

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

In the Name of Allāh, the Most Beneficent, the Most Merciful

20. The Chapters On Legal Punishments

(المعجم ٢٠) أَبْوَابُ الْحُدُودِ

(التحفة ١٢)

Comments:

Literal meaning of *Hudud* is Limits of Preventives. That is why punishments of crimes are called *Hudud*, because they stop perpetration of crimes, whereas the actual meaning of *Hadd* is standing in between two things. A thing which differentiates something from another is called *Hadd*, as in boundaries of land or boundaries of the house etc.

In Islamic law, punishment for transgression and violation of the orders of Allāh is called *Hadd*. Allāh has described different punishments for different crimes in the Noble Qur'ān. Some of them are murder, theft, adultery and robbery.

Chapter 1. It Is Not Lawful To Shed The Blood Of A Muslim Except In Three Cases

(المعجم ١) - بَابُ: لَا يَحِلُّ دَمُ امْرِئٍ
مُسْلِمٍ إِلَّا فِي ثَلَاثٍ (التحفة ١)

2533. It was narrated from Abu Umāmah bin Sahl bin Hunaif that 'Uthmān bin 'Affān looked at them and heard them when they spoke of killing. He said: "Are they threatening to kill me? Why would they kill me? I heard the Messenger of Allāh ﷺ say: 'It is not lawful to shed the blood of a Muslim except in one of three (cases): a man who commits adultery when he is a married person, then he should be stoned; a man who kills a soul not in retaliation for murder; and a man who apostatizes after becoming Muslim.' By Allāh, I never committed adultery either during Ignorance days nor in Islam, and I

٢٥٣٣ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ: أَتَيْنَا حَمَادَ
ابْنَ زَيْدٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي
أُمَامَةَ بْنِ سَهْلِ بْنِ حَتِيفٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ
أَشْرَفَ عَلَيْهِمْ. فَسَمِعَهُمْ وَهُمْ يَذْكُرُونَ الْقَتْلَ
فَقَالَ: إِنَّهُمْ لَيَتَوَاعَدُونِي بِالْقَتْلِ؟ فَلِمَ يَقْتُلُونِي؟
وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَحِلُّ
دَمُ امْرِئٍ مُسْلِمٍ إِلَّا فِي إِحْدَى ثَلَاثٍ: رَجُلٌ
زَنَى وَهُوَ مُحْصَنٌ فَرُجِمَ. أَوْ رَجُلٌ قَتَلَ نَفْسًا
بِغَيْرِ نَفْسٍ. أَوْ رَجُلٌ ارْتَدَّ بَعْدَ إِسْلَامِهِ» فَوَاللَّهِ!
مَا زَيْتُ فِي جَاهِلِيَّةٍ وَلَا فِي إِسْلَامٍ، وَلَا
قَتَلْتُ نَفْسًا مُسْلِمَةً، وَلَا ارْتَدَدْتُ مُنْذُ
أَسْلَمْتُ.

have never killed a Muslim soul, and I have not apostatized since I became Muslim.” (*Sahih*)

تخريج: [إسناده صحيح] أخرجه أبو داود، الدييات، باب الإمام يأمر بالعرف في الدم، ح: ٤٥٠٢ من حديث حماد به، وحسنه الترمذي، ح: ٢١٥٨، وصححه ابن الجارود، ح: ٨٣٦.

Comments:

- Murder of a Muslim without a legal reason is a major crime.
- Other than the causes mentioned above, murder of a Muslim is unlawful. Execution of the punishment for the abovementioned crimes is the right of the Islamic state or the Islamic courts. The general public cannot execute the punishment. Adultery is a heinous crime, despite all that, if an adulterer is unmarried he cannot be stoned to death. His punishment is one hundred lashes, and if the judge determines it best, he can add the punishment of sending into exile.
- Punishment of a married person involved in adultery is to stone him/her to death.
- A person who apostatizes after becoming a Muslim, his punishment is death. If he is sincerely penitent, and embraces Islam again, he will be forgiven.

2534. It was narrated from ‘Abdullāh, who is Ibn Mas‘ud, that the Messenger of Allāh ﷺ said: “It is not lawful to shed the blood of a Muslim who bears witness that none has the right to be worshiped but Allāh, and that I am the Messenger of Allāh, except in one of the three cases: a soul for a soul; a married person who commits adultery, and one who leaves his religion and splits from the *Jamā’ah*.”^[1] (*Sahih*)

٢٥٣٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ أَبُو بَكْرُ ابْنُ خَلَادٍ الْبَاهِلِيُّ قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ، وَهُوَ ابْنُ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، إِلَّا أَحَدٌ ثَلَاثَةً نَفَر: النَّفْسُ بِالنَّفْسِ، وَالثَّيِّبُ الزَّانِي، وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ لِلْجَمَاعَةِ».

تخريج: أخرجه البخاري، الدييات، باب قول الله تعالى: إن النفس بالنفس والعين بالعين، ح: ٦٨٧٨ من حديث الأعمش به، ومسلم، القسامة والمحاررين، باب ما يباح به دم المسلم، ح: ١٦٧٦ من حديث وكيع به.

^[1] The main body of the Muslims, and the meaning of this third case is the same as the meaning of the third case in the previous narration, i.e., he leaves the religion.

Comments:

Leaving the *Jamâ'ah* means leaving the religion of Islam and accepting some other religion and joining disbelievers. Here *Jamâ'ah* does not mean an organization of Muslims that is engaged in religious tasks like the missionary work of preaching. A person is a Muslim before joining such a *Jamâ'ah* and after quitting remains a Muslim. Such a person cannot be treated a rebel because these organizations are only missionaries and cannot act as an Islamic state. Punishment of the rebel of an Islamic state is death.

Chapter 2. The Apostate Who Leaves His Religion

(المعجم ٢) - بَابُ الْمُرْتَدِّ عَنْ دِينِهِ

(التحفة ٢)

2535. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Whoever changes his religion, execute him." (*Sahih*)

٢٥٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّنَا سَفْيَانُ بْنُ عُيَيْنَةَ، عَنْ أَيُّوبَ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ».

تخريج: أخرجه البخاري، الجهاد والسير، باب: لا يعذب بعذاب الله، ح: ٣٠١٧ من حديث سفيان به.

2536. It was narrated from Bahz bin Hakim, from his father, from his grandfather that the Messenger of Allâh ﷺ said: "Allâh will not accept any good deed from a polytheist who committed polytheism after having become Muslim, until he leaves the polytheists and joins the Muslims." (*Hasan*)

٢٥٣٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ بَهْزِ بْنِ حَكِيمٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَقْبَلُ اللَّهُ مِنْ مُشْرِكٍ، أَشْرَكَ بَعْدَمَا أَسْلَمَ، عَمَلًا حَتَّى يُفَارِقَ الْمُشْرِكِينَ إِلَى الْمُسْلِمِينَ».

تخريج: [إسناده حسن] أخرجه النسائي، الزكاة، باب من سأل بوجه الله عز وجل، ح: ٢٥٦٩ من حديث بهز به.

Comments:

- Change of religion mean to leave Islam and accept another religion. If a Jew converts to Christianity or a Magus becomes a Jew it does not fall under the sense of change of religion.
- If an apostate repents sincerely, and leaves the disbelievers, and embraces Islam, then there is no death penalty for him.

Chapter 3. Carrying Out The Hudud

(المعجم ٣) - بَابُ إِقَامَةِ الْخُدُودِ

(التحفة ٣)

2537. It was narrated from Ibn

٢٥٣٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

'Umar that the Messenger of Allāh ﷺ said: "Carrying out one of the legal punishments prescribed by Allāh is better than if it were to rain for forty nights in the land of Allāh, Glorified is He." (*Da'if*)

الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا سَعِيدُ بْنُ سِنَانٍ، عَنْ أَبِي الزَّاهِرِيِّ، عَنْ أَبِي شَجَرَةَ كَثِيرِ بْنِ مُرَّةَ، عَنْ ابْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِقَامَةُ حَدٍّ مِنْ حُدُودِ اللَّهِ، خَيْرٌ مِنْ مَطَرٍ أَرْبَعِينَ لَيْلَةً، فِي بِلَادِ اللَّهِ عَزَّ وَجَلَّ».

تخريج: [إسناده ضعيف جداً] وضعفه البوصيري، قلت: سعيد بن سنان الحنفي الحمصي متروك، ورماء الدارقطني وغيره بالوضع كما في التقريب.

Comments:

- Hadd* means punishment ordained by Allāh for specific crimes. For example punishment of theft is cutting off the hand and punishment of murder is payment of blood money. Legally, there is increase or decrease in these punishments. Punishment for other general crimes is called *Ta'zir* - penalization. It depends on the judgment of the *Qadi*, he can punish according to the intensity of the crime.
- A simile of rain has been used for the blessing of Allāh. Rain is considered a very special blessing in the Arabian peninsula.

2538. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "A legal punishment that is carried out in the land is better for the people of that land than if it were to rain for forty days." (*Da'if*)

٢٥٣٨ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ: أَتْبَانَا عِيسَى بْنُ يَزِيدَ أَطْنَهُ عَنْ جَرِيرِ بْنِ يَزِيدَ عَنْ أَبِي زُرْعَةَ بْنِ عَمْرٍو ابْنِ جَرِيرٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «حَدٌّ يُعْمَلُ بِهِ فِي الْأَرْضِ، خَيْرٌ لِأَهْلِ الْأَرْضِ مِنْ أَنْ يُمَطَّرُوا أَرْبَعِينَ صَبَاحًا».

تخريج: [إسناده ضعيف] أخرجه النسائي، قطع السارق، - الترغيب في إقامة الحد، ح: ٤٩٠٨ من حديث ابن المبارك * وجري بن يزيد البجلي ضعيف كما في التقريب وغيره، وأخرج ابن حبان (موارد)، ح: ١٥٠٧ من طريق (محمد بن الحسن) ابن قتيبة (العسقلاني وثقه الدارقطني، والذهبي وغيرهما) عن (محمد) ابن قدامة (المصيصي وثقه الدارقطني، وابن حبان وغيرهما) حدثنا ابن علية عن يونس بن عبيد عن عمرو بن سعيد عن أبي زرعة به إلخ، وإسناده ضعيف لعلل، منها تليس يونس بن عبيد، وروى الطبراني في الصغير: ٧٢/٢ عن محمد بن عبد الصمد بن أبي الجراح المقرئ المصيصي حدثنا محمد بن قدامة الجوهري حدثنا إسماعيل ابن علية عن يونس بن عبيد عن جرير بن يزيد عن أبي زرعة به إلخ، وقال: تفرد به محمد بن قدامة، ورواه عمرو بن زرار (ثقة) عن ابن علية عن يونس عن جرير عن أبي زرعة عن أبي هريرة به

موقوفًا ، أخرجه النسائي، وللحديث شاهد ضعيف عند الطبراني في الأوسط: ٣٨٤/٥، ح: ٤٧٦٢، وقال الهيثمي في أحد رواته: زريق بن السخت ولم أعرفه (٦/٢٦٣)، وفيه عفا بن جبير الطائي ينظر فيه، ومع ذلك حسنه المنذري، والعراقي.

2539. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Whoever denies a Verse of the Qur'ân, it is permissible to strike his neck (i.e., execute him). Whoever says, *Lâ ilâha illallâhu wahdahu lâ sharika lahu, wa anna Muhammadan 'abduhu wa rasuluhu* (None has the right to be worshiped but Allâh alone, with no partner or associate, and Muhammad is His slave and Messenger), no one has any way of harming him, unless he (does something which) deserves a legal punishment, and it is carried out on him." (*Da'if*)

٢٥٣٩ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا حَفْصُ بْنُ عُمَرَ: حَدَّثَنَا الْحَكَمُ بْنُ أَبَانَ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ جَحَدَ آيَةً مِنَ الْقُرْآنِ، فَقَدْ حَلَّ ضَرْبُ عُقْبِهِ. وَمَنْ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ، فَلَا سَبِيلَ لِأَحَدٍ عَلَيْهِ، إِلَّا أَنْ يُصِيبَ حَدًّا، فَيُقَامَ عَلَيْهِ».

تخريج: [إسناده ضعيف] أخرجه ابن عدي: ٧٩٣/٢ من حديث حفص بن عمر العدني به مختصرًا * والعدني لقبه الفرخ، وهو ضعيف كما في التقريب وغيره، والحديث ضعفه البوصيري من أجله.

2540. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ said: "Carry out the legal punishments on relatives and strangers, and do not let the fear of blame stop you from carrying out the command of Allâh." (*Hasan*)

٢٥٤٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْمَقْلُوجُ: حَدَّثَنَا عُيَيْنَةُ بْنُ الْأَسْوَدِ، عَنْ الْقَاسِمِ بْنِ التَّوَلِيدِ، عَنْ أَبِي صَادِقٍ، عَنْ رَبِيعَةَ بْنِ نَاجِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَتَمُّوا حُدُودَ اللَّهِ فِي الْقَرِيبِ وَالْبَعِيدِ. وَلَا تَأْخُذْكُمْ فِي اللَّهِ لَوْمَةٌ لَأَيِّمٍ».

تخريج: [حسن] أخرجه عبد الله بن أحمد في زوائد المسند: ٣٣٠/٥ عن المقلوج به مطولاً، وأورده الضياء في المختارة، وفيه علة قاذحة، وهي عتنة عبيدة بن الأسود لأنه مدلس، مذكور في المرتبة الثالثة من طبقات المدلسين لابن حجر، وله شاهد عند البيهقي: ١٠٣/٩، ١٠٤، فيه منصور الخولاني، ولم أجد له ترجمة، وشيخه غيلان بن أنس، وثقه ابن حبان، وللحديث شواهد كثيرة.

Comments:

- In this narration, near and distant stand for relative and strangers. In this way all the factors like bribery, relation, post and position that save the criminals, are nullified in Islamic society.
- While doing justice, the judge should be impartial and carry out the command of Allāh only for the pleasure of Allāh. He should not care for the blame and criticism of people.

Chapter 4. One Who May Be Exempt From The Legal Punishment

2541. It was narrated that 'Abdul-Malik bin 'Umair said: "I heard 'Atiyyah Al-Qurazi say: 'We were presented to the Messenger of Allāh ﷺ on the Day of Quraizah. Those whose pubic hair had grown were killed, and those whose pubic hair had not yet grown were let go. I was one of those whose pubic hair had not yet grown, so I was let go."

(*Sahih*)

تخریج: [صحيح] أخرجه الترمذي، السير، باب ماجاء في النزول على الحكم، ح: ١٥٨٤ من حديث وكيع به، وقال: حسن صحيح، وصححه ابن الجارود، ح: ١٠٤٥، راجع نيل المقصود، ح: ٤٤٠٤.

2542. It was narrated that 'Abdul-Malik bin 'Umair said: "I heard 'Atiyyah Al-Qurazi say: 'Here I am still among you.'"

(*Sahih*)

(المعجم ٤) - بَابُ مَنْ لَا يَجِبُ عَلَيْهِ الْحُدُّ (التحفة ٤)

٢٥٤١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ عَطِيَّةَ الْقُرَظِيِّ يَقُولُ: عُرِضْنَا عَلَى رَسُولِ اللَّهِ ﷺ يَوْمَ قُرَيْظَةَ. فَكَانَ مَنْ أَتَيْتَ قُتِلَ. وَمَنْ لَمْ يُتَيْتْ خُلِيَ سَبِيلُهُ. فَكُنْتُ فِيمَنْ لَمْ يُتَيْتْ، فَخُلِيَ سَبِيلِي.

٢٥٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ بَنَاءَ سُفْيَانَ بْنَ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ عَطِيَّةَ الْقُرَظِيِّ يَقُولُ: فَهَذَا أَنَا ذَا بَيْنٍ أَظْهَرَكُمْ.

تخریج: [صحيح] أخرجه النسائي: ١٥٥/٦، الطلاق، باب: متى يقع طلاق الصبي، ح: ٣٤٦٠ من حديث ابن عيينة به.

Comments:

- Banu Quraizah had signed a treaty with Muslims that they would not help the Quraish of Makkah against the Muslims. Huyai bin Akhtab, a leader of Banu Quraizah, on the false temptations of Ka'b bin Sa'd, a leader of Banu Nadir broke this treaty.
- When the battle of Al-Khandaq was over, the Noble Prophet ﷺ besieged the quarter of Banu Quraizah.
- Appearance of pubic hair is a mark of attaining adulthood.

d. Legal punishment is not imposed on minors but the judge can punish them according to the intensity of the crime.

2543. It was narrated that Ibn 'Umar said: "I was presented to the Messenger of Allāh ﷺ on the day of Uhud, when I was fourteen years old, but he did not permit me (to fight). I was presented to him on the Day of Khandaq when I was fifteen years old, and he permitted me (to fight)." (*Sahih*)

Nâfi' said: "I narrated this *Hadith* to 'Umar bin 'Abdul-'Aziz during his caliphate and said: This is the dividing line between young and old."

٢٥٤٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ وَ أَبُو مُعَاوِيَةَ وَ أَبُو أُسَامَةَ قَالُوا: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: عُرِضْتُ عَلَى رَسُولِ اللَّهِ ﷺ يَوْمَ أُحُدٍ، وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً، فَلَمْ يُجْزِنِي. وَعُرِضْتُ عَلَيْهِ يَوْمَ الْخَنْدَقِ وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً، فَأُجَازَنِي.

قَالَ نَافِعٌ: فَحَدَّثْتُ بِهِ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ فِي خِلَافَتِهِ فَقَالَ: هَذَا فَضْلٌ مَا بَيْنَ الصَّغِيرِ وَالْكَبِيرِ.

تخريج: أخرجه البخاري، الشهادات، باب بلوغ الصبيان وشهادتهم، ح: ٢٦٦٤ من حديث أبي أسامة من حديث عبيد الله بن عمر به، ومسلم، الإمامة، باب بيان سن البلوغ، ح: ١٨٦٨ من حديث عبدالله بن نعيم به.

Comments:

- On the basis of this narration many scholars have argued that the age of fifteen is the age of puberty, and a boy at this age should be considered an adult.
- Normally puberty is judged from other signs, like appearance of pubic hair, wet dreams, menstrual course in girls etc. If these signs do not appear at the proper time in a boy or a girl then the age of fifteen should be considered the mark of adulthood.

Chapter 5. Covering (The Sin Of) The Believer And Warding Off Legal Punishments In The Case Of Doubt

2544. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever covers (the sin of) a Muslim, Allāh will cover him (his sin) in this world and in the Hereafter." (*Sahih*)

(المعجم ٥) - بَابُ السِّرِّ عَلَى الْمُؤْمِنِ
وَدَفْعِ الْحُدُودِ بِالشُّبُهَاتِ (التحفة ٥)

٢٥٤٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَتَرَ مُسْلِمًا سَتَرَهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ».

تخریج: أخرجه مسلم، الذكر والدعاء، باب فضل الاجتماع على تلاوة القرآن وعلى الذكر، ح: ٢٦٩٩ من حديث أبي بكر بن أبي شيبة به مطولاً، انظر، ح: ٢٢٥ من هذا الكتاب.

Comments:

- Covering means to conceal the faults of others.
- To err is human; therefore, one should not expose the faults of others.
- To cover in the Hereafter means forgiveness of sins.
- Dealing with others with kindness pays in this world, as well as in the Hereafter.

2545. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Ward off the legal punishments as much as you can." (*Da'if*)

٢٥٤٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَّاحِ: حَدَّثَنَا وَكِيعٌ عَنْ إِبْرَاهِيمَ بْنِ الْفَضْلِ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ لَهُ مَدْفَعًا».

تخریج: [إسناده ضعيف جداً] أخرجه أبو يعلى: ٤٩٤/١١، ح: ٦٦١٨ من حديث وكيع به بلفظ: إدروا الحدود ما استطعتم، وضعفه البوصيري، وقال ابن حجر في إبراهيم بن الفضل المخزومي متروك (تقريب)، وله شواهد ضعيفة عند الترمذي، ح: ١٤٢٤، وابن عدي: ١/٢٣٣ وغيرهما.

Comments:

Legal punishment should be awarded only after having complete and definite proofs of the crime committed. In case of doubt, legal punishment cannot be given.

2546. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "Whoever conceals the (hidden) fault of his Muslim brother, Allāh will conceal his faults on the Day of Resurrection. Whoever exposes the fault of his Muslim brother, Allāh will expose his faults, until (so that) He shames him, due to it, in his (own) house." (*Da'if*)

٢٥٤٦ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: أَنَّنَا مُحَمَّدُ بْنُ عُمَانَ الْجُمَحِيُّ: حَدَّثَنَا الْحَكَمُ بْنُ أَبَانَ عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ سَتَرَ عَوْرَةَ أَخِيهِ الْمُسْلِمِ، سَتَرَ اللَّهُ عَوْرَتَهُ يَوْمَ الْقِيَامَةِ. وَمَنْ كَشَفَ عَوْرَةَ أَخِيهِ الْمُسْلِمِ، كَشَفَ اللَّهُ عَوْرَتَهُ حَتَّى يَفْضَحَهُ بِهَا فِي بَيْتِهِ».

تخریج: [إسناده ضعيف] * محمد بن عثمان بن صفوان الجمحي ضعيف كما في التقريب وغيره، وح: ٢٥٤٤، ٢٢٥ يغني عنه.

Comments:

Covering the nakedness of someone may mean to give him clothes to cover his body. It may also mean to conceal his faults to save him from humiliation.

Chapter 6. Intercession Concerning Legal Punishments

2547. It was narrated from 'Aishah that Quraish became concerned about the case of the Makhzumi woman who had stolen, and they said: "Who will speak to the Messenger of Allāh ﷺ concerning her?" They said: "Who would dare to do that other than Usâmah bin Zaid, the beloved of the Messenger of Allāh ﷺ?" So Usâmah spoke to him, and the Messenger of Allāh ﷺ said, "Are you interceding concerning one of the legal punishments of Allāh?" Then he stood up and addressed (the people) and said: "O people! Those who came before you were only destroyed because when one of their nobles stole, they let him off, but when one of the weak people among them stole, they would carry out the punishment on him. By Allāh, if Fâtimah the daughter of Muhammad were to steal, I would cut off her hand."

(*Sahih*)

(One of the narrators) Muhammad bin Rumh said: "I heard Laith bin Sa'd say: 'Allāh protected her (Fâtimah) from stealing, and every Muslim should say this.'"

تخريج: أخرجه البخاري، أحاديث الأنبياء، باب (٥٤)، ح: ٣٤٧٥، ٣٣٢٢، ٦٧٨٧، ٦٧٨٨، من حديث الليث به، ومسلم، الحدود، باب قطع السارق الشريف وغيره والنهي عن الشفاعة في الحدود، ح: ١٦٨٨ عن محمد بن رمح به.

Comments:

a. The name of this woman of Banu Makhzum was Fâtimah, the daughter of

(المعجم ٦) - بَابُ الشَّفَاعَةِ فِي الْحُدُودِ

(التحفة ٦)

٢٥٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ الْبُصْرِيُّ: أَنَّنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَرْأَةِ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ. فَقَالُوا: مَنْ يَكْلُمُ فِيهَا رَسُولَ اللَّهِ ﷺ؟ قَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ بْنُ زَيْدٍ، حُبُّ رَسُولِ اللَّهِ ﷺ؟ فَكَلَّمَهُ أُسَامَةُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟». ثُمَّ قَامَ فَاخْتَطَبَ فَقَالَ: «يَا أَيُّهَا النَّاسُ! إِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا، إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ. وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ. وَإِنَّمَا اللَّهُ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ، لَقَطَعْتُ يَدَهَا».

قَالَ مُحَمَّدُ بْنُ رُمْحٍ: سَمِعْتُ اللَّيْثَ بْنَ سَعْدٍ يَقُولُ: قَدْ أَعَادَهَا اللَّهُ عَزَّ وَجَلَّ أَنْ تَسْرِقَ. وَكُلُّ مُسْلِمٍ يَنْبَغِي لَهُ أَنْ يَقُولَ هَذَا.

Aswad bin Abdul Asad. She was the niece of Abu Salamah who was the ex-husband of Mother of the Believers, Umm Salamah. (*Fathul-Bâri* 12/108)

- b. Usâmah was chosen for intercession because of his young age and nearness to the Prophet ﷺ, and for the general view that if the request is not accepted, the Prophet ﷺ will not be angry with him due to his young age.
- c. There is partiality of undue favor in enforcement of legal punishment.

2548. It was narrated from 'Aishah bint Mas'ud bin Aswad, that her father said: "When the woman stole the *Qatifah*^[1] from the house of the Messenger of Allâh ﷺ, we regarded that as a serious matter. She was a woman from Quraish. So we came to the Prophet ﷺ and spoke to him, and said: 'We will ransom her for forty *Uqiyyah*.' The Messenger of Allâh ﷺ said: 'Purification is better for her.' When we heard the Messenger of Allâh ﷺ speak so kindly, we went to Usâmah and said: 'Speak to the Messenger of Allâh ﷺ.' When the Messenger of Allâh ﷺ saw that, he stood up to speak and said: 'How much do you intercede with me concerning one of the legal punishments of Allâh that has befallen one of the female slaves of Allâh! By the One in Whose Hand is the soul of Muhammad, if Fâtimah the daughter of the Messenger of Allâh, were to do what she has done, Muhammad would cut off her hand.'" (*Da'if*)

٢٥٤٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ طَلْحَةَ بْنِ رُكَّانَةَ، عَنْ أُمِّهِ عَائِشَةَ بِنْتِ مَسْعُودِ بْنِ الْأَسْوَدِ، عَنْ أَبِيهَا قَالَ: لَمَّا سَرَقَتِ الْمَرْأَةُ تِلْكَ الْقُطِيفَةَ مِنْ بَيْتِ رَسُولِ اللَّهِ ﷺ، أَغْضَمْنَا ذَلِكَ. وَكَانَتْ امْرَأَةً مِنْ قُرَيْشٍ. فَجِئْنَا إِلَى النَّبِيِّ ﷺ نُكَلِّمُهُ. وَقُلْنَا: نَحْنُ نَقْدِيهَا بِأَرْبَعِينَ أُوقِيَّةً. فَقَالَ رَسُولُ اللَّهِ ﷺ: «تَطَهَّرْ خَيْرَ لَهَا» فَلَمَّا سَمِعْنَا لَيْسَ قَوْلُ رَسُولِ اللَّهِ ﷺ، أَتَيْنَا أُسَامَةَ فَقُلْنَا: كَلِّمْ رَسُولَ اللَّهِ ﷺ. فَلَمَّا رَأَى رَسُولُ اللَّهِ ﷺ ذَلِكَ، قَامَ خَطِيبًا فَقَالَ: «مَا إِكْتَارُكُمْ عَلَيَّ فِي حَدِّ مِنْ حُدُودِ اللَّهِ عَزَّ وَجَلَّ وَقَعَ عَلَى أَمَةٍ مِنْ إِمَاءِ اللَّهِ؟ وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَوْ كَانَتْ فَاطِمَةُ ابْنَةُ رَسُولِ اللَّهِ ﷺ نَزَلَتْ بِالَّذِي نَزَلْتُ بِهِ، لَقَطَعْتُ مُحَمَّدٌ يَدَهَا».

تخریج: [إسناده ضعيف] أخرجه الحاكم في المستدرک: ٤/٣٧٩، ٣٨٠ (على تصحيف فيه) من حديث محمد بن إسحاق به، وصححه، ووافقه الذهبي، والحديث في مصنف ابن أبي شيبة: ٩/٤٦٦، ٤٦٧ عن ابن نمير به، وقال البوصيري: هذا إسناده ضعيف لتدليس ابن إسحاق،

[1] A garment made of velvet or a plush fabric.

انظر، ح: ١٢٠٩، والحديث السابق شاهد له، ولعله من أجله حسنه الحافظ في الإصابة: ٤٠٩/٣.

Chapter 7. The Legal Punishment For Adultery

(المعجم ٧) - بَابُ حَدِّ الزَّنا (التحفة ٧)

2549. It was narrated that Abu Hurairah, Zaid bin Khālid and Shibl said: "We were with the Messenger of Allāh ﷺ and a man came to him and said: 'I adjure you by Allāh to judge between us according to the Book of Allāh.' His opponent, who was more knowledgeable than him, said: 'Judge between us according to the Book of Allāh, but let me speak first.' He said: 'Speak.' He said: 'My son was a servant of this man, and he committed adultery with his wife, and I ransomed him for one hundred sheep and a servant. I asked some men of knowledge and I was told that my son should be given one hundred lashes and exiled for a year, and that the wife of this man should be stoned.' The Messenger of Allāh ﷺ said: 'By the One in Whose Hand is my soul, I will judge between you according to the Book of Allāh. The one hundred sheep and the servant are to be returned to you, and your son is to be given one hundred lashes and exiled for a year. Go tomorrow, O Unais, to the wife of this man and if she admits it then stone her.'" (Sahih)

Hishām said: "He went to her the following day, and she admitted it, so he stoned her."

٢٥٤٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَهِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي هُرَيْرَةَ وَ زَيْدِ ابْنِ خَالِدٍ وَ شَيْبِلٍ قَالُوا: كُنَّا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَأَتَاهُ رَجُلٌ فَقَالَ: أَتَشُدُّكَ اللَّهُ لَمَّا قَضَيْتَ بَيْنَنَا بِكِتَابِ اللَّهِ. فَقَالَ خَصَمُهُ، وَكَانَ أَفْقَهُ مِنْهُ: اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ. وَاتَّذَنُ لِي حَتَّى أَقُولَ. قَالَ: «قُلْ» قَالَ: إِنَّ ابْنِي كَانَ عَمِيقًا عَلَى هَذَا. وَإِنَّ زَنَى بِامْرَأَتِهِ. فَأَقْدَبْتُ مِنْهُ بِمِائَةِ شَاةٍ وَخَادِمٍ. فَسَأَلْتُ رِجَالًا مِنْ أَهْلِ الْعِلْمِ. فَأُخْبِرْتُ أَنَّ عَلَى ابْنِي جَلْدَ مِائَةٍ وَتَغْرِيبَ عَامٍ. وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجُلِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَالَّذِي نَفْسِي بِيَدِهِ لَا أَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ. الْمِائَةُ الشَّاةُ وَالْخَادِمُ رَدٌّ عَلَيْكَ. وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ. وَاعْدُوا يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا. فَإِنْ اعْتَرَفَتْ فَأَرْجُمُهَا».

قَالَ هِشَامٌ: فَعَدَا عَلَيْهَا، فَأَعْتَرَفَتْ، فَرَجَمَهَا.

تخريج: أخرجه البخاري، الحدود، باب الاعتراف بالزنا، ح: ٦٨٢٨، ٦٨٦٠ من حديث ابن

عينة، ومسلم، الحدود، باب من اعترف على نفسه بالزنى، ح: ١٦٩٨ من حديث الزهري به.

Comments:

- Here Book of Allāh means both the Qur'ân and *Hadith* because both of are from Allāh.
- In cases of murder, there is a possibility and permission of reconciliation, either by payment or blood money or by forgiving the murderer, but in cases of illegal sexual intercourse, legal punishment must be implemented.

2550. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allāh ﷺ said: "Learn from me. Allāh has ordained for them (women^[1]) another way. (If) a virgin (commits illegal sexual intercourse) with a virgin, (the punishment is) one hundred lashes and exile for one year. (If) a *Thayyib* (commits adultery) with a *Thayyib*,^[2] (the punishment is) one hundred lashes and stoning." (*Sahih*)

٢٥٥٠ - حَدَّثَنَا بَكْرُ بْنُ خَلْفٍ أَبُو بَشِيرٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ يُونُسَ بْنِ جَبْرِ، عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «خُلِدُوا عَنِّي. قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا. الْبِكْرُ بِالْبِكْرِ جُلْدٌ مِائَةٌ وَتَغْرِبُ سَنَةً. وَالثَّيِّبُ بِالثَّيِّبِ جُلْدٌ مِائَةٌ وَالرَّجْمُ».

تخريج: أخرجه مسلم، الحدود، باب حد الزنى، ح: ١٦٩٠ من حديث حطان به.

Comments:

- The Prophet ﷺ ordered the punishment of stoning to married adulterers. They were not given the punishment of lashes as has been mentioned in the narration no. 2549, it makes it clear that the punishment of lashes merges into stoning.
- Punishment of an unmarried person is lashes and sending into exile for one year, so that the change in environment may bring a healthy change. Now-a-days imprisonment can be an alternate of sending into exile. The environment of jails should be oriented toward character building and the reformation of criminals.

^[1] This is a reference to the Verse: "And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them (i.e., women) to houses until death comes to them or Allāh ordains for them some (other) way" (*An-Nisā'* 4:15)

^[2] A non-virgin who is legally married or was previously married, and has had sexual relations with another such from the other sex.

Chapter 8. One Who Has Intercourse With The Slave Woman Of His Wife

(المعجم ٨) - بَابُ مَنْ وَقَعَ عَلَى جَارِيَةٍ
أَمْرَأَتِهِ (التحفة ٨)

2551. It was narrated that Habib bin Sâlim said: "A man who had intercourse with the slave woman of his wife was brought to Nu'mân bin Bashir. He said: 'I will pass no other judgement than that of the Messenger of Allâh ﷺ.' He said: 'If (his wife) had made her lawful for him, then I will give him one hundred lashes, but if she has not given permission, I will stone him.'"
(Hasan)

٢٥٥١ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: أَنَّ أَبَا سَعِيدٍ عَنْ قَتَادَةَ، عَنْ حَبِيبِ بْنِ سَالِمٍ، قَالَ: أُتِيَ الثُّعْمَانُ بْنُ بَشِيرٍ بِرَجُلٍ غَشَى جَارِيَةَ امْرَأَتِهِ. فَقَالَ: لَا أَقْضِي فِيهَا إِلَّا بِقَضَاءِ رَسُولِ اللَّهِ ﷺ. قَالَ: إِنْ كَانَتْ أَحَلَّتْهَا لَهُ، جَلَدْتُهُ مِائَةً. وَإِنْ لَمْ تَكُنْ أَذِنَتْ لَهُ، رَجَمْتُهُ.

تخریج: [حسن] أخرجه الترمذي، الحدود، باب ما جاء في الرجل يقع على جارية امرأته، ح: ١٤٥١ من حديث سعيد بن أبي عروبة به، وتابعه أيوب بن مسكين عنه * قتادة لم يسمع من حبيب بن سالم، سمعه من خالد بن عرفطة، وكتب إليه حبيب، وتابعه أبو بشر عن خالد بن عرفطة عن حبيب به ... الخ، وخالد جهله أبو حاتم، والبخاري، ووثقه ابن حبان، والحديث الآتي شاهد له.

2552. It was narrated from Salamah bin Muhabbiq that the case of a man who had intercourse with the slave woman of his wife was referred to the Messenger of Allâh ﷺ, and he did not stipulate any legal punishment for him. (Hasan)

٢٥٥٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ حَرْبٍ، عَنْ هِشَامِ بْنِ حَسَّانٍ، عَنِ الْحَسَنِ، عَنْ سَلَمَةَ بْنِ الْمُحَبِّقِ أَنَّ رَسُولَ اللَّهِ ﷺ رَفَعَ إِلَيْهِ رَجُلٌ وَطِئَ جَارِيَةَ امْرَأَتِهِ، فَلَمْ يَحْدُدْ.

تخریج: [إسناده حسن] أخرجه النسائي في الكبرى: ٢٩٧/٤، ح: ٧٢٣٠ من حديث عبد السلام به، وقال: لا تصح هذه الأحاديث (تحفة الاشراف: ٥٢/٤)، وأخرجه أبو داود، ح: ٤٤٦٠، ٤٤٦١ من طريقين عن قتادة عن الحسن به، وأخرج البيهقي: ٢٤٠/٨ بإسناد صحيح عن الحسن قال: حدثني قبيصة بن حريث الأنصاري عن سلمة بن المحبق به بلفظ: إن كان استكرهها فهي عتقة وعليه مثلها وإن كان أتاه عن طيبة نفس منها رضي فهي له وعليه مثل ثمنها لك (أي لزوجه) ولم يقم عليه حدًا * قبيصة وثقه العجلي، وابن حبان، وقال الحافظ في التقریب صدوق انتهى، ولم يطعن أحد فيه بحجة، فالسند حسن.

Chapter 9. Stoning

2553. It was narrated from Ibn 'Abbās that 'Umar bin Khattāb said: "I fear that after a long time has passed, some will say: 'I do not find (the sentence of) stoning in the Book of Allāh,' and they will go astray by abandoning one of the obligations enjoined by Allāh. Rather stoning is a must if a man is married (or previously-married) and proof is established, or if pregnancy results or if he admits it. I have read it (in the Qur'ān). "And if an old man and an old woman commit adultery, stone them both." The Messenger of Allāh ﷺ stoned (adulterers) and we stoned (them) after him."

(*Sahih*)

تخريج: أخرجه البخاري، الحدود، باب الاعتراف بالزنا، ح: ٦٨٢٩ من حديث سفیان به، ومسلم، الحدود، باب رجم الثيب في الزنا، ح: ١٦٩١ من حديث أبي بكر بن أبي شيبة به.

Comments:

- If an adulterer or an adulteress is married he/she is to be killed by stoning.
- Orders of stoning the adulterer were also in previously revealed Books. The present version of Bible still contains the orders of death for an adulterer.
- There are some Verses of the Noble Qur'ān that have been abrogated, and their orders have also been abrogated. In the narration under discussion the Verse has been abrogated but the orders of stoning still exist.

2554. It was narrated that Abu Hurairah said: "Mā'iz bin Mālik came to the Prophet ﷺ and said: 'I have committed fornication,' and he (the Prophet ﷺ) turned away from him. He said: 'I have committed fornication,' and he turned away from him. He said: 'I have committed fornication,' and he turned away from him. Then, he said: I have committed

(المعجم ٩) - بَابُ الرَّجْمِ (التحفة ٩)

٢٥٥٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا مُثَنَّى بْنُ عُمَيْتَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَقَدْ خَشِيتُ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ، حَتَّى يَقُولَ قَائِلٌ: مَا أَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ، فَيَضْلُوا بِتَرْكِ فَرِيضَةٍ مِنْ فَرَائِضِ اللَّهِ. أَلَا وَإِنَّ الرَّجْمَ حَقٌّ إِذَا أُحْصِنَ الرَّجُلُ وَقَامَتِ الْبَيْتَةُ، أَوْ كَانَ حَمْلٌ أَوْ اغْتِرَافٌ. وَقَدْ قَرَأْتُهَا، الشَّيْخُ وَالشَّيْخَةُ إِذَا زَنَيَا فَارْجُمُوهُمَا الْبَيْتَةَ، رَجَمَ رَسُولُ اللَّهِ ﷺ وَرَجَمْنَا بَعْدَهُ.

٢٥٥٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ بْنُ الْعَوَّامِ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ مَا عَزُ ابْنُ مَالِكٍ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي زَنَيْتُ. فَأَعْرَضَ عَنْهُ. ثُمَّ قَالَ: إِنِّي قَدْ زَنَيْتُ. فَأَعْرَضَ عَنْهُ. ثُمَّ قَالَ: إِنِّي زَنَيْتُ. فَأَعْرَضَ عَنْهُ. ثُمَّ قَالَ: قَدْ زَنَيْتُ. فَأَعْرَضَ عَنْهُ. حَتَّى

fornication, and he turned away from him, until when he had confessed four times, he ordered that he should be stoned. When he was being struck with the stones, he ran away, but a man caught up with him who had a camel's jawbone in his hand; he struck him and he fell down. The Prophet ﷺ was told about how he fled when the stones hit him, and he said: 'Why did you not let him be?' (Hasan)

أَقْرَأَ أَرْبَعَ مَرَّاتٍ. فَأَمَرَ بِهِ أَنْ يُرْجَمَ. فَلَمَّا أَصَابَتْهُ الْحِجَارَةُ أَذْبَرَ يَسْتَدُّ. فَلَقِيَهُ رَجُلٌ يَبْدُو لَحْيٍ جَمَلٍ. فَضْرَبَهُ فَضْرَعَهُ. فَذَكَرَ لِلنَّبِيِّ ﷺ فِرَارَهُ حِينَ مَسَّهُ الْحِجَارَةُ. قَالَ: «فَهَلَّا تَرَكْتُمُوهُ».

تخريج: [إسناده حسن] أخرجه الترمذي، الحدود، باب ما جاء في درء الحد، عن المعترف إذا رجع، ح: ١٤٢٨ من حديث محمد بن عمرو به، وقال: هذا حديث حسن، وصححه الحاكم على شرط مسلم: ٣٦٣/٤، ووافقه الذهبي وهو في مصنف ابن أبي شيبة: ٧٢/١٠ عن عباد به باختلاف يسير.

Comments:

- The crime of fornication is confirmed by confession.
- This incident proves the greatness of Mā'iz bin Mālik, since he accepted laying his life down only for the fear of Allāh.
- Legal punishments should be executed outside of the mosque premises. If some one confesses his crime of fornication and afterwards renounces his confession, he should not be punished. Imām Tirmidhi has inferred this conclusion from this incident. (*Jāmi' Tirmidhi* 1428)

2555. It was narrated from 'Imrān bin Husain that a woman came to the Prophet ﷺ and confessed to committing fornication. He issued orders, and her garments were tightened around her (so that her private parts would not become uncovered) then he stoned her, then he offered the funeral prayer for her. (*Sahih*)

٢٥٥٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ عُثْمَانَ الدَّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا أَبُو عَمْرٍو: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي الْمُهَاجِرِ، عَنْ عِمْرَانَ بْنِ الْخُصَّيْنِ أَنَّ امْرَأَةً آتَتْ النَّبِيَّ ﷺ فَأَعْتَرَفَتْ بِالزَّانَا. فَأَمَرَ بِهَا فَشَكَّتْ عَلَيْهَا ثِيَابَهَا. ثُمَّ رَجَمَهَا. ثُمَّ صَلَّى عَلَيْهَا.

تخريج: [صحيح] أخرجه النسائي في الكبرى: ٢٨٤/٤، ح: ٧١٨٨ من حديث الأوزاعي به، وقال: لا تعلم أحدًا تابع الأوزاعي على قوله: عن أبي المهاجر، وإنما هو أبو المهلب، وحديث أبي المهلب أخرجه مسلم، ح: ١٦٩٦ وغيره من طريق يحيى بن أبي كثير عن أبي قلابه عنه.

Comments:

- The clothes were tightened around her body to shield her from nudity.
- One who has been given legal punishment, his funeral prayers should be offered and he should be buried in the Muslim graveyard.

Chapter 10. Stoning A Jewish Man And Jewish Woman

(المعجم ١٠) - بَابُ رَجْمِ الْيَهُودِيِّ
وَالْيَهُودِيَّةِ (التحفة ١٠)

2556. It was narrated from Ibn 'Umar: "The Prophet ﷺ stoned two Jews, and I was among those who stoned them. I saw (the man) trying to shield (the woman) from the stones." (*Sahih*)

٢٥٥٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ رَجَمَ يَهُودِيَيْنِ. أَنَا فِيْمَنْ رَجَمَهُمَا. فَلَقَدْ رَأَيْتُهُ وَإِنَّهُ يَسْتُرُهَا مِنَ الْحِجَارَةِ.

تخريج: أخرجه مسلم، الحدود، باب رجم اليهود، أهل الذمة في الزنى، ح: ١٦٩٩ من حديث عبيد الله بن عمر به مطولاً، وأصله متفق عليه من حديث مالك عن نافع به.

2557. It was narrated from Jābir bin Samurah that the Prophet ﷺ stoned a Jewish man and a Jewish woman. (*Sahih*)

٢٥٥٧ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا شَرِيكٌ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ جَابِرِ بْنِ سَمُرَةَ أَنَّ النَّبِيَّ ﷺ رَجَمَ يَهُودِيًّا وَيَهُودِيَّةً.

تخريج: [صحيح] أخرجه الترمذي، الحدود، باب ما جاء في رجم أهل الكتاب، ح: ١٤٣٧ من حديث شريك به، وقال: حسن غريب * شريك القاضي عنعن، وهو مدلس كما في كتب المدلسين، والحديث السابق شاهد له.

Comments:

- The punishment of stoning was present in previously revealed texts. This punishment exists in the Torah.
- Some Islamic legal punishments in an Islamic state are applicable even on non-Muslims.

2558. It was narrated that Barā' bin 'Āzib said: "The Messenger of Allāh ﷺ passed by a Jew with a blackened face who had been flogged. He called them and said: 'Is this the punishment for the adulterer that you find in your Book?' They said: 'Yes.' Then he called one of their scholars and said: 'I adjure you by Allāh Who

٢٥٥٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مَرَّ النَّبِيُّ ﷺ بِيَهُودِيٍّ مُحْتَمٍ مَجْلُودٍ. فَدَعَاهُمْ فَقَالَ: «هَكَذَا تَجِدُونَ فِي كِتَابِكُمْ حَدَّ الزَّانِي؟» قَالُوا: نَعَمْ. فَدَعَا رَجُلًا مِنْ عُلَمَائِهِمْ فَقَالَ: «أَتَشُدُّكَ بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى،

sent down the Tawrah (Torah) to Musa! Is this the punishment for the adulterer that you find in your Book?' He said: 'No; if you had not adjured me by Allāh, I would not have told you. The punishment for the adulterer that we find in our Book is stoning, but many of our nobles were being stoned (because of the prevalence of adultery among them), so if we caught one of our nobles (committing adultery), we would let him go; but if we caught one of the weak among us, we would carry out the punishment on him. We said: "Come, let us agree upon something that we may impose on both noble and weak alike." So we agreed to blacken the face and whip them, instead of stoning.' The Prophet ﷺ said: 'O Allāh, I am the first of those who revive Your command which they had killed off,' and he issued orders that (the man) be stoned." (Sahih)

أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي؟ قَالَ: لَا. وَلَوْلَا أَنَّكَ نَشَدْتَنِي لَمْ أُخْبِرْكَ. نَجِدُ حَدَّ الزَّانِي، فِي كِتَابِنَا، الرَّجْمَ. وَلَكِنَّهُ كَثُرَ فِي أَشْرَافِنَا الرَّجْمُ. فَكُنَّا إِذَا أَخَذْنَا الشَّرِيفَ تَرْكُنَاهُ. وَكُنَّا إِذَا أَخَذْنَا الضَّعِيفَ أَقَمْنَا عَلَيْهِ الْحَدَّ. فَقُلْنَا: نَعَالُوا فَلَنَجْتَمِعَ عَلَى شَيْءٍ نُقِيمُهُ عَلَى الشَّرِيفِ وَالضَّعِيفِ. فَاجْتَمَعْنَا عَلَى التَّحْمِيمِ وَالْجَلْدِ، مَكَانَ الرَّجْمِ. فَقَالَ النَّبِيُّ ﷺ: «اللَّهُمَّ إِنِّي أَوَّلُ مَنْ أَحْيَا أَمْرَكَ، إِذْ أَمَاتُوهُ». وَأَمَرَ بِهِ فَرَجِمَ.

تخريج: [صحيح] تقدم، ح: ٢٣٢٧ مختصراً.

Comments:

- This is a deviation which the Jewish people strayed into; to make a law and attribute it to Allāh. Muslims are warned to restrain themselves from this wrongdoing.
- Those customs which are in contradiction of Divine law, should be brought in confirmation of the Divine law.
- The present version of the Bible contains the orders of death for an adulterer.
- The law should be applied on nobles and weak alike .

Chapter 11. One Who Commits Immoral Actions Openly

2559. It was narrated from Ibn

(المعجم ١١) - بَابُ مَنْ أَظْهَرَ الْفَاحِشَةَ
(التحفة ١١)

٢٥٥٩ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدَّمَشَقِيُّ:

'Abbâs that the Messenger of Allâh ﷺ said: "If I were to stone anyone without proof, I would have stoned so-and-so, for there is obviously doubt concerning her speech, her appearance and those who enter upon her." (*Sahih*)

حَدَّثَنَا زَيْدُ بْنُ يَحْيَى بْنِ عُبَيْدٍ: حَدَّثَنَا اللَّيْثُ ابْنُ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ، عَنْ أَبِي الْأَسْوَدِ، عَنْ عُرْوَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ، لَرَجَمْتُ فَلَانَةَ. فَقَدْ ظَهَرَ مِنْهَا الرِّيبَةُ فِي مَنَظَرِهَا وَهَيْئَتِهَا وَمَنْ يَدْخُلُ عَلَيْهَا».

تخريج: [إسناده صحيح] وصححه البوصيري، والحديث الآتي شاهد له.

2560. It was narrated that Qâsim bin Muhammad said: "Ibn 'Abbâs mentioned two people who had engaged in the process of *Li'ân*.^[1] Ibn Shaddâd said to him: 'Is this the one of whom the Messenger of Allâh ﷺ said: "If I were to stone anyone without proof I would have stoned so-and-so." Ibn 'Abbâs said: 'No, that was a woman who, (although she was a Muslim), used to expose herself.'"^[2] (*Sahih*)

٢٥٦٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي الزُّنَادِ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: ذَكَرَ ابْنُ عَبَّاسٍ الْمُتَلَاعَتَيْنِ. فَقَالَ لَهُ ابْنُ شَدَّادٍ: هِيَ الَّتِي قَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا؟» فَقَالَ ابْنُ عَبَّاسٍ: تِلْكَ امْرَأَةٌ أَعْلَنْتُ.

تخريج: أخرجه البخاري، الحدود، باب من أظهر الفاحشة واللتخ والتهمة بغير بينة، ح: ٦٨٥٥، ومسلم، اللعان، ح: ١٤٩٧ من حديث سفیان بن عیینة به.

Comments:

- Stoning to death is the severest physical punishment so it should not be executed until the validity of the crime is confirmed, or the crime is confessed.
- Four male eyewitness are required as evidence to warrant the punishment of stoning.
- A warning can be issued to the persons of doubtful and loose moral character. They can be tried under penalization.

^[1] See no. 2066 and those that follow it.

^[2] Meaning her blatant misconduct.

Chapter 12. Those Who Do The Action Of The People Of Lut

2561. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ said: "Whoever you find doing the action of the people of Lut, kill the one who does it, and the one to whom it is done." (Hasan)

(المعجم ١٢) - بَابُ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ (التحفة ١٢)

٢٥٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ وَ أَبُو بَكْرٍ ابْنُ خَلَّادٍ قَالَا: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ، فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ».

تخريج: [إسناده حسن] أخرجه أبو داود، الحدود، باب فيمن عمل عمل قوم لوط، ح: ٤٤٦٢ من حديث عبد العزيز الدراوردي به، وصححه الضياء، وابن الجارود، ح: ٨٢٠، والحاكم: ٣٥٥/٤، والذهبي.

2562. It was narrated from Abu Hurairah that the Prophet ﷺ said concerning those who do the action of the people of Lut: "Stone the upper and the lower, stone them both." (Hasan)

٢٥٦٢ - حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ الْأَعْلَى: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ نَافِعٍ: أَخْبَرَنِي عَاصِمُ بْنُ عُمَرَ عَنْ سُهَيْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ فِي الَّذِي يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ. قَالَ: «ارْجُمُوا الْأَعْلَى وَالْأَسْفَلَ. ارْجُمُوهُمَا جَمِيعاً».

تخريج: [حسن] أخرجه الترمذي، الحدود، باب ما جاء في حد اللوطي، ح: ١٤٥٦ من حديث عاصم به معلقاً من غير سند، وقال: عاصم يضعف في الحديث من قبل حفظه، والحديث السابق شاهد له.

Comments:

- Sodomy is one of the most immoral actions and a mortal sin. Its punishment is more severe than the punishment of illegal sexual intercourse.
- Mostly people call male to male sexual action *Liwa't*, in Arabic, which is totally wrong, because this word is derived from the name of a pious Prophet Lut, he used to warn his people from this mortal sin. He forbade and threatened his people with severe punishment but his people refused to listen to him.

In the *Sunnah* this act is called 'the act of the people of Lut.'

- The punishment of this crime is death whether committed by married or unmarried persons.

2563. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "The thing that I most fear for my nation is the action of the people of Lut." (*Da'if*)

٢٥٦٣ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ: [حَدَّثَنَا] الْقَاسِمُ بْنُ عَبْدِ الْوَاحِدِ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَخْوَفَ مَا أَخَافُ عَلَى أُمَّتِي، عَمَلُ قَوْمِ لُوطٍ».

تخريج: [إسناده ضعيف] أخرجه الهيثم بن خلف الدوري في ذم اللواط (٥٥) من حديث عبدالوارث به، وتابعه همام بن يحيى عند الترمذي، ح: ١٤٥٧ وغيره، وحسنه الترمذي، وصححه الحاكم: ٣٥٧/٤، والذهبي * القاسم بن عبدالواحد روى عنه جماعة، ووثقه ابن حبان، والحاكم وغيرهما، فحديثه لا ينزل عن درجة الحسن، وابن عقييل ضعيف تقدم، ح: ٣٩٠.

Comments:

- We as a Muslim nation should be more careful and abstain from the fears and dangers about which the Prophet ﷺ showed his concerns.
- If anyone is tainted with this sin and his sin is still hidden from the people, he should think that till now Allâh has kept his secret, He can let it out at anytime. What will happen and how much humiliation he will have to bear if this thing were made open to all, how will he face such an ugly situation. He who is involved in this sin should sincerely repent and ask Allâh's forgiveness.

Chapter 13. One Who Has Intercourse With A Mahram Relative And One Who Has Intercourse With An Animal

(المعجم ١٣) - بَابُ مَنْ أَتَى ذَاتَ مَحْرَمٍ وَمَنْ أَتَى بِهَيْمَةً (التحفة ١٣)

2564. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Whoever has intercourse with a Mahram relative, kill him; and whoever has intercourse with an animal, kill him, and kill the animal." (*Sahih*)

٢٥٦٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا ابْنُ أَبِي فَدْلِكَ عَنْ إِبْرَاهِيمَ ابْنِ إِسْمَاعِيلَ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَقَعَ عَلَى ذَاتِ مَحْرَمٍ فَاقْتُلُوهُ. وَمَنْ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ، وَاقْتُلُوا الْبَهِيمَةَ».

تخريج: [صحيح] أخرجه الترمذي، الحدود، باب ما جاء فيمن يقول للآخر يامخنث، ح: ١٤٦٢ من حديث ابن أبي فديك ببعضه، وقال: إبراهيم بن إسماعيل يضعف في الحديث وانظر، ح: ١٠٣٢، ٢٥٦١، ٢٥٦٢ يغنيان عنه وفي الوقوع على ذات رحم شاهد يأتي، ح: ٢٦٠٧.

Comments:

- He who marries his step mother, his punishment is death. (See no. 2607). This principle applies to all other relationships which fall under *Mahram* relatives like sister, daughter, niece, daughter of sister and so on. *Mahram* means close relatives with whom marriage is illegal according to Divine law.
- One who performs sexual intercourse with an animal, his punishment is also death.
- If the animal is not the property of the criminal, it should also be killed and its price should be paid to the owner of the animal from the bequest of the criminal.

Chapter 14. Carrying Out Legal Punishment On Slave Women

2565. It was narrated that Abu Hurairah, Zaid bin Khâlid and Shibl said: "We were with the Prophet ﷺ and a man asked him about a slave woman who commits fornication before she is married. He said: 'Whip her, and if she commits fornication (again), whip her (again).' Then he said, on the third or fourth time: 'Then sell her, even if that is for a rope of hair.'" (*Sahih*)

(المعجم ١٤) - بَابُ إِقَامَةِ الْخُدُودِ عَلَى

الْإِمَاءِ (التحفة ١٤)

٢٥٦٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ
مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ
عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ
اللَّهِ، عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ، وَ
شَيْبِلٍ قَالُوا: كُنَّا عِنْدَ النَّبِيِّ ﷺ. فَسَأَلَهُ رَجُلٌ
عَنِ الْأَمَةِ تَزْنِي قَبْلَ أَنْ تُحْصَنَ. فَقَالَ:
«اجْلِدْهَا. فَإِنْ رَزَتْ فَاجْلِدْهَا». ثُمَّ قَالَ: فِي
الثَّلَاثَةِ أَوْ فِي الرَّابِعَةِ: «فَبِعْهَا وَلَوْ بِحَبْلِ مِنْ
شَعْرٍ».

تخریج: أخرجه البخاري، العتيق، باب كراهية التطاول على الرقيق، وقوله: عبيد أو أمي،
ح: ٢٥٥٥ من حديث ابن عينة مختصراً، ومسلم، الحدود، باب رجم اليهود، أهل الزمة في
الزنى، ح: ١٧٠٤ من حديث الزهري به، وقول ابن عينة: وشبل، وهم كما حققه النسائي وغيره،
راجع التهذيب وغيره.

2566. 'Aishah narrated that the Messenger of Allāh ﷺ said: "If a slave woman commits fornication then whip her, and if she commits fornication then whip her, and if she commits fornication then whip her, and if she commits fornication then whip her, and if she commits fornication then whip her, then

٢٥٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، قَالَ: أَنْبَأَنَا
اللِّثِيُّ بْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ،
عَنْ عَمَّارِ بْنِ أَبِي قُرَّةٍ أَنَّ مُحَمَّدَ بْنَ مُسْلِمٍ
حَدَّثَهُ أَنَّ عُرْوَةَ حَدَّثَتْهُ أَنَّ عَمْرَةَ بِنْتَ عَبْدِ
الرَّحْمَنِ حَدَّثَتْهُ أَنَّ عَائِشَةَ حَدَّثَتْهَا أَنَّ رَسُولَ

sell her even if that is for a rope.”
(*Sahih*)

And *Dafir* means: rope.

اللَّهُ ﷻ قَالَ: «إِذَا زَنَتِ الْأَمَةُ فَاجْلِدُوهَا. فَإِنْ زَنَتْ فَاجْلِدُوهَا. فَإِنْ زَنَتْ فَاجْلِدُوهَا. فَإِنْ زَنَتْ فَاجْلِدُوهَا. ثُمَّ بَيْعُوهَا وَلَوْ بِضَفِيرٍ». وَالضَّفِيرُ الْحَبْلُ.

تخريج: [صحيح] أخرجه النسائي في الكبرى: ٣٠٣/٤، ح: ٧٢٦٤ من حديث الليث به، وضعفه البوصيري من أجل عمار بن أبي فروة، ضعفه العقيلي، وابن الجارود وغيرهما، والحدث السابق شاهد له.

Comments:

- If a slave or slave woman commits fornication, punishment of stoning to death cannot be given to them.
- Punishment of a slave or slave woman for committing fornication is fifty lashes.
- The reason behind the principle of not applying the punishment of death to a slave or slave woman, is to save the damages of the master because he is not involved in the crime. He/she cannot be sent on exile for the same reason. It is better to sell the slave to some other person to make a change in their environment for the purpose of saving them from sin.

Chapter 15. The Legal Punishment For Slander

(المعجم ١٥) - بَابُ حَدِّ الْقَذْفِ

(التحفة ١٥)

2567. It was narrated that 'Āishah said: "When my innocence was revealed, the Messenger of Allāh ﷺ stood on the pulpit and mentioned that, and he recited Qur'ān. When he came down, he ordered that the legal punishment (of slandering) be carried out on two men and a woman." (*Hasan*)

٢٥٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا نَزَلَ عُذْرِي، قَامَ رَسُولُ اللَّهِ ﷺ عَلَى الْمِنْبَرِ فَذَكَرَ ذَلِكَ وَتَلَا الْقُرْآنَ. فَلَمَّا نَزَلَ أَمَرَ بِرَجُلَيْنِ وَامْرَأَةٍ فَضَرَبُوا حَدَّهُمْ.

تخريج: [إسناده حسن] أخرجه أبو داود، الحدود، باب: في حد القاذف، ح: ٤٤٧٤ من حديث ابن أبي عدي به، أخرجه الترمذي، ح: ٣١٨١ عن محمد بن بشار به، وقال: حسن غريب * وابن إسحاق صرح بالسماع عند البيهقي: ٢٥٠/٨.

Comments:

- On return from the expedition of Banu Mustaliq, which is also known as the Muraisi' expedition, some hypocrites made an allegation of adultery against 'Āishah, the Mother of the Believers. According to the research of Maulana Safiur-Rahmān Mubārakpuri, this incident happened on the 5th of

Sha'bân 5 AH. (*Ar-Rahiqul-Makhtum*) In this connection legal punishment was passed against some true Muslims. This punishment was terminated after the Revelation and they were pardoned. The hypocrites who made the allegation against 'Aishah ؓ were not punished due to lack of evidence against them, but they will meet their punishment in the Hereafter.

- b. The two males and one female who were given the legal punishment were Hassân bin Thâbit, Mistah bin Uthâthah, and Hammah bint Jahsh.
- c. The accusation of adultery against an innocent person is a great crime and its punishment is eighty lashes.

2568. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "If one man says to another: 'O effeminate one!' give him twenty lashes. And if one man says to another: 'O homosexual!' give him twenty lashes." (*Da'if*)

٢٥٦٨ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ: حَدَّثَنِي ابْنُ أَبِي حَبِيبَةَ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا قَالَ الرَّجُلُ لِلرَّجُلِ: يَا مُخَنَّثٌ فَاجْلِدُوهُ عَشْرِينَ. وَإِذَا قَالَ الرَّجُلُ لِلرَّجُلِ: يَا لَوْطِي فَاجْلِدُوهُ عَشْرِينَ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، الحدود، باب ما جاء فيمن يقول للآخر يا مخنث، ح: ١٤٦٢ من حديث ابن أبي فديك به مختصراً، انظر، ح: ٢٥٦٤ لعلته.

Comments:

- a. It is mentioned in *Hadith* no. 2571, with reference of 'Ali bin Abu Tâlib, that the Prophet ﷺ gave the punishment of forty lashes. 'Ali did not consider it a fixed punishment. 'Umar increased this punishment and made it eighty lashes with the consultation of other Companions. 'Abdur Rahmân bin 'Awf suggested this increase and others did not differ in this matter. (*Sahih Muslim*, 1706)

Chapter 16. The Legal Punishment For Drunkenness

(المعجم ١٦) - بَابُ حَدِّ السَّكَرَانِ

(التحفة ١٦)

2569. 'Ali bin Abu Tâlib said: "I would not pay the blood money (*Diyah*^[1]) for those on whom I carried out the legal punishment, except for the wine-drinker. The Messenger of Allâh ﷺ did not institute anything in that case,

٢٥٦٩ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا شَرِيكٌ عَنْ أَبِي حَبِيبٍ، عَنْ عُمَيْرِ بْنِ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا مُطَرِّفٌ، سَمِعْتُهُ، عَنْ عُمَيْرِ بْنِ سَعِيدٍ قَالَ: قَالَ عَلِيٌّ

[1] This applies if the person dies as a result of the legal punishment.

rather it is something that we would do.”^[1] (*Sahih*)

إِنَّ أَبِي طَالِبٍ: مَا كُنْتُ أَدِي مَنْ أَقَمْتُ عَلَيْهِ
الْحَدَّ. إِلَّا شَارِبَ الْخَمْرِ. فَإِنَّ رَسُولَ اللَّهِ
ﷺ لَمْ يَسْنَ فِيهِ شَيْئًا. إِنَّمَا هُوَ شَيْءٌ جَعَلْنَاهُ
نَحْنُ.

تخريج: أخرجه البخاري، الحدود، باب الضرب بالجريد والنعال، ح: ٦٧٧٨، ومسلم،
الحدود، باب حد الخمر، ح: ١٧٠٧ من حديث أبي حصين به.

2570. It was narrated that Anas bin Mâlik said: “The Messenger of Allâh ﷺ used to beat (offenders) for drinking wine with sandals and date-palm stalks.” (*Sahih*)

٢٥٧٠ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ:
حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا سَعِيدٌ. ح
وَحَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ
هَشَامِ الدُّسْتَوَائِيِّ، جَمِيعاً عَنْ قَتَادَةَ، عَنْ
أَنْسِ بْنِ مَالِكٍ قَالَ: كَانَ رَسُولُ اللَّهِ ﷺ
يَضْرِبُ فِي الْخَمْرِ بِالنَّعَالِ وَالْجَرِيدِ.

تخريج: أخرجه البخاري، الحدود، باب ماجاء في ضرب شارب الخمر،
ح: ٦٧٧٣، ٦٧٧٦، ومسلم، الحدود، الباب السابق، ح: ١٧٠٦ من حديث هشام الدستوائي به
بألفاظ متقاربة المعنى.

Comments:

- There is no fixed range of the maximum or minimum punishment for drinking wine, that is why there is the possibility of awarding a greater or lesser punishment. The range fixed by 'Umar with the consultation of the Companions is eighty lashes and there should be no change in it.
- In other punishments the offender is whipped, but in this punishment he can be beaten with sandals or sticks.
- The Companions of the Prophet ﷺ agreed upon the punishment of eighty lashes, so eighty lashes is the correct punishment.

2571. Hudain bin Mundhir said: “When Walid bin 'Uqbah was brought to 'Uthmân, they had testified against him. He said to

٢٥٧١ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
إِبْنُ عُلَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ عَبْدِ
اللَّهِ بْنِ الدَّانَاجِ، سَمِعْتُ حُضَيْنَ بْنَ الْمُثَنَّرِ

^[1] The meaning of the narration is that they would not pay the blood money if someone died as a result of being administered the prescribed punishment, except in the case of the drinker who was to receive a number of lashes. If he died as a result of that punishment, then we would pay the blood money to his relatives, because his punishment was not prescribed by the Prophet ﷺ.

'Ali: 'You are close to your uncle's son, so carry out the legal punishment on him.' So 'Ali whipped him. He said: 'The Messenger of Allāh ﷺ gave forty lashes, and Abu Bakr gave forty lashes, and 'Umar gave eighty, and all are *Sunnah*.'''' (*Sahih*)

الرَّقَاشِي؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ ابْنُ أَبِي السَّوَارِبِ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ قَيْسٍ الدَّانَاجُ، قَالَ: حَدَّثَنِي حُضَيْنُ بْنُ الْمُثَنِّرِ، قَالَ: لَمَّا جِيءَ بِالْوَلِيدِ بْنِ عُقْبَةَ إِلَى عُثْمَانَ، قَدْ شَهِدُوا عَلَيْهِ، قَالَ لِعَلِيِّ: دُونَكَ ابْنَ عَمِّكَ، فَأَقِمَّ عَلَيْهِ الْحَدَّ. فَجَلَدَهُ عَلِيُّ. وَقَالَ: جَلَدَ رَسُولُ اللَّهِ ﷺ أَرْبَعِينَ. وَجَلَدَ أَبُو بَكْرٍ أَرْبَعِينَ. وَجَلَدَ عُمَرُ ثَمَانِينَ. وَكُلُّ سَنَةٍ.

تخريج: أخرجه مسلم، الحدود، باب حد الخمر، ح: ١٧٠٧ من حديث ابن عليه به، ومن حديث عبدالعزيز بن المختار به.

Comments:

Acting in accordance with the Rightly-Guided Caliphs is *Sunnah*. The Prophet ﷺ said, 'Follow me and the *Sunnah* of my the Rightly-Guided caliphs.' This can be quoted as proof. (*Jāmi' Tirmidhi* 2676)

Chapter 17. One Who Drinks Wine Repeatedly

(المعجم ١٧) - بَابُ مَنْ شَرِبَ الْخَمْرَ

مِرَارًا (التحفة ١٧)

2572. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "If he gets drunk, then whip him. If he does it again, then whip him. If he does it again, then whip him." And he said concerning the fourth time: 'If he does it again, then strike his neck (i.e., execute him).'''' (*Sahih*)

٢٥٧٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَبَابَةُ عَنْ ابْنِ أَبِي ذُئْبٍ، عَنِ الْحَارِثِ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا سَكِرَ فَاجْلِدُوهُ. فَإِنْ عَادَ فَاجْلِدُوهُ. فَإِنْ عَادَ فَاجْلِدُوهُ» ثُمَّ قَالَ فِي الرَّابِعَةِ: «فَإِنْ عَادَ فَاضْرِبُوا عُنُقَهُ».

تخريج: [إسناده صحيح] أخرجه النسائي، الأشربة، ذكر الروايات المغلطات في شرب الخمر، ح: ٥٦٦٥ من حديث شبابة، وأخرجه أبو داود، ح: ٤٤٨٤ من حديث ابن أبي ذئب، وصححه ابن الجارود، ح: ٨٣١، وابن حبان، ح: ١٥١٧، والحاكم: ٣٧١/٤ على شرط مسلم، ووافقه الذهبي برمز: خ م!.

2573. It was narrated from Mu'āwiyah bin Abu Sufyān that the Messenger of Allāh ﷺ said: "If they drink wine, then whip them. If they drink (again), then whip them. If they drink (again), then whip them. If they drink (again), then whip them. If they drink (again), then kill them." (*Hasan*)

٢٥٧٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شُعَيْبُ بْنُ إِسْحَاقَ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ، عَنْ ذَكْوَانَ أَبِي صَالِحٍ، عَنْ مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا شَرِبُوا الْخَمْرَ فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاقْتُلُوهُمْ».

تخريج: [إسناده حسن] أخرجه أبو داود، الحدود، باب: إذا تتابع في شرب الخمر، ح: ٤٤٨٢ من حديث عاصم به، وصححه ابن حبان (موارد)، ح: ١٥١٩، والذهبي في تلخيص المستدرک: ٣٧٢/٤.

Comments:

According to Imām Tirmidhi the order of killing a drunkard existed, but later on it was abrogated. Imām Muhammad bin Ishāq reported from Muhammad bin Munkadir, and he from Jābir bin Abdullāh that he said, that the Prophet ﷺ said, "Whip him and if he drinks fourth time, kill him." Afterwards a man was brought to him who had drunk a fourth time but the Prophet ﷺ did not order killing him. Zuhri also reported similarly from Qabish bin Zowaib from the Prophet ﷺ. Based on this account, the majority of the scholars affirm the orders of abrogation. There was no disagreement on this point among the scholars of the past and those who came after them. (*Jāmi' Tirmidhi* 1444.)

Chapter 18. The Legal Punishment Must Be Carried Out On The Old And The Sick (When They Deserve It)

2574. It was narrated that Sa'eed bin Sa'd bin 'Ubādah said: "There was a man living among our dwellings who had a physical defect, and to our astonishment he was seen with one of the slave women of the dwellings, committing illegal sex with her. Sa'd bin 'Ubādah referred his case to the Messenger of Allāh ﷺ, who said: 'Give him one hundred

(المعجم ١٨) - بَابُ الْكَبِيرِ وَالْمَرِيضِ
يَجِبُ عَلَيْهِ الْحَدُّ (التحفة ١٨)

٢٥٧٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ ثُمَيْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَعْقُوبَ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِ، عَنْ أَبِي أَمَامَةَ بْنِ سَهْلٍ [ابْنِ حُنَيْفٍ]، عَنْ سَعِيدِ بْنِ سَعْدِ بْنِ عُبَادَةَ قَالَ: كَانَ بَيْنَ أَيْبَاتِنَا رَجُلٌ مُخْدَجٌ ضَعِيفٌ. فَلَمْ يَرَعْ إِلَّا وَهُوَ عَلَى أَمَةٍ مِنْ إِمَاءِ الدَّارِ يَخْبُثُ بِهَا. فَرَفَعَ شَأْنَهُ سَعْدٌ

lashes.' They said: 'O Prophet of Allāh, he is too weak to bear that. If we give him one hundred lashes he will die.' He said: 'Then take a branch with a hundred twigs and hit him once.'" (*Sahih*)

Another chain with similar wording.

ابْنُ عَبَّادَةَ إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ: «اجْلِدُوهُ ضَرْبَ مِائَةِ سَوْطٍ» قَالُوا: يَا نَبِيَّ اللَّهِ هُوَ أَضْعَفُ مِنْ ذَلِكَ. لَوْ ضَرَبْنَاهُ مِائَةَ سَوْطٍ مَاتَ. قَالَ: «فَخُذُوا لَهُ [عِشْكَالًا] فِيهِ مِائَةُ شِمْرَاخٍ، فَاضْرِبُوهُ ضَرْبَةً وَاحِدَةً».

حَدَّثَنَا شَفِيَّانُ بْنُ وَكَيْعٍ: حَدَّثَنَا الْمُحَارِبِيُّ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ يَعْقُوبَ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي أَمَامَةَ بْنِ سَهْلٍ، عَنْ سَعْدِ بْنِ عَبَّادَةَ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخریج: [صحيح] أخرجه ابن أبي عاصم في الأحاد والمثاني: ٧/٤، ح: ٢٠٢٤ عن أبي بكر ابن أبي شيبة به، أخرجه أحمد: ٢٢٢٢/٥ من طريق آخر عن ابن إسحاق به، وضعفه البوصيري من أجل عننة ابن إسحاق، وله شاهد صحيح عند أبي داود، ح: ٤٤٧٢، وصححه ابن الجارود، ح: ٨١٧.

Comments:

- If an offender is not given the punishment of death, but only the punishment of lashes, and there is the possibility of his death while executing the punishment, it can be lessened.
- This concession is only for old and sick people who cannot bear the severity of the punishment, or there is no hope of them surviving.
- In the case of a person whose sickness is curable, his punishment may be delayed until he gets well.

Chapter 19. One Who Brandishes His Weapon

2575. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever bears weapons against us is not one of us." (*Sahih*)

(المعجم ١٩) - بَابُ مَنْ شَهَرَ السَّلَاحَ
(التحفة ١٩)

٢٥٧٥ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، [عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: وَحَدَّثَنَا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ، عَنِ ابْنِ عَجَلَانَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ، وَحَدَّثَنَا أَنَسُ بْنُ عِيَاضٍ،

عَنْ أَبِي مَعْشَرٍ، عَنْ مُحَمَّدِ بْنِ كَعْبٍ وَ
مُوسَى بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ
قَالَ: «مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ فَلَيْسَ مِنَّا».

تخريج: أخرجه مسلم، الإيمان، باب قول النبي ﷺ: «من غشنا فليس منا» ح: ١٠١ من
حديث ابن حازم به.

2576. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever bears weapons against us is not one of us." (Sahih)

٢٥٧٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ غَامِرٍ بْنُ الْبَرَادِ
ابْنُ يُونُسَ بْنِ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى
الْأَشْعَرِيِّ، قَالَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ عُبَيْدِ
اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمرَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ
فَلَيْسَ مِنَّا».

تخريج: أخرجه مسلم، الإيمان، باب قول النبي ﷺ: «من حمل علينا السلاح فليس منا»
ح: ٩٨ من حديث أبي أسامة به.

2577. It was narrated from Abu Musa Al-Ash'ari that the Messenger of Allāh ﷺ said: "Whoever brandishes weapons against us is not one of us." (Sahih)

٢٥٧٧ - حَدَّثَنَا مَحْمُودُ بْنُ غِيلَانَ وَ أَبُو
كُرَيْبٍ وَ يُونُسُ بْنُ مُوسَى وَ عَبْدُ اللَّهِ بْنُ
الْبَرَادِ قَالُوا: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ بُرَيْدٍ، عَنْ
أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ شَهَرَ عَلَيْنَا السَّلَاحَ
فَلَيْسَ مِنَّا».

تخريج: أخرجه البخاري، الفتن، باب قول النبي ﷺ: «من حمل علينا السلاح فليس منا»
ح: ٧٠٧١ من حديث أبي أسامة به، ومسلم، الإيمان، الباب السابق، ح: ٩٩ من حديث عبد الله بن
البراد به.

Comments:

- Frightening or threatening to kill a Muslim is a great sin.
- To attack a Muslim or fight with him is a great sin.
- 'Is not one of us' means that this is not an Islamic attitude or such an action is against the prestige and status of a Muslim.

Chapter 20. Those Who Engage In Banditry And Spread Mischief In The Land

2578. Anas bin Mâlik narrated that some people from (the tribe of) 'Urainah came to us (to Al-Madinah) during the time of the Messenger of Allâh ﷺ, but they did not want to stay in Al-Madinah because the climate did not suit them. He said: "Go out to the camels which belong to us, and drink their milk and urine." So they did that (and recovered), then they apostatized from Islam and killed the herdsman of the Messenger of Allâh ﷺ and stole his camels. The Messenger of Allâh ﷺ sent people after them, and they were brought back. Then he cut off their hands and feet, branded their eyes and left them in Harrah^[1] until they died. (Sahih)

تخریج: [صحيح] أخرجه النسائي: ٩٥/٧، ٩٦، تحريم الدم، - ذكر اختلاف الناقلين لخبر حميد عن أنس بن مالك فيه، ح: ٤٠٣٣، ٤٠٣٦ من طرق عن حميد به، وأخرجه مسلم، ح: ١٦٧١ من طريق آخر عن عبد العزيز بن صهيب وحميد عن أنس به، وبه صح الحديث.

2579. It was narrated from 'Aishah that some people raided the she-camels of the Messenger of Allâh ﷺ, so the Prophet ﷺ cut off their hands and feet (on opposite sides) and lanced (gougued out) their eyes. (Sahih)

(المعجم ٢٠) - بَابُ مَنْ حَارَبَ وَسَعَى فِي الْأَرْضِ فَسَادًا (التحفة ٢٠)

٢٥٧٨ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا حُمَيْدٌ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ أَنَسًا مِنْ غُرَيْثَةٍ قَدِمُوا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَاجْتَوَوْا الْمَدِينَةَ. فَقَالَ: «لَوْ خَرَجْتُمْ إِلَى دَوْدَ لَنَا، فَشَرِبْتُمْ مِنْ أَلْبَانِهَا وَأَبْوَالِهَا» فَفَعَلُوا. فَارْتَدُّوا عَنِ الْإِسْلَامِ. وَقَتَلُوا رَاعِي رَسُولِ اللَّهِ ﷺ. وَاشْتَأَفُوا دَوْدَهُ. فَبَعَثَ رَسُولُ اللَّهِ ﷺ فِي طَلَبِهِمْ. فَجِيءَ بِهِمْ. فَفُطِعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ وَسَمِرَ أَعْيُنُهُمْ وَتَرَكَهُمْ بِالْحَرَّةِ حَتَّى مَاتُوا.

٢٥٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ وَ مُحَمَّدُ بْنُ الْمُثَنَّى قَالَا: حَدَّثَنَا إِبْرَاهِيمُ بْنُ أَبِي الْوَزِيرِ: حَدَّثَنَا الدَّرَاوَزِيُّ، عَنْ هِشَامِ بْنِ غُرَوةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ قَوْمًا أَغَارُوا عَلَى لِقَاحِ رَسُولِ اللَّهِ ﷺ. فَفُطِعَ النَّبِيُّ ﷺ أَيْدِيَهُمْ وَأَرْجُلُهُمْ وَسَمِلَ أَعْيُنُهُمْ.

[1] A volcanic rock region around Al-Madinah.

تخریج: [إسناده صحيح] أخرجه النسائي، تحريم الدم، ذكر اختلاف طلحة بن مصرف ومعاوية بن صالح على يحيى بن سعيد في هذا الحديث، ح: ٤٠٤٣ عن ابن المثنى وابن بشار به.

Comments:

- Poor and needy Muslims can benefit from the animals of *Baitul-mâl*.
- Urine of *Halâl* animals (lawful to be slaughtered and eaten), may be used for treatment.
- The punishment of an apostate is death.
- They were offenders of various crimes. They were apostates, they were involved in robbery and murder, and they gouged out the eyes of the shepherds, that is why they were treated likewise.

Chapter 21. One Who Is Killed Defending His Property Is A Martyr

(المعجم ٢١) - بَابُ مَنْ قُتِلَ دُونَ مَالِهِ
فَهُوَ شَهِيدٌ (التحفة ٢١)

2580. It was narrated from Sa'eed bin Zaid bin 'Amr bin Nufail that the Prophet ﷺ said: "Whoever is killed defending his property, he is a martyr." (*Sahih*)

٢٥٨٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُبْيَانُ بْنُ الزُّهْرِيِّ، عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ، عَنْ سَعِيدِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ نُفَيْلٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ».

تخریج: [إسناده صحيح] أخرجه النسائي: ١١٥/٧، تحريم الدم، من قتل دون ماله، ح: ٤٠٩٥ من طريق سفيان ابن عيينة به، وأخرجه أبو داود، ح: ٤٧٧٢ من طريق آخر عن طلحة به، وإسناده صحيح، وصححه الترمذي، ح: ١٤١٨، وللحديث طرق أخرى عند البخاري، ح: ٢٤٥٢، ٢٤٨٠ وغيره، راجع مسند الحميدي، ح: ٨٣ بتحقيقي.

2581. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "If a man's property is targeted, and he is fought and fights back and is killed, he is a martyr." (*Hasan*)

٢٥٨١ - حَدَّثَنَا الْخَلِيلُ بْنُ عَمْرِو: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ: حَدَّثَنَا يَزِيدُ بْنُ سَيَّانٍ الْجَزْرِيُّ عَنْ مَيْمُونِ بْنِ مِهْرَانَ، عَنْ ابْنِ عَمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُتِيَ عِنْدَ مَالِهِ، فَقُوتِلَ فَقَاتَلَ فَقُتِلَ، فَهُوَ شَهِيدٌ».

تخریج: [صحيح] أخرجه ابن عدي: ٢٧٢٦/٧ من حديث شعبة عن أبي فروة يزيد بن سنان به، وقال: هذا حديث صالح، وضعفه البوصيري من أجل يزيد بن سنان وأصحاب، ولكن الحديث السابق شاهد له، وبه صح الحديث.

2582. It was narrated that Abu Hurairah said: "The Messenger of Allāh ﷺ said: 'If a man's property is wrongfully targeted, and he is killed, he is a martyr.'"

٢٥٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَامِرٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ [الْمُطَّلِبِ]، عَنْ عَبْدِ اللَّهِ بْنِ الْحَسَنِ، عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُرِيدَ مَالُهُ ظُلْمًا فُقِّلَ، فَهُوَ شَهِيدٌ».

تخريج: [إسناده حسن] أخرجه أحمد: ٢/٣٢٤ عن أبي عامر به، وحسنه البوصيري.

Comments:

- Every one has the right to safeguard his property, his life and his honour, so to defend against the plunderer is his basic right.
- As fighting in defence of property is lawful, similarly, defending one's honor and life is more important, so is more recommended.
- If someone is killed while defending himself, he is a martyr, but his status is less than the martyr who is martyred in the cause of Allāh. He should be buried after being given a bath and shrouded. A martyr of *Jihād* is buried without giving him a bath or shrouding him.

Chapter 22. The Legal Punishment For The Thief

(المعجم ٢٢) - بَابُ حَدِّ السَّارِقِ

(التحفة ٢٢)

2583. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "May Allāh curse the thief! He steals an egg and his hand is cut off, and he steals a rope and his hand is cut off." (Sahih)

٢٥٨٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَعَنَ اللَّهُ السَّارِقَ، يَسْرِقُ الْبَيْضَةَ فَتَقَطَّعَ يَدُهُ، وَيَسْرِقُ الْحَبْلَ فَتَقَطَّعَ يَدُهُ».

تخريج: أخرجه مسلم، الحدود، باب حد السرقة ونصابها، ح: ١٦٨٧ عن ابن أبي شيبة به.

Comments:

- This narration means that when a thief steals minor things like an egg or a rope and remains uncaught, he is encouraged to steal more precious things.
- The punishment of cutting off the thief's hand is given in the Noble Qur'ān. (See *Al-Ma'idah* 5: 38)

2584. It was narrated that Ibn 'Umar said: "The Prophet ﷺ cut off (the hand of a thief) for a shield worth three Dirham." (*Sahih*)

٢٥٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ عُثَيْدٍ اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَطَعَ النَّبِيُّ ﷺ فِي مِجَنٍّ قِيمَتَهُ ثَلَاثَةَ دَرَاهِمٍ.

تخريج: أخرجه مسلم، الحدود، الباب السابق، ح: ١٦٨٦ عن ابن أبي شيبة به، وأخرجه البخاري، الحدود، باب قول الله تعالى: ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا﴾ وفي كم يقطع؟، ح: ٦٧٩٥، ومسلم وغيرهما من حديث مالك عن نافع به.

2585. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "Do not cut off (the thief's hand) except for something worth one quarter of a Dinār or more." (*Sahih*)

٢٥٨٥ - حَدَّثَنَا أَبُو مَرْوَانَ الْعُثْمَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ أَنَّ عَمْرَةَ أَخْبَرَتْهُ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُقَطَّعُ الْيَدُ إِلَّا فِي رُبْعٍ دِينَارٍ فَصَاعِدًا».

تخريج: أخرجه البخاري، الحدود، باب قول الله تعالى: والسارق والسارقة فاقطعوا أيديهما وفي كم يقطع؟، ح: ٦٧٨٩، ومسلم، الحدود، باب حد السرقة ونصابها، ح: ١٦٨٤ من حديث إبراهيم بن سعد به.

Comments:

- In the times of the Prophet ﷺ coins of Dirham and Dinār were in use. The silver coin was known as Dirham and the gold coin was called Dinār. One Dinār was equal to twelve Dihram. These two narrations give us the same standard for awarding punishment.
- If the worth of the stolen thing is less than the criterion prescribed, the hand of the thief will not be cut off. The punishment of beating can be given or some fine can be imposed on him.
- Today paper money is a substitute for gold. One quarter Dinār is equal to hundred grams of gold. The punishment of cutting off the hand should not be enforced unless the stolen item's value is equal to one hundred grams of gold.

2586. It was narrated from 'Âmir bin Sa'd, from his father, that the Prophet ﷺ said: "The hand of the thief is to be cut off for the price of a shield." (*Hasan*)

٢٥٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو هِشَامٍ الْمَخْزُومِيُّ: حَدَّثَنَا وَهَيْبٌ: حَدَّثَنَا أَبُو وَاقِدٍ عَنْ غَامِرِ بْنِ سَعْدٍ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ قَالَ: «تُقَطَّعُ يَدُ السَّارِقِ فِي ثَمَنِ الْمِجَنِّ».

تخریج: [حسن] أخرجه أحمد: ١/١٦٩ من حديث وهيب بن خالد به، وقال البوصيري: هذا إسناد فيه أبو واقد واسمه صالح بن محمد بن زائدة اللثي وهو ضعيف، وأورده الضياء في المختارة لشاهد في الصحيح من حديث عائشة، وأخرج النسائي: ٨/٨٠، ح: ٤٩٤٦ بإسناد حسن عن عائشة مرفوعاً بلفظ: يقطع يد السارق في ثمن المعجن، وثمن المعجن ربع دينار.

Chapter 23. Hanging The Hand From The Neck

(المعجم ٢٣) - بَابُ تَعْلِيقِ الْيَدِ فِي

الْعُنُقِ (التحفة ٢٣)

2587. It was narrated that Ibn Muḥairiz said: "I asked Fadālah bin 'Ubaid about hanging the hand (of the thief) from his neck, and he said: 'It is *Sunnah*. The Messenger of Allāh ﷺ cut off a man's hand then hung it from his neck.'" (Da'if)

٢٥٨٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ أَبُو بَكْرٌ بْنُ خَلْفٍ، وَ مُحَمَّدُ بْنُ بَشَّارٍ، وَ أَبُو سَلَمَةَ الْجَوَابَرِيُّ يَحْيَى بْنُ خَلْفٍ قَالُوا: حَدَّثَنَا عَمْرُ بْنُ عَلِيٍّ بْنِ عَطَاءٍ بْنُ مُقَدَّمٍ عَنْ حَجَّاجٍ، عَنْ مَكْحُولٍ، عَنْ ابْنِ مُحَيْرِيزٍ قَالَ: سَأَلْتُ فَضَالَهَ بْنَ عُبَيْدٍ عَنْ تَعْلِيقِ الْيَدِ فِي الْعُنُقِ؟ فَقَالَ: السُّنَّةُ، فَطَعَّ رَسُولُ اللَّهِ ﷺ يَدَ رَجُلٍ ثُمَّ عَلَّقَهَا فِي عُنُقِهِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب في السارق تعلق يده في عنقه، ح: ٤٤١١ من حديث عمر بن علي به، وحسنه الترمذي، ح: ١٤٤٧، وقال النسائي: ٨/٩٢، ٤٩٨٦، الحجاج بن أرطاة ضعيف ولا يحتج بحديثه، وانظر، ح: ١١٢٩، ٤٩٦.

Comments:

This narration is Weak but the matter and the standard of punishment is correct as preceded in *Hadith* no. 2584.

Chapter 24. A Thief Who Confesses

(المعجم ٢٤) - بَابُ السَّارِقِ يَعْتَرِفُ

(التحفة ٢٤)

2588. It was narrated from 'Abdur-Rahmān bin Tha'labah Al-Ansāri, from his father, that 'Amr bin Samurah bin Habib bin 'Abd Shams came to the Messenger of Allāh ﷺ and said: "O Messenger of Allāh! I stole a camel belonging to Banu so-and-so; purify me!" The Prophet ﷺ sent word to them

٢٥٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ أَبِي مَرْيَمَ: أَنبَأَنَا ابْنُ لَهَيْعَةَ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ ثَعْلَبَةَ الْأَنْصَارِيِّ، عَنْ أَبِيهِ أَنَّ عَمْرُو بْنَ سُمْرَةَ بْنَ حَبِيبٍ بْنِ عَبْدِ شَمْسٍ جَاءَ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي سَرَقْتُ جَمَلًا لِبَنِي

and they said: "(Yes), we have lost a camel of ours." So the Prophet ﷺ ordered that his hand be cut off. Tha'labah said: "I was looking at him when his hand fell and he said (to it): 'Praise is to Allâh Who has purified me of you; you wanted to cause my whole body to enter Hell.'"

(Da'if)

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناد ضعيف لضعف عبدالله بن لهيعة، وانظر، ح: ٣٣٠ * وعبدالرحمن بن ثعلبة مجهول كما في التقريب.

Chapter 25. A Slave Who Steals

2589. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "If a slave steals, then sell him, even for half price." (Hasan)

(المعجم ٢٥) - بَابُ الْعَبْدِ يَسْرِقُ

(التحفة ٢٥)

٢٥٨٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أَسَمَةَ عَنْ أَبِي عَوَانَةَ، عَنْ عَمْرِو بْنِ أَبِي سَلَمَةَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا سَرَقَ الْعَبْدُ فَبِعُوهُ وَلَوْ بِشِقِّ».

تخریج: [إسناده حسن] أخرجه أبو داود، الحدود، باب بيع المملوك إذا سرق، ح: ٤٤١٢ من حديث أبي عوانة به، وقال النسائي، ح: ٤٩٨٣ عمر بن أبي سلمة ليس بالقوي في الحديث قلت: هو حسن الحديث كما حققته في نيل المقصود.

2590. It was narrated from Ibn 'Abbâs that one of the slaves of Khumus stole something from the Khumus,^[1] and the matter was referred to the Prophet ﷺ, but he did not cut off his hand, and he said: 'The property of Allâh, part of it stealing another part.'" (Da'if)

٢٥٩٠ - حَدَّثَنَا جُبَارَةُ بْنُ الْمُغَلَّسِ: حَدَّثَنَا حَجَّاجُ بْنُ تَمِيمٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ عَبْدًا مِنْ رَقِيقِ الْخُمُسِ سَرَقَ مِنَ الْخُمُسِ، فَرَفَعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ، فَلَمْ يَقُطِعْهُ وَقَالَ: «مَا لِلَّهِ عَزَّ وَجَلَّ، سَرَقَ بَعْضُهُ بَعْضًا».

تخریج: [إسناده ضعيف جدًا] أخرجه البيهقي: ٢٨٢/٨ من طريق أبي يعلى ثنا جبارة به، جبارة تقدم، ح: ٧٤٠، وحجاج تقدم، ح: ١٣١٥ ضعيفان، والأول أضعف من الثاني.

[1] See no. 2881. One fifth of the spoils of war.

Chapter 26. Those Who Betray Trusts, Robbers and Pilferers

(المعجم ٢٦) - بَابُ الْخَائِنِ وَالْمُتَّهَبِ
وَالْمُخْتَلِسِ (التحفة ٢٦)

2591. It was narrated from Jābir bin 'Abdullāh that the Messenger of Allāh ﷺ said: "The hand of the one who betrays a trust, the robber and the pilferer is not to be cut off." ⁽¹⁾ (Sahih)

٢٥٩١ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ ابْنِ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَقُطَعُ الْخَائِنُ وَلَا الْمُتَّهَبُ وَلَا الْمُخْتَلِسُ».

تخريج: [صحيح] أخرجه أبو داود، الحدود، باب القطع في الخلسة والخيانة، ح: ٤٣٩٣، ٤٣٩١ من حديث ابن جريج به، وصرح بالسماع عند الدارمي: ١٧٥/٢ وغيره، وصححه الترمذي، ح: ١٤٤٨، وابن حبان (موارد)، ح: ١٥٠٤، ١٥٠٢ وغيرهما ورواه عمرو بن دينار عن جابر به عند ابن حبان وغيره، وأعله أبو داود وغيره بعله غير قاذحة.

2592. It was narrated from Ibrāhīm bin 'Abdur-Rahmān bin 'Awf that his father said: "I heard the Messenger of Allāh ﷺ say: 'The hand of the pilferer is not to be cut off.'" (Sahih)

٢٥٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَحِيصٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَاصِمٍ بْنِ جَعْفَرٍ الْمِصْرِيُّ: حَدَّثَنَا الْمُفَضَّلُ بْنُ فَصَّالَهُ، عَنْ يُونُسَ بْنِ يَزِيدَ، عَنْ ابْنِ شِهَابٍ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَيْسَ عَلَى الْمُخْتَلِسِ قَطْعٌ».

تخريج: [صحيح] أخرجه المزي في تهذيب الكمال (ق: ١٢١٥/٣) من حديث محمد بن عاصم به، وصححه المحافظ في التلخيص: ٦٦/٤، ح: ١٧٧٥، والبوصيري، وفيه عنعنة الزهري تقدم، ح: ٧٠٧، والحديث السابق شاهد له.

Comments:

- The punishment of cutting off the hand is only in the case of stealing. The abovementioned crimes do not come under the definition of stealing.
- It does not mean that they are not punished, they are punished, but under other rules for punishment.

⁽¹⁾ *Khā'in* (one who betrays a trust) is a person who takes something that was entrusted to him; *Muntahib* (robber) is one who forcefully takes something in public view; and *Mukhtalis* is one who pilfers or loots. The wisdom behind cutting the hand of the thief and not the hand of these, is that the thief steals in a hidden manner while all of these are visible. See explanation by Sindi.

Chapter 27. The Hand Is Not To Be Cut Off For (Stealing) Produce Or The Spadix (Marrow) Of Palm Trees

2593. It was narrated from Râfi' bin Khadij that the Messenger of Allâh ﷺ said: "The hand is not to be cut off for (stealing) produce or the spadix of palm trees." (*Sahih*)

(المعجم ٢٧) - بَابُ: لَا يُقَطَّعُ فِي ثَمَرٍ وَلَا كَثْرٍ (التحفة ٢٧)

٢٥٩٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ عَمِّهِ وَاسِعِ بْنِ حَبَّانَ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَطْعُ فِي ثَمَرٍ وَلَا كَثْرٍ».

تخريج: [صحيح] أخرجه النسائي ٧٨/٨، قطع السارق، باب ما لا قطع فيه، ح: ٤٩٦٩، من حديث وكيع به، أخرجه أبو داود، ح: ٤٣٨٨ وغيره من طريق آخر عن يحيى بن سعيد به، وهو في الموطأ (يحيى) ٨٣٩/٢، وإسناده صحيح، وصححه ابن الجارود، ح: ٨٢٦، وابن حبان (موارد)، ح: ١٥٠٥.

2594. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The hand is not to be cut off for (stealing) produce or the spadix of palm trees." (*Sahih*)

٢٥٩٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَعْدُ ابْنِ سَعِيدٍ الْمُقْبَرِيُّ، عَنْ أَخِيهِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَطْعُ فِي ثَمَرٍ وَلَا كَثْرٍ».

تخريج: [صحيح] وضعه البوصيري من أجل عبدالله بن سعيد، ح: ٢٦٠، وأخوه سعد لين الحديث (تقريب)، والحديث السابق شاهد له.

Comments:

- Fruit means the fruit on the tree. If someone takes the fruit from the tree and eats it, his hand will not be cut off. See no. 2298.
- The spadix of date palm is part of the palm tree which is soft and eaten by Arabs.

Chapter 28. One Who Steals Something That Is Guarded

(المعجم ٢٨) - بَابُ مَنْ سَرَقَ مِنَ الْجُرْزِ (التحفة ٢٨)

2595. It was narrated from 'Abdullâh bin Safwân that his father slept in the mosque, using his upper wrap as a pillow, and it was taken from beneath his head. He brought the thief to the Prophet ﷺ and the Prophet ﷺ ordered that his hand be cut off.

٢٥٩٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَةُ عَنْ مَالِكِ [ابن] أَنَسٍ، عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ صَفْوَانَ، عَنْ أَبِيهِ أَنَّهُ نَامَ فِي الْمَسْجِدِ وَتَوَسَّدَ رِدَاءَهُ، فَأُخِذَ مِنْ تَحْتِ رَأْسِهِ، فَجَاءَ بِسَارِقِهِ إِلَى النَّبِيِّ ﷺ، فَأَمَرَ بِهِ

Safwân said: "O Messenger of Allâh, I did not want this! I give my upper wrap to him in charity." The Messenger of Allâh ﷺ said: "Why did you not give it to him before you brought him to me?" (Hasan)

النَّبِيِّ ﷺ أَنْ يَقْطَعَ. فَقَالَ صَفْوَانُ: يَا رَسُولَ اللَّهِ! لَمْ أُرِدْ هَذَا، رِدَائِي عَلَيْهِ صَدَقَةٌ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ».

تخریج: [حسن] وهو في الموطأ (يحيى): ٢/٨٣٤، ٨٣٥، وله شاهد حسن عند أبي داود، ح: ٤٣٩٤، وصححه ابن الجارود، ح: ٨٢٨.

Comments:

- The owner has the right to forgive the thief.
- If the matter is brought in notice of the judge, it cannot be taken back. In murder cases, heirs have the right to forgive the murderer before the execution of the punishment of death.

2596. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that a man from Muzainah asked the Prophet ﷺ about fruits. He said: "What is taken from the tree and carried away, its value and the like of it along with it (meaning double its price must be paid). What (is taken) from the place where dates are dried, (the penalty) is cutting off the hand if the amount taken is equal to the price of a shield. But if (the person) eats it and does not take it away, there is no penalty." He said: "What about the sheep taken from the pasture, O Messenger of Allâh?" He said: "(The thief) must pay double its price and be punished, and if it was in the pen then his hand should be cut off, if what was taken was worth the price of a shield." (Hasan)

٢٥٩٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو أُسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَجُلًا مِنْ مَرْثَنَةَ سَأَلَ النَّبِيَّ ﷺ عَنِ الشَّمَارِ فَقَالَ: «مَا أَخَذَ فِي أَكْمَامِهِ فَاحْتَمَلَ، فَتَمَنَّهُ وَمِثْلُهُ مَعَهُ، وَمَا كَانَ فِي الْجِرَانِ، فَفِيهِ الْقَطْعُ إِذَا بَلَغَ ذَلِكَ ثَمَنَ الْمِجَنِّ، وَإِنْ أَكَلَ وَلَمْ يَأْخُذْ، فَلَيْسَ عَلَيْهِ» قَالَ: الشَّاةُ الْحَرِيسَةُ مِنْهُمْ يَا رَسُولَ اللَّهِ؟ قَالَ: «ثَمَنُهَا وَمِثْلُهُ مَعَهُ وَالنَّكَالُ، وَمَا كَانَ فِي الْمَرَاحِ، فَفِيهِ الْقَطْعُ، إِذَا كَانَ مَا يَأْخُذُ مِنْ ذَلِكَ ثَمَنَ الْمِجَنِّ».

تخریج: [حسن] أخرجه أبو داود، اللقطة، باب التعريف باللقطة، ح: ١٧١١ من حديث أبي أسامة به، وحسنه الترمذي، ح: ١٢٨٩، وصححه ابن الجارود، ح: ٨٢٧ من حديث عمرو بن شعيب به.

Comments:

- Though there is no punishment for this offence, it is not approved to take fruit away from someone's garden.
- Taking away the produce from the garden is a punishable crime.
- If a stolen thing is less in price than the criterion fixed for the punishment, its penalty is double than its original price.
- Punishment of lashes can be added according to the severity of the crime.
- Punishment for a thing stolen from a secure and protected place is cutting off the hand, provided the price is one fourth of a Dinâr. In this *Hadith* "shield" has been mentioned because in the period of the Noble Prophet ﷺ the average price of a shield was one fourth of a Dinâr.

Chapter 29. Prompting A Thief**(المعجم ٢٩) - بَابُ تَلْقِينِ السَّارِقِ**

(التحفة ٢٩)

2597. It was narrated from Ishâq bin Abu Talhah: "I heard Abu Mundhir, the freed slave of Abu Dharr, say that Abu Umayyah narrated to him, that a thief was brought to the Messenger of Allâh ﷺ, and he admitted his crime, although the stolen goods were not found with him. The Messenger of Allâh ﷺ said: 'I do not think that you stole them.' He said: 'Yes I did.' Then he said (again): 'I do not think that you stole them,' and he said: 'Yes I did.' Then he ordered that his hand be cut off. The Prophet ﷺ said: 'Say: I seek Allâh's forgiveness and I repent to Him.' So he (the thief) said: 'I seek Allâh's forgiveness and I repent to Him' He (the Prophet ﷺ) said twice: 'O Allâh! Accept his repentance.'" (*Da'if*)

٢٥٩٧ - حَدَّثَنَا إِسْحَاقُ بْنُ عَمَّارٍ: حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ، عَنْ إِسْحَاقَ بْنِ أَبِي طَلْحَةَ: سَمِعْتُ أَبَا الْمُنْذِرِ، مَوْلَى أَبِي ذَرٍّ، يَذْكُرُ أَنَّ أَبَا أُمَيَّةَ حَدَّثَهُ أَنَّ رَسُولَ اللَّهِ ﷺ أَنَّى يَلِصُّ، فَأَعْتَرَفَ اعْتِرَافًا، وَلَمْ يَوْجَدْ مَعَهُ الْمَتَاعُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «مَا إِخَالُكَ سَرَقْتَ» قَالَ: بَلَى، ثُمَّ قَالَ: «مَا إِخَالُكَ سَرَقْتَ» قَالَ: بَلَى، فَأَمَرَ بِهِ فُقِطِعَ. قَالَ [النَّبِيُّ ﷺ]: «قُلْ: أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ» قَالَ: أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ. قَالَ: «اللَّهُمَّ تُبْ عَلَيْهِ» مَرَّتَيْنِ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب في التلقين في الحد، ح: ٤٣٨٠ من حديث حماد به * أبو المنذر لا يعرف كما قال الذهبي، وأشار إليه الخطابي.

Chapter 30. One Who Is Coerced

(المعجم ٣٠) - بَابُ الْمُسْتَكْرَه

(التحفة ٣٠)

2598. It was narrated from 'Abdul-Jabbâr bin Wâ'il that his father said: "A woman was coerced (i.e., raped) during the time of the Messenger of Allâh ﷺ. He waived the legal punishment for her and carried it out on the one who had attacked her, but he (the narrator) did not say that he ruled that she should be given a bridal-money." (*Da'if*)

٢٥٩٨ - حَدَّثَنَا عَلِيُّ بْنُ مَيْمُونٍ الرَّقِّي، وَ
أَيُّوبُ بْنُ مُحَمَّدٍ الْوَزَّانُ، وَ عَبْدِ اللَّهِ بْنُ
سَعِيدٍ، قَالُوا: حَدَّثَنَا مَعْمَرُ بْنُ سُلَيْمَانَ:
أَنْبَأَنَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَبْدِ الْجَبَّارِ بْنِ
وَائِلٍ، عَنْ أَبِيهِ قَالَ: اسْتَكْرَهَتْ امْرَأَةً عَلَى
عَهْدِ رَسُولِ اللَّهِ ﷺ. فَدَرَأَ عَنْهَا الْحَدَّ،
وَأَقَامَهُ عَلَى الَّذِي أَصَابَهَا. وَلَمْ يَذْكُرْ أَنَّ
جَعَلَ لَهَا مَهْرًا.

تخریج: [إسناده ضعيف] أخرجه الترمذي، الحدود، باب ما جاء في المرأة إذا استكرهت على الزنا، ح: ١٤٥٣ من حديث معمر بن سليمان به، وفيه علتان إحداهما ضعف الحجاج تقدم، ح: ٤٩٦، ١١٢٩، ٢٥٨٧، والثانية: الانقطاع بين عبد الجبار وأبيه انظر، ح: ٨٥٥.

Chapter 31. Prohibition Of Carrying Out The Legal Punishments In The Mosques

(المعجم ٣١) - بَابُ النَّهْيِ عَنْ إِقَامَةِ

الْحُدُودِ فِي الْمَسْجِدِ (التحفة ٣١)

2599. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Do not carry out the legal punishments in the mosques." (*Da'if*)

٢٥٩٩ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلِيُّ
ابْنُ مُسْهِرٍ، ح: وَحَدَّثَنَا الْحَسَنُ بْنُ عَرَفَةَ:
حَدَّثَنَا أَبُو حَفْصٍ الْأَبَّارُ، جَمِيعًا عَنْ
إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ،
عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ
ﷺ قَالَ: «لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ».

تخریج: [إسناده ضعيف] أخرجه الترمذي، الديات، باب ما جاء في الرجل يقتل ابنه يقاد منه أم لا؟، ح: ١٤٠١ من حديث إسماعيل به تقدم، ح: ٣٠١، وهو ضعيف كما في التلخيص الحبير: ٧٧/٤، ح: ١٨٠٠ وغيره، وله شاهد ضعيف عند أبي داود، ح: ٤٤٩٠، وقال الحافظ: ولا بأس بإسناده، وللحديث طرق لم يصح منها شيء، انظر الحديث الآتي.

2600. 'Amr bin Shu'aib narrated from his father, from his

٢٦٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنْبَأَنَا عَبْدُ
اللَّهِ بْنُ لَهِيْعَةَ، عَنْ مُحَمَّدِ بْنِ عَجْلَانَ أَنَّ

grandfather, that the Messenger of Allāh ﷺ forbade lashing for the legal punishment in the mosques. (Da'if)

سَمِعَ عَمْرُو بْنُ شَعَيْبٍ [يُحَدِّثُ] عَنْ أَبِيهِ،
عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ جَلْدِ
الْحَدِّ فِي الْمَسَاجِدِ.

تخريج: [إسناده ضعيف] وقال البوصيري: هذا إسناد ضعيف لضعف ابن لهيعة، وانظر،
ح: ٣٣٠.

Comments:

- Beating and punishing inside the mosque is not permitted. The dignity of the mosque does not allow such things to happen inside the mosque. The purpose of the mosque is to provide a tranquil atmosphere for prayers and remembrance of Allāh.
- The environment of a mosque is quite calm and serene and best for remembrance of Allāh and offering prayers with all concentration. Execution of punishments inside the mosque will disturb this entire atmosphere. The spilling of blood and the hew and cry of onlookers during the execution of the punishment will also damage the dignity, cleanliness and virtuous atmosphere of the mosque.

Chapter 32. Penalty Or Discretionary Punishments (Decided by The Judge)

(المعجم ٣٢) - بَابُ التَّعْزِيرِ (التحفة ٣٢)

2601. It was narrated from Abu Burdah bin Niyâr that the Messenger of Allāh ﷺ used to say: "No one should be given more than ten lashes, except in the case of one of the legal punishments of Allāh." (Sahih)

٢٦٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ أَبَا نَيْيَارٍ اللَّيْثُ
ابْنَ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ بُكَيْرِ
ابْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِ، عَنْ سُلَيْمَانَ بْنِ
يَسَارٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرٍ بْنِ عَبْدِ
اللَّهِ، عَنْ أَبِي بُرْدَةَ بْنِ نَيْيَارٍ أَنَّ رَسُولَ اللَّهِ ﷺ
كَانَ يَقُولُ: «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرِ
جَلْدَاتٍ، إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ».

تخريج: أخرجه البخاري، الحدود، باب: كم التعزير والأدب، ح: ٦٨٤٨ من طريق الليث،
ومسلم، الحدود، باب قدر أسواط التعزير، ح: ١٧٠٨ من طريق بكير به.

2602. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Do not punish with more than ten whips." (Da'if)

٢٦٠٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنَا عَبْدُ بْنُ كَثِيرٍ،
عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ
أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا

تُعَزَّرُوا فَوْقَ عَشْرَةِ أَسْوَاطٍ».

تخريج: [إسناده ضعيف] وضعفه البوصيري من أجل عباد بن كثير، انظر، ح: ١٤٦٢، وله شاهد عند الطبراني (الأوسط: ٢٦٠/٨، ح: ٧٥٢٤، ونصب الراية: ٣/٣٥٤)، والعقبلي: ١/٦٥، وقال: إبراهيم بن محمد شامي مجهول، حديثه منكر غير محفوظ، والحديث السابق يغني عنه.

Comments:

There are two kinds of punishments:

- Hudud* punishment that has been prescribed by the Divine law, like the punishment of the murder, which is life for life or blood money; or the punishment of slandering, which is eighty lashes. This punishment is fixed and cannot be increased or decreased.
- Ta'zir* punishment is that for which there is no fixed criterion by Divine law. This depends on the discretionary powers of the judge. A judge can punish the offender by seeing the intensity of the crime. In a discretionary punishment, while giving the punishment of lashes, a judge cannot accede more than ten lashes, but he can add other punishments according to the intensity of the crime.

Chapter 33. The Legal Punishment Is Expiation

(المعجم ٣٣) - بَابُ: الْحَدِّ كَفَّارَةً

(التحفة ٣٣)

2603. It was narrated from 'Ubādah bin Sâmit that the Messenger of Allāh ﷺ said: "Whoever among you undergoes a *Hadd*, his punishment has been brought forward,^[1] and it is an expiation for him, otherwise his case rests with Allāh." (*Sahih*)

٢٦٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا عَبْدُ الْوَهَّابِ وَابْنُ أَبِي عَدِيٍّ، عَنْ خَالِدِ الْحَدَّاءِ، عَنْ أَبِي قَلَابَةَ، عَنْ أَبِي الْأَشْعَثِ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَ مِنْكُمْ حَدًّا، فَعَجَّلَتْ لَهُ عُقُوبَتُهُ، فَهُوَ كَفَّارَتُهُ. وَإِلَّا، فَأَمْرُهُ إِلَى اللَّهِ».

تخريج: أخرجه مسلم، الحدود، باب الحدود كفارات لأهلها، ح: ١٧٠٩ من طريق خالد الحداء به.

Comments:

- Any crime which has been punished in this world will be pardoned in the Hereafter.
- There is a possibility that a person did a crime, but it always remained hidden from the people, or never was proved against him in the court, his exemption from the punishment in the Hereafter is not certain.
- "His case rests with Allāh" means Allāh may forgive him in lieu of some

[1] In this world — as opposed to the Hereafter.

other great virtuous deed, or He may punish him for his crime to purify him for forgiveness.

2604. It was narrated from 'Ali that the Messenger of Allāh ﷺ said: "Whoever commits a sin in this world and is punished for it, Allāh is too just to repeat the punishment for His slave (in the Hereafter). And whoever commits a sin in this world and Allāh conceals him, Allāh is too generous to go back to something that He has pardoned." (*Da'if*)

٢٦٠٤ - حَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللَّهِ الْحَمَّالُ: حَدَّثَنَا حِجَّاجُ بْنُ مُحَمَّدٍ: حَدَّثَنَا يُونُسُ بْنُ أَبِي إِسْحَاقَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي جُحَيْفَةَ، عَنْ عَلِيٍّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَ فِي الدُّنْيَا ذَنْبًا، فَعُوقِبَ بِهِ، فَاللَّهُ أَعَدَّ لَهُ أَنْ يُثَنِّي عُقُوبَتَهُ عَلَى عَبْدِهِ. وَمَنْ أَذْنَبَ ذَنْبًا فِي الدُّنْيَا، فَسَرَّهُ اللَّهُ عَلَيْهِ، فَاللَّهُ أَكْرَمُ [مِنْ] أَنْ يَعُودَ فِي شَيْءٍ قَدْ عَفَا عَنْهُ».

تخریج: [إسناده ضعيف] أخرجه الترمذي، الإيمان، باب ما جاء لا يزني الزاني وهو مؤمن، ح: ٢٢٦٦ من حديث حجاج به، وقال: حسن غريب صحيح، وصححه الحاكم: ٧/١، والذهبي * أبو إسحاق عن تقدم، ح: ٤٦، ١٠٣٩.

Chapter 34. A Man Who Finds Another Man With His Wife

(المعجم ٣٤) - بَابُ الرَّجُلِ يَجِدُ مَعَ امْرَأَتِهِ رَجُلًا (التحفة ٣٤)

2605. It was narrated from Abu Hurairah that Sa'd bin 'Ubadah Al-Ansari said: "O Messenger of Allāh, if a man finds another man with his wife, should he kill him?" The Messenger of Allāh ﷺ said: "No." Sa'd said: "Yes he should, by the One Who honored you with the Truth!" The Messenger of Allāh ﷺ said: "Listen to what your leader says!" (*Sahih*)

٢٦٠٥ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ وَ مُحَمَّدٌ بْنُ عُبَيْدِ الْمَدِينِيِّ أَبُو عُبَيْدٍ قَالَ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ سَعْدَ بْنَ عُبَادَةَ الْأَنْصَارِيَّ قَالَ: يَا رَسُولَ اللَّهِ! الرَّجُلُ يَجِدُ مَعَ امْرَأَتِهِ رَجُلًا، أَيْقُتْلُهُ؟ قَالَ رَسُولُ اللَّهِ ﷺ: «لَا». قَالَ سَعْدٌ: بَلَى. وَالَّذِي أَكْرَمَكَ بِالْحَقِّ فَقَالَ رَسُولُ اللَّهِ ﷺ: «اسْمَعُوا مَا يَقُولُ سَيِّدُكُمْ».

تخریج: أخرجه مسلم، اللعان، ح: ١٤٩٨ من حديث الدراوردي به.

2606. It was narrated that Salamah bin Muhabbiq said: "When the Verse of legal

٢٦٠٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ الْفَضْلِ بْنِ دَلْهَمٍ، عَنِ الْحَسَنِ، عَنْ

punishments was revealed, it was said to Abu Thâbit, Sa'd bin 'Ubadah, who was a jealous man: 'If you found another man with your wife, what would you do?' He said: 'I would strike them both with the sword; do you think I should wait until I bring four (witnesses) and he has satisfied himself and gone away? Or should I say I saw such and such, and you will carry out the legal punishment punishment on me (for slander) and never accept my testimony thereafter?' Mention of that was made to the Prophet ﷺ and he said: 'The sword is sufficient as a witness.'^[1] Then he said: 'No, (on second thought) I am afraid that the drunkard and the jealous would pursue that.'^[2] (Da'if)

Abu 'Abdullâh — meaning Ibn Mâjah — said: "I heard Abu Zur'ah saying: 'This is a *Hadith* of 'Ali bin Muhammad At-Tanâfisi, I did not hear it from him.'"^[2]

تخريج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب: في الرجم، ح: ٤٤١٧ من حديث الفضل بن دلهم به * الفضل بن دلهم لين ورمي بالاعتزال (ومن حديث وكيع تعليقاً، ح: ٤٤١٧).

Comments:

- If a person finds a couple performing sexual intercourse, and he catches them red-handed, even then he is not allowed to kill them.
- He needs three more male persons to see them performing the action.
- It is the right of the court to pass the judgment and punish them accordingly, stoning or whipping.
- The wisdom behind producing witnesses is to stop the killing of innocent

^[1] It means if the two bodies were found together in the bed, this would make it quite clear what had happened, namely that the husband had discovered the pair committing adultery and had taken action.

^[2] 'Ali bin Muhammad is the one who narrated it to Ibn Mâjah.

قَبِيصَةَ بْنِ حُرَيْثٍ، عَنْ سَلَمَةَ بْنِ الْمُحَبِّقِ قَالَ: قِيلَ لِأَبِي ثَابِتٍ، سَعْدُ بْنُ عُبَادَةَ، حِينَ نَزَلَتْ آيَةُ الْحُدُودِ، وَكَانَ رَجُلًا غَيُورًا: أَرَأَيْتَ لَوْ أَنَّكَ وَجَدْتَ مَعَ امْرَأَتِكَ رَجُلًا، أَيْ شَيْءٍ كُنْتَ تَصْنَعُ؟ قَالَ: كُنْتُ ضَارِبُهُمَا بِالسَّيْفِ. أُنْتَظِرُ حَتَّى أَجِيءَ بِأَرْبَعَةٍ؟ إِلَى مَا ذَاكَ قَدْ قَضَى حَاجَتَهُ وَذَهَبَ. أَوْ أَقُولُ: رَأَيْتُ كَذَا وَكَذَا. فَتَضْرِبُونِي الْحَدَّ وَلَا تَقْبَلُوا لِي شَهَادَةً أَبَدًا. قَالَ: فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «كَفَى بِالسَّيْفِ شَاهِدًا». ثُمَّ قَالَ: «لَا. إِنِّي أَخَافُ أَنْ يَتَّبَعَ فِي ذَلِكَ السَّكَرَانُ وَالْغَيْرَانُ».

قَالَ أَبُو عَبْدِ اللَّهِ، يَعْنِي ابْنَ مَاجَهَ: سَمِعْتُ أَبَا زُرْعَةَ يَقُولُ: هَذَا حَدِيثٌ عَلِيٌّ بْنُ مُحَمَّدٍ الطَّنَافِسِيُّ. وَقَاتَنِي مِنْهُ.

people on the basis of personal enmity. If the condition of four eye witnesses is not there, anybody may kill anyone, and say that he found him engaged in illegal sex. This will open the way to killing innocent people. If anybody finds his wife involved in illegal sexual intercourse with someone, he can choose the way of *Li'ân* and divorce her, but taking the law in his own hands and killing her is not proper.

- e. The words of Sa'd bin 'Ubâdah show his sense of dignity and courage. The Noble Prophet ﷺ praised this, but did not allow him to take the law in his own hands.

Chapter 35. One Who Marries His Father's Wife After He Dies

2607. It was narrated that Barâ' bin 'Âzib said: "My maternal uncle passed by me – (one of the narrators) Hushaim named him in his narration as Hârith bin 'Amr – and the Prophet ﷺ had given him a banner to carry.^[1] I said to him: 'Where are you going?' He said: 'The Messenger of Allâh ﷺ has sent me to a man who married his father's wife after he died, and has commanded me to strike his neck (i.e., execute him).'" (*Sahih*)

تخریج: [صحيح] أخرجه أبو داود، الحدود، باب: في الرجل يزني بجريمه، ح: ٤٤٥٧ من حديث عدي به، وصححه ابن الجارود، ح: ٦٨١، وله طرق عند أبي داود، ح: ٤٤٥٦، وابن حبان، ح: ١٥١٦، والترمذي، والحاكم ١٩١/٢ وغيرهم.

Comments:

- To marry a *Mahram* woman is a great sin.
- The punishment for this crime is death.
- The punishment for illegal sexual intercourse and marrying a *Mahram* woman is not the same. The punishment for illegal sexual intercourse is stoning to death, and the punishment for marrying a *Mahram* is death.

2608. It was narrated from Mu'âwiyah bin Qurrah that his father said: "The Messenger of Allâh ﷺ sent me to a man who

(المعجم ٣٥) - بَاب مَنْ تَزَوَّجَ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ (التحفة ٣٥)

٢٦٠٧ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا هُشَيْمٌ، ح: وَحَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا خَفْصُ بْنُ غِيَاثٍ، جَمِيعاً عَنْ أَشْعَثَ، عَنْ عَلِيِّ بْنِ ثَابِتٍ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مَرَّ بِي خَالِي، سَمَاهُ هُشَيْمٌ، فِي حَدِيثِهِ، الْحَارِثُ بْنُ عَمْرٍو وَقَدْ عَقَدَ لَهُ النَّبِيُّ ﷺ لَوَاءً. فَقُلْتُ لَهُ: أَيْنَ تَرِيدُ؟ فَقَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ. فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ.

٢٦٠٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ، ابْنُ أَخِي الْحُسَيْنِ الْجُعْفِيُّ: حَدَّثَنَا يُوسُفُ بْنُ مَزَازِلَ التِّيمِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ،

^[1] To indicate that he was sent on this mission by the Prophet ﷺ. See 'Awnul-Ma'bud.

had married his father's wife after he died, to strike his neck (execute him) and confiscate his wealth." (Hasan)

عَنْ خَالِدِ بْنِ أَبِي كَرِيمَةَ، عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ، عَنْ أَبِيهِ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةً أَبِيهِ، أَنْ أَضْرِبَ عَنْقَهُ وَأُصْفِيَ مَالَهُ.

تخريج: [إسناده حسن] أخرجه الطبراني: ٢٤/١٩ من حديث ابن إدريس به، على تصحيف فيه، وصححه البوصيري.

Comments:

Killing is a form of the *Hadd*, and confiscating wealth is *Ta'zir*. It means that the Noble Prophet ﷺ gave him both of the punishments.

Chapter 36. One Who Claims To Belong To Someone Other Than His Father, Or (A Slave) Who Claims To Belong To Someone Other Than His Master

(المعجم ٣٦) - بَابُ مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ أَوْ تَوَلَّى غَيْرَ مَوَالِيهِ (الشفعة ٣٦)

2609. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Whoever claims to belong to someone other than his father, or (a freed slave) who claims that his *Walâ'*^[1] is for other than his real master, the curse of Allâh, the angels and all the people will be upon him."^[2] (Sahih)

٢٦٠٩ - حَدَّثَنَا أَبُو يَسْرِ بَكْرُ بْنُ خَلْفٍ: حَدَّثَنَا ابْنُ أَبِي الصَّيْفِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ [خُنَيْمٍ]، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ انْتَسَبَ إِلَى غَيْرِ أَبِيهِ، أَوْ تَوَلَّى غَيْرَ مَوَالِيهِ، فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ».

تخريج: [صحيح] * محمد بن أبي الصيف مستور، وتابعه وهيب عند ابن حبان (موارد)، ح: ١٢١٧ وغيره، وإسناده صحيح، وله شاهد عند مسلم في صحيحه، الحج، باب فضل المدينة ... الخ، ح: ١٣٧٠، وأصله في صحيح البخاري، ح: ١٨٧٠، ٣١٧٢، ٣١٧٩، ٦٧٥٥، ٧٣٠٠.

2610. It was narrated that Abu 'Uthmân Nahdi said: "I heard Sa'd and Abu Bakrah both say that they heard directly from

٢٦١٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنْ عَاصِمِ الْأَحْوَلِ، عَنْ أَبِي عُثْمَانَ

^[1] Referring to the relationship of inheritance between the freed slave and the one who freed him. In most cases the freed slave's tribe name will be the same as that of the one who freed him.

^[2] See also no. 2712.

Muhammad ﷺ saying it and memorized: 'Whoever claims to belong to someone other than his father knowing that he is not his father, Paradise will be forbidden to him.' (Sahih)

النَّهْدِيُّ قَالَ: سَمِعْتُ سَعْدًا وَأَبَا بَكْرَةَ، وَكُلُّ وَاحِدٍ مِنْهُمَا يَقُولُ: سَمِعْتُ أَذْنَابِي وَوَعَى قَلْبِي مُحَمَّدًا ﷺ [يَقُولُ]: «مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ وَهُوَ يَعْلَمُ أَنَّهُ غَيْرُ أَبِيهِ فَالْجَنَّةُ عَلَيْهِ حَرَامٌ».

تخريج: أخرجه البخاري، المغاري، باب غزوة الطائف في شوال سنة ثمان، ح: ٤٣٢٧ من حديث عاصم، ومسلم، الإيمان، باب بيان حال إيمان من رغب عن أبيه وهو يعلم، ح: ٦٣ من حديث أبي معاوية من حديث عاصم الأحول به.

Comments:

- Many issues and matters depend on the proof of lineage. For example: a) identification of a *Mahram*. b) Distribution of inheritance etc. In Islamic law a great deal of importance has been given to lineage.
- The relationship between a freed slave and the one who freed him is known as *Walâ'*, and some legal issues depend on it, for example issues of inheritance etc, in the absence of a legal bloodline.

2611. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "Whoever claims to belong to someone other than his father will not smell the fragrance of Paradise, even though its fragrance may be detected from a distance of five hundred years." (Sahih)

٢٦١١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ أَبَا سَفْيَانَ عَنْ عَبْدِ الْكَرِيمِ، عَنْ مُجَاهِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ، لَمْ يَرِخْ رَائِحَةَ الْجَنَّةِ وَإِنْ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ خَمْسِمِائَةِ عَامٍ».

تخريج: [صحيح] وصححه البوصيري، قلت: عبد الكريم الجزري لم ينفرد به، تابعه الحكم عند أحمد: ١٩٤/٢، ١٧١ عن مجاهد به، والراجح سبعين عامًا، دون خمسمائة عام، والله أعلم.

Comments:

- It is unlawful to claim to belong to someone other than one's own father.
- 'Will not smell the fragrance of Paradise,' means that he will not enter Paradise and he will remain far away from it.
- This means he will go to Hell. Allâh may forgive him, as He is All-Forgiving.

Chapter 37. One Who Says That A Man Does Not Belong To His Tribe

2612. Muslim bin Haisam narrated from Ash'ath bin Qais who said: "I came to the Messenger of Allāh ﷺ with a delegation from Kindah, and they thought that I was the best of them. I said: 'O Messenger of Allāh, are you not from among us?' He said: 'We are the tribe of Banu Nadr bin Kinānah, and we do not attribute ourselves to our mother and we do not deny our forefathers.'"

He said: "Ash'ath bin Qais used to say: 'If any man is brought to me who suggests that a man from Quraish does not belong to Nadr bin Kinānah, I would carry out the legal punishment (for slander) on him.'"

تخريج: [إسناده حسن] أخرجه أحمد: ٢١١/٥، ٢١٢ من حديث حماد بن سلمة به، ومسلم ابن هيصم روى عنه جماعة، وذكره ابن حبان في الثقات، وأخرج عنه مسلم في صحيحه، وقال البوصيري: هذا إسناده صحيح، رجاله ثقات .

Comments:

- The tribe of the Noble Prophet ﷺ is the Quraish. Quraish was an appellation (title) of Fihir bin Mālik and only the bloodline of Fihir bin Mālik is called Quraishi. The name of the father of Mālik or grandfather of Fihir was Nadr bin Kinānah. (See *Ar-Rahiq Al-Makhtum*, p. 91)
- When it is claimed that someone is not the son of the father who actually is his father, it means that his mother is slandered with the allegation of adultery. The slanderer should either prove it, or bear the punishment of eighty lashes.

Chapter 38. Effeminate Men

(المعجم ٣٧) - بَابُ مَنْ نَفَى رَجُلًا مِنْ قَبِيلَةٍ (التحفة ٣٧)

٢٦١٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ؛ ح وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ؛ ح: وَحَدَّثَنَا هَارُونُ بْنُ حَيَّانَ: أَنَّ أَبَا عَبْدِ الْعَزِيزِ بْنِ الْمُغِيرَةِ قَالَ: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ، عَنْ عَقِيلِ بْنِ طَلْحَةَ السُّلَمِيِّ، عَنْ مُسْلِمِ بْنِ هَيْصَمٍ، عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي وَفْدٍ كِنْدَةٍ، وَلَا يَرُونِي إِلَّا أَفْضَلَهُمْ. فَقُلْتُ: يَا رَسُولَ اللَّهِ! أَلَسْتُمْ مِنَّا؟ فَقَالَ: «نَحْنُ بَنُو النَّضْرِ بْنِ كِنَانَةَ، لَا نَقْفُو أُمَّتًا، وَلَا نَسْتَفِي مِنْ أَيْبِنَا».

قَالَ: فَكَانَ الْأَشْعَثُ بْنُ قَيْسٍ يَقُولُ: لَا أَوْتِي بِرَجُلٍ نَفَى رَجُلًا مِنْ قُرَيْشٍ، مِنَ النَّضْرِ ابْنِ كِنَانَةَ، إِلَّا جَلَدْتُهُ الْحَدَّ.

(المعجم ٣٨) - بَابُ الْمُخْتَضِنِ

(التحفة ٣٨)

2613. Safwān bin Umayyah said:

٢٦١٣ - حَدَّثَنَا الْحَسَنُ بْنُ أَبِي الرَّيِّعِ

"We were with the Messenger of Allâh ﷺ and 'Amr bin Murrah came and said: 'O Messenger of Allâh, Allâh has decreed that I be doomed, and He has not guided me to earn a living except by beating my tambourine with my hand; give me permission to sing without doing anything immoral.' The Messenger of Allâh ﷺ said: 'I will not give you permission, or honor you, nor give you what you want. You are lying, O enemy of Allâh. Allâh has granted you a good, lawful provision, but you have chosen the provision that Allâh has forbidden to you instead of that which He has permitted. If I had warned you before, I would have done such and such to you. Get away from me and repent to Allâh. If you do that again, after this warning, I will give you a painful beating and shave your head, to make an example of you, and I will banish you from among your people, and tell the young men of Al-Madinah to come and take your goods.'

'Amr stood up, suffering grief and humiliation that is known only to Allâh.

When he went away, the Prophet ﷺ said: 'Those sinners, whoever among them dies without having repented, Allâh will gather him on the Day of Resurrection just as he was in this world, effeminate and naked, with not even a piece of cloth to conceal him from the people. Every time he gets up, he

الْجُرْجَانِي: أَتَيْنَا عَبْدَ الرَّزَّاقِ: أَخْبَرَنِي يَحْيَى ابْنُ الْعَلَاءِ أَنَّهُ سَمِعَ [يُشْرَ] بَنَ مُمَيْرٍ أَنَّهُ سَمِعَ مَكْحُولًا يَقُولُ: إِنَّهُ سَمِعَ يَزِيدَ بَنَ عَبْدِ اللَّهِ أَنَّهُ سَمِعَ صَفْوَانَ بَنَ أُمَيَّةَ قَالَ: كُنَّا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَجَاءَهُ عَمْرُو بْنُ [مُرَّة] فَقَالَ: يَا رَسُولَ اللَّهِ! إِنَّ اللَّهَ قَدْ كَتَبَ عَلَيَّ الشَّقَوَةَ. فَمَا أَرَانِي أُزْزَقُ إِلَّا مِنْ دُفِّي بِكَفِّي. فَأَذَّنَ لِي فِي الْغِنَاءِ، فِي غَيْرِ فَاجِشَةٍ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا أَذِّنُ لَكَ، وَلَا كَرَامَةً، وَلَا نِعْمَةً عَيْنٍ. كَذَبْتَ، أَيُّ عَدُوِّ اللَّهِ لَقَدْ رَزَقَكَ اللَّهُ طَيِّبًا حَلَالًا، فَاخْتَرْتَ مَا حَرَّمَ اللَّهُ عَلَيْكَ مِنْ رِزْقِهِ مَكَانَ مَا أَحَلَّ اللَّهُ عَزَّ وَجَلَّ لَكَ مِنْ حَلَالِهِ. وَلَوْ كُنْتُ تَقَدَّمْتُ إِلَيْكَ لَفَعَلْتُ بِكَ وَفَعَلْتُ. ثُمَّ عَنِي، وَتُبْ إِلَى اللَّهِ. أَمَا إِنَّكَ إِنْ فَعَلْتَ، بَعْدَ التَّقْدِيمَةِ إِلَيْكَ، ضَرْبَتَكَ ضَرْبًا وَجِيعًا، وَحَلَقْتُ رَأْسَكَ مُثَلَّةً، وَنَفَيْتَكَ مِنْ أَهْلِكَ، وَأَخْلَلْتُ سَلْبَكَ نُهْبَةً لِفَتَيَانِ أَهْلِ الْمَدِينَةِ».

فَقَامَ عَمْرُو، وَبِهِ مِنَ الشَّرِّ وَالْجُرْزِيِّ مَا لَا يَعْلَمُهُ إِلَّا اللَّهُ.

فَلَمَّا وَلَّى، قَالَ النَّبِيُّ ﷺ: «هُؤُلَاءِ الْعَصَاةُ. مَنْ مَاتَ مِنْهُمْ بِغَيْرِ تَوْبَةٍ، حَشَرَهُ اللَّهُ عَزَّ وَجَلَّ يَوْمَ الْقِيَامَةِ كَمَا كَانَ فِي الدُّنْيَا مُحْتَسًا عُرْيَانًا لَا يَسْتَتِرُ مِنَ النَّاسِ بِهَذِيَّةٍ، كُلَّمَا قَامَ صُرِعَ».

will fall to the ground.''' (Maudu')

تخريج: [إسناده موضوع] أخرجه الطبراني: ٨/٦٠، ٦١، ح: ٧٣٤٢ من حديث الحسن بن أبي الربيع به، وضعه البوصيري، ونقل عن يحيى بن سعيد القطان قال في بشر بن نمير: كان ركنًا من أركان الكذب، ونقل عن أحمد قال في يحيى بن العلاء: كان يضع الحديث.

Comments:

- A eunuch is a person that is genderless and as man - woman, cannot lead a married life. Due to their resemblance to a male or female they can be considered either one of them accordingly.
- In Arab culture an eunuch looks like a male, wears men's clothes and works normally outdoors.
- Women should veil themselves from the eunuch who is particularly more interested in female matters.
- A eunuch who is not interested in female matters and his only interest is in other household matters or foods etc., to whom the Noble Qur'an in *Surat An-Nur* 24: 31 refers as "male servants who lack vigor" can be counted among those who have no potency. Women are not required to wear *Hijāb* before them.

2614. It was narrated from Umm Salamah that the Prophet ﷺ entered upon her, and heard an effeminate man saying to 'Abdullāh bin Abu Umayyah: "If Allāh enables us to conquer Tā'if tomorrow, I will show you a woman who comes in on four (rolls of fat) and goes out on eight." The Prophet ﷺ said: "Throw them out of your houses." (Sahih)

٢٦١٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا، فَسَمِعَ مُحَنَّتًا وَهُوَ يَقُولُ لِعَبْدِ اللَّهِ بْنِ أَبِي أُمَيَّةَ: إِنْ يَفْتَحَ اللَّهُ الطَّائِفَ غَدًا، دَلَلْتُكَ عَلَى امْرَأَةٍ تُقْبَلُ بِأَرْبَعٍ وَتُذَبَّرُ بِثَمَانٍ. فَقَالَ النَّبِيُّ ﷺ: «أَخْرِجُوهُمْ مِنْ بُيُوتِكُمْ».

تخريج: [صحيح] تقدم، ح: ١٩٠٢.