

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

## 21. The Chapters On Blood Money

### (المعجم ٢١) أَبْوَابُ الدِّيَّاتِ

(التحفة ١٣)

#### Chapter 1. The Severity Of Killing A Muslim

#### (المعجم ١) - بَابُ التَّغْلِيظِ فِي قَتْلِ

مُسْلِمٍ ظَلَمًا (التحفة ١)

**2615.** It was narrated from 'Abdullāh that the Messenger of Allāh ﷺ said: "The first matter concerning which judgment will be passed among the people on the Day of Resurrection will be bloodshed." (*Sahih*)

٢٦١٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَ عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ بْنُ بَشَّارٍ قَالُوا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ، يَوْمَ الْقِيَامَةِ، فِي الدِّمَاءِ».

**تخريج:** أخرجه البخاري، الرقاق، باب القصاص يوم القيامة، ح: ٦٥٣٣، ٦٨٦٤ من حديث الأعمش به، ومسلم، القسامة والمحاربيين، باب المجازاة بالدماء في الآخرة وأنها أول ما يقضى فيه بين الناس يوم القيامة، ح: ١٦٧٨ عن ابن نمير به.

#### Comments:

- The issue of bloodshed is among the most serious and grave issues regarding the rights of human beings. On the Day of Resurrection the first thing that will be accounted for is the issue of bloodshed.
- Prayer is the first of physical acts of worship to be questioned about on the Day of Resurrection.
- Killing of criminals on the orders of an Islamic state as punishment is not bloodshed, it is in compliance of orders by the executioner, and performing the duty according to the Islamic punishments is a virtuous deed.

**2616.** It was narrated from 'Abdullāh that the Messenger of Allāh ﷺ said: "No person is killed wrongfully, but a share of responsibility for his blood will be upon the first son of Ādam, because he was the first one to kill." (*Sahih*)

٢٦١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنَا الْأَعْمَشُ، [عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُقْتَلُ نَفْسٌ ظَلَمًا، إِلَّا كَانَ عَلَى ابْنِ آدَمَ الْأَوَّلِ كِفْلٌ مِنْ

دِمَهَا . لِأَنَّهُ أَوَّلُ مَنْ سَنَّ الْقَتْلَ .»

تخريج: أخرجه البخاري، الديات، باب: ومن أحيائها، ح: ٦٨٦٧، ٣٣٣٥، ٧٣٢١ من حديث الأعمش به، ومسلم، القسامة والمحاربين، باب بيان إثم من سن القتل، ح: ١٦٧٧ من حديث عيسى بن يونس .

**Comments:**

Inventing a new way of tyranny is a source of loss for the inventor, as it brings the share of punishment and responsibility to the originator when others use this newly invented way of tyranny. Those who tyrannize innocents are accountable for the crime, as well as the one who initiated such behavior.

**2617.** It was narrated from ‘Abdullâh that the Messenger of Allâh ﷺ said: “The first matter concerning which judgment will be passed among the people on the Day of Resurrection will be bloodshed.” (*Sahih*)

٢٦١٧ - حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى بْنِ الْأَزْهَرِ الْوَأَسِطِيُّ: حَدَّثَنَا إِسْحَاقُ بْنُ يُونُسَ الْأَزْرَقِيُّ، عَنْ شَرِيكٍ، عَنْ عَاصِمٍ، عَنْ أَبِي وَائِلٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ، يَوْمَ الْقِيَامَةِ، فِي الدِّمَاءِ.»

تخريج: [صحيح] أخرجه النسائي، تحريم الدم، تعظيم الدم، ح: ٣٩٩٦ من حديث الأزرق به، أخرجه البخاري، ح: ٦٥٣٣، ٦٨٦٤، ومسلم، ح: ١٦٧٨ من حديث الأعمش عن أبي وائل به .

**2618.** It was narrated from ‘Uqbah bin ‘Âmir Al-Juhani that the Messenger of Allâh ﷺ said: “Whoever meets Allâh not associating anything in worship with Him, and not having shed any blood unlawfully, will enter Paradise.” (*Sahih*)

٢٦١٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَائِدٍ، [عَنْ] عُبَيْدَةَ بْنِ غَامِرِ الْجُهَنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ لَقِيَ اللَّهَ لَا يُشْرِكُ بِهِ شَيْئًا، لَمْ يَنْتَدِ بِدَمٍ حَرَامٍ، دَخَلَ الْجَنَّةَ.»

تخريج: [صحيح] أخرجه أحمد: ٤/١٥٢ عن وكيع به، وفيه: لم ينتد بدم حرام، والمعنى واحد، وصححه الحاكم: ٤/٣٥١، ٣٥٢، والذهبي، وإسماعيل عنين، انظر، ح: ١٦١٢، ولأول الحديث شاهد عند البخاري، ح: ١٢٩، وغيره، وللدماء شواهد عند البخاري، ح: ٦٨٦٤، ٦٨٦٣، والهيتمي (مجمع: ١/١٩، ٢١) وغيرهما .

**Comments:**

a. Whosoever associates anything in worship with Allâh, he will remain in Hell forever.

- b. The crime of murder is a cause to lead one to Hell.  
 c. If someone wishes to enter Paradise, it is necessary for him to avoid all such crimes that lead to Hell.

**2619.** It was narrated from Barâ' bin 'Azib that the Messenger of Allâh ﷺ said: "If this world were to be destroyed, that would be less significant before Allâh than the unlawful killing of a believer." (Hasan)

٢٦١٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا الْوَلِيدُ ابْنُ مُسْلِمٍ: حَدَّثَنَا مَرْوَانُ ابْنُ جَنَاحٍ، عَنِ أَبِي الْجَهْمِ الْجَوْزَجَانِيِّ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لِزَوَالِ الدُّنْيَا أَهْوَنُ عَلَيَّ اللَّهُ مِنْ قَتْلِ مُؤْمِنٍ بِغَيْرِ حَقٍّ».

تخريج: [حسن] حسنه المنذري، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات قلت: الوليد لم يصرح بالسماع المسلسل تقدم، ح: ٢٥٥، ولحديثه شواهد عند النسائي: ٨٢/٧، ٨٣، والترمذي، ح: ١٣٩٥ وغيرهما.

### Comments:

- a. A true believer is very dear to Allâh.  
 b. Usually the cause of murder is some worldly gain. One should not kill a believer for a small worldly gain because the life of the believer is more precious than all the treasures of the world to Allâh.

**2620.** It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever helps to kill a believer, even with half a word, he will meet Allâh with (the words) written between his eyes, 'He has no hope of the mercy of Allâh.'" (Da'if)

٢٦٢٠ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ: حَدَّثَنَا يَزِيدُ بْنُ زِيَادٍ، عَنِ الزُّهْرِيِّ، عَنِ سَعِيدِ بْنِ الْمُسَيْبِ، عَنِ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعَانَ عَلَى قَتْلِ مُؤْمِنٍ بِسَطْرِ كَلِمَةٍ، لَقِيَ اللَّهَ عَرًّا وَجَلًّا، مَكْتُوبٌ بَيْنَ عَيْنَيْهِ: آيسٌ مِنْ رَحْمَةِ اللَّهِ».

تخريج: [ضعيف] أخرجه البيهقي ٢٢/٨ من حديث مروان بن معاوية الفزاري به، وقال: يزيد بن زياد وقيل: ابن أبي زياد الشامي، منكر الحديث، وقال أبو حاتم، هذا الحديث: باطل موضوع، وضعفه البوصيري، وللحديث شواهد ضعيفة عند البيهقي، وأبي نعيم (حلية: ٧٤/٥) وغيرهما.

## Chapter 2. Can The One Who Kills A Believer Repent?

(المعجم ٢) - بَابُ: هَلْ لِقَاتِلِ مُؤْمِنٍ تَوْبَةٌ (التحفة ٢)

**2621.** It was narrated that Sâlim bin Abu Ja'd said: "Ibn 'Abbâs

٢٦٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا

was asked about one who kills a believer deliberately, then repents, believes, does righteous deeds and follows true guidance. He said: 'Woe to him, can there be any guidance for him? I heard your Prophet ﷺ say: "The killer and his victim will be brought on the Day of Resurrection, with the slain holding onto the head of his killer, saying: 'O Lord, ask this one, why did he kill me?'" By Allâh, Allâh the Mighty and Sublime revealed<sup>[1]</sup> it to your Prophet, then He did not abrogate it after He revealed it.'" (*Sahih*)

سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمَّارِ الدُّهْمِيِّ، عَنْ  
سَالِمِ بْنِ أَبِي الْجَعْدِ قَالَ: سَمِعْتُ ابْنَ عَبَّاسٍ  
عَمَّنْ قَتَلَ مُؤْمِنًا مُتَعَمِّدًا ثُمَّ تَابَ وَأَمَّنْ وَعَمِلَ  
صَالِحًا ثُمَّ اهْتَدَى؟ قَالَ: وَرِيحُهُ وَأَنَّى لَهُ  
الْهُدَى؟ سَمِعْتُ نَبِيَّكُمْ ﷺ يَقُولُ: «يَجِيءُ  
الْقَاتِلُ، وَالْمَقْتُولُ يَوْمَ الْقِيَامَةِ مُتَعَلِّقٌ بِرَأْسِ  
صَاحِبِهِ. يَقُولُ: رَبِّ سَلْ لِهَذَا، لِمَ قَتَلْتَنِي؟»  
وَاللَّهُ لَقَدْ أَنْزَلَهَا اللَّهُ عَزَّ وَجَلَّ عَلَى نَبِيِّكُمْ، ثُمَّ  
مَا نَسَخَهَا بَعْدَ مَا أَنْزَلَهَا.

تخريج: [إسناده صحيح] أخرجه النسائي، تحريم الدم، تعظيم الدم، ح: ٤٠٠٤، ٤٨٧٠،  
والحميدي، ح: ٤٨٨ من حديث سفيان به، وتابعه يحيى بن عبدالله بن الحارث، المجرى التيمي عند  
أحمد: ١/٢٤٠، ٢٩٤، ٣٦٤ وغيره، وهو لين الحديث (تقريب)، وللحديث شواهد عند البخاري،  
ح: ٣٨٥٥، ومسلم، ح: ٣٠٢٣، والنسائي: ٨٤/٧، والترمذي، ح: ٢٢٠٨، وقال: حسن صحيح  
غريب، ح: ٣٠٢٩، وقال: حسن غريب، وغيرهم وبها صح الحديث.

### Comments:

Forgiveness for the crime of murder is possible through various ways:

- Payment of blood money, because legal punishment purifies from the sin. (See *Hadith*: 2603)
- An heir can pardon the murderer by taking blood money, or for Allâh's sake, without taking blood money.
- True and sincere repentance may save one from punishment. (See the next *Hadith*)

**2622.** It was narrated that Abu Sa'eed Khudri said: "Shall I not tell you what I heard directly from the Messenger of Allâh ﷺ? I heard it and memorized it: 'A man killed ninety-nine people, then the idea of repentance occurred to him. He asked who

٢٦٢٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا  
بَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَا هَمَّامٍ بْنَ يَحْيَى عَنْ  
قَتَادَةَ، عَنْ أَبِي الصَّدِّيقِ النَّاجِيِّ، عَنْ أَبِي  
سَعِيدِ الْخُدْرِيِّ قَالَ: أَلَا أُخْبِرُكُمْ بِمَا سَمِعْتُ  
مِنْ فِي رَسُولِ اللَّهِ ﷺ؟ سَمِعْتُهُ أُذُنًا بِي، وَوَعَاةً

[1] This is a reference to the Verse: "And whoever kills a believer intentionally, his recompense is Hell to abide therein; and the wrath and the curse of Allâh are upon him, and a great punishment is prepared for him." (*An-Nisâ'* 4:93)

was the most knowledgeable of people on earth, and he was told of a man so he went to him and said: "I have killed ninety-nine people. Can I repent?" He said: "After ninety-nine people?!" He said: 'So he drew his sword and killed him, thus completing one hundred. Then the idea of repentance occurred to him (again), so he asked who was the most knowledgeable of people, and he was told of a man (so he went to him) and said: "I have killed one hundred people. Can I repent?" He said: "Woe to you, what is stopping you from repenting? Leave the evil town where you are living and go to a good town, such and such town and worship your Lord there." So he went out, heading for the good town, but death came to him on the road. The angels of mercy and the angels of punishment argued over him. *Iblis* (Satan) said: "I have more right to him, for he never disobeyed me for a moment." But the angels of mercy said: "He went out repenting."

(One of the narrators) Hammâm said: "Humaid At-Tawîl narrated to me from Bakr bin 'Abdullâh, that Abu Râfi' said: 'So Allâh sent an angel to whom they referred (the case). He said: "Look and see which of the two towns was he closer, and put him with its people."

(One of the narrators) Qatâdah said: "Hasan narrated to us: 'When death came to him he

قَلْبِي: «إِنَّ عَبْدًا قَتَلَ تِسْعَةً وَتِسْعِينَ نَفْسًا، ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ. فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فُدِّلَ عَلَى رَجُلٍ فَأَتَاهُ. فَقَالَ: إِنِّي قَتَلْتُ تِسْعَةً وَتِسْعِينَ نَفْسًا. فَهَلْ لِي مِنْ تَوْبَةٍ؟ قَالَ: بَعْدَ تِسْعَةٍ وَتِسْعِينَ نَفْسًا قَالَ: فَاتَّضَى سَيْفُهُ فَقَتَلَهُ. فَأَكْمَلَ بِهِ الْمِائَةَ. ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فُدِّلَ عَلَى رَجُلٍ. [فَأَتَاهُ] فَقَالَ: إِنِّي قَتَلْتُ مِائَةَ نَفْسٍ، فَهَلْ لِي مِنْ تَوْبَةٍ؟ قَالَ، فَقَالَ: وَيْحَكَ وَمَنْ يَحُولُ بَيْنَكَ وَبَيْنَ التَّوْبَةِ؟ أَخْرَجَ مِنَ الْقَرْيَةِ الْحَبِيبَةَ الَّتِي أَنْتَ فِيهَا، إِلَى الْقَرْيَةِ الصَّالِحَةِ، قَرْيَةَ كَذَا وَكَذَا. فَأَعْبُدْ رَبَّكَ فِيهَا. فَخَرَجَ يُرِيدُ الْقَرْيَةَ الصَّالِحَةَ، فَعَرَضَ لَهُ أَجَلُهُ وَفِي الطَّرِيقِ. فَاخْتَصَمَتْ فِيهِ مَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْعَذَابِ. قَالَ إِبْلِيسُ: أَنَا أَوْلَى بِهِ، إِنَّهُ لَمْ يَعْصِنِي سَاعَةً قَطُّ. قَالَ، فَقَالَتْ مَلَائِكَةُ الرَّحْمَةِ: إِنَّهُ خَرَجَ تَائِبًا.

قَالَ هَمَّامٌ: فَحَدَّثَنِي حُمَيْدُ الطَّوِيلُ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي رَافِعٍ، قَالَ: بَعَثَ اللَّهُ عَزَّ وَجَلَّ مَلَكًا. فَاخْتَصَمُوا إِلَيْهِ ثُمَّ رَجَعُوا. فَقَالَ: انظُرُوا. أَيُّ الْقَرْيَتَيْنِ كَانَتْ أَقْرَبَ، فَأَلْحَقُوهُ بِأَهْلِهَا.

قَالَ قَتَادَةُ: فَحَدَّثَنَا الْحَسَنُ، قَالَ: لَمَّا حَضَرَهُ الْمَوْتُ اخْتَفَرَ بِنَفْسِهِ قَرُوبَ مِنَ الْقَرْيَةِ الصَّالِحَةِ، وَبَاعَدَ مِنْهُ الْقَرْيَةَ الْحَبِيبَةَ. فَأَلْحَقُوهُ بِأَهْلِ الْقَرْيَةِ الصَّالِحَةِ.

حَدَّثَنَا أَبُو الْعَبَّاسِ بْنُ عَبْدِ اللَّهِ بْنِ

stroke and drew closer to the good town, and farther away from the evil town, so they put him with the people of the good town.” (Sahih)

Another chain from Hammâm, and he mentioned similarly.

إِسْمَاعِيلُ الْبَغْدَادِيُّ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا هَمَّامٌ، فَذَكَرَ نَحْوَهُ.

تخريج: أخرجه البخاري، أحاديث الأنبياء، باب: (٥٤)، ح: ٣٤٧٠، ومسلم، التوبة، باب قبول توبة القتال، وإن كثر قتله، ح: ٢٧٦٦ من حديث قتادة به.

**Comments:**

- a. One who after committing a crime is afraid of Allâh’s justice, he should not be disappointed by religious scholars from Allâh’s mercy. They should encourage him to repent and ask Allâh’s mercy. Anyone who takes undue leave of Allâh’s mercy should be warned of severe punishment.
- b. True and sincere repentance may induce the mercy of Allâh to pardon mortal sins like bloodshed.
- c. One way of improvement of character is to leave the bad and impure environment and join the company of good people.

**Chapter 3. If A Person’s Relative Is Killed, He Has The Choice Of Three Things**

(المعجم ٣) - بَابُ مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ (التحفة ٣)

2623. It was narrated from Abu Shuraih Al-Khuzâ'i that the Messenger of Allâh ﷺ said: "Whoever suffers from killing or wounding, has the choice of three things, and if he wants the fourth then restrain him. He may kill (the killer), or forgive him, or take the blood money. Whoever accepts any of these (options), then kills (the killer) after that will have the fire of Hell to abide therein forever." (Da'if)

٢٦٢٣ - حَدَّثَنَا مُحَمَّدٌ: حَدَّثَنَا عُمَانُ وَ أَبُو بَكْرِ ابْنَا أَبِي شَيْبَةَ: قَالَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ؛ ح: وَحَدَّثَنَا أَبُو بَكْرِ وَ عُمَانُ [ابْنَا] أَبِي شَيْبَةَ، قَالَ: حَدَّثَنَا جَرِيرٌ وَ عَبْدُ الرَّحِيمِ ابْنُ سَلِيمَانَ، جَمِيعًا عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنِ الْحَارِثِ بْنِ فَضِيلٍ، أَظَنَّهُ عَنِ ابْنِ أَبِي الْعَوَّجَاءِ، وَاسْمُهُ سُفْيَانُ عَنْ أَبِي شُرَيْحِ الْخُرَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُصِيبَ بِدَمٍ أَوْ خَبْلٍ، - وَالْخَبْلُ الْجِرَاحُ فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ. فَإِنْ أَرَادَ الرَّابِعَةَ، فَخَذُوا عَلَى يَدَيْهِ: أَنْ يَقْتُلَ أَوْ يَغْفُو أَوْ يَأْخُذَ الدِّيَةَ. فَمَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ فَعَادَ، فَإِنْ لَهُ

نَارَ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الإمام يأمر بالعتو في الدم، ح: ٤٤٩٦ من حديث ابن إسحاق به، وصرح بالسماع عند الطحاوي في معاني الآثار: ٣/ ١٧٤، ١٧٥ على تصحيح، وقع في السند \* وسفيان بن أبي العوجاء ضعيف (تقريب وغيره)، ولبعض حديثه شاهد حسن عند أحمد: ٣٢/٤، وانظر الحديث الآتي.

**Comments:**

- a. 'Whoever suffers from killing or wounding' means that one of his relatives is killed or he himself is wounded. In both situations he can either have the killer killed for killing his relative, or take the blood money for his wound and he can forgive the offender. This issue is also proven by other arguments in other *Ahâdith*.
- b. 'The fourth' means an unlawful demand, like first accepting the blood money and finishing the matter, but later on finding an opportunity and killing the killer. If he does so, he is a killer and should be punished according to the law. Doing one thing (accepting the blood money) and then doing the other (killing the killer) means the same as explained above.

**2624.** It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "If a person's relative is killed, he has the choice of two things: He may either have the killer killed, or he may demand the blood money." (*Sahih*)

٢٦٢٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدُّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يَكْتُلَ وَإِمَّا أَنْ يُفْدَى».

تخریج: أخرجه البخاري، اللقطة، باب: كيف تعرف لقطه أهل مكة، ح: ٢٤٣٤، ومسلم، الحج، باب تحريم مكة وتحريم صيدها وخلها وشجرها ولقطتها إلا لمنشد، على الدوام، ح: ١٣٥٥ من حديث الوليد بن مسلم به.

**Comments:**

- a. Killing in retaliation, and blood money, have been mentioned as identical things, as the third thing, forgiveness has been designated a higher status than the other two.
- b. Blood money is better than killing in retaliation, as there is also a segment of forgiveness in it. There is also a possibility of reduction in blood money by the heirs.
- c. The decision of killing or taking blood money is the right of the heirs. The court has nothing to do with this decision.
- d. Killing in retaliation is a punishment only for deliberate murder. The punishment for accidental murder is only blood money.

### Chapter 4. One Who Is Killed Deliberately And His Heirs Accept The Blood Money

2625. It was narrated that Ziyād bin Sa'd bin Dumairah (said): "My father and my paternal uncle, who were present at Hunain with the Messenger of Allāh ﷺ, narrated to me: 'The Prophet ﷺ prayed *Zuhr*, then he sat beneath a tree. Aqra' bin Hâbis, who was the chief of Khindaf, came to him arguing in defense of Muhallim bin Jaththâmah. 'Uyainah bin Hisn came to him demanding vengeance for 'Âmir bin Adbat, who was from the tribe of Ashja'. The Prophet ﷺ said to them: 'Will you accept the blood money?'" But they refused. Then a man from Banu Laith, whose name was Mukaital, stood up and said: 'O Messenger of Allāh! By Allāh! This man who was killed in the early days of Islam is like sheep that come to drink but stones are thrown at them, so the last of them runs away (i.e., the murderer should be killed).' The Prophet ﷺ said: 'You will have fifty (camels) while we are travelling and fifty (camels) when we return.' So they accepted the blood money." (*Hasan*)

(المعجم ٤) - بَابُ مَنْ قَتَلَ عَمَدًا،  
فَرَضُوا بِالذِّيَّةِ (التحفة ٤)

٢٦٢٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: حَدَّثَنِي مُحَمَّدُ بْنُ جَعْفَرٍ، عَنْ [زِيَادِ] بْنِ [سَعْدِ بْنِ] ضَمِيرَةَ: حَدَّثَنِي أَبِي وَعَمِّي، وَكَانَا شَهِدًا حَتِينًا مَعَ رَسُولِ اللَّهِ ﷺ، قَالَ: صَلَّى النَّبِيُّ ﷺ الظُّهْرَ. ثُمَّ جَلَسَ تَحْتَ شَجَرَةٍ. فَقَامَ إِلَيْهِ الْأَقْرَعُ بْنُ حَابِسٍ، وَهُوَ سَيْدُ خِنْدَفٍ، يَرُدُّ عَنْ دَمِ مُحَلِّمِ بْنِ جَثَّامَةَ. وَقَامَ عَيْشَةُ بْنُ حِصْنٍ يَطْلُبُ بِدَمِ عَامِرِ بْنِ الْأَضْبَطِ. وَكَانَ أَشْجَعِيًّا. فَقَالَ لَهُمُ النَّبِيُّ ﷺ: «تَقْبَلُونَ الدِّيَةَ؟» فَأَبَوْا. فَقَامَ رَجُلٌ مِنْ بَنِي لَيْثٍ، يُقَالُ لَهُ مُكَيْتَلٌ. فَقَالَ: يَا رَسُولَ اللَّهِ ﷺ وَاللَّهِ! مَا شَبَّهْتُ هَذَا الْقَتِيلَ، فِي غُرَّةِ الْإِسْلَامِ، إِلَّا كَعَنَمٍ وَرَدَّتْ، فَرُمِيَتْ، فَفَنَعَرَ آخِرُهَا، فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ خَمْسُونَ فِي سَفَرِنَا، وَخَمْسُونَ إِذَا رَجَعْنَا» فَاقْبَلُوا الدِّيَةَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الديات، باب الإمام يأمر بالعفو في الدم، ح: ٤٥٠٣ من حديث ابن إسحاق به، وصححه ابن الجارود، ح: ٧٧٧، وحسنه الحافظ في الإصابة: ٦٤/٣ \* زياد بن سعد بن ضميرة وثقه ابن حبان، وابن الجارود وغيرهما، فحديثه لا ينزل عن درجة الحسن.



**Comments:**

- In the case of deliberate murder both the punishments, either taking blood money or killing in retaliation are lawful.
- There can be reconciliation in the case of blood money. Reduction is possible only with the consent of heirs, but increase is not permitted.
- There are only three types of situations in which a killing takes place: A) Deliberate killing. Meaning that the killer deliberately and intentionally attacks with a weapon and kills. In this situation the amount of blood money is fixed, as has been mentioned in the *Hadith*. B) Killing by mistake, in a manner that resembles intentionally killing. Meaning, to attack with such a weapon which usually does not kill, like a stick and rod etc. This situation is identical to deliberate killing, and the punishment is also the same. C) Killing by mistake or by accident. In this situation the intention is not to kill but it happens by accident, like one man fires at a deer and suddenly someone comes in the way and is killed, or as usually happens in road accidents. The punishment of this is blood money, which is one hundred young camels or their price. (See *Hadith* 2630)

**2626.** It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allāh ﷺ said: "Whoever kills deliberately, he will be handed over to the heirs of the victim. If they want, they may kill him, or if they want, they may accept the blood money, which is thirty *Hiqqah*,<sup>[1]</sup> thirty *Jadha'ah*<sup>[2]</sup> and forty *Khalifah*.<sup>[3]</sup> This is the blood money for deliberate slaying. Whatever is settled by reconciliation belongs to them, and that is a binding covenant.'" (*Hasan*)

٢٦٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ الدَّمَشْقِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سَلِيمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَمْدًا، دُفِعَ إِلَى أَوْلِيَاءِ الْقَتِيلِ. فَإِنْ شَاءُوا قَتَلُوا. وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ. وَذَلِكَ ثَلَاثُونَ حِقَّةً وَثَلَاثُونَ جَذَعَةً وَأَرْبَعُونَ خَلْفَةً. وَذَلِكَ عَقْلُ الْعَمْدِ. وَمَا صَوْلِحُوا عَلَيْهِ، فَهُوَ لَهُمْ. وَذَلِكَ تَشْدِيدُ الْعَقْلِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الدييات، باب ولي العمد يأخذ الدية، ح: ٤٥٠٦ من حديث محمد بن راشد به، وحسنه الترمذي، ح: ١٣٨٧.

[1] A three-year-old she-camel.

[2] A four-year-old she-camel.

[3] Pregnant she-camels which are halfway through their pregnancy.

**Chapter 5. The Blood Money For What Appears To Be Intentional Due To Its Harshness**

2627. It was narrated from 'Abdullāh bin 'Amr that the Prophet ﷺ said: "Killing by mistake that resembles intentionally, is killing with a whip or stick, for which the blood money is one hundred camels, of which forty should be pregnant she-camels in the middle of their pregnancies, with their young in their wombs." (*Sahih*)

(المعجم ٥) - بَابُ: دِيَّةٌ شَبِهَ الْعَمْدِ مُعَلَّظَةٌ (التحفة ٥)

٢٦٢٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَ مُحَمَّدُ بْنُ جَعْفَرٍ، قَالَ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي يُوْب. سَمِعْتُ الْقَاسِمَ بْنَ رَبِيعَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو [عَمْرٍو] عَنِ النَّبِيِّ ﷺ قَالَ: «قَتِيلُ الْخَطَا شِبْهُ الْعَمْدِ، قَتِيلُ السَّوْطِ وَالْعَصَا. مِائَةٌ مِنَ الْإِبِلِ. أَرْبَعُونَ مِنْهَا خَلْفَةٌ، فِي بَطْنِهَا أَوْلَادُهَا».

تخریج: (الف) [صحیح] أخرجه النسائي، القسامة، باب: كم دية شبه العمد ... الخ، ح: ٧٩٠٥ عن ابن بشار به.

Another chain with similar wording. (*Sahih*)

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ ابْنُ حَرْبٍ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ خَالِدِ الْحَدَّاءِ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عُقْبَةَ بْنِ أَوْسٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

تخریج: (ب) [صحیح] أخرجه أبو داود، الديات، باب: في دية الخطأ شبه العمد، ح: ٤٥٤٧ من حديث سليمان به، و صححه ابن حبان (موارد)، ح: ١٥٢٦، وابن الجارود، ح: ٧٧٣، وابن القطان القاسمي (التلخيص الحبير: ٤/١٥).

**Comments:**

- a. Killing by mistake that resembles intentionally killing is named so because in this killing, the purpose of the killer is not to kill but to hurt only.
- b. 'With their young in their wombs' means pregnant she-camels. It has been repeated only for emphasis.

2628. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ stood up on the Day of the conquest of Makkah, on the

٢٦٢٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا شُعْبَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ جُدْعَانَ، سَمِعَهُ مِنَ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنِ ابْنِ عَمْرٍو أَنَّ

steps of the Ka'bah. He praised and glorified Allāh, then he said: "Praise is to Allāh Who has fulfilled His promise, granted victory to His slave and defeated the Confederates alone. The one who is killed by mistake is the one who is killed with a whip or a stick; for him the blood money is one hundred camels, of which forty should be pregnant she-camels with their youngs in their wombs. Every custom of Ignorance period, and every blood claim, is beneath these two feet of mine (i.e., is abolished), except for the custodianship of the Ka'bah and the provision of water for the pilgrims, which I confirm still belong to the people to whom they belonged before." (*Da'if*)

رَسُولَ اللَّهِ ﷺ قَامَ، يَوْمَ فَتَحَ مَكَّةَ، وَهُوَ عَلَى دَرَجِ الْكَعْبَةِ. فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ. فَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي صَدَّقَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الْأَحْزَابَ وَحْدَهُ. أَلَا إِنَّ قَتِيلَ الْخَطَا، قَتِيلَ السَّوِطِ وَالْعَصَا: فِيهِ مِائَةٌ مِنَ الْإِبِلِ مِنْهَا أَرْبَعُونَ خَلْفَةً، فِي بَطُونِهَا أَوْلَادُهَا. أَلَا إِنَّ كُلَّ مَأْتِرَةٍ كَانَتْ فِي الْجَاهِلِيَّةِ، وَدَمٌ تَحْتِ قَدَمَيَّ هَاتَيْنِ. إِلَّا مَا كَانَ مِنْ سِدَانَةِ النَّبِيِّ وَسِقَايَةِ الْحَاجِّ. أَلَا إِنِّي قَدْ أَمْضَيْتُهُمَا لِأَهْلِهِمَا كَمَا كَانَا».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب في دية الخطأ شبه العمد، ح: ٤٥٤٩ من حديث ابن جلعان به، وهو ضعيف، ومن حديث ابن عيينة به تعليقاً، ح: ٤٥٤٩، وله شواهد منها الحديث السابق.

**Comments:**

- Allāh's promise means the conquest of Makkah and victory of Islam which was fulfilled in the life of the Noble Prophet ﷺ.
- Killing by mistake means the killing that resembles killing intentionally. It has been explained in this *Hadith* by mentioning a stick or whip.
- Before the conquest of Makkah different offices for public services related to the Sacred Ka'bah were with various tribes. All other offices were cancelled, but the office of the custodianship of Ka'bah and the office of provision of water for the pilgrims were not changed because there were no anti-Islamic beliefs or practices involved.

**Chapter 6. The Blood Money For Killing By Mistake**

(المعجم ٦) - بَابُ دِيَةِ الْخَطَا (التحفة ٦)

2629. It was narrated from Ibn 'Abbās that the Prophet ﷺ set the blood money at twelve thousand (Dirham). (*Hasan*)

٢٦٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُعَاذُ ابْنُ هَانِئٍ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ

عَنِ النَّبِيِّ ﷺ أَنَّهُ جَعَلَ الدِّيَةَ اثْنَيْ عَشَرَ أَلْفًا.

تخريج: [إسناده حسن] أخرجه الترمذي، الديات، باب ماجاء في الدية، كم هي من الدراهم، ح: ١٣٨٨ عن ابن بشار به، وقال النسائي: محمد بن مسلم ليس بالقوي في الحديث، وهذا خطأ والصواب عن عكرمة: مرسل، قلت: بل هو صدوق حسن الحديث، من رجال مسلم وغيره، أخرجه أبو داود، ح: ٤٥٤٦ من طريقه به.

2630. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "Whoever is killed by mistake, his blood money in camels is thirty *Bint Makhād* (a one-year-old she-camel), thirty *Bint Labun* (a two-year-old she-camel), thirty *Hiqqah* (a three-year-old she-camel) and ten *Bani Labun* (two-year-old male camels)." The Messenger of Allāh ﷺ used to fix the value (of the blood money for accidental killing) among town-dwellers at four hundred Dinār or the equivalent value in silver. When he calculated the price in terms of camels (for Bedouins), it would vary from one time to another. When prices rose, the value (in Dinār) would rise; and when prices fell, the value (in Dinār) would fall. At the time of the Messenger of Allāh ﷺ the value was between four hundred and eight hundred Dinār, or the equivalent value in silver, eight thousand Dirham. And the Messenger of Allāh ﷺ ruled that if a person's blood money was paid in cattle, among those who kept cattle, the amount was two hundred cows; and if a person's

٢٦٣٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ الْمَرْوَزِيُّ: أَتَيْنَا بَرِيدَ بْنَ هَارُونَ: أَتَيْنَا مُحَمَّدَ بْنَ رَاشِدٍ، عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ قُتِلَ خَطَأً، فِدْيَتُهُ مِنَ الْإِبِلِ ثَلَاثُونَ بِنْتِ مَخَاضٍ وَثَلَاثُونَ ابْنَةَ لَبُونٍ وَثَلَاثُونَ حِقَّةً، وَعَشْرَةَ بَنِي لَبُونٍ». وَكَانَ رَسُولُ اللَّهِ ﷺ يَقُومُهَا عَلَى أَهْلِ الْبُقَرَى أَرْبَعِمِائَةَ دِينَارٍ، أَوْ عَدْلُهَا مِنَ الْوَرِقِ. وَيَقُومُهَا عَلَى أَزْمَانِ الْإِبِلِ، إِذَا عَلَتْ رَفَعَ فِي ثَمَنِهَا. وَإِذَا هَانَتْ نَقَصَ مِنْ ثَمَنِهَا. عَلَى نَحْوِ الزَّمَانِ مَا كَانَ. فَبَلَغَ قِيمَتُهَا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ مَا بَيْنَ الْأَرْبَعِمِائَةِ دِينَارٍ إِلَى ثَمَانِمِائَةِ دِينَارٍ. أَوْ عَدْلُهَا مِنَ الْوَرِقِ ثَمَانِيَةَ آلَافٍ دِرْهَمٍ. وَقَضَى رَسُولُ اللَّهِ ﷺ أَنَّ مَنْ كَانَ عَقْلُهُ فِي الْبُقَرَى، عَلَى أَهْلِ الْبُقَرَى، مَا تَنَّى بَقَرَةً. وَمَنْ كَانَ عَقْلُهُ فِي الشَّاءِ، عَلَى أَهْلِ الشَّاءِ، أَلْفِي شَاةٍ.

blood money was paid in sheep, among those who kept sheep, the value was two thousand sheep.

(*Hasan*)

تخريج: [إسناده حسن] أخرجه أبو داود، الديات، باب الدية كم هي؟، ح: ٤٥٤١ من حديث يزيد به.

**Comments:**

- a. Blood money is determined by the quantity of camels.
- b. If it not possible to pay in the form of camels then cows or goats can be paid.
- c. Payment is also possible in cash. Judge or the government are responsible to determine the price of one hundred camels.
- d. Increase or decrease in the price of the camels may affect the price in cash.

**2631.** It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "The blood money of one who is killed by mistake is twenty *Hiqqah* (three-year-old she-camels), twenty *Jadha'ah* (four-year-old she-camels), twenty *Bint Makhâd* (one-year-old she-camel), twenty *Bint Labun* (two-year old she-camels) and twenty *Bani Makhâd* (one-year-old male camels)." (*Da'if*)

٢٦٣١ - حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ عَاصِمٍ: حَدَّثَنَا الصَّبَّاحُ بْنُ مُحَارِبٍ: حَدَّثَنَا حَجَّاجُ بْنُ أَرْطَاةَ: حَدَّثَنَا زَيْدُ بْنُ جُبَيْرٍ، عَنْ خُشْفِ بْنِ مَالِكِ الطَّائِي، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِي دِيَةِ الْخَطِئِ عَشْرُونَ حِقَّةً وَعَشْرُونَ جَذَعَةً وَعَشْرُونَ بِنْتِ مَخَاضٍ وَعَشْرُونَ بِنْتِ لَبُونٍ وَعَشْرُونَ بَنِي مَخَاضٍ [أَدْكُورًا].»

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الدية كم هي؟، ح: ٤٥٤٥ من حديث حجاج به، وانظر، ح: ٤٩٦، ١١٢٩، ٢٥٨٧.

**2632.** It was narrated from 'Krimah, from Ibn 'Abbâs, that the Prophet ﷺ set the blood money at twelve thousand (Dirham). He said:<sup>[1]</sup> "This is what Allâh says: 'And they could not find any cause to do so except that Allâh and His Messenger had enriched them of His bounty.'<sup>[2]</sup> He said: "By their taking the

٢٦٣٢ - حَدَّثَنَا الْعَبَّاسُ بْنُ جَعْفَرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سِنَانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عَمْرٍو بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ جَعَلَ الدِّيَةَ اثْنَيْ عَشَرَ أَلْفًا. قَالَ: وَذَلِكَ قَوْلُهُ: «وَمَا نَقَمُوا إِلَّا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ مِنْ فَضْلِهِ» [التوبة: ٧٤].

[1] The speaker is either 'Krimah, or Muhammad bin Sinân, and Allâh knows best.

[2] *At-Taubah* 9:74.

blood money."<sup>[1]</sup> (Hasan)

قَالَ: بِأَخْذِهِمُ الدِّيَّةَ.

تخريج: [إسناده حسن] أخرجه ابن أبي حاتم الرازي في التفسير: ٦/١٨٤٥، توبة: ٩٤ من حديث محمد بن سنان الباهلي به، وانظر، ح: ٢٦٢٩، وهذا طرف منه.

**Chapter 7. The Blood Money Must Be Paid By The 'Āqilah; If there Is No 'Āqilah, Then It Must Be Paid From The Treasury**

(المعجم ٧) - بَابُ الدِّيَّةِ عَلَى الْعَاقِلَةِ  
فَإِنْ لَمْ يَكُنْ عَاقِلَةً فَفِي بَيْتِ الْمَالِ  
(التحفة ٧)

**2633.** It was narrated that Mughirah bin Shu'bah said: "The Messenger of Allāh ﷺ ruled that the blood money must be paid by the 'Āqilah." (Sahih)

٢٦٣٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا أَبِي، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدِ بْنِ نَضْلَةَ، عَنْ الْمُغِيرَةَ بْنِ شُعْبَةَ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالدِّيَّةِ عَلَى الْعَاقِلَةِ.

تخريج: أخرجه مسلم، القسامة والمحاربين، باب دية الجنين ووجوب الدية في قتل الخطأ وشبه العمدة على عاقلة الجاني، ح: ١٦٨٢ من حديث منصور به.

**Comments:**

- 'Āqilah' means the near male relatives on the father's side who are obliged to pay the blood money on behalf of any of the clan's members who kills a person.
- The first responsibility of the payment of blood money is with brothers and nephews, after them, the responsibility rests upon their son. Meaning the male members of one grandfather. After this, the responsibility goes to the brothers of the grandfather.
- Making blood money the responsibility of the 'Āqilah is to divide the due blood money into many easy shares, to lighten the burden of payment. In this way one person or one family is not overburdened.
- Another reason for collecting the blood money from the relatives is that they usually help each other in fights and disputes, they also understand that in case of bloodshed, they will have to pay their share of blood money, so naturally they will not allow any member of their tribe to commit this type of crime, rather they will stop him from doing such a crime.

**2634.** It was narrated from Miqdām Ash-Shāmi that the

٢٦٣٤ - حَدَّثَنَا يَحْيَى بْنُ دُرُومْتَ: حَدَّثَنَا

<sup>[1]</sup> The last phrase appears to be from Muhammad bin Sinān, one of the narrators. And Allāh knows best. And most of the narrations of this *Hadith* mentioning the *Āyah* are from 'Ikrimah.

Messenger of Allāh ﷺ said: "I am the heir of the one who has no heir, and I will pay the blood money on his behalf and inherit from him, and the maternal uncle is the heir of the one who has no heir; he pays the blood money on his behalf and inherits from him." (Sahih)

حَمَادُ بْنُ زَيْدٍ عَنْ بُدَيْلِ بْنِ مَيْسَرَةَ، عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ، عَنْ رَاشِدٍ، عَنْ أَبِي عَامِرٍ الْهَوَزَنِيِّ، عَنِ الْمُقْدَامِ الشَّامِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَنَا وَارِثٌ مَنْ لَا وَارِثَ لَهُ. أَغْفِلُ عَنْهُ وَارِثُهُ. وَالْخَالَ وَارِثٌ مَنْ لَا وَارِثَ لَهُ. يَغْفِلُ عَنْهُ وَيَرِثُهُ».

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: في ميراث ذوي الأرحام، ح: ٢٨٩٩ من حديث بديل به، وصححه ابن الجارود، ح: ٩٦٥ وابن حبان (موارد)، ح: ١٢٢٥، والحاكم: ٣٤٤/٤ على شرط الشيخين، وتعليقه الذهبي، وصححه ابن القطان، وحسنه أبو زرعة الدمشقي، وله طريق آخر عند ابن حبان، ح: ١٢٢٦، وإسناده حسن.

**Comments:**

- a. The priority and shares of the heirs have been determined in the Noble Qur'an and the Sunnah of the Noble Prophet ﷺ. These heirs are called *Ashābul-Furu'd*, first responsibility holders. In the absence of these heirs, or after giving them their shares of inheritance, the rest of the property or wealth of the deceased goes to the *Asabah*, meaning those relatives of the deceased who are from the father's side, like the brother, nephew (son of brother) father's brother etc. In the absence of the *Asabah*, legacy goes to *Dhul-Arhām*. Meaning relatives of the deceased through the mother, like the maternal uncle, the mother's sister and the mother's father etc.
- b. As the priority is determined by the inheritance, the same priority remains in the payment of blood money.

**Chapter 8. One Who Prevents The Next Of Kin Of The Slain From Exacting Retaliation Or Taking The Blood Money**

2635. It was narrated from Ibn 'Abbās, who attributed it to the Prophet ﷺ: "Whoever kills out of folly or for tribal motives, using a rock, a whip, or a stick; he must pay the blood money for killing by mistake. Whoever kills deliberately, he is to be killed in retaliation. Whoever tries to prevent that, upon him is the

(المعجم ٨) - بَابُ مَنْ حَالَ بَيْنَ وَلِيِّ الْمُقْتُولِ وَبَيْنَ الْقَوْدِ أَوْ الدِّيَّةِ (التحفة ٨)

٢٦٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: حَدَّثَنَا سَلِيمَانُ بْنُ كَثِيرٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنْ ابْنِ عَبَّاسٍ، رَفَعَهُ إِلَى النَّبِيِّ ﷺ قَالَ: «مَنْ قَتَلَ فِي عَمِيَّةٍ أَوْ عَصِيَّةٍ بِحَجَرٍ أَوْ سَوْطٍ أَوْ عَصَا، فَعَلَيْهِ عَقْلُ الْخَطِيئِ. وَمَنْ قَتَلَ عَمْدًا فَهُوَ قَوْدٌ. وَمَنْ حَالَ بَيْنَهُ وَبَيْنَهُ، فَعَلَيْهِ لَعْنَةُ اللَّهِ

curse of Allâh, the angels and all the people, and no change nor equitable exchange will be accepted from him.”<sup>[1]</sup> (*Sahih*)

وَالْمَلَائِكَةُ وَالنَّاسُ أَجْمَعِينَ. لَا يَقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ.

تخریج: [إسناده صحيح] أخرجه النسائي، القسامة، باب من قتل بحجر أو سوط، ح: ٤٧٩٤ عن محمد بن معمر به، وأخرجه أبو داود، ح: ٤٥٤٠ من حديث سليمان به.

### Comments:

- Folly or tribal motives, means that two parties fight each other and they make use of stones, sticks clubs and whips etc. If someone is killed in this fight, it is very difficult to determine and pinpoint the killer, so no one can be killed in retaliation. In such cases blood money is the essential punishment.
- Killing in retaliation is a punishment fixed by Allâh in the revealed Divine law, therefore, putting up any kind of hindrances to it is a harshly censured crime.

## Chapter 9. Actions For Which There Is No Retaliation

(المعجم ٩) - بَابُ مَا لَا قَوَدَ فِيهِ

(التحفة ٩)

2636. Nimrân bin Jâriyah narrated from his father that a man struck another man on the wrist with his sword and severed it, not at the joint. He appealed to the Prophet ﷺ who ordered that the *Diyah* be paid. The man said: “O Messenger of Allâh, I want retaliation.” He said: “Take the compensation and may Allâh bless you therein.” And he did not rule that he be allowed retaliation. (*Da'if*)

٢٦٣٦ - حَدَّثَنَا [مُحَمَّدُ بْنُ الصَّبَّاحِ وَ] عَمَّارُ بْنُ خَالِدِ الْوَاسِطِيِّ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عِيَّاشٍ، عَنْ دَهْمِ بْنِ قُرَّانَ: حَدَّثَنِي نِمْرَانَ ابْنُ جَارِيَةَ، عَنْ أَبِيهِ أَنَّ رَجُلًا ضَرَبَ رَجُلًا عَلَى سَاعِدِهِ بِالسَّيْفِ فَقَطَعَهَا مِنْ غَيْرِ مَفْصِلٍ. فَاسْتَعَدَى عَلَيْهِ النَّبِيُّ ﷺ. فَأَمَرَ لَهُ بِالذَّيَّةِ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أُرِيدُ الْقِصَاصَ. فَقَالَ: «خُذِ الذَّيَّةَ. بَارَكَ اللَّهُ لَكَ فِيهَا». وَكَمْ يُقْبَضُ لَهُ بِالْقِصَاصِ.

تخریج: [إسناده ضعيف جداً] أخرجه الطبراني: ٢/٢٦٠ من طريق أبي بكر بن عياش به، وتابعه أسد بن عمرو البجلي عنده، وانظر، ح: ٢٣٤٣ لحال دهثم.

[1] No *Sarf* – they say it means no repentance, which is changing from the state of disobedience to the state of obedience; and no *’Adl* – meaning no equity through ransoming. And it is said to be for the purpose of stressing the gravity of the wrong. See explanation by Sindi. See also no. 2712.



2637. It was narrated from 'Abbâs bin 'Abdul-Muttalib that the Messenger of Allâh ﷺ said: "There is no retaliation for a head wound that does not reach the brain, a spear wound that does not penetrate deeply, or a wound that dislocates a bone." (*Da'if*)

٢٦٣٧ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا رِشْدِينُ ابْنُ سَعْدٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ، عَنْ مُعَاذِ بْنِ مُحَمَّدٍ الْأَنْصَارِيِّ، عَنِ ابْنِ صُهَيْبَانَ، عَنِ الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَوْدَ فِي الْمَأْمُومَةِ وَلَا الْجَائِفَةِ وَلَا الْمُتَقَلِّةِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٦٥/٨ من طريق أبي يعلى عن أبي كريب به، وقال البوصيري: هذا إسناد ضعيف، رشدين بن سعد ضعفه ابن معين، وأبو حاتم الرازي، وأبو زرعة، والنسائي، وابن حبان، والنجورجاني، وابن يونس، وابن سعد، وأبو داود، والدارقطني وغيرهم، وله شاهد ضعيف في المطالب العالية، وروى البيهقي بإسناد حسن عن طلحة، رفعه: 'ليس في المأمومة قود'.

**Comments:**

There is retaliation for cuts and wounds that cannot be made equally deep and damaging, when there is a chance of causing more damage than the damage done, so compensation is punishment which is decided according the severity of wound.

**Chapter 10. One Who Inflicts A Wound May Ransom Himself By Paying The Compensatory Money**

(المعجم ١٠) - بَابُ الْجَارِحِ يَفْتَدِي بِالْقَوْدِ (النخعة ١٠)

2638. It was narrated from 'Āishah that the Messenger of Allâh ﷺ sent Abu Jahm bin Hudhaifah to collect *Sadaqah*. A man disputed with him concerning his *Sadaqah*, and Abu Jahm struck him and wounded his head. They came to the Prophet ﷺ and said: "Compensatory money, O Messenger of Allâh!" The Prophet ﷺ said: "You will have such and such," but they did not accept that. He said: "You will have such and such," and they agreed. Then the Prophet ﷺ said: "I am going to address the people

٢٦٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنْبَأَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَ أَبَا جَهْمَ بْنَ حُدَيْفَةَ مُصَدِّقًا. فَلَاجَهُ رَجُلٌ فِي صَدْقَتِهِ، فَضْرَبَهُ أَبُو جَهْمَ فَسَجَّهُ. فَأَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ كَذَا وَكَذَا» فَلَمْ يَرْضَوْا. فَقَالَ: «لَكُمْ كَذَا وَكَذَا». فَرْضَوْا. فَقَالَ النَّبِيُّ ﷺ: «إِنِّي خَاطِبٌ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ؟» قَالُوا: نَعَمْ. فَخَطَبَ النَّبِيُّ ﷺ فَقَالَ: «إِنَّ هَؤُلَاءِ اللَّئِيْسِينَ أَتَوْنِي يُرِيدُونَ الْقَوْدَ».

and tell them that you agreed." They said: "Yes." So the Prophet ﷺ addressed (the people) and said: "These people of Laith came to me seeking the compensatory money, and I have offered them such and such. Do you agree?" They said: "No." The Emigrants wanted to attack them, but the Prophet ﷺ told them not to, so they refrained. Then he called them and offered them more and said: "Do you agree?" They said: "Yes." He said: "I am going to address the people and tell them that you agreed." They said: "Yes." So the Prophet ﷺ addressed (the people) then said: "Do you agree?" They said: "Yes." (Da'if)

Ibn Mâjah said: "I heard Muhammad bin Yahyâ saying: 'Ma'mar alone has narrated this *Hadith*. I don't know anyone else that has narrated it."

فَعَرَضْتُ عَلَيْهِمْ كَذَا وَكَذَا. أَرْضَيْتُمْ؟» قَالُوا: لَا. فَهَمَّ بِهِمُ الْمُهَاجِرُونَ. فَأَمَرَ النَّبِيُّ ﷺ أَنْ يَكْفُوا. فَكَفُوا. ثُمَّ دَعَاهُمْ فَرَادَهُمْ. فَقَالَ: «أَرْضَيْتُمْ؟» قَالُوا: نَعَمْ. قَالَ: «إِنِّي خَاطِبٌ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ» قَالُوا: نَعَمْ. فَخَطَبَ النَّبِيُّ ﷺ ثُمَّ قَالَ: «أَرْضَيْتُمْ؟» قَالُوا: نَعَمْ.

قَالَ ابْنُ مَاجَهَ: سَمِعْتُ مُحَمَّدَ بْنَ يَحْيَى يَقُولُ: تَقَرَّرَ بِهَذَا مَعْمَرٌ. لَا أَعْلَمُ رَوَاهُ غَيْرُهُ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الذيات، باب العامل يصاب على يديه خطأ، ح: ٤٥٣٤ من حديث عبدالرزاق به، وهو في مصنفه، ح: ١٨٠٣٢، وصححه ابن الجارود، ح: ٨٤٥، ولم أجد تصريح سماع الزهري تقدم، ح: ٧٠٧، فيه، وباقي السند صحيح.

### Comments:

- Retaliation is in order for cases involving wounds.
- Compensatory money is a better option instead of retaliation, in cases of cuts and wounds.
- In cases where the punishment is retaliation, the choice of taking blood money rests with the claimant.
- In the decisions made by the leader, where there is a possibility of public criticism or protest from the general public, the leader should make the decision according to the law and at the same time in a manner acceptable to the public.

### Chapter 11. The Blood Money For A Fetus

(المعجم ١١) - بَابُ دِيَّةِ الْجَنِينِ

(التحفة ١١)

2639. It was narrated that Abu Hurairah said: "The Messenger of Allāh ﷺ ruled concerning a fetus that (the blood money) was a slave, male or female. The one against whom this verdict was passed said: 'Should we pay blood money for one who neither ate, drank, shouted, nor cried (at the moment of birth)? One such as this should be overlooked.' The Messenger of Allāh ﷺ said: 'This man speaks like a poet. (But the blood money for a fetus is) a slave, male or female.'"

٢٦٣٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشِيرٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، [عَنْ أَبِي سَلَمَةَ،] عَنْ أَبِي هُرَيْرَةَ قَالَ: فَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بِعُرَّةَ: عَبْدٌ أَوْ أَمَةٌ. فَقَالَ الَّذِي فَضَى عَلَيْهِ: أَنْعِقُلْ مَنْ لَا شَرِبَ وَلَا أَكَلَ. وَلَا صَاحَ وَلَا اسْتَهَلَّ. وَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ هَذَا لَيَقُولُ بِقَوْلِ شَاعِرٍ. فِيهِ عُرَّةَ، عَبْدٌ أَوْ أَمَةٌ».

تخريج: [إسناده حسن] أخرجه الترمذي، والديات، باب ماجاء في دية الجنين، ح: ١٤١٠

من حديث محمد بن عمرو به، وقال: حسن صحيح.

#### Comments:

- Fetus here means fully developed embryo or simply a baby still in the mother's womb, and born later.
- Sometimes it happens that a pregnant woman is hurt and the baby in her womb dies before birth. This is considered murder.
- Blood money for a fetus (fully developed baby in the mother's womb) is a slave, male or female. If the mother dies as well, the killer has to pay the full blood money.

2640. It was narrated that Miswar bin Makhramah said: "Umar bin Khattâb consulted the people concerning a woman who had been caused to miscarry. Al-Mughirah bin Shu'bah said: 'I saw the Messenger of Allāh ﷺ rule that a slave, male or female, be given as blood money (for a fetus).' Umar said: 'Bring me someone who will testify alongside you. So he brought

٢٦٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ ابْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ الْمُسَوَّرِ بْنِ مَخْرَمَةَ قَالَ: اسْتَشَارَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ فِي إِمْلَاصِ الْمَرْأَةِ. - يَعْنِي سِقْطَهَا - . فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: شَهِدْتُ رَسُولَ اللَّهِ ﷺ فَضَى فِيهِ بِعُرَّةَ، عَبْدٌ أَوْ أَمَةٌ. فَقَالَ عُمَرُ: الْتَبَّيْ بِمَنْ يَشْهَدُ مَعَكَ. فَشَهِدَ مَعَهُ مُحَمَّدُ بْنُ

Muhammad bin Maslamah to testify alongside him.'” (*Sahih*)

سَلَمَةَ .

تخريج: أخرجه مسلم، الفسامة والمحاربين، باب دية الجنين ووجوب الدية في قتل الخطأ وشبه العمد ... الخ، ح: ١٦٨٣ عن ابن أبي شيبة به.

#### Comments:

‘Umar did not have any doubt about the narration of Mughirah, but he wanted to verify it because the issue was over a legal matter and it was necessary to confirm this point. The other reason behind this confirmation was to send a warning message to the general public, that if a statement of an eminent Companion can be questioned, the general public should be very careful and not quote any *Hadith* of the Noble Prophet ﷺ without proper proof and investigation.

**2641.** It was narrated from ‘Umar bin Khattâb that he asked the people about the ruling of the Prophet ﷺ concerning that – concerning a fetus. Hamal bin Mâlik bin Nâbighah stood up and said: “I was between my two wives and one of them struck the other with a tent-pole, killing her and her fetus. The Messenger of Allâh ﷺ ruled that the blood money for the fetus was a slave, and that she should be killed in retaliation.” (*Sahih*)

٢٦٤١ - حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ: أَخْبَرَنِي ابْنُ جُرَيْجٍ: حَدَّثَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ طَاوُسًا عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ نَشَدَ النَّاسَ فَضَاءَ النَّبِيِّ ﷺ فِي ذَلِكَ. - يَعْنِي فِي الْجَنِينِ - . فَقَامَ حَمَلُ بْنُ مَالِكِ بْنِ النَّابِغَةِ فَقَالَ: كُنْتُ بَيْنَ امْرَأَتَيْنِ لِي. فَضَرَبَتْ إِحْدَاهُمَا الْأُخْرَى بِمِطْحٍ فَقَتَلَتْهَا، وَقَتَلْتُ جَنِينَهَا. فَقَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بَعْرَةَ، عَبْدًا. وَأَنْ تُقْتَلَ بِهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، الديات، باب دية الجنين، ح: ٤٥٧٢ من حديث أبي عاصم به.

#### Comments:

- The Noble Qur’ân and the word and practices of the Noble Prophet ﷺ are the basis of Islamic law.
- If any issue is not clear for judgment, it is necessary to seek the answer from the Noble Qur’ân and from the *Ahâdith* of the Prophet ﷺ.
- Killing a pregnant woman is a dual murder, killing of the mother and killing her baby, the punishment for killing a fully developed baby in mother’s womb is giving of a male or female slave, and the punishment for killing a mother is blood money, or killing in retaliation.

## Chapter 12. Inheritance From The Blood Money

2642. It was narrated from Sa'eed bin Musayyab that 'Umar used to say: "The blood money is for the near male relatives from the father's side and the wife does not inherit anything from the blood money of her husband," until Ad-Dahhâk bin Sufyân wrote to him, and told him that the Prophet ﷺ ruled that the wife of Ashyam bin Dibâbi should inherit from the blood money of her husband. (*Sahih*)

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: في المرأة ترث من دية زوجها، ح: ٢٩٢٧ من حديث سفیان به، وصححه الترمذي، ح: ١٤١٥، وابن الجارود، ح: ٩٦٦، وله شواهد عند الطبراني: ٢٧٦/٥، ح: ٥٣١٥ وغيره.

### Comments:

- Most probably 'Umar's opinion was based upon the principle that the blood money is to be paid by the killer's male relatives from the father's side, so it should be distributed among such relatives of the deceased, and the wife is not among such relatives, so she is a claimant of the blood money's share.
- Blood money is distributed among the heirs as the legacy is distributed among the heirs. There is no difference in the distribution of blood money and inheritance.
- Companions can make a mistake in explaining or understanding a legal issue, similar is the position of the later scholars, they also can make a mistake in understanding or explaining an issue. The scholars of today are advised to adopt the same behavior of their predecessors.

2643. It was narrated from 'Ubâdah bin Sâmî that the Prophet ﷺ ruled that Hamal bin Mâlik Hudhali Al-Lihyânî should inherit from his wife who was killed by his other wife. (*Da'if*)

(المعجم ١٢) - بَابُ: الْمِيرَاثِ مِنْ

الدِّيَةِ (التحفة ١٢)

٢٦٤٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ ابْنِ الْمُسَيْبِ أَنَّ عُمَرَ كَانَ يَقُولُ: الدِّيَةُ لِلْعَاقِلَةِ، وَلَا تَرِثُ الْمَرْأَةُ مِنْ دِيَةِ زَوْجِهَا شَيْئًا. حَتَّى كَتَبَ إِلَيْهِ الضَّحَّاكُ بْنُ سُفْيَانَ أَنَّ النَّبِيَّ ﷺ وَرَثَ امْرَأَةً أَشِيَمَ الصُّبَايِيَّ مِنْ دِيَةِ زَوْجِهَا.

٢٦٤٣ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدٍ السُّمَيْرِيُّ:

حَدَّثَنَا الْفَضِيلُ بْنُ سَلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عَقَبَةَ عَنْ إِسْحَاقَ بْنِ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ أَنَّ النَّبِيَّ ﷺ قَضَى لِحَمَلِ ابْنِ مَالِكِ الْهُذَلِيِّ اللَّحْيَانِيِّ بِمِيرَاثِهِ مِنْ امْرَأَتِهِ الَّتِي قَتَلَتْهَا امْرَأَتُهُ الْأُخْرَى.

تخريج: [إسناده ضعيف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٦، ٣٢٧، أطراف المسند: ٢/٦٤٠ من حديث الفضيل به، وإسحاق لم يدرك عبادة رضي الله عنه كما قال البخاري وغيره.

**Comments:**

The blood money of a woman who is killed is also her legacy, that is why her husband gets a share from her inheritance, whereas the payment of blood money is made by killer's male relatives from her father's side, and the husband is not from the victim's such relatives, but is from her heirs whose share is fixed.

**Chapter 13. The Blood Money Of A Disbeliever**

(المعجم ١٣) - بَابُ دِيَّةِ الْكَافِرِ

(التحفة ١٣)

2644. It was narrated from 'Amr bin Shu'aib, from his father, that the Messenger of Allāh ﷺ ruled that the blood money for the People of the Book is half of that of the blood money for the Muslims, and they are the Jews and Christians. (Hasan)

٢٦٤٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عِيَّاشٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ عَقْلَ أَهْلِ الْكِتَابَيْنِ يَنْصَفُ عَقْلَ الْمُسْلِمِينَ، وَهُمْ الْيَهُودُ وَالنَّصَارَى.

تخريج: [إسناده حسن] \* عبدالرحمن بن الحارث بن عبدالله بن عياش المخزومي صدوق، وتابعه أسامة بن زيد (الترمذي، ح: ١٤١٣، وقال: حسن).

**Comments:**

If a Jew or a Christian is killed, the blood money due is half the blood money of Muslim.

**Chapter 14. The Killer Does Not Inherit**

(المعجم ١٤) - بَابُ: الْقَاتِلِ لَا يَرِثُ

(التحفة ١٤)

2645. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The killer does not inherit." (Hasan)

٢٦٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ زُحَيْرٍ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي فَرُوهَ، عَنْ ابْنِ شِهَابٍ، عَنْ حُمَيْدٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْقَاتِلُ لَا يَرِثُ».

تخريج: [حسن] أخرجه الترمذي، الفرائض، باب ماجاء في إبطال ميراث القاتل، ح: ٢١٠٩ من حديث الليث به، وانظر، ح: ٣٤٥ لعلته، وله شاهد حسن عند أبي داود، ح: ٤٥٦٤ وغيره.

**Comments:**

A killer is deprived from the inheritance because many a time the intention behind the killing is to get the property of the victim. This law compels the killer to ponder over various aspects of murder. A) He will not get the share of the inheritance. B) There is a possibility of the punishment of death. C) If he escapes the sentence, he will have to pay his share of blood money. In this way he will be in a state of loss. Therefore, he may avoid committing the crime.

**2646.** It was narrated from 'Amr bin Shu'aib that Abu Qatadah, a man from Banu Mudlij, killed his son, and 'Umar took one hundred camels from him, thirty *Hiqqah*,<sup>[1]</sup> thirty *Jadha'ah*<sup>[2]</sup> and forty *Khalifah*.<sup>[3]</sup> Then he said: "Where is the brother of the slain? I heard the Messenger of Allāh ﷺ say: 'The killer does not inherit.'" (*Hasan*)

٢٦٤٦ - حَدَّثَنَا أَبُو كُرَيْبٍ وَ عَبْدِ اللَّهِ بْنُ سَعِيدٍ الْكِنْدِيُّ، قَالَا: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ أَبَا قَتَادَةَ، رَجُلًا مِنْ بَنِي مُدَلِجٍ، قَتَلَ ابْنَهُ، فَأَخَذَ مِنْهُ عُمُرٌ مِائَةً مِنَ الْإِبِلِ. ثَلَاثِينَ حِقْفَةً، وَثَلَاثِينَ جَذَعَةً، وَأَرْبَعِينَ خَلْفَةً. فَقَالَ: أَيْنَ أَخُو الْمَقْتُولِ؟ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَيْسَ لِقَاتِلٍ مِيرَاثٌ».

**تخريج:** [حسن] أخرجه مالك في الموطأ (يحيى): ٨٦٧/٢ عن يحيى بن سعيد به، والسند منقطع، وله شاهد حسن عند أبي داود وغيره، وحسنه البوصيري.

### Chapter 15. The Blood Money Of A Woman (Who Kills Someone) Must Be Paid By Her Male Relatives On Her Father's Side, And Her Inheritance Goes To Her Children

**2647.** It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allāh ﷺ ruled that a woman's blood money (if she kills someone) should be paid by her male relatives on her father's

(المعجم ١٥) - بَابُ: عَقْلُ الْمَرْأَةِ عَلَى عَصَبَتِهَا، وَمِيرَاثُهَا لَوْلِدِهَا (التحفة ١٥)

٢٦٤٧ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ أَبَانَ بْنَ يَزِيدٍ بْنَ هَارُونَ: أَنَّ أَبَانَ مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنْ يُعْقَلَ الْمَرْأَةُ عَصَبَتِهَا، مَنْ كَانُوا. وَلَا

[1] A three-year-old she-camel.

[2] A four-year-old she-camel.

[3] Pregnant she-camels that are halfway through their pregnancy.

side, whoever they are, and they should not inherit anything from her, except what is left over after her heirs have taken their shares. If she is killed then her blood money is to be shared among her heirs, since they are the ones who may kill the one who killed her.” (Hasan)

**2648.** It was narrated that Jābir said: “The Messenger of Allāh ﷺ ruled that the blood money should be paid by the near male relations from the father’s side of the killer, and the such relatives of the slain woman said: ‘O Messenger of Allāh, her legacy is for us.’ He said: ‘No, her legacy is for her husband and children.’” (Da’if)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب دية الجنين، ح: ٤٥٧٥ من حديث عبدالواحد به، وانظر، ح: ١١ لحال مجالد.

### Chapter 16. The Retaliation For A Tooth

**2649.** It was narrated that Anas said: “Rubai’, the paternal aunt of Anas, broke the tooth of a girl and they (her family) asked (the girl’s family) to let her off, but they refused. They offered to pay compensatory money, but they refused. So they came to the Prophet ﷺ who ordered retaliation. Anas bin Nadr said: ‘O Messenger of Allāh, will the tooth of Rubai’ be broken? By the One Who sent you with the Truth, it will not be broken!’ The Prophet ﷺ said: ‘O Anas, what

يَرْتُوُوا مِنْهَا شَيْئًا. إِلَّا مَا فَضَلَ عَنْ وَرَثَتِهَا. وَإِنْ قُتِلَتْ فَعَقَلُهَا بَيْنَ وَرَثَتِهَا. فَهُمْ يَقْتُلُونَ قَاتِلَهَا».

تخريج: [إسناده حسن] انظر، ح: ٢٦٢٦.

٢٦٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الْمُعَلَّى بْنُ أَسَدٍ: حَدَّثَنَا عَبْدُ الْوَّاحِدِ بْنُ زِيَادٍ: حَدَّثَنَا مُجَالِدٌ عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ قَالَ: جَعَلَ رَسُولُ اللَّهِ ﷺ الدِّيَةَ عَلَى عَاقِلَةِ الْقَاتِلَةِ. فَقَالَتْ عَاقِلَةُ الْمُمْتَوْلَةِ: يَا رَسُولَ اللَّهِ! مِيرَاثُهَا لَنَا. قَالَ: «لَا. مِيرَاثُهَا لِرَوْحِهَا وَوَلَدِهَا».

(المعجم ١٦) - بَابُ: الْقَصَاصِ فِي

السِّنِّ (التحفة ١٦)

٢٦٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَبُو مُوسَى: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ وَابْنُ أَبِي عَدِيٍّ، عَنْ حُمَيْدٍ، عَنْ أَنَسٍ قَالَ: كَسَرَتْ الرَّبِيعُ، عَمَّةُ أَنَسٍ، نَيْبَةَ جَارِيَةٍ. فَطَلَبُوا الْعُقُوفَ، فَأَبَوْا. فَعَرَضُوا عَلَيْهِمُ الْأَرْضَ فَأَبَوْا. فَأَتَوْا النَّبِيَّ ﷺ، فَأَمَرَ بِالْقِصَاصِ. فَقَالَ أَنَسُ ابْنُ النَّضْرِ: يَا رَسُولَ اللَّهِ! تُكْسَرُ نَيْبَةُ الرَّبِيعِ؟ وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا تُكْسَرُ. فَقَالَ النَّبِيُّ ﷺ: «يَا أَنَسُ! كِتَابُ اللَّهِ الْقِصَاصُ». قَالَ: فَرَضِي الْقَوْمَ، فَعَفَوْا. فَقَالَ رَسُولُ اللَّهِ ﷺ:



Allâh has decreed is retaliation.' So the people accepted that and forgave her. The Messenger of Allâh ﷺ said: "There are among the slaves of Allâh those who, if they swear by Allâh, Allâh fulfills their oath.'" (*Sahih*)

«إِنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبْرَهُ».

تخریج: أخرجه البخاري، الصلح، باب الصلح في الدية، ح: ٢٧٠٣، ٤٤٩٩، ٤٥٠٠، ٤٦١١، ٦٨٩٤ من طرق عن حميد به، وصرح بالسماع عنده، وتابعه ثابت عند مسلم، ح: ١٦٧٥.

#### Comments:

- Retaliation is due for breaking a tooth. One can forgive the offender or accept compensatory money.
- Compensatory money for breaking a tooth is five camels.
- Anas bin Nadr said, "It will not be broken." This statement was not an expression of resentment against the decision, but it was an expression of strong confidence in Allâh's blessing, that the other party will accept the compensatory money, or forgive his aunt.

### Chapter 17. The Compensatory Money For Teeth

2650. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Teeth are all the same; the incisor and the molar are the same." (*Sahih*)

(المعجم ١٧) - بَابُ دِيَّةِ الْأَسْنَانِ  
(التحفة ١٧)

٢٦٥٠ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ: حَدَّثَنَا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ: حَدَّثَنِي شُعْبَةُ عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَسْنَانُ سَوَاءٌ. الثَّنِيَّةُ وَالضَّرْسُ سَوَاءٌ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب ديات الأعضاء، ح: ٤٥٥٩ عن العباس العنبري به.

2651. It was narrated from Ibn 'Abbâs that the Prophet ﷺ ruled that (the compensatory money) for a tooth was five camels. (*Sahih*)

٢٦٥١ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْبَلْبَاسِيُّ: حَدَّثَنَا عَلِيُّ بْنُ الْحَسَنِ بْنِ شَقِيقٍ: حَدَّثَنَا أَبُو حَمْرَةَ الْمُرَوِّزِيُّ: حَدَّثَنَا يَزِيدُ النَّخَوِيُّ عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَضَى فِي السِّنِّ خَمْسًا مِنَ الْإِبِلِ.

تخريج: [إسناده صحيح] وقال البوصيري: هذا إسناده صحيح، رجاله ثقات .

### Comments:

- The punishment for breaking a tooth is the payment of five camels.
- The punishment will increase according to the number of teeth broken. Meaning five camels for every broken tooth. This punishment may go up to a maximum limit in the case of all of the teeth.
- In compensation of tooth breaking, number of teeth broken are counted and not the utility of the tooth.

### Chapter 18. The Compensatory Money For Fingers

#### (المعجم ١٨) - بَابُ دِيَّةِ الْأَصَابِعِ

(التحفة ١٨)

2652. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "This and this are the same" – meaning the pinky finger, ring finger and thumb. (*Sahih*)

٢٦٥٢ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَ مُحَمَّدُ بْنُ جَعْفَرٍ وَ ابْنُ [أَبِي] عَدِيٍّ، قَالُوا: حَدَّثَنَا شُعْبَةُ عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «هَذِهِ وَهَذِهِ سَوَاءٌ» يَعْنِي الْخِنْصَرَ وَالْبَنْصَرَ وَالْإِنْهَامَ.

تخريج: أخرجه البخاري، الدييات، باب دية الأصابع، ح: ٦٨٩٥ عن ابن بشار به مختصراً.

2653. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "The fingers are all the same, and (the compensatory money) for each of them is ten camels." (*Sahih*)

٢٦٥٣ - حَدَّثَنَا جَوَيْلُ بْنُ الْحَسَنِ الْعَتَكِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ مَطَرٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ كُلُّهُنَّ. فِيهِنَّ عَشْرٌ عَشْرٌ مِنَ الْإِبِلِ».

تخريج: [صحيح] أخرجه البيهقي: ٨/٨٩، ٩٢ من حديث سعيد عن مطر الوراق به مطولاً، وتابعه حسين المعلم (أبو داود، ح: ٤٥٦٢، وإسناده حسن)، وصححه ابن الجارود، ح: ٧٨١، وللحديث شواهد كثيرة جداً، منها ما أخرجه الترمذي، ح: ١٣٩١، وابن الجارود، ح: ٧٨٠ من حديث ابن عباس به نحو المعنى، وقال الترمذي: حسن صحيح، وطريق ابن ماجه حسنه البوصيري.

### Comments:

- Compensatory money for cutting a finger is ten camels.

b. Compensatory money for each severed finger is ten camels.

2654. It was narrated from Abu Musa Al-Ash'ari that the Messenger of Allāh ﷺ said: "The fingers are the same." (*Sahih*)

٢٦٥٤ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجِّحِ السَّمَرَقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ شُمَيْلٍ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ غَالِبِ التَّمَّارِ، عَنْ حُمَيْدِ بْنِ هِلَالٍ، عَنْ مَسْرُوقِ بْنِ أَوْسٍ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ عَنِ النَّبِيِّ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الدييات، باب ديوات الأعضاء، ح: ٤٥٥٦ من حديث سعيد به، وصرح بالسماع عند البيهقي: ٩٢/٨، وللحديث طرق أخرى عند أبي داود وغيره، وصححه ابن حبان، ح: ١٥٢٧.

### Chapter 19. A Wound That Exposes The Bone

(المعجم ١٩) - بَابُ الْمَوْضِحَةِ  
(التحفة ١٩)

2655. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "For a wound that exposes the bone, is five; (the compensation) is five camels." (*Hasan*)

٢٦٥٥ - حَدَّثَنَا جَبِيْلُ بْنُ الْأَحْسَنِ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ، عَنْ مَطَرٍ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «فِي الْمَوْضِحِ خَمْسٌ خَمْسٌ مِنَ الْإِبِلِ».

تخریج: [حسن] انظر، ح: ٢٦٥٣، وهذا طرف منه.

#### Comments:

Ibn Athir said, "Compensation of five camels is only for the wounds of the head and face, compensatory money for wounds on other parts of the body that expose the whiteness of the bone is determined by the judge, or by the government, according to the severity of the wound." (*An-Nihâya*).

### Chapter 10. If A Person Bites A Man And He Pulls Away His Hand And His Tooth Comes Out

(المعجم ٢٠) - بَابُ مِنْ عَضَّ رَجُلًا  
فَنَزَعَ يَدَهُ فَتَدَّرَ تَنَائِيَاهُ (التحفة ٢٠)

2656. It was narrated that Ya'la and Salamah the sons of Umayyah said: "We went out with the

٢٦٥٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ

Messenger of Allāh ﷺ on the military expedition of Tabuk, and with us was a friend of ours. He fought with another man while we were on the road. The man bit the hand of his opponent, who pulled away his hand and the man's tooth fell out. He came to the Messenger of Allāh ﷺ demanding compensatory money for his tooth, and the Messenger of Allāh ﷺ said: 'Would anyone of you go and bite his brother like a stallion, then come demanding compensatory money? There is no compensatory money for this.'" Hence, the Messenger of Allāh ﷺ invalidated it (i.e. compensatory money in such a case). (Hasan)

إِسْحَاقَ، عَنْ عَطَاءٍ، عَنْ صَفْوَانَ بْنِ عَبْدِ اللَّهِ، عَنْ عَمِّهِ يَعْلَى وَ سَلَمَةَ ابْنَيْ أُمِّهِ قَالَا: خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ تَبُوكَ. وَمَعَنَا صَاحِبٌ لَنَا. فَاقْتَتَلَ هُوَ وَرَجُلٌ آخَرُ وَنَحْنُ بِالطَّرِيقِ. قَالَ: فَعَضَّ الرَّجُلُ يَدَ صَاحِبِهِ. فَجَذَبَ صَاحِبُهُ يَدَهُ مِنْ فِيهِ. فَطَرَحَ ثِيْبَهُ، فَأَتَى رَسُولَ اللَّهِ ﷺ يَلْتَمِسُ عَقْلَ ثِيْبِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «يَعْمِدُ أَحَدُكُمْ إِلَى أَخِيهِ فَيَمَضُهُ كِعَضَّاضِ الْفَحْلِ. ثُمَّ يَأْتِي يَلْتَمِسُ الْعَقْلَ لَا عَقْلَ لَهَا» قَالَ: فَأَبْطَلَهَا رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده حسن] أخرجه النسائي، القسامة، ذكر الاختلاف على عطاء في هذا الحديث، ح: ٤٧٦٩ من حديث ابن إسحاق به، وصرح بالسماع عند أحمد: ٢٢٢/٤، ٢٢٣، وغيره، وله شواهد عند البخاري وغيره، انظر الحديث الآتي.

2657. It was narrated from 'Imrān bin Husain that a man bit another man on his forearm; he pulled his arm away and the man's tooth fell out. The matter was referred to the Prophet ﷺ, who invalidated it and said: 'Would one of you bite (another) like a stallion?'" (Sahih)

٢٦٥٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا عَضَّ رَجُلًا عَلَى ذِرَاعِهِ. فَتَرَخَ يَدَهُ، فَوَقَعَتْ ثِيْبُهُ. فَرَفَعَ إِلَى النَّبِيِّ ﷺ. فَأَبْطَلَهَا وَقَالَ: «يَقَضُّمُ أَحَدُكُمْ كَمَا يَقَضُّمُ الْفَحْلُ».

تخریج: أخرجه البخاري، الديات، باب إذا عض رجلاً ثنياه، ح: ٦٨٩٢، ومسلم، القسامة والمحاربين، باب الصائل على نفس الإنسان وعضوه إذا دفعه الموصول عليه . . . الخ، ح: ١٦٧٣ من حديث قتادة به، وصرح بالسماع.

#### Comments:

- Everyone has the right to defend himself.
- If someone is hurt during an attack, the defender will not pay any penalty.

### Chapter 21. A Muslim Should Not Be Killed For A Disbeliever

2658. It was narrated that Abu Juhaifah said: "I said to 'Ali bin Abu Tâlib: 'Do you have any knowledge that the people do not have?' He said: 'No, by Allâh, we only know what the people know, except that Allâh may bless a man with understanding of the Qur'ân or what is in this sheet, in which are mentioned the rulings on blood money from the Messenger of Allâh ﷺ, and it says that a Muslim should not be killed in retaliation for the murder of a disbeliever.'" (Sahih)

(المعجم ٢١) - بَابُ: لَا يُقْتَلُ مُسْلِمٌ

بِكَاْفِرٍ (التحفة ٢١)

٢٦٥٨ - حَدَّثَنَا عَلْقَمَةُ بْنُ عَمْرٍو الدَّارِمِيُّ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ مُطَرِّفٍ، عَنِ الشَّعْبِيِّ، عَنْ أَبِي جُحَيْفَةَ قَالَ: قُلْتُ لِعَلِيِّ بْنِ أَبِي طَالِبٍ: هَلْ عِنْدَكُمْ شَيْءٌ مِنَ الْعِلْمِ لَيْسَ عِنْدَ النَّاسِ؟ قَالَ: لَا. وَاللَّهِ مَا عِنْدَنَا إِلَّا مَا عِنْدَ النَّاسِ. إِلَّا أَنْ يُرَزِّقَ اللَّهُ رَجُلًا فَهَمَّا فِي الْقُرْآنِ. أَوْ مَا فِي هَذِهِ الصَّحِيفَةِ. فِيهَا الدِّيَاتُ عَنْ رَسُولِ اللَّهِ ﷺ وَأَنْ لَا يُقْتَلَ مُسْلِمٌ بِكَافِرٍ.

تخریج: أخرجه البخاري، العلم، باب كتابة العلم، ح: ٦٩٠٣، ٣٠٤٧، ١١١، من حديث

#### Comments:

مطرف به.

- It is falsely claimed that 'Ali bin Abu Tâlib had an extra internal secret knowledge of the metaphysical world which was additional to the existing knowledge of *Shari'at* (Divine law). Existing chains of Sufism or mysticism are based on this false concept. For the purification of mind and heart, whatever the Prophet ﷺ said is enough, and also available in the books of *Ahâdith*. There is no extra hidden knowledge.
- ‘Im Jafar* is also attributed to 'Ali bin Abu Tâlib by which people know their past and future. This is a baseless opinion. No one knows the future except Allâh. Believing that someone has complete knowledge of future, is a form of disbelief in many Verses of the Noble Qur'ân.
- If a Muslim kills a non-Muslim, he will not be killed in retaliation for the murder of a disbeliever. His punishment is blood money only.

2659. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: "A Muslim should not be killed in retaliation for the murder of a disbeliever." (Sahih)

٢٦٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

حَاتِمُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَيَّاشٍ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ».

**تخريج:** [صحيح] أخرجه أحمد: ٢/٢١٥ من حديث عبدالرحمن بن عياش به مطولاً، إسناده حسن، وانظر، ح: ٢٦٤٤ لتحقيق عبدالرحمن بن عياش رحمه الله، وللحديث طرق عن عمرو بن شعيب عند أبي داود، ح: ٤٥٠٦، وأحمد: ٢/١٧٨، ١٨٠، ١٩٢ وغيرهما، وانظر الحديث السابق فإنه شاهد له.

**2660.** It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "A believer should not be killed in retaliation for the murder of a disbeliever, and a person who has a treaty should not be killed during the time of the treaty." (Sahih)

٢٦٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنَعَانِيُّ: حَدَّثَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْشٍ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ».

**تخريج:** [صحيح] وضعفه البوصيري من أجل حنش، انظر، ح: ٢٤٤٦، وللحديث طرق عند أبي داود، ح: ٤٥٠٦، ٤٥٣٠، وابن حبان(موارد)، ح: ١٦٩٩ وغيرهما.

**Comments:**

- a. Security of non-Muslim minorities living in an Islamic state is the duty of the state.
- b. A non-Muslim living in a Muslim state under a treaty should not be killed, until and unless he commits a crime which breaks the treaty, like dishonoring the Noble Qur'ân or disgracing the Noble Prophet ﷺ. (Allâh forbid us)

**Chapter 22. A Father Should Not Be Killed For His Son**

(المعجم ٢٢) - بَابُ: لَا يُقْتَلُ الْوَالِدُ بَوْلَدِهِ (التحفة ٢٢)

**2661.** It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "A father should not be killed for his son." (Da'if)

٢٦٦١ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يُقْتَلُ بِالْوَالِدِ الْوَالِدُ».

**تخريج:** [إسناده ضعيف] أخرجه الترمذي به، انظر، ح: ٢٥٩٩ من هذا الكتاب، وللحديث شواهد ضعيفة، انظر الحديث الآتي.

**2662.** It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that 'Umar bin Khattâb said: "I heard the Messenger of Allâh ﷺ say: 'A father should not be killed for his son.'" (Da'if)

٢٦٦٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنْ عَمْرِو بْنِ الْخَطَّابِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يُقْتَلُ الْوَالِدُ بِالْوَالِدِ».

**تخریج:** [إسناده ضعيف] أخرجه الترمذي، الديات، باب ماجاء في الرجل يقتل ابنه يقاد منه أم لا، ح: ١٤٠٠، من حديث أبي خالد الأحمر به \* والحجاج بن أرتاة تقدم حاله، ح: ٤٩٦٦، ١١٢٩، ٢٥٨٧، وعنن، وتابعه محمد بن عجلان به عند البيهقي: ٣٨/٨، وغيره، وصححه ابن الجارود، ح: ٧٨٨، وغيره، وابن عجلان عنن تقدم، ح: ١٩٦٧، وللحديث طرق أخرى، وقال عبدالحق الإشبيلي: هذه الأحاديث كلها معلولة، لا يصح منها شيء (تلخيص: ١٧/٤).

**Comments:**

If a son is killed by his father, he should not be killed in retaliation, he can be punished as has been mentioned in *Hadith* no. 2646.

**Chapter 23. Can A Free Person Be Killed For A Slave?**

(المعجم ٢٣) - بَابُ: هَلْ يُقْتَلُ الْحُرُّ

بِالْعَبْدِ؟ (التحفة ٢٣)

**2663.** It was narrated from Samurah bin Jundab that the Messenger of Allāh ﷺ said: "Whoever kills his slave, we will kill him, and whoever mutilates (his slave) we will mutilate him." (*Hasan*)

٢٦٦٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ بْنِ جُنْدَبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَا. وَمَنْ جَدَعَهُ جَدَعْنَا».

**تخریج:** [حسن] أخرجه أبو داود، الديات، باب من قتل عبده أو مثل به أيقاد منه؟، ح: ٤٥١٧ من طريق سعيد به، وتابعه شعبة وغيره (أبو داود، ح: ٤٥١٥، وحسنه الترمذي: ١٤١٤، صححه الحاكم على شرط البخاري: ٣٦٧/٤، ووافقه الذهبي) \* حسن عن سمرة: حسن تقدم، ح: ٢١٨٣.

**2664.** It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man killed his slave deliberately and with malice aforethought, so the Messenger of Allāh ﷺ gave him one hundred lashes, banished him for one year, and cancelled his share from among the Muslims." (*Da'if*)

٢٦٦٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ الطَّبَّاعِ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرُوةَ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُنَيْنٍ، عَنْ أَبِيهِ عَنْ عَلِيٍّ، وَعَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَا: قَتَلَ رَجُلٌ عَبْدَهُ عَمْدًا مُتَعَمِّدًا. فَجَلَدَهُ رَسُولُ اللَّهِ ﷺ مِائَةً. وَنَفَاهُ سَنَةً. وَمَحَا سَهْمَهُ مِنَ الْمُسْلِمِينَ.

**تخریج:** [إسناده ضعيف جدًا] وقال البوصيري: هذا إسناد ضعيف لضعف إسحاق بن أبي فروة تقدم، ح: ٣٤٥، وتدليس إسماعيل بن عياش، ح: ٧٥.

### Chapter 24. Retaliation Upon The Killer Will Be Carried Out In The Same Manner As He Killed (His Victim)

2665. It was narrated from Anas bin Mâlik that a Jew crushed the head of a woman between two rocks and killed her, so the Messenger of Allâh ﷺ crushed his head between two rocks. (Sahih)

تخریج: أخرجه البخاري، الخصومات، باب ما يذكر في الإشخاص والخصومة بين المسلم واليهود، ح: ٢٤١٣، ٢٧٤٦، ٦٨٨٤، ومسلم، القسامة، باب ثبوت القصاص في القتل بالحجر وغيره ... الخ، ح: ١٦٧٢ من حديث همام به.

2666. It was narrated from Anas bin Mâlik that a Jew killed a girl for her jewelry. He asked her (as she was dying): "Did so-and-so kill you?" and she gestured with her head to say no. Then he asked her again, and she gestured with her head to say no. He asked her a third time and she gestured with her head to say yes. So the Messenger of Allâh ﷺ killed him (by crushing his head) between two rocks. (Sahih)

(المعجم ٢٤) - بَابُ: يُقْتَلُ مِنَ الْقَاتِلِ  
كَمَا قَتَلَ (التحفة ٢٤)

٢٦٦٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ هَمَّامِ بْنِ يَحْيَى، عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ يَهُودِيًّا رَضَّ رَأْسَ امْرَأَةٍ بَيْنَ حَجْرَيْنِ فَقَتَلَهَا. فَرَضَّ رَسُولُ اللَّهِ ﷺ رَأْسَهُ بَيْنَ حَجْرَيْنِ.

٢٦٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ؛ ح وَحَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: حَدَّثَنَا النَّضْرُ بْنُ شَمَيْلٍ، قَالَ: حَدَّثَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ يَهُودِيًّا قَتَلَ جَارِيَّةً عَلَى أَوْضَاحِ لَهَا. فَقَالَ لَهَا: «أَقْتَلِكِ فُلَانٌ؟» فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا. ثُمَّ سَأَلَهَا الثَّانِيَةَ. فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا. ثُمَّ سَأَلَهَا الثَّالِثَةَ. فَأَشَارَتْ بِرَأْسِهَا: أَنْ نَعَمْ. فَقَتَلَهُ رَسُولُ اللَّهِ ﷺ بَيْنَ حَجْرَيْنِ.

تخریج: أخرجه البخاري، الطلاق، باب الإشارة في الطلاق والأمور، ح: ٥٢٩٥ تعليقا، ٦٨٧٧، ٦٨٧٩، ومسلم، القسامة والمحاربين، الباب السابق، ح: ١٦٧٢ من حديث شعبة به.

#### Comments:

- Killing between two rocks means putting the head on one rock and hitting it with another rock, by which she was severely wounded and died.
- The killer should be killed in the same way as he killed.



### Chapter 25. There Is No Retaliation Except With The Sword

2667. It was narrated from Nu'mân bin Bashir that the Messenger of Allâh ﷺ said: "There is no retaliation except with the sword." (*Da'if*)

(المعجم ٢٥) - بَابُ: لَا قَوْدَ إِلَّا

بِالسَّيْفِ (التحفة ٢٥)

٢٦٦٧ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ الْعُرْوَقِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ سُفْيَانَ، عَنْ جَابِرٍ، عَنْ أَبِي عَازِبٍ، عَنِ النَّعْمَانِ بْنِ بَشِيرٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا قَوْدَ إِلَّا بِالسَّيْفِ».

تخريج: [إسناده ضعيف جداً] أخرجه الطحاوي في معاني الآثار: ٣/١٨٤ من حديث أبي عاصم به \* جابر الجعفي تقدم، ح: ٣٥٦، وأبو عازب مستور (تقريب)، وانظر الحديث الآتي.

2668. It was narrated from Abu Bakrah that the Messenger of Allâh ﷺ said: "There is no retaliation except with the sword." (*Da'if*)

٢٦٦٨ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ: حَدَّثَنَا الْحُرُّ بْنُ مَالِكٍ الْأَعْبَرِيُّ: حَدَّثَنَا مُبَارَكُ بْنُ فَضَالَةَ عَنِ الْحَسَنِ، عَنْ أَبِي بَكْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَوْدَ إِلَّا بِالسَّيْفِ».

تخريج: [إسناده ضعيف] \* الحسن عنن تقدم، ح: ٧١، وفيه علة أخرى، وأخرج الدارقطني: ٣/١٠٥ بإسناد حسن عن مبارك عن الحسن مرسلًا، وقال: قال يونس: قلت للحسن! عنم أخذت هذا؟ قال: سمعت النعمان بن بشير يذكر ذلك، يعني أنه موقوف، والله أعلم.

### Chapter 26. No Criminal Can Bring Punishment Upon Anyone Else (For His Crime)

2669. It was narrated from Sulaimân bin 'Amr bin Ahwas that his father said: I heard the Messenger of Allâh ﷺ saying during the Farewell pilgrimage: "No criminal commits a crime but he brings (the punishment for that) upon himself. No father can bring punishment upon his son by his crime, and no son can bring punishment upon his father." (*Hasan*)

(المعجم ٢٦) - بَابُ: لَا يَجْنِي أَحَدٌ

عَلَى أَحَدٍ (التحفة ٢٦)

٢٦٦٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ شَيْبِ بْنِ عَرْفَلَةَ، عَنْ سُلَيْمَانَ بْنِ عَمْرٍو بْنِ الْأَحْوَصِ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي حَجَّةِ الْوَدَاعِ: «أَلَا لَا يَجْنِي جَانٍ إِلَّا عَلَى نَفْسِهِ. لَا يَجْنِي وَالِدٌ عَلَى وَلَدِهِ، وَلَا مَوْلُودٌ عَلَى وَالِدِهِ».

**تخریج:** [إسناده حسن] أخرجه أحمد: ٤٩٩، ٤٩٨/٣ من حديث شبيب به، وأصله في سنن أبي داود، ح: ٣٣٣٤ وغيره.

**2670.** It was narrated that Târiq Al-Muhârîbi said: "I saw the Messenger of Allâh ﷺ raising his hands until I saw the whiteness of his armpits, saying: 'No child should be punished because of his mother's crime, no child should be punished because of his mother's crime.'" (Sahih)

٢٦٧٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ: حَدَّثَنَا جَامِعُ بْنُ شَدَّادٍ، عَنْ طَارِقِ الْمُحَارِبِيِّ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ ﷺ يَرْفَعُ يَدَيْهِ، حَتَّى رَأَيْتُ بَيَاضَ إِبْطَيْهِ، يَقُولُ: «أَلَا لَا تَجْنِي أُمَّ عَلَى وَلَدٍ. أَلَا لَا تَجْنِي أُمَّ عَلَى وَلَدٍ».

**تخریج:** [إسناده صحيح] أخرجه الدارقطني: ٤٤، ٤٣/٣ من حديث ابن نمير به مطولاً، وصححه ابن حبان (موراد)، ح: ١٦٨٣، والحاكم: ٦١١، ٦١٢، والذهبي، والبوصيري، فائدة: رواه الفضل بن موسى عن يزيد بن زياد بن أبي الجعد عن أبي صخر جامع بن شداد عن طارق بن عبدالله المحاربي به.

**2671.** It was narrated that Khashkhâsh Al-'Anbari said: "I came to the Prophet ﷺ and my son was with me. He said: 'You will not be punished because of his crime and he will not be punished because of yours.'" (Sahih)

٢٦٧١ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُشَيْمٌ عَنْ يُونُسَ، عَنْ حُصَيْنِ بْنِ أَبِي الْحَرِّ، عَنِ الْخَشْخَاشِ الْعَنْبَرِيِّ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ وَمَعِيَ ابْنِي. فَقَالَ: «لَا تَجْنِي عَلَيْهِ، وَلَا يَجْنِي عَلَيْكَ».

**تخریج:** [صحيح] أخرجه أحمد: ٣٤٤، ٣٤٥/٤ عن هشيم: أنا يونس بن عبيد به، وقال: قال هشيم مرة يونس قال: أخبرني مخبر عن حصين بن أبي الحر (وانظر المسند: ٨١/٥)، فالسند ضعيف لجهالة المخبر، والحديث السابق شاهد له، وللحديث طريق آخر عند البيهقي: ٢٧/٨.

**2672.** It was narrated from Usâmah bin Sharik that the Messenger of Allâh ﷺ said: "No person will be punished because of another's crime." (Sahih)

٢٦٧٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عَقِيلٍ: حَدَّثَنَا عَمْرُو بْنُ عَاصِمٍ: حَدَّثَنَا أَبُو الْعَوَّامِ الْقَطَّانُ، عَنْ مُمَمِّدِ بْنِ جِحَادَةَ، عَنْ زِيَادِ بْنِ عَلَاقَةَ، عَنْ أَسَامَةَ بْنِ شَرِيكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى».

**تخریج:** [إسناده حسن] وقال البوصيري: هذا إسناد صحيح رجاله ثقات، وأبو العوام اسمه عمران بن داود، وإن ضعفه النسائي فقد وثقه الجمهور.

**Comments:**

- A criminal is responsible for his crime; other relatives like the father or brother cannot be punished in his place.
- It is unlawful to pressure or torture the relatives of fugitives and criminals.
- A suspect can only be forced to a limit to confess his crime.
- A criminal or a suspect can be forced to a certain limit in order to get information about his companions. The suspect can only be pressed if some circumstantial evidences are available against him. (Allāh knows better.)

### Chapter 27. Offences For Which There Is No Liability

(المعجم ٢٧) - بَابُ الْجِبَارِ  
(التحفة ٢٧)

**2673.** It was narrated from Abu Hurairah that Allāh's Messenger ﷺ said: "The injuries caused by the beast are without liability,<sup>[1]</sup> and wells are without liability, and mines are without liability." (Sahih)

٢٦٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شُعْبَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعَجْمَاءُ جَرَحُهَا جُبَارٌ. وَالْمَعْدِنُ جُبَارٌ. وَالْبُئْرُ جُبَارٌ».

تخریج: [صحيح] تقدم، ح: ٢٥٠٩.

**2674.** Kathir bin 'Abdullāh bin 'Amr bin 'Awf narrated from his father that his grandfather said: "I heard the Messenger of Allāh ﷺ say: "The injuries caused by the beast are without liability, and mines are without liability."" (Sahih)

٢٦٧٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا خَالِدُ بْنُ مَخْلَدٍ: حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَجْمَاءُ جَرَحُهَا جُبَارٌ، وَالْمَعْدِنُ جُبَارٌ».

تخریج: [صحيح] أخرجه الطبراني: ١٧/١٤، ح: ٦٠ من حديث كثير به \* كثير ضعيف جداً، متهم تقدم، ح: ١٦٥ والحديث السابق شاهد له.

**2675.** It was narrated that 'Ubādah bin Sāmīt said: "The Messenger of Allāh ﷺ ruled that there is no liability for injuries caused by falling into a mines or a well, nor those caused by a beast." (Sahih)

٢٦٧٥ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدِ النَّمَيْرِيُّ: حَدَّثَنَا فَضِيلُ بْنُ سَلِيمَانَ: حَدَّثَنِي مُوسَى بْنُ عَقَبَةَ: حَدَّثَنِي إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنْ الْمَعْدِنَ جُبَارٌ، وَالْبُئْرَ جُبَارٌ،

[1] Meaning the owner of these is not liable for damages others suffer from them.

*Al-'Ajmā'* are grazing live-stock (such as sheep, camels, cattle, goats), and others. *Al-Jubār* is bloodshed with impunity (i.e. without liability).

شاهد ٢٦٧٣: وح: لعنته وح: ٢٦٤٣، وانظر، ح: ٢٦٤٣، لعنته وح: ٢٦٧٣ شاهد

وَالْعَجَمَاءُ جَرُوحُهَا جُبَارٌ.

وَالْعَجَمَاءُ التَّيْمَةُ مِنَ الْأَنْعَامِ وَغَيْرِهَا.  
وَالْجُبَارُ هُوَ الْهَدْرُ الَّذِي لَا يُغْرَمُ.

تخریج: [صحیح] وقال البوصيري: مقطع ، وانظر، ح: ٢٦٤٣، لعنته وح: ٢٦٧٣ شاهد

2676. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "(The injuries caused by) a fire are without liability, and by falling into a well." (*Sahih*)

تخریج: [إسناده صحیح] أخرجه أبو داود، الديات، باب في النار تعدي، ح: ٤٥٩٤ من حديث عبدالرزاق به، وهو في الصحیفة الصحیحة للإمام همام بن منبه رحمه الله تقدم، ح: ١٣٨، وأصله متفق عليه.

٢٦٧٦ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا

عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنْ هَمَّامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّارُ جُبَارٌ، وَالْبُئْرُ جُبَارٌ».

**Comments:**

- a. Killing by an animal warrants no blood money. Meaning, if an animal unties itself from its peg and runs away out of the barn and hurts or kills someone, responsibility of hurting or killing will not fall on its owner, and he cannot be asked to pay the blood money.
- b. If a miner is killed in a mine by a cave-in or by falling rocks, the owner of the mine should not be held responsible. He is not liable to pay blood money.
- c. Similarly, if someone dies by falling in the well, the owner of the well is not held responsible for that mishap.
- d. Damages caused by fire are not claimable. The person who lit the fire for his needs will not be held responsible for the damages caused by the fire, because it was not his intention to hurt someone or destroy someone's property.

**Chapter 28. Oaths**

(المعجم ٢٨) - بَابُ الْقَسَامَةِ (التحفة ٢٨)

2677. It was narrated from Sahl bin Abu Hathmah from the elders of his people that 'Abdullāh bin Sahl and Muhayyisah set out for Khaibar because of some problem that had arisen. Someone came to Muhayyisah, and he told him that 'Abdullāh bin Sahl had been

٢٦٧٧ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا

بِشْرُ بْنُ عَمْرٍ: سَمِعْتُ مَالِكَ بْنَ أَنَسٍ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ ابْنَ سَهْلٍ بْنِ حَتِيفٍ، عَنْ سَهْلِ بْنِ أَبِي حَتْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كِبَرَاءِ قَوْمِهِ أَنَّ عَبْدَ

killed and thrown into a pit or well in Khaibar. He came to the Jews and said: "By Allāh, you killed him." They said: "By Allāh, we did not kill him." Then he went back to his people and told them about that. Then he and his brother Huwayyisah, who was older than him, and 'Abdur-Rahmān bin Sahl, came (to the Prophet ﷺ). Muhayyisah, who was the one who had been at Khaibar, went and he began to speak, but the Messenger of Allāh ﷺ said: "Let the elder speak first." So Huwayyisah spoke, then Muhayyisah spoke. The Messenger of Allāh ﷺ said: "Either (the Jews) will pay the blood money for your companion, or war will be declared on them." The Messenger of Allāh ﷺ sent a letter to that effect (to the Jews) and they wrote back saying: "By Allāh, we did not kill him." The Messenger of Allāh ﷺ said to Huwayyisah, Muhayyisah and 'Abdur-Rahmān: "Will you swear an oath establishing your claim to the blood money of your companion?" They said: "No." He said: "Should the Jews swear an oath for you?" They said: "They are not Muslims." So the Messenger of Allāh ﷺ paid the blood money himself, and he sent one hundred she-camels to them and some of them entered the house.

Sahl said: "A red she-camel from among them kicked me." (*Sahih*)

اللَّهُ بْنُ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إِلَى خَيْبَرَ مِنْ جَهْدِ أَصَابِهِمْ. فَأَتَى مُحَيِّصَةُ فَأُخْبِرَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَالْقَيْ فِي فَقِيرٍ أَوْ عَيْنٍ بِخَيْبَرَ. فَأَتَى يَهُودَ، فَقَالَ: أَنْتُمْ، وَاللَّهِ قَتَلْتُمُوهُ. قَالُوا: وَاللَّهِ مَا قَتَلْنَاهُ. ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ. فَذَكَرَ ذَلِكَ لَهُمْ. ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيْصَةُ، وَهُوَ أَكْبَرُ مِنْهُ، وَعَبْدُ الرَّحْمَنِ بْنِ سَهْلٍ. فَذَهَبَ مُحَيِّصَةُ يَتَكَلَّمُ، وَهُوَ الَّذِي كَانَ بِخَيْبَرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِمُحَيِّصَةَ: «كَبِيرٌ، كَبِيرٌ» يُرِيدُ السَّنَّ. فَتَكَلَّمَ حُوَيْصَةُ. ثُمَّ تَكَلَّمَ مُحَيِّصَةُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِمَّا أَنْ تَدُلُّوا صَاحِبِكُمْ، وَإِمَّا أَنْ تُؤَدُّنَا بِحَرْبٍ» فَكَتَبَ رَسُولُ اللَّهِ ﷺ فِي ذَلِكَ. فَكَتَبُوا: إِيَّا، وَاللَّهِ مَا قَتَلْنَاهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِحُوَيْصَةَ وَمُحَيِّصَةَ وَعَبْدَ الرَّحْمَنِ: «تَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟» قَالُوا: لَا. قَالَ: «فَتَحْلِفُ لَكُمْ يَهُودٌ؟» قَالُوا: لَيْسُوا بِمُسْلِمِينَ. فَوَدَّاهُ رَسُولُ اللَّهِ ﷺ مِنْ عِنْدِهِ. فَعَبَّتْ إِلَيْهِمْ رَسُولُ اللَّهِ ﷺ مِائَةَ نَاقَةٍ. حَتَّى أَذْخَلَتْ عَلَيْهِمُ الدَّارَ. قَالَ سَهْلٌ: فَلَقَدْ رَكَضَنِي مِنْهُ نَاقَةٌ حَمْرَاءُ.

تخریج: أخرجه البخاري، الأحكام، باب كتاب الحاكم إلى عماله والقاضي إلى أمنائه، ح: ٧١٩٢ من حديث مالك به، ومسلم، القسامة والمحاريين...، باب القسامة، ح: ٦/١٦٦٩ من حديث بشر بن عمر به.

### Comments:

- If a person is killed, and it is not known who the killer is then fifty persons from the claimant tribe will swear about the suspect or suspects that they are murderers. If the claimants take an oath, the respondent will pay the blood money. If the claimant tribe does not take an oath, the defendant will swear that they have not killed him, and they are not aware of the killer, so they will be cleared from blame, and they will not have to pay the blood money, it will be paid from the public treasury. If the defendant tribe does not swear, they will have to present the murderer or pay the blood money.
- The oath of women, children and insane persons is not acceptable. If fifty persons are not available for taking the oath, the number of persons present will suffice, but they will have to complete the number of fifty oaths. (Footnote of *Sunnan Ibn Mâjah* by Muhammad Fuwâd Abdul-Bâqi.)

2678. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that Huwayyisah and Muhayyisah, the sons of Mas'ud, and 'Abdullâh and 'Abdur-Rahmân the sons of Sahl, went out to search for food in Khaibar. 'Abdullâh was attacked and killed, and mention of that was made to the Messenger of Allâh ﷺ. He said: "Will you swear an oath and establish your right to blood money?" They said: "O Messenger of Allâh, how can we swear an oath when we did not witness anything?" He said: "Do you want the Jews to swear that they are innocent?" They said: "O Messenger of Allâh, then they will kill us too." So the Messenger of Allâh ﷺ paid the blood money himself. (*Sahih*)

٢٦٧٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ حُوَيْصَةَ وَمُحَيِّصَةَ، ابْنَيْ مَسْعُودٍ وَعَبْدُ اللَّهِ وَعَبْدُ الرَّحْمَنِ، ابْنَيْ سَهْلِ. خَرَجُوا يَمْتَارُونَ بِخَيْبَرَ. فَعُدِيَ عَلَى عَبْدِ اللَّهِ، فَقَتِلَ. فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ فَقَالَ: «تُقْسِمُونَ وَتَسْتَحِقُّونَ؟» فَقَالُوا: يَا رَسُولَ اللَّهِ! كَيْفَ نُقْسِمُ وَلَمْ نَشْهَدْ؟ قَالَ: «فَتَبَرَّكُمْ يَهُودُ؟» قَالُوا: يَا رَسُولَ اللَّهِ! إِذَا تَقْتُلْنَا. قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ ﷺ مِنْ عِنْدِهِ.

تخریج: [صحیح] أخرجه ابن أبي شيبة: ٣٧٨/٩ عن أبي خالد به ضعفه البوصيري لعنة الحجاج بن أرتاة، ح: ٢٦٦٢، والحديث السابق شاهد له.

### Chapter 29. Whoever Mutilates His Slave, Then He (The Slave) Is Free

2679. It was narrated from Salamah bin Rawh bin Zinbâ', that his grandfather came to the Prophet ﷺ and he had castrated a slave of his. The Prophet ﷺ manumitted the slave in compensation for having been mutilated. (*Sahih*)

(المعجم ٢٩) - بَابُ مَنْ مَثَلَ بِعَبْدِهِ فَهُوَ حُرٌّ (التحفة ٢٩)

٢٦٧٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ قَالَ: حَدَّثَنَا عَبْدُ السَّلَامِ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرُورَةَ، عَنْ سَلْمَةَ بْنِ رَوْحِ بْنِ زُبَاعٍ، عَنْ جَدِّهِ أَنَّهُ قَدِمَ عَلَى النَّبِيِّ ﷺ وَوَدَّ أَحْصَى غُلَامًا لَهُ. فَأَعْتَقَهُ النَّبِيُّ ﷺ بِالْمَثَلَةِ.

تخريج: [صحیح] أخرجه الطبراني: ٥/٢٦٩، ح: ٥٣٠٢ من حديث عبدالسلام بن حرب به، وضعفه البوصيري من أجل إسحاق بن أبي فرورة، ح: ٣٤٥، والحديث الآتي شاهد له.

2680. 'Amr bin Shu'aib narrated from his father that his grandfather said: "A man came to the Prophet ﷺ screaming. The Messenger of Allâh ﷺ said to him: 'What is the matter with you?' He said: 'My master saw me kissing a slave woman of his, so he cut off my penis.' The Prophet ﷺ said: "Take me to the man.' He was sought but could not be found, so the Messenger of Allâh ﷺ said: 'Go, for you are free.' He said: 'Who will protect me, O Messenger of Allâh? What if my master enslaves me again?' The Messenger of Allâh ﷺ said: 'Your protection will be (incumbent upon) every believer or Muslim.'" (*Hasan*)

٢٦٨٠ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجَّى السَّمَرَقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ سُمَيْلٍ: حَدَّثَنَا أَبُو حَمْرَةَ الصَّبْرِيُّ: حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ صَارِحًا فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «مَا لَكَ؟» قَالَ: سَيِّدِي رَأَى أُمَّبِلُ جَارِيَةً لَهُ، فَجَبَّ مَذَاكِيرِي. فَقَالَ النَّبِيُّ ﷺ: «عَلَيَّ بِالرَّجُلِ» فَطَلَبَ فَلَمْ يُقَدَّرْ عَلَيْهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِذْهَبْ.» فَأَنْتَ حُرٌّ» قَالَ: عَلَى مَنْ نُصِرْتِي يَا رَسُولَ اللَّهِ! قَالَ يَقُولُ: أَرَأَيْتَ إِنْ اشْتَرَيْتَنِي مَوْلَايَ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «عَلَيَّ كُلُّ مُؤْمِنٍ أَوْ مُسْلِمٍ.»

تخريج: [إسناده حسن] أخرجه أبو داود، والديات، باب من قتل عبده أو مثل به، ح: ٤٥١٩ من حديث أبي حمزة به، وأخرجه أحمد، والطبراني، ح: ٥٣٠١ من طريق معمر، وابن جريج عن عمرو بن شعيب به.

**Chapter 30. The Most Decent People In Killing Are The People Of Faith**

(المعجم ٣٠) - بَابُ أَعْفَ النَّاسِ قِتْلَةَ،  
أَهْلِ الْإِيمَانِ (التحفة ٣٠)

2681. 'Abdullâh said that the Messenger of Allâh ﷺ said: "The most decent of the people in killing are the people of faith." (Da'if)

٢٦٨١ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّورَقِيِّ: حَدَّثَنَا هُشَيْمٌ عَنْ مُغِيرَةَ، عَنْ شِبَاكِ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ قَالَ: قَالَ عَبْدُ اللَّهِ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ مِنْ أَعْفَ النَّاسِ قِتْلَةَ أَهْلِ الْإِيمَانِ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ١/٣٩٣ من حديث هشيم: أنبا مغيرة به، وانظر الحديث الأتي لعلته.

2682. It was narrated that 'Abdullâh that the Messenger of Allâh ﷺ said: "The most decent of the people in killing are the people of faith." (Da'if)

٢٦٨٢ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا غُلَّزُّ عَنْ شُعْبَةَ، عَنْ مُغِيرَةَ، عَنْ شِبَاكِ، عَنْ إِبْرَاهِيمَ، عَنْ هُنَيِّ بْنِ نُوَيْرَةَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَعْفَ النَّاسِ قِتْلَةَ، أَهْلِ الْإِيمَانِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الجهاد، باب: في النهي عن المثلة، ح: ٢٦٦٦ من حديث مغيرة به، وانظر، ح: ٢٠٧٤ لتدليس إبراهيم النخعي \* وهنّي بن نويرة مستور (تقريب)، وفيه علة أخرى.

**Comments:**

The Noble Prophet ﷺ said, "When you kill or when you slaughter, do it in a decent way." Whoever kills or slaughters, he should sharpen his knife to cause less pain to the animal. (See no. 3170)

**Chapter 31. The Lives Of All Muslims Are Equal In Value**

(المعجم ٣١) - بَابُ: الْمُسْلِمُونَ تَتَكَافَأُ دِمَاؤُهُمْ (التحفة ٣١)

2683. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "The blood of the Muslims is equal, they are one hand against others. The asylum offered by the lowest of them in status applies to them (all), and the return is

٢٦٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنَعَانِيُّ: حَدَّثَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْسِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «الْمُسْلِمُونَ تَتَكَافَأُ دِمَاؤُهُمْ. وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ. يَسْعَى



granted to the farthest of them.”<sup>[1]</sup> (*Sahih*)

بِدَمِّهِمْ أَدْنَاهُمْ، وَيُرَدُّ عَلَى أَقْصَاهُمْ».

تخریج: [صحیح] ضعفه البوصيري لضعف حنش، وللحديث طرق عند أبي داود وغيره،

انظر، ح: ٢٦٦٠.

### Comments:

- “The blood of Muslims is equal.” It means the killing in retaliation and blood money is equal for all Muslims. In this matter there is no difference at all between tribes, poor or rich, noble or common man, young or adult, all are equal in this regard, and the punishment is the same for everyone.
- If the lowest of the Muslims in status gives asylum to a non-Muslim it applies to all Muslims. In other words, he is under the protection of all Muslims.
- Whatever the quantity of booty a warrior collects, small or large, he cannot keep it in his custody. He must submit it to the leader of the army. He can claim only his share from the whole. He is bound to follow the principles of the spoils of war.

**2684.** It was narrated from Ma'qil bin Yasâr that the Messenger of Allâh ﷺ said: “The Muslims are one hand against others, and their blood is equal.” (*Sahih*)

٢٦٨٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ:

حَدَّثَنَا أَنَسُ بْنُ عِيَاضٍ، أَبُو ضَمْرَةَ، عَنْ عَبْدِ

السَّلَامِ بْنِ أَبِي الْجَنْدُبِ، عَنِ الْحَسَنِ، عَنْ

مَعْقِلِ بْنِ يَسَارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:

«الْمُسْلِمُونَ يَدٌ عَلَى مَنْ سِوَاهُمْ. وَتَكَافَأَ

دِمَاؤُهُمْ».

تخریج: [صحیح] أخرجه ابن عدي: ١٩٦٨/٥ من طريق إبراهيم بن سعيد به، وفي المطبوع

تصحيف فليصحح من هاهنا وضعفه البوصيري من أجل عبدالسلام بن أبي الجنوب، ضعفه ابن  
المديني، وأبو زرعة وغيرهما، والحديث السابق شاهد له.

**2685.** It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: “The hand of the Muslims is over others, and their blood and wealth is equal in value. The (asylum granted by) the lowest of

٢٦٨٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ

عِيَّاسٍ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ

جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَدُ

الْمُسْلِمِينَ عَلَى مَنْ سِوَاهُمْ. تَكَافَأَ دِمَاؤُهُمْ

<sup>[1]</sup> They say it refers to the spoils of war, and that those captured by this army should be returned to it, or, that it deals with not discriminating between this group and that group when dividing the spoils of war. See explanation by Sindi.

them applies to the Muslims, and the Muslims return (the spoils of war) to the farthest of them.” (Hasan)

وَأَمْوَالُهُمْ. وَيُجِيرُ عَلَى الْمُسْلِمِينَ أَذْنَاهُمْ،  
وَيُرَدُّ عَلَى الْمُسْلِمِينَ أَقْصَاهُمْ.”

تخریج: [إسناده حسن] انظر، ح: ٢٦٤٤.

#### Comments:

There will be a flag on the body of the offender on the Day of Resurrection who killed an asylum-granted non-Muslim. This flag will put him to shame and humiliation.

#### Chapter 32. One Who Kills A *Mu'ahid*<sup>[1]</sup>

(المعجم ٣٢) - بَابُ مَنْ قَتَلَ مُعَاهِدًا

(التحفة ٣٢)

2686. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "Whoever kills a *Mu'ahid*, will not smell the fragrance of Paradise, even though its fragrance may be detected from a distance of forty years." (Sahih)

٢٦٨٦ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو  
مُعَاوِيَةَ عَنِ الْحَسَنِ بْنِ عَمْرٍو، عَنْ مُجَاهِدٍ،  
عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ  
ﷺ: «مَنْ قَتَلَ مُعَاهِدًا، لَمْ يَرِحْ رَائِحَةَ الْجَنَّةِ  
وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا».

تخریج: أخرجه البخاري، الجزية والموادعة، باب إثم من قتل معاهدًا بغير جرم، ح: ٦٩١٤، ٣١٦٦ من حديث الحسن بن عمرو به.

2687. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever kills a *Mu'ahid* who has the protection of Allâh and the protection of His Messenger, will not smell the fragrance of Paradise, even though its fragrance may be detected from a distance of seventy years." (Sahih)

٢٦٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا  
مَعْدِيُّ بْنُ سُلَيْمَانَ: أَبَانَا ابْنُ عَجْلَانَ عَنْ  
أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ  
قَتَلَ مُعَاهِدًا، لَهُ ذِمَّةُ اللَّهِ وَذِمَّةُ رَسُولِهِ، فَلَا  
يَرِاحُ رَائِحَةَ الْجَنَّةِ. وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ  
مَسِيرَةِ سَبْعِينَ عَامًا».

تخریج: [صحيح] أخرجه الترمذي، الدييات، باب ما جاء فيمن يقتل نفسًا معاهدًا، ح: ١٤٠٣، عن ابن بشار به، وقال: حسن صحيح \* ومعدي ضعيف، وابن عجلان عنن تقدم، ح: ١٩٦٧، والحديث السابق شاهد له.

#### Comments:

a. Non-Muslim residents of an Islamic state are called *Mu'ahid*, meaning protected, because the state is responsible for their rights and their lives.

[1] One whom there is a covenant with.

- b. They get their rights with the orders of Allâh and His Messenger ﷺ.  
 c. 'Will not smell the fragrance of Paradise' means that the offender will be away from Paradise. In the Hereafter there are only two places, Paradise and Hell. This is a warning that the offenders will enter Hell.

### Chapter 33. One Who Offers Protection To A Man Then Kills Him

(المعجم ٣٣) - بَابُ مَنْ أَمِنَ رَجُلًا  
عَلَى دَمِهِ فَقَتَلَهُ (التحفة ٣٣)

**2688.** It was narrated that Rifâ'ah bin Shaddâd Al-Qitbâni said: "Were it not for a word that I heard from 'Amr bin Hamiq Khuzâ'i, I would have separated the head of Al-Mukhtâr from his body. I heard him saying: "The Messenger of Allâh ﷺ said: 'If a man trusts someone with his life then he kills him, he will carry a banner of treachery on the Day of Resurrection.'" (*Sahih*)

٢٦٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ رِفَاعَةَ بْنِ شَدَّادِ الْقَيْبَانِيِّ قَالَ: لَوْلَا كَلِمَةٌ سَمِعْتُهَا مِنْ عَمْرِو بْنِ الْحَمِقِ الْخُزَاعِيِّ، لَمَسَيْتُ فِيمَا بَيْنَ رَأْسِ الْمُخْتَارِ وَجَسَدِهِ. سَمِعْتُهُ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَمِنَ رَجُلًا عَلَى دَمِهِ، فَقَتَلَهُ فَإِنَّهُ يَحْمِلُ لَوَاءَ عَذْرِ يَوْمِ الْقِيَامَةِ».

تخریج: [صحیح] أخرجه النسائي في الكبرى: ٢٢٥/٥، ح: ٨٧٣٩ من حديث أبي عوانة به، وصححه البوصيري، قلت: عبد الملك بن عمير (٢١١٨ب) صرح بالسماع عند النسائي (الكبرى، ح: ٨٧٤١) إلا أنه قال: حدثني عامر بن شداد والصواب: رفاعة بن شداد، وتابعه إسماعيل السدي عن رفاعة به عند ابن حبان، ح: ١٦٨٢ وغيره، وللحديث طرق أخرى.

#### Comments:

- a. Killing after giving a promise of protection is a great sin.  
 b. Mukhtâr bin 'Ubaid Thaqfi, after the martyrdom of Hussain ؑ, stood up with a slogan of revenge. Through this slogan, he gained popularity and the sympathies of the people. He then claimed to be a prophet, and mislead the people. Mus'ab bin Zubair killed him and ended his mischief.

**2689.** It was narrated that Rifâ'ah said: "I entered upon Mukhtâr in his palace and he said: 'Jibril has just left me.' Nothing stopped me from striking his neck (i.e., killing him) but a *Hadith* that I heard from Sulaimân bin Surad, according to which the Prophet ﷺ said: 'If a man trusts you with

٢٦٨٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا أَبُو نَيْلَى عَنْ أَبِي عَكَّاشَةَ، عَنْ رِفَاعَةَ قَالَ: دَخَلْتُ عَلَى الْمُخْتَارِ فِي قَصْرِهِ. فَقَالَ: قَامَ جِبْرِيلُ مِنْ عِنْدِي السَّاعَةَ. فَمَا مَتَنَيْ مِنْ ضَرْبِ عُنُقِهِ إِلَّا حَلِيتُ سَمِعْتُهُ مِنْ سُلَيْمَانَ بْنِ صُرَدِ بْنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «إِذَا

his life, then do not kill him.' That is what stopped me." (*Da'if*)

أَمْتِكَ الرَّجُلُ عَلَى دَمِهِ، فَلَا نَقْتُلُهُ، فَذَاكَ الَّذِي مَنَعَنِي مِنْهُ.

تخريج: [إسناده ضعيف] أخرجه البخاري في التاريخ الكبير: ٣/٣٢٣، وأحمد: ٦/٣٩٣، وابن عدي: ٤/١٤٨٩ من حديث أبي ليلي عبدالله بن ميسرة الحارثي الواسطي به، وضعفه البيهقي \* عبدالله بن ميسرة ضعيف (تقريب)، وأبو عكاشة الهمداني مجهول، وقع في المسند أبو عكاشة وهو تصحيف، راجع أطراف المسند: ٢/٥٠٨ وهامشه، والحديث السابق يغني عنه.

### Chapter 34. Pardoning The Killer

### (المعجم ٣٤) - بَابُ الْعَفْوِ عَنِ الْقَاتِلِ

(التحفة ٣٤)

2690. It was narrated that Abu Hurairah said: "A man killed (another) during the time of the Messenger of Allāh ﷺ, and that was referred to the Prophet ﷺ. He handed him over to the victim's next of kin, but the killer said: 'O Messenger of Allāh, by Allāh I did not mean to kill him.' The Messenger of Allāh ﷺ said to the next of kin: 'If he is telling the truth and you kill him, you will go to Hell.' So he let him go. He had been tied with a rope, and he went out dragging his rope, so he became known as *Dhan-Nis'ah* (the one with the rope). (*Sahih*)

٢٦٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَتَلَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَرَفَعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ. فَدَفَعَهُ إِلَى وَلِيِّ الْمَقْتُولِ. فَقَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ! وَاللَّهِ مَا أَرَدْتُ قَتْلَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْوَلِيِّ: «أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا ثُمَّ قَتَلْتَهُ، دَخَلْتَ النَّارَ» قَالَ: فَخَلَى سَبِيلَهُ. قَالَ: وَكَانَ مَكْتُوفًا بِنَسْعَةٍ. فَخَرَجَ يَجُرُّ نَسْعَتَهُ. فَسُمِّيَ ذَا النَّسْعَةِ.

تخريج: [صحيح] أخرجه أبو داود، اللديات، باب الإمام يأمر بالعفو في الدم، ح: ٤٤٩٨ من حديث أبي معاوية به، وصححه الترمذي، ح: ١٤٠٧ \* الأعمش عنن تقدم، ح: ١٧٨ وتقوية بعض العلماء لروايته عن أبي صالح ليس بجيد كما حققته في نيل المقصود، ح: ٥١٧، ولكن لحديثه شاهد صحيح عند مسلم، ح: ١٦٨٠، وأبي داود، ح: ٤٥٠١ وغيرهما.

2691. It was narrated that Anas bin Málík said: "A man brought the killer of his relative to the Messenger of Allāh ﷺ, and the Messenger of Allāh ﷺ said: 'Pardon him,' but he refused. He

٢٦٩١ - حَدَّثَنَا أَبُو عُمَيْرٍ عَيْسَى بْنُ مُحَمَّدٍ النَّخَّاسُ، وَ عَيْسَى بْنُ يُونُسَ، وَ الْحُسَيْنُ بْنُ أَبِي السَّرِيِّ الْعَسْقَلَانِيُّ، قَالُوا: حَدَّثَنَا ضَمْرَةُ ابْنُ رَبِيعَةَ، عَنْ ابْنِ شَوْذَبٍ، عَنْ ثَابِتِ

said: 'Take the blood money,' but he refused. He said: 'Go and kill him, but then you will be like him.' Someone caught up with him and reminded him that the Messenger of Allāh ﷺ had said: 'Go and kill him, but then you will be like him.' So he let him go. (Sahih)

He (the killer) was seen, dragging his rope (with which he had been tied), going to his family. It was as if he had been fettered (with his hands behind his back).

(One of the narrators) Abu 'Umair said in his narration: "Ibn Shawdhab said, narrating from 'Abdur-Rahmān bin Qāsim: 'No one has the right after the Prophet ﷺ to say: "Go and kill him, but then you will be like him."'

Ibn Mājah said: This is the narration of the Ramliyīn, and is found only with them. (Meaning, the three who narrated this to Ibn Mājah were all from Ramlah.)

الْبُنَّانِيُّ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أَتَى رَجُلٌ بِقَاتِلٍ وَوَلَّيَهُ إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ لَهُ النَّبِيُّ ﷺ: «اغْفُ» فَأَبَى. فَقَالَ: «خُذْ أَرْضًا» فَأَبَى. قَالَ: «فَادْهَبْ فَاقْتُلْ فَإِنَّكَ مِثْلُهُ». قَالَ: فَلَحِقَ بِهِ. فَقِيلَ لَهُ: إِنَّ رَسُولَ اللَّهِ ﷺ قَدْ قَالَ: «اقْتُلْ فَإِنَّكَ مِثْلُهُ» [قَالَ:] فَحَلَّى سَيْلَهُ.

قَالَ: فَرَوَيْ يَجْرُ نِسْعَتَهُ ذَاهِبًا إِلَى أَهْلِهِ. قَالَ: كَأَنَّهُ قَدْ كَانَ أَوْثَقَهُ.

قَالَ أَبُو عَمْرِو فِي حَدِيثِهِ: قَالَ ابْنُ شَوَدْبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ: فَلَيْسَ لِأَحَدٍ بَعْدَ النَّبِيِّ ﷺ أَنْ يَقُولَ: «اقْتُلْ فَإِنَّكَ مِثْلُهُ».

قَالَ ابْنُ مَاجَهَ: هَذَا حَدِيثُ الرَّمْلِيِّينَ، لَيْسَ إِلَّا عِنْدَهُمْ.

تخريج: [إسناده صحيح] أخرجه النسائي: ١٧/٨، والقاسمة، . ذكر اختلاف الناقلين لخبر

علقمة بن وائل، ح: ٤٧٣٤ عن عيسى بن يونس به.

### Comments:

- Killing in retaliation is not the correct decision in the case of killing by mistake. Taking blood money or forgiving is a better decision.
- In the case of one killed by mistake, killing in retaliation is like murder, and liable to the same punishment as killing.
- This is a narration of 'Ramliyīn' means that all the narrators in this narration are of Ramlā. This is not a matter of distrust, rather it shows the keen interest of scholars of *Ahādīth* in investigation of narrations.

Chapter 35. Pardoning In Cases Of Retaliation

(المعجم ٣٥) - بَابُ الْعَفْوِ فِي الْقِصَاصِ (التحفة ٣٥)

2692. It was narrated that 'Atâ' bin Abu Maimunah said: "I only know it from Anas bin Mâlik who said: 'No case involving retaliation was referred to the Messenger of Allâh ﷺ but he enjoined forgiveness.'" (Sahih)

٢٦٩٢ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَتَيْنَا حَبَّانَ بْنَ هِلَالٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ بَكْرٍ الْمُرَزِيُّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ قَالَ: لَا أَعْلَمُهُ إِلَّا عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: مَا رُفِعَ إِلَى رَسُولِ اللَّهِ ﷺ شَيْءٌ فِيهِ الْقِصَاصُ، إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ.

تخريج: [إسناده صحيح] أخرجه أبو داود، الدييات، باب الإمام يأمر بالعفو في الدم، ح: ٤٤٩٧ من حديث عبدالله بن بكر به.

Commetns:

- a. Killing in retaliation is a lawful action, but forgiving is better, and appreciated.
- b. The judge can give a suggestion of reconciliation or forgiveness to the parties but he cannot compel them to accept it. It's the right of the parties to accept or reject it.

2693. Abu Dardâ' said: "I heard the Messenger of Allâh ﷺ say: 'There is no man who suffers some (injury) on his body and forgives (the perpetrator), but Allâh will raise him one degree in status thereby, or erase from him one sin.'

٢٦٩٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ، عَنْ أَبِي السَّفَرِ قَالَ: قَالَ أَبُو الدَّرْدَاءِ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَا مِنْ رَجُلٍ يُصَابُ بِشَيْءٍ مِنْ جَسَدِهِ، فَيَتَصَدَّقُ بِهِ، إِلَّا رَفَعَهُ اللَّهُ بِهِ دَرَجَةً، وَحَطَّ عَنْهُ بِهِ حَطِيئَةً».

My own ears heard it and my heart memorized it." (Da'if)

سَمِعْتُهُ أُذُنَايَ، وَوَعَاهُ قَلْبِي.

تخريج: [إسناده ضعيف] أخرجه الترمذي، الدييات، باب ماجاء في العفو، ح: ١٣٩٣ من حديث يونس به \* سعيد بن يحمدا أبوالسفر الكوفي ثقة لكنه أرسل عن أبي الدرداء كما في التهذيب وغيره، فالسند منقطع.

Chapter 36. A Pregnant Woman Deserving Retaliation

(المعجم ٣٦) - بَابُ الْحَامِلِ يَجِبُ عَلَيْهَا الْقَوْدُ (التحفة ٣٦)

2694. Mu'adh bin Jabal, Abu

٢٦٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا أَبُو

'Ubaidah bin Jarrâh, 'Ubâdah bin Sâmit and Shaddâd bin Aws narrated that the Messenger of Allâh ﷺ said: "If a woman kills someone deliberately, she should not be killed until she delivers what is in her womb, if she is pregnant, and until the child's sponsorship is guaranteed. And if a woman commits illegal sex, she should not be stoned until she delivers what is in her womb and until her child's sponsorship is guaranteed." (*Da'if*)

صَالِحٍ عَنِ ابْنِ لَهَيْعَةَ، عَنِ ابْنِ أَنْعَمٍ، عَنِ  
عَبَادَةَ بْنِ نُسَيْبٍ، عَنِ عَبْدِ الرَّحْمَنِ بْنِ عَنَمٍ:  
حَدَّثَنَا مُعَاذُ بْنُ جَبَلٍ، وَ أَبُو عُبَيْدَةَ بْنُ  
الْجَرَّاحِ، وَ عَبَادَةُ بْنُ الصَّامِتِ، وَ شَدَّادُ بْنُ  
أَوْسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْمَرْأَةُ، إِذَا  
قَتَلَتْ عَمْدًا، لَا تُقْتَلُ حَتَّى تَضَعَ مَا فِي  
بَطْنِهَا، إِنْ كَانَتْ حَامِلًا، وَحَتَّى تُكْفَلَ  
وَلَدَهَا. وَإِنْ زَنَتْ، لَمْ تُرْجَمْ حَتَّى تَضَعَ مَا  
فِي بَطْنِهَا، وَحَتَّى تُكْفَلَ وَلَدَهَا».

تخریج: [إسناده ضعيف] \* ابن أنعم، ح: ٥٤ وابن لهيعة، ح: ٣٣٠ تقدم حالهما، وفيه علة  
أخرى، وللحديث شاهد عند مسلم، ح: ٦٩٥، وأبي داود، ح: ٤٤٤٢ وغيرهما، وهو يغني عنه.

#### Comments:

Ghamidiyah happened to commit the crime of illegal sex and she appeared before the Prophet ﷺ and confessed her offence and also informed that she was pregnant. The Noble Prophet ﷺ delayed the punishment till the birth of the baby. After the birth when an *Ansâri* Companion took the responsibility of upbringing the child, and she was stoned to death. (*Sahih Muslim*: 1695)