

English Translation of

**Sunan
Ibn Mâjah**

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Compiled by:

**Imâm Muhammad Bin Yazeed
Ibn Majah Al-Qazwînî**

Volume 3

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Ahâdith edited & referenced by:

Hâfiż Abu Tâhir Zubair 'Ali Za'i

Translated by:

Nasiruddin al-Khattab (Canada)

Final review by:

Abu Khaliyl (USA)



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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(المعجم ٨) أبواب الزكاة (التحفة ٦)

8. The Chapters Regarding Zakât

Comments:

a: The word *Zakât* indicates literally 'increase and growth'.

The noble jurists of Islamic law explained *Zakât* by various definitions; one of these is: "It is an obligatory duty for a group possessing a specific amount of wealth at a specific time."

b. *Zakât* was declared as an obligatory duty in the 2nd year of *Hijrah* in the month of Shawwâl.

c. The kinds of wealth on which *Zakât* is due: Gold, silver, cash, commodities for trade, grains, fruits, (which can be stored like dates, raisin etc), minerals, cattle. Things other than these like: household utensils; vegetables are not subject to *Zakât*, and nor are modes of transport such as horses, cars, etc.

d. The following are the recipients of *Zakât*: The poor, the needy, the collectors of it, those whose hearts are to be reconciled, to free the captives, in the debtors, the cause of Allâh and the wayfarer.

Chapter 1. The Obligation Of *Zakât*

(المعجم ١) - بَابُ فَرْضِ الزَّكَاةِ

(التحفة ١)

1783. It was narrated from Ibn 'Abbâs that the Prophet ﷺ sent Mu'âdh to Yemen, and said: "You are going to some people among the People of the Book. Call them to bear witness that none has the right to be worshiped but Allâh, and that I am the Messenger of Allâh. If they obey that, then tell them that Allâh has enjoined upon them five prayers every day and night. If they obey that, then tell them that Allâh has enjoined upon them charity (*Zakât*) from their wealth, to be taken from their rich and given to their poor.

١٧٨٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِبْعَانُ الْجَرَاحِ: حَدَّثَنَا زَكَرِيَّا بْنُ إِسْحَاقَ الْمَكِيُّ، عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَفِيفٍ، عَنْ أَبِي مَعْدِدٍ، مَوْلَى أَبْنِ عَبَّاسٍ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ بَعَثَ مُعَاذًا إِلَى الْيَمَنِ، فَقَالَ: إِنَّكَ تَأْتِي قَوْمًا أَهْلَ كِتَابٍ. فَادْعُهُمْ إِلَى شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ. فَإِنْ هُمْ أَطَاعُوكُمْ لِذلِكَ فَأَغْلِمْهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ خَمْسَ صَلَواتٍ فِي كُلِّ يَوْمٍ وَلَيْلَةً. فَإِنْ هُمْ أَطَاعُوكُمْ لِذلِكَ فَأَغْلِمْهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ، تُؤْخَذُ مِنْ

If they obey that, then beware of (taking) the best of their wealth. And beware of the supplication of the oppressed, for there is no barrier between it and Allâh.”
(Sahîh)

أَغْنَيْتُهُمْ فَتَرَدَّ فِي فَقَرَائِبِهِمْ. إِنَّهُمْ أَطَاعُوا
لِذلِكَ فِيَّا كَوَافِرَهُمْ وَكَرَائِمَ أَمْوَالِهِمْ. وَاتَّقِ دَعَوَةَ
الْمَظْلُومِ، فَإِنَّهَا لَنِسَنَ بَيْنَهَا وَبَيْنَ اللَّهِ
جِبَابٌ.

تخریج: أخرجه البخاري، المظالم، باب الاتقاء والحذر من دعوة المظلوم، ح: ٢٤٤٨ مختصرًا من حديث وكيع، وانظر، ح: ١٣٩٥ وغيره، ومسلم، الإيمان، باب الدعاء إلى الشهدتين وشراط الإسلام، ح: ١٩ من حديث وكيع به.

Comments:

- Mu'âdh was appointed as a governor of Yemen in the 10th year of *Hijrah* before the Farewell *Hajj*. One part of Yemen was under the governorship of Mu'âdh bin Jabal and the other was under the governorship of Abu Musa Ash'ari.
- 'Among the People of Book' means Jews. The larger population of Yemen at that time was Jewish.
- Zakât* is due only from Muslims; as for non-Muslims they pay a tax instead of *Zakât* which is a fixed, more or less amount, according to the financial condition of each individual, and this tax is called *Jizyah*.
- Zakât* is distributed only among the Muslim beneficiaries. From among the non-Muslims, only that non-Muslim may be given some from *Zakât* if there is a hope that he/she comes close to the Muslims, will have interests in Islam, and eventually will embrace Islam, such people are called "those whose hearts are to be reconciled."

Chapter 2. What Was Narrated Concerning Withholding Zakât

1784. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "There is no one who does not pay *Zakât* on his wealth, but a bald-headed snake^[1] will be made to appear to him on the Day of Resurrection, until it

(المعجم ٢) - بَابُ مَا جَاءَ فِي مَنْعِ
الزَّكَوةِ (التحفة ٢)

١٧٨٤ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدْنَيِّ :
حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ
أَعْيَنَ، وَجَامِعِ بْنِ أَبِي رَاشِدٍ، سَيِّدِ شَقِيقَ
ابْنِ سَلَمَةَ يُخْبِرُ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، عَنْ
رَسُولِ اللَّهِ ﷺ قَالَ: «مَا مَنْ أَحَدٍ لَا يُؤْدِي

^[1] Hydra or serpent, they say it means a male snake that is either bald, or white headed due to its poison.

encircles his neck.” Then the Messenger of Allâh ﷺ recited the following Verse to us confirming that from the Book of Allâh the Most High: “And let not those who covetously withhold of that which Allâh has bestowed on them of His Bounty (wealth) think that it is good for them.”^[1] (Sahih)

تَخْرِيج: [إسناده صحيح] أخرجه الترمذى، تفسير القرآن، باب ومن سورة آل عمران، ح ٣٠١٢: عن ابن أبي عمر العدنى به، وقال: حسن صحيح ، وقال الحميدى فى مسنده ثنا سفيان ثنا جامع بن أبي راشد وعبدالملك بن أعين به، ح: ٩٣، وصححه ابن خزيمة، ح . ٢٢٥٦.

Comments:

- a. A sinful person will be inflicted punishment on the Day of Judgement before entering Hell.
- b. If there is a benefit in a worldly matter which is contrary to the *Shari'ah*, then one should reflect upon the loss of the Hereafter, so that the worldly benefit seems despicable, and due to this reflection, practising the *Shari'ah* becomes easier.

1785. It was narrated from Abu Dharr that the Messenger of Allâh ﷺ said: “There is no owner of camels, sheep or cattle who does not pay Zakât on them, but they will come to him on the Day of Resurrection as big and as fat as they ever were, butting him with their horns and trampling him with their hooves. Every time the last of them has passed, the first of them will come back to him, until judgement is passed upon the people.” (Sahih)

تَخْرِيج: أخرجه البخارى، الزكوة، باب زكوة البقر، ح: ١٤٦٠، ٦٦٣٨ من حديث الأعمش به، ومسلم، الزكوة، باب تعليظ عقوبة من لا يؤدي الزكوة، ح: ٩٩٠ .

زَكَاةً مَالَهُ إِلَّا مُكِلَّ لَهُ يَوْمَ الْقِيَامَةِ شُجَاعًا أَفَرَغَ حَتَّى يُطْوِقَ عُنْقَهُ؟ ثُمَّ قَرَأَ عَلَيْنَا رَسُولُ اللهِ ﷺ مِضْدَافَةً مِنْ كِتَابِ اللهِ تَعَالَى: «وَلَا يَحْسِنَ الَّذِينَ يَبْخَلُونَ بِمَا مَلَأْنَاهُمُ اللهُ يَنْ فَضَّلُهُمْ» [آل عمران: ١٨٠] الآية.

١٧٨٥ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنِ الأَعْمَشِ، عَنِ الْمَعْرُورِ بْنِ سُوَيْدٍ، عَنْ أَبِي ذِرٍّ قَالَ: قَالَ رَسُولُ اللهِ ﷺ: «مَا مِنْ صَاحِبٍ إِيمَانٍ وَلَا غَنَمٍ وَلَا بَقَرٍ لَا يُؤْدِي زَكَاتَهَا، إِلَّا جَاءَتْ يَوْمَ الْقِيَامَةِ أَغْطَمَ مَا كَانَتْ وَأَشَمَّهُ، تَنْطَحُهُ بِقُرُونِهَا، وَتَنْطَلُهُ بِأَخْفَافِهَا. كُلُّمَا نَقَدْتُ أَخْرَاهَا عَادَتْ عَلَيْهِ أَوْلَاهَا. حَتَّى يُقْضَى بَيْنَ النَّاسِ».

[1] Al 'Imrân 3:180.

Comments:

- Not paying Zakât is a very big sin.
- The cattle are also subject to Zakât; its elaborated description is coming in the following chapter.

1786. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The camels on which the dues (i.e., Zakât) were not paid will come, trampling their owners with their hooves. And cattle and sheep will come and trample their owners with their hooves and butt them with their horns. And hoarded treasure will come in the form of a bald-headed snake, and will meet its owner on the Day of Resurrection. Its owner will flee from it two times, then it will come to him and he will flee again, and will say: 'What do I have to do with you?' and it will say: 'I am your hoarded treasure, I am your hoarded treasure.' He will try to shield himself with his hand and it will devour it." (*Sahih*)

١٧٨٦ - حَدَّثَنَا أَبُو مَرْوَانَ، مُحَمَّدُ بْنُ عُثْمَانَ الْعَشْمَانِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمَ، عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «تَأْتِي الْإِبْلُ الَّتِي لَمْ تُطْعَطِ الْحَقَّ مِنْهَا، تَطْأَ صَاحِبَهَا يَأْخْفَافُهَا. وَتَأْتِي الْبَقَرُ وَالْغَنَمُ تَطْأَ صَاحِبَهَا يَأْظَلَّهَا، وَتَنْطَحُهَا بِقُرُونِهَا. وَيَأْتِي الْكَنْزُ شُجَاعًا أَفْرَعَ فَيَلْقَى صَاحِبَهُ يَوْمَ الْقِيَامَةِ. فَيَنْبُرُ مِنْهُ صَاحِبُهُ مَرَّتَيْنِ. ثُمَّ يَسْتَقْبِلُهُ فَيَنْبُرُ. فَيَقُولُ: مَا لِي وَلَكَ فَيَقُولُ: أَنَا كَنْزُكَ، أَنَا كَنْزُكَ. فَيَتَقَبَّلُهُ بِيَدِهِ فَيَلْقِمُهَا».

تخریج: [صحيح] إسناده حسن، وله شواهد كثيرة، منها الحديثان السابقان.

Comments:

- Hoarded treasure means gold and silver etc., on which the owner failed to pay Zakât.
- A person takes wealth with his hand but does not give away with the same hand in the path of Allâh; therefore this hand will be punished such that his/her wealth turns into a snake which will bite this very hand. May Allâh ﷺ keep us in His refuge!

Chapter 3. Wealth On Which Zakât Is Paid Is Not Hoarded Treasure'

1787. Khâlid bin Aslam, the freed slave of 'Umar bin Khattâb, said: "I went out with 'Abdullâh bin

(المعجم ٣) - بَابُ مَا أَدْيَ زَكَاتُهُ لَيْسَ بِكَنْزٍ (التحفة ٣)

١٧٨٧ - حَدَّثَنَا عَمْرُو بْنُ سَوَادٍ الْمُضْرِبِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ، عَنْ أَبْنِ لَهِيَةَ،

'Umar, and a Bedouin met him and recited to him the words of Allâh: 'And those who hoard up gold and silver (the money, the Zakâh of which has not been paid) and spend them not in the way of Allâh.'^[1] Ibn 'Umar said to him: 'The one who hoards it and does not pay the Zakât due on it, woe to him. But this was before the (ruling on) Zakât was revealed. When it was revealed, Allâh made it a purification of wealth.' Then he turned away and said: 'I do not mind if I have (the equivalent of) Uhud in gold, provided that I know how much it is and I pay Zakât on it, and I use it in obedience of Allâh, the Mighty and Sublime.''' (Sahîh)

عَنْ عُقَيْلٍ، عَنْ ابْنِ شَهَابٍ: حَدَّثَنَا حَمَادُ بْنُ أَسْلَمَ، مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: حَرَجْتُ مَعَ عَبْدِ اللَّهِ بْنِ عُمَرَ، فَلَحِقَهُ أَغْرَابِيُّ. قَالَ لَهُ: قَوْلُ اللَّهِ: «وَالَّذِينَ يَكْرِهُنَّ اللَّهَتَبَ وَالْفَضْلَةَ وَلَا يُنْقُنُهَا فِي سَبِيلِ اللَّهِ؟» [التوبه: ٣٤] قَالَ لَهُ ابْنُ عُمَرَ: مَنْ كَتَرَهَا فَلَمْ يُؤْدِ زَكَاتَهَا، فَوَيْلٌ لَهُ إِنَّمَا كَانَ هَذَا قَبْلَ أَنْ تُنْزَلَ الزَّكَاةُ. فَلَمَّا أُنْزِلَتْ جَعَلَهَا اللَّهُ طَهُورًا لِلْأَمْوَالِ. ثُمَّ اتَّهَمَ قَوْلَهُ: مَا أَبَالَيْ لَهُ كَانَ لِي أُحَدِّ ذَهَبًا، أَعْلَمُ عَنْهُ وَأَرْكَيْهِ، وَأَخْمَلُ فِيهِ بِطَاعَةَ اللَّهِ عَزَّ وَجَلَّ.

تخریج: أخرجه البخاري، الزکوة، باب ما أدي زکاته فليس بکنز، ح: ٤٦٦١، ١٤٠٤: من حديث يونس عن ابن شهاب به تعليقاً، وأسنده أبوذر في روايته، ورواه الحافظ في تغليق التعليق: ٦٥٣ من طرق عن أحمد بن شبيب به موصولاً.

Comments:

- Giving away as a charity in the path of virtue, other than paying Zakât and spending for other compulsory expenses, is a voluntary worship.
- Payment of Zakât purifies the rest of the wealth, otherwise all wealth remains impure.

1788. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "When you pay Zakât on your wealth, then you have done what is required of you." (Hasan)

١٧٨٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ الْمَلِكِ: حَدَّثَنَا مُوسَى بْنُ أَشْعَرَ: حَدَّثَنَا عَمْرُو بْنُ الْحَارِثِ، عَنْ دَرَاجِ أَبِي السَّمْعَ، عَنْ ابْنِ حُجَّيْرَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا أَدَيْتَ زَكَةَ مَالِكَ، فَقَدْ قَضَيْتَ مَا عَلَيْكَ». مالك، فقد قضيت ما عليك.

[1] At-Taubah 9:34.

تخریج: [إسناده حسن] أخرجه الترمذی، الزکوة، باب ماجاء إذا أديت الزکوة فقد قضيتك ما عليك، ح: ٦١٨ من حديث عمرو به، وقال: حسن غريب ، وصححه ابن خزيمة، ح: ٢٤٧١، وابن حبان (موارد)، ح: ٧٩٧، والحاکم: ٣٩٠، والذهبی * دراج صدوق، في حديثه عن أبي الهیش ضعف (تقرب)، وهو حسن الحديث عن غير أبي الهیش، وزاد ابن حبان وغيره: ومن جمع ما لا حراماً ثم تصدق به، لم يكن له فيه أجر، وكان إصره عليه .

1789. It was narrated from Fâtimah bint Qais that she heard him, meaning the Prophet ﷺ say: "There is nothing due on wealth other than Zakât." (*Da'if*)

1789 - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ، عَنْ شَرِيكَ، عَنْ أَبِي حَمْرَةَ، عَنِ الشَّعْبِيِّ عَنْ فَاطِمَةَ بْنِتِ قَيْسٍ أَنَّهَا سَوْمَقَتْهُ، تَعْنِي التَّبَّىءَ، يَقُولُ: «لَا يُؤْسَ فِي الْمَالِ حَقٌّ سَوْيَ الرَّكَأَةِ».

تخریج: [إسناده ضعيف] أخرجه الترمذی، الزکوة، باب ماجاء أن في المال حقاً سوى الزکوة، ح: ٦٥٩، ٦٦٠ من حديث شريك به، وقال: هذا حديث إسناده ليس بذلك، وأبو حمزة ميمون الأعور يضعف * والأعور هذا ضعفه صاحب التقریب وغيره، وفيه علة أخرى .

Chapter 4. Zakât on Silver and Gold

(المعجم ٤) - بَابُ زَكَّةِ الْوَرِقَ وَالدَّهِبِ (التحفة ٤)

1790. It was narrated from 'Ali that the Messenger of Allâh ﷺ said: "I have exempted you from having to pay Zakât on horses and slaves, but bring one quarter of one-tenth of every forty Dirham: one Dirham." (*Da'if*)

1790 - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنْ سُفِيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا قَدْ عَفَوْتُ عَنْكُمْ عَنْ صَدَقَةِ الْخَيْلِ وَالرِّيقِ وَلَكُنْ هَاتُوا رُبْعَ الْعُشْرِ مِنْ كُلِّ أَرْبَعِينِ دِرْهَمًا، ذِرْقَمًا».

تخریج: [إسناده ضعيف] وانظر، ح: ٩٥ لعلته، وأخرجه أبو ذاود، الزکوة، باب: في زکوة السائمة، ح: ١٥٧٤ وغيره من حديث أبي إسحاق عن عاصم بن ضمرة عن علي رضي الله عنه نحوه، وصححه البخاري، وابن خزيمة وغيرهما * أبو إسحاق عنعن تقدم، ح: ٤٦، وللحديث شواهد .

1791. It was narrated from Ibn 'Umar and 'Aishah that from every twenty Dinâr or more, the Prophet ﷺ used to take half a

1791 - حَدَّثَنَا بَكْرُ بْنُ خَلَفٍ وَ مُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عَيْدُ اللَّهِ بْنُ مُوسَى: أَنَّنَا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ اللَّهِ بْنِ

Dinar, and from forty Dinâr, one Dinâr. (*Hasan*)

وَأَقِدْ، عَنِ ابْنِ عُمَرَ وَ عَائِشَةَ أَنَّ الرَّبِيعَ^{١٧٩٢}
كَانَ يَأْخُذُ مِنْ كُلِّ عِشْرِينَ دِينَاراً، فَصَاعِداً،
نَصْفَ دِينَارٍ. وَمِنَ الْأَرْبَعِينَ دِينَاراً، دِينَاراً.

تخریج: [حسن] وضعه ابوصیری * إبراهیم بن اسماعیل بن مجتمع قدم حاله، ح: ۱۷۹۲،
وله شواهد عند أبي داود، ح: ۱۵۷۳ وغیره.

Comments:

- The horses kept for work, and the slaves for the service are not subject to *Zakât*. But if a person trades in horses and slaves, then he should pay *Zakât* after estimating their current value like other goods for trade.
- The quantity of gold on which *Zakât* is levied is twenty Dinâr, which is equal to 92 grams (as said by Shaikh Ibn Bâz, *Majmu'ah Fatâwâ*, vol: 14, page: 99).
- The rates of *Zakât* levied on gold and silver is one fortieth. For example: If a person owns 100 grams of gold, he must pay two and a half grams of gold or its value in *Zakât*.
- The amount of cash money on which *Zakât* is levied is equal to that of gold, because the current system of currency is based on gold.

Chapter 5. One Who Acquires Wealth

1792. It was narrated that 'Âishah said: "I heard the Messenger of Allâh ﷺ say: 'There is no *Zakât* on wealth until *Hawl* (one year) has passed.'" (*Hasan*)

(المعجم ۵) - بَابُ مَنِ اسْتَفَادَ مَالًا
(التحفة ۵)

١٧٩٢ - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْضُومِيُّ:
حَدَّثَنَا شُجَاعُ بْنُ الْوَلِيدِ: حَدَّثَنَا حَارِثَةُ بْنُ
مُحَمَّدٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ:
سَوْفَتُ رَسُولُ اللَّهِ ﷺ يَقُولُ: «لَا زَكَاةَ في
مَالٍ، حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ».

تخریج: [حسن] وانظر، ح: ۵۶ لعلته، وضعه ابوصیری، وله شواهد كثيرة.

Comments:

- Zakât* is due from a person who owns gold and silver etc, (equal to the *Nisâb* or more on which *Zakât* is levied) and the period of one whole year has passed.
- As for agricultural produce, *Zakât* becomes compulsory on it when the produce of a garden or field are harvested, and the elapse of a year is not a condition for it.

Chapter 6. Wealth On Which Zakât Is Required

1793. It was narrated from Abu Sa'eed Al-Khudri that he heard the Prophet ﷺ say: "There is no *Sadaqah* on anything less than five *Awsâq*^[1] of dates, five *Awâq*^[2] of silver and five camels." (*Sahih*)

(المعجم ٦) - بَابُ مَا تَحْبُّ فِيهِ الرَّكَأَةُ
مِنَ الْأَمْوَالِ (التحفة ٦)

١٧٩٣ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
أَبُو أَسَامَةَ: حَدَّثَنِي الْوَلِيدُ بْنُ كَثِيرٍ، عَنْ
مُحَمَّدٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي صَعْصَعَةَ، عَنْ
يَحْيَى بْنِ عُمَارَةَ، وَعَبَادِ بْنِ تَمِيمٍ، عَنْ أَبِي
سَعِيدِ الْخُدْرِيِّ أَنَّهُ سَمِعَ النَّبِيَّ ﷺ يَقُولُ: «لَا
صَدَقَةَ فِيمَا دُونَ خَمْسَةَ أُوسَاقٍ مِنَ التَّمْرِ.
وَلَا فِيمَا دُونَ خَمْسٍ أَوْ أَقِيرٍ. وَلَا فِيمَا دُونَ
خَمْسٍ مِنَ الْأَبِلِ».

تَحْرِيْج: [صَحِيح] أَخْرَجَهُ النَّسَائِيُّ: ٣٧/٥، الزَّكُوْهُ، بَابُ زَكْوَةِ الْوَرْقِ، ح: ٢٤٧٧، مِنْ
حَدِيثِ أَبِي أَسَامَةَ بْنِ عَبْدِ الرَّحْمَنِ الْبَخَارِيِّ، ح: ١٤٠٥ وَغَيْرِهِ، وَمُسْلِمٌ، ح: ٩٧٩ وَغَيْرِهِمَا مِنْ حَدِيثِ
يَحْيَى بْنِ عُمَارَةَ عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ بْنِ عَبْدِ الرَّحْمَنِ الْبَخَارِيِّ.

Comments:

- When the date fruits become dry and can be stored, then if their weight is equal to five *Wasq*, *Zakât* must be levied. One *Wasq* is equal to sixty *Sâ'*, and *Sâ'* is a measurement. Five *Wasq* is equal to 750 Kilos.
- Five *Uqiyah* is equal to two hundred Dirham, which means the amount of silver on which *Zakât* is levied is two hundred Dirham.
- If one has less than five camels they are not subject to *Zakât*. One goat is due for *Zakât* in the case of five camels. Further details of *Zakât* on camels will come in chapter 9.

1794. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: 'There is no *Sadaqah* on less than five camels; there is no *Sadaqah* on less than five *Awâq*; and there is no *Sadaqah* on less than five *Awsâq*.''' (*Sahih*)

١٧٩٤ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا
وَكَيْبَعُ، عَنْ مُحَمَّدٍ بْنِ مُشْلِمٍ، عَنْ عُمَرٍ وَبْنِ
دِيَارٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: لَيْسَ فِيمَا دُونَ خَمْسَةَ ذُؤُودٍ
صَدَقَةً. وَلَيْسَ فِيمَا دُونَ خَمْسٍ أَوْ أَقِيرٍ صَدَقَةً.
وَلَيْسَ فِيمَا دُونَ خَمْسَةَ أُوسَاقٍ صَدَقَةً.

^[1] *Awsâq* is plural of *Wasq*; a volume measurement equal to sixty *Sâ'*. (Sindi).

^[2] *Awâq* is plural of *Uqiyah* and they also say: *waqiyah*. It is forty Dirham, and five *Awâq* is equal to two hundred Dirham. (Sindi).

تخریج: [صحیح] أخرجه أَحْمَدُ: ۲۹۶/۳ من حديث محمد بن مسلم به، وحسنه البوصيري.

Chapter 7. Paying Zakât Before It Is Due

1795. It was narrated from 'Ali bin Abu Tâlib that 'Abbâs asked the Prophet ﷺ about paying his *Sadaqah* before it is due, and he granted him permission to do that. (*Da'i*)

(المعجم ۷) - بَابُ تَعْجِيلِ الرَّكَأَةِ قَبْلَ مَحْلِهَا (التحفة ۷)

۱۷۹۵ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ زَكَرِيَّاً، عَنْ حَمَاجَاجِ بْنِ دِينَارٍ، عَنْ الْحَكَمِ، عَنْ حُجَيْةَ بْنِ عَدْرَىٰ، عَنْ عَلَىٰ بْنِ أَبِي طَالِبٍ أَنَّ الْعَبَاسَ سَأَلَ النَّبِيَّ ﷺ فِي تَعْجِيلِ صَدَقَتِهِ قَبْلَ أَنْ تَجْلَلَ. فَرَخَصَ لَهُ فِي ذَلِكَ.

تخریج: [إسناد ضعیف] أخرجه أبو دارد، الزکوة، باب: في تعجيل الزکوة، ح: ۱۶۲۴، عن سعید بن منصور به، وصححه الحاکم، والذهبي * الحکم بن عتیة عن تقدم، ح: ۱۱۹۲، وله شواهد كلها ضعیفة.

Comments:

Paying Zakât in advance means to pay before the completion of year; the fluctuation of the right amount of Zakât will be sorted out at its due time. Paying Zakât in advance is permissible.

Chapter 8. What Is To Be Said When Zakât Is Paid

1796. 'Abdullâh bin Abu Awfa said: "Whenever a man brought *Sadaqah* to the Messenger of Allâh ﷺ, he would bless him. I brought him the *Sadaqah* of my wealth and he said: 'Allâhumma, salli 'ala âli Abi Awfa (O Allâh! Send blessing upon the family of Abu Awfa).' ("Sahih")

(المعجم ۸) - بَابُ مَا يُقَالُ عِنْدَ إِخْرَاجِ الرَّكَأَةِ (التحفة ۸)

۱۷۹۶ - حَدَّثَنَا عَلَىٰ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنْ شُعبَةَ، عَنْ عَمْرُو بْنِ مُرَّةَ. قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَىٰ يَقُولُ: كَانَ رَسُولُ اللَّهِ ﷺ، إِذَا آتَاهُ الرَّجُلُ بِصَدَقَةٍ مَالِهِ، صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، إِذَا آتَاهُ الرَّجُلُ بِصَدَقَةٍ مَالِهِ، صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَأَتَيْتُهُ بِصَدَقَةٍ مَالِيْ فَقَالَ: «اللَّهُمَّ صَلِّ عَلَى آلِ أَبِي أَوْفَىٰ». تخریج: أخرجه البخاري، الزکوة، باب صلاة الإمام، ودعائه لصاحب الصدقة ... الخ، ح: ۱۴۹۷ وغيره من حديث شعبة به، ومسلم، الزکوة، باب الدعاء لمن أتى بصدقة، ح: ۱۰۷۸، حديث وكيع به.

1797. It was narrated from Abu Hurairah that the Messenger of

۱۷۹۷ - حَدَّثَنَا سُوِيدُ بْنُ سَعِيدٍ: حَدَّثَنَا

Allâh ﷺ said: "When you give Zakât, do not forget its reward, and say, 'Allâhummaj-'alha maghnaman wa lâ taj-'alha maghrama (O Allâh! Make it a gain and do not make it a loss).'" (*Maudu'*)

الْوَلِيدُ بْنُ مُسْلِمٍ، عَنِ الْبَخْتَرِيِّ بْنِ عَيْبَدٍ، عَنْ أَيْهَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا أَعْطَيْتُمُ الزَّكَاةَ فَلَا تَشْنَوْا ثُواهَهَا، أَنْ تَقُولُوا: اللَّهُمَّ اجْعَلْهَا مَغْنِيَةً وَلَا تَجْعَلْهَا مَغْرِمًا.

تخریج: [إسناده موضوع] * البختري بن عبيد ضعيف متروك (تقريب)، وقال البصيري: متفق على ضعفه ، وقال الحاكم ، وأبونعيم وغيرهما: روی عن أبي هريرة موضوعات ، وجراحته ابن حبان وغيره.

Comments:

- a. A person possessing *Nisâb* of gold, silver and cash money, should personally make payment of the amount of *Zakât* at the local collecting place. As for the *Zakât* due on grain, crops and cattle, an appointed collecting officer of Islamic government will visit the person possessing the *Nisâb* and collect it.
- b. The relationship between public and government is of love and respect in an Islamic society. The *Zakât* collector should thank the person paying *Zakât* and pray for him.

Chapter 9. Sadaqah Due On Camels

(المعجم ٩) - بَابُ صَدَقَةِ الْإِبَلِ (التحفة ٩)

1798. Ibn Shihâb narrated from Sâlim bin 'Abdullâh, from his father, from the Prophet ﷺ. He (Ibn Shihâb) said: "Sâlim read to me a letter that the Messenger of Allâh ﷺ had written concerning *Sadaqât*, before Allâh caused him to pass away, in which it was said: 'For five camels one sheep; for ten, two sheep; for fifteen, three sheep; for twenty, four sheep. For twenty-five, a *Bint Makhâd* (a one-year-old she-camel), up to thirty-five; if there is no *Bint Makhâd*, then a *Bin Labun* (a two-year-old male camel). If there are more than thirty-five, even one, then a *Bin Labun* (a two-year-old she-camel) must be

١٧٩٨ - حَدَّثَنَا أَبُو يَثْرَةُ، بَكْرُ بْنُ حَافَّةَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا شَيْمَانُ بْنُ كَثِيرٍ: حَدَّثَنَا ابْنُ شِهَابٍ، عَنْ سَالِمٍ بْنِ عَبْدِ اللَّهِ، عَنْ أَيْهَى، عَنْ النَّبِيِّ ﷺ، قَالَ: أَفْرَأَنِي سَالِمٌ كَتَبَ كِتَابًا كَتَبَهُ رَسُولُ اللَّهِ ﷺ فِي الصَّدَقَاتِ قَبْلَ أَنْ يَوْفَأَهُ اللَّهُ، فَوَجَدْتُ فِيهِ: «فِي خَمْسٍ مِّنَ الْإِبَلِ شَاهٌ». وَفِي عَشْرِ شَتَانِ. وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شَيَاهٍ. وَفِي عَشْرِينَ أَرْبَعَ شَيَاهٍ. وَفِي خَمْسٍ وَعَشْرِينَ بِنْتَ مَحَاضِ، إِلَى خَمْسٍ وَتَلَاثِينَ. فَإِنْ لَمْ تُوجِدْ بِنْتَ مَحَاضِ، فَإِنْ لَبِونَ، ذَكَرٌ. فَإِنْ زَادَتْ، عَلَى خَمْسٍ وَتَلَاثِينَ، وَاحِدَةً، فَفِيهَا بِنْتٌ

given, up to forty-five. If there are more than forty-five, even one, then a *Hiqqah* (a three-year-old she-camel), up to sixty camels. If there are more than sixty, even one more, then a *Jadha'ah* (a four-year-old she-camel) must be given, up to seventy-five. If there are more than seventy-five, even one more, then two *Bint Labun* must be given, up to ninety. If there are more than ninety, even one more, then two *Hiqqah* must be given, up to one hundred and twenty. If there are many camels, then for each fifty, one *Hiqqah* must be given and for each forty a *Bint Labun*.''' (*Hasan*)

تغريب: [حسن] أخرجه البهقي: ٨٩، ٨٨ من حديث ابن مهدي به * سليمان بن كثير: لا يأس به في غير الظري (تقريب)، وتابعه سفيان بن الحسين عند أبي داود، ح: ١٥٦٨ وغيره، وحسنه الترمذى، ح: ٦٢١، وعلقه البخاري في صحيحه، قوله شواهد.

1799. It was narrated that Abu Sa'eed Al-Khudri said: "The Messenger of Allâh ﷺ said: 'There is no *Sadaqah* on any less than five camels, or for four. If the number of camels reaches five then one sheep must be given, up to nine. If the number reaches ten, then two sheep must be given, up to fourteen. If the number reaches fifteen, then three sheep must be given, up to nineteen. If the number reaches twenty, then four sheep must be given, up to twenty-four. If the number reaches twenty-five, then a *Bint Makhâd* (a one-year-old she-camel), up to thirty-five; if there is no *Bint Makhâd*, then a *Bin Labun*

لَبُونٍ، إِلَى خَمْسَةٍ وَأَرْبَعِينَ. فَإِنْ زَادَتْ، عَلَى
خَمْسٍ وَأَرْبَعِينَ، وَاحِدَةً، فَفِيهَا حَقَّةٌ إِلَى
سِتِّينَ. فَإِنْ زَادَتْ، عَلَى سِتِّينَ، وَاحِدَةً،
فَفِيهَا جَدْعَةٌ، إِلَى خَمْسٍ وَسَبْعِينَ. فَإِنْ
زَادَتْ، عَلَى خَمْسٍ وَسَبْعِينَ وَاحِدَةً، فَفِيهَا
ابْنَتَا لَبُونٍ إِلَى تِسْعِينَ. فَإِنْ زَادَتْ، عَلَى
تِسْعِينَ، وَاحِدَةً، فَفِيهَا حِقَّاتَانِ، إِلَى عِشْرِينَ
وَمَائَةً. فَإِذَا كَثُرَتْ، فَفِي كُلِّ خَمْسِينَ، حَقَّةٌ.
وَفِي كُلِّ أَرْبَعِينَ، بَنْتُ لَبُونٍ".

١٧٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عَقِيلٍ بْنُ حُوَيْلِدٍ
السَّيَّاسَيُورِيُّ: حَدَّثَنَا حَفْصُ بْنُ عَبْدِ اللَّهِ
السُّلَمِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ طَهْمَانَ، عَنْ
عَمْرِو بْنِ يَحْيَى بْنِ عُمَارَةَ، عَنْ أَبِيهِ، عَنْ
أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: الَّذِينَ فِيمَا دُونَ خَمْسِيْنَ مِنَ الْأَبْلَى
صَدَقَةً. وَلَا فِي الْأَرْبَعِ شَيْءٍ، فَإِذَا بَلَغَتْ
خَمْسًا فِيهَا شَاهٌ إِلَى أَنْ تَبْلُغَ تِسْعًا. فَإِذَا
بَلَغَتْ عَشْرًا، فِيهَا شَاهَاتٍ، إِلَى أَنْ تَبْلُغَ أَرْبَعَ
عَشْرَةً. فَإِذَا بَلَغَتْ خَمْسَ عَشْرَةً، فِيهَا ثَلَاثُ
شَيَاهٍ، إِلَى أَنْ تَبْلُغَ تِسْعَ عَشْرَةً. فَإِذَا بَلَغَتْ
عِشْرِينَ، فِيهَا أَرْبَعُ شَيَاهٍ، إِلَى أَنْ تَبْلُغَ أَرْبَعًا
وَعَشْرِينَ. فَإِذَا بَلَغَتْ خَمْسًا وَعَشْرِينَ، فِيهَا

(a two-year-old male camel). If there are more camels, then a bint *Labun* (two-year-old she-camel) up to forty-five. If there are more camels, then a *Hiqqah* (a three-year-old she-camel) must be given, up to sixty. If there are more camels, then a *Jadha'ah* (a five-year-old she-camel) must be given, up to seventy-five. If there are more camels, then two *Bint Labun* must be given, up to ninety. If there are more camels, then two *Hiqqah* should be given, up to one hundred and twenty. Then for each fifty, one *Hiqqah*, and for each forty, a *Bint Labun*.'''
(Hasan)

بِسْمِ مَحَاضِ، إِلَى حَمْسٍ وَّثَلَاثِينَ. فَإِذَا لَمْ تَكُنْ بِسْمِ مَحَاضِ فَإِنْ لَبُونٍ، ذَكَرٌ. فَإِنْ رَادَتْ بَعِيرًا، فَقِيهَا بِسْمِ لَبُونٍ، إِلَى أَنْ تَبْلُغْ حَمْسًا وَّأَرْبَعينَ. فَإِنْ رَادَتْ بَعِيرًا، فَقِيهَا حَقَّةً، إِلَى أَنْ تَبْلُغْ سِتِّينَ. فَإِنْ رَادَتْ بَعِيرًا، فَقِيهَا جَدَعَةً. إِلَى أَنْ تَبْلُغْ حَمْسًا وَّسِيَّعينَ. فَإِنْ رَادَتْ بَعِيرًا، فَقِيهَا بِشَالَ لَبُونٍ، إِلَى أَنْ تَبْلُغْ تِسْعِينَ. فَإِنْ رَادَتْ بَعِيرًا، فَقِيهَا حَفَّانَ، إِلَى أَنْ تَبْلُغْ عِشْرِينَ وَمِائَةً. ثُمَّ فِي كُلِّ حَمْسِينَ، حَقَّةً. وَفِي كُلِّ أَرْبَعينَ، بِسْمِ لَبُونٍ».

تخریج: [حسن] أخرجه البخاري، ومسلم وغيرهما من حديث عمرو بن يحيى عن أبيه عن أبي سعيد به مختصاراً جداً، الفقرة الأولى، وللباقية شواهد كثيرة.

Comments:

- Only female camels should be given and taken as *Zakât* on camels; a two-year-old male camel is allowed to be taken as *Zakât* if a female camel of one year of age does not exist in the herd, although the real due is a one year-old-female camel.
- In the case of possessing over one hundred and twenty camels, the camels will be divided into groups of either 40 or 50 and then accordingly two-year-old female camels and three-year-old female camels will be taken as *Zakât*. A two-year-old female camel is due for a group of 40 camels, and a three-year-old female camel for a group of 50 camels. For example: A herd of 130 camels would be divided into two groups of 40 camels and one group of fifty camels, $130=40+40+50$. So one female camel of two years of age is due for each group of forty camels, and one female camel of three years of age is due for the fifty.

Similarly, one hundred and forty camels will be divided into three groups as follows; $140=40+50+50$; so one two-year-old female camel is due for the forty camels and two three-year-olds are due for the two groups of fifty camels. As one three year old female camel is due for fifty camels, there will be three female camels of three years of age due for possessing one hundred and fifty ($50+50+50$) camels. Four two-year-old female camels are due in *Zakât* for one hundred and sixty camels ($40+40+40+40$), respectively one three years old female is due if the camels are increased by ten ($40+10$) and

became a group of 50.

If the number reaches two hundred, then the owner may give four female camels of three years of age, or five female camels of two years of age.

Chapter 10. When The Zakât Collector Receives An Animal That Is One Year Younger Or One Year Older Than Required

1800. Anas bin Mâlik narrated that Abu Bakr Siddiq wrote to him: "In the Name of Allâh, the Most Gracious, the Most Merciful. This is the obligation of *Sadaqah* which the Messenger of Allâh ﷺ enjoined upon the Muslims, as Allâh commanded the Messenger of Allâh ﷺ. The ages of camels to be given (in Zakât) may be made up in sheep. So if a man has camels on which the *Sadaqah* is a *Jadha'ah* (a four-year-old she-camel), and he does not have a *Jadha'ah* but he has a *Hiqqah* (a three-year-old she-camel), then the *Hiqqah* should be accepted from him, and two sheep should be given (in addition), if they are readily available, or twenty Dirham. If a man has camels on which the *Sadaqah* is a *Hiqqah*, and he only has a *Bint Labun* (a two-year-old she-camel), then the *Bint Labun* should be accepted from him, along with two sheep or twenty Dirhams. If a man has camels on which the *Sadaqah* is a *Bint Labun*, and he does not have one, but he has a *Hiqqah*, then it should be accepted from him, and the Zakât collector should give

(المعجم ١٠) - بَابُ: إِذَا أَخْدَى
المُصَدَّقُ سِنًا دُونَ سِنًّا أَوْ فَوْقَ سِنًّا
(التحفة ١٠)

١٨٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَّارٍ، وَ مُحَمَّدُ
ابْنُ يَحْيَى، وَ مُحَمَّدُ بْنُ مَرْزُوقٍ. قَالُوا:
حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُسْتَى: حَدَّثَنِي
أَبِي، عَنْ ثَمَامَةَ: حَدَّثَنِي أَنَّ بْنَ مَالِكَ أَنَّ
أَبَا بَكْرِ الصَّدِيقِ كَتَبَ لَهُ: بِسْمِ اللَّهِ الرَّحْمَنِ
الرَّحِيمِ. هُنَوْ فِي رِسَّةِ الصَّدَقَةِ الَّتِي فَرَضَ
رَسُولُ اللَّهِ ﷺ عَلَى الْمُسْلِمِينَ الَّتِي أَمَرَ اللَّهُ
بِهَا رَسُولُ اللَّهِ ﷺ. فَإِنَّ مِنْ أَسْنَانِ الْأَيْلِ فِي
فَرَائِصِ الْعَنْتَمِ مَنْ بَلَغَتْ عِنْدَهُ مِنْ الْأَيْلِ صَدَقَةَ
الْجَدَعَةِ، وَ لَيْسَ عِنْدَهُ جَمَعَةُ، وَ عِنْدَهُ حَقَّةُ،
فَإِنَّهَا تُقْبَلُ مِنْهُ الْحَقَّةُ. وَ يَجْعَلُ مَكَانَهَا شَاتِينَ
إِنْ أَسْتَيْسِرَنَا. أَوْ عِشْرِينَ دِرْهَمًا. وَ مَنْ بَلَغَتْ
عِنْدَهُ صَدَقَةُ الْحَقَّةِ، وَ لَيْسَتْ عِنْدَهُ إِلَّا يُنْتَ
لَبُونٍ، فَإِنَّهَا تُقْبَلُ مِنْهُ بَنْتُ لَبُونٍ، وَ يُعْطَى
مَعَهَا شَاتِينَ أَوْ عِشْرِينَ دِرْهَمًا. وَ مَنْ بَلَغَتْ
صَدَقَةُ بَنْتُ لَبُونٍ، وَ لَيْسَتْ عِنْدَهُ، وَ عِنْدَهُ
حَقَّةٌ، فَإِنَّهَا تُقْبَلُ مِنْهُ الْحَقَّةُ وَ يُعْطَى
عِشْرِينَ دِرْهَمًا، أَوْ شَاتِينَ. وَ مَنْ بَلَغَتْ
صَدَقَةُ بَنْتُ لَبُونٍ، وَ لَيْسَتْ عِنْدَهُ، وَ عِنْدَهُ بَنْتُ
مَخَاضٍ، فَإِنَّهَا تُقْبَلُ مِنْهُ ابْنَةُ مَخَاضٍ وَ يُعْطَى
مَعَهَا عِشْرِينَ دِرْهَمًا، أَوْ شَاتِينَ. وَ مَنْ بَلَغَتْ

him back twenty Dirham or two sheep. If a man has camels on which the *Sadaqah* is a *Bint Labun*, and he does not have one, but he has a *Bint Makhâd* (a one-year-old she-camel), then the *Bint Makhâd* should be accepted from him, along with twenty Dirham or two sheep. If a man has camels on which the *Sadaqah* is a *Bint Makhâd*, and he does not have one, but he has a *Bint Labun*, then the *Bint Labun* should be accepted from him, and the *Zakât* collector should give him back twenty Dirhams or two sheep. Whoever does not have a *Bint Makhâd*, but he has a *Bin Labun* (a two-year-old male camel), then it should be accepted from him and nothing else need be given along with it.''" (*Sahih*)

تخریج: أخرجه البخاري، الزکوة، باب زکوة الغنم، ح: ١٤٥٤ وغيره عن محمد بن عبد الله بن المثنى به.

Comments:

- The ages of female camels given in *Zakât* due on camels are of the following: (a): *Bint Makhâd*, i.e., one-year-old; (b): *Bint Laboon*, i.e., two-year-old; (c): *Hiqah*, i.e., three-year-old and (d): *Jadh'ah*, i.e., four-year-old.
- Only female camels are accepted for *Zakât*; however a two year old male camel may be taken in *Zakât* in replacement of a one-year-old female camel if such is not available.

Chapter 11. What Kind Of Camels Should Be Taken

1801. It was narrated that Suwaid bin Ghafalah said: "The *Zakâh* collector of the Prophet ﷺ came to us, and I took him by the hand and read in his order: 'Do not gather separate herds and do not separate a single herd for fear

صَدَقَتْهُ بِنْتَ مَخَاضٍ، وَلَيْسَتْ عِنْدَهُ، وَعِنْهُ أبْنَةُ لَبَوْنٍ، فَإِنَّهَا تَقْبَلُ مِنْهُ بِنْتُ لَبَوْنٍ، وَيُعْطِيهِ الْمُصَدَّقُ عِشْرِينَ دِرْهَمًا، أَوْ شَاتِئَنِ، فَمَنْ لَمْ يَكُنْ عِنْدَهُ أبْنَةُ مَخَاضٍ عَلَى وَجْهِهَا، وَعِنْهُ أبْنُ لَبَوْنٍ ذَكَرٌ، فَإِنَّهُ يَقْبَلُ مِنْهُ، وَلَيْسَ مَعَ شَيْءٍ.

(المعجم (11) - باب ما يأخذ المصدق

من الإبل (التحفة (11)

١٨٠١ - حَدَثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَثَنَا وَكِيعٌ: حَدَثَنَا شَرِيكٌ، عَنْ عُثْمَانَ التَّقِيفِيِّ، عَنْ أَبِي لَيْلَةِ الْكَنْدِيِّ، عَنْ سُوَيْدِ بْنِ عَفَّةَ قَالَ: جَاءَنَا مُصَدَّقُ النَّبِيِّ ﷺ فَأَخْذَتْ يَكِيدُ وَقَرَأَتْ فِي عَهْدِهِ: لَا يُجْمِعُ بَيْنَ مُتَفَرِّقٍ. وَلَا

of *Sadaqah*.' A man brought him a huge, fat she-camel, but he refused to accept it. So he brought him another of lower quality and he accepted it. He said: 'What land would shelter me and what heaven would shade me, if I came to the Messenger of Allâh ﷺ having taken the best of a Muslim man's camels?"' (*Da'iif*)

يُفْرَقُ بَيْنَ مُجَمِّعٍ، خَشِيشَةَ الصَّدَقَةِ. فَأَتَاهُ رَجُلٌ بِنَاقَةً عَظِيمَةً مُلْمَمَةً فَأَبَى أَنْ يَأْخُذَهَا. فَأَتَاهُ بِأُخْرَى دُونَهَا فَأَخْدَمَا، وَقَالَ: أَيُّ أَرْضٍ تُقْلِنِي، وَأَيُّ سَمَاءٍ تُظْلِنِي، إِذَا أَتَيْتُ رَسُولَ اللَّهِ ﷺ وَقَدْ أَخْدَثْتُ خَيَارَ إِيلِ رَجُلٍ مُسْلِمٍ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الرَّوْكَة، باب في زَكُوَّةِ السَّائِمَةِ، ح: ١٥٨٠ من حديث شريك به، انظر، ح: ١٤٩١ لعلته، لم أجده تصريحاً سمع شريك فيه.

Comments:

- A moderate type of animal should be taken or given in *Zakât*; neither the best animal should be taken in *Zakât*, which will cause harm to the owner, nor should a useless animal be taken in *Zakât* that will not benefit a needy.
- The noble Companions & used to be extremely careful when appointed for an official duty.
- Separate herds should not be brought together and the joint herds should not be separated for the fear of *Zakât*; its explanation will come in the following chapter, *Hadith 1805* and see the comments on it.

1802. It was narrated from Jarir bin 'Abdullâh that the Messenger of Allâh ﷺ said: 'The *Zakât* collector should not come back unless the people are pleased with him.'^[1] (*Sahih*)

تخریج: [صحيح] أخرجه الطبراني في الكبير: ٢٢٧، ح: ٢٣٦٧ من حديث إسرائيل به * جابر تقدم، ح: ٣٥٦، وتابعه مجالد عند الطبراني، ح: ٢٣٦٢، وتابعهما داود بن أبي هند (صحيح مسلم، ح: ٩٨٩ وغيره) وغيره نحو المعنى.

١٨٠٢ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبِيعُ، عَنْ إِسْرَائِيلَ، عَنْ جَابِرٍ، عَنْ عَامِرٍ، عَنْ جَرِيرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَرْجِعُ الْمُصَدَّقُ إِلَّا عَنْ رِضَا».

Comments:

It guides that people should welcome the *Zakât* collector; they should cooperate with him for discharge of his duties and pay their *Zakât* happily.

^[1] Meaning, welcomed by those who he collects from, and paid the *Zakât* willingly.

Chapter 12. Sadaqah Due On Cattle

(المعجم ١٢) - بَابُ صَدَقَةِ الْبَقَرِ

(التحفة ١٢)

1803. It was narrated that Mu'âdh bin Jabal said: "The Messenger of Allâh ﷺ sent me to Yemen and commanded me; for every forty cows, to take a *Musinnah*,^[1] and for every thirty, a *Tabi'*^[2] or *Tabi'ah*." (*Da'if*)

١٨٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعَيْرٍ: حَدَّثَنَا يَحْيَى بْنُ عَيسَى الرَّمْلِيُّ: حَدَّثَنَا الأَعْمَشُ، عَنْ شَيْقَى، عَنْ مَسْرُوقٍ، عَنْ مَعَاذَ ابْنِ جَبَلٍ قَالَ: بَعْثَتِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. وَأَمْرَنِي أَنْ أَخْذَ مِنَ الْبَقَرِ، مِنْ كُلِّ أَرْبَعِينَ مُسِيَّةً. وَمِنْ كُلِّ ثَلَاثِينَ، تَبِيعًا أَوْ تَبِيعَةً.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الزکوة، باب: فی زکوة السائمة، ح: ١٥٧٨ من حديث الأعمش به، وحسن الترمذی، ح: ٦٢٣، وصححه ابن خزيمة، وابن حبان، والحاکم، والذهبی وغيرهم.

1804. It was narrated from 'Abdullâh that the Prophet ﷺ said: "For every thirty cattle, a *Tabi'* or *Tabi'ah*, and for every forty a *Musinnah*." (*Da'if*)

١٨٠٤ - حَدَّثَنَا سُفِيَّانُ بْنُ وَكِيعٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ حَرْبٍ، عَنْ خُصَيْفٍ، عَنْ أَبِي عُبَيْدَةَ، عَنْ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «فِي ثَلَاثِينَ مِنَ الْبَقَرِ، تَبِيعٌ أَوْ تَبِيعَةً. وَفِي أَرْبَعِينَ، مُسِيَّةً».

تخریج: [إسناده ضعیف] أخرجه الترمذی، الزکوة، باب: فی زکوة البقر، ح: ٦٢٢ من حديث عبد السلام به، وتكلم فيه، وانظر، ح: ١٦٠٦ و ١٤٧٨ * وخصیف ضعیف كما تقدم، ح: ١١٧٣، وللحديث شواهد منها الحديث السابق.

Comments:

- Less than thirty cows and bulls are not subject to *Zakât*.
- A two-year-old cow is called *Musinnah*, which has broken two front teeth.
- When making account of *Zakât* for cows and bulls, they should be divided into groups of thirty or forty, then accordingly one-year-old or two-year-old calves should be taken as *Zakât*, i.e., one-year-old for groups of thirty and two-year-olds for groups of forty is compulsory. Thereafter, the following are to be given as *Zakât*; two one-year-old calves for sixty; a one-year-old calf and a one two-year-old calf for seventy; two calves of two years of age for eighty; three one-year-old calves for ninety; one calf of two years of age, and two calves that are one-year-old for a group of one hundred.

[١] A female cow that has entered its third year.

[٢] A male cow that has entered its second year, and *Tabi'ah* is the female.

(المعجم ١٣) - بَابُ صَدَقَةِ الْغَنِيمِ
 (التحفة ١٣)

Chapter 13. Sadaqah Due On Sheep

1805. It was narrated from Ibn Shihâb, from Sâlim bin 'Abdullâh, from his father, from the Messenger of Allâh ﷺ. He (Sâlim) said: "My father read to me a letter that the Messenger of Allâh ﷺ had written about *Sadaqât* before Allâh caused him to pass away. I read in it: 'For forty sheep, one sheep, up to one hundred and twenty. If there is more than that — even one — then two sheep, up to two hundred. If there is one more than that — even one — then three sheep, up to three hundred. If there are many sheep, then for each hundred, one sheep.' And I read in it: 'Separate flocks should not be combined, and a combined flock should not be separated.' And I read in it: 'And a male goat should not be taken for *Sadaqah*, nor a decrepit nor defective animal.'"^[١] (Hasan)

Comments:

- Only one goat as *Zakât* is due on anyone possessing between forty and one hundred and twenty goats.
- Two goats as *Zakât* are compulsory on a flock between a hundred and twenty one, and two hundred goats.
- Only three goats are due in *Zakât* from a flock between two hundred and one and three hundred and ninety-nine; when this number becomes a complete four hundred, then four goats will be given for *Zakât*.
- After four hundred, one goat is given in *Zakât* for each hundred goats; there is no *Zakât* on goats which are left over after hundreds.

١٨٠٥ - حَدَّثَنَا بَكْرُ بْنُ خَلَفٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا شَلِيمَانَ بْنُ كَثِيرٍ: حَدَّثَنَا ابْنُ شَهَابٍ، عَنْ سَالِيمٍ بْنِ عَبْدِ اللَّهِ، عَنْ أَيْيَهِ، عَنْ رَسُولِ اللَّهِ ﷺ، قَالَ: أَفَرَأَنِي سَالِيمٌ كَتَبَ كَتَبَ رَسُولُ اللَّهِ ﷺ فِي الصَّدَقَاتِ قَبْلَ أَنْ يَمُوتَ فَاهُ اللَّهُ. فَوَجَدْتُ فِيهِ: «فِي أَرْبَعِينَ شَاءَ، شَاءَ، إِلَى عِشْرِينَ وَمِائَةً. فَإِذَا زَادَتْ وَاحِدَةً، فَفِيهَا شَاتَانِ، إِلَى مِائَتَيْنِ. فَإِنْ زَادَتْ وَاحِدَةً، فَفِيهَا تَلَاثُ شَيَاهٍ، إِلَى تَلَاقِمَاتِهِ. فَإِذَا كَثُرَتْ، فَفِي كُلِّ مِائَةٍ، شَاءٌ». وَوَجَدْتُ فِيهِ: «لَا يُجْمَعُ بَيْنَ مُتَنَرِّقٍ، وَلَا يُمْرَقُ بَيْنَ مُجْتَمِعٍ». وَوَجَدْتُ فِيهِ: «لَا يُؤْخَذُ فِي الصَّدَقَةِ تَيْسٌ وَلَا هِرَمَةٌ وَلَا ذَاثٌ عَوَارٌ».

تخریج: [حسن] تقدم، ح: ١٧٩٨.

[١] See no. 1798.

e. A male goat is a special goat and is kept in the flock for breeding purposes; it has such importance because of it being dearer in price to the owner. Similarly, if an old animal with defects is given to the needy; it will affect the right of the recipient because he/she will not get full benefits from it. The principle is laid so that both the payer of Zakât and the beneficiary should not lose out.

1806. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: 'The Sadaqât of the Muslims should be taken at their watering places.' (Hasan)

١٨٠٦ - حَدَّثَنَا أَبُو بَدْرٍ، عَبَادُ بْنُ الْوَلِيدِ: حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ: حَدَّثَنَا ابْنُ الْمُبَارَكِ، عَنْ أَسَامَةَ بْنِ زَيْدٍ، عَنْ أَيِّهِ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تُؤْخَذُ صَدَقَاتُ الْمُسْلِمِينَ عَلَى مِيَاهِهِمْ».

تخریج: [حسن] * أسماء بن زيد بن أسلم ضعيف من قبل حفظه (تقریب)، ومحمد بن الفضل هو عارم السدوسي أبوالنعمان، وأخرج أحمده: ١٨٥، ١٨٤ / ٢، وغيره بإسناد صحيح عن عبدالله بن المبارك عن أسماء بن زيد (الليثي)، انظر، ح: ١٠٧٢: عن عمرو بن شبيب عن أبيه عن عبدالله بن عمرو نحوه، وإسناده حسن، وأخرج ابن الجارود، ح: ٣٤٦: وغيره من حديث عائشة رضي الله عنها قالت: قال رسول الله ﷺ: تؤخذ صدقات أهل البادية على مياههم وأفنيتهم وإن ساده حسن، وحسنه الهيثمي.

Comments:

The *Hadîth* legislates a rule that, for the collection of Zakât, a collector himself should go to places where people's herds of animals graze and pasture; and the people upon whom Zakât is due are not commanded to bring their animals to the collecting officer to pay the Zakât.

1807. It was narrated from Ibn 'Umar, from that the Prophet ﷺ: 'For forty sheep, one sheep, up to one hundred and twenty. If there is one more, then two sheep, up to two hundred. If there is one more, then three sheep, up to three hundred. If there are more than that, then for every hundred one sheep. Do not separate a combined flock and do not combine separate flocks for fear of *Sadaqah*. Each partner (who has a share in a combined flock) should pay in proportion to his shares.

١٨٠٧ - حَدَّثَنَا أَخْمَدُ بْنُ عُثْمَانَ بْنَ حَكِيمَ الْأَوْدِيِّ: حَدَّثَنَا أَبُو سَعْيِمٍ: حَدَّثَنَا عَبْدُ السَّلَامِ ابْنُ حَرْبٍ، عَنْ يَزِيدِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُنَيْدٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ: «فِي أَرْبَعِينَ شَاةً، شَاةً، إِلَى عَشْرِينَ مَائَةً. فَإِذَا زَادَتْ وَاحِدَةً، فَفِيهَا شَاقَانٌ، إِلَى مِائَتَيْنِ. فَإِنْ زَادَتْ وَاحِدَةً، فَفِيهَا ثَلَاثَ شَيَّاً، إِلَى ثَلَاثِمِائَةً. فَإِنْ زَادَتْ، فَفِي كُلِّ مَائَةٍ شَاةً. لَا يُفَرَّقُ بَيْنَ مُجْمَعٍ، وَلَا يُجْمَعُ بَيْنَ مُتَكَرِّقٍ، خَشْيَةَ الصَّدَقَةِ. وَكُلُّ خَلِيلٍ

And the Zakât collector should not accept any decrepit or defective animal, nor any male goat, unless he wishes to.” (*Hasan*)

يَتَرَاجِعُانِ بِالسُّوَيْهَةِ. وَلَيْسَ لِلْمُصَدِّقِ هَرَمَةٌ وَلَا
ذَائِثٌ عَوَارٌ وَلَا نَيْسٌ، إِلَّا أَنْ يَشَاءُ
الْمُصَدِّقُ». .

تخریج: [حسن] وحدیث: ١٨٠٥ شاهد له * أبوهند أحد المجاهيل (تحفة الأشراف: ٦: ٢٠٥)، ويزيد بن عبد الرحمن أبو خالد الدالاني صدوق يخطىء كثيراً وكان يدلس (تقريب).

Comments:

- Two persons joining their goats together as one flock will be considered reliable only if the shepherd of both of the flocks, their resting place, watering arrangement and male goat for breeding are shared. (*Muwatta Mâlik*: 1/242]
- If person paying Zakât is willing to give a better animal or big male (i.e., male goat or stallion) then it will be accepted otherwise the collector himself should not ask for it.

Chapter 14. What Was Narrated Concerning The Collectors Of Zakât

1808. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: ‘The one who is unjust in *Sadaqah* is like one who withholds it.’’ (*Hasan*)

(المعجم ١٤) - بَابُ مَا جَاءَ فِي عُمَالٍ
الصَّدَقَةِ (التحفة ١٤)

١٨٠٨ - حَدَّثَنَا عِيسَى بْنُ حَمَادٍ الْمِضْرِيُّ:
حَدَّثَنَا الْأَبْيَثُ بْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي
حَيَّيْبٍ، عَنْ سَعْدِ بْنِ سَيَّانٍ، عَنْ أَنَسِ بْنِ
مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُعْنَتِي
فِي الصَّدَقَةِ كَمَا يَعْنِيهَا».

تخریج: [إسناده حسن] أخرجه أبو داود، الزکوة، باب: في زکوة السائمة، ح: ١٥٨٥ من
حدیث الليث به، واستغیره الترمذی، ح: ٦٤٦، وصححه ابن خزيمة، ح: ٢٢٣٥.

Comments:

- This type of collector is given resemblance to that of a person who evades Zakât because this collector's injustice urges people not to pay Zakât, and subsequently they stop paying Zakât by making excuses.
- An unjust person in matters of Zakât also can be the one who distributes Zakât and charity among those who are not rightful beneficiaries.

1809. It was narrated that Râfi' bin Khadij said: ‘I heard the Messenger of Allâh ﷺ say: ‘The person who is appointed to collect

١٨٠٩ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُهُ بْنُ
سُلَيْمَانَ، وَمُحَمَّدُ بْنُ فُضَيْلٍ، وَيُونُسُ بْنُ
بُكَرٍ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ، عَنْ عَاصِمٍ بْنِ

the *Sadaqah* – who does so with sincerity and fairness is like one who goes out to fight for the sake of Allâh, until he returns to his house.’’ (Hasan)

عُمَرَ بْنِ فَتَاهَةَ، عَنْ مُحَمَّدِ بْنِ لَيْدَ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: سَوْغَتْ رَسُولُ اللَّهِ ﷺ يَقُولُ: «الْعَامِلُ عَلَى الصَّدَقَةِ بِالْحَقِّ كَالْعَازِي فِي سَبِيلِ اللَّهِ، حَتَّى يَرْجِعَ إِلَى مَيْهَةٍ».

تخریج: [إسناده حسن] أخرجه أبو داود، الخراج، باب: في السعاية على الصدقة، ح: ٢٩٣٦ من حديث ابن إسحاق به، وحسنه الترمذى، ح: ٦٤٥، وصححه ابن خزيمة، والحاكم، والذهبى وغيرهم.

Comments:

Collecting Zakât with full rights means the collector should take as much amount as compulsory according to *Shari'ah*; he should not ask for any extra beyond the fixed amount which would oppress those paying neither should he take any less than the amount due which will violate the right of the recipients.

1810. ‘Abdullâh bin Unaïs said that he and ‘Umar bin Khattâb were speaking about *Sadaqah* one day, and ‘Umar said: ‘Did you not hear the Messenger of Allâh ﷺ when he mentioned *Ghuluu*^[1] with the *Sadaqah* (and said): ‘Whoever steals a camel or a sheep from it, he will be brought carrying it on the Day of Resurrection?’’ ‘Abdullâh bin Unaïs said: ‘Yes.’’ (Hasan)

١٨١٠ - حَدَّثَنَا عَمْرُو بْنُ سَرَادَ الْمَصْرِيُّ : حَدَّثَنَا أَبْنُ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْخَارِثَ أَنَّ مُوسَى بْنَ جُبَيْرٍ حَدَّثَهُ أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنَ الْحَبَّابِ الْأَنْصَارِيَّ حَدَّثَهُ: أَنَّ عَبْدَ اللَّهِ بْنَ أَئْيَسِ حَدَّثَهُ أَنَّ نَذَاكَرْ هُوَ وَعُمَرُ أَبْنُ الْحَطَّابِ، يَوْمًا، الصَّدَقَةَ. فَقَالَ عُمَرُ: أَلَمْ تَسْمَعْ رَسُولَ اللَّهِ ﷺ حِينَ يَذُكُّرُ غُلُوْلَ الصَّدَقَةِ: «أَلَّا مَنْ غَلَّ مِنْهَا بَعِيرًا أَوْ شَاءَ أَئْيَسٌ بِهِ يَوْمَ الْقِيَامَةِ يَحْمِلُهُ؟» قَالَ: فَقَالَ عَبْدُ اللَّهِ أَبْنُ أَئْيَسٍ: يَكُلِّي.

تخریج: [حسن] أخرجه أحمد أحمـد: ٤٩٨/٣، وأطراف المسند: ٦٨٢ من حديث ابن وهب به، ومن طريق أحمد أخرجه المزي في تهذيب الكمال: ٢٠٣/١٥: * عبدالله بن عبد الرحمن لم يوثقه غير ابن حبان، موسى بن جبیر روی عنه جماعة ووثقه الذهبی وغيره، وقال ابن يونس: قدم مصر وأقام بها ، فحدیبه لا ينزل عن درجة الحسن، وللمحدث شواهد.

Comments:

a. Dishonesty is a very big crime in collective matters. Those who are responsible for financial matters of mosques, Islamic schools, province and

^[1] Normally used to refer to goods pilfered from the spoils of war.

state must be mindful of this warning.

- b. Dishonesty in Zakât may also mean that the owner of property does not disclose all his wealth, and thus he pays less than the compulsory amount due.

1811. Ibrâhim bin 'Atâ', the freed slave of 'Imrân bin Husain, said: "My father told me that 'Imrân bin Husain was appointed to collect the Sadaqah. When he came back, it was said to him: 'Where is the wealth?' He said: 'Was it for wealth that you sent me? We took it from where we used to take it at the time of the Messenger of Allâh ﷺ, and we distributed it where we used to distribute it.'" (Hasan)

١٨١١ - حَدَّثَنَا أَبُو بَدْرٍ، عَبَادُ بْنُ الْوَلِيدِ: حَدَّثَنَا أَبُو عَتَابٍ: حَدَّثَنِي إِبْرَاهِيمُ بْنُ عَطَاءَ، مَوْلَى عَمْرَانَ: حَدَّثَنِي أَبِي أَنَّ عِمْرَانَ بْنَ الْحُصَنِينَ اسْتَعْمَلَ عَلَى الصَّدَقَةِ فَلَمَّا رَجَعَ قَبْلَهُ أَنْتَهَى إِلَيْهِ أَيْنَ الْمَالُ؟ قَالَ: وَلِلْمَالِ أَرْسَلْنَا؟ أَخْذَنَا مِنْ حَيْثُ كُنَّا نَأْخُذُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، وَوَضَعَنَا حَيْثُ كُنَّا نَضَعُهُ.

تخریج: [إسناد حسن] أخرجه أبو داود، الزکوة، باب: في الزکوة هل تحمل من بلد إلى بلد، ح: ١٦٢٥ من حديث إبراهيم بن عطاء به.

Comments:

- This conversation of 'Imrân bin Husain ﷺ was with 'Umar ﷺ; it was upon 'Umar's order that Imrân went to Basrah to collect Zakât.
- The poor people of the area from where the Zakât is being collected have more right to Zakât.
- The noble Companions ﷺ were very strict in following the Sunnah of the noble Prophet ﷺ.

Chapter 15. Sadaqah Due On Horses And Slaves

1812. It was narrated from Abu Hurairah that the Messenger of Allâh said: "The Muslim is not obliged to pay Sadaqah on his slave nor his horse." (Sahîh)

(المعجم ١٥) - بَابُ صَدَقَةِ الْحَيْلِ وَالرَّقِيقِ (التحفة ١٥)

١٨١٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفِيَّانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ عِرَائِكَ بْنِ مَالِكٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ عَلَى الْمُسْلِمِ فِي عَبْدِهِ وَلَا فِي فَرْسِهِ صَدَقَةً».

تخریج: أخرجه البخاري، الزکوة، باب: ليس على المسلم في فرسه صدقة، ح: ١٤٦٤، ١٤٦٣، ومسلم، الزکوة، باب: لا زکوة على المسلم في عبده وفرسه، ح: ٩٨٢ من حديث ابن دينار به.

1813. It was narrated from 'Ali that the Prophet ﷺ said: "I have exempted you from having to pay Sadaqah on horses and slaves." (Hasan)

١٨١٣ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا سُعِيَّانُ بْنُ عَيْنَتَةَ، عَنْ أَبِي إِسْحَاقَ، عَنْ الْحَارِثِ، عَنْ عَلَيِّ، عَنِ النَّبِيِّ ﷺ قَالَ: «تَجَوَّرُّ لَكُمْ عَنْ صَدَقَةِ الْخَيْلِ وَالرَّقْبَيْنِ».

تخریج: [حسن] أخرجه الحمیدی (ديوینۃ: ۵۴) عن سفیان به، وانظر، ح: ۹۵ لعلته، وله طریق آخر فیه عن عنة أبي إسحاق تقدم، ح: ۴۶، وله طرق أخرى، وللحديث شواهد من الحديث السابق.

Comments:

This forgiveness is from Allâh, and the Prophet ﷺ transmitted this commandment being a ruler.

Chapter 16. Wealth On Which Zakât Is Due

1814. It was narrated from Mu'âdh bin Jabal that the Messenger of Allâh ﷺ sent him to Yemen and said to him, "Take grains from grains, sheep from sheep, camels from camels and cows from cows." (Da'if)

(المعجم ۱۶) - بَابُ مَا تَحِبُّ فِيهِ
الزَّكَاةُ مِنَ الْأُمُوَالِ (التحفة ۱۶)

١٨١٤ - حَدَّثَنَا عَمْرُو بْنُ سَوَادِ الْمُضْرِبِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي سُلَيْمَانُ بْنُ يَلَلِ، عَنْ شَرِيكِ بْنِ أَبِي ثَمَرٍ، عَنْ عَطَاءَ بْنِ يَسَارٍ، عَنْ مُعاذِ بْنِ جَبَلَ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَ إِلَى الْيَمَنِ، وَقَالَ لَهُ: «خُذِ الْحَبَّ مِنَ الْحَبَّ. وَالشَّاهَةَ مِنَ الشَّاهَةِ. وَالْبَيْرَةَ مِنَ الْبَيْرَةِ. وَالْبَقْرَةَ مِنَ الْبَقْرَةِ».

تخریج: [إسناده ضعیف لانقطاعه] أخرجه أبو داود، الزکوة، باب صدقة الزرع، ح: ۱۰۹۹ من حديث ابن وهب به * عطاء بن يسار لم يلق معاذًا رضي الله عنه كما قال النهي وغیره.

1815. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ only prescribed Zakât on these five things: wheat, barley, dates, raisins and corn." (Da'if)

١٨١٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: إِنَّمَا سَنَّ رَسُولُ اللَّهِ ﷺ الزَّكَاةَ فِي هَذِهِ الْخَمْسَةِ: فِي الْحُنْصَةِ، وَالشَّعِيرِ، وَالثَّمْرِ، وَالرَّيْبِ، وَالذَّرَّةِ.

تخریج: [إسناده ضعیف جداً] انظر، ح: ۶۶۴ لعلته، وضعفه البوصیری، وفيه علة أخرى.

Comments:

- Agricultural produce (i.e., grain crops and fruits) on which Zakât is levied is five Wasq. (See *Hadith* 1794)
- Wheat and barley will be weighed after being separated from the husk, then if the weight is equal to five Wasq or more, Zakât becomes compulsory.
- When the dates and raisins become dry and are able to be stored they should be measured and weighed.
- The Zakât due on these crops is mentioned in the following chapter.

Chapter 17. Sadaqah Due On Crops And Fruits

1816. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: 'For crops that are irrigated by the sky (i.e., rain) and springs, one-tenth. For those that are irrigated by watering, one half of one-tenth.' (*Hasan*)

(المعجم ١٧) - باب صدقة الزروع
والثمار (التحفة ١٧)

١٨١٦ - حَدَّثَنَا إِسْحَاقُ بْنُ مُوسَى، أَبُو مُوسَى الْأَنْصَارِيُّ: حَدَّثَنَا عَاصِمُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ سَعْدٍ بْنِ أَبِي دُبَابٍ، عَنْ شَيْمَانَ بْنِ يَسَارٍ، وَعَنْ بُشْرٍ بْنِ سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِيمَا سَقَتِ السَّمَاءُ وَالْعُيُونُ، الْعُشْرُ. وَفِيمَا سُقِيَ بِالنَّضْحِ، نِصْفُ الْعُشْرِ».

تخریج: [حسن] أخرجه الترمذی، الزکرة، باب ماجاء في الصدقة فيما يسقى بالأنهار وغيرها، ح: ٦٣٩ عن إسحاق بن موسى به.

Comments:

- Ten percent as Zakât is due on the produce of land watered by rainfall.
- Twenty percent as Zakât is due on crops irrigated by water wells and tube wells. As for the areas that have a canal system for irrigation and they pay seasonal water tax for it; they shall pay one twentieth in Zakât on produce of land irrigated by a canal system if the quantity of produce reaches five Wasq or more, [which is nearly a little above 750 kilos]. Allâh knows best!

1817. It was narrated from Sâlim that his father said: "I heard the Messenger of Allâh ﷺ say: 'For whatever is irrigated by the sky, rivers and springs, or draws up water from deep roots, one-tenth. For whatever is irrigated by animals (i.e., by artificial means) one half of one-tenth.'" (*Sahih*)

١٨١٧ - حَدَّثَنَا هَارُونُ بْنُ سَعِيدِ الْيَضْرِيِّ، أَبُو جَعْفَرٍ: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُوسُفُ، عَنْ ابْنِ شَهَابٍ، عَنْ سَالِمٍ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «فِيمَا سَقَتِ السَّمَاءُ وَالْأَنْهَارُ وَالْعُيُونُ، أَوْ كَانَ بَعْلًا، الْعُشْرُ. وَفِيمَا سُقِيَ بِالسَّوَانِي، نِصْفُ الْعُشْرِ».

تخریج: أخرجه البخاري، الزکوة، باب العشر فيما يسقى من ماء السماء والماء الجاري، ح: ١٤٨٣ من حديث ابن وهب به.

Comments:

The land watered by natural moisture which is not in need of rain or any other irrigation; like crops growing in land near a river; similarly the roots of date-palm trees go very deep into the earth so in some areas they do not need to be watered; such produce is subject to ten percent *Zakât*.

1818. It was narrated that Mu'âdh bin Jabal said: "The Messenger of Allâh ﷺ sent me to Yemen and commanded me to take one-tenth of that which was irrigated from the sky and that which was irrigated by deep roots, and to take one half of one-tenth of that which was irrigated by means of buckets." (*Da'iif*)

Yahyâ bin Âdâm said: The *Ba'l* and *'Athari* and *'Adhyu* are (crops) irrigated by rain. *'Athari* is the crop irrigated by the clouds and rain especially. It is only watered by rain. *Ba'l* is the garden (grapevine) whose roots have gone down in to the earth to the water. Hence it does not need irrigation, even if it is not watered for five or six years. This is *Ba'l*. *Sail* is the water of the valley when it flows (freely) and *Ghail* is a lesser *Sail*.

تخریج: [إسناده ضعيف] انظر، ح: ٨٥٥ لعلته، وأخرج النسائي (المجتبى: ٤٢/٥، ح: ٢٤٩٠، والكبيرى، ح: ٢٢٦٩) من حديث أبي بكر عن عاصم عن أبي وائل عن معاذ به نحوه، وقال (كما في تحفة الأشراف: ٤٠٠/٨) ليس هذا الإسناد بذلك القوي ... الخ ، انظر الحديث السابق فهو نفي عنه.

Chapter 18. Assessment Of Date-Palms And Grapevines

1819. It was narrated from 'Attâb

١٨١٨ - حَدَّثَنَا الْحَسَنُ بْنُ عَلَيٍّ بْنِ عَفَّانَ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ: حَدَّثَنَا أَبُو بَكْرٍ بْنُ عَيَّاشٍ، عَنْ عَاصِمٍ بْنِ أَبِي الْجَجَودِ، عَنْ أَبِي وَائِلٍ، عَنْ مَسْرُوقٍ، عَنْ مُعاذٍ بْنِ جَبَلٍ قَالَ: يَعْتَشِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. وَأَمْرَنِي أَنْ أَخْدَدَ بِمَا سَقَتِ السَّمَاءُ، وَمَا سُقِيَ بَعْلًا، الْعُشْرَ. وَمَا سُقِيَ بِاللَّوَالِي، يَضْفَفُ الْعُشْرَ. قَالَ يَحْيَى بْنُ آدَمَ: الْبَعْلُ وَالْعَتْرِيُّ وَالْعَدْيُ هُوَ الَّذِي يُسْتَهِنُ بِمَاءِ السَّمَاءِ. وَالْعَتْرِيُّ مَا يُزْرَعُ بِالسَّحَابَ وَالْمَطَرِ خَاصَّةً. لَيْسُ يُصْبِبُ إِلَّا مَاءُ الْمَطَرِ. وَالْبَعْلُ مَا كَانَ مِنَ الْكُرُومِ قَدْ ذَهَبَتْ عُرُوفُهُ فِي الْأَرْضِ إِلَى الْمَاءِ. فَلَا يَحْتَاجُ إِلَى السَّقْيِ. الْخَمْسُ سِينَ وَالسِّتُّ. يَحْتَمِلُ تَرَكَ السَّقْيِ. فَهَذَا الْبَعْلُ. وَالسِّئْلُ مَاءُ الْوَادِي إِذَا سَالَ. وَالْعَيْلُ سِيلٌ دُونَ سِيلٍ.

تخریج: (المعجم ١٨) - باب خرص التخل والعنبر (التحفة ١٨)

١٨١٩ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ

bin Asid that the Prophet ﷺ used to send to the people one who would assess their vineyards and fruits. (*Da'if*)

الدَّمْسَنْقِيُّ، وَ الرَّبِيعُ بْنُ بَكَارٍ. قَالَ: حَدَّثَنَا
ابْنُ نَافِعٍ: حَدَّثَنَا مُحَمَّدُ بْنُ صَالِحِ التَّمَارِ،
عَنِ الزَّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبٍ، عَنْ
عَتَابِ بْنِ أَسِيدٍ أَنَّ النَّبِيَّ ﷺ كَانَ يَبْعَثُ عَلَى
النَّاسِ مَنْ يَخْرُصُ عَلَيْهِمْ كُرُومَهُمْ وَثِمَارَهُمْ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الزکوة، باب: فی خرص العنبر، ح: ۱۶۰۴ من
حدیث ابن نافع به، وقال: سعید لم یسمع من عتاب شيئاً، وحسنه الترمذی، ح: ۶۴۴، وصححه
ابن حزيمة، وابن جبان، وقال المتنزی: انقطعه ظاهر . . . الخ .

1820. It was narrated from Ibn 'Abbâs that when the Prophet ﷺ conquered Khaibar, he stipulated that the land, and all the yellow and white, meaning gold and silver, belonged to him. The people of Khaibar said to him: "We know the land better, so give it to us so that we may work the land, and you will have half of its produce and we will have half." He maintained that, he gave it to them on that basis. When the time for the date harvest came, he sent Ibn Rawâhah to them. He assessed the date palms, and he said: "For this tree, such and such (amount)." They said: "You are demanding too much of us, O Ibn Rawâhah!" He said: "This is my assessment, and I will give you half of what I say." They said: "This is fair, and fairness is what heaven and earth are based on." They said: "We agree to take (accept) what you say." (*Hasan*)

١٨٢٠ - حَدَّثَنَا مُوسَى بْنُ مَرْوَانَ الرَّقِيقُ:
حَدَّثَنَا عُمَرُ بْنُ أَيُوبَ، عَنْ جَعْفَرِ بْنِ بُرْقَانَ،
عَنْ مَمْوُنِ بْنِ مَهْرَانَ، عَنْ مَقْسُمٍ، عَنْ ابْنِ
عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ، حِينَ افْتَسَحَ خَيْرُهُ،
اشْتَرَطَ عَلَيْهِمْ أَنَّ لَهُ الْأَرْضَ، وَكُلُّ صَفَرَاءَ
وَبَيْضَاءَ. يَعْنِي الْذَّهَبَ وَالْفِضَّةَ. وَقَالَ لَهُ أَهْلُ
خَيْرٍ: تَحْنُنْ أَعْلَمُ بِالْأَرْضِ. فَأَعْطَيْنَاهَا عَلَى
أَنْ تَعْمَلُهَا وَيَكُونَ لَكُنَا نِصْفُ الْشَّمَرَةَ وَلَكُمْ
نِصْفُهَا. فَرَأَمَ اللَّهُ أَعْطَاهُمْ عَلَى ذَلِكَ. فَلَمَّا
كَانَ حِينَ يُصْرُمُ النَّخْلُ، بَعَثَ إِلَيْهِمْ ابْنَ
رَوَاحَةَ. فَحَرَرَ النَّخْلَ. وَهُوَ الَّذِي يَدْعُونَهُ،
أَهْلُ الْمَدِينَةِ، الْخَرْصَ. فَقَالَ: فِي ذَا، كَذَا
وَكَذَا. فَقَالُوا: أَكْثَرْتَ عَلَيْنَا يَا ابْنَ رَوَاحَةَ.
فَقَالَ: فَإِنَّا أَحْرَرْنَا النَّخْلَ وَأَعْطَيْكُمْ نِصْفَ
الَّذِي قُلْتُ. قَالَ، فَقَالُوا: هَذَا الْحُقْ. وَبِهِ
تَقْوُمُ السَّمَاءُ وَالْأَرْضُ. فَقَالُوا: قَدْ رَضِيْتَ أَنْ
تَأْخُذَ بِالَّذِي قُلْتَ.

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب في المساقاة، ح: ۳۴۱۰ من حدیث
عمر بن أيوب به.

Comments:

- a. The land captured during a war against disbelievers is the property of the Islamic state. A Muslim ruler has sole right to use the produce of this land for the benefit of the state and the people.
- b. Leasing out land on condition of sharing the produce; for example: instead of cultivating by himself the landlord gives the land to someone on contract that the produce of land will be shared between the landlord and the cultivator, fifty percent for each, or, less or more according to the agreed percentage.
- c. The aforementioned contract is allowed for date-palm orchards and vineyards.
- d. Trading deals and relations with a *Dhimi* (a non-Muslim who lives in a Muslim country and pays tax) and other non-Muslims, is allowed, provided no trading deal takes place contrary to Islamic law.
- e. The yield of fruits that are used fresh before being dried is estimated while the fruit is on the trees and plants; so after the fruits becomes dry the estimated amount of *Zakât* will be taken.
- f. Jews accused Ibn Rawâhah ر of over estimating with the intention of bribing him to reduce the estimate, but he denied giving up honesty.

Chapter 19. Prohibition Of Giving The Worst Of One's Wealth As *Sadaqah*

1821. It was narrated that 'Awf bin Mâlik Al-Ashja'i said: "The Messenger of Allâh ﷺ went out, and a man had hung up one or more bunches of dates. He (the Prophet ﷺ) had a stick in his hand and he started hitting that bunch of dates repeatedly, saying: 'If the owner of these dates wanted to give in charity, he should have given something better than these. The owner of this charity will eat rotten and shriveled dates on the Day of Resurrection.'" (*Hasan*)

(المعجم ١٩) - بَابُ النَّهْيِ أَنْ يَخْرُجَ فِي الصَّدَقَةِ شَرًّا مَالِهِ (الصفحة ١٩)

١٨٢١ - حَدَّثَنَا أَبُو يَحْيَىٰ بْنُ سَعِيدٍ، عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ: حَدَّثَنِي صَالِحُ بْنُ أَبِي عَرِيبٍ، عَنْ كَثِيرِ بْنِ مُرَّةَ الْحَضْرَمِيِّ، عَنْ عَوْفِ بْنِ مَالِكٍ الْأَسْجُجِيِّ قَالَ: خَرَجَ رَسُولُ اللَّهِ ﷺ، وَقَدْ عَلَقَ رَجُلٌ أَفْنَاءَ أَوْ قُتُوا. وَبَيْدَوْ عَصَمًا. فَجَعَلَ يَطْعُنُ بِدَقْيقٍ فِي ذِلِكَ الْأَفْنَاءِ وَيَقُولُ: لَوْ شَاءَ رَبُّ هَذِهِ الصَّدَقَةِ تَصَدَّقَ بِأَطْبَابِ مِنْهَا. إِنَّ رَبَّ هَذِهِ الصَّدَقَةِ يَأْكُلُ الْحَشَفَ يَوْمَ الْقِيَامَةِ.

تخریج: [إسناده حسن] أخرجه أبو داود، الزکوة، باب ما لا يجوز من الشمرة في الصدقة، ح: ١٦٠٨ من حدیث یحيی بن سعید به، وصححه ابن خزيمة، وابن حبان، والحاکم، والذهبي.

Comments:

- A rope was tied between two pillars of the Prophet's Mosque, and the people would hang bunches of date fruit on it; whoever was in need might eat as wished. The following *Hadîth* is clear about it.
- It is not necessary that the charity be given in the hand of the needy, rather it may be placed somewhere in such a way that everyone is allowed to benefit from it.
- The owner who does not have something of better quality may give something of low quality in charity.

1822. It was narrated that Barâ' bin 'Âzib said concerning the Verse: "And of that which We have produced from the earth for you, and do not aim at that which is bad to spend from it."^[1] "This was revealed concerning the *Ansâr*. At the time of the new date-palm harvest, they would take a bunch of dates that were beginning to ripen and hang it on a rope between two of the pillars in the mosque of the Messenger of Allâh ﷺ, and the poor Emigrants would eat from it. One of them deliberately mixed a bunch containing rotten and shriveled dates, and thought that this was permissible because of the large number of dates that had been put there. So the following was revealed about the one who did that: "...and do not aim at that which is bad to spend from it". Meaning do not seek out the rotten and shriveled dates to give in charity: "...(though) you would not accept it save if you close your eyes and tolerate therein." Meaning, if you were given this

١٨٢٢ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنُ يَحْيَى
ابْنِ سَعِيدِ الْقَطَانِ: حَدَّثَنَا عَمْرُو بْنُ مُحَمَّدٍ
الْعَنْفَرِيُّ: حَدَّثَنَا أَسْبَاطُ بْنُ تَصْرِيْ. عَنْ
السُّلْطَنِيِّ، عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنْ الْبَرَاءِ بْنِ
عَازِبٍ، فِي قَوْلِهِ سُبْحَانَهُ: «وَمِمَّا أَخْرَجْنَا لَكُمْ
مِّنَ الْأَرْضِ وَلَا تَمْمَمُوا الْخَيْثَ وَمِنْ تُنْفِقُونَ»
(البقرة: ٢٦٧) قَالَ: نَرَأَتِ فِي الْأَنْصَارِ.
كَانَتِ الْأَنْصَارُ تُخْرُجُ، إِذَا كَانَ جِدَادُ
السُّلْطُلُ، مِنْ جِبِطَانِهَا، أَقْنَاءَ الْبَشَرِ. فَيُعْلَقُونَهُ
عَلَى حَبْلٍ بَيْنَ أَسْطُوانَتَيْنِ فِي مَسْجِدِ رَسُولِ
الله ﷺ. فَيَأْكُلُ مِنْهُ فُقَرَاءُ الْمُهَاجِرِينَ. فَيَعْمَدُ
أَحَدُهُمْ فَيُنْخَلُّ فَنَوَا فِي الْحَشَفِ. يَقُولُ اللَّهُ
جَاهِزٌ فِي كَثْرَةِ مَا يُوضَعُ مِنَ الْأَقْنَاءِ. فَتَرَكَ
فِيمَنْ فَعَلَ ذَلِكَ: «وَلَا تَمْمَمُوا الْخَيْثَ وَمِنْ
تُنْفِقُونَ» يَقُولُ: لَا تَعْمَدُوا لِلْحَشَفِ مِنْهُ
تُنْفِقُونَ» (وَلَسْتُ يَكْنِي إِلَّا أَنْ تُنْفِقُوا فِيهِ)
يَقُولُ: لَوْ أُهْدِيَ لَكُمْ مَا قِيلُمُوهُ إِلَّا عَلَى
اسْتِحْيَاءِ مِنْ صَاحِبِهِ، عَيْطًا أَنَّهُ بَعَثَ إِلَيْكُمْ مَا
لَمْ يَكُنْ لَّكُمْ فِيهِ حَاجَةً. وَأَعْلَمُوا أَنَّ اللَّهَ غَنِيٌّ
عَنْ صَدَاقَاتِكُمْ.

^[1] Al-Baqarah 2:267.

as a gift you would only accept it because you felt embarrassed, and you would be angry that he had sent you something of which you have no need. And know that Allâh has no need of your charity." (*Hasan*)

تخریج: [إسناده حسن] أخرجه الإمام ابن جریر الطبیري السُّنّی فی تفسیره: ۸۲/۳، ح: ۶۱۳۸، وتفسیر ابن کثیر: ۱/ ۳۰۳ من حديث عمرو بن محمد به، وصححه الحاکم: ۲۸۵/۲، والذهبی، والبصیری.

Comments:

- a. When fruit is plucked from the orchards, some of it should be given to the poor.
 - b. A good quality thing, according to the best of one's ability, should be given in charity.
 - c. Allâh is not in need of charity and alms; it is His favor that we give to our own friends and relatives, but Allâh counts it for Himself and bestows immense reward for it upon us.

Chapter 20. Zakâh Due On Honey

(المعجم ٢٠) - بَابُ زَكَاةِ الْعَسْلِ

1823. It was narrated that Abu Sayyārah Al-Muta'i said: "I said: 'O Messenger of Allāh! I have bees.' He said: 'Give one-tenth.' I said: 'O Messenger of Allāh! Protect it for me.' And he protected it for me."^[1] (*Hasan*)

- حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ، وَعَلَيْهِ أَبْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكِيعٌ، عَنْ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ، عَنْ شَلَّيْمَانَ بْنِ مُوسَى، عَنْ أَبِي سَيَّارَةَ الْمُعْعَيِّ. قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي نَحْلًا. قَالَ: «أَدْعُوكَ لِي نَحْلًا». قَالَ: فَقُلْتُ: يَا رَسُولَ اللَّهِ احْمِهَا لِي. فَحَمَّاهَا لِي.

تخریج: [حسن] أخرجه ابن أبي شيبة: ١٤١، والطیلاني، والطبراني (الکبیر: ٢٢/٣٥١، ٣٥٢) وغيره من حديث سعید به، وسنده ضعیف، وقال البیهقی: ١٢٦ هو منقطع، ونقل الترمذی عن البخاری قال: مرسل، وقال أبو حاتم: لم يلق سليمان بن موسى أبا سيارة والحديث مرسل ، والحديث الآتی (١٨٢٤) شاهد له.

^[1] Meaning, no one was to enter the area of the beehives given in charity except him, so he could care for it.

Comments:

- The Companion had honeybees, means that the honeybees would make hives in some of his trees.
- Protected means that he was allotted those hives and that none should take honey from the hives in his trees without his permission.
- One may collect honey from the beehives in the trees belonging to no one.
- Ten percent for *Zakât* is due on honey. If one has ten containers of honey he should give one container in *Zakât*.

1824. It was narrated from 'Abdullâh bin 'Amr that the Prophet ﷺ took one-tenth of honey (as *Zakât*). (*Hasan*)

١٨٢٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا
نَعِيمٌ بْنُ حَمَادٍ: حَدَّثَنَا ابْنُ الْمَبَارِكِ: حَدَّثَنَا
أَسَمَّةً بْنُ زَيْدٍ، عَنْ عَمْرِو بْنِ شَعْبٍ، عَنْ
أَبِيهِ، عَنْ جَلْدُو عَبْدِ اللَّهِ بْنِ عَمْرِو، عَنِ النَّبِيِّ
ﷺ أَنَّهُ أَخْدَى مِنَ الْعُسْلِ الْعَشْرَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الزکوة، باب زکوة العسل، ح: ١٦٠٢ من حديث
أسامة بن حزميَّة * نعيم بن حماد: صدوق حسن الحديث، وأخطأ من ضعفه.

Chapter 21. *Sadaqatul-Fitr*

(المعجم ٢١) - بَابُ صَدَقَةِ الْفِطْرِ

(التحفة ٢١)

1825. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ enjoined *Zakâtul-Fitr*, one *Sâ'* of dates or one *Sâ'* of barley.

Abdullâh said: The people made two *Mudd* (equal to half of a *Sâ'*) of wheat as its equivalent. (*Sahîh*)

١٨٢٥ - حَدَّثَنَا مُحَمَّدُ بْنُ رُونَاحِ الْمَضْرِئِ:
حَدَّثَنَا الْلَّيْثُ بْنُ سَعْدٍ، عَنْ تَافِعٍ، عَنْ ابْنِ
عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَ بِزَكَاةِ الْفِطْرِ.
صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعْبِيرٍ.
قَالَ عَبْدُ اللَّهِ: فَجَعَلَ النَّاسُ عِدَّةً مُدَّيْنٍ
مِنْ حِنْطَةٍ.

تخریج: أخرجه البخاري، الزکوة، باب صدقة الفطر صاعاً من تمر، ح: ١٥٠٧ من حديث
الليث به، ومسلم، الزکوة، باب زکوة الفطر على المسلمين من التمر والشعير، ح: ٩٨٤ عن محمد
ابن رمح وغيره.

Comments:

- Sâ'* is a weight volume measurement. People's usual daily food should be given in *Sadaqatul-Fitr* by measuring a *Sâ'*.
- A *Sâ'* is approximately equal to two and a half kilos.
- 'Abdullâh bin 'Umar ﷺ did not agree to the juristic opinion that half a *Sâ'* of wheat is equal to a *Sâ'* of dry dates.

d. Half a Sâ' of wheat is enough as *Sadaqatul-Fitr* according to the opinion of Mu'âwiyah رضي الله عنه، as follows in *Hadith* 1829.

1826. It was narrated that Ibn 'Umar said: "The Messenger of Allâh ﷺ enjoined *Sadaqatul-Fitr*, one Sâ' of barley or one Sâ' of dates for every Muslim, free or slave, male or female." (*Sahîh*)

١٨٢٦ - حَدَّثَنَا حَفْصُ بْنُ عَمْرِو : حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ : حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ ، عَنْ نَافِعٍ ، عَنْ أَبْنِ عُمَرَ قَالَ : فَرَضَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدَقَةَ الْفِطْرِ صَاعًا مِّنْ شَعْبِرٍ ، أَوْ صَاعًا مِّنْ تَمْرٍ عَلَى كُلِّ حُرٍّ ، أَوْ عَبْدٍ ، ذَكَرَ أَوْ أُنْثَى ، مِنَ الْمُسْلِمِينَ .

تخریج: أخرجه البخاري، الزکوة، باب صدقة الفطر على العبد وغيره من المسلمين، مسلم، الزکوة، الباب السابق، ح: ٩٨٤ من حديث مالك به.

Comments:

- The usual daily food of the inhabitants of Al-Madinah was barley and dates; that is why only these two are mentioned.
- One Sâ' as *Sadaqatul-Fitr* is paid for each member of the family.
- Some scholars adopted the view of paying cash equal to the value of one Sâ' of food as *Sadaqatul-Fitr*, but the Prophetic sayings and good practice of the Companions tell us that *Sadaqatul-Fitr* should be the type of usual food of the family; for example: wheat, rice, dates etc.

1827. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ enjoined *Zakâtul-Fitr* as a purification for the fasting person from idle talk and obscenities, and to feed the poor. Whoever pays it before the ('Eid) prayer, it is an accepted *Zakâh*, and whoever pays it after the prayer, it is (ordinary) charity." (*Hasan*)

١٨٢٧ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَخْمَدَ بْنُ بَشِيرٍ أَبْنِ دَكْوَانَ ، وَأَخْمَدُ بْنُ الْأَزْهَرِ . قَالَ : حَدَّثَنَا مَرْوَانُ بْنُ مُحَمَّدٍ : حَدَّثَنَا أَبُو يَزِيدُ الْخَوَلَانِيُّ ، عَنْ سَيَّارِ بْنِ عَبْدِ الرَّحْمَنِ الصَّدَفِيِّ ، عَنْ عِكْرَمَةَ ، عَنْ أَبْنِ عَبَّاسٍ قَالَ : فَرَضَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ زَكَةَ الْفِطْرِ طُهْرَةَ الصَّائِمِ مِنَ اللَّعُوِّ وَالرُّفْثِ . وَطُعْمَةً لِلْمَسَاكِينِ . فَمَنْ أَذَاهَا قَبْلَ الصَّلَاةِ ، فَهُوَ زَكَةٌ مَقْبُولَةٌ . وَمَنْ أَذَاهَا بَعْدَ الصَّلَاةِ ، فَهُوَ صَدَقَةٌ مِنَ الصَّدَقَاتِ .

تخریج: [إسناده حسن] أخرجه أبو داود، الزکوة، باب زکة الفطر، ح: ١٦٠٩ من حديث مروان بن محمد به، وصححه الحاكم، والذهبی، وحسن التنویر وغيره.

Comments:

Paying *Sadaqatul-Fitr* just before the 'Eid prayer is the last time for its payment. Paying it before the day of 'Eid is also correct. Nâfi', may Allâh have mercy on him, said: 'The noble Companions used to give *Sadaqatul-Fitr* one or two days prior to 'Eid.' (*Sahîh Al-Bukhârî*: 1511) If *Sadaqatul-Fitr* could not be paid prior to the 'Eid prayer then it should be paid even after the 'Eid prayer; although it would not have the same particular reward for it, yet the reward for normal charity will be there, and thus the deprivation of reward for *Sadaqatul-Fitr* may be made up to a certain extant.

1828. It was narrated that Qais bin Sa'd said: "The Messenger of Allâh ﷺ enjoined *Sadaqatul-Fitr* upon us before (the command of) Zakât was revealed. When (the command of) Zakât was revealed, he neither ordered us (to pay) nor forbade us (from paying it), so we did it." (*Sahîh*)

١٨٢٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعَ، عَنْ سُقِيَانَ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ الْقَاسِمِ بْنِ مُحَمَّرَةَ، عَنْ أَبِي عَمَارٍ، عَنْ قَيْسِ بْنِ سَعْدٍ قَالَ: أَمَرَنَا رَسُولُ اللَّهِ ﷺ بِصَدَقَةِ الْفَطْرِ قَبْلَ أَنْ تُنْزَلَ الزَّكَاةُ. فَلَمَّا نُزِّلَتِ الزَّكَاةُ، لَمْ يَأْمُرْنَا، وَلَمْ يَنْهَا. وَتَحْمِلُ نَفْعَهُ.

تخريج: [صحيح] أخرجه النسائي: ٤٩/٥، الزكوة، باب فرض صدقة الفطر قبل نزول الزكوة، ح ٢٥٩ من حديث وكيع به، وصححه الحاكم على شرط الشعيبين: ٤١٠/١، ووافقه الذهبي * الثوري عنون، وتابعه شعبة في مشكل الآثار للطحاوي: ٨٥/٣، وللحديث طريق آخر صحيح عند النسائي وغيره، وعادة شعبة أن لا يروي عن المحدثين إلا بما صرحوا بالسماع.

Comments:

This *Hadîth* apparently shows that giving *Sadaqatul-Fitr* is not obligatory; however, the collection of *Sadaqatul-Fitr* by Messenger of Allâh ﷺ and its distribution among the poor give emphasis that the legislation of rules of Zakât did not abrogate the obligation of *Sadaqatul-Fitr*.

1829. It was narrated that Abu Sa'eed Al-Khudri said: "We used to pay *Zakâtul-Fitr* when the Messenger of Allâh ﷺ was among us, one Sâ' of food, one Sâ' of dates, one Sâ' of barley, one Sâ' of sun-baked cottage cheese, one Sâ' of raisins. We continued to do that until Mu'âwiyyah came to us in Al-Madinah. One of the things he said to the people was: 'I think that two *Mudd* wheat from Shâm is equivalent to one Sâ' of this

١٨٢٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعَ، عَنْ دَاؤُدَ بْنِ قَيْسِ الْفَرَاءِ، عَنْ عَيَاضِي ابْنِ عَبْدِ اللَّهِ بْنِ أَبِي سَرْحٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: كُنَّا نُخْرِجُ زَكَاةَ الْفَطْرِ إِذَا كَانَ فِيهَا رَسُولُ اللَّهِ ﷺ، صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ أَقْطِيلٍ، صَاعًا مِنْ زَبَبٍ. فَلَمَّا نُزِّلَ كَذَلِكَ حَتَّى قَدِمَ عَلَيْنَا مَعَاوِيَةُ الْمَدِينَةِ. فَكَانَ فِيمَا كَلَمَ بِهِ

(i.e., dates). So the people followed that."

Abu Sa'eed said: "I will continue to pay it as I used to pay it at the time of the Messenger of Allâh ﷺ, for as long as I live." (*Sahih*)

النَّاسُ أَنْ قَالَ: لَا أُرِي مُلْئِنَ مِنْ سَمْرَاءِ الشَّامِ إِلَّا يَعْدُلُ صَاعًا مِنْ هَذَا. فَأَخَذَ النَّاسُ بِذَلِكَ.

قَالَ أَبُو سَعِيدٍ: لَا أَزَالُ أُخْرِجُهُ كَمَا كُنْتُ أُخْرِجُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، أَبْدًا، مَا عَشْتُ.

تخریج: آخرجه البخاري، الزکوة، باب صدقة الفطر صاع من شعير، ح: ١٥٠٥، ١٥٠٦، ١٥٠٨، ١٥١٠ من حديث عياض به، ومسلم، الزکوة، باب زکة الفطر على المسلمين من التمر والشعير، ح: ٩٨٥ من حديث داود وغيره به.

Comments:

As Abu Sa'eed ؓ did not agree with Mu'âwiyah ؓ, likewise Abdullâh bin 'Umar ؓ disagreed with Mu'âwiyah ؓ, as mentioned in *Hadith 1825*.

1830. It was narrated from 'Ammâr bin Sa'eed, the *Mu'âdh-dhin* of the Messenger of Allâh ﷺ, from his father, that the Messenger of Allâh ﷺ enjoined *Sadaqatul-Fitr*, one *Sâ'* of dates, one *Sâ'* of barley, or one *Sâ'* of *Sult* (a kind of barley without skin on it, resembling wheat). (*Sahih*)

١٨٣٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَعْدٍ بْنِ عَمَّارِ الْمُؤْذِنِ: حَدَّثَنَا عُمَرُ بْنُ حَفْصٍ، عَنْ عَمَّارٍ بْنِ سَعْدٍ، مُؤْذِنِ رَسُولِ اللَّهِ ﷺ عَنْ أَبِيهِ، أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَ بِصَدَقَةِ الْفِطْرِ. صَاعًا مِنْ تَمْرٍ، أَوْ صَاعًا مِنْ شَعِيرٍ، أَوْ صَاعًا مِنْ شُلْتٍ.

تخریج: [صحیح] انظر، ح: ١١٠١ لعلته * وعمر بن حفص فيه لین، من السابعة(تقريب)، وعمر بن سعد تابعي مستور، وله شواهد صحیحة.

Chapter 22. 'Ushr And Kharâj

(المعجم (٢٢) - بَابُ الْعُشْرِ وَالْخَرَاجِ (التحفة (٢٢)

1831. It was narrated that 'Alâ' bin Hadrami said: "The Messenger of Allâh ﷺ sent me to Bahrain or Hajar. I used to go to a garden that was shared by some brothers, one of whom had become Muslim. I would take the

١٨٣١ - حَدَّثَنَا الْحُسَيْنُ بْنُ جُنَيْدِ الدَّامَغَانِيِّ: حَدَّثَنَا عَتَابُ بْنُ زَيْدِ الْمَرْوَزِيِّ: حَدَّثَنَا أَبُو حَمْرَةَ قَالَ: سَمِعْتُ مُعِيرَةَ الْأَرْدَيِّ يَحْدُثُ عَنْ مُحَمَّدٍ بْنِ زَيْدٍ، عَنْ جَيَانَ الْأَعْرَجَ، عَنِ الْعَلَاءِ بْنِ الْحَضْرَمَيِّ قَالَ: بَعْثَيْتِي رَسُولُ اللَّهِ ﷺ إِلَى

'Ushr (one-tenth of the harvest) from the Muslim, and the Kharâj from the Mushrik.' (Da'if)

البُحْرَنِيُّ وَإِلَى هَجَرَ . فَكُنْتُ أَنِي الْحَائِطَ يَكُونُ
بَيْنَ الْإِخْوَةِ . يُشْلِمُ أَحَدُهُمْ . فَأَخْذُ مِنَ الْمُسْلِمِ
الْعُشْرَ ، وَمِنَ الْمُشْرِكِ الْخَرَاجَ .

تخریج: [إسناده ضعیف] أخرجه أحمد: ٥٢، والطبراني (الکبیر: ٩٧/١٨، ح: ١٧٤) من
حدیث عتاب به، وقال البوصیری: إسناده ضعیف، لأن مغيرة الأزدي، ومحمد بن زید مجہولان،
وحیان الأعرج وإن وثقه ابن معن، وعده ابن حبان في الثقات، فإن روايته عن العلاء مرسلة، قاله
المزی في التهذیب .

Chapter 23. A Wasq Is Sixty Sâ'

1832. It was narrated from Abu Sa'eed and attributed to the Prophet ﷺ: "A Wasq is sixty Sâ'." (Da'if)

(المعجم ٢٣) - بَابُ الْوَسْقَ سِتُّونَ
صَاعًا (التحفة ٢٣)

١٨٣٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدِ الْكَنْدِيِّ :
حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْعَظَمَفُسْقِيُّ ، عَنْ إِدْرِيسَ
الْأَوْدِيِّ ، عَنْ عَمْرُو بْنِ مُرَّةَ ، عَنْ أَبِي
الْبَخْرِيِّ ، عَنْ أَبِي سَعِيدٍ . رَفَعَهُ إِلَى النَّبِيِّ
ﷺ قَالَ: «الْوَسْقُ سِتُّونَ صَاعًا» .

تخریج: [إسناده ضعیف لانقطاعه] أخرجه أبو داود، الزکوة، باب ما تجب فيه الزکوة،
ح: ١٥٥٩، وقال: أبو البخری لم يسمع من أبي سعید وشك ابن خزيمة في صحته، وللحديث
زيادة عند أبي داود وغيره، وهي صحيحة انظر سنن النسائي، والبيهقي، ح: ٢٤٨٥.

Comments:

According to modern measurements, one Wasq of Hijâz (Makkah, Al-Madinah and Tâ'if) is approximately equal to 180 kilos (as Ibn Bâz said in his *Fatâwa*) and 629.856 kilograms (according to the research of Shaikh Fâruq Asghar Sâram Pakistani); and according to modern measurements, one Iraqi Wasq is equal to 189 kilograms (said by Shaikh Fâruq Sâram; and it is much bigger according to Ibn Bâz).

1833. It was narrated that Jâbir bin 'Abdullâh said: "The Messenger of Allâh ﷺ said: 'A Wasq is sixty Sâ'.'" (Da'if)

١٨٣٣ - حَدَّثَنَا عَلَيْهِ بْنُ الْمُنْتَرِ : حَدَّثَنَا
مُحَمَّدُ بْنُ فُضِيلٍ : حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ،
عَنْ عَطَاءَ بْنِ أَبِي رَبَاحٍ وَأَبِي الرُّبَّيرِ ، عَنْ
جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ :
«الْوَسْقُ سِتُّونَ صَاعًا» .

تخریج: [إسناده ضعیف جداً] انظر، ح: ٦٦٤ لعلته.

Chapter 24. Giving Charity To Relatives

1834. It was narrated that Zainab the wife of 'Abdullâh said: "I asked the Messenger of Allâh ﷺ: 'Will it be accepted as charity on my part if I spend on my husband and the orphans in my care?' The Messenger of Allâh ﷺ said: 'She will have two rewards, the reward for charity and the reward for upholding the ties of kinship.'" (*Sahîh*)

Another chain from Zainab the wife of 'Abdullâh, from the Prophet ﷺ, with similar wording.

(المعجم ٢٤) - باب الصدقة على ذي قرابة (التحفة ٢٤)

١٨٣٤ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ شَقِيقِ، عَنْ عَمْرِو بْنِ الْحَارِثِ بْنِ الْمُضْطَلِقِ، عَنْ أَبِنِ أَخِي رَبِيعَ، امْرَأَةِ عَبْدِ اللَّهِ، عَنْ رَبِيعَ امْرَأَةِ عَبْدِ اللَّهِ قَالَتْ: سَأَلْتُ رَسُولَ اللَّهِ ﷺ أَيْجُزِيَّةَ عَنِي مِنَ الصَّدَقَةِ التَّقْفَةِ عَلَى رَوْجِي وَأَيْتَامِ فِي حِجْرِي؟ قَالَ رَسُولُ اللَّهِ ﷺ: «لَهَا أَجْرَانِ: أَجْرُ الصَّدَقَةِ، وَأَجْرُ الْقِرَاءَةِ».

حدّثنا الحسنُ بنُ مُحَمَّدٍ بنِ الصَّبَّاحِ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ، عَنْ شَقِيقِ، عَنْ عَمْرِو بْنِ الْحَارِثِ، أَبْنِ أَخِي رَبِيعَ، عَنْ رَبِيعَ امْرَأَةِ عَبْدِ اللَّهِ، عَنِ التَّيِّبِ، تَحْوِهَ.

تخریج: أخرجه البخاري، الزکوة، باب الزکوة على الزوج والأيتام في الحجر، ح: ١٤٦٦؛ ومسلم، الزکوة، باب فضل الفقة والصدقة على الأقربين والزوج والأولاد والوالدين ولو كانوا مشركين، ح: ١٠٠ من حديث الأعمش به.

1835. It was narrated that Umm Salamah said: "The Messenger of Allâh ﷺ enjoined charity upon us. Zainab, the wife of 'Abdullâh, said: 'Will it be accepted as charity on my part if I give charity to my husband who is poor, and to the children of a brother of mine who are orphans, spending such and such on them, and in all circumstances?' He said: 'Yes.'" (*Sahîh*)

One of the narrators said: "She

١٨٣٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ: حَدَّثَنَا حَفْصُ بْنُ غَيَاثٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ رَبِيعَ بْنِتِ أُمِّ سَلَمَةَ، عَنْ رَبِيعَ بْنِتِ أَمْرَأَةِ عَبْدِ اللَّهِ بِالصَّدَقَةِ. فَقَالَتْ رَبِيعَ امْرَأَةُ عَبْدِ اللَّهِ: أَيْجُزِنِي مِنَ الصَّدَقَةِ أَنْ أَنْصَدِقَ عَلَى رَوْجِي وَهُوَ فَقِيرٌ، وَبَنِي أَخٍ لِي، أَيْتَامٍ. وَأَنَا أُنْقُضُ عَلَيْهِمْ هَكَذَا وَهَكَذَا، وَعَلَى كُلِّ حَالٍ؟ قَالَ، قَالَ: «نَعَمْ».

used to prepare handicraft articles.”^[1]

قالَ: وَكَانَتْ صَنَاعَةُ النِّسَاءِ .
تخریج: [صحيح] والحادیث السابق شاهد له.

Comments:

- A husband is responsible for the expenses of his wife and children, whereas a wife does not bear responsibility for the expenses of her husband and children. Therefore the spending of a husband for his wife and children cannot be considered as *Zakât*, but the spending of a wife on her husband and on her children will be *Sadaqah* (charity).
- Giving financial support to the close relatives, if they deserve financial help, has more reward than giving in charity to others.

Chapter 25. Begging Is Disliked

(المعجم (٢٥) - بَابُ كَرَاهِيَّةِ الْمَسَالَةِ
(التحفة (٢٥)

1836. It was narrated from Hishâm bin ‘Urwah, from his father, that his grandfather said: “The Messenger of Allâh ﷺ said: ‘If one of you were to take his rope (or ropes) and go to the mountains, and bring a bundle of firewood on his back to sell, and thus become independent of means, that would be better for him than begging from people who may either give him something or not give him anything.’” (*Sahih*)

١٨٣٦ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ وَعَمْرُو بْنُ عَبْدِ اللَّهِ الْأَوْدِيِّ . قَالَا: حَدَّثَنَا وَكِيعٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (لَأَنَّ يَأْخُذَ أَحَدُكُمْ حَبْلَهُ فَيَأْتِيَ الْجَبَلَ، فَيَبِحِّيَ بِحُزْمَةِ حَطَبٍ عَلَى ظَهْرِهِ فَيَبِعُهَا، فَيَسْتَغْفِي بِشَمَّهَا - خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ النَّاسَ. أَعْطُوهُ أَوْ نَمْعُوهُ) .

تخریج: أخرجه البخاري، البيوع، باب كسب الرجل وعمله بيده، ح: ٢٠٧٥ من حديث وكيع به مختصاراً، وله طريق آخر عن هشام به، ح: ١٤٧١، ٢٣٧٣ .

Comments:

- Begging is abhorrent in the sight of Islam.
- If a person is unable to find such a profession that is considered decent in the society, then one should not mind doing labor work.

1837. It was narrated from ‘Abdur-Rahmân bin Yazid, that Thawbân said: “The Messenger of

١٨٣٧ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنْ ابْنِ أَبِي ذِئْبٍ، عَنْ مُحَمَّدِ بْنِ

[1] Meaning, she worked, and that is why she had wealth to give.

Allâh ﷺ said: 'Who will commit himself to one thing, I will guarantee him Paradise?' I said: 'I will.' He said: 'Do not ask people for anything.' So Thawbân would drop his whip while he was on his mount, and he would not say to anyone: 'Get that for me' rather he would dismount and grab it." (*Sahih*)

فَيُسْأَلُ، عَنْ عِنْدِ الرَّحْمَنِ بْنَ يَرِيدَ، عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «وَمَنْ يَتَقَبَّلُ لِي بِوَاحِدَةٍ أَقْبَلَ لَهُ بِالْجَنَّةِ؟» قُلْتُ: أَنَا. قَالَ: «لَا تَسْأَلِ النَّاسَ شَيْئًا».

قَالَ: فَكَانَ ثَوْبَانُ يَقْعُدُ سَوْطَهُ، وَهُوَ رَازِيْبٌ، فَلَا يَقُولُ لِأَحَدٍ: نَأَوْلِيْهِ. حَتَّىٰ يَنْزَلَ فِي أَخْلَدٍ.

تخريج: [إسناده صحيح] أخرجه النسائي: ٥٩٦، الزكوة . - فضل من لا يسأل الناس شيئاً، ح: ٢٥٩١ من حديث ابن أبي ذئب به، وله شاهد عند أبي داود، ح: ١٦٤٣ وغيره، وإسناده صحيح، وصححه الحاكم، والذهبى، والمتذرى .

Comments:

- Contentment is a source to enter Paradise.
- What a person is able to do by oneself, it is better not to ask other's help for it.

Chapter 26. One Who Asks When He Is Not In Need

1838. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever begs from people so as to accumulate more riches, he is asking for a live coal from Hell, so let him ask for a lot or a little." (*Sahih*)

(المعجم (٢٦) - بَابُ مَنْ سَأَلَ عَنْ ظَهَرٍ غَنِيًّا (التحفة (٢٦

١٨٣٨ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدٌ بْنُ فَضْيَلٍ، عَنْ عُمَارَةَ بْنِ الْقَعْدَاءِ، عَنْ أَبِي زُرْعَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَأَلَ النَّاسَ أَمْوَالَهُمْ تَكْثُرًا، فَإِنَّمَا يَسْأَلُ جَمْرَ جَهَنَّمَ». فَلَيَسْتَقِلَّ مِنْهُ أَوْ لِيُنْكِثُ».

تخريج: [صحيح] أخرجه مسلم، الزكوة، باب كراهة المسألة للناس، ح: ١٠٤١ من حديث ابن فضيل به .

Comments:

- Begging without a dire and real need is such a big sin, that a person thus entitles himself to the burning coals of Hell.
- Avoiding unlawful earning is compulsory.

1839. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Charity is not permissible for a rich person, or

١٨٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَبْنَانَا أَبُو بَكْرٌ بْنُ عَيَّاشٍ، عَنْ أَبِي حَصِينٍ، عَنْ سَالِمٍ أَبْنِ أَبِي الْجَعْدِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ

for one who is strong and healthy." (*Sahih*)

رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ : «لَا تَحْلِ الصَّدَقَةُ لِغَنِيٍّ، وَلَا
لِذِي مَرْءَةٍ سَوِيًّا».

تخریج: [صحیح] أخرجه النسائی: ۹۹/۵، الزکوة، . إذا لم يكن له دراهم وكان له عدلها، ح: ۲۰۹۷ من حديث أبي بكر بن عیاش به، وللحديث شواهد كثیرة جداً، منها ما أخرجه أبو داود، ح: ۱۶۳۴ من حديث عبدالله بن عمرو به، وحسنه الترمذی، ح: ۶۵۲.

Comments:

- 'A rich person,' means he who has enough resources to make do with. One being unable to have a lavish lifestyle does not entitle him to take *Zakât* or to declare him/her poor.
- A healthy person means someone who does not have such a physical disease or disability that he/she is unable to earn a livelihood.

1840. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "Whoever begs when he has enough to suffice him, his begging will come on the Day of Resurrection like lacerations on his face." It was said: "O Messenger of Allâh, what is sufficient for him?" He said: "Fifty Dirham, or their value in gold." (*Da'if*)

Another chain of narrators for the *Hadîth* has been discussed by Sufyân (one of the narrators).

١٨٤٠ - حَدَّثَنَا الْحَسَنُ بْنُ عَلَيٍّ الْخَلَّالُ : حَدَّثَنَا يَحْيَى بْنُ أَدَمَ : حَدَّثَنَا سُفِينٌ، عَنْ حَكِيمِ بْنِ جُبِيرٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ ابْنِ زَيْدٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ : «مَنْ سَأَلَ، وَلَهُ مَا يُعْنِيهِ، جَاءَتْ مَسَأَلَتُهُ يَوْمَ الْقِيَامَةِ خُدُوشًا أَوْ حُمُوشًا أَوْ كُدُوشًا فِي وَجْهِهِ» قَبْلَ : يَا رَسُولَ اللَّهِ وَمَا يُعْنِيهِ؟ قَالَ : «خَمْسُونَ دِرْهَمًا، أَوْ قِيمَتُهَا مِنَ الدَّهْبِ» .

فَقَالَ رَجُلٌ لِسُفِينَيْنَ : إِنَّ شُعْبَةَ لَا يُحَدِّثُ عَنْ حَكِيمِ بْنِ جُبِيرٍ . فَقَالَ سُفِينَيْنَ : قَدْ حَدَّثَنَا زَيْدٌ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ .

تخریج: [إسناده ضعیف] أخرجه أبو داود، الزکوة، باب من يعطى من الصدقة وجد الغنى، ح: ۱۶۲۶ عن الحسن بن علي به، وحسنه الترمذی، ح: ۶۰۰، وقال النسائی: حکیم ضعیف * وللثوری تدلیس عجیب لأنه حدث به عن زید عن محمد بن عبد الرحمن بن زید مقطوعاً أو مرسلاً، والله أعلم.

Comments:

- If one possesses a reasonable amount of resources then one should avoid begging.
- A rich person is allowed to ask for financial help (*Zakât & charity*) in some circumstances, these conditions are coming in the following chapter.

Chapter 27. For Whom Is Charity Permissible?

1841. It was narrated from Abu Sa'eed Al-Khudri that the Messenger of Allâh ﷺ said: "Charity is not permissible for a rich man except in five cases: One who is appointed to collect it, a warrior fighting in the cause of Allâh, a rich man who buys it with his own money, a poor man who receives the charity and gives it as a gift to a rich man, and a debtor." (*Sahih*)

(المعجم ٢٧) - بَابُ مَنْ تَحِلُّ لَهُ
الصَّدَقَةُ (التحفة ٢٧)

١٨٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا
عَبْدُ الرَّزَاقِ: أَتَبَّانَا مَعْمَرٌ، عَنْ رَيْدِ بْنِ
أَشْلَمَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ أَبِي سَعِيدِ
الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: لَا تَحِلُّ
الصَّدَقَةُ لِغُنْيٍ إِلَّا لِحَمْسَةِ لِعَامِلٍ عَلَيْهَا، أَوْ
لِغَازٍ فِي سَبِيلِ اللَّهِ، أَوْ لِغُنْيٍ اشْتَرَاهَا بِمَالِهِ،
أَوْ فَقِيرٍ تُصَدِّقُ عَلَيْهِ فَأَهْداهَا لِغُنْيٍ، أَوْ
غَارِمٍ.

تخریج: [إسناده صحيح] أخرجه أبو داود، الزکوة، باب من يجوز لهأخذ الصدقة وهو غني، ح: ١٦٣٦ من حديث عبدالرزاق به، وصححه ابن خزيمة، ح: ٢٣٧٤، والحاكم: ١/٤٠٨، ٤٠٧ على شرط الشیخین، ووافقه النہبی، وأعلل بما لا يقدح.

Comments:

- When wealth of *Zakât* or charity is given away, and has been handed over to a valid recipient, its status of being charity changes.
- If a poor person offers something to someone rich as a gift, there is no need to find out if the poor got it by means of *Sadaqah*/charity or by another means. It is not a charity for the one who accepts it as a gift, so there is no harm in accepting it.

Chapter 28. The Virtue Of Charity

(المعجم ٢٨) - بَابُ فَضْلِ الصَّدَقَةِ
(التحفة ٢٨)

1842. It was narrated from Sa'eed bin Yasâr that he heard Abu Hurairah say: "The Messenger of Allâh ﷺ said: 'No one gives charity from good sources — for Allâh does not accept anything but that which is good — but the Most Merciful takes it in His Right Hand, even if it is a date, and it flourishes in the Hand of the Most Merciful until it

١٨٤٢ - حَدَّثَنَا عَيْسَىٰ بْنُ حَمَادَ الْمِصْرِيُّ:
أَتَبَّانَا الْيَثُثُ بْنُ سَعْدٍ، عَنْ سَعِيدِ بْنِ أَبِي
سَعِيدِ الْمَقْبَرِيِّ، عَنْ سَعِيدِ بْنِ يَسَارٍ أَنَّهُ سَمَعَ
أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: (مَا
تَصَدَّقَ أَحَدٌ بِصَدَقَةٍ مِنْ طَيِّبٍ، وَلَا يَقْبَلُ اللَّهُ
إِلَّا الطَّيِّبَ، إِلَّا أَخْدَهَا الرَّحْمَنُ بِيَمِينِهِ وَإِنْ
كَانَتْ تَمَرَّةً. فَتَرُبُّو فِي كَفْ الرَّحْمَنِ حَتَّىٰ

becomes bigger than a mountain, and He tends it as anyone of you would tend to his colt (i.e., young pony) or his young (weaned) camel.''" (*Sahih*)

تَكُونُ أَخْظَمَ مِنَ الْجَبَلِ . وَيُرِيبُهَا لَهُ كَمَا يُرِيبُ
أَحَدُكُمْ فُلُوًّا أَوْ فَصِيلَةً .

تخریج: آخرجه مسلم، الزکوة، باب قبول الصدقة من الكسب الطيب وتربيتها، ح: ١٠١٤
من حدیث الليث به، وأصله عند البخاري، ح: ١٤١٠، ٧٤٣٠ وغيره.

Comments:

- Sincerity near Allāh is more important than the quantity.
- A little amount of charity given out of sincerity is also a source of immense reward.

1843. It was narrated from 'Adi bin Hâtim that the Messenger of Allāh ﷺ said: "Each one of you will be spoken to by his Lord, with no mediator between them. He will look in front of him and the Fire will be facing him. He will look to his right and will not see anything but something that he had sent on before. He will look to his left and will not see anything but something that he had sent on before. Whoever among you can save himself from the Fire, even with half a date, let him do so." (*Sahih*)

Comments:

- Allāh Himself will judge every person on the Day of Reckoning. Speech is one of Allāh's Attributes, the reality and condition of Allāh's Speech is not known to us; however, it must not be given resemblance with the speech attributes of any creature. One should abstain from giving a metaphorical meaning to such Attributes of Allāh.
- Small good deeds should not be ignored on account of their being small. It is unknown if one will have an opportunity for a great good or not; and if a great good deed has been done, how much is the shortfall in it!!! Only Allāh knows whether it is worth being accepted or not!

1844. It was narrated from Salmân bin 'Âmir Dabbi that the Messenger of Allāh ﷺ said: "Charity given to the poor is

١٨٤٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا
وَكَبِيعٌ: حَدَّثَنَا الأَعْمَشُ، عَنْ حَيْثَمَةَ، عَنْ
عَدَى بْنِ حَاتِمَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
مَا مِنْكُمْ مَنْ أَحَدٍ إِلَّا سَيْكَلْمَةُ رَبِّهِ . لَيْسَ بِهِ
وَبِهِ تَرْجُمَانٌ . فَيَنْظُرُ أَمَامَةً فَتَسْتَقْبِلُ التَّارُ.
وَيَنْظُرُ عَنْ أَيْمَانِهِ فَلَا يَرَى إِلَّا شَيْئًا قَدْمَهُ .
وَيَنْظُرُ عَنْ أَشَامِهِ فَلَا يَرَى إِلَّا شَيْئًا قَدْمَهُ .
فَمَنْ اسْتَطَاعَ مِنْكُمْ أَنْ يَتَّقَى النَّارَ وَلَوْ بِشَقِّ
تَمَرَّةٍ، فَلَيَفْعُلْ .

تخریج: [صحیح] تقدم، ح: ١٨٥ .

١٨٤٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ، وَ
عَلَيُّ بْنُ مُحَمَّدٍ . قَالَا: حَدَّثَنَا وَكَبِيعٌ، عَنْ أَبْنِ
عَوْنَ، عَنْ حَفْصَةَ بْنِ سَعْدٍ، عَنِ الرَّبَابِ

charity, and that given to a relative is two things: charity and upholding the ties of kinship.” (*Sahih*)

أم الرائع، بنت صلبيخ. عن سليمان بن عامرٍ
الضيّق قال: قال رسول الله ﷺ: «الصدقة
على الميسكين صدقة، وعلى ذي القرابة
اثنان: صدقة وصلة».

تخریج: [صحیح] نقدم، ح ۱۶۹۹، وهذا طرف منه.

Comments:

- a. One's close relatives and friends should be given more importance when giving charity.
- b. A person giving *Sadaqah*/charity; if he has a religious obligation to spend on dependents, spending on them is not that of *Zakât* and *Sadaqah*/charity, rather he should give *Zakât* and charity to those needy relatives who are not his dependents.

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

9. The Chapters On Marriage

(المعجم ٩) أبواب النكاح (التحفة ٧)

Comments:

- Nikâh* linguistically means (to unite and to bring together). The real literal meaning of *Nikâh* is 'to have sexual intercourse'; and the metaphorical meaning of *Nikâh* is 'the bond of marriage'.
- The noble jurists defined *Nikâh* through various definitions, and one of these is: "*Nikâh* is such a bond from which the act of sexual intercourse becomes lawful, and the bond of marriage takes place with the words like: *Inkâh* or *Tazwîj* or other words derived from these roots."
- Nikâh* is the *Sunnah* of our Noble Prophet ﷺ, as well as of the previous Noble Prophets ﷺ. As the statement of Allâh, the Originator, the High is: "Indeed We sent Messengers before you (O Muhammad ﷺ) and made for them wives and offspring." (*Ar-Râ'd*: 13:38)
- Nikâh* is a compulsory duty for a person who is physically healthy and can afford the expenses of marriage and the living expenses of a wife; and also if he has the risk of indulging in adultery and other lustful desires which he is unable to get rid of even if he observes fasting.
- It is unlawful for such a person to marry who is physically unfit for marriage, or unable to afford the matrimonial expenses; or for he who wants to have a second marriage with the intention to oppress his first wife.
- If a person is naturally harsh and fears that he will be unjust with the wife after marriage; then marriage is disliked for such a person.
- The *Nikâh* is desirable for a person who is of moderate personality, he has no fear of indulging in adultery or other lustful desires, and he can afford matrimonial expenses.

Chapter 1. What Was Narrated Concerning The Virtue Of Marriage

1845. It was narrated that 'Alqamah bin Qais said: "I was with 'Abdullâh bin Mas'ud in Mina, and 'Uthmân took him aside. I was sitting near him. 'Uthmân said to him: 'Would you

(المعجم ١) - بَابُ مَا جَاءَ فِي فَضْلِ النكاح (التحفة ١)

١٨٤٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرٍ بْنُ زُرَارَةَ: حَدَّثَنَا عَلَيُّ بْنُ مُسْهِرٍ، عَنْ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ بْنِ قَيْسٍ قَالَ: كُنْتُ مَعَ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يَوْمَئِنِي. فَخَلَّا بِهِ عُثْمَانُ.

like that I marry you to a young virgin who will remind you of how you were in the past?" When 'Abdullâh saw that he did not want to say anything to him apart from that, he gestured to me, so I came and he said: 'As you say that, the Messenger of Allâh ﷺ said: "O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding one's chastity. Whoever cannot afford it, let him fast, for it will diminish his desire." (Sahih)

فَجَاءَنِي قَرِيباً مِنْهُ. فَقَالَ لَهُ عُتْمَانُ: هَلْ لَكَ أَنْ أُزَوِّجَكَ جَارِيَةً يُكْرَأُ تُذَكَّرُكَ مِنْ نَفْسِكَ بَعْضَ مَا قَدْ مَضَى؟ فَلَمَّا رَأَى عَبْدَ اللَّهِ أَلَّهَ لَيْسَ لَهُ حَاجَةٌ سَوَى هَذَا، أَشَارَ إِلَيَّ بِيَدِهِ فَجِئْتُ وَهُوَ يَقُولُ: لَيْسَ قُلْتُ ذَلِكَ، لَقَدْ قَالَ رَسُولُ اللَّهِ ﷺ: «إِيمَانٌ مَعْشَرَ الشَّبَابِ مِنْ إِسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَزُوْجْ». فَإِنَّهُ أَغْضَى لِلنَّصْرِ وَأَخْصَنَ لِلْفَرْجِ. وَمَنْ لَمْ يَسْطِعْ، فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وِجَاءٌ».

تخرج: أخرجه البخاري، الصوم، باب الصوم لمن خاف على نفسه العزبة، ح ١٩٥٠، ٥٦٥، ومسلم، النكاح، باب استحباب النكاح لمن تاقت نفسه إليه ووجد مؤنة ... الخ، ح ١٤٠٠ من حديث الأعمش به.

Comments:

- The greatest benefit of marriage is protection against a sinful life and the fulfillment of sexual desire through lawful means. This great benefit is the main objective of marriage and should be focused upon at the time of marriage; other benefits will then be achieved thereafter.
- A person can control evil thoughts and temptations with the observance of fasting, and thus the natural desire of sex does not get out of control. Therefore if the marriage of a young man or woman is delayed for any reason, he/she should observe fasts frequently; and they must also avoid the atmosphere that incites temptations, such as the study of certain literature and magazines, inciting songs, movies, films and other such seducing activities; so that the warmth of youth should not force one to commit sin.

1846. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "Marriage is part of my Sunnah, and whoever does not follow my Sunnah has nothing to do with me. Get married, for I will boast of your great numbers before the nations. Whoever has the means, let him get married, and whoever does not, then he

١٨٤٦ - حَدَّثَنَا أَخْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا أَدْمُ: حَدَّثَنَا عَيْسَى بْنُ مَيْمُونٍ، عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّكَاحُ مِنْ سُتُّيْ. فَمَنْ لَمْ يَعْمَلْ بِسُتُّيْ فَلَيْسَ بِيَتِيْ. وَقَرَوْجُوا، فَإِنَّمَا مُكَاثِرُ بِيَكُمُ الْأَمْمَ». وَمَنْ كَانَ ذَا طَوْلِ فَلْيَنْكِحْ وَمَنْ لَمْ

should fast, for it will diminish his desire.” (*Hasan*)

يَعِدُ فَعَلَيْهِ بِالصَّيَامِ . فَإِنَّ الصَّوْمَ لَهُ وِجَاءٌ .

تخریج: [حسن] وقال ابوصری: إسناده ضعیف لإتفاقهم على ضعف عیسی بن میمون المدینی، لكن له شاهد صحيح، يعني لفقرات الحديث شواهد من حديث أنس، ومعلق بن يسار، وابن مسعود وغيرهم.

Comments:

- The abundance of children from Muslims is a religious demand. Therefore, to strive for it, through getting married and keeping the matrimonial relationship established is also religiously recommended.
- Marriage is not a hindrance for spiritual betterment.

1847. It was narrated from Ibn ‘Abbâs that the Messenger of Allâh ﷺ said: ‘There is nothing like marriage for two who love one another.’ (*Hasan*)

١٨٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا سَعِيدُ بْنُ شَلَّيْمَانَ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ مَيْسَرَةَ، عَنْ طَاؤُسٍ، عَنْ أَبْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَمْ يُرِدْ الْمُتَحَابِينَ مِثْلُ النَّكَاحِ» .

تخریج: [إسناده حسن] أخرجه البهقی: ٧٨ من حديث محمد بن مسلم الطافی به، وصححه الحاکم: ١٦٠ على شرط مسلم، ووافقة الذہبی، وأورده الصیاغ في المختارة.

Chapter 2. Prohibition Of Celibacy

(المعجم (٢) - بَابُ النَّهَيِّ عَنِ التَّبَرِّ (التحفة (٢)

1848. It was narrated that Sa‘d said: “The Messenger of Allâh ﷺ disapproved of ‘Uthmân bin Maz’ûn’s desire to remain celibate; if he had given him permission, we would have gotten ourselves castrated.” (*Sahih*)

١٨٤٨ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُثْمَانَ الْعَمَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ سَعِيدٍ قَالَ: لَقَدْ رَدَ رَسُولُ اللَّهِ ﷺ عَلَى عُثْمَانَ بْنِ مَطْعُونِ التَّبَرِّ . وَلَوْ أَدِنَ لَهُ، لَا خَتَّاصِيَّةًا .

تخریج: أخرجه البخاری، النکاح، باب ما يكره من التبیر والخصاء، ح: ٥٧٣، ومسلم، النکاح، باب استحباب النکاح لمن ثافت نفسه إليه ووجد مؤنة ... إلخ، ح: ١٤٠٢ من حديث ابراهیم بن سعد به.

Comments:

- Uthman bin Maz'un ﷺ was a very dedicated worshiper and was fond of it. He thought that due to the busy commitments with a wife and children after getting married, the opportunities of voluntary worship, i.e., observing voluntary fasts will be little. So it is better not to marry, but the Messenger of Allâh ﷺ did not allow him to live a life without marriage.

b. Seeking nearness to Allâh does not mean that one should avoid even lawful things like the Hindu and Christian monks; rather closeness to Allâh is earned by practising the guidance of *Shari'ah* in eating, drinking and through living the daily life. Depriving someone from sexual ability and desire, or to try to deprive oneself from this ability, is prohibited in accordance with the *Shari'ah*.

1849. It was narrated from Samurah that the Messenger of Allâh ﷺ forbade celibacy.

Zaid bin Akhzam added: "And Qatâdah recited: 'And indeed We sent Messengers before you (O Muhammad ﷺ), and made for them wives and offspring.'"^[1] (*Sahih*)

١٨٤٩ - حَدَّثَنَا يُشْرُبُ بْنُ أَدَمْ وَ زَيْدُ بْنُ أَخْزَمْ . قَالَا: حَدَّثَنَا مُعاذُ بْنُ هِشَامٍ: حَدَّثَنَا أَبِي عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنِ التَّبَّلِ .

رَبَّا زَيْدُ بْنُ أَخْزَمْ: وَقَرَأَ قَتَادَةَ: وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَدُرْبَرِيَّةً . [الرعد: ٣٨]

تخریج: [صحيح] أخرجه الترمذی، النکاح، باب ماجاء في النهي عن التبلل، ح: ١٠٨٢ من حديث زید بن اخزم به، وقال: حسن غريب * قاتدة عنون، وأخرج الشنائي: ٢٢١٥، ح: ٥٩/٦، وغيره من حديث الحسن عن سعد بن هشام عن عائشة رضي الله عنها، ونحوه، وصححه الترمذی، ح: ١٠٨٢، والحديث السابق شاهد له.

Comments:

- It is certainly wrong to regard celibacy a good deed; whether it is performed in the name of Sufism, monasticism or in any other name.
- Nikâh* (marriage) is a *Sunnah* of all the Prophets ﷺ.
- The noble Prophets ﷺ were not the beings created from light, but they were human beings, and the best of the creatures, and they married, and they had offspring too.

Chapter 3. The Wife's Rights Over The Husband

(المعجم (٣) - باب حق المرأة على الزوج (الصفحة (٣)

1850. It was narrated from Hakim bin Mu'âwiyah, from his father, that a man asked the Prophet ﷺ: "What are the rights of the woman over her husband?" He said: "That he should feed her as he feeds himself and clothe her as he clothes himself; he should

١٨٥٠ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا زَيْدُ بْنُ هَارُونَ، عَنْ شُعْبَةَ، عَنْ أَبِي فَرَعَةَ، عَنْ حَكِيمٍ بْنِ مُعَاوِيَةَ، عَنْ أَبِيهِ أَنَّ رَجُلًا سَأَلَ النَّبِيَّ ﷺ: مَا حَقُّ الْمَرْأَةِ عَلَى الرَّوْجِ؟ قَالَ: «أَنْ يُطْعَمُهَا إِذَا طَعَمَ . وَأَنْ يُكْسُبَهَا إِذَا

not strike her on the face nor disfigure her, and he should not abandon her except in the house (as a form of discipline).” (*Hasan*)

اكتسى. ولا يضرِّب الْوَجْهَ. ولا يُقْبِحَ. ولا يَهْجُر إِلَّا فِي الْبَيْتِ.

تخریج: [إسناده حسن] أخرجه أبو داود، النكاح، باب: في حق المرأة على زوجها، ح: ٢٤٢ من حديث أبي قزعة به.

Comments:

- a. It is the obligation of the husband to provide the daily and essential needs of the wife such as: food, clothes and accommodation.
- b. A husband has the authority to give an appropriate admonishment to the wife for her mistakes.
- c. If an ordinary admonishment is not affective, a light physical punishment may also be given, but hitting on the face is forbidden.
- d. It is permissible to stop talking to her temporarily in order to express anger as an admonishment, but to get her out of the house or the husband leaving the house for several days is not right. The presence of them both being at home together gives hope to getting rid of anger sooner.

1851. It was narrated that Sulaimân bin ‘Amr bin Ahwas said: “My father told me that he was present on the Farewell pilgrimage with the Messenger of Allâh ﷺ. He praised and glorified Allâh, and reminded and exhorted (the people). Then he said: I enjoin good treatment of women, for they are prisoners with you, and you have no right to treat them otherwise, unless they commit clear indecency. If they do that, then forsake them in their beds and hit them, but without causing injury or leaving a mark. If they obey you, then do not seek means of annoyance against them. You have rights over your women and your women have rights over you. Your rights over your women are that they are not to allow anyone

الْحُسَيْنُ بْنُ عَلَيٍّ، عَنْ زَائِدَةَ، عَنْ شَيْبِ بْنِ عَرْفَةَ الْبَارِقِيِّ، عَنْ سُلَيْمَانَ بْنِ عَمْرُو بْنِ الْأَخْوَصِ: حَدَّثَنِي أَبِي أَنَّهُ شَهِدَ حَجَّةَ الْوَدَاعَ مَعَ رَسُولِ اللَّهِ ﷺ. فَحَمَدَ اللَّهَ وَأَنْتَى عَلَيْهِ، وَذَكَرَ وَوَعَطَ، ثُمَّ قَالَ: «اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا فَإِنَّهُنَّ عِنْدَكُمْ عَوَانٍ. لَئِنْ تَمْلِكُونَ مِنْهُنَّ شَيْئًا غَيْرَ ذَلِكَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاجِحَتِهِ مُبِيْتَةً. فَإِنْ فَعَلْنَ فَاهْجِرُوهُنَّ فِي الْمَضَاجِعِ وَأَسْرُرُوهُنَّ ضَرْبًا غَيْرَ مُبِرَّحٍ. فَإِنْ أَطْعَنْتُكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَيْلًا. إِنَّ لَكُمْ مِنْ نِسَائِكُمْ حَقًا وَلِنِسَائِكُمْ عَلَيْكُمْ حَقًا. فَإِنَّ حَقُّكُمْ عَلَى نِسَائِكُمْ، فَلَا يُوطَّنَ فُرْسَكُمْ مِنْ تَكْرُهِنَّ. وَلَا يَأْذَنَ فِي بُيُوتِكُمْ لِمَنْ تَكْرُهُنَّ. أَلَا، وَحَقُّهُنَّ عَلَيْكُمْ أَنْ تُخْسِنُوا إِلَيْهِنَّ فِي كُسُوفِهِنَّ

whom you dislike to tread on your bedding (furniture),^[1] nor allow anyone whom you dislike to enter your houses. And their rights over you are that you should treat them kindly with regard to their clothing and food.” (*Sahih*)

وطعائهمنَّ .

تخریج: [إسناده صحيح] أخرجه الترمذی، الرضاع، باب ماجاء في حق المرأة على زوجها، ح: ۱۱۶۳ من حديث الحسين بن علي به، وقال: حسن صحيح .

Comments:

- The husband should supervise the manners and character of the wife, but being suspicious and doubtful for no reason is not right if there is no clear sign to cause doubt.
- Clear indecency means such activities which may increase the chance of committing adultery if they are not challenged and prevented. In case of adultery, there are other regulations which are mentioned in the Qur'an and Hadith.
- Being respectful of guests is necessary, but if a person visits whom the husband, does not like, then the wife should care for the sentiments of her husband, and should make her apologies and not let the person in, or she should say that the men are not at home so come another time.

Chapter 4. The Husband's Rights Over His Wife

1852. It was narrated from 'Aishah that the Messenger of Allâh ﷺ said: "If I were to command anyone to prostrate to anyone else, I would have commanded women to prostrate to their husbands. If a man were to command his wife to move (something) from a red mountain to a black mountain, and from a black mountain to a red mountain, her duty is to obey him." (*Da'if*)

(المعجم ٤) - باب حُقُّ الزَّوْجِ عَلَى الْمَرْأَةِ (التحفة ٤)

١٨٥٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَفَانُ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ عَلَيِّ بْنِ رَيْدٍ بْنِ جُدْعَانَ، عَنْ سَعِيدِ بْنِ الْمُسَبِّبِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَوْ أَمْرَتُ أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ، لَأَمْرَتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا. وَلَوْ أَنَّ رَجُلًا أَمَرَ امْرَأَةً أَنْ تَنْقُلَ مِنْ جَبَلٍ أَخْمَرٍ إِلَى جَبَلٍ أَسْوَدَ، وَمِنْ جَبَلٍ أَسْوَدَ إِلَى جَبَلٍ أَخْمَرَ، لَكَانَ تَؤْنُهَا أَنْ تَفْعَلُ». .

[1] Meaning, that they are not to let anyone you dislike in your home, as mentioned in the following statement. See *Tuhfaful-Ahwadhi* (no. 1162) and explanation by Sindi.

تخریج: [إسناده ضعیف] أخرجه أحمد: ٧٦ عن عفان وغيره به، وانظر، ح: ١١٦ لعلته.

1853. It was narrated that 'Abdullâh bin Abu Awfa said: "When Mu'âdh bin Jabal came from Shâm, he prostrated to the Prophet ﷺ, who said: 'What is this, O Mu'âdh?' He said: 'I went to Shâm and saw them prostrating to their bishops and patricians (i.e. aristocrats), and I wanted to do that for you.' The Messenger of Allâh ﷺ said: 'Do not do that. If I were to command anyone to prostrate to anyone other than Allâh, I would have commanded women to prostrate to their husbands. By the One in Whose Hand is the soul of Muhammad! No woman can fulfill her duty towards Allâh until she fulfills her duty towards her husband. If he asks her (for intimacy) even if she is on her camel saddle, she should not refuse.'" (*Hasan*)

تخریج: [إسناده حسن] أخرجه البهقى: ٢٩٢ من حديث حماد بن زيد به، وتابعه إسماعيل ابن علية (أحمد: ٣٨١ / ٤)، وصححه ابن حبان (موارد)، ح: ١٢٩٠، وله شواهد كثيرة.

Comments:

- Making prostration in worship to any of the creatures is disbelief; the prostration of respect was allowed in the previous religions, but in our *Shari'ah* this is forbidden too.
- Some people say we do not prostrate to the saints but kiss their feet, or fall down on their feet to please them; this is also prostration. Unlawful acts do not become lawful by changing their name.
- A great objective of marriage is the protection of honor and chastity; therefore, the wife must not ignore the obligation of fulfilling the sexual desires of the husband. Also the husband should equally fulfill the desire of the wife as he feels that she desires it. The mention of the woman in the *Hadith* is mostly made, because the refusal of matrimonial relations is usually from woman and vice versa is very rare.

١٨٥٣ - حَدَّثَنَا أَرْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا حَمَّادُ بْنُ رَبِيعَ، عَنْ أَيُوبَ، عَنْ الْقَاسِمِ الشَّيْبَاتِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أُوفَى قَالَ: لَمَّا قَدِيمَ مَعَادٌ مِنَ الشَّامِ سَجَدَ لِلنَّبِيِّ ﷺ قَالَ: «مَا هَذَا يَا مَعَادُ؟» قَالَ: أَتَيْتُ الشَّامَ فَوَاقْتَهُمْ يَسْجُدُونَ لِأَسَاقِفَتِهِمْ وَبَطَارِقِهِمْ. فَوَرَدَتْ فِي نَفْسِي أَنْ تَفْعَلْ ذَلِكَ بِكَ. قَفَانَ رَسُولُ اللَّهِ ﷺ: «فَلَا تَفْعَلُوا. فَإِنِّي لَوْ كُنْتُ أَمْرَأً أَخْدَا أَنْ يَسْجُدَ لِغَيْرِ اللَّهِ، لِأَمْرَتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا. وَالَّذِي تَفْسِنُ مُحَمَّدٌ بِيَدِهِ لَا تُؤْدِي الْمَرْأَةُ حَقًّا رَبِّهَا حَتَّى تُؤْدِي حَقًّا زَوْجَهَا وَلَوْ سَأَلَهَا نَفْسَهَا، وَهِيَ عَلَى قَبِيبٍ، لَمْ تَمْنَعْهُ».

d. The wife should take care of the honor of the husband.

1854. It was narrated from Musâwir Al-Himyari from his mother that she heard Umm Salamah say: "I heard the Messenger of Allâh ﷺ say: 'Any woman who dies when her husband is pleased with her, will enter Paradise.'" (*Hasan*)

١٨٥٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنْ أَبِي نَصْرٍ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ مُسَاوِرِ الْجَمِيرِيِّ، عَنْ أُمِّهِ: قَالَتْ: سَمِعْتُ أُمَّ سَلَمَةَ تَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «أَيْمَّا امْرَأَةً مَاتَتْ، وَزَوْجُهَا عَنْهَا رَاضٍ، دَخَلَتِ الْجَنَّةَ».

تخریج: [حسن] أخرجه الترمذی، الرضاع، باب ماجاء في حق الزوج على المرأة، ح: ١١٦١ من حديث محمد بن فضیل به، وقال: حسن غريب، وصححة الحاکم، والذهبی، وقال الذهبی في المیزان، ترجمة مساور: فيه جهالة، والخبر منکر، وجھله صاحب التقریب * أم مساور: وقہا الترمذی، والحاکم وغیرهما والله أعلم، والحدیث ضعفه ابن الجوزی وغيره، ولا أعلم وجه النکارة فيه.

Chapter 5. The Best Of Women

(المعجم ٥) - بَابُ أَفْضَلِ النِّسَاءِ (التحفة ٥)

1855. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "This world is but provisions, and there is no provision in this world better than a righteous wife." (*Sahih*)

١٨٥٥ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا عِيسَى بْنُ يُوْسَعَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ أَبْنُ أَنَّمٌ، عَنْ عَبْدِ اللَّهِ بْنِ بَرِيزَةَ، عَنْ عَبْدِ اللَّهِ أَبْنِ عَمِّرُو أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنَّمَا الدُّنْيَا مَتَاعٌ. وَلَيْسَ مِنْ مَتَاعِ الدُّنْيَا شَيْءٌ أَفْضَلُ مِنَ الْمَرْأَةِ الصَّالِحَةِ».

تخریج: [صحیح] * عبد الرحمن بن زیاد ضعیف كما تقدم، ح: ٥٤، وأخرج مسلم، ح: ١٤٦٩ وغيرها من طرق شریحیل بن شریک عن أبي عبد الرحمن عبد الله بن بزید الحبلي به بلفظ: الدنيا متاع وخير متاع الدنيا المرأة الصالحة .

Comments:

- a. The righteous wife is a great favor, because she proves to be a good advisor in worldly matters; she is a good life partner and she assists her husband in matters of the Hereafter; thus both achieve high ranks.
- b. The righteous husband is a great favor for the wife too.

1856. It was narrated that Thawbân said: "When the Verse

١٨٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنَ سُمَرَةَ: حَدَّثَنَا وَكِيمٌ عَنْ عَبْدِ اللَّهِ بْنِ عَمِّرُو بْنِ

concerning silver and gold was revealed, they said: 'What kind of wealth should we acquire?' 'Umar said: 'I will tell you about that.' So he rode on his camel and caught up with the Prophet ﷺ, and I followed him. He said: 'O Messenger of Allâh, what kind of wealth should we acquire?' He said: 'Let one of you acquire a thankful heart, a tongue that remembers Allâh and a believing wife who will help him with regard to the Hereafter.'" (*Hasan*)

مُؤْمِنَةً، عَنْ أَبِيهِ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ،
عَنْ ثَوْبَانَ قَالَ: لَمَّا نَزَلَ فِي الْفَضَّةِ وَالْأَنَهَى
مَا نَزَلَ، قَالُوا: فَإِيْ الْمَالِ تَتَسْخِدُ؟ قَالَ عُمَرُ:
فَإِنَّا أَعْلَمُ لَكُمْ ذَلِكَ. فَأَوْضَعَ عَلَى بَعِيرِهِ.
فَأَذْرَكَ النَّبِيُّ ﷺ، وَإِنَّا فِي أَثْرِهِ قَالَ: يَا
رَسُولَ اللَّهِ أَيِّ الْمَالِ تَتَسْخِدُ؟ قَالَ: «الْيَتَعَظَّدُ
أَحَدُكُمْ قَلْبًا شَاكِرًا، وَلِسَانًا ذَاكِرًا، وَرَوْجَةً
مُؤْمِنَةً، تُعِينُ أَحَدَكُمْ عَلَى أَمْرِ الْآخِرَةِ».

تخریج: [حسن] أخرجه الترمذی، تفسیر القرآن، باب: ومن سورة التوبیة، ح: ۳۰۹۴ من طریق منصور عن سالم به، وقال: حسن ، وقال ما ملخصه: سالت البخاری: سالم سمع من ثوابان؟ فقال: لا ، وكذلك قال أحمد وغيره، وله شواهد، منها ما أخرجه أحمد: ۳۶۶/۵، وأطراف المسند: ۲۹۰/۸، ومن طریقه المزی فی تهذیب الکمال: ۲۳۱/۱۱ وهو فی السنن الکبری للنسائی، وفيه سلم بن عطیة وفته ابن حبان، روى عنه شعبة وهو لا يروي إلا عن ثقة عنده، ولیه أبوحاتم الرازی .

Comments:

- The severe rule revealed in regard to gold and silver is this: "And those who hoard up gold and silver and spend them not in the way of Allâh, announce unto them a painful torment." *At-Taubah* 9:34.
- The woman who has faith in her heart, she herself would reflect upon the Hereafter, and she will also assist her husband to adopt the way of righteousness. Therefore, such a virtuous woman is a great favor of Allâh. Any Muslim man should value a woman like this.

1857. It was narrated from Abu Umâmah that the Prophet ﷺ used to say: "Nothing is of more benefit to the believer after *Taqwa* of Allâh than a righteous wife whom, if he commands her she obeys him, if he looks at her he is pleased, if he swears an oath concerning her she fulfills it, and when he is away from her she is sincere towards him with regard

١٨٥٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
صَدَقَةُ بْنُ خَالِدٍ: حَدَّثَنَا عُثْمَانُ بْنُ أَبِي
الْعَاتِكَةِ، عَنْ عَلَيِّ بْنِ يَرِيدَةِ، عَنْ الْقَاسِمِ،
عَنْ أَبِي أَمَانَةَ، عَنِ النَّبِيِّ ﷺ أَنَّهُ كَانَ يَقُولُ:
«مَا اسْتَفَادَ الْمُؤْمِنُ، بَعْدَ تَقْوَى اللَّهِ، خَيْرًا لَهُ
مِنْ زَوْجَةٍ صَالِحةٍ. إِنْ أَمْرَهَا أَطْاعَتْهُ. وَإِنْ
نَظَرَ إِلَيْهَا سُرْرَةً. وَإِنْ أَقْسَمَ عَلَيْهَا أَبْرَئَهُ».

to herself and his wealth.” (*Da’if*)

غَابَ عَنْهَا نَصْحَةٌ فِي نَفْسِهَا وَمَالِهِ.

تَخْرِيجُ: [إِسْنَادٌ ضَعِيفٌ جَدًّا] وَانْظُرْ، ح: ٢٢٨ لِعْلَتِهِ.

Chapter 6. Marrying A Religious Woman

1858. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: “A woman may be married for four things: Her wealth, her lineage, her beauty or for her religion. Choose the religious, may your hands be rubbed with dust (i.e., may you prosper).” (*Sahih*)

تَخْرِيجُ: أَخْرَجَهُ الْبَخَارِيُّ، النَّكَاحُ، بَابُ الْأَكْفَاءِ فِي الدِّينِ . . . إِلَخُ، ح: ٥٠٩٠، وَمُسْلِمُ، الرَّضَاعُ، بَابُ اسْتِحْبَابِ نِكَاحِ ذَاتِ الدِّينِ، ح: ١٤٦٦ مِنْ حَدِيثِ يَحْيَى بْنِ سَعِيدٍ بْنِ حَكِيمٍ.

Comments:

- The desire of having a good wife or good husband is a good and correct desire, so the procedure of choosing the spouses should be correct.
- The real reliable standard and procedure is righteousness and fear of Allâh. The righteous wife remains the symbol of honor even in poverty, and in the time of prosperity she does not become arrogant and disrespectful to the husband; the woman from a family of high status is sometimes known to have the bad habit of pride and arrogance.
- The Hereafter gets better too, because of a righteous wife, and the husband will be better off from all aspects.

1859. It was narrated from ‘Abdullâh bin ‘Amr that the Messenger of Allâh ﷺ said: ‘Do not marry women for their beauty, for it may lead to their doom.^[1] Do not marry them for their wealth, for it may lead them to fall into sin. Rather, marry them for their religion. A black slave woman with piercings who

(المعجم ٦) - بَابُ تَزْوِيجِ ذَاتِ الدِّينِ (التحفة ٦)

١٨٥٨ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِيهِ، عَنْ أَبِيهِ هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «تُنْكِحُ النِّسَاءَ لِأَرَقِعٍ: لِمَالِهَا، وَلِحَسَنَةِهَا، وَلِجَمَالِهَا، وَلِدِينِهَا». فَاظْفَرْ بِذَاتِ الدِّينِ، تَرِبَّتْ يَدَكَ.

تَخْرِيجُ: أَخْرَجَهُ الْبَخَارِيُّ، النَّكَاحُ، بَابُ الْأَكْفَاءِ فِي الدِّينِ، ح: ١٤٦٦ مِنْ حَدِيثِ يَحْيَى بْنِ سَعِيدٍ بْنِ حَكِيمٍ.

١٨٥٩ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ الْمَخَارِبِيُّ وَجَعْفَرُ بْنُ عَوْنَ، عَنِ الْأَفْرِيقِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ يَرِيدَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا تَرْزُقُوا النِّسَاءَ لِحُسْنِهِنَّ. فَعُسْنِي حُسْنِهِنَّ أَنْ يُرْدِيَهُنَّ. وَلَا تَرْزُقُوهُنَّ لِأَمْوَالِهِنَّ. فَعُسْنِي أَمْوَالُهُنَّ أَنْ تُطْعِنُهُنَّ. وَلَكِنْ تَرْزُقُوهُنَّ عَلَى

[1] Because of self-admiration and vanity.

is religious is better." (*Da'if*)

الَّذِينَ، وَلِأَمْمَةٍ حَرَمَهُ سُوْدَاءُ ذَاتُ دِينٍ أَفْضَلٌ.

تخریج: [إسناده ضعیف] أخرجه البیهقی: ۷/۸۰ من حديث عبدالرحمن الإفریقی به، وضعفه البوصیری، وانظر، ح: ۵۴ لعلته.

Chapter 7. Marrying Virgins

(المعجم ۷) - بَابُ تَزْوِيجِ الْأَبْكَارِ

(التحفة ۷)

1860. It was narrated that Jâbir bin 'Abdullâh said: "I married a woman during the time of the Messenger of Allâh ﷺ, then I met the Messenger of Allâh ﷺ and he said: 'Have you got married, O Jâbir?' I said: 'Yes.' He said: 'To a virgin or to a previously-married woman?' I said: 'A previously-married woman.' He said: 'Why not a virgin so you could play with her?' I said: 'I have sisters and I did not want her to create trouble between them and me.' He said: 'That is better then.'" (*Sahih*)

تخریج: أخرجه مسلم، الرضاع، باب استحباب نکاح ذات الدين، ح: ۷۱۵ من حديث عبد الملك بن أبي سليمان به.

Comments:

- The gathering of all the friends and relatives at the time of marriage ceremony is not necessary.
- It is not a bad thing to marry a widow or a divorcee. The word '*Thayyib*' in the *Hadith* is used for both the widow and a divorced woman.
- The marriage of a young man with a young woman is better, because in such there is hope for more mutual understanding.

1861. It was narrated from 'Abdur-Rahmân bin Sâlim bin 'Utbah bin 'Uwaim bin Sâ'idah Al-Ansâri, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'You should

۱۸۶۰ - حَدَّثَنَا هَنَدُ بْنُ السَّرِّيٍّ: حَدَّثَنَا عَبْدُهُ ابْنُ سَلَيْمَانَ، عَنْ عَبْدِ الْمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: تَزَوَّجْتُ امْرَأَةً عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَلَقِيَتِ رَسُولَ اللَّهِ ﷺ فَقَالَ: أَتَزَوَّجْتَ يَا جَابِرُ؟ قَالَ: نَعَمْ. قَالَ: أَبِكُراً أَوْ ثَيَّبَاً؟ قَالَ: ثَيَّبَاً. قَالَ: فَقَلَّا بِكُراً ثَلَّاكِبِهَا؟ قَالَ: كُلُّ لَبِي أَخْوَاتٍ. فَخَشِيَتْ أَنْ تَدْخُلَ يَتِيمَةً وَيَتِيمَةً. قَالَ: فَدَاكَ إِذْنَ.

۱۸۶۱ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْتَهِيِّ الْحَرَازِمِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ طَلْحَةَ التَّمِيميُّ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ سَالِمٍ بْنِ عَتَّبَةَ بْنِ عُوَيْمٍ بْنِ سَاعِدَةَ الْأَنْصَارِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ:

marry virgins, for their mouths are sweeter, their wombs are more prolific and they are satisfied with less.” (*Da’if*)

قالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «عَلَيْكُمْ بِالْأَبْكَارِ فَإِنَّهُنَّ أَغْذَبُ أَفْوَاهَا، وَأَنْتُ أَرْخَامًا، وَأَرْضَى بِالْيَسِيرِ».

تخریج: [إسناده ضعیف] أخرجه الطبراني (الکبیر: ۱۴۱/۱۷)، ح ۳۵۱ من طریق الحمیدی عن محمد بن طلحة به، إلا أنه قال: عبدالرحمن بن سالم بن عبدالرحمن بن عویم بن ساعدة، وهو الصواب، وقال البغوي: عبدالرحمن بن عویم لیست له صحبة ، فالحادیث مرسل مع جهالة عبدالرحمن، وله شواهد ضعیفة، راجع التلخیص: ۱۴۵/۳ وغیره.

Comments:

- Widows and divorced women should also be married; but if the hand of a widow and that of a woman who has never been married is available, the one who has never been married should be given preference; particularly, when the man is young.
- ‘Sweet mouth’ means those who have not previously been married are more bashful; they try more to keep their husbands happy, and they avoid harshness in conversation.
- Contentment is a good quality, and the woman who has this quality will prove to be a good wife.

Chapter 8. Marrying Free Women Who Are Fertile

1862. It was narrated that Anas bin Mâlik said: “I heard the Messenger of Allâh ﷺ say: ‘Whoever wants to meet Allâh pure and purified, let him marry free women.’” (*Da’if*)

(المعجم ۸) - بَابُ تَزْوِيجِ الْحَرَائِيرِ
وَالْوُلُودِ (التحفة ۸)

١٨٦٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَلَامُ بْنُ سَوَارٍ: حَدَّثَنَا كَثِيرُ بْنُ سَلِيمٍ، عَنِ الْفَضَّالِ كَبِيرٍ بْنِ مُزَاجِمٍ قَالَ: سَمِعْتُ أَسَنَ بْنَ مَالِكٍ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَرَادَ أَنْ يَلْقَى اللَّهَ طَاهِرًا مُطَهَّرًا، فَلْيَتَرْوَحْ الْحَرَائِيرَ».

تخریج: [إسناده ضعیف جداً] أخرجه ابن عدی في الكامل من حادیث سلام به، ومن طریقه أورده ابن الجوزی في الموضوعات: ۲۶۱/۲، وقال: لا يصح * وسلام هذا ضعیف (تقریب)، وكذا شیخه (ایضاً) بل قال ابن حبان: یروی عن أنس ما لیس من حدیثه ویضع عليه ، والحادیث ضعفه البوسیری، والمنذري وغيرهما، وله شاهد عند البخاری في التاریخ الكبیر: ۴۰۴/۸ بدون سند، والله أعلم بحاله.

Comments:

- Nikâh* is from among the important Commandments of Islam; therefore it is not right to remain single without any valid reason.
- The abundance of children is a demand of the *Shari’ah* because this pleases the Messenger of Allâh ﷺ.

1863. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Marry, for I will boast of your great numbers." (*Sahih*)

١٨٦٣ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنَ كَاسِبٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْحَارِثِ الْمَخْرُومِيُّ، عَنْ طَلْحَةَ، عَنْ عَطَاءَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّكُمْ فَيَانِي مَكَاثِيرٌ بِكُمْ».

تخریج: [صحیح] انظر، ح: ٨٥٧ لعلته، وأخرج أبو داود، النکاح، باب النهي عن تزوج من لم يلد من النساء، ح: ٢٠٥٠ بإسناد حسن مرفوعاً: تزوجوا الودود الولود فیانی مکاثیرکم الأمم وصححه ابن حبان، والحاکم، والذهبی، وله شواهد كثيرة.

Chapter 9. Looking At A Woman When Wanting To Marry Her

1864. It was narrated that Muhammad bin Salamah said: "I proposed marriage to a woman, then I hid and waited to see her until I saw her among some date palm trees that belonged to her." It was said to him: "Do you do such a thing when you are a Companion of the Messenger of Allâh ﷺ?" He said: "I heard the Messenger of Allâh ﷺ saying: 'When Allâh causes a man to propose to a woman, there is nothing wrong with him looking at her.'" (*Da'if*)

(المعجم ٩) - بَابُ النَّظَرِ إِلَى الْمَرْأَةِ إِذَا أَرَادَ أَنْ يَنْزَوِّجَهَا (التحفة ٩)

١٨٦٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُونَ بْنُ عَيَّاشَ، عَنْ حَاجَاجَ، عَنْ مُحَمَّدِ ابْنِ سُلَيْمَانَ، عَنْ عَمِّهِ سَهْلِ بْنِ أَبِي حَنْثَةَ، عَنْ مُحَمَّدِ بْنِ مَسْلَمَةَ قَالَ: حَطَّبْتُ امْرَأَةً. فَجَعَلْتُ أَتَحَبُّ لَهَا، حَتَّى نَظَرْتُ إِلَيْهَا فِي نَخْلٍ لَهَا. فَقَبَلَ لَهُ: أَتَقْعُلُ هَذَا وَأَنْتَ صَاحِبُ رَسُولِ اللَّهِ ﷺ؟ فَقَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا أَلْقَى اللَّهُ فِي قَلْبِ امْرِيَّةٍ حَطَّبَةً امْرَأَةً، فَلَا بَأْسَ أَنْ يَنْظُرَ إِلَيْهَا».

تخریج: [إسناده ضعیف] أخرجه أحمدر: ٤/٢٢٥ من حديث الحجاج بن أرطاة، ح: ٤٩٦، ١١٢٩ عن محمد بن سليمان به، وصححه ابن حبان (موارد)، ح: ١٢٣٥، وسقط ذكر الحجاج من سنده، إما خطأ وإما التدليس من أبي معاوية محمد بن خازم لأنه مذكور في المدلسين (المربطة الثانية)، وانظر الحديث الآتي فإنه يعني عنه.

Comments:

- It is permissible to look at a woman whom one wants to marry.
- The woman is also allowed to see the man.

1865. It was narrated from Anas bin Mâlik that Mughirah bin Shu'bah wanted to marry a woman. The Prophet ﷺ said to him: "Go and look at her, for that is more likely to create love between you." So he did that, and he married her, and mentioned how well he got along with her. (*Sahih*)

١٨٦٥ - حَدَّثَنَا الْحَسْنُ بْنُ عَلَيِّ الْخَلَالُ، وَرُهْبَرُ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ. قَالُوا: حَدَّثَنَا عَبْدُ الرَّزَاقِ، عَنْ مَعْمَرِ، عَنْ ثَابِتٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ الْمُغَيْرَةَ بْنَ شُعْبَةَ أَرَادَ أَنْ يَتَرَوَّجَ امْرَأَةً. فَقَالَ لَهُ النَّبِيُّ ﷺ: «إِذْهَبْ فَانْظُرْ إِلَيْهَا». فَإِنَّهُ أُخْرَى أَنْ يُؤْتَمْ بِتَكْمِيلِهِ» فَفَعَلَ. فَتَرَوَّجَهَا. فَذَكَرَ مِنْ مُوَافِقَيْهَا .

تخریج: [إسناده صحيح] أخرجه البهقی: ٨٤ / ٧ من حديث عبد الرزاق به، وصححه ابن حبان (موارد)، ح: ١٢٣٦ ، والحاکم: ١٥٦ / ٢ ، والذهبی ، والبوصیری .

Comments:

Only one look is allowed; meeting each other in seclusion and to have long conversations, or to go together for a leisurely walk or on holidays, etc., are all contrary to the Islamic etiquettes of life. This *Hadith* does not allow the permission of such things.

1866. It was narrated that Mughirah bin Shu'bah said: "I came to the Prophet ﷺ and told him of a woman to whom I had to propose marriage. He said: 'Go and look at her, for that is more likely to create love between you.' So I went to a woman among the *Ansâr* and proposed marriage through her parents. I told them what the Prophet ﷺ had said, and it was as if they did not like that. Then I heard that woman, behind her curtain, say: 'If the Messenger of Allâh ﷺ has told you to do that, then do it, otherwise I adjure you by Allâh (not to do so)'. And it was as if she regarded that as a serious matter. So I looked at her and married her." And he mentioned

١٨٦٦ - حَدَّثَنَا الْحَسْنُ بْنُ أَبِي الرَّبِيعِ: أَبَيَا نَا عَبْدُ الرَّزَاقِ، عَنْ مَعْمَرِ، عَنْ ثَابِتِ الْبَنَانِيِّ، عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزْنِيِّ، عَنْ الْمُغَيْرَةَ بْنَ شُعْبَةَ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ، فَذَكَرْتُ لَهُ امْرَأَةً أَخْطَبْهَا فَقَالَ: «إِذْهَبْ فَانْظُرْ إِلَيْهَا». فَإِنَّهُ أَخْدَرَ أَنْ يُؤْتَمْ بِتَكْمِيلِهِ» فَأَتَيْتُ امْرَأَةً مِنَ الْأَنْصَارِ. فَحَاطَبْهَا إِلَى أَبْوَاهَا. وَأَخْبَرْتُهُمَا بِيَقْوِيلِ النَّبِيِّ ﷺ. فَكَأَهْمَمَا كَرِهَا ذَلِكَ. قَالَ: فَسَوَعَتْ ذَلِكَ الْمَرْأَةُ، وَهِيَ فِي خَدْرِهَا، فَقَالَتْ: إِنْ كَانَ رَسُولُ اللَّهِ ﷺ أَمْرَكَ أَنْ تَنْظُرْ، فَانْظُرْ. وَإِلَّا فَانْشُدْكَ. كَأَهْمَمَا أَغْطَمَتْ ذَلِكَ. قَالَ: فَنَظَرْتُ إِلَيْهَا فَتَرَوَّجْتُهَا. فَذَكَرَ مِنْ مُوَافِقَيْهَا .

how well he got along with her.

(*Sahih*)

تخریج: [إسناده صحيح] أخرجه الترمذی، النکاح، باب ماجاء في النظر إلى المخطوبۃ، ح: ۱۰۸۷ من حديث بکر بہ، وقال: حسن ، وصححه البوصیری .

Comments:

- a. The boy should look only at that girl whom he is really interested in marrying. Using this excuse unfairly in order to keep looking at the daughters of people in vain is a very bad habit. Allâh ﷺ is aware of the thoughts of the heart; no one's treachery is hidden from Him.
- b. The noble Companions; men and women had great respect of the Prophetic *Hadith* in their hearts. As the girl was informed about the statement of the Prophet ﷺ, she immediately agreed while she, before being informed, naturally disliked it.

Chapter 10. A Man Should Not Propose Marriage To A Woman To Whom His Brother Has Already Proposed

1867. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "A man should not propose marriage to a woman to whom his brother has already proposed." (*Sahih*)

تخریج: أخرجه البخاری، البيوع، باب لا يبيع على بيع أخيه ... الخ، ح: ۲۱۴۰ وغیره، ومسلم، النکاح، باب تحریم الخطبة على خطبة أخيه حتى يأذن أو يترك، ح: ۱۴۱۳ من حديث سفیان به مطولاً.

1868. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "A man should not propose marriage to a woman to whom his brother has already proposed." (*Sahih*)

تخریج: أخرجه مسلم، النکاح، الباب السابق، ح: ۱۴۱۲ من حديث يحيی بہ، البيوع، باب تحریم بيع الرجل على بيع أخيه ... الخ، ح: ۸/۱۴۱۲.

Comments:

If it is realised that the woman did not yet decide to accept the man, and she is not clearly inclined to him, then the second person may send the

(المعجم ۱۰) - باب: لَا يَخْطُبُ
الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ (التحفة ۱۰)

۱۸۶۷ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ سَهْلُ بْنُ
أَبِي سَهْلٍ. قَالَا: حَدَّثَنَا سُقْيَانُ بْنُ عَيْنَةَ،
عَنِ الرُّهْرَيْ، عَنْ سَعِيدِ بْنِ الْمُسْبِّبِ، عَنْ
أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا
يَخْطُبُ الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ».

۱۸۶۸ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمَ: حَدَّثَنَا
يَحْيَى بْنُ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ
نَافِعٍ، عَنْ أَبْنَى عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «لَا يَخْطُبُ الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ».

proposal of marriage; so that the woman would be able to decide which of the two men is more suitable for her, and her guardians will also have a better chance to think about the matter.

1869. It was narrated that Abu Bakr bin Abu Jahl bin Sukhair Al-Adawi said: "I heard Fātimah bint Qais say: 'The Messenger of Allāh ﷺ said to me: "When you become lawful,^[1] tell me." So I told him.' Then Mu'āwiyah, Abu Jahl bin Sukhair and Usāmah bin Zaid proposed marriage to her. The Messenger of Allāh ﷺ said: 'As for Mu'āwiyah, he is a poor man who has no money. As for Abu Jahl, he is a man who habitually beats woman. But Usāmah (is good).' She gestured with her hand, saying: 'Usāmah, Usāmah!?' The Messenger of Allāh ﷺ said to her: 'Obedience to Allāh and obedience to His Messenger is better for you.' She said: 'So I married him and I was pleased with him.'" (*Sahih*)

١٨٦٩ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْهَةَ، وَ عَلَيْهِ بْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفِيَّانُ عَنْ أَبِي بَكْرٍ بْنِ أَبِي الْجَفَّافِ بْنِ صُحَيْرِ الْمَدْوَى قَالَ: سَمِعْتُ فَاطِمَةَ بِنْتَ قَيْسٍ تَقُولُ: قَالَ لِي رَسُولُ اللَّهِ ﷺ: إِذَا حَلَّتِ فَادْتَهِ فَادْتَهِهِ فَخَطَبَهَا مَعَاوِيَةً وَأَبُو الْجَهَنِ ابْنَ صُحَيْرٍ وَأَسَامَةَ بْنَ زَيْدٍ. قَالَ رَسُولُ اللَّهِ ﷺ: أَمَا مَعَاوِيَةً فَرَجُلٌ تَرَبٌ، لَا مَالَ لَهُ وَأَمَا أَبُو الْجَهَنِ فَرَجُلٌ ضَرَابٌ لِلنِّسَاءِ. وَلِكِنْ أَسَامَةً. قَنَّاَتْ بِيَدِهَا هَكَذَا: أَسَامَةً. أَسَامَةً. قَنَّاَتْ لَهَا رَسُولُ اللَّهِ ﷺ: طَاعَةُ اللَّهِ وَطَاعَةُ رَسُولِهِ خَيْرٌ لَكِ قَالَتْ: فَتَزَوَّجْتَهُ فَاغْبَطْتُ بِهِ.

تخریج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٨٠، عن ابن أبي شيبة به.

Comments:

- If concealing the defect of someone puts another Muslim at risk of loss, then the demand of sincerity is that the defect should be disclosed. This type of disclosure will not be regarded as prohibited backbiting. The criticism about the narrators of the *Hadith* also has the same rationale, that a rule which is not proven from the Messenger of Allāh ﷺ should not be regarded a religious rule mistakenly. Therefore this type of criticism is also allowed.
- When a slave is freed, his status and position should not be less than those of other free individuals.
- The interpretation of Fātimah's indication was to express the disagreement; because Zaid ﷺ, the father of Usāmah, had been a slave for sometime.

[1] Meaning when her *Iddah* ends.

Chapter 11. Seeking The Consent Of Virgins And Previously-Married Women

1870. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "A widow has more right (to decide) concerning herself than her guardian, and a virgin should be consulted." It was said: "O Messenger of Allâh, a virgin may be too shy to speak." He said: "Her consent is her silence." (*Sahih*)

(المعجم ١١) - بَابُ اسْتِئْمَارِ الْبَكْرِ
وَالثَّيْبِ (التحفة ١١)

١٨٧٠ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى الشَّدِيدُ:
حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ عَبْدِ اللَّهِ بْنِ
الْفَضْلِ الْهَاشِمِيِّ، عَنْ نَافِعِ بْنِ جُيَيْرَ بْنِ
مُطْعَمٍ، عَنْ أَبْنَى عَيَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْأَيْمَنُ أَوَّلَيْنِ يَسْأَلُونَهُ مِنْ وَلِيَّهَا وَالْبَكْرُ
تُسْأَلُ فِي نَفْسِهَا» قَالَ: يَا رَسُولَ اللَّهِ إِنَّ
الْبَكْرَ تَسْخِيْسِيَّ أَنْ تَكَلَّمَ قَالَ: «إِذْنُهَا
سُوكُونُهَا».

تخریج: أخرجه مسلم، النکاح، باب استیدان الثیب فی النکاح بالبطق والبکر بالسکوت،
ح: ١٤٢١ من حديث مالک به.

Comments:

- a. The consent of the girl must also be regarded in matters of her marriage, and at the same time, the permission of the guardian is necessary too.
- b. The virgin girl, if she does not express her consent verbally out of bashfulness, her silence will be regarded as her approval, provided that her silence was not because of anger.

1871. It was narrated from Abu Hurairah that the Prophet ﷺ said: "A previously-married woman should not be married until she is consulted, and a virgin should not be married until her consent is sought, and her consent is her silence." (*Sahih*)

١٨٧١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ
الْمَدْمَسِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا
الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ
أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ الْبَيِّنِ
قَالَ: «لَا تُنْكِحُ الْمُؤْمِنَاتِ حَتَّى تُسْأَلْمَوْا وَلَا
الْبَكْرَ حَتَّى تُسْأَلْنَ، وَإِذْنُهَا الصَّمُوْثُ».

تخریج: أخرجه مسلم، النکاح، الباب السابق، ح: ٦٤ / ١٤١٩ من حديث الأوزاعي وغيره
به، ورواه البخاري، ح: ٥١٣٧ من حديث يحيى بن أبي كثیر به.

1872. It was narrated from 'Adi bin 'Adi Al-Kindi that his father said: "The Messenger of Allâh ﷺ said: 'A previously-married

١٨٧٢ - حَدَّثَنَا عَيْسَى بْنُ حَمَادَ الْمَضْرِيُّ:
أَبَنَا الْلَّيْثِ بْنِ سَعْدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ
الرَّحْمَنِ بْنِ أَبِي حُسْنَيْنِ، عَنْ عَدَيِّ بْنِ عَدَيِّ

woman can speak for herself, and the consent of a virgin is her silence.””

الْكَنْدِيُّ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
«الثَّيْبُ تُعْرِبُ عَنْ نَفْسِهَا، وَالْإِكْرُ رِضَاهَا
صَمْتُهَا».

تخریج: [صحیح] أخرجه أحمد: ١٩٢ / ٤ من حديث الثیب به، قيل: عدي لم يسمع من أبیه، ولكن للحديث شواهد صحيحة، عند أحمد وغيره.

Comments:

The woman is not allowed to conduct her marriage herself. Her marriage will be conducted by her guardian; however, her opinion will also be given importance. The marriage bond takes place with the consent of both.

Chapter 12. One Who Arranges His Daughter's Marriage When She Is Unwilling

1873. 'Abdur-Rahmân bin Yazid Al-Ansâri and Mujamma' bin Yazid Al-Ansâri said that a man among them who was called Khidâm arranged a marriage for his daughter, and she did not like the marriage arranged by her father. She went to the Messenger of Allâh ﷺ and told him about that, and he annulled the marriage arranged by her father. Then she married Abu Lubâbâh bin 'Abdul-Mundhir. (*Sahîh*)

(One of the narrators) Yahya mentioned that she was a previously-married woman.

تخریج: أخرجه البخاري، النكاح، باب: إذا زوج الرجل ابنته وهي كارهة فنكاحه مردود، ح: ٥١٣٩: من حديث يزيد به مختصراً.

Comments:

- If the marriage of a previously-married woman is conducted against her consent, the marriage does take place; but she has the right to dissolve this marriage through the court.
- To avoid this unpleasant consequence, it is better to reach an agreed compromise beforehand. So the marriage should take place where the girl is happy, as well as the guardian having no objection.

(المعجم ١٢) - بابٌ مِنْ زَوْجِ الْأُنْثَى وَهِيَ
كَارِهَةٌ (التحفة ١٢)

١٨٧٣ - حَدَّثَنَا أَبُو يَكْرَبٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
يَزِيدُ بْنُ هَلْرُونَ، عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّ
الْقَاسِمَ بْنَ مُحَمَّدٍ أَخْبَرَهُ: أَنَّ عَبْدَ الرَّحْمَنِ
بْنَ يَزِيدَ، وَمُعْجَمَ بْنَ يَزِيدَ الْأَنْصَارِيَّينَ
أَخْبَرَهُ: أَنَّ رَجُلًا وَنِسْنَاهُ يَدْعُونِي خَدَّامًا إِلَكَحَ
إِنَّهُ لَهُ فَكَرِهَتْ لِكَاحَ أَبِيهَا. فَأَكَلَ رَسُولُ
اللَّهِ ﷺ فَلَذَّرَتْ لَهُ. فَرَدَّ حَلَّيَهَا لِكَاحَ أَبِيهَا.
فَنَكَحَتْ أَبَا الْبَاهَةَ بْنَ عَبْدِ الْمُتَّنِّ.
وَذَكَرَ يَحْيَى أَبِيهَا كَانَتْ تَبَاهِيَ.

1874. It was narrated from Ibn Buraidah that his father said: 'A girl came to the Prophet ﷺ and said: 'My father married me to his brother's son so that he might raise his status thereby.' The Prophet ﷺ gave her the choice, and she said: 'I approve of what my father did, but I wanted women to know that their fathers have no right to do that.'" (Sahih)

تخریج: [إسناده صحيح] وقال البوصيري: إسناده صحيح، وال الحديث الآتي شاهد له.

Comments:

'So that he might raise his status thereby'; this phrase gives two meanings: My father is poor and his nephew is well-off, so he wants to gain financial benefit because of this relation; and another possible meaning is that his nephew is poor and my father wants to elevate his status with the relation of my marriage.

1875. It was narrated from Ibn 'Abbás that a virgin girl came to the Prophet ﷺ and told him that her father had arranged a marriage that she did not like, and the Prophet ﷺ gave her the choice. (Sahih)

Another chain of narrators with similar wording.

١٨٧٤ - حَدَّثَنَا هَنَدُ بْنُ السَّرِّيٍّ؛ حَدَّثَنَا وَكَيْفَيْهِ عَنْ كَهْمَسِ بْنِ الْحَسَنِ، عَنْ أَبِيهِ بْنِ بُرْيَادَةَ، عَنْ أَبِيهِ قَالَ: جَاءَتْ نَفَّاتَةً إِلَى النَّبِيِّ ﷺ. فَقَالَتْ: إِنَّ أَبِيهِ رَوَجَنِي ابْنَ أَخِيهِ لِرِفْعَةِ بْنِ حَسِيبَتَهُ. قَالَ: فَجَعَلَ الْأَمْرَ إِلَيْهَا. فَقَالَتْ: قَدْ أَجْزَتُ مَا صَنَعَ أَبِيهِ. وَلِكُنْ أَرَدْتُ أَنْ تَعْلَمَ النِّسَاءُ أَنَّ لَيْسَ إِلَيَّ الْأَيَّامُ مِنْ الْأَمْرِ شَيْئًا.

تخریج: [إسناده صحيح] وقال البوصيري: إسناده صحيح، وال الحديث الآتي شاهد له.

١٨٧٥ - حَدَّثَنَا أَبُو السَّفْرِ يَحْيَى بْنُ بَرِّادَةَ الْعَسْكَرِيُّ؛ حَدَّثَنَا الْحُسَيْنُ بْنُ مُحَمَّدٍ الْمَرْوُذِيُّ؛ حَدَّثَنِي جَوَيْرُ بْنُ حَازِمٍ، عَنْ أَبِيهِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ جَارِيَةً يَكْنُوا أَشْتَهِيَّتِي ﷺ. قَدْكَرَثَ لَهُ أَنَّ أَبَاهَا رَوَجَهَا وَهِيَ كَارِهَةً. فَخَيَّرَهَا النَّبِيُّ ﷺ.

حدّثنا محمد بن الصباخ: أتانا معمراً بن شليمان الرقي، عن زيد بن حبان، عن أبوب السخيني، عن عكرمة، عن ابن عباس، عن النبي ﷺ، مثله.

تخریج: [صحیح] أخرجه أبو داود، النکاح، باب: في البکر یزوجها أبوها ولا یستأمرها، ٢٠٩٦ من حديث الحسين بن محمد به * حریر بن حازم ثقة مدلس (رماء بالتدليس الإمام البهقي وغيره) وعنون، وتابعه زيد بن حبان، وخالههما الجبل حماد بن زيد فرواه مرسلاً وهو الصواب، والحديث السابق شاهد لحديث حریر وزید، وبه صح الحديث.

Chapter 13. Marriage Of Minor Girls Arranged By Their Fathers

1876. It was narrated that Aishah said: "The Messenger of Allâh ﷺ married me when I was six years old. Then we came to Al-Madinah and settled among Banu Hârith bin Khazraj. I became ill and my hair fell out, then it grew back and became abundant. My mother Umm Rumân came to me while I was on an *Urzulah*^[1] with some of my friends, and called for me. I went to her, and I did not know what she wanted. She took me by the hand and made me stand at the door of the house, and I was panting. When I got my breath back, she took some water and wiped my face and head, and led me into the house. There were some women of the Ansâr inside the house, and they said: 'With the blessings and good fortune (from Allâh).' (My mother) handed me over to them and they tidied me up. And suddenly I saw the Messenger of Allâh ﷺ in the morning. And she handed me over to him and I was at that time, nine years old." (*Sahih*)

(المعجم ١٣) - باب زواج الصغار
بزوجهن الآباء (التحفة ١٣)

١٨٧٦ - حَدَّثَنَا شُوَيْبُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلَيْهِ ابْنُ مُسْهِرٍ: حَدَّثَنَا هِشَامُ بْنُ عُرْقَةَ، عَنْ أَتِيهِ، عَنْ عَائِشَةَ قَالَتْ: تَرَوْجَنِي رَسُولُ اللَّهِ ﷺ وَأَنَا بِنْتُ سِنَنَ سِنَنَ فَقَدِئْنَا الْمَدِينَةَ. فَتَرَكْنَا فِي بَيْتِ الْجَارِثِ بْنِ الْخَرَجِ فَوَعَكْتُ فَمَنَزَقَ شَعْرِي حَتَّى وَفَى لِي جُمِيْمَةً. فَأَتَتْنِي أُمُّ أَمْ رُومَانَ وَإِنِّي لَفِي أَرْجُوْحَةٍ وَمَعِي صَوَاحِبَاتِنِي. فَصَرَّخَتْ بِي. فَأَتَيْتُهُنَّا وَمَا أَدْرِي مَا تُرِيدُنِي. فَأَخَذَتْ بِيَدِي فَأَوْفَقْتُنِي عَلَى بَابِ الدَّارِ. وَإِنِّي لَا تَهْمُحْ حَتَّى سَكَنَ بَعْضَ نَفْسِي. ثُمَّ أَخَذَتْ شَيْئًا مِنْ مَاءٍ فَمَسَحَتْ بِهِ عَلَى وَجْهِي وَرَأْسِي. ثُمَّ أَدْخَلَتْنِي الدَّارَ. فَإِذَا نِسْوَةٌ مِنَ الْأَنْصَارِ فِي بَيْتِ فَقْلَنْ: عَلَى الْخَيْرِ وَالْبَرَّةِ، وَعَلَى خَيْرِ طَائِرٍ. فَأَسْلَمَتْنِي إِلَيْهِنَّ. فَأَصْلَحْنَ مِنْ شَانِي. فَلَمْ يَرْغُبِي إِلَيْهِنَّ. رَسُولُ اللَّهِ ﷺ صَحِيْحٌ. فَأَسْلَمَتْنِي إِلَيْهِ، وَأَنَا بِوَمَيْدَ بِنْتِ سِنَنَ:

تخریج: أخرجه البخاري، باب تزویج النبي ﷺ عائشة وقدومها المدينة وبنائه بها، ح: ٣٨٩٤؛ من حديث علي بن مسهر، ومسلم، النکاح، باب جواز تزویج الأب البكر الصغيرة، ح: ١٤٢٢ من حديث هشام به.

^[1] A word used to refer to both a swing, and a seesaw.

Comments:

- a. The marriage bond of a girl who is not yet adult (has not reached the age of puberty) is perfectly valid in Islam.
- b. *Urijah* refers to both, a swing and a seesaw; it is a long piece of wood, its middle is placed at a high place and the children sit on both ends, when its one side goes down the other side goes up; it is called seesaw in English.
- c. It is recommended to beautify the bride when she leaves for her husband's home.

1877. It was narrated that 'Abdullâh said: "The Prophet ﷺ married 'Aishah when she was seven years old, and consummated the marriage with her when she was nine, and he passed away when she was eighteen." (*Sahih*)

١٨٧٧ - حَدَّثَنَا أَخْمَدُ بْنُ سَيَّانٍ؛ حَدَّثَنَا أَبُو أَخْمَدٍ، حَدَّثَنَا إِسْرَائِيلُ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عَيْنَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: تَزَوَّجُ الْمُتَّيِّبَةَ عَاشِشَةَ وَهِيَ بُنْتُ سَعْيَ وَبَنْتُ يَهَآ وَهِيَ بُنْتُ تَسْعَ وَبَنْتُ عَوْفَى وَهِيَ بُنْتُ شَمَانِي عَشْرَةَ سَنةً.

تخریج: [صحيح] فيه علنان، والحديث السابق شاهد له، ول الحديث طرق كثيرة عن عائشة رضي الله عنها، وأجمع المحدثون على صحته، وهو عمدة في هذا الشأن.

Chapter 14. Marriage Of Minor Girls Arranged By Someone Other Than Their Fathers

1878. It was narrated from Ibn 'Umar that when 'Uthmân bin Maz'un died, he left behind a daughter. Ibn 'Umar said: "My maternal uncle Qudâmah, who was her paternal uncle, married me to her, but he did not consult her. That was after her father had died. She did not like this marriage, and the girl wanted to marry Mughirah bin Shû'bah, so she married him." (*Sahih*)

(المعجم ١٤) - بَابُ نِكَاحِ الصَّغَارِ
بِرُّوجْهَنَّ غَيْرِ الْأَبْاءِ (التحفة ١٤)

١٨٧٨ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشِقِيُّ؛ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نَافِعَ الصَّابِغُ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ نَافِعٍ، عَنْ أَبِيهِ، عَنْ أَبْنِ عُمَرَ أَنَّهُ حِينَ هَلَكَ عُثْمَانُ بْنُ مَطْعُونٍ تَرَكَ ابْنَهُ لَهُ، قَالَ أَبْنُ عُمَرَ: فَرَوَجَنِيهَا خَالِي قُدَامَةُ، وَهُوَ عَمُّهَا، وَلَمْ يُشَارِرُهَا. وَذَلِكَ بَعْدَمَا هَلَكَ أَبُوهَا. فَكَرِهَتْ نِكَاحَهُ، وَأَحَبَتْ الْجَارِيَةَ أَنْ يَرْوِجَهَا الْمُغَيْرَةُ بْنُ شُعْبَةَ، فَرَوَجَهَا إِلَيْهَا.

تخریج: [صحيح] وقال البوصيري: وفيه عبدالله بن نافع مولى ابن عمر: متفق على تضعيفه، وتابعه عمر بن حسن بن عبدالله مولى آل حاطب عند أحمد (٢/١٣٠)، ح ٦١٣٦، وله شواهد عند

البيهقي: ١٢٠، ١٢١ و غيره.

Comments:

- The compiler indicated by classifying the title of this chapter that a father is allowed to conduct the marriage of his daughter, without her consent, who is not yet adult; any other guardian like maternal or paternal uncle etc., cannot do so.
- In case of her being adult, her consent is compulsory; because the first marriage took place without her consent being sought, therefore, it was dissolved. Apparently, it looks as if she was adult when her first marriage took place.

Chapter 15. No Marriage Except With A Guardian

1879. It was narrated from 'Aishah that the Messenger of Allah ﷺ said: "Any woman whose marriage is not arranged by her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. If (the man) has had intercourse with her, then the *Mahr* belongs to her in return for his intimacy with her. And if there is any dispute then the ruler is the guardian of the one who does not have a guardian." (*Sahih*)

(المعجم ١٥) - بَابُ : لَا نِكَاحٌ إِلَّا

بِوَالِيٍّ (التحفة ١٥)

١٨٧٩ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مَعَاذٌ: حَدَّثَنَا أَبْنُ جُرَيْجٍ، عَنْ شُلَيْمَانَ بْنِ مُوسَى، عَنِ الرَّهْبَرِيِّ، عَنْ عُزُورَةَ، عَنْ عَائِشَةَ قَالَتْنَاهُ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّهَا الْمُرْأَةُ لَمْ يَنْكِحْهَا الْوَالِيُّ، فَنِكَاحُهَا بِأَطْلَلٍ، فَنِكَاحُهَا بِأَطْلَلٍ، فَنِكَاحُهَا بِأَطْلَلٍ. فَإِنْ أَصَابَهَا، فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا. فَإِنْ اشْتَجَرُوا، فَالْسُّلْطَانُ وَلِيُّهُ مَنْ لَا وَلِيَّ لَهُ».

تخریج: [صحیح] أخرجه أبو داود، النکاح، باب: في الولي، ح: ٢٠٨٣ من حديث ابن جریج به، وصححه ابن حبان، والحاکم، وله شواهد كثيرة، وحديث: لا نکاح إلا بولي متواتر كما قال السیوطی (قطف الأزهار، ح: ٨٧) وغيره، وكذا تواتر عن الصحابة رضی الله عنهم من فتاویهم، راجع السنن الکبری للبیهقی: ٧/ ١١١ وغيره.

Comments:

- As the consent of the girl is necessary for the marriage, likewise the permission of her guardian is necessary too. As indicated in *Hadith.1870* as well.
- The marriage without the permission of the guardian is religiously illegal. Nevertheless if the guardian refuses to give permission, the separation will be made between the husband and wife.
- In case of separation after consummating the marriage, the husband will be necessarily responsible for paying the full amount of dower.

1880. It was narrated that 'Aishah and Ibn 'Abbas said: "The Messenger of Allāh ﷺ said: 'There is no marriage except with a guardian.'"

According to the Hadith of 'Aishah: "And the ruler is the guardian of the one who does not have a guardian." (Sahih)

1881. It was narrated from Abu Musa that the Messenger of Allāh ﷺ said: 'There is no marriage except with a guardian.' (Sahih)

تخریج: [صحيح] أخرجه أبو داود، النکاح، باب: في الولی، ح: ۲۰۸۵ من حديث أبي إسحاق به، وتابعه يونس عنده، وانظر، ح: ۱۸۷۹۔

1882. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: 'No woman should arrange the marriage of another woman, and no woman should arrange her own marriage. The adulteress is the one who arranges her own marriage.' (Sahih)

تخریج: [صحيح] أخرجه الدارقطني، والبیهقی: ۱۱۰/۷ من طرق جمیل به، وبالنظر، ح: ۱۶۷۳ للعلة، وفیه علة اخیر، وأخرج البیهقی بایسناد: صیح عن أبي هریرة رضی الله عنه قال: لاتزوج المرأة المرأة ولا تزوج المرأة نفسها، فإن الزانية هي التي تزوج نفسها، « والله حکم الرفع».

Comments:

a: A woman cannot be a guardian for marriage.

b: The marriage of a woman does not take place without the guardian.

١٨٨٠ - حَدَّثَنَا أَبُو حُرَيْبٍ : حَدَّثَنَا عَبْدُ اللَّهِ أَبْنُ الْمُبَارَكِ ، عَنْ حَجَاجٍ ، عَنِ الرَّهْمَيِّ ، عَنْ عُرْوَةَ ، عَنْ عَائِشَةَ عَنِ السَّيِّدِ عَلِيِّ بْنِ أَبِي طَالِبٍ ، وَعَنْ عَكْرَمَةَ ، عَنْ أَبْنِ عَبَّاسٍ . قَالَ : قَالَ رَسُولُ اللَّهِ عَلِيٌّ : « لَا نِكَاحٌ إِلَّا بِوْلَى ». وَفِي حَدِيثِ عَائِشَةَ : « وَالسُّلْطَانُ وَلِيُّ مَنْ لَا « لَوْلَى لَهُ ». تخریج: [صحيح] انظر الحديث السابق.

١٨٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْحَكَمِ بْنِ أَبِي الشَّوَارِبِ : حَدَّثَنَا أَبُو عَوَانَةَ : حَدَّثَنَا أَبُو إِسْحَاقَ الْهَمَدَانِيَّ ، عَنْ أَبِي بُرْدَةَ ، عَنْ أَبِي مُوسَى قَالَ : قَالَ رَسُولُ اللَّهِ عَلِيٌّ : « لَا نِكَاحٌ إِلَّا بِوْلَى ». تخریج: [صحيح] آخرجه أبو داود، النکاح، باب: في الولی، ح: ۲۰۸۵ من حديث أبي إسحاق به، وتابعه يونس عنده، وانظر، ح: ۱۸۷۹۔

١٨٨٢ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ الْعَنْكَبِيُّ : حَدَّثَنَا مُحَمَّدُ بْنُ مَرْوَانَ الْعَقِيلِيُّ : حَدَّثَنَا هَشَامُ بْنُ حَسَّانَ ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ ، عَنْ أَبِي هُرَيْرَةَ قَالَ : قَالَ رَسُولُ اللَّهِ عَلِيٌّ : « لَا تَزُوِّجِيَّ الْمَرْأَةَ الْمَرْأَةَ . وَلَا تُزُوِّجِيَّ الْمَرْأَةَ نَفْسَهَا . فَإِنَّ الزَّانِيَةَ هِيَ الَّتِي تُزُوِّجُ نَفْسَهَا ». تخریج: [صحيح] أخرجه الدارقطني، والبیهقی: ۱۱۰/۷ من طرق جمیل به، وبالنظر، ح: ۱۶۷۳ للعلة، وفیه علة اخیر، وأخرج البیهقی بایسناد: صیح عن أبي هریرة رضی الله عنه قال: لاتزوج المرأة المرأة ولا تزوج المرأة نفسها، فإن الزانية هي التي تزوج نفسها، « والله حکم الرفع».

Chapter 16. Prohibition Of Shighâr

1883. It was narrated that Ibn 'Umar said: "The Messenger of Allâh ﷺ forbade Shighâr. Shighâr is when a man says to another man: 'Marry your daughter or sister to me, on condition that I will marry my daughter or sister to you,' and they do not give any dower (i.e., neither of them give the other the dower)." (*Sahih*)

(المعجم ١٦) - بَابُ النَّهْيِ عَنِ الشَّعْرَارِ
(التحفة ١٦)

١٨٨٣ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا
مَالِكُ بْنُ أَبِي أَسْمَاءَ، عَنْ نَافِعٍ، عَنْ أَبْنَاءِ عُمَرَ
قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الشَّعْرَارِ
وَالشَّعْرَارُ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: زَوْجِي
إِبْنُكَ أَوْ إِبْنَكَ، عَلَى أَنْ أَزْوِجَ إِبْنَكَ أَوْ
أَخْسِي.. وَلَئِنْ تَبَيَّنَهُمَا صَدَاقٌ.

تخریج: أخرجه البخاري، النكاح، باب الشغار، بح: ٥١١٢، ومسلم، النكاح، باب تحرير
نكاح الشغار وبطلانه، بح: ١٤١٥؛ من حديث مالك به.

Comments:

- a. *Nikâh Shighâr* or "Exchange Marriages" are the same thing, which are known in parts of Pakistan by the name of 'Watta Satta'; its explanation has been mentioned in the narration.
- b. In the pre-Islamic period, the dowry was not fixed in case of *Nikâh Shighâr*, neither was it paid equal to the dowry of other women. In fact a woman was exchanged for a woman. In these days, although the dowry is fixed, but the flaws and defects of the ancient system still remain; the revenge of mistreatment by a man is often incorrectly taken by mistreating his daughter or sister.

1884. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade Shighâr." (*Sahih*)

١٨٨٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
بَيْهَىٰ بْنُ سَعِيدٍ وَأَبُو أَسْمَاءَ، عَنْ
[عَيْدِ اللَّهِ]، عَنْ أَبِي الزَّنَادِ، عَنِ الْأَعْرَجِ،
عَنْ أَبِي هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ
الشَّعْرَارِ.

تخریج: أخرجه مسلم، النكاح، الباب السادس، بح: ١٤١٦؛ عن ابن أبي شيبة عن أبيأسامة وغيره به.

1885. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: "There is no Shighâr in Islam." (*Sahih*)

١٨٨٥ - حَدَّثَنَا الْحَسِينُ بْنُ قَهْدِيٍّ: أَبْنَانًا
عَبْدُ الرَّزَاقِ: أَبْنَانًا يَعْمَرُ عَنْ ثَلِيلٍ، عَنْ

أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا شَعَارٌ فِي الْإِسْلَامِ».

تخریج: [إسناده صحيح] أخرجه أحمد: ١٦٥ عن عبدالرزاق به عن معمر عن ثابت وأبان: وغير واحد عن أنس به.

Comments:

It means it is a custom of non-Muslims. Muslims must abandon it because it is an un-Islamic custom.

Chapter 17. Dowries Of Women

(المعجم ١٧) - بَابُ صَدَاقِ النِّسَاءِ
(التحفة ١٧)

1886. It was narrated that Abu Salamah said: "I asked 'Aishah: 'How much was the dowry of the wives of the Prophet ﷺ?' She said: 'The dowry he gave to his wives was twelve Uqiyah and a Nash (of Silver). Do you know what a Nash is? It is one half of an Uqiyah. And that is equal to five hundred Dirham.'"^[١] (*Sahih*)

١٨٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَبْنَانَا عَبْدُ الْعَزِيزَ الدَّرَوِرِيُّ، عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ أَبْنِ الْهَادِ، عَنْ مُعَمَّدِ بْنِ إِبْرَاهِيمَ، عَنْ أَبِي سَلَمَةَ قَالَ: سَأَلْتُ عَائِشَةَ: كُمْ كَانَ صَدَاقُ نِسَاءِ النَّبِيِّ ﷺ؟ قَالَتْ: كَانَ صَدَاقَهُ فِي أَرْوَاحِهِ اثْتَنَى عَشْرَةً أُوقِيَّةً وَسَّاً. هَلْ تَلَمِّدِي مَا السُّنْنُ؟ هُوَ نَصْفُ أُوقِيَّةٍ. وَلِذَلِكَ خَمْسَمَائَةً دِرْهَمًا.

تخریج: أخرجه مسلم، النکاح، باب الصداق، جواز كونه تعلم قرآن وخطاتم حديث وغيره، ذلك ... الخ، ح: ١٤٢٦ من حديث عبد العزيز بن محمد به.

Comments:

- The dowry fixed should not be excessive, such that it is difficult for a husband to pay; and it should also be not very little, such that it has no importance in the sight of a husband.
- If the husband is poor, the dowry fixed may be less; maybe an iron ring. (See *Hadith: 1889*.)
- Five hundred Dirham are equal to one and three quarters of a kilo approximately.

1887. It was narrated that Abu 'Ajfa' As-Sulami said: "Umar bin Khattab said: 'Do not go to extremes with regard to the

١٨٨٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ أَبِنِ عَوْنَى، ح: وَحَدَّثَنَا

[١] They say that *Nash* is twenty Dirham and it is also used to refer to half of something as in this case, half of an *Uqiyah*.

dowries of women, for if that were a sign of honor and dignity in this world or a sign of *Taqwa* before Allâh, then Muhammad ﷺ would have done that before you. But he did not give any of his wives and none of his daughters were given more than twelve *Uqiyah*. A man may increase the dowry until he feels resentment against her and says: "You cost me everything I own," or, "You caused me a great deal of hardship." (*Hasan*)

And I was a man born among the Arabs,^[1] but I do not know the meaning of '*Alaql-Qirbah*' or '*Araqul-Qirbah*'.^[2]

نَصْرُ بْنُ عَلَيٰ الْجَهْضَمِيُّ: حَدَّثَنَا يَزِيدُ بْنُ زُرْبَعٍ: حَدَّثَنَا ابْنُ عَوْنَى، عَنْ مُحَمَّدٍ بْنِ سَيْرِينَ، عَنْ أَبِي الْعَجْفَاءِ السُّلَيْمَى قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُغَالِوا صَدَاقَ النِّسَاءِ، فَإِنَّهَا لَوْ كَانَتْ مَكْرُمَةً فِي الدِّينِ، أَوْ تَقْوَى عِنْدَ اللَّهِ، كَانَ أَوْلَاكُمْ وَأَحَقُّكُمْ بِهَا مُحَمَّدٌ **بَشَّارٌ.** مَا أَصْدَقَ امْرَأَةً مِنْ نِسَائِهِ وَلَا أَصْدِقُ امْرَأَةً مِنْ بَنَائِهِ أَكْثَرَ مِنْ اثْنَتِي عَشْرَةً أُوْقِيَّةً. وَإِنَّ الرَّجُلَ لِيَقْتُلُ صَدَقَةَ امْرَأَتِهِ حَتَّى يَكُونَ لَهَا عَذَاؤَهُ فِي نَفْسِهِ. وَيَقُولُ: قَدْ كَلَفْتُ إِلَيْكُمْ عَلَقَ الْفَرِيزَةِ، أَوْ عَرَقَ الْفَرِيزَةِ.

وَكُنْتُ رَجُلًا عَرَبِيًّا مَوْلَدًا، مَا أَدْرِي مَا عَلَقَ الْفَرِيزَةِ، أَوْ عَرَقَ الْفَرِيزَةِ.

تَحْرِيق: [حسن] أخرجه أبو داود، النكاح، باب الصداق، ح: ٢١٠٦ من حديث محمد بن سيرين مختصرًا، وقال الترمذى: حسن صحيح ، ح: ١١١٤م، وصححه الحاكم، والذهبي.

Comments:

- The consequence of appointing a dowry more than one's ability is not good. A man works hard to pay it, and if he is unable to pay, it creates hatred in the heart. The man says to himself "I am trapped in difficulty because of this woman." Whereas a reasonable dowry is paid easily and thus the mutual love between husband and wife increases, which is a religious objective.

1888. It was narrated from 'Abdullâh bin 'Âmir bin Rabi'ah, from his father, that a man from

١٨٨٨ - حَدَّثَنَا أَبُو عُمَرَ الصَّسِيرُ وَهَنَّادُ بْنُ السَّرِيَّ. قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ

[1] In *Musnad Al-Humaidi* (23) it is: "And I was a young man."

[2] Meaning due to the ambiguity of the expressions: '*Alaql-Qirbah*' and '*Araqul-Qirbah*'. A *Qirbah* is a very large water skin that only a very strong man could carry. So the meaning is that I gave you everything until I even carried a giant water skin to your family, or, did so much that I even sweated enough to fill such a water skin. In *Al-'Ilal wal-Mârifatul-Rijâl* (no. 95), Ahmad reported regarding this, from *Sufyân*, who is one of those who narrated this *Hadith* as recorded by others: "Until I carried a *Qirbah* from far away."

among Banu Fazârah got married for a pair of sandals, and the Prophet ﷺ permitted his marriage. (*Da'if*)

عاصِم بْن عَبْدِ اللَّهِ، عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ أَبْنَى رَبِيعَةَ، عَنْ أَبِيهِ أَنَّ رَجُلًا مِنْ بَنِي فَزَارَةَ تَزَوَّجُ عَلَى تَعْلِيَنِ. فَأَبْجَازَ النَّبِيُّ ﷺ يَكَاهُ.

تَحْرِيْج: [إسْنَادٌ ضَعِيفٌ] أَخْرَجَهُ التَّرمِذِيُّ، النَّكَاحُ، بَابُ مَاجَاءٍ فِي مَهْوِ النِّسَاءِ، ح: ١١١٣
مِنْ حَدِيثِ عَاصِمٍ بْنِ عَامِرٍ، وَقَالَ: حَسْنٌ صَحِيحٌ، وَانْظُرْ، ح: ٩٠٧ لِعْلَتِهِ.

1889. It was narrated that Sahl bin Sa'd said: "A woman came to the Prophet ﷺ and he said: 'Who will marry her?' A man said: 'I will.' The Prophet ﷺ said: 'Give her something, even if it is an iron ring.' He said: 'I do not have one.' He said: 'I marry her to you for what you know of the Qur'an.'" (*Sahih*)

١٨٨٩ - حَدَّثَنَا حَفْصُ بْنُ عَمْرِو: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ سُفْيَانَ، عَنْ أَبِي حَازِمٍ، عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ قَالَ: «مَنْ يَتَزَوَّجُهَا؟» قَالَ رَجُلٌ: أَنَا. قَالَ لَهُ النَّبِيُّ ﷺ: «أَعْلَمُهَا وَأَنْ خَاتَمًا مِنْ حَدِيدٍ» قَالَ: لَيْسَ مَعِيْ. قَالَ: «فَذَرْ وَبِحَكْمَهَا عَلَى مَا مَعَكَ مِنَ الْقُرْآنِ».

تَحْرِيْج: أَخْرَجَهُ البَطْرَجِيُّ، النَّكَاحُ، بَابُ الْمُهِيرَ بِالْعَرْوَضِ، وَخَاتَمُ مِنْ حَلِيلِهِ، ح: ٥١٥٠ مِنْ طَرِيقِ سَفِيَانٍ بْنِ عَامِرٍ، وَأَخْرَجَهُ سَلْمَانُ الصَّدَاقِ وَجَوَازُ كُونَهُ تَعْلِيمُ قُرْآنٍ ... الخ
ح: ١٤٢٥ مِنْ طَرِيقِ آخَرٍ عَنْ أَبِي حَازِمٍ بْنِ عَامِرٍ.

Comments:

- There is no minimum amount of dowry fixed. An ordinary usable thing may be fixed as dowry as long the woman agrees.
- A non-material benefit can also be a dowry, as Musa رضى served his in laws and tended to their goats for ten years. (*Al-Qasas* 28: 27-29]

1890. It was narrated from Abu Sa'eed Al-Khudri that the Prophet ﷺ married 'Aishah with household goods the value of which was fifty Dirham. (*Da'if*)

١٨٩٠ - حَدَّثَنَا أَبُو هَشَامٍ الرَّفَاعِيُّ مُحَمَّدُ أَبْنُ يَزِيدَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانٍ: حَدَّثَنَا الْأَغْرِيَ الرَّقَاشِيُّ، عَنْ عَطِيَّةِ الْقُوَّافِيِّ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ النَّبِيَّ ﷺ تَزَوَّجَ عَائِشَةَ عَلَى مَتَاعٍ بَيْتٍ، قِيمَتُهُ خَمْسُونَ دِرْهَمًا.

تَحْرِيْج: [إسْنَادٌ ضَعِيفٌ] وَانْظُرْ، ح: ٣٧ لِعْلَتِهِ، وَفِيهِ عَلَلٌ أُخْرَى، مِنْهَا جَهَالَةُ الرَّقَاشِيِّ،
رَاجِعُ التَّقْرِيبِ وَغَيْرِهِ.

Chapter 18. A Man Who Gets Married Without Stipulating The Dowry And Then Dies

(المعجم ١٨) - بَابُ الرَّجُلِ بَنِيَ زَوْجٍ وَلَا
بِفِرْضٍ لَهَا فَيُمُوتُ عَلَى ذَلِكَ

(الصفحة ١٨)

1891. It was narrated (from Masruq) that 'Abdullâh was asked about a man who married a woman and died without having consummated the marriage with her, nor stipulating the dowry. 'Abdullâh said: "The dowry is hers, and the inheritance is hers, and she has to observe the waiting period." Ma'qil bin Sinân Al-Ashjâ'i said: "I saw the Messenger of Allâh pass a similar ruling concerning Birwa bint Wâshiq." (Sahîh)

Another chain from Alqamah, from 'Abdullâh, with similar wording.

١٨٩١ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ الرَّحْمَنُ بْنُ مَهْدَىً، عَنْ سُقْيَانَ، عَنْ فَرَاسٍ، عَنْ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ أَنَّهُ سُلَيْلٌ عَنْ رَجُلٍ تَزَوَّجُ امْرَأَةً فَمَاتَ عَنْهَا، وَلَمْ يَذْكُرْ بِهَا، وَلَمْ يَقُولْ لَهَا قَالَ فَقَالَ عَبْدُ الرَّحْمَنِ لَهَا الصَّدَاقُ وَلَهَا الْمِيرَاثُ وَعَلَيْهَا الْعِدَّةُ. فَقَالَ مَعْقُلٌ بْنُ سَيَّانَ الْأَشْجَعِيُّ شَهَدَتْ رَسُولُ اللَّهِ قَضَى فِي بَرْوَغٍ يَسْتَدِيْرُ وَأَشْقَى يَمْلَأُ ذَلِكَ حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ الرَّحْمَنُ بْنُ مَهْدَىً، عَنْ سُقْيَانَ، عَنْ مَصْنُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ مِثْلَهُ تَحْرِيرُ [صَحِّحُ] أَخْرِجَهُ أَبُو دَاوُدُ، النَّكَاحُ، بَابٌ: فَيَمْنَنْ تَزَوَّجُ وَلَمْ يَسْبِمْ لَهَا صِدَاقًا حَتَّى مَاتَ، ح: ٢١١٤، ٢١١٥ من حديث ابن مهدي به؛ وصححه الترمذى، والبيهقي.

Comments:

- The husband and wife get a share from the inheritance of each other provided the marriage bond has taken place; even though they did not consummate the marriage.
- The wife will necessarily spend her waiting period, four months and ten days after the death of husband, whether they had consummated the wedding or not. But if the divorce takes place before the consummation of the marriage, the woman will not be required to wait for any period (Ahzâb 33: 49); and in this case the amount of dowry will be specified in the light of the dowry of other women of her family.
- If the dowry is not specified at the time of the marriage, the marriage bond (*Nikâh*) is still valid; but it is better to specify it at the same time.

Chapter 19. Sermon Of Marriage

1892. It was narrated that 'Abdullâh bin Mas'ud said: "The Messenger of Allâh ﷺ was granted a combination of all manner of goodness, as well as its seal," or he said: "The opening (of the way to) all good. He taught us the *Khutbah* of prayer and *Khutbah* of need. "The *Khutbah* of prayer is: *At-tahiyyâtu lillâhi was-salawâtu wat-tayyibât*. As-salâmu 'alaika ayyuha Nabiyyu wa rahmat-illâhi wa barakâtuhu. As-salâmu 'alaikum wa 'ala 'ibâdillâhi sâlihin. Ashhadu an lâ ilâha illallâh. wa ashhadu anna Muhammadañ 'abduhu wa rasuluh (All compliments, prayers and pure words are due to Allâh. Peace be upon you, O Prophet, and the mercy of Allâh and His blessings. Peace be upon us and upon the righteous slaves of Allâh. I bear witness that none has the right to be worshiped but Allâh and I bear witness that Muhammad is His slave and Messenger). *Khutbah* of need is: *Al-hamdu lillâhi nahmaduhu wa nastâ'inuhu wa nastaghfiruhu, wa na'udhu billâhi min shururi anfusinâ wa min sayi'âti a'mâlinâ*. Man yahidhillâhu falâ mudilla lahu, wa man yudîl falâ hâdiya lahu. Wa ashhadu an lâ ilâha illallâh wâhdahu lâ sharika lahu, wa ashhadu anna Muhammadañ 'abduhu wa rasuluh (Praise is to Allâh, we praise Him and we seek

(المعجم ١٩) - بَابُ حُكْمِ الْنِكَاحِ (التحفة ١٩)

١٨٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنِي أَبِي عَنْ جَدِّي أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَخْوَصِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أُوتِيَ رَسُولُ اللَّهِ ﷺ جَوَامِعَ الْجَيْرِ، وَحَوَّاتِهِ. أَوْ قَالَ: فَوَاحِظُ الْجَيْرِ. فَعَلَّمَنَا خُطْبَةُ الصَّلَاةِ وَخُطْبَةُ الْحَاجَةِ. خُطْبَةُ الصَّلَاةِ: التَّحْيَاتُ لِلَّهِ وَالصَّلَواتُ وَالطَّيَّاتُ. السَّلَامُ عَلَيْكُ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ.

السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ. أَشْهُدُ أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهُدُ أَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ. وَخُطْبَةُ الْحَاجَةِ: أَنَّ الْحَمْدَ لِلَّهِ تَحْمِدُهُ وَسَمْعَتِيهِ وَسَمْعَقُورِهِ وَعَبُودُ اللَّهِ مِنْ شُرُورِ أَنفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَنْ تَهْدِي إِلَيْهِ فَلَا مُضِلٌّ لَهُ، وَمَنْ يُضْلِلُ فَلَا هَادِي لَهُ.

وَأَشْهُدُ أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَشْهُدُ أَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ. ثُمَّ تَصُلُّ خُطْبَتُكَ بِتَلَاقِتِ آيَاتِ مِنْ كِتَابِ اللَّهِ: «يَا أَيُّهَا الَّذِينَ آتَيْنَاكُمُ الْحُقْقَاءَ نَقْلَلُهُمْ» [آل عمران: ١٠٢] إِلَى آخر الآية: «وَأَنْقُوا اللَّهَ الَّذِي سَأَلَنَّ يَهُ وَالْأَحْمَمَ» [النساء: ١] إِلَى آخر الآية: «أَنْقُوا اللَّهَ وَقُولُوا قُولًا سَدِيدًا يُصْلِحُ لَكُمْ أَعْمَلَكُمْ وَيَغْفِرُ لَكُمْ ذُنُوبَكُمْ» [الأحزاب: ٧١] إِلَى آخر الآية.

His help and His forgiveness. We seek refuge with Allâh from the evil of our own souls and from our bad deeds. Whomsoever Allâh guides, will never be led astray; and whomsoever is led astray, no one can guide. I bear witness that there is none worthy of worship but Allâh, alone with no partner or associate, and I bear witness that Muhammad is His slave and His Messenger). Then add to your *Khutbah* the following three Verses: 'O you who believe! Fear Allâh as He should be feared, and die not except in the state of Islam (as Muslims) with complete submission to Allâh.'^[1] And: 'O mankind! Be dutiful to your Lord, Who created you from a single person, and from him He created his wife, and from them both He created many men and women, and fear Allâh through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship). Surely, Allâh is Ever an All-Watcher over you.'^[2] And: 'O you who believe! Keep your duty to Allâh and fear Him, and speak (always) the truth. He will direct you to do righteous good deeds and will forgive you your sins...'^[3] until the end of the Verse." (Da'if)

تخرج: [إسناده ضعيف] أخرجه أبو داود، النكح، باب في خطبة النكاح، ح: ٢١١٨ من

^[1] Al 'Inrâ' 3:102.

^[2] An-Nisâ' 4:1.

^[3] Al-Ahzâb 33:70-71.

حدیث أبي إسحاق عن أبي الأحوص به، وحسنه الترمذی، ح: ۱۱۰۵، واظر، ح: ۴۷ نقلته، وله طریق آخر مقطع، فالخبر لم يصح، والله أعلم.

Comments:

- A-Khutbah* is called an address (speech or sermon). *Khutbah* of prayer means the supplications through which a devotee speaks to his Lord.
- Khutbah* of need are the words which the Messenger of Allâh ﷺ read out before he would begin the speech at every important occasion. These words are also read in the Friday sermon.
- These Qur'anic Verses consist of the fundamental teachings regarding the family and social life. The scholars should give brief and precise advice to the attendees in accordance with the *Sunnah*.
- It indicates that the *Khutbah* should be recited first, and then the acceptance of the marriage bond is to be declared.

1893. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Al-hamdu lillâhi nahmaduhu wa nastâ'inuhu wa na'uđhu billâhi min shururi anfusinâ wa min say'i âti a'mâlinâ. Man yahdihillâhu falâ mudilla lahu, wa man yudil falâ hâdiya lahu. Wa ashliadu an lâ ilâha illâllâhu wahdahu lâ sharika lahu, wa anna Muhammadañ 'abduhu wa rasuluhu. Ammâ ba'd: (Praise is to Allâh, we praise Him and we seek His help. We seek refuge with Allâh from the evil of our own souls and from our bad deeds, Whomsoever Allâh guides will never be led astray; and whomsoever is led astray, no one can guide. I bear witness that none has the right to be worshiped but Allâh, alone with no partner or associate, and that Muhammad is His slave and His Messenger. To proceed:)." (Sahih)

١٨٩٣ - حَدَّثَنَا بَكْرُ بْنُ حَلَفَ، أَبُو بَشِّرٍ. حَدَّثَنَا يَزِيدُ بْنُ رُزْيَعَ: حَدَّثَنَا دَاؤُودُ بْنُ أَبِي هِنْدٍ: حَدَّثَنِي عَمْرُو بْنُ سَعِيدٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْحَمْدُ لِلَّهِ تَحْمِدُهُ وَتَسْتَغْفِرُهُ وَتَعُوذُ بِاللَّهِ مِنْ شَرُورِ أَنفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِي اللَّهَ فَلَا مُضِلٌّ لَهُ، وَمَنْ يُضْلِلُ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ أَشْرِيكُ اللَّهَ، وَأَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ. أَمَّا بَعْدُ».

تخریج: أخرجه مسلم، الجمعة، بباب تخفیف الصلوة والجمعة، ح: ۸۶۸ من حدیث دارد به مطولاً.

Comments:

- It is desirable to commence a good conversation with the Praise of Allâh.

b. Seeking Allâh's help in every matter and to seek ability only from Him is part of *Tauhid*.

1894. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Every important matter that does not start with praise of Allâh, is devoid (of blessings)." (*Da'if*)

١٨٩٤ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ، وَ مُحَمَّدُ بْنُ يَحْيَى، وَ مُحَمَّدُ بْنُ خَلَفٍ الْعَسْقَلَانِيُّ قَالُوا: حَدَّثَنَا عَيْنُ الدُّهُنِ بْنُ مُوسَى، عَنِ الْأَوْزَاعِيِّ، عَنْ فُرَّةَ، عَنْ الرُّهْبَرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ أَمْرٍ ذِي بَالٍ، لَا يُبَدِّلُهُ بِالْحَمْدِ، أَطْلَعَهُ».

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأدب، باب الهدي في الكلام، ح: ٤٨٤٠ من حديث الأوزاعي به * قوله متكلما فيه، وخالفه الجبار الثقات، والزهری عنون تقدم، ح: ٧٠٧.

Chapter 20. Announcing Marriages

1895. It was narrated from 'Âishah that the Prophet ﷺ said: "Announce this marriage, and beat the sieve for it." ^[١] (*Da'if*).

(المعجم ٢٠) - بَابُ إِغْلَانِ النِّكَاحِ
(التحفة ٢٠)

١٨٩٥ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْضُوِيُّ وَ الْخَلِيلُ بْنُ عَمْرُو قَالَا: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ، عَنْ خَالِدِ بْنِ إِلْيَاسَ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «أَغْلِنُوا هَذَا النِّكَاحَ، وَأَصْرِنُوا عَلَيْهِ بِالْغَرَبَالِ».

تخریج: [إسناده ضعیف جداً] أخرجه البیهقي: ٧/٢٩٠ من حديث عيسى بن يونس به، وانظر، ح: ٧٦٠ لعلته.

Comments:

Announcing a marriage bond means the acceptance should be declared in the gathering of Muslims, and the wedding feast (*Walimah*) should be arranged so that the people in general would know that so-and-so man is married to so-and-so lady. Thus the way to illegal affairs will be closed.

1896. It was narrated from Muhammad bin Hâtid that the

١٨٩٦ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا

^[١] "Meaning with the *Daff*. He used a *Ghirbâl* (sieve) for it, because it resembles it in its roundness (and shape)." (Sindi).

Messenger of Allāh ﷺ said: "What differentiates between the lawful and the unlawful is (beating) the *Daff* and raising the voices (in song) at the time of marriage." (*Hasan*)

هُشَيْمٌ، عَنْ أَبِي بَلْجٍ، عَنْ مُحَمَّدِ بْنِ حَاطِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فَضْلٌ مَا بَيْنَ الْمُحَلَّ وَالْمُحرَّمِ، الدُّفُّ وَرَفْعُ الصَّوْتِ فِي النِّكَاحِ».

تخریج: [حسن] أخرجه الترمذی، النکاح، باب ماجاء في إعلان النکاح، ح: ۱۰۸۸ من حلیث هشیم به، وقال: حسن ، وصحیحه الحاکم: ۲/۱۸۴ ، والذهبی .

Comments:

Beating a *Daff* on the occasion of weddings serves the purpose that all the people will know about the marriage. Songs, poetry etc., may also be sung at this occasion so long as its wording is not contrary to the teachings of the *Shari'ah*; and only the young girls, who are not adult, are allowed to do so. This type of entertainment is allowed during the 'Eid days too.

Chapter 21. Singing And (Beating) The Daff

(المعجم ۲۱) - بَابُ الغَنَاءِ وَالدُّفِّ

(التحفة ۲۱)

1897. It was narrated that Abu Husain, whose name was Khâlid Al-Madani, said: "We were in Al-Madinah on the Day of 'Âshurâ', and the girls were beating the *Daff* and singing. We entered upon Rubai' bint Mu'awwidh and mentioned that to her. She said: 'The Messenger of Allāh ﷺ entered upon me on the morning of my wedding, and there were two girls with me who were singing and mentioning the qualities of my forefathers who were killed on the Day of Badr. One of the things they were saying was: "Among us there is a Prophet who knows what will happen tomorrow." He ﷺ said: "Do not say this, for no one knows what will happen tomorrow except Allāh." (*Sahîh*)

١٨٩٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا تَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ أَبِي الْحُسْنَيْنِ، اسْمُهُ خَالِدُ الْمَدَنِيُّ قَالَ: كُنَّا بِالْمَدِينَةِ يَوْمَ عَاشُورَاءَ. وَالْجَوَارِي يَضْرِبُنَّ بِالدُّفُّ. وَيَغْنِيْنَ. فَدَخَلْنَا عَلَى الرَّبِيعِ بْنِتِ مُعَاوِيَةَ. فَذَكَرْنَا ذَلِكَ لَهَا. فَقَالَتْ: دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ صَبِيْحَةَ عُرْسِيِّ وَعَنْدِي جَارِيَاتٍ تُغَنِيْنَ وَتَدْبِيْنَ آبَائِي الَّذِينَ قُتُلُوا يَوْمَ بَطْرِيرٍ. وَتَقُولُنَّ، فِيمَا تَقُولُنَّ: وَفِينَا نَبِيٌّ يَعْلَمُ مَا فِي غَدٍ. قَالَ: «أَمَّا هَذَا، فَلَا تَقُولُوهُ. مَا يَعْلَمُ مَا فِي غَدٍ إِلَّا اللَّهُ».

تخریج: [إسناده صحيح] أخرجه البخاري، المغازي، باب(١٢)، ح: ٤٠٠١، ٥١٤٧ من حديث خالد به.

Comments:

- Young girls, who are not adult yet, are allowed to sing and beat the *Daff* at weddings.
- The elderly people should allow the young children to enjoy the rejoicing activities at occasions of happiness, but if the children do something which is impermissible, their attention should be drawn to the fact that it is not a good thing.
- Praise and singing the attributes of the Messenger of Allāh ﷺ is a blessed deed, but the exaggeration of it is not allowed. It is permissible to express the qualities of the righteous people which they in fact possess, and exaggeration must be avoided.
- The Prophet ﷺ did not have the knowledge of unseen.

1898. It was narrated that 'Āishah said: "Abu Bakr entered upon me, and there were two girls from the *Ansār* with me, singing about what the *Ansār* used to sing about the Day of Bu'āth."^[1] She said: "And they were not really singers. Abu Bakr said: 'The wind instruments of Satan in the house of the Prophet ﷺ?' That was on the day of 'Eid (Al-Fitr). But the Prophet ﷺ said: 'O Abu Bakr, every people has its festival and this is our festival.'" (Sahih)

١٨٩٨ - حدثنا أبو بكر بن أبي شيبة: حدثنا أبوأسامة عن هشام بن عرفة، عن أبيه، عن عائشة قالت: دخل علىي أبو بكر، وعندى جاريتان من جواري الأنصار. فعنان بتنا تقاولت به الأنصار في يوم عاشوراء. قالت وليستا بمعيتي. فقال أبو بكر: أيمزموه الشيطان في بيتهن؟ وذلك في يوم عيد الفطر. فقال النبي ﷺ: «يا أبي بكر إن لكل قوم عيداً. وهذا عيننا».

تخریج: أخرجه البخاري، العیدین، باب سنة العیدین لأهل الإسلام، ح: ٩٥٢، ومسلم، صلاة العیدین، باب الرخصة في اللعب الذي لا معصية فيه في أيام العيد، ح: ٨٩٢ من حديث أبيأسامة به.

Comments:

- To read and say the poetry is allowed as long as it is within the limits of the *Shari'ah*.
- Adopting the profession of singing is regarded a condemned act in the Islamic society, and such people are not regarded respectable, instead these individuals are detested.
- Entertaining programs are allowed at wedding and 'Eid celebrations,

^[1] Bu'āth was a place about two miles from Al-Madinah where on that day before Islam a battle took place between the *Ansār* tribes of Aus and Khazraj.

provided no such act is performed which is contrary to the teachings of the *Shari'ah*. However it is absolutely wrong to take this reasonable permission as proof for music with singing, indecent songs, and for the proof of mixed gatherings (male and female).

1899. It was narrated from Anas bin Mâlik that the Prophet ﷺ passed by some part of Al-Madinah and saw some girls beating their *Daff* and singing, saying:

"We are girls from Banu Najjâr
What an excellent neighbor is
Muhammad."

The Prophet ﷺ said: "Allâh knows that you are dear to me." (*Sahih*)

نَخْرُجُ حَجَّارٍ مِنْ بَنْيِ النَّضَارِ
يَا حَبَّادًا مُحَمَّدًا مِنْ جَارِ

قَالَ الرَّبِيعِيُّ: «اللَّهُ يَعْلَمُ إِنِّي لِأَحْبَبُكُمْ».

تخریج: [إسناده صحيح] و قال البوصيري: إسناده صحيح و رجاله ثقات .

Comments:

- Respected elderly people may say suitable friendly and kind words to the young girls, so long as there is no risk of misunderstanding.
- The words 'Allâh knows' are regarded as an oath in this case. Speaking words of an oath for emphasis is permissible even though there is no doubt which has arisen.
- The Messenger of Allâh ﷺ liked the *Ansâr* because they offered lots of sacrifices for Islam; the love for the *Ansâr* by the believers is a requisite of their belief.

1900. It was narrated that Ibn 'Abbâs said: 'Aishah arranged a marriage for a female relative of hers among the *Ansâr*, and the Messenger of Allâh ﷺ came and said: Have you taken the girl (to her husband's house)?" They said: "Yes." He said: "Have you sent someone with her to sing?" She said: "No." The Messenger of Allâh ﷺ said: "The *Ansâr* are people with romantic feelings. Why don't you send someone with her to say: 'We have come to you we have come to you, may

١٩٠٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَقْبُورٍ: أَنَّبَانَا
جَعْفَرَ بْنَ عَوْنَى: أَنَّبَانَا الْأَجْلَحُ، عَنْ أَبِي
الرَّبِيعِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: أَنْكَحْتَ عَائِشَةَ
ذَاتَ فَرَابَةِ لَهَا مِنَ الْأَنْصَارِ فَجَاءَ رَسُولُ اللَّهِ
ﷺ فَقَالَ: «أَهْدَيْتُمُ الْفَتَاهَ؟» قَالُوا: نَعَمْ.
[قَالَ]: «أَرْسَلْتُمُ مَعَهَا مَنْ يُعْنِي؟» قَالَتْ:
لَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الْأَنْصَارَ قَوْمٌ
فِيهِمْ غَزَلٌ. فَلَوْ بَعْثَمْ مَعَهَا مَنْ يَقُولُ:
أَنْتُمْ أَنْتُنَا كُمْ، فَحَيَّنَا وَحَيَّا ثُمَّ». .

Allâh bless you and us?" (Da'if)

تخریج: [إسناد ضعیف] أخرجه أَحْمَدٌ: ۳۹۱ / ۳ من حديث الأجلح به، وله شاهد ضعیف عند الطبراني في الأوسط، وأصل الحديث في صحيح البخاري، ح: ۵۱۶۲ وغيره، وله شواهد أخرى عند ابن حبان (موارد)، ح: ۲۰۱۶: ۲۰۱۶ وغيره، وانظر المشكوة [بتحقيقی]، ح: ۳۱۰۴.

1901. It was narrated that Mujâhid said: "I was with Ibn 'Umar, and he heard the sound of a drum, so he put his fingers in his ears and turned away. He did that three times, then he said: 'This is what I saw the Messenger of Allâh ﷺ do!'" (Da'if)

١٩٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا الطَّبرَانِيُّ عَنْ كُلَّبَةَ بْنِ أَبِي مَالِكِ التَّمِيميِّ، عَنْ لَيْثٍ، عَنْ مُجَاهِدٍ قَالَ: كُنْتُ مَعَ أَبِي عُمَرَ، فَسَمِعْتُ صَوْتَ طَبلٍ فَأَذْتَخَلَ إِصْبَاعَيِّهِ فِي أَذْنِيَهُ تُمَّ شَتَّىٰ. حَتَّىٰ فَعَلَ ذَلِكَ ثَلَاثَ مَرَّاتٍ. ثُمَّ قَالَ: هَذِهَا فَعَلَ رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناد ضعیف] انظر، ح: ۲۰۸، لعلته.

Chapter 22. Effeminate Men

(المعجم ٢٢) - بَابُ : فِي الْمُخْتَنِينَ

(الشحفة ٢٢)

1902. It was narrated from Umm Salamah that the Prophet ﷺ entered upon her, and he heard an effeminate man say to 'Abdullâh bin Abu Umayyah: "If Allâh enables you to conquer Tâ'if tomorrow, I will show you a woman who comes in on four (rolls of fat) and goes out on eight." The Messenger of Allâh ﷺ said: "Throw them out of your houses." (Sahîh)

١٩٠٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَبِيرٌ عَنْ هَشَامَ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبَ بْنِتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا. فَسَمِعَ مُخْتَنًا وَهُوَ يَقُولُ إِعْبُدِ اللَّهِ بْنَ أَبِي أُمِّيَّةَ: إِنْ يَفْتَحَ اللَّهُ الطَّائِفَ غَدًا، دَلَّلَكَ عَلَى امْرَأَةٍ قُبْلَ يَأْزِيْعَ وَتَدْبِرَ يَسْمَانِ. قَالَ رَسُولُ اللَّهِ ﷺ: «اَخْرِجُوهُ مِنْ بَيْتِكُمْ».

تخریج: أخرجه البخاري، المغازي، باب غزوة الطائف في شوال سنة ثمان، ح: ٤٣٢٤، ٥٢٢٥، وغيرهما من حديث هشام به، ومسلم، السلام، باب منع المختن من الدخول على النساء الأجانب، ح: ٢١٨٠ عن ابن أبي شيبة وغيره وانظر، ح: ٢٦١٤.

Comments:

- The person who is born male, but wears the dress of women and adopts feminine behavior and imitation, should not be allowed to enter the home. Being a man who is imitating women is a type of curse.
- A stranger (who is not an immediate blood relative) or a hermaphrodite

should not go to women freely, if it does happen the women should veil themselves.

1903. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ cursed women who imitate men and men who imitate women. (*Sahih*)

١٩٠٣ - حَدَّثَنَا يَعْقُوبُ بْنُ حَمْيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمَ، عَنْ سَهْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ لَهُنَّا لَعْنَ الْمَرْأَةِ تَشَبَّهُ بِالرِّجَالِ، وَالرَّجُلِ تَشَبَّهُ بِالسَّنَاءِ.

نَحْرِيق : [صحيح] انظر الحديث الآتي.

١٩٠٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ خَلَدٍ الْبَاهْلِيُّ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا شُبَّهٌ عَنْ فَتَاهَةَ، عَنْ عَكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ الرَّبِيعَ لَعْنَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالسَّنَاءِ. وَلَعْنَ الْمُتَشَبِّهَاتِ مِنَ السَّنَاءِ بِالرِّجَالِ.

1904. It was narrated from Ibn 'Abbâs that the Prophet ﷺ cursed men who imitate women and women who imitate men. (*Sahih*)

نَحْرِيق : [صحيح] أخرجه البخاري، اللياس، باب المتشبهين بالنساء والمتشبهات بالرجال، ح ٥٨٨٥ عن طريق شعبة به.

Comments:

- The curse clarifies that it is a major sin.
- The imitation can be in dress, in matters of applying make up, and in the manners of walking and talking too. To practice such imitation, intentionally, is prohibited.

Chapter 23. Offering Congratulations On The Occasion Of Marriage

1905. It was narrated from Abu Hurairah that the Prophet ﷺ used to say, when offering congratulations on the occasion of marriage: "Bârak Allâhu lakum, wa bârak 'alaikum, wa jama'a bainakumâ fi khair (May Allâh bless you and bestow blessings upon you, and bring you together in harmony)." (*Sahih*)

(المعجم ٢٣) - بَابُ تَهْنِيَةِ النَّكَاحِ

(التحفة ٢٣)

١٩٠٥ - حَدَّثَنَا شُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَارِوْدِيُّ، عَنْ سَهْلٍ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ الشَّيْءَ كَانَ إِذَا رَفَقَ قَالَ: «بَارَكَ اللَّهُ لَكُمْ وَبَارَكَ عَلَيْكُمْ». وَجَمِيعَ بَيْنَهُمَا فِي خَيْرٍ.

تخریج: [صحیح] أخرجه أبوداود، النکاح، باب ما يقال للمتزوج، ح: ٢١٣٠ من طريق عبدالعزیز الدراوردي به، وصححه الترمذی، ح: ١٠٩١، وابن حبان، والحاکم، والذهبی.

1906. It was narrated from 'Aqil bin Abu Tâlib that he married a woman from Banu Jusham, and they said: "May you live in harmony and have many sons." He said: "Do not say that, rather say what the Messenger of Allâh ﷺ said: 'Allâhumma bârik lahûm wa bârik alâihim (O Allâh, bless them and bestow blessings upon them.)'" (Hasan)

١٩٠٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَارِ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا أَشْعَثُ، عَنِ الْحَسَنِ، عَنْ عَقِيلِ بْنِ أَبِي طَالِبٍ أَنَّهُ تَرَوَّجَ امْرَأَةٌ مِنْ بَنِي جُعْشَمَ فَقَالُوا: بِالرَّغَاءِ وَالْبَيْنِ. قَالَ: لَا تَقُولُوا هَكُذا. وَلَكِنْ قُولُوا، كَمَا قَالَ رَسُولُ اللَّهِ ﷺ: «اللَّهُمَّ بَارِكْ لَهُمْ وَبَارِكْ عَلَيْهِمْ».

تخریج: [حسن] أخرجه الطبراني (کبیر: ١٧، ١٩٤) ، ح: ٥١٦ من طريق أشعث بن عبدالملك به، وله طرق عن الحسن عند أحمد: ٤٥١/٣ وغیره * والحسن عنون تقدم، ح: ٧١ ول الحديث شواهد، منها حديث عبدالله بن محمد بن عقيل عند أحمد، وانظر الحديث السابق.

Comments:

- Congratulating the bridegroom, and the bride of marriage, and making supplication of good for them, is in accordance with the *Sunnah*.
- The best way to congratulate and supplicate is to say the blessed words which the noble Prophet ﷺ uttered with his blessed tongue.

Chapter 24. The Walimah (Wedding Feast)

1907. It was narrated from Anas bin Mâlik that the Prophet ﷺ saw traces of yellow perfume on 'Abdur-Rahmân bin 'Awf, and he asked him: "What is this?" He said: "O Messenger of Allâh, I married a woman for the weight of a *Nawâh* (Stone) of gold.^[١] He said: "May Allâh bless you. Give a feast even if it is only with one sheep." (Sahîh)

(المعجم ٢٤) - بَابُ الْوَلِيمَةِ (التحفة ٢٤)

١٩٠٧ - حَدَّثَنَا أَخْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَمَادَ بْنُ رَيْدَ: حَدَّثَنَا ثَابِتُ الْبَيْنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ رَأَى عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَثْرَ صُفْرَةً. قَالَ: «مَا هَذَا؟ أَوْ مَا» قَالَ: يَا رَسُولَ اللَّهِ إِنِّي تَرَوَّجْتُ امْرَأَةً عَلَى وَزْنِ تَوَافَةِ مِنْ ذَهَبٍ. قَالَ: «بَارِكْ اللَّهُ لَكَ أَوْلَمْ وَلَوْ بِشَاءَةً».

^[١] They differ over its definition, between three to five

تخریج: أخرجه البخاري، النکاح، باب: کيف يدعى للمتزوج؟، ح: ۱۰۰، ۵۱۰۰، ۶۳۸۶، ومسلم، النکاح، باب الصداق وجوائز كونه تعليم قرآن وخاتم حديد ... الخ، ح: ۱۴۲۷: من حديث حماد به

Comments:

- The Messenger of Allâh ﷺ noticed a mark of the fragrance of women on the dress of the Companion, so he ﷺ asked him the reason for using the fragrance of women. In this is a warning that the use of it for you is improper, and it also indicated that if there was a valid excuse, it should be explained.
- Stone means the date-stone. It was a known weight at the time; it is mentioned to be equal to five Dirham (approximately 15-16 grams). (*Mirqât Sharh Mishkât*: 3210)

1908. It was narrated that Anas bin Mâlik said: "I never saw the Messenger of Allâh ﷺ give a wedding feast for any of his wives like the feast he gave for Zainab, for which he slaughtered a sheep." (*Sahih*)

١٩٠٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَمَادُ بْنُ زَئِدٍ، عَنْ ثَابِتِ الْمُبَانِيِّ، عَنْ أَنْسِ ابْنِ مَالِكٍ قَالَ: مَا رَأَيْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْلَمَ عَلَى شَيْءٍ مِّنْ نِسَائِهِ مَا أَوْلَمَ عَلَى زَيْبَتْ. فَإِنَّهُ ذَيَّحَ شَاءَ.

تخریج: أخرجه البخاري، النکاح، باب الوليمة ولو بشارة، ح: ۱۴۲۸، ۵۱۶۸، ومسلم، النکاح، باب زواج زینب بنت جحش، ونزول الحجاب، وإثبات وليمة العرس، ح: ۱۴۲۸ من حديث حماد به، وفي رواية لمسلم وأطعمهم خبزاً ولحمًا حتى تركوه .

Comments:

- Zainab the daughter of Jahsh, the Mother of the Believers, was the daughter of the paternal aunt of Allâh's Messenger ﷺ; her mother was Ummâmah the daughter of Abdul-Muttalib. The Messenger of Allâh ﷺ married her to his freed slave Zaid bin Hâarithah رضي الله عنه. But they could not get on, and the divorce took place. Allâh ﷺ Himself married her to the Messenger ﷺ through the revelation after the waiting period had passed.
- Taking a loan for the *Walimah* (wedding feast) and to bear the burden of debt for no reason is not right; one should make affordable arrangement for the *Walimah*.
- No *Hadith* shows the mention of a gathering for the feast to take place at the bride's residence, or for any arrangement of food by the family of the bride; it is merely a custom, which has no relation with the *Shari'ah* and religious teachings.

1909. It was narrated from Anas bin Mâlik that the Prophet ﷺ offered *Sawiq*^[1] and dates as a

١٩٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَائِيِّ، وَغَيْاثُ بْنُ جَعْفَرٍ الرَّوَاحِيِّ. قَالَ: حَدَّثَنَا

[1] A kind of barley mash.

wedding feast for Safiyyah.
(*Hasan*)

سُفِيَّاً بْنَ عَيْنَةَ: حَدَّثَنَا وَائِلُ بْنُ دَاؤِدَ، عَنْ [أَبِيهِ]، عَنْ الرَّهْرِيِّ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ أَوْتَمَ عَلَى صَفِيَّةَ مَسْرُوقَ وَتَمِّرَ.

تخریج: [حسن] أخرجه أبو داود، الأطعمة، باب: في استحباب الوليمة، ح: ٣٧٤٤ من حديث سفيان بن عيينة به، وحسنه الترمذی، ح: ١٠٩٥، وله شواهد عند البخاری، ومسلم وغيرهما.

Comments:

- The cooked food is not necessary for the wedding feast. Anything which is used as food in a society may be offered in the hospitality of wedding feast.
- If the female slave is married after having been freed, she will have all the rights of a free wife.

1910. It was narrated from Sufyān (Ibn 'Uyainah) from 'Ali bin Zaid bin Ju'dān from Anas bin Mālik who said: "I attended a wedding feast for the Prophet ﷺ, in which there was no meat and no bread." (*Da'if*)

Ibn Mājah said: It was not narrated except by Ibn 'Uyainah.

١٩١٠ - حَدَّثَنَا رُهْبَرُ بْنُ حَرْبٍ أَبُو حَيْمَةَ: حَدَّثَنَا سُفِيَّاً عَنْ عَلَيِّ بْنِ زَيْدٍ بْنِ جُدْعَانَ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: شَهِدْتُ لِلنَّبِيِّ ﷺ وَلِيَمَّةً. مَا فِيهَا لَحْمٌ وَلَا خُبْزٌ. قَالَ أَبُنْ مَاجِهِ: لَمْ يُحَدِّثْ بِهِ إِلَّا أَبْنُ عَيْنَةَ.

تخریج: [إسناده ضعیف] واظر، ح: ١١٦ لعلته، وقال أحمد في مسنده: ٩٩ ثنا هشيم أنا على بن زيد عن أنس بن مالك، قال سمعته يحدث، قال شهدت وليتين من نساء رسول الله ﷺ، قال: فما أطعمتنا فيها خبزاً ولا لحماً، قال: فمه؟ قال: الحيس يعني التمر والأقط بالسمن ، وللحديث شواهد ضعيفة عند أحمد(٣/٢٥٥، ٢٦٦) وغيره.

Comments:

Only barley and dates etc., were offered.

1911. It was narrated that 'Aishah and Umm Salamah said: "The Messenger of Allāh ﷺ commanded us to prepare Fātimah (for her wedding) and take her in to 'Ali. We went to the house and sprinkled it with soft earth from the land of Bathā'. Then we stuffed two pillows with (date - palm) fiber which we

١٩١١ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا [الْمُفَضْلُ] بْنُ عَبْدِ اللَّهِ، عَنْ جَابِرٍ، عَنْ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ وَأُمِّ سَلَمَةَ قَالَتَا: أَمْرَتَا رَسُولُ اللَّهِ ﷺ أَنْ تُجْهَزْ فَاطِمَةَ حَتَّى تُدْخِلَهَا عَلَى عَلَيِّ. فَعَمَدْنَا إِلَى الْبَيْتِ. فَقَرَسْنَاهُ تُرَابًا لَيْتَا مِنْ أَغْرَاضِ الْبَطْحَاءِ. ثُمَّ حَشَّوْنَا مِرْفَقَتَيْنِ لِهَا. فَنَفَشْنَاهُ بِأَيْدِينَا. ثُمَّ

picked with our own hands. Then we offered dates and raisins to eat, and sweet water to drink. We went and got some wood and set it up at the side of the room, to hang clothes and water skins on. And we never saw any wedding better than the wedding of Fâtimah." (Da'if)

أطعمنا تمرًا ورَبِيبًا وسقينَا ماءً عذبًا وعَمَدنا
إلى عود، فعَرَضْنَاهُ في جانِبِ الْبَيْتِ لِتَلْقَى
عَيْنِهِ الثُّوبُ وَيُعْلَقُ عَلَيْهِ السَّقَاءُ. فَمَا رَأَيْنَا
عُرْسًا أَحْسَنَ مِنْ عُرْسٍ فَاطِمَةً.

تخریج: [إسناده ضعیف جداً] * جابر تقدم حاله، ح: ٣٥٦، والمنضل بن عبدالله ضعیف
كما في التقریب وغيره.

1912. It was narrated that Sahl bin Sa'd As-Sâ'idi said: "Abu Usaid As-Sâ'idi invited the Messenger of Allâh ﷺ to his wedding, and the bride herself served them. She said: 'Do you know what I gave the Messenger of Allâh ﷺ to drink? I had soaked some dates the night before, then in the morning I strained them and gave him that water to drink.'" (Sahih)

١٩١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَتَيْنَا
عَبْدَهُ الرَّبِيعَ بْنَ أَبِي حَازِمَ: حَدَّثَنِي أَبِي عَنْ
سَهْلِ بْنِ سَعْدِ السَّاعِدِيِّ قَالَ: دَعَاهُ أَبُو أَسَدِ
السَّاعِدِيُّ رَسُولُ اللَّهِ ﷺ إِلَى عُرْسِهِ. فَكَانَتْ
خَاتِمَهُمُ الْعَرَوْسُنَّ. قَالَتْ: تَدْرِي مَا سَيَئَتْ
رَسُولُ اللَّهِ ﷺ؟ قَالَتْ: أَقْعَدْتُ تَمَرَاتٍ مِنَ
اللَّيْلِ. فَلَمَّا أَصْبَحْتُ صَفِيفَهُنَّ فَأَسْقَيْتُهُنَّ إِيَّاهُ.

تخریج: أخرجه البخاري، النکاح، باب حق إجابة الوليمة والدعوة ومن أولم سبعة أيام
ونحوه، ح: ٥١٧٦، ٦٦٨٥، ومسلم، الأشربة، باب إجابة النبي الذي لم يشد ولم يصر مسكراً،
ح: ٢٠٠٦ من حديث عبدالعزيز به.

Comments:

- Everybody's invitation should be accepted, whether one is poor or rich.
- A woman is allowed to serve the guests even if they are not immediate blood relatives, as long as she observes the veil in accordance with the *Shari'ah*.

Chapter 25. Accepting Invitations

1913. It was narrated that Abu Hurairah said: "The worst of food is food of a wedding feast to which the rich are invited and the

(المعجم ٢٥) - بَابُ إِجَابَةِ الدَّاعِي

(التحفة ٢٥)

١٩١٣ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا
سَقِيَانُ بْنُ عَيْنَةَ عَنِ الرُّهْبَرِيِّ، عَنْ عَبْدِ
الرَّحْمَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: شَرُّ

poor are not. Whoever does not accept an invitation has disobeyed Allâh and His Messenger.” (*Sahih*)

اللَّعَمْ طَعَامُ الْوَلِيمَةِ يُذْعَنُ لَهَا الْأَغْيَاءُ
وَيُتَرَكُ الْفَقَرَاءُ وَمَنْ لَمْ يُجِبْ فَقَدْ عَصَى اللَّهَ
وَرَسُولَهُ.

تخریج: أخرجه البخاري، النکاح، باب من ترك الدعوة فقد عصى الله ورسوله، ح: ٥١٧٧ من حديث الزهري به، ومسلم، النکاح، باب الأمر بإجابة الداعي إلى دعوة، ح: ١٤٣٢ من حديث سفيان به.

1914. It was narrated from Ibn ‘Umar that the Messenger of Allâh ﷺ said: “If anyone of you is invited to a wedding feast, let him accept.” (*Sahih*)

١٩١٤ - حَدَّثَنَا إِسْحَاقُ بْنُ مَتْصُورٍ أَبْنَاءُ
عَبْدِ اللَّهِ بْنِ نُعْمَرٍ: حَدَّثَنَا عَبْدُ اللَّهِ عَنْ نَافِعٍ,
عَنْ أَبْنَى عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا
دُعِيَ أَخْدُوكُمْ إِلَى وَلِيمَةِ عُرْسٍ فَلَا تُبْحِبْ».

تخریج: أخرجه مسلم، النکاح، الباب السابق، ح: ١٤٢٩ من حديث ابن نعمر به، وأخرجه البخاري، ح: ٥١٧٣، ومسلم، ح: ١٤٢٩ من حديث مالك عن نافع به نحو المعنى.

Comments:

- Marriage is an important social celebration of Muslims; therefore attending the wedding feast is very important and useful for the establishment of social relations.
- One should not refuse to accept the invitation of a wedding feast without a genuine excuse.

1915. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: ‘The wedding feast on the first day is an obligation, on the second day is a custom and on the third day is showing off.’ (*Da’if*)

١٩١٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبَادَةَ الْوَاسِطِيِّ:
حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ
حُسَيْنٍ أَبُو مَالِكِ التَّمَحِيِّ، عَنْ مَنْصُورٍ، عَنْ
أَبِي حَازِمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ
اللَّهِ ﷺ: «الْوَلِيمَةُ أَوَّلَ يَوْمَ حَقٌّ. وَالثَّانِي
مَعْرُوفٌ. وَالثَّالِثُ رِبَاءً وَسُمْعَةً».

تخریج: [إسناده ضعيف جدًا] قال أبوالبصيري: في إسناده أبومالك التمحي وهو من اتفقا على ضعفه ، وللحديث شواهد عند أبي داود، ح: ٣٧٤٥ و غيره ، وكلها ضعيفة.

Chapter 26. Staying With A Virgin And A Previously-Married Woman

1916. It was narrated from Anas

(المعجم ٢٦) - بَابُ الِّإِقَامَةِ عَلَى الْكُبْرِ
وَالثَّيْبِ (التحفة ٢٦)

١٩١٦ - حَدَّثَنَا هَنَدُ بْنُ السَّرِيِّ: حَدَّثَنَا عَدْدٌ

that the Messenger of Allâh ﷺ said: "Three days for a previously-married woman and seven days for a virgin." (*Hasan*)

ابن شِيَّمَانَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ أَئْوَبَ، عَنْ أَبِي قِلَّابَةَ، عَنْ أَنْسِي قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ لِلَّهِ ثَلَاثَةَ، وَلِلْكُفَّارِ سَبْعًا».

Tafsir: [حسن] انظر، ح: ١٤٦١، وأخرج البخاري، ح: ٥٢١٤، ومسلم، ح: ١٤٠٩ من حديث أبوب عن أبي قلابة عن أنس قال: من السنة إذا تزوج الرجل البكر على الثيب أقام عندها سبعاً وقسم، وإذا تزوج الثيب على البكر أقام عندها ثلاثة ثم قسم ، والحديث حسن بالشواهد .

Comments:

After passing this time, the new wife will have the same rights as the wives before her. The new wife will have her turn as other wives have their turns. The husband will treat her equally in expenses and spending nights with her, just like the other wives. He will spend the night with her when she has her turn.

1917. It was narrated from Al-Hâarith from his father that when the Messenger of Allâh ﷺ married Umm Salamah, he stayed with her for three days, then he said: "You are not insignificant in your husband's eyes. If you wish, I will stay with you for seven days, but then I will stay with my other wives for seven days too." (*Sahih*)

١٩١٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْمَىٰ بْنُ سَعِيدِ الْقَطَانِ عَنْ سَعِيْدِ بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، عَنْ عَبْدِ الْمَلِكِ يَعْنِي أَبْنَ أَبِي بَكْرٍ بْنَ الْحَارِثِ بْنَ هَشَامَ، عَنْ أَبِيهِ، عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ ﷺ لَمَّا تَزَوَّجَ أُمَّ سَلَمَةَ أَقَامَ عِنْدَهَا ثَلَاثَةَ: وَقَالَ: «الَّذِينَ يُكِّلُّونَ عَلَى أَهْلِكَهُمْ هُوَ أَنْ شَفِّتَ، سَبَّعْتَ لَكِ. وَإِنْ سَبَّعْتُ لَكِ، سَبَّعْتُ لِشَفَاعَيِّ».

Tafsir: أخرجه مسلم، الرضاع، باب قدر ما تستحقه البكر والثيب من إقامة الزوج عندها عقب الزفاف، ح: ١٤٦٠ عن ابن أبي شيبة وغيره به .

Comments:

- If the bride is divorced or a widow, the husband is allowed to be with her for up to seven days; but in this case the husband will then spend seven days with each of his wives, and then he will begin the turns.
- In response to this offer of the Messenger of Allâh ﷺ, Umm Salamah, the Mother of the Believers, chose the period of three days. (*Sahih Muslim*: 1460). The most probable reason of it was the hope that her turn would then come sooner.

Chapter 27. What The Man Should Say When His Bride Comes In To Him

1918. It was narrated from 'Abdullâh bin 'Amr that the Prophet ﷺ said: "When anyone of you gets a new wife, a servant, or an animal, let him take hold of the forelock and say: 'Allâhumma inni as'âluka min khayriha wa khayri ma jubilat 'ala'ihi, wa 'audhu bika min sharriha wa sharri ma jubilat 'ala'ihi' (O Allâh, I ask You for the goodness within her and the goodness that she is inclined towards, and I seek refuge with You from the evil within her and the evil to which she is inclined)." (Hasan)

تخریج: [إسناده حسن] أخرجه أبو داود، النکاح، باب في جامع النکاح، ح: ٢٦٠ من حديث ابن عجلان به، وصححه الحاکم، والذهبي * ابن عجلان صرخ بالسماع عند البخاري في خلق أفعال العباد.

Comments:

- The wife, female slave, cow, buffalo and horse etc., are all the favors of Allâh to a man; but they may have such habits which can cause perpetual concerns. Therefore, one should invoke Allâh to have good from them, and for no harm to be inflicted.
- The head of a human or an animal is the most important part of the body, the objective of making supplication by placing the hand on the head of the human or an animal is that Allâh may make them useful for us. Allâh knows best!

1919. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "When anyone of you has intercourse with his wife, let him say: 'Allâhumma jannibnîsh-Shaitâna wa jannibish-Shaitâna ma razaqtani' (O Allâh, keep Satan away from me and keep Satan away from that with which You

(المعجم ٢٧) - باب ما يَقُولُ الرَّجُلُ إِذَا دَخَلَتْ عَلَيْهِ أَهْلُهُ (التحفة ٢٧)

١٩١٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَصَالِحُ ابْنُ مُحَمَّدٍ بْنُ يَحْيَى الْقَطَّانُ. قَالَ: حَدَّثَنَا عَيْدُ اللَّهِ بْنُ مُوسَى: حَدَّثَنَا شُعَيْبٌ عَنْ مُحَمَّدٍ ابْنِ عَجْلَانَ، عَنْ عَمْرُو بْنِ شَعَيْبٍ، عَنْ أَيْمَهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرُو، عَنِ النَّبِيِّ ﷺ قَالَ: إِذَا أَفَادَ أَحَدُكُمْ امْرَأَةً أَوْ خَادِمًا، أَوْ دَائِهَةً، فَلْيَأْخُذْ بِنَاصِيَتِهَا وَلَيُقْلِنْ: اللَّهُمَّ إِنِّي أَشَأْكَ مِنْ حَيْرَهَا وَخَيْرَهَا وَجَيْرَهَا مَا جُبِّلَتْ عَلَيْهِ. وَأَعُوذُ بِكَ مِنْ شَرِّهَا وَشَرِّ مَا جُبِّلَتْ عَلَيْهِ».

١٩١٩ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا حَرِيرٌ، عَنْ مَضْوِيِّرٍ، عَنْ سَالِمٍ بْنِ أَبِي الْجَعْدِ، عَنْ كُرَيْبٍ، عَنْ أَبْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: إِنَّمَا أَخْدُكُمْ إِذَا أَتَيْتُمْ امْرَأَةً الْلَّهُمَّ جَنِّبْنِي الشَّيْطَانَ وَجَنِّبْ الشَّيْطَانَ مَا رَأَيْتُنِي شَهِدَ كَانَ بِنِئْمَاهُ وَلَدُّ، لَمْ يُسْلِطْ اللَّهُ

bless me).’ Then if they have a child, Allâh will never allow Satan to gain control over him or he will never harm him.” (*Sahih*)

نَفْرِيْج: أخرجه البخاري، الوضوء، باب التسمية على كل حال وعند الوقع، ح: ١٤١، وغيره، ومسلم، النكاح، باب يستحب أن يقوله عند الجماع، ح: ١٤٣٤ من حديث جرير به.

Comments:

- a. It is better to read the mentioned supplication before taking off the clothes.
- b. The benefit of this supplication is that due to its blessing, Satan keeps away when having intercourse; therefore, the risk of the effects of Satan on the children becomes less, and it is protection against some certain diseases also.

Chapter 28. Covering Oneself When Having Intercourse

1920. Bahz bin Hakim narrated from his father that his grandfather said: “I said: ‘O Messenger of Allâh, with regard to our ‘Awrah, what may we uncover of it and what must we conceal?’ He said: ‘Cover your ‘Awrah except from your wife and those whom your right hand possesses.’ I said: ‘O Messenger of Allâh, what if the people live close together?’ He said: ‘If you can make sure that no one sees it, then do not let anyone see it.’ I said: ‘O Messenger of Allâh, what if one of us is alone?’ He said: ‘Allâh is more deserving that you should feel shy before Him than people.’” (*Hasan*)

نَفْرِيْج: [إسناده حسن] أخرجه أبو داود، الحمام، باب: في التعرى، ح: ٤٠١٧ من حديث بهز به، وحسنه الترمذى، ح: ٢٧٦٩، وعلقه البخاري في صحيحه، الغسل، باب من اغتسل عرياناً وحده في خلوة.

Comments:

- a. To keep the private parts preserved from anyone else, other than the wife and female slave, means to abstain from illegal affairs and adultery.
- b. This *Hadith* also indicates that if a husband and wife see each other’s

عَلَيْهِ الشَّيْطَانُ. أَوْ لَمْ يَضُرْهُ.

(المعجم ٢٨) - بَابُ التَّسْتُرِ عِنْدَ الْجِمَاعِ (التحفة ٢٨)

١٩٢٠ - حَدَّثَنَا أَبُو يَكْرِبٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَهْرُبُ بْنُ هَارُونَ، وَأَبُو أَسَمَةَ. قَالَا: حَدَّثَنَا بَهْرُ بْنُ حَكِيمٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ عَوْرَاتُنَا. مَا نَأْتَنِي مِنْهَا وَمَا نَذَرْ؟ قَالَ: «اَخْفِظْ عَوْرَاتَكَ. إِلَّا مِنْ زَوْجِكَ أَوْ مَا مَلَكْتَ يَمْنَكَ» قُلْتُ: يَا رَسُولَ اللَّهِ! أَرَيْتَ إِنْ كَانَ الْقَوْمُ بَعْضُهُمْ فِي بَعْضٍ؟ قَالَ: «إِنْ اسْتَطَعْتَ أَنْ لَا تُبَرِّهَا أَحَدًا، فَلَا تُرِينَهَا» قُلْتُ: يَا رَسُولَ اللَّهِ! فَإِنْ كَانَ أَحَدُنَا خَالِيًّا؟ قَالَ: «فَإِنَّهُ أَحَقُّ أَنْ يُسْتَحْيِي مِنْهُ مِنَ النَّاسِ».

private parts, it is not sinful. The following *Ahâdîth* prohibited it but both narrations are Weak.

1921. It was narrated from 'Utbah bin 'Abd Sulami that the Messenger of Allâh ﷺ said: "When anyone of you has intercourse with his wife, let him cover himself and not be naked like donkeys." (*Da'if*)

١٩٢١ - حَدَّثَنَا إِسْحَاقُ بْنُ وَهْبٍ الْوَاسِطِيُّ : حَدَّثَنَا الْوَلِيدُ بْنُ الْقَاسِمِ الْهَمَدَانِيُّ : حَدَّثَنَا الأَخْوَصُ بْنُ حَكَمٍ ، عَنْ أَبِيهِ . وَرَاشِدُ بْنُ سَعْدٍ ، وَعَبْدُ الْأَعْلَى بْنُ عَدَى ، عَنْ عُتْبَةِ بْنِ عَبْدِ اللَّهِ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : «إِذَا أَتَى أَحَدُكُمْ أَهْلَهُ فَلْيَسْتَرْ وَلَا يَجْرِدْ تَجْرِيدَ الْعَيْرَيْنِ» .

تخریج: [إسناده ضعیف] وقال البوصیری: إسناده ضعیف * الأحوص بن حکیم ضعفه أحمد، وأیوباتم، والننائی وغیرهم ، وقال صاحب التقریب: ضعیف الحفظ ، وللمحدث شواهد ضعیفة.

1922. It was narrated from a freed slave of 'Âishah that 'Âishah said: "I never looked at or I never saw the private part of the Messenger of Allâh ﷺ." (*Da'if*)

(One of the narrators) Abu Bakr (Ibn Abu Shaibah) said: "Abu Nu'aim said: 'From a freed female slave of 'Âishah.'"

١٩٢٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ : حَدَّثَنَا وَكِيعٌ ، عَنْ شَفَيْيَانَ ، عَنْ مَنْصُورٍ ، عَنْ مُوسَى بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ ، عَنْ مَوْلَى لِعَاشَةَ ، عَنْ عَاشَةَ قَالَتْ : مَا نَظَرْتُ ، أَوْ مَا رَأَيْتُ فَرَجَعَ رَسُولُ اللَّهِ ﷺ قَطُّ .
قَالَ أَبُو بَكْرٍ : قَالَ أَبُو نُعَيْمٍ : عَنْ مَوْلَةِ لِعَاشَةَ .

تخریج: [ضعیف] تقدم، ح: ٦٦٢.

Chapter 29. Prohibition Of Having Intercourse With Women In The Buttocks

1923. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Allâh will not look at a man who has intercourse with his wife in her buttocks." (*Sahîh*)

(المعجم ٢٩) - بَابُ النَّهِيِّ عَنِ إِيمَانِ النِّسَاءِ فِي أَدْبَارِهِنَّ (التحفة ٢٩)
١٩٢٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَبِي الشَّوَّارِبِ : حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ ، عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ ، عَنْ الْحَارِثِ بْنِ مُخْلَدٍ ، عَنْ أَبِي هُرَيْرَةَ ، عَنِ النَّبِيِّ ﷺ قَالَ : «لَا يَنْظُرُ اللَّهُ إِلَى رَجُلٍ جَامَعَ امْرَأَةً فِي دُبْرِهَا» .

تخریج: [صحیح] أخرجه أبو داود، النکاح، باب: فی جامع النکاح، ح: ۲۱۶۲ من حدیث سهیل به، واسناده حسن، وصححه البوصیری، وله شواهد صحیحة، وهو من الأحادیث المتراءة.

Comments:

'Allâh ﷺ will not look towards him'; it means Allâh ﷺ will not cast a glance of mercy at him and his offence will not be forgiven on the Day of Judgement. It shows the prohibition of this act; another *Hadîth* narrates that the perpetrator of this act is cursed too. The Prophetic statement is, 'He who has intercourse with a woman from her backside (anus) is cursed.' (*Sunan Abu Dawud*: 2162)

1924. It was narrated from Khuzaimah bin Thâbit that the Messenger of Allâh ﷺ said: "Allâh is not too shy to tell the truth," three times. "Do not have intercourse with women in their buttocks." (*Sahîh*)

١٩٢٤ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: أَبْيَانًا عَبْدُ الْوَاحِدِ بْنُ زَيْدٍ، عَنْ حَجَّاجَ بْنِ أَرْطَافَةَ، عَنْ عَمْرُو بْنِ شُعْبِينَ، عَنْ هَرَمِيَّ بْنِ عَبْدِ اللَّهِ، عَنْ حُرَيْمَةَ بْنِ ثَابِتٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ اللَّهَ لَا يَسْتَخِي مِنَ الْحَقِّ ثَلَاثَ مَرَّاتٍ لَا تَنْوِي النِّسَاءَ فِي أَذْبَارِهِنَّ.

تخریج: [صحیح] اனظر، ح: ۱۱۲۹، ۴۹۶ لعله، وضعفه البوصیری وغيره، والحدیث صحیح، وانظر الحدیث السابق.

Comments:

The anus is a place of filth; therefore, a believer avoids it. Naturally, this is not the function and purpose of this place; and medically it has many affects and dark sides, one of these has recently appeared in the form of 'AIDS Disease'. The legal place of intercourse, the vagina, is even forbidden during the days of impurity; so how can the place which is just for filth be allowed!

1925. It was narrated from Muhammad bin Munkadir that he heard Jâbir bin 'Abdullâh say: "The Jews used to say that if a man has intercourse with a woman in her vagina from the back, the child would have a squint. Then Allâh, Glorious is He, revealed: 'Your wives are a tilth for you, so go to your tilth, when or how you will.'"^[1] (*Sahîh*)

١٩٢٥ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ، وَ جَوَيْلُ بْنُ الْحَسَنِ. قَالَا: حَدَّثَنَا شَفَيْبَانَ عَنْ مُحَمَّدِ بْنِ الْمُتَكَبِّرِ أَنَّهُ سَمِعَ جَاهِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: كَانَتِ يَهُودُ تَقُولُونَ: مَنْ أَتَى امْرَأَةً فِي قُلْبِهَا، مِنْ دُبْرِهَا، كَانَ الْوَلَدُ أَحْوَلَّ. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ: «إِنَّا لَكُمْ بَرْئٌ لَكُمْ فَأُنْوِي سَرْقَمَ أَنْ شِئْتُمْ» [البقرة: ۲۲۳].

[۱] *Al-Baqarah* 2:223.

تخریج: أخرجه البخاري، التفسیر، باب: «نساؤكم حرث لكم فأتوا حرثكم أني شتم» ح: ٤٥٢٨، ومسلم، النکاح، باب جواز جماعه امرأه في قبها ... إلخ، ح: ١٤٣٥ من حديث سفيان به.

Comments:

The husband and wife are allowed to enjoy each other by all means, whether the woman is lying on her back, on the stomach or on the side. But the necessary thing is that only the legal and natural way according to *Shari'ah* should be used for intercourse.

Chapter 30. Coitus Interruptus (المعجم ٣٠) - باب العزل (التحفة ٣٠)

1926. It was narrated that Abu Sa'eed Al-Khudri said: "A man asked the Messenger of Allâh ﷺ about coitus interruptus. He said: 'Do you do that? If you do not do so, it will not harm; for there is no soul that Allâh has decreed will exist but it will come into being.'" (*Sahih*)

١٩٢٦ - حدثنا أبو مروان محمد بن عثمان العثماني: حدثنا إبراهيم بن سعيد، عن ابن شهاب: حدثني عبيد الله بن عبد الله، عن أبي سعيد الخدري قال: سأله رجل رسول الله ﷺ عن العزل؟ فقال: «أو تفعلون؟ لا عليكم أن لا تفعلوا. فإنه ليس من نسمة، قضى الله لها أن تكون، إلا هي كائنة».

تخریج: [إسناده صحيح] أخرجه النساءي في الكبير، وأحمد: ٩٢/٣، ٩٣ من حديث إبراهيم بن سعد به، وله طرق أخرى عند مسلم، ح: ١٤٣٨. وغيره.

Comments:

- Coitus interruptus is, when having intercourse, to withdraw the penis before emission of semen to avoid the risk of conception.
- If you do not do so, it will not harm'; it indicates that not doing coitus interruptus is better, but it is not forbidden strictly. Therefore, if woman is unable to bear the difficulty of pregnancy and childbirth due to sickness or weakness, then coitus interruptus may be practised.

1927. It was narrated that Jâbir said: "We used to practice coitus interruptus during the time of the Messenger of Allâh ﷺ when the Qur'ân was being revealed." (*Sahih*)

١٩٢٧ - حدثنا هارون بن إسحاق الهمذاني: حدثنا سفيان عن عمرو، عن عطاء، عن جابر قال: كنا ننزل على عهد رسول الله ﷺ، والقرآن يتزل.

تخریج: أخرجه البخاري، النکاح، باب العزل، ح: ٥٢٠٨، ومسلم، النکاح، باب حكم العزل، ح: ١٤٤٠ من حديث سفيان به.

Comments:

Its definite prohibition was not revealed during the period of revelation, which proves the permissibility of this action.

1928. It was narrated that 'Umar bin Khattâb said: "The Messenger of Allâh ﷺ forbade practicing coitus interruptus with a free woman except with her consent." (*Da'if*)

١٩٢٨ - حَدَّثَنَا الْحَسْنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا إِسْحَاقُ بْنُ عَيْشَىٰ: حَدَّثَنَا ابْنُ لَهِيَةَ: حَدَّثَنِي جَعْفُرُ بْنُ رَبِيعَةَ، عَنْ الزُّهْرِيِّ، عَنْ مُحَمَّدِ بْنِ أَبِي هُرَيْرَةَ، عَنْ أَبِيهِ، عَنْ عُمَرَ بْنِ الْحَطَّابِ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ أَنْ يُعْزَلَ عَنِ الْحُرْةِ إِلَّا يَأْذَنُهَا.

تخریج: [إسناده ضعيف] أخرجه أحمده: ٣١/١ عن إسحاق به، وقال البوصيري: هذا إسناد ضعيف لضعف ابن لهيعة ، وفيه علة أخرى تقدم، ح: ٧٠٧، وليس له شاهد صحيح.

Chapter 31. A Man Should Not Be Married To A Woman Along With Her Paternal or Maternal Aunt At The Same Time

1929. It was narrated from Abu Hurairah that the Prophet ﷺ said: "A woman should not be married to a man who is married to her paternal aunt or maternal aunt (at the same time)." (*Sahih*)

(المعجم ٣١) - بَابُ: لَا تُنكحُ الْمَرْأَةَ عَلَى عَمَّتِهَا وَلَا عَلَى خَالِتِهَا (التحفة ٣١)

١٩٢٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أَسَامَةَ، عَنْ هَشَامِ بْنِ حَسَانَ، عَنْ مُحَمَّدِ بْنِ سَيْرَينَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ النَّبِيِّ ﷺ قَالَ: لَا تُنكحُ الْمَرْأَةَ عَلَى عَمَّتِهَا، وَلَا عَلَى خَالِتِهَا.

تخریج: وأخرجه مسلم، النکاح، باب تحريم الجمع بين المرأة وعمتها أو خالتها في النکاح، ح: ٣٨/١٤٠٨ عن أبي بكر بن أبي شيبة به، وله طرق أخرى عند البخاري، ح: ٥١٠٩ وغيرها.

1930. It was narrated that Abu Sa'eed Al-Khudri said: "I heard the Messenger of Allâh ﷺ forbid two types of marriage: For a man to be married to a woman and her paternal aunt (at the same time), and to a woman and her maternal aunt (at the same time)." (*Sahih*)

١٩٣٠ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُهُ بْنُ سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ يَعْقُوبَ ابْنِ عُتْبَةَ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ أَبِي سَعِيدِ الْخُدَرِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَنْهَا عَنِ نِكَاحِهِنَّ. أَنْ يَجْمَعَ الرَّجُلُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَبَيْنَ الْمَرْأَةِ وَخَالِتِهَا.

تخریج: [صحيح] أخرجه أَحْمَدٌ: ٦٧ / ٣ من حديث ابن إسحاق به مطولاً، والحديث السابق شاهد له.

1931. Abu Bakr bin Abu Musa narrated that his father said: "The Messenger of Allāh ﷺ said: "A man should not be married to a woman and her paternal aunt or maternal aunt at the same time." (Sahih)

١٩٣١ - حَدَّثَنَا جُبَارَةُ بْنُ الْمَعْلَسِ: حَدَّثَنَا أَبُو بَكْرِ الْمَهْشِلِيُّ: حَدَّثَنِي أَبُو بَكْرٍ بْنُ أَبِي مُوسَى ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُنكِحُ الْمَرْأَةَ عَلَى عِنْدِهَا وَلَا عَلَى خَالِتِهَا».

تخریج: [صحيح] انظر، ح: ٧٤٠ لعلته، ح: ١٩٢٩ شاهد له.

Comments:

After the death of a wife or after her divorce, her maternal aunt or the daughter of her sister, and her paternal aunt or the daughter of her brother, are permissible for the man to take as brides. Similarly, two sisters at one time cannot be in the marriage bond of one man; but after the divorce or death of the first sister, the marriage of the second sister is allowed with the same man. (*An-Nisâ' 4:23*)

Chapter 32. A Man Divorces His Wife Thrice, Then Another Man Marries Her And Divorces Her Before Consummating The Marriage. Can She Go Back To The First Man?

1932. It was narrated from 'Âishah that the wife of Rifâ'ah Al-Qurazi came to the Messenger of Allâh ﷺ and said: "I was married to Rifâ'ah, and he divorced me and made it irrevocable. Then I married 'Abdur-Rahmân bin Zubair, and what he has is like the fringe of a garment." The Prophet ﷺ smiled and said: "Do you want to go back to Rifâ'ah? No, not until you taste his ('Abdur-Rahmân's) sweetness and he tastes your sweetness." (Sahih)

(المعجم ٣٢) - بَابُ الرَّجُلِ يُطْلَقُ امْرَأَهُ ثَلَاثَةَ فَتَرَوْجَ فَيُطْلَقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا . أَتْرَجِعُ إِلَى الْأُولَى

(التحفة ٣٢)

١٩٣٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا سَفِيَّانُ بْنُ عَيْنَةَ، عَنِ الرُّؤْبَرِيِّ. أَخْبَرَنِي عُرْوَةُ، عَنْ عَائِشَةَ أَنَّ امْرَأَةَ رِفَاعَةَ الْمُرْظَبِيِّ جَاءَتْ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: إِنِّي كُنْتُ عِنْدَ رِفَاعَةَ فَطَلَقَنِي فَبَتَ طَلَاقِي . فَتَرَوْجَتْ عِنْدَ الرَّحْمَنِ بْنِ الزُّبَيرِ. وَإِنَّ مَا مَعَهُ مِثْلُ هُدْبَيَّةِ التَّوْبِ . فَكَسَمَ النَّبِيُّ ﷺ فَقَالَ: «أَتَرِيدِينَ أَنْ تَرْجِعِي إِلَى رِفَاعَةَ؟ لَا . حَسَّنِي تَلْوِي عُسَيْنَةَ وَيَدْعُوكَ عُسَيْنَتِكَ».

تخریج: أخرجه البخاري، الشهادات، باب شهادة المختبئ، ح: ٢٦٣٩، ومسلم، النكاح، لا تحل المطلقة ثلثاً لمطلقها حتى تنكح زوجاً غيره ويطأها ثم يفارقها وتنتقض عدتها، ح: ١٤٣٣ من حديث سفيان به.

Comments:

- The permission of marrying the first man (who gave her final divorce) is with the condition that the second husband divorced her after having intercourse. If the second husband divorced her before having sexual intercourse, then remarrying the former husband is not yet permissible; but she may marry a third person.
- The third divorce is an absolute or final divorce after which the right of revocation is void. If a woman is divorced after the marriage ceremony without consummating the marriage, then this first divorce will be regarded as absolute and final. If one is married to a female slave, then the second divorce will be the absolute one. Any other case has the right to three divorces and the third divorce will be the last one.

1933. It was narrated from Ibn 'Umar, from the Prophet ﷺ, concerning a man who had a wife then divorced her, then another man married her but divorced her before consummating the marriage. Could she go back to the first man? He said: "No, not until he tastes her sweetness." (*Sahih*)

١٩٣٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَسَارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَلْقَمَةَ بْنِ مَرْقَدٍ قَالَ: سَمِعْتُ [سَالِمَ بْنَ رَزِينَ] يُحَدِّثُ عَنْ سَالِمٍ بْنِ عَبْدِ اللَّهِ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ، فِي الرَّجُلِ تَكُونُ لَهُ الْمَرْأَةُ فَيَطْلَقُهَا رَجُلٌ فَيَطْلَقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا. أَتَرْجِعُ إِلَى الْأَوَّلِ؟ قَالَ: «لَا. حَتَّى يَذُوقَ الْعُسْيَلَةَ». *(صحيح)*

تخریج: [صحيح] أخرجه النسائي: ٦/١٤٨، ١٤٩، ٣٤٤٣: ح، التعليقات السلفية: ٣٤٤٣، وأحمد: ٢/٨٥ عن محمد بن جعفر من حديث شعبة به، وخالفه سفيان الثوري فرواه عن علقة من رزين بن سليمان الأحمرى عن ابن عمر به * رزين أو ابن رزين مجھول كما في التقریب، ولحديثه شواهد كثيرة منها الحديث السابق، فائدة: وقع في المجتى للنسائي: سلم بن زرير ، وهو تصحیف كما حفظه شيخنا الإمام الحجة المستقن الفقيه المحدث محمد عطاء الله حنف الفوجياني رحمه الله عليه في التعليقات، ثم وجده على الصواب في السنن الكبرى للنسائي، ح: ٥٦٠٧ دره.

Comments:

'Taste' means the performance of intercourse, as has been mentioned previously.

Chapter 33. The *Muhallil* And The *Muhallal Lahu*^[1]

1934. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ cursed the *Muhallil* and the *Muhallal lalu*." (*Sahîh*)

(المعجم (٣٣) - باب **المُحَلّ وَالْمُحَلَّ لَهُ** (التحفة (٢٣)

١٩٣٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَارٍ: حَدَّثَنَا أَبُو عَامِرٍ، عَنْ رَمْعَةَ بْنِ صَالِحٍ، عَنْ سَلَمَةَ بْنِ [وَهْرَامَ]، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: لَعْنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُحَلَّ وَالْمُحَلَّ لَهُ.

تخریج: [صحیح] * زمعة تقدم، ح: ٣٢٦، ولهديه شاهد حسن عند أحمد وغيره من حديث أبي هريرة رضي الله عنه: ٣٢٣/٢، وصححه ابن الجارود، ح: ٦٨٤، وحسنه البخاري (التاخیص الحیر: ١٧٠/٣)، وللحديث شواهد كثیرة، ذکرت بعضها في نيل المقصود، ح: ٢٠٧٦، وثبت إنكار التحلیل المذکور عن عمر وعثمان وابن عمر وغيرهم رضي الله عنهم أجمعین.

1935. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ cursed the *Muhallil* and the *Muhallal lalu*." (*Da'if*)

١٩٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ [بْنِ الْبَحْرَنِيِّ الْوَاسِطِيِّ]: حَدَّثَنَا أَبُو أَسَمَّةَ، عَنْ ابْنِ عَوْنَى وَ مُجَالِدٍ عَنِ الشَّعْبِيِّ، عَنِ الْحَارِثِ، عَنْ عَلَىٰ قَالَ: لَعْنَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُحَلَّ وَالْمُحَلَّ لَهُ.

تخریج: [ضعیف] أخرجه أبو داود، النکاح، باب: فی التحلیل، ح: ٢٠٧٦ من حديث الشعبي به * والحارث تقدم، ح: ٩٥، وحديث أحمد (٣٢٣/٢)، ح: ٨٢٧٠ (٨٢٧٠: ٩٥) يعني عنه.

1936. 'Uqbah bin 'Âmir narrated that the Messenger of Allâh ﷺ said: 'Shall I not tell you of a borrowed billy goat.' They said: 'Yes, O Messenger of Allâh!' He said: 'He is *Muhallil*. May Allâh curse the *Muhallil* and the *Muhallal lalu*.' (*Hasan*)

١٩٣٦ - حَدَّثَنَا يَحْيَى بْنُ عُثْمَانَ بْنُ صَالِحٍ الْمُضْرِبِيُّ: حَدَّثَنَا أَبِي. قَالَ: سَمِعْتُ اللَّهَ أَبْنَ سَعْدٍ يَقُولُ: قَالَ لِي أَبُو مُضْعِفٍ مِسْرَخُ ابْنُ هَاعَانَ، قَالَ عَبْرَةُ بْنُ عَامِرٍ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَلَا أَخْبِرُكُمْ بِالْتَّيْسِ الْمُسْتَعْارِ؟ قَالُوا: بَلَى. يَا رَسُولَ اللَّهِ. قَالَ: هُوَ الْمُحَلَّ. لَعْنَ اللَّهِ الْمُحَلَّ وَالْمُحَلَّ لَهُ.

تخریج: [حسن] أخرجه الطبراني (الكبير: ٢٩٩/١٧)، ح: ٨٢٥ من حديث أبي صالح عن الليث به، وصححه الحاکم: ١٩٨/٢، والذهبی، وفيه علة قادحة، وح: ١٩٣٤ شاهد له، وحسنه

[1] *Muhallil* is the man who marries a woman in order to divorce her, so that she can go back to her first husband. *Muhallal lalu* is the first husband for whom this is done.

الحافظ عبدالحق الإشبيلي، والحافظ ابن تيمية وغيرهما.

Comments:

- If a woman is divorced three times (the three divorces in accordance with the *Shari'ah*) and her husband wants to take her back, it is not allowed. If a second man marries her, and he has no intention to live a matrimonial or family life with her permanently; rather he intends to divorce her after marriage, and having sexual intercourse and this marriage is a trick, so that the former husband can remarry her, thus which was unlawful for the former husband will become lawful, this type of temporary marriage is called *Halâlah*, it is declared a cursed deed in this *Hadîth*.
- The curse proves the prohibition of *Halâlah*, because a permissible deed never causes a curse.
- The person who performs *Halâlah* is named, in the *Hadîth*, a billy goat or a male goat, which stresses the gravity of evil in this act.

Chapter 34. What Is Unlawful Due To Lineage Is Unlawful Due To Breastfeeding

1937. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: 'Breastfeeding makes unlawful (for marriage) the same things that blood ties make unlawful.' (*Sahîh*)

(المعجم ٣٤) - باب : يُحرّم من الرّضاع مَا يُحرّم من النسب (الصفحة ٣٤)

١٩٣٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ، عَنِ الْحَجَّاجِ، عَنِ الْحَكَمِ، عَنْ عِرَّاكِ بْنِ مَالِكٍ، عَنْ عُرْوَةَ، عَنْ غَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «يُحرّم من الرّضاع مَا يُحرّم من النسب».

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفحل، ح: ٩/١٤٤٥ من حديث يزيد بن أبي حبيب عن عراك به مطولاً، نحو المعنى، وأصله عند البخاري، ومسلم وغيرهما، وأنظر الحديث الآتي.

Comments:

The details of the women who are prohibited for marriage due to fosterage (suckling a baby) are the following:

- Foster Mother: Who suckled you during the foster period (first two years of infancy).
- Foster Sister: Your real or foster mother suckled her, along with you, before you or after you; or a woman whose real or foster mother suckled you; i.e., all blood related children and the foster children of a woman will become brothers and sisters of the suckling child.
- Foster maternal aunt: The sisters of the foster mother will become maternal aunts of the suckling child.
- Foster paternal aunt: The husband of the foster mother will be the father of

the suckling child; therefore, the sisters of the foster father will become paternal aunts and his brothers will be the paternal uncles of the suckling child.

Other real brothers and sisters of the suckling child, who did not suckle the same foster mother, will not have any foster relation with the woman and her children.

1938. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ was offered the daughter of Hamzah bin 'Abdul-Muttalib in marriage, and he said: "She is the daughter of my brother through breastfeeding, and breastfeeding makes unlawful (for marriage) the same things that blood ties make unlawful." (*Sahih*)

تخریج: أخرجه البخاري، الشهادات، باب الشهادة على الأنساب والرضاع المستفاض والموت القديم، ح: ٢٦٤٥، ٥١٠٠، مسلم، الرضاع، باب تحريم ابنة الأخ من الرضاعة، ح: ١٤٤٧ من حديث قتادة به.

Comments:

- The chief of the martyrs, Hamzah ﷺ was the real paternal uncle of Allâh's Messenger ﷺ. Therefore, the marriage of his daughter should have been legal with the Prophet; that is why 'Ali ﷺ gave this proposal to the Prophet ﷺ. But the Messenger of Allâh ﷺ made it clear that it was possible because of the family lineage relation, but it was impossible due to the prohibition of fosterage.
- Thuwaibah, the female slave of Abu Lahab, suckled Hamzah ﷺ; she also suckled the Messenger of Allâh ﷺ for a few days. (*Lama'ât Sharh Mishkât*, Book of *Nikâh*, chapter: The women prohibited for marriage)

1939. It was narrated from Urwah bin Zubair that Zainab bint Abi Salamah told him that Umm Habibah told her that she said to the Messenger of Allâh ﷺ: "Marry my sister 'Azzah." The Messenger of Allâh ﷺ said: "Would you like that?" She said: "Yes, O Messenger of Allâh. I am not the only one living with you and the one who most deserves to

١٩٣٨ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ، وَأَبُو بَكْرٍ
ابْنُ خَلَادٍ. قَالَ: حَدَّثَنَا خَالِدُ بْنُ الْخَارِبِ:
حَدَّثَنَا سَعِيدٌ، عَنْ قَاتَدَةَ، عَنْ جَابِرِ بْنِ زَيْدٍ،
عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ أَرِيدَ عَلَى
بِنْتِ حَمْزَةَ بْنِ عَبْدِ الْمُطَّلِبِ. فَقَالَ: «إِنَّهَا
ابْنَةُ أَخِي مِنَ الرَّضَاعَةِ. وَإِنَّهُ يَحْرُمُ مِنَ
الرَّضَاعَةِ مَا يَخْرُمُ مِنَ النَّسَبِ».

تخریج: أخرجه البخاري، الشهادات، باب الشهادة على الأنساب والرضاع المستفاض والموت القديم، ح: ٢٦٤٥، ٥١٠٠، مسلم، الرضاع، باب تحريم ابنة الأخ من الرضاعة، ح: ١٤٤٧ من حديث قتادة به.

١٩٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ رُونِيقٍ: أَبْنَاءُ الَّذِي
بْنُ سَعِيدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَيْبٍ، عَنْ ابْنِ
شِهَابٍ، عَنْ عُرْوَةَ بْنِ الرَّبِيعِ أَنَّ رَبِيعَ بْنَتِ
أَبِي سَلَمَةَ حَدَّثَهُ أَنَّ أُمَّ حَبِيبَةَ حَدَّثَهَا أَنَّهَا
قَاتَلَتْ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ: إِنْ كُنْتُ أُخْتِي عَزَّةً. قَالَ:
رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ: «أَتَجِبِينَ ذَلِكَ؟» قَاتَلَ:
نَعَمْ. يَا رَسُولَ اللَّهِ فَلَسْتُ لَكَ بِمُحْلِيَةٍ.

share good things with me is my sister." The Messenger of Allâh ﷺ said: "But that is not permissible for me." She said: "But we thought that you wanted to marry Durrah bint Abi Salamah." The Messenger of Allâh ﷺ said: "The daughter of Umm Salamah?" She said: "Yes." The Messenger of Allâh ﷺ said: "Even if she were not my step-daughter who is under my care, she would not be permissible for me, because she is the daughter of my brother through breastfeeding. Thuwaibah breastfed both her father and I. So do not offer your sisters and daughters to me for marriage." (*Sahih*)

Another chain of narrator with similar wording.

وَأَحَقُّ مَنْ شَرِكَنِي فِي حَمِيرٍ أُخْتِي. قَالَ رَسُولُ اللهِ ﷺ: «فَإِنَّ ذَلِكَ لَا يَجْلُ لِي» قَالَتْ: فَإِنَّا نَتَحَدَّثُ أَنَّكَ تُرِيدُ أَنْ تَنْكِحَ دُرَّةً بِنْتَ أَبِي سَلَمَةَ. قَالَ: «بِنْتُ أُمِّ سَلَمَةَ؟» قَالَتْ: نَعَمْ. قَالَ رَسُولُ اللهِ ﷺ: «فَإِنَّهَا لَوْلَمْ تَكُنْ رَبِيعَتِي فِي حَجَرِي مَا حَلَّتْ لِي. إِنَّهَا لَبَنَةُ أَخِي مِنَ الرَّضَاعَةِ. أَرْضَعْتِي وَأَبَاهَا ثُوَبَيْهُ. فَلَا تَعْرِضْنِ عَلَيَّ أَخْوَاتِكُنَّ وَلَا بَنَاتِكُنَّ».

حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللهِ بْنُ نُعَيْرٍ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ رَبِيعَتِبِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ حَيْيَةَ، عَنْ النَّبِيِّ ﷺ، نَحْوَهُ.

تخریج: أخرجه البخاري، النكاح، باب «وَأَنْهَتُكُمُ الَّتِي أَرْضَعْتُكُمْ» ح: ٥١٠١٠ وغیره من حديث الزهرى به، ومسلم، الرضاع، باب تحريم الريبة وأخت المرأة، ح: ١٤٤٩ من حديث محمد بن رمح به، أخرجه البخاري، ح: ٥١٠٦، ومسلم، ح: ١٤٤٩ وغیرهما من حديث هشام بن عروة به .

Comments:

- Two sisters at one time are not allowed in the marriage bond with the same man.
- Marriage with the step daughter is not allowed.
- The marriage with a foster niece is as prohibited as with the real niece.
- The relations of fosterage must be kept identified lest the marriage mistakenly take place with such a woman that it is not allowed.

Chapter 35. Suckling Once Or Twice Does Not Make (Marriage) Unlawful

1940. It was narrated that Umm Fadl said that the Messenger of Allâh ﷺ said: "Breastfeeding once or twice, or suckling once or

(المجمع ٣٥) - بَابُ: لَا تُحِرِّمُ الْمَعْصَةُ وَلَا الْمَصَّانِ (الصفحة ٣٥)

١٩٤٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ يَسْرَى: حَدَّثَنَا ابْنُ أَبِي عَرْوَةَ، عَنْ قَتَادَةَ، عَنْ أَبِي الْخَلِيلِ، عَنْ عَبْدِ اللهِ بْنِ

twice, does not make (marriage) unlawful.” (*Sahih*)

الْحَارِثُ أَنَّ أُمَّ الْفَضْلِ حَدَّثَنَا أَنَّ رَسُولَ اللَّهِ قَالَ: «لَا تُحْرِمُ الرَّضْعَةَ وَلَا الرَّضْعَانِ أَوِ الْمَصَّةَ وَالْمَصَّانِ».

تخریج: أخرجه مسلم، الرضاع، باب في المصة والمصتان، ح: ١٤٥١ عن أبي بكر بن أبي شيبة به.

Comments:

Some of the scholars understood from this *Hadith* that three cases of suckling establishes the rules of fosterage, i.e. the relationship of fosterage is established. But the truth is that the fosterage is proven by suckling five times. As the saying of ‘Aishah ﷺ is narrated in *Sahih Muslim* that the first rule of suckling regarding the prohibition of marriage, revealed in the Qur’ān, was of suckling ten times; later it was abrogated and the rule of fosterage prohibition due to suckling five times was revealed.

1941. It was narrated from ‘Aishah that the Prophet ﷺ said: “Suckling once or twice does not make (marriage) unlawful.” (*Sahih*)

١٩٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ بْنِ خَدَائِشِ: حَدَّثَنَا أَبْنُ عُلَيَّةَ، عَنْ أَيُوبَ، عَنْ أَبْنِ أَبِي مُلِيْكَةَ عَنْ عَبْدِ اللَّهِ بْنِ الرَّبِيعِ، عَنْ عَائِشَةَ، عَنْ النَّبِيِّ ﷺ قَالَ: «لَا تُحْرِمُ الْمَصَّةَ وَالْمَصَّانِ».

تخریج: أخرجه مسلم، الرضاع، الباب السابق، ح: ١٤٥٠ من حديث إسماعيل ابن عليه وغيره به.

1942. It was narrated that ‘Aishah said: “One of the things that Allāh revealed in the Qur’ān and then abrogated was that nothing makes marriage prohibited except ten breastfeedings or five well-known (breastfeedings).” (*Sahih*)

١٩٤٢ - حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمِيدِ أَبْنُ عَبْدِ الْوَارِثِ: حَدَّثَنَا أَبِي: حَدَّثَنَا حَمَادَهُ أَبْنُ سَلَمهُ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عُمَرَهُ، عَنْ عَائِشَةَ أَنَّهَا قَالَتْ: كَانَ فِيمَا أَنْزَلَ اللَّهُ مِنَ الْقُرْآنِ، ثُمَّ سَقَطَ: لَا يُحْرِمُ إِلَّا عَشْرُ رَضَاعَاتٍ أَوْ خَمْسُ مَعْلُومَاتٍ.

تخریج: [إسناد صحيح].

Comments:

This narration has uncertainty regarding the revealed rule if it was ten times or five times; but the aforementioned narration of *Sahih Muslim* made it clear that the rule was revealed for five times.

Chapter 36. Breastfeeding An Adult

1943. It was narrated that 'Âishah said: "Sahlah bint Suhaib came to the Prophet ﷺ and said: 'O Messenger of Allâh, I see signs of displeasure on the face of Abu Hudhaifah when Sâlim enters upon me.' The Prophet ﷺ said: "Breastfeed him." She said: "How can I breastfeed him when he is a grown man?" The Messenger of Allâh ﷺ smiled and said: "I know that he is a grown man." So she did that, then she came to the Prophet ﷺ and said: "I have never seen any signs of displeasure on the face of Abu Hudhayfah after that." And he was present at (the battle of) Badr.^[1] (*Sahih*)

تخریج: أخرجه مسلم، الرضاع، باب رضاعة الكبير، ح: ١٤٥٣ من حديث سفیان به.

Comments:

Due to this *Hadith*, 'Âishah ﷺ had the opinion that the milk, in whatever age it is suckled, will prove the prohibition of fosterage. But other Mothers of the Believers did not agree with her; as appears in the following chapter. (See *Hadith*: 1947)

1944. It was narrated that 'Âishah said: "The Verse of stoning and of breastfeeding an adult ten times was revealed, and the paper was with me under my

(المعجم ٣٦) - باب رضاع الكبير

(الصفحة ٣٦)

١٩٤٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَفِيَّانُ بْنُ عَيْنَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَتْ سَهْلَةُ بْنُتْ سَهْلٍ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنِّي أَرَى فِي وَجْهِ أَبِيهِ حُذْنَيْةَ الْكَرَاهِيَّةِ مِنْ دُخُولِ سَالِمٍ عَلَيَّ. فَقَالَ النَّبِيُّ ﷺ: «أَرْضَعِيهِ» قَالَتْ: كَيْفَ أَرْضُعُهُ وَهُوَ رَجُلٌ كَبِيرٌ؟ فَبَيْسَمَ رَسُولُ اللَّهِ ﷺ وَقَالَ: «فَدْعُوكَمْ أَنْتَ أَنْتَ رَجُلٌ كَبِيرٌ». فَعَلَمَتْ أَنَّهُ رَجُلٌ كَبِيرٌ. فَفَعَلَتْ. فَأَتَتِ السَّيِّدَةَ سَهْلَةَ بْنَتَ سَهْلٍ أَكْثَرَهُ بَعْدًا. وَكَانَ شَهِيدًا بِذَرَّاً.

١٩٤٤ - حَدَّثَنَا أَبُو سَلَمَةَ يَحْيَى بْنُ خَلْفٍ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ عَمْرَةَ، عَنْ

^[1] Nearly all of the scholars hold the view of the rest of the wives of the Prophet ﷺ, as recorded by *Muslim* and others (similar here under no. 1947), that Umm Salamah, the wife of the Prophet ﷺ would say: "The rest of the wives of the Prophet ﷺ refused to have anyone enter upon them based upon such suckling. They said to 'Âishah: 'By Allâh! We see that this is but an allowance that Allâh's Messenger ﷺ granted to Sâlim specifically. So no one enters upon us based on this suckling, nor sees us.'" And regarding the sucking itself, Nawawi mentioned that Qâdi 'Iyâd said: "Perhaps she expressed the milk, then he drank it without touching."

pillow. When the Messenger of Allâh ﷺ died, we were preoccupied with his death, and a tame sheep came in and ate it.” (Hasan)

عائشة. وعن عبد الرحمن بن القاسم عن أبيه، عن عائشة قالت: لقد نزلت آية الرجم، ورضاة الكبير عشرًا. ولقد كان في صحيقة تحت سريري. فلما مات رسول الله ﷺ وشاء علينا بموته، دخل ذاخر فأكلها.

تخریج: [سناده حسن] أخرجه أحمد: ٢٦٩ من حديث ابن إسحاق حدثني عبد الله بن أبي بكر به، طريق عمرة بنت عبد الرحمن فقط، واللفظ لهذا الطريق، أخرجه مالك: ٦٠٨ / ٢، ومن طريقه مسلم، ح: ١٤٥٢ عن عبد الله بن أبي بكر به لم يذكر به قصة الداجن، وهاتان الآياتي كاتنا منسوختان القراءة فاكتبهما الداجن لأن لا تكتبا في القرآن، والقرآن كامل مكمل كما تركه رسول الله ﷺ لم يزد في حرف ولم يتقص منه شيء، والحمد لله.

Comments:

- a. These are such Verses that their recitation has been abrogated, while the rule remained in force; therefore, the Companions did not write it in the copy of the Qur'an.
- b. It is proven from other *Ahâdîth* that the latest rule regarding the prohibition of fosterage is for suckling five times, and this is the preferred view.

Chapter 37. There Is No Breastfeeding After Weaning

1945. It was narrated from 'Âishah that the Prophet ﷺ entered upon her and there was a man with her. He said: "Who is this?" She said: "This is my brother." He said: "Look at whom you allow to enter upon you, because the breastfeeding (that makes a person *Mahram*) is that which satisfies hunger." (*Sahih*)

(المعجم ٣٧) - باب: لَا رِضَاعَ بَعْدَ فِصَالٍ (التحفة ٣٧)

١٩٤٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَبِيعٌ عَنْ شَيْبَانَ، عَنْ أَشْعَثِ بْنِ أَبِي الشَّعْبَاءِ، عَنْ أَبِيهِ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا وَعِنْدَهَا رَجُلٌ. فَقَالَ: «مَنْ لَهُذَا؟» قَالَتْ: لَهُذَا أَخِي. قَالَ: «اَنْظُرُوا مَنْ تُدْخِلُنَّ عَلَيْكُمْ». فَإِنَّ الرَّضَاعَةَ مِنَ الْمَبَحَاةِ».

تخریج: أخرجه البخاري، الشهادات، باب الشهادة على الأنساب والرضاع المستفيض والموت القديم، ح: ٢٦٤٧، ومسلم، الرضاع، باب: إنما الرضاعة من المجاعة، ح: ١٤٥٥ من حديث سفيان به.

Comments:

The prohibited relation due to fosterage will come about if the child is fostered in the first two years of age; and the child sucked milk five times to the fill; if a child is fostered after the first two years, then this suckling will

not be regarded as a prohibitive one, and it will not establish the relation of fosterage; except for in extreme circumstances.

1946. It was narrated from 'Abdullâh bin Zubair that the Messenger of Allâh ﷺ said: "There is no breastfeeding except that which fills the stomach." (*Sahih*)

١٩٤٦ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَىٰ: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي ابْنُ لَهِيَةَ عَنْ
أَبِي الْأَشْوَدِ، عَنْ عُرْوَةَ، عَنْ عَبْدِ اللَّهِ بْنِ
الرَّبِيعِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا رَضَاعَ إِلَّا
مَا فَقَنَ الْأَمْعَاءَ».

تخریج: [صحيح] * ابن لهيعة عنون، ح: ٣٣٠ فيما أعلم، ولحديثه شواهد منها الحديث السابق، وقال البوصيري: في إسناده ابن لهيعة ... والحديث رواه الترمذی، ح: ١١٥٢ من حديث أم سلمة، وقال: حسن صحيح ، وبه صح الحديث.

Comments:

The meaning of the *Hadith* is, only that suckling will be taken into consideration in such early age of the baby when the milk of the mother serves the purpose of food for the baby. In normal circumstances, suckling an older child will not establish the relation of fosterage.

1947. It was narrated from Zainab bint Abi Salamah that the wives of the Prophet ﷺ all differed with 'Âishah and refused to allow anyone with ties of breastfeeding like Sâlim, the freed slave of Abu Hudhaifah, to enter upon them. They said: "How do we know? That may be a concession granted only to Sâlim." (*Sahih*)

١٩٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ رُفْعَانَ الْمُضْرِبِيُّ:
حَدَّثَنَا عَبْدُ اللَّهِ بْنُ لَهِيَةَ، عَنْ يَزِيدَ بْنِ أَبِي
حَيْبٍ وَ عُقَيْلَ عَنْ أَبْنَى شَهَابٍ: أَخْبَرَنِي أَبُو
عَيْبَةَ بْنُ عَبْدِ اللَّهِ بْنِ زَمْعَةَ، عَنْ أُمِّهِ زَيْنَبِ
بْنِتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّ أَزْوَاجَ النَّبِيِّ
كُلُّهُنَّ خَالِقُنَّ عَائِشَةَ وَ أَبْيَانَ أَنَّ يَدْخُلَ
عَائِنَيْنِ أَحَدٌ يُمْثِلُ رَضَاعَةَ سَالِمٍ، مَوْلَى أَبِي
حُدَيْفَةَ. وَ قُلْنَ: وَ مَا يُدْرِيْنَا؟ تَعْلَمُ ذَلِكَ كَاتِبُ
رُخْصَةِ سَالِمٍ وَ حَدَّهُ.

تخریج: أخرجه مسلم، الرضاع، باب رضاعة الكبير، ح: ١٤٥٤ من حديث عقيل عن ابن شهاب الزهرى به.

Comments:

The same opinion of the Pure Wives of Prophet ﷺ is that of the majority scholars. Imam Bukhâri preferred it too; as mentioned in the comments of the previous *Ahâdîth*. However some people are also in favor of effectiveness of suckling a grown up man; which may be practised in extreme circumstances. For further elaboration one may see in the appendix of *Tafsir Ahsanul-Bayân*, "Some Essential Rules of Fosterage," in the Urdu version.

Chapter 38. The Breast Milk Belongs To The Sire

1948. It was narrated that 'Âishah said: "My paternal uncle through breastfeeding, Aflah bin Abu Qu'ais, came and asked permission to visit me, after the ruling on veiling had been enjoined, and I refused to let him in, until the Prophet ﷺ came in and said: 'He is your paternal uncle; let him in.' I said: 'But it is the woman who breastfed me; the man did not breastfeed me.' He said: 'May your hands be rubbed with dust', or: 'May your right hand be rubbed with dust!'" (*Sahih*)

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفحل، ح: ٤/١٤٤٥ عن ابن أبي شيبة به، وأخرجه البخاري، ح: ٣٧٩٦، ٥١٠٣، ٦١٥٦، ومسلم وغيرهما من طرق عن الزهرى نحوه مطولاً.

1949. It was narrated that 'Âishah said: "My paternal uncle through breastfeeding came to visit me and I refused to let him in. The Messenger of Allâh ﷺ said: 'Let your paternal uncle visit you.' I said: 'But it is the woman who breastfed me; the man did not breastfeed me.' He said: 'He is your paternal uncle; let him visit you.'" (*Sahih*)

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفحل، ح: ٧/١٤٤٥ عن ابن أبي شيبة وغيره به، وأخرجه البخاري، النكاح، باب ما يحل من الدخول والنظر إلى النساء في الرضاع، ح: ٥٢٣٩ من طريق مالك عن هشام به نحوه مطولاً.

Comments:

Foster relations are established from both sides, that of the foster mother and the foster father; resulting in foster maternal uncles and aunts etc. The husband of the suckling woman becomes the father of the foster child; so

(المعجم ٣٨) - بَابُ لَبِنِ الْفَحْلِ

(٣٨) (التحفة)

١٩٤٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَيْهِ، عَنْ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: أَتَأْنِي عَمِيُّ مِنَ الرَّضَاعَةِ، أَفْلَحُ بْنُ أَبِي قَعْدَةِ يَسْتَأْذِنُ عَلَيَّ، بَعْدَ مَا ضُرِبَ الْحِجَابُ. فَأَبَيْتُ أَنْ أَذَّنَ لَهُ. حَتَّى دَخَلَ عَلَيَّ النَّبِيُّ ﷺ قَالَ: «إِنَّهُ عَمُكُ، فَأَذْنِنِي لَهُ» فَقَلَّتْ: إِنَّمَا أَرْضَعْتِي الْمَرْأَةُ وَلَمْ يُرْضِعْنِي الرَّجُلُ؟ قَالَ: «تَرِبَّثَ يَدَاكَ، أَوْ يَوْسِنُكُ». .

١٩٤٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ ثَمَّةَ، عَنْ هَشَّامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَ عَمِيُّ مِنَ الرَّضَاعَةِ يَسْتَأْذِنُ عَلَيَّ، فَأَبَيْتُ أَنْ أَذَّنَ لَهُ . قَالَ رَسُولُ اللَّهِ ﷺ: «فَلَيَأْتِي عَلَيْكُمْ عَمُكُ» فَقَلَّتْ: إِنَّمَا أَرْضَعْتِي الْمَرْأَةُ وَلَمْ يُرْضِعْنِي الرَّجُلُ. قَالَ: «إِنَّهُ عَمُكُ. فَلَيَأْتِي عَلَيْكُمْ». .

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفحل، ح: ٧/١٤٤٥ عن ابن أبي شيبة وغيره به، وأخرجه البخاري، النكاح، باب ما يحل من الدخول والنظر إلى النساء في الرضاع، ح: ٥٢٣٩ من طريق مالك عن هشام به نحوه مطولاً.

his brothers and sisters will be child's foster paternal uncles and aunts etc.

Chapter 39. A Man Became Muslim And He Has (i.e., Is Married To) Two Sisters

1950. It was narrated that Dailami said: "I came to the Messenger of Allâh ﷺ, and I was married to two sisters whom I had married during the Ignorance period. He said: 'When you go back, divorce one of them.'" (Hasan)

(المعجم (٣٩) - بَابُ الرَّجُلِ يُسْلِمُ وَعِنْدَهُ أُخْتَانٌ (التحفة (٣٩)

١٩٥٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ السَّلَامَ بْنُ حَرْبٍ عَنْ إِشْحَاقَ بْنِ عَبْدِ اللَّهِ أَبْنِ أَبِي فَرْوَةَ، عَنْ أَبِي وَهْبِ الْجِيَشَانِيِّ، عَنْ أَبِي خَرَاثِ الرُّعَيْنِيِّ، عَنْ الدَّلِيلَيِّ قَالَ: قَدِمْتُ عَلَى رَسُولِ اللَّهِ ﷺ، وَعَنِي أُخْتَانٌ تَرَوْجُهُمَا فِي الْجَاهِلِيَّةِ. قَالَ: إِذَا رَجَعْتَ فَطَلُّ أَحَدَهُمَا».

تخریج: [حسن] فيه متروک، ولكن انظر الحديث الآتي، وأخرجه ابن أبي شيبة: ٤٣٧ به.

1951. Dahhâk bin Fairuz Dailami narrated that his father said: "I came to the Prophet ﷺ and said: 'O Messenger of Allâh! I have become Muslim and I am married to two sisters.' The Messenger of Allâh ﷺ said: 'Divorce whichever of them you want.'" (Hasan)

١٩٥١ - حَدَّثَنَا لُؤْنُسُ بْنُ عَبْدِ الْأَعْلَى: حَدَّثَنَا أَبْنُ وَهْبٍ: أَخْبَرَنِي أَبْنُ لَهِيَعَةَ، عَنْ أَبِي وَهْبِ الْجِيَشَانِيِّ: حَدَّثَنِي أَنَّهُ سَمِعَ الصَّحَّاكَ بْنَ قَيْرَوْزِ الدَّلِيلَيِّ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ أَنِّي أَسْلَمْتُ وَتَخْيِي أُخْتَانِي. قَالَ رَسُولُ اللَّهِ ﷺ لِي: «طَلُّ أَيْتَهُمَا شِئْتَ».

تخریج: [حسن] أخرجه أبو داود، الطلاق، باب: في من أسلم وعنه نساء أكثر من أربع أو أختان، ح: ٢٤٣ من حديث أبي وهب نجوة، وحسنه الترمذى، ح: ١١٣٠، وصححه ابن حبان، وللحديث طرق عند الطبراني في الكبير: ١٨/٣٢٨، ٣٢٩، وغيرها.

Comments:

- If a person is already married in accordance with his religion, before embracing Islam, and then the wife and husband become Muslims, their first marriage bond will be valid; they are not required to remarry.
- If a man is married, before embracing Islam, to such a woman with whom his marriage is unlawful according to Islam, then after embracing Islam he will have to separate from her.
- Before embracing Islam, the children born from this sort of marriage will be regarded lawful, and they will share the inheritance of the father.

Chapter 40. A Man Became Muslim And He Has More Than Four Wives

1952. It was narrated that Qais bin Hârith said: "I became Muslim and I had eight wives. I went to the Prophet ﷺ and told him about that. He said: 'Choose four of them.'" (*Da'if*)

(المعجم ٤٠) - بَابُ الرَّجُلِ يُسْلِمُ وَعِنْهُ أَكْثَرُ مِنْ أَرْبَعَ نِسْوَةٍ (التحفة ٤٠)
١٩٥٢ - حَدَّثَنَا أَحْمَدُ بْنُ إِبْرَاهِيمَ الدُّورَقِيُّ : حَدَّثَنَا هُشَيْمٌ عَنْ أَبْنِ أَبِي لَيْلَى، عَنْ حُمَيْضَةَ بْنِتِ الشَّمَرْدَلِ، عَنْ قَيْسِ بْنِ الْحَارِثِ قَالَ: أَسْأَمْتُ وَعَنِّي ثَمَانِي نِسْوَةً. فَأَكَبَّتِ التَّبَيَّنَ فَقُلْتُ ذَلِكَ لَهُ . فَقَالَ: «اخْتَرْ مِنْهُنَّ أَرْبَعًا» .

تخریج: [إسناده ضعیف] أخرجه أبو داود، العلاق، باب في من أسلم وعنه نساء أكثر من أربع أو اثنتان، ح ٢٢٤١: من حديث هشيم به، وانظر، ح ٨٥٤: لعلته * حمیضة بن (وفي كتاب ابن ماجه: بنت، وهو وهم قدیم) الشمردل مستور لا يعرف.

1953. It was narrated that Ibn 'Umar said: "Ghailân bin Salamah became Muslim and he had ten wives. The Prophet ﷺ said to him: 'Choose four of them.'" (*Da'if*)

١٩٥٣ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا مَعْمَرُ عَنْ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبْنِ عُمَرَ قَالَ: أَشْلَمَ عَيْلَانَ أَبْنَ سَلَمَةَ وَحَتَّهُ عَشْرَ نِسْوَةً. فَقَالَ لَهُ التَّبَيَّنَ: «خُذْ مِنْهُنَّ أَرْبَعًا» .

تخریج: [إسناده ضعیف] أخرجه الترمذی، النکاح، باب ماجاء في الرجل يسلم وعنه عشر نسوة، ح ١١٢٨: من حديث معمر به، ونقل عن البخاري قال: هذا حديث غير محفوظ ، وفيه علة أخرى، وهي عنعة الزهری، ح ٧٠٧.

Comments:

- If a person is married to more than four women before embracing Islam, after embracing Islam he has the right to keep only four women in marriage, and he will necessarily divorce the rest.
- A person married to more than four women has the privilege to choose any four of them to keep in marriage bond, and there is no condition of choosing the first four or the last four.

Chapter 41. Conditions In Marriage

(المعجم ٤١) - بَابُ الشَّرْطِ فِي النِّكَاحِ (التحفة ٤١)

1954. It was narrated from Uqbah bin 'Âmir that the Prophet

١٩٥٤ - حَدَّثَنَا عَمْرُو بْنُ عَبْدِ اللَّهِ، وَ مُحَمَّدٌ

ﷺ said: "The conditions most deserving to be fulfilled are those by means of which the private parts become permissible for you." (*Sahih*)

ابن إسحاق عليهما السلام قال: حَدَّثَنَا أَبُو أَسَأَةُ، عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ، عَنْ يَزِيدَ بْنِ أَبِي حَيْبٍ، عَنْ مَرْثَدَ بْنِ عَبْدِ اللَّهِ، عَنْ عُقْبَةَ بْنِ عَامِرٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِنَّ أَحَقَ الشَّرْطِ أَنْ يُوفَى بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوضَ».

تخریج: أخرج البخاري، الشروط، باب الشروط في المهر عند عقدة النكاح، ح: ٢٧٤١ من حديث يزيد به، ومسلم، النكاح، باب الوفاء بالشروط في النكاح، ح: ١٤١٨ من حديث عبد الحميد به.

Comments:

- Marriage is a contract between a man and woman; both have rights and obligations to discharge. A man and woman both should take care of their obligations.
- According to the circumstances, more conditions may be stipulated at the time of marriage.

1955. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Whatever is given as a dowry or gift before the marriage, it belongs to her. Whatever is given after the marriage belongs to the one to whom it was given. And the most deserving matter for which a man is honored is (the marriage of) his daughter or sister.'" (*Hasan*)

١٩٥٥ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ، عَنْ أَبْنِ جُرَيْجٍ، عَنْ عَمْرُو بْنِ شَعْبَنَ، عَنْ أَبِيهِ، عَنْ جَلْوَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا كَانَ مِنْ صَدَاقٍ أَوْ جِبَاءٍ أَوْ هِيَةً قَبْلَ عِصْمَةِ النِّكَاحِ فَهُوَ لَهَا. وَمَا كَانَ بَعْدَ عِصْمَةِ النِّكَاحِ فَهُوَ لِمَنْ أُغْطِيَهُ أَوْ حَيَّهُ. وَأَحَقُّ مَا يُكْرَمُ الرَّجُلُ بِهِ، ابْنَتُهُ أَوْ أُخْرَهُ».

تخریج: [إسناده حسن] أخرجه أبو داود، النكاح، باب: في الرجل يدخل بامرأته قبل أن يتقدّها شيئاً، ح: ٢١٢٩ من حديث ابن جريج به، وصح بالسماع عند النسائي: ٦/١٢٠، ح: ٣٢٥٥.

Chapter 42. A Man Setting Free His Slave Woman Then Marrying Her

1956. It was narrated from Abu Musa that the Messenger of Allâh ﷺ said: "Whoever has a slave woman and teaches her good

(المعجم ٤٢) - بَابُ الرَّجَلِ يُعْتَقُ أَمْتَهُ ثُمَّ يَتَزَوَّجُهَا (التحفة ٤٢)

١٩٥٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ، أَبُو سَعِيدٍ الأَشْجَعُ: حَدَّثَنَا عَبْدَةُ بْنُ شَلَّيْمَانَ عَنْ صَالِحٍ أَبْنِ صَالِحٍ بْنِ حَيْيٍ، عَنِ الشَّعْبِيِّ، عَنْ أَبِي

manners and educates her, then sets her free and marries her, will have two rewards. Any man from among the People of the Book who believed in his Prophet and believed in Muhammad will have two rewards. Any slave who does his duty towards Allâh and towards his masters will have two rewards." (*Sahih*)

(One of the narrators) Sâlih said: "Sha'bi said: I have given this (*Hadith*) to you for little effort on your part. A rider would travel to Al-Madinah for less than this."

بُرْئَةً، عَنْ أَبِي مُوسَىٰ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ جَارِيَةٌ فَأَدْبَهَا فَأَخْسَنَ أَدْبَهَا. وَعَلَمَهَا فَأَخْسَنَ تَعْلِيمَهَا. ثُمَّ أَغْنَتَهَا وَتَرْوَجَهَا، فَلَهُ أَجْرَانِ». وَأَيْمَانَ رَجُلٍ مِّنْ أَهْلِ الْكِتَابِ أَمْنَ بِتَبَيْهِ وَآمِنَ بِمُحَمَّدٍ فَلَهُ أَجْرَانِ. وَأَيْمَانَ عَبْدَ مَمْلُوكٍ أَدَى حَقَّ اللَّهِ عَلَيْهِ وَسَعَى مَوَالِيهِ، فَلَهُ أَجْرَانِ».

قَالَ صَالِحٌ: قَالَ الشَّعْبِيُّ: قَدْ أَعْطَيْتُهَا بِغَيْرِ شَيْءٍ. إِنْ كَانَ الرَّاكِبُ لَيَرْكَبُ فِيمَا دُونَهَا إِلَى الْمَدِينَةِ.

تخریج: أخرجه البخاري، العلم، باب تعليم الرجل أمهه وأهله، ح: ٩٧، وغيره، ومسلم، الإمامان، باب وجوب الإيمان برسالة نبينا محمد ﷺ إلى جميع الناس ونسخ الملل بملته، ح: ١٥٤، من حديث صالح به مطلقاً.

Comments:

- Male and female slaves are bought for service; the arrangement of their education and professional training is a great favor to them; and then setting the female slave free is another favor unto her. Thereafter, she should not be ignored for marriage just because she was a slave in the past; it will be the negation of her freedom. Instead, it will be the perfection of favor that a freed female slave acquires the rights of a free wife.
- If a Jew remaining firm on *Tauhid* believes in Musa ﷺ, or a Christian believes in 'Eisa ﷺ (Jesus), so long as he is unaware of the prophethood of Muhammad ﷺ, he (Jew or Christian) is correct. Whenever he knows about the advent of the Prophet ﷺ and believes in him, thus he secures a double reward, as is the story of Najâshi.

1957. It was narrated that Anas said: "Safiyah was given to Dihyah Al-Kalbi (as his share of the war booty), then she was given to the Messenger of Allâh ﷺ after that. He married her, and made her ransom (i.e., freedom from slavery) her dowry." (*Sahih*)

Hammâd said: "Abdul-'Aziz said to Thâbit: 'O Abu Muhammad! Did you ask Anas

١٩٥٧ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ: حَدَّثَنَا ثَابِتُ وَعَبْدُ الْعَزِيزِ عَنْ أَنَسٍ قَالَ: صَارَتْ صَفِيفَةُ لِدِحْيَةَ الْكَلَبِيِّ. ثُمَّ صَارَتْ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعْدُ. فَتَرْوَجَهَا وَجَعَلَ عِنْهَا صَدَاقَهَا.

قَالَ حَمَّادٌ: قَالَ عَبْدُ الْعَزِيزِ لِثَابِتٍ: يَا أَبَا مُحَمَّدٍ أَنْتَ سَأَلْتَ أَنَسًا مَا أَنْهَرَهَا؟ قَالَ:

what her bridal-money was? He said: 'Her bridal-money was her freedom.'

أمهرها نفسيها.

تخریج: أخرجه البخاري، صلوة الخوف، باب التکیر والغلس بالصلوة عند الإغارة وال الحرب، ح ٩٤٧ مطولاً، ٥٠٨٦، ومسلم، النکاح، باب فضیلۃ اعتاقه أمه ثم يتزوجها، ح ١٣٦٥ من حديث حماد بن زید به.

Comments:

- Safiyyah became a war prisoner when the Muslims attacked Banu Nadir, a tribe of Jews. For further details see *Hadith*: 1909 and its comments.
- The freedom of a female slave can be declared as her dower.

1958. It was narrated from 'Aishah that the Messenger of Allâh ﷺ set Safiyyah free, and made her ransom her dowry, and he married her. (*Sahih*)

١٩٥٨ - حَدَّثَنَا حُبَيْشُ بْنُ مُبِيرٍ: حَدَّثَنَا يُونُسُ بْنُ مُحَمَّدٍ: حَدَّثَنَا حَمَادَ بْنُ زَيْدٍ، عَنْ أَئُوبَ، عَنْ عِكْرِمَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَعْنَقَ صَنِيَّةَ، وَجَعَلَ عِنْتَهَا صَدَاقَهَا، وَتَزَوَّجَهَا.

تخریج: [صحيح] والحديث السابق شاهد له.

Comments:

As it is Islamically forbidden for a woman to marry without the permission of her father or *Wali* (the guardian), likewise a slave is not allowed to marry without the permission of the master. The logic of it is that, after marriage, the slave will have to look after his wife and children, and it will undermine the service to his master; but if the master, with a goodwill gesture, is prepared to decrease his duties then the slave should marry, otherwise he should observe patience. Morally, the master should allow the slave to marry so that he can protect his chastity.

Chapter 43. A Slave Marrying Without His Master's Permission

1959. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "If a slave gets married without his master's permission, he is a fornicator." (*Da'if*)

(المعجم ٤٣) - بَابُ تَزْوِيجِ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ (التحفة ٤٣)

١٩٥٩ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ: حَدَّثَنَا الْقَاسِمُ بْنُ عَبْدِ الْواحِدِ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ عَقِيلٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ، كَانَ عَاهِرًا.

تخریج: [إسناده ضعيف] أخرجه الحاکم: ١٩٤/٢ من حديث عبد الوارث به، وصححةه.

ووافقه الذهبي * ابن عقيل ضعيف تقدم، ح: ٣٩٠

1960. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Any slave who gets married without his master's permission, is a fornicator." (*Da'if*)

١٩٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ صَالِحُ
ابْنُ مُحَمَّدٍ بْنِ يَحْيَى بْنِ سَعْدٍ. قَالَ: حَدَّثَنَا
أَبُو عَسَانَ، مَالِكُ بْنُ إِشْمَاعِيلَ: حَدَّثَنَا مَنْدَلُ
عَنْ أَبْنَى جُرَيْجَ، عَنْ مُوسَى بْنِ عَبْدَةَ، عَنْ
تَافِعٍ، عَنْ أَبْنَى عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «إِنَّمَا عَبْدَنِ تَرْوَجَ بِغَيْرِ إِذْنِ مَوَالِيهِ، فَهُوَ
رَاجِ».

تخریج: [إسناده ضعیف] انظر، ح: ١٢٤٧ لعلته.

Chapter 44. Prohibition Of Temporary Marriage (*Mut'ah*)

(المعجم ٤٤) - بَابُ النَّهْيِ عَنْ نِكَاحِ
الْمُمْتَعَةِ (التحفة ٤٤)

1961. It was narrated from 'Ali bin Abu Tâlib that the Messenger of Allâh ﷺ forbade on the Day of Khaibar, the temporary marriage of women and (he forbade) the flesh of domestic donkeys. (*Sahih*)

١٩٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا
يُشْرِبُ بْنُ عُمَرَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ أَبِي
شَهَابٍ، عَنْ عَبْدِ اللَّهِ وَالْمُحَسِّنِ، أَبْنَى مُحَمَّدٍ
أَبْنَى عَلَيِّ، عَنْ أَبِيهِمَّا، عَنْ عَلَيِّ بْنِ أَبِي
طَالِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ مُمْتَعَةِ النِّسَاءِ
يَوْمَ خَيْرٍ، وَعَنْ لُحُومِ الْحُمُرِ الْأَسْرِيَّةِ.

تخریج: أخرجه البخاري، المغازي، باب غروة خير، ح: ٤٢٦، ومسلم، باب نكاح الممتعة وبيان أنه أبيح ثم نسخ ثم أبىح ثم نسخ واستقر تحريمه إلى يوم القيمة، ح: ١٤٠٧ من حديث مالك به، وهو في الموطأ: ٥٤٢/٢.

Comments:

- In a temporary or short-term marriage, a man and a woman agree to live together as wife and husband for a temporary appointed term; and as soon as this term comes to end, the marriage ends too. This kind of marriage was permissible, later it was forbidden, and now it is absolutely unlawful.
- The Islamic bond of marriage is a contract between man and woman to live together for their whole life. Because the objective of the temporary marriage is not to live together permanently, therefore it is prohibited too.
- Domestic donkey is unlawful (to eat); an animal very similar to a donkey is found in the jungle, and it is called a wild ass in Arabic.

1962. It was narrated from Rabi' bin Sabrah that his father said: "We went out with the Messenger of Allâh ﷺ on the Farewell pilgrimage, and they said: 'O Messenger of Allâh, celibacy has become too difficult for us.' He said: 'Then make temporary marriages with these women.' So we went to them, but they insisted on setting a fixed time between us and them. They mentioned that to the Prophet ﷺ and he said: 'Set a fixed time between you and them.' So I went out with a cousin of mine. He had a cloak and I had a cloak, but his cloak was finer than mine, and I was younger than him. We came to a woman and she said: 'One cloak is like another.' So I married her and stayed with her that night. Then the next day I saw the Messenger of Allâh ﷺ standing between the *Rukn* (corner) and the door (of the Ka'bah), saying: 'O people, I had permitted temporary marriage for you, but Allâh has forbidden it until the Day of Resurrection. Whoever had any temporary wives, he should let them go, and do not take back anything that you had given to them.'" (*Sahih*)

تخریج: أخرجه مسلم، النکاح، باب نکاح المتعة وبيان أنه أبیح ثم نسخ ثم أبیح ثم نسخ... الخ، ح: ٢١/١٤٠٦ عن ابن أبي شيبة به مختصرًا، وله طرق عنده ولم يذكر قوله: في حجة الوداع ، والصواب أنه في غزوة الفتح كما في صحيح مسلم وغيره.

Comments:

- Shaikh Albâni said: This *Hadith* is authentic but the mention of the Farewell pilgrimage in it is incorrect. The truth is that it was made unlawful forever at the conquest of Makkah; as mentioned in *Sahih Muslim*: 1406.
- The temporary marriage was allowed during a limited time for certain

١٩٦٢ - حدثنا أبو بكر بن أبي شيبة: حدثنا عبدة بن سليمان، عن عبد العزيز بن عمر، عن الربيع بن سبرة، عن أبيه قال: خرجنا مع رسول الله ﷺ في حجة الوداع. فقلوا: يا رسول الله! إن العزبة قد أشتئت علينا. قال: «فاستمتعوا من هذه النساء». فأتياهن. فآتينا أن ينكحنا إلا أن نجعل بيتنا وبينهن أجلاً. فذكروا ذلك للنبي ﷺ. فقال: «اجعلوا بينكم وبينهن أجلاً». فخرجت أنا وإن عم لي. معه برد ومعي برد. وبرد أحوجه ومن بريدي وأنا أشبع منه. فآتينا على أمرأة، فقالت: برد كبرد. فتروجتها فنكحت عدتها تلك الليلة. ثم غداة ورسول الله ﷺ قائم بين الركين والباب، وهو يقول: «أيها الناس إني قد كنت أذنت لكم في الاستئمان. ألا وإن الله قد حرمتها إلى يوم القيمة. فمن كان عنده متنه شيئاً فليدخل سيفها. ولا تأخذوا مما آتيموهن شيئاً».

circumstances and thereafter it was declared unlawful forever.

1963. It was narrated that Ibn 'Umar said: "When 'Umar bin Khattâb was appointed caliph, he addressed the people and said: 'The Messenger of Allâh ﷺ permitted temporary marriage for us three times, then he forbade it. By Allâh, if I hear of any married person entering a temporary marriage, I will stone him to death, unless he can bring me four witnesses who will testify that the Messenger of Allâh ﷺ allowed it after he forbade it.'" (Hasan)

١٩٦٣ - حَدَّثَنَا مُحَمَّدُ بْنُ خَلَفٍ الْعَشْتَلَانِيُّ : حَدَّثَنَا الْفَرِيَّاَبِي عَنْ أَبَانَ بْنِ أَبِي حَازِمٍ ، عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ ، عَنْ أَبْنِ عُمَرَ قَالَ : لَمَّا وَلَيَ عُمَرُ بْنُ الْخَطَّابِ ، نَحَّطَ النَّاسَ فَقَالَ : إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ لَنَا فِي الْمُعْتَدَى ثَلَاثَةً ، ثُمَّ حَرَّمَهَا . وَاللَّهُ لَا أَعْلَمُ أَحَدًا يَتَّسَعُ وَهُوَ مُحْصَنٌ إِلَّا رَجَمَتْهُ بِالْحِجَّارَةِ . إِلَّا أَنْ يَأْتِيَنِي بِأَرْبَعَةٍ يَشْهُدُونَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ أَحَلَّهَا بَعْدَ إِذْ حَرَّمَهَا .

* تخریج: [إسناده حسن] آخرجه البزار (البحر الرخار)، ح: ١٨٣ من حديث الفريابي به أبوبکر بن حفص بن عمر بن سعد بن أبي وقاص: اسمه عبدالله، ثقة بالاتفاق، من رجال السنة، وتلميذه حسن الحديث وثقة الجمهور، أخطأ في حديث واحد، راجع الميزان: ١/٩٠ وغيره.

Comments:

- 'Umar ﷺ did not deny the fact that temporary marriage was lawful at some time; instead he made it clear that the final verdict of the Messenger of Allâh ﷺ regarding it was absolute prohibition forever.
- The marriage bonds that were regarded lawful in the pre-Islamic era, and then were prohibited in Islam, have no legal status in Islamic *Shari'ah*. Now if someone does this kind of marriage, it will not be regarded as marriage, rather it will be an act of adultery; and this individual will be declared a criminal and will be given the prescribed punishment.

Chapter 45. Marriage Of A Muhrim

1964. Maimunah bint Hârith narrated that the Messenger of Allâh ﷺ married her when he was *Halâl* (not in *Ihrâm*). (*Sahîh*) He (one of the narrators—Yazid) said: "And she was my maternal aunt and the maternal aunt of Ibn 'Abbâs also."

(المعجم ٤٥) - بَابُ الْمُحْرِمِ يَتَزَوَّجُ

(التجففة ٤٥)

١٩٦٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ : حَدَّثَنَا يَحْيَى بْنُ آدَمَ : حَدَّثَنَا جَرِيرُ بْنُ حَازِمٍ : حَدَّثَنَا أَبُو فَزَارَةَ ، عَنْ يَزِيدِ بْنِ الْأَصْمَ : حَدَّثَنِي مَيْمُونَةُ بْنُتُ الْحَارِثَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ تَرَوَّجَهَا وَهُوَ حَلَالٌ .

قال: وكانت خاتمي وحالة ابن عباس.

تخریج: أخرجه مسلم، باب تحریم نکاح المحرم وكراهة خطبته، ح: ١٤١١ عن ابن أبي شيبة به.

Comments:

Imam Albâni رَضِيَ اللَّهُ تَعَالَى عَنْهُ stated this narration as Contradictory (*Shâdhdh*). The truth is that the Prophet ﷺ was not in the state of *Ihrâm* at the time of the marriage.

1965. It was narrated from Ibn 'Abbâs that the Prophet ﷺ got married while he was a *Muhrim* (in *Ihrâm*). (*Sahih*)

١٩٦٥ - حَدَّثَنَا أَبُو بَكْرُ بْنُ حَلَادَ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَةَ، عَنْ عَمْرُو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ [رَبِيدٍ]، عَنْ أَبْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ نَكَحَ وَهُوَ مُحْرِمٌ.

تخریج: أخرجه البخاري، النکاح، باب نکاح المحرم، ح: ٥١١٤، ومسلم، النکاح، الباب السابق، ح: ١٤١٠ من حدیث سفیان به.

1966. It was narrated from Abâan bin 'Uthmân bin 'Affâan that his father said: "The Messenger of Allâh ﷺ said: 'The one in *Ihrâm* should not get married, nor arrange a marriage for anyone else, nor propose marriage.'"^{١٢٤} (*Sahih*)

١٩٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَجَاءِ الْمُكْيَى، عَنْ مَالِكِ بْنِ أَنَسِ، عَنْ تَافِعٍ، عَنْ تَبَيَّنِ بْنِ وَهْبٍ، عَنْ أَبَانَ بْنِ عُمَّانَ بْنِ عَقَّانَ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُحْرِمُ لَا يَنكِحُ وَلَا يُنكَحُ وَلَا يَحْطُبُ».

تخریج: أخرجه مسلم، النکاح، باب تحریم نکاح المحرم وكراهة خطبته، ح: ٤٠٩ من حدیث مالک به.

Comments:

- a. Getting married or making a marriage contract whilst in the state of *Ihrâm* is not allowed.
- b. The person in *Ihrâm* cannot marry himself, neither can he be an attorney for someone's marriage, nor can he act as a guardian for the marriage of his daughter or sister etc.
- c. A woman in *Ihrâm* also cannot be married, nor should a proposal be sent to her.

Chapter 46. Compatibility

(المعجم ٤٦) - بَابُ الْأَكْفَاءِ (التحفة ٤٦)

1967. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "If there comes to

١٩٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ سَابُورٍ الرَّقِيقُ: حَدَّثَنَا عَبْدُ الْحَمِيدِ بْنُ شَلِيمَانَ

you one with whose character and religious commitment you are pleased, then marry (your daughter or female relative under your care) to him, for if you do not do that there will be *Fitnah* in the land and widespread corruption.''" (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه الترمذی، النکاح، باب ماجاء فیمن ترضون دینه فروجوه، ح: ۱۰۸۴ من حديث عبد الحمید به، ونقل عن البخاری بأنه لم يعد حديث عبد الحمید محفوظاً * عبد الحمید بن سلیمان ضعیف (تقریب)، وخالقه الثقة الليث بن سعد فرواه عن ابن عجلان عن أبي هریرة به منقطعٌ، وابن عجلان مدلس (المربة الثالثة عند الحافظ في طبقات المدلسين)، وعنون، ومع ذلك صححه الحاکم: ۱۶۴/۲، ۱۶۵، وتعقبه الذهبی، وله شاهد عند الترمذی من حديث أبي حاتم المزنی، وحسنه، وفيه ضعیف ومجھولان، ولهمما شاهد من حديث ابن عمر، ولا يستشهد به إنما ذكرته لأنبه عليه، وقال النسائي فيه: هذا كذب ، وأبطله ابن عدي مخرجه.

1968. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "Choose the best for your sperm, and marry compatible women and propose marriage to them.'" (*Da'if*)

الأنصاریُّ، أخو قُلَیْح، عنْ مُحَمَّدِ بْنِ عَجْلَانَ، عَنْ أَبِي وَشِمَّةَ الْبَصْرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا أَتَكُمْ مَنْ تَرَضَوْنَ خُلُقَهُ وَوِينَهُ فَزُوْجُوهُ. إِلَّا تَقْعِلُوا تَكُنْ فِتْنَهُ فِي الْأَرْضِ وَفَسَادُ عَرِيضُ.

١٩٦٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا الْحَارِثُ بْنُ عِمْرَانَ الْجَعْفَرِيُّ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: تَخْبِرُوا لِتُطْلِكُمْ وَأَنْكِحُوا الْأَكْفَاءَ وَأَنْكِحُوا إِلَيْهِمْ.

تخریج: [إسناده ضعیف جداً منکر] أخرجه الدارقطنی: ۹۹/۳ من حديث عبد الله بن سعيد الأشج به * الحارث بن عمران ضعیف، رمه ابن حبان بالوضع (تقریب)، وتابعه عکرمة بن ابراهیم ضعیف، منکر الحديث، ليس بشيء، ليس بثقة، راجع اللسان وغيره، وتبعهما الصعفاء مثل أبي أمیة بن يعلى وغيره، وذكر بعض العلماء طریقاً آخر من تاريخ دمشق لابن عساکر، ولم أقف على سندہ الكامل، والله أعلم.

Comments:

- The manners, good conduct and religion should be given preference when looking for a spouse. This is the meaning of the compatibility of the spouses.
- Many righteous girls will remain without marriage if the family status and wealth etc, is given precedence to religion; and this will cause them suffering and hardship.

Chapter 47. Dividing One's Time Among Wives

1969. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever has two wives and favors one of them over the other, he will come on the Day of Resurrection with one of his sides leaning." (*Da'if*)

(المعجم ٤٧) - بَابُ الْقُسْمَةِ بَيْنَ النِّسَاءِ
(التحفة ٤٧)

١٩٦٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
وَكَيْفَ عَنْ هَمَامٍ، عَنْ قَتَادَةَ، عَنْ التَّنْصُرِ بْنِ
أَنَسٍ، عَنْ بَشِيرٍ بْنِ نَهَيْكٍ، عَنْ أَبِي هُرَيْرَةَ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَ لَهُ
أَمْرَانَانِ، يَمْلِئُ مَعَ إِخْدَاهُنَا عَلَى الْأُخْرَى،
جَاءَ يَوْمَ الْقِيَامَةِ، وَأَحَدُ شَقَقِ سَاقِطٍ».

تخریج: [إسناده ضعیف] أخرجه أبو داود، النکاح، باب: فی القسم بین النساء، ح: ٢١٣٣؛ من حديث همام به، وصححه ابن حبان، والحاکم، والذهبی وغیرهم * قتادة عنون تقدم، ح: ١٧٥، وله شاهد ضعیف.

Comments:

- If one has two or more wives, it is possible that the inclination of the heart is towards just one, but this inclination must not cause injustice.
- In matters of matrimonial desire, there can be lack of interest in cohabitation according to love and desire, but it is unlawful to ignore the fulfillment of matrimonial desire of any of them.

1970. It was narrated from 'Aishah that whenever the Messenger of Allâh ﷺ was to travel, he would cast lots among his wives. (*Sahih*)

١٩٧٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
يَحْيَى بْنُ يَمَانٍ، عَنْ عَمْرِ، عَنْ الزَّهْرِيِّ،
عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ كَانَ
إِذَا سَافَرَ أَفْرَغَ بَيْنَ نِسَائِهِ.

تخریج: أخرجه البخاري، الہبة وفضلها والتحریض عليها، باب هبة المرأة لغير زوجها وعنتها إذا كان لها زوج ... الخ، ح: ٢٥٩٣ وغیره، ومسلم، التوبه، باب في حديث الإلقاء وقبول توبة القاذف، ح: ٢٧٧٠ من طرق عن الزهری به مطولاً، وحديث ابن ماجة مختصراً جداً.

Comments:

- In matters of wives, equality and justice must be observed to the maximum possibility.
- If more than one individual has a right to something, and the thing cannot be divided into shares, then the decision can be made by drawing lots.

1971. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ used to divide his time

١٩٧١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَ
مُحَمَّدُ بْنُ يَحْيَى. قَالَ: حَدَّثَنَا يَزِيدُ بْنُ

equally among his wives, then he would 'O Allâh, this is what I am doing with regard to that which is within my control, so do not hold me accountable for that which is under Your control and is beyond my control.'" (*Sahih*)

هارون: أَبْنَا حَمَادَ بْنَ سَلَمَةَ، عَنْ أَيُوبَ،
عَنْ أَبِي قَلَبَةَ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ
عَائِشَةَ قَالَتْ: كَانَ رَسُولُ اللَّهِ يَقْسِمُ بَيْنَ
نِسَاءِهِ، فَعَيْدَلُ، ثُمَّ يَسْأُلُ: «اللَّهُمَّ هَذَا فِعْلِي
فِيمَا أَمْلَكَ. فَلَا تَلْمِنِي فِيمَا تَمْلِكَ وَلَا
أَمْلِكُ». .

تخریج: [إسناده صحيح] أخرجه أبو داود، النکاح، باب: في القسم بين النساء، ح: ٢١٣٤ من حديث حماد به، وصححه الحاکم، والذهبی، وأرسله حماد بن زید، وابن علیة عن أیوب عن أبی قلابة به، وهذا لا يضر، والطريقان محفوظان، وصححه ابن حبان (موارد)، ح: ١٣٠٥، وابن کثیر.

Chapter 48. A Woman Giving Her Day To Her Co-Wife

(المعجم ٤٨) - بَابُ الْمَرْأَةِ نَهْبُ يَوْمَهَا لِصَاحِبِهَا (التحفة ٤٨)

1972. 'Urwah narrated from 'Aishah that when Saudah bint Zam'ah grew old, she gave her day to 'Aishah, and the Messenger of Allâh ﷺ went to 'Aishah on Saudah's day. (*Sahih*)

١٩٧٢ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
عُقْبَةُ بْنُ خَالِدٍ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ
الصَّبَّاحِ: أَبْنَا عَبْدَ الْعَزِيزِ بْنَ مُحَمَّدٍ، جَمِيعًا
عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ
قَالَتْ: لَمَّا كَبَرَتْ سَوْدَةُ بْنُتْ رَمَّةَ وَهَبَتْ
لَيَوْمَهَا لِعَائِشَةَ. فَكَانَ رَسُولُ اللَّهِ يَقْسِمُ
لِعَائِشَةَ يَوْمَ سَوْدَةَ.

تخریج: أخرجه مسلم، الرضاع، باب جواز هبتها نوبتها لضرتها، ح: ١٤٦٣ عن ابن أبی شیة وغيره به.

Comments:

- a. It is right of the wife that according to the turn, the husband spends the night with her. She may withdraw from her right, and she is also allowed to give her right to any of her co - wives.
- b. The Messenger of Allâh ﷺ was not obliged to stay with his wives according to their turns. Allâh says: "You (O Muhammad) can postpone (the turn of) whom you will of them (your wives), and you may receive whom you will. And whomsoever you desire of those whom you have set aside (her turn temporarily), it is no sin on you (to receive her again)." (*Al-Ahzâb* 33:51). Despite that the Prophet ﷺ would take a great care of their turns; it was the highness of his best manners.

1973. It was narrated from 'Âishah that the Messenger of Allâh ﷺ became angry with Safiyyah bint Huyai for something, and Safiyyah said: "O 'Âishah, can you make the Messenger of Allâh ﷺ be pleased with me, and I will give you my day?" She said: "Yes." So she took a headcover of hers that was dyed with saffron, and sprinkled it with water so that its fragrance would become stronger, then she sat beside the Messenger of Allâh ﷺ. The Prophet ﷺ said: "O 'Âishah, go away, because it is not your day." She said: "That is the Grace of Allâh which He bestows on whom He pleases."^[1] Then she told him about that matter and he was pleased with her. (*Sahih*)

١٩٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عَفَانُ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ ثَابِتٍ، عَنْ شَيْبَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَجَدَ عَلَى صَفِيفَةَ بِنْتِ حَمِيَّةَ فِي شَيْءٍ. فَقَالَتْ صَفِيفَةَ: يَا عَائِشَةَ هَلْ لَكِ أَنْ تُرْضِي رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِّي، وَلَكِ يَوْمٌ؟ قَالَتْ: نَعَمْ. فَأَخَذَتْ حِمَارًا لَهَا مَصْبُوغاً بِرَغْفَانَ. فَرَسَّهَ بِالْمَاءِ لِتُفْوحَ رِيحُهُ. قَالَ: فَعَدَتْ إِلَى جَنْبِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. فَقَالَ الْمُؤْمِنَةُ صَفِيفَةَ: يَا عَائِشَةُ إِنِّي عَنِّي. إِنَّهُ لَيْسَ يَوْمَكِ «ذَلِكَ فَضْلُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ» فَأَخْبَرَتْهُ بِالْأَمْرِ، فَرَضَيَ عَنْهَا.

تخریج: [إسناده صحيح] أخرجه أحمد (٦/١٤٥) وغيره عن عفان وغيره به، أخرجه مرة أخرى (٦/١٣١، ١٣٢) عن عفان به، وقال: شميسة وفيه: قالت: فييتنا أنا يوماً بنصف النهار إذا أنا بظل رسول الله ﷺ قبل * سمية (شميسة) وثقاها ابن معين (انظر الجرح والتعديل) وروى عنها شعبة، وهو لا يروي إلا عن ثقة عنده.

1974. It was narrated that 'Âishah said: "This Verse 'And making peace is better.'^[2] was revealed concerning a man who had been married to a woman for a long time, and she had given birth to his children and he wanted to exchange her (for a new wife). She agreed that he would stay with her (the new wife) and would not give her (the

١٩٧٤ - حَدَّثَنَا سَعْدُ بْنُ عَمْرُو: حَدَّثَنَا عُمَرُ بْنُ عَلَيْهِ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّهَا قَالَتْ: تَزَلَّتْ هَذِهِ الْأَيْةُ: «وَأَصْلِحُ حَيْدَرًا» فِي رَجُلٍ كَانَتْ تَحْتَهُ امْرَأَةٌ فَدَّ طَالَتْ صُحْبُهَا. وَوَلَدَتْ مِنْهُ أُولَادًا. فَأَرَادَ أَنْ يَسْتَبِيلَ بِهَا. فَرَاضَتْهُ عَلَى أَنْ يَقْيِمَ عِنْدَهَا وَلَا يَسْتَمِمَ لَهَا.

[١] *Al-Hadid* 57:21.

[٢] *An-Nisâ' 4:128.*

first wife) a share of his time. (i.e., not spend the nights with her).”
(Sahih)

تخریج: [صحیح] * عمر بن علی المقدمی ثقة وكان یدلس شدیداً(تقرب) و عنون، ولحدیثه شواهد منها حدیث رافع بن خدیج، وأخرجه الحاکم: ٣٠٩، ٣٠٨/٢، وصححه على شرط الشیخین، ووافقه الذھبی، وانظر تفسیر ابن کثیر: ٥٣٣، ٥٣٢/١ وغیره إن شئت.

Chapter 49. Intercession Concerning Marriage

1975. It was narrated that Abu Ruhm said: “The Messenger of Allāh ﷺ said: ‘One of the best kinds of intercession is interceding between two people concerning marriage.’” (Da’if)

(المعجم ٤٩) - بَابُ الشَّفَاعَةِ فِي
التَّزْوِيجِ (التحفة ٤٩)

١٩٧٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
مَعَاوِيَةُ بْنُ يَحْيَى: حَدَّثَنَا مَعَاوِيَةُ بْنُ يَرِيدَ،
عَنْ يَرِيدَ بْنِ أَبِي حَيْبٍ، عَنْ أَبِي الْخَيْرِ، عَنْ
أَبِي رُهْمَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنْ
أَفْضَلُ الشَّفَاعَةِ أَنْ يُشَفَّعَ بَيْنَ الْأَثْنَيْنِ فِي
النَّكَاحِ».

تخریج: [إسناده ضعیف] انظر، ح: ٨٤٢ لعلته، وفيه علة أخرى.

1976. It was narrated that ‘Aishah said: “Usāmah stumbled at the threshold of the door and cut his face. The Messenger of Allāh ﷺ said: ‘Remove the harm (the blood) from him,’ but I was repulsed by that. He started to suck the blood and remove it from his face, then he said: ‘If Usāmah were a girl, I would have adorned him and dressed him until I married him off.’” (Da’if)

١٩٧٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا
شَرِيكُ عَنْ الْعَبَّاسِ بْنِ ذَرِيعَةَ، عَنْ الْبَهِيِّ،
عَنْ عَائِشَةَ قَالَتْ: عَنْ أَسَاطِهِ بِعِيقَةِ الْأَبَابِ -
فَشَجَّ فِي وَجْهِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ:
«أَمْبَطِي عَنْهُ الْأَذَى» فَتَقَلَّرَتْهُ. فَجَعَلَ يَمْصُّ
عَنْهُ الدَّمَ وَيَمْجُهُ عَنْ وَجْهِهِ. ثُمَّ قَالَ: «لَوْ
كَانَ أَسَاطِهِ جَارِيَةً لَحَلَّتْهُ وَكَسُوتُهُ حَتَّى
أَنْفَقَهُ».

تخریج: [إسناده ضعیف] آخرجه أحمد: ٦/٢٢٢، ١٣٩ من حدیث شریک به * شریک عنون تقدم، ح: ١٤٩، وتابعه مجالد ضعیف تقدم، ح: ١١، وفي سماع البھی من عائشة کلام.

Comments:

It is permissible to adorn girls with jewelry and nice clothes. But this should not be a frequent habit, so they have the inclination to simplicity as well. Of

course, there is no harm in dressing up nicely for weddings and 'Eid celebrations etc., and to use the relevant adornment up to a certain limit.

Chapter 50. Good Treatment Of Women

1977. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "The best of you is the one who is best to his wife, and I am the best of you to my wives." (*Hasan*)

(المعجم ٥٠) - بَابُ حُسْنٍ مُعاشرَةِ النِّسَاءِ (التحفة ٥٠)

١٩٧٧ - حَدَّثَنَا أَبُو يَثْرَى بْنُ خَلَفٍ، وَمُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ جَعْفَرٍ بْنِ يَحْيَى بْنِ ثُوبَانَ، عَنْ عَمَّهُ عُمَارَةَ بْنِ ثُوبَانَ، عَنْ عَطَاءَ، عَنْ أَبْنَى عَبَّاسِ، عَنْ النَّبِيِّ ﷺ قَالَ: «خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ. وَأَنَا خَيْرُكُمْ لِأَهْلِي».

تخریج: [حسن] أخرجه البزار من حديث أبي عاصم به، وصححه ابن حبان (موارد)، ح: ١٣١٥، والحاكم: ١٧٣/٢، والذهبي، وضعفه البوصيري، وللحديث شواهد عند الترمذى، وابن حبان، ح: ١٣١٢، ١٣١١ وغيرهما.

1978. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "The best of you are those who are best to their womenfolk." (*Sahih*)

١٩٧٨ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا أَبُو حَالِدٍ عَنِ الْأَعْمَشِ، عَنْ شَرِيقَيِّ، عَنْ مَسْرُوقَيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «خَيْرُكُمْ خَيْرُكُمْ لِإِنْسَائِهِمْ».

تخریج: [صحيح] وصححه البوصيري، والحديث السابق شاهد له.

Comments:

Due to the good relationship between husband and wife, the children also learn and adopt good manners and habits. Once they are grown up, they prove to be a mercy for themselves as well as for their parents; but if the husband and wife have an unpleasant relationship, the children are affected too, and by learning bad habits, they cause hardships and worry to the parents as well. They also cause mischief and trouble in the society.

1979. It was narrated that 'Aishah said: "The Prophet ﷺ raced with me and I beat him." (*Sahih*)

١٩٧٩ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَيَّةَ، عَنْ هَشَامٍ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: سَابَقْنِي النَّبِيُّ ﷺ فَسَقَقَهُ.

تخریج: [صحیح] أخرجه أَحْمَدُ: ٣٩ / ٦ عن سفيان بْنِ مطْلُوْاً، وصحّحه ابن حبَّان (موارد)، ح: ١٣١٠، وللحديث طرق كثيرة عند أبي داود، ح: ٢٥٧٨ وغيره.

Comments:

- When 'Aishah ﷺ was honored with the kind company of Allâh's Messenger ﷺ, she was then very young. The Messenger of Allâh ﷺ would take great care of her young age, he ﷺ would avail her occasions of amusement.
- It is not appropriate to keep the household atmosphere formal and strict all the time; having a good sense of humor with the wife and children, and trying to amuse them, is not contrary to the status of righteousness.

1980. It was narrated that 'Aishah said: "When the Messenger of Allâh ﷺ came to Al-Madinah, he had just married Safiyyah bint Huyai, and the women of the *Ansâr* came and told us about that. My expression changed and I covered my face and went away. The Messenger of Allâh ﷺ looked at my eyes and recognized me. I turned away and walked quickly, but he caught up with me and put his arm around me and said: 'What did you see?' I said: 'Let me go, (I saw) a Jewish woman among other Jewish women.'" (*Da'iif*)

تخریج: [إسناده ضعیف] انظر، ح: ١١٦ لعلته، وفيه علتان آخرتان.

1981. 'Urwah bin Zubair narrated that 'Aishah said: "I did not know until Zainab burst in on me without permission, and she was angry. Then she said: 'O Messenger of Allâh, is it enough for you that the young daughter of Abu Bakr waves her hands in front of you?' Then she turned to me, but I ignored her until the Prophet ﷺ said: 'You should say something to defend yourself.' So I turned on her, (and replied to

١٩٨٠ - حَدَّثَنَا أَبُو بَدْرٍ، عَبْدُ بْنُ الْوَلِيدِ: حَدَّثَنَا حَبَّانَ بْنُ هَلَالٍ: حَدَّثَنَا مُبَارِكُ بْنُ فَضَالَةَ، عَنْ عَلَيِّ بْنِ رَزِيدٍ، عَنْ أُمِّ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا قَدِمَ رَسُولُ اللهِ ﷺ الْمَدِينَةَ، وَهُوَ عَرْوُسٌ يَصْفِيَّ بَنْتَ حُسَيْنٍ، جِئْنَ نِسَاءُ الْأَصْلَارِ فَأَخْبَرْنَ عَنْهَا. قَالَتْ، فَتَكَرَّرَتْ وَتَنَبَّئَتْ فَلَهَبَتْ. فَنَظَرَ رَسُولُ اللهِ ﷺ إِلَى عَيْنِي فَعَرَفَنِي. قَالَتْ: فَالْمُتَّقَتْ فَأَشْرَعْتُ الْمُتَّقَيْ. فَأَذْرَكَنِي فَأَخْتَصَنِي. قَالَ: «كَيْفَ رَأَيْتِ؟» قَالَتْ، قُلْتُ: أَرَسِلْ، يَهُودِيَّةً وَسُطْرَ يَهُودِيَّاتَ.

١٩٨١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بِشَرٍّ، عَنْ زَكَرِيَّاً، عَنْ خَالِدِ بْنِ سَلَمَةَ، عَنْ الْبَهِيَّ، عَنْ عُرْوَةَ بْنِ الزُّبَيرِ قَالَ: قَالَتْ عَائِشَةُ: مَا عَلِمْتُ حَتَّى دَخَلَتْ عَائِشَةَ زَيْنَبَ بْنَ عَيْنَيْ إِذْنِي، وَهِيَ غَضَبَيْ. ثُمَّ قَالَتْ: يَا رَسُولَ اللهِ! أَحْسَبْتَ إِذَا قَبَّلْتَ لَكَ بَيْتَهُ أَبِي بَكْرٍ ذُرْعَتِيَّاهَا. ثُمَّ أَقْبَلَتْ عَلَيَّ. فَأَغْرَضْتُ عَنْهَا. حَتَّى قَالَ النَّبِيُّ: «ثُونِكَ، فَأَنْصِبِري».

her) until I saw that her mouth had become dry, and she did not say anything back to me. And I saw the Prophet ﷺ with his face shining." (Hasan)

تخریج: [حسن] أخرجه أحمد: ٩٣٦ عن ابن أبي شيبة به، وصححه البوصيري على شرط مسلم، وهو في السنن الكبير، ح: ١٩١٦٨٩١٤ من حديث زكريا به، وهو مدلس (المرتبة الثانية)، ولم أجده تصريحاً سابعاً، وله شاهد عند مسلم، ح: ٢٤٤٢.

Comments:

- The expression of anger by Zainab ؓ against 'Aishah ؓ was because of natural sentiment, which is normal among co-wives.
- This permission to 'Aishah ؓ by the Messenger of Allāh ﷺ was on the basis of justice; so 'Aishah ؓ made Zainab ؓ quiet and the Prophet ﷺ became pleased.

1982. It was narrated that 'Aishah said: "I used to play with dolls when I was with the Messenger of Allāh ﷺ, and he used to bring my friends to me to play with me." (Sahih)

تخریج: أخرجه البخاري، الأدب، باب الانبساط إلى الناس، ح: ٦١٣٠، ومسلم، فضائل الصحابة، باب: في فضائل عائشة أم المؤمنين رضي الله عنها، ح: ٢٤٤٠ من حديث هشام به * عمر بن حبيب تابعه غير واحد.

Chapter 51. Hitting Women

1983. It was narrated that 'Abdullāh bin Zam'ah said: "The Prophet ﷺ delivered a sermon then he made mention of women, and exhorted (the men) concerning them. Then he said: 'How long will one of you whip his wife like a slave, then lie with her at the end of the day?'" (Sahih)

تخریج: أخرجه البخاري، التفسير، سورة «والشمس وضحاها» ح: ٤٩٤٢، ح: ٤٩٤٣ وغيرهما من حديث هشام به، ومسلم، الجنة وصفة نعيمها، باب: النار يدخلها الجارون والجنة

فَأَبْكَيْتُ عَيْنِهَا، حَتَّى رَأَيْتُهَا وَقَدْ يَسَّرَ رِيقُهَا
فِي فَيْهَا، مَا تَرُدُّ عَلَيَّ شَيْئاً. فَرَأَيْتُ النَّبِيَّ ﷺ
يَتَهَلَّلُ وَجْهُهُ.

١٩٨٢ - حَدَّثَنَا حَفْصُ بْنُ عَمْرُو: حَدَّثَنَا
عُمَرُ بْنُ حَبِيبِ الْقَاضِيِّ. قَالَ: حَدَّثَنَا هِشَامٌ
ابْنُ عُزْرَوَةَ عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: كُنْتُ
أَعْبُّ بِالْبَيْنَاتِ وَأَنَا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَكَانَ
يُسَرِّبُ إِلَيَّ صَوَاعِدَتِي مُلَأِيْعِنْتِي.

(المعجم ٥١) - بَابُ ضَرْبِ النِّسَاءِ (التحفة ٥١)

١٩٨٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ ثُمَّيْنٍ: حَدَّثَنَا هِشَامٌ بْنُ عُزْرَوَةَ عَنْ
أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ زَمْعَةَ قَالَ: خَطَبَ النَّبِيُّ
ﷺ. ثُمَّ ذَكَرَ النِّسَاءَ. فَوَعَظَهُمْ فِيهِنَّ. ثُمَّ
قَالَ: إِلَّا يَجْلِدُ أَخْدُوكُمْ أَمْرَأَتَهُ جَلْدَ الْأَمَةِ؟
وَلَعْلَهُ أَنْ يُضَاقِّهُمَا مِنْ آخِرِ يَوْمِهِ.

يدخلها الضعفاء، ح: ٢٨٥٥ عن ابن أبي شيبة به.

Comments:

The rebuke to women for a mistake is necessary but it should be only verbal; if she is very careless and defiantly disobedient, then the husband should get angry; this punishment is enough. Physical light punishment is allowed only at a certain stage when there is no alternative.

1984. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ never beat any of his servants, or wives, and his hand never hit anything." (*Sahih*)

تخریج: أخرجه مسلم، الفضائل، باب مبادعته ﷺ للذم واحتیاره من المباح أسهله ...
الخ، ح: ٢٣٢٨ عن ابن أبي شيبة به مختصرًا.

Comments:

- Kindness and compassion are admirable qualities.
- The physical punishment to the wife, children and servants should be avoided to the maximum possibility.

1985. It was narrated that Iyâs bin 'Abdullâh bin Abu Dhubâb said: "The Prophet ﷺ said: 'Do not beat the female slaves of Allâh.' Then 'Umar came to the Prophet ﷺ and said: 'O Messenger of Allâh, the woman have become bold towards their husbands? So order the beating of them,' and they were beaten. Then many women went around to the family of Muhammad ﷺ. The next day he said: 'Last night seventy women came to the family of Muhammad, each woman complaining about her husband. You will not find that those are the best of you.'" (*Sahih*)

تخریج: [صحيح] أخرجه أبو داود، النكاح، باب: في ضرب النساء، ح: ٢١٤٦ من حديث سفيان به، وصححه ابن حبان، والحاكم، والذهبى، والعسقلانى.

١٩٨٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
وَكَيْفَيْهِ عَنْ هَشَامٍ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ
عَائِشَةَ قَالَتْ: مَا ضَرَبَ رَسُولُ اللَّهِ ﷺ
خَادِمًا لَهُ، وَلَا امْرَأً، وَلَا ضَرَبَ يَنْدِي شَيْئًا.

تخریج: أخرجه مسلم، الفضائل، باب مبادعته ﷺ للذم واحتیاره من المباح أسهله ...
الخ، ح: ٢٣٢٨ عن ابن أبي شيبة به مختصرًا.

١٩٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَبْنَاءَنَا
سُفِيَّانُ بْنُ عَيْبَيْهَ، عَنِ الرُّهْرِيِّ، عَنْ [عَيْبَدِ]
اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ إِيَّاسِ بْنِ عَبْدِ
اللَّهِ بْنِ أَبِي ذُبَابٍ قَالَ: قَالَ النَّبِيُّ ﷺ: لَا
تَضْرِبُنَّ إِمَاءَ اللَّهِ فَجَاءَ عُمَرُ إِلَى النَّبِيِّ ﷺ
فَقَالَ: يَا رَسُولَ اللَّهِ قَدْ ذَرَّ النِّسَاءَ عَلَى
أَرْوَاحِهِنَّ. فَأَمْرَرَهُنَّ طَافِهِ نِسَاءَ كَثِيرٍ. فَلَمَّا أَضْبَخَ
بَالِيْلَمَدِيْلَهُ طَافَهُ نِسَاءَ كَثِيرٍ. فَلَمَّا أَضْبَخَ
قَالَ: لَقَدْ طَافَ الْلَّيْلَةَ بِالِّمَدِيْلَهُ امْرَأَةٌ مُحَمَّدٌ سَبَّوْنَ
امْرَأَةً. كُلُّ امْرَأَةٍ تَشْتَكِي زَوْجَهَا. فَلَا تَجِدُونَ
أُولَئِكَ حِيَارَكُمْ.

1986. It was narrated that Ash'ath bin Qais said: "I was a guest (at the home) of 'Umar one night, and in the middle of the night he went and hit his wife, and I separated them. When he went to bed he said to me: 'O Ash'ath, learn from me something that I heard from the Messenger of Allâh ﷺ: "A man should not be asked why he beats his wife, and do not go to sleep until you have prayed the Witr.'" And I forgot the third thing." (*Hasan*)

Another chain with similar wording.

١٩٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَالْمَسْئُونُ أَبْنُ مُدْرِكِ الطَّحَانْ. قَالَ: حَدَّثَنَا يَحْيَى بْنُ حَمَادٍ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ دَاؤَدْ بْنِ عَبْدِ اللَّهِ الْأَوْذِيِّ، عَنْ عَبْدِ الرَّحْمَنِ [الْمُسْلِيِّ]، عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: ضِفْتُ عُمَرَ إِلَيْهِ. فَلَمَّا كَانَ فِي جَوْفِ اللَّيلِ قَامَ إِلَيْهِ امْرَأَتُهُ يَضْرِبُهَا. فَحَجَزْتُ بَيْتَهُمَا. فَلَمَّا أَوَى إِلَى فِرَاشِهِ قَالَ لِي: يَا أَشْعَثُ! احْفَظْ عَنِّي شَيْئًا سَيِّعَتْهُ عَنْ رَسُولِ اللَّهِ ﷺ: «لَا يُسَأَ الرَّجُلُ فِيمَ يَضْرِبُ امْرَأَتَهُ. وَلَا تَنْمِ إِلَّا عَلَى وِثْرٍ» وَتَسَيَّسَ الثَّالِثَةُ.

حدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ بْنِ خَدَاشٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا أَبُو عَوَانَةَ يَاسِنَاتِيُّو، تَحْوِهُ.

تخریج: [حسن] أخرجه أبو داود، النکاح، باب: في ضرب النساء، ح: ٢١٤٧ من حديث أبي عوانة به * وصححه الحاکم (١٧٥/٤)، ووافقه الذهبي.

Chapter 52. Those Who Put Extensions In Hair And Those Who Make Tattoos

1987. It was narrated from Ibn 'Umar that the Prophet ﷺ cursed the woman who does hair extensions and the one who has that done, and the woman who does tattoos and the one who has that done. (*Sahih*)

(المعجم ٥٢) - بَابُ الْوَاصِلَةِ وَالْوَاشِمَةِ
(٥٢) التحفة

١٩٨٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نَعْمَانَ وَأَبُو أَسَامَةَ، عَنْ عَبْدِ اللَّهِ ابْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ أَنَّهُ لَعَنَ الْوَاصِلَةِ وَالْمُشَوَّصِلَةِ، وَالْوَاشِمَةِ وَالْمُسْتَوْشِمَةِ.

تخریج: أخرجه مسلم، اللباس والزينة، باب تحريم فعل الواصلة والمستوصلة والواشمة والمستوشمة ... إلخ، ح: ٢١٢٤ من حديث ابن نمير وغيره به، أخرجه البخاري، ح: ٥٩٤٧، ومسلم وغيرهما من طريق يحيى القطان عن عبيدة الله به.

Comments:

- The woman is recommended to adorn herself for the pleasure of her husband; but must be careful about what is lawful and unlawful.
- If a woman has less hair, she should not add artificial hair to show more; and also the men should avoid wearing a wig to hide baldness. For this purpose one may wear a cap, hat or turban etc.
- As for the art of making tattoos on the body; the print of tattoos remain permanent on the body and do not get deleted; the Arab women used to practise this fashion; but having tattoos and making tattoos are prevented alike.

1988. It was narrated that Asmā' said: "A woman came to the Prophet ﷺ and said: 'My daughter is going to get married, and she had the measles and her hair has fallen out. Can I put extensions in her hair?' The Messenger of Allāh ﷺ said: 'Allāh has cursed the one who does hair extensions and the one who has that done.'" (*Sahih*)

١٩٨٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدَهُ بْنُ سَيَّمَانَ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ فَاطِمَةَ، عَنْ أَسْمَاءَ قَالَتْ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: إِنَّ ابْنَتِي عَرِيسَةُ. وَقَدْ أَصَابَتْهَا الْحُضْبَةُ. فَعَمِّرَ شَعْرَهَا. فَأَصْلَلَ لَهَا فِيهِ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَعْنَ اللَّهِ الْوَاصِلَةُ وَالْمُسْتَوْصِلَةُ».

تخرج: أخرجه البخاري،اللباس،باب وصل الشعر، ح: ٥٩٣٦، ٥٩٤١ من حديث هشام به، ومسلم،اللباس والزينة،الباب السابق، ح: ٢١٢٢ عن ابن أبي شيبة وغيره.

Comments:

Despite the excuse, the Messenger of Allāh ﷺ did not allow her to add artificial hair; even though the adornment for the pleasure of the husband is a religious demand. It informs us that this prohibition is not of that of dislike, instead it is a definite unlawful thing. The curse on it is also a proof of its total prohibition, because a curse is not spelt out just for something disliked.

1989. It was narrated that 'Abdullāh said: "The Messenger of Allāh ﷺ cursed the woman who does tattoos and the one who has them done, and those who pluck their eyebrows and file their teeth for the purpose of beautification, and those who change the creation of Allāh." News of that reached a woman of Banu Asad who was called Umm Ya'qub. She came to him and

١٩٨٩ - حَدَّثَنَا أَبُو عُمَرَ، حَفَصُ بْنُ عُمَرَ، وَعَبْدُ الرَّحْمَنِ بْنُ عُمَرَ. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيًّا: حَدَّثَنَا سُفْيَانُ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: لَعْنَ رَسُولِ اللَّهِ ﷺ الْوَاشِمَاتِ وَالْمُسْتَوْشِمَاتِ وَالْمُتَمَمَّصَاتِ وَالْمُتَنَجِّجَاتِ لِلْحُسْنَ، الْمُغَيْرَاتِ لِخَلْقِ اللَّهِ فَبَلَغَ ذَلِكَ

said: "I have heard that you said such and such." He said: "Why should I not curse those whom the Messenger of Allâh ﷺ cursed? And it is in the Book of Allâh." She said: "I read what is between its two covers and I have not found that." He said: "If you read it properly you would have found it. Have you not read the words: 'And whatsoever the Messenger (Muhammad) gives you, take it; and whatsoever he forbids you, abstain (from it).'"^[1] She said: "Of course." He said: "The Messenger of Allâh ﷺ forbade that." She said: 'I think that your wife does it.' He said: "Go and look." So she went and looked and she did not see what she wanted. She said: "I have not seen anything." 'Abdullâh said: "If she was as you say, I would not have kept her with me." (*Sahih*)

تخریج: أخرجه البخاري، اللباس، باب المستوشمة، ح: ٥٩٤٨؛ مختصرًا، ومسلم، اللباس والزينة، باب تحريم فعل الراصلة والمستوصلة ... الخ، ح: ٢١٢٥ من حديث ابن مهدي به، وله عندهما طرق.

Comments:

- Removing and plucking hair is about the facial hair, which does not look good on the faces of women; plucking, removing them is not allowed Islamically. But some sort of color may be used that they do not look outstanding.
- Some people have their eyebrows naturally join together and they create a gap between them by shaving; or some women make their eyebrows thinner by using different techniques; these are all forbidden and part of this prohibition.
- This custom also used to be that it was regarded as a sign of beauty if the front teeth were not joined together; and for this purpose women would make artificial spaces in between the teeth filing them. This is not allowed.

[1] Al-Hashr 59:7.

امرأةٌ مِنْ بَنِي أَسَدٍ، يَقُولُ لَهَا أُمُّ يَعْقُوبَ.
فَجَاءَتْ إِلَيْهِ. قَالَتْ: بَلَغْنِي عَنْكَ أَنَّكَ فُلْتَ
كَيْتَ وَكَيْتَ. قَالَ: وَمَا لِي لَا أَلْعَنُ مِنْ لَعَنَّ
رَسُولِ اللَّهِ ﷺ. وَهُوَ فِي كِتَابِ اللَّهِ؟ قَالَتْ:
إِنِّي لَا كُفَّارًا مَا بَيْنَ لَوْحَيْهِ فَمَا وَجَدْتُهُ. قَالَ:
إِنِّي كُنْتُ فَرَأَيْهِ فَقَدْ وَجَدْتُهُ. أَمَا فَرَأَتْ: هُوَ مَا
عَنْكُمُ الرَّسُولُ فَحَسْلُوهُ وَمَا تَهْنَكُمْ عَنْهُ فَانْهَوْهُ
[الحشر: ٧] قَالَتْ: بَلَى. قَالَ: فَإِنَّ رَسُولَ
اللَّهِ ﷺ قَدْ تَهَنَّ عَنْهُ. قَالَتْ: فَإِنِّي لَا أَطْعُنُ
أَهْلَكَ يَمْعَلُونَ. قَالَ: اذْهَبِي فَانْظُرْيِ.
فَذَهَبَتْ فَنَظَرَتْ فَلَمْ تَرِ مِنْ حَاجَتِهَا شَيْئًا.
قَالَتْ: مَا رَأَيْتُ شَيْئًا. قَالَ عَبْدُ اللَّهِ: لَوْ
كَانَتْ كَمَا تَهْوِلِنَّ مَا جَاءَعَنَّنَا.

Chapter 53. Recommended Time For Consummating Marriage

1990. It was narrated that 'Âishah said: "The Prophet ﷺ married me in Shawwâl, and he consummated the marriage with me in Shawwâl, and which of his wives was more favored to him than I." 'Âishah used to like marriage to be consummated with her female relatives in Shawwâl. (*Sahih*)

(المعجم ٥٣) - بَابٌ : مَتَى يُسْتَحْبِطُ الْإِنْاءُ بِالسَّاءِ (التحفة ٥٣)

١٩٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ : حَدَّثَنَا وَكَبِيعُ بْنُ الْجَرَاحَ ; ح : وَحَدَّثَنَا أَبُو شِرٍّ بْنَ بَكْرٍ ابْنُ خَلْفٍ : حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ ، جَوِيعاً عَنْ سُقِيَانَ ، عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ ، عَنْ عَبْدِ اللَّهِ بْنِ عُرْوَةَ ، عَنْ عَرْوَةَ ، عَنْ عَائِشَةَ قَالَتْ : تَرَوَّجَنِي النَّبِيُّ ﷺ فِي شَوَّالٍ . وَيَقِيُّ بْنِ فِي شَوَّالٍ . فَأَيُّ نِسَاءٍ كَانَ أَحْظَى عِنْدَهُ مِنِّي ، وَكَانَتْ عَائِشَةُ تُسْتَحْبِطُ أَنْ تُدْخِلَ نِسَاءَهَا فِي شَوَّالٍ .

تخریج: أخرجه مسلم، النکاح، باب استحباب التزوج والتزویج في شوال واستحباب الدخول فيه، ح: ١٤٢٣ عن ابن أبي شيبة وغيره به.

Comments:

In the pre-Islamic era, the month of Shawwâl used to be considered unblessed; therefore the people would avoid marrying in it. 'Âishah ﷺ refuted this wrong belief by giving her own example.

1991. It was narrated from 'Abdul-Malik bin Hârith bin Hishâm, from his father, that the Prophet ﷺ married Umm Salamah in Shawwâl, and consummated the marriage with her in Shawwâl. (*Da'if*)

١٩٩١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ : حَدَّثَنَا أَسْوَدُ بْنُ عَامِرٍ : حَدَّثَنَا رُهْبَرٌ ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ ، عَنْ أَبِيهِ ، عَنْ عَبْدِ الْمَلِكِ بْنِ الْحَارِثِ بْنِ هَشَامٍ ، عَنْ أَبِيهِ أَنَّ النَّبِيَّ ﷺ تَرَوَّجَ أَمْ سَلَّمَ فِي شَوَّالٍ . وَجَمَعَهَا إِلَيْهِ فِي شَوَّالٍ .

تخریج: [إسناده ضعيف] أخرجه الطبراني (الكبير: ٣/ ٢٩٤، ٢٩٥) من طريق ابن أبي شيبة به، وانظر، ح: ١٢٠٩: لعلته.

Chapter 54. A Man Consummating The Marriage With His Wife Before Giving Her Anything

1992. It was narrated from 'Âishah that the Messenger of Allâh ﷺ told her to take a woman to her husband before he had given her anything (i.e., bridal-money). (*Da'if*)

(المعجم ٥٤) - بَابُ الرَّجُلِ يَدْخُلُ بِأَهْلِهِ قَبْلَ أَنْ يُعْطِيَهَا شَيْئاً (التحفة ٥٤)

١٩٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا الْهَيْمُونَ بْنَ جَوْهِيلَ: حَدَّثَنَا شَرِيكٌ، عَنْ مُنْصُورٍ أَطْلَهُهُ عَنْ طَلْحَةَ، عَنْ خَيْثَمَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَمْرَهَا أَنْ تُدْخِلَ عَلَى رَجُلٍ امْرَأَةً قَبْلَ أَنْ يُعْطِيَهَا شَيْئاً.

تخریج: [إسناده ضعیف] أخرجه أبو داود، النکاح، باب: فی الرجل يدخل بامرأته قبل أن ينقدما شيئاً، ح ٢١٢٨: من حديث شريك به * شريك عن عائشة، ح ١٤٩، وخیثمة لم يسمع لها عائشة رضي الله عنها.

Chapter 55. Omens And Good Fortune

1993. It was narrated from Hakim bin Mu'âwiya that his paternal uncle Mikhmar bin Mu'âwiya said: "I heard the Messenger of Allâh ﷺ say: 'Do not believe in omens, and good fortune is only to be found in three things: A woman, a horse and a house.'" (*Hasan*)

(المعجم ٥٥) - بَابُ مَا يَكُونُ فِيهِ الْيُمْنُ وَالشُّؤْمُ (التحفة ٥٥)

١٩٩٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنِي سُلَيْمَانُ بْنُ شَيْمَ الْكَلْبِيُّ، عَنْ يَحْيَىٰ بْنِ جَابِرٍ، عَنْ حَكِيمٍ بْنِ مُعَاوِيَةَ، عَنْ عَمِّهِ مُخْمَرٍ بْنِ مُعَاوِيَةَ قَالَ: سَمِعْتَ رَسُولَ اللَّهِ ﷺ يَقُولُ: لَا شُؤْمَ. وَقَدْ يَكُونُ الْيُمْنُ فِي ثَلَاثَةَ: فِي الْمَرْأَةِ وَالْقَرْسِ وَالنَّارِ».

تخریج: [حسن] أخرجه الطبراني في الكبير: الكبیر: ٣٣٦، ٣٣٧، ٢٠/٧٩٦ من حديث هشام به (وسقط يحيى بن جابر من سنده) إلا أنه قال: مخمر بن حيدة ، وللحديث شواهد كثيرة.

Comments:

'Omens and good fortune' is the trouble or harmony caused by something or by a person. For example: a woman, if she is of good conduct, obedient and well-mannered, then it is a mercy and blessing; but if she is abusive, disobedient and ill-mannered, then it is ominousness. Similarly if the horse (ride) is healthy, fast and obedient to the master, then it is a blessing but if it is stubborn and ungovernable, it will be a problem. A big and wide house and a good neighbor are a blessing.

1994. It was narrated from Sahl bin Sa'd that the Messenger of Allâh ﷺ said: "If it exists, it is in three things: a horse, and woman and a house," meaning omens. (*Sahih*)

١٩٩٤ - حَدَّثَنَا عَبْدُ السَّلَامَ بْنُ عَاصِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ تَافِعٍ: حَدَّثَنَا مَالِكُ بْنُ أَئْسٍ، عَنْ أَبِي حَازِمٍ، عَنْ سَهْلِ بْنِ سَعْدٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنَّ كَانَ، فَفِي الْفَرَسِ وَالْمَرْأَةِ وَالْمَسْكِنِ». يَعْنِي الشُّوْمَ.

تخریج: أخرجه البخاري، النکاح، باب ما يتلقى من شوم المرأة ... إلخ، ح: ٥٠٩٥، ٢٢٦: من حديث مالك به.

1995. It was narrated from Sâlim, from his father, that the Messenger of Allâh ﷺ said: "Omens are only to be found in three things: a horse, a woman and a house." (*Sahih*)

(One of the narrators) Az-Zuhri said: "Abu 'Ubaidah bin 'Abdullâh bin Zam'âh said that his mother, Zainab, narrated to him, from Umm Salamah, that she used to list these three, and add to them "the sword."

١٩٩٥ - حَدَّثَنَا يَحْيَى بْنُ خَلْفٍ، أَبُو سَلَمَةَ: حَدَّثَنَا يَشْرُبُ بْنُ الْمُعَضِّلِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الشُّوْمُ فِي ثَلَاثٍ: فِي الْفَرَسِ وَالْمَرْأَةِ وَاللَّادِرِ».

قَالَ الزُّهْرِيُّ: فَحَدَّثَنِي أَبُو عَبْيَةَ بْنُ عَبْدِ اللَّهِ بْنِ زَمْعَةَ أَنَّ أُمَّهُ، رَبِّبَ حَدَّثَتْهُ عَنْ أُمِّ سَلَمَةَ أَنَّهَا كَانَتْ تَعْدُ هُؤُلَاءِ الْمُلَائِكَةَ. وَتَرِيدُ مَعْهُنَّ، السَّيْفَ.

تخریج: أخرجه البخاري، الطبراني، باب الطيرة، ح: ٥٧٥٣، ٢٢٥: وخبرهما من طريق الزهرى نحوه، إلا أن البخارى قال: إلا أن البخارى نحوه، إلا أن البخارى قال: إلا أن البخارى نحوه، وهذا الحديث مختصرًا، والحديث السابق قاضى عليه، لأن فيه زيادة، والله أعلم.

Chapter 56. Jealousy

(المعجم ٥٦) - باب الغيرة (التحفة ٥٦)

1996. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There is a kind of protective jealousy that Allâh loves and a kind that Allâh hates. As for that which Allâh loves, it is protective jealousy when there are grounds for suspicion. And as for

١٩٩٦ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَكَبِيعُ عَنْ شَيْبَانَ أَبِي مُعَاوِيَةَ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَهْمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنِ الْغَيْرَةُ مَا يُحِبُّ اللَّهُ وَمِنْهَا مَا يَكْرَهُ اللَّهُ. فَمَمَا يُحِبُّ اللَّهُ فَالْغَيْرَةُ فِي الرِّبْيَةِ. وَمَمَا يَكْرَهُ، فَالْغَيْرَةُ

that which He hates, it is protective jealousy when there are no grounds for suspicion."

(Sahih)

تخریج: [صحیح] * أبو شہم، قال الحافظ في التقریب: كذا وقع: عنده أی عند ابن ماجہ، والصواب: أبو سلمة وهو ابن عبد الرحمن ، وأبو سلمة ثقة مشهور، ولحدیثه شاهد عند أبي داود، ح ٢٦٥٩: وغيره، وصححه ابن حبان(موارد)، ح ١٢١٣: ، والحافظ في الإصابة.

Comments:

- If the conduct of wife looks doubtful, she should be given proper admonishment, in order to prevent her from stepping forward into bad conduct.
- One should not have doubts in his chaste and bashful wife just by hearing nonsense from irresponsible individuals; it is possible that out of jealousy, grudge and enmity, they want to spoil his family.

1997. It was narrated that 'Âishah said: "I never felt as jealous of any woman as I did of Khadijah, because I saw how the Messenger of Allâh ﷺ remembered her, and his Lord had told him to give her the glad tidings of a house in Paradise made of Qasab."^[1] (Sahih)

Meaning of gold; Ibn Mâjah said that.

تخریج: أخرجه البخاري، مناقب الأنصار، باب تزویج النبي ﷺ خديجة وفضلها رضي الله عنها، ح ٣٨١٦، ٣٨١٧، ٥٢٢٩، ومسلم، فضائل الصحابة، باب: من فضائل خديجة (أم المؤمنين) رضي الله تعالى عنها، ح ٢٤٣٥ من حديث هشام به، وصححه البوصيري.

Comments:

- It means the jealousy for good, which a woman normally has about the co-wife. This is a natural sentiment among women, and it expresses their love for the husband; so it should be tolerated so long as no wrong doing happens because of it.
- This Hadith shows the virtuousness and high status of Khadijah ﷺ.

1998. It was narrated that

١٩٩٧ - حَدَّثَنَا هَارُونُ بْنُ إِسْحَاقَ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: مَا غَرَّتْ عَلَى امْرَأَةٍ قَطُّ، مَا غَرَّتْ عَلَى خَدِيجَةَ، مِمَّا رَأَيْتُ مِنْ ذِكْرِ رَسُولِ اللَّهِ ﷺ لَهَا، وَلَقَدْ أَمْرَهُ أَنْ يُسْرِرَهَا بِسِتَّ فِي الْجَنَّةِ مِنْ قَصَبٍ.

يعني من ذهب. قاله ابن ماجہ.

تخریج: حَدَّثَنَا عَيسَى بْنُ حَمَادٍ الْمَصْرِيُّ:

^[1] Qasab refers to thread, cane, or reed. In other narrations it is mentioned that it is made of hollow pearl.

Mishwar bin Makhramah said: "I heard the Messenger of Allāh ﷺ, when he was on the pulpit, say: 'Banu Hishām bin Mughirah asked me for permission to marry their daughter to 'Ali bin Abu Tālib, but I will not give them permission, and I will not give them permission, and I will not give them permission, unless 'Ali bin Abu Tālib wants to divorce my daughter and marry their daughter, for she is a part of me, and what bothers her bothers me, and what upsets her upsets me.'" (*Sahih*)

أَبْنَا الْلَّهُثُ بْنُ سَمِيعٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلِيكَةَ، عَنِ الْوَسْوَرَ بْنِ مَخْرَمَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ، وَهُوَ عَلَى الْمِنْبَرِ، يَقُولُ: إِنَّ بْنَي هَشَامَ بْنِ الْمُغَيْرَةِ اسْتَأْذَنُنِي أَنْ يُنْكِحُوهُمْ عَلَيَّ بْنَ أَبِي طَالِبٍ. فَلَا أَذِنْ لَهُمْ، ثُمَّ لَا أَذِنْ لَهُمْ، ثُمَّ لَا أَذِنْ لَهُمْ. إِلَّا أَنْ يُرِيدَ عَلَيَّ ابْنُ أَبِي طَالِبٍ أَنْ يُطْلَقَ ابْنَتِي وَيَنْكِحَ ابْنَهُمْ. فَإِنَّمَا هِيَ بَضْعَةُ يَوْمٍ. يَرِبِّنِي مَا رَأَيْهَا، وَيَؤْذِنِي مَا آذَاهَا".

تخریج: أخرجه البخاري، النكاح، باب ذب الرجل عن ابنته في الغيرة والإنصاف، ح: ٥٢٣٠، ومسلم، فضائل الصحابة، باب: من فضائل فاطمة (بنت النبي ﷺ) رضي الله عنها، ح: ٤٤٩٩ من حديث الليث به.

Comments:

- a. It is not allowed to worry the noble Prophet ﷺ by any means even though the concern may be about what is lawful; but perhaps it would be displeasing to the Messenger of Allāh ﷺ for a certain reason.
- b. The Messenger of Allāh, prohibited 'Ali ﷺ from marrying the daughter of Abu Jahl because it would be troublesome for Fātimah ﷺ, and it would hurt the Prophet ﷺ too; consequently 'Ali ﷺ would earn the displeasure of Allāh for bothering the Prophet ﷺ. This prohibition, in fact, was a means of kindness towards 'Ali ﷺ.

1999. 'Ali bin Husain said that Miswar bin Makhramah told him that 'Ali bin Abu Tālib proposed to the daughter of Abu Jahl, when he was married to Fātimah the daughter of the Prophet ﷺ. When Fātimah heard of that she went to the Prophet ﷺ and said: "Your people are saying that you do not feel angry for your daughters. This 'Ali is going to marry the daughter of Abu Jahl." Miswar

١٩٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا أَبُو الْيَمَانٌ: أَبْنَا شَعِيبَ عَنِ الزُّهْرِيِّ. أَخْبَرَنِي عَلَيْهِ بْنُ الْحُسْنَىٰ أَنَّ الْوَسْوَرَ بْنَ مَخْرَمَةَ أَخْبَرَهُ أَنَّ عَلَيَّ بْنَ أَبِي طَالِبٍ خَطَبَ بِنْتَ أَبِي جَهَلٍ وَعِنْدَهُ فَاطِمَةُ بْنُتُ النَّبِيِّ ﷺ. فَلَمَّا سَمِعَتْ بِذَلِكَ فَاطِمَةُ بْنُتُ النَّبِيِّ ﷺ قَالَتْ: إِنَّ قَوْمَكَ يَحْدَثُونَ أَنَّكَ لَا تَعْصِبُ لِيَتَاكَ. وَهَذَا عَلَيَّ نَارِحًا ابْنَةً أَبِي جَهَلٍ.

said: "The Prophet ﷺ stood up, and I heard him when he bore witness (i.e., said the *Shahâdah*), then he said: 'I married my daughter (Zainab) to Abûl-Âs bin Rabi', and he spoke to me and was speaking the truth. Fâtimah bint Muhammad is a part of me, and I hate to see her faced with troubles. By Allâh, the daughter of the Messenger of Allâh and the daughter of the enemy of Allâh will never be joined together in marriage to one man.'"

He said: So, 'Ali abandoned the marriage proposal. (*Sahih*)

قَالَ الْمُوسَوْرُ: فَقَامَ النَّبِيُّ ﷺ. فَسَوْعَتْهُ حِينَ تَشَهَّدُ، ثُمَّ قَالَ: «أَمَا بَعْدُ. فَإِنِّي قَذَ أَنْكَحْتُ أَبْنَا الْعَاصِ بْنَ الرَّبِيعِ فَخَدَشَنِي فَصَدَقَنِي. وَإِنَّ فَاطِمَةَ بْنَتَ مُحَمَّدٍ بَضْعَةً وَيْنِي. وَأَنَا أَكْرَهُ أَنْ تَقْبِلُهَا. وَإِنَّهَا، وَاللَّهُ لَا يَجْمِعُ بِنْتَ رَسُولِ اللَّهِ وَبِنْتَ عَدُوِّ اللَّهِ، عِنْدَ رَجُلٍ وَاحِدٍ أَبْدًا».

قَالَ: فَنَزَّلَ عَلَيْهِ عَنِ الْخَطْبَةِ.

تخریج: أخرجه البخاري، فضائل أصحاب النبي ﷺ، باب ذكر أصحاب النبي ﷺ منهم أبوالعاشر بن الربع، ح: ٣٧٢٩، ومسلم، فضائل الصحابة، الباب السابق، ح: ٩٦/٢٤٤٩ من حديث أبي اليمان به * رواه البخاري عنه.

Chapter 57. The Woman Who Offered Herself (In Marriage) To The Prophet ﷺ

2000. It was narrated from Hishâm bin 'Urwah, from his father that 'Aishah used to say: "Wouldn't a woman feel too shy to offer herself to the Prophet ﷺ?" Until Allâh revealed: "You (O Muhammad) can postpone (the turn of) whom you will of them (your wives), and you may receive whom you will."^[1] She said: "Then I said: 'Your Lord is quick to make things easy for you.'" (*Sahih*)

تخریج: أخرجه البخاري، النكاح، باب: هل للمرأة أن تهب نفسها لأحد؟، ح: ٥١١٣ من

(المعجم (٥٧) - بَابُ النَّبِيِّ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ ﷺ (التحفة (٥٧)

٢٠٠٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُهُ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّهَا كَانَتْ تَقُولُ: أَمَا تَسْتَحِيَ الْمَرْأَةُ أَنْ تَهَبْ نَفْسَهَا لِلنَّبِيِّ ﷺ؟ حَتَّى أَنْزَلَ اللَّهُ: «تُرْقِي مَنْ شَاءَ مِنْهُنَّ وَتُقْوِي إِلَيْكَ مَنْ تَشَاءُ» [الأحزاب: ٥١] قَالَتْ: فَقُلْتُ: إِنَّ رَبِّكَ لَيَسْأَرُ فِي هَوَاهُ.

[1] Al-Ahzâb 33:51.

حدث هشام به، ومسلم، الرضاع، باب حواز هبتها نوبتها لضرتها، ح: ١٤٦٤ عن ابن أبي شيبة به من حديث هشام به، [وعلقه البخاري من طريق عبدة].

Comments:

It is not regarded a good thing in an Islamic society that a woman offers herself to a man for marriage; the right procedure is that this offer should be made by the guardian of woman. The distinctive highness of Allâh's Messenger ﷺ looked strange to 'Âishah ؓ, that the women themselves would request the Messenger of Allâh ﷺ to marry with them.

2001. Thâbit said: "We were sitting with Anas bin Mâlik, and a daughter of his was with him. Anas said: 'A woman came to the Prophet ﷺ and offered herself to him. She said: "O Messenger of Allâh, do you have any need of me?"' His daughter said: 'How little modesty she had!' He said: 'She was better than you, because she wanted (to marry) the Messenger of Allâh ﷺ, and she offered herself to him.'" (*Sahih*)

٢٠٠١ - حَدَّثَنَا أَبُو بِشْرٍ، بْنُ كُلَّفَى
وَمُحَمَّدُ بْنُ بَشَّارٍ. قَالَ: حَدَّثَنَا مَرْجُونُ بْنُ
عَبْدِ الْعَزِيزِ: حَدَّثَنَا ثَابِتٌ قَالَ: كُلَّا جُلُوسًا
مَعَ أَنَسِ بْنِ مَالِكٍ، وَعِنْدَهُ ابْنَةٌ لَهُ. فَقَالَ
أَنَسٌ: جَاءَتْ امْرَأَةٌ إِلَيَّ تَبَرَّعَتْ
نَفْسَهَا عَلَيْهِ. فَقَالَتْ: يَا رَسُولَ اللَّهِ هَلْ لَكَ
فِي حَاجَةٍ؟ فَقَالَتْ ابْنَتُهُ: مَا أَفَلَ حَيَاءً.
فَقَالَ: هِيَ خَيْرٌ مِنْكُمْ. رَغِبَتْ فِي رَسُولِ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ، فَعَرَضَتْ نَفْسَهَا عَلَيْهِ.

تخریج: أخرجه البخاري، النكاح، باب عرض المرأة نفسها على الرجل الصالح، ح: ٥١٢٠ من حديث مرجون به.

Comments:

Men and women alike may attend a gathering (or circle) of knowledge, but the women should have their place separate, and the mixing of men and women is not allowed apart from immediate blood relatives.

Chapter 58. A Man Who Has Doubts Concerning His Child

(المعجم ٥٨) - بَابُ الرَّجُلِ يَشْكُّ فِي
وَلِيِّهِ (التحفة ٥٨)

2002. It was narrated that Abu Hurairah said: "A man from Banu Fazârah came to the Messenger of Allâh ﷺ and said: 'O Messenger of Allâh, my wife has given birth to a black boy.' The Messenger of Allâh ﷺ said: 'Do you have camels?' He said: 'Yes.' He said: 'What color are they?' He said:

٢٠٠٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَ
مُحَمَّدُ بْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا سَعْيَانُ بْنُ
عَيْنِيَةَ عَنْ الرُّهْبَرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ،
عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ مِنْ بَنِي فَزَارَةَ
إِلَيْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ. فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ
إِمْرَأَيِّي وَلَدَتْ غُلَامًا أَسْوَدَّ. فَقَالَ رَسُولُ اللَّهِ صَلَّى

'Red.' He said: 'Are there any grey ones among them?' He said: 'Yes, there are some grey ones among them.' He said: 'Where does that come from?' He said: 'Perhaps it is hereditary.' He said: 'Likewise, perhaps this is hereditary.'" (*Sahih*)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ: «هَلْ لَكَ مِنْ إِبْلٍ؟» قَالَ: نَعَمْ. قَالَ: فَمَا أَلْوَانُهَا؟ [قَالَ: حُمْرًا]. قَالَ: «هَلْ فِيهَا مِنْ أُورَقٍ؟» قَالَ: إِنَّ فِيهَا لَوْرَقًا. قَالَ: (فَإِنِّي أَتَاهَا ذَلِكَ؟) قَالَ: عَسَى عِرْقٌ نَّزَعَهَا. قَالَ: «وَهَذَا، لَعَلَّ عِرْقًا نَّزَعْنَا». .

واللهُ أعلم لِأَيِّنِ الصَّبَاحِ،

تخریج: أخرجه مسلم، اللعن، ح: ١٥٠٠ عن ابن أبي شيبة وغيره به، أخرجه البخاري، الطلاق، باب: إذا عرض بنفي الولد، ح: ٦٨٤٧، ٥٣٠٥، ومسلم وغيرهما من طرق عن الزهري .

Comments:

'Perhaps it is hereditary' means the child took the resemblance of a maternal or paternal ancestor, i.e., genes transmitted from a paternal grandfather and grandmother, maternal grandfather and grandmother or any of the ancestors.

2003. It was narrated from Ibn 'Umar that a man from the desert people came to the Prophet ﷺ and said: "O Messenger of Allâh, my wife has given birth on my bed to a black boy, and there are no black people among my family." He said: "Do you have camels?" He said: "Yes." He said: "What color are they?" He said: "Red." He said: "Are there any black ones among them?" He said, "No." He said: "Are there any grey ones among them?" He said: "Yes." He said: "How is that?" He said: "Perhaps it is hereditary." He said: "Perhaps (the color of) this son of yours is also hereditary." (*Hasan*)

٢٠٠٣ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا [عَيْنَةُ] أَبْنُ كُلَيْبِ الْلَّيْثِيِّ، أَبُو عَسَانَ، عَنْ جُوبِرِيَّةَ أَبْنِ أَسْمَاءَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ أَنَّ رَجُلًا مِنْ أَهْلِ الْأَبَادِيَّةِ أَتَى النَّبِيَّ ﷺ. قَالَ: يَا رَسُولَ اللهِ إِنَّ امْرَأَنِي وَلَدَثُ عَلَى فِرَاشِي غَلَامًا أَسْوَدَةِ وَإِنَّا، أَهْلُ بَيْتٍ، لَمْ يَكُنْ فِينَا أَسْوَدُ قَطُّ. فَقَالَ: «هَلْ لَكَ مِنْ إِبْلٍ؟» قَالَ: حُمْرَةٌ. قَالَ: «فَمَا أَلْوَانُهَا؟» قَالَ: لَا. قَالَ: (فِيهَا أُورَقٌ؟) قَالَ: نَعَمْ. قَالَ: (فَإِنِّي كَانَ ذَلِكَ؟) قَالَ: عَسَى أَنْ يَكُونَ نَزَعَهُ عِرْقٌ. قَالَ: (فَلَعِلَّ ابْنَكَ هَذَا نَزَعَهُ عِرْقٌ). .

تخریج: [إسناده حسن] والحديث السابق شاهد له.

Chapter 59. The Child Is For The Bed And The Fornicator Gets Nothing

2004. It was narrated that 'Âishah said: Ibn Zam'ah and Sa'd (Ibn Abu Waqqâs) referred a dispute to the Prophet ﷺ concerning the son of Zam'ah's slave woman. Sa'd said: "O Messenger of Allâh, my brother (Utbah bin Abu Waqqâs) left instructions in his will that when I come to Makkah, I should look for the son of the slave woman of Zam'ah and take him into my care." 'Abd bin Zam'ah said: "He is my brother and the son of the slave woman of my father; he was born on my father's bed." The Prophet ﷺ saw that he resembled 'Utbah, and said: "He belongs to you, O 'Abd bin Zam'ah. The child is for the bed."^[1] Observe *Hijâb* before him, O Saudah."

(*Sahih*)

(المعجم ٥٩) - بَابُ الْوَلَدِ لِلْفَرَاشِ
وَلِلْعَاهِرِ الْحَجَرِ (التحفة ٥٩)

٢٠٠٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سَفِيَّانُ بْنُ عَيْنَيْهِ، عَنِ الرُّهْبَرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: إِنَّ ابْنَ رَمْعَةَ وَسَعْدًا احْتَصَمَا إِلَى النَّبِيِّ ﷺ فِي ابْنِ أُمَّةِ رَمْعَةِ، فَقَالَ سَعْدٌ: يَا رَسُولَ اللَّهِ! أَوْصَانِي أَخِي، إِذَا قَدِيمْتُ مَكَّةَ، أَنْ أَنْظُرَ إِلَى ابْنِ أُمَّةِ رَمْعَةِ فَأَفْصِهِ. وَقَالَ عَبْدُ بْنُ رَمْعَةَ: أَخِي وَابْنُ أُمَّةِ شَبَهَهُ بِعَيْنَيْهِ. وَقَالَ: «هُوَ لَكَ يَا عَبْدَ بْنَ رَمْعَةَ. الْوَلَدُ لِلْفَرَاشِ. وَاحْتَجِبِي عَنْهُ يَا سَوْدَةَ».

تخریج: أخرجه البخاري، الخصومات، باب دعوى الوصي للوريث، ح: ٢٤٢١ من حديث سفيان به، ومسلم، الرضاع، باب الولد للفراش وتوفيق الشبهات، ح: ١٤٥٧ عن ابن أبي شيبة وغيره.

Comments:

- In the pre-Islamic period, a child born because of illegal affairs used to be considered of the same man due to whose affairs it was born. Following the same custom of pre-Islamic Ignorance, Sa'd bin Abu Waqqâs wanted to have the guardianship of the child born to a female slave of Zam'ah 'a legal child of his brother'.
- Abd bin Zam'ah had the opinion that legally the child was his brother, regardless who the child's real father should be, because he (the child) was a son of the female slave of his father.
- The apparent look and facial features showed that the child was born of

^[1] 'The child is for the bed' means that the child is attributed to the husband or the man who owns the slave women who gave birth to that child, even if the child resembles someone else.

Sa'd's brother; but legally, according to the Islamic *Shari'ah*, he was regarded the brother of Abd bin Zam'ah.

- d. It looked clear that the child being a legal brother of Saudah ﷺ was not yet her real blood brother, so the Messenger of Allâh ﷺ told the mother of the Believers 'Saudah' to observe *Hijâb* before him.

2005. It was narrated from 'Umar that the Messenger of Allâh ﷺ ruled that the child belonged to the bed. (*Sahih*)

٢٠٠٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا سُقْفَيَانُ بْنُ عَيْنِيَّةَ، عَنْ عَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ، عَنْ أَبِيهِ، عَنْ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَصَّى بِالْوَلَدِ لِلْفَرَاشِ.

تخریج: [صحیح] أخرجه أحمد: ١/٤٢٦، وأطراف المستند: ٥/٨٨، ومسند الفاروق: ١/٤٢٥، عن سفيان به، وقال الحميدي (ديوبنديه: ٢٤) ثنا سفيان ثني عبيد الله بن أبي يزيد أخبرني أبي به مطولاً، وإسناده حسن، وصححه أبو بصري، والحديث السابق شاهد له.

Comments:

'The child belonged to the bed' means the person who owns the bed; i.e., to the husband of the woman or the master of the female slave. The child will be considered his, and the relation of inheritance etc., would also be related to him; no relation will be connected with the man due to whose illegal affairs the child was born.

2006. It was narrated from Abu Hurairah that the Prophet ﷺ said: "The child is for the bed (i.e., belongs to the husband) and the fornicator gets nothing." (*Sahih*)

٢٠٠٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُقْفَيَانُ بْنُ عَيْنِيَّةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ ابْنِ الْمُسْبِّبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْوَلَدُ لِلْفَرَاشِ. وَلِلْعَاهِرِ الْحَجَرُ».

تخریج: أخرجه مسلم، الرضاع، باب الولد للفراش وللعاهر الحجر، ح: ١٤٥٨ من حديث سفيان به، ذكر اختلاف الرواية فيه.

Comments:

'The fornicator gets nothing' or 'the fornicator will have the stone' means he has nothing to do with the child, i.e., he is deprived of legal benefits from the child, like: inheritance etc. Another meaning is that he deserves the punishment and should be stoned to death.

2007. Shurahbil bin Muslim said: "I heard Abu Umâmah Al-Bâhilî say: 'I heard the Messenger of Allâh ﷺ say: "The child is for the bed and the fornicator gets nothing." (*Hasan*)

٢٠٠٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ قَالَ: سَمِعْتُ أَبَا أُمَّاتَ الْبَاهِلِيِّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: الْوَلَدُ

للفراش، وللغاهر الحجر».

تخرج: [إسناده حسن] أخرجه أحمـد: ٢٦٧ / ٥ من حديث إسماعيل به مطولاً، وصححه البوصيري.

Chapter 60. When One Spouse Becomes Muslim Before The Other

2008. It was narrated from Ibn 'Abbâs that a woman came to the Prophet ﷺ and became Muslim, and a man married her. Then her first husband came and said: "O Messenger of Allâh, I became Muslim with her, and she knew that I was Muslim." So the Messenger of Allâh ﷺ took her away from her second husband and returned her to her first husband. (*Da'if*)

تخرج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: إذا أسلم أحد الزوجين، ح: ٢٢٣٩، ٢٢٢٨ من حديث سماك به، وصححه الترمذى، ح: ١١٤٤، والحاكم، والذهبي، وانظر، ح: ١٧١ لعلته.

Comments:

- If a wife embraces Islam before her husband, she is not allowed to have matrimonial relationship with him anymore. After passing one menstruation cycle as her waiting period, she is allowed to marry another man. (*Sahih Al-Bukhâri*: 5286).
- If she does not marry another man, and waits for her husband to embrace Islam, then this is allowed. Even if the husband embraces a long time after, they are still allowed to live a spouses' life under the previous marriage bond. But Imam Bukhâri quoted the verdicts of some Companions and the Successors that if a woman becomes Muslim first and then the husband embraces Islam, even though the waiting period has not yet finished, the new marriage contract is still necessary.

2009. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ returned his daughter to Abul-'As bin Rabi' after two years, on the basis of the first marriage contract. (*Da'if*)

(المعجم ٦٠) - باب الزوجين يسلّم أحدهما قبل الآخر (التحفة ٦٠)

٢٠٠٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَفْصُ بْنُ جُمِيعٍ: حَدَّثَنَا سِمَاكُ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً جَاءَتْ إِلَيَّ النَّبِيِّ ﷺ فَأَسْلَمَتْ. فَتَرَوَجَهَا رَجُلٌ. قَالَ: فَجَاءَ زَوْجُهَا الْأَوَّلُ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي قَدْ كُنْتُ أَسْلَمْتُ مَعْهَا، وَعَلِمْتُ بِإِسْلَامِي. قَالَ: فَأَنْتَزْعَهَا رَسُولُ اللَّهِ ﷺ مِنْ زَوْجِهَا الْآخِرِ، وَرَدَّهَا إِلَى زَوْجِهَا الْأَوَّلِ.

٢٠٠٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ حَلَادٍ وَيَحْيَى بْنُ حَكِيمٍ. قَالَا: حَدَّثَنَا يَرِيدُ بْنُ هَارُونَ: أَنَّبَاتَا مُحَمَّدًا بْنَ إِسْحَاقَ، عَنْ دَاؤُدَ بْنَ الْحُصَينِ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ

رَسُولُ اللَّهِ رَدَّ ابْنَتَهُ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، يَعْدَ سَتِينَ، بِنِكَاجِهَا الْأَوَّلِ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب: إلى متى ترد عليه أمرأته إذا أسلم بعدها، ح: ٢٤٠ من حديث يزيد به، أخرجه الترمذی، ح: ١١٤٣، ١١٤٢، وذكر كلاماً، وصححه الحاکم وغيره، وما روى داود عن عكرمة متکر كما قال ابن المديني وغيره (نهذیب)، وقال في التقریب في داود بن الحصین: ثقة إلا في عكرمة، ورمي برأي الخوارج.

2010. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ returned his daughter Zainab to Abul-'Âs bin Rabi', with a new marriage contract. (*Da'if*)

٢٠١٠ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو مُعاوِيَةَ، عَنْ حَجَّاجٍ، عَنْ عُمَرِ بْنِ شَعْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، بِنِكَاجٍ جَلِيلِهِ.

تخریج: [إسناده ضعیف] أخرجه الترمذی، النکاح، باب ماجاء في الزوجین المشرکین يسلم أحدهما، ح: ١١٤٢ من حديث أبي معاویة به، وانظر، ح: ٤٩٦، ١١٢٩ لعلته.

Chapter 61. Intercourse With A Nursing Mother

2011. It was narrated that Judâmah bint Wahb Al-Asadiyyah said: "I heard the Messenger of Allâh ﷺ say: 'I wanted to forbid intercourse with a nursing mother, but then (I saw that) the Persians and the Romans do this, and it does not kill their children.' And I heard him say, when he was asked about coitus interruptus: 'It is the disguised form of burying children alive.'" (*Sahih*)

(المعجم (٦١) - بَابُ الْغَيْلِ (التحفة (٦١)

٢٠١١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ إِسْحَاقَ: حَدَّثَنَا يَحْيَى بْنُ أَبُوبَتْ، عَنْ مُحَمَّدٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلَ الْقُرَشِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنْ جُدَامَةَ بْنِتِ وَهْبِ الْأَسْدِيَّةِ أَنَّهَا قَالَتْ: سَيُعْتَقِلُ رَسُولُ اللَّهِ رَدُّ أَرْدُثُ أَنَّ أَنْهِي عَنِ الْغَيْلِ. فَإِذَا فَارِسٌ وَالرُّومُ يُعْيِلُونَ فَلَا يَقْتُلُونَ أُولَادَهُمْ وَسَيْعَةٌ يَقُولُ، وَسَيْلٌ عَنِ الْغَرْلِ، فَقَالَ: «هُوَ الْوَادُ الْخَفِيُّ».

تخریج: أخرجه مسلم، النکاح، باب جواز الغيلة، ح: ١٤٤٢ من حديث محمد بن عبد الرحمن بن نوفل به.

Comments:

Having sexual intercourse during the breastfeeding period carries the risk of conception; and due to it, the milk of the mother decreases, and the child

who is already breastfeeding would get weak for not having proper nutrition.

2012. It was narrated from Muħājir bin Abu Muslim, from Asmā' bint Yazid bin Sakan, who was his freed slave woman, that she heard the Messenger of Allāh ﷺ say: "Do not kill your children secretly, for by the One in Whose Hand is my soul, intercourse with a breastfeeding woman catches up with people when they are riding their horses (in battle) and wrestles them to the ground." (*Da'iif*)

٢٠١٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمْزَةَ، عَنْ عَمْرُو بْنِ مُهَاجِرٍ أَنَّهُ سَمِعَ أَبَاهُ الْمُهَاجِرِ بْنَ أَبِي مُسْلِمٍ يُحَدِّثُ عَنْ أَسْمَاءَ بِنْتِ يَزِيدِ بْنِ السَّكَنِ. وَكَانَتْ مَوْلَاتَهُ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَقْتُلُوا أُولَادَكُمْ سِرًا. فَوَاللَّهِ الَّذِي نَفَسَيْتُ بِيَدِهِ إِنَّ الْغَيلَ لِيَنْرُكُ الْفَارَسَ عَلَى ظَفَرِ فَرَسِهِ حَتَّى يَضْرَعَهُ». .

تخریج: [إسناده ضعیف] آخرجه أبو داود، الطب، باب: في الغيل، ح: ٣٨٨١ من حدیث المهاجر به، وصححه ابن حبان * مهاجر الأنصاري وثقة ابن حبان وحده فيما أعلم.

Comments:

'Wrestles them to the ground' means the affect of weakness caused by intercourse with a breastfeeding woman remains affective for the whole life, even if such a child becomes a good horse rider after having grown up, he will not yet be able to compete with a child without such history. However this *Hadith* is Weak; therefore such concern is not necessary.

Chapter 62. A Woman Who Annoys Her Husband

(المعجم ٦٢) - بَابُ : فِي الْمُرْأَةِ تُؤْذِي زَوْجَهَا (التحفة ٦٢)

2013. It was narrated that Abu Umāmah said: "A woman came to the Prophet ﷺ with two of her children, carrying one and leading the other. The Messenger of Allāh ﷺ said: 'They carry children and give birth to them and are compassionate. If they do not annoy their husbands, those among them who perform prayer will enter Paradise.'" (*Da'iif*)

٢٠١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُؤَمِّلٌ: حَدَّثَنَا سُعْيَانُ عَنِ الْأَعْمَشِ، عَنْ سَالِمٍ بْنِ أَبِي الْجَعْدِ، عَنْ أَبِي أُمَّةَةَ قَالَ: أَتَتِ النَّبِيَّ ﷺ امْرَأً مَعْنَاهَا صَبِيًّا لَّهَا. قَدْ حَمَلَتْ أَخْدَهُمَا وَهِيَ تَقُوَّدُ الْآخَرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «حَامِلَاتُ، وَالَّذِيَاتُ، رَحِيمَاتُ. لَوْلَا مَا يَأْتِينَ إِلَى أَزْوَاجِهِنَّ، دَخَلَ مُصْلِيَّاتُهُنَّ الْجَنَّةَ». .

تخریج: [إسناده ضعیف] أخرجه الحاکم: ٤/١٧٣، ١٧٤ من حديث مؤمل بن إسماعیل به، وصححه على شرط الشیخین، وواقه الذھبی * الأعشی تابعه منصور عند أحمد: ٥/٢٥٧، ٢٦٩، ٢٥٧ وغیره، وأخرجه أحمد: ٥/٢٥٢ بایسناد صحيح عن سالم بن أبي الجعد قال: ذکر لي عن أبي أمامة به، فالسند متقطع، والواسطة بينهما مجھولة.

2014. It was narrated from Mu'âdh bin Jabal that the Messenger of Allâh ﷺ said: "No woman annoys her husband but his wife among houris (of Paradise) says: 'Do not annoy him, may Allâh destroy you, for he is just a temporary guest with you and soon he will leave you and join us.'" (*Hasan*)

٢٠١٤ - حَدَّثَنَا عَبْدُ الْوَهَابِ بْنُ الصَّحَّافِ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ، عَنْ يَحْيَى بْنِ سَعْدٍ، عَنْ خَالِدِ بْنِ مَعْدَانَ، عَنْ كَثِيرِ بْنِ مُرَّةَ، عَنْ مُعَاذِ بْنِ جَبَّالٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُؤْذِي امْرَأَةً رَوْجَهَا إِلَّا قَالَتْ زَوْجَهُ مِنَ الْحُورِ الْأَعْيَنِ: لَا تُؤْذِنِي. فَأَنَّكَ اللَّهُ فَإِنَّمَا هُوَ عِنْدَكِ دَخِيلٌ أَوْ شَكَّ أَنْ يَقْارِبُكِ إِلَيْنَا».

تخریج: [إسناده حسن] أخرجه الترمذی، الرضاع، باب الوعيد للمرأة على إيناء المرأة زوجها، ح ١١٧٤ من حديث إسماعیل به، وقال: حسن غریب * إسماعیل بن عیاش صرخ بالسمع عند أبي نعیم في الحلبة: ٥/٢٢٠، وباقی السند صحيح.

Comments:

- Not to obey the correct orders of the husband is a major sin.
- If a woman annoys her good husband, this annoys the maids of Paradise.
- Hourی literally means the woman of white color and beautiful black eyes. They are the women whom Allâh created in Paradise for the men of Paradise. The righteous Muslim women, who lives their live according to the commandments of Allâh, their status in Paradise will be higher than that of the maids of Paradise.

Chapter 63. What Is *Harâm* Does Not Make What Is *Halâl* A *Harâm*

2015. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "What is *Harâm* does not make what is *Halâl* into what is *Harâm*."^[1] (*Da'if*)

(المعجم ٦٣) - بَابُ: لَا يُحَرِّمُ الْحَرَامُ
الْحَلَالُ (التحفة ٦٣)

٢٠١٥ - حَدَّثَنَا يَحْيَى بْنُ مَعْلَى بْنِ مَنْصُورٍ: حَدَّثَنَا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَزُوريُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنَ عُمَرَ، عَنْ الشَّيْخِ رَضِيَ اللَّهُ عَنْهُ قَالَ: «لَا يُحَرِّمُ الْحَرَامُ الْحَلَالُ».

[1] Meaning either: If one prohibits something for himself, it does not make the thing unlawful, or the commission of an unlawful act will not, by itself, makes something else unlawful.

تخریج: [إسناده ضعیف] أخرجه الدارقطنی: ۲۶۸/۳، والیهقی: ۱۶۸/۷ من حديث الفروی
 به * الفروی ضعفه الجمهور، وروى عنه البخاري ثلاثة أحادیث: كأنها مما أخذه عنه من كتابه
 قبل ذهاب بصره ، وأما العمري فقدم حاله، ح: ۱۲۹۹، ۳۶۶ .

Comments:

According to the majority of the scholars, if a man committed adultery with a woman, his marriage with this woman will not be unlawful because of the illegal sex; neither the mother of this woman will be unlawful as mother-in-law for the man, nor the daughter of this woman will be unlawful like the stepdaughter. Similarly, if a man commits adultery with his mother-in-law or stepdaughter, then due to this, his wife will not become unlawful for him, because this relation, legally, is not a relationship of wife and husband. The mentioned commandments are related to the wife. The sin of adultery and the entitlement to its punishment is one thing, and it being prohibited is another thing. (For further information see: *Tafsir Ahsanul-Bayân* by Hâfiż Salâh-uddin Yusuf, *Surah: An-Nisâ* 4: 23)

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

10. The Chapters On Divorce

(المعجم ١٠) أبواب الطلاق

(التحفة ٨)

Comments:

The following are three types of divorce:

- Divorce in accordance with the *Sunnah*: Such a divorce given to a wife during her purity period (the days other than her menses) and on the basis that he has not had intercourse with her during her purity. A husband should divorce her by saying 'I divorce you' or 'You are divorced' and thereafter he maintains her living expenses; and he keeps her in his house for the waiting period (which is three menses or three months) and they should separate after the waiting period is over. This is the best way to divorce. Restoring one's wife after issuing such a divorce is consensually correct, and establishing a new bond of marriage after the waiting time has elapsed is also permissible.
- Divorce contrary to *Sunnah*: Divorce issued to a woman during her menses or during her purity, in which the husband has had intercourse with her; or pronouncing divorce three times in the same session is contrary to the *Sunnah*.
- False or Ineffective Divorce: Divorce issued by a person being forced to do so, divorcing before establishing a bond of marriage, divorce of a child, divorce of an insane person, or the divorce of an unconscious person are all ineffective.

Chapter 1. Suwayd bin Sa'eed told us

(المعجم ١٠) - [باب : حَدَّثَنَا سُوَيْدُ بْنُ

سَعِيدٍ] (التحفة ١)

2016. It was narrated from 'Umar bin Khattâb that the Messenger of Allâh ﷺ divorced Hafsa then took her back. (*Sahîh*)

٢٠١٦ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ، وَ عَبْدُ اللَّهِ ابْنُ عَامِرٍ بْنِ زُرَارَةَ، وَ مَسْرُوقُ بْنُ الْمَزْرُبِيَّانَ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ زَكْرِيَّا بْنُ أَبِي زَيْدَةَ، عَنْ صَالِحِ بْنِ صَالِحٍ بْنِ حَقِّيٍّ، عَنْ سَلَمَةَ بْنِ كُهَفِيلٍ، عَنْ سَعِيدِ بْنِ جُبَيرٍ، عَنْ ابْنِ عَبَّاسٍ، عَنْ عُمَرِ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ ﷺ طَلَقَ حَصْنَةً ثُمَّ رَاجَعَهَا.

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في المراجعة، ح: ٢٢٨٣ من حديث يحيى بن زكريا به، وذكر الحافظ البستاني له علة، ولكنها غير قادحة.

Comments:

- Giving divorce is permissible but one should avoid doing so without any valid reason.
- Restoration of the wife after divorce grants her all the rights that she had before divorce.

2017. It was narrated from Abu Musa that the Messenger of Allâh ﷺ said: What is wrong with people who play with the limits imposed by Allâh, and one of them says: "I divorce you, I take you back, I divorce you?" (*Da'iif*)

٢٠١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُؤْمِلٌ: حَدَّثَنَا سُعِيَّاً، عَنْ أَبِي إِسْحَاقِ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا بَالُ أَقْوَامٍ يَلْعَبُونَ بِحُدُودِ اللَّهِ يَعِزُّ ذَكْرَهُمْ: قَدْ طَلَقْتُكُمْ. قَدْ رَاجَعْتُكُمْ طَلَقْتُكُمْ».

تخریج: [إسناده ضعیف] أخرجه البیهقی: ٣٢٢ من حديث مؤمل بن إسماعيل به، وتابعه أبو حلیفة موسی بن مسعود نا سفيان الثوری به * أبو اسحاق تقدم، ح: ٤٦، والثوری تقدم، ح: ١٦٢، مدلسان وعنتا، ومع ذلك حسنة البوصيري.

2018. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ said: "The most hated of permissible things to Allâh is divorce." (*Sahih*)

٢٠١٨ - حَدَّثَنَا كَثِيرُ بْنُ عَيْدِ الْجَمْصُيِّ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، عَنْ عَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَافِيِّ، عَنْ مُحَارِبِ بْنِ دَيْارٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَبْغَضُ الْخَالَلَ إِلَى اللَّهِ الطَّلاقُ».

تخریج: [صحیح] أخرجه ابن عدی من حديث محمد بن خالد به، وقال: الوصافی ضعیف جداً قلت: تابعه القمة معرف بن واصل عند أبي داود، ح: ٢١٧٨ وغیره، وبه صح الحديث، وصححه الحاکم، والذہبی، ولم أر لمuspیه حجۃ.

Chapter 2. Divorce According To The Sunnah

(المعجم ٢) - بَابُ طَلاقِ السُّنَّةِ

(التحفة ٢)

2019. It was narrated that Ibn 'Umar said: "I divorced my wife when she was menstruating. 'Umar mentioned that to the Messenger of Allâh and he said: 'Tell him to take her back until she becomes pure (i.e., her period ends), then she has her period (again), then she becomes pure

٢٠١٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ عَيْدِ اللَّهِ، عَنْ نَافِعٍ، عَنْ أَبِينِ عُمَرَ قَالَ: طَلَقْتُ امْرَأَتِي وَهِيَ حَارِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «إِمْرَأَةٌ فَلَمْ يَرْجِعْهَا حَتَّى تَطَهَّرْ، ثُمَّ تَحِيطَ، ثُمَّ تَطَهَّرْ. ثُمَّ إِنْ شَاءَ طَلَقَهَا قَبْلَ أَنْ

(again), then if he wishes he may divorce her before having sexual relations with her, and if he wishes he may keep her. This is the waiting period that Allâh has enjoined.”” (*Sahih*)

يُجَامِعُهَا . وَإِنْ شَاءَ أَمْسَكَهَا . فَإِنَّهَا الْعِدَةُ الَّتِي
أَمْرَ اللَّهُ .

تخریج: أخرجه مسلم، الطلاق، باب تحریم طلاق الحاضن بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتها، ح: ٢/١٤٧١ عن ابن أبي شيبة وغيره به، وأخرجه البخاري، ح: ٥٢٥١، ومسلم وغيرهما من طريق مالك عن نافع به.

Comments:

Issuing divorce during menses, or during the pure days in which the husband has had intercourse, is an illegal way of divorce. This divorce has the controversial status of it being effective or ineffective. It will take place according to many scholars (like Imam Bukhâri رضي الله عنه), and they said the person giving divorce in such a way will be sinful. Some other scholars said this type of divorce cannot take place at all because it is not in accordance with the *Sunnah*. Imam Ibn Hazm and Imam Ibn Taimiyah and others, may Allâh have mercy on them, hold this opinion.

2020. It was narrated that 'Abdullâh said: “Divorce according to the *Sunnah* means divorcing her when she is pure, (i.e., not menstruating) and without having had intercourse with her (during that cycle).” (*Hasan*)

تخریج: [حسن] أخرجه النسائي، الطلاق، باب طلاق السنة، ح: ٣٤٢٤ من حديث يحيى القطان به، وصححه ابن حزم في المحتوى: ١٧٢/١٠، مسند: ١٩٤٩، وانظر، ح: ٤٦: لعلته، وللحديث شواهد عند ابن أبي شيبة، كتاب الطلاق، باب: ١ وغيره.

٢٠٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
يَحْيَى بْنُ سَعِيدٍ، عَنْ سُقِيَّاً، عَنْ أَبِي
إِسْحَاقَ، عَنْ أَبِي الْأَخْوَصِ، عَنْ عَبْدِ اللَّهِ
قَالَ: طَلَاقُ الشَّيْءَ أَنْ يُطْلَقُهَا طَاهِرًا مِنْ غَيْرِ
جَمَاعٍ .

2021. It was narrated that 'Abdullâh said: “Divorce according to the *Sunnah* means divorcing her with one divorce in each cycle when she is pure, then when she becomes pure the third time, then he pronounces divorce again, and after that she must wait one more menstrual cycle.” (*Hasan*)

٢٠٢١ - حَدَّثَنَا عَلَيْيَ بْنُ مَيْمُونٍ الرَّقِيعِ:
حَدَّثَنَا حَفْصُونَ بْنُ عَيَّاثٍ، عَنِ الْأَعْمَشِ، عَنْ
أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَخْوَصِ، عَنْ عَبْدِ
اللهِ، قَالَ، فِي طَلَاقِ الشَّيْءَ: يُطْلَقُهَا عَنْدَ كُلِّ
طُهْرٍ تَطْلِيقَةً . فَإِذَا طَهَرَتِ التَّالِثَةَ طَلَقَهَا.
وَعَنِيهَا بَعْدَ ذَلِكَ حِি�ضَةً .

تخریج: [حسن] انظر الحديث السابق.

Comments:

- This is in such a case when the husband is determined for permanent separation and thus a third, final and irrevocable divorce will take place, after which returning the wife into a bond of marriage becomes impossible. It is better to let the waiting period pass after one divorce, if the husband has no intention to return to her, and thus the woman will come out of the bond of marriage, and thereafter, if there is a chance of reconciliation, they may live together as wife and husband after renewing the bond of marriage (after a new marriage contract.)
- If a wife is returned after the first divorce, and then the second divorce is issued, the waiting time for the second divorce is also three menstruation periods; the return of a wife, during this waiting time, without a new bond of marriage is allowed.

2022. It was narrated that Yunus bin Jûbair, Abu Ghallâb, said: "I asked Ibn 'Umar about a man who divorced his wife when she was menstruating. He said: 'Do you know 'Abdullâh bin 'Umar? He divorced his wife when she was menstruating then 'Umar came to the Prophet ﷺ (and told him what had happened). He ordered him to take her back.' I said: 'Will that be counted (as a divorce)?' He said: 'Do you think he was helpless and behaving foolishly? [i.e., yes, it counts (as a divorce)].'" (*Sahih*)

٢٠٢٢ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْصُومِيُّ : حَدَّثَنَا عَنْدَ الْأَعْنَى : حَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ ، عَنْ يُونُسَ بْنِ جُبَيْرٍ ، أَبِي غَلَابٍ قَالَ : سَأَلْتُ ابْنَ عُمَرَ عَنْ رَجُلٍ طَلَقَ امْرَأَةً وَهِيَ حَائِضٌ . فَقَالَ : تَعْرِفُ عَبْدَ اللَّهِ بْنَ عُمَرَ ؟ طَلَقَ امْرَأَةً وَهِيَ حَائِضٌ . فَأَتَى عُمَرُ الرَّبِيعَ ﷺ . فَأَمْرَأَهُ أَنْ يُرَأِعَهَا . قُلْتُ : أَعْتَدْتَ بِئْلَكَ ؟ قَالَ : أَرَأَيْتَ إِنْ عَجَزَ وَاسْتَحْمَقَ ؟

تخریج: أخرجه البخاري، الطلاق، باب مراجعة الحائض، ح: ٥٣٣، ومسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتها، ح: ١٤٧١؛ من حديث محمد بن سيرين به.

Comments:

The Prophet ﷺ ordered him to take her back. The wording 'to take her back' is a proof that the divorce had taken place because returning (taking a wife back) only happens after divorce. Those scholars who are not in favor of the effectiveness of this divorce, they say the wording 'to take her back' means to establish normal spouses' relation as it was before divorce. (I say: This divorce is affective, as quoted earlier in the view of Imam Bukhâri. — Usmani)

Chapter 3. How A Pregnant Woman Is To Be Divorced

2023. It was narrated from Ibn 'Umar that he divorced his wife when she was menstruating, and 'Umar mentioned that to the Prophet ﷺ. He said: "Tell him to take her back then divorce her when she is pure (not menstruating) or pregnant." (*Sahih*)

(المعجم ٣) - بَابُ الْحَامِلِ كَيْفَ تُطْلَقُ
(التحفة ٣)

٢٠٢٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلَيْهِ أَبْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ شَعْبَانَ، عَنْ مُحَمَّدٍ بْنِ عَبْدِ الرَّحْمَنِ، مَوْلَى آلِ طَلْحَةَ، عَنْ سَالِمٍ، عَنْ أَبِي عُمَرٍ أَنَّهُ طَلَقَ امْرَأَةً وَهِيَ حَائِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ فَقَالَ: «مُرْءَةٌ فَلَمْ يَأْجُنْهَا ثُمَّ يُطْلَقُهَا وَهِيَ طَاهِرٌ أَوْ حَامِلٌ».

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ١٤٧١ / ٥ عن ابن أبي شيبة وغيره به.

Comments:

Divorce can be given as the pregnancy is confirmed; there is no need for waiting until the delivery, because the confirmation of pregnancy leaves no doubt for establishing a family lineage. In this condition, the waiting time for a woman is until the delivery of the baby, during which the husband is allowed to take her back.

Chapter 4. One Who Divorces His Wife Three Times In One Sitting

2024. It was narrated that 'Âmir Shâ'bi said: "I said to Fâtimah bint Qais: 'Tell me about your divorce.' She said: 'My husband divorced me three times when he was leaving for Yemen, and the Messenger of Allâh ﷺ allowed that.'" (*Da'iif*)

(المعجم ٤) - بَابُ مَنْ طَلَقَ ثَلَاثًا فِي مَجْلِسٍ وَاحِدٍ (التحفة ٤)

٢٠٢٤ - حَدَّثَنَا مُحَمَّدُ بْنُ رَمْحٍ: أَتَبَّأْنَا إِلَيْهِ أَبْنُ سَعْدٍ، عَنْ إِسْحَاقَ بْنِ أَبِي فَرْوَةَ، عَنْ أَبِي الزَّنَادِ، عَنْ عَامِرِ الشَّعْبِيِّ قَالَ: فَلَمْ يَقْاطِعْهُ بَيْتٌ قَيْسٍ: حَدَّثَنِي عَنْ طَلَاقِكَ. قَالَتْ: طَلَقْتِي زَوْجِي ثَلَاثَةً، وَهُوَ خَارِجٌ إِلَيْهِ الْيَمَنِ. فَأَجَازَ ذَلِكَ رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده ضعيف جداً] أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٥٤٣ / ١٤٨٠ و غيره، من طرق عن الشعبي نحوه دون قوله: فأجاز ذلك رسول الله ﷺ . واظر، ح: ٢٠٣٦.

Comments:

- The narration of *Sahih Muslim* clarifies that Abu 'Amr bin Hafs bin Mughirah Makhzumi, the husband of Fâtimah, the daughter of Qais, had already divorced her twice, and he sent her the third and the final divorce

- from Yemen, through 'Aiyâsh bin Abu Rabi'ah. He did not divorce her with three pronouncements at a time in one session. (*Sahih Muslim*: 1480).
- b. As divorce can be given directly to the wife, likewise the message of divorce may also be sent through a reliable person, and may be sent as a written divorce; divorce can take place in any mentioned form.

Chapter 5. Taking One's Wife Back

2025. 'Imrân bin Husain was asked about a man who divorced his wife then had intercourse with her, and there were no witnesses to his divorcing her or his taking her back. 'Imrân said: "You have divorced (her) in a manner that is not according to the *Sunnah*, and you have taken her back in a manner that is not according to the *Sunnah*. Bring people to witness your divorcing her and taking her back." (*Sahih*)

(المعجم ٥) - بَابُ الرَّجْعَةِ (التحفة ٥)

٢٠٢٥ - حَدَّثَنَا يَشْرُبُ بْنُ هَلَالٍ الصَّوَافُ : حَدَّثَنَا جَعْفَرُ بْنُ سُلَيْمَانَ الْقُسْبِيُّ ، عَنْ زَيْدِ الرَّشْكِ ، عَنْ مُطَرْقَبِ بْنِ عَبْدِ اللَّهِ بْنِ السَّخَّيْرِ أَنَّ عُمَرَانَ بْنَ الْحُصَنِينَ سُتْلَ عَنْ رَجُلٍ يُطْلُقُ امْرَأَةً ثُمَّ يَقْعُ بِهَا وَلَمْ يُشَهِّدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعِتِهَا . فَقَالَ عُمَرَانُ : طَلَقْتَ يَعْتَزِرُ سُتْلَةً ، وَرَاجَعْتَ بِعَيْرِ سُتْلَةَ ، أَشْهِدْ عَلَى طَلَاقِهَا وَ[عَلَى] رَجْعِتِهَا .

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب الرجل يراجع ولا يشهد، ح ٢١٨٦ عن بشر بن هلال به.

Comments:

As the witnesses are required for the marriage bond, similarly the divorce and return should be in the presence of witnesses. (Although the presence of witnesses is not required compulsorily for divorce and return as it is in the case of marriage. — *Usmani*)

Chapter 6. When A Divorced Pregnant Woman Gives Birth, The Divorce Becomes Irrevocable

2026. It was narrated from Zubair bin 'Awwâm that he was married to Umm Kulthum bint 'Uqbah, and she said to him when she was pregnant: "I will accept one divorce." So he divorced her once. Then he went out for prayer, and when he came back

(المعجم ٦) - بَابُ الْمُطْلَقَةِ الْحَامِلِ إِذَا وَضَعَتْ ذَا بَطْنَهَا بَانَتْ (التحفة ٦)

٢٠٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عُمَرَ بْنِ هَيَّاجَ : حَدَّثَنَا قَيْصَرَةُ بْنُ عُقْبَةَ : حَدَّثَنَا سُلَيْمَانُ عَنْ عَمْرُو بْنِ مَيْمُونَ ، عَنْ أَبِيهِ ، عَنْ الزُّبِيرِ بْنِ الْقَوَاعِمِ أَنَّهُ كَانَتْ عِنْتَهُ أُمُّ كُلُّومَ بِنْتُ عُقْبَةَ . فَقَالَتْ لَهُ ، وَهِيَ حَامِلٌ : طَيْبْ نَفْسِي

she had given birth. He said: "What is wrong with her? She misled me, may Allâh mislead her!" Then he came to the Prophet ﷺ, who said: "Her waiting period is over (and she is divorced); propose marriage anew to her." (*Dâ'if*)

نَحْرِيْج: [إِسْنَادٌ ضَعِيفٌ] وَقَالَ الْبُوْصِيرِيُّ: هَذَا إِسْنَادٌ رَجَالَهُ ثَقَاتٌ، إِلَّا أَنَّهُ مُنْقَطِعٌ * مِيمُونُ هُوَ ابْنُ مَهْرَانَ، أَبُو أَيُوبَ، رَوَيْتُهُ عَنِ الرَّبِّيْرِ مَرْسَلَةً، قَالَهُ الْمَزِيْرُ فِي الْأَطْرَافِ ، وَأَخْرَجَ الْبِيْهِقِيُّ: ٤٢١/٧ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ أَبِي الْلَّبِثِ (ضَعِيفٌ) عَنِ الْأَشْجَاعِيِّ عَنِ سَفِيَّانَ عَنْ عُمَرَ بْنِ مِيمُونٍ عَنْ أُمِّ كَلْثُومِ بَنْتِ عَقْبَةِ بْنِ عَاصِيٍّ، وَضَعْفُهُ ظَاهِرٌ وَفِيهِ عَلَةٌ أُخْرَىٍ .

Comments:

- Zubair ﷺ divorced her once with the intention to take her back, but he did not know that the delivery of the baby was near to this extent.
- If the waiting time for the divorce of revocation elapses, then just the verbal action of taking the wife back is not enough, rather they should marry anew.
- Asking the hand of an ex-wife for marriage again, means if she likes, she may remarry her ex-husband, otherwise there is no enforcement.
- The birth of a baby terminates the waiting period of divorce, as well as the waiting period after a husband's death.

Chapter 7. When A Pregnant Widow Gives Birth, It Is Permissible For Her To Remarry

2027. It was narrated that Abu Sâni'bâl said: "Subâ'i'ah Aslamiyyah bint Hârith gave birth twenty-odd days after her husband died. When her postnatal bleeding ended, she adorned herself, and was criticized for doing that. Her case was mentioned to the Prophet ﷺ, and he said: 'If she does that, then her waiting period is over.'" (*Hasan*)

بِتَطْلِيقَتِهِ فَطَلَّقَهَا تَطْلِيقَةً. ثُمَّ خَرَجَ إِلَى الصَّلَاةِ فَرَجَعَ وَقَدْ وَضَعَتْ. فَقَالَ: مَا لَهَا؟ خَدَعَتِي، خَدَعَهَا اللَّهُ. ثُمَّ أَتَى النَّبِيَّ ﷺ فَقَالَ: «سَبَقَ الْكِتَابُ أَجْلَهُ». اخْطَبَهَا إِلَى نَفْسِهَا».

(المعجم ٧) - بَابُ الْحَامِلِ الْمُتَوْفَى
عَنْهَا رَوْجُهَا، إِذَا وَضَعَتْ حَلَّ
لِلأَرْزَاقِ (التحفة ٧)

٢٠٢٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا أَبُو الْأَخْوَصِ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ الْأَسْوَدِ، عَنْ أَبِي السَّنَابِلِ قَالَ: وَضَعَتْ سُبِيعَةُ الْأَسْلَمِيَّةِ بِنْتُ الْحَارِثَ حَمَلَهَا بَعْدَ وَفَاءِ رَوْجِهَا بِيَضْعِيْعٍ وَعَشْرِينَ لَيْلَةً. فَلَمَّا تَعَلَّثَ مِنْ يَنْقَاصِهَا تَسْوَقَتْ. فَوَبَيْتَ ذَلِكَ عَلَيْهَا. وَذُكِرَ أَمْرُهَا لِلنَّبِيِّ ﷺ. فَقَالَ: «إِنْ تَفْعَلْ فَقَدْ مَضَى أَجْلُهَا».

تخریج: [حسن] أخرجه الترمذی، الطلاق، باب ماجاء في الحال المتأول عنها زوجها تضع، ح: ۱۱۹۳ من حديث منصور به، وقال: لا نعرف للأسود شيئاً عن أبي الستابل ، وللحديث شواهد عند النسائي، ح: ۳۰۹ وغیره.

Comments:

- The waiting period for a pregnant woman is up to delivery. This issue has also been mentioned in the Noble Qur'an, as the Divine statement is: "...and those who are pregnant, their waiting period shall be until they deliver their pregnancy." (*At-Talâq* 65: 4).
- The intention of Subai'ah to marry after she had delivered the child was objected to by Abu Sanâbil himself, who thought if the birth takes place before the end of the waiting period (four months and ten days) then the widow should wait for the full prescribed waiting period of four months and ten days. The period of waiting until the delivery shall be only if the delivery takes longer than four months and ten days, as mentioned in the following *Hadith*.
- In the beginning Subai'ah also believed that the opinion of Abu Sanâbil was true; but it became clear after having been asked from the Prophet ﷺ that the waiting period will come to end soon after the birth of child. (See *Hadith*: 2028)

2028. It was narrated that Masruq and 'Amr bin 'Utbah wrote to Subai'ah bint Hâarith, asking about her case. She wrote to them saying that she gave birth twenty-five days after her husband died. Then she prepared herself, seeking to remarry. Abu Sanâbil bin Ba'kak passed by her and said: "You are in a hurry; observe waiting period for the longer period, four months and ten days." "So I went to the Prophet ﷺ and said: 'O Messenger of Allâh, pray for forgiveness for me.' He said: 'Why is that?' I told him (what had happened). He said: 'If you find a righteous husband then marry him.'" (*Sahîh*)

٢٠٢٨ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلَيْهِ بْنُ مُسْهِرٍ، عَنْ دَاؤُدَ بْنِ أَبِي هَنْدٍ، عَنْ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، وَ عَمْرُو بْنُ عَتْبَةَ أَنَّهُمَا كَتَبَا إِلَى سَيِّدَةِ بَنْتِ الْحَارِثِ يَسْأَلَاهُمَا عَنْ أُمِّهَا. فَكَبَّثُتِ إِلَيْهِمَا: إِنَّهَا وَضَعَتْ بَعْدَ وَفَاتَةِ زَوْجِهَا بِخَمْسَةٍ وَعَشْرِينَ. فَهَيَّأَتْ تَطْلُبُ الْخَيْرِ. فَمَرَّ بِهَا أَبُو السَّتَّابِلِ بْنُ بَعْكَلٍ. فَقَالَ: قَدْ أَسْرَعْتِ. اغْتَدَّتِي أَخْرَى الْأَجَلَيْنِ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. فَأَكَبَّتِ النَّبِيُّ ﷺ. فَقُتِلَتْ: يَا رَسُولَ اللَّهِ اسْتَغْفِرْ لِي. قَالَ: «وَفِيمَ ذَاكَ» فَأَخْبَرَتْهُ. فَقَالَ: «إِنْ وَجَدْتِ زَوْجًا صَالِحًا فَتَزَوَّجِي». .

تخریج: [إسناده صحيح] أخرجه الطبراني (الكبير: ۲۴/ ۲۹۳)، ح: ۷۴۵ من حديث ابن أبي شيبة به، أخرجه البخاري، ح: ۳۹۱، ۵۳۱۹، ۳۹۹۱، ومسلم، ح: ۱۴۸۴ من حديث سيدة رضي الله عنها

به مطولاً نحو المعنى.

Comments:

- Preparing for marriage means she replaced the simple dress, which is worn for the waiting period, with a good looking dress, and she also applied the relevant adornment.
- Requesting for the supplication of forgiveness means she was remorseful about the mistake of lifting the restrictions of the waiting period before its due time. The prophetic statement clarifies that her waiting period had come to end, therefore, she did not make any mistake and should not worry about this matter.

2029. It was narrated from Miswar bin Makhramah that the Prophet ﷺ told Subai'ah to get married, when her postnatal bleeding ended. (*Sahih*)

٢٠٢٩ - حَدَّثَنَا نَصْرُ بْنُ عَلَيٍّ، وَمُحَمَّدُ بْنُ بَشَّارٍ. قَالَا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ دَاؤِدَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ الْمِسْوَرِ بْنِ مَخْرُومَةَ أَنَّ النَّبِيَّ ﷺ أَمَرَ سَبْعَةَ أَنْ تَنكِحَ، إِذَا تَكُلُّتْ مِنْ زَفَافِهَا.

تخریج: أخرجه البخاري، الطلاق، باب «أولات الأحوال أجلهن أن يضعن حملهن» ح: ٥٣٢٠ من حديث هشام به، وأصله متفق عليه، البخاري، ح: ٤٩٠٩، ومسلم، ح: ١٤٨٥ من حديث كريب عن أم سلمة بعضه.

2030. It was narrated that 'Abdullâh bin Mas'ud said: "By Allâh, for those who would like to go through the process of praying for Allâh's curse to be upon the one who is wrong, the shorter *Surah* concerning women^[1] was revealed after (the Verses^[2] which speak of the waiting period of) four months and ten (days)."

٢٠٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُتَشَّبِّهِ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: وَاللَّهُ لَمْنَ شَاءَ لَا عَنَّهُ. لَا زَلَّتْ سُورَةُ الشَّائِعَةِ الْقُضْرَى بَعْدَ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا.

تخریج: [صحیح] أخرجه أبوذاود، الطلاق، باب في عدة المحامل، ح: ٢٣٠٧ من حديث أبي معاوية به، انظر، ح: ١٧٨ لعلته، وللحديث طرق كثيرة ولكنها معلولة بتلخيص الرواة، وغيره صحيح بالشواهد.

Comments:

- The Verse of *Surat At-Talâq* legislates that the waiting period for a pregnant women shall be till delivery. This is the last rule in the chronological order

[1] Meaning *Surat At-Talâq*. (65: 4).

[2] *Surat Al-Baqarah* 2:234.

of revelation; and the Verse (234) of *Surat Al-Baqarah* that the waiting period for a widow is four months and ten days was revealed earlier. Therefore, if a pregnant woman's husband dies her waiting period will not be four months and ten days, rather it will be till delivery, regardless if the time for delivery is longer or shorter, and this is the correct rule.

- b. A woman who is not pregnant and her husband dies, she will spend her waiting period according to *Surat Al-Baqrah*, which is four months and ten days, regardless if she has consummated the marriage or not.

Chapter 8. Where Should The Woman Whose Husband Died Observe Her Waiting Period?

(المعجم ٨) - باب: أَيْنَ تَعْتَدُ الْمُتَوَفِّي
عَنْهَا زَوْجُهَا؟ (التحفة ٨)

2031. It was narrated from Zainab bint Ka'b bin 'Ujrah, who was married to Abu Sa'eed Al-Khudri, that his sister Furai'ah bint Malik said: "My husband went out to pursue some slaves of his. He caught up with them at the edge of Qadum^[1] and they killed him. News of his death reached me when I was in one of the houses of the *Ansâr*, far away from the house of my family and my brothers. I went to the Prophet ﷺ and said: 'O Messenger of Allâh, there has come to me news of my husband's death and I am in a house far away from the house of my people and the house of my brothers. He did not leave any money that could be spent on me, or any inheritance, or any house I may take possession of. If you think that you could give me permission to join my family and my brothers, then that is what I prefer and is better for me in

٢٠٣١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرَ، سَلِيمَانُ بْنُ حَيَّانَ، عَنْ سَعْدٍ بْنِ إِسْحَاقَ بْنِ كَعْبٍ بْنِ عَجْرَةَ، وَكَاتَتْ تَحْتَ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ أَخَّهُ الْفَرِيعَةَ بْنَ مَالِكٍ، قَالَ: خَرَجَ رَوْجِيٌّ فِي طَلَبٍ أَعْلَاجَ لَهُ، فَأَدْرَكَهُمْ بِطَرَفِ الْقَدْوِمِ، فَقَتَلُوهُ، فَجَاءَ عَنْهُ رَوْجِيٌّ وَأَنَا فِي دَارٍ مِنْ دُورِ الْأَنْصَارِ، شَاسِعَةً عَنْ دَارِ أَهْلِيِّ، فَأَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّهُ جَاءَ تَعْيَى رَوْجِيٌّ وَأَنَا فِي دَارٍ شَاسِعَةٍ عَنْ دَارِ أَهْلِيِّ وَدَارِ إِخْرَوْتِيِّ، وَلَمْ يَدْعُ مَالًا يُنْقُضَ عَلَيَّ، وَلَا مَالًا وَرَثَتْهُ، وَلَا دَارًا يَمْلِكُهَا، فَإِنْ رَأَيْتَ أَنْ تَأْذِنَ لِي فَأَلْتَقِي بِدَارِ أَهْلِيِّ وَدَارِ إِخْرَوْتِيِّ فَإِنَّهُ أَحَبُّ إِلَيَّ، وَأَجْمَعُ لِي فِي بَعْضِ أَمْرِيِّ، قَالَ: «فَافْعُلِي إِنْ شِئْتَ» قَالَ: فَخَرَجْتُ فَرِيرَةً عَيْنِي لِمَا نَصَبَ اللَّهُ لِي عَلَى لِسَانِ رَسُولِ اللَّهِ ﷺ، حَتَّى إِذَا كُنْتُ فِي الْمَسْجِدِ، أَوْ فِي

[1] A location outside of Al-Madinah.

some ways.' He said: 'Do that if you wish.' Then I went out, feeling happy with the ruling of Allâh given upon the lips of the Messenger of Allâh ﷺ, until, when I was in the mosque, or, in one of the apartments, he called me and said: 'What did you say?' I told him the story, and he said: 'Stay in the house in which the news of your husband's death came to you, until your waiting period is over.'" She said: "So I observed the waiting period there for four months and ten (days)." (Sahih)

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب في المتوفى عنها تتقلّل؟، ح ٢٣٠٠ من حديث سعد بن إسحاق به، وصححه الترمذی، ح: ١٢٠٤، والذهبی، والحاکم، والذهبی.

Comments:

- A widow should spend her waiting period at the same place where she lived with her husband.
- The waiting period for a widow who is not pregnant is four months and ten days.

Chapter 9. Can A Woman Go Out During Her Waiting Period?

2032. It was narrated from Hishâm bin 'Urwah that his father said: "I entered upon Marwân and said to him: 'A woman from your family has been divorced. I passed by her and she was moving. She said: 'Fâtimah bint Qais told us to do that, and she told us that the Messenger of Allâh ﷺ told her to move.' Marwân said: 'She told them to do that.'" 'Urwah said: "I said: 'By Allâh, 'Âishah did not like that, and said: 'Fâtimah was

بعض المُحْجَرَةَ دَعَانِي فَقَالَ: «كَيْفَ رَعَمْتِ؟» قَالَتْ: فَقَصَصْتُ عَلَيْهِ. فَقَالَ: «أَمْكُثْتِ فِي بَيْنِكَ الَّذِي جَاءَ فِيهِ نَعْيُ رَوْجَكَ حَتَّى يَبْلُغَ الْكِتَابُ أَجْلَهُ» قَالَتْ: فَأَعْتَدْتُ فِيهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

(المعجم ٩) - بَابُ : هَلْ تَخْرُجُ الْمَرْأَةُ فِي عِدَّتِهَا (التحفة ٩)

٢٠٣٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا ابْنُ أَبِي الذَّيْدِ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ قَالَ: دَخَلْتُ عَلَى مَرْوَانَ فَقُلْتُ لَهُ: امْرَأَةٌ مِنْ أَهْلِكَ طَلَقْتُ. فَمَرَزَتْ عَلَيْهَا وَهِيَ تَسْقُلُ. فَقَالَتْ: أَمْرَتْنَا فَاطِمَةُ بْنُتْ قَيْسٍ، وَأَخْبَرَنَا أَنَّ رَسُولَ اللَّهِ ﷺ أَمْرَهَا أَنْ تَسْقُلَ. قَالَ مَرْوَانُ: هِيَ أَمْرَتُهُمْ بِذَلِكَ. قَالَ عُرْوَةُ، فَقُلْتُ: أَمَا وَاللَّهِ لَقَدْ عَابَتْ ذَلِكَ عَائِشَةُ،

living in a deserted house and it was feared for her (safety and well being), so the Messenger of Allâh ﷺ granted a concession to her.''" (*Hasan*)

وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَسْكِنٍ وَحْشِيٍّ
فَخَيَّفَ عَلَيْهَا. فَلِذلِكَ أَرْخَصَ لَهَا رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب من أنكر ذلك على فاطمة بنت قيس، ح ٢٢٩٢ من حديث عبد الرحمن بن أبي الزناد به، وعلمه البخاري في صحيحه، ح ٥٣٢٦.

Comments:

- a. The waiting period after divorce should also be spent at the husband's home.
- b. It is permissible for the accommodation to be changed due to extreme reasons (like insecurity).

2033. It was narrated that 'Âishah said: "Fâtimah bint Qais said: 'O Messenger of Allâh, I am afraid that someone may enter upon me by force.' So he told her to move." (*Sahih*)

٢٠٣٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُونَ بْنُ غَيَاثَ، عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: قَالَتْ فَاطِمَةُ بْنُتْ قَيْسٍ: يَا رَسُولَ اللَّهِ! إِنِّي أَخَافُ أَنْ يُشَتَّمَ عَلَيِّ. فَأَمَرَهَا أَنْ تَسْجُوَ.

تخریج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح ١٤٨٢، والنسائي، ح ٣٥٧٧: كلامها عن محمد بن المثنى عن حفص بن غياث حدثنا هشام عن أبيه عن فاطمة بنت قيس به، وهو الصواب، وقوله: عن عائشة قالت ، وهم .

2034. It was narrated that Jâbir bin 'Abdullâh said: "My maternal aunt was divorced, and she wanted to collect the harvest from her date-palm trees. A man rebuked her for going out to the trees. She went to the Prophet ﷺ, who said: 'No, go and collect the harvest from your trees, for perhaps you will give some in charity or do a good deed with it.'" (*Sahih*)

٢٠٣٤ - حَدَّثَنَا سُفْيَانُ بْنُ وَكِيعٍ: حَدَّثَنَا رَوْحٌ: حَدَّثَنَا أَحْمَدُ بْنُ مَنْصُورٍ: حَدَّثَنَا حَجَاجُ بْنُ مُحَمَّدٍ، جَمِيعًا عَنْ أَبْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الرُّبِّيْرِ، عَنْ حَاجِرِ بْنِ عَبْدِ اللَّهِ: قَالَ: طُلِقْتُ حَاتِنِي: فَأَرَادَتْ أَنْ تَجْدَعْ تَحْلَهَا. فَرَجَرَهَا رَجُلٌ أَنْ تَخْرُجَ إِلَيْهِ. فَأَتَتْ الَّبَيْنِ فَقَالَ: «بَلَى». فَجَدَيْ تَحْلَكِي. فَإِنَّكَ عَسَى أَنْ تَصْلِقَيْ أَوْ تَفْعَلِي مَعْرُوفًا.

تخریج: أخرجه مسلم، الطلاق، باب جواز خروج المعتدة البائن والمتوفي عنها زوجها في النهار ل حاجتها، ح ١٤٨٣ من حديث حجاج وغيره به .

Comments:

- A woman is allowed to go out of her house during her waiting period if there is a dire and extreme need for her to do so.
- Had Jâbir's maternal aunt not been allowed to pick fruit from her orchard, it would have gone to waste. Therefore, she had to step out of her house for the safety of the seasonal harvest.
- It is inappropriate to step outside of the home for minor things. Likewise she should not go to visit a relative or to attend a wedding or any occasions of grief, because these things are not of extreme necessity.

Chapter 10. Does A Woman Who Has Been Divorced Three Times Have The Right To Accommodation And Maintenance?

2035. It was narrated that Abu Bakr bin Abu Jahm bin Sukhair Al-'Adawi said: "I heard Fâtîmah bint Qais say that her husband divorced her three times, and the Messenger of Allâh ﷺ did not say that she was entitled to accommodation and maintenance." (*Sahîh*)

Comments:

- A husband is not responsible for a woman's living expenses for the waiting period after the final divorce.
- If a woman is pregnant, then the husband is responsible for the expense of her waiting period, even after the final divorce. The statement of Allâh Almighty is: "And if they are pregnant then spend for them till they deliver their pregnancy." (*At-Talâq* 65: 6)

2036. It was narrated that Sha'bî said: Fâtîmah bint Qais said: "My husband divorced me at the time of the Messenger of Allâh ﷺ three times. The Messenger of Allâh ﷺ said: 'You have no right to accommodation or to maintenance.'" (*Sahîh*)

(المعجم ١٠) - باب : المطلقة ثلاثة
هل لها سكناً ونفقة؟ (التحفة ١٠)

٢٠٣٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَعَلَيْهِ بَنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفِيَانُ، عَنْ أَبِي بَكْرٍ بْنِ أَبِي الْجَهْمِ بْنِ صَحْيَرِ الْعَدَوِيِّ قَالَ: سَمِعْتُ فَاطِمَةَ بِنْتَ قَيْسَ تَقُولُ: إِنَّ رَوْجَهَا طَلَقَهَا ثَلَاثَةً. فَلَمْ يَجْعَلْ لَهَا رَسُولُ اللَّهِ ﷺ سَكْنًا وَلَا نَفْقَةً.

تخریج: [صحیح] نقدم، ح: ١٨٦٩.

٢٠٣٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا جَرِيرٌ، عَنْ مُغِيرَةَ، عَنْ الشَّعْبِيِّ قَالَ: قَالَ فَاطِمَةُ بِنْتُ قَيْسٍ: طَلَقَنِي زَوْجِي عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ ثَلَاثَةً. قَالَ رَسُولُ اللَّهِ ﷺ: (لَا سَكْنَى لَكَ وَلَا نَفْقَةً).

تخریج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٢/١٤٨٠ من حديث
معيرة به نحو المعنى، وانظر، ح: ٢٠٢٤.

Chapter 11. Giving A Gift In The Event Of Divorce

(المعجم ١١) - بَابُ مُتْعِةِ الطَّلاقِ

(التحفة ١١)

2037. It was narrated from 'Âishah that 'Amrah bint Jawn sought refuge with Allâh from the Messenger of Allâh ﷺ when she was brought to him (as a bride). He said: "You have sought refuge with Him in Whom refuge is sought." So he divorced her and told Usâmah or Anas to give her a gift of three garments of white flax. (*Maudû'*)

٢٠٣٧ - حَدَّثَنَا أَخْمَدُ بْنُ الْمَقْدَامَ أَبُو الأَشْعَثِ الْعَجْلَيْهِ؛ حَدَّثَنَا عَبْيَضُ بْنُ الْفَارِسِ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ عَمَرَةَ بْنَتَ الْجَبُونِ تَعَوَّذَتْ مِنْ رَسُولِ اللَّهِ ﷺ حِينَ أُدْخِلَتْ عَلَيْهِ. فَقَالَ: «لَقَدْ عَذَّتْ بِمُعَادِنِهِ فَطَلَّقَهَا. وَأَمَرَ أَسَامَةً أَوْ أَسَاسًا، فَمَتَّهَا بِشَكَّةٍ أَثْوَابَ رَازِيقَةٍ».

تخریج: [إسناده موضوع] * عبيد بن القاسم متrock، كذبه ابن معين، واتهمه أبو داود
بالوضع (تقریب)، وأصله في الصحيح البخاري، ح: ٥٢٥٤، وانظر، ح: ٢٠٥٠.

Comments:

- Imam Albâni said: Quoting Usâmah and Anas ﷺ in this narration is *Munkar* (Denounced); and he said the correct wording is: "The Prophet ﷺ ordered Abu Usaid to make her ready in order to send her to her parents' home, and also to give her two cotton cloths as compensation."
- 'Amrah the daughter of Jawn ﷺ, said these inappropriate words because of a misunderstanding.
- If a divorce is issued after a marriage contract that had its dower fixed, and the marriage was not consummated, then half of the dower is due (*Al-Baqarah* 2: 237) and if the dower is not fixed, then a pair of clothes or what is reasonable according to the circumstances should be given to the woman in compensation.

Chapter 12: When The Man Denies The Divorce

(المعجم ١٢) - بَابُ الرَّجُلِ يَجْحَدُ الطَّلاقَ (التحفة ١٢)

2038. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "If a woman claims that her husband has divorced her, and she brings a witness of good

٢٠٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَمْرُو بْنُ أَبِي سَلَمَةَ أَبُو حَفْصِ التَّسِيْئِيَّ، عَنْ رُهْبَرِيَّ، عَنْ أَبْنِ جُرَيْجٍ، عَنْ عَمْرُو بْنِ شُعْبَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنِ النَّبِيِّ ﷺ

character (to testify) to that, her husband should be asked to swear an oath. If he swears, that will invalidate the testimony of the witness, but if he refuses then that will be equivalent to a second witness, and the divorce will take effect." (*Da'i*)

تخرج: [إسناده ضعيف] أخرجه الدارقطني: /٤، ٦٤ من حديث محمد بن يحيى به، وقال أبو حاتم الرازي: حديث منكر (علل الحديث: ٤٣٢/١)، وحسنه البوصيري وانظر، ح: ٩١٩، لعلته، وفيه علة أخرى، وانظر، ح: ٧٢٨.

Chapter 13. One Who Divorces, Marries Or Takes Back His Wife In Jest

2039. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There are three matters in which seriousness is serious and joking is serious: marriage, divorce and taking back (one's wife)." (*Hasan*)

قال: إذا ادعَتِ المرأة طلاقَ زوجها، فجاءتْ على ذلك بشاهدٍ، عَدِيلٍ، استُخلصَ زوجها. فإنْ خلفَ بطلَّ شهادة الشاهدِ. وإنْ تكلَّفَ فنكُولُهُ بِمُنْزَلَةِ شاهدٍ آخرٍ. وجائز طلاقُهُ.

تخرج: [إسناده ضعيف] أخرجه الدارقطني: /٤، ١٢٦ من حديث محمد بن يحيى به، وقال أبو حاتم الرازي: حديث منكر (علل الحديث: ٤٣٢/١)، وحسنه البوصيري وانظر، ح: ٩١٩، لعلته، وفيه علة أخرى، وانظر، ح: ٧٢٨.

(المعجم ١٣) - بابُ مَنْ طَلَقَ أَوْ نَكَحَ أَوْ رَاجَعَ لَاعِبًا (التحفة ١٣)

٢٠٣٩ - حدثنا هشام بن عمّار: حدثنا حاتم بن إسحائيل: حدثنا عبد الرحمن بن حبيب بن أذكى: حدثنا عطاء بن أبي رياح، عن يوسف بن ماهك، عن أبي هريرة قال: قال رسول الله ﷺ: «ثلاث جدهن حمد، وهرؤلن حمد: النكاح والطلاق والرجعة».

تخرج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الطلاق على الهزل، ح: ٢١٩٤ من حديث عبد الرحمن به، وحسنه الترمذى، ح: ١١٨٤، وصححه الحاكم وغيره.

Comments:

- The relationship of marriage is extremely important due to which a man and woman become lawful for each other and they accept its responsibilities; and it is also because of the marriage bond that their children are legal. Therefore, many rules were Divinely legislated to keep the sanctity of this relationship upright.
- When accepting a religious responsibility, or withdrawing from it, one should carefully reflect upon its consequences, so that one will not have to face regret and worry later.

Chapter 14. One Who Divorces His Wife To Himself, But Did Not Speak The Words Out Loud

2040. It was narrated from Abu Hurairah that the Messenger of

(المعجم ١٤) - بابُ مَنْ طَلَقَ فِي نَفْسِهِ وَلَمْ يَكُلُّمْ بِهِ (التحفة ١٤)

٢٠٤٠ - حدثنا أبو بكر بن أبي شيبة: حدثنا

Allâh ﷺ said: "Allâh has forgiven my nation for what they think of to themselves, so long as they do not act upon it or speak of it." (Sahih)

عَلَيْهِ بْنُ مُسْبِرٍ، وَ عَبْدَةُ بْنُ سُلَيْمَانَ؛ ح: وَحَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا حَالِدُ بْنُ الْحَارِثَ، جَيْعَانًا عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ قَتَادَةَ، عَنْ رُزَارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاءُرُ لِأَمْيَنِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا. مَا لَمْ تَعْمَلْ بِهِ، أَوْ تَكْلُمْ بِهِ».

تخریج: أخرجه البخاري، العنق، باب الخطأ والنسيان في العناقة والطلاق ونحوه ... الخ، ح ٢٥٢٨، ٥٢٦٩، ٦٦٦٤، ومسلم، الإيمان، باب تجاوز الله عن حدث النفس والخواطر بالقلب إذا لم تستقر، ح ١٢٧ من طرق عن قتادة به.

Comments:

- Many thoughts rise in a human's mind, of which some are good and some are bad. There is no accountability in respect to them, as long as they remain just thoughts and are not uttered or practiced.
- Some deeds are concerned just with the heart like: love, hate and fear etc., when one of these gets determinedly absorbed in one's mind, it can affect other deeds that will be recompensed good or bad accordingly. For example: love for Allâh, love for Allâh's Messenger ﷺ, respect of the Noble Qur'ân, to hate good work or to have a grudge against a good person etc.; belief, disbelief, sincerity and hypocrisy are also from this type.

Chapter 15. Divorce Of One Who Is Insane, A Minor And One Who Is Sleeping

2041. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "The Pen has been lifted from three: from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses." (Hasan)

In his narration, (one of the narrators) Abu Bakr (Ibn Abu Shaibah) said: "And from the afflicted person, until he

(المعجم ١٥) - بَابُ طَلَاقِ الْمُعْنُوَةِ
وَالصَّغِيرِ وَالنَّائِمِ (التحفة ١٥)

٢٠٤١ - حَدَّثَنَا أَبُو يَكْرِبٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ حَالِدٍ أَبْنُ خَدَائِشٍ، وَ مُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا حَمَادٌ أَبْنُ سَلَمَةَ، عَنْ حَمَادٍ، عَنْ إِبْرَاهِيمَ، عَنْ الْأَسْوَدِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «رُفِعَ الْقَلْمَنْ عَنْ ثَلَاثَةِ: عَنِ النَّائِمِ حَتَّى يَسْتَيقِظَ. وَعَنِ الصَّغِيرِ حَتَّى يَكْبُرَ. وَعَنِ

recovers.”^[1] (*Hasan*)

المُخْجُونَ حَتَّى يَعْقِلَ، أَوْ يَهْبِطُ». .

فَالَّذِي أَبْوَأْ بَكْرٌ، فِي حَدِيثِهِ: «وَعَنِ الْمُبْتَلِي
حَتَّى يَبْرُأ». .

تخریج: [حسن] أخرجه أبو داود، الحدود، باب: في المجنون يسرق أو يصيّب خداً، ٤٣٩٨ من حديث حماد بن سلمة به، وصححه ابن حبان، والحاكم، والذهبى، الرواى عن إبراهيم التخنفى، هو حماد بن أبي سليمان.

Comments:

- ‘The Pen has been lifted’ means: Bad deeds are not recorded against these people.
- Any act done by the people mentioned in the *Hadith* has no legal effective status, and will be regarded unperformed.
- If a sleeping person says the word of ‘divorce’, this divorce will be ineffective, because he did not have the intention to divorce nor did he know that he has divorced.

2042. It was narrated from ‘Ali bin Abu Tâlib that the Messenger of Allâh ﷺ said: “The Pen is lifted from the minor, the insane person and the sleeper.” (*Hasan*)

٢٠٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ شَاءِرٍ: حَدَّثَنَا رَوْحٌ
ابْنُ عَبَادَةَ: حَدَّثَنَا ابْنُ جُرَيْجٍ: أَبْنَانَا الْقَاسِمُ
ابْنُ يَزِيدَ، عَنْ عَلَيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ
الله ﷺ قَالَ: «يُرْفَعُ الْقَلْمَنْ عَنِ الصَّغِيرِ وَعَنِ
الْمُجْنُونِ وَعَنِ النَّائِمِ».

تخریج: [حسن] وقال البوسيري: هذا إسناد ضعيف، القاسم بن يزيد هذا مجھول، وأيضاً
لم يدرك علي بن أبي طالب ، والحديث السابق شاهد له .

Chapter 16. Divorce Of One Who Is Compelled, And Of One Who Is Forgetful

2043. It was narrated from Abu Dharr Al-Ghifâri that the Messenger of Allâh ﷺ said: “Allâh has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do.” (*Sahih*)

(المعجم ١٦) - بَابُ طَلاقِ الْمُكْرَهِ
وَالنَّاسِيِّ (التحفة ١٦)

٢٠٤٣ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ بْنُ يُوسَفَ
الْقَرْيَاتِيِّ: حَدَّثَنَا أَبْيُوبُ بْنُ سُوَيْدٍ: حَدَّثَنَا أَبُو
بَكْرُ الْهَلْلَيُّ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي
ذَرِّ الْغَفَارِيِّ قَالَ: قَالَ رَسُولُ الله ﷺ: «إِنَّ
اللهَ تَعَالَى لِي عَنْ أُمَّتِي الْخَطَا وَالشَّيْءَ، وَمَا
أَسْتَكِرُهُوَا عَلَيْهِ».

[1] Meaning, in place of the wording for the third, and the meaning is the same.

تخریج: [صحیح] انظر، ح: ۹۲۱ لعله، والحادیث صحیح بشهاده، وقال البوصیری: هذا إسناد ضعیف لأنقاومهم على ضعف أبي بکر الھذلی ، والحادیث الائچی شاهد له.

Comments:

- 'Mistake' means that a person wanted to do something but unintentionally it went wrong, in that case he will not be sinful. However, that wrongly performed act, somehow, must be corrected and compensated appropriately.
- If one is forced to do something illegal, being threatened to be killed or forced to do something by threat of unbearable loss, then the forced person will not be sinful (provided he is not forced to take someone's life).

2044. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Allāh has forgiven my nation for the evil suggestions of their hearts, so long as they do not act upon it or speak of it, and for what they are forced to do." (*Sahih*)

٢٠٤٤ - حَدَّثَنَا هَشَمُ بْنُ عَمَّارٍ: حَدَّثَنَا سَفِيْنَانَ بْنَ عَيْنَيْهَ، عَنْ مِسْنَعٍ، عَنْ قَتَادَةَ، عَنْ زُرَارَةَ بْنِ أَوْفَىَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاءُرَ لِأَمْتَنِي عَمَّا تُوَسِّعُ بِهِ صُدُورُهَا. مَا لَمْ تَعْمَلْ بِهِ أَوْ تَكَلَّمْ بِهِ. وَمَا اسْتَكْرِهُوا عَلَيْهِ».

تخریج: [صحیح] تقدم، ح: ۲۰۴۰.

2045. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Allāh has forgiven my nation for mistakes and forgetfulness, and what they are forced to do." (*Sahih*)

٢٠٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصْفَى الْجَمْصِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ عَنْ عَطَاءَ، عَنْ أَبْنِ عَبَاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِنَّ اللَّهَ وَضَعَ عَنْ أَمْتَنِي الْحَطَا وَالنَّشْيَانَ وَمَا اسْتَكْرِهُوا عَلَيْهِ».

تخریج: [صحیح] آخرجه البیهقی: ۷/۳۵۶، ۳۵۷ من حديث محمد بن المصفى به، وأخرجه الدارقطني: ۴/۱۷۰، ۱۷۱، والبیهقی: ۷/۳۵۶ وغيرهما من طريق بشر نا الأوزاعي عن عطاء عن عبيد بن عمیر عن ابن عباس به نحو المعنى، وقال البیهقی: جود إسناده بشر بن بکر وهو من الثقات ، فالإسناد صحيح، وصححه ابن حبان (موارد)، ح: ۱۴۹۸/۲، والحاکم: ۱۹۸/۲، والذهبی وغيره، وله شواهد كثيرة.

2046. It was narrated that Safiyyah bint Shaibah said: "Aishah told me that the

٢٠٤٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ،

Messenger of Allâh ﷺ said: 'There is no divorce and no manumission at the time of coercion.' " (Hasan)

عَنْ ثَوْرٍ، عَنْ [مُحَمَّدٌ بْنٌ] عَيْدِ بْنِ أَبِي صَالِحٍ، عَنْ صَفِيَّةَ بْنِتِ شَبَّيَّةَ قَالَتْ: حَدَّثَنِي عَائِشَةُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا طَلاقَ، وَلَا عَنَاقٌ فِي إِغْلَاقٍ».

تخریج: [حسن] أخرجه أبو داود، الطلاق، باب في الطلاق على غلط، ح: ٢١٩٣، وأحمد: ٢٧٦ من حديث ابن إسحاق حدثي ثور بن يزيد الكلاعي عن محمد بن عبيد بن أبي صالح المكي به، وهو الصواب، وصححه الحاكم، ورده الذهبي، وله شواهد منها طريق الحاكم عن عائشة رضي الله عنها، وإسناده حسن.

Chapter 17. No Divorce Before Marriage

2047. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "There is no divorce regarding that which one does not possess." (Hasan)

(المعجم ١٧) - بَابُ : لَا طَلاقَ قَبْلَ النِّكَاحِ (التحفة ١٧)

٤٠٤٧ - حَدَّثَنَا أَبُو كُرَيْبٍ : حَدَّثَنَا هَشَّيْمٌ : أَبْنَانَا عَامِرٌ الْأَخْوَلُ ؛ ح : وَحَدَّثَنَا أَبُو كُرَيْبٍ : حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ ، عَنْ عَدْرَ الرَّحْمَنِ ابْنِ الْحَارِثِ ، جَوِيعًا عَنْ عَمْرُونَ بْنِ شَعِيبٍ ، عَنْ أَبِيهِ ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ : «لَا طَلاقَ فِيمَا لَا يَمْلِكُ» .

تخریج: [إسناده حسن] أخرجه الترمذی، الطلاق، باب ماجاء لا طلاق قبل النکاح، ح: ١١٨١ من طريق هشیم، وأبو داود، الطلاق، باب: في الطلاق قبل النکاح، ح: ٢١٩٢، ٢١٩١ من حديث عبد الرحمن بن الحارث، كلها عن عمرو بن شعيب به، وقال الترمذی: حسن صحيح، ولفظ الحاکم: ٢٠٥/٢ لا طلاق قبل النکاح، وصححه الذهبي، ولفظ أبي داود: ولا عتق إلا فيما تملك.

2048. It was narrated from Miswar bin Makhramah that the Prophet ﷺ said: "There is no divorce before marriage, and no manumission before taking possession." (Hasan)

٤٠٤٨ - حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدِ الدَّارِوِيِّ : حَدَّثَنَا عَلَيُّ بْنُ الْحُسَيْنِ بْنُ وَاقِدٍ : حَدَّثَنَا هِشَامُ بْنُ سَعْدٍ، عَنْ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ الْمُسْوَرِ بْنِ مَحْرَمَةَ، عَنْ الْتَّبَّيِّ ﷺ قَالَ : «لَا طَلاقَ قَبْلَ نِكَاحٍ . وَلَا عَنْقٌ قَبْلَ مِلْكٍ» .

تخریج: [حسن] وحسنه البوصيري، والحديث السابق شاهد له.

2049. It was narrated from 'Ali bin Abu Tâlib that the Prophet ﷺ said: "There is no divorce before marriage." (*Hasan*)

٢٠٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ : حَدَّثَنَا عَبْدُ الرَّزَاقَ : أَبْنَا نَا مَعْمَرٌ، عَنْ جُوَيْرٍ، عَنِ الصَّحَّافِ، عَنِ التَّرَالِ بْنِ سَبِّرَةَ، عَنْ عَلَيِّ بْنِ أَبِي طَالِبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا طَلاقَ قَبْلَ النِّكَاحِ».

تخریج: [حسن] وضعفه البوصيري، والحديث حسن * جویر ضعیف جداً (تقرب)، والحديث السابق شاهد له.

Comments:

If a person says: 'If I marry so-and-so woman and then I will divorce her.' This is vain talk, which is ineffective, because he spoke of divorcing her when she was not even his wife, as long as he does not divorce her after the bond of marriage.

Chapter 18. (Words) By Which Divorce Takes Place

2050. Awzâ'i said: "I asked Zuhri: 'Which of the wives of the Prophet ﷺ sought refuge with Allâh from him?' He said: "Urwah told me, (narrating) from 'Âishah, that when the daughter of Jawn entered upon the Messenger of Allâh ﷺ and he came close to her, she said: "I seek refuge with Allâh from you." The Messenger of Allâh ﷺ said: "You have sought refuge in the Almighty; go to your family." (*Sahih*)

(المعجم ١٨) - بَابُ مَا يَقْعُدُ بِهِ الطَّلاقُ
[من الكلام] (التحفة ١٨)

٢٠٥٠ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشِقِيُّ : حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ : حَدَّثَنَا الْأَوْزَاعِيُّ . قَالَ: سَأَلْتُ الرُّهْرَيِّيَّ: أَيُّ أَزْوَاجِ النَّبِيِّ ﷺ اسْتَعَادُتْ مِنْهُ؟ فَقَالَ: أَخْبَرَنِي عُرْوَةُ عَنْ عَائِشَةَ أَنَّ ابْنَةَ الْجَوْنِ لَمَّا دَخَلَتْ عَلَى رَسُولِ اللَّهِ ﷺ، فَدَنَّا مِنْهَا، قَالَتْ: أَغُوذُ بِاللَّهِ مِنْكَ . فَقَالَ رَسُولُ اللَّهِ ﷺ: «عَدْتِ بِعَظِيمٍ الْحَقِّ بِإِهْلِكَ» .

تخریج: أخرجه البخاري، الطلاق، باب من طلق، وهل يواجه الرجل امرأته بالطلاق، ح: ٥٢٥٤ من حديث الوليد به.

Comments:

- Some words used for divorce are very clear and manifest, and give clear message of divorce; for example: 'I divorce you.' These words consensually make the divorce effective.
- There are some words that have both meanings: divorce or any other meaning which is called "connotation." The clear and manifest meanings of these words rely on the intention of the person. If one uttered them with the

intention of divorce, then the divorce would be effective, otherwise not.

Chapter 19. Irrevocable Divorce

2051. It was narrated from 'Abdullâh bin 'Ali bin Yazid bin Rukânah, from his father, from his grandfather, that he divorced his wife irrevocably, then he came to the Messenger of Allâh ﷺ and asked him. He said: "What did you mean by that?" He said: "One (divorce)." He said: "By Allâh, did you only mean one (divorce) thereby?" He said: "By Allâh, I meant one." Then he sent her back to him. (*Da'if*)

Muhammad bin Mâjah said: I heard Abul-Hasan 'Ali bin Muhammad Tanâfisi saying: "How noble is this *Hadith*."

Ibn Mâjah said: 'Abu 'Ubaid left it (i.e., did not accept its narration) and Ahmad was fearful of it (i.e., of narrating it)."

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب: في البتة، ح: ٢٠٨ من حديث جریر به، وأخرجه الترمذی، ح: ١١٧٧، وذكر كلاماً * الزبیر بن سعید لین الحدیث (تقرب)، ويعنی عنه طریق أبي داود، ح: ٢٢٠٧، ٢٢٠٦ وغيره نحو المعنی، وصححه أبو داود، والحاکم، والقرطی، ولم أر لمضھیه حجة.

Chapter 20. A Man Giving His Wife The Choice

2052. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ gave us the choice, and we chose him, and he did not consider it as something (i.e., an effective divorce)." (*Sahih*)

(المعجم ١٩) - بَابُ طَلَاقِ الْبَتَةِ

(التحفة ١٩)

٢٠٥١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَ عَلَيْهِ ابْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ جَرِيرٍ بْنِ حَازِمٍ، عَنْ الرُّبِّيْرِ بْنِ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَلَيْهِ بْنِ بَرِّيْدَ بْنِ رُكَانَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّهُ طَلَقَ امْرَأَتَهُ الْبَتَةَ. فَأَتَى رَسُولَ اللَّهِ ﷺ فَسَأَلَهُ: مَا أَرْدَتُ بِهَا؟ قَالَ: وَاحِدَةً. قَالَ: أَلَّهُ مَا أَرْدَتُ بِهَا إِلَّا وَاحِدَةً؟ قَالَ: أَلَّهُ مَا أَرْدَتُ بِهَا إِلَّا وَاحِدَةً. قَالَ، فَرَدَهَا عَلَيْهِ.

قَالَ مُحَمَّدُ بْنُ مَاجَهَ: سَمِعْتُ أَبا الْحَسَنِ عَلَيْهِ بْنَ مُحَمَّدٍ الطَّنَافِسِيَّ يَقُولُ: مَا أَشَرَّفَ هَذَا الْحَدِيثَ.

قَالَ أَبْنُ مَاجَهَ: أَبُو [غَيْثٍ] تَرَكَهُ نَاجِيَةً، وَأَحْمَدُ جَيْشَ عَنْهُ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب: في البتة، ح: ٢٠٨ من حديث جریر به، وأخرجه الترمذی، ح: ١١٧٧، وذكر كلاماً * الزبیر بن سعید لین الحدیث (تقرب)، ويعنی عنه طریق أبي داود، ح: ٢٢٠٧، ٢٢٠٦ وغيره نحو المعنی، وصححه أبو داود، والحاکم، والقرطی، ولم أر لمضھیه حجة.

(المعجم ٢٠) - بَابُ الرَّجُلِ يُخْرِجُ

امْرَأَتَهُ (التحفة ٢٠)

٢٠٥٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنْ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوفٍ، عَنْ عَائِشَةَ قَالَتْ: خَيَّرَنَا رَسُولُ اللَّهِ ﷺ، فَاخْتَرْنَاهُ. فَلَمْ يَرِهْ شَيْئًا.

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

Comments:

- The background of this incident is that as the economic position of Muslims became better, as a result of conquests; the mothers of the Believers 'the wives of the Prophet ﷺ' saw the well - off position of the women of *Ansâr* and immigrants, upon which the wives of the Prophet ﷺ also requested him to increase their living expenses.
- A choice of divorce given to a wife by a husband is not a divorce, however if the wife takes advantage of the choice and decides for separation, then it will be considered one revocable divorce.

2053. It was narrated that 'Âishah said: "When the following was revealed: 'But if you desire Allâh and His Messenger,'^[1] the Messenger of Allâh ﷺ entered upon me and said: 'O 'Âishah! I want to say something to you, and you do not have to hasten (in making a decision) until you have consulted your parents.'"² She said: "He knew, by Allâh, that my parents would never tell me to leave him." She said: "Then he recited to me: 'O Prophet (Muhammad)! Say to your wives: 'If you desire the life of this world, and its glitter.'"^[2] I said: 'Do I need to consult my parents about this? I choose Allâh and His Messenger.'² (*Sahih*)

٢٠٥٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا عَبْدُ الرَّزَاقِ: أَبْنَائَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا نَزَّلَتْ: «وَلَئِنْ كُنْتُنَّ تُرِدْنَ اللَّهَ وَرَسُولَهُ» [الأحزاب: ٢٩] دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ فَقَالَ: «إِيَّاهُ عَائِشَةُ! إِنِّي ذَاكِرٌ لَكِ أَمْرًا. فَلَا عَلَيْكِ أَنْ لَا تَعْجَلِي فِيهِ حَتَّى تَسْتَأْمِرِي أَبْوَانِكَ قَالَتْ: قَدْ عَلِمْتُ وَاللَّهُ أَنَّ أَبْوَيَّ لَمْ يَكُونَا لِي أَمْرًا يُفَرَّقُهُ قَالَتْ: فَقَرَأَ عَلَيَّ: «إِنَّمَا الْمُؤْمِنَاتِ قُلْ لِإِذْنِكُنَّ يَكُنْ شُرِدْنَكَ الْحَيَاةَ الَّذِنِّيَا وَزِينَتَهَا» [الأحزاب: ٢٨] الْآيَاتِ. فَقَلَّتْ: فِي هَذَا أَسْتَأْمِرُ أَبْوَيَّ قَدْ اخْتَرْتَ اللَّهَ وَرَسُولَهُ.

تخریج: أخرجه البخاري، باب قوله: «إِنْ كُنْتُنَّ ترْدَنَ اللَّهَ وَرَسُولَهُ ...» الخ، ح: ٤٧٨٦ تعليقاً، ومسلم، الطلاق، الباب السابق، ح: ١٤٧٥ من حديث الزهرى به .

^[1] Al-Ahzâb 33:29.

^[2] Al-Ahzâb 33:28.

Comments:

- a. This *Hadith* signifies the virtue of 'Âishah ﷺ, that the Messenger of Allâh ﷺ conveyed Allâh's Message first of all to her.
- b. The Messenger of Allâh ﷺ did not want the Mother of the Believers to make any wrong or sentimental decision because of her young age, therefore, he instructed her to seek the consent of her parents.

Chapter 21. That *Khul'*^[1] Is Undesireble For The Women

2054. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "No woman asks for divorce when it is not absolutely necessary, but she will never smell the fragrance of Paradise, although its fragrance can be detected from a distance of forty years' travel." (*Hasan*)

(المعجم ٢١) - بَابُ كَرَاهِيَّةِ الْخُلُعِ
لِلنِّسَاءِ (التحفة ٢١)

٢٠٥٤ - حَدَّثَنَا يَكْرُزُ بْنُ خَلَفٍ، أَبُو يُشْرِ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ جَعْفَرٍ بْنِ يَحْيَى بْنِ ثَوْبَانَ، عَنْ عَمِّهِ عُمَارَةَ بْنِ ثَوْبَانَ، عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا تَسْأَلُ النِّسَاءَ رَزْوَجَهَا الطَّلاقَ فِي غَيْرِ كُنْهِهِ مَسِيرَةِ أَرْبَعينَ عَامًا».

تخریج: [حسن] وضفعه البصیری، والحدیث الاتی شاهد لبعضه * جعفر وعمارة جهلهما بعض العلماء، ووثقهما ابن حبان، والحاکم، والذہبی، انظر، ح: ١٩٧٧، والله أعلم.

2055. It was narrated from Thawbân that the Messenger of Allâh ﷺ said: "Any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of Paradise will be forbidden to her." (*Sahih*)

٢٠٥٥ - حَدَّثَنَا أَخْمَدُ بْنُ الْأَرْبَهِ: حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ، عَنْ حَمَادَ بْنِ زَيْدٍ، عَنْ أَيُوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي أَسْمَاءَ، عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّهَا الْمُرْأَةُ سَأَلْتَ رَزْوَجَهَا الطَّلاقَ فِي غَيْرِ مَا بَأْسِ، فَكَرِمْ عَلَيْهَا رَائِحةَ الْجَنَّةِ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في الخلع، ح: ٢٢٢٦ من حدیث حماد بن زید به، وحسنه الترمذی، ح: ١١٨٧، وصححه ابن حبان، والحاکم، والذہبی.

Comments:

- a. *Khul'* means that a woman returns all or some of the dowry to her husband

^[1] *Khul'* is a kind of annulment in which a wife seeks divorce from her husband by giving him a certain compensation, or returning back the *Mahr* (bridal-money) which he gave her.

- to get an annulment of the marriage. A husband is not allowed to demand all what he has spent on her, or to demand more than the fixed dowry.
- b. *Khul'* is legal if a woman does not want to live with her husband while the husband wants to live with her. If a person deliberately troubles his wife in order to force her to eventually demand a *Khul'*, then the husband is guilty of oppression.

Chapter 22. The Man Whose Wife (Seeks) *Khul'* Takes What He Had Given To Her

2056. It was narrated from Ibn 'Abbâs that Jamilah bint Salul came to the Prophet ﷺ and said: "By Allâh, I do not find any fault with Thâbit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him." The Prophet ﷺ said to her: "Will you give him back his garden?" She said: "Yes." So the Messenger of Allâh ﷺ told him to take back his garden from her and no more than that. (*Sahîh*)

تخریج: [صحيح] أخرجه البیهقی: ٣١٣ من حديث عبدالاعلى به، وقال: كذا رواه عبدالاعلى بن عبدالاعلى عن سعيد بن أبي عروبة موصولاً وأرسله غيره عنه ، أخرجه البخاري، ح: ٥٢٧٣: وغيره من حديث خالد عن عكرمة عن ابن عباس به نحو المعنى.

Comments:

- When a woman feels that she cannot live with her husband, and it will be hard for her to discharge matrimonial obligations, then she may ask for divorce.
- In this situation, if a husband divorces her without taking anything back, it is also correct, and it will be considered divorce but not *Khul'*.
- When a woman returns the whole dowry or some of it to separate from her husband, it is called *Khul'* and it is legal.

2057. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "Habibah bint Sahl was married to Thâbit bin Qais bin Shammâs, who was

(المعجم ٢٢) - باب المحتلة يأخذ ما أعطاه (التحفة ٢٢)

٢٠٥٦ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرْوَةَ، عَنْ قَتَادَةَ، عَنْ عَكْرِمَةَ، عَنْ أَبْنَى عَبَّاسِ أَنَّ جَمِيلَةَ بِنْتَ سَلْوَلِ أَتَتِ النَّبِيَّ ﷺ فَقَالَتْ: وَاللَّهِ مَا أَغْنِيْتُ عَلَيْ تَائِبَتِي فِي دِينِ وَلَا حَلْقِيُّ. وَلَكِنِي أَكْرَهُ الْكُفَّارَ فِي الْإِسْلَامِ. لَا أُطِيقُهُ بَعْضًا. فَقَالَ لَهَا النَّبِيُّ ﷺ: أَتَرْدِنَ عَلَيْهِ حَدِيقَتَهُ؟ قَالَتْ: نَعَمْ. فَأَمَرَهُ رَسُولُ اللَّهِ ﷺ أَنْ يَأْخُذَ مِنْهَا حَدِيقَتَهُ وَلَا يَرْدَادَهُ.

تخریج: [صحيح] أخرجه البیهقی: ٣١٣ من حديث عبدالاعلى عن سعيد بن أبي عروبة موصولاً وأرسله غيره عنه ، أخرجه البخاري، ح: ٥٢٧٣: وغيره من حديث خالد عن عكرمة عن ابن عباس به نحو المعنى.

٢٠٥٧ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو حَالِدُ الأَحْمَرُ عَنْ حَاجَاجَ، عَنْ عَمْرُو بْنِ شَعْبَيْنَ، عَنْ أَبِيهِ، عَنْ جَلْوَهُ قَالَ: كَانَتْ حَسِيْبَةَ بِنْتَ سَهْلٍ تَعْثَثَ تَائِبَتِي بْنِ قَيْسِ بْنِ شَمَّاسِ. وَكَانَ

an ugly man. She said: 'O Messenger of Allâh, by Allâh, were it not for fear of Allâh, when he enters upon me I would spit in his face.' The Messenger of Allâh ﷺ said: 'Will you give him back his garden?' She said: 'Yes.' So she gave him back his garden and the Messenger of Allâh ﷺ separated them.' (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أحمد: ٤/٣ من حديث الحجاج به، وقال البوصيري: هذا إسناد ضعیف لتدلیس الحجاج، وهو ابن أرطاء ، وانظر، ح: ٤٩٦، ١١٢٩.

Chapter 23. The Waiting Period Of A Woman Granted *Khul'*

2058. It was narrated from Ubâdah bin Sâmit from Rubai' bint Mu'awwidh bin 'Afrâ'. He said: "I said to her: 'Tell me your Hadith.' She said: 'I got *Khul'* from my husband, then I came to 'Uthmân and asked him: 'What waiting period do I have to observe?'" He said: "You do not have to observe any waiting period, unless you had intercourse with him recently, in which case you should stay with him until you have menstruated." In that he was following the ruling of the Messenger of Allâh ﷺ concerning Maryam Maghâliyyah, who was married to Thâbit bin Qais and she got *Khul'* from him.'" (*Hasan*)

تخریج: [إسناده حسن] أخرجه النسائي، الطلاق، عدة المختلعة، ح: ٣٥٢٨ من حديث يعقوب به.

Comments:

- Although *Khul'* is apparently like a divorce where a husband lets his wife go based upon her demand to do so, however, in real terms it is irrevocable

رجلاً دمیماً . فَقَالَتْ: يَا رَسُولَ اللَّهِ، وَاللَّهُ، لَوْلَا مَخَافَةَ اللَّهِ، إِذَا دَخَلَ عَلَيَّ، لَبَسَقْتُ نِي وَجْهِهِ . فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَتَرْدِينَ عَلَيْهِ حَدِيقَتَهُ؟» قَالَتْ: نَعَمْ . [قَالَ:، فَرَدَتْ عَلَيْهِ حَدِيقَتَهُ . قَالَ: فَفَرَقَ بَيْنَهُمَا رَسُولُ اللَّهِ ﷺ .

(المعجم ٢٣) - بَابُ عِدَّةِ الْمُخْتَلَعَةِ
(التحفة ٢٣)

٢٠٥٨ - حَدَّثَنَا عَلَيُّ بْنُ سَلَمَةَ التِّيسَابُورِيِّ : حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنُ سَعْدٍ : حَدَّثَنَا أَبِي عَنْ أَبْنِ إِسْحَاقَ: أَخْبَرَنِي عُبَادَةُ بْنُ الْوَلِيدِ بْنِ عُبَادَةَ أَبْنِ الصَّامِيتِ، عَنْ عُبَادَةَ بْنِ الصَّامِيتِ، عَنْ الرَّبِيعِ بْنِ مُؤَودَ بْنِ عَفَّاءَ قَالَ، قُلْتُ لَهَا: حَدَّثَنِي حَدِيقَتَكَ . قَالَتْ: اخْتَلَعْتُ مِنْ زَوْجِي . ثُمَّ جِئْتُ عُثْمَانَ . فَسَأَلَتْ: مَاذَا عَلَيَّ مِنِ الْعِدَّةِ؟ فَقَالَ: لَا عِدَّةَ عَلَيْكَ، إِلَّا أَنْ يَكُونَ حَدِيقَتَ عَهْدِ يَكِ، فَتَمْكِثُنِي عِنْهُ حَتَّى تَحِيطَنِي حِيَضَةً . قَالَتْ: وَإِنَّمَا تَبَعَ فِي ذَلِكَ قَضَاءَ رَسُولِ اللَّهِ ﷺ فِي مَرَّتِهِ الْمُعَالَةَ . وَكَانَتْ تَحْتَ ثَابِتَ بْنِ قَيْسِ، فَاخْتَلَعْتُ مِنْهُ .

separation; therefore its waiting period is not three menstruation periods, rather just the one menstruation cycle.

- b. Waiting for one menstruation period after *Khul'* is to verify that the womb is empty to confirm that she is not pregnant; and one menstruation cycle clarifies the position of pregnancy. If a menstruation cycle does not begin, then it could mean she is pregnant; in that case, she is not allowed to marry another man until delivery.

Chapter 24. Swearing To Forego Marital Relations With One's Wife

2059. It was narrated that 'Âishah said: "The Messenger of Allâh ﷺ swore that he would not enter upon his wives for a month, and he stayed for twenty-nine days until, on the eve of the thirtieth, he entered upon me. I said: 'You swore not to enter upon us for a month.' He said: 'The month may be like this,' and he held up his (ten) fingers three times; 'or the month may be like this,' and he held up his fingers three times, keeping one finger down on the third time." (*Hasan*)

(المعجم ٢٤) - باب الإيلاء (التحفة ٢٤)

٢٠٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الرِّجَالِ، عَنْ أَبِيهِ، عَنْ عُمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: أَقْسَمَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ لَا يَدْخُلَ عَلَى نِسَائِهِ شَهْرًا . فَكَتَبَ تِسْعَةَ وَعَشْرِينَ يَوْمًا . حَتَّى إِذَا كَانَ مَسَاءَ ثَلَاثَيْنَ، دَخَلَ عَلَيَّ . فَقَالَتْ: إِنَّكَ أَقْسَمْتَ أَنَّ لَا تَدْخُلَ عَلَيَّنَا شَهْرًا . قَالَ: «الشَّهْرُ كَذَا» يُرْسِلُ أَصْبَاغَهُ فِي ثَلَاثَ مَرَّاتٍ «وَالشَّهْرُ كَذَا» وَأَرْسِلُ أَصْبَاغَهُ كُلَّهَا، وَأَمْسِكْ إِضْبَاعًا وَاجْدَأْ فِي الثَّالِثَةِ .

تخریج: [إسناده حسن] أخرجه أحمد ٦/١٠٥ من حديث عبد الرحمن بن محمد بن عبد الرحمن بن أبي الرجال به، وقال البوصيري: إسناده حسن * عبد الرحمن بن أبي الرجال ثقة وثقة الجمهوري، ولم يطعن أحد في بحجه، والنقل عن أبي داود لا يثبت من أجل جهة الآجري . الرواى عنه ..

Comments:

- If a husband gets angry with his wife for a valid reason, and he swears by the Name of Allâh that he would not have sexual intercourse with her for sometime, it is allowed, and it is called *Iyla'*.
- The maximum period of *Iyla'* is four months. If he has sworn for an unspecified period, and the period of four months has come to end, she is allowed to sue him in court and the court would order him either to divorce her or to establish full matrimonial relations with her. (*Al-Baqarah*: 226 - 227)
- If a husband swore for four months, or for a period less than that, but still had intercourse with her before the end of the sworn period, then he would

have to pay expiation of oath; and there is no expiation if he stood by his oath until the sworn period, nor would any divorce occur.

2060. It was narrated from 'Âishah that the Messenger of Allâh ﷺ swore to keep away from his wives, because Zainab had sent back his gift and 'Âishah said: "She has disgraced you." He became angry and swore to keep away from them. (*Da'if*)

٢٠٦٠ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا يَحْيَى بْنُ زَكَرْيَةَ بْنُ أَبِي رَاهِدَةَ، عَنْ حَارِثَةَ ابْنِ مُحَمَّدٍ، عَنْ عُمَرَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ إِنَّمَا أَلَى، لِأَنَّ رَبِّتَ رَدَّتْ عَلَيْهِ هَدِيَتَهُ . فَقَالَتْ عَائِشَةُ: لَقَدْ أَفْعَلْتَكَ . فَغَضِبَ عَلَيْهِ . فَالَّى مِنْهُنَّ .

تخریج: [إسناده ضعیف] انظر، ح ٥٦: لعله.

2061. It was narrated from Umm Salamah that the Messenger of Allâh ﷺ swore to keep away from some of his wives for a month. On the twenty-ninth day, in the evening or the morning, it was said: "O Messenger of Allâh, only twenty-nine days have passed." He said: "The month is twenty-nine days." (*Sahih*)

٢٠٦١ - حَدَّثَنَا أَحْمَدُ بْنُ يُوسُفَ السَّلَمِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ أَبْنَ جُرَيْجٍ، عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ صَيْفِيَّ، عَنْ عِكْرَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَلَى مِنْ بَعْضِ نِسَائِهِ شَهْرًا . فَلَمَّا كَانَ تِسْعَةً وَعِشْرِينَ رَاحَ أَوْ غَدَّا . فَقَيلَ: يَا رَسُولَ اللَّهِ! إِنَّمَا مَضَى تِسْعَ وَعِشْرُونَ . فَقَالَ: الشَّهْرُ تِسْعَ وَعِشْرُونَ .

تخریج: أخرجه البخاري، الصوم، باب قول النبي ﷺ: إذا رأيتم الهلال فصوموا وإذا رأيتموه فأفطروا ، ح ١٩١٠، ٥٢٠٢، ١٩١٠: ومسلم، الصيام، باب الشهر يكون تسعًا وعشرين، ح ١٠٨٥ من حديث أبي عاصم الضحاك بن مخلد به.

Comments:

"The month is twenty-nine days" means that this month is twenty-nine days; if it was of thirty days I would stay away for one more day.

Chapter 25. *Zihâr*

(المعجم ٢٥) - بَابُ الظَّهَارِ (التحفة ٢٥)

2062. It was narrated that Salamah bin Sakhr Al-Bayâdi said: "I was a man who had a lot of desire for women, and I do not think there was any man who had as great a share of that as me. When Ramadân began, I declared

٢٠٦٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَىْ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ، عَنْ مُحَمَّدٍ بْنِ عَمْرُو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ ابْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرِ الْيَاضِيَّ . قَالَ: مُكْثَتُ امْرَأَةً أَكْثَرُهُ مِنَ النِّسَاءِ . لَا أَرَى

Zihâr upon my wife (to last) until Ramadân ended. While she was talking to me one night, part of her body became uncovered. I jumped on her and had intercourse with her. The next morning I went to my people and told them, and said to them: 'Ask the Messenger of Allâh ﷺ for me.' They said: 'We will not do that, lest Allâh reveal Qur'ân concerning us or the Messenger of Allâh ﷺ says something about us, and it will be a lasting source of disgrace for us. Rather we will leave you to deal with it yourself. Go yourself and tell the Messenger of Allâh ﷺ about your problem.' So I went out and when I came to him, I told him what happened. The Messenger of Allâh ﷺ said: 'Did you really do that?' I said: 'I really did that, and here I am, O Messenger of Allâh. I will bear Allâh's ruling on me with patience.' He said: 'Free a slave.' I said: 'By the One Who sent you with the truth, I do not own anything but myself.' He said: 'Fast for two consecutive months.' I said: 'O Messenger of Allâh, the thing that happened to me was only because of fasting.' He said: 'Then give charity, or feed sixty poor persons.' I said: 'By the One Who sent you with the truth, we spent last night with no dinner.' He said: 'Then go to the collector of charity of Banu Zuraiq, and tell him to give you something, then feed sixty poor persons, and benefit from the rest.'" (*Da'iif*)

رَجُلًا كَانَ يُصِيبُ مِنْ ذِلِكَ مَا أُصِيبُ. فَلَمَّا دَخَلَ رَمَضَانُ ظَاهِرُتْ مِنْ امْرَأَتِي حَتَّى يَسْلَخَ رَمَضَانُ. فَيَنِمَا هِيَ تُحَدِّثُنِي ذَاتَ لَيْلَةٍ انْكَشَفَ لِي مِنْهَا شَيْءٌ. فَوَبَيْتُ عَلَيْهَا فَوَاقَعْتُهَا. فَلَمَّا أَصْبَحْتُ غَدَوْتُ عَلَى قَوْمِيْ. فَأَخْبَرْتُهُمْ خَبَرِي. وَقُلْتُ لَهُمْ: سَلُوا لِي رَسُولَ اللَّهِ ﷺ. قَالُوا: مَا كُنَّا نَفْعَلُ. إِذَا يُنْزَلُ اللَّهُ فِينَا كِتَابًا، أَوْ يَكُونُ فِينَا مِنْ رَسُولِ اللَّهِ ﷺ قَوْلٌ، فَيَقِنُّ عَلَيْنَا عَارًةً، وَلِكُنْ سَوْفَ نُسْلِمُكَ بِجَرِيرَتِكَ. أَدْهَبَ أَنْتَ فَادْهُبْ شَانِكَ لِرَسُولِ اللَّهِ ﷺ. قَالَ: فَخَرَجْتُ حَتَّى جِئْتُهُ، فَأَخْبَرْتُهُ الْحَبْرَ. قَالَ رَسُولُ اللَّهِ ﷺ: «أَنْتَ بِذَكَرِكَ؟» فَقُلْتُ: أَنَا بِذَكَرِكَ وَهَا أَنَا، يَا رَسُولَ اللَّهِ صَابِرٌ لِحُكْمِ اللَّهِ عَلَيَّ. قَالَ: «فَأَغْيِنْ رَقَبَةً» قَالَ: قُلْتُ: وَالَّذِي بَعْنَكَ بِالْحَقِّ مَا أَصْبَحْتُ أَمْلِكٌ إِلَّا رَقَبَتِي هُنْدِي. قَالَ: «فَصُنْ شَهْرَيْنِ مُتَتَابِعِيْنِ» قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ وَهُلْ دَخَلَ عَلَيَّ مَا دَخَلَ مِنَ الْبَلَاءِ إِلَّا بِالصَّوْمِ؟ قَالَ: «فَتَصَدَّقَ [إِنَّ أَطْعُمْ سَيِّنَ مِسْكِينًا]» قَالَ: قُلْتُ: وَالَّذِي بَعْنَكَ بِالْحَقِّ لَقْدْ بَيْتَنَا لَيْتَنَا هُنْدِي، مَا لَنَا عَشَاءُ. قَالَ: «فَأَدْهَبْ إِلَى صَاحِبِ صَدَقَةٍ بَيْنِ زُرَبَيْنِ قَلْنَ لَهُ، فَلَيْدَقَهَا إِلَيْكَ. وَأَطْعُمْ سَيِّنَ مِسْكِينًا. وَانْتَفِعْ بِيَسِّرِهَا».

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب: فی الظہار، ح: ۲۲۱۳ وغیره من حديث ابن إسحاق به، وحسنه الترمذی، ح: ۱۲۰۰، وصححه الحاکم على شرط مسلم: ۲/ ۲۰۳، ووافقه الذهنی، وقال البخاری: سليمان لم يسمع عندي من سلامة * وابن إسحاق عنعن تقدم، ح: ۱۲۰۹، وله شاهد مقطع عند الترمذی وغيره.

Comments:

- Zihâr* is that a person says to his wife, 'you are for me just like the back of my mother', which means 'you are unlawful for me just like relations with my mother are unlawful for me.'
- Doing *Zihâr* is a sin but it does not break the marriage bond. In *Zihâr* only sexual intercourse is forbidden until the expiation is made.
- There is no expiation to be made if *Zihâr* is acted upon for a fixed period and matrimonial relations do not occur during it.
- If the time limit for *Zihâr* is not specified, then expiation should be made before having intercourse.

2063. It was narrated from 'Urwah bin Zubair, that 'Âishah said: "Blessed is the One Whose hearing encompasses all things. I heard some of the words of Khawlah bint Thâ'labah, but some of her words were not clear to me, when she complained to the Messenger of Allâh ﷺ about her husband, and said: 'O Messenger of Allâh, he has consumed my youth and I split my belly for him (i.e., bore him many children), but when I grew old and could no longer bear children, he declared *Zihâr* upon me; O Allâh, I complain to You.' She continued to complain until Jibra'il brought down these Verses: 'Indeed Allâh has heard the statement of she who pleads with you (O Muhammad) concerning her husband, and complains to Allâh.'"^[1] (*Sahîh*)

٢٠٦٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عَيْدَةَ: حَدَّثَنَا أَبِي عَنِ الْأَعْمَشِ، عَنْ ثَمِيرِ بْنِ سَلَمَةَ، عَنْ عُرْوَةَ بْنِ الرَّبِيعِ قَالَ: قَالَتْ عَائِشَةُ: تَبَارَكَ الَّذِي وَسَعَ سَمْعَهُ كُلَّ شَيْءٍ. إِنِّي لَا سَمِعْ كَلَامَ خَوْلَةَ بِنْتِ تَعْلَبَةَ، وَيَخْفِي عَائِي بَعْضَهُ، وَهِيَ تَشْتَكِي زَوْجَهَا إِلَى رَسُولِ اللَّهِ ﷺ. وَهِيَ تَقُولُ: يَا رَسُولَ اللَّهِ! أَكَلَ شَبَابِي. وَشَرَثَ لَهُ بَطْنِي. حَتَّى إِذَا كَبِرَتْ سِنِّي، وَانْقَطَعَ وَلَدِي، ظَاهَرَ مِنِّي. اللَّهُمَّ إِنِّي أَشْكُو إِلَيْكَ. فَمَا بَرَحَتْ حَتَّى نَزَلَ جِبْرِيلٌ بِهُؤُلَاءِ الْآيَاتِ: «قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي بَعْدَلَكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَيْكَ اللَّهُ» [المجادلة: ۱].

تخریج: [صحيح] تقدم، ح: ۱۸۸.

^[1] Al-Mujâdilah 58:1.

Comments:

- Allâh ﷺ has the Attribute of Hearing, and His Hearing is not limited like His creatures, rather it is limitless.
- Khawlah ﷺ made mention of her old age, that had she been young, it would have been easier for her to marry another person; or someone would marry her because of her young age with the hope of bearing children from her and thus looking after the children would become easier for her.

Chapter 26. A Man Who Declared Zihâr Upon His Wife, Having Intercourse With Her Before Offering Expiation

2064. It was narrated from Salamah bin Sakhr Al-Bayâdi that the Prophet ﷺ said concerning a man who declared Zihâr upon his wife having intercourse with her before compensation: "Let him offer one expiation." (*Da'if*)

(المعجم ٢٦) - بَابُ الْمُظَاهِرِ يُجَامِعُ
قَبْلَ أَنْ يُكَفَّرَ (التحفة ٢٦)

٢٠٦٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ،
عَنْ مُحَمَّدٍ بْنِ عَمْرُو بْنِ عَطَاءَ، عَنْ سُلَيْمَانَ
ابْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرِ الْيَاضِيِّ، عَنْ
النَّبِيِّ ﷺ، فِي الْمُظَاهِرِ يُوَافِعُ قَبْلَ أَنْ يُكَفَّرَ.
قَالَ: «كُفَّارَةً وَاحِدَةً».

تخریج: [ضعیف] انظر، ح: ٢٠٦٢.

٢٠٦٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ يَرِيدَ: قَالَ:
حَدَّثَنَا عُنَيْدَرٌ: حَدَّثَنَا مَعْمَرٌ عَنِ الْحَكَمِ بْنِ
أَبْيَانٍ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا
ظَاهَرَ مِنْ امْرَأَتِهِ، فَعَشَّيْهَا قَبْلَ أَنْ يُكَفَّرَ. فَأَتَى
النَّبِيِّ ﷺ، فَذَكَرَ ذَلِكَ لَهُ. قَالَ: «مَا حَمَلْتَ
عَلَى ذَلِكَ؟» فَقَالَ: يَا رَسُولَ اللَّهِ! رَأَيْتُ
بِيَاضَ حَجَلَيْهَا فِي الْقَمَرِ، فَلَمْ أَمْلِكْ نَفْسِي
أَنْ وَقَعْتُ عَلَيْهَا. فَضَحِّكَ رَسُولُ اللَّهِ ﷺ
وَأَمْرَهُ أَلَا يُقْرَبَهَا حَتَّى يُكَفَّرَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢٥، من
حديث معمر به، وصححه الترمذى، ح: ١١٩٩.

2065. It was narrated from Ibn 'Abbâs that a man declared Zihâr upon his wife, then he had intercourse with her before offering expiation. He came to the Prophet ﷺ and told him about that. He said: "What made you do that?" He said: "I saw her ankles in the moonlight, and I could not control myself, and I had intercourse with her." The Messenger of Allâh ﷺ smiled and told him not to go near her until he had offered expiation. (*Hasan*)

Comments:

- A person who has done Zihâr should keep away from his wife until the expiation is performed.

b. If he has had intercourse mistakenly before making expiation, then he would not have to make two expiations; and just one expiation is enough, and he should beg Allâh's pardon and seek forgiveness.

Chapter 27. The *Li'ân*^[1]

2066. It was narrated that Sahl bin Sa'd As-Sâ'idi said: "Uwaimir came to 'Âsim bin 'Adi and said: 'Ask the Messenger of Allâh ﷺ for me: "Do you think that if a man finds another man with his wife and kills him, he should be killed in retaliation, or what should he do?"' 'Âsim asked the Messenger of Allâh ﷺ about that, and the Messenger of Allâh ﷺ disapproved of the question. Then 'Uwaimir met him ('Âsim) and asked him about that, saying: 'What did you do?' He said: 'I did that and you have not brought me any good. I asked the Messenger of Allâh ﷺ and he disapproved of this question.' 'Uwaimir said: 'By Allâh, I will go to the Messenger of Allâh ﷺ myself and ask him.' So he went to the Messenger of Allâh ﷺ and found that Qur'ân had been revealed concerning them, and the Prophet ﷺ told them to go through the procedure of *Li'ân*. 'Uwaimir said: 'O Messenger of Allâh, by Allâh if I take her back, I would have been telling lies about her.' So he left her before the Messenger of Allâh ﷺ told him to do so, and that became the Sunnah for two who engage in the

(المعجم ٢٧) - بَابُ الْلِّعَانِ (التحفة ٢٧)

٢٠٦٦ - حَدَّثَنَا أَبُو مَرْوَانَ، مُحَمَّدُ بْنُ عُثْمَانَ
الْعُمَانيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنْ أَبْنِ
شَهَابٍ، عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ:
جَاءَ عُوَيْمَرٌ إِلَى عَاصِمٍ بْنِ عَدِيٍّ، فَقَالَ: سَلْ
لِي رَسُولَ اللَّهِ ﷺ: أَرَأَيْتَ رَجُلًا وَجَدَ مَعَ
إِمْرَأَهُ رَجُلًا فَقَتَلَهُ، أَيْقُلُ بِهِ؟ أَمْ كَيْفَ
يَصْنَعُ؟ فَسَأَلَ عَاصِمٌ رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ
فَعَابَ رَسُولُ اللَّهِ ﷺ الْمَسَائِلَ. ثُمَّ لَقِيَ
عُوَيْمَرٌ فَسَأَلَهُ، فَقَالَ: مَا صَنَعْتَ؟ [فَقَالَ:
صَنَعْتُ] أَنَّكَ لَمْ تَأْتِنِي بِخَيْرٍ. سَأَلَ رَسُولَ
اللَّهِ ﷺ فَعَابَ الْمَسَائِلَ. فَقَالَ عُوَيْمَرٌ: وَاللَّهِ!
لَا يَئِنَّ رَسُولُ اللَّهِ ﷺ وَلَا شَانَةَ. فَأَتَى رَسُولَ
اللَّهِ ﷺ فَوَجَدَهُ قَدْ أُنْزِلَ عَلَيْهِ فِيهِمَا. فَلَأْعَنَ
بِيهِمَا. فَقَالَ عُوَيْمَرٌ: وَاللَّهِ لَيْنَ انْطَلَقْتُ بِهَا
يَا رَسُولَ اللَّهِ كَذَبْتُ عَلَيْهَا. قَالَ: فَقَارَفَهَا
قَبْلَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ ﷺ. فَصَارَتْ سُنَّةً
فِي الْمُتَلَاقِعَيْنِ. ثُمَّ قَالَ النَّبِيُّ ﷺ:
«اَنْظُرُوهَا». فَإِنْ جَاءَتْ بِهِ أَسْحَمٌ، اذْعَجَ
الْعَيْنَيْنِ، عَظِيمَ الْأَلَيْنَيْنِ، فَلَا أَرَأَهُ إِلَّا قَدْ
صَدَقَ عَلَيْهَا. فَإِنْ جَاءَتْ بِهِ أَحْيَمَ كَانَهُ
وَحْرَةً، فَلَا أَرَأَهُ إِلَّا كَانِيْنَا» قَالَ: فَجَاءَتْ بِهِ
عَلَى التَّغْتِ الْمُكْرُوْهِ.

[1] An oath which is taken by both the wife and the husband when he accuses his wife of committing illegal sexual intercourse. See *Surat An-Nur* (24:6-9).

procedure of *Li'ân*. Then the Prophet ﷺ said: 'Wait and see. If she gives birth to a child who is black in color with widely-spaced dark eyes and large buttocks, then I think that he was telling the truth about her, but if she gives birth to a child with a red complexion like a *Wahrah*,^[1] then I think that he was lying.' Then she gave birth to a child with features resembling those of the man concerning whom she was accused." (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، من جوز الطلاق الثالث لقول الله تعالى: ﴿الطلاق مرتان...﴾ إلخ ، ح: ٥٢٥٩ وغيره، ومسلم، كتاب اللعان، ح: ١٤٩٢ من حديث ابن شهاب الزهري به.

Comments:

- The characteristic of self-esteem in a man is a good quality, but killing someone because of self-esteem is illegal. If one has strong doubt in the character of one's wife, then one should divorce her.
- The Messenger of Allâh ﷺ disliked this question, because according to his knowledge, this type of incident had not happened, and it was impossible to inflict punishment based purely on doubt.
- If a husband accuses his wife of committing adultery, then the woman should be questioned, and if she admits to it, she should be stoned, and the husband will not be entitled to any punishment. Likewise, if four witnesses bear witness against her, then this woman and her fornicator mate will deserve punishment.
- If a woman does not admit her sexual offence, then the man should be told that the accusation is a crime and should be asked to repent. If he admits that he accused her wrongly, then he will be inflicted with the punishment of accusation, which is eighty lashes, and the woman will have no punishment.

2067. It was narrated from Ibn 'Abbâs that Hilâl bin Umayyah accused his wife in the presence of the Prophet ﷺ of (committing adultery) with Sharik bin Sahmâ'. The Prophet ﷺ said: "Bring proof

٢٠٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ. قَالَ: أَتَبَأَنَا هَشَامُ بْنُ حَسَّانَ: حَدَّثَنَا عَرْكِمَةُ عَنْ ابْنِ عَبَّاسٍ أَنَّ هَلَائِنَ بْنَ أُمَيَّةَ قَدَّفَ امْرَأَةً عِنْدَ النَّبِيِّ ﷺ بِشَرِيكٍ بْنِ

[1] They say it is a kind of gecko (lizard) or small red crawling animal or reptile.

or you will feel the *Hadd* (punishment) on your back.” Hilâl bin Umayyah said: “By the One Who sent you with the truth, I am telling the truth, and Allâh will send down revelation concerning my situation which will spare my back.” Then the following was revealed: “And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e., testifies four times) by Allâh that he is one of those who speak the truth. And the fifth (testimony should be) the invoking of the curse of Allâh on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allâh, that he (her husband) is telling a lie. And the fifth (testimony) should be that the wrath of Allâh be upon her if he (her husband) speaks the truth.”^[1] The Prophet ﷺ turned and sent for them, and they came. Hilâl bin Umayyah stood up and bore witness, and the Prophet ﷺ said: “Allâh knows that one of you is lying. Will either of you repent?” Then she stood up and affirmed her innocence. On the fifth time, meaning that the wrath of Allâh be upon her if he (her husband) speaks the truth, they said to her: “It will invoke the wrath of Allâh.” Ibn ‘Abbâs said:

سَحْمَاءٌ. قَالَ النَّبِيُّ ﷺ: «الْبَيْتَةُ أَوْحَدُ فِي ظَهْرِكَ» قَالَ هِلَالٌ بْنُ أُمَيَّةَ: وَالَّذِي بَعْدَهُ بِالْحَقِّ إِنِّي لصَادِقٌ. وَلَيَنْزَلَنَّ اللَّهُ فِي أُمْرِي مَا يُبَرِّئُنِي ظَهْرِي. قَالَ: فَنَزَّلَتْ «وَالَّذِينَ يَرْجُونَ أَرْوَاحَهُمْ وَلَا يَكُنْ لَّهُ شَهِيدٌ إِلَّا أَنْفَسُهُمْ» حَسَنٌ بْلَغَ: «وَالنَّوْسَةُ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ» [النور: ٩-٦] فَانْصَرَفَ النَّبِيُّ ﷺ. فَأَرْسَلَ إِلَيْهَا فَجَاءَهُ. قَالَ هِلَالٌ بْنُ أُمَيَّةَ فَشَهَدَ، وَالنَّبِيُّ ﷺ يَقُولُ: «إِنَّ اللَّهَ يَعْلَمُ أَنَّ أَخْدَكُمَا كَاذِبٌ. فَهُنَّ مِنْ تَائِبٍ؟» ثُمَّ قَامَتْ فَشَهَدَتْ. فَلَمَّا كَانَ عِنْدَ الْحَامِسَةِ: «أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ» قَالُوا لَهَا: إِنَّهَا لِمُوجِبَةٍ. قَالَ ابْنُ عَبَّاسٍ: فَتَلَّكَاثَ وَلَكَصَتْ. حَتَّىٰ ظَنَّتَا أَنَّهَا سَرَّاجٌ. قَالَتْ: وَاللَّهِ لَا أَفْضُحُ قَوْمِي سَائِرَ الْيَوْمِ. قَالَ النَّبِيُّ ﷺ: «اَنْظُرُوهَا». فَإِنْ جَاءَتْ بِهِ أَكْحَلَ الْعَيْنَيْنِ، سَاعِيَ الْأَلْيَيْنِ، خَدَلَّ السَّائِيْنِ، فَهُوَ لِشَرِيكِ بْنِ سَحْمَاءِ». فَجَاءَتْ بِهِ كَذَلِكَ. قَالَ النَّبِيُّ ﷺ: «الْوَلَا مَا مَضَى مِنْ كِتَابٍ اللَّهُ لَكَانَ لِي وَلَهَا شَانٌ».

[1] *An-Nur* 24:6-9.

"She hesitated and backed up, until we thought that she was going to recant. Then she said: 'By Allâh, I cannot dishonor my people for ever.' Then the Prophet ﷺ said: 'Wait and see. If she gives birth to a child with black eyes, fleshy buttocks and big calves, then he is the son of Sharik bin Sahmâ'.' And she gave birth to such a child. Then the Prophet ﷺ said: 'Had not the matter been settled by the Book of Allâh, I would have punished her severely.'" (*Sahih*)

تخریج: أخرجه البخاري، الشهادات، باب: إذا ادعى أو قدف فله أن يلتمس البينة وينظر
لطلب البينة، ح: ٢٦٧١، ٤٧٤٧، ٥٣٠٧، وأبو داود، ح: ٢٢٥٤، والترمذني، ح: ٣١٧٩ كلهم عن
محمد بن بشار به.

Comments:

- Hilâl bin Umayyah ﷺ trusted Allâh, and left his matter with Allâh, and Allâh cleared him.
- The wording of the fifth witnessing is different than the first four; which is to awaken the conscious that whoever is in the wrong from the two parties should admit their mistake, and should accept a worldly punishment in order to escape the punishment of the Hereafter.
- The statement of Allâh's Messenger ﷺ: 'Had not the matter been settled by the Book of Allâh, I would have punished her severely' means the crime of the woman was certain, but to inflict punishment after *Li'an* (having invoked the curse) was not allowed, so he ﷺ let her go, otherwise she would have had to be stoned.

2068. It was narrated that 'Abdullâh said: "We were in the mosque one Friday night when a man said: 'If a man finds a man with his wife and kills him, will you kill him, and if he speaks,^[1] will you flog him. By Allâh I will mention that to the Prophet ﷺ.'

٢٠٦٨ - حَدَّثَنَا أَبُو بَكْرُ بْنُ خَلَادَ الْبَاهْلِيُّ .
وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنُ حَيْبٍ . قَالَ :
حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ ، عَنْ الأَعْمَشِ ، عَنْ
إِبْرَاهِيمَ ، عَنْ عَلْقَمَةَ ، عَنْ عَبْدِ اللَّهِ قَالَ : كُنَّا
فِي الْمَسْجِدِ لِيَلَةَ الْجُمُعَةِ . قَاتَلَ رَجُلٌ : لَوْ أَنَّ

^[1] Meaning he accuses her.

So he mentioned that to the Prophet ﷺ, and Allâh revealed the Verses of *Li'ân*. Then after that the man came and accused his wife, so the Prophet ﷺ told them to go through the procedure of *Li'ân* and he said: 'Perhaps she will give birth to a black child.' Then she gave birth to a black child with curly hair." (*Sahih*)

رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا فَقَتَلَهُ فَتَبَوَّءَهُ.
وَإِنْ تَكُلَّمْ جَلَدُتُمُوهُ. وَاللَّهُ لَا يُدْكِرُنَّ ذَلِكَ لِلشَّيْءِ
فَذَكَرَهُ لِلشَّيْءِ. فَأَنْزَلَ اللَّهُ آيَاتِ
الْعَانِ. ثُمَّ جَاءَ الرَّجُلُ بَعْدَ ذَلِكَ يُقْدِفُ
امْرَأَتَهُ. فَلَأَعْنَ الشَّيْءِ يَسِّهِمَا. وَقَالَ:
عَسَى أَنْ تَعْجِي بِهِ أَسْوَدًا فَجَاءَتْ بِهِ أَسْوَدًا،
جَعْدًا.

تخریج: أخرجه مسلم، كتاب اللعان، ح: ١٤٩٥ من حديث الأعمش به.

Comments:

This incident most probably is the same as the one mentioned in the previous *Hadîth*. It seems as if he had doubt in his wife's character but he did not see that she had committed the offense with his own eyes. As he saw with his own eyes, Allâh then revealed the Verses of the Qur'ân about invoking curses.

2069. It was narrated from Ibn 'Umar that a man invoked curses on his wife, and refused to accept her child. The Messenger of Allâh ﷺ separated them, and left the child with the woman. (*Sahîh*)

٢٠٦٩ - حَدَّثَنَا أَحْمَدُ بْنُ سَيَّانٍ: حَدَّثَنَا عَبْدُ
الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ مَالِكِ بْنِ أَنَسٍ، عَنْ
نَافِعٍ، عَنْ أَبْنِ عُمَرَ أَنَّ رَجُلًا لَأَعْنَ امْرَأَةَ
وَأَنْهَى مِنْ وَلِيْهَا. فَنَرَقَ رَسُولُ اللَّهِ
يَسِّهِمَا. وَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ.

تخریج: أخرجه البخاري، الطلاق، باب: يلحق الولد بالملائنة، ح: ٦٧٤٨، ٥٣١٥،
ومسلم، كتاب اللعان، ح: ١٤٩٤ من حديث مالك به.

Comments:

- Li'ân* (invoking curses) is an irrevocable separation, after which a man (who invokes curses) can never remarry the woman.
- The child of a woman involved in invoking the curse will not be a part of the lineage of the husband who invokes the curse, and also the child will not be an heir of that man. However, the woman is doubtlessly the mother of the child. Therefore the child will be the heir of the mother, and other maternal relatives, and they will be the child's heir.

2070. It was narrated that Ibn 'Abbâs said: "A man from among the *Ansâr* married a woman from Bal'ijlân. He entered upon her and

٢٠٧٠ - حَدَّثَنَا عَلَيُّ بْنُ سَلَمَةَ التَّيْسَابُورِيِّ:
حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنُ سَعْدٍ: حَدَّثَنَا
أَبِي عَنْ أَبْنِ إِسْحَاقَ. قَالَ: ذَكَرَ طَلَحَةُ بْنُ

spent the night with her, then in the morning he said: 'I did not find her to be a virgin.' Her case was taken to the Prophet ﷺ, and he called the girl and asked her. She said: 'No, I was a virgin.' So he told them to go through the procedure of *Li'ân*, and gave her the bridal-money." (*Da'iif*)

نافع، عن سعيد بن حبيب، عن ابن عباس
قال: ترَوْجَ رَجُلٌ مِّن الْأَنْصَارِ امْرَأَةً مِّنْ
بَلْعَجَلَانَ. فَدَخَلَ بِهَا. فَبَاتَ عِنْدَهَا. فَلَمَّا
أَضْبَحَ قَالَ: مَا وَجَدْنَاهَا عَذْرَاءً. فَرَفِعَ شَانِهَا
إِلَى النَّيْرِ بَلْعَجَلَانَ. فَدَعَا الْجَارِيَةَ فَسَأَلَهَا.
قَالَتْ: بَلَى. فَقَدْ ثُنِتْ عَذْرَاءً. فَأَمْرَرَ بِهَا
فَتَلَاعَنَاهَا الْمَهْرَ.

تخریج: [إسناده ضعیف] أخرجه أحمد: ٢٦١ / ١ عن يعقوب بن إبراهيم به، وقال
البوصيري: في إسناده ضعف لتلليس محمد بن إسحاق ، وانظر، ح: ١٢٠٩ .

2071. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "There are four kinds of women for whom there is no *Li'ân*: a Christian woman married to a Muslim, a Jewish woman married to a Muslim, a free woman married to a slave, and a slave woman married to a free man." (*Da'iif*)

٢٠٧١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا
حَيْوَةُ بْنُ شَرْبِيعِ الْحَضْرَمِيِّ، عَنْ ضَمْرَةَ بْنِ
رَبِيعَةَ، عَنْ أَبِي عَطَاءَ، عَنْ أَبِيهِ، عَنْ عَمْرُو
أَبْنِ شَعِيبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّيْرَ بَلْعَجَلَانَ
قَالَ: «أَرْبَعٌ مِّنَ النِّسَاءِ. لَا مُلَاعَةَ بَيْتَهُنَّ:
النَّصَارَى تَحْتَ الْمُسْلِمِ. وَالْيَهُودَى تَحْتَ
الْمُسْلِمِ. وَالْحُرَّةُ تَحْتَ الْمَمْلُوكِ. وَالْمَمْلُوكُ
تَحْتَ الْحُرُّ». .

تخریج: [إسناده ضعیف جداً] أخرجه الدارقطني: ١٦٤، ١٦٣ / ٣ من حديث ضمرة به،
وقال: وهذا عثمان بن عطاء الخراشاني وهو ضعيف الحديث جداً ، وتابعه يزيد بن بزيع (ويقال:
نزير) الرملاني وهو من الدجاجلة كما قال الدارقطني رحمة الله، وروى موقفاً بإسناد ضعيف، والله
أعلم.

Chapter 28. Declaring A Woman As Unlawful For Oneself

(المعجم ٢٨) - بَابُ الْحَرَامِ (التحفة ٢٨)

2072. It was narrated that 'Âishah said: "The Messenger of Allâh ﷺ swore to keep away from his wives and declared them as unlawful for him, so he made something permissible forbidden,

٢٠٧٢ - حَدَّثَنَا الْحَسَنُ بْنُ فَزْعَةَ: حَدَّثَنَا
مَسْلِمَةُ بْنُ عَلْقَمَةَ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ،
عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ:
إِلَى رَسُولِ اللَّهِ بَلْعَجَلَانَ مِنْ نِسَاءِهِ. وَ حَرَمَ فَجَعَلَ

and he offered expiation for having sworn to do so." (*Da'iif*)

الحلال حراماً. وَجَعَلَ فِي الْتَّمِينِ كَفَارَةً.

تخریج: [إسناده ضعیف] أخرجه الترمذی، الطلاق، باب ماجاء في الإماء، ح: ١٢٠١ عن الحسن بن قرعة به * مسلمة صدوق لكنه روى عن داود بن أبي هند أحادیث مناکیر، عند الجمهور، وخالفه علي بن مسهر(ثقة) وغيره، فرووه عن داود عن الشعیی به مرسلاً، وهو المحفوظ.

Comments:

The Statement of Allâh Almighty with respect to oath is: "Its expiation is to feed ten poor persons, on a scale of that with which you would feed your own families, or to clothe them, or to set free a slave. But whosoever cannot afford (that), then he should fast for three days." (*Al-Mâ'idah: 89*).

2073. It was narrated from Sa'eed bin Jubair that Ibn 'Abbâs said: "For the one who makes unlawful is the swearing."^[1] (*Sahîh*)

And Ibn 'Abbâs used to say: "You had the best example in the Messenger of Allâh."^[2]

٢٠٧٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا وَهُبَّ بْنُ جَبَرٍ: حَدَّثَنَا هِشَامُ الدَّسْتُوَائِيُّ عَنْ يَحْيَىٰ بْنِ أَبِي كَثِيرٍ، عَنْ يَعْلَىٰ بْنِ حَكِيمٍ، عَنْ سَعِيدِ بْنِ جُبَيرٍ قَالَ: قَالَ أَبْنُ عَبَّاسٍ: فِي الْحَرَامِ يَوْمَيْنِ.

وَكَانَ أَبْنُ عَبَّاسٍ يَقُولُ: لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أَشْوَةُ حَسَنَةٍ.

تخریج: أخرجه البخاری، التفسیر، (سورة التحریم)، باب يابها النبي لم تحرم ما أحل الله لك ، ح: ٤٩١١، ومسلم، الطلاق، باب وجوب الكفارة على من حرم امرأته ولم ينو الطلاق، ح: ١٤٧٣ من حدیث هشام الدستوایی به .

Comments:

The statement of Abdullâh bin Abbâs ﷺ is that if one declares something that is lawful as unlawful, he should carry out the expiation of it (as an expiation of oath). The same narration is mentioned in *Sahîh Al-Bukhâri* with the following wording: Narrated from Sa'eed bin Jubair ﷺ that Ibn Abbâs ﷺ said with regard to making things unlawful: "He must make an expiation."

Chapter 29. Giving A Slave Woman The Choice When She Is Freed

2074. It was narrated from

(المعجم ٢٩) - بَابُ حِيَارِ الْأَمَةِ إِذَا

أُعْنِقَتْ (الصفحة ٢٩)

٢٠٧٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

^[1] That is, in the case of who makes his wife unlawful for himself, he is to atone the same as the one who had to atone for swearing about something. See *Sahîh Al-Bukhâri*, no. 4911.

^[2] *Al-Ahzâb* 33:21.

'Âishah that she freed Barirah and the Messenger of Allâh ﷺ gave her the choice, and she (Barirah) had a free husband. (*Da'if*)

حَفْصُ بْنُ غِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَى، عَنْ عَائِشَةَ أَنَّهَا أَعْتَقَتْ بَرِيرَةً. فَخَيَّرَهَا رَسُولُ اللَّهِ ﷺ. وَكَانَ لَهَا زَوْجٌ حُرٌّ.

تغرييغ: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب من قال كان حرّاً، ح: ٢٢٣٥، والترمذني، والنمسائي، وابن ماجه من حديث إبراهيم به، وقال الترمذني: حسن صحيح قلت: إبراهيم التخلي يدلّس كما قال الحاكم وغيره، ولم أجده تصريحاً سماه، وذكر ابن حبان هذا الحديث في صحيحه (الإحسان)، ح: ٤٢٥٧، ولكن قال: وإن الأسود واهم في قوله: كان حرّاً، ولو ثبت هذا الحديث عن الأسود لكان ضعيفاً لمخالفة جمع كثير من الرواية والعدد الكبير أولى بالحفظ من الواحد، تنبية: قوله وكان لها زوج حر من قول الأسود رحمة الله، كما في روایة أبي عوانة عن منصور، عند البخاري وغيره.

Comments:

Shaikh Albâni رَضِيَ اللَّهُ تَعَالَى عَنْهُ أَعْلَمُ بِهِ said, "It is untrue in this narration that her husband was a free man; the truth is that he was a slave, as comes in the following two narrations."

2075. It was narrated that Ibn 'Abbâs said: "The husband of Barirah was a slave called Mughith. It is as if I can see him now, walking behind her and weeping, with tears running down his cheeks. The Prophet ﷺ said to 'Abbâs: 'O 'Abbâs, are you not amazed by the love of Mughith for Barirah, and the hatred of Barirah for Mughith?' And the Prophet ﷺ said to her: 'Why don't you take him back, for he is the father of your child?' She said: 'O Messenger of Allâh, are you commanding me (to do so)?' He said: 'No, rather I am interceding.' She said: 'I have no need of him.'" (*Sahîh*)

٢٠٧٥ - حَدَّثَنَا مُحَمَّدُ بْنُ أَنْثَى، وَمُحَمَّدُ ابْنُ خَلَادِ الْبَاهِلِيُّ. قَالَ: حَدَّثَنَا عَبْدُ الْوَهَابِ التَّقِيُّ: حَدَّثَنَا خَالِدُ الْحَدَادُ عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ رَوْجُ بَرِيرَةَ عَبْدًا يَقَالُ لَهُ مُغِيثٌ. كَانَيْنِي أَنْظَرُ إِلَيْهِ يَطْعُوفُ خَلْفَهَا وَيَتَكَبُّ. وَدُمُوعُهُ تَسِيلُ عَلَى خَدَوْهُ. فَقَالَ الرَّبِيعُ لِلْعَبَّاسِ: «يَا عَبَّاسُ! أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثٍ لِبَرِيرَةَ، وَمِنْ بُعْضِ بَرِيرَةِ مُغِيثًا؟» قَالَ لَهَا النَّبِيُّ ﷺ: «لَوْ رَأَجْعَنِيهِ، فَإِنَّهُ أَبُو وَلَدِكَ» قَالَتْ: يَا رَسُولَ اللَّهِ! تَأْمُرُنِي؟ قَالَ: «إِنَّمَا أَشْفَعُ» قَالَتْ: لَا حَاجَةَ لِي فِيهِ.

تغرييغ: أخرجه البخاري، الطلاق، باب شفاعة النبي ﷺ في زوج بريرة، ح: ٥٢٨٣ من حديث عبد الوهاب التقفي به.

Comments:

- If husband and wife both are slaves; and the wife is set free, she has the choice to live with her husband or to separate from him.
- The decision of separation will break the marriage contract, but they are allowed to reunite after remarriage. Allâh's Messenger ﷺ advised Barirah to go back to her husband, which was an advice to remarry.
- If the husband is set free before the wife, then the wife does not have a choice of separation.

2076. It was narrated that 'Aishah said: "Three *Sunan* were established because of Barirah: She was given the choice (of whether to remain married) when she was freed, and her husband was a slave; they used to give her charity and she used to give it as a gift to the Prophet ﷺ, and he would say: 'It is charity for her and a gift for us,' and he said, the '*Walâ'* is for the one who set the slave free."

(*Sahih*)

٢٠٧٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبِيعُ عَنْ أَنَسَةَ بْنِ رَبِيعٍ، عَنْ الْفَالِقِيْمَ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: مَضَى فِي بَرِيرَةَ ثَلَاثَ سِنِّينَ: خَيْرَتْ حِينَ أَعْيَثْتْ. وَكَانَ رَوْجَهَا مَمْلُوكًا. وَكَانُوا يَتَصَدَّقُونَ عَلَيْهَا فَتَهْمِي إِلَى النَّبِيِّ ﷺ فَيَقُولُ: «هُوَ عَلَيْهَا صَدَقَةٌ، وَهُوَ لَنَا هَدِيَّةٌ» وَقَالَ: «الْأُلَوَاءُ لِمَنْ أَعْنَى».

تخریج: [صحیح] أخرجه أحمد: ٢٠٧/٦ عن وکیع به مختصرًا، وإنستاده حسن، وللحديث طرق كثيرة عند البخاري، ومسلم وغيرهما.

Comments:

- The right of ownership changes the status of an object. If a poor person gets something in charity, and he offers it to a rich person as a present, or a rich person buys it from him, it will not have the status of charity for the rich person.
- Walâ'* is a relation between the emancipator and the emancipated slave which is established due to emancipation. Due to this relation, an emancipated slave is considered the member of the emancipator's family. If the emancipated slave leaves no heir, then the emancipator will be the heir which is called the right of *Walâ'*.

2077. It was narrated that 'Aishah said: "Barirah was told to observe the waiting period for three menstrual cycles." (*Hasan*)

٢٠٧٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبِيعُ عَنْ سَقِيَانَ، عَنْ مَصْبُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ الْأَسْوَدِ، عَنْ عَائِشَةَ قَالَتْ: أُمِرَتْ بَرِيرَةً أَنْ تَعْدَدْ بِثَلَاثَ حِيَضَ.

تخریج: [حسن] و قال البوصيري: إسناده صحيح و رجاله موثقون * سفيان الثوري عنن تقدم، ح: ١٦٢، وفيه علة أخرى، وأخرج أبو داود، ح: ٢٢٣٢: من حديث ابن عباس: وأمرها (يعني النبي ﷺ أمر ببريرة) أن تعتد ، وهو في صحيح البخاري، ح: ٥٢٨٠: مختصر جدًا، وروى أحمد عن عفان عن همام . حديث ابن عباس مطولا . وفيه: أنها تعتد عدة المenses ولم أجد ما يخالفه.

Comments:

The choice is of a female slave to separate from her husband after she has been set free from her slavery bond, and if she separates by using this choice, she will then spend three menstruation cycles as her waiting period.

2078. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ gave Barirah the choice. (*Hasan*)

٢٠٧٨ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوَيَّةَ: حَدَّثَنَا عَبَّادُ بْنُ الْعَوَامِ، عَنْ يَعْمَيْسِ بْنِ أَبِي إِسْحَاقَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أُبَيْتَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ خَرَّ بَرِيرَةً.

تخریج: [إسناده حسن] وله شواهد عند البخاري، الطلاق، باب(١٧)، ح: ٥٢٨٤ وغيره، فالحديث صحيح.

Chapter 30. Divorce And Waiting Period Of A Slave Woman

2079. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "The divorce of a slave woman is twice, and her waiting period is two menstrual cycles." (*Da'i*)

(المعجم (٣٠) - بَابُ: فِي طَلَاقِ الْأَمَةِ وَعِدَّتِهَا (التحفة (٣٠)

٢٠٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ، وَإِبْرَاهِيمُ ابْنُ سَعِيدِ الْجُوهَرِيِّ. قَالَ: حَدَّثَنَا عُمَرُ بْنُ شَيْبَ الْمُسْلِمِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى، عَنْ عَطِيَّةَ، عَنْ أَبِي عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «طَلَاقُ الْأَمَةِ اثْنَانِ، وَعِدَّتُهَا حَيْضَتَانِ».

تخریج: [إسناده ضعيف] أخرجه الدارقطني: ٣٨/٤ وغيره من حديث عمر بن شيبه به، وقال الدارقطني: تفرد به عمر بن شيبه مرفوعًا وكان ضعيفًا، وال الصحيح عن ابن عمر ما رواه سالم ونافع عنه من قوله ، وفيه علة أخرى، وانظر، ح: ٣٧.

2080. It was narrated from 'Aishah that the Prophet ﷺ said: "The divorce of a slave woman is twice, and her (waiting) period is two menstrual cycles."

٢٠٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا أَبْنُ جُرَيْجٍ، عَنْ مُظَاهِرِ بْنِ أَسْلَمَ، عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ

Abu 'Âsim said: "I mentioned this to Muzâhir and said: 'Tell me what you told Ibn Juraij.' So he told me, narrating from Qâsim from 'Âishah, that the Prophet ﷺ said: 'The divorce of a slave woman is twice, and her (waiting) period is two menstrual cycles.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أبوداود، الطلاق، باب في سنة طلاق العبد، ح: ٢١٨٩، والترمذی، ح: ١١٨٢ من حديث أبي عاصم به، وقال أبوداود: هو حديث مجهول ، وقال الترمذی: غريب * مظاہر ضعیف كما في التقریب وغيره.

Comments:

In *Muwatta*, Imam Mâlik ﷺ quoted the verdicts of Uthmân, Zaid bin Thâbit and 'Abdullâh bin 'Umar ، that a male slave has the right to divorce two times only, and the waiting period of a female slave will be two menstruation cycles. It means divorce relies on the husband's status of him being free or a slave, while the waiting period depends on the woman's status of her being free or a slave. (*Muwatta Imam Mâlik*, 2/118]

Chapter 31. The Divorce Performed By A Slave

2081. It was narrated that Ibn 'Abbâs said: "A man came to the Prophet ﷺ and said: 'O Messenger of Allâh, my master married me to his slave woman, and now he wants to separate me and her.' The Messenger of Allâh ﷺ ascended the pulpit and said: 'O people, what is the matter with one of you who marries his slave to his slave woman, then wants to separate them? Divorce belongs to the one who takes hold of the calf (i.e., her husband):'" (*Da'if*)

تخریج: [إسناده ضعیف] قال البوصیری: هذا إسناد ضعیف لضعف ابن لهيعة ، وانظر، ح: ٣٣٠، وللحديث شواهد عند الدارقطنی وغيره، وانظر نصب الرایة: ٤/١٦٥، والطبرانی: ١١

قال: «طلاق الأمة تطليقان». وَقُرُونُهَا حِيْضَتَانِ».

قال أبو عاصم: فَذَكَرَهُ لِمُظَاهِرٍ. فَقُلْتُ: حَدَثْنِي كَمَا حَدَثْتَ ابْنَ جُرَيْجَ. فَأَخْبَرَنِي عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «طلاق الأمة تطليقان». وَقُرُونُهَا حِيْضَتَانِ».

تخریج: [إسناده ضعیف] أخرجه أبوداود، الطلاق، باب في سنة طلاق العبد، ح: ٢١٨٩، والترمذی، ح: ١١٨٢ من حديث أبي عاصم به، وقال أبوداود: هو حديث مجهول ، وقال الترمذی: غريب * مظاہر ضعیف كما في التقریب وغيره.

(المعجم (٣١) - باب طلاق العبد

(التحفة (٣١)

٢٠٨١ - حَدَثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَثَنَا يَحْيَى بْنُ عَبْدِ اللَّهِ بْنِ بُكَيْرٍ: حَدَثَنَا ابْنُ لَهِيْعَةَ، عَنْ مُوسَى بْنِ أَبْيَوبَ الْغَافِقِيِّ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: أَتَى النَّبِيُّ ﷺ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ! [إِنَّ] سَيِّدِي زَوْجِي أَمْتَهُ، وَهُوَ يُرِيدُ أَنْ يَفْرَقَ بَيْنِي وَبَيْتِهَا، قَالَ، فَصَعَدَ رَسُولُ اللَّهِ ﷺ الْمُبَرَّ فَقَالَ: «يَا أَيُّهَا النَّاسُ مَا بَالُ أَحَدُكُمْ يَزِوْجُ عَبْدَهُ أَمْتَهُ ثُمَّ يُرِيدُ أَنْ يَفْرَقَ بَيْتَهُمَا؟ إِنَّمَا الطلاق لِمَنْ أَخَذَ بِالسَّاقِ».

٣٠١، ٣٠٠، ح: ١١٨٠٠ وغيرهما، ولم يصح منها شيء، وفي القرآن غنية عن هذا الحديث وغيره، راجع التعليق المغني على سنن الدارقطني: ٤/٣٧، قوله شواهد موقوفة، ومرفوعة، والقرآن يحضده.

Comments:

- A slave needs his master's permission to get married, but once a slave is married, the master has no authority to cancel the marriage.
- Divorcing is a husband's right, whether he is free or is a slave. None has the right to force him to separate from his wife.

Chapter 32. One Who Divorces A Slave Woman With Two Divorces, Then Buys Her

2082. It was narrated that Abul Hasan, the freed slave of Banu Nawfal, said: "Ibn 'Abbâs was asked about a slave who divorces his wife twice, then (they are freed). Can he marry her? He said: 'Yes.' It was said to him: 'On what basis?' He said: 'The Messenger of Allâh ﷺ passed such a judgement.'" (*Da'if*)

(One of the narrators) 'Abdur Razzâq said: "Abdullâh bin Al-Mubârak said: 'This Abul-Hasan loaded a tremendous boulder upon his neck.'" ^[1]

(المعجم ٣٢) - بابُ مَنْ طَلَقَ أَمَّةً
تَطْلِيقَتِينِ ثُمَّ اشْتَرَاهَا (التحفة ٣٢)

٢٠٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمُلْكِ بْنُ زَيْجَوْنِيَّةِ أَبُو بَكْرٍ: حَدَّثَنَا عَبْدُ الرَّزَاقِ: حَدَّثَنَا مَعْمُرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عُمَرَ بْنِ مُعْتَدِلٍ، عَنْ أَبِي الْحَسَنِ، مَوْلَى بَنِي تَوْقَلِ: قَالَ: سُئِلَ أَبْنُ عَبَّاسٍ عَنْ عَبْدِ الرَّزَاقِ أَمْرَأَتَهُ تَطْلِيقَتِينِ ثُمَّ [أُغْيِّرَتْ]. يَتَرَوَّجُهَا؟ قَالَ: نَعَمْ. فَقَبِيلَ لَهُ: عَمَّنْ؟ قَالَ: قَصَّى بْنَ دِلْكَ رَسُولُ اللَّهِ ﷺ.

قَالَ عَبْدُ الرَّزَاقِ: قَالَ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ: لَقَدْ تَحْمَلَ أَبُو الْحَسَنِ هَذَا صَحْرَةً عَظِيمَةً عَلَى عُقُودِهِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في سنة طلاق العبد، ح: ٢١٨٧ من حديث يحيى به * عمر بن معتد ضعيف كما في التقريب وغيره، ويدل السندي على أن يحيى بن أبي كثير كان يروي عن الصعفاء أيضاً.

Comments:

'Loaded a tremendous boulder upon his neck' means he bore a burden of great responsibility by narrating this narration. (Imam Albâni declared this Hadith as Weak in *Ibn Mâjah* and *Abu Dawud*. Also there are some narrations in *Ibn Mâjah* that have not been classified.)

^[1] Referring to the gravity of the matter, for it is not acted upon by most.

Chapter 33. The Waiting Period Of An *Umm Walad*

2083. It was narrated that 'Amr bin 'Âs said: "Do not corrupt the *Sunnah* of our Prophet Muhammad ﷺ. The waiting period of an *Umm Walad* is four months and ten (days)." (*Da'if*)

(المعجم ٣٣) - باب عدة أم الولد

(التحفة ٣٣)

٢٠٨٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبِيعُ
عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ مَطْرِ الْوَرَاقِ،
عَنْ رَجَاءِ بْنِ حَيْوَةَ، عَنْ قَبِيْصَةَ بْنِ دُؤْبِ،
عَنْ عُمَرِ بْنِ الْعَاصِ قَالَ: لَا تُقْسِدُوا عَلَيْنَا
سَهْنَةَ تَبَيَّنَتْ مُحَمَّدٌ ﷺ. عَدَةُ أم الولد أربعة
أشهرٍ وعشراً.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب في عدة أم الولد، ح: ٢٣٠٨ من
حديث سعيد به، وصححه ابن حبان (موارد)، ح: ١٣٣٣، والحاكم على شرط الشیخین: ٢٠٩٤/٢،
ووقفه الذہبی، وقال أحمد: هذا حديث منكر، وقال الدارقطنی: هو مرسل، لأن قبیصة لم
يسمع من عمرو: ٣١/٤، وتبعه البیهقی، فالستد معلم.

Comments:

- a. *Umm Walad* is female slave who gives birth to a child by her master.
- b. 'Umar ﷺ said, 'the female slave who gives birth to a child by her master, she should not be sold, gifted, nor be inherited. The master may benefit from her in his life, and she is a free woman after her master's death.' (*Muwatta Imam Mâlik*: 2/291).
- c. An *Umm Walad* becomes free after the death of her master, therefore, her waiting period will be that of a free woman.

Chapter 34. It Is Disliked For A Recently Widowed Woman To Adorn Herself

2084. It was narrated from Humaid bin Nâfi' that he heard Zainab the daughter of Umm Salamah narrating that she heard Umm Salamah and Umm Habibah mention that a woman came to the Prophet ﷺ and said that her daughter's husband had died, and she was suffering from an eye disease, and she wanted to apply kohl to her eyes (as a remedy). The Messenger of Allâh ﷺ said "One of you would

(المعجم ٣٤) - باب كراهية الزينة
للمتوفى عنها زوجها (التحفة ٣٤)

٢٠٨٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
يَزِيدُ بْنُ هَارُونَ: أَتَيْنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ
حُمَيْدٍ بْنِ نَافِعٍ أَنَّهُ سَمِعَ رَبِيبَ ابْنَةِ أُمِّ سَلَمَةَ
تُحَدِّثُ أَنَّهَا سَمِعَتْ أُمَّ سَلَمَةَ وَأُمَّ حَسِيَّةَ
تَذَكَّرَانِ أَنَّ امْرَأَةَ أَتَتِ النَّبِيَّ ﷺ فَقَالَتْ: إِنَّ
ابْنَةَ لَهَا تُؤْفَيُّ عَنْهَا زَوْجُهَا. فَاسْتَكَثَ عَنْهَا.
فَهِيَ تُرِيدُ أَنْ تَكْحَلَهَا. فَقَالَ رَسُولُ اللَّهِ ﷺ:
كَانَتْ إِحْدَاكُنْ تَرْمِي بِالْبُرَّةِ عِنْدَ رَأْسِ

throw a she-camel's dropping when a year had passed (since the death of her husband).^[1] Rather it is four months and ten (days)." (Sahih)

تخریج: أخرجه البخاري، الطلاق، باب: تحد المתוّف عنها أربعة أشهر وعشراً، ح: ٥٣٣٦ من حديث حميد بن نافع به، ومسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة ... الخ، ح: ٦١/١٤٨٦، ١٤٨٨ عن أبي بكر بن أبي شيبة وغيره.

Comments:

- a. Wearing jewelry and applying things of adornment should be avoided during the waiting period, rather a simple dress should be worn.
- b. Things that are used for beauty like makeup are not allowed, even for treatment during the waiting period, like: applying kohl or henna etc. Other alternatives should be used for treatment during this period.
- c. The waiting period after a husband's death is four months and ten days. But if a woman is pregnant, her waiting period will be till the birth of child, regardless if her child is born before the period of four months and ten days or after it. (*Sunan Ibn Majah*; 2027-2030)

Chapter 35. Can A Woman Mourn For Anyone Other Than Her Husband?

2085. It was narrated from 'Aishah that the Prophet ﷺ said: "It is not permissible for a woman to mourn for any deceased person for more than three days, except for her husband." (Sahih)

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ١٤٩١ عن أبي بكر بن أبي شيبة وغيره

Comments:

- a. Besides the death of a husband, it is also correct not to adorn oneself to express sorrow for the death of other close relatives.
- b. Things of adornment and attraction should be avoided only for three days upon the death of relatives.
- c. As for the waiting period after a husband's death, she should avoid applying or using anything like pretty adornment, kohl, perfumes, etc., during the whole waiting period.

الحُولِ. وَإِنَّمَا هِيَ: أَرْبَعَةُ أَشْهُرٍ وَعَشْرًا۔

(المعجم ٣٥) - بَابٌ: هَلْ تُحَدُّ الْمَرْأَةُ عَلَى غَيْرِ زَوْجِهَا (الصفحة ٣٥)

٢٠٨٥ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنِيَّةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنِ الْأَبِي َ قَالَ: «لَا يَحِلُّ لِإِنْسَانَةٍ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثَةِ إِلَّا عَلَى زَوْجٍ».

[1] A description of the widow's behavior during the period of Ignorance.

2086. It was narrated from Hafsah the wife of the Prophet ﷺ that the Messenger of Allâh ﷺ said: "It is not permissible for a woman who believes in Allâh and the Last Day to mourn for any deceased person for more than three days, except for her husband." (*Sahih*)

تخریج: أخرجه مسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة وتحريمها في غير ذلك إلا ثلاثة أيام، ح: ٦٤٩٠ من حديث يحيى بن سعيد به.

2087. It was narrated from Umm 'Atiyyah that the Messenger of Allâh ﷺ said: 'No deceased person should be mourned for more than three days, except a woman should mourn for her husband for four months and ten days, and she should not wear dyed clothes, except for a garment of 'Asb, and she should not wear kohl or perfume, except at the beginning of her purity,^[1] when she may apply a little *Qust* and *Azfar*'."^[2] (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، باب: تلبس الحادة ثياب العصب، ح: ٥٣٤٢، ٥٣٤٣، ومسلم، الطلاق، الباب السابق، ح: ٩٣٨ بعد، ح: ١٤٩١ من حديث هشام به.

Comments:

- 'Ash is a specific cloth made in Yemen. Spun cotton thread with knots was dyed and the color would not affect the inner side of knot. So when the knot was undone, some thread would remain uncolored and some colored. The cloth made of this thread would have whiteness and color patterns; this type of cloth used to be called 'Asb, which means some white and some colored cloth.
- This type of cloth is allowed to be worn during the waiting period because the white color prevails and the cloth does not remain attractive.

^[1] Meaning after her menstrual period when she becomes clean.

^[2] Nawawi said: "*Qust* and *Azfar* are two popular types of incense. They were permitted to remove offensive odor and not to use as a perfume."

٢٠٨٦ - حَدَّثَنَا هَنَّادُ بْنُ السَّرِّيٍّ: حَدَّثَنَا أَبُو الأَخْوَصِ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنْ صَفِيفَةَ بْنِتِ أَبِي عَبْدِهِ، عَنْ حَفْصَةَ زَوْجِ النَّبِيِّ ﷺ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحِلُّ لِأَمْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثَةِ إِلَّا عَلَى زَوْجٍ».

٢٠٨٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ، عَنْ هِشَامِ بْنِ حَسَانٍ، عَنْ حَفْصَةَ، عَنْ أُمِّ أَمْ عَيْلَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثَةِ إِلَّا امْرَأَةٌ تُحَدَّ عَلَى زَوْجِهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. وَلَا تَلْبِسْ ثَوْبًا مَضْبُوغًا، إِلَّا ثُوبَ عَصْبٍ. وَلَا تَكْتُحِلْ وَلَا تَطْبِبْ إِلَّا عِنْدَ أَذْنِ طَهْرَهَا، بِسْلَةٌ مِنْ قُسْطِنْ أَوْ أَظْفَارٍ».

Chapter 36. A Man Whose Father Orders Him To Divorce His Wife

2088. It was narrated that 'Abdullâh bin 'Umar said: "I had a wife whom I loved, but my father hated her. 'Umar mentioned that to the Prophet ﷺ, and he ordered me to divorce her, so I divorced her." (*Hasan*)

(المعجم (٣٦) - بَابُ الرَّجُلِ يَأْمُرُهُ أُبُوهُ
بِطَلَاقِ امْرَأَتِهِ (التحفة (٣٦)

٢٠٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
يَحْيَى بْنُ سَعِيدِ الْقَطَانِ، وَعُثْمَانُ بْنُ عُمَرَ.
قَالَ: حَدَّثَنَا ابْنُ أَبِي ذِئْبٍ، عَنْ حَمْزَةَ بْنِ عَبْدِ
اللهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ قَالَ:
كَانَتْ تَحْتِي امْرَأَةً. وَكُنْتُ أَجِهَّهَا. وَكَانَ أَبِي
يَغْضُبُهَا. فَذَكَرَ ذَلِكَ عَمْرُ لِلنَّبِيِّ ﷺ. فَأَمَرَنِي
أَنْ أَطْلَقَهَا. فَطَلَقْتُهَا.

تخریج: [إسناده حسن] أخرجه أبو داود، الأدب، باب: في بر الوالدين، ح: ٥١٣٨ من
حديث يحيى القطان به، وقال الترمذى، ح: ١١٨٩ حسن صحيح.

Comments:

- a. The parents often give preference to the pleasure of children, and sometimes they tolerate unreasonable and un-Islamic things just for the sake of children. In this situation if the parents are unhappy with the daughter-in-law, there must be a valid reason for it. Particularly, a father cannot order his son to divorce his wife.
- b. Giving precedence to parents' pleasure over one's own, is part of being dutiful and good to parents.

2089. It was narrated from 'Abdur-Rahmân that a man's father or mother – Shu'bah (one of the narrators) was not sure – ordered him to divorce his wife, and he made a vow that he would free one hundred slaves if he did that. He came to Abu Dardâ' while he was praying the *Duha*, and he was making his prayer lengthy, and he prayed between *Zuhr* and *'Asr*. Then he asked him, and Abu Dardâ' said: "Fulfill your vow and honor your parents." Abu Ad-Dardâ' said: "I

٢٠٨٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُبَّابٌ عَنْ عَطَاءِ بْنِ
السَّائِبِ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا
أَمْرَةً أُبُوهُ أَوْ أُمَّهُ - شَكَ شُبَّابٌ - أَنْ يُطْلَقَ
امْرَأَةً. فَجَعَلَ عَلَيْهِ مِائَةً مُحَرَّرًّا. فَأَتَى أَبَا
الدَّرْدَاءَ. فَإِذَا هُوَ يُصَلِّي الصَّحَّى وَيُطْلِقُهَا.
وَصَلَّى مَا بَيْنَ الظَّهِيرَةِ وَالْعَصْرِ. فَسَأَلَهُ.
أَبُو الدَّرْدَاءِ: أَوْفِ بِنَدْرِكَ، وَبَرَّ وَالْدَيْكَ.
وَقَالَ أَبُو الدَّرْدَاءِ: سَمِعْتَ رَسُولَ اللهِ ﷺ

heard the Messenger of Allâh ﷺ say: '(Honoring) one's father may lead one to enter through the best of the gates of Paradise; so take care of your parents, (it is so, whether you take care of them) or not.' " (Hasan)

يَقُولُ: «الْوَالِدُ أَوْسَطُ أَبْوَابِ الْجَنَّةِ، فَحَافِظُ عَلَى وَالَّذِينَكُمْ، أَوْ افْرُكُ». .

تخریج: [إسناده حسن] أخرجه الترمذی، البر والصلة، باب ماجاء من الفضل في رضا الوالدين، ح: ۱۹۰۰ من حديث عطاء به، وقال: هذا حديث صحيح، وأبو عبد الرحمن السلمي اسمه عبدالله بن حبيب ، وصححه ابن حبان(موارد)، ح: ۲۰۲۳، والحاکم: ۲/۱۹۷، ۴/۱۵۲، ووافقه الذهبي.

Comments:

- Service and obedience to parents is a means to enter Paradise.
- If the parents command the child to do something which is Islamically permissible, it should be done even though the heart dislikes it. The parents, in the same way, should also care for the rights, needs and demands of the children.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

11. The Chapters On Expiation

(المعجم ١١) أبواب الكفارات
(التحفة ٩)

Chapter 1. The Swearing Of The Messenger Of Allâh ﷺ By Which He Would Take An Oath

2090. It was narrated that Rifâ'ah Al-Juhani said: "When the Prophet ﷺ took an oath, he would say: 'By the One in Whose Hand is the soul of Muhammad.'" (*Sahih*)

(المعجم ١) - بَابُ يَمِينِ رَسُولِ اللَّهِ ﷺ
الَّتِي كَانَ يَحْلِفُ بِهَا (التحفة ١)

٢٠٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
مُحَمَّدُ بْنُ مُضْعِبٍ عَنِ الْأَوْزَاعِيِّ، عَنْ يَحْيَى
ابْنِ أَبِي كَثِيرٍ، عَنْ هَلَالِ بْنِ أَبِي مَيْمُونَةَ، عَنْ
عَطَاءِ بْنِ يَسَارٍ، عَنْ رِفَاعَةَ الْجُهَنِيِّ قَالَ: كَانَ
الَّتِي ﷺ إِذَا حَلَّفَ قَالَ: «وَالَّذِي نَفْسُ
مُحَمَّدٍ بِيَدِهِ».

تخریج: [صحيح] أخرجه أحمد: ١٦/٤ ياسناد صحيح عن الأوزاعي به * ويصحى صرح
بالسماع عنده، تقدم طرقه، ح: ١٣٦٧، وانظر الحديث الآتي (٤٢٨٥).

2091. It was narrated that Rifâ'ah bin 'Arâbah Al-Juhani said: "The swearing of the Messenger of Allâh ﷺ when he took an oath; and I bear witness before Allâh was: 'By the One in Whose Hand is my soul.'" (*Sahih*)

٢٠٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ
الْمَلِكِ بْنُ مُحَمَّدٍ الصَّيْعَانِيِّ: حَدَّثَنَا الْأَوْزَاعِيُّ
عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ هَلَالِ بْنِ أَبِي
مَيْمُونَةَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ رِفَاعَةَ بْنِ
عَرَابَةَ الْجُهَنِيِّ قَالَ: كَانَتْ يَمِينُ رَسُولِ اللَّهِ
ﷺ، الَّتِي يَحْلِفُ بِهَا، أَشْهَدُ عَنْدَ اللَّهِ «وَالَّذِي
نَفْسِي بِيَدِهِ».

تخریج: [صحيح] أخرجه ابن أبي عاصم في الأحاديث والمثنوي: ٢٤/٥، ح: ٢٥٦٠ عن هشام
ابن عمار به، وانظر الحديث السابق.

Comments:

The meaning of oath is that a person makes Allâh witness to such and such matter being thus. Now if that testimony is false, then to use the Name of Allâh for it will be a grave sin, because Allâh is never a false witness.

2092. It was narrated from Sâlim that his father said: "The swearing most frequently sworn by the Messenger of Allâh ﷺ was: 'No, by the Controller of the hearts.'" (*Da'if*)

٢٠٩٢ - حَدَّثَنَا أَبُو إِسْحَاقَ الشَّافِعِيُّ إِبْرَاهِيمُ ابْنُ مُحَمَّدٍ بْنِ الْعَبَّاسِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَجَاءَ الْمَكِيُّ، عَنْ عَبَادَ بْنِ إِسْحَاقَ، عَنْ ابْنِ شَهَابٍ، عَنْ سَالِمٍ، عَنْ أَبِيهِ قَالَ: كَانَتْ أَكْثَرُ أَيْمَانِ رَسُولِ اللَّهِ ﷺ لَا وَمُصْرِفُ الْقُلُوبِ.

تخریج: [إسناده ضعیف] أخرجه النسائي، الأیمان والندور، الحلف بمصرف القلوب، ح ٣٧٩٣: من حديث عبدالله بن رجاء به، فيه علل منها عننتة الزهرى، وأخرج البخارى، ح ٦٦١٧ وغيره عن عبدالله بن عمر قال: كثيراً ما كان النبي ﷺ يحلف: لا، ومقلب القلوب، وهو الصواب.

2093. It was narrated that Abu Hurairah said: "The swearing of the Messenger of Allâh ﷺ was: 'No, and I ask Allâh for forgiveness.'" (*Da'if*)

٢٠٩٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَمَادُ بْنُ خَالِدٍ، ح: وَحَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا مَعْنُ بْنُ عَيْسَى، جَمِيعًا عَنْ مُحَمَّدٍ بْنِ هَلَالٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: كَانَتْ يَوْمَنِ رَسُولِ اللَّهِ ﷺ لَا وَأَسْتَغْفِرُ اللَّهَ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأیمان والندور، باب ماجاء في يمين النبي ﷺ ما كانت، ح ٣٢٦٥ من حديث محمد بن هلال به، قلت: هلال مستور لم يوثقه غير ابن حبان، والله أعلم.

Chapter 2. Prohibition Of Making An Oath By Other Than Allâh

2094. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from his father, from 'Umar, that the Messenger of Allâh ﷺ heard him swearing by his father. The Messenger of Allâh ﷺ said: "Allâh forbids you from making oaths by your forefathers." 'Umar said: "I never took an oath by them (i.e., my forefathers) myself

(المعجم ٢) - بَابُ النَّهْيِ أَنْ يَخْلِفَ بِغَيْرِ اللَّهِ (التحفة ٢)

٢٠٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عَمَرِ الْعَدَنِيُّ: حَدَّثَنَا سُقِيَانُ بْنُ عُيَيْنَةَ عَنِ الرُّهْبَرِيِّ، عَنْ سَالِمٍ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ أَبِيهِ، عَنْ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ سَمِعَهُ يَخْلِفُ بِأَبِيهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ اللَّهَ يَهَاكُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ قَالَ: عُمَرُ: فَمَا حَلَفْتُ بِهَا ذَاكِرًا وَلَا آتِرًا.

nor narrating such words from anyone else.” (*Sahih*)

تخریج: أخرجه البخاري، الأیمان والنذور، باب: لا تحلفوا بآبائكم، ح: ٦٦٤٧ من حديث الزهري به، ومسلم، الأیمان، باب النهي عن الحلف بغير الله تعالى، ح: ١٦٤٦ من حديث ابن عبیة وغيره.

Comments:

It is impermissible to swear by anyone other than Allâh, regardless of whether it is a father, grandfather, shaikh, saint, religious leader, highly virtuous person or a Prophet. As some people take an oath by ‘Ali ﷺ or by five pure personalities, it is all prohibited.

2095. It was narrated from ‘Abdur-Rahmân bin Samurah that the Messenger of Allâh ﷺ said: ‘Do not take oaths by idols nor by your forefathers.’ (*Sahih*)

٢٠٩٥ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْأَعْلَى، عَنْ هَشَامٍ، عَنْ الْحَسَنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمْرَةَ: قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَحْلِفُوا بِالظَّاغِيِّ، وَلَا بِآبَائِكُمْ».

تخریج: أخرجه مسلم، الأیمان، باب من حلف باللات والعزی فليقل: لا إله إلا الله ، ح: ١٦٤٨ عن أبي بکر بن أبي شيبة به.

Comments:

Taking an oath by an idol is, in fact, an oath by a person because of his importance or honor, due to which that person's statue was made. Thus this type of oath is also taken by saints and virtuous peoples; and taking an oath by other than Allâh is prohibited.

2096. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: “Whoever takes an oath, and swears, saying: ‘By Al-Lât and Al-Uzza,’ let him say: ‘Lâ ilâha illallâh.’” (*Sahih*)

٢٠٩٦ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشِقِيُّ: حَدَّثَنَا عُمَرُ بْنُ عَبْدِ الرَّاحِدِ، عَنِ الْأَوْزَاعِيِّ، عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ حَلَّفَ، فَقَالَ فِي يَمِينِهِ: بِاللَّاتِ وَالْعَزَّى، فَلَيَقُولْ: لَا إِلَهَ إِلَّا اللَّهُ».

تخریج: أخرجه البخاري، الأدب، باب من لم ير إكفار من قال ذلك متأولاً أو جاهلاً، ح: ٦١٠٧، ومسلم، الأیمان، الباب السابق، ح: ١٦٤٧(ب) من حديث الأوزاعي به، وللحديث طرق أخرى عن الزهري به.

Comments:

A new Muslim who, in a state of disbelief, had a habit of swearing by other than Allâh, might utter these polytheistic words because of a previous habit. When he/she realises the mistake, the person should then declare the

word of *Tauhid* 'Lâ ilâha illallâh' (none has the right to be worshiped but Allâh); the wording of *Tauhid* would be an expiation for the polytheistic words. However a person does not become an apostate because of making a mistake like this.

2097. It was narrated that Sa'd said: "I took an oath by Lât and 'Uzza. The Messenger of Allâh ﷺ said: 'Say: "Lâ ilâha illallâh wahdahu lâ sharika lahu" (None has the right to be worshipped but Allâh alone, with no partner or associate)," then spit toward your left three times, and seek refuge with Allâh, and do not do that again.'" (*Sahih*)

تخریج: [صحيح] أخرجه النسائي، الأیمان والنذر، الحلف باللات والعزى، ح: ٣٨٠٨ من حديث أبي إسحاق به، وهو صرح بالسماع عند النسائي في رواية، وصححه ابن حبان (موارد)، ح: ١١٧٨.

Chapter 3. One Who Takes An Oath To Follow A Religion Other Than Islam

2098. It was narrated that Thâbit bin Ad-Dâhhâk said: "The Messenger of Allâh ﷺ said: 'Whoever takes an oath to follow a religion other than Islam, telling a deliberate lie, he will be as he said.'" (*Sahih*)

تخریج: أخرجه البخاري، الجناز، باب ماجاء في قاتل النفس، ح: ١٣٦٣ من حديث خالد، ومسلم، الأیمان، باب بيان غلط تحريم قتل الإنسان نفسه وأن من قتل نفسه بشيء... الخ، ح: ١١٠ من حديث أبي قلابة به.

Comments:

- Swearing by another religion is when a person says: 'If I have done such and such a thing I shall be a Jew' or he says: 'If I tell a lie I shall be an infidel'; one must avoid this type of oath.
- At the time of taking an oath, if a person has the intention that by doing such and such thing, he will then choose the path of disbelief; in that case he immediately becomes a disbeliever. But if he meant to remain steadfast on the religion of Islam and was determined never to adopt the way of disbelief, he would not become a disbeliever, but he was wrong in doing so.

٢٠٩٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَالْحَسَنُ ابْنُ عَلِيٍّ الْخَلَّالُ. قَالَ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ عَنْ إِسْرَائِيلَ، عَنْ أَبِي إِسْحَاقَ، عَنْ مُضْعِبٍ ابْنِ سَعْدٍ، عَنْ سَعْدٍ قَالَ: حَلَقْتُ بِاللَّاتِ وَالْعَزَّرِيِّ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «قُلْ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ. ثُمَّ انْفَثْ عَنْ يَسَارِكَ ثَلَاثًا. وَتَعَوَّذْ. وَلَا تَعْدُ».

(المعجم ٣) - بَابُ مَنْ حَلَفَ بِمِلَّةٍ غَيْرِ الإِسْلَامِ (التحفة ٣)

٢٠٩٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ حَالِدِ الْحَنْدَاءِ، عَنْ أَبِي قَلَابَةَ، عَنْ ثَابِتِ بْنِ الصَّحَافِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ بِمِلَّةٍ سَوَى الإِسْلَامِ كَذَبًا مُكَمَّدًا، فَهُوَ كَمَا قَالَ».

تخریج: أخرجه البخاري، الجنائز، باب ما جاء في قاتل النفس، ح: ١٣٦٣ من حديث خالد، ومسلم، الأیمان، باب بيان غلط تحريم قتل الإنسان نفسه وأن من قتل نفسه بشيء... الخ، ح: ١١٠ من حديث أبي قلابة به.

2099. It was narrated from Anas that the Messenger of Allâh ﷺ heard a man say: "If that happens, I will be a Jew." The Messenger of Allâh ﷺ said: "That is guaranteed." (*Da'if*)

تخریج: [إسناد ضعیف جداً] وقال البوصیری: هذا إسناد ضعیف لتدليس بقیة بن الولید * وابن سحر متروک (تقرب). .

2100. It was narrated from 'Abdullâh bin Buraidah that his father told that the Messenger of Allâh ﷺ said: "Whoever says: 'I have nothing to do with Islam,' if he is lying then he is as he said, and if he is telling the truth, his Islam will not be sound." (*Hasan*)

٢٠٩٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ : حَدَّثَنَا بَقِيَّةُ عَنْ عَبْدِ اللَّهِ بْنِ مُحَرِّرٍ، عَنْ قَتَادَةَ، عَنْ أَنْسِي قَالَ: سَمِعَ النَّبِيُّ رَجُلًا يَقُولُ: أَنَا، إِذَا، لَيْهُوْيٌ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَوْجَبْتَ».

٢١٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنَ سَمْرَةَ وَعَمْرُو بْنُ رَافِعِ الْجَنْوِيِّ : حَدَّثَنَا الفَضْلُ ابْنُ مُوسَى، عَنِ الْحُسَيْنِ بْنِ وَاقِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ بُرْيَةَ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: مَنْ قَالَ: إِنِّي بَرِيءٌ مِنَ الْإِسْلَامِ، فَإِنْ كَانَ كَاذِبًا فَهُوَ كَمَا قَالَ. وَإِنْ كَانَ صَادِقًا لَمْ يُعْذَلْ إِلَيْهِ الْإِسْلَامُ سَالِمًا.

تخریج: [إسناد حسن] أخرجه أبو داود، الأیمان والذور، باب ماجاء في الحلف بالبراءة وبلة غير الإسلام، ح: ٣٢٥٨ من حديث حسین بن واقد به، وصححه الحاکم على شرط الشیخین: ٤٢٩٨، ووافقه الذہبی.

Comments:

- a. It is strictly forbidden to take an oath like this.
- b. This type of carelessness shows disrespect to Islam, whereas Islam is invaluable in the sight of a true Muslim, for which he is prepared to give his life. Whoever has this type of disrespect for Islam such that he utters words rejecting Islam for minor issues; he shows how little and insufficient his Faith is!

Chapter 4. The Person For Whom An Oath Is Sworn By Allâh Should Accept What Is Said

2101. It was narrated that Ibn 'Umar said: "The Messenger of Allâh ﷺ heard a man taking an oath by his father and said: 'Do not make oaths by your forefathers. Whoever makes an oath by Allâh, let him fulfill his

(المعجم ٤) - بَابُ مَنْ حَلَفَ لَهُ بِاللَّهِ فَلَيْرُضَ (التحفة ٤)

٢١٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنَ سَمْرَةَ: حَدَّثَنَا أَسْبَاطُ بْنُ مُحَمَّدٍ، عَنْ مُحَمَّدٍ ابْنِ عَجْلَانَ، عَنْ تَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: سَمِعَ النَّبِيُّ رَجُلًا يَحْلِفُ بِأَبِيهِ فَقَالَ: «لَا تَحْلِفُوا بِآبَائِكُمْ». مَنْ حَلَفَ بِاللَّهِ فَلَيَصْدِقْ.

oath, and if an oath is sworn for a person by Allâh, let him accept it. Whoever is not content with Allâh has nothing to do with Allâh.''' (*Da'if*)

وَمَنْ حُلِّفَ لَهُ بِاللَّهِ فَلَيُرْضَىٰ . وَمَنْ لَمْ يَرْضَ
بِاللَّهِ، فَلَيُسَعِّدَ مِنَ اللَّهِ .

تخریج: [إسناده ضعیف] أخرجه البیهقی: ۱۸۱/۱۰ من حديث أسباط به، وصححه البوصيري، وانظر، ح: ۱۹۶۷: علته، قلت وحديث: لا تحلفوا بآياتكم صحيح متفق عليه من حديث عبدالله بن دينار عن ابن عمر به.

Comments:

- The objective of demanding someone to take an oath is that if a person takes an oath on a matter, then that person is to be trusted on the matter. Now if the person takes an oath but he who demands it is still not satisfied, it means the oath has no respect and value in his sight. If this is the case, then the demand of an oath is totally wrong; it should either be accepted, or not be sought.
- Telling a lie by taking oath is a very grave sin.
- One should swear and adjure by Allâh only.

2102. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Eisa bin Maryam saw a man stealing and said: 'Did you steal?' He said: 'No, by the One besides Whom there is no other God.' Eisa said: 'I believe in Allâh, and I do not believe what my eyes see.''' (*Sahih*)

٢١٠٢ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنَ كَابِسٍ : حَدَّثَنَا حَاتِمُ بْنُ إِشْمَاعِيلَ، عَنْ أَبِي بَكْرِ بْنِ يَحْيَىٰ بْنِ النَّضْرِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «رَأَى عِيسَى ابْنَ مَرْيَمَ رَجُلًا يَسْرِقُ . فَقَالَ: أَسْرَقْتَ؟ قَالَ: لَا . وَالَّذِي لَا إِلَهَ إِلَّا هُوَ . فَقَالَ عِيسَى: أَمْتُ بِاللَّهِ، وَكَبَّبْتُ بَصَرِيِّ» .

تخریج: [صحيح] روى نحوه همام بن منه في صحيفة، ح: ۴۲ عن أبي هريرة رضي الله عنه، ومن طريقه أخرجه البخاري، ومسلم وغيرهما.

Comments:

This is an example of trusting a believer's oath that Eisa ﷺ belied a thing seen by his own eyes by trusting an oath. That thing perhaps belonged to the same person who took it, but he took it secretly most certainly, maybe because of a certain reason.

Chapter 5. Swearing Is (i.e., Leads To) Sin Or Regret

(المعجم ۵) - بَابُ الْمَيْمِنِ حَنْثٌ أَوْ نَدْمٌ
(التحفة ۵)

2103. It was narrated from Ibn 'Umar that the Messenger of

٢١٠٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو

Allâh ﷺ said: "An oath (leads to) either sin or regret." (*Da'if*)

مُعَاوِيَة، عَنْ بَشَّارِ بْنِ كَدَامٍ، عَنْ مُحَمَّدٍ بْنِ رَئِيدٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّمَا الْحَلِفُ حِثْ أَوْ نَدْمٌ.

Takhrij: [إسناده ضعيف] أخرجه أبو يعلى، ح: ٥٥٨٧ من حديث أبي معاوية، حدثنا بشار ابن كدام به، وصححه ابن حبان (موارد)، ح: ١١٧٥ * بشار ضعيف، ضعفه أبو زرعة وغيره، وروى الحاكم: ٣٠٤ / ٣٠٣، عن ابن عمر قال: إنما اليمين مأثمة أو مندمة، وصححه، وفيه أحمد بن سهل البخاري شيخ الحاكم، ولم أجده له ترجمة.

Comments:

The meaning of the *Hadith* is that a person often takes an oath in anger, declaring that he will not do such and such; but sometimes the situation takes such a turn that he has to do contrary to the oath. Now it will be problematic if he does not break the oath; but if he breaks it, he will have to make expiation, which seems a penalty for nothing. Therefore this type of oaths should be avoided to the best of one's ability.

Chapter 6. Uttering The Exception When Swearing^[1]

(المعجم ٦) - بَابُ الْإِسْتِثنَاءِ فِي الْيَمِينِ

(النحوة ٦)

2104. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: 'Whoever swears an oath and says *In shâ' Allâh*, he will have made an exception.'^[2] (*Sahih*)

٢١٠٤ - حَدَّثَنَا الْعَبَاسُ بْنُ عَدْيِ الْعَظِيمِ الْعَتَّبِيُّ: حَدَّثَنَا عَبْدُ الرَّزَاقِ: أَبْيَانًا مَعْمَرُ، عَنْ ابْنِ طَاؤُسٍ، عَنْ أَبِيهِ، عَنْ أَبِيهِ هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ قَالَ: إِنْ شَاءَ اللَّهُ، فَلَهُ ثُنِيَّاهُ».

Takhrij: [إسناده صحيح] أخرجه الترمذى والذور والأيمان، باب ماجاء في الاستثناء في اليمين، ح: ١٥٣٢ من حديث عبد الرزاق به، وذكر كلاماً، وهو في مصنف عبد الرزاق، ح: ١٦١١٨، وصححه ابن حبان (موارد)، ح: ١١٨٥، وله شاهد.

Comments:

An oath becomes ineffective by saying *In shâ' Allâh*. Now if the matter determined with the oath is not performed, the person will not be sinful for not fulfilling the oath, and fulfillment of expiation is not required. The reason for that is that an oath is to express determination, and the purpose of saying *In shâ' Allâh* is that 'I shall do so, Allâh willing'; and the will of

[1] Meaning, saying *In shâ' Allâh* (If Allâh wills).

[2] Meaning that making the exception will benefit him, in that he will not be guilty of having violated the oath were he not able to fulfill it. See explanation by Sindî.

Allâh with respect to the matters of the future is unknown to humans. So by saying '*In shâ' Allâh*' there is a negation of total self dependence without the Will of Allâh, and it involves uncertainty that I shall most certainly do this or might not.

2105. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever swears an oath and says *In shâ' Allâh*, if he wishes he may go ahead and if he wishes he may not, without having broken his oath." (*Sahih*)

تخریج: [إسناده صحيح] أخرجه أبو داود، الأیمان النذور، باب الاستثناء في اليمين، ح: ٣٢٦٢ من حديث عبدالوارث به * أيوب ثقة حجة، وتابعه كثیر بن فرقان عند النسائي وغيره، وصححه الحاکم: ٣٠٣/٤، والذهبی.

2106. It was narrated from Ibn 'Umar: "Whoever swears an oath and says *In shâ' Allâh*, will never break his oath." (*Sahih*)

٢١٠٥ - حَدَّثَنَا مُحَمَّدُ بْنُ زَيْدٍ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ وَأَسْتَشْتَىٰ، إِنْ شَاءَ رَجَعَ، وَإِنْ شَاءَ تَرَكَ، غَيْرُ حَاتِثٍ».

٢١٠٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الرُّهْبَرِيُّ: حَدَّثَنَا سُقِيَّانُ بْنُ عَيْمَةَ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ رَوَاهُ يَهُوَةُ قَالَ: «مَنْ حَلَفَ وَأَسْتَشْتَىٰ، فَلَنْ يَحْتَثَ».

تخریج: [صحيح] انظر الحديث السابق.

Comments:

The meaning of saying *In shâ' Allâh* along with an oath is that 'I am certainly determined to do such and such, but if Allâh's decision is otherwise and I face a hindrance, then it will not be done.'

Chapter 7. One Who Swears An Oath And Then Sees That Something Else Is Better

(المعجم ٧) - بَابُ مَنْ حَلَفَ عَلَىٰ
يَمِينٍ فَرَأَىٰ غَيْرَهَا خَيْرًا مِنْهَا (التحفة ٧)

2107. It was narrated from Abu Burdah that his father Abu Musa said: "I came to the Messenger of Allâh ﷺ with a group of Asharites and asked him to give us animals to ride. He said: 'By Allâh, I cannot give you anything to ride, and I have nothing to give you to ride.' We stayed as long as

٢١٠٧ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: أَتَيْنَا حَمَادَ بْنُ [زَيْنٍ]: حَدَّثَنَا عَيْلَانُ بْنُ جَرِيرٍ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِيهِ أَبِي مُوسَىٰ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي رَهْطٍ مِنَ الْأَسْعَرِيِّينَ نَسْخَمُهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَاللَّهِ مَا أَحْمِلُكُمْ. وَمَا عِنْدِي مَا أَحْمِلُكُمْ عَلَيْهِ» قَالَ: فَلَيْسَنَا مَا شَاءَ

Allâh willed, then some camels were brought to him. He ordered that we be given three she-camels with fine humps. When we left, we said to one another: 'We came to the Messenger of Allâh ﷺ to ask him for animals to ride, and he swore by Allâh that he would not give us anything to ride, then he gave us something. Let us go back.' So we went to him and we said: 'O Messenger of Allâh! We came to you seeking mounts, and you took an oath that you would not give us mounts, then you gave us some mounts.' He said: 'By Allâh, I did not give you animals to ride, rather Allâh gave you them to ride. I, by Allâh, if Allâh wills, do not swear and then see something better than it, but I offer expiation for what I swore about, and do that which is better.' Or he said: 'I do that which is better and offer expiation for what I swore about.''' (Sahih)

الله. ثُمَّ أَتَيْنَا يَابِلٍ. فَأَمَرَ لَنَا بِثَلَاثَةِ يَابِلٍ دُوْجَةً
غَرْ الذَّرِي. فَلَمَّا انطَلَقْنَا قَالَ بَعْضُنَا لِبَعْضٍ:
أَتَيْنَا رَسُولَ اللهِ ﷺ سَتَحْمِلُهُ فَحَفَّ أَلَّا
يَحْمِلُنَا. ثُمَّ حَمَلَنَا. ارْجَعُوا بَنَا. فَأَتَيْنَاهُ
فَقُلْنَا: يَا رَسُولَ اللهِ! إِنَّا أَتَيْنَاكَ سَتَحْمِلُكَ
فَحَلَقْتَ أَنْ لَا تَحْمِلَنَا. ثُمَّ حَمَلَنَا. فَقَالَ:
«وَاللهِ مَا أَنَا حَمَلْتُكُمْ. بَلِ اللهِ حَمَلْتُكُمْ. إِنِّي،
وَاللهِ إِنْ شَاءَ اللهُ، لَا أَحْلِفُ عَلَى يَوْمٍ فَارِي
[غَيْرَهَا] خَيْرًا مِنْهَا إِلَّا كَفَرْتُ عَنْ يَمِينِي
وَأَتَيْتُ الَّذِي هُوَ خَيْرٌ» أَوْ قَالَ: «أَتَيْتُ الَّذِي
هُوَ خَيْرٌ وَكَفَرْتُ عَنْ يَمِينِي».

تخریج: أخرجه البخاري، الأیمان والنشور، باب قول الله تعالى: «لَا يَؤاخذكُمُ اللهُ بِاللغو
في أیمانکم»، ح ٦٦٢٣، ٦٦١٨، ٦٧١٨، ومسلم، الأیمان، باب ندب من حلف يميناً فرأى غيرها خيراً
منها ... الخ، ح ١٦٤٩ من حديث حماد به.

Comments:

a. The oath has three categories, and these are as follows:

1. *Laghw*: It is an oath that is spoken by tongue without the intention of swearing. As some people habitually speak words of swearing unintentionally, this type of oath will not be counted against the person but it should be avoided.
2. *Ghamus*: It is a false oath sworn to deceive someone. It is a major sin. One should seek forgiveness and should avoid such in the future, but the expiation for it is not obligatory.
3. *Mu'aqqadah*: It is an oath that a person swears to express his determination and definite intention to do something in the future. The expiation becomes obligatory for breaking this oath. The expiation for this oath is to feed ten

poor people, or to clothe them or to set a slave free. (*Al-Mâ'idah* 5: 89)

12108. It was narrated from 'Adi bin Hâtim that the Messenger of Allâh ﷺ said: "Whoever swears an oath then sees that something else is better than it, let him do that which is better and offer expiation for what he swore about." (*Sahih*)

٢١٠٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ عَبْدُ اللَّهِ ابْنُ عَامِرٍ بْنُ زُرَارَةَ. قَالَ: حَدَّثَنَا أَبُو بَكْرٍ بْنُ عِيَاشٍ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَعَيْ، عَنْ تَوْبِيمَ ابْنِ طَرَفَةَ، عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ عَلَى يَوْمَينِ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلِيَاتِ الدِّيْنِ هُوَ خَيْرٌ وَ لِيَكْفُرْ عَنْ يَوْمَيْنِ». .

تخریج: أخرجه مسلم، الأیمان، الباب السابق، ح: ١٦٥١ من طريق آخر عن عبدالعزيز به مطولاً.

2109. It was narrated from Abul-Ahwas 'Awf bin Mâlik Al-Jushami that his father said: "I said: 'O Messenger of Allâh, my cousin comes to me and I swear that I will not give him anything or uphold the ties of kinship with him.' He said: 'Offer expiation for what you swore about.'" (*Sahih*)

٢١٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ: حَدَّثَنَا سُفيَانُ بْنُ عَبِيَّةَ: حَدَّثَنَا أَبُو الزَّعْدَاءِ عُمَرُ بْنُ عُمَرٍو، عَنْ عَمِّ أَبِي الْأَخْوَصِ عَوْفِ بْنِ مَالِكِ الْجُحْشِيِّ، عَنْ أَبِيهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! يَأْتِيَنِي أَبْنُ عَمِّيْ فَأَحْلَفُ أَنْ لَا أُغْطِيَهُ وَ لَا أَصِلُّهُ. قَالَ: «كَفَرْ عَنْ يَمِينِكَ».

تخریج: [إسناده صحيح] أخرجه سفيان بن عبيدة، الأیمان والنور، . الكفارة بعد الحلف، ح: ٣٨١٩ من حديث سفيان به، وهو مخرج في مسند الحمدي، ح: ٨٨٥ بتحقيقه.

Chapter 8. Those Who Say That The Expiation Is To Not Fulfill It

(المعجم ٨) - بَابُ مَنْ قَالَ كَفَارَتُهَا تَرْكُهَا (التحفة ٨)

2110. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "Whoever takes an oath to cut off the ties of kinship, or to do something that is not right, the fulfillment of his vow is not to do that." (*Da'if*)

٢١١٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ ثُمَيرٍ، عَنْ حَارِثَةَ بْنِ أَبِي الرِّجَالِ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ فِي قَطْبِيَّةِ رَجْمٍ، أَوْ فِيمَا لَا يَصْلُحُ، فَإِنْ لَا يَمْعَلْ عَلَى ذَلِكَ». .

تخریج: [إسناده ضعیف] أخرجه الطبراني في الأوسط: ٤٨٥ / ٥، ح: ٤٨١٨ من حديث
حارثة به، وانظر، ح: ٥٦ لعلته، وأخرج الطحاوي في المشكّل: ١ / ٢٨٧ بایسناد حسن عن ابن
عباس رفعه قال: من حلف بيمين على قطيعة رحم أو معصية فحنت، فذلك كفارة له.

2111. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said that the Prophet ﷺ said: "Whoever swears an oath then sees that something else is better than it, let him not do it, and his leaving it is the expiation for it." (*Hasan*)

٢١١١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الْمُؤْمِنِ الْوَاسِطِيُّ: حَدَّثَنَا عَوْنُ بْنُ عُمَارَةَ: حَدَّثَنَا رَوْحُ بْنُ الْقَاسِمِ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عَمْرُو بْنِ شَعْبَيْنِ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ حَلَّفَ عَلَى يَوْمِنْ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَتَرْكُهَا. فَإِنْ تَرَكَهَا كَفَارَهَا».

تخریج: [حسن] أخرجه أبو داود، الأیمان والذور، باب اليمين في قطيعة الرحم،
ح: ٣٢٧٤ من طريق آخر عن عمرو بن شعيب به مطولاً.

Comments:

It means that if one is unable to make expiation, he should then at least avoid the sin that he was determined to do, because avoiding a sin is also a good deed.

Chapter 9. How Much Food Should Be Given When Atoning For What One Swore About?

2112. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ offered expiation of a *Sâ'* of dates, and he enjoined the people to do likewise. Whoever does not have that (must give) half a *Sâ'* of wheat." (*Da'if*)

(المعجم ٩) - بَابُ: كَمْ يُطْعَمُ فِي كَفَارَةِ الْأَيْمَنِ (التحفة ٩)

٢١١٢ - حَدَّثَنَا الْعَبَّاسُ بْنُ زَيْدَ: حَدَّثَنَا زَيَادُ ابْنُ عَبْدِ اللَّهِ الْبَكَائِيُّ: حَدَّثَنَا عُمَرُ بْنُ عَبْدِ اللَّهِ ابْنِ يَعْلَى التَّكْفِيِّ عَنِ الْمُنْهَالِ بْنِ عَمْرُو، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: كَفَرَ رَسُولُ اللَّهِ ﷺ بِصَاعِ مِنْ تَمْرٍ. وَأَمَرَ النَّاسَ بِإِذْلِكَ. فَمَنْ لَمْ يَجِدْ فَيُضَعِّفُ صَاعِ مِنْ بُرًّا.

تخریج: [إسناده ضعیف] أخرجه ابن عدي في الكامل: ١٦٩٢ / ٥ من حديث زياد به، وقال ابن كثير في تفسيره: ٩٣ / ٢ لا يصح هذا الحديث لحال عمر بن عبد الله هذا فإنه مجمع على ضعفه وذكروا أنه كان يشرب الخمر، وقال الدارقطني: متروك.

Chapter 10. (Expiation Should Be) With The Average Food That You Feed Your Families

2113. It was narrated that Ibn 'Abbâs said: "A man would give his family food that was abundant and another would give his family food that was barely sufficient, then the following was revealed: 'With the *Awsat*^[1] of that with which you feed your families...'"^[2] (*Da'iif*)

(المعجم ١٠) - بَابُ مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِكُمْ (التحفة ١٠)

٢١١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَعْيَى: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْشَةَ، عَنْ سُلَيْمَانَ بْنِ أَبِي الْمُغْبِرَةِ، عَنْ سَعِيدِ بْنِ جُبَيرٍ، عَنْ أَبْنِ عَبَّاسٍ قَالَ: كَانَ الرَّجُلُ يَقُولُ أَهْلَهُ قُوتًا فِيهِ سَعَةً. وَكَانَ الرَّجُلُ يَقُولُ أَهْلَهُ قُوتًا فِيهِ شَدَّةً. فَتَرَكَ: (مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِكُمْ) [المائدة: ٦٩].

تخریج: [إسناده ضعیف] أخرجه ابن جریر الطبری: ١٥، وابن أبي حاتم: ١١٩٣ / ٤، ح ٧٧٢٢ في تفسیرهما من حديث سفیان بن عیة به، وصححه البرصیری * سفیان مدلس، ولم أجد تصریح سماعه ولا ينفعه . کونه لا یدلس إلا عن ثقة كما حققته في تخریج النهاية في الفتن والملاحم، ح: ١٣٣٠.

Comments:

The food for expiation should not be prepared painstakingly of high standard, like the preparation for guests, nor should it be of low quality, as sometimes people do just with pickles, sauce or salad etc., rather the food provided for expiation should be of normal standard as a person often prepares for himself. Allâh knows best!

Chapter 11. Prohibition Of Man Insisting On What He Swore About, And Not Offering Expiation

2114. It was narrated that Hammâm heard Abu Hurairah saying that 'Abul-Qâsim ﷺ said: "If anyone of you insists on fulfilling what he swore to (after learning that it is wrong) then it is

(المعجم ١١) - بَابُ النَّهْيِ أَنْ يَسْتَلِجَ الرَّجُلُ فِي يَمِينِهِ وَلَا يُكَفِّرُ (التحفة ١١)

٢١١٤ - حَدَّثَنَا سُفِيَّانُ بْنُ وَكِيعٍ: حَدَّثَنَا مُحَمَّدُ بْنُ حُمَيْدِ الْمَعْمَرِيِّ، عَنْ مَعْمَرٍ، عَنْ هَيَّامَ قَالَ: سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ ﷺ: إِذَا اسْتَأْجَ أَحَدُكُمْ فِي الْيَمِينِ

[١] Meaning: Average, and some of them said it means, the best.

[٢] Al-Mâ'idah 5:89.

more sinful before Allâh than (breaking the oath for which) the expiation that has been enjoined upon him.” (*Sahih*)

فَإِنَّهُ أَكْثَرُ لَهُ عِنْدَ اللَّهِ مِنَ الْكُفَّارَةِ الَّتِي أُمِرَّ بِهَا».

تخریج: (الف) [صحيح] أخرجه عبدالرزاق، ح: ١٦٠٣٦ عن معمر به نحوه، أخرجه البخاري، ح: ٦٦٢٥، ومسلم، ح: ١٦٥٥ من حديث عبدالرزاق به نحو المعنى، وهو في صحيفة همام، ح: ٩٦.

Another chain with similar wording.

حدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا يَحْيَىٰ بْنُ صَالِحِ الْوَحَاظِيِّ: حَدَّثَنَا مُعاوِيَةُ بْنُ سَلَامٍ، عَنْ يَحْيَىٰ بْنِ أَبِي كَثِيرٍ، عَنْ عَكْرِمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ النَّبِيِّ ﷺ، نَحْوَهُ.

تخریج: (ب) أخرجه البخاري، الأيمان والندور، باب قول الله تعالى: «لَا يُؤاخذُكُمُ اللَّهُ بِالغُوْنِ فِي أَيْمَانِكُمْ» ح: ٦٦٢٦ من حديث يحيى بن صالح به.

Comments:

- Insistence upon an oath means to be determined to fulfill an oath, sometimes to do something sinful or prohibited. It is better to make expiation for breaking such an oath.
- Remaining firm upon an oath for a bad thing is also a sin. So it is better to break the mistaken oath, because this will be forgiven by making expiation; whereas remaining firm on the mistake will only increase the sin.

Chapter 12. Helping Others Fulfill Their Oaths

2115. It was narrated that Barâ’ bin ‘Âzib said: “The Messenger of Allâh ﷺ commanded us to help fulfill the oath.” (*Sahih*)

(المعجم ١٢) - بَابُ إِبْرَارِ الْمُقْسِمِ
(التحفة ١٢)

٢١١٥ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنْ عَلَيِّ بْنِ صَالِحٍ، عَنْ أَشْعَثِ بْنِ أَبِي الشَّعْنَاءِ، عَنْ مُعاوِيَةِ بْنِ سُوَيْدٍ بْنِ مُقْرَبٍ، عَنِ الْبَرَاءِ بْنِ عَازِيْبٍ قَالَ: أَمْرَنَا رَسُولُ اللَّهِ ﷺ بِإِبْرَارِ الْمُقْسِمِ.

تخریج: أخرجه البخاري، الجنائز، باب الأمر باتباع الجنائز، ح: ٥١٧٥، ٢٤٤٥، ١٢٣٩، ومسلم، اللباس والزينة، باب تحريم استعمال إناء الذهب والفضة على الرجال والنساء ... إلخ، ح: ٢٠٦٦ من حديث أشعث به مطولاً.

Comments:

- It is an obligation upon a Muslim to help other Muslims, particularly when his help is sought. Adjuring is also a type of request for help, and it has extra emphasis in which the request is made by using the Name of Allâh; therefore it should certainly be fulfilled.
- If an oath is imposed to do something illegal, then it should not be fulfilled.

2116. It was narrated from Mujâhid, that 'Abdur-Rahmân bin Safwâن, or Safwâن bin 'Abdur-Rahmân Al-Qurashi said: "On the Day of the conquest of Makkah, he came with his father and he said: 'O Messenger of Allâh, give my father a share of *Hijrah*.' He said: 'There is no *Hijrah*.' Then he went away and entered upon 'Abbâs and said: 'Do you know who I am?' He said: 'Yes.' Then 'Abbâs went out, wearing a shirt and no upper wrap, and said: 'O Messenger of Allâh, do you know so-and-so with whom we have friendly ties? He brought his father to swear an oath of allegiance (i.e., promise) to emigrate.' The Prophet ﷺ said: 'There is no *Hijrah*.'" 'Abbâs said: 'I adjure you to do it.' The Prophet ﷺ stretched forth his hand and touched his hand, and said: 'I have fulfilled the oath of my uncle, but there is no *Hijrah*.' (*Da'if*)

Another chain with similar wording. Yazid bin Abu Ziyâd said: "Meaning: There is no *Hijrah* from a land whose people have accepted Islam."

٢١١٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ، عَنْ مُجَاهِدٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ صَفْوَانَ، أَوْ عَنْ صَفْوَانَ بْنِ عَبْدِ الرَّحْمَنِ الْقَرْشِيِّ قَالَ: لَمَّا كَانَ يَوْمُ فَتْحِ مَكَّةَ جَاءَ يَأْيِهِ رَسُولُ اللَّهِ اجْعَلَ لِأَبِي نَصِيبَ مِنَ الْهِجْرَةِ فَقَالَ: «إِنَّهُ لَا هِجْرَةً» فَانطَّلَقَ فَنَدَخَلَ عَلَى الْعَبَاسِ فَقَالَ: فَقَدْ عَرَفْتَنِي؟ فَقَالَ: أَجَلْ. فَخَرَجَ الْعَبَاسُ فِي قَبِيصَةِ لَيْسَ عَلَيْهِ رِدَاءً فَقَالَ: يَا رَسُولَ اللَّهِ! قَدْ عَرَفْتَ فُلَانًا وَالَّذِي يَئِنَّا وَيَئِنَّهُ. وَجَاءَ يَأْيِهِ لِتَبَاعِيهِ عَلَى الْهِجْرَةِ فَقَالَ النَّبِيُّ ﷺ: «إِنَّهُ لَا هِجْرَةً» فَقَالَ الْعَبَاسُ: أَقْسَمْتُ عَلَيْكَ. فَمَدَ النَّبِيُّ ﷺ يَدَهُ، فَمَسَّ يَدَهُ. فَقَالَ: أَبْرُزْتُ عَمِّي. وَلَا هِجْرَةً.

حدثنا محمد بن يحيى: حدثنا الحسن ابن الربيع، عن عبد الله بن إدريس، عن يزيد بن أبي زيد، يسألواه، تغوه. قال يزيد بن أبي زيد: يعني لا هجرة من دار قد أسلم أهلها.

تخریج: [إسناده ضعیف] أخرجه أحمد: ٤٣١، ٤٣٠ / ٣ من حديث يزيد به باختلاف يسرى، وقال البوصيري: هذا إسناد فيه يزيد بن أبي زيد، أخرج له مسلم في المتابعات وضفة الجمهور، وانظر، ح: ١٤٧١، ٥٠٤.

Chapter 13. Prohibition On Saying: "What Allâh Wills And You Will"

2117. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: 'When anyone of you swears an oath, let him not say: 'What Allâh wills and what you will.' Rather let him say: 'What Allâh wills and then what you will.' (*Hasan*)

(المعجم ١٣) - بَابُ النَّهْيِ أَنْ يُقَالَ: مَا شَاءَ اللَّهُ وَشَيْتَ (التحفة ١٣)

٢١١٧ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنَا الْأَجْلَحُ الْكَنْدِيُّ، عَنْ يَزِيدَ بْنِ الْأَصْمَمِ، عَنْ أَبْنِ عَيَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا حَلَفَ أَحَدُكُمْ فَلَا يَقُلْ: مَا شَاءَ اللَّهُ وَشَيْتَ. وَلَكِنْ لِيَقُلْ: مَا شَاءَ اللَّهُ ثُمَّ شَيْتَ».

تخریج: [حسن] أخرجه النسائي في عمل اليوم والليلة، ح: ٩٨٨ من حديث عيسى به مطولاً، وقال الهيثي في مجمع الروايد: ١٨٩ اختلف في الأجلح الكندي والأكثر على توبيقه.

2118. It was narrated from Hudhaifah bin Yamâن that a Muslim man saw in a dream that he met a man from among the People of the Book, who said: "What good people you would be if only you were not committing *Shirk*. For you say: 'What Allâh wills and Muhammad wills.'" He mentioned that to the Prophet ﷺ and he said: "By Allâh, I am aware of that. Say: 'What Allâh wills then what Muhammad wills.'" (*Da'if*)

٢١١٨ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا سُعْيَانُ بْنُ عَيْشَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عَمِيرٍ، عَنْ رَبِيعِي بْنِ حِرَاشٍ، عَنْ حُدَيْفَةَ بْنِ الْيَمَانِ أَنَّ رَجُلًا مِنَ الْمُسْلِمِينَ رَأَى فِي النَّوْمِ أَنَّ لَقِيَ رَجُلًا مِنْ أَهْلِ الْكِتَابِ قَالَ: نَعَمْ الْقَوْمُ أَتُّقُولُ لَنَا أَنَّكُمْ تُشْرِكُونَ. تَقُولُونَ: مَا شَاءَ اللَّهُ وَشَاءَ مُحَمَّدٌ. وَذَكَرَ ذَلِكَ لِلَّهِ ﷺ قَالَ: «أَمَا وَاللَّهِ إِنْ كُنْتُ لَا أَعْرِفُهَا لَكُمْ. قُولُوا: مَا شَاءَ اللَّهُ ثُمَّ شَاءَ مُحَمَّدٌ».

تخریج: (الف) [ضعيف] انظر الحديث الآتي وأخرجه البخاري في التاريخ الكبير: ٣٦٤ / ٤ من حديث سفيان به.

Another chain from Tufail bin Sakhbarah, the brother of 'Aishah by her mother, from the Prophet ﷺ, with similar wording. (*Da'if*)

حدثنا [محمد بن عبد الملك] بن أبي السوارب: حدثنا أبو عوانة، عن عبد الملك، عن ربيعي بن حراش، عن الطفيلي ابن سخيرة، أرجي عائشة لأمها، عن النبي ﷺ، ينتهي.

تخریج: (ب) [إسناده ضعیف] أخرجه أحمـد: ٥ / ٧٢ وغیره من حديث عبد الملك بن عمیر به * وعبدالملك مشهور بالتلليس، ولم أجد تصريح سماعه.

Comments:

"What Allāh wills and then what Muhammad ﷺ wills" means what Allāh wills will happen, and we are committed to the command and decision of Muhammad ﷺ to practice accordingly.

Chapter 14. One Who Uses Ambiguous Words In His Oath

2119. It was narrated that Suwaid bin Hanzalah said: "We went out looking for the Messenger of Allāh ﷺ, and Wā'il bin Hujr was with us. An enemy of his seized him and the people were reluctant to swear an oath, but I swore that he was my brother, so they set him free. We came to the Messenger of Allāh ﷺ and I told him that the people had been reluctant to swear an oath, but I had sworn that he was my brother. He said: 'You told the truth. The Muslim is the brother of his fellow Muslim.'" (Hasan)

(المعجم ١٤) - بَابُ مَنْ وَرَى فِي يَمِيمَةِ (التحفة ١٤)

٢١١٩ - حَدَّثَنَا أَبُو سَكِيرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْيُودُ اللَّهِ بْنُ مُوسَى، عَنْ إِسْرَائِيلَ؛ حَ وَحَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ، عَنْ عَبْدِ الرَّزْقِ بْنِ أَبْنِ مَهْدِيٍّ، عَنْ إِسْرَائِيلَ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ الْأَعْدَى، عَنْ جَدِّهِ، عَنْ أَبِيهِا سُونِيدِ بْنِ حَنْظَلَةَ قَالَ: خَرَجْنَا نَرِيدُ رَسُولَ اللَّهِ ﷺ وَمَعَنَا وَائِلٌ بْنُ حُمَّاجٍ. فَأَخْدَهُ عَدُوُّ لَهُ فَتَحَرَّجَ النَّاسُ أَنْ يَحْلِفُوا. فَحَلَّفْتُ أَنَا أَنَّهُ أَجْحِي. فَخَلَّى سَيْلُهُ. فَأَتَيْنَا رَسُولَ اللَّهِ ﷺ فَأَخْبَرَهُ أَنَّ الْقَوْمَ تَحْرَجُوا أَنْ يَحْلِفُوا وَحَلَّفْتُ أَنَا أَنَّهُ أَجْحِي. فَقَالَ: «صَدَقْتَ. الْمُسْلِمُ أَخْوَى الْمُسْلِمِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الأیمان والتنور، باب المعارض في الأیمان، ح: ٣٢٥٦ من حديث إسرائيل به، وصححه الحاکم: ٢٩٩/٤، ٣٠٠، ٢٩٩، والذهبي.

Comments:

- Ambiguity is to say something that has two meanings. The listener understands some other meaning, and the person talking means something different, in order to avoid telling a lie and to escape with his life.
- When life, property or honor is in danger a then ambiguous behavior to get away from enemies is allowed.
- Ambiguity is also allowed to save the life of another Muslim.

2120. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The oath is only according to the intention of the one who requests the oath to be taken.'" (Sahih)

٢١٢٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَبْنَانَا هُسَيْمٌ، عَنْ عَبَادِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّمَا الْيَمِينُ عَلَى نِعَةِ الْمُسْتَحْلِفِ».

تخریج: آخرجه مسلم، الأیمان، باب اليمین على نیة المستحلف، ح: ۱۶۵۳ عن أبي بکر بن أبي شیبة به.

Comments:

- a. It means ambiguity is not allowed in the case of an oath and using it in an oath will be considered a lie as well.
- b. The previous Hadith is apparently contradictory to this Hadith, but the meaning of the previous Hadith applies when a Muslim's life, property or honor is in danger, and this Hadith (2120) is about daily matters.

2121. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Your oath is as your companion understands it to be." (Sahih)

٢١٢١ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُسَيْمٌ: أَبْنَانَا عَبْدُ اللَّهِ بْنُ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَمِينُكُمْ عَلَى مَا يُصَدِّقُكُمْ بِهِ صَاحِبُكُمْ».

تخریج: آخرجه مسلم، الأیمان، الباب السابق، ح: ۱۶۵۳ من حدیث هشیم به.

Comments:

It means if one swore and said something that has two meanings, and he meant such a meaning which was true, but the listener did not understand the same meaning; and according to the listener's understanding of the meaning that oath was false, then this oath would be counted as false one. Only that purpose and meaning of oath will be relied for which it was required.

Chapter 15. The Prohibition Of Vows

2122. It was narrated that 'Abdullâh bin 'Umar said: "The Messenger of Allâh ﷺ forbade vows and said: 'They are just a means of taking wealth from the miserly.'" (Sahih)

(المعجم (۱۵) - باب النهي عن
التذر (التحفة (۱۵)

٢١٢٢ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُقْيَانَ، عَنْ مَنْصُورٍ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ التَّذْرِ. وَقَالَ: إِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الظَّمِينِ».

تخریج: أخرجه البخاري، القدر، باب إلقاء العبد النذر إلى القدر، ح: ٦٦٩٣، ٦٦٠٨: ومسلم، النذر، باب النهي عن النذر، وأنه لا يرد شيئاً، ح: ٤/١٦٣٩ من حديث سفيان به.

2123. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Vows do not bring the son of Âdam anything unless it has been decreed for him. But he is dominated by Divine preordainment, and will get what is decreed for him. And (vows) are a means of making the miser give something, so what he desires becomes obtainable for him, which was not obtainable before his vow. And Allâh says: 'Spend, I will spend on you.' (Sahih)

٢١٢٣ - حَدَّثَنَا أَحْمَدُ بْنُ يُوسُفَ: حَدَّثَنَا عَيْبَدُ اللَّهِ عَنْ سُفِّيَانَ، عَنْ أَبِي الزَّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ النَّذْرَ لَا يَأْتِي أَبْنَ آدَمَ شَيْئًا إِلَّا مَا قُدِّرَ لَهُ . وَلَكِنْ يَعْلَمُ الْقَدْرُ، مَا قُدِّرَ لَهُ . فَيُسْتَخْرَجُ بِهِ مِنَ الْخَيْلِ فَيَسِّرُ عَلَيْهِ مَا لَمْ يَكُنْ يُسَرُّ عَلَيْهِ مِنْ قَبْلِ ذَلِكَ . وَقَدْ قَالَ اللَّهُ أَنْفَقَ أَنْفُقَ عَلَيْكَ» .

تخریج: أخرجه البخاري، الأيمان والنذور، باب الوفاء بالنذر وقول الله تعالى: «يروفون بالنذر» ح ٦٦٩٤ من حديث أبي الزناد به.

Comments:

- A generous person always spends in the path of Allâh. He does not need to make a vow for conditional spending.
- Making a conditional vow is a habit of miserly people. A person making a vow says: "If such and such work gets done or such and such calamity is warded off, I shall give such and such money in charity," it is as if he is saying if such and such work is not done I shall not give in charity. Therefore, making a vow according to this mentality is disliked.

Chapter 16. Vows For Disobedience

2124. It was narrated from 'Imrân bin Husain that the Messenger of Allâh ﷺ said: "[There is no vow to commit disobedience and] no vow concerning that which the son of Âdam does not possess." (Sahih)

(المعجم (١٦) - بَابُ النَّذْرِ فِي الْمُعْصِيَةِ (١٦) التحفة (١٦)

٢١٢٤ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا سُفِّيَانُ بْنُ عَيْبَدٍ: حَدَّثَنَا أَيُوبُ عَنْ أَبِي قِلَّابَةَ، عَنْ عَمْوَهُ، عَنْ عُمَرَانَ بْنِ الْحُصَيْنِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «[لَا نَذْرٌ فِي مُعْصِيَةٍ . وَلَا نَذْرٌ فِيمَا لَا يَمْلُكُ أَبْنُ آدَمَ» .

تخریج: أخرجه مسلم، التذر، باب لا وفاء لنذر في معصية الله ولا فيما لا يملك العبد، ح: ١٦٤١ من حديث أیوب به مطولاً.

Comments:

- A vow is made to please Allâh, therefore, if a person makes such a vow that is sinful, then this vow is next to nothing. It is illegal to fulfill it; for example: a person vows that I shall give to so-and-so son of mine more than other sons, or vows for something which is not worthy of reward according to *Shari'ah*; for example: making a vow to keep standing in the sun. One should not fulfill this vow, rather one should carry out expiation.
- Making a vow for something which one does not own; for example: vowing to slaughter someone's animal is incorrect. However if he thinks of buying that animal, and hopes that the owner will sell it, then he should slaughter it after owning it.

2125. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "There is no vow to commit disobedience, and the expiation (for such a vow) is the expiation for breaking an oath." (*Sahih*)

٢١٢٥ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرُو بْنُ السَّرْجِنِ الْوَضْرَبِيُّ أَبُو طَاهِرٍ: حَدَّثَنَا أَبْنُ وَهْبٍ: أَتَيْنَا يُونُسَ، عَنْ أَبْنِ شَهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ غَائِشَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَا تَنْذِرْ فِي مَعْصِيَةٍ. وَكَفَارَةُ كُفَّارَةٍ يَوْمَينِ».

تخریج: [صحیح] أخرجه أبو داود، الأیمان والتنور، باب من رأی عليه کفارۃ إذا كان في معصیة، ح: ٣٢٩١ من حديث ابن وهب به، أخرجه الترمذی، ح: ١٥٢٤، وقال: هذا لا يصح لأن الزهری لم يسمع هذا الحديث من أبي سلمة * والزهری صرح بالسماع من أبي سلمة عند النسائي، ح: ٣٨٦٩.

2126. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "Whoever vows to obey Allâh, let him obey Him, and whoever vows to disobey Allâh, let him not disobey Him." (*Sahih*)

٢١٢٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أَسَامَةَ، عَنْ عَيْبَدِ اللَّهِ، عَنْ طَلْحَةَ بْنِ عَبْدِ الْمَلِكِ، عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ غَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ. وَمَنْ نَذَرَ أَنْ يَعْصِي اللَّهَ فَلَا يَعْصِيهِ».

تخریج: أخرجه البخاری، الأیمان والتنور، باب: التذر في الطاعة «وما أنفقت من نفقة أو نذر من نذر» ح: ٦٦٩٦ من حديث طلحہ به.

Chapter 17. One Who Makes A Vow But Does Not State It Specifically

2127. It was narrated from 'Uqbah bin 'Amir Al-Juhani that the Messenger of Allâh ﷺ said: "Whoever makes a vow and does not state it specifically, the expiation (for such a vow) is the expiation for breaking an oath." (*Hasan*)

تخریج: [حسن] * إسماعيل بن رافع تقدم، ح: ١٣٣٧ ، ولحدیث شاهد حسن، انظر الحديث الآتي.

Comments:

An unspecified and unnamed vow is if a person says: 'I vow for Allâh.'

2128. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Whoever makes a vow and does not state it specifically, the expiation (for such a vow) is the expiation for breaking an oath. Whoever makes a vow and is not able to fulfill it, the expiation for that is the expiation for breaking an oath. Whoever makes a vow and is able to fulfill it, let him do so." (*Hasan*)

تخریج: [حسن] أخرجه أبو داود، الأیمان والذور، باب من نذر نذرًا لا يطیقه، ح: ٣٣٢٢ من طريق آخر عن بكير عن النبي ﷺ، وإسناده حسن.

Chapter 18. Fulfilling Vows

2129. It was narrated that 'Umar bin Khattâb said: "I made a vow during the Ignorance period and I asked the Prophet ﷺ (about it) after I became Muslim. He told me to fulfill my vow." (*Sahih*)

(المعجم ١٧) - بَابُ مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ (التحفة ١٧)

٢١٢٧ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ رَافِعٍ، عَنْ خَالِدِ ابْنِ يَرِيدَ، عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجِيَهِيِّنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ، فَكَفَّارَتُهُ كَفَارةً يَمِينٍ».

٢١٢٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ مُحَمَّدٍ الصَّنْعَانِيُّ: حَدَّثَنَا حَارِجٌ ابْنُ مُضْعِبٍ عَنْ بُكْرٍ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشْجَحِ، عَنْ كُرَيْبٍ، عَنْ ابْنِ عَبَّاسٍ، عَنْ النَّبِيِّ ﷺ قَالَ: «مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ فَكَافَّارَتُهُ كَفَارةً يَمِينٍ. وَمَنْ نَذَرَ نَذْرًا لَمْ يُطِقْهُ فَكَافَّارَتُهُ كَفَارةً يَمِينٍ. وَمَنْ نَذَرَ نَذْرًا أَطَاقَهُ فَلَيْسَ بِهِ».

(المعجم ١٨) - بَابُ الْوَفَاءِ بِالنَّذْرِ (التحفة ١٨)

٢١٢٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: نَذَرْتُ نَذْرًا فِي الْجَاهِلِيَّةِ.

فَسَأَلْتُ النَّبِيَّ ﷺ بَعْدَمَا أَسْلَمْتُ . فَأَمْرَنِي أَنْ
أُوْفِي بِنَدْرِي .

تخریج: [صحیح] تقدم، ح: ١٧٧٢.

Comments:

- Vowing is a type of worship, and is a good deed, because 'Umar made a determined vow to do good before embracing Islam, therefore, the noble Prophet ﷺ ordered him to fulfill the vow to do the good deed.
- If a vow is made in the state of disbelief to do something which is a good deed in Islam as well, then this vow must be fulfilled after embracing Islam.

2130. It was narrated from Ibn 'Abbas that a man came to the Prophet ﷺ and said: "O Messenger of Allâh, I vowed to offer a sacrifice at Buwânah." He said: "Do you intend any action of Ignorance period?" He said: "No." He said: "Then fulfill your vow." (*Hasan*)

٢١٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَعَبْدُ اللَّهِ
ابْنُ إِسْحَاقَ الْجَوَهِرِيُّ . قَالَ: حَدَّثَنَا عَبْدُ اللَّهِ
ابْنُ رَجَاءً: أَبْنَا الْمَسْعُودِيُّ، عَنْ حَيْبِ بْنِ
أَبِي ثَابِتٍ، عَنْ سَعِيدِ بْنِ جُبَيرٍ، عَنْ ابْنِ
عَبَّاسٍ أَنَّ رَجُلًا جَاءَ إِلَى النَّبِيِّ ﷺ فَقَالَ: يَا
رَسُولَ اللَّهِ إِنِّي نَذَرْتُ أَنْ أَنْحَرَ بِيوانَةً.
فَقَالَ: «فِي نَفْسِكَ شَيْءٌ مِّنْ أَمْرِ الْجَاهِلِيَّةِ؟»
قَالَ: لَا . قَالَ: أُوفِي بِنَذْرِكَ .

تخریج: [حسن] أخرجه الطبراني في الكبير: ١٢/١٢، ٢٢، ٢٢، ح: ١٢٣٥٦؛ وحسنه العسوي في المختلط تقدم، ح: ٩٠٦، وحبيب عنون تقدم، ح: ٣٨٣، إن صحة السند إليه، وله شواهد عند أبي داود، ح: ٣٣١٣؛ وغيره.

Comments:

- Having something from the pre-Islamic ignorance period in the heart, means for example, if he still specified a place because it used to be considered holy for some reason in the time of ignorance, and he had vowed to slaughter a camel there following the same assumed holiness.
- Buwânah is a sand-hill near the seashore situated beyond Yanbu.

2131. It was narrated from Maimunah bint Kardam Al-Yasâriyyah that her father met the Prophet ﷺ when she was riding behind him. He said: "I vowed to offer a sacrifice at Buwânah." The Messenger of Allâh ﷺ said: "Is there any idol there?" He said: "No." He said: "Fulfill your

٢١٣١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
مَرْوَانُ بْنُ مَعَاوِيَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ
الرَّحْمَنِ الطَّافِيِّ، عَنْ مَيْمُونَةَ بْنَتْ كَرْدَمَ
الْيَسَارِيَّةَ أَنَّ أَبَاهَا لَقِيَ النَّبِيَّ ﷺ وَهِيَ رَوِيَّةٌ
لَهُ . فَقَالَ: إِنِّي نَذَرْتُ أَنْ أَنْحَرَ بِيوانَةً . فَقَالَ
رَسُولُ اللَّهِ ﷺ: «هَلْ بِهَا وَئِنْ؟» قَالَ: لَا .

vow.” (*Hasan*)

Another chain with similar wording.

قال: «أَوْفِ بِنَذْرِكَ».

حدثنا أبو بكرٍ بنُ أبي شيبةَ: حدثنا ابنُ دكينَ، عنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ، عنْ يَزِيدَ بْنِ مَقْسُمٍ، عنْ مَيْمُونَةَ بِنْتِ كَرْدَمٍ، عنِ الْبَيْهِيِّنِيِّ، بِنْخُورِهِ.

تخریج: [حسن] أخرجه أحمد: ٣٦٦ / ٦ من حديث الطافحي به، الرواية الثانية، وقال البوصيري: أنه منقطع، يزيد بن مقسوم لم يسمع من ميمونة بنت كردم ، وفي الرواية الأولى تدلisis، انظر الحديث السابق، وله طريق آخر عند أبي داود، ح: ٣١٤.

Comments:

- Fulfilling a vow is compulsory.
- If someone vowed and died without fulfilling it, the vow related to wealth should be fulfilled from the deceased's wealth, just as one's debt is paid after death from the wealth, and then the inheritance is divided.
- A vow related to physical worship should be fulfilled by a close heir.
- The offspring has more responsibility for fulfilling the parents' vow.

Chapter 19. One Who Dies With A Vow Left To Fulfill

2132. It was narrated from Ibn 'Abbâs that Sa'd bin 'Ubâdah asked the Messenger of Allâh ﷺ about a vow which his mother had made, but she had died without fulfilling it. The Messenger of Allâh ﷺ said: "Fulfill it on her behalf." (*Sahîh*)

(المعجم ١٩) - بَابُ مَنْ مَاتَ وَعَلَيْهِ نَذْرٌ (التحفة ١٩)

٢١٣٢ - حدثنا محمد بن رميح: أئبنا الأئمّةُ بن سعدٍ، عن ابن شهابٍ، عن عبّيد الله بن عبد الله، عن ابن عباسٍ أن سعد بن عبادة استحق رسول الله ﷺ في نذر كان على أمّه. توفيت ولم تقضيه. فقال رسول الله ﷺ: «أقضيه عنها».

تخریج: أخرجه البخاري، الوضایا، باب ما يستحب لمن توفي فجاءه أن يتصدقوا عنه، وقضاء النذر عن الميت، ح: ٢٧٦١، ٢٧٩٨ من حديث ابن شهاب الزهري به، ومسلم، النذر، باب الأمر بقضاء النذر، ح: ١٦٣٨.

2133. It was narrated from Jâbir bin 'Abdullâh that a woman came to the Messenger of Allâh ﷺ and said: "My mother has died, and she had made a vow to fast, but

٢١٣٣ - حدثنا محمد بن يحيى: حدثنا يحيى بن بکير: حدثنا ابن لبيعة عن عمرو ابن دينار، عن جابر بن عبد الله أن امرأة

she died before she could fulfill it. The Messenger of Allâh ﷺ said: 'Let her guardian fast on her behalf.' (Da'if)

تخریج: [إسناده ضعیف] و ضعفه البوصیری، و انظر، ح: ۳۲۰ لعلته، و حدیث: من مات
وعلیه صیام صام عنه ولیه، یعنی عنه.

Chapter 20. One Who Vows To Go For Hajj Walking

2134. It was narrated from Abu Sa'eed Ar-Ru'aani that 'Abdullah bin Mâlik told him, that 'Uqbah bin Âmir told him, that his sister vowed to walk, barefoot and bareheaded, and he mentioned that to the Messenger of Allâh ﷺ. He said: "Order her to ride and to cover her head, and to fast for three days." (Da'if)

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأیمان والذور، باب من رأى عليه كفارة إذا
كان في مقصبة، ح: ۳۲۹۳ من حدیث یحییی به * عبیدالله بن زحر ضعفه الجمھور، وقال ابن
معین: كل حدیثه عندي ضعیف، وله متابعة ضعیفة عند أحمد: ۱۴۷/۴ من أجل ابن لهيعة تقدم،
ح: ۳۲۰.

2135. It was narrated that Abu Hurairah said: "The Prophet ﷺ saw an old man walking between his two sons, and he said: 'What is the matter with him?' His sons said: 'A vow, O Messenger of Allâh.' He said: 'Let this old man ride, for Allâh has no need of you or your vow.'" (Sahih)

تخریج: أخرجه مسلم، المذ. باب من بد: أن يمشي إلى الكعبه، ح: ۱۶۴۳ من حدیث
عبدالعزیز بـ

أَتَتْ رَسُولَ اللَّهِ ﷺ فَقَالَتْ: إِنَّ أُمِّي تُؤْمِنُ.
وَعَلَيْهَا نَدْرٌ صِيَامٌ. فَتُؤْمِنُ قَبْلَ أَنْ تَفْضِيَ.
فَقَالَ رَسُولُ اللَّهِ ﷺ: «لِيَصُمُّ عَنْهَا الْوَلِيُّ».

(المعجم (۲۰) - باب مَنْ نَدَرَ أَنْ يَحْجُّ
ماشیاً (التحفة (۲۰)

۲۱۳۴ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ
اللَّهِ بْنُ نُمَيْرٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَبْدِ
اللَّهِ بْنِ زَحْرٍ، عَنْ أَبِي سَعِيدِ الرَّغَبِيِّ أَنَّ عَبْدَ
اللَّهِ بْنَ مَالِكٍ أَخْبَرَهُ أَنَّ عَبْدَهُ بْنَ عَامِرٍ أَخْبَرَهُ
أَنَّ أُخْتَهُ نَدَرَتْ أَنْ تَمْشِي حَافِقَةً، غَيْرَ
مُحْتَمِرَةً وَأَنَّهُ ذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ.
فَقَالَ: «مُرْهَا فَلْتَرْكِبْ وَلَتَخْتَمْ وَلَتَصْمِ ثَلَاثَةَ
أَيَّامٍ».

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأیمان والذور، باب من رأى عليه كفارة إذا
كان في مقصبة، ح: ۳۲۹۳ من حدیث یحییی به * عبیدالله بن زحر ضعفه الجمھور، وقال ابن
معین: كل حدیثه عندي ضعیف، وله متابعة ضعیفة عند أحمد: ۱۴۷/۴ من أجل ابن لهيعة تقدم،
ح: ۳۲۰.

۲۱۳۵ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ
ڪَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ
عُمَرِو بْنِ أَبِي عَمِّرٍو، عَنِ الْأَعْرَجِ، عَنْ أَبِي
هُرَيْرَةَ قَالَ: رَأَى النَّبِيُّ ﷺ شَيْخًا يَمْشِي بَيْنَ
ابْنَيْهِ. فَقَالَ: «مَا شَاءَ هَذَا؟» قَالَ ابْنَاهُ:
نَدَرٌ، يَا رَسُولَ اللَّهِ قَالَ: «ارْكِبْ أَيْهَا الشَّيْخَ
إِنَّ اللَّهَ غَنِيٌّ عَنْكَ وَعَنْ نَدْرِكَ».

تخریج: أخرجه مسلم، المذ. باب من بد: أن يمشي إلى الكعبه، ح: ۱۶۴۳ من حدیث
عبدالعزیز بـ

Comments:

- a. One should not make such a vow that is extremely and exceedingly hard to fulfill.
- b. If one feels that fulfilling a vow is getting out of reach, then one should break the vow, and carry out the expiation.

Chapter 21. One Who Mixes Obedience And Sin In His Vow

2136. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ passed by a man in Makkah who was standing in the sun. He said: "What is this?" They said: "He vowed to fast and not to seek shade until night comes, and not to speak, and to remain standing." He said: "Let him speak and seek shade, and let him sit down, but let him complete his fast." (*Sahih*)

Another chain from Ibn 'Abbâs, from the Prophet ﷺ, with similar wording.

(المعجم ٢١) - بَابُ مَنْ خَلَطَ فِي نَذْرِهِ طَاعَةً بِمَعْصِيَةٍ (التحفة ٢١)

٢١٣٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَרוْقَوْيِ: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ عُمَرَ، عَنْ عَطَاءٍ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ مِنْ يَرْجُلَ بِمَكَّةَ وَهُوَ قَائِمٌ فِي الشَّمْسِ. فَقَالَ: «مَا هُذَا؟» قَالُوا: نَذَرَ أَنْ يَصُومَ وَلَا يَسْتَظِلُ إِلَى الظَّلَّ. وَلَا يَتَكَلَّمُ. وَلَا يَزَالُ قَائِمًا. قَالَ: «الْيَتَكَلَّمُ وَلَيَسْتَظِلُّ وَلَيَجْلِسُ وَلَيُتَمِّمَ صَوْمَهُ». حَدَّثَنَا الْحُسَيْنُ بْنُ مُحَمَّدٍ بْنُ شَبَّابَ الْوَاسِطيِّ: حَدَّثَنَا العَلَاءُ بْنُ عَبْدِ الْجَبَارِ، عَنْ وَهْبِيَّ، عَنْ أَيُوبَ، عَنْ عَكْرَمَةَ، عَنْ أَبْنِ عَبَّاسٍ عَنِ النَّبِيِّ نَحْوَهُ.

تخریج: آخرجه البخاری، الأیمان والذور، باب النذر فيما لا يملك وفي معصية، ح: ٦٧٠٤ من حديث وهب به، الروایة الثانية، وبها صبح السندا الأول.

Comments:

If the vow is of such a type, which includes legal and illegal things, then one should give up the illegal things and fulfill the vow of doing the legal ones. Because making a vow to avoid speaking, sitting and keeping away from shade was incorrect, so these things were prohibited, and observing fast is a permissible worship, therefore it was ordered to be fulfilled.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

12. The Chapters On Business Transactions

(المعجم ١٢) أبواب التجارية
(التحفة ١٠)

Comments:

Linguistically *Bai'* means 'exchanging a commodity for another commodity'. The term *Bai'* is identified thus: 'It is to exchange property with mutual agreement.'

A transaction relating to sales and business has the following four principle factors:

- 1: The Seller: It is essential that the seller owns the commodity, understands the matter in hand and he/she is sane.
- 2: The Buyer: It is essential for the buyer too that he/she has the ability to make and exercise a deal.
- 3: The Commodity: The commodity being sold should be permissible and the commodity taken as price should also be permissible.
- 4: Words of Striking a Deal: Acceptance and liability, for example: a person says 'I sell this in exchange for such and such price,' and the buyer should say 'I buy it.'

Chapter 1. Encouragement To Earn A Living

2137. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: 'The best (most pure) food a man consumes is that which he has earned himself, and his child (and his child's wealth) is part of his earnings.' (Sahih)

(المعجم ١) - بَابُ الْحَثِّ عَلَى
المَكَاسِبِ (التحفة ١)

٢١٣٧ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ، وَ
عَلَيْهِ بْنُ مُحَمَّدٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنُ
خَبِيبٍ قَالُوا: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا
الأَعْمَشُ عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ
عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ
أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِنْ كَسِيهِ. وَإِنَّ
وَلَدَهُ مِنْ كَسِيهِ».

تغريب: [صحيح] أخرجه النسائي: ٢٤١/٧، البیوع، باب الحث على الكسب، ح: ٤٤٥٦، ٤٤٥٧ من حديث الأعمش به، وصححه ابن حبان (موارد)، ح: ١٠٩٣، ١٠٩٢، وله شواهد كثيرة انظر، ح: ٢٢٩٠، ٢٢٩٢.

Comments:

- Livelihood earned with hard work is lawful earning, provided it was earned according to Islamic law. This hard work can be physical, technical, professional, handicraft, intellectual and academic.
- Parents are allowed to take from their children's wealth, as needed, however they should not disregard their children's lawful and reasonable needs and facilities.

2138. It was narrated from Miqdâm bin Ma'dikarîb (Az-Zubaidi) that the Messenger of Allâh ﷺ said: "No man earns anything better than that which he earns with his own hands, and what a man spends on himself, his wife, his child and his servant, then it is charity." (*Hasan*)

٢١٣٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ، عَنْ بَحْرِيْبِ بْنِ سَعْدٍ، عَنْ خَالِدِ بْنِ مَعْدَانَ، عَنِ الْمُقْدَامِ بْنِ مَعْدِيَّكَرِبَ [الرَّبِيعِيِّ]، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «مَا كَسَبَ الرَّجُلُ كَسْبًا أَطْيَبَ مِنْ عَمَلٍ يَكْوِي. وَمَا أَنْفَقَ الرَّجُلُ عَلَى نَفْسِهِ وَأَهْلِهِ وَوَلَدِهِ وَخَارِجِهِ، فَهُوَ صَدَقَةٌ».

تخریج: [حسن] أخرجه أحمد: ٤/١٣٢ من حديث إسماعيل به نحو المعنى، وتابعه بقية ثنا بحير به (المستد للإمام أحمد، أيضاً)، وحسنه البوصيري، وأصله في صحيح البخاري، ح: ٢٠٧٢، وغيره، وله شاهد.

Comments:

- The best earning is earned by hard work.
- To avoid spending on one's wife and children is miserliness and stinginess which is condemnable. But to keep fulfilling unreasonable legal and illegal needs of the family is also extravagance and squandering, which are both disliked.

2139. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "The trustworthy, honest Muslim merchant will be with the martyrs on the Day of Resurrection." (*Da'if*)

٢١٣٩ - حَدَّثَنَا أَحْمَدُ بْنُ سَيَّانٍ: حَدَّثَنَا كَثِيرُ بْنُ هِشَامٍ: حَدَّثَنَا كُلُّثُومُ بْنُ جُوشَنِ الْقُشَيْرِيُّ عَنْ أَبُوبَرَّ، عَنْ تَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْتَّاجِرُ الْأَمِينُ الصَّلُوقُ الْمُسْلِمُ، مَعَ الشُّهَدَاءِ يَوْمَ الْقِيَامَةِ».

تخریج: [ضعيف] أخرجه الحاكم: ٦/٢ من حديث كثیر به، وقال البوصيري: هذا إسناد فيه كلوثون بن جوشن وهو ضعيف ، وله شاهد ضعيف عند الترمذی، ح: ١٢٠٩ وغيره، وحسنه الترمذی، وفيه علل منها عنعنة المحسن وغيره.

Comments:

- This is narrated in *Jâmi' At-Tirmidhi* by Abu Sa'eed. Imâm Tirmidhi declared this Hadith as *Hasan* (Good). (*Jâmi' At-Tirmidhi*, Hadith: 1209)

2140. It was narrated from Abu Hurairah that the Prophet ﷺ said: "The one who strives to support the widow and the poor is like a *Mujāhid* who fights in the cause of Allāh, and like one who stands in the night (in voluntary prayer) and fasts by day." (*Sahih*)

٢١٤٠ - حَدَّثَنَا يَفْعُوبُ بْنُ حُمَيْدٍ بْنَ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزَ الدَّرَاوِرْدِيُّ، عَنْ ثَوْرَ بْنِ رَيْدٍ الدَّلِيلِيِّ، عَنْ أَبِي الْعَيْثَ مَوْئِيَ ابْنِ مُطْبِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «السَّاعِي عَلَى الْأَرْمَلَةِ وَالْمُسْكِنِ كَالْمُجَاهِدِ فِي سَبِيلِ اللَّهِ، وَكَالَّذِي يَقُومُ اللَّيْلَ وَيَضُمُّ النَّهَارَ».

تخریج: أخرجه البخاري، الفتاوی، باب فضل النفقة على الأهل ... الخ، ح: ٥٣٥٣؛ ومسلم، الزهد، باب فضل الإحسان إلى الأرمدة والمسكين واليتيم، ح: ٢٩٨٢ من حديث ثور به.

Comments:

The best source of looking after a widow is to arrange her marriage, thus her honor will be protected as well, and also it will be a permanent arrangement for her and her children to be looked after, and to have a good upbringing. However, if her marriage seems impossible for some reason, then it is an obligation upon the Muslims to fulfill her and her children's lawful and reasonable needs in order to make them useful, responsible and positive members of the society.

2141. It was narrated from Mu'âdh bin 'Abdullâh bin Khubaib, from his father, that his paternal uncle said: "We were sitting in a gathering, and the Prophet ﷺ came with traces of water on his head. One of us said to him: 'We see that you are of good cheer today.' He said: 'Yes, praise is to Allâh.' Then he spoke to the people about being rich. He said: 'There is nothing wrong with being rich for one who has piety, but good health, for one who has piety is better than riches, and being of good cheer is a blessing.' (*Sahih*)

٢١٤١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَالِدٌ بْنُ مَحْلِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَلَيْمَانَ عَنْ مَعَاذِ بْنِ مَحْلِيدٍ عَنْ خَيْرِ بْنِ خَيْرٍ، عَنْ أَبِيهِ، عَنْ عَمِّهِ قَالَ: كُنَّا فِي مَجْلِسٍ فَجَاءَ النَّبِيُّ ﷺ وَعَلَى رَأْسِهِ أَثْرٌ مَاءً. فَقَالَ لَهُ بَعْضُهُنَا: تَرَكَ الْوَمْرَ طَيْبَ النَّفْسِ. قَالَ: «أَجَلُ وَالْحَمْدُ لِلَّهِ» ثُمَّ أَفَاضَ الْقَوْمُ فِي ذُئْرِ الْغَنَى. قَالَ: «لَا يَأْمُسَ بِالْغَنَى لِمَنِ اتَّقَى». وَالصَّحَّةُ لِمَنِ اتَّقَى خَيْرٌ مِنَ الْغَنَى. وَطَيْبُ النَّفْسِ مِنَ الْغَنِيمِ».

تخریج: [إسناده صحيح] أخرجه أحمد: ٥/ ٣٧٢، ٣٨١ من حديث عبد الله بن سليمان به، وصححه الحاكم: ٢/ ٣، والذهبی، والبصیری.

Comments:

- A righteous person having fear of Allāh ﷺ earns his livelihood through lawful ways, and spends it in good causes, and in fulfilling lawful and reasonable needs, thus he earns reward in earning and in spending. The wealth is a great favor for such a person.
- A bad person does not distinguish between lawful and unlawful in earning a livelihood. He spends with pride, to show off, and he uses wealth for an unreasonable lavish lifestyle. Thus the gain of this wealth becomes a source of sin for him, and the spending of it multiplies his sins even more. The wealth is a test and a cause of destruction for such a person. May Allāh keep us safe! Amen.
- Health is a greater favor than wealth. Being in a state of good health, despite being less fortunate in respect to wealth, certainly allows more good deeds to be performed.

Chapter 2. Moderation In Seeking To Earn A Living

2142. It was narrated from Abu Humaid As-Sâ'idi that the Messenger of Allāh ﷺ said: "Be moderate in seeking worldly things, for everyone will be facilitated for which he was created." (*Sahih*)

(المعجم ٢) - باب الاقتصاد في طلب المعيشة (التحفة ٢)

٢١٤٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ، عَنْ عُمَارَةَ بْنِ غَرِيَّةَ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ عَبْدِ الْمُلِكِ بْنِ سَعِيدِ الْأَنصَارِيِّ، عَنْ أَبِي حُمَيْدٍ السَّاعِدِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَجْمَلُوا فِي طَلَبِ الدُّنْيَا فَإِنَّ كُلَّا مُبِيرٌ لِمَا خُلِقَ لَهُ».

تخرج: [صحح] آخرجه ابن أبي عاصم في السنة، ح: ٤١٨ عن هشام بن عمار به، أخرجه البهقي وغيره من حديث سليمان بن بلال عن ربيعة به، وصححه الحاكم على شرط الشيخين: ٢/٣، وافقه الذهبي، وهو على شرط مسلم فقط، والله أعلم.

Comments:

'Be moderate in seeking worldly things' means to strive for earning lawful and one should not engage oneself fully in the earning that his/her attention for the Hereafter is driven away. It means to adopt a moderate manner of earning the worldly gain.

2143. It was narrated from Anas bin Mâlik that the Messenger of Allāh ﷺ said: 'The one who has the most concerns is the believer who is concerned about both his worldly affairs and his Hereafter.'" (*Da'if*)

٢١٤٣ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ بَهْرَامٍ: حَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدٍ بْنِ عُثْمَانَ، زَوْجُ بِنتِ الشَّعِيْيِّ: حَدَّثَنَا سُفِيَّانُ عَنِ الْأَعْمَشِ، عَنْ يَزِيدِ الرَّئَاثِيِّ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ

Abu 'Abdullah said: "This *Hadith* is *Gharib*' Ismâ'il, alone, has narrated it."

رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ: (أَعْظَمُ النَّاسِ هُمَا، الْمُؤْمِنُ الَّذِي يَهُمْ بِإِمْرٍ دُنْيَا وَأَمْرٍ آخِرَتِهِ).

قالَ أَبُو عَبْدِ اللَّهِ: هَذَا حَدِيثٌ غَرِيبٌ.
تَقَرَّدَ بِهِ إِسْمَاعِيلُ.

تخریج: [إسناده ضعیف] أخرجه ابن أبي الدنيا في الهم والحزن من حديث إسماعیل به،
وانظر، ح: ١٠٨٠: لعلته، وفيه عمل أخرى.

2144. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "O people, fear Allâh and be moderate in seeking a living, for no soul will die until it has received all its provision, even if it is slow in coming. So fear Allâh and be moderate in seeking provision; take that which is permissible and leave that which is forbidden." (*Sahih*)

٢١٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحَمْصِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ، عَنْ أَبِي جُرَيْحٍ، عَنْ أَبِي الرَّزِيرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ: (أَيُّهَا النَّاسُ اتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ. فَإِنْ تَفْسَأَ لَنْ تَمُوتَ حَتَّى تَسْتَوِي رِزْقَهَا، وَإِنْ أَبْطَأَ عَنْهَا فَانَّقَوْا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ. خُذُوا مَا حَلَّ، وَدَعُوا مَا حَرُّمَ).

تخریج: [صحیح] أخرجه ابن أبي عاصم في السنة، ح: ٤٢٠ من حديث الوليد به، وتتابعه محمد بن بكر (المستدرك: ٤/٢) وغيره، وله شاهد حسن عند ابن حبان (موارد)، ح: ١٠٨٥، ١٠٨٤، ١٠٨٥، ١٠٨٤، ١٠٨٣ وغيره، وصححه العحاكم، والذهبی.

Comments:

- A person caring for a lawful earning is never deprived of livelihood.
- Putting trust in Allâh, unlawful livelihood must be avoided.
- As the term of worldly life is appointed, which will not be increased or decreased; likewise livelihood is also fixed and specified. But the human earns reward or chastisement for its right or wrong strife.

Chapter 3. Fearing Allâh In Business

(المعجم ٣) - بَابُ التَّوْقِيِّ فِي التَّجَارَةِ
(التحفة ٣)

2145. It was narrated that Qais bin Abu Gharazah said: "At the time of the Messenger of Allâh ﷺ we used to be called brokers, but the Messenger of Allâh ﷺ passed by us and called by a name that

٢١٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعْمَيْرٍ: حَدَّثَنَا أَبُو مُعاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ شَقِيقٍ، عَنْ قَيْسِ بْنِ أَبِي غَرَّةَ قَالَ: كُنَّا نُسَمَّى، فِي عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ، السَّمَاسِرَةَ. فَمَرَّ بِنَا

was better than that. He said: 'O merchants, selling involves (false) oaths and idle talk, so mix some charity with it.''" (*Sahih*)

رسول الله ﷺ فَسَمَّانَا بِاسْمِهِ هُوَ أَحْسَنُ مِنْهُ.
فَقَالَ: «يَا مَعْشَرَ التُّجَارِ إِنَّ الْبَيْعَ يَحْضُرُهُ
الْخَلْفُ وَاللَّغْوُ. فَشُوَّهُهُ بِالصَّدَقَةِ».

تخریج: [صحیح] أخرجه أبو داود، البیوع، باب في التجارة يخالفها الحلف واللغو، ح: ٣٣٢٦ من حديث أبي معاوية به، وصححه الترمذی، ح: ١٢٠٨، وابن الجارود، ح: ٥٥٧، والحاکم: ٥/٢، والذهبی * الأعمش صرح بالسماع (مشكل الآثار للطحاوی: ١٤، ١٣/٣)، وتابعه جماعة.

Comments:

This *Hadith* expresses the permissibility of a broker and commissioning agent, whereas the *Ahâdîth* (2175-2177) are contrary to it. These *Ahâdîth* can be reconciled thus; that helping a brother, out of sincerity without taking commission, in buying and selling the commodity is better, but receiving a salary or commission for it is disliked. Ibn Sirin, 'Atâ, Ibrâhim and Hasan, may Allâh have mercy on them, see no harm in the salary of an agent. Ibn Abbâs رَضِيَ اللَّهُ عَنْهُ said: "There is no harm in saying, 'sell this clothe, and whatever is gained over such and such price is yours'." Ibn Sirin said: "Sell this commodity for such and such, whatever the profit will be is yours. Or the profit will be divided between you and me." There is no harm in it." The Prophet ﷺ said: "The Muslims are bound to their conditions." (*Sahîh Al-Bukhârî: The Book of Hiring* (37) Chapter: 14 The wages of a broker)

2146. It was narrated from Ismâ'il bin 'Ubaid bin Rifâ'ah, from his father, that his grandfather Rifâ'ah said: "We went out with the Messenger of Allâh ﷺ, and the people were trading early in the morning. He called them: 'O merchants!' and when they looked up and craned their necks, he said: 'The merchants will be raised on the Day of Resurrection as immoral people, apart from those who fear Allâh and act righteously and speak the truth (i.e. those who are honest).''" (*Hasan*)

٢١٤٦ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنَ كَاسِبٍ: حَدَّثَنَا يَحْيَى بْنُ شَائِمَ الطَّائِئِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ بْنِ خَثِيمٍ، عَنْ إِسْمَاعِيلَ بْنِ عَيْدَ بْنِ رِفَاعَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ رِفَاعَةَ قَالَ: حَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فَإِذَا النَّاسُ يَبْتَأِلُونَ بُكْرَةً. فَنَادَاهُمْ: «يَا مَعْشَرَ التُّجَارِ» فَلَمَّا رَفَعُوا أَبْصَارَهُمْ، وَمَدُوا أَعْنَافَهُمْ. قَالَ: «إِنَّ التُّجَارَ يَعْمَلُونَ يَوْمَ الْقِيَامَةِ فُجَارًا. إِلَّا مَنْ أَنْتَنِي اللَّهُ وَبِرَّ وَصَدَقَ».

تخریج: [إسناده حسن] أخرجه الترمذی، البیوع، باب ماجاء في التجار وتسمية النبي ﷺ إياهم، ح: ١٢١٠ من حديث ابن خثیم به، وقال: هذا حديث حسن صحيح ، وصححه ابن

جبان (موارد)، ح: ١٠٩٥، والحاكم: ٦/٢، والنهبي.

Chapter 4. If A Man Finds A Way Of Earning A Living, Let Him Stick With It

2147. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: 'Whoever achieves at something, let him stick with it.''' (*Da'if*)

(المعجم ٤) - باب : إِذَا قُسِّمَ لِلرَّجُلِ رِزْقٌ مِّنْ وَجْهِ فَلِيَلْزَمْهُ (التحفة ٤)

٢١٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَسَارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا فَوْهَةُ أَبْوَ يُوسُفَ، عَنْ هَلَالِ بْنِ جُعْنَى، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَ مِنْ شَيْءٍ، فَلِيَلْزَمْهُ».

تخریج: [إسناده ضعيف] أخرجه البخاري في التاريخ الكبير: ٢٠٦/٨ من حديث محمد بن عبد الله الأنصاري به، وقال البوصيري: هذا إسناد ضعيف * هلال مستور، وشك ابن جبان في سماعه من أنس (تقريب)، وفيه علة أخرى.

2148. It was narrated that Nâfi' said: I used to send trade goods to Shâm and Egypt, then I prepared to send trade goods to 'Irâq. I went to 'Aishah, the Mother of the Believers, and said to her: "O Mother of the Believers! I used to send trade goods to Shâm and I am preparing to send trade goods to 'Irâq." She said: "Do not do that. What is wrong with the way you have been doing it? I heard the Messenger of Allâh ﷺ say: 'If Allâh causes provision to come to one of you through a certain means, he should not leave it unless it changes or deteriorates.'" (*Da'if*)

٢١٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا أَبُو عَاصِمٍ: أَخْبَرَنِي أَبِي، عَنْ الزَّبِيرِ بْنِ عَيْدَى، عَنْ نَافِعٍ قَالَ: كُنْتُ أَجْهَزُ إِلَى الشَّامِ وَإِلَى مَصْرَ، فَجَهَزْتُ إِلَى الْعِرَاقِ. فَأَتَيْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ فَقُلْتُ لَهَا: يَا أُمَّ الْمُؤْمِنِينَ كُنْتُ أَجْهَزُ إِلَى الشَّامِ. فَجَهَزْتُ إِلَى الْعِرَاقِ. فَقَالَتْ: لَا تَقْتَلُ مَا لَكَ وَلَمْ تَحِرِّكْ؟ فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا سَبَبَ اللَّهُ أَحْدَكُمْ رِزْقًا مِّنْ وَجْهِهِ، فَلَا يَدْغُهُ حَتَّى يَغْفِرَ لَهُ، أَوْ يَتَكَبَّرَ لَهُ».

تخریج: [إسناده ضعيف] أخرجه أبو حماد: ٢٤٦ عن أبي عاصم به بعض الاختلاف * والزبير بن عبيد مجھول كما في التقريب وغيره.

Chapter 5. Occupations

2149. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Allâh has not sent any Prophet but he was a shepherd." His Companions said to him: "Even you, O Messenger of Allâh?" He said: "Even me. I used to tend the sheep of the people of Makkah for a few Qirâts." (*Sahih*)

(One of the narrators) Suwaïd said: "Meaning one Qirât for every sheep."

تخریج: أخرجه البخاري، الإجارة، باب رعي الغنم على قراريط، ح: ٢٢٦٢ من حديث عمرو بن يحيى به.

Comments:

- Physical work and labor is a lawful profession, provided a worker works honestly and he is not given work to do which is religiously unlawful.
- Work should not be started until the labor and salary is determined.
- Tending to goats and sheep was a profession of the Prophet ﷺ.
- Qirât is a type of currency, which is a twentieth or twenty-fourth of a Dinâr. (See: *An-Nihâyah* of Ibn Athir, root word *Qirât*).

2150. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Zakariyyâ was a carpenter." (*Sahih*)

(المعجم ٥) - باب الصناعات (التحفة ٥)

٢١٤٩ - حَدَّثَنَا سُوِيدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَمْرُو بْنُ يَحْيَى بْنِ سَعِيدٍ الْقُرَشِيِّ، عَنْ جَدِّهِ، سَعِيدِ بْنِ أَبِي أَحْيَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا بَعَثَ اللَّهُ نَبِيًّا إِلَّا رَاعَى عَنْهُ» قَالَ لَهُ أَصْحَابُهُ: وَأَنْتَ يَا رَسُولَ اللَّهِ! قَالَ: «وَأَنَا. كُنْتُ أَرْعَاهَا لِأَهْلَ مَكَّةَ بِالْقَرَارِبِ». قَالَ سُوِيدٌ: يَعْنِي كُلُّ شَاةٍ بِقِيرَاطٍ.

فَالْمُؤْمِنُونَ

٢١٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْخُزَاعِيُّ، وَالْحَجَاجُ، وَالْهَيْثَمُ بْنُ جَوْهِيلَ قَالُوا: حَدَّثَنَا حَمَادٌ عَنْ ثَابِتٍ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «كَانَ رَكِينًا تَجَارًا».

تخریج: أخرجه مسلم، الفضائل، باب: من فضائل ذكرياء عليه السلام، ح: ٢٣٧٩ من حديث حماد بن سلمة به.

Comments:

- Carpentry and woodwork is a good profession, through which a believer can earn lawful livelihood with his hands. Prophet Nuh (Noah) also built a wooden ark with Allâh's command. (*Surah Hud* 11: 37-38).
- No profession should be disregarded. Disregard is that a person chooses

unlawful means to earn a livelihood or he/she adopts a profession which is unlawful according to *Shari'ah*.

2151. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "The image-makers will be punished on the Day of Resurrection and will be told: 'Give life to that which you have created.'" (*Sahih*)

٢١٥١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمِحْ: حَدَّثَنَا الْيَثْ بْنُ سَعْدٍ عَنْ نَافِعٍ، عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: إِنَّ أَصْحَابَ الصُّورِ يُعَذَّبُونَ يَوْمَ الْقِيَامَةِ. يُقَالُ لَهُمْ: أَحْيِوْا مَا حَلَقْتُمْ.

تخریج: أخرجه البخاري، التوحید، باب قول الله تعالى: «وَاللَّهُ خَلَقَكُمْ وَمَا تَعْمَلُونَ ...»
الخ، ح: ٧٥٥٧ من حديث الليث بن سعد به.

Comments:

- a. Drawing pictures of living animals is prohibited, regardless if it is drawn on paper, a wall or a piece of cloth, or a statue made of clay, stone, porcelain or plastic etc.
- b. The commandment of blowing life will be given to the artists just for the sake of making them ashamed, and to make clear the gravity of their crime, thus this commandment will in fact be a form of chastisement.

2152. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The most dishonest of people are the dyers and the goldsmiths."^[1] (*Da'if*)

٢١٥٢ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا عُمَرُ بْنُ هَارُونَ، عَنْ هَمَامَ، عَنْ فَرَّاقِ السَّبِيجِيِّ، عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الشَّخِيرِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: أَكْذَبُ النَّاسِ الصَّبَاغُونَ وَالصَّوَاغُونَ.

تخریج: [إسناده ضعيف] أخرجه أبو داود الطیالسي، ح: ٢٥٧٤ عن همام به، وانظر،
ح: ١٧٨١ لعلته.

Chapter 6. Hoarding And Importing

(المعجم ٦) - بَابُ الْحُكْرَةِ وَالْجَلْبِ
(التحفة ٦)

2153. It was narrated from 'Umar bin Khattâb that the Messenger of Allâh ﷺ said: "The importer is

٢١٥٣ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْضُومِيُّ: حَدَّثَنَا أَبُو أَحْمَدَ: حَدَّثَنَا إِسْرَائِيلُ عَنْ عَلَيِّ

[1] These two occupations are characterized as dishonest because they often tell people that their goods will be ready at a certain time then break that promise. The words translated as 'dyers and goldsmiths' may also refer to those who tell lies and invent fabrications. See explanation by Sindi.

blessed with provision and the hoarder is cursed." (*Da'if*)

ابن سالم بن ثوبان، عن علي بن زيد بن جدعان، عن سعيد بن المسيب، عن عمر ابن الخطاب قال: قال رسول الله ﷺ: **«الحالب مزوق والمحتكر ملعون»**.

نَحْرِيْج: [إسناده ضعيف] أخرجه الدارمي: ٢٤٩، ح: ٢٥٤٧ من حديث إسرائيل به، وضفه البوصيري، والسعقلاني في التلخيص الكبير: ١٣/٣، وانظر، ح: ١١٦ لعلته * وعلى بن سالم ضعيف (قريب).

2154. It was narrated from Ma'mar bin 'Abdullâh bin Nadlah that the Messenger of Allâh ﷺ said: "No one hoards but a sinner." ("Sahîh")

٢١٥٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا تَبَرِّيْدُ بْنُ هَارُونَ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدٍ بْنِ إِبْرَاهِيمَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ مَعْنَى بْنِ عَبْدِ اللَّهِ بْنِ نَضْلَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحْتَكِرُ إِلَّا خَاطِئٌ».

نَحْرِيْج: [صحيح] أخرجه الترمذى. البيع، باب ماجاء في الاحتياط، ح: ١٢٦٧ من حديث يزيد بن هارون به، وقال: حسن صحيح ، أخرجه مسلم، ح: ١٦٠٥ من طرق عن سعيد بن المسيب به.

Comments:

"Hoarding up" is when people are in more need of something, the trader holds back the stock in order to let the price increase, out of greed and selfishness. Such a person has a desire in his heart that the public get trapped in difficulty and he/she will take advantage of that to accumulate wealth. This type of desires does not suit a Muslim's dignity.

2155. It was narrated that 'Umar bin Khattâb said: "I heard the Messenger of Allâh ﷺ say: 'Whoever hoards food (and keeps it from) the Muslims, Allâh will afflict him with leprosy and bankruptcy.'" ("Hasan")

٢١٥٥ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمَ: حَدَّثَنَا أَبُو بَكْرٍ الْحَنْفِيُّ: حَدَّثَنَا الْهَيْمَمُ بْنُ رَافِعٍ: حَدَّثَنِي أَبُو يَحْيَى الْمَكْنِيُّ، عَنْ فَرُوقٍ مَوْلَى عُثْمَانَ ابْنِ عَفَّانَ، عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: سَوْعَتْ رَسُولُ اللَّهِ ﷺ يَقُولُ: «مَنْ احْتَكَرَ عَلَى الْمُسْلِمِينَ طَعَامًا ضَرَبَهُ اللَّهُ بِالْجَدَامِ وَالْأَفْلَاسِ».

نَحْرِيْج: [إسناده حسن] أخرجه أحمد: ١/٢١ من حديث الهيثم به مطلقاً، وصححه البوصيري، وقال المنذري في الترغيب والترهيب: ٢/٨٣ هذا إسناد جيد متصل ورواته ثقات ،

وقال الحافظ في الفتح: ٤/٣٤٨ وإسناده حسن.

(المعجم ٧) - باب أجر الرأفي

(التحفة ٧)

٢١٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ ثَمَّةِ: حَدَّثَنَا أَبُو مَعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ جَعْفَرِ ابْنِ إِيَّاسٍ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: بَعَثَنَا رَسُولُ اللَّهِ تَعَالَى لِلَّاهِ رَأِيكَانِي فِي سَرِيرَةٍ. فَتَرَلَنَا يَقُومُونَ. فَسَأَلْنَاهُمْ أَنْ يَقْرُونَا. فَأَبَوَا. فَلَدِعَ سَيِّدُهُمْ فَأَكْتُونَا فَقَاتُلُوا: أَفَيْكُمْ أَحَدٌ يَرْقِي مِنَ الْعَقَرِبِ؟ فَقَلَّتْ: نَعَمْ. أَنَا. وَلَكُنْ لَا أَرْقِي هَذِهِ تُعْطُونَا عَنْمَا. قَالُوا: إِنَّا نُعْطِيْكُمْ ثَلَاثِينَ شَاهَةً. فَقَبَلُوهَا. قَرَأْتُ عَلَيْهِ الْحَمْدَ [الفاتحة] سِبْعَ مَرَّاتٍ. فَبَرِّئَهُ وَقَبَضَتُ الْأَنْفَامَ. فَعَرَضَ فِي أَنْفُسِهَا مِنْهَا شَيْءٌ. فَقَلَّتْ: لَا تَعْجَلُوا حَتَّى تَأْتِيَ النَّبِيَّ تَعَالَى. فَلَمَّا قَدِيمَنَا ذَكَرْتُ لَهُ الَّذِي صَنَعْتُ. فَقَالَ: «أَوَمَا عَلِمْتَ أَنَّهَا رُقِيَّةٌ؟ اقْتِسِمُوهَا وَاضْرِبُوا لِي مَعْكُمْ سَهْمًا».

Chapter 7. The Wages Of The Râqi^[1]

2156. It was narrated that Abu Sa'eed Al-Khudri said: "The Messenger of Allâh ﷺ sent us, thirty horsemen, on a military campaign. We camped near some people and asked them for hospitality but they refused. Then their leader was stung by a scorpion, and they said: 'Is there anyone among you who can recite Ruqyah for a scorpion sting?' I said: 'Yes, I can, but I will not recite Ruqyah for him until you give us some sheep.' They said: 'We will give you thirty sheep.' So we accepted them, and I recited Al-Hamد (i.e. Al-Fâtiha) over him seven times. Then he recovered, and I took the sheep. Then some doubts occurred within ourselves. Then we said: 'Let us not hasten (to make a decision concerning the sheep) until we come to the Prophet ﷺ.' So when we came back: 'I told him what I had done. He said: 'How did you know that it is a Ruqyah? Divide them up and give me a share as well.'" (*Sahih*)

تخریج: (الف) [صحيح] أخرجه الترمذی، الطب، باب ماجاء في أخذ الأجر على التعویذ، ح ٢٠٦٣ من حديث أبي معاویة به، وقال: هذا حديث حسن ، وانظر الحديث الآتی.

^[1] The one who administers *Rugyah* (recitation of Qur'anic Verses as a means of curing disease).

Other chains with similar wording.

حدَّثَنَا أَبُو كُرْبَيْبٍ: حَدَّثَنَا هُشَيْمٌ: حَدَّثَنَا أَبُو بِشْرٍ عَنْ أَبْنَى أَبِي الْمُتَوَكِّلِ، عَنْ أَبِي الْمُتَوَكِّلِ، عَنْ أَبِي سَعِيدٍ، عَنْ النَّبِيِّ ﷺ يَنْهَا حٰدِّيْهٖ؛ حٰدِّيْهٖ مُحَمَّدٌ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدٌ بْنُ جَعْفَرٍ: حَدَّثَنَا شَعْبَةُ عَنْ أَبِي بِشْرٍ، عَنْ أَبْنَى أَبِي الْمُتَوَكِّلِ، عَنْ أَبِي سَعِيدٍ، عَنْ النَّبِيِّ ﷺ يَنْهَا حٰدِّيْهٖ.

قَالَ أَبُو عَبْدِ اللَّهِ: وَالصَّوَابُ هُوَ أَبُو الْمُتَوَكِّلِ.

تخریج: (ب) أخرج البخاري، الإجارة، باب ما يعطي في الرقية على أحياء العرب بفاتحة الكتاب، ح: ٢٢٧٦ من حديث أبي بشر به، وهو الأرجح من السندي السابق، ومسلم، السلام، باب جوازأخذ الأجرة على الرقية بالقرآن والأذكار، ح: ٢٢٠١ من حديث هشيم به.

Comments:

- Ruqyah (incantation) is to read Qur'anic Verses or supplications narrated from the Prophet ﷺ, and then to blow over a patient in order to seek cure through its blessing with the permission of Allâh ﷺ. It is called *Damm* in Urdu.
- Companions of the Prophet ﷺ would avoid a doubtful livelihood, which is requisition of Allâh's fear (*Taqwa*).
- If there is a doubt concerning an issue, it should be clarified from a religious scholar who is known to follow the *Sunnah*.
- Allâh's Messenger ﷺ asked that his share be reserved in order to satisfy his noble Companions ﷺ, and to terminate their uncertainty.

Chapter 8. Wages For Teaching Qur'an

(المعجم ٨) - بَابُ الْأَجْرِ عَلَى تَعْلِيمِ
الْقُرْآنِ (التحفة ٨)

2157. It was narrated that 'Ubâdah bin Sâmit said: "I taught people from *Ahlus-Suffah*^[1] the Qur'an and how to write, and one of them gave me a bow. I said: 'It

٢١٥٧ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ، وَ مُحَمَّدٌ
أَبْنُ إِسْمَاعِيلَ. قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا
مُغِيرَةُ بْنُ زَيْدٍ الْمَوْصِلِيُّ، عَنْ عَبَادَةَ بْنِ

[1] "They were the poor among the *Muhâjirin*, and those who did not have a house to live in. So they would stay in a shady place in the mosque in Al-Madinah, where they resided." (*An-Nihâyah*). *Suff* means ledge, or molding.

is not money, and I can shoot (with it) for the sake of Allâh.' I asked the Messenger of Allâh ﷺ about it and he said: 'If it would please you to have a necklace of fire placed around your neck, then accept it.'" (*Hasan*)

نُسِيٌّ، عَنْ الْأَسْوَدِ بْنِ تَعْلَمَةَ، عَنْ عُبَادَةَ بْنِ الصَّابِرِ قَالَ: عَلِمْتُ نَاسًا مِنْ أَهْلِ الصُّفَّةِ الْقُرْآنَ وَالْكِتَابَةِ. فَأَهْدَى إِلَيَّ رَجُلٌ مِنْهُمْ قَوْسًا. فَقُلْتُ: يَسِّرْتُ بِمَالِي. وَأَرْمِي [عَنْهَا] فِي سَبِيلِ اللَّهِ. فَسَأَلْتُ رَسُولَ اللَّهِ ﷺ عَنْهَا. فَقَالَ: «إِنْ سَرَكَ أَنْ تُطْوِقَ بِهَا طَوْقًا مِنْ تَارٍ فَاقْبِلْهَا».

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب: في كسب المعلم، ح: ٣٤١٦ من حديث وكيع به، وصححه الحاکم، ٤٢، ٤١/٢، ورجاه موافقون عند الجمهور.

2158. It was narrated that Ubayy bin Ka'b said: "I taught a man the Qur'ân, and he gave me a bow. I mentioned that to the Messenger of Allâh ﷺ and he said: 'If you accept it you will be accepting a bow of fire.' So I returned it." (*Da'iif*)

٢١٥٨ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ ثُورِ بْنِ تَرِيدَ: حَدَّثَنَا خَالِدُ بْنُ مَعْدَانَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ سَلْمٍ، عَنْ عَطِيَّةَ الْكَلَاعِيِّ، عَنْ أَبِي بْنِ كَعْبٍ قَالَ: عَلِمْتُ رَجُلًا الْقُرْآنَ. فَأَهْدَى إِلَيَّ قَوْسًا. فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «إِنْ أَخْلَنْتَهَا أَخْلَدْتَ قَوْسًا مِنْ تَارٍ» فَرَدَّدْتُهَا.

تخریج: [إسناده ضعیف] أخرجه البیهقی: ١٢٦، ١٢٥/٦ من حديث يحيی بن سعید به، وعلله بالانقطاع * عطیة عن أبي مرسل كما في جامع التحصیل وغيره، وفيه علة أخرى.

Comments:

- According to the majority of the scholars, accepting a salary for teaching the Noble Qur'ân is allowed. The proof of it is that the Prophet ﷺ appointed the teaching of Qur'ân as a dowry in the marriage of a Companion, who did not have anything to pay as dowry.
- It was narrated from Ibn Abbâs رضي الله عنه that the Prophet ﷺ said: "The most rightful thing for which a wage is charged is the Book of Allâh." (*Sahîh Al-Bukhâri*: 2276). The title of Imam Bukhâri's chapter clarifies that he is making it clear that if taking a wage for *Ruqyah* (incantation) is correct then why not for teaching the Noble Qur'ân, which requires even more hard work, so according to him, taking wages for teaching the Qur'ân should definitely be permissible. (This is a one sided view; there is a more balanced view of other scholars mentioned in *Awnul-Mabud*, and *Usmani*)

**Chapter 9. Prohibition Of
The Price Of A Dog, The
Payment (Given) to A
Prostitute, The Payment
Made To A Soothsayer And
Studding A Stallion^[1]**

2159. It was narrated from Abu Mas'ud that the Prophet ﷺ forbade the price of a dog, the payment (given to a prostitute) and the payment made to a soothsayer. (*Sahih*)

(المعجم ٩) - بَابُ النَّهْيِ عَنْ ثَمَنِ
الْكُلْبِ وَمَهْرِ الْبَغْيِ وَحُلُوانِ الْكَاهِنِ
وَعَشْبِ الْفَحْلِ (التحفة ٩)

٢١٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدُ
ابْنُ الصَّبَّاحِ؛ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ،
عَنْ الرُّؤْهُرِيِّ، عَنْ أَبِي بَخْرٍ بْنِ عَبْدِ الرَّحْمَنِ،
عَنْ أَبِي مَسْعُودٍ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ ثَمَنِ
الْكُلْبِ وَمَهْرِ الْبَغْيِ وَحُلُوانِ الْكَاهِنِ.

تَحْرِيْج: أَخْرَجَهُ الْبَخَارِيُّ، الطَّلاقُ، بَابُ مَهْرِ الْبَغْيِ وَالنَّكَاجِ الْفَاسِدِ، ح: ٥٣٤٦، وَمُسْلِمُ،
الْمَسَاقَةُ، بَابُ تَحْرِيْمِ ثَمَنِ الْكُلْبِ وَحُلُوانِ الْكَاهِنِ وَمَهْرِ الْبَغْيِ وَالنَّهْيِ عَنْ بَيعِ السَّنَورِ، ح: ١٥٦٧.
مِنْ حَدِيثِ سَفِيَانَ بْنِ عُيَيْنَةَ.

Comments:

- The trade of prohibited things is also prohibited.
- A *Kāhin* is a person who foretells about future events and claims to tell about the Unseen; fortune-tellers, palmists, astrologers, those making amulets and charms, those who open the book of omens, those who use parrots to choose a card of fortune, and other fortune card readers, all come under the term *Kāhin*.
- Some people (in the time of Ignorance) used to make their female slaves work as prostitutes and took it a source of income. Adultery (sexual relations out of marriage) is prohibited in Islam; whether this performed by paying money or in the name of love and friendship by mutual consent.
- Some people allowed trading in hunting dogs because of the permissibility of keeping them at home. According to this view, the trade in dogs, other than those for hunting is forbidden, because keeping them is impermissible. However, trade in any type of dogs should be avoided as precautionary measures and must not be practiced. Allāh ﷺ knows best!

2160. It was narrated that Abu Hurairah said: "The Messenger of Allāh ﷺ forbade the price of a dog and studding a stallion." (*Sahih*)

٢١٦٠ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ
ابْنُ طَرِيفٍ. قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ:
حَدَّثَنَا الْأَعْمَشُ، عَنْ أَبِي حَازِمٍ، عَنْ أَبِي

[1] This refers to when the owner of a stallion rents it out to others to impregnate mares, and it applies to camels as well as horses. See explanation by Sindi.

هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْكَلْبِ وَعَنْهُ الْفَحْلُ.

تخریج: [صحيح] أخرجه الترمذی، البیوی، باب ماجاء فی کراہی ثمن الكلب والستور، ح ۱۲۷۹ من حدیث محمد بن فضیل به معلقاً، وعلله أبو حاتم الرازی فی عللہ، ح ۲۸۳۴ من جهہ السند * وأما المتن فصحیح ثابت من طرق أخرى، انظر الحديث السابق وسنن النسائی ۷/ ۳۱۰ وغیرهما.

Comments:

Cows, buffalos and goats etc., are taken to male counterparts for breeding purposes and the owner of the male animal (i.e., stallion) charges something for the female animal to mate with his male animal; these charges are incorrect. It should be for the sake of Allāh. But if the owner of a female animal offers something with his own goodwill, then it is allowed to be taken. (See *Jāmi' At-Tirmidhi*: 1274)

2161. It was narrated from Abu Az-Zubair that Jâbir said: "The Messenger of Allâh ﷺ forbade the price of a cat." (*Sahih*)

٢١٦١ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا الرَّوِيلِدُ [بْنُ مَسْلِمَةَ]: أَبْنَا أَبْنَ لَهِيَةَ، عَنْ أَبِي الرُّبِّيرِ عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْكَلْبِ وَعَنْهُ الْفَحْلُ.

تخریج: [صحيح] أخرجه النسائی: ۷/ ۱۹۰، ۱۹۱، ۱۹۱، الصید، الرخصة فی ثمن كلب الصید، ح ۴۳۰، والبیهقی: ۶/ ۶ من طريقین عن حماد بن سلمة عن أبي الزبیر به مطولاً، وعلله النسائی، وانظر، ح ۳۹۵ لعله المدرمة ولكن أخرج مسلم، ح ۱۵۶۹ من طريق آخر عن أبي الزبیر قال: سالت جابرًا عن ثمن الكلب والستور؟ فقال: زجر النبي ﷺ عن ذلك، وبه صح الحديث.

Comments:

A cat is not as benefiting as a dog so its trade is unlawful, and the scholars who hold the view that the selling and buying of any dogs is forbidden also hold the view that the trade of cats is forbidden.

Chapter 10. Earnings Of A Cupper

(المعجم ۱۰) - بَابُ كَسْبِ الْحَجَّاجِ

(التحفة ۱۰)

2162. It was narrated from Ibn 'Abbâs that the Prophet ﷺ was treated with cupping and he gave him (the cupper) his wages. (*Sahih*)

Ibn Abu 'Umar was alone in

٢١٦٢ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيِّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ أَبْنَ طَاؤِسٍ، عَنْ أَبِيهِ، عَنْ أَبْنَ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ احْتَجَمَ وَأَعْطَاهُ أَجْرَهُ.

narrating it. That was said by Ibn Mâjah.^[1]

تَفَرَّدَ بِهِ ابْنُ أَبِي عُمَرَ وَحْدَهُ. قَالَهُ ابْنُ مَاجَةَ .

تخریج: أخرجه البخاري، الإجارة، باب خراج الحجام، ح: ٢٢٧٨ وغیره، ومسلم، السلام، باب لكل داء دواء واستحباب التداوى، ح: ١٢٠٢ بعد، ح: ٢٢٠٨ من حديث ابن طاوس به.

Comments:

- The Companion who cupped the Prophet ﷺ was Abu Taibah ﷺ. (*Sahih Al-Bukhari*: 2102). His name was Nâfi'. (*Al-Akmâl fee Asmâ Al-Rijâl* by the compiler of *Mishkâtul-Masâbih*). He was a slave of the Banu Bayâdâh tribe. The Messenger of Allâh ﷺ gave him a decent wage and he ﷺ did him a further favor by telling his masters to decrease his *Kharâj*. *Kharâj* is a fixed amount of his earnings that he is required to give to his masters. (*Sahih Al-Bukhari* aforementioned reference)
- Cupping and being cupped is lawful and therefore its earning is lawful too.

2163. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ was treated with cupping and he told me to give the cupper his wages." (*Sahih*)

٢١٦٣ - حَدَّثَنَا عَمْرُو بْنُ عَلَيٍّ أَبُو حَفْصٍ الصَّيْرَفِيُّ : حَدَّثَنَا أَبُو دَاؤِدَّ؛ حَ وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبَادَةَ الْوَاسِطِيِّ : حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ . قَالَآ: حَدَّثَنَا وَرْقَاءُ، عَنْ عَبْدِ الْأَعْلَى، عَنْ أَبِي جَوِيلَةَ، عَنْ عَلَيٍّ، قَالَ: احْتَجَمَ رَسُولُ اللَّهِ ﷺ وَأَمْرَنِي فَأَعْطَيْتُ الْحِجَامَ أَجْرَهُ .

تخریج: [صحيح] أخرجه عبد الله بن أحمد في زوائد المستد: ١٣٤ / ١ عن عمرو بن علي به، وهو في مسند أبي داود الطيالسي، ح: ١٥٣، وانظر، ح: ١٠٥٤ لعلته، وفيه علة أخرى، وضعفه البوصيري، وله طريق آخر عند ابن أبي شيبة: ٦ / ٢٦٧ عن أبي جميلة به، والحديث الآتي شاهد له.

2164. It was narrated from Anas bin Mâlik that the Prophet ﷺ was treated with cupping and gave the cupper his wages. (*Sahih*)

٢١٦٤ - حَدَّثَنَا عَبْدُ الْحَمِيدِ بْنُ يَكْيَانِ الْوَاسِطِيُّ : حَدَّثَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ، عَنْ يُونُسَ، عَنْ ابْنِ سِيرِينَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ احْتَجَمَ وَأَعْطَى الْحِجَامَ أَجْرَهُ .

[1] That is, Muhammad bin Abu 'Umar Al-'Adani, from whom Ibn Mâjah heard the narration.

تخریج: [إسناده صحيح] أخرجه الطحاوی فی معانی الآثار: ٤/١٣٠ من حديث خالد به، وقال البوصیری: هذا إسناد صحيح، رجال ثقات علی شرط البخاری ، وللحديث طرق عن أنس عند البخاری ومسلم وغيرهما.

2165. It was narrated that Abu Mas'ud, 'Uqbah bin 'Amr, said: "The Messenger of Allâh ﷺ forbade the earnings of a cupper." (*Sahih*)

٢١٦٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمْزَةَ: حَدَّثَنِي الْأَوْزَاعِيُّ عَنِ الرَّهْبَرِيِّ، عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِي مَسْعُودٍ، عَقْبَةَ ابْنِ عَمْرُو قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ كَسْبِ الْحَجَّاجَمِ.

تخریج: [صحيح] وللحديث شواهد عند النسائي: ٣١١، ٣١٠ / ٧، البيوع، . بيع ضراب الجمل، ح: ٤٦٧٧ وغیره، وأخرج مسلم، ح: ١٥٦٨ وغيره عن رافع بن خديج، رفعه: كسب الحجام حيث

2166. It was narrated from Harâm bin Muhayyisah that his father asked the Prophet ﷺ about the earnings of a cupper and he forbade him from that. Then he mentioned his need and he said: "Spend it on feeding your she-camels that draw water." (*Sahih*)

٢١٦٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْءَةَ: حَدَّثَنَا شَبَابَةُ [بْنُ سَوَّارٍ، عَنِ] ابْنِ أَبِي وَقْبَلٍ، عَنِ الرَّهْبَرِيِّ، عَنْ حَرَامِ بْنِ مُحَمَّصَةَ، عَنْ أَبِيهِ أَنَّهُ سَأَلَ النَّبِيَّ ﷺ عَنْ كَسْبِ الْحَجَّاجَمِ. فَهَاهُ عَنْهُ. فَذَكَرَ لَهُ الْحَاجَةَ. قَالَ: «اغْلِفْهُ تَوَاضِعْكَ».

تخریج: [صحيح] أخرجه أبو داود، البيوع، باب: في كسب الحجام، ح: ٣٤٢٢ من حديث الزهری به، وصححه الترمذی، ح: ١٢٧٧، وله شاهد عند الحمیدی، ح: ١٢٩٣ وغیره.

Comments:

- Cupping is a type of treatment; it is a special technique from which extra blood from the body is drained out.
- Earning by the practice of cupping is not unlawful, otherwise the Messenger of Allâh ﷺ would not have paid Abu Taibah ؓ for cupping. But it can be classified as disliked because of the Prophet's forbiddance. Also it is known from the command of feeding it to the camels that this earning is not unlawful rather it is disliked.

Chapter 11. What It Is Not Permissible To Sell

2167. 'Atâ' bin Abu Rabâh said: I

(المجمع ١١) - بَابُ مَا لَا يَحِلُّ بَيْعُهُ

(التحفة ١١)

٢١٦٧ - حَلَّتَنَا عَيْسَى بْنُ حَمَادَ الْمَضْرُبُ:

heard Jâbir bin 'Abdullâh say: "In the Year of the Conquest, while he was in Makkah, the Messenger of Allâh ﷺ said: 'Allâh and His Messenger have forbidden the sale of wines, meat of dead animals, pigs and idols.' It was said to him: 'O Messenger of Allâh, what do you think of the fat of dead animals, for it is used to caulk ships, it is daubed on animal skins and people use it to light their lamps?' He said: 'No, it is unlawful.' Then the Messenger of Allâh ﷺ said: 'May Allâh curse the Jews, for Allâh forbade them the fat (of animals) but they rendered it, (i.e. melted it) sold it and consumed its price.'" (*Sahih*)

تخریج: أخرجه البخاري، المغازي، باب: (٥٢)، ح: ٤٢٩٦، ومسلم، المساقاة، باب تحریم بيع الخمر والميتة والخزیر والأصنام، ح: ١٥٨١ من حديث الليث به.

Comments:

- As alcohol, dead animals and swine are forbidden to eat; similarly other use of these is also prohibited.
- Selling the prohibited things is unlawful as well as their revenue.
- Earning through false tricks and excuses does not make unlawful earning lawful; rather it makes the sin more evil and grave. (As many Muslims, particularly in the West, try to justify unlawful business of alcohol and intoxicants with silly excuses).

2168. It was narrated that Abu Umâmah said: "The Messenger of Allâh ﷺ forbade selling or buying singing girls, and their wages, and consuming their price." (*Da'if*)

أَبْنَا الْأَئِثُرَ بْنَ سَعْدٍ، عَنْ يَرِيدَ بْنِ أَبِي حَسِيبٍ أَنَّهُ قَالَ: قَالَ عَطَاءُ بْنُ أَبِي رَيَاحٍ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ، عَامَ النَّفْحَ وَهُوَ يُمَكِّنُهُ: إِنَّ اللَّهَ وَرَسُولَهُ حَرَمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخَنِزِيرِ وَالْأَصْنَامِ» فَقَبِيلَ لَهُ، عِنْدَ ذَلِكَ: يَا رَسُولَ اللَّهِ! أَرَأَيْتَ شُحُومَ الْمَيْتَةِ، فَإِنَّهُ يُدْهَنُ بِهَا السُّنْنُ، وَيُدْهَنُ بِهَا الْجُلُودُ، وَيَسْتَضْبِغُ بِهَا النَّاسُ؟ قَالَ: «لَا. هُنَّ حَرَامٌ». ثُمَّ قَالَ رَسُولُ اللَّهِ ﷺ: «قَاتَلَ اللَّهُ الْيَهُودُ. إِنَّ اللَّهَ حَرَمَ عَلَيْهِمُ الشُّحُومَ فَأَجْمَلُوهُ، ثُمَّ بَاعُوهُ فَأَكَلُوا ثُمَّهُ». فَأَكَلُوا ثُمَّهُ.

تخریج: [إسناده ضعيف معضل] أخرجه الترمذی، البيوع، باب ماجاء في كراهة بيع

٢١٦٨ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنُ يَحْيَى ابْنُ سَعِيدِ الْقَطَانِ: حَدَّثَنَا هَاشِمُ بْنُ الْقَاسِمِ: حَدَّثَنَا أَبُو جَعْفَرٍ الرَّازِيُّ، عَنْ عَاصِمٍ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عَبْدِ اللَّهِ الْإِفْرِيقِيِّ، عَنْ أَبِي أُمَّامَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْمُعَيْنَاتِ وَعَنْ شِرَائِينَ وَعَنْ كَسِيْهِنَّ وَعَنْ أَكْلِ أَشْمَانِهِنَّ.

المنفيات، ح: ١٢٨٢ يأسناد صحيح عن عبيد الله بن زحر الإفريقي عن علي بن يزيد عن القاسم عن أبي أمامة به بلطف آخر، وهو المحفوظ، وانظر، ح: ٢٢٨ لعلته، وله شواهد ضعيفة عند الطبراني وغيره.

Comments:

- a. Some Arabs disliked music and singing even in the pre-Islamic period. So the ladies of the respected families used to avoid it, but the female slaves would sing to entertain their masters or their friends, and they would also make musical presentations to gain prizes.
- b. Singing and musical presentations are conducted in the name of art and profession, and are taken a source of income. It is unlawful from a religious perspective. Playing indecent roles in movies and the profession of modeling is also relevant to this prohibited category.

Chapter 12. What Was Narrated Concerning The Prohibition Of *Munâbadhah* And *Mulâmasah*

2169. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade two kinds of transactions: *Mulâmasah* and *Munâbadhah*. (*Sahih*)

(المعجم (١٢) - باب مَا جاءَ فِي النَّهْيِ عَنِ الْمُنَبَّدَةِ وَالْمُلَامَسَةِ (التحفة (١٢)

٢١٦٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعَيْرٍ وَأَبُو أَسَامَةَ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَفْصَيْ بْنِ عَاصِمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: نَهَا رَسُولُ اللَّهِ ﷺ عَنْ بَيْتَنِينِ: عَنِ الْمُلَامَسَةِ وَالْمُنَبَّدَةِ.

تخریج: [صحیح] تقدم، ح: ١٤٨.

٢١٧٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَ سَهْلُ بْنُ أَبِي سَهْلٍ قَالَا: حَدَّثَنَا سَفِيَّانُ بْنُ عَيْبَةَ، عَنِ الزُّهْرِيِّ، عَنْ عَطَاءِ بْنِ يَزِيدِ اللَّثِيِّ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَا عَنِ الْمُلَامَسَةِ وَالْمُنَبَّدَةِ.

زاد سهيل: قال سفيان: الملامسة أَنْ يَلْمِسَ الرَّجُلُ بِيَدِ الشَّيْءِ وَلَا يَرَاهُ. والمُنَبَّدَةُ أَنْ يَقُولَ: أَلَيْ إِلَيَّ مَا مَعَكَ، وَأَلَقِي إِلَيَّكَ مَا

معي.

2170. It was narrated from Abu Sa'eed Al-Khudri that the Messenger of Allâh ﷺ forbade *Mulâmasah* and *Munâbadhah*. (*Sahih*)

Sahl added: "Sufyân said: '*Mulâmasah* means when a man touches something with his hand without seeing it, and *Munâbadhah* means when he says: "Toss me what you have, and I will toss you what I have."

تخریج: أخرجه البخاري، الاستاذان، باب الجلوس كفما تيسر، ح: ٦٢٨٤ من حدیث سفیان به مطولاً.

Comments:

- The buyer has every right to check and try the commodity prior to purchase, in order to know the quality, be it good or bad, and to see if it has any defects or not; and the consumer will decide accordingly, if he should purchase it for such and such a reasonable price.
- The transaction that affects this statutory right of the purchaser is an unlawful transaction and illegal.
- Lottery and these types of other prize drawing schemes, which have an uncertainty in the outcome, are all unlawful.

Chapter 13. "A Man Is Not To Undersell The Sale Of His Brother, Nor Is He To Try To Out-Haggle His Brother."

(المعجم ١٣) - باب: لَا يَبْيَعُ الرَّجُلُ عَلَى بَيْعِ أَخِيهِ وَلَا يَسُومُ عَلَى سُومِهِ (الصفحة ١٣)

2171. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Let one of you not undersell another." [١] (*Sahih*)

٢١٧١ - حَدَّثَنَا سُوَيْدُ بْنُ سَعْيِدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ تَافِعٍ، عَنْ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: لَا يَبْيَعُ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ.

تخریج: أخرجه البخاري، البيوع، باب: لا يبيع على بيع أخيه ولا يسوم على سوم أخيه حتى يأذن له أو يترك، ح: ٢١٣٩، ومسلم، البيوع، باب تحريم بيع الرجل على بيع أخيه ... إلخ، ح: ١٤١٢ من حدیث مالک به، وهو في الموطأ (یحیی): ٦٨٣ / ٢.

Comments:

Requesting to cancel an already done deal is forbidden. It could be that a seller urges a buyer to return an item bought from another seller, so that he can then sell his own item to the buyer for a lesser price. Or a buyer urges a seller to cancel a deal that he has with another buyer for an item, so that he can purchase it, and is willing to pay a higher price than the former buyer. Both tricks are forbidden because such things cause quarrel and mischief.

2172. It was narrated from Abu Hurairah that the Prophet ﷺ said: "A man is not to undersell his brother, nor is he to try to out-haggle his brother." (*Sahih*)

٢١٧٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا سُفْيَانُ عَنْ الزُّهْرِيِّ، عَنْ سَعْيِدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: لَا يَبْيَعُ

[١] Meaning: "Do not urge someone to cancel a sale already agreed upon so as to sell him your own goods."

الرجل على بيع أخيه، ولا يسمى على سُفْرِ أخيه».

تخيير: [صحيح] تقدم، ح: ١٨٦٧ بعضه.

Chapter 14. What Was Narrated Concerning The Prohibition Of *Najsh*^[١]

2173. It was narrated from Ibn 'Umar that the Prophet ﷺ forbade the *Najsh*. (*Sahih*)

(المعجم ١٤) - بَابُ مَا جَاءَ فِي النَّهْيِ عَنِ النَّجْشِ (التحفة ١٤)

٢١٧٣ - قَرَأْتُ عَلَى مُضَبِّطِ بْنِ عَبْدِ اللَّهِ الزُّبَيرِيِّ، عَنْ مَالِكٍ، ح: وَحَدَّثَنَا أَبُو حُذَافَةَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ نَهَا عَنِ النَّجْشِ.

تخيير: أخرجه البخاري، البيوع، باب النجاش، ومن قال: لا يجوز ذلك البيع، ح: ٢١٤٢، ومسلم، البيوع، باب تحريم بيع الرجل على بيع أخيه وسومه على سمه وتحريم النجاش وتحريم التصرية، ح: ١٥٦ من حديث مالك به، وهو في الموطأ (بحي): ٦٨٤/٢.

Comments:

- Najsh* is that a person does not intend to buy the goods, but he offers a bid merely to incite another needy buyer into paying a higher price.
- It is forbidden because it is cheating and is a loss for the buyer.
- Selling goods through bidding and auction is lawful.

2174. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Do not practice *Najsh*." (*Sahih*)

٢١٧٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ وَ سَهْلُ بْنُ أَبِي سَهْلٍ. قَالَا: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا تَنَاجُشُوا».

تخيير: [صحيح] انظر، ح: ٢١٧٢.

(المعجم ١٥) - بَابُ النَّهْيِ أَنْ يَبْيَعَ حَاضِرٌ لِيَادِ (التحفة ١٥)

٢١٧٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ

Chapter 15. Prohibition Of A City-Dweller Selling On Behalf Of A Bedouin

2175. It was narrated from Abu Hurairah that the Messenger of

[١] When a person praises merchandise in a manner intended to inflate the value, or he offers a high price for it in order to encourage a customer to outbid him for it.

Allâh ﷺ said: "A city-dweller should not sell for a Bedouin." (*Sahih*)

تخریج: انظر الحديث السابق، وأخرجه مسلم، البیو، باب تحریم بيع الحاضر للبادی، ح: ١٥٢٠ عن أبي بکر بن أبي شيبة به.

2176. It was narrated from Jâbir bin 'Abdullâh that the Prophet ﷺ said: "A city-dweller should not sell for a Bedouin. Leave people to (engage in trade) and Allâh will grant them provision through one another." (*Sahih*)

تخریج: [صحیح] أخرجه مسلم، البیو، باب تحریم بيع الحاضر للبادی، ح: ١٥٢٢ من حديث سفیان به.

2177. Ibn Tâwus narrated from his father that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ forbade a city-dweller to sell for a Bedouin." (*Sahih*)

I (Tâwus) said to Ibn 'Abbâs: "What is meant by the words: 'A city-dweller selling for a Bedouin?' He said: "He should not be a broker for him."

تخریج: أخرجه البخاري، البیو، باب: هل بیع حاضر لباد بغير أجر؟، ح: ٢١٥٨ وغیره من حديث عبد الرزاق به، ومسلم، البیو، الباب السابق، ح: ١٥٢١ من حديث معمر به.

Comments:

See the comments of *Hadith 2145*.

Chapter 16. Prohibition Of Meeting Traders On The Way

2178. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Do not meet the traders on the way, and whoever meets any of them and buys from him, the

المُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَبْيَعُ حَاضِرٌ لِيَادِهِ».

٢١٧٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شَفِيَّاً بْنُ عَيْنَيَةَ، عَنْ أَبِي الرَّبِيعِ، عَنْ جَابِرٍ أَبْنِ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا يَبْيَعُ حَاضِرٌ لِيَادِهِ دَعُوا النَّاسَ يَرْبُطُ اللَّهُ بِعَضَهُمْ مِنْ بَعْضٍ».

٢١٧٧ - حَدَّثَنَا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَتَبِيُّ: حَدَّثَنَا عَبْدُ الرَّزَاقِ: أَنَّبَانَا مَعْمَرًا، عَنِ ابْنِ طَاؤُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ أَنَّ يَبْيَعَ حَاضِرٌ لِيَادِهِ.

فَلْمَّا لَرِبَّنِ عَبَّاسٍ: مَا قَوْلُهُ حَاضِرٌ لِيَادِهِ؟ قَالَ: لَا يَكُونُ لَهُ سُمْسَارًا.

(المعجم ١٦) - بَابُ النَّهْيِ عَنْ تَلَقْيِ الْجَلْبِ (التحفة ١٦)

٢١٧٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلَيْهِ أَبْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا أَبُو أَسَامَةَ، عَنْ هِشَامِ بْنِ حَسَانٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ النَّبِيِّ ﷺ قَالَ: «لَا تَلْقَوْا

vendor has the choice of annulling the transaction when he comes to the marketplace.” (Sahih)

الأجلاب. فمن تلقى منه شيئاً فأشترى، فصاحبُه بالخيار، إذا أتى السوق.

تخریج: أخرجه مسلم، البيوع، باب تحريم تلقي الجلب، ح: ١٥١٩ من حديث هشام بن حسان الفردوسي به اختلاف يسير.

Comments:

- The caravans with goods coming to town do not know the condition of the market. Townsmen go out of the town to meet the caravans and buy the goods from the owner at a cheap price. It is forbidden.
- The logic behind its prohibition is that if the owner from the caravan would come to the market and discover a higher market value for his goods, he would feel regret for his loss. Another logic of its prohibition is that the owner of the goods would sell his items at the going rate as he is willing to offload the goods, whereas a townsmen may have the intention of hoarding the goods to drive up the market value, and then sell them at an inflated price; this would create a loss to the public.

2179. It was narrated that Ibn 'Umar said: “The Messenger of Allâh ﷺ forbade meeting traders on the way.” (Sahih)

٢١٧٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدَةُ بْنُ شَلَيْهَانَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ تَلَقِي الْجَلْبِ.

تخریج: أخرجه مسلم، البيوع، الباب السابق، ح: ١٥١٧ من حديث عبد الله به مطولاً بالفاظ مختلفة، والمعنى واحد.

2180. It was narrated that 'Abdullâh bin Mas'ud said: “The Messenger of Allâh ﷺ forbade meeting the owners of goods (away from the market).” (Sahih)

٢١٨٠ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَ حَمَادُ بْنُ مَسْعَدَةَ، عَنْ شَلَيْهَانَ التَّيْمِيِّ، ح: وَ حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنُ حَبِيبِ بْنِ الشَّهِيدِ: حَدَّثَنَا مُعَمَّرُ ابْنُ شَلَيْهَانَ قَالَ: سَمِعْتُ أَبِي. قَالَ: حَدَّثَنَا أَبُو عُثْمَانَ التَّهَدِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ تَلَقِي الْبَيْعِ.

تخریج: أخرجه البخاري، البيوع، باب النهي للبائع أن لا يحصل الإبل والبقر ... الخ، ح: ٢١٤٩ من حديث معتمر وغيره، ومسلم، البيوع، باب تحريم تلقي الجلب، ح: ١٥١٨ من حديث سليمان التيمي به.

Chapter 17. The Two Parties To A Transaction Have The Choice (Of Annulling It) So Long As They Have Not Yet Parted

2181. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh said: "When two men enter into a transaction, each of them has the choice (of annulling it) so long as they have not yet parted and are still together, or one of them has given the option or choice to the other. Once he has accepted the terms of the other, then the transaction is binding. If they part after concluding the transaction and neither of them has rescinded the transaction, then the transaction is binding." (*Sahih*)

تخریج: أخرجه البخاري، البيوع، باب: إذا خير أحدهما صاحبه بعد البيع فقد وجب البيع، ح: ٢١١٢، ومسلم، البيوع، باب ثبوت خيار المجلس للمتابعين، ح: ١٥٣١ من حديث الليث به.

Comments:

- As the deal is done and the goods are received once the price has been paid, the transaction is complete. But it is possible that the buyer, later on, feels that the purchase should not have been made at the previously agreed price, and he now wants to return the goods; or the seller realises that he should not have sold the goods, and he now wants them back. In this condition it is better for both parties to cancel the deal and exchange the goods and payment.
- There is a great reward for accepting the refund of the sold goods. (See *Hadith*: 2199).
- The right to return the goods or to cancel the deal is standing whilst the seller and the buyer are together in the same transactional meeting, (or one of them gives a choice to the other to cancel the deal until a certain period).

2182. It was narrated from Abu Barzah Al-Aslami that the Messenger of Allâh ﷺ said: "The

(المعجم ١٧) - بَابُ الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَقْتَرِفَا (النَّسْخَةُ ١٧)

٢١٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحَاجِ الْمُضْرِبِيُّ: أَنَّبَأَنَا الْلَّيْثَ بْنَ سَعْدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَقْتَرِفَا وَكَانَا جَمِيعًا. أَوْ يُخَيِّرُ أَحَدَهُمَا إِلَى الْآخَرِ. فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ، فَقَدْ وَجَبَ الْبَيْعُ. وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا، وَلَمْ يَتَرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ».

٢١٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ وَأَحْمَدُ بْنُ الْمُقْتَمِّ. قَالَا: حَدَّثَنَا حَمَادٌ بْنُ زَيْدٍ عَنْ

two parties to a transaction have the choice (of annulling it) so long as they have not yet parted." (Sahih)

حَبِيبُ بْنُ مُرْعَةَ، عَنْ أَبِي الْوَضِيْعِ، عَنْ أَبِي بَرَزَةَ الْأَشْلَمِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: الْبَيْعَانُ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا.

تخریج: [إسناده صحيح] أخرجه أبو داود، البيع، باب: في خيار المتابعين، ح: ٣٤٥٧. من حديث حماد به، وصححه ابن الجارود، ح: ٦١٩.

2183. It was narrated from Samurah that the Messenger of Allâh ﷺ said: "The two parties to a transaction have the choice (of annulling it) so long as they have not yet parted." (Hasan)

٢١٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ إِسْحَاقُ ابْنُ مَنْصُورٍ. قَالَا: حَدَّثَنَا عَبْدُ الصَّمْدِ: حَدَّثَنَا شُبَّهٌ عَنْ قَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: الْبَيْعَانُ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا.

تخریج: [إسناده حسن] أخرجه النسائي: ٢٥١، ٤٤٨٦، ٤٤٨٧ من حديث قنادة به * الحسن عن سمرة كتاب قاله النسائي (عون المعبد: ١٩ وغیره) وبهز بن أسد ويحيى القطان وغيرهم وذلك لا يقتضي الانقطاع (تهذيب التهذيب، جامع التحصيل، ص: ١٦٥) لأن الرواية من كتاب إما إجازة وإما مناولة وكلاهما صحيح، ولتفصيل انظر نيل المقصود في التعليق على سن أبي داود، ح: ٣٥٤ يسر الله لنا طبعه.

Chapter 18. A Transaction With The Option To Cancel

2184. It was narrated that Jâbir bin 'Abdullâh said: "The Messenger of Allâh ﷺ bought a load of fodder from a Bedouin man. When the transaction was concluded, the Messenger of Allâh ﷺ said: 'Choose (either to go ahead or to cancel the transaction).' The Bedouin said: 'May Allâh grant you a long life of good transaction!'" (Da'if)

تخریج: [إسناده ضعيف] أخرجه الترمذی، البيع، باب ماجاء في خيار المتابعين، ح: ١٢٤٩ من حديث عبدالله بن وهب به، وقال: هذا حديث حسن غريب ، وصححه الحاکم: ٢/٤٩ على شرط مسلم، وواقه الدھبی، وقال الدارقطنی: ٣/٢١ كلهم ثقات * ابن جریح صرخ بالسماع، وانظر، ح: ٣٩٥ لعلته، وللحديث شواهد مرسلة عند البیهقی وغيره.

(المعجم ١٨) - بَابُ بَيْعِ الْخِيَارِ

(التحفة ١٨)

٢١٨٤ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى وَ أَخْمَدُ ابْنُ عِيسَى الْمُؤْسِرِيَّانِ. قَالَا: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ وَهْبٍ: أَخْبَرَتِي ابْنُ جُرَيْجٍ، عَنْ أَبِي الرَّبِيعِ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: اشْتَرَى رَسُولُ اللَّهِ ﷺ مِنْ رَجُلٍ مِنَ الْأَغْرَابِ حِمْلَ خَبَطٍ. فَلَمَّا وَجَبَ النَّيْعُ قَالَ رَسُولُ اللَّهِ ﷺ: أَخْتَرْ فَقَالَ الْأَغْرَابِيُّ: عَمَرَكَ اللَّهُ بِيَعًا.

تخریج: [إسناده ضعيف] أخرجه الترمذی، البيع، باب ماجاء في خيار المتابعين، ح: ١٢٤٩ من حديث عبدالله بن وهب به، وقال: هذا حديث حسن غريب ، وصححه الحاکم: ٢/٤٩ على شرط مسلم، وواقه الدھبی، وقال الدارقطنی: ٣/٢١ كلهم ثقات * ابن جریح صرخ بالسماع، وانظر، ح: ٣٩٥ لعلته، وللحديث شواهد مرسلة عند البیهقی وغيره.

Comments:

- Selling and buying a heap or a bundle of something without it being measured or weighed is allowed; because the estimate of the weight and quantity can be determined by observation.
- As the buyer has a statutory right to cancel the deal in the same transactional meeting, likewise the seller has the same right too.
- Advising for one's benefit is part of a Muslim's sincerity, particularly when a person does not know about the matter.

2185. It was narrated from Dâwud bin Sâlih Al-Madani that his father said: I heard Abu Sa'eed Al-Khudri say: "The Messenger of Allâh ﷺ said: 'Transactions may only be done by mutual consent.'" (*Sahîh*)

تخریج: [إسناده صحيح] أخرجه البهقی: ٦/١٧ من حديث عبدالعزيز الدراوردي به مطولاً وصححه ابن حبان (موارد)، ح: ١١٠٦، والبوصيري.

Comments:

If the seller or the buyer is forced into a transaction, but does not agree with it in his heart, then this transaction may be annulled.

Chapter 19. Parties To A Transaction Who Differ With One Another

2186. It was narrated from Qâsim bin 'Abdur-Rahmân from his father that 'Abdullâh bin Mas'ud sold one of the slaves from the state^[1] to Ash'âth bin Qais, and they differed concerning the price. Ibn Mas'ud said: "I sold him to you for twenty thousand," but Ash'âth bin Qais said: "I bought him from you for ten thousand." 'Abdullâh said: "If you want, I will tell you a *Hadîth* which I heard from the Messenger of Allâh ﷺ." He said:

٢١٨٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدَّمَشْقِيُّ : حَدَّثَنَا مَرْوَانُ بْنُ مُحَمَّدٍ : حَدَّثَنَا عَبْدُ الْعَزِيزِ ابْنُ مُحَمَّدٍ ، عَنْ دَاؤَةَ بْنِ صَالِحِ الْمَدْنَيِّ ، عَنْ أَبِيهِ قَالَ : سَوْعَتْ أَبَا سَعِيدِ الْخُدْرِيِّ يَقُولُ : قَالَ رَسُولُ اللَّهِ ﷺ : «إِنَّمَا الْتَّعْنِيَةُ عَنْ تَرَاضِيٍّ» .

تحقيق: [إسناده صحيح] أخرجه البهقى: ٦/١٧ من حديث عبدالعزيز الدراوردي به مطولاً وصححه ابن حبان (موارد)، ح: ١١٠٦، والبوصيري.

(المجمع ١٩) - بَابُ الْبَيْعَانِ يَخْتَلِفُونَ
(التحفة ١٩)

٢١٨٦ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْمَةَ وَمُحَمَّدُ ابْنُ الصَّبَّاحِ . قَالَا : حَدَّثَنَا هُشَيْمٌ : أَبْنَائَا أَبْنَ أَبِي لَيْلَى ، عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ ، عَنْ أَبِيهِ أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَاعَ مِنَ الْأَشْعَثِ ابْنِ قَيْسٍ رَّقِيقًا مِنْ رَقِيقِ الْإِمَارَةِ . فَاخْتَلَفَا فِي الشَّيْنِ . فَقَالَ ابْنُ مَسْعُودٍ : يُعْتَكَ يُعْشِرِينَ أَلْفًا . وَقَالَ الْأَشْعَثُ بْنُ قَيْسٍ : إِنَّمَا اشْتَرَتْ مِنْكَ يُعْشَرَةَ أَلْفًا . فَقَالَ عَبْدُ اللَّهِ : إِنْ شِئْتَ حَدَّثْتُكَ بِحَدِيثِ سَوْعَتْهُ مِنْ رَسُولِ اللَّهِ ﷺ .

^[1] *Imârah*. In the narration recorded by Abu Dâwud (no. 3512) it is 'from the *Khums* (one-fifth of the spoils of war)'.

"Tell me it." He said: "I heard the Messenger of Allâh ﷺ say: If two parties to a transaction differ, and they have no proof, and the sale item remains (unredeemed), then what the seller says is valid. Or they may cancel the transaction." He said: "I want to cancel the transaction." And he cancelled it.

(*Hasan*)

نحوه: [حسن] أخرجه أبو داود، البيع، باب: إذا اختلف البياع والمبيع قائم، ح: ٢٥١٢؛ من حديث هشيم به * محمد بن أبي ليلى لم يفرد به تفاصيله، ح: ٨٥٤، تابعه عمر بن قيس المأصر (ط: ٢٢٠ وغيره)، وصححه ابن الجارود، ح: ٦٢٤ وغيره.

Comments:

- Selling and buying for (interest free) credit is allowed. The dispute mentioned in the *Hadith* occurs when the commodity is received in advance, and the price is meant to be paid later.
- The matter regarding the dispute should be settled depending on the witnesses if available.
- If there is no witness, and it is possible to return the purchased commodity, either the seller's claim is to be accepted, or the deal is to be cancelled, and the commodity will be returned; both solutions are lawful.

Chapter 20. The Prohibition Of Selling What Is Not With You, And From Profiting On What You Do Not Possess

2187. It was narrated that Hâkim bin Hizâm said: "I said: 'O Messenger of Allâh, a man is asking me to sell him something that I do not possess. Shall I sell it to him?' He said: 'Do not sell what is not with you.'" (*Hasan*)

قالَ: هاتِهِ. قَالَ: فَلَمْ يُسْمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: إِذَا اخْلَفَ الْبَيْعَانَ، وَلَيْسَ بِيَهُمَا بَيْنَهُمَا، وَالْبَيْعُ قَائِمٌ بِعِينِهِ، فَالْقُولُ مَا قَالَ الْبَيْعُ. أَوْ يَرَادُ الْبَيْعُ؟ قَالَ: فَلَمْ أَرَى أَنْ أَرْدِدَ الْبَيْعَ. فَرَكِهَ.

(المعجم ٢٠) - باب النهي عن بيع ما ليس عنك، وعن ربح ما لم يضمن
(التحفة ٢٠)

٢١٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي يُشْرِيكِي: قَالَ: سَمِعْتُ يُوسُفَ بْنَ مَاهِلَكَ يُحَدِّثُ عَنْ حَكِيمِ بْنِ حِزَامٍ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! الرَّجُلُ يَسْأَلُنِي الْبَيْعَ وَلَيْسَ عِنْدِي. أَفَأَبْيَعُ؟ قَالَ: لَا تَبْيَعْ مَا لَيْسَ عِنْدَكَ.

نحوه: [إسناده حسن] أخرجه أبو داود، البيع، باب: في الرجل بيع ما ليس عنده، ح: ٣٥٠٣؛ من حديث أبي بشر به، وحسنه الترمذى، ح: ١٢٢٢، وصححه ابن حزم، وله طرق كثيرة عند ابن الجارود، ح: ٦٠٢ وغيره، فالحديث صحيح.

Comments:

- The explanation of the prohibited form is if the seller does not have the

commodity but he receives a fixed price in advance, and promises that when he will have the commodity available he will give it to the buyer. It is unknown if he will have that commodity, and even if he does, the buyer may not like it; or perhaps the commodity is of a low quality compared to the price the buyer has paid in advance. It will cause a dispute and argument between the two parties, so this form of transaction is unlawful.

- b. The purchase of an unspecified thing is also included in the aforementioned unlawful trade; for example: a person says, before throwing a net into the river; "Whatever number of fish get trapped in the net, I shall sell them to you for such and such a price." Despite the fact that it is unknown whether there will be many or few fish in the net, or if they will be small or large. Therefore, the deal can only be made once the fish are out of water. The uncertainty of the deal makes it unlawful. (See: *Ahâdîth*: 2194-2195)
- c. If the type, quantity and quality of the commodity is determined, and the time of delivery is appointed, then to pay a price in advance and to collect the commodity later at the appointed time is permissible. It is called *Salam* or *Salaf* (absolute interest free credit). (See *Ahâdîth*: 2280-2282)

2188. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'It is not permissible to sell something that is not with you, nor to profit from what you do not possess.'" (*Sahih*)

٢١٨٨ - حَدَّثَنَا أَرْهَرُ بْنُ مَرْوَانَ. قَالَ: حَدَّثَنَا حَمَادٌ بْنُ زَيْدٍ؛ ح: وَحَدَّثَنَا أَبُو كُرْبَيْرٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلَيَّةِ. قَالَا: حَدَّثَنَا أَيُوبُ، عَنْ عَمْرِو بْنِ شَعِيبٍ، عَنْ أَيْيَةِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: لَا يَحِلُّ بَيْعٌ مَا لَيْسَ عِنْدَكَ، وَلَا رِبْحٌ مَا لَمْ يُضْمِنْ».

تخریج: [إسناده صحيح] أخرجه أبو داود، البيوع، الباب السابق، ح: ٣٥٠٤ من حديث أیوب به، وصححه الترمذی، ح: ١٢٣٤، وابن الجارود، والحاکم، والذهبی.

Comments:

- a. A buyer is allowed to sell the purchased items to someone else, only after taking it in his control. Selling it before taking the control of it is not allowed.
- b. Control of things varies depending on the type of merchandise; as the control of transferable goods is to collect them. For example: to transfer the wheat away from the seller. As for the control of a purchase that cannot be transferred like a house; its control will be that the owner of the house moves out along with his things, and the buyer is allowed to move in to reside.

2189. It was narrated from 'Atâ' that 'Attâb bin Asid said that

٢١٨٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

when the Messenger of Allâh ﷺ sent him to Makkah, he forbade him from profiting off of what he did not possess. (*Dâ’if*)

تخریج: [إسناده ضعیف] وضعفه البوصیری، وقال: وعطاً هو ابن أبي ریاح لم يدرك عتاباً، انظر، ح ٢٠٨ لعلته الأخرى.

Chapter 21. If Two Authorized Persons Make A Sale, Then The First Transaction Is The One That Is Valid

2190. It was narrated from ‘Uqbah bin ‘Âmir or Samurah bin Jundab that the Messenger of Allâh ﷺ said: “Any man who sells to two men, it is for the one who was first.”^[1] (*Hasan*)

تخریج: [حسن] أخرجه أبو داود، التکاھ، ح: ۲۰۸۸ من حديث قتادة به، وحسنه الترمذی، ح: ۱۱۱، وصححه ابن الجارود، وله شواهد، راجع سنن النسائي، ح: ۴۶۸۶ وغيره.

2191. It was narrated from Samurah that the Messenger of Allâh ﷺ said: “If two (separate) authorized persons make a sale (of the same thing), then the first transaction is the one that is valid.” (*Hasan*)

مُحَمَّدُ بْنُ الْفَضَّلِ، عَنْ لَيْثٍ، عَنْ عَطَاءٍ، عَنْ عَتَّابِ بْنِ أَبِي سَلَيْلٍ قَالَ: لَمَّا بَعَثَهُ رَسُولُ اللَّهِ ﷺ إِلَى مَكَّةَ، نَهَاهُ عَنْ شَيْفٍ مَا لَمْ يُضْمِنْ.

تخریج: [إسناده ضعیف] وضعفه البوصیری، وقال: وعطاً هو ابن أبي ریاح لم يدرك عتاباً، انظر، ح ٢٠٨ لعلته الأخرى.

(المعجم (٢١) - باب: إِذَا بَاعَ الْمُجِيزَانِ فَهُوَ لِلأَوَّلِ (التحفة (٢١)

٢١٩٠ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثَ: حَدَّثَنَا سَعِيدُ عَنْ قَتَادَةَ، عَنْ الْحَسَنِ، عَنْ عَقْبَةَ بْنِ عَامِرٍ أَوْ سَمْرَةَ بْنِ جُنَاحِيَّ، عَنْ الشَّجَرَةِ قَالَ: «إِيمَّا رَجُلٌ بَاعَ بَيْعًا مِنْ رَجُلَيْنِ فَهُوَ لِلأَوَّلِ مِنْهُمَا».

٢١٩١ - حَدَّثَنَا الْحُسَيْنُ بْنُ أَبِي السَّرِّيِّ الْعَنْقَلَاتِيُّ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سَعِيدُ بْنُ بَشِيرٍ، عَنْ قَتَادَةَ، عَنْ الْحَسَنِ عَنْ سَمْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا بَاعَ الْمُجِيزَانِ فَهُوَ لِلأَوَّلِ».

تخریج: [حسن] انظر الحديث السابق.

Comments:

The example of a transaction made by two persons is that an item belongs to two partners. Each of the two sold it to different people without telling the other. Or the agent sold it, and the owner also sold the same thing to

^[1] “What was sold, or, for the first of the two purchasers.” (Sindi) This is how they explain it, although it has a slightly different meaning than the following *Hadîth*, and the chapter heading.

someone without informing the agent; in this case whoever made the deal first, his deal will be correct and the other's deal will be annulled. Allâh knows best!

Chapter 22 Prohibition On Earnest Money^[1]

2192. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Prophet ﷺ forbade the deal involving earnest money. (*Hasan*)

تَحْرِيْج: [حسن] أخْرَجَهُ أبُو دَاوُدُ، الْبَيْوُعُ، بَابُ: فِي الْعَرْبَانِ، ح: ٣٥٠٢ من حديث مالك به، وهو في الموطأ: (٦٠٩/٢)، رواه مالك عن الثقة عنده (ابن لهيعة كما في رواية ابن وهب) * وابن لبيعة صرح بالسماع، وتابعه المخاريث بن عبد الرحمن بن أبي ذباب عند البيهقي وغيره، وإسناده حسن.

2193. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Prophet ﷺ forbade the deal involving earnest money. (*Hasan*)

Abu 'Abdullâh said: Earnest-money refers to when a man buys an animal for one hundred Dinâr, then he gives the seller two Dinâr in advance and says: "If I do not buy the animal, then the two Dinâr are yours."

And it was said that it refers, and Allâh knows best, to when a man buys something, and gives the seller a Dirham or less or more, and says: "If I take it (all well and good), and if I do not, then the Dirham is yours."

(المعجم ٢٢) - بَابُ بَيْعِ الْعَرْبَانِ (التحفة ٢٢)

٢١٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ. قَالَ: بَلَّغَنِي عَنْ عَمْرُو بْنِ شَعْبَيْنَ، عَنْ أَبِيهِ، عَنْ جَلْوَهُ أَنَّ النَّبِيَّ ﷺ نَهَىٰ عَنْ بَيْعِ الْعَرْبَانِ.

٢١٩٣ - حَدَّثَنَا الْفَضْلُ بْنُ يَعْقُوبَ الرُّحَامَى: حَدَّثَنَا حَيْبُ بْنُ أَبِي حَيْبٍ، أَبُو مُحَمَّدٍ، كَاتِبُ مَالِكٍ بْنِ أَنَسٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرٍ الْأَشْلَوِيُّ، عَنْ عَمْرُو بْنِ شَعْبَيْنَ، عَنْ أَبِيهِ، عَنْ جَلْوَهُ أَنَّ النَّبِيَّ ﷺ نَهَىٰ عَنْ بَيْعِ الْعَرْبَانِ.

قَالَ أَبُو عَبْدِ اللَّهِ: الْعَرْبَانُ أَنْ يَسْتَرِي الرَّجُلُ دَابَّةً يَمَاكِهَ دِينَارَ، فَيُعْطِيَهُ دِينَارَيْنِ عَرْبَوْنَاً. فَيَقُولُ: إِنْ لَمْ أَسْتَرِ الدَّابَّةَ، فَالدِّينَارُانِ لَكَ.

وَقَيلَ: يَعْنِي، وَاللَّهُ أَعْلَمُ: أَنْ يَسْتَرِي الرَّجُلُ الشَّيْءَ. فَيَدْفَعُ إِلَيَّ الْبَاعِيْدُ دِرْهَمًا أَوْ أَفْلَأَ أَوْ أَكْثَرَ. وَيَقُولُ: إِنْ أَخْذَتْهُ، وَإِلَّا

^[1] Earnest money: A kind of down payment which is counted towards the cost of the goods if the transaction is completed, and which is kept by the seller if the transaction is cancelled. This is commonly referred to as a non-refundable 'deposit' or 'down payment'.

فالذرهمُ لكَ.

تخریج : [حسن] والحادیث السابق شاهد له.

Comments:

'Amir San'âni said in *Subulus-Salâm Sharh Bulughul-Marâm*: "The jurists are at variance regarding the permissibility of this transaction. Imam Mâlik and Shâfi'i declared it illegal due to the *Hadith* prohibiting it. They declared it illegal due to another reason as well; because it involves an unreasonable condition, it is cheating as well. It also involves a trick to consume others' wealth through unlawful means." This opinion seems to be correct; because the seller does not give anything or any benefit to the buyer in exchange for the deposit he receives from the buyer; and taking one's property without exchange is impermissible. Besides this, accepting the sold item back is rewarding. (See *Hadith*: 2199). The condition of deposit is made lest the purchaser return the bought merchandise. It is an act which keeps one away from doing a good deed, which cannot be appreciated.

Chapter 23. Prohibition Of Hasâh And Gharar Transactions^[1]

2194. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade Gharar transactions and Hasâh transactions." (*Sahih*)

(المعجم ٢٢) - بَابُ النَّهْيِ عَنْ بَيْعِ
الْحَصَاءِ وَعَنْ بَيْعِ الْغَرَرِ (التحفة ٢٣)

٢١٩٤ - حَدَّثَنَا مُحَمَّرُ بْنُ سَلَمَةَ الْعَدْنِيِّ:
حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ عَبْدِ اللَّهِ
عَنْ أَبِي الزَّنَادِ، عَنْ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ
قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْغَرَرِ وَعَنْ
بَيْعِ الْحَصَاءِ.

تخریج: أخرجه مسلم، البيع، باب بطلان بيع الحصاء والبيع الذي فيه غرر، ح: ١٥١٣ من
حدیث عبد الله بن عمر به.

2195. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ forbade Gharar transactions." (*Sahîh*)

٢١٩٥ - حَدَّثَنَا أَبُو كُرَيْبٍ وَالْعَيَّاسُ بْنُ عَبْدِ
الْعَظِيمِ الْعَبَرِيُّ. قَالَا: حَدَّثَنَا الْأَسْوَدُ بْنُ
عَامِرٍ: حَدَّثَنَا أَيُوبُ بْنُ عُتْبَةَ، عَنْ يَحْيَى بْنِ

^[1] **Hasâh:** A transaction involving throwing pebbles, which may be understood in three ways: (i) the seller throws pebbles onto the goods and gives the buyer whatever the pebbles land on; (ii) the seller sells land then tells the purchaser that he will get the land as far as a pebble thrown by the seller reaches; (iii) the seller tells the purchaser that he has the option to change his mind until he (the seller) throws a pebble, at which point the transaction becomes binding.

Gharar: Selling goods which appear sound but contain some hidden fault, or concerning which something is unclear.

أبي كثير، عن عطاء، عن ابن عباس قال:
نَهَى رَسُولُ اللَّهِ عَنْ بَيْعِ الْغَرَرِ.

تخریج: [صحیح] أخرجه الدارقطنی: ١٥/٣ من حديث الأسود بن عامر، شاذان به، ضعفه البوصيري لضعف أیوب بن عتبة، والحديث السابق شاهد له.

Comments:

- All forms of transactions in which the quantity of the commodity being sold and bought cannot be estimated, are the transactions which involve uncertainty and cheating. For example: the sale of fish in water, or the sale of an unborn baby animal which is still in the female's womb. The transaction of uncertainty and cheating also includes the things which are impossible to handover to the buyer, like the sale of a lost animal.
- The deal of transaction done by throwing a pebble is a type of lottery, which was in vogue during the pre-Islamic period. For example: The seller would ask the customer to throw a pebble; and then whichever item amongst many got hit by the pebble would be sold for one hundred pounds; whilst those items varied in quantity, quality, value and price. Many modern forms of lottery are practised these days; as some companies introduce prize drawing schemes to increase the sale of their product. These all are under the rule of 'Transaction done by throwing a pebble'.

Chapter 24. Prohibition Of Buying What Is In The Wombs And Udders Of Cattle,^[1] And Whatever A Diver Is Going To Bring Up

2196. It was narrated that Abu Sa'eed Al-Khudri said: "The Messenger of Allāh ﷺ forbade selling what is in the wombs of cattle until they give birth, and selling what is in their udders unless it is measured out, and selling a slave who has fled, and selling spoils of war until it has been distributed, and selling *Sadaqah* until it has been received, and what a diver is going to bring up." (*Hasan*)

(المعجم (٢٤) - باب النهي عن شراء ما في بطون الأنعام وصروعها وضربي الغائض (٢٤) (التحفة

٢١٩٦ - حدثنا هشام بن عمار: حدثنا
حاتم بن إسماعيل: حدثنا جهضم بن عبد الله البهانى، عن محمد بن إبراهيم التاهلى،
عن محمد بن زيد العبدى، عن شهر بن حوشب، عن أبي سعيد الخذري قال: نهى
رسول الله ﷺ عن شراء ما في بطون الأنعام
حتى تضع، وعما في صروعها. إلا يكتفى.
وعن شراء العبد وهو آبق، وعن شراء
المغائب حتى تقسم، وعن شراء الصدقات

[1] The *An'am* are domesticated grazing animals including camels as well as cows and sheep.

حَتَّى تُقْبَضَ، وَعَنْ ضَرْبَةِ الْغَائِصِ.

تَحْرِير: [حسن] أخرجه الترمذى، السير، باب في كراهة بيع المغانم حتى تقسم، ح: ١٥٦٣: من حديث حاتم به، وقال: غريب، محمد بن إبراهيم الباهلى مجھول(تقريب) وفي شيخه نظر ، وللحديث شواهد كثيرة عند ابن أبي شيبة: ٤٣٥ / ١٣ وغیره.

Comments:

This *Hadith* is Weak; but the issue mentioned in it is authentic because the forms of sale mentioned in it are all transactions of uncertainty and cheating. However if milk is bought after measuring it, then it does not involve cheating, so it is a lawful sale.

2197. It was narrated from Ibn Umar that the Prophet ﷺ forbade selling *Hablul-Habalah*. (*Sahih*)

٢١٩٧ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَفِيَّاً، عَنْ أَلْوَبَ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ أَبْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ حَبْلٍ الْحَبَلَةَ.

تَحْرِير: [صحيح] أخرجه السجى: ٢٩٣ / ٧، البيوع، . بيع حبل الحبلة، ح: ٤٦٢٧: من حديث سفيان به، وله شواهد عند البخاري وغيره.

Comments:

- Habalul-Habalah* is to sell and buy a baby of an animal before its birth, which is illegal; because it involves uncertainty and cheating. It is unknown whether the baby will be male or female, physically fit or defective.
- Payment of a loan should have a clear appointed time. Then if the debtor could not pay back at the appointed time, and asked for more time, or the deadline is not set at all; and then the debtor pays back according to the flexible ability; granting this type of flexibility to the debtor is a highly virtuous deed.

Chapter 25. Auctions

(المعجم ٢٥) - بَابُ بَيْعِ الْمُزَايِدَةِ

(التحفة ٢٥)

2198. It was narrated from Anas bin Malik that a man from among the *Ansâr* came to the Prophet ﷺ and begged from him. He said, "Do you have anything in your house?" He said: "Yes, a blanket, part of which we cover ourselves with and part we spread beneath us, and a bowl from which we drink water." He said: "Give them to me." So he brought them to him, and the Messenger of

٢١٩٨ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ: حَدَّثَنَا الْأَخْضَرُ بْنُ عَجْلَانَ: حَدَّثَنَا أَبُو بَكْرُ الْحَقِيقِيُّ، عَنْ أَنَّسِ بْنِ مَالِكٍ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ جَاءَ إِلَى النَّبِيِّ ﷺ يَسْأَلُهُ. فَقَالَ: «لَكَ فِي بَيْتِكَ شَيْئٌ؟» قَالَ: بَلَى. حَلَّسْ تَبْسُّ بَعْضُهُ وَبَسْطُ بَعْضُهُ. وَقَدْحٌ نَسْرَبُ فِيهِ الْمَاءُ. قَالَ:

Allâh ﷺ took them in his hand and said, "Who will buy these two things?" A man said: "I will buy them for one Dirham." He said: "Who will offer more than a Dirham?" two or three times. A man said: "I will buy them for two Dirham." So he gave them to him and took the two Dirham, which he gave to the *Ansâri* and said: "Buy food with one of them and give it to your family, and buy an axe with the other and bring it to me." So he did that, and the Messenger of Allâh ﷺ took it and fixed a handle to it, and said: "Go and gather firewood, and I do not want to see you for fifteen days." So he went and gathered firewood and sold it, then he came back, and he had earned ten Dirham. (The Prophet ﷺ) said: "Buy food with some of it and clothes with some." Then he said: "This is better for you than coming with begging (appearing) as a spot on your face on the Day of Resurrection. Begging is only appropriate for one who is extremely poor or who is in severe debt, or one who must pay painful blood money."^[1] (*Hasan*)

«ائْتَنِي بِهِمَا» قَالَ، فَأَتَاهُ يَوْمًا. فَأَخْدَهُمَا رَسُولُ اللَّهِ ﷺ بِيَدِهِ. ثُمَّ قَالَ: «مَنْ يَشْتَرِي هَذِئِينَ؟» فَقَالَ رَجُلٌ: أَنَا آخْذُهُمَا بِدِرْهَمٍ. قَالَ: «مَنْ يَزِيدُ عَلَى دِرْهَمٍ؟» مَرْتَبَتِينَ أَوْ ثَلَاثَةَ. قَالَ رَجُلٌ: أَنَا آخْذُهُمَا بِدِرْهَمَيْنِ. فَأَعْطَاهُمَا إِلَيْهِ وَآخَذَ الدِّرْهَمَيْنِ، فَأَعْطَاهُمَا الْأَصْبَارِيَّ، وَقَالَ: «اشْتَرِ بِأَحْدِيْمَا طَعَامًا فَأَنْبِهُ إِلَى أَهْلِكَ. وَاشْتَرِ بِالْآخِرِ قَدْوَمًا، فَأَنْتَنِي بِهِ» فَفَعَلَ. فَأَخْدَهُ رَسُولُ اللَّهِ ﷺ. فَشَدَّ فِيهِ عُودًا بِيَدِهِ وَقَالَ: «اذْهَبْ فَاحْتَطِبْ وَلَا أَرَاكَ حَمْسَةَ عَشَرَ يَوْمًا» فَجَعَلَ يَحْتَطِبْ وَيَسْبِعُ. فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دَرَاهِمَ، فَقَالَ: «اشْتَرِ بِعَصْبَهَا طَعَامًا وَبِعَصَبَهَا نُوبَا». ثُمَّ قَالَ: «هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَحْيِي وَالْمَسَائِلَةَ تُنْكَتَهُ فِي وَجْهِكَ يَوْمَ الْقِيَامَةِ. إِنَّ الْمَسَائِلَةَ لَا تَضْلُعُ إِلَّا لِنَذِي فَقْرٌ مُدْقَعٌ، أَوْ لِذِي عُرْمٍ مُمْطَعِّ، أَوْ دَمْ مُوجِعٍ».

تخریج: [إسناده حسن] أخرجه أبو داود، الزکاة، باب ما تجوز فيه المسألة، ح: ١٦٤١ من حديث عيسى بن يونس به، وحسنه الترمذی، ح: ١٢١٨.

^[1] 'Painful blood money' i.e., if the blood money is not paid, the killer will be executed and his family will suffer his loss.

Comments:

A calamity stricken person is allowed to make an appeal of financial support but taking beggary as a profession is unlawful. The Messenger of Allâh ﷺ said: "Begging is only allowed for three type of people: a person who took a loan (to set right someone else's matters and the loan was more than his financial capability) is allowed to make an appeal until he gets the required amount of money and then he should stop; the second person allowed to make financial appeal is the one who is afflicted by a calamity and all his property got ruined. He is allowed to do so until he finds means to fulfill the needs of his daily life. The third person having this is the one who is suffering from starvation; three wise and reliable individuals from among his people should certify the case that so-and-so is really suffering from starvation. (*Sahîh Muslim*: 1044)

Chapter 26. Letting Someone Off

2199. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever agrees with a Muslim to cancel a transaction, Allâh will forgive his sins on the Day of Resurrection." (*Da'if*)

نحوه: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في فضل الإقالة، ح: ٣٤٦٠ من حديث الأعمش به، وصححه ابن حبان، والذهبي، وابن حزم وابن دقيق العيد، عليه عنونة الأعمش تقدم، ح: ١٧٨، وله شواهد ضعيفة.

Comments:

- If one is given a choice at the time of making the deal to annul the sale; for example: a person says to the other that you are allowed to cancel the deal within such and such time, then the person given the choice may use this right to cancel the sale within the fixed time.
- But if the condition of choice does not exist, and the buyer wants to return the bought commodity; or the seller wants it back for the exchange of the same price, then either of the two parties should accept the request of the other, and should exchange the commodity and price. It is a deed of great reward. It will be seen as a moral duty but not a legal responsibility.

Chapter 27. Whoever Does Not Like To Fix Prices

2200. It was narrated that Anas bin Mâlik said: "Prices rose

(المعجم ٢٦) - باب الإقالة (التحفة ٢٦)

٢١٩٩ - حَدَّثَنَا زَيْنُ الدِّينُ بْنُ يَحْيَى أَبُو الخطَّابِ: حَدَّثَنَا مَالِكُ بْنُ سُعِيرٍ: حَدَّثَنَا الأَعْمَشُ عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَقَالَ مُسْلِمًا أَقَالَهُ اللَّهُ عَزَّزَتْهُ يَوْمَ الْقِيَامَةِ».

(المعجم ٢٧) - باب مَنْ كَرِهَ أَنْ يُسْعَرَ (التحفة ٢٧)

٢٢٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ المُشَيْخِ: حَدَّثَنَا

during the time of the Messenger of Allāh ﷺ, and they said: 'O Messenger of Allāh, prices have risen, so fix the prices for us.' He said: 'Indeed Allāh is the *Musa'ir*,^[1] the *Qâbid*, (Restrainer) the *Bâsit*,^[2] the *Râzzâq* (Provider). And I am hopeful that I meet my Lord and none of you are seeking (recompense from) me for an injustice involving blood or wealth.''' (*Sahih*)

تخریج: [إسناده صحيح] أخرجه أبو داود، البيوع، باب: في التسعير، ح: ٣٤٥١؛ من حديث حماد به، وصححه الترمذى، ح: ١٣١٤، وابن حبان (التلخيص الحيرى)، وأورده الضياء المقدسى في الأحاديث المختارة.

2201. It was narrated that Abu Sa'eed said: "Prices rose at the time of the Messenger of Allāh ﷺ, and they said: 'Why do you not fix the food prices, O Messenger of Allāh?' He said: 'I hope that when I leave you, no one among you will be demanding restitution for a wrong that I have done to him.''' (*Sahih*)

حَجَاج: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ قَتَادَةَ وَحُمَيْدٍ وَتَابِتَ عَنْ أَسِّيْنِ بْنِ مَالِكٍ قَالَ: غَلَّ السُّعْرُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. فَقَالُوا: يَا رَسُولَ اللَّهِ قَدْ غَلَّ السُّعْرُ، فَسَعَرَ لَنَا. قَالَ: إِنَّ اللَّهَ هُوَ الْمُسْعِرُ الْقَابِضُ الْبَاسِطُ الرَّارِقُ: إِنِّي لَا زُحْوَ أَنَّ الْقَى رَبِّيْ وَلَيْسَ أَحَدَ يَطْلُبُنِي بِمَظْلِمَةٍ فِي دَمٍ وَلَا مَالٍ».

٢٢٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ زَيْدٍ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: غَلَّ السُّعْرُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. فَقَالُوا: لَوْ قَوَمْتَ، يَا رَسُولَ اللَّهِ قَالَ: إِنِّي لَا زُحْوَ أَنَّ أَفَارِقْكُمْ وَلَا يَطْلُبُنِي أَحَدٌ مِنْكُمْ بِمَظْلِمَةٍ ظَلَمْتُهُ».

تخریج: [صحيح] أخرجه أحمـد: ٨٥/٣، والخطيب في تاريخه: ٤٥١/٩ من طريقين عن الجرجري عن أبي نصرة به نحوه، والحديث السابق شاهد له.

Comments:

- The affairs of trade should operate according to the economic law of demand and consumption, and import and export; which is better for the economy of the country; and the government should avoid interfering in it.
- If the traders do not take care of the needs of the public, due to the greed of excessive profit, then the government can get rid of the artificial inflation and shortage by providing the food stuff from the official stores for cheaper rates.

[١] "In *An-Nihâyah* he said: 'It is that He is the One who makes things inexpensive and expensive, He can not be opposed by anyone. So because of that it is not allowed to fix prices.'" (*Tuhfatal-Ahwadhi*)

[٢] "Meaning: He restricts sustenance and other than that from whom He wills, regarding what He wills, and how He wills, and He makes it unrestricted." (*Tuhfatal-Ahwadhi*)

Chapter 28. Being Lenient During Transactions

2202. 'Uthmân bin 'Affâن narrated that the Messenger of Allâh ﷺ said: "Allâh will admit to Paradise a man who was lenient when he sold and when he bought." (*Sahih*)

(المعجم ٢٨) - باب السماحة في البيع
(التحفة ٢٨)

٢٢٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي الْبَلْخِيِّ أَبُو بَكْرٍ: حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عَلِيَّةَ، عَنْ يُوسُفَ ابْنِ عَيْدَ، عَنْ عَطَاءَ بْنِ فَرْوَحَ قَالَ: قَالَ عُثْمَانُ بْنُ عَفَافَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَذْخُلْ اللَّهَ الْجَنَّةَ رَجُلًا كَانَ سَهْلًا، بَائِعًا وَمُشْتَرِيًّا».

تخریج: [صحيح] أخرجه النسائي: ٣١٨ / ٧، ٣١٩، البيوع، . حسن المعاملة والرفق في المطالبة، ح: ٤٧٠٠ من حديث إسماعيل بن عليه به * عطاء بن فروخ لم يلق عثمان رضي الله عنه، قاله ابن المديني، والحديث الآتي شاهد له.

2203. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "May Allâh have mercy on a person who is lenient when he sells, lenient when he buys, and lenient when he asks for payment." (*Sahih*)

٢٢٠٣ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنُ سَعِيدٍ أَبْنِ كَيْرٍ بْنِ دِينَارِ الْحَمْصِيِّ: حَدَّثَنَا أَبِي: حَدَّثَنَا أَبُو غَسَانَ مُحَمَّدُ بْنُ مُطَرِّفٍ، عَنْ مُحَمَّدٍ بْنِ الْمُنْتَكِبِ، عَنْ جَابِرٍ بْنِ عَيْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «وَرَحْمَ اللَّهِ عَبْدًا سَمْحًا إِذَا بَاعَ سَمْحًا إِذَا اشْتَرَى سَمْحًا إِذَا أَقْتَضَى».

تخریج: أخرجه البخاري، البيوع، باب السهولة والسماحة في الشراء والبيع، ومن طلب حقه فليطلب في عفاف، ح: ٢٠٧٦ من حديث أبي غسان به.

Comments:

- Easiness and flexibility in sale is to give appropriate concession in price, and to give respite to the debtor; and if a buyer asks for an unreasonable concession, then the seller should excuse himself instead of making an argument. If a buyer wants to return the bought commodity, it should be taken back.
- Easiness in buying is that the buyer should not ask for an unreasonable reduction in price; and if there is a minor defect in the commodity, it should be overlooked. The price should be paid immediately according to the best ability. If seller misbehaves and shows harshness in sale, the buyer should not pay with the same token.

Chapter 29. Haggling

2204. It was narrated that Qailah Umm Bani Anmâr said: "I came to the Messenger of Allâh ﷺ during one of his 'Umrah at Marwah and said: 'O Messenger of Allâh, I am a woman who buys and sells. When I want to buy something, I state a price less than I want to pay, then I raise it gradually until it reaches the price I want to pay. And when I want to sell something, I state a price more than I want, then I lower it until it reaches the price I want.' The Messenger of Allâh ﷺ said: 'Do not do that, O Qailah. When you want to buy something, state the price you want, whether it is given or not. And when you want to sell something, state the price you want, whether it is given or not.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه الطبراني في الكبير: ٢٥/١٣ من حديث يعلى به، وهو لین الحديث كما في التقریب * وقال النھی في الكافش: قیلة أم بنی انمار، صحابیة، عنها عبدالله ابن عثمان بن خثیم مرسلًا ، وقال البوصیری: منقطع .

2205. It was narrated that Jâbir bin 'Abdullâh said: "I was with the Prophet ﷺ on a military campaign, and he said to me: 'Will you sell this camel of yours for a Dinâr?' I said: 'O Messenger of Allâh, it is yours when I get to Al-Madinah.' He said: 'Then sell it for two Dinâr, may Allâh forgive you.' And he kept increasing the price for me, saying: 'May Allâh forgive you,' each time, until the

(المعجم ٢٩) - باب السّوْم (التحفة ٢٩)
 ٤ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ : حَدَّثَنَا يَعْلَى بْنُ شَبَّابٍ ، عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ بْنِ خُثْمَ ، عَنْ قَيْلَةِ أُمِّ بَنِي أَنْتَارٍ قَالَ : أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي بَعْضِ عُمُرِهِ عَنْدَ الْمَرْوَةِ . فَقَالَ : يَا رَسُولَ اللَّهِ إِنِّي امْرَأَةٌ أَبِيَّ وَأَشَّرِيِّ . فَإِذَا أَرَدْتُ أَنْ أَبْتَاعَ الشَّيْءَ سَمِّطْتُ يَهُ أَقْلَى مِمَّا أُرِيدُ . ثُمَّ زَرْدْتُ حَتَّى أَبْلَغَ الدَّيْرِيَ أُرِيدُ . وَإِذَا أَرَدْتُ أَنْ أَبْتَاعَ الشَّيْءَ سَمِّطْتُ يَهُ أَكْثَرَ مِنَ الدَّيْرِيَ أُرِيدُ . ثُمَّ وَضَعْتُ حَتَّى أَبْلَغَ الدَّيْرِيَ أُرِيدُ . فَقَالَ رَسُولُ اللَّهِ ﷺ : (لَا تَنْعَلِي يَا قَيْلَةً إِذَا أَرَدْتَ أَنْ تَبْتَاعِي شَيْئًا فَاسْتَأْمِي يَهُ الدَّيْرِيَ تُرِيدِينَ . أَعْطَيْتِي أَوْ مُنْتَهِتِي) . فَقَالَ : إِذَا أَرَدْتُ أَنْ تَبْتَاعِي شَيْئًا فَاسْتَأْمِي يَهُ الدَّيْرِيَ تُرِيدِينَ . أَعْطَيْتِي أَوْ مُنْتَهِتِي) .

٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَعْسَى : حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ ، عَنْ الْجَرِيرِيِّ ، عَنْ أَبِي نَضْرَةَ ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ : كُنْتُ مَعَ النَّبِيِّ ﷺ فِي عَرْوَةَ . فَقَالَ لِي : (أَتَبِعُ نَاصِحَّكَ هَذَا بِلِينَارٍ ، وَاللَّهُ يَغْفِرُ لَكَ؟) قُلْتُ : يَا رَسُولَ اللَّهِ! هُوَ نَاصِحُّكَ إِذَا أَتَيْتَ الْمَدِيْنَةَ . قَالَ : (فَتَسْتَعِدُ بِدِينَارَيْنِ ، وَاللَّهُ يَغْفِرُ لَكَ) . قَالَ : فَمَا زَالَ يَرِيدُنِي دِينَارًا دِينَارًا

amount reached twenty Dinâr. When I came to Al-Madinah, I took hold of the camel's head and brought it to the Prophet ﷺ and he said: 'O Bilâl, give him twenty Dinâr from the spoils of war.' And he said: 'Take your camel away and go to your people with it.' "(Sahîh)

وَقُلُّوْنُ، مَكَانَ كُلُّ دِيْنَارٍ: «وَاللَّهُ يَعْفُرُ لَكَ حَتَّى يَلْغَ عَشْرِينَ دِيْنَارًا. فَلَمَّا أَتَيْتُ الْمَدِينَةَ أَحْدَثْتُ بِرَأْسِ النَّاضِحِ فَأَتَيْتُ بِهِ النَّبِيَّ ﷺ قَالَ: «يَا بِلَّاْنَ أَعْطِهِ مِنَ الْقِنِيمَةِ عِشْرِينَ دِيْنَارًا»، وَقَالَ: «أَنْطِقْ بِنَاضِحَكَ فَادْهُبْ بِهِ إِلَى أَهْلِكَ».

تخریج: أخرجه مسلم، المسافة، باب بيع البعير واستثناء رکوبه، ح: ١١٢ / ٧١٥ من حديث الجريري به مختصرًا، وعلمه البخاري، ح: ٢٧١٨.

Comments:

- To receive the price first and then to give the commodity to the buyer, is lawful; even though at that time the commodity is with the seller. But in this situation the mutual consent of seller and buyer is necessary.
- When doing a favor for a person in any sort of deal, it should be done in such a way that it looks like a normal business deal, and the person receiving the favor does not feel ashamed, as this is a matter of great courage, highness, generosity and dignity.

2206. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ forbade haggling before sunrise, and (he forbade) slaughtering animals that yield milk." (*Da'if*)

٢٢٠٦ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ، وَ سَهْلُ بْنُ أَبِي سَهْلٍ. قَالَ: حَدَّثَنَا عَيْدُ اللَّهِ بْنُ مُوسَى: أَبَيَّنَا الرَّبِيعُ بْنُ حَبِيبٍ، عَنْ نَوْفَلِ بْنِ عَبْدِ الْمَلِكِ، عَنْ أَبِيهِ، عَنْ عَلَيِّ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ السَّوْمِ قَبْلَ طُلُوعِ الشَّمْسِ. وَ عَنْ ذَبْحِ ذَوَاتِ النَّرِ.

تخریج: [إسناده ضعيف] أخرجه ابن عدي في الكامل: ٩٩٥ / ٣ (ترجمة الريبع بن حبيب) من حديث عبيد الله بن موسى به، وقال: هذه الأحاديث ... ليست بالمحفوظة * نوافل مستور (تقریب)، والحديث ضعفه البوصيري.

Comments:

The purpose of slaughtering is for the use of the meat, and this purpose can be achieved by slaughtering an animal that does not give milk. Therefore, it is inappropriate to be deprived from the favor of milk.

Chapter 30. What Was Narrated About It Being Disliked To Swear Oaths When Buying And Selling

2207. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There are three to whom Allâh will not speak on the Day of Resurrection, nor will He look at them or purify them, and theirs will be a painful torment: A man who has surplus water in the desert but refuses to give any to a wayfarer; a man who sells a product to a man after 'Asr and swears by Allâh that he bought it for such and such amount, and he believes him, when that is not the case; and a man who swears allegiance to a ruler, and only does so for worldly gains, so if he gives him some of (these worldly benefits) he fulfills his oath of allegiance, and if he is not given anything, he does not uphold his oath of allegiance." (*Sahih*)

تخریج: أخرجه مسلم، الإيمان، باب بيان غلط تحريم إسبال الإزار والمن بالعطية وتنفيق السلعة بالحلف... الخ، ح: ١٠٨ عن أبي بكر بن أبي شيبة وغيره به.

Comments:

- 'Neither speaking to nor looking at' means the talk of mercy and the look of kindness; otherwise Allâh will judge every action, good and bad; and nothing can be hidden before Him.
- 'Not to purify' means not to forgive sins.
- Giving water to the thirsty is a deed of great reward. Particularly, giving drinking water to the people at a place where it is not available easily is a source of high reward.
- A water spring in the desert is a grace of Allâh ﷺ. Occupying that spring water illegally and not letting the needy drink from it is mean spirited.
- Bearing false oath is a sin. Swearing a false oath after 'Asr prayer is an even worse sin; and such a grave sin is committed just for the assumed benefit of

(المعجم ٣٠) - باب ما جاء في كراهة
الأيمان في الشراء والبيع (التحفة ٣٠)

٢٢٠٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَ
عَلَيْهِ بَنُونَ مُحَمَّدٌ، وَأَخْمَدُ بْنُ سَيَّانٍ. قَاتُلُوا:
حَدَّثَنَا أَبُو عَمَارَيْهُ، عَنْ الْأَعْمَشِ، عَنْ أَبِي
صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللَّهُ عَزَّ وَجَلَّ يَوْمَ
الْقِيَامَةِ، وَلَا يَنْظُرُ إِلَيْهِمْ، وَلَا يُزَكِّيهِمْ، وَلَهُمْ
عَذَابٌ أَلِيمٌ: رَجُلٌ عَلَى فَضْلٍ مَاءٍ بِالْفَلَةِ
يَمْنَعُهُ أَبْنُ السَّيْلِ. وَرَجُلٌ بَايْعَ رَجُلًا سُلْطَةً
بَعْدَ الْعَصْرِ فَحَفَّ بِاللَّهِ لَا يَخْلُمُهَا بِكَذَّا وَكَذَّا.
فَصَدَقَهُ، وَهُوَ عَلَى غَيْرِ ذَلِكَ. وَرَجُلٌ بَايْعَ
إِمَاماً، لَا يُبَايِعُهُ إِلَّا لِدُنْيَا. فَإِنْ أَعْطَاهُ مِنْهَا
وَفِي لَهُ، وَإِنْ لَمْ يُعْطِهِ مِنْهَا لَمْ يَفِ لَهُ».

a small amount of money!!! Because there is no certainty that the customer will definitely buy something with the impression of his false oath. A false oath for this type of objective is an extremely indecent act; therefore, its punishment is severe too.

2208. It was narrated from Abu Dharr that the Prophet ﷺ said: "There are three to whom Allâh will not speak on the Day of Resurrection, nor will He look at them or purify them, and theirs will be a painful torment." I said: "Who are they, O Messenger of Allâh? For they are indeed losers." He said: "The one who lets his garment hang beneath his ankles, the one who reminds another of what he has given him, and the one who sells his product by means of false oaths." (*Sahih*)

٢٢٠٨ - حَدَّثَنَا عَلَيْ بْنُ مُحَمَّدٍ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَ: حَدَّثَنَا وَكِبْرَعْ عَنْ الْمَسْعُودِيِّ، عَنْ عَلَيِّ بْنِ مُذْرِكٍ، عَنْ خَرَشَةَ ابْنِ الْحَرْرَ، عَنْ أَبِي ذَرٍّ، عَنِ النَّبِيِّ ﷺ؛ حَوْدَدَتْنَا مُحَمَّدًا بْنَ بَشَّارٍ: حَدَّثَنَا مُحَمَّدًا بْنَ جَعْفَرٍ: حَدَّثَنَا شَعْبَةَ عَنْ عَلَيِّ بْنِ مُذْرِكٍ، عَنْ أَبِي زُرْعَةَ بْنِ عَمْرُو بْنِ جَرِيرٍ، عَنْ خَرَشَةَ بْنِ الْحَرْرَ، عَنْ أَبِي ذَرٍّ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَاتَّهُ لَا يُكَلِّمُهُمُ اللَّهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ إِلَيْهِمْ وَلَا يُرْجِكِيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ» فَقُلْتُ: مَنْ هُمْ؟ يَا رَسُولَ اللَّهِ! فَقَدْ خَابُوا وَخَسِرُوا. قَالَ: «الْمُسْلِمُ إِذَا رَأَهُ، وَالْمُنَافِقُ سَلَعْتَهُ بِالْحَلْفِ الْكَاذِبِ».

تخریج: أخرجه مسلم، الإيمان، الباب السابق، ح: ١٠٦ من حديث علي بن مدرك به.

Comments:

- It is forbidden for a man to lower his garment, trousers and pants below the ankles. A man must have the garment, trousers and pants above the ankles, which will leave the ankles uncovered. Declaring an act, that deserves such a severe punishment, to be merely disliked is incorrect.
- Swearing a false oath in the Name of Allâh is contrary to the regard of Allâh's Blessed Name, and disregarding Allâh's Name is a major sin.

2209. It was narrated from Abu Qatâdah that the Messenger of Allâh ﷺ said: "Beware of swearing oaths when selling, for it may help you to make a sale but it destroys the blessing.'" (*Sahih*)

٢٢٠٩ - حَدَّثَنَا يَحْيَى بْنُ خَلَفَ: حَدَّثَنَا عَنْ الْأَعْلَى؛ حَوْدَدَتْنَا هِشَامًا بْنَ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَاشٍ. قَالَ: حَدَّثَنَا مُحَمَّدًا بْنَ إِسْحَاقَ، عَنْ مَعْبُدٍ بْنِ كَعْبٍ بْنِ مَالِكٍ، عَنْ أَبِي فَتَاهَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّكُمْ وَالْحَلْفَ فِي الْبَيْعِ. فَإِنَّهُ يَنْقُضُ ثُمَّ يَمْكُحُ».

تخریج: [صحیح] أخرجه أَحْمَدُ: ۲۹۷، ۲۹۸ من حديث ابن إسحاق به، وصرح بالسماع،
وله طريق آخر عند مسلم، ح: ۱۶۰۷ وغيره عن عبد بن كعب به.

Comments:

It is best that oaths be used rarely. It is not a good habit to keep swearing unnecessarily to sell goods.

Chapter 31.What Was Narrated Concerning One Who Sells A Pollinated Palm Tree Or A Slave Who Has Wealth

2210. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever buys a palm tree that has been pollinated, its fruits belong to the seller, unless the purchaser stipulated a condition." (*Sahih*)

Another chain from Ibn 'Umar, from the Prophet ﷺ, with similar wording.

(المعجم (٣١) - بَابُ مَا جَاءَ فِيمَنْ بَاعَ نَخْلًا مُؤَبِّرًا أَوْ عَبْدًا لَهُ مَالٌ (التحفة (٣١)

٢٢١٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ. قَالَ: حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: مَنْ اشْتَرَى نَخْلًا قَدْ أَبْرَثَ شَمْرُثًا لِلْبَاعِ إِلَّا أَنْ يُشَرِّطَ الْمُبَتَاعَ».

حدثنا محمد بن رفعون: أبناه الليث بن سعيد، عن نافع، عن ابن عمر، عن النبي ﷺ، بسجدة.

تخریج: أخرجه البخاري، باب من باع نخلاً قد أبرث أو أرضًا مزروعة بيلجارة، ح: ۲۲۰۴،
ومسلم، البيوع، باب من باع نخلاً عليها تمر، ح: ۱۵۴۳ من حديث مالك به، وأخرجه البخاري،
ح: ۲۲۰۶ من حديث الليث به، ومسلم، ح: ۱۵۴۳ عن ابن رمح وغيره.

Comments:

- Male and female flowers of date trees grow on separate trees; if wind, flies and insects are the only means for the transfer of pollination of male and female flowers, then the yield of fruits gets reduced. Therefore the flowers of the male tree are taken and spread over the female tree and thus the trees bear more fruits. It is called artificial pollination.
- Artificial pollination is hard work, and the quantity of the produce depends on it. So if a tree is sold after artificial pollination is done, the hard work of the seller will go vain, therefore, it should be made clear at the time of transaction whether it is only the tree that is being sold or its fruit as well. If it is not cleared beforehand, then only the tree will be sold, and its fruit will legally belong to the seller. However, in the following years if a buyer does artificial pollination he will be the owner of the fruit as well.

2211. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from

٢٢١١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُفْعَةَ: أَبْنَاءَ الْلَّيْثِ

Ibn 'Umar, that the Messenger of Allâh ﷺ said: "Whoever sells a palm tree that has been pollinated, its fruits belong to the seller, unless the purchaser stipulated a condition. And whoever buys a slave who has wealth, his wealth belongs to the seller, unless the purchaser stipulated a condition." (*Sahih*)

ابن سعد: ح: وَحَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَقِيَانُ بْنُ عَيْنِيَّةَ، جَمِيعاً عَنِ ابْنِ شَهَابٍ الرُّهْبَرِيِّ، عَنْ سَالِمٍ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ بَاعَ نَخْلًا قَدْ أَبْرَتْ فَسَمْرَتْهَا لِلَّذِي بَاعَهَا، إِلَّا أَنْ يَشْرِطَ الْمُبْتَاعَ. وَمَنْ ابْتَاعَ عَبْدًا وَلَهُ مَالٌ، فَمَالُهُ لِلَّذِي بَاعَهُ. إِلَّا أَنْ يَشْرِطَ الْمُبْتَاعَ». .

تخریج: أخرجه البخاري، المساقاة، باب الرجل يكون له مهر أو شرب في حائط أو في نخل، ح: ٢٣٧٩، ومسلم، البيوع، باب من باع نخلاً عليها تمر، ح: ٨٠/١٥٤٣ من حديث الليث به، أخرجه مسلم من حديث سقيان بن عيينة به مختصراً.

Comments:

- a. A slave sometimes needs wealth to fulfill his duties and the master gives him a reasonable amount of money to spend; or the master may be pleased with the service of his slave and give him some jewelry to wear for encouragement. In such cases, this wealth still belongs to the master, and it will not go with the slave if he is sold.
- b. If a buyer makes it clear that he is buying the slave along with the wealth; or trees along with the fruits; it is then apparent that the price will increase accordingly. In this case, according to the condition, the wealth or fruit will belong to the buyer.

2212. It was narrated from Nâfi' from Ibn 'Umar that the Prophet ﷺ said: "Whoever sells a palm tree and sells a slave." Mentioning both of them together.^[1]

٢٢١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْوَلِيدِ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَبْدِ رَبِيعٍ بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ الْبَيْنَ أَنَّهُ قَالَ: «مَنْ بَاعَ نَخْلًا وَبَاعَ عَبْدًا جَمِيعَهُمَا [جَمِيعاً]». .

[1] This narration is reported by Shu'bah, from 'Abd Rabbih bin Sa'eed, from Nâfi'. In *Al-Kubra* (the Book of Freeing Slaves: Mention of a slave being freed while he has wealth) by Nasâ'i, after narrating it, Shu'bah said: "I narrated to him ('Abd Rabbih) the narration of Ayyub, from Nâfi', that he narrated it to me with 'palmtree' from the Prophet ﷺ, and 'slave' from 'Umar. So 'Abd Rabbih said: 'I do not know of the two of them together except from the Prophet ﷺ.' Then, another time he narrated it from the Prophet ﷺ, without any rebuke about it." So in this narration of Ibn Mâjah, from Shu'bah, from 'Abd Rabbih, the statement: "Both of them together" is from the explanation of Shu'bah, and Allâh knows best.

تخریج: [إسناده صحيح] أخرجه أَحْمَدُ بْنُ حَيْثَمٍ، وَعَنْ مُحَمَّدِ بْنِ جَعْفَرٍ، وَهُوَ فِي الْسَّنَنِ الْكَبِيرِ لِلنسَّائِيِّ، ح: ٤٩٨٢، أَطْوَلُ مِنْهُ.

2213. It was narrated that 'Ubâdah bin Sâmit said: "The Messenger of Allâh ﷺ ruled that the fruit of a palm tree belongs to the one who pollinated it, and that the wealth of a slave belongs to the one who sold him, unless the purchaser stipulated a condition." (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه عبدالله بن احمد في زوائد المستد: ٣٢٦، ٣٢٧، ٣٢٦/٥ حديث الفضيل به مطولاً * إسحاق أرسل عن عبادة وهو مجاهول الحال(تقريب).

Chapter 32. Prohibition Of Selling Fruits Before They Have Ripened

2214. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Do not sell fruits until they have ripened." And he forbade (both) the seller and the purchaser (to engage in such a transaction). (*Sahih*)

تخریج: [إسناده صحيح] أخرجه النسائي: ٢٦٢، البيوع، - يع الشمر قبل أن يبلو صلاحه، ح: ٤٥٢٣ من حديث الليث به، وله طرق عند البخاري ومسلم وغيرهما عن نافع عن ابن عمر به نحو المعنى.

Comments:

- a. Selling and buying the fruit which is still on the trees is allowed.
- b. When trees get flowers, it looks as if the fruit will be enormous but lots of flowers just fall down. A lot of small fruit in its early age of growth falls down because of winds; and then sometimes it goes to waste because of unexpected rain. The fruit which is safe after all of these misfortunes is the real fruit that benefits the buyer. Therefore, the fruit of an orchard should be sold after passing these stages and a clear estimate is made regarding the quantity of fruit that is expected. This is interpreted in the *Hadith* by 'until they have ripened' as 'until the fruits are clearly in good condition'.

(المعجم ٣٢) - بَابُ النَّهْيِ عَنْ بَيعِ
الثَّمَارِ قَبْلَ أَنْ يَبْدُو صَلَاحُهَا
(التحفة ٣٢)

2214. - حَدَّثَنَا مُحَمَّدُ بْنُ رُونَاحٍ: أَبْنَا الْلَّيْثَ
ابْنُ سَعْدٍ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ، عَنْ
رَسُولِ اللَّهِ ﷺ قَالَ: «لَا تَبْيَعُوا الشَّمْرَ حَتَّى
يَبْدُو صَلَاحُهَا». نَهَى الْتَّابِعَ وَالْمُشْتَريَ.

2215. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Do not sell fruits until they have ripened." (Sahih)

٢٢١٥ - حَدَّثَنَا أَحْمَدُ بْنُ عَيسَى الْمَضْرِبِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ، عَنْ يُونُسَ بْنِ يَزِيدَ، عَنْ ابْنِ شَهَابٍ: حَدَّثَنِي سَعِيدُ بْنُ الْمُسَيْبِ وَأَبُو سَمَاءَ بْنُ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَبْعُدُوا الشَّرْحَ حَتَّى يَبْلُو صَلَاحُهُ».

تخریج: أخرجه مسلم، البيوع، باب تحريم بيع الرطب بالتمر إلا في العرایا، ح: ١٥٣٨ من حديث ابن وهب به.

2216. It was narrated from Jâbir that the Prophet ﷺ forbade selling fruits until they have ripened. (Sahih)

٢٢١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شُفَّيْبٌ، عَنْ ابْنِ جُرَيْجٍ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ التَّمَرِ حَتَّى يَبْلُو صَلَاحُهُ.

تخریج: أخرجه البخاري، البيوع، باب بيع التمر على رؤوس التخل بالذهب أو الفضة، ح: ٢١٨٩ من حديث ابن جريج به مطولاً.

2217. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ forbade selling fruits until they have changed the color, and selling grapes until they have turned black, and selling grains until they have hardened. (Da'if)

٢٢١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُتَّشِّنِ: حَدَّثَنَا حَجَاجٌ: حَدَّثَنَا حَمَادٌ عَنْ حُمَيْدٍ، عَنْ أَنْسٍ ابْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ بَيْعِ التَّمَرِ حَتَّى تَرُهُو. وَعَنْ بَيْعِ الْعِنْبِ حَتَّى يَسْوَدَ، وَعَنْ بَيْعِ الْحَبَّ حَتَّى يَسْتَدَّ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في بيع الثمار قبل أن يجدوا صلاحها، ح: ٣٣٧١: من حديث حماد بن سلمة به، وحسنه الترمذى، ح: ١٢٢٨، وصححه ابن حبان، والحاكم على شرط مسلم، ووافقه الذهبي * لم أجده تصريح سماح حميد الطويل تقدم، ح: ٨٦٦، فالسدل عدل.

Comments:

- Different crops, grains and fruits have different ways to be judged before they are sold.
- The raw fruit of an orchard is green and later its real color begins to appear gradually. At this time, the danger of waste is little, and to sell them is safe and lawful. The real objective of changing the color is to let them grow big enough until they are out of climatic danger.

Chapter 33. Selling Fruits For Many Years Ahead^[1] And Crop Failure

2218. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ forbade selling for many years ahead. (*Sahîh*)

(المعجم ٣٣) - بَابُ بَيْعِ التَّمَارِ سِنِينَ وَالْجَائِحَةِ (التحفة ٣٣)

٢٢١٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَمُحَمَّدُ بْنُ الصَّبَّاحِ. قَالَا: حَدَّثَنَا سُعْيَانُ عَنْ حُمَيْدِ الْأَغْرِيْجِ، عَنْ سَيِّدِهِنَّ بْنِ عَتَّيْقٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَىٰ عَنْ بَيْعِ السِّنِينَ.

تخریج: آخرجه مسلم، المساقاة، باب وضع الجوائع، ح: ١٧/١٥٥٤ من حديث سفيان بن عيينة به بالفظ: أن النبي ﷺ أمر بوضع الجوائع ، والمعنى واحد.

Comments:

- 'Selling for many years ahead' is, for example: to sell the fruits due for the next two or three years and to receive a price in advance; this is prohibited.
- The logic of its prohibition is that the situation of the produce in the following years is unknown; as well as whether there will be produce or not. It is also possible that the fruit will go to waste after the appearance and the buyer's money is then wasted as well. From this prospect, it is a sale of uncertainty and cheating.
- See *Ahâdîth* 2194-2197 for detailed information about the sale which involves uncertainty and cheating.

2219. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "Whoever sells fruits then the crop fails, should not take any of his brother's money. Why would any of you take the money of his Muslim brother?" (*Sahîh*)

٢٢١٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمْزَةَ: حَدَّثَنَا ثَوْرُ بْنُ يَرِيدَ، عَنِ ابْنِ جُرْيَجَ، عَنْ أَبِي الرُّؤْبِرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ بَاعَ ثَمَرًا فَأَصَابَتْهُ بَيْحَةً، فَلَا يَأْخُذُ مِنْ مَالِ أَخِيهِ شَيْئًا. عَلَامْ يَأْخُذُ أَحَدُكُمْ مَالَ أَخِيهِ الْمُسْلِمِ؟».

تخریج: آخرجه مسلم، المساقاة، باب وضع الجوائع، ح: ١٤/١٥٥٤ من حديث ابن جريج به بالفاظ مختلفة والمعنى واحد.

Comments:

The money is exchanged for merchandise; when the fruit of the orchard was sold it was not able to be used, which means the buyer did not collect

[1] Meaning, to take money in advance against the next two or three years of produce, prior to the existence of the produce. See explanation by Sindî.

it. It was merely a promise of giving fruit to the buyer; and as the fruit went to waste and the buyer did not get anything, but has paid the price in advance, or has promised to pay; thus he would pay the price and would not receive anything in exchange; therefore this type of sale is unlawful.

Chapter 34. Allowing More When Weighing Goods For Sale

(المعجم (٣٤) - بَابُ الرُّجْحَانِ فِي
الْوَزْنِ (التحفة (٣٤)

2220. It was narrated that Suwaid bin Qais said: "Makhrafah Al-'Abdi and I brought linens from Hajar.^[1] The Messenger of Allâh ﷺ came to us to bargain with us with some trousers. There was someone with me who weighed (the goods) in exchange for a wage. So the Prophet ﷺ said to the one weighing: 'Weigh and add more.'" (*Sahih*)

٢٢٢٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ، وَ عَلَيْهِ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالُوا: حَدَّثَنَا سُفِيَّانُ عَنْ سِمَاكِ ابْنِ حَرْبٍ، عَنْ سُوَيْدِ بْنِ قَيْسٍ قَالَ: جَاءَنَا أَنَا وَمَخْرَفَةُ الْعَبْدِيُّ بَرْزًا مِنْ هَجَرَ، فَجَاءَنَا رَسُولُ اللَّهِ ﷺ. فَسَأَوَّمَا سَرَاوِيلَ. وَعَدْنَا وَزَانُ بَرْزَنُ بِالْأَجْرِ، فَقَالَ لَهُ النَّبِيُّ ﷺ: «يَا وَزَانُ بَرْزَنُ وَأَرْجُنْ».

تخریج: [صحيح] أخرجه أبو داود، البيوع، باب: في الرجحان في الوزن والوزن بالأجر، ح: ٣٣٣٦ من حديث سفيان الثوري به، وصححه الترمذى، ح: ١٣٥٥، وابن حبان (موارد)، ح: ١٤٤٤، وابن الجارود * سفيان تابعه قيس بن الريبع، والحديث الآتى شاهد له.

Comments:

- The business of cloths is religiously lawful.
- Business of import and export is permissible.
- Shalwâr* (a loose Punjabi style trouser) is a good and decent dress.
- Taking a wage for weighing and measuring is allowed, as well as taking a wage for any work that involves physical labor.
- To keep the measuring part of a scale a little lower is good manners. But giving short measure in weight and measurement is dishonesty; and it is a major sin.

2221. It was narrated that Simâk bin Harb said: "I heard Mâlik, Abu Safwân bin 'Umairah, say: 'I bought a pair of trousers from the Messenger of Allâh ﷺ before the

٢٢٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ مُحَمَّدُ بْنُ الْوَلِيدِ. قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ سِمَاكِ بْنِ حَرْبٍ. قَالَ:

[1] There are many places with this name, one of which is a village close to Al-Madinah.

Hijrah, and he weighed it for me and allowed more.'" (*Sahih*)

سَوْقَتْ مَالِكًا، أَبَا صَفْوَانَ بْنَ عُمَيْرَةَ قَالَ: بِعْثَتْ مِنْ رَسُولِ اللَّهِ رَجُلًا سَرَّاً وَيَلَ قَبْلَ الْهِجْرَةِ. فَوَزَنَ لَيْ، فَأَرْجَعَ لَيْ.

تخریج: [إسناده صحيح] أخرجه أبو داود، البيوع، الباب السابق، ح: ٣٣٧ من حديث شعبة به، وصححه الحاکم: ٣١، ٢٠ / ٢٤ على شرط مسلم، وواقه الذہبی.

Comments:

The translation of *Sarâwil*: Loose Punjabi trouser, pyjama and pants is correct. Its name may vary depending upon various locations, designs and styles.

2222. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "When you weigh, allow more." (*Sahih*)

٢٢٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا عَبْدُ الصَّمَدِ: حَدَّثَنَا شُعبَةُ عَنْ مُحَارِبِ بْنِ دَيَارٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ رَجُلًا سَرَّاً وَيَلَ: إِذَا وَرَثْتُمْ فَأَرْجِحُوهَا.

تخریج: [إسناده صحيح] أخرجه الضياء في المختارة (كما في كنز العمال، ح: ٩٤٤٢)، وقال البوصيري: هذا إسناد صحيح على شرط البخاري .

Chapter 35. Being Cautious With Regard To Weights And Measures

(المعجم (٣٥) - بَابُ التَّوْقِيِّ فِي الْكَيْلِ وَالْوَزْنِ (التحفة (٣٥)

2223. It was narrated that Ibn 'Abbâs said: "When the Prophet ﷺ came to Al-Madinah, they were the worst people in weights and measures. Then Allâh, Glorious is He, revealed: "Woe to the *Mutaffifun* (those who give less in measure and weight)"^[١] and they were fair in weights and measures after that. (*Hasan*)

٢٢٢٣ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ يَشْرِبِ بْنِ الْحَكَمِ، وَ مُحَمَّدُ بْنُ عَقِيلٍ بْنِ حُوَيْلِدٍ. قَالَ: حَدَّثَنَا عَلَيُّ بْنُ الْحُسَنِ بْنُ وَاقِدٍ: حَدَّثَنِي أَبِي: حَدَّثَنِي يَرِيدُ التَّحْوِيُّ أَنَّ عَكِيرَةَ حَدَّثَهُ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَمَّا قَلِمَ النَّبِيُّ رَسُولُ اللَّهِ الْمَدِيَّةَ كَانُوا مِنْ أَخْبَثِ النَّاسِ كُلَّاً. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ «وَيَلِ لِلْمَطْفَقِينَ» [المطففين: ٦] فَأَخْسَنُوا الْكَيْلَ بَعْدَ ذَلِكَ.

تخریج: [إسناده حسن] أخرجه النسائي في الكبرى، التفسير، سورة المطففين، ح: ١١٥٩٠

[١] *Al-Mutaffifin* 83:1.

عن محمد بن عقيل به، وصححه ابن حبان (موارد)، ح: ١٧٧٠، والحاكم: ٣٣/٢، والذهبي، وحسنه البوصيري.

Chapter 36. Prohibition Of Cheating

2224. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ passed by a man who was selling food. He put his hand in it and saw that there was something wrong with it. The Messenger of Allâh ﷺ said, 'He is not one of us who cheats.'" (*Sahih*)

(المعجم ٣٦) - بَابُ النَّهْيِ عَنِ الْغَشِّ
(التحفة ٣٦)

٢٢٢٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَفِيَّانُ عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: مَرَّ رَسُولُ اللَّهِ ﷺ بِرَجُلٍ يَبْعِي طَعَامًا. فَادْخَلَ يَدَهُ فِيهِ فَإِذَا هُوَ مَعْشُوشٌ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ مِنَ مَنْ عَشَّ». *(Sahih)*

تخریج: [إسناده صحيح] أخرجه أبو داود، البيوع، باب النهي عن الغش، ح: ٣٤٥٢ من حديث سفيان بن عيينة به، وصححه الحاكم: ٩/٨، على شرط مسلم، ووافقه الذهبي، أخرجه مسلم، ح: ١٠٢ وغيره عن إسماعيل بن جعفر عن العلاء به نحو المعنى.

Comments:

- The cheating involved in the grains was that some of the grains became wet because of rain. The seller put the dry grains at the top and thus the wet grains got covered beneath. (*Sahih Muslim*: 101)
- There are many forms of cheating, all of which are unlawful. For example: Trying to prove a lie as a truth with plausible conversation, presenting falsehood in the way of truth, not to disclose a defect in the goods, adulterating low quality products with that of fine quality; and then to sell it for the price of the finer quality.
- Using illegal means in exams like copying; or the examiner gives more marks to the student than what he/she deserves, are also a form of deception and cheating. It deprives the rightful people from their true right.

2225. It was narrated that Abu Hamrâ' said: "I saw the Messenger of Allâh ﷺ pass by a man having food in a vessel. He put his hand in it and said: 'Perhaps you are cheating. Whoever cheats us is not one of us.'" (*Da'if*)

٢٢٢٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا يُوسُفُ بْنُ أَبِي إِسْحَاقَ، عَنْ [أَبِي] دَاؤَدَ، عَنْ أَبِي الْحَمْرَاءِ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ ﷺ مِنْ يَجْتَبِيهِ رَجُلًا عِنْدَهُ طَعَامٌ فِي وِعَاءٍ. فَادْخَلَ يَدَهُ فِيهِ. فَقَالَ: «الْعَلَّكَ عَشَّشْتَ. مَنْ عَشَّنَا فَلَيْسَ مِنَّا».

تخریج: [إسناده ضعیف جداً] أخرجه الدو لا بی فی الکنی: ٢٥/١، أبو نعیم الأصبهانی (کما فی تهذیب الکمال، ق: ٣/١٦٠٠) من حديث أبي نعيم الفضل بن دكین به * وأبو داود هو الأعمى كما فی فتح الباب فی الکنی والألقاب (لابن منه، ص: ٢٨٠) وغيره، وانظر، ح: ١٤٨٥ للجرح فیه.

Chapter 37. The Prohibition Of Selling Food Before Taking Possession Of It

2226. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "Whoever buys food, let him not sell it until he has taken full possession of it." (*Sahih*)

تخریج: أخرجه البخاری، البیوع، باب الكیل على البائع والمعطی، ح: ٢١٣٦، ٢١٢٦ ومسلم، البیوع، باب بطلان بيع المیع قبل القبض، ح: ١٥٢٦ من حديث مالک به وهو في الموطا (یحیی): ٦٤٠/٢.

2227. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ said: 'Whoever buys food, let him not sell it until he has taken full possession of it.'" (*Sahih*)

In his narration, (one of the narrators) Abu 'Awânah said: "Ibn 'Abbâs said: 'I think everything is like food.'"

(المعجم ٣٧) - **باب النهي عن بيع الطعام قبل ما لم يقبض** (التحفة ٣٧)
2226 - حَدَّثَنَا شُورِيدُ بْنُ سَعِيدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنْ أَبْنَى عُمَرَ أَنَّ الَّتِي قَالَ: «مَنْ ابْتَاعَ طَعَامًا، فَلَا يَبْتَعِهُ حَتَّى يَسْتَوِيهُ».

٢٢٢٧ - حَدَّثَنَا عُمَرَانُ بْنُ مُوسَى الْلَّيْثِي: حَدَّثَنَا حَمَادُ بْنُ رَيْدٍ، ح: وَحَدَّثَنَا إِسْرَارُ بْنُ مُعَاذَ الصَّرِيرِ: حَدَّثَنَا أَبُو عَوَانَةَ وَ حَمَادُ بْنُ رَيْدٍ. قَالَا: حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاؤِسٍ، عَنْ أَبْنَى عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبْتَعِهُ حَتَّى يَسْتَوِيهُ».

قَالَ أَبُو عَوَانَةَ، فِي حَدِيثِهِ: قَالَ أَبْنُ عَبَّاسٍ: وَأَخْسِبَ كُلَّ شَيْءٍ مِثْلَ الطَّعَامِ.

تخریج: أخرجه البخاری، البیوع، باب بطلان بيع المیع قبل القبض، ح: ١٥٢٥ من حديث عمرو بن دینار به بالفاظ متقاربة.

2228. It was narrated that Jâbir said: "The Messenger of Allâh ﷺ forbade selling food bought by measure until two *Sâ'* have been measured – the *Sâ'* of the seller

٢٢٢٨ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبُّعْ عَنْ أَبْنَى لَيْلَى، عَنْ أَبِي الرَّثِيرِ، عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الطَّعَامِ

and the *Sâ'* of the buyer.”^[1]
(Da'if)

حَتَّى يَجْرِي فِيهِ الصَّاغَانُ. صَاعُ الْبَائِعِ وَصَاعُ الْمُشْتَرِي .

تخریج: [إسناده ضعیف] أخرجه الدارقطنی: ٨/٣ من حديث محمد بن أبي لیلی به، وانظر، ح ٨٥٤: لعلته، وله شاهد عند البیهقی: ٣٦/٥ من حديث أبي هریرة رضی الله عنه * فيه هشام بن حسان تقدم، ح ١٦٧٦، ولم أجده تصریح سماعه، وباقی السند صحيح، وهو حسن بالشواهد.

Comments:

- a. Selling and buying without looking at the goods is a trade of such people who do not need the goods for themselves; and they make a profit without hard work. Thus the goods reach the consumers with expensive rates; and the real producers (like farmers) get a very low price.
- b. Measuring by two measures, means that it should be measured or weighed after the purchase, and then it should be handed over to the new buyer after measuring it again. The goods which are to be weighed should be weighed; and the goods which are to be counted should be counted before collection and they should be counted again before being handing over to the customer, so that no one is deceived at any point.

Chapter 38. Chapter Sales Involving Risk (Due To Its Amount Being Unknown)

2229. It was narrated that Ibn 'Umar said: “We used to buy food from troops of riders (i.e., the caravans) without knowing the amount, but the Messenger of Allâh ﷺ forbade us to sell it until it had been delivered to us.”
(Sahîh)

(المعجم ٣٨) - بَابُ بَيْعِ الْمُجَازَةِ
 (التحفة ٣٨)

٢٢٢٩ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ عَنْ عَبْيَدِ اللَّهِ، عَنْ تَافِعٍ، عَنْ أَبْنِي عُمَرَ قَالَ: كُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكَّابَانِ جِزَافًا. فَهَاهَا رَسُولُ اللَّهِ ﷺ أَنَّ نَبِيعَهُ حَتَّى نَقْلُهُ مِنْ مَكَانِهِ.

تخریج: أخرجه مسلم، البيوع، باب بطلان بيع المبيع قبل القبض، ح ٣٤/١٥٢٦ من حديث عبد الله بن نمير به.

Comments:

- a. It is known from this *Hadith* that buying grains with an estimate, without measuring or weighing, is correct but measuring and weighing is better to avoid any uncertainty.
- b. After making the deal, the goods should be taken to one's control and transferred from there; and thereafter should be sold.

[1] When someone purchases food that was measured for him, he can not sell it until he has measured it again for his customer. See no. 2230.

2230. It was narrated that 'Uthmân bin 'Affâن said: "I used to sell dates in the marketplace, and I would say: 'This was such and such an amount (when I bought it).' I would give the purchaser a specific amount of dates according to the way it had been measured for me, and take my profit. Then I began to have some doubts about that, so I asked the Messenger of Allâh ﷺ, and he said: 'When you name the amount, measure it in front of the purchaser.'" (Hasan)

٢٢٣٠ - حَدَّثَنَا عَلَيْهِ بْنُ مَيمُونَ الرَّقِيقُ : حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدَ عَنِ ابْنِ لَهِيَةَ، عَنْ مُوسَى بْنِ وَرْدَانَ، عَنْ سَعِيدِ بْنِ الْمُسِيبِ، عَنْ عُثْمَانَ بْنِ عَفَانَ قَالَ: كُنْتُ أَبْيَعُ التَّمَرَ فِي السُّوقِ. فَأَقُولُ: كُلْتُ فِي وَسْقِي هَذَا كَذَّا. فَأَدْفَعُ أُوْسَاقَ التَّمَرِ يَكْنِيلَهُ وَأَخْذُ شَفْقِي. فَدَخَلَنِي مِنْ ذَلِكَ شَيْءٍ. فَسَأَلْتُ رَسُولَ اللَّهِ ﷺ قَالَ: إِذَا سَمِيتَ الْكَبَلَ فَكِلْهُ .

تخریج: [إسناده حسن] أخرجه أحمد: ٦٢ عن يحيى بن إسحاق ثنا ابن لهيعة ثنا موسى ابن وردان به * ويحيى من قدماء أصحاب ابن لهيعة كما في التهذيب: ٢/ ٣٦١ حفص بن هاشم وتابعه ابن المبارك وغيره عن ابن لهيعة به، وله شاهد عند مسلم من حديث ابن عمر رضي الله عنهما به.

Comments:

- The commodity bought as a measure should be measured again at the time of sale in order to avoid doubt and uncertainty and so that the customer will be satisfied.
- If there is doubt in any issue of lawfulness or unlawfulness, it should be clarified by a scholar.

Chapter 39. The Blessing That Is Hoped For When Measuring Food

2231. It was narrated that 'Abdullâh bin Busr Al-Mâzîni said: "I heard the Messenger of Allâh ﷺ say: 'Measure your food, may you be blessed therein.'" (Sahih)

(المعجم ٣٩) - بَابُ مَا يُرْجَى فِي كَيْلِ الطَّعَامِ مِنَ الْبَرَكَةِ (النَّفَخَةُ ٣٩)

٢٢٣١ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ الْيَحْصَبِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُشِّيرٍ الْمَازِينِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «كَيْلُوا طَعَامَكُمْ يُبَارِكُ لَكُمْ فِيهِ».

تخریج: أخرجه البخاري في التاريخ الكبير: ١٥١ من حديث إسماعيل (وغيره) به، وإسناده حسن، وله شواهد عند البخاري (في صحيحه)، ح: ٢١٢٨ (وغيره)، انظر الحديث الآتي.

2232. It was narrated from Abu Ayyub that the Prophet ﷺ said: "Measure your food, may you be blessed therein." (*Sahih*)

٢٢٣٢ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدٍ أَبْنِ كَثِيرٍ بْنِ وَيْتَارِ الْجَمْصِيِّ: حَدَّثَنَا يَقِيَّةُ بْنُ الْوَلِيدِ عَنْ بَحْرِيِّ بْنِ سَعْدٍ، عَنْ خَالِدِ بْنِ مَعْدَانَ، عَنِ الْوَقْدَامِ بْنِ مَعْدِيَكَرِبٍ، عَنْ أَبِي أَيُوبَ، عَنِ النَّبِيِّ ﷺ قَالَ: «كِيلُوا طَعَامَكُمْ يَمْرَأُكُمْ لَكُمْ فِيهِ».

تخریج: [صحیح] أخرجه أحمد: ٤١٤ / ٥ من حديث يقیة، حديث بحر بن سعد به، أخرجه البخاري، ح: ٢١٢٨ من حديث ثور عن خالد بن معدان عن المقدام بن معدی کرب به، ولم یذكر أباً أيوب، رضي الله عنهما.

Chapter 40. Marketplaces And Entering Them

(المعجم (٤٠) - بَابُ الْأَسْوَاقِ وَدُخُولُهَا
(التحفة (٤٠)

2233. It was narrated that Abu Usaid said that the Messenger of Allâh ﷺ went to the market of Nabît,^[١] and looked at it, and said: "This is not a market for you." Then we went to another market and looked at it, and said: "This is not a market for you." Then he came back to this market and walked around in it, then he said: "This is your market. It will always be your market and no duty will be levied on it." (*Da'if*)

٢٢٣٣ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْجَزَامِيُّ: حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ سَعِيدٍ: حَدَّثَنَا صَفَوَانُ بْنُ شَلَيْمٍ: حَدَّثَنِي مُحَمَّدٌ وَعَلَيْهِ [[بننا]] الْحَسَنُ بْنُ أَبِي الْكَحْسَنِ الْبَرَادُ أَنَّ الرَّبِيعَ بْنَ الْمُنْذِرِ بْنَ أَبِي أَسِيدِ [[السَّاعِدِيِّ]]: حَدَّثَهُمَا أَنَّ أَبَاهَا الْمُنْذِرَ حَدَّثَهُ عَنْ أَبِي أَسِيدٍ أَنَّ أَبَا أَسِيدٍ حَدَّثَهُ أَنَّ رَسُولَ اللَّهِ ﷺ ذَهَبَ إِلَى شَوْقِ النَّبِيِّطِ. فَنَظَرَ إِلَيْهِ، فَقَالَ: «لَيْسَ هَذَا لَكُمْ سُوقٌ» ثُمَّ ذَهَبَ إِلَى سُوقٍ. فَنَظَرَ إِلَيْهِ فَقَالَ: «لَيْسَ هَذَا لَكُمْ سُوقٌ» ثُمَّ رَجَعَ إِلَى هَذَا السُّوقَ فَطَافَ فِيهِ ثُمَّ قَالَ: «هَذَا سُوقُكُمْ. فَلَا يُنْتَصِنُ وَلَا يُضْرِبُنَّ عَلَيْهِ خَرَاجٌ».

تخریج: [إسناد ضعيف] أخرجه ابن أبي عاصم في الأحاديث والمثنوي: ٤٥٤ / ٣، ح: ١٩٠٨ عن إبراهيم بن المنذر به، وقال البوصيري: هذا إسناد ضعيف * إسحاق لين الحديث، والزبير بن المنذر بن أبي أسد مستور (تقريب).

[١] Meaning, the market where the Nabateans sell.

2234. It was narrated that Salmân said: "I heard the Messenger of Allâh ﷺ saying: 'Whoever goes to the Morning prayer first thing in the morning, he goes out with the banner of faith, but whoever goes out to the marketplace first thing in the morning, he goes out under the banner of Iblis (Satan).'" (Da'if)

تخریج: [إسناده ضعیف جداً] أخرجه الطبراني في الكبير: ٢٥٥ / ٦، ح: ٦٤٦ من حديث عیسیٰ به، وقال البوضيري في عیسیٰ: هو متفق على تضعیفه ، وقال المیتمی: هو ضعیف متروک .

2235. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from his father, that his grandfather told that the Messenger of Allâh ﷺ said: "Whoever says, when he enters the marketplace: 'Lâ ilâha illallâh wahdahu lâ sharika lahu, lahu-l-mulk wa lahu-l-hamdu, yuhyi wa yumitu, wa Huwa hayyun la yamu, bi yadîhil-khairu kulluhu, wa Huwa 'ala kulli shay'in Qadir (None has the right to be worshiped but Allâh alone, with no partner, to Him belongs all sovereignty and to Him is the praise, He gives life and gives death, and He is Ever-Living and does not die; in His Hand is all goodness and He is Able to do all things),' Allâh will record for him one million good deeds, and will erase from him one million bad deeds, and will build for him a house in Paradise." (Da'if)

تخریج: [إسناده ضعیف] أخرجه الترمذی، الدعوات، باب ما يقول إذا دخل السوق، ح: ٣٤٢٩ من حديث حماد به * وعمرو ضعیف كما في التقریب، وله طریق آخر عند الترمذی،

٢٢٣٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِ
الْعَرْوَقِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا عَبْيُسُ بْنُ
مَيْمُونٍ: حَدَّثَنَا عَوْنَ الْعَقْلَيُّ, عَنْ أَبِي عُثْمَانَ
الْهَدِيِّيِّ, عَنْ سَلْمَانَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ غَدَ إِلَى صَلَةِ الصَّبْحِ, غَدَ
بِرَأْيَةِ الْإِيمَانِ. وَمَنْ غَدَ إِلَى السُّوقِ, غَدَ
بِرَأْيَةِ إِنْلِيسِ». *

٢٢٣٥ - حَدَّثَنَا يَشْرُبُ بْنُ مَعَاذِ الصَّرِيرِ: حَدَّثَنَا
حَمَادُ بْنُ زَيْدٍ, عَنْ عَمْرِو بْنِ دِينَارٍ, مَوْلَى آلِ
الزَّبِيرِ, عَنْ سَالِمَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ, عَنْ
أَبِيهِ, عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ:
«مَنْ قَالَ حِينَ يَدْخُلُ السُّوقَ: لَا إِلَهَ إِلَّا اللَّهُ
وَحْدَهُ لَا شَرِيكَ لَهُ. لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ
يُحْكِي وَيُؤْمِنُ, وَهُوَ حَيٌّ لَا يَمُوتُ. يَسِدُ
الْحَيَاةِ كُلُّهُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ - كَتَبَ
اللَّهُ لَهُ أَلْفَ أَلْفِ حَسَنَةٍ, وَمَحَا عَنْهُ أَلْفَ أَلْفِ
سَيِّئَةٍ. وَبَيْنَ لَهُ بَيْنَا فِي الْجَنَّةِ». *

ح: ٣٤٢٨، وفيه أزهر بن سنان وهو ضعيف (تقريب)، وللحديث شواهد ضعيفة عند الحاكم: ١٠١، ح: ٥٣٩، ٥٣٨، وابن السندي وغيرهما.

Comments:

- Going to the market for lawful needs is allowed.
- Remembering Allâh at a place where the atmosphere is unmindful of Allâh is a matter of enormous reward.
- A good deed performed according to the Sunnah, which apparently looks small, has a high status before Allâh ﷺ.
- Only those words and supplications should be chanted and remembered which are authentically reported from the Prophet ﷺ; self made and self introduced remembrances must be avoided.

Chapter 41. The Blessing That Is Hoped For When Starting One's Day Early

2236. It was narrated from Sakhr Al-Ghâmîdi that the Messenger of Allâh ﷺ said: "O Allâh, bless my nation in their early mornings (i.e., what they do early in the morning)." (*Hasan*)

He said: "When he sent out a raiding party or an army, he would send them at the beginning of the day."

He said:^[1] "Sakhr was a man engaged in trade, and he used to send his goods out at the beginning of the day, and his wealth grew and increased."

(المعجم ٤١) - بَابُ مَا يُرْجَى مِنَ الْبَرَكَةِ فِي الْبُكُورِ (الصفحة ٤١)

٢٢٣٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْءَةَ: حَدَّثَنَا هَشَمٌ عَنْ يَعْلَى بْنِ عَطَاءٍ، عَنْ عُمَارَةَ بْنَ حَدِيدٍ، عَنْ صَحْرٍ الْغَامِدِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (اللَّهُمَّ بَارِكْ لِأَمْتَنِي فِي بُكُورِهَا). قَالَ: وَكَانَ إِذَا بَعَثَ سَرِيرَةً أَوْ جِيشًا، بَعَثَهُمْ فِي أَوَّلِ النَّهَارِ. قَالَ: وَكَانَ صَحْرُ رَجُلًا تَاجِرًا. فَكَانَ يَعْثُثُ تِجَارَتَهُ فِي أَوَّلِ النَّهَارِ فَأَنْزَى وَكَثُرَ مَالُهُ.

تخریج: [إسناده حسن] أخرجه سعید بن منصور في سننه، ح: ٢٣٨٢ عن هشيم به، ومن طريقه أخرجه أبو داود، ح: ٢٦٠٦، وصححه ابن خزيمة، وابن حبان.

Comments:

- Morning time is a blessed time; therefore it should be spent in good work. It should not get wasted in negligence and sleep.
- Opening a shop early in the morning is a source of blessing for the shopkeeper.

^[1] It is likely that the speaker here is 'Umârah bin Hadid who narrated it from Sakhr in this narration, as well as with Abu Dâwud, Tirmidhi, Ahmad and others.

2237. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "O Allāh, bless my nation early in the morning of Thursday." (Sahih)

٢٢٣٧ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عَثْمَانَ الْعَتَمَانِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ مَيْمُونَ الْمَدْنَيْيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الرِّنَادِ، عَنْ أَبِيهِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اللَّهُمَّ بَارِكْ لِأَمْتَنِي فِي بُكُورِهَا يَوْمَ الْخَمِيسِ».

تخریج: [إسناده ضعيف] أخرجه الحافظ المزي في تهذيب الكمال، ق: ١٢٨٠ من حديث أبي مروان به، وقال البصيري: هذا إسناد ضعيف * محمد بن ميمون لم أجده من وقته، وقال صاحب التهذيب في حديثه: منكر .

2238. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "O Allāh, bless my nation in their early mornings." (Sahih)

٢٢٣٨ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدَ بْنَ كَاسِيٍّ: حَدَّثَنَا إِسْحَاقُ بْنُ جَعْفَرٍ بْنُ مُحَمَّدٍ أَبْنِ عَلَيٍّ بْنِ الْحُسَيْنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرِ الْجَدْعَانِيِّ، عَنْ نَافعٍ، عَنْ أَبْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: «اللَّهُمَّ بَارِكْ لِأَمْتَنِي فِي بُكُورِهَا».

تخریج: [صحيح] أخرجه الخطيب في موضح أوهام الجمع والتفريق: ٣١٨/١ من حديث يعقوب بن حميد ثنا إسحاق بن جعفر عن محمد بن عبد الرحمن بن أبي بكر يعني عن عيد الله بن عمر عن نافع به، وهو الصواب، وكذا أخرجه الطبراني في الصغير وغيره عن اسماعيل بن أبي أويس عن محمد بن عبد الرحمن الجدعاني به * الجدعاني وأبوه ضعيفان كما في التهذيب وغيره، وانظر، ح: ٢٢٣٦.

Chapter 42. Selling The Musarrâh^[1]

(المجمع ٤٢) - بَابُ بَيْعِ الْمُصَرَّأَةِ
(التحفة ٤٢)

2239. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever buys a *Musarrâh*, he has the choice (of annulling the deal) for three days. If he returns

٢٢٣٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ، وَ عَلَيٌّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ حَسَانٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ

[1] A *Musarrâh* is a sheep or she-camel that is not milked for one or two days, to increase the amount of milk in its udder, so that it can then be sold for a higher price. This kind of deception and cheating is forbidden in Islam.

it, then he must also give a *Sâ'* of dates, not *Samrâ'*.'' Meaning wheat. (*Sahih*)

أَبْيَ هُرِيرَةَ، عَنِ التَّمِيمِ قَالَ: «مَنْ ابْتَاعَ مُصْرَأً، فَهُوَ بِالْخَيَارِ ثَلَاثَةَ أَيَّامٍ. فَإِنْ رَدَهَا، رَدَ مَعَهَا صَاعًا مِنْ تَمْرٍ، لَا سَمْرَاءً» يَعْنِي الْحِنْطَةَ.

تخریج: أخرجه مسلم، البيوع، باب حكم بيع المصراء، ح: ٢٥/١٥٢٤، ٢٥، ٢٦ من طريقين عن

محمد بن سيرين به.

Comments:

- When people want to sell a milch animal (like: a cow, buffalo, goat or sheep etc.), they stop milking it two or three days in advance; due to which the udders become quite full with milk. Looking at the big udders, the buyer thinks that this cow, buffalo, goat or camel will give a good amount of milk; thus he buys it and pays a good price. It is a kind of deception, and deceiving someone is unlawful.
- Three days deadline is fixed to cancel this transaction. Because the first day's milking does not disclose the secret of cheating; as for the second day, the buyer may think that the milk was less probably because of the change of atmosphere, or because of less or more fodder; but if the milk is less on the third day as well, then it means the milk was definitely stopped by the seller from being milked, and this is how the deception was committed.
- Paying a *Sâ'* of dates to the owner at the time of returning the animal is ordered on moral ground; because if the owner feels anger due to the cancellation of transaction, it may soothe the anger to some limit. It is not the price of the milk used for three days. If the buyer benefits from milk, he feeds the animal and looked after its necessary needs as well.

2240. 'Abdullâh bin 'Umar said: "The Messenger of Allâh ﷺ said: 'Whoever buys a *Muhaffalah*,^[1] he has the choice (of annulling the deal) for three days. If he returns it, then he must also give wheat equal to twice the amount of its milk, or equal to the amount of its milk.''' (*Dâ'if*)

٢٤٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمُلِكِ بْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ: حَدَّثَنَا حَضْدَفَةُ بْنُ سَعِيدِ الْحَنْقَفِيُّ: حَدَّثَنَا جُمَيْعُ ابْنُ عُمَيْرِ التَّمِيمِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَا أَيُّهَا النَّاسُ مَنْ بَاعَ مُحَفَّلَةً فَهُوَ بِالْخَيَارِ ثَلَاثَةَ أَيَّامٍ. فَإِنْ رَدَهَا، رَدَ مَعَهَا مِثْلَنِ لَبَنِهَا أَوْ قَالَ مِثْلَ لَبَنِهَا قَمْحًا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب من اشتري مصراءً فكرهها،

^[1] Meaning: *Musarrâh*. (Sindi)

٣٤٤٦: ح من حديث عبد الواحد به * صدقة وجميع ضعفهما الجمهور، راجع التهذيب وغيره.

2241. It was narrated that 'Abdullâh bin Mas'ud said: "I bear witness that the true and truly inspired one Abul-Qâsim ﷺ told us: 'Selling a *Muhaffalah* is *Khilâbah*, and *Khilâbah* is not lawful for the Muslim.'" (Ibn Mâjah said: "Meaning: 'Deception.") (*Da'if*)

٢٢٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَكِبْرُّ: حَدَّثَنَا الْمَسْعُودِيُّ عَنْ جَابِرٍ، عَنْ أَبِي الضَّحْئَى، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: أَشَهَدُ عَلَى الصَّادِقِ الْمَضْدُوِقِ أَبِي الْقَاسِمِ ﷺ أَنَّهُ حَدَّثَنَا، قَالَ: بَيْعُ الْمُحَفَّلَاتِ خَلَابَةٌ. وَلَا تَجْلِي الْخَلَابَةَ لِمُسْلِمٍ». [قال ابن ماجه: يعني الحديثة]

تخریج: [إسناده ضعيف جداً] آخرجه أحمد: ٤٣٣ عن وكيع به.

Chapter 43. A Slave's Earnings Belong To His Guarantor^[1]

2242. It was narrated from 'Âishah that the Messenger of Allâh ﷺ ruled that what a slave earns belongs to his guarantor. (*Hasan*)

(المعجم ٤٣) - بَابُ الْخَرَاجِ بِالضَّمَانِ (التحفة ٤٣)

٢٢٤٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلِيٍّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكِبْرُّ عَنْ أَبِي ذِئْبٍ ذَئْبٌ عَنْ مَحْلِدٍ بْنِ حُفَافٍ بْنِ إِيمَاءَ بْنِ رَحْضَةَ الْغَفارِيِّ، عَنْ عُرْوَةَ بْنِ الزَّبِيرِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَصَّى أَنَّ خَرَاجَ الْعَبْدِ يَضْمَانُهُ.

تخریج: [إسناده حسن] آخرجه أبو داود، البيوع، باب: فيمن اشتري عبداً فاستعمله ثم ردّد به عيّنا، ح: ٣٥٠٩، ٣٥٠٨ من حديث ابن أبي ذئب به، وصححه الترمذى، ح: ١٢٨٥، وابن الجارود، ح: ٦٢٧، وابن حبان، ح: ١١٢٥ وغيرهم.

2243. It was narrated from 'Âishah that a man bought a slave and put him to work, then he found some defect in him, so he returned him. He (the seller) said: "O Messenger of Allâh, he put my slave to work." The Messenger of

٢٢٤٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُسْلِمُ بْنُ خَالِدٍ الرَّبِيعِيِّ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ رَجُلًا أَشْتَرَى عَبْدًا فَاسْتَغْلَهُ ثُمَّ وَجَدَ بِهِ عَيْنًا فَرَدَهُ. فَقَالَ:

[1] i.e., his master who put him to work at the time he earned that income.

Allâh ﷺ said: "A slave's earnings belong to his guarantor." (*Da'iif*)

يَا رَسُولَ اللَّهِ إِنَّهُ قَدْ اسْتَغْلَلَ عُلَمَاءِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: «الْخَرَاجُ بِالضَّمَانِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيوع، الباب السابق، ح: ٣٥١٠ من حديث مسلم الزنجي به، وصححه ابن الجارود، ح: ٦٢٦، وابن حبان (موارد)، ح: ١١٢٦، والحاكم: ٢، والذهباني، وأعلمه الذهباني.

Comments:

- If something is bought which brings in income, and then it is returned, the buyer will not give anything in return to the seller along with the commodity for the number of days he kept it and benefited from it. Only the milking animal is exempt from this rule; a *Sâ'* of dates will be given in return along with the animal.
- If the animal dies while in the charge of the buyer; or anything else goes to waste or is destroyed, then the buyer will bear this loss. If the buyer gets an income from it, he deserves it. The buyer will not return the income earned from that item when returning it to the seller.

Chapter 44. Contractual Obligation Regarding A Slave

(المعجم (٤٤) - بَابُ عَهْدَةِ الرَّقِيقِ)

(التحفة (٤٤))

2244. It was narrated from Samurah bin Jundab that the Messenger of Allâh ﷺ said: "The contractual obligation regarding a slave lasts for three days." ^[1] (*Da'iif*)

٢٢٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنُ نُعَيْرٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنْ الْحَسَنِ، إِنْ شَاءَ اللَّهُ، عَنْ سَمْرَةَ ابْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «عَهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ».

تخريج: [إسناده ضعيف] أخرجه الطبراني في الكبير: ٧/٢١٠، ح: ٦٨٧٤. من حديث محمد بن عبد الله بن نمير (وغيره) به، وانظر، ح: ٤٢٩، ١٧٥، لعلية، وله شاهد ضعيف، انظر الحديث الآتي.

2245. It was narrated from 'Uqbah bin 'Âmir that the Messenger of Allâh ﷺ said: "There is no contractual obligation after four (days)." (*Da'iif*)

٢٢٤٥ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا مُسَيْمٌ عَنْ يُونُسَ بْنِ عُيَيْدٍ، عَنْ الْحَسَنِ، عَنْ عَفْيَةَ بْنِ عَامِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا عَهْدَةَ بَعْدَ أَرْبَعَ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب في عهدة الرقيق، ح: ٣٥٠٦.

^[1] Meaning, the seller is responsible for any defect found in the slave during that time.

٣٥٠٧ من حديث الحسن به، وقال المنذري: هذا منقطع، فإن الحسن لم يصح له سماع من عقبة.

Comments:

The meaning of the *Hadith* is when one buys a slave and then finds a defect in him. If the buyer comes across the defect within three days and he wants to return him, then he may do so. He is not allowed to do so after three days. But this *Hadith* is Weak. It is a moral and religious duty of every seller to disclose, very clearly, the defect in whatever he sells.

Chapter 45. One Who Sells Defective Goods Should Point Out The Defect

2246. It was narrated that 'Uqbah bin 'Amir said: "I heard the Messenger of Allâh ﷺ say: 'The Muslim is the brother of another Muslim, and it is not permissible for a Muslim to sell his brother goods in which there is a defect, without pointing that out to him.'" (*Sahih*)

(المعجم ٤٥) - بَابُ مَنْ بَاعَ عَيْنِيَا
فَلَيُبَيِّنَهُ (التحفة ٤٥)

٢٢٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
وَهُبَّ بْنُ جَرِيرٍ: حَدَّثَنَا أَبِي: سَمِعْتُ يَحْيَى
ابْنَ أَيُوبَ يَحْدُثُ عَنْ يَزِيدِ بْنِ أَبِي حَيْبٍ،
عَنْ عَبْدِ الرَّحْمَنِ بْنِ شَمَاسَةَ، عَنْ عَقْبَةَ بْنِ
عَامِرٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ:
«الْمُسْلِمُ أَخُو الْمُسْلِمِ». وَلَا يَجُلُّ لِمُسْلِمٍ بَاعَ
مِنْ أَخِيهِ بَيْعًا، فِيهِ عِيبٌ، إِلَّا بَيْتَهُ لَهُ».

تخریج: آخرجه مسلم، النکاح، باب تحريم الخطبة على خطبة أخيه حتى يأذن أو يترك، ح: ١٤١٤ من حديث يزيد بن أبي حبيب به مطولاً بالفاظ مختلفة، والمعنى واحد.

Comments:

- Every Muslim should be a well-wisher of other Muslims.
- Any defect and shortcoming in the commodity on sale should be disclosed; because it may be that the defect does not have any bearing for the objective for which the buyer requires.
- The price of a fine quality item should not be set upon one of lower quality.
- Disclosing a defect of any commodity is honesty, and honesty is an important quality of a Muslim.

2247. It was narrated that Wâthilah bin Asqa' said: "I heard the Messenger of Allâh ﷺ say: 'Whoever sells defective goods without pointing it out, he will remain subject to the wrath of Allâh, and the angels will continue to curse him.'" (*Da'if*)

٢٢٤٧ - حَدَّثَنَا عَبْدُ الْوَهَابِ بْنُ الصَّحَّافِ:
حَدَّثَنَا بَقِيَّةُ بْنُ الْوَلِيدِ، عَنْ مُعاوِيَةَ بْنِ
يَحْيَى، عَنْ مَكْحُولٍ وَسُلَيْمَانَ بْنِ مُوسَى،
عَنْ وَائِلَةَ بْنِ الأَسْقَعِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ
ﷺ يَقُولُ: «مَنْ بَاعَ عَيْنِيَا لَمْ يُبَيِّنْهُ، لَمْ يَزِدْ
فِي مَفْعَلِ اللَّهِ، وَلَمْ تَزِدِ الْمَلَائِكَةَ تَلْمِعَهُ».

تخریج: [إسناده ضعیف] أخرجه الطبراني في الكبير في ٢٢، ح: ١٢٩ من حديث عبد الوهاب به باختلاف السند، وتابعه موسى بن أيوب عنده، ح: ١٥٧ باختلاف السند، بقية عنون، وعبد الوهاب بن الصحاح متوفى، وفيه علة أخرى.

Chapter 46. Prohibition Of Separating Captives

2248. It was narrated that 'Abdullâh bin Mas'ud said: "When captives were brought to him, the Prophet ﷺ would give the members of one family together (to one person), not wanting to separate them." (*Da'iif*)

(المعجم (٤٦) - باب النهي عن التفريق بين السبي (التحفة (٤٦)

٢٢٤٨ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفيانُ عَنْ جَابِرٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: كَانَ النَّبِيُّ ﷺ إِذَا أُتْرِيَ بِالسَّبِيِّ، أَعْطَى أَهْلَ الْيَتِيمِ جَمِيعاً. كَرَاهِيَّةُ أَنْ يَفْرَقَ بَيْنَهُمْ.

تخریج: [إسناده ضعیف جداً] أخرجه ابن أبي شيبة: ١٩٢، ح: ٢٨٥٦ عن وکیع به، وانظر، ح ٣٥٦: لعله.

2249. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ gave me two slaves who were brothers, and I sold one of them. He said: 'What happened with the two slaves?' I said: 'I sold one of them.' He said: 'Take him back.'" (*Da'iif*)

٢٢٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَفَانُ عَنْ حَمَادٍ: أَتَبَّانَا الْحَجَاجُ عَنْ الْحُكْمِ، عَنْ مِيمُونَ بْنِ أَبِي شَيْبٍ، عَنْ عَلَيِّ بْنِ وَهَبٍ لِي رَسُولُ اللَّهِ ﷺ غَلَامَيْنِ أَخْوَيْنِ. فَقَعْتُ أَحَدُهُمَا. قَالَ: «مَا فَعَلَ الْغَلَامَانِ؟» قُلْتُ: بِعَثْتُ أَحَدَهُمَا. قَالَ: «رُدْهُ». .

تخریج: [إسناده ضعیف] أخرجه أحمد: ١٠٢ عن عفان وغيره، والترمذی، ح: ١٢٨٤ عن ابن مهدي، کلمهم عن حماد بن سلمة به، وقال الترمذی: جسن غريب ، أخرجه أيوب داود، ح: ٢٦٩٦ من طريق آخر عن الحكم به بالفظ مختلف، وقال: ميمون لم يدرك عليه، وللحديث شواهد ضعيفة عند البیهقی: ١٢٧/٩ وغيره، وصححه الحاکم .

2250. It was narrated that Abu Musa said: "The Messenger of Allâh ﷺ cursed the one who separates a mother and her child, or a brother from his brother." (*Da'iif*)

٢٢٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عُمَرَ بْنِ الْهَيَّاجِ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى: أَتَبَّانَا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ عَنْ طَلْقَيْنِ بْنِ عِمْرَانَ، عَنْ أَبِي بُرَدَةَ، عَنْ أَبِي مُوسَى قَالَ: لَعَنَ رَسُولِ اللَّهِ ﷺ مَنْ فَرَقَ بَيْنَ الْوَالِدَةِ وَوَلَدَهَا. وَبَيْنَ الْأَخْ

وَبَيْنَ أُخْرَيِهِ.

تخریج: [إسناده ضعیف] أخرجه البهقی: ١٢٨/٩ من حديث عبیدالله بن موسی به، وقال: ابراهیم بن إسماعیل بن مجمع هذا لا يحتاج به ، وانظر، ح: ١٠٦٩، والسند ضعفه البوصیری.

Chapter 47. Buying Slaves

(المعجم ٤٧) - باب شراء الرقيق

(التحفة ٤٧)

2251. It was narrated that 'Abdul-Majid bin Wahb said: "Addâ' bin Khâlid bin Hawdhah said to me: 'Shall I not read to you a letter that the Messenger of Allâh ﷺ wrote to me?' I said: 'Yes.' So he took out a letter. In it was: 'This is what 'Addâ' bin Khâlid bin Hawdhah bought [from] Muhammad the Messenger of Allâh ﷺ. He bought from him a slave' - or - 'a female slave, having no ailments, nor being a runaway, nor having any malicious behavior. Sold by a Muslim to a Muslim.'" (Hasan)

٢٢٥١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَسَارٍ: حَدَّثَنَا عَبْدُ
ابْنِ لَيْثٍ، صَاحِبُ الْكِرَاسِيِّ: حَدَّثَنَا عَبْدُ
الْمُجِيدُ بْنُ وَهْبٍ قَالَ: قَالَ لِي الْعَدَاءُ بْنُ
خَالِدٍ بْنِ هَوْذَةَ: أَلَا تُقْرِئُكَ كِتَابًا كَتَبَهُ لِي
رَسُولُ اللَّهِ ﷺ؟ قَالَ: قُلْتُ: بَلِي. فَأَخْرَجَ
لِي كِتَابًا. فَإِذَا فِيهِ: «هَذَا مَا اشْرَى الْعَدَاءُ
ابْنُ خَالِدٍ بْنِ هَوْذَةَ [مِنْ] مُحَمَّدٍ رَسُولِ اللَّهِ
ﷺ». اشْرَى مِنْهُ مِنْهُ أَوْ أَمْمَةً. لَا دَاءَ وَلَا
غَائِلَةَ وَلَا خَبَثَةَ. بَعْدَ الْمُسْلِمِ لِلْمُسْلِمِ».

تخریج: [حسن] أخرجه الترمذی، البیوع، باب ماجاء في كتابة الشروط، ح: ١٢١٦ عن محمد بن يشار به، وقال: حسن غريب ، وعلمه البخاری قبل، ح: ٢٠٧٩ بصیغة التمریض، وصححه ابن الجارود، ح: ١٠٢٨، المتنقی، وحسنه الحافظ في الفتح: ٣٥٠/١٢ * عباد بن ليث مختلف فيه، وتابعه المنهال بن بحر عند الحافظ في تعلیق التعليق: ٢١٩/٣ وغيره.

Comments:

- A document should be composed when selling and buying something precious.
- 'Bought a male or a female slave', i.e., the document has the word written 'male slave' or 'female slave'; this doubt is from 'Abbâd bin Laith, who is a teacher of Imam Ibn Mâjah's teacher.
- The word *Ghâ'ilah* is explained through various meanings: i.e. she does not have a habit of running away, stealing or committing adultery or any other bad habit; this word also means she is not stolen property; and the third meaning is that the seller is not hiding any defect in the slave.

2252. It was narrated from 'Amr bin Shu'aib from his father that his grandfather told that the Messenger of Allâh ﷺ said: "When anyone of you buys a slave woman let him say: 'Allâhumma inni as'aluka khairahâ wa khaira mâ jabaltahâ 'alaihi, wa a'udhu bika min sharriha wa shari' mâ jabaltahâ 'alaihi (O Allâh, I ask You for the goodness within her and the goodness that You have made her inclined towards, and I seek refuge with You from the evil within her and the evil that You have made her inclined towards).' And he should pray for blessing. And if anyone of you buys a camel then he should take hold of its hump and pray for blessing and say similar words." (Hasan)

Chapter 48. Bartering And Excesses Not Permitted In Hand-To-Hand Exchange

2253. It was narrated that Mâlik bin Aws bin Hadathân Nasri said: "I heard 'Umar bin Al-Khattâb say: The Messenger of Allâh ﷺ said: "Exchanging gold for gold is usury, unless it is done on the spot. (Exchanging) wheat for wheat is usury, unless it is done on the spot. (Exchanging) barley for barley is usury unless it is done on the spot. (Exchanging) dates for dates is usury, unless it is done on the spot." (Sahîh)

٢٢٥٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو حَمَدٍ الْأَحْمَرُ، عَنْ ابْنِ عَجْلَانَ، عَنْ عُمَرِ بْنِ شَعْبَنَ، عَنْ أَبِيهِ، عَنْ جَلْوَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَشْرَى أَحَدُكُمُ الْجَارِيَةَ فَلِيُقُلْ: اللَّهُمَّ إِنِّي أَسأَلُكَ خَيْرَهَا وَخَيْرَ مَا جَبَّتْهَا عَلَيْهِ. وَأَعُوذُ بِكَ مِنْ شَرِّهَا وَشَرِّ مَا جَبَّتْهَا عَلَيْهِ. وَلِيَذْعُ بِالْبَرَكَةِ. وَإِذَا أَشْرَى أَحَدُكُمْ بَعِيرًا فَلِيَأْخُذْ بِنِرْوَةِ سَنَامِهِ وَلِيُدْعُ بِالْبَرَكَةِ وَلِيُقُلْ مِثْلَ ذَلِكَ».

تخریج: [حسن] تقدم، ح: ١٩١٨ .

(المعجم ٤٨) - بَابُ الصَّرْفِ وَمَا لَا يَجْوُزُ مُتَفَاضِلاً يَدَا بَيْدٍ (التحفة ٤٨)

٢٢٥٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ بْنُ مُحَمَّدٍ، وَهَشَامُ بْنُ عَمَّارٍ، وَنَضْرُ بْنُ عَلَيْهِ، وَمُحَمَّدُ بْنُ الصَّبَاحِ. قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ مَالِكِ بْنِ أَوْسٍ بْنِ الْحَدَّانِ التَّنْصِيرِيِّ قَالَ: سَمِعْتُ عُمَرَ بْنَ الْحَطَّابِ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «الذَّهَبُ بِالذَّهَبِ رِبَا إِلَّا هَاءَ وَهَاءٌ. وَالْبَيْرُ بِالْبَيْرِ رِبَا إِلَّا هَاءَ وَهَاءٌ. وَالشَّعِيرُ بِالشَّعِيرِ رِبَا إِلَّا هَاءَ وَهَاءٌ. وَالثَّمْرُ بِالثَّمْرِ رِبَا

إلا هاء وهاه».

تخریج: أخرجه البخاري، البيع، باب ما يذكر في بيع الطعام والحركة، ح: ٢١٣٤؛ ومسلم، المسافة، باب الصرف وبيع الذهب بالورق نقداً، ح: ١٥٨٦ من حديث سفيان (وغيره) به.

Comments:

- If the category of foodstuff is the same but the kinds are different, then it is lawful to exchange them for each other with two conditions; A): The quantity from both sides should be equal, for example: a *Sâ'* of a certain type of dates may be exchanged for a *Sâ'* of another kind of dates. But taking or giving two *Sâ'* of dates in exchange for one *Sâ'* of dates is unlawful. B) To exchange foodstuff with immediate payment that both parties exchange things in the same meeting.
- Gold and silver have the same rule. Gold for gold should be exchanged with the payment on the spot, and equal weight.
- But if the class is different, then it is allowed to decrease and increase the weight and quantity; for example: Barley in exchange for wheat, or silver for gold, the equality of quantity is not necessary in this form. But the exchange should be made with immediate payment from both sides.
- If a person owns a low-quality wheat and he wants to buy a better quality; the lawful method to do so is that he should sell his wheat for cash and then should buy the required wheat with money.

2254. Muslim bin Yasâr and 'Abdullâh bin 'Ubâid said: "Ubâdah bin Sâmit and Mu'âwiyah happened to meet, either in a church or in a synagogue. 'Ubâdah bin Sâmit narrated to them and said: 'The Messenger of Allâh ﷺ forbade us from selling silver for silver, gold for gold, wheat for wheat, barley for barley, and dates for dates.'" - one of them said: "And salt for salt," but the other did not say it. - "And he commanded us to sell wheat for barley, or barley for wheat, hand-to-hand, however we wished." (*Sahih*)

٢٢٥٤ - حَدَّثَنَا مُحَمَّدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا
بَرِيدُ بْنُ رُزَيْعٍ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ
ابْنِ حَدَّاشَ: حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عَلَيَّ قَالَ:
حَدَّثَنَا سَلَمَةُ بْنُ عَلْقَمَةَ التَّمِيمِيُّ: حَدَّثَنَا
مُحَمَّدُ بْنُ سَيِّدِنَا أَنَّ مُسْلِمَ بْنَ يَسَارَ وَعَبْدَ
اللهِ بْنَ عَبْيَدِ حَلَّثَاهُ قَالَ: جَمَعَ الْمَتَرِّلُ بَيْنَ
عُبَادَةَ بْنِ الصَّامِيتِ وَمَعَاوِيَةَ إِمَّا فِي كَبِيسَةٍ
وَإِمَّا فِي بَيْعَةٍ. فَحَدَّثَنَاهُمْ عُبَادَةَ بْنِ الصَّامِيتِ
فَقَالَ: تَهَاجَنَا رَسُولُ اللهِ ﷺ عَنْ بَيْعِ الْوَرْقِ
بِالْوَرْقِ، وَالذَّهَبِ بِالذَّهَبِ، وَالْأَبْرَ بِالْأَبْرِ،
وَالشَّعِيرِ بِالشَّعِيرِ، وَالثَّمَرِ بِالثَّمَرِ، قَالَ
أَحَدُهُمَا: وَالْمِلْحِ بِالْمِلْحِ. وَلَمْ يَقُلْهُ الْآخَرُ

وَأَمْرَنَا أَنْ تَبْعَيَ الْبَرَّ بِالشَّعِيرِ، وَالشَّعِيرَ بِالْبَرِّ
يَدًا يَبْدِدُ، كَيْفَ شِئْنَا.

تخریج: [إسناده صحيح] أخرجه النسائي: ٧/٢٧٤، ٢٧٥، البيوع، . بيع البر بالبر، ح: ٤٥٦٤، ٤٥٦٥ من حديث يزيد وإسماعيل به، وللحديث طريق آخر عند مسلم وغيره.

Comments:

According to some scholars this rule applies only to the following things: Gold, silver, wheat, barley, dates and salt. In the opinion of other scholars the same rule applies to all other things also, which are not mentioned in the *Hadith*; that it is impermissible to exchange good quality things for lower quality or vice versa, or with an amount that is less or more.

2255. It was narrated from Abu Hurairah that the Prophet ﷺ said: '(Sell) silver for silver, gold for gold, barley for barley, wheat for wheat, like for like.' (*Sahih*)

٢٢٥٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
يَعْلَمَى بْنُ عُيَيْدٍ: حَدَّثَنَا فُضَيْلُ بْنُ غَزْوَانَ عَنْ
ابْنِ أَبِي نُعْمَمْ، عَنْ أَبِي هُرَيْرَةَ، عَنْ النَّبِيِّ ﷺ
قَالَ: «الْفَضَّةُ بِالْفَضَّةِ وَالذَّهَبُ بِالذَّهَبِ
وَالشَّعِيرُ بِالشَّعِيرِ وَالْحِنْطَةُ بِالْحِنْطَةِ، وَمِثْلُ
يَمِثْلٍ».

تخریج: أخرجه مسلم، المساقاة، باب الصرف وبيع الذهب بالورق تقدماً، ح: ١٥٨٨ من ٨٤

حديث فضيل به.

2256. It was narrated that Abu Sa'eed said: "The Prophet ﷺ used to give us dates from the collection (mixed)^[1] dates, and we would exchange them for dates that were better, and we add to the price.^[2] The Messenger of Allâh ﷺ said: 'It is not right to give one *Sâ'î* of dates for two *Sâ'î*, nor one Dirham for two Dirham. A Dirham for a Dirham and a Dinâr for a Dinâr is allowed; the only difference

٢٢٥٦ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا عَبْدُهُ بْنُ
سُلَيْمَانَ، عَنْ مُحَمَّدٍ بْنِ عَمْرُو، عَنْ أَبِي
سَلَمَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: كَانَ النَّبِيُّ ﷺ
يَرْزُقُنَا تَمِراً مِنْ تَمَرِ الْجَمْعِ. فَسَتَبَدُّلُ يَهْ تَمِراً
هُوَ أَطْيَبُ مِنْهُ وَتَرِيدُ فِي السُّعْرِ. قَالَ رَسُولُ
الله ﷺ: «لَا يَصْلُحُ صَلَعٌ صَلَعٌ تَمِرٌ بِصَاعِينِ، وَلَا
دَرْهَمٌ بِدَرْهَمِينِ. وَالدَّرْهَمُ بِالدَّرْهَمِ وَالدِّينâرُ
بِالدِّينâرِ». [وَلَا فَضْلٌ بَيْنَهُمَا إِلَّا وَرَزْنَا].

[1] "It is said that every type of date whose name is not known is called *Jam'*; and it is said that the *Jam'* refers to a mixture of dates comprised of various types, none of which are most desirable, and not mixed except due to their inferiority." (Sindi).

[2] Meaning that they would give more, or twice as much as this for that.

between them is in weight (i.e., the weight must be equal).”
(Sahih)

تخریج: أخرجه البخاري، البيوع، باب بيع الخليط من التمر، ح: ٢٠٨٠، ومسلم، المساقاة، باب بيع الطعام مثلاً بمثيل، ح: ١٥٩٥ من حديث يحيى (بن أبي كثير) عن أبي سلمة به.

Comments:

- When exchanging dates for dates, the weight should be equal, less or more weight is not allowed. The same is the case of other things; it is unlawful to exchange the same class foodstuff for less or more weight.
- The exchange of new currency notes for old ones, or the exchange of big notes for small ones should be on the basis of equality in numbers. Giving one hundred and ten old notes for exchange of one hundred new notes; or to belittle the value of coins in exchange for a note of one hundred is unlawful. Because the currency market makes no difference between the value of new notes and old ones, or in the value of coins.

Chapter 49. One Who Says That There Is No Usury Except In Credit

(المعجم (٤٩) - بَابُ مَنْ قَالَ لَا رِبَا إِلَّا
في النَّسْيَةِ (التحفة (٤٩)

2257. It was narrated that Abu Hurairah said: “I heard Abu Sa’eed Al-Khudri say: ‘A Dirham for a Dirham and a Dinâr for a Dinâr.’ So I said: ‘I heard Ibn ‘Abbâs say something other than that.’ He said: ‘But I met Ibn ‘Abbâs and said: “Tell me about what you say concerning exchange – is it something that you heard from the Messenger of Allâh ﷺ or something that you found in the Book of Allâh?”’ He said: “I did not find it in the Book of Allâh, and I did not hear it from the Messenger of Allâh; rather Usâmah bin Zaid told me that the Messenger of Allâh ﷺ said: “Usury is only in credit.”^[1]”

٢٢٥٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا سُفِينَانُ بْنُ عَيْنَيْهِ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: سَوَعَتْ أَبَا سَعِيدَ الْخُدْرِيَّ يَقُولُ: الرِّزْهُمُ بِالرِّزْهِمِ وَالدِّينَارُ بِالدِّينَارِ. فَقُلْتُ: إِنِّي سَيِّعَتْ ابْنَ عَبَّاسٍ يَقُولُ غَيْرَ ذَلِكَ: قَالَ: أَمَا إِنِّي لَقِيْتُ ابْنَ عَبَّاسٍ فَقُلْتُ: أَخْبَرْتِي عَنْ لِذَا الَّذِي تَقُولُ فِي الصَّرْفِ، أَشْرِقْتِي سَيِّعَتْهُ مِنْ رَسُولِ اللَّهِ ﷺ، أَمْ شَيْءٌ وَجَدْتُهُ فِي كِتَابِ اللَّهِ؟ فَقَالَ: مَا وَجَدْتُهُ فِي كِتَابِ اللَّهِ، وَلَا سَمِعْتُهُ مِنْ رَسُولِ اللَّهِ. وَلِكِنْ أَخْبَرْتِي أُسَامَةُ بْنُ زَيْدٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: إِنَّمَا الرِّبَا فِي النَّسْيَةِ.

[1] Meaning on credit, when the payment is deferred.

تخریج: أخرجه البخاري، البيوع، باب بيع الدينار بالدينار نساء، ح: ٢١٧٨، ٢١٧٩ من حديث عمرو بن دينار به، ومسلم، المساقاة، الباب السابق، ح: ١٥٩٦ من حديث سفيان به.

Comments:

- a. Exchange of gold for silver or silver for gold should be with the payment on the spot.
- b. The currency of different countries should be exchanged according to the current rate with immediate payment. If one has American dollars and he wants to exchange them for Saudi riyals; or a person says, 'you give me the dollars and I shall pay you tomorrow such and such amount of riyals'; it is not allowed.
- c. 'Interest involves only when the payment is made later' this is if the exchanged items are of a different class; for example: gold for silver, or if wheat for dates are exchanged. It is allowed to exchange them for different amounts, so the exchange of one gram of gold for ten or fifteen grams of silver, or the exchange of forty kilograms of wheat for eighty kilograms of barley is allowed, provided the payment is made on the spot from both parties. The exchange of the same class for more or less amount is not allowed, even if the payment is made on the spot. It is also unlawful to exchange forty kilograms of good quality wheat for eighty kilograms of lower quality, even though the payment is made immediately from both sides.

2258. It was narrated that Abu Jawzâ' said: "I heard him - meaning Ibn 'Abbâs - allowing exchange (of Dirhams for Dirham etc., if extra was given) and that was narrated from him. Then I heard that he has taken back this opinion. I met him in Makkah and said: 'I heard that you had taken back (your opinion).' He said: 'Yes. That was just my own opinion, but Abu Sa'eed narrated from the Messenger of Allâh ﷺ that he forbade exchange (of like items if extra is given).'" (*Sahih*)

٢٢٥٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِهِ: أَنَّهَا حَمَادَةً ابْنَ رَبِيدٍ، عَنْ سُلَيْمَانَ بْنِ عَلَى الرَّبِيعِيِّ، عَنْ أَبِي الْجَوْزَاءِ قَالَ: سَمِعْتُهُ يَأْمُرُ بِالصَّرْفِ. يَعْنِي ابْنَ عَبَّاسٍ. وَيُحَدِّثُ ذَلِكَ عَنْهُ. ثُمَّ يَلْغَيُ أَنَّهُ رَجَعَ عَنْ ذَلِكَ. فَلَقِيَهُ بِعَدَّةَ فَقْلُتُ: إِنَّهُ يَلْغَيُ أَنَّكَ رَجَعْتَ. قَالَ: نَعَمْ. إِنَّمَا كَانَ ذَلِكَ رَأْيًا مَيِّزِيًّا. وَهَذَا أَبُو سَعِيدٍ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ نَهَى عَنِ الصَّرْفِ.

تخریج: [إسناده صحيح] أخرجه أحمد: ٤٨/٣ من حديث سليمان الربعي به.

Comments:

- a. *Bai' Sarf* is to exchange gold for silver or silver for gold, or the exchange of one country's currency with the currency of other country.
- b. Currency of a country is one class, and the currency of another country is a

different class, although their name is same; for example: As Pakistani rupee and the Indian rupee are two different classes.

- c. It is an agreed view that the exchange of different classes of currency will be unlawful if one party pays cash on the spot and the other party promises to pay later; because the immediate payment from both sides is a condition. Another condition is that if the currency is of the same class, then the increase or decrease in the amount given and taken must not be practiced.

Chapter 50. Exchanging Gold For Silver

2259. It was narrated that Zuhri heard Mâlik bin Aws bin Hadathân say: "I heard 'Umar say: 'The Messenger of Allâh ﷺ said: 'Gold for silver is usury, unless it is exchanged on the spot.'" (*Sahih*)

Abu Bakr bin Abu-Shaibah said: "I heard sufyân saying: 'Gold for silver.' memorize (this).

Comments:

- The exchange of gold and silver is permissible provided the payment from both sides is made on the spot.
- If this condition does not exist, then the exchange of gold and silver is Islamically prohibited.

2260. It was narrated that Mâlik bin Aws bin Hadathân said: "I came saying, 'Who will exchange Dirham?' Talhah bin 'Ubaidullâh, who was with 'Umar bin Khattâb, said: 'Show us your gold, then come to us; when our treasure comes, we will give you your silver.' 'Umar said: 'No, by Allâh, you will give him silver (now), or give him back his gold, for the Messenger of Allâh ﷺ said: "Silver for gold is usury, unless it is exchanged on the spot.'" (*Sahih*)

(المعجم ٥٠) - بَابُ صَرْفِ الدَّهْبِ
بِالْوَرِقِ (النَّحْفَةُ ٥٠)

٢٢٥٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَةَ عَنِ الرُّهْبَرِيِّ، سَمِعَ مَالِكَ ابْنَ أُوسٍ بْنِ الْحَدَّاثَانِ يَقُولُ: سَمِعْتُ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْدَّهْبُ بِالْوَرِقِ رِبَآ، إِلَّا هَاءَ وَهَاءَ».

قَالَ أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: سَمِعْتُ سُفْيَانَ يَقُولُ: الْدَّهْبُ بِالْوَرِقِ. احْفَظُوا.

تَخْرِيج: [صَحِيحٌ] تَقْدِيمٌ، ح: ٢٢٥٣.

٢٢٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحَجَ: أَبْنَانَا الْلَّيْثُ ابْنُ سَعِيدٍ، عَنِ ابْنِ شَهَابٍ، عَنْ مَالِكِ بْنِ أُوسٍ بْنِ الْحَدَّاثَانِ قَالَ: أَقْبَلْتُ أُوسُ بْنَ يَضْطَرِفَ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عَيْنَدِ اللَّهِ، وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ: أَرِنَا ذَهَبَكَ. ثُمَّ أَثْنَا، إِذَا جَاءَ خَازِنَنَا، نُعْطِكَ وَرَقَكَ.

فَقَالَ عُمَرُ: كَلَّا، وَاللَّهُ، لَتَعْطِلَنِي وَرَقَكَ أَوْ لَتَرْدَدَ إِلَيْهِ ذَهَبَكَ. فَإِنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْوَرِقِ بِالْدَّهْبِ رِبَآ، إِلَّا هَاءَ وَهَاءَ».

تَخْرِيج: [صَحِيحٌ] تَقْدِيمٌ، ح: ٢٢٥٣.

Comments:

Talhah bin 'Ubaidullah ﷺ is one of the ten noble Companions ﷺ who were given the good news of Paradise in their life. Despite this great honor, he did not know this issue until 'Umar ﷺ gave the explanation. Therefore, being a great scholar does not mean that there is not any issue which he does not know; or that it is impossible for him to make any mistake and in any issue.

2261. It was narrated from 'Umar bin Muhammad bin 'Ali bin Abi Tâlib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Dinâr for Dinar, Dirham for Dirham, with no increase between them. Whoever has need of silver, let him trade gold for it, and whoever has need of gold, let him trade silver for it, and let the transaction be done on the spot.'" (*Da'if*)

٢٢٦١ - حَدَّثَنَا أَبُو إِسْحَاقُ الشَّافِعِيُّ إِبْرَاهِيمُ ابْنُ مُحَمَّدٍ بْنِ الْعَوَاسِ: حَدَّثَنِي أَبِي عَنْ أَبِيهِ الْعَبَّاسِ بْنِ عُثْمَانَ بْنِ شَافِعٍ، عَنْ عُمَرَ بْنِ مُحَمَّدٍ بْنِ عَلَيٍّ بْنِ أَبِي طَالِبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (الدِّينَارُ بِالدِّينَارِ، وَالدرْهَمُ بِالدرْهَمِ، لَا فَضْلٌ بَيْنَهُمَا). فَمَنْ كَانَتْ لَهُ حَاجَةٌ بِوْرَقِهِ فَلْيَصْطَرِفْهَا بِدَهْبِهِ. وَمَنْ كَانَتْ لَهُ حَاجَةٌ بِدَهْبِهِ فَلْيَصْطَرِفْهَا بِأَوْرَقِهِ. وَالصَّرْفُ هَاءُ وَهَاءُ.

تخریج: [إسناده ضعیف] أخرجه الطبراني في الأوسط: ١٨٣، ١٨٤، ٧/٢٣٤٣، ح: ٢٣٤٣ من حديث إبراهيم بن محمد به، وقال البوصيري: هذا إسناد ضعیف * عباس بن عثمان لا يعرف حاله (نحو). .

Chapter 51. Exchanging Gold For Silver And Silver For Gold

2262. It was narrated that Ibn 'Umar said: "I used to sell camels, and I used to buy gold for silver and silver for gold, Dinâr for Dirham and Dirham for Dinâr. I asked the Prophet ﷺ about that, and he said: 'If you take one of them and give the other, then you and your companion should not separate until everything is clear (i.e., the exchange is completed).'" (*Hasan*)

(المعجم ٥١) - بَابُ اقْتِضَاءِ الدَّهْبِ مِنَ الْوَرِقِ وَالوَرِقِ مِنَ الدَّهْبِ (التحفة ٥١)
٢٢٦٢ - حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنَ حَيْبٍ، وَ سُقِيَانُ بْنُ وَكِيعٍ، وَ مُحَمَّدُ بْنُ عَيْدٍ بْنَ تَعْلَيَةَ الْحِمَانِيِّ. قَالُوا: حَدَّثَنَا عُمَرُ بْنُ عَيْدٍ الظَّافِرِيُّ: حَدَّثَنَا عَطَاءُ بْنُ السَّائِبِ أَوْ سِمَاكٌ وَلَا أَعْلَمُ إِلَّا سِمَاكٌ، عَنْ سَعِيدِ بْنِ جُبَيرٍ، عَنْ أَبِنِ عُمَرَ قَالَ: كُنْتُ أَيُّجِي الإِلَيْهِ فَكُنْتُ أَخْدُ الدَّهْبَ مِنَ الْفِضَّةِ، وَ الْفِضَّةُ مِنَ الدَّهْبِ. وَ الدَّنَانِيرُ مِنَ الدَّرَاهِمِ، وَ الدَّرَاهِمُ

Another chain with similar wording.

مِنَ الدَّنَانِيرِ فَسَأَلْتُ النَّبِيَّ ﷺ فَقَالَ: إِذَا أَخْدَتْ أَحَدَهُمَا وَأَعْطَيْتَ الْآخَرَ، فَلَا تَفَارِقْ صَاحِبَكَ وَبَيْنَكَ وَبَيْنَهُ لَبْسٌ.

حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَعْقُوبُ ابْنُ إِسْحَاقَ: أَبْنَا حَمَادَ بْنُ سَلَمَةَ، عَنْ سَمَاكَ بْنِ حَرْبٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ أَبْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب في اقتضاء الذهب من الورق، ح: ٣٣٥٤، ٣٣٥٥ من حديث سماك به، وصححه ابن حبان (موارد)، ح: ١١٢٨، وابن الجارود، ح: ٦٥٥٠، والحاكم: ٤٤/٢ على شرط مسلم، وواقه النهي.

Comments:

The meaning of the *Hadith* is that the transaction of something was done for *Dinâr*, but the buyer paid the price in *Dirham* according to the exchange rate of *Dinâr* of the same day; it is lawful if the payment is made immediately in the same meeting.

Chapter 52. Prohibition Of Breaking Dirham And Dinâr

2263. It was narrated from 'Alqamah bin 'Abdullâh that his father said: "The Messenger of Allâh ﷺ forbade breaking the coins of the Muslims that are in circulation among them, without any necessary reason."^[1] (*Da'if*)

(المعجم ٥٢) - بَابُ النَّهِيِّ عَنْ كَسْرِ الدِّرَاهِمِ وَالدَّنَانِيرِ (التحفة ٥٢)

- حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَشُوَيْدُ بْنُ سَعِيدٍ، وَهَارُونُ بْنُ إِسْحَاقَ. قَالُوا: أَبْنَا الْمُعْتَمِرَ بْنَ سُلَيْمَانَ عَنْ مُحَمَّدٍ أَبْنِ فَضَاءٍ، عَنْ أَبِيهِ، عَنْ عَلْقَمَةَ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِيهِ قَالَ: نَهَى رَسُولُ اللهِ ﷺ عَنْ كَسْرِ سِكَّةِ الْمُسْلِمِينَ الْجَائِزَةِ بَيْنَهُمْ. إِلَّا مِنْ بَأْسٍ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في كسر الدرهم، ح: ٣٤٤٩ من حديث المعتمر به * محمد بن فضاء ضعيف، وأبوه مجھول (تقريب).

Comments:

The explanation of *Hadith* is that the coin of gold or silver which is official

^[1] Since the coins were minted from silver and gold, they used to give a portion of them for some payments.

and is in circulation in the currency market, and also used for trade; it is unlawful to turn it into just normal gold or silver, because it disturbs the system that fulfills the needs of Muslims and the general public. However, if there is a genuine need to do so, for example, if the coin is unusable, in that case it might be dissolved into gold or silver.

Chapter 53. Selling Fresh Dates For Dried Dates

2264. It was narrated from 'Abdullâh bin Yazid, the freed slave of Al-Aswad bin Sufyân, that Zaid, Abu 'Ayyâsh, the freed slave of Bani Zuhrah, told him that he asked Sa'd bin Abu Waqqâs about buying wheat with barley. Sa'd said to him: "Which of them is better?" He said: "Wheat." He told him not to do that and said: "I heard the Messenger of Allâh ﷺ being asked about buying fresh dates with dried dates, and he said: 'Do fresh dates decrease in weight when they become dry?' They said: 'Yes.' So he told them not to do that." (*Hasan*)

(المعجم ٥٣) - باب بيع الرطب بالتمر
(التحفة ٥٣)

٢٢٦٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِبْعَانُ إِسْحَاقُ بْنُ سُلَيْمَانَ . قَالَ: حَدَّثَنَا مَالِكُ ابْنُ أَكْسِيرٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدٍ، مَوْلَى الْأَسْنَدِ ابْنِ سُفْيَانَ أَنَّ زَيْدًا، أَبَا عَيَّاشٍ، مَوْلَى لَيْتَنِي رَمَرَةً، أَخْبَرَهُ أَنَّهُ سَأَلَ سَعْدَ بْنَ أَبِي وَقَاصٍ عَنِ اشْتِرَاءِ الْيَضَاءِ بِالشُّلْطَةِ . فَقَالَ لَهُ سَعْدٌ: أَيْهُمَا أَفْضَلُ؟ قَالَ: الْيَضَاءُ . فَهَنَّاكِي عَنْهُ وَقَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ سُئِلَ عَنِ اشْتِرَاءِ الرُّطْبِ بِالْتَّمْرِ فَقَالَ: «أَيْقُصُ الرُّطْبُ، إِذَا يَسَّرَ؟» قَالُوا: نَعَمْ . فَهَنَّاكِي عَنْ ذَلِكَ .

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب: في التمر بالتمر، ح: ٣٣٥٩ من حديث مالك به، وهو في الموطأ (يحيى): ٢٤٦، وصححه الترمذى، ح: ١٢٢٥، وابن الجارود، ح: ٦٥٧، والحاكم: ٣٨، ٣٩، والذهبي.

Comments:

- Sult* is a type of barley without any skin on it. It resembles wheat because of not having any skin; but its natural consumption quality is like barley. Anyhow it is counted from among the kinds of barley.
- The exchange of fresh and dry dates for each other is forbidden even though the payment is made on the spot.
- The dry and fresh dates apparently are the same class, and exchanging them for each other should be lawful, but this is not the case, and the reason of its prohibition is that they are not really equal in weight, despite their apparent look of equality in weight; because the fresh dates lose weight when they are dried.

Chapter 54. The Muzâbanah and The Muhâqalah^[1]

2265. It was narrated that 'Abdullâh bin 'Umar said: "The Messenger of Allâh ﷺ forbade the Muzâbanah. The Muzâbanah means when a man sells the dates of his grove when they are still on the tree, for a measure of dry dates;^[2] or, if it is grapes, he sells them when they are still on the vine, for a measure of raisins; or if it is a crop, he sells it for food, estimating the amount (of the crop in the field). He forbade all of these things." (*Sahih*)

(المعجم ٥٤) - بَابُ الْمُرَبَّةِ وَالْمُحَاكَلَةِ
(التحفة ٥٤)

٢٢٦٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: أَبْنَا النَّبِيِّ
ابْنُ سَعْدٍ، عَنْ تَافِي، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ
قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُرَبَّةِ.
وَالْمُرَبَّةُ أَنْ يَسْعِ الرَّجُلُ تَمِّرًا حَاطِطَهُ، إِنْ
كَانَتْ نَخْلًا، يَتَمِّرُ كَيْلًا. وَإِنْ كَانَتْ كَرْمًا،
أَنْ يَسْعِهُ بِرَبِيبٍ كَيْلًا. وَإِنْ كَانَتْ زَرْعًا أَنْ
يَسْعِهُ بِكَيْلٍ طَعَامٍ. نَهَى عَنْ ذَلِكَ كُلُّهُ.

تخریج: أخرجه البخاري، البيع، باب بيع الزرع بالطعم كيلاً، ح: ٢٢٠٥ ، ومسلم، البيع،
باب تحريم بيع الربط بالتمر إلا في العرايا، ح: ٧٦ / ١٥٤٢ من حديث النبي به.

Comments:

The *Muzâbanah* transaction is when a person buys the fruits from an orchard of dates and pays a fixed amount of dry dates for it as price; or for example: he says: "I will buy all the crops about to ripen, of such and such field, for two thousand kilograms of wheat. It is unlawful because of the uncertainty of the produce of wheat in the field, if it is more than two thousand kilograms or less than that. This type of sale regarding the crops of field is called *Muhâqalah*; and the same type of transaction of the fruits of an orchard is called *Muzâbanah*.

2266. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ forbade the *Muhâqalah* and the *Muzâbanah*. (*Sahih*)

٢٢٦٦ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا
حَمَادُ بْنُ زَيْدٍ، عَنْ أَبِي أَبْيَادٍ، عَنْ أَبِي الرَّبِيبِ وَ
سَعِيدِ بْنِ مِنَاءَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ
رَسُولَ اللَّهِ ﷺ نَهَى عَنِ الْمُحَاكَلَةِ وَالْمُرَبَّةِ.

تخریج: أخرجه مسلم، البيع، باب النهي عن المحاقلة والمراقبة ... إلخ، ح: ٨٥ / ١٥٣٦ .

[1] The *Muzâbanah*: Selling fruit that is still on the tree for a measured amount of the dried fruit. The *Muhâqalah*: Selling crops that have not yet ripened for food that has already been harvested.

[2] Estimating the amount of dates on the tree.

من حديث حماد بن زيد به.

2267. It was narrated that Râfi' bin Khadij said: "The Messenger of Allâh ﷺ forbade the *Muhâqalah* and the *Muzâbahah*." (*Hasan*)

٢٢٦٧ - حَدَّثَنَا هَنَّادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَخْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبٍ، عَنْ رَأْيِهِ بْنِ خَدِيجٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُحَافَلَةِ وَالْمُزَابَةِ.

تخریج: [إسناده حسن] آخرجه أبو داود، البيوع، باب: في التشديد في ذلك، ح: ٣٤٠٠
من حديث أبي الأخصوص به * طارق بن عبد الرحمن وفته الجمهور، وحديثه لا ينزل عن درجة الحسن.

Chapter 55. The Sale 'Arâyah^[1] By Estimating Its Amount For Dry Dates.

2268. It was narrated from Sâlim from his father: "Zaid bin Thâbit narrated to me that the Messenger of Allâh ﷺ gave a concession regarding the sale of 'Arâyah." (*Sahih*)

تخریج: آخرجه البخاري، البيوع، باب بيع المزاينة وهي بيع التمر بالتمر وبيع الزبيب بالكرم وبيع العرايا، ح: ٢١٨٤، ومسلم، البيوع، باب تحريم بيع الربط بالتمر إلا في العرايا، ح: ١٥٣٩
من حديث الزهري به.

2269. It was narrated from 'Abdullâh bin 'Umar that he said: "Zaid bin Thâbit told me that the Messenger of Allâh ﷺ gave a concession regarding the sale of the estimated harvest of 'Arâyah in return for dried dates." (*Sahih*)

Yahya (one of the narrators) said: "The 'Arâyah is when a man purchases dates on the trees for

(المعجم ٥٥) - بَابُ بَيْعِ الْعَرَائِيَا
بِخَرْصِهَا تَمْرًا (التحفة ٥٥)

٢٢٦٨ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ. قَالَا: حَدَّثَنَا شَعِيْثَانُ بْنُ عَيْنِيَّةَ، عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ، عَنْ أَبِيهِ: حَدَّثَنِي زَيْدُ بْنُ ثَابِتٍ أَنَّ رَسُولَ اللَّهِ ﷺ رَأَخَصَ فِي الْعَرَائِيَا.

تخریج: آخرجه البخاري، البيوع، باب بيع المزاينة وهي بيع التمر بالتمر وبيع الزبيب بالكرم وبيع العرايا، ح: ٢١٨٤، ومسلم، البيوع، باب تحريم بيع الربط بالتمر إلا في العرايا، ح: ١٥٣٩
من حديث الزهري به.

٢٢٦٩ - حَدَّثَنَا مُحَمَّدُ بْنُ رُومِيٍّ: أَبَيَا النَّاثِ
ابن سعيد، عن يحيى بن سعيد، عن نافع،
عن عبد الله بن عمر آله قال: حَدَّثَنِي زَيْدُ بْنُ ثَابِتٍ أَنَّ رَسُولَ اللَّهِ ﷺ أَرَخَصَ فِي بَيْعِ
الْعَرَيَا بِخَرْصِهَا تَمْرًا.
قَالَ يَحْيَى: الْعَرَيَا أَنْ يَشْتَرِي الرَّجُلُ تَمْرًا

[1] 'Arâyah refers to trees of the coming harvest which are given as a gift, but the giver will be troubled by the recipient's coming to his grove to collect the dates, so he offers to sell him dried, measured dates in return for the coming harvest. This is the definition of Imâm Mâlik, see the definition after no. 2269 which follows, and those listed in *Sahîh Al-Bukhârî* under chapter no. 84 in the Book of Sales.

food that his family has that is ripe, by estimating them (the dates)."

الَّخَلَاتِ بِطَعَامِ أَهْلِهِ رُطْبَاً، يَخْرُصُهَا [تَمَراً].

تَحْرِيْج: أخرجه البخاري، المساقاة، باب الرجل يكون له ممر أو شرب في حائط أو في نخل، ح: ٢٣٨٠، ومسلم، البيوع، الباب السابق، ح: ٦١/١٥٣٩ من حديث يحيى بن سعيد به.

Comments:

It is a general rule that the exchange of dates for dates should be equal in weight and paid on the spot from both sides, but the issue of *Arâyâ* is exempt from this rule. The definition of *Arâyâ* according to Imâm Mâlik is that a person offers a tree of fresh dates to another person so that his household may benefit from fresh dates, but the frequency of the person into the orchard disturbs the owner, in this case the owner is allowed to buy the fruit of the gifted tree for dry dates. Another explanation mentioned (in *Sahîh Al-Bukhârî*, *Hadîth: 2192*) is that the fresh fruit of the tree will be estimated according to the weight it will have when it dries up, and then the tree will be taken back by paying that amount of dry dates. Thus the fresh dates still on the tree are bought for the dry dates, and the dry dates are paid in measure. It is to be known that the quantity of dates involved in this transaction must be less than five *Wasq*.

Chapter 56. Selling Animals For Animals On Credit

2270. It was narrated from Samurah bin Jundub that the Messenger of Allâh ﷺ forbade selling animals for animals on credit. (*Sahîh*)

(المعجم ٥٦) - بَابُ الْحَيَوَانِ بِالْحَيَوَانِ
نَسِيَّةً (التحفة ٥٦)

٢٢٧٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ قَاتَدَةَ، عَنِ الْحَسَنِ، عَنْ سَمْرَةَ بْنِ جُنْدُبٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَىٰ عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيَّةً.

تَحْرِيْج: [صحيح] أخرجه أبو داود، البيوع، باب: في الحيوان بالحيوان نسيئة، ح: ٣٣٥٦؛ من حديث قادة به، وصححه الترمذى، ح: ١٢٣٧، وابن الجارود، ح: ٦١١، رواه شعبة عن قادة به، كما في أربع نسخ من سنن الإمام السعدي رحمه الله، وانظر، ح: ٢١٨٣؛ وله شواهد عند ابن حبان (موارد)، ح: ١١١٣؛ وغيره.

2271. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: "There is nothing wrong with selling animals, one for two, hand to hand," but he disliked selling them on credit. (*Da'if*)

٢٢٧١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ وَأَبُو حَالِدٍ، عَنْ حَجَاجٍ، عَنْ أَبِي الرُّزْبَرِ، عَنْ جَابِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ

قال: «لَا يَأْسَ بِالْحَيَّوَانِ، وَاحِدًا بِاثْتَيْنِ، يَدًا بِيَكِيرٍ وَكَرْهَهُ نَسِيَّةً».

تخریج: [إسناده ضعیف] أخرجه الترمذی، البویع، باب ماجاء فی کراہیه بيع الحیوان بالحیوان نسیّة، ح: ۱۲۳۸ من حديث حجاج بن أرطاة به، وقال: هذا حديث حسن ، والحديث السابق يعني عنه.

Comments:

- Exchange of an animal for an animal is allowed.
- The exchange of animals by both parties should be made immediately when exchanging an animal for an animal.
- The equality of numbers is not necessary when exchanging an animal for an animal, for example, two cows of a lower category can be given in exchange for one cow of a higher category. Or two goats of a lower breed can be given in exchange for one goat of good breed.

Chapter 57. Selling Animals For Animals, Of Different Kinds, Hand To Hand

(المعجم ۵۷) - بَابُ الْحَيَّوَانِ بِالْحَيَّوَانِ
مُقَاضِيَّاً يَدًا بِيَدٍ (التحفة ۵۷)

2272. It was narrated from Anas that the Prophet ﷺ bought Safiyyah for seven slaves. (*Sahih*)

(One of the narrators) 'Abdur-Rahmân said: "From Dihyah Kalbi."

2272 - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْنَمِيُّ : حَدَّثَنَا الْحُسَيْنُ بْنُ عُرْوَةَ ; ح : وَحَدَّثَنَا أَبُو عَمَّارٍ حَفْصُ بْنُ عُمَرَ : حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ . قَالَ : حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ ، عَنْ ثَابِتٍ ، عَنْ أَنَسٍ أَنَّ النَّبِيَّ ﷺ اشترى صَفِيفَةً سِبْعَةً أَرْقُسٍ .

قال عبد الرحمن: من دجية الكلبي.

تخریج: [إسناده صحيح] أخرجه أبو داود، الخراج، باب ماجاء في سهم الصفي، ح: 2997 من حديث حماد به، وصححه البوسیري، وأصله متفق عليه.

Comments:

- Safiyyah ﷺ was the daughter of the chief of her tribe. She was under the control of the Muslims because of her being a prisoner of war. She was given to Dihyah Kalbi as his share from the distribution of the war booty. The Messenger of Allâh ﷺ requested that, as she was a daughter of a chief; it is better if she was with him. So the Messenger of Allâh ﷺ bought her from Dihyah.
- The trade of male and female slaves was allowed, which Islam gradually brought to an end.
- There is a great reward for setting free male and female slaves alike; particularly when they are Muslims and good in conduct.

Chapter 58. Emphatic Prohibition Of Usury

2273. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "On the night in which I was taken on the Night Journey (*Al-Isra'*), I came to people whose stomachs were like houses, in which there were snakes that could be seen from outside their stomachs. I said: 'Who are these, O Jibrâ'il?' He said: 'They are the ones who consumed usury.'" (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أحمد ٣٦٣، ٣٥٣؛ حديث حماد به مطولاً، انظر، ح ١١٦ لعلته * وأبوالصلت مجھول كما في التفیریب (الکنی، ص: ٤١٢).

2274. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There are seventy degrees of usury, the least of which is equivalent to a man having intercourse with his mother." (*Hasan*)

تخریج: [حسن] وقال البوصيري: هذا إسناد ضعيف، أبومعشر هو نجح بن عبد الرحمن متفق على تضعيقه ، وله شاهد قوي عند ابن الجارود، ح: ٦٤٧، وانظر الحديث الآتي.

Comments:

- Interest (or usury alike) is a great factor behind the destruction of a society. It has enormous aspects of economic and social damages and losses; that is why one single sin of interest or usury has been declared equal to seventy types of sins. This *Hadith* also shows that the sins are of different degrees.
- If the least sin is so huge and detestable, then what about the rest of the sixty-nine types of sins, how horrible they will be??!
- The most distinctive quality of an Islamic society is sympathy and sincerity to others, while the theory of interest (or usury alike) is totally contrary to it.

2275. It was narrated from 'Abdullâh that the Prophet ﷺ

(المعجم ٥٨) - باب التَّغْلِيظِ فِي الرِّبَا

(التحفة ٥٨)

٢٢٧٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا الْحَسْنُ بْنُ مُوسَى، عَنْ حَمَادَ بْنِ سَلَمَةَ، عَنْ عَلَيِّ بْنِ رَيْدٍ، عَنْ أَبِي الصَّلَتِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَنْتُمْ، لِيَلَّةَ أُسْرَيْتُ بِي، عَلَى قَوْمٍ بُطُونُهُمْ كَالْبَيْوَتِ، فِيهَا الْكَبَائِثُ تُرَى مِنْ خَارِجِ بُطُونِهِمْ فَقُلْتُ: مَنْ هُؤُلَاءِ يَا جِبْرِيلُ؟ قَالَ: هُؤُلَاءِ أَكْلَةُ الرِّبَا».

٢٢٧٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ أَبِي مَعْشِرٍ، عَنْ سَعِيدِ الْمَقْبَرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الرِّبَا سَبْعُونَ حُوَيَا. أَيْسَرُهَا أَنْ يَنْكِحَ الرَّجُلُ أُمَّهَّ».

تخریج: [حسن] وقال البوصيري: هذا إسناد ضعيف، أبومعشر هو نجح بن عبد الرحمن متفق على تضعيقه ، وله شاهد قوي عند ابن الجارود، ح: ٦٤٧، وانظر الحديث الآتي.

٢٢٧٥ - حَدَّثَنَا عَمْرُو بْنُ عَلَيِّ الصَّيْرَفِيُّ، أَبُو حَفْصٍ: حَدَّثَنَا ابْنُ أَبِي عَدَيْ، عَنْ

said: "There are seventy-three degrees of usury." (*Hasan*)

شَعْبَةُ، عَنْ زَيْدٍ، عَنْ إِبْرَاهِيمَ، عَنْ مَسْرُوقٍ،
عَنْ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ ﷺ قَالَ: «الرِّبَا ثَلَاثَةٌ
وَسَبْعُونَ بَاباً».

تخریج: [حسن] أخرجه الحاکم ۲/۳۷ من حديث عمرو بن علي به بلفظ: الربا ثلاثة وسبعون باباً أيسرها مثل أن ينکح الرجل أمه وإن أربى الربا عرض الرجل المسلم ، وصححه على شرط الشیخین، ووافقه الذھبی، وقال البوسیری: هذا إسناد صحيح .

Comments:

- a. There are various types of interest. Therefore, extraordinary precautionary measures should be taken in business, lest any dealing of interest gets involved.
- b. Islamic scholars should carefully examine the current categories of business according the teachings of the *Shari'ah* and should guide the Muslim nation accordingly; so that they do not, unknowingly, commit the offence of consuming interest.

2276. It was narrated that 'Umar bin Khattâb said: "The last thing to be revealed was the Verse on usury, but the Messenger of Allâh ﷺ died before he had explained it to us. So give up usury (interest) and doubtful things." (*Da'iif*)

٢٢٧٦ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْضُوِيُّ:
حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ بْنُ
قَتَادَةَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ عُمَرَ بْنِ
الْخَطَّابِ قَالَ: إِنَّ آخِرَ مَا نَزَّلْتَ إِلَيْهِ الرِّبَا.
وَإِنَّ رَسُولَ اللَّهِ ﷺ فِيضٌ وَلَمْ يَفْسُرْهَا لَنَا:
فَدَعُوا الرِّبَا وَالرِّبَيْةَ.

تخریج: [إسناده ضعیف] أخرجه أحمد ۱/۳۶ من حديث سعيد بن أبي عروفة ثنا قتادة به، وانظر، ح ۱۷۵ لعلته، وله طريق آخر عند الإمام علی كما في مسند الفاروق ۵۷۱/۲، وإسناده ضعیف.

Comments:

- a. The regulations of interest were the latest in revelation among the issues of lawful and unlawful.
- b. The Messenger of Allâh ﷺ explained the interest properly, and he prohibited its contemporary various forms clearly. Despite that, there can be some forms of it which will be invented and introduced later, and the scholars will have to strive to clarify them through analogy. Therefore, the scholars should issue clear religious verdicts after scrutinizing these matters.

2277. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ cursed the one who consumes usury, the one

٢٢٧٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شَعْبَةُ: حَدَّثَنَا سَمَائِكُ
ابْنُ حَرْبٍ قَالَ: سَيِّئَتْ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ

who pays it, those who witness it and the one who writes it down.
(Hasan)

الله يُحَدِّثُ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَسُولَ
الله ﷺ لَعِنَ أَكْلِ الرِّبَا وَمُوْكَلَهُ وَشَاهِدَيْهِ
وَكَاتِبَهُ.

تخریج: [إسناد حسن] أخرجه أبو داود، البيوع، باب: في أكل الربا وموكله، ح: ٣٣٣٣ من حديث سماك به، وصححه الترمذى، ح: ١٢٠٦، وابن حبان، ح: ١١١٢، وللحديث شواهد كثيرة جداً.

2278. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There will come a time when there will be no one left who does not consume usury (interest), and whoever does not consume it will nevertheless be affected by it." (Da'if)

٢٢٧٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيْنَةَ: حَدَّثَنَا دَاؤُدُّ بْنُ أَبِي هِنْدٍ، عَنْ سَعِيدِ بْنِ أَبِي خَيْرَةَ، عَنِ الْحَسَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْبَاتِنُ عَلَى النَّاسِ زَمَانٌ لَا يَتَقَوَّلُ مِنْهُمْ أَحَدٌ. إِلَّا أَكْلُ الرِّبَا. فَمَنْ لَمْ يَأْكُلْ، أَصَابَهُ مِنْ عَبَارَةٍ».

تخریج: [إسناد ضعيف] أخرجه أبو داود، البيوع، باب: في اجتناب الشبهات، ح: ٣٣٣١ من حديث سعيد به، وانظر، ح: ٧١ لعلته * والحسن لم يسمع من أبي هريرة رضي الله عنه عند الجمهور، قاله المنذري في الترغيب: ١٠/٣.

Comments:

- a. All forms of interest are unlawful, and cause the curse of Allâh.
- b. As taking interest is a major sin, likewise paying interest is a major sin too. Therefore, taking a loan on the basis of interest is unlawful; whether this interest-based loan is taken from banks or from business individuals.
- c. Helping in any unlawful cause in anyway is prohibited, and the helper will be as equally sinful as the doer.

2279. It was narrated from Ibn Mas'ud that the Prophet ﷺ said: "There is no one who deals in usury a great deal (to increase his wealth) but he will end up with little (i.e., his wealth will be decreased)." (Sahih)

٢٢٧٩ - حَدَّثَنَا الْعَبَّاسُ بْنُ جَعْفَرٍ: حَدَّثَنَا عَمْرُو بْنُ عَوْنَى: حَدَّثَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ، عَنْ إِسْرَائِيلَ، عَنْ رُكَيْنَ بْنِ الرَّبِيعِ بْنِ عُمَيْلَةَ، عَنْ أَبِيهِ، عَنْ أَبِي مَسْعُودٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَا أَحَدُ أَكْثَرَ مِنَ الرِّبَا إِلَّا كَانَ عَالِيَّهُ أَمْرُهُ إِلَى قَلْهَةٍ».

تخریج: [إسناد صحيح] أخرجه عمرو بن عون به، وصححه، ٣٧/٢ من حديث الحاكم

ووافقه الذهبي، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات.

Comments:

There is no blessing in unlawful earning.

Chapter 59. Payment In Advance For A Known Amount Or A Known Weight To Be Delivered At A Known Time

2280. It was narrated that Ibn 'Abbâs said: "When the Prophet ﷺ came (to Al-Madinah), they used to pay in advance for dates, two or three years in advance. He said: 'Whoever pays in advance for dates, let him pay for a known amount or a known weight, to be delivered at a known time.'"
(*Sahih*)

Tarhib: أخرجه البخاري، السلم، باب السلم في وزن معلوم، ح: ٢٢٤١، ٢٢٤٠، ومسلم، المسافة، باب السلم، ح: ١٦٠٤ من حديث سفيان به.

Comments:

- Receiving the price of goods in advance and to deliver the goods later at a fixed time is called *Bai'us-Salam* or *Bai'us-Salaf*.
- It is necessary for the permissibility of this transaction that the commodity being sold and bought, its quantity, quality, delivery, time of collection and other such matters, conditions and terms, should be discussed and specified beforehand, which later can be the cause of dispute.

2281. It was narrated from Muhammad bin Hamzah bin Yusuf bin 'Abdullâh bin Salâm, from his father, that his grandfather 'Abdullâh bin Salâm said: "A man came to the Prophet ﷺ and said, 'The tribe of Banu so-and-so, who were descended from the Jews, have become Muslim, and they are starving, and I am afraid that they may

(المعجم ٥٩) - باب السلف في كيل معلوم وزن معلوم إلى أجل معلوم
(التحفة ٥٩)

٢٢٨٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْمَةَ عَنْ ابْنِ أَبِي نَجِيحٍ، عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ، عَنْ أَبِي الْجِئْهَالِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَدِيمُ النَّبِيِّ ﷺ وَهُمْ يُسْلِفُونَ فِي التَّمَرِ، السَّتَّينَ وَالثَّلَاثَةِ . فَقَالَ: «مَنْ أَسْلَفَ فِي تَمَرٍ فَلَيُسْلِفَ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ».

ـ حَدَّثَنَا يَعْنُوبُ بْنُ حُمَيْدٍ بْنَ كَاسِبٍ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ، عَنْ مُحَمَّدٍ بْنِ حَمْزَةَ بْنِ يُوسُفَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ سَلَامَ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنَّ بَنِي فُلَانَ أَشَلَّمُوا، لَقِيَوْنَا مِنَ الْيَهُودِ وَإِنَّهُمْ قَدْ جَاءُوكُمْ فَأَخَافُ أَنْ يَرْتَدُوا. فَقَالَ النَّبِيُّ ﷺ: «مَنْ

apostatize.' The Prophet ﷺ said: 'Who has something with him?' A Jewish man said: 'I have such and such, and he named it, and I think he said three hundred Dinâr for such and such an amount (of produce) from the garden of the tribe of Banu so-and-so.' The Messenger of Allâh ﷺ said: 'For such and such a price at such and such a time, but not from the garden of the tribe of Banu so-and-so.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه الطبراني: ۲۲۲/۵، ح: ۵۱۴۷، وأبو يعلى، ح: ۷۴۹۶ وغیرهما من طرق عن الوليد حدثنا محمد بن حمزة به، ولم يصرح بالسماع المُسلسل، وصححه ابن حبان(موارد)، ح: ۲۱۰۵، والحاکم: ۶۰۵/۳، وتعقبه الذہبی، وضعفه البوزیری، وله طریق ضعیف عند الدارقطنی فی المؤلف والمختلف: ۱۳۸۸/۳.

2282. It was narrated that Abu Mujâlid said: "Abdullâh bin Shaddâd and Abu Barzah had a dispute about paying in advance. They sent me to 'Abdullâh bin Abu Awfa to ask him about it. He said: 'We used to make payments in advance at the time of the Messenger of Allâh ﷺ and the time of Abu Bakr and 'Umar, for wheat, barley, raisins and dates, to people who did not yet possess those things.' I asked Ibn Abzâ, and he said something similar." (*Sahih*)

عَنْهُ؟ قَالَ رَجُلٌ مِّنَ الْيَهُودِ: عَنِّي كَذَا وَكَذَا لِشَيْءٍ قَدْ سَمِّاهُ أَرَاهُ قَالَ ثَلَاثُمِائَةَ دِينâرٍ بِسْعَرٍ كَذَا وَكَذَا مِنْ حَائِطِ بَنِي فَلَانٍ. قَالَ رَسُولُ اللَّهِ ﷺ: بِسْعَرٍ كَذَا وَكَذَا إِلَى أَجْلٍ كَذَا وَكَذَا، وَلَيْسَ مِنْ حَائِطِ بَنِي فَلَانٍ.

٢٢٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدَىٰ . قَالَ: حَدَّثَنَا شَعْبَةُ قَالَ يَحْيَى: عَنْ عَبْدِ اللَّهِ ابْنِ أَبِي الْمُجَالِدِ . وَقَالَ عَبْدُ الرَّحْمَنِ: عَنْ أَبِي الْمُجَالِدِ قَالَ: امْتَرَى عَبْدُ اللَّهِ بْنُ شَدَادٍ وَأَبُو بَرَّةَ فِي السَّلَامِ . فَأَرْسَلُونِي إِلَى عَبْدِ اللَّهِ ابْنِ أَبِي أَوْفَى . فَسَأَلْتُهُ فَقَالَ: كُنَّا نُسْلِمُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَعَهْدِ أَبِي بَكْرٍ وَعَمَرَ فِي الْجِنْطَةِ وَالشَّعْبَرِ وَالزَّبِيبِ وَالثَّمَرِ، عِنْدَ قَوْمٍ، مَا عِنْدَهُمْ .

فَسَأَلْتُ أَبْنَ أَبِيَّ . قَالَ: مِثْلُ ذَلِكَ .

تخریج: [صحيح] أخرجه أبو داود، البيوع، باب في السلف، ح: ۳۴۶۵ عن محمد بن بشار به، وهو في صحيح البخاري، السلام، ح: ۲۲۴۰. ۲۲۴۲ وح: ۲۲۵۰، ۲۲۵۴ .

Comments:

Bai'us-Salam and *Bai'us-Salaf* are two names of the same thing.

Bai'us-Salam is allowed. [This is a sale of something on interest-free credit according to Islamic terms and conditions. — *Usmani*]

Chapter 60. The One Who Has Paid In Advance For Something Should Not Exchange It For Something Else

2283. It was narrated from Abu Sa'eed that the Messenger of Allâh ﷺ said: "When you have paid in advance for something, do not exchange it for something else." (*Da'iif*)

Another chain with similar wording.

(المعجم ٦٠) - بَابُ مَنْ أَسْلَمَ فِي شَيْءٍ
فَلَا يَصْرِفُهُ إِلَى غَيْرِهِ (التحفة ٦٠)

٢٢٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعْمَانَ: حَدَّثَنَا شُجَاعُ بْنُ الْوَلِيدِ: حَدَّثَنَا زِيَادُ بْنُ خَيْرَةَ، عَنْ سَعْدٍ، عَنْ عَطِيَّةَ، عَنْ أَبِي سَعِيدٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا أَسْلَفْتَ فِي شَيْءٍ، فَلَا تَصْرِفْهُ إِلَى غَيْرِهِ».

حدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا شُجَاعُ ابْنُ الْوَلِيدِ، عَنْ زِيَادِ بْنِ خَيْرَةَ، عَنْ عَطِيَّةَ، عَنْ أَبِي سَعِيدٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: فَذَكِّرْ مِثْلَهُ . وَلَمْ يَذْكُرْ سَعْدًا .

تخریج: [إسناده ضعیف] أخرجه أبو داود، البيوع، باب السلف يحول، ح: ٣٤٦٨ من حديث أبي بدر شجاع به، السند الأول، وحسنه الترمذی في العلل الكبير، وضعفه الحافظ ابن حجر (تلخيص: ٢٥/٣) وغيره، وانظر، ح: ٣٧: لعلته.

(المعجم ٦١) - بَابُ: إِذَا أَسْلَمَ فِي نَخْلٍ بِعِينِهِ لَمْ يَطْلُعْ (التحفة ٦١)

Chapter 61. If One Pays In Advance For A Specific Date Palm And It Does Not Yield Anything

2284. It was narrated that Najrâni said: "I said to 'Abdullâh bin 'Umar: 'Can I pay in advance for a date palm before it bears fruit?' He said: 'No.' I said: 'Why not?' He said: 'A man paid in advance for a grove of trees during the time of the Messenger of Allâh ﷺ, before they had produced any fruit, and they did not bear anything that year. The purchaser said: 'They belong to me until they produce,' but the

٢٢٨٤ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيرِيِّ: حَدَّثَنَا أَبُو الْأَخْوَصِ، عَنْ أَبِي إِشْحَاقَ، عَنْ النَّجَارَانِيِّ، قَالَ، قُلْتُ لِعَبْدِ اللَّهِ بْنِ عُمَرَ: أَسْلَمْ فِي نَخْلٍ قَبْلَ أَنْ يَطْلُعَ؟ قَالَ: لَا. قُلْتُ: لِمَ؟ قَالَ: إِنَّ رَجُلًا أَسْلَمَ فِي حَدِيقَةِ نَخْلٍ، فِي عَهْدِ رَسُولِ اللَّهِ ﷺ قَبْلَ أَنْ يَطْلُعَ النَّخْلُ شَيْئًا، ذَلِكَ الْعَامُ. فَقَالَ يَطْلُعُ النَّخْلُ شَيْئًا، ذَلِكَ الْعَامُ. فَقَالَ الْمُسْتَرِيِّ: هُوَ لِي حَتَّى يَطْلُعَ. وَقَالَ الْبَائِعُ: إِنَّمَا يَعْتَكَ النَّخْلُ هُنْوَ السَّنَةَ. فَاخْتَصَمَا إِلَى

seller said: 'I only sold the trees to you for this year.' They referred their dispute to the Messenger of Allâh ﷺ, who said to the seller: 'Did he take anything from your date palms?' He said: 'No.' He said: 'Then why do you regard his wealth as lawful for you? Give back what you took from him, and do not take payment in advance for date palms until their usefulness appears.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أبو داود، البيوع، باب في السلم في ثمرة بعينها، ٣٤٦٧ من حديث أبي إسحاق السبئي به * التجراني مجهول (تقرب: ١٣٨)، وأبو إسحاق تقدم، ح: ١٠٣٩، ٤٦.

Chapter 62. Paying For Animals In Advance

2285. It was narrated from Abu Râfi' that the Prophet ﷺ asked a man to give as a loan a young camel and said: "When the camels of the *Sadaqah* come, we will pay you back." When the camels came, he said: "O Abu Râfi', pay this man back for his young camel." But all I could find was a seven-year-old camel or that which is better. I told the Prophet ﷺ and he said: "Give it to him, for the best of people are those who are best in repaying." (*Sahih*)

تخریج: أخرجه مسلم، المساقاة، باب جواز اقتراض الحيوان واستحباب توفیته خيراً مما عليه، ح: ١٦٠٠ من حديث زید به باختلاف سیر.

Comments:

- a. Selling and buying on absolute interest free credit (according to Islamic terms and conditions) is allowed.

رسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لِلنَّبِيِّ: «أَخْدَ مِنْ نَخْلِكَ شَيْئًا؟» قَالَ: لَا. قَالَ: «فَإِنْ تَشَتَّحُ مَالَهُ؟ أَرْدُدْ عَلَيْهِ مَا أَخْدَتَ مِنْهُ». وَلَا تُشَلِّمُوا فِي نَخْلٍ حَتَّى يَبْدُو صَلَاحُهُ».

(المعجم ٦٢) - باب السَّلَمِ فِي الْحَيَوانِ
(التحفة ٦٢)

٢٢٨٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا
مُسْلِمٌ بْنُ خَالِدٍ: حَدَّثَنَا زَيْدُ بْنُ أَسْلَمَ، عَنْ
عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي رَافِعٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
اسْتَشْلَفَ مِنْ رَجُلٍ بَكْرًا وَقَالَ: «إِذَا جَاءَتْ
إِلَيْكُ الصَّدَقَةِ قَصَّيْنَاكَ» فَلَمَّا قَدِمَتْ قَالَ: «يَا
أَبَا رَافِعٍ اقْضِ هَذَا الرَّجُلَ بَكْرَهُ» فَلَمْ أَجِدْ
إِلَّا رَبَاعِيًّا فَصَاصَعْدًا فَأَخْبَرْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
فَقَالَ: «أَعْطِهِ». فَإِنَّ خَيْرَ النَّاسِ أَخْسَسُهُمْ
فَصَاءَ».

- b. Returning a better animal than the one taken is allowed; provided it is not conditioned before, and the payer is giving with his own pleasure, and the recipient does not ask for.
- c. As for the cash, the borrowed amount is to be returned only; no increase in it is allowed.

2286. Sa'eed bin Hâni' said: "I heard 'Irбâd bin Sâriyah say: 'I was with the Prophet ﷺ and a Bedouin said: 'Pay me back for my young camel, and he gave him an older (i.e., better) camel.' He said: 'O Messenger of Allâh! It is older (i.e., better) than my camel.' The Messenger of Allâh ﷺ said: 'The best of people are those who are best in repaying.'" (*Sahih*)

٢٢٨٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا زَيْدٌ بْنُ الْجُبَابِ: حَدَّثَنَا مَعَاوِيَةً بْنُ صَالِحٍ: حَدَّثَنِي سَعِيدُ بْنُ هَانِئٍ قَالَ: سَمِعْتُ الْعَرَبِيَّاً ضَيْفَهُ بْنَ سَارِيَّةَ يَقُولُ: كُنْتُ عِنْدَ النَّبِيِّ ﷺ فَقَالَ أَعْرَابِيُّ: افْصِنِي بَكْرِيًّا. فَأَعْطَاهُ بَكْرِيًّا. فَقَالَ أَعْرَابِيُّ: إِنَّمَا أَنْتَ مُسْتَأْنِدٌ. فَقَالَ الْأَعْرَابِيُّ: يَا رَسُولَ اللَّهِ أَنْتَ أَسَنُّ مِنْ بَعْيرِي. فَقَالَ رَسُولُ اللَّهِ ﷺ خَيْرُ النَّاسِ حَيْرُهُمْ قَضَاءً».

تخریج: [صحیح] أخرجه النسائي: ٧/٢٩١، ٢٩٢، أبیوع، استسلاف الحیوان واستقراضه، ح: ٤٢٣ من حديث معاویة به مطولاً، وصححه الحاکم: ٢/٣٠، ووافقه الذہبی، واسناده حسن، وله شواهد عند البخاری: ٣٠/٢، ح: ٢٣٥ وغيره.

Chapter 63. Partnership And Profit Sharing

(المعجم ٦٣) - بَابُ الشُّرْكَةِ وَالْمُضَارَّةِ
(التحفة ٦٣)

2287. It was narrated that Sâ'ib said to the Prophet ﷺ: "You were my partner during the Ignorance period and you were the best of partners, you did not contend or dispute." (*Da'if*)

٢٢٨٧ - حَدَّثَنَا عُثْمَانُ وَأَبُو بَكْرٍ ابْنَ أَبِي شَيْعَةَ. قَالَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُعِيَّانَ، عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ، عَنْ مُجَاهِدٍ، عَنْ قَائِدِ السَّائِبِ، عَنِ السَّائِبِ قَالَ لِلنَّبِيِّ ﷺ: كُنْتُ شَرِيكَيِّ فِي الْجَاهِلِيَّةِ. فَكُنْتُ خَيْرُ شَرِيكَيْ. كُنْتُ لَا تُدَارِينِي وَلَا تُمَارِينِي.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأدب، باب: في كراهة المرأة، ح: ٤٨٣٦ من حديث سفیان الثوری به مجاهد لم یسمعه من السائب رضی الله عنه بل سمعه من قائد، والقائد لم أجد له ترجمة وهو علة الخبر.

Comments:

- The partnership in business is allowed.
- Only those forms of trade of the pre-Islamic time, which the Messenger of Allāh ﷺ forbade are forbidden and the rest of them are allowed.
- The Messenger of Allāh ﷺ had attributes of good manners and characteristics before his mission of prophethood as well.

2288. It was narrated that 'Abdullāh said: "Sa'd, 'Ammār and I entered into a partnership on the day of Badr, (agreeing to share) whatever was allotted to us. 'Ammār and I did not get anything, but Sa'd got two men (slaves)." (*Da'if*)

٢٢٨٨ - حَدَّثَنَا أَبُو السَّائِبِ سُلَمُ بْنُ جَحَادَةَ: حَدَّثَنَا أَبُو دَاوُدَ الْحَفْرِيُّ، عَنْ سُفِيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عُيَيْنَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: أَشْتَرَكْنَا أَنَا وَسَعْدٌ وَعَمَّارٌ، يَوْمَ بَنْرِ، فِيمَا نُصِيبُ. فَلَمْ أَجِدْ أَنَا وَلَا عَمَّارٌ بِشَيْءٍ، وَجَاءَ سَعْدٌ بِرَجُلَيْنِ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، البیوع، باب: في الشرکة على غير رأس المال، ح: ٣٣٨٨ من حديث سفيان الثوری به * أبو إسحاق تقدم، ح: ٤٦، وأبو عیینة لم يدرك أباه، انظر، ح: ١٤٧٨، ١٦٠٦.

2289. It was narrated from Sâlih bin Suhaib that his father said: "The Messenger of Allāh ﷺ said: 'There are three things in which there is blessing: A sale with deferred payment; *Muqâradhah* (profit sharing); and mixing wheat with barley for one's house, but not for sale.'" (*Da'if*)

٢٢٨٩ - حَدَّثَنَا الْحَسَنُ بْنُ عَلَيِّ الْخَلَالُ: حَدَّثَنَا يَشْرُبُ بْنُ ثَابِتِ الْبَرَّارُ: حَدَّثَنَا تَصْرِيْبُ بْنُ الْقَاسِمِ، عَنْ عَبْدِ الرَّحِيمِ بْنِ دَاوُدَ، عَنْ صَالِحِ بْنِ صَهْبَيْنَ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تَلَاثَتْ فِيهَا الْبَرَكَةُ. الْبَيْعُ إِلَى أَجْلٍ، وَالْمُقَارَضَةُ وَأَخْلَاطُ الْبَرِّ بِالشَّعْمِ، لِلْبَيْتِ، لَا لِلْبَيْعِ».

تخریج: [إسناده ضعیف جداً] أخرجه العقيلي: ٨٠/٣ من حديث نصر بن القاسم به، وقال في عبد الرحيم: مجھول بالنقل، حديثه غير محفوظ * ونصر مجھول (تقرب: ٥٢٢)، وصالح مجھول الحال (تقرب: ٢٣٠)، والحديث ضعفه البوصيري، والحافظ في بلوغ المرام، وأورده ابن الجوزي في الموضوعات: ٢٤٩، ٢٤٨/٢، وقال: موضوع ، وقال البخاري في نصر: حديثه موضوع ، وقال الذهبي: إسناد مظلوم والمتن باطل .

Comments:

Muqâradhah has two explanations: a): To lend money or something to someone. b): To be a partner, i.e., one person invests money and the other does practical work, and the profit is divided between both according to the agreed percentage. This type of business is allowed.

Chapter 64. What A Man Is Entitled To Of His Son's Property

2290. It was narrated from 'Aishah that the Messenger of Allâh ﷺ said: "The best of your provision is what you earn, and your children are part of what you earn." (*Sahih*)

(المعجم ٦٤) - بَابُ مَا لِلرَّجُلِ مِنْ مَالٍ
وَلَدِهِ (التحفة ٦٤)

٢٢٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
ابْنُ أَبِي زَائِدَةَ، عَنِ الْأَعْمَشِ، عَنْ عُمَارَةَ بْنِ
عُمَيْرٍ، عَنْ عَمِّيْهِ، عَنْ عَائِشَةَ قَاتِلَتْ: قَالَ
رَسُولُ اللَّهِ ﷺ: إِنَّ أَطَيْبَ مَا أَكَلْتُمْ مِنْ
كَسِّبِكُمْ. وَإِنَّ أَوْلَادَكُمْ مِنْ كَسِّبِكُمْ».

تخریج: [صحيح] أخرجه الترمذی، الأحكام، باب ما جاء أن الوالد يأخذ من مال ولده، ح: ١٣٥٨ من حديث يحيى بن ذكرياء بن أبي زائدة به، وقال: حسن صحيح، وصححه الذہبی، وهو مخرج في نيل المقصود، ح: ٣٥٢٨، وتخریج مستند الحمیدی، ح: ٢٤٧.

Comments:

See also *Hadith* 2137.

2291. It was narrated from Jâbir bin 'Abdullâh that a man said: "O Messenger of Allâh, I have wealth and a son, and my father wants to take all my wealth." He said: "You and your wealth belong to your father." (*Sahih*)

٢٢٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا
عِيسَى بْنُ يُوسُفَ: حَدَّثَنَا يُوسُفُ بْنُ إِسْحَاقَ،
عَنْ مُحَمَّدٍ بْنِ الْمُنْتَكِبِيرِ، عَنْ جَابِرٍ بْنِ عَبْدِ
اللَّهِ أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ! إِنَّ لِي مَالًا
وَوَلَدًا. وَإِنَّ أَبِي يُرِيدُ أَنْ يَجْتَاهَ مَالِي.
فَقَالَ: «أَنْتَ وَمَالُكَ لِأَيْكَ».

تخریج: [صحيح] أخرجه الطحاوی في معانی الآثار: ١٥٨ / ٤ من حديث عیسی بن یونس به، وصححه البوصیری، وابن الترکمانی في الجوهر القی: ٤٨١ / ٧، والبزار، ولم یصب من أعلمه، وله شواهد انظر العدیث الآتی.

2292. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Messenger of Allâh ﷺ and said: 'My father is taking all my wealth.' He said: 'You and your wealth belong to your father.' And the Messenger of Allâh ﷺ said: 'Your children are among the best of your earnings,

٢٢٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ يَحْيَى
ابْنُ حَكِيمٍ. قَالَ: حَدَّثَنَا يَرِيدُ بْنُ هَارُونَ:
أَبْنَا حَجَاجَ عَنْ عَمْرِو بْنِ شَعِيبٍ، عَنْ أَبِيهِ،
عَنْ جَعْلَوْ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ
فَقَالَ: إِنَّ أَبِي اجْتَاهَ مَالِي. فَقَالَ: «أَنْتَ
وَمَالُكَ لِأَيْكَ» وَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ

so eat from your wealth.”¹¹
(Sahih)

أَوْلَادُكُمْ مِنْ أَطِيبِ كُسْبِكُمْ. فَكَلُوا مِنْ أَمْوَالِكُمْ.

تخریج: [صحیح] أخرجه أحمد: ٢٠٤ / ٢ من حديث حجاج (بن أرطاة) به، وتابعه حبيب المعلم عند أبي داود، ح: ٣٥٣٠ وغيره، وله طرق، وصححه ابن الجارود، ح: ٩٩٥.

Chapter 65. What A Woman Is Entitled To Of Her Husband's Wealth

2293. It was narrated that 'Âishah said: "Hind came to the Prophet ﷺ and said: 'O Messenger of Allâh, Abu Sufyân is a stingy man and he does not give me enough for me and my child, except for what I take from his wealth without him realizing.' He said: 'Take what is sufficient for you and your child, on a reasonable basis.'" (Sahih)

(المعجم ٦٥) - بَابُ مَا لِلْمَرْأَةِ مِنْ مَالٍ رَّوَّجِهَا (التحفة ٦٥)

٢٢٩٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَعَلَيْهِ بْنُ مُحَمَّدٍ، وَأَبُو عُمَرَ الصَّرِيرِ. قَالُوا: حَدَّثَنَا وَكَيْعُ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَتْ هِنْدٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ أَبَا سَفِيَّانَ رَجُلٌ شَرِيكٌ، وَلَا يُعْطِينِي مَا يَكْفِينِي وَوَلَّيِ، إِلَّا مَا أَخْذَتْ مِنْ مَالِهِ، وَهُوَ لَا يَعْلَمُ. فَقَالَ: خُذْنِي مَا يَكْفِيكَ وَوَلَّكِ بِالْمَعْرُوفِ.

تخریج: أخرجه مسلم، الأقضية، باب قضية هند، ح: ١٧١٤ من حديث وكيع، وغيره به.

Comments:

- a. It is the responsibility of a husband to fulfill the genuine necessities of his wife and children.
- b. It is not counted as backbiting, if someone's fault is disclosed just for the sake of seeking clear guidelines from Islamic prospects.
- c. A reasonable amount of a husband's wealth may be used without seeking his permission to fulfill the genuine daily needs.
- d. 'What is sufficient' will be specified depending upon the circumstances, atmosphere, financial condition of the husband and the type of need.

2294. It was narrated from 'Âishah that the Messenger of Allâh ﷺ said: "When a woman spends" – and my father said:^[1]

٢٢٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا أَبِي وَأَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ أَبِي وَائِلٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ:

[1] The speaker is Muhammad bin 'Abdullâh bin Numair, the Shaikh of Ibn Majah in this narration. Muhammad narrated the *Hadith* from his father, and from Abu Mu'âwiyyah.

- "When a woman feeds (the poor) from her husband's house, without spending too much, she will have her reward, and he will be rewarded likewise because he earned it, and she will be rewarded for what she spent. The same applies to the storekeeper, without anything being detracted from their rewards." (*Sahih*)

تخریج: أخرجه البخاري، الزکاة، باب أجر الخادم إذا تصدق بأمر صاحبه غير مفسد، ح: ١٤٣٩، ١٤٣٧ من حديث الأعمش به، ومسلم، الزکاة، باب أجر الخازن الأمين والمرأة إذا تصدق من بيت زوجها ... الخ، ح: ١٠٢٤ من حديث محمد بن عبد الله بن نمير به.

Comments:

- a. It is man's responsibility to bring home the livelihood.
- b. Although the livelihood is earned by the husband, the wife has full equal right to spend it.
- c. When spending, the wife must bear in mind that the wealth should not be squandered; it should not be spent for unlawful things; and should not be spent on that which the husband does not like. This is because such practice affects the financial condition of the household and the mutual relations will turn unpalatable.
- d. *Khâzin* (translated as storekeeper) is a person who spends for the needs of the household with the permission of the master; he may be an employee or a member of the family, like a younger brother or son etc.

2295. Shurahbil bin Muslim Al-Khawlani said: I heard Abu Umâmah Al-Bâhili say: I heard the Messenger of Allâh ﷺ say: "No woman should spend anything from her house without her husband's permission." They said: "O Messenger of Allâh, not even food?" He said: "That is among the best of our wealth." (*Hasan*)

تخریج: [إسناده حسن] أخرجه الترمذی، الزکوة، باب ماجاء في نفقة المرأة من بيت زوجها، ح: ٦٧٠ من حديث إسماعيل به، وقال: حديث حسن، وأصله في سنن أبي داود، ح: ٣٥٦٥، وصححه ابن الجارود، ح: ١٠٢٣.

قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا أَنْفَقَتِ الْمَرْأَةُ وَقَالَ أَبِي فِي حَدِيثِهِ: إِذَا أَطْعَمَتِ الْمَرْأَةَ مِنْ بَيْتِ رَوْجِهَا، غَيْرِ مُفْسِدَةٍ، كَانَ لَهَا أَجْرُهَا. وَلَهُ مِثْلُهُ بِمَا اكْتَسَبَ. وَلَهَا بِمَا أَنْفَقَتْ. وَلِلْخَازِنِ مِثْلُ ذَلِكَ، مِنْ غَيْرِ أَنْ يَنْفَصَمَ مِنْ أَجْوَرِهِمْ شَيْئًا.

تخریج: أخرجه البخاري، الزکاة، باب أجر الخادم إذا تصدق بأمر صاحبه غير مفسد، ح: ١٤٣٩، ١٤٣٧ من حديث الأعمش به، ومسلم، الزکاة، باب أجر الخازن الأمين والمرأة إذا تصدق من بيت زوجها ... الخ، ح: ١٠٢٤ من حديث محمد بن عبد الله بن نمير به.

٢٢٩٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنِي شُرَحْبِيلُ بْنُ مُسْلِمٍ الْخُولَانِيَّ قَالَ: سَمِعْتُ أَبَا أُمَّاتَ الْبَاهِلِيِّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: لَا تُنْفِقُ الْمَرْأَةُ مِنْ بَيْتِهَا شَيْئًا إِلَّا يَأْذِنُ رَوْجِهَا» قَالُوا: يَا رَسُولَ اللَّهِ! وَلَا الطَّعَام؟ قَالَ: «ذَلِكَ مِنْ أَفْضَلِ أَمْوَالِنَا».

تخریج: [إسناده حسن] أخرجه الترمذی، الزکوة، باب ماجاء في نفقة المرأة من بيت زوجها، ح: ٦٧٠ من حديث إسماعيل به، وقال: حديث حسن، وأصله في سنن أبي داود، ح: ٣٥٦٥، وصححه ابن الجارود، ح: ١٠٢٣.

Comments:

- The wife should seek her husband's permission for spending in charity.
- Foodstuff also means ready meals, chapatti, bread, curry, sausages, etc.; and other foodstuff like: wheat, barley, rice, etc., too.
- If the wife is certain, and has confidence in her husband's habit and circumstances, that the husband will not get angry for giving such and such charity, or helping the needy, then seeking his permission is not necessary. But if she suspects that the husband may not like such spending, then she should definitely seek his permission; for example: she wants to give jewelry in charity or a large amount of something, then she should certainly ask his permission.

Chapter 66. What A Slave May Give Away And Give In Charity

2296. It was narrated from Muslim Al-Mulâ'i that he heard Anas bin Mâlik say: "The Messenger of Allâh ﷺ used to accept the invitation of a slave." (*Da'if*)

(المعجم ٦٦) - بَابُ مَا لِلْعَبْدِ أَنْ يُعْطِي
وَيَتَصَدَّقَ (التحفة ٦٦)

٢٢٩٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا سُقِيَانُ، ح: وَحَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا جَرِيرٌ عَنْ مُسْلِمِ الْمُلَائِقِ، سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ: كَانَ رَسُولُ اللَّهِ ﷺ يُحِبُّ دَعْوَةَ الْمَمْلُوكِ.

تخریج: [إسناده ضعیف] أخرجه الترمذی، الجنائز، باب آخر [في سنة عيادة المريض وشهود الجنائزة]، ح: ١٠١٧ من حديث مسلم الأعور الملائی به، وقال: مسلم الأعور يضعف .

Comments:

This is a part of another Hadith, for the complete text see Hadith: 4178.

2297. It was narrated that 'Umair, the freed slave of Aabi Lahm, said: "My master used to give me, food and I would feed others from it, then he stopped me," - or he said: "He beat me. So I asked the Prophet ﷺ," - or - "he asked him and I said: 'I will not stop.' He said: 'Both of you will be rewarded.'" (*Sahih*)

٢٢٩٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ عَيَّاثٍ، عَنْ مُحَمَّدِ بْنِ زَيْدٍ، عَنْ عُمَيْرٍ مَوْلَى أَبِي اللَّهِ قَالَ: كَانَ مَوْلَايَ يُعْطِينِي الشَّيْءَ فَأَطْعِمُ مِنْهُ. فَمَنَّعَنِي، أَوْ قَالَ: فَصَرَّبَنِي. فَسَأَلْتُ أَبِي اللَّهِ، أَوْ سَأَلْهُ: فَقُلْتُ: لَا أَنْتَ بِي أَوْ لَا أَدْعُهُ قَالَ: «الْأَجْرُ يَنْكِمُكَ».

تخریج: أخرجه مسلم، الزکاة، باب ما أنفق العبد من مال مولاه، ح: ١٠٢٥ عن ابن أبي شيبة به .

Comments:

- The noble Companions used to look after their slaves as the children are looked after; and Aabi Lahm ﷺ would give his slave good and healthy food to eat.
- Aabi Lahm, out of kindness, prevented his slave from giving this away in charity; because he wanted his slave to eat what was given to him.
- 'Umair would give the things in charity to others, which were given for himself. The Messenger of Allâh ﷺ liked this behavior on his behalf.
- The partnership in reward was due to the fact that the charity was done by 'Umair while the property in fact belonged to Aabi Lahm; this is how the master and slave shared the reward together.

Chapter 67. One Who Passes By The Livestock (Of Some People) Or A Garden – Can He Take Something From That?

2298. It was narrated that Abu Bishr Ja'far bin Abu Iyâs said: "I heard 'Abbâd bin Shurahbil, a man from Banu Ghubar, say: 'We suffered a year of famine, and I came to Al-Madinah. I came to one of its gardens and took an ear of corn, I rubbed it, ate some and put the rest in my garment. The owner of the garden came and beat me and took my garment. I came to the Prophet ﷺ and told him (what had happened). He said to the man: "You did not feed him when he was hungry and you did not teach him when he was ignorant."'" Then the Prophet ﷺ told him to give back his garment and ordered that a Wasq or half a Wasq of food be brought to him." (*Sahih*)

(المعجم ٦٧) - بَابُ مَنْ مَرَّ عَلَىٰ مَاشِيَةٍ
[قَوْمٌ] أَوْ حَائِطٍ، هُلْ يُصِيبُ مِنْهُ؟
(التحفة ٦٧)

٢٢٩٨ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
شَبَابَةُ بْنُ شَوَّارٍ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ
وَ مُحَمَّدُ بْنُ الْوَلِيدِ. قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ
جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي شِرْ جَعْفَرِ بْنِ
إِيَّاسٍ قَالَ: سَمِعْتُ عَبَادَ بْنَ شُرَحْبِيلَ، رَجُلًا
مِنْ بَنْيِ غَيْرِ قَالَ: أَصَابَنَا عَامٌ مُخْمَصَةٌ.
فَأَتَيْتُ الْمَدِينَةَ. فَأَتَيْتُ حَائِطًا مِنْ جِيَطَانِهَا.
فَأَخَذْتُ شَتْلًا فَرَكِّتُهُ وَأَكَلْتُهُ وَجَعَلْتُهُ فِي
كِسَائِي. فَجَاءَ صَاحِبُ الْحَائِطِ. فَضَرَبَنِي
وَأَخْنَدَنِي. فَأَتَيْتُ النَّبِيَّ ﷺ فَأَخْبَرْتُهُ. فَقَالَ
لِلرَّجُلِ: «مَا أَطْعَمْتَهُ إِذْ كَانَ جَائِعاً أَوْ
سَاعِيناً. وَلَا عَلِمْتَهُ إِذْ كَانَ جَاهِلاً» فَأَمْرَهُ
النَّبِيُّ ﷺ فَرَدَ إِلَيْهِ ثَوْبَهُ. وَأَمْرَ لَهُ بِوَسْقِي مِنْ
طَعَامٍ أَوْ نَصْفِ وَسْقِيٍّ.

تَحْرِيْج: [إِسْنَادُهُ صَحِيحٌ] أَخْرَجَهُ أَبُو دَاوُدُ، الْجَهَادُ، بَابُ فِي أَبْنِ السَّبِيلِ يَأْكُلُ مِنَ التَّمَرِ
وَيَشْرُبُ مِنَ الْلَّبَنِ إِذَا مَرَّ بِهِ، ح: ٢٢٢١٤٣/٤، وَصَحَّحَهُ الْحَافِظُ
وَالْذَّهَبِيُّ.

Comments:

- A needy person may take something to fulfill his need from someone's field or garden; but he is not allowed to carry anything away with him.
- The person who committed a mistake should be treated well after discovering his circumstances and dealing with his mistake.
- The noble Prophet ﷺ did not punish the owner of the field because he was right; but he ﷺ showed that his way of dealing was wrong.

2299. It was narrated that Râfi' bin 'Amr Al-Ghfârî said: "When I was a boy, I used to throw stones at our date-palm trees"^[1] - or he said: "the date-palm trees of the *Ansâr*." I was brought to the Prophet ﷺ and he said: 'O boy' - (one of the narrators) Ibn Kâsib said: He said: 'O my son ~ why are you throwing stones at the date-palm trees?' I said: 'So I can eat.' He said: 'Do not throw stones at the date-palm trees. Eat from what falls to the ground from them.' Then he patted me on the head and said: 'O Allâh, give him enough to eat.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أبو داود، الجهاد، باب من قال إنه يأكل مما سقط، ح: ٢٦٢٢ من حديث معمتمر به، وصححه الترمذی، ح: ١٢٨٨ * ابن أبي الحكم لم يوثقه غير الترمذی ولم يعرف اللذی، فهو مستور كما قال صاحب التقریب.

2300. It was narrated from Abu Sa'eed that the Prophet ﷺ said: "When you come to a shepherd, call him three times. If he answers (all well and good), otherwise drink (milk from the flock) without taking advantage. And when you come to a garden, call the owner of the garden three times. If he answers (all well and good), otherwise eat (from the

٢٢٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّيَّابِ وَيَقْتُلُونُ
ابْنُ حُمَيْدٍ بْنُ كَاسِبٍ. قَالَ: حَدَّثَنَا مُعْتَمِرُ بْنُ
سُلَيْمَانَ قَالَ: سَمِعْتُ ابْنَ أَبِي الْحَكَمِ
الْغِفارِيَّ قَالَ: حَدَّثَنِي جَلَّتِي عَنْ عَمٍّ أَبِيهَا
رَافِعِ بْنِ عَمْرِو الْغِفارِيَّ قَالَ: كُنْتُ وَأَنَا غُلَامٌ
أَرْبَعِيَ تَحْلَنَا، أَوْ قَالَ: تَحْلُلُ الْأَنصَارِ. فَأَتَيَنِي
بَنِي النَّبِيِّ ﷺ. قَالَ: يَا غُلَامُ وَقَالَ ابْنُ
كَاسِبٍ: فَقَالَ يَا بْنَيَ لِمَ تَرْمِي النَّخْلَ؟ قَالَ:
فَلَمْ: أَكُلُ. قَالَ: «فَلَا تَرْمِي النَّخْلَ. وَكُلْ
مِمَّا يَسْقُطُ فِي أَسَافِلَهَا» قَالَ: ثُمَّ مَسَحَ رَأْسِي
وَقَالَ: «اللَّهُمَّ أَشِنْ بَطْنَهُ». *

٢٣٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا
بَرِيدُ بْنُ هَارُونَ: أَبْنَاءُ الْجَرْبِيَّ، عَنْ أَبِي
نَصِّرَةَ، عَنْ أَبِي سَعِيدٍ، عَنْ النَّبِيِّ ﷺ قَالَ:
«إِذَا أَتَيْتَ عَلَى رَاعٍ، فَنَادُهُ ثَلَاثَ مَرَاتٍ. فَإِنْ
أَجَابَكَ، وَإِلَّا فَأَشْرُبْ فِي عَيْرٍ أَنْ تُقْسِدَ. وَإِذَا
أَتَيْتَ عَلَى حَائِطٍ بُشْتَانٍ، فَنَادُ صَاحِبَ
الْبُشْتَانِ ثَلَاثَ مَرَاتٍ. فَإِنْ أَجَابَكَ، وَإِلَّا فَكُلْ

[1] To knock some dates down to eat.

produce of the garden) without taking advantage." (*Da'if*)

فِي أَنْ لَا تُفْسِدَ».

تخریج: [إسناده ضعیف] أخرجه أحمد: ٢١ عن یزید بن هارون به، وصححه الحاکم: ٤/١٣٢ على شرط مسلم، وقال البوصیری: هذا إسناد ضعیف، فيه الجریبی، واسمه سعید بن ایاس، وقد اختلط باخیره، ویزید بن هارون روى عنه بعد الاختلاط، وانظر الحديث الآتی.

Comments:

- a. It is not allowed to use anything from someone's field, orchard or herd without securing the permission of the owner.
 - b. If the owner is not present, then one should try his best to call out loud for the owner to seek his/her permission.
 - c. If the owner is not found, despite calling loud three times; then the fruit or milk may be used without the permission of the owner in extreme circumstances.
 - d. This permission is limited; this permission may be taken as an advantage only to meet the current need. The advantage of this limited permission is to be used only when getting food through other legal means becomes almost impossible.

2301. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "When anyone of you passes by a garden, let him eat therefrom, but he should not carry any away in his garment." (Da'if)

٢٣٠١ - حَدَّثَنَا هَلْيَةُ بْنُ عَبْدِ الْوَهَابِ، وَ
أَبْيُوبُ بْنُ حَسَانَ الْوَاسِطِيِّ، وَ عَلَيَّ بْنُ
سَلَمَةَ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ سَلَيْمٍ
الطَّافِئِيُّ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ،
عَنْ أَبْنَ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا
مَرَ أَحَدُكُمْ بِحَاجَةٍ، فَلْيَأْكُلْ، وَلَا يَتَحَاجَدْ
خُسْنَةً.

تخریج: [إسناد ضعيف] أخرجه الترمذی، البیع، باب ماجاء في الرخصة في أكل الشمرة للملار بها، ح: ۱۲۸۷ من حديث يحيى الطافھي به نحو المعنى، وقال: غریب ، وطعن فيه يحيى بن معین وغیره، وقال البخاری: يحيى بن سلیم یروی أحادیث عن عبیدالله، یهم فيها (هـ: ۹/ ۳۵۹)، وقال النسائی: لیس به بأس وهو منکر الحديث عن عبیدالله بن عمر قلت: هو ضعیف الحديث عن عبیدالله، وحسن الحديث عن غیر عبیدالله، وصحیح الحديث فی روایة الحمیدی عنه عن غیر عبیدالله، وهو أعدل الأقوال فیه، وأخرج الیھیقی بإسناد قوی عن عمر قال: من مر منکم بحاطئ فیا کل فی بطنه ولا یتھذل خینةً وقال: صحیح بإسناده جمیعاً ، وراجعت الفتح: ۹۰/۵.

Comments:

- The fruit from the orchard of someone may be eaten during hard times only to ward off hunger.
- Picking more than one's need from the fruit of someone's garden and to carry some away after eating it is not allowed, rather it will be an act of stealing.
- If the value of the stolen property is equal to a quarter of a Dinâr (approximately one gram gold), then the hand of the thief is to be cut off. (See *Hadith*: 2585)

Chapter 68. The Prohibition Of Taking Something Without The Permission Of The Owner

2302. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ stood up and said: "No one of you should milk from the livestock of another man without his permission. Would anyone of you like someone to break into his storeroom and take his food? The udders of their livestock store food for them, so none of you should milk the livestock of another man without his permission." (*Sahih*)

(المعجم (٦٨) - باب النهي أن يصيّب منها شيئاً إلا بإذن صاحبها (التحفة (٦٨)

٢٣٠٢ - حَدَّثَنَا مُحَمَّدُ [بْنُ] رَمْحَقَ قَالَ: أَبْيَانًا الْيَثُورُ بْنُ سَعْدٍ عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ قَامَ فَقَالَ: «لَا يَحْلِمُنَّ أَحَدُكُمْ مَاشِيَةً رَجُلٌ يَغْتَرِي إِذْنَهُ، أَيُحِبُّ أَحَدُكُمْ أَنْ تُؤْتِيَ مَشْرِبَتَهُ فَيُكْسِرَ بَابَ خَزَاتَهُ، فَيَسْتَلِ طَعَامَهُ؟ فَإِنَّمَا تَخْرُنُ لَهُمْ ضُرُوعُ مَوَاشِيهِمْ أَطْعَمَاهُمْ. فَلَا يَحْلِمُنَّ أَحَدُكُمْ مَاشِيَةً امْرِئٌ يَغْتَرِي إِذْنَهُ».

تخریج: أخرجه مسلم، باب تحريم حلب الماشية بغير إذن مالكها، ح: ١٧٢٦ عن محمد بن رمح به.

Comments:

- The important matters of daily life should be explained in the sermon.
- The sermon should be delivered while standing.
- The examples should be given for the explanation of the issue. It is prohibited to milk an animal without the permission of its owner.

2303. Abu Hurairah said: "While we were with the Messenger of Allâh ﷺ on a journey, we saw some camels with their udders tied, among some thorny trees. We rushed towards it, but the

٢٣٠٣ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ بَشْرٍ بْنِ مَنْصُورٍ: حَدَّثَنَا عُمَرُ بْنُ عَلَيٍّ، عَنْ حَاجَاجَ، عَنْ سَلِيلِ بْنِ عَبْدِ اللَّهِ الطَّهْوَيِّ، عَنْ ذُهَيْلِ بْنِ عَوْفٍ بْنِ شَمَائِخِ الطَّهْوَيِّ: حَدَّثَنَا أَبُو هُرَيْرَةَ

Messenger of Allâh ﷺ called us and we came back to him. He said: "These camels belong to a family of Muslims, and this is their support (and blessing) after Allâh. Would you be happy if you went back to your vessels and found that what was in them had been taken away? Do you think that is fair?" They said: 'No.' He said: 'This is like that.' We said: 'What do you think if we are in need of food and drink?' He said: 'Eat but do not carry any away; drink but do not carry any away.'" (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أحمد: ٤٠٥ من طريق حجاج بن أرطاة به، والحديث ضعفه البخاري، والبصیري * الحجاج قدم، ح: ٤٩٦، ١١٢٩، وسلیط، وذهیل مجھولان كما في التعریف.

Chapter 69. Keeping Livestock

2304. It was narrated from Umm Hâni' that the Prophet ﷺ said to her: "Keep sheep, for in them is blessing." (*Sahih*)

تخریج: [إسناده صحيح] أخرجه الخطیب: ١١/٤ من حديث هشام به بلفظ: اتخذوا ، وصححه البصیري، وله طریق آخر عند أحمد: ٦/٣٤٣، وفيه من لم يعرفه الهیشمي: ٤/٦٦.

2305. It was narrated that 'Urwah Al-Bâriqi said in a *Marfu'*^[١] report: "Camels are the pride of their owners, and sheep are a blessing, and goodness is tied to the forelocks of horses until the Day of Resurrection." (*Sahih*)

قال: يَئِنَّا نَهْنُ مَعَ رَسُولِ اللَّهِ ﷺ فِي سَفَرٍ، إِذْ رَأَيْنَا إِبْلًا مَضْرُورًا بِعَضَّاً وَالشَّجَرَ. فَقَبَّلَاهَا فَنَادَاهَا رَسُولُ اللَّهِ ﷺ. فَرَجَعْنَا إِلَيْهِ. فَقَالَ: «إِنَّ هَذِهِ الْإِبْلَ لِأَهْلِ بَيْتٍ مِنَ الْمُسْلِمِينَ. هُوَ قُوتُهُمْ [وَيُمْنَهُمْ] بَعْدَ اللَّهِ أَيْسُرُكُمْ لَوْ رَجَعْتُمْ إِلَى مَزَارِدِكُمْ فَوَجَدْتُمْ مَا فِيهَا قَدْ ذُهِبَ بِهِ؟ أَتَرَوْنَ ذَلِكَ عَدْلًا؟» قَالُوا: لَا. قَالَ: «فَإِنَّ هَذَا كَذِيلَكَ» قَوْنَا: أَفَرَأَيْتَ إِنْ احْتَجَنَا إِلَى الطَّعَامِ وَالشَّرَابِ؟ فَقَالَ: «كُلُّ وَلَا تَحْمِلُ. وَاسْرَبْ وَلَا تَعْجِلُ».

(المعجم ٦٩) - بَابُ اتْخَاذِ الْمَاشِيَةِ
(التحفة ٦٩)

٢٣٠٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعَ عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ أَمَّ هَانِجَةَ أَنَّ النَّبِيَّ ﷺ قَالَ لَهَا: «اتْخِذِي غَنَّمًا، فَإِنْ فِيهَا بَرَّكَةً».

تخریج: [إسناده صحيح] أخرجه الخطیب: ١١/٤ من حديث هشام به بلفظ: اتخذوا ، وصححه البصیري، وله طریق آخر عند أحمد: ٦/٣٤٣، وفيه من لم يعرفه الهیشمي: ٤/٦٦.

٢٣٠٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ ثُمَيرٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ حُصَيْنِ، عَنْ عَامِرٍ، عَنْ عُرْوَةَ الْبَارِقِيِّ، يَرْفَعُهُ قَالَ: «الْإِبْلُ عَزْ لِأَهْلِهَا. وَالْغَنَمُ بَرَّكَةً. وَالْخَيْرُ مَعْقُودٌ فِي تَوَاصِي الْخَيْلِ إِلَى يَوْمِ الْقِيَامَةِ».

[١] Meaning, he attributed it to the Prophet ﷺ.

تخریج: أخرجه البخاری، الجہاد والسیر، باب الخیل معقود فی نواصیها الخیر إلی يوم القيمة، ح ۳۱۱۹، ۲۸۵۰ وغیرهما، ومسلم، الإمارة، باب فضیلة الخیل وأن الخیر معقود بنواصیها، ح ۱۸۷۳ عن محمد بن عبد الله بن نعیر به، وقال البوصیری: هذا إسناد صحيح على شرط الشیخین وقد احتج بما يصحیح رواته.

Comments:

- There are enormous benefits of a camel. It is still highly important, particularly in the desert territories.
- The goats bear more kids and the kids grow faster; and also they eat any type of fodder and tree leaves, etc. Therefore, they prove to be the source of blessing.
- The blessing of horses is interpreted with 'reward and war spoils' in another *Hadith*; i.e. they work for *Jihâd*. (See *Sahîh Al-Bukhârî*: 2852).
- Breeding and keeping animals is a source of lawful earning.

2306. It was narrated from Ibn 'Umar ﷺ that the Messenger of Allâh ﷺ said: "Sheep are among the animals of Paradise." (*Da'if*)

٢٣٠٦ - حَدَّثَنَا عِصْمَةُ بْنُ الْفَضْلِ الْيَسَابُرِيُّ، وَمُحَمَّدُ بْنُ فِرَاسٍ، أَبُو هُرَيْرَةَ الصَّدِيرِيُّ. قَالَ: حَدَّثَنَا حَرَمَيُّ بْنُ عُمَارَةَ: حَدَّثَنَا زَرْبَيُّ، إِنَّمَا مَسْجِدُ هَشَامَ بْنِ حَسَانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سَيِّدِينَ، عَنْ أَبْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّاةُ مِنْ دَوَابِ الْجَنَّةِ».

تخریج: [إسناده ضعیف جدًا] أخرجه ابن عدی في الكامل: ۱۰۹۴ / ۳ من حديث عصمة به، وضعفه ابن الجوزي في الواهیات: ۱۷۴ / ۲، ح ۱۱۰۲، والبوصیری، وقال: زبی متفق علیه ضعفه ، وله طريق آخر مظلم، عند الخطیب: ۴۳۵ / ۷ .

Comments:

- It means it is a lawful animal. Its meat and milk is benefiting. Therefore, the goats should be bred and kept as livestock, and their meat and milk should be consumed.
- It may also mean that some of these animals are slaughtered and offered in the Name of Allâh and sacrificed at the occasion of '*Eid*'; and these actions become a source of achieving Paradise.
- One narrator in the chain of this *Hadith*, Zarbi bin 'Abdullâh, is Weak, and Imâm Albâni did not mention this *Hadith* in *Da'if Ibn Mâjah*. Therefore, its benefits have been mentioned. [I would like to say: This *Hadith* is authentic; therefore Shaikh Albâni did not mention it in *Da'if Ibn Mâjah*; but he mentioned it to be authentic in *Sahîhul-Jâmi As-Saghir wa Ziyâdatuh*: 3619 and also in *Silsilatul-Ahâdîthus As-Sâhihah*: 1128 – Usmani]

2307. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ commanded the rich to keep sheep, and he commanded the poor to keep chickens, and he said: 'When the rich keep chickens, then Allâh will give permission for the town to be destroyed.'" (*Maudu'*)

٢٣٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ : حَدَّثَنَا عُثْمَانُ بْنُ عَبْدِ الرَّحْمَنِ : حَدَّثَنَا عَلَيُّ بْنُ عُرْوَةَ، عَنِ الْمَقْبِرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ : أَمَرَ رَسُولُ اللَّهِ ﷺ الْأَغْنِيَاءَ بِاتْخَادِ الْعَنْمَ وَأَمَرَ الْفُقَرَاءَ بِاتْخَادِ الدَّجَاجِ . وَقَالَ : «عِنْدَ اتْخَادِ الْأَغْنِيَاءِ الدَّجَاجَ، يَأْذَنُ اللَّهُ بِهِلَاكِ الْقُرْيَ» .

تخریج: [إسناده موضوع] أخرجه أبوسعید بن الأعرابی في المعجم من طريق عثمان بن عبد الرحمن الحرانی به، وقال البوصیری: هذا إسناد ضعیف، علی بن عروة ترکوه، وقال ابن حبان: یضع الحديث ، وقال الحافظ في التقریب: متروک وله لون آخر عند ابن الجوزی في الموضوعات، أخرجه العقیلی من طريق آخر فيه کذاب ومتروک .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

13. The Chapters On Rulings

(المعجم ١٣) أبواب الأحكام
(التحفة ١١)

Chapter 1. Mention Of Judges

(المعجم ١) - باب ذكر القضاة
(التحفة ١)

2308. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever is appointed judge between the people, he has been slaughtered without a knife." (Hasan)

٢٣٠٨ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُعْلَى بْنُ مَتْصُورٍ، عَنْ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ، عَنْ عُתْمَانَ بْنِ مُحَمَّدٍ، عَنْ الْمُقْبَرِيِّ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ جَعَلَ قاضِيًّا بَيْنَ النَّاسِ، فَقَدْ دُبَحَ بِغَيْرِ سَكِينٍ».

تخریج: [إسناده حسن] أخرجه أبو داود، القضاة، باب: في طلب القضاء، ح ٣٥٧٢: من حديث عبدالله بن جعفر به، وصححه الحاکم: (تخریج الأحكام: ٩١/٤)، والنہی، والعرابی، (تخریج الأحكام: ٣٦)، ولہ شواهد.

Comments:

- Judging people's disputes and making the right decisions is an important responsibility, yet it is a very sensitive one. The right decisions are a guarantor for permanent peace and tranquility in society, whereas the consequences of wrong decisions appear in the form of anarchy and mischief.
- 'Has been slaughtered without a knife' is an indication towards the sensitivity of its post, and the difficulties in the performance of this duty. Despite this, the presence of this system and the position of a judge in the society are necessary. Therefore he who has this ability, should accept this responsibility and should discharge this duty with justice as required.

2309. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: "Whoever asks to be appointed a judge, will be entrusted to himself, but whoever is forced to accept the position, an

٢٣٠٩ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ ابْنُ إِسْمَاعِيلَ. قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْرَائِيلُ، عَنْ عَبْدِ الْأَعْلَى، عَنْ بِلَالِ بْنِ أَبِي مُوسَى، عَنْ أَبِي مَالِكٍ قَالَ: قَالَ رَسُولُ

angel will come down to him and guide him.''" (*Da'if*)

الله ﷺ: «مَنْ سَأَلَ الْقَضَاءَ وُكِلَ إِلَيْهِ نَفْسِهِ.
وَمَنْ جُرِّبَ عَلَيْهِ نَزَلَ إِلَيْهِ مَلْكُ فَسَدِّدُهُ».

تخریج: [إسناده ضعیف] آخرجه أبو داود، القضاة، باب في طلب القضاة والتسريع إليه، ح: ٢٥٧٨ من حديث إسرائيل به، وأخرجه الترمذی، ح: ١٣٢٣، وله طريق آخر عند الترمذی، ح: ١٣٢٤، وحسنه، وفي الطريقين عبد الأعلى التعلبی، وقدم حالت، ح: ١٥٥٤.

2310. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ sent me to Yemen. I said: 'O Messenger of Allâh, you are sending me to judge between them while I am a young man, and I do not know how to judge.' He struck me on the chest with his hand and said: 'O Allâh, guide his heart and make his tongue steadfast.' And after that I never doubted in passing judgment between two people." (*Da'if*)

٢٣١٠ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا يَعْلَى
وَأَبُو مَعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَمْرُو بْنِ
مُرْرَةَ، عَنْ أَبِي الْبَخْرِيِّ، عَنْ عَلَيٍ قَالَ:
بَعْثَتِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. قَلَّتْ: يَا
رَسُولَ اللَّهِ تَبَعَّثَنِي وَأَنَا شَابٌ أَطْبَصِي بِيَهُمْ،
وَلَا أَذْرِي مَا الْقَضَاءُ؟ قَالَ، فَضَرَبَ يَدَهُ فِي
صَدْرِي. ثُمَّ قَالَ: «اللَّهُمَّ اهْدِ قَلْبَهُ وَبَثِّ
لِسَانَهُ» قَالَ: فَمَا شَكِّتُ بَعْدَ فِي قَضَاءِ بَيْنَ
اثْنَيْنِ.

تخریج: [إسناده ضعیف] * أبوالبختري سعید بن فیروز لم یسمع من علی، ولم یدركه قاله أبوحاتم الرازی، فالسند متقطع، وله شاهد عند أبي داود، ح: ٤٥٨٤؛ حسنہ الترمذی، ح: ١٣٣١، وصححه الحاکم، والذهبی * وفيه حنش بن المعتمر ضعفه الجمهور.

Comments:

- If an individual feels that he/she does not have the ability to discharge these obligations which are being assigned to him/her, then the person has the right to refuse the acceptance of the post.
- It will not be regarded as disobedience, to tell about one's weakness or difficulties, to one's elderly peer or to a person in charge.

Chapter 2. Emphatic Prohibition Against Injustice And Bribery

2311. It was narrated that 'Abdullâh said: "The Messenger of Allâh ﷺ said: 'There is no judge who judges between the people but on the Day of Resurrection an angel will come

(المعجم ٢) - بَابُ التَّغْلِيظِ فِي الْحِيفِ
وَالرِّشْوَةِ (التحفة ٢)

٢٣١١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ حَلَّادِ الْبَاهْلِيِّ:
حَدَّثَنَا يَحْيَى بْنُ سَعِيدِ الْقَطَانَ: حَدَّثَنَا مُجَالِدُ
عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «مَا مِنْ حَاكِمٍ يَحْكُمُ

and take hold of the back of his head and raise his head towards the sky and if it said: "Throw him," he will throw him into an abyss the depth of forty autumns (years).'" (Da'if)

تخریج: [إسناده ضعیف] أخرجه أحمد: ٤٣٠ عن يحيیٰ به، وانظر، ح: ١١ لعلته، وضعفه البوصيري.

2312. It was narrated from 'Abdullâh bin Abu Awfa that the Messenger of Allâh ﷺ said: "Allâh is with the judge so long as he is not unjust, but if he rules unjustly, He entrusts him to himself." (Hasan)

بَيْنَ النَّاسِ إِلَّا جَاءَ يَوْمَ الْقِيَامَةِ، وَمَلَكُ الْأَخْدُونُ يَقْنَاعُهُ. ثُمَّ يَرْفَعُ رَأْسَهُ إِلَى السَّمَاءِ. فَإِنْ قَاتَ اللَّهُ أَلْقَاهُ فِي مَهْوَاةِ أَرْبَعينَ خَرِيفًا.

٢٣١٢ - حَدَّثَنَا أَخْمَدُ بْنُ سَيَّانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ يَلَالٍ، عَنْ عُمَرَانَ الْقَطَّانَ، عَنْ حُسْنَيْنِ، يَعْنِي ابْنَ عِمْرَانَ، عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أُوفَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ مَعَ الْقَاضِيِّ، مَا لَمْ يَبْعِرْ. فَإِذَا جَازَ وَكَلَهُ إِلَى نَفْسِهِ».

تخریج: [إسناده حسن] أخرجه الطبراني من طريقين عن محمد بن يلال به، كما في تهذيب الكمال (طبع: ٤٥٨/٦)، وأخرجه ابن عدي: ٢١٤٥ عن ابن صاعد عن أحمد بن سنان القطان به، إلا أنه قال: حسين المعلم ، ومن طريقه أخرجه البيهقي: ٨٨/١٠، والصواب: حسين بن عمران دون المعلم، وأخرجه الترمذى، ح: ١٣٣٠، والبيهقي وغيرهما من حديث عمرو بن عاصم ثنا عمران القطان عن الشيباني عن ابن أبي أوفى به، ولم يكن في السندي حسيناً، وقال الترمذى: غريب ، وصححه ابن حبان(موارد)، ح: ١٥٤٠ ، والحاكم: ٩٣/٤ ، والذهبي.

Comments:

If a person has the intention of performing good work, he gets help and power from Allâh. Similarly, if a judge wants to make a correct decision, then Allâh guides him, and it becomes easy for him to find the truth. Despite having a good intention, if a mistake occurs then this mistake is forgiven.

2313. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "The curse of Allâh is upon the one who offers a bribe and the one who takes it." (Hasan)

٢٣١٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا ابْنُ أَبِي ذِئْبٍ، عَنْ حَالَيِّ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي سَلَمَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَعْنَةُ اللَّهِ عَلَى الرَّاشِيِّ وَالْمُرْتَشِيِّ».

تخریج: [إسناده حسن] أخرجه أبو داود، القضاة، باب: في كراهة الرشوة، ح: ٣٥٨٠ من

Hadith ibn Abi Dathib, reported by al-Tirmidhi, no. 1337, and the judge: no. 103, 102, and al-Zuhri, and ibn al-Jawarid, no. 586.

Comments:

The dishonesty of bribery occurs when a person despite being wrong, wants the decision to be made in his favor; thus the one who bribes, deprives a rightful person of his right and also makes the judge sinful. This twofold sin deprives him of the mercy of Allâh.

Chapter 3. When The Judge Does His Best (To Reach A Verdict) And Gets It Right

2314. It was narrated from 'Amr bin 'Âs that he heard the Messenger of Allâh ﷺ say: "When the judge passes a judgment and does his best and gets it right, he will have two rewards, and if he passes a judgement and does his best and gets it wrong, he will have one reward." (*Sahih*)

Yazid (one of the narrators) said: "So I narrated it to Abu Bakr bin 'Amr bin Hazm. He said: 'This is how it was narrated to me by Abu Salamah from Abu Hurairah.'"

تخريج: أخرجه البخاري، الاعتصام بالكتاب والسنّة، باب أجر الحاكم إذا اجتهد فأصاب أو أخطأ، ح: ٧٣٥٢ من حديث ابن الهاد به، ومسلم، الأقضية، باب بيان أجر الحاكم إذا اجتهد فأصاب أو أخطأ، ح: ١٧١٦ من حديث الدراوردي به.

Comments:

- Literally *Ijtihâd* means to strive hard, and in this context it is to pay full due attention and strive hard with the utmost sincerity, in the light of the proofs and evidences, for giving the correct decision concerning the issue brought forward. It is the duty of the person who will make the decision that he tries his best to make the correct decision.
- If the later generation comes across a mistake that a scholar may have made in adopting a view about an issue, then they should act according to their own research; and they should have a good opinion about the scholar who made the mistake, that he did not intentionally judge the issue incorrectly.

(المعجم ٣) - بابُ الْحَاكِمِ يَجْتَهِدُ فَيُصْبِبُ الْحَقَّ (التحفة ٣)

٢٣١٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا عَبْدُ العَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوِرِدِيُّ: حَدَّثَنَا يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ الْهَادِي، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْبِيِّ، عَنْ بُشَّرٍ بْنِ سَعِيدٍ، عَنْ أَبِي قَيْسٍ مَوْلَى عَمْرُو بْنِ الْعَاصِ، عَنْ عَمْرُو بْنِ الْعَاصِ أَنَّهُ سَمِعَ رَسُولَ اللهِ ﷺ يَقُولُ: «إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ فَأَصَابَ فَلَهُ أَجْرٌ. وَإِذَا حَكَمَ فَاجْتَهَدَ فَأَخْطَأَ فَلَهُ أَجْرٌ».

فَالَّذِي يَزِيدُ: فَحَدَّثَنِي أَبَا بَكْرٍ بْنَ عَمْرُو أَبْنَ حَزْمٍ. فَقَالَ: هَكَذَا حَدَّثَنِي أَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ.

2315. Abu Hâshim said: "Were it not for the *Hadîth* of Ibn Burâîdah from his father, from the Prophet ﷺ who said: 'Judges are of three types, two of whom will be in Hell and one will be in Paradise. The man who knows the truth and rules in accordance with it, will be in Paradise. The man who passes judgment on the people in ignorance will be in Hell, and the man who is unjust in judgment will be in Hell' — we would have said that if the judge does his best he will be in Paradise." (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أبو داود، القضاء، باب: في القاضی يخطىء، ح: ٣٧٣ . من حدیث خلف به، وله شاهد عند الطبرانی (مجمع: ٤/١٩٣).

Comments:

- a. It is incorrect to give a decision after a minor hearing without the proper investigation in order to verify the truth.
- b. When it is certain that such and such party is in the right, then giving a decision in favor of the other party is injustice. Its chastisement is Hell. This injustice may sometimes give a temporary, worldly benefit and this type of benefit is a part of bribery, which results in a curse. (See *Hadîth*: 2313)

Chapter 4. The Judge Should Not Pass A Judgement When He Is Angry

2316. It was narrated from 'Abdul-Malik bin 'Umair that he heard 'Abdur-Rahmân bin Abu Bakrah (narrate) from his father that the Messenger of Allâh ﷺ said: "Let the judge (*Qâdi*) not pass a judgment when he is angry." (*Sahîh*)

In his narration, (one of the narrators) Hishâm said: "The judge (ruler) should not judge between two people when he is angry."

٢٣١٥ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوْبَةَ: حَدَّثَنَا خَلْفُ بْنُ خَلِيفَةَ: حَدَّثَنَا أَبُو هَاشِمٍ؛ قَالَ: لَوْلَا حَدِيثُ ابْنِ بُرْيَدَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «الْقُضَاءُ ثَلَاثَةُ أُشْكَانٌ فِي النَّارِ، وَوَاحِدٌ فِي الْجَنَّةِ». رَجُلٌ عَلِمَ الْحَقَّ فَقَضَى بِهِ فَهُوَ فِي الْجَنَّةِ. وَرَجُلٌ فَطَنَ النَّاسَ عَلَى جَهْلِ فَهُوَ فِي النَّارِ. وَرَجُلٌ جَازَ فِي الْحَكْمِ فَهُوَ فِي النَّارِ». لَقُلْنَا: إِنَّ الْقَاضِيَ إِذَا اجْتَهَدَ فَهُوَ فِي الْجَنَّةِ.

(المعجم ٤) - بَابٌ: لَا يَحْكُمُ الْحَاكُمُ وَهُوَ عَصْبَانٌ (التحفة ٤)

٢٣١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَمُحَمَّدُ ابْنُ عَبْدِ اللَّهِ بْنِ بَرِيدَةَ، وَأَحْمَدُ بْنُ ثَائِتِ الْجَحَدَرِيِّ قَالُوا: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَيْهِ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنَ بْنَ أَبِي بَكْرَةَ، عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَقْضِي الْقَاضِي بَيْنَ اثْتَيْنِ وَهُوَ عَصْبَانٌ».

قَالَ هِشَامٌ، فِي حَدِيثِهِ: لَا يَنْبغي لِلْحَاكِمِ

أَنْ يَقْضِي بَيْنَ اُتْسَنِ وَهُوَ غَضِبًاً.

تخریج: أخرج البخاري، الأحكام، هل يقضي القاضي أو يفتى وهو غضبان؟، ح: ٧١٥٨،
ومسلم، الأقضية، باب كراهة قضاء القاضي وهو غضبان، ح: ١٧١٧ من حديث عبد الملك به.

Comments:

The intellectual faculty of a person does not remain stable in a state of anger; and due to sentimental factors, the reflection upon all aspects of the matter becomes almost impossible. So it is a risk, that the decision given in the state of anger may be incorrect.

Chapter 5. The Ruling Of A Judge Does Not Make What Is Forbidden Permissible Nor What Is Permissible Forbidden

2317. It was narrated from Umm Salamah that the Messenger of Allāh ﷺ said: "You refer your disputes to me and I am only human. Perhaps some of you may be more eloquent in presenting your case than others, so I rule in your favor because of what I hear from you. If I pass a judgment in favor of one of you that detracts from his brother's rights, then he should not take it, because it is a piece of fire that is given to him which he will bring forth on the Day of Resurrection." (*Sahih*)

(المعجم ٥) - باب قضية الحكم لا تجعل حراماً ولا تحرّم حلالاً (الصفحة ٥)

٢٣١٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَعْبٌ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، عَنْ زَيْنَبَ بْنِتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّكُمْ تَحْصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ. وَلَعَلَّ بِعَذَابِكُمْ أَنْ يَكُونُ الْأَخْرَى بِحُجَّتِهِ مِنْ بَعْضِهِ. وَإِنَّمَا أَفْضِي لَكُمْ عَلَى تَحْمِيلِ مِمَّا أَسْمَعْتُكُمْ. فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئاً، فَلَا يَأْخُذُهُ. فَإِنَّمَا أَطْعَمْتُ لَهُ قطْعَةً مِنَ النَّارِ. يَأْتِي بِهَا يَوْمَ الْقِيَامَةِ».

تخریج: أخرج البخاري، الشهادات، باب من أقام اليمينة بعد اليمين، ح: ٢٦٨٠، ٦٩٦٧، ٧١٤٩. من حديث هشام به، ومسلم، الأقضية، باب بيان أن حكم الحاكم لا يغير الواقع، ح: ١٧١٣ عن ابن أبي شيبة به.

Comments:

In the light of this *Hadīth* the scholars formed a rule that: "the decision of a judge has an apparent implication, but does not change any true reality which is not visible"; so the decision of a judge does not make someone's thing lawful for another person. For example: If a person proves with the help of false witnesses, that his marriage took place with so-and-so woman; while in fact this was not the case, then the matrimonial relations of both man and woman will be unlawful. If he does so, he will be committing

adultery and will get punished for it on the Day of Judgement. Likewise, if a judge gives a decision that so-and-so woman is divorced; but in reality the husband did not divorce her, then the husband will not be sinful in the sight of Allâh for having matrimonial relations with his wife.

2318. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "I am only human, and some of you may be more eloquent in presenting your case than others. If I pass a judgment in his favor that detracts from his brother's rights, I am giving him a piece of fire." (*Hasan*)

٢٣١٨ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ شِرْبِيرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرُو، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّمَا أَنَا بَشَرٌ وَلَعَلَّ يَعْضُّكُمْ أَنْ يَكُونَ الْحَاجَةُ بِحُجْجَتِهِ مِنْ بَعْضٍ. فَمَنْ قَطَّعَ لَهُ مِنْ حَقٍّ أَخِيهِ قِطْعَةً. فَإِنَّمَا أَفْطَعَ لَهُ قِطْعَةً مِنَ النَّارِ.

تخریج: [إسناده حسن] أخرجه أحمـد /٢٣٢ عن محمد بن بشـر به، وصحـحه ابن حبان (موارد)، ح: ١١٩٧ من حديث محمد بن عمـرو، وقال البوصيري: هذا إسنـاد صـحـيـحـ.

Comments:

- Even the Messenger of Allâh ﷺ had the duty to act and give a decision according to the *Shari'ah*.
- 'That detracts from his brother's rights' means that a party was not given its full and deserved right, but rather some extra share mistakenly was given to the other party.

Chapter 6. One Who Claims Something That Does Not Belong To Him And Disputes About It

2319. It was narrated from Abu Dharr that he heard the Messenger of Allâh ﷺ say: "Whoever claims something that does not belong to him; he is not one of us, so let him take his place in Hell." (*Sahih*)

(المعجم ٦) - بَابُ مَنْ ادْعَى مَا لَيْسَ لَهُ وَخَاصَّمَ فِيهِ (التحفة ٦)

٢٣١٩ - حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ: أَبْنُ عَبْدِ الْوَارِثِ بْنُ سَعِيدٍ، أَبُو عَيْبَةَ: حَدَّثَنِي أَبِي عَنْ أَبِيهِ: حَدَّثَنَا الْحُسَيْنُ بْنُ ذَكْوَانَ عَنْ عَبْدِ اللَّهِ بْنِ بُرِيَّةَ قَالَ: حَدَّثَنِي يَحْيَى بْنُ يَعْمَرَ أَنَّ أَبَا الْأَسْوَدَ الدَّبَّابِيَّ حَدَّثَهُ عَنْ أَبِي ذَرَ رَضِيَ اللَّهُ تَعَالَى عَنْهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ ادْعَى مَا لَيْسَ لَهُ فَلَيْسَ مِنَّا، وَلَيَبْرُدَ مَقْعَدُهُ مِنَ النَّارِ».

تخریج: أخرجه مسلم، الإيمان، باب بيان حال إيمان من قال لأخيه المسلم ياكافرا، ح: ٦١

من حديث عبد الصمد به مطولاً.

Comments:

'Let him take his place in Hell' means that the person should be certain to go to Hell. Therefore, to avoid the chastisement of Hell, he should avoid committing this sin; and if this mistake has taken place, then he should escape Hell by restoring the right of the rightful person and by seeking sincere forgiveness.

2320. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever takes the wrongdoer's side in a dispute or supports wrongdoing, he will remain subject to the wrath of Allâh until he gives it up." (Hasan)

تخریج: [إسناده حسن] أخرجه أبو داود، القضاة، باب: في الرجل يعين على خصومة من غير أن يعلم أمرها، ح: ٣٥٩٨ من حديث مطر به.

Chapter 7. The Burden Of Proof Rests With The Plaintiff And An Oath Is Required From The One The Claim Is Made Against

2321. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "If the people were given what they claimed, some would have claimed the lives and property of men. But the one the claim is made against is obliged to swear an oath." (Sahîh)

تخریج: أخرجه البخاري، التفسير، باب «إن الذين يشترون بعهد الله ...» الخ ، ح: ٤٥٢ من حديث ابن جریح به، ومسلم، الأقضیة، باب اليمین على المدّعى عليه، ح: ١٧١١ من حديث ابن وهب به.

Comments:

When the plaintiff is unable to bring the witnesses regarding a case, then the defendant will be asked to take the oath; and he will testify by swearing

٢٣٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ ثَعْلَبَةَ بْنُ سَوَاءً: حَدَّثَنِي عَمِيْ مُحَمَّدُ بْنُ سَوَاءً، عَنْ حُسْنِيْ الْمُعَلِّمِ، عَنْ مَطْرِ الْوَرَاقِ، عَنْ نَافِعِ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَعْنَى عَلَىٰ خُصُومَةٍ يَظْلِمُ أَوْ يُعِينُ عَلَىٰ ظُلْمٍ لَمْ يَزُلْ فِي سَخْطِ اللَّهِ حَتَّىٰ يَنْزَعَ».

(المعجم ٧) - بَابُ: الْبَيِّنَةُ عَلَى الْمُدَعِّي وَالْيَمِينُ عَلَى الْمُدَعَى عَلَيْهِ (التحفة ٧)

٢٣٢١ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى الْمَضْرِبِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَبْنَانَا ابْنُ جُرَيْجَ، عَنْ ابْنِ أَبِي مُلَيْكَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يُغْطِي النَّاسَ بِذَعْوَاهُمْ، ادْعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ. وَلَكِنَ الْيَمِينُ عَلَى الْمُدَعَى عَلَيْهِ».

in the Name of Allâh to prove his claim to be true.

- b. The decision cannot be made upon the oath of the plaintiff only rather he is first required to bring a witnesses.

2322. It was narrated that Ash'ath bin Qais said: "There was a dispute between myself and a Jewish man concerning some land, and he denied me my rights so I brought him to the Prophet ﷺ. The Messenger of Allâh ﷺ said to me: 'Do you have proof?' I said: 'No.' He said to the Jews, 'Swear an oath.' I said: 'If he swears an oath he will take my property.' Then Allâh, Glorious is He, revealed: 'Verily, those who purchase a small gain at the cost of Allâh's covenant and their oaths, they shall have no portion in the Hereafter (Paradise). Neither will Allâh speak to them nor look at them on the Day of Resurrection nor will He purify them, and they shall have a painful torment.'"^[1] (*Sahih*)

٢٣٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنُ نُعَيْرٍ، وَعَلَيْهِ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكِيعٌ وَأَبُو مُعاوِيَةَ. قَالَا: حَدَّثَنَا الْأَعْمَشُ عَنْ شَفِيقِهِ عَنِ الْأَشْعَاعِيِّ بْنِ قَيْسٍ قَالَ: كَانَ بَنِي وَبَنَى رَجُلٌ مِنَ الْيَهُودِ أَرْضًا. فَجَعَلَنِي قَدَّمَةً إِلَى النَّبِيِّ ﷺ. فَقَالَ لِي رَسُولُ اللَّهِ ﷺ: «هَلْ لَكَ بَيْتٌ؟» قُلْتُ: لَا. قَالَ لِلْيَهُودِيِّ: «اَخْلَفْ» قُلْتُ: إِذَا يَحْلِفُ فِيهِ فَيَذَهِبُ بِسَالِي. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ: «إِنَّ الَّذِينَ يَشْرُكُونَ بِعَهْدِ اللَّهِ وَآتَيْنَاهُمْ ثَمَنًا قَيْلَدًا» [آل عمران: ٧٧] إِلَى آخِرِ الآيَةِ.

تخریج: أخرجه البخاري، المساقاة، باب الخصومة في البشر والقضاء فيها، ح: ٢٣٥٦، ٢٣٥٧... الخ، من حديث الأعمش به، ومسلم، الإيمان، باب وعيد من اقطع حق مسلم يعين فاجرة بالنار، ح: ١٣٨ عن ابن نمير به.

Comments:

- a. The judge is responsible to give a decision according to his best understanding of the dispute, on the basis of witnesses and evidences; he will not be sinful if he tried his best to give the right decision in the light of the Qur'ân and *Hadith*, even though the decision, mistakenly, happened to be incorrect. But if the claimant knew that the claim was false, he was then not allowed to take the other's right, although the decision had been made in his favor.
- b. 'Neither will Allâh speak to them' means He will not address him with mercy and pleasure, rather He will reckon him with anger, rebuke and admonition.

^[1] Al 'Imrân 3:77.

Chapter 8. One Who Swears A False Oath In Order To Seize Wealth Unlawfully

2323. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "Whoever swears a false oath in order to seize the wealth of a Muslim unlawfully, he will meet Allâh when He is angry with him." (*Sahih*)

(المعجم ٨) - باب من حلف على
يمين فاجرة ليقطع بها مالاً (التحفة ٨)

٢٣٢٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعَيْرٍ:
حَدَّثَنَا وَكِيعٌ وَأَبُو مُعَاوِيَةَ قَالَا: حَدَّثَنَا
الْأَعْمَشُ عَنْ شَقِيقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ عَلَى
يَمِينٍ، وَهُوَ فِيهَا فَاجِرٌ، يُقطِّعُ بِهَا مَالَ
إِمْرَىءٍ مُسْلِمٍ، لَفِي اللَّهِ وَهُوَ عَلَيْهِ غَضِيبٌ».

تخریج: [صحیح] انظر الحديث السابق.

Comments:

- False oath is a major sin, particularly when its purpose is to wrongfully take the property of another person.
- Taking the property of a non-Muslim wrongfully is also a crime, but a Muslim taking the property of another Muslim by unlawful means is an even worst sin and offence.

2324. Abu Umâmah Al-Hârithi narrated that he heard the Messenger of Allâh ﷺ say: "No man seizes the wealth of a Muslim unlawfully by means of his (false) oath, but Allâh will deny Paradise to him and will doom him to Hell." A man among the people said: "O Messenger of Allâh, even if it is something small?" He said: "Even if it is a twig of an *Arâk* tree." (*Sahih*)

٢٣٢٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
أَبُو أَسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ مُحَمَّدٍ بْنِ
كَعْبٍ أَنَّهُ سَمِعَ أَخَاهُ عَبْدَ اللَّهِ بْنَ كَعْبَ أَنَّ
أَبَا أُمَّامَةَ الْحَارِثِيَّ حَدَّثَهُ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ
يَقُولُ: «لَا يُقطِّعُ رَجُلٌ حَقَّ إِمْرَىءٍ مُسْلِمٍ
بِيَمِينِهِ، إِلَّا حَرَمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأُوْجَبَ لَهُ
النَّارَ». فَقَالَ رَجُلٌ مِنَ الْقَوْمِ: يَا رَسُولَ اللَّهِ
وَإِنْ كَانَ شَيْئاً يَسِيرَأْ؟ قَالَ: «فَإِنْ كَانَ سِوَا كَـا
مِنْ أَرْكَـا».

تخریج: أخرجه مسلم، الإيمان، باب وعيد من اقطع حق مسلم بيمين فاجرة بالنار، ح: ١٣٧ عن ابن أبي شيبة به.

Comments:

The fulfillment of human rights is also obligatory along with the fulfillment of the Rights of Allâh. Alongside *Shirk* (associating partners with Allâh) there are other sins for which Hell is prescribed for the perpetrator. He may be released after bearing sufficient punishment; and if he has good deeds

greater than the sin, he may be delivered because of it. Allâh may also forgive him with His special kindness. But the punishment for major *Shirk* and other such blasphemous deeds that brand one out of the fold of Islam is everlasting.

Chapter 9. Swearing An Oath At The Time Of Usurping People's Rights

2325. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: 'Whoever swears a false oath near this pulpit of mine, let him take his place in Hell, even if it is for a green twig.' (*Sahih*)

(المعجم ٩) - بَابُ الْيَمِينِ عِنْدَ مُقَاطِعِ
الْحُقُوقِ (الصفحة ٩)

٢٣٢٥ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا
مَرْوَانُ بْنُ مَعَاوِيَةَ، حٌ: وَحَدَّثَنَا أَخْمَدُ بْنُ
ثَابِتَ الْجَعْدِرِيُّ: حَدَّثَنَا صَفَوانُ بْنُ عَيْسَى.
قَالَا: حَدَّثَنَا هَاشِمُ بْنُ هَاشِمٍ عَنْ عَبْدِ اللَّهِ بْنِ
إِسْطَاسِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: (مَنْ حَلَفَ بِيمِينِ أُلْيَاءِ، عِنْدَ
مِنْبَرِي هَذَا، فَلَيَبُوأْ مَقْعَدَهُ مِنَ النَّارِ. وَلَوْ
عَلَى سِوَاكِ أَخْضَرَ).

تخریج: [إسناده صحيح] أخرجه أبو داود، الأیمان والندور، باب ماجاء في تعظيم اليمين عند منبر النبي ﷺ، ح: ٣٢٤٦، من حديث هاشم به، وصححه ابن حبان (موارد)، ح: ١١٩٢، وابن الجارود، ح: ٩٢٧، والحاکم: ٤/٢٩٦، ٢٩٧، والذهبی، وله شواهد كثيرة.

Comments:

- Taking an oath and demanding an oath is allowed for solving mutual disputes and differences, providing the oath is true, and the sin is only involved if the oath is false.
- Committing an offence or sin at an honored and holy place, is worse in gravity than doing so at an ordinary place, and the punishment for it will be more severe.
- The place in the mosque around the pulpit is more respected and regarded holier. The Prophet ﷺ said: "Between my house (the room of 'Âishah ؓ) and my pulpit is a garden from the Gardens of Paradise." [*Sahih Al-Bukhâri* (1195) and *Sahih Muslim* (1390)]

2326. Muhammad bin Yahya, who is Abu Yunus Al-Qawi, said: I heard Abu Salamah say: I heard Abu Hurairah say: "The Messenger of Allâh ﷺ said: 'No man or woman swears a false oath beside this pulpit, even if it is for a fresh twig, but he will be

٢٣٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَرَيْدُ
ابْنُ أَخْزَمَ . قَالَا: حَدَّثَنَا الضَّحَّاكُ بْنُ مَخْلِدٍ:
حَدَّثَنَا الْحَسَنُ بْنُ تَيْرِيدَ بْنِ فَرْوَخٍ؛ قَالَ مُحَمَّدُ
ابْنُ يَحْيَى: وَهُوَ أَبُو يُوسُفَ الْقَوِيُّ، قَالَ:
سَعَيْتُ أَبَا سَلَيْمَةَ يَقُولُ: سَوَعَتْ أَبَا هُرَيْرَةَ

doomed to Hell.''" (*Sahih*)

يَقُولُ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ: (لَا يَخْلُفُ عَنْهُ هَذَا الْمُتَبَرِّ عَبْدُهُ، وَلَا أَمَّةٌ، عَلَى يَوْمِ الْآيَةِ، وَلَوْ عَلَى سِوَاكٍ رَطِيبٍ، إِلَّا وَجَبَتْ لَهُ النَّارُ).

تخریج: [إسناده صحيح] أخرجه أحمد: ٥١٨، ٣٢٩ / ٢٤٠ عن الفسحان به، وصححه البوصيري، والمناري في الترغيب والترهيب: ٦٢٥ / ٢، والحاکم: ٢٩٧ / ٤ على شرط الشیخین، وقال النھی: صحيح.

Chapter 10. What The People Of The Book Should Be Asked To Swear By

2327. It was narrated from Barâ' bin 'Âzib that the Messenger of Allâh ﷺ called one of the Jewish scholars and said: "Swear by the One Who sent the Torah (Tawrâh) down to Musa." (*Sahih*)

(المعجم ١٠) - بَابُ بِمَا يُسْتَحْلِفُ أَهْلُ الْكِتَابِ (التحفة ١٠)

٢٣٢٧ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مَرَّةَ، عَنْ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دَعَا رَجُلًا مِنْ عُلَمَاءِ الْيَهُودِ. فَقَالَ: «أَنْتُكَ بِاللَّهِ الَّذِي أَنْزَلَ التُّورَةَ عَلَى مُوسَى».

تخریج: أخرجه مسلم، الحدود، باب رجم اليهود، أهل النمة في الزنى، ح: ١٧٠٠ من حديث أبي معاویة به، وانظر، ح: ٢٥٥٨.

2328. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said to two Jews: "Swear by Allâh Who sent the Tawrâh down to Musa, peace be upon him." (*Da'if*)

٢٣٢٨ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو أَسَامَةَ عَنْ مُجَالِدٍ: أَبْنَا نَاهِيًّا عَامِرًا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لِيَهُودَيِّينَ: «تَشَدَّدْتُمَا بِاللَّهِ الَّذِي أَنْزَلَ التُّورَةَ عَلَى مُوسَى عَلَيْهِ السَّلَامُ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب: في رجم اليهودين، ح: ٤٤٥٢ من حديث أبيأسامة به، وانظر، ح: ١١ لعلته.

Comments:

- The false oath is also forbidden in the religion of Jews and Christians. Therefore they can be asked to take an oath when needed.
- The non-Muslims should also be asked to swear only by Allâh ﷺ.
- The Jews respect the Torah and claim to have faith in it; the oath can be demanded from them according to their faith, but by using only such words that are not contrary to Islamic faith.

Chapter 11. When Two Men Claim Some Goods And Neither Of Them Has Any Proof

2329. It was narrated from Abu Hurairah that he said that two men laid claim to an animal, and neither of them had any proof, so the Prophet ﷺ commanded them to cast lots as to which of them should swear an oath. (*Da'iif*)

(المعجم ١١) - بابُ الرَّجُلَانِ يَدْعُيَا
السُّلْعَةَ وَلَيْسَ بَيْنَهُمَا بَيْنَهُ (التحفة ١١)

٢٣٢٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي
عَرْوَةَ عَنْ قَتَادَةَ، عَنْ خَلَاسٍ، عَنْ أَبِي
رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ ذَكَرَ أَنَّ رَجُلَيْنِ
أَدَّعَيَا دَائِبًا.. وَأَنَّمَا يَكُونُ بَيْنَهُمَا بَيْنَهُ فَأَمْرَاهُمَا
النَّبِيُّ ﷺ أَنْ يَسْتَهِمَا عَلَى الْيُوْمَيْنِ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأقضیة، باب الرجلین يدعیان شيئاً وليس بينهما بینة، ح: ٣٦٦٦ من حديث سعید به، انظر، ح: ٤٢٩، ١٧٥ لعلته.

Comments:

- Islamic law stipulates that the claimant should bring forward the witnesses, otherwise the defendant will take an oath.
- In the mentioned form in the *Hadith*, both parties are plaintiffs as well as defendants. Both parties have the right to swear in a situation like this. Therefore drawing lots will decide who should swear.

2330. It was narrated from Abu Musa that two men referred a dispute to the Messenger of Allâh ﷺ concerning an animal, and neither of them had proof, so he ruled that it should be divided in half. (*Hasan*)

٢٣٣٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، وَ
مُحَمَّدُ بْنُ مَعْمَرٍ، وَ زُهْرَيُّ بْنُ مُحَمَّدٍ. قَالُوا:
حَدَّثَنَا رَوْحُ بْنُ عَبَادَةَ: حَدَّثَنَا [سعید] عَنْ
قَتَادَةَ، عَنْ سَعِيدٍ بْنِ أَبِي بُرْدَةَ، عَنْ أَبِيهِ، عَنْ
أَبِي مُوسَى أَنَّ رَسُولَ اللَّهِ ﷺ أَخْصَصَ إِلَيْهِ
رَجُلَانِ، بَيْنَهُمَا دَائِبٌ.. وَلَيْسَ لِوَاحِدٍ مِنْهُمَا
بَيْنَهُمَا فَجَعَلَهَا بَيْنَهُمَا نِصْفَيْنِ.

تخریج: [حسن] أخرجه أبو داود، الأقضیة، باب الرجلین يدعیان شيئاً وليس بينهما بینة، ح: ٣٦١٣ من حديث قتادة به، رواه شيبة عن قتادة به (السنن الکبری للبیهقی: ٢٥٧/١٠)، والمسند المطبوع للإمام أحمد: ٤٠٢/٤)، وله شواهد كثيرة جداً.

Chapter 12. A Person Who Has Something Stolen, And He Finds It In The Possession Of A Man Who Bought It

2331. It was narrated from Samurah bin Jundub that the Messenger of Allâh ﷺ said: "If a man loses something, or it is stolen from him, and he finds it in the possession of a man who bought it, then he has more right to it, and the one who bought it should ask for his money back from the one who sold it to him." (Da'if)

تخریج: [إسناده ضعیف] أخرجه البیهقی: ۵۱ من حديث أبي معاویة ثنا الحجاج بن أرطاة به، وضعفه البوسیری، وانظر، ح: ۴۹۶، ۱۱۲۹، ۱۱۲۹ لعلته.

Chapter 13. Ruling On Property Damaged By Livestock

2332. It was narrated from Ibn Shihâb that Ibn Muhayyisah Al-Ansâri told him that a she-camel belonging to Barâ' used to wander free. It entered a garden belonging to some people and caused some damage. The Messenger of Allâh ﷺ was told of that, and he ruled that property was to be protected by its owners during the day, but the owners of livestock were responsible for any damage caused by their animals during the night. (*Da'if*)

Another chain from Harâm bin Muhayyisah, from Barâ' bin 'Âzib, that a she-camel belonging to the family of Barâ' damaged

(المعجم ١٢) - بَابُ مَنْ سُرِقَ لَهُ
 شيءٌ، فَوَجَدَهُ فِي يَدِ رَجُلٍ، اشْتَرَاهُ
 (التحفة ١٢)

المعجم (١٣) - بابُ الْحُكْمِ فِيمَا أَفْسَدَتِ الْمَوَاثِي (التحفةٌ (١٣

- حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحَ المُضْرِبِيُّ - ٢٣٣٢
أَبْنَائَا الْكَيْثَ بْنِ سَعْدٍ، عَنْ أَبْنِ شَهَابٍ أَنَّ أَبَنَ
مُحِيطَةَ الْأَصْبَارِيَّ أَخْبَرَهُ أَنَّ نَاقَةَ لِلْبَرَاءِ،
كَانَتْ ضَارِبَةً، دَحَّتْ فِي حَائِطٍ قَوْمًا.
فَأَفْسَدَتْ فِيهِ. فَكَلَمَ رَسُولُ اللَّهِ ﷺ فِيهَا.
فَقَضَى أَنْ حَفْظَ الْأَمْوَالِ عَلَى أَهْلِهَا بِالْتَّهَارِ.
وَعَلَى أَهْلِ الْمَوَاشِيِّ مَا أَصَابَتْ مَوَاشِيهِمْ
بِاللَّيْلِ.

حدَثَنَا الْحَسَنُ بْنُ عَلَيٍّ بْنُ عَفَانَ: حَدَّثَنَا
مَعَاوِيَةُ بْنُ هَشَامٍ، عَنْ سُقْيَانَ، عَنْ عَبْدِ اللَّهِ
بْنِ عَيْسَى، عَنْ الرَّهْرَى، عَنْ حَرَامَ بْنِ
مُحْيَصَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ نَافَةً لِآلِ

something, and the Messenger of Allâh ﷺ issued a similar ruling.

البراء أفسدَتْ شَيْئاً، فَقَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ السَّلَامُ،

تخریج: [إسناده ضعیف] أخرجه أبو داود، البيوع، باب المواشي تفسد زرع قوم، ح: ٣٥٧٠ من حديث ابن شهاب الزهرى به * الأوزاعي تابعه مالك (الموطأ: ٧٤٨، ٧٤٧ / ٢)، وغيره، ولم أجد تصريح سماع الزهرى، وانظر، ح: ٧٠٧.

Comments:

The night is for rest, and during the night the animals are kept in enclosures. Therefore, if an animal enters into the field or garden of someone during night, it will be the negligence and fault of the owner of the animal. So he will be responsible to pay for the damage. Contrary to the night, if any damage is done during the day, it will be the fault of the owner of the garden or of the farmer; and the owner of the animal will not be responsible.

Chapter 14. Ruling Concerning One Who Breaks Something

(المعجم ١٤) - بَابُ الْحُكْمِ فِيمَنْ كَسَرَ شَيْئاً (الصفحة ١٤)

2333. It was narrated that a man from Banu Suwâ'ah said: "I said to 'Aishah: 'Tell me about the character of the Messenger of Allâh ﷺ.' She said: 'Have you not read the Qur'ân: "And verily, you (O Muhammad) are on an exalted (standard of) character?"^[1] She said: 'The Messenger of Allâh ﷺ was with his Companions, and I made some food for him, and Hafsa made some food for him, but Hafsa got there before me. So I said to the slave girl: "Overturn her bowl." She went and caught up with her, and she was about to put (the bowl) in front of the Messenger of Allâh ﷺ. She overturned it and the bowl broke, scattering the food. The Messenger of Allâh ﷺ

٢٣٣٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ قَيْسِ بْنِ وَهْبٍ، عَنْ رَجُلٍ مِنْ بَنْيِ شُوَّاةَ قَالَ: قُلْتُ لِعَائِشَةَ: أَخْبِرْنِي عَنْ خُلُقِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ السَّلَامُ. قَالَتْ: أَوْ مَا تَقْرَأُ الْقُرْآنَ: «وَإِنَّكَ لَعَلَىٰ خُلُقٍ عَظِيمٍ»؟ [القلم: ٤] قَالَتْ: كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ السَّلَامُ أَصْحَابِهِ فَصَعَّبَتْ لَهُ طَعَاماً. وَصَعَّبَتْ لَهُ حَفْصَةً طَعَاماً. قَالَتْ: فَسَبَقْتُنِي حَفْصَةً. قُلْتُ لِلْجَارِيَةِ: اغْلِقِي فَأَفْخُضِي قَصْعَتَهَا. فَلَعِنْتُهَا وَقَدْ هَمَتْ أَنْ تَصْبَحَ بَيْنَ يَدَيِّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ السَّلَامُ فَأَكْفَانَتُهَا فَأَنْكَسَرَتِ الْقَصْعَةُ، وَانْسَرَ الطَّعَامُ. قَالَتْ: فَجَمَعَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَلَيْهِ السَّلَامُ وَمَا فِيهَا مِنْ الطَّعَامِ عَلَى النَّطْعِ. فَأَكَلُوا. ثُمَّ بَعَثَ بَعْصَعَتِي. فَدَفَعَهَا إِلَى حَفْصَةَ.

[1] Al-Qalam 68:4.

gathered the pieces and the food on the leather mat, and they ate. Then he sent for my bowl and gave it to Hafsah, and said: "Take this pot in place of your pot, and eat what is in it." And I did not see any expression of anger on the face of the Messenger of Allâh ﷺ. (Da'if)

تَخْرِيجٌ: [إِسْنَادٌ ضَعِيفٌ] أَخْرَجَهُ أَبُو دَاوُدُ، الْبَيْوُعُ، بَابٌ: فِيمَنْ أَفْسَدَ شَيْئًا يَغْرِمُ مَثَلَهُ، ح: ٢١٤، ٢١٥، وَضَعَفَهُ الْبَوْصِيرِيُّ: لِجَهَالَةِ رَجُلٍ مِّنْ بَنِي سُوَاءٍ.

2334. It was narrated that Anas bin Mâlik said: "The Prophet ﷺ was with one of the Mothers of the Believers (his wives) and another (wife) sent a bowl containing food. She (the first wife) struck the hand of the Messenger and the bowl fell and broke. The Messenger of Allâh ﷺ took the two pieces and put them back together, then he started gathering up the food and putting it in (the bowl). He said: 'Your mother was jealous. Eat.' So they ate, and she (the wife who broke the bowl) brought the bowl that was in her house and gave the intact bowl to the Messenger, who left the broken bowl in the house of the one who broke it." (Sahih)

تَخْرِيجٌ: [إِسْنَادٌ صَحِيفٌ] أَخْرَجَهُ أَبُو دَاوُدُ، الْبَيْوُعُ، بَابٌ: فِيمَنْ أَفْسَدَ شَيْئًا يَغْرِمُ مَثَلَهُ، ح: ٣٥٦٧، وَالنَّسَائِيُّ، ح: ٣٤٠٧، وَمُحَمَّدٌ بْنُ الْمُشْنِيٍّ بْنُ عَمِّيْرٍ، وَأَخْرَجَهُ الْبَخَارِيُّ، وَالْتَّرمِذِيُّ وَغَيْرُهُمَا مِّنْ طَرْقَةِ حَمِيدٍ بْنِ عَوْنَانَ، وَقَالَ التَّرمِذِيُّ، ح: ١٣٥٩، حَسْنٌ صَحِيفٌ، وَتَابَعَهُ ثَابِتُ الْبَنَانِيُّ عَنْ أَنْسٍ بْنِ مَالِكٍ قَالَ: كَانَ النَّبِيُّ ﷺ عِنْدَ إِحْدَى أُمَّهَاتِ الْمُؤْمِنِينَ فَأَرْسَلَهُ أُخْرَى بِقَضَيَّةٍ فِيهَا طَعَامٌ فَضَرِبَتْ يَدَ الرَّسُولِ فَسَقَطَتِ الْقَضَيَّةُ فَانْكَسَرَتْ فَأَخْدَى الرَّسُولُ اللَّهُ ﷺ الْكِسْرَيْنِ فَقَضَمَ إِحْدَاهُمَا إِلَى الْأُخْرَى فَجَعَلَ يَجْمَعُ فِيهَا الطَّعَامَ وَيَقُولُ: «غَارَثَ أَنْتُمْ كُلُّكُمْ فَأَكُلُّوكُمْ حَتَّى جَاءَكُمْ بِقَصْعَتِهَا الَّتِي فِي تَبَيْهَا فَلَدَعَ الْقَصْعَةَ الصَّحِيفَةَ إِلَى الرَّسُولِ وَرَرَكَ الْمُكْسُورَةَ فِي بَيْتِ الَّتِي كَسَرَهَا».

«خُلُدُوا ظَرْفًا مَكَانَ ظَرْفِكُمْ وَكُلُّوْ مَا فِيهَا»
قَالَتْ: فَمَا رَأَيْتُ ذَلِكَ فِي وَجْهِ رَسُولِ اللَّهِ ﷺ .

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Chapter 15. A Man Fixing Wood To The Wall Of His Neighbor

2335. It was narrated that 'Abdur-Rahmân Al-A'raj said: "I heard Abu Hurairah narrating that the Prophet ﷺ said: 'When anyone of you asks his neighbor for permission to fix a piece of wood to his wall, he should not refuse him.' When Abu Hurairah told them this, they lowered their heads, and when he saw them he said: 'Why do I see you turning away from it? By Allâh, I will force you to accept it.'" (*Sahih*)

(المعجم ١٥) - باب الرَّجُل يَضْعُفُ خَشَبَةً
عَلَى جِدَارِ جَارِهِ (التحفة ١٥)

٢٣٣٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدُ
ابْنُ الصَّبَّاحِ . قَالَ: حَدَّثَنَا سُفيَانُ بْنُ عَيْنَةَ
عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ الْأَغْرِيِّ قَالَ:
سَمِعْتُ أَبَا هُرَيْرَةَ، يَتَلَقَّبُ بِهِ النَّبِيُّ ﷺ، قَالَ:
إِذَا اسْتَأْذَنَ أَحَدَكُمْ جَارُهُ أَنْ يَعْرِزَ خَشَبَةً فِي
جِدَارِهِ فَلَا يَمْتَنَعُهُ» فَلَمَّا حَدَّثُهُمْ أَبُو هُرَيْرَةَ
طَاطَّلُوا رُؤُوسَهُمْ . فَلَمَّا رَأَهُمْ قَالَ: مَا لَيِ
أَرَأْكُمْ عَنْهَا مُغَرِّضِينَ . وَاللَّهُ لَأَرْضِينَ يَهَا بَيْنَ
أَكْنَافِكُمْ .

تخریج: أخرجه البخاري، المظالم، باب لا يمنع جار جاره أن يغرس خشبَةً في جداره، ح: ٢٤٦٣ من حديث الزهرى به، ومسلم، المساقاة، باب غرز الخشبَة في جدار الجار، ح: ١٦٠٩ من حديث سفيان بن عيينة به.

Comments:

- a. Thrusting wood into the wall means, either to fix a peg, or to place a beam etc., on the wall to put a roof on it.
- b. Linguistically the Arabic text translates as: 'Keep hitting it on the shoulders' and it means whether you like it or not I shall keep telling you the rule of *Shari'ah* and you will have to act upon it.

2336. 'Ikrimah bin Salamah narrated that there were two brothers from among the sons of Mughirah. One of them swore an oath to set a slave free if the other one fixed a piece of wood to his wall. Mujammi' bin Yazid and many men from among the *Ansâr* came and said: "We bear witness that the Messenger of Allâh ﷺ said: 'None of you should refuse to let his neighbor fix a piece of wood to his wall.'" He said: 'O my brother, judgment has been

٢٣٣٦ - حَدَّثَنَا أَبُو يَثْرَى، بْكُرٌ بْنُ خَلَفٍ:
حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ أَبْنِ جُرَيْجٍ، عَنْ
عُمَرِ بْنِ دِينَارٍ أَنَّ هِشَامَ بْنَ يَحْيَى أَخْبَرَهُ
أَنَّ عِكْرَمَةَ أَبْنَ سَلَمَةَ أَخْبَرَهُ أَنَّ أَخْوَيْنِيْنِ مِنْ
بَلْمُغِيرَةَ أَعْنَتَ أَحَدَهُمَا أَنَّ لَا يَعْرِزَ خَشَبَةً فِي
جِدَارِهِ . فَأَقْبَلَ مُجَمِّعٌ بْنُ يَزِيدَ وَرَجَالٌ كَثِيرٌ
مِنَ الْأَنْصَارِ . فَقَالُوا: نَشَهُدُ أَنَّ رَسُولَ اللَّهِ
ﷺ قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ جَارَهُ أَنْ يَعْرِزَ
خَشَبَةً فِي جِدَارِهِ» فَقَالَ: يَا أَخِي إِنَّكَ مَقْضِيٌّ

passed in your favor against me, but I have sworn an oath.' So go ahead and fix your wood to my wall."

لَكَ عَلَيْهِ. وَقَدْ حَلَفْتُ. فَاجْعَلْ أُسْطُوَانًا دُونَ حَائِطٍ، أَوْ حَدَارِيٍّ. فَاجْعَلْ عَلَيْهِ خَشْكَ.

تخریج: [إسناده ضعیف] آخرجه أحمد: ٤٧٩/٣، ٤٨٠ من حديث ابن جریح (أخیرني عمرو ابن دینار) به * عکرمة بن سلمة مجھول (تقریب)، وفیه علة أخرى، وأصل الحديث صحيح، انظر الحديث الساندة.

Comments:

- a. Taking a conditional oath about one's own thing is permissible; for example: "If I do such and such work then my slave is free."
 - b. The Companions and the *Tâbi'in* (the successors) would end their dispute by listening to a *Hadith*, and would act in the light of *Hadith*; even if the decision was against them.
 - c. One who has taken an oath, should not be forced to break it, but rather encouraged to fulfill it.

2337. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "No one of you should refuse to let his neighbor fix a piece of wood to his wall." (*Sahîh*)

٢٣٣٧ - حَدَّثَنَا حَرْمَةُ بْنُ يَحْيَىٰ : حَدَّثَنَا
 عَبْدُ اللَّهِ بْنُ وَهْبٍ : أَخْبَرَنِي أَبْنُ لَهِيَعَةَ، عَنْ
 أَبِي الْأَشْوَدِ، عَنْ عِكْرَمَةَ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ
 النَّبِيَّ ﷺ قَالَ : «لَا يَمْنَعُ أَحَدُكُمْ جَارَةً أَنْ
 يَغْرِيَ حَسَنةَ عَلَى جَدَارِهِ» .

نخريج: [صحيغ] أخرجه أحمد: ٢٥٥ من حديث ابن لهيعة به، ولم أجد تصريح سماعه، وضعفه البواصري، ولكن رواه أبويب وغيره عن عكرمة به، وله شواهد عند البخاري وغيره.

Chapter 16. When There Is A Dispute As To How Wide A Road Or Path Should Be

(المعجم ١٦) - بَابُ: إِذَا تَشَاجَرُوا فِي
قُدْرِ الطَّرِيقِ (التحفة ١٦)

2338. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Make the path seven forearms length wide." (*Sahih*)

٤٣٣٨ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا
وَكَيْعُ: حَدَّثَنَا مُتَّى بْنُ سَعِيدَ الْضَّبْعَيْعِيَّ عَنْ
فَقَادَةَ عَنْ بُشَيْرِ بْنِ كَعْبٍ، عَنْ أَبِي هُرَيْرَةَ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اجْعِلُوا الطَّرِيقَ
سَيِّدَةً أَذْرَعَ».

تخریج: [صحیح] أخرجه أبو داود، القضاة، باب: في القضاة، ح: ٣٦٣٣ من حديث المثنی به، وصححه الترمذی، ح: ١٣٥٦، وابن الجارود، ح: ١٠١٨، ولم أجد تصریح سماع

قتادة، ح: ١٧٥، وله شواهد عند مسلم، ح: ١٦١٣ وغيره.

2339. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "When you dispute concerning a path, make it seven forearms length wide." (*Sahîh*)

٢٣٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ مُحَمَّدُ
ابْنُ عَمَّرَ بْنِ هَيَّاجٍ. قَالَ: حَدَّثَنَا فَيْصَلُ:
حَدَّثَنَا سُفْيَانُ عَنْ سِمَّاٰكٍ، عَنْ عِكْرِمَةَ، عَنْ
ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا
اخْتَلَقْتُمْ فِي الظَّرِيفِ فَاجْعَلُوهُ سَبْعَةَ أَذْرُعٍ.

تخریج: [صحیح] أخرجه أحمد: ٢٤٥ من حديث سفيان الثوری به، وتابعه شريك النخعي مع عننته، وصححه البوصيري وانظر، ح: ١٧١ لعلته، وللحديث شواهد عند مسلم، ح: ١٦١٣ وغيره.

Comments:

- A forearm's length means the length from finger tips to the elbow, which is equal to one and half foot. The measure of seven forearms is equal to three yards or ten and half a feet.
- The current era is of cars, buses, trucks and other vehicles; therefore a suitable width of streets, roads and footpaths should be designed. At the time of drawing architectural plans for new settlements, the width of streets and roads must not be less than that mentioned in the *Hadîth*.

Chapter 17. One Who Builds Something On His Own Property That Harms His Neighbor

2340. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ ruled: "There should be neither harming nor reciprocating harm." (*Da'if*)

(المعجم ١٧) - بَابُ مَنْ بَنَى فِي حَقِّهِ
مَا يَضُرُّ بَجَارِهِ (الصفحة ١٧)

٢٣٤٠ - حَدَّثَنَا عَبْدُ رَبِيعٍ بْنُ خَالِدٍ التَّمِيرِيِّ،
أَبُو الْمُغَلَّسِ: حَدَّثَنَا فُضِيلُ بْنُ شَلَيْهَانَ:
حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ
يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِيتَ أَنَّ
رَسُولَ اللَّهِ ﷺ قَضَى أَنْ: لَا ضَرَرَ وَلَا
ضَرَارًا.

تخریج: [ضعیف] أخرجه عبد الله بن أحمد في زوائد المسند: ٣٢٧/٥ من حديث فضیل به، وانظر، ح: ٢٢١٣ لعلته، وله شواهد كثيرة جداً، ولم يصح منها شيء.

Comments:

- If someone tries to cause loss, hurt or annoyance, it is incorrect to retaliate with loss and annoyance, rather the arbitration of the wise and elderly, the council of arbitrators, or a religious court should be used as sources to fulfill

true rights, and to stop the person from making trouble.

- b. Many such issues that appeared after the noble Prophet ﷺ should be resolved in the light of these rules; if something causes loss to an individual, or it is a collective loss, or the public gets hurt, then this must be eliminated.

2341. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "There should be neither harming nor reciprocating harm." (*Da'if*)

٢٣٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ : حَدَّثَنَا عَبْدُ الرَّزَاقِ : أَتَبَّانَا مَعْمَرٌ عَنْ جَابِرِ الْجُعْفَرِيِّ ، عَنْ عُكْرِمَةَ ، عَنْ أَبْنِ عَيَّاشٍ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : «لَا ضَرَرَ وَلَا إِضْرَارٌ» .

تخریج: [إسناده ضعیف جداً] أخرجه أحمد: ٣١٣ / ١ عن عبدالرزاق به، وانظر، ح: ٣٥٦.
لعلته، وانظر الحديث السابق.

2342. It was narrated from Abu Sirmah that the Messenger of Allâh ﷺ said: "Whoever harms others, Allâh will harm him; and whoever causes hardship to others Allâh will cause hardship to him." (*Da'if*)

٢٣٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ : أَتَبَّانَا الْلَّيْثُ ابْنُ سَعْدٍ ، عَنْ يَحْيَىٰ بْنِ سَعْدٍ ، عَنْ مُحَمَّدٍ ابْنِ يَحْيَىٰ بْنِ حَبَّانَ ، عَنْ لُؤْلُؤَةَ ، عَنْ أَبِي صِرْمَةَ ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ : «مَنْ ضَرَّ اللَّهُ بِهِ ، وَمَنْ شَاقَ شَقَّ اللَّهُ عَلَيْهِ» .

تخریج: [إسناده ضعیف] أخرجه أبو داود، القضاة، باب: في القضاء، ح: ٣٦٣٥ من حديث الليث به، وحسنه الترمذی، ح: ١٩٤٠ * لولؤة مولاۃ الانصار وفها الترمذی، والهمشی في المجمع: ١٧٨ / ١٠، ولحدیثها شواهد كثیرة.

Comments:

- Muslims must care for each other's rest and peace, and must not try to hurt anyone.
- 'Allâh will cause hardship to him' also means He will punish him on Judgment Day and reckon him strictly. Another possible meaning is that he will get punishment for it in this life, and he will be swamped in difficulties from Allâh, and will bear losses.

Chapter 18. Two Men Who Lay Claim To A Hut

(المعجم ١٨) - بَابُ : الرَّجُلَانِ يَدْعَيَا نَحْسَ (التحفة ١٨)

2343. It was narrated from Nimrân bin Jâriyah, from his father, that some people referred a dispute to the Prophet ﷺ about a hut, so that he could judge between them. He sent Hudhaifah

٢٣٤٣ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ ، وَعَمَّارُ ابْنِ خَالِدِ الْوَاسِطِيِّ . قَالَ : حَدَّثَنَا أَبُو بَكْرٍ بْنِ عَيَّاشٍ ، عَنْ دَهْمَمَ بْنِ قُرَّانِ ، عَنْ نِمْرَانَ بْنِ جَارِيَةَ ، عَنْ أَبِيهِ أَنَّ قَوْمًا اخْتَصَمُوا إِلَيْهِ

to judge between them, and he ruled in favor of those who had the rope (with which the hut was bound together). When he went back to the Prophet ﷺ he told him (what he had done) and he said: "You did the right thing, and you did well." (*Da'if*)

فِي حُصْنٍ كَانَ يَنْهَمُ . فَبَعَثَ حُدَيْفَةَ
يَقْضِي يَنْهَمُ . فَقَضَى لِلَّذِينَ يَلْهُمُ الْقِمَطُ .
فَلَمَّا رَجَعَ إِلَى النَّبِيِّ ﷺ أَخْبَرَهُ قَالَ :
«أَصَبْتَ وَأَخْسَسْتَ» .

تخریج: [إسناده ضعیف جداً] أخرجه الطبراني في الكبير: ٢٦٠ من حديث أبي بكر بن عیاش به، وقال الدارقطني: ٢٢٨ / ٤ لم يروه غير دھشم بن قران وهو ضعیف وقد اختلف في إسناده ، وقال الحافظ في الإصابة: ١٠٤٨ ، ت: ٢١٨ / ١٠٤٨ ولا يعرف له رواية إلا من طريق دھشم ودھشم ضعیف جداً انتهى * ونمان مجھول(تقرب)، وأبوبکر بن عیاش ضعفه الجمهور، ولم يخرج عنه البخاري إلا متابعة.

Comments:

Shaikh Zuhair Shâ'waish said in the footnotes of *Da'if Ibn Mâjah*: 'Khuss is a hut made of reeds (a type of wild plant). The soft end of the reeds is on the same side of threads and strings. The leaves of the date tree and the skin are on the side of the owner and the hard and rough end is on the other side. This description tells that the claimant was wrong in claiming the ownership of the hut, because his beams were on the side of the hard and rough end.'

Chapter 19. One Who Stipulates The Condition Of *Khalâs*^[1]

2344. It was narrated from ('Uqbah bin 'Âmir or) Samurah bin Jundub that the Messenger of Allâh ﷺ said: "If a product is sold to two men, it is for the one who was first."^[2] (*Da'if*)

(One of the narrators) Abu Al-Walid said: "This *Hadith* shows that *Khalâs* is invalid."

(المعجم ١٩) - بَابُ مَنِ اشْتَرَطَ
الخَلَاصَ (التحفة ١٩)

٢٣٤٤ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ : حَدَّثَنَا أَبُو الْوَلِيدِ : حَدَّثَنَا هَمَّامٌ عَنْ قَتَادَةَ ، عَنْ الْحَسَنِ ،
عَنْ سَمْرَةَ بْنِ جُنْدُبٍ ، عَنْ النَّبِيِّ ﷺ قَالَ :
إِذَا بَيَعَ الْبَيْعَ مِنْ رَجُلَيْنِ ، فَالْبَيْعُ لِلَّأَوَّلِ .
قَالَ أَبُو الْوَلِيدِ : فِي هَذَا الْحَدِيثِ إِنْطَالُ
الخَلَاصِ .

تخریج: [ضعیف] تقدم، ح: ٢١٩٠.

[1] *Khalâs*: A condition stipulating that the seller will deliver the product when it comes into his possession.

[2] "What was sold, or, for the first of the two purchasers." (Sindi). See no. 2190 where it preceded.

Comments:

The meaning of the *Hadith* is that if a person sells an item to someone; then the seller finds another customer who is willing to pay more, and asks the seller to take the item back somehow, and sell it to the new customer; this condition is wrong, as is the second transaction. Only the first sale is correct and legally lawful.

Chapter 20. Passing Judgment By Casting Lots

2345. It was narrated from 'Imrān bin Husain that a man had six slaves, and he did not have any other wealth apart from them, and he set them free when he died. The Messenger of Allāh ﷺ divided them into groups, set two free and left four as slaves. (*Sahih*)

تخريج: أخرجه مسلم، الأيمان، باب من أعتق شركا له في عبد، ح: ١٦٦٨ من حديث أبي قلابة به.

Comments:

- a. It is unlawful to give all of one's wealth in charity at the point of death. Just one third, maximum, of the whole inheritance may be given in charity; and donating less than one third is better. (See *Hadith*: 2708).
- b. This Companion set free all the slaves while he had the right to set free only two of them. Now every slave had the right to be counted among the two who were set free. It is known from the decision of the Prophet ﷺ, that when more than one claimant has an equal right of something, then the decision will be made by drawing lots.

2346. It was narrated from Abu Hurairah that two men disputed concerning a transaction, and neither of them had proof. The Messenger of Allāh ﷺ commanded them to draw lots as to which of them should swear an oath, whether they liked it or not. (*Da'iif*)

(المعجم ٢٠) - بَابُ الْفَضَاءِ بِالْقُرْعَةِ

(التحفة ٢٠)

٢٣٤٥ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْضُوْيُّ، وَمُحَمَّدُ بْنُ الْمُشَّى. قَالَا: حَدَّثَنَا عَبْدُ الْأَعْلَمَ: حَدَّثَنَا خَالِدُ الْحَذَّاءُ، عَنْ أَبِي قَلَابَةَ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا كَانَ لَهُ سَيْتُهُ مَمْلُوكَيْنَ. لَيْسَ لَهُ مَا لَيْسَ لَهُ فَأَعْتَقَهُمْ عِنْدَ مَوْتِهِ. فَجَرَّاهُمْ رَسُولُ اللَّهِ ﷺ. فَأَعْتَقَ اثْنَيْنِ وَأَرْبَعَةَ.

تخريج: أخرجه مسلم، الأيمان، باب من أعتق شركا له في عبد، ح: ١٦٦٨ من حديث أبي قلابة به.

٢٣٤٦ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ الْعَنْكَوِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَمَ: حَدَّثَنَا سَعِيدُ، عَنْ قَتَادَةَ، عَنْ خِلَاسِيِّ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَجُلَيْنِ تَدَارَأُوا فِي بَيْتِهِ. لَيْسَ لَوْا جَدٌ مِنْهُمَا بَيْتُهُ. فَأَمْرَهُمَا رَسُولُ اللَّهِ ﷺ أَنْ يَسْتَهِمُهُمَا عَلَى الْيَمِينِ. أَحَبَا ذَلِكَ أُمُّ كَرِهَا.

تخریج: [ضعیف] تقدم، ح: ٢٣٢٩.

Comments:

- When the claimant is unable to bring the witness or his witnesses are unacceptable, then the defendant will be asked to take an oath.
- Both parties can be the claimants in the case mentioned in the *Hadith*; and both can be considered defendants as well. Now who will be the defendant and take an oath will be judged by drawing lots.

2347. It was narrated from 'Âishah that when the Prophet ﷺ traveled, he would cast lots among his wives (to decide which one would accompany him). (*Sahih*)

٢٣٤٧ - حَدَّثَنَا أُبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانٍ، عَنْ مَعْمَرٍ، عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا سَافَرَ أَقْرَعَ بَيْنَ نِسَائِهِ.

تخریج: [صحیح] تقدم، ح: ١٩٧٠.

Comments:

Allâh granted special permission to the noble Prophet ﷺ, therefore, it was not compulsory for the Prophet ﷺ to appoint turns among his wives. (See *Al-Ahzâb* 33: 51), despite that, the Prophet ﷺ would fulfill justice with them. There is a lesson in it for the nation to take the utmost care of justice among wives and children.

2348. It was narrated that Zaid bin Arqam said: "A case was brought to 'Ali bin Abu Tâlib when he was in Yemen, concerning three men who had had intercourse with a woman during one period of being free from menses. He asked two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." He asked another two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." Every time he asked two of them whether they affirmed that the child belonged to the third, they would say no. So he cast lots between them, and attributed the child to the one whose name was

٢٣٤٨ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَبْنَا عَبْدُ الرَّزَاقِ: أَبْنَا الثُّورِيِّ، عَنْ صَالِحِ الْهَمْدَانِيِّ، عَنْ الشَّعْبِيِّ، عَنْ عَبْدِ خَيْرِ الْحَاضِرِيِّ، عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: أَتَيَ عَلَيَّ ابْنُ أَبِي طَالِبٍ، وَهُوَ بِالْيَمَنِ، فِي ثَلَاثَةِ [قَدْ] وَقَعُوا عَلَى امْرَأَةٍ فِي طَهْرٍ وَاحِدٍ. فَسَأَلَ اثْتَيْنِ. فَقَالَا: أَتَقْرَآنِ لِهُذَا بِالْوَلَدِ؟ فَقَالَا: لَا. ثُمَّ سَأَلَ اثْتَيْنِ. فَقَالَا: أَتَقْرَآنِ لِهُذَا بِالْوَلَدِ؟ فَقَالَا: لَا. فَجَعَلَ كُلُّمَا سَأَلَ اثْتَيْنِ: أَتَقْرَآنِ لِهُذَا بِالْوَلَدِ؟ فَالَا: لَا. فَأَقْرَعَ بَيْنَهُمْ. وَالْحَقُّ الْوَلَدُ بِالذِّي أَصَابَتْهُ الْفَرْغَةُ. وَجَعَلَ عَلَيْهِ ثُلْثَيِ الدِّيَةِ. فَذَكَرَ ذُلْكَ لِنَبِيِّ ﷺ فَضَحَّكَ حَتَّى بَدَأَ تَوَاجِهُ.

chosen in this manner, and obliged him to pay two thirds of the *Diyah*.^[1] The Prophet ﷺ was told of this, and he smiled so broadly that his back teeth became visible. (*Da'iif*)

تخریج: [إسناده ضعیف] أخرجه أبو داود، الطلاق، باب من قال بالقرعة إذا تنازعوا في الولد، ح: ٢٢٧٠ من حديث عبد الرزاق به، وسنته ضعیف من أجل عنعنة الثوري، ح: ١٦٢، وله شواهد ضعیفة.

Comments:

- A free human cannot be sold at all; therefore, the human cannot be priced. But in case of a mistaken killing, etc., the blood money is fixed at one hundred camels. 'Ali رضى الله عنه proved this amount as a price of the victim.
- If a case were to come about for which there is no exact and precise information in the Qur'an and *Hadith*, then the decision should be made in the light of dedicated jurisprudence and analogy. But following the juristic and analogical opinion, in the presence of clear and precise wording of the *Shari'ah*, is unlawful.
- Although the habit of laughing a lot is disliked, if a matter of happiness or surprise occurs, then laughing for it is not contrary to the virtue of a scholar or an elderly person.

Chapter 21. Those Who Detect A Family Likeness

(المعجم ٢١) - باب القافية (التحفة ٢١)

2349. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ came in one day looking happy, and said: 'O 'Aishah, did you not see that Mujazziz Al-Mudliji entered upon me and saw Usâmah and Zaid. There was a blanket over them and their faces were covered but their feet were exposed, and he said: 'These feet belong to one another.'" (*Sahih*)

٢٣٤٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَهِشَامٌ بْنُ عَمَّارٍ، وَمُحَمَّدٌ بْنُ الصَّبَّاحِ. قَالُوا: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: دَخَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ذَاتَ يَوْمٍ مَشْرُورًا وَهُوَ يَقُولُ: «يَا عَائِشَةُ! أَلَمْ تَرَنِ أَنَّ مُجَزِّزاً الْمُدْلِجِيَّ دَخَلَ عَلَيَّ قَرَأَيْ أَسَامَةَ وَزَيْدًا، عَلَيْهِمَا قَطْيَةً، فَذَغَّلَاهُمَا رُؤُوسَهُمَا وَقَدْ بَدَّتْ أَقْدَامُهُمَا. فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ، بَعْضُهَا مِنْ بَعْضٍ».

تخریج: أخرجه البخاري، الفراض، باب القائف، ح: ٦٧٧١ من حديث سفيان به، ومسلم،

[1] *Diyah*: blood money, in this case it refers to the value of the woman (who was a slave).

الرضاع، باب العمل بالحاق القافل الولد، ح: ١٤٥٩ عن ابن أبي شيبة به.

Comments:

- Qâ'if* (physiognomist) is a person who is well versed in the science of physiognomy; physiognomy is an art of judging a man's nature. A person with the art of physiognomy reads the facial features and apparent physical characteristics and thus he judges the nature of things. Particularly, a physiognomist tries to express his view regarding the lineage relationship between two individuals. In these days some expert human trackers (modern: detectives) who, in search for thieves, are able to recognise a suspicious person with the help of their footprints; are also a kind of physiognomists.
- In the time of Ignorance (the pre-Islamic period), if the people had a dispute about who a child belonged to, then they would ask the physiognomist (*Qâ'if*) to express his judgement with regard to the lineage of the child. This *Hadîth* is a proof that their assistance still can be sought in these days. [I say: This *Hadîth* is a fundamental rule for using modern detective devices and other trusted scientific and technical methods; like DNA, drug probes, fingerprints and other methods used to track criminals etc. Islam is a religion that deals with all types of problems, and Islam has always been modern, and a pioneer until the Day of Judgment. — *Usmani*]
- Zaid ﷺ, who was the adopted son of the Prophet ﷺ, had a white complexion, but his son Usâmah had a brown complexion; about which some of the hypocrites made inappropriate comments. When an Arab expert physiognomist said that these two individuals have the same family lineage, i.e., they are father and son; it uprooted the false propaganda of the hypocrites. So the Prophet ﷺ was very much pleased.

2350. It was narrated from Ibn 'Abbâs that the Quraish went to a sorceress and they said to her: "Tell us whose footprints most resemble those of the owner of *Al-Maqâm* (the station of Ibrâhim)." She said: "If you spread a piece of cloth over this soft earth and walk over it, I will tell you." So they spread out a piece of cloth and the people walked over it. She saw the footprints of the Messenger of Allâh ﷺ and said: "This one most closely resembles him among you." After that twenty years passed, or as long as

٢٣٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا
مُحَمَّدُ بْنُ يُوسُفَ: حَدَّثَنَا إِسْرَائِيلُ: حَدَّثَنَا
سَمَّاكٌ بْنُ حَرْبٍ، عَنْ عَكِيرَةَ، عَنْ أَبْنِ
عَبَّاسٍ أَنَّ قُرِيشًا آتَوْا امْرَأَةً كَاهِنَةً. قَالُوا
لَهَا: أَخْبِرْنَا أَشْبَهَنَا أَثْرًا بِصَاحِبِ الْمَقَامِ.
فَقَالَتْ: إِنَّ أَنْتُمْ جَرَرْتُمْ كَسَاءَ عَلَى هَذِهِ
السَّهْلَةِ، ثُمَّ مَشَيْتُمْ عَلَيْهَا: أَنْبَاتُكُمْ. قَالَ
فَجَرُرُوا كَسَاءً. ثُمَّ مَشَى النَّاسُ عَلَيْهَا.
فَأَبْصَرَتْ أَنَّ رَسُولَ اللَّهِ ﷺ. فَقَالَتْ: هَذَا
أَقْرِبُكُمْ إِلَيْهِ شَهَادَةً. ثُمَّ مَكَثُوا بَعْدَ ذَلِكَ
عِشْرِينَ سَنَةً، أَوْ مَا شَاءَ اللَّهُ، ثُمَّ بَعَثَ اللَّهُ

مُحَمَّدًا ﷺ

Allâh willed, then Allâh sent Muhammad ﷺ (i.e., missioned him as the Prophet). (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه أحمد: ٣٣٢ من حديث إسرائيل به، وانظر، ح: ١٧١
لعلته ومع ذلك قال البوصيري: هذا إسناد صحيح، رجاله ثقات .

Chapter 22. Giving A Child The Choice Between His Parents

2351. It was narrated from Abu Hurairah that the Prophet ﷺ gave a child the choice between his father and his mother (i.e., which parent to live with). He said: "O boy, this is your mother and this is your father." (*Sahih*)

(المعجم ٢٢) - باب تخيير الصبي بين أبيويه (التحفة ٢٢)

٢٣٥١ - حدثنا هشام بن عمّار: حدثنا سفيان بن عبيدة، عن زياد بن سعيد، عن هلال بن أبي ميمونة، عن أبي ميمونة، عن أبي هريرة أن النبي ﷺ خير غلاماً بين أبيه وأمه. وقال: يا غلام هل هو أمك وهذا أبوك؟

تخریج: [صحیح] أخرجه الترمذی، الأحكام، باب ماجاء في تخيير الغلام بين أبيويه إذا افترقا، ح: ١٣٥٧ من حديث سفیان به، و قال: حسن صحیح ، وأخرجه أبو داود، ح: ٢٢٧٧ من حديث ابن جریح أخبرني زید به، وإسناده صحیح.

2352. It was narrated from 'Abdul-Hamid bin Salamah, from his father, from his grandfather, that his parents referred their dispute to the Prophet ﷺ, and one of them was a disbeliever while the other a Muslim. He gave him the choice and he turned towards the disbeliever. He (the Prophet ﷺ) said: "O Allâh, guide him," and he turned towards the Muslim, and he ruled that he should go with that parent. (*Hasan*)

٢٣٥٢ - حدثنا أبو بكر بن أبي شيبة: حدثنا إسماعيل ابن علية، عن عثمان البوسي، عن عبد الحميد بن سلمة، عن أبيه، عن جده أن أبويء اختصما إلى النبي ﷺ. أحدهما كافر والآخر مسلم. فخيرة فتوحة إلى الكافر. فقال: (اللهم اهلي) فتوحة إلى المسلمين. فقضى له به.

تخریج: [حسن] أخرجه النسائي: ١٨٥، الطلاق، إسلام أحد الزوجين وتخيير الولد، ح: ٣٥٢٥ من حديث عثمان البوسي به، و قال البوصيري: هذا إسناد ضعیف، عبد الحميد وأبیه وجده لا يعرفون ، أخرجه أبو داود، ح: ٢٢٤٤ من حديث عبد الحميد بن جعفر (ابن عبدالله بن الحكم بن

رافع الأنصاري) عن أبيه عن جده رافع بن سنان به، وصححه الحاكم: ٢٠٦، ٢٠٧، ٢٠٨، ووافقه الذهبي، وسنده صحيح إن ثبت سماع جعفر من جده لأمه رافع، والله أعلم.

Comments:

- If the husband or wife embraces Islam, and the other spouse persists in disbelief, then they will be separated; and the wife has the right to marry another man after passing the waiting period.
- If the wife waits for her husband to become a Muslim instead of marrying another man, they will be allowed to establish matrimonial relations again, whenever he embraces Islam, without a new marriage bond. (See *Hadith: 2009*)
- If a husband and wife get separated for some reason; maybe because of divorce or the cancellation of the marriage bond; in this case the child will be given the choice to go with whoever the child pleases. Or the judge will look at the circumstances, to determine who will be better for the child, and then will decide accordingly.

Chapter 23. Reconciliation
(المعجم ٢٣) - بَابُ الصَّلْحِ (التحفة ٢٣)

2353. Kathir bin 'Abdullâh bin 'Amr bin 'Awf narrated from his father that his grandfather said: "I heard the Messenger of Allâh ﷺ say: 'Reconciling between Muslims is permissible, except reconciliation that forbids something that is allowed, or allows something that is forbidden.'" (*Sahîh*)

٢٣٥٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا خَالِدٌ بْنُ مَخْلُدٍ: حَدَّثَنَا كَثِيرٌ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرُو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الصَّلْحُ جَارٌ بَيْنَ الْمُسْلِمِينَ. إِلَّا صَلْحًا حَرَّمَ حَلَالًا، أَوْ أَحْلَى حَرَاماً».

تخريج : [صحيح] أخرجه الترمذى، الأحكام، باب ما ذكر عن رسول الله ﷺ في الصلح بين الناس، ح: ١٣٥٢ من حديث كثير به، وقال: حسن صحيح ، وقال الذهبي في ميزان الاعتدال: ٤٠٧/٣، وأما الترمذى فروى من حديثه: الصلح جائز بين المسلمين وصححه، فلهذا لا يعتمد العلماء على تصحیح الترمذى، وانظر، ح: ١٦٥ لعلته، ولكن كثيراً لم يفرد به، أخرجه أبو داود، ح: ٣٥٩٤ من حديث الوليد بن رياح عن أبي هريرة به مثله، وإسناده حسن، وصححه ابن الجارود، ح: ٦٣٧، ٦٣٨، وابن حبان (موارد)، ح: ١١٩٩ .

Comments:

- If there is a dispute among two individuals or two parties, the responsible people should not let it get worse; and they should try to make reconciliation as soon as possible.
- The reconciliation means that one of them accepts his right, maybe even less than the due, just for the sake of ending the dispute. It is a deed of enormous reward.

c. Any condition which is contrary to the clear rules of the *Shari'ah* cannot be allowed; stipulating such a condition or acting upon it is prohibited.

Chapter 24. Preventing One Who Will Mishandle His Wealth

2354. It was narrated from Anas bin Mâlik that there was a man at the time of the Messenger of Allâh ﷺ whose mental faculties were lacking, and he used to buy and sell. His family came to the Prophet ﷺ and said, "O Messenger of Allâh, stop him." So the Prophet ﷺ called him, and told him not to do that. He said: "O Messenger of Allâh, I cannot bear to be away from business." He said, "If you engage in a transaction, then say: 'Take it (i.e. the goods) and don't cheat (me).'"^[1] (*Sahih*)

(المعجم ٢٤) - باب الحجر على من يفسد ماله (التحفة ٢٤)

٢٣٥٤ - حَدَّثَنَا أَرْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ عَنْ قَتَادَةَ، عَنْ أَبِي مَالِكٍ أَنَّ رَجُلًا كَانَ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ، فِي عُقْدَتِهِ ضَعْفٌ، وَكَانَ يُبَايِعُ، وَأَنَّ أَهْلَهُ أَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! اخْجُرْ عَلَيْهِ. فَدَعَاهُ النَّبِيُّ ﷺ. فَنَهَا عَنْ ذَلِكَ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي لَا أَصِيرُ عَنِ الْبَيْعِ. فَقَالَ: إِذَا بَايعْتَ فَقُلْ: هَا. وَلَا خِلَاةً.

تخریج: [صحیح] أخرجه الترمذی، البیع، باب ماجاء في من يخدع في البيع، ح: ١٢٥٠ من حدیث عبد الأعلى به، وقال: حسن صحيح غريب ، وصححه ابن الجارود، ح: ٥٦٨، والحاکم: ١٠١/٤ على شرط الشیخین، ووافقه الذھبی، وانظر، ح: ١٧٥، ٤٢٩ (علمه)، ولكن له شواهد عند البخاری، ومسلم وغیرهما، راجع الموسا: ٦٨٥/٢ (وسن أبي داود، ح: ٣٥٠١، ٣٥٠٠ نیل المقصود بتحقيقی).

Comments:

- 'And don't cheat' means if you deceive me in this transaction, and later I find out, then I have the right to cancel the transaction.
- Once he was hit in the head and his brain was affected, and that was the reason for him being deceived.
- The person who is mentally unstable can be banned from conducting business deals, and any transaction made by him may be annulled. After having been banned from doing so, whoever makes a business deal with him, will be responsible himself, because his relatives have the right to prove the deal void.

^[1] The Prophet ﷺ told him to do that so that people would realize that he was not very smart, so they would be kind to him and treat him fairly, as people at that time were like brothers, and cared for others more than they cared for themselves.

2355. It was narrated that Muhammad bin Yahya bin Habbâr said: "My grandfather was Munqidh bin 'Amr. He was a man who had suffered a head wound and lost the power of speech, but that did not stop him from engaging in trade. He was always being cheated, so he went to the Prophet ﷺ and told him about that. He said to him: 'When you buy something, say: "There should be no intention of cheating," and for every product you buy, you have the choice for three nights. If you are pleased with it, keep it, and if you are displeased then return it.'" (Hasan)

٢٣٥٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدٍ بْنِ يَحْيَى بْنِ حَبَّانَ قَالَ: هُوَ جَدُّي مُنْقَدُ بْنُ عَمْرُو. وَكَانَ رَجُلًا قَدْ أَصَابَتْهُ آمَةٌ فِي رَأْسِهِ فَكَسَرَتِ لِسَانَهُ. وَكَانَ لَا يَدْعُ عَلَى ذَلِكَ التِّجَارَةَ. وَكَانَ لَا يَرَأُلُ يَعْبُرُ. فَاتَّى النَّبِيُّ ﷺ فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ لَهُ: «إِذَا أَنْتَ بَاعْتَ قَطْلً: لَا خِلَاةَ. ثُمَّ أَنْتَ فِي كُلِّ سُلْطَةٍ ابْتَعْتَهَا بِالْجِيَارِ ثَلَاثَ لِيَالٍ. فَإِنْ رَضِيَتْ فَأَمْسِكْ، وَإِنْ سَخْطَتْ فَارْدُدْهَا عَلَى صَاحِبِهَا».

تخریج: [حسن] آخرجه البخاري في التاريخ الكبير: ١٨، ١٧/٨ من حديث عبد الأعلى قال: نا محمد بن إسحاق قال حدثني محمد بن يحيى بن حبان به، وفي سماعه من جهة نظر، وللحديث شواهد كثيرة عند البخاري، ومسلم وغيرهما من غير تعين حبان بن منقد أو منقد بن عمرو رضي الله عنهما.

Comments:

A less wise person is allowed to buy and sell; however an officer appointed by the Islamic government has the authority to ban him from doing so.

Chapter 25. Bankruptcy Of A Poor Man, And Selling His Assets To Pay Off His Creditors

2356. It was narrated that Abu Sa'eed Al-Khudri said: "At the time of the Messenger of Allâh ﷺ, a man suffered loss of some fruit that he had purchased, and his debts increased. The Messenger of Allâh ﷺ said: 'Give him charity.' So the people gave him charity, but that was not enough to pay

(المعجم ٢٥) - بَابُ تَفْلِيسِ الْمُعْدَمِ
وَالْبَيْعِ عَلَيْهِ لِغُرْمَائِهِ (التحفة ٢٥)

٢٣٥٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَةُ: حَدَّثَنَا الْأَئْلَى بْنُ سَعْدٍ عَنْ مُكَبِّرٍ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشْجَرِ، عَنْ عِيَاضِي بْنِ عَبْدِ اللَّهِ ابْنِ سَعْدٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ فِي شَمَارِ ابْتَاعَهَا. فَكَثُرَ دِيْنُهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ:

off his debts. The Messenger of Allâh ﷺ said: 'Take what you find, but you have no right to more than that,' meaning his creditors." (*Sahih*)

«تَصَدَّقُوا عَلَيْهِ» فَتَصَدَّقَ النَّاسُ عَلَيْهِ. فَلَمْ يَئِنْعِ
ذَلِكَ وَقَاءَ دِينِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «خُذُوا
مَا وَجَدْتُمْ، وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ» يَعْنِي
الْغُرْمَاءَ.

تخریج: أخرجه مسلم، المساقاة، باب استحباب الوضع من الدين، ح: ١٥٥٦ من حديث
الليث بن.

Comments:

- The person who has an enormous amount of debt due from him, and is unable to repay it, should be helped with charity, and he is also entitled to receive Zakât.
- If the debt is huge, and the amount collected from the people is not enough to repay the debt, then whatever is available should be divided among the creditors according to the percentage of their debts; for example: if a debtor has an amount equal to half of the debt, then every creditor will receive half of his credit.
- When a possible amount has been repaid and the debtor has been declared bankrupt; thereafter, the creditors cannot demand more.

2357. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ rid Mu'âdh bin Jabal of his creditors, then he appointed him governor of Yemen. Mu'âdh said: "The Messenger of Allâh ﷺ settled my debts with my creditors using what wealth I had, then he appointed me as governor." (*Da'iif*)

٢٣٥٧ - حَدَّثَنَا مُحَمَّدُ بْنُ شَهَارٍ: حَدَّثَنَا أَبُو
عَاصِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُسْلِمٍ بْنُ هُرْمَزٍ،
عَنْ سَلَمَةَ الْمَكِيِّ، عَنْ جَاهِرٍ بْنِ عَبْدِ اللَّهِ أَنَّ
رَسُولَ اللَّهِ ﷺ حَلَّ مَعَادَ بْنَ جَبَلِ مِنْ
غُرْمَائِهِ. ثُمَّ اسْتَعْمَلَهُ عَلَى الْيَمَنِ. فَقَالَ
مَعَادٌ: إِنَّ رَسُولَ اللَّهِ ﷺ اسْتَخْلَصَنِي بِمَالِي
ثُمَّ اسْتَعْمَلَنِي.

تخریج: [إسناده ضعيف] * عبد الله بن مسلم بن هرمز ضعيف كما في التقریب، وسلمة المکی قال البوصیری: لا یعرف حاله ، وضفه البوصیری .

Chapter 26. One Who Finds His Exact Property With A Man Who Has Become Bankrupt

2358. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever finds his

(المعجم ٢٦) - بَابُ مَنْ وَجَدَ مَتَاعَهُ
بِعِينِيهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ (التحفة ٢٦)

٢٣٥٨ - حَلَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
سُعْيَانُ بْنُ عَيْنَةَ، ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ

exact property with a man who has become bankrupt, then he has more right to it than anyone else.” (Sahih)

رُمِحٌ: أَبْنَانَا الْلَّيْثُ بْنُ سَعْدٍ، جَوِيعاً عَنْ يَعْيَى بْنِ سَعِيدٍ، عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدٍ بْنِ عَمْرَو بْنِ حَزْمٍ، عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هَشَامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدَ مَتَاعَهُ بِعِينِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ».

تخریج: أخرجه البخاري، الاستعراض، باب: إذا وجد ماله عند مفلس في البيع والقرض والوديعة فهو أحق به، ح ٢٤٠٢، ومسلم، المساقاة، باب ما باعه عند المشتري، وقد أفلس، فله الرجوع إليه، ح ١٥٥٩ من حديث يحيى بن سعيد به.

2359. It was narrated from Abu Hurairah that the Prophet ﷺ said: “Any man who sells a product, then he finds the exact product with the man who has become bankrupt, and he has not taken any of its price, it belongs to him, but if he had taken any of its price, then he is like any other creditor.” (Sahih)

٢٣٥٩ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ، عَنْ مُوسَى بْنِ عَقْبَةَ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ الْحَارِثِ بْنِ هَشَامٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «إِيمَّا رَجُلٌ بَاعَ سُلْعَةً، فَادْرَكَ سُلْعَةً بِعِينِهَا عِنْدَ رَجُلٍ، وَقَدْ أَفْلَسَ، وَلَمْ يَكُنْ قَبْضَ مِنْ ثَمَنِهَا شَيْئاً، فَهِيَ لَهُ». وَإِنْ كَانَ قَبْضَ مِنْ ثَمَنِهَا شَيْئاً، فَهُوَ أَسْوَةُ الْغُرَمَاءِ».

تخریج: [صحيح] انظر الحديث السابق * إسماعيل بن عياش ضعيف، والحديث السابق شاهد له.

Comments:

- If a person under such an enormous amount of debt, is unable to repay it; it is allowed to declare him bankrupt.
- Extra merchandise of the bankrupt person will be sold to repay the debt to the lenders.
- If an item belonging to a creditor is still present with the bankrupt (debtor); then this case has two aspects: A): If the bankrupt debtor did not pay anything towards the item at all, then the creditor will take the thing back; it will be considered as if nothing was sold and bought. B): If the bankrupt debtor has paid something, or the whole price for the item, then now it belongs to the debtor. Now when the households are shared by the creditors, if this thing falls into the share of the creditor, who was the real owner, then

this is fair enough, otherwise in whoever's share it falls, he will take it, and the creditor who initially owned it does not have any right upon it.

2360. It was narrated that Ibn Khaldah, who was a judge in Al-Madinah, said: We came to Abu Hurairah and asked him about a companion of ours who had become bankrupt. He said: "This is what the Prophet ﷺ ruled: 'Any man who dies or becomes bankrupt, the owner of the product has more right to it, if he finds the exact thing.'" (*Hasan*)

٢٣٦٠ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُتَّفِرِ الْجَرَائِمِيُّ وَعَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشِقِيُّ . قَالَا: حَدَّثَنَا بْنُ أَبِي فُلْدَيْكَ، عَنْ أَبْنِ أَبِي ذِئْبٍ عَنْ أَبِي الْمُعْتَمِرِ بْنِ عَمْرُو بْنِ رَافِعٍ، عَنْ أَبْنِ خَلْدَةَ الرَّقِيقِ، وَكَانَ قَاضِيًّا بِالْمَدِينَةِ قَالَ: حَسْنًا أَبَا هُرَيْرَةَ فِي صَاحِبِ لَئَا قَدْ أَفْلَسَ . قَالَ: هَذَا الَّذِي قَضَى فِيهِ النَّبِيُّ ﷺ: «أَيُّمَا رَجُلٌ ماتَ أَوْ أَفْلَسَ، فَصَاحِبُ الْمَتَاعِ أَحَقُّ بِمَتَاعِهِ إِذَا وَجَدَهُ بِعِينِهِ». .

تخریج : [إسناده حسن] أخرجه أبو داود، البيوع، باب في الرجل يفلس فيجد الرجل متاعه بعينه عنده، ح ٣٥٢٣ من حديث ابن أبي ذئب به، وصححه ابن الجارود، ح ٦٣٤: ، والحاكم ٢/٥٠، والنهي * أبوالمعتمر لم يعرفه ابن عبد البر، ووفقاً ابن حبان، وابن الجارود، والحاكم وغيرهم، فحديثه لا ينزل عن درجة الحسن.

2361. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Any man who dies and has the property of another man, whether he paid something towards it or not, (the owner of those goods) is like any other creditor." (*Hasan*)

٢٣٦١ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنُ سَعِيدٍ أَبْنُ كَثِيرٍ بْنِ دِيَارِ الْجَمْصُونِيِّ: حَدَّثَنَا الْيَمَانُ أَبْنُ عَدِيٍّ: حَدَّثَنِي الزَّيْدِيُّ مُحَمَّدُ بْنُ الْوَلِيدِ، عَنِ الرَّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَيْعَ ماتَ وَعَنْهُ مَالٌ امْرَيْعَ بِعِينِهِ، افْتَضَى مِنْهُ شَيْئًا أَوْ لَمْ يَفْتَضِ، فَهُوَ أَسْوَةُ الْمُغَرَّمَاءِ» .

تخریج : [حسن] أخرجه الدارقطني: ٢٩/٣ من حديث عمرو بن عثمان به، وقال: اليمان بن علي ضعيف الحديث ، وقال: ٢٢٩/٤: خالقه إسماعيل بن عياش عن الزبيدي ، وموسى بن عقبة ، واليمان بن عدي ، وإسماعيل بن عياش ضعيفان ، وللحديث شواهد كثيرة جداً .

Comments:

If a person borrowed some cash from someone, and the borrower dies before using the cash; the lender cannot claim the whole amount of cash to be repaid to him only; for example: he claims that these are the same notes borrowed from him. This creditor will be just like the other creditors. If the other creditors are repaid fully then he will be repaid fully; otherwise if the

debt is more than the debtor's inheritance, the lender of cash will be paid a lesser amount in proportion to the amount paid to the other creditors. So, in this matter, the cash and other things are not treated equally; as in the case of goods, the creditor may take his goods back. As mentioned in *Hadith* 2359, comment c.

The Chapters On Testimonies

أبواب الشهادات

Comments:

- Testimony is that a person tells an account about something accurately as he/she sees and hears.
- * Only those things should be informed of as testimony which have been seen by the eyes or heard by the ears. Uncertain testimony must not be given.
 - * Two trustworthy persons should testify to the honesty and trustworthiness of the witness.
 - * A false witness should be given some sort of punishment in order to make an example of him for other people in the future.

Chapter 27. To Give Testimony When One Has Not Been Asked To Do So Is Disliked

2362. ‘Abdullâh bin Mas’ud said: “The Messenger of Allâh ﷺ was asked, ‘Which of the people are best?’ He said: ‘My generation, then those that follow them, then those that follow them. Then there will come people whose testimony precedes their oath and whose oath precedes their testimony.’” (*Sahih*)

(المعجم ٢٧) - بَابُ كَرَاهِيَّةِ الشَّهَادَةِ
لِمَنْ لَمْ يُسْتَشْهَدْ (التحفة ٢٧)

٢٣٦٢ - حَدَّثَنَا عُمَّانُ بْنُ أَبِي شَيْبَةَ وَعَمْرُو
ابْنُ رَافِعٍ، قَالَا: حَدَّثَنَا جَرِيرُ عَنْ مَنْصُورٍ،
عَنْ إِبْرَاهِيمَ، عَنْ عَيْدَةَ السَّلْمَانِيِّ قَالَ: قَالَ
عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: شَيْلَ رَسُولُ اللَّهِ ﷺ:
أَيُّ النَّاسِ خَيْرٌ؟ قَالَ: «قَرْنِي، ثُمَّ الَّذِينَ
يَلُونُهُمْ، ثُمَّ الَّذِينَ يَلُونُهُمْ. ثُمَّ يَحِيَّ قَوْمٌ
تَبَرُّ شَهَادَةَ أَحَدِهِمْ يَوْمَئِنَّهُ، وَيَمْنَأُ شَهَادَتَهُ».

تخریج: أخرجه البخاري، الشهادات، باب: لا يشهد على شهادة جور إذا أشهد، ح: ٢٦٥٢، ٣٦٥١، ٦٦٥٨، وغيره، ومسلم، فضائل الصحابة، باب فضل الصحابة ثم الذين يلونهم، ثم الذين يلونهم، ح: ٢٥٣٣ من حديث منصور به.

Comments:

- Qarn* means the people of an era; i.e., people of a generation. Here the first *Qarn* (era) means the first generation of Islam, who were the noble Companions of the noble Prophet ﷺ; and those who succeeded them are the *Tâbi'in* (the successors) and those who succeeded the *Tâbi'in* are the *Taba' Tâbi'in* (the successor of the successors); (i.e., first, second and third generations of Islam).
- The noble Companions are the most virtuous generation of the Muslim

Nation; a Companion who is smallest in status is more virtuous than the most righteous *Tâbi'i* (successor).

- c. Hastening to take an oath before witnessing, and to bear witness before an oath means they will not understand the value, importance and consequences of it. So, they will take false oaths without any hesitation, and particularly, when testifying, to something, they will have no fear of taking a false oath. It is an awfully bad habit.

2363. It was narrated that Jâbir bin Samurah said: 'Umar bin Khattâb addressed us at Jâbiyah and said: "The Messenger of Allâh ﷺ stood up among us as I stand among you, and said: 'Honor my Companions for my sake, then those who come after them, then those who come after them. Then lying will prevail until a man will give testimony without being asked to do so, and he will swear an oath without being asked to do so.'" (*Sahih*)

٢٣٦٣ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَاحَ: حَدَّثَنَا جَرِيرٌ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ جَابِرِ بْنِ سَمْرَةَ. قَالَ: تَحْطَبُنَا عُمَرُ بْنُ الْخَطَّابِ بِالْجَاهِيَّةِ فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ قَامَ فِينَا مِثْلَ مُقَامِي فِيكُمْ فَقَالَ: «اَخْفَظُونِي فِي اَصْحَاحِي. ثُمَّ الَّذِينَ يَلُونُهُمْ. ثُمَّ الَّذِينَ يَلُونُهُمْ. ثُمَّ يَقْشُو الْكَلْبُ حَتَّى يَشَهِّدَ الرَّجُلُ وَمَا يُشَهِّدُ. وَيَخْلُفُ وَمَا يُسْتَحْلِفُ».

تخریج: [إسناده صحيح] أخرجه أحمد: ١/٢٦، والنسائي في الكبير، عن جریر (بن عبد الحميد) به، وتتابعه جریر بن حازم عند النسائي في الكبير وغيره (وصححه ابن حبان)، وقول أبو داود الطیالسي في مسنده: أخبرنا شعبة عن عبدالملك بن عمیر قال: سمعت جابر بن سمرة قال: خطبنا عمر بالجاهية به ... إلخ كما في مسند الفاروق لابن كثير: ٢/٥٥٤، وللأثر شواهد كثيرة جداً تبلغ حد التواتر.

Comments:

- In the time of Companions, *Tâbi'in* and the *Taba' Tâbi'in*, in the society, good was overwhelming, whereas the evil was overwhelmed. The general people did not have the moral and behavioural corruption which appeared later; the mistakes that occurred in the earlier era were not that severe and damaging as ones those occurring among the later generations.
- The meaning of an oath not to be demanded, is that the witness will be determined to bear witness, but due to corruption and weakness of morality they will be unreliable; therefore they will not be accepted as a witness, and even their oaths will be regarded unreliable.

Chapter 28. A Man Who Has Testimony To Give, When The Person To Whom It Pertains Is Unaware Of That

2364. Zaid bin Khâlid Al-Juhani said that he heard the Messenger of Allâh ﷺ say: "The best of witnesses is the one who gives his testimony before he is asked for it." (*Sahih*)

(المعجم ٢٨) - بَابُ الرَّجُلِ عِنْدَهُ الشَّهَادَةُ لَا يَعْلَمُ بِهَا صَاحِبُهَا
(التحفة ٢٨)

٢٣٦٤ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ
ابْنُ عَبْدِ الرَّحْمَنِ الْجُعْفَرِيُّ قَالَ: حَدَّثَنَا زَيْدُ
ابْنُ الْحُجَّابِ الْعُكْلَيُّ: أَخْبَرَنِي أَبِي بْنُ عَبَاسِ
ابْنِ سَهْلٍ بْنِ سَعْدِ السَّاعِدِيِّ: حَدَّثَنِي أَبُو
بَكْرٍ بْنُ عَمْرُو بْنِ حَزْمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ
عَبْدِ اللَّهِ بْنِ عَمْرُو بْنِ عُثْمَانَ بْنِ عَفَانَ:
حَدَّثَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ: أَخْبَرَنِي
عَبْدُ الرَّحْمَنِ بْنُ أَبِي عَمْرَةِ الْأَنْصَارِيِّ أَنَّهُ
سَمِعَ زَيْدَ بْنَ خَالِدِ الْجُهَنِيِّ يَقُولُ: إِنَّهُ سَيِّعَ
رَسُولُ اللَّهِ يَقُولُ: «خَيْرُ الشُّهُودِ مَنْ أَدَى
شَهَادَتَهُ قَبْلَ أَنْ يُسَأَلَّهَا».

تخریج: أخرجه مسلم، الأقضية، باب بيان خير الشهود، ح: ١٧١٩ من حديث أبي بكر بن عمرو بن حزم به.

Comments:

It means a true witness, if he does not testify, then someone's right is at risk; this is because perhaps there are no other witnesses, or there is a witness, but he is unreliable.

Chapter 29. Witnessing Loans

(المعجم ٢٩) - بَابُ إِلَاسْهَادِ عَلَى
الدِّيُونِ (التحفة ٢٩)

2365. It was narrated that Abu Sa'eed Al-Khudri recited this Verse: "O you who believe! When you contract a debt for a fixed period..." until: "then if one of you entrusts the other."^[1] Then

٢٣٦٥ - حَدَّثَنَا عُيُونُ الدُّهُونِ بْنُ يُوسُفَ
الْجُبَيْرِيُّ، وَ جَوَيْلُ بْنُ الْحَسَنِ الْعَنْكَلِيُّ.
قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ مَرْوَانَ الْعِجْلَيِّ:
حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي نَضْرَةَ، عَنْ أَبِيهِ،

^[1] Al-Baqarah 2:282-283.

he said: "This abrogates what came before."^[1] (Hasan)

عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: تَلَّا هُذِهِ الْآيَةُ: «إِنَّمَا الَّذِينَ مَأْمُونُوا إِذَا تَدَامُسُوكُمْ يُدْعَيُنَّ إِلَى أَجْبَلٍ مُّسْكَنٍ» حَتَّىٰ بَلَغَ: «فَإِنْ أَيْمَنْ بَعْضُكُمْ بَعْضًا» [البقرة: ٢٨٢-٢٨٣] فَقَالَ: هُنُّمَا نَسْخَتْ مَا قَبْلَهَا.

تخریج: [إسناده حسن] أخرجه ابن أبي حاتم في تفسيره: ٢/٥٧٠، وأبو داود في الناسخ والمنسوخ، والطبراني، ومن طرifice المزري في تهذيب الكمال (٢/٨٦٣) من حديث محمد بن مروان به، وقواه ابن كثير في تفسيره، وهذا اجتهاد من أبي سعيد الخدري رضي الله عنه، والله أعلم.

Comments:

This 'abrogation' does not mean the Terminological Abrogation. It is a partial abrogation that the first Verse commands for documenting any type of loan.

Chapter 30. The One Whose Testimony Is Not Permitted

(المعجم ٣٠) - بَابُ مَنْ لَا تُجُوزُ شَهَادَتُهُ (التحفة ٣٠)

2366. It was narrated from 'Amr bin Shu'aib from his father that his grandfather said that the Messenger of Allâh ﷺ said: "The testimony of a man or woman who is treacherous, or of one who has been subjected to one of the *Hadd* punishments of Islam, or of one who bears a grudge against his brother, is not permissible." (*Da'iif*)

٢٣٦٦ - حَدَّثَنَا أَبْيُوبُ بْنُ مُحَمَّدٍ الرَّقِيقُ: حَدَّثَنَا مُعَمَّرُ بْنُ سُلَيْمَانَ، حٌ: وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ قَالَ: حَدَّثَنَا حَاجَاجُ بْنُ أَرْطَاءَ عَنْ عَمْرُو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُجُوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا مَحْدُودٍ فِي الإِسْلَامِ، وَلَا ذِي غَمْرٍ عَلَى أَخِيهِ». *أَخِيهِ*.

تخریج: [إسناده ضعيف] أخرجه أحمد: ٢/٢٠٨ عن يزيد بن هارون وغيره به، وانظر، ح: ٤٩٦، ١١٢٩ لعلته، وله شواهد ضعيفة، وأصل الحديث صحيح بلقط: لا تجوز شهادة خائن ولا خائنة ولا زان ولا زانية ولا ذي غمر على أخيه أبو داود، ح: ٣٦٠١ وغيره، وسنته

^[1] Ibn Kathir said: "Abu Sa'eed, Sha'bî, Rabi' bin Anas, Hasan, Ibn Juraij, and Ibn Zaid said that recording such transactions was necessary before, but was then abrogated by Allâh's Statement," and he cited this portion of *Al-Baqarah* 2:283. See the *Tafsîr* of Ibn Kathir, *Al-Baqarah* 2:283.

فوي كما قال الحافظ في التلخيص: ١٩٨ / ٤، وللحديث شواهد.

Comments:

- A person behaving treacherously with a trust is not reliable. So, his testimony is unacceptable in the court.
- If it is proven that the witness already has unpleasant terms against whom he is testifying, it makes the testimony doubtful. It is possible that due to enmity, he wants to take revenge by testifying against the opponent.

2367. It was narrated from Abu Hurairah that he heard the Messenger of Allâh ﷺ say: "The testimony of a Bedouin against a town-dweller is not permissible." (*Sahih*)

٢٣٦٧ - حَدَّثَنَا حَرْمَةُ بْنُ يَحْيَىٰ: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي نَافِعُ بْنُ يَزِيدَ،
عَنْ أَبْنِ الْهَادِ، عَنْ مُحَمَّدٍ بْنِ عَمْرُو بْنِ
عَطَاءٍ، عَنْ عَطَاءَ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ
أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَجُوزُ
شَهادَةُ بَكُوئٍ عَلَى صَاحِبِ قَرْيَةٍ».

تخریج: [إسناده صحيح] أخرجه أبو داود، القضاء، باب شهادة البدوي على أهل الأمصار، ح: ٣٦٠٢ من حديث ابن وهب به، وصححه ابن الجارود، ح: ١٠٠٩.

Comments:

- The fact of it, is that the Bedouins are generally at a low level in religion, morals and character; because they do not have the opportunity to sit in the company of the scholars and to learn about the religion. Therefore, there is more possibility they will not testify accurately.
- It is necessary that the witness is a trustworthy person.

Chapter 31. Passing Judgment On The Basis Of A Witness And An Oath

(المعجم ٣١) - بَابُ الْقَضَاءِ بِالشَّاهِدِ
وَالْيَمِينِ (التحفة ٣١)

2368. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. [This is in the absence of two witnesses.] (*Sahih*)

٢٣٦٨ - حَدَّثَنَا أَبُو مُضْعِفٍ [الْمَدْنِيُّ]،
أَحْمَدُ بْنُ عَبْدِ اللَّهِ الزُّهْرِيُّ، وَيَعْقُوبُ بْنُ
إِبْرَاهِيمَ الدَّوْرَقَيُّ، قَالَا: حَدَّثَنَا عَبْدُ العَزِيزِ
ابْنُ مُحَمَّدٍ الدَّرَاؤِدِيُّ، عَنْ رَبِيعَةَ بْنِ أَبِي
عَبْدِ الرَّحْمَنِ، عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ، عَنْ
أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ فَصَّى
بِالْيَمِينِ مَعَ الشَّاهِدِ.

تخریج: [إسناده صحيح] أخرجه الترمذی، الأحكام، باب ماجاء في اليمين مع الشاهد، ح: ۱۳۴۳ عن يعقوب بن إبراهیم به، وقال: حسن غریب ، وصححه ابن الجارود، ح: ۱۰۰۷ والحدیث مخرج في نیل المقصود، ح: ۳۶۱۰، أخرجه أبو داود من حدیث الدراوردي به.

2369. It was narrated from Jâbir that the Prophet ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. (*Sahih*)

تخریج: [إسناده صحيح] أخرجه الترمذی، الأحكام، باب ماجاء في اليمین مع الشاهد، ح: ۱۳۴۴ عن محمد بن بشار به.

2370. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ passed judgment on the basis of a witness along with an oath (by the claimant)." (*Sahih*)

٢٣٦٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ، عَنْ جَابِرٍ أَنَّ النَّبِيَّ ﷺ قَصَّى بِالْيَمِينِ مَعَ الشَّاهِدِ.

تخریج: أخرجه مسلم، الأقضیة، باب وجوب الحكم بشاهد ویمین، ح: ۱۷۱۲ من حدیث سیف به.

2371. It was narrated from Surraq that the Prophet ﷺ allowed the testimony of a man along with the oath of the claimant. (*Sahih*)

٢٣٧١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّبَانَا جُوَيْرِيَةَ بْنُ أَسْمَاءَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدٍ، مَوْلَى الْمُبِيعَتِ، عَنْ رَجُلٍ مِنْ أَهْلِ مِصْرَ، عَنْ سُرْقَيْ أَنَّ النَّبِيَّ ﷺ أَجَازَ شَهَادَةَ الرَّجُلِ وَيَمِينَ الطَّالِبِ.

تخریج: [إسناده ضعیف] أخرجه الطبرانی: ۱۶۶ / ۷، ح: ۱۷۱۷ من حدیث جویرة بن اسماء (في الاصل المطروح: اسماعیل وهو خطأ) به، وضعفه البوصیری لجهالت تابعیه، ولاصل الحدیث شاهد صحق تقدم قبله، وفيه غنیة عن مثل هذه الروایة المجهولة.

Comments:

- Two trustworthy witnesses are compulsory to prove a claim to be true.
- If the claimant has one witness only, he will then take one oath along with the witness, and thus the claim of the claimant will be proven.

Chapter 32. False Witness

(المعجم ٣٢) - بَابُ شَهَادَةِ الزُّورِ

(التحفة ٣٢)

2372. It was narrated that Khuraim bin Fâlik Al-Asadi said that the Prophet ﷺ prayed the Morning prayer, and when he had finished, he stood up and said: "Bearing false witness is equivalent to associating others with Allâh," three times. Then he recited this Verse: "And shun lying speech (false statements), *Hunafâ' Lillâh* (i.e., worshiping none but Allâh), not associating partners (in worship) to Him."^[1] (*Da'iif*)

تخریج: [إسناده ضعیف] أخرجه أبو داود، القضاة، باب في شهادة الزور، ح: ٣٥٩٩ من حديث محمد بن عبید به، وعلته جهالة حال أبي سفيان زيد العصفری، وشيخه حبیب بن النعمان، والله أعلم بحالهما .

Comments:

Bearing false witness is a major sin. There are several authentic *Ahâdîth* concerning this issue. The three sins that the noble Prophet ﷺ declared 'the worst of the major sins' are: "Associating partners with Allâh, disobeying parents and bearing false witness." (See *Sahîh Al-Bukhârî*, The Testimonies, Chapter: What is mentioned concerning the false oath)

2373. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: 'The one who bears false witness will not move away (on the Day of Resurrection) until Allâh condemns him to Hell.''' (*Da'iif*)

تخریج: [ضعیف جداً] أخرجه أبو علی، ح: ٥٦٧٢ من حديث محمد بن الفرات به، وسئلته موضوع، وبصححة الحاکم (٩٨/٤)، ووافقه الذہبی * سوید ضعیف وشيخه محمد بن الفرات كذاب كما قال الإمام أحمد، ومحمد بن عمار وغيرهما ، وقال ابن حزم: ضعیف بالاتفاق ، والحديث ضعفة البوصیری ، وللحديث شاهد ضعیف جداً عند أبي نعیم في حلية

٢٣٧٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبِيدٍ: حَدَّثَنَا سَفِيَّانُ الْعَصْفَرِيُّ عَنْ أَبِيهِ، عَنْ حَبِيبِ بْنِ النَّعْمَانِ الْأَسْدِيِّ، [عَنْ خُرَيْمٍ بْنِ فَاتِكِ الْأَسْدِيِّ] قَالَ: صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الصَّحَّ. فَلَمَّا انْصَرَفَ قَامَ قَائِمًا. قَالَ: أَعْدَلْتُ شَهَادَةَ الزُّورِ بِالْإِنْسَارِ إِلَيْهِ تَلَاقَتْ مَرَّاتٍ. ثُمَّ تَلَّا هَذِهِ الْآيَةُ: «وَاجْتَنَبُوا كُوْكَبَ الزُّورِ ۝ حَفَّاءَ لِلَّهِ عَنْ مُشْرِكِينَ يَهُدُّ» .

[الحج: ٣١-٣٠].

٢٣٧٣ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقَرَاتَ، عَنْ مُحَارِبِ بْنِ دَتَّارٍ، عَنْ أَبِي عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ عَلَيْهِ وَسَلَّمَ: «إِنَّ تَزُولَ قَدَّمَا شَاهِدِ الزُّورِ حَتَّىٰ يُوجَبَ اللَّهُ لَهُ النَّارَ» .

[1] Al-Hajj 22:30-31.

الأولاء (٧/٢٦٤).

Chapter 33. The Testimony Of The People Of The Book Against One Another

2374. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ allowed the People of the Book to testify against one another. (*Da'if*)

(المعجم ٣٣) - بَابُ شَهَادَةِ أَهْلِ الْكِتَابِ بِعَضِيهِمْ عَلَى بَعْضٍ (التحفة ٣٣)

٢٣٧٤ - حَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ: حَدَّثَنَا أَبُو خَالِدُ الْأَخْمَرُ، عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ أَجَازَ شَهَادَةَ أَهْلِ الْكِتَابِ، بِعَضِيهِمْ عَلَى بَعْضٍ.

تخریج: [إسناده ضعیف] أخرجه البیهقی: ١٦٥ / ١٠ من حديث أبي خالد به، وقال: هو مما أخطأ في، وقال البوصیری: هذا إسناد ضعیف من أجل مجالد بن سعید ، وانظر، ح: ١١، وفيه علة أخرى ذكرها البیهقی كما تقدم في کلامه .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

14. The Chapters On Gifts

(المعجم ١٤) أبواب الهبات
(التحفة ...)

Hibah is that a person, willingly, gives his wealth or property to someone as a gift without asking for anything in exchange. Religiously, giving a gift is desirable, because it is such a good deed that Allāh urged His slaves for it.

If a father wants to give something to his children, he should necessarily treat all his children equally.

It is *Harām* (illegal) to take the gift back.

A father is allowed to take his gift back.

It is wrong even to hope for an exchange for a gift.

Chapter 1. A Man Giving A Gift To His Son

(المعجم ١) - بَابُ الرَّجُلِ يَنْحَلُّ وَلَدَهُ
(التحفة ٣٤)

2375. It was narrated that Nu'mân bin Bashir said that his father took him to the Prophet ﷺ and said: "Bear witness that I have given Nu'mân such and such from my wealth." He said: "Have you given all your children something like that which you have given to Nu'mân?" He said: "No." He said: "Then let someone other than me bear witness to that." And he said: "Would you not like all your children to honor you equally?" He said: "Of course." He said: "Then do not do this." (*Sahih*)

٢٣٧٥ - حَدَّثَنَا أَبُو بِشْرٍ، بَكْرُ بْنُ خَلَفٍ: حَدَّثَنَا يَرِيدُ بْنُ رُزْيَعَ، عَنْ دَاؤَدَ بْنِ أَبِي هِنْدٍ، عَنِ الشَّعْبِيِّ، عَنِ التَّعْمَانَ بْنِ بَشِيرٍ قَالَ: انْطَقْتُ بِهِ أُبُوهُ يَغْمُولُهُ إِلَى النَّبِيِّ ﷺ. فَقَالَ: اشْهَدْ أَنِّي قَدْ تَحَلَّتُ التَّعْمَانَ مِنْ مَالِي كَذَا وَكَذَا. قَالَ: «فَكُلْ بَنِيكَ تَحَلَّتُ مِثْلَ الَّذِي تَحَلَّتُ التَّعْمَانَ؟» قَالَ: لَا. قَالَ: «فَأَكْشُهُدْ عَلَى هَذَا غَيْرِي». قَالَ: «أَلَيْسَ يَسْرُكَ أَنْ يَكُونُوا لَكَ فِي الْيَوْمِ سَوَاءً؟» قَالَ: بَلَى. قَالَ: فَلَا. إِذَا».

تخریج: أخرج البخاري، الهبة وفضالها والتحریض عليها، باب الهبة للولد، ح: ٢٥٨٧، ٢٦٥٠، ومسلم، الهبات، باب كراهة تفضيل بعض الأولاد في الهبة، ح: ١٦٢٣ من حديث عامر الشعبي به.

2376. It was narrated from Nu'mān bin Bashir that his father gave him a gift of a slave, and he came to the Prophet ﷺ so that he could witness the gift. He said: "Have you given something to all of your children?" He said: "No." He said: "Then take back (your gift)." (*Sahih*)

٢٣٧٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، وَ مُحَمَّدِ بْنِ التَّعْمَانِ بْنِ بَشِيرٍ: أَخْبَرَاهُ عَنِ التَّعْمَانِ بْنِ بَشِيرٍ أَنَّ أَبَاهُ نَحَّلَهُ غُلَامًا. وَأَنَّهُ جَاءَ إِلَى النَّبِيِّ ﷺ يُسْهِدُهُ. قَالَ: «أَكُلُّ وَلَكِنَّكَ نَحَّلْتَهُ؟» قَالَ: لَا. قَالَ: «فَأَرْدُدْهُ». **«فَأَرْدُدْهُ».**

تخریج: أخرجه البخاري، الهبة وفضلها والتحریر، باب الهبة للولد، ح: ٢٥٨٦، ومسلم، الهبات، الباب السابق، ح: ١٦٢٣ من حديث الزهرى به.

Comments:

- Children should be treated equally. Equal treatment in daily needs is that everybody should be given according to one's needs, for example: if a child needs clothes, he should be provided with the clothes; whoever needs medical treatment he/she should be provided with it; moreover, the equality of giving gifts to children is also necessary.
- The parents may take back the gift given to the children.

Chapter 2. One Who Gives His Child A Gift Then Takes It Back

2377. It was narrated from Ibn 'Abbās and Ibn 'Umar, who attributed the *Hadith* to the Prophet ﷺ, that he said: "It is not permissible for a man to give a gift then take it back, except what a father gives to his child." (*Sahih*)

(المعجم ٢) - بَابُ مَنْ أَعْطَى وَلَدَهُ ثُمَّ رَجَعَ فِيهِ (التحفة ٣٥)

٢٣٧٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ أَبُو بَكْرٍ ابْنُ خَلَادِ الْبَاهِلِيِّ. قَالَا: حَدَّثَنَا ابْنُ أَبِي عَلَيِّ، عَنْ حُسْنِيْنِ الْمُعَلَّمِ، عَنْ عُمَرِ بْنِ شُعْبَيْنِ، عَنْ طَاؤُسٍ، عَنْ ابْنِ عَبَّاسٍ وَ ابْنِ عُمَرَ. يَرْفَعُانَ الْحَدِيثَ إِلَى النَّبِيِّ ﷺ قَالَ: «لَا يَجُلُّ لِلرَّجُلِ أَنْ يُعْطِي الْعَطِيَّةَ ثُمَّ يَرْجِعُ فِيهَا. إِلَّا الْوَالدُ فِيمَا يُعْطِي وَلَدَهُ».

تخریج: [إسناده صحيح] أخرجه الترمذى، البيوع، باب ماجاء في كراهة الرجوع في الهبة، ح: ١٢٩٩، ٢١٣٢ عن محمد بن بشار به، وقال: حسن صحيح ، وصححه ابن الجارود، ح: ٩٩٤، وابن حبان، والحاكم: ٤٦/٢، والذهبى.

2378. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet of Allâh ﷺ said: "None of you should take back his gift, except a father (taking it back) from his son." (*Sahih*)

٢٣٧٨ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ، عَنْ عَامِرِ الْأَحْوَلِ، عَنْ عَمْرُو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ نَبِيَّ اللَّهِ ﷺ قَالَ: «لَا يَرْجِعُ أَحَدُكُمْ فِي هَبَّةٍ، إِلَّا الْوَالَدُ مِنْ وَلَدِهِ».

تخریج: [صحيح] أخرجه النسائي: ٦/٢٦٤، ٢٦٥، ٢٦٥، ٢٦٥، الهبة. رجوع الوالد فيما يعطي ولده ... الخ، ح ٣٧١٩ من حديث سعيد بن أبي عروبة به، وتابعه عبد الوارث، وإبراهيم بن طهمان عن عامر الأحول به (السنن الكبرى للبيهقي: ١٧٩/٦).

Comments:

- It is not right to take back something given to someone as gift, whether the gift is something ordinary or precious.
- A father may take back something that he has given to his children.
- The same rule of taking a gift back from a child applies to the mother as well.
- Some scholars even included the maternal grandfather and grandmother, paternal grandfather and grandmother in the same rule.

Chapter 3. Lifelong Grant

(المعجم ٣) - بَابُ الْعُمْرَى (التحفة ٣٦)

2379. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There is no lifelong grant. Whoever is given something as a lifelong grant, it is his.'" (*Hasan*)

٢٣٧٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّاً بْنُ أَبِي زَائِدَةَ، عَنْ مُحَمَّدِ ابْنِ عَفْرَوْنَ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا عُمْرَى». فَمَنْ أَغْمَرَ شَيْئًا، فَهُوَ لَهُ».

تخریج: [إسناده حسن] أخرجه النسائي: ٦/٢٧٧ من طرق عن محمد بن عمرو به، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات.

Comments:

- The Arab would sometimes say when doing a favor to someone: 'I give you the permission to reside in my house for your whole life.' It means "this house will be mine or it will be inherited by my heirs after your death," it is called '*'Umra*'.
- The Messenger of Allâh ﷺ stated the '*'Umra*' as a general charity. Now according to the *Shari'ah*, something given to someone as '*'Umra*' will belong to whom it is given. It is wrong to stipulate the condition that 'it will come back to me after your death.'

2380. It was narrated that Jâbir said: "I heard the Messenger of Allâh ﷺ say: 'Whoever gives a lifelong grant to a man, it belongs to him (the recipient) and to his heirs. His (the giver's) words put an end to his right to it, and it belongs to the one to whom it was given for life and to his heirs.' (Sahih)

تخریج: أخرجه البخاري، الہبة وفضلها والتحریض عليها، باب ما قيل في العمر والرقبی، ح: ٢٦٢٥ من حديث أبي سلمة به، ومسلم، الہبات، باب العمری، ح: ١٦٢٥ عن محمد بن رمحه .

٢٣٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُعْيٍ : أَبْنَا اللَّيْثَ ابْنُ سَعْدٍ ، عَنْ ابْنِ شَهَابٍ ، عَنْ أَبِي سَلَمَةَ ، عَنْ جَابِرٍ قَالَ : سَيِّعْتُ رَسُولَ اللَّهِ يَقُولُ : مَنْ أَعْمَرَ رَجُلًا عُمَرَ لَهُ وَلِتَقِيهِ ، فَقَدْ قَطَعَ قَوْلَهُ حَقَّهُ فِيهَا . فَهِيَ لِمَنْ أَعْمَرَ وَلِعَقِيهِ .

Comments:

Whatever is given to someone for one's whole life, after the recipient's death, it will not be returned to the giver; instead it will be shared by the deceased's heirs, just like his/her remaining inheritance is divided among the heirs, according to their shares, because it has the status of *Hibah* according to the Islamic law. Therefore it will be regarded legal property of the recipient.

2381. It was narrated from Zaid bin Thâbit that the Prophet ﷺ ruled that a gift given for life belongs to the heirs (of the recipient). (Sahih)

٢٣٨١ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ : حَدَّثَنَا سُفِيَّانُ عَنْ عَمْرُو بْنِ دِينَارٍ ، عَنْ طَاؤُسٍ ، عَنْ حُبَّرِ الْمَدْرَيِّ ، عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ النَّبِيَّ ﷺ جَعَلَ الْعُمُرَى لِلْوَارِثَاتِ .

تخریج: [إسناده صحيح] أخرجه أبو داود، البيوع، باب في الرقبی، ح: ٣٥٥٩ من حديث عمرو بن دينار به، وصححه ابن حبان، وهو مخرج في مسند الحمیدی، ح: ٣٩٩ بتتحققیقی.

(المعجم ٤) - بَابُ الرُّقْبَى (التحفة ٣٧)

Chapter 4. The Ruqba

2382. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "There is no *Ruqba*. Whoever is given a gift on the basis of *Ruqba*, it belongs to him, whether he lives or dies." (Sahih)

He (the narrator) said: "*Ruqba* is when one man says to another: 'When either of us dies.'"

٢٣٨٢ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ : أَبْنَا عَبْدَ الرَّزَّاقِ : أَبْنَا ابْنُ حُرَيْجٍ عَنْ عَطَاءٍ ، عَنْ حَبِّيْبِ بْنِ أَبِي ثَابِتٍ ، عَنْ ابْنِ عُمَرَ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : لَا رُقْبَى . فَمَنْ أَرْقَبَ شَيْئاً فَهُوَ لَهُ ، حَيَاةً وَمَاهَةً .

قال: والرُّقْبَى أَنْ يَقُولَ هُوَ لِلآخِرِ: مِنِّي

وَمِنْكَ مُؤْتَمِنًا.

تخریج: [صحیح] أخرجه النسائي: ٦/٢٧٣، العمري، ذكر اختلاف الفاظ الناقلين لخبر جابر في العمري، ح: ٣٧٦٣ من حديث عبدالرازق به، وهو في مصنف عبدالرازق: ٩/١٩٦، ح: ١٦٩٢٠ بطولة * ابن جریح صرح بالسماع، وحبيب لم يسمع هذا الحديث من ابن عمر رضي الله عنه، والحديث صحيح بشواهده راجع نيل المقصود، ح: ٣٥٥٦ وغيره.

2383. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "‘Umra belongs to the one to whom it is given, and Rûqba belongs to the one to whom it is given." (*Sahih*)

٢٣٨٢ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُشَيْمٌ: ح: وَحَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مَعَاوِيَةَ قَالَا: حَدَّثَنَا دَاوُدُ عَنْ أَبِي الرَّبِيعِ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعُمْرَى جَائِزَةٌ لِمَنْ أَعْمَرَهَا. وَالرُّقْبَى جَائِزَةٌ لِمَنْ أَرْقَهَا».

تخریج: [صحیح] أخرجه أبو داود، البيوع، باب: في الرقبي، ح: ٣٥٥٨ من حديث هشيم به، وحسنه الترمذى، ح: ١٣٥١، وانظر، ح: ٣٩٥ لعلته، وللحديث شواهد.

Comments:

- The difference between 'Umra and Rûqba is that in the matter of 'Umra, the life of the recipient is considered, he will reside in the house as long he is alive, whether he dies before the giver or after. Whenever the recipient dies, the house is reversed to the giver or to his heirs. But Rûqba has a condition that the giver will take it back only if the recipient dies before; if the giver dies before the recipient, then the house will belong to the recipient.
- If someone wants to help a poor person, and he also wants the house to remain the property of the owner, he should then lend the house to the poor for a certain period; this period may be extended at the end of the previous period if the need is realized.

Chapter 5. Taking Back A Gift

(المعجم ٥) - بَابُ الرُّجُوعِ فِي الْهَبَةِ
(التحفة ٣٨)

2384. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The likeness of one who takes back his gift is that of a dog that eats until it is full and vomits; then it goes back to its vomit and eats it again." (*Sahih*)

٢٣٨٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ: حَدَّثَنَا أَبُو أَسَامَةَ، عَنْ عَوْفٍ، عَنْ خَلَاسٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ مَثَلَ الظَّالِمِ يَعُودُ فِي عَطَيَّتِهِ، كَمَثَلِ الْكَلْبِ. أَكَلَ، حَتَّى إِذَا شَيَّقَ قَاءً. ثُمَّ عَادَ فِي قَيْتِهِ، فَأَكَلَهُ».

تخریج: [صحيح] أخرجه أَحْمَدُ ۚ ۲/۴۹۲، ۴۳۰ ۖ من حديث عوف الأعرابي به، وقال البوصيري: مقطع، خلاس بن عمرو الھجری لم یسمع من أبي هريرة شيئاً قلت: تابعه محمد بن سيرين عن أبي هريرة به عند أَحْمَدٍ ۚ ۲/۴۹۲ وغیره، فالحديث صحيح.

2385. It was narrated from Ibn 'Abbaṣ that the Messenger of Allāh ﷺ said: "The one who takes back his gift is like the one who goes back to his vomit." (*Sahih*)

٢٣٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ مُحَمَّدُ ابْنُ الْمُشْنَى قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُبَّةُ قَالَ: سَمِعْتُ قَاتَدَةَ يُحَدِّثُ عَنْ سَعِيدِ بْنِ الْمُسِّيْبِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعَائِدُ فِي هِبَّتِهِ كَالْعَائِدِ فِي قَيْمَتِهِ».

تخریج: أخرجه البخاري، الھبة وفضلها والتحریض عليها، باب: لا يحل لأحد أن یرجع في هبته وصدقته، ح: ۲۶۲۱ من حديث شعبة به، ومسلم، الھیات، باب تحريم الرجوع في الصدقة بعد القبض إلا ما وھب لولده وإن سفل، ح: ۱۶۲۲ من حديث محمد بن بشار به.

2386. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "The one who takes back his gift is like the dog that goes back to its vomit." (*Sahih*)

٢٣٨٦ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُوسُفَ الْعَرْغَرِيُّ: حَدَّثَنَا يَزِيدُ بْنُ أَبِي حَكِيمٍ: حَدَّثَنَا الْعُمَرِيُّ، عَنْ زَيْدِ بْنِ أَشْلَامَ، عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ قَالَ: «الْعَائِدُ فِي هِبَّتِهِ كَالْكَلْبِ يَعُودُ فِي قَيْمَتِهِ».

تخریج: [صحيح] * العرجي مستور(تقريب)، عبدالله بن عمر العمري ضعيف عابد(تقريب) في غير نافع، وانظر، ح: ۳۶۶، ۱۲۹۹، ولدیه شواهد صحيحة، انظر الحديث السابق.

Comments:

Hibah is to give something to someone without any exchange for it. Its objective is only and solely to gain Allāh's pleasure, and fair treatment to a believer. So taking it back is to spoil one's good deed, and it is a very bad habit to spoil a good deed deliberately.

Chapter 6. One Who Gives A Gift Hoping To Get Something Back In Return

2387. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "A man has more right to his gift so long as he has

(المعجم ۶) - بَابُ مَنْ وَهَبَ هِبَّةً رَجَاءً ثَوَابِهَا (التحفة ۳۹)

٢٣٨٧ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ ابْنُ إِسْمَاعِيلَ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا

not gotten something in return for it.” (*Sahih*)

إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ بْنُ مُجَمِّعٍ بْنُ جَارِيَةَ
الْأَصْسَارِيُّ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ أَبِي
هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الرَّجُلُ
أَحَقُّ بِهِتَّهُ مَا لَمْ يُثْبِتْ مِنْهَا».

تخریج: [إسناد ضعیف] أخرجه ابن أبي شيبة: ٤٧٤ عن وکیع به، وقال البوصیری: هذا
إسناد ضعیف لضعف ابراهیم بن اسماعیل بن مجع وانظر، ح: ١٠٦٩، ٢٢٥٠.

Chapter 7. A Woman Giving Something Without Her Husband's Permission

2388. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said, in a sermon that he delivered: “It is not permissible for a woman to dispose of her wealth except with her husband's permission, once he has married her.” (*Sahih*)

(المعجم ٧) - بَابُ عَطِيَّةِ الْمَرْأَةِ بِغَيْرِ
إِذْنِ زَوْجِهَا (التحفة ٤٠)

٢٣٨٨ - حَدَّثَنَا أَبُو يُوسُفُ الرَّقِيقُ، مُحَمَّدُ بْنُ
أَخْمَدَ الصَّيْلَانِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ سَلْمَةَ عَنِ
الْمُشَّى بْنِ الصَّبَّاحِ، عَنْ عَمْرِو بْنِ شَعْبَى، عَنْ
أَبِيهِ، عَنْ جَلْوَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ، فِي
خُطُبَةِ حَطَبَهَا: «لَا يَجُوزُ لِإِمْرَأَةٍ فِي مَالِهَا، إِلَّا
يَأْذِنُ زَوْجَهَا، إِذَا هُوَ مَالُكٌ عِصْمَتَهَا».

تخریج: [صحیح] * المثنی لم یفرد به بل تابعه داود بن أبي هند، وحیب المعلم عن عمرو
به، أخرجه أبو داود، ح: ٣٥٤٦ وغیره، وصححه الحاکم: ٤٧/٢، والذهبي.

2389. It was narrated from 'Abdullâh bin Yahya, one of the sons of Ka'b bin Mâlik, from his father, from his grandfather, that his grandmother Khairah, the wife of Ka'b bin Mâlik, came to the Messenger of Allâh ﷺ with some jewelry belonging to her, and said, I am giving this in charity. The Messenger of Allâh ﷺ said to her: “It is not permissible for a woman to dispose of her wealth without her husband's permission. Did you

٢٣٨٩ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي الْلَّيْثُ بْنُ سَعْدٍ،
عَنْ عَبْدِ اللَّهِ بْنِ يَحْيَى رَجُلٌ مِنْ وَلَدِ كَعْبٍ
ابْنِ مَالِكٍ عَنْ أَبِيهِ، عَنْ جَلْوَ أَنَّ جَدَّهُ
خَمِيرَةً، امْرَأَةً كَعْبِ بْنِ مَالِكٍ أَنْتُ رَسُولَ اللَّهِ
ﷺ بِحُلْيِي لَهَا. فَقَالَتْ: إِنِّي تَصَدَّقَتْ بِهَذَا.
فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «لَا يَجُوزُ لِإِمْرَأَةٍ
فِي مَالِهَا إِلَّا يَأْذِنُ زَوْجَهَا. فَهَلْ أَسْتَأْذِنُتِ
كَعْبَأً؟» قَالَتْ: نَعَمْ. فَبَعَثَ رَسُولُ اللَّهِ ﷺ

ask Ka'b's permission?" She said: "Yes." So the Messenger of Allâh ﷺ sent for Ka'b bin Mâlik, her husband, and said, "Did you give Khairah permission to give her jewelery in charity?" He said: "Yes." So the Messenger of Allâh ﷺ accepted it from her. (*Da'if*)

إلى كعب بن مالك، روجها فقال: «هل أذنت لخيرة أن تصدق بحليها؟» فقال: «نعم». فقبله رسول الله ﷺ منها.

تخریج: [إسناده ضعيف] أخرجه الطحاوي في معاني الآثار: ٤٥١ من حديث الليث به، وقال ابن عبدالبر: إسناده ضعيف، لا تقوم به الحجة ، وضعفه البوصيري وغيره * عبدالله بن يحيى، وأبيه مجاهد لأن (نثريبي).

Comments:

- If a woman intends to give charity from her own wealth, it is better to ask the husband's permission.
- Imâm Bukhâri said that if a woman is wise enough, she may give charity to someone, even if her husband is at home, but this permission applies when a woman knows that her husband will have no objection against her giving it away, or he will not object for such and such amount; and she normally gives away the amount which her husband has no objection too.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

15. The Chapters On Charity

(المعجم ١٥) أبواب الصدقات
(التحفة ...)

Chapter 1. Taking Back One's Charity

2390. It was narrated from 'Umar bin Khattāb that the Messenger of Allāh ﷺ said: "Do not take back your charity." (*Sahih*)

(المعجم ١) - باب الرُّجُوعِ في الصَّدَقَةِ
(التحفة ٤١)

٢٣٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا هِشَامُ بْنُ سَعْدٍ، عَنْ زَيْدِ ابْنِ أَشْلَمَ، عَنْ أَبِيهِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا تَعْدُ فِي صَدَقَتِكَ».

تخریج: أخرجه البخاري، الزکوة، باب: هل يشتري صدقته؟ ... إلخ، ح: ١٤٩٠، ٢٦٢٣، ٣٠٠٣، ومسلم، الهبات، باب كراهة شراء الإنسان ما تصدق به من تصدق عليه، ح: ١٦٢٠ من حديث زيد بن أسلم به.

2391. 'Abdullāh bin 'Abbās narrated that the Messenger of Allāh ﷺ said: "The likeness of the one who gives charity then takes it back is that of a dog who vomits then goes back and eats its vomit." (*Sahih*)

٢٣٩١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشِيقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُشْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي أَبُو جَعْفَرٍ، مُحَمَّدُ بْنُ عَلِيٍّ: حَدَّثَنِي سَعِيدُ بْنُ الْمُسَيْبَ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ الْعَبَاسِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَثُلُ الَّذِي يَتَصَدَّقُ ثُمَّ يَرْجِعُ فِي صَدَقَتِهِ، مَثُلُ الْكَلْبِ يَقْبَغُ ثُمَّ يَرْجِعُ فِي أَكْلِ قَيْئَهُ».

تخریج: [صحیح] تقدم، ح: ٢٣٨٥ .

Comments:

Charity is a great virtuous deed. It is not good to take charity back once it is given. Taking it back is to annul the good of it. Annulling a virtuous deed is a great loss. Giving the example of a dog that vomits and eat its vomit shows that taking back charity is a most abhorrent deed and one should avoid it.

Chapter 2. One Who Gives Charity Then Finds His Gift Being Sold – Should He Buy It?

2392. It was narrated from 'Umar bin 'Abdullâh bin 'Umar, meaning, from his father, from his grandfather 'Umar, that he gave a horse in charity at the time of the Messenger of Allâh ﷺ, then he saw its owner selling it for a low price. He went to the Prophet ﷺ and asked him about that, and he said: "Do not buy what you gave in charity." (*Sahih*)

(المعجم ٢) - بَابُ مَنْ تَصَدَّقَ بِصَدَقَةٍ فَوَجَدَهَا تُبَاعُ هَلْ يَشْتَرِيهَا (التحفة ٤٢)

٢٣٩٢ - حَدَّثَنَا تَوْيِيمُ بْنُ الْمُنْتَصِرِ الْوَاسِطِيُّ: حَدَّثَنَا إِسْحَاقُ بْنُ يُوسُفَ، عَنْ شَرِيكِ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ أَبْنَاءِ عُمَرَ، يَعْنِي عَنْ أَبِيهِ، عَنْ جَدِّهِ عُمَرَ أَبْنَاءِ عُمَرَ، يَعْنِي عَنْ أَبِيهِ، عَنْ عَهْدِ رَسُولِ اللَّهِ ﷺ. فَأَبْصَرَ صَاحِبَهَا يَبْعِيْهَا بِكَسْرٍ. فَأَتَى الشَّيْءَ، فَسَأَلَهُ عَنْ ذَلِكَ. قَالَ: «لَا تَتَبَعَنْ صَدَقَتِكَ».

تخریج: أخرجه البخاري في التاریخ الكبير: ١٦٨ من حديث شريك القاضي به، وفيه: عمر بن عروة بن عمر بن عبد الله بن عمر عن أبيه ... الخ، ولعله تصحیف، وللحديث شواهد عند البخاري، ومسلم وغيرهما من حديث زيد بن أسلم عن أبيه عن عمر به.

Comments:

To give a thing in charity, and the desire to buy it back, shows that its attachment and love is still in the heart, which is wrong and against the basic philosophy of charity. Giving a dear thing in the Name of Allâh is only to seek His pleasure and approval, and keeping a desire for that thing in the heart is to undo the virtuous deed.

2393. It was narrated from Zubair bin 'Awwâm that he gave a horse called Ghâmr or Ghâmrâh to someone, then he saw one of its colts or fillies attributed to his horse being sold, but he refrained from (buging) it.^[1] (*Sahih*)

٢٣٩٣ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا شَيْمَانُ الشَّيْمَيِّ عَنْ أَبِي عُثْمَانَ النَّهْرَيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ، عَنْ الزَّيْرِ بْنِ الْعَوَامِ أَنَّهُ حَمَلَ عَلَى فَرَسٍ يَقَالُ لَهُ عَمْرٌ أَوْ عَمْرَةً. فَرَأَى مُهْرَأً أَوْ مُهْرَةً مِنْ أَفْلَائِهَا يُبَاعُ، يُتَبَسَّبُ إِلَى فَرَسِهِ، فَنَهَى عَنْهَا.

[1] He would not buy it because it was the offspring of what he gave in charity, this was stated in *Injâhul-Hâjjah*.

تخریج: [إسناده صحيح] أخرجه أَحْمَدُ: ١٦٤ عن يَزِيدَ بْنِ عَامِرٍ، وَقَالَ الْبُوصِيرِيُّ: هَذَا إِسْنَادٌ صَحِيحٌ * عَبْدُ اللَّهِ بْنُ عَامِرٍ، هُوَ ابْنُ رِبِيعَةَ أَوْ ابْنِ كُرَيْزَةَ وَكَلَاهُمَا ثَقَنَانُ، وَاللَّهُ أَعْلَمُ.

Chapter 3. One Who Gives Something In Charity Then Inherits It

2394. It was narrated from 'Abdullâh bin Burâîdah that his father said: "A woman came to the Prophet ﷺ and said: 'O Messenger of Allâh, I gave my mother a slave girl of mine, and she has died.' The Messenger of Allâh ﷺ said: 'Allâh has rewarded you, and returned to you your inheritance (without your seeking that).' " (Sahih)

تخریج: [صحیح] تقدم من حديث عبدالرازاق عن سفیان الثوری به، ح ۱۷۵۹.

2395. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Prophet ﷺ and said: 'I gave my mother a garden of mine, and she has died and has no other heir but me.' The Messenger of Allâh ﷺ said: 'Your charity is valid and your garden has been returned to you.'" (Sahih)

(المعجم ٣) - بَابُ مَنْ تَصَدَّقَ بِصَدَقَةٍ ثُمَّ وَرَثَهَا (النَّفْعَةُ ٤٣)

٢٣٩٤ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُقْيَانَ، عَنْ عَبْدِ اللَّهِ بْنِ عَطَاءٍ، عَنْ عَبْدِ اللَّهِ بْنِ بُرْيَدَةَ، عَنْ أَبِيهِ قَالَ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنِّي تَصَدَّقَتُ عَلَى أُمِّي بِجَارِيَةٍ. وَإِنَّهَا مَاتَتْ. فَقَالَ: «آتَيْرَكَ اللَّهُ، وَرَدَّ عَلَيْكَ الْمِيرَاثَ».

٢٣٩٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الرَّوْقَيِّ: حَدَّثَنَا عَبْدُ اللَّهِ، عَنْ عَبْدِ الْكَرِيمِ، عَنْ عَمْرُو بْنِ شَعِيبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي أَعْطَيْتُ أُمِّي حَدِيقَةً لِي. وَإِنَّهَا مَاتَتْ وَلَمْ تَرُكْ وَارِثًا غَيْرِي. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَبَيَّنْتَ صَدَقَتَكَ، وَرَجَعْتَ إِلَيْكَ حِدِيقَتَكَ».

تخریج: [إسناده صحيح] أخرجه أَحْمَدُ: ١٨٥ من حديث عبید الله (بن عمرو الرقبي) به وقال البوصيري: هذا إسناد صحيح إلى عمرو بن شعيب ومن يحتاج بعمرو بن شعيب عن أبيه عن جده فالإسناد صحيح عنده قلت: احتاج به الجمهور كما حققته في جزء خاص وهو مذكور في تخریج مسند الحمیدي.

Comments:

- Charity can be given to parents.
- If anything is given to parents in charity, and it comes back in inheritance, it is not the same as taking back charity, it is just the share of inheritance that is the right of the heir.

- c. In this situation, the reward of the virtuous deed of giving charity is not invalidated.

Chapter 4. One Who Establishes A *Waqf* (An Endowment)

2396. It was narrated that Ibn 'Umar said: "Umar bin Khattâb acquired some land at Khaibar, and he came to the Prophet ﷺ and consulted him. He said: 'O Messenger of Allâh, I have been given some wealth at Khaibar and I have never been given any wealth that is more precious to me than it. What do you command me to do with it?' He said: 'If you wish, you can make it an endowment and give (its produce) in charity.' So 'Umar gave it on the basis that it would not be sold, given away or inherited, and (its produce) was to be given to the poor, to relatives, for freeing slaves, in the cause of Allâh, to wayfarers and to guests; and there was nothing wrong if a person appointed to be in charge of it consumed from it on a reasonable basis or feeding a friend, without accumulating it for himself." (*Sahih*)

(المعجم ٤) - باب مَنْ وَقَّتْ (التحفة ٤٤)

٢٣٩٦ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضُومِيُّ : حَدَّثَنَا مُعْنَمُ بْنُ سُلَيْمَانَ، عَنْ أَبْنِ عَوْنَ، عَنْ تَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: أَصَابَ عُمَرَ بْنَ الْخَطَّابِ أَرْضًا بِخَيْرٍ. فَأَتَى النَّبِيَّ ﷺ فَاسْتَأْمَرَهُ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أَصَبَّتُ مَالًا بِخَيْرٍ. لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَنْفُسُ عِنْدِي مِنْهُ. فَمَا تَأْمُرُنِي بِهِ؟ فَقَالَ: إِنْ شِئْتَ حَبَّسْتَ أَصْلَاهَا وَتَصَدَّقْتَ بِهَاٰ قَالَ: فَعَمِلْتُ بِهَا عُمَرُ عَلَى أَنْ لَا يَتَابَعَ أَصْلُهَا وَلَا يُوَهَّبَ وَلَا يُورَثَ . تَصَدَّقْتُ بِهَا لِلْفُقَرَاءِ وَفِي الْفَرَائِيسِ وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ وَالضَّيْفِ. لَا جُنَاحَ عَلَى مَنْ وَلَيْكُمْ أَنْ يَأْكُلَهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا. غَيْرُ مُتَمَوِّلٍ .

نَحْرِيْج: أَخْرَجَ الْبَخَارِيُّ، الشَّرْوُطُ، بَابُ الشُّرُوطِ فِي الْوَقْفِ، ح: ٢٧٣٧، ٢٧٧٢، ٢٧٧٣، ٢٧٧٤، ١٦٣٢ مِنْ حَدِيثِ أَبْنِ عَوْنَ بْنِ مُوسَمَ، الْوَصِيَّةُ، بَابُ الْوَقْفِ، ح:

Comments:

- Making a trust is lawful and permitted.
- An endowment is not property of anyone, but the person who makes the endowment has the right to manage it.
- 'Without accumulating it for himself' means not to make it a source of income for himself. The person appointed in charge can use endowment money only for his basic needs without being extravagant.

2397. It was narrated that Ibn 'Umar said: "Umar bin Khattâb said: 'O Messenger of Allâh, the one hundred shares of the Khaibar I have never been given any wealth that is more beloved to me than them, and I wanted to give them in charity.' The Prophet ﷺ said: 'Make it an endowment and give its produce in the cause of Allâh.'" (*Sahih*)

تخریج: (الف) [صحيح] أخرجه النسائي: ٢٣٢ من حديث سفيان بن عيينة به، الطريق الأول * سفيان تابعه عبدالعزيز بن محمد الدراوردي وغيره، والسد الآتي شاهد له.

(One of the narrators) Ibn Abu 'Umar (who narrated it from Sufyân, from 'Ubâidullâh bin 'Umar) said: "I found this *Hadîth* in another location in my book from Sufyân, from 'Abdullâh, from Nâfi', from Ibn 'Umar who said: 'Umar said.' And he mentioned similarly." (*Sahih*)

تخریج: (ب) [صحيح] أخرجه أحمّد: ١٥٧، ١١٤، ١٥٦ من طريقين آخرين عن عبد الله ابن عمر العمري به، وإسناده قوي، انظر، ح: ١٢٩٩، ٣٦٦.

Chapter 5. Borrowed Items

2398. Shurahbil bin Muslim said: I heard Abu Umâmah say: "I heard the Messenger of Allâh ﷺ say: 'Borrowed items are to be returned and an animal borrowed for milking is to be returned.'" (*Hasan*)

تخریج: [إسناده حسن] أخرجه الترمذی، البیوع، باب ماجاء في أن العاریة مؤدّاة، ح: ١٢٦٥ من حديث إسماعيل بن عیاش، وقال: حسن غریب، وأخرجه أبو داود، ح: ٣٥٦٥ مطولاً، وصححه ابن الجارود، ح: ١٠٢٣، وله طريق آخر عند ابن حبان في صحيحه.

٢٣٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ : حَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يَا رَسُولَ اللَّهِ إِنَّ الْمِائَةَ سَهْمٌ الَّتِي يُحِبُّنِي، لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَحَبُّ إِلَيَّ مِنْهَا. وَقَدْ أَرَدْتُ أَنْ أَتَصَدِّقَ بِهَا. فَقَالَ النَّبِيُّ ﷺ: «الْأَحْسَنُ أَصْلَهَا، وَسَبِّلْ ثَمَرَتَهَا».

قالَ أَبْنُ أَبِي عُمَرَ: فَوَجَدْتُ هَذَا الْحَدِيثَ فِي مَوْضِعٍ أَخْرَى فِي كِتَابِي، عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ عُمَرُ: فَلَمَّا كَرِنَ تَحْوِةً.

(المعجم ٥) - باب العارية (التحفة ٤٥)

٢٣٩٨ - حَدَّثَنَا يَشَّامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشَ: حَدَّثَنَا شَرْحَبِيلُ بْنُ مُسْلِمٍ قَالَ: سَوْعَتْ أَبَا أُمَّامَةَ يَقُولُ: سَوْعَتْ رَسُولُ اللَّهِ ﷺ يَقُولُ: «الْعَارِيَةُ مُؤَدَّةٌ. وَالْمَنْتَهَى مَرْدُودَةٌ».

2399. It was narrated that Anas bin Mâlik said: "I heard the Messenger of Allâh ﷺ say: 'Borrowed items are to be returned and an animal borrowed for milking is to be returned.'" (Sahîh)

٢٣٩٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَعَنْ الرَّحْمَنِ بْنِ إِبْرَاهِيمَ الدَّمْشِيقِيِّ قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ شَعْبَيْهِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ تَرِيدَةِ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَسَى بْنِ مَالِكٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: (الْعَارِيَةُ مُؤَدَّةٌ وَالْمَنْجَةُ مَرْفُودَةٌ).

تخریج: [صحيح] أخرجه الطبراني في مستند الشاميين: ١/٣٦١، ٣٦٠ ح: ٦٢١ من حديث هشام بن عمار به، أخرجه الدارقطني: ٤/٦٩ من طريق آخر عن عبد الرحمن بن يزيد بن جابر به، وقال البوسيري: هذا إسناد صحيح رجاله ثقات قلت: سعيد بن أبي سعيد الساحلي - غير المقبرى . مجهول كما في التقريب ، ونيل المقصود، ح: ٥١١٥ ، والحديث السابق شاهد له .

2400. It was narrated from Samurah that the Messenger of Allâh ﷺ said: "The hand that takes is responsible for what it has taken until it returns it." (Da'if)

٤٤٠٠ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَبْرِ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ؛ ح: وَحَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، يَجِيدُ عَنْ سَعِيدٍ، عَنْ فَتَادَةِ، عَنِ الْحَسَنِ، عَنْ سَمْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: (عَلَى الْيَدِ مَا أَخْدَثَ حَتَّى تُؤْدِيهِ).

تخریج: [إسناده ضعيف] أخرجه الترمذی ، البيوع ، باب ماجاء في أن العارية مؤداة ، ح: ١٢٦٦ من حديث ابن أبي عدي به ، وقال: حسن صحيح ، وصححه ابن الجارود ، ح: ١٠٢٤ ، والحاکم على شرط البخاری: ٤٧/٢ ، ووافقه الذہبی * سعید الدھبی * سعید الدھبی * وفتاده تقدم ، ح: ٤٢٩ ، وفتاده تقدم ، ح: ١٧٥ مدلسان وعننا .

Comments:

Debt, something borrowed, and entrusted things; must be returned after use. Their return is an obligation. Orders to return these things are there in the Noble Qur'an and Sound Traditions. It is mentioned in the Noble Qur'an, Surah Al-Mu'minun, Verse 8: "Those who are faithfully true to their trusts and to their covenants." (Those are indeed successful.)

Chapter 6. Items Placed In Trust

(المعجم ٦) - بَابُ الْوَدِيعَةِ (التحفة ٤٦)

2401. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said:

٤٤٠١ - حَدَّثَنَا عَيْدُ اللَّهِ بْنُ الْجَهْمَ الْأَنْطاَطِيُّ: حَدَّثَنَا أَيُوبُ بْنُ سُوِيدٍ، عَنْ الْمُتَّبَّى، عَنْ عَفْرَوْ بْنِ شَعْبَيْهِ، عَنْ أَبِيهِ،

'Whoever is entrusted with an item for safekeeping, is not responsible for it (so long as he is not negligent).' (Da'if)

عَنْ جَهْدِهِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَوْدَعَ وَدِيعَةً، فَلَا ضَيْانَ عَلَيْهِ».

تخریج: [إسناده ضعیف] وقال البوصيري: هذا إسناد ضعیف لضعف المتنى وهو ابن الصباح، والراوى عنه قلت: مما ضعیفان على الراجح، ورواه ابن لهیعة فيما ذکرہ البیهقی، وضعف ابن لهیعة مشهور بعد ثبوت السند إليه من غير روایة العبادلة، ورواه یزید بن عبد الملک نحوه یاسناد ضعیف * یزید ضعیف أيضًا، فالحادیث غير حسن.

Comments:

- Safeguarding an entrusted thing, and not breaking the trust, is the true character of a Muslim.
- If an entrusted thing is damaged or lost, its same substitute should be returned, and if it is damaged or lost by some mishap, and there is no negligence or carelessness from the trustee, then there is no replacement for it.

Chapter 7. When The One Who Is Entrusted With Something Engages In Trade With It And Makes A Profit

2402. It was narrated from 'Urwah Al-Bâriqi that the Prophet ﷺ gave him a Dinâr to buy him a sheep, and he bought two sheep for him, then sold one of them for a Dinâr, and brought a Dinâr and a sheep to the Prophet ﷺ. The Messenger of Allâh ﷺ prayed for blessing for him. (*Sahih*)

He (one of the narrators) said: "If he had bought dust, he would have made a profit from it."

تخریج: (الف) أخرجه البخاري، المناقب، باب ، ح ٣٦٤٢: من حديث سفيان به، إلا أنه قال: شیب بن عرقدة قال: سمعت الحجّي يتحدثون عن عروة به ... إلخ، انظر، الروایة الآتية.

(Another chain) from, 'Urwah bin Abu ja'd Al-Bâriqi who said: "Some trade arrived, so the Prophet ﷺ gave me a Dinâr." And he mentioned similarly. (*Hasan*)

(المعجم ٧) - بَابُ الْأَمِينِ يَتَحَرَّ فِيهِ فَيَرْبَحَ (التحفة ٤٧)

٢٤٠٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْهَةَ: حَدَّثَنَا شَعْبَيْانُ بْنُ عَيْنَةَ، عَنْ شَيْبِ بْنِ عَرْقَدَةَ، عَنْ عُرْوَةَ الْبَارِقِيِّ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَعْطَاهُ دِينَارًا يَشْتَرِي لَهُ شَاءَ. فَأَشْتَرَ لَهُ شَائِنَينِ . فَبَاعَ إِحْدَاهُمَا بِدِينَارٍ. فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَشَاءَ. فَدَعَاهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِالْبُرْكَةِ.

قَالَ: فَكَانَ لَوْ أَشْتَرَ الرُّتْبَ الْمُرْبَحَ فِيهِ.

حدَّثَنَا أَحْمَدُ بْنُ سَعِيدِ الدَّارِمِيِّ: حَدَّثَنَا حَبَّانُ بْنُ هَلَالٍ: حَدَّثَنَا سَعِيدُ بْنُ زَيْدٍ، عَنِ الرَّبِيعِ بْنِ الْخَرِيجِ، عَنْ أَبِي لَيْدٍ لِمَازَةَ بْنِ زَيَارٍ، عَنْ عُرْوَةَ بْنِ أَبِي الْجَعْدِ الْبَارِقِيِّ قَالَ:

قَدِمَ جَلْبٌ، فَأَعْطَانِي النَّبِيُّ ﷺ دِينَارًا. فَذَكَرَ تَحْوِهُ.

تخریج: (ب) [إسناده حسن] أخرجه أبو داود، البيوع، باب: في المضارب يخالف، ح: ۲۲۸۰ من حديث سعيد بن زيد به.

Comments:

- Entrusted wealth can be used for personal purposes but after making it certain that it will be immediately returned on demand.
- Doing business with the entrusted wealth is allowed, but if there is a loss in it, the trader will bear it, and the full amount of the entrusted wealth will be returned. Similarly if there is a profit in this trade, it is for the trader. The trader by his own free will can offer some money or gift to the owner of the wealth, and it is legal to accept it.

Chapter 8. Transferring Debt

(المعجم ۸) - بَابُ الْحَوَالَةِ (التحفة ۴۸)

2403. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "(Wrongdoing) is when a rich man takes a long time to repay a debt, and if one of you is referred to a rich man (to collect a debt), he should accept that referral." (*Sahih*)

تخریج: أخرجه البخاري، الحالات، باب الحوالات، وهل يرجع في الحوالات، ح: ۲۲۸۷، ومسلم، المسافة، باب تحريم مطل الغني وصححة الحوالات واستحباب قبولها إذا أحيل على مليء، ح: ۱۵۶۴ من حديث مالك عن أبي الزناد من حديث أبي الزناد به، أخرجه النسائي، ح: ۴۶۹۲ من حديث سفيان بن عيينة به.

Comments:

- If one has enough sources to return the debt, it is a sin and moral crime to make a delay in return of debt.
- 'Should accept that referral' means if the debtor refers the lender to a wealthy man having good reputation to receive his money from him, he should accept this reference and contact him regarding his loan return. The lender can again make a demand from the debtor if he does not receive his money from the referred person.

2404. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "When a rich man takes too long to repay a debt, this is wrongdoing, and if the

٢٤٠٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَيْهِ، عَنْ أَبِي الزَّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «[الظُّلْمُ] مَطْلُ الغَنِيِّ. وَإِذَا أُتْبَعَ أَخْدُوكُمْ عَلَى مَلِيءٍ فَلَيْسَ». .

٢٤٠٤ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوَيْبَةَ: حَدَّثَنَا هُشَيْمٌ عَنْ يُوسُفَ بْنِ عَيْنَيْدٍ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَطْلُ

debt is transferred to a rich man, you should accept it." (*Sahih*)

العنبي ظلمٌ. فإذا أحْلَتْ عَلَى مَلِيءٍ فَائِبَةً».

تخریج: [صحيح] أخرجه أحمد: ٧١ من حديث هشيم: أنا يونس بن عبيد به مطولاً، وعلته أن يونس لم يسمع من نافع شيئاً، فالسند منقطع كما قال البوصيري، ولكن له شواهد صحيحة، وبها صح الحديث.

Chapter 9. Guaranty

2405. Shurahbil bin Muslim Al-Khawlâni said: I heard Abu Umâmah Al-Bâhili say: "I heard the Messenger of Allâh ﷺ say: 'The guarantor is responsible and the debt must be repaid.'"^[1] (*Hasan*)

(المعجم ٩) - باب الكفالة (التحفة ٤٩)

٤٤٠٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَالْحَسَنُ
ابْنُ عَرْفَةَ قَالَا: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ:
حَلَّتْنِي شُرَحْبِيلُ بْنُ مُسْلِمٍ الْحَوْلَانِيُّ. قَالَ:
سَمِعْتُ أَبَا أُمَّامَةَ الْبَاهْلِيَّ يَقُولُ: سَمِعْتُ
رَسُولَ اللَّهِ ﷺ يَقُولُ: «الرَّاعِيمُ غَارِمٌ، وَالَّذِينَ
مَقْضِيَّهُ».

تخریج: [حسن] نقدم، ح: ٢٣٩٨ ببعضه، وهذا طرف منه.

Comments:

- If a person act as a guarantor for guarantee to another person, saying that he will return the debt in time, or on demand, and the debtor fails to return it, the guarantor is responsible to return it. He should pay the debt from his own pocket and receive it later from the debtor.
- Payment of a debt is a must even if the debtor dies. It should be paid from his legacy, and if the legacy is not enough to cover the amount of debt, his heirs are responsible to pay off the debt.

2406. It was narrated from Ibn 'Abbâs that during the time of the Messenger of Allâh ﷺ, a man pursued a debtor who owed him ten Dinâr, and he said: "I do not have anything to give you." He (the creditor) said: "No, by Allâh, I will not leave you until you pay the debt or you bring me a guarantor." Then he dragged him to the Prophet ﷺ and the Prophet

٤٤٠٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا
عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَوِيدِيُّ، عَنْ عَمْرِو
ابْنِ أَبِي عَمْرِو، عَنْ عِكْرَمَةَ، عَنْ أَبْنِ عَبَّاسٍ
أَنَّ رَجُلًا لَّزَمَ غَرِيمًا لَّهُ بِعَشْرَةَ دَنَارٍ، عَلَى
عَهْدِ رَسُولِ اللَّهِ ﷺ. فَقَالَ: مَا عِنْدِي شَيْءٌ
أُعْطِيَكَهُ. قَالَ: لَا وَاللَّهِ لَا أَفَارِكُ حَتَّى
تَنْهَضِي أَوْ تَأْتَيَنِي بِحَمِيلٍ. فَجَرَّهُ إِلَى الشَّيْءِ

[1] See no. 2398.

ﷺ said to him: "How long will you wait?" He said: "One month." The Messenger of Allâh ﷺ said: "I will be a guarantor for him." Then he came to him at the time the Prophet ﷺ had said, and the Prophet ﷺ said to him: "Where did you get this from?" He said: "From a mine." He said: "There is nothing good in it," and he paid the debt for him. (*Hasan*)

ﷺ. فَقَالَ لِهِ الرَّبِيعُ: «كَمْ تَسْتَظِرُ؟» فَقَالَ: شَهْرًا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «فَإِنَّا أَحْمَلُ لَهُ» فَجَاءَهُ فِي الْوَقْتِ الَّذِي قَالَ الرَّبِيعُ. فَقَالَ لِهِ النَّبِيُّ ﷺ: «مِنْ أَيْنَ أَصَبَّتَ هَذَا؟» قَالَ: مِنْ مَعْدِنٍ. قَالَ: «لَا خَيْرٌ فِيهَا وَكَفَاهَا عَنْهُ.

تخریج: [إسناده حسن] أخرجه أبو داود، البيع، باب: في استخراج المعادن، ح: ٣٢٨؛ من حديث الدراوردي به، وانظر نيل المقصود، ح: ٣٥٣؛ لوثيق عمرو بن أبي عمرو رحمة الله.

Comments:

- a lender can press the debtor to pay back the loan taken.
- b. To keep the wealth found from the mine is legal, but for him it was better to earn by working.
- c. If the guarantor pays the amount of the debt on behalf of the debtor, it is requited and the debtor is free from the obligation.

2407. It was narrated that 'Uthmân bin 'Abdullâh bin Mawhab said: "I heard 'Abdullâh bin Abu Qatâdah narrate from his father that a corpse was brought to the Prophet ﷺ for him to offer the funeral prayer, and he said: 'Pray for your companion, for he owes a debt.' Abu Qatâdah said: 'I will stand surely for him.' The Prophet ﷺ said: 'In full?' He said: 'In full.' And the debt he owed was eighteen or nineteen Dirham." (*Sahîh*)

٤٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَارٍ: حَدَّثَنَا أَبُو عَامِرٍ: حَدَّثَنَا شَعْبُهُ عَنْ عُثْمَانَ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ، قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي قَتَادَةَ، عَنْ أَبِيهِ أَنَّ النَّبِيَّ ﷺ أَنِّي بِجَنَازَةِ لِيُصَلِّيَ عَلَيْهَا. فَقَالَ: «صَلُّوا عَلَى صَاحِبِكُمْ». فَإِنَّ عَلَيْهِ دِينًا» فَقَالَ أَبُو قَتَادَةَ: أَنَا أَنْكِفُ لَهُ. قَالَ النَّبِيُّ ﷺ: «بِالْوَفَاءِ؟» قَالَ: بِالْوَفَاءِ. وَكَانَ اللَّذِي عَلَيْهِ عَلَيْهِ ثَمَانِيَّةً عَشَرَ أَوْ تِسْعَةً عَشَرَ دِرْهَمًا.

تخریج: [إسناده صحيح] أخرجه الترمذى، الجنائز، باب: ماجاء في الصلوة على المديون، ح: ١٠٦٩؛ من حديث شعبة به، وقال: حسن صحيح ، وصححه ابن حبان (موارد)، ح: ١١٦١.

Comments:

- a. The funeral prayer should be offered for a person who committed a sin; and should not be buried without the prayer.

- b. Taking the responsibility on behalf of the deceased for payment of debt is legal and permitted, rather it is a favor for the deceased and his relatives.

Chapter 10. One Who Takes A Loan With The Intention Of Repaying It

2408. It was narrated that the Mother of the Believers Maimunah used to take out loans frequently, and some of her family said: "Do not do that," and they denounced her for that. She said: "No, I heard my Prophet ﷺ and my close friend say: 'There is no Muslim who takes out a loan and Allâh knows that he intends to pay it back, but Allâh will pay it back for him in this world.'" (Hasan)

(المعجم ١٠) - بَابُ مَنْ ادَّانَ دِينًا وَهُوَ يَنْوِي قَضَاءُهُ (الصفحة ٥٠)

٢٤٠٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْيَةَ بْنُ حُمَيْدٍ، عَنْ مَنْصُورٍ، عَنْ زَيَادٍ بْنِ عَمْرُو بْنِ هَنْدٍ، عَنْ ابْنِ حُذَيْفَةَ، هُوَ عِمْرَانُ عَنْ أُمِّ الْمُؤْمِنِينَ مَيْمُونَةَ قَالَ: كَانَتْ تَدَائِنُ دِينًا. فَقَالَ لَهَا بَعْضُ أَهْلِهَا: لَا تَعْلِمُ وَأَنْكَرَ ذَلِكَ عَلَيْهَا قَالَتْ: بَلَى. إِنِّي سَعَيْتُ نَبِيًّيَ وَخَلِيلِهِ يَقُولُ: «مَا مِنْ مُسْلِمٍ يَدْعَانِ دِينًا، يَعْلَمُ اللَّهُ مِنْهُ أَنَّهُ يُرِيدُ أَدَاءَهُ، إِلَّا أَدَاءَهُ اللَّهُ عَنْهُ فِي الدُّنْيَا».

تخریج: [حسن] أخرجه النسائي، البيوع، التسهيل فيه، ح: ٤٦٩٠ من حديث منصور بن المعتمر به، وصححه ابن حبان (موارد)، ح: ١١٥٧، وسكت عليه الحافظ في الفتح: ٥٤/٥.

Comments:

- To borrow at the time of need is allowed and legal but it is better to avoid it.
- At the time of borrowing it should be the sincere intention to pay back the loan as soon as possible.
- Allâh ﷺ helps those who sincerely intend and try to repay the debt.

2409. It was narrated from 'Abdullâh bin Ja'far that the Messenger of Allâh ﷺ said: "Allâh will be with the borrower until he pays off his debt, so long as it (the loan) is not for something that Allâh dislikes." (Hasan)

He (the narrator) said: "Abdullâh bin Ja'far used to say to his store keeper (i.e., the one entrusted with his wealth): 'Go and take out a loan for me, for I

٢٤٠٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ: حَدَّثَنَا أَبْنُ أَبِي قُدَيْبَةَ: حَدَّثَنَا سَعِيدُ بْنُ سُعْدِيَانَ مَوْلَى الْأَشْلَمِيِّينَ، عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كَانَ اللَّهُ مَعَ الدَّائِنِ حَتَّى يَقْضِي دِينَهُ. مَا لَمْ يَكُنْ فِيمَا يَكْرَهُ اللَّهُ».

قَالَ: فَكَانَ عَبْدُ اللَّهِ بْنُ جَعْفَرَ يَقُولُ لِحَازِزِيهِ: اذْهَبْ فَخُذْ لِي بِلَيْنِينَ. فَإِنِّي أَكْرَهُ أَنْ

would hate to spend the night without Allâh being with me, after I heard that from the Messenger of Allâh ﷺ.” (Hasan)

أَبْيَتْ لِيَّنَةً إِلَّا وَاللَّهُ مَعِيْ. بَعْدَ الَّذِي سَمِعْتُ
مِنْ رَسُولِ اللَّهِ ﷺ.

تخریج: [إسناده حسن] أخرجه الحاکم: ٢٣ من حديث ابن أبي ذیک به، وقال: صحيح الإسناد ، وقال النھی: صحيح، وقال البوسیری: هذا إسناد صحيح، رجاله ثقات ، وقال الحافظ فی الفتح: ٥٤/٥ إسناده حسن * سعید بن سقیان وثقه ابن جبان ، والحاکم ، واختلف قول النھی والسعقلانی فیه ، فحدیثه لا ینزل عن درجة الحسن ، ولحدیثه شواهد كثیرة .

Comments:

If there is a dire need of money for some good deed, one can borrow it, but one should not borrow for extravagant and worthless rites and customs, like un-Islamic customs in marriage and food parties after the burial etc. Such parties are innovations in Islam.

Chapter 11. One Who Takes A Loan With No Intention Of Repaying It

2410. Suhail Al-Khair narrated that the Messenger of Allâh ﷺ said: “Any man who takes out a loan, having resolved not to pay it back, will meet Allâh as a thief.” (Hasan)

(المعجم (١١) - بابُ مَنْ ادَّأَنَ دِينَاهُ
يَنْوِي قَضَاءَهُ (التحفة (٥١)

٢٤١٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
يُوسُفُ بْنُ مُحَمَّدٍ بْنِ صَيْفِيِّ بْنِ صَهْبَيِّ
الْحَمِيرِ: حَدَّثَنِي عَبْدُ الْحَمِيدِ بْنُ زِيَادَ بْنِ
صَيْفِيِّ بْنِ صَهْبَيِّ، عَنْ شَعِيبِ بْنِ عَمِّروْ:
حَدَّثَنَا صَهْبَيْنُ الْحَمِيرِ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ:
«إِنَّمَا رَجُلٌ يَكْرِهُ دِينَاهُ، وَهُوَ مُجْمِعٌ أَنْ لَا
يُؤْفَيَ إِيَّاهُ، لَقِيَ اللَّهَ سَارِقاً».

تخریج: (الف) [حسن] * يوسف وعبدالحمید ضعیفان كما سیأتي، ح: ٢٤١٠ ب، وشعب مستور، ولم يوثقه غير ابن جبان ، وللحدیث شاهد حسن بأتی بعده .

Another chain with similar wording. (Hasan)

حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْتَرِ الْجَزَامِيُّ: حَدَّثَنَا
يُوسُفُ بْنُ مُحَمَّدٍ بْنِ صَيْفِيِّ، عَنْ عَبْدِ
الْحَمِيدِ بْنِ زِيَادٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ
صَهْبَيِّ، عَنْ الشَّيْبِ الْمَوْلَانِ نَحْوَهُ.

تخریج: (ب) [حسن] آخرجه العقلي في الضعفاء: ٤٥١/٤ من حدیث إبراهيم بن المتندر به * يوسف بن محمد ضعفه البخاري ، والعقلي ، وذكره النھی في دیوان الضعفاء ، وثقة ابن جبان ، وأبو حاتم ، وضعفه راجع ، وشيخه لین الحدیث كما في التقریب ، وللحدیث شواهد منها ما آخرجه

الطبراني في الأوسط: ٥٠٦، ح: ٦٤٩، ح: ١٨٧٢، ح: ١١٩، ح: ٧، ياستاد حسن عن ميمون (ابن جبابان) الكردي عن أبيه به مطولاً نحو المعنى، وقال الهيثمي (مجمع: ١٣٢/٤) ورجاله ثقات ، فالحديث حسن، وحسنه البوصيري، وقال المتندرى: ورواته ثقات (الترغيب: ٦٠٢/٢).

Comments:

- A person who borrows and purposely delays returning a debt, and desires not to pay it back, such a person, though in the eyes of law cannot be proved a thief, is an offender, and will be punished in the Hereafter.
- Allâh is All-Knowing, and knows what is in the hearts of His slaves; therefore, Muslims should not cheat each other. It is possible to cheat each other, but it is not possible to cheat Allâh.

2411. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever takes people's wealth with the intention of destroying it, Allâh will destroy him." (*Sahih*)

٤٤١ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ : حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ ثُورِ بْنِ زَيْدِ الدَّلِيلِ، عَنْ أَبِي الْئَيْثَ، مَوْلَى ابْنِ مُطْعِمٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ الْبَيِّنَ قَالَ: «مَنْ أَخْدَى أَمْوَالَ النَّاسِ يُرِيدُ إِتْلَافَهَا، أَتَلَفَهَا اللَّهُ» .

تخریج: أخرجه البخاري، الاستقرارض وأداء الديون والحجر والتفلیس، باب من أخذ أموال الناس يريد أداءها أو إتلافها، ح: ٢٢٨٧ من حديث ثور به.

Comments:

'With the intention of destroying it' means that he does not want to return it. For the lender it is destroyed because he will not get it back.

Chapter 12. Stern Warning Concerning Debt

(المعجم ١٢) - بَابُ التَّشْدِيدِ فِي الدِّينِ

(التحفة ٥٢)

2412. It was narrated from Thawbân, the freed slave of the Messenger of Allâh ﷺ, that the Messenger of Allâh ﷺ said: "Anyone whose soul leaves his body and he is free of three things, will enter Paradise: Arrogance, stealing from the spoils of war, and debt." (*Sahih*)

٤٤٢ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا حَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ عَنْ قَتَادَةَ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ، عَنْ ثُوبَانَ، مَوْلَى رَسُولِ اللَّهِ ﷺ، عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ قَالَ: «مَنْ فَارَقَ الرُّوحَ الْجَسَدَ، وَهُوَ بَرِيءٌ مِنْ ثَلَاثَةِ دَخَلَ الْجَنَّةَ: مِنَ الْكُبُرِ وَالْغُلُولِ وَالْدِينِ» .

تخریج: [صحیح] أخرجه الترمذی، السیر، باب ماجاء فی الغلول، ح: ۱۵۷۳ من حديث سعید بن أبي عربة به، وصححه ابن حبان (موارد)، ح: ۱۶۷۶، وقال محمد بن هارون الرویانی في مستنده: ۱/۴۰۴، ح: ۶۱۲: أنا أبوالخطاب: أنا سعید بن زریع: نا سعید بن أبي عربة: نا قاتدة به، وتابعه أبوعوانة عن قاتدة به (هـ: ۹/۱۰۱)، وصححه الحاکم على شرط الشیخین: ۲/۲۶، ووافقه الذہبی، وتابعهما همام، وابن (مستند أحمد: ۵/۲۷۶)، وشعبة (أحمد: ۵/۲۸۱، ۲۸۲) أطراف المستند: ۱/۶۶ عن قاتدة به، ورواية شعبة عن قاتدة تدل على أن قاتدة صرخ بالسمع من شیخه كما هو مقرر في الأصول وحققته في التأسيس في مسئلة التدليس وروى الحاکم في تاريخ نیسابور بإسناد صحيح عن شعبة قال: كفیکم تدلیس ثلاثة: الأعمش وأبی إسحاق وقاتدة ومن طریقہ آخرجه محمد بن طاهر المقدسی فی مسألة التسمیة، ص: ۴۷، وسالم رمی بالتدليس ولا یشت عنه.

Comments:

- a. Spoils of war is a common property of all the Muslims of a state prior to its distribution. As it is a mortal sin to steal it, in the same way making an embezzlement in the common property of Muslims is a mortal sin. As wealth of public treasury cannot be used for personal needs, in the same way, funds collected for mosques and religious schools, or for other welfare organizations, cannot be spent for personal needs. These funds should be used only for the purposes collected. Any officeholder of the welfare organization cannot spend it for any other purpose. Doing so is sure embezzlement.
- b. Intentionally not returning the debt is a mortal sin, and it is an obligation on every Muslim to avoid such a great sin.

2413. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The soul of the believer is attached to his debt until it is paid off." (*Hasan*)

٢٤١٣ - حَدَّثَنَا أَبُو مَرْوَانَ الْعُمَرَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنْ أَبِيهِ، عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «نَفْسُ الْمُؤْمِنِ مُعْلَقَةٌ بِدَيْنِهِ، حَتَّىٰ يُقْضَىَ عَنْهُ».

تخریج: [إسناده حسن] أخرجه الترمذی، الجنائز، باب ماجاء أن نفس المؤمن معلقة بدينه حتى يقضى عنه، ح: ۱۰۷۹ من حديث إبراهيم بن سعد به، وقال: هذا حديث حسن ، وللحديث طرق صحيح بعضها ابن حبان، ح: ۱۱۵۸: وغيره.

Comments:

'Is attached to his debt' means that the responsibility of debt remains on the deceased until the debt is paid off, or he is not allowed to enter the Paradise until the debt is not paid off.

2414. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever dies owing a Dinâr or a Dirham, it will

٢٤١٤ - حَدَّثَنَا مُحَمَّدُ بْنُ ثَعْلَبَةَ بْنِ سَوَاءً: حَدَّثَنَا عَمِيْ مُحَمَّدُ بْنُ سَوَاءً، عَنْ حُسْنِيْ الْمُعْلَمِ، عَنْ مَطْرِ الْوَزَّاقِ، عَنْ نَافِعٍ، عَنْ

be paid back from his good deeds, because then there will be no Dinâr or Dirham.” (*Sahih*)

ابن عمر قال: قال رسول الله ﷺ: «من مات وعليه دينار أو درهم قضي من حسنته ليس ثم دينار ولا درهم».

تخریج: [صحیح] إسناده حسن، وله شاهد عند أحمد: ٢٧، ٧٠، وصححه الحاکم: ٢/٨٢، والذهبی، وله طریق آخر عند أحمد: ٨٢.

Comments:

- If the heirs of the deceased do not pay his debt, it remains the responsibility of the dead, and this debt will be paid off from his virtues on the Day of Resurrection, and it will be a big cause of trouble for him.
- Rights of human beings have great importance in religious affairs, and the settlements on the Day of Resurrection, regarding the dealings among the people in this world, will depend on their behavior with each other.
- Barter of virtues and sins will settle the matters of debt on the Day of Resurrection. The lender will get the virtues of the debtor equal to his debt. If the debtor does not have enough virtues to pay the debt, the sins of the lender will be transferred to the debtor's account.
- Rewards of virtuous deeds should be saved from being wasted. Bad deeds like oppression, tyranny, malice, doing some favor to someone, and then placing him under obligation, are negators of virtues, therefore, these should be avoided.

Chapter 13. If A Man Leaves Behind A Debt Or Children, Then Allâh And His Messenger Are Responsible For Them

2415. It was narrated from Abu Hurairah that if a believer died at the time of the Messenger of Allâh ﷺ and he had debts, the Messenger of Allâh ﷺ would ask: “Did he leave anything with which to pay off his debt?” If they said yes, then he would offer the funeral prayer for him, but if they said no, then he would say: “Pray for your companion.” When Allâh granted His Prophet the conquests, he said: “I am nearer to the believers than their own selves. Whoever dies owing a

(المعجم ١٣) - باب من ترك دينار أو
صبياعاً فعلى الله وعلى رسوله
(التحفة ٥٣)

٤١٥ - حدثنا أحمدر بن عمرو بن السريح
ال攸ضري: حدثنا عبد الله بن وهب: أخبرني
يونس، عن ابن شهاب، عن أبي سلمة، عن
أبي هريرة أنَّ رَسُولَ اللَّهِ كَانَ يَشُولُ، إِذَا
تُوْفِيَ الْمُؤْمِنُ فِي عَهْدِ رَسُولِ اللَّهِ وَعَلَيْهِ
الَّذِينَ فَيْسَأْلُونَ: «هُلْ تَرَكَ لِدِيْنِهِ مِنْ قَضَاءِ؟»
فَإِنْ قَالُوا: نَعَمْ - صَلَى اللَّهُ عَلَيْهِ وَسَلَّمَ -
قَالَ: «صَلُّو عَلَى صَاحِبِكُمْ». فَلَمَّا فَتَحَ اللَّهُ
عَلَى رَسُولِهِ الْفُتوْحَ قَالَ: «أَنَا أَوْلَى بِالْمُؤْمِنِينَ
مِنْ أَنفُسِهِمْ». فَمَنْ تُوْفِيَ وَعَلَيْهِ دِينٌ، فَعَلَيَّ

debt, I will pay it off for him, and whoever leaves behind wealth, it will be for his heirs.” (*Sahih*)

تخریج: أخرجه مسلم، الفرائض، باب من ترك مالاً فلورثه، ح: ١٦١٩ من حديث ابن وهب به.

Comments:

- The Noble Prophet’s declining from offering a debtor’s funeral prayer was a sort of warning for the people and showing the gravity of this sin.
- If someone dies as debtor and his heirs are poor and cannot pay his debt, it should be paid by the State from the public treasury.

2416. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: “Whoever leaves behind money, it is for his heirs, and whoever leaves behind a debt or children, I am responsible for them, and I am nearer to the believers.”^[1] (*Sahih*)

تخریج: [صحيح] أخرجه أبو داود، الخراج، باب في أرزاق الذرية، ح: ٢٩٥٤ من حديث سفيان الثوري به، وصححه ابن حبان، وأخرجه مسلم، ح: ٨٦٧ من طريق آخر عن جعفر بن محمد به.

Comments:

The Arabic word *Dayâ’* includes those individuals who need care, like children, old people and the handicapped. They need someone to take care of them for survival.

Chapter 14. Giving Respite To One Who Is In Difficulty

2417. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: Whoever is easy with (a debtor) who is in difficulty, Allâh will be easy with him in this world and in the Hereafter.” (*Sahih*)

تخریج: أخرجه مسلم، الذكر والدعاء، باب فضل الاجتماع على تلاوة القرآن وعلى الذكر،

قضاؤه. ومن ترك مالاً، فهو لورثته.

٢٤١٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعُ: حَدَّثَنَا سُفِّيَانُ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ تَرَكَ مالاً فَلَوْرَثَتِهِ وَمَنْ تَرَكَ دِنَّا أَوْ ضَيَاعًا فَعَلَيَّ وَإِلَيَّ، وَأَنَا أَوْلَى بِالْمُؤْمِنِينَ».

(المعجم ١٤) - بَابُ إِنْظَارِ الْمُعْسِرِ

(التحفة ٥٤)

٢٤١٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنِ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ يَسَّرَ عَلَى مُعْسِرٍ يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالآخِرَةِ».

[1] See no. 45.

ح ٢٦٩٩: من حديث أبي معاوية به مطولاً * والأعمش صرح بالسماع عنده.

Comments:

'Who is in difficulty' means the debtor who is poor and not in a position to pay back the debt. Such a person should be given more time to payback his debt or it should be waived.

2418. It was narrated from Buraidah Al-Aslami that the Prophet ﷺ said: "Whoever gives respite to one in difficulty, he will have (the reward of) an act of charity for each day. Whoever gives him respite after payment becomes due, will have (the reward of) an act of charity equal to (the amount of the loan) for each day." (Sahih)

تخریج: [صحیح] أخرجه أحمد: ٣٥١٥ عن عبدالله بن نمير به * نفع کذاب متروک كما تقدم، ح ١٤٨٥، ولحديثه شاهد صحيح عند أحمد: ٣٦٠٥، وصححة الحاکم على شرط الشیخین: ٢٢٩/٢، ورواقة الذهبي، وإسناده صحيح على شرط مسلم فقط.

Comments:

- Giving respite means to fix a reasonable time for the repayment that is suitable and easy for the debtor to pay back the debt.
- After the expiry of the determined time, instead of pressing for repayment, giving more time is a good deed and brings reward from Allâh ﷺ.

2419. It was narrated from Abu Yasar, the Companion of the Prophet ﷺ that the Messenger of Allâh ﷺ said: "Whoever would like Allâh to shade him with His shade, let him give respite to one in difficulty, or waive repayment of the loan." (Sahih)

٢٤١٩ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدُّورَقِيُّ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُعَاوِيَةَ، عَنْ حَنْظَلَةَ بْنِ قَيْسٍ، عَنْ أَبِي الْيَسِيرِ صَاحِبِ الْيَقِينِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَحَبَّ أَنْ يُظْلَمَ اللَّهُ فِي ظِلِّهِ - فَلْيُنْظِرْ مُعْسِرًا، أَوْ لِيَصُنْعَ لَهُ».

تخریج: [صحیح] أخرجه أحمد: ٤٢٧٣ عن إسماعيل بن إبراهيم به، وأصله في صحيح مسلم، الراهن، باب حديث جابر الطويل وقصة أبي اليسر، ح ٣٠٠٦ من طريق آخر عن أبي اليسر به، وبه صح الحديث (لأن عبد الرحمن بن معاوية الزرقى ضعيف على الراجح).

Comments:

- On the Day of Resurrection some people will be under the shade of Allâh's Throne. Shade of Allâh means the shade of Allâh's Throne.
- Getting a place under the shade of Allâh's Throne is a matter of great honor, as there will be no shade except the shade of Allâh's Throne. Everyone will feel the scorching heat of the sun according to one's sins, and comfort will only be found in the shade of Allâh's Throne.
- Waiving the debt is a great deed of getting reward from Allâh. If one cannot waive the debt, it is easy to give more time for the repayment of the loan.

2420. It was narrated from Hudhaifah that the Prophet ﷺ said: "A man died and it was said to him: 'What did you do?' Either he remembered or was reminded and said: 'I used to be easy going in coins and cash concerning collecting debts due, and I used to give respite to (the debtor) who was in difficulty. So, Allâh forgave him.'"

Abu Mas'ud said: "I heard that from the Messenger of Allâh ﷺ." (*Sahih*)

تَحْرِيْج: أخرجه البخاري، الاستقرار، باب حسن التراضي، ح: ٢٣٩١، ومسلم، المساقاة، باب فضل إنتظار الميسر والتجاوز في الاقضاء من الميسر والميسر، ح: ١٥٦٠ من حديث شعبة به.

Comments:

- Allâh loves those who are easy with the people in recovering loans.
- Easy going in coin means not caring about the petty damages done to the coin and accepting such coins without any hesitation. People used to reject such coins at the time of the Noble Prophet ﷺ, as today people may refuse to accept currency with some damage.

Chapter 15. Asking In A Polite Manner And Taking One's Rights Without Behaving In An Indecent Manner

2421. It was narrated from Ibn 'Umar and 'Âishah that the

٤٤٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَامِرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ رَبِيعَيْ بْنَ حِرَاشٍ يُحَدِّثُ عَنْ حُذِيفَةَ، عَنِ النَّبِيِّ ﷺ: «أَنَّ رَجُلًا ماتَ فَقِيلَ لَهُ: مَا عَمِلْتَ؟ فَإِنَّا ذَكَرْ أَوْ ذَكَرْ قَالَ: إِنِّي كُنْتُ أَتَبَوَّزُ فِي السَّكَّةِ وَالنَّقْدِ، وَأَنْظُرُ الْمُعْسِرَ. فَغَفَرَ اللَّهُ لَهُ».

قَالَ أَبُو مَسْعُودٍ: أَنَا قَدْ سَمِعْتُ هَذَا مِنْ رَسُولِ اللَّهِ ﷺ.

(المعجم ١٥) - بَابُ حُسْنِ الْمُطَالَبَةِ وَأَخْذِ الْحَقِّ فِي عَفَافٍ (التحفة ٥٥)

٤٤٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ خَلَفَ الْعَسْقَلَانِيُّ وَمُحَمَّدُ بْنُ يَحْيَى، قَالَا: حَدَّثَنَا أَبْنُ أَبِي

Messenger of Allâh ﷺ said: "Whoever demands his rights let him do so in a decent manner as much as he can." (*Hasan*)

مَرِيمٌ: حَدَّثَنَا يَحْيَى بْنُ أَبْيُوبَ، عَنْ عُبَيْدِ اللَّهِ ابْنِ أَبِي جَعْفَرٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ وَعَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ طَالَبَ حَقًّا فَلْيُطْلُبْهُ فِي عَفَافٍ وَافِ، أَوْ غَيْرِ وَافِ».

تخریج: [إسناده حسن] أخرجه البهیقی: ۳۵۸ / ۵ من حديث سعید بن أبي مريم به، وصححه ابن حبان (موارد)، ح: ۱۱۶۳، والحاکم على شرط البخاری: ۳۲ / ۲، وواقه الذہبی.

2422. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said to the one who was entitled to something: "Take your rights in a decent manner, as much as you can." (*Hasan*)

٢٤٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُؤْمَلِ بْنَ الصَّبَّاحِ الْقَيْسِيِّ: حَدَّثَنَا مُحَمَّدُ بْنُ [مُحَبَّبٍ الْقَرْشِيِّ]: حَدَّثَنَا سَعِيدُ بْنُ السَّائِبِ الطَّافِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ يَامِينٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ لِصَاحِبِ الْحَقِّ: «خُذْ حَقَّكَ فِي عَفَافٍ وَافِ، أَوْ غَيْرِ وَافِ».

تخریج: [حسن] أخرجه الحاکم: ۳۲ / ۲، ۳۳ من حديث أبي همام محمد بن محبب به، وقال البوصیری: هذا إسناد صحيح على شرط البخاری قلت: عبدالله بن يامین مجهول الحال وليس من رجال البخاری، وله شواهد عند ابن أبي شيبة: ۷ / ۲۵۱ وغیره، والحديث السابق شاهد له .

Comments:

- a. It is natural to be concerned when the loan is not returned in time, even after giving more time, more than once, but to control one's anger is a great deed before Allâh.
- b. 'Afâf (to keep away from the sin, 'Afâf also means decent manners), in this case, means to ask the return of loan in a decent manner. One should not be hard and harsh in asking for the return of loan. The lender should receive only what is his due.

Chapter 16. Paying Off Debts In A Good Manner

(المعجم ۱۶) - بَابُ حُسْنِ الْقَضَاءِ

(التحفة ۵۶)

2423. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The best of you – or among the best of you – are those who pay off their debts in the best manner." (*Sahih*)

٢٤٢٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَبَابَةُ، ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، قَالًا: حَدَّثَنَا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهْنَيْلٍ: سَمِعْتُ أَبَا سَلَمَةَ بْنَ عَبْدِ

الرَّحْمَنِ يَعْلَمُ عَنْ أَيِّهِ هُرِيرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ خَيْرَكُمْ أَوْ مِنْ خَيْرِكُمْ أَخَاسِكُمْ قَضَاءً.

تخریج: أخرجه البخاري، الوکالة، باب الوکالة فی قضاء الديون، ح: ۲۳۰۶ وغیره من حديث شعبة به، ومسلم، المساقاة، باب جواز اقتراض الحیوان واستحباب توفیته خيراً مما عليه، ح: ۱۶۰۱ عن محمد بن بشار به.

2424. Ismā'il bin Ibrāhim bin 'Abdullāh bin Abi Rabi'ah Al-Makhzumi narrated from his father, from his grandfather, that the Prophet ﷺ borrowed thirty or forty thousand from him, when he fought at Hunain. When he came back he paid back the loan, then the Prophet ﷺ said to him: "May Allāh bless your family and your wealth for you. The reward for lending is repayment and words of praise." (*Hasan*)

٢٤٢٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَعْبٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةِ الْمَخْزُومِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ اسْتَشْفَفَ مِنْهُ، حِينَ غَرَّا حُنَيْنًا، ثَلَاثِينَ أَوْ أَرْبَعينَ لَفَّاً. فَلَمَّا قَدِمَ قَضَاهَا إِلَيْهِ. ثُمَّ قَالَ لَهُ النَّبِيُّ ﷺ: «بَارَكَ اللَّهُ لَكَ فِي أَهْلَكَ وَمَالَكَ. إِنَّمَا جَزَاءَ السَّلَفِ الْوَفَاءُ وَالْحَمْدُ».

تخریج: [إسناد حسن] أخرجه النسائي، البيوع، الاستقرارض، ح: ٤٦٨٧ من حديث إسماعيل به، ورواه أحمد: ٣٦/٤ عن وكيع به * إسماعيل بن إبراهيم بن عبد الله وثقة أبو داود، وأبن حبان، وأبوه من رجال البخاري، ووثقه ابن حبان أيضاً، فحديثهما لا ينزل عن درجة الحسن، وقال العراقي: إسناده حسن (إنتحاف السادة المتقدن: ٥/١١٤).

Comments:

- a. It is allowed and legal to borrow at the time of need.
- b. Making the repayment with the best manners, means to make the repayment in time, and according to the promise.
- c. Giving a better thing in repayment is a sign of decent manners, it is legal and allowed, but to decide it before taking, or giving the loan is usury, which is a great sin.

Chapter 17. The One Who Has A Right Has Authority (Over The Debtor)

2425. It was narrated that Ibn 'Abbās said: "A man came to ask

(المعجم ١٧) - بَابُ: لِصَاحِبِ الْحَقِّ سُلْطَانُ (التحفة ٥٧)

٢٤٢٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى

the Prophet of Allāh ﷺ for some debt or some right, and he spoke harshly to him, and the Companions of the Messenger of Allāh ﷺ wanted to rebuke him. But the Messenger of Allāh ﷺ said: 'Let him be, for the one who is owed something has authority over the debtor, until it is paid off.' (Da'iif)

الصَّنْعَانِيُّ: حَدَّثَنَا مُعْتَدِلُ بْنُ شُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْشَنَ، عَنْ عَطْرِمَةَ، عَنْ أَبْنَ عَبَاسٍ قَالَ: جَاءَ رَجُلٌ يَطْلُبُ نَفِيَ اللَّهِ بِلَيْلَيْنِ، أَوْ يَحْقُّ. فَكَلَّمَ بِعْضَ الْكَلَامِ. فَهَمَ صَاحَابَهُ رَسُولُ اللَّهِ بِلَيْلَيْنِ. فَقَالَ رَسُولُ اللَّهِ بِلَيْلَيْنِ: إِنَّ صَاحِبَ الدِّينِ لَهُ سُلْطَانٌ عَلَى صَاحِبِهِ، حَتَّى يَقْضِيَهُ.

تَحْرِيق: [ضَعِيفٌ] وَضَعْفُهُ الْبُوْصِيرِيُّ مِنْ أَجْلِ حَشْشَبِ بْنِ الْمُعْتَمِرِ، وَانتَرَ، ح: ٢٣١٠، وَلِبعْضِهِ شَاهِدٌ غَدِ الْبَزَارِ (كَشْفُ: ٢/ ١٠٤)، وَإِسْنَادُهُ حَسْنٌ.

2426. It was narrated that Abu Sa'eed Al-Khudri said: "A Bedouin came to the Prophet ﷺ to ask him to pay back a debt that he owed him, and he spoke harshly, saying: 'I will make things difficult for you unless you repay me.' His Companions rebuked him and said: 'Woe to you, do you know who you are speaking to?' He said: 'I am only asking for my rights.' The Prophet ﷺ said: 'Why do you not support the one who has a right?' Then he sent word to Khawlah bint Qais, saying to her: 'If you have dates, lend them to us until our dates come, then we will pay you back.' She said: 'Yes, may my father be ransomed for you, O Messenger of Allāh!' So she gave him a loan, and he paid back the Bedouin and fed him. He (the Bedouin) said: 'You have paid me in full, may Allāh pay you in full.' He (the Prophet ﷺ) said: 'Those are the best of people. May that nation

٢٤٢٦ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ عُثْمَانَ، أَبُو شَيْبَةَ: حَدَّثَنَا أَبْنُ أَبِي عَيْنَةَ، أَطْئَبُهُ قَالَ: حَدَّثَنَا أَبِي عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: جَاءَ أَعْرَابِيٌّ إِلَى النَّبِيِّ بِلَيْلَيْنِ يَتَضَاضُهُ دِينُهُ كَانَ عَلَيْهِ. فَاشْتَدَ عَلَيْهِ، حَتَّى قَالَ لَهُ: أَخْرُجْ عَلَيْكَ إِلَّا فَقَضَيْتِي. فَاتَّهَرَهُ أَصْحَابُهُ وَقَالُوا: وَيَحْكُمْ تَدْرِي مَنْ تَكْمِلُ؟ قَالَ: إِنِّي أَطْلُبْ حَقِّي. فَقَالَ النَّبِيُّ بِلَيْلَيْنِ: هَلَا مَعَ صَاحِبِ الْحَقِّ كُتُشْ؟ ثُمَّ أَرْسَلَ إِلَى خَوْلَةَ بِنْتِ قَيْسٍ فَقَالَ لَهَا: إِنْ كَانَ عِنْدَكَ تَمْرٌ فَاقْرُضْنِي بَحْرَيْ بِأَيْتَنَا تَمْرَنَا فَقَضَيْتِكِ. فَقَالَتْ: نَعَمْ. بِأَبِي أَنْتَ يَا رَسُولَ اللَّهِ! قَالَ: فَاقْرُضْنِهِ. فَقَضَى الْأَعْرَابِيُّ وَأَطْعَمَهُ. فَقَالَ: أَوْفِيَتْ. أَوْفَى اللَّهُ لَكَ. فَقَالَ: أَوْلَئِكَ حِيَارُ النَّاسِ. إِنَّهُ لَا قُدْسَتْ أُمَّةٌ لَا يَأْخُذُ الضَّعِيفَ فِيهَا حَقَّهُ غَيْرُ مُتَعَنِّعٍ.

not be cleansed (of sin) among whom the weak cannot get their rights without trouble." (Hasan)

تَخْرِيج: [حسن] وَصَحَّحَهُ الْبَوَاضِيرِيُّ، وَإِسْنَادُهُ ضَعِيفٌ لِمُعْلَمَتِهِ إِجْدَاهُمَا شَكُّ الرَّاوِيِّ، وَانْظُرْ، ح: ۱۷۸، وَلِهُ شَاهِدٌ حَسْنٌ عَنْ أَحْمَدَ: ۲۴۸/۶ مِنْ حَدِيثِ مُحَمَّدِ بْنِ إِسْحَاقَ قَالَ: حَدَّثَنِي هَشَّامُ بْنُ عَزْرَةَ عَنْ أَبِيهِ عَنْ غَائِشَةَ بْنِ قَطْلَوْلًا، وَتَابِعُهُ يَحْيَى بْنُ عَمِيرٍ عَنْ هَشَّامٍ بْنِ عَنْ دِيَقِي: ۲۰/۶، وَهُوَ صَدِيقٌ كَمَا في الْكَاشِفِ: ۲۳۲/۳.

Comments:

- A lender has the right to press the debtor for return, but it is recommended to be easy with him, and give him enough time to repay the loan. (See Ahādīth 2417 and 2421)
- Unversed and rough creditors should be treated kindly, and their harshness should be tolerated.

Chapter 18. Imprisonment Because Of Debts And Pursuing Debtors

2427. It was narrated from 'Amr bin Sharid that his father said that the Messenger of Allāh ﷺ said: "If one who can afford it delays repayment, his honor and punishment become permissible." (Hasan)

(One of the narrators) 'Ali At-Tanāfisi said: 'Honor' means that it is permissible to make a complaint, and 'punishment' means that he may be imprisoned.

(المعجم ۱۸) - بَابُ الْكَبْسِ فِي الدِّينِ
وَالْمُلَازْمَةِ (التحفة ۵۸)

۲۴۲۷ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلَيْهِ أَبْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا وَبْرُ ابْنُ أَبِي ذَلِيلَةَ الطَّافِيِّ: حَدَّثَنِي مُحَمَّدُ بْنُ مَعْمُونَ بْنُ [الْمُسِيْكَةَ]، قَالَ وَكِيعٌ وَأَنَّهُ عَلَيْهِ خَيْرًا عَنْ عَمْرُو بْنِ الشَّرِيدِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: {لَئِنِ الْوَاجِدِ يُجْلِي عِرْضَهُ وَعُقُوبَتِهِ}.

قَالَ عَلَيْهِ الطَّافِيِّ: يَعْنِي عِرْضَهُ شِكَائِهِ، وَعُقُوبَتِهِ سِجْنَهُ.

تَخْرِيج: [إِسْنَادُهُ حَسْنٌ] أَخْرَجَهُ أَبُو دَاوُدُ، الْفَضَاءُ، بَابُ: فِي الدِّينِ هَلْ يَجْبَسُ بِهِ، ح: ۳۶۲۸ مِنْ حَدِيثِ وَبْرٍ، وَالشَّنَائِيِّ، الْبَيْوَعِ، مَطْلُ الْغَنِيِّ، ح: ۴۶۹۴، ۴۶۹۳ مِنْ حَدِيثِ وَكِيعٍ بِهِ، وَعَلَقَهُ الْبَخَارِيُّ فِي صَحِيحِهِ، وَصَحَّحَهُ أَبْنُ جَبَانَ، ح: ۱۱۶۴، وَالْحَاكِمُ: ۱۰۲/۴، وَالْذَّهَبِيُّ وَقَالَ الْحَافِظُ فِي الْفَتْحِ: إِسْنَادُ حَسْنٍ.

Comments:

- Repayment of the loan in time is necessary, and delay without a genuine cause must be avoided.
- If the debtor does not return the loan on time, a complaint can be lodged

against him with a *Qâzi* or the ruler of the time, and it is the duty of the ruler or *Qâzi* to provide justice to the claimant.

2428. Hirmâs bin Habîb narrated from his father that his grandfather said: "I came to the Prophet ﷺ with a man who owed me money, and he said to me: 'Keep him.' Then he passed by me at the end of the day and said: 'What did your prisoner do, O brother of Banu Tamim?'" (*Da'if*)

٤٤٢٨ - حَدَّثَنَا هَذِيلَيُّ بْنُ عَبْدِ الْوَهَابِ: حَدَّثَنَا التَّعْصُرُ بْنُ شَمْلَيْنَ: حَدَّثَنَا الْهُرْمَاسُ بْنُ حَبِّيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: أَتَيْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِعَرِيمٍ لِي. فَقَالَ لِي: «الْرَّمْمَةُ». ثُمَّ مَرَّ بِي آخِرَ النَّهَارِ فَقَالَ: «مَا فَعَلَ أَسِيرُكَ يَا أَخَا بْنِي تَمِيمٍ؟».

تخریج: [إسناده ضعیف] أخرجه أبو داود، القضاة، الباب السابق، ح: ٣٦٢٩ من حديث التنصير به * هرماس بن حبيب، وأبوه مجاهolan كما حقيقته في نيل المقصود، يسر الله لنا طبعه.

2429. It was narrated from 'Abdullâh bin Ka'b bin Mâlik from his father that he demanded payment owed by Ibn Abi Hadrad in the mosque. Their voices became so loud that the Messenger of Allâh ﷺ heard them when he was in his house. He came out and called Ka'b who said: "Here I am, O Messenger of Allâh!" He said: "Waive this much of your loan," and gestured with his hand to indicate half. He said: "I will do that," and he said: "Get up and repay it." (*Sahih*)

٤٤٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَيَحْيَى ابْنُ حَكِيمَ، قَالَا: حَدَّثَنَا عُمَانُ بْنُ عُمَرَ: أَبْنَانَا يُونُسُ بْنُ يَزِيدَ، عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ كَعْبٍ بْنِ مَالِكٍ، عَنْ أَبِيهِ أَنَّهُ تَقَاضَى أَبْنَ أَبِي حَدْرَدِ دِينَهُ لَهُ عَلَيْهِ فِي الْمَسْجِدِ. حَتَّى ارْتَعَثَ أَصْوَاتُهُمَا، حَتَّى سَمِعُوهُمَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِي بَيْتِهِ. فَخَرَجَ إِلَيْهِمَا فَنَادَى كَعْبًا. فَقَالَ: لَكَكَ يَا رَسُولَ اللَّهِ! قَالَ: «قَعْ مِنْ دِينِكَ هَذَا» وَأَوْمَأَ يَدِيهِ إِلَى الشَّطْرِ. فَقَالَ: قَدْ فَعَلْتُ. قَالَ: «قُمْ فَاقْضِيهِ».

تخریج: أخرجه البخاري، الصلة، باب التقاضي والملازمة في المسجد، ح: ٤٥٧، ومسلم، المساقاة، باب استحباب الوضع من الدين، ح: ١٥٥٨ من حديث عثمان بن عمر به.

Comments:

- A lender can press the debtor to repay his loan.
- If the claimant waives a part of the loan, it is a matter of great reward from Allâh ﷺ.

Chapter 19. Lending

2430. It was narrated that Qais bin Rumi said: "Sulaimān bin Udhunān lent 'Alqamah one thousand Dirham until he got his salary. When he got his salary, he demanded that he pay him back and treated him harshly. He paid him back, and it was as if 'Alqamah was angry. Several months passed, then he came to him and said: 'Lend me one thousand Dirham until my salary comes.' He said: 'Yes, it would be an honor. O Umm 'Utbah! Bring me that sealed leather bag that you have.' He said: 'By Allāh, these are your Dirham that you paid back to me; I did not touch a single Dirham. 'What made you do what you did to me (i.e., treat me so harshly)?' He said: 'What I heard from you.' He said: 'What did you hear from me?' He said: 'I heard you narrated from Ibn Mas'ud that the Prophet ﷺ said: "There is no Muslim who lends something to another Muslim twice, but it will be like giving charity once."

He said: 'That is what Ibn Mas'ud told me.'" (*Sahih*)

تخریج: [ضعیف] أخرجه البیهقی: ٣٥٣/٥ من حديث سلیمان بن سیر به مختصراً، وقال في سلیمان: قال البخاري: وليس بالقوي، وقياس مجھول كما في التقریب، والسنّد ضعفه البوصيري، أخرجه أحمـد: ٤١٢/١ ياسنـاد حسـن عن ابن أذـان بـه نحو المعـنى * وابن أذـان مستور لم أجـد فـيه توـثيقاً يعتمد عـلـيـه، أخرجه البـیـهـقـیـ من طـرـیـقـ آخرـ عنـ اـبـنـ مـسـعـودـ نـحـوـ مـرـفـعـاًـ، وـقـالـ: تـرـفـدـ بـهـ عـبدـالـلـهـ بـنـ الـحـسـنـ أـبـوـ حـرـیـزـ قـاضـیـ سـجـسـتـانـ، وـلـیـسـ بـالـقوـیـ يـاسـنـادـ غـرـیـبـ عنـ أـنـسـ رـفـعـهـ قـرضـ الشـیـءـ خـیـرـ مـنـ صـدـقـتـهـ، وـفـیـ نـظرـ مـنـ أـجـلـ تـمـامـ.

(المعجم ١٩) - باب القرض (التحفة ٥٩)

٢٤٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ خَلَفٍ الْعَسْقَلَانِيُّ : حَدَّثَنَا سُلَيْمَانُ بْنُ سُبَيْرٍ ، عَنْ قَيْسٍ بْنِ رُومِيٍّ قَالَ : كَانَ سُلَيْمَانُ بْنُ أَذْنَانَ يُقْرِضُ عَلْقَمَةَ الْأَلْفِ دِرْهَمٍ إِلَى عَطَاطِيَّهِ . فَلَمَّا [خَرَجَ عَطَاطُهُ] تَقَاضَاهَا بِمُهُ وَاشْتَدَ عَلَيْهِ، فَقَضَاهُ . فَكَانَ عَلْقَمَةَ غَضِيبٍ . فَمَكَثَ أَشْهُرًا ثُمَّ أَتَاهُ فَقَالَ : أَقْرِضْنِي الْأَلْفَ دِرْهَمٍ إِلَى عَطَاطِيَّهِ . قَالَ : نَعَمْ . وَكَرَاهَهُ . يَا أُمَّ عَبْتَهِ هَلْمُونِي تِلْكَ الْخَرِيطَةَ الْمَخْتُومَةَ الَّتِي عِنْكَ . فَجَاءَتْ يَهَآ . فَقَالَ : أَمَا وَاللَّهِ إِنَّهَا لِنَرَاهُمْكَ الَّتِي قَصَيْتَنِي . مَا حَرَكْتُ مِنْهَا دِرْهَمًا وَاحِدًا . قَالَ : فَلِلَّهِ أَبُوكَ مَا حَمَلْتَ عَلَى مَا فَعَلْتَ بِي؟ قَالَ : مَا سَعَتْ مِنْكَ . قَالَ : مَا سَعَتْ مِنْيِ؟ قَالَ : سَعَيْتُكَ تَذَكَّرُ عَنِ ابْنِ مَسْعُودٍ أَنَّ النَّبِيَّ ﷺ قَالَ : «مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَينِ إِلَّا كَانَ كَصَدَقَتْهَا مَرَّةً» .

قال: كذلك أتبأني ابن مسعود.

Comments:

A reward is in store for lending to a person that is well off, but to lend a poor man and give him extra time for repayment is a cause of increase in reward. (See Chapter 14, *Ahādīth* 2417 to 2420)

2431. It was narrated from Anas bin Mālik that the Messenger of Allāh ﷺ said: "On the night on which I was taken on the Night Journey (*Isra*), I saw written at the gate of Paradise: 'Charity brings a tenfold reward and a loan brings an eighteen fold reward.' I said: 'O Jibril! Why is a loan better than charity?' He said: 'Because the beggar asks when he has something, but the one who asks for a loan does so only because he is in need.'" (*Da'if*)

٢٤٣١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الْكَرِيمِ: حَدَّثَنَا هِشَامُ بْنُ خَالِدٍ: حَدَّثَنَا خَالِدُ بْنُ يَزِيدَ: وَحَدَّثَنَا أَبُو حَاتِمٍ: حَدَّثَنَا هِشَامُ بْنُ خَالِدٍ: حَدَّثَنَا خَالِدُ بْنُ يَزِيدَ بْنُ أَبِي مَالِكٍ، عَنْ أَبِيهِ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «رَأَيْتُ لَيْلَةً أَشْرِيَ بِي عَلَى بَابِ الْجَنَّةِ مَكْتُوبًا: الصَّدَقَةُ يُعْشِرُ أَمْتَالَهَا، وَالْقُرْضُ بِشَمَائِيلَةِ عَشَرَ». فَقُلْتُ: يَا جِبْرِيلُ مَا بِالْقُرْضِ أَفْضَلُ مِنَ الصَّدَقَةِ؟ قَالَ: لِأَنَّ السَّائِلَ يَسْأَلُ وَعِنْهُ، وَالْمُسْتَقْرِضُ لَا يَسْتَقْرِضُ إِلَّا مِنْ حَاجَةِ».

تخریج: [إسناده ضعيف جداً] أخرجه ابن عدي في الكامل: ٨٨٣/٣ من حديث هشام بن خالد به، وقال البوصيري: هذا إسناد ضعيف ، وقال ابن حبان في هذا الحديث: ليس بصحيح * خالد بن يزيد تكلم فيه فيما يروي عن أبيه، وقال ابن معين: لم يرض أن يكتب على أبيه حتى كذب على أصحاب رسول الله ﷺ (تهذيب)، ولبعض حديثه شاهد عند الطبراني: ٢٩٧/٨، ٣٥٦٤، ح: ٢٨٤/٣، وإنسانه ضعيف ، ولعله انظر الحديث الآتي .

2432. It was narrated that Yahya bin Abu Ishāq Al-Hunā'i said: "I asked Anas bin Mālik: 'What if a man gives his brother a loan, then (the borrower) gives him a gift?' The Messenger of Allāh ﷺ said: 'If anyone of you borrows something then he gives (the lender) a gift or gives him a ride on his riding-beast, he should not accept the gift or the ride, unless they used to treat each other in that manner beforehand.'" (*Da'if*)

٢٤٣٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنِي عَبْيَةُ بْنُ حُمَيْدٍ الصَّبَّيُّ، عَنْ يَحْمِيسِي بْنِ أَبِي إِسْحَاقِ الْهَنَائِيِّ قَالَ: سَأَلْتُ أَنَسَّ بْنَ مَالِكٍ: الرَّجُلُ مَنِ يُقْرِضُ أَخَاهُ الْمَالَ فَيُهَدِي لَهُ؟ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَفْرَضَ أَحَدُكُمْ قَرْصًا فَأَهَدَى لَهُ، أَوْ حَمَلَهُ عَلَى الدَّائِيَةِ، فَلَا يَرْكَبُهَا وَلَا يَقْبَلُهُ. إِلَّا أَنْ يَكُونَ جَرَى بَيْتَهُ وَبَيْتَهُ قَبْلَ ذَلِكَ».

تخریج: [إسناده ضعیف] أخرجه البیهقی: ٣٥٠ / ٥ من حديث هشام به، ونقل عن المعمري أن قوله: يحيى بن أبي إسحاق الهنائي وهم، أخرجه من طريق سعيد بن منصور ثنا إسماعيل به، وفيه: يزيد بن أبي يحيى * عقبة بن حميد ليس شامياً ورواية إسماعيل عن غير الشاميين ضعيفة، وابنطر، ح: ٥٩٥.

Chapter 20. Paying A Debt On Behalf Of The Deceased

(المعجم ٢٠) - باب أداء الدين عن
الميت (التحفة ٦٠).

2433. It was narrated from Sa'd bin Atwal that his brother died, leaving behind three hundred Dirham and dependents. "I wanted to spend (the money) on his dependents, but the Prophet ﷺ said: 'Your brother is being detained by his debt, so pay it off for him.'" He said: "O Messenger of Allâh, I have paid it off apart from two Dinâr, which a woman is claiming but she has no proof." He said: "Give them to her for she is telling the truth." (*Hasan*).

تخریج: [حسن] أخرجه أحمد: ٧ / ٥ عن عفان به، وصححه البوزبیری، وقال: عبد الملک ذکرہ ابن حبان في الثقات ، ولجدیثہ شاهد عند أحمد، والبیهقی: ١٤٢١، وإسناده حسن.

Comments:

- An inheritance is distributed after paying off the debt of the deceased.
- The woman claimed that the deceased owed her two Dinâr, and Sa'd bin Atwal was asking for proof or for witnesses for his own satisfaction, but she had no witness or proof to produce before Sa'd. To avoid such troublesome situations the matter of debt should be written before witnesses.
- The Noble Prophet knew, through revelation, that the claim of the woman was genuine, therefore he ordered Sa'd to pay her.

2434. It was narrated from Jâbir bin 'Abdullâh that his father died owing thirty *Wasq* to a Jewish man. Jâbir bin 'Abdullâh asked him for respite but he refused. Jâbir asked the Messenger of Allâh ﷺ to intercede for him with him, so the Messenger of Allâh ﷺ

- ٢٤٣٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ: أَخْبَرَنِي عَبْدُ الْمَلِكِ أَبُو جَعْفَرٍ، عَنْ أَبِي نَضْرَةَ، عَنْ سَعْدٍ أَبْنِ الْأَطْوَلِ أَنَّ أَخَاهُ مَاتَ وَتَرَكَ ثَلَاثَ مِائَةً دِرْهَمًا. وَتَرَكَ عَلَيْهِ فَأَرْدَثَ أَنَّ أَفْقَهَهَا عَلَى عَيْالِهِ. فَقَالَ النَّبِيُّ ﷺ: إِنَّ أَخَاهُكَ مُحْتَبِسٌ بِدِينِهِ. فَأَقْضَى عَنْهُ إِلَّا دِينَارَيْنِ، أَدْعَتْهُمَا امْرَأَةٌ وَلَيْسَ لَهَا بِيَهُ. قَالَ: فَأَعْطِهَا فَإِنَّهَا مُحْقَّةٌ.

تخریج: [حسن] أخرجه أحمد: ٧ / ٥ عن عفان به، وصححه البوزبیری، وقال: عبد الملک

الدمشقي: حَدَّثَنَا شُعَيْبُ بْنُ إِسْحَاقَ: حَدَّثَنَا هَشَامٌ بْنُ عُرْوَةَ، عَنْ وَهْبٍ بْنِ كَيْسَانَ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ أَنَّ أَبَاهُ تُوفِيَ وَتَرَكَ عَلَيْهِ ثَلَاثَيْنِ وَسَقَا لِرْجُلٍ مِنَ الْيَهُودِ. فَاسْتَنْظَرَ

went and spoke to the Jew, asking him to accept dates in lieu of what was owed, but he refused. The Messenger of Allâh ﷺ spoke to him; but he refused to give respite. Then the Messenger of Allâh ﷺ went in among the date-palm trees and walked among them. Then he said to Jâbir: "Pick (dates) for him and pay off what is owed to him in full." So he picked thirty Wasq of dates after the Messenger of Allâh ﷺ came back, and there were twelve Wasq more (than what was owed). Jâbir came to the Messenger of Allâh ﷺ to tell him what had happened, and he found that the Messenger of Allâh ﷺ was absent. When the Messenger of Allâh ﷺ came back he came to him and told him that he had paid off the debt in full, and he told him about the extra dates. The Messenger of Allâh ﷺ said: "Tell 'Umar bin Khattâb about that." So Jâbir went to 'Umar and told him, and 'Umar said to him: "I knew when the Messenger of Allâh ﷺ walked amongst them that Allâh would bless them for us." (*Sahîh*)

تخریج: أخرجه البخاري، الاستقراض، باب: إذا قاصِن أو جازفه في الدين تمراً بتمر أو غيره، ح: ٢٣٩٦ من حديث هشام به، وأبو داود، ح: ٢٨٨٤ عن طريق شعيب به.

جَابِرُ بْنُ عَبْدِ اللَّهِ فَأَبَى أَنْ يُظْرِهُ فَكَلَمَ رَسُولُ اللَّهِ لِيُشْفَعَ لَهُ إِلَيْهِ فَجَاءَ رَسُولُ اللَّهِ لِيُشْفَعَ لَهُ إِلَيْهِ فَكَلَمَ الْيَهُودِيَّ لِيُأْخُذَ ثَمَرَ تَخْلِيَّهُ بِالَّذِي لَهُ عَلَيْهِ فَأَبَى عَلَيْهِ فَكَلَمَ رَسُولُ اللَّهِ لِيُشْفَعَ فَأَبَى أَنْ يُظْرِهُ فَدَخَلَ رَسُولُ اللَّهِ التَّحْلُلَ فَمَسَّهُ فِيهَا ثُمَّ قَالَ لِجَابِرِ بْنِ عَبْدِ اللَّهِ أَجَدَ لَهُ سَاقِوْهُ الَّذِي لَهُ فَجَدَ لَهُ بِعْدَمَا زَرَجَعَ رَسُولُ اللَّهِ ثَلَاثَيْنَ وَسَقَانَ وَفَصَلَ لَهُ اثْنَا عَشَرَ وَسَقَانَ فَجَاءَ جَابِرُ رَسُولَ اللَّهِ لِيُعْخِرَهُ بِالَّذِي كَانَ فَوَجَدَ رَسُولَ اللَّهِ جَاءَهُ غَائِيَاً فَلَمَّا انْتَرَفَ رَسُولُ اللَّهِ فَجَاءَهُ فَأَخْبَرَهُ أَنَّهُ قَدْ أَوْفَاهُ وَأَخْبَرَهُ بِالْفَضْلِ الَّذِي فَصَلَ فَقَالَ رَسُولُ اللَّهِ أَخْيَرُ بِذَلِكَ عُمَرَ بْنُ الْحَطَّابِ فَدَهَبَ جَابِرٌ إِلَى عُمَرَ فَأَخْبَرَهُ فَقَالَ لَهُ عُمَرُ لَقَدْ عَلِمْتُ بِهِ مَسْئِي فِيهِ رَسُولُ اللَّهِ لَيْسَارِكَنَ اللَّهُ فِيهَا

Comments:

- Increase in food stuff is a miracle of the Noble Prophet, which occurred at different places and in various incidents.
- 'Umar's faith was so firm that he believed that this incident will end up in such and such manner as it did. This incident also shows the greatness of 'Umar bin Khattâb.
- A *Wasq* is equal to sixty *Sâ'* which equal to four *Mudd* of weight or about 180 kilog.

Chapter 21. Three Things Which, If A Person Takes Out A Loan Because Of Them, Allâh Will Pay It Off For Him

2435. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "A debt will be settled on the Day of Resurrection if the one who owes it 'dies, apart from three: A man who lost his strength fighting in the cause of Allâh, so he borrows in order to become strong again to fight the enemy of Allâh and his enemy. A man who sees a Muslim die and he cannot find anything with which to shroud him except by taking a loan. A man who fears Allâh if he stays single, so he gets married for fear of (losing) his religious commitment. Allâh will pay off the debt for these people on the Day of Resurrection." (*Da'if*)

(المعجم ٢١) - يَكُلُّهُ: ثَلَاثٌ مِنْ أَذَانَ
فِيهِنَّ قَضَى اللَّهُ حَتَّهُ (التحفة ٦١)

٤٣٥ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا رِشْدِينُ
ابْنُ سَعْدٍ وَعَبْدُ الرَّحْمَنِ الْمُخَارِبِيِّ وَأَبُو
أَسَامَةَ وَجَعْفَرُ بْنِ عَوْنَى، عَنْ أَبْنِ أَنَّمٍ، قَالَ
أَبُو كُرَيْبٍ: [وَ] حَدَّثَنَا أَوْكَبُعْنَى عَنْ سُقْيَانَ، عَنْ
أَبْنِ أَنَّمٍ، عَنْ عُمَرَلَّانَ بْنِ عَبْدِ الْمَعَافِرِيِّ،
عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو، قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «إِنَّ الَّذِينَ يُقْضَى مِنْ صَاحِبِهِ يَوْمَ
الْقِيَامَةِ إِذَا مَاتُوا. إِلَّا مَنْ تَدَّيَّنَ فِي ثَلَاثَ
خَلَالٍ: الرَّجُلُ تَضَعُفُ قُوَّتُهُ فِي سَبِيلِ اللَّهِ
فَيَسْتَدِينُ يَقْتَوْيَ بِهِ لَعْنُوَ اللَّهِ وَعَذَوْهُ.. وَرَجُلٌ
يَمُوتُ عِنْدَهُ مُسْلِمٌ، لَا يَجِدُ مَا يَكْفِهُ وَيُوَارِيَهُ
إِلَّا بِدَيْنٍ. وَرَجُلٌ خَافَ اللَّهَ عَلَى نَفْسِهِ
الْعَزْيَةَ، فَيَنْكِحُ خَشْيَةً عَلَى دِينِهِ. فَإِنَّ اللَّهَ
يُقْضِي عَنْ هُؤُلَاءِ يَوْمَ الْقِيَامَةِ».

تَحْرِيج: [إِسْنَادٌ ضَعِيفٌ] وَضَعْفُهُ الْبَوْصِيرِيُّ، وَانْظُرْ، ح: ٥٤ لِحَالِ أَبْنِ أَنَّمٍ وَح: ٩٧٠ لِحَالِ
الْمَعَافِرِيِّ.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

The Chapters On Pawning

(المعجم ١٦) أبواب الرهون
(التحفة . . .)

Comments:

The act of pawning is to deposit something in pledge or as security or guaranty against a loan obtained, so that if the loan is not returned on time, the lender could make recovery of his money from that property.

The legitimacy of the pledge is proven in the Noble Qur'ân and the Traditions of the Noble Prophet. In the Noble Qur'ân there is: "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)."^[1] "Every person is a pledge for what he has earned."^[2] It means he is a pledge against his deeds. This also applies to that thing which is surrendered to the lender as surety and security of his loan.

Chapter 1. [Abu Bakr Bin Abi Shaibah Narrated To Us]^[3]

(المعجم ١) - [باب : حَدَّثَنَا أَبُو بَكْرٌ
ابن أبي شيبة] (التحفة ٦٢)

2436. It was narrated from 'Âishah that the Prophet ﷺ bought some food from a Jew with payment to be made later, and he pawned his armor for that. (*Sahih*)

٢٤٣٦ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ عِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ: حَدَّثَنِي الْأَشْوَدُ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ اشترى مِنْ يَهُودِي طَعَاماً إِلَى أَجْلٍ، وَرَهَنَهُ دِرْعَةً.

تخریج: أخرجه البخاري، البيوع، باب شراء الطعام إلى أجل، ح: ٢٢٠٠ من حديث حفص به، ومسلم، المساقاة، باب الرهن وجوازه في الحضر كالسفر، ح: ١٦٠٣ عن ابن أبي شيبة.

2437. It was narrated that Anas said: "The Messenger of Allâh ﷺ pawned his armor to a Jew in Al-Madinah, and took barley for his

٢٤٣٧ - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْضُوِيُّ: حَدَّثَنِي أَبِي هِشَامَ عَنْ قَاتَدَةَ، عَنْ أَنْسِ قَاتَدَةَ: لَقِدْ رَهَنَ رَسُولُ اللَّهِ ﷺ دِرْعَةً عِنْدَ

^[1] Al-Baqarah 2:283.

^[2] At-Tur 52:21 and Al-Muddathir 74:38.

^[3] Indicating the beginning of the first chain of the chapter.

family in return.” (*Sahih*)

يَهُودِيٌّ بِالْمَدِينَةِ، فَلَمَّا حَدَّ لِأَهْلِهِ مِنْ شَعِيرًا.

تَخْرِيجٌ: أَخْرَجَهُ الْبَخْارِيُّ، الْبَيْنُونُ، بَابُ شَرَاءِ النَّبِيِّ ﷺ بِالْمَسِيقَةِ، ح: ٢٠٦٩، مِنْ طَرِيقِ هِشَامٍ.

بـ

2438. It was narrated from Asmā' bint Yazid that the Prophet died while his armor was pawned to a Jew for food. (*Hasan*)

٤٣٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكَعْبٌ عَنْ عَبْدِ الْحَمِيلِ بْنِ بَهْرَامَ، عَنْ شَهْرٍ ابْنِ حُوشَبٍ، عَنْ أَشْمَاءَ بْنَتِ يَزِيدٍ أَنَّ النَّبِيَّ ﷺ تَوَفَّى وَدَرْعَهُ مَرْهُونٌ عِنْدَ يَهُودِيٍّ بِطَعَامٍ.

تَخْرِيجٌ: [إِسْنَادُهُ حَسْنٌ] أَخْرَجَهُ أَجْمَدٌ: ٦/٤٥٣، مِنْ وَكِيعٍ بْنِهِ، وَجَسِنَهُ الْبَوْصِيرِيُّ، وَانْظُرْ، ح: ١٤٩٦ لِحَالِ شَهْرٍ بْنِ حُوشَبٍ رَحْمَةُ اللهِ.

2439. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ died while his armor was pawned to a Jew for thirty Sâ's of barley. (*Hasan*)

٤٣٩ - حَدَّثَنَا عَبْدُ اللهِ بْنُ مَعَاوِيَةَ الْجُمْجُوِيُّ، حَدَّثَنَا تَابِعٌ بْنُ يَزِيدٍ، حَدَّثَنَا هَلَالٌ بْنُ خَبَابٍ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللهِ ﷺ مَاتَ وَدَرْعُهُ رَهْنٌ عِنْدَ يَهُودِيٍّ، يَثْلَاثَيْنَ صَاعَيْنَ مِنْ شَعِيرٍ.

تَخْرِيجٌ: [حَسْنٌ] وَصَحَّحَهُ صَاحِبُ الزَّوَائِدِ، وَانْظُرْ تَخْرِيجَ النَّهايَةِ فِي الْفَقْنِ وَالْمَلاَمِحِ، ح: ٢٤٩ لِحَالِ هَلَالٍ بْنِ خَبَابٍ رَحْمَةُ اللهِ.

Chapter 2. The Pawned Animal May Be Ridden And Milked

2440. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: “A mount may be ridden when it is pawned, and its milk may be drunk when it is pawned, but the one who rides it or milks it must pay for its upkeep.”” (*Sahih*)

٤٤٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكَعْبٌ عَنْ زَكَرِيَّاً، عَنْ الشَّعِيرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ ﷺ: «الظَّهَرُ يُرْكَبُ إِذَا كَانَ مَرْهُونًا، وَلَبَنُ الدَّرَّ يُسْرَبُ إِذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يُرْكَبُ وَيُسْرَبُ، نَفْقَهُ».

تَخْرِيجٌ: أَخْرَجَهُ الْبَخْارِيُّ، الرَّهَنُ فِي الْحَضْرِ، بَابُ الرَّهَنِ مُرْكُوبٌ وَمَحْلُوبٌ، ح: ٢٥١١، ٢٥١٢ مِنْ حَدِيثِ زَكَرِيَاٰ بـ.

Comments:

a. Pawned animal needs to be looked after. It has to be fed, otherwise it can

die or become sick or weak. In this way it will be a form of cruelty to the animal.

b. If a car or any kind of conveyance is pawned, whoever takes the benefit from it will bear the expenditure of maintenance and fuel etc.

Chapter 3. Pawned Items Are Not To Be Forfeited

2441. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Do not forfeit items held in pledge." (Da'i)

(المعجم ٣) - باب : لَا يُعْلَقُ الرِّهْنُ

(التحفة ٦٤)

٢٤٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ حُمَيْدٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُخْتَارِ. عَنْ إِسْحَاقَ بْنِ رَاشِدٍ، عَنْ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يُعْلَقُ الرِّهْنُ».

تخریج: [إسناده ضعيف] أخرجه الدارقطني: ٣١٧/٣ من طريق زياد بن سعد عن الزهري به مطولاً، وإسناده ضعيف لعله ومع ذلك صححه ابن حبان (موارد)، ح: ١١٢٢، والطحاون: ٥٠١/٢، والذهباني، وحسنه الدارقطني، ورواه مالك في الموطأ: ٧٢٨/٢ عن الزهري، عن ابن المسيب به مرسلاً، وله شواهد كثيرة جداً لم يصح منها شيء.

Comments:

Before the advent of Islam, it was customary that if the loan was not returned on time, the pawned property would become the property of the lender, and even the delayed payment of the loan would not allow the borrower to take back his property. There is no logic to become the owner of the pledged property when the loan has been returned, though delayed.

Chapter 4. Wages Of Workers

(المعجم ٤) - باب أَبْيَرُ الْأَجْرَاءِ

(التحفة ٦٥)

2442. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said:^[1] (Allâh says:) "I am the opponent of three on the Day of Resurrection, and if I am someone's opponent I will defeat him: A man who makes promises in My Name, then proves

٢٤٤٢ - حَدَّثَنَا سُوِيدُ بْنُ سَعِيدٍ: حَدَّثَنَا يَحْيَى بْنُ سُلَيْمَانَ، عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدِ الْمَقْبَرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثَةُ أَنَا حَضُّهُمْ يَوْمَ الْقِيَامَةِ. وَمَنْ كُثِّرَ حَضِيمَةُ

[1] This narration is a *Hadith Qudsi*, as clearly narrated by Ahmad (2:358) and Bukhâri (2227 and 2270) in which it says: "Allâh said: 'I am...'"

treacherous; a man who sells a free man and consumes his price; and a man who hires a worker, makes use of him, then does not give him his wages." (*Sahih*)

حَدَّثَنَا يَوْمُ الْقِيَامَةِ: رَجُلٌ أَخْطَى بِي، ثُمَّ عَلَرَ. وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ. وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا، فَاسْتَوْقَى مِنْهُ وَلَمْ يُوفِّ أَجْرَهُ.

تخریج: أخرجه البخاري، البيوع، باب إثم من باع حررا، ح: ٢٢٢٧ من حديث يحيى بن سليم به * ويحيى وشهادة الجمهور في غير عباد الله بن عمر، فحديثه لا ينزل عن درجة الحسن أبداً، انظر، ح: ٢٣٠١.

Comments:

- The three sins mentioned in the narration belong to the category of 'Rights of human beings' and they are ranked in the class of Major Sins'.
- To escape from the humiliation and punishment on the Day of Resurrection it is necessary to escape from these major sins.
- In an Islamic society, great importance has been given to justice and equity, rather the base and foundation of an Islamic society is justice and equity.
- All Muslims, collectively and individually, should exert themselves to create a true Muslim society, and they should do so as their religious obligation.

2443. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ said: "Give the worker his wages before his sweat dries." (*Sahih*)

٤٤٣ - حَدَّثَنَا التَّعَيَّانُ بْنُ الْوَلِيدِ الْمَقْشُونِيُّ: حَدَّثَنَا وَهِبْتُ بْنُ سَعِيدٍ بْنِ عَطِيَّةِ السَّلَمِيِّ: حَلَّتَنَا عَيْدُ الرَّحْمَنِ بْنُ زَيْدٍ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَخْطُوا الْأَجِيرَ أَجْرَهُ، قَبْلَ أَنْ يَجْفَفَ عَرْقَهُ».

تخریج: [صحيح] وضعفه البيهقي، وانظر، ح: ٢٣٨، [العلته]، وله شاهد عند الطحاوي في مشكل الآثار: ١٤٣/٤، وإننا نؤيده صحيحاً، وبه صحة الحديث.

Comments:

- Wages of the laborer should be paid as soon as he finishes his work.
- Without a genuine cause, delaying payment of wages for labor is a great sin.

Chapter 5. Hiring A Worker In Return For Food

(المعجم: ٥) - بِابِ إِجَارَةِ الْأَجِيرِ عَلَى طَعَامِ بَطْلِيهِ (التحفة: ٦٦).

2444. It was narrated that 'Ali bin Rabâh said: "I heard 'Utbah bin Nuddar say: 'We were with

٤٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحِمْصِيُّ: حَدَّثَنَا يَقِيَّةُ بْنُ الْوَلِيدِ، عَنْ مَسْلَمَةَ

the Messenger of Allâh ﷺ and he recited *Ta-Sin*.^[1] When he reached the story of Musa, he said: 'Musa ﷺ hired himself out for eight years, or ten, in return for his chastity and food in his stomach.'"*(Da'i)*

ابن علی، عن سعید بن ابی القوب، عن
الحارث بن بزید، عن علی بن دیاب قال:
سمعت عتبة بن [النذر] يقول: كنا عند
رسول الله ﷺ فقرأ [هشمة]. حتى إذا
بلغ قصّة موسى قال: «إن موسى عليه السلام أجر
نفسه ثمانين شهراً، على حفنة فرجمه
وطعام يطنه».

تخریج: [إسناده ضعیف جداً] أخرجه الطبراني في الكبير: ١٣٥/١٧، ح: ٣٣٣ من طريق
محمد بن المصفي به، وضعيته البوصيري، وإسناده ضعیف جداً منها ضعف مسلمه بن علی، فإنه
متروك، انظر، ح: ٣٥١.

Comments:

'In return for his chastity' means the promise of marriage as it has been given in the Noble Qur'an (*An-Nur* 24:32-33).

2445. Salim bin Hayyân said: I heard my father say: I heard Abu Hurairah say: "I grew up an orphan, and I emigrated as a poor man, and I was hired by the daughter of Ghazwân in return for food and a turn riding the camel. I would gather firewood for them when they stopped to camp and urge their camels along for them by singing when they rode. Praise is to Allâh Who has caused His religion to prevail and has made Abu Hurairah an *Imâm*."*(Sahih)*

٢٤٤٥ - حديثنا أبو عمر حفص بن عمرو:
حدثنا عبد الرحمن بن مهدي: حدثنا سليمان
بن حيان. سمعت أبي يقول: سمعت أبي
هريرة يقول: شئت تسمى، وهاجرت
مسكيناً، وكنت أحير لابنته غروان بطعم
بطني وعقبة رجلي. أخطب لهم إذا تذروا.
وأحددو لهم إذا ركبوا. فالحمد لله الذي
جعل الدين قياماً، وجعل أبي هريرة إماماً.

تخریج: أخرجه البخاري في التاریخ الكبير في التاریخ الكبير: ٣٢٦/٤، وابن سعد: ٥٤/٣، والبيهقي: ٦٢٠، وأبونعيم في الحلية: ١/٣٧٩ من طرق عن سليم بن علی، وقال البوصيري: هذا إسناد صحيح
موقوف * حيان بن سطام وفاته ابن حيان، ول الحديث شاهد صحيح عند ابن سعد، وشاهد آخر عند
أبی نعیم في حلیة الأولیاء، وابن عساکر في تاریخ دمشق، وفيه ابن لهيعة المدلس.

[1] That is *Surat An-Naml* (27).

**Chapter 6. A Man Who
Draws A Bucket Of Water In
Return For A Date And
Stipulates That They Must Be
Good Quality Dried Dates**

2446. It was narrated that Ibn 'Abbâs said: "The Prophet of Allâh ﷺ was in need of food, and news of that reached 'Ali. He went out seeking work so that he could earn something to give to the Messenger of Allâh ﷺ. He came to a garden belonging to a Jewish man, and he drew seventeen buckets of water for him, each bucket for a date. The Jew gave him the option to take seventeen of his 'Ajwah dates (a high quality of dates) and he brought them to the Prophet of Allâh ﷺ." (*Da'if*)

تخریج: [إسناده ضعیف جداً] أخرجه البیهقی: ١١٩/٦ من حديث المعتمر به، وضعفه البوصيري * وحسین بن قیس، لقبه حتش، متربک كما في التقریب وغيره.

2447. It was narrated that 'Ali said: "I used to draw water, one bucket for a date, and I stipulated that they should be good quality, dried dates." (*Da'if*)

تخریج: [إسناده ضعیف] أخرجه البزار في البحر الزخار: ٢/٣١٢، ح: ٧٣٨ من حديث سفیان الثوری به، وانظر، ح: ٤٦، ١٦٢ لعلیه، وصححه البوصيري.

2448. It was narrated that Abu Hurairah said: "A man from among the *Ansâr* came and said: 'O Messenger of Allâh, why do I see that your color has changed?' He said: 'Hunger.' So the *Ansârî*

(المعجم ٦) - باب الرَّجُل يَسْتَقِي كُلَّ
دُلُو بِتَمْرَةٍ وَيَشْرُطُ جَلَدَةً (التحفة ٦٧)

٢٤٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَغْلَبِ
الصَّعَانِي: حَدَّثَنَا الْمُعْتَمِرُ بْنُ شَلَيْمَانَ، عَنْ
أَبِيهِ، عَنْ حَثَّشَ، عَنْ عَكْرَمَةَ، عَنْ أَبْنِ
عَبَّاسٍ قَالَ: أَصَابَتْ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خَاصَّةً.
فَبَلَغَ ذَلِكَ عَلَيْهِ. فَخَرَجَ يَلْتَمِسُ عَمَلاً يُصِيبُ
فِيهِ شَيْئاً لِتَقِيتِهِ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. فَأَتَى
بِسُكَّانَا لِرَجُلٍ مِنَ الْيَهُودِ. فَأَسْتَأْتَنِي لَهُ سَبْعَةَ
عَشَرَ دُلُو. كُلُّ دُلُو بِتَمْرَةٍ. فَخَيْرَةُ الْيَهُودِيِّ
مِنْ تَمْرَوْهُ، سَبْعَ عَشَرَةَ عَجُوجَةً. فَجَاءَ بِهَا إِلَيَّ
نَبِيُّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.

٢٤٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ شَارِي: حَدَّثَنَا عَبْدُ
الرَّحْمَنِ: حَدَّثَنَا شَيْبَانُ عَنْ أَبِي إِسْحَاقَ، عَنْ
أَبِي حَيَّةَ، عَنْ عَلَيَّ قَالَ: كُنْتُ أَذْلُو الدَّلُو
بِتَمْرَةٍ. وَأَسْتَرْطُ أَنَّهَا جَلَدَةً.

٢٤٤٨ - حَدَّثَنَا عَلَيُّ بْنُ الْمُنْذِرِ: حَدَّثَنَا
مُحَمَّدُ بْنُ فَضْلَلِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدِ،
عَنْ جَدِّهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ
مِنَ الْأَنْصَارِ فَقَالَ: يَا رَسُولَ اللَّهِ مَا لَيْ أَرَى

went to his dwelling, but he did not find anything in his dwelling, so he went out looking, and he found a Jew watering his date-palm trees. The Ansâri said to the Jew: 'Shall I water your trees?' He said: 'Yes.' He said: 'Every bucket for one date.' And the Ansâri stipulated that he would not take any dates that were black (rotten), hard and dried out or inferior, and he would only take good quality dates. He earned nearly two *Sâ'as* (of dates), and he brought it to the Prophet ﷺ." (*Da'iif*)

تخریج: [إسناده ضعیف جداً] وضعه البوصیری، وانظر، ح: ٢٦٠ لحال عبدالله بن سعید المقربی.

Chapter 7. Lending Land In Return For One Third Or One Quarter (Of The Crop)

2449. It was narrated that Râfi' bin Khadij said: "The Messenger of Allâh ﷺ forbade *Muhâqalah* and *Muzâbahah*, and said: 'Only three may cultivate: A man who has land which he cultivates; a man who was given some land and cultivates what he was given; and a man who takes land on lease for gold or silver.'" (*Hasan*)

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب في التشديد في ذلك، ح: ٣٤٠٠ من حديث أبي الأحوص به * طارق هذا وفته الجمهور، فحديثه لا ينزل عن درجة الحسن.

Comments:

- For the explanation of *Muhâqalah* and *Muzâbahah* see *Hadîth* no. 2265: note b.
- As cash can be given to help a poor man for earning his livelihood, similarly a piece of land can be given to a poor farmer for his use, to make a permanent source of lawful earnings.

لَوْنَكَ مُنْكِفِنَا؟ قَالَ: «الْخَصْصُ» فَانْطَلَقَ الْأَنْصَارِيُّ إِلَى رَحْلِهِ. فَلَمْ يَجِدْ فِي رَحْلِهِ شَيْئًا. فَخَرَجَ يَطْلُبُ. فَإِذَا هُوَ يَبْهُوْدِيٌّ نَسْقِيَ تَحْلَكَ؟ قَالَ: نَعَمْ. قَالَ: كُلُّ دُلُوْبَتْمَرَةَ وَأَشْتَرَطَ الْأَنْصَارِيُّ أَنْ لَا يَأْخُذَ خَيْرَةَ وَلَا تَأْوِرَةَ وَلَا حَشَفَةَ. وَلَا يَأْخُذَ إِلَّا جَلَدَةَ. فَاسْتَقَى يَنْحُو مِنْ صَاعِينَ. فَجَاءَ يَهُ إِلَى النَّبِيِّ ﷺ.

(المعجم ٧) - بَابُ الْمُزَارَعَةِ بِالْثُلُثِ
وَالرُّبْعِ (التحفة ٦٨)

٢٤٤٩ - حَدَّثَنَا هَنَّادُ بْنُ السَّرِّيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّّحْمَنِ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ رَافِعِ بْنِ خَدِيْجَيْ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُحَاكَلَةِ وَالْمُزَابَنَةِ. وَقَالَ: إِنَّمَا يَبْرُزُ عَلَيْهَا: وَرَجُلٌ لَهُ أَرْضٌ، فَهُوَ يَبْرُزُ عَلَيْهَا. وَرَجُلٌ مُنْعَنِ أَرْضًا، فَهُوَ يَبْرُزُ مَا [مُنْعَنِ]. وَرَجُلٌ اسْتَكْرَى أَرْضًا بِلَهْبِ أَوْ فَضَّيْةِ.

تخریج: [إسناده حسن] أخرجه أبو داود، البيوع، باب في التشديد في ذلك، ح: ٣٤٠٠ من

- c. Taking and giving a piece of land on the basis of division of produce between the cultivator and the landlord is lawful, but it is necessary to determine the terms and conditions beforehand to avoid the eruption of disputes.
- d. Gold and silver are the symbols of currency, because in the times of the Noble Prophet ﷺ, gold and silver Dinâr and Dirham, respectively were in use.

2450. It was narrated that 'Amr bin Dinâr said: "I heard Ibn 'Umar say: We used to lend land for cultivation in return for a share of the harvest, and we did not see anything wrong with that, until we heard Râfi' bin Khadîj say: "The Messenger of Allâh ﷺ forbade it." Then we stopped because of what he said."

(*Sahîh*: أخرجه مسلم، البيع، باب كراء الأرض، ح: ١٥٤٧ من حديث سفيان به).

Comments:

Mukhâharah means division of produce between the cultivator and the landlord. For example the produce is divided between the two, half and half or one third and two thirds, or as agreed upon. It is lawful and permitted. But the division of the produce on the basis of particular parts of land is unlawful. It is prohibited to divide the produce such that the produce of this part of land will go to the landlord, and produce from the other part of the land will go to the tiller. (See *Hadîth* no.2458)

2451. 'Atâ' said: "I heard Jâbir bin 'Abdullâh say: Some men among us had extra land which they would rent out for one third or one quarter (of the crop). The Prophet ﷺ said: "Whoever has extra land, let him cultivate it (himself) or let him give it to his brother (for free, to cultivate it), and if he does not want to do that, let him keep his land."

(*Sahîh*)

(تخریج: أخرجه البخاري، الحرف والمزارعة، باب ما كان من أصحاب النبي ﷺ يواسى بعضهم بعضًا في الزراعة والثمرة، ح: ٢٣٤٠، ٢٦٣٢، ٢٦٣٤؛ ومسلم، البيع، باب كراء الأرض،

٢٤٥٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ . قَالَا: حَدَّثَنَا سُفِيَّانُ بْنُ عُيَيْنَةَ، عَنْ عُمَرِ بْنِ دِيَارٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: كُنَّا نُخَابِرُ وَلَا نَرَى بِذَلِكَ يَأْسًا . حَتَّى سَمِعْتُ رَافِعَ بْنَ حَلَبِيَّ يَقُولُ: شَهِيْدٌ رَسُوْلُ اللهِ عَلَيْهِ السَّلَامُ عَنْهُ . فَتَرَكْتُهُ لِقَوْلِهِ .

(تخریج: أخرجه مسلم، البيع، باب كراء الأرض، ح: ١٥٤٧ من حديث سفيان به).

٢٤٥١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشِيقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي عَطَاءً قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: كَانَتْ لِرِجَالِكِ مِنَ الْفُضُولِ أَرْضَيْنِ يُؤَاجِرُوهَا عَلَى الثُّلُثِ وَالرُّبُعِ . فَقَالَ النَّبِيُّ ﷺ: (مَنْ كَانَ لَهُ فُضُولُ أَرْضَيْنَ فَلْيَرْغِهَا أَوْ لِيُرْجِعَهَا أَخَاهُ . فَإِنْ أَلِمَ فَلِيُمْسِكَ أَرْضَهُمْ) .

(تخریج: أخرجه البخاري، الحرف والمزارعة، باب ما كان من أصحاب النبي ﷺ يواسى

بعضهم بعضًا في الزراعة والثمرة، ح: ٢٣٤٠، ٢٦٣٢، ٢٦٣٤؛ ومسلم، البيع، باب كراء الأرض،

ح: ٨٩/١٥٣٦ من حديث الأوزاعي به

2452. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever has land, let him cultivate it (himself) or let him give it to his brother (for free, to cultivate it), and if he does not want to do that, let him keep his land." (Sahih)

٢٤٥٢ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعِيدِ الْجُوَهْرِيُّ
حَدَّثَنَا أَبُو تَوْتَةَ الرَّبِيعُ بْنُ نَافِعٍ: حَدَّثَنَا مُعاوِيَةُ
ابْنُ سَلَامَ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي
سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: (مَنْ كَانَ لَهُ أَرْضٌ فَلْيَزْعُمْهَا)، أَوْ
لَمْ يَجِدْهَا أَخَاهُ فَإِنْ أَنْتَ أَنْتَ فَلَيُئْسِنْكَ أَرْضَهُ:

تخریج: آخرجه البخاري، الحجرات والمزارعه، الباب السابق، ح: ٢٣٤١، ومسلم، البيوع،
الباب السابق، ح: ١٥٤٤ من حديث أبي توبه به

Comments:

'Let him keep his land' means to let his land remain without cultivation. It is obvious that if the land remains without cultivation, it will produce nothing, and there will be no profit at all, and if it is given to someone to cultivate it will be a great act of generosity.

Chapter 8. Leasing Out Land

(المعجم ٨) - باب كراء الأرض

(التحفة ٦٩)

2453. It was narrated from Ibn 'Umar that he used to lease out some land that belonged to him, for cultivation. Then someone came to him and told him that Rāfi' bin Khadīj said that the Messenger of Allāh ﷺ had forbidden leasing out land for cultivation. Ibn 'Umar went, and I went with him, until he met him in Balāt,^[1] and asked him about that, and he told him that the Messenger of Allāh ﷺ had forbidden leasing out land for cultivation. So 'Abdullāh stopped leasing out land. (Sahih)

٢٤٥٣ - حَدَّثَنَا أَبُو كُرْبَيْبٍ: حَدَّثَنَا عَبْدُهُ بْنُ شَيْعَمَانَ وَ أَبُو أَسَانَةَ وَ مُحَمَّدُ بْنُ عَبْيَدٍ، عَنْ عَبْيَدِ اللَّهِ أَوْ قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عَمْرَأَنَّهُ كَانَ يَكْرِي أَرْضًا لَهُ، مَزَارِعًا، فَأَتَاهُ إِنْسَانٌ فَأَخْبَرَهُ عَنْ رَافِعٍ بْنِ خَدِيْبٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَرَاءَ الْمَرَأَعِ، فَذَهَبَ أَبْنُ عَمْرَأَنَّهُ مَهْبِتُ مَعَهُ حَشَّى أَنَّاهُ بِالْبَلَاطِ، فَسَأَلَهُ عَنْ ذَلِكَ فَأَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَرَاءَ الْمَرَأَعِ، فَتَرَكَ عَبْدُ اللَّهِ كَرَاءَهَا.

[1] A place in Al-Madinah.

تخریج: أخرجه مسلم، البيوع، باب كراء الأرض، ح: ١٥٤٧ من حديث عبیدالله بن عمر به، وعلمه البخاري، ح: ٢٢٨٦ مختصرًا، أخرجه البخاري، ح: ٢٣٤٤، ٢٢٨٦، ومسلم وغيرهما من طرق عن نافع به.

Comments:

- 'Leasing out land' means that the tiller will cultivate the land of the landlord according to a set treaty. The tiller, after collecting the produce will give a certain agreed upon amount of money to the landlord, and will keep the rest.
- Giving the land for free to cultivate is a better deed than leasing it out. The Noble Prophet ﷺ prohibited leasing out land, only to encourage the better gesture towards Muslim brothers, otherwise leasing out the land is lawful. (See Hadith no. 2456.)

2454. It was narrated that Jâbir bin 'Abdullâh said: "The Messenger of Allâh ﷺ addressed us and said: 'Whoever has land, let him cultivate it or allow someone else to cultivate it, and not rent it out.'" (*Sahih*)

٤٥٤ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدٍ أَبْنِ كَثِيرٍ بْنِ دِينَارِ الْحَمْصِيِّ؛ حَدَّثَنَا ضَمْرَةُ أَبْنُ رَبِيعَةَ، عَنْ أَبْنِ شَوَّدَبٍ، عَنْ مَطْرَ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: حَطَّنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَقَالَ: «مَنْ كَانَتْ لَهُ أُرْضٌ فَلْيَتَرْعَهَا أَوْ لِيُزِرْعَهَا، وَلَا يُؤْجِرْهَا».

تخریج: أخرجه مسلم، البيوع، باب كراء الأرض، ح: ١٥٣٦ من حديث مطر به.

2455. It was narrated from Abu Sufyân, the freed slave of Ibn Abu Ahmad, that he told him that he heard Abu Sa'eed Al-Khudri say: "The Messenger of Allâh ﷺ forbade *Muhâqalah*." (*Sahih*)
Muhâqalah means leasing out land.

٤٥٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ؛ حَدَّثَنَا مُطَرُّفُ بْنُ عَبْدِ اللَّهِ؛ حَدَّثَنَا مَالِكُ، عَنْ دَاؤَدَ أَبْنِ الْحُصَيْنِ، عَنْ أَبِي سُقِيَّانَ، مَوْلَى أَبِي أَبِي أَحْمَدَ أَنَّهُ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا سَعِيدَ الْخُنَرَى يَقُولُ: تَهَىءِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُحَاqَلَةِ.

وَالْمُحَاqَلَةُ اسْتِكْرَاءُ الْأَرْضِ.

تخریج: أخرجه البخاري، البيوع، باب بيع المزاينة وهي بيع التمر بالثمر وبيع الزبيب بالكرم وبيع العرايا، ح: ٢١٨٦، ومسلم، البيوع، الباب السابق، ح: ١٥٤٦ من حديث مالك به.

Chapter 9. Concession Allowing Leasing Out Barren Land For Gold And Silver

2456. It was narrated from Ibn 'Abbâs that he heard that people were leasing out land more. He said: "Sûbhân-Allâh, the Messenger of Allâh ﷺ said: 'Why does not one of you lend it to his brother?' But he did not forbid leasing it out.'" (*Sahîh*)

(المعجم ٩) - بَابُ الرَّحْصَةِ فِي كِرَاءِ
الْأَرْضِ الْبَيْضَاءِ بِالذَّهَبِ وَالْفِضَّةِ

(التحفة ٧٠)

٢٤٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمِيعٍ: أَبْنَا الْلَّيْثِ
ابْنُ سَعْدٍ، عَنْ عَبْدِ الْمُلْكِ بْنِ عَبْدِ الْعَزِيزِ بْنِ
جُرَيْجٍ، عَنْ عَمْرُو بْنِ دِيَنَارٍ، عَنْ طَاؤُسٍ،
عَنْ أَبْنِ عَبَّاسٍ أَنَّهُ لَمَّا سَمِعَ إِكْتَارَ النَّاسِ فِي
كِرَاءِ الْأَرْضِ - قَالَ: سُبْحَانَ اللَّهِ إِنَّمَا قَالَ
رَسُولُ اللَّهِ ﷺ: «أَلَا مَنْحَاهَا أَخْدُكُمْ أَخَاهُ»
وَلَمْ يَهُدِ عَنْ كِرَائِهَا.

تخریج: أخرجه البخاري، الحرف والمزارعة، باب: (!)، ح: ٢٣٣٠، ٢٣٤٢، ٢٣٤٤، ٢٣٣٤،
ومسلم، البيوع، باب الأرض تمنح، ح: ١٥٥٠ من حديث عمرو بن دينار به.

2457. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "If one of you were to lend his brother his land, it would be better for him than taking such and such rent for it." (*Sahîh*)

Ibn 'Abbâs said: "It is *Haql* (i.e., leasing land for cultivation), and in the dialect of the *Ansâr* it is called *Muhâqalah*."

٢٤٥٧ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ
الْعَسْتَرِيُّ: حَدَّثَنَا عَبْدُ الرَّزَاقِ: أَبْنَا عَمَّرَ عَنْ
ابْنِ طَاؤُسٍ، عَنْ أَبِيهِ، عَنْ أَبْنِ عَبَّاسٍ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «لَأَنْ يَمْنَعَ أَخْدُكُمْ أَخَاهُ
أَرْضَهُ، خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا كَذَا وَكَذَا»
لِشَيْءٍ مَعْلُومٍ.

فَقَالَ أَبْنُ عَبَّاسٍ: هُوَ الْحَقْلُ. وَهُوَ بِلَسَانِ
الْأَنْصَارِ الْمُحَاكَلَةُ.

تخریج: أخرجه مسلم، البيوع، باب الأرض تمنح، ح: ١٥٥٠ من حديث عبد الرزاق
به.

2458. It was narrated that Hanzalah bin Qais said: "I asked Râfi' bin Khadîj and he said: 'We used to lease out land on the basis that you would have what is produced by this piece of land, and I would have what is produced by this (other) piece of

٢٤٥٨ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا
سَفِيَّانُ بْنُ عُيَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ
خَنْظَلَةَ بْنِ قَبِيسٍ قَالَ: سَأَلْتُ رَافِعَ بْنَ خَلْيَجٍ
قَالَ: كُنَّا نُكْرِي الْأَرْضَ عَلَى أَنَّ لَكَ مَا
أَخْرَجْتُ هَذِهِ، وَلَيَ مَا أَخْرَجْتُ هَذِهِ فَهَذِهِنَا

land, and we were forbidden to lease it out on the basis of crop-sharing but he did not forbid us to rent out land for silver.” (Sahih)

تخریج: أخرجه البخاري، الحرف والمزارعة، باب ما يكره من الشروط في المزارعة، ح ٢٣٣٢، ومسلم، البيوع، باب كراء الأرض بالذهب والورق، ح ١٥٤٧ من حديث سفيان بن عيينة به.

Chapter 10. Kinds Of Cultivation That Are Disliked

2459. Râfi' bin Khadij narrated that his paternal uncle Zuhair said: “The Messenger of Allâh ﷺ forbade us from doing something that was convenient for us.” I said: “What the Messenger of Allâh ﷺ said is true.” He said that the Messenger of Allâh ﷺ said: “What do you do with your farms?” We said: “We rent them out for one third or one quarter of their yield, and a certain amount of wheat and barley.” He said: “Do not do that; cultivate them or let others cultivate them.” (Sahih)

تخریج: أخرجه البخاري، الحرف والمزارعة، باب ما كان من أصحاب النبي ﷺ يواسى بعضهم بعضًا في الزراعة والثمر، ح ٢٣٣٩، ومسلم، البيوع، باب كراء الأرض بالطعام، ح ١٥٤٨ من حديث الأوزاعي به.

2460. It was narrated from Usaid bin Zuhair, the paternal nephew of Râfi' bin Khadij, that Râfi' bin Khadij said: “If one of us did not need his land, he would give it (to someone else to cultivate) in return for one third, or one quarter, or one half of the yield, and he would stipulate (that he should receive) the produce

أَنْ تُكْرِيَهَا بِمَا أَخْرَجَتْ . وَلَمْ يُتَّسِّرْ أَنْ تُكْرِيَ الْأَرْضَ بِالْتُّورِيَّ .

(المعجم ١٠) - بَابُ مَا يُكْرِهُ مِنَ الْمُرَارَعَةِ (التحفة ٧١)

٢٤٥٩ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ : حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ : حَدَّثَنَا الْأَوْزَاعِيُّ : حَدَّثَنِي أَبُو التَّجَاشِيِّ أَنَّهُ سَمِعَ رَافِعَ ابْنَ خَدِيجَ يُحَدِّثُ عَنْ عَمِّهِ طَهْفَيِّرَ قَالَ : نَهَانَا رَسُولُ اللَّهِ ﷺ عَنْ أَمْرٍ كَانَ لَنَا رَاقِفًا . فَقُلْتُ : مَا قَالَ رَسُولُ اللَّهِ ﷺ فَهُوَ حَقٌّ . فَقَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : مَا تَصْنَعُونَ بِمَحَالِكُمْ؟ . قُلْنَا : نُؤَاجِرُهَا عَلَى الثَّلِثِ وَالرُّبُعِ وَالْأُوْسُقِ مِنَ الْبُرْ وَالشَّعْبِيرِ . فَقَالَ : فَلَا تَفْعَلُوا . اُرْعُوهَا أَوْ أُرْعِعُوهَا .

٢٤٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى : أَبْنَانَا عَبْدُ الرَّزْاقِ : أَبْنَانَا التُّورِيِّ ، عَنْ مَتْصُورٍ ، عَنْ مُجَاهِدٍ ، عَنْ أَسِيدٍ بْنِ طَهْفَيِّرٍ ، ابْنِ أَخِي رَافِعٍ ابْنِ خَدِيجَ ، عَنْ رَافِعٍ بْنِ خَدِيجَ قَالَ : كَانَ أَحَدُنَا إِذَا اسْتَغْنَى عَنْ أَرْضِهِ أَعْطَاهَا بِالثَّلِثِ وَالرُّبُعِ وَالصَّفِيفِ . وَاشْتَرَطَ ثَلَاثَ جَنَاحِلَ

grown on the banks of three streams, and the grains that remain in the ear after threshing, and the produce irrigated by a stream. Life at that time was hard, and he would work (the land) with iron and whatever Allâh willed, and he would benefit from it. Then Râfi' bin Khadîj came to us and said: 'The Messenger of Allâh ﷺ forbade you to do something that may seem beneficial to you, but obedience to Allâh and obedience to His Messenger are more beneficial for you. The Messenger of Allâh ﷺ forbade *Haql*^[1] for you, and he said: "Whoever has no need of his land, let him give it to his brother (to cultivate) or let him leave it (uncultivated)." (Sahîh)

وَالْقُصَارَةَ وَمَا يَسْتَهِي الرَّبَيعُ. وَكَانَ الْعَيْشُ إِذْ ذَاكَ شَدِيداً. وَكَانَ يَمْمُلُ فِيهَا بِالْحَدِيدِ، وَيَمْلُأ شَاءَ اللَّهُ. وَيُصَبِّبُ مِنْهَا مَفْعَةً، فَأَنَا رَافِعٌ بْنَ خَدِيجَ قَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ نَهَاكُمْ عَنْ أَمْرٍ كَانَ لَكُمْ نَافِعاً. وَطَاعَةُ اللَّهِ وَطَاعَةُ رَسُولِهِ أَنْفَعُ لَكُمْ. إِنَّ رَسُولَ اللَّهِ ﷺ يَنْهَاكُمْ عَنِ الْحَقْلِ، وَيَقُولُ: «مَنْ اشْتَغَلَ عَنْ أَرْضِهِ فَلِمَنْتَحِهَا أَخَاهُ، أَوْ لِنَدَعْ». قَالَ رَافِعٌ بْنُ خَدِيجَ: إِنَّ رَسُولَ اللَّهِ ﷺ يَنْهَاكُمْ عَنِ الْحَقْلِ، وَيَقُولُ: «مَنْ اشْتَغَلَ عَنْ أَرْضِهِ فَلِمَنْتَحِهَا أَخَاهُ، أَوْ لِنَدَعْ».

تخریج: [صحیح] أخرجه أبو داود، البيوع، باب في التشديد في ذلك، ح ٣٣٩٨ من حديث منصور به.

Comments:

- The narration clears the concept of leasing out the land. Leasing out the land on one half or on one quarter is prohibited only on the conditional division of the produce, on the basis of particular parts of land. Usually the landlord keeps the produce of the piece of land which is more fertile, and is more productive. Since this is not fair, therefore, this kind of division is prohibited.
- Leasing out the land on one half or on one quarter is allowed, on the basis of the total produce gained from the land.

2461. Zaid bin Thâbit said: "May Allâh forgive Râfi' bin Khadîj. By Allâh! I have more knowledge of *Ahâdîth* than he does. Two men who had quarreled came to the Prophet ﷺ and he said: 'If this is

٢٤٦١ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيُّ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلَيَّ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِسْحَاقَ: حَدَّثَنِي أَبُو عَيْدَةَ أَبْنُ مُحَمَّدٍ بْنِ عَمَّارٍ بْنِ يَاسِرٍ، عَنِ الْوَلِيدِ بْنِ

^[1] Leasing land in return for a share of the crops.

your situation, do not lease farms,' and what Râfi' bin Khadîj heard was 'Do not lease farms.'"
(*Hasan*)

أَبْيَ الْوَلِيدِ، عَنْ عُرْوَةَ بْنِ الرَّبِيعِ قَالَ: قَالَ رَبِيعٌ بْنُ ثَابِتٍ: يَعْقُرُ اللَّهُ لِرَافِعٍ بْنِ خَدِيجٍ. أَنَا، وَاللَّهُ، أَعْلَمُ بِالْحَدِيثِ مِنْهُ. إِنَّمَا أَنِي رَجُلٌ أَنَّ اللَّهَ يَعْلَمُ. وَقَدْ افْسَلَاهُ فَقَالَ: «إِنْ كَانَ هَذَا شَأْنُكُمْ فَلَا تُنْكِرُوا الْمَزَارِعَ» فَسَمِعَ رَافِعٍ بْنِ خَدِيجٍ قَوْلَهُ: «فَلَا تُنْكِرُوا الْمَزَارِعَ».

تخریج: [إسناده حسن] آخرجه أبو داود، البيوع، باب: في المزارعة، ح: ٣٣٩٠ من حديث عبد الرحمن بن إسحاق به * أبو عبيدة وثقة ابن معين وغيره وتعديل راجح، والوليد وثقة أبو زرعة، والتعجلي، وابن شاهين وغيرهم.

Chapter 11. Concession Allowing Cultivation For One Third And One Quarter (Of The Crop)

2462. It was narrated that 'Amr bin Dinâr said: I said to Tâwûs: "O Abu 'Abdur-Rahmân, why do you not give up this *Mukhâbarah*^[1] because they claim that the Messenger of Allâh ﷺ forbade it." He said: "O 'Amr, I help them by taking their land and cultivating it, and giving them something in return, and Mu'âdh bin Jabal allowed people here to do that. The most knowledgeable of them – meaning Ibn 'Abbâs – told me that the Messenger of Allâh ﷺ did not forbid it, rather he said: 'For one of you to give (land) to his brother is better for him than if he were to take a set amount in rent for it.'" (*Sahih*)

(المعجم (١١) - باب الرخصة في
المزارعة بالثلث والربع (التحفة ٧٢)

٤٦٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَاحِ: أَبْنَا أَنَّ سُقِيَانُ بْنُ عَيْنِيَّةَ، عَنْ عَمْرُو بْنِ دِيَنَارٍ قَالَ: قُلْتُ لِطَاؤُسٍ: يَا أَبَا عَبْدِ الرَّحْمَنِ! لَوْ تَرَكْتَ هَذِهِ الْمَخَابِرَةَ، فَإِنَّهُمْ يَرْعَمُونَ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْهُ. فَقَالَ: أَيْ عَمْرُو إِنِّي أُعِيَّهُمْ وَأَعْطِيهِمْ. وَإِنَّ مَعَادَ بْنَ جَبَلَ أَخَذَ النَّاسَ عَلَيْهَا عِنْدَنَا. وَإِنَّ أَعْلَمُهُمْ يَعْنِي أَبْنَ عَيْنَيِّهِ أَخْبَرَنِي أَنَّ رَسُولَ اللَّهِ ﷺ لَمْ يَنْهَ عَنْهَا وَلَكِنْ قَالَ: أَلَا يَمْنَعُ أَحَدُكُمْ أَخَاهُ، خَيْرُهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا أَجْرًا مَعْلُومًا؟

تخریج: آخر جاه من حديث عمرو بن دينار به، وانظر، ح: ٢٤٥٦.

[1] Leasing land in return for a share of the crops.

Comments:

- a. It is the duty of the scholars to explain the issues and satisfy the common public. In support of their point of view, they can give the references of other great scholars as Tâwus quoted the two Companions, Mu'âdh bin Jabal and Ibn Abbâs. These kind of references prove more affective and satisfy the common man.
- b. 'Set amount' means an agreement for a fixed amount.

2463. It was narrated from Tâwus that Mu'âdh bin Jabal leased some land during the time of the Messenger of Allâh ﷺ, Abu Bakr, 'Umar and 'Uthmân, in return for one third or one fourth (of the yield), and he was still doing that until this day of yours. (*Da'iif*)

٢٤٦٣ - حَدَّثَنَا أَحْمَدُ بْنُ قَاتِيِّ الْجَعْدِرِيُّ : حَدَّثَنَا عَبْدُ الرَّحَمَنِ بْنُ خَالِدٍ، عَنْ مُجَاهِدٍ، عَنْ طَوْسٍ أَنَّ مَعَاذَ بْنَ جَبَلَ أَكْرَى الْأَرْضَ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ، عَلَى الثَّلَاثِ وَالرُّبُعِ فَهُوَ يُعْمَلُ بِهِ إِلَى يَوْمَكَ هَذَا .

تخریج: [إسناده ضعیف] وقال البوصيري: هذا إسناد صحيح رجاله ثقات ، قلت: طاوس لم يسمع من معاذ شيئاً كما قال ابن المديني وغيره، انظر جامع التحصیل للعلاءی ص: ٢٠١ وغيره .

2464. It was narrated from Tâwus that Ibn 'Abbâs told that the Messenger of Allâh ﷺ merely said: "For one of you to give (land) to his brother is better for him than if he were to take a set amount in rent for it." (*Sahih*)

٢٤٦٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ خَلَدٍ الْبَاهْلِيُّ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ . قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ شُفَيْيَانَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَوْسٍ قَالَ: قَالَ أَبْنُ عَبَّاسٍ: إِنَّمَا قَالَ رَسُولُ اللَّهِ ﷺ: لِأَنَّ يَنْمَنِحَ أَخَدُوكُمْ أَخَةَ الْأَرْضِ، خَيْرَ لَهُ مَنْ أَنْ يَأْخُذَ خَرَاجًا مَعْلُومًا .

تخریج: وانظر، ح ٢٤٥٦، ٢٤٦٢: .

(المعجم ١٢) - بَابُ اسْتِكْرَاءِ الْأَرْضِ
بِالطَّعَامِ (التحفة ٧٣)

Chapter 12. Renting Out Land In Return For Food

2465. It was narrated that Râfi' bin Khadij said: We used to give land in return for food at the time of the Messenger of Allâh ﷺ, and some of my paternal uncles came

٢٤٦٥ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثَ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرْوَيْةَ عَنْ يَعْلَى بْنِ حَكِيمٍ، عَنْ شَعِيْمَانَ بْنِ يَسَارٍ، عَنْ رَافِعِ بْنِ تَحَرِّيْجٍ قَالَ: كُنَّا نُحَاقِّلُ

to them and said: "The Messenger of Allâh ﷺ said: 'Whoever has land, he should not rent it out for a set amount of food.'" (Sahih)

عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَرَأَمَ أَنْ يَغْضِبَ عَمُومَتِي أَتَاهُمْ فَقَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: مَنْ كَانَ لَهُ أَرْضٌ، فَلَا يُكَرِّبَهَا بِطَعَامٍ مُسْكُنٍ».

تخريج: أخرجه مسلم، البيوع، باب كراء الأرض بالطعام، ح: ١٥٤٨ من حديث سعيد بن أبي عروبة به.

Comments:

'Set amount of food' may mean one third or one fourth of the produce, or it may mean a certain fixed quantity of food stuff, like ten or twenty mounds of grain etc. Leasing out the land against a set amount of food instead of a certain amount of money is legal, as it has been discussed in detail in a previous chapter.

Chapter 13. Whoever Cultivates People's Land Without Their Permission

2466. It was narrated that Râfi' bin Khadij said: "The Messenger of Allâh ﷺ said: 'Whoever cultivates people's land without their permission, he has no right to any of the produce, but he should be recompensed for his expenditure.'" (Da'iif)

(المعجم ١٣) - بَابُ مَنْ زَرَعَ فِي أَرْضٍ
قومٍ بِغَيْرِ إِذْنِهِمْ (التحفة ٧٤)

٢٤٦٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرٍ بْنُ زُرَارَةَ: حَدَّثَنَا شَرِيكٌ عَنْ أَبِي إِسْحَاقَ، عَنْ عَطَاءَ، عَنْ رَافِعَ بْنِ خَلْبَيْجِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ، فَلَكُنْ لَهُ مِنَ الزَّرْعِ شَيْءٌ، وَتُرْدَ عَلَيْهِ الْفَقَدُ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في زرع الأرض بغير إذن أصحابها، ح: ٣٤٠٣ من حديث شريك القاضي به، ولم أجده تصریح سماعه، وتابعه قيس بن الربيع عند البيهقي ٦/١٣٦، والحديث حسنة الترمذى، ح: ١٣٦٦، والبخاري * عطا لم يسمع من رافع رضي الله عنه (خطابي)، وأبو إسحاق عنون تقدم، ح: ٤٦ وفيه علة أخرى، انظر، ح: ١٠٣٩، وله شواهد.

Comments:

In the situation mentioned in the narration, the cultivator will only get the expenditure which he has spent on seeds, manure, or hiring a tractor etc., but he will not get anything for his labor of tilling. This will be his punishment for not seeking permission in advance.

Chapter 14. Dealing With People Who Have Date-Palm Trees And Grape Vines

2467. It was narrated from Ibn

(المعجم ١٤) - بَابُ مُعَالَمَةِ النَّخْلِ
وَالْكَرَمِ (التحفة ٧٥)

٢٤٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاجِ وَسَهْلٌ

'Umar that the Messenger of Allâh ﷺ entered into a contract with the people of Khaibar for one half of the fruits or crops yielded. (*Sahih*)

ابن أبي سهيل و إسحاق بن منصور. قالوا :
حدثنا يحيى بن سعيد القطان، عن عبيد الله
ابن عمر، عن نافع، عن ابن عمر أن رسول الله
الله ﷺ عامل أهل خير بالشطر مما يخرج
من ثمر أو زرع.

تخریج: أخرجه البخاري، الحرف والمزارعة، باب : إذا لم يشرط السفين في المزارعة، ح: ٢٣٢٩، ومسلم، المساقاة، باب المشaqueة والمعاملة بجزء من الثمر والزرع، ح: ١٥٥١ من حديث يحيى القطان به.

2468. It was narrated from Ibn 'Abbas that the Messenger of Allâh ﷺ gave Khaibar to its people in return for one half of the yield of its palm trees and land. (*Sahih*)

٤٤٦٨ - حدثنا إسناعيل بن قوية : حدثنا
هشيم عن ابن أبي ليلى، عن الحكم بن
عبيدة، عن مفسن، عن ابن عباس أن رسول الله
الله ﷺ أعطى خير أهلها على النصف.
نخلها وأرضها .

تخریج: [صحيح] أخرجه أحميد ٢٥٠ / ١ من حديث هشيم به، إسناده ضعيف لعل، وضعفه البوصيري، ولكن الحديث السابق شاهد له.

2469. It was narrated that Anas bin Mâlik said: "When the Messenger of Allâh ﷺ conquered Khaibar, he gave it (to its people) in return for half (of its yield)." (*Sahih*)

٤٤٦٩ - حدثنا علي بن المتن : حدثنا
محمد بن فضيل، عن مسلم الأغور، عن
أبي بن مالك قال: لما افتح رسول الله
الله ﷺ خير أهلها على النصف.

تخریج: [صحيح] إسناده ضعيف لضعف مسلم الأغور تقدم، ح: ٢٢٩٦، ولكن الحديث (٢٤٦٧) شاهد له.

Comments:

- This type of agreement regarding gardens is called *Masâqât*. Whatever is the total produce of the garden, one half or one third, it is given to the person who is taking care of the garden and the rest is for the owner. Such an agreement regarding cultivation of land is called *Muzâra'ah*.
- The land of a non-Muslim country that comes under the control and possession of the Muslim victorious army, becomes the property of the Muslim State. For the development and settlement of this land, a contract can be made both with Muslim subjects or non-Muslim subjects of the country, but the land remains the property of the state. The tiller, according to the contract, has to submit the produce to the government, and then he

will receive his share from the state. If the tiller is a Muslim and receives the produce for which Zakât becomes due, he will have to pay one tenth as Zakât.

Chapter 15. Pollinating Palm Trees

2470. It was narrated from Simâk that he heard Musa bin Talhah bin 'Ubaidullâh narrating that his father said: "I passed by some palm trees with the Messenger of Allâh ﷺ and he saw some people pollinating the trees. He said: 'What are these people doing?' They said: 'They are taking something from the male part (of the plant) and putting it in the female part.' He said: 'I do not think that this will do any good.' News of that reached them, so they stopped doing it, and their yield declined. News of that reached the Prophet ﷺ and he said: 'That was only my thought. If it will do any good, then do it. I am only a human being like you, and what I think may be right or wrong. But when I tell you: "Allâh says," I will never tell lies about Allâh.'" (Sahîh)

(المعجم ١٥) - باب تلقيح النخل

(التحفة ٧٦)

٢٤٧٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُوسَى، عَنْ إِسْرَائِيلَ، عَنْ سَمَاكَ أَنَّهُ سَيِّعَ مُوسَى بْنَ طَلْحَةَ بْنَ عَبْدِ اللَّهِ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: مَرَرْتُ مَعَ رَسُولِ اللَّهِ ﷺ فِي نَخْلٍ. فَرَأَى قَوْمًا يُلْمَصُونَ النَّخْلَ. فَقَالَ: «مَا يَضْعِفُ هُؤُلَاءِ؟» قَالُوا: يَأْخُذُونَ مِنَ الدَّكَرِ فَيَجْعَلُونَهُ فِي الْأَنْثَى». قَالَ: «مَا أَطْنَ ذَلِكَ يَعْنِي شَيْئاً». قَبَعُوهُمْ، فَرَكُوْهُ. فَرَأُوا عَنْهَا. فَبَلَّغَ النَّبِيَّ ﷺ، فَقَالَ: «إِنَّمَا هُوَ الظَّنُّ. إِنْ كَانَ يَعْنِي شَيْئاً فَاضْطَعُوهُ. فَإِنَّمَا أَنَا بَشَرٌ مِثْكُمْ. وَإِنَّ الظَّنَّ يُخْطِئُ وَيُصِيبُ. وَلَكِنْ مَا قُلْتُ لَكُمْ: قَالَ اللَّهُ - فَلَنْ أَكُنْ عَلَى

اللَّهِ».

تخریج: أخرجه مسلم، الفضائل، باب وجوب امتثال ما قاله شرعاً . . . الخ، ح: ٢٣٦١ من حديث سماك به.

Comments:

- In worldly matters everything is permitted accept those things that have been prohibited, but regarding worship, only that thing is permitted which has been taught by the Prophet ﷺ. Self-made rites and customs should not be made part of worship. These self-made rites are innovations in the religion. The Prophets were also human beings, therefore, in worldly matters, they did not give any importance to things of personal opinion.
- It is not necessary that a Prophet is always aware of the specific details of every profession, but in the matters of religion, Allâh guides His Prophets.

2471. It was narrated from 'Aishah that the Prophet ﷺ heard some sounds and said: "What is this noise?" They said: "Palm trees that are being pollinated." He said: "If they did not do that it would be better." So they did not pollinate them that year, and the dates did not mature properly. They mentioned that to the Prophet ﷺ and he said: "If it is one of your worldly matters then it is your affair, but if it is one of the matters of your religion, then refer to me." (*Sahih*)

٢٤٧١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ : حَدَّثَنَا عَفَانٌ : حَدَّثَنَا حَمَادٌ : حَدَّثَنَا ثَابِتُ عَنْ أَنَسِي ابْنِ مَالِكٍ . وَ هَشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ سَمِعَ أَصْوَاتًا . قَالَ : «مَا هَذَا الصَّوْتُ؟» قَالُوا : النَّخْلُ يُؤْبِرُونَهَا . قَالَ : «لَوْ لَمْ يَقْعُلُوا لَصَلَحَ فَلَمْ يُؤْبِرُوا عَامَيْنِ . فَسَارَ شَيْصًا . فَذَكَرُوا ذَلِكَ لِلنَّبِيِّ ﷺ . قَالَ : «إِنْ كَانَ شَيْئًا مِنْ أَمْرِ دُنْيَاكُمْ ، فَشَانُكُمْ بِهِ . وَ إِنْ كَانَ مِنْ أُمُورِ دِينِكُمْ ، فَإِلَيَّ .»

تخریج: أخرجه مسلم، الفضائل، الباب السابق، ح ٢٣٦٣ من حديث حماد بن سلمة به.

Chapter 16. The Muslims Are Partners In Three Things

2472. It was narrated from Ibn 'Abbas that the Messenger of Allâh ﷺ said: "The Muslims are partners in three things: water, pasture and fire, and their price is unlawful." (*Da'if*)

Abu Sa'eed said: "This means flowing water."

(المعجم ١٦) - بَابُ : الْمُسْلِمُونَ
شُرَكَاءُ فِي ثَلَاثَةِ (النسخة ٧٧)

٢٤٧٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ : حَدَّثَنَا عَبْدُ اللَّهِ بْنُ خَرَاشِ بْنِ حَوْشَبِ الشَّيْبَانِيِّ ، عَنْ الْعَوَامِ بْنِ حَوْشَبٍ ، عَنْ مُجَاهِدٍ ، عَنْ ابْنِ عَبَّاسٍ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثَةِ : فِي الْمَاءِ وَالنَّكَلِ وَالنَّارِ . وَ تَمَّنُهُ حَرَامٌ .»

قال أبو سعيد: يعني الماء الجاري.

تخریج: [إسناده ضعيف جداً] وقال الحافظ في التلخيص: ٦٥ / ٣ * وفيه عبدالله بن خراش متوفى، وقد صححه ابن السكن، وقال البوصيري: هذا إسناد ضعيف، عبدالله بن خراش ضعفه أبو زرعة، والبخاري، والنسائي، وابن حبان وغيرهم ، وانظر من الحديث الآتي فإنه يعني عنه.

Comments:

- Here, water means running water, like the water of a river or fountain. Everyone has the right to use the water according to his needs, and it must be unrestrained for others to use. If someone has constructed a pond or dug a well or installed a water hand pump for his personal use, it is better for him to let other people use it. It is obvious that he has the first right over its use.

b. Everyone has the right to use wild grass for his animals and other uses, and similarly, everyone can use the wood of wild plants for fuel. After cutting the wild plant the cut wood becomes the property of the cutter, so he can sell it as well.

2473. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Three things cannot be denied to anyone: water, pasture and fire." (*Sahih*)

٢٤٧٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَرِيدَةَ: حَدَّثَنَا شَفَيْيَانُ عَنْ أَبِي الرَّتَادِ، عَنْ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَآتُ لَا يُمْتَنَعُ: الْمَاءُ وَالكَلَأُ وَالنَّارُ».

تخریج: [صحيح] وصححه ابن حجر في التلخیص: ٦٥، ح: ١٣٠٤، والبصیری، وابن الملقن، ح: ٣١٠، و قال ابن کثیر (الواقعة: ٣١٨/٤، ٧٣) بإسناد جید ، قلت: ابن عیینة عنعن، وانظر، ح: ٢١١٣ ، ولحدیث شواهد منها ما أخرجه أبو داود، ح: ٣٤٧٧ بلفظ: المسلمين شراء في ثلاث: في الماء والكلأ والنار ، وإسناده صحيح.

2474. It was narrated that 'Aishah said: "O Messenger of Allâh, what are the things which are not permissible to withhold?" He said: "Water, salt and fire." She said: "I said: 'O Messenger of Allâh, we know what water is, but what about salt and fire?'" He said: "O Humairâ, whoever gives fire (to another), it is as if he has given in charity all the food that is cooked on that fire. And whoever gives salt, it is as if he has given in charity all that the salt makes good. And whoever gives a Muslim water to drink when water is available, it is as if he freed a slave; and whoever gives a Muslim water to drink when there is no water available, it is as if he brought him back to life." (*Da'if*)

٢٤٧٤ - حَدَّثَنَا عَمَّارُ بْنُ خَالِدِ الْوَاسِطِيِّ: حَدَّثَنَا عَلَيُّ بْنُ عَرَابَيْ، عَنْ زُهَيرِ بْنِ مَرْزُوقِ، عَنْ عَلَيِّ بْنِ رَبِيعَ بْنِ جُذْعَانَ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ عَائِشَةَ أُنَّهَا قَالَتْ: يَا رَسُولَ اللَّهِ! مَا الشَّيْءُ الَّذِي لَا يَجْعَلُ مَعْنَى؟ قَالَ: «الْمَاءُ وَالملْحُ وَالنَّارُ» قَالَتْ: قُلْتُ: يَا رَسُولَ اللَّهِ! هَذَا الْمَاءُ قَدْ عَرَفْتَاهُ. فَمَا بَالُ الْمَلْحُ وَالنَّارُ؟ قَالَ: «يَا حَمِيرَاءُ! مَنْ أَعْطَى نَارًا، فَكَانَهَا تَصَدَّقَ بِجُمِيعِ مَا أَضَبَّجَتْ بِلَكَ النَّارُ. وَمَنْ أَغْطَى مِلْحًا، فَكَانَهَا تَصَدَّقَ بِجُمِيعِ مَا طَبَّتْ بِلَكَ الْمَلْحُ». وَمَنْ سَقَ مُسْلِمًا شَرِبَةً مِنْ مَاءِ، حَيْثُ يُوجَدُ الْمَاءُ، فَكَانَهَا أَعْتَقَ رَقَّةً. وَمَنْ سَقَ مُسْلِمًا شَرِبَةً مِنْ مَاءِ، حَيْثُ لَا يُوجَدُ الْمَاءُ، فَكَانَهَا أَخْتَاهَا».

تخریج: [إسناده ضعیف] وضعفه البصیری، وانظر، ح: ١١٦ لضعف ابن جدعان، وتلميذه مجھول (نقریب) * وعلي بن غراب مدلس، وله شاهدان ضعیفان جداً.

Chapter 17. Giving Rivers And Springs To People

2475. It was narrated from Abyad bin Hammâl that he asked for a salt flat called the salt flat of the Ma'rib Dam to be given to him, and it was given to him. Then Aqra' bin Hâbis At-Tamimi came to the Messenger of Allâh ﷺ and said: "O Messenger of Allâh, I used to come to the salt flat during the Ignorance period and it was in a land in which there was no water, and whoever came to it took from it. It was (plentiful) like flowing water." So the Messenger of Allâh ﷺ asked Abyad bin Hammâl to give back his share of the salt flat. He said: "I give it to you on the basis that you make it charity given by me." The Messenger of Allâh ﷺ said: "It is a charity from you, and it is like flowing water, whoever comes to it may take from it."

(One of the narrators) Faraj said: "That is how it is today, whoever comes to it takes from it."

He said: "The Prophet ﷺ gave him land and palm trees in Jurf Murâd instead, when he took back the salt flat from him." *(Hasan)*

تخریج: [إسناده حسن] أخرجه أبو داود، الخراج والفيء والإمارة، باب: في إقطاع الأرضين، ح: ٣٠٦٦ من حديث فرج بن سعيد به * فرج وأبوه وتقهما ابن حبان، والهيثمي (مجمع: ١٤٠٦/٤)، وأخرجه الترمذى، ح: ١٣٨٠ من طريق آخر عن أبيض به، وقال: حسن غريب.

Comments:

- The head of an Islamic State can give a piece of land to any Muslim as a gift. It is known as estate.

(المعجم ١٧) - باب إقطاع الأنهار
والmiumin (الصفحة ٧٨)

٢٤٧٥ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ : حَدَّثَنَا فَرَجُ بْنُ سَعِيدٍ بْنُ عَلْقَمَةَ بْنُ سَعِيدٍ بْنِ أَبِيضَنَ بْنِ حَمَالٍ : حَدَّثَنِي عَمِيُّ ثَابِتُ بْنُ سَعِيدٍ بْنِ أَبِيضَنَ بْنِ حَمَالٍ ، [عَنْ أَبِيهِ سَعِيدٍ] ، عَنْ أَبِيهِ أَبِيضَنَ بْنِ حَمَالٍ أَنَّهُ اسْقَطَعَ الْمُلْحَ ئُلَيْهِ يَقُولُ لَهُ مُلْحٌ سَدٌ مَأْرِبٌ . فَأَقْطَعَهُ لَهُ . ثُمَّ إِنَّ الْأَفْرَعَ بْنَ حَاسِنَ التَّمِيِّيَّ أَتَى رَسُولَ اللَّهِ ﷺ فَقَالَ : [يَا رَسُولَ اللَّهِ إِنِّي قَدْ وَرَدْتُ الْمُلْحَ فِي الْجَاهَلِيَّةِ وَهُوَ يَأْرِضُ لَيْسَ بِهَا مَاءً . وَمَنْ وَرَدَهُ أَخْلَدَهُ . وَهُوَ مِثْلُ الْمَاءِ الْعَدَدِ . فَاسْتَشَارَ رَسُولَ اللَّهِ ﷺ أَبِيضَنَ بْنَ حَمَالٍ فِي قَطْبِيَّتِهِ فِي الْمُلْحِ . فَقَالَ : قَدْ أَفْلَكْتُكَ مِنْ عَلَى أَنْ تَجْعَلَهُ مِنِّي صَدَقَةً . فَقَالَ رَسُولُ اللَّهِ ﷺ : هُوَ مِنْكَ صَدَقَةً . وَهُوَ مِثْلُ الْمَاءِ الْعَدَدِ . مَنْ وَرَدَهُ أَخْلَدَهُ .]

قال فرج: وهو اليوم على ذلك. من وردها أخليده.

قال: فقطع له النبي ﷺ أرضاً ونخلاً، بالجرف جرف مراد، مكانه حين أفاله منه.

- b. A thing that is in common use by the community should not be given as an estate.
- c. An endowment is not anyone's property but every member of the society has the right to take benefit from it.

Chapter 18. The Prohibition Of Selling Water

2476. It was narrated that Abu Minhâl said: "I heard Iyâs bin 'Abd Muzani say — when he saw people selling water: 'Do not sell water, for I heard the Messenger of Allâh ﷺ forbidding selling of water.'" (*Sahih*)

(المعجم ١٨) - بَابُ النَّهْيِ عَنْ بَعْثَانِ الْمَاءِ (الصفحة ٧٩)

٢٤٧٦ - حَدَّثَنَا أَبُو يَكْرِينَ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرُو بْنِ دِينَارٍ، عَنْ أَبِي الْمَهَالِ: سَمِعْتُ إِيَّاسَ بْنَ عَبْدِ الْمُزَنِيِّ، وَرَأَى نَاسًا يَبْعُونَ الْمَاءَ، قَالَ: لَا يَبْعُونَ الْمَاءَ. فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ نَهَايَ أَنْ يَبْعَثَ الْمَاءَ.

تخریج: [صحيح] أخرجه أبو داود، البيوع، باب: في بيع فضل الماء، ح: ٣٤٧٨ من حديث عمرو بن دينار به، وصححه الثرمذني، ح: ٥٩٤، وأبن دقیق العبد، والحاکم: ٦١، ٤٤/٢: على شرط مسلم، ووافقه الذهبي.

2477. It was narrated that Jâbir said: "The Messenger of Allâh ﷺ forbade selling surplus water." (*Sahih*)

٢٤٧٧ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ وَإِبْرَاهِيمَ بْنُ سَعِيدِ الْجُوَهْرِيِّ، قَالَا: [حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا ابْنُ جُرْجِيجَ عَنْ أَبِي الزُّبَيرِ، عَنْ جَابِرٍ قَالَ: نَهَايَ رَسُولُ اللَّهِ ﷺ عَنْ بَعْثَانِ الْمَاءِ].

تخریج: أخرجه مسلم، المساقاة، باب تحریم بيع فضل الماء الذي يكون بالفلاة ويحتاج إليه ... الخ، ح: ١٥٦٥ من حديث وكيع به.

Comments:

- a. First come, first served is the basic principle of running water. Whose land comes first, in the way of flowing water, he has the first right to watering his fields and garden, and the water flow for use of others is made clear in chapter twenty.
- b. When water is transported from one place to another place, it can be sold at a reasonable price, just as the wood of wild plants and trees can be sold.

Chapter 19. The Prohibition Of Withholding Surplus Water From Common Pastureland

2478. It was narrated from Abu Hurairah that the Prophet ﷺ said: "No one of you should withhold surplus water from common pastureland." (*Sahih*)

(المعجم ١٩) - بَابُ النَّهْيِ عَنْ مَنْعِ فَضْلِ الْمَاءِ لِيُمْنَعَ بِهِ الْكَلَّا (الصفحة ٨٠)

٢٤٧٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي الزَّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يُمْنَعُ أَحَدُكُمْ فَضْلًا مَاءً، لِيُمْنَعَ بِهِ الْكَلَّا».

تخریج: أخرجه البخاري، المساقاة، باب من قال: إن صاحب الماء أحق بالماء حتى يروي الخ، ح: ١٥٦٦، ٢٣٥٣، ٦٩٦٢، ومسلم، المساقاة، الباب السابق، ح: ١٥٦٦ من حديث أبي الزناد به.

2479. It was narrated from 'Aishah that the Messenger of Allâh ﷺ said: "Surplus water should not be withheld, and neither should surplus water from a well." (*Hasan*)

٢٤٧٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُهُ بْنُ سَلَيْمَانَ، عَنْ حَارِثَةَ، عَنْ عُمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يُمْنَعُ فَضْلُ الْمَاءِ، وَلَا يُمْنَعُ تَقْعُدُ الْبَرِّ».

تخریج: [حسن] أخرجه البهیقی: ٦/١٥٢، ٢/١٥٣ من حديث حارثة به، وقال: حارثة هذا ضعيف ، وضعفه البوصيري من أجله، ولكنه لم ينفرد به، أخرج الحاکم: ٢/٦١، ٢/٦٢ وغيره من طریق محمد بن أبي الرجال عن عمرة به، وصححه الحاکم، والذهی، وإسناده حسن.

Comments:

- The fields and gardens which come first in the flow of water, have the first right to use the water.
- The Prophet's first decision gave Zubair his due right, at the same time needs of the second party were also given due consideration. It was suggested to Zubair to let the water flow for the second party's use. This type of reconciliation is legal.
- The second decision of the Prophet ﷺ was according to the principles of justice. The favor given to the *Ansâri* was taken back as punishment, and the decision was made according to the demand of justice.
- As it is a must to obey the Qur'anic commands, similarly it is a must to obey the orders of the Prophet ﷺ.

Chapter 20. Irrigation From Rivers And How Much Water May Be Retained

2480. It was narrated from 'Abdullâh bin Zubair that a man from among the *Ansâr* had a dispute with Zubair in the presence of the Messenger of Allâh ﷺ concerning the streams of the Harrah with which he irrigated his palm trees. The *Ansâri* said: "Let the water flow," but he refused. So they referred their dispute to the Messenger of Allâh ﷺ. The Messenger of Allâh ﷺ said: "Irrigate (your trees) O Zubair, then let the water flow to your neighbor." The *Ansâri* became angry and said: "O Messenger of Allâh ﷺ, is it because he is your cousin (son of your paternal aunt)?" The expression of the Messenger of Allâh ﷺ changed, then he said: "O Zubair, irrigate (your trees) then retain the water until it reaches the walls." Zubair said: "I think this Verse was revealed concerning that: 'But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.'"^[1] (*Sahih*)

2481. It was narrated that

(المعجم ٢٠) - باب الشرب من الأودية ومقدار حبس الماء (التحفة ٨١)

٤٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُفْعٍ: أَنَّبَّا الْيَثِيرَ
ابْنَ سَعْدٍ عَنْ ابْنِ شَهَابٍ، عَنْ عُرْوَةَ بْنِ
الرَّبِيعِ، عَنْ عَبْدِ اللَّهِ بْنِ الرَّبِيعِ أَنَّ رَجُلًا مِنَ
الْأَصْصَارِ خَاصَّمَ الرَّبِيعَ عِنْدَ رَسُولِ اللَّهِ ﷺ فِي
شَرَاجِ الْحَرَّةِ الَّتِي يَسْقُونَ بِهَا التَّحْلَ. فَقَالَ
الْأَصْصَارِيُّ: سَرِحْ الْمَاءَ يَمُرُّ. فَأَلَّى عَلَيْهِ
فَاخْتَصَّمَا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَقَالَ رَسُولُ
اللَّهِ ﷺ: (اْسْقِ يَا رَبِيعَ! ثُمَّ أَرْسِلِ الْمَاءَ إِلَيَّ
جَارِكَ) فَغَضِبَ الْأَصْصَارِيُّ فَقَالَ: يَا رَسُولَ
اللَّهِ! إِنَّ كَانَ ابْنَ عَمِّنِكَ؟ فَتَلَوَّنَ وَجْهُ رَسُولِ
اللَّهِ ﷺ ثُمَّ قَالَ: (يَا رَبِيعَ! اْسْقِ، ثُمَّ أَخْبِسِ
الْمَاءَ حَتَّى يَرْجِعَ إِلَى الْبَخْرِ) قَالَ: فَقَالَ
الرَّبِيعُ: وَاللَّهِ إِنِّي لَأَخْبِسُ هَذِهِ الْآيَةَ نَزَّلَتْ
فِي ذَلِكَ: (فَلَا وَرَبِّكَ لَا يُؤْمِنُوكُ حَتَّى
يُحَكِّمُوكُ فِيمَا شَجَرَ بِيَنْهُمْ ثُمَّ لَا يَجِدُوا
فِي أَفْسَهِمْ حَرَجًا إِنَّمَا فَصَّبَيْتَ وَيَسِّلَمُوا
سَلِيمًا). [النساء: ٦٥]

تخریج: [صحیح] تقدم، ح: ١٥.

٤٨١ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْجَزَامِيُّ:

[1] *An-Nisâ' 4:65.*

Tha'labah bin Abu Mâlik said: "The Messenger of Allâh ﷺ ruled concerning the stream of Mahzur that the higher ground took precedence over the lower, so the higher ground should be irrigated until the water reached the ankles, then it should be released to those who were lower. (*Hasan*)

حدَّثَنَا زَكْرِيَاً بْنُ مَنْظُورٍ بْنِ ثَعْبَةَ بْنِ أَبِي مَالِكٍ: حَدَّثَنِي مُحَمَّدُ بْنُ عَقْبَةَ بْنِ أَبِي مَالِكٍ، عَنْ عَمِّهِ ثَعْبَةَ بْنِ أَبِي مَالِكٍ قَالَ: فَضَى رَسُولُ اللَّهِ ﷺ فِي سِيلٍ مَهْزُورٍ، الْأَعْلَى فَوْقَ الْأَسْفَلِ. يَسْتَقِي الْأَعْلَى إِلَى الْكَعْبَيْنِ، ثُمَّ يُرْسَلُ إِلَى مَنْ هُوَ أَسْفَلُ مِنْهُ.

تخريج: [حسن] و قال البوصيري: واستاد حديثه ضعيف، زكريا بن منظور متفق على ضعفه * شيخه مستور، وأخرج ابن أبي عاصم في الأحاديث والمثنوي: ٢١٥ ح: ٢٢٠٠، والطبراني في الكبير: ٨٦/٧ ح: ١٣٨٧ من حديث يعقوب بن حميد بن كاسب عن إسحاق بن إبراهيم (بن سعيد الصواف المدني) مولى مزينة عن صفوان بن سليم عن ثعلبة به نحو المعنى * وإسحاق لين الحديث كما في التقريب، وضعفه أبو زرعة، وأبو حاتم وغيرهما كما في التهذيب وغيره، فالسنن ضعيف، وله طريق آخر عند الطبراني، ح: ١٣٨٦، وفيه محمد بن إسحاق، وهو صدوق مدللس وعنون، وللحديث شواهد كثيرة عند أبي داود، ح: ٣٦٣٨ و غيره، وانظر الحديث الآتي.

Comments:

'Higher ground' means where fields or gardens come first in the flow of water, and 'lower ground' means where water reaches later. The owner of the higher ground can stop the water from going to others' fields until it reaches an ankle's height in his fields, and then he must release the water for others, and has no right to stop it.

2482. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ ruled concerning the stream of Mahzur that the water should be retained until it reached the ankles, then released. (*Hasan*)

٤٤٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: أَبْنَاءَ الْمُغَيْرَةِ بْنُ عَبْدِ الرَّحْمَنِ: حَدَّثَنِي أَبِي عَنْ عُمَرٍ وَ بْنِ شَعْبَيْنَ، عَنْ أَبِيهِ، عَنْ جَلْوَأَنَّ رَسُولَ اللَّهِ ﷺ فَضَى فِي سِيلٍ مَهْزُورٍ، أَنَّ يُمْسِكَ حَتَّى يَئُنَّ الْكَعْبَيْنِ، ثُمَّ يُرْسَلَ الْمَاءُ.

تخريج: [إسناده حسن] أخرجه أبو داود، القضاة، باب: في القضاء، ح: ٣٦٣٩ عن أحمد بن عبدة به.

2483. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ ruled concerning the irrigation of palm trees from streams, that the higher

٤٤٨٣ - حَدَّثَنَا أَبُو الْمَعْلَسِ: حَدَّثَنَا فُضَيْلُ ابْنُ سُلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عَقْبَةَ، عَنْ إِسْحَاقَ بْنِ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عُبَادَةَ بْنِ

ground should be irrigated before the lower, and that the water should be allowed to reach the ankles, then released to flow the nearest lower ground, and so on, until all the fields were watered or until the water ran out. (*Da'if*)

الصَّامِتُ أَنَّ رَسُولَ اللَّهِ قَصَّى، فِي شُرْبِ النَّخْلِ مِنَ السَّيْلِ، أَنَّ الْأَعْلَى فَالْأَعْلَى يَشْرَبُ قَبْلَ الْأَسْفَلِ، وَيَسْرُكُ الْمَاءَ إِلَى الْكَعْبَيْنِ، ثُمَّ يَرْسُلُ الْمَاءَ إِلَى الْأَسْفَلِ الَّذِي يَلْبِي، وَكَذَلِكَ، حَتَّى تَقْضِي الْحَوَافِطُ أَوْ يَقْعُدَ الْمَاءُ.

تخریج: [ضعیف] وقال البوصیری: هذا إسناد ضعیف، إسحاق بن یحیی لم یدرك عبادة بن الصامت قاله البخاری .

Chapter 21. Distribution Of Water

2484. It was narrated from Kathir bin 'Abdullâh bin 'Amr bin 'Awf Al-Muzani, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Start with the horses on the day that you bring (the animals to drink).'" (*Da'if*)

٢٤٨٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُتَنَرِ الْجَزَامِيُّ: أَبْنَائَا أَبُو الْجَعْدِ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ، عَنْ كَثِيرِ بْنِ عَبْدِ اللَّهِ بْنِ عَمْرُو بْنِ عَوْفِ الْمُزَانِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يُبَدِّأُ بِالْحَيْلِ يَوْمَ وِرْدَهَا».

تخریج: [إسناده ضعیف جداً] وضھفه البوصیری، وانظر، ح: ١٦٥ لحال کثیر بن عبدالله العوفی المزنی، وفيه علة أخرى .

2485. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Every division that was allocated according to (the rules of) the Ignorance days, stands as it is, and every division that was allocated according to (the rules of) Islam, stands according to the rules of Islam." (*Hasan*)

٢٤٨٥ - حَدَّثَنَا عَبْدُوازُ بْنُ جَعْفَرٍ: حَدَّثَنَا مُوسَى بْنُ دَاؤَدْ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّาْئِنِيُّ عَنْ عَمْرُو بْنِ دِينَارٍ، عَنْ أَبِي الشَّعْنَاءِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ قُسْمٍ قُسْمٌ فِي الْجَاهِلَةِ، فَهُوَ عَلَى مَا قُسِّمَ. وَكُلُّ قُسْمٍ أَدْرَكَهُ الْإِسْلَامُ، فَهُوَ عَلَى قُسْمِ الْإِسْلَامِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الفرائض، باب فیمن أسلم على میراث، ح: ٢٩١٤ من حديث موسی به، وقواه ابن عبدالهادی، والضیاء المقدسي، وله شواهد كثيرة جداً.

Comments:

- All sinful and wicked dealings regarding business and financial matters before embracing Islam are pardoned, and possession is considered legal.
- A common property that has been distributed before accepting Islam need not be redistributed among the heirs.

Chapter 22. The Land Around A Well (Which Belongs Only To The Well Owner)

2486. It was narrated from 'Abdullâh bin Mughaffal that the Prophet ﷺ said: "Whoever digs a well, is entitled to forty forearms' length surrounding it as a resting place for his flocks." (*Hasan*)

(المعجم (٢٢) - بَابُ حَرِيمِ الْبَئْرِ
(التحفة (٨٣)

٤٨٦ - حَدَّثَنَا الْوَلِيدُ بْنُ عَمْرُو بْنِ سُكِيْنٍ : حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُتَّمِّنِ ; حَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدٍ بْنِ الصَّبَّاحِ : حَدَّثَنَا عَبْدُ الْوَهَابِ بْنُ عَطَاءَ ، قَالَ : حَدَّثَنَا إِسْمَاعِيلُ الْمَكِيُّ ، عَنِ الْحَسَنِ ، عَنْ عَبْدِ اللَّهِ أَبْنِ مُعْنَى أَنَّ النَّبِيَّ ﷺ قَالَ : «مَنْ حَفَرَ بِرًا فَلَهُ أَرْبَيْوْنَ ذَرَاعًا عَطَانًا لِمَاشِيَتِهِ» .

تخریج: [حسن] أخرجه الدارمي: ٢٧٣ من حديث إسماعيل بن مسلم المكي به، وضعفه البوصيري، وانظر، ح ٣٠١: لعلته، وأخرج البيهقي: ٦/١٥٥ يأسناد صحيح عن أبي هريرة قال: قال رسول الله ﷺ حریم البئر أربعون ذراعاً من جوانبها، كلها لأعطان الإبل والغنم وابن السبيل أول شارب، ولا يمنع فضل ماء لم يمنع به الكلأ، قلت: أبوالحسن علي بن محمد بن علي المقري الأسفراطي، شيخ البيهقي المعروف بابن السقا الإمام الحافظ الناقد القاضي ... من أولاد أئمة الحديث ... حدث عنه البيهقي وجماعة (سير أعلام النبلاء: ١٧/٣٠٦، ٣٠٥)، وصحح له البيهقي كثيراً، انظر السنن الكبرى: ٤/٤٥، ٢٤٩، ٤٨، ٢٠٩، ١٩٧/١٠، ٤٨، ٢٠٩، ١٩٧ فحديثه صحيح، وشيخه المحدث الثقة الرجال أبومحمد الحسن بن محمد بن إسحاق بن أزهر الإسفراطي والد أبي نعيم (النبلاء: ١٦/٥٠)، وشيخه يوسف بن يعقوب القاضي من كبار الفتاوى، ترجمته في تاريخ بغداد: ١٤/٣١٠، ٤١٢، والنبلاء: ١٤/٨٥ وغيرهما، ومن فرقه ثقات، فالسنن صحيح، فالحديث بهذا الشاهد حسن.

Comments:

- When camels are watered, they drink the water and sit down near the well, after a short while they drink again, that is why the adjoining place of the well is reserved for animals, and for this reason, this place is considered the property of the person who owns the well.
- If someone digs up a well at a place which is no one's land, he is deemed to be the owner of that well, in addition to forty fore-arms' length of the surrounding area.

2487. It was narrated from Abu Sa'eed Al-Khudri that the Messenger of Allâh ﷺ said: "The land around a well (that is considered to be part of it) is the length of the well rope (in all directions)." (*Da'iif*)

تخریج: [إسناده ضعیف] وقال البوصری: هذا إسناد ضعیف، ثابت بن محمد انقلب على ابن ماجه، وصوابه محمد بن ثابت كما ذكره الذہبی فی الكاشف، وقد ضعفوه، ومنصور بن چفیر متفق علی ضعفه ، وانظر الحديث الآتی، ح: ٢٤٨٩.

Comments:

'Length of the well rope' means the rope which is dropped down in the well for pulling up water. This length is the measure for the place around the well for his flocks. This is a Weak narration.

Chapter 23. The Precincts Of Trees

2488. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ ruled concerning one, two or three date palms belonging to a man among other palm trees — when they differ concerning entitlement to the surrounding land. He ruled that the land around each of those trees, as far as their leaves reach, measured from the bottom of the tree, belongs to the owner of the tree. (*Hasan*)

تخریج: [حسن] وضعفه البوصری، وانظر، ح: ٢٤٨٣ لعلته، وللمحدث شواهد عند أبي داود، ح: ٣٦٤٠ وغيره.

2489. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "The land around a date-palm tree, as far as its branches reach, belongs to the

٢٤٨٧ - حَدَّثَنَا سَهْلُ بْنُ أَبِي الصَّعْدَى: حَدَّثَنَا مَنْصُورُ بْنُ صَفَّيْرٍ: حَدَّثَنَا ثَابِثُ بْنُ مُحَمَّدٍ، عَنْ نَافِعٍ أَبِي عَالِيٍّ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «حَرِيمُ الْبَرِّ مَدُّ رِشَائِهِ».

(المعجم ٢٣) - بَابُ حَرِيمِ الشَّجَرِ
(الصفحة ٨٤)

٢٤٨٨ - حَدَّثَنَا عَبْدُ رَبِيعٍ بْنُ خَالِدِ الْمُتَبَرِّيُّ، أَبُو الْمَعْلَسِ: حَدَّثَنَا الْفَضِيلُ بْنُ سَلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ: أَخْبَرَنِي إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِدِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى فِي النَّحْلَةِ وَالنَّحْلَتَيْنِ وَالثَّلَاثَةِ لِلرَّجُلِ [فِي النَّحْلِ]. فَيَخْتَلِفُونَ فِي حُكْمِ ذَلِكَ. فَقَضَى أَنَّ لِكُلِّ نَحْلَةٍ مِنْ أُولَئِكَ مِنَ الْأَسْفَلِ، تَبَلُّغُ جَرِيدَهَا حَرِيمٌ لَهَا.

٢٤٨٩ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ الصَّعْدَى: حَدَّثَنَا مَنْصُورُ بْنُ صَفَّيْرٍ: حَدَّثَنَا ثَابِثُ بْنُ مُحَمَّدٍ الْعَبَدِيُّ عَنْ أَبِي عُمَرَ قَالَ:

owner of the tree.” (*Da’if*)

فَالْ رَسُولُ اللَّهِ ﷺ : «خَرِيمُ التَّحْلَةِ مُدْ جَرِيدَهَا» .

تخریج: [إسناده ضعیف] وضعفه صاحب الزوائد، وانظر، ح: ٢٤٨٧ لعلته، وله شواهد.

Chapter 24. One Who Sells Property And Does Not Use The Money For Something Similar

2490. It was narrated that Sa’eed bin Huraith said: “I heard the Messenger of Allāh ﷺ say: ‘Whoever sells a house or property and does not use the money for something similar, deserves not to be blessed therein.’” (*Da’if*)

(المعجم ٢٤) - بَابُ مَنْ بَاعَ عَقَارًا وَلَمْ يَجْعَلْ ثَمَنَهُ فِي مِثْلِهِ (التحفة ٨٥)

٢٤٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنُ مُهَاجِرٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ سَعِيدِ ابْنِ حُرَيْثٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ [يَقُولُ]: «مَنْ بَاعَ دَارًا أَوْ عَقَارًا فَلْمَ يَجْعَلْ ثَمَنَهُ فِي مِثْلِهِ كَانَ قَوْمٌ أَنْ لَا يُتَارُكَ فِيهِ» .

تخریج: (الف) [إسناده ضعیف] آخرجه أحمد: ٤/٣٠٧ عن وكيع به، وله شواهد.

Another chain with similar wording.

حدّثنا مُحَمَّدُ بْنُ بَشَّارٍ: حدّثنا عَبْدُ اللَّهِ ابْنُ عَبْدِ الْمَجِيدِ: حدّثني إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنُ مُهَاجِرٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ عَمْرُو بْنِ حُرَيْثٍ، عَنْ أَخِيهِ سَعِيدِ بْنِ حُرَيْثٍ، عَنِ النَّبِيِّ ﷺ، مِثْلُهُ .

تخریج: (ب) [إسناده ضعیف] آخرجه ابن عدي: ١/٢٨٤ من حديث عبيدة الله بن عبدالمجيد، أبي علي الحنفي به، وهو الصواب * إسماعيل بن إبراهيم بن مهاجر ضعيف (قریب)، ولكن تابعه أبو حمزة التسلکري، محمد بن ميمون: ثقة فاضل، السنن الكبرى للبيهقي: ٦/٣٤، والسدن إلىه ضعيف من أجل محمد بن موسى بن حاتم، عبد الملك بن عمير مدلس، انظر، ح: ٢١١٨ ب، ولكنه صرح بالسماع (المعرفة والتاريخ ليعقوب بن سفيان الفارسي: ١/٢٩٤) في روایة إسماعيل عنه، وله شواهد.

٢٤٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَعَمْرُو بْنُ رَافِعٍ، قَالَا: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ: حَدَّثَنَا أَبُو مَالِكِ التَّحْلَعِيَّ، عَنْ يُوسُفَ بْنِ مَيْمُونٍ،

2491. It was narrated from Hudhaifah bin Yamâm that the Messenger of Allāh ﷺ said: “Whoever sells a house and does not use the money for something

similar will not be blessed therein." (*Da'iif*)

عَنْ أَبِي عَيْدَةَ بْنِ حُذَيْفَةَ، عَنْ أَبِيهِ حُذَيْفَةَ بْنِ الْيَمَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ بَاعَ دَارًا وَلَمْ يَجْعَلْ ثَمَّهَا فِي مِثْلِهَا، لَمْ يُبَارِكْ لَهُ فِيهَا».

تخریج: [إسناده ضعیف] أخرجه البخاری في التاريخ الكبير: ٣٢٨/٨ من حديث مروان بن معاویة الفزاری به، وضعفه البوصیری من أجل يوسف بن میمون (المخزومی)، ولكن تلمیذه أبومالك التخجی أضعف منه لأنّه متروک، وانظر، ح: ١٩١٥ و لم یتفردا به، رواه شعبہ عن یزید بن أبي خالد عن أبي عبیدة به، أخرجه البخاری في التاريخ، والبیهقی: ٣٣/٦، ٣٤ وغیرهما، وسنده ضعیف، انظر، ح: ١٨٠٧، وفيه علة أخرى.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

The Chapters On Preemption

(المجمد ١٧) أبواب الشفعة
(التحفة . . .)

Comments:

Preemption has been defined as the right of one partner to buy the share of the other partner or partners.

Preemption is proven in the *Sunnah* of the Prophet ﷺ and the consensus of the scholars of the Muslim nation. Jâbir narrates the the Prophet ﷺ allowed the right of preemption in an undistributed property, but when the property is distributed, and the path is separate then there is no right of preemption. All the scholars agree that the right of preemption is legal.

All the Islamic commands and principles have reason and wisdom behind them. Rights and duties of all Muslims as individuals and as a community have been fixed by Islamic law, so that people may live with love and harmony among themselves. Among these wise instructions is the right of preemption. If one of the two shareholders of a property wishes to sell his share, he must consult his co-shareholder about it and give him an offer to buy his share. This friendly gesture will create an atmosphere of understanding between them, and save them from unwanted conflict. If the other shareholder buys the property, well and good, otherwise it can be sold to a third party and it will be legal.'

Chapter 1. One Who Sells A Property Should Notify His Partner (Of His Intention)

2492. It was narrated that Jâbir said: "The Messenger of Allâh ﷺ said: 'Whoever has a date-palm tree or land, should not sell it until he has offered it to his partner.'" (*Sahih*)

(المجمد ١) - بَابُ مَنْ بَاعَ رِبَاعًا
فَلْيُؤذِنْ شَرِيكُهُ (التحفة ٨٦)

٢٤٩٢ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ وَمُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفِيَّانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الرَّئِسِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَتْ لَهُ تَخْلُّ أَوْ أَرْضٌ فَلَا يَبِعُهَا حَتَّى يَعْرِضَهَا عَلَى شَرِيكِهِ».

تخریج: [إسناده صحيح] أخرجه النسائي، البيهقي، الشرکة في التخل، ح: ٤٧٠٤ من حديث سفيان به * سفيان بن عيينة، وأبوالزبير صرحاً بالسماع عند الحميدي ()، ح: ١٢٨١ بتحقيقه، وصححه ابن الجارود، ح: ٦٤١، وأخرجه مسلم، ح: ١٦٠٨ من طريقين آخرين عن أبي الزبير به نحو المعنى.

2493. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Whoever has land and wants to sell it, let him offer it to his neighbor." (*Sahih*)

٢٤٩٣ - حَدَّثَنَا أَخْمَدُ بْنُ سِنَانٍ وَالْعَلَاءُ بْنُ سَالِمٍ، قَالَا: حَدَّثَنَا تَرِيدُ بْنُ هَارُونَ: أَنَّبَانَا شَرِيكٌ عَنْ سِمَائِكَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: (مَنْ كَانَتْ لَهُ أَرْضٌ فَأَرَادَ بَيْعَهَا، فَلْيَتَعْرضَهَا عَلَى جَارِهِ).

تخریج: [صحيح] وصححه البوصيري، وفيه علة قادحة، انظر، ح: ١٧١، والحديث السابق شاهد له.

Comments:

If there are two owners of a property and one of them wishes to sell his share, he must inform his co-shareholder and give him a chance to buy his share. They are supposed to cooperate each other in this matter. The neighbors also have the right of preemption, therefore, the neighbors should also be informed before any buying and selling occurs.

Chapter 2. Preemption By Virtue Of Being Neighbors

(المعجم ٢) - بَابُ الشُّفْعَةِ بِالْجَوَارِ

(التحفة ٨٧)

2494. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: "The neighbor has more right to preemption of his neighbor, so let him wait for him even if he is absent, if they share a path." (*Da'if*)

٢٤٩٤ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُشَيْمٌ: أَنَّبَانَا عَبْدُ الْمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (الْجَارُ أَحَقُّ بِشُفْعَةِ جَارِهِ، يَتَنَظِّرُ بِهَا وَإِنْ كَانَ غَايِاً، إِذَا كَانَ طَرِيقَهُمَا وَاحِدَّاً).

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في الشفعة، ح: ٣٥١٨ من حديث هشيم به، وحسنه الترمذى، ح: ١٣٦٩.

2495. It was narrated from Abu Râfi' that the Prophet ﷺ said: "The neighbor has more right to property that is near." (*Sahih*)

٢٤٩٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عَيْبَةَ، عَنْ إِبْرَاهِيمَ بْنِ مَسِيرَةَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ أَنَّ النَّبِيِّ ﷺ قَالَ: (الْجَارُ أَحَقُّ بِسَقَبِيهِ).

تخریج: أخرجه البخاري، الحيل، باب في الهبة والشفعة، ح: ٦٩٧٧ من طريق سفيان به مطولاً.

2496. It was narrated that Sharid bin Suwaïd said: "I said: 'O Messenger of Allâh, (what do you think of) land owned by only one person but this land has neighbors?' He said: 'The neighbor has more right to property that is near.'" (*Sahih*)

٢٤٩٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أَسَامَةَ عَنْ حُسْنِيْنِ الْمُعَلَّمِ، عَنْ عَمْرِو بْنِ شُعْبِيْنَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ بْنِ سُوَيْدٍ، عَنْ أَبِي شَرِيدِ بْنِ سُوَيْدٍ قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ أَرْضٌ كَيْسٌ فِيهَا لِأَحَدٍ قِسْمٌ، وَلَا شَرِيكٌ إِلَّا جَوَارٌ؟ قَالَ: «الْجَارُ أَحَقُّ بِسَقْبِهِ».

تخریج: [إسناده صحيح] أخرجه النسائي، البيع، ذكر الشفعة وأحكامها، ح: ٤٧٠٧ من حديث حسين المعلم به.

Comments:

- The neighbor who has a common path to the property has more right of preemption than others.
- If at the time of selling a house or piece of land, the neighbor is absent or out of the town or village, the other party should wait for his arrival to give his right of preemption to him.

Chapter 3. If The Boundaries Have Been Fixed Then There Is No Preemption

2497. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ ruled concerning preemption of land that has not been divided; if the boundaries have been set then there is no preemption. (*Sahih*)

Another chain with similar wording:

Abu 'Âsim said: (The chain of) Sa'eed bin Musayyab is *Mursal* (i.e., having a break after the successor Sa'eed). (The chain of) Abu Salamah from Abu Hurairah is *Muttasil* (i.e., unbroken & connected).

(المعجم ٣) - بَابٌ : إِذَا وَقَعَتِ الْحُدُودُ فَلَا شُفْعَةَ (الصفة ٨٨)

٢٤٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ وَ عَبْدُ الرَّحْمَنِ بْنُ عُمَرَ، قَالَا: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، وَ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالشُّفْعَةِ فِيمَا لَمْ يُقْسِمْ. فَإِذَا وَقَعَتِ الْحُدُودُ، فَلَا شُفْعَةَ .

حدثنا محمد بن حماد الطهراني: حدثنا أبو عاصم، عن مالك، عن الزهري، عن سعيد بن المسيب و أبي سلمة، عن أبي هريرة، عن النبي ﷺ، نحوه.

قال أبو عاصم: سعيد بن المسيب مرسلاً. وأبو سلمة عن أبي هريرة متصل.

تخریج: [صحیح] أخرجه البیهقی: ١٠٣، ١٠٤، وغیره من طرق عن مالک به، وصححه جبان (موارد)، ح ١١٥٢، والبوزیری، وأرسله جماعة عن مالک، وح ٢٤٩٩: شاهد له.

2498. It was narrated from Abu Râfi' that the Messenger of Allâh ﷺ said: "The partner has more right to what is near him, so long as he is still a partner." (*Sahih*)

٢٤٩٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَاحَ: حَدَّثَنَا سُقْيَانُ بْنُ عُسْيَنَةَ، عَنْ إِبْرَاهِيمَ بْنِ مَسْرَةَ، عَنْ عَمْرُو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّرِيكُ أَحَقُّ بِسَقَيَةِ مَا كَانَ».

تخریج: أخرجه البخاري، انظر، ح ٢٤٩٥.

2499. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ ruled that preemption takes effect in all cases where land has not been divided. But if the boundaries have been set and the roads laid out, then there is no preemption." (*Sahih*)

٢٤٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَاقِ عَنْ مَعْمِرٍ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إِنَّمَا جَعَلَ رَسُولُ اللَّهِ ﷺ الشُّفْعَةَ فِي كُلِّ مَا لَمْ يُقْسِمْ. فَإِذَا وَقَعَتِ الْحُدُودُ وَصَرَفَتِ الطُّرُقُ، فَلَا شُفْعَةً».

تخریج: أخرجه البخاري، البيوع، باب بيع الشريك من شريكه، ح ٢٢١٣، ٢٢١٤ من حديث عبد الرزاق به.

Comments:

Ahâdîth mentioned above show that only that neighbor who has a common path to the property has the right of preemption, and those neighbors who have nothing common in property have no right to preemption. It was made clear by mentioning that when property is divided and paths are separate then there is no right to preemption. Division of property and separation of paths makes them ordinary neighbors, and not allowed to enter in each other's deals.

Chapter 4. Requesting Preemption

(المعجم ٤) - بَابُ طَلَبِ الشُّفْعَةِ
(التحفة ٨٩)

2500. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Preemption is like undoing the 'Iqâl."^[1] (*Da'if*)

٢٥٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثَ، عَنْ مُحَمَّدٍ بْنِ عَبْدِ الرَّحْمَنِ الْيَلِمَانِيِّ، عَنْ أَبِيهِ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشُّفْعَةُ كَحْلُ الْعِقَالِ».

[1] *Iqâl* is the rope used to hobble a camel. It means that the opportunity may slip through your fingers if you do not hasten to take advantage of it, just as a camel released from the *Iqâl* will run away quickly. See explanation by Sindi.

تخریج: [إسناده ضعیف جداً] أخرجه البیهقی: ١٠٨/٦ من حديث محمد بن الحارث به، و قال: محمد بن الحارث البصري متوفى ومحمد بن عبد الرحمن البيلمانی ضعیف ضعفهما يعني بن معین وغيره من آئمة أهل الحديث ، والحديث ضعفه البوصيري وغيره.

2501. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "There is no preemption for a partner when his co-partner has beaten him to it (in another deal before), nor for a minor nor one who is absent." (*Da'if*)

٢٥٠١ - حَدَّثَنَا سُوِيدُ بْنُ سَعِيدٍ، قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثِ عَنْ مُحَمَّدٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ، عَنْ أَبِيهِ، عَنْ أَبِنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا شُفْعَةَ لِشَرِيكٍ عَلَى شَرِيكٍ إِذَا سَبَقَهُ بِالشَّرْاءِ. وَلَا لِصَغِيرٍ، وَلَا لِغَائِبٍ».

تخریج: [إسناده ضعیف جداً] أخرجه ابن عدي: ٢١٨٨، ٢١٨٥/٦ من حديث محمد بن الحارث به، وضعفه البوصيري، وانظر الحديث السابق لعلیه.

Comments:

'When a partner has beaten his co-partner' means that if there are three co-sharers of a property and one of them buys the share of his co-shareholder, the third has no right to preemption. This narration is Weak.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

18. The Chapters On Lost Property

(المعجم ١٨) أبواب اللقطة
(التحفة ...)

Chapter 1. Lost Camels, Cattle And Sheep

(المعجم ١) - باب ضالة الإبل والبقر
والغنم (التحفة ٩٠)

2502. It was narrated from Mutarrif bin 'Abdullâh bin Shikhkhîr that his father said: "The Messenger of Allâh ﷺ said: 'The lost animal of the Muslim may lead to the burning flame of Hell.'" (*Sahîh*)

٢٥٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُشَيْ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ حُمَيْدِ الطَّوَيْلِ، عَنِ الْحَسَنِ، عَنْ مُطَرْفِ بْنِ عَبْدِ اللَّهِ بْنِ الشَّخْبِيرِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ضَالَّ الْمُسْلِمُ حَرَقُ النَّارِ».

تخریج: [صحيح] أخرجه أحمد: ٢٥٤ عن يحيى بن سعيد قال: ثنا حميد يعني الطويل: ثنا الحسن به ... الخ، وصححه ابن حبان (موارد)، ح: ١١٧١، والبصيري، والضياء المقدسي في المختارة * الحسن تابعه قتادة عند أبي نعيم في الحلية: ٩/٣٣ وقبيله الطبراني في الأوسط، ح: ٢: ٣٢٩، ح: ١٥٧٠ رواه شعبة عنه، والسند صحيح إليه، وللحديث شواهد كثيرة.

Comments:

- Zâllah* is an animal that is separated from the herd, and lost, and its ownership is not known.
- Inanimate or lifeless thing are called *Luqatah*; details of such lost and found things will be discussed in the next chapter.

2503. It was narrated that Mundhir bin Jarir said: "I was with my father in Bawâzîj and the cows came back in the evening. He saw a cow and did not recognize it. He said: 'What is this?' He said: 'A cow that joined the herd.' And he issued orders that it be driven away until it disappeared from view. Then he

٢٥٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو حَيَّانَ التَّمِيميُّ: حَدَّثَنَا الضَّحَّاكُ حَالُ الْمُنْتَرِ بْنِ جَرِيرٍ، عَنِ الْمُنْتَرِ بْنِ جَرِيرٍ قَالَ: كُنْتُ مَعَ أَبِي بَالْبَوَارِيجِ فَرَاحَتِ الْبَقْرُ. فَرَأَى بَقْرَةً أَنْكَرَهَا. فَقَالَ: مَا هَذِهِ؟ قَالُوا: بَقْرَةٌ لَجَحَّتِ الْبَقْرِ. قَالَ: فَأَمَرْتُ بِهَا فَطَرَدْتُ حَتَّى تَوَارَثَ.

said: 'I heard the Messenger of Allâh ﷺ say: "No one gives refuge to a stray animal but one who is also astray." (Sahih)

ثُمَّ قَالَ: سَيِّئَتْ رَسُولُ اللهِ يَقُولُ: لَا يُؤْوِي الضَّالَّ إِلَّا ضَالٌ.

تخریج: [صحيح] أخرجه النسائي في الكبرى: ٤١٦/٣، ح: ٥٨٠٠ من حديث يحيى بن سعيد به * والضحاك لم يوثقه غير ابن حبان وسقط ذكره من سند أبي داود، ح: ١٧٢٠، وله شاهد عند مسلم في صحيحه، ح: ١٧٢٥، وبه صرح الحديث.

Comments:

This reproach is for the person who takes the animal with the intention of keeping it. But if he takes it with the intention to pronounce it and search for the owner, there is no harm in keeping it until the owner is found. In *Sahih Muslim* this narration is with these words: "Whoever gives refuge to a stray animal, he is also astray."

2504. It was narrated from Zaid bin Khâlid that the Prophet ﷺ was asked about a lost camel. He became angry and his cheeks turned red, and he said: "What does it have to do with you? It has its feet and its water supply, it can go and drink water and eat from the trees until its owner finds it." And he was asked about lost sheep, and he said: "Take it, for it will be for you or for your brother or for the wolf." And he was asked about lost property and he said: "Remember the features of its leather bag and strap, and announce it for one year, then if someone claims it, describing it to you with those features (give it to him), otherwise incorporate it into your own wealth." (Sahîh)

٢٥٠٤ - حَدَّثَنَا إِسْحَاقُ بْنُ إِسْمَاعِيلَ بْنِ الْعَلَاءِ الْأَيْلِيِّ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ. عَنْ زَيْدِ مَوْلَى الْمُتَبَعِّثِ، عَنْ زَيْدِ ابْنِ خَالِدِ الْجُهَنِيِّ. فَلَقِيَتْ رَبِيعَةَ فَسَأَلَهُ قَالَ: حَدَّثَنِي زَيْدُ بْنُ خَالِدِ الْجُهَنِيِّ، عَنِ النَّبِيِّ ﷺ قَالَ: سُئِلَ عَنْ ضَالَّةِ الْإِلَيْلِ فَعَضِبَ وَاحْمَرَّتْ وَجْنَتَاهُ فَقَالَ: «مَا لَكَ وَلَهَا؟ مَعَهَا الْجَذَاءُ وَالسَّقَاءُ. تَرُدُّ الْمَاءَ وَتَأْكُلُ الشَّجَرَ. حَتَّى يَلْقَاهَا رَبُّهَا». وَشُقِّلَ عَنْ ضَالَّةِ الْغَنَمِ فَقَالَ: «خُذْهَا. فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذَّلِكِ». وَسُئِلَ عَنِ اللَّقْطَةِ فَقَالَ: «أَغْرِفْ عِفَاصَهَا وَوِكَاءَهَا وَعَرْفَهَا سَنَّةً، فَإِنْ اعْتَرَفْتُ، وَإِلَّا فَأَخْيَطُهَا بِمَالِكَ».

تخریج: أخرجه البخاري، الطلاق، باب حكم المفقود في أهله وما له، ح: ٥٢٩٢ من حديث سفيان بن عيينة، ومسلم، اللقطة، باب: معرفة العفاص والوκاء وحكم ضالة الغنم والإبل، ح: ١٧٢٢ من حديث يحيى بن سعيد به.

Comments:

- Catching a lost camel and keeping it in one's custody is not legal because a camel needs no one to take care of it.
- A sheep or goat cannot survive without care, so if you do not take the sheep or goat, someone else will take it, or a wolf will eat it. It is better to take it to save it from wild animals, and it is also possible that the owner will be found.
- Lost property means those precious things that are lost by the carelessness of the owner, like a large amount of currency, gold, precious ornaments etc.
- It is necessary to announce about the lost things up to one year, and one should try to find the owner during this period. After one year's search, things can be used. If later on the real owner is found, his property should be returned to him, or he should be given the price of that thing.

Chapter 2. Lost Property

(المعجم ٢) - باب اللقطة (التحفة ٩١)

2505. It was narrated from 'Iyâd bin Himâr that the Messenger of Allâh ﷺ said: "Whoever finds lost property, let him ask one or two men of good character to witness it, then he should not alter it nor conceal it. If its owner comes along, then he has more right to it, otherwise it belongs to Allâh, Who gives it to whomsoever He wills." (*Sahih*)

٢٥٠٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا عَبْدُ الْوَهَابِ التَّقِيُّ عَنْ خَالِدِ الْحَدَاءِ، عَنْ أَبِي الْعَلَاءِ، عَنْ مُطَرِّفٍ، عَنْ عِيَاضِ بْنِ حِمَارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدَ لَقْطَةً فَلْيَشْهُدْهَا عَذْلٌ أَوْ ذَوِي عَذْلٍ. ثُمَّ لَا يَعِزِّزُهُ وَلَا يَكْتُمُهُ. فَإِنْ جَاءَ رَبِّهَا، فَهُوَ أَحَقُّ بِهَا. وَإِلَّا فَهُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ».

تخریج: [إسناده صحيح] أخرجه أبو داود، اللقطة، باب التعريف باللقطة، ح: ١٧٠٩ من حديث خالد الحداء به، وصححه ابن حبان (موارد)، ح: ١١٦٩.

Comments:

Making a witness is beneficial and helpful. Later on if the claimant of the bag or thing is found, and he objects about the contents of the bag or the amount or other defalcation with his lost thing, then the witness can confute his claim.

2506. It was narrated that Suwaid bin Ghafalah said: "I went out with Zaid bin Suhân and Salmân bin Rabi'ah, and when we were at 'Udhaib, I found a whip. They said to me:

٢٥٠٦ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفْيَانُ عَنْ سَلَمَةَ بْنِ كُهْبِلٍ، عَنْ سُوَيْدِ بْنِ غَفَّلَةَ قَالَ: حَرَجْتُ مَعَ زَيْدِ بْنِ صُوحَانَ وَسَلْمَانَ بْنِ رَبِيعَةَ. حَتَّى إِذَا كُنَّا

'Throw it away,' but I refused. When we came to Al-Madinah I went to Ubayy bin Ka'b and told him about that. He said: 'You did the right thing. I found one hundred Dinâr that had been lost at the time of the Messenger of Allâh ﷺ, and I asked him about it. He said, "Announce it for a year." So I announced it, and I did not find anyone who recognized it. I asked him (again) and he said: "Announce it," but I did not find anyone who recognized it. He said: "Remember the features of its bag and strap, and how many it contains, then announce it for a year. If someone comes who describes it with those features, (give it to him), otherwise it is like your own property.'" (*Sahih*)

تخریج: أخرجه البخاري، كتاب في المقطة، باب إذا أخبر رب المقطة بالعلامة دفع إليه، ح ١٧٢٣؛ ٢٤٢٦، ومسلم، المقطة، باب: معرفة العفاصن والوكاء ... الخ، ح ٢٤٣٧؛ ٢٤٣٨. حديث سلمة بن كهيل به.

Comments:

- Average precious thing needs to be announced up to one year but extra precious things should be announced for more than one year.
- Ordinary things need not to be announced.
- Now a days the announcement of lost things can be made on radio, TV and in newspapers. If the owner is found, claiming and receiving the expenditure of announcement from him is legal.

2507. It was narrated from Zaid bin Khâlid Al-Juhani that the Messenger of Allâh ﷺ was asked about lost property. He said: "Announce it for a year, then if someone describes it with its features, return it to him. If no one claims it, then remember the features of its leather bag and

بالمغذى، التقطت سوطاً. فقلالاً لي: ألقه. فائيث. فلما قدمنا المدينة أتيت أبي بن كعب. فذكرت ذلك له. فقال: أصبت. التقطت ما تدري على عهد رسول الله ﷺ. فسألته. فقال: «عرفها سنة» فعرفتها. فلمن أجد أحداً يعرفها. فسألته. فقال: «عروفها» فعرفتها. فلمن أجد أحداً يعرفها. فسألته. فقال: «اغرف وغايتها ووكانها وعدتها، ثم عرفها سنة». فإن جاء من يعرفها. وإنما، فيهي كسبيل مالك.

٢٥٠٧ - حدثنا محمد بن بشير: حدثنا أبو بكر الحقفي؛ ح: وحدثنا حرمته بن يحيى: حدثنا عبد الله بن وهب، قالا: قلنا: حدثنا الضحاك بن عمّان القرشي: حدثني سالم أبو النضر، عن [بُشْرٍ] بن سعيد، عن زيد بن خالد الجهمي أنَّ رسول الله ﷺ سئلَ عن

strap, and consume it (use it). Then if its owner comes along, give it to him." (*Sahih*)

اللقطة قَالَ: «عَرَفَهَا سَنَةً. فَإِنْ اعْتَرَفَتْ، فَأَدَّهَا. فَإِنْ لَمْ تُعْتَرِفْ، فَاغْفِرْ عِصَاصَهَا وَوَعَاءَهَا ثُمَّ كُلُّهَا. فَإِنْ جَاءَ صَاحِبُهَا، فَأَدَّهَا إِلَيْهِ».

تعریح: أخرجه مسلم، اللقطة، الباب السابق، ح: ١٧٢٢ من حديث ابن وهب، وأبي بكر الحنفي به.

Chapter 3. Picking Up What A Rat Brings Out

2508. It was narrated from Miqdâd bin 'Amr that he went out one day to Al-Baqî', which is the graveyard, to relieve himself. People used to go out to relieve themselves only every two or three days, and their feces was like that of a camel (because of hunger and rough food). Then he entered a ruin and while he was squatting to relieve himself, he saw a rat bringing a Dinâr out of a hole, then it went in and brought out another, until it had brought out seventeen Dinârs. Then it brought out a piece of red rag.

Miqdâd said: "I picked up the rag and found another Dinâr inside it, thus completing eighteen Dinâr. I took them out and brought them to the Messenger of Allâh ﷺ, and told him what had happened. I said, 'Take its *Sadaqah* (charity), O Messenger of Allâh.' He said: 'Take them back, for no *Sadaqah* is due on them. May Allâh bless them for you.' Then he said: 'Perhaps you put your

(المعجم ٣) - بَابُ الْقِطَاطِ مَا أَخْرَجَ
الْحِرْدُ (التحفة ٩٢)

٢٥٠٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ أَبْنِ عَثْمَةَ: حَدَّثَنِي مُوسَى بْنُ يَعْقُوبَ الرَّمْعَيِّ: حَدَّثَنِي عَمْتِي قُرْيَةً بْنَ عَبْدِ اللَّهِ أَنَّ أُمَّهَا كَرِيمَةً بْنَتِ الْمُقْدَادِ بْنَ عَمْرِي وَأَخْبَرَتِهَا عَنْ ضُبَاعَةَ بْنِتِ الرُّزِيرِ، عَنِ الْمُقْدَادِ بْنِ عَمْرِي وَأَنَّهُ خَرَجَ ذَاتَ يَوْمٍ إِلَى الْبَيْعِ، وَهُوَ الْمَفْرِرُ، لِحَاجَتِهِ. وَكَانَ النَّاسُ لَا يَدْهُبُ أَحَدُهُمْ فِي حَاجَتِهِ إِلَّا فِي الْيَوْمَيْنِ وَالثَّلَاثَةِ. فَإِنَّمَا يَعْرُ كَمَا تَبْغُ الْإِبْلُ. ثُمَّ دَخَلَ حَرْبَةً. فَبَيْنَا هُوَ جَالِسٌ لِحَاجَتِهِ، إِذْ رَأَى جُرْدًا أَخْرَجَ مِنْ جُحْرِ دِينَارًا. ثُمَّ دَخَلَ فَأَخْرَجَ آخَرَ. حَتَّى أَخْرَجَ سَبْعَةَ عَشَرَ دِينَارًا. ثُمَّ أَخْرَجَ طَرْفَ حَرْقَةَ حَمْرَاءَ.

قَالَ الْمُقْدَادُ: فَسَلَّلْتُ الْحِرْدَةَ. فَوَجَدْتُ فِيهَا دِينَارًا. فَقَمَّتْ ثَمَائِيَّةَ عَشَرَ دِينَارًا. فَخَرَجْتُ بِهَا حَتَّى أَتَيْتُ بِهَا رَسُولَ اللَّهِ ﷺ. فَأَخْبَرْتُهُ حَبْرَهَا. فَقَلْتُ: حُذْ صَدَقْتَهَا، يَا رَسُولَ اللَّهِ قَالَ: «أَرْجِعْ بِهَا». لَا صَدَقَةَ فِيهَا. بَارَكَ اللَّهُ لَكَ فِيهَا». ثُمَّ قَالَ: «الْعَلَّكَ

hand in the hole?" I said: 'No, by the One Who has honored you with the Truth.'" (*Da'if*)

He (the narrator) said: "And they did not run out before he died."

تغريب: [إسناده ضعيف] أخرجه أبو داود، الخراج، باب ماجاء في الركاز وما فيه، ح: ٣٠٨٧ من حديث موسى الزمعي به، قلت: قرية مجهولة الحال.

Chapter 4. One Who Finds Buried Treasure

2509. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "One fifth is due on buried treasure." (*Sahih*)

أَتَبْعَثْتَ يَدَكَ فِي الْجُحْرِ؟ قُلْتُ: لَا. وَالَّذِي أَكْرَمَكَ بِالْحَقِّ.

قال: فَلَمْ يَفْنِ آخِرُهَا حَتَّى مَاتَ.

تغريب: [إسناده ضعيف]

آخرجه أبو داود، الخراج، باب ماجاء في الركاز وما فيه، ح: ٣٠٨٧ من حديث موسى الزمعي به، قلت: قرية مجهولة الحال.

(المعجم ٤) - بَابُ مَنْ أَصَابَ رِكَازًا

(التحفة ٩٣)

٢٥٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ مَيْمُونٍ التَّمْكَنِيُّ، وَهَشَّامُ بْنُ عَمَّارٍ، قَالَا: حَدَّثَنَا شَيْعَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدٍ وَأَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «فِي الرِّكَازِ الْحُمْسُ».

تغريب: أخرجه مسلم، الحدود، باب جرح العجماء والمعدن والبئر جبار، ح: ١٧١٠ من حديث سفيان به.

2510. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "One fifth is due on buried treasure." (*Sahih*)

٢٥١٠ - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْضَمِيُّ: حَدَّثَنَا أَبُو أَحْمَدُ عَنْ إِسْرَائِيلَ، عَنْ سَمَائِكَ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِي الرِّكَازِ الْحُمْسُ».

تغريب: [صحيح] أخرجه أحمدر: ١/٣١٤ من طريق إسرائيل به، ورواه عن أبي أحمد أيضاً كما في أطراف المسند: ٣/٢٠٧، وصححه البوصيري، ولكن سنته ضعيف، انظر، ح: ١٧١: لعلته، والحديث السابق شاهد له، وبه صحة الحديث.

Comments:

Rikâz is buried treasure whose ownership and burial period is not known. Immediate payment of one fifth is due on such treasure, and the rest is the property of the founder.

2511. Sulaim bin Hayyân said: "I heard my father narrate from Abu Hurairah that the Prophet ﷺ said: 'Among those who came before you there was a man who bought

٢٥١١ - حَدَّثَنَا أَحْمَدُ بْنُ ثَابِتِ الْجَهْدَرِيُّ: حَدَّثَنَا يَعْنُوبُ بْنُ إِسْحَاقَ الْحَصَرَمِيُّ: حَدَّثَنَا سَلِيمُ بْنُ حَيَّانَ. سَوْغَتْ أَبِي يُحَدِّثُ عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «كَانَ فِيمَنْ كَانَ

some property and found therein a jar of gold. He said: "I bought land from you, but I did not buy the gold from you." The man said: "Rather I sold you the land with whatever is in it." They referred their case to (a third) man who said: "Do you have children?" One of them said: "I have a boy." The other said: "I have a girl." He said: "Marry the boy to the girl, and let them spend on themselves from it and give in charity." (*Hasan*)

قَبْلَكُمْ رَجُلٌ اشْتَرَى عَقَارًا. فَوَجَدَ فِيهَا جَرَّةً مِنْ ذَهَبٍ. قَالَ: اشْتَرَيْتُ مِنْكَ الْأَرْضَ، وَلَمْ أَشْتَرِ مِنْكَ الذَّهَبَ. قَالَ الرَّجُلُ: إِنَّمَا يُعْنِيكَ الْأَرْضُ بِمَا فِيهَا. فَحَاجَكُمَا إِلَى رَجُلٍ. قَالَ: الْكُمَا وَلَدٌ؟ قَالَ أَحَدُهُمَا: لَيْ عُلَامٌ. وَقَالَ الْآخَرُ: لَيْ جَارِيَةٌ. قَالَ: فَانْكِحَا الْغَلَامَ الْجَارِيَةَ. وَلِيُنْقِتا عَلَى أَنفُسِهِمَا مِنْهُ، وَلِيُتَصَدَّقاً.

تخریج: [إسناده حسن] * حیان بن سطام وشهاب بن حبان، والبوصيري، انظر، ح: ٢٤٤٥.

Comments:

- Buried treasure is the property of the person who found it, provided its ownership is not known.
- The total amount of the found treasure should not be used by the founder. Twenty percent of the total amount should be given as *Zâkat*.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

19. The Chapters On Manumission (Of Slaves)

(المعجم ١٩) أبواب العتق
(التحفة ...)

Comments:

'Al-Itq' means 'cease to be personal property and emancipation.' Imâm Azhari says 'Ataqâ' is derived from 'Ataqal-Fars: This phrase is used when a horse wins a race or when a young bird learns to fly and flies away. Young birds, when they learn to fly, are free to go anywhere and they are not dependent on their parents. The word 'Itq' is used for a slave who is granted freedom, and allowed to go anywhere with his own free will.

'Manumission of slaves' means to emancipate a slave and free him from the disgrace and indignity of slavery.

There are three kinds of freedom enumerated below.

1. *Tadbîr* or Policy: If a master promises his slave that he would be free after his death it is known as *Tadbîr*.
2. *Mukâtabat* or Written Agreement: If a master writes an agreement with a slave to free him for a certain price, and the slave pays the agreed installments, then he is free. This known as *Mukâtabât*.
3. *Umm Walad* or Mother of a Son: A master who has sexual intercourse with his slave girl, and she gives birth to a son or daughter. This is known as *Umm Walad*.

Chapter 1. The Mudâbbâr^[1]

(المعجم ١) - بَابُ الْمُدَبَّرِ (التحفة ٩٤)

2512. It was narrated from Jâbir that the Messenger of Allâh ﷺ sold a *Mudâbbâr*. (*Sahih*)

٢٥١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعْمَانَ، وَعَلَيْهِ بْنُ مُحَمَّدٍ، قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، عَنْ سَلَمَةَ بْنِ كُهْفِي، عَنْ عَطَاءٍ، عَنْ جَابِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ بَاعَ الْمُدَبَّرَ.

تخریج: أخرجه البخاري، البيع، باب بيع المدبّر، ح: ٢٢٣٠ عن عبدالله بن نمير به.

^[1] A slave promised his freedom after his master's death.

2513. It was narrated that Jâbir bin 'Abdullâh said: "A man among us promised freedom to a slave after his death, and he did not have any property other than him (this slave). So the Prophet ﷺ sold him, and Ibn (Nahhâm), a man from Banu 'Adî, bought him."

تخریج: أخرجه البخاري، البيوع، باب بيع المدبر، ح: ٢٢٣١، ومسلم، الأيمان، باب جواز بيع المدبر، ح: ٩٩٧ بعد، ح: ١٦٦٨ من حديث سفيان به.

Comments:

Mudabbar means a slave who's master promised freedom after his death (*Fathul-Bari*, Hadith 2230)

2514. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "The *Mudabbar* is part of the one third of the estate."^[١] (*Da'if*)

Ibn Mâjah said: I heard 'Uthmân – meaning Ibn Abu Shaibah – say: "This is a mistake," meaning the *Hadith*: "The *Mudabbar* is part of the one third of the estate." Abu 'Abdullâh (Ibn Mâjah) said: "There is no basis for it."

تخریج: [إسناده ضعيف جداً] أخرجه البیهقی: ٣١٤ / ١٠ من طریق علی بن ظبیان به، وهو ضعیف كما في التقریب وغيره ورجح عن رفعه في روایة الشافعی، والموقوف هو الصحيح، وللمروج شاهد ضعیف جداً عند البیهقی وغيره، ولو شاهد مرسلاً ضعیف أيضاً.

Chapter 2. *Umahâtul-Awlâd*^[٢]

2515. It was narrated from Ibn

٢٥١٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفِيَّانُ بْنُ عَيْسَيْهَ، عَنْ عَمْرُو بْنِ دِيَّارٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: دَبَّرَ رَجُلٌ مِنَ الْعَلَامَاءِ. وَلَمْ يَكُنْ لَّهُ مَالٌ غَيْرُهُ. فَبَاعَهُ النَّبِيُّ ﷺ. فَأَشْتَرَاهُ ابْنُ [النَّحَّامِ], رَجُلٌ مِنْ بَنِي عَدَّيْ.

تخریج: أخرجه البخاري، البيوع، باب بيع المدبر، ح: ٢٢٣١، ومسلم، الأيمان، باب

٢٥١٤ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلَيُّ بْنُ ظَبَيَّانَ، عَنْ عَبْدِ اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْمُدَبَّرُ مِنَ الثَّلَاثِ».

قَالَ ابْنُ مَاجَةَ: سَوْعَתْ عُثْمَانَ، يَعْنِي ابْنَ أَبِي شَيْبَةَ، يَقُولُ: هَذَا خَطَّأً. يَعْنِي حَدِيثَ: «الْمُدَبَّرُ مِنَ الثَّلَاثِ».

قَالَ أَبُو عَبْدِ اللَّهِ: لَيْسَ لَهُ أَصْلٌ.

تخریج: [إسناده ضعیف جداً] أخرجه البیهقی: ٣١٤ / ١٠ من طریق علی بن ظبیان به، وهو ضعیف كما في التقریب وغيره ورجح عن رفعه في روایة الشافعی، والموقوف هو الصحيح، وللمروج شاهد ضعیف جداً عند البیهقی وغيره، ولو شاهد مرسلاً ضعیف أيضاً.

(المعجم ٢) - بَابُ أَمَهَاتِ الْأَوْلَادِ (التحفة ٩٥)

٢٥١٥ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ وَ مُحَمَّدُ بْنُ

^[١] One third of the estate: i.e., the one third concerning which a person may leave instructions as to how it is to be disposed of after his death.

^[٢] *Umahâtul-Awlâd* (sing. *Umm Walad*): literally means 'mothers of children.' Slave women who bore their masters children.

'Abbâs that the Messenger of Allâh ﷺ said: "Any man whose slave woman bears him a child, she will be free after he dies." (Da'if)

تخریج: [إسناده ضعیف] أخرجه ابن أبي شيبة: ٤٣٦ / ٦ عن شريك به، وصححه البوصیري، وانظر، ح: ١٦٢٨.

2516. It was narrated that Ibn 'Abbâs said: "Mention was made of the mother of Ibrâhim in the presence of the Messenger of Allâh ﷺ, and he said: 'Her son set her free.'" (Da'if)

إسماعيل، قالا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا شَرِيكُ، عَنْ حُسْنِيْنِ بْنِ عَبْدِ اللَّهِ بْنِ عَيْنَدِ اللَّهِ ابْنِ عَبَّاسٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: أَبْيَمَا رَجُلٌ وَلَدَتْ أُمُّهُ مِنْهُ، فَهِيَ مُعْتَقَةٌ عَنْ دُبُرِ مِنْهُ.

تخریج: [إسناده ضعیف] أخرجه ابن أبي سیرة به، وقال: أبو بکر بن أبي سیرة البهیقی: ٣٤٦ / ١٠ من طريق ابن أبي سیرة به، إلا أنه قد روی عن غيره عن حسین بهذا اللفظ ، وأخرجه ابن سعد: ٢١٥ / ٨، والبهیقی وغيرهما من طرق عن حسین به، وانظر، ح: ١٦٢٨ لحاله . وللحديث طريق آخر ضعیف، وأخطأ من صححه.

2517. Jâbir bin 'Abdullâh was heard to say: "We used to sell our slave women and the mothers of our children (*Umahât Awlâdîna*) when the Prophet ﷺ was still living among us, and we did not see anything wrong with that." (Sahih)

٢٥١٦ - حَدَّثَنَا أَحْمَدُ بْنُ يُوسُفَ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا أَبُو بَكْرٍ، يَعْنِي النَّهَشَلِيَّ، عَنْ الْحُسْنِيْنِ بْنِ عَبْدِ اللَّهِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: ذَكَرْتُ أُمًّا إِبْرَاهِيمَ عِنْدَ رَسُولِ اللَّهِ ﷺ. فَقَالَ: «أَعْنَقُهَا وَلَدُهَا».

تخریج: [إسناده صحيح] أخرجه أحمدر: ٣٢١ / ٣ عن عبد الرزاق به، وتابعه عبد المجيد عند الشافعی (الستان المأثورة: ٢٩٣، ح: ٢٨٦)، وصححه البوصیري، وله شاهد عند الحاکم: ٢: ١٨، ١٩، وصححه على شرط مسلم، ووافقة الذهبي .

Comments:

When the master copulates with his slave girl, a baby born as result of this copulation is free.

Chapter 3. The *Mukâtab*^[1]

2518. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There are three who are all entitled to Allâh's help: the one who fights in the cause of Allâh; the *Mukâtab* who wants to pay (the price of his freedom); and the one who gets married seeking chastity." (*Sahih*)

(المعجم ٣) - باب المُكَاتِب (التحفة ٩٦)

٢٥١٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَمِيمَةَ وَعَبْدُ اللَّهِ بْنُ سَعِيدَ، قَالَا: حَدَّثَنَا أَبُو حَالِدٍ الْأَحْمَرُ، عَنْ أَبْنِ عَجْلَانَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تَلَاقَتْ كُلُّهُمْ حَقًّا عَلَى اللَّهِ عَوْنَهُ: الْفَارَازِي فِي سَبِيلِ اللَّهِ. وَالْمُكَاتَبُ الَّذِي يُرِيدُ الْأَدَاءَ. وَالنَّاكِحُ الَّذِي يُرِيدُ التَّعْفَفَ».

تخریج: [إسناده صحيح] أخرجه الترمذی، فضائل الجهاد، باب ماجاء في المجاهد والناتح والمکاتب وعون الله إیاهم، ح: ١٦٥٥ من حديث ابن عجلان به، وقال: حديث حسن ، وأخرجه أحمد: ٤٢٧/٢ عن يحيی (القطان) عن ابن عجلان قال: حدثني سعيد عن أبي هريرة به ... الخ.

Comments:

- If there is a written agreement between a slave and his master that the slave, in an agreed period, will pay the master a fixed and agreed upon price, then when this price is paid the slave becomes free.
- Jihâd* in the cause of Allâh depends on the sincerity of intention. If the Divine law is observed strictly while fighting, Allâh helps the warrior.
- Chastity is a remarkable characteristic of Islamic society and marriage is a vital and powerful source to maintain a pious and pure society.

2519. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: "Any slave who has made a contract to buy his freedom for one hundred *Uqiyyah* and pays it all except ten *Uqiyyah*; he is still a slave." (One *Uqiyyah* is equal to 40 Dirham.) (*Hasan*)

٢٥١٩ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ أَبْنُ نُعَيْرٍ وَمُحَمَّدُ بْنُ قُضِيلٍ عَنْ حَاجَاجَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا عَبْدٌ كُوتِبَ عَلَى مَا تَهِيَّ أَوْقِيَةً، فَأَدَاهَا إِلَّا عَشْرَ أَوْقِيَاتٍ، فَهُوَ رَقِيقٌ».

تخریج: [حسن] أخرجه أحمد: ١٧٨/٢ عن نعیر به، وضعفه البوصيري الحجاج بن أرتاة لم يفرد به، تابعه عباس الجريري عند أبي داود، ح: ٣٩٢٧، واليهقي: ١٠

^[1] A slave with a written contract of manumission, according to which he will buy his freedom from his master.

٣٢٣ في رواية الثقتين، أو العلاء، الأول ثقة وهو الراجع والثاني مجهول، وللمحدث شواهد حسنة عند أبي داود، ح: ٣٩٢٨، ٣٩٢٦ وغيره، فالحديث حسن، انظر الحديث الآتي.

Comments:

Islamic law is different for a slave and a free person. A slave who has not attained full freedom will be tried and judged under the law for slaves.

2520. It was narrated from Umm Salamah that the Prophet ﷺ said: "If anyone of you (women) has a *Mukâtab*, and he has enough (wealth) to pay off (his contract of manumission), she must veil herself from him." (*Hasan*)

٢٥٢٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سَفِيَّاً بْنُ عُسَيْنَةَ، عَنِ الزُّرْهُفِيِّ، عَنْ نَبَهَانَ، مَوْلَى أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّهَا أَخْبَرَتْ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «إِذَا كَانَ لِإِخْدَائِنْ مُكَاتَبٍ، وَكَانَ عِنْدَهُ مَا يُؤْدِي، فَلْتَحْجِبْ مِنْهُ». .

تخریج: [إسناده حسن] أخرجه أبو داود، العتق، باب في المكاتب يؤدي بعض كتابته فيعجز أو يموت، ح: ٣٩٢٨ من حديث سفيان بن عيينة به، وصححه الترمذى، ح: ١٢٦١، وابن حبان، والحاكم: ٢١٩، والذهبي، قلت: نبهان وثقة الذهبي في الكاشف، والترمذى، وابن حبان، والجمهور، فحديثه لا ينزل عن درجة الحسن * والزهرى صرح بالسماع.

Comments:

In a previous narration it has been mentioned that a slave does not attain the manumission until he makes the full payment. Only having the required amount does not make it obligatory to veil herself from him.

2521. It was narrated from Hishâm bin 'Urwah, from his father, about 'Aishah, the wife of the Prophet ﷺ – that Barirah came to her when she was *Mukâtabah*, and her masters had written a contract of manumission for nine *Uqiyah*. She ('Aishah) said: "If your masters wish I will pay them that in one sum, and the right of inheritance will belong to me."

He said: "So she went to her masters and told them about that, but they insisted that the right of inheritance should belong to

٢٥٢١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَعَلَيْهِ أَبْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ، زَوْجِ النَّبِيِّ ﷺ أَنَّ بَرِيرَةَ أَتَهَا وَهِيَ مُكَاتَبَةٌ، فَدَعَاتَهَا أَهْلَهَا عَلَى تَشْعِيرِ أَوَاقٍ. فَقَالَتْ لَهُمَا: إِنْ شَاءَ أَهْلُكُمْ عَدَدُتُ لَهُمْ عَدَدًا وَأَجَدَّهُ، وَكَانَ الْوَلَاءُ لِي. قَالَ: فَأَتَتْ أَهْلَهَا. فَذَكَرَتْ ذَلِكَ لَهُمْ. فَأَبْوَا إِلَّا أَنْ تَشْرِطَ الْوَلَاءَ لَهُمْ. فَذَكَرَتْ عَائِشَةُ ذَلِكَ لِلنَّبِيِّ ﷺ. فَقَالَ: «أَفْعَلَى» قَالَ: فَقَامَ النَّبِيُّ ﷺ فَخَطَبَ النَّاسَ. فَحَمَدَ اللَّهَ وَأَشْتَقَ

them. 'Âishah mentioned that to the Prophet ﷺ and he said: 'Do it.' Then the Prophet ﷺ stood up and addressed the people. He praised and glorified Allâh, then he said: 'What is the matter with some people who stipulated conditions that are not in the Book of Allâh? Every condition that is not in the Book of Allâh is invalid, even if there are one hundred conditions. The Book of Allâh is more deserving of being followed and the conditions of Allâh are more binding. And the *Wâlâ'* belongs to the one who manumits (the slave).' '(Sahîh)

علیهِ. ثُمَّ قَالَ: «مَا بَالْ رِجَالٍ يَشْرِطُونَ شُرُوطًا لَّيْسَتْ فِي كِتَابِ اللَّهِ. كُلُّ شَرْطٍ لَّيْسَ فِي كِتَابِ اللَّهِ فَهُوَ باطِلٌ، وَإِنْ كَانَ مِائَةً شَرْطٍ. كِتَابُ اللَّهِ أَكْثَرُهُ وَشَرْطُ اللَّهِ أَوْقَعُهُ. وَالْوَلَاءُ لِمَنْ أَعْنَقَ». .

تخریج: أخرجه مسلم، العتق، باب بيان أن الولاء لمن أעنق، ح: ١٥٠٤ من حديث هشام

. به

Comments:

- The Noble Prophet ﷺ asked 'Âishah to accept their illegal and undue conditions, so that they may not back out of their promise of manumission.
- Even if the parties agree upon illegal terms the deal remains unlawful.
- Here the Book of Allâh means the orders revealed by Allâh. It includes the orders of the Noble Qur'ân and the orders prescribed by the Noble Prophet ﷺ based on revelation.
- 'Wâlâ' is the relationship between a slave and the one who manumits. By this relationship, the freed-slave is considered the family member of the one who freed them. If he dies without having any legal heir, his property goes to one who freed him.

Chapter 4. Manumission

(المعجم ٤) - باب العتق (التحفة ٩٧)

2522. It was narrated that Shurahbil bin Simt said: I said to Ka'b: O Ka'b bin Murrah, tell us a *Hadith* from the Messenger of Allâh ﷺ, but be careful. He said: I heard the Messenger of Allâh ﷺ say: "Whoever frees a Muslim man, he will be his ransom from

٢٥٢٢ - حَدَّثَنَا أَبُو حُرَيْبٍ: حَدَّثَنَا أَبُو مَعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَمْرُو بْنِ مُرَّةَ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ شُرَحْبِيلِ بْنِ السُّمْطِ قَالَ: قُلْتُ لِكَعْبٍ: يَا كَعْبُ بْنَ مُرَّةَ حَدَّثَنَا عَنْ رَسُولِ اللَّهِ ﷺ وَاحْذَرْ. قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ أَعْنَقَ

the Fire; each of his bones will suffice (as a ransom) for each of his bones. Whoever frees two Muslim women, they will be his ransom from the Fire; each of their two bones will suffice (as a ransom) for each of his bones.”
(Da’if)

امرأةً مُسْلِمًا كَانَ فِكَاكَهُ مِنَ النَّارِ. يُبْخِرُ إِعْلَمٌ كُلُّ عَظَمٍ مِنْهُ بِكُلِّ عَظَمٍ مِنْهُ . وَمَنْ أَعْنَى
 امْرَأَتَيْنِ مُسْلِمَاتَيْنِ، كَانَتَا فِكَاكَهُ مِنَ النَّارِ.
 يُبْخِرُ إِعْلَمَيْنِ مِنْهُمَا عَظَمٌ مِنْهُ .

تخریج: [إسناده ضعیف] أخرجه النسائي، الجهاد، ثواب من رمى بهم في سبل الله عزوجل، ح: ٣١٤٦ من حديث أبي معاوية به، وأخرجه أبو داود، ح: ٣٩٦٧ من طريق آخر عن عمرو به، وقال: سالم لم يسمع من شرحيل ، ولبعض الحديث شواهد صحيحة عند مسلم، ح: ١٥٠٩ ، والحمidi (ح: ٧٦٧ بتحقيقه) وغيرهما.

Comments:

- Shurahbil did not remain for a long period in the presence of the Noble Prophet ﷺ, so he acquired the knowledge of *Ahâdîth* from other Companions.
- Manumission of a slave saves one from the Hell-fire.
- Manumission of a slave girl is also a tremendous virtuous deed.

2523. It was narrated that Abu Dharr said: “I said: ‘O Messenger of Allâh, which slave is best?’ He said: ‘The one who is most precious to his master and most valuable in price.’” (*Sahîh*)

٢٥٢٣ - حَدَّثَنَا أَخْمَدُ بْنُ سَيَّانٍ: حَدَّثَنَا أَبُو مُعاوِيَةَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ أَبِي مُرَاوِحٍ، عَنْ أَبِي ذَرٍ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! أَيُّ الرِّقَابِ أَفْضَلُ؟ قَالَ: أَنْفَسُهَا عِنْدَ أَهْلِهَا، وَأَغْلَاهَا تَمَنَّاً.

تخریج: أخرجه البخاري، العتق، باب أي الرقاب أفضلي، ح: ٢٥١٨، ومسلم، الإيمان، باب بيان كون الإيمان بالله تعالى أفضلي للأعمال، ح: ٨٤ من حديث هشام مطولاً.

Comments:

- Giving a precious thing in the way of Allâh is most virtuous and superior deed. In the same way, manumission of a precious and valuable slave girl is one of the best deeds.
- A precious and healthy animal given as charity brings more reward.

**Chapter 5. If A Person
Becomes The Master Of A
Mahram, Then He Becomes
Free**

2524. It was narrated from Samurah bin Jundub that the Prophet ﷺ said: "Whoever becomes the master of a *Mahram* relative (with whom marriage is not lawful), he becomes free." (*Hasan*)

(المعجم ٥) - بَابُ مَنْ مَلَكَ ذَا رَحْمٍ
مَحْرَمٌ فَهُوَ حُرٌّ (التحفة ٩٨)

٢٥٢٤ - حَدَّثَنَا عَقبَةُ بْنُ مُكْرَمَ وَ إِسْحَاقُ بْنُ مَنْصُورٍ، قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ بَكْرٍ الْبَرْسَانِيُّ عَنْ حَمَادَ بْنِ سَلَمَةَ، عَنْ فَتَادَةَ وَ عَاصِمٍ، عَنْ الْحَسَنِ، عَنْ سُعْدَةَ بْنِ جُنْدُبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ مَلَكَ ذَا رَحْمٍ مَحْرَمٌ، فَهُوَ حُرٌّ».

تخریج: [حسن] أخرجه الترمذی، الأحكام، باب ماجاء فيمن ملك ذا رحم محرم، ح: ١٣٦٥ عن عقبة بن مكرم به، وصححه ابن الجارود، ح: ٩٧٣، والحاکم: ٢١٤/٢، والذهبی: كما في نيل المقصود، ح: ٣٩٤٩، وانظر، ح: ٢١٨٣.

2525. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever becomes the master of a *Mahram* relative, he becomes free." (*Hasan*)

٢٥٢٥ - حَدَّثَنَا رَاشِدُ بْنُ سَعِيدِ الرَّمْلِيِّ وَ عَبْدُ اللَّهِ بْنُ الْجَيْمِ الْأَنْمَاطِيُّ قَالَا: حَدَّثَنَا ضَمْرَةُ بْنُ رَبِيعَةَ عَنْ سُقْيَانَ، عَنْ عَبْدِ اللَّهِ بْنِ وَبَنَارِ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ مَلَكَ ذَا رَحْمٍ مَحْرَمٌ فَهُوَ حُرٌّ».

تخریج: [حسن] أخرجه الترمذی، الأحكام، الباب السابق، ح: ١٣٦٥ بغير سند عن ضمرة به، وقال: ولا يتابع ضمرة على هذا الحديث. وهو حديث خطأ عند أهل الحديث ، والحديث السابق شاهد له.

Comments:

- An example of a *Mahram* relative becoming master is explained in the following example: Suppose there were two slave brothers, one of them was freed and later on he bought his brother. The second one will be freed because he is a *Mahram* relative. A *Mahram* relative cannot become a master. The same rule applies to a mother and son, father and daughter, brother and sister, niece, nephew, parental uncle and parental aunt.
- Right of property is through any mean - by payment, by way of gift, or inheritance - a slave or slave girl will be freed.

Chapter 6. Whoever Frees A Slave But Stipulates That He Should Serve Him

2526. It was narrated that Safinah – Abu ‘Abdur-Rahmân – said: “Umm Salamah freed me, but stipulated that I should serve the Prophet ﷺ as long as he lived.” (*Hasan*)

(المعجم ٦) - بَابُ مَنْ أَعْنَقَ عَبْدًا
وَأَشْرَطَ خِدْمَتَهُ (التحفة ٩٩)

٢٥٢٦ - حَدَّثَنَا عَدْدُ اللَّهِ بْنُ مُعاوِيَةَ
الْجُمَحِيُّ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ عَنْ سَعِيدِ
ابْنِ [جُمَهَارَانَ], عَنْ سَفِينَةَ، أَبِي عَبْدِ الرَّحْمَنِ
قَالَ: أَعْنَقْتَنِي أُمُّ سَلَمَةَ وَأَشْرَطْتَ عَلَيَّ أَنْ
أَخْذُمُ النَّبِيَّ ﷺ، مَا عَاشَ.

تخریج: [إسناده حسن] أخرجه أبو داود، العتق، باب: في العتق على شرط، ح: ٣٩٣٢ من
حديث سعيد به، وصححه ابن الجارود، ح: ٤٧٦، ٢١٤، ٢١٣/٢، والحاکم: ٢١٤، والذهبی: .

Comments:

- Apparently putting a condition is against the spirit of manumission. Manumission means free from all conditions. In this case, putting a special condition was an honor for Safinah.
- Putting a condition on a slave at the time of his manumission to do some virtuous deed, is not against the spirit of manumission, rather it is an opportunity for him to do a righteous deed.
- Maybe ‘stipulated’ here means only a promise taken at the time of manumission.

Chapter 7. Whoever Frees His Share Of A Slave

2527. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: “Whoever frees his share of a slave or part of his share, must pay from his wealth if he has any wealth (in order to buy the rest of the slave’s freedom). If he does not have wealth, then the slave should be asked to work for the price (of his freedom), without that causing him too much hardship.”” (*Sahih*)

(المعجم ٧) - بَابُ مَنْ أَعْنَقَ شِرْكًا لَهُ
فِي عَبْدٍ (التحفة ١٠٠)

٢٥٢٧ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْءَةَ: حَدَّثَنَا
عَلَيْهِ بْنُ مُسْهِيرٍ وَمُحَمَّدُ بْنُ يَشْرِ عَنْ سَعِيدِ بْنِ
أَبِي عَوْبَةَ، عَنْ فَقَادَةَ، عَنْ التَّضْرِبِ بْنِ أَنْسَ،
عَنْ بَشِيرِ بْنِ نَهَلَكَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: مَنْ أَعْنَقَ نَصِيبًا لَهُ فِي
مَمْلُوكٍ، أَوْ شِفْقَةً، فَعَلَيْهِ خَلَاصَةٌ مِنْ مَالِهِ،
إِنْ كَانَ لَهُ مَالٌ. فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ،
إِنْ شَعِيَ الْعَبْدُ فِي قِيمَتِهِ، غَيْرَ مَشْقُوقٍ عَلَيْهِ.

تخریج: أخرجه البخاري، الشروکة، باب تقویم الأشياء بين الشرکاء بقيمة عدل، ح: ٢٥٢٧، ٢٤٩٢؛
ومسلم، العتق، باب ذکر سعاية العبد، ح: ١٥٠٣ من حديث سعيد بن أبي عروبة به.

Comments:

- a. A slave can belong to more than one person. For example, a person is the father of two sons and has a slave. If he dies, the slave will be inherited by his two sons. Another example is that some persons contribute equal shares of money and buy a slave, then the slave is common property of all the shareholders.
- b. If one master of a common slave frees his share, the slave will still remain a slave for the rest of the co-owners.
- c. In such cases, one who frees his share should buy the shares of other co-owners with a fairly evaluated price, and free the slave to complete the manumission.
- d. Another way out is that the slave should work and earn money to pay other owners to be freed.
- e. A slave should not be forced to pay soon, he should be given proper time to pay the price, just as a debtor is given a chance to return the debt. It would be better if the slave is treated more sympathetically and given more time.

2528. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever frees his share of a slave, the price of the slave should be fairly evaluated, and he (the partner who initiated this process) should free him (in full, by giving the rest of his price to the other co-owners), if he has enough wealth to do so. Otherwise, he will have freed whatever he freed." (*Sahīl*)

٢٥٢٨ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا عُثْمَانُ بْنُ عُمَرَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ ﷺ: «مَنْ أَعْتَقَ شَرْكًا لَهُ فِي عَبْدٍ، أُقِيمَ عَلَيْهِ بِقِيمَةِ عَدْلٍ. فَأَغْطَى شُرْكَاءُهُ حِصْصَتِهِمْ إِنْ كَانَ لَهُ مِنَ الْمَالِ مَا يَلْعُغُ ثَمَنَهُ، وَعَنِتَ عَلَيْهِ الْعَبْدُ. وَإِلَّا، فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ».

تخریج: أخرجه البخاري، العتق، باب: إذا أعتق عبداً بين اثنين أو أمةً بين الشركاء، ح: ٢٥٢٢، ومسلم، العتق، باب من أعتق شركاً له في عبد، ح: ١٥٠١ من حديث مالك به، وهو في الموطأ (يحيى: ٢/ ٧٧٢).

Comments:

- a. 'Fair evaluation' means that the price of a slave should be evaluated according to the local customs and circumstances. For instance, if one person is a master of half a share viz., $1/2$, and the price is evaluated as one hundred Dinâr, he should pay fifty Dinâr to his co-owner/owners and buy the second half and free him.
- b. In the foregoing example, if one, who frees his share of a slave does not have the ability to pay the co-owners their share, in this situation the slave will be considered half free. If he is murdered, the blood money to be paid for him will be half, and half a share of the price of the slave will also be

charged, and in a case where distribution is not possible, he will be considered a slave as in the case of the *Mukâtab*. (Allâh knows better)

Chapter 8. One Who Frees A Slave Who Has Some Wealth

2529. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever frees a slave who has some wealth, the slave's wealth belongs to him, unless the master stipulates that it will belong to him." (*Sahih*)

(One of the narrators) Ibn Lahi'ah said (in his narration): "Unless the master makes an exception for that."

(المعجم ٨) - بَابُ مَنْ أَعْنَقَ عَبْدًا وَلَهُ مَالٌ (التحفة ١٠١)

٢٥٢٩ - حَدَّثَنَا حَرْمَةً بْنُ يَحْيَىٰ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي أَبُو لَهِيَةَ . حَ وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي مَرِيمٍ: أَبْنَانَا الْلَّيْثُ بْنُ سَعْدٍ، جَوِيعاً، عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ، عَنْ بُكَيْرِ بْنِ الْأَشْجَعِ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعْنَقَ عَبْدًا وَلَهُ مَالٌ، فَمَالُ الْعَبْدِ لَهُ . إِلَّا أَنْ يَشْتَرِطَ السَّيِّدُ مَالَهُ، فَيَكُونُ لَهُ .»

وَقَالَ أَبُنْ لَهِيَةَ: إِلَّا أَنْ يَسْتَشِئَ السَّيِّدُ .

تخریج: [إسناده صحيح] أخرجه أبو داود، العنق، فیمن أعنق عبداً وله مال، ح: ٣٩٦٢ من حديث ابن وهب به.

Comments:

- Usually, the things in use of a slave belong to the master, since they were given to him for use in fulfillment of his services. When the slave is freed, all things in his use go back to his master.
- There may be a case that a master allows his slave to work and earn money, on the condition to pay him a part of this earned money, and allows him to use the rest of it for his own needs. In this case, the saved money will belong to the slave, and if he is freed he will keep the saved money. Manumission can also be conditional, the master can ask the slave to give him all his belongings and money before his manumission takes place.

2530. It was narrated from Ishâq bin Ibrâhim, from his grandfather 'Umair, who was the freed slave of Ibn Mas'ud, that 'Abdullâh said to him: "O 'Umair, I have set you free in a good way. I heard the Messenger of Allâh ﷺ say: 'Any man who frees a slave and

٢٥٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ: حَدَّثَنَا سَعِيدُ بْنُ مُحَمَّدٍ الْجَرْمِيِّ: حَدَّثَنَا الْمُطَلِّبُ بْنُ زِيَادٍ، عَنْ إِسْحَاقَ بْنِ إِبْرَاهِيمَ، عَنْ جَلْدُو عُمَيْرٍ وَهُوَ مَوْلَى أَبْنِ مَسْعُودٍ أَنَّ عَبْدَ اللَّهِ قَالَ لَهُ: يَا عُمَيْرًا إِنِّي أَعْنَقْتُكَ عِنْقًا هَنِيَّاً . إِنِّي

does not say anything about his (the slave's) wealth, it belongs to him (the slave).' So tell me, how much wealth do you have?" (*Da'iif*)

Another chain with similar wording.

سَوْمَتْ رَسُولُ اللَّهِ ﷺ يَقُولُ: «إِيَّمَا رَجُلٍ أَعْنَقَ غَلَامًا، وَلَمْ يُسَمِّ مَالَهُ، فَالْمَالُ لَهُ». فَأَخْرِبْنِي مَا مَالُك؟

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعَيْرٍ: حَدَّثَنَا الْمُطَلِّبُ بْنُ زَيْنٍ عَنْ إِسْحَاقَ بْنِ إِبْرَاهِيمَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ لِجَدِيِّي. فَذَكَرَ تَحْوِةً.

تخریج: [إسناده ضعیف] * إسحاق بن ابراهیم بن عمر و جده مجھولان كما في التقریب، لم يوثقهما غير ابن حبان، و توثیق مسلمة لا شيء لأن مسلمة مجروح في نفسه، والأول ضعفه ابن الجارود وغيره.

Chapter 9. Freeing Illegitimate Children

2531. It was narrated from Maimunah bint Sa'd, the freed slave woman of the Prophet ﷺ, that the Messenger of Allâh ﷺ was asked about illegitimate children. He said: "Two sandals in which I wage *Jihâd* are better than freeing an illegitimate child." (*Da'iif*)

تخریج: [إسناده ضعیف] أخرجه الحاکم: ٤١/٤ من حديث إسرائیل به، وقال البوصیری: هذا إسناد ضعیف * أبو یزید الضنی مجھول كما في التقریب وغيره، وقال عبد الغنی بن سعید: منکر الحديث .

Chapter 10. If One Wants To Free A Man Along With His Wife, He Should Start With The Man

2532. It was narrated that 'Aishah had a male slave and a female slave who were married. She said: "O Messenger of Allâh, I want to free them both." The

(المعجم ٩) - بَابُ عِنْقٍ وَلَدَ الزَّنَةِ
(التحفة ١٠٢)

٢٥٣١ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا الْفَضْلُ بْنُ دُكَيْنٍ: حَدَّثَنَا إِسْرَائِيلُ عَنْ زَيْنِ بْنِ جُبَيْرٍ، عَنْ أَبِي بَرِيدِ الصَّسْبَيِّ، عَنْ مَيْمُونَةَ بِنْتِ سَعْدٍ، مَوْلَةَ النَّبِيِّ ﷺ أَنَّ رَسُولَ اللَّهِ ﷺ سَيْلَ عَنْ وَلَدِ الزَّنَةِ. قَالَ: «نَعْلَانٌ أَجَاهِدُ فِيهِمَا، خَيْرٌ مِنْ أَنْ أَعْنِقَ وَلَدَ الزَّنَةِ».

تخریج: [إسناده ضعیف] أخرجه الحاکم: ٤١/٤ من حديث إسرائیل به، وقال البوصیری: هذا إسناد ضعیف * أبو یزید الضنی مجھول كما في التقریب وغيره، وقال عبد الغنی بن سعید: منکر الحديث .

(المعجم ١٠) - بَابُ مَنْ أَرَادَ عِنْقَ رَجُلٍ
وَامْرَأَتِهِ فَلْيَبْدِأْ بِالرَّجُلِ (التحفة ١٠٣)

٢٥٣٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا حَمَادٌ بْنُ مَسْعَدَةَ، حَوْدَّثَنَا مُحَمَّدُ بْنُ حَلَفِ الْعَسْلَلَائِيِّ وَإِسْحَاقَ بْنُ مَنْصُورٍ قَالَا: حَدَّثَنَا

Messenger of Allâh ﷺ said: "If you free them, then start with the man before the woman." (*Hasan*)

عَبْيَدُ اللَّهِ بْنُ عَبْدِ الْمَجِيدِ: حَدَّثَنَا عَبْيَدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ أَنَّهَا كَانَ لَهَا غُلَامٌ وَجَارِيَّةٌ، رَوْجٌ. فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنِّي أُرِيدُ أَنْ أَعْتَقَهُمَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنْ أَعْتَقْتَهُمَا، فَأَبْنَتِي بِالرَّجُلِ قَلَّ الْمَرْأَةُ».

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في المملوکين يعتقان معًا هل تخیر امرأته؟، ح: ۲۲۳۷ من حديث عبید الله به * عبید الله بن عبد الرحمن رثقة الجمهور، وقال ابن عدي: حسن الحديث يكتب حديثه .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

20. The Chapters On Legal Punishments

المعجم (٢٠) آباؤب الحدود
(التحفة ١٢)

Comments:

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

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

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

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

(المعجم ١) - بَابٌ : لَا يَحِلُّ دَمُ امْرِيَّةِ مُسْلِمٍ إِلَّا فِي ثَلَاثٍ (التحفة ١)

٢٥٣٣ - حَدَّثَنَا أَخْمَدُ بْنُ عَبْدَةَ: أَنَّبَانَا حَمَادَ بْنَ زَيْدٍ، عَنْ يَعْمَىٰ بْنِ سَعِيدٍ، عَنْ أَبِي أَمَامَةَ بْنِ سَهْلٍ بْنِ حُنَيْفٍ أَنَّ عَمْرَانَ بْنَ عَمَّانَ أَشْرَفَ عَلَيْهِمْ. فَسَوْعَهُمْ وَهُمْ يَذْكُرُونَ الْقَتْلَ فَقَالَ: إِنَّهُمْ لَيَوْا عَذْرَنِي بِالْقَتْلِ؟ فَلَمْ يَقْتُلُنِي؟ وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَحِلُّ دَمُ امْرِيَّةِ مُسْلِمٍ إِلَّا فِي إِحْدَى ثَلَاثٍ: رَجُلٌ زَنَىٰ وَهُوَ مُحْصَنٌ فَرُّجِمَ. أَوْ رَجُلٌ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ. أَوْ رَجُلٌ ارْتَدَّ بَعْدَ إِسْلَامِهِ فَوَرَأَ اللَّهَ! مَا زَيَّثَ فِي جَاهِلِيَّةِ وَلَا فِي إِسْلَامِهِ، وَلَا قَتَلَ نَفْسًا مُسْلِمَةً، وَلَا ارْتَدَّ مُنْذُ أَسْمَئَثُ.

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

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب الإمام يأمر بالعفو في الدم، ح: ٤٥٠٢ من حديث حماد به، وحسنه الترمذى، ح: ٢١٥٨، وصححه ابن الجارود، ح: ٨٣٦.

Comments:

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

2534. It was narrated from 'Abdullâh, who is Ibn Mas'ud, that the Messenger of Allâh ﷺ said: "It is not lawful to shed the blood of a Muslim who bears witness that none has the right to be worshiped but Allâh, and that I am the Messenger of Allâh, except in one of the three cases: a soul for a soul; a married person who commits adultery, and one who leaves his religion and splits from the *Jamâ'ah*."^[١] (*Sahih*)

٢٥٣٤ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ وَأَبُو بَكْرٍ ابْنُ حَلَادَ الْأَبَاهِلِيَّ قَالَا: حَدَّثَنَا وَكَيْعُ عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ، وَهُوَ ابْنُ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشَهُدُ أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ رَسُولَ اللَّهِ، إِلَّا أَحَدُ ثَلَاثَةِ نَفَرٍ: النَّفَرُ بِالنَّفَرِ، وَالشَّبَّابُ الرَّازِيُّ، وَالثَّارِكُ لِدِينِهِ الْمُقَارِفُ لِلْجَمَاعَةِ.

تخریج: أخرجه البخاري، الديات، باب قول الله تعالى: إن النفس بالنفس والعين بالعين، ح: ٦٨٧٨ من حديث الأعمش به، ومسلم، القسامه والمحاربين، باب ما يباح به دم المسلم، ح: ١٦٧٦ من حديث وكيع به.

^[١] The main body of the Muslims, and the meaning of this third case is the same as the meaning of the third case in the previous narration, i.e., he leaves the religion.

Comments:

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

Chapter 2. The Apostate Who Leaves His Religion

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

(المعجم ٢) - بَابُ الْمُرْتَدِ عَنْ دِينِهِ

(التحفة ٢)

٢٥٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَبَنُنَا شُعْبَيْنُ بْنُ عَيْيَةَ، عَنْ أَبِيهِ، عَنْ عَكْرِمَةَ، عَنْ أَبْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ).

تخریج: أخرجه البخاري، الجihad والسير، باب: لا يذب بعذاب الله، ح: ٣٠١٧ من حدیث سفیان به.

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

٢٥٣٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ بَهْزِنْ بْنِ حَكِيمٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: (لَا يَقْبِلُ اللَّهُ مِنْ مُّشْرِكٍ، أَشْرَكَ بَعْدَمَا أَسْلَمَ، عَمَّا لَّمْ يَحْتَمِلْ بُشَارَقُ الْمُشْرِكِينَ إِلَى الْمُسْلِمِينَ).

تخریج: [إسناده حسن] أخرجه النسائي، الزکاة، باب من سأل بوجه الله عزوجل، ح: ٢٥٦٩ من حدیث بهز به.

Comments:

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

Chapter 3. Carrying Out The Hudud

2537. It was narrated from Ibn

(المعجم ٣) - بَابُ إِقَامَةِ الْحُدُودِ

(التحفة ٣)

٢٥٣٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

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

الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا سَعِيدُ بْنُ سَيْنَانَ، عَنْ أَبِي الرَّازِّاهِرِيَّةِ، عَنْ أَبِي شَجَرَةَ كَثِيرَ بْنِ مُرَّةَ، عَنْ أَبْنَى عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِقَامَةٌ حَدٌّ مِنْ حُدُودِ اللَّهِ، خَيْرٌ مِنْ مَطَرٍ أَرْبَعِينَ لَيْلَةً، فِي بِلَادِ اللَّهِ عَزَّ وَجَلَّ».

تخریج: [إسناده ضعيف جداً] وضعفه البوصيري، قلت: سعيد بن سنان الحنفي الحمصي متوفى، ورماء الدارقطني وغيره بالوضع كما في التریب.

Comments:

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

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

٢٥٣٨ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا عَمْدَةُ اللَّهِ بْنُ الْمُبَارَكِ: أَبْنَانَا عِيسَى بْنُ يَزِيدَ أَطْهَرَهُ عَنْ حَجَرِيرٍ بْنِ يَزِيدٍ عَنْ أَبِي زُرَعَةَ بْنِ عَمْرِو أَبْنِ حَجَرِيرٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «حَدٌّ يُعَمَّلُ بِهِ فِي الْأَرْضِ، خَيْرٌ لِأَهْلِ الْأَرْضِ مِنْ أَنْ يُمْطَرُوا أَرْبَعِينَ صَبَاحًا».

تخریج: [إسناده ضعيف] أخرجه السایي، قطع السارق، - الترغيب في إقامة الحد، ح: ٤٩٠٨ من حديث ابن المبارك به * وجير بن يزيد البجلي ضعيف كما في التریب وغيره، وأخرج ابن حبان (موارد)، ح: ١٥٠٧ من طريق (محمد بن الحسن) ابن قتيبة (العسقلاني وثقة الدارقطني، والذهبي وغيرها) عن (محمد) ابن قدامة (المصيصي وثقة الدارقطني، وابن حبان وغيرها) حدثنا ابن علية عن يونس بن سعيد عن أبي زرعة به إلى، وإسناده ضعيف لعل، منها تدلisis يونس بن عبيد، وروى الطبراني في الصغير: ٧٢/٢ عن محمد بن عبد الصمد بن أبي الجراح المقرئ المصيصي حدثنا محمد بن قدامة الجوهري حدثنا إسماعيل ابن علية عن يونس بن عبيد عن جرير بن يزيد عن أبي زرعة به إلى، وقال: تفرد به محمد بن قدامة ، ورواه عمرو بن زراة (ثقة) عن ابن علية عن يونس عن جرير عن أبي زرعة عن أبي هريرة به

موقوفاً ، أخرجه النسائي ، وللحديث شاهد ضعيف عند الطبراني في الأوسط: ٣٨٤ / ٥ ، ح: ٤٧٦٢ ، وقال الهيثمي في أحد رواهه: زريق بن السخت ولم أعرفه (٦/٢٦٣) ، وفيه عفان بن جبير الطائي ينظر فيه ، ومع ذلك حسنة المنذري ، والعرافي .

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

تخریج: [إسناده ضعيف] أخرجه ابن عدي: ٧٩٣ / ٢ من حديث حفص بن عمر العدنی به مختصراً * والعدنی لقبه الفرخ ، وهو ضعيف كما في التقریب وغيره ، والحادیث ضعفه البوصیری من أجله .

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

٢٥٣٩ - حَدَّثَنَا نَصْرُ بْنُ عَلَيِّ الْجَهْضُوْيِّ : حَدَّثَنَا حَقْصُونَ بْنُ عُمَرَ : حَدَّثَنَا الْحَكَمُ بْنُ أَبِيَّانَ ، عَنْ عِكْرَمَةَ ، عَنْ ابْنِ عَبَّاسٍ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : مَنْ جَحَدَ آيَةً مِّنَ الْقُرْآنِ ، فَقَدْ حَلَّ ضَرْبُ عَنْهُ . وَمَنْ قَالَ : لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ ، وَأَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ ، فَلَا سَبِيلٌ لِأَحْدِي عَنْهُ ، إِلَّا أَنْ يُصْبِطَ حَدًّا ، فَيَقْنَمَ عَلَيْهِ» .

٢٥٤٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْمَقْلُوْعُ : حَدَّثَنَا عَبْيَدَةَ بْنُ الْأَسْوَدَ ، عَنْ الْقَاسِمِ بْنِ الْوَلِيدِ ، عَنْ أَبِي صَادِقٍ ، عَنْ رَبِيعَةَ بْنِ نَاجِدٍ ، عَنْ عُبَادَةَ بْنِ الصَّامِدِ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : «أَقِيمُوا حُدُودَ اللَّهِ فِي الْقَرِيبِ وَالْبَعِيدِ . وَلَا تَأْخُذُوكُمْ فِي اللَّهِ لَوْمَةً لَا ثِيمٍ» .

تخریج: [حسن] أخرجه عبد الله بن أحمد في زوائد المستند: ٣٣٠ / ٥ عن المقلوج به مطولاً ، وأورده الضياء في المختار ، وفيه علة قادحة ، وهي عنترة عبيدة بن الأسود لأنه مدلس ، مذكور في المرتبة الثالثة من طبقات المدلسين لابن حجر ، وله شاهد عند البيهقي: ٩/١٣٠ ، ٩/١٠٤ ، فيه منصور الغولاني ، ولم أجد له ترجمة ، وشيخه غilan بن أنس ، وثقة ابن حبان ، وللحديث شاهد كثيرة .

Comments:

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

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

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

(Sahih)

تخریج: [صحيح] أخرجه الترمذی، السیر، باب ماجاء فی النزول علی الحكم، ح: ١٥٨٤ من حديث وکیع به، وقال: حسن صحيح ، وصححه ابن الجارود، ح: ١٠٤٥، راجع نیل المقصود، ح: ٤٤٠٤.

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

(المعجم ٤) - باب مَنْ لَا يَحِبُّ عَلَيْهِ الْحُدُدُ (التحفة ٤)

٢٥٤١ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ وَعَلَيْهِ أَبْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكَبِيعُ عَنْ سُفِيَّانَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ عَطِيَّةَ الْقُرَنْيَّيَّ بِقَوْلٍ: عُرِضْنَا عَلَى رَسُولِ اللَّهِ ﷺ يَوْمَ قُرْيَظَةَ. فَكَانَ مَنْ أَبْتَثَ قُتْلًا. وَمَنْ لَمْ يَبْتَثْ خَلَّيَ سَيْلَهُ. فَكَتَبْتُ فِيمَنْ لَمْ يَبْتَثْ، فَخَلَّيَ سَيْلِيَ.

تخریج: [صحيح] أخرجه الترمذی، المصباح: أباً نعيم، سفيان بن عيينة، عن عبد الملك بن عمير قال: سمعت عطيه القرني يقول: فها أنا ذا

بَنْ أَطْهِرُكُمْ.

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

Comments:

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

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

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

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

تخریج: أخرجه البخاري، الشهادات، باب بلوغ الصبيان وشهادتهم، ح: ٢٦٤ من حديث أبيأسامة من حديث عبيدة الله بن عمر به، ومسلم، الإمار، باب بيان سن البلوغ، ح: ١٨٦٨ من حديث عبد الله بن نعير به.

Comments:

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

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

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

٢٥٤٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ وَأَبُو مُعاوِيَةَ وَأَبُو أَسَامَةَ قَالُوا: حَدَّثَنَا عَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ، عَنْ أَنْبَعَ عُمَرَ قَالَ: عَرِضْتُ عَلَى رَسُولِ اللَّهِ ﷺ يَوْمًا أُخْدِي، وَأَنَا أَبْنَ أُرْبَعَ عَشَرَةَ سَنَةً، فَلَمْ يُجْزِنْنِي. وَعَرِضْتُ عَلَيْهِ يَوْمًا الْخَنْدَقَ وَأَنَا أَبْنَ خَمْسَ عَشَرَةَ سَنَةً، فَأَجَازَنِي. قَالَ نَافِعٌ: فَحَدَّثَنِي يَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي خِلَاقَتِهِ فَقَالَ: هَذَا فَصْلٌ مَا بَيْنَ الصَّغِيرِ وَالكَبِيرِ.

المعجم (٥) - بَابُ السُّرُّ عَلَى الْمُؤْمِنِ وَدَفْعُ الْحُدُودِ بِالشُّبُهَاتِ (التحفة (٥)

٢٥٤٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَرَّ مُسْلِمًا سَرَّهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ».

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

Comments:

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

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

٢٥٤٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَاحِ: حَدَّثَنَا وَكَيْعَ عَنْ إِبْرَاهِيمَ بْنِ النَّضْلِ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اذْفُوا الْحُدُودَ مَا وَجَدْتُمْ لَهُ مَذْعُومًا».

تخریج: [إسناد ضعیف جدًا] أخرجه أبو يعلى: ١١، ح: ٦٦١٨ من حديث وكيع به بلفظ: إذفوا الحدود ما استطعتم ، وضفة البوصيري، وقال ابن حجر في إبراهيم بن النضل المخزومي متروك (تقريب)، وله شواهد ضعيفة عند الترمذى، ح: ١٤٤٣، وابن عدي: ١/٢٣٣ وغيرهما .

Comments:

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

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

٢٥٤٦ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنَ كَائِبٍ: أَبْنَانَا مُحَمَّدُ بْنُ عُثْمَانَ الْجَمَحِيُّ: حَدَّثَنَا الْحُكْمُ بْنُ أَبَانَ عَنْ عَكِيرَةَ، عَنْ أَبِي عَبَّاسٍ، عَنِ الْيَتَمِّيِّ قَالَ: «مَنْ سَتَّرَ عُوْرَةَ أَخِيهِ الْمُسْلِمِ، سَتَّرَ اللَّهُ عَوْرَتَهُ يَوْمَ الْقِيَامَةِ. وَمَنْ كَشَفَ عُوْرَةَ أَخِيهِ الْمُسْلِمِ، كَشَفَ اللَّهُ عَوْرَتَهُ حَتَّى يَقْضَحَهُ بِهَا فِي بَيْتِهِ».

تخریج: [إسناد ضعیف] * محمد بن عثمان بن صفوان الجمحي ضعيف كما في التقریب وغيره، ح: ٢٥٤٤، ٢٢٥ يغنى عنه .

Comments:

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

Chapter 6. Intercession Concerning Legal Punishments

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

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

تَحْرِيْج: أَخْرَجَهُ الْبَخَارِيُّ، أَحَادِيثُ الْأَنْبِيَا، بَابُ(٥٤)، ح: ٦٧٨٨، ٦٧٨٧، ٣٧٣٢، ٣٤٧٥

مِنْ حَدِيثِ الْمُلِّيْثِ بْنِهِ، وَمُسْلِمٌ، الْحَدُودُ، بَابُ قَطْعِ السَّارِقِ الشَّرِيفِ وَغَيْرِهِ وَالنَّهِيِّ عَنِ الشَّفَاعَةِ فِي الْحَدُودِ، ح: ١٦٨٨

عَنْ مُحَمَّدِ بْنِ رَمْحَهُ بْنِهِ.

Comments:

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

(المعجم ٦) - بَابُ الشَّفَاعَةِ فِي الْحَدُودِ
(التحفة ٦)

٢٥٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ رَمْحَهُ الْمَضْرِبِيُّ:

أَبْنَانَا الْلَّيْثُ بْنُ سَعْدٍ عَنْ أَبِنِ شَهَابٍ، عَنْ عَائِشَةَ أَنَّ فَرِيْتَنَا أَهْمَهُمْ شَاءُ الْمَرْأَةُ الْمَخْزُوبَيَّةُ الَّتِي سَرَقَتْ. فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ؟ قَالُوا: وَمَنْ يَجْرِيُ عَلَيْهِ إِلَّا أَسَامَةُ بْنُ زَيْدٍ، حَبُّ رَسُولِ اللَّهِ؟ فَكَلَّمَهُ أَسَامَةً. فَقَالَ رَسُولُ اللَّهِ: أَتَشْفَعُ فِي حَدٍّ مِنْ حَدُودِ اللَّهِ؟ ثُمَّ قَامَ فَأَنْخَبَهُ فَقَالَ: «يَا أَبْنَاءَ النَّاسِ! إِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا، إِذَا سَرَقُ فِيهِمُ الْشَّرِيفُ تَرَكُوهُ. وَإِذَا سَرَقَ فِيهِمُ الصَّبِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ. وَإِيمُونَ اللَّهُ لَوْ أَنْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ سَرَقَتْ، لَنَطَمَتْ يَدَهَا».

قَالَ مُحَمَّدُ بْنُ رَمْحَهُ: سَمِعْتُ الْلَّيْثَ بْنَ سَعْدِ يَقُولُ: قَدْ أَعَذَّهَا اللَّهُ عَزَّ وَجَلَّ أَنْ تَسْرِقَ. وَكُلُّ مُسْلِمٍ يَبْغِي لَهُ أَنْ يَقُولَ هَذَا.

- Aswad bin Abdul Asad. She was the niece of Abu Salamat who was the ex-husband of Mother of the Believers, Umm Salamat. (*Fathul-Bâri* 12/108)
- b. Usâmah was chosen for intercession because of his young age and nearness to the Prophet ﷺ, and for the general view that if the request is not accepted, the Prophet ﷺ will not be angry with him due to his young age.
 - c. There is partiality of undue favor in enforcement of legal punishment.

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

تَحْرِيْج: [إسْنَادٌ ضَعِيفٌ] أَخْرَجَهُ الْحَاكِمُ فِي الْمُسْتَدِرِكِ: ٤/٣٧٩، ٣٨٠ (عَلَى تَصْحِيفِهِ) مِنْ حَدِيثِ مُحَمَّدٍ بْنِ إِسْحَاقَ بْنِهِ، وَوَافَقَهُ النَّذِيْرِيُّ، وَالْحَدِيثُ فِي مُصْنَفِ ابْنِ أَبِي شَيْبَةِ: ٩/٤٦٦، ٤٦٧ عَنْ ابْنِ نَمِيرٍ بْنِهِ، وَقَالَ الْبُوْصِيرِيُّ: هَذَا إِسْنَادٌ ضَعِيفٌ لِتَدْلِيسِ ابْنِ إِسْحَاقَ،

٢٥٤٨ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
عَبْدُ اللَّهِ بْنُ ثُمَيْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ
عَنْ مُحَمَّدٍ بْنِ طَلْحَةَ بْنِ رُكَانَةَ، عَنْ أُمِّهِ
عَائِشَةَ يَبْنَتْ مَسْعُودَ بْنِ الْأَسْوَدَ، عَنْ أَبِيهَا
قَالَ: لَمَّا سَرَقَتِ الْمَرْأَةُ تِلْكَ الْقُطْفِيَّةَ مِنْ بَيْتِ
رَسُولِ اللَّهِ ﷺ، أَعْظَمْنَا ذَلِكَ. وَكَانَتْ امْرَأَةً
مِنْ قُرَيْشٍ. فَجَئْنَا إِلَيْهِ النَّبِيِّ ﷺ نُكَلِّمُهُ.
وَقُلْنَا: تَعْنِنَنَّ نَقْدِيَّهَا بِأَرْبَعِينَ أُوْقِيَّةً. فَقَالَ
رَسُولُ اللَّهِ ﷺ: «تُظَاهِرْ خَيْرَ لَهَا» فَلَمَّا سَمِعْنَا
لَيْنَ قَوْلَ رَسُولِ اللَّهِ ﷺ، أَتَيْنَا أَسَامَةَ فَقَلْنَا:
كَلَمْ رَسُولِ اللَّهِ ﷺ. فَلَمَّا رَأَى رَسُولَ اللَّهِ
ﷺ ذَلِكَ، قَامَ حَاطِبًا فَقَالَ: «مَا إِكْتَارُكُمْ
عَلَيَّ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ عَزَّ وَجَلَّ وَقَعَ عَلَى
أَمَّةٍ مِنْ إِمَاءِ اللَّهِ؟ وَالَّذِي نَفْسُ مُحَمَّدٍ يَبْدِلُ لَهُ
كَانَتْ فَاطِمَةُ ابْنَةُ رَسُولِ اللَّهِ نَزَّلَتْ بِاللَّهِ
نَزَّلَتْ بِهِ، لَقْطَعَ مُحَمَّدٌ يَدَهَا».

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

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

Chapter 7. The Legal Punishment For Adultery

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

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

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

٢٥٤٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ وَ هَشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالُوا: حَدَّثَنَا سَفْيَانُ بْنُ عُسَيْنَةَ، عَنْ الرُّهْبَرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي هُرَيْرَةَ وَ زَيْدِ ابْنِ خَالِدٍ وَ شَبِيلٍ قَالُوا: كُنَّا عِنْدَ رَسُولِ اللَّهِ ﷺ فَقَاتَاهُ رَجُلٌ فَقَالَ: أَتَشْدِدُكَ اللَّهُ لَمَّا فَضَيَّتْ بَيْنَنَا بِكِتَابِ اللَّهِ فَقَالَ حَسْنَةُ، وَكَانَ أَفْعَةُ فِتْنَةٍ: أَفْضِيَّ بَيْنَنَا بِكِتَابِ اللَّهِ وَأَنْذَنْ لِي حَتَّى أَقُولَ. قَالَ: «قُلْ» قَالَ: إِنَّ أَبْنِي كَانَ عَسِيفًا عَلَى هَذَا. وَإِنَّهُ زَنَى بِأَمْرِ أَبِيهِ. فَاقْتُدِرْتُ مِنْهُ بِمِائَةِ شَاءَ وَخَادِمٍ. فَسَأَلْتُ رِجَالًا مِنْ أَهْلِ الْعِلْمِ فَأَخْبَرْتُ أَنَّ عَلَى أَبْنِي جَلْدٌ مِائَةٌ وَتَغْرِيبٌ عَامٌ. وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَالَّذِي نَفْسِي بِيَدِهِ لَا يَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ الْمِائَةُ الشَّاءُ وَالْخَادِمُ وَدُّ عَلَيْكَ. وَعَلَى ابْنِكَ جَلْدٌ مِائَةٌ وَتَغْرِيبٌ عَامٌ. وَاغْدِ يَا أَنْثِي عَلَى امْرَأَةِ هَذَا. فَإِنْ اعْرَفْتَ فَارْجُمْهَا». قَالَ هَشَامٌ: فَعَدَا عَلَيْهَا، فَاعْتَرَفَتْ، فَرَجَمْهَا.

تخریج: أخرجه البخاري، الحدود، باب الاعتراف بالزنا، ح: ٦٨٢٨، ٦٨٦٠ من حدیث ابن

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

Comments:

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

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

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

٢٥٥٠ - حَدَّثَنَا بَكْرُ بْنُ خَلَفٍ أَبُو يَشِّرٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ فَقَادَةَ، عَنْ يُونُسَ بْنِ جُعْنَيْرَ، عَنْ حَطَّانَ بْنِ عَبْدِ اللَّهِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «خُذُنُوا عَنِّي». فَنَذَرَ اللَّهُ لَهُنَّ سَيِّلًا. الْبِكْرُ بِالْبِكْرِ جَلْدٌ مِائَةٌ وَتَغْرِيبٌ سَيِّةٌ. وَالثَّيْبُ بِالثَّيْبِ جَلْدٌ مِائَةٌ وَالرَّجْمُ».

Comments:

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

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

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

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

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

تخریج: [حسن] أخرجه الترمذی، الحدود، باب ماجاء في الرجل يقع على جارية أمرأته، ١٤٥١ من حديث سعید بن أبي عروبة به، وتابعه أیوب بن مسکین عنده * فنادة لم يسمع من حبیب بن سالم، سمعه من خالد بن عرفة، وكتب إلیه حبیب، وتابعه أبو بشر عن خالد بن عرفة عن حبیب به . . . الخ، وخالد جھله أبوحاتم، والبزار، ووثقه ابن حبان، والحديث الآتی شاهد له.

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

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

٢٥١ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا
خَالِدُ بْنُ الْحَارِثِ: أَتَبَّانَا سَعِيدُ عَنْ قَتَادَةِ،
عَنْ حَيْبِ بْنِ سَالِمٍ، قَالَ: أُتَيَ النَّعْمَانُ بْنُ
بَشِيرٍ بِرَجْلِ عَشَى جَارِيَةً امْرَأَتِهِ، فَقَالَ: لَا
أُفْضِيُّ فِيهَا إِلَّا بِقَصَاءِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ
إِنْ كَانَتْ أَحْتَلَهَا لَهُ، جَلَّدَهُ مِائَةً، وَإِنْ لَمْ
تَكُنْ أَذَنَتْ لَهُ، رَجَمَهُ.

تخریج: [حسن] أخرجه الترمذی، الحدود
١٤٥١: من حديث سعید بن أبي عروبة به، وتر
ح حبیب بن سالم، سمعه من خالد بن عرفة، وكتب
عن حبیب به . . . الخ، وخالد جهله أبو رحات،
له.

- حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا ٢٥٥٢
 عَبْدُ السَّلَامَ بْنُ حَرْبٍ، عَنْ هِشَامِ بْنِ حَسَانٍ،
 عَنِ الْحَسَنِ، عَنْ سَلَمَةَ بْنِ الْمُحَبَّقِ أَنَّ رَسُولَ
 اللَّهِ ﷺ رُفِعَ إِلَيْهِ رَجُلٌ وَطَيْعَةً جَارِيَةً امْرَأَتِهِ،
 فَلَمْ يَحْدُدْهُ.

تخریج: [إسناد حسن] آخرجه النسائي في الكبرى: ٤/٢٩٧، ح ٧٢٣٠ من حدیث عبدالسلام به، وقال: لا تصح هذه الأحادیث (تحفة الاشراف: ٤/٥٢)، وأخرجه أبو داود، ح ٤٤٦١، من طريقین عن قادة عن الحسن به، وأخرج البیهقی: ٨/٤٠، بایسناد صحيح عن الحسن قال: حدثی قیصہ بن حریث الأنصاری عن سلمة بن المحقق به بالفظ: إن كان استکرھا فھی عتبۃ وعلیھ مثلها وإن كان أتاھ عن طبیة نفس منها ورضی فھی له وعلیھ مثل ثمنها لک (أی لزوجته) ولم یقم علیھ حدّا * قیصہ وثقة العجالی، وابن حبان، وقال الحافظ في التقریب صدوق انتھی، ولم یطعن أحد فی بحجه، فاللسند حسن.

Chapter 9. Stoning

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

(Sahîh)

تخریج: أخرجه البخاري، الحدود، باب الاعتراف بالزنا، ح: ٢٨٢٩ من حديث سفيان به، ومسلم، الحدود، باب رجم الشب في الزنا، ح: ١٦٩١ من حديث أبي بكر بن أبي شيبة به.

Comments:

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

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

(المعجم ٩) - بَابُ الرَّجْمِ (التحفة ٩)

٢٥٥٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سَعْيَانَ بْنَ عُيَيْنَةَ، عَنِ الرُّهْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ ابْنِ عَبَّاسٍ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَقَدْ خَشِبْتُ أَنْ يَطْلُوَ بِالْتَّسِ رَمَانٌ، حَتَّى يَقُولَ قَاتِلٌ: مَا أَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ، فَيَضْلُّوا بِتَرْوِيَةِ غَرِيقَةٍ مِنْ فَرَائِصِ اللَّهِ. أَلَا وَإِنَّ الرَّجْمَ حَقٌّ إِذَا أَخْصَنَ الرَّجُلَ وَقَامَتِ الْيَتِيمَةُ، أَوْ كَانَ حَمْلُ أَوْ اغْيَارَفُ. وَقَدْ قَرَأْنَا، الشَّيْخُ وَالشِّيخَةُ إِذَا زَيَّا فَارِجُوهُمَا الْبَتَّةَ، رَجَمَ رَسُولُ اللَّهِ ﷺ وَرَجَمْنَا بَعْدَهُ.

٢٥٥٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبَادُ بْنُ الْعَوَامِ عَنْ مُحَمَّدٍ بْنِ عَمْرِو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ مَا عَزَّ ابْنُ مَالِكٍ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي زَيَّتُ. فَأَغْرَضَ عَنْهُ. ثُمَّ قَالَ: إِنِّي قَدْ زَيَّتُ. فَأَغْرَضَ عَنْهُ. ثُمَّ قَالَ: إِنِّي زَيَّتُ. فَأَغْرَضَ عَنْهُ. ثُمَّ قَالَ: قَدْ زَيَّتُ. فَأَغْرَضَ عَنْهُ. حَتَّى

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

تخریج: [إسناده حسن] أخرجه الترمذی، الحدود، باب ماجاء في درء الحد، عن المعترف إذا رجع، ح ١٤٢٨ من حديث محمد بن عمرو به، وقال: هذا حديث حسن ، وصححه الحاکم على شرط مسلم: ٣٦٣ / ٤، وافقه الذہبی وهو في مصنف ابن أبي شيبة: ٧٧ / ١٠ عن عباد به باختلاف يسیر.

Comments:

- a. The crime of fornication is confirmed by confession.
- b. This incident proves the greatness of Mâ'iz bin Mâlik, since he accepted laying his life down only for the fear of Allâh.
- c. Legal punishments should be executed outside of the mosque premises. If some one confesses his crime of fornication and afterwards renounces his confession, he should not be punished. Imâm Tirmidhi has inferred this conclusion form this incident. (Jâmi' Tirmidhi 1428)

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

تخریج: [صحيح] أخرجه النسائي في الكبير: ٤/٢٨٤، ح ٧١٨٨ من حديث الأوزاعي به، وقال: لا نعلم أحداً تابع الأوزاعي على قوله: عن أبي المهاجر، وإنما هو أبو المهلب ، وحديث أبي المهلب أخرجه مسلم، ح ١٧٩٦ وغيره من طريق يحيى بن أبي كثير عن أبي قلابة عنه.

أَقْرَأَ أَرْبَعَ مَرَاتٍ. فَأَمَرَ بِهِ أَنْ يُرْجَمَ. فَلَمَّا
أَصَابَتْهُ الْحِجَارَةُ أَدْبَرَ يَشَدُّ. فَلَقَيْهُ رَجُلٌ يَكْدُو
لَحْيُ جَمَلٍ. فَضَرَبَهُ فَصَرَعَهُ. فَذُكِرَ لِلَّهِيَّ ﷺ
فِرَارُهُ حِينَ مَسَّهُ الْحِجَارَةُ. قَالَ: «فَهَلَا
تَرْكُمُوهُ».

٢٥٥٥ - حَدَّثَنَا أَعْبَاسُ بْنُ عُمَانَ الدَّمَشْقِيُّ : حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ : حَدَّثَنَا أَبُو عَمْرُو : حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ ، عَنْ أَبِي قَلَابَةَ ، عَنْ أَبِي الْمَهَاجِرِ ، عَنْ عَمَانَ بْنِ الْحُصَنِ أَنَّ امْرَأَةً أَتَتِ النَّبِيَّ ﷺ فَاعْتَرَفَتْ بِالرِّبَّا . فَأَمَرَرَ بِهَا فَشَكَّتْ عَلَيْهَا ثَيَابُهَا . ثُمَّ رَجَمَهَا . ثُمَّ صَلَّى عَلَيْهَا .

Comments:

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

Chapter 10. Stoning A Jewish Man And Jewish Woman

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

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

٢٥٥٦ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَنْ اللَّهِ بْنِ نُعَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ رَجَمَ يَهُودِيَّيْنِ. أَكَانَا فِيمَنْ رَجَمَهُمَا. فَلَقِدْ رَأَيْتُهُ وَلَهُ يَسْرُرُهَا مِنَ الْجِحَارَةِ.

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

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

٢٥٥٧ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا شَرِيكُ عَنْ سَمَاكِ بْنِ حَرْبٍ، عَنْ جَابِرِ بْنِ سُمْرَةَ أَنَّ النَّبِيَّ ﷺ رَجَمَ يَهُودِيَّاً وَيَهُودِيَّةَ.

تخریج: [صحيح] أخرجه الترمذی، المحدود، باب ماجاء في رجم أهل الكتاب، ح: ١٤٣٧ من حديث شريك به، وقال: حسن غريب * شريك القاضي عنون، وهو مدلس كما في كتب المدلسين، والحديث السابق شاهد له.

Comments:

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

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

٢٥٥٨ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مَرَّ النَّبِيُّ ﷺ بِيَهُودِيٍّ مُهَمَّ مَجْلُوذِيًّا فَدَعَاهُمْ فَقَالُوا: هَكَذَا تَحْلُونَ فِي كِتَابِكُمْ حَدَّ الرَّازِي؟ قَالُوا: نَعَمْ. فَدَعَاهُمْ رَجُلًا مِنْ عُلَمَائِهِمْ فَقَالَ: أَنْشُدُكَ بِاللَّهِ الَّذِي أَنْزَلَ التُّورَةَ عَلَى مُوسَى،

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

(Sahih)

أهكذا تحدّون حَدَّ الزَّانِي؟» قَالَ: لَا . وَلَوْلَا
أَنَّكَ شَدَّتْنِي لَمْ أُخْبِرْكَ . تَحِدُّ حَدَّ الزَّانِي ،
فِي كِتَابِنَا ، الرَّجْمَ . وَلَكِنَّهُ كَثُرَ فِي أَشْرَافِنَا
الرَّجْمُ . فَكَيْنًا إِذَا أَخْدَنَا الشَّرِيفَ تَرْكَنَا . وَكَيْنًا
إِذَا أَخْدَنَا الْضَّعِيفَ أَقْمَنَا عَلَيْهِ الْحَدَّ . فَقَلَّنَا :
تَعَالَوْا فَلَنَجْمَعَنَّ عَلَى شَيْءٍ تُقْسِمُ عَلَى
الشَّرِيفِ وَالْوَضِيعِ . فَاجْتَمَعْنَا عَلَى التَّحْجِيمِ
وَالْجَلْدِ ، مَكَانَ الرَّجْمِ . فَقَالَ النَّبِيُّ ﷺ :
«اللَّهُمَّ إِنِّي أَوَّلُ مَنْ أَحْبَبَ أَمْرَكَ ، إِذْ أَمَاتُوهُ» .
وَأَمْرَ بِهِ فَرِجَمَ .

تخریج: [صحيح] تقدم، ح: ٢٣٢٧ مختصرًا.

Comments:

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

Chapter 11. One Who Commits Immoral Actions Openly

2559. It was narrated from Ibn

(المعجم ١١) - بَابُ مَنْ أَظْهَرَ الفَاحِشَةَ

(التحفة ١١)

- حَدَّنَا الْعَبَاسُ بْنُ الْوَلِيدِ الْمَسْقِيُّ :

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

حدَّثَنَا زَيْدُ بْنُ يَحْيَى بْنُ عَبِيدٍ: حَدَّثَنَا الْيَثْرَى
ابْنُ سَعْدٍ عَنْ عَبِيدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ، عَنْ
أَبِي الْأَسْوَدِ، عَنْ عُرْوَةَ، عَنْ ابْنِ عَبَّاسٍ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَوْ كُنْتُ رَاجِحًا
أَحَدًا بِغَيْرِ بَيِّنَةٍ، لَرَجَمْتُ فُلَانَةً. فَقَدْ ظَهَرَ
مِنْهَا الرِّبَيْةُ فِي مَنْطِقَتِهَا وَهَبَّتِهَا وَمَنْ يَدْخُلُ
عَلَيْهَا».

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

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

٢٥٦٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ خَلَادٍ الْبَاهْلِيُّ:
حَدَّثَنَا سُفْيَانُ عَنْ أَبِي الرَّبَّادِ، عَنْ القَاسِمِ بْنِ
مُحَمَّدٍ قَالَ: ذَكَرَ ابْنُ عَبَّاسٍ الْمُتَلَاعِنِينَ.
فَقَالَ لَهُ ابْنُ شَدَّادٍ: هِيَ الَّتِي قَالَ لَهَا رَسُولُ
اللَّهِ ﷺ: «لَوْ كُنْتُ رَاجِحًا أَحَدًا بِغَيْرِ بَيِّنَةٍ
لَرَجَمْتُهُ؟» فَقَالَ ابْنُ عَبَّاسٍ: تِلْكَ امْرَأَةٌ
أَغْلَقْتُ.

تخریج: أخرجه البخاري، المحدود، باب من أظهر الفاحشة واللطخ والتهمة بغير بينة، ح: ٦٨٥٥، ومسلم، اللعان، ح: ١٤٩٧ من حديث سفيان بن عيينة به.

Comments:

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

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

[2] Meaning her blatant misconduct.

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

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

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

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

(المعجم ١٢) - باب من عمل عمل قوم
لوط (التحفة ١٢)

٢٥٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ وَأَبُو بَكْرٍ
ابْنُ خَلَادٍ قَالَ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ
عَنْ عَمْرِو بْنِ أَبِي عَمْرِو، عَنْ عِكْرَمَةَ، عَنْ
ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ
وَجَدَ نَسَوَةً يَعْمَلُ عَمَلَ قَوْمٍ لُوطٍ، فَاقْتُلُوا
الْفَاعِلَ وَالْمَمْعُولَ بِهِ».

٢٥٦٢ - حَدَّثَنَا يُونُسُ بْنُ عَبْدِ الْأَعْلَى:
أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ تَافِي: أَخْبَرَنِي عَاصِمُ بْنُ
عُمَرَ عَنْ سُهْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ،
عَنِ النَّبِيِّ ﷺ فِي الَّذِي يَعْمَلُ عَمَلَ قَوْمٍ
لُوطٍ. قَالَ: «ارْجُمُوهُمَا الْأَغْلَى وَالْأَشَفَّ.
ارْجُمُوهُمَا جَمِيعًا».

تخریج: [حسن] أخرجه الترمذى، الحدود، باب ماجاء في حد اللوطى، ح ١٤٥٦ من حديث عاصم به معلنا من غير سند، وقال: عاصم يضعف في الحديث من قبل حفظه ، والحديث السابق شاهد له.

Comments:

- Sodomy is one of the most immoral actions and a mortal sin. Its punishment is more severe than the punishment of illegal sexual intercourse.
- Mostly people call male to male sexual action *Liwât*, in Arabic, which is totally wrong, because this word is derived from the name of a pious Prophet Lut, he used to warn his people from this mortal sin. He forbade and threatened his people with severe punishment but his people refused to listen to him.

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

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

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

٢٥٦٣ - حَدَّثَنَا أَبْهُرُ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ: [حَدَّثَنَا] الْفَاسِمُ بْنُ عَبْدِ الْوَاحِدِ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ عَقِيلٍ، عَنْ جَابِرٍ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَخْوَفَ مَا أَخْفَى عَلَى أُمَّتِي، عَمِلُ قَوْمٍ لُوطِ». .

نَفْرِيْج: [إِسْنَادٌ ضَعِيفٌ] أَخْرَجَهُ الْهَمِيمُ بْنُ خَلْفِ الدُّورِي فِي ذِمَّةِ الْلَّوَاطِ (٥٥) مِنْ حَدِيثِ عَبْدِ الْوَارِثِ بِهِ، وَتَابِعِهِ هَمَامُ بْنُ يَحْيَى عِنْدَ التَّرمِذِيِّ، ح: ١٤٥٧ وَغَيْرِهِ، وَحَسَنَهُ التَّرمِذِيُّ، وَصَحَّحَهُ الْحَاكِمُ (٤/٣٥٧)، وَالذَّهَبِيُّ * الْفَاسِمُ بْنُ عَبْدِ الْوَاحِدِ رَوَى عَنْهُ جَمَاعَةً، وَوَثَقَهُ ابْنُ حَبَّانُ، وَالْحَاكِمُ وَغَيْرُهُمَا، فَحَدِيثُهُ لَا يَنْزَلُ عَنْ دَرْجَةِ الْحَسْنِ، وَابْنُ عَقِيلٍ ضَعِيفٌ تَقْدِيمٌ، ح: ٣٩٠. .

Comments:

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

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

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

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

٢٥٦٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمْشَقِيُّ: حَدَّثَنَا ابْنُ أَبِي قُلَيْبٍ عَنْ إِبْرَاهِيمَ ابْنِ إِسْمَاعِيلَ، عَنْ دَاؤِدِ بْنِ الْحَصَّينِ، عَنْ عَكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَقَعَ عَلَى ذَاتِ مَحْرَمٍ فَاقْتُلُوهُ. وَمَنْ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ، وَأَقْتُلُوا الْبَهِيمَةَ».

نَفْرِيْج: [صَحِّحٌ] أَخْرَجَهُ التَّرمِذِيُّ، الْحَدَّوْدُ، بَابُ مَاجَاءِ فِيمَنْ يَقُولُ لِلآخرِ يَامْخَنْتُ، ح: ١٤٦٢ مِنْ حَدِيثِ ابْنِ أَبِي قُلَيْبٍ بِعِصْمِهِ، وَقَالَ: إِبْرَاهِيمَ بْنُ إِسْمَاعِيلَ يَضَعُفُ فِي الْحَدِيثِ وَانْظُرْ، ح: ١٠٣٢، ٢٥٦١، ٢٥٦٢ يَغْنِيَانُهُ وَفِي الْوَقْعَ عَلَى ذَاتِ رَحْمٍ شَاهِدٌ يَأْتِي، ح: ٢٦٠٧. .

Comments:

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

Chapter 14. Carrying Out Legal Punishment On Slave Women

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

نَبْرِيْج: أخرجه البخاري، العنق، باب كراهة التطاول على الرقيق، وقوله: عبدي أو أمتي، ح: ٢٥٥٥ من حديث ابن عبيدة مختصرًا، ومسلم، المحدود، باب رجم اليهود، أهل الذمة في الزنى، ح: ١٧٠٤ من حديث الزهري به، وقول ابن عبيدة: وشيل ، وهم كما حققه النسائي وغيره، راجع التهذيب وغيرها.

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

(المعجم ١٤) - باب إقامة المُحْدُود على الإمام (التحفة ١٤)

٢٥٦٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَيَةَ عَنِ الزُّهْرِيِّ، عَنْ عَيْبِدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي هُرَيْرَةَ، وَرَيْدَ بْنِ حَالِدٍ، وَشِيلٍ قَالُوا: كُنَّا عِنْدَ النَّبِيِّ ﷺ فَسَأَلَهُ رَجُلٌ عَنِ الْأُمَّةِ تَرَنِي قَبْلَ أَنْ تُحْصِنَ: فَقَالَ: «الْجِلْدُهُمَا. إِنْ زَتَثْ فَاجْلِدُهُمَا». ثُمَّ قَالَ: فِي التَّالِيَةِ أُوْ فِي الرَّابِعَةِ: «فَبِعْهَا وَلَوْ يَحْبِلُ مِنْ شَعَرِ».

الْمُحْدُود: أخرجه البخاري، العنق، باب كراهة التطاول على الرقيق، وقوله: عبدي أو أمتي، ح: ٢٥٥٥ من حديث ابن عبيدة مختصرًا، ومسلم، المحدود، باب رجم اليهود، أهل الذمة في الزنى، ح: ١٧٠٤ من حديث الزهري به، وقول ابن عبيدة: وشيل ، وهم كما حققه النسائي وغيره، راجع التهذيب وغيرها.

٢٥٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمَيْحٍ، قَالَ: أَبَيَا النَّبِيِّ أَبْنَى بْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَيْبٍ، عَنْ عَمَّارِ بْنِ أَبِي فَرْوَةَ أَنَّ مُحَمَّدَ بْنَ مُسْلِمٍ حَدَّثَهُ أَنَّ عُرْوَةَ حَدَّثَهُ أَنَّ عَمْرَةَ بْنَ عَبْدِ الرَّحْمَنِ حَدَّثَهُ أَنَّ عَائِشَةَ حَدَّثَهَا أَنَّ رَسُولَ

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

And *Dafir* means: rope.

الله ﷺ قال: «إِذَا زَنَتِ الْأُمَّةُ فَاجْلِدُوهَا». فَإِنْ زَنَتْ فَاجْلِدُوهَا. فَإِنْ زَنَتْ فَاجْلِدُوهَا. فَإِنْ زَنَتْ فَاجْلِدُوهَا. ثُمَّ بِسْعُوهَا وَلَوْ بِضَيْفِيرٍ».
والضَّيْفِيرُ الْحَبْلُ.

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

Comments:

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

Chapter 15. The Legal Punishment For Slander

(المعجم ١٥) - بَابُ حَدُّ الْفَدْحِ

(التحفة ١٥)

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

٢٥٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ عَمَّرَةَ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا نَزَّلَ عُذْرِي، قَامَ رَسُولُ الله ﷺ عَلَى الْمِنْبَرِ فَذَكَرَ ذَلِكَ وَتَلَأَ الْقُرْآنَ. فَلَمَّا نَزَّلَ أَمْرَ بِرَجُلَيْنِ وَأَمْرَأَةٍ فَضَرِبُوا حَدَّهُمْ.

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

Comments:

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

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

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

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

٢٥٦٨ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا أَبْنُ أَبِي فُدَيْكَ: حَدَّثَنِي أَبْنُ أَبِي حَيْيَةَ، عَنْ دَاؤَدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرَمَةَ، عَنْ أَبْنِ عَبَاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا قَالَ الرَّجُلُ لِلرَّجُلِ: يَا مُخَنَّثَ فَاجْلِدُوهُ عِشْرِينَ. وَإِذَا قَالَ الرَّجُلُ لِلرَّجُلِ: يَا لُوطِيَّ فَاجْلِدُوهُ عِشْرِينَ».

تخریج: [إسناده ضعیف] آخرجه الترمذی، الحدود، باب ماجاء فیمن يقول للآخر يامختى، ح: ١٤٦٢ من حدیث ابن أبي فدیک به مختصراً، انظر، ح: ٢٥٦٤ لعلته.

Comments:

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

Chapter 16. The Legal Punishment For Drunkenness

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

(المجمع ١٦) - باب حَدُّ السَّكْرَانِ

(التحفة ١٦)

٢٥٦٩ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا شَرِيكٌ عَنْ أَبِي حُصَيْنٍ، عَنْ عُمَيْرٍ بْنِ سَعِيدٍ؛ ح: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَةَ: حَدَّثَنَا مُطَرْفٌ، سِعْدُتُهُ، عَنْ عُمَيْرٍ بْنِ سَعِيدٍ قَالَ: قَالَ عَلَيْهِ

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

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

ابن أبي طالب: مَا كُنْتُ أَدِي مِنْ أَفْمَتْ عَائِنَةَ
الْحَدَّ. إِلَّا شَارِبُ الْخَمْرِ. فَإِنَّ رَسُولَ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ لَمْ يَسْعَ فِيهِ شَيْئًا. إِنَّمَا هُوَ شَيْءٌ جَعَلْنَا
نَحْنُ.

تغريب: أخرجه البخاري، الحدود، باب الضرب بالجريد والتعال، ح: ٦٧٧٨، ومسلم،
الحدود، باب حد الخمر، ح: ١٧٠٧ من حديث أبي حفص بن.

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

٢٥٧٠ - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْضُومِيُّ:
حَدَّثَنَا يَكِيدُ بْنُ زُرْبَعَ: حَدَّثَنَا سَعِيدُ. ح
وَحَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ
هَشَامِ الدَّسْتَوَائِيِّ، جَيْبِعًا عَنْ قَاتَدَةَ، عَنْ
أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ رَسُولُ اللَّهِ صَلَّى
يَضْرِبُ فِي الْخَمْرِ بِالنَّعَالِ وَالْجَرِيدِ.

تغريب: أخرجه البخاري، الحدود، باب ضرب شارب الخمر، ح: ٦٧٧٦، ٦٧٧٣، ومسلم، الحدود، الباب السابق، ح: ١٧٠٦ من حديث هشام الدستاوي به بالفاظ متقاربة المعنى.

Comments:

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

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

٢٥٧١ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
ابن عُلَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَزْوَيَّةَ، عَنْ عَبْدِ
اللهِ بْنِ الدَّانَاجَ، سَمِعْتُ حُسَيْنَ بْنَ الْمُتَنَبِّرِ

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

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

الرَّفَاسِيُّ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ ابْنُ أَبِي الشَّوَّابِ: حَدَّثَنَا عَبْدُ الْعَزِيزَ بْنُ الْمُخْتَارِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ فَيْرُوزَ الدَّانَاجُ، قَالَ: لَمَّا جَاءَ بِالْوَلِيدِ بْنِ عُقْبَةَ إِلَى عُثْمَانَ، قَدْ شَهَدُوا عَلَيْهِ، قَالَ لِعَلِيٍّ: دُونَكَ ابْنَ عَمْكَ، فَأَقْرَمَ عَلَيْهِ الْحَدَّ. فَجَلَّدَهُ عَلِيٌّ. وَقَالَ: جَلَّدَ رَسُولُ اللَّهِ ﷺ أَرْبَعَنَّ. وَجَلَّدَ أَبُو بَكْرٍ أَرْبَعَنَّ. وَجَلَّدَ عَمَرَ ثَمَانِينَ. وَكُلُّ شَهَةٍ.

تخریج: أخرجه مسلم، الحدود، باب حد الخمر، ح: ١٧٠٧ من حديث ابن علیہ به، ومن حديث عبد العزیز بن المختار به.

Comments:

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

Chapter 17. One Who Drinks Wine Repeatedly

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

تخریج: [إسناده صحيح] أخرجه النسائي، الأشتری، ذکر الروایات المغناطیسات فی شرب الخمر، ح: ٥٦٦٥ من حديث شباتة، وأخرجه أبو داود، ح: ٤٤٨٤؛ وصححه ابن الجارود، ح: ١٥١٧، والحاکم: ٣٧١/٤ على شرط مسلم، ووافقه الذهبي برمزه: خ م!

(المعجم ١٧) - بَابُ مَنْ شَرِبَ الْخَمْرَ
مِرَارًا (التحفة ١٧)

٢٥٧٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَبَابَةُ عَنْ أَبِنِ أَبِي دَفْعٍ، عَنْ الْحَارِثِ، عَنْ أَبِي سَلْمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِذَا سَكَرَ فَاجْلِدُوهُ. فَإِنْ عَادَ فَاجْلِدُوهُ. فَإِنْ عَادَ فَاجْلِدُوهُ ثُمَّ قَالَ فِي الرَّابِعَةِ: فَإِنْ عَادَ فَاضْرِبُوهُ عَنْهُ.

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

٢٥٧٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شَعِيبٌ بْنُ إِسْحَاقَ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرْوَةَ عَنْ عَاصِمٍ بْنِ بَهْلَةَ، عَنْ ذَكْرَانَ أَبِي صَالِحٍ، عَنْ مَعَاوِيَةَ بْنِ أَبِي سُقْيَانَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا شَرِبُوا الْخَمْرَ فَاجْلِدُوهُمْ». ثُمَّ إِذَا شَرِبُوا فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاجْلِدُوهُمْ. ثُمَّ إِذَا شَرِبُوا فَاقْتُلُوهُمْ».

Tarikh: [إسناده حسن] آخرجه أبو داود، الحدود، باب: إذا تابع في شرب الخمر، ح ٤٤٨٢: من حديث عاصم به، وصححه ابن حبان (موارد)، خ ١٥١٩، والذهبي في تلخيص المستدرك: ٣٧٢ / ٤.

Comments:

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

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

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

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

٢٥٧٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَعْقُوبَ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشْجَحِ، عَنْ أَبِي أُمَّامَةَ بْنِ سَهْلٍ [بْنِ حُيَيْفَةَ], عَنْ سَعِيدِ بْنِ سَعِيدِ بْنِ عُبَادَةَ قَالَ: كَانَ بَنْ أَبِي تَنَاهِ رَجُلٌ مُّخْدِجٌ ضَعِيفٌ. فَلَمْ يُرِعِ إِلَّا وَهُوَ عَلَى أَمَّةٍ مِّنْ إِمَاءِ الدَّارِ يَجْبُثُ بِهَا. فَرَفَعَ شَانِهَ سَعِيدُ

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

Another chain with similar wording.

ابن عبادة إلى رسول الله ﷺ. فقال: «اجلدوه ضرب مائة سوط» قالوا: يا نبي الله هؤلاء أضعف من ذلك. لو ضربناه مائة سوط مات. قال: «فحذوا له [عكالاً] فيه مائة شمران، فاضربوه ضربة واحدة».

حدثنا شفيان بن وكيع: حدثنا المخاربى، عن محمد بن إسحاق، عن يعقوب بن عبد الله، عن أبي أمامة بن سهل، عن سعيد بن عبادة، عن النبي ﷺ، نحوه.

تخریج: [صحیح] آخرجه ابن أبي عاصم في الأحاديث الثاني: ٧، ح: ٢٠٤٤ عن أبي بكر ابن أبي شيبة به، آخرجه أحمد: ٥/٢٢٢ من طريق آخر عن ابن إسحاق به، وضعيه البصيري من أجل عنترة ابن إسحاق، وله شاهد صحيح عند أبي داود، ح: ٤٤٧٢، وصححه ابن الجارود، ح: ٨١٧.

Comments:

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

Chapter 19. One Who Brandishes His Weapon

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

(المعجم ١٩) - باب من شهر السلاح
(التحفة ١٩)

٤٥٧٥ - حدثنا يعقوب بن حميد بن كاسيب: حدثنا عبد العزير بن أبي حازم، عن سهيل [بن أبي صالح،] عن أبيه، عن أبي هريرة قال: وحدثنا المغيرة بن عبد الرحمن، عن ابن عجلان، عن أبيه، عن أبي هريرة، قال، وحدثنا أنس بن عياض،

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

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

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

٢٥٧٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرٍ بْنُ الْبَرَادِ
ابْنُ يُوسُفَ بْنِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى
الْأَشْعَرِيِّ، قَالَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ عَيْدِ
اللَّهِ، عَنْ تَافِعِ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ
فَلَيْسَ مَنًا».

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

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

٢٥٧٧ - حَدَّثَنَا مَحْمُودُ بْنُ عَيْلَانَ وَ أَبُو
كُرَيْبٍ وَ يُوسُفُ بْنُ مُوسَى وَ عَبْدُ اللَّهِ بْنُ
الْبَرَادَ قَالُوا: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ بُرَيْدَةَ، عَنْ
أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ شَهَرَ عَلَيْنَا السَّلَاحَ
فَلَيْسَ مَنًا».

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

Comments:

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

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

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

تخریج: [صحيح] أخرجه النسائي: ٩٥، ٩٦، حرم الدم، ذكر اختلاف الناقلین لخبر حميد عن أنس بن مالك فيه، ح: ٤٠٣٦ من طرق عن حميد به، وأخرجه مسلم، ح: ١٦٧١ من طريق آخر عن عبد العزيز بن صهيب وحميد عن أنس به، ويه صح الحديث.

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

(المعجم ٢٠) - بابٌ مِنْ حَارَبَ وَسَعَ في الْأَرْضِ فَسَادًا (الصفة ٢٠)

٢٥٧٨ - حَدَّثَنَا نَفْرُ بْنُ عَلَيِّ الْجَهْضُوْيِّ: حَدَّثَنَا عَبْدُ الْوَهَابِ: حَدَّثَنَا حُمَيْدٌ عَنْ أَنَسِ ابْنِ مَالِكٍ أَنَّ أَنَاسًا مِنْ عَرَبَةَ قَدِمُوا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَاجْتَوُا الْمَدِينَةَ. فَقَالَ: «لَوْ خَرَجْتُمْ إِلَى دُودِ لَنَا، فَشَرِّبْتُمْ مِنْ أَلْبَانِهَا وَأَبْوَالِهَا» فَفَعَلُوا. فَأَرْتَدُوا عَنِ الإِسْلَامِ. وَقَتَلُوا رَاعِيَ رَسُولِ اللَّهِ ﷺ. وَاسْتَأْفُوا دُودَهُ. فَعَثَ رَسُولُ اللَّهِ ﷺ فِي طَلَبِهِمْ. فَجَيَءُوهُمْ فَقَطَعَ أَيْدِيهِمْ وَأَرْجُلَهُمْ وَسَمَّرَ أَعْيُنَهُمْ وَتَرَكَهُمْ بِالْحَرَّةِ حَتَّى مَاتُوا.

٢٥٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ وَمُحَمَّدُ بْنُ الْمُشَّى قَالَا: حَدَّثَنَا إِبْرَاهِيمُ بْنُ أَبِي الْوَزِيرِ: حَدَّثَنَا الدَّرَأْوَدِيُّ، عَنْ هَشَّامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ قَوْمًا أَغَارُوا عَلَى لَقَاحِ رَسُولِ اللَّهِ ﷺ. فَقَطَعَ الشَّيْءَ ﷺ أَيْدِيهِمْ وَأَرْجُلَهُمْ وَسَمَّلَ أَعْيُنَهُمْ.

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

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

Comments:

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

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

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

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

٢٥٨٠ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
سُقِيَانُ عَنِ الزُّهْرِيِّ، عَنْ طَلْحَةَ بْنِ عَبْدِ اللهِ
بْنِ عَوْفٍ، عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرُو بْنِ
ثَمَيْنٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ قُتِلَ دُونَ مَالِهِ
فَهُوَ شَهِيدٌ».

تخریج: [إسناده صحيح] أخرجه النسائي: ١١٥، تحريم الدم، من قتل دون ماله، ح: ٤٠٩٥ من طريق سفيان ابن عيينة به، وأخرجه أبو داود، ح: ٤٧٧٢ من طريق آخر عن طلحة بن عوف، وإسناده صحيح، وصححه الترمذى، ح: ١٤١٨، وللحديث طرق أخرى عند البخارى، ح: ٢٤٥٢، ٢٤٨٠ وغيره، راجع مسند الحمدى، ح: ٨٣ بتحقيقى.

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

٢٥٨١ - حَدَّثَنَا الْخَلِيلُ بْنُ عُمَرْ: حَدَّثَنَا
مُرْوَانُ بْنُ مَعَاوِيَةَ: حَدَّثَنَا يَزِيدُ بْنُ سَيَّانَ
الْجَزَرِيُّ عَنْ مَيْمُونَ بْنِ مَهْرَانَ، عَنْ ابْنِ عُمَرَ
قَالَ: قَاتَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُتِيَ عِنْدَ
مَالِهِ، فَقُتِلَ فَقَاتَلَ قُتُلَ، فَهُوَ شَهِيدٌ».

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

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

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

تخریج: [إسناد حسن] أخرجه أحمد: ٣٢٤ عن أبي عامر به، وحسنه البوصيري.

Comments:

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

Chapter 22. The Legal Punishment For The Thief

(المعجم (٢٢) - بَابُ حَدَّ السَّارِقِ

(التحفة (٢٢)

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

٤٥٨٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَعْنَ اللَّهِ السَّارِقَ، يَسْرُقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ، وَيَسْرُقُ الْحَجْلَ فَتُقْطَعُ يَدُهُ».

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

Comments:

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

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

٢٥٨٤ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلَيْهِ بْنُ مُسْهِرٍ، عَنْ عَبْدِ اللَّهِ، عَنْ نَافِعَ، عَنْ أَبْنِ عُمَرَ قَالَ: قَطَعَ النَّبِيُّ ﷺ فِي مِجْنَ قِيمَتُهُ ثَلَاثَةِ دَرَاهِمَ.

تخریج: أخرجه مسلم، الحدود، الباب السابق، ح: ١٦٨٦ عن ابن أبي شيبة به، وأخرجه البخاري، الحدود، باب قول الله تعالى: «والسارق والسارقة فاقطعوا أيديهما» وفي كم يقطع؟، وفي كم يقطع؟، ومسلم وغيرهما من حديث مالك عن نافع به. ح: ٣٧٩٥

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

٢٥٨٥ - حَدَّثَنَا أَبُو مَرْوَانَ الْعُشَيْبَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ أَبْنِ شَهَابٍ أَنَّ عَمْرَةَ أَخْبَرَهُ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُقْطِعُ الْيَدَ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا».

تخریج: أخرجه البخاري، الحدود، باب قول الله تعالى: والسارق والسارقة فاقطعوا أيديهما وفي كم يقطع؟، ح: ٣٧٨٩، ومسلم، الحدود، باب حد السرقة ونصابها، ح: ١٦٨٤ من حديث إبراهيم بن سعد به.

Comments:

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

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

٢٥٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَارٍ: حَدَّثَنَا أَبُو هَشَامَ الْمَخْزُومِيُّ: حَدَّثَنَا وُهَيْبٌ: حَدَّثَنَا أَبُو وَاقِدٍ عَنْ عَامِرٍ بْنِ سَعْدٍ، عَنْ أَبِيهِ عَنْ النَّبِيِّ ﷺ قَالَ: «تُقْطِعُ يَدُ السَّارِقِ فِي ثَمَنِ الْمِجْنَ».

تخریج: [حسن] أخرجه أَحْمَدُ 169 / 1 من حديث وَهِيبٍ بْنِ خَالِدٍ بْنِ هَبْرَةَ الْبُوْصِيرِيِّ: هذا إسناد فيه أبو وَاقِد واسمه صالح بن زائدة الليثي وهو ضعيف ، وأورده الضياء في المختارة لشاهد في الصحيح من حديث عائشة، وأخرج النسائي: ح ٤٩٤٦، ح ٨٠ / ٨ ياسناد حسن عن عائشة مرفوعاً بلفظ: يقطع يد السارق في ثمن المجن، وثمن المجن ربع دينار .

Chapter 23. Hanging The Hand From The Neck

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

(المعجم ٢٣) - بَابُ تَعْلِيقِ الْيَدِ فِي الْعُنْقِ (التحفة ٢٣)

٢٥٨٧ - حَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْبَةَ، وَأَبُو يَسِيرٍ بْنُ أَبِي حَافَّةَ، وَمُحَمَّدُ بْنُ بَشَّارٍ، وَأَبُو سَلَمَةَ الْجُوبَارِيُّ يَحْسِنُ بْنُ حَافَّةَ قَالُوا: حَدَّثَنَا عُمَرُ بْنُ عَلَيٍّ بْنُ عَطَاءَ بْنِ مُقَدَّمٍ عَنْ حَاجَاجَ، عَنْ مَكْحُولٍ، عَنْ ابْنِ مُحَمَّدٍ يَزِيدٍ قَالَ: سَأَلْتُ فَضَالَةَ بْنَ عَيْدٍ عَنْ تَعْلِيقِ الْيَدِ فِي الْعُنْقِ؟ فَقَالَ: السُّنْنَةُ، قَطَعَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَدَ رَجُلٍ ثُمَّ عَلَّقَهَا فِي عُنْقِهِ.

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

Comments:

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

Chapter 24. A Thief Who Confesses

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

(المعجم ٢٤) - بَابُ السَّارِقِ يَعْتَرِفُ (التحفة ٢٤)

٢٥٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْسِنَ: حَدَّثَنَا أَبْنُ أَبِي مَرِيمَ: أَبْنَانَا أَبْنُ لَهِبَةَ، عَنْ يَزِيدَ بْنِ أَبِي حَيْبَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ نَعْلَمَةَ الْأَنْصَارِيِّ، عَنْ أَبِيهِ أَنَّ عَمْرَوْ بْنَ سَمَرَةَ بْنَ حَيْبَ بْنِ عَبْدِ شَمْسٍ جَاءَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي سَرَقْتُ جَمِلاً لَّيْتَ

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

تَحْرِيْج: [إِسْنَادٌ ضَعِيفٌ] وَقَالَ الْبُوْصِيرِيُّ: هَذَا إِسْنَادٌ ضَعِيفٌ لِضَعْفِ عَبْدِ اللَّهِ بْنِ لَهْيَةِ، وَانْظُرْ، ح: ٢٣٠ * وَعَبْدُ الرَّحْمَنِ بْنِ ثَلْبَةِ مَجْهُولٍ كَمَا فِي التَّقْرِيبِ.

Chapter 25. A Slave Who Steals

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

تَحْرِيْج: [إِسْنَادٌ حَسْنٌ] أَخْرَجَهُ أَبُو دَاودُ، الْحَدُودُ، بَابُ بَيعِ الْمَمْلُوكِ إِذَا سَرَقَ، ح: ٤٤١٢؛ من حديث أبي عوانة به، وقال النسائي، ح: ٤٩٨٣؛ عمر بن أبي سلمة ليس بالقوى في الحديث قلت: هو حسن الحديث كما حققه في نيل المقصود.

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

تَحْرِيْج: [إِسْنَادٌ ضَعِيفٌ جَدًّا] أَخْرَجَهُ الْبَيْهِقِيُّ: ٢٨٢/٨ من طريق أبي يعلى ثنا جباره به، جباره تقدم، ح: ٧٤٠، وحجاج تقدم، ح: ١٣١٥ ضعيفان، والأول أضعف من الثاني.

فَلَانِ. فَطَهَرَنِي. فَأَرْسَلَ إِلَيْهِمُ النَّبِيُّ ﷺ
فَقَالُوا: إِنَّا أَفْعَدْنَا جَمِيلًا لَنَا. فَأَمَرَ بِهِ النَّبِيُّ ﷺ فَقُطِعَتْ يَدُهُ.

قَالَ تَعَلَّبَةُ: أَكَانَ أَنْظَرُ إِلَيْهِ حَيْثُ وَقَعَتْ يَدُهُ
وَهُوَ يَشْوُلُ: الْحَمْدُ لِلَّهِ الَّذِي طَهَرَ لِي مِنْكُ.
أَرَدْتُ أَنْ تُدْخِلَنِي جَسَدِي الْأَنَارَ.

تَحْرِيْج: [إِسْنَادٌ ضَعِيفٌ] وَقَالَ الْبُوْصِيرِيُّ: هَذَا إِسْنَادٌ ضَعِيفٌ لِضَعْفِ عَبْدِ اللَّهِ بْنِ لَهْيَةِ، وَانْظُرْ، ح: ٢٣٠ * وَعَبْدُ الرَّحْمَنِ بْنِ ثَلْبَةِ مَجْهُولٍ كَمَا فِي التَّقْرِيبِ.

(المعجم ٢٥) - بَابُ الْعَبْدِ يَسْرِقُ (التحفة ٢٥)

٢٥٨٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْمَةَ: حَدَّثَنَا
أَبُو أَسَامَةَ عَنْ أَبِي عَوَانَةَ، عَنْ عُمَرَ بْنِ أَبِي
سَلَمَةَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: إِذَا سَرَقَ الْعَبْدُ فَيُعَوَّدُ وَلَوْ
يَبْشِّرُ.

تَحْرِيْج: [إِسْنَادٌ حَسْنٌ] أَخْرَجَهُ أَبُو دَاودُ، الْحَدُودُ، بَابُ بَيعِ الْمَمْلُوكِ إِذَا سَرَقَ، ح: ٤٤١٢؛ من حديث أبي عوانة به، وقال النسائي، ح: ٤٩٨٣؛ عمر بن أبي سلمة ليس بالقوى في الحديث قلت: هو حسن الحديث كما حققه في نيل المقصود.

٢٥٩٠ - حَدَّثَنَا جُبَارَةُ بْنُ الْمُغَلْسِ: حَدَّثَنَا
حَجَّاجُ بْنُ تَبَّىْمَعْ عَنْ مَيْمُونَ بْنِ مُهْرَانَ، عَنْ
ابْنِ عَبَاسٍ أَنَّ عَبْدًا مِنْ رَقِيقِ الْخُمُسِ سَرَقَ
مِنَ الْخُمُسِ، فَرُفِعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ، فَلَمْ
يُعْطَهُ وَقَالَ: «مَالُ اللَّهِ عَزَّ وَجَلَّ، سَرَقَ
بَعْضُهُ بَعْضًا».

تَحْرِيْج: [إِسْنَادٌ ضَعِيفٌ جَدًّا] أَخْرَجَهُ الْبَيْهِقِيُّ: ٢٨٢/٨ من طريق أبي يعلى ثنا جباره به، جباره تقدم، ح: ٧٤٠، وحجاج تقدم، ح: ١٣١٥ ضعيفان، والأول أضعف من الثاني.

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

Chapter 26. Those Who Betray Trusts, Robbers and Pilferers

(المعجم ٢٦) - بابُ الْخَائِنِ وَالْمُتَهِبِ
وَالْمُخْتَلِسِ (التحفة ٢٦)

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

تخریج: [صحيح] أخرجه أبو داود، الحدود، باب القطع في الخمسة والخيانة، ح: ٤٣٩٣.٤٣٩١ من حديث ابن جریح به، وصرح بالسماع عند الدارمي: ٢/١٧٥ وغیره، وصححه الترمذی، ح: ١٤٤٨، وابن حبان(موارد)، ح: ١٥٠٤.١٥٠٢ وغيرهما ورواه عمرو بن دینار عن جابر به عند ابن حبان وغیره، وأعلمه أبو داود وغیره بعلة غير قادحة.

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

٢٥٩١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَسَارٍ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ ابْنِ جُرَيْحٍ، عَنْ أَبِي الرَّبِيعِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَا يُقطَعُ الْخَائِنُ وَلَا الْمُتَهِبُ وَلَا الْمُخْتَلِسُ».

٢٥٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ عَاصِمٍ بْنُ جَعْفَرِ الْمِصْرِيِّ: حَدَّثَنَا الْمُفَضَّلُ بْنُ فَضَّالَةَ، عَنْ يُونُسَ بْنِ يَزِيدَ، عَنْ أَبْنِ شِهَابٍ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «لَيْسَ عَلَى الْمُخْتَلِسِ قَطْعٌ».

تخریج: [صحيح] أخرجه المزی في تهذیب الكمال(ق: ١٢١٥ / ٣) من حديث محمد بن عاصم به، وصححه الحافظ في التلخیص: ٤/٦٦، ح: ١٧٧٥، والبصیری، وفیه عن عنة الزھری تقدم، ح: ٧٠٧، والحديث السابق شاهد له.

Comments:

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

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

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

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

(المعجم ٢٧) - بَابٌ : لَا يُقْطَعُ فِي ثَمِيرٍ
وَلَا كَثِيرٍ (التحفة ٢٧)

٢٥٩٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ : حَدَّثَنَا وَكِيعٌ
عَنْ سُفْيَانَ، عَنْ يَحْيَى بْنِ سَعْدٍ، عَنْ
مُحَمَّدٍ بْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ عَمِّهِ وَ اسْبَعِ
ابْنِ حَبَّانَ، عَنْ رَافِعِ بْنِ خَبَّابٍ قَالَ : قَالَ
رَسُولُ اللَّهِ ﷺ : لَا قَطْعَ فِي ثَمِيرٍ وَلَا كَثِيرٍ .

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

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

٢٥٩٤ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ : حَدَّثَنَا سَعْدُ
ابْنُ سَعِيدِ الْمَقْبَرِيِّ ، عَنْ أَخِيهِ ، عَنْ أَبِيهِ ، عَنْ
أَبِي هُرَيْرَةَ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : لَا
قطْعَ فِي ثَمِيرٍ وَلَا كَثِيرٍ .

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

Comments:

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

Chapter 28. One Who Steals Something That Is Guarded

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

(المعجم ٢٨) - بَابُ مَنْ سَرَقَ مِنْ
الْحِرْزِ (التحفة ٢٨)

٢٥٩٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ : حَدَّثَنَا
شَبَابَةُ عَنْ مَالِكٍ [بْنِ] أَسِي ، عَنْ الرُّهْمَيِّ ،
عَنْ عَبْدِ اللَّهِ بْنِ صَفْوَانَ ، عَنْ أَبِيهِ أَنَّهُ نَامَ فِي
الْمَسْجِدِ وَتَوَسَّدَ رِدَاءً ، فَأُخْذَدَ مِنْ تَحْتِ
رَأْسِهِ ، فَجَاءَ بِسَارِقِهِ إِلَى النَّبِيِّ ﷺ ، فَأَمَرَ بِهِ

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

النَّبِيُّ ﷺ أَنْ يُقْطَعَ فَقَالَ صَفْوَانُ: يَا رَسُولَ اللَّهِ! لَمْ أُرِدْ هَذَا، رِدَائِي عَلَيْهِ صَدَقَةٌ، فَقَالَ رَسُولُ اللَّهِ ﷺ: فَهَلًا قَبْلَ أَنْ تَأْتِنِي بِهِ.

تخریج: [حسن] وهو في الموطأ (یحيى): ۲/۸۳۴، ۸۳۵، وله شاهد حسن عند أبي داود، ح: ۴۳۹۴، وصححه ابن الجارود، ح: ۸۲۸.

Comments:

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

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

٢٥٩٦ - حَدَثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَثَنَا أَبُو أَسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ عَمْرُو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَجُلًا مِنْ مُزَيْنَةَ سَأَلَ النَّبِيَّ ﷺ عَنِ التَّمَارِ فَقَالَ: «مَا أَخْذَ فِي أَكْمَامِهِ فَاحْتَمِلْ، فَشَنَّهُ وَمِثْلُهُ مَعَهُ، وَمَا كَانَ فِي الْجِرَانِ، وَإِنْ أَكَلَ وَلَمْ يَأْخُذْ، فَلَيْسَ ثَمَنَ الْمَجْنَنَ، وَإِنْ أَكَلَ وَلَمْ يَأْخُذْ، فَلَيْسَ عَلَيْهِ» قَالَ: الشَّاءُ الْحَرِسَةُ مِنْهُنَّ يَا رَسُولَ اللَّهِ؟ قَالَ: «ثَمَنُهَا وَمِثْلُهُ مَعَهُ وَالنَّكَالُ، وَمَا كَانَ فِي الْمَرَاحِ، فَقَبِيَ القَطْعُ، إِذَا كَانَ مَا يَأْخُذُ مِنْ ذُلِكَ ثَمَنَ الْمَجْنَنَ».

تخریج: [حسن] أخرجه أبو داود، اللقطة، باب التعريف باللقطة، ح: ۱۷۱۱ من حديث أبي أسماء به، وحسنه الترمذى، ح: ۱۲۸۹، وصححه ابن الجارود، ح: ۸۲۷ من حديث عمرو بن شعيب به.

Comments:

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

Chapter 29. Prompting A Thief

(المعجم ٢٩) - بَابُ تَلْقِينِ السَّارِقِ

(التحفة ٢٩)

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

٢٥٩٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ إِسْحَاقَ بْنِ أَيِّي طَلْحَةَ: سَمِعْتُ أَبَا الْمُتَثَرِّ، مَوْلَى أَيِّي دَرَّ، يَذْكُرُ أَنَّ أَبَا أُمَّةَ حَلَّهُ أَنَّ رَسُولَ اللَّهِ ﷺ أَيِّي يُلْصِنُ، فَاعْرَفْ أَعْيَرَافًا، وَلَمْ يُوجَدْ مَعْهُ الْمَتَاعُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «مَا إِخَالُكَ سَرَقْتَ» قَالَ: بَلَى، ثُمَّ قَالَ: «مَا إِخَالُكَ سَرَقْتَ» قَالَ: بَلَى، فَأَمَرَ بِهِ قَطْعَةً. قَالَ [الثَّبَيْرِي]: «قُلْ: أَسْتَغْفِرُ اللَّهَ وَأَتُوْبُ إِلَيْهِ» قَالَ: أَسْتَغْفِرُ اللَّهَ وَأَتُوْبُ إِلَيْهِ. قَالَ: «اللَّهُمَّ تُبْ عَلَيْهِ» مَرَّيْنِ.

تخریج: [إسناده ضعیف] أترجحه أبو داود، الحدود، باب في التلقین في الحد، ح: ٤٣٨٠ من حديث حماد به * أبوالمنذر لا يعرف كما قال الذہبی، وأشار إليه الخطابی.

Chapter 30. One Who Is Coerced

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

(المعجم ٣٠) - بَابُ الْمُسْتَكْرِهِ

(التحفة ٣٠)

٢٥٩٨ - حَدَّثَنَا عَلَيُّ بْنُ مَيْمُونٍ الرَّقِيُّ، وَأَئْبُو بْنُ مُحَمَّدٍ الْوَرَانُ، وَعَبْدُ اللَّهِ بْنُ سَعِيدٍ، قَالُوا: حَدَّثَنَا مَعْمَرٌ بْنُ سَلَيْمَانَ: أَتَبَّانَا الْحَجَاجُ بْنُ أَزْطَاءَ عَنْ عَبْدِ الْجَبَارِ بْنِ وَائِلٍ، عَنْ أَيْيَهُ قَالَ: اسْتَكْرِهَتْ امْرَأَةٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَدَرَأَ عَنْهَا الْحَدَّ، وَأَفَاقَتْ عَلَى الَّذِي أَصَابَهَا. وَأَنْ يَذْكُرَ اللَّهُ بَعْلَ لَهَا مَهْرًا.

تخریج: [إسناده ضعیف] آخرجه الترمذی، المحدود، باب ما جاء في المرأة إذا استكرهت على الزنا، ح: ١٤٥٣ من حديث معمر بن سليمان به، وفيه علتان إحداهما ضعف الحجاج تقدم، ح: ٤٩٦، ١١٢٩، ٢٥٨٧، والثانية: الانقطاع بين عبدالجبار وأبيه انظر، ح: ٨٥٥.

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

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

(المعجم ٣١) - بَابُ النَّهَيِّ عَنِ إِقَامَةِ الْحُدُودِ فِي الْمَسَاجِدِ (التحفة ٣١)

٢٥٩٩ - حَدَّثَنَا شُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلَيُّ بْنُ مُسْهِرٍ؛ ح: وَحَدَّثَنَا الْحَسَنُ بْنُ عَرَقَةَ: حَدَّثَنَا أَبُو حَفْصٍ الْأَبَارُ، جَمِيعاً عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاؤُسٍ، عَنْ أَبْنَ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا تُثَقَّلُ الْحُدُودُ فِي الْمَسَاجِدِ».

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

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

٢٦٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَتَبَّانَا عَبْدُ اللَّهِ بْنُ لَهْيَةَ، عَنْ مُحَمَّدٍ بْنِ عَجْلَانَ اللَّهُ أَكْبَرُ

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

سَمِعَ عَمْرَو بْنَ شُعْبٍ [تَحْدِيثٌ] عَنْ أَبِيهِ،
عَنْ جَلْدُهُ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَىٰ عَنْ جَلْدِ
الْحَدَّ فِي الْمَسَاجِدِ.

تخریج: [إسناد ضعیف] وقال البوصيري: هذا إسناد ضعیف لضعف ابن لهيعة ، وانظر، ح: ٣٣٠.

Comments:

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

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

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

(المعجم (٣٢) - باب التّعزير (التحفة ٣٢)

٢٦٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ : أَبَيَّنَ اللَّيْثُ
ابْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَيْبٍ، عَنْ بُكَيْرٍ
ابْنِ عَبْدِ اللَّهِ بْنِ الأَشْجَحِ، عَنْ سَلَيْمَانَ بْنِ
يَسَارٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرٍ بْنِ عَبْدِ
اللَّهِ، عَنْ أَبِي بُرْدَةَ بْنِ نَيَارٍ أَنَّ رَسُولَ اللَّهِ ﷺ
كَانَ يَقُولُ : «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرِ
جَلَدَاتٍ، إِلَّا فِي حَدَّ مِنْ حُدُودِ اللَّهِ».

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

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

٢٦٠٢ - حَدَّثَنَا هَشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنَا عَبَادُ بْنُ كَبِيرٍ،
عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ
أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا

تَعَرِّزُوا فَوْقَ عَشَرَةِ أَسْوَاطٍ.

تخریج: [إسناده ضعیف] وضعفة البوصیری من أجل عباد بن کثیر، انظر، ح: ۱۴۶۲، وله شاهد عند الطبرانی (الأوسط: ۸/ ۷۰۴، ح: ۲۶۰)، ونصب الرایة: ۳۵۴/ ۳)، والعقیلی: ۶۵/ ۱) وقال: ابراهیم بن محمد شامی مجهول، حدیثه منکر غیر محفوظ ، والحدیث السابق يغایب عنه .

Comments:

There are two kinds of punishments:

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

Chapter 33. The Legal Punishment Is Expiation

(المعجم (۳۳) - بَابُ : الْحَدُّ كَفَّارَةً

(التحفة (۳۳)

2603. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ said: "Whoever among you undergoes a *Hadd*, his punishment has been brought forward,^[۱] and it is an expiation for him, otherwise his case rests with Allâh." (*Sahih*)

٢٦٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُتَّهَّى: حَدَّثَنَا عَنْ الْوَهَّابِ وَابْنِ أَبِي عَدْيٍ، عَنْ خَالِدِ الْحَذَّاءِ، عَنْ أَبِي قَلَبَةِ، عَنْ أَبِي الْأَشْعَثِ، عَنْ عُبَيْدَةَ بْنِ الصَّابِرِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَكُمْ حَدًّا، فَعُجِّلْتَ لَهُ عُقُوبَتُهُ، فَهُوَ كَفَّارَةٌ. وَإِلَّا، فَأَمْرَهُ إِلَى اللَّهِ». تخریج: أخرجه مسلم، الحدود، باب الحدود كفارات لأهلها، ح: ۱۷۰۹ من طریق خالد

Comments:

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

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

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

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

٢٦٠٤ - حَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللَّهِ الْحَمَّالُ: حَدَّثَنَا حَجَّاجُ بْنُ مُحَمَّدٍ: حَدَّثَنَا يُونُسُ بْنُ أَبِي إِسْحَاقَ، عَنْ أَبِي إِسْحَاقِ، عَنْ أَبِي جُحْفَةَ، عَنْ عَلِيٍّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَ فِي الدُّنْيَا ذَنْبًا، فَعُوقَبَ بِهِ، فَإِنَّ اللَّهَ أَعْذَلُ مِنْ أَنْ يُتَنَّى عُقُوبَتُهُ عَلَى عَبْدِهِ. وَمَنْ أَذْنَبَ ذَنْبًا فِي الدُّنْيَا، فَسَرَّهُ اللَّهُ عَلَيْهِ، فَإِنَّ اللَّهَ أَكْرَمُ [مِنْ] أَنْ يَعُودَ فِي شَيْءٍ قَدْ عَفَا عَنْهُ». *(أَكْرَمُ [مِنْ] أَنْ يَعُودَ فِي شَيْءٍ قَدْ عَفَا عَنْهُ)*

تخریج: [إسناده ضعیف] آخرجه الترمذی، الإيمان، باب ماجاء لا يزني الزانی وهو مؤمن، ٢٦٢٦ من حدیث حجاج به، وقال: حسن غریب صصح، وصححه الحاکم: ١/٧، والذهبی * أبو إسحاق عنون تقدم، ح: ٤٦، ١٠٣٩.

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

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

٢٦٠٥ - حَدَّثَنَا أَخْمَدُ بْنُ عَدَةَ وَ مُحَمَّدُ بْنُ عَبْدِ الدَّمَاطِي أَبُو عَبْدِ الدَّمَاطِي قَالَ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرِدِيُّ، عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ سَعْدَ بْنَ عَبَادَةَ الْأَنْصَارِيَّ قَالَ: يَا رَسُولَ اللَّهِ الرَّجُلُ يَعْجِدُ مَعَ امْرَأَهُ رَجُلًا، أَيْقُلُهُ؟ قَالَ رَسُولُ اللَّهِ ﷺ: «لَا». قَالَ سَعْدٌ: بَأَ-. وَالَّذِي أَكْرَمَكَ بِالْحَقِّ قَالَ رَسُولُ اللَّهِ ﷺ: «اَسْمَعُوا مَا يَقُولُ سَيِّدُكُمْ».

تخریج: آخرجه مسلم، اللعان، ح: ١٤٩٨ من حدیث الدراوردي به.

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

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

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

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

تخریج: [إسناده ضعیف] أخرجه أبو داود، الحدود، باب: في الرجم، ح: ٤٤١٧؛ من حديث الفضل بن دلهم به * الفضل بن دلهم لین ورمي بالاعتزال (ومن حديث وكيع تعلقاً، ح: ٤٤١٧).

Comments:

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

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

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

فيصَّةَ بْنِ حُرَيْثَ، عَنْ سَلَمَةَ بْنِ الْمُحَبِّبِ قَالَ: قِيلَ لِأَبِي ثَابِتِ، سَعْدَ بْنِ عَبَادَةَ، حِينَ نَزَّلَتْ آيَةُ الْحُدُودِ، وَكَانَ رَجُلًا عَيْوَرًا: أَرَأَيْتَ لَوْ أَنِّكَ وَجَدْتَ مَعَ امْرَأَكَ رَجُلًا، أَيْ شَيْءٍ كُنْتَ تَضْنَعُ؟ قَالَ: كُنْتُ ضَارِبَهُمَا بِالسَّيْفِ. أَنْتَظَرْتُ حَتَّى أَجِيءَ بِأَرْبَعَةِ؟ إِلَى مَا ذَاكَ قَدْ قَضَى حَاجَتُهُ وَذَهَبَ. أَوْ أَقُولُ: رَأَيْتُ كَذَّا وَكَذَا. فَقَضَرُونِي الْحَدَّ وَلَا تَقْبِلُوا لِي شَهَادَةً أَبَدًا. قَالَ: فَدُكِرَ ذَلِكَ لِلَّهِيَّ بِاللَّهِ فَقَالَ: «كَفَى بِالسَّيْفِ شَاهِدًا». ثُمَّ قَالَ: لَا. إِلَيْيَ أَخَافُ أَنْ يَتَابَعَ فِي ذَلِكَ السَّكُرَانُ وَالْغَيْرَانُ.

قَالَ أَبُو عَبْدِ اللَّهِ، يَعْنِي أَبْنَ مَاجِهِ: سَمِعْتُ أَبَا زُرْعَةَ يَقُولُ: هَذَا حَدِيثُ عَلَيِّ بْنِ مُحَمَّدٍ الطَّنَافِسِيِّ. وَفَاتَتِي مِنْهُ.

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

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

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

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

نَحْرِيْج: [صَحِّيْح] أَخْرَجَهُ أَبُو دَاوُدُ، الْخَدُودُ، بَابٌ: فِي الرَّجُلِ يَزْنِي بِجَرِيمَةِ، ح: ٤٤٥٧ مِنْ حَدِيثِ عَدِيِّ بْنِ هَارِثَةِ، وَصَحَّحَهُ ابْنُ الْجَارِوْدَ، ح: ٦٨١، وَلِهِ طَرْقٌ عِنْدَ أَبِي دَاوُدَ، ح: ٤٤٥٦، وَابْنِ حَبَّانَ، ح: ١٥١٦، وَالْتَّرْمِذِيُّ، وَالحاكِمُ: ح ١٩١/٢ وَغَيْرُهُمْ.

Comments:

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

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

(المعجم ٣٥) - بَابٌ مِنْ تَزَوْجَ امْرَأَةٍ أَبِيهِ مِنْ بَعْدِهِ (التحفة ٣٥)

٢٦٠٧ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا هُشَيْمٌ؛ ح: وَحَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، جَمِيعاً عَنْ أَشْعَثٍ، عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنْ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مَرَّ بِي خَالِي، سَمَّاهُ هُشَيْمٌ، فِي حَدِيثِهِ، الْحَارِثُ بْنُ عَمْرُو وَقَدْ عَقَدَ لَهُ النَّبِيُّ ﷺ لَوَاءَ. فَقُلْتُ لَهُ: أَيْنَ تُرِيدُ؟ فَقَالَ: بَعْثَني رَسُولُ اللهِ ﷺ إِلَى رَجُلٍ تَزَوَّجُ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ. فَأَمَرَنِي أَنْ أَضْرِبَ عَنْقَهُ.

أَخْيُ الْحُسَيْنِ الْجُعْفِيُّ: حَدَّثَنَا يُوسُفُ بْنُ مَنَازِلِ التَّيَّبِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ،

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

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

عَنْ خَالِدِ بْنِ أَبِي كَيْمَةَ، عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ، عَنْ أَبِيهِ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَرَوَّجَ امْرَأَةً أَبِيهِ، أَنْ أَضْرِبَ عَنْهُ وَأَصْفِي مَالَهُ.

Tafsir: [Ibn 'Abd al-Hayy] أخرجه الطبراني: ٢٤١٩ من حديث ابن إدريس به، على تصحيف فيه، وصححه البواصيري.

Comments:

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

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

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

(المعجم ٣٦) - بَابُ مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ أَوْ تَوَلَّ غَيْرَ مَوَالِيهِ (التحفة ٣٦)

٢٦٠٩ - حَدَّثَنَا أَبُو شِرْبَكُ بْنُ خَلَفٍ: حَدَّثَنَا أَبُو الصَّيْبِغِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ [خُتَّمٍ]، عَنْ سَعِيدِ بْنِ جُبَيرٍ، عَنْ أَبْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: مَنْ انْتَسَبَ إِلَى غَيْرِ أَبِيهِ، أَوْ تَوَلَّ غَيْرَ مَوَالِيهِ، فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ.

Tafsir: [صحيح] * محمد بن أبي الصيف مستور، وتابعه وهب عند ابن حبان (موارد)، ح: ١٢١٧ وغيره، [صحيح]، واسناده صحيح، قوله شاهد عند مسلم في صحيحه، الحج، باب فضل العدالة ... الخ، ح: ١٣٧٠، وأصله في صحيح البخاري، ح: ١٨٧٠، ٣١٧٢، ٣١٧٩، ٦٧٥٥، ٦٧٣٠.

٢٦١٠ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنْ عَاصِمِ الْأَخْوَلِ، عَنْ أَبِيهِ عُثْمَانَ

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

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

[2] See also no. 2712.

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

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

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

Comments:

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

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

٢٦١١ - حَدَثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَبْنَاهُ سُفِيَّاً عَنْ عَبْدِ الْكَرِيمِ، عَنْ مُجَاهِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرُو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ ادْعَى إِلَى غَيْرِ أَبِيهِ، لَمْ يَرَحْ رَائِحةَ الْجَنَّةِ وَلَمْ يَجِدْهَا لَيُوجَدُ مِنْ مَسِيرَةِ خَمْسِيَّةِ عَامٍ».

تخریج: [صحيح] وصححه البوصيري، قلت: عبدالكريم الجزري لم ينفرد به، تابعه الحكم عند أحمد: ١٩٤/٢، ١٧١ عن مجاهد به، والراجح سبعين عاماً، دون خمسة وسبعين عاماً، والله أعلم.

Comments:

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

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

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

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

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

٢٦١٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ؛ حَوْلَهُ وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ؛ حَوْلَهُ وَحَدَّثَنَا هَارُونُ بْنُ حَيَّانَ: أَبِيَّنَا عَبْدَ الْعَزِيزِ بْنَ الْمُغَيْرَةِ قَالَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ عَقِيلِ بْنِ طَلْحَةَ السُّلَومِيِّ، عَنْ مُسْلِمٍ بْنِ هَيْصِمٍ، عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: أَيْتُ رَسُولَ اللَّهِ ﷺ فِي وَفْدِ كَنْدَةَ، وَلَا يَرْوَنِي إِلَّا أَفْضِلُهُمْ. قَلَّتْ: يَا رَسُولَ اللَّهِ! أَلَسْتُمْ مِنَّا؟ قَالَ: تَعْنُونَ بْنَ النَّضْرِ بْنَ كَنَّاتَةَ، لَا تَنْقُو أَمَّنَا، وَلَا تَنْتَنِي مِنْ أَبِيَّنَا". قَالَ: فَكَانَ الْأَشْعَثُ بْنُ قَيْسٍ يَقُولُ: لَا أُوتَى بِرَجُلٍ نَفَى رَجُلًا مِنْ قُرَيْشٍ، مِنَ النَّضْرِ بْنِ كَنَّاتَةَ، إِلَّا جَلَّدَهُ الْحَدَّ.

تخریج: [إسناده حسن] آخرجه أحمده ٥/٢١١، ٢١٢ من حديث حماد بن سلمة به، ومسلم ابن هيسن روى عنه جماعة، وذكره ابن حبان في الثقات، وأخرج عنه مسلم في صحيحه، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات .

Comments:

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

Chapter 38. Effeminate Men

(المعجم ٣٨) - بَابُ الْمُخْتَنِينَ

(التحفة ٣٨)

2613. Safwân bin Umayyah said:

٢٦١٣ - حَدَّثَنَا الْحَسَنُ بْنُ أَبِي الرَّبِيعِ

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

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

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

الْجُرْجَانِيُّ: أَبْنَا عَبْدُ الرَّزَاقِ: أَخْبَرَنِي يَحْمَى
ابْنُ الْعَلَاءِ أَنَّهُ سَمِعَ [إِشْرَ] بْنَ نُمَيْرٍ أَنَّهُ سَمِعَ
مَكْحُولًا يَقُولُ: إِنَّهُ سَمِعَ تَزِيدَ بْنَ عَبْدِ اللَّهِ أَنَّهُ
سَمِعَ صَفْوَانَ بْنَ أُمِيَّةَ قَالَ: كُلُّا عِنْدَ رَسُولِ
اللَّهِ ﷺ. فَجَاءَهُ عَمْرُو بْنُ [مُرَّةَ] قَالَ: يَا
رَسُولَ اللَّهِ! إِنَّ اللَّهَ قَدْ كَتَبَ عَلَيَّ الشَّفَوَةَ.
فَمَا أَرْزَقَنِي أَرْزُقُ إِلَّا مِنْ دُفَّيْ بِكَمِيْ. فَأَذْنُ لِي
فِي الْخَنَاءِ, فِي غَيْرِ فَاحِشَةِ. قَالَ رَسُولُ اللَّهِ
ﷺ: «لَا أَذْنُ لَكَ, وَلَا كَرَامَةً, وَلَا نُعْمَةً
عَيْنِ. كَذَبْتَ, أَيْ عَلَوْ اللَّهُ لَقْدَ رَزَقَ اللَّهُ
طَيِّبًا حَلَالًا, فَاخْتَرْتَ مَا حَرَّمَ اللَّهُ عَلَيْكَ مِنْ
رِزْقِهِ مَكَانًا مَا أَحَلَّ اللَّهُ عَزَّ وَجَلَّ لَكَ مِنْ
حَلَالِهِ. وَلَوْ كُنْتُ تَنَدَّمْتِ إِلَيَّكَ لَفَعَلْتُ بِكَ
وَفَعَلْتُ. ثُمَّ عَيْنِي, وَتَبَّ إِلَى اللَّهِ. أَمَا إِنِّي إِنَّ
فَعَلْتُ, بَعْدَ التَّقْيِيمَةِ إِلَيْكَ, صَرَّيْتُكَ صَرِبًا
وَجِيعًا, وَحَلَقْتُ رَأْسَكَ مُثْلَةً, وَنَفَيْتُكَ مِنْ
أَهْلِكَ, وَأَخْلَقْتُ سَلَبَكَ نُهْبَةً لِغَيْبَانِ أَهْلِ
الْمَدِينَةِ».

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

فَلَمَّا وَلَى، قَالَ النَّبِيُّ ﷺ: «هُؤُلَاءِ
الْمُصَاهُونُ. مَنْ مَاتَ مِنْهُمْ بِعَيْنِ تَوْيِهِ، حَشَرَهُ اللَّهُ
عَزَّ وَجَلَّ يَوْمَ الْقِيَامَةِ كَمَا كَانَ فِي الدُّنْيَا
مُخْتَنَأً عَرْبَانًا لَا يَسْتَرُّ مِنَ النَّاسِ بِهُدْيَةِ، كُلُّمَا
قَامَ صُرَعَ».

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

تخریج: [إسناده موضوع] أخرجه الطبراني: ٨/٦٠، ح: ٧٣٤٢ من حديث المحسن بن أبي الربيع به، وضعفه البوسيري، ونقل عن يحيى بن سعيد القطان قال في بشر بن نمير: كان ركناً من أركان الكذب، ونقل عن أحمد قال في يحيى بن العلاء: كان يضع الحديث.

Comments:

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

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

٢٦١٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ هَشَامَ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبَ بْنَتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا، فَسَمِعَ مُخْتَشَّاً وَهُوَ يَقُولُ لِعَبْدِ اللَّهِ بْنِ أَبِي أُمِّيَّةَ: إِنْ يَقْتَصِرَ اللَّهُ الطَّافِيَ غَدَاءً، دَلَّلَتْ عَلَى امْرَأَةٍ تُقْبَلُ بِأَرْبَعٍ وَتُنْبَرُ بِشَمَائِيرَ، فَقَالَ النَّبِيُّ ﷺ: «أَخْرِجُوهُمْ مِنْ بُيُونُكُمْ».

تخریج: [صحیح] تقدم، ح: ۱۹۰۲ .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

21. The Chapters On Blood Money

Chapter 1. The Severity Of Killing A Muslim

2615. 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*)

تخریج: آخرجه البخاری، الرائق، باب القصاص يوم القيمة، ح: ٦٥٣٣، ٢٨٦٤ من حديث الأعمش به، ومسلم، القسامة والمحاربين، باب المجازاة بالدماء في الآخرة وأنها أول ما يقضى فيه بين الناس يوم القيمة، 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 'Abdullâh that the Messenger of Allâh ﷺ said: "No person is killed wrongfully, but a share of responsibility for his blood will be upon the first son of Âdam, because he was the first one to kill." (*Sahih*)

(المعجم ٢١) أبواب الديّات

(التحفة ١٣)

(المعجم ١) - باب التغليظ في قتل مُسلِّمٍ ظُلْمًا (التحفة ١)

٢٦١٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُعَيْرٍ، وَعَلَيْهِ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ بَشَّارٍ قَالُوا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا الأَعْمَشُ عَنْ شَقِيقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَوْلُ مَا يُقْضَىٰ بَيْنَ النَّاسِ، يَوْمُ الْقِيَامَةِ، فِي الدَّمَاءِ».

عيسى بن يوئيل: حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَىٰ بْنُ يُوسَىٰ: حَدَّثَنَا الأَعْمَشُ، [عَنْ] عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنْ سَرْوُقَ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُقْتَلُ نَفْسٌ ظُلْمًا، إِلَّا كَانَ عَلَى ابْنِ آدَمَ الْأَوَّلِ كِفْلٌ مِّنْ

دَمْهَا لِأَنَّهُ أَوْلُ مَنْ سَنَ القَتْلَ.

تخریج: أخرج البخاري، الديات، باب: ومن أحياها ، ح: ٦٨٦٧، ٣٣٣٥ من حديث الأعمش به، ومسلم، القسامه 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 بْنُ الْأَزْهَرِ الرَّاِسِطِيُّ: حَدَّثَنَا إِشْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ، عَنْ شَرِيكٍ، عَنْ عَاصِمٍ، عَنْ أَبِي وَائِلٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَوْلُ مَا يُقْضَى بَيْنَ النَّاسِ، يَوْمُ الْعِيَامَةِ، فِي الدَّمَاءِ».

تخریج: [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 .

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 - حَكَّاَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَائِدٍ، [عَنْ] عُقْبَةَ بْنِ غَامِرِ الْجُعْهَيِّنِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ لَقِيَ اللَّهَ لَا يُشْرِكُ بِهِ شَيْئًا، لَمْ يَتَنَّدْ بِدَمٍ حَرَامٍ، دَخَلَ الْجَنَّةَ».

تخریج: [صحيح] أخرجه أحميد: ١٥٢ / ٤ عن وكيع به، وفيه: لم يتند بدم حرام ، والمعنى واحد، وصححه الحاكم: ٤ / ٣٥١، ٣٥٢، والنهي، إسماعيل عنون، انظر، ح: ١٦١٢؛ وأول الحديث شاهد عند البخاري، ح: ١٢٩ وغيره، وللدماء شواهد عند البخاري، ح: ٦٨٦٤، ٦٨٦٣؛ والهشمي (مجمع: 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 Barā' bin 'Āzib that the Messenger of Allāh ﷺ said: "If this world were to be destroyed, that would be less significant before Allāh than the unlawful killing of a believer." (Hasan)

٢٦١٩ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا الْوَلِيدُ ابْنُ مُسْلِمٍ: حَدَّثَنَا مَرْوَانُ ابْنُ جَنَاحٍ، عَنْ أَبِي الْجَهْنِ الْجُوزَجَانِيِّ، عَنْ أَبْرَاءِ بْنِ عَازِبٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الرَّوْاْلُ الَّذِي تَبَرَّأَ مِنْ أَهْوَانِ عَلَى اللَّهِ مِنْ قَتْلِ مُؤْمِنٍ يُغَيِّرُ حَقًّا».

تخریج: [حسن] حسنة المتندری، وقال البوصیری: هذا إسناد صحيح، رجاله ثقات قلت: الولید لم یصرح بالسماع المسلط تقدم، ح: ٢٥٥، ولحديث شواهد عند النسائي: ٨٣، ٨٤/٧، والترمذی، ح: ١٣٩٥ وغيرهما.

Comments:

- a. A true believer is very dear to Allāh.
- 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 Allāh.

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

٢٦٢٠ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا مَرْوَانُ بْنُ مَعَاوِيَةَ: حَدَّثَنَا يَزِيدُ بْنُ زَيَادٍ، عَنْ الرُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَعْنَى عَلَى قَتْلِ مُؤْمِنٍ يُشَطِّرُ كَلِمَةً، لَقَدْ أَعْنَى اللَّهُ عَزَّ وَجَلَّ، مَكْتُوبٌ بَيْنِ عَيْنَيْهِ: أَيْسَرُ مِنْ رَحْمَةِ اللَّهِ».

تخریج: [ضعیف] أخرجه البیهقی: ٢٢/٨ من حديث مروان بن معاویة الفزاری به، وقال: زید بن زیاد وقيل: ابن أبي زیاد الشامی، منکر الحديث، وقال أبو حاتم، هذا الحديث: باطل موضوع ، وضعنه البوصیری، وللحديث شواهد ضعیفة عند البیهقی، وأبی نعیم (حلیة: ٧٤/٥) وغيرهما.

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

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

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

٢٦٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاجِ: 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^[1] it to your Prophet, then He did not abrogate it after He revealed it.''' (*Sahih*)

سُفِّيَانُ بْنُ عَيْنَةَ، عَنْ عَمَّارِ الدُّهْنِيِّ، عَنْ سَالِمَ بْنِ أَبِي الْجَعْدِ قَالَ: شَيْلَ ابْنَ عَبَّاسٍ عَمَّنْ قَتَلَ مُؤْمِنًا مُّتَعَمِّدًا ثُمَّ تَابَ وَأَمَّنَ وَعَمِلَ صَالِحًا ثُمَّ اهْتَدَى؟ قَالَ: وَيَحْمَدُ اللَّهَ أَهْلَ الْهَدَى؟ سَمِعْتُ نَبِيَّكُمْ ﷺ يَقُولُ: «يَحِيِّ الْقَاتِلُ، وَالْمَقْتُولُ يَوْمَ الْقِيَامَةِ مُشْتَكِلٌ بِرَبِّهِ صَاحِبِهِ». يَقُولُ: رَبِّ سُلْطَنٍ هَذَا، لَمْ قُتَلْنِي؟» وَاللَّهُ لَقَدْ أَنْزَلَهَا اللَّهُ عَزَّ وَجَلَّ عَلَى نَبِيِّكُمْ، ثُمَّ مَا تَسْخَنُهَا بَعْدَ مَا أَنْزَلَهَا.

تخریج: [إسناده صحيح] أخرجہ النسائی، تحريم الدم، تعظیم الدم، ح: ٤٨٧٠، ٤٠٠٤ والحمدی، ح: ٤٨٨ من حديث سفيان بن عبد الله بن الحارث، المجر التمي عند أحمد: ١/٢٤٠، ٣٦٤، ٢٩٤، ٤٢٤٠ وغيرها، وهو لین الحديث (تقریب)، وللحديث شواهد عند البخاري، ح: ٢٨٥٥، ومسلم، ح: ٣٠٢٣، والنمسائی، ح: ٨٤، والترمذی، ح: ٢٢٠٨، وقال: حسن صحيح غریب، ح: ٣٠٢٩، وقال: حسن غریب، وغيرهم وبها صحیح الحديث.

Comments:

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

- a. Payment of blood money, because legal punishment purifies from the sin. (See *Hadith*: 2603)
- b. An heir can pardon the murderer by taking blood money, or for Allâh's sake, without taking blood money.
- c. 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 بَكْرٍ بْنُ أَبِي شَيْءَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَبْنَانَا هَمَّامُ بْنُ يَحْيَى عَنْ قَاتِلَةَ، عَنْ أَبِي الصَّدِيقِ النَّاجِيِّ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: أَلَا أُخْرِجُكُمْ بِمَا سَمِعْتُ مِنْ فِي رَسُولِ اللَّهِ ﷺ؟ سَمِعْتُهُ أَذْنَانِي، وَوَعَاءَ

[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-Tawil 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

قُلْبِي: «إِنَّ عَبْدًا قُتِلَ تِسْعَةً وَتِسْعِينَ نَفْسًا، ثُمَّ عَرَضْتُ لَهُ التَّوْيِةَ. فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فَدَلَّ عَلَى رَجُلٍ فَتَأَمَّهُ. فَقَالَ: إِنِّي قُتْلَتُ تِسْعَةً وَتِسْعِينَ نَفْسًا. فَهَلْ لِي مِنْ تَوْيِةٍ؟» قَالَ: بَعْدَ تِسْعَةً وَتِسْعِينَ نَفْسًا قَالَ: فَأَنْتَصِي سَيِّدَهُ فَتَنَاهُ. فَأَكْمَلَ بِهِ الْمِائَةَ. ثُمَّ عَرَضْتُ لَهُ التَّوْيِةَ فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فَدَلَّ عَلَى رَجُلٍ. [فَتَأَمَّهُ] فَقَالَ: إِنِّي قُتْلَتُ مِائَةَ نَفْسٍ، فَهَلْ لِي مِنْ تَوْيِةٍ؟ قَالَ، فَقَالَ: وَيَحْكُمُ وَمَنْ يَحْوِلُ بَيْنَكَ وَبَيْنَ التَّوْيِةِ؟ اخْرُجْ مِنَ الْقَرْيَةِ الْخَيْشِيَّةِ الَّتِي أَنْتَ فِيهَا، إِلَى الْمَرْيَةِ الصَّالِحَةِ، فَرِيَةٌ كَذَا وَكَذَا. فَأَغْبَدْ رَبَّكَ فِيهَا. فَخَرَجَ بِرِيدِ الْقَرْيَةِ الصَّالِحَةِ، فَتَرَضَ لَهُ أَجْلَهُ وَفِي الطَّرِيقِ. فَاخْتَصَمَتْ فِيهِ مَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْعَذَابِ. قَالَ إِلِيلِيسُ: أَنَا أُولَئِي بِهِ، إِنَّهُ لَمْ يَعْصِيَنِي سَاعَةً قَطُّ. قَالَ، فَقَالَ مَلَائِكَةُ الرَّحْمَةِ: إِنَّهُ خَرَجَ تَائِيَاً.

قَالَ هَمَامٌ: فَحَدَّثَنِي حُمَيْدٌ الطَّوَيْلُ عَنْ بَكْرٍ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي رَافِعٍ، قَالَ: فَبَعَثَ اللَّهُ عَزَّ وَجَلَّ مَلَكًا. فَاخْتَصَمُوا إِلَيْهِ ثُمَّ رَجَعُوا. فَقَالَ: انْظُرُوا. أَيُّ الْقَرْيَتَيْنِ كَانَ أَقْرَبُ، فَالْحَقُومَةُ يَأْهُلُهَا.

قَالَ فَتَادَهُ: فَحَدَّثَنَا الْحَسَنُ، قَالَ: لَمَّا حَضَرَهُ الْمَوْتُ احْتَفَرَ بِنَفْسِهِ فَقَرُوبٌ مِنَ الْقَرْيَةِ الصَّالِحَةِ، وَبَيْاعَدَ مِنْهُ الْقَرْيَةِ الْخَيْشِيَّةِ. فَالْحَقُومَةُ يَأْهُلُ الْقَرْيَةِ الصَّالِحَةِ. حَدَّثَنَا أَبُو الْعَبَّاسِ بْنُ عَبْدِ اللَّهِ بْنِ

stroved 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.

تخریج: أخرجه البخاري، أحاديث الأنبياء، باب: ٥٤، ومسلم، التوبة، باب قبول توبة القاتل، وإن كثر قتله، ح: ٢٧٦٦ من حديث قتادة بنه.

Comments:

- 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.
- True and sincere repentance may induce the mercy of Allâh to pardon mortal sins like bloodshed.
- 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

2623. It was narrated from Abu Shurâih Al-Khuza'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*)

إسماعيل البنداري: حدثنا عفان: حدثنا
همام، فذكر تحوه.

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

٢٦٢٣ - حدثنا محمد: حدثنا عثمان و أبو
بكر ابنا أبي شيبة: قالا: حدثنا أبو خالد
الأحمر، ح: وحدثنا أبو بكر و عثمان [ابنا]
أبي شيبة، قالا: حدثنا حريز و عبد الرحيم
ابن سليمان، جمعاً عن محمد بن إسحاق،
عن المحارث بن فضيل، أظنه عن ابن أبي
العوجاء، واسمه سليمان عن أبي شريح
الخراعي قال: قال رسول الله ﷺ: «من
أصيب بدم أو خيل، - والخيل الجراح فهو
بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ. فإن أراد الرابعة،
فَعذوا على يديه: أن يقتل أو يغفو أو يأخذ
الديمة. فمن فعل شيئاً من ذلك فعاد، فإن له

نَارَ جَهَنَّمَ حَالِدًا مُخْلَدًا فِيهَا أَبَدًا .

تخریج: [إسناده ضعیف] أخرجه أبو داود، الديات، باب الإمام يأمر بالغفو في الدم، ح: ٤٤٩٦ من حديث ابن إسحاق به، وصح بالسماع عند الطحاوي في معانی الآثار: ٣/١٧٤ على تصحیف، وقع في السنده * وسفیان بن أبي العوجاء ضعیف (تقرب وغیره)، ولبعض حدیثه شاهد حسن عند أحمد: ٤/٣٢، وانظر الحديث الآتی.

Comments:

- '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 *Ahâdîth*.
- '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 الدَّمْشِقِيُّ: حَدَّثَنَا الْوَلِيدُ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قُتِلَ لَهُ قَتْلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُقْتَلَ وَإِمَّا أَنْ يُفْدَى» .

تخریج: أخرجه البخاري، القطعة، باب: كيف تعرف لقطة أهل مكة، ح: ٢٤٣٤، ومسلم، ح: ١٣٥٥ من حديث الوليد بن مسلم به.

Comments:

- 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.
- 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.
- The decision of killing or taking blood money is the right of the heirs. The court has nothing to do with this decision.
- 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 Ziyâd bin Sa'd bin Dumairah (said): "My father and my paternal uncle, who were present at Hunain with the Messenger of Allâh ﷺ, narrated to me: 'The Prophet ﷺ prayed Zuhr, then he sat beneath a tree. Aqra' bin Hâabis, 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 Allâh! By Allâh! 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*)

تخریج: [إسناده حسن] أخرجه أبو داود، باب الديات، باب الغفران بالغفران في الدم، ح ٤٥٠٣ من حديث ابن إسحاق به، وصححه ابن الجارود، ح ٧٧٧، وحسنه الحافظ في الإلقاءة: * زياد بن سعد بن ضميرة وثقة ابن حبان، وابن الجارود وغيرهما، فحديثه لا ينزل عن درجة الحسن.

(المعجم ٤) - باب مَنْ قُتِلَ عَمَدًا،
فَرَضُوا بِالدِّيَةِ (التحفة ٤)

٢٦٢٥ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
أَبُو حَالِدٍ الْأَحْمَرُ، عَنْ مُحَمَّدٍ بْنِ إِسْحَاقَ:
حَدَّثَنِي مُحَمَّدُ بْنُ جَعْفَرٍ، عَنْ [زِيَادَ] بْنِ
[سَعْدٍ بْنِ] ضَمِيرَةَ: حَدَّثَنِي أَبِي وَعْدٍ،
وَكَانَا شَهِداً حُتِّيْنَا مَعَ رَسُولِ اللَّهِ ﷺ، قَالَ:
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الظَّهَرَ. ثُمَّ جَلَسَ تَحْتَ
شَجَرَةَ. فَقَامَ إِلَيْهِ الْأَفْرَعُ بْنُ حَارِسٍ، وَهُوَ
سَيِّدُ خَنْدَفٍ، يَرْدُ عَنْ دَمِ مُحَمَّدٍ بْنِ جَنَّةَ.
وَقَامَ عُيَيْنَةُ بْنُ حَصْنٍ يَطْلُبُ يَدَمَ عَامِرٍ بْنِ
الْأَضْبَطِ. وَكَانَ أَشْجَعِيَا. فَقَالَ لَهُمُ الرَّبِيعُ
ﷺ: «تَقْبِلُونَ الدِّيَةَ؟» فَأَبَوُنَا. فَقَامَ رَجُلٌ مِنْ
بَنِي لَيْثٍ، يَقُولُ لَهُ مُكَيْنٌ. فَقَالَ: يَا رَسُولَ
اللَّهِ ﷺ وَاللَّهُ! مَا شَهِدْتُ هَذَا الْقَتِيلَ، فِي عَرَةِ
الْإِسْلَامِ، إِلَّا كَعْنَمْ وَرَدَثْ، فَرَمَيْتُ، فَنَفَرَ
آخْرُهَا، فَقَالَ الرَّبِيعُ ﷺ: «لِكُمْ خَمْسُونَ فِي
سَفَرِنَا، وَخَمْسُونَ إِذَا رَجَعْنَا» فَقَبِلُوا الدِّيَةَ.

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 Allah 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*,^[1] thirty *Jadha'ah*^[2] and forty *Khalifah*.^[3] 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 مَحْمُودُ بْنُ خَالِدِ الدَّمْشِقِيِّ: حَدَّثَنَا أَبِي: حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سَلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعْبَيْنِ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَمَدًا، دُفِعَ إِلَى أُولَئِكَ الْقَتِيلِ. فَإِنْ شَاءُوا قَتَلُوا. وَإِنْ شَاءُوا أَخْلَوُا الْدِيَةَ. وَذَلِكَ ثَلَاثُونَ حِقَّةً وَثَلَاثُونَ جَدَعَةً وَأَرْبَعُونَ خَلِفَةً. وَذَلِكَ عَطْلُ الْعَمَدِ. وَمَا صُولِحُوا عَلَيْهِ، فَهُوَ لَهُمْ. وَذَلِكَ تَشْدِيدُ الْعَقْلِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الديات، باب ولی العمد يأخذ الديمة، ح: ٤٥٠٦
من حدیث محمد بن راشد به، وحسنه الترمذی، 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 'Abdullâh 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) - بَابٌ : دِيَةُ شَبَهِ الْعَمَدِ
مُغَلَّظَةٌ (التحفة ٥)

٢٦٢٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنُ بْنُ مَهْدِيٍّ وَ مُحَمَّدُ بْنُ جَعْفَرٍ، قَالَا: حَدَّثَنَا شُبَّهُ عَنْ أَيُوبَ . سَمِعَتُ الْقَاسِمَ بْنَ رَبِيعَةَ، عَنْ عَبْدِ اللَّهِ بْنِ [عَمْرُو] عَنِ النَّبِيِّ ﷺ قَالَ: «قَتْلُ الْخَطَّابِ شَبَهُ الْعَمَدِ، قَتْلُ السَّوْطِ وَالْعَصَاصِ. مِائَةٌ مِنَ الْإِلَيْلِ. أَرْبَعُونَ مِنْهَا خَلْفَةً، فِي بُطُونِهَا أَوْلَادُهَا».

تخریج: (الف) [صحیح] آخرجه النسائي، القسامه، باب: کم دیه شبہ العمد ... الخ، ح: ٧٩٠٥ عن ابن بشار به.

Another chain with similar wording. (*Sahih*)

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ ابْنُ حَرْبٍ: حَدَّثَنَا حَمَادُ بْنُ زَيْلٍ عَنْ خَالِدِ الْحَدَّاءِ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عُقْبَةَ بْنِ أُوسٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرُو عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

تخریج: (ب) [صحیح] آخرجه أبو داود، الديات، باب: في دية الخطأ شبہ العمد، ح: ٤٤٧ من حديث سليمان به، وصححه ابن حبان (موارد)، ح: ١٥٢٦، وابن الجارود، ح: ٧٧٣، وابنقطان الفاسي (التلخيص الحبير: ٤/١٥).

Comments:

- 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.
- '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 Allâh ﷺ stood up on the Day of the conquest of Makkah, on the

٢٦٢٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزَّهْرِيِّ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْنَةَ، عَنْ ابْنِ جُذْعَانَ، سَمِعَةً مِنَ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ ابْنِ عُمَرَ أَنَّ

steps of the Ka'bah. He praised and glorified Allâh, then he said: "Praise is to Allâh 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)

رسول اللہ ﷺ قَامَ، يَوْمَ فَتْحِ مَكَّةَ، وَهُوَ عَلَى دَرَجِ الْكَعْبَيْهِ. فَحَمِدَ اللَّهَ وَأَنْتَى عَلَيْهِ. فَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي صَدَقَ وَعْدَهُ وَنَصَرَ عَبْدَهُ، وَهَزَمَ الْأَخْرَابَ وَحْدَهُ». أَلَا إِنْ قَتْلَ الْحَطَبِيِّ، قَتْلَ السُّوْطِ وَالْعَصَابَ: فِيهِ مَا تَهْبَطُ مِنَ الْإِبَلِ. مِنْهَا أَرْبَعُونَ خَلْفَةً، فِي بُطُونِهَا أَوْلَادُهَا. أَلَا، إِنَّ كُلَّ مَأْتِيَّةٍ كَانَتْ فِي الْجَاهِلِيَّةِ، وَدَمٌ تَحْتَ قَدَمَيِّ هَائِيْنِ. إِلَّا مَا كَانَ مِنْ سَدَّاتَةِ الْبَيْتِ وَسَقَايَةِ السَّاجِ. أَلَا إِنِّي قَدْ أَمْضَيْتُهُمَا لِأَهْلِهِمَا كَمَا كَانَا».

تخریج: [إسناده ضعیف] أخرجه أبو داود، الديات، باب في دية الخطأ شبه العمد، ح: ٤٥٤٩ من حديث ابن جدعان به، وهو ضعيف، ومن حديث ابن عبيدة به تعلقاً، ح: ٤٥٤٩. وله شواهد منها الحديث السابق.

Comments:

- Allâh'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

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

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

٢٦٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَارٍ: حَدَّثَنَا مُعَاذُ ابْنُ هَانِيٍّ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عُمَرِ بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ

عَنِ النَّبِيِّ أَنَّهُ جَعَلَ الدِّيَةَ أَنْتِي عَشْرَ أَلْفًا.

تخریج: [إسناده حسن] أخرجه الترمذی، الديات، باب ماجاء في الدية، کم هي من الدرام، ح: ۱۳۸۸ عن ابن بشار به، وقال النسائی: محمد بن سلم ليس بالقوي في الحديث، وهذا خطأ والصواب عن عکرمة: مرسل، قلت: بل هو صدوق حسن الحديث، من رجال سلم وغيره، أخرجه أبو داود، ح: ۴۵۶ من طريقه به.

2630. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "Whoever is killed by mistake, his blood money in camels is thirty *Bint Makhâd* (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 Allâh ﷺ used to fix the value (of the blood money for accidental killing) among town-dwellers at four hundred Dinâr 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 Dinâr) would rise; and when prices fell, the value (in Dinâr) would fall. At the time of the Messenger of Allâh ﷺ the value was between four hundred and eight hundred Dinâr, or the equivalent value in silver, eight thousand Dirham. And the Messenger of Allâh 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

۲۶۳۰ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ
الْمَرْوَزِيُّ: أَبْنَا نَبِيِّنَا يَزِيدَ بْنَ هَارُونَ: أَبْنَا
مُحَمَّدَ بْنَ رَاشِدٍ، عَنْ شَيْمَانَ بْنِ مُوسَى،
عَنْ عَمْرِي وَبْنِ شُعْبِيْنَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ
رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ قُتِلَ خَطَأً، فَلِيَهُ
مِنَ الْإِلَيْلِ ثَلَاثُونَ بَنْتَ مَخَاضٍ وَثَلَاثُونَ ابْنَةً
لَبَوْنَ وَثَلَاثُونَ حِقَّةً، وَعَشْرَةً بْنَيْ لَبَوْنَ». وَكَانَ
رَسُولُ اللَّهِ ﷺ يَقُومُهَا عَلَى أَهْلِ الْقُرْبَى
أَرْبَعِمَائَةِ دِينَارٍ، أَوْ عَدْلَهَا مِنَ الْوَرِقِ.
وَيَقُومُهَا عَلَى أَرْبَعِمَائَةِ دِينَارٍ، إِذَا غَلَّ رَفَعَ فِي
نَمَىْهَا. وَإِذَا هَانَتْ نَقْصَنَ مِنْ نَمَىْهَا. عَلَى
نَحْوِ الرَّمَانِ مَا كَانَ. فَبَلَغَ قِيمَهَا عَلَى عَهْدِ
رَسُولِ اللَّهِ ﷺ مَا بَيْنَ الْأَرْبَعِمَائَةِ دِينَارٍ إِلَى
ثَمَانِمَائَةِ دِينَارٍ. أَوْ عَدْلَهَا مِنَ الْوَرِقِ ثَمَانِمَائَةَ
آلَافِ دِرْهَمٍ. وَفَصَلَ رَسُولُ اللَّهِ ﷺ أَنَّ مَنْ
كَانَ عَقْلُهُ فِي الْبَقَرِ، عَلَى أَهْلِ الْبَقَرِ، مَا تَقْيَ
بَقَرَةً. وَمَنْ كَانَ عَقْلُهُ فِي الشَّاءِ، عَلَى أَهْلِ
الشَّاءِ، أَلْفَيْنِ شَاءَ.

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

(*Hasan*)

تخریج: [إسناده حسن] أخرجه أبو داود، الديات، باب الدية کم هي؟، ح: ٤٥٤١ من

حدیث یزید 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*)

تخریج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الدية کم هي؟، ح: ٤٥٤٥ من

حدیث حجاج به، وانظر، ح: ٢٥٨٧، ١١٢٩، ٤٩٦.

2632. It was narrated from 'Ikrimah, from Ibn 'Abbâs, that the Prophet ﷺ set the blood money at twelve thousand (Dirham). He said:^[1] "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.'"^[2] He said: "By their taking the

٢٦٣١ - حَدَّثَنَا عَبْدُ السَّلَامَ بْنُ عَاصِمٍ : حَدَّثَنَا الصَّبَّاغُ بْنُ مُحَارِبٍ : حَدَّثَنَا حَاجَاجُ بْنُ أَرْطَاطَةَ : حَدَّثَنَا زَيْدُ بْنُ جُبَيرٍ ، عَنْ حَشْفِ بْنِ مَالِكِ الطَّائِيِّ ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُورِدَ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : « فِي دِيَةِ الْخَطْلِ عَشْرُونَ حَمَّةً وَعِشْرُونَ جَاءَةً وَعِشْرُونَ بِنْتَ مَحَاضِ وَعِشْرُونَ بِنْتَ لَبُونَ وَعِشْرُونَ بَنِي مَحَاضِ ذُكُورٌ ». .

تخریج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الدية کم هي؟، ح: ٤٥٤٦ من
حدیث حجاج به، وانظر، ح: ٢٥٨٧، ١١٢٩، ٤٩٦.

٢٦٣٢ - حَدَّثَنَا الْجَبَّاسُ بْنُ جَعْفَرٍ : حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ ، عَنْ عَمْرُو بْنِ دِيَارٍ ، عَنْ عِكْرَمَةَ ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جَعَلَ الْدِيَةَ الَّتِي عَشَرَ أَلْفًا . قَالَ : وَذَلِكَ قَوْلُهُ : « وَمَا نَقَمُوا إِلَّا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ بْنُ فَضْلَةَ » (التوبه: ٧٤).

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

^[2] At-Taubah 9:74.

blood money.”^[1] (*Hasan*)

تخریج: [إسناده حسن] أخرجه ابن أبي حاتم الرازی فی التفسیر: ٦/١٨٤٥، توبیة: ٩٤ من حديث محمد بن سنان الباهلي به، وانظر، ح: ٢٦٢٩، وهذا طرف منه.

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

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 ‘Aqilah.” (*Sahih*)

قالَ: يأْخُذُهُمُ الْدِيَةَ.

(المجمع ٧) - بابُ الدِّيَةِ عَلَى الْعَاقِلَةِ
فَإِنْ لَمْ يَكُنْ عَاقِلَةً فَقِي بَيْتُ الْمَالِ
(التحفة ٧)

٢٦٣٣ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا
وَكَيْعُ: حَدَّثَنَا أَبِي، عَنْ مَنْصُورٍ، عَنْ
إِبْرَاهِيمَ، عَنْ عَبْيَدِ بْنِ نَضْلَةَ، عَنْ الْمُغَиْرَةِ بْنِ
شَعْبَةَ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالْدِيَةِ عَلَى
الْعَاقِلَةِ.

تخریج: أخرجه مسلم، القسامۃ والمغاربین، باب دية الجنین ووجوب الدية في قتل الخطأ وشبه العمد على عاقلة الجاني، ح: ١٦٨٢ من حديث منصور به.

Comments:

- ‘Aqilah’ 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 ‘Aqilah 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 دُرْسَتَ: حَدَّثَنَا

^[1] 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 *Hadīth* mentioning the *Āyah* are from Tkrimah.

Messenger of Allâh 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 بُكَيْلِ بْنِ مَيْسَرَةَ، عَنْ عَلَيِّ
ابْنِ أَبِي طَلْحَةَ، عَنْ رَاشِدٍ، عَنْ أَبِي عَامِرِ
الْهَوَزْنَىَّ، عَنِ الْمُقْدَامِ الشَّامِيِّ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «أَنَا وَارِثُ مَنْ لَا وَارِثَ لَهُ
أَعْقَلُ عَنْهُ وَارِثُهُ. وَالخَالُ وَارِثُ مَنْ لَا وَارِثَ
لَهُ. يَعْتَقِلُ عَنْهُ قَرِيرُهُ».

تَحْرِيْج: [صَحِيح] أَخْرَجَهُ أَبُو دَاوُدُ، الْفَرَائِضُ، بَابٌ: فِي مِيرَاثِ ذُوِّ الْأَرْحَامِ، ح: ٢٨٩٩؛
مِنْ حَدِيثِ بَدْيَلِ بْنِهِ، وَصَحَّحَهُ ابْنُ الْجَارِوْدِ، ح: ٩٦٥؛ وَابْنُ حَبَّانَ (مَوَارِدُ)، ح: ١٢٢٥؛
وَالْحَاكِمُ ٤/٣٤٤ عَلَى شَرْطِ الشَّيْخَيْنِ، وَتَعْقِيْهِ الْذَّهَبِيِّ، وَصَحَّحَهُ ابْنُ الْفَطَانِ، وَحَسَنَهُ أَبُو زُرْعَةَ
الْدَّمْشَقِيِّ، وَلَهُ طَرِيقٌ آخَرُ عِنْدَ ابْنِ حَبَّانَ، ح: ١٢٢٦، وَإِسْبَادَهُ حَسَنٌ.

Comments:

- The priority and shares of the heirs have been determined in the Noble Qur'ân and the Sunnah of the Noble Prophet ﷺ. These heirs are called Ashâbul-Furud, 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 Asâbah, 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 Asâbah, legacy goes to Dhul-Arâhâm. Meaning relatives of the deceased through the mother, like the maternal uncle, the mother's sister and the mother's father etc.
- 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 'Abbâs, 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 وَلَيْ
الْمَقْتُولِ وَبَيْنَ الْقَوْدِ أَوِ الْدَّيَّةِ (التحفة ٨)

٢٦٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ كَثِيرٍ: حَدَّثَنَا شَلِيمَانُ بْنُ كَثِيرٍ، عَنْ
عَمْرُو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنْ ابْنِ
عَبَّاسٍ، رَفِعَهُ إِلَى النَّبِيِّ ﷺ قَالَ: «مَنْ قَتَلَ
فِي عُمَيْةٍ أَوْ عَصَبَيْةٍ بِحَجْرٍ أَوْ سُوْطٍ أَوْ عَصَاصًا،
فَعَلَيْهِ عَقْلُ الْخَطَلِ. وَمَنْ قُتِلَ عَمَدًا 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.”^[1] (*Sahih*)

وَالْمَلَائِكَةُ وَالنَّاسُ أَجْمَعِينَ. لَا يَقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ.

تخریج: [إسناده صحيح] أخرجه التسائي، القسامية، 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 قَوْدٌ 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 خَالِدٍ الْوَاسِطِيُّ: حَدَّثَنَا أُبُو بَكْرٍ بْنُ
عَيَّاشٍ، عَنْ دَهْشَمْ بْنِ قُرَّانَ: حَدَّثَنِي نِيمَرَانُ
بْنُ جَارِيَةَ، عَنْ أَبِيهِ أَنَّ رَجُلًا ضَرَبَ رَجُلًا
عَلَى سَاعِدِهِ بِالسَّيْفِ فَقَطَعَهَا مِنْ غَيْرِ مُفْصِلٍ.
فَاسْتَعْدَى عَلَيْهِ النَّبِيُّ ﷺ. فَأَمَرَ لَهُ بِالدِّيَةِ.
فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أُرِيدُ الْفَصَاصَ.
فَقَالَ: «خُذْ الدِّيَةَ. بَارِكَ اللَّهُ لَكَ فِيهَا». وَكَمْ
يَقْضِي لَهُ بِالْفَصَاصِ.

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

^[1] No *Surf* — 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 كُرْبَةَ: حَدَّثَنَا رِشْدِينُ ابْنُ سَعْدٍ عَنْ مَعَاوِيَةَ بْنِ صَالِحٍ، عَنْ مَعَاذَ بْنِ مُحَمَّدٍ الْأَنْصَارِيِّ، عَنْ ابْنِ صُهْبَاءَ، عَنْ أَبْيَاسِ بْنِ عَبْدِ الْمُطَلِّبِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَوْدٌ فِي الْمَأْمُومَةِ وَلَا الْجَاهَةِ وَلَا الْمُفْلِقَةِ».

تخریج: [إسناد ضعيف] أخرجه البيهقي: ٦٥ من طريق أبي يعلى عن أبي كريب به، وقال البوصيري: هذا إسناد ضعيف، رشدين بن سعد ضعفة ابن معين، وأبو حاتم الرازي، وأبوزرعة، والنسائي، وأبن حبان، والجوزجاني، وأبن يونس، وأبن سعد، وأبوداود، 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

2638. It was narrated from 'Âishah 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

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

٢٦٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَاقِ: أَتَيْنَا مَعْمَرَ عَنِ الرُّهْرَيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَ أَبَا جَهْمَ بْنَ حُلَيْفَةَ مُصَدِّقًا. فَلَمَّا جَاءَهُ رَجُلٌ فِي صَدَقَتِهِ، فَضَرَبَهُ أَبُو جَهْمٍ فَسَجَّهُ. فَأَتَوْا النَّبِيَّ ﷺ فَقَالُوا: الْقَوْدُ. يَا رَسُولَ اللَّهِ! فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ كَذَا وَكَذَا» فَلَمْ يَرْضُوْا. فَقَالَ: «الْكُمْ كَذَا وَكَذَا». فَرَضُوا. فَقَالَ النَّبِيُّ ﷺ: «إِنِّي خَاطِبٌ عَلَى النَّاسِ وَمَخْبِرُهُمْ بِرِضاكُمْ؟» قَالُوا: نَعَمْ. فَخَاطَبَ النَّبِيُّ ﷺ فَقَالَ: «إِنَّ هُؤُلَاءِ الْلَّذِيْنَ أَتَوْنِي بِرِيْدُونَ 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.’”

تخریج: [إسناده ضعیف] أخرجه أبو داود، الديات، باب العامل، بصاحب على يديه خطأ، ح: ٤٥٣٤ من حديث عبد الرزاق به، وهو في مصنفه، ح: ١٨٠٣٢، وصححه ابن الجارود، ح: ٨٤٥، ولم أجد تصريح سماع الزهرى تقدم، ح: ٧٠٧، فيه، وباقى 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.

فَعَرَضْتُ عَلَيْهِمْ كَذَا وَكَذَا. أَرَضِيْتُمْ؟» قَالُوا: لَا. فَهُمْ يَهُمُ الْمُهَاجِرُونَ. فَأَمَرَ النَّبِيُّ ﷺ أَنْ يَكْفُوا. فَكَفُوا. ثُمَّ دَعَاهُمْ فَرَادُهُمْ. فَقَالَ: «أَرَضِيْتُمْ؟» قَالُوا: نَعَمْ. قَالَ: «إِنِّي خَاطِبُ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ» قَالُوا: نَعَمْ. فَخَطَبَ النَّبِيُّ ﷺ ثُمَّ قَالَ: «أَرَضِيْتُمْ؟» قَالُوا: نَعَمْ.

قَالَ ابْنُ مَاسِحَةَ: سَمِعْتُ مُحَمَّدَ بْنَ يَحْيَى بِقُولٍ: تَفَرَّدَ بِهَا مَعْمَرٌ. لَا أَعْلَمُ رَوَاهُ عَيْرُهُ.

Chapter 11. The Blood Money For A Fetus

2639. It was narrated that Abu Hurairah said: "The Messenger of Allâh 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 Allâh ﷺ said: 'This man speaks like a poet. (But the blood money for a fetus is) a slave, male or female.'"

(المعجم (١١) - باب دية الجنين)

(التحفة (١١)

٢٦٣٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ يَسْرِيرٍ عَنْ مُحَمَّدٍ بْنِ عُمَرٍ، [عَنْ أَبِي سَلْمَةَ،] عَنْ أَبِي هُرَيْرَةَ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي الْجِنِينِ بُغْرَةً: عَبْدٌ أَوْ أُمَّةٌ فَقَالَ الَّذِي قَضَى عَلَيْهِ: أَنْفَقْتُ مَنْ لَا شَرِبَ وَلَا أَكَلَّ. وَلَا صَاحَ وَلَا أَشْتَهَلَّ. وَمِثْلُ ذَلِكَ يُطْلَكُ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ هَذَا لِيَقُولُ بِقَوْلٍ شَاعِرٍ. فِيهِ بُغْرَةٌ، عَبْدٌ أَوْ أُمَّةٌ.

تخریج: [إسناده حسن] أخرجه الترمذی، الديات، 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 Allâh 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 بَكْرٍ بْنُ أَبِي شَيْبَةَ وَ عَلَيْهِ أَبْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَ كَيْنُ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ الْمُؤْسَرِ بْنِ مَحْرَمَةَ قَالَ: اسْتَشَارَ عُمَرَ بْنَ الْخَطَّابِ النَّاسَ فِي إِمْلَاصِ الْمَرْأَةِ. - يَعْنِي سَقْطَهَا -. فَقَالَ الْمُغَيْرَةُ بْنُ شَعْبَةَ: شَهَدْتُ رَسُولَ اللَّهِ ﷺ قَضَى فِيهِ بُغْرَةً، عَبْدٌ أَوْ أُمَّةٌ. فَقَالَ عُمَرُ: الَّتِي يَمْنَنْ يَشْهَدُ مَعَكَ. فَشَهَدَ مَعَهُ مُحَمَّدُ بْنُ

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

تخریج: أخرجه مسلم، القسامه 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 أَخْمَدُ بْنُ سَعِيدِ الدَّارِمِيِّ: حَدَّثَنَا أَبُو عَاصِمٍ: أَخْبَرَنِي ابْنُ جُرَيْحٍ: حَدَّثَنِي عَمْرُو بْنُ دِيَنَارٍ أَنَّهُ سَمِعَ طَاؤِسًا عَنْ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ نَسِدَ النَّاسَ قَضَاءَ النَّبِيِّ ﷺ فِي ذَلِكَ. - يَعْنِي فِي الْجَنِينِ -. فَقَامَ حَمَلُ بْنُ مَالِكٍ بْنِ النَّابِعَةِ فَقَالَ: كُنْتُ بَيْنَ امْرَأَتَيْنِ لِي. فَصَرَرْتُ إِحْدَاهُمَا الْأُخْرَى بِمُسْطَحٍ فَقَتَلَتْهَا، وَقَتَلَتْ جَنِينَهَا. فَقَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بِعَرَّةً، عَبْدًا. وَأَنْ تُقْتَلَ بِهَا.

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

Comments:

- a. The Noble Qur'ân and the word and practices of the Noble Prophet ﷺ are the basis of Islamic law.
- b. If any issue is not clear for judgment, it is necessary to seek the answer from the Noble Qur'ân and from the *Ahâdîth* of the Prophet ﷺ.
- c. 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. (*Sahîh*)

تخریج: [صحیح] أخرجه أبو داود، الترایض، باب: في المرأة ترث من دية زوجها، ح: ٢٩٢٧ من حديث سفيان به، وصححه الترمذی، 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 Sâmit that the Prophet ﷺ ruled that Hamal bin Mâlik Hudhalî Al-Lihyâni should inherit from his wife who was killed by his other wife. (*Da'if*)

(المعجم ١٢) - باب: الميراث من الديّة (التحفة ١٢)

٢٦٤٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفِيَّانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ أَنَّ عُمَرَ كَانَ يَقُولُ: الْدِّيَةُ لِلْعَاقِلَةِ، وَلَا تَرِثُ الْمَرْأَةُ مِنْ دِيَةِ زَوْجِهَا شَيْئًا. حَتَّىٰ تَكُبَ إِلَيْهِ الضَّحَّاكُ بْنُ سُفِيَّانَ أَنَّ الرَّبِيعَ بْنَ الْمُهَاجِرَةَ وَرَثَ امْرَأَةً أَشْبَمَ الصَّنَابِيَّ مِنْ دِيَةِ زَوْجِهَا.

تخریج: [صحیح] أخرجه أبو داود، الترایض، باب: في المرأة ترث من دية زوجها،

ح: ٢٩٢٧ من حديث سفيان به، وصححه الترمذی، ح: ١٤١٥، وابن الجارود، ح: ٩٦٦، وله

شواهد عند الطبراني: ٢٧٦/٥، ح: ٥٣١٥ وغيره.

٢٦٤٣ - حَدَّثَنَا عَبْدُ رَبِيعَ بْنُ خَالِدِ الْمُمِيرِيِّ: حَدَّثَنَا الْفُضَيْلُ بْنُ سَلَيْمانَ: حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ عَنْ إِسْحَاقَ بْنِ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِيتِ أَنَّ الرَّبِيعَ بْنَ الْمُهَاجِرَةَ قَضَى لِحَمْلِ ابْنِ مَالِكِ الْهَذَلِيِّ الْمَحْيَانِيِّ بِمِيرَاثِهِ مِنْ امْرَأَةٍ أَنَّهَا قُتِلَّتْ بْنَ اخْرَى.

تخریج: [إسناده ضعیف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٦، ٣٢٧، ٥/٣٢٦، أطراف المسند: ٦٤٠ من حديث الفضیل 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

2644. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh 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*)

تخریج: [إسناده حسن] * عبد الرحمن بن العارث بن عبد الله بن عياش المخزومي صدوق، وتابعه أسماء بن زيد (الترمذی، 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

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

تخریج: [حسن] أخرجه الترمذی، 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.

(المعجم ١٣) - بَابُ دِيَةِ الْكَافِرِ

(التحفة ١٣)

٢٦٤٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمٌ بْنُ إِشْتَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَيَّاشَ، عَنْ عَمْرِو بْنِ شَعْبَىٰ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَىَ أَنْ عَقْلَ أَهْلِ الْكَافَرَيْنَ يَضُفُّ عَقْلِ الْمُسْلِمِينَ، وَهُمُ الْيَهُودُ وَالنَّصَارَىٰ.

(المعجم ١٤) - بَابُ : الْقَاتِلُ لَا يَرِثُ

(التحفة ١٤)

٢٦٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْجَنَ الْمَضْرِبِيُّ: أَبْنَاءَنَا الَّذِيْتُ بْنُ سَعْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي فَرْوَةَ، عَنْ أَبِي شَهَابٍ، عَنْ حُمَيْدٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْقَاتِلُ لَا يَرِثُ».

تخریج: [حسن] أخرجه الترمذی، الفرائض، باب ما جاء 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 Qatâdah, a man from Banu Mudlij, killed his son, and 'Umar took one hundred camels from him, thirty *Hiqqah*,^[1] thirty *Jadha'ah*^[2] and forty *Khalifah*.^[3] Then he said: "Where is the brother of the slain? I heard the Messenger of Allâh ﷺ say: 'The killer does not inherit.'" (Hasan)

٢٦٤٦ - حَدَّثَنَا أَبُو كُرْبَهُ وَ عَبْدُ اللَّهِ بْنُ سَعِيدِ الْكَنْدِيِّ، قَالَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شَعِيبٍ أَنَّ أَبَا قَتَادَةَ، رَجُلًا مِنْ بَنِي مُذْلِعٍ، قَتَلَ ابْنَهُ، فَأَخَذَ مِنْهُ عُمُرًا يَاهَةً مِنَ الْإِبْلِ. ثَلَاثَيْنَ حَقَّةً، وَ ثَلَاثَيْنَ جَذْعَةً، وَ أَرْبَعَينَ حَلْفَةً. فَقَالَ: أَئِنَّ أَخُو الْمُقْتُولِ؟ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَيْسَ لِقَاتِلِ مِيرَاثَ».

تخریج: [حسن] أخرجه مالك في الموطأ (يحيى): ٨٦٧ / ٢: عن يحيى بن سعيد به، والسندي مقطوع، وله شاهد حسن عند أبي داود وغيره، وحسنه البصيري.

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 Allâh 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 ، وَ مِيرَاثُهَا لِوَلِيِّهَا (الصفحة ١٥)

٢٦٤٧ - حَدَّثَنَا إِشْحَاقُ بْنُ مَصْوِرٍ: أَنَّ أَبَانَا يَزِيدَ بْنَ هَارُونَ: أَنَّ أَبَانَا مُحَمَّدَ بْنَ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شَعِيبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنْ يَعْقِلَ الْمَرْأَةَ عَصَبَتِهَا، مَنْ كَانُوا. وَ لَا

[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 Jâbir said: “The Messenger of Allâh 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 Allâh, her legacy is for us.’ He said: ‘No, her legacy is for her husband and children.’” (Da’if)

تخریج: [إسناده حسن] انظر، ح: ٢٦٢٦.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب دية الجنين، ح: ٤٥٧٥ من حديث عبد الواحد 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 Allâh, 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

يرثوا منها شيئاً. إِلَّا مَا فَضَلَ عَنْ وَرَثَتْهَا.
وَإِنْ قُتِلَتْ فَعَقْلُهَا بَيْنَ وَرَثَتْهَا. فَهُمْ يَقْتُلُونَ
فَانْلَهَا».

تخریج: [إسناده حسن] انظر، ح: ٢٦٤٨.

٢٦٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَىٰ : حَدَّثَنَا
الْمُعَلَّى بْنُ أَسِدٍ : حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ
رِيَادٍ : حَدَّثَنَا مُجَالِدٌ عَنِ الشَّعْبِيِّ ، عَنْ جَابِرٍ
قَالَ: يَجْعَلُ رَسُولُ اللَّهِ ﷺ الْدِيَةَ عَلَى عَاقِلَةِ
الْقَاتِلَةِ . فَقَالَتْ عَاقِلَةُ الْمَقْتُولَةِ: يَا رَسُولَ
اللَّهِ! مِيرَاثُهَا لَنَا . قَالَ: «لَا . مِيرَاثُهَا لِزَوْجِهَا
وَوَلَدِهَا» .

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

(المعجم ١٦) - بَابُ : القَصَاصِ فِي السُّنْنِ (التحفة ١٦)

٢٦٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُتَّهِّنِ أَبُو
مُوسَىٰ : حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ وَ أَبْنُ أَبِي
عَدِيٍّ ، عَنْ حُمَيْدٍ ، عَنْ أَسِنِ قَالَ: كَسَرَتِ
الرُّبِيعُ ، عَمَّةُ أَسِنِ ، ثَنَيَةُ جَارِيَةٍ . فَطَلَّبُوا
الْعَقْرَ، فَأَبْوَا . فَرَرَضُوا عَلَيْهِمُ الْأَرْشَ فَأَبْوَا .
فَأَكَلُوا النَّبَيِّ ﷺ، فَأَمَرَ بِالْقَصَاصِ . فَقَالَ أَسِنُ
ابْنُ النَّضْرِ: يَا رَسُولَ اللَّهِ! تُكْسِرُ ثَنَيَةَ الرُّبِيعِ؟
وَالَّذِي يَعْثَكَ بِالْحَقِّ لَا تُكْسِرُ . فَقَالَ النَّبَيِّ
ﷺ: «يَا أَسِنُ! كِتَابُ اللَّهِ الْقِصَاصُ» . قَالَ:
فَرَضَيْ الْقُرْمُ، فَفَقَوْ . 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
لَا يَرْجُهُ .

تخریج: أخرجه البخاري، الصلح، باب الصلح في الديات، ح: ٢٧٠٣، ٤٤٩٩، ٤٥٠٠، ٦٨٩٤ من طرق عن حمید 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 دِيَةِ الْأَسْنَانِ
(التحفة ١٧)

٢٦٥٠ - حَدَّثَنَا الْعَبَاسُ بْنُ عَبْدِ الْعَظِيمِ
الْعَنْبَرِيُّ : حَدَّثَنَا عَبْدُ الصَّمْدِ بْنُ عَبْدِ
الْوَارِثِ : حَدَّثَنِي شُعْبَةُ عَنْ قَاتَدَةَ، عَنْ
عِكْرِمَةَ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ
قَالَ: «الْأَسْنَانُ سَوَاءُ. النَّسْوَةُ وَالضَّرْسُ
سَوَاءُ» .

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب ديات الأعضاء، ح: ٤٥٥٩ عن العباس العنبرى 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
الْبَالِسِيُّ : حَدَّثَنَا عَلِيُّ بْنُ الْحَسَنِ بْنُ شَقِيقِ:
حَدَّثَنَا أَبْيُونَ حَمْرَةُ الْمَرْوَزِيُّ : حَدَّثَنَا تَيْرِيدُ
النَّحْوِيُّ عَنْ عِكْرِمَةَ، عَنْ أَبْنِ عَبَّاسٍ عَنِ النَّبِيِّ
صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَسَلَّمَ فِي السَّنَّ خَمْسًا مِنَ الْإِبْلِ .

تخریج: [إسناده صحيح] وقال ابوصیري: هذا إسناد 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

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

(المعجم (١٨) - باب دية الأصابع
(التحفة (١٨)

٢٦٥٢ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِبْيَعٌ؛ حٍ: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَمُحَمَّدُ بْنُ جَعْفَرٍ وَابْنُ [أَبِي] عَدِيٍّ، قَالُوا: حَدَّثَنَا شُعْبَةُ عَنْ فَتَادَةَ، عَنْ عَكْرَمَةَ، عَنْ أَبْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «هُنَّوْهُنَّ سَوَاءٌ» يَعْنِي الْخُضْرَ وَالْبَيْضَرَ وَالْإِنْهَامَ.

تخریج: أخرجه البخاري، الديات، باب دية الأصابع، ح: ٦٨٩٥ عن ابن بشار به مختصاراً.

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 جَوْهِيلُ بْنُ الْحَسَنِ الْعَتَكِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ عَنْ مَطْلَبٍ، عَنْ عَمْرِو بْنِ شَعْبَيْبٍ، عَنْ أَبِيهِ، عَنْ جَلْوَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ كُلُّهُنَّ». فِيهِنَّ عَشْرُ عَشْرُ مِنَ الْإِلَيْلِ».

تخریج: [صحيح] أخرجه البهقى: ٩٢، ٨٩ / ٨ وتابعه حسين المعلم (أبو داود، ح: ٤٥٦٢)، وإسناده حسن، وصححه ابن الجارود، ح: ٧٨١، وللحديث شواهد كثيرة جداً، منها ما أخرجه الترمذى، ح: ١٣٩١، وابن الجارود، ح: ٧٨٠ من حديث ابن عباس به نحو المعنى، وقال الترمذى: حسن صحيح، وطريق ابن ماجة حسنة ابوصیري.

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 Allâh ﷺ said: "The fingers are the same." (*Sahih*)

٢٦٥٤ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجَّحِيُّ السَّمَرْقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ شَمِيلٍ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرْوَةَ عَنْ غَالِبِ التَّمَارِ، عَنْ حُمَيْدِ بْنِ هَلَالٍ، عَنْ مَسْرُوقِ بْنِ أَفْوِسٍ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ عَنِ النَّبِيِّ ﷺ قَالَ: «الْأَصَابِعُ سَوَاةٌ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب ديات 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

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*)

(المعجم ١٩) - بَابُ الْمُؤْبِحَةِ (التحفة ١٩)

٢٦٥٥ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرْوَةَ، عَنْ مَطْرِ، عَنْ عَمْرِو بْنِ شَعْبَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيِّ ﷺ قَالَ: «فِي الْمَوَاضِعِ خَمْسٌ خَمْسٌ مِنَ الْإِبَلِ».

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

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

(المعجم ٢٠) - بَابُ مِنْ عَضْ رَجُلًا فَنَزَعَ يَدَهُ فَتَلَرَ ثَنَائِاهُ (التحفة ٢٠)

٢٦٥٦ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَمِيمَةَ: حَدَّثَنَا عَبْدُ الرَّجِيمِ بْنُ شَلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ

Messenger of Allâh 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 Allâh ﷺ demanding compensatory money for his tooth, and the Messenger of Allâh 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 Allâh invalidated it (i.e. compensatory money in such a case). (*Hasan*)

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

2657. It was narrated from Imrân 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*)

إِسْحَاقَ، عَنْ عَطَاءٍ، عَنْ صَفْوَانَ بْنَ عَبْدِ اللَّهِ، عَنْ عَمِيَّةَ يَعْلَى وَ سَلَمَةَ ابْنِي أُمِيَّةَ قَالَا: حَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي غَرْوَةِ تَبُوكَ. وَمَعَنَا صَاحِبُ لَنَّا. فَأَقْسَلَ هُوَ وَرَجْلُ أَخْرَى وَنَحْنُ بِالطَّرِيقِ. قَالَ: فَعَصَنَ الرَّجُلُ يَدَ صَاحِبِهِ. فَجَبَ صَاحِبُهُ يَدَهُ مِنْ فِيهِ. فَطَرَّ شَيْئَهُ، فَأَتَى رَسُولَ اللَّهِ ﷺ يَلْتَمِسُ عَقْلَ شَيْئَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «يَعْمَدُ أَحَدُكُمْ إِلَى أَخِيهِ فَيَعْضُهُ كَعِصَاضِ التَّفْحِلِ». ثُمَّ يَأْتِي يَلْتَمِسُ الْعَقْلَ لَا عَقْلًا لَهَا» قَالَ: فَأَبْطَلَهَا رَسُولُ اللَّهِ ﷺ.

٢٦٥٧ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُعْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ قَتَادَةَ، عَنْ زَرَارةَ بْنِ أَوْفَى، عَنْ عُمَرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا عَضَ رَجُلًا عَلَى ذِرَاعِهِ فَتَرَعَ يَدَهُ، فَوَقَعَتْ شَيْئَهُ. فَرُفِعَ إِلَى النَّبِيِّ ﷺ. فَأَبْطَلَهَا وَقَالَ: «يَقْضِمُ أَحَدُكُمْ كَمَا يَقْضِمُ الْفَحْلُ».

تخریج: أخرجه البخاري، الديات، باب إذا عض رجلاً فرقعت ثيابه، ح: ٦٨٩٢، ومسلم، القسامة والمحاربين، باب الصائل على نفس الإنسان وعضوه إذا دفعه المصول 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.' " (Sahîh)

المعجم (٢١) - بَابُ لَا يُقْتَلُ مُسْلِمٌ
كَافِرٌ (التحفة (٢١)

- ٢٦٥٨ - حَدَّثَنَا عَلْقَمَةُ بْنُ عَمْرُو الدَّارِمِيُّ
حَدَّثَنَا أَبُو بَكْرٍ بْنُ عَبَاشٍ، عَنْ مُطَرِّفٍ، عَنْ
الشَّعْبِيِّ، عَنْ أَبِي جَعْفَرٍ قَالَ: فَلْمَتْ لِعْلَيْ بْنِ
أَبِي طَالِبٍ: هَلْ عِنْدُكُمْ شَيْءٌ مِّنَ الْعِلْمِ لَيْسَ
عِنْدَ النَّاسِ؟ قَالَ: لَا. وَاللَّهِ مَا عِنْدَنَا إِلَّا مَا
عِنْدَ النَّاسِ. إِلَّا أَنْ يَرِزُقَ اللَّهُ رَجُلًا فَهُمَا فِي
الْقُرْآنِ. أَوْ مَا فِي هَذِهِ الصَّحِيفَةِ. فِيهَا
الدِّيَاتُ عَنْ رَسُولِ اللَّهِ ﷺ وَأَنْ لَا يُفْتَنَ
مُسْلِمٌ بِكَافِرٍ.

تخرج: أخرجه البخاري، العلم، باب كتابة العلم، ح: ١١١، ٤٧، ٣٠٤٧، ٦٩٠٣ من حدیث مطرف بن .
Comments:

Comments:

- a. 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 Ahâdîth. There is no extra hidden knowledge.
 - b. '*Ilm 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.
 - c. 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." (*Sahîh*)

٢٦٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَارٍ: حَدَّثَنَا
حَاتِمٌ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ
عَيَّاشٍ، عَنْ عُمَرٍ وَبْنِ شَعْبٍ، عَنْ أَبِيهِ، عَنْ
جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يُقْتَلُ
مُسْلِمٌ بِكَافِرٍ».

تخریج: [صحیح] أخرجه أَحْمَدُ ۖ ۲۱۵ مِنْ حَدِيثِ عَبْدِ الرَّحْمَنِ بْنِ عَيَّاشَ بْنِ مَطْلُوٍّ، إِسْنَادُه حَسْنٌ، وَانْظُرْ، ح: ۲۶۴۴ لِتَحْقِيقِ عَبْدِ الرَّحْمَنِ بْنِ عَيَّاشَ رَحْمَهُ اللَّهُ، وَلِلْحَدِيثِ طَرْقٌ عَنْ عُمَرِ بْنِ شَعْبِيْنَ عَنْ أَبِي دَاوُدَ، ح: ۴۰۶، وَأَحْمَدُ ۖ ۱۷۸، ۱۸۰، ۱۹۲ وَغَيْرَهُمَا، وَانْظُرْ الْحَدِيثَ السَّابِقَ فَإِنَّهُ شَاهِدٌ لَهُ.

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*)

تخریج: [صحیح] وضعه البوصیری من أجل حتش، انظر، ح: ۲۴۴۶، وللحادیث طرق عند أبی داود، ح: ۴۰۶، ۴۵۳۰، وابن حبان(موارد)، ح: ۱۶۹۹ وغیرهما.

Comments:

- Security of non-Muslim minorities living in an Islamic state is the duty of the state.
- 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'an or disgracing the Noble Prophet ﷺ. (Allâh forbid us)

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

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

تخریج: [إسناده ضعیف] أخرجه الترمذی به، انظر، ح: ۲۵۹۹ من هذا الكتاب، وللحادیث شواهد ضعیفة، انظر الحدیث الآتی.

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'iif*)

٢٦٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَىِ الصَّنْعَانِيُّ: حَدَّثَنَا مُعْتَمِرُ بْنُ سَلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَتْشَنَ، عَنْ عَكِيرَةَ، عَنْ أَبْنَ عَبَّاسٍ عَنْ النَّبِيِّ ﷺ قَالَ: «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ».

(المجمع ۲۲) - بَابٌ : لَا يُقْتَلُ الْوَالِدُ
بَوْلِيْهِ (التحفة ۲۲)

٢٦٦١ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلَيُّ ابْنُ مُسْهِرٍ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاؤُسٍ، عَنْ أَبْنَ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يُقْتَلُ بِالْوَلَدِ الْوَالِدُ».

تخریج: [إسناده ضعیف] أخرجه الترمذی به، انظر، ح: ۲۵۹۹ من هذا الكتاب، وللحادیث شواهد ضعیفة، انظر الحدیث الآتی.

٢٦٦٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرَ عَنْ حَجَاجَ، عَنْ عَمْرِو بْنِ شَعْبِيْنَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنْ عُمَرَ بْنِ الْحَكَّاطِ قَالَ: سَوْمَتْ رَسُولُ اللَّهِ ﷺ يَقُولُ: «لَا يُقْتَلُ الْوَالِدُ بِالْوَلَدِ».

تخریج: [إسناده ضعیف] أخرجه الترمذی، الديات، باب ماجاء فی الرجل يقتل ابنته يقاد منه أم لا؟، ح: ١٤٠٠ من حديث أبي خالد الأحمر به * والحجاج بن أرطاة تقدم حاله، ح: ٤٩٦، ١١٢٩، ٢٥٨٧، وعنون، وتابعه محمد بن عجلان به عند البيهقي: ٣٨/٨ وغیره، وصححه ابن الجارود، ح: ٧٨٨ وغیره، وابن عجلان عن تقدم، ح: ١٩٦٧، وللحديث طرق أخرى، وقال عبد الحق 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) - باب: هل يقتل العُرْبُ
بالعَبْدِ؟ (التحفة ٢٣)

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

٢٦٦٣ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْمَعْ
عَنْ سَعِيدِ بْنِ أَبِي عَرْوَةَ، عَنْ قَتَادَةَ، عَنْ
الْحَسَنِ، عَنْ سَمْرَةَ بْنِ جُنْدَبٍ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَاهُ. وَمَنْ
جَدَعَهُ جَدَعْنَاهُ». .

تخریج: [حسن] أخرجه أبو داود، الديات، باب من قتل عبده أو مثل به أیقاد منه؟، ح: ٤٥١٧ من طريق سعيد به، وتابعه شعبة وغیره (أبو داود، ح: ٤٥١٥، وحسنه الترمذی: ١٤١٤، صححه الحاکم على شرط البخاری: ٣٦٧/٤، ووافقه الذهبی) * 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 Allâh 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 يَحْيَىٰ: حَدَّثَنَا
ابْنُ الطَّاعَ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ
إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ، عَنْ
إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُكَيْمٍ، عَنْ أَبِيهِ عَنْ
عَلِيٍّ، وَعَنْ عَمْرُو بْنِ شَعْبٍ، عَنْ أَبِيهِ، عَنْ
جَدِّهِ قَالًا: قَتَلَ رَجُلٌ عَبْدَهُ عَمْدًا مُتَعَمِّدًا.
فَجَلَّهُ رَسُولُ اللَّهِ ﷺ مِائَةً. وَقَنَاهُ سَتَّةً.
وَمَحَا سَهْمَهُ مِنَ الْمُمْثَلِينَ.

تخریج: [إسناده ضعیف جداً] وقال البوصیری: هذا إسناد ضعیف لضعف إسحاق بن أبي فروة تقدم، ح: ٣٤٥، وتدلیس إسماعیل بن عیاش، 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 الأشخاص والخصومات بين المسلم واليهود، ح: ٢٤١٣، ٦٨٨٤، ٢٧٤٦، ومسلم، القسامة، باب ثبوت القصاص في القتل بالحجر وغيره... الخ، ح: ١٦٧٢ من حديث همام.

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 قُتِلَ (التحفة ٢٤)

٢٦٦٥ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَبِيعُ
عَنْ هَمَّامَ بْنِ يَحْيَى، عَنْ فَتَادَةَ، عَنْ أَنَسِ
ابْنِ مَالِكٍ أَنَّ يَهُودِيًّا رَضَّ رَأْسَ امْرَأَةَ بَيْنَ
حَجَرَيْنِ فَقَتَلَهَا. فَرَضَخَ رَسُولُ اللَّهِ ﷺ رَأْسَهُ
بَيْنَ حَجَرَيْنِ.

٢٦٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ؛ حَ وَحَدَّثَنَا إِسْحَاقُ بْنُ
مَنْصُورٍ: حَدَّثَنَا التَّضْرُّرُ بْنُ شَمْيَنْ، قَالَ:
حَدَّثَنَا شُبَّهٌ عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ أَنَسِ بْنِ
مَالِكٍ أَنَّ يَهُودِيًّا قَتَلَ جَارِيَةً عَلَى أَوْصَاحِ
لَهَا. فَقَالَ لَهَا: «أَقْتَلَكَ فُلَانٌ؟» فَأَشَارَتْ
إِلَيْهَا: أَنَّ لَا. ثُمَّ سَأَلَهَا الثَّانِيَةَ. فَأَشَارَتْ
إِلَيْهَا: أَنَّ لَا. ثُمَّ سَأَلَهَا الثَّالِثَةَ. فَأَشَارَتْ
إِلَيْهَا: أَنَّ نَعَمْ. فَقَتَلَهَا رَسُولُ اللَّهِ ﷺ بَيْنَ
حَجَرَيْنِ.

تخریج: أخرجه البخاري، الطلاق، باب الإشارة في الطلاق والأمور، ح: ٥٢٩٥ تعلیقاً، 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 قَوْدٌ إِلَّا
بِالسَّيْفِ (التحفة ٢٥)

٢٦٦٧ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِ
الْعُرْوَقِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ سُقْيَانَ، عَنْ
جَابِرٍ، عَنْ أَبِي عَازِيزٍ، عَنِ النَّعْمَانَ بْنِ بَشِيرٍ
أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا قَوْدٌ إِلَّا
بِالسَّيْفِ».

تخریج: [إسناده ضعیف جداً] آخرجه الطحاوی في معانی الآثار: ١٨٤ / ٣ من حديث أبي عاصم به * جابر الجعفی تقدم، ح: ٣٥٦، وأبو عازب مستور (تقرب)، 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 الْمُسْتَمِرِ: حَدَّثَنَا
الْحُرُّ بْنُ مَالِكِ الْعَبْرِيُّ: حَدَّثَنَا مُبَارَكُ بْنُ
فَضَالَةَ عَنِ الْحَسَنِ، عَنْ أَبِي بَكْرَةَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «لَا قَوْدٌ إِلَّا بِالسَّيْفِ».

تخریج: [إسناده ضعیف] * الحسن عنون تقدم، ح: ٧١، وفيه علة أخرى، وأخرج الدارقطنی: ١٠٥ ياسناد حسن عن مبارك عن الحسن مرسلاً، وقال: قال يonus: قلت للحسن! من أخذت هذا؟ قال: سمعت النعمان بن بشير يذكر ذلك ، يعني أنه موقف، 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 بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
أَبُو الْأَخْوَصِ عَنْ شَيْبِ بْنِ غَرْفَةَ، عَنْ
شَلَيْمَانَ بْنِ عَمْرُو بْنِ الْأَخْوَصِ، عَنْ أَبِيهِ
قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي حَجَّةِ
الْوَدَاعِ: «أَلَا لَا يَجْنِي جَانِ إِلَّا عَلَى نَفْسِهِ.
لَا يَجْنِي وَالِدٌ عَلَى وَلَدِهِ، وَلَا مَوْلُودٌ عَلَى
وَالِدِهِ».

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

2670. It was narrated that Târiq Al-Muhâribi 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 بَكْرٍ بْنُ أَبِي شَمِيمَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ تُمَيْرٍ عَنْ يَزِيدَ بْنِ أَبِي زَيَادٍ: حَدَّثَنَا جَامِعٌ بْنُ شَدَادٍ، عَنْ طَارِقِ الْمُحَارِبِيِّ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ ﷺ يَرْفَعُ يَدَيْهِ، حَتَّىٰ رَأَيْتُ بَيْاضَ إِنْطِيلِيَّةَ، يَقُولُ: «أَلَا لَا تَجْنِي أُمًّا عَلَىٰ وَلَدٍ. أَلَا لَا تَجْنِي أُمًّا عَلَىٰ وَلَدٍ».

تخریج: [إسناده صحيح] أخرجه الدارقطني: ٤٣، ٤٤ من حديث ابن نمير به مطولاً، وصححه ابن حبان (موارد)، ح: ١٦٨٣، ٦١٢، ٦١١ / ٢، والحاکم: رواه الفضل بن موسى عن يزيد بن زياد بن أبي الجعد عن سخر جامع بن شداد عن طارق بن عبد الله 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 الْمُرْخَ، عَنِ الْخَسْنَاخَانِ الْعَبَّارِيِّ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ وَمَعِي ابْنِي. فَقَالَ: «لَا تَجْنِي عَلَيْهِ، وَلَا يَجْنِي عَلَيْكَ».

تخریج: [صحيح] أخرجه أحمد: ٣٤٤، ٣٤٥ عن هشيم: أنا يونس بن عبيد به، وقال: قال هشيم مرة يونس قال: أخبرني مخبر عن حصين بن أبي الحر (وانظر المستند: ٨١/٥)، فالسندي ضعيف لجهالة المخبر، والحديث السابق شاهد له، وللحديث طريق آخر عند البهقي: 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 عَبِيدٍ أَبْنُ عَقِيلٍ: حَدَّثَنَا عَمْرُو بْنُ عَاصِمٍ: حَدَّثَنَا أَبُو الْعَوَامِ الْقَطَانُ، عَنْ مُحَمَّدِ بْنِ جُحَادَةَ، عَنْ زَيَادِ بْنِ عِلَّاتَةَ، عَنْ أَسَامَةَ بْنِ شَرِيكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَجْنِي نَفْسٌ عَلَىٰ أُخْرَىٰ».

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. (Allâh knows better.)

Chapter 27. Offences For Which There Is No Liability

(المعجم ٢٧) - بابُ الجبارِ
(التحفة ٢٧)

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

٢٦٧٣ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ: حَدَّثَنَا شُفَّيْبٌ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَبِّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ. وَالْمَعْدِنُ جُبَارٌ. وَالْبَرْ جُبَارٌ».

تخریج: [صحيح] تقدم، ح: ٢٥٠٩

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

٢٦٧٤ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شِيمَةَ: حَدَّثَنَا خَالِدٌ بْنُ مَخْلِدٍ: حَدَّثَنَا كَثِيرٌ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرُو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَجْمَاءُ جَرْحُهَا جُبَارٌ، وَالْمَعْدِنُ جُبَارٌ».

تخریج: [صحيح] أخرجه الطبراني: ١٤/١٧ ح، ٦٢: من حديث كثير به * كثير ضعيف جداً، والحديث السابق شاهد له متهم تقدم، ح: ١٦٥.

2675. It was narrated that 'Ubâdah bin Sâmit said: "The Messenger of Allâh 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 الْمُتَبَرِّيِّ: حَدَّثَنَا فُضَيْلُ بْنُ شُلَيْمَانَ: حَدَّثَنِي مُوسَى بْنُ عَفْعَةَ: حَدَّثَنِي إِسْحَاقُ بْنُ يَحْيَى بْنُ الْوَلِيدِ، عَنْ عُبَادَةَ بْنِ الصَّامتِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنَّ الْمَعْدِنَ جُبَارٌ، وَالْبَرْ 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-Jubâr* is bloodshed with impunity (i.e. without liability).

نَحْرِيْجٌ: [صَحِّيْحٌ] وَقَالَ الْبُوْصِيرِيُّ: مُنْقُطٌ ، وَانْظُرْ ، ح: ٢٦٤٣ ، لَعْنَهُ وَحْـ: ٢٦٧٣ شَاهِدٌ لَهُ .

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

نَحْرِيْجٌ: [إِسْنَادٌ صَحِّيْحٌ] أَخْرَجَهُ أَبُو دَاوُدُ، الْدِيَاتُ، بَابُ فِي النَّارِ تَعْدِي، ح: ٤٥٩٤ مِنْ حَدِيثِ عَبْدِ الرَّزَاقِ بْنِ مَعْمَرٍ، عَنْ هَمَّامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّارُ جُبَارٌ، وَالْمَيْتُ جُبَارٌ» .

Comments:

- 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.
- 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.
- Similarly, if someone dies by falling in the well, the owner of the well is not held responsible for that mishap.
- 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 'Abdullâh bin Sahl and Muhayyisah set out for Khaibar because of some problem that had arisen. Someone came to Muhayyisah, and he told him that 'Abdullâh bin Sahl had been

٢٦٧٧ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَشْرُبُ بْنُ عُمَرَ: سَمِعْتُ مَالِكَ بْنَ أَنَسَ: حَدَّثَنِي أَبُو نَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ أَبْنِ سَهْلٍ بْنِ حُنَيْفٍ، عَنْ سَهْلٍ بْنِ أَبِي حَمَّةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْبَوْنَ أَنَّ عَبْدَ

killed and thrown into a pit or well in Khaibar. He came to the Jews and said: "By Allâh, you killed him." They said: "By Allâh, 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-Rahmân 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 Allâh ﷺ said: "Let the elder speak first." So Huwayyisah spoke, then Muhayyisah spoke. The Messenger of Allâh ﷺ said: "Either (the Jews) will pay the blood money for your companion, or war will be declared on them." The Messenger of Allâh ﷺ sent a letter to that effect (to the Jews) and they wrote back saying: "By Allâh, we did not kill him." The Messenger of Allâh ﷺ said to Huwayyisah, Muhayyisah and 'Abdur-Rahmân: "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 Allâh 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*)

الله بْنَ سَهْلٍ، وَمُحَمَّصَةً حَرَجًا إِلَى خَيْرٍ مِنْ جَهْدِ أَصَابُهُمْ. فَأَتَيْتُهُ مُحَمَّصَةً فَأُخْبَرَ أَنَّ عَبْدَ الله بْنَ سَهْلٍ قُدِّ قُطْلَ وَأُقْتَيَ فِي فَقِيرٍ أَوْ عَيْنٍ بِخَيْرٍ. فَأَتَيْتُهُ يَهُودَةً، فَقَالَ: أَنْتُمْ، وَالله قَاتِلُوكُمْ. قَالُوا: وَالله مَا قَاتَلْنَاكُمْ. ثُمَّ أَقْبَلَ حَسَنٌ فَلِيمَ عَلَى قَوْمِهِ. فَذَكَرَ ذَلِكَ لَهُمْ. ثُمَّ أَقْبَلَ هُوَ وَأَخْرُوهُ حُوَيْصَةً، وَهُوَ أَكْبَرُ مِنْهُ، وَعَبْدُ الرَّحْمَنُ بْنُ سَهْلٍ. فَدَهَبَ مُحَمَّصَةً يَكَلِّمُ وَهُوَ الَّذِي كَانَ بِخَيْرٍ. فَقَالَ رَسُولُ الله ﷺ لِمُحَمَّصَةَ: «كَبِيرٌ، كَبِيرٌ» يُرِيدُ السُّنَّ. فَكَلَّمَ حُوَيْصَةً. ثُمَّ تَكَلَّمَ مُحَمَّصَةً. فَقَالَ رَسُولُ الله ﷺ: «إِنَّمَا أَنْ تَدْعُوا صَاحِبَكُمْ، وَإِنَّمَا أَنْ تُؤْذِنُوا بِحَرْبٍ» فَكَتَبَ رَسُولُ الله ﷺ فِي ذَلِكَ الْكِتَابَ: فَكَبُرُوا: إِنَّا، وَالله مَا قَاتَلْنَاكُمْ. فَقَالَ رَسُولُ الله ﷺ لِحُوَيْصَةَ وَمُحَمَّصَةَ وَعَبْدِ الرَّحْمَنِ: «تَخْلُفُونَ وَتَسْتَحْمُونَ دَمَ صَاحِبَكُمْ؟» قَالُوا: لَا. قَالَ: «فَتَخْلُفُ لَكُمْ يَهُودُ؟» قَالُوا: لَيْسُوا بِمُسْلِمِينَ. فَوَدَاهُ رَسُولُ الله ﷺ مِنْ عَنْدِهِ فَبَعَثَ إِلَيْهِمْ رَسُولُ الله ﷺ مَا تَرَكَ نَاقَةً. حَتَّى أَدْخَلَتْ عَلَيْهِمُ الدَّارَ.

قَالَ سَهْلٌ: فَلَقَدْ رَكَضْتِي مِنْ نَاقَةٍ حَمْراءً.

تخریج: أخرجه البخاري، الأحكام، باب كتاب الحاكم إلى عماله والقاضي إلى أمرائه، ح: ٧١٩٢ من حديث مالك به، ومسلم، القسامه والمحاربين ...، باب القسامه، ح: ٦٦٦٩ 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 خَالِدِ الْأَحْمَرِ عَنْ حَاجَاجَ، عَنْ عَمْرِو بْنِ شُعْبِيْنَ عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ حُوَيْصَةَ وَمُحَيْصَةَ، ابْنَيْ مَسْعُودٍ وَعَبْدِ اللَّهِ وَعَبْدِ الرَّحْمَنِ، ابْنَيْ سَهْلٍ. حَرَجُوا يَمَارُونَ بِخَيْرٍ. فَعَدَى عَلَى عَبْدِ اللَّهِ، فَقُتِلَ. فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ قَالَ: «تُقْسِمُونَ وَسَتُنْجِحُونَ؟» فَقَالُوا: يَا رَسُولَ اللَّهِ! كَفَ ثُقْسُمْ وَلَمْ شَهَدْ؟ قَالَ: «فَتَثْرِكُمْ بِهُودْ؟» قَالُوا: يَا رَسُولَ اللَّهِ! إِذَا تَقْتَلْنَا. قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ ﷺ مِنْ عَنْتِهِ.

تخریج: [صحیح] أخرجه ابن أبي شيبة: ٣٧٨ عن أبي خالد به ضعفه البوصيري لعنترة الحاجاج 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 Zirbā', 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 حَرُّ (التحفة ٢٩)

٢٦٧٩ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ قَالَ: حَدَّثَنَا عَبْدُ السَّلَامِ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ، عَنْ سَلَمَةَ بْنِ رَفِيقٍ بْنِ زَيْنَاعَ، عَنْ جَدِّهِ أَنَّهُ قَدِيمٌ عَلَى النَّبِيِّ ﷺ وَقَدْ أَخْصَصَ عَلَيْهِ لَهُ فَاغْتَهَرَ أَبُو شَيْبَةَ بِالْمُمْثَلَةِ.

تخریج: [صحیح] أخرجه الطبراني: ٢٦٩/٥، ح: ٥٣٠٢ من حديث عبد السلام بن حرب به، وضعفه البوصيري من أجل إسحاق بن أبي فروة، 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 Allāh 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 Allāh ﷺ said: 'Go, for you are free.' He said: 'Who will protect me, O Messenger of Allāh? What if my master enslaves me again?' The Messenger of Allāh ﷺ said: 'Your protection will be (incumbent upon) every believer or Muslim.'" (*Hasan*)

٢٦٨٠ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجَّى السَّمَرْقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ شَمْيْلٍ: حَدَّثَنَا أَبُو حَمْزَةَ الصَّبَرِيفِيُّ: حَدَّثَنِي عَمْرُو بْنُ شَعْبَيْنَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ صَارِخًا قَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «مَا لَكَ؟» قَالَ: سَيِّدِي رَأَيْتُ أَقْبَلَ حَجَارِيَّةً لَهُ، فَجَبَ مَذَاكِيرِي. فَقَالَ النَّبِيُّ ﷺ: «عَلَيَّ بِالرَّجُلِ» فَطَلَبَ فَلَمْ يَقُدِّرْ عَلَيْهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «اَهْبِطْ. فَأَنْتَ حُرٌّ» قَالَ: عَلَى مَنْ نُضْرَتِي يَا رَسُولَ اللَّهِ! قَالَ يَقُولُ: أَرَأَيْتَ إِنْ اسْتَرْفَقَ فِي مَوْلَايَ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «عَلَى كُلِّ مُؤْمِنٍ أَوْ مُسْلِمٍ».

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

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

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

(المعجم ٣٠) - باب أَعْفُ النَّاسِ قِتْلَةً
أَهْلُ الإِيمَانِ (التحفة ٣٠)

٢٦٨١ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيُّ: حَدَّثَنَا هُشَيْمٌ عَنْ مُغِيرَةَ، عَنْ شَبَّاكَ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ قَالَ: قَالَ عَبْدُ اللَّهِ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ مَنْ أَعْفَ النَّاسِ قِتْلَةً أَهْلُ الإِيمَانِ».

تخریج: [إسناده ضعیف] أخرجه أحمد: ١/٣٩٣ من حديث هشیم: أبا مغیرة به، وانظر الحديث الآتي 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'iif*)

٢٦٨٢ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَنْدَرُ عَنْ شَعْبَةَ، عَنْ مُغِيرَةَ، عَنْ شَبَّاكَ، عَنْ إِبْرَاهِيمَ، عَنْ هُنَيِّ بْنِ تُوْرَةَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ أَعْفَ النَّاسِ قِتْلَةً، أَهْلُ الإِيمَانِ».

تخریج: [إسناده ضعیف] أخرجه أبو داود، الجهاد، باب: في النهي عن المثلة، ح: ٢٦٦٦ من حديث مغیرة به، وانظر، ح: ٢٠٧٤ لتلییس إبراهیم التخعی * وهنی بن نویرة مستور (تقرب)، 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

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

(المعجم ٣١) - باب : الْمُسْلِمُونَ تَكَافَأُ دِمَاؤُهُمْ (التحفة ٣١)

٢٦٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّعَانِيُّ: حَدَّثَنَا الْمُعْتَمِرُ بْنُ شَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْشِنَ، عَنْ عَكْرَمَةَ، عَنْ أَبْنَ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «الْمُسْلِمُونَ تَكَافَأُ دِمَاؤُهُمْ». وَهُمْ يَدُّ عَلَى مَنْ سَوَاءُهُمْ. يَسْعَى

granted to the farthest of them.”^[1] (*Sahih*)

يُذْمِنُهُمْ أَذْنَاهُمْ، وَيَرْدُ عَلَى أَقْصَاهُمْ».

تخریج: [صحیح] ضعفه البوصیری لضعف حش، وللحديث طرق عند أبي داود وغيره، انظر، ح: ۲۶۶۰.

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 سَعِيدِ الْجُوَهْرِيِّ: حَدَّثَنَا أَنَسُ بْنُ عِيَاضٍ، أَبُو ضَمْرَةَ، عَنْ عَبْدِ السَّلَامِ بْنِ أَبِي الْجَنْوِبِ، عَنْ الْحَسَنِ، عَنْ مَعْقِلِ بْنِ يَسَارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُسْلِمُونَ يَدْ عَلَى مَنْ سَوَاهُمْ. وَتَكَافَأْ دَمَاؤُهُمْ».

تخریج: [صحیح] أخرجه ابن عدی: ۱۹۶۸/۵ من طریق إبراهیم بن سعید به، وفي المطبوع تصحیف فلیصح من هاها و ضعفه البوصیری من أجل عبدالسلام بن أبي الجنوب، ضعفه ابن المدینی، 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 عَيَّشٍ، عَنْ عُمَرِو بْنِ شَعْبَيْ، عَنْ أَبِيهِ، عَنْ جَلْوَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَدُ الْمُسْلِمِينَ عَلَى مَنْ سَوَاهُمْ. تَكَافَأْ دَمَاؤُهُمْ

[۱] 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)

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'âhid*^[1]

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

تخریج: أخرجه البخاري، الجزية والموادعه، باب إثم من قتل معاهداً 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'âhid* 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*)

تخریج: [صحيح] أخرجه الترمذی، الديات، باب ماجاء فيمن يقتل نفسه معاهداً، ح ١٤٠٣، عن ابن بشار به، وقال: حسن صحيح * ومدحی ضعیف، وابن عجلان عنن تقدم، ح ١٩٦٧، والحدیث السابق شاهد له.

Comments:

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

وأنوالهم. ويُحرِّرُ عَلَى الْمُسْلِمِينَ أَذْنَاهُمْ،
وَيَرِدُ عَلَى الْمُسْلِمِينَ أَضْصَاهُمْ».

تخریج: [إسناده حسن] انظر، ح: ٢٦٤٤

(المعجم (٣٢) - باب مَنْ قَتَلَ مُعَاهِدًا
(التحفة (٣٢)

٢٦٨٦ - حَدَّثَنَا أَبُو كُرْبَةَ: حَدَّثَنَا أَبُو
مَعَاوِيَةَ عَنِ الْحَسَنِ بْنِ عَمْرُو، عَنْ مُجَاهِدٍ،
عَنْ عَبْدِ اللَّهِ بْنِ عَمْرُو قَالَ: قَالَ رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ قَتَلَ مُعَاهِدًا، لَمْ يَرُخْ رَائِحةَ الْجَنَّةِ
وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا».

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

٢٦٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مَعْدِيُّ بْنُ شَلَيْمَانَ: أَبْنَانَا أَبْنُ عَجْلَانَ عَنْ
أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ
قَتَلَ مُعَاهِدًا، لَهُ ذَمَّةُ اللَّهِ وَذَمَّةُ رَسُولِهِ، فَلَا
يَرَأْخُ رَائِحةَ الْجَنَّةِ. وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ
مَسِيرَةِ سَبْعِينَ عَامًا».

[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

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)

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

٢٦٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي الشَّوَارِبِ : حَدَّثَنَا أَبْرُو عَوَانَةُ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ رِفَاعَةَ بْنِ شَدَادَ الْقُبَّانِيِّ قَالَ: لَوْلَا كَلِمَةً سَوَعَتْهَا مِنْ عَمْرُو بْنِ الْحَمْوَقِ الْخَرَاعِيِّ، لَمَسَيْتُ فِيمَا بَيْنَ رَأْسِ الْمُخْتَارِ وَجَسْدِهِ سَمِعْتُهُ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَمِنَ رَجُلًا عَلَى دِمْهُ، فَقَتَلَهُ فَإِنَّهُ يَحْمِلُ لَوَاءَ عَذَابِ يَوْمِ الْقِيَامَةِ».

تخریج: [صحيح] أخرجه النسائي في الكبير: ٤٠/٢٢٥، ح: ٨٧٣٩ من حديث أبي عوانة به، وصححه البوصيري، قلت: عبد الملك بن عمير (١١٨) صرح بالسماع عند النسائي (الكبير)، ح: ٨٧٤) إلا أنه قال: حدثني عامر بن شداد والصواب: رفاعة بن شداد ، وتابعه إسماعيل السدي عن رفاعة به عند ابن حبان، ح: ١٦٨٢ وغيره، وللمحدث طرق أخرى.

Comments:

- a. Killing after giving a promise of protection is a great sin.
- b. Mukhtâr bin 'Ubayd 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 *Hadîth* that I heard from Sulaimân bin Surad, according to which the Prophet ﷺ said: 'If a man trusts you with

٢٦٨٩ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ : حَدَّثَنَا أَبُو لَيْلَى عَنْ أَبِي عَكَاشَةَ، عَنْ رِفَاعَةَ قَالَ: دَحَّلْتُ عَلَى الْمُخْتَارِ فِي قَصْرِهِ . فَقَالَ: قَامَ جِبْرِيلُ مِنْ عَنْدِي السَّاعَةَ . فَمَا مَنَعَنِي مِنْ ضَرِبِ عَنْقِهِ إِلَّا حَدِيثُ سَوَعْتُهُ مِنْ سُلَيْمَانَ بْنِ صَرْدٍ عَنِ النَّبِيِّ ﷺ أَلَّا قَالَ: «إِذَا

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

أَمْنَكَ الرَّجُلُ عَلَى دَمِهِ، فَلَا قَتْلَةُ فَذَاكَ الَّذِي
مَنْعَنِي مِنْهُ.

تخریج: [إسناده ضعیف] أخرجه البخاری في التاريخ الكبير: ٣٢٣، وأحمد: ٦/٣٩٣، وابن عدی: ٤/١٤٨٩ من حديث أبي لیلی عبدالله بن ميسرة الحارثی الواسطی به، وضویه البوسیری * عبدالله بن ميسرة ضعیف (تقریب)، وأبوعکاشة الهمدانی مجھول، وقع في المسند أبوحاشیة وهو نصیحی، راجع أطراف المسند: ٢/٥٠٨ وہامشہ، والحدیث السابق یعنی 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*)

تخریج: [صحیح] أخرجه أبو داود، الديات، باب الإمام يأمر بالغفو في الدم، ح: ٤٤٩٨ من حديث أبي معاویة به، وصحیح الترمذی، ح: ١٤٠٧ * الأعمش عنون تقدم، ح: ١٧٨ ونقویة بعض العلماء لروایته عن أبي صالح ليس بجيد كما حققته في نيل المقصود، ح: ٥١٧، ولكن لحدیث شاهد صحیح عند مسلم، ح: ١٦٨٠، وأبی داود، ح: ٤٥٠١ وغیرهما.

2691. It was narrated that Anas bin Mâlik 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

٢٦٩٠ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ، وَ عَلَيْهِ بْنُ مُحَمَّدٍ، قَالَ: حَدَّثَنَا أَبُو مَعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَتَلَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَرَفِعَ ذُلْكَ إِلَى النَّبِيِّ ﷺ فَدَفَعَهُ إِلَيْ وَلِيِّ الْمَقْتُولِ. قَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ! وَاللَّهُ مَا أَرَدْتُ قَتْلَهُ. قَالَ رَسُولُ اللَّهِ ﷺ لِلْوَلِيِّ: «أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا ثُمَّ قَتَلَهُ، دَخَلَ النَّارَ» قَالَ: فَخَلَى سَبِيلَهُ. قَالَ: وَكَانَ مَكْتُوفًا بِسَعْيَهِ. فَخَرَجَ يَجْزُرُ نَسْعَتَهُ فَسُمِيَّ ذَا النَّسْعَةِ.

٢٦٩١ - حَدَّثَنَا أَبُو عَمَيْرٍ عِيسَى بْنُ مُحَمَّدٍ الصَّحَافِيُّ، وَ عِيسَى بْنُ يُونُسَ، وَ الْحُسَيْنُ بْنُ أَبِي السَّرِّيِّ الْعَسْقَلَانِيُّ، قَالُوا: حَدَّثَنَا ضَمْرَةُ ابْنِ رَبِيعَةَ، عَنْ ابْنِ شَوَّذِبٍ، عَنْ تَابِيتِ

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 Allâh ﷺ had said: 'Go and kill him, but then you will be like him.' So he let him go. (*Sahîh*)

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-Rahmân bin Qâsim: 'No one has the right after the Prophet ﷺ to say: "Go and kill him, but then you will be like him."

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

تخریج: [إسناده صحيح] أخرجه النسائي: ١٧/٨، والقاسمي، ذكر اختلاف الناقلین لخبر علیمة 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 'Ramliyin' means that all the narrators in this narration are of Ramla. This is not a matter of distrust, rather it shows the keen interest of scholars of *Ahâdîth* in investigation of narrations.

البناني، عن آنس بن مالك قال: أتى رجلٌ يقاتلُ ولِيهِ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «اغْفِ» فَأَبَى. قَالَ: «خُذْ أَرْشًا». فَأَبَى. قَالَ: «فَادْهُبْ فَاقْتُلْهُ فَإِنَّكَ مِثْلُهُ». قَالَ: فَلَحِقَ بِهِ فَقَيَّلَ لَهُ: إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَدْ قَالَ: «اقْتُلْهُ فَإِنَّكَ مِثْلُهُ» [قال:] فَخَلَى سَيِّلَهُ.

قال: فَرُؤْيَ يَجْرُ نِسْعَتَهُ ذَاهِيًّا إِلَى أَهْلِهِ.
قال: كَانَهُ قَدْ كَانَ أَوْنَقَهُ.
قالَ أَبُو عُمَيْرٍ فِي حَدِيثِهِ: قَالَ ابْنُ شَوْدَبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ: فَإِنَّ لِأَحَدٍ بَعْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَقُولَ: «اقْتُلْهُ فَإِنَّكَ مِثْلُهُ».قالَ ابْنُ مَاجَهَ: هَذَا حَدِيثُ الرَّمْلَيْنِ، كَيْسَ إِلَّا يَنْدَهُمْ.

Chapter 35. Pardoning In Cases Of Retaliation

(المعجم ٣٥) - باب العفو في

القصاص (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: أَبَنَا حَبَّانَ بْنَ هَلَالٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ بَكْرٍ الْمَزَانِيُّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ قَالَ: لَا أَعْلَمُ إِلَّا عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: مَا رُفِعَ إِلَى رَسُولِ اللَّهِ ﷺ شَيْءٌ فِيهِ الْقِصَاصُ، إِلَّا أَمْرٌ فِيهِ بِالْعَفْوِ.

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب الإمام يأمر بالغفو في الدم، ح ٤٤٩٧ من حدیث عبد الله بن بکر به.

Comments:

- Killing in retaliation is a lawful action, but forgiving is better, and appreciated.
- 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.'

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

٢٦٩٣ - حَدَّثَنَا عَلَيْيَ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ، عَنْ أَبِي السَّفَرِ قَالَ: قَالَ أَبُو الدَّرْدَاءِ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَا مَنَ رَجُلٌ يُصَابُ بِشَيْءٍ مِّنْ جَسَدِهِ، فَيَتَصَدَّقُ بِهِ، إِلَّا رَفَعَ اللَّهُ بِهِ دَرْجَةً، وَحَظَّ عَنْهُ بِهِ خَطِيبَةً».

سمعته أذنائي، ووعاه قلبي.

تخریج: [إسناده ضعيف] أخرجه الترمذی، الديات، باب ماجاء في العفو، ح ١٣٩٣ من حدیث یونس به * سعید بن یحییٰ السفر الكوفي ثقة لكنه أرسی عن أبي الدرداء كما في البهالیب وغيره، فالسند منقطع.

Chapter 36. A Pregnant Woman Deserving Retaliation

(المعجم ٣٦) - باب الحامل يجحب

عليها القوْد (التحفة ٣٦)

2694. Mu'âdh 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*)

تخریج: [إسناده ضعيف] * ابن أُنْعَمٌ، ح: ٣٣٠ تقدم لهيعة، ح: ٥٤ وابن لهيعة، ح: ٤٤٢ وأبي داود، ح: ٦٩٥، وأبي شاهد عند مسلم، ح: ١٦٩٥، وللحديث شاهد عند مسلم، ح: ٤٤٢ وغيرهما، وهو يغنى 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. (*Sahîh Muslim*: 1695)

صالح عن ابن لعيّة، عن ابن أُنْعَمٍ، عن عبادة بْنِ نُسَيْيَرٍ، عن عبد الرّحْمَنِ بْنِ عَمِّهِ حَدَّثَنَا مُعاذُ بْنُ جَبَلٍ، وَأَبُو عَيْدَةَ بْنُ الْجَرَاحَ، وَعُبَادَةَ بْنُ الصَّامِتِ، وَشَدَّادَ بْنَ أُوسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِذَا قُتِلَتْ عَمْدًا، لَا تُقْتَلْ حَتَّى تَضَعَ مَا فِي بَطْنِهَا، إِنْ كَانَتْ حَامِلًا، وَحَتَّى تُكَفَّلَ وَلَدَهَا. فَإِنْ زَنَتْ، لَمْ تُرْجَمْ حَتَّى تَضَعَ مَا فِي بَطْنِهَا، وَحَتَّى تُكَفَّلَ وَلَدَهَا».

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

22. The Chapters On Wills

(المعجم ٢٢) أبواب الوصايا
(التحفة ١٤)

To make a will means to take a pledge from one that he, the testator, in his life or after death will do this and this. This can be applied to another person as well.

It is carried out by appointing someone after one's death to gift one's property to someone. It can be property, wealth or anything of benefit in any shape.

The kinds of Wills are:

1. *Wâjib* (Compulsory): This kind of will is compulsory to follow—that is carrying out the obligations like payment of debt, the return of entrusted things, expiations etc.
2. *Mustahab* (Desirable): Making a will for relatives other than heirs is commended.
3. *Mubah* (Permissible): Making a will for relatives other than heirs who are already rich is permitted.
4. *Makruh Tahrimi* (Undesirable to the point of being forbidden): Making a will for sinners and disbelievers in Allâh is not approved. (Allâh knows better.)

Chapter 1. Did The Messenger Of Allâh ﷺ Make A Will?

2695. It was narrated that 'Âishah said: "The Messenger of Allâh ﷺ did not leave behind a Dinâr nor a Dirham, nor a sheep nor a camel, and he did not make a will concerning anything." (Sahih)

(المعجم ١) - [باب] وَهَلْ أَوْصَى
رَسُولُ اللهِ ﷺ (التحفة ١)

٢٦٩٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنُ نُعْمَيْرٍ : حَدَّثَنَا أَبِي وَأَبُو مُعَاوِيَةَ، حٌ : وَحَدَّثَنَا أَبُو بَكْرٌ بْنُ أَبِي شَيْعَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ، قَالَا : حَدَّثَنَا أَبُو مُعَاوِيَةَ، قَالَ أَبُو بَكْرٌ : وَأَبْعَدَ اللَّهُ أَبْنُ نُعْمَيْرٍ عَنِ الْأَعْمَشِ عَنْ شَقِيقٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ : مَا تَرَكَ رَسُولُ اللهِ ﷺ دِينَارًا . وَلَا دِرْهَمًا ، وَلَا شَاءًا وَلَا بَعِيرًا ، وَلَا أَوْصَى بِشَيْءٍ .

تخریج: أخرج مسلم، الوصية، باب ترك الوصية لمن ليس له شيء يوصي فيه، ح: ١٦٣٥ عن محمد بن عبد الله بن نمير به.

Comments:

- Allâh's Messenger ﷺ said, "My heirs will not inherit a Dinâr or Dirham (i.e., money) for whatever I have, excluding adequate support of wives and wages of my employees, is to be given in charity." (*Sahîh Al-Bukhâri*: 2776)
- There is an opinion that the Noble Prophet ﷺ made some particular wills, especially in favor of his caliphate. This opinion is totally wrong and baseless as 'Ali himself denied it. (See *Ahâdîth* 2652 & 2698)

2696. It was narrated from Mâlik bin Mighwâl that Talhah bin Musarrif said: "I said to 'Abdullâh bin Abu Awfa: 'Did the Messenger of Allâh ﷺ make a will concerning anything?' He said: 'No.' I said: 'How come he told the Muslims to make wills?' He said: 'He enjoined (them to adhere to) the Book of Allâh.' Mâlik said: "Talhah bin Musarrif said: 'Huzail bin Shurahbil said: "Abu Bakr was granted leadership according to the will of Allâh's Messenger ﷺ?"' (Rather) Abu Bakr wished that he found a covenant (in that regard) from Allâh's Messenger ﷺ, so he could fetter his nose with a (camel's) nose ring."^[1] (*Sahîh*)

تخریج: أخرج البخاري، الوصايا، باب الوصايا، ح: ٢٧٤٠، ٤٤٦٠ من حديث مالك بن مغويث به، ومسلم، الوصية، الباب السابق، ح: ١٦٣٤ من حديث وكيع به، وقول هزيل صحيح، وأخرجه أحمد: ٤٨١، ٤٨٢ عن وكيع به.

Comments:

- The question was about the will of caliphate and Ibn Abu Awfa made it clear that the Prophet ﷺ never made such a will.
- The second question was about the ambiguities as the Noble Prophet ﷺ

[1] Meaning, that there was no will, and that Abu Bakr did not accept the position of leadership happily, and if the claims of the *Rawâfi'd* that there was a will ordering 'Ali to be the leader were true,, then Abu Bakr would have been pleased and ready to follow behind him. See *Injâh Al-Hâjjah* by 'Abdul-Ghani Dehlavi.

٢٦٩٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ
عَنْ مَالِكِ بْنِ مَغْوِيْلِ، عَنْ طَلْحَةَ بْنِ مُضْرِفٍ
قَالَ: قُلْتُ لِعَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى: أَوْصَى
رَسُولُ اللَّهِ ﷺ بِشَيْءٍ؟ قَالَ: لَا. قُلْتُ:
فَكَيْفَ أَمَرَ الْمُسْلِمِينَ بِالْوَصِيَّةِ؟ قَالَ: أَوْصَى
بِكِتَابِ اللَّهِ.

قَالَ مَالِكٌ: وَقَالَ طَلْحَةُ بْنُ مُضْرِفٍ: قَالَ
الْهَرَبِيُّ بْنُ شَرَحِبِيلَ: أَبُو بَكْرٍ كَانَ يَتَأَمَّرُ عَلَى
وَصِيَّ رَسُولِ اللَّهِ ﷺ وَدَ أَبُو بَكْرٍ أَنَّهُ وَجَدَ
مِنْ رَسُولِ اللَّهِ ﷺ عَهْدًا، فَخَرَّمَ أَنفَهُ بِخَرَامٍ.

ordered the Muslims to make will, he must have made one particularly about the caliphate, that 'so-and-so will be the caliph after me.' The answer to this ambiguity was that the Noble Prophet ﷺ ordered acting upon the complete Qur'ân. There is an order in the Noble Qur'ân "Obey those who are in authority."

c. The most important and foremost feature of Abu Bakr's nature was to follow the Noble Prophet ﷺ. Therefore, it was impossible that if the Prophet ﷺ had appointed 'Ali as his caliph, he could have dared to deny the orders of the Prophet ﷺ, rather he would have loved to go to any extent to obey the caliph appointed by the Prophet ﷺ.

2697. It was narrated that Anas bin Mâlik said: "What the Messenger of Allâh ﷺ most enjoined when he was dying and breathing his last was: The prayer; and those whom your right hands possess." (Da'if)

٢٦٩٧ - حَدَّثَنَا أَحْمَدُ بْنُ الْمَقْدَامَ: حَدَّثَنَا
الْمُعْتَوْرُ بْنُ شَيْمَانَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ
قَاتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَتْ عَامَةً
وَصَيْرَةً رَسُولِ اللَّهِ ﷺ حِينَ حَضَرَتِهِ الْزَّوْقَةُ،
وَهُوَ يُعَرِّغُ بِتَقْسِيمِ الصَّلَاةِ. وَمَا مَلَكَ
أَيْمَانَكُمْ.

تخریج: [إسناده ضعیف] أخرجه أحمد: ١١٧/٣ من حديث سليمان التيمي به، وصححه ابن حبان (موارد)، ح: ١٢٢٠، وحسنه البوصيري، وأخرجه أبو يعلى: ٣٤٧/٥، ح: ٢٩٩٠ عن أحمد ابن المقدام به، وتابعه هريم بن عبد الأعلى أبو حمزة الأنصي عنه (ص: ٣٠٩، ح: ٢٩٣٣) عن المعتبر به * قاتادة عن تقدم، ح: ١٧٥، ول الحديث شواهد، كلها ضعيفة انظر، ح: ١٦٢٥: و الحديث الآتي وغيرهما، الله أعلم.

2698. It was narrated that 'Ali bin Abu Tâlib said: "The last words of the Prophet ﷺ were: The prayer; and those whom your right hands possess." (Da'if)

٢٦٩٨ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ مُغِيرَةَ، عَنْ أَمْ مُوسَى،
عَنْ عَلَيِّ بْنِ أَبِي طَالِبٍ، قَالَ: كَانَ أَخْرَى
كَلَامَ النَّبِيِّ ﷺ: الصَّلَاةُ وَمَا مَلَكَ
أَيْمَانَكُمْ.

تخریج: [إسناده ضعیف] أخرجه أبو داود، الأدب، باب في حق المملوك، ح: ٥١٥٦ من حديث محمد بن فضيل به * مغيرة عن تقدم، ح: ١٣٠٢، وأم موسى مجهرة الحال، ول الحديث شواهد كلها ضعيفة.

Comments:

a. Prayer on time is among the most important obligations in Islam, therefore, the Noble Prophet ﷺ at the time of his departure from this world, emphasized offering prayers regularly and on time.

- b. Slaves belong to the most destitute class of society, but Islam gave them respect and honor, and they held highly esteemed posts in Islamic society. Kingship of Slave Dynasty, in the subcontinent is a well-known example.
- c. The last word which can be deemed the last will of the Noble Prophet ﷺ was "O Allâh (with) the highest companions."
- d. As we make wills regarding worldly matters, in the same way, we ought to make wills concerning duties of the faith.
- e. The last words or last will of the Noble Prophet ﷺ are equally concerned and relevant to this world and the Hereafter.

Chapter 2. Exhortation To Make A Will

(المعجم ٢) - بَابُ الْحَثِّ عَلَى الْوَصِيَّةِ

(التحفة ٢)

2699. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "The Muslim man has no right to spend two nights, if he has something for which a will should be made, without having a written will with him." (Sahih)

٢٦٩٩ - حَدَّثَنَا عَلَيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ ثُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ أَبْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا حَقٌّ امْرِئٌ إِذْ مُسْلِمٌ أَنْ يَبِيَّنَ لِنَلِيْنَ وَلَهُ شَيْءٌ يُوصِي فِيهِ، إِلَّا وَوَصِيَّةٌ مَكْتُوبَةٌ عِنْهُ».

تخریج: أخرجه مسلم، الوصية، باب: وصية الرجل مكتوبة عنده، ح: ١٦٢٧ من حديث ابن نمير به، أخرجه البخاري، الوصايا، باب الوصايا، ح: ٢٧٣٨ من حديث مالك به.

Comments:

- a. The reward and benefits of the will begin after death, when the commands of the will are carried out.
- b. No human knows the moment of his death, therefore, a will should always be kept ready. A Muslim should always be ready to welcome the moment of death.
- c. One can make changes at times, according to the circumstances, in a will written earlier.
- d. Written details of debt and matters entrusted to others should always be kept ready at hand.

2700. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: "The one who is deprived is the one who is deprived of a will." (Da'if)

٢٧٠٠ - حَدَّثَنَا نَضْرُ بْنُ عَلَيِّ الْجَهْضُوِيُّ: حَدَّثَنَا دُرْسُتُ بْنُ زَيَادٍ: حَدَّثَنَا يَزِيدُ الرَّفَّاشِيُّ عَنْ أَسِّيْنِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمَحْرُومُ مَنْ خَرِمَ وَصِيَّتَهُ».

تخریج: [إسناده ضعیف] وقال البوصیری: هنا إسناد ضعیف لضعف الرقاشی تقدم، ح: ١٠٨٠، والراوی عنه .

Comments:

The sense of the narration is that one who died without making a written will, remained deprived of the benefits he could have if he had written one. For example, if he had advised in the will to give charity to pay the debt etc., he could have availed the benefits after his death. The one who does not write the will, remains deprived of such blessing.

2701. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "Whoever dies leaving a will, he dies on the right path and Sunnah, and he dies with piety and witness, and he dies forgiven." (*Da'if*)

٢٧٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصْفِى الْجَمْصِيُّ: حَدَّثَنَا يَعْقِيْهُ بْنُ الْوَلِيدِ، عَنْ يَزِيدَ ابْنِ عَوْفٍ، عَنْ أَبِي الزَّيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ مَاتَ عَلَى وَصِيَّةٍ، مَاتَ عَلَى سَبِيلٍ وَسُتْهٌ. وَمَاتَ عَلَى تُقْنَى وَشَهَادَةٍ. وَمَاتَ مَفْقُورًا لَهُ».

تخریج: [إسناده ضعیف جداً] وضعفه البوصیری، وأخرجه ابن عدی: ١٦٨٥/٥ عن بقیة: حدیثی یزید بن عوف حدیثی عمر بن صالح عن أبي الزییر عن جابر به ... الخ * یزید مجھول(تقربی)، عمر بن صالح متروک، کذبه ابن راهویه(ایضاً)، ولعله این راهویه امره اسقطه محمد ابن المصفی، وکان یدلس کما فی التقربی وغيره، وبقیة تقدم، ح: ٧١٢، ٥٥١.

2702. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "The Muslim man has no right to spend two nights, if he has something for which a will should be made, without having a written will with him." (*Sahih*)

٢٧٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا رَوْحٌ [عَنْ] ابْنِ عَوْنَى، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ ﷺ قَالَ: «مَا حَقُّ امْرِيٍّ مُسْلِمٍ تَبَيَّثُ لِيَتَّقِنَ، وَلَهُ شَيْءٌ يُوْصَىٰ بِهِ، إِلَّا وَوَصِيَّةٌ مَكْتُوبَةٌ عَنْهُ».

تخریج: أخرجه البخاری من حديث مالک عن نافع به، انظر، ح: ٢٦٩٩ وأخرجه النسائي: ٦/٢٣٩، ح: ٣٦٤٧: ياسناد صحيح عن ابن المبارك عن ابن عون عن نافع عن ابن عمر قوله، يعني أنه موقف، قلت: وقع في الأصل: روح بن عوف عن نافع ، وفي النسخ الهندية، روح بن عون عن نافع ، والصواب: روح عن ابن عون عن نافع ، والله أعلم * وروح هو ابن عبادة، وهذا السند لم يذكره الإمام المزي رحمة الله في تحفة الأشراف: ١١٢/٦ .

Chapter 3. Injustice In Wills

(المعجم ٣) - بَابُ الْحَيْنَفِ فِي الْوَصِيَّةِ (التحفة ٣)

2703. It was narrated from Anas

٢٧٠٣ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ

bin Mâlik that the Messenger of Allâh ﷺ said: "Whoever tries to avoid giving the inheritance to his heirs, Allâh will deprive him of his inheritance in Paradise on the Day of Resurrection." (*Da'if*)

تخریج: [إسناده ضعیف جداً] وقال البصیري: هذا إسناد ضعیف لضعف زید العمی وابنه عبد الرحیم.

2704. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "A man may do the deeds of the people of goodness for seventy years, then when he makes his will, he is unjust in his will, so he ends (his life) with evil deeds and enters Hell. And a man may do the deeds of the people of evil for seventy years, then he is just in his will, so he ends (his life) with good deeds and enters Paradise."

Abu Hurairah said: "Recite, if you wish: 'These are the limits (set by) Allâh' up to His saying: 'a disgraceful torment'"^[1] (*Hasan*) .

تخریج: [إسناده حسن] أخرجه أبو داود، الوصايا، باب ماجاء في كراهة الإضرار في الوصية، ح: ٢٨٦٧ من حديث أشعث به، وحسنه الترمذى، ح: ٢١١٧ قلت: شهر تقدم حاله، ح: ١٤٩٦، ولم يثبت الحرج المفسر، المسقط للعدالة فيه، وقضية السرقة لم تصبح، وقال الذهبي في ديوان الضغفاء (ص: ١٤٥) شهر بن حوشب مختلف فيه وحديثه حسن . . . ، وقال العسقلانى في الفتتح: ٦٥/٣ وشهر حسن الحديث وإن كان فيه بعض الضعف .

2705. It was narrated from Mu'âwiyah bin Qurrah, from his father that the Messenger of Allâh

الرَّحِيمِ بْنُ زَيْدِ الْعَمِيِّ، عَنْ أَبِيهِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ [فَرَّ] مِنْ مِيرَاثٍ وَارِثَهُ، قَطَعَ اللَّهُ وَمِرَاثُهُ مِنَ الْجَنَّةِ يَوْمَ الْقِيَامَةِ».

٢٧٠٤ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرُ: حَدَّثَنَا عَبْدُ الرَّزَاقِ بْنُ هَمَّامَ: أَبْنَانَا مَعْمَرٌ عَنْ أَشْعَثَ ابْنِ عَبْدِ اللَّهِ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْخَيْرِ سَبْعِينَ سَنَةً. فَإِذَا أَوْصَى حَافَّ فِي وَصِيَّةٍ. فَيَخْتَمُ لَهُ بِشَرٌّ عَمَلِهِ، فَيَدْخُلُ النَّارَ. وَإِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الشَّرِّ سَبْعِينَ سَنَةً. فَيَعْدُلُ فِي وَصِيَّةٍ، فَيَخْتَمُ لَهُ بِخَيْرٍ عَمَلِهِ، فَيَدْخُلُ الْجَنَّةَ».

قال أبو هريرة: واقرأوا إن شئتم: « تلك مُحْدُودُ اللَّهِ» إلى قوله: «عَدَابُ مُهِيتٍ»^[2] . [النساء: ١٤، ١٣].

٢٧٠٥ - حَدَّثَنَا يَحْيَى بْنُ عُمَّانَ بْنِ سَعِيدٍ أَبْنِ كَثِيرٍ بْنِ دِينَارِ الْحَمْصِيِّ: حَدَّثَنَا يَقِيَّةُ عَنْ

[1] *An-Nisâ'* 4:13, 14.

وَ said: "Whoever makes a will as death approaches, and his will is in accordance with the Book of Allâh, it will be an expiation for whatever he did not pay of his Zakâh during his lifetime." (*Da'if*)

أَبِي حَلْيَسٍ، عَنْ خَلِيدِ بْنِ أَبِي خَلِيدٍ، عَنْ مُعَاوِيَةَ بْنِ فَرْعَةَ، عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ حَضَرَتْهُ الْمُوْفَأَةُ فَأُوْصِيَ، وَكَانَتْ وَصِيَّةُ عَلَى كِتَابِ اللَّهِ، كَانَتْ كَفَارَةً لِمَا تَرَكَ مِنْ زَكَاتِهِ فِي حَيَاةِنَّهُ». وَكَانَتْ

تخریج: [إسناده ضعیف] أخرجه الدارقطنی: ١٤٩، ٤/١٤٨؛ من حديث بقیة به، وقال البوصیری: هذا إسناد ضعیف، بقیة (٥٠١، ١١٢١) مدلس وشیخه أبوحبلیس مجهول * خلید وتلمذته مجهولان كما في التقریب وغيره، وللحديث شواهد ضعیفة عند الطبرانی: ١٩/٣٣ وغيرها.

Chapter 4: The Prohibition Of Withholding While Alive, Only To Squander Upon One's Death

2706. It was narrated that Abu Hurairah said: "A man came to the Prophet ﷺ and said: 'O Messenger of Allâh, tell me, which of the people has most right to my good companionship?' He said: 'Yes, by your father, you will certainly be told.'^[1] He said: 'Your mother.' He said, 'Then who?' He said: 'Then your mother.' He said: 'Then who?' He said: 'Then your mother.' He said: 'Then who?' He said: 'Then your father.' He said: 'Tell me, O Messenger of Allâh, about my wealth – how should I give in charity?' He said: 'Yes, by Allâh, you will certainly be told. You should give in charity when

(المعجم ٤) - بَابُ النَّهَيِّ عَنِ الْإِمْسَاكِ
فِي الْحَيَاةِ وَالتَّدْبِيرِ عِنْدَ الْمَوْتِ
(الصفحة ٤)

٢٧٠٦ - حَدَّثَنَا أَبُو بَكْرُ بْنُ أَبِي شَيْعَةَ: حَدَّثَنَا
شَرِيكُ عَنْ عُمَارَةَ بْنِ الْفَقَاعَ وَابْنِ شَبِيرَةَ،
عَنْ أَبِي زُرْعَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ
رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ!
بَشِّئِيْ. مَا حَقُّ النَّاسِ مِنِّي بِحُسْنِ الصَّحْبَةِ؟
فَقَالَ: «نَعَمْ. وَأَبِيكَ لِتَشَبَّهَنَّ». [قَالَ: إِنَّمَّا
قَالَ: ثُمَّ مَنْ؟ قَالَ: ثُمَّ أَمْكَ»] قَالَ: ثُمَّ مَنْ؟
قَالَ: «ثُمَّ أَمْكَ» قَالَ: ثُمَّ مَنْ؟ قَالَ: «ثُمَّ
أَبُوكَ» قَالَ: نَسْنَئِيْ يَا رَسُولَ اللَّهِ عَنْ مَالِيِّ
كَيْفَ أَصْدَقُ فِيهِ؟ قَالَ: «نَعَمْ. وَاللَّهُ لِتَشَبَّهَنَّ.
إِنَّمَا تَصَدَّقُ وَأَنْتَ صَحِيحٌ شَحِيجٌ. تَأْمُلُ
الْعَيْشَ وَتَخَافُ الْفَقْرَ. وَلَا تُمْهِلْ. حَتَّىْ إِذَا

[1] The commentaries say that it was either the type of statement that comes upon the tongue without intending its actual meaning, or, that this was stated prior to the narrations which forbid swearing by one's father. And some of them said that narrations such as this prove that the prohibition for swearing by one's father are intended to censure, not to make it absolutely prohibited. The second view appears most likely, and is the safest view, and indeed Allâh knows best.

you are still healthy and greedy for wealth, hoping for a long life and fearing poverty. Do not tarry until your soul reaches here and you say: "My wealth is for so-and-so," and "My wealth is for so-and-so," and it will be for them even though you dislike that.'" (Sahih)

بلغت نفسك ههنا، قلت: مالي لفلان،
ومالي لفلان. وهو لهم، فإن كرمت».

تخریج: أخرجه البخاري، الأدب، باب من أحق الناس بحسن الصحبة، ح: ٥٩٧١ من
حديث عمارة به، ومسلم، البر والصلة والأدب، باب برالوالدين وأيهما أحق به، ح: ٢٥٤٨ عن
أبي بكر بن أبي شيبة به.

Comments:

- To emphasize one's point swearing by Allâh is legal.
- Before answering the question, saying words as a start of the talk attracts the listener's attention, as the Noble Prophet ﷺ said, "Yes you will certainly be told."
- An oath can only be taken by the Name of Allâh. It is not legal to take an oath over other than Allâh's Name, as in authentic *Ahâdîth* it has been made clear. The Prophet ﷺ said; "Verily! Allâh ﷺ forbids you to swear by your fathers. If one has to take an oath he should swear by Allâh or keep quite." (*Sahîh Al-Bukhârî*: 6108.) In this *Hadîth* the oath taken by the father is either before the time when it was prohibited, or just a part of Arabian culture, as a habitual custom. It was common in Arabia that during conversation some additional words or phrases without any particular intention were added.

2707. It was narrated that Busr bin Jahhâsh Al-Qurashi that the Prophet ﷺ spat in his palm then pointed to it with his index finger and said: "Allâh says: 'Do you think you can escape from My punishment, O son of Âdam, when I have created you from something like this? When your soul reaches here' – and (the Prophet ﷺ) pointed to his throat – 'You say: I give charity.' But it is too late for charity?'" (Sahih)

٢٧٠٧ - حَدَّثَنَا أَبُو تَكْرِيرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَبْنَانًا حَرْبَزُ بْنُ عُثْمَانَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ مَيْسَرَةَ، عَنْ جُبَيْرِ بْنِ نُفَيْرٍ، عَنْ بُشْرٍ بْنِ جَحَادِشَ الْقُوْشَيِّ قَالَ: يَرْبَقُ النَّبِيُّ ﷺ فِي كَفَوِهِ، ثُمَّ وَضَعَ إِصْبَعَهُ السَّيَّابَةَ وَقَالَ: «يَقُولُ اللَّهُ عَزَّ وَجَلَّ: أَنَّى تُعْجِزُنِي، أَبْنَ آدَمَ وَقَدْ حَانَتْكَ مِنْ مِثْلِ هَذِهِ، إِنَّا بَلَّثْتَ نَفْسَكَ [إِلَيْ] هَذِهِ - وَأَشَارَ إِلَى حَلْقِهِ - قُلْتَ: أَنْصَدْتُ، وَأَنَّى أَوْانَ الصَّدَقَةِ؟».

تخریج: [إسناده صحيح] أخرجه أحمد: ٤٢١٠ وغیره من طرق عن حریز به، وتابعه ثور ابن
يزید الرّحیی عند الطبرانی: ٢/٣٢، وصححه الحاکم: ٢/٤٥٠٢، ٤/٣٢٣، والذهبی، والبصیری.

Comments:

- Allâh is the Creator of man, and has all authority and control over His creation. Man, in all his needs and requirements stands in need of Allâh and cannot do anything without His guidance.
- This is Allâh's mercy and favor, that He created man from a clot (a petty thing) and made him most eminent of all creation.

Chapter 5. Making A Will For One Third

(المعجم ٥) - باب الوصيّة بالثلث

(التحفة ٥)

2708. It was narrated from 'Âmir bin Sa'd that his father said: "I became sick during the year of the Conquest, and was at death's door. The Messenger of Allâh ﷺ came to visit me and I said: 'O Messenger of Allâh, I have a great deal of wealth and no one will inherit from me apart from my daughter. Can I give two thirds of my wealth in charity?' He said: 'No.' I said: 'Then half?' He said: 'No.' I said: 'One third?' He said: 'One third, and one third is a lot. If you leave your heirs rich that is better than leaving them destitute and begging from people.'" (Sahîh)

٢٧٠٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَالْحُسَنِيُّ
ابْنُ الْحَسَنِ الْمُرْوَزِيُّ، وَسَهْلُ قَالُوا: حَدَّثَنَا
سُفْيَانُ بْنُ عَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَامِرِ بْنِ
سَعْدٍ، عَنْ أَبِيهِ قَالَ: مَرِضْتُ عَامَ الْفُتُحِ حَتَّى
أَشْفَقْتُ عَلَى الْمَوْتِ. فَعَانِي رَسُولُ اللهِ
ﷺ. قَلَّتْ: أَيْ رَسُولُ اللهِ إِنَّ لِي مَالًا
كَثِيرًا. وَلَيْسَ يَرُثِي إِلَّا ابْنَهُ لِي. أَفَاتَصِدُّ
بِثَلَاثِي مَالِي؟ قَالَ: «لَا» قَلَّتْ: فَالشَّطْرُ؟ قَالَ:
«لَا» قَلَّتْ: فَالثُّلُثُ؟ قَالَ: «الثُّلُثُ. وَالثُّلُثُ
كَثِيرٌ. أَنْ تَلِّرَ وَرَشِكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ
تَلِّرُهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ». .

تخریج: أخرجه البخاري، الفرات، باب میراث البنات، ح: ٦٧٣٣، ومسلم، الوصيّة، باب الوصيّة بالثلث، ح: ١٦٢٨ من حديث سفيان به.

Comments:

- Visiting a sick person is a highly appreciated deed and it is a sick man's right that people should visit him.
- When one feels that his time of death is approaching near, he can make a will for giving alms from his wealth, but not more than one third.
- It is better if the will is made for less than one third. The Noble Prophet ﷺ, in spite of recommending one third deemed it 'a lot'. According to 'Abdullâh bin Abbâs, one third is a large part, and will should be for less than one third.

2709. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Allâh has been

٢٧٠٩ - حَدَّثَنَا عَلَيْهِ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ
عَنْ طَلْحَةَ بْنِ عَمْرُو، عَنْ عَطَاءٍ، عَنْ أَبِي

charitable with you over the disposal of one third of your wealth at the time of your death, so that you may be able to add to the record of your good deeds." (Da'if)

تخریج: [إسناده ضعیف] أخرجه البیهقی: ٢٦٩ / ٦ من حديث طلحة بن عمرو به، وضعفه البوصيري من أجل طلحة تقدم، ح: ٨٥٧، وتابعه عقبة بن عبد الله الأصم عن عطاء به، عند أبي نعيم في الحلية: ٣٢٢ * وعقبة ضعيف (تقریب)، وللحديث طرق كلها ضعيفة.

هُریَّةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ اللَّهَ تَعَالَى يَعْلَمُ عَلَيْكُمْ، عِنْدَ وَفَاتِكُمْ، يُثْلِثُ أَمْوَالَكُمْ زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ.

Comments:

- Divine laws of Islamic faith are equally beneficial for this world and the Hereafter.
- A dead person gets the rewards and benefits of his will when it is carried out after his death.

2710. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "(Allâh says): O son of Adam! I have given you two things which you do not deserve (except by the mercy of Allâh): I allow you to dispose of a share of your wealth when you are on your deathbed, in order to cleanse and purify you, and My slaves pray for you after your life is over." (Da'if)

٢٧١٠ - حَدَّثَنَا صَالِحُ بْنُ مُحَمَّدٍ بْنُ يَحْيَى ابْنِ سَعِيدِ الْقَطَانِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُوسَى: أَبْنَانَا مُبَارِكُ بْنُ حَسَانَ عَنْ نَافِعٍ، عَنْ أَبْنَى عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: إِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: يَا أَيُّهُ الْأَكْمَمُ اشْتَانَ لَمْ تَكُنْ لَكَ وَاحِدَةٌ مِنْهُمَا: جَعَلْتُ لَكَ تَصْبِيَاً مِنْ مَالِكِ حِينَ أَخْذَتُ بِكَظُمَكَ، لَأَطْهَرَكَ بِهِ وَأَرْكَبَكَ. وَصَلَّةُ عِبَادِي عَلَيْكَ، بَعْدَ اتِّقَاءِ أَجْلِكَ.

تخریج: [إسناده ضعیف] أخرجه الدارقطني: ١٤٨ / ٤ من حديث عبيد الله بن موسى به *

مبارك بن حسان ضعفه البیهقی (شعب الإيمان: ٧/٥٧)، والجمهور، وهي علة الخبر.

Comments:

Offering of funeral prayer for Muslims is an obligation and a blessing of Allâh on his deceased slave. Muslim brothers pray for him, and Allâh forgives His slave and elevates his status by accepting the prayers. 'Prayer' may mean the supplication which a Muslim makes for other Muslims brothers.

2711. It was narrated that Ibn 'Abbâs said: "I would like the people to reduce (the will) from

٢٧١١ - حَلَّثَنَا عَائِيْثُ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ هَشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ أَبِيهِ

one third to one quarter, because the Messenger of Allāh ﷺ said: 'One third is a lot.''' (Sahih)

عَبَّاسٌ قَالَ: وَرَدَتْ أَنَّ النَّاسَ عَصُوا مِنَ الْثُلُثِ إِلَى الرُّبُعِ. لِأَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ قَالَ: «الْثُلُثُ كَبِيرٌ أَوْ كَثِيرٌ».

تخریج: أخرجه البخاري، الوصايا، باب الوصية بالثلث، ح: ٢٧٤٣ من حديث هشام، ومسلم، الوصية، باب الوصية بالثلث، ح: ١٦٢٩ من حديث وكيع به.

Chapter 6. There Is No Bequest For An Heir

(المعجم ٦) - باب: لا وصيّة لوارث

(التحفة ٦)

2712. It was narrated from 'Amr bin Khārijah: "The Prophet ﷺ addressed them when he was on his camel. His camel was chewing its cud and its saliva was dripping between my shoulders. He said: 'Allāh has allocated for each heir his share of the inheritance, so it is not permissible (to make) a bequest for an heir. The child belongs to the bed and the adulterer gets the stone. Whoever claims to belong to someone other than his father, or (a freed slave) who claims that his *Walā'*^[1] is for other than his *Mawāli*, upon him will be the curse of Allāh, the angels and all the people, and no change nor equitable exchange will be accepted from him.'''^[2] Or he said: "No equitable exchange nor change." (Hasan)

٢٧١٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَبْنَانَا سَعِيدُ بْنُ أَبِي عَرْوَةَ عَنْ قَتَادَةَ، عَنْ شَهْرِ بْنِ حَوْشَبَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَثْمَانَ، عَنْ عَمْرِو بْنِ خَارِجَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ رَاحِلَتَهُ لِتَكْسُبِ بِعْرَيْهَا. وَإِنَّ لِغَامِهَا لِتَسْبِيلَ بَيْنَ كَتَفَيْهِ قَالَ: «إِنَّ اللَّهَ قَسَمَ لِكُلِّ وَارِثٍ وَصِيَّةً وَمِنَ الْمِيرَاثِ». فَلَا يَجُوزُ لِوارثٍ وَصِيَّةً. الْوَلْدُ لِلْفَرَاشِ وَلِلْعَاهِرِ الْحَجَرُ. وَمَنْ ادْعَى إِلَى غَيْرِ أَبِيهِ، أَوْ تَوَلَّ غَيْرَ مَوَالِيهِ، فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ. لَا يَقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ» أَوْ قَالَ: عَدْلٌ وَلَا صَرْفٌ.

^[1] Referring to the relationship of inheritance between the freed slave and the one who freed him. In most cases, the freed slave's tribe name will be the same as that of the one who freed him. See no. 2609.

^[2] 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 no. 2635.

تخریج: [إسناده حسن] أخرجه الترمذی، الوصایا، باب ماجاء لا وصیة لوارث، ح: ۲۱۲۱ من حديث قتادة به، وقال: حسن صحيح وأخرجه النسائی: ۶/ ۲۴۷، ح: ۳۶۷۲ من طريق شعبة عن قتادة به.

Comments:

- The share of inheritance for the relatives which has been fixed by Allâh, they must get it accordingly.
- In the case of the share of inheritance for relatives which have not been fixed by Allâh, making an adequate will for them is commanded.
- By making an excuse for an orphan grandson, allegations are placed on the system of Islamic inheritance. For example one man has two sons, one is alive and the other has died, but the son who has died has a son who is alive. It means the deceased has an orphan grandson who, according to the law of inheritance, is not liable to inherit anything from the property of his grandfather, because in the presence of a close relative from the father's side, a distant relative is not liable of getting any share. In such a rare and uncommon situation, making change in Divine law is a great audacity, whereas a legal way out is available in the laws of inheritance. A person, before his death, can advise giving his orphan grandson an adequate share of his wealth, or the legal heirs can give him some share from their own shares, as they think proper.
- To make a will in favor of legal heirs is not permitted, because if this will is in accordance with the law of inheritance, there is no need for it, as they get it automatically, and if this is not in accordance with the law of inheritance, it is not legal to carry out in and it will be dismissed by itself.
- This narration that the child belongs to the bed has already been explained in *Hadith* no. 2004.
- Bloodline relationship cannot be changed, that is why in Islam there is no concept of adoption. According to the Islamic point of view, to adopt someone as a son is a great sin.
- The relationship of *Wâlî* is also unchangeable. One who has freed a slave is his *Mawâlî*, and a freed slave cannot say anyone else is his *Mawâlî* as it is a great sin.

2713. Shurahbil bin Muslim Al-Khawlâni narrated from Abu Umâmah Al-Bâhili that he heard the Messenger of Allâh ﷺ say in his sermon, during the year of the Farewell pilgrimage: "Allâh has given each person who has rights his rights, and there is no bequest for an heir." (*Hasan*)

٢٧١٣ - حَدَّثَنَا هَشَامُ بْنُ عَمَارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ: حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ الْحَوَلَانِيُّ. سَمِعْتُ أَبَا أُمَّامَةَ الْبَاهْلِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي خُطْبَتِهِ، عَامَ حَجَّةَ الْوَدَاعِ: إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقًّا. فَلَا وَصِيَّةَ لِوَارِثٍ.

تخریج: [إسناده حسن] أخرجه أبو داود، الوصایا، باب ماجاء في الوصیة للوارث،

ح: ٢٨٧٠، ٣٥٦٥ من حديث إسماعيل به، وحسنه الترمذى، ح: ٢١٢٠.

2714. It was narrated that Anas bin Mâlik said: "I was under the she-camel of the Messenger of Allâh ﷺ and its saliva was dripping between my shoulders, and I heard him say: 'Allâh has given each person who has rights his rights, but there is no bequest for an heir.'" (Sahîh)

٢٧١٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ شَعْبَٰنَ شَبَّابُورِ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنُ جَابِرٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ أَنَّهُ حَدَّثَهُ عَنْ أَنَّسَ بْنِ مَالِكٍ قَالَ: إِنِّي لَتَحْتَ نَاقَةَ رَسُولِ اللَّهِ ﷺ يَسِيلُ عَلَيَّ لِعَابُهَا. فَسَمِعْتُهُ يَقُولُ: إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقَّةً. أَلَا لَهُ وَصِيَّةٌ لِوَارِثٍ.

تخریج: [صحیح] أخرجه الدارقطنی: ٦٩/٤ من حديث ابن جابر به * وسعيد بن أبي سعيد السالحی (کما في السنن الکبری للبیهقی: ٢٦٥، والدارقطنی، وصرح به ابن عبدالهادی كما في هامش تحفة الأشرف: ١/٢٢٥)، وهو مجھول كما في البقری، ولحدیث شواهد صحیحة، والحدیث صححه البوسیری وغيره.

Chapter 7. Debts Before The Will

2715. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ ruled that the debts should be paid off before the execution of the will. You recite: '(The distribution in all cases is) after the payment of legacies he may have bequeathed or debts.'^[1] The sons of one mother (from the same father) inherit from one another, but not the sons from different mothers (but the same father)." (Da'if)

تخریج: [إسناده ضعیف] أخرجه الترمذی، الفراضی، باب ما جاء في میراث الإخوة من الأب والأم، ح: ٢٠٩٤ من حديث سفیان الثوری به، وتابعه سفیان بن عبیة (الترمذی، ح: ٢١٢٢، ٢٠٩٥ وغیره) * الحارت الأعور تقدم حاله، ح: ٩٥، وفيه علة أخرى، ولم يتم تقدیم الحديث شاهد حسن تقدم، ح: ٢٤٣٣.

(المعجم ٧) - بَابُ : الَّدِينُ قَبْلَ الْوَصِيَّةِ
(التحفة ٧)

٢٧١٥ - حَدَّثَنَا عَلَيَّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سَفِيَّاً عَنْ أَبِي إِسْحَاقَ، عَنْ الْحَارِثِ، عَنْ عَلَيِّ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالدِّينِ قَبْلَ الْوَصِيَّةِ. وَأَنْتُمْ تَقْرُئُوهَا: ۝ وَمَنْ يَعْدُ وَسِكْوَةً يُوصَىٰ بِهَا أَوْ دِينَ ۝ [النساء: ١١] وَإِنَّ أَعْيَانَ بَنِي الْأَمْ لَيَتَوَارَثُونَ دُونَ بَنِي الْعَلَالَاتِ.

^[1] An-Nisâ' 4:11.

Comments:

- The issue of debt is important and serious because it remains payable in life and after death as well, whereas the will is carried out after death. On the other hand, whatever the amount of debt is, it must be paid as a will is valid only up to one third of the total amount of legacy. The amount of debt may accede from one third of the legacy.
- First of all, from the wealth of the deceased, expenditure of shrouding and burial rites are deducted. After making the payment of debt from the remaining property, whatever is left, one third or less than one third is paid according to the will, and then the remaining is distributed among the heirs.
- The real brother and sister of the deceased are given priority over the step brothers and sisters.

Chapter 8. If A Person Dies Without Having Made A Will, Can Charity Be Given On His Behalf?

2716. It was narrated from Abu Hurairah that a man asked the Messenger of Allāh ﷺ: "My father died and left behind wealth, but he did not make a will. Will it expiate for him if I give charity on his behalf?" He said: "Yes." (*Sahih*)

(المعجم ٨) - بَابُ مَنْ مَاتَ وَلَمْ يُوصِّي
هَلْ يُتَصَدِّقُ عَنْهُ؟ (التحفة ٨)

٢٧١٦ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُثْمَانَ
الْعُثْمَانِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمَ،
عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَيْيَهِ، عَنْ
أَبِي هُرَيْرَةَ أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ ﷺ قَالَ:
إِنَّ أَبِي مَاتَ وَتَرَكَ مَالًا . وَلَمْ يُوصِّي .
فَهَلْ يُكَفَّرُ عَنْهُ أَنْ تَصَدَّقَتْ عَنْهُ؟ قَالَ:
«نَعَمْ» .

تخریج: أخرجه مسلم، الوصية، باب وصول ثواب الصدقات إلى الميت، ح: ١٦٣٠ من
حديث العلاء به.

2717. It was narrated from 'Aishah that a man came to the Prophet ﷺ and said: "My mother died unexpectedly and she had not made a will. I think that if she could have spoken, she would have given in charity. Will she have a reward if I give in charity on her behalf, and will I have a reward?" He said: "Yes." (*Sahih*)

٢٧١٧ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: حَدَّثَنَا
أَبُو أَسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَيْيَهِ، عَنْ
عَائِشَةَ أَنَّ رَجُلًا أَتَى النَّبِيَّ ﷺ فَقَالَ: إِنَّ أُمِّي
افْتَلَتْ نَفْسَهَا . وَلَمْ تُوصِّي . وَإِنِّي أَظْنَهَا لَوْ
تَكَلَّمَتْ لَتَصَدِّقَتْ . فَلَهَا أَجْرٌ إِنْ تَصَدَّقَ
عَنْهَا، وَلَيَ أَجْرُ؟ فَقَالَ: «نَعَمْ» .

تخریج: أخرجه مسلم، الوصية، الباب السابق، ح: ١٠٠٤ بعد، ح: ١٦٣٠، والزكوة، باب وصول ثواب الصدقة عن الميت، إليه، ح: ١٠٠٤ من حديث أبي أسامة به.

Comments:

- Nowadays banquets and feast parties are arranged in the name of sending reward to the dead person, this is not a correct Islamic way to send reward to the deceased. The amount spent on such parties and food should be given to the poor and needy.
- As deputizing is possible in life for payment of debt, or other matters relating to property or wealth, similarly another person may make a payment of debt for a dead person and release him from his obligation.

Chapter 9. Allâh's Saying:
"But if he is poor, let him have for himself what is just and reasonable." ^[١]

2718. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Prophet ﷺ and said: 'I do not have anything and I have no wealth, but I have an orphan (under my care) who has wealth.' He said: "Eat from the wealth of your orphan, without being extravagant or use it for trade." He (the narrator) said: "And I think he said: 'Do not preserve your wealth using his instead.'" (*Hasan*)

تخریج: [إسناده حسن] أخرجه أبو داود، الوصايا، باب ماجاء فيما لولي اليتيم أن ينال من مال اليتيم، ح: ٢٨٧٢ من حديث حسين المعلم به، وصححه ابن خزيمة، وابن الجارود، ح: ٩٥٢، وقال الحافظ في الفتح: ٢٤١/٨ إسناده قوي.

Comments:

- If the guardian of an orphan is extremely poor and has nothing to use, he is allowed to use the wealth of the orphan, but only for basic necessities without being extravagant.
- Preserving one's wealth means using the wealth of the orphan instead of

(المعجم ٩) - باب قوله: «وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ» [النساء: ٦]
(التحفة ٩)

٢٧١٨ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرَ: حَدَّثَنَا رَوْحَ بْنُ عَبَادَةَ: حَدَّثَنَا حُسْنِيُّ الْمُعْلَمُ عَنْ عَمْرُو بْنِ شَعْبِينَ، عَنْ أَبِيهِ، عَنْ جَلْوَ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: لَا أَجِدُ شَيْئًا. وَلَيْسَ لِي مَالٌ. فَلَمَّا سَمِعَ لَهُ مَالٌ قَالَ: «كُلْ مِنْ مَالِ يَتِيمِكَ». غَيْرُ مُسْرِفٍ وَلَا مُسَائِلٍ مَالًا». قَالَ وَأَخْسِبَهُ قَالَ: «وَلَا تَقْرَبْ مَالَكَ بِمَالِهِ».

^[١] An-Nisâ' 4: 6.

using his own wealth for personal gains or needs.

- c. Using wealth of an orphan is permitted for trade upon the condition of giving him his due share of the profit. It is not lawful for a guardian to keep the entire profit, or spend it extravagantly for his personal needs.