



***X:PRESCRIBED
PUNISHMENTS***

Hudûd (Prescribed Punishments)

Hudûd are the prescribed punishments legally decreed to be executed when certain sins are committed in order to forbid recommitting them. The origin of the legality of these prescribed punishments is the Noble Qur'ân, the *Sunnah* (Prophetic Tradition) and the consensus of Muslim scholars.

Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

“The prescribed punishments stem from the mercy to all creatures and doing whatever is good for them. Thus, he who executes such punishments should have the intention of doing good and showing mercy to those on whom they are imposed, just like the father who seeks to discipline his son or the doctor who seeks to cure a patient.”¹

The wisdom behind ordaining the prescribed punishments is that they are means of deterrence, restraint, and purification from sins. They are ordained to fulfill the Rights of Allah, Exalted be He, in the first place, and then for

the benefit of the Muslim community. Allah, Exalted be He, has made these punishments incumbent upon those who commit crimes stemming from weaknesses in human nature. Thus, such prescribed punishments are in the best interest of humankind in this world as well as in the Hereafter. To illustrate, the affairs of any state do not settle except through having restraints, deterrents, and punishments to be imposed on criminals. Through applying these punishments, the disobedient people and outlaws are deterred, the obedient and law-abiding people feel safe, justice is established on earth, and people feel secure with regard to their souls, honors and properties. This can be seen in the societies that apply the punishments prescribed by Allah, where security, stability, and welfare are achieved in a way that none can deny. In contrast to this are the societies that dispense with the punishments prescribed by Allah on the pretext that such punishments are savage and incompatible with modern civilization. Thus, these communities are deprived of this divine justice achieved through these prescribed punishments and the virtues of security and stability they maintain. Whatever arms and high technology such straying communities have, it avails them nothing until they apply the punishments prescribed by Allah for the benefit of His servants. This is because human societies cannot be ruled only by power and technology, but they are to be ruled by the Law of Allah and His prescribed punishments; power and technology can only serve as means to execute these legal punishments, provided they are properly used.

How could those deviating people describe the punishments prescribed by Allah as being savage while in reality they represent divine mercy to all humankind? How could they regard those divine decrees as savage while not regarding the wrongdoing done by criminals as savage, though they, the criminals, horrify safe people, harm the innocent, and disturb social peace and stability? In fact, this is the real savagery; the one who shows mercy toward such criminals is more unjust and more savage than the criminals themselves. So regrettably, when minds are spoiled and morality vanishes, people see what is right wrong and vice versa. In this regard, a poet says,

*“For a sore eye, sunlight might look obscure
And for a sore tongue, water might taste impure”.*

It is impermissible to execute a prescribed punishment on a culprit unless the following two conditions are met:

The first condition: is that the culprit must be a legally accountable person, i.e. sane and adult, for the Prophet (PBUH) said:

“There are three (persons) whose actions are not recorded: A minor until he reaches puberty, a lunatic until he regains his reason, and a sleeper until he awakes.”

(Related by the Compilers of *Sunan* and others)

Since none of the acts of worship is obligatory upon such persons, they are more entitled to be exempted from legal punishments, for they are already legally unaccountable persons, in addition to the fact that legal penalties are inapplicable in case of suspicion.

The second condition: is that a culprit must be aware of the prohibition of the act he has committed; otherwise, the prescribed punishment is inapplicable. This is because ‘Umar Ibnul-Khattâb, ‘Uthmân Ibn ‘Affân, and ‘Alî Ibn Abû Tâlib (may Allah be pleased with them all) maintained:

“No prescribed punishment is to be executed except on him who is aware of it (i.e. aware that his deed entails such a punishment).”²

That opinion of theirs was not rejected by any of the Companions, and Al-Muwaffaq Ibn Qudâmah said, *“This is the opinion of the majority of scholars.”*

When these conditions are met by the culprit who commits a crime that incurs a prescribed punishment, then it is to be carried out by the judge (or his deputy). The Prophet (PBUH) used to execute the prescribed punishments and so did the Rightly-guided Caliphs. In addition, it happened that the Prophet (PBUH) appointed a person to execute a prescribed punishment on his behalf, as he (PBUH) once said to Unays (in a certain incident):

“O Unays! Go to the wife of this man and if she confesses (that she has committed adultery), then stone her to death.”

Moreover, he (PBUH) ordered that Mâ‘iz was to be stoned to death and he (PBUH) did not witness him being stoned³. The Prophet (PBUH) also said concerning a thief:

“Take him and cut his hand off...”⁴

As the prescribed punishment needs *ijtihâd*, and because there is a risk of transgressing during its execution, it must be undertaken by the judge or his deputy so as to guarantee complete justice during execution. This should be the way to follow, whether the prescribed punishment concerns violating one of the Rights of Allah, as in the case of *zinâ* (adultery or fornication), or a right of a human being, as in the case of false accusation of *zinâ*.

Sheikh Taqyyud-Dīn Ibn Taymiyah (may Allah have mercy on him) said:

“The limits whose violation does not only affect certain people are called ‘the Limits of Allah’ and ‘the Rights of Allah’, such as banditry, theft, and zinâ. This also applies to running public properties, endowments, and bequests that are not made to specified people. Such limits are among the most important affairs of any state, so it is the duty of rulers to pursue them and execute the punishments for violating them even if without any claimants, and testimonies are to be accepted even if without any claimants as well. Moreover, the prescribed punishments are to be executed without any distinction between the honorable and the mean, or the mighty and the weak...”⁵

It is impermissible to execute prescribed punishments in the mosque. Rather, they are to be executed outside it, for **Hakīm Ibn Hizām** (may Allah be pleased with him) narrated:

“The Messenger of Allah (PBUH) forbade executing qisâs (legal retribution), reciting poetry, or executing prescribed punishments (hudûd) in the mosque.”⁶

The poetry meant in this *hadith* is the immoral one.

In addition, one is prohibited to intercede to prevent executing a prescribed punishment after it has reached the judge, and it is also prohibited for those in authority to accept any intercession in this concern. This is because the Prophet (PBUH) said:

“If anyone’s intercession hinders the execution of one of the punishments prescribed by Allah, then he has opposed Allah in what He has ordained.”⁷

Moreover, the Prophet (PBUH) said to the one who wanted to pardon a thief:

“Why did you not do that before bringing him to me?”⁸

Shaykhul-Islām Ibn Taymiyah (may Allah have mercy on him) said:

“It is prohibited to suspend executing a prescribed punishment whether by an intercession, a gift, or anything of the kind. And it is already prohibited to intercede in a crime that entails a prescribed punishment. Whoever stops executing it (i.e. the prescribed punishment) for any of such reasons – though he is able to execute it – upon him is the curse of Allah, the angels, and all mankind, altogether.”⁹

Ibn Taymiyah added:

“It is impermissible to get money from a thief, an adulterer, a drunk, a bandit, or the like, to stop executing a prescribed punishment, whether this money is paid to the treasury or to any other person. Such money is deemed ill-gotten and evil, so if the one in authority accepts it, then he is considered to be committing two evil deeds; the first is preventing the execution of a prescribed punishment, and the second is taking ill-gotten money. Thus, such a person (who accepts such a bribe) abandons what is obligatory and does what is prohibited. It is unanimously agreed that the property taken (as a bribe) from an adulterer, a thief, a drunk, a bandit, and their likes, to stop executing a prescribed punishment, is evil and ill-gotten money, and it is among the most evil things that spoil Muslims’ affairs. It also causes the violability of the one in authority, his disrespect in the hearts of people, and the diminishment of his power.”¹⁰

This is because nothing can stop crimes and safeguard the society against their evils but the establishment of the prescribed punishments against perpetrators. However, replacing the legal punishments with mere fines, imprisonment, or suchlike innovated positive punishments, leads only to corruption, injustice, and spread of evil.

Our *faqīhs* (scholars of Islamic Jurisprudence) state that the crimes for which executing the prescribed punishments is obligatory are five: *Zinā* (adultery or fornication), theft, banditry, drinking intoxicants, and false accusation of *zinā*. As for crimes other than these five, they just entail discretionary punishments, as will be explained later if Allah wills. They also maintain that the severest lashing is that executed as a punishment for fornication, then that for false accusation of *zinā*, whereas the lashing for drinking intoxicants is less severe, and the least is that executed as a discretionary punishment. This is because Allah, Exalted be He, stresses that the punishment for *zinā* in particular must be severe; Allah says,

“...and do not be taken by pity for them in the religion [i.e. law] of Allah...”
(Qur’ān: An-Nūr: 2)

Whatever sin less than fornication in grievousness is to be less with regard to the number of lashes, for no other sin entailing a punishment by lashing is to be graver than fornication.

Furthermore, *faqīhs* maintain that if the offender dies during the execution of a prescribed punishment, the executer will be liable for nothing, for he has been carrying out the punishment prescribed by Allah, in the way ordained by Allah, Exalted be He, and enjoined by His Messenger (PBUH). However, if the executer exceeds the legal way of execution that the one being punished dies, the former becomes liable for *diyyah*. In this case, the death of the one being punished has been the result of the transgression of the executer, so the case becomes similar to murder rather than a prescribed punishment. Thus, the executer becomes liable to pay the *diyyah*; this opinion is maintained by **Al-Muwaffaq** (may Allah have mercy on him) who said, “*We do not know any juristic disagreement on this ruling.*”

Endnotes

- 1 See the footnote in “*Ar-Rawd Al-Murbi*” [7/300].
- 2 `Abdur-Razzâq (13644) [7/403], (13648) [7/405], and (13644) [7/403] and Al-Bayhaqî (17065) [8/415].
- 3 Al-Bukhârî (6815) [12/147] and Muslim (4396) [6/193].
- 4 An-Nasâ’î (4892) [4/438].
- 5 See: “*Majmu`ul-Fatâwâ*” (28/297).
- 6 Abû Dâwûd (4490) [4/407], At-Tirmidhî (1405) [4/19] and Ibn Mâjah (2599) [3/248].
- 7 Abû Dâwûd (3597) [4/18] and Al-Bayhaqî (17617) [8/576].
- 8 Abû Dâwûd (4394) [4/360], An-Nasâ’î (4893) [4/438] and Ibn Mâjah (2595) [3/246].
- 9 See: “*Majmu`ul-Fatâwâ*” (28/298).
- 10 See: “*Majmu`ul-Fatâwâ*” (28/302).

Prescribed Punishments for *Zinâ*

Faqîhs view that the judge or his deputy must witness the execution of the punishment for *zinâ* (adultery or fornication). In addition, the execution must be witnessed by some believers as well, for Allah, Exalted be He, says:

“...And let a group of the believers witness their punishment.”

(Qur’ân: An-Nûr: 2)

Zinâ is one of the most grievous crimes, and the cases of *zinâ* differ in the degree of immorality, sinfulness, and ugliness. To illustrate, having sexual intercourse with a married woman, committing incest, and having sexual intercourse with one’s neighbor’s wife are the most grievous types of *zinâ*.

Moreover, *zinâ* is a major sin as it results in abominable consequences such as lineal disarray and confusion that lead to disconnection and miscommunication among people and to their lack of mutual support in righteousness. It also causes the corruption and destruction of all aspects

of human life. Due to such grievous consequences of *zinâ*, Allah, Exalted be He, has prescribed a severe punishment for adultery, namely stoning to death, or lashing and banishment in case of fornication. Such severe punishments are decreed as means of deterrence and avoidance of the resulting moral and social diseases that afflict society. That is why the Lawgiver of *Sharî'ah* firmly prohibited committing *zinâ*; Allah, Exalted be He, says,

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.” (Qur’ân: Al-Isrâ’: 32)

Therefore, Allah has prescribed severe punishments for committing the sin of *zinâ*.

Faqîhs define *zinâ* as follows: It is the committing of illegal sexual intercourse in the vagina or the anus. **Ibn Rushd** (Averroës) said:

*“It is every sexual intercourse that happens in any circumstances other than valid marriage or what may be thought as marriage, or with one’s slave girl. This is unanimously agreed upon by Muslim scholars, but they have disagreed on whether what may be thought as marriage can prevent executing the prescribed punishment or not.”*¹

If the perpetrator of illegal sexual intercourse, male or female, is married and legally major (i.e. if the case is adultery), he/she is to be stoned to death. This is the opinion maintained by the men of religious knowledge of the Prophet’s Companions, the Successors of the Companions, and those who followed them in the various Islamic states through different eras; none has disagreed on this opinion except the Kharijites². In addition to this, stoning to death as a legal punishment for adultery is stated in the *Sunnah* (Tradition) of the Messenger of Allah (PBUH), and clearly shown through the Prophetic sayings and actions that are recurrently narrated. Stoning the offender to death in case of adultery was also mentioned in the Noble Qur’ân, then it was abrogated in wording but its ruling is still valid. It had been stated in the following verse before it was abrogated: ***“And when an old man (i.e. a married man) or an old woman (i.e. a married woman) commits adultery, inevitably stone each one of them as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise.”***³

Stoning to death in case of adultery is clearly stated in the Qur’ân (through the aforementioned verse that was abrogated in wording but not in ruling), the recurrent *Sunnah*, and the consensus of Muslim scholars. However, the Kharijites as well as some similar modern writers have dared to deny it, following their

own desires and disregarding the prescribed legal rulings and the consensus of Muslim scholars.

The man supposed to be *muhsan*⁴ is the one who has already had sexual intercourse with his wife in her vagina, whether she is Muslim or non-Muslim (i.e. a Christian or a Jew), provided both the married couple are adult, sane, and free, not slaves. However, if any of these conditions is not fulfilled in one of the two spouses, then the state of *ihsân* is not fulfilled.

These conditions can be summarized as follows:

- 1-The sexual intercourse must be done in the vagina.
- 2-The sexual intercourse must be within a valid marriage.
- 3-Both of the two spouses must be adult, sane, and free persons.

The married person is singled out for stoning to death because he/she has already got married and become acquainted with abstinence from unlawful sexual intercourse and aware of the way to safeguard oneself against such prohibited sexual affairs. Such a person is supposed to have known how to abstain from committing adultery and consequently from suffering its legal punishment. Thus, there is no excuse for him/her at all, as s/he has been completely favored over single people (through marriage), and whoever is favored by Allah over others his guilt is more grievous, and thus such a person deserves to be punished more severely.

If a legally accountable free person commits fornication while he/she is not in a state of *ihsân* (i.e. not married or previously married), he/she is to be lashed a hundred lashes, as Allah, Exalted be He, says:

"The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them a hundred lashes..."

(Qur'ân: An-Nûr: 2)

Thus, the prescribed punishment for adultery, which is stoning to death, is inapplicable in case of fornication, when one is not *muhsan*. Rather, the offender of fornication is to be lashed instead of being stoned to death, as his/her case involves a kind of excuse. Thus, the life of a fornicator is spared, yet s/he is to be punished for his/her sin by hurting all his/her body through the severest kind of lashing. Allah, Exalted be He, says:

"...and do not be taken by pity for them in the religion [i.e. law] of Allah..."

(Qur'ân: An-Nûr: 2)

This means that there should be no mercy toward fornicators concerning the execution of the prescribed punishment, namely lashing. Moreover, Allah, Exalted be He, addresses the executer saying:

“...if you should believe in Allah and the Last Day...”

(Qur’ân: An-Nûr: 2)

That is, there should be no mercy in such cases if the executer is a true believer, as faith entails firmness in the religious affairs and exerting all effort to establish their rulings.

It is authentically stated in the *Sunnah* of the Messenger of Allah (PBUH) that a fornicator is to be banished for a year in addition to lashing him/her. That is because it is related by At-Tirmidhî and other compilers of *Hadîth* that:

*“The Prophet (PBUH) executed the punishment of lashing and banishing (the fornicator), and Abû Bakr executed the punishment of lashing and banishing, and (also) ‘Umar executed the punishment of lashing and banishing.”*⁵

Moreover, the Prophet (PBUH) said:

*“When an unmarried male commits fornication with an unmarried female (they should receive) a hundred lashes and banishment for a year.”*⁶

If the adulterer is a slave, he is to be lashed fifty lashes, as Allah, Exalted be He, says concerning female slaves:

“...But once they are sheltered in marriage, if they should commit adultery, then for them is half the punishment for free [unmarried] women...”

(Qur’ân: An-Nisâ’: 25)

There is no difference between male and female in this regard. The prescribed punishment mentioned in the Qur’ân is lashing. Stoning to death was also mentioned in the Qur’ân as the prescribed punishment for adultery, yet its wording was abrogated but its ruling is still in force.

The punishment of banishing is not to be executed on slaves, for it harms the interest of their masters. In addition, there is nothing mentioned in the *Sunnah* stating that a slave should be banished in this case. The Prophet (PBUH) said concerning the case of a slave girl who commits fornication while not being in a state of *iḥsân*, i.e. not sheltered in marriage:

*“If she commits fornication, then lash her; if she commits it again, then lash her again; and if she repeats it for (a third time), then lash her for (a third time)...”*⁷

However, he (PBUH) did not mention banishment concerning the fornication of slaves.

The prescribed punishment is not to be executed unless the case is void of suspicion of *zinâ* (adultery or fornication), for the Messenger of Allah (PBUH) said:

*“Avert punishments in the case of suspicion as much as you can.”*⁸

Thus, there is no prescribed punishment applicable to the one who has sexual intercourse in the following cases:

- 1- If one has sexual intercourse with a woman mistakenly believing that she is his wife
- 2- If one thinks one's marriage contract is valid while it is not
- 3- If the validity of one's marriage is controversial
- 4- If one is unaware of the prohibition of *zinâ* because of being a new convert to Islam or being brought up somewhere away from Islamic states
- 5- If one is forced to commit *zinâ*

Ibnul-Mundhir said:

*“All the people of religious knowledge (scholars) from whom we have derived knowledge unanimously agree that the execution of prescribed punishments should be averted in the case of suspicion.”*⁹

In fact, this is an aspect of the easiness and leniency of *Shari'ah* (Islamic Law), as suspicion indicates that the sinner has committed the sin unintentionally. Allah, Exalted be He, says:

“...And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful.” (Qur'an: Al-Ahzâb: 5)

Among the conditions that obligate executing the prescribed punishment on the offender of *zinâ* is that there must be certainty that s/he has committed it. Such certainty cannot be reached except through two ways:

The first way is that the offender confesses four times that s/he has committed *zinâ*. This is due to the fact that Mâ'iz Ibn Mâlik (may Allah be pleased with him) confessed to the Prophet (PBUH) four times that he had committed it after which the Prophet (PBUH) applied the legal punishment

to him; he (PBUH) kept refraining from punishing him three times, until Mâ'iz confessed for the fourth time. If confessing less than four times had been enough to execute the punishment, the Prophet (PBUH) would have executed it on him at any of the three times of confession.

The confession is not deemed valid unless the offender declares that he/she has committed *zinâ* in plain words. If he/she does not mention the sin of *zinâ* in the confession, then no punishment is applicable, as the offender might mean any prohibited act of lust that does not entail a prescribed punishment, unlike *zinâ*. That is why the Prophet (PBUH) said to Mâ'iz (may Allah be pleased with him) when the latter confessed to the Prophet (PBUH):

*"Maybe you have only kissed her, winked at her, or looked at her (lustfully)."*¹⁰

When Mâ'iz insisted he did it, the Prophet (PBUH) kept inquiring until there were no other possibilities.

Moreover, if the offender recants his/her confession before the execution of the punishment, he/she must not be punished. This is illustrated in the way the Prophet (PBUH) continued asking Mâ'iz (and others in other cases) in case the latter takes his confession back. Also, when Mâ'iz tried to escape while being punished and then the people caught him and stoned him to death, the Prophet (PBUH) said:

*"Why did you not leave him, for he might repent and Allah would accept his repentance?"*¹¹

The second way to reach certainty concerning a case of *zinâ* (adultery or fornication) is the presence of four witnesses. Allah, Exalted be He, says:

"Why did they [who slandered] not produce for it four witnesses?..."
(Qur'ân: An-Nûr: 13)

Allah also says:

"And those who accuse chaste women and then do not produce four witnesses..."
(Qur'ân: An-Nûr: 4)

Moreover, Allah, Exalted be He, says:

"...bring against them four [witnesses] from among you..."
(Qur'ân: An-Nisâ': 15)

The conditions for the validity of testimony in the case of *zinâ*:

- 1- The four witnesses must testify against the adulterer (or the fornicator) at the same place of assembly.
- 2- They must testify for the same single case of *zinâ*, i.e. their testimony must concern the same specific case of *zinâ* committed by that person.
- 3- They must describe the committed sexual intercourse in a way that puts aside the possibility of committing any sin other than *zinâ*. This is because some actions preceding the sexual intercourse do not deserve the legal penalty for *zinâ*, such as kissing and foreplay, so the witnesses' testimonies must be made clear to put aside any doubt.
- 4- The four witnesses must be just men, for neither the testimony of women nor that of wicked, dissolute people is accepted.
- 5- There must be no defects invalidating the testimony of any of them, such as blindness or the like.

If one of these conditions is not fulfilled, then the prescribed punishment of slandering must be executed upon the witnesses, for in this case they are considered slanderers. Allah, Exalted be He, says:

“And those who accuse chaste women and then do not produce four witnesses – lash them eighty lashes ...” (Qur’ân: An-Nûr: 4)

Scholars unanimously agree that *zinâ* can be proven by any of the aforementioned two ways, namely confession and testimony. Yet, they disagree on whether there is a third way that can prove it, namely pregnancy, as in the case when a woman conceives while having neither a husband nor a master (if she is a slave girl). Some of the scholars maintain that this case does not entail a prescribed punishment on the woman, for she may be pregnant due to a doubtful marriage or compulsion. Other scholars believe that this case deserves executing the prescribed punishment as long as the woman does not claim any matter of suspicion concerning her pregnancy.

Shaykhul-Islâm Ibn Taymiyah said:

*“This ruling – that a pregnant woman who has neither a husband nor a master is to be legally punished – is the one known to have been carried out at the times of the Rightly-guided Caliphs, and it is more consistent with the legal principles. Moreover, it is the opinion maintained by the scholars of Medina; it is based on the fact that uncertain possibilities are disregarded.”*¹²

Furthermore, **Ibnul-Qayyim** said:

“Umar Ibnul-Khattâb judged that the woman who becomes pregnant while having neither a husband nor a master is to be stoned to death. This is the opinion adopted by the Mâliki School, and it is the more valid of the two opinions attributed to Imâm Ahmad, being based on irrefutable evidence, namely the woman’s pregnancy.”

Just as the prescribed punishment is to be executed in case of *zinâ* (adultery or fornication) when its conditions are fulfilled, it is to be executed in case of sodomy, namely having anal sex, which is an evil crime and an ugly perversion contradictory to natural disposition. Allah, Exalted be He, said regarding the People of Prophet Lût (Lot) who used to practice sodomy:

“...Do you commit such immorality as no one has preceded you with from among the worlds [i.e. peoples]? Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people.” (Qur’ân: Al-A’ râf: 80-81)

In fact, sodomy is prohibited according to the Noble Qur’ân, the *Sunnah*, and the consensus of scholars. Allah, Exalted be He, describes the People of Prophet Lût as committing an unprecedented immoral act, so such people are deviants in this world. Allah also describes them as being trespassers, transgressors, and criminals. Thus, because of the ugliness of their sin, Allah punished the People of Prophet Lût with a punishment that He had never afflicted any other people with; He turned their town upside down and rained on them stones of hard clay. In addition to this, the Messenger of Allah (PBUH) cursed both the one who practices sodomy and his partner¹³. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

“The most valid opinion maintained by the Prophet’s Companions is that both those who practice sodomy are to be killed, whether they are muḥṣans¹⁴ or not.” He added: *“The Companions of the Prophet have not differed on killing sodomites, and some of them are of the opinion that a sodomite is to be raised to the top of the highest building in town and thrown from there, followed by stones thrown at him.”¹⁵*

Al-Muwaffaq said: *“As the judgment of killing the sodomite is unanimously agreed upon among the Prophet’s Companions, they all have acted in accordance with that ruling. Yet, they have differed regarding the way a sodomite is to be killed.”¹⁶*

Moreover, Ibn Rajab said:

"The sound opinion is that a sodomite is to be killed, whether he is muhsan or not, for Allah, Exalted be He, says (about the sodomites of the People of Lūt), '...and rained upon them stones of layered hard clay.' (Qur'an: Hūd: 82)"

In this connection, Imām Aḥmad said, "The prescribed punishment for a sodomite is stoning to death, whether he has previously married or not." This is the same opinion maintained by Imām Mālik and others, and it is also one of the two opinions attributed to Imām Ash-Shāfi'i. This is because the Prophet (PBUH) said:

"If you find anyone committing the deed of the People of Lūt (i.e. sodomy), kill the one who does it, and the one to whom it is done."¹⁷

(Related by Abū Dāwūd)

According to another narration, the Prophet (PBUH) said:

"...kill the upper and the lower (i.e. the two partners)."¹⁸

Among the acts of sodomy is having anal sexual intercourse with one's wife. Allah, Exalted be He, says:

"...then come to them [i.e. wives] from where Allah has ordained for you. Indeed, Allah loves those who are constantly repentant and loves those who purify themselves."

(Qur'an: Al-Baqarah: 222)

Ibn 'Abbās, Mujāhid, and others, maintained that the lawful sexual intercourse meant in the verse is that made through one's wife's vagina; "from where Allah has ordained for you."

In addition, 'Alī Ibn Abū Ṭalhah reported that Ibn 'Abbās said:

"The verse that reads, '...then come to them from where Allah has ordained for you...?' (Qur'an: Al-Baqarah: 222) means that you must have sexual intercourse only through the vagina and never exceed it, having it elsewhere; whoever does anything of the kind is regarded as a transgressor."

Whoever has anal sexual intercourse with his wife must receive a deterrent punishment. If such a person continues committing it, then it is obligatory for his wife to ask for separation from him, for he is such a low, villainous person with whom she must by no means live under such circumstances.

Endnotes

- 1 See: "*Bidāyat Al-Mujtahid*" (2/529).
- 2 The Kharijites (Al-Khawārij, i.e. the Seceders): An Islamic radical sect who broke away from the reign of `Alī Ibn Abū Tālib, the Muslim Caliph then, and murdered him. Their followers believe that the Muslim who commits a major sin is a disbeliever. They also curse and revile the Prophet's Companions and deem the blood of Muslims violable.
- 3 Ibn Mājah (2553) [3/225], Al-Bukhārī (6830) [12/176] and Muslim (4394) [6/191].
- 4 *Muhsan*: One in a state of *ihsān*, i.e. in a state of fortification against illegal sexual intercourse and immorality by virtue of valid (current or previous) marriage.
- 5 At-Tirmidhī (1442) [4/44] and Al-Bayhaqī (16977) [8/389].
- 6 Muslim (4890) [6/189].
- 7 Al-Bukhārī (2153) [4/466] and Muslim (4422) [6/211].
- 8 At-Tirmidhī (1428) [4/33] and Ibn Mājah (2545) [3/219].
- 9 See: "*Al-Ijmā'*" (p. 162)
- 10 Al-Bukhārī (6824) [12/165].
- 11 Abū Dāwūd (4419) [4/373].
- 12 See: "*Majmū'ul-Fatāwā*" (28/334).
- 13 See Ibn `Adiyy in his "*Al-Kāmeel*" and Al-Bayhaqī (17017) [8/402] and At-Tirmidhī [4/58].
- 14 *Muhsan*: One in a state of *ihsān*, i.e. in a state of fortification against illegal sexual intercourse and immorality by virtue of valid (current or previous) marriage.
- 15 See: "*Majmū'ul-Fatāwā*" (28/361).
- 16 See: "*Al-Mughnī*" (10/161).
- 17 Abū Dāwūd (4462) [4/393], At-Tirmidhī (1460) [4/57] and Ibn Mājah (2561) [3/229].
- 18 Ibn Mājah (2562) [3/229].

Prescribed Punishment for Slander

Faqīhs define slander as accusing some person of adultery, fornication, or sodomy. It is a prohibited act according to the Noble Qur'an, the *Sunnah* and the consensus of Muslim scholars.

Allah, Exalted be He, says:

"And those who accuse chaste women and then do not produce four witnesses – lash them eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient."

(Qur'an: An-Nûr: 4)

The legal punishment for the slanderer in this world is lashing, the rejection of his testimony, and considering him a defiantly disobedient wicked person as long as he does not prove what he has claimed. As for his punishment in the Hereafter, it is stated in the verse in which Allah, Exalted be He, says:

"Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in this world and the Hereafter; and they will

have a great punishment. On a Day when their tongues, their hands and their feet will bear witness against them as to what they used to do. That Day, Allah will pay them in full their true [i.e. deserved] recompense, and they will know that it is Allah Who is the Manifest Truth [i.e. Perfect in Justice]."

(Qur'an: An-Nûr: 23-25)

Moreover, the Prophet (PBUH) mentioned slander as one of the enormous, destructive major sins when he said:

"Avoid the seven most destructive major sins."

He (PBUH) pointed out that among those seven destructive major sins was:

"...slandering chaste, unaware believing women (i.e. women who are so chaste that they are even unaware of immorality)."

Furthermore, Muslim scholars unanimously agree on the prohibition of slander, regarding it as one of the major sins.

Allah, Exalted be He, has ordained a deterrent legal punishment for the slanderer. If a legally accountable person falsely accuses a chaste person of committing adultery, fornication, or sodomy, the slanderer is to be lashed eighty lashes, for Allah, Exalted be He, says:

"And those who accuse chaste women and then do not produce four witnesses – lash them eighty lashes..." (Qur'an: An-Nûr: 4)

The verse indicates that if those who accuse chaste modest women do not produce four witnesses to testify to what they have claimed, then they (the accusers) are to be lashed eighty lashes. It does not make any difference whether the accused person is a man or a woman, but women are mentioned in particular because the verse refers to a specific incident, and because slandering women is an uglier and more recurrent deed than slandering men.

This punishment is ordained to be executed on the slanderer in order to preserve the honors of Muslims from profanation, to safeguard innocent chaste people against such offenses and obscenities, and to protect the Muslim community from the spread of sin and corruption.

The *muḥṣan* person, defaming whom entails the legal punishment for slander, is the one who is free, Muslim, sane, chaste, and able to have sexual intercourse. **Ibn Rushd** (Averroës) said:

“Scholars have unanimously agreed that the slandered person must have the following five characteristics (to regard the case as slander): legal majority, freedom, chastity, Islam, and the ability to have sexual intercourse. If any of these conditions is not fulfilled, the application of the punishment for slander becomes invalid.”¹

Carrying out the punishment for slander is a right belonging only to the slandered person; it is dropped if he forgives the slanderer, and it cannot be executed except upon his request. Thus, if the slandered person pardons the slanderer, the latter is to be exempted from the prescribed punishment. However, the slanderer in this case is to be discretionarily punished to deter him from going on slandering others, which is a prohibited act that incurs the curse and the painful punishment of Allah as stated in the Qur’ân. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said, *“Scholars unanimously agree that the prescribed punishment for slander is not to be executed except upon the request of the slandered person.”²*

If someone slanders an absent person, he is not to be punished until the slandered person returns and asks to execute the prescribed punishment or if it is proven that he has asked for it in his absence.

Words of Slander are of Two Types

- 1- Plain words:** such words imply nothing but slander, so the slanderer’s allegation of intending something other than slander is not acceptable in this case. Slander in direct, plain words includes such expressions as “you adulterer,” “you fornicator,” or “you sodomite.”
- 2- Allusive words:** such words imply slander along with other meanings, so the slanderer’s claim of intending something other than slander is acceptable in this case. Slander in such allusive, indirect, metonymic words includes such expressions as “you lecher,” or “you dissolute,” or the like. In the latter case, if the slanderer claims that he means something other than adultery by calling the other person a “dissolute” or a “lecher,” his claim is to be accepted and he does not become liable to punishment. This is because his words are allusive and they indicate other meanings, so there should be no punishment according to the legal rule that states, “Legal punishments are averted in the case of suspicion.”

If the slanderer accuses a group of people of adultery while they are far above suspicion, or if he slanders the people of a whole town, then no prescribed punishment is to be executed upon him, yet he is to be discretionarily punished. This is because it is certain that such a person is telling a lie, so no shame befalls the accused ones. Still, he is to receive a discretionary punishment to give up such offenses and obscenities that involve a sin entailing punishment, even if none of the accused persons asks for it.

If any one slanders a prophet, he is regarded as a disbeliever, for it is an act of apostasy. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said, "*Slandering the wives of the Prophet (PBUH) is the same as slandering the Prophet (PBUH) himself; the slanderer is considered an apostate.*"³

Concerning whether the slanderer's repentance is accepted if he repents before the slandered person is acquainted with the slander, **Shaykhul-Islâm Ibn Taymiyah** said,

*"The sound opinion is that it differs from one person to another due to the differences between people. Most scholars maintain that if the slandered person knows about the slander, then the repentance of the slanderer is not accepted. But if the slandered person does not know, then the slanderer's repentance is accepted, yet he should pray for the slandered person and ask Allah's forgiveness for slandering him..."*⁴

Thus, it has become obvious how a dangerous organ one's tongue is and how grievous what one utters could be. That is why the Prophet (PBUH) rhetorically says:

*"Is there anything that causes people to be thrown into the Hellfire upon their faces other than the outcome of their tongues (i.e. the verbal sins)?"*⁵

Moreover, Allah, Exalted be He, says:

"He [i.e. man] does not utter any word except that with him is an observer prepared [to record]." (Qur'ân: Qâf: 18)

So, one must keep one's tongue away from saying what is prohibited, weigh one's words, and say only what is right and just, for Allah, Exalted be He, says:

"O you who have believed, fear Allah and speak words of appropriate justice." (Qur'ân: Al-Aḥzâb: 70)

Endnotes

- 1 See: "*Bidāyat Al-Mujtahid*" (2/539).
- 2 See: "*Majmū'ul-Fatāwā*" (32/119).
- 3 See: "*Majmū'ul-Fatāwā*" (32/119).
- 4 See: "*Majmū'ul-Fatāwā*" (34/541).
- 5 At-Tirmidhī (2621) [5/11].

CHAPTER

4

Prescribed Punishment for Intoxicants

Every beverage that intoxicates is prohibited according to the Qur'an, the *Sunnah* and the consensus of Muslim scholars. Allah, the Exalted, says:

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?” (Qur'an: Al-Mâ'idah: 90-91)

Moreover, the Prophet (PBUH) said:

“Every beverage that intoxicates is prohibited (to drink).”¹

(Related by Al-Bukhâri, Muslim, and other compilers of *Hadîths*)

In another *hadith*, he (PBUH) said:

*“Every inebriant is an intoxicant, and every intoxicant is prohibited.”*²

Thus, every beverage that intoxicates when taken in large quantities is also prohibited to be taken in small quantities, as it is still called wine after all, whether it is made of grape juice or anything else.

‘Umar Ibnul-Khattâb (may Allah be pleased with him) said:

*“An intoxicant is that which deranges the mind.”*³

Moreover, **Sheikh Taqiyyud-Dîn Ibn Taymiyah** (may Allah have mercy on him) said:

“Hashish is impure according to the preponderant opinion; it is prohibited whether it intoxicates or not. Hashish that intoxicates is prohibited according to the unanimous agreement of Muslim scholars. Its harm in some aspects is graver than that of wine. It began to appear in the sixth century A.H. (after Hijrah)”^{4,5}

Hashish and all other drugs are among the most destructive means that ruin the Muslim youth nowadays. They are considered the most dangerous weapon exported to us by our enemies. They are propagated in our lands by the Jews and their agents so as to destroy Muslims, corrupt their youth, hinder them from benefiting their societies, from striving for their religion, and from defending their nations against transgressors. In such a way, many of the Muslim youth have become narcotized, living either as dependents on their societies or in prisons. These are, regrettably, the consequences of the spread of narcotics and intoxicants in the Islamic countries. There is neither might nor power except in Allah, the Most High, the Most Great.

Intoxicants are by all means prohibited, and drinking is impermissible whatever the case may be; it is impermissible to drink for pleasure, as medication, for quenching thirst, or for any other reason.

As for the prohibition of drinking intoxicants as a means of medication, the Prophet (PBUH) says:

*“It is not a remedy; it is a malady.”*⁶

(Related by Imâm Muslim)

In addition, Ibn Mas‘ûd (may Allah be pleased with him) said:

*“Allah has never made your remedy in a prohibited thing.”*⁷

As regards the prohibition of drinking for quenching one's thirst, it is due to the fact that intoxicants do not actually quench thirst, but they rather increase it.

If a Muslim willingly drinks alcoholic liquor or anything mixed with it, such as cologne or suchlike perfumes that contain alcohol, while being aware that it intoxicates, the prescribed punishment for drinking is to be imposed on him, for the Prophet (PBUH) says:

*"If anyone drinks an intoxicant, then lash him."*⁸

(Related by Abû Dâwûd and other compilers of *Hadîth*)

The prescribed punishment for drinking is eighty lashes. `Umar Ibnul-Khattâb (may Allah be pleased with him) consulted the people as regards the prescribed punishment for drinking intoxicants. Thereupon, `Abdur-Rahmân Ibn `Awf said:

"Make it the same as the lightest prescribed punishment; eighty lashes."

Thus, `Umar executed it as eighty lashes. Then, he wrote to Khâlid Ibnul-Walîd and Abû `Ubaydah in Ash-Shâm (the Levant) informing them of that new ruling. (Related by Ad-Dâraqutnî and others)⁹

That incident was witnessed by both the *Muhâjirûn* and the *Anşâr* and none of them disapproved of the new ruling.

Imâm Ibnul-Qayyim (may Allah have mercy on him) said:

*"In fact, `Umar made the prescribed punishment for drinking the same as that of slander (i.e. eighty lashes), and the Companions ratified this judgment."*¹⁰

Moreover, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

"According to the Sunnah and the consensus of Muslim scholars, the prescribed punishment for drinking is forty lashes. Any increase can be decreed by the judge only when necessary, as in the cases when people become addicted to alcohol and they are not deterred except through more lashing."

He also said:

"The sound opinion is that raising the punishment for drinking from forty to eighty lashes is neither completely obligatory nor completely prohibited. Rather, it depends on the discretion of the judge, just

as it is permissible for him to exercise ijtihād (legal reasoning and discretion) as regards the way of lashing.”¹¹

The prescribed punishment becomes incumbent upon the confession of the drinker or after the testimony of two just witnesses. Yet, scholars disagree concerning the one who smells of alcohol and whether that proves his guilt or not. Some maintain that the prescribed punishment is inapplicable in this case, and that only a discretionary punishment is to be carried out. Others say that the prescribed punishment is applicable to the one who smells of alcohol unless he claims something that makes the case suspicious. The latter is the opinion reported to have been maintained by Imām Aḥmad. Likewise, it is the opinion of Imām Mālik, and it is also the opinion chosen by Sheikh Taqyyud-Dīn Ibn Taymiyah (may Allah have mercy on him). **Shaykhul-Islām Ibn Taymiyah** said:

“He who has circumstantial evidences proving he is guilty of drinking, like the smell of alcohol, is more deserving to be punished than the one whose guilt is proven by witnesses or confession, as both may be true or false (unlike the smell of alcohol). The Prophet’s Companions unanimously agree on this opinion.”¹²

Moreover, **Ibnul-Qayyim** (may Allah have mercy on him) said:

“Both ‘Umar and Ibn Mas‘ūd judged that the prescribed punishment is to be carried out on the person who smells of alcohol, whether he is a man or not. None disagreed on that judgment of ‘Umar and Ibn Mas‘ūd then.”

The danger of intoxicants is really grave. It is the cunning means used by Satan to mislead Muslims. Allah, Exalted be He, says:

“Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?”

(Qur’ān: Al-Mā’idah: 91)

In addition, wine represents the mother of all evils. The Prophet (PBUH) cursed ten persons related to wine, among them are those included in the following *ḥadīth*:

“Allah has cursed wine, the one who drinks it, the one who serves it, the one who sells it, the one who buys it, the one who presses it, the one for whom it is pressed, the one who conveys it, and the one to whom it is conveyed.”¹³

In the narration related by Ibn Mâjah, there is another one added:

“...and the one who eats up its price.”

Thus, all Muslims should resist wine firmly and courageously, through blocking its sources and imposing a deterrent punishment on those who drink or promote it. This is because wine leads one to all evils and sins and alienates one from all kinds of goodness. May Allah spare all Muslims its evils and dangers. The Prophet (PBUH) pointed out in a *ḥadīth* that toward the end of time, some people would deem wine permissible; they would refer to it with other names and would shamelessly drink it¹⁴. Therefore, Muslims must be on their guard against such wicked people.

Endnotes

1 Al-Bukhârî (242) [1/460] and Muslim (5179) [7/170].

2 Muslim (5189) [7/137].

3 Al-Bukhârî (5581) [10/45] and Muslim (7475) [9/360].

4 *Hijrah: The Prophet's Immigration to Medina*.

5 See Ibn Taymiyah's *Majmû'ul-Fatâwâ* (34/213).

6 Muslim (1984).

7 Al-Bukhârî [74].

8 Abû Dâwûd (4483) [4/404] and An-Nasâ'i (5677) [4/716].

9 Muslim (1706) (35, 36), 'Abdur-Razzâq (13542) [7/378], Mâlik (710), Ad-Darâqutnî (3290) [3/112] and Abû Dâwûd (4489) [4/406].

10 See *Zâdul-Ma'âd* [5/44].

11 See Ibn Taymiyah's *Majmû'ul-Fatâwâ* (34/299).

12 Ibn Abû Shaybah (28619) [5/519], 'Abdur-Razzâq (17029) [9/228] and Mâlik (709).

13 Abû Dâwûd (3674) [4/55], Ibn Mâjah (3380) [4/64] and At-Tirmidhî (1298) [3/589].

14 Abû Dâwûd (3688) [4/61] and Ibn Mâjah (4020) [4/368].



Discretionary Punishments

From the juristic point of view, a discretionary punishment is a disciplinary one intended to prevent wrongdoing and transgression. It is also a means of honor and respect, for when one is deterred through it and refrains from wrongdoing, one becomes more honorable and respectable.

As for the ruling on the discretionary punishment in Islam, it is obligatory to be carried out for every sin for which there is neither a prescribed punishment nor expiation, whether it is related to doing something prohibited or abandoning something obligatory. A discretionary punishment is to be executed by the judge in case he finds it beneficial to apply it, yet the judge is to give it up if he sees otherwise. Executing discretionary punishments does not need to be requested, so an aggressor is to be discretionarily punished even without the request of the aggressed person; it depends upon the judge's discretion, as crimes differ as regards the degree of enormity and frequency.

The sound opinion is that there is no fixed discretionary punishment, but if the offense is related to a sin that already has a prescribed punishment, like *zinâ* (adultery or fornication) or theft, a discretionary punishment should never reach the amount of the prescribed one.

A discretionary punishment may reach killing if necessary, such as killing a spy, killing one who seeds dissension among Muslims and severs their unity, and killing one who invites people to abide by something other than the Book of Allah, the Qur'ân, and the *Sunnah* (Tradition) of His Messenger (PBUH). Thus, killing as a discretionary punishment is applicable in suchlike cases for which there is no deterrent punishment other than killing.

Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

*"This is the most just opinion, and it is stated in the Sunnah and the tradition of the Rightly-guided Caliphs. To illustrate, the Prophet (PBUH) ordered that the husband whose wife made her slave girl lawful for him (to have sexual intercourse with) was to be scourged a hundred lashes. Likewise, Abû Bakr As-Siddîq and `Umar Ibnul-Khattâb ordered that the man and the woman who were found in one bed (though not a married couple) were to be beaten a hundred lashes each. Also, `Umar ordered that Sabîgh was to be scourged so severely (as a discretionary punishment)..."*¹

Shaykhul-Islâm added:

*"If the intention (behind the discretionary punishment) is to repel corruption that would not be repelled except through killing, then killing is to be executed. Thus, when the offender repeats the same wrongdoing as he has not been deterred by the prescribed punishment, then he is regarded as an assaulting person whose aggression cannot be stopped except through killing, so he is to be killed."*²

There is no minimal limit for a discretionary punishment, as crimes differ in the degree of aggression and according to the different circumstances and ages. Thus, some punishments are referred to the discretion of the judge who should decide according to the necessity and the public interest, provided his discretionary punishment accords with what Allah has ordained and avoids what Allah has prohibited.

Just as discretionary punishments may be executed through lashing, they may also be executed through detention, slapping, admonition, banishment, and the like. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

"A discretionary punishment may be administered through reviling the honor of the transgressor by calling him, for example, 'you oppressor' or 'you transgressor,' and dismissing him from the assembly (as a sign of disdain)..."

There is a *hadith* in which the Messenger of Allah (PBUH) says:

"Nobody should be lashed more than ten lashes unless he/she is guilty of a crime that entails a punishment prescribed by Allah."

(Related by Al-Bukhârî and Muslim)³

Those scholars who permit making a discretionary punishment more than ten lashes argue that the phrase *"unless he/she is guilty of a crime that entails a punishment prescribed by Allah"* here means "unless he exceeds one of the limits set by Allah", which is acceptable in Arabic. Thus, they argue that the sins that incur more than ten lashes are those related to prohibited matters, and the prohibited matters are the limits set by Allah. Accordingly, a discretionary punishment for a certain crime is to be decided according to the benefit of the punishment and the gravity of the crime.

It is impermissible to cut off one of the parts of the offender's body, to wound him, or to shave his beard as a discretionary punishment, for this causes mutilation and disfigurement. It is also impermissible to apply a discretionary punishment through something unlawful, such as making the offender drink wine as a punishment.

Whoever is notorious for hurting people or damaging their properties is to be jailed until his death or repentance. In this regard, **Imâm Ibnul-Qayyim** (may Allah have mercy on him) said:

"Such a person is to be obligatorily detained. This is the opinion maintained by many Muslim scholars, and it should not be disputable, as it is in the best interests of Muslims and a way of sparing them wrongdoing."

He added:

"Working as a ruler entails firmness, so a ruler should not lack firmness as long as he is acting in accordance with the Shari'ah (Islamic Law). Achieving justice in whatever way is regarded as one of the laws prescribed by Allah. The policy that achieves justice can never be said to contradict the Shari'ah. Not only does it agree with the Shari'ah, but it is also considered one of its integral parts. We call

it a "policy" just to keep up with the modern legal terminology, but it is one of the essential Islamic laws rather than a policy. To illustrate, the Prophet (PBUH) once detained a man who was accused of a crime,⁴ and punished another man who was accused when signs of his guilt appeared. Thus, whoever believes that such persons should be released or freed upon taking an oath, despite their being notorious for corruption and evil, disagrees with the Islamic legal policy. Rather, accused persons should be punished (if signs of their guilt appear) and those in authority should not accept the claims of suspects belied by custom and convention."⁵

Sheikh Taqiyyud-Din (may Allah have mercy on him) said concerning sorcerers and conjurers:

"A discretionary punishment should be applied to those who hold snakes (i.e. snake charmers), those who play tricks with fire, and the like."⁶

A discretionary punishment should also be applied to whoever disparages the Islam of a Muslim or makes fun of his religiousness. Likewise, a discretionary punishment is to be applied to whoever calls a *Dhimmī* "a hajji" and whoever calls the one who visits graves (and idolizes the dead) "a hajji", and the like.

Moreover, if the complainant is proven to be a liar and the accused person to be innocent of the charge alleged by the former, a discretionary punishment is to be imposed on the complainant. He should also be liable for a compensation for the injustice and wrongdoing he has done to the accused person without right.

Endnotes

1 See Ibn Taymiyah's *Majmū'ul-Fatāwā* (28/344).

2 Ibid.

3 Al-Bukhārī (6848) [12/217] and Muslim (4435) [6/219].

4 Abū Dāwūd (3630) [4/32], At-Tirmidhī (1421) [4/28] and An-Nasā'ī (4891) [4/437].

5 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/351].

6 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/352].

Prescribed Punishment for Stealing

Allah, Exalted be He, says:

[As for] the thief, the male and the female, amputate their hands in recompense for what they earned [i.e., committed] as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise. (Qur'ân: Al-Mâ'idah: 38)

Moreover, the Prophet (PBUH) says:

"The hand should be cut off for stealing something that is worth a quarter of a dinar or more."¹

In addition, Muslim scholars have unanimously agreed on the legal necessity of cutting off the hand of the thief in general.

The thief is a corrupt member of society; if left, his corruption would spread in the body of the nation. Thus, he should be restrained by applying the suitable penalty to inhibit him. Therefore, Allah, Exalted be He, has legislated cutting off the hand of the thief; such an unjust hand that reaches out for what is not rightful for it, such a hand that destroys rather than constructs, and takes rather than gives.

Stealing is the act of taking a property stealthily from its owner or his deputy while the thief is subjected to the Laws of Islam and the stolen property has reached the *niṣāb*,² provided that he has taken the stolen property from a repository for safekeeping objects of the kind. It is also a condition, to regard the case as theft, that the owner of the stolen property is protected by Islam, and that there is no doubt that the offender has no right to take it.

Thus, there are certain qualities that must be fulfilled in the thief, the stolen person, the stolen property and the manner of stealing, and all these qualities are included in the aforementioned definition. Whenever any of these conditions is not fulfilled, the hand should not be cut off. These conditions are:

The act of stealing must be committed stealthily; otherwise, the prescribed punishment of cutting the hand off is not to be executed, as when the property is plundered publicly or is usurped, for in such case the owner of the property can seek help and punish the oppressor and the usurper. With regard to this, **Imām Ibnul-Qayyim** says:

“The penalty of cutting off the hand is to be executed on the thief rather than the plunderer and the usurper, as it is impossible to be guarded against him, for he (the thief) digs out houses, rips open repositories of properties and breaks the seals. So, if cutting off the hand were not legislated, people would steal one another, damage would aggravate, and hardship would grow severer.”³

Moreover, the author of the book entitled *Al-Ifṣāḥ (Demonstration)* says:

“Scholars unanimously agree that for the embezzler, the plunderer and the usurper, despite the gravity of their crime and their sin, no amputation of the hands is to be executed on any of them. It is permissible to prevent their aggression by means of disciplining, punishing, long imprisonment, and deterrent penalty by confiscating their properties.”⁴

Furthermore, to execute the prescribed punishment of amputation, what is stolen must be an inviolable property, for what is not deemed a property is not inviolable, such as the instruments of amusement, intoxicants, the swine

and the dead animals. Also, concerning what is considered a non-inviolable property due to its owner's being a disbelieving warrior against Muslims, no amputation is to be executed. This is because the blood and property of such a person is lawful.

In addition, to execute the punishment of amputation in stealing, the stolen property must not be less than the *nisâb*, which is three Islamic dirhams that equal a quarter of an Islamic dinar. This amount can be estimated by comparing its value to what equals it in other currencies or by estimating the value of the stolen properties according to each age. In regard to this ruling, the Prophet (PBUH) says:

*"The hand of a thief is not to be cut off but for a quarter of a dinar or more."*⁵

(Related by Ahmad, Muslim and other compilers of *Hadith*)

During the lifetime of the Prophet (PBUH), the value of a quarter of a dinar, which was made of gold, used to equal three dirhams, which were made of silver. There is a clear wisdom in ordaining such amount for the prescribed punishment of amputation, for such amount can mostly suffice a person and those he provides for in a day. Thus, it is worthy of consideration that a hand is to be cut off for stealing a quarter of a dinar though the indemnity paid for cutting it off is five hundred dinars. This is because when it is honest, it is precious; whereas, when it betrays, it becomes worthless. Abul-'Alâ' Al-Ma'arrî, one of the atheist poets, objected to this saying:

A hand whose indemnity is five hundred golden pieces

Wherefore cut off for stealing a quarter of a dinar?

One of the Muslim scholars replied to him saying:

Honesty made it valuable; betrayal made it cheaper

So, mind the Wisdom of the Creator

Among the conditions that must be fulfilled for amputating the hand of the thief is that the stolen property is taken from its repository. The repository of a property is the place where things are usually put for safekeeping, because depositing something indicates safekeeping it. The repository differs according to the kind of property, difference of places, and the ruler's being just or unjust, and his power or weakness. For example, the valuable properties are to be preserved inside houses, stores, and fortified buildings and the like under secure conditions, and so on according to the nature of the preserved property

and the customs of the place. Hence, if a property is stolen from a place which is not considered a repository of such a thing, as when a thief steals from a building whose door is open or from a broken repository, then no amputation is to be executed on him.

There must not be any doubt on the side of the thief. That is, if there is any doubt that may justify the thief stealing, then his hand is not to be cut off, according to the *hadith* of the Prophet (PBUH) in which he says:

*“Avert punishments in the case of suspicion as much as you can.”*⁶

Thus, the penalty of cutting off the hand is not to be executed in case someone steals from his father’s property or from his son’s property, as each of them has a right in the property of the other. This constitutes a doubt that averts the execution of the prescribed penalty. Similarly, everyone who is entitled to a right in a property and takes from it, his hand is not to be cut off. However, it is prohibited for such a person to do such an act; thus, he must be punished for doing this and the property he has taken must be returned to its owner.

In addition to the above-mentioned conditions, theft has to be proved by one of two ways. Firstly, two upright men must testify to the theft and describe how stealing has occurred, its repository, the amount stolen and its kind, in order to remove all other doubts and possibilities. Secondly, the thief may confess twice that he has stolen. This is based on the following *hadith* related by Abû Dâwûd:

*“A thief who admitted stealing was summoned before the Prophet (PBUH). The Prophet (PBUH) said to him, ‘I do not think you have stolen.’ He (the thief) replied, ‘I did.’ The Prophet (PBUH) repeated it twice or thrice (and the man insisted on his confession). Thus, the Prophet (PBUH) ordered that his hand be cut off and it was done.”*⁷

The confession made by a thief must include a description of the way he has committed stealing in order to refute the possibility that he might mistakenly believe that his hand must be amputated whereas the case does not entail such a penalty. Moreover, this helps establish whether the conditions of amputating the thief’s hand are fulfilled or not.

The person whose property is stolen must reclaim his property. In case he does not, the penalty of cutting off the hand is not to be executed, since property becomes allowable by the permission of its owner. Consequently, if the owner does not demand his property back, then it is possible that he has allowed the accused person to take it, and this constitutes a doubt that averts the execution of the legal penalty.

If the conditions for cutting off the hand are all fulfilled, it is obligatory to amputate the thief's hand. Therefore, his right hand is to be cut off. This is according to the way in which 'Abdullāh Ibn Mas'ūd (may Allah be pleased with him) used to recite the Qur'anic verse "...*amputate their hands...*" (Qur'ān: Al-Mā'idah: 38) as "...*amputate their right hands...*" The position of cutting is from the wrist joint, as the hand is the organ one uses in stealing; thus, the thief is punished by destroying such a means. After amputating the hand, the proper treatment should be applied in order to stop the bleeding and cure the wound through the available means of medication. And, Allah, Exalted be He, knows best.

Endnotes

1 Al-Bukhārī (6789) [12/117] and Muslim (4374) [6/181].

2 *Nisāb*: As far as theft is concerned, the *nisāb* refers to the minimum amount of property stealing which entails executing the prescribed punishment, namely cutting off the thief's hand.

3 See *I'lām Al-Muwaqqi'in* (2/61-63)

4 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/355].

5 Al-Bukhārī (6790) [12/117], Muslim (4376) [6/182], Abū Dāwūd (4384) [4/355] and An-Nasā'i (4930) [4/449].

6 At-Tirmidhī (1428) [4/33]; see also Ibn Mājah (2545) [3/219].

7 Abū Dāwūd (4380) [4/353] An-Nasā'i (4892) [4/438] and Ibn Mājah (2597) [3/247].

Prescribed Punishment for Highway Robbery

Allah, Exalted be He, wants Muslims to walk safely through His land, for interchanging benefits, increasing their properties, maintaining good relations with their relatives and helping one another in virtue, righteousness and piety, especially when traveling to the Ka'bah (at Mecca) to perform the rites of *Hajj* (Pilgrimage) and *'Umrah* (Lesser Pilgrimage). Thus, whoever intends to obstruct people's course, or terrorize them on their journeys, Allah has legislated a deterring penalty to eliminate such an obstacle and harm from the way of Muslims. Allah, Exalted be He, says:

“Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the

land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment. Except for those who return [repenting] before you overcome [i.e., apprehend] them. And know that Allah is Forgiving and Merciful."

(Qur'ân: Al-Mâ'idah: 33-34)

The meant warmongers in the aforementioned noble Qur'anic verse who strive throughout the land causing harm and mischief are the highwaymen, who harass people in the desert or inhabited areas and seize their properties publicly not stealthily.

It is stipulated to execute the prescribed penalty on the highwaymen that what they have seized be tantamount to the *nisâb* of theft. It is also stipulated that they have stolen from a repository, like seizing the property from the hands of its owner while being in a caravan. Also, the highway robbery must be proved whether through the highwaymen's own confession or through the testimony of two upright men.

The legal punishments highwaymen are to receive differ according to their crimes as follows:

- Whoever kills and seizes people's property is to be killed and crucified until his crime is well-known. Such a person must not be pardoned according to the consensus of Muslim scholars as stated by Ibnul-Mundhir.
- Whoever kills without seizing any property must be killed without being crucified.
- Whoever seizes the property without committing murder, his right hand and his left leg are to be cut off at one time, then the bleeding is to be stopped, and then he is to be released.
- Whoever just terrorizes people on the way without committing murder or seizing any property must be exiled from the land causing him to be homeless. He should not be allowed to stay in any country but should be expelled.

Thus, the punishments the highwaymen receive differ according to the degree of enormity of their crimes. In this respect, Allah, Exalted be He, says:

"Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land..."

(Qur'ân: Al-Mâ'idah: 33)

According to the opinion adopted by the majority of the *Salaf* (early Muslim scholars), this noble verse was revealed regarding the highwaymen, and this is the base on which they founded their judgments. With regard to this, Imâm Ash-Shâfa`î related that Ibn `Abbâs (may Allah be pleased with him) said:

“If the highwaymen kill and seize people’s properties, they must be killed and crucified. If they kill but do not seize properties, they must be killed without being crucified. Moreover, if they seize properties without killing, their hands and feet are to be cut off from opposite sides. If they only terrorize people on ways without seizing their properties, they are to be exiled from the land.”

If some highwaymen commit murder, the death sentence must be passed on them all. If some of them commit murder and others seize the property, all of them are to be killed and crucified.

If one of such bandits repents before being apprehended, the penalties prescribed concerning his crime, such as exile, amputating a hand and a foot and inevitability of killing, are to be annulled. However, the rights owed to humans must be redeemed, be it a soul, a limb, or a property (as a fulfillment of *qisâs*, i.e., legal retribution), except if the bandit is pardoned by the rightful claimers. This is based on the noble Qur’anic verse in which Allah, Exalted be He, says:

“Except for those who return [repenting] before you overcome [i.e., apprehend] them. And know that Allah is Forgiving and Merciful.”
(Qur’ân: Al-Mâ’idah: 34)

In this respect, **Shaykhul-Islâm, Ibn Taymiyah** (may Allah have mercy on him) said:

“Muslim scholars have unanimously agreed that if a highwayman, a thief and their like are brought to justice before the ruler, or the judge, and they repent afterwards, the prescribed penalty imposed on them is not annulled, but it must be executed even if they repent sincerely.”¹

Thus, the exception of repentance mentioned in the noble verse is only applicable before they are apprehended. So, the one who is penitent after being apprehended is still considered among those on whom the legal penalty must be executed. This is based on the general meaning indicated in the previous noble verse. Moreover, accepting the repentance of the bandit after being apprehended may be used as a means to suspend executing the legal penalties prescribed by Allah. That is, it is easy for the one on whom the penalty must be executed to pretend that he has repented in order to be pardoned for the offenses he has committed.

If anyone is attacked, he has the right to defend himself against the one who wants to kill him, or dishonor him by raping any of his female relatives, such as his mother, his daughter, his sister or his wife, or usurp his property or ruin it. Thus, one has the right to defend oneself in such cases, whether the assailant is a human or an animal. However, one should drive the assailant away by the means one believes the least harmful, because if one were inhibited from defending oneself, one would be harmed either physically or regarding one's honor and property. Besides, if it were not permitted, people would oppress one another. Rather, if the assailant cannot be driven away except by killing, one has the right to kill him without having to pay blood money or being subjected to legal retribution, because one has killed him to ward off his evil.

If the attacked person is killed, he is considered a martyr, based on the *hadith* in which the Prophet (PBUH) says:

*"If the property of anyone is being taken away without right and he fights (in defense) and is killed, then he is a martyr."*²

Imâm Muslim and other compilers of *Hadith* relate that ABÛ Hurayrah (may Allah be pleased with him) has narrated:

*"A man once came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah! What if a man comes desiring to seize my property?' He (the Prophet) replied, 'Then do not surrender your property to him.' The man said, 'And what if he fights me?' The Prophet replied, 'Then fight him back.' The man asked again, 'And what if he kills me?' The Prophet (PBUH) answered, 'Then you are a martyr.' The man said, 'And what if I kill him?' He (PBUH) replied, 'He will be cast in the Hellfire.'"*³

One must defend oneself and one's honor provided that this does not lead to any sedition, as Allah, Exalted be He, says:

"...And do not throw [yourselves] with your [own] hands into destruction..." (Qur'ân: Al-Baqarah: 195)

One should also defend the life and honor of one's Muslim brother, according to the *hadith* of the Prophet (PBUH) in which he says:

*"Help your (Muslim) brother, whether he is an oppressor or he is an oppressed one."*⁴

What is meant by helping one's Muslim brother while he is an oppressor is restraining his oppression.

If a thief sneaks into someone's house, he is regarded the same as an assailant; he should be driven away by the means least harmful as possible.

Whoever peeps into someone's house through a crack, a window or from above the roof, the homeowner has the right to drive him away and prevent him from doing so. Moreover, if the homeowner hits such person's eye and gouges it out, then no indemnity is to be paid for such injury. Similarly, if the homeowner stabs such a person with a stick and injures his eye, no compensation is to be paid for it. With regard to this, the Prophet (PBUH) says:

*"If anyone peeps into the house of some people without their permission and his eye is knocked out, neither diyah (indemnity) nor qisâs (legal retribution) is due then."*⁵

This is for the sake of guarding the Muslim's inviolability, as well as the inviolability of his property, his honor and his dignity that Allah has endued him with.

This is the justice of Islam and how it secures the safety of the community and the regulation of its interests in order to develop countries, make people feel safe, and regulate the means of transportation between different regions so that people may travel securely by night and day. Indeed, humanity would never gain prosperity save by applying this wise legislation, for all the worldly systems and its material power have failed to achieve even a little of the aspired security without applying this *Shari'ah* (Islamic Law). Verily, Almighty Allah, the Most Truthful, has spoken the truth when saying:

*"Then is it the judgment of [the time of] ignorance they desire?
But who is better than Allah in judgment for a people who are
certain [in faith]"* (Qur'an: Al-Mâ'idah: 50)

Endnotes

1 See Ibn Taymiyah's *Majmû' ul-Fatâwâ* [28/376].

2 Abû Dâwûd (4771) [5/83], At-Tirmidhî (1424) [4/29] and An-Nasâ'î (4100) [4/131].

3 Muslim (358) [1/342].

4 Al-Bukhârî (2443) [5/122] and Muslim (6525) [8/353].

5 See Muslim (5607) [7/363]; see also Al-Bukhârî (6902) [12/303] and Muslim (5608) [7/363].

CHAPTER

8

Fighting the Rebels

Allah, Exalted be He, says:

“And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly. The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy.” (Qur’ân: Al-Hujurât: 9-10)

Thus, Allah, Exalted be He, orders the believers, in this noble Qur’anic verse, to fight the oppressors or the rebels if they do not accept reconciliation. Furthermore, the Prophet (PBUH) says:

“When you (Muslims) are holding to one single man as your leader and someone comes seeking to sow discord among you or disrupt your unity, then you should kill him.”¹

(Related by Imâm Muslim)

Imâm Muslim also related that the Prophet (PBUH) has said:

“If anyone tries to disrupt the affairs of this nation while it is united, you should strike him with the sword whoever he is.”²

The Prophet’s Companions also have unanimously agreed on fighting the rebel.

The word rebellion, in Arabic, indicates oppression, inequity, injustice and deviation from the right path, as the rebels are those notorious for their inequity and injustice, and dissent from the leaders of Muslims, for Muslims must be united as one group under one leadership. Allah, Exalted be He, says:

“And hold firmly to the rope of Allah all together and do not become divided...” (Qur’ân: Âlu `Imrân: 103)

And He also says:

“O you who have believed, obey Allah and obey the Messenger and those in authority among you...” (Qur’ân: An-Nisâ’: 59)

In addition, the Prophet (PBUH) says:

“I enjoin you to fear Allah, and to hear and obey even if a slave is assigned as your leader.”³

This is considered a necessity, for people are in need of leadership, to preserve the entity of the Muslim community, protect Muslim possessions, execute the prescribed penalties, fulfill due rights, enjoin what is right and forbid what is evil.

In this regard, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

“It must be known that undertaking the responsibility of people’s affairs is one of the greatest duties of the religion; rather, neither religion nor life can rise without it. That is, people’s interests can never be fulfilled except through the unity of the community. Moreover, any community must have a leader. The Lawgiver of Shari`ah has ordained it in nonessential small gatherings as an exhortation to do the same in other kinds of gathering.”⁴

Ibn Taymiyah also says:

“It is well-known that people do not thrive except with the presence of rulers, even if those who take over are from the unjust people, for it is better for people to have an unjust ruler than none. It is said that: a year under a despotic leader is better than a night without a ruler.”⁵

Thus, if a group of people who are strong and powerful revolt against the leader on the basis of misinterpretation, aiming to dethrone him or oppose him and to sow the seeds of dissent among people and disrupt their unity, they are considered rebels, who are oppressors and transgressors. In such a case, the leader must send to them asking them about the reason behind their rebellion. If they complain about any act of injustice, he should eliminate it, and if they claim an unclear matter, he should clear it. Allah, Exalted be He, says:

“...then make settlement between the two...”

(Qur’ân: Al-Hujurât: 9)

Thus, the peacemaking should be implemented in such a way. If what they hold against falls under what is prohibited, he must remove it; however, if it is lawful but they misconceive the matter believing that it is prohibited, he is to clarify the proof of its legitimacy and reveal its truth to them. After that, if they return to the right path and show allegiance, he should leave them, but if they insist on disobedience, he must by law fight against them and his subjects must support him. Allah, Exalted be He, says:

“...Then fight against the one that oppresses until it returns to the ordinance of Allah...”

(Qur’ân: Al-Hujurât: 9)

Accordingly, fighting the rebels is obligatory in order to ward off their evil and suppress their sedition.

In fighting against rebels, the following matters should be taken into consideration:

First: It is prohibited to use weapons of mass destruction while fighting them, like destructive bombs.

Second: It is prohibited to kill their children, their escapees, their injured, and those who give up fighting among them.

Third: Their captives are to be imprisoned until the rebellion is suppressed.

Forth: Their properties should not be taken as spoils of war, as they still belong to them just like the inviolable properties that belong to other Muslims. Thus, they are impermissible to be looted, as they are still the owners' properties. When fighting comes to an end and the suppression of rebellion is achieved, those rebels who find their properties in the possession of any of those supporters of the ruler have the right to take them back. However, what has been damaged during the war is considered a wasted property entailing no compensation, and there is no *diyah* (blood money) for whoever is killed on both sides.

In this connection, **Az-Zuhri** said:

*"A rebellion erupted and was witnessed by many of the Companions of the Messenger of Allah (PBUH). They unanimously agreed that none was to be killed in qisâs (legal retribution), and no property was to be looted on the basis of a misinterpretation of the Qur'an, and the property found safe on the spot, after the fight, is to be returned to its owner."*⁶

Moreover, it is stated in the book entitled *Al-Ifsâh* (Demonstration), *They (the Companions) have agreed that there is no compensation for the property spoiled by the just rightful people for the rebels, and vice versa.*

If two Muslim parties are engaged in fighting and none of them is obedient to the ruler, i.e. they fight out of partisanship or craving for leadership, both are considered oppressors. This is because each of them oppresses the other, and none of them is better than the other. Therefore, each is liable for compensation for the damage it may cause to the other. However, if one of them fights by the order of the ruler, it is regarded as the rightful one while the other is the unjust rebellious party as mentioned above.

If a group of people supports the opinion of the Kharijites, considering the Muslim who commits a major sin a disbeliever, cursing and reviling the Prophet's Companions, and deeming the blood of Muslims violable, then they are regarded as followers of the Kharijites and considered as dissolute, vicious and inequitable as them. And if they, in addition to the above, mutiny against the authority of the ruler of Muslims, they must be fought.

Concerning the Kharijites, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

"The Adherents of the Sunnah agree that they are innovators in religion and that they must be fought according to the authentic religious texts. Furthermore, the Companions have agreed on fighting them.

There is no disagreement among the Sunni Scholars that Muslims should confederate with the just rulers who fight against them (i.e. the Kharijites). Yet, there is a disagreement on whether Muslims should confederate with the despotic rulers who fight against the Kharijites or not. It is reported that some scholars agree that it is permissible to ally with unjust rulers in fighting against them, and it is permissible to do the same in fighting against the Dhimmis⁷ who have breached their covenant with Muslims; this is the opinion maintained by the majority of Muslim scholars. They also maintain that it is permissible to fight along with any ruler, whether he is righteous or depraved, so long as his cause is legitimate. That is, if he fights against disbelievers, apostates, covenant-breakers, or the Kharijites, Muslims should fight along with him, yet they should not if the fighting is illegitimate.”⁸

If those who support the belief of the Kharijites do not mutiny against the ruler or sow the seeds of dissention among the Muslim subjects, they should not be fought against, and the Islamic laws are applied to them as Muslims. Yet, they should be discretionarily punished, rebuked, condemned, and prevented from expressing their wicked views and spreading their heresy among the Muslims. This is the opinion of those scholars who do not regard the Kharijites as disbelievers, which is also the opinion of the majority of scholars. However, those who consider them disbelievers maintain that they are to be fought against whatever the case may be.

Endnotes

1 Muslim (4775) [6/444].

2 Muslim (4773) [6/444].

3 Abū Dāwūd (4607) [5/12], At-Tirmidhī (2680) [5/44] and Ibn Mājah (42) [1/30].

4 See Ibn Taymiyah's *Majmū`ul-Fatāwā* (28/376).

5 Ibid.

6 See Ibn Abū Shaybah (27954) [5/457]

7 *Dhimmī*: A non-Muslim living in and under the protection of an Islamic state.

8 See Ibn Taymiyah's *Majmū`ul-Fatāwā* (28/376).

Apostasy

Linguistically, the word “apostasy” in Arabic is derived from “turning back” or “backsliding”. So, an apostate is a backslider; Allah, Exalted be He, says:

“...and do not turn back...” (Qur’ân: Al-Mâ’idah: 21)

That is, do not backslide.

According to the religious terminology, an apostate is the one who willingly disbelieves after embracing Islam, whether through utterance, belief, doubt, or action.

There are prescribed penalties imposed on the apostate in this world and in the Hereafter. As for his worldly punishment, it is stated in the *hadith* in which the Prophet (PBUH) says:

“If anyone (Muslim) changes his religion (i.e. apostatizes), kill him.”¹

There is consensus among Muslim scholars on this judgment and its relevant rulings, such as separating between the apostate and his wife and preventing him from disposing of his property before killing him.

As regards the prescribed punishment awaiting the apostate in the Hereafter, Allah, Exalted be He, states it in the Qur'anic verse that reads:

"...And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever – for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally."

(Qur'an: Al-Baqarah: 217)

Apostasy takes place by committing one of the breaches of Islam, whether seriously, playfully, or mockingly. Allah, Exalted be He, says:

"And if you ask them, they will surely say, 'We were only conversing and playing.' Say, 'Is it Allah and His verses and His Messenger that you were mocking?' Make no excuse; you have disbelieved [i.e. rejected faith] after your belief..."

(Qur'an: At-Tawbah: 65-66)

However, if a Muslim is compelled to utter words of disbelief, he is not regarded as an apostate, as Allah, Exalted be He, says:

"Whoever disbelieves in [i.e. denies] Allah after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith..."

(Qur'an: An-Nahl: 106)

The Breaches of Islam by Which Apostasy Takes Place are Many

The most grievous among them is associating others in worship with Allah, Exalted be He. For example, some people associate others in worship with Allah, such as supplicating the dead, the faithful servants of Allah, and the righteous people, slaughtering sacrificial animals for their graves, vowing to them, or seeking help and support from the dead as grave worshippers do nowadays. So, whoever commits any of such acts of association is considered to have apostatized. Allah, Exalted be He, says:

"Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills..."

(Qur'an: An-Nisā': 48)

In this connection, Shaykhul-Islām Ibn Taymiyah, said:

"Whoever makes mediators between Allah and himself, supplicating them, seeking their aid, and putting his trust in them, has surely disbelieved according to the consensus of Muslim scholars."²

Furthermore, whoever denies some of Allah's messengers or some of the Divine Books has surely apostatized, as he disbelieves Allah and denies one of His messengers or one of His Books. The same applies to whoever denies the angels or the resurrection after death; whoever does this is an apostate, as he thus disbelieves Allah's Book (the Qur'an), the *Sunnah* (Prophetic Tradition), and the consensus of Muslim scholars. Moreover, whoever disparages or reviles Allah, Exalted be He, or any of His prophets, is considered a disbeliever.

Similarly, whoever claims prophethood, or believes in anyone who claims prophethood after Prophet Muhammad (PBUH), is considered a disbeliever. This is because such people thus deny the Qur'anic verse in which Allah, Exalted be He, says:

"Muhammad is not the father of [any] one of your men, but [he is] the messenger of Allah and seal [i.e. the last] of the prophets..."

(Qur'an: Al-Ahzab: 40)

Moreover, whoever denies the prohibition of adultery (fornication and sodomy), or denies the unlawfulness of any of the consensually and obviously prohibited things, such as eating the flesh of swine, drinking intoxicants, is regarded as an apostate. The same applies to whoever prohibits something consensually and indisputably lawful, such as the lawful slaughter of the animals of grazing livestock.

The same also applies to whoever denies the obligation of any of the prescribed five acts of worship mentioned in the following *hadith* in which the Prophet (PBUH) says:

"Islam is built on (the following) five (principles): Testifying that there is no deity but Allah and that Muhammad is the Messenger of Allah, establishing the (compulsory congregational) Prayers dutifully and perfectly, paying the Zakah, fasting the month of Ramadan, and performing Hajj (Pilgrimage) to the Sacred House of Allah (i.e. the Ka'bah)."

Whoever denies any of them is deemed an apostate. Additionally, whoever mocks religion, despises the Noble Qur'an, or alleges that something of the Qur'an is lost, missing, or concealed, is indisputably regarded as a disbeliever.

Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

“It is religiously taken for granted that, and according to the consensus of Muslim scholars, whosoever vindicates the profession of a religion other than Islam or the Shari`ah revealed to Prophet Muḥammad (PBUH) is a disbeliever and his disbelief resembles those who believe in part of the Scripture and disbelieve in the rest.”

He also said:

“And whosoever ridicules the Promise of Allah or His Threat, or does not consider those who profess a religion other than Islam disbelievers, such as the Christians, or doubts their disbelief or maintains the validity of their creed, is consensually regarded as a disbeliever.”³

Shaykhul-Islâm Ibn Taymiyah added:

“Whoever curses the Prophet’s Companions or one of them, and adds to his revilement an allegation that ‘Alî Ibn Abû Tâlib is a god or a prophet and that Jibrîl (Gabriel) has erred (and revealed the Message to Muḥammad instead) is undoubtedly a disbeliever.”⁴

Additionally, whoever judges with the positive laws instead of the Islamic *Shari`ah*, believing that they are more beneficial to people than the latter, or whoever adopts the ideology of communism or Arab nationalism instead of Islam, is undoubtedly an apostate.

There are many types of apostasy. For example, claiming knowledge of the unseen is an act of apostasy, absolving the disbelievers from disbelief, doubting their disbelief, or deeming their creed valid are acts of apostasy, and believing that certain guidance or a certain judgment is more perfect than that of the Prophet (PBUH) is an act of apostasy. In addition, detesting something brought by the Messenger of Allah (PBUH), mocking something related to the religion of the Messenger of Allah (PBUH), and denying a certain reward or punishment stated by him are acts of apostasy. Moreover, supporting the infidels and helping them against Muslims are acts of apostasy. The same applies to those who believe that some people are permitted to deviate from the *Shari`ah* brought by Prophet Muḥammad (PBUH), such as the extremist Sufis; they are regarded as apostates. Likewise, those who turn away from the Religion of Allah, Islam, refraining from learning it or acting according to its teachings are considered apostates. All the aforementioned are among the aspects of apostasy and the breaches of Islam.

Sheikh Muḥammad Ibn `Abdul-Wahhâb (may Allah have mercy on him) said:

“There is no distinction regarding all these breaches between committing them jokingly, seriously, or fearfully, save the case when one is forced to commit them. All of them are extremely dangerous and they happen so frequently. Therefore, Muslims must beware of them and be on their guard against them. Verily, we seek refuge with Allah from the acts incurring His wrath and painful torment.”

These are some examples of the breaches of Islam, which exceed by far what is mentioned above. Therefore, Muslims have to learn and know them in order to be on their guard against them and be able to avoid them. This is because if one is not aware of the aspects of associating others in worship with Allah, one becomes apt to commit it. `Umar Ibnul-Khattâb (may Allah be pleased with him), said:

“The knots (i.e. handholds) of Islam are about to be unraveled one after another if there arise in Islam people who know not the Pre-Islamic era.”

So, I advise you, gentle reader, to read Shaykhul-Islâm Ibn Taymiyah's book entitled *“Adherence to the Straightway Requires Opposing the People of the Hellfire”* and Sheikh Muḥammad Ibn Abdul-Wahhâb's book entitled *“The Matters in Which the Messenger of Allah Opposed the People of the Pre-Islamic Period of Ignorance”* and its explanation by the great Iraqi Muslim scholar Maḥmūd Shukrî Al-Âlûsî, may Allah have mercy on them all.

Whoever apostatizes must be asked to repent and be given a three-day respite; either to repent or to be killed. This is because when `Umar Ibnul-Khattâb (may Allah be pleased with him) was informed that a man had apostatized after his embracement of Islam and had been killed without being asked for repentance, `Umar said:

“Why have you not imprisoned him for three days, fed him a loaf of bread every day, and asked him to repent? Perhaps he may have repented and reconsidered the Commandment of Allah (i.e. Islam). O Allah! I have not witnessed it, and I would not have approved (of killing the man) if I had been informed.”

(Related by Imâm Mâlik in his collection of *Hadith* entitled *Al-Muwatta`*)⁵

Owing to the fact that apostasy is caused by doubt and is not dispelled at once, a respite must be given to the apostate before killing him that he may meditate and recant. As for the proof of the obligation of killing the apostate if he does not repent, the Prophet (PBUH) says:

"If anyone (Muslim) changes his religion (i.e. apostatizes), kill him."

(Related by Al-Bukhârî and Abû Dâwûd)⁶

The killing of an apostate must be handled by the judge or his deputy, for it is a punishment for violating one of the Rights of Allah, so it is the duty of the one in authority to establish it. The wisdom behind the obligation of killing the apostate is the fact that he has known the Religion of Truth and then abandoned it. Thus, he has become a corrupt person who no longer deserves to live; he has become a corrupted member that may harm the society as well as the Religion of Islam.

Repentance is fulfilled by uttering the Two Testifications of Faith, due to the general meaning of the *hadith* in which the Prophet (PBUH) says:

*"I have been commanded (by Allah) to fight the people until they say, 'There is no deity but Allah.' If they say it, they will protect their blood and property from me, except for (violating) Islamic laws (for which they will deserve to be justly punished)."*⁷

As for an apostate whose apostasy is based on the denial of one of the fundamentals of Islam, his repentance – along with uttering the Two Testifications of Faith⁸ – is fulfilled by his acknowledgment of what he has denied.

An apostate is prevented from disposing of his property due to the dependence of other people's rights on it, just like the property of a bankrupt. Thus, the debts of an apostate, his own expenses, and the expenses of his family are to be managed through his property, throughout the period he is prevented from disposing of it. If the apostate recants and returns to Islam, he retrieves his property and he is enabled to dispose of it once again, as the reason for preventing him from disposing of his property is no longer there. However, if the apostate dies without recantation, or gets killed while still an apostate, his property becomes *fay'* (i.e. spoils gained without fighting or war) belonging to the Muslims' Public Treasury. This is because an apostate is supposed to have no heirs, for he is regarded as a disbeliever, and Muslims do not inherit from disbelievers. In addition, he is not to be inherited by any of the disbelievers, not even those to whose religion he converted, for his apostasy is by no means acknowledged. Furthermore, an apostate inherits from neither a disbeliever nor a Muslim, for the Prophet (PBUH) says:

“A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim.”⁹

Muslim scholars (may Allah have mercy on them) have disagreed regarding the judgment pertaining to the acceptance of the repentance of the one who has disparaged or reviled Allah, Exalted be He, or His Messenger (PBUH). Some of them are of the opinion that his repentance is not accepted as regards the worldly rulings and prescribed penalties; he is to be killed and disallowed to inherit or have heirs. They maintain that he is to be killed anyway for the grievousness of his sin, the viciousness of his creed, and his belittlement of Allah, Exalted be He. Another group of scholars believes that his repentance is accepted, for Allah, Exalted be He, says:

“Say to those who have disbelieved [that] if they cease, what has previously occurred will be forgiven for them...”

(Qur’ân: Al-Anfâl: 38)

Likewise, Muslim scholars (may Allah have mercy on them all) have disagreed regarding the acceptance of the repentance of the one who has recurrently apostatized. Some of them maintain that his repentance is not accepted in this world, and the prescribed penalty pertaining to apostasy must be imposed on him, even if he repents. This opinion is based on the fact that Allah, Exalted be He, says:

“Indeed, those who have believed then disbelieved, then believed, then disbelieved, and then increased in disbelief – never will Allah forgive them, nor will He guide them to a way”.

(Qur’ân: An-Nisâ: 137)

However, another group of scholars believes that his repentance is accepted, basing their opinion on the Qur’anic verse in which Allah, Exalted be He, says:

“Say to those who have disbelieved [that] if they cease, what has previously occurred will be forgiven for them...”

(Qur’ân: Al-Anfâl: 38)

The aforementioned verse is a general one, and the phrase *those who have disbelieved* includes those who have repeatedly apostatized, as apostasy is a kind of disbelief.

Scholars have also disagreed regarding the acceptance of the repentance of a hypocrite, who pretends to be a Muslim and hides disbelief. Some scholars maintain that the repentance of such a person is not accepted, as he cannot show any more signs of his reversion to Islam. Allah, Exalted be He, says:

“Except for those who repent and correct themselves and make evident [what they concealed]...” (Qur’ân: Al-Baqarah: 160)

That is to say, if such hypocrites declare repentance and try to show signs of their Islam, it will not surpass their previous state, as they used to show Islam and hide disbelief anyway.

However, some other scholars maintain that the repentance of such hypocrites is accepted, for Allah, Exalted be He, says:

“Indeed, the hypocrites will be in the lowest depths of the Fire - and never will you find for them a helper. Except for those who repent, correct themselves, hold fast to Allah, and are sincere in their religion for Allah, for those will be with the believers. And Allah is going to give the believers a great reward.”

(Qur’ân: An-Nisâ’: 145-146)

In addition, the Prophet (PBUH) refrained from punishing the hypocrites due to the signs they showed of their Islam.

Among the sects of atheism and disbelief are those who believe in the *Halûliyyah* (immanentism or pantheism) and the *Ibâhiyyah* (libertinism). Other examples of disbelief are the one who prefers his master (or sheikh) to Prophet Muḥammad (PBUH) and the one who believes that if he possesses knowledge, he is exempted from what is divinely ordained or prohibited. The same applies to the one who believes that if he possesses knowledge, he is permitted to profess the creed of the Jews, the Christians, or suchlike sects that have abjured Islam, such as the extremist Sufis and others.

Muslim scholars (may Allah have mercy on them all) have also disagreed concerning the validity of Islam embraced by a discriminating child and the ruling on his apostasy. Some scholars maintain that apostasy of such a discriminating child occurs if he perpetrates any of its forms, because if the Islam of a person is deemed valid, his apostasy is deemed valid as well. Since Islam embraced by a discriminating child is valid, his apostasy is deemed valid, yet such an apostate child is not to be killed until he is asked to repent after he has reached puberty and has been given a three-day respite then. If he repents, his repentance is accepted, but if he does not, he is to be killed.

Moreover, scholars have disagreed regarding the one who abandons the performance of prayer out of negligence despite his acknowledgment of its obligation. The sound opinion in this regard is that such a person is regarded as a disbeliever. This is because the Prophet (PBUH) says:

“Between a man and polytheism and disbelief is the negligence of Prayer.”¹⁰

He (PBUH) also says:

“The (only) convention between us and them (i.e. the disbelievers) is Prayer, so whoever neglects it has become unbeliever.”

In addition, Allah, Exalted be He, says:

“[And asking them], ‘What put you into Saqar?’¹¹ They will say, ‘We were not of those who prayed...’”

(Qur’ân: Al-Muddaththir: 42-43)

Allah, Exalted be He, also says:

“But if they repent, establish prayer, and give Zakâh, then they are your brothers in religion...” (Qur’ân: At-Tawbah: 11)

The aforementioned noble Qur’anic verse indicates that whoever does not perform prayer is not one of our fellow Muslim brothers, unless he “establishes” prayer, as mentioned in the verse, not only acknowledges its being obligatory. Moreover, the Prophet (PBUH) said:

“Islam is built on (the following) five (principles): Testifying that there is no deity but Allah and that Muḥammad is the Messenger of Allah, establishing the (compulsory congregational) prayers dutifully and perfectly...”

The Prophet (PBUH) did not say, “acknowledging the obligation of prayer,” but he said, “establishing prayers.”

Unfortunately, slackness and negligence regarding prayer have become so recurrent nowadays. It is really a serious matter, so those people who are negligent of prayer have to repent to Allah and rescue themselves from Hellfire, as prayer is the basic pillar of Islam that safeguards one against immorality, wrongdoing, and sin.

Endnotes

- 1 Al-Bukhâri (3017) [6/180], Abû Dâwûd (4351) [4/339], At-Tirmidhî (1462) [4/59], An-Nasâ'î (4070) [4/130] and Ibn Mâjah (2535) [3/214].
- 2 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/400].
- 3 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/402].
- 4 See Ibn Taymiyah's *Majmû'ul-Fatâwâ* (28/376).
- 5 Mâlik (869) and Ibn Abû Shaybah (32744) [6/444].
- 6 Al-Bukhâri (3017) [6/180], Abû Dawûd (4351) [4/339], At-Tirmidhî (1462) [4/59], An-Nasâ'î (4070) [4/130] and Ibn Mâjah (2535) [3/214].
- 7 Muslim (127) [1/156]; see also Al-Bukhâri (1399) [3/331] and Muslim (124) [1/150].
- 8 The Two Testifications of Faith: Saying, "I testify that there is no deity but Allah and that Muḥammad is the Messenger of Allah."
- 9 Among the rulings relating to apostasy is that the apostate and his (Muslim) wife are to be separated. Yet, if he repents before her waiting period is done, they can reunite in marriage, and if the waiting period is done before he repents, the marriage contract is deemed invalid from the time he apostatized; this applies even if he had apostatized before the marriage was consummated. Al-Bukhâri (6764) [12/61] and Muslim (4116) [6/53].
- 10 Muslim (243) [1/259].
- 11 *Saqar*: One of the gates or layers of the Hellfire.



XI:FOOD

CHAPTER

1

Food

Food is the means of nourishment of the human body, and its effect is reflected on man's behavior and conduct; hence, good lawful food has a good effect on the human being, and evil food has an evil effect. For this reason, Allah, Exalted be He, has commanded His servants to eat good lawful food, and has forbidden them from eating what is unlawful. This is illustrated in the following verses:

- Allah, Exalted be He, says:

“O mankind, eat from whatever is on earth [that is] lawful and good...” (Qur'an: Al-Baqarah: 168)

- Allah, the Almighty, also says:

“O you who have believed, eat from the good [i.e., lawful] things which We have provided for you and be grateful to Allah if it is [indeed] Him that you worship.” (Qur'an: Al-Baqarah: 172)

- In addition, Allah, Exalted be He, says:
“O messengers, eat from the good foods and work righteousness. Indeed, I, of what you do, am Knowing.”
 (Qur’ân: Al-Mu’minûn: 51)
- Allah, the Exalted, also says:
“Say, ‘Who has forbidden the adornment of [i.e., from] Allah which He has produced for His servants and the good [lawful] things of provision?’ ”
 (Qur’ân: Al-A`râf: 32)

Linguistically, **food** is generally everything that can be eaten or drunk, and all kinds of food are originally lawful according to the general meaning of the noble verse:

“It is He Who created for you all of that which is on the earth...”
 (Qur’ân: Al-Baqarah: 29)

In addition to this verse, there are many legal texts in the Qur’ân and the *Sunnah*, which indicate that all kinds of food are originally lawful except what is particularly excluded.

With regard to this, **Shaykhul-Islâm Ibn Taymiyah** says:

“The basic rule is that all good kinds of food are lawful for the Muslim who does lawful deeds. That is, Allah, the Almighty, has made lawful the good food for those who make use of it in obeying Him, not in disobedience. As an illustration to this, Allah, Exalted be He, says, ‘There is not upon those who believe and do righteousness [any] blame concerning what they have eaten [in the past]...’ (Qur’ân: Al-Mâ’idah: 93) Therefore, it is impermissible to utilize what is lawful in disobeying Allah. For example, it is not permissible to give meat and bread to someone who drinks alcohol and commits immoralities. Those who eat from the lawful food and do not thank Allah for this blessing, are censured, for Allah, the Almighty, says, ‘Then you will surely be asked that Day about pleasure.’ (Qur’ân: Al-Kawthar: 8)”¹

The verse means that one will be asked on the Day of Judgment whether one has thanked Allah in return for this pleasure or not. Allah, Exalted be He, has allowed the believers to avail themselves of the lawful things as indicated in the following noble verse:

“They ask you, [O Muḥammad], what has been made lawful for them. Say, ‘Lawful for you are [all] good foods...”
 (Qur’ân: Al-Mâ’idah: 4)

Allah has clarified to His servants what He has forbidden them to eat or drink, as He says:

“...He has explained in detail to you what He has forbidden you, excepting that to which you are compelled...”

(Qur’ân: Al-An’âm: 119)

Thus, any food that is not prohibited by Allah is deemed lawful, as illustrated in the following *hadith* in which the Prophet (PBUH) says:

*“Allah, Almighty and Ever-Majestic be He, has made obligations so do not neglect them, and He has set limits so do not transgress them, and He has prohibited things so do not violate them, and He has not made a mention of (other) things (i.e., He has neither decreed them lawful nor prohibited) not out of forgetfulness so do not seek to know them.”*²

Imâm An-Nawawî (may Allah have mercy on him) commented on this *hadith* saying, “This is a *hasan* (good) *hadith* which is related by Ad-Dâraquṭnî and other compilers of *Hadith*.”

Any kind of food, drink or clothes that is not prohibited by Allah or His Messenger (PBUH) is considered lawful and it is impermissible to prohibit it. That is because Allah, Exalted be He, has defined and explained to us what is prohibited; thus, whatever Allah prohibits is well-explained. As it is impermissible to sanction what is prohibited, it is also impermissible to prohibit what Allah has decreed as lawful and has not mentioned as prohibited.

The rule of thumb in this regard is that any pure and harmless food is lawful, in contrast to the impure food such as the meat of dead animals, blood, droppings, urine, liquor, hashish, and anything defiled with an impure object. All such things are forbidden, as they are all evil and harmful, based on the following verse in which Allah, the Almighty, says:

“Prohibited to you are dead animals, blood, the flesh of swine...”

(Qur’ân: Al-Mâ’idah: 3)

As for the **dead**, it is the animal that dies without being slaughtered according to the legal way of slaughtering. It is forbidden by reason of being an evil food, as one’s purity is surely affected by the kind of food one eats. Prohibiting such kinds of food is one of the virtues of the *Sharî’ah* (Islamic Law). However, if one is compelled to eat such a food, it is lawful for him to do so and the aspect of being impure and evil is nullified under the circumstances

of necessity. This is because the evil impure effect of the evil food is only there when one is willing to accept eating such a kind of food. So, when one is obliged, under the circumstances of necessity, to eat such a food, one's purity is not affected by eating it, as the bad effect only happens when one voluntarily eats such an evil food. Thus, when there is no choice other than eating evil food, there is no harm in eating it.

As for **blood**, it is the blood shed as a result of slaughtering an animal. People of the Pre-Islamic Period of Ignorance (*Al-Jâhiliyyah*) used to put it in the entrails, grill it and eat it. However, whatever blood remaining inside the flesh of the slaughtered animal or in the veins is lawful. Rather, it is not considered impure even if one touches it with the hand or with a piece of cotton for example and it leaves visible traces. In this respect, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

*"The right opinion is that the blood that is forbidden is the shed, the spilled or the poured blood; however, the blood left in the veins is not deemed prohibited by any of Muslim scholars."*³

Moreover, it is prohibited to have any kind of food or drink that causes harm to the body, such as poison, intoxicants, hashish, or tobacco. Allah, Exalted be He, says:

"...And do not throw [yourselves] with your [own] hands into destruction..."
(Qur'ân: Al-Baqarah: 195)

This noble Qur'anic verse indicates the prohibition of eating or drinking anything that may cause harm. In addition, there are many other legal proofs that emphasize the prohibition of any kind of food or drink that may be harmful either to one's mind or body.

Lawful kinds of food are divided into two kinds: **animals** and **plants** such as cereals and fruits. Thus, any harmless kind of food is lawful. Animals in turn are divided into two kinds: land animals and sea animals. Land animals are lawful except those types prohibited by the Lawgiver of *Shari'ah* and they are as follows:

- The domestic donkeys; this is illustrated in the *hadîth* narrated by Jâbir (may Allah be pleased with him) who has said:

*"The Prophet (PBUH) forbade (eating) the meat of domestic donkeys and he permitted the (eating of the) meat of horses."*⁴

(Related by Al-Bukhârî and Muslim)

Ibnul-Mundhir says, "There is no disagreement among Muslim scholars regarding the prohibition of the flesh of domestic donkeys."⁵

- Land animals that have fangs used for preying are also prohibited, according to the *hadith* narrated by Abû Tha'labah Al-Khushanî (may Allah be pleased with him) who has said:

*"The Messenger of Allah (PBUH) prohibited eating any of the fanged beasts of prey."*⁶

(Related by Al-Bukhârî and Muslim)

There is only one exception to this ruling and that is the hyena; it is lawful to eat its meat as indicated in the *hadith* narrated by Jâbir (may Allah be pleased with him) as:

"The Messenger of Allah (PBUH) ordered us to eat (the flesh of) hyena."

In this connection, the great scholar **Ibnul-Qayyim** (may Allah have mercy on him) has said:

*"The animals that are prohibited are those having the two attributes of having fangs and being predators by nature such as lions, wolves, tigers, and leopards. But, as for the hyena, it only has one of these two attributes; it has fangs but it is not a predator beast by nature. The beasts of prey are forbidden to be eaten owing to the predatory nature they possess which is transmitted to the one feeding on them. However, the hyena is not considered a beast of prey by nature whether linguistically or conventionally."*⁸

- Birds are generally lawful to be eaten, with the exception of birds with talons used for preying and hunting animals. Examples of such birds are eagles, falcons, and hawks. The prohibition of eating such kinds of birds is illustrated in the *hadith* narrated by Ibn 'Abbâs (may Allah be pleased with him) who has said,

"The Messenger of Allah (PBUH) prohibited eating any of the fanged beasts of prey or any of the birds having talons."

(Related by Abû Dâwûd and other compilers of *Hadith*)⁹

Imâm Ibnul-Qayyim (may Allah have mercy on him) says:

"There are recurrent narrations related about the Prophet (PBUH) indicating that he (PBUH) has prohibited eating animals with fangs, i.e., beasts of prey (or birds with talons). The validity of such traditions is

*irrefutable according to the hadiths narrated by 'Alī Ibn Abū Tālib, Ibn 'Abbās, Abū Hurayrah and Abū Tha'labah Al-Khushani (may Allah be pleased with them all)."*¹⁰

- Among the birds that are forbidden to be eaten are those which feed on carrions, like vultures and crows, owing to the evil food they feed on. It is also prohibited to eat the animals that are considered foul, such as snakes, rats, and insects. **Shaykhul-Islām Ibn Taymiyah** (may Allah have mercy on him) says:

*"It is unanimously agreed upon among Muslim scholars that eating snakes and scorpions is prohibited. Therefore, if any one eats such animals regarding them as lawful to be eaten, he is to be urged to repent (for denying an agreed upon legal ruling), and whoever regards them as prohibited foods but eats them is considered sinful and defiantly disobedient to Allah and His Messenger (PBUH)."*¹¹

- As mentioned above, it is prohibited to eat insects, as they are injurious.

Among the animals that are prohibited is whatever is born as a result of copulation between an animal that is lawful to be eaten and another animal prohibited to be eaten, such as the mule, which is the offspring of a horse and a domestic donkey. The reason behind prohibiting the eating of such an animal is giving priority to the aspect of prohibition over that of lawfulness.

Some Muslim scholars have classified the land animals prohibited to be eaten in six types:

- 1) Animals particularly stated in the Qur'an and *Sunnah* such as the domestic donkeys
- 2) Animals restricted by certain characteristics and criteria, like the fanged beasts of prey and the birds with talons
- 3) Whatever feeds on carrions, like vultures and crows
- 4) Whatever is pernicious and injurious, like rats and snakes
- 5) Whatever is born as a result of copulation between two animals, one of which is lawful to be eaten and the other is prohibited, like the mule
- 6) Whatever the Lawgiver of *Shari'ah* has ordered us to kill, like the five pernicious animals (i.e., the rat, the snake, the scorpion, the rabid dog, and the kite), and what He, the Almighty, has forbidden us from killing, like the hoopoe, and the shrike.

All other animals and birds that are not included under the above-mentioned categories are considered lawful according to the rule stating that any thing is deemed lawful until proved otherwise. The examples of such animals are horses, animals of grazing livestock, poultry, zebras, antelopes, ostriches, rabbits and other wild animals. All these animals are considered good food, so they are included under the meaning of the Qur'anic verse in which, Allah, Exalted be He, says:

"...and makes lawful for them the good things"

(Qur'ân: Al-A`râf: 157)

The *jallâlah*¹² of cows and camels are excluded from being of lawful food. Imâm Ahmad, Abû Dâwûd and other compilers of *Hadîth* have related that Ibn `Umar (may Allah be pleased with him) has said:

*"The Messenger of Allah (PBUH) forbade eating jallâlah or (drinking) its milk."*¹³

It is also related on the authority of `Amr Ibn Shu`ayb that the Messenger of Allah (PBUH) forbade eating the meat of domestic donkeys and (forbade) riding *jallâlah* or eating its meat¹⁴. It does not make any difference whether the *jallâlah* is from the animals of grazing livestock, poultry or other animals. Moreover, its milk and eggs are also considered impure until the animal is detained for three days¹⁵ and fed on pure fodder only. In this regard, **Ibnul-Qayyim** says:

*"Muslim scholars have unanimously agreed that if the animal is fed on impure fodder, then detained and fed on pure food, its meat and milk become lawful. Likewise, if plants and fruits are watered with impure water, then watered with pure water, they are deemed lawful. Thus, they are no longer deemed impure food because they have been converted to good and lawful food by means of pure water."*¹⁶

Eating onion, garlic and suchlike foods with a bad smell is detestable, especially when attending mosques, as illustrated in the *hadîth* in which the Prophet (PBUH) says:

*"Whoever eats from this plant (i.e., garlic) should not enter our mosque."*¹⁷

If any one is compelled by necessity to eat a prohibited food other than poison food, lest he should perish, it is deemed lawful for him to eat only the amount that will support him and keep him alive. The proof of this is shown in the noble verse in which Allah, Exalted be He, says:

"...But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him..."

(Qur'ân: Al-Baqarah: 173)

Also, if anyone is compelled to eat from the food of others, provided that the owner of such a food does not face the same circumstances of compulsion, the former must be offered whatever may keep him alive in return for paying the price of the food. Furthermore, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

"If the person in need of the food is poor, then he does not have to pay compensation in return for food, for feeding the hungry and clothing the naked is a collective duty, and it becomes an individual duty¹⁸ on the person other than whom no one can undertake such a duty."¹⁹

Moreover, if someone is compelled to use the properties of others without consuming such property, like using clothes to protect the body from coldness, a rope or a bucket to obtain water, or a cooking pot, he must be given such things at no cost, provided that the owner is not in need of them. This is because Allah, the Almighty, has dispraised withholding such things from the poor in the Qur'anic verse:

"And withhold [simple] assistance." (Qur'ân: Al-Mâ`ûn: 7)

Commenting on this noble verse, Ibn `Abbâs, Ibn Mas`ûd and others said:

"This verse refers to the utensils people share and borrow among themselves such as axes, pots, buckets and the like."²⁰

It is permissible for a passerby to eat from the fruits of a garden that has neither a fence nor a guard, whether the fruits are still on the trees or have fallen to the ground. However, one has no right to carry anything of it. This is the opinion adopted by Ibn `Abbâs, Anas Ibn Mâlik and others. Yet, one is not to climb a tree, nor aim at it with a thing, nor eat from collected fruits, except in case of necessity.

In short, a person passing by a garden is allowed to eat from its fruits provided that the following conditions are fulfilled:

First: It must have neither a fence nor a guard.

Second: The fruits must be either still on the trees or fallen to the ground but not collected.

Third: He must not climb a tree, but just pick the fruits without ascending.

Fourth: He must carry nothing of it with him.

Fifth: He must be in need of such food as stipulated by the majority of Muslim scholars.

Accordingly, if any of the above-mentioned conditions is not fulfilled, one is not permitted to eat from such a garden.

A Muslim should host a Muslim traveling through villages, for a day and a night. However, in towns providing accommodation, it is not obligatory because restaurants and hotels can be found therein, so the traveler is not in need of being hosted, in contrast to the case in villages and deserts. Hosting a Muslim passenger is a duty according to the *hadith* in which the Prophet (PBUH) says:

“Whoever believes in Allah and the Last Day should serve his guest generously by giving him his reward.” They (the Companions) asked, “What is his reward, O Messenger of Allah?” He (PBUH) said, “(To be entertained generously) for a day and a night.”

(Related by Al-Bukhârî and Muslim)²¹

The *hadith* proves that hosting a passenger is a duty as indicated in the phrase *“Whoever believes in Allah...,”* which indicates that one’s true faith is dependent on showing hospitality to one’s guest. It was also related in the Two *Sahîhs*²² that the Messenger of Allah (PBUH) said:

“If you stay with some people and they entertain you as they should do for a guest, accept their hospitality, but if they do not, take from them the right of the guest they should offer.”²³

The story of Allah’s Prophet Ibrâhîm (Abraham) (PBUH) with his guests, which shows how he entertained them with a calf, indicates that hospitality is a characteristic of the religion of the Prophet Ibrâhîm (PUBH). It also shows that one should offer the guests more than what one usually eats. This is one of the virtues and noble merits of this religion which remained throughout Ibrâhîm’s offspring until Islam came, stressed them and urged Muslims to adhere to them. Moreover, Islam has entitled the wayfarer a right among the ten due rights mentioned in the noble Qur’anic verse in which Allah, the Almighty, says:

“Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler...”

(Qur’ân: An-Nisâ’: 36)

Allah, the Exalted, also says:

“So give the relative his right, as well as the needy and the traveler...”

(Qur’ân: Ar-Rûm: 38)

The religion of Islam has also assigned a right in the *Zakâh*, among the eight categories that are entitled to receive the *Zakâh*, to be paid to the wayfarer. The wayfarer meant here is the traveler who cannot afford to continue on his journey or return home.

All praises be to Allah for this perfect religion and that wise and Divine Law which is granted to Muslims as a guidance and mercy.

Endnotes

- 1 See Ibn Taymiyah's *Majmû'ul-Fatâwâ* (7/44) and *Al-Ikhtiyârât Al-Fiqhiyyah* p. 464.
- 2 Ad-Darâqutnî (4350) [4/109] and Al-Bayhaqî (19726) [10/21].
- 3 See the footnote in *Ar-Rawd Al-Murbi'* [7/417].
- 4 Al-Bukhârî (4219) [7/601] and Muslim (4997) [7/95].
- 5 See the footnote in *Ar-Rawd Al-Murbi'* [7/418].
- 6 Al-Bukhârî (5530) [9/812] and Muslim (4967) [7/84].
- 7 See At-Tirmidhî (1796) [4/252].
- 8 See *I'lâm Al-Muwaqqi'in* (2/126), (4/ 240,380).
- 9 Muslim (4970) [7/85], Abû Dâwûd (3803) [4/103] and Ibn Mâjah (3234) [3/582].
- 10 See *I'lâm Al-Muwaqqi'in* (2/118), (4/380).
- 11 See Ibn Taymiyah's *Majmû'ul-Fatâwâ* (11/690).
- 12 *Jallâlah*: A term referring to animals that eat impurities.
- 13 At-Tirmidhî (1829) [4/270] and Ibn Mâjah (3189) [3/560]; see also Abû Dâwûd (3811) [4/106] and An-Nasâ'î (4459) [4/275].
- 14 Abû Dâwûd (3811) [4/106] and An-Nasâ'î (4459) [4/275].
- 15 The criterion in this regard is being sure that the animal's blood and flesh have become pure after feeding on pure food; thus, the period may differ from an animal to another according to its body.
- 16 See *I'lâm Al-Muwaqqi'in* (1/40).
- 17 Muslim (1251) [3/51].
- 18 Individual duty: A religious duty whose obligation extends to every Muslim.
- 19 See *Al-Ikhtiyârât* (p. 465).
- 20 See Ibn Abû Shaybah (10619) [2/420] and Al-Bayhaqî (7792) [4/308]; see also Abû Dâwûd (1657) [2/206], Ibn Abû Shaybah (10617) [2/402] and Al-Bayhaqî (7789) [4/308].
- 21 Al-Bukhârî (6019) [10/547] and Muslim (4488) [6/256].
- 22 The Two *Ṣaḥīḥs*: The Two Authentic Books of Al-Bukhârî and Muslim.
- 23 Al-Bukhârî (2461) [5/134] and Muslim (4491) [6/257].

CHAPTER

2

Slaughtering

Slaughtering land animals according to the rules of the *Shari'ah* (Islamic Law) is a prerequisite to make an animal's meat lawful to be eaten; otherwise, it will be considered a dead animal whose meat is prohibited. For this reason, studying the rules of slaughtering and whatever is related to it has become of great importance.

Faqihs (may Allah have mercy on them) have defined slaughtering as: slaying a land animal lawful to be eaten by cutting its throat and esophagus, or wounding the animal that cannot be slaughtered, for being wild for instance. Allah, the Exalted, says:

"Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a headlong fall or by the goring of horns, and those from which a wild animal has eaten, except what you [are able to] slaughter [before its death]..."

(Qur'an: Al-Má'idah: 3)

That is to say, the animal that can be slaughtered before it dies is deemed lawful. It does not matter whether the act of slaughtering is a second step after first injuring the animal or it is the first step.

Slaughtering is obligatory and the meat of the animal is not considered lawful unless it is slaughtered according to the rulings of *Shari'ah*. Therefore, the animal that is not slaughtered in such a way is considered dead and there is a consensus among Muslim scholars that the dead animals' meat is prohibited to be eaten except in case of necessity. Allah, the Exalted, says:

"Prohibited to you are dead animals..."

(Qur'ân: Al-Mâ'idah: 3)

Locusts, fish, and all sea animals are lawful to be eaten without slaughtering, for the dead animals of the sea are lawful. This is based on the *hadith* narrated by Ibn `Umar who narrated that the Messenger of Allah (PBUH) said:

"Two dead (animals) and two (organs containing) blood have been made lawful to us (Muslims). The two dead (animals) are the whale and the locust, and the two (organs containing) blood are the liver and the spleen."

(Related by Imâm Aḥmad and other compilers of *Hadith*)¹

The Prophet (PBUH) also said regarding sea animals:

*"It (the sea) is that whose water is pure and whose dead animals (the fish) are lawful (to eat)."*²

There are Four Conditions for Lawful Slaughtering

The First Condition: The slaughterer must be legally competent. That is, the one who performs slaughtering must be sane, professing a heavenly religion, i.e., a Muslim or a person belonging to the People of the Scripture. Thus, whatever is slaughtered by an insane, a drunk or a child under the age of discretion, is judged as unlawful, due to the invalidity of the intention of slaughtering from any of such persons for their lack of discretion. It is also unlawful to eat what is slaughtered by an idolater, a Magus, an apostate, or the one who resorts to graveyards and seeks the help of the dead, because it is considered a sort of major polytheism.

Nevertheless, the slaughtering done by disbelievers, who belong to the People of the Scripture, Jews and Christians, is deemed lawful. In this regard, Allah, Exalted be He, says:

“...and the food of those who were given the Scripture is lawful for you ...”
(Qur’ân: Al-Mâ’idah: 5)

That is to say, Allah has allowed us, Muslims, to eat whatever is slaughtered by a Jew or a Christian. It is worth mentioning that there is a consensus among Muslim scholars regarding this matter. Imâm Al-Bukhârî (may Allah have mercy on him) related that Ibn `Abbâs (may Allah be pleased with him) said:

“The food meant in the verse is their slaughtered animals.”³

It is also indicated in the meaning of the aforementioned verse that it is unlawful to eat what is slaughtered by a disbeliever who does not belong to the People of the Scripture, which is an unanimously agreed upon opinion.

It is permitted to eat the animals slaughtered by the disbeliever who belongs to the People of the Scripture in contrast to those slaughtered by other disbelievers. This is because the People of the Scripture, Jews and Christians, believe in the prohibition of slaughtering animals for other than Allah and also believe in the prohibition of dead animals, based on the teachings of their Prophets. Contrarily, other disbelievers may slaughter animals for the sake of idols and regard the dead animals as lawful.

The Second Condition: Availability of a tool for slaughtering. Slaughtering is permitted with any sharp-edged tool that causes blood to gush. This tool may be made of iron, stone or other materials. However, it is unlawful to slaughter an animal using a tooth or a claw as a tool. This is according to the *hadîth* in which the Prophet (PBUH) said:

“If the slaughtering tool causes blood to gush and if the Name of Allah is mentioned, eat (of the slaughtered animal); but do not slaughter using a tooth or a nail.”

(Related by Al-Bukhârî and Muslim)⁴

With regard to this *hadîth*, Imâm Ibnul-Qayyim (may Allah have mercy on him) says:

“The hadîth warns us not to slaughter using a bone, either because some bones may be impure, or because slaughtering with a bone defiles it and thus the believers among the jinn cannot make use of it⁵. The hadîth also confirms this as he (PBUH) said after that, ‘...I will tell you why: As for the tooth, it is a bone, and as for the nail, it is the knife used by the Ethiopians.’ The hadîth declares that it is not lawful to slaughter using the tooth as it is a bone, and that it

is unlawful to slaughter using nails as they were used as knives for slaughtering by the Ethiopians (who were disbelievers).⁶

The Third Condition: Cutting the throat which is the respiratory track, the esophagus, which is the passage of food and drink, and one of the two jugular veins. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

“In slaughtering, the esophagus, the throat and the two jugular veins have to be cut. Yet, according to the soundest opinion, cutting three out of these four still makes the slaughtering lawful, whether the throat is one of these three parts or not, for cutting the two jugular veins is more efficient than cutting the throat and more sufficient to cause the blood to gush.”⁷

Concerning the way of slaughtering camels, it is an act of the *Sunnah* (Prophetic Tradition) to stab the camel by an edged tool at the upper part of its chest, whereas other animals are slaughtered by cutting the throat. The reason behind specifying such particular parts in the body of the animal to be cut while slaughtering is to ensure the blood gushes out. Such spots are the junction of veins. Therefore, this will make the slaughtering faster, the meat more delicious, and this will cause less pain to the slaughtered animal. The Prophet (PBUH) says:

“When you slaughter, slaughter in a good way.”⁸

With regard to those animals that the slaughterer cannot manage to slaughter at the aforementioned spots, as in game, wild cattle, animals falling into a well and the like, they can be slaughtered by injuring the animal at any spot of its body and this will be enough for slaughtering the animal according to the *Shari`ah*. This is illustrated in the *hadith* narrated by Râfi` (may Allah be pleased with him) that says:

“...One of the camels once ran away, so a man shot it with an arrow that stopped it. Thereupon, the Messenger of Allah (PBUH) said, ‘If any animal runs away from you, treat it in this way (i.e., shoot it with an arrow).’ ”⁹

(Related by Al-Bukhârî and Muslim)

Other *hadiths* indicting the same meaning have been narrated on the authority of `Ali Ibn Abû Tâlib, Ibn Mas`ûd, Ibn `Umar, Ibn `Abbâs and `Âishah (may Allah be pleased with them all)¹⁰.

The animals injured by strangling, by a violent blow, by a headlong fall, or by the goring of horns, and those from which a wild animal has eaten, can be lawful provided that the animal is caught while still alive and slaughtered before it dies. This is based on a noble verse:

“Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a headlong fall or by the goring of horns, and those from which a wild animal has eaten, except what you [are able to] slaughter [before its death]...”
(Qur’ân: Al-Mâ’idah: 3)

That is, when the animal is slaughtered before it dies, it is deemed lawful to be eaten.

- **The animal killed by strangling** is the animal strangled by a rope or the like wrapped around its neck.
- **The animal killed by violent blow** is the animal that is stricken by a violent blow causing it to die.
- **The animal killed by a headlong fall** is the animal that has fallen from a height.
- **The animal killed by the goring of horns** is the animal that is butted by another animal and consequently dies.
- **The animal from which a wild animal has eaten** is the animal that is hunted and killed by a wild beast such as the wolf and the like.

In consideration of the lawfulness of slaughtering such previously mentioned kinds, *Shaykh al-Islâm Ibn Taymiyah* (may Allah have mercy on him) says:

“...If such an animal is slaughtered and the normal red blood, which is not the blood of a dead animal, gushed out of it, then it is deemed lawful to eat its meat, even if the animal does not move its forelimb or hind limb or blink or wave its tail or the like¹¹.”

The Fourth Condition: The slaughterer must say *tasmiyah*¹² while his hand is doing the act of slaughtering, as Allah, the Almighty, says:

“And do not eat of that upon which the Name of Allah has not been mentioned, for indeed, it is grave disobedience...”

(Qur’ân: Al-An’âm: 121)

Imâm Ibnul-Qayyim says:

“There is no doubt that uttering the Name of Allah while slaughtering the animal purifies it and drives Satan away from the slaughterer and the slaughtered animal. On the contrary, if this condition is violated, Satan will beset the slaughterer and the slaughtered animal and will cause foulness to the animal. The Prophet (PBUH) used to mention the Name of Allah when slaughtering. Moreover, the aforementioned noble verse indicates that the slaughtered animal is not lawful to be eaten if the Name of Allah is not mentioned when slaughtering it, even if the slaughterer is a Muslim.”¹³

In addition, it is considered an act of the *Sunnah* to say *takbîr* (saying, “*Allāhu-Akbar*” (i.e. Allah is the Greatest)) along with mentioning the Name of Allah.

Proprieties of Slaughtering

- It is detestable to slaughter with a blunt tool, as illustrated in the *ḥadīth* of the Prophet (PBUH) in which he says:

“Every one of you should sharpen his knife, and let the slaughtered animal die without causing it suffering.”¹⁴
- It is detestable to sharpen the knife, the slaughtering tool while being seen by the animal. This is based on the *ḥadīth* related by Imâm Aḥmad as the Messenger of Allah (PBUH) ordered that knives should be sharpened and that they (knives) should be hidden from the animals¹⁵.
- It is detestable to turn the animal to a direction other than that of the *qiblah*¹⁶.
- It is detestable to break the animal's neck or skin it before its body becomes cool.

It is an act of the *Sunnah* to slaughter the camel while it is in the standing position and its left forelimb is shackled; and to slaughter the cow or the sheep while it is lying down on its left side. And Allah knows best.

Endnotes

- 1 Aḥmad (5723) [2/97] and Ibn Mājah (3218) [3/576].
- 2 Abū Dāwūd (83) [1/52], At-Tirmidhī (69) [1/100], An-Nasā'i (59) [1/53] and Ibn Mājah (386) [1/236].
- 3 See Al-Bukhāri [9/787].
- 4 Al-Bukhāri (2488) [5/162] and Muslim (5065) [7/124].
- 5 Bones are the food of the believers of the jinn as stated in other Prophetic *ḥadīths*.
- 6 See *I'lām Al-Muwaqqi'in* (4/162).
- 7 See *Al-Ikhtiyārāt* (468).
- 8 Muslim (1955).
- 9 Al-Bukhāri (5065) [7/124] and Muslim (3075) [6/226].
- 10 See Al-Bukhāri [9/789].
- 11 See *Al-Ikhtiyārāt* p. 468.
- 12 *Tasmiyah*: Saying "Bismillāh" (i.e., In the Name of Allah).
- 13 See the footnote of *Ar-Rawḍ Al-Murbi'* [7/450].
- 14 Muslim (1955).
- 15 Aḥmad (5864) [2/108] and Ibn Mājah (3172) [3/554].
- 16 The *qiblah*: The direction of prayer, namely towards the Ka`bah.

CHAPTER

3

Hunting

Hunting means chasing and killing a lawful wild animal that cannot be grasped easily for slaughtering.

The Islamic ruling pertaining to hunting dictates that it is lawful to hunt an animal for food; however, if it is done only for fun or sport, then it is detestable. Likewise, it is considered prohibited if any harm is caused to people's properties or farms as a result of hunting. The legal evidence of its legitimacy in cases other than the last one is as follows:

Allah, Exalted be He, says:

"...But when you come out of iḥrām, then [you may] hunt..."

(Qur'ān: Al-Mā'idah: 2)

He, the Almighty, also says:

"...and [game caught by] what you have trained of hunting animals which you train as Allah has taught you. So eat of what

they catch for you, and mention the Name of Allah of upon it..”
 (Qur’ân: Al-Mâ’idah: 4)

Moreover, the Prophet (PBUH) says:

“If you let loose your trained dog (for hunting) and mention Allah’s Name (while releasing it), then you may eat (the game).”

(Related by Al-Bukhârî and Muslim)¹

The hunted animal, the game, has either one of two cases after being chased and caught:

The First State: It may be caught alive. In such a case, the animal must be slaughtered according to the rules of legal slaughtering – as previously explained in the chapter of slaughtering – and it is not rendered lawful just by hunting.

The Second State: The game may be caught killed or caught while unstably alive. In such cases, it is only considered lawful if the following conditions are fulfilled:

The First Condition: The hunter must fulfill the conditions of the competent slaughterer, namely, the one who is legally accepted to slaughter. This is because the hunter assumes the role of the slaughterer in this case. Therefore, the hunter must be legally competent by being sane, Muslim or belonging to the People of the Scripture (Christians or Jews). To illustrate, it is not lawful to eat what is hunted by an insane or a drunken person, for their lack of discretion. Similarly, it is not lawful to eat what is hunted by a magus, an idolater, or other disbelievers, just like their slaughtered animals.

The Second Condition: There must be a tool used in hunting, which is one of the following two kinds:

First: A sharpened tool, which must be like the one used for slaughtering in order to cause blood to be shed. Moreover, it must be neither a tooth nor a fingernail, and it must wound the animal with its edge not by its weight. Thus, if the tool whereby the game is killed is blunt like a pebble, a staff, a snare, a net or a piece of iron, the hunted animal is considered unlawful, except those hunted by gun bullets. This is because this tool possesses a driving force that pierces and causes the blood to gush out the same as the sharp tool does or even more.

Second: Predatory animals, such as birds of prey and hunting dogs. The game killed by such animals is deemed lawful provided that they are trained, whether they hunt using their fangs, like dogs, or their claws, like birds. This is according to the noble verse in which Allah, Exalted be He, says:

"...and [game caught by] what you have trained of hunting animals which you train as Allah has taught you. So eat of what they catch for you, and mention the Name of Allah upon it..."

(Qur'ân: Al-Mâ'idah: 4)

The phrase: *"...which you train as Allah has taught you..."* indicates that you have to train and teach them the rules of catching the game out of the knowledge Allah has granted you. Training and teaching a predatory bird or animal means that it should obey orders; if it is set off for hunting, it goes, and if it is summoned, it complies, and when it seizes the game, it keeps it for its master until he reaches the hunted animal, and that it does not catch the game for itself.

The Third Condition: To aim or set off the means, or the tool, of hunting while having the intention of hunting. This is based on the *hadith* in which the Prophet (PBUH) says:

"If you let loose your trained dog (for hunting) and mention Allah's Name (while releasing it), then you may eat (the game)."

(Related by Al-Bukhârî and Muslim)

The *hadith* indicates that setting off a hunting bird or animal has the same conditions of slaughtering. That is, one must have the intention of hunting; accordingly, if the tool falls from the hunter's hand and kills a game, this game is considered unlawful because of the absence of intention. Likewise, if a hound sets off on its own and kills a game, the game is considered unlawful for the same reason. However, if someone shoots at a certain game and this shot hits more than one game, all are rendered lawful because the hunter basically had the intention of hunting.

The Fourth Condition: The hunter must pronounce *tasmiyah* while aiming the arrow or setting off the predatory hunting animal or bird as illustrated in the noble verse:

"And do not eat of that upon which the Name of Allah has not been mentioned..."

(Qur'ân: Al-An`âm: 121)

And the other verse in which Allah, the Almighty, says:

"...So eat of what they catch for you, and mention the Name of Allah upon it..."
(Qur'ân: Al-Mâ'idah: 4)

Furthermore, the Prophet (PBUH) says:

"If you let loose your trained dog (for hunting) and mention Allah's Name (while releasing it), then you may eat (the game)."

(Related by Al-Bukhârî and Muslim)

According to the previously mentioned noble verse and *hadith*, if Allah's Name is not mentioned while hunting (i.e. if the hunter does not say *tasmiyah*), the game is not lawful.

Along with mentioning *tasmiyah*, it is an act of the *Sunnah* to glorify Allah by pronouncing *takbîr* while hunting a game, just like the case with slaughtering. This is because when slaughtering, the Prophet (PBUH) used to say:

*"Bismillâh (In the Name of Allah) wallâhu Akbar (and Allah is the Greatest)."*²

Two Warnings

The First Warning: There are certain cases in which hunting is prohibited: It is forbidden for a *muḥrim*³ to kill the land game, hunt it or help in hunting it by giving guidance, a gesture or something else. This is based on the noble verse in which Allah, the Almighty, says:

"O you who have believed, do not kill game while you are in the state of iḥrâm."
(Qur'ân: Al-Mâ'idah: 95)

It is also prohibited for the *muḥrim* to eat from the game that he has hunted, helped in hunting, or that has been hunted for him; Allah, Exalted be He, says:

"...but forbidden to you is game from the land as long as you are in the state of iḥrâm. And fear Allah to Whom you will be gathered."
(Qur'ân: Al-Mâ'idah: 96)

In addition, according to the consensus of Muslim scholars, it is prohibited for a *muḥrim* or a non-*muḥrim* to hunt the game of Mecca. With respect to this, *Ibn 'Abbâs* (may Allah be pleased with him) narrated:

"On the Day of the Conquest of Mecca, the Messenger of Allah (PBUH) said, 'Allah has made this town (i.e., Mecca) a sanctuary"

*since the day He created the Heavens and the Earth, and it will remain a sanctuary by virtue of the sanctity Allah has bestowed on it until the Day of Resurrection ... Its trees must not be cut, nor must its game be chased, nor must its vegetation or grass be uprooted...'*⁴

The Second Warning: It is prohibited to possess a dog for reasons other than those permitted by the Messenger of Allah (PBUH), and they are one of three cases: hunting, guarding a livestock or guarding a plantation. The Prophet (PBUH) said:

*"He who keeps a dog except one meant for watching a herd, for hunting, or for watching fields, will lose one qîrât (i.e., a great amount) of his reward every day."*⁵

(Related by Al-Bukhârî and Muslim)

Yet, some people care nothing for such a threat and own dogs for purposes other than these three permitted by the Messenger of Allah (PBUH); they keep dogs just for showiness and imitation of the disbelievers. They pay no attention to the loss of rewards resulting from what they do, though if they were to lose anything of their worldly benefits, they would not endure it. There is neither might nor power save in Allah! In this connection, the Prophet (PBUH) says:

*"Angels (of Mercy) do not enter a house wherein there is a dog or a picture of a living creature (a human being or an animal)."*⁶

So, a Muslim must fear his Lord and not wrong himself by committing such sins and deprive himself from rewards. Indeed, Allah, Alone, is the One Whose Help is sought.

Endnotes

1 Al-Bukhârî (5484) [9/756] and Muslim (4949) [7/75].

2 Al-Bukhârî (5565) [10/29] and Muslim (5060) [7/121].

3 *Muḥrim*: The one in a state of ritual consecration for *Hajj* (Pilgrimage) or 'Umrah (Lesser Pilgrimage).

4 Al-Bukhârî (1834) [4/61] and Muslim (3289) [5/127].

5 Al-Bukhârî (2322) [5/8] and Muslim (4007) [5/484].

6 Al-Bukhârî (3225) [6/375] and Muslim (5481) [7/410].



XII:
OATHS AND VOWS

Oaths

An oath is a solemn, formal declaration to fulfill a pledge, to do or refrain from doing something, or to confirm that something is true, often calling on a sacred object as witness. An oath has a certain way to be taken.

An oath that requires expiation if not fulfilled is that taken by calling on the Name of Allah or on one of His Attributes, such as swearing "by Allah," "by the Face of Allah," "by His Magnificence," "by His Glory," "by His Sublimity," "by His Power," "by His Mercy," "by His Covenant," "by His Will," "by the Qur'an," ...etc.

It is prohibited to take an oath by calling on other than Allah, as it is considered an act of polytheism, for the Prophet (PBUH) says:

"If one has to take an oath, one must swear by Allah or otherwise keep quiet."

(Related by Al-Bukhârî and Muslim)¹

Also, he (PBUH) says:

*"Whoever swears by other than Allah is committing an act of disbelief or polytheism."*²

Furthermore, the Prophet (PBUH) says:

"He who swears by Al-Amânah³ is not one of us (i.e. he does not follow the true pathway of Muslims)."

(Related by Abû Dâwûd)⁴

The aforementioned *hadiths* state the prohibition of swearing by other than Allah and that it is considered an act of polytheism. Examples of such unlawful oaths are swearing, "By the Prophet," "By your life," "By Al-Amânah," "By the Ka'bah," or the like. Ibn 'Abdul-Barr said, "This (i.e. the prohibition of swearing by other than Allah) is unanimously agreed upon."

Sheikh Taqiyyuddîn Ibn Taymiyah said:

*"It is prohibited to take an oath by other than Allah, and this is the opinion acted upon in the Hanbali School. Moreover, Ibn Mas'ûd and others were quoted as saying, 'I would rather take a false oath by Allah than take a true oath by other than Allah.'"*⁵

Commenting on the aforementioned statement of Ibn Mas'ûd, **Ibn Taymiyah** said:

*"This is because the virtue of monotheism is greater than the virtue of truthfulness, and the sin of telling a lie is not so grave as that of polytheism."*⁶

Expiation for breaking an oath sworn by the Name of Allah is obligatory if the following three conditions are fulfilled:

First: An oath must be bound with intention so as to entail expiation if broken. That is, one must intend the oath to do a certain possible deed in the future. Allah, Exalted be He, says:

"Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths..." (Qur'ân: Al-Mâ'idah: 89)

The verse indicates that expiation is not obligatory unless the oath is bound with intention.

Therefore, an oath is not validly effected unless it refers to something in the future, not in the past, as it is impossible to intend to do or refrain

from doing something in the past. However, if a person deliberately takes a false oath that he had done something in the past but in fact he had not for example, such an oath is called “an immersing false oath,” as it “immerses” the one who commits it into sinning and, hence, into the Hellfire. Such perjury cannot be expiated for, as it is considered too grave to be expiated for. Furthermore, it is regarded as one of the major sins.

If one utters an oath unintentionally due to a force of habit, as in saying, “No, by Allah,” or “Yes, by Allah,” such are not considered oaths bound with intention, but meaningless words. Hence, no expiation is called for in this case, for Allah, Exalted be He, says:

“Allah will not impose blame upon you for what is meaningless in your oaths...” (Qur’an: Al-Mā’idah: 89)

In addition, ‘Āishah, the Prophet’s wife, (may Allah be pleased with her) narrated that the Prophet (PBUH) said regarding a meaningless oath:

“It is the usual talk of a man at his home, (such as) ‘No, by Allah,’ or ‘Yes, by Allah.’”

(Related by Abū Dāwūd)⁷

Likewise, if one takes an oath concerning something believing it to be true but later it proves to be untrue, such an unfulfilled oath does not entail expiation. Shaykhul-Islām Ibn Taymiyah said:

“The same ruling applies to swearing concerning something in the future believing it will happen, as when one takes an oath to do something, believing that another person will do it for him, and that person does not.”⁸

Second: An oath must be taken voluntarily so as to entail expiation if broken. Thus, if a person is forced to take an oath, his oath is not validly effected. This is because the Prophet (PBUH) says:

“My nation is pardoned for what they commit by mistake, out of forgetfulness, and for what they were compelled to do.”⁹

The *ḥadīth* states that breaking an oath one has been compelled to take is pardoned.

Third: An oath entails expiation if it is broken, such as doing what one has sworn not to do or refraining from what one has sworn to do. Nevertheless, if one breaks one’s oath out of forgetfulness or compulsion, no expiation is called for, because, in such a case, one is

not considered to have committed a sin. This is pursuant to the *hadith* of the Prophet (PBUH) that states:

*"My nation is pardoned for what they commit by mistake, out of forgetfulness, and for what they were compelled to do."*¹⁰

Sometimes the one taking an oath adds a conditional phrase as an integral part of the wording of the oath, as in saying, "By Allah, I shall do so and so, if Allah wills." In this case, if one fails to fulfill one's oath, one is not considered to have committed perjury, as long as the conditional phrase was an integral part of the oath. The Prophet (PBUH) said:

"If anyone includes 'if Allah wills' in his oath, he will not be considered to have committed perjury if he does break his oath."

(Related by Imām Ahmad and other compilers of *Hadīth*)¹¹

However, if the phrase "if Allah wills" is not meant to be conditional in the oath, but only to seek Allah's blessing by mentioning His Name, the oath will entail expiation if broken. Likewise, if this conditional phrase, namely "if Allah wills," is separated from the utterance of the oath by a pause for no reason, this conditional phrase does not spare one the expiation for breaking such an oath. However, some other scholars maintain that the phrase, "if Allah wills," spares expiation, even if it is uttered a while after the utterance of the oath, or even if the one taking the oath utters it only after being urged by others to do so. **Shaykhul-Islām Ibn Taymiyah** commented on the latter opinion saying, *"...and this is the sound opinion"*.

Breaking an oath may be obligatory, prohibited or permissible. To illustrate, an oath must be broken if it is taken to abandon an obligation, as when one takes an oath to sever the ties of kinship. Also, an oath must be broken if it is taken to do something prohibited, such as swearing to drink an alcoholic drink. In such cases, one must break one's oath and expiate for it.

It is prohibited to break an oath if it is taken to abandon a prohibited deed or to do an obligatory one. In such a case, the person has to fulfill his oath and it is impermissible to break it.

However, it is permissible to break an oath taken to do or abandon something permissible. The Prophet (PBUH) says:

*"Whenever I take an oath to do something and (later on) I find something else better to do, I do what I find better and expiate for (breaking) my oath."*¹²

The Prophet (PBUH) also says:

*"If anyone takes an oath to do something and (later on) finds something else better to do, he should do what is better and then expiate for (breaking) his oath."*¹³

Sometimes one takes an oath to abstain from something permissible, such as food, drinks, or clothes, except for one's wife, as when one swears saying, "By Allah, I will deem what Allah has permitted prohibited for me," or, "By Allah, I will deem this food prohibited for me." That permissible thing does not become prohibited for one to have or use due to such an oath. Rather, it is permissible for one to have it or use it, yet one in this case has to expiate for breaking one's oath. This is because Allah Exalted be He, says:

"O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful. Allah has already ordained for you (Muslims) the dissolution of your oath..."

(Qur'an: At-Tahrim: 1-2)

The word "dissolution" here refers to the expiation for breaking an oath taken to prohibit for oneself something made lawful by Allah.

In case a man takes an oath to abstain from having sexual intercourse with his wife, it is considered *zihar*¹⁴ that entails a special kind of expiation, as the expiation for breaking an oath is insufficient in this case.

In this chapter we have to point out the ruling on taking an oath by calling on a religion other than Islam, such as saying, "I will be a Jew (or a Christian) if I do so and so (or if I do not do so and so)." Such oaths are abominable and strictly prohibited. It is related in the Two *Sahih*s that the Prophet (PBUH) says:

*"Whoever intentionally swears falsely by calling on a religion other than Islam (i.e. swearing by saying that he is a non-Muslim in case he is telling a lie), then he is as he says (i.e. he becomes a non-Muslim)."*¹⁵

According to the narration of Imâm Ahmad, the Prophet (PBUH) said:

*"When anyone takes an oath saying that he will be free from Islam (i.e. if he is telling a lie), he will be as what he has said (i.e. a non-Muslim) if he is lying; and if he is telling the truth, he will not return to Islam safely (i.e. he will not return to Islam free from sin or punishment)."*¹⁶

We invoke Allah to protect us against evil speeches, and to mend our words, deeds, and intentions. Verily, Allah is Near and Responsive.

Endnotes

- 1 Al-Bukhâri (6108) [10/634] and Muslim (4233) [6/108].
- 2 Abû Dâwûd (3251) [3/371] and At-Tirmidhî (1539) [4/110].
- 3 Al-Amânah, in Arabic, carries the meanings of honesty, trust, and obedience. It can also, in this context, refer to the obligatory acts of worship ordained by Allah, such as Prayer, Fasting, Hajj (Pilgrimage), etc.
- 4 Abû Dâwûd (3253) [3/371].
- 5 `Abdur-Razzâq (15929) [8/469] and Abû Nu`aym in his book "Al-*Hilyah*" [7/267].
- 6 See: "Al-*Ikhtiyârât Al-Fiqhiyyah*" [p. 473].
- 7 Abû Dâwûd (3254) [3/372]. See also Al-Bukhâri (4612) [8/348].
- 8 See: '*Majmû`ul-Fatâwâ`*' [35/324].
- 9 Ibn Mâjah (2045) [2/513] and Ad-Dâraqutni (4306) [4/99].
- 10 Ibn Mâjah (2043) [2/513].
- 11 Aḥmad (8074) [2/309], At-Tirmidhî (1536) [4/108], and An-Nasâ'î (3864) [4/38]. See also Abû Dâwûd (3261) [3/374].
- 12 Al-Bukhâri (6621) [11/629]. See also Al-Bukhâri (6623) [11/630] and Muslim (4239) [6/111].
- 13 Muslim (4249) [6/117].
- 14 *Zihâr* is the saying of a husband to his wife, when he wants to abstain from having sex with her, "(Sexually,) you are to me like the back of my mother," i.e. unlawful to approach sexually. That was a type of divorce practiced by Arabs in the Pre-Islamic Period of Ignorance (the *Jâhiliyyah*).
- 15 Al-Bukhâri (1363) [3/288] and Muslim (300) [1/303].
- 16 Aḥmad (22906) [5/355], Abû Dâwûd (3258) [3/373], Ibn Mâjah (2100) [2/541].

Expiation for a Broken Oath

Almighty Allah is so Merciful to His servants that He has decreed expiation for broken oaths. Allah, Exalted be He, says:

“Allah has already ordained for you (Muslims) the dissolution of your oaths...” (Qur’ân: At-Tahrim: 2)

Besides, it is related in the Two *Ṣaḥīḥs* that the Prophet (PBUH) says:

“If you take an oath to do something and (later on) you find that something else is better than the first, then do the better one and expiate for (breaking) your oath.”

There are option and priority order concerning the expiation for a broken oath. One can choose between feeding ten needy people (half a *ṣâ‘* of food for each), clothing ten needy people (each one gets a garment proper to be worn during performing prayer), or freeing a Muslim slave void of defects. If one cannot afford any of the three aforementioned choices, one has to fast for

three days. Hence, it is clear that the expiation for breaking an oath combines both choice and priority order. Choice is between feeding ten needy people, clothing them, or freeing a Muslim slave, in the same order of priority, then comes fasting as the last alternative. The evidence of this ruling is the Qur'anic verse that reads:

"...so its expiation is the feeding of ten needy people from the average of that which you feed your (own) families or clothing them or the freeing of a slave but who cannot find (or afford it) - then a fast of three days (is required)..."

(Qur'an: Al-Mâ'idah: 89)

This verse as a whole means that the expiation for breaching an oath bound with intention is ***"the feeding of ten needy people from the average of that you feed your (own) families"***, i.e. from the best food that one normally provides for one's family, ***"or clothing them"*** with clothes proper to be worn during performing prayer, ***"or the freeing of a slave"***; most scholars agree that this slave must be a believing Muslim. In addition, Allah arranges the order of the three options of expiation according to easiness, and if any of these options is fulfilled, the expiation is unanimously deemed valid. As for the expiatory fasting of the three days, the majority of scholars stipulate that it must be performed successively according to 'Abdullâh Ibn Mas'ûd's recitation of the aforementioned verse in which the word ***"successive"*** is added; ***"...then a fast of three successive days (is required)..."*** (Qur'an: Al-Mâ'idah: 89)

Nowadays, most common people mistakenly believe that they have the choice whether to fast or to fulfill any of the three aforementioned options to expiate for their broken oaths. Hence, they fast while they can afford the feeding of ten needy people or clothing them, and this is not a valid expiation for a broken oath, since fasting is not a valid means of expiation unless one cannot afford the other alternatives. So, every Muslim must be aware of this fact.

A Muslim is permitted to make the expiation before or after breaking the oath. If it precedes perjury, it is considered dissolution of the oath, and if it succeeds perjury, it is considered expiation for the sin of perjury. The evidence of this ruling is a *ḥadīth* related in the Two *Ṣaḥīḥs* that reads:

"If you take an oath to do something and (later on) you find that something else is better than the first, then do the better one and expiate for (breaking) your oath."²

This *hadith* proves that it is lawful to delay expiation until after breaking one's oath; the *hadith* related by Abû Dâwûd reads:

*"...then make expiation for your oath and do the better one."*³

The latter *hadith* indicates the permissibility of making expiation for an oath before breaking it. Thus, the aforementioned *hadiths* state that a Muslim can make expiation before or after breaking his oath.

It is an act of the *Sunnah* (Prophetic Tradition) and a duty of a Muslim toward his Muslim brother to fulfill the latter's oath. Al-Barâ' Ibn 'Âzib (may Allah be pleased with him) said:

*"The Prophet (PBUH) enjoined us to do seven things. He (PBUH) enjoined us to visit the sick, follow funeral processions, pray for a sneezer (by saying to him, 'May Allah have mercy on you'), fulfill a Muslim's oath, help the oppressed, accept invitations, and propagate greetings (by saying when meeting one another, 'Peace be with you.'"*⁴

If an oath is repeated then broken, one is obliged to expiate for it only once, as it is regarded as one oath. Similarly, if one breaks an oath taken to do or abstain from doing many things (such as saying, "By Allah, I will neither eat, nor drink, nor do so and so,") one, in case of non-fulfillment, has to expiate for it only once, as it is considered one oath as well. Nevertheless, if one takes more than one oath to do or refrain from doing more than one deed, and then one breaks one's oaths, one has to expiate for each of the broken oaths. **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

*"Concerning repeating an oath before expiation, there are three opinions, the third of them, which is the preponderant one, is that if an oath pertains to one deed, expiating once is called for, otherwise expiation as many times as the deeds to which an oath pertains is called for."*⁵

If anyone swears not to do something, then he does it out of forgetfulness, compulsion, or unawareness, it is not deemed perjury, nor does it entail expiation. This is because Allah, Exalted be He, states in the Qur'an that His righteous servants invoke Him saying:

"Our Lord, do not impose blame upon us if we have forgotten or erred..."
(Qur'an: Al-Baqarah: 286)

Furthermore, a person is not held responsible for a deed he is forced to do, and Allah forgives the Muslim nation for the sins they commit by mistake, out of forgetfulness, or while being compelled to do them.

Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

"If one swears, out of showing hospitality or generosity to another, that the latter 'should' do something, breaking such an oath is not considered perjury. Yet, it is considered perjury if one means that the other person 'must' do it..."⁶

Notice

Allah, Exalted be He, says in the same verse, after mentioning the expiation for a broken oath:

"...and keep up your oath..." (Qur'ân: Al-Mâ'idah: 89)

Therefore, Allah commands us to keep up our oaths, and this means that one should not rush into taking oaths nor should he rush into breaking them, and that broken oaths must be expiated for. In general, this noble verse enjoins the believers to hold oaths in high esteem and not to underestimate them.

It is important to point out that some people resort to trickery to evade fulfilling their oaths, mistakenly believing that they, thus, have exempted themselves from expiation and from the consequences of taking oaths. In this regard, **Ibnul-Qayyim** (may Allah have mercy on him) warned against such evasion saying:

"Some people make unlawful tricks in order to evade fulfilling their oaths or expiating for breaking them. For example, a man may swear not to eat a certain loaf, not to live in a certain house for a year, or not to eat a certain food, and then he eats the whole loaf except for a small bite, lives in the said house for a whole year except for one day, or eats the said food except for a little amount. These tricks are groundless and such oaths are thus broken. Such evasive people may permit committing all kinds of deeds prohibited by the Lawgiver by avoiding committing a little part of each deed. However, keeping an oath or breaking it is just like the matter of obedience and disobedience regarding Divine ordinances. One's oath is not fulfilled unless it is fulfilled to the full, not only part of it, and thus one is regarded as an obedient servant of Allah. On the other hand, breaking part of the oath is regarded as perjury, and thus one is regarded as a disobedient servant of Allah."⁷

It happens that someone may swear not to do something and then he makes someone else do it for him to avoid perjury. In fact, such evasion does not spare such a person the liability of his oath, unless he has already meant not to do it himself when taking the oath.

In a nutshell, it must be asserted that oaths have such a high esteem and must not be dealt with lightly, nor should people resort to trickery to evade fulfilling the liabilities of their oaths.

Endnotes

1 *Ṣā'*: A standard measure that equals 2172 grams.

2 Al-Bukhārī (6622) [11/629] and Muslim (4257) [6/118].

3 Abū Dāwūd (3278) [3/380] and At-Tirmidhī (1534) [4/107].

4 Al-Bukhārī (1239) [3/145] and Muslim (5356) [7/257].

5 See "*Al-Ikhtiyārāt*" [p. 474] and '*Majmū'ul-Fatāwā*' (32/219).

6 See '*Majmū'ul-Fatāwā*' (32/219).

7 See "*I'lām Al-Muwaqqi'in*" (3/294).

CHAPTER

3

VOWS

Linguistically, to take a vow, in Arabic, means to obligate oneself solemnly to do something. However, according to Islamic jurisprudence, a vow is a voluntary obligation taken by a competent, legally accountable person upon himself to do something seeking the pleasure of Allah, Exalted be He.

A vow is considered an act of worship that should never be meant to seek the pleasure of anyone other than Allah, Exalted be He. It must not be dedicated to a dead person in his grave, an angel, a prophet, or a righteous servant of Allah, as one, by doing so, is associating partners with Allah, which is considered an act of major polytheism that renders a person non-Muslim, as it is regarded as a kind of worship to someone other than Allah. Accordingly, those who take vows seeking the pleasure of the dead righteous people at their graves nowadays commit major polytheism. May Allah protect us all against falling into polytheism! So, those people who commit such acts must repent to Allah and avoid this major sin, and warn their people against it that they may fear Allah.

Making vows is originally detestable, and it is deemed prohibited by a group of scholars according to the *ḥadīth* narrated by Ibn `Umar (may Allah be pleased with him) that reads:

“Making a vow does not prevent anything (related to fate), but it makes a miser spend his property.”

The compiler of the book entitled *Al-Muntaqâ (the Selected)* said, “*This ḥadīth is related by the Group of the Compilers of Ḥadīth excluding At-Tirmidhī.*”¹ The reason behind these two rulings is that one who makes a vow obligates oneself to do something that is not originally a religious obligation, and gets oneself into a critical situation by such a vow, whereas a Muslim is enjoined to do good deeds without having to make vows.

Nevertheless, if one makes a vow to perform an act of worship, one has to fulfill it, for Allah, Exalted be He, says:

“And whatever you spend of expenditures or make of vows – indeed, Allah knows of it...” (Qur`ân: Al-Baqarah: 270)

In another verse of the Qur`ân, Almighty Allah describes His faithful, pious worshippers saying,

“They [are those who] fulfill [their] vows and fear a Day whose evil will be widespread.” (Qur`ân: Al-Insân: 7)

Allah, Exalted be He, also says:

“...and fulfill their vows...” (Qur`ân: Al-Ḥajj: 29)

Moreover, it is related in *Sahīh Al-Bukhârī (Al-Bukhârī’s Authentic Book of Ḥadīth)* that the Prophet (PBUH) says:

*“Whoever vows to obey Allah must obey Him, and whoever vows to disobey Allah must not disobey Him.”*²

Imâm Ibnul-Qayyim said:

“As for those who commit themselves to voluntarily perform acts of worship to Allah, they do that in one of four ways. They either take an oath to perform it, or vow to perform it, or take an oath emphasized by a vow to perform it, or take a vow emphasized by an oath to perform it. Allah says, ‘And among them are those who made a covenant with Allah, [saying], ‘If He should give us from His bounty, we will surely spend in charity...’” (Qur`ân: At-Tawbah: 75) *Such a vow must be fulfilled or else the one who makes*

*it will be subject to the punishment stated in the verse that reads, "So He penalized them with hypocrisy in their hearts..." (Qur'an: At-Tawbah: 77) Thus, vowing to perform a voluntary act of worship is worthier of fulfillment than feeling obliged to perform it as in saying, 'I owe Allah to do so and so.'"*³

Faqīhs (may Allah have mercy on them) stipulate that a vow must be voluntarily made by a competent, sane, discriminating, adult person so as to be validly effected. They base this opinion on the *ḥadīth* in which the Prophet (PBUH) says:

*"There are three (persons) whose actions are not recorded: A minor until he reaches puberty, a lunatic until he comes to reason, and a sleeper until he awakes."*⁴

This *ḥadīth* proves that the above-mentioned three kinds of people are not obligated to fulfill any vows they may take, as they are not legally accountable for their deeds.

The vow made by a disbeliever is deemed valid if it is made to perform an act of worship, and if such a disbeliever converts to Islam, he has to fulfill the vow he has taken while being a disbeliever. `Umar Ibnul-Khattāb (may Allah be pleased with him) narrated that he had once made a vow in the Pre-Islamic Period of Ignorance (the *Jāhiliyyah*) to seclude in the Sacred Mosque for one night, so the Prophet (PBUH) said to him: "Fulfill your vow."⁵

Valid Vows are of Five Kinds

1- An Absolute Vow

It is the vow made by saying, for example, "I owe Allah a vow," without defining a certain act of worship to perform due to vowing. The expiation for such a vow is the same as that for a broken oath, whether the vow is conditional or not. This is because `Uqbah Ibn `Āmir (may Allah be pleased with him) narrated that the Prophet (PBUH) said:

*"The expiation for (breaking) a vow which is not defined is the same as that for (breaking) an oath."*⁶

(Related by Ibn Mājah and At-Tirmidhī who deemed it a *ḥasan saḥīḥ gharīb*)⁷

This *ḥadīth* states that it is obligatory to expiate for an absolute vow if the act of worship dedicated to Allah, Almighty and Ever-Majestic be He, is not defined in the vow.

2- A Vow Taken in a State of Importunity or in a Fit of Anger

It is a conditional vow meant to either prevent someone from doing something, to urge him to do it, or to make someone believe something, or disbelieve in it. For example, when one says, "I vow to perform *Hajj* (or free a slave) if my speech proves untrue or if I speak to you, or about you." A person who takes such a vow may choose between fulfilling his vow and expiating for it just like a broken oath. This is because 'Imrân Ibn Hujayn (may Allah be pleased with him) narrated that he heard the Prophet (PBUH) saying:

"No vows taken in a fit of anger (are valid), and the expiation for such a vow is the same as that for (breaking) an oath."

(Related by Sa'id Ibn Mansûr in his book of *Hadiths*)⁸

3- A Vow Taken to Do an Ordinary, Permissible Act

An example of such a vow is vowing to wear one's garment or to ride one's pack animal. In this case, one may choose between fulfilling one's vow and expiating for it if one refrains from doing the said act, the same as the expiation for breaking an oath, just like the second case. The opinion of Ibn Taymiyah (may Allah have mercy on him) in this regard is that no expiation whatsoever is called for in case of breaking a vow to perform a permissible act. He grounds this ruling on the *hadith* related by Al-Bukhârî that reads:

*"While the Prophet (PBUH) was delivering a sermon, he saw a man who remained standing, so he asked about the man. They (the people) said, 'It is Abû Isrâ'il who has taken a vow to stand and never sit down, never come in the shade, nor speak to anybody, and to fast.' The Prophet (PBUH) said, 'Order him to resume speaking, come in the shade, and sit down, but let him complete his fast.'"*⁹

4- A Vow Taken to Commit an Act of Disobedience to Allah

An example of such a kind of vow is vowing to drink intoxicating liquors or to fast the days of menstruation or the Day of Sacrifice. It is impermissible to fulfill such a vow, as the Prophet (PBUH) says:

"Whoever vows to disobey Allah must not disobey Him."

This *hadith* states that it is impermissible to fulfill a vow to disobey Allah, because one is never permitted to disobey Allah under any circumstances.

Another example of vows of disobedience to Allah is the vows taken to be fulfilled at the graveyards seeking the pleasure of the dead buried therein. Such

a deed is considered major polytheism as previously mentioned. Expiation for such a vow is the same as that for a broken oath according to some scholars, the opinion which is based on the narrations of Ibn Mas'ūd, Ibn 'Abbās, 'Imrān Ibn Ḥuṣayn, and Samurah Ibn Jundub (may Allah be pleased with them all).

However, some scholars maintain that a vow taken to commit an act of disobedience to Allah is originally invalid and it entails no expiation. This is one of the opinions attributed to Imām Aḥmad, and it is the opinion of the Ḥanafī, the Mālikī, and the Shāfi'ī Schools. It is also the opinion maintained by Shaykhul-Islām Ibn Taymiyah who said:

“The vows to furnish a grave, a mountain, or a tree with lights, and the vows dedicated to such places, their inhabitants, or their visitors, are impermissible to be taken; such vows are impermissible to be fulfilled as scholars unanimously agree. Such objects (i.e. the lamps, money, or whatever is put in such places due to vows) are to be gathered and used for the benefit of the public, as long as the identities of their owners are unknown (to return these objects to them).”¹⁰

5- A Vow to Perform a Pious Act

It is a vow taken to perform an act of obedience to Allah, like performing Prayer, Fasting, *Hajj* (Pilgrimage) and so forth. Such a vow can be absolute (i.e. unconditional), as in saying, “I have taken a vow to fast (or pray),” or conditional, as in saying, “If Allah cures so and so, I vow to perform such and such an act of worship.” In the latter case, once the condition is fulfilled, it becomes obligatory for the one taking the vow to fulfill it. The Prophet (PBUH) says:

“Whoever vows to obey Allah must obey Him.”

(Related by Al-Bukhārī)¹¹

Moreover, Allah, exalted be He, says:

“They (are those who) fulfill their (vows)...”

(Qur'ān: At-Tahrim: 7)

Almighty Allah also says:

“...and fulfill their vows...”

(Qur'ān: Al-Ḥajj: 29)

And, Allah knows best.

Endnotes

- 1 Al-Bukhârî (6608) [11/608], Muslim (4213) [6/99], Abû Dâwûd (3287) [3/384], An-Nasâ'î (3810) [4/21] and Ibn Mâjah (2122) [2/552]. See also At-Tirmidhî (1542) [4/112].
- 2 Al-Bukhârî (6696) [11/708].
- 3 See "*T'lâm Al-Mûwaqqi'in*" (2/122).
- 4 Abû Dâwûd (4403) and An-Nasâ'î (3462).
- 5 Al-Bukhârî (2032) [4/348] and Muslim (4268) [6/126].
- 6 At-Tirmidhî (1532) [4/106], Ibn Mâjah (2127) [2/554]. See also Muslim (4229) [6/106], Abû Dâwûd (3323) [3/398] and An-Nasâ'î (3841) [4/33].
- 7 *Gharib* (Unfamiliar) *hadith*: A *hadith* reported by just one narrator at even one stage of the chain of transmission.
- 8 An-Nasâ'î (3851) [4/35].
- 9 Al-Bukhârî (6704) [11/714].
- 10 See "*Al-Ikhtiyârât Al-Fiqhiyyah*" [476].
- 11 See "*T'lâm Al-Mûwaqqi'in*" (2/122).



***XIII: QADĀ`
(JUDICIARY)***

CHAPTER

1

Judiciary in Islam

Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

*"It is obligatory to assume the judiciary as a religious duty and as a means of drawing near to Allah. In fact, it is one of the best means of achieving nearness to Allah. However, many persons in this position have been corrupted because of seeking leadership and wealth through it."*¹

Judiciary is legislated according to the Qur'ân, the Sunnah (Prophetic Tradition) and consensus of Muslim scholars. Allah, Exalted be He, says:

"And judge, [O Muḥammad], between them by what Allah has revealed ..." (Qur'ân: Al-Mâ'idah: 49)

And He also says:

"[We said], O David, indeed We have made you a successor upon the earth, so judge between the people in truth..."

(Qur'ân: Sâd: 26)

Moreover, the Prophet (PBUH) himself undertook that responsibility and appointed judges in the regions that were under the Islamic rule, and so did the Caliphs that succeeded him. Furthermore, Muslim scholars agree uniformly on the necessity of assigning judges to settle disputes among people.

Jurisprudentially speaking, the judiciary indicates the clarification of the legal ruling and applying it as well as settling disputes.

As for the judge, **Shaykhul-Islām Ibn Taymiyah** (may Allah have mercy on him) said:

"The judge assumes the role of a witness with regard to providing evidence, the role of a mufti² with regard to issuing rulings, and the role of a person in authority with regard to having judgments implemented."³

In Islam, the judiciary is a collective duty as it is an indispensable thing in people's affairs. In this respect, **Imām Ahmad** said, "There must be a judge among people so that rights are not lost." Moreover, **Shaykhul-Islām Ibn Taymiyah** said, "The Prophet (PBUH) has made it a duty to appoint one as leader when a small group is on a journey⁴. Such a command goes for all kinds of assemblies."⁵

If only one competent person exists who can undertake judgeship, then it is an individual obligation upon him to do so. That is because undertaking judgeship involves a great reward for the one who is capable of observing it according to the legally prescribed way. Nevertheless, assuming judgeship involves grave danger for the one who does not apply it according to the legally prescribed way.

When appointing judges, the ruler of Muslims has to appoint judges according to the requisites of the public interest so that rights are not lost. Besides, the ruler has to select the best persons in terms of knowledge and piety. However, if the ruler is not able to decide whether a certain person fits that position or not, he should inquire about him.

With regard to the judge, he has to make every effort to establish justice among people. Thus, the judge is not obligated to observe what is beyond his capacity or be blamed for it. The person in authority has to allocate a sufficient salary from the Muslims' Public Treasury for the judge to cover his expenses so that he can dedicate himself exclusively to his job. In support of this view, the Rightly-guided Caliphs have assigned sufficient salaries from the Muslims' Public Treasury for judges.

The judge's powers are to be referred to the conventions prevailing in each age separately. In this relation, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

*"As for the powers of the ruler, they are not specified by legislation; rather, they are dependent on the customs and conventions."*⁶

This is due to the fact that whatever is not decided by legislation is to be referred to convention. **Ibn Taymiyah** added:

*"The position of the judge can be divided; namely, it can be held by many people, for each is a certain area of jurisdiction. Besides, it is not obligatory for the judge to be cognizant of areas other than his. That is because the position of practicing ijtihâd can be divided. Assuming that the judge is assigned to decide on matters relating to the distribution of the shares of inheritance, it is not obligatory upon him to be cognizant of matters other than the rulings pertaining to the laws of inheritance, bequests and such related matters. Likewise, if the judge is assigned to decide on matters relating to marriage contracts, it is not required from him to be knowledgeable of other unrelated matters. Hence, it is permissible to assign a judge to decide on matters relating to his area of knowledge and whatever does not belong to that area is viewed out of his competence. This is applicable in the case of the one who undertakes the position of the judge to render a judgment concerning a certain matter related to the disbelievers who confess satisfaction concerning his being a judge. Moreover, if someone, who is in the state of iḥrâm, hunts a game from the land, then two just persons are to be appointed to judge his case. Hence, it is permissible to appoint persons as judges to decide on certain cases at specific situations; yet, they are not to be viewed as judges who have the competence to decide on all cases."*⁷

Nowadays, the Ministry of Justice has adopted a system to which judges stick; each judge has his own area of jurisdiction and powers. That is, judges have to refer to that system and be committed to it, for such a system is considered a means of regulating matters and specifying jurisdiction. Besides, that system does not contradict any of the texts of the Qur'ân or the *Sunnah* (Prophetic Tradition), so it must be acted upon and adhered to.

The necessary qualifications (that should be considered as much as possible) for being an Islamic judge are:

- To be a legally accountable person, namely to be adult and sane. That is because the non-legally accountable person is under the guardianship of others, so such a person cannot be the judge of others, for the judge assumes the position of the ruler.
- To be a male; this is due to the *hadith* in which the Prophet (PBUH) says: *"The people who are ruled by a woman will never be successful."*⁸
- To be a freeman; that is because the slave is busy looking after the rights of his master.
- To be a Muslim; this is due to the fact that Islam is the condition of being just. Besides, it is required to degrade the disbeliever, not to raise him in rank through appointing him in such a sublime position of judgeship.
- To be upright; that is because it is impermissible to appoint the defiantly disobedient person. This is due to the statement of Allah, in which He says:

"O you who have believed, if there comes to you a disobedient one with information, investigate..." (Qur'ān: Al-Hujurāt: 6)

Accordingly, as it is not permissible to accept information from such a person, his judgment is to be rejected with greater reason.

- To have sound hearing; that is because the deaf cannot hear the speech of the two litigants.
- To have sound eyesight; that is because the blind judge cannot distinguish between the plaintiff and the defendant.

In this respect, **Shaykhul-Islām Ibn Taymiyah** said:

"According to the analogical deduction of the Hanbalī School, it is permissible to appoint a blind person as a judge just as his testimony is accepted. That is because such a person lacks nothing but seeing the litigants, a thing which he does not need, for he can judge according to description. This is supported by the fact that Prophet Dāwūd (David) (PBUH) judged between two angels. Besides, it tends to be viewed absolutely permissible to appoint a blind man as a judge. In such a case,

*the blind judge is to be told who the witnesses and litigants are, just as the normal judge is told of the meanings of their speech in case translation is needed. This is because knowing who the litigants' identities and getting the meaning of their speech are equally important."*⁹

- The judge must have the faculty of speech. That is because the dumb person cannot deliver the judgments. Besides, many people do not comprehend the signs used by such a person.
- The judge must be one who exercises *ijtihad*. He must exercise *ijtihad*, even in the school he adopts, in which he follows the opinions of one of the great scholars. That is, the judge has to be able to differentiate between the sound and unsound rulings in that school.

With regard to these conditions, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

*"These necessary qualifications are to be considered as much as possible. Further, the position of judgeship must be undertaken by the best among people. This is the view adopted by Imâm Ahmad and others. Accordingly, if there are defiantly disobedient persons and one of them must be chosen to undertake judgeship, the most suitable amongst them is to be chosen. Likewise, if there are some persons who do not exercise *ijtihad* but follow a certain jurisprudential school, the most upright and learned of them, with regard to following the opinions of such a school, is to be appointed."*

In this connection, the compiler of *Al-Furû' (The Branches)* said, "The soundest opinion is what has been said by Ibn Taymiyah." Besides, the compiler of the book entitled *Al-Insâf (Justice)* said with regard to the issue of appointing the one who imitates the opinions adopted in a particular jurisprudential scholar, "...Such a view has been applied for a long time, so as not to suspend people's affairs and interests."¹⁰

Moreover, **Imâm Ibnul-Qayyim** said:

*"The one who exercises *ijtihad* is the one who possesses knowledge of the Noble Qur'ân and the Sunnah. In addition, the *ijtihad* of such a person does not forbid him from adopting the opinions of other scholars in certain cases. That is because one finds all the great scholars building their judgments on the opinions of those who are above them in knowledge with regard to some issues."*¹¹

Endnotes

- 1 See "Al-Ikhtiyârât" [p. 480].
- 2 *Mufti*: A Muslim scholar specialized in issuing legal rulings in response to a layman's question on a point of the Islamic Law.
- 3 See "Al-Ikhtiyârât" [p. 481].
- 4 As came in the *hadith* related by Abû Dâwûd (2608, 2609) [3/58].
- 5 See "Al-Ikhtiyârât" [p. 480].
- 6 See "Al-Ikhtiyârât" [p. 480].
- 7 See "Al-Ikhtiyârât" [pp. 485-486].
- 8 Al-Bukhârî (4425) [8/159].
- 9 See "Al-Ikhtiyârât" [p. 486].
- 10 See 'Al-Insâf' (11/170).
- 11 See 'I'lâm Al-Muwaqqi'in' (1/7).

CHAPTER

2

Judge Ethics

Imâm Ahmad (may Allah have mercy on him) said, "Good manners means not to get angry or rancorous." Moreover, **Imâm Ibnul-Qayyim** (may Allah have mercy on him) said:

"The judge needs to know three matters, if any of which is absent, the judgment becomes invalid: knowing the evidence, reasons, and clear proofs. For more illustration, the evidence guides the judge to know the general legal ruling, the reasons guide him to know the applicability of such a ruling to a certain case, while the clear proofs guide him to know the way of passing a judgment when there is contradiction in evidence. Thus, whoever errs in one of the three, errs in his judgment.

It is recommended that the judge be strong without harshness so that the oppressor does not belittle him, and flexible without weakness so that the people entitled to rights may not fear him. In this respect, **Shaykhul-Islâm Taqiyyud-**

Dīn Ibn Taymiyah (may Allah have mercy on him) said, "*Judgeship has two pillars: strength and trustworthiness.*"¹ In addition, the judge should be patient so as not to get angry at the words of the litigant and thus unable to judge justly. That is, patience is the ornament, beauty and splendor of knowledge; and it is contrary to impatience, rashness, hastiness, irritability, and instability. Besides, the judge should be patient so as not to misjudge among litigants. Moreover, he should be discerning so that he could not be deceived by some litigants. Furthermore, the judge should be virtuous by keeping himself away from all prohibited matters. Further, he should be knowledgeable of the judgments passed by the preceding judges. The place of the court should be in the middle of the town, if possible, so that people do not face hardship in reaching it. Besides, there is no harm in sitting in a mosque to decide cases, as it is reported that `Umar Ibnul-Khattāb, `Uthmān Ibn `Affān and `Alī Ibn Abū Ṭālib used to sit in the mosque to decide cases. In addition, the judge should treat the two litigants impartially and justly in terms of the way he looks at them, the way he addresses them, the places where they sit, the way he receives them, and so forth. In this regard, Abū Dāwūd related on the authority of Ibnuz-Zubayr (may Allah be pleased with him) who narrated:

*"The Messenger of Allah (PBUH) gave the judgment that the two adversaries should be made to sit before the judge."*²

With regard to this, **Imām Ibnul-Qayyim** said:

*"It is prohibited for the judge to set one of the two litigants above the other, give him more attention, consult him, or stand up for him as a means of honoring him. That is because such acts may cause the other litigant to feel disheartened and unable to express his argument. The judge also should not show his disapproval of the litigants, as it may cause them disheartenment and frustration, and hold their tongues from expressing their arguments."*³

In addition to this, it is deemed prohibited for the judge to have a secret discourse with one of the litigants, to tell him what to say, to entertain him, or to teach him how to deliver his argument, except when one of the litigants forgets something necessary and it must be explained to him when presenting the case.

Besides, the judge's sessions should be attended by the *faqīhs* and he should consult them concerning whatever may be difficult or doubtful for him. Thus, if the ruling is clear to the judge, he is to pass his judgment; if not, he must delay passing his judgment until he makes sure of it.

It is deemed prohibited for the judge to decide cases when being in a state of great anger. This is due to the *hadith*, in which the Prophet (PBUH) said:

“A judge must not judge between two persons while he is in an angry mood.”⁴

That is because anger affects both the judge’s mind and heart and thus blocks his sound comprehension and wise consideration. Likewise, every matter that may affect the judge’s temperament for the worse, such as hunger, thirst, anxiety, boredom, sleepiness, retention of urine or stool, or when the weather is irritatingly hot or cold, has the same ruling applied to anger. This is based on the fact that such matters disturb and confuse the mind in a way that may prevent the judge from reaching a sound decision.

Further, it is prohibited for the judge to receive bribes. This is due to the *hadith* narrated by Ibn ‘Umar (may Allah be pleased with him) in which he said:

“The Messenger (PBUH) cursed the one who bribes and the one who takes bribe.”⁵

Commenting on this *hadith*, At-Tirmidhi said, *“This is a hasan sahih hadith.”*

In this regard, bribes are of two kinds:

- 1- A bribe taken from one of the two litigants in order to decide in his favor.
- 2- A bribe given to the judge who abstains from judging in favor of the rightful person until he bribes him. This is one of the gravest acts of injustice.

In addition, it is prohibited for the judge to accept gifts from those who did not use to give him gifts before he became a judge. In this respect, the Prophet (PBUH) said:

“Gifts given to governors are (considered) ill-gotten property.”

(Related by Ahmad)⁶

That is because accepting gifts from someone who did not use to give the judge gifts before he became a judge is an excuse to decide in that person’s favor.

Furthermore, it is detestable for the judge to sell or buy except through an agent who should not be known as the judge’s agent, for fear of partiality. That is, partiality in purchasing and selling is similar to the previous ruling pertaining to gifts.

The judge may not decide cases in which he is involved or cases involving any of those to whom his testimony cannot be accepted, such as his father, son, wife, or enemy, for, in such cases, he is suspected of partiality. Therefore, if any of such cases is assigned to him, he is to refer it to another judge. This is supported by the fact that `Umar Ibnul-Khattāb referred the case of Ubayy to Zayd Ibn Thābit to decide it, and `Alī referred an Iraqi man to Shurayh to judge his case, and `Uthmān referred Talhah to Jubayr Ibn Muṭ'im (may Allah be pleased with them all) for judgment.

It is desirable for the judge to first look into the cases demanding summary decisions, such as those of the imprisoned, minor orphans and lunatics, then the cases of endowments and bequests that have no guardian.

With regard to the decisions made by the judge, they are not to be invalidated unless they contradict the rulings of the Noble Qur'ān, the *Sunnah*, or a decisive consensus of Muslim scholars. If the judge does so, his decisions are not to be implemented, as they contradict the Qur'ān, *Sunnah* or the consensus.

In the light of this brief presentation of the ethics of the judge, the justice of the judiciary in Islam becomes evident. In other words, judges in Islam assume a high rank that cannot be reached through all the worldly law systems. True are the Words of Allah in which He says:

***"Then is it the judgment of [the time of] ignorance they desire?
But who is better than Allah in judgment for a people who are
certain [in faith]."***
(Qur'ān: Al-Mā'idah: 50)

May Allah disgrace those who turn away from that divine judgment and replace it with Satan's law. Those are the people whom Allah meant in the noble verses:

***"...those who exchanged the favor of Allah for disbelief and
settled their people [in] the home of ruin? [It is] Hell, which they
will [enter to] burn, and wretched is the settlement."***
(Qur'ān: Ibrāhīm: 28-29)

Endnotes

1 See "*Al-Ikhtiyârât*" [p. 480].

2 Abû Dâwûd (3588) [4/14].

3 See "*Zâdul-Ma'âd*" (4/96).

4 Al-Bukhârî (7158) [13/169] and Muslim (4465) [6/241].

5 Abû Dâwûd (3580) [4/10], Ibn Mâjah (2313) [3/91] and At-Tirmidhî (1340) [3/622].

6 Aḥmad (23492) [5/424] and Al-Bayhaqî (20474) [10/233].

CHAPTER

3

Method of Undertaking Judgment

When two litigants come to a judge to decide their case, he seats them before him and asks, "Who is the plaintiff?" Or he may wait until the plaintiff speaks presenting his claim. The judge then should listen carefully to the claim. If the claim is presented properly, the judge then is to ask the defendant, "What is your defense?" If the defendant admits that the claim is true, the judge may give a decision in favor of the plaintiff. But if the defendant denies the claim, the judge is to turn again to the plaintiff asking him to present proof if he has any. That is because the plaintiff is the one who should substantiate his claim in order to get his right. When the plaintiff brings the proof, the judge is to pass the judgment according to the proofs.

The judge is not to judge according to his own knowledge (apart from other sources of information) as this may lead to his being suspected. In this regard, the great scholar **Ibnul-Qayyim** (may Allah have mercy on him) said:

*"When the judge decides a case according to his own knowledge, then he may decide it unjustly and defend himself saying that he has done so depending on his own knowledge."*¹

He also said:

"It is authentically reported that Abū Bakr, 'Umar, 'Abdur-Rahmān Ibn 'Awf and Mu'āwiyah viewed such an act prohibited and none of the Prophet's Companions was known to disagree with them. Besides, the master of judges, the Prophet (PBUH), knew some matters about the hypocrites that would make it lawful to kill them and take their wealth. However, he did not decide their case in terms of his own knowledge, though there would be no offense on him if he did so, for he is free from any suspicion and trusted by Allah, His angels and His servants."

Ibnul-Qayyim added:

"...However, it is permissible for the judge to decide the cases according to what is available before him of recurrently reported information, namely, there are many who share knowledge with him. Moreover, it is permissible for the judge to decide a case according to the information that many people other than him have knowledge of. Thus, it is permissible for him to depend on such recurrent information in passing judgments as they are considered among the most preponderant proofs. Consequently, the decision of the judge will not be suspected if he establishes his opinion on this common information, as it will be based on proof not merely on his own knowledge."

With regard to the plaintiff, if he says, "I have no proof to substantiate my claim," then the judge is to inform him that he may request that the defendant swear. This is according to the *ḥadīth* related by Muslim and Abū Dāwūd that states:

*"Two persons referred their case to the Prophet (PBUH); one of them was from Hadramaut and the other was from Kindah. The one who had come from Hadramaut said, 'O Messenger of Allah! This man has appropriated my land which belonged to my father. The one who had come from Kindah said, 'This is my land and it is in my possession; he has no right in it.' The Messenger of Allah (PBUH) said to the man from Hadramaut, 'Do you have any evidence (to support your claim)?' He replied in the negative. Thereupon, the Messenger of Allah (PBUH) said, 'Then, your case is to be decided on his oath.'"*²

In this respect, **Imâm Ibnul-Qayyim** said:

“This is the continuous rule of the Sharî`ah (Islamic Law). Hence, the oath is to be taken by the defendant, as the plaintiff has not brought forth anything supporting his claim. Thereupon, the defendant is the one who is to take the oath, as there is no proof against him and he is primarily innocent. In other words, the defendant is the stronger of the two litigants due to the original principle of being innocent; thus, the oath is to be taken by him.”³

Therefore, if the plaintiff requests that the defendant take an oath, the judge is to make him do so and then set him free, as the principle states his innocence. Nevertheless, it is stipulated, for the validity of the defendant’s oath, that the oath is to be a reply to what the plaintiff claims. Moreover, the oath is to be taken by the defendant after the plaintiff’s request, as it is a right of the plaintiff which must not be taken except after his request.

However, if the defendant abstains and refuses to swear, then he is judged as being guilty, under the conditions of his abstention from taking the oath. That is because if the plaintiff’s claim was untrue, the defendant would defend himself by taking the oath. So, his refusal to take an oath is considered an evident proof indicating the truthfulness of the plaintiff in whatever he claims. Thus, such a proof is to be considered regardless of the principle stating the innocence of the defendant until proven guilty. Considering the defendant guilty in case he refuses to take an oath is the opinion adopted by many scholars, and `Uthmân (may Allah be pleased with him) passed judgments according to it. In this regard, some scholars say, *“If the defendant refuses to swear, then the judge is to ask the plaintiff to swear, especially if his claim is substantiated.”*

With regard to the issue of taking an oath, **Imâm Ibnul-Qayyim** (may Allah have mercy on him) said:

“The Sharî`ah ordains that the oath is to be taken by the one whose proofs outweigh those of the other litigant. Accordingly, the one whose side is substantiated more than the other is the one who is to take an oath. This is the opinion adopted by the majority of scholars, such as the scholars of Medina and the scholars of Hadîth like Ahmad, Ash-Shâfi`i, Mâlik and others.”

He added:

“...Moreover, this opinion has been applied by the Prophet’s Companions, and viewed sound by Imâm Ahmad and other scholars.”

He also said:

*"This opinion is not difficult to be applied; the oath is to be taken by the plaintiff and he will take his right. Furthermore, Shaykhul-Islām Ibn Taymiyah adopted that opinion."*¹

In addition to this, Abū `Ubayd said:

"Asking the plaintiff to take the oath (in case the defendant refuses to take the oath) has its roots in both the Noble Qur`ān and the Sunnah (Prophetic Tradition)."

Shaykhul-Islām Ibn Taymiyah (may Allah have mercy on him) said:

*"What has been reported from the Prophet's Companions concerning the defendant's refusal to take an oath and that the judge in this case asks the plaintiff to swear, does not contradict each other. Rather, each of the two matters has its own position. To illustrate more, in case the plaintiff knows the truth of his claim and the defendant refuses to swear, the plaintiff may swear that his claim is true and thus becomes entitled to what he claims. But if the plaintiff refuses to take the oath, then the judge is not to judge in his favor on basis of the abstention of the defendant to take the oath. This is the same as the case of `Uthmān Ibn `Affān (may Allah be pleased with him)."*⁵

Commenting on what Ibn Taymiyah has said, **Ibnul-Qayyim** says:

*"The opinion adopted by our Sheikh Ibn Taymiyah is the decisive one concerning the defendant's refusal to take an oath and permitting the plaintiff to do so."*⁶

He went on saying:

*"If the truth of the claim is dependent solely on the defendant and he refuses to take an oath, then the judge is to judge against him. Whereas, if the truth is solely dependent on the plaintiff, then the judge is to ask him to swear, but if he refuses, then the judge is not to decide in his favor on the basis of the defendant's refusal (to take the oath). This is the best review concerning the rulings on both the defendant's refusal to take an oath and referring the oath to the plaintiff."*⁷

However, if the defendant takes an oath denying the claim of the plaintiff and thus the judge sets him free, as mentioned above, and after that the plaintiff comes again with proof, then it is one of two cases. The first case, if the plaintiff has previously said that there is no proof, then the judge is not to

listen to his proof, as the plaintiff has denied it before. The second case, if the plaintiff has not denied its existence, then the judge is to listen to this proof and judge accordingly.

In this connection, it is worth mentioning that the oath taken by the denier (the defendant) is not considered a means of eliminating the truth of the claim, as the claim is not invalidated through taking oaths. Rather, the oath taken by the denier is a means of ending the dispute, not eliminating the right of the plaintiff. Likewise, if the plaintiff states that he has no proof and after that he finds one, then the judge should consider it and judge accordingly. This is because the plaintiff has not denied it in the first place. And Allah, Exalted be He, knows best.

Endnotes

1 See: "*Zâd Al-Ma'âd*" (4/96).

2 Muslim (356) [1/340]. See also Abû Dâwûd (3245) [3/368] and At-Tirmidhî (1344) [3/625].

3 See the footnote in *Ar-Rawâd Al-Murbi'* [7/543].

4 See "*Zâd Al-Ma'âd*" (4/96).

5 See the footnote in *Ar-Rawâd Al-Murbi'* (7/545).

6 See "*At-Turuq Al-Hukmiyyah*" (pp. 122-135).

7 See the footnote in *Ar-Rawâd Al-Murbi'* [7/545].

Valid Court Claim: Conditions

The claim is not valid unless it is presented in detail. So, if the claim is about a debt owed from a dead person, for example, then the death of the indebted, the type of the debt and its amount as well as all the other related information that may clarify the claim must be mentioned. This is due to the fact that the decision is dependent on such details. That is why Allah's Messenger (PBUH) said:

*"...I give my judgment according to what I hear."*¹

Hereby, the *hadith* refers to the obligation of clarifying the claim so as to clarify to the judge the reasons and facts needed for the decision.

It is not valid also to litigate over something unknown or unspecified; the object of claim should be known so as to be attained and obligated when the validity of the claim is proven. However, there are some exceptions to this ruling, as it is valid to do so in some cases, such as claiming a bequest in which a person bequeaths some of his wealth or one of his slaves as a dowry or suchlike. In

such a case, the claim is valid, even if the thing litigated over is unknown or unspecified.

Moreover, the claim must be declared. So, it is not enough for the plaintiff to say, "He owes me such and such," but he (the plaintiff) must declare that he claims such a thing. Besides, the thing litigated over must be due, as the claim is not valid for a debt on credit. This is because the defendant is not to be demanded for the debt before its due time and, also, he is not to be imprisoned for it.

Furthermore, the claim must not involve what disproves it. For example, it is invalid to claim that someone killed somebody or stole something twenty years ago while the defendant's age is less than twenty, as the claim would be illogical.

If it is litigated over a selling or renting contract, the claim, in order to be valid, must involve the conditions of the contract. This is due to the fact that some people may dispute over them. Besides, that contract may be invalid from the judge's point of view.

In addition, if the claim relates to inheritance, the reason entitling it must be clarified. That is because the reasons obligating inheritance differ, so the reason on which the claim is established must be defined.

Further, the valid claim must define the object litigated over; whether it is present in the court or the country, so as to eliminate obscurity. However, if the claimed object is not present, then it must be described with a description like that connected with buying, namely, to state all the necessary descriptions of the object.

In addition to this, justice (truthfulness) is considered a prerequisite for the validity of the evidence. This is due to the noble verse in which Allah, Exalted be He, says:

"...And bring to witness two just men from among you..."

(Qur'ān: At-Talâq: 2)

Allah also says:

"...from those whom you accept as witnesses..."

(Qur'ān: Al-Baqarah: 282)

And:

"O you who have believed, if there comes to you a disobedient one with information, investigate..." (Qur'ān: Al-Hujurat: 6)

In this regard, *faqih*s (may Allah have mercy on them) differ as to whether the witness must be an outwardly and inwardly just (true) person or being an outward just person is enough. There are two different opinions, the prepon-

derant of which deems an outwardly just person a valid witness. This is based on the fact that the Prophet (PBUH) accepted the testimony of a Bedouin (i.e., the Prophet (PBUH) considered his outward state). Besides, 'Umar (may Allah be pleased with him) said, "*Muslims are just.*"²

In this respect, the judge is to judge depending on the just evidence unless he knows otherwise. That is, if he knows that such evidence is contradicted (by others), then it is not permissible for him to decide according to it.

As for the witnesses whose justice (i.e., truthfulness) is not known to the judge, he is to inquire about them. He may ask persons who are well acquainted with those witnesses such as friends, neighbors or persons dealing with them financially. In this regard, 'Umar (may Allah be pleased with him) said to a man who recommended another man before him:

*"Are you a neighbor of his?" The man replied in the negative. Then, 'Umar asked him again, "Have you ever accompanied him in traveling where the true nature of men appears?" The man said, "No." 'Umar asked him for the third time, "Have you ever dealt with him financially?" The man replied in the negative. Upon this, 'Umar said, "Then, you do not know him."*³

If there is contradiction between the proofs invalidating and those validating the witnesses, namely, there are signs indicating their non-uprightness for testimony as well as others indicating their uprightness, the judge must give precedence to the issue of their non-uprightness (i.e., not to accept their testimony). This is supported by the fact that the one refuting the uprightness of a witness knows something unperceived by the one who recommends him. Besides, such a person tells about something unknown by others while the one viewing the uprightness of the witness for testimony tells only about something outward. Moreover, the one refuting the uprightness of a witness is proving something (to substantiate his view) while the one who views otherwise tries to deny something already proved. It is stated as a general principle that what is proved is to be given precedence to what is denied. In this connection, when the defendant acknowledges the justice and truthfulness of the evidence, it is considered just and true accordingly. That is because seeking the truthfulness of the evidence is a means of ensuring his right. Moreover, his acknowledgement of the truthfulness of the evidence is regarded as an acknowledgment of the right he owes to the other litigant (the plaintiff). So, the defendant is to be judged in consideration of his acknowledgment of the truthfulness of the evidence.

As for the judge, if he knows the truthfulness of the evidence, then he must decide the case according to it and he does not need recommendation. Otherwise, if the judge knows the untruthfulness of the evidence, he must not judge according to it. Moreover, if he has some doubt with regard to the witnesses, he must ask them how they bore such a witness and where they bore it. **Ibnul-Qayyim** (may Allah have mercy on him) said:

*"...The judge must do this (i.e., to exclude doubted evidence and judge according to the proven ones). Thus, if he deviates from doing this, then he is regarded as committing a sin and turning away from the right judgment. In this regard, it happened that two witnesses testified before 'Alī Ibn Abū Tālib (may Allah be pleased with him) that a man had stolen something, but 'Alī doubted their testimony. Therefore, he ordered them to cut off the man's hand themselves (to test their truthfulness), so they fled."*⁴

If a litigant claims the invalidation of a witness, he must introduce proof. This is due to the *ḥadīth* in which the Prophet (PBUH) said:

*"Proof lies on the plaintiff."*⁵

In such a case, such a litigant is to be granted a respite of three days to present his proofs, but if he brings none, then he is judged in consideration with the evidence. That is because his inability to bring a proof that the witnesses are not upright during the specified period is considered a proof of the voidance of what he claims.

If the judge does not know the actual state of the witnesses, he is to ask the plaintiff to prove their uprightness, so as to judge according to what they testify. In order to accept the uprightness of the witness, there should be two persons testifying before the judge that he is just and truthful. However, it is viewed sufficient by some scholars that one person testifies that the witness is upright.

It is permissible to judge an absent person provided that he is far-off for a distance that requires shortening prayers as long as the claim is proved against him. This is due to the *ḥadīth* in which Hind Bint 'Utbah complained to the Prophet (PBUH) saying:

"O Messenger of Allah! Abū Sufyân (her husband) is a stingy man and he does not give me what suffices my children and me." The Messenger said to her, "Take what is sufficient for you and your children, and the amount should be just and reasonable."

(Related by Al-Bukhārī and Muslim)⁶

Hereby, the *ḥadīth* indicates the permissibility of judging against the absent person. Nevertheless, when the absent person returns, he may present his argument before the judge as the reason obstructing the case is eliminated by his return. That is because proving the truthfulness of something does not invalidate the claim against it or neglect it.

When deciding against an absent person, he must be out of the area falling under the authority of the judge. However, if the absent person is in that area and there is no judge therein, the judge is to write to a person fitting to decide among the litigants to judge between them. However, if it is unattainable to do so, then the judge is to write to whoever is fit to effect conciliation between the litigants. But, if it is unattainable to do so, then the judge is to ask the plaintiff to bring a proof substantiating his claim. Therefore, if the plaintiff substantiated his claim with proofs, then the judge is to bring the other litigant even if he is far-off.

In relation to this, Imām Aḥmad mentioned that the opinion adopted by the scholars of Medina stated that they decided cases against the absent persons. He commented on this saying that this is a good opinion. Moreover, Az-Zarkashī said, "Imām Aḥmad did not deny the view of hearing the claim or the evidence (in order to decide against an absent person)." Besides, Imām Aḥmad cited the opinion of the people of Medina and Iraq as if it was uncontroversial.

In addition to this, it is permissible to listen to the claim against someone who is not legally accountable and then decide according to the proofs. This is supported by the aforementioned *ḥadīth* of Hind Bint `Utbaḥ. If such a person becomes legally accountable after passing a judgment against him, then he has the right to present whatever proofs to substantiate his defense⁷.

Endnotes

1 Al-Bukhārī (6967) [12/424] and Muslim (4448) [6/231].

2 Al-Bayhaqī (20537) [10/252].

3 See the footnote in *Ar-Rawḍ Al-Murbi`* [7/551].

4 See the footnote in *Ar-Rawḍ Al-Murbi`* [7/552].

5 At-Tirmidhī (1345) [3/626].

6 Al-Bukhārī (5364) [9/628] and Muslim (4452) [6/234].

7 See the footnote in *Ar-Rawḍ Al-Murbi`* [7/556].

Dividing Shares among Partners

The proofs of dividing shares among partners are derived from the Noble Qur'an, the *Sunnah* (Prophetic Tradition) and the consensus of Muslim scholars. Allah, Exalted be He, says:

“And inform them that the water is shared between them...”

(Qur'an: Al-Qamar: 28)

He also says:

“And when [other] relatives and orphans and the needy are present at the [time of] division...” (Qur'an: An-Nisâ': 8)

Moreover, the Prophet (PBUH) says:

“The preemption is applied in every joint undivided property.”¹

Moreover, he (PBUH) himself used to divide the spoils of war among Muslims². In addition, many scholars maintain that there is consensus among scholars on the issue of division. This is due to the fact that necessity calls for it as there is no other way to give rights of the joint property to those entitled to them except through division.

Division Is of Two Types:

Consensual Division and Compulsory Division

First Type: Consensual Division

It refers to the division that must be implemented with the mutual consent of all partners and it is impermissible to implement it without their mutual consent. For more illustration, it is the kind of division that cannot be implemented without causing harm to one or some of the partners, or that cannot be implemented except when one of the partners gives something in compensation to the other. Such a type may be witnessed in properties such as small houses, shops or lands consisting of different spots distinguished by buildings, trees or the like, or when a certain spot represents a kind of benefit for one of the partners excluding the others. Therefore, it is impermissible to divide such a type of joint properties except with the mutual consent of all the partners. This is due to the *hadith* in which the Prophet (PBUH) says:

"One should not harm others nor should one seek benefit for himself by causing harm to others."

(Related by Imām Ahmad and other compilers of *Hadith*)

The general meaning of the *hadith* indicates that it is impermissible to divide something that may cause harm to any of the partners except with the partners' mutual consent. Such a division takes the same ruling applying to sale transactions. That is, the sold item may be returned if defective. Besides, it involves the option to conclude the contract or cancel it in the session of selling, making conditions, and suchlike matters. Nevertheless, no partner is to be forced to accept such a division. But if one of the partners demands selling the joint item, the one who refuses division is to be obliged to submit, and if he insists on his stand, then the judge may sell the item on their behalf and divide the price between them, each according to his share.

The sort of harm that forbids implementing such a type of division is the undervaluation of the property when divided, regardless of whether the partners benefit from the division or not. That is, it is not included in such harm that the partners do not benefit from the joint property if divided.

Second Type: Compulsory Division

This is when there is no harm caused in dividing a property, and there is no compensation required. It is called so because the judge forces the one who refuses division to accept and implement it when its conditions are fulfilled.

Such a type of division may be concluded in properties such as a village, a garden, big houses and shops, spacious lands, as well as measurable and weighable items from the same kind.

In order to make it permissible to oblige the one abstaining from division to accept it, three conditions must be fulfilled:

- 1- The judge must make sure of the partners' ownership of the article.
- 2- He must make sure that there will be no harm resulting from the division.
- 3- He must make sure of the possibility of dividing the shares of the joint property in a way allowing the shares to be changed without giving compensation to any of the partners in return for this change.

Thus, if one of the partners demands division, after fulfilling these conditions, the other partner is to be forced to implement it even if he refuses to do so. This is based on the fact that division eliminates the harm caused by the existence of partnership, and enables each partner to dispose freely of his own share and benefit from it through planting, building and suchlike matters that are not attainable with the existence of partnership.

With regard to the above issue, if one of the partners is not legally accountable, then his guardian may implement the division on his behalf. Moreover, if one of the partners is absent (for any reason), then the judge may implement the division on his behalf upon the demand of the other partner.

In fact, that type of division is a means of distinguishing the share of one partner from that of the other. Moreover, it does not take the same ruling applied to sale transactions, as each has its own specified rulings.

It is permissible for the partners to divide the joint property by themselves, assign someone to divide it among them, or refer to the judge to assign someone to do so.

As for adjusting the division of the shares, it may be through dividing the joint property into parts, if the property is weighable or measurable and of the same kind. Moreover, just division of shares may be through considering the value of the shares in case the property is of different parts; each having a value different from that of the others. In such a case, the share consisting of parts of less value must be more than the share consisting of parts of higher value, so as to make a kind of balance between them. However, if implementing a just division is not attainable, neither through

dividing the property nor considering the value, then partners may resort to compensation, namely, the one who takes a share of value more than the share of the other partner has to pay him an amount of money equal to the difference in value.

When the partners divide the property among themselves or draw lots for the shares, the division becomes binding. That is because the one who divides the property among them is like the judge and the act of drawing lots on the shares is like the decision made by the judge, so the division becomes binding. It is permissible to draw lots on the shares in any form. However, the most preferable way of drawing lots is the one in which the names of the partners are written on pieces of paper and then they are rolled up and mixed together. Then, the partners may invite a person, who was not present (so he did not see such pieces of paper) and ask him to pick those pieces and put them on the shares. So, whoever finds his name on a certain share, it belongs to him.

Besides, if each partner gives the other the right to choose between shares, the division becomes binding, by means of their consent and by the ending of the session of division without any objection.

Moreover, if one partner claims that there is a mistake in the division they have implemented among themselves, though there are witnesses on their mutual consent, then such a claim is not considered. This is due to the fact that he has already consented to the division according to the way it has been implemented, so he is to accept the increase of the share of the other partner.

In addition, whoever claims that there is a mistake in the division implemented by the person assigned by the judge or the person they have assigned, such a claim is considered only with a proof; otherwise, the other partner is to take an oath denying that claim. The original ruling states that the claim is not true until proven otherwise. Thus, if such a person presents proof substantiating his claim, then it is considered and the division is to be invalidated. This is based on the fact that his silence (i.e., accepting the division) goes back to his view concerning the apparent justice of the person who has implemented the division. So, if the person submits a proof substantiating his claim of the injustice made to his right, he may claim his right back.

Whereas, if each of the two partners claims his right to something in the property, they may resort to taking oaths and the division is to be invalidated. That is because the thing they both claim has not gone to someone other than them, and none of them has a proof to outweigh the claim of the other.

As for the defects that appear in the share of one partner, he has the right to choose between revoking the division or keeping the defective share and taking compensation. That is based on the fact that the defect in the share of any of the partners is regarded as giving him less than his entitled share. Thus, such a person is to be given the choice either to revoke the division or keep it and get compensation, the same as applied in sale transactions. And Allah, Exalted be He, knows best.

Endnotes

- 1 Muslim (4105) [6/47]. See also Al-Bukhâri (2257) [4/550] and Muslim (4104) [6/46].
- 2 Muslim (4595) [6/337].

CHAPTER

6

Claim and Evidence

The term “claim” refers to the act of requesting or demanding something. Allah, Exalted be He, says:

“...and for them is whatever they request [or wish].”

(Qur’ân: Yâsîn: 57)

Jurisprudentially, the term “claim” refers to the act when a person demands something in the possession of another person or in his liability. As for the “evidence,” it refers to any sign indicating one’s right, such as witnesses and oaths. **Imâm Ibnul-Qayyim** (may Allah have mercy on him) said:

“In the Shari’ah, clear evidence refers to whatever clarifies and manifests any right. Allah, Exalted and Glorified be He, has made rights clear with signs and indications signifying and leading to them. So, whoever ignores those signs and indications in general wastes a lot of rulings as well as rights.”¹

The difference between the plaintiff and the defendant is that the former is the one who is released when silent (does not claim) while the latter is the one who is not released when silent, as he is claimed against.

In order to decide on the validity of the claim or the denial (defense), each must be from a person who has the freedom of action i.e., he must be a free, major, and legally accountable person.

If two persons claim for a particular property that is already in the possession of one of the litigants, then it belongs to the person who has it, provided that he swears an oath that it is his. In this regard, the litigant who is in full possession of the property is called the "ingoing" while the one who does not possess it is called the "outgoing."

However, if each of the two litigants submits proof that the property is his, the property is to be given to the "outgoing party (i.e., the one who does not possess it)." This is based on the *hadith* narrated by Ibn 'Abbās (may Allah be pleased with him), as a *marfū'* *hadith*. In this *hadith*, the Prophet (PBUH) said:

"If people were to be given what they claim (without proving their claim), then some people would claim the life and property of other people. The oath is to be taken by the defendant (in the absence of any proof against him)."

(Related by Imām Aḥmad and Imām Muslim)²

Moreover, the Prophet (PBUH) said:

"Proof lies on the plaintiff and the oath is to be sworn by the defendant."

(Related by At-Tirmidhī)³

Thus, the two *hadiths* indicate that the plaintiff is the one who must bring proof substantiating his claim; if he brings it, the decision will be in his favor. They also indicate that the oath is to be taken by the person who denies the claim (the defendant) when the plaintiff does not have proofs substantiating his claim. In this case, the majority of scholars say that the property belongs to the one who already is in full possession of it; the "ingoing party." Those scholars are of the view that the *hadith* concerns the case in which the one who is in possession of the property does not have a proof; thus, his possession of this property next to the proof will be stronger. It is worth mentioning that the opinion of the majority of scholars has more right to be followed.

However, when the property is in the possession of neither, then each is to swear an oath that it does not belong to the other, and half the property is to be equally divided between them. This is because they are equal in their claims and none of them has proofs to outweigh those of the other. However, if there is an apparent sign indicating that the property belongs to one of them, it is to be considered in the decision. For example, if two spouses litigate over the clothes and suchlike of the house belongings, then whatever fits a man is to be given to the husband and whatever fits a woman is to be given to the wife, and whatever fits both is to be given to both.

Endnotes

1 See the footnote in "*Ar-Rawḍ Al-Murbi*" [7/576]

2 Muslim (4445) [6/229] and Al-Bukhârî (4552) [8/268].

3 At-Tirmidhî (1345) [3/626].

Testimony

Testimony, in Arabic, refers to seeing, since the witness informs about what he/she has already seen and known. It is a controversial matter among scholars whether the witness should begin his/her testimony with saying, "I testify..." or "I have testified..." or not. In this regard, there are two views; the first is the well-known view maintained by the Hanbali scholars, namely, that it is obligatory to say such words when testifying. The second is one of the views reported to be maintained by Imâm Ahmad and a group of scholars; they maintain that it is not obligatory to begin one's testimony with "I testify..." or the like. This is the same opinion adopted by Imâm Taqiyyud-Dîn Ibn Taymiyah, his disciple Ibnul-Qayyim, and other Muslim scholars.

Shaykhul-Islâm Ibn Taymiyah said:

"It is not a prerequisite of testimony to say 'I testify...'. This is the same opinion adopted by Imâm Ahmad and others, and it has not come to my knowledge that there is a contrary legal text in this concern. Furthermore,

*none of the Companions of the Prophet (PBUH) or of the Companions' Successors has stipulated saying such words when testifying."*¹

Ibnul-Qayyim says:

*"According to the sound view of the majority of Muslim scholars in this regard, informing about what one has witnessed is in fact a testimony. That is to say, it is not a condition for the validity of the testimony to say 'I testify...' Rather, whenever the witness says that he has seen such and such a thing or that he has heard such and such a thing and the like, this is regarded as a valid testimony. In addition, there is no text either in the Glorious Qur'ān or in the Sunnah stipulating that the witness is to say 'I testify' when bearing a testimony. Furthermore, none of the Companions of the Prophet (PBUH) is reported to have stipulated saying so when testifying, nor can it be concluded by means of analogical deduction or inference. Further, the numerous proofs of the Glorious Qur'ān, the Sunnah, the statements of the Companions and the Arabic language assert that it is not required to say such words when testifying."*²

It is a collective duty to undertake testimony in matters other than the limits set by Allah, Exalted be He. That is to say, if someone assumes the responsibility of testifying, it becomes sufficient and the rest of the Muslims are not to be accountable, since the purpose of testimony has been accomplished. If there is only one person to do so, then it is personally obligatory upon him, in consideration with what Allah, Exalted be He, says:

"...And let not the witnesses refuse when they are called upon..."

(Qur'ān: Al-Baqarah: 282)

That is, if witnesses are asked to assume the responsibility of testifying to what they have witnessed, they are to offer the testimony. The general meaning of the verse implies both assuming the responsibility of testifying and offering the testimony itself. According to Ibn 'Abbās and others, the above-mentioned verse means assuming the responsibility of testifying and declaring testimony in front of a judge (or a court, a deliberative body, or those in authority). Since necessity requires legal testimony for confirming the rights of people and the concluded contracts, testifying becomes an obligation like enjoining what is right and forbidding what is wrong.

As for declaring testimony, it is an individual duty on whomever undertakes it, and is asked to testify, in consideration of what Allah, Exalted be He, says:

“...And do not conceal testimony, for whoever conceals it – his heart is indeed sinful...” (Qur’ân: Al-Baqarah: 283)

That is, when one is asked to testify of what one has witnessed, one is not to conceal testimony nor overstate in declaring it, since Allah says, “...for whoever conceals it – his heart is indeed sinful...” That is to say, the heart of the one concealing testimony is wicked; a severe divine threat of turning one’s heart into a wicked disfigured one. Allah mentions the heart in particular since it is the position acquainted with what one has witnessed. The above verse signifies that testifying is an individual duty upon whoever witnesses an event whenever he/she is asked to testify.

The great scholar **Ibnul-Qayyim** (may Allah have mercy on him) says, “Undertaking and declaring testimony are an obligation the nonperformance of which is a sin.” He adds:

*“...By means of analogical deduction of the view maintained by the Hanbalî scholars in this concern, if the witness conceals his testimony (i.e., refuses to undertake or declare testimony) concerning any right, he is to redress this right in the form of a fine. This is because he has been able to give the right to whom it is due (by declaring testimony) but refrained. It is as if one has had the opportunity to save a person from a dangerous situation, yet one has not done so...”*³

If there is no harm on the side of the witness (because of declaring testimony), it then becomes obligatory upon him to testify. However, if testimony will cause harm to him personally or to his sense of honor, property or family, in this case, it is not obligatory upon him. This is according to what Allah, Exalted be He, says:

“...Let no scribe be harmed or any witness...”

(Qur’ân: Al-Baqarah: 282)

This also is demonstrated in the *hadîth* in which the Prophet (PBUH) says:

“One should not harm others nor should he seek benefit for himself by causing harm to others.”

And Allah, Exalted be He, knows best.

The witness must be certain about the matter concerning which he is to testify. It is prohibited for the witness to testify to having witnessed anything except what he/she knows with certainty (by seeing or hearing for example), in consideration to what Allah, Exalted be He, says:

"And do not pursue that of which you have no knowledge..."

(Qur'ān: Al-Isrā': 36)

And His statement:

"...but only those who testify to the truth [can benefit], and they know."

(Qur'ān: Az-Zukhruf: 36)

That is, the witness must be wholly certain regarding what he/she is to testify. In this connection, Ibn 'Abbās (may Allah be pleased with him) narrated:

"When the Prophet (PBUH) was asked about testimony, he said to the inquirer, 'Do you see the sun?' The man replied in the affirmative. He (PBUH) then said, 'So testify like this or leave it (i.e., be wholly certain regarding what you are testifying the same as you are certain of seeing the sun, or do not testify).'"

This narration is related by Al-Khallāl in his book entitled *Al-Jāmi'* (The Collection)⁴. Al-Bayhaqī says, "This narration is not narrated by a reliable chain of transmitters." However, Al-Hāfiz Ibn Hajar says commenting on this *hadith*, "...But the meaning of the *hadith* stated in this narration is correct."

To illustrate, knowledge about the matter, regarding which one is to testify, should be based either upon hearing it or upon seeing it. Thereby, one is not to testify to having witnessed anything except what one knows with certainty by way of seeing or hearing, or through hearing about an issue which is a public event discussed among people and which is difficult to know except in this way, as in cases like relationships by marriage and death (of a person). However, one is not to offer testimony depending upon hearing about an issue discussed among people except when it comes to one's knowledge through a number of people enough to prove the certainty of such matter.

There are six conditions to be fulfilled by the one who is to deliver testimony:

- 1- Reaching puberty:** Testimony is not acceptable from children except when it concerns matters relating to them. In this concern, the great scholar Ibnul-Qayyim says:

"The Companions of the Prophet (PBUH) and the faqīhs of Medina used to accept the testimony of children when it is related to quarrels occurring amongst them. This is because men are not typically present at such situations. If the testimony of those children were not to be

acceptable in such situations, people's rights would be lost, unfulfilled and thus disregarded, especially when their testimony is more probable to be truthful or reliably truthful. This is as in cases such as when they come directly, without going to their homes, to testify to an incident they have witnessed, agree on the same information and are separated at the time of delivering the testimony. When their testimony is identical in such a case, their testimony is considered more reliable than that of two men. This is a view that cannot be denied or refused..."⁵

- 2- **Sanity:** The testimony of the insane or the foolish person is not acceptable. As for the one who sometimes loses consciousness, his testimony is acceptable when he regains consciousness and assumes the responsibility of testifying. This is because in his consciousness, it is a testimony from a sane person who resembles a person who has not lost his mind.
- 3- **The Ability to Speak:** The testimony of the mute is not acceptable even if his signs and gestures are understandable, since certainty must be fulfilled in testimony. The signs of the mute, in spite of that, are effective and sufficient in rulings pertaining to his affairs such as marriage and divorce, for necessity. However, if such a person writes his testimony, it is then acceptable, for writing is suggestive of speech (i.e., what he cannot say can be written).
- 4- **Being a Muslim:** A witness must be a Muslim according to the verse in which Allah, Exalted be He, says:

"...And bring to witness two just men from among you..."

(Qur'an: At-Talâq: 2)

Thus, the testimony of a disbeliever is unacceptable except when being a witness to a will at the time of bequest when one is traveling and is about to die. Only in this case the testimony of two disbelievers are acceptable when there are no Muslims, in consideration to what Allah, Exalted be He, says:

"O you who have believed, testimony [should be taken] among you when death approaches one of you at the time of bequest - [that of] two just men from among you or two others from outside if you are traveling through the land and the disaster of death should strike you..." (Qur'an: Al-Mâ'idah: 106)

The testimony of two disbelievers is legalized for necessity only in this case.

- 5- **Having a Good Memory:** The testimony of a foolish or a forgetful person is not acceptable, since it is known that such a person makes many mistakes and usually forgets, and because he is unreliable in telling the truth. Besides, whatever he says is thought to be incorrect since it may be one of his mistakes. Yet, testimony is acceptable from the person who makes fewer mistakes and does not usually forget, since none is free from both defects.
- 6- **Uprightness:** Jurisprudentially speaking, the term "uprightness" refers to one's righteousness and moderateness whatever one says or does. What proves that uprightness is one of the conditions of testimony is what Allah, Exalted be He, says in the Glorious Qur'ān:

"...from those whom you accept as witnesses..."

(Qur'ān: Al-Baqarah: 282)

And:

"...And bring to witness two just men from among you..."

(Qur'ān: At-Talâq: 2)

The majority of Muslim scholars maintain that uprightness is an additional characteristic to being a Muslim. A just and upright Muslim is the one who abides by the religious obligations and acts of worship, observes the desirable deeds, and keeps away from committing the prohibited and the detestable ones. In this regard, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says, "*The faqîhs uniformly agree that the testimony of the one known to be untruthful is rejected.*"⁶ **Ibn Taymiyah** also adds:

*"...The concept of uprightness is valued according to each age, place and people. Thus, a witness must be an upright person according to his own people, though the uprightness of the same person may be viewed differently by other people (though still considered uprightness). This is how judgments can be conducted among people; otherwise, if testimony is restricted to those witnesses who establish the religious obligations and abandon the prohibited matters, as has been done by the Prophet's Companions, then all the testimonies or most of them would be invalid."*⁷

Ibn Taymiyah goes on saying:

*"...It is advisable to accept the testimony of those known to be outwardly truthful in cases of necessity even if they do not observe the limits set by Allah. Thus, their testimony may be accepted in cases related to imprisonment, incidents among Bedouins or in villages where there are no upright witnesses."*⁸

Faqihs (may Allah have mercy on them) maintain that one's uprightness is known by two things, the first of which is performing the religious obligations: the Five Obligatory Prayers and *Al-Jumu'ah* (Friday) Prayer along with their stressed supererogatory practices. Thereupon, the testimony of the one regularly neglecting these prayers and the *Witr* Prayer⁹ is unacceptable. Concerning the one who persists in abandoning the supererogatory acts of prayer, **Imâm Ahmad** (may Allah have mercy on him) says, *"...Such a person is a wicked one, for his persistence makes him a non-observant of the Sunnah (out of reluctance), and so he is always blamable."*¹⁰ Uprightness is also considered through avoiding prohibited acts, the same as it is considered through observing religious obligations. Thus, such an upright person should not commit the major sins nor persist in committing a minor one.

Furthermore, Allah has forbidden Muslims from accepting the testimony of the slanderer (the one who accuses a chaste person of committing adultery or fornication without producing four witnesses). Likewise, by means of analogical deduction, every one who has committed a major sin is to be treated the same as the slanderer. Jurisprudentially, a major sin is the crime which deserves executing a prescribed punishment in this world or is severely threatened against (in the Qur'an or the *Sunnah*) with a punishment in the Hereafter. These sins are like taking usury, delivering a false testimony, *zinâ* (adultery or fornication), robbery, drinking intoxicants and other sins. Thereby, the testimony of the defiantly disobedient person is unacceptable.

The second sign by which one's uprightness is known is respectability, namely observing the good deeds and having the traits that beautify and adorn one's character and conduct, such as generosity, good manners, and neighborliness. It also involves avoiding whatever may dishonor oneself of the ignominious and ignoble things, such as singing and comic acting. In this concern, **Shaykhul-Islâm Ibn Taymiyah** says, *"...It is forbidden to imitate people sarcastically, and whoever does so, or*

orders someone to do so, is to undergo discretionary punishment, since it is a harmful act."¹¹ By means of analogical deduction, this applies to the TV series presented nowadays. How strange is it to consider singing nowadays as an art whose performers are supported and praised! And there is neither might nor power except in Allah!

Whenever these afore-said impediments preventing the acceptability of the testimony cease to exist, the testimony becomes acceptable. Hence, when the child reaches puberty, the insane person regains sanity, the disbeliever embraces Islam and the defiantly disobedient person repents, the testimony of any of them is to be accepted. This is because there are no impediments as the conditions of the testimony are fulfilled. And Allah, Exalted be He, knows best.

The testimony of the following is (legally) unacceptable:

- A person testifying in favor of his parents and forefathers and on up in ascending lineage or in favor of his offspring and on down in descending lineage. This is because one's testimony then is doubtful due to being a relative of the litigant one testifies for. However, testimony is acceptable from a brother for his brother and from a friend for his friend according to the general meaning of the verses related to such an issue and since testimony then is not doubtful.
- The testimony of a spouse for the other is unacceptable, for each of them is already obtaining benefit from the other's property, and also because of the close relationship combining both; all this makes their testimony in favor of each other doubtful. However, testimony at the same time is acceptable against one's spouse, in consideration to what Allah, Exalted be He, says,

"...be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives..."

(Qur'an: An-Nisā': 135)

That is to say, if one testifies against one's parent, child, wife or the latter testifies against her husband, the testimony in this case is acceptable.

- The testimony of a person that may get him some benefit or spare him some harm is unacceptable.
- The testimony of a person against his enemy is unacceptable. In this

regard, the great scholar **Ibnul-Qayyim** says:

*"The Shari'ah has decreed that testimony is unacceptable when born by someone against his/her enemy, lest testimony be used as a pretext to gain benefit or avenge oneself from one's enemy through perjury..."*¹²

Animosity which renders one's testimony unacceptable is the case of being happy when another person is in adversity or sorrow, or unhappy when he is in prosperity or joy. It is worth mentioning that the animosity meant here is the worldly one, unlike animosity in religion; thereby the testimony of a believer against a disbeliever is acceptable. Likewise, the testimony of one following the *Sunnah* against an innovator in religion is acceptable, since Islam enjoins Muslims not to commit whatever is prohibited.

- In addition, the testimony of a person known to be a bigot and of extreme zealotry for his clan is not to be accepted, since his testimony will then be doubtful.

The number of witnesses differs according to the case or issue testified in

If testimony concerns a case of *zinâ* (adultery or fornication) or sodomy, it is not accepted unless there are four male witnesses, as Allah, Exalted be He, says:

"... Why did they [who slandered] not produce for it four witnesses?..."
(Qur'ân: An-Nûr: 13)

Since Muslims are ordered to conceal the faults of their Muslim brothers and so the faults of those committing any of those sins, the number of witnesses is four males.

When testimony concerns proving the insolvency of a person known to be wealthy but claiming the opposite, then it requires three male witnesses, according to the *hadith* related by Imâm Muslim in which the Prophet (PBUH) says:

*"...until three wise persons from amongst his people witness that so and so (i.e. that person) has been smitten by poverty..."*¹³

If testimony concerns the prescribed punishments for crimes other than *zinâ*, such as the prescribed punishment for slander, drinking intoxicants, robbery and banditry, or if it concerns *qisâs* (legal retribution), then it is valid to accept the testimony of only two male witnesses. Also, in such cases, women's testimony is unacceptable.

If testimony concerns matters other than the prescribed punishments or financial affairs, which men often see or witness, such as marriage, divorce or remarriage to one's revocably divorced wife, then two male witnesses may testify. Shaykhul-Islām Ibn Taymiyah and his disciple Ibnul-Qayyim (may Allah have mercy on them both) maintain that if testimony concerns remarriage with one's revocably divorced wife, then women's testimony is acceptable, since it is easier for them to be present at that time than at the time of writing the documents (i.e., marriage or divorce contracts).

If testimony concerns properties and transactions related thereof, such as sales, renting and the like, then two men or a man and two women are to testify, for Allah, Exalted be He, says:

"...And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women..."

(Qur'ān: Al-Baqarah: 282)

The context of this verse signifies that testimony here concerns financial affairs. The great Muslim scholar **Ibnul-Qayyim** (may Allah have mercy on him) says:

*"Muslim scholars uniformly agree that if testimony concerns financial affairs, then a man and two women are sufficient as witnesses. The same applies to transactions related to financial affairs, such as sales, sales on credit, the choice to conclude a sale or to cancel it, mortgages, granting properties through wills, gifts or endowments. This also applies to the cases of guaranteeing a property or spoiling it, the claim of slavery of one of unknown lineage, defining the amount of dowry or the recompense of Khul' (a wife's release for payment)."*¹⁴

The wisdom behind accepting the testimony of women in financial affairs – Allah, Exalted be He, knows best – is that in such transactions both men and women often witness them; thereupon, the *Shari'ah* allows men and women to testify in such affairs.

Allah, Exalted be He, has stated that a man's share equals that of two women in many rulings, such as testimony, inheritance, *diyah* (blood money), slaughtering for a newborn child, and emancipation. Allah, Exalted be He, has demonstrated the wisdom behind this in His statement in the Glorious Qur'ān:

"...so that if one of them [i.e., the women] errs, then the other can remind her..."

(Qur'ān: Al-Baqarah: 282)

That is, if either of the two female witnesses forgets (any of the details of what she has witnessed), the other woman may remind her. This is because

women, by nature, tend to forget, which renders the testimony of two women equal to that of one man. Yet, if the testimony of a woman were to be wholly unacceptable, this would lead to wasting many rights and rendering them ineffective. That is why a woman's testimony is added to that of another woman to remind each other in case any of them forgets.

Besides, if testimony concerns financial affairs, it is sufficient for the plaintiff to have a male witness together with taking an oath. This is based on the *hadith* in which Ibn `Abbâs (may Allah be pleased with him) said:

"The Messenger of Allah (PBUH) decreed that testimony (concerning cases involving financial affairs) is acceptable of a male witness together with the oath of the plaintiff."

(Related by Imâm Aḥmad and other compilers of *Hādith*)¹⁵

In this concern, Imâm Aḥmad (may Allah have mercy on him) said, "It is stated in the *Sunnah* that a judgment can be based on the testimony of a male witness along with the oath of the plaintiff."

In this connection, Ibnul-Qayyim said:

*"...This ruling (accepting the testimony of a male witness along with the oath of the plaintiff in financial affairs) does not contradict the *hadith* in which the Prophet (PBUH) says, 'The oath is to be sworn by the defendant.'" What is actually meant here is that if the plaintiff does not have any witnesses or proofs substantiating his claim, then the case is not to be decided in his favor. However, if the plaintiff has an upright witness or the like, the case is not to be decided in his favor unless he is to introduce a male witness, to support his claim, along with taking an oath..."*

If testimony concerns things that men do not often see or witness, such as concealed female defects, virginity, being deflowered, menstruation, childbirth, breastfeeding, participating in the childbirth and the like, the testimony of an upright woman is acceptable. This is according to the *hadith* narrated by Ḥudhayfah (may Allah be pleased with him) who said:

"The Prophet (PBUH) accepted the testimony of a midwife."

(Related by Ad-Dāraqūṭni and other compilers of *Hādith*)¹⁷

Yet, some scholars have viewed that this *hadith* has a weak chain of transmitters. It is worth mentioning that it is stated in the Two *Saḥīḥs*¹⁸ that the Prophet (PBUH) accepted the testimony of one woman in rulings pertaining to breastfeeding.

Endnotes

- 1 See "Al-Ikhtiyārāt Al-Fiqhiyyah" [pp. 522-523].
- 2 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/580].
- 3 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/581].
- 4 Al-Hākīm (7124) [198] and Al-Bayhaqī (20579) [10/263].
- 5 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/591].
- 6 See *'Majmū'ul-Fatāwā'* (15/356).
- 7 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/593-594].
- 8 See *'Majmū'ul-Fatāwā'* (15/356).
- 9 The *Witr* Prayer: A supererogatory prayer consisting of an odd number of *rak'ahs* [one, three, five, seven, nine, eleven or thirteen] and it is performed any time between the *'Ishā'* (Night) and the *Fajr* (Dawn) Prayers.
- 10 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/594].
- 11 See "Al-Ikhtiyārāt" (p. 358).
- 12 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/604].
- 13 Muslim (2401) [4/134].
- 14 See the footnote in *Ar-Rawḍ Al-Murbi'* [7/611].
- 15 Muslim (4447) [6/230], Abū Dāwūd (3608) [4/24], Ibn Mājah (2370) [3/122]. See also At-Tirmidhī (1347) [3/627].
- 16 Muslim (4445) [6/229] and Al-Bukhārī (4552) [8/268].
- 17 Ad-Dāraquṭnī (4510) [4/149] and Al-Bayhaqī (20542) [10/254].
- 18 Al-Bukhārī (88) [1/243].

Letters among Judges, Testifying to Testimony, and Taking Back Testimony

A judge may send a letter for another judge if necessary; for example, a person may be living in another town other than his and he has a right that he cannot substantiate or claim except in front of the judge of his town. In this case, the judge of the town where he lives is allowed to send a letter to that of the other town to complete legal procedures. That is because it may be difficult for witnesses to travel; besides, they may be known (concerning their uprightness) in a town but not in the other. Due to the above, it would be difficult to substantiate one's right or claim without a letter sent from a judge to another.

Muslim scholars uniformly agree upon accepting the letter sent from a judge to another for proving and establishing rights. In this connection, Prophet Sulaymân (Solomon) (PBUH) sent a letter to Bilqis;¹ the Prophet (PBUH) also sent letters to An-Najâshî (Negus, King of Abyssinia), Qaysar (Caesar,

the Roman emperor) and to Kisrā (Khosrau, King of Persia) inviting them all to embrace Islam. He (PBUH) used to send letters to Muslim governors in Islamic countries as recurrently related in many *hadīths*. All the above prove the legality of sending letters among judges for proving rights and the like.

It is worth mentioning here that the letter sent from a judge to another is acceptable when related to people's rights and is unacceptable in cases of the limits set by Allah (i.e., prescribed punishments), such as the prescribed punishments for committing *zinā* (adultery or fornication) and drinking intoxicants. This is based on the fact that such divine limits are Allah's rights which are based upon concealing the fault of those violating any of them and their prescribed punishments are not to be applied on suspicious proofs.

The letter sent by a judge to another is one of two types:

- The first type: The letter sent by a judge including a judgment of his to be effected by his counterpart. In this case, the letter is acceptable even if the two judges are in the same town, since the judgment of a judge is to be applied whatever the case may be; otherwise, judgments would be suspended and disputes would increase.
- The second type: The letter including whatever the sending judge has proved and substantiated to be taken as evidence in giving the judgment by his counterpart. It is stipulated, however, that the distance between the two judges is equal to or more than the distance that entails shortening prayer. That is because it is an act of transferring a written testimony to the receiver, his counterpart; thereby, it is impermissible when the distance between the sending judge and the receiving one is close.

The wording of substantiation may be as follows: "It has been proved to me that so and so owes so and so such and such a right." However, substantiation is not a judgment; it is rather informing the other judge about what has been proved.

In this connection, **Sheikh `Abdur-Rahmān Ibn Qāsim** says:

*"It is permissible to send a letter to a judge containing what has been proved to another judge when the distance between both is equal to or more than the distance that entails shortening prayer, even if the sender views that it is impermissible to issue a judgment on the basis of what has been proved to him. This is because he only informs the receiving judge about what is proved and the latter may issue his judgment according to what has been proved if he views such proofs as valid."*²

Furthermore, it is permissible for a judge to send a letter to an unspecified judge; the wording may be as follows: "To whomever receives my letter of the Muslim judges," without specifying a certain person. Whatever judge receives such a letter has to accept it since it is sent from a judge to another judge. Thus, it is the same as the case when the letter is sent to a certain judge.

There are two views concerning the acceptability of the letter sent to another judge. The first view is that the judge must call two upright witnesses to testify to it. Those two witnesses are to define its meaning and the rulings related to what it includes. The second view is that it is permissible to act upon a letter sent from a judge to another when the receiving one knows the handwriting of the sending judge, even if there are no witnesses. This is one of the views reported to be adopted by Imâm Aḥmad. However, at the present time, the formal seal of the court is sufficient and takes the place of witnesses.

In this regard, **Imâm Ibnul-Qayyim** (may Allah have mercy on him) says:

"The Prophet's Companions have uniformly agreed upon acting according to matters proved and recorded in a letter sent to one another. The same has been observed by the Muslim Caliphs. It is well-known that people always depend on what is included in manuscripts and letters; if they were not to act upon what those writings include, the laws of Shari'ah (Islamic Law) would not be in effect."

Imâm Ibnul-Qayyim adds:

"...Muslim caliphs, judges, rulers and governors have been acting upon letters they used to send to each other. They would not inform persons carrying such letters about the content they included nor read them in their presence. This is the way according to which people used to behave during the lifetime of the Prophet (PBUH) until present."

Ibnul-Qayyim goes on saying:

"...The purpose intended here is that the judge receiving the letter must be certain of the person who has written it. If the handwriting is known with certainty that it is of a certain person, it becomes the same as ascribing a certain speech to him. Allah, Exalted be He, has made a distinction between every scribe's handwriting from that of the other, the same as everyone's form is distinguished from others'. Besides, witnesses may declare undoubted testimony based on that a certain handwriting is certainly of so and so..."³

Sheikh Taqiyyud-Dīn Ibn Taymiyah (may Allah have mercy on him) says:

*"...And whose handwriting is recognized by way of confession, style of writing or a testimony, should be acted upon..."*⁴

As for testifying to a testimony, it refers to a case when someone asks another to testify to the testimony of the former. He may say, "Testify to my testimony that..." or "Testify that I bear witness that..." and the like. It, in fact, bears the meaning of representation where the first witness is referred to as the original witness and the other as the secondary witness. In this regard, **Abū 'Ubayd** said, "Muslim scholars from the people of Hejaz⁵ and Iraq uniformly agree on accepting the testifying to a testimony in cases related to financial affairs." **Imām Ahmad** was asked about testifying to a testimony, and he replied saying, "...It is permissible." Necessity, in fact, requires accepting testifying to a testimony. If it were unacceptable, testimony would not be in effect and judgments would be suspended. In addition, in some cases, some proofs may be established late or witnesses may die before testifying, which causes harm to people and is considered a severe difficulty. This is why it is obligatory to accept testifying to a testimony the same as the original testimony is accepted.

To accept testifying to a testimony, there are many conditions that must be fulfilled:

- First:** The original witness must give permission to the secondary witness to testify to his testimony, since testifying to one's testimony means representation that is to be done only with one's permission.
- Second:** Testifying to a testimony must be in cases where it is permissible that a judge sends to another as mentioned before, namely, in cases where people's rights rather than Allah's limits are concerned.
- Third:** When the testimony of the original witness is unattainable because of his death, illness, absence in a place far away, fear of a ruler and the like.
- Fourth:** The circumstances hindering the testimony of the original witness continue until giving the judgment.
- Fifth:** Both the original and the representative witnesses must be characterized by uprightness until the judgment is issued.
- Six:** The representative witness must declare the identity of the original witness on whose behalf he is assuming the responsibility of testifying.

As for the rulings on taking back one's testimony, they are as follows:

- If the witnesses in cases pertaining to financial affairs take back their testimony, the judgment does not become null, since it has been already issued; besides, the plaintiff has become entitled to take what has been testified to belong to him. However, the witnesses are accused of trying to nullify the judgment, so the judgment is to take effect and the witnesses are to be fined the equivalent of what they testified to, since they thus unlawfully deprived the real owner of his rightful property.
- If the judge gives a judgment according to the testimony of a witness and an oath (taken by the plaintiff), and the witness takes back his testimony, the witness is to guarantee the whole property in dispute, for the whole claim is based on his testimony. Moreover, the oath is to be taken by the plaintiff and it is not necessarily acceptable against the other party (as proof), since it is only one of the conditions for giving the judgment.
- If the witnesses take back their testimonies before the judgment is issued, the judgment is to be cancelled and the witnesses are not accountable for guaranteeing any thing. And Allah, Exalted be He, knows best.

Endnotes

1 Bilqis; also Balkis: The Queen of Saba' (Sheba; a place in Yemen); she ruled during the lifetime of Prophet Sulaymân (Solomon), and she and her people used to worship the sun.

2 See the footnote in "Ar-Rawḍ Al-Murbi" [7/560].

3 See the footnote in "Ar-Rawḍ Al-Murbi" [7/561-562].

4 See "Majmû' ul Fatâwâ" [35/66, 428].

5 Hejaz (Hijaz): A region of northwest Saudi Arabia on the Gulf of Aqaba and the Red Sea. It includes the sacred cities of Mecca and Medina.

Oaths in Claims

Taking an oath is one of the legal procedures, for the Prophet (PBUH) said:

“...The oath is to be sworn by the defendant.”¹

Thereby, the oath is to be taken by the defendant if the plaintiff does not have any proof against him. The oath does end the dispute but does not annul the plaintiff's right. That is to say, if the plaintiff establishes evidence after the case is ended, his proof is to be taken in consideration and the judgment is to be in his favor. Likewise, if the defendant takes back his oath and returns whatever right he owes to the plaintiff, it is then considered acceptable and it is permissible for the plaintiff to take what he claims to be his.

Oaths are to be specifically sworn concerning people's rights, which is not the case concerning the rights of Allah, Exalted be He, such as the acts of worship, and the prescribed punishments. If a Muslim says, “I have already paid the *Zakâh* due on me,” or “There is no atonement or expiation due on me,” this is acceptable from him, and he is not to be asked to take an oath. The

same goes for a Muslim who denies transgressing the limits set by Allah; he is not to be asked to take an oath, since it is desirable to conceal people's faults. Besides, if someone confesses transgressing a divine limit, then takes back his confession, this is to be acceptable from him and he is to be released. Thus, it is worthier not to ask such a person to take an oath without having confessed.

- Taking an oath is worthless in claims relating to people's rights, except when the judge orders the defendant to swear upon the request of the plaintiff. In this case, the oath is to be in the form of an answer to the plaintiff.
- Taking an oath is to be done in the assembly of the judge.
- An oath is valid only if sworn by Allah, Exalted be He, since taking an oath by other than Allah is an act of polytheism.
- When taking an oath by Allah, it is sufficient to say, "By Allah..." which suffices as an oath. Taking an oath with these words has been mentioned in many positions in the Glorious Qur'ān. Allah, Exalted be He, says:

"...And they swear by Allah their strongest oaths..."

(Qur'ān: Al-An'ām: 109)

And He says:

"...and let them both swear by Allah..."

(Qur'ān: Al-Mā'idah: 106)

He also says:

"...four testimonies [swearing] by Allah..."

(Qur'ān: An-Nūr: 6)

Besides, the word "Allah" is a proper name which indicates one of the Best Names attributed to none but Him, Exalted be He.

- A solemn oath is only taken concerning matters of great importance, such as a crime that does not necessitate legal retribution or emancipating a slave (at the time of slavery). In such cases, the judge may ask the defendant to swear a solemn oath, such as saying: "By Allah, other than Whom there is no deity, the Knower of the unseen and the witnessed, the Predominant, the Harm-Inflicting, the Benefit-Giver and the Knower of that which deceives the eyes and what the breasts conceal.

- In case one owes a right to a group of people, one is to take an oath for each, for each of them has a right upon the one, which is regarded as separate and different from the other's right. However, the defendant is to take only one oath in case those people agree upon that, which then is sufficient, for they have agreed to disclaim their own right.

Endnotes

1 At-Tirmidhi (1345) [3/626].

Confession

Jurisprudentially, confession refers to acknowledging that one owes a right to someone else. In fact, confession is just an act of acknowledging rights which one owes others; it does not establish a new right. In this concern, **Sheikh Taqiyyud-Din Ibn Taymiyah** (may Allah have mercy on him) said:

“If someone informs (a person) about what he owes others, then he is a confessor, and if he informs (a person) about what others owe him, then he is a plaintiff. In case someone informs about rights which a person owes others, while he is entrusted with such rights, he thus is regarded as a mere reporter. However, if he is not entrusted with such rights, he then is regarded as a witness. The judge, the agent, the scribe, the guardian and the authorized person, are all entrusted with whatever jobs they perform. However, if they are dismissed from their offices and inform about what they knew, this is not considered a confession, it is rather informing.”¹

Ibn Taymiyah then adds"

"...Confession does not establish a new right; rather it brings right into light and informs people about what one owes others."

- There are many conditions that must be fulfilled to make the confession valid, one of which is that it is valid when the confessor is legally accountable. Hence, it is not valid when made by a child, an insane person or a sleeping person. However, confession is acceptable, and legally binding, from a minor provided that it must be within the limits specified for him in commercial affairs.
- Also, confession must be made with one's free will. That is, confession is not acceptable when one is forced, except when confessing to a thing other than what one has been forced to confess to.
- Moreover, confession is not valid when the confessor is interdicted; the confession of a weak-minded person is not legally valid.
- Confession is not to be made to a thing in other people's possession or under other people's guardianship, as in cases where a stranger confesses (claims) the paternity of a child or confesses to an endowment which belongs to another person or is under someone else's guardianship.
- If the confessor claims that he has confessed involuntarily, this is accepted from him provided that he introduces a proof substantiating what he claims.
- The confession of a sick person that a property belongs to any one other than the legal heirs is legally binding, since he is not suspected of showing favoritism. Moreover, when one is sick, one is keen to return whatever rights one owes others.
- If someone claims that another person owes him something and the respondent acknowledges this person's claim, the respondent's acknowledgement is acceptable and binding as well, and it is regarded as a confession which he is bound to. This is according to the *hadith* of the Prophet (PBUH) in which he said:
*"There is no excuse for the one who confesses."*²
- Confession is valid and legally binding when declared with any wording indicating confession. For example, the respondent may say (to the plaintiff), "You have told the truth," or "Yes," (as a confirmation to his claim) or "I confess to that."

- It is valid to exclude half or less of the total amount (or whatever one owes another) when confessing. That is to say when one confesses that he owes someone ten (of such and such a thing) except five of it, he is bound to give him five. The style of exclusion is used at many positions in the Glorious Qur'an; Allah, Exalted be He, says,

"...and he remained among them a thousand years minus fifty years..." (Qur'an: Al-'Ankabût: 14)

In addition, many scholars maintain that it is permissible for the confessor to exclude more than half.

- To be valid, exclusion in confession must be said nonstop. If the confessor says, "I owe so-and-so one hundred (of an article, for example)," then he pauses though he can continue, then he says, "profitless" or "on credit," the confessor then is bound to give him one saleable hundred on the spot. Besides, whatever the confessor says after his pause is not to be taken into consideration, since he thus tries to remove a right which is already binding on him.
- If someone sells something or gives it as a gift, and then he confesses that this thing belongs to someone else, his confession is not to be accepted. Moreover, neither the sale nor any other transaction related to this property becomes null, since he confesses to something that belongs to someone else. In addition to this, the confessor is to pay the value of the object to the original owner in compensation, since the latter has been deprived of his rightful property.
- Confession is valid and legally binding when it concerns a thing the confessor does not exactly specify, which could be interpreted in two ways or more, all being the same for the confessor.
- If a person confesses saying, "I owe so-and-so such and such a thing," his confession is valid and legally binding. Yet he is to be asked to explain what he intended and make himself clear so as to be liable for it. In case the confessor refuses to point out what he intended, he is to be put under arrest until he points out what he intended. This is because the confessor must make clear what he has intended to say, for it is a right that he has to clarify and give to its owner. If the confessor denies knowing the object to which he has confessed, he is to take an oath confirming that. Besides, he is to pay to its owner a fine equal to the least value of that object. If the confessor dies before explaining what he has intended, his heirs are not to be responsible for giving it to

its owner, even if the confessor has left an estate, for that thing might be something other than a property.

- If someone says, "I owe so and so a sum less than one thousand," it is to be interpreted as having intended what is less than the half.
- If someone says, for example, "I owe so and so an amount between one dirham and ten," he is to give eight dirhams to the owner since this is the meaning he has intended; eight is the number between one and ten.
- If someone says, "I owe so and so an amount from one dirham to ten," one is to give nine dirhams to the owner, for the maximum number (which is ten here) is not included in what is intended by the confessor. Besides, some scholars maintain that if the extreme limit is of the same kind of the thing intended, it is to be considered a part of the total; otherwise, it is not to be included.
- If someone confesses saying, "The space between this wall and the other wall belongs to so and so," the two walls are not to be included, for he only has confessed to whatever is between them.
- If someone confesses that a tree or some trees belong to someone else, his confession does not include the land. Thus, neither the rightful owner of the trees has the right to replant them in case they are removed nor does the owner of the land have the right to remove them. This is because it is obvious that the trees have been rightfully planted.
- If someone confesses that a garden belongs to someone else, his confession includes the trees, the buildings and the land, since the garden refers to all these things.
- If someone confesses owing someone some dates in a bag, a knife in a sheath, or a garment in a wrapping, his confession includes the enveloped object (the dates, the knife or the garment) rather than the envelope (the bag, sheath, or the wrapping). This is because the enveloped object and the envelope are not the same, for the former does not completely absorb the latter. Besides, the enveloped object and the envelope do not necessarily belong to one person, and confession is not binding in probable cases where there may be more than one owner of the object.
- If someone confesses saying, "I and so-and-so share the ownership of such and such an object," he is to determine the share of his partner. Some scholars maintain that in such cases each partner is considered

as having an equal share according to the general rule stating that "the partnership in general entails having equal shares". Allah, Exalted be He, says:

"...they share a third..." (Qur'an: An-Nisâ': 12)

If anyone owes any right to others, he must make a confession stating that when necessary. Allah, Exalted be He, says:

"O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves..."

(Qur'an: An-Nisâ': 135)

And He says:

"...and let the one who has the obligation [i.e., the debtor] dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice..."

(Qur'an: Al-Baqarah: 282)

In this regard, in his book entitled *Al-Kâfi (The Sufficient)*, Al-Muwaffaq said:

"...Dictation in this verse means confession, and the judgment must be issued according to the confession, for the Prophet (PBUH) has said, '...O Unays! Go to the wife of this (man) and if she confesses (that she has committed adultery), then stone her to death.'³ Besides, he (PBUH) ordered that Mâ'iz and Al-Ghâmidiyah (a woman from the tribe of Ghâmid) be stoned to death after confessing that they had committed adultery (in two separate cases). Moreover, since a judgment must be given according to the substantiated proofs, then it is worthier to be given by virtue of an undoubted confession."

And, all praise be to Allah, the Lord of the Worlds.

Finally, gentle reader, here is an abstract of the Islamic jurisprudence between your hands, and I seek Allah's Forgiveness for whatever mistakes or defects may be herein. I also invoke Allah to grant us all benefit from whatever sound matters are in it, and to guide us all to the useful knowledge and righteous deeds.

Endnotes

1 See "*Al-Ikhtiyārāt*" (p. 527).

2 Al-Hāfīz Ibn Hajar said, "It has no origin in the *Sunnah*. Besides, its meaning is not considered totally correct." See Al-Sakhāwī's book "*Al-Maqāṣid Al-Ḥasanah*" (1311) and Al-'Ajlūnī's book "*Kashf Al-Khafā'*" (2/511). See also "*Al-Asrār Al-Marfū'ah*" by Mullā `Alī Al-Qārī (383).

3 Muslim (4406) [6/198].

APPENDICES

GLOSSARY

NOTE: For easier search for the terms beginning with “Al-” “Ar-” “Ad-” “As-” etc. omit them, as they are in Arabic equivalents to the article “the”. For example, a term like *As-Ṣafā* will be found under letter “S”; and *Al-Wasīlah* under letter “W”.

A

- Al-Amānah*** *Al-Amānah*, in Arabic, carries the meanings of honesty, trust, and obedience. It can also, in this context, refer to the obligatory acts of worship ordained by Allah, such as Prayer, Fasting, *Hajj* (Pilgrimage), etc.
- The *Anṣār*** The Medinian Helpers; the inhabitants of Medina who had accepted Islam and supported the Prophet (PBUH) and all the *Muhājirūn* (the Emigrants) upon their arrival at Medina.
- '*Āriyah*** '*Āriyah* as a permission for benefiting from an article whose use is permissible, and then the borrowed article remains until it is returned to its owner.
- '*Awl*** An increase in the number of shares of inheritance and a decrease in their amounts according to the deserving parties.

B

- Bilqīs*** The Queen of Sheba (a place in Yemen); she ruled during the lifetime of Prophet Sulaymān (Solomon), and she and her people used to worship the sun.

C

- Collective duty** A religious duty which if sufficiently fulfilled by some Muslims, the rest will not be accountable for it as an obligation, and it becomes an act of the *Sunnah* for them.

D

- Dhimmi*** A non-Muslim living in and under the protection of a Muslim state.
- Dinar** An old Arab coin that equals 4.25 grams of gold.

- Dirham (of silver)** A dirham of silver equals 2.975 grams of silver.
- Diyah** *Diyah* in Arabic means a compensation payment for a murder or an injury; it mainly means "blood money", and it can also mean "indemnity".

F

- Faqih** A scholar of Islamic Jurisprudence.
- Fatwa** A legal opinion issued by a *mufti* [a Muslim scholar specialized in issuing legal rulings] in response to a question on a point of the Islamic Law.
- The Five Compilers of *Hadith*** They are **Aḥmad**, **Abū Dāwūd**, **At-Tirmidhī**, **An-Nasā'ī**, and **Ibn Mājah**.

G

- Gharīb (Unfamiliar) *hadith*** A *hadith* reported by just one narrator at even one stage of the chain of transmission.

H

- Haṣāh* (stone) selling** A way of selling used to be practiced before Islam; it means that when the buyer throws a stone at a certain commodity displayed for sale, he has to buy it at the price decided by the seller.
- Hasan* (good) *hadith*** It is a *hadith* whose chain of transmission is linked to the narration of an authority with weak exactitude, and the *hadith* is free from eccentricity or blemish.
- Hawālah*** The transference of a debt from the liability of the debtor to the liability of another person.
- Hejaz (also *Hijāz*)** A region of northwest Saudi Arabia on the Gulf of Aqaba and the Red Sea. It includes the sacred cities of Mecca and Medina.
- Hijrah*** The Prophet's Immigration to Medina.

I

- Ijārah*** *Ijārah* is defined as follows: a lease for a lawful identified use of either an identified present or described anticipated thing, for a specified purpose and for a known period of time, or (a hiring agreement) for the performance of a certain service in return for a specified compensation.

- Ijtihād* (legal reasoning and discretion)** An independent judgment in a legal question, based on the interpretation and application of the Four Foundations: the Qur'ān, the Prophet's *Sunnah*, Consensus of scholars and Analogical Deduction.
- Ila'*** The potent husband's oath not to have sexual intercourse with his wife for a certain period, this period is specified by four months or more.
- Imām* (in prayer)** The *imām* is the one who leads the congregational prayer.
- 'Inah*** A usurious kind of transaction in which a seller sells a commodity on credit to a buyer and then buys it from him at the same time at a lower price. For example, a trader sells a car for twenty thousand pounds on credit then buys it from the same man (who has just bought it) for fifteen thousand pounds cash. Thus, the original buyer owes the seller twenty thousand pounds to be paid at the due time.
- 'Inān* (cooperative) partnership** It refers to the equivalence between the two partners, in both capital and labor; they equally participate in the business.

Individual duty A religious duty whose obligation extends to every Muslim.

Istihāḍah Vaginal bleeding other than menstruation.

J

Jallālah A term referring to animals that eat impurities.

Jihād Fighting in the Cause of Allah

Jizyah A tribute or a tax required of non-Muslims living in an Islamic state exempting them from military service and entitling them to the protection of the Islamic state. Concurrently, *Zakāh* is not taken from them, being an obligation only upon Muslims.

K

Kalālah A case related to the rulings on inheritance; in this case the deceased leaves neither descendants nor ascendants (as heirs).

The Kharijites (Al-Khawārij, i.e. the Seceders) An Islamic radical sect who broke away from the reign of 'Alī Ibn Abū Tālib, the Muslim Caliph then, and murdered him. Their followers believe that the Muslim who commits a major sin is a disbeliever. They also curse and revile the Prophet's Companions and deem the blood of Muslims violable.

L

- The Lawgiver** The Lawgiver of *Shari'ah* (Islamic Law) is Allah, Exalted be He; the term can also refer to the Prophet (PBUH) as he never ordained but what was revealed to him by Allah.
- Luqatah** *Luqatah* refers to any lost property, excluding animals, found by someone.

M

- Mani'ah** The word *mani'ah* in Arabic indicates something gifted to be made use of then returned to its owner.
- Marfū' (traceable) hadith** It is whatever word, deed, approval or attribute, traced directly back to the Prophet (PBUH) with a connected or disconnected chain of transmission.
- Mithqāl** A standard measure that equals 4.25 grams
- Mudārabah (speculative) partnership** Juristically, *mudārabah* (speculative) partnership means giving a certain amount of money to others in order to trade with it in return for a share in the profit.
- Muḥallil (in contests)** A non-contestant who shares in case of profit and does not share in case of loss.
- Muḥallil (in marriage)** The one who marries a woman who has been irrevocably divorced three times to make her lawful for her ex-husband to remarry.
- Muḥallal-lahu** The ex-husband of the woman whom he has irrevocably divorced (i.e. he divorced her three times) and seeks remarrying her through *muḥallil* marriage which is unlawful.
- Muḥrim** The one in a state of ritual consecration for *Hajj* (Pilgrimage) or *'Umrah* (Lesser Pilgrimage).
- Muḥsan** One in a state of *iḥsān*, i.e. in a state of fortification against illegal sexual intercourse and immorality by virtue of valid (current or previous) marriage.

- Mulâmasah** A way of selling used to be practiced before Islam; it means that when the buyer touches something displayed for sale, he has to buy it at the price decided by the seller.
- Munâsakhah** It refers to the process of re-dividing the estate in case a legal heir dies before the division of the inheritance of the first deceased. In such a case, the inheritance is to be re-divided taking into consideration the death of that legal heir.
- Munâbadhah** A way of selling used to be practiced before Islam; it means that when the buyer throws something to the seller, the buyer has to buy it at the price decided by the seller.
- Musâqâh** *Musâqâh* is defined as giving planted or unplanted trees along with a piece of land to someone to plant them therein, water them, and perform the necessary work until they bear fruit. The farmer then is to be given a specified share of the fruits of these trees, from an unspecified part of the land, while the rest goes to their owner.
- Mustahâdah** A woman in a state of *istihâdah* (i.e. a woman having vaginal bleeding other than menstruation).
- Mutawâtir (continuously recurrent) ḥadīth** It is a *ḥadīth* reported by a large number of narrators whose agreement upon telling a lie is inconceivable (this condition must be met in the entire chain from the beginning to the end).
- Muzâra'ah** *Muzâra'ah* is defined as giving a land to someone to cultivate or giving a land along with some seeds to someone to plant them therein and take care of the plantation in return for a specified portion of the harvest, from an unspecified part of the land, while the rest is for the landowner.
- N**
- Najsh** An illegal transaction based on a trick through which the buyer is deceived and ensnared by the artificial outbidding of a fake buyer.
- Nisâb (in theft)** As far as theft is concerned, the *nisâb* refers to the minimum amount of property stealing which entails executing the prescribed punishment, namely cutting off the thief's hand.

Q

Qiblah The direction of prayer, namely towards the Ka'bah

R

Radd It is the distribution of the remaining portion of estate among the prescribed heirs. To illustrate, if something remains of the estate after the prescribed heirs take their shares, and there is no agnate heir to take over the remaining portion, this portion is to be redistributed among the prescribed heirs, each according to his share.

The Rāfidah A *Shiite* group who refused the caliphates of Abū Bakr Aṣ-Ṣiddīq and 'Umar Ibnul-Khattāb and waged accusations against them and against many of the Prophet's Companions as well.

Ribā A term that includes usury and usurious gain and interest.

Ribal-faḍl (excess usury) The selling of an item for another of the same type, on the spot, but in excess.

Riban-nasi'ah (delay usury) Conditional excess for delay of payment.

S

Ṣā' A standard measure that equals 2172 grams.

Ṣaḥīḥ (authentic) ḥadīth It is a *ḥadīth* whose chain of transmission has been transmitted by truly pious persons who have been known for their uprightness and exactitude; such a *ḥadīth* is free from eccentricity and blemish.

Ṣalam The *ṣalam* is payment in advance with delaying the receipt of the sold item.

Ṣaqar One of the gates or layers of the Hellfire.

Ash-Shām The Levant; the region covering Syria, Lebanon, Jordan, and Palestine.

Shighâr It is the type of marriage in which a guardian gives his daughter (or a woman under his guardianship) in marriage to another person on the condition that the other gives him his daughter (or a woman under his guardianship) in marriage too, and without any dowry paid by either.

The Sunan The *Sunan* refers to compilations of the Prophetic *hadiths* classified according to the Islamic jurisprudential subjects; the main four compilers of the *Sunan* are Abû Dâwûd, Ibn Mâjah, At-Tirmidhî and An-Nasâ'î.

Sunni (adj) According to the *Sunnah* (Prophetic Tradition).

T

The Two *Sahihs* The Two Authentic Books of Al-Bukhârî and Muslim.

The Two Testifications of Faith Saying, "I testify that there is no deity but Allah and that Muḥammad is the Messenger of Allah."

U

Ūqiyyah An *ūqiyyah* equals forty dirhams of silver, i.e. 119 grams of silver (as a dirham of silver equals 2.975 grams of silver).

W

Wakâlah In Islamic terminology, *wakâlah* (commissioning) refers to the act in which a legally accountable person appoints another legally accountable person to act on his behalf in a certain matter in which such authorization is permissible.

Walâ' The freed slave's loyalty by virtue of emancipation.

Wasq A standard measure that equals 130320 grams.

Waqf Endowment.

Witr Prayer A supererogatory prayer consisting of an odd number of *rak'ahs* (one, three, five, seven, nine, eleven or thirteen) and it is performed any time between the '*Ishâ'*' (Night) and the *Fajr* (Dawn) Prayers.

Z

- Zakâh** *Zakâh* is an annual expenditure for the benefit of the Muslim community, primarily to help the poor, required from those Muslims who have excess wealth. Paying *Zakâh* is one of the five main pillars of Islam (for more elaboration, refer to the chapter on *Zakâh*).
- Zihâr** *Zihâr* is the saying of a husband to his wife, when he wants to abstain from having sex with her, "(Sexually,) you are to me like the back of my mother," i.e. unlawful to approach sexually. That was a type of divorce practiced by Arabs in the Pre-Islamic Period of Ignorance (*Jâhiliyyah*).

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41	<i>"If somebody sells pollinated date palms, the fruits will be for the seller unless..."</i>	49
42	<i>"They get red or yellow (fit for eating)."</i>	51
43	<i>"The Messenger of Allah (PBUH) forbade selling date palms until the dates are almost ripe..."</i>	52
44	<i>"If Allah destroyed the fruits (present on the trees), what right would one of you has to take..."</i>	52

45	<i>"until they are white and safe from blight."</i>	52
46	<i>"How could you take the money of your (Muslim) brother without a right?"</i>	56
47	<i>"...when it is fit for eating."</i>	57
48	<i>"I testify that Allah has made lawful to us (Muslims) to pay in advance for....."</i>	60
49	<i>"Whoever pays in advance the price of a thing....."</i>	60
50	<i>"No Muslim lends a loan to another Muslim twice but it will be like giving it once in charity."</i>	63
51	<i>"He who relieves a Muslim from hardship Allah will relieve him from the hardships....."</i>	63
52	<i>"Any loan that brings a profit is (a kind of) ribā."</i>	64
53	<i>"If anyone of you gives a loan (to somebody) and there is a gift presented to him or....."</i>	64
54	<i>"If someone indebted to you gives you a load of hay as a gift..."</i>	64
55	<i>"The best amongst you is he who pays the rights of others handsomely."</i>	65
56	<i>"When someone mortgages an item, it is not to be foreclosed..."</i>	69
57	<i>"The mortgaged animal can be used for riding as long as it is fed..."</i>	70
58	<i>"The guarantor is responsible for (paying) the thing he guaranteed."....</i>	73,74
59	<i>"If the debt of one of you is transferred (from your debtor) to a rich debtor, he should agree."</i>	79,81
60	<i>"Whoever is transferred (from his debtor) to a rich debtor, should agree."</i>	79
61	<i>"Procrastination (delay) in paying debts by a wealthy person is injustice....."</i>	81
62	<i>"O Unays! Go to the wife of this (man) and if she confesses (that she has committed adultery)....."</i>	85
63	<i>"He who is pleased to be granted shade by Allah under the shade granted by Him....."</i>	91
64	<i>"Procrastination in paying debts by a wealthy man makes it permissible to be....."</i>	91
65	<i>"The Messenger of Allah (PBUH) interdicted Mu`adh and sold his property....."</i>	92

66	"If a man finds his very things with a bankrupt person, then..."	93,94
67	"...If he (the bankrupt buyer) dies, then....."	94
68	"The Messenger of Allah (PBUH) called me to present myself in front of him on the Day of Uḥud....."	97
69	"...He (the Prophet) saw that I had not reached the age of maturity (to be able to fight)."....."	97
70	"Allah does not accept the prayer of a woman who has reached puberty unless....."	97
71	"Trade in the property of orphans; otherwise....."	100
72	"It was revealed regarding the case of the orphan's guardian..."	101
73	"I have an orphan who has a property but I have nothing..."	101
74	"Avoid the seven great destructive sins....."	102
75	"Conciliation is permissible among Muslims except....."	106,109
76	"Draw lots, seek the truth, and then let everyone of you absolve his companion....."	110
77	"No one should prevent his neighbor from fixing a wooden peg in his wall....."	114
78	"A Muslim is he from whose hand and tongue Muslims are safe..."	116
79	"Faith has over sixty branches, the most excellent of which is....."	116
80	"The Prophet (PBUH) decided the validity of preemption in every joint undivided property....."	118
81	"...It is not lawful for him (the partner) to sell that until the other partner gives his consent."....."	118
82	"Do not commit what the Jews had committed in order to make lawful....."	119
83	"...if the boundaries are well marked and the ways and streets are fixed....."	119
84	"Allah, Exalted be He, says, 'I am the third of the two partners..."	126
85	"Allah assists the person so long as he assists his (Muslim) brother."....."	126
86	"I, 'Ammâr, and Sa'd became partners in what we would get (from the booty)....."	136
87	"The Prophet (PBUH) concluded a contract with the people of Khaybar....."	142
88	"The Prophet (PBUH) returned to the Jews of Khaybar the date palms of Khaybar....."	142

89	<i>"The Prophet (PBUH) gave the people of Khaybar the date palms and the land of Khaybar....."</i>	142
90	<i>"People (landowners) used to rent their lands during the lifetime of the Messenger....."</i>	146
91	<i>"The Prophet (PBUH) and Abû Bakr (may Allah be pleased with him) employed....."</i>	149
92	<i>"Give the laborer his wages before his sweat is dry....."</i>	152
93	<i>"Allah, Exalted be He, says, 'I will be against three (persons) on the Day of Judgment....."</i>	153
94	<i>"Indeed, strength is (in) archery."</i>	155
95	<i>"No (reward should be given for a) competition except that made between....."</i>	156,157
96	<i>"The hand (referring to man) has to give back what it had taken...."</i>	163,164
97	<i>"Render the trust to him who entrusted you (with it)."</i>	163
98	<i>"Verily, your blood, property and honor are sacred to one another (as Muslims)."</i>	165
99	<i>"If anyone extorts a span of land unjustly....."</i>	166,168
100	<i>"Whoever wrongs anyone in a matter that concerns his honor or any other matter....."</i>	166
101	<i>"The unjust root (planted in someone's land without his permission) has no right."</i>	166
102	<i>"If I gave some one's right to another....."</i>	168
103	<i>"If one ties a riding animal in one of the pathways of the Muslims..."</i>	172
104	<i>"There is no compensation for whatsoever is damaged....."</i>	174
105	<i>"...And Allah helps a person so long as the person helps his (Muslim) brother."</i>	177
106	<i>"If one is trusted with something, then he is not liable for compensation (if it is damaged)."</i>	178
107	<i>"There is no compensation to be paid by an honest borrower..."</i>	178
108	<i>"There is no compensation to be paid by the trustee (if the trusted object is damaged)."</i>	178
109	<i>"If anyone brings a barren land into cultivation, then it belongs to him."</i>	184
110	<i>"If anyone surrounds a land (i.e. a wasteland) with a wall, then it belongs to him."</i>	184

111	<i>"O Zubayr! Irrigate (your land) and then withhold the water until it reaches....."</i>	186
112	<i>"It (water) should be withheld until its height becomes equal to..."</i>	186
113	<i>"Some of the Prophet's Companions went on a journey until they reached some of the Arab tribes....."</i>	190
114	<i>"The Messenger of Allah (PBUH) gave us permission concerning sticks, ropes, whips....."</i>	193
115	<i>"It is none of your concern. It has its feet and its water container (reservoir)....."</i>	194
116	<i>"Whoever takes a lost animal (that he finds) is considered to have gone astray."</i>	194
117	<i>"Take it, for it is either for you, for your brother....."</i>	195
118	<i>"A man asked the Prophet (PBUH) about the ruling on finding lost gold or silver....."</i>	196
119	<i>"If anyone hears a man in the mosque asking about something he has lost....."</i>	197
120	<i>"...it is not allowed to pick up its fallen things....."</i>	198
121	<i>"If anyone finds an animal whose owners could not afford it..."</i>	198
122	<i>"Go. It (the found baby) is free; you have become its guardian..."</i>	202
123	<i>"Every newborn is born with Fitrah (the True Religion of Islam)."...</i>	202
124	<i>"O Messenger of Allah! I have a land in Khaybar which I prize highly, so....."</i>	206
125	<i>"When a human being dies, his deeds come to an end except for three deeds....."</i>	206
126	<i>"All the rich of the Prophet's Companions gave endowments."....."</i>	206
127	<i>"...the land and trees (of an endowment) will neither be sold nor given as a present....."</i>	209
128	<i>"Give presents to one another to gain the love of one another."....."</i>	213
129	<i>"The Messenger of Allah (PBUH) used to accept gifts and give something in return."</i>	213
130	<i>"Give presents to one another, for a present removes rancor."....."</i>	213
131	<i>"O my daughter, I granted you some palm trees in Al-`Aliyah..."</i>	214
132	<i>"Have you given equivalent ones to everyone of your children?..."</i>	214
133	<i>"He who takes back a gift (which he has already given) is like a dog that vomits....."</i>	215

134	<i>"It is not lawful for anyone to give a gift then take it back except for..."</i>	215
135	<i>"The pleasantest things you enjoy come from what you earn..."</i>	215
136	<i>"You and your property belong to your father.".....</i>	215,216,398
137	<i>"Take what is sufficient for you and your children....."</i>	216,505,508 509
138	<i>"Give presents to one another, for a present removes rancor from the heart."</i>	216
139	<i>"(The greatest charity is that which) you give in charity when you are healthy and....."</i>	222
140	<i>"Allah made a charity upon you at death by (allowing you to give) one-third of your wealth....."</i>	222,226
141	<i>"It is not permissible for any Muslim who has something to will to stay for two nights without....."</i>	226
142	<i>"I bequeathed the amount which Allah has determined for Himself.."</i>	226
143	<i>"Indeed, to bequeath one-fifth (of the property) is preferred for me to bequeath a quarter."</i>	227
144	<i>"It would be better for people to lower the value of the bequest from one-third to a quarter....."</i>	227
145	<i>"No bequest must be made to an heir."</i>	227
146	<i>"You would better leave your inheritors wealthy rather than leaving them poor....."</i>	228,229
147	<i>"You have left only little property, so let it go to your heirs.".....</i>	228
148	<i>"It could happen that a man spends sixty years in obedience to Allah....."</i>	228
149	<i>"Causing harm by the will is one of the major sins.".....</i>	228
150	<i>"One has the right to change whatever one likes in one's bequest.".....</i>	231
151	<i>"The Messenger of Allah (PBUH) decreed that one's debt is to be settled before one's will is carried out."</i>	231
152	<i>"...So fulfill Allah's Rights, as He is more entitled to receive His rights."</i>	231
153	<i>"If Zayd is martyred, Ja'far is to take over his position.".....</i>	236
154	<i>"Learn the rules of inheritance and teach them to others for they are half of knowledge....."</i>	239

155	<i>"I am a mortal and knowledge will be taken away and trials will appear until....."</i>	239
156	<i>"Knowledge has three categories; anything else is extra....."</i>	240
157	<i>"Learn the rules of inheritance, for they are part of your religion.".....</i>	240
158	<i>"Whoever reads the Noble Qur'ân should learn the rules of inheritance.".....</i>	240
159	<i>"If anyone disinherits his heir....."</i>	241
160	<i>"The walâ' is a bond like that of kinship.".....</i>	240
161	<i>"Verily, the walâ' is for the emancipator.".....</i>	246,248 249,282
162	<i>"Give the shares of the inheritance (prescribed in the Qur'ân) to those who are entitled to receive them....."</i>	248,254 279,282 327
163	<i>"The walâ' (i.e. loyalty by virtue of emancipation) is a bond like that of kinship.".....</i>	248
164	<i>"The grandmother (of the deceased) is to be given sixth....."</i>	249
165	<i>"A grandmother went to Abû Bakr asking him for her share of inheritance....."</i>	260
166	<i>"The Prophet (PBUH) entitled the grandmother to one-sixth of the estate in case of....."</i>	260
167	<i>"She was the first grandmother whom the Prophet (PBUH) judged to be given a sixth....."</i>	262
168	<i>"The wife of Sa'd Ibnur-Rabî' went to the Messenger of Allah (PBUH) with her two daughters and said....."</i>	267
169	<i>"This was the verdict of the Messenger of Allah (PBUH) in this regard.".....</i>	271
170	<i>"Abû Mûsâ (may Allah be pleased with him) was asked regarding a case of inheritance in which....."</i>	276
171	<i>"If a newborn cries (or shows any other signs indicating life), then it is to get a share of inheritance."....."</i>	314
172	<i>"The fetus does not stay in the womb of the mother for more than two years."....."</i>	315
173	<i>"If anyone leaves a property, it goes to his heirs."....."</i>	328
174	<i>"O Messenger of Allah! I have no heirs except my only daughter."...</i>	328
175	<i>"The maternal uncle is the heir of him who has none."....."</i>	332

176	<i>"A Muslim cannot be the heir of a disbeliever....."</i>	339
177	<i>"A Muslim cannot be the heir of a Christian except when...."</i>	340
178	<i>"An estate which was divided in the Pre-Islamic Period of Ignorance (the Jāhiliyyah....."</i>	340
179	<i>"Islam increases and never decreases."....."</i>	340
180	<i>"People of two different religions cannot inherit from one another".."</i>	341
181	<i>"No (share of the) inheritance (of the murdered person) is to be given to the murderer."....."</i>	343,345
182	<i>"A murderer is not to inherit anything (from the inheritance of the person he killed)."....."</i>	343,344
183	<i>"O young people! Whoever among you has the ability to marry should marry....."</i>	350,354
184	<i>"Marry women who are loving and very prolific....."</i>	350,354
185	<i>"Treat women kindly, as they are like captives in your houses."....."</i>	351,408,410
186	<i>"Intercourse with them (women) has been made lawful unto you by....."</i>	351
187	<i>"A woman is married for four (reasons)....."</i>	353
188	<i>"You should not marry women for the sake of their beauty..."</i>	353
189	<i>"Why have you not married a virgin so that you may play with her and she may play with you?"....."</i>	354
190	<i>"When one of you gets engaged to a woman....."</i>	357
191	<i>"Look at her, for it is better that there should be love between you.".."</i>	357
192	<i>"I used to look at her (i.e. his fiancée) secretly, until....."</i>	358
193	<i>"None should ask for the hand of a woman who is already engaged to his (Muslim) brother....."</i>	359
194	<i>"A man should not ask for the hand of a woman who is already engaged to his (Muslim) brother unless....."</i>	359
195	<i>"Verily, all praise be to Allah; we praise Him, ask His help and forgiveness....."</i>	361
196	<i>"There are three things which, whether undertaken seriously or in jest....."</i>	363
197	<i>"A previously married woman should not be given in marriage except after consulting her....."</i>	364

198	"No marriage (is valid) without (the permission of) a guardian..."	364
199	"No marriage (is valid) without (the permission of) a guardian and (in presence of) two just witnesses."	365
200	"According to the Sunnah, the husband and wife who swear allegation against each other....."	372
201	"All things which become unlawful because of blood relations are unlawful....."	373
202	"A man is prohibited to marry both a woman and her paternal aunt or....."	374
203	"If you did so, then you would sever your ties of kinship."	374
204	"A muhrim must neither marry himself, nor....."	376
205	"The worthiest conditions to be fulfilled are"	380
206	"They (women) may divorce us then!" `Umar answered....."	380
207	"The Prophet (PBUH) forbade shighâr marriage....."	381
208	"Shall I tell you about the borrowed billy goat?....."	382
209	"Select four (wives to keep) of them."	393
210	"Find something (to give the bride as a dowry), even if it is an iron ring."	395
211	"The most blessed of women are those with less expenditure..."	396
212	"Do not go to extremes concerning the dowries of women..."	397
213	"She is entitled to get a proper dowry like that given to ones like her....."	399
214	"Hold a wedding feast even if by (offering) one sheep."	403,404
215	"Holding a wedding feast on the first day (of the wedding) is a duty....."	405
216	"The worst kind of food is that of the wedding feast....."	405
217	"Make marriage publicly known."	406
218	"Make marriage publicly announced."	406
219	"The distinction between what is lawful and what is prohibited..."	406
220	"The best amongst you is the one who treats his family best."	408
221	"If I were to command anyone to prostrate to another....."	408
222	"If a woman spends the night deserting her husband's bed..."	408
223	"The one who dislikes his wife may beget a child from her..."	408
224	"A believing man should not hate a believing woman....."	408

225	<i>"Verily, among the most wicked of people in the Sight of Allah on the Day of Resurrection is....."</i>	412
226	<i>"Do you have a husband?" When she replied in the affirmative, he (PBUH) said to her....."</i>	413
227	<i>"It concerns the woman whose husband does not want to keep her with him any longer....."</i>	416
228	<i>"I give my night (i.e. the night the Prophet spends with her) to `Â'ishah."....."</i>	416
229	<i>"...if a man marries a virgin and he has already a wife who has been previously married (i.e. not a virgin)....."</i>	417
230	<i>"There is no lack of estimation for you on the part of your husband....."</i>	417
231	<i>"If any woman asks her husband for divorce without some strong reason....."</i>	423
232	<i>"This verse addresses the man who hates his wife....."</i>	423
233	<i>"The wife of Thâbit Ibn Qays came to the Prophet (PBUH) and said....."</i>	424
234	<i>"The most detestable lawful act in the Sight of Allah is divorce."</i>	427
235	<i>"Divorce belongs only to the one who takes hold of the leg (i.e. the husband) ."</i>	429,430 438
236	<i>"Every divorce is permissible except that by an insane man."...</i>	430
237	<i>"There is no divorce or emancipation in case of duress."....."</i>	430
238	<i>"The verse means that women can be divorced only during their state of purity....."</i>	434
239	<i>"If people adhere to the ordinance of Allah concerning divorce..."</i>	434
240	<i>"Is the Book of Allah made light of while I am amongst you?!"</i>	435
241	<i>"There are three things which, whether undertaken seriously or in jest....."</i>	436
242	<i>"Allah has forgiven my followers the evil thoughts that occur to their minds....."</i>	437
243	<i>"The son of Âdam (Adam) should not make a vow about what he does not possess....."</i>	439
244	<i>"Leave that which makes you doubt for that which does not make you doubt."....."</i>	439

245	<i>"He should not leave his prayer unless he hears sound or smells something."</i>	440
246	<i>"When the four months are over, the husband must be legally ordered either to give up ilâ'....."</i>	449
247	<i>"Then do not approach her (i.e. do not have intercourse with her) until....."</i>	452
248	<i>"Verily, (the correctness and rewards of) deeds depend upon intentions....."</i>	454
249	<i>"My husband, Aws Ibnuṣ-Şâmit, pronounced zihâr from me..."</i>	455
250	<i>"...if there should be separation between the two spouses in case of li`ân....."</i>	460
251	<i>"The child belongs to the owner of the bed (i.e. the husband or the master)."</i>	463,464 465
252	<i>"Command your children to pray when they become seven (years old)....."</i>	464
253	<i>"Barîrah was ordered (by the Prophet) to count three monthly periods as a waiting period."....."</i>	468
254	<i>"Stay during your waiting period in the house where you were informed of your husband's death."....."</i>	472
255	<i>"Talk as much as you want at the home of one of you and when you want to sleep....."</i>	472
256	<i>"... When your menstruation comes, do not perform prayer."</i>	747
257	<i>"The waiting period of the slave woman is two monthly periods."</i>	474
258	<i>"The waiting period prescribed for the divorced slave girl who has begotten a child....."</i>	475
259	<i>"It is not lawful for a man who believes in Allah and the Last Day to water what another has sown....."</i>	479,480
260	<i>"No one should have sexual intercourse with a pregnant woman..."</i>	479,480
261	<i>"All things which become unlawful because of blood relations are unlawful because of....."</i>	483
262	<i>"What is unlawful because of blood relations is also unlawful because of....."</i>	483
263	<i>"It had been revealed in the Glorious Qur`ân that ten clear sucks make the marriage unlawful....."</i>	484
264	<i>"The only breastfeeding which makes marriage unlawful is..."</i>	484
265	<i>"O Messenger of Allah! My womb was a vessel to this son of mine..."</i>	490

266	<i>"Her (the mother's) smell, bed and lap are better for your son until..."</i>	491
267	<i>"The maternal aunt is of the same status as the mother.".....</i>	492
268	<i>"You have more right to him as long as you do not marry."..</i>	495,497
269	<i>"A woman came to the Prophet (PBUH) and said, 'My husband wants to take away my son....."</i>	497
270	<i>"Their rights upon you are that you should provide them with provision and....."</i>	502
271	<i>"There is neither alimony nor lodging for you.".....</i>	502
272	<i>"There is no alimony for you except if you are pregnant.".....</i>	503
273	<i>"They are to be separated (by divorce).".....</i>	504
274	<i>"A man asked the Prophet (PBUH), 'O Messenger of Allah! To whom should I show kindness?....."</i>	509
275	<i>"...Start giving first to your dependents: your mother, your father, your sister, your brother....."</i>	509
276	<i>"It is essential to feed the slave, clothe him (properly) and not to burden him with....."</i>	510
277	<i>"Your slaves are your brothers and Allah has put them under your command....."</i>	510
278	<i>"A woman was punished because of a cat which she had imprisoned until it died....."</i>	511
279	<i>"The blood of a Muslim who testifies that there is no deity but Allah and that I am His Messenger....."</i>	516
280	<i>"The diyah (blood money) for quasi-premeditated murder is to be made as much as....."</i>	517
281	<i>"The diyah (blood money) for quasi-premeditated murder, such as that committed with a whip or a stick, is....."</i>	518
282	<i>"Two women from (the tribe of) Hudhayl fought with each other and....."</i>	520
283	<i>"The Messenger of Allah (PBUH) gave the judgment that a male or female slave is....."</i>	523
284	<i>"Whoever suffers the murder of a relative, he has the choice between two options....."</i>	528
285	<i>"No person forgives an act of injustice (done to him) but Allah will add to his honor for it."....."</i>	529
286	<i>"There are three (persons) whose actions are not recorded..."</i>	530

- 287 "No Muslim should be killed in *qisâs* (legal retribution) for killing a disbeliever."..... 530
- 288 "It is an act of the Sunnah that no free person is to be killed in *qisâs* for killing a slave."..... 530
- 289 "A parent is not to be killed (in *qisâs*) for his/her child."..... 531
- 290 "If a pregnant woman intentionally murders someone..... 534
- 291 "Go home until you give birth."..... 534
- 292 "When you kill (in *qisâs*), do it in a good manner (i.e. gently and mercifully)."..... 535
- 293 "(The law prescribed in) the Book of Allah is *qisâs*."..... 539
- 294 "...By Him in Whose Hand my soul is, I shall carry out the *qisâs* against whoever (governor) does so..... 542
- 295 "If all the people of Sana had acted together in killing him... 546
- 296 "No person is to be obeyed in a matter of disobedience to the Creator."..... 547
- 297 "If I thought you had intentionally testified against the first... 548
- 298 "...The Prophet (PBUH) forbade applying *qisâs* to the culprit until..... 548
- 299 "A man stabbed another in his knee with a horn, so the injured man came to the Prophet (PBUH) and said..... 549
- 300 "He whose relative is murdered has to choose one of two ways... 551
- 301 "...`Umar asked some of the Prophet's Companions about the legal judgment concerning this incident..... 554
- 302 "The Messenger of Allah (PBUH) gave judgment that the *diyâh* to be paid by those possessing camels is..... 557
- 303 "A man was killed and the Messenger of Allah (PBUH) gave judgment that the *diyâh* to be paid was..... 558
- 304 "One thousand dinars are to be paid (as *diyâh*) by the people possessing gold."..... 558
- 305 "(The *diyâh*) for (killing) a believing soul (i.e. person) is one hundred camels."..... 558
- 306 "Verily, the *diyâh* (blood money) for quasi-premeditated murder is one hundred camels."..... 558
- 307 "Camels have become dear, so `Umar (referring to himself) has decreed that..... 558

308	<i>"During the lifetime of the Messenger of Allah (PBUH), the diyah was divided into quarters....."</i>	559
309	<i>"...The diyah for (killing one of) the People of the Scripture is half the diyah paid for (killing) a Muslim....."</i>	559
310	<i>"The diyah paid for killing a Magi is eight hundred dirhams."</i>	560
311	<i>"The diyah paid for killing a woman is half the diyah paid for killing a man....."</i>	560
312	<i>"The diyah (indemnity for a wound) of a woman is equal to that of a man unless....."</i>	560
313	<i>"...A ghurrah is to be given (as diyah) for an abortion case of a woman from (the tribe of) Banû Lahyân....."</i>	561
314	<i>"The male organ (if cut off or wholly damaged) necessitates the total amount of diyah....."</i>	564
315	<i>"The nose, if cut off or wholly damaged, necessitates the total amount of diyah....."</i>	564
316	<i>"The indemnity to be paid in case the fingers or the toes are cut off is equal....."</i>	565
317	<i>"This and that (referring to the little finger and the thumb) are the same....."</i>	565
318	<i>"Five camels are to be paid (as indemnity) for a tooth....."</i>	565
319	<i>"The total amount of diyah is to be paid for damaging someone's sense of smell....."</i>	566
320	<i>"Five camels are to be paid (in compensation) for a bone-clearing wound....."</i>	570
321	<i>"Fifteen camels are to be paid (as indemnity) for a bone-breaking-and-dislocating wound....."</i>	570
322	<i>"One third of the total amount of diyah (blood money) is to be paid (as indemnity) for....."</i>	570
323	<i>"One third of the diyah (blood money) is to be paid (as indemnity) for the wound that reaches....."</i>	571
324	<i>"The diyah (indemnity) for (breaking) a rib is one camel..."</i>	571
325	<i>"`Amr Ibnul-`Âs (may Allah be pleased with him) wrote to `Umar Ibnul-Khattâb asking him about....."</i>	571
326	<i>"Free a slave for him (i.e., for the murderer) so that Allah would free for each part of his body....."</i>	574

- 327 "Both 'Abdullāh Ibn Sahl and Muhayyisāh Ibn Mas'ūd set forward to Khaybar..... 580
- 328 "If fifty men of you take oaths to (that) a man of them (is believed to be guilty)..... 582
- 329 "If people are granted (what they claim) on basis of their claim... 582
- 330 "O Commander of the Believers! A Muslim's blood must be soon compensated..... 582
- 331 "No prescribed punishment is to be executed except on him who is aware of it..... 589
- 332 "The Messenger of Allah (PBUH) forbade executing qisās (legal retribution)..... 590
- 333 "If anyone's intercession hinders the execution of one of the punishments prescribed by Allah..... 590
- 334 "The Prophet (PBUH) executed the punishment of lashing and banishing (the fornicator)..... 596
- 335 "When an unmarried male commits fornication with an unmarried female..... 596
- 336 "If she commits fornication then lash her; if she commits it again then..... 596
- 337 "Avert punishments in the case of suspicion as much as you can." 597,622
- 338 "Maybe you have only kissed her, winked at her, or looked at her (lustfully)."..... 598
- 339 "Why did you not leave him, for he might repent and Allah would accept his repentance?"..... 598
- 340 "If you find anyone committing the deed of the People of Lūt... 601
- 341 "... kill the upper and the lower (i.e. the two partners)."..... 601
- 342 "... You must have sexual intercourse only through the vagina and never exceed it..... 601
- 343 "...slandering chaste, unaware believing women..... 604
- 344 "Is there anything that causes people to be thrown into the Hellfire upon their faces other than..... 606
- 345 "Every beverage that intoxicates is prohibited (to drink).".... 609
- 346 "Every inebriant is an intoxicant, and every intoxicant is prohibited."..... 610

347	<i>"An intoxicant is that which deranges the mind."</i>	610
348	<i>"It is not a remedy; it is a malady."</i>	610
349	<i>"Allah has never made your remedy in a prohibited thing."</i> ..	610
350	<i>"If anyone drinks an intoxicant, then lash him."</i>	611
351	<i>"Make it the same as the lightest prescribed punishment; eighty lashes."</i>	611
352	<i>"Allah has cursed wine, the one who drinks it....."</i>	612
353	<i>"...and the one who eats up its price."</i>	613
354	<i>"Nobody should be lashed more than ten lashes unless....."</i>	617
355	<i>"The hand should be cut off for stealing something that is worth a quarter of a dinar or more."</i>	619
356	<i>"The hand of a thief is not to be cut off but for a quarter of a dinar..."</i>	621
357	<i>"A thief who admitted stealing was summoned before the Prophet (PBUH)....."</i>	622
358	<i>"If the highwaymen kill and seize people's properties, they must be killed and crucified....."</i>	627
359	<i>"If the property of anyone is being taken away without right..."</i>	628
360	<i>"...O Messenger of Allah! What if a man comes desiring to seize my property?....."</i>	628
361	<i>"Help your (Muslim) brother, whether....."</i>	628
362	<i>"If anyone peeps into the house of some people without their permission....."</i>	629
363	<i>"When you (Muslims) are holding to one single man as your leader and....."</i>	632
364	<i>"If anyone tries to disrupt the affairs of this nation while it is united....."</i>	632
365	<i>"I enjoin you to fear Allah....."</i>	632
366	<i>"If anyone (Muslim) changes his religion (i.e. apostatizes), kill him."</i>	637,642
367	<i>"Islam is built on (the following) five (principles)....."</i>	639,645
368	<i>"The knots (i.e. handholds) of Islam are about to be unraveled one after another....."</i>	641
369	<i>"Why have you not imprisoned him for three days, fed him a loaf of bread every day....."</i>	641

- 370 "I have been commanded (by Allah) to fight against the people until they say..... 642
- 371 "A Muslim does not inherit from a disbeliever..... 643
- 372 "Between a man and polytheism and disbelief is the negligence of Prayer."..... 645
- 373 "The (only) convention between us and them..... 645
- 374 "Allah, Almighty and Ever-Majestic be He, has made obligations so do not neglect them..... 651
- 375 "The Prophet (PBUH) forbade (eating) the meat of domestic donkeys..... 652
- 376 "The Messenger of Allah (PBUH) prohibited eating any of the fanged beasts of prey."..... 653
- 377 "The Messenger of Allah (PBUH) ordered us to eat (the flesh of) hyena."..... 653
- 378 "The Messenger of Allah (PBUH) forbade eating jallalah or (drinking) its milk."..... 655
- 379 "Whoever eats from this plant (i.e., garlic) should not enter our mosque."..... 655
- 380 "This verse refers to the utensils people share and borrow among themselves such as..... 656
- 381 "Whoever believes in Allah and the Last Day should serve his guest generously by giving him his reward..... 657
- 382 "If you stay with some people and they entertain you as they should do for a guest..... 657
- 383 "Two dead (animals) and two (organs containing) blood have been made lawful to us (Muslims)..... 660
- 384 "It (the sea) is that whose water is pure and whose dead animals (the fish) are lawful (to eat)."..... 660
- 385 "The food meant in the verse is their slaughtered animals."..... 661
- 386 "If the slaughtering tool causes blood to gush and if the Name of Allah is mentioned..... 661
- 387 "...I will tell you why: As for the tooth, it is a bone..... 661
- 388 "When you slaughter, slaughter in a good way."..... 662
- 389 "...One of the camels once ran away, so a man shot it with an arrow that stopped it..... 662

390	<i>"Every one of you should sharpen his knife....."</i>	664
391	<i>"If you let loose your trained dog (for hunting) and mention Allah's Name....."</i>	668,669 670
392	<i>"Bismillâh (In the Name of Allah) wallâhu Akbar (and Allah is the Greatest)."</i>	670
393	<i>"...Allah has made this town (i.e., Mecca) a sanctuary since the day....."</i>	671
394	<i>"He who keeps a dog except one meant for watching a herd..."</i>	671
395	<i>"Angels (of Mercy) do not enter a house wherein there is a dog or a picture....."</i>	671
396	<i>"If one has to take an oath, one must swear by Allah or otherwise keep quiet."....."</i>	675,676
397	<i>"Whoever swears by other than Allah is committing an act of disbelief or polytheism."....."</i>	676
398	<i>"He who swears by Al-Amânah is not one of us....."</i>	676
399	<i>"It is the usual talk of a man at his home....."</i>	677
400	<i>"My nation is pardoned for what they commit by mistake..."</i>	677,678
401	<i>"If anyone includes 'if Allah wills' in his oath....."</i>	678
402	<i>"Whenever I take an oath to do something....."</i>	678
403	<i>"If anyone takes an oath to do something....."</i>	679,681 682
404	<i>"Whoever intentionally swears falsely by calling on a religion other than Islam....."</i>	679
405	<i>"When anyone takes an oath saying that he will be free from Islam....."</i>	679
406	<i>"...then make expiation for your oath and do the better one."....."</i>	683
407	<i>"The Prophet (PBUH) enjoined us to do seven things....."</i>	693
408	<i>"Making a vow does not prevent anything (related to fate), but..."</i>	688
409	<i>"Whoever vows to obey Allah must obey Him....."</i>	688,691
410	<i>"The expiation for (breaking) a vow which is not defined is..."</i>	689
411	<i>"No vows taken in a fit of anger (are valid)....."</i>	690
412	<i>"While the Prophet (PBUH) was delivering a sermon, he saw a man who remained standing, so....."</i>	690

413	"Whoever vows to disobey Allah must not disobey Him.".....	690
414	"The people who are ruled by a woman will never be successful."...	698
415	"The Messenger of Allah (PBUH) gave the judgment that the two adversaries....."	702
416	"A judge must not judge between two persons while he is in an angry mood.".....	703
417	"The Messenger (PBUH) cursed the one who bribes and the one who takes bribe.".....	703
418	"Gifts given to governors are (considered) ill-gotten property.".....	703
419	"Two persons referred their case to the Prophet (PBUH)...."	708
420	"Are you a neighbor of his?" The man replied in the negative...	715
421	"O Messenger of Allah! Abû Sufyân (her husband) is a stingy man...."	716
422	"The preemption is applied in every joint undivided property.".....	719
423	"If people were to be given what they claim (without proving their claim)....."	726
424	"Proof lies on the plaintiff and the oath is to be sworn by the defendant.".....	716,720
425	"When the Prophet (PBUH) was asked about testimony, he said....."	732
426	"...until three wise persons from amongst his people witness that so and so....."	737
427	"The Messenger of Allah (PBUH) decreed that testimony...."	739
428	"The oath is to be sworn by the defendant.".....	739,747
429	"The Prophet (PBUH) accepted the testimony of a midwife."....."	739
430	"There is no excuse for the one who confesses."....."	752

TRANSLITERATION SYSTEM

Arabic Character	Symbol	Example	Arabic Character	Symbol	Example
ا/أ	a/ʾ	amen/ʾishāʾ	ف	f	faith/fatwa
ب	b	badʾ/Bilāl	ق	q	Qurʾān
ت	t	tap/tasmiyah	ك	k	kill/Kaʾbah
ث	th	think/thaqif	ل	l	qiblah
ج	j	Jew/janābah	م	m	man/marwah
ح	h	Muḥammad	ن	n	Noah/nasiʾah
خ	kh	Al-Bukhārī	ه	h	has/hilāl
د	d	day/diyah	ة	h/t	zakāh/ zakātul-fitr
ذ	dh	Dhul-Hijjah	و	w	way/witr
ر	r	far/ribā	ي	y	yard/talbiyah
ز	z	zero/zayd	ا	a	fadl
س	s	say/sura	ي	i	fiqh
ش	sh	show/ʾishāʾ	و	u	sunnah
ص	ṣ	ʾAṣr	ا/آ	ā	Ādam/siwāk
ض	ḍ	ifḍāḥ	و	û	Dāwûd
ط	ṭ	tawāf	ي	î	ḥadīth/hanaḥfî
ظ	ẓ	zuhr	و	aw	await/ʾawrah
ع	ʿ	rakʿah	ي	ay	ayman
غ	gh	maghrib			

A SUMMARY OF ISLAMIC JURISPRUDENCE



المختصر الفقهي
الكويتي
الشيخ صالح بن فوزان بن عبد الله الفوزان

This book is an introduction to Islamic Jurisprudence for readers without substantial background in this field. In two volumes, **Sheikh Ṣāliḥ Al-Fawzān** has projected light on jurisprudential issues of utmost importance in a genuine and reader-friendly style, free from any jargon or sophisticated expressions.

A Summary of Islamic Jurisprudence, in this translated version, fulfills a long-standing need on the part of English-speaking Muslims for a brief, introductory book on Islamic jurisprudence. It is a valuable book for novice readers, be they Muslims or non-Muslims, who do not have thorough knowledge of the Islamic jurisprudence. The chapters of this book focus on major issues in Islamic jurisprudence. Volume one covers issues such as Purification, Prayer, *Zakāh*, Fasting, *Hajj* and *Jihād*. **Sheikh Ṣāliḥ Al-Fawzān** (born in 1935) has obtained a PhD in Islamic jurisprudence and has a high profile in teaching jurisprudence. He is a member of many academic institutions including the Board of Senior Ulema, the Permanent Committee for Fatwa and Research. He has written more than sixty published works covering Muslim Creed, Islamic jurisprudence and Muslim's conduct.



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