

English Translation of

**Sunan
Ibn Mâjah**

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Ibn Mâjah**

Compiled by:

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

Volume-3

From Hadith No. 01 to 802

Ahâdith edited & referenced by:

Hâfiz Abu Tâhir Zubair 'Ali Za'i

Translated by:

Nasiruddin al-Khattab (Canada)

Final review by:

Abu Khaliyl (USA)

سُنَنِ ابْنِ مَاجَةَ

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

8. The Chapters Regarding Zakât

(المعجم ٨) أَبْوَابُ الزَّكَاةِ (التحفة ٦)

Comments:

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

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

- b. *Zakât* was declared as an obligatory duty in the 2nd year of *Hijrah* in the month of *Shawwâl*.
- c. The kinds of wealth on which *Zakât* is due: Gold, silver, cash, commodities for trade, grains, fruits, (which can be stored like dates, raisin etc), minerals, cattle. Things other than these like: household utensils; vegetables are not subject to *Zakât*, and nor are modes of transport such as horses, cars, etc.
- d. The following are the recipients of *Zakât*: The poor, the needy, the collectors of it, those whose hearts are to be reconciled, to free the captives, in the debtors, the cause of Allâh and the wayfarer.

Chapter 1. The Obligation Of *Zakât*

(المعجم ١) - بَابُ فَرَضِ الزَّكَاةِ

(التحفة ١)

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

١٧٨٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعُ ابْنُ الْجَرَّاحِ: حَدَّثَنَا زَكَرِيَّا بْنُ إِسْحَاقَ الْمَكِّيُّ، عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِيٍّ، عَنْ أَبِي مَعْبُدٍ، مَوْلَى ابْنِ عَبَّاسٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ بَعَثَ مُعَاذًا إِلَى الْيَمَنِ، فَقَالَ: «إِنَّكَ تَأْتِي قَوْمًا أَهْلَ كِتَابٍ. فَأَدْعُهُمْ إِلَى شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ. فَإِنْ هُمْ أَطَاعُوا لِنَدِّكَ فَأَعْلِمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِي كُلِّ يَوْمٍ وَلَيْلَةٍ. فَإِنْ هُمْ أَطَاعُوا لِنَدِّكَ فَأَعْلِمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ، تُؤْخَذُ مِنْ

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

أَغْنِيَانِهِمْ فَتَرَدُّ فِي فَقْرَائِهِمْ. فَإِنْ هُمْ أَطَاعُوا
لِذَلِكَ فَإِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ. وَأَتَى دَعْوَةَ
الْمُظْلُومِ، فَإِنَّهَا لَيْسَ بَيْنَهَا وَبَيْنَ اللَّهِ
حِجَابٌ.”

تخريج: أخرجه البخاري، المظالم، باب الانتفاء والحذر من دعوة المظلوم، ح: ٢٤٤٨ مختصراً من حديث وكيع، وانظر، ح: ١٣٩٥ وغيره، ومسلم، الإيمان، باب الدعاء إلى الشهادتين وشرايع الإسلام، ح: ١٩٠ من حديث وكيع به.

Comments:

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

Chapter 2. What Was Narrated Concerning Withholding *Zakât*

(المعجم ٢) - بَابُ مَا جَاءَ فِي مَنَعِ
الزَّكَاةِ (التحفة ٢)

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

١٧٨٤ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ:
حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ
أَعْيَنَ، وَ جَامِعِ بْنِ أَبِي رَاشِدٍ، سَمِعَا شَقِيقَ
ابْنِ سَلَمَةَ يُخْبِرُ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، عَنْ
رَسُولِ اللَّهِ ﷺ قَالَ: «مَا مِنْ أَحَدٍ لَّا يُؤَدِّي

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

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

(Sahih)

تخریج: [إسناده صحيح] أخرجه الترمذي، تفسير القرآن، باب ومن سورة آل عمران، ح: ٣٠١٢ عن ابن أبي عمر العدني به، وقال: حسن صحيح، وقال الحميدي في مسنده ثنا سفيان ثنا جامع بن أبي راشد وعبد الملك بن أعين به، ح: ٩٣، وصححه ابن خزيمة، ح: ٢٢٥٦.

Comments:

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

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

١٧٨٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنِ الْأَعْمَشِ، عَنِ الْمَعْرُورِ بْنِ سُوَيْدٍ، عَنْ أَبِي ذَرٍّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا مِنْ صَاحِبِ إِبِلٍ وَلَا خَنَمٍ وَلَا بَقَرٍ لَا يُؤَدِّي زَكَاتَهَا، إِلَّا جَاءَتْ يَوْمَ الْقِيَامَةِ أَغْظَمَ مَا كَانَتْ وَأَسْمَنَهُ، تَنْطَحُهُ بِقُرُونِهَا. وَتَطْوُهُ بِأُخْفَافِهَا. كُلَّمَا نَفَدَتْ أُخْرَاهَا عَادَتْ عَلَيْهِ أَوْلَاهَا. حَتَّى يُفْضَى بَيْنَ النَّاسِ».

تخریج: أخرجه البخاري، الزكوة، باب زكوة البقر، ح: ١٤٦٠، ٦٦٣٨ من حديث الأعمش به، ومسلم، الزكوة، باب تغليظ عقوبة من لا يؤدي الزكوة، ح: ٩٩٠.

[1] *Al 'Imrân* 3:180.

Comments:

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

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

١٧٨٦ - حَدَّثَنَا أَبُو مَرْوَانَ، مُحَمَّدُ بْنُ عُمَانَ
 الْعُمَانِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ،
 عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ
 أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «تَأْتِي
 الْإِبِلُ النَّبِيَّ لَمْ تُعْطِ الْحَقَّ مِنْهَا، تَطَأُ صَاحِبَهَا
 بِأَخْفَافِهَا. وَتَأْتِي الْبَقَرُ وَالْعَمَمُ تَطَأُ صَاحِبَهَا
 بِأَطْلَافِهَا، وَتَنْطَعُهُ بِقُرُونِهَا. وَيَأْتِي الْكَنْزُ
 شُجَاعًا أَقْرَعَ فَيَلْقَى صَاحِبَهُ يَوْمَ الْقِيَامَةِ. فَيَفِرُّ
 مِنْهُ صَاحِبُهُ مَرَّتَيْنِ. ثُمَّ يَسْتَقْبِلُهُ فَيَفِرُّ. فَيَقُولُ:
 مَا لِي وَلَكَ فَيَقُولُ: أَنَا كَنْزُكَ، أَنَا كَنْزُكَ.
 فَيَتَّقِيهِ بِيَدِهِ فَيَلْقَمُهَا».

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

Comments:

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

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

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

(المعجم ٣) - بَابُ مَا أَدَّى زَكَاتَهُ لَيْسَ
 بِكَنْزٍ (النحفة ٣)

١٧٨٧ - حَدَّثَنَا عَمْرُو بْنُ سَوَادٍ الْمِصْرِيُّ:
 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ، عَنِ ابْنِ لَهْيَعَةَ،

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

عَنْ عَقِيلٍ، عَنِ ابْنِ شِهَابٍ: حَدَّثَنِي خَالِدُ بْنُ أَسْلَمَ، مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: خَرَجْتُ مَعَ عَبْدِ اللَّهِ بْنِ عُمَرَ، فَلِحِقَّةِ أَعْرَابِيٍّ. فَقَالَ لَهُ: قَوْلُ اللَّهِ: ﴿وَالَّذِينَ يَكْتُمُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يُفْقِدُونَهَا فِي سَبِيلِ اللَّهِ؟﴾ [التوبة: ٣٤] قَالَ لَهُ ابْنُ عُمَرَ: مَنْ كَتَمَهَا فَلَمْ يُؤَدِّ زَكَاتَهَا، فَوَيْلٌ لَهُ. إِنَّمَا كَانَ هَذَا قَبْلَ أَنْ تُنَزَّلَ الزَّكَاةُ. فَلَمَّا أُتْرِلَتْ جَعَلَهَا اللَّهُ طَهْرًا لِلْأَمْوَالِ. ثُمَّ انْتَفَتَ فَقَالَ: مَا أَبَالِي لَوْ كَانَ لِي أُحُدٌ ذَهَبًا، أَعْلَمُ عَدَدَهُ وَأَرْكَبُهُ، وَأَعْمَلُ فِيهِ بِطَاعَةِ اللَّهِ عَزَّ وَجَلَّ.

تخریج: أخرجه البخاري، الزكوة، باب ما أدي زكاته فليس بكنز، ح: ٤٦٦١، ١٤٠٤. حديث يونس عن ابن شهاب به تعليقا، وأسندة أبوذر في روايته، ورواه الحافظ في تعليق التعليق: ٦٥٥/٣ من طرق عن أحمد بن شبيب به موصولاً.

Comments:

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

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

١٧٨٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ الْمَلِكِ: حَدَّثَنَا مُوسَى بْنُ أَعْيَنَ: حَدَّثَنَا عُمَرُو بْنُ الْحَارِثِ، عَنْ دَرَّاجِ أَبِي السَّمْحِ، عَنِ ابْنِ حُجَيْرَةَ، عَنِ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا أَدَيْتَ زَكَاةَ مَالِكَ، فَقَدْ قَضَيْتَ مَا عَلَيْكَ».

[1] At-Taubah 9:34.

تخريج: [إسناده حسن] أخرجه الترمذي، الزكوة، باب ما جاء إذا أدبت الزكوة فقد قضيت ما عليك، ح: ٦١٨ من حديث عمرو به، وقال: حسن غريب، وصححه ابن خزيمة، ح: ٢٤٧١، وابن حبان (موارد)، ح: ٧٩٧، والحاكم: ٣٩٠/١، والذهبي * دراج صدوق، في حديثه عن أبي الهيثم ضعف (تقريب)، وهو حسن الحديث عن غير أبي الهيثم، وزاد ابن حبان وغيره: ومن جمع مالاً حراماً ثم تصدق به، لم يكن له فيه أجر، وكان إصره عليه .

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

١٧٨٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ، عَنْ شَرِيكٍ، عَنْ أَبِي حُمْزَةَ، عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّهَا سَمِعَتْهُ، تَعْنِي النَّبِيَّ ﷺ، يَقُولُ: «لَيْسَ فِي الْمَالِ حَقٌّ سِوَى الزَّكَاةِ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، الزكوة، باب ما جاء أن في المال حقاً سوى الزكوة، ح: ٦٥٩، ٦٦٠ من حديث شريك به، وقال: هذا حديث إسناده ليس بذلك، وأبو حمزة ميمون الأعرور يضعف * والأعور هذا ضعفه صاحب التقريب وغيره، وفيه علة أخرى.

Chapter 4. Zakât on Silver and Gold

(المعجم ٤) - بَابُ زَكَاةِ الْوَرِقِ وَالذَّهَبِ (التحفة ٤)

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

١٧٩٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنِّي قَدْ عَفَوْتُ عَنْكُمْ عَنْ صَدَقَةِ الْخَيْلِ وَالرَّقِيقِ وَلَكِنْ هَاتُوا رُبْعَ الْعُشْرِ مِنْ كُلِّ أَرْبَعِينَ دِرْهَمًا، دِرْهَمًا».

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

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

١٧٩١ - حَدَّثَنَا بَكْرُ بْنُ حَلْفٍ وَ مُحَمَّدٌ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى: أَنَّ أَبَانَا إِبْرَاهِيمَ بْنَ إِسْمَاعِيلَ، عَنْ عَبْدِ اللَّهِ بْنِ

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

وَأَقِيدَ، عَنِ ابْنِ عُمَرَ وَ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ يَأْخُذُ مِنْ كُلِّ عِشْرِينَ دِينَارًا، فَصَاعِدًا، نِصْفَ دِينَارٍ. وَمِنَ الْأَرْبَعِينَ دِينَارًا، دِينَارًا.

تخريج: [حسن] وضعفه البوصيري * إبراهيم بن إسماعيل بن مجمع تقدم حاله، ح: ١٠٦٩، وله شواهد عند أبي داود، ح: ١٥٧٣ وغيره.

Comments:

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

Chapter 5. One Who Acquires Wealth

(المعجم ٥) - بَابُ مَنْ اسْتَفَادَ مَالًا
(التحفة ٥)

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

١٧٩٢ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضِيُّ: حَدَّثَنَا شُعَاعُ بْنُ الْوَلِيدِ: حَدَّثَنَا حَارِثَةُ بْنُ مُحَمَّدٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا زَكَاةَ فِي مَالٍ، حَتَّى يَحُولَ عَلَيْهِ الْحَوْلُ».

تخريج: [حسن] وانظر، ح: ٥٦ لعلته، وضعفه البوصيري، وله شواهد كثيرة.

Comments:

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

Chapter 6. Wealth On Which Zakât Is Required

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

(المعجم ٦) - بَابُ مَا تَحِبُّ فِيهِ الزَّكَاةُ
مِنَ الْأَمْوَالِ (التحفة ٦)

١٧٩٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ: حَدَّثَنِي الْوَلِيدُ بْنُ كَثِيرٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي صَعْصَعَةَ، عَنْ يَحْيَى بْنِ عُمَارَةَ، وَعَبَادِ بْنِ تَمِيمٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّهُ سَمِعَ النَّبِيَّ ﷺ يَقُولُ: «لَا صَدَقَةَ فِيمَا دُونَ خَمْسَةِ أَوْسَاقٍ مِنَ التَّمْرِ. وَلَا فِيمَا دُونَ خَمْسِ أَوْاقٍ. وَلَا فِيمَا دُونَ خَمْسِ مِنَ الْإِبِلِ».

تخريج: [صحيح] أخرجه السنائي: ٣٧/٥، الزكوة، باب زكوة الورق، ح: ٢٤٧٧ من حديث أبي أسامة به، أخرجه البخاري، ح: ١٤٠٥ وغيره، ومسلم، ح: ٩٧٩ وغيرهما من حديث يحيى بن عمارة عن أبي سعيد الخدري به.

Comments:

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

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

١٧٩٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ فِيمَا دُونَ خَمْسِ دَوْدٍ صَدَقَةٌ. وَلَيْسَ فِيمَا دُونَ خَمْسِ أَوْاقٍ صَدَقَةٌ. وَلَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسَاقٍ صَدَقَةٌ».

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

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

تخريج: [صحيح] أخرجه أحمد: ٢٩٦/٣ من حديث محمد بن مسلم به، وحسنه البوصيري.

Chapter 7. Paying Zakât Before It Is Due

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

(المعجم ٧) - بَابُ تَعْجِيلِ الزَّكَاةِ قَبْلَ مَحَلِّهَا (التحفة ٧)

١٧٩٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ زَكَرِيَّا، عَنْ حَجَّاجِ بْنِ دِينَارٍ، عَنِ الْحَكَمِ، عَنْ حُجَيْبِ بْنِ عَدِيٍّ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ الْعَبَّاسَ سَأَلَ النَّبِيَّ ﷺ فِي تَعْجِيلِ صَدَقَتِهِ قَبْلَ أَنْ تَحِلَّ. فَرَخَّصَ لَهُ فِي ذَلِكَ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الزكوة، باب: في تعجيل الزكوة، ح: ١٦٢٤ عن سعيد بن منصور به، وصححه الحاكم، والذهبي * الحكم بن عتيبة عن تقدم، ح: ١١٩٢، وله شواهد كلها ضعيفة.

Comments:

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

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

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

(المعجم ٨) - بَابُ مَا يُقَالُ عِنْدَ إِخْرَاجِ الزَّكَاةِ (التحفة ٨)

١٧٩٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ شُعْبَةَ، عَنْ عَمْرِو بْنِ مَرْثَةَ. قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى يَقُولُ: كَانَ رَسُولُ اللَّهِ ﷺ، إِذَا آتَاهُ الرَّجُلُ بِصَدَقَةٍ مَالِهِ، صَلَّى عَلَيْهِ. فَأَتَيْتُهُ بِصَدَقَةٍ مَالِي فَقَالَ: «اللَّهُمَّ صَلِّ عَلَى آلِ أَبِي أَوْفَى».

تخريج: أخرجه البخاري، الزكوة، باب صلاة الإمام، ودعائه لصاحب الصدقة ... الخ، ح: ١٤٩٧ وغيره من حديث شعبة به، ومسلم، الزكوة، باب الدعاء لمن أتى بصدقة، ح: ١٠٧٨ من حديث وكيع به.

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

١٧٩٧ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا

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

الْوَلِيدُ بْنُ مُسْلِمٍ، عَنِ الْبُخْتَرِيِّ بْنِ عَبْدِ، عَنِ أَبِيهِ، عَنِ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَعْطَيْتُمُ الزَّكَاةَ فَلَا تَنْسُوا ثَوَابَهَا، أَنْ تَقُولُوا: اللَّهُمَّ اجْعَلْهَا مَغْنَمًا وَلَا تَجْعَلْهَا مَغْرَمًا».

تخريج: [إسناده موضوع] * البخاري بن عبيد ضعيف متروك (تقريب)، وقال البوصيري: متفق على ضعفه، وقال الحاكم، وأبو نعيم وغيرهما: روى عن أبيه عن أبي هريرة موضوعات، وجرحه ابن حبان وغيره.

Comments:

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

Chapter 9. Sadaqah Due On Camels

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

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

١٧٩٨ - حَدَّثَنَا أَبُو بَشِيرٍ، بِكَرْبُ بْنُ خَلْفٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُلَيْمَانُ بْنُ كَثِيرٍ: حَدَّثَنَا ابْنُ شِهَابٍ، عَنِ سَالِمِ بْنِ عَبْدِ اللَّهِ، عَنِ أَبِيهِ، عَنِ النَّبِيِّ ﷺ، قَالَ: أَقْرَأَنِي سَالِمٌ كِتَابًا كَتَبَهُ رَسُولُ اللَّهِ ﷺ فِي الصَّدَقَاتِ قَبْلَ أَنْ يَوَفَّاهُ اللَّهُ. فَوَجَدْتُ فِيهِ: «فِي خَمْسٍ مِنَ الْإِبِلِ شَاةٌ. وَفِي عَشْرِ شَاتَانِ. وَفِي خَمْسِ عَشْرَةَ ثَلَاثَ شِيَاهٍ. وَفِي عَشْرِينَ أَرْبَعَ شِيَاهٍ. وَفِي خَمْسِ وَعِشْرِينَ بِنْتُ مَخَاضٍ، إِلَى خَمْسِ وَثَلَاثِينَ. فَإِنْ لَمْ تَوْجَدْ بِنْتُ مَخَاضٍ، فَابْنُ لَبُونٍ، ذَكَرٌ. فَإِنْ زَادَتْ، عَلَى خَمْسِ وَثَلَاثِينَ، وَاحِدَةً، فَفِيهَا بِنْتُ

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

تخریج: [حسن] أخرجه البيهقي: ٤/٨٨، ٨٩ من حديث ابن مهدي به * سليمان بن كثير: لا بأس به في غير الزهري (تقريب)، وتابعه سفیان بن الحسين عند أبي داود، ح: ١٥٦٨، وغيره، وحسنه الترمذي، ح: ٦٢١، وعلقه البخاري في صحيحه، وله شواهد.

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

لَبُونٍ، إِلَى خَمْسَةِ وَأَرْبَعِينَ. فَإِنْ زَادَتْ، عَلَى خَمْسٍ وَأَرْبَعِينَ، وَاحِدَةً، ففِيهَا حِقَّةٌ إِلَى سِتِّينَ. فَإِنْ زَادَتْ، عَلَى سِتِّينَ، وَاحِدَةً، ففِيهَا جَذَعَةٌ، إِلَى خَمْسٍ وَسَبْعِينَ. فَإِنْ زَادَتْ، عَلَى خَمْسٍ وَسَبْعِينَ وَاحِدَةً، ففِيهَا ابْتْنَا لَبُونٍ إِلَى تِسْعِينَ. فَإِنْ زَادَتْ، عَلَى تِسْعِينَ، وَاحِدَةً، ففِيهَا حِقَّتَانِ، إِلَى عِشْرِينَ وَمِائَةً. فَإِذَا كَثُرَتْ، ففِي كُلِّ خَمْسِينَ، حِقَّةٌ. وَفِي كُلِّ أَرْبَعِينَ، بِنْتُ لَبُونٍ".

١٧٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عَقِيلٍ بْنُ حَوْثِلَةَ النَّيْسَابُورِيُّ: حَدَّثَنَا حَفْصُ بْنُ عَبْدِ اللَّهِ السَّلْمِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ طَهْمَانَ، عَنْ عَمْرِو بْنِ يَحْيَى بْنِ عُمَارَةَ، عَنْ أَبِيهِ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ فِيمَا دُونَ خَمْسٍ مِنَ الْإِبِلِ صَدَقَةٌ. وَلَا فِي الْأَرْبَعِ شَيْءٌ، فَإِذَا بَلَغَتْ خَمْسًا ففِيهَا شَاةٌ إِلَى أَنْ تَبْلُغَ تِسْعًا. فَإِذَا بَلَغَتْ عَشْرًا، ففِيهَا شَاتَانِ، إِلَى أَنْ تَبْلُغَ أَرْبَعَ عَشْرَةَ. فَإِذَا بَلَغَتْ خَمْسَ عَشْرَةَ، ففِيهَا ثَلَاثُ شِيَاءٍ، إِلَى أَنْ تَبْلُغَ تِسْعَ عَشْرَةَ. فَإِذَا بَلَغَتْ عِشْرِينَ، ففِيهَا أَرْبَعُ شِيَاءٍ، إِلَى أَنْ تَبْلُغَ أَرْبَعًا وَعِشْرِينَ. فَإِذَا بَلَغَتْ خَمْسًا وَعِشْرِينَ، ففِيهَا

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

بِنْتُ مَخَاضٍ، إِلَى خَمْسٍ وَثَلَاثِينَ. فَإِذَا لَمْ تَكُنْ بِنْتُ مَخَاضٍ فَابْنُ لَبُونٍ، ذَكَرٌ. فَإِنْ زَادَتْ بَعِيرًا، فَفِيهَا بِنْتُ لَبُونٍ، إِلَى أَنْ تَبْلُغَ خَمْسًا وَأَرْبَعِينَ. فَإِنْ زَادَتْ بَعِيرًا، فَفِيهَا حِقَّةٌ، إِلَى أَنْ تَبْلُغَ سِتِينَ. فَإِنْ زَادَتْ بَعِيرًا، فَفِيهَا جَذَعَةٌ. إِلَى أَنْ تَبْلُغَ خَمْسًا وَسَبْعِينَ. فَإِنْ زَادَتْ بَعِيرًا، فَفِيهَا بِنْتُ لَبُونٍ، إِلَى أَنْ تَبْلُغَ تِسْعِينَ. فَإِنْ زَادَتْ بَعِيرًا، فَفِيهَا حِقَّتَانِ، إِلَى أَنْ تَبْلُغَ عِشْرِينَ وَمِائَةً. ثُمَّ فِي كُلِّ خَمْسِينَ، حِقَّةٌ. وَفِي كُلِّ أَرْبَعِينَ، بِنْتُ لَبُونٍ."

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

Comments:

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

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

became a group of 50.

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

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

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

(المعجم ١٠) - بَابُ: إِذَا أَخَذَ
الْمُصَدِّقُ سِنًا دُونَ سِنٍّ أَوْ فَوْقَ سِنٍّ
(التحفة ١٠)

١٨٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ مُحَمَّدُ
ابْنُ يَحْيَى، وَ مُحَمَّدُ بْنُ مَرْزُوقٍ. قَالُوا:
حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى: حَدَّثَنِي
أَبِي، عَنْ ثُمَامَةَ: حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ أَنَّ
أَبَا بَكْرٍ الصِّدِّيقَ كَتَبَ لَهُ: بِسْمِ اللَّهِ الرَّحْمَنِ
الرَّحِيمِ. هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ
رَسُولُ اللَّهِ ﷺ عَلَى الْمُسْلِمِينَ الَّتِي أَمَرَ اللَّهُ
بِهَا رَسُولَ اللَّهِ ﷺ. فَإِنْ مِنْ أَسْتَانِ الْإِبِلِ فِي
فَرَائِضِ الْعَتَمِ مَنْ بَلَغَتْ عِنْدَهُ مِنَ الْإِبِلِ صَدَقَةٌ
الْجَذَعَةَ، وَلَيْسَ عِنْدَهُ جَذَعَةٌ، وَعِنْدَهُ حِقَّةٌ،
فَإِنَّهَا تُقْبَلُ مِنْهُ الْحِقَّةُ. وَيَجْعَلُ مَكَانَهَا شَاتَيْنِ
إِنْ اسْتَيْسَرَتَا. أَوْ عَشْرَيْنِ دِرْهَمًا. وَمَنْ بَلَغَتْ
عِنْدَهُ صَدَقَةُ الْحِقَّةِ، وَلَيْسَتْ عِنْدَهُ إِلَّا بِنْتُ
لَبُونٍ، فَإِنَّهَا تُقْبَلُ مِنْهُ بِنْتُ لَبُونٍ، وَيُعْطَى
مَعَهَا شَاتَيْنِ أَوْ عَشْرَيْنِ دِرْهَمًا. وَمَنْ بَلَغَتْ
صَدَقَتَهُ بِنْتُ لَبُونٍ، وَلَيْسَتْ عِنْدَهُ، وَعِنْدَهُ
حِقَّةٌ، فَإِنَّهَا تُقْبَلُ مِنْهُ الْحِقَّةُ وَيُعْطِيهِ الْمُصَدِّقُ
عَشْرَيْنِ دِرْهَمًا، أَوْ شَاتَيْنِ. وَمَنْ بَلَغَتْ
صَدَقَتَهُ بِنْتُ لَبُونٍ، وَلَيْسَتْ عِنْدَهُ، وَعِنْدَهُ بِنْتُ
مَخَاضٍ، فَإِنَّهَا تُقْبَلُ مِنْهُ ابْنَةُ مَخَاضٍ وَيُعْطَى
مَعَهَا عَشْرَيْنِ دِرْهَمًا، أَوْ شَاتَيْنِ. وَمَنْ بَلَغَتْ

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

صَدَقْتُهُ بِنْتِ مَخَاضٍ، وَلَيْسَتْ عِنْدَهُ، وَعِنْدَهُ ابْنَةُ لَبُونٍ، فَإِنَّهَا تُقْبَلُ مِنْهُ بِنْتُ لَبُونٍ، وَيُعْطِيهِ الْمُصَدِّقُ عِشْرِينَ دِرْهَمًا، أَوْ شَاتَيْنِ. فَمَنْ لَمْ يَكُنْ عِنْدَهُ ابْنَةُ مَخَاضٍ عَلَى وَجْهِهَا، وَعِنْدَهُ ابْنٌ لَبُونٍ ذَكَرَ، فَإِنَّهُ يُقْبَلُ مِنْهُ، وَلَيْسَ مَعَهُ شَيْءٌ.

تخریج: أخرجه البخاري، الزكوة، باب زكوة الغنم، ح: ١٤٥٤ وغيره عن محمد بن عبد الله

Comments:

بن المثنى به.

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

Chapter 11. What Kind Of Camels Should Be Taken

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

(المعجم ١١) - بَابُ مَا يَأْخُذُ الْمُصَدِّقُ

مِنَ الْإِبِلِ (التحفة ١١)

١٨٠١ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا شَرِيكٌ، عَنْ عَثْمَانَ التَّمِيمِيِّ، عَنْ أَبِي لَيْلَى الْكِنْدِيِّ، عَنْ سُؤَيْدِ بْنِ عَقْلَةَ قَالَ: جَاءَنَا مُصَدِّقُ النَّبِيِّ ﷺ فَأَخَذْتُ بِيَدِهِ وَقَرَأْتُ فِي عَهْدِهِ: لَا يُجْمَعُ بَيْنَ مُتَفَرِّقٍ. وَلَا

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

يُفَرِّقُ بَيْنَ مُجْتَمِعٍ، خَشِيَّةَ الصَّدَقَةِ. فَأَنَاهُ رَجُلٌ بِنَاقَةٍ عَظِيمَةٍ مُلَمَّمَةٍ فَأَبَى أَنْ يَأْخُذَهَا. فَأَنَاهُ بِأُخْرَى دُونَهَا فَأَخَذَهَا، وَقَالَ: أَيُّ أَرْضٍ تُظِلُّنِي، وَأَيُّ سَمَاءٍ تُظِلُّنِي، إِذَا أَتَيْتُ رَسُولَ اللَّهِ ﷺ وَقَدْ أَخَذْتُ خَيْرَ إِبِلٍ رَجُلٍ مُسْلِمٍ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الزكاة، باب في زكاة السائمة، ح: ١٥٨٠ من حديث شريك به، انظر، ح: ١٤٩ لعلته، لم أجد تصريح سماع شريك فيه.

Comments:

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

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

١٨٠٢ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ إِسْرَائِيلَ، عَنْ جَابِرٍ، عَنْ عَامِرٍ، عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَرْجِعُ الْمُصَدِّقُ إِلَّا عَنِ رِضَا».

تخريج: [صحيح] أخرجه الطبراني في الكبير: ٣٢٧/٢، ح: ٢٣٦٧ من حديث إسرائيل به * جابر تقدم، ح: ٣٥٦، وتابعه مجالد عند الطبراني، ح: ٢٣٦٢، وتابعهما داود بن أبي هند (صحيح مسلم، ح: ٩٨٩ وغيره) وغيره نحو المعنى.

Comments:

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

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

Chapter 12. *Sadaqah* Due On Cattle

(المعجم ١٢) - بَابُ صَدَقَةِ الْبَقَرِ

(التحفة ١٢)

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

١٨٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا يَحْيَى بْنُ عِيسَى الرَّثَمِيُّ: حَدَّثَنَا الْأَعْمَشُ، عَنْ شَقِيبٍ، عَنْ مَسْرُوقٍ، عَنْ مُعَاذِ ابْنِ جَبَلٍ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ، وَأَمَرَنِي أَنْ أَخَذَ مِنَ الْبَقَرِ، مِنْ كُلِّ أَرْبَعِينَ، مِئْتَةً. وَمِنْ كُلِّ ثَلَاثِينَ، تَبِيعًا أَوْ تَبِيعَةً.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الزكوة، باب: في زكوة السائمة، ح: ١٥٧٨ من حديث الأعمش به، وحسنه الترمذي، ح: ٦٢٣، وصححه ابن خزيمة، وابن حبان، والحاكم، والذهبي وغيرهم.

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

١٨٠٤ - حَدَّثَنَا سُفْيَانُ بْنُ وَكَيْعٍ: حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ حَرْبٍ، عَنْ خُصَيْفٍ، عَنْ أَبِي عُبَيْدَةَ، عَنْ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «فِي ثَلَاثِينَ مِنَ الْبَقَرِ، تَبِيعٌ أَوْ تَبِيعَةٌ. وَفِي أَرْبَعِينَ، مِئْتَةٌ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، الزكوة، باب: في زكوة البقر، ح: ٦٢٢ من حديث عبدالسلام به، وتكلم فيه، وانظر، ح: ١٦٠٦ و ١٤٧٨ * وخصيف ضعيف كما تقدم، ح: ١١٧٣، وللحديث شواهد منها الحديث السابق.

Comments:

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

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

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

Chapter 13. *Sadaqah* Due On Sheep

1805. It was narrated from Ibn Shihâb, from Sâlim bin 'Abdullâh, from his father, from the Messenger of Allâh ﷺ. He (Sâlim) said: "My father read to me a letter that the Messenger of Allâh ﷺ had written about *Sadaqât* before Allâh caused him to pass away. I read in it: 'For forty sheep, one sheep, up to one hundred and twenty. If there is more than that — even one — then two sheep, up to two hundred. If there is one more than that — even one — then three sheep, up to three hundred. If there are many sheep, then for each hundred, one sheep.' And I read in it: 'Separate flocks should not be combined, and a combined flock should not be separated.' And I read in it: 'And a male goat should not be taken for *Sadaqah*, nor a decrepit nor defective animal.'"^[1] (*Hasan*)

(المعجم ١٣) - بَابُ صَدَقَةِ الْعَنَمِ

(التحفة ١٣)

١٨٠٥ - حَدَّثَنَا بَكْرُ بْنُ خَلْفٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُلَيْمَانُ بْنُ كَثِيرٍ: حَدَّثَنَا ابْنُ شِهَابٍ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِيهِ، عَنْ رَسُولِ اللَّهِ ﷺ، قَالَ: أَقْرَأَنِي سَالِمٌ كِتَابًا كَتَبَهُ رَسُولُ اللَّهِ ﷺ فِي الصَّدَقَاتِ قَبْلَ أَنْ يَمُوتَ اللَّهُ. فَوَجَدْتُ فِيهِ: «فِي أَرْبَعِينَ شَاةً، شَاةً، شَاةً، إِلَى عَشْرِينَ وَمِائَةٍ. فَإِذَا زَادَتْ وَاحِدَةً، فَفِيهَا شَاتَانِ، إِلَى مِائَتَيْنِ. فَإِنْ زَادَتْ وَاحِدَةً، فَفِيهَا ثَلَاثُ شِيَاءٍ، إِلَى ثَلَاثِمِائَةٍ. فَإِذَا كَثُرَتْ، فَفِي كُلِّ مِائَةٍ، شَاةٌ. وَوَجَدْتُ فِيهِ: «لَا يُجْمَعُ بَيْنَ مُتَرَقِّ، وَلَا يُتَرَقَّى بَيْنَ مُجْتَمِعٍ». وَوَجَدْتُ فِيهِ: «لَا يُؤْخَذُ فِي الصَّدَقَةِ نَيْسٌ وَلَا هَرِمَةٌ وَلَا ذَاتُ عَوَارٍ».

تخريج: [حسن] تقدم، ح: ١٧٩٨.

Comments:

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

^[1] See no. 1798.

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

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

١٨٠٦ - حَدَّثَنَا أَبُو بَدْرِ، عَبَادُ بْنُ الْوَلِيدِ:
حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ: حَدَّثَنَا ابْنُ
الْمُبَارَكِ، عَنْ أُسَامَةَ بْنِ زَيْدٍ، عَنْ أَبِيهِ، عَنِ
ابْنِ عَمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تُؤَخَذُ
صَدَقَاتُ الْمُسْلِمِينَ عَلَى مِيَاهِهِمْ».

تخریج: [حسن] * أسامة بن زيد بن أسلم ضعيف من قبل حفظه (تقريب)، ومحمد بن الفضل هو عارم السلوسي أبو النعمان، وأخرج أحمد: ١٨٤/٢، ١٨٥ وغيره بإسناد صحيح عن عبدالله بن المبارك عن أسامة بن زيد (الليثي، انظر، ح: ١٠٧٢) عن عمرو بن شعيب عن أبيه عن عبدالله بن عمرو نحوه، وإسناده حسن، وأخرج ابن الجارود، ح: ٣٤٦ وغيره من حديث عائشة رضي الله عنها قالت: قال رسول الله ﷺ: تؤخذ صدقات أهل البادية على مياههم وأفتيتهم وإسناده حسن، وحسنه الهيثمي.

Comments:

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

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

١٨٠٧ - حَدَّثَنَا أَحْمَدُ بْنُ عُمَانَ بْنِ حَكِيمِ
الْأَوْدِيِّ: حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا عَبْدُ السَّلَامِ
ابْنُ حَرْبٍ، عَنْ يَزِيدَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ
أَبِي هِنْدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عَمَرَ، عَنِ النَّبِيِّ
ﷺ: «فِي أَرْبَعِينَ شَاةً، شَاةً، إِلَى عِشْرِينَ
وِمِائَةً. فَإِذَا زَادَتْ وَاحِدَةً، فَفِيهَا سَاتَانِ، إِلَى
مِائَتَيْنِ. فَإِنْ زَادَتْ وَاحِدَةً، فَفِيهَا ثَلَاثُ
شِيَاهٍ، إِلَى ثَلَاثِمِائَةٍ. فَإِنْ زَادَتْ، فَفِي كُلِّ
مِائَةٍ شَاةً. لَا يَفْرُقُ بَيْنَ مُجْتَمِعٍ، وَلَا يُجْمَعُ
بَيْنَ مُتَفَرِّقٍ، خَشْيَةَ الصَّدَقَةِ. وَكُلُّ خَلِيطَيْنِ

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

بِتَرَاجَعَانِ بِالسَّوِيَّةِ. وَلَيْسَ لِلْمُصَدِّقِ هَرِمَةٌ وَلَا دَاثٌ عَوَارٍ وَلَا تَيْسٌ، إِلَّا أَنْ يَشَاءَ الْمُصَدِّقُ».

تخريج: [حسن] وحديث: ١٨٠٥ شاهد له * أبوهند أحد المجاهيل (تحفة الأشراف: ٦/٢٥٥)، ويزيد بن عبدالرحمن أبوخالد الدالاني صدوق يخطيء كثيرًا وكان يلدس (تقريب).

Comments:

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

Chapter 14. What Was Narrated Concerning The Collectors Of Zakât

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

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

١٨٠٨ - حَدَّثَنَا عَيْسَى بْنُ حَمَّادٍ الْبَصْرِيُّ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ سَعْدِ بْنِ سِتَّانٍ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُعْتَدِي فِي الصَّدَقَةِ كَمَا نِعَمَهَا».

تخريج: [إسناده حسن] أخرجه أبو داود، الزكوة، باب: في زكوة السائمة، ح: ١٥٨٥ من حديث الليث به، واستغربه الترمذي، ح: ٦٤٦، وصححه ابن خزيمة، ح: ٢٣٣٥.

Comments:

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

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

١٨٠٩ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُ بْنُ سَلِيمَانَ، وَ مُحَمَّدُ بْنُ فَضِيلٍ، وَ يُونُسُ بْنُ بُكَيْرٍ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ عَاصِمِ بْنِ

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

عَمَرَ بْنِ قَتَادَةَ، عَنْ مَحْمُودِ بْنِ لَيْدٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَامِلُ عَلَى الصَّدَقَةِ بِالْحَقِّ كَالْعَازِي فِي سَبِيلِ اللَّهِ، حَتَّى يَرْجِعَ إِلَى بَيْتِهِ».

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

Comments:

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

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

١٨١٠ - حَدَّثَنَا عَمْرُو بْنُ سَوَادٍ الْمِصْرِيُّ: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ أَنَّ مُوسَى بْنَ جُبَيْرٍ حَدَّثَهُ أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحُبَابِ الْأَنْصَارِيَّ حَدَّثَهُ: أَنَّ عَبْدَ اللَّهِ بْنَ أُتَيْسٍ حَدَّثَهُ أَنَّهُ تَذَاكَّرَ هُوَ وَعَمَرُ ابْنُ الْخَطَّابِ، يَوْمًا، الصَّدَقَةَ. فَقَالَ عُمَرُ: أَلَمْ تَسْمَعْ رَسُولَ اللَّهِ ﷺ حِينَ يَذْكُرُ غُلُولَ الصَّدَقَةِ: «أَنَّهُ مَنْ غَلَّ مِنْهَا يَغِيرًا أَوْ شَاةً أُتِيَ بِهِ يَوْمَ الْقِيَامَةِ يَحْمِلُهَا؟» قَالَ: فَقَالَ عَبْدُ اللَّهِ ابْنُ أُتَيْسٍ: بَلَى.

تخريج: [حسن] أخرجه أحمد: ٤٩٨/٣، وأطراف المسند: ٦٨٢/٢ من حديث ابن وهب به، ومن طريق أحمد أخرجه المزني في تهذيب الكمال: ٢٠٣/١٥ * عبدالله بن عبدالرحمن لم يوثقه غير ابن حبان، موسى بن جبيرة روى عنه جماعة ووثقه الذهبي وغيره، وقال ابن يونس: قدم مصر وأقام بها، فحديثه لا ينزل عن درجة الحسن، وللحديث شواهد.

Comments:

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

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

state must be mindful of this warning.

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

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

١٨١١ - حَدَّثَنَا أَبُو بَدْرٍ، عَبَادُ بْنُ الْوَلِيدِ: حَدَّثَنَا أَبُو عَتَّابٍ: حَدَّثَنِي إِبْرَاهِيمُ بْنُ عَطَاءٍ، مَوْلَى عِمْرَانَ: حَدَّثَنِي أَبِي أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ اسْتَعْمَلَ عَلَى الصَّدَقَةِ. فَلَمَّا رَجَعَ قِيلَ لَهُ: أَيْنَ الْمَالُ؟ قَالَ: وَلِمَالٍ أُرْسَلْتَنِي؟ أَخَذْنَاهُ مِنْ حَيْثُ كُنَّا نَأْخُذُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، وَوَضَعْنَاهُ حَيْثُ كُنَّا نَضَعُهُ.

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

Comments:

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

Chapter 15. Sadaqah Due On Horses And Slaves

(المعجم ١٥) - بَابُ صَدَقَةِ الْخَيْلِ

وَالرَّقِيقِ (التحفة ١٥)

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

١٨١٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ، عَنْ سُلَيْمَانَ بْنِ بَسَّارٍ، عَنْ عِرَاكِ بْنِ مَالِكٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ عَلَى الْمُسْلِمِ فِي عَبْدِهِ وَلَا فِي فَرَسِهِ صَدَقَةٌ».

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

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

١٨١٣ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ أَبِي إِسْحَاقَ، عَنْ الْحَارِثِ، عَنْ عَلِيٍّ، عَنِ النَّبِيِّ ﷺ قَالَ: «تَجَوَّزْتُ لَكُمْ عَنْ صَدَقَةِ الْخَيْلِ وَالرَّقِيقِ».

تخریج: [حسن] أخرجه الحميدي (ديوندية: ٥٤) عن سفيان به، وانظر، ح: ٩٥ لعلته، وله طريق آخر فيه عن عنة أبي إسحاق تقدم، ح: ٤٦، وله طرق أخرى، وللحديث شواهد من الحديث السابق.

Comments:

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

Chapter 16. Wealth On Which Zakât Is Due

(المعجم ١٦) - بَابُ مَا تَجِبُ فِيهِ الزَّكَاةُ مِنَ الْأَمْوَالِ (التحفة ١٦)

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

١٨١٤ - حَدَّثَنَا عَمْرُو بْنُ سَوَّادٍ الْمِصْرِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ، عَنْ شَرِيكَ بْنِ أَبِي نَمِرٍ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ مُعَاذِ بْنِ جَبَلٍ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَهُ إِلَى الْيَمَنِ، وَقَالَ لَهُ: «خُذِ الْحَبَّ مِنَ الْحَبِّ. وَالشَّاةَ مِنَ الْغَنَمِ. وَالْبَعِيرَ مِنَ الْإِبِلِ. وَالْبَقَرَةَ مِنَ الْبَقَرِ».

تخریج: [إسناده ضعيف لانقطاعه] أخرجه أبو داود، الزكوة، باب صدقة الزرع، ح: ١٥٩٩ من حديث ابن وهب به * عطاء بن يسار لم يلق معاذًا رضي الله عنه كما قال الذهبي وغيره.

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

١٨١٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ، عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ، عَنْ عَمْرُو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: «إِنَّمَا سَنَّ رَسُولُ اللَّهِ ﷺ الزَّكَاةَ فِي هَذِهِ الْخَمْسَةِ: فِي الْحِنْطَةِ، وَالشَّعِيرِ، وَالتَّمْرِ، وَالزَّرْبِيبِ، وَالذُّرَّةِ».

تخریج: [إسناده ضعيف جدًا] انظر، ح: ٦٦٤ لعلته، وضعفه البوصيري، وفيه علة أخرى.

Comments:

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

Chapter 17. Sadaqah Due On Crops And Fruits**(المعجم ١٧) - بَابُ صَدَقَةِ الزُّرُوعِ
وَالثَّمَارِ (التحفة ١٧)**

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

١٨١٦ - حَدَّثَنَا إِسْحَاقُ بْنُ مُوسَى، أَبُو
مُوسَى الْأَنْصَارِيُّ: حَدَّثَنَا عَاصِمُ بْنُ عَبْدِ
الْعَزِيزِ بْنِ عَاصِمٍ: حَدَّثَنَا الْحَارِثُ بْنُ عَبْدِ
الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي دُبَابٍ،
عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، وَعَنْ بُشَيْرِ بْنِ سَعِيدٍ،
عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
«فِيمَا سَقَّتِ السَّمَاءُ وَالْعُيُونُ، الْعُشْرُ. وَفِيمَا
سَقَى بِالنَّضْحِ، نِصْفُ الْعُشْرِ».

تخريج: [حسن] أخرجه الترمذي، الزكوة، باب ماجاء في الصدقة فيما يسقى بالأنهار
وغيره، ح: ٦٣٩ عن إسحاق بن موسى به.

Comments:

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

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

١٨١٧ - حَدَّثَنَا هَارُونُ بْنُ سَعِيدٍ الْأَمَّصِيُّ،
أَبُو جَعْفَرٍ: حَدَّثَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي يُونُسُ،
عَنِ ابْنِ شِهَابٍ، عَنْ سَالِمٍ، عَنْ أَبِيهِ قَالَ:
سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «فِيمَا سَقَّتِ
السَّمَاءُ وَالْأَنْهَارُ وَالْعُيُونُ، أَوْ كَانَ بَعْلًا،
الْعُشْرُ. وَفِيمَا سَقَى بِالسَّوَانِي، نِصْفُ الْعُشْرِ».

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

Comments:

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

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

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

١٨١٨ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ بْنِ عَمَانَ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ، عَنْ أَبِي وَائِلٍ، عَنْ مَسْرُوقٍ، عَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. وَأَمَرَنِي أَنْ أَخَذَ مِمَّا سَقَّتِ السَّمَاءُ، وَمَا سَقَّتْ بَعْلًا، الْعُشْرَ. وَمَا سَقَّتْ بِاللُّؤَالِي، نِصْفَ الْعُشْرِ. قَالَ يَحْيَى بْنُ أَدَمَ: الْبُغْلُ وَالْعَثْرِيُّ وَالْعَذْيُ هُوَ الَّذِي يُسْقَى بِمَاءِ السَّمَاءِ. وَالْعَثْرِيُّ مَا يُزْرَعُ بِالسَّحَابِ وَالْمَطَرِ خَاصَّةً. لَيْسَ يُصْبِيهِ إِلَّا مَاءُ الْمَطَرِ. وَالْبُغْلُ مَا كَانَ مِنَ الْكُرُومِ قَدْ ذَهَبَتْ عُرُوفُهُ فِي الْأَرْضِ إِلَى الْمَاءِ. فَلَا يَحْتَاجُ إِلَى السَّقْيِ. الْخُمْسَ سِنِينَ وَالسَّتَّ. يَحْتَمِلُ تَرَكَ السَّقْيِ. فَهَذَا الْبُغْلُ. وَالسَّيْلُ مَاءُ الْوَادِي إِذَا سَالَ. وَالغَيْلُ سَيْلٌ دُونَ سَيْلٍ.

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

Chapter 18. Assessment Of Date-Palms And Grapevines

(المعجم ١٨) - بَابُ حَرْصِ النَّخْلِ وَالْعِنَبِ (التحفة ١٨)

1819. It was narrated from 'Attâb

١٨١٩ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ

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

الدَّمْسُقِيُّ، وَ الزُّبَيْرُ بْنُ بَكَّارٍ. قَالَ: حَدَّثَنَا
ابْنُ نَافِعٍ: حَدَّثَنَا مُحَمَّدُ بْنُ صَالِحِ التَّمَارِ،
عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ
عَتَّابِ بْنِ أُسَيْدٍ أَنَّ النَّبِيَّ ﷺ كَانَ يَبْعَثُ عَلَى
النَّاسِ مَنْ يَخْرُصُ عَلَيْهِمْ كُرُومَهُمْ وَثَمَارَهُمْ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الزكوة، باب: في خرص العنب، ح: ١٦٠٤ من حديث ابن نافع به، وقال: سعيد لم يسمع من عتاب شيئاً، وحسنه الترمذي، ح: ٦٤٤، وصححه ابن خزيمة، وابن حبان، وقال المنذري: انقطاعه ظاهر... إلخ.

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

١٨٢٠ - حَدَّثَنَا مُوسَى بْنُ مَرْوَانَ الرَّقِّيُّ:
حَدَّثَنَا عُمَرُ بْنُ أَيُّوبَ، عَنْ جَعْفَرِ بْنِ بُرْقَانَ،
عَنْ مَيْمُونِ بْنِ مِهْرَانَ، عَنْ مِقْسَمِ، عَنْ ابْنِ
عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ، حِينَ افْتَتَحَ خَيْبَرَ،
اشْتَرَطَ عَلَيْهِمْ أَنْ لَهُ الْأَرْضُ، وَكُلُّ صَفْرَاءَ
وَبَيْضَاءَ. يَعْنِي الذَّهَبَ وَالْفِضَّةَ. وَقَالَ لَهُ أَهْلُ
خَيْبَرَ: نَحْنُ أَعْلَمُ بِالْأَرْضِ. فَأَعْطَيْنَاهَا عَلَى
أَنْ نَعْمَلَهَا وَنَكُونَ لَنَا نِصْفُ الثَّمَرَةِ وَلَكُمْ
نِصْفُهَا. فَرَعِمَ أَنَّهُ أَعْطَاهُمْ عَلَى ذَلِكَ. فَلَمَّا
كَانَ حِينَ يَضْرُمُ النَّخْلَ، بَعَثَ إِلَيْهِمْ ابْنَ
رَوَاحَةَ. فَحَزَرَ النَّخْلَ. وَهُوَ الَّذِي يَدْعُونَهُ،
أَهْلَ الْمَدِينَةِ، الْخُرُصَ فَقَالَ: فِي ذَا، كَذَا
وَكَذَا. فَقَالُوا: أَكْثَرْتَ عَلَيْنَا يَا ابْنَ رَوَاحَةَ.
فَقَالَ: فَأَنَا أَحْزَرُ النَّخْلَ وَأَعْطِيكُمْ نِصْفَ
الَّذِي قُلْتُمْ. قَالَ، فَقَالُوا: هَذَا الْحَقُّ. وَبِهِ
تَقُومُ السَّمَاءُ وَالْأَرْضُ. فَقَالُوا: قَدْ رَضِينَا أَنْ
نَأْخُذَ بِالَّذِي قُلْتُمْ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيوع، باب في المساقاة، ح: ٣٤١٠ من حديث عمر بن أيوب به.

Comments:

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

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

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

(المعجم ١٩) - بَابُ النَّهْيِ أَنْ يَخْرُجَ فِي الصَّدَقَةِ شَرَّ مَا لَهُ (التحفة ١٩)

١٨٢١ - حَدَّثَنَا أَبُو بَشِيرٍ، بَكْرُ بْنُ خَلْفٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ: حَدَّثَنِي صَالِحُ بْنُ أَبِي عَرِيبٍ، عَنْ كَثِيرِ بْنِ مَرَّةَ الْحَضْرَمِيِّ، عَنْ عَوْفِ بْنِ مَالِكِ الْأَشْجَعِيِّ قَالَ: خَرَجَ رَسُولُ اللَّهِ ﷺ، وَقَدْ عَلَّقَ رَجُلٌ أَفْئَاءَ أَوْ فِتْوَاءَ. وَيَبِيدُهُ عَصَاً. فَجَعَلَ يَطْعَنُ يَدْفُقُ فِي ذَلِكَ الْقِنْوِ وَيَقُولُ: «لَوْ شَاءَ رَبُّ هَذِهِ الصَّدَقَةِ تَصَدَّقَ بِأَطْيَبِ مِنْهَا. إِنَّ رَبَّ هَذِهِ الصَّدَقَةِ يَأْكُلُ الْحَشَفَ يَوْمَ الْقِيَامَةِ».

تخريج: [إسناده حسن] أخرجه أبو داود، الزكوة، باب ما لا يجوز من الثمرة في الصدقة،

ح: ١٦٠٨ من حديث يحيى بن سعيد به، وصححه ابن خزيمة، وابن حبان، والحاكم، والذهبي.

Comments:

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

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

١٨٢٢ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنِ يَحْيَى
ابْنِ سَعِيدِ الْقَطَّانُ: حَدَّثَنَا عَمْرُو بْنُ مُحَمَّدٍ
الْعَتَقَرِيُّ: حَدَّثَنَا أَسْبَاطُ بْنُ نَضْرٍ. عَنِ
السُّدِّيِّ، عَنِ عَلِيِّ بْنِ ثَابِتٍ، عَنِ الْبَرَاءِ بْنِ
عَازِبٍ، فِي قَوْلِهِ سُبْحَانَ: ﴿وَمِمَّا أَرْجَمْنَا لَكُمْ
مِنَ الْأَرْضِ وَلَا تَتَمَمُوا الْحَبِيبَ مِنْهُ تُنْفِقُونَ﴾
[البقرة: ٢٦٧] قَالَ: نَزَلَتْ فِي الْأَنْصَارِ.
كَانَتْ الْأَنْصَارُ تُخْرَجُ، إِذَا كَانَ جَدَادُ
النَّخْلِ، مِنْ حِطَائِبِهَا، أَقْنَاءَ الْبُسْرِ. فَيَعْلَقُونَهُ
عَلَى حَبْلِ بَيْنَ أُسْطُوَانَتَيْنِ فِي مَسْجِدِ رَسُولِ
اللَّهِ ﷺ. فَيَأْكُلُ مِنْهُ قُرَاءُ الْمُهَاجِرِينَ. فَيَعْمِدُ
أَحَدُهُمْ فَيُدْخِلُ فِتْوَا فِيهِ الْحَشْفُ. يَظُنُّ أَنَّهُ
جَائِزٌ فِي كَثْرَةِ مَا يُوَضَعُ مِنَ الْأَقْنَاءِ. فَتَرَلَّ
فِيْمَنْ فَعَلَ ذَلِكَ: ﴿وَلَا تَتَمَمُوا الْحَبِيبَ مِنْهُ
تُنْفِقُونَ﴾ يَقُولُ: لَا تَعْمِدُوا لِلْحَشْفِ مِنْهُ
تُنْفِقُونَ ﴿وَأَسْتَمُّ بِإِخْذِهِ إِلَّا أَنْ تُنْحَضُوا فِيهِ﴾
يَقُولُ: لَوْ أَهْدَيْتَنِي لَكُمْ مَا قَبِلْتُمُوهُ إِلَّا عَلَى
اسْتِحْيَاءٍ مِنْ صَاحِبِهِ، غَيْظًا أَنَّهُ بَعَثَ إِلَيْكُمْ مَا
لَمْ يَكُنْ لَكُمْ فِيهِ حَاجَةٌ. وَاعْلَمُوا أَنَّ اللَّهَ غَنِيٌّ
عَنْ صِدْقَاتِكُمْ.

[1] Al-Baqarah 2:267.

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

تخريج: [إسناده حسن] أخرجه الإمام ابن جرير الطبري الشنبي في تفسيره: ٨٢/٣، ح: ٦١٣٨، وتفسير ابن كثير: ٣٠٣/١ من حديث عمرو بن محمد به، وصححه الحاكم: ٢/٢٨٥، والذهبي، والبوصيري.

Comments:

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

Chapter 20. Zakâh Due On Honey

(المعجم ٢٠) - بَابُ زَكَاةِ الْعَسَلِ
(التحفة ٢٠)

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

١٨٢٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ ابْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا وَكَيْعٌ، عَنْ سَعِيدِ بْنِ عَبْدِ الْعَزِيزِ، عَنْ سَلِيمَانَ بْنِ مُوسَى، عَنْ أَبِي سَيَّارَةَ الْمُتَعِيِّ. قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّ لِي نَحْلًا. قَالَ: «أَدُّ الْعُسْرَ» قُلْتُ: يَا رَسُولَ اللَّهِ اأَحْمِهَا لِي. فَحَمَاهَا لِي.

تخريج: [حسن] أخرجه ابن أبي شيبة: ١٤١/٣، والطبراني (الكبير): ٣٥١/٢٢، وغيرهم من حديث سعيد به، وسنده ضعيف، وقال البيهقي: ١٢٦/٤: هو منقطع، ونقل الترمذي عن البخاري قال: مرسل، وقال أبو حاتم: لم يلق سليمان بن موسى أبا سيارة والحديث مرسل، والحديث الآتي (١٨٢٤) شاهد له.

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

Comments:

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

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

١٨٢٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا نُعَيْمُ بْنُ حَمَادٍ: حَدَّثَنَا ابْنُ الْمُبَارَكِ: حَدَّثَنَا أُسَامَةُ بْنُ زَيْدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو، عَنِ النَّبِيِّ ﷺ أَنَّهُ أَخَذَ مِنَ الْعَسَلِ الْعُشْرَ.

تخريج: [إسناده حسن] أخرجه أبو داود، الزكوة، باب زكوة العسل، ح: ١٦٠٢ من حديث أسامة به، وصححه ابن خزيمة * نعيم بن حماد: صدوق حسن الحديث، وأخطأ من ضعفه.

Chapter 21. Sadaqatul-Fitr**(المعجم ٢١) - بَابُ صَدَقَةِ الْفِطْرِ**

(التحفة ٢١)

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

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

١٨٢٥ - حَدَّثَنَا مُحَمَّدُ بْنُ زُرَيْجٍ الْمِصْرِيُّ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَ بِزَكَاةِ الْفِطْرِ. صَاعًا مِنْ تَمْرٍ. أَوْ صَاعًا مِنْ شَعِيرٍ. قَالَ عَبْدُ اللَّهِ: فَجَعَلَ النَّاسُ عِدْلَهُ مَدَّيْنِ مِنْ حِنْطَةٍ.

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

Comments:

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

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

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

١٨٢٦ - حَدَّثَنَا حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: فَرَضَ رَسُولُ اللَّهِ ﷺ صَدَقَةَ الْفِطْرِ صَاعاً مِنْ شَعِيرٍ، أَوْ صَاعاً مِنْ تَمْرٍ عَلَى كُلِّ حُرٍّ، أَوْ عَبْدٍ، ذَكَرٍ أَوْ أُنْثَى، مِنَ الْمُسْلِمِينَ.

تخريج: أخرجه البخاري، الزكوة، باب صدقة الفطر على العبد وغيره من المسلمين، ح: ١٥٠٤، ومسلم، الزكوة، الباب السابق، ح: ٩٨٤ من حديث مالك به.

Comments:

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

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

١٨٢٧ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ بَشِيرٍ ابْنِ ذَكْوَانَ، وَ أَحْمَدُ بْنُ الْأَزْهَرِيِّ. قَالَ: حَدَّثَنَا مَرْوَانُ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو يَزِيدَ الْخَوْلَانِيُّ، عَنْ سَيَّارِ بْنِ عَبْدِ الرَّحْمَنِ الصَّدَقِيِّ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: فَرَضَ رَسُولُ اللَّهِ ﷺ زَكَاةَ الْفِطْرِ طَهْرَةً لِلصَّائِمِ مِنَ اللَّغْوِ وَالرَّفَثِ. وَطُعْمَةً لِلْمَسَاكِينِ. فَمَنْ آدَاهَا قَبْلَ الصَّلَاةِ، فَهِيَ زَكَاةٌ مَقْبُولَةٌ. وَمَنْ آدَاهَا بَعْدَ الصَّلَاةِ، فَهِيَ صَدَقَةٌ مِنَ الصَّدَقَاتِ.

تخريج: [إسناده حسن] أخرجه أبوداود، الزكوة، باب زكاة الفطر، ح: ١٦٠٩ من حديث مروان بن محمد به، وصححه الحاكم، والذهبي، وحسنه النووي وغيره.

Comments:

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

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

١٨٢٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ أَبِي عَمَّارٍ، عَنْ قَيْسِ بْنِ سَعْدٍ قَالَ: أَمَرَنَا رَسُولُ اللَّهِ ﷺ بِصَدَقَةِ الْفِطْرِ قَبْلَ أَنْ تَنْزَلَ الزَّكَاةُ. فَلَمَّا نَزَلَتِ الزَّكَاةُ، لَمْ يَأْمُرْنَا، وَلَمْ يَنْهَنَا. وَنَحْنُ نَفْعَلُهُ.

تخریج: [صحیح] أخرجه النسائي: ٤٩/٥، الزكوة، باب فرض صدقة الفطر قبل نزول الزكوة، ح: ٢٥٠٩ من حديث وكيع به، و صححه الحاكم على شرط الشيخين: ٤١٠/١، ووافقه الذهبي * الثوري عنمن، وتابعه شعبة في مشكل الآثار للطحاوي: ٨٥/٣، وللحديث طريق آخر صحيح عند النسائي وغيره، وعادة شعبة أن لا يروي عن المدلسين إلا بما صرحوا بالسماع.

Comments:

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

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

١٨٢٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ دَاوُدَ بْنِ قَيْسِ الْفَرَّاءِ، عَنْ عِيَّاضِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي سَرْحٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: كُنَّا نُخْرِجُ زَكَاةَ الْفِطْرِ إِذَا كَانَ فِينَا رَسُولُ اللَّهِ ﷺ، صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ أَقِطٍ، صَاعًا مِنْ زَبِيبٍ. فَلَمْ نَزَلْ كَذَلِكَ حَتَّى قَدِمَ عَلَيْنَا مُعَاوِيَةُ الْمَدِينَةَ. فَكَانَ فِيمَا كَلَّمَ بِهِ

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

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

النَّاسَ أَنْ قَالَ: لَا أَرَى مُدَّيْنٍ مِنْ سَمَرَاءِ الشَّامِ إِلَّا يَغْلِبُ صَاعًا مِنْ هَذَا. فَأَخَذَ النَّاسُ بِذَلِكَ.

قَالَ أَبُو سَعِيدٍ: لَا أَرَأَى أَنْ أُخْرِجَهُ كَمَا كُنْتُ أُخْرِجُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، أَبَدًا، مَا عَشْتُ.

تخريج: أخرجه البخاري، الزكوة، باب صدقة الفطر صاع من شعير، ح: ١٥٠٥، ١٥٠٦، ١٥٠٨، ١٥١٠ من حديث عياض به، ومسلم، الزكوة، باب زكاة الفطر على المسلمين من التمر والشعير، ح: ٩٨٥ من حديث داود وغيره به.

Comments:

As Abu Sa’eed ؓ did not agree with Mu’âwiyah ؓ, likewise Abdullah bin ‘Umar ؓ disagreed with Mu’âwiyah ؓ; as mentioned in *Hadith* 1825.

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

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

تخريج: [صحيح] انظر، ح: ١١٠١ لعلته * وعمر بن حفص فيه لين، من السابعة (تقريب)، وعمار بن سعد تابعي مستور، وله شواهد صحيحة.

Chapter 22. ‘Ushr And Kharâj

(المعجم ٢٢) - بَابُ الْعُشْرِ وَالْخَرَاجِ

(التحفة ٢٢)

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

١٨٣١ - حَدَّثَنَا الْحُسَيْنُ بْنُ جَبْرِ الدَّامَغَانِيُّ: حَدَّثَنَا عَتَّابُ بْنُ زِيَادِ الْمُرُوزِيُّ: حَدَّثَنَا أَبُو حَمْرَةَ قَالَ: سَمِعْتُ مُعْبِرَةَ الْأُرْدِيَّيَّةَ يَحَدِّثُ عَنْ مُحَمَّدِ بْنِ زَيْدٍ، عَنْ حَيَّانِ الْأَعْرَجِ، عَنْ الْعَلَاءِ بْنِ الْحَضْرَمِيِّ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى

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

الْبَحْرَيْنِ أَوْ إِلَى هَجَرَ. فَكُنْتُ آتِي الْحَائِطَ يَكُونُ بَيْنَ الْإِخْوَةِ. يُسَلِّمُ أَحَدُهُمْ. فَأَخَذَ مِنَ الْمُسْلِمِ الْعُسْرَ، وَمِنَ الْمُشْرِكِ الْحَرَاجَ.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٥٢/٥، والطبراني (الكبير: ٩٧/١٨، ح: ١٧٤) من حديث عتاب به، وقال البوصيري: إسناده ضعيف، لأن مغيرة الأزدي، ومحمد بن زيد مجهولان، وحيان الأعرج وإن وثقه ابن معين، وعده ابن حبان في الثقات، فإن روايته عن العلاء مرسلة، قاله المزني في التمهيد.

Chapter 23. A Wasq Is Sixty Sâ'

(المعجم ٢٣) - بَابُ الْوَسْقِ سِتُّونَ

صَاعًا (التحفة ٢٣)

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

١٨٣٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ الْكِنْدِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ عُبَيْدِ الطَّنَافِيزِيِّ، عَنْ إِدْرِيسَ الْأَوْدِيِّ، عَنْ عَمْرِو بْنِ مُرَّةَ، عَنْ أَبِي الْبَخْتَرِيِّ، عَنْ أَبِي سَعِيدٍ. رَفَعَهُ إِلَى النَّبِيِّ ﷺ قَالَ: «الْوَسْقُ سِتُّونَ صَاعًا».

تخريج: [إسناده ضعيف لانقطاعه] أخرجه أبو داود، الزكوة، باب ما تجب فيه الزكوة، ح: ١٥٥٩، وقال: أبوالبختري لم يسمع من أبي سعيد وشك ابن خزيمة في صحته، وللحديث زيادة عند أبي داود وغيره، وهي صحيحة انظر سنن النسائي، والبيهقي، ح: ٢٤٨٥.

Comments:

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

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

١٨٣٣ - حَدَّثَنَا عَلِيُّ بْنُ الْمُنْذِرِ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ، عَنْ عَطَاءِ بْنِ أَبِي رِيَّاحٍ وَ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْوَسْقُ سِتُّونَ صَاعًا».

تخريج: [إسناده ضعيف جدًا] انظر، ح: ٦٦٤ لعلته.

Chapter 24. Giving Charity To Relatives

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

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

(المعجم ٢٤) - بَابُ الصَّدَقَةِ عَلَى ذِي

قَرَابَةٍ (التحفة ٢٤)

١٨٣٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ شَقِيقِ، عَنْ عَمْرِو بْنِ الْحَارِثِ بْنِ الْمُصْطَلِقِ، عَنِ ابْنِ أَخِي زَيْنَبَ، امْرَأَةَ عَبْدِ اللَّهِ، عَنْ زَيْنَبَ امْرَأَةَ عَبْدِ اللَّهِ قَالَتْ: سَأَلْتُ رَسُولَ اللَّهِ ﷺ أَيُجْزَى عَنِّي مِنَ الصَّدَقَةِ النَّقْمَةُ عَلَى زَوْجِي وَأَيْتَامٍ فِي حِجْرِي؟ قَالَ رَسُولُ اللَّهِ ﷺ: «لَهَا أَجْرَانِ: أَجْرُ الصَّدَقَةِ، وَأَجْرُ الْقَرَابَةِ».

حَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدٍ بْنِ الصَّبَّاحِ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ، عَنْ شَقِيقِ، عَنْ عَمْرِو بْنِ الْحَارِثِ، ابْنِ أَخِي زَيْنَبَ، عَنْ زَيْنَبَ امْرَأَةَ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخريج: أخرجه البخاري، الزكوة، باب الزكوة على الزوج والأيتام في الحجر، ح: ١٤٦٦، ومسلم، الزكوة، باب فضل النفقة والصدقة على الأقرين والزوج والأولاد والوالدين ولو كانوا مشركين، ح: ١٠٠٠ من حديث الأعمش به.

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

One of the narrators said: "She

١٨٣٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ قَالَتْ: أَمَرَنَا رَسُولُ اللَّهِ ﷺ بِالصَّدَقَةِ. فَقَالَتْ زَيْنَبُ امْرَأَةَ عَبْدِ اللَّهِ: أَيُجْزَانِي مِنَ الصَّدَقَةِ أَنْ أَتَصَدَّقَ عَلَى زَوْجِي وَهُوَ فَقِيرٌ، وَبَنِي أَخِي لِي، أَيْتَامٌ. وَأَنَا أَنْفُوقٌ عَلَيْهِمْ هَكَذَا وَهَكَذَا، وَعَلَى كُلِّ حَالٍ؟ قَالَ، قَالَ: «نَعَمْ».

used to prepare handicraft articles.”^[1]

قَالَ: وَكَانَتْ صَنَاعَ الْيَدَيْنِ.

تخریج: [صحيح] والحديث السابق شاهد له.

Comments:

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

Chapter 25. Begging Is Disliked

(المعجم ٢٥) - بَابُ كَرَاهِيَةِ الْمَسْأَلَةِ

(التحفة ٢٥)

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

١٨٣٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَعَمْرُو بْنُ عَبْدِ اللَّهِ الْأَوْدِيُّ. قَالَ: حَدَّثَنَا وَكَيْعٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَأَنْ يَأْخُذَ أَحَدُكُمْ حَبْلَهُ فَيَأْتِيَ الْجَبَلَ، فَيُحْمِلَ بِحُرْمَةٍ حَطَبٍ عَلَى ظَهْرِهِ فَيَبِيعَهَا، فَيَسْتَعْنِيَ بِمَنْهَا - خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ النَّاسَ. أَعْطَوْهُ أَوْ مَنَعُوهُ».

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

Comments:

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

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

١٨٣٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ، عَنْ ابْنِ أَبِي ذُنُبٍ، عَنْ مُحَمَّدِ بْنِ

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

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

قَيْسٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «وَمَنْ يَتَّقِبْ لِي بِوَاحِدَةٍ أَتَقَبَّلُ لَهُ بِالْجَنَّةِ؟» قُلْتُ: أَنَا. قَالَ: «لَا تَسْأَلِ النَّاسَ شَيْئًا».

قَالَ: فَكَانَ ثَوْبَانُ يَمْعُ سَوْطُهُ، وَهُوَ رَاكِبٌ، فَلَا يَقُولُ لِأَحَدٍ: نَاوِلْنِيهِ. حَتَّى يَنْزِلَ فَيَأْخُذَهُ.

تخريج: [إسناده صحيح] أخرجه النسائي: ٩٦/٥، الزكوة، فضل من لا يسأل الناس شيئاً، ح: ٢٥٩١ من حديث ابن أبي ذئب به، وله شاهد عند أبي داود، ح: ١٦٤٣ وغيره، وإسناده صحيح، وصححه الحاكم، والذهبي، والمنذري.

Comments:

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

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

(المعجم ٢٦) - بَابُ مَنْ سَأَلَ عَنْ ظَهْرِ غِنَى (التحفة ٢٦)

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

١٨٣٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ فَضِيلٍ، عَنْ عُمَارَةَ بْنِ الْمُعْتَمِرِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَأَلَ النَّاسَ أَمْوَالَهُمْ تَكَثُّرًا، فَإِنَّمَا يَسْأَلُ جَمْرَ جَهَنَّمَ. فَلْيَسْتَقِلَّ مِنْهُ أَوْ لِيُكْحِرْ».

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

Comments:

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

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

١٨٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ أَبَا بَكْرٍ بْنَ عَيَّاشٍ، عَنْ أَبِي حَصِينٍ، عَنْ سَالِمِ ابْنِ أَبِي الْجَعْدِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ

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

رَسُولُ اللَّهِ ﷺ: «لَا تَجِلُّ الصَّدَقَةُ لِغَنِيِّ، وَلَا لِذِي مِرَّةٍ سَوِيٍّ».

تخريج: [صحيح] أخرجه النسائي: ٩٩/٥، الزكوة، - إذا لم يكن له دراهم وكان له عدلها، ح: ٢٥٩٧ من حديث أبي بكر بن عياش به، وللحديث شواهد كثيرة جداً، منها ما أخرجه أبو داود، ح: ١٦٣٤ من حديث عبد الله بن عمرو به، وحسنه الترمذي، ح: ٦٥٢.

Comments:

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

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

١٨٤٠ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ: حَدَّثَنَا سُفْيَانُ، عَنْ حَكِيمِ بْنِ جُبَيْرٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ ابْنِ زَيْدٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَأَلَ، وَلَهُ مَا يُغْنِيهِ، جَاءَتْ مَسْأَلَتُهُ يَوْمَ الْقِيَامَةِ خُدُوشًا أَوْ خُوشًا أَوْ كُدُوحًا فِي وَجْهِهِ» قِيلَ: يَا رَسُولَ اللَّهِ! وَمَا يُغْنِيهِ؟ قَالَ: «خَمْسُونَ دِرْهَمًا، أَوْ قِيمَتُهَا مِنَ الذَّهَبِ».

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

فَقَالَ رَجُلٌ لِسُفْيَانَ: إِنَّ شُعْبَةَ لَا يُحَدِّثُ عَنْ حَكِيمِ بْنِ جُبَيْرٍ. فَقَالَ سُفْيَانُ: قَدْ حَدَّثَنَا زَيْدٌ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدٍ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الزكوة، باب من يعطى من الصدقة وحد الغنى، ح: ١٦٢٦ عن الحسن بن علي به، وحسنه الترمذي، ح: ٦٥٠، وقال النسائي: حكيم ضعيف * وللتوري تديس عجيب لأنه حدث به عن زييد عن محمد بن عبدالرحمن بن يزيد مقطوعاً أو رسلاً، والله أعلم.

Comments:

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

Chapter 27. For Whom Is Charity Permissible?

(المعجم ٢٧) - بَابُ مَنْ تَحِلُّ لَهُ

الصَّدَقَةُ (التحفة ٢٧)

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

١٨٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنبَأَنَا مَعْمَرٌ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَحِلُّ الصَّدَقَةُ لِغَنِيِّ إِلَّا لِخِمْسَةٍ: لِعَامِلٍ عَلَيْهَا، أَوْ لِنَاغِرٍ فِي سَبِيلِ اللَّهِ، أَوْ لِغَنِيِّ اشْتَرَاهَا بِمَالِهِ، أَوْ لِفَقِيرٍ تُصَدَّقَ عَلَيْهِ فَأَهْدَاهَا لِغَنِيِّ، أَوْ غَارِمٍ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الزكوة، باب من يجوز له أخذ الصدقة وهو غني، ح: ١٦٣٦ من حديث عبدالرزاق به، وصححه ابن خزيمة، ح: ٢٣٧٤، والحاكم: ١/٤٠٧، ٤٠٨ على شرط الشيخين، ووافقه الذهبي، وأعل بما لا يقدرح.

Comments:

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

Chapter 28. The Virtue Of Charity

(المعجم ٢٨) - بَابُ فَضْلِ الصَّدَقَةِ

(التحفة ٢٨)

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

١٨٤٢ - حَدَّثَنَا عِيسَى بْنُ حَمَّادٍ الْمِصْرِيُّ: أَنبَأَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمُقْبَرِيِّ، عَنْ سَعِيدِ بْنِ يَسَارٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا تُصَدَّقُ أَحَدٌ بِصَدَقَةٍ مِنْ طَيِّبٍ، وَلَا يَقْبَلُ اللَّهُ إِلَّا الطَّيِّبَ، إِلَّا أَخَذَهَا الرَّحْمَنُ بِيَمِينِهِ وَإِنْ كَانَتْ تَمْرَةً. فَتَرَبُّو فِي كَفِّ الرَّحْمَنِ حَتَّى

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

تَكُونُ أَكْثَرَ مِنَ الْجَبَلِ. وَيُرِيهَا لَهُ كَمَا يُرِي أَحَدَكُمْ فَلُوَّهُ أَوْ فَصِيلَهُ.

تخريج: أخرجه مسلم، الزكوة، باب قبول الصدقة من الكسب الطيب وترتيبها، ح: ١٠١٤ من حديث الليث به، وأصله عند البخاري، ح: ١٤١٠، ٧٤٣٠ وغيره.

Comments:

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

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

١٨٤٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا الْأَعْمَشُ، عَنْ خَيْثَمَةَ، عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا مِنْكُمْ مِنْ أَحَدٍ إِلَّا سَيَكَلِّمُهُ رَبُّهُ. لَيْسَ بَيْنَهُ وَبَيْنَهُ تَرْجُمَانٌ. فَيَنْظُرُ أَمَامَهُ فَتَسْتَقْبِلُهُ النَّارُ. وَيَنْظُرُ عَنْ أَيْمَنِ مِنْهُ فَلَا يَرَى إِلَّا شَيْئًا قَدَّمَهُ. وَيَنْظُرُ عَنْ أَشْأَمِ مِنْهُ فَلَا يَرَى إِلَّا شَيْئًا قَدَّمَهُ. فَمَنْ اسْتَطَاعَ مِنْكُمْ أَنْ يَنْجِيَ النَّارَ وَلَوْ بِشِقِّ تَمْرَةٍ، فَلْيَفْعَلْ».

تخريج: [صحيح] تقدم، ح: ١٨٥.

Comments:

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

1844. It was narrated from Salmân bin ‘Amir Dabbi that the Messenger of Allāh ﷺ said: “Charity given to the poor is

١٨٤٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ، عَنْ ابْنِ عَوْنٍ، عَنْ حَفْصَةَ بِنْتِ سَبْرِينَ، عَنِ الرَّبَابِ

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

أُمُّ الرَّائِحِ، بِنْتُ صُلَيْحٍ. عَنْ سَلْمَانَ بْنِ عَامِرٍ
الضَّبِّيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْصَّدَقَةُ
عَلَى الْمِسْكِينِ صَدَقَةٌ، وَعَلَى ذِي الْقَرَابَةِ
اِثْنَانِ: صَدَقَةٌ وَصِلَةٌ».

تخريج: [صحيح] تقدم، ح: ١٦٩٩، وهذا طرف منه.

Comments:

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

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

9. The Chapters On Marriage

(المعجم ٩) أَبْوَابُ النِّكَاحِ (التحفة ٧)

Comments:

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

Chapter 1. What Was Narrated Concerning The Virtue Of Marriage

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

(المعجم ١) - بَابُ مَا جَاءَ فِي فَضْلِ

النِّكَاحِ (التحفة ١)

١٨٤٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ غَامِرِ بْنِ زُرَّارَةَ:
حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنِ الْأَعْمَشِ، عَنْ
إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ بْنِ قَيْسٍ قَالَ: كُنْتُ مَعَ
عَبْدِ اللَّهِ بْنِ مَسْعُودٍ بِمِنَى. فَخَلَا بِهِ عُثْمَانُ.

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

فَجَلَسْتُ قَرِيبًا مِنْهُ. فَقَالَ لَهُ عُثْمَانُ: هَلْ لَكَ أَنْ أُزَوِّجَكَ جَارِيَةً بِكَرًا تُذَكِّرُكَ مِنْ نَفْسِكَ بَعْضَ مَا قَدْ مَضَى؟ فَلَمَّا رَأَى عَبْدُ اللَّهِ أَنَّهُ لَيْسَ لَهُ حَاجَةٌ سِوَى هَذَا، أَشَارَ إِلَيَّ بِيَدِهِ. فَجِئْتُ وَهُوَ يَقُولُ: لَيْنَ قُلْتَ ذَلِكَ، لَقَدْ قَالَ رَسُولُ اللَّهِ ﷺ: «يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ. فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَحْصَنُ لِلْفَرْجِ. وَمَنْ لَمْ يَسْتَطِعْ، فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وِجَاءٌ».

تخريج: أخرجه البخاري، الصوم، باب الصوم لمن خاف على نفسه العزبة، ح: ١٩٠٥، ٥٠٦٥، ومسلم، النكاح، باب استحباب النكاح لمن تاقت نفسه إليه ووجد مؤنة... الخ، ح: ١٤٠٠ من حديث الأعمش به.

Comments:

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

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

١٨٤٦ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِيِّ: حَدَّثَنَا أَدَمُ: حَدَّثَنَا عَيْسَى بْنُ مَيْمُونٍ، عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّكَاحُ مِنْ سُنَّتِي. فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي. وَتَزَوَّجُوا، فَإِنِّي مُكَاثِرٌ بِكُمْ الْأُمَمِ. وَمَنْ كَانَ ذَا طَوْلٍ فَلْيَتَنَكَّحْ وَمَنْ لَمْ

should fast, for it will diminish his desire.” (Hasan) . فَإِنَّ الصَّوْمَ لَهُ وَجَاءٌ .

تخريج: [حسن] وقال البوصيري: إسناده ضعيف لإتفاقهم على ضعف عيسى بن ميمون المدني، لكن له شاهد صحيح، يعني لفقرات الحديث شواهد من حديث أنس، ومعلق بن يسار، وابن مسعود وغيرهم.

Comments:

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

1847. It was narrated from Ibn ‘Abbās that the Messenger of Allāh ﷺ said: “There is nothing like marriage for two who love one another.” (Hasan)

١٨٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سَعِيدُ بْنُ سَلِيمَانَ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ مَيْسَرَةَ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَمْ يَرِ لِلْمُتَحَابِّينِ مِثْلَ النِّكَاحِ».

تخريج: [إسناده حسن] أخرجه البيهقي: ٧٨/٧ من حديث محمد بن مسلم الطائفي به، ووصحه الحاكم: ١٦٠/٢ على شرط مسلم، ووافقه الذهبي، وأورده الضياء في المختارة.

Chapter 2. Prohibition Of Celibacy

(المعجم ٢) - بَابُ النَّهْيِ عَنِ التَّبَتُّلِ
(التحفة ٢)

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

١٨٤٨ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُثْمَانَ الْعُثْمَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ سَعْدِ قَالَ: لَقَدْ رَدَّ رَسُولُ اللَّهِ ﷺ عَلَى عُثْمَانَ بْنِ مَطْعُونِ التَّبَتُّلَ. وَلَوْ أَدِنَ لَهُ، لَأَخْصَيْنَا.

تخريج: أخرجه البخاري، النكاح، باب ما يكره من التبتل والخصاء، ح: ٥٠٧٣، ومسلم، النكاح، باب استحباب النكاح لمن تاقت نفسه إليه ووجد مؤنة... إلخ، ح: ١٤٠٢ من حديث إبراهيم بن سعد به.

Comments:

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

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

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

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

١٨٤٩ - حَدَّثَنَا بِشْرُ بْنُ أَدَمَ وَ زَيْدُ بْنُ أَحْزَمَ . قَالَ : حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ : حَدَّثَنَا أَبِي عَنْ قَتَادَةَ ، عَنِ الْحَسَنِ ، عَنْ سُمْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنِ التَّبَتُّلِ .

زَادَ زَيْدُ بْنُ أَحْزَمَ : وَقَرَأَ قَتَادَةُ : ﴿وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَحَلَلْنَا لَهُمْ أَنْزُلًا وَمُزِينَةً﴾ . [الرعد : ٣٨]

تخريج : [صحيح] أخرجه الترمذي، النكاح، باب ماجاء في النهي عن التبتل، ح: ١٠٨٢ من حديث زيد بن اخزم به، وقال: حسن غريب * قتادة عنن، وأخرج النسائي: ٥٩/٦، ح: ٣٢١٥ وغيره من حديث الحسن عن سعد بن هشام عن عائشة رضي الله عنها، ونحوه، وصححه الترمذي، ح: ١٠٨٢، والحديث السابق شاهد له.

Comments:

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

Chapter 3. The Wife's Rights Over The Husband

(المعجم ٣) - بَابُ حَقِّ الْمَرْأَةِ عَلَى الرَّوْجِ (التحفة ٣)

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

١٨٥٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ : حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ ، عَنْ شُعْبَةَ ، عَنْ أَبِي قَزَعَةَ ، عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ ، عَنْ أَبِيهِ أَنَّ رَجُلًا سَأَلَ النَّبِيَّ ﷺ : مَا حَقُّ الْمَرْأَةِ عَلَى الرَّوْجِ ؟ قَالَ : « أَنْ يُطْعِمَهَا إِذَا طَعِمَ . وَأَنْ يَكْسُوَهَا إِذَا

[1] Ar-Ra'd 13:38.

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

اِكْتَسَى. وَلَا يَضْرِبُ الْوَجْهَ. وَلَا يَقْعُحُ. وَلَا يَهْجُرُ إِلَّا فِي الْبَيْتِ».

تخريج: [إسناده حسن] أخرجه أبو داود، النكاح، باب: في حق المرأة على زوجها، ح: ٢١٤٢ من حديث أبي قرعة به.

Comments:

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

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

١٨٥١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا الْحُسَيْنُ بْنُ عَلِيٍّ، عَنْ زَائِدَةَ، عَنْ شَيْبِ بْنِ عَرَفَةَ الْبَارِقِيِّ، عَنْ سُلَيْمَانَ بْنِ عَمْرٍو بْنِ الْأَجْوَصِ: حَدَّثَنِي أَبِي أَنَّهُ شَهِدَ حَجَّةَ الْوَدَاعِ مَعَ رَسُولِ اللَّهِ ﷺ. فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، وَذَكَرَ وَعَظَ، ثُمَّ قَالَ: «اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا فَإِنَّهُنَّ عِنْدَكُمْ عَوَانٍ. لَيْسَ تَمْلِكُونَ مِنْهُنَّ شَيْئًا غَيْرَ ذَلِكَ. إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ. فَإِنْ فَعَلْنَ فَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِحٍ. فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا. إِنْ لَكُمْ مِنْ نِسَائِكُمْ حَقًّا وَلِنِسَائِكُمْ عَلَيْهِمْ حَقًّا. فَأَتِمُّوا حَقَّكُمْ عَلَى نِسَائِكُمْ، فَلَا يُوطِئَنَّ فُرُشَكُمْ مَنْ تَكْرَهُونَ. وَلَا يَأْذَنَنَّ فِي بُيُوتِكُمْ لِمَنْ تَكْرَهُونَ. إِلَّا، وَحَقَّهُنَّ عَلَيْكُمْ أَنْ تُحْسِنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ

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

وَطَعَامِهِنَّ».

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

Comments:

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

Chapter 4. The Husband's Rights Over His Wife

(المعجم ٤) - بَابُ حَقِّ الزَّوْجِ عَلَى
الْمَرْأَةِ (التحفة ٤)

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

۱۸۵۲ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَوْ أَمَرْتُ أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ، لِأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا. وَلَوْ أَنَّ رَجُلًا أَمَرَ امْرَأَةً أَنْ تَنْقُلَ مِنْ جَبَلٍ أَحْمَرَ إِلَى جَبَلٍ أَسْوَدَ، وَمِنْ جَبَلٍ أَسْوَدَ إِلَى جَبَلٍ أَحْمَرَ، لَكَانَ تَوَلَّيْتُهَا أَنْ تَفْعَلَ».

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

تخريج: [إسناده ضعيف] أخرجه أحمد: ٧٦/٦ عن عفان وغيره به، وانظر، ح: ١١٦ لعلته.

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

١٨٥٣ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنِ الْقَاسِمِ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ: لَمَّا قَدِمَ مُعَاذٌ مِنَ الشَّامِ سَجَدَ لِلنَّبِيِّ ﷺ. قَالَ: «مَا هَذَا يَا مُعَاذُ؟» قَالَ: أَتَيْتُ الشَّامَ فَوَافَقْتُهُمْ يَسْجُدُونَ لِأَسَاقِفَتِهِمْ وَبَطَّارِقَتِهِمْ. فَوَدِدْتُ فِي نَفْسِي أَنْ نَفْعَلَ ذَلِكَ بِكَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «فَلَا تَفْعَلُوا. فَإِنِّي لَوْ كُنْتُ أَمْرًا أَحَدًا أَنْ يَسْجُدَ لِغَيْرِ اللَّهِ، لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا. وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَا تُؤَدِّي الْمَرْأَةُ حَقَّ رَبِّهَا حَتَّى تُؤَدِّيَ حَقَّ زَوْجِهَا وَلَوْ سَأَلَهَا نَفْسُهَا، وَهِيَ عَلَى قَتَبٍ، لَمْ تَمْتَعَهُ».

تخريج: [إسناده حسن] أخرجه البيهقي: ٢٩٢/٧ من حديث حماد بن زيد به، وتابعه

إسماعيل ابن عليّة (أحمد: ٣٨١/٤)، وصححه ابن حبان (موارد)، ح: ١٢٩٠، وله شواهد كثيرة.

Comments:

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

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

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

١٨٥٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنْ أَبِي نَصْرِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ مُسَاوِرِ الْجَمِيرِيِّ، عَنْ أُمِّهِ: قَالَتْ: سَمِعْتُ أُمَّ سَلَمَةَ تَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «أَيُّمَا امْرَأَةٍ مَاتَتْ، وَرَزَوُجُهَا عَنْهَا رَاضٍ، دَخَلَتْ الْجَنَّةَ».

تخریج: [حسن] أخرجه الترمذي، الرضاع، باب ما جاء في حق الزوج على المرأة، ح: ١١٦١ من حديث محمد بن فضيل بن به، وقال: حسن غريب، وصححه الحاكم: ١٧٣/٤، والذهبي، وقال الذهبي في الميزان، ترجمة مساور: فيه جهالة، والخبر منكر، وجهله صاحب التفریب * أم مساور: وثقها الترمذي، والحاكم وغيرهما والله أعلم، والحديث ضعفه ابن الجوزي وغيره، ولا أعلم وجه النكارة فيه.

Chapter 5. The Best Of Women

(المعجم ٥) - بَابُ أَفْضَلِ النِّسَاءِ

(التحفة ٥)

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

١٨٥٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ زِيَادِ ابْنِ أَنَسٍ، عَنْ عَبْدِ اللَّهِ بْنِ بَرِيدٍ، عَنْ عَبْدِ اللَّهِ ابْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنَّمَا الدُّنْيَا مَتَاعٌ. وَلَيْسَ مِنْ مَتَاعِ الدُّنْيَا شَيْءٌ أَفْضَلُ مِنَ الْمَرْأَةِ الصَّالِحَةِ».

تخریج: [صحيح] * عبدالرحمن بن زياد ضعيف كما تقدم، ح: ٥٤، وأخرج مسلم، ح: ١٤٦٩ وغيره من طريق شرحبيل بن شريك عن أبي عبدالرحمن عبدالله بن يزيد الحبلي به بلفظ: الدنيا متاع وخير متاع الدنيا المرأة الصالحة.

Comments:

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

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

١٨٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ

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

مُرَّةً، عَنْ أَبِيهِ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ ثَوْبَانَ قَالَ: لَمَّا نَزَلَ فِي الْفِضَّةِ وَالذَّهَبِ مَا نَزَلَ، قَالُوا: فَأَيُّ الْمَالِ نَتَّخِذُ؟ قَالَ عُمَرُ: فَأَنَا أَعْلَمُ لَكُمْ ذَلِكَ. فَأَوْضَعَ عَلَيَّ بَعِيرَهُ. فَأَذْرَكَ النَّبِيَّ ﷺ، وَأَنَا فِي آثَرِهِ فَقَالَ: يَا رَسُولَ اللَّهِ أَيُّ الْمَالِ نَتَّخِذُ؟ فَقَالَ: «الْيَتَّخِذُ أَحَدُكُمْ قَلْبًا شَاكِرًا، وَلِسَانًا ذَاكِرًا، وَزَوْجَةً مُؤْمِنَةً، تُعِينُ أَحَدَكُمْ عَلَى أَمْرِ الْآخِرَةِ».

تخريج: [حسن] أخرجه الترمذي، تفسير القرآن، باب: ومن سورة التوبة، ح: ٣٠٩٤ من طريق منصور عن سالم به، وقال: حسن، وقال ما ملخصه: سألت البخاري: سالم سمع من ثوبان؟ فقال: لا، وكذا قال أحمد وغيره، وله شواهد، منها ما أخرجه أحمد: ٣٦٦/٥، وأطراف المستند: ٢٩٥/٨، ومن طريقه المزني في تهذيب الكمال: ٢٣١/١١ وهو في السنن الكبرى للنسائي، وفيه سلم بن عطية وثقه ابن حبان، وروى عنه شعبة وهو لا يروي إلا عن ثقة عنده، ولينه أبو حاتم الرازي.

Comments:

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

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

١٨٥٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا صَدَقَةُ بْنُ خَالِدٍ: حَدَّثَنَا عُثْمَانُ بْنُ أَبِي الْعَائِكَةِ، عَنْ عَلِيِّ بْنِ يَزِيدَ، عَنِ الْقَاسِمِ، عَنْ أَبِي أُمَامَةَ، عَنِ النَّبِيِّ ﷺ أَنَّهُ كَانَ يَقُولُ: «مَا اسْتَفَادَ الْمُؤْمِنُ، بَعْدَ تَقْوَى اللَّهِ، خَيْرًا لَهُ مِنْ زَوْجَةٍ صَالِحَةٍ. إِنْ أَمَرَهَا أَطَاعَتْهُ. وَإِنْ نَظَرَ إِلَيْهَا سَرَّتْهُ. وَإِنْ أَقْسَمَ عَلَيْهَا أَبْرَأَتْهُ. وَإِنْ

to herself and his wealth.” (Da’if)

غَابَ عَنْهَا نَفْسُهَا وَمَالُهَا.

تخریج: [إسناده ضعيف جدًا] وانظر، ح: ٢٢٨ لعلته.

Chapter 6. Marrying A Religious Woman

(المعجم ٦) - بَابُ تَزْوِيجِ ذَاتِ الدِّينِ

(الصحفة ٦)

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

١٨٥٨ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «تُنكَحُ النِّسَاءَ لِأَرْبَعٍ: لِمَالِهَا، وَلِحَسَبِهَا، وَلِجَمَالِهَا، وَلِدِينِهَا. فَاظْفَرْ بِذَاتِ الدِّينِ، تَرِبَتْ يَدَاكَ».

تخریج: أخرجه البخاري، النكاح، باب الأكناء في الدين ... إلخ، ح: ٥٠٩٠، ومسلم، الرضاع، باب استحباب نكاح ذات الدين، ح: ١٤٦٦ من حديث يحيى بن سعيد به.

Comments:

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

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

١٨٥٩ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ الْمُحَارِبِيُّ وَجَعْفَرُ بْنُ عَوْنٍ، عَنِ الْإِفْرِيقِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ عَبْدِ اللَّهِ ابْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَزَوِّجُوا النِّسَاءَ لِجُسْنِهِنَّ. فَعَلَى حُسْنِهِنَّ أَنْ يُرْدِيَهُنَّ. وَلَا تَزَوِّجُوهُنَّ لِأَمْوَالِهِنَّ. فَعَلَى أَمْوَالِهِنَّ أَنْ تُطْعِيَهُنَّ. وَلَكِنْ تَزَوِّجُوهُنَّ عَلَى

[1] Because of self-admiration and vanity.

is religious is better.” (Da‘if)

الَّذِينَ. وَلَا أُمَّةَ خَرَمَاءَ سَوْدَاءَ ذَاتَ دِينٍ،
أَفْضَلُ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٨٠/٧ من حديث عبد الرحمن الإفريقي به، وضعفه البوصيري، وانظر، ح: ٥٤ لعلته.

Chapter 7. Marrying Virgins

(المعجم ٧) - بَابُ تَزْوِيجِ الْأَبْكَارِ
(التحفة ٧)

1860. It was narrated that Jābir bin ‘Abdullāh said: “I married a woman during the time of the Messenger of Allāh ﷺ, then I met the Messenger of Allāh ﷺ and he said: ‘Have you got married, O Jābir?’ I said: ‘Yes.’ He said: ‘To a virgin or to a previously-married woman?’ I said: ‘A previously-married woman.’ He said: ‘Why not a virgin so you could play with her?’ I said: ‘I have sisters and I did not want her to create trouble between them and me.’ He said: ‘That is better then.’”

١٨٦٠ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا عَبْدَةُ
ابْنُ سُلَيْمَانَ، عَنْ عَبْدِ الْمَلِكِ، عَنْ عَطَاءٍ،
عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: تَزَوَّجْتُ امْرَأَةً
عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَلَقِيَتْ رَسُولَ اللَّهِ
ﷺ فَقَالَ: «أَتَزَوَّجْتَ يَا جَابِرُ؟» قُلْتُ: نَعَمْ.
قَالَ: «أَبْكَرًا أَوْ ثَيِّبًا؟» قُلْتُ: ثَيِّبًا. قَالَ:
«فَهَلَّا بَكَرًا تَلَاعِبُهَا؟» قُلْتُ: كُنَّ لِي أَخَوَاتٌ.
فَخَشِيتُ أَنْ تَدْخُلَ بَيْتِي وَيَتَبَهَّنَّ. قَالَ: «فَذَلِكَ
إِذْنٌ».

(Sahih)

تخريج: أخرجه مسلم، الرضاع، باب استحباب نكاح ذات الدين، ح: ٧١٥ من حديث عبد الملك بن أبي سليمان به.

Comments:

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

1861. It was narrated from ‘Abdur-Rahmān bin Sālim bin ‘Utbah bin ‘Uwaim bin Sā'idah Al-Ansāri, from his father, that his grandfather said: “The Messenger of Allāh ﷺ said: ‘You should

١٨٦١ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْحَرَامِيُّ:
حَدَّثَنَا مُحَمَّدُ بْنُ طَلْحَةَ التَّمِيمِيُّ: حَدَّثَنِي عَبْدُ
الرَّحْمَنِ بْنُ سَالِمِ بْنِ عُثْبَةَ بْنِ عُؤَيْمِ بْنِ
سَاعِدَةَ الْأَنْصَارِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ:

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

قَالَ رَسُولُ اللَّهِ ﷺ: «عَلَيْكُمْ بِالْأَبْكَارِ. فَإِنَّهُنَّ أَعْدَبُ أَفْوَاهًا، وَأَتْقَى أَرْحَامًا، وَأَرْضَى بِالْيَسِيرِ».

تخریج: [إسناده ضعيف] أخرجه الطبراني (الكبير: ١٧/١٤١)، ج: ٣٥١ من طريق الحميدي عن محمد بن طلحة بن طه، إلا أنه قال: عبد الرحمن بن سالم بن عبد الرحمن بن عويم بن ساعدة، وهو الصواب، وقال البيهقي: عبد الرحمن بن عويم ليست له صحة، فالحديث مرسل مع جهالة عبد الرحمن، وله شواهد ضعيفة، راجع التلخيص: ٣/١٤٥ وغيره.

Comments:

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

Chapter 8. Marrying Free Women Who Are Fertile

(المعجم ٨) - بَابُ تَرْوِيجِ الْحَرَائِرِ
وَالْوُلُودِ (التحفة ٨)

1862. It was narrated that Anas bin Málík said: "I heard the Messenger of Alláh ﷺ say: 'Whoever wants to meet Alláh pure and purified, let him marry free women.'" (*Da'if*)

١٨٦٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَلَامُ بْنُ سَوَّارٍ: حَدَّثَنَا كَثِيرُ بْنُ سَلِيمٍ، عَنِ الضَّحَّاكِ بْنِ مَرْحَمٍ قَالَ: سَمِعْتُ أَنَسَ بْنَ مَالِكٍ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ أَرَادَ أَنْ يَلْقَى اللَّهَ طَاهِرًا مُطَهَّرًا، فَلْيَتَزَوَّجِ الْحَرَائِرَ».

تخریج: [إسناده ضعيف جداً] أخرجه ابن عدي في الكامل من حديث سلام بن، ومن طريقه أورده ابن الجوزي في الموضوعات: ٢/٢٦١، وقال: لا يصح * وسلام هذا ضعيف (تريب). وكذا شيخه (أيضاً) بل قال ابن حبان: يروي عن أنس ما ليس من حديثه ويضع عليه، والحديث ضعفه البوصيري، والمنذري وغيرهما، وله شاهد عند البخاري في التاريخ الكبير: ٨/٤٠٤ بدون سند، والله أعلم بحاله.

Comments:

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

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

١٨٦٣ - حَدَّثَنَا يَحْيَى بْنُ حُمَيْدٍ بْنُ كَثِيرٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْحَارِثِ الْمَخْزُومِيُّ، عَنْ طَلْحَةَ، عَنْ عَطَاءٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَنَا أَكْبَرُ مَا فِئْتِي مَكَائِرُ بَيْتِكُمْ».

تخريج: [اصحيح] انظر، ج: ٨٥٧ لعلته، وأخرج أبو داود، النكاح، باب النهي عن تزوج من لم يلد من النساء، ج: ٢٠٥٠ بإسناد حسن مرفوعاً: تزوجوا الودود الودود فاني مكائير بكم الأهم وصنحه ابن حبان، والحاكم، والذهبي، وله شواهد كثيرة.

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

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

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

١٨٦٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَنْصَلُ بْنُ عِيَّانٍ، عَنْ حَجَّاجٍ، عَنْ مُحَمَّدِ بْنِ سُلَيْمَانَ، عَنْ عَمِّهِ سَهْلِ بْنِ أَبِي حَضَمَةَ، عَنْ مُحَمَّدِ بْنِ سَلَمَةَ قَالَ: خَطَبْتُ امْرَأَةً. فَجَعَلْتُ أَتَخَبَّأُ لَهَا، حَتَّى نَظَرْتُ إِلَيْهَا فِي نَخْلِ لَهَا. فَقِيلَ لَهَا: أَتَفْعَلُ هَذَا وَأَنْتِ صَاحِبُ رَسُولِ اللَّهِ ﷺ؟ فَقَالَتْ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا أَلْقَى اللَّهُ فِي قَلْبِ امْرَأَةٍ خِطْبَةَ امْرَأَةٍ، فَلَا بَأْسَ أَنْ يَنْظُرَ إِلَيْهَا».

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

Comments:

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

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

١٨٦٥ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْأَخْلَافِيُّ، وَزُهَيْرُ بْنُ مُحَمَّدٍ، وَمُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ. قَالُوا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، عَنْ مَعْمَرٍ، عَنْ ثَابِتٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ أَرَادَ أَنْ يَتَزَوَّجَ امْرَأَةً. فَقَالَ لَهُ النَّبِيُّ ﷺ: «اذْهَبْ فَانظُرْ إِلَيْهَا. فَإِنَّهُ أَوْجَبَ أَنْ يُوَدَّمَ بَيْنَكُمَا» ففَعَلَ. فَتَزَوَّجَهَا. فَذَكَرَ مِنْ مُوَافَقَتِهَا.

تخريج: [إسناده صحيح] أخرجه البيهقي: ٨٤/٧ من حديث عبد الرزاق به، ووضحه ابن حبان (موارد)، ح: ١٢٣٦، والحاكم: ١٥٦/٢، والذهبي، والبوصيري.

Comments:

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

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

١٨٦٦ - حَدَّثَنَا الْحَسَنُ بْنُ أَبِي الرَّيِّعِ: أَنَّ بَنَاتَنَا عَبْدَ الرَّزَّاقِ، عَنْ مَعْمَرٍ، عَنْ ثَابِتِ الْبُنَانِيِّ، عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُرَيْيِّ، عَنْ الْمُغِيرَةَ بْنِ شُعْبَةَ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ، فَذَكَرْتُ لَهُ امْرَأَةً أُحْطَبْتُهَا فَقَالَ: «اذْهَبْ فَانظُرْ إِلَيْهَا. فَإِنَّهُ أَجْدَرُ أَنْ يُوَدَّمَ بَيْنَكُمَا» فَأَتَيْتُ امْرَأَةً مِنَ الْأَنْصَارِ. فَحَاطَبْتُهَا إِلَى أَبِيهَا. وَأَخْبَرْتُهَا بِقَوْلِ النَّبِيِّ ﷺ. فَكَأَنَّهَا كَرِهَتْ ذَلِكَ. قَالَ: فَسَمِعْتُ ذَلِكَ الْمَرْأَةَ، وَهِيَ فِي خِدْرِهَا، فَقَالَتْ: إِنْ كَانَ رَسُولُ اللَّهِ ﷺ أَمَرَكَ أَنْ تَنْظُرَ، فَانظُرْ. وَإِلَّا فَانْشُدْكَ. كَأَنَّهَا أَعْظَمَتْ ذَلِكَ. قَالَ: فَنَظَرْتُ إِلَيْهَا فَتَزَوَّجْتُهَا. فَذَكَرَ مِنْ مُوَافَقَتِهَا

how well he got along with her.

(*Sahih*)

تخریج: [إسناده صحيح] أخرجه الترمذي، النكاح، باب ما جاء في النظر إلى المخطوبة، ح: ١٠٨٧ من حديث بكر به، وقال: حسن، وصححه البوصيري.

Comments:

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

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

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

(المعجم ١٠) - بَابُ: لَا يَخْطُبُ
الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ (التحفة ١٠)

١٨٦٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ سَهْلُ بْنُ أَبِي سَهْلٍ. قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَخْطُبُ الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ».

تخریج: أخرجه البخاري، البيوع، باب لا يبيع على بيع أخيه ... الخ، ح: ٢١٤٠ وغيره، ومسلم، النكاح، باب تحريم الخطبة على خطبة أخيه حتى يأذن أو يترك، ح: ١٤١٣ من حديث سفیان به مطولاً.

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

١٨٦٨ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَخْطُبُ الرَّجُلُ عَلَى خُطْبَةِ أَخِيهِ».

تخریج: أخرجه مسلم، النكاح، الباب السابق، ح: ١٤١٢ من حديث يحيى به، البيوع، باب تحريم بيع الرجل على بيع أخيه ... الخ، ح: ٨/١٤١٢.

Comments:

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

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

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

١٨٦٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ بْنِ صُخَيْرِ الْعَدَوِيِّ قَالَ: سَمِعْتُ فَاطِمَةَ بِنْتَ قَيْسٍ تَقُولُ: قَالَ لِي رَسُولُ اللَّهِ ﷺ: «إِذَا حَلَلْتَ فَأَنْبِئِي» فَأَذَنْتَهُ. فَحَطَبَهَا مُعَاوِيَةَ وَأَبُو الْجَهْمِ ابْنُ صُخَيْرٍ وَأُسَامَةُ بْنُ زَيْدٍ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَمَّا مُعَاوِيَةُ فَرَجُلٌ تَرِبٌ، لَا مَالَ لَهُ. وَأَمَّا أَبُو الْجَهْمِ فَرَجُلٌ ضَرَابٌ لِلنِّسَاءِ. وَلَكِنْ أُسَامَةُ». فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «طَاعَةُ اللَّهِ وَطَاعَةُ رَسُولِهِ خَيْرٌ لَكَ» قَالَتْ: فَتَرَوُجْتُهُ فَأَعْتَبْتُ بِهِ.

تخریح: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٧/٤٨٠ عن ابن أبي

شيبه به.

Comments:

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

[1] Meaning when her *Idah* ends.

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

(المعجم (١١) - بَابُ اسْتِئْذَانِ الْبِكْرِ
وَالثَّيِّبِ (التحفة ١١)

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

١٨٧٠ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى السُّدِّيُّ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ الْهَاشِمِيِّ، عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْأَيُّمُ أَوْلَى بِنَفْسِهَا مِنْ وَلِيِّهَا. وَالْبِكْرُ تُسْتَأْمَرُ فِي نَفْسِهَا» قِيلَ: يَا رَسُولَ اللَّهِ إِنَّ الْبِكْرَ تَسْتَحْيِي أَنْ تَتَكَلَّمَ. قَالَ: «إِذْنُهَا سُكُوتُهَا».

تخریج: أخرجه مسلم، النكاح، باب استئذان الثيب والبكر بالنطق والسكوت، ح: ١٤٢١. من حديث مالك به.

Comments:

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

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

١٨٧١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا تُنْكَحُ الثَّيِّبُ حَتَّى تُسْتَأْمَرَ. وَلَا الْبِكْرُ حَتَّى تُسْتَأْذَنَ، وَإِذْنُهَا الصُّمُوتُ».

تخریج: أخرجه مسلم، النكاح، الباب السابق، ح: ٦٤/١٤١٩ من حديث الأوزاعي وغيره به، ورواه البخاري، ح: ٥١٣٦٦. من حديث يحيى بن أبي كثير به.

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

١٨٧٢ - حَدَّثَنَا عِيسَى بْنُ حَمَادٍ الْمَصْرِيُّ: أَنَّ أَبَانَ اللَّيْثُ بْنُ سَعْدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي حُسَيْنٍ، عَنْ عَدِيِّ بْنِ عَدِيٍّ

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

الْكُنْدِيُّ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْتَيْبُ تُعْرَبُ عَنْ نَفْسِهَا، وَالْبِكْرُ رِضَا مَا صَمَتْهَا».

تخريج: [صحيح] أخرجه أحمد: ١٩٢/٤ من حديث الليث به، قيل: عدي لم يسمع من أبيه، ولكن للحديث شواهد صحيحة، عند أحمد وغيره.

Comments:

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

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

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

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

تخريج: أخرجه البخاوي، النكاح، باب: إذا زوج الرجل ابنته وهي كارهة فنكاحه مردود،

ج: ٥١٣٩ من حديث يزيد به مختصراً.

Comments:

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

(المعجم ١٢) - بَابُ مِنَ زَوْجِ ابْنَتِهِ وَهِيَ كَارِهَةٌ (التحفة ١٢)

١٨٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّ الْقَاسِمَ بْنَ مُحَمَّدٍ أَخْبَرَهُ: أَنَّ عَبْدِ الرَّحْمَنِ ابْنَ يَزِيدَ، وَ مُجَمَّعُ بْنُ يَزِيدَ الْأَنْصَارِيِّينِ أَخْبَرَاهُ: أَنَّ رَجُلًا مِنْهُمْ يُدْعَى خِدَامًا أُنْكَحَ ابْنَتَهُ لَهَا. فَكَرِهَتْ نِكَاحَ أَبِيهَا. فَأَتَتْ رَسُولَ اللَّهِ ﷺ. فَذَكَرَتْ لَهُ. فَرَدَّ عَلَيْهَا نِكَاحَ أَبِيهَا. فَكَرِهَتْ أَبَا لُبَابَةَ بْنَ عَبْدِ الْمُنْذِرِ. وَذَكَرَ يَحْيَى أَنَّهَا كَانَتْ نِكَاحًا.

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

١٨٧٤ - حَدَّثَنَا هَنَادُ بْنُ السَّيِّدِيِّ: حَدَّثَنَا وَكَيْعٌ عَنْ كَهْمَسِ بْنِ الْحَسَنِ، عَنِ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ قَالَ: جَاءَتْ فَتَاةٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: إِنَّ أَبِي زَوَّجَنِي ابْنَ أَخِيهِ لِيَرْفَعَ بِي حَيْسِنَتَهُ. قَالَ: فَجَعَلَ الْأَمْرَ إِلَيْهَا. فَقَالَتْ: قَدْ أَجَزْتُ مَا صَنَعَ أَبِي. وَلَكِنْ أُرَدْتُ أَنْ تَعْلَمَ النِّسَاءُ أَنَّ لَيْسَ إِلَى الْآبَاءِ مِنَ الْأَمْرِ شَيْءٌ.

تخريج: [إسناده صحيح] وقال البوصيري: [إسناده صحيح]، والخطيب الآتي شاهد له.

Comments:

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

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

Another chain of narrators with similar wording.

١٨٧٥ - حَدَّثَنَا أَبُو الشَّامِرِ يَحْيَى بْنُ يَزِيدَ الْعُسْكُرِيُّ: حَدَّثَنَا الْحُسَيْنُ بْنُ مُحَمَّدٍ الْمُرُوذِيُّ: حَدَّثَنِي جَرِيرُ بْنُ حَازِمٍ، عَنْ أَيُّوبَ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ جَارِيَةَ بَكْرًا أَتَتْ النَّبِيَّ ﷺ. فَذَكَرَتْ لَهُ أَنَّ أَبَاهَا زَوَّجَهَا وَهِيَ كَارِهَةٌ. فَخَيَّرَهَا النَّبِيُّ ﷺ.

حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ أَبَانَا مُعَمَّرُ بْنُ سُلَيْمَانَ الرَّقِّيَّ، عَنْ زَيْدِ بْنِ حَبَّانَ، عَنْ أَيُّوبَ السَّخْتِيَّانِيِّ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ، مِثْلَهُ.

تخريج: [صحيح] أخرجه أبو داود، النكاح، باب: في البكر يزوجه أبوها ولا يستأمرها، ح ٢٠٩٦ من حديث الحسين بن محمد به * جرير بن حازم ثقة مدلس (رماه بالتدليس الإمام البيهقي وغيره) وعنن، وتابعه زيد بن حبان، وخالفهما الجبل حماد بن زيد فرواه مرسلًا وهو الصواب، والحديث السابق شاهد لحديث جرير وزيد، وبه صح الحديث.

Chapter 13. Marriage Of Minor Girls Arranged By Their Fathers

المعجم (١٣) - بَابُ نِكَاحِ الصَّغَارِ يُزَوِّجُهُنَّ الْآبَاءُ. (التحفة ١٣)

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

١٨٧٦ - حَدَّثَنَا سُؤْدُبُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلِيُّ ابْنُ مُسْهِرٍ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: تَزَوَّجَنِي رَسُولُ اللَّهِ ﷺ وَأَنَا بِنْتُ سِتِّ سِنِينَ. فَقَدِمْنَا الْمَدِينَةَ. فَتَزَلْنَا فِي بَيْتِ الْحَارِثِ بْنِ الْخَزْرَجِ: فَوَعَكَتُ. فَتَمَزَّقَ شَعْرِي حَتَّى وَفَى لِي جُمِيمَةٌ. فَأَتَنِي أُمِّي أُمُّ رُوْمَانَ وَإِنِّي لَفِي أَرْجُوحَةٍ وَمَعِيَ صَوَاحِبَاتٌ لِي. فَصَرَخَتْ بِي. فَأَتَيْتُهَا وَمَا أَدْرِي مَا تُرِيدُ. فَأَخَذَتْ يَدِي فَأَوْفَقْتَنِي عَلَى بَابِ الدَّارِ. وَإِنِّي لَأَهْجُحُ حَتَّى سَكَنَ بَعْضُ نَفْسِي. ثُمَّ أَخَذَتْ شَيْئًا مِنْ مَاءٍ فَمَسَحَتْ بِهِ عَلَى وَجْهِي وَرَأْسِي. ثُمَّ أَدْخَلْتَنِي الدَّارَ. فَإِذَا نِسْوَةٌ مِنَ الْأَنْصَارِ فِي بَيْتٍ. فَقُلْنَ: عَلَى الْحَبِيرِ وَالْبُرَيْكَةِ، وَعَلَى خَيْرِ طَائِرٍ. فَأَسْلَمْتَنِي إِلَيْهِنَّ. فَأَصْلَحْنَ مِنْ شَأْنِي. فَلَمْ يَرُعْنِي إِلَّا رَسُولُ اللَّهِ ﷺ ضَحَى. فَأَسْلَمْتَنِي إِلَيْهِ، وَأَنَا يَوْمَئِذٍ بِنْتُ تِسْعِ سِنِينَ.

تخريج: أخرجه البخاري، مناقب الأنصار، باب تزويج النبي ﷺ عائشة وقدمها المدينة وبنائه بها، ح: ٣٨٩٤ من حديث علي بن مسهر، ومسلم، النكاح، باب جواز تزويج الأب البكر الصغيرة، ح: ١٤٢٢ من حديث هشام به.

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

Comments:

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

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

١٨٧٧ - حَدَّثَنَا أَحْمَدُ بْنُ سَيَانَ: حَدَّثَنَا أَبُو أَحْمَدَ: حَدَّثَنَا إِسْرَائِيلُ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عُبَيْدَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: تَزَوَّجَ النَّبِيُّ ﷺ عَائِشَةَ وَهِيَ بِنْتُ سَبْعٍ وَوَبَّى بِهَا وَهِيَ بِنْتُ تِسْعٍ. وَتَوَفَّى عَنْهَا وَهِيَ بِنْتُ ثَمَانِي عَشْرَةَ سَنَةً.

تخریج: [صحيح] فيه علتان، والحديث السابق شاهد له، وللحديث طرق كثيرة عن عائشة رضي الله عنها، وأجمع المحدثون على صحته، وهم عمدة في هذا الشأن.

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

(المعجم ١٤) - **بَابُ نِكَاحِ الصَّغَارِ يُزَوِّجُهُنَّ غَيْرُ الْآبَاءِ (التحفة: ١٤)**

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

١٨٧٨ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نَافِعٍ الصَّائِغُ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ نَافِعٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عُمَرَ أَنَّهُ جِئَ هَلَكَ عُثْمَانُ بْنُ مَطْعُونٍ تَرَكَ ابْنَةً لَهُ. قَالَ ابْنُ عُمَرَ: فَزَوَّجْنَاهَا خَالِي قُدَامَةَ، وَهِيَ عَمَّتَاهُ، وَلَمْ يُشَاوِرْهَا. وَذَلِكَ بَعْدَمَا هَلَكَ أَبُوهَا. فَكَرِهَتْ نِكَاحَهُ، وَأَحْبَبَتْ الْجَارِيَةَ أَنْ يُزَوِّجَهَا الْمُغِيرَةَ بْنَ شُعْبَةَ، فَزَوَّجَهَا إِيَّاهُ.

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

البيهقي ١٢٠، ١٢١، وغيره.

Comments:

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

Chapter 15. No Marriage Except With A Guardian

(المعجم ١٥) - بَابُ: لَا نِكَاحَ إِلَّا

بِوَلِيِّ (التحفة ١٥)

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

١٨٧٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُعَاذٌ: حَدَّثَنَا ابْنُ جُرَيْجٍ، عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَأَةٍ لَمْ يُنْكَحْهَا الْوَلِيُّ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ أَصَابَهَا، فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا. فَإِنْ اشْتَجَرُوا، فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ».

تخريج: [صحيح] أخرجه أبو داود، النكاح، باب: في الولي، ح: ٢٠٨٣ من حديث ابن جريج به، وصححه ابن حبان، والحاكم، وله شواهد كثيرة، وحديث: لا نكاح إلا بولي متواتر كما قال السيوطي (قطف الأزهار، ح: ٨٧) وغيره، وكذا تواتر عن الصحابة رضي الله عنهم من فتاويهم، راجع السنن الكبرى للبيهقي: ١١١/٧ وغيره.

Comments:

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

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

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

١٨٨٠ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ الْمُبَارَكِ، عَنْ حَجَّاجٍ، عَنِ الرَّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ، وَعَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ. قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ».

وَفِي حَدِيثِ عَائِشَةَ: «وَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ».

تخريج: [صحيح] انظر الحديث السابق.

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

١٨٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا أَبُو عَوَانَةَ: حَدَّثَنَا أَبُو إِسْحَاقَ التَّمَمْدَانِيُّ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ».

تخريج: [صحيح] أخرجه أبو داود، النكاح، باب: في الولي، ح: ٢٠٨٥ من حديث أبي إسحاق به، وتابعه يونس عنده، وانظر، ح: ١٨٧٩.

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

١٨٨٢ - حَدَّثَنَا جَعْفَرُ بْنُ الْحَسَنِ الْعَتَكِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ مَرْوَانَ الْعَقِيلِيُّ: حَدَّثَنَا هِشَامُ بْنُ حَسَّانَ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَزُوجُ الْمَرْأَةَ الْمَرْأَةَ. وَلَا تَزُوجُ الْمَرْأَةَ نَفْسَهَا. فَإِنَّ الزَّانِيَةَ هِيَ الَّتِي تَزُوجُ نَفْسَهَا».

تخريج: [صحيح] أخرجه الدارقطني، والبيهقي: ١١٠/٧ من طريق جميل به، وانظر، ح: ١٦٧٦ لغتته، وفيه علة أخرى، وأخرج البيهقي بإسناد صحيح عن أبي هريرة رضي الله عنه قال: لا تزوج المرأة المرأة ولا تزوج المرأة نفسها، فإن الزانية هي التي تزوج نفسها، والله حكيم الرفع.

Comments:

a: A woman cannot be a guardian for marriage.

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

Chapter 16. Prohibition Of *Shighâr*

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

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

١٨٨٣ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الشَّغَارِ وَالشَّغَارُ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: زَوِّجْنِي ابْنَتَكَ أَوْ أُخْتَكَ، عَلَى أَنْ أُزَوِّجَكَ ابْنَتِي أَوْ أُخْتِي. وَلَيْسَ بَيْنَهُمَا صِدَاقٌ.

تخریج: أخرجه البخاري، النكاح، باب الشغار، ج: ٥١١٢، ومسلم، النكاح، باب تجريم نكاح الشغار وبطلانه، ج: ١٤١٥، من حديث مالك به.

Comments:

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

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

١٨٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَ أَبُو أُسَامَةَ، عَنْ [عَبِيدِ اللَّهِ، عَنْ أَبِي الزَّوَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الشَّغَارِ.

تخریج: أخرجه مسلم، النكاح، الباب السابق، ج: ١٤١٦، عن ابن أبي شيبة عن أبي أسامة وغيره به.

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

١٨٨٥ - حَدَّثَنَا الْحُسَيْنُ بْنُ مَهْدِيٍّ: أَنَّ أَبَانَ بْنَ عَبْدِ الرَّزَّاقِ: أَنَّ أَبَانَ مَعْمَرٌ عَنْ ثَابِتٍ، عَنْ

أَنَسُ بْنُ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا شِعَارَ فِي الْإِسْلَامِ».

تخریج: [إسناده صحيح] أخرجه أحمد: ۱۶۵/۳ عن عبدالرزاق به عن معمر عن ثابت وأبان وغير واحد عن أنس به.

Comments:

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

Chapter 17. Dowries Of Women

(المعجم ۱۷) - بَابُ صَدَاقِ النِّسَاءِ

(التحفة ۱۷)

1886. It was narrated that Abu Salamah said: "I asked 'Āishah: 'How much was the dowry of the wives of the Prophet ﷺ?' She said: 'The dowry he gave to his wives was twelve *Uqiyyah* and a *Nash* (of Silver). Do you know what a *Nash* is? It is one half of an *Uqiyyah*. And that is equal to five hundred Dirham.'"^[1] (*Sahih*)

۱۸۸۶ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ أَبَانَ عَبْدَ الْعَزِيزِ الدَّرَاوَرْدِيُّ، عَنْ زَيْدِ بْنِ عَبْدِ اللَّهِ ابْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، عَنْ أَبِي سَلَمَةَ قَالَ: سَأَلْتُ عَائِشَةَ: كَمْ كَانَ صَدَاقُ نِسَاءِ النَّبِيِّ ﷺ؟ قَالَتْ: كَانَ صَدَاقَهُ فِي أَزْوَاجِهِ اثْنَتَيْ عَشْرَةَ أُوقِيَّةً وَنَشًّا. هَلْ تَدْرِي مَا النَّشُ؟ هُوَ نِصْفُ أُوقِيَّةٍ. وَذَلِكَ خَمْسِمِائَةَ دِرْهَمٍ.

تخریج: أخرجه مسلم، النكاح، باب الصداق، وجواز كونه تعليم قرآن وخاتم حديد وغيره، ذلك... الخ، ج: ۱۴۲۶ من حديث عبدالعزیز بن محمد به.

Comments:

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

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

۱۸۸۷ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا زَيْدُ بْنُ هَارُونَ، عَنِ ابْنِ عَوْنٍ، ج: وَحَدَّثَنَا

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

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

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

نَضْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا ابْنُ عَوْنٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ أَبِي التَّخَفَاءِ السُّلَمِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُغَالُوا صَدَاقَ النِّسَاءِ، فَإِنَّهَا لَوْ كَانَتْ مَكْرَمَةً فِي الدُّنْيَا، أَوْ تَقْوَى عِنْدَ اللَّهِ، كَانَ أَوْلَاكُمْ وَأَحَقَّكُمْ بِهَا مُحَمَّدٌ ﷺ. مَا أَصْدَقَ امْرَأَةً مِنْ نِسَائِهِ وَلَا أَصْدَقْتَ امْرَأَةً مِنْ بَنَاتِهِ أَكْثَرَ مِنْ اثْنَتَيْ عَشْرَةَ أُوقِيَةً. وَإِنَّ الرَّجُلَ لَيَنْتَقِلُ صَدَقَةَ امْرَأَتِهِ حَتَّى يَكُونَ لَهَا عَدَاوَةٌ فِي نَفْسِهِ. وَيَقُولُ: قَدْ كَلِفْتُ إِلَيْكَ عَلَقُ الْقَرْيَةِ، أَوْ عَرَقُ الْقَرْيَةِ.

وَكُنْتُ رَجُلًا عَرَبِيًّا مَوْلِدًا، مَا أَدْرِي مَا عَلَقُ الْقَرْيَةِ، أَوْ عَرَقُ الْقَرْيَةِ.

تخريج: [حسن] أخرجه أبو داود، النكاح، باب الصداق، ح: ٢١١٦ من حديث محمد بن سيرين مختصراً، وقال الترمذي: حسن صحيح، ح: ١١١٤م، وصححه الحاكم، والذهبي.

Comments:

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

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

١٨٨٨ - حَدَّثَنَا أَبُو عُمَرَ الضَّرِيرُ وَ هَذَا مِنْ السَّرِيِّ. قَالَ: حَدَّثَنَا وَكَيْعٌ عَنْ شَفِيَّانَ، عَنْ

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

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

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

عاصم بن عبيد الله، عن عبد الله بن عامر ابن ربيعة، عن أبيه أن رجلاً من بني فزارة تزوج على نعلين. فأجاز النبي ﷺ نكاحه.

تخريج: [إسناده ضعيف] أخرجه الترمذي، النكاح، باب ما جاء في مهر النساء، ح: ١٦١٣ من حديث عاصم به، وقال: حسن صحيح، وانظر، ح: ٩٠٧ لعلته.

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

١٨٨٩ - حَدَّثَنَا حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْلَبٍ، عَنْ سُفْيَانَ، عَنْ أَبِي حازِمٍ، عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ. قَالَ: «مَنْ يَتَزَوَّجُهَا؟» فَقَالَ رَجُلٌ: أَنَا. فَقَالَ لَهُ النَّبِيُّ ﷺ: «أَعْطَيْهَا وَلَوْ خَاتماً مِنْ حَدِيدٍ» فَقَالَ: لَيْسَ مَعِيَ. قَالَ: «فَدِّ زَوَّجْتُهَا عَلَى مَا مَعَكَ مِنَ الْقُرْآنِ» -

تخريج: أخرجه البخاري، النكاح، باب المهر بالعروض، وباب ما جاء في مهر النساء، ح: ٥١٥٠ من طريق سفیان به، وأخرجه مسلم، النكاح، باب الضدائق وجواز كونه تعليم. قرآن ... الخ، ح: ١٤٢٥ من طريق آخر عن أبي حازم به.

Comments:

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

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

١٨٩٠ - حَدَّثَنَا أَبُو هِشَامٍ الرَّقَاعِيُّ مُحَمَّدُ ابْنُ يَزِيدَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانَ: حَدَّثَنَا الْأَعْرَابِيُّ، عَنْ عَطِيَّةِ الْعَوْفِيَّةِ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ النَّبِيَّ ﷺ تَزَوَّجَ عَائِشَةَ عَلَى مَتَاعِ بَيْتٍ، فِيمَتُهُ خَمْسُونَ دِرْهَمًا.

تخريج: [إسناده ضعيف] وانظر، ح: ٣٧ لعلته، وفيه علل أخرى، منها جهالة الرقاشي، راجع التقريب وغيره.

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

(المعجم ١٨) - بَابُ الرَّجُلِ يَتَزَوَّجُ وَلَا يَمْرُضُ لَهَا فَيَمُوتُ عَلَى ذَلِكَ

(التحفة ١٨)

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

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

١٨٩١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ سُفْيَانَ، عَنْ فِرَاسِ بْنِ عَبْدِ اللَّهِ، عَنِ النَّعْمِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ أَنَّهُ سُئِلَ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً فَمَاتَ عَنْهَا، وَلَمْ يَدْخُلْ بِهَا، وَلَمْ يَمْرُضْ لَهَا، قَالَ فَقَالَ عَبْدُ اللَّهِ: لَهَا الصَّدَاقُ وَلَهَا الْمِيرَاثُ وَعَلَيْهَا الْعِدَّةُ. فَقَالَ مَعْقِلُ بْنُ سِنَانٍ الْأَشْجَعِيُّ: شَهِدْتُ رَسُولَ اللَّهِ ﷺ قَضَى فِي بَرُوعَ بِنْتِ وَاشِقٍ بِمِثْلِ ذَلِكَ.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ سُفْيَانَ، عَنْ مَثُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ وَثَلَّةُ.

تخریج: [صحيح] أخرجه أبو داود، النكاح، باب: فيمن تزوج ولم يسم لها صداقاً حتى مات، ج: ٢١١٤، ٢١١٥ من حديث ابن مهدي به، وصححه الترمذي، والبيهقي.

Comments:

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

Chapter 19. Sermon Of Marriage

المعجم (١٩) - بَابُ خُطْبَةِ النِّكَاحِ

(التحفة ١٩)

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

١٨٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنِي أَبِي عَنْ جَدِّي أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَخْوَصِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أَوْتِيَ رَسُولُ اللَّهِ ﷺ جَوَامِعَ الْخَيْرِ، وَخَوَاتِمَهُ. أَوْ قَالَ: فَوَاتِحَ الْخَيْرِ. فَعَلِمْنَا خُطْبَةَ الصَّلَاةِ وَخُطْبَةَ الْحَاجَةِ. خُطْبَةُ الصَّلَاةِ: التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ. السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ. السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ. أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ. وَخُطْبَةُ الْحَاجَةِ: أَنْ الْحَمْدُ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ. وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ. وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ. وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ. ثُمَّ تَصِلُ خُطْبَتُكَ بِثَلَاثِ آيَاتٍ مِنْ كِتَابِ اللَّهِ: ﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ﴾ [آل عمران: ١٠٢] إِلَى آخِرِ الْآيَةِ: ﴿وَاعْتُوا اللَّهَ الَّذِي سَأَلْتُمْ بِهِ وَالْأَرْحَامَ﴾ [النساء: ١] إِلَى آخِرِ الْآيَةِ: ﴿اتَّقُوا اللَّهَ وَفُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ﴾ [الأحزاب: ٧٠ - ٧١] إِلَى آخِرِ الْآيَةِ.

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

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

[1] *Āl 'Imrān* 3:102.

[2] *An-Nisā'* 4:1.

[3] *Al-Ahzāb* 33:70-71.

حديث أبي إسحاق عن أبي الأحوص به، وحسنه الترمذي، ح: ٢٢٠٥، وانظر، ح: ٤٦: لعلته، وله طريق آخر منقطع، فالخير لم يصح، والله أعلم.

Comments:

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

1893. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "Al-hamdu lillāhi nahmaduhu wa nasta'inuhu wa na'udhu billāhi min shururi anfusinā wa min sayi'āti a'mālinā. Man yahdihillāhu falā mudilla lahu, wa man yudlil falā hādīya lahu. Wa ashhiadu an lā ilāha illallāhu wahdahu lā sharīka lahu, wa anna Muhammadan 'abduhu wa rasuluhu. Ammā ba'd: (Praise is to Allāh, we praise Him and we seek His help. We seek refuge with Allāh from the evil of our own souls and from our bad deeds, Whomsoever Allāh guides will never be led astray; and whomsoever is led astray, no one can guide. I bear witness that none has the right to be worshiped but Allāh, alone with no partner or associate, and that Muhammad is His slave and His Messenger. To proceed:)" (*Sahih*)

١٨٩٣ - حَدَّثَنَا بَكْرُ بْنُ خَلْفٍ أَبُو بَشِيرٍ. حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ: حَدَّثَنِي عَمْرُو بْنُ سَعِيدٍ، عَنِ مَعْبُدِ بْنِ جَبْرِ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْحَمْدُ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا، مَنِ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ. أَمَّا بَعْدُ».

تخريج: أخرجه مسلم، الجمعة، باب تخفيف الصلوة والجمعة، ح: ٨٦٨ من حديث داود به

مطولاً.

Comments:

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

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

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

١٨٩٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ مُحَمَّدُ بْنُ يَحْيَى، وَ مُحَمَّدُ بْنُ خَلْفٍ الْعَسْقَلَانِيُّ قَالُوا: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى، عَنِ الْأَوْزَاعِيِّ، عَنْ قُرَّةَ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ. قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ أَمْرٍ ذِي بَالٍ، لَا يُبْدَأُ فِيهِ بِالْحَمْدِ، أَقْطَعُ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الأدب، باب الهدي في الكلام، ح: ٤٨٤٠ من حديث الأوزاعي به * قرة متكلم فيه، وخالفه الجبال الثقات، والزهرى عن تقدم، ح: ٧٠٧.

Chapter 20. Announcing Marriages

بابُ إِغْلَانِ النِّكَاحِ (المعجم ٢٠) (التحفة ٢٠)

1895. It was narrated from 'Aishah that the Prophet ﷺ said: "Announce this marriage, and beat the sieve for it."^[1] (*Da'if*).

١٨٩٥ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ وَ الْخَلِيلُ بْنُ عَمْرٍو. قَالَا: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ، عَنِ خَالِدِ بْنِ الْإِسْمِ، عَنِ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنِ الْقَاسِمِ، عَنِ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «أَغْلِنُوا هَذَا النِّكَاحَ، وَأَضْرِبُوا عَلَيْهِ بِالْفَرْتَالِ».

تخريج: [إسناده ضعيف جداً] أخرجه البيهقي: ٢٩٠/٧ من حديث عيسى بن يونس به، وانظر، ح: ٧٦٠ لعلته.

Comments:

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

1896. It was narrated from Muhammad bin Hâtib that the

١٨٩٦ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا

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

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

هُشَيْمٌ، عَنْ أَبِي بَلْجٍ، عَنْ مُحَمَّدِ بْنِ حَاطِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فَضْلُ مَا بَيْنَ الْحَلَالِ وَالْحَرَامِ، الدَّفُّ وَرَفْعُ الصَّوْتِ فِي النِّكَاحِ».

تخریج: [حسن] أخرجه الترمذي، النكاح، باب ما جاء في إعلان النكاح، ح: ١٠٨٨ من حديث هشيم به، وقال: حسن، وصححه الحاكم: ١٨٤/٢، والذهبي.

Comments:

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

Chapter 21. Singing And (Beating) The *Daff*

(المعجم ٢١) - بَابُ الْغِنَاءِ وَالْدَّفِّ

(التحفة ٢١)

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

١٨٩٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ أَبِي الْحُسَيْنِ، اسْمُهُ خَالِدُ الْمَدَنِيُّ قَالَ: كُنَّا بِالْمَدِينَةِ يَوْمَ عَاشُورَاءَ. وَالْحَوَارِيُّ يَضْرِبَنَّ بِالْدَّفِّ. وَتَغَنَّيَنَّ. فَدَخَلْنَا عَلَى الرَّبِيعِ بِنْتِ مُعَاوِذٍ. فَذَكَرْنَا ذَلِكَ لَهَا. فَقَالَتْ: دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ صَبِيحَةَ عُرْسِي وَعِنْدِي جَارِيَتَانِ تَغْنِيَانِ وَتَذْبَابَانِ الْآبَاءِ الَّذِينَ قُتِلُوا يَوْمَ بَدْرٍ. وَتَقُولَانِ، فِيمَا تَقُولَانِ: وَفِينَا نَبِيٌّ يَعْلَمُ مَا فِي غَدِي. فَقَالَ: «أَمَا هَذَا، فَلَا تَقُولُوهُ. مَا يَعْلَمُ مَا فِي غَدِي إِلَّا اللَّهُ».

تخريج: [إسناده صحيح] أخرجه البخاري، المغازي، باب (١٢)، ح: ٤٠٠١، ٥١٤٧ من

حديث خالد به.

Comments:

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

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

١٨٩٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: دَخَلَ عَلَيَّ أَبُو بَكْرٍ، وَعِنْدِي جَارِيَتَانِ مِنْ جَوَارِي الْأَنْصَارِ. تَغْتَابَانِ بِمَا تَقَاوَلَتْ بِهِ الْأَنْصَارُ فِي يَوْمِ بَعَاثٍ. قَالَتْ وَلَيْسَتَا بِمَعْنِيَتَيْنِ. فَقَالَ أَبُو بَكْرٍ: أَبِمَزْمُورِ الشَّيْطَانِ فِي بَيْتِ النَّبِيِّ ﷺ؟ وَذَلِكَ فِي يَوْمِ عِيدِ [الْفِطْرِ]. فَقَالَ النَّبِيُّ ﷺ: «يَا أَبَا بَكْرٍ إِنَّ لِكُلِّ قَوْمٍ عِيدًا. وَهَذَا عِيدُنَا».

تخريج: أخرجه البخاري، العيدين، باب سنة العيدين لأهل الإسلام، ح: ٩٥٢، ومسلم،

صلاة العيدين، باب الرخصة في اللعب الذي لا معصية فيه في أيام العيد، ح: ٨٩٢ من حديث أبي أسامة به.

Comments:

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

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

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

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

“We are girls from Banu Najjâr

What an excellent neighbor is Muhammad.”

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

١٨٩٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنَا عَوْفٌ عَنْ ثُمَامَةَ بِنِ عَبْدِ اللَّهِ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ مَرَّ بِبَعْضِ الْمَدِينَةِ. فَإِذَا هُوَ بِجَوَارٍ يَضْرِبْنَ بِدَفْفِهِنَّ وَيَتَغَنَّينَ وَيَقْلَنَ.

نَحْنُ جَوَارٍ مِنْ بَنِي النَّجَّارِ
يَا حَبِيبًا مُحَمَّدٌ مِنْ جَارِ
قَالَ النَّبِيُّ ﷺ: «اللَّهُ يَعْلَمُ إِنِّي لِأَحِبُّكُمْ».

تخریج: [إسناده صحيح] وقال البوصيري: إسناده صحيح ورجاله ثقات .

Comments:

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

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

١٩٠٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنبَأَنَا جَعْفَرُ بْنُ عَوْنٍ: أَنبَأَنَا الْأَجْلُحُ، عَنْ أَبِي الزُّبَيْرِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: أَتَكَحَّتْ عَائِشَةُ ذَاتَ قَرَابَةٍ لَهَا مِنَ الْأَنْصَارِ. فَجَاءَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «أَهْدَيْتُمُ الْفَتَاةَ؟» قَالُوا: نَعَمْ. [قَالَ]: «أُرْسَلْتُمْ مَعَهَا مِنْ يُغْنِي؟» قَالَتْ: لَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الْأَنْصَارَ قَوْمٌ فِيهِمْ غَزَلٌ. فَلَوْ بَعَثْتُمْ مَعَهَا مَنْ يَقُولُ: أَتَيْنَاكُمْ أَتَيْنَاكُمْ، فَحَبَّانَا وَحَبَّائِكُمْ».

Allāh bless you and us?" (Da'if)

تخريج: [إسناده ضعيف] أخرجه أحمد: ٣/٣٩١ من حديث الأجلح به، وله شاهد ضعيف عند الطبراني في الأوسط، وأصل الحديث في صحيح البخاري، ح: ٥١٦٢ وغيره، وله شواهد أخرى عند ابن حبان (موارد)، ح: ٢٠١٦ وغيره، وانظر المشكوة [بتحقيقي]، ح: ٣١٥٤.

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

١٩٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الْفَرَّائِيُّ عَنْ ثَعْلَبَةَ بْنِ أَبِي مَالِكٍ التَّمِيمِيِّ، عَنْ لَيْثٍ، عَنْ مُجَاهِدٍ قَالَ: كُنْتُ مَعَ ابْنِ عُمَرَ، فَسَمِعَ صَوْتَ طَبَلٍ فَأَدْخَلَ إِصْبَعَيْهِ فِي أُذُنَيْهِ. ثُمَّ تَنَحَّى. حَتَّى فَعَلَ ذَلِكَ ثَلَاثَ مَرَّاتٍ. ثُمَّ قَالَ: هَكَذَا فَعَلَ رَسُولُ اللَّهِ ﷺ.

تخريج: [إسناده ضعيف] انظر، ح: ٢٠٨٠ لعلته.

Chapter 22. Effeminate Men

(المعجم ٢٢) - بَابُ فِي الْمُخْتَلِينَ

(التحفة ٢٢)

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

١٩٠٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ رَبِيبِ بْنِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا. فَسَمِعَ مُخْتَلًا وَهُوَ يَقُولُ لِعَبْدِ اللَّهِ بْنِ أَبِي أُمَيَّةَ: إِنْ يَفْتَحَ اللَّهُ الطَّائِفَ غَدًا، دَلَّلْتُكَ عَلَى امْرَأَةٍ تَقْبَلُ بِأَرْبَعٍ وَتُذْبِرُ بِثَمَانٍ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَخْرِجُوهُ مِنْ بُيُوتِكُمْ».

تخريج: أخرجه البخاري، المغازي، باب غزوة الطائف في شوال سنة ثمان، ح: ٤٣٢٤، ٥٢٣٥ وغيرهما من حديث هشام به، ومسلم، السلام، باب منع المختن من الدخول على النساء الأجانب، ح: ٢١٨٠ عن ابن أبي شيبة وغيره وانظر، ح: ٢٦١٤.

Comments:

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

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

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

١٩٠٣ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ، عَنْ شَهْبِيلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ لَعَنَ الْمَرْأَةَ تَشَبَّهُ بِالرِّجَالِ، وَالرَّجُلَ تَشَبَّهُ بِالنِّسَاءِ.

تخريج: [صحيح] انظر الحديث الآتي.

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

١٩٠٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا شُعْبَةُ عَنْ قَتَادَةَ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ لَعَنَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ. وَلَعَنَ الْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ.

تخريج: [صحيح] أخرجه البخاري، اليباس، باب المتشبهين بالنساء والمتشبهات بالرجال،

ج: ٥٨٨٥، من طريق شعبة به.

Comments:

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

Chapter 23. Offering Congratulations On The Occasion Of Marriage

(المعجم ٢٣) - بَابُ تَهْنِئَةِ النِّكَاحِ

(النحفة ٢٣)

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

١٩٠٥ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، عَنْ شَهْبِيلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا رَفَأَ قَالَ: «بَارَكَ اللَّهُ لَكُمْ، وَبَارَكَ عَلَيْكُمْ. وَجَمَعَ بَيْنَكُمَا فِي خَيْرٍ».

تخریج: [صحيح] أخرجه أبو داود، النكاح، باب ما يقال للمتزوج، ح: ٢١٣٠ من طريق عبدالعزيز الدراوردي به، وصححه الترمذي، ح: ١٠٩١، وابن حبان، والحاكم، والذهبي.

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

١٩٠٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا أَشْعَثُ، عَنِ الْحَسَنِ، عَنِ عَقِيلِ بْنِ أَبِي طَالِبٍ أَنَّهُ تَزَوَّجَ امْرَأَةً مِنْ بَنِي جُشَمٍ. فَقَالُوا: بِالرِّفَاءِ وَالنِّينِ. فَقَالَ: لَا تَقُولُوا لِهَذَا. وَلَكِنْ قُولُوا، كَمَا قَالَ رَسُولُ اللَّهِ ﷺ: «اللَّهُمَّ بَارِكْ لَهُمْ وَبَارِكْ عَلَيْهِمْ».

تخریج: [حسن] أخرجه الطبراني (كبير: ١٧: ١٩٤)، ح: ٥١٦ من طريق أشعث بن عبد الملك به، وله طرق عن الحسن عند أحمد: ٤٥١/٣ وغيره * والحسن عن تقدم، ح: ٧١ ولحديثه شواهد، منها حديث عبد الله بن محمد بن عقيل عند أحمد، وانظر الحديث السابق.

Comments:

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

Chapter 24. The *Walimah* (Wedding Feast)

(المعجم ٢٤) - بَابُ الْوَلِيمَةِ (التحفة ٢٤)

1907. It was narrated from Anas bin Mâlik that the Prophet ﷺ saw traces of yellow perfume on 'Abdur-Rahmân bin 'Awf, and he asked him: "What is this?" He said: "O Messenger of Allâh, I married a woman for the weight of a *Nawâh* (Stone) of gold.^[1] He said: "May Allâh bless you. Give a feast even if it is only with one sheep." (Sahih)

١٩٠٧ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ: حَدَّثَنَا ثَابِتُ الْبُنَائِي عَنِ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ رَأَى عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَثَرَ صُفْرَةٍ. فَقَالَ: «مَا هَذَا؟ أَوْ مَهْ» فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي تَزَوَّجْتُ امْرَأَةً عَلَى وَزْنِ نَوَاحٍ مِنْ ذَهَبٍ. فَقَالَ: «بَارَكَ اللَّهُ لَكَ. أَوْلِمْ وَلَوْ بِشَاةٍ».

[1] They differ over its definition, between three Dînars to five

تخریج: أخرجه البخاري، النكاح، باب: كيف يدعى للمتزوج؟، ح: ٦٣٨٦، ٥١٥٥، ومسلم، النكاح، باب الصداق وجواز كونه تعليم قرآن وخاتم حديد ... الخ، ح: ١٤٢٧ من حديث حماد به

Comments:

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

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

١٩٠٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ ثَابِتِ بْنِ أَبِي أَنَسِ بْنِ مَالِكٍ قَالَ: مَا رَأَيْتُ رَسُولَ اللَّهِ ﷺ مَا أَوْلَمَ عَلَى شَيْءٍ مِنْ نِسَائِهِ مَا أَوْلَمَ عَلَى زَيْنَبَ. فَإِنَّهُ ذَبَحَ شَاةً.

تخریج: أخرجه البخاري، النكاح، باب الوليمة ولو بشاة، ح: ٥١٦٨، ٥١٧١، ومسلم، النكاح، باب زواج زينب بنت جحش، ونزول الحجاب، وإثبات وليمة العرس، ح: ١٤٢٨ من حديث حماد به، وفي رواية لمسلم وأطعمهم خيرًا ولحمًا حتى تركوه .

Comments:

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

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

١٩٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ، وَغِيَاثُ بْنُ جَعْفَرٍ الرَّحْبِيُّ. قَالَ: حَدَّثَنَا

^[1] A kind of barley mash.

wedding feast for Safiyyah.
(Hasan)

سُفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا وَائِلُ بْنُ دَاوُدَ، عَنْ
[أَبْنَيْهِ]، عَنِ الرَّهْرِيِّ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ
النَّبِيَّ ﷺ أَوْلَمَ عَلَى صَفِيَّةَ بِسَوِيقٍ وَتَمْرٍ.

تخريج: [حسن] أخرجه أبو داود، الأ طعمة، باب: في استحباب الوليمة، ح: ٣٧٤٤ من
حديث سفیان بن عیینة به، وحسنه الترمذی، ح: ١٠٩٥، وله شواهد عند البخاری، ومسلم
وغيرهما.

Comments:

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

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

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

١٩١٠ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ أَبُو حَنِيمَةَ:
حَدَّثَنَا سُفْيَانُ عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ،
عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: شَهِدْتُ لِلنَّبِيِّ ﷺ
وَلِيمَةً. مَا فِيهَا لَحْمٌ وَلَا خُبْزٌ.
قَالَ ابْنُ مَاجَهَ: لَمْ يُحَدِّثْ بِهِ إِلَّا ابْنُ
عُيَيْنَةَ.

تخريج: [إسناده ضعيف] وانظر، ح: ١١٦ لعلته، وقال أحمد في مسنده: ٩٩/٣ ثنا هشيم
أنا علي بن زيد عن أنس بن مالك، قال سمعته يحدث، قال شهدت وليمتين من نساء رسول الله
ﷺ، قال: فما أطعمنا فيها خبزاً ولا لحماً، قال: قلت: فمه؟ قال: الحيس يعني التمر والأفط
بالسمن، وللحديث شواهد ضعيفة عند أحمد (٢٥٥/٣، ٢٦٦) وغيره.

Comments:

Only barley and dates etc., were offered.

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

١٩١١ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا
[الْمُفْضَلُ] بْنُ عَبْدِ اللَّهِ، عَنْ جَابِرٍ، عَنِ
الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ وَأُمِّ سَلَمَةَ
قَالَتَا: أَمَرَنَا رَسُولُ اللَّهِ ﷺ أَنْ نُجَهِّرَ فَاطِمَةَ
حَتَّى نُدْخِلَهَا عَلَى عَلِيِّ. فَعَمَدْنَا إِلَى النَّبِيِّ.
فَفَرَّسْنَاهُ ثُرَابًا لُبْنًا مِنْ أَغْرَاضِ الْبَطْحَاءِ. ثُمَّ
حَشَوْنَا مِرْفَقَتَيْنِ لَيْفًا. فَفَرَّسْنَاهُ بِأَيْدِينَا. ثُمَّ

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

أَطْعَمْنَا تَمْرًا وَرَيْبًا وَسَقَيْنَا مَاءً عَذْبًا وَعَمَدْنَا إِلَى عُوْدٍ، فَعَرَضْنَاهُ فِي بَجَانِبِ الْبَيْتِ لِيُلْفَى عَلَيْهِ الثَّوْبُ وَيُلْقَى عَلَيْهِ السَّقَاءُ. فَمَا رَأَيْنَا عُرْسًا أَحْسَنَ مِنْ عُرْسِ فَاطِمَةَ.

تخريج: [إسناده ضعيف جدًا] * جابر تقدم حاله، ح: ٣٥٦، والمفضل بن عبدالله ضعيف

كما في التقريب وغيره.

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

١٩١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّنَا عَبْدُ الْمُعْزِزِ بْنُ أَبِي حَازِمٍ: حَدَّثَنِي أَبِي عَنْ سَهْلِ بْنِ سَعْدِ السَّاعِدِيِّ قَالَ: دَعَا أَبُو أُسَيْدٍ السَّاعِدِيُّ رَسُولَ اللَّهِ ﷺ إِلَى عُرْسِهِ. فَكَانَتْ خَادِمَهُمُ الْبَعْرُوسُ. قَالَتْ: تَدْرِي مَا سَقَيْتُ رَسُولَ اللَّهِ ﷺ؟ قَالَتْ: أَنْقَعْتُ تَمْرَاتٍ مِنَ اللَّيْلِ. فَلَمَّا أَصْبَحْتُ صَفَيْتُهُنَّ فَاسْقَيْتُهُنَّ إِيَّاهُ.

تخريج: أخرجه البخاري، النكاح، باب حق إجابة الوليمة والدعوة ومن أولم سبعة أيام ونحوه، ح: ٥١٧٦، ٦٦٨٥، ومسلم، الأشربة، باب إباحة النبيذ الذي لم يشتمد ولم يصير مسكرًا، ح: ٢٠٠٦ من حديث عبدالعزیز به.

Comments:

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

Chapter 25. Accepting Invitations

(المعجم ٢٥) - بَابُ إِجَابَةِ الدَّاعِي

(التحفة ٢٥)

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

١٩١٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: سُرُّ

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

الطَّعَامِ طَعَامُ الْوَالِيْمَةِ. يُدْعَى لَهَا الْأَغْنِيَاءُ وَيَتْرَكُ الْفُقَرَاءُ وَمَنْ لَمْ يُجِبْ فَقَدْ عَصَى اللَّهَ وَرَسُوْلَهُ.

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

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

١٩١٤ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ أَبَانَ عَبْدَ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا عُبَيْدُ اللَّهِ عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا دُعِيَ أَحَدُكُمْ إِلَى وَالِيْمَةٍ عُرْسٍ، فَلْيُجِبْ».

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

Comments:

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

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

١٩١٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبَّادَةَ الْوَاسِطِيُّ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ حُسَيْنِ أَبُو مَالِكٍ النَّخَعِيُّ، عَنْ مَنْصُورٍ، عَنْ أَبِي حَازِمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْوَالِيْمَةُ أَوَّلُ يَوْمٍ حَقٌّ. وَالثَّانِي مَعْرُوفٌ. وَالثَّلَاثُ رِيَاءٌ وَسُمْعَةٌ».

تخریج: [إسناده ضعيف جدًا] قال البوصيري: في إسناده أبو مالك النخعي وهو ممن اتفقوا على ضعفه، وللحديث شواهد عند أبي داود، ح: ٣٧٤٥ وغيره، وكلها ضعيفة.

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

(المعجم ٢٦) - بَابُ الْإِقَامَةِ عَلَى الْبِكْرِ وَالثَّيِّبِ (التحفة ٢٦)

1916. It was narrated from Anas

١٩١٦ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا عَبْدُ

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

ابْنُ شَيْمَانَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ أَيُّوبَ، عَنْ أَبِي قَلَابَةَ، عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ لِلثَّيْبِ ثَلَاثًا، وَلِلْبُكَرِ سَبْعًا».

تخریج: [حسن] انظر، ح: ۱۲۰۹ لعلته، وأخرج البخاري، ح: ۵۲۱۴، ومسلم، ح: ۱۴۶۱ من حديث أيوب عن أبي قلابة عن أنس قال: من السنة إذا تزوج الرجل البكر على الثيب أقام عندها سبعا وقسم، وإذا تزوج الثيب على البكر أقام عندها ثلاثا ثم قسم، والحديث حسن بالشواهد.

Comments:

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

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

۱۹۱۷ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ شُعْبَانَ، عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، عَنْ عَبْدِ الْمَلِكِ يَعْغِي ابْنَ أَبِي بَكْرٍ بْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِيهِ، عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ ﷺ لَمَّا تَزَوَّجَ أُمَّ سَلَمَةَ أَقَامَ عِنْدَهَا ثَلَاثًا. وَقَالَ: «لَيْسَ بِكَ عَلَى أَهْلِكَ هَوَانٌ. إِنْ شِئْتِ، سَبَعْتُ لَكَ. وَإِنْ سَبَعْتُ لَكَ، سَبَعْتُ لِنِسَائِي».

تخریج: أخرجه مسلم، الرضاع، باب قدر ما تستحقه البكر والثيب من إقامة الزوج عندها عقب الزفاف، ح: ۱۴۶۰ عن ابن أبي شيبة وغيره به.

Comments:

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

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

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

(المعجم ٢٧) - بَابُ مَا يَقُولُ الرَّجُلُ إِذَا دَخَلَتْ عَلَيْهِ أَهْلُهُ (التحفة ٢٧)

١٩١٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَصَالِحُ ابْنُ مُحَمَّدٍ بْنِ يَحْيَى الْقَطَّانُ. قَالَ: حَدَّثَنَا عَيْدُ اللَّهِ بْنُ مُوسَى: حَدَّثَنَا سُفْيَانُ عَنْ مُحَمَّدِ ابْنِ عَجَلَانَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو، عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا أَقَادَ أَحَدُكُمْ امْرَأَةً أَوْ خَادِمًا، أَوْ دَابَّةً، فَلْيَأْخُذْ بِنَاصِيَتِهَا وَلْيَقُلْ: اللَّهُمَّ إِنِّي أَسْأَلُكَ مِنْ خَيْرِهَا وَخَيْرِ مَا جُبِلَتْ عَلَيْهِ. وَأَعُوذُ بِكَ مِنْ شَرِّهَا وَشَرِّ مَا جُبِلَتْ عَلَيْهِ.»

تخريج: [إسناده حسن] أخرجه أبوداود، النكاح، باب في جامع النكاح، ح: ٢١٦٠ من حديث ابن عجلان به، وصححه الحاكم، والذهبي * ابن عجلان صرح بالسماع عند البخاري في خلق أفعال العباد.

Comments:

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

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

١٩١٩ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا جَرِيرٌ، عَنْ مَنْصُورٍ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ كُرَيْبٍ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَوْ أَنَّ أَحَدَكُمْ إِذَا أَتَى امْرَأَتَهُ قَالَ: اللَّهُمَّ جَنِّبْنِي الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنِي ثُمَّ كَانَ بَيْنَهُمَا وَلَدٌ، لَمْ يَسْلُطِ اللَّهُ

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

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

Comments:

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

Chapter 28. Covering Oneself When Having Intercourse

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

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

Comments:

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

(المعجم ٢٨) - بَابُ التَّسْتُرِ عِنْدَ

الْجِمَاعِ (التحفة ٢٨)

١٩٢٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
 زَيْدُ بْنُ هَارُونَ، وَأَبُو أُسَامَةَ. قَالَ: حَدَّثَنَا
 بَهْزُ بْنُ حَكِيمٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ:
 قُلْتُ: يَا رَسُولَ اللَّهِ عَوْرَاتُنَا. مَا نَأْتِي مِنْهَا
 وَمَا نَنْدَرُ؟ قَالَ: «أَحْفَظْ عَوْرَتَكَ. إِلَّا مِنْ
 رَوْحِكَ أَوْ مَا مَلَكَتْ يَمِينُكَ» قُلْتُ: يَا
 رَسُولَ اللَّهِ! أَرَأَيْتَ إِنْ كَانَ الْقَوْمُ بَعْضُهُمْ فِي
 بَعْضٍ؟ قَالَ: «إِنْ اسْتَطَعْتَ أَنْ لَا تُرِيَهَا
 أَحَدًا، فَلَا تُرِيَهَا» قُلْتُ: يَا رَسُولَ اللَّهِ! إِنْ
 كَانَ أَحَدُنَا خَالِيًا؟ قَالَ: «فَاللَّهِ أَحَقُّ أَنْ
 يُسْتَحْيَى مِنْهُ مِنَ النَّاسِ».

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

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

١٩٢١ - حَدَّثَنَا إِسْحَاقُ بْنُ وَهَبِ الْوَأَسِطِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ الْقَاسِمِ الْهَمْدَانِيُّ: حَدَّثَنَا الْأَخْوَصُ بْنُ حَكِيمٍ، عَنْ أَبِيهِ. وَرَاشِدُ بْنُ سَعْدٍ، وَعَبْدُ الْأَعْلَى بْنُ عَبْدِ، عَنْ عَثْبَةَ بْنِ عَبْدِ السَّلْمِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَتَى أَحَدُكُمْ أَهْلَهُ فَلْيَسْتَتِرْ وَلَا يَتَجَرَّدْ تَجَرُّدَ الْعَيْرَيْنِ».

تخریج: [إسناده ضعيف] وقال البوصيري: إسناده ضعيف * الأخوص بن حكيم ضعفه أحمد، وأبو حاتم، والنسائي وغيرهم، وقال صاحب التريب: ضعيف الحفظ، وللحديث شواهد ضعيفة.

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

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

١٩٢٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ، عَنْ سُفْيَانَ، عَنْ مَنْصُورٍ، عَنْ مُوسَى ابْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ مَوْلَى لِعَائِشَةَ، عَنْ عَائِشَةَ قَالَتْ: مَا نَظَرْتُ، أَوْ مَا رَأَيْتُ فَرْجَ رَسُولِ اللَّهِ ﷺ قَطُّ. قَالَ أَبُو بَكْرٍ: قَالَ أَبُو نُعَيْمٍ: عَنْ مَوْلَا لِعَائِشَةَ.

تخریج: [ضعيف] تقدم، ح: ٦٦٢.

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

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

(المعجم ٢٩) - بَابُ التَّنْهِي عَنْ إِتْيَانِ النِّسَاءِ فِي أَدْبَارِهِنَّ (التحفة ٢٩)

١٩٢٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَبِي السَّوَّارِ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ، عَنْ سَهْبِيلِ بْنِ أَبِي صَالِحٍ، عَنِ الْحَارِثِ بْنِ مُحَمَّدٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَنْظُرُ اللَّهُ إِلَى رَجُلٍ جَامَعَ امْرَأَتَهُ فِي دُبْرِهَا».

تخريج: [صحيح] أخرجه أبو داود، النكاح، باب: في جامع النكاح، ح: ٢١٦٢ من حديث سهل به، وإسناده حسن، وصححه البوصيري، وله شواهد صحيحة، وهو من الأحاديث المتواترة.

Comments:

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

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

١٩٢٤ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ: أَيْبَانَا عَبْدُ الْوَالِدِ بْنُ زَيْدٍ، عَنْ حَجَّاجِ بْنِ أَرْطَاةَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ هَرَمِيِّ بْنِ عَبْدِ اللَّهِ، عَنْ حُزَيْمَةَ بْنِ ثَابِتٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ لَا يَسْتَعْيِي مِنَ الْحَقِّ ثَلَاثَ مَرَّاتٍ وَلَا تَأْتُوا النِّسَاءَ فِي أَدْبَارِهِنَّ».

تخريج: [صحيح] انظر، ح: ١١٢٩، ٤٩٦، لعلته، وضعفه البوصيري وغيره، والحديث صحيح، وانظر الحديث السابق.

Comments:

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

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

١٩٢٥ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ، وَ جَمِيلُ بْنُ الْحَسَنِ. قَالَا: حَدَّثَنَا شَيْبَانُ عَنْ مُحَمَّدِ بْنِ الْمُثَنَّبِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: كَانَتْ يَهُودٌ تَقُولُ: مَنْ أَتَى امْرَأَةً فِي قُبُلِهَا، مِنْ دُبُرِهَا، كَانَ الْوَلَدُ أَحْوَلَ. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ: ﴿نِسَاءَكُمْ حَرْثٌ لَكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ﴾ [البقرة: ٢٢٣].

[1] *Al-Baqarah* 2:223.

تخريج: أخرجه البخاري، التفسير، باب: ﴿نساؤكم حرث لكم فأتوا حرثكم أنى شئتم﴾ ح: ٤٥٢٨، ومسلم، النكاح، باب جواز جماعه امرأته في قبلها . . . إلخ، ح: ١٤٣٥ من حديث سفيان به.

Comments:

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

Chapter 30. Coitus Interruptus (المعجم ٣٠) - بَابُ الْعَزْلِ (التحفة ٣٠)

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

١٩٢٦ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُثْمَانَ الْعُثْمَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنِ ابْنِ شِهَابٍ: حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: سَأَلَ رَجُلٌ رَسُولَ اللَّهِ ﷺ عَنِ الْعَزْلِ؟ فَقَالَ: «أَوْ تَفْعَلُونَ؟ لَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوا. فَإِنَّهُ لَيْسَ مِنْ نَسَمَةٍ، قَضَى اللَّهُ لَهَا أَنْ تَكُونَ، إِلَّا هِيَ كَائِنَةٌ».

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

Comments:

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

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

١٩٢٧ - حَدَّثَنَا هَارُونُ بْنُ إِسْحَاقَ الْهَمْدَانِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ عَمْرٍو، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، وَالْقُرْآنُ يَنْزِلُ.

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

Comments:

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

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

١٩٢٨ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا إِسْحَاقُ بْنُ عِيسَى: حَدَّثَنَا ابْنُ لَهِيْعَةَ: حَدَّثَنِي جَعْفَرُ بْنُ رَبِيعَةَ، عَنِ الزُّهْرِيِّ، عَن مُحَرَّرِ بْنِ أَبِي هُرَيْرَةَ، عَن أَبِيهِ، عَن عَمْرِ بْنِ الْخَطَّابِ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ أَنْ يُعْرَلَ عَنِ الْحُرَّةِ إِلَّا بِإِذْنِهَا.

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

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

(المعجم ٣١) - بَابُ: لَا تُنْكَحُ الْمَرْأَةُ عَلَى عَمَّتَيْهَا وَلَا عَلَى خَالَتَيْهَا (التحفة ٣١)

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

١٩٢٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَن هِشَامِ بْنِ حَسَّانٍ، عَن مُحَمَّدِ بْنِ سَبْرِينَ، عَن أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا تُنْكَحُ الْمَرْأَةُ عَلَى عَمَّتَيْهَا، وَلَا عَلَى خَالَتَيْهَا».

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

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

١٩٣٠ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَن مُحَمَّدِ بْنِ إِسْحَاقَ، عَن يَعْقُوبِ بْنِ عَتَبَةَ، عَن سُلَيْمَانَ بْنِ بَسَّارٍ، عَن أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَنْهَى عَنِ نِكَاحَيْنِ. أَنْ يَجْمَعَ الرَّجُلُ بَيْنَ الْمَرْأَةِ وَعَمَّتَيْهَا، وَبَيْنَ الْمَرْأَةِ وَخَالَتَيْهَا.

تخريج: [صحيح] أخرجه أحمد: ٦٧/٣ من حديث ابن إسحاق به مطولاً، والحديث السابق

شاهد له.

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

١٩٣١ - حَدَّثَنَا جُبَارَةُ بْنُ الْمُغَلِّسِ: حَدَّثَنَا أَبُو بَكْرِ بْنُ النَّهْسَلِيِّ: حَدَّثَنِي أَبُو بَكْرٍ بْنُ أَبِي مُوسَى، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُنْكَحُ الْمَرْأَةَ عَلَى عَمَّتِهَا وَلَا عَلَى خَالَئِهَا».

تخريج: [صحيح] انظر، ح: ٧٤٠ لعله، ح: ١٩٢٩ شاهد له.

Comments:

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

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

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

(المعجم ٣٢) - بَابُ الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فَتَرْوَجُ فَيُطَلِّقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا. أَرْجِعُ إِلَى الْأَوَّلِ (التحفة ٣٢)

١٩٣٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ. أَخْبَرَنِي عُرْوَةُ، عَنْ عَائِشَةَ أَنَّ امْرَأَةَ رِفَاعَةَ الْقُرْظِيِّ جَاءَتْ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: إِنِّي كُنْتُ عِنْدَ رِفَاعَةَ. فَطَلَّقَنِي فَبَتَّ طَلَاقِي. فَتَرْوَجْتُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ. وَإِنَّ مَا مَعَهُ مِثْلُ هُدْيَةِ الثَّوْبِ. فَتَبَسَّمَ النَّبِيُّ ﷺ فَقَالَ: «أَتُرِيدِينَ أَنْ تَرْجِعِي إِلَى رِفَاعَةَ؟ لَا. حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتِكَ».

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

Comments:

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

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

١٩٣٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عُلْقَمَةَ بِنِ مَرْثَدٍ قَالَتْ: سَمِعْتُ [سَالِمَ بْنَ رَزِينٍ] يُحَدِّثُ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ ابْنِ عَمْرٍ، عَنِ النَّبِيِّ ﷺ، فِي الرَّجُلِ تَكُونُ لَهُ الْمَرْأَةُ فَيُطَلِّقُهَا. فَيَتَزَوَّجُهَا رَجُلٌ فَيُطَلِّقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا. أَتُرْجَعُ إِلَى الْأَوَّلِ؟ قَالَتْ: «لَا. حَتَّى يَذُوقَ الْعُسَيْلَةَ».

تخریج: [صحيح] أخرجه النسائي: ١٤٨/٦، ١٤٩، ح: ٣٤٤٣، التعليقات السلفية: ٣٤٤٣، وأحمد: ٨٥/٢ عن محمد بن جعفر من حديث شعبة به، وخالفه سفيان الثوري فرواه عن علقمة عن رزين بن سليمان الأحمرى عن ابن عمر به * رزين أو ابن رزين مجهول كما في التقريب، ولحديثه شواهد كثيرة منها الحديث السابق، فائدة: وقع في المجتبى للنسائي: سلم بن زبير، وهو تصحيف كما حققه شيخنا الإمام الحجة المتقن الفقيه المحدث محمد عطاء الله حنيف الفوجياني رحمه الله عليه في التعليقات، ثم وجدته على الصواب في السنن الكبرى للنسائي، ح: ٥٦٠٧ فله دره.

Comments:

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

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

(المعجم ٣٣) - بَابُ الْمُحَلِّلِ وَالْمُحَلَّلِ
لَهُ (التحفة ٣٣)

1934. It was narrated that Ibn 'Abbās said: "The Messenger of Allāh ﷺ cursed the *Muhallil* and the *Muhallal lahu*." (*Sahih*)

١٩٣٤ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَامِرٍ، عَنْ زَمْعَةَ بْنِ صَالِحٍ، عَنْ سَلْمَةَ بْنِ [وَهْرَامٍ]، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ.

تخریج: [صحيح] * زمعة تقدم، ح: ٣٢٦، ولحديثه شاهد حسن عند أحمد وغيره من حديث أبي هريرة رضي الله عنه: ٣٢٣/٢، وضححه ابن الجارود، ح: ٦٨٤، وحسنه البخاري (التلخيص الحبير: ٣/١٧٠)، وللحديث شواهد كثيرة، ذكرت بعضها في نيل المقصود، ح: ٢٠٧٦، وثبت إنكار التحليل المذكور عن عمر وعثمان وابن عمر وغيرهم رضي الله عنهم أجمعين.

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

١٩٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ [ابْنِ الْبَخْتَرِيِّ الْوَاسِطِيِّ]: حَدَّثَنَا أَبُو أَسَامَةَ، عَنْ ابْنِ عَوْنٍ وَ مَجَالِدٍ عَنِ الشَّعْبِيِّ، عَنِ الْحَارِثِ، عَنْ عَلِيِّ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ.

تخریج: [ضعيف] أخرجه أبو داود، النكاح، باب: في التحليل، ح: ٢٠٧٦ من حديث الشعبي به * والحاثر تقدم، ح: ٩٥، وحديث أحمد (٣٢٣/٢)، ح: ٨٢٧٠ يغني عنه.

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

١٩٣٦ - حَدَّثَنَا يَحْيَى بْنُ عُمَرَ بْنِ صَالِحِ الْمِصْرِيِّ: حَدَّثَنَا أَبِي. قَالَ: سَمِعْتُ اللَّيْثَ ابْنَ سَعْدٍ يَقُولُ: قَالَ لِي أَبُو مُصْعَبٍ مِشْرُحُ ابْنِ هَاعَانَ، قَالَ عَقِبَهُ بْنُ عَامِرٍ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَلَا أُخْبِرُكُمْ بِالَّتَيْسِ الْمُسْتَعَارِ؟» قَالُوا: بَلَى. يَا رَسُولَ اللَّهِ. قَالَ: «هُوَ الْمُحَلِّلُ. لَعَنَ اللَّهُ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ».

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

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

الحافظ عبدالحق الإشبيلي، والحافظ ابن تيمية وغيرهما.

Comments:

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

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

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

(المعجم ٣٤) - بَابُ: يُحْرَمُ مِنَ الرِّضَاعِ مَا يُحْرَمُ مِنَ النَّسَبِ (التحفة ٣٤)

١٩٣٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنِ الْحَجَّاجِ، عَنِ الْحَكَمِ، عَنِ عِرَاكِ بْنِ مَالِكٍ، عَنِ عُرْوَةَ، عَنِ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «يُحْرَمُ مِنَ الرِّضَاعِ مَا يُحْرَمُ مِنَ النَّسَبِ».

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

Comments:

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

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

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

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

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

١٩٣٨ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ، وَ أَبُو بَكْرٍ ابْنُ خَلَّادٍ. قَالَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، عَنْ جَابِرِ بْنِ زَيْدٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ أُرِيدَ عَلَى بِنْتِ حَمْزَةَ بْنِ عَبْدِ الْمُطَّلِبِ. فَقَالَ: «إِنَّهَا ابْنَةُ أَخِي مِنَ الرِّضَاعَةِ. وَإِنَّهُ يَحْرُمُ مِنَ الرِّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ».

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

Comments:

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

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

١٩٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَابَا اللَّيْثِ ابْنَ سَعْدٍ، عَنْ بَرِيدِ بْنِ أَبِي حَبِيبٍ، عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ زَيْنَبَ بِنْتَ أَبِي سَلَمَةَ حَدَّثَتْهُ أَنَّ أُمَّ حَبِيبَةَ حَدَّثَتْهَا أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ ﷺ: انكِحْ أُخْتِي عَزَّةَ. قَالَ رَسُولُ اللَّهِ ﷺ: «أَتَعْجِبِينَ ذَلِكَ؟» قَالَتْ: نَعَمْ. يَا رَسُولَ اللَّهِ فَلَسْتُ لَكَ بِمُخْلِئَةٍ.

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

Another chain of narrator with similar wording.

وَأَحَقُّ مِنْ شُرَكَائِي فِي خَيْرِ أُخْتِي. قَالَ رَسُولُ اللَّهِ ﷺ: «فَإِنَّ ذَلِكَ لَا يَجُزُّ لِي» قَالَتْ: فَإِنَّا نَتَحَدَّثُ أَنَّكَ تُرِيدُ أَنْ تَنْكِحَ دُرَّةَ بِنْتِ أَبِي سَلَمَةَ. فَقَالَ: «بِنْتِ أُمِّ سَلَمَةَ؟» قَالَتْ: نَعَمْ. قَالَ رَسُولُ اللَّهِ ﷺ: «فَإِنَّهَا لَوْ لَمْ تَكُنْ رِبِيبَتِي فِي حَجْرِي مَا حَلَّتْ لِي. إِنَّهَا لَابْنَةُ أُخِي مِنْ الرِّضَاعَةِ. أَرْضَعْتَنِي وَأَبَاهَا ثُوَيْبَةُ. فَلَا تَعْرِضْنِ عَلَيَّ أَحْوَابِكُنَّ وَلَا بَنَاتِكُنَّ».

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ حَبِيبَةَ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخریج: أخرجه البخاري، النكاح، باب ﴿وَأُمَّهَاتِكُمْ الَّتِي أَرْضَعْتَكُمْ﴾ ح: ٥١٠١ وغيره من حديث الزهري به، ومسلم، الرضاع، باب تحريم الربيبة وأخت المرأة، ح: ١٤٤٩ من حديث محمد بن رباح به، أخرجه البخاري، ح: ٥١٠٦، ومسلم، ح: ١٤٤٩ وغيرهما من حديث هشام بن عروة به .

Comments:

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

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

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

(المعجم ٣٥) - بَابُ: لَا تُحَرِّمُ الْمَصَّةُ وَلَا الْمَصَّتَانِ (التحفة ٣٥)

١٩٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشِيرٍ: حَدَّثَنَا ابْنُ أَبِي عُرْوَةَ، عَنْ قَتَادَةَ، عَنْ أَبِي الْخَلِيلِ، عَنْ عَبْدِ اللَّهِ بْنِ

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

الْبَحَارِثِ أَنَّ أُمَّ الْفَضْلِ حَدَّثَتْهُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا تُحْرَمُ الرَّضْعَةُ وَلَا الرَّضْعَتَانِ أَوْ الْمَصَّةُ وَالْمَصَّتَانِ».

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

Comments:

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

1941. It was narrated from 'Āishah that the Prophet ﷺ said: "Suckling once or twice does not make (marriage) unlawful." (*Sahih*)

١٩٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ بْنُ خِدَاشٍ: حَدَّثَنَا ابْنُ أَبِي عُلَيْبَةَ، عَنْ أَبِي بَرْزَةَ، عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا تُحْرَمُ الْمَصَّةُ وَالْمَصَّتَانِ».

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

1942. It was narrated that 'Āishah said: "One of the things that Allāh revealed in the Qur'an and then abrogated was that nothing makes marriage prohibited except ten breastfeedings or five well-known (breastfeedings)." (*Sahih*)

١٩٤٢ - حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ ابْنِ عَبْدِ الْوَارِثِ: حَدَّثَنَا أَبِي: حَدَّثَنَا حَمَادُ ابْنُ سَلَمَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ أَنَّهَا قَالَتْ: كَانَ فِيمَا أَنْزَلَ اللَّهُ مِنَ الْقُرْآنِ، ثُمَّ سَقَطَ: لَا يُحْرَمُ إِلَّا عَشْرُ رَضَعَاتٍ أَوْ خَمْسُ مَعْلُومَاتٍ.

تخریج: [إسناده صحيح].

Comments:

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

(المعجم ٣٦) - بَابُ رِضَاعِ الْكَبِيرِ

(التحفة ٣٦)

Chapter 36. Breastfeeding An Adult

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

١٩٤٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَتْ سَهْلَةَ بِنْتُ سُهَيْلٍ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنِّي أَرَى فِي وَجْهِ أَبِي حَدِيثَةَ الْكَرَاهِيَةَ مِنْ دُخُولِ سَالِمٍ عَلَيَّ. فَقَالَ النَّبِيُّ ﷺ: «أَرْضِعِيهِ» قَالَتْ: كَيْفَ أَرْضِعُهُ وَهُوَ رَجُلٌ كَبِيرٌ؟ فَتَبَسَّمَ رَسُولُ اللَّهِ ﷺ وَقَالَ: «قَدْ عَلِمْتُ أَنَّهُ رَجُلٌ كَبِيرٌ». فَفَعَلْتُ. فَأَتَتِ النَّبِيَّ ﷺ فَقَالَتْ: مَا رَأَيْتُ فِي وَجْهِ أَبِي حَدِيثَةَ شَيْئًا أَكْرَهُهُ بَعْدُ. وَكَانَ شَهِدَ بَدْرًا.

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

Comments:

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

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

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

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

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

عَائِشَةَ. وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: لَقَدْ نَزَلَتْ آيَةُ الرَّجْمِ، وَرِضَاعَةُ الْكَبِيرِ عَشْرًا. وَلَقَدْ كَانَ فِي صَحْبِيهِ تَحْتَ سَرِيرِي. فَلَمَّا مَاتَ رَسُولُ اللَّهِ ﷺ وَتَسَاءَلْنَا بِمَوْتِهِ، دَخَلَ دَاجِنٌ فَأَكَلَهَا.

تخريج: [إسناده حسن] أخرجه أحمد: ٢٦٩/٦ من حديث ابن إسحاق حدثني عبدالله بن أبي بكر به، طريق عمره بنت عبدالرحمن فقط، واللفظ لهذا الطريق، أخرجه مالك: ٦٠٨/٢ موطأ، ومن طريقه مسلم، ح: ١٤٥٢ عن عبدالله بن أبي بكر به لم يذكر قصة الداجن، وهاتان الآيتان كانتا منسوختان القراءة فأكلتهما الداجن لأن لا تكتبها في القرآن، والقرآن كامل مكمل كما تركه رسول الله ﷺ لم يزد فيه حرف ولم ينقص منه شيء، والحمد لله.

Comments:

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

Chapter 37. There Is No Breastfeeding After Weaning

(المعجم ٣٧) - بَابُ: لَا رِضَاعَ بَعْدَ فَصَالٍ (التحفة ٣٧)

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

١٩٤٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ سُفْيَانَ، عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ، عَنْ أَبِيهِ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ دَخَلَ عَلَيْهَا وَعِنْدَهَا رَجُلٌ. فَقَالَ: «مَنْ هَذَا؟» قَالَتْ: هَذَا أُخِي. قَالَ: «انظُرُوا مَنْ تُدْخِلْنَ عَلَيْكِنَّ. فَإِنَّ الرِّضَاعَةَ مِنَ الْمَجَاعَةِ».

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

Comments:

The prohibited relation due to fosterage will come about if the child is fostered in the first two years of age; and the child sucked milk five times to the fill; if a child is fostered after the first two years, then this suckling will

not be regarded as a prohibitive one, and it will not establish the relation of fosterage; except for in extreme circumstances.

1946. It was narrated from 'Abdullâh bin Zubair that the Messenger of Allâh ﷺ said: "There is no breastfeeding except that which fills the stomach." (Sahih)

١٩٤٦ - حَدَّثَنَا حَزْمَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لَهَيْعَةَ عَنْ أَبِي الْأَسْوَدِ، عَنْ عُرْوَةَ، عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا رَضَاعَ إِلَّا مَا فَتَقَ الْأَمْعَاءُ».

تخریج: [صحیح] * ابن لهیعة عنین، ح: ٣٣٠ فیما أعلم، ولحدیثه شواهد منها الحدیث السابق، وقال البوصیری: فی إسناده ابن لهیعة . . . والحدیث رواه الترمذی، ح: ١١٥٢ من حدیث أم سلمة، وقال: حسن صحیح، وبه صح الحدیث.

Comments:

The meaning of the *Hadith* is, only that suckling will be taken into consideration in such early age of the baby when the milk of the mother serves the purpose of food for the baby. In normal circumstances, suckling an older child will not establish the relation of fosterage.

1947. It was narrated from Zainab bint Abi Salamah that the wives of the Prophet ﷺ all differed with 'Aishah and refused to allow anyone with ties of breastfeeding like Sâlim, the freed slave of Abu Hudhaifah, to enter upon them. They said: "How do we know? That may be a concession granted only to Sâlim." (Sahih)

١٩٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ الْمُصَرِّفِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ لَهَيْعَةَ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ وَعَقِيلِ بْنِ أَبِي شِهَابٍ: أَخْبَرَنِي أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ زَمْعَةَ، عَنْ أُمِّهِ زَيْنَبِ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّ أَرْوَاجَ النَّبِيِّ ﷺ كُلَّهُنَّ خَالَفْنَ عَائِشَةَ وَأَبِينَ أَنْ يَدْخُلَ عَلَيْهِنَّ أَحَدٌ يُمِثِلُ رَضَاعَةَ سَالِمٍ، مَوْلَى أَبِي حَذِيفَةَ. وَقُلْنَ: وَمَا يَدْرِينَا؟ لَعَلَّ ذَلِكَ كَانَتْ رُخْصَةً لِسَالِمٍ وَحَدَهُ.

تخریج: أخرجه مسلم، الرضاع، باب رضاعة الكبير، ح: ١٤٥٤ من حدیث عقیل بن ابی شهاب الزهری به.

Comments:

The same opinion of the Pure Wives of Prophet ﷺ is that of the majority scholars. Imam Bukhâri preferred it too; as mentioned in the comments of the previous *Ahâdith*. However some people are also in favor of effectiveness of suckling a grown up man; which may be practised in extreme circumstances. For further elaboration one may see in the appendix of *Tafsir Ahsanul-Bayân*, "Some Essential Rules of Fosterage," in the Urdu version.

Chapter 38. The Breast Milk Belongs To The Sire

(المعجم ٣٨) - بَابُ لَبَنِ الْفَجْلِ

(التحفة ٣٨)

1948. It was narrated that 'Aishah said: "My paternal uncle through breastfeeding, Aflah bin Abu Qu'ais, came and asked permission to visit me, after the ruling on veiling had been enjoined, and I refused to let him in, until the Prophet ﷺ came in and said: 'He is your paternal uncle; let him in.' I said: 'But it is the woman who breastfed me; the man did not breastfeed me.' He said: 'May your hands be rubbed with dust', or: 'May your right hand be rubbed with dust!'" (Sahih)

١٩٤٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: أَتَانِي عَمِّي مِنَ الرَّضَاعَةِ، أَفْلَحُ بْنُ أَبِي قُعَيْسٍ يَسْتَأْذِنُ عَلَيَّ، بَعْدَ مَا ضُرِبَ الْحِجَابُ. فَأَبَيْتُ أَنْ أَدْنَ لَهُ. حَتَّى دَخَلَ عَلَيَّ النَّبِيُّ ﷺ فَقَالَ: «إِنَّهُ عَمُّكَ، فَأَذْنِي لَهُ» فَقُلْتُ: «إِنَّمَا أَرْضَعْتَنِي الْمَرْأَةُ وَلَمْ يُرْضِعْنِي الرَّجُلُ؟ قَالَ: «تَرَبَّثَ يَدَاكَ، أَوْ يَمِينِكَ».

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفجل، ح: ٤/١٤٤٥ عن ابن أبي شيبه به، وأخرجه البخاري، ح: ٣٧٩٦، ٥١٠٣، ٦١٥٦، ومسلم وغيرهما من طرق عن الزهري نحوه مطولاً.

1949. It was narrated that 'Aishah said: "My paternal uncle through breastfeeding came to visit me and I refused to let him in. The Messenger of Allāh ﷺ said: 'Let your paternal uncle visit you.' I said: 'But it is the woman who breastfed me; the man did not breastfeed me.' He said: 'He is your paternal uncle; let him visit you.'" (Sahih)

١٩٤٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَ عَمِّي مِنَ الرَّضَاعَةِ يَسْتَأْذِنُ عَلَيَّ، فَأَبَيْتُ أَنْ أَدْنَ لَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «فَلْيَلِجْ عَلَيْكَ عَمُّكَ» فَقُلْتُ: «إِنَّمَا أَرْضَعْتَنِي الْمَرْأَةَ وَلَمْ يُرْضِعْنِي الرَّجُلُ. قَالَ: «إِنَّهُ عَمُّكَ. فَلْيَلِجْ عَلَيْكَ».

تخریج: أخرجه مسلم، الرضاع، باب تحريم الرضاعة من ماء الفجل، ح: ٧/١٤٤٥ عن ابن أبي شيبه وغيره به، وأخرجه البخاري، النكاح، باب ما يحل من الدخول والنظر إلى النساء في الرضاع، ح: ٥٢٣٩ من طريق مالك عن هشام به نحوه مطولاً.

Comments:

Foster relations are established from both sides, that of the foster mother and the foster father; resulting in foster maternal uncles and aunts etc. The husband of the suckling woman becomes the father of the foster child; so

his brothers and sisters will be child's foster paternal uncles and aunts etc.

Chapter 39. A Man Became Muslim And He Has (i.e., Is Married To) Two Sisters

1950. It was narrated that Dailami said: "I came to the Messenger of Allâh ﷺ, and I was married to two sisters whom I had married during the Ignorance period. He said: 'When you go back, divorce one of them.'" (Hasan)

(المعجم ٣٩) - بَابُ الرَّجُلِ يُسْلِمُ
وَعِنْدَهُ أُخْتَانِ (التحفة ٣٩)

١٩٥٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ حَرْبٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ ابْنِ أَبِي قُرُوءَةَ، عَنْ أَبِي وَهَبِ الْجَيْشَانِيِّ، عَنْ أَبِي خِرَاشِ الرُّعَيْنِيِّ، عَنِ الدَّيْلَمِيِّ قَالَ: قَدِمْتُ عَلَى رَسُولِ اللَّهِ ﷺ، وَعِنْدِي أُخْتَانِ تَزَوَّجْتُهُمَا فِي الْجَاهِلِيَّةِ. فَقَالَ: «إِذَا رَجَعْتَ فَطَلِّقْ إِحْدَاهُمَا».

تخريج: [حسن] فيه متروك، ولكن انظر الحديث الآتي، وأخرجه ابن أبي شيبة: ٣١٧/٤ به.

1951. Dahhâk bin Fairuz Dailami narrated that his father said: "I came to the Prophet ﷺ and said: 'O Messenger of Allâh! I have become Muslim and I am married to two sisters.' The Messenger of Allâh ﷺ said: 'Divorce whichever of them you want.'" (Hasan)

١٩٥١ - حَدَّثَنَا بُرَيْسُ بْنُ عَبْدِ الْأَعْلَى: حَدَّثَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لِهَيْعَةَ، عَنْ أَبِي وَهَبِ الْجَيْشَانِيِّ: حَدَّثَهُ أَنَّهُ سَمِعَ الضَّحَّاكَ بْنَ قَيْرُوزِ الدَّيْلَمِيِّ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي أَسْلَمْتُ وَتَحْتِي أُخْتَانِ. قَالَ رَسُولُ اللَّهِ ﷺ لِي: «طَلِّقْ أَيَّتَهُمَا شِئْتَ».

تخريج: [حسن] أخرجه أبو داود، الطلاق، باب: في من أسلم وعنده نساء أكثر من أربع أو أختان، ح: ٢٢٤٣ من حديث أبي وهب نحوه، وحسنه الترمذي، ح: ١١٣٠، وصححه ابن حبان، وللحديث طرق عند الطبراني في الكبير: ٣٢٨/١٨، ٣٢٩، وغيره.

Comments:

- If a person is already married in accordance with his religion, before embracing Islam, and then the wife and husband become Muslims, their first marriage bond will be valid; they are not required to remarry.
- If a man is married, before embracing Islam, to such a woman with whom his marriage is unlawful according to Islam, then after embracing Islam he will have to separate from her.
- Before embracing Islam, the children born from this sort of marriage will be regarded lawful, and they will share the inheritance of the father.

Chapter 40. A Man Became Muslim And He Has More Than Four Wives

1952. It was narrated that Qais bin Hârith said: "I became Muslim and I had eight wives. I went to the Prophet ﷺ and told him about that. He said: 'Choose four of them.'" (Da'if)

(المعجم ٤٠) - بَابُ الرَّجُلِ يَسْلِمُ
وَعِنْدَهُ أَكْثَرُ مِنْ أَرْبَعِ نِسْوَةٍ (التحفة ٤٠)
١٩٥٢ - حَدَّثَنَا أَحْمَدُ بْنُ إِبْرَاهِيمَ الدُّورِيُّ:
حَدَّثَنَا هُشَيْمٌ عَنِ ابْنِ أَبِي لَيْلَى، عَنْ حُمَيْصَةَ
بِنْتِ الشَّمْرَدَلِ، عَنْ قَيْسِ بْنِ الْحَارِثِ قَالَ:
أَسْلَمْتُ وَعِنْدِي ثَمَانِي نِسْوَةٍ. فَأَكْبَيْتُ النَّبِيَّ
ﷺ فَقُلْتُ ذَلِكَ لَهُ. فَقَالَ: «اخْتَرِ مِنْهُنَّ
أَرْبَعًا».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب في من أسلم وعنده نساء أكثر من أربع أو أختان، ح: ٢٢٤١ من حديث هشيم به، وانظر، ح: ٨٥٤ لعلته * حميصة بن (وفي كتاب ابن ماجه: بنت، وهو وهم قديم) الشمردل مستور لا يعرف.

1953. It was narrated that Ibn 'Umar said: "Ghailân bin Salamah became Muslim and he had ten wives. The Prophet ﷺ said to him: 'Choose four of them.'" (Da'if)

١٩٥٣ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ،
عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ قَالَ: أَسْلَمَ غَيْلَانُ
ابْنُ سَلَمَةَ وَنَحْتَهُ عَشْرُ نِسْوَةٍ. فَقَالَ لَهُ النَّبِيُّ
ﷺ: «خُذْ مِنْهُنَّ أَرْبَعًا».

تخريج: [إسناده ضعيف] أخرجه الترمذي، النكاح، باب ما جاء في الرجل يسلم وعنده عشر نساء، ح: ١١٢٨ من حديث معمر به، ونقل عن البخاري قال: هذا حديث غير محفوظ، وفيه علة أخرى، وهي عننة الزهري، ح: ٧٠٧.

Comments:

- If a person is married to more than four women before embracing Islam, after embracing Islam he has the right to keep only four women in marriage, and he will necessarily divorce the rest.
- A person married to more than four women has the privilege to choose any four of them to keep in marriage bond, and there is no condition of choosing the first four or the last four.

Chapter 41. Conditions In Marriage

1954. It was narrated from 'Uqbah bin 'Âmir that the Prophet

(المعجم ٤١) - بَابُ الشَّرْطِ فِي النِّكَاحِ
(التحفة ٤١)

١٩٥٤ - حَدَّثَنَا عَمْرُو بْنُ عَبْدِ اللَّهِ، وَ مُحَمَّدٌ

ﷺ said: "The conditions most deserving to be fulfilled are those by means of which the private parts become permissible for you." (*Sahih*)

ابْنُ إِسْمَاعِيلَ . قَالَ : حَدَّثَنَا أَبُو أُسَامَةَ ، عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ ، عَنْ مَرْثَدِ بْنِ عَبْدِ اللَّهِ ، عَنْ عُقْبَةَ بْنِ غَامِرٍ ، عَنِ النَّبِيِّ ﷺ قَالَ : «إِنَّ أَحَقَّ الشَّرْطِ أَنْ يُوفَى بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ» .

تخریج: أخرجه البخاري، الشروط، باب الشروط في المهر عند عقدة النكاح، ح: ٢٧٤١ من حديث يزيد به، ومسلم، النكاح، باب الوفاء بالشروط في النكاح، ح: ١٤١٨ من حديث عبدالحميد به.

Comments:

- Marriage is a contract between a man and woman; both have rights and obligations to discharge. A man and woman both should take care of their obligations.
- According to the circumstances, more conditions may be stipulated at the time of marriage.

1955. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Whatever is given as a dowry or gift before the marriage, it belongs to her. Whatever is given after the marriage belongs to the one to whom it was given. And the most deserving matter for which a man is honored is (the marriage of) his daughter or sister.'" (*Hasan*)

١٩٥٥ - حَدَّثَنَا أَبُو كُرَيْبٍ : حَدَّثَنَا أَبُو خَالِدٍ ، عَنِ ابْنِ جُرَيْجٍ ، عَنْ عَمْرِو بْنِ شُعَيْبٍ ، عَنْ أَبِيهِ ، عَنْ جَدِّهِ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ : «مَا كَانَ مِنْ صَدَاقٍ أَوْ جِوَاءٍ أَوْ هَبَةٍ قَبْلَ عِضْمَةِ النِّكَاحِ فَهِيَ لَهَا . وَمَا كَانَ بَعْدَ عِضْمَةِ النِّكَاحِ فَهِيَ لِمَنْ أُعْطِيَهِ أَوْ حُبِّي . وَأَحَقُّ مَا يُكْرَمُ الرَّجُلُ بِهِ ، ابْنَتُهُ أَوْ أُخْتُهُ» .

تخریج: [إسناده حسن] أخرجه أبو داود، النكاح، باب: في الرجل يدخل بامرأته قبل أن ينقدها شيئاً، ح: ٢١٢٩ من حديث ابن جريج به، وصرح بالسماع عند النسائي: ٦/١٢٠، ح: ٣٣٥٥.

Chapter 42. A Man Setting Free His Slave Woman Then Marrying Her

1956. It was narrated from Abu Musa that the Messenger of Allâh ﷺ said: "Whoever has a slave woman and teaches her good

(المعجم ٤٢) - بَابُ الرَّجُلِ يُعْتِقُ أَمَّتَهُ ثُمَّ يَتَزَوَّجُهَا (التحفة ٤٢)
١٩٥٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ ، أَبُو سَعِيدٍ الْأَشْجِيُّ : حَدَّثَنَا عَبْدُ بْنُ سَلِيمَانَ عَنْ صَالِحِ ابْنِ صَالِحِ بْنِ حَيٍّ ، عَنِ الشَّعْبِيِّ ، عَنْ أَبِي

manners and educates her, then sets her free and marries her, will have two rewards. Any man from among the People of the Book who believed in his Prophet and believed in Muhammad will have two rewards. Any slave who does his duty towards Allāh and towards his masters will have two rewards." (*Sahih*)

(One of the narrators) Sâlih said: "Sha'bi said: 'I have given this (*Hadith*) to you for little effort on your part. A rider would travel to Al-Madinah for less than this.'"

بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَتْ لَهُ جَارِيَةٌ فَأَدَّبَهَا فَأَحْسَنَ أَدَبَهَا. وَعَلَّمَهَا فَأَحْسَنَ تَعْلِيمَهَا. ثُمَّ أَعْتَقَهَا وَتَزَوَّجَهَا، فَلَهُ أَجْرَانِ. وَأَيُّمَا رَجُلٍ مِنْ أَهْلِ الْكِتَابِ آمَنَ بِنَبِيِّهِ وَآمَنَ بِمُحَمَّدٍ فَلَهُ أَجْرَانِ. وَأَيُّمَا عَبْدٍ مَمْلُوكٍ آدَى حَقَّ اللَّهِ عَلَيْهِ وَحَقَّ مَوَالِيهِ، فَلَهُ أَجْرَانِ».

قَالَ صَالِحٌ: قَالَ الشَّعْبِيُّ: قَدْ أَعْطَيْتُكَهَا بِعَيْرِ شَيْءٍ. إِنْ كَانَ الرَّابِئُ لَيَّرَكَبُ فِيمَا دُونَهَا إِلَى الْمَدِينَةِ.

تخریج: أخرجه البخاري، العلم، باب تعليم الرجل أمته وأهله، ح: ٩٧ وغيره، ومسلم، الإيمان، باب وجوب الإيمان برسالة نبينا محمد ﷺ إلى جميع الناس ونسخ الملل بملته، ح: ١٥٤ من حديث صالح به مطولاً.

Comments:

- Male and female slaves are bought for service; the arrangement of their education and professional training is a great favor to them; and then setting the female slave free is another favor unto her. Thereafter, she should not be ignored for marriage just because she was a slave in the past; it will be the negation of her freedom. Instead, it will be the perfection of favor that a freed female slave acquires the rights of a free wife.
- If a Jew remaining firm on *Tauhid* believes in Musa ﷺ, or a Christian believes in 'Eisa ﷺ (Jesus), so long as he is unaware of the prophethood of Muhammad ﷺ, he (Jew or Christian) is correct. Whenever he knows about the advent of the Prophet ﷺ and believes in him, thus he secures a double reward, as is the story of Najāshi.

1957. It was narrated that Anas said: "Safiyah was given to Dihyah Al-Kalbi (as his share of the war booty), then she was given to the Messenger of Allāh ﷺ after that. He married her, and made her ransom (i.e., freedom from slavery) her dowry." (*Sahih*)

Hammād said: "Abdul-'Aziz said to Thābit: 'O Abu Muhammad! Did you ask Anas

١٩٥٧ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ: حَدَّثَنَا ثَابِتٌ وَعَبْدُ الْعَزِيزِ عَنْ أَنَسٍ قَالَ: صَارَتْ صَفِيَّةُ لِدِيحِيَةِ الْكَلْبِيِّ. ثُمَّ صَارَتْ لِرَسُولِ اللَّهِ ﷺ بَعْدُ. فَتَزَوَّجَهَا وَجَعَلَ عِقَّتَهَا صَدَاقَهَا.

قَالَ حَمَادٌ: فَقَالَ عَبْدُ الْعَزِيزِ لِثَابِتٍ: يَا أَبَا مُحَمَّدٍ أَنْتَ سَأَلْتَ أَنَسًا مَا أَمْرُهَا؟ قَالَ:

what her bridal-money was?' He said: 'Her bridal-money was her freedom.'"

أَمَهْرَهَا نَفْسَهَا.

تخريج: أخرجه البخاري، صلوة الخوف، باب التكبير والغسل بالصبح والصلوة عند الإغارة والحرب، ح: ٩٤٧ مطولاً، ٥٠٨٦، ومسلم، النكاح، باب فضيلة إعتاقه أمته ثم يتزوجها، ح: ١٣٦٥ من حديث حماد بن زيد به.

Comments:

- Safiyyah became a war prisoner when the Muslims attacked Banu Nadir, a tribe of Jews. For further details see *Hadith*: 1909 and its comments.
- The freedom of a female slave can be declared as her dowry.

1958. It was narrated from 'Aishah that the Messenger of Allāh ﷺ set Safiyyah free, and made her ransom her dowry, and he married her. (*Sahih*)

١٩٥٨ - حَدَّثَنَا حُبَيْشُ بْنُ مُبَشَّرٍ: حَدَّثَنَا يُوسُفُ بْنُ مُحَمَّدٍ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ عِكْرِمَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَعْتَقَ صَفِيَّةَ، وَجَعَلَ عِتْقَهَا صَدَاقَهَا، وَتَزَوَّجَهَا.

Comments:

تخريج: [صحيح] والحديث السابق شاهد له.

As it is Islamically forbidden for a woman to marry without the permission of her father or *Wali* (the guardian), likewise a slave is not allowed to marry without the permission of the master. The logic of it is that, after marriage, the slave will have to look after his wife and children, and it will undermine the service to his master; but if the master, with a goodwill gesture, is prepared to decrease his duties then the slave should marry, otherwise he should observe patience. Morally, the master should allow the slave to marry so that he can protect his chastity.

Chapter 43. A Slave Marrying Without His Master's Permission

(المعجم ٤٣) - بَابُ تَزْوِيجِ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ (التحفة ٤٣)

1959. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "If a slave gets married without his master's permission, he is a fornicator." (*Da'if*)

١٩٥٩ - حَدَّثَنَا أَبُو زُهَيْرٍ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ: حَدَّثَنَا الْقَاسِمُ بْنُ عَبْدِ الْوَاحِدِ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ، كَانَ عَاهِرًا».

تخريج: [إسناده ضعيف] أخرجه الحاكم: ١٩٤/٢ من حديث عبدالوارث به، وصححه،

وواقفه الذهبي * ابن عقيل ضعيف تقدم، ح: ٣٩٠.

1960. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Any slave who gets married without his master's permission, is a fornicator." (Da'if)

١٩٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ صَالِحُ ابْنِ مُحَمَّدٍ بْنِ يَحْيَى بْنِ سَعِيدٍ. قَالَ: حَدَّثَنَا أَبُو عَسَانَ، مَالِكُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا مَنْدَلٌ عَنِ ابْنِ جُرَيْجٍ، عَنْ مُوسَى بْنِ عُقْبَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ مَوْلِيهِ، فَهُوَ زَانٍ».

تخريج: [إسناده ضعيف] انظر، ح: ١٢٤٧ لعلته.

Chapter 44. Prohibition Of Temporary Marriage (Mut'ah)

(المعجم ٤٤) - بَابُ النَّهْيِ عَنِ نِكَاحِ الْمُتَعَةِ (التحفة ٤٤)

1961. It was narrated from 'Ali bin Abu Tālib that the Messenger of Allāh ﷺ forbade on the Day of Khaibar, the temporary marriage of women and (he forbade) the flesh of domestic donkeys. (Sahih)

١٩٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا يَشْرُ بْنُ عُمَرَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عَبْدِ اللَّهِ وَ الْحَسَنِ، ابْنَيْ مُحَمَّدِ ابْنِ عَلِيٍّ، عَنْ أَبِيهِمَا، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ مُتَعَةِ النِّسَاءِ يَوْمَ خَيْبَرَ، وَعَنْ لُحُومِ الْحُمْرِ الْإِنْسِيَّةِ.

تخريج: أخرجه البخاري، المغازي، باب غزوة خيبر، ح: ٤٢١٦، ومسلم، باب نكاح المتعة وبيان أنه أبيض ثم نسخ ثم أبيض ثم نسخ واستقر تحريمه إلى يوم القيامة، ح: ١٤٠٧ من حديث مالك به، وهو في الموطأ: ٥٤٢/٢.

Comments:

- In a temporary or short-term marriage, a man and a woman agree to live together as wife and husband for a temporary appointed term; and as soon as this term comes to end, the marriage ends too. This kind of marriage was permissible, later it was forbidden, and now it is absolutely unlawful.
- The Islamic bond of marriage is a contract between man and woman to live together for their whole life. Because the objective of the temporary marriage is not to live together permanently, therefore it is prohibited too.
- Domestic donkey is unlawful (to eat); an animal very similar to a donkey is found in the jungle, and it is called a wild ass in Arabic.

1962. It was narrated from Rabi' bin Sabrah that his father said: "We went out with the Messenger of Allāh ﷺ on the Farewell pilgrimage, and they said: 'O Messenger of Allāh, celibacy has become too difficult for us.' He said: 'Then make temporary marriages with these women.' So we went to them, but they insisted on setting a fixed time between us and them. They mentioned that to the Prophet ﷺ and he said: 'Set a fixed time between you and them.' So I went out with a cousin of mine. He had a cloak and I had a cloak, but his cloak was finer than mine, and I was younger than him. We came to a woman and she said: 'One cloak is like another.' So I married her and stayed with her that night. Then the next day I saw the Messenger of Allāh ﷺ standing between the *Rukn* (corner) and the door (of the Ka'bah), saying: 'O people, I had permitted temporary marriage for you, but Allāh has forbidden it until the Day of Resurrection. Whoever had any temporary wives, he should let them go, and do not take back anything that you had given to them.'" (*Sahih*)

تخريج: أخرجه مسلم، النكاح، باب نكاح المتعة وبيان أنه أبيض ثم نسخ ثم أبيض ثم نسخ... الخ، ح: ٢١/١٤٠٦ عن ابن أبي شيبة به مختصراً، وله طرق عنده ولم يذكر قوله: في حجة الوداع، والصواب أنه في غزوة الفتح كما في صحيح مسلم وغيره.

Comments:

- Shaykh Albāni said: This *Hadith* is authentic but the mention of the Farewell pilgrimage in it is incorrect. The truth is that it was made unlawful forever at the conquest of Makkah; as mentioned in *Sahih Muslim*: 1406.
- The temporary marriage was allowed during a limited time for certain

١٩٦٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ، عَنِ الرَّبِيعِ بْنِ سَبْرَةَ، عَنْ أَبِيهِ قَالَ: خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي حَجَّةِ الْوَدَاعِ. فَقَالُوا: يَا رَسُولَ اللَّهِ! إِنَّ الْعُرْبَةَ قَدْ اشْتَدَّتْ عَلَيْنَا. قَالَ: «فَاسْتَمْتِعُوا مِنْ هَذِهِ النِّسَاءِ». فَأَتَيْنَاهُنَّ. فَأَبَيْنَ أَنْ يَنْكِحُنَنَا إِلَّا أَنْ نَجْعَلَ بَيْنَنَا وَبَيْنَهُنَّ أَجَلًا. فَذَكُرُوا ذَلِكَ لِلنَّبِيِّ ﷺ. فَقَالَ: «اجْعَلُوا بَيْنَكُمْ وَبَيْنَهُنَّ أَجَلًا». فَخَرَجْتُ أَنَا وَابْنُ عَمِّ لِي. مَعَهُ بُرْدٌ وَمَعِيَ بُرْدٌ. وَبُرْدُهُ أَجْوَدُ مِنْ بُرْدِي وَأَنَا أَشَبُّ مِنْهُ. فَأَتَيْنَا عَلَى امْرَأَةٍ، فَقَالَتْ: بُرْدٌ كَبِيرٌ. فَتَرَوُجُهَا فَمَكَيْتُ عِنْدَهَا تِلْكَ اللَّيْلَةَ. ثُمَّ عَدَوْتُ وَرَسُولُ اللَّهِ ﷺ قَائِمٌ بَيْنَ الرُّكْنِ وَالْبَابِ، وَهُوَ يَقُولُ: «أَيُّهَا النَّاسُ! إِنِّي قَدْ كُنْتُ أَذْنْتُ لَكُمْ فِي الْإِسْتِمْتَاعِ. أَلَا وَإِنَّ اللَّهَ قَدْ حَرَّمَهَا إِلَيَّ يَوْمَ الْقِيَامَةِ. فَمَنْ كَانَ عِنْدَهُ مِنْهُنَّ شَيْءٌ فَلْيُخْلِ سَبِيلَهَا. وَلَا تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا».

circumstances and thereafter it was declared unlawful forever.

1963. It was narrated that Ibn 'Umar said: "When 'Umar bin Khattâb was appointed caliph, he addressed the people and said: 'The Messenger of Allâh ﷺ permitted temporary marriage for us three times, then he forbade it. By Allâh, if I hear of any married person entering a temporary marriage, I will stone him to death, unless he can bring me four witnesses who will testify that the Messenger of Allâh ﷺ allowed it after he forbade it.'" (Hasan)

١٩٦٣ - حَدَّثَنَا مُحَمَّدُ بْنُ حَلْفِ الْعَسْقَلَانِيُّ: حَدَّثَنَا الْفُرَيْيَابِيُّ عَنْ أَبِي حَازِمٍ، عَنْ أَبِي بَكْرٍ بْنِ حَفْصٍ، عَنْ ابْنِ عُمَرَ قَالَ: لَمَّا وَلِيَ عُمَرُ بْنُ الْخَطَّابِ، حَطَبَ النَّاسَ فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ أَذِنَ لَنَا فِي الْمُنْعَةِ ثَلَاثًا، ثُمَّ حَرَّمَهَا. وَاللَّهِ لَا أَعْلَمُ أَحَدًا يَتَمَتَّعُ وَهُوَ مُحْصَنٌ إِلَّا رَجَمْتُهُ بِالْحِجَارَةِ. إِلَّا أَنْ يَأْتِيَنِي بِأَرْبَعَةٍ يَشْهَدُونَ أَنَّ رَسُولَ اللَّهِ ﷺ أَحَلَّهَا بَعْدَ إِذْ حَرَّمَهَا.

تخریج: [إسناده حسن] أخرجه البزار (البحر الزخار)، ح: ١٨٣ من حديث الفريابي به * أبو بكر بن حفص بن عمر بن سعد بن أبي وقاص: اسمه عبدالله، ثقة بالاتفاق، من رجال السنة، وتلميذه حسن الحديث وثقه الجمهور، أخطأ في حديث واحد، راجع الميزان: ٩٠/١ وغيره.

Comments:

- 'Umar ﷺ did not deny the fact that temporary marriage was lawful at some time; instead he made it clear that the final verdict of the Messenger of Allâh ﷺ regarding it was absolute prohibition forever.
- The marriage bonds that were regarded lawful in the pre-Islamic era, and then were prohibited in Islam, have no legal status in Islamic *Shari'ah*. Now if someone does this kind of marriage, it will not be regarded as marriage, rather it will be an act of adultery; and this individual will be declared a criminal and will be given the prescribed punishment.

Chapter 45. Marriage Of A *Muhrim*

(المعجم ٤٥) - بَابُ الْمُحْرَمِ يَتَزَوَّجُ

(التحفة ٤٥)

1964. Maimunah bint Hârith narrated that the Messenger of Allâh ﷺ married her when he was *Halâl* (not in *Ihrâm*). (*Sahih*)

He (one of the narrators—Yazid) said: "And she was my maternal aunt and the maternal aunt of Ibn 'Abbâs also."

١٩٦٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ: حَدَّثَنَا جَرِيرٌ بْنُ حَازِمٍ: حَدَّثَنَا أَبُو فَرَازَةَ، عَنْ يَزِيدَ بْنِ الْأَصَمِّ: حَدَّثَنِي مَيْمُونَةُ بِنْتُ الْحَارِثِ أَنَّ رَسُولَ اللَّهِ ﷺ تَزَوَّجَهَا وَهُوَ حَلَالٌ.

قَالَ: وَكَانَتْ خَالَتِي وَخَالَةَ ابْنِ عَبَّاسٍ.

تخریج: أخرجه مسلم، النكاح، باب تحريم نكاح المحرم وكراهة خطبته، ح: ١٤١١ عن ابن أبي شيبة به.

Comments:

Imam Albâni رحمته stated this narration as Contradictory (*Shâdhah*). The truth is that the Prophet ﷺ was not in the state of *Ihrâm* at the time of the marriage.

1965. It was narrated from Ibn 'Abbâs that the Prophet ﷺ got married while he was a *Muhrim* (in *Ihrâm*). (*Sahih*)

١٩٦٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ [رَزِيدٍ]، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ نَكَحَ وَهُوَ مُحْرِمٌ.

تخریج: أخرجه البخاري، النكاح، باب نكاح المحرم، ح: ٥١١٤، ومسلم، النكاح، الباب السابق، ح: ١٤١٠ من حديث سفیان به.

1966. It was narrated from Abân bin 'Uthmân bin 'Affân that his father said: "The Messenger of Allâh ﷺ said: "The one in *Ihrâm* should not get married, nor arrange a marriage for anyone else, nor propose marriage." (*Sahih*)

١٩٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَجَاءِ الْمَكِّيُّ، عَنْ مَالِكِ بْنِ أَنَسٍ، عَنْ نَافِعٍ، عَنْ نَبِيِّ بْنِ وَهَبٍ، عَنْ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُحْرِمُ لَا يَنْكِحُ وَلَا يُنْكَحُ وَلَا يَخْطُبُ».

تخریج: أخرجه مسلم، النكاح، باب تحريم نكاح المحرم وكراهة خطبته، ح: ١٤٠٩ من حديث مالك به.

Comments:

- a. Getting married or making a marriage contract whilst in the state of *Ihrâm* is not allowed.
- b. The person in *Ihrâm* cannot marry himself, neither can he be an attorney for someone's marriage, nor can he act as a guardian for the marriage of his daughter or sister etc.
- c. A woman in *Ihrâm* also cannot be married, nor should a proposal be sent to her.

Chapter 46. Compatibility

(المعجم ٤٦) - بَابُ الْأُكْفَاءِ (التحفة ٤٦)

1967. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "If there comes to

١٩٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ سَابُورٍ الرَّقِّيُّ: حَدَّثَنَا عَبْدُ الْحَمِيدِ بْنُ سُلَيْمَانَ

you one with whose character and religious commitment you are pleased, then marry (your daughter or female relative under your care) to him, for if you do not do that there will be *Fitnah* in the land and widespread corruption.'" (*Da'if*)

الْأَنْصَارِيُّ، أَحُو فُلَيْحٍ، عَنْ مُحَمَّدِ بْنِ عَجْلَانَ، عَنِ ابْنِ وَثِيْمَةَ الْبَصْرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَنْتُمْ مَنْ تَرْضَوْنَ خُلُقَهُ وَدِينَهُ فَرُجُوهُ. إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ عَرِيضٌ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، النكاح، باب ماجاء فيمن ترضون دينه فزوجوه، ح: ١٠٨٤ من حديث عبدالحميد به، ونقل عن البخاري بأنه لم يعد حديث عبدالحميد محفوظاً * عبدالحميد بن سليمان ضعيف (تقريب)، وخالفه الثقة الليث بن سعد فرواه عن ابن عجلان عن أبي هريرة به منقطعاً، وابن عجلان مدلس (المرتبة الثالثة عند الحافظ في طبقات المدلسين)، وعنن، ومع ذلك صححه الحاكم ١٦٤/٢، ١٦٥، وتقبيه الذهبي، وله شاهد عند الترمذي من حديث أبي حاتم المزني، وحسنه، وفيه ضعيف ومجهولان، ولهما شاهد من حديث ابن عمر، ولا يستشهد به إنما ذكرته لأئبه عليه، وقال النسائي فيه: هذا كذب، وأبطله ابن عدي مخرجه.

1968. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "Choose the best for your sperm, and marry compatible women and propose marriage to them.'" (*Da'if*)

١٩٦٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا الْحَارِثُ بْنُ عِمْرَانَ الْجَعْفَرِيُّ، عَنْ هِشَامِ بْنِ غُرُؤَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «تَخَيَّرُوا لِنُطْفِئِكُمْ وَأَنْكِحُوا الْأَكْفَاءَ وَأَنْكِحُوا إِلَيْهِمْ».

تخريج: [إسناده ضعيف جداً منكر] أخرجه الدارقطني: ٣/٩٩ من حديث عبدالله بن سعيد الأشج به * الحارث بن عمران ضعيف، رماه ابن حبان بالوضع (تقريب)، وتابعه عكرمة بن إبراهيم ضعيف، منكر الحديث، ليس بشيء، ليس بثقة، راجع اللسان وغيره، وتابعهما الضعفاء مثل أبي أمية بن يعلى وغيره، وذكر بعض العلماء طريقاً آخر من تاريخ دمشق لابن عساکر، ولم أقف على سند الكامل، والله أعلم.

Comments:

- The manners, good conduct and religion should be given preference when looking for a spouse. This is the meaning of the compatibility of the spouses.
- Many righteous girls will remain without marriage if the family status and wealth etc, is given precedence to religion; and this will cause them suffering and hardship.

Chapter 47. Dividing One's Time Among Wives

1969. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever has two wives and favors one of them over the other, he will come on the Day of Resurrection with one of his sides leaning." (*Da'if*)

(المعجم ٤٧) - بَابُ الْقِسْمَةِ بَيْنَ النِّسَاءِ
(التحفة ٤٧)

١٩٦٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ هَمَّامٍ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهْيَلٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَ لَهُ امْرَأَتَانِ، يَمِيلُ مَعَ إِحْدَاهُمَا عَلَى الْأُخْرَى، جَاءَ يَوْمَ الْقِيَامَةِ، وَأَحَدُ شِقَيْهِ سَاقِطٌ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، النكاح، باب: في القسم بين النساء، ح: ٢١٣٣ من حديث همام به، وصححه ابن حبان، والحاكم، والذهبي وغيرهم * قتادة عنن تقدم، ح: ١٧٥، وله شاهد ضعيف.

Comments:

- If one has two or more wives, it is possible that the inclination of the heart is towards just one, but this inclination must not cause injustice.
- In matters of matrimonial desire, there can be lack of interest in cohabitation according to love and desire, but it is unlawful to ignore the fulfillment of matrimonial desire of any of them.

1970. It was narrated from 'Āishah that whenever the Messenger of Allâh ﷺ was to travel, he would cast lots among his wives. (*Sahih*)

١٩٧٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانَ، عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ كَانَ إِذَا سَافَرَ أَفْرَجَ بَيْنَ نِسَائِهِ.

تخريج: أخرجه البخاري، الهبة وفضلها والتحريض عليها، باب هبة المرأة لغير زوجها وعقها إذا كان لها زوج ... الخ، ح: ٢٥٩٣ وغيره، ومسلم، التوبة، باب في حديث الإفك وقبول توبة القاذف، ح: ٢٧٧٠ من طرق عن الزهري به مطولاً، وحديث ابن ماجه مختصراً جداً.

Comments:

- In matters of wives, equality and justice must be observed to the maximum possibility.
- If more than one individual has a right to something, and the thing cannot be divided into shares, then the decision can be made by drawing lots.

1971. It was narrated that 'Āishah said: "The Messenger of Allâh ﷺ used to divide his time

١٩٧١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ مُحَمَّدٌ بْنُ يَحْيَى. قَالَ: حَدَّثَنَا يَزِيدُ بْنُ

equally among his wives, then he would 'O Allāh, this is what I am doing with regard to that which is within my control, so do not hold me accountable for that which is under Your control and is beyond my control.'" (Sahih)

هَارُونَ: أَتَيْنَا حَمَادَ بْنَ سَلَمَةَ، عَنْ أَبِي يَزِيدَ، عَنْ أَبِي قِلَابَةَ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ عَائِشَةَ قَالَتْ: كَانَ رَسُولُ اللَّهِ ﷺ يَقْسِمُ بَيْنَ نِسَائِهِ، فَيَعْدِلُ، ثُمَّ يَقُولُ: «اللَّهُمَّ هَذَا فِعْلِي فِيمَا أَمْلِكُ. فَلَا تَلْمَنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ».

تخريج: [إسناده صحيح] أخرجه أبو داود، النكاح، باب: في القسم بين النساء، ح: ٢١٣٤ من حديث حماد به، وصححه الحاكم، والذهبي، وأرسله حماد بن زيد، وابن علي عن أيوب عن أبي قلابه به، وهذا لا يضر، والطريقان محفوظان، وصححه ابن حبان (موارد)، ح: ١٣٠٥، وابن كثير.

Chapter 48. A Woman Giving Her Day To Her Co-Wife

(المعجم ٤٨) - بَابُ الْمَرْأَةِ تَهَبُ يَوْمَهَا لِصَاحِبَتَيْهَا (التحفة ٤٨)

1972. 'Urwah narrated from 'Āishah that when Saudah bint Zam'ah grew old, she gave her day to 'Āishah, and the Messenger of Allāh ﷺ went to 'Āishah on Saudah's day. (Sahih)

١٩٧٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عُقْبَةُ بْنُ خَالِدٍ: ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ أَبَانَ عَبْدَ الْعَزِيزِ بْنَ مُحَمَّدٍ، جَمِيعاً عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا كَبُرَتْ سَوْدَةُ بِنْتُ زَمْعَةَ وَهَبَتْ يَوْمَهَا لِعَائِشَةَ. فَكَانَ رَسُولُ اللَّهِ ﷺ يَقْسِمُ لِعَائِشَةَ يَوْمَ سَوْدَةَ.

تخريج: أخرجه مسلم، الرضاع، باب جواز هبتها نويتها لضررتها، ح: ١٤٦٣ عن ابن أبي

شيبه وغيره به.

Comments:

- It is right of the wife that according to the turn, the husband spends the night with her. She may withdraw from her right, and she is also allowed to give her right to any of her co - wives.
- The Messenger of Allāh ﷺ was not obliged to stay with his wives according to their turns. Allāh says: "You (O Muhammad) can postpone (the turn of) whom you will of them (your wives), and you may receive whom you will. And whomsoever you desire of those whom you have set aside (her turn temporarily), it is no sin on you (to receive her again)." (Al-Ahzāb 33:51). Despite that the Prophet ﷺ would take a great care of their turns; it was the highness of his best manners.

1973. It was narrated from 'Aishah that the Messenger of Allāh ﷺ became angry with Safiyyah bint Huyai for something, and Safiyyah said: "O 'Aishah, can you make the Messenger of Allāh ﷺ be pleased with me, and I will give you my day?" She said: "Yes." So she took a headcover of hers that was dyed with saffron, and sprinkled it with water so that its fragrance would become stronger, then she sat beside the Messenger of Allāh ﷺ. The Prophet ﷺ said: "O 'Aishah, go away, because it is not your day." She said: "That is the Grace of Allāh which He bestows on whom He pleases."^[1] Then she told him about that matter and he was pleased with her. (*Sahih*)

١٩٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ مُحَمَّدُ بْنُ يَحْيَى. قَالَ: حَدَّثَنَا عَفَانُ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ ثَابِتٍ، عَنْ سُمَيْهَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ وَجَدَ عَلَى صَفِيَّةَ بِنْتِ حَيْبِي فِي شَيْءٍ. فَقَالَتْ صَفِيَّةُ: يَا عَائِشَةُ هَلْ لَكَ أَنْ تُرْضِي رَسُولَ اللَّهِ ﷺ عَنِّي، وَلَكَ يَوْمِي؟ قَالَتْ: نَعَمْ. فَأَخَذَتْ خِمَارًا لَهَا مَضْبُوعًا بِرَعْفَرَانٍ. فَرَشَتْهُ بِالْمَاءِ لِيُفَوِّحَ رِيحُهُ. قَالَ: قَعَدْتُ إِلَى جَنْبِ رَسُولِ اللَّهِ ﷺ. فَقَالَ النَّبِيُّ ﷺ: «يَا عَائِشَةُ إِلَيْكَ عَنِّي. إِنَّهُ لَيْسَ يَوْمُكَ» فَقَالَتْ: «ذَلِكَ فَضْلُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ» فَأَخْبَرْتُهُ بِالْأَمْرِ، فَرَضِي عَنْهَا.

تخريج: [إسناده صحيح] أخرجه أحمد (١٤٥/٦) وغيره) عن عفان وغيره به، أخرجه مرة أخرى: ١٣٢، ١٣١/٦، وقال: شميسة وفيه: قالت: فبينما أنا يوماً بنصف النهار إذا أنا بظل رسول الله ﷺ مقبل * سمية (شميسة) وثقها ابن معين (انظر الجرح والتعديل) وروى عنها شعبة، وهو لا يروي إلا عن ثقة عنده.

1974. It was narrated that 'Aishah said: "This Verse 'And making peace is better.'^[2] was revealed concerning a man who had been married to a woman for a long time, and she had given birth to his children and he wanted to exchange her (for a new wife). She agreed that he would stay with her (the new wife) and would not give her (the

١٩٧٤ - حَدَّثَنَا حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عَمْرُ بْنُ عَلِيٍّ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّهَا قَالَتْ: تَزَلَّتْ هَذِهِ الْآيَةُ: «وَالصُّلْحُ خَيْرٌ» فِي رَجُلٍ كَانَتْ تَحْتَهُ امْرَأَةً قَدْ طَلَّقَتْ صُحْبَتَهَا. وَوَلَدَتْ مِنْهُ أَوْلَادًا. فَأَرَادَ أَنْ يَسْتَبَدِّلَ بِهَا. فَرَأَيْتُهُ عَلَى أَنْ يُؤَيِّمَ عَنْدَهَا وَلَا يُسَيِّمَ لَهَا.

[1] *Al-Hadid* 57:21.

[2] *Ant-Nisā'* 4:128.

first wife) a share of his time. (i.e., not spend the nights with her).”
(*Sahih*)

تخريج: [صحيح] * عمر بن علي المقدمي ثقة وكان يدلّس شديدًا (تقريب) وعنن، ولحديثه شواهد منها حديث رافع بن خديج، وأخرجه الحاكم: ٣٠٩، ٣٠٨/٢، وصححه على شرط الشيخين، ووافقه الذهبي، وانظر تفسير ابن كثير: ١/٥٣٢، ٥٣٣ وغيره إن شئت.

Chapter 49. Intercession Concerning Marriage

(المعجم ٤٩) - بَابُ الشَّفَاعَةِ فِي التَّرْوِيجِ (التحفة ٤٩)

1975. It was narrated that Abu Ruhm said: "The Messenger of Allāh ﷺ said: 'One of the best kinds of intercession is interceding between two people concerning marriage.'" (*Da'if*)

١٩٧٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُعَاوِيَةُ بْنُ يَحْيَى: حَدَّثَنَا مُعَاوِيَةُ بْنُ يَزِيدَ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ أَبِي الْخَيْرِ، عَنْ أَبِي رَهْمٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مِنْ أَفْضَلِ الشَّفَاعَةِ أَنْ يُشْفَعَ بَيْنَ الْإِثْنَيْنِ فِي النِّكَاحِ».

تخريج: [إسناده ضعيف] انظر، ح: ٨٤٢ لعلته، وفيه علة أخرى.

1976. It was narrated that 'Aishah said: "Usâmah stumbled at the threshold of the door and cut his face. The Messenger of Allāh ﷺ said: 'Remove the harm (the blood) from him,' but I was repulsed by that. He started to suck the blood and remove it from his face, then he said: 'If Usâmah were a girl, I would have adorned him and dressed him until I married him off.'" (*Da'if*)

١٩٧٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَرِيكٌ عَنِ الْعَبَّاسِ بْنِ ذَرِيحٍ، عَنِ الْبُهَيِّ، عَنْ عَائِشَةَ قَالَتْ: عَثَرَ أُسَامَةُ بِعَتَبَةِ الْبَابِ. فَضَجَّ فِي وَجْهِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَمِيطِي عَنْهُ الْأَذَى» فَتَقَدَّرَتْهُ. فَجَعَلَ يَمصُّ عَنْهُ الدَّمَ وَيَمسِّحُهُ عَنْ وَجْهِهِ. ثُمَّ قَالَ: «لَوْ كَانَ أُسَامَةُ جَارِيَةً لَحَلَيْتُهُ وَكَسَوْتُهُ حَتَّى أُنْفِقَهُ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ١٣٩/٦، ٢٢٢ من حديث شريك به * شريك عنن تقدم، ح: ١٤٩، وتابعه مجالد ضعيف تقدم، ح: ١١، وفي سماع البهي من عائشة كلام.

Comments:

It is permissible to adorn girls with jewelry and nice clothes. But this should not be a frequent habit, so they have the inclination to simplicity as well. Of

course, there is no harm in dressing up nicely for weddings and 'Eid celebrations etc., and to use the relevant adornment up to a certain limit.

Chapter 50. Good Treatment Of Women

(المعجم ٥٠) - بَابُ حُسْنِ مُعَاشَرَةِ

النِّسَاءِ (التحفة ٥٠)

1977. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "The best of you is the one who is best to his wife, and I am the best of you to my wives." (*Hasan*)

١٩٧٧ - حَدَّثَنَا أَبُو بَشِيرٍ بَكْرُ بْنُ خَلْفٍ، وَ مُحَمَّدٌ بْنُ يَحْيَى. قَالَ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ جَعْفَرِ بْنِ يَحْيَى بْنِ تُوْبَانَ، عَنْ عَمِّهِ عُمَارَةَ بْنِ تُوْبَانَ، عَنْ عَطَاءٍ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِيهِ. وَأَنَا خَيْرُكُمْ لِأَهْلِي.»

تخریج: [حسن] أخرجه البزار من حديث أبي عاصم به، وصححه ابن حبان (موارد)، ح: ١٣١٥، والحاكم ١٧٣/٣، والذهبي، وضعفه البوصيري، وللحديث شواهد عند الترمذي، وابن حبان، ح: ١٣١١، ١٣١٢ وغيرهما.

1978. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "The best of you are those who are best to their womenfolk." (*Sahih*)

١٩٧٨ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو نَخَالِدٍ عَنِ الْأَعْمَشِ، عَنْ شَقِيبٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «خَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ.»

تخریج: [صحيح] وصححه البوصيري، والحديث السابق شاهد له.

Comments:

Due to the good relationship between husband and wife, the children also learn and adopt good manners and habits. Once they are grown up, they prove to be a mercy for themselves as well as for their parents; but if the husband and wife have an unpleasant relationship, the children are affected too, and by learning bad habits, they cause hardships and worry to the parents as well. They also cause mischief and trouble in the society.

1979. It was narrated that 'Aishah said: "The Prophet ﷺ raced with me and I beat him." (*Sahih*)

١٩٧٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: سَابَقَنِي النَّبِيُّ ﷺ فَسَبَقْتُهُ.

تخریج: [صحیح] أخرجه أحمد: ۳۹/۶ عن سفیان به مطولاً، وصححه ابن حبان (موارد)، ح: ۱۳۱۰، وللحديث طرق كثيرة عند أبي داود، ح: ۲۵۷۸ وغيره.

Comments:

- When 'Aishah ﷺ was honored with the kind company of Allāh's Messenger ﷺ, she was then very young. The Messenger of Allāh ﷺ would take great care of her young age, he ﷺ would avail her occasions of amusement.
- It is not appropriate to keep the household atmosphere formal and strict all the time; having a good sense of humor with the wife and children, and trying to amuse them, is not contrary to the status of righteousness.

1980. It was narrated that 'Aishah said: "When the Messenger of Allāh ﷺ came to Al-Madinah, he had just married Safiyyah bint Huyai, and the women of the *Ansār* came and told us about that. My expression changed and I covered my face and went away. The Messenger of Allāh ﷺ looked at my eyes and recognized me. I turned away and walked quickly, but he caught up with me and put his arm around me and said: 'What did you see?' I said: 'Let me go, (I saw) a Jewish woman among other Jewish women.'" (*Da'if*)

۱۹۸۰ - حَدَّثَنَا أَبُو بَدْرٍ، عَبَادُ بْنُ الْوَلِيدِ: حَدَّثَنَا حَبَّانُ بْنُ هِلَالٍ: حَدَّثَنَا مُبَارَكُ بْنُ فَضَالَةَ، عَنْ عَلِيِّ بْنِ زَيْدٍ، عَنْ أُمِّ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا قَدِمَ رَسُولُ اللَّهِ ﷺ الْمَدِينَةَ، وَهُوَ عَرُوسٌ بِصَفِيَّةَ بِنْتِ حَيْبٍ، جِئْنَا نِسَاءَ الْأَنْصَارِ فَأَخْبِرْنَ عَنْهَا. قَالَتْ، فَتَنَكَّرْتُ وَتَمَثَّلْتُ فَذَهَبْتُ. فَطَظَرَ رَسُولُ اللَّهِ ﷺ إِلَيَّ عَيْنِي فَعَرَفَنِي. قَالَتْ: فَالْتَمَسْتُ فَاسْرَعْتُ الْمُسْمِي. فَأَدْرَكَنِي فَاحْتَضَنَنِي. فَقَالَ: «كَيْفَ رَأَيْتِ؟» قَالَتْ، قُلْتُ: أُرْسِلُ، يَهُودِيَّةً وَسَطَ يَهُودِيَّاتٍ.

تخریج: [إسناده ضعيف] انظر، ح: ۱۱۶ لعلته، وفيه علتان أخریان.

1981. 'Urwah bin Zubair narrated that 'Aishah said: "I did not know until Zainab burst in on me without permission, and she was angry. Then she said: 'O Messenger of Allāh, is it enough for you that the young daughter of Abu Bakr waves her hands in front of you?' Then she turned to me, but I ignored her until the Prophet ﷺ said: 'You should say something to defend yourself.' So I turned on her, (and replied to

۱۹۸۱ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشِيرٍ، عَنْ زَكَرِيَّا، عَنْ خَالِدِ بْنِ سَلَمَةَ، عَنْ الْبَيْهَقِيِّ، عَنْ عُرْوَةَ بْنِ الرُّبَيْرِ قَالَ: قَالَتْ عَائِشَةُ: مَا عَلِمْتُ حَتَّى دَخَلْتُ عَلَيَّ زَيْنَبُ بِنْتُ أَبِي بَكْرٍ، وَهِيَ غَضَبِي. ثُمَّ قَالَتْ: يَا رَسُولَ اللَّهِ! أَحْسَبُكَ إِذَا قَلَبْتَ لَكَ بِنْتَهُ أَبِي بَكْرٍ ذُرِّيَعَتَيْهَا. ثُمَّ أَقْبَلْتُ عَلَيَّ. فَأَعْرَضْتُ عَنْهَا. حَتَّى قَالَ النَّبِيُّ: «دُونِكَ، فَانْتَصِرِي»

her) until I saw that her mouth had become dry, and she did not say anything back to me. And I saw the Prophet ﷺ with his face shining." (Hasan)

فَأَقْبَلْتُ عَلَيْهَا، حَتَّى رَأَيْتُهَا وَقَدْ يَبَسَ رِيفُهَا فِي فِيهَا، مَا تَرُدُّ عَلَيَّ شَيْئًا. فَرَأَيْتَ النَّبِيَّ ﷺ يَهْلَلُ وَجْهَهُ.

تخریج: [حسن] أخرجه أحمد: ٩٣/٦ عن ابن أبي شيبه به، وصححه البوصيري على شرط مسلم، وهو في السنن الكبرى، ح: ٨٩١٦٨٩١٤ من حديث زكريا به، وهو مدلس (المرتبة الثانية)، ولم أجد تصريح سماعه، وله شاهد عند مسلم، ح: ٢٤٤٢.

Comments:

- a. The expression of anger by Zainab ؓ against 'Aishah ؓ was because of natural sentiment, which is normal among co-wives.
- b. This permission to 'Aishah ؓ by the Messenger of Allāh ﷺ was on the basis of justice; so 'Aishah ؓ made Zainab ؓ quiet and the Prophet ﷺ became pleased.

1982. It was narrated that 'Aishah said: "I used to play with dolls when I was with the Messenger of Allāh ﷺ, and he used to bring my friends to me to play with me." (Sahih)

١٩٨٢ - حَدَّثَنَا حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عُمَرُ بْنُ حَبِيبِ الْقَاضِي. قَالَ: حَدَّثَنَا هِشَامُ ابْنُ عُرْوَةَ عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: كُنْتُ أَلْعَبُ بِالْبَائِتَاتِ وَأَنَا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَكَانَ يُسَرِّبُ إِلَيَّ صَوَاجِعَاتِي يُلَاعِبُنِي.

تخریج: أخرجه البخاري، الأدب، باب الانسباط إلى الناس، ح: ٦١٣٠، ومسلم، فضائل الصحابة، باب: في فضائل عائشة أم المؤمنين رضي الله عنها، ح: ٢٤٤٠ من حديث هشام به * عمر بن حبيب تابعه غير واحد.

Chapter 51. Hitting Women

(المعجم ٥١) - بَابُ ضَرْبِ النِّسَاءِ

(التحفة ٥١)

1983. It was narrated that 'Abdullāh bin Zam'ah said: "The Prophet ﷺ delivered a sermon then he made mention of women, and exhorted (the men) concerning them. Then he said: 'How long will one of you whip his wife like a slave, then lie with her at the end of the day?'" (Sahih)

١٩٨٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ زَمْعَةَ قَالَ: خَطَبَ النَّبِيُّ ﷺ. ثُمَّ ذَكَرَ النِّسَاءَ. فَوَعَّظَهُمْ فِيهِنَّ. ثُمَّ قَالَ: «إِلَّامٌ يَجْلِدُ أَحَدَكُمْ امْرَأَتَهُ جَلْدَ الْأَمَةِ؟ وَلَعَلَّهُ أَنْ يُضَاجِعَهَا مِنْ آخِرِ يَوْمِهِ».

تخریج: أخرجه البخاري، التفسير، سورة ﴿والشمس وضحاها﴾ ح: ٤٩٤٢، ح: ٥٢٠٤ وغيرهما من حديث هشام به، ومسلم، الجنة وصفة نعيمها، باب: النار يدخلها الجبارون والجنة

يدخلها الضعفاء، ح: ٢٨٥٥ عن ابن أبي شيبه به.

Comments:

The rebuke to women for a mistake is necessary but it should be only verbal; if she is very careless and defiantly disobedient, then the husband should get angry; this punishment is enough. Physical light punishment is allowed only at a certain stage when there is no alternative.

1984. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ never beat any of his servants, or wives, and his hand never hit anything." (*Sahih*)

١٩٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: مَا ضَرَبَ رَسُولُ اللَّهِ ﷺ خَادِمًا لَهُ، وَلَا امْرَأَةً، وَلَا ضَرَبَ يَدَيْهِ شَيْئًا.

تخریج: أخرجه مسلم، الفضائل، باب مباحته ﷺ للآثام واختياره من المباح أسهله ... الخ، ح: ٢٣٢٨ عن ابن أبي شيبه به مختصراً.

Comments:

- Kindness and compassion are admirable qualities.
- The physical punishment to the wife, children and servants should be avoided to the maximum possibility.

1985. It was narrated that Iyâs bin 'Abdullâh bin Abu Dhubâb said: "The Prophet ﷺ said: 'Do not beat the female slaves of Allâh.' Then 'Umar came to the Prophet ﷺ and said: 'O Messenger of Allâh, the woman have become bold towards their husbands? So order the beating of them,' and they were beaten. Then many women went around to the family of Muhammad ﷺ. The next day he said: 'Last night seventy women came to the family of Muhammad, each woman complaining about her husband. You will not find that those are the best of you.'" (*Sahih*)

١٩٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنبَأَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ [عُبَيْدِ] اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ إِبَّاسِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي دُبَابٍ قَالَ: قَالَ النَّبِيُّ ﷺ: «لَا تَضْرِبَنَّ إِمَاءَ اللَّهِ» فَجَاءَ عُمَرُ إِلَى النَّبِيِّ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ قَدْ ذَرَّ النِّسَاءَ عَلَى أَرْوَاجِهِنَّ. فَأَمُرُ بِضَرْبِهِنَّ. فَضْرِبْنَ. فَطَافَ بِأَلِ مُحَمَّدٍ ﷺ طَائِفٌ نِسَاءً كَثِيرٍ. فَلَمَّا أَصْبَحَ قَالَ: «لَقَدْ طَافَ اللَّيْلَةَ بِأَلِ مُحَمَّدٍ سَبْعُونَ امْرَأَةً. كُلُّ امْرَأَةٍ تَشْتَكِي زَوْجَهَا. فَلَا تَجِدُونَ أَوْلِيكَ خِيَارِكُمْ».

تخریج: [صحیح] أخرجه أبو داود، النكاح، باب: في ضرب النساء، ح: ٢١٤٦ من حديث سفیان به، وضححه ابن حبان، والحاكم، والذهبي، والعسقلاني.

1986. It was narrated that Ash'ath bin Qais said: "I was a guest (at the home) of 'Umar one night, and in the middle of the night he went and hit his wife, and I separated them. When he went to bed he said to me: 'O Ash'ath, learn from me something that I heard from the Messenger of Allâh ﷺ: "A man should not be asked why he beats his wife, and do not go to sleep until you have prayed the *Witr*.'" And I forgot the third thing." (Hasan)

Another chain with similar wording.

١٩٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ الْحَسَنُ ابْنُ مُدْرِكِ الطَّحَّانُ. قَالَ: حَدَّثَنَا يَحْيَى بْنُ حَمَّادٍ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ دَاوُدَ بْنِ عَبْدِ اللَّهِ الْأَوْدِيِّ، عَنْ عَبْدِ الرَّحْمَنِ [الْمُسْلِيِّ]، عَنْ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: ضِفْتُ عُمَرَ لَيْلَةً. فَلَمَّا كَانَ فِي جَوْفِ اللَّيْلِ قَامَ إِلَيَّ امْرَأَتُهُ يَضْرِبُهَا. فَحَجَزْتُ بَيْنَهُمَا. فَلَمَّا أُوِيَ إِلَيَّ فَرَّاشِهِ قَالَ لِي: يَا أَشْعَثُ! احْفَظْ عَنِّي شَيْئًا سَمِعْتُهُ عَنْ رَسُولِ اللَّهِ ﷺ: «لَا يُسْأَلُ الرَّجُلُ فِيمَ يَضْرِبُ امْرَأَتَهُ. وَلَا تَنَمُ إِلَّا عَلَى وَتْرٍ» وَنَسِيتُ الثَّالِثَةَ.

حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدِ بْنِ خَدَّاشٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا أَبُو عَوَانَةَ بِإِسْنَادِهِ، نَحْوَهُ.

تخريج: [حسن] أخرجه أبو داود، النكاح، باب: في ضرب النساء، ح: ٢١٤٧ من حديث أبي عوانة به * وصححه الحاكم (١٧٥/٤)، ووافقه الذهبي.

Chapter 52. Those Who Put Extensions In Hair And Those Who Make Tattoos

1987. It was narrated from Ibn 'Umar that the Prophet ﷺ cursed the woman who does hair extensions and the one who has that done, and the woman who does tattoos and the one who has that done. (Sahih)

(المعجم ٥٢) - بَابُ الْوَاصِلَةِ وَالْوَأْشِمَةِ

(التحفة ٥٢)

١٩٨٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ وَ أَبُو أُسَامَةَ، عَنْ عَبْدِ اللَّهِ ابْنِ عُمَرَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ أَنَّهُ لَعَنَ الْوَاصِلَةَ وَالْمُسْتَوْصِلَةَ، وَالْوَأْشِمَةَ وَالْمُسْتَوْشِمَةَ.

تخريج: أخرجه مسلم، اللباس والزينة، باب تحريم فعل الواصلة والمستوصلة والواشمة والمستوشمة ... إلخ، ح: ٢١٢٤ من حديث ابن نمير وغيره به، أخرجه البخاري، ح: ٥٩٤٧، ومسلم وغيرهما من طريق يحيى القطان عن عبيد الله به.

Comments:

- The woman is recommended to adorn herself for the pleasure of her husband; but must be careful about what is lawful and unlawful.
- If a woman has less hair, she should not add artificial hair to show more; and also the men should avoid wearing a wig to hide baldness. For this purpose one may wear a cap, hat or turban etc.
- As for the art of making tattoos on the body; the print of tattoos remain permanent on the body and do not get deleted; the Arab women used to practise this fashion; but having tattoos and making tattoos are prevented alike.

1988. It was narrated that Asmâ' said: "A woman came to the Prophet ﷺ and said: 'My daughter is going to get married, and she had the measles and her hair has fallen out. Can I put extensions in her hair?' The Messenger of Allâh ﷺ said: 'Allâh has cursed the one who does hair extensions and the one who has that done.'" (*Sahih*)

١٩٨٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ بْنُ سُلَيْمَانَ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ فَاطِمَةَ، عَنْ أَسْمَاءَ قَالَتْ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: إِنَّ ابْنَتِي عُرِيْسٌ. وَقَدْ أَصَابَتْهَا الْحَصْبَةُ. فَمَزَّقَ شَعْرَهَا. فَأَصَلَ لَهَا فِيهِ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَعَنَ اللَّهُ الْوَاصِلَةَ وَالْمُسْتَوْصِلَةَ».

تخریج: أخرجه البخاري، اللباس، باب وصل الشعر، ح: ٥٩٣٦، ٥٩٤١ من حديث هشام به، ومسلم، اللباس والزينة، الباب السابق، ح: ٢١٢٢ عن ابن أبي شيبة وغيره.

Comments:

Despite the excuse, the Messenger of Allâh ﷺ did not allow her to add artificial hair, even though the adornment for the pleasure of the husband is a religious demand. It informs us that this prohibition is not of that of dislike, instead it is a definite unlawful thing. The curse on it is also a proof of its total prohibition, because a curse is not spelt out just for something disliked.

1989. It was narrated that 'Abdullâh said: "The Messenger of Allâh ﷺ cursed the woman who does tattoos and the one who has them done, and those who pluck their eyebrows and file their teeth for the purpose of beautification, and those who change the creation of Allâh." News of that reached a woman of Banu Asad who was called Umm Ya'qub. She came to him and

١٩٨٩ - حَدَّثَنَا أَبُو عُمَرَ، حَفْصُ بْنُ عَمْرٍو، وَ عَبْدِ الرَّحْمَنِ بْنُ عُمَرَ. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الْوَائِمَاتِ وَالْمُسْتَوْشِمَاتِ وَالْمُسْتَوَشِمَاتِ وَالْمُتَعَلِّجَاتِ لِلْحُسْنِ، الْمُعْتَبِرَاتِ لِخَلْقِ اللَّهِ. فَبَلَغَ ذَلِكَ

said: "I have heard that you said such and such." He said: "Why should I not curse those whom the Messenger of Allāh ﷺ cursed? And it is in the Book of Allāh." She said: "I read what is between its two covers and I have not found that." He said: "If you read it properly you would have found it. Have you not read the words: 'And whatsoever the Messenger (Muhammad) gives you, take it; and whatsoever he forbids you, abstain (from it).'"^[1] She said: "Of course." He said: "The Messenger of Allāh ﷺ forbade that." She said: 'I think that your wife does it.' He said: "Go and look." So she went and looked and she did not see what she wanted. She said: "I have not seen anything." 'Abdullāh said: "If she was as you say, I would not have kept her with me." (*Sahih*)

امرأة من بني أسد، يقال لها أم يعقوب. فجاءت إليه. فقالت: بلغني عنك أنك قلت كيت وكيت. قال: وما لي لا ألعن من لعن رسول الله ﷺ. وهو في كتاب الله؟ قالت: إني لأقرأ ما بين لوحيه فما وجدته. قال: إن كنت قرأته فقد وجدته. أما قرأت: ﴿وما آتاكم الرسول فخذوه وما نهاكم عنه فانتهوا﴾ [الحشر: ٧] قالت: بلى. قال: فإن رسول الله ﷺ قد نهى عنه. قالت: فإني لأظن أهلك يفعلون. قال: اذهبي فانظري. فذهبت فنظرت فلم تر من حاجبها شيئاً. قالت: ما رأيت شيئاً. قال عبد الله: لو كانت كما تقولين ما جامعتنا.

تخريج: أخرجه البخاري، اللباس، باب المستوشمة، ح: ٥٩٤٨ مختصراً، ومسلم، اللباس والزينة، باب تحريم فعل الواصلة والمستوصلة . . . الخ، ح: ٢١٢٥ من حديث ابن مهدي به، وله عندهما طرق.

Comments:

- Removing and plucking hair is about the facial hair, which does not look good on the faces of women; plucking, removing them is not allowed Islamically. But some sort of color may be used that they do not look outstanding.
- Some people have their eyebrows naturally join together and they create a gap between them by shaving; or some women make their eyebrows thinner by using different techniques; these are all forbidden and part of this prohibition.
- This custom also used to be that it was regarded as a sign of beauty if the front teeth were not joined together; and for this purpose women would make artificial spaces in between the teeth filing them. This is not allowed.

^[1] Al-Hashr 59:7.

Chapter 53. Recommended Time For Consummating Marriage

1990. It was narrated that 'Aishah said: "The Prophet ﷺ married me in Shawwâl, and he consummated the marriage with me in Shawwâl, and which of his wives was more favored to him than I." 'Aishah used to like marriage to be consummated with her female relatives in Shawwâl. (*Sahih*)

(المعجم ٥٣) - بَابُ: مَتَى يُسْتَحَبُّ
الْبِنَاءُ بِالنِّسَاءِ (التحفة ٥٣)

١٩٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعُ بْنُ الْجَرَّاحِ؛ ح: وَحَدَّثَنَا أَبُو يَشْرِ بَكْرُ ابْنُ خَلْفٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، جَمِيعاً عَنْ سُفْيَانَ، عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ، عَنْ عَبْدِ اللَّهِ بْنِ عُرْوَةَ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: تَزَوَّجَنِي النَّبِيُّ ﷺ فِي شَوَّالٍ. وَبَيَّ فِي فِي شَوَّالٍ. فَأَيُّ نِسَائِهِ كَانَ أَحْظَى عِنْدَهُ مِنِّي، وَكَانَتْ عَائِشَةُ تَسْتَجِبُ أَنْ تُدْخَلَ نِسَاءَهَا فِي شَوَّالٍ.

تخریج: أخرجه مسلم، النكاح، باب استحباب النزوج والتزويج في شوال واستحباب الدخول فيه، ح: ١٤٢٣ عن ابن أبي شيبة وغيره به.

Comments:

In the pre-Islamic era, the month of Shawwâl used to be considered unblest; therefore the people would avoid marrying in it. 'Aishah ﷺ refuted this wrong belief by giving her own example.

1991. It was narrated from 'Abdul-Malik bin Hârith bin Hishâm, from his father, that the Prophet ﷺ married Umm Salamah in Shawwâl, and consummated the marriage with her in Shawwâl. (*Da'if*)

١٩٩١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَسْوَدُ بْنُ غَامِرٍ: حَدَّثَنَا زُهَيْرٌ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ الْمَلِكِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِيهِ أَنَّ النَّبِيَّ ﷺ تَزَوَّجَ أُمَّ سَلَمَةَ فِي شَوَّالٍ. وَجَمَعَهَا إِلَيْهِ فِي شَوَّالٍ.

تخریج: [إسناده ضعيف] أخرجه الطبراني (الكبير: ٣/٢٩٤، ٢٩٥) من طريق ابن أبي شيبة به، وانظر، ح: ١٢٠٩ لعلته.

Chapter 54. A Man Consummating The Marriage With His Wife Before Giving Her Anything

1992. It was narrated from 'Āishah that the Messenger of Allāh ﷺ told her to take a woman to her husband before he had given her anything (i.e., bridal-money). (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أبو داود، النكاح، باب: في الرجل يدخل بامرأته قبل أن يقدها شيئاً، ح: ٢١٢٨ من حديث شريك به * شريك عنن تقدم، ح: ١٤٩، وخيشمة لم يسمع من عائشة رضي الله عنها.

Chapter 55. Omens And Good Fortune

1993. It was narrated from Hakim bin Mu'āwiyah that his paternal uncle Mikhmar bin Mu'āwiyah said: "I heard the Messenger of Allāh ﷺ say: 'Do not believe in omens, and good fortune is only to be found in three things: A woman, a horse and a house.'" (*Hasan*)

تخریج: [حسن] أخرجه الطبراني في الكبير: ٣٣٦/٢٠، ٣٣٧، ح: ٧٩٦ من حديث هشام به (وسقط يحيى بن جابر من سنده) إلا أنه قال: مخمر بن حيدة، وللحديث شواهد كثيرة.

Comments:

'Omens and good fortune' is the trouble or harmony caused by something or by a person. For example: a woman, if she is of good conduct, obedient and well-mannered, then it is a mercy and blessing; but if she is abusive, disobedient and ill-mannered, then it is ominousness. Similarly if the horse (ride) is healthy, fast and obedient to the master, then it is a blessing but if it is stubborn and ungovernable, it will be a problem. A big and wide house and a good neighbor are a blessing.

(المعجم ٥٤) - بَابُ الرَّجُلِ يَدْخُلُ بِأَهْلِهِ قَبْلَ أَنْ يُعْطِيَهَا شَيْئًا (التحفة ٥٤)

١٩٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الْهَيْثَمُ بْنُ جَمِيلٍ: حَدَّثَنَا شَرِيكٌ، عَنْ مَنْصُورٍ أَطْنَهُ عَنْ طَلْحَةَ، عَنْ خَيْثَمَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَهَا أَنْ تَدْخُلَ عَلَى رَجُلٍ أَمْرَأَتَهُ قَبْلَ أَنْ يُعْطِيَهَا شَيْئًا.

(المعجم ٥٥) - بَابُ مَا يَكُونُ فِيهِ الْيَمْنُ وَالشُّؤْمُ (التحفة ٥٥)

١٩٩٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنِي سُلَيْمَانُ بْنُ سُلَيْمٍ الْكَلْبِيُّ، عَنْ يَحْيَى بْنِ جَابِرٍ، عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ، عَنْ عَمِّهِ وَمَخْمَرِ بْنِ مُعَاوِيَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا شُؤْمَ. وَقَدْ يَكُونُ الْيَمْنُ فِي ثَلَاثَةٍ: فِي الْمَرْأَةِ وَالْفَرَسِ وَالِدَّارِ».

1994. It was narrated from Sahl bin Sa'd that the Messenger of Allāh ﷺ said: "If it exists, it is in three things: a horse, and woman and a house," meaning omens. (Sahih)

١٩٩٤ - حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ عَاصِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نَافِعٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ أَبِي حَازِمٍ، عَنْ سَهْلِ بْنِ سَعْدٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنْ كَانَ، فِيهِ الْفَرَسِ وَالْمَرْأَةُ وَالْمَسْكَنُ». يَعْنِي الشُّؤْمَ.

تخريج: أخرجه البخاري، النكاح، باب ما يتقى من شؤم المرأة... إلخ، ح: ٥٠٩٥، ومسلم، السلام، باب الطيرة والفأل وما يكون فيه الشؤم، ح: ٢٢٢٦ من حديث مالك به.

1995. It was narrated from Sâlim, from his father, that the Messenger of Allāh ﷺ said: "Omens are only to be found in three things: a horse, a woman and a house." (Sahih)

١٩٩٥ - حَدَّثَنَا يَحْيَى بْنُ خَلْفٍ، أَبُو سَلَمَةَ: حَدَّثَنَا بَشْرُ بْنُ الْمُفَضَّلِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنِ الرَّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الشُّؤْمُ فِي ثَلَاثٍ: فِي الْفَرَسِ وَالْمَرْأَةِ وَالذَّارِ».

(One of the narrators) Az-Zuhri said: "Abu 'Ubaidah bin 'Abdullāh bin Zam'ah said that his mother, Zainab, narrated to him, from Umm Salamah, that she used to list these three, and add to them "the sword."

قَالَ الرَّهْرِيُّ: فَحَدَّثَنِي أَبُو عُبَيْدَةَ بْنُ عَبْدِ اللَّهِ بْنِ زَمْعَةَ أَنَّ أُمَّهُ، زَيْنَبَ حَدَّثَتْهُ عَنْ أُمِّ سَلَمَةَ أَنَّهَا كَانَتْ تَعُدُّ هَؤُلَاءِ الثَّلَاثَةَ. وَتَزِيدُ مَعَهُنَّ، السَّيْفَ.

تخريج: أخرجه البخاري، الطب، باب الطيرة، ح: ٥٧٥٣، ومسلم، السلام، الباب السابق، ح: ٢٢٢٥ وغيرهما من طريق الزهري نحوه، إلا أن البخاري قال: والدابة دون الفرس، وهذا الحديث مختصراً، والحديث السابق قاضٍ عليه، لأن فيه زيادة، والله أعلم.

Chapter 56. Jealousy

(المعجم ٥٦) - بَابُ الْعَيْرَةِ (التحفة ٥٦)

1996. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There is a kind of protective jealousy that Allāh loves and a kind that Allāh hates. As for that which Allāh loves, it is protective jealousy when there are grounds for suspicion. And as for

١٩٩٦ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَكَيْعٌ عَنْ شَيْبَانَ أَبِي مُعَاوِيَةَ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَهْمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مِنَ الْعَيْرَةِ مَا يُحِبُّ اللَّهُ. وَمِنْهَا مَا يَكْرَهُ اللَّهُ. فَأَمَّا مَا يُحِبُّ اللَّهُ فَالْعَيْرَةُ فِي الرَّبِيبَةِ. وَأَمَّا مَا يَكْرَهُ، فَالْعَيْرَةُ

that which He hates, it is protective jealousy when there are no grounds for suspicion.”

في غَيْرِ رَيْبَةٍ.

(*Sahih*)

تخريج: [صحيح] * أبوشهم، قال الحافظ في التقریب: كذا وقع: عنده أي عند ابن ماجه، والصواب: أبوسلمة وهو ابن عبدالرحمن، وأبوسلمة ثقة مشهور، ولحديثه شاهد عند أبي داود، ح: ٢٦٥٩ وغيره، وصححه ابن حبان(موارد)، ح: ١٣١٣، والحافظ في الإصابة.

Comments:

- If the conduct of wife looks doubtful, she should be given proper admonishment, in order to prevent her from stepping forward into bad conduct.
- One should not have doubts in his chaste and bashful wife just by hearing nonsense from irresponsible individuals; it is possible that out of jealousy, grudge and enmity, they want to spoil his family.

1997. It was narrated that 'Aishah said: "I never felt as jealous of any woman as I did of Khadijah, because I saw how the Messenger of Allāh ﷺ remembered her, and his Lord had told him to give her the glad tidings of a house in Paradise made of *Qasab*." [1] (*Sahih*)

Meaning of gold; Ibn Mâjah said that.

تخريج: أخرجه البخاري، مناقب الأنصار، باب تزويج النبي ﷺ خديجة وفضلها رضي الله عنها، ح: ٣٨١٦، ٣٨١٧، ٥٢٢٩، ومسلم، فضائل الصحابة، باب: من فضائل خديجة (أم المؤمنين) رضي الله تعالى عنها، ح: ٢٤٣٥ من حديث هشام به، وصححه البوصيري.

Comments:

- It means the jealousy for good, which a woman normally has about the co-wife. This is a natural sentiment among women, and it expresses their love for the husband; so it should be tolerated so long as no wrong doing happens because of it.
- This *Hadith* shows the virtuousness and high status of Khadijah ؓ.

1998. It was narrated that حَدَّثَنَا عِيسَى بْنُ حَمَّادٍ الْبُصَيْرِيُّ: ١٩٩٨ -

[1] *Qasab* refers to thread, cane, or reed. In other narrations it is mentioned that it is made of hollow pearl.

Mishwar bin Makhramah said: "I heard the Messenger of Allāh ﷺ, when he was on the pulpit, say: 'Banu Hishām bin Mughirah asked me for permission to marry their daughter to 'Ali bin Abu Tālib, but I will not give them permission, and I will not give them permission, and I will not give them permission, unless 'Ali bin Abu Tālib wants to divorce my daughter and marry their daughter, for she is a part of me, and what bothers her bothers me, and what upsets her upsets me.'" (Sahih)

أَنْبَأَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ، عَنِ الْمُسَوَّرِ بْنِ مَخْرَمَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ، وَهُوَ عَلَى الْمِنْبَرِ، يَقُولُ: «إِنَّ بَنِي هِشَامِ بْنِ الْمُغِيرَةِ اسْتَأْذَنُونِي أَنْ يُنْكَحُوا ابْنَتَهُمْ عَلِيَّ بْنَ أَبِي طَالِبٍ. فَلَا أَذْنُ لَهُمْ، ثُمَّ لَا أَذْنُ لَهُمْ، ثُمَّ لَا أَذْنُ لَهُمْ. إِلَّا أَنْ يُرِيدَ عَلِيٌّ ابْنَ أَبِي طَالِبٍ أَنْ يُطَلِّقَ ابْنَتِي وَيُنْكَحَ ابْنَتَهُمْ. فَإِنَّمَا هِيَ بَضْعَةٌ مِنِّي. يَرِيْبِي مَا رَابَهَا، وَيُؤْذِنِي مَا آذَاهَا».

تخریج: أخرجه البخاري، النكاح، باب ذب الرجل عن ابنته في الغيرة والإنصاف، ح: ٥٢٣٠، ومسلم، فضائل الصحابة، باب: من فضائل فاطمة (بنت النبي ﷺ) رضي الله عنها، ح: ٢٤٤٩ من حديث الليث به.

Comments:

- a. It is not allowed to worry the noble Prophet ﷺ by any means even though the concern may be about what is lawful; but perhaps it would be displeasing to the Messenger of Allāh ﷺ for a certain reason.
- b. The Messenger of Allāh, prohibited 'Ali ﷺ from marrying the daughter of Abu Jahl because it would be troublesome for Fātimah ﷺ, and it would hurt the Prophet ﷺ too; consequently 'Ali ﷺ would earn the displeasure of Allāh for bothering the Prophet ﷺ. This prohibition, in fact, was a means of kindness towards 'Ali ﷺ.

1999. 'Ali bin Husain said that Miswar bin Makhramah told him that 'Ali bin Abu Tālib proposed to the daughter of Abu Jahl, when he was married to Fātimah the daughter of the Prophet ﷺ. When Fātimah heard of that she went to the Prophet ﷺ and said: "Your people are saying that you do not feel angry for your daughters. This 'Ali is going to marry the daughter of Abu Jahl." Miswar

١٩٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا أَبُو الْيَمَانِ: أَنَّبَأَنَا شُعَيْبٌ عَنِ الزُّهْرِيِّ. أَخْبَرَنِي عَلِيُّ بْنُ الْحُسَيْنِ أَنَّ الْمُسَوَّرَ بْنَ مَخْرَمَةَ أَخْبَرَهُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ خَطَبَ بِنْتَ أَبِي جَهْلٍ وَعِنْدَهُ فَاطِمَةُ بِنْتُ النَّبِيِّ ﷺ. فَلَمَّا سَمِعَتْ بِذَلِكَ فَاطِمَةُ أَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: إِنَّ قَوْمَكَ يَتَحَدَّثُونَ أَنَّكَ لَا تَغَضَبُ لِبَنَاتِكَ. وَهَذَا عَلِيٌّ نَاكِحًا ابْنَةَ أَبِي جَهْلٍ.

said: "The Prophet ﷺ stood up, and I heard him when he bore witness (i.e., said the *Shahâdah*), then he said: 'I married my daughter (Zainab) to Abul-Âs bin Rabi', and he spoke to me and was speaking the truth. Fâtimah bint Muhammad is a part of me, and I hate to see her faced with troubles. By Allâh, the daughter of the Messenger of Allâh and the daughter of the enemy of Allâh will never be joined together in marriage to one man.'"

He said: So, 'Ali abandoned the marriage proposal. (*Sahih*)

قَالَ الْمُسَوِّرُ: فَقَامَ النَّبِيُّ ﷺ. فَسَمِعْتُهُ جَمِينَ تَشَهَّدَ، ثُمَّ قَالَ: «أَنَا بَعْدُ. فَإِنِّي قَدْ أَنْكَحْتُ أَبَا الْعَاصِ بْنِ الرَّبِيعِ فَحَدَّثَنِي فَصَدَّقَنِي. وَإِنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ بَضْعَةٌ مِنِّي. وَأَنَا أَكْرَهُ أَنْ تَفْتِنُوهَا. وَإِنَّهَا، وَاللَّهِ لَا تَجْتَمِعُ بِنْتُ رَسُولِ اللَّهِ وَبِنْتُ عَدُوِّ اللَّهِ، عِنْدَ رَجُلٍ وَاحِدٍ أَبَدًا».

قَالَ: فَتَرَلَّ عَلَيَّ عَنِ الْخُطْبَةِ.

تخريج: أخرجه البخاري، فضائل أصحاب النبي ﷺ، باب ذكر أصحاب النبي ﷺ منهم أبو العاص بن الربيع، ح: ٣٧٢٩، ومسلم، فضائل الصحابة، الباب السابق، ح: ٩٦/٢٤٤٩ من حديث أبي اليمان به * رواه البخاري عنه.

Chapter 57. The Woman Who Offered Herself (In Marriage) To The Prophet ﷺ

2000. It was narrated from Hishâm bin 'Urwah, from his father that 'Aishah used to say: "Wouldn't a woman feel too shy to offer herself to the Prophet ﷺ?" Until Allâh revealed: "You (O Muhammad) can postpone (the turn of) whom you will of them (your wives), and you may receive whom you will."^[1] She said: "Then I said: 'Your Lord is quick to make things easy for you.'" (*Sahih*)

(المعجم ٥٧) - بَابُ الَّتِي وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ ﷺ (التحفة ٥٧)

٢٠٠٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّهَا كَانَتْ تَقُولُ: أَمَا تَسْتَحْيِي الْمَرْأَةَ أَنْ تَهَبَ نَفْسَهَا لِلنَّبِيِّ ﷺ؟ حَتَّى أَنْزَلَ اللَّهُ: «رَبِّي مَنْ تَشَاءُ مِنْهُنَّ وَتَوَيْتَ إِلَيْكَ مَنْ تَشَاءُ» [الأحزاب: ٥١] قَالَتْ: فَقُلْتُ: إِنَّ رَبَّكَ لَيْسَارٌ فِي هَوَاكَ.

تخريج: أخرجه البخاري، النكاح، باب: هل للمرأة أن تهب نفسها لأحد؟، ح: ٥١١٣ من

[1] Al-Ahzâb 33:51.

حديث هشام به، ومسلم، الرضاع، باب جواز هبتها نوبتها لضررتها، ح: ١٤٦٤ عن ابن أبي شيبة به من حديث هشام به، [وعلقه البخاري من طريق عبدة].

Comments:

It is not regarded a good thing in an Islamic society that a woman offers herself to a man for marriage; the right procedure is that this offer should be made by the guardian of woman. The distinctive highness of Allāh's Messenger ﷺ looked strange to 'Āishah ؓ, that the women themselves would request the Messenger of Allāh ﷺ to marry with them.

2001. Thâbit said: "We were sitting with Anas bin Mâlik, and a daughter of his was with him. Anas said: 'A woman came to the Prophet ﷺ and offered herself to him. She said: "O Messenger of Allāh, do you have any need of me?"' His daughter said: 'How little modesty she had!' He said: 'She was better than you, because she wanted (to marry) the Messenger of Allāh ﷺ, and she offered herself to him.'" (*Sahih*)

٢٠٠١ - حَدَّثَنَا أَبُو بَشِيرٍ، بَكْرُ بْنُ خَلْفٍ وَمُحَمَّدُ بْنُ بَشَّارٍ. قَالَ: حَدَّثَنَا مَرْحُومُ بْنُ عَبْدِ الْعَزِيزِ: حَدَّثَنَا ثَابِتٌ قَالَ: كُنَّا جُلُوسًا مَعَ أَنَسِ بْنِ مَالِكٍ، وَعِنْدَهُ ابْنَتُهُ لَهُ. فَقَالَ أَنَسٌ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ. فَعَرَّضَتْ نَفْسَهَا عَلَيْهِ. فَقَالَتْ: يَا رَسُولَ اللَّهِ هَلْ لَكَ فِيَّ حَاجَةٌ؟ فَقَالَتْ ابْنَتُهُ: مَا أَقَلَّ حَيَاءَهَا. فَقَالَ: هِيَ خَيْرٌ مِنْكَ. رَغِبْتَ فِي رَسُولِ اللَّهِ ﷺ، فَعَرَّضْتَ نَفْسَهَا عَلَيْهِ.

تخریج: أخرجه البخاري، النكاح، باب عرض المرأة نفسها على الرجل الصالح، ح: ٥١٢٠ من حديث مرحوم به.

Comments:

Men and women alike may attend a gathering (or circle) of knowledge, but the women should have their place separate, and the mixing of men and women is not allowed apart from immediate blood relatives.

Chapter 58. A Man Who Has Doubts Concerning His Child

(المعجم ٥٨) - **بَابُ الرَّجُلِ يَشْكُ فِي وُلْدِهِ** (التحفة ٥٨)

2002. It was narrated that Abu Hurairah said: "A man from Banu Fazârah came to the Messenger of Allāh ﷺ and said: 'O Messenger of Allāh, my wife has given birth to a black boy.' The Messenger of Allāh ﷺ said: 'Do you have camels?' He said: 'Yes.' He said: 'What color are they?' He said:

٢٠٠٢ - حَدَّثَنَا أَبُو بَكْرٍ بْنُ أَبِي سَيِّبَةَ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عَيْسَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ مِنْ بَنِي فَزَارَةَ إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ امْرَأَتِي وَوَلَدَتْ غُلَامًا أَسْوَدًا. فَقَالَ رَسُولُ اللَّهِ

'Red.' He said: 'Are there any grey ones among them?' He said: 'Yes, there are some grey ones among them.' He said: 'Where does that come from?' He said: 'Perhaps it is hereditary.' He said: 'Likewise, perhaps this is hereditary.'" (*Sahih*)

عَلَيْهِ: «هَلْ لَكَ مِنْ إِبِلٍ؟» قَالَ: نَعَمْ. قَالَ: «فَمَا أَلْوَانُهَا؟» [قَالَ: حُمْرًا]. قَالَ: «هَلْ فِيهَا مِنْ أَوْرَقٍ؟» قَالَ: إِنَّ فِيهَا لَوُرْقًا. قَالَ: «فَأَنَّى أَتَاهَا ذَلِكَ؟» قَالَ: عَسَى عِرْقُ نَزَعَهَا. قَالَ: «وَهَذَا، لَعَلَّ عِرْقًا نَزَعَهُ».

وَاللَّفْظُ لِابْنِ الصَّبَاحِ،

تخريج: أخرجه مسلم، اللعان، ح: ١٥٠٠ عن ابن أبي شيبة وغيره به، أخرجه البخاري، الطلاق، باب: إذا عرض بنفي الولد، ح: ٦٨٤٧، ٥٣٠٥، ومسلم وغيرهما من طرق عن الزهري . ٤.

Comments:

'Perhaps it is hereditary' means the child took the resemblance of a maternal or paternal ancestor, i.e., genes transmitted from a paternal grandfather and grandmother, maternal grandfather and grandmother or any of the ancestors.

2003. It was narrated from Ibn 'Umar that a man from the desert people came to the Prophet ﷺ and said: "O Messenger of Allâh, my wife has given birth on my bed to a black boy, and there are no black people among my family." He said: "Do you have camels?" He said: "Yes." He said: "What color are they?" He said: "Red." He said: "Are there any black ones among them?" He said, "No." He said: "Are there any grey ones among them?" He said: "Yes." He said: "How is that?" He said: "Perhaps it is hereditary." He said: "Perhaps (the color of) this son of yours is also hereditary." (*Hasan*)

٢٠٠٣ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا [عَبَّاءُ] ابْنُ كُثَيْبٍ اللَّيْثِيُّ، أَبُو عَسَّانَ، عَنْ جُوَيْرِيَةَ ابْنِ أَسْمَاءَ، عَنْ نَافِعٍ، عَنِ ابْنِ عَمْرٍَ أَنَّ رَجُلًا مِنْ أَهْلِ الْبَادِيَةِ أَتَى النَّبِيَّ ﷺ. فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ امْرَأَتِي وَلَدَتْ عَلَيَّ فِرَاشِي غُلَامًا أَسْوَدًا. وَإِنَّا، أَهْلُ بَيْتِ، لَمْ يَكُنْ فِيْنَا أَسْوَدٌ قَطُّ. فَقَالَ: «هَلْ لَكَ مِنْ إِبِلٍ؟» قَالَ: نَعَمْ. قَالَ: «فَمَا أَلْوَانُهَا؟» قَالَ: حُمْرٌ. قَالَ: «هَلْ فِيهَا أَسْوَدٌ؟» قَالَ: لَا. قَالَ: «فِيهَا أَوْرَقٌ؟» قَالَ: نَعَمْ. قَالَ: «فَأَنَّى كَانَ ذَلِكَ؟» قَالَ: عَسَى أَنْ يَكُونَ نَزَعُهُ عِرْقٌ. قَالَ: «فَلَعَلَّ ابْنَكَ هَذَا نَزَعُهُ عِرْقٌ».

تخريج: [إسناده حسن] والحديث السابق شاهد له.

Chapter 59. The Child Is For The Bed And The Fornicator Gets Nothing

2004. It was narrated that 'Aishah said: Ibn Zam'ah and Sa'd (Ibn Abu Waqqâs) referred a dispute to the Prophet ﷺ concerning the son of Zam'ah's slave woman. Sa'd said: "O Messenger of Allâh, my brother (Utbah bin Abu Waqqâs) left instructions in his will that when I come to Makkah, I should look for the son of the slave woman of Zam'ah and take him into my care." 'Abd bin Zam'ah said: "He is my brother and the son of the slave woman of my father; he was born on my father's bed." The Prophet ﷺ saw that he resembled 'Utbah, and said: "He belongs to you, O 'Abd bin Zam'ah. The child is for the bed.^[1] Observe *Hijâb* before him, O Saudah." (*Sahih*)

(المعجم ٥٩) - بَابُ: الْوَلَدُ لِلْفِرَاشِ
وَلِلْعَاهِرِ الْحَجَرُ (التحفة ٥٩)
٢٠٠٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ،
عَنْ عَائِشَةَ قَالَتْ: إِنَّ ابْنَ زَمْعَةَ وَسَعْدًا
اِخْتَصَمَا إِلَى النَّبِيِّ ﷺ فِي ابْنِ أُمِّ زَمْعَةَ.
فَقَالَ سَعْدٌ: يَا رَسُولَ اللَّهِ! أَوْصَانِي أَخِي،
إِذَا قَدِمْتُ مَكَّةَ، أَنْ أَنْظُرَ إِلَيَّ ابْنُ أُمِّ زَمْعَةَ
فَأَقْبِضَهُ. وَقَالَ عَبْدُ بْنُ زَمْعَةَ: أَخِي وَابْنُ أُمِّ
أَبِي. وَوُلِدَ عَلَى فِرَاشِ أَبِي. فَرَأَى النَّبِيُّ ﷺ
شَبَّهُهُ بِعُتْبَةَ. فَقَالَ: «هُوَ لَكَ يَا عَبْدُ بْنُ
زَمْعَةَ. الْوَلَدُ لِلْفِرَاشِ. وَاحْتَجِي عَنْهُ يَا
سَوْدَةَ».

تخريج: أخرجه البخاري، الخصومات، باب دعوى الوصي للميت، ح: ٢٤٢١ من حديث
سفيان به، ومسلم، الرضاع، باب الولد للفراش وتوحي الشبهات، ح: ١٤٥٧ عن ابن أبي شيبة
وغيره.

Comments:

- In the pre-Islamic period, a child born because of illegal affairs used to be considered of the same man due to whose affairs it was born. Following the same custom of pre-Islamic Ignorance, Sa'd bin Abu Waqqâs wanted to have the guardianship of the child born to a female slave of Zam'ah 'a legal child of his brother'.
- Abd bin Zam'ah had the opinion that legally the child was his brother, regardless who the child's real father should be, because he (the child) was a son of the female slave of his father.
- The apparent look and facial features showed that the child was born of

[1] 'The child is for the bed' means that the child is attributed to the husband or the man who owns the slave women who gave birth to that child, even if the child resembles someone else.

Sa'd's brother; but legally, according to the Islamic *Shari'ah*, he was regarded the brother of Abd bin Zam'ah.

- d. It looked clear that the child being a legal brother of Saudah ﷺ was not yet her real blood brother, so the Messenger of Allâh ﷺ told the mother of the Believers 'Saudah' to observe *Hijâb* before him.

2005. It was narrated from 'Umar that the Messenger of Allâh ﷺ ruled that the child belonged to the bed. (*Sahih*)

٢٠٠٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُهَيْبَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي يَزِيدَ، عَنْ أَبِيهِ، عَنْ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالْوَلَدِ لِلْفِرَاشِ.

تخریج: [صحيح] أخرجه أحمد: ٢٥/١، وأطراف المسند: ٨٨/٥، ومسند الفاروق: ١/٤٢٥، ٤٢٦ عن سفيان به، وقال الحميدي (ديوبندية: ٢٤) ثنا سفيان ثني عبيدالله بن أبي يزيد أخبرني أبي به مطولاً، وإسناده حسن، وصححه البوصيري، والحديث السابق شاهد له.

Comments:

"The child belonged to the bed" means the person who owns the bed; i.e., to the husband of the woman or the master of the female slave. The child will be considered his, and the relation of inheritance etc., would also be related to him; no relation will be connected with the man due to whose illegal affairs the child was born.

2006. It was narrated from Abu Hurairah that the Prophet ﷺ said: "The child is for the bed (i.e., belongs to the husband) and the fornicator gets nothing." (*Sahih*)

٢٠٠٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُهَيْبَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ ابْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْوَلَدُ لِلْفِرَاشِ. وَلِلْعَاهِرِ الْحَجَرُ».

تخریج: أخرجه مسلم، الرضاع، باب الولد للفراش وللعاهر الحجر، ح: ١٤٥٨ من حديث سفيان به، وذكر اختلاف الرواة فيه.

Comments:

"The fornicator gets nothing" or 'the fornicator will have the stone' means he has nothing to do with the child, i.e., he is deprived of legal benefits from the child, like: inheritance etc. Another meaning is that he deserves the punishment and should be stoned to death.

2007. Shurahbil bin Muslim said: "I heard Abu Umâmah Al-Bâhili say: 'I heard the Messenger of Allâh ﷺ say: "The child is for the bed and the fornicator gets nothing." (*Hasan*)

٢٠٠٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ قَالَ: سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْوَلَدُ

لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجْرِ».

تخريج: [إسناده حسن] أخرجه أحمد: ٢٦٧/٥ من حديث إسماعيل به مطولاً، و صححه البوصيري .

Chapter 60. When One Spouse Becomes Muslim Before The Other

(المعجم ٦٠) - بَابُ الرَّوْحَيْنِ يُسْلِمُ
أَحَدُهُمَا قَبْلَ الْآخَرِ (التحفة ٦٠)

2008. It was narrated from Ibn 'Abbās that a woman came to the Prophet ﷺ and became Muslim, and a man married her. Then her first husband came and said: "O Messenger of Allāh, I became Muslim with her, and she knew that I was Muslim." So the Messenger of Allāh ﷺ took her away from her second husband and returned her to her first husband. (*Da'if*)

٢٠٠٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا حَفْصُ بْنُ جُمَيْعٍ: حَدَّثَنَا سِمَاكٌ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً جَاءَتْ إِلَى النَّبِيِّ ﷺ فَأَسْلَمَتْ. فَتَزَوَّجَهَا رَجُلٌ. قَالَ: فَجَاءَ زَوْجُهَا الْأَوَّلُ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي قَدْ كُنْتُ أَسْلَمْتُ مَعَهَا، وَعَلِمْتُ بِإِسْلَامِي. قَالَ: فَانْتَزَعَهَا رَسُولُ اللَّهِ ﷺ مِنْ زَوْجِهَا الْآخِرِ، وَرَدَّهَا إِلَى زَوْجِهَا الْأَوَّلِ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: إذا أسلم أحد الزوجين، ح: ٢٢٣٨، ٢٢٣٩ من حديث سماك به، و صححه الترمذي، ح: ١١٤٤، والحاكم، والذهبي، وانظر، ح: ١٧١ لعلته.

Comments:

- If a wife embraces Islam before her husband, she is not allowed to have matrimonial relationship with him anymore. After passing one menstruation cycle as her waiting period, she is allowed to marry another man. (*Sahih Al-Bukhâri*: 5286).
- If she does not marry another man, and waits for her husband to embrace Islam, then this is allowed. Even if the husband embraces a long time after, they are still allowed to live a spouses' life under the previous marriage bond. But Imam Bukhâri quoted the verdicts of some Companions and the Successors that if a woman becomes Muslim first and then the husband embraces Islam, even though the waiting period has not yet finished, the new marriage contract is still necessary.

2009. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ returned his daughter to Abul-'Ās bin Rabi' after two years, on the basis of the first marriage contract. (*Da'if*)

٢٠٠٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ وَ يَحْيَى ابْنُ حَكِيمٍ. قَالَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ ابْنَةَ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ

رَسُولَ اللَّهِ ﷺ رَدَّ ابْنَتَهُ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، بَعْدَ سَتَيْنِ، يَبْكَاجُهَا الْأَوَّلَ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: إلی متى ترد علیه امرأته إذا أسلم بعدها، ح: ۲۲۴۰ من حدیث یزید به، أخرجه الترمذی، ح: ۱۱۴۲، ۱۱۴۳، وذكر كلامًا، وصححه الحاكم وغيره، وما روى داود عن عكرمة منكر كما قال ابن المديني وغيره (تهذيب)، وقال في التقريب في داود بن الحصين: ثقة إلا في عكرمة، ورمى برأي الخوارج .

2010. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ returned his daughter Zainab to Abul-'As bin Rabi', with a new marriage contract. (*Da'if*)

۲۰۱۰ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، بِنِكَاحٍ جَدِيدٍ.

تخریج: [إسناده ضعيف] أخرجه الترمذی، النكاح، باب ماجاء في الزوجين المشركين يسلم أحدهما، ح: ۱۱۴۲ من حدیث أبي معاوية به، وانظر، ح: ۴۹۶، ۱۱۲۹ لعلته .

Chapter 61. Intercourse With A Nursing Mother

(المعجم ۶۱) - بَابُ الْغَيْلِ (التحفة ۶۱)

2011. It was narrated that Judamah bint Wahb Al-Asadiyyah said: "I heard the Messenger of Allāh ﷺ say: 'I wanted to forbid intercourse with a nursing mother, but then (I saw that) the Persians and the Romans do this, and it does not kill their children.' And I heard him say, when he was asked about coitus interruptus: 'It is the disguised form of burying children alive.'" (*Sahih*)

۲۰۱۱ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ إِسْحَاقَ: حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ نَوْفَلٍ الْقُرَشِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنْ جَدَامَةَ بِنْتِ وَهَبِ الْأَسَدِيَّةِ أَنَّهَا قَالَتْ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «قَدْ أَرَدْتُ أَنْ أَنْهَى عَنِ الْغَيْالِ. فَإِذَا فَارِسٌ وَالرُّومُ يُغِيلُونَ فَلَا يَقْتُلُونَ أَوْلَادَهُمْ» وَسَمِعْتُهُ يَقُولُ، وَسُئِلَ عَنِ الْعَزْلِ، فَقَالَ: «هُوَ الْوَأْدُ الْحَقْفِيُّ».

تخریج: أخرجه مسلم، النكاح، باب جواز الغيلة، ح: ۱۴۴۲ من حدیث محمد بن عبدالرحمن بن نوفل به .

Comments:

Having sexual intercourse during the breastfeeding period carries the risk of conception; and due to it, the milk of the mother decreases, and the child

who is already breastfeeding would get weak for not having proper nutrition.

2012. It was narrated from Muhājir bin Abu Muslim, from Asmá' bint Yazid bin Sakan, who was his freed slave woman, that she heard the Messenger of Allāh ﷺ say: "Do not kill your children secretly, for by the One in Whose Hand is my soul, intercourse with a breastfeeding woman catches up with people when they are riding their horses (in battle) and wrestles them to the ground." (Da'if)

٢٠١٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمَزَةَ، عَنْ عَمْرِو بْنِ مَهَاجِرٍ أَنَّهُ سَمِعَ أَبَاهُ الْمُهَاجِرَ بْنَ أَبِي مُسْلِمٍ يُحَدِّثُ عَنْ أَسْمَاءَ بِنْتِ يَزِيدَ بْنِ السَّكَنِ. وَكَانَتْ مَوْلَانَهُ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَقْتُلُوا أَوْلَادَكُمْ سِرًّا. فَوَالَّذِي نَفْسِي بِيَدِهِ إِنْ الْغَيْلَ لَيُذْرِكُ الْفَارِسَ عَلَى ظَهْرِ فَرَسِهِ حَتَّى يَضْرَعَهُ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطب، باب: في الغيل، ح: ٣٨٨١ من حديث المهاجر به، وصححه ابن حبان * مهاجر الأنصاري وثقه ابن حبان وحده فيما أعلم.

Comments:

'Wrestles them to the ground' means the affect of weakness caused by intercourse with a breastfeeding woman remains affective for the whole life, even if such a child becomes a good horse rider after having grown up, he will not yet be able to compete with a child without such history. However this *Hadith* is Weak; therefore such concern is not necessary.

Chapter 62. A Woman Who Annoys Her Husband

(المعجم ٦٢) - بَابُ: فِي الْمَرْأَةِ تُوْذِي زَوْجَهَا (التحفة ٦٢)

2013. It was narrated that Abu Umamah said: "A woman came to the Prophet ﷺ with two of her children, carrying one and leading the other. The Messenger of Allāh ﷺ said: 'They carry children and give birth to them and are compassionate. If they do not annoy their husbands, those among them who perform prayer will enter Paradise.'" (Da'if)

٢٠١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُؤَمَّلٌ: حَدَّثَنَا سُفْيَانُ عَنِ الْأَعْمَشِ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ أَبِي أُمَامَةَ قَالَ: أَتَتِ النَّبِيَّ ﷺ امْرَأَةٌ مَعَهَا صَبِيَّانِ لَهَا. فَذُ حَمَلَتْ أَحَدَهُمَا وَهِيَ تَقُودُ الْآخَرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «حَامِلَاتٌ، وَاللِّدَاتُ، رَحِيمَاتٌ. لَوْلَا مَا يَأْتِيَنَّ إِلَى أَرْوَاجِهِنَّ، دَخَلَ مَصْلِيَاتُهُنَّ الْجَنَّةَ».

تخريج: [إسناده ضعيف] أخرجه الحاكم: ١٧٣/٤، ١٧٤ من حديث مؤمل بن إسماعيل به، وصححه على شرط الشيخين، ووافقه الذهبي * الأعمش تابعه منصور عند أحمد: ٢٦٩، ٢٥٧/٥، وغيره، وأخرجه أحمد: ٢٥٢/٥ بإسناد صحيح عن سالم بن أبي الجعد قال: ذكر لي عن أبي أمامة به، فالسند منقطع، والواسطة بينهما مجهولة.

2014. It was narrated from Mu'adh bin Jabal that the Messenger of Allāh ﷺ said: "No woman annoys her husband but his wife among houris (of Paradise) says: 'Do not annoy him, may Allāh destroy you, for he is just a temporary guest with you and soon he will leave you and join us.'" (Hasan)

٢٠١٤ - حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ الصُّحَّالِكِ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ، عَنْ بَجِيرِ بْنِ سَعْدٍ، عَنْ خَالِدِ بْنِ مَعْدَانَ، عَنْ كَثِيرِ بْنِ مَرْة، عَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُؤْذِي امْرَأَةً زَوْجَهَا إِلَّا قَالَتْ زَوْجَتُهُ مِنَ الْخُورِ الْعَيْنِ: لَا تُؤْذِيهِ. قَاتَلِكِ اللَّهُ فَإِنَّمَا هُوَ عِنْدَكَ دَخِيلٌ أَوْشَكُ أَنْ يُفَارِقَكَ إِلَيْنَا».

تخريج: [إسناده حسن] أخرجه الترمذي، الرضاع، باب الوعيد للمرأة على إيداء المرأة زوجها، ح: ١١٧٤ من حديث إسماعيل به، وقال: حسن غريب * إسماعيل بن عياش صرح بالسماع عند أبي نعيم في الحلية: ٢٢٠/٥، وباقي السند صحيح.

Comments:

- Not to obey the correct orders of the husband is a major sin.
- If a woman annoys her good husband, this annoys the maids of Paradise.
- Houri literally means the woman of white color and beautiful black eyes. They are the women whom Allāh created in Paradise for the men of Paradise. The righteous Muslim women, who lives their live according to the commandments of Allāh, their status in Paradise will be higher than that of the maids of Paradise.

Chapter 63. What Is *Harâm* Does Not Make What Is *Halâl* A *Harâm*

(المعجم ٦٣) - بَابُ: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ (التحفة ٦٣)

2015. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "What is *Harâm* does not make what is *Halâl* into what is *Harâm*."^[1] (Da'if)

٢٠١٥ - حَدَّثَنَا يَحْيَى بْنُ مَعْلَى بْنِ مَنصُورٍ: حَدَّثَنَا إِسْحَاقُ بْنُ مُحَمَّدٍ الْقُرَوِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ».

[1] Meaning either: If one prohibits something for himself, it does not make the thing unlawful, or the commission of an unlawful act will not, by itself, makes something else unlawful.

تخريج: [إسناده ضعيف] أخرجه الدارقطني: ٣/٢٦٨، والبيهقي: ٧/١٦٨ من حديث الفروي به * الفروي ضعفه النجهمور، وروى عنه البخاري ثلاثة أحاديث: كأنها مما أخذه عنه من كتابه قبل ذهاب بصره، وأما العمري فتقدم حاله، ح: ٣٦٦، ١٢٩٩.

Comments:

According to the majority of the scholars, if a man committed adultery with a woman, his marriage with this woman will not be unlawful because of the illegal sex; neither the mother of this woman will be unlawful as mother-in-law for the man, nor the daughter of this woman will be unlawful like the stepdaughter. Similarly, if a man commits adultery with his mother-in-law or stepdaughter, then due to this, his wife will not become unlawful for him; because this relation, legally, is not a relationship of wife and husband. The mentioned commandments are related to the wife. The sin of adultery and the entitlement to its punishment is one thing, and it being prohibited is another thing. (For further information see: *Tafsir Ahsanul-Bayân* by Hâfiz Salâh-uddin Yusuf, *Surah : An-Nisâ* 4: 23)

[بِسْمِ اللَّهِ الرَّكَّابِ الرَّحِيمِ]

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

10. The Chapters On Divorce

(المعجم ١٠) أَبْوَابُ الطَّلَاقِ

(التحفة ٨)

Comments:

The following are three types of divorce:

- Divorce in accordance with the *Sunnah*: Such a divorce given to a wife during her purity period (the days other than her menses) and on the basis that he has not had intercourse with her during her purity. A husband should divorce her by saying 'I divorce you' or 'You are divorced' and thereafter he maintains her living expenses; and he keeps her in his house for the waiting period (which is three menses or three months) and they should separate after the waiting period is over. This is the best way to divorce. Restoring one's wife after issuing such a divorce is consensually correct, and establishing a new bond of marriage after the waiting time has elapsed is also permissible.
- Divorce contrary to *Sunnah*: Divorce issued to a woman during her menses or during her purity, in which the husband has had intercourse with her; or pronouncing divorce three times in the same session is contrary to the *Sunnah*.
- False or Ineffective Divorce: Divorce issued by a person being forced to do so, divorcing before establishing a bond of marriage, divorce of a child, divorce of an insane person, or the divorce of an unconscious person are all ineffective.

Chapter 1. Suwayd bin Sa'eed told us

(المعجم ١٠) - [بَابُ: حَدَّثَنَا سُؤَيْدُ بْنُ

سَعِيدٍ] (التحفة ١)

2016. It was narrated from 'Umar bin Khattāb that the Messenger of Allāh ﷺ divorced Hafsah then took her back. (*Sahih*)

٢٠١٦ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ، وَ عَبْدِ اللَّهِ ابْنُ عَامِرٍ بْنِ زُرَّازَةَ، وَمَشْرُوقُ بْنُ الْمَرْزُبَانِ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، عَنْ صَالِحِ بْنِ صَالِحِ بْنِ حَيٍّ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ ﷺ طَلَّقَ حَفْصَةَ ثُمَّ رَاجَعَهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في المراجعة، ح: ٢٢٨٣ من حديث يحيى بن زكريا به، وذكر الحافظ النسائي له علته، ولكنها غير قاطعة.

Comments:

- a. Giving divorce is permissible but one should avoid doing so without any valid reason.
- b. Restoration of the wife after divorce grants her all the rights that she had before divorce.

2017. It was narrated from Abu Musa that the Messenger of Allâh ﷺ said: What is wrong with people who play with the limits imposed by Allâh, and one of them says: "I divorce you, I take you back, I divorce you?" (*Da'if*)

٢٠١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُؤَمَّلٌ: حَدَّثَنَا سُفْيَانُ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا بَالُ أَقْوَامٍ يَلْعَبُونَ بِحُدُودِ اللَّهِ. يَقُولُ أَحَدُهُمْ: قَدْ طَلَقْتِكِ. قَدْ رَاجَعْتِكِ. قَدْ طَلَقْتِكِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٢٢/٧ من حديث مؤمل بن إسماعيل به، وتابعه أبو حذيفة موسى بن مسعود نا سفیان الثوري به * أبوإسحاق تقدم، ح: ٤٦، والثوري تقدم، ح: ١٦٢، مدلسان وعنعنا، ومع ذلك حسنه البوصيري.

2018. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ said: "The most hated of permissible things to Allâh is divorce." (*Sahih*)

٢٠١٨ - حَدَّثَنَا كَثِيرُ بْنُ عُيَيْدٍ الْجَمَصِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، عَنْ عُيَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ، عَنْ مَحَارِبِ بْنِ دِنَارٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ».

تخریج: [صحیح] أخرجه ابن عدي من حديث محمد بن خالد به، وقال: الوصافي ضعيف جدًا قلت: تابعه الثقة معرف بن واصل عند أبي داود، ح: ٢١٧٨ وغيره، وبه صح الحديث، وصححه الحاكم، والذهبي، ولم أر لمضعفه حجة.

Chapter 2. Divorce According To The Sunnah

(المعجم ٢) - **بَابُ طَلَاقِ السَّنَةِ**
(التحفة ٢)

2019. It was narrated that Ibn 'Umar said: "I divorced my wife when she was menstruating. 'Umar mentioned that to the Messenger of Allâh and he said: "Tell him to take her back until she becomes pure (i.e., her period ends), then she has her period (again), then she becomes pure

٢٠١٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ عُيَيْدِ اللَّهِ، عَنْ نَافِعِ، عَنِ ابْنِ عُمَرَ قَالَ: طَلَّقْتُ امْرَأَتِي وَهِيَ حَائِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «مُرَهُ فَلْيُرَاجِعْهَا حَتَّى تَطْهَرُ، ثُمَّ تَحِيضَ، ثُمَّ تَطْهَرُ. ثُمَّ إِنْ شَاءَ طَلَّقَهَا قَبْلَ أَنْ

(again), then if he wishes he may divorce her before having sexual relations with her, and if he wishes he may keep her. This is the waiting period that Allāh has enjoined.” (Sahih)

يُجَامِعَهَا. وَإِنْ شَاءَ أَمْسَكَهَا. فَإِنَّهَا الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ.»

تخريج: أخرجه مسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتها، ح: ٢/١٤٧١ عن ابن أبي شيبة وغيره به، وأخرجه البخاري، ح: ٥٢٥١، ومسلم وغيرهما من طريق مالك عن نافع به.

Comments:

Issuing divorce during menses, or during the pure days in which the husband has had intercourse, is an illegal way of divorce. This divorce has the controversial status of it being effective or ineffective. It will take place according to many scholars (like Imam Bukhārī رحمه الله), and they said the person giving divorce in such a way will be sinful. Some other scholars said this type of divorce cannot take place at all because it is not in accordance with the *Sunnah*. Imam Ibn Hazm and Imam Ibn Taimiyyah and others, may Allāh have mercy on them, hold this opinion.

2020. It was narrated that ‘Abdullāh said: “Divorce according to the *Sunnah* means divorcing her when she is pure, (i.e., not menstruating) and without having had intercourse with her (during that cycle).”

(Hasan)

تخريج: [حسن] أخرجه النسائي، الطلاق، باب طلاق السنة، ح: ٣٤٢٤ من حديث يحيى القطان به، وصححه ابن حزم في المحلى: ١٠/١٧٢ مسألة: ١٩٤٩، وانظر، ح: ٤٦ لعلته، وللحديث شواهد عند ابن أبي شيبة، كتاب الطلاق، باب: ١ وغيره.

٢٠٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَحْوَصِ، عَنْ عَبْدِ اللَّهِ قَالَ: طَلَاقُ السُّنَّةِ أَنْ يُطَلَّقَهَا طَاهِرًا مِنْ غَيْرِ جَمَاعٍ.

2021. It was narrated that ‘Abdullāh said: “Divorce according to the *Sunnah* means divorcing her with one divorce in each cycle when she is pure, then when she becomes pure the third time, then he pronounces divorce again, and after that she must wait one more menstrual cycle.”

(Hasan)

٢٠٢١ - حَدَّثَنَا عَلِيُّ بْنُ مَيْمُونِ الرَّقِّيُّ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَحْوَصِ، عَنْ عَبْدِ اللَّهِ، قَالَ، فِي طَلَاقِ السُّنَّةِ: يُطَلَّقُهَا عِنْدَ كُلِّ طَهْرٍ تَطْلِيْقَةً. فَإِذَا طَهَّرَتْ الثَّلَاثَةَ طَلَّقَهَا وَعَلَيْهَا بَعْدَ ذَلِكَ حَيْضَةٌ.

تخریج: [حسن] انظر الحديث السابق .

Comments:

- a. This is in such a case when the husband is determined for permanent separation and thus a third, final and irrevocable divorce will take place, after which returning the wife into a bond of marriage becomes impossible. It is better to let the waiting period pass after one divorce, if the husband has no intention to return to her, and thus the woman will come out of the bond of marriage, and thereafter, if there is a chance of reconciliation, they may live together as wife and husband after renewing the bond of marriage (after a new marriage contract.)
- b. If a wife is returned after the first divorce, and then the second divorce is issued, the waiting time for the second divorce is also three menstruation periods; the return of a wife, during this waiting time, without a new bond of marriage is allowed.

2022. It was narrated that Yunus bin Jubair, Abu Ghallâb, said: "I asked Ibn 'Umar about a man who divorced his wife when she was menstruating. He said: 'Do you know 'Abdullâh bin 'Umar? He divorced his wife when she was menstruating then 'Umar came to the Prophet ﷺ (and told him what had happened). He ordered him to take her back.' I said: 'Will that be counted (as a divorce)?' He said: 'Do you think he was helpless and behaving foolishly? [i.e., yes, it counts (as a divorce)].'" (*Sahih*)

٢٠٢٢ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ، عَنْ يُونُسَ بْنِ جُبَيْرٍ، أَبِي غَلَّابٍ قَالَ: سَأَلْتُ ابْنَ عُمَرَ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَقَالَ: تَعْرِفُ عَبْدَ اللَّهِ بْنَ عُمَرَ؟ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَأَتَى عُمَرُ النَّبِيَّ ﷺ. فَأَمَرَهُ أَنْ يُرَاجِعَهَا. قُلْتُ: أَيْعَتَدُ بِتِلْكَ؟ قَالَ: أَرَأَيْتَ، إِنْ عَجَزَ وَاسْتَحَمَقَ؟

تخریج: أخرجه البخاري، الطلاق، باب مراجعة الحائض، ح: ٥٣٣٣، ومسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتهما، ح: ٩/١٤٧١ من حديث محمد بن سيرين به.

Comments:

The Prophet ﷺ ordered him to take her back. The wording 'to take her back' is a proof that the divorce had taken place because returning (taking a wife back) only happens after divorce. Those scholars who are not in favor of the effectiveness of this divorce, they say the wording 'to take her back' means to establish normal spouses' relation as it was before divorce. (I say: This divorce is affective, as quoted earlier in the view of Imam Bukhâri. — *Usmani*)

Chapter 3. How A Pregnant Woman Is To Be Divorced

2023. It was narrated from Ibn 'Umar that he divorced his wife when she was menstruating, and 'Umar mentioned that to the Prophet ﷺ. He said: "Tell him to take her back then divorce her when she is pure (not menstruating) or pregnant." (*Sahih*)

(المعجم ٣) - بَابُ الْحَامِلِ كَيْفَ تُطَلَّقُ

(التحفة ٣)

٢٠٢٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ ابْنُ مُحَمَّدٍ . قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، مَوْلَى آلِ طَلْحَةَ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ فَقَالَ: «مَرَّةٌ فَلْيَرْجِعْهَا ثُمَّ يُطَلِّقْهَا وَهِيَ طَاهِرَةٌ أَوْ حَامِلَةٌ».

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ٥/١٤٧١ عن ابن أبي شيبه وغيره به.

Comments:

Divorce can be given as the pregnancy is confirmed; there is no need for waiting until the delivery, because the confirmation of pregnancy leaves no doubt for establishing a family lineage. In this condition, the waiting time for a woman is until the delivery of the baby, during which the husband is allowed to take her back.

Chapter 4. One Who Divorces His Wife Three Times In One Sitting

2024. It was narrated that 'Amir Sha'bi said: "I said to Fâtimah bint Qais: 'Tell me about your divorce.' She said: 'My husband divorced me three times when he was leaving for Yemen, and the Messenger of Allâh ﷺ allowed that.'" (*Da'if*)

(المعجم ٤) - بَابُ مَنْ طَلَّقَ ثَلَاثًا فِي

مَجْلِسٍ وَاحِدٍ (التحفة ٤)

٢٠٢٤ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَابَانَ اللَّيْثُ ابْنُ سَعْدٍ، عَنْ إِسْحَاقَ بْنِ أَبِي قُرَوَةَ، عَنْ أَبِي الزُّنَادِ، عَنْ عَامِرِ الشَّعْبِيِّ قَالَ: قُلْتُ لِغَاطِمَةَ بِنْتِ قَيْسٍ: حَدِّثِي عَن طَلَاؤِكَ. قَالَتْ: طَلَّقَنِي زَوْجِي ثَلَاثًا، وَهُوَ خَارِجٌ إِلَى الْيَمَنِ. فَأَجَارَ ذَلِكَ رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده ضعيف جداً] أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٥٤٣/١٤٨٠ وغيره، من طرق عن الشعبي نحوه دون قوله: فأجاز ذلك رسول الله ﷺ، وانظر، ح: ٢٠٣٦.

Comments:

a. The narration of *Sahih Muslim* clarifies that Abu 'Amr bin Hafs bin Mughirah Makhzumi, the husband of Fâtimah, the daughter of Qais, had already divorced her twice, and he sent her the third and the final divorce

from Yemen, through 'Aiyâsh bin Abu Rabi'ah. He did not divorce her with three pronouncements at a time in one session. (*Sahih Muslim*: 1480).

- b. As divorce can be given directly to the wife, likewise the message of divorce may also be sent through a reliable person, and may be sent as a written divorce; divorce can take place in any mentioned form.

Chapter 5. Taking One's Wife Back

(المعجم ٥) - بَابُ الرَّجْعَةِ (التحفة ٥)

2025. 'Imrân bin Husain was asked about a man who divorced his wife then had intercourse with her, and there were no witnesses to his divorcing her or his taking her back. 'Imrân said: "You have divorced (her) in a manner that is not according to the *Sunnah*, and you have taken her back in a manner that is not according to the *Sunnah*. Bring people to witness your divorcing her and taking her back." (*Sahih*)

٢٠٢٥ - حَدَّثَنَا بِشْرُ بْنُ هَلَالٍ الصَّوَّافُ: حَدَّثَنَا جَعْفَرُ بْنُ سُلَيْمَانَ الضُّبَيْيُّ، عَنْ يَزِيدَ الرَّشْدِيِّ، عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشُّخَيْرِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ سُئِلَ عَنْ رَجُلٍ يُطَلِّقُ امْرَأَتَهُ ثُمَّ يَقَعُ بِهَا وَلَمْ يُشْهَدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعَتِهَا. فَقَالَ عِمْرَانُ: طَلَّقْتَ بِغَيْرِ سُنَّةٍ، وَرَاجَعْتَ بِغَيْرِ سُنَّةٍ، أَشْهَدْ عَلَى طَلَاقِهَا [وَعَلَى] رَجْعَتِهَا.

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب الرجل يراجع ولا يشهد،

ح: ٢١٨٦ عن بشر بن هلال به.

Comments:

As the witnesses are required for the marriage bond, similarly the divorce and return should be in the presence of witnesses. (Although the presence of witnesses is not required compulsorily for divorce and return as it is in the case of marriage. — *Usmani*)

Chapter 6. When A Divorced Pregnant Woman Gives Birth, The Divorce Becomes Irrevocable

(المعجم ٦) - بَابُ الْمُطَلَّاقَةِ الْحَامِلِ إِذَا وَضَعَتْ ذَا بَطْنِهَا بَانَتْ (التحفة ٦)

2026. It was narrated from Zubair bin 'Awwâm that he was married to Umm Kulthum bint 'Uqbah, and she said to him when she was pregnant: "I will accept one divorce." So he divorced her once. Then he went out for prayer, and when he came back

٢٠٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ هَيَّاجٍ: حَدَّثَنَا قَبِيصَةُ بْنُ عُقْبَةَ: حَدَّثَنَا سُفْيَانُ عَنْ عَمْرِو بْنِ مَيْمُونٍ، عَنْ أَبِيهِ، عَنِ الرَّبِيعِ بْنِ الْعَوَّامِ أَنَّهُ كَانَتْ عِنْدَهُ أُمُّ كَلْثُومِ بِنْتِ عُقْبَةَ. فَقَالَتْ لَهُ، وَهِيَ حَامِلٌ: طَيِّبْ نَفْسِي

she had given birth. He said: "What is wrong with her? She misled me, may Allâh mislead her!" Then he came to the Prophet ﷺ, who said: "Her waiting period is over (and she is divorced); propose marriage anew to her." (*Da'if*)

بَطْلِقَهَا. فَطَلَّقَهَا تَطْلِيقَةً. ثُمَّ خَرَجَ إِلَى الصَّلَاةِ فَرَجَعَ وَقَدْ وَضَعَتْ. فَقَالَ: مَا لَهَا؟ خَدَعْتَنِي، خَدَعَهَا اللَّهُ. ثُمَّ أَتَى النَّبِيَّ ﷺ فَقَالَ: «سَبَقَ الْكِتَابَ أَجَلَهُ. اخْطُبْهَا إِلَى نَفْسِهَا».

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناد رجاله ثقات، إلا أنه منقطع * ميمون هو ابن مهران، أبو أيوب، رواه عن الزبير مرسله، قاله المزي في الأطراف، وأخرج البيهقي: ٧/ ٤٢١ من طريق إبراهيم بن أبي الليث (ضعيف) عن الأشجعي عن سفیان عن عمرو بن ميمون عن أبيه عن أم كلثوم بنت عقبة به، وضعفه ظاهر وفيه علة أخرى.

Comments:

- Zubair ﷺ divorced her once with the intention to take her back, but he did not know that the delivery of the baby was near to this extent.
- If the waiting time for the divorce of revocation elapses, then just the verbal action of taking the wife back is not enough, rather they should marry anew.
- Asking the hand of an ex-wife for marriage again, means if she likes, she may remarry her ex-husband, otherwise there is no enforcement.
- The birth of a baby terminates the waiting period of divorce, as well as the waiting period after a husband's death.

Chapter 7. When A Pregnant Widow Gives Birth, It Is Permissible For Her To Remarry

2027. It was narrated that Abu Sanâbil said: "Subai'ah Aslamīyah bint Hârith gave birth twenty-odd days after her husband died. When her postnatal bleeding ended, she adorned herself, and was criticized for doing that. Her case was mentioned to the Prophet ﷺ, and he said: 'If she does that, then her waiting period is over.'" (*Hasan*)

(المعجم ٧) - بَابُ الْحَامِلِ الْمُتَوَفَّى
عَنْهَا زَوْجَهَا، إِذَا وَضَعَتْ حَلَّتْ
لِلْأَزْوَاجِ (التحفة ٧)

٢٠٢٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو الْأَخْوَصِ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ أَبِي السَّنَابِلِ قَالَ: وَضَعَتْ سُبَيْعَةُ الْأَسْلَمِيَّةُ بِنْتُ الْحَارِثِ حَمَلَهَا بَعْدَ وَقَاةِ زَوْجِهَا بِبِضْعِ وَعِشْرِينَ لَيْلَةً. فَلَمَّا تَعَلَّتْ مِنْ نِفَاسِهَا تَشْرُفَتْ. فَعَيْبَ ذَلِكَ عَلَيْهَا. وَذَكَرَ أَمْرَهَا لِلنَّبِيِّ ﷺ. فَقَالَ: «إِنْ تَفَعَّلَ فَقَدْ مَضَى أَجَلُهَا».

تخریج: [حسن] أخرجه الترمذي، الطلاق، باب ما جاء في الحامل المتوفى عنها زوجها
تضع، ح: ۱۱۹۳ من حديث منصور به، وقال: لا تعرف للأسود شيئاً عن أبي السنابل، وللحديث
شواهد عند النسائي، ح: ۳۵۰۹ وغيره.

Comments:

- The waiting period for a pregnant woman is up to delivery. This issue has also been mentioned in the Noble Qur'an, as the Divine statement is: "...and those who are pregnant, their waiting period shall be until they deliver their pregnancy." (*At-Talâq* 65: 4).
- The intention of Suba'ah ﷺ to marry after she had delivered the child was objected to by Abu Sanâbil himself, who thought if the birth takes place before the end of the waiting period (four months and ten days) then the widow should wait for the full prescribed waiting period of four months and ten days. The period of waiting until the delivery shall be only if the delivery takes longer than four months and ten days, as mentioned in the following *Hadith*.
- In the beginning Suba'ah also believed that the opinion of Abu Sanâbil was true; but it became clear after having been asked from the Prophet ﷺ that the waiting period will come to end soon after the birth of child. (See *Hadith*: 2028)

2028. It was narrated that Masruq and 'Amr bin 'Utbah wrote to Suba'ah bint Hârith, asking about her case. She wrote to them saying that she gave birth twenty-five days after her husband died. Then she prepared herself, seeking to remarry. Abu Sanâbil bin Ba'kak passed by her and said: "You are in a hurry; observe waiting period for the longer period, four months and ten days." "So I went to the Prophet ﷺ and said: 'O Messenger of Allâh, pray for forgiveness for me.' He said: 'Why is that?' I told him (what had happened). He said: 'If you find a righteous husband then marry him.'" (*Sahih*)

۲۰۲۸ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنِ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، وَ عَمْرٍو بْنِ عُتْبَةَ أَنَّهُمَا كَتَبَا إِلَى سُبَيْعَةَ بِنْتِ الْحَارِثِ يَسْأَلَانِهَا عَنْ أَمْرِهَا. فَكَتَبَتْ إِلَيْهِمَا: إِنَّهَا وَضَعَتْ بَعْدَ وَقَاةٍ زَوْجَهَا بِخَمْسَةِ وَعَشْرِينَ. فَتَهَيَّأَتْ تَطْلُبُ الْخَيْرَ. فَمَرَّ بِهَا أَبُو السَّنَابِلِ بْنُ بَعَكَكٍ. فَقَالَ: قَدْ أَسْرَعْتَ. اعْتَدِي آخِرَ الْأَجَلَيْنِ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. فَأَتَيْتُ النَّبِيَّ ﷺ. فَقُلْتُ: يَا رَسُولَ اللَّهِ اسْتَعْمِرْ لِي. قَالَ: «وَفِيمَ ذَلِكَ» فَأَخْبَرْتُهُ. فَقَالَ: «إِنْ وَجَدْتَ زَوْجًا صَالِحًا فَتَزَوَّجِي».

تخریج: [إسناده صحيح] أخرجه الطبراني (الكبير: ۲۴/۲۹۳)، ح: ۷۴۵ من حديث ابن أبي شيبه به، أخرجه البخاري، ح: ۵۳۱۹، ۳۹۹۱، ومسلم، ح: ۱۴۸۴ من حديث سبيعة رضي الله عنها

به مطولاً نحو المعنى .

Comments:

- Preparing for marriage means she replaced the simple dress, which is worn for the waiting period, with a good looking dress, and she also applied the relevant adornment.
- Requesting for the supplication of forgiveness means she was remorseful about the mistake of lifting the restrictions of the waiting period before its due time. The prophetic statement clarifies that her waiting period had come to end, therefore, she did not make any mistake and should not worry about this matter.

2029. It was narrated from Miswar bin Makhramah that the Prophet ﷺ told Subai'ah to get married, when her postnatal bleeding ended. (*Sahih*)

٢٠٢٩ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ، وَ مُحَمَّدُ بْنُ بَشَّارٍ. قَالَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ دَاوُدَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ الْمُسَوِّرِ بْنِ مَخْرَمَةَ أَنَّ النَّبِيَّ ﷺ أَمَرَ سُبَيْعَةَ أَنْ تَنْكِحَ، إِذَا تَعَلَّتْ مِنْ نِفَاسِهَا.

تخریج: أخرجه البخاري، الطلاق، باب «وأولات الأحمال أجلهن أن يضعن حملهن» ح: ٥٣٢٠ من حديث هشام به، وأصله متفق عليه، البخاري، ح: ٤٩٠٩، ومسلم، ح: ١٤٨٥ من حديث كريب عن أم سلمة ببعضه.

2030. It was narrated that 'Abdullâh bin Mas'ud said: "By Allâh, for those who would like to go through the process of praying for Allâh's curse to be upon the one who is wrong, the shorter *Surah* concerning women^[1] was revealed after (the Verses^[2] which speak of the waiting period of) four months and ten (days)."

٢٠٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: وَاللَّهِ لَمَنْ شَاءَ لَأَعْتَاهُ. لِأَنْزَلَتْ سُورَةُ النِّسَاءِ الْفُضْرَى بَعْدَ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا.

تخریج: [صحیح] أخرجه أبو داود، الطلاق، باب في عدة الحامل، ح: ٢٣٠٧ من حديث أبي معاوية به، انظر، ح: ١٧٨ لعلته، وللحديث طرق كثيرة ولكنها معلولة بتدليس الرواة، وغيره صحيح بالشواهد.

Comments:

- The Verse of *Surat At-Talâq* legislates that the waiting period for a pregnant women shall be till delivery. This is the last rule in the chronological order

[1] Meaning *Surat At-Talâq*. (65: 4).

[2] *Surat Al-Baqarah* 2:234.

of revelation; and the Verse (234) of *Surat Al-Baqarah* that the waiting period for a widow is four months and ten days was revealed earlier. Therefore, if a pregnant woman's husband dies her waiting period will not be four months and ten days, rather it will be till delivery, regardless if the time for delivery is longer or shorter, and this is the correct rule.

- b. A woman who is not pregnant and her husband dies, she will spend her waiting period according to *Surat Al-Baqarah*, which is four months and ten days, regardless if she has consummated the marriage or not.

Chapter 8. Where Should The Woman Whose Husband Died Observe Her Waiting Period?

2031. It was narrated from Zainab bint Ka'b bin 'Ujrah, who was married to Abu Sa'eed Al-Khudri, that his sister Furai'ah bint Mâlik said: "My husband went out to pursue some slaves of his. He caught up with them at the edge of Qadum^[1] and they killed him. News of his death reached me when I was in one of the houses of the *Ansâr*, far away from the house of my family and my brothers. I went to the Prophet ﷺ and said: 'O Messenger of Allâh, there has come to me news of my husband's death and I am in a house far away from the house of my people and the house of my brothers. He did not leave any money that could be spent on me, or any inheritance, or any house I may take possession of. If you think that you could give me permission to join my family and my brothers, then that is what I prefer and is better for me in

(المعجم ٨) - بَابُ: أَيَنْ تَعْتَدُ الْمُتَوَفَّى
عَنْهَا زَوْجَهَا؟ (التحفة ٨)

٢٠٣١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَخْمَرِيُّ، سُلَيْمَانُ بْنُ حَيَّانَ، عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عَجْرَةَ، عَنْ زَيْنَبِ بِنْتِ كَعْبِ بْنِ عَجْرَةَ وَكَانَتْ تَحْتَ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ أُخْتَهُ الْفُرَيْعَةَ بِنْتَ مَالِكِ، قَالَتْ: خَرَجَ زَوْجِي فِي طَلَبِ أَعْلَاجٍ لَهُ. فَأَذْرَكَهُمْ بِطَرْفِ الْقُدُومِ. فَتَقْتَلُوهُ. فَجَاءَ نَعْيَ زَوْجِي وَأَنَا فِي دَارٍ مِنْ دُورِ الْأَنْصَارِ. شَاسِعَةٍ عَنْ دَارِ أَهْلِي. فَأَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّهُ جَاءَ نَعْيَ زَوْجِي وَأَنَا فِي دَارٍ شَاسِعَةٍ عَنْ دَارِ أَهْلِي وَدَارِ إِخْوَتِي. وَلَمْ يَدَعْ مَالًا يُنْفِقُ عَلَيَّ، وَلَا مَالًا وَرَثَتُهُ. وَلَا دَارًا يَمْلِكُهَا. فَإِنْ رَأَيْتَ أَنْ تَأْذَنَ لِي فَأَلْحَقَ بِدَارِ أَهْلِي وَدَارِ إِخْوَتِي فَإِنَّهُ أَحَبُّ إِلَيَّ، وَأَجْمَعُ لِي فِي بَعْضِ أَمْرِي. قَالَ: «فَأَفْعَلِي إِنْ شِئْتِ» قَالَتْ: فَخَرَجْتُ قَرِيرَةً عَيْنِي لِمَا قَضَى اللَّهُ لِي عَلَى لِسَانِ رَسُولِ اللَّهِ ﷺ. حَتَّى إِذَا كُنْتُ فِي الْمَسْجِدِ، أَوْ فِي

[1] A location outside of Al-Madinah.

some ways.' He said: 'Do that if you wish.' Then I went out, feeling happy with the ruling of Allâh given upon the lips of the Messenger of Allâh ﷺ, until, when I was in the mosque, or, in one of the apartments, he called me and said: 'What did you say?' I told him the story, and he said: 'Stay in the house in which the news of your husband's death came to you, until your waiting period is over.'" She said: "So I observed the waiting period there for four months and ten (days)."(Sahih)

بَعْضِ الْحُجْرَةِ دَعَانِي فَقَالَ: «كَيْفَ رَعِمْتِ؟»
قَالَتْ: فَقَصَّصْتُ عَلَيْهِ. فَقَالَ: «امْكُتِي فِي
بَيْتِكَ الَّذِي جَاءَ فِيهِ نَعْيُ زَوْجِكَ حَتَّى يَبْلُغَ
الْكِتَابُ أَجَلَهُ» قَالَتْ: فَأَعْتَدْتُ فِيهِ أَرْبَعَةَ
أَشْهُرٍ وَعَشْرًا.

تخریج: [إسناده صحيح] أخرجه أبوداود، الطلاق، باب في المتوفى عنها تنتقل؟، ح: ۲۳۰۰ من حديث سعد بن إسحاق به، وصححه الترمذي، ح: ۱۲۰۴، والذهلي، والحاكم، والذهبي.

Comments:

- A widow should spend her waiting period at the same place where she lived with her husband.
- The waiting period for a widow who is not pregnant is four months and ten days.

Chapter 9. Can A Woman Go Out During Her Waiting Period?

2032. It was narrated from Hishâm bin 'Urwah that his father said: "I entered upon Marwân and said to him: 'A woman from your family has been divorced. I passed by her and she was moving. She said: 'Fâtimah bint Qais told us to do that, and she told us that the Messenger of Allâh ﷺ told her to move.' Marwân said: 'She told them to do that.'" 'Urwah said: "I said: 'By Allâh, 'Aîshah did not like that, and said: 'Fâtimah was

(المعجم ۹) - بَابُ: هَلْ تَخْرُجُ الْمَرْأَةُ
فِي عِدَّتِهَا (التحفة ۹)

۲۰۳۲ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا
عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا ابْنُ أَبِي
الرَّزَادِ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ قَالَ:
دَخَلْتُ عَلَى مَرْوَانَ فَقُلْتُ لَهُ: امْرَأَةٌ مِنْ
أَهْلِكَ طَلَّقَتْ. فَمَرَرْتُ عَلَيْهَا وَهِيَ تَتَّقِلُ.
فَقَالَتْ: أَمَرْتَنَا فَاطِمَةُ بِنْتُ قَيْسٍ، وَأَخْبَرْتَنَا
أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَهَا أَنْ تَتَّقِلَ. فَقَالَ
مَرْوَانُ: هِيَ أَمَرْتَهُمْ بِذَلِكَ. قَالَ عُرْوَةُ،
فَقُلْتُ: أَمَا وَاللَّهِ لَقَدْ عَابَتْ ذَلِكَ عَائِشَةُ،

living in a deserted house and it was feared for her (safety and well being), so the Messenger of Allāh ﷺ granted a concession to her." (Hasan)

وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَسْكَنٍ وَحْشٍ. فَخِيفَ عَلَيْهَا. فَلِذَلِكَ أَرْخَصَ لَهَا رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب من أنكر ذلك على فاطمة بنت قيس، ح: ٢٢٩٢ من حديث عبدالرحمن بن أبي الزناد به، وعلقه البخاري في صحيحه، ح: ٥٣٢٦.

Comments:

- The waiting period after divorce should also be spent at the husband's home.
- It is permissible for the accommodation to be changed due to extreme reasons (like insecurity).

2033. It was narrated that 'Āishah said: "Fâtimah bint Qais said: 'O Messenger of Allāh, I am afraid that someone may enter upon me by force.' So he told her to move." (Sahih)

٢٠٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: قَالَتْ فَاطِمَةُ بِنْتُ قَيْسٍ: يَا رَسُولَ اللَّهِ! إِنِّي أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ. فَأَمَرَهَا أَنْ تَتَحَوَّلَ.

تخریج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ١٤٨٢، والنسائي، ح: ٣٥٧٧ كلاهما عن محمد بن المثنى عن حفص بن غياث حدثنا هشام عن أبيه عن فاطمة بنت قيس به، وهو الصواب، وقوله: عن عائشة قالت ، وهم.

2034. It was narrated that Jābir bin 'Abdu'llāh said: "My maternal aunt was divorced, and she wanted to collect the harvest from her date-palm trees. A man rebuked her for going out to the trees. She went to the Prophet ﷺ, who said: 'No, go and collect the harvest from your trees, for perhaps you will give some in charity or do a good deed with it.'" (Sahih)

٢٠٣٤ - حَدَّثَنَا سُفْيَانُ بْنُ وَكَيْعٍ: حَدَّثَنَا رَوْحٌ؛ ح: وَحَدَّثَنَا أَحْمَدُ بْنُ مُنْصَوِّرٍ: حَدَّثَنَا حَجَّاجُ بْنُ مُحَمَّدٍ، جَمِيعًا عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ. قَالَ: طَلَّقْتُ خَالَتِي. فَأَرَادَتْ أَنْ تَجِدَ نَخْلَهَا. فَزَجَرَهَا رَجُلٌ أَنْ تَخْرَجَ إِلَيْهِ. فَأَتَتْ النَّبِيَّ ﷺ فَقَالَ: «بَلَى. فَجُدِّي نَخْلَكَ. فَإِنَّكَ عَسَى أَنْ تَصَدَّقِي أَوْ تَعْمَلِي مَعْرُوفًا».

تخریج: أخرجه مسلم، الطلاق، باب جواز خروج المعتدة البائن والمتوفى عنها زوجها في النهار لحاجتها، ح: ١٤٨٣ من حديث حجاج وغيره به.

Comments:

- a. A woman is allowed to go out of her house during her waiting period if there is a dire and extreme need for her to do so.
- b. Had Jâbir's maternal aunt not been allowed to pick fruit from her orchard, it would have gone to waste. Therefore, she had to step out of her house for the safety of the seasonal harvest.
- c. It is inappropriate to step outside of the home for minor things. Likewise she should not go to visit a relative or to attend a wedding or any occasions of grief, because these things are not of extreme necessity.

Chapter 10. Does A Woman Who Has Been Divorced Three Times Have The Right To Accommodation And Maintenance?

2035. It was narrated that Abu Bakr bin Abu Jahm bin Sukhair Al-'Adawi said: "I heard Fâtimah bint Qais say that her husband divorced her three times, and the Messenger of Allâh ﷺ did not say that she was entitled to accommodation and maintenance." (*Sahih*)

(المعجم ١٠) - بَابُ : الْمُطَلَّاقَةِ ثَلَاثًا
هَلْ لَهَا سُكْنَى وَنَفَقَةٌ؟ (التحفة ١٠)

٢٠٣٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ
عَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا
سُفْيَانُ، عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ بْنِ
صُخَيْرِ الْعَدَوِيِّ قَالَ: سَمِعْتُ فَاطِمَةَ بِنْتَ
قَيْسٍ تَقُولُ: إِنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا. فَلَمْ
يَجْعَلْ لَهَا رَسُولُ اللَّهِ ﷺ سُكْنَى وَلَا نَفَقَةً.

تخريج: [صحيح] تقدم، ح: ١٨٦٩.

Comments:

- a. A husband is not responsible for a woman's living expenses for the waiting period after the final divorce.
- b. If a woman is pregnant, then the husband is responsible for the expense of her waiting period, even after the final divorce. The statement of Allâh Almighty is: "And if they are pregnant then spend for them till they deliver their pregnancy." (*At-Talâq* 65: 6)

2036. It was narrated that Sha'bi said: Fâtimah bint Qais said: "My husband divorced me at the time of the Messenger of Allâh ﷺ three times. The Messenger of Allâh ﷺ said: 'You have no right to accommodation or to maintenance.'" (*Sahih*)

٢٠٣٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
جَرِيرٌ، عَنْ مُعِينَةَ، عَنِ الشَّعْبِيِّ قَالَ: قَالَتْ
فَاطِمَةُ بِنْتُ قَيْسٍ: طَلَّقَنِي زَوْجِي عَلَى عَهْدِ
رَسُولِ اللَّهِ ﷺ ثَلَاثًا. فَقَالَ رَسُولُ اللَّهِ ﷺ:
«لَا سُكْنَى لَكَ وَلَا نَفَقَةٌ».

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٢/١٤٨٠ من حديث مغيرة به نحو المعنى، وانظر، ح: ٢٠٢٤.

Chapter 11. Giving A Gift In The Event Of Divorce

(المعجم ١١) - بَابُ مُنْعَةِ الطَّلَاقِ

(التحفة ١١)

2037. It was narrated from 'Aishah that 'Amrah bint Jawn sought refuge with Allâh from the Messenger of Allâh ﷺ when she was brought to him (as a bride). He said: "You have sought refuge with Him in Whom refuge is sought." So he divorced her and told Usâmah or Anas to give her a gift of three garments of white flax. (*Maudu'*)

٢٠٣٧ - حَدَّثَنَا أَحْمَدُ بْنُ الْمُقْدَامِ أَبُو الْأَشْعَثِ الْعَجَلِيُّ: حَدَّثَنَا عُبَيْدُ بْنُ الْقَاسِمِ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ عَمْرَةَ بِنْتَ الْجَوْنِ تَوَدَّتْ مِنْ رَسُولِ اللَّهِ ﷺ حِينَ أُدْخِلَتْ عَلَيْهِ. فَقَالَ: «لَقَدْ عُذْتُ بِمَعَاذِ» فَطَلَّقَهَا. وَأَمَرَ أُسَامَةَ أَوْ أَنَسًا، فَمَتَّعَهَا بِثَلَاثَةِ أَثْوَابٍ رَازِقِيَّةٍ.

تخريج: [إسناده موضوع] * عبيد بن القاسم متروك، كذبه ابن معين، واتهمه أبو داود بالوضع (تقريب)، وأصله في الصحيح البخاري، ح: ٥٢٥٤، وانظر، ح: ٢٠٥٠.

Comments:

- Imam Albâni said: Quoting Usâmah and Anas ﷺ in this narration is *Munkar* (Denounced); and he said the correct wording is: "The Prophet ﷺ ordered Abu Usaid to make her ready in order to send her to her parents' home, and also to give her two cotton cloths as compensation."
- 'Amrah the daughter of Jawn ﷺ, said these inappropriate words because of a misunderstanding.
- If a divorce is issued after a marriage contract that had its dower fixed, and the marriage was not consummated, then half of the dower is due (*Al-Baqarah* 2: 237) and if the dower is not fixed, then a pair of clothes or what is reasonable according to the circumstances should be given to the woman in compensation.

Chapter 12: When The Man Denies The Divorce

(المعجم ١٢) - بَابُ الرَّجُلِ يَجْحَدُ

(التحفة ١٢)

2038. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "If a woman claims that her husband has divorced her, and she brings a witness of good

٢٠٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَمْرُو بْنُ أَبِي سَلَمَةَ أَبُو حَفْصِ التَّنَيْسِيُّ، عَنْ زُهَيْرٍ، عَنْ ابْنِ جُرَيْجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنِ النَّبِيِّ ﷺ

character (to testify) to that, her husband should be asked to swear an oath. If he swears, that will invalidate the testimony of the witness, but if he refuses then that will be equivalent to a second witness, and the divorce will take effect." (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه الدارقطني: ٤/١٦٦، ٦٤/٤ من حديث محمد بن يحيى به، وقال أبو حاتم الرازي: حديث منكر (علل الحديث: ١/٤٣٢)، وحسنه البوصيري وانظر، ح: ٩١٩ لعلته، وفيه علة أخرى، وانظر، ح: ٧٢٨.

Chapter 13. One Who Divorces, Marries Or Takes Back His Wife In Jest

2039. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There are three matters in which seriousness is serious and joking is serious: marriage, divorce and taking back (one's wife)." (*Hasan*)

قَالَ: «إِذَا أَدَعَتِ الْمَرْأَةُ طَلَاقَ زَوْجِهَا، فَجَاءَتْ عَلَى ذَلِكَ بِشَاهِدٍ، عَدْلٍ، اسْتُخْلِفَ زَوْجُهَا. فَإِنْ خَلَفَ بَطَلَتْ شَهَادَةُ الشَّاهِدِ. وَإِنْ نَكَلَ فَتَكْوَلُهُ بِمَنْزِلَةِ شَاهِدٍ آخَرَ. وَجَارَ طَلَاقُهُ».

(المعجم ١٣) - بَابُ مَنْ طَلَّقَ أَوْ نَكَحَ أَوْ رَاجَعَ لَأَعِيَابًا (التحفة ١٣)

٢٠٣٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ حَبِيبٍ بِنِ أُرْدَكَ: حَدَّثَنَا عَطَاءُ بْنُ أَبِي رَبَاحٍ، عَنْ يُونُسَ بْنِ مَاهَكَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثٌ جُدْهُنَّ جِدًّا، وَهَزَلُنَّ جِدًّا: النِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ».

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الطلاق على الهزل، ح: ٢١٩٤ من حديث عبدالرحمن به، وحسنه الترمذي، ح: ١١٨٤، وصححه الحاكم وغيره.

Comments:

- The relationship of marriage is extremely important due to which a man and woman become lawful for each other and they accept its responsibilities; and it is also because of the marriage bond that their children are legal. Therefore, many rules were Divinely legislated to keep the sanctity of this relationship upright.
- When accepting a religious responsibility, or withdrawing from it, one should carefully reflect upon its consequences, so that one will not have to face regret and worry later.

Chapter 14. One Who Divorces His Wife To Himself, But Did Not Speak The Words Out Loud

2040. It was narrated from Abu Hurairah that the Messenger of

(المعجم ١٤) - بَابُ مَنْ طَلَّقَ فِي نَفْسِهِ وَلَمْ يَتَكَلَّمْ بِهِ (التحفة ١٤)

٢٠٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

Allâh ﷻ said: "Allâh has forgiven my nation for what they think of for themselves, so long as they do not act upon it or speak of it." (Sahih)

عَلِيُّ بْنُ مُسَيْهِرٍ، وَ عَبْدَةُ بْنُ سُلَيْمَانَ؛ ح: وَحَدَّثَنَا حَمِيدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، جَمِيعاً عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا. مَا لَمْ تَعْمَلْ بِهِ، أَوْ تَكَلَّمَ بِهِ».

تخریج: أخرجه البخاري، العتق، باب الخطأ والنسيان في العتاقة والطلاق ونحوه... الخ، ح: ٢٥٢٨، ٥٢٦٩، ٦٦٦٤، ومسلم، الإیمان، باب تجاوز الله عن حديث النفس والخواطر بالقلب إذا لم تستقر، ح: ١٢٧ من طرق عن قتادة به.

Comments:

- Many thoughts rise in a human's mind, of which some are good and some are bad. There is no accountability in respect to them, as long as they remain just thoughts and are not uttered or practiced.
- Some deeds are concerned just with the heart like: love, hate and fear etc., when one of these gets determinedly absorbed in one's mind, it can affect other deeds that will be recompensed good or bad accordingly. For example: love for Allâh, love for Allâh's Messenger ﷺ, respect of the Noble Qur'ân, to hate good work or to have a grudge against a good person etc.; belief, disbelief, sincerity and hypocrisy are also from this type.

Chapter 15. Divorce Of One Who Is Insane, A Minor And One Who Is Sleeping

(المعجم ١٥) - بَابُ طَلَاقِ الْمَعْتُوهِ
وَالصَّغِيرِ وَالنَّائِمِ (التحفة ١٥)

2041. It was narrated from 'Aishah that the Messenger of Allâh ﷻ said: "The Pen has been lifted from three: from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses." (Hasan)

In his narration, (one of the narrators) Abu Bakr (Ibn Abu Shaibah) said: "And from the afflicted person, until he

٢٠٤١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ خَالِدِ بْنِ خِدَاشٍ، وَ مُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ حَمَادٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ. وَعَنِ الصَّغِيرِ حَتَّى يَكْبُرَ. وَعَنِ

recovers.”^[1] (Hasan)

الْمَجْنُونِ حَتَّى يَعْقِلَ، أَوْ يُقَيِّقَ.

قَالَ أَبُو بَكْرٍ، فِي حَدِيثِهِ: «وَعَنِ الْمُبْتَلَى حَتَّى يَبْرَأَ».

تخریج: [حسن] أخرجه أبو داود، الحدود، باب: في المجنون يسرق أو يصيب حداً، ح: ٤٣٩٨ من حديث حماد بن سلمة به، وصححه ابن حبان، والحاكم، والذهبي، الراوي عن إبراهيم النخعي، هو حماد بن أبي سليمان.

Comments:

- a. ‘The Pen has been lifted’ means: Bad deeds are not recorded against these people.
- b. Any act done by the people mentioned in the *Hadith* has no legal effective status, and will be regarded unperformed.
- c. If a sleeping person says the word of ‘divorce’, this divorce will be ineffective, because he did not have the intention to divorce nor did he know that he has divorced.

2042. It was narrated from ‘Ali bin Abu Tâlib that the Messenger of Allâh ﷺ said: “The Pen is lifted from the minor, the insane person and the sleeper.” (Hasan)

٢٠٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا رَوْحُ ابْنُ عُبَادَةَ: حَدَّثَنَا ابْنُ جُرَيْجٍ: أَنَّ بَنَّا الْقَاسِمِ ابْنَ يَزِيدَ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «يُرْفَعُ الْقَلَمُ عَنِ الصَّغِيرِ وَعَنِ الْمَجْنُونِ وَعَنِ النَّائِمِ».

تخریج: [حسن] وقال البوصيري: هذا إسناد ضعيف، القاسم بن يزيد هذا مجهول، وأيضاً لم يدرك علي بن أبي طالب، والحديث السابق شاهد له.

Chapter 16. Divorce Of One Who Is Compelled, And Of One Who Is Forgetful

(المعجم ١٦) - بَابُ طَلَاقِ الْمُكْرَهِ

وَالنَّاسِي (التحفة ١٦)

2043. It was narrated from Abu Dharr Al-Ghifâri that the Messenger of Allâh ﷺ said: “Allâh has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do.” (Sahih)

٢٠٤٣ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ بْنِ يُونُسَ الْفَرِّيَّابِيُّ: حَدَّثَنَا أَيُّوبُ بْنُ سُوَيْدٍ: حَدَّثَنَا أَبُو بَكْرٍ الْهَدَلِيُّ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي دَرِّ الْعَمَارِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ، وَمَا اسْتُكْرِهُوا عَلَيْهِ».

^[1] Meaning, in place of the wording for the third, and the meaning is the same.

تخریج: [صحيح] انظر، ح: ٩٢١ لعلته، والحديث صحيح بشواهد، وقال البوصيري: هذا إسناده ضعيف لاتفاهم على ضعف أبي بكر الهذلي، والحديث الآتي شاهد له.

Comments:

- 'Mistake' means that a person wanted to do something but unintentionally it went wrong, in that case he will not be sinful. However, that wrongly performed act, somehow, must be corrected and compensated appropriately.
- If one is forced to do something illegal, being threatened to be killed or forced to do something by threat of unbearable loss, then the forced person will not be sinful (provided he is not forced to take someone's life).

2044. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Allāh has forgiven my nation for the evil suggestions of their hearts, so long as they do not act upon it or speak of it, and for what they are forced to do." (Sahih)

٢٠٤٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ مِسْعَرٍ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا تُؤْسِسُ بِهِ صُدُورَهَا. مَا لَمْ تَعْمَلْ بِهِ أَوْ تَتَكَلَّمْ بِهِ. وَمَا اسْتَكْرَهُوا عَلَيْهِ».

تخریج: [صحيح] تقدم، ح: ٢٠٤٠.

2045. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "Allāh has forgiven my nation for mistakes and forgetfulness, and what they are forced to do." (Sahih)

٢٠٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحِمَاصِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ، عَنْ النَّبِيِّ ﷺ قَالَ: «إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ».

تخریج: [صحيح] أخرجه البيهقي ٣٥٦، ٣٥٧ من حديث محمد بن المصنفى به، وأخرج الدارقطني ١٧٠/٤، ١٧١، والبيهقي ٣٥٦/٧ وغيرهما من طريق بشر نا الأوزاعي عن عطاء عن عبيد بن عمير عن ابن عباس به نحو المعنى، وقال البيهقي: جود إسناده بشر بن بكر وهو من الثقات، فالسند صحيح، وصححه ابن حبان (موارد)، ح: ١٤٩٨، والحاكم: ١٩٨/٢، والذهبي وغيره، وله شواهد كثيرة.

2046. It was narrated that Safiyyah bint Shaibah said: "Āishah told me that the

٢٠٤٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ،

Messenger of Allâh ﷺ said: 'There is no divorce and no manumission at the time of coercion.' (Hasan)

عَنْ ثَوْرٍ، عَنْ [مُحَمَّدِ بْنِ] عُبَيْدِ بْنِ أَبِي صَالِحٍ، عَنْ صَفِيَّةَ بِنْتِ سَيْبَةَ قَالَتْ: حَدَّثَنِي عَائِشَةُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا طَلَّاقَ، وَلَا عَتَاقَ فِي إِغْلَاقٍ».

تخريج: [حسن] أخرجه أبوداود، الطلاق، باب في الطلاق على غلط، ح: ٢١٩٣، وأحمد: ٢٧٦/٦ من حديث ابن إسحاق حدثني ثور بن يزيد الكلاعي عن محمد بن عبيد بن أبي صالح المكي به، وهو الصواب، وصححه الحاكم، ورواه الذهبي، وله شواهد منها طريق الحاكم عن عائشة رضي الله عنها، وإسناده حسن.

Chapter 17. No Divorce Before Marriage

(المعجم ١٧) - بَابُ: لَا طَلَّاقَ قَبْلَ

النِّكَاحِ (التحفة ١٧)

2047. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "There is no divorce regarding that which one does not possess." (Hasan)

٢٠٤٧ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا هُشَيْمٌ: أَبَانَا عَامِرُ الْأَحْوَلُ؛ ح: وَحَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ ابْنِ الْحَارِثِ، جَمِيعاً عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا طَلَّاقَ فِيمَا لَا يَمْلِكُ».

تخريج: [إسناده حسن] أخرجه الترمذي، الطلاق، باب ما جاء لا طلاق قبل النكاح، ح: ١١٨١ من طريق هشيم، وأبو داود، الطلاق، باب: في الطلاق قبل النكاح، ح: ٢١٩١، ٢١٩٢ من حديث عبدالرحمن بن الحارث، كلاهما عن عمرو بن شعيب به، وقال الترمذي: حسن صحيح، ولفظ الحاكم: ٢٠٥/٢ لا طلاق قبل النكاح، وصححه الذهبي، ولفظ أبي داود: ولا عتق إلا فيما تملك.

2048. It was narrated from Miswar bin Makhramah that the Prophet ﷺ said: "There is no divorce before marriage, and no manumission before taking possession." (Hasan)

٢٠٤٨ - حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ: حَدَّثَنَا عَلِيُّ بْنُ الْحُسَيْنِ بْنِ وَاقِدٍ: حَدَّثَنَا هِشَامُ بْنُ سَعْدٍ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنِ الْوَسْوَءِ بْنِ مَخْرَمَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا طَلَّاقَ قَبْلَ نِكَاحٍ. وَلَا عِتْقَ قَبْلَ مِلْكٍ».

تخريج: [حسن] وحسنه البوصيري، والحديث السابق شاهد له.

2049. It was narrated from 'Ali bin Abu Tâlib that the Prophet ﷺ said: "There is no divorce before marriage." (*Hasan*)

٢٠٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَبَانَا مَعْمَرٌ، عَنْ جُوَيْرٍ، عَنِ الضَّحَّاكِ، عَنِ التِّرَّالِ بْنِ سَبْرَةَ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا طَلَّاقَ قَبْلَ النِّكَاحِ».

تخريج: [حسن] وضعفه البوصيري، والحديث حسن * جوير ضعيف جداً (تقريب)، والحديث السابق شاهد له.

Comments:

If a person says: 'If I marry so-and-so woman and then I will divorce her.' This is vain talk, which is ineffective, because he spoke of divorcing her when she was not even his wife, as long as he does not divorce her after the bond of marriage.

Chapter 18. (Words) By Which Divorce Takes Place

2050. Awzâ'i said: "I asked Zuhri: 'Which of the wives of the Prophet ﷺ sought refuge with Allâh from him?' He said: "Urwah told me, (narrating) from 'Aishah, that when the daughter of Jawn entered upon the Messenger of Allâh ﷺ and he came close to her, she said: "I seek refuge with Allâh from you." The Messenger of Allâh ﷺ said: "You have sought refuge in the Almighty; go to your family." (*Sahih*)

(المعجم ١٨) - بَابُ مَا يَقَعُ بِهِ الطَّلَاقُ
[مِنَ الْكَلَامِ] (التحفة ١٨)

٢٠٥٠ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشَقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ. قَالَ: سَأَلْتُ الزُّهْرِيَّ: أَيُّ أَزْوَاجِ النَّبِيِّ ﷺ اسْتَعَاذَتْ مِنْهُ؟ فَقَالَ: أَخْبَرَنِي عُرْوَةُ عَنْ عَائِشَةَ أَنَّ ابْنَةَ الْجَوْنِ لَمَّا دَخَلَتْ عَلَى رَسُولِ اللَّهِ ﷺ، فَدَنَا مِنْهَا، قَالَتْ: أَعُوذُ بِاللَّهِ مِنْكَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «عُدْتِ بِعَظِيمٍ؛ الْحَقِّي بِأَهْلِكَ».

تخريج: أخرجه البخاري، الطلاق، باب من طلق، وهل يواجه الرجل امرأته بالطلاق، ح: ٥٢٥٤ من حديث الوليد به.

Comments:

- Some words used for divorce are very clear and manifest, and give clear message of divorce; for example: 'I divorce you.' These words consensually make the divorce effective.
- There are some words that have both meanings: divorce or any other meaning which is called "connotation." The clear and manifest meanings of these words rely on the intention of the person. If one uttered them with the

intention of divorce, then the divorce would be effective, otherwise not.

Chapter 19. Irrevocable Divorce

2051. It was narrated from 'Abdullâh bin 'Ali bin Yazid bin Rukânah, from his father, from his grandfather, that he divorced his wife irrevocably, then he came to the Messenger of Allâh ﷺ and asked him. He said: "What did you mean by that?" He said: "One (divorce)." He said: "By Allâh, did you only mean one (divorce) thereby?" He said: "By Allâh, I meant one." Then he sent her back to him. (*Da'if*)

Muhammad bin Mâjah said: I heard Abul-Hasan 'Ali bin Muhammad Tanâfisi saying: "How noble is this *Hadith*."

Ibn Mâjah said: 'Abu 'Ubaid left it (i.e., did not accept its narration) and Ahmad was fearful of it (i.e., of narrating it)."

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في البتة، ح: ٢٢٠٨ من حديث جرير به، وأخرجه الترمذي، ح: ١١٧٧، وذكر كلاماً * الزبير بن سعيد لئن الحديث (تقريب)، ويغني عنه طريق أبي داود، ح: ٢٢٠٦، ٢٢٠٧ وغيره نحو المعنى، وصححه أبو داود، والحاكم، والقرطبي، ولم أر لمضعفيه حجة.

Chapter 20. A Man Giving His Wife The Choice

2052. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ gave us the choice, and we chose him, and he did not consider it as something (i.e., an effective divorce)." (*Sahih*)

(المعجم ١٩) - بَابُ طَلَاقِ الْبَيْتَةِ

(التحفة ١٩)

٢٠٥١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ جَرِيرِ بْنِ حَازِمٍ، عَنِ الزُّبَيْرِ بْنِ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَلِيٍّ بْنِ يَزِيدَ بْنِ رُكَّانَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ الْبَيْتَةَ. فَأَتَى رَسُولَ اللَّهِ ﷺ فَسَأَلَهُ. فَقَالَ: «مَا أَرَدْتَ بِهَا؟» قَالَ: وَاحِدَةً. قَالَ: «اللَّهُ مَا أَرَدْتَ بِهَا إِلَّا وَاحِدَةً؟» قَالَ: اللَّهُ مَا أَرَدْتُ بِهَا إِلَّا وَاحِدَةً. قَالَ، فَرَدَّهَا عَلَيْهِ.

قَالَ مُحَمَّدُ بْنُ مَاجَةَ: سَمِعْتُ أَبَا الْحَسَنِ عَلِيَّ بْنَ مُحَمَّدٍ الطَّنَافِيسِيَّ يَقُولُ: مَا أَشْرَفَ هَذَا الْحَدِيثَ.

قَالَ ابْنُ مَاجَةَ: أَبُو [عُبَيْدٍ] تَرَكَهُ نَاجِيَةً، وَأَحْمَدُ جَبَنَ عَنْهُ.

(المعجم ٢٠) - بَابُ الرَّجُلِ يُخَيِّرُ

امْرَأَتَهُ (التحفة ٢٠)

٢٠٥٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: خَيَّرَنَا رَسُولُ اللَّهِ ﷺ، فَأَخْتَرْنَاهُ. فَلَمْ يَرَهُ شَيْئًا.

تخریج: أخرجه البخاري، الطلاق، باب من خير أزواجه ... الخ، ح: ٥٢٦٢، ومسلم، الطلاق، باب بيان أن تخيير امرأته لا يكون طلاقاً إلا بالنية، ح: ٢٨/١٤٧٧ من حديث الأعمش .٤

Comments:

- The background of this incident is that as the economic position of Muslims became better, as a result of conquests; the mothers of the Believers 'the wives of the Prophet ﷺ' saw the well - off position of the women of *Ansâr* and immigrants, upon which the wives of the Prophet ﷺ also requested him to increase their living expenses.
- A choice of divorce given to a wife by a husband is not a divorce, however if the wife takes advantage of the choice and decides for separation, then it will be considered one revocable divorce.

2053. It was narrated that 'Āishah said: "When the following was revealed: 'But if you desire Allāh and His Messenger,'^[1] the Messenger of Allāh ﷺ entered upon me and said: 'O 'Āishah! I want to say something to you, and you do not have to hasten (in making a decision) until you have consulted your parents.'" She said: "He knew, by Allāh, that my parents would never tell me to leave him." She said: "Then he recited to me: 'O Prophet (Muhammad)! Say to your wives: "If you desire the life of this world, and its glitter."^[2] I said: 'Do I need to consult my parents about this? I choose Allāh and His Messenger.'" (*Sahih*)

٢٠٥٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أُنْبَأَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا نَزَلَتْ: ﴿وَإِنْ كُنْتُمْ تُرِيدُونَ اللَّهَ وَرَسُولَهُ﴾ [الأحزاب: ٢٩] دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ فَقَالَ: يَا عَائِشَةُ! إِنِّي ذَاكِرٌ لِكَ أَمْرًا. فَلَا عَلَيْكَ أَنْ لَا تَعْجَلِي فِيهِ حَتَّى تَسْتَأْمِرِي أَبُوبِكَ قَالَتْ: قَدْ عَلِمَ، وَاللَّهِ أَنَّ أَبُوبِي لَمْ يَكُونَا لِيَأْمُرَانِي بِفِرَاقِهِ. قَالَتْ: فَقَرَأَ عَلَيَّ: ﴿يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي هَذَا كُنْتُمْ تُرِيدُونَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا﴾ [الأحزاب: ٢٨] قَالَتْ: فِي هَذَا اسْتَأْمِرُ أَبُوبِي قَدْ اخْتَرْتُ اللَّهَ وَرَسُولَهُ.

تخریج: أخرجه البخاري، باب قوله: ﴿وَإِنْ كُنْتُمْ تُرِيدُونَ اللَّهَ وَرَسُولَهُ...﴾ الخ، ح: ٤٧٨٦، تعليقا، ومسلم، الطلاق، الباب السابق، ح: ١٤٧٥ من حديث الزهري به.

[1] *Al-Ahzâb* 33:29.

[2] *Al-Ahzâb* 33:28.

Comments:

- a. This *Hadith* signifies the virtue of ‘Āishah رضي الله عنها, that the Messenger of Allāh صلى الله عليه وسلم conveyed Allāh’s Message first of all to her.
- b. The Messenger of Allāh صلى الله عليه وسلم did not want the Mother of the Believers to make any wrong or sentimental decision because of her young age, therefore, he instructed her to seek the consent of her parents.

Chapter 21. That *Khul*^[1] Is Undesireble For The Women

(المعجم ٢١) - بَابُ كَرَاهِيَةِ الْخُلْعِ
لِلْمَرْأَةِ (التحفة ٢١)

2054. It was narrated from Ibn ‘Abbās that the Prophet صلى الله عليه وسلم said: “No woman asks for divorce when it is not absolutely necessary, but she will never smell the fragrance of Paradise, although its fragrance can be detected from a distance of forty years’ travel.” (*Hasan*)

٢٠٥٤ - حَدَّثَنَا بَكْرُ بْنُ خَلْفٍ، أَبُو بَشِيرٍ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ جَعْفَرِ بْنِ يَحْيَى بْنِ تُوْبَانَ، عَنْ عَمِّهِ عُمَارَةَ بْنِ تُوْبَانَ، عَنْ عَطَاءٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ صلى الله عليه وسلم قَالَ: «لَا تَسْأَلُ الْمَرْأَةُ زَوْجَهَا الطَّلَاقَ فِي عَتْرِ كُنْهٍ فَتَجِدَ رِيحَ الْجَنَّةِ. وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا».

تخریج: [حسن] وضعفه البوصيري، والحديث الآتي شاهد لبعضه * جعفر وعمارة جهلها بعض العلماء، ووثقهما ابن حبان، والحاكم، والذهبي، انظر: ح: ١٩٧٧، والله أعلم.

2055. It was narrated from Thawbân that the Messenger of Allāh صلى الله عليه وسلم said: “Any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of Paradise will be forbidden to her.” (*Sahih*)

٢٠٥٥ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقَاضِلِ، عَنْ حَمَادِ بْنِ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي أَسْمَاءَ، عَنْ تُوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم: «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي عَتْرِ مَا بَأْسٍ، فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في الخلع، ح: ٢٢٢٦ من حديث حماد بن زيد به، وحسنه الترمذي، ح: ١١٨٧، وصححه ابن حبان، والحاكم، والذهبي.

Comments:

- a. *Khul*’ means that a woman returns all or some of the dowry to her husband

[1] *Khul*’ is a kind of annulment in which a wife seeks divorce from her husband by giving him a certain compensation, or returning back the *Mahr* (bridal-money) which he gave her.

to get an annulment of the marriage. A husband is not allowed to demand all what he has spent on her, or to demand more than the fixed dowry.

- b. *Khul'* is legal if a woman does not want to live with her husband while the husband wants to live with her. If a person deliberately troubles his wife in order to force her to eventually demand a *Khul'*, then the husband is guilty of oppression.

Chapter 22. The Man Whose Wife (Seeks) *Khul'* Takes What He Had Given To Her

2056. It was narrated from Ibn 'Abbâs that Jamilah bint Salul came to the Prophet ﷺ and said: "By Allâh, I do not find any fault with Thâbit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him." The Prophet ﷺ said to her: "Will you give him back his garden?" She said: "Yes." So the Messenger of Allâh ﷺ told him to take back his garden from her and no more than that. (*Sahih*)

تخریج: [صحیح] أخرجه البيهقي: ۳۱۳/۷ من حديث عبدالأعلى به، وقال: كذا رواه عبدالأعلى بن عبدالأعلى عن سعيد بن أبي عروبة موصولاً وأرسله غيره عنه، أخرجه البخاري، ح: ۵۲۷۳ وغيره من حديث خالد عن عكرمة عن ابن عباس به نحو المعنى.

Comments:

- When a woman feels that she cannot live with her husband, and it will be hard for her to discharge matrimonial obligations, then she may ask for divorce.
- In this situation, if a husband divorces her without taking anything back, it is also correct, and it will be considered divorce but not *Khul'*.
- When a woman returns the whole dowry or some of it to separate from her husband, it is called *Khul'* and it is legal.

2057. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "Habibah bint Sahl was married to Thâbit bin Qais bin Shammâs, who was

(المعجم ۲۲) - بَابُ الْمُخْتَلَعَةِ يَأْخُذُ مَا
أَعْطَاهَا (التحفة ۲۲)

۲۰۵۶ - حَدَّثَنَا أَبُو زُهَيْرٍ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ
الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي
عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ
عَبَّاسٍ أَنَّ جَمِيلَةَ بِنْتَ سَلُولٍ أَتَتْ النَّبِيَّ ﷺ
فَقَالَتْ: وَاللَّهِ مَا أَعْتَبْتُ عَلَى ثَابِتٍ فِي دِينٍ
وَلَا خَلْقٍ. وَلِكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ.
لَا أُطِيقُهُ بَعْضًا. فَقَالَ لَهَا النَّبِيُّ ﷺ: «أَتُرِيدِينَ
عَلَيْهِ حَلِيقَتَهُ؟» قَالَتْ: نَعَمْ. فَأَمَرَهُ رَسُولُ اللَّهِ
ﷺ أَنْ يَأْخُذَ مِنْهَا حَلِيقَتَهُ وَلَا يَزِدَّادَ.

۲۰۵۷ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو خَالِدٍ
الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ،
عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: كَانَتْ حَبِيبَةُ بِنْتُ
سَهْلِ تَحْتِ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ. وَكَانَ

an ugly man. She said: 'O Messenger of Allâh, by Allâh, were it not for fear of Allâh, when he enters upon me I would spit in his face.' The Messenger of Allâh ﷺ said: 'Will you give him back his garden?' She said: 'Yes.' So she gave him back his garden and the Messenger of Allâh ﷺ separated them." (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه أحمد: ٣/٤ من حديث الحجاج به، وقال البوصيري: هذا إسناده ضعيف لتدليس الحجاج، وهو ابن أرتاة، وانظر، ح: ٤٩٦، ١١٢٩.

Chapter 23. The Waiting Period Of A Woman Granted *Khul'*

2058. It was narrated from 'Ubâdah bin Sâmî from Rubai' bint Mu'awwidh bin 'Afrâ'. He said: "I said to her: "Tell me your *Hadith*." She said: "I got *Khul'* from my husband, then I came to 'Uthmân and asked him: "What waiting period do I have to observe?" He said: "You do not have to observe any waiting period, unless you had intercourse with him recently, in which case you should stay with him until you have menstruated." In that he was following the ruling of the Messenger of Allâh ﷺ concerning Maryam Maghâliyyah, who was married to Thâbit bin Qais and she got *Khul'* from him.'" (*Hasan*)

تخريج: [إسناده حسن] أخرجه النسائي، الطلاق، عدة المختلعة، ح: ٣٥٢٨ من حديث

Comments:

a. Although *Khul'* is apparently like a divorce where a husband lets his wife go based upon her demand to do so, however, in real terms it is irrevocable

رَجُلًا دَمِيمًا. فَقَالَتْ: يَا رَسُولَ اللَّهِ، وَاللَّهِ، لَوْلَا مَخَافَةُ اللَّهِ، إِذَا دَخَلَ عَلَيَّ، لَسَقَمْتُ فِي وَجْهِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَتُرَدِّينَ عَلَيْهِ حَدِيثَهُ؟» قَالَتْ: نَعَمْ. [قَالَ:]، فَرَدَّتْ عَلَيْهِ حَدِيثَهُ. قَالَ: فَفَرَّقَ بَيْنَهُمَا رَسُولُ اللَّهِ ﷺ.

(المعجم ٢٣) - بَابُ عِدَّةِ الْمُخْتَلَعَةِ

(الصفحة ٢٣)

٢٠٥٨ - حَدَّثَنَا عَلِيُّ بْنُ سَلَمَةَ النَّيْسَابُورِيُّ: حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ: حَدَّثَنَا أَبِي عَنِ ابْنِ إِسْحَاقَ: أَخْبَرَنِي عَبَادَةُ بْنُ الْوَلِيدِ بْنِ عَبَادَةَ ابْنِ الصَّامِتِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ، عَنِ الرَّبِيعِ بْنِ مَعُوذٍ بْنِ عَفْرَاءَ قَالَ، قُلْتُ لَهَا: حَدَّثَنِي حَدِيثُكَ. قَالَتْ: اخْتَلَعْتُ مِنْ زَوْجِي. ثُمَّ جِئْتُ عُثْمَانَ. فَسَأَلْتُ: مَاذَا عَلَيَّ مِنَ الْعِدَّةِ؟ فَقَالَ: لَا عِدَّةَ عَلَيْكَ، إِلَّا أَنْ يَكُونَ حَدِيثَ عَهْدٍ بِكَ، فَتَمَكُّتِينَ عِنْدَهُ حَتَّى تَحِيضِينَ حَيْضَةً. قَالَتْ: وَإِنَّمَا تَبِعَ فِي ذَلِكَ قِصَاةَ رَسُولِ اللَّهِ ﷺ فِي مَرْيَمَ الْمَغَالِيَّةِ. وَكَأَنْتَ تَحْتِ تَابِتِ بْنِ قَيْسٍ، فَأَخْتَلَعْتَ مِنْهُ.

يعقوب به.

separation; therefore its waiting period is not three menstruation periods, rather just the one menstruation cycle.

- b. Waiting for one menstruation period after *Khul'* is to verify that the womb is empty to confirm that she is not pregnant; and one menstruation cycle clarifies the position of pregnancy. If a menstruation cycle does not begin, then it could mean she is pregnant; in that case, she is not allowed to marry another man until delivery.

Chapter 24. Swearing To Forego Marital Relations With One's Wife

(المعجم ٢٤) - بَابُ الْإِيْلَاءِ (التحفة ٢٤)

2059. It was narrated that 'Aishah said: "The Messenger of Allāh ﷺ swore that he would not enter upon his wives for a month, and he stayed for twenty-nine days until, on the eve of the thirtieth, he entered upon me. I said: 'You swore not to enter upon us for a month.' He said: 'The month may be like this,' and he held up his (ten) fingers three times; 'or the month may be like this,' and he held up his fingers three times, keeping one finger down on the third time." (Hasan)

٢٠٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الرَّجَالِ، عَنْ أَبِيهِ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: أَقْسَمَ رَسُولُ اللَّهِ ﷺ أَنْ لَا يَدْخُلَ عَلَيَّ نِسَائِهِ شَهْرًا. فَمَكَتَ تِسْعَةَ وَعِشْرِينَ يَوْمًا. حَتَّى إِذَا كَانَ مَسَاءَ ثَلَاثِينَ، دَخَلَ عَلَيَّ. فَقُلْتُ: إِنَّكَ أَقْسَمْتَ أَنْ لَا تَدْخُلَ عَلَيْنَا شَهْرًا. فَقَالَ: «الشَّهْرُ كَذَا» يُرْسِلُ أَصَابِعَهُ فِيهِ ثَلَاثَ مَرَّاتٍ «وَالشَّهْرُ كَذَا» وَأَرْسَلَ أَصَابِعَهُ كُلَّهَا، وَأَمْسَكَ إِصْبَعًا وَاحِدًا فِي الثَّلَاثَةِ.

تخريج: [إسناده حسن] أخرجه أحمد: ١٠٥/٦ من حديث عبدالرحمن (بن محمد بن عبدالرحمن) بن أبي الرجال به، وقال البوصيري: إسناده حسن * عبدالرحمن بن أبي الرجال ثقة و ثقته الجمهور، ولم يظن أحد فيه بحجة، والنقل عن أبي داود لا يثبت من أجل جهالة الأجرى. الراوي عنه ..

Comments:

- If a husband gets angry with his wife for a valid reason, and he swears by the Name of Allāh that he would not have sexual intercourse with her for sometime, it is allowed, and it is called *Iyala'*.
- The maximum period of *Iyala'* is four months. If he has sworn for an unspecified period, and the period of four months has come to end, she is allowed to sue him in court and the court would order him either to divorce her or to establish full matrimonial relations with her. (*Al-Baqarah: 226 - 227*)
- If a husband swore for four months, or for a period less than that, but still had intercourse with her before the end of the sworn period, then he would

have to pay expiation of oath; and there is no expiation if he stood by his oath until the sworn period, nor would any divorce occur.

2060. It was narrated from 'Āishah that the Messenger of Allāh ﷺ swore to keep away from his wives, because Zainab had sent back his gift and 'Āishah said: "She has disgraced you." He became angry and swore to keep away from them. (*Da'if*)

٢٠٦٠ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ، عَنْ حَارِثَةَ ابْنِ مُحَمَّدٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ إِنَّمَا آلَى، لِأَنَّ زَيْنَبَ رَدَّتْ عَلَيْهِ هَدِيَّتَهُ. فَقَالَتْ عَائِشَةُ: لَقَدْ أَقْمَأْتَك. فَغَضِبَ ﷺ. فَأَلَى مِنْهُنَّ.

تخريج: [إسناده ضعيف] انظر، ح: ٥٦ لعلته.

2061. It was narrated from Umm Salamah that the Messenger of Allāh ﷺ swore to keep away from some of his wives for a month. On the twenty-ninth day, in the evening or the morning, it was said: "O Messenger of Allāh, only twenty-nine days have passed." He said: "The month is twenty-nine days." (*Sahih*)

٢٠٦١ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ السُّلَمِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ صَيْفِيٍّ، عَنْ عِكْرِمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ ﷺ آلَى مِنْ بَعْضِ نِسَائِهِ شَهْرًا. فَلَمَّا كَانَ تِسْعَةَ وَعِشْرِينَ رَاحَ أَوْ غَدَا. فَقِيلَ: يَا رَسُولَ اللَّهِ! إِنَّمَا مَضَى تِسْعَ وَعِشْرُونَ. فَقَالَ: «الشَّهْرُ تِسْعَ وَعِشْرُونَ».

تخريج: أخرجه البخاري، الصوم، باب قول النبي ﷺ: إذا رأيتم الهلال فصوموا وإذا رأيتموه فأفطروا، ح: ٥٢٠٢، ١٩١٠، ومسلم، الصيام، باب الشهر يكون تسعًا وعشرين، ح: ١٠٨٥ من حديث أبي عاصم الضحاك بن مخلد به.

Comments:

'The month is twenty-nine days' means that this month is twenty-nine days; if it was of thirty days I would stay away for one more day.

Chapter 25. Zihâr

2062. It was narrated that Salamah bin Sakhr Al-Bayâdi said: "I was a man who had a lot of desire for women, and I do not think there was any man who had as great a share of that as me. When Ramadân began, I declared

(المعجم ٢٥) - بَابُ الظَّهَارِ (التحفة ٢٥)

٢٠٦٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ ابْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرٍ النَّبَاطِيِّ قَالَ: كُنْتُ امْرَأًا أُسْتَكْرِمُ مِنَ النِّسَاءِ. لَا أَرَى

Zihâr upon my wife (to last) until Ramadân ended. While she was talking to me one night, part of her body became uncovered. I jumped on her and had intercourse with her. The next morning I went to my people and told them, and said to them: 'Ask the Messenger of Allâh ﷺ for me.' They said: 'We will not do that, lest Allâh reveal Qur'ân concerning us or the Messenger of Allâh ﷺ says something about us, and it will be a lasting source of disgrace for us. Rather we will leave you to deal with it yourself. Go yourself and tell the Messenger of Allâh ﷺ about your problem.' So I went out and when I came to him, I told him what happened. The Messenger of Allâh ﷺ said: 'Did you really do that?' I said: 'I really did that, and here I am, O Messenger of Allâh. I will bear Allâh's ruling on me with patience.' He said: 'Free a slave.' I said: 'By the One Who sent you with the truth, I do not own anything but myself.' He said: 'Fast for two consecutive months.' I said: 'O Messenger of Allâh, the thing that happened to me was only because of fasting.' He said: 'Then give charity, or feed sixty poor persons.' I said: 'By the One Who sent you with the truth, we spent last night with no dinner.' He said: 'Then go to the collector of charity of Banu Zuraiq, and tell him to give you something, then feed sixty poor persons, and benefit from the rest.'" (*Da'if*)

رَجُلًا كَانَ يُصِيبُ مِنْ ذَلِكَ مَا أَصِيبُ. فَلَمَّا دَخَلَ رَمَضَانَ ظَاهَرْتُ مِنْ امْرَأَتِي حَتَّى يَسْلَخَ رَمَضَانَ. فَبَيْنَمَا هِيَ تُحَدِّثُنِي ذَاتَ لَيْلَةٍ انْكَشَفَ لِي مِنْهَا شَيْءٌ. فَوَيْبَتْ عَلَيْهَا فَوَافَعْتُهَا. فَلَمَّا أَصْبَحْتُ غَدَوْتُ عَلَى قَوْمِي. فَأَخْبَرْتُهُمْ خَبْرِي. وَقُلْتُ لَهُمْ: سَلُوا لِي رَسُولَ اللَّهِ ﷺ. فَقَالُوا: مَا كُنَّا نَفْعَلُ. إِذَا يُنَزَّلُ اللَّهُ فِيْنَا كِتَابًا، أَوْ يَكُونُ فِيْنَا مِنْ رَسُولِ اللَّهِ ﷺ قَوْلٌ، فَيُنْفِقِي عَلَيْنَا عَارُهُ، وَلَكِنْ سَوْفَ نَسْأَلُكَ بِحَبْرِيَّتِكَ. أَذْهَبَ أَنْتَ فَادْكُرْ شَأْنَكَ لِرَسُولِ اللَّهِ ﷺ. قَالَ: فَخَرَجْتُ حَتَّى جِئْتُهُ، فَأَخْبَرْتُهُ الْخَبْرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَنْتَ بِذَلِكَ؟» فَقُلْتُ: أَنَا بِذَلِكَ. وَهَا أَنَا، يَا رَسُولَ اللَّهِ صَابِرٌ لِحُكْمِ اللَّهِ عَلَيَّ. قَالَ: «فَأَعْتِقْ رَقَبَةً» قَالَ: قُلْتُ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا أَصْبَحْتُ أَمْلِكُ إِلَّا رَقَبَتِي هَذِهِ. قَالَ: «فَصُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ» قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ وَهَلْ دَخَلَ عَلَيَّ مَا دَخَلَ مِنَ الْبَلَاءِ إِلَّا بِالضُّومِ؟ قَالَ: «فَصَدَّقْ [أَوْ أَطْعِمْ سِتِّينَ مَسْكِينًا]» قَالَ: قُلْتُ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَقَدْ بَتْنَا لَيْلَتَنَا هَذِهِ، مَا لَنَا عَشَاءٌ. قَالَ: «فَأَذْهَبْ إِلَى صَاحِبِ صَدَقَةِ بَنِي زُرَيْقٍ فَقُلْ لَهُ، فَلْيَدْفَعْهَا إِلَيْكَ. وَأَطْعِمْ سِتِّينَ مَسْكِينًا. وَانْتَفِعْ بِبَقِيَّتِهَا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢١٣ وغيره من حديث ابن إسحاق به، وحسنه الترمذي، ح: ١٢٠٠، وصححه الحاكم على شرط مسلم: ٢/ ٢٠٣، ووافقه الذهبي، وقال البخاري: سليمان لم يسمع عندي من سلمة * وابن إسحاق عن ابن تقدم، ح: ١٢٠٩، وله شاهد منقطع عند الترمذي وغيره.

Comments:

- Zihâr* is that a person says to his wife, 'you are for me just like the back of my mother', which means 'you are unlawful for me just like relations with my mother are unlawful for me.'
- Doing *Zihâr* is a sin but it does not break the marriage bond. In *Zihâr* only sexual intercourse is forbidden until the expiation is made.
- There is no expiation to be made if *Zihâr* is acted upon for a fixed period and matrimonial relations do not occur during it.
- If the time limit for *Zihâr* is not specified, then expiation should be made before having intercourse.

2063. It was narrated from 'Urwah bin Zubair, that 'Āishah said: "Blessed is the One Whose hearing encompasses all things. I heard some of the words of Khawlah bint Tha'labah, but some of her words were not clear to me, when she complained to the Messenger of Allāh ﷺ about her husband, and said: 'O Messenger of Allāh, he has consumed my youth and I split my belly for him (i.e., bore him many children), but when I grew old and could no longer bear children, he declared *Zihâr* upon me; O Allāh, I complain to You.' She continued to complain until Jibra'il brought down these Verses: 'Indeed Allāh has heard the statement of she who pleads with you (O Muhammad) concerning her husband, and complains to Allāh.'"^[1] (*Sahih*)

٢٠٦٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُبَيْدَةَ: حَدَّثَنَا أَبِي عَنِ الْأَعْمَشِ، عَنْ ثَمِيمِ بْنِ سَلْمَةَ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَتْ عَائِشَةُ: تَبَارَكَ الَّذِي وَسِعَ سَمْعُهُ كُلَّ شَيْءٍ. إِنِّي لَأَسْمَعُ كَلَامَ حَوَلَةَ بِنْتِ ثَعْلَبَةَ، وَيَخْفَى عَلَيَّ بَعْضُهُ، وَهِيَ تَسْتَكِي زَوْجَهَا إِلَى رَسُولِ اللَّهِ ﷺ. وَهِيَ تَقُولُ: يَا رَسُولَ اللَّهِ! أَكَلْتُ شَبَابِي. وَكَثُرَتْ لِي بَطْنِي. حَتَّى إِذَا كَبِرْتُ سِنِّي، وَأَنْقَطَعَ وَكْدِي، ظَاهَرَ مِنِّي. اللَّهُمَّ إِنِّي أَشْكُو إِلَيْكَ. فَمَا بَرَحْتُ حَتَّى نَزَلَ جِبْرَائِيلُ بِهِؤْلَاءِ الْآيَاتِ: ﴿قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ﴾ [المجادلة: ١].

تخریج: [صحیح] تقدم، ح: ١٨٨.

^[1] *Al-Mujādilah* 58:1.

Comments:

- a. Allāh ﷻ has the Attribute of Hearing, and His Hearing is not limited like His creatures, rather it is limitless.
- b. Khawlah ؓ made mention of her old age, that had she been young, it would have been easier for her to marry another person; or someone would marry her because of her young age with the hope of bearing children from her and thus looking after the children would become easier for her.

Chapter 26. A Man Who Declared *Zihâr* Upon His Wife, Having Intercourse With Her Before Offering Expiation

2064. It was narrated from Salamah bin Sakhr Al-Bayâdi that the Prophet ﷺ said concerning a man who declared *Zihâr* upon his wife having intercourse with her before compensation: "Let him offer one expiation." (*Da'if*)

2065. It was narrated from Ibn 'Abbâs that a man declared *Zihâr* upon his wife, then he had intercourse with her before offering expiation. He came to the Prophet ﷺ and told him about that. He said: "What made you do that?" He said: "I saw her ankles in the moonlight, and I could not control myself, and I had intercourse with her." The Messenger of Allāh ﷺ smiled and told him not to go near her until he had offered expiation. (*Hasan*)

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢٢٥، من

Comments:

- a. A person who has done *Zihâr* should keep away from his wife until the expiation is performed.

(المعجم ٢٦) - بَابُ الْمُظَاهِرِ يُجَامِعُ
قَبْلَ أَنْ يُكْفِّرَ (التحفة ٢٦)

٢٠٦٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرٍ الْبَيْضِيِّ، عَنِ النَّبِيِّ ﷺ، فِي الْمُظَاهِرِ يُوَاقِعُ قَبْلَ أَنْ يُكْفِّرَ. قَالَ: «كُفَّارَةٌ وَاحِدَةٌ».

تخریج: [ضعيف] انظر، ح: ٢٠٦٢.

٢٠٦٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ بَرِيدٍ. قَالَ: حَدَّثَنَا عُثْمَرُ: حَدَّثَنَا مَعْمَرٌ عَنِ الْحَكَمِ بْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا ظَاهَرَ مِنْ امْرَأَتِهِ. فَعَشِيهَا قَبْلَ أَنْ يُكْفِّرَ. فَأَتَى النَّبِيَّ ﷺ، فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ: «مَا حَمَلَكَ عَلَى ذَلِكَ؟» فَقَالَ: يَا رَسُولَ اللَّهِ! رَأَيْتُ بَيَاضَ جِجَلَيْهَا فِي الْقَمَرِ، فَلَمْ أَمْلِكْ نَفْسِي أَنْ وَقَعْتُ عَلَيْهَا. فَضَحِكَ رَسُولُ اللَّهِ ﷺ وَأَمَرَهُ أَلَّا يَتْرِبَهَا حَتَّى يُكْفِّرَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢٢٥، من حديث معمر به، وصححه الترمذي، ح: ١١٩٩.

b. If he has had intercourse mistakenly before making expiation, then he would not have to make two expiations; and just one expiation is enough, and he should beg Allāh's pardon and seek forgiveness.

Chapter 27. The *Li'ân*^[1]

2066. It was narrated that Sahl bin Sa'd As-Sâ'idi said: "Uwaimir came to 'Āsim bin 'Adi and said: 'Ask the Messenger of Allāh ﷺ for me: "Do you think that if a man finds another man with his wife and kills him, he should be killed in retaliation, or what should he do?" 'Āsim asked the Messenger of Allāh ﷺ about that, and the Messenger of Allāh ﷺ disapproved of the question. Then 'Uwaimir met him ('Āsim) and asked him about that, saying: 'What did you do?' He said: 'I did that and you have not brought me any good. I asked the Messenger of Allāh ﷺ and he disapproved of this question.' 'Uwaimir said: 'By Allāh, I will go to the Messenger of Allāh ﷺ myself and ask him.' So he went to the Messenger of Allāh ﷺ and found that Qur'ān had been revealed concerning them, and the Prophet ﷺ told them to go through the procedure of *Li'ân*. 'Uwaimir said: 'O Messenger of Allāh, by Allāh if I take her back, I would have been telling lies about her.' So he left her before the Messenger of Allāh ﷺ told him to do so, and that became the *Sunnah* for two who engage in the

(المعجم ٢٧) - بَابُ اللَّعَانِ (التحفة ٢٧)

٢٠٦٦ - حَدَّثَنَا أَبُو مَرْوَانَ، مُحَمَّدُ بْنُ عُمَانَ
الْعُمَانِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنْ ابْنِ
شِهَابٍ، عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ:
جَاءَ عُومِرٌ إِلَى عَاصِمِ بْنِ عَبْدِ اللَّهِ، فَقَالَ: سَلْ
لِي رَسُولَ اللَّهِ ﷺ: أَرَأَيْتَ رَجُلًا وَجَدَ مَعَ
امْرَأَتِهِ رَجُلًا فَقَتَلَهُ، أَتُقْتَلُ بِهِ؟ أَمْ كَيْفَ
يَصْنَعُ؟ فَسَأَلَ عَاصِمٌ رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ
فَعَابَ رَسُولُ اللَّهِ ﷺ الْمَسْأَلَةَ. ثُمَّ لَقِيَهُ
عُومِرٌ فَسَأَلَهُ، فَقَالَ: مَا صَنَعْتَ؟ [فَقَالَ:
صَنَعْتُ] أَنْكَ لَمْ تَأْتِنِي بِخَيْرٍ. سَأَلْتُ رَسُولَ
اللَّهِ ﷺ فَعَابَ الْمَسْأَلَةَ. فَقَالَ عُومِرٌ: وَاللَّهِ!
لَأَتَيْنَ رَسُولَ اللَّهِ ﷺ وَلَا سَأَلْتُهُ. فَاتَى رَسُولَ
اللَّهِ ﷺ فَوَجَدَهُ قَدْ أُنْزِلَ عَلَيْهِ فِيهِمَا. فَلَا عَن
بَيْنَهُمَا. فَقَالَ عُومِرٌ: وَاللَّهِ لَئِنْ أَنْطَلَقْتُ بِهَا
يَا رَسُولَ اللَّهِ لَقَدْ كَذَبْتُ عَلَيْهَا. قَالَ: فَفَارَقَهَا
قَبْلَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ ﷺ. فَصَارَتْ سُنَّةً
فِي الْمُتَلَاعِنِينَ. ثُمَّ قَالَ النَّبِيُّ ﷺ:
«انظروها. فَإِنْ جَاءَتْ بِهِ أَسْحَمٌ، أَدْعَجِ
الْمَيْتِينَ، عَظِيمِ الْأَلْبَتِينَ، فَلَا أَرَاهُ إِلَّا قَدْ
صَدَّقَ عَلَيْهَا. وَإِنْ جَاءَتْ بِهِ أَحْمِرٌ كَأَنَّهُ
وَحْرَةٌ، فَلَا أَرَاهُ إِلَّا كَاذِبًا» قَالَ: فَجَاءَتْ بِهِ
عَلَى التَّعْتِ الْمَكْرُوهِ.

^[1] An oath which is taken by both the wife and the husband when he accuses his wife of committing illegal sexual intercourse. See *Surat An-Nur* (24:6-9).

procedure of *Li'ân*. Then the Prophet ﷺ said: 'Wait and see. If she gives birth to a child who is black in color with widely-spaced dark eyes and large buttocks, then I think that he was telling the truth about her, but if she gives birth to a child with a red complexion like a *Wahrah*,^[1] then I think that he was lying.' Then she gave birth to a child with features resembling those of the man concerning whom she was accused." (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، من جوز الطلاق الثلاث لقول الله تعالى: ﴿الطلاق مرتان...﴾ إلخ، ح: ٥٢٥٩ وغيره، ومسلم، كتاب اللعان، ح: ١٤٩٢ من حديث ابن شهاب الزهري به.

Comments:

- The characteristic of self-esteem in a man is a good quality, but killing someone because of self-esteem is illegal. If one has strong doubt in the character of one's wife, then one should divorce her.
- The Messenger of Allâh ﷺ disliked this question, because according to his knowledge, this type of incident had not happened, and it was impossible to inflict punishment based purely on doubt.
- If a husband accuses his wife of committing adultery, then the woman should be questioned, and if she admits to it, she should be stoned, and the husband will not be entitled to any punishment. Likewise, if four witnesses bear witness against her, then this woman and her fornicator mate will deserve punishment.
- If a woman does not admit her sexual offence, then the man should be told that the accusation is a crime and should be asked to repent. If he admits that he accused her wrongly, then he will be inflicted with the punishment of accusation, which is eighty lashes, and the woman will have no punishment.

2067. It was narrated from Ibn 'Abbâs that Hilâl bin Umayyah accused his wife in the presence of the Prophet ﷺ of (committing adultery) with Sharik bin Sahnâ'. The Prophet ﷺ said: "Bring proof

٢٠٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ. قَالَ: أَنْبَأَنَا هِشَامُ بْنُ حَسَّانَ: حَدَّثَنَا عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ امْرَأَتَهُ عِنْدَ النَّبِيِّ ﷺ بِشَرِيكَ بْنِ

[1] They say it is a kind of gecko (lizard) or small red crawling animal or reptile.

or you will feel the *Hadd* (punishment) on your back." Hilâl bin Umayyah said: "By the One Who sent you with the truth, I am telling the truth, and Allâh will send down revelation concerning my situation which will spare my back." Then the following was revealed: "And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e., testifies four times) by Allâh that he is one of those who speak the truth. And the fifth (testimony should be) the invoking of the curse of Allâh on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allâh, that he (her husband) is telling a lie. And the fifth (testimony) should be that the wrath of Allâh be upon her if he (her husband) speaks the truth."^[1] The Prophet ﷺ turned and sent for them, and they came. Hilâl bin Umayyah stood up and bore witness, and the Prophet ﷺ said: "Allâh knows that one of you is lying. Will either of you repent?" Then she stood up and affirmed her innocence. On the fifth time, meaning that the wrath of Allâh be upon her if he (her husband) speaks the truth, they said to her: "It will invoke the wrath of Allâh." Ibn 'Abbâs said:

سَحْمَاءُ. فَقَالَ النَّبِيُّ ﷺ: «الْبَيْتَةُ أَوْحَدٌ فِي ظَهْرِكَ» فَقَالَ هِلَالُ بْنُ أُمَيَّةَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ إِنِّي لَصَادِقٌ. وَلَيُنَزِّلَنَّ اللَّهُ فِي أَمْرِي مَا يَبْرِئُ ظَهْرِي. قَالَ: فَتَزَلَّتْ «وَالَّذِينَ يَرْمُونَ زَوْجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ» حَتَّى بَلَغَ: «وَالْفَلْسَفَةَ أَنَّ عَضَبَ اللَّهِ عَلَيْهِمَا إِنْ كَانَ مِنْ الصَّادِقِينَ» [النور: ٦-٩] فَأَنْصَرَفَ النَّبِيُّ ﷺ. فَأَرْسَلَ إِلَيْهِمَا فَجَاءَا. فَقَامَ هِلَالُ بْنُ أُمَيَّةَ فَشَهِدَ، وَالنَّبِيُّ ﷺ يَقُولُ: «إِنَّ اللَّهَ يَعْلَمُ أَنَّ أَحَدَكُمَا كَاذِبٌ. فَهَلْ مِنْ تَائِبٍ؟» ثُمَّ قَامَتْ فَشَهِدَتْ. فَلَمَّا كَانَ عِنْدَ الْخَامِسَةِ: «إِنَّ عَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ» قَالُوا لَهَا: إِنَّهَا لَمُوجِبَةٌ. قَالَ ابْنُ عَبَّاسٍ: فَتَلَكَّأَتْ وَكَصَّصَتْ. حَتَّى طَنَّنَّا أَنَّهَا سَتَرْجِعُ. فَقَالَتْ: وَاللَّهِ! لَا أَفْضَحُ قَوْمِي سَائِرَ الْيَوْمِ. فَقَالَ النَّبِيُّ ﷺ: «انظروها. فَإِنْ جَاءَتْ بِهِ أَكْحَلُ الْعَيْبَتَيْنِ، سَابَغِ الْأَلْيَتَيْنِ، خَدَلَجِ السَّاقَيْنِ، فَهُوَ لِشَرِيكَ بْنِ سَحْمَاءَ». فَجَاءَتْ بِهِ كَذَلِكَ. فَقَالَ النَّبِيُّ ﷺ: «لَوْلَا مَا مَضَى مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلِهَا شَأْنٌ».

[1] An-Nur 24:6-9.

“She hesitated and backed up, until we thought that she was going to recant. Then she said: ‘By Allâh, I cannot dishonor my people for ever.’ Then the Prophet ﷺ said: ‘Wait and see. If she gives birth to a child with black eyes, fleshy buttocks and big calves, then he is the son of Sharik bin Sahnâ.’ And she gave birth to such a child. Then the Prophet ﷺ said: ‘Had not the matter been settled by the Book of Allâh, I would have punished her severely.’” (*Sahih*)

تخریج: أخرجه البخاري، الشهادات، باب: إذا ادعى أو قذف فله أن يلتمس البينة وينطلق لطلب البينة، ح: ٢٦٧١، ٤٧٤٧، ٥٣٠٧، وأبو داود، ح: ٢٢٥٤، والترمذي، ح: ٣١٧٩ كلهم عن محمد بن بشار به.

Comments:

- Hilâl bin Umayyah ﷺ trusted Allâh, and left his matter with Allâh, and Allâh cleared him.
- The wording of the fifth witnessing is different than the first four; which is to awaken the conscious that whoever is in the wrong from the two parties should admit their mistake, and should accept a worldly punishment in order to escape the punishment of the Hereafter.
- The statement of Allâh’s Messenger ﷺ: ‘Had not the matter been settled by the Book of Allâh, I would have punished her severely’ means the crime of the woman was certain, but to inflict punishment after *Li’ân* (having invoked the curse) was not allowed, so he ﷺ let her go, otherwise she would have had to be stoned.

2068. It was narrated that ‘Abdullâh said: “We were in the mosque one Friday night when a man said: ‘If a man finds a man with his wife and kills him, will you kill him, and if he speaks,^[1] will you flog him. By Allâh I will mention that to the Prophet ﷺ.’

٢٠٦٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ .
و إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ حَبِيبٍ . قَالَ :
حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سُلَيْمَانَ ، عَنِ الْأَعْمَشِ ، عَنْ
إِبْرَاهِيمَ ، عَنْ عَلْقَمَةَ ، عَنْ عَبْدِ اللَّهِ قَالَ : كُنَّا
فِي الْمَسْجِدِ لَيْلَةَ الْجُمُعَةِ . فَقَالَ رَجُلٌ : لَوْ أَنَّ

[1] Meaning he accuses her.

So he mentioned that to the Prophet ﷺ, and Allāh revealed the Verses of *Li'ân*. Then after that the man came and accused his wife, so the Prophet ﷺ told them to go through the procedure of *Li'ân* and he said: 'Perhaps she will give birth to a black child.' Then she gave birth to a black child with curly hair." (*Sahih*)

رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا فَفَتَنَهُ فَتَنَتْهُمُوهُ.
وَإِنْ تَكَلَّمَ جَلَدْتُمُوهُ. وَاللَّهُ لَأَذَكُرَنَّ ذَلِكَ لِلنَّبِيِّ
ﷺ. فَذَكَرَهُ لِلنَّبِيِّ ﷺ. فَأَنْزَلَ اللَّهُ آيَاتِ
اللِّعَانِ. ثُمَّ جَاءَ الرَّجُلُ بَعْدَ ذَلِكَ يَقْدِفُ
امْرَأَتَهُ. فَلَا عَنَ النَّبِيِّ ﷺ بَيْنَهُمَا. وَقَالَ:
«عَسَى أَنْ تَجِيءَ بِهِ أَسْوَدٌ» فَجَاءَتْ بِهِ أَسْوَدٌ،
جَعْدًا.

تخريج: أخرجه مسلم، كتاب اللعان، ح: ١٤٩٥ من حديث الأعمش به.

Comments:

This incident most probably is the same as the one mentioned in the previous *Hadith*. It seems as if he had doubt in his wife's character but he did not see that she had committed the offense with his own eyes. As he saw with his own eyes, Allāh then revealed the Verses of the Qur'ân about invoking curses.

2069. It was narrated from Ibn 'Umar that a man invoked curses on his wife, and refused to accept her child. The Messenger of Allāh ﷺ separated them, and left the child with the woman. (*Sahih*)

٢٠٦٩ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ: حَدَّثَنَا عَبْدُ
الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ مَالِكِ بْنِ أَنَسٍ، عَنْ
نَافِعٍ، عَنِ ابْنِ عَمْرٍو أَنَّ رَجُلًا لَاعَنَ امْرَأَتَهُ
وَأَتَمَّتْ مِنْ وَلَدِهَا. فَفَرَّقَ رَسُولُ اللَّهِ ﷺ
بَيْنَهُمَا. وَالْحَقَّ الْوَلَدَ بِالْمَرْأَةِ.

تخريج: أخرجه البخاري، الطلاق، باب: يلحق الولد بالملاعة، ح: ٦٧٤٨، ٥٣١٥،
ومسلم، كتاب اللعان، ح: ١٤٩٤ من حديث مالك به.

Comments:

- a. *Li'ân* (invoking curses) is an irrevocable separation, after which a man (who invokes curses) can never remarry the woman.
- b. The child of a woman involved in invoking the curse will not be a part of the lineage of the husband who invokes the curse, and also the child will not be an heir of that man. However, the woman is doubtlessly the mother of the child. Therefore the child will be the heir of the mother, and other maternal relatives, and they will be the child's heir.

2070. It was narrated that Ibn 'Abbâs said: "A man from among the *Ansâr* married a woman from Bal'ijlân. He entered upon her and

٢٠٧٠ - حَدَّثَنَا عَلِيُّ بْنُ سَلَمَةَ النَّيْسَابُورِيُّ:
حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ: حَدَّثَنَا
أَبِي عَنِ ابْنِ إِسْحَاقَ. قَالَ: ذَكَرَ طَلْحَةُ بْنُ

spent the night with her, then in the morning he said: 'I did not find her to be a virgin.' Her case was taken to the Prophet ﷺ, and he called the girl and asked her. She said: 'No, I was a virgin.' So he told them to go through the procedure of *Li'ân*, and gave her the bridal-money." (*Da'if*)

نَافِعٌ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: تَزَوَّجَ رَجُلٌ مِنَ الْأَنْصَارِ امْرَأَةً مِنْ بُلْعِجَلَانَ. فَدَخَلَ بِهَا. فَبَاتَ عِنْدَهَا. فَلَمَّا أَصْبَحَ قَالَ: مَا وَجَدْتُهَا عَذْرَاءً. فَرَفَعَ شَأْنَهَا إِلَى النَّبِيِّ ﷺ. فَدَعَا الْجَارِيَةَ فَسَأَلَهَا فَقَالَتْ: بَلَى. قَدْ كُنْتُ عَذْرَاءً. فَأَمَرَ بِهِمَا فَتَلَاعَنَا. وَأَعْطَاهَا الْمَهْرَ.

تخريج: [إسناده ضعيف] أخرجه أحمد: ١/٢٦١ عن يعقوب بن إبراهيم بن، وقال البوصيري: في إسناده ضعف لتدليس محمد بن إسحاق، وانظر، ح: ١٢٠٩.

2071. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "There are four kinds of women for whom there is no *Li'ân*: a Christian woman married to a Muslim, a Jewish woman married to a Muslim, a free woman married to a slave, and a slave woman married to a free man." (*Da'if*)

٢٠٧١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا حَيَوَةُ بْنُ شُرَيْحٍ الْأَحْزَرِيُّ، عَنْ صَمْرَةَ بْنِ زَيْبَةَ، عَنِ ابْنِ عَطَاءٍ، عَنْ أَبِيهِ، عَنْ عَمْرِو ابْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «أَرْبَعٌ مِنَ النِّسَاءِ لَا مُلَاعَنَةَ بَيْنَهُنَّ: النَّصْرَانِيَّةُ تَحْتَ الْمُسْلِمِ. وَالْيَهُودِيَّةُ تَحْتَ الْمُسْلِمِ. وَالْحُرَّةُ تَحْتَ الْمَمْلُوكِ. وَالْمَمْلُوكَةُ تَحْتَ الْحُرِّ».

تخريج: [إسناده ضعيف جداً] أخرجه الدارقطني: ٣/١٦٣، ١٦٤ من حديث صمرة به، وقال: وهذا عثمان بن عطاء الخراساني وهو ضعيف الحديث جداً، وتابعه يزيد بن بزيع (ويقال: بزيع) الرملي وهو من الدجاجلة كما قال الدارقطني رحمه الله، وروى موقوفاً بإسناد ضعيف، والله أعلم.

Chapter 28. Declaring A Woman As Unlawful For Oneself

(المعجم ٢٨) - بَابُ الْحَرَامِ (التحفة ٢٨)

2072. It was narrated that 'Aishah said: "The Messenger of Allāh ﷺ swore to keep away from his wives and declared them as unlawful for him, so he made something permissible forbidden,

٢٠٧٢ - حَدَّثَنَا الْحَسَنُ بْنُ قُرْعَةَ: حَدَّثَنَا مَسْلَمَةُ بْنُ عَلْقَمَةَ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ، عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: أَلَى رَسُولِ اللَّهِ ﷺ مِنْ نِسَائِهِ. وَحَرَّمَ فَجَعَلَ

and he offered expiation for having sworn to do so." (*Da'if*) *وَجَعَلَ فِي الْيَمِينِ كَفَّارَةً.*

تخريج: [إسناده ضعيف] أخرجه الترمذي، الطلاق، باب ماجاء في الإيلاء، ح: ١٢٠١ عن الحسن بن قرعة به * مسلمة صدوق لكنه روى عن داود بن أبي هند أحاديث مناكير، عند الجمهور، وخالفه علي بن مسهر (ثقة) وغيره، فرووه عن داود عن الشعبي به مراسلاً، وهو المحفوظ.

Comments:

The Statement of Allâh Almighty with respect to oath is: "Its expiation is to feed ten poor persons, on a scale of that with which you would feed your own families, or to clothe them, or to set free a slave. But whosoever cannot afford (that), then he should fast for three days." (*Al-Mâ'idah*: 89).

2073. It was narrated from Sa'eed bin Jubair that Ibn 'Abbâs said: "For the one who makes unlawful is the swearing."^[1] (*Sahih*)

And Ibn 'Abbâs used to say: "You had the best example in the Messenger of Allâh."^[2]

٢٠٧٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ: حَدَّثَنَا هِشَامُ الدَّسْتَوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ يَعْلَى بْنِ حَكِيمٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: فِي الْحُرَامِ يَمِينٌ.
وَكَانَ ابْنُ عَبَّاسٍ يَقُولُ: لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ.

تخريج: أخرجه البخاري، التفسير، (سورة التحريم)، باب يايها النبي لم تحرم ما أحل الله لك ، ح: ٤٩١١، ومسلم، الطلاق، باب وجوب الكفارة على من حرم امرأته ولم ينو الطلاق، ح: ١٤٧٣ من حديث هشام الدستوائي به .

Comments:

The statement of Abdullâh bin Abbâs رضي الله عنه is that if one declares something that is lawful as unlawful, he should carry out the expiation of it (as an expiation of oath). The same narration is mentioned in *Sahih Al-Bukhâri* with the following wording: Narrated from Sa'eed bin Jubair رضي الله عنه that Ibn Abbâs رضي الله عنه said with regard to making things unlawful: "He must make an expiation."

Chapter 29. Giving A Slave Woman The Choice When She Is Freed

2074. It was narrated from

(المعجم ٢٩) - بَابُ خِيَارِ الْأَمَةِ إِذَا أُعْتِقَتْ (التحفة ٢٩)

٢٠٧٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

[1] That is, in the case of who makes his wife unlawful for himself, he is to atone the same as the one who had to atone for swearing about something. See *Sahih Al-Bukhâri*, no. 4911.

[2] *Al-Ahzâb* 33:21.

‘Aishah that she freed Barirah and the Messenger of Allāh ﷺ gave her the choice, and she (Barirah) had a free husband. (*Da‘if*)

حَفْصُ بْنُ عِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ أَنَّهَا أَعْتَقَتْ بَرِيرَةَ. فَخَيَّرَهَا رَسُولُ اللَّهِ ﷺ. وَكَانَ لَهَا زَوْجٌ حُرٌّ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب من قال كان حراً، ح: ٢٢٣٥، والترمذي، والنسائي، وابن ماجه من حديث إبراهيم به، وقال الترمذي: حسن صحيح قلت: إبراهيم النخعي يندلس كما قال الحاكم وغيره، ولم أجد تصريح سماعه، وذكر ابن حبان هذا الحديث في صحيحه (الإحسان)، ح: ٤٢٥٧، ولكن قال: وإن الأسود واهم في قوله: كان حراً، ولو ثبت هذا الحديث عن الأسود لكان ضعيفاً لمخالفة جمع كثير من الرواة والعدد الكثير أولى بالحفظ من الواحد، تنبيه: قوله وكان لها زوج حر من قول الأسود رحمه الله، كما في رواية أبي عوانة عن منصور، عند البخاري وغيره.

Comments:

Shaikh Albâni رحمه الله said, "It is untrue in this narration that her husband was a free man; the truth is that he was a slave, as comes in the following two narrations."

2075. It was narrated that Ibn ‘Abbâs said: "The husband of Barirah was a slave called Mughith. It is as if I can see him now, walking behind her and weeping, with tears running down his cheeks. The Prophet ﷺ said to ‘Abbâs: 'O ‘Abbâs, are you not amazed by the love of Mughith for Barirah, and the hatred of Barirah for Mughith?' And the Prophet ﷺ said to her: 'Why don't you take him back, for he is the father of your child?' She said: 'O Messenger of Allāh, are you commanding me (to do so)?' He said: 'No, rather I am interceding.' She said: 'I have no need of him.'" *(Sahih)*

٢٠٧٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَ مُحَمَّدُ ابْنُ خَلَادٍ الْبَاهِلِيُّ. قَالَ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ: حَدَّثَنَا خَالِدُ الْحَدَّادُ عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: كَانَ زَوْجُ بَرِيرَةَ عَبْدًا يُقَالُ لَهُ مُغِيثٌ. كَأَنِّي أَنْظُرُ إِلَيْهِ يَطُوفُ خَلْفَهَا وَيَبْكِي. وَدُمُوعُهُ تَسِيلُ عَلَى خَدِّهِ. فَقَالَ النَّبِيُّ ﷺ لِعَبَّاسٍ: «يَا عَبَّاسُ! أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثِ بَرِيرَةَ، وَمِنْ بُغْضِ بَرِيرَةَ مُغِيثًا؟» فَقَالَ لَهَا النَّبِيُّ ﷺ: «لَوْ رَاجَعْتِهِ، فَإِنَّهُ أَبُو وَلَدِكَ» قَالَتْ: يَا رَسُولَ اللَّهِ! تَأْمُرُنِي؟ قَالَ: «إِنَّمَا أَسْتَعِينُ» قَالَتْ: لَا حَاجَةَ لِي فِيهِ.

تخريج: أخرجه البخاري، الطلاق، باب شفاعة النبي ﷺ في زوج بريرة، ح: ٥٢٨٣ من حديث عبدالوهاب الثقفي به.

Comments:

- If husband and wife both are slaves; and the wife is set free, she has the choice to live with her husband or to separate from him.
- The decision of separation will break the marriage contract, but they are allowed to reunite after remarriage. Allāh's Messenger ﷺ advised Barirah to go back to her husband, which was an advice to remarry.
- If the husband is set free before the wife, then the wife does not have a choice of separation.

2076. It was narrated that 'Aishah said: "Three *Sunan* were established because of Barirah: She was given the choice (of whether to remain married) when she was freed, and her husband was a slave; they used to give her charity and she used to give it as a gift to the Prophet ﷺ, and he would say: 'It is charity for her and a gift for us,' and he said, the '*Walā'* is for the one who set the slave free.'" (*Sahih*)

٢٠٧٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ أَسَامَةَ بْنِ زَيْدٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: مَضَى فِي بَرِيرَةَ ثَلَاثُ سُنَنِ: خَيْرَتِ حِينَ أُغْتِقَتْ. وَكَانَ زَوْجُهَا مَمْلُوكًا. وَكَانُوا يَصَدَّقُونَ عَلَيْهَا فَتُهْدِي إِلَى النَّبِيِّ ﷺ فَيَقُولُ: «هُوَ عَلَيْهَا صَدَقَةٌ، وَهُوَ لَنَا هَدِيَّةٌ» وَقَالَ: «الْوَلَاءُ لِمَنْ أُغْتِقَ».

تخریج: [صحيح] أخرجه أحمد: ٢٠٧/٦ عن وكيع به مختصراً، وإسناده حسن، وللحديث طرق كثيرة عند البخاري، ومسلم وغيرهما.

Comments:

- The right of ownership changes the status of an object. If a poor person gets something in charity, and he offers it to a rich person as a present, or a rich person buys it from him, it will not have the status of charity for the rich person.
- Walā'* is a relation between the emancipator and the emancipated slave which is established due to emancipation. Due to this relation, an emancipated slave is considered the member of the emancipator's family. If the emancipated slave leaves no heir, then the emancipator will be the heir which is called the right of *Walā'*.

2077. It was narrated that 'Aishah said: "Barirah was told to observe the waiting period for three menstrual cycles." (*Hasan*)

٢٠٧٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ قَالَتْ: أُمِرْتُ بِثَلَاثِ بَرِيرَةَ أَنْ تَعْتَدَ بِثَلَاثِ بَرِيرَةَ.

Abu 'Āsim said: "I mentioned this to Muzāhir and said: 'Tell me what you told Ibn Juraij.' So he told me, narrating from Qāsim from 'Āishah, that the Prophet ﷺ said: 'The divorce of a slave woman is twice, and her (waiting) period is two menstrual cycles.'" (Da'if)

ﷺ قَالَ: «طَلَقُ الْأَمَةِ تَطْلِقَتَانِ. وَفُرُؤُهَا حَيْضَتَانِ».

قَالَ أَبُو عَاصِمٍ: فَذَكَرْتُهُ لِمُطَاهِرٍ. فَقُلْتُ: حَدَّثَنِي كَمَا حَدَّثْتَ ابْنَ جُرَيْجٍ. فَأَخْبَرَنِي عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «طَلَقُ الْأَمَةِ تَطْلِقَتَانِ. وَفُرُؤُهَا حَيْضَتَانِ».

تخريج: [إسناده ضعيف] أخرجه أبوداود، الطلاق، باب في سنة طلاق العبد، ح: ٢١٨٩، والترمذي، ح: ١١٨٢ من حديث أبي عاصم به، وقال أبوداود: هو حديث مجهول، وقال الترمذي: غريب * مظاهر ضعيف كما في التقريب وغيره.

Comments:

In *Muwatta*, Imam Mālik ﷺ quoted the verdicts of Uthmān, Zaid bin Thābit and 'Abdullāh bin 'Umar ؓ, that a male slave has the right to divorce two times only, and the waiting period of a female slave will be two menstruation cycles. It means divorce relies on the husband's status of him being free or a slave, while the waiting period depends on the woman's status of her being free or a slave. (*Muwatta Imam Mālik*: 2/118]

Chapter 31. The Divorce Performed By A Slave

(المعجم ٣١) - بَابُ طَلَاقِ الْعَبْدِ

(التحفة ٣١)

2081. It was narrated that Ibn 'Abbās said: "A man came to the Prophet ﷺ and said: 'O Messenger of Allāh, my master married me to his slave woman, and now he wants to separate me and her.' The Messenger of Allāh ﷺ ascended the pulpit and said: 'O people, what is the matter with one of you who marries his slave to his slave woman, then wants to separate them? Divorce belongs to the one who takes hold of the calf (i.e., her husband).'" (Da'if)

٢٠٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا يَحْيَى بْنُ عَبْدِ اللَّهِ بْنِ بُكَيْرٍ: حَدَّثَنَا ابْنُ لَهَيْعَةَ، عَنْ مُوسَى بْنِ أَيُّوبَ الْعَاقِقِيِّ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ: أَتَى النَّبِيَّ ﷺ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ! [إِن] سَيِّدِي زَوَّجَنِي أَمَتَهُ، وَهُوَ يُرِيدُ أَنْ يُفَرِّقَ بَيْنِي وَبَيْنَهَا، قَالَ، فَصَدَّقَ رَسُولُ اللَّهِ ﷺ الْوَسْبَرَ فَقَالَ: «يَا أَيُّهَا النَّاسُ مَا بَالُ أَحَدِكُمْ يَزُوجُ عَبْدَهُ أَمَتَهُ ثُمَّ يُرِيدُ أَنْ يُفَرِّقَ بَيْنَهُمَا؟ إِنَّمَا الطَّلَاقُ لِمَنْ أَخَذَ بِالسَّاقِ».

تخريج: [إسناده ضعيف] قال البوصيري: هذا إسناد ضعيف لضيف ابن لهيعة، وانظر، ح: ٣٣٠، وللحديث شواهد عند الدارقطني وغيره، وانظر نصب الراية: ٤/١٦٥، والطبراني: ١١/

٣٠١، ٣٠٠، ح: ١١٨٠٠ وغيرهما، ولم يصح منها شيء، وفي القرآن غنية عن هذا الحديث وغيره، راجع التعليق المغني على سنن الدارقطني: ٣٧/٤، وله شواهد موقوفة، ومرفوعة، والقرآن بعضه.

Comments:

- A slave needs his master's permission to get married, but once a slave is married, the master has no authority to cancel the marriage.
- Divorcing is a husband's right, whether he is free or is a slave. None has the right to force him to separate from his wife.

Chapter 32. One Who Divorces A Slave Woman With Two Divorces, Then Buys Her

2082. It was narrated that Abul Hasan, the freed slave of Banu Nawfal, said: "Ibn 'Abbās was asked about a slave who divorces his wife twice, then (they are freed). Can he marry her? He said: 'Yes.' It was said to him: 'On what basis?' He said: 'The Messenger of Allāh ﷺ passed such a judgement.'" (*Da'if*)

(One of the narrators) 'Abdur-Razzâq said: "Abdullāh bin Al-Mubâarak said: "This Abul-Hasan loaded a tremendous boulder upon his neck.""^[1]

(المعجم ٣٢) - بَابُ مَنْ طَلَّقَ أَمَةً
تَطْلِقَتَيْنِ ثُمَّ اشْتَرَاهَا (التحفة ٣٢)

٢٠٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ زَنْجَوِيهِ أَبُو بَكْرٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عُمَرَ بْنِ مُعْتَبٍ، عَنْ أَبِي الْحَسَنِ، مَوْلَى بَنِي تَوْفَلٍ. قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ عَبْدِ طَلَّقَ امْرَأَتَهُ تَطْلِقَتَيْنِ ثُمَّ [أَعْتَبًا]. بَيَّرَ وَجْهَهَا؟ قَالَ: نَعَمْ. فَقِيلَ لَهُ: عَمَّنْ؟ قَالَ: قَضَى بِذَلِكَ رَسُولُ اللَّهِ ﷺ.

قَالَ عَبْدُ الرَّزَّاقِ: قَالَ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ: لَقَدْ تَحَمَّلَ أَبُو الْحَسَنِ هَذَا صَخْرَةً عَظِيمَةً عَلَى عُنُقِهِ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في سنة طلاق العبد، ح: ٢١٨٧ من حديث يحيى به * عمر بن معتب ضعيف كما في التقريب وغيره، ويدل السند على أن يحيى بن أبي كثير كان يروي عن الضعفاء أيضًا.

Comments:

'Loaded a tremendous boulder upon his neck' means he bore a burden of great responsibility by narrating this narration. (Imam Albāni declared this *Hadith* as Weak in *Ibn Mājah* and *Abu Dawud*. Also there are some narrations in *Ibn Mājah* that have not been classified.)

[1] Referring to the gravity of the matter, for it is not acted upon by most.

Chapter 33. The Waiting Period Of An *Umm Walad*

(المعجم ٣٣) - بَابُ عِدَّةِ أُمِّ الْوَالِدِ

(التحفة ٣٣)

2083. It was narrated that 'Amr bin 'Ās said: "Do not corrupt the *Sunnah* of our Prophet Muhammad ﷺ. The waiting period of an *Umm Walad* is four months and ten (days)." (*Da'if*)

٢٠٨٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ مَطَرِ الْوَرَّاقِ، عَنْ رَجَاءِ بْنِ حَبُوةَ، عَنْ قَبِيصَةَ بْنِ دُوَيْبٍ، عَنْ عَمْرٍو بْنِ الْعَاصِ قَالَ: لَا تُفْسِدُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا مُحَمَّدٍ ﷺ. عِدَّةُ أُمِّ الْوَالِدِ أَرْبَعَةٌ أَشْهُرٌ وَعَشْرًا.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب في عدة أم الولد، ح: ٢٣٠٨ من حديث سعيد به، وصححه ابن حبان (موارد)، ح: ١٣٣٣، والحاكم على شرط الشيخين: ٢/٢٠٩، ووافقه الذهبي، وقال أحمد: هذا حديث منكر، وقال الدارقطني: هو مرسل، لأن قبصة لم يسمع من عمرو: ٣١/٤، وتبعه البيهقي، فالسند معلل.

Comments:

- Umm Walad* is female slave who gives birth to a child by her master.
- 'Umar ؓ said, 'the female slave who gives birth to a child by her master, she should not be sold, gifted, nor be inherited. The master may benefit from her in his life, and she is a free woman after her master's death.' (*Muwatta Imam Mālik: 2/291*).
- An *Umm Walad* becomes free after the death of her master, therefore, her waiting period will be that of a free woman.

Chapter 34. It Is Disliked For A Recently Widowed Woman To Adorn Herself

2084. It was narrated from Humaid bin Nāfi' that he heard Zainab the daughter of Umm Salamah narrating that she heard Umm Salamah and Umm Habibah mention that a woman came to the Prophet ﷺ and said that her daughter's husband had died, and she was suffering from an eye disease, and she wanted to apply kohl to her eyes (as a remedy). The Messenger of Allāh ﷺ said "One of you would

(المعجم ٣٤) - بَابُ كَرَاهِيَةِ الزُّيْنَةِ

لِلْمُتَوَفَّى عَنْهَا زَوْجُهَا (التحفة ٣٤)

٢٠٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَا يَحْيَى بْنُ سَعِيدٍ، عَنْ حُمَيْدِ بْنِ نَافِعٍ أَنَّهُ سَمِعَ زَيْنَبَ ابْنَةَ أُمِّ سَلَمَةَ تُحَدِّثُ أَنَّهَا سَمِعَتْ أُمَّ سَلَمَةَ وَ أُمَّ حَبِيبَةَ تَذْكُرَانِ أَنَّ امْرَأَةً أَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: إِنَّ ابْنَةَ لَهَا تُؤَفِّئُ عَنْهَا زَوْجَهَا. فَاشْتَكَّتْ عَيْنَهَا. فَهِيَ تُرِيدُ أَنْ تَكْحَلَهَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: د كَانَتْ إِخْدَاكُ تَرْهِي بِالْبَعْرَةِ عِنْدَ رَأْسِ

throw a she-camel's dropping when a year had passed (since the death of her husband).^[1] Rather it is four months and ten (days)."

(*Sahih*)

الْحَوْلِ. وَإِنَّمَا هِيَ: أَرْبَعَةٌ أَشْهُرٍ وَعَشْرًا».

تخریج: أخرجه البخاري، الطلاق، باب: تحد المتوفى عنها أربعة أشهر وعشراً، ح: ٥٣٣٦ من حديث حميد بن نافع به، ومسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة... إلخ، ح: ١٤٨٨، ١٤٨٦/٦١ عن أبي بكر بن أبي شيبة وغيره.

Comments:

- Wearing jewelry and applying things of adornment should be avoided during the waiting period, rather a simple dress should be worn.
- Things that are used for beauty like makeup are not allowed, even for treatment during the waiting period, like: applying kohl or henna etc. Other alternatives should be used for treatment during this period.
- The waiting period after a husband's death is four months and ten days. But if a woman is pregnant, her waiting period will be till the birth of child, regardless if her child is born before the period of four months and ten days or after it. (*Sunan Ibn Mājah*; 2027-2030)

Chapter 35. Can A Woman Mourn For Anyone Other Than Her Husband?

(المعجم ٣٥) - بَابُ: هَلْ تُحَدُّ الْمَرْأَةُ عَلَى غَيْرِ زَوْجِهَا (التحفة ٣٥)

2085. It was narrated from 'Aishah that the Prophet ﷺ said: "It is not permissible for a woman to mourn for any deceased person for more than three days, except for her husband." (*Sahih*)

٢٠٨٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُمَيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَجُزُّ لِامْرَأَةٍ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ. إِلَّا عَلَى زَوْجٍ».

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ١٤٩١ عن أبي بكر بن أبي شيبة وغيره

Comments:

- Besides the death of a husband, it is also correct not to adorn oneself to express sorrow for the death of other close relatives.
- Things of adornment and attraction should be avoided only for three days upon the death of relatives.
- As for the waiting period after a husband's death, she should avoid applying or using anything like pretty adornment, kohl, perfumes, etc., during the whole waiting period.

[1] A description of the widow's behavior during the period of Ignorance.

2086. It was narrated from Hafsaah the wife of the Prophet ﷺ that the Messenger of Allāh ﷺ said: "It is not permissible for a woman who believes in Allāh and the Last Day to mourn for any deceased person for more than three days, except for her husband." (Sahih)

٢٠٨٦ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ، عَنْ حَفْصَةَ زَوْجِ النَّبِيِّ ﷺ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحَدِّثَ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ. إِلَّا عَلَى زَوْجٍ».

تخريج: أخرجه مسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة وتحريمه في غير ذلك إلا ثلاثة أيام، ح: ٦٤/١٤٩٠ من حديث يحيى بن سعيد به.

2087. It was narrated from Umm 'Atiyyah that the Messenger of Allāh ﷺ said: 'No deceased person should be mourned for more than three days, except a woman should mourn for her husband for four months and ten days, and she should not wear dyed clothes, except for a garment of 'Ashb, and she should not wear kohl or perfume, except at the beginning of her purity,^[1] when she may apply a little *Qust* and *Azfar*.'^[2] (Sahih)

٢٠٨٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ هِشَامِ بْنِ حَسَّانٍ، عَنْ حَفْصَةَ، عَنْ أُمِّ عَطِيَّةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُحَدِّثُ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ، إِلَّا امْرَأَةٌ تُحَدِّثُ عَلَى زَوْجِهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، إِلَّا ثَوْبَ عَصَبٍ. وَلَا تَكْتَجِلُ وَلَا تَطَيَّبُ إِلَّا عِنْدَ أَذْنَى طَهْرِهَا، بِنَبَلٍ مِنْ قُسْطٍ أَوْ أَظْفَارٍ».

تخريج: أخرجه البخاري، الطلاق، باب: تلبس الحادة ثياب العصب، ح: ٥٣٤٢، ٥٣٤٣، ومسلم، الطلاق، الباب السابق، ح: ٩٣٨ بعد، ح: ١٤٩١ من حديث هشام به.

Comments:

- 'Ashb is a specific cloth made in Yemen. Spun cotton thread with knots was dyed and the color would not affect the inner side of knot. So when the knot was undone, some thread would remain uncolored and some colored. The cloth made of this thread would have whiteness and color patterns; this type of cloth used to be called 'Ashb, which means some white and some colored cloth.
- This type of cloth is allowed to be worn during the waiting period because the white color prevails and the cloth does not remain attractive.

[1] Meaning after her menstrual period when she becomes clean.

[2] Nawawi said: "Qust and Azfar are two popular types of incense. They were permitted to remove offensive odor and not to use as a perfume."

Chapter 36. A Man Whose Father Orders Him To Divorce His Wife

(المعجم ٣٦) - بَابُ الرَّجُلِ يَأْمُرُهُ أَبُوهُ
بِطَلَاقِ امْرَأَتِهِ (الصفحة ٣٦)

2088. It was narrated that 'Abdullâh bin 'Umar said: "I had a wife whom I loved, but my father hated her. 'Umar mentioned that to the Prophet ﷺ, and he ordered me to divorce her, so I divorced her." (Hasan)

٢٠٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَعُثْمَانُ بْنُ عُمَرَ. قَالَا: حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ، عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَمْرَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: كَانَتْ تَحْتِي امْرَأَةً. وَكُنْتُ أُحِبُّهَا. وَكَانَ أَبِي يُبْغِضُهَا. فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ. فَأَمَرَنِي أَنْ أَطْلِقَهَا. فَطَلَقْتُهَا.

تخريج: [إسناده حسن] أخرجه أبو داود، الأدب، باب: في بر الوالدين، ح: ٥١٣٨ من حديث يحيى القطان به، وقال الترمذي، ح: ١١٨٩ حسن صحيح .

Comments:

- The parents often give preference to the pleasure of children, and sometimes they tolerate unreasonable and un-Islamic things just for the sake of children. In this situation if the parents are unhappy with the daughter-in-law, there must be a valid reason for it. Particularly, a father cannot order his son to divorce his wife.
- Giving precedence to parents' pleasure over one's own, is part of being dutiful and good to parents.

2089. It was narrated from 'Abdur-Rahmân that a man's father or mother – Shu'bah (one of the narrators) was not sure – ordered him to divorce his wife, and he made a vow that he would free one hundred slaves if he did that. He came to Abu Dardâ' while he was praying the *Duha*, and he was making his prayer lengthy, and he prayed between *Zuhr* and *Asr*. Then he asked him, and Abu Dardâ' said: "Fulfill your vow and honor your parents." Abu Ad-Dardâ' said: "I

٢٠٨٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَطَاءِ بْنِ السَّائِبِ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا أَمَرَهُ أَبُوهُ أَوْ أُمُّهُ - شَكَتْ شُعْبَةُ - أَنْ يُطْلَقَ امْرَأَتَهُ. فَجَعَلَ عَلَيْهِ مِائَةَ مُحَرَّرٍ. فَأَتَى أَبَا الدَّرْدَاءِ. فَإِذَا هُوَ يُصَلِّي الضُّحَى وَيُطِيلُهَا. وَصَلَّى مَا بَيْنَ الظُّهْرِ وَالْعَصْرِ. فَسَأَلَهُ. فَقَالَ أَبُو الدَّرْدَاءِ: أَوْفِ بِنَدْرِكَ، وَبِرِّ وَالِدَيْكَ.

وَقَالَ أَبُو الدَّرْدَاءِ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ

heard the Messenger of Allîh ﷺ say: '(Honoring) one's father may lead one to enter through the best of the gates of Paradise; so take care of your parents, (it is so, whether you take care of them) or not.'" (*Hasan*)

يَقُولُ: «الْوَالِدُ أَوْسَطُ أَبْوَابِ الْجَنَّةِ، فَحَافِظُ عَلَيَّ وَالِدَيْكَ، أَوْ اتْرُكْ».

تخريج: [إسناده حسن] أخرجه الترمذي، البر والصلة، باب ماجاء من الفضل في رضا الوالدين، ح: ١٩٠٠ من حديث عطاء به، وقال: هذا حديث صحيح، وأبو عبدالرحمن السلمي اسمه عبدالله بن حبيب، وصححه ابن حبان(موارد)، ح: ٢٠٢٣، والحاكم: ١٩٧/٢، ١٥٢/٤، ووافقه الذهبي.

Comments:

- a. Service and obedience to parents is a means to enter Paradise.
- b. If the parents command the child to do something which is Islamically permissible, it should be done even though the heart dislikes it. The parents, in the same way, should also care for the rights, needs and demands of the children.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

11. The Chapters On Expiation

(المعجم ١١) أَبْوَابُ الْكَفَّارَاتِ (التحفة ٩)

Chapter 1. The Swearing Of The Messenger Of Allāh ﷺ By Which He Would Take An Oath

2090. It was narrated that Rifā'ah Al-Juhani said: "When the Prophet ﷺ took an oath, he would say: 'By the One in Whose Hand is the soul of Muhammad.'" (*Sahih*)

(المعجم ١) - بَابُ يَمِينِ رَسُولِ اللَّهِ ﷺ
الَّتِي كَانَ يَحْلِفُ بِهَا (التحفة ١)

٢٠٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ مُصْعَبٍ عَنِ الْأَوْزَاعِيِّ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ رِفَاعَةَ الْجُهَنِيِّ قَالَ: كَانَ النَّبِيُّ ﷺ إِذَا حَلَفَ قَالَ: «وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ».

تخريج: [صحيح] أخرجه أحمد: ١٦/٤ بإسناد صحيح عن الأوزاعي به * ويحيى صرح بالسماع عنده، تقدم طرفه، ح: ١٣٦٧، وانظر الحديث الآتي (٤٢٨٥).

2091. It was narrated that Rifā'ah bin 'Arābah Al-Juhani said: "The swearing of the Messenger of Allāh ﷺ when he took an oath; and I bear witness before Allāh was: 'By the One in Whose Hand is my soul.'" (*Sahih*)

٢٠٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ مُحَمَّدٍ الصَّنْعَانِيُّ: حَدَّثَنَا الْأَوْزَاعِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ رِفَاعَةَ بْنِ عَرَابَةَ الْجُهَنِيِّ قَالَ: كَانَتْ يَمِينُ رَسُولِ اللَّهِ ﷺ، الَّتِي يَحْلِفُ بِهَا، أَشْهَدُ عِنْدَ اللَّهِ «وَالَّذِي نَفْسِي بِيَدِهِ».

تخريج: [صحيح] أخرجه ابن أبي عاصم في الآحاد والمثاني: ٢٤/٥، ح: ٢٥٦٠ عن هشام

Comments:

The meaning of oath is that a person makes Allāh witness to such and such matter being thus. Now if that testimony is false, then to use the Name of Allāh for it will be a grave sin, because Allāh is never a false witness.

ابن عمار به، وانظر الحديث السابق.

2092. It was narrated from Sâlim that his father said: "The swearing most frequently sworn by the Messenger of Allâh ﷺ was: 'No, by the Controller of the hearts.'" (Da'if)

٢٠٩٢ - حَدَّثَنَا أَبُو إِسْحَاقَ الشَّافِعِيُّ إِبْرَاهِيمُ بْنُ مُحَمَّدٍ بْنِ الْأَعْبَاسِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَجَاءِ الْمَكِّيِّ، عَنْ عَبْدِ بْنِ إِسْحَاقَ، عَنْ ابْنِ شِهَابٍ، عَنْ سَالِمٍ، عَنْ أَبِيهِ قَالَ: كَانَتْ أَكْثَرَ أَيْمَانِ رَسُولِ اللَّهِ ﷺ: «لَا. وَمُصْرَفِ الْقُلُوبِ».

تخريج: [إسناده ضعيف] أخرجه النسائي، الأيمان والندور، الحلف بمصرف القلوب، ح: ٣٧٩٣ من حديث عبدالله بن رجاء به، فيه علل منها عن عنة الزهري، وأخرج البخاري، وغيره عن عبدالله بن عمر قال: كثيراً ما كان النبي ﷺ يحلف: لا، ومقلب القلوب، وهو الصواب.

2093. It was narrated that Abu Hurairah said: "The swearing of the Messenger of Allâh ﷺ was: 'No, and I ask Allâh for forgiveness.'" (Da'if)

٢٠٩٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَمَادُ بْنُ خَالِدٍ، ح: وَحَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا مَعْنُ بْنُ عِيسَى، جَمِيعاً عَنْ مُحَمَّدِ بْنِ هِلَالٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: كَانَتْ يَمِينُ رَسُولِ اللَّهِ ﷺ: «لَا. وَأَسْتَغْفِرُ اللَّهَ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الأيمان والندور، باب ماجاء في يمين النبي ﷺ ما كانت، ح: ٣٢٦٥ من حديث محمد بن هلال به، قلت: هلال مستور لم يوثقه غير ابن حبان، والله أعلم.

Chapter 2. Prohibition Of Making An Oath By Other Than Allâh

(المعجم ٢) - بَابُ التَّهْوِي أَنْ يَحْلِفَ بِغَيْرِ اللَّهِ (التحفة ٢)

2094. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from his father, from 'Umar, that the Messenger of Allâh ﷺ heard him swearing by his father. The Messenger of Allâh ﷺ said: "Allâh forbids you from making oaths by your forefathers." 'Umar said: "I never took an oath by them (i.e., my forefathers) myself

٢٠٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْأَعْدَنِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ أَبِيهِ، عَنْ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ سَمِعَهُ يَحْلِفُ بِأَبِيهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ يَنْهَاكُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ» قَالَ: عُمَرُ: فَمَا حَلَفْتُ بِهَا ذَاكِرًا وَلَا آثِرًا.

nor narrating such words from anyone else." (*Sahih*)

تخریج: أخرجه البخاري، الأيمان والنذور، باب: لا تحلفوا بأبائكم، ح: ٦٦٤٧ من حديث الزهري به، ومسلم، الأيمان، باب النهي عن الحلف بغير الله تعالى، ح: ١٦٤٦ من حديث ابن عيينة وغيره.

Comments:

It is impermissible to swear by anyone other than Allāh, regardless of whether it is a father, grandfather, shaikh, saint, religious leader, highly virtuous person or a Prophet. As some people take an oath by 'Ali ﷺ or by five pure personalities, it is all prohibited.

2095. It was narrated from 'Abdur-Rahmān bin Samurah that the Messenger of Allāh ﷺ said: 'Do not take oaths by idols nor by your forefathers.' (*Sahih*)

٢٠٩٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْأَعْلَى، عَنْ هِشَامٍ، عَنِ الْحَسَنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ: قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَحْلِفُوا بِالطَّوَاغِي، وَلَا بِأَبَائِكُمْ».

تخریج: أخرجه مسلم، الأيمان، باب من حلف باللات والعزى فليقل: لا إله إلا الله، ح: ١٦٤٨ عن أبي بكر بن أبي شيبة به.

Comments:

Taking an oath by an idol is, in fact, an oath by a person because of his importance or honor, due to which that person's statue was made. Thus this type of oath is also taken by saints and virtuous peoples; and taking an oath by other than Allāh is prohibited.

2096. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever takes an oath, and swears, saying: 'By Al-Lât and Al-'Uzza,' let him say: 'Lâ ilâha illallâh.'" (*Sahih*)

٢٠٩٦ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا عُمَرُ بْنُ عَبْدِ الْوَاحِدِ، عَنِ الْأَوْزَاعِيِّ، عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ حَلَفَ، فَقَالَ فِي يَمِينِهِ: بِاللَّاتِ وَالْعُزَّى، فَلْيَقُلْ: لَا إِلَهَ إِلَّا اللَّهُ».

تخریج: أخرجه البخاري، الأدب، باب من لم ير إكفار من قال ذلك متأولاً أو جاهلاً، ح: ٦١٠٧، ومسلم، الأيمان، الباب السابق، ح: ١٦٤٧ (ب) من حديث الأوزاعي به، وللحديث طرق أخرى عن الزهري به.

Comments:

A new Muslim who, in a state of disbelief, had a habit of swearing by other than Allāh, might utter these polytheistic words because of a previous habit. When he/she realises the mistake, the person should then declare the

word of *Tauhid* 'Lâ ilâha illallâh' (none has the right to be worshiped but Allâh); the wording of *Tauhid* would be an expiation for the polytheistic words. However a person does not become an apostate because of making a mistake like this.

2097. It was narrated that Sa'ud said: "I took an oath by Lât and 'Uzza. The Messenger of Allâh ﷺ said: 'Say: "Lâ ilâha illallâh wahdahû lâ sharika lahu"' (None has the right to be worshipped but Allâh alone, with no partner or associate)," then spit toward your left three times, and seek refuge with Allâh, and do not do that again.'" (*Sahih*)

٣٨٠٨: ح: والعزى، الحلف باللات والعزى، الأيمان والندور، الحلف باللات والعزى، ح: ٣٨٠٨

من حديث أبي إسحاق به، وهو صرح بالسمع عند النسائي في رواية، وصححه ابن حبان (موارد)، ح: ١١٧٨.

Chapter 3. One Who Takes An Oath To Follow A Religion Other Than Islam

2098. It was narrated that Thâbit bin Ad-Dahhâk said: "The Messenger of Allâh ﷺ said: 'Whoever takes an oath to follow a religion other than Islam, telling a deliberate lie, he will be as he said.'" (*Sahih*)

تخریج: أخرجه البخاري، الجنائز، باب ماجاء في قاتل النفس، ح: ١٣٦٣ من حديث خالد، ومسلم، الأيمان، باب بيان غلظ تحريم قتل الإنسان نفسه وأن من قتل نفسه بشيء... الخ، ح: ١١٠ من حديث أبي قلابة به.

Comments:

- Swearing by another religion is when a person says: 'If I have done such and such a thing I shall be a Jew' or he says: 'If I tell a lie I shall be an infidel'; one must avoid this type of oath.
- At the time of taking an oath, if a person has the intention that by doing such and such thing, he will then choose the path of disbelief; in that case he immediately becomes a disbeliever. But if he meant to remain steadfast on the religion of Islam and was determined never to adopt the way of disbelief, he would not become a disbeliever, but he was wrong in doing so.

٢٠٩٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ الْحَسَنُ ابْنُ عَلِيٍّ الْخَلَّالُ. قَالَ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ عَنْ إِسْرَائِيلَ، عَنْ أَبِي إِسْحَاقَ، عَنْ مُضْعَبِ ابْنِ سَعْدٍ، عَنْ سَعْدِ قَالَ: حَلَفْتُ بِاللَّاتِ وَالْعَزَّى. فَقَالَ رَسُولُ اللَّهِ ﷺ: «قُلْ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ. ثُمَّ انْفُثْ عَنْ يَسَارِكَ ثَلَاثًا. وَتَعَوَّذْ. وَلَا تَعُدْ».

(المعجم ٣) - بَابُ مَنْ حَلَفَ بِمِلَّةٍ غَيْرِ الْإِسْلَامِ (التحفة ٣)

٢٠٩٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ خَالِدِ الْحَدَّاءِ، عَنْ أَبِي قَلَابَةَ، عَنْ ثَابِتِ بْنِ الصَّحَّاحِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ بِمِلَّةٍ سِوَى الْإِسْلَامِ كَاذِبًا مُتَعَمِّدًا، فَهُوَ كَمَا قَالَ».

2099. It was narrated from Anas that the Messenger of Allāh ﷺ heard a man say: "If that happens, I will be a Jew." The Messenger of Allāh ﷺ said: "That is guaranteed." (*Da'if*)

٢٠٩٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا بَقِيَّةُ عَنْ عَبْدِ اللَّهِ بْنِ مُحَرَّرٍ، عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: سَمِعَ النَّبِيَّ ﷺ رَجُلًا يَقُولُ: أَنَا، إِذَا، لِيَهُودِيٌّ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَوْجِبَتْ».

تحريج: [إسناده ضعيف جداً] وقال البوصيري: هذا إسناده ضعيف لتدليس ببيعة بن الوليد * وابن محرر متروك (تقريب).

2100. It was narrated from 'Abdullāh bin Buraidah that his father told that the Messenger of Allāh ﷺ said: "Whoever says: 'I have nothing to do with Islam,' if he is lying then he is as he said, and if he is telling the truth, his Islam will not be sound." (*Hasan*)

٢١٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ وَعَمْرُو بْنُ رَافِعِ بْنِ أَبِي بَكْرٍ: حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى، عَنِ الْحُسَيْنِ بْنِ وَاقِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ بَرِيْدَةَ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَالَ: إِنِّي بَرِيءٌ مِنَ الْإِسْلَامِ، فَإِنْ كَانَ كَاذِبًا فَهُوَ كَمَا قَالَ. وَإِنْ كَانَ صَادِقًا لَمْ يَعْذِرْ إِلَيْهِ الْإِسْلَامُ سَالِمًا».

تحريج: [إسناده حسن] أخرجه أبو داود، الأيمان والنذور، باب ماجاء في الحلف بالبراءة وبملة غير الإسلام، ح: ٣٢٥٨ من حديث حسين بن واقد به، وصححه الحاكم على شرط الشيخين: ٤/٢٩٨، ووافقه الذهبي.

Comments:

- It is strictly forbidden to take an oath like this.
- This type of carelessness shows disrespect to Islam, whereas Islam is invaluable in the sight of a true Muslim, for which he is prepared to give his life. Whoever has this type of disrespect for Islam such that he utters words rejecting Islam for minor issues; he shows how little and insufficient his Faith is!

Chapter 4. The Person For Whom An Oath Is Sworn By Allāh Should Accept What Is Said

2101. It was narrated that Ibn 'Umar said: "The Messenger of Allāh ﷺ heard a man taking an oath by his father and said: 'Do not make oaths by your forefathers. Whoever makes an oath by Allāh, let him fulfill his

(المعجم ٤) - بَابُ مَنْ حُلِفَ لَهُ بِاللَّهِ فَلْيَرْضَ (التحفة ٤)

٢١٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ: حَدَّثَنَا أَشْبَاهُ بْنُ مُحَمَّدٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ عَجْلَانَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: سَمِعَ النَّبِيَّ ﷺ رَجُلًا يَحْلِفُ بِأَبِيهِ فَقَالَ: «لَا تَحْلِفُوا بِأَبَائِكُمْ. مَنْ حَلَفَ بِاللَّهِ فَلْيَصْدُقْ».

oath, and if an oath is sworn for a person by Allâh, let him accept it. Whoever is not content with Allâh has nothing to do with Allâh.'” (Da’if)

وَمَنْ حَلَفَ لَهُ بِاللَّهِ فَلْيَرْضَ. وَمَنْ لَمْ يَرْضَ بِاللَّهِ، فَلَيْسَ مِنَ اللَّهِ.

تخریج: [إسناده ضعيف] أخرجه البيهقي: ١٨١/١٠ من حديث أسباط به، وصححه البوصيري، وانظر، ح: ١٩٦٧ لعلته، قلت وحديث: لا تحلفوا بأبائكم صحيح متفق عليه من حديث عبدالله بن دينار عن ابن عمر به.

Comments:

- The objective of demanding someone to take an oath is that if a person takes an oath on a matter, then that person is to be trusted on the matter. Now if the person takes an oath but he who demands it is still not satisfied, it means the oath has no respect and value in his sight. If this is the case, then the demand of an oath is totally wrong; it should either be accepted, or not be sought.
- Telling a lie by taking oath is a very grave sin.
- One should swear and adjure by Allâh only.

2102. It was narrated from Abu Hurairah that the Prophet ﷺ said: “Eisa bin Maryam saw a man stealing and said: ‘Did you steal?’ He said: ‘No, by the One besides Whom there is no other God.’ Eisa said: ‘I believe in Allâh, and I do not believe what my eyes see.’” (Sahih)

٢١٠٢ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ أَبِي بَكْرٍ بْنِ يَحْيَى بْنِ النَّضْرِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «رَأَى عَيْسَى ابْنُ مَرْيَمَ رَجُلًا يَسْرِقُ. فَقَالَ: أَسْرَقْتَ؟ قَالَ: لَا. وَالَّذِي لَا إِلَهَ إِلَّا هُوَ. فَقَالَ عَيْسَى: آمَنْتُ بِاللَّهِ، وَكَذَّبْتُ بِصُرِّي».

تخریج: [صحيح] وروى نحوه همام بن منبه في صحيفه، ح: ٤٢ عن أبي هريرة رضي الله عنه، ومن طريقه أخرجه البخاري، ومسلم وغيرهما.

Comments:

This is an example of trusting a believer’s oath that Eisa ﷺ belied a thing seen by his own eyes by trusting an oath. That thing perhaps belonged to the same person who took it, but he took it secretly most certainly, maybe because of a certain reason.

Chapter 5. Swearing Is (i.e., Leads To) Sin Or Regret

(المعجم ٥) - بَابُ الْيَمِينِ حِنْتُ أَوْ نَدَمٍ
(التحفة ٥)

2103. It was narrated from Ibn ‘Umar that the Messenger of

٢١٠٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو

Allāh ﷺ said: "An oath (leads to) either sin or regret." (*Da'if*)

مُعَاوِيَةَ، عَنْ بَشَّارِ بْنِ كِدَامٍ، عَنْ مُحَمَّدِ بْنِ زَيْدٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا الْخَلْفُ حِنْثٌ أَوْ نَدَمٌ».

تخريج: [إسناده ضعيف] أخرجه أبو يعلى، ح: ٥٥٨٧ من حديث أبي معاوية، حدثنا بشار ابن كدام به، وصححه ابن حبان (موارد)، ح: ١١٧٥ * بشار ضعيف، ضعفه أبو زرعة وغيره، وروى الحاكم: ٣٠٣/٤، ٣٠٤ عن ابن عمر قال: إنما اليمين مائة أو مندمة، وصححه، وفيه أحمد بن سهل البخاري شيخ الحاكم، ولم أجد له ترجمة.

Comments:

The meaning of the *Hadith* is that a person often takes an oath in anger, declaring that he will not do such and such; but sometimes the situation takes such a turn that he has to do contrary to the oath. Now it will be problematic if he does not break the oath; but if he breaks it, he will have to make expiation, which seems a penalty for nothing. Therefore this type of oaths should be avoided to the best of one's ability.

Chapter 6. Uttering The Exception When Swearing^[1]

(المعجم ٦) - بَابُ الْإِسْتِثْنَاءِ فِي الْيَمِينِ
(التحفة ٦)

2104. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: 'Whoever swears an oath and says *In shā' Allāh*, he will have made an exception.'^[2] (*Sahih*)

٢١٠٤ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَبْرِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أُنْبَأَنَا مَعْمَرٌ، عَنْ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ فَقَالَ: إِنْ شَاءَ اللَّهُ، فَلَهُ نِيَاءٌ».

تخريج: [إسناده صحيح] أخرجه الترمذي والنذير والأيمان، باب ماجاء في الاستثناء في اليمين، ح: ١٥٣٢ من حديث عبدالرزاق به، وذكر كلاماً، وهو في مصنف عبدالرزاق، ح: ١٦١١٨، وصححه ابن حبان (موارد)، ح: ١١٨٥، وله شاهد.

Comments:

An oath becomes ineffective by saying *In shā' Allāh*. Now if the matter determined with the oath is not performed, the person will not be sinful for not fulfilling the oath, and fulfillment of expiation is not required. The reason for that is that an oath is to express determination, and the purpose of saying *In shā' Allāh* is that 'I shall do so, Allāh willing'; and the will of

[1] Meaning, saying *In shā' Allāh* (If Allāh wills).

[2] Meaning that making the exception will benefit him, in that he will not be guilty of having violated the oath were he not able to fulfill it. See explanation by Sindi.

Allâh with respect to the matters of the future is unknown to humans. So by saying 'In shâ' Allâh' there is a negation of total self dependence without the Will of Allâh, and it involves uncertainty that I shall most certainly do this or might not.

2105. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever swears an oath and says *In shâ' Allâh*, if he wishes he may go ahead and if he wishes he may not, without having broken his oath." (*Sahih*)

٢١٠٥ - حَدَّثَنَا مُحَمَّدُ بْنُ زَيْدٍ: حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ وَاسْتَشَى، إِنْ شَاءَ رَجَعَ، وَإِنْ شَاءَ تَرَكَ، غَيْرَ حَانِثٍ».

تخريج: [إسناده صحيح] أخرجه أبو داود، الأيمان النذور، باب الاستثناء في اليمين، ح: ٣٢٦٢ من حديث عبدالوارث به * أيوب ثقة حجة، وتابعه كثير بن فرقد عند النسائي وغيره، وصححه الحاكم: ٣٠٣/٤، والذهبي.

2106. It was narrated from Ibn 'Umar: "Whoever swears an oath and says *In shâ' Allâh*, will never break his oath." (*Sahih*)

٢١٠٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ رَوَايَةً قَالَ: «مَنْ حَلَفَ وَاسْتَشَى، فَلَنْ يَحْتَثَّ».

تخريج: [صحيح] انظر الحديث السابق.

Comments:

The meaning of saying *In shâ' Allâh* along with an oath is that 'I am certainly determined to do such and such, but if Allâh's decision is otherwise and I face a hindrance, then it will not be done.'

Chapter 7. One Who Swears An Oath And Then Sees That Something Else Is Better

(المعجم ٧) - بَابُ مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا (التحفة ٧)

2107. It was narrated from Abu Burdah that his father Abu Musa said: "I came to the Messenger of Allâh ﷺ with a group of Asharites and asked him to give us animals to ride. He said: 'By Allâh, I cannot give you anything to ride, and I have nothing to give you to ride.' We stayed as long as

٢١٠٧ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ: أُنْبَأَنَا حَمَّادُ بْنُ [زَيْدٍ]: حَدَّثَنَا غِيلَانُ بْنُ جَبْرِ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِيهِ أَبِي مُوسَى قَالَ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي رَهْطٍ مِنَ الْأَشْعَرِيِّينَ نَسْتَحْمِلُهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَاللَّهِ مَا أَحْمِلُكُمْ. وَمَا عِنْدِي مَا أَحْمِلُكُمْ عَلَيْكُمْ» قَالَ: فَلَبِثْنَا مَا شَاءَ

Allâh willed, then some camels were brought to him. He ordered that we be given three she-camels with fine humps. When we left, we said to one another: 'We came to the Messenger of Allâh ﷺ to ask him for animals to ride, and he swore by Allâh that he would not give us anything to ride, then he gave us something. Let us go back.' So we went to him and we said: 'O Messenger of Allâh! We came to you seeking mounts, and you took an oath that you would not give us mounts, then you gave us some mounts.' He said: 'By Allâh, I did not give you animals to ride, rather Allâh gave you them to ride. I, by Allâh, if Allâh wills, do not swear and then see something better than it, but I offer expiation for what I swore about, and do that which is better.' Or he said: 'I do that which is better and offer expiation for what I swore about.' (Sahih)

الله. ثُمَّ أُتِيَ بِإِبِلٍ. فَأَمَرَ لَنَا بِثَلَاثَةِ إِبِلٍ ذَوْدٍ
عُرِّ الدَّرَى. فَلَمَّا أَنْطَلَقْنَا قَالَ بَعْضُنَا لِبَعْضٍ:
أَتَيْنَا رَسُولَ اللَّهِ ﷺ نَسْتَحْمِلُهُ فَحَلَفَ أَلَّا
يَحْمِلَنَا. ثُمَّ حَمَلَنَا. ارْجِعُوا بِنَا. فَأَتَيْنَاهُ،
فَقُلْنَا: يَا رَسُولَ اللَّهِ! إِنَّا أَتَيْنَاكَ نَسْتَحْمِلُكَ
فَحَلَفْتَ أَنْ لَا تَحْمِلَنَا. ثُمَّ حَمَلْتَنَا. فَقَالَ:
«وَاللَّهِ مَا أَنَا حَمَلْتُكُمْ. بَلِ اللَّهُ حَمَلَكُمْ. إِنِّي،
وَاللَّهِ إِنْ شَاءَ اللَّهُ، لَا أَحْلِفُ عَلَى يَمِينٍ فَأَرَى
[غَيْرَهَا] خَيْرًا مِنْهَا إِلَّا كَفَّرْتُ عَنْ يَمِينِي
وَأَتَيْتُ الَّذِي هُوَ خَيْرٌ» أَوْ قَالَ: «أَتَيْتُ الَّذِي
هُوَ خَيْرٌ وَكَفَّرْتُ عَنْ يَمِينِي».

تخریج: أخرجه البخاري، الأيمان والنذور، باب قول الله تعالى: ﴿لَا يُوَاحِدُكُمْ اللَّهُ بِاللُّغُو فِي أَيْمَانِكُمْ﴾ ، ح: ٦٦٢٣، ٦٧١٨، ومسلم، الأيمان، باب نذب من حلف يمينًا فرأى غيرها خيرًا منها ... الخ، ح: ١٦٤٩ من حديث حماد به .

Comments:

a. The oath has three categories, and these are as follows:

1. *Laghw*: It is an oath that is spoken by tongue without the intention of swearing. As some people habitually speak words of swearing unintentionally, this type of oath will not be counted against the person but it should be avoided.
2. *Ghamus*: It is a false oath sworn to deceive someone. It is a major sin. One should seek forgiveness and should avoid such in the future, but the expiation for it is not obligatory.
3. *Mu'aaqqadah*: It is an oath that a person swears to express his determination and definite intention to do something in the future. The expiation becomes obligatory for breaking this oath. The expiation for this oath is to feed ten

poor people, or to clothe them or to set a slave free. (*Al-Mâ'idah* 5: 89)

12108. It was narrated from 'Adi bin Hâtim that the Messenger of Allâh ﷺ said: "Whoever swears an oath then sees that something else is better than it, let him do that which is better and offer expiation for what he swore about." (*Sahih*)

٢١٠٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ عَبْدِ اللَّهِ ابْنُ عَامِرٍ بْنِ زُرَّارَةَ. قَالَ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنْ تَمِيمِ ابْنِ طَرْفَةَ، عَنْ عَبْدِ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكْفِرْ عَنْ يَمِينِهِ».

تخریج: أخرجه مسلم، الأيمان، الباب السابق، ح: ١٦٥١ من طريق آخر عن عبدالعزیز به مطولاً.

2109. It was narrated from Abul-Ahwas 'Awf bin Mâlik Al-Jushami that his father said: "I said: 'O Messenger of Allâh, my cousin comes to me and I swear that I will not give him anything or uphold the ties of kinship with him.' He said: 'Offer expiation for what you swore about.'"
(*Sahih*)

٢١٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا أَبُو الرَّعْرَاءِ عَمْرُو بْنُ عَمْرُو، عَنْ عَمِّهِ أَبِي الْأَخْوَصِ عَوْفِ بْنِ مَالِكِ الْجُسَيْمِيِّ، عَنْ أَبِيهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! يَا أَبَتِي ابْنُ عَمِّي فَأَحْلِفُ أَنْ لَا أُعْطِيَهُ وَلَا أُصَلِّهُ. قَالَ: «كُفِّرْ عَنْ يَمِينِكَ».

تخریج: [إسناده صحيح] أخرجه النسائي، الأيمان والندور، الكفارة بعد الحنث، ح: ٣٨١٩ من حديث سفيان به، وهو مخرج في مسند الحميدي، ح: ٨٨٥ بتحقيقي.

Chapter 8. Those Who Say That The Expiation Is To Not Fulfill It

(المعجم ٨) - بَابُ مَنْ قَالَ كَفَّارَتُهَا تَرْكُهَا (التحفة ٨)

2110. It was narrated from 'Āishah that the Messenger of Allâh ﷺ said: "Whoever takes an oath to cut off the ties of kinship, or to do something that is not right, the fulfillment of his vow is not to do that." (*Da'if*)

٢١١٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ حَارِثَةَ بْنِ أَبِي الرَّجَالِ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ فِي قَطِيعَةِ رَجْمٍ، أَوْ فِيمَا لَا يَصْلُحُ، فَبَرَهُ أَنْ لَا يَتِمَّ عَلَى ذَلِكَ».

تخريج: [إسناده ضعيف] أخرجه الطبراني في الأوسط: ٤٨٥/٥، ح: ٤٨١٨ من حديث حارثه به، وانظر، ح: ٥٦ لعلته، وأخرج الطحاوي في المشكل: ٢٨٧/١ بإسناد حسن عن ابن عباس رفعه قال: من حلف يمين على قطيعة رحم أو معصية فحنت، فذلك كفارة له.

2111. It was narrated from 'Amr bin Shu'ab, from his father, that his grandfather said that the Prophet ﷺ said: "Whoever swears an oath then sees that something else is better than it, let him not do it, and his leaving it is the expiation for it." (*Hasan*)

٢١١١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الْمُؤْمِنِ الْوَاسِطِيُّ: حَدَّثَنَا عَوْْنُ بْنُ عُمَارَةَ: حَدَّثَنَا رَوْحُ بْنُ الْقَاسِمِ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَتْرُكْهَا. فَإِنَّ تَرْكَهَا كَفَّارَتُهَا».

تخريج: [حسن] أخرجه أبو داود، الأيمان والندور، باب اليمين في قطيعة الرحم، ح: ٣٢٧٤ من طريق آخر عن عمرو بن شعيب به مطولاً.

Comments:

It means that if one is unable to make expiation, he should then at least avoid the sin that he was determined to do, because avoiding a sin is also a good deed.

Chapter 9. How Much Food Should Be Given When Atoning For What One Swore About?

2112. It was narrated that Ibn 'Abbās said: "The Messenger of Allāh ﷺ offered expiation of a *Sā'* of dates, and he enjoined the people to do likewise. Whoever does not have that (must give) half a *Sā'* of wheat." (*Da'if*)

(المعجم ٩) - بَابُ: كَمْ يُطْعَمُ فِي كَفَّارَةِ الْيَمِينِ (التحفة ٩)

٢١١٢ - حَدَّثَنَا الْعَبَّاسُ بْنُ يَزِيدَ: حَدَّثَنَا زِيَادُ ابْنِ عَبْدِ اللَّهِ الْبَكَّائِيُّ: حَدَّثَنَا عَمْرٌو بْنُ عَبْدِ اللَّهِ ابْنِ يَعْلَى التَّقْفِيُّ عَنِ الْمِنْهَالِ بْنِ عَمْرٍو، عَنْ سَعِيدِ بْنِ جَبْرِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: كَفَّرَ رَسُولُ اللَّهِ ﷺ بِصَاعٍ مِنْ تَمْرٍ. وَأَمَرَ النَّاسَ بِذَلِكَ. فَمَنْ لَمْ يَجِدْ فَنُصْفُ صَاعٍ مِنْ بُرٍّ.

تخريج: [إسناده ضعيف] أخرجه ابن عدي في الكامل: ١٦٩٢/٥ من حديث زياد به، وقال ابن كثير في تفسيره: ٩٣/٢ لا يصح هذا الحديث لحال عمر بن عبد الله هذا فإنه مجمع على ضعفه وذكروا أنه كان يشرب الخمر، وقال الدارقطني: متروك.

Chapter 10. (Expiation Should Be) With The Average Food That You Feed Your Families

2113. It was narrated that Ibn 'Abbâs said: "A man would give his family food that was abundant and another would give his family food that was barely sufficient, then the following was revealed: 'With the *Awsat*^[1] of that with which you feed your families...'"^[2] (*Da'if*)

(المعجم ١٠) - بَابُ مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِيكُمْ (التحفة ١٠)

٢١١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ سُلَيْمَانَ بْنِ أَبِي الْمُعْتَبِرَةِ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ الرَّجُلُ يَقُوْتُ أَهْلَهُ قُوْتًا فِيهِ سَعَةٌ. وَكَانَ الرَّجُلُ يَقُوْتُ أَهْلَهُ قُوْتًا فِيهِ شِدَّةٌ. فَتَزَلَّتْ: ﴿مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِيكُمْ﴾ [المائدة: ٨٩].

تخریج: [إسناده ضعيف] أخرجه ابن جرير الطبري: ١٥/٧، وابن أبي حاتم: ٤/١١٩٣، ح: ٦٧٢٢ في تفسيريهما من حديث سفیان بن عيينة به، وصححه البوصيري * سفیان مدلس، ولم أجد تصريح سماعه ولا ينفعه. كونه لا يدلس إلا عن ثقة كما حققته في تخریج النهاية في الفتن والملاحم، ح: ١٠٣٠.

Comments:

The food for expiation should not be prepared painstakingly of high standard, like the preparation for guests, nor should it be of low quality, as sometimes people do just with pickles, sauce or salad etc., rather the food provided for expiation should be of normal standard as a person often prepares for himself. Allâh knows best!

Chapter 11. Prohibition Of Man Insisting On What He Swore About, And Not Offering Expiation

2114. It was narrated that Hammâm heard Abu Hurairah saying that 'Abul-Qâsim ﷺ said: "If anyone of you insists on fulfilling what he swore to (after learning that it is wrong) then it is

(المعجم ١١) - بَابُ النَّهْيِ أَنْ يَسْتَلِجَ الرَّجُلُ فِي يَمِينِهِ وَلَا يَكْفُرَ (التحفة ١١)

٢١١٤ - حَدَّثَنَا سُفْيَانُ بْنُ وَكَيْعٍ: حَدَّثَنَا مُحَمَّدُ بْنُ حُمَيْدٍ الْمَعْمَرِيُّ، عَنْ مَعْمَرٍ، عَنْ هَمَّامٍ قَالَ: سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ أَبُو الْقَاسِمِ ﷺ: «إِذَا اسْتَلَجَ أَحَدُكُمْ فِي الْيَمِينِ

[1] Meaning: Average, and some of them said it means, the best.

[2] *Al-Ma'â'idah* 5:89.

more sinful before Allāh than (breaking the oath for which) the expiation that has been enjoined upon him.” (*Sahih*)

فَإِنَّهُ أَتَمُّ لَهُ عِنْدَ اللَّهِ مِنَ الْكُفَّارَةِ الَّتِي أُمِرَ بِهَا.

تخريج: (الف) [صحيح] أخرجه عبدالرزاق، ح: ١٦٠٣٦ عن معمر به نحوه، أخرجه البخاري، ح: ٦٦٢٥، ومسلم، ح: ١٦٥٥ من حديث عبدالرزاق به نحو المعنى، وهو في صحيفة همام، ح: ٩٦.

Another chain with similar wording.

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا يَحْيَى بْنُ صَالِحٍ الْوُحَاظِيُّ: حَدَّثَنَا مُعَاوِيَةُ بْنُ سَلَامٍ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عِكْرِمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخريج: (ب) أخرجه البخاري، الأيمان والنذور، باب قول الله تعالى: ﴿لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ﴾ ح: ٦٦٢٦ من حديث يحيى بن صالح به.

Comments:

- Insistence upon an oath means to be determined to fulfill an oath, sometimes to do something sinful or prohibited. It is better to make expiation for breaking such an oath.
- Remaining firm upon an oath for a bad thing is also a sin. So it is better to break the mistaken oath, because this will be forgiven by making expiation; whereas remaining firm on the mistake will only increase the sin.

Chapter 12. Helping Others Fulfill Their Oaths

(المعجم ١٢) - بَابُ إِبْرَارِ الْمُقْسِمِ
(التحفة ١٢)

2115. It was narrated that Barâ' bin 'Âzib said: "The Messenger of Allāh ﷺ commanded us to help fulfill the oath." (*Sahih*)

٢١١٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ، عَنْ عَلِيِّ بْنِ صَالِحٍ، عَنْ أَشْعَثَ بْنِ أَبِي الشَّعَثَاءِ، عَنْ مُعَاوِيَةَ بْنِ سُوَيْدٍ بْنِ مَقْرِنٍ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: أَمَرَنَا رَسُولُ اللَّهِ ﷺ بِإِبْرَارِ الْمُقْسِمِ.

تخريج: أخرجه البخاري، الجنائز، باب الأمر باتباع الجنائز، ح: ٥١٧٥، ٢٤٤٥، ١٢٣٩، ومسلم، اللباس والزينة، باب تحريم استعمال إناء الذهب والفضة على الرجال والنساء ... إلخ، ح: ٢٠٦٦ من حديث أشعث به مطولاً.

Comments:

- a. It is an obligation upon a Muslim to help other Muslims, particularly when his help is sought. Adjuring is also a type of request for help, and it has extra emphasis in which the request is made by using the Name of Allāh; therefore it should certainly be fulfilled.
- b. If an oath is imposed to do something illegal, then it should not be fulfilled.

2116. It was narrated from Mujāhid, that ‘Abdur-Rahmān bin Safwān, or Safwān bin ‘Abdur-Rahmān Al-Qurashi said: “On the Day of the conquest of Makkah, he came with his father and he said: ‘O Messenger of Allāh, give my father a share of *Hijrah*.’ He said: ‘There is no *Hijrah*.’ Then he went away and entered upon ‘Abbās and said: ‘Do you know who I am?’ He said: ‘Yes.’ Then ‘Abbās went out, wearing a shirt and no upper wrap, and said: ‘O Messenger of Allāh, do you know so-and-so with whom we have friendly ties? He brought his father to swear an oath of allegiance (i.e., promise) to emigrate.’ The Prophet ﷺ said: ‘There is no *Hijrah*.’” ‘Abbās said: ‘I adjure you to do it.’ The Prophet ﷺ stretched forth his hand and touched his hand, and said: ‘I have fulfilled the oath of my uncle, but there is no *Hijrah*.’” (*Da’if*)

Another chain with similar wording. Yazid bin Abu Ziyād said: “Meaning: There is no *Hijrah* from a land whose people have accepted Islam.”

٢١١٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ، عَنْ مُجَاهِدٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ صَفْوَانَ، أَوْ عَنْ صَفْوَانَ بْنِ عَبْدِ الرَّحْمَنِ الْقُرَشِيِّ قَالَ: لَمَّا كَانَ يَوْمَ فَتْحِ مَكَّةَ جَاءَ بِأَبِيهِ. فَقَالَ: يَا رَسُولَ اللَّهِ! اجْعَلْ لِأَبِي نَصِيبًا مِنَ الْهِجْرَةِ. فَقَالَ: «إِنَّهُ لَا هِجْرَةَ» فَأَنْطَلَقَ فَلَخَلَ عَلَى الْعَبَّاسِ فَقَالَ: فَقَدْ عَرَفْتَنِي؟ فَقَالَ: أَجَلٌ. فَفَرَجَ الْعَبَّاسُ فِي قَمِيصٍ لَيْسَ عَلَيْهِ رِدَاءٌ فَقَالَ: يَا رَسُولَ اللَّهِ! قَدْ عَرَفْتُ فَلَنَا وَالَّذِي بَيْنَنَا وَبَيْنَهُ. وَجَاءَ بِأَبِيهِ لِتَبَايَعِهِ عَلَى الْهِجْرَةِ. فَقَالَ النَّبِيُّ ﷺ: «إِنَّهُ لَا هِجْرَةَ» فَقَالَ الْعَبَّاسُ: أَفَسَمِعْتُ عَلَيْكَ. فَمَدَّ النَّبِيُّ ﷺ يَدَهُ، فَمَسَّ يَدَهُ. فَقَالَ: «أَبْرَزْتُ عَمِّي. وَلَا هِجْرَةَ».

حَدَّثَنَا مُحَمَّدُ بْنُ يُحْيَى: حَدَّثَنَا الْحَسَنُ ابْنُ الرَّبِيعِ، عَنْ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ، عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ، بِإِسْنَادِهِ، نَحْوَهُ. قَالَ يَزِيدُ بْنُ أَبِي زِيَادٍ: يَعْني لَا هِجْرَةَ مِنْ دَارٍ قَدْ أَسْلَمَ أَهْلُهَا.

تخریج: [إسناده ضعيف] أخرجه أحمد: ٣/٤٣٠، ٤٣١ من حديث يزيد به باختلاف يسير، وقال البوصيري: هذا إسناد فيه يزيد بن أبي زياد، أخرج له مسلم في المتابعات وضعفه الجمهور، وانظر، ح: ١٤٧١، ٥٠٤.

Chapter 13. Prohibition On Saying: "What Allâh Wills And You Will"

2117. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: 'When anyone of you swears an oath, let him not say: 'What Allâh wills and what you will.' Rather let him say: 'What Allâh wills and then what you will.' (Hasan)

تخریج: [حسن] أخرجه النسائي في عمل اليوم والليلة، ح: ٩٨٨ من حديث عيسى به طولاً، وقال الهيثمي في مجمع الزوائد: ١٨٩/١ اختلف في الأجلح الكندي والأكثر على توثيقه.

2118. It was narrated from Hudhaifah bin Yamân that a Muslim man saw in a dream that he met a man from among the People of the Book, who said: "What good people you would be if only you were not committing *Shirk*. For you say: 'What Allâh wills and Muhammad wills.'" He mentioned that to the Prophet ﷺ and he said: "By Allâh, I am aware of that. Say: 'What Allâh wills then what Muhammad wills.'" (Da'if)

تخریج: (الف) [ضعيف] انظر الحديث الآتي وأخرجه البخاري في التاريخ الكبير: ٣٦٤/٤ من حديث سفيان به.

Another chain from Tufail bin Sakhbarah, the brother of 'Aishah by her mother, from the Prophet ﷺ, with similar wording. (Da'if)

(المعجم ١٣) - بَابُ النَّهْيِ أَنْ يُقَالَ: مَا شَاءَ اللَّهُ وَشِئْتُ (التحفة ١٣)

٢١١٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ: حَدَّثَنَا الْأَجْلَحُ الْكِنْدِيُّ، عَنْ زَيْدِ بْنِ الْأَصَمِّ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا حَلَفَ أَحَدُكُمْ فَلَا يَقُلْ: مَا شَاءَ اللَّهُ وَشِئْتُ. وَلَكِنْ لِيَقُلْ: مَا شَاءَ اللَّهُ ثُمَّ شِئْتُ».

٢١١٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عَمْرِو، عَنْ رَبِيعِ بْنِ جِرَاشٍ، عَنْ حُدَيْفَةَ بْنِ الْيَمَانِ أَنَّ رَجُلًا مِنَ الْمُسْلِمِينَ رَأَى فِي النَّوْمِ أَنَّهُ لَقِيَ رَجُلًا مِنْ أَهْلِ الْكِتَابِ فَقَالَ: نِعْمَ الْقَوْمُ أَنْتُمْ لَوْلَا أَنْكُمْ تُشْرِكُونَ. تَقُولُونَ: مَا شَاءَ اللَّهُ وَشَاءَ مُحَمَّدٌ. وَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «أَمَا وَاللَّهِ إِنْ كُنْتُ لِأَعْرِفَهَا لَكُمْ فُؤُولُوا: مَا شَاءَ اللَّهُ ثُمَّ شَاءَ مُحَمَّدٌ».

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ [بْنِ أَبِي الشَّوَّازِبِ]: حَدَّثَنَا أَبُو عَوَّانَةَ، عَنْ عَبْدِ الْمَلِكِ، عَنْ رَبِيعِ بْنِ جِرَاشٍ، عَنِ الطَّفَيْلِ بْنِ سَخْبَرَةَ، أَخِي عَائِشَةَ لِأُمِّهَا، عَنِ النَّبِيِّ ﷺ، بِنَحْوِهِ.

تخريج: (ب) [إسناده ضعيف] أخرجه أحمد: ٥/ ٧٢ وغيره من حديث عبدالمملك بن عمير به * وعبدالمملك مشهور بالتدليس، ولم أجد تصريح سماعه.

Comments:

“What Allāh wills and then what Muhammad ﷺ wills” means what Allāh wills will happen, and we are committed to the command and decision of Muhammad ﷺ to practice accordingly.

Chapter 14. One Who Uses Ambiguous Words In His Oath

2119. It was narrated that Suwaid bin Hanzalah said: “We went out looking for the Messenger of Allāh ﷺ, and Wā'il bin Hujr was with us. An enemy of his seized him and the people were reluctant to swear an oath, but I swore that he was my brother, so they set him free. We came to the Messenger of Allāh ﷺ and I told him that the people had been reluctant to swear an oath, but I had sworn that he was my brother. He said: ‘You told the truth. The Muslim is the brother of his fellow Muslim.’” (Hasan)

(المعجم ١٤) - بَابُ مَنْ وَرَى فِي يَمِينِهِ

(التحفة ١٤)

٢١١٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى، عَنْ إِسْرَائِيلَ؛ ح: وَحَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، عَنْ إِسْرَائِيلَ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ الْأَعْلَى، عَنْ جَدِّهِ، عَنْ أَبِيهَا سُؤَيْدِ بْنِ حَنْظَلَةَ قَالَ: خَرَجْنَا نُرِيدُ رَسُولَ اللَّهِ ﷺ وَمَعَنَا وَائِلُ بْنُ حُجْرٍ. فَأَخَذَهُ عَدُوٌّ لَهُ. فَتَحَرَّجَ النَّاسُ أَنْ يَحْلِفُوا. فَحَلَفْتُ أَنَا أَنَّهُ أَخِي. فَحَلَى سَيْلَهُ. فَأَتَيْنَا رَسُولَ اللَّهِ ﷺ. فَأَخْبَرْتُهُ أَنَّ الْقَوْمَ تَحَرَّجُوا أَنْ يَحْلِفُوا وَحَلَفْتُ أَنَا أَنَّهُ أَخِي. فَقَالَ: «صَدَقْتَ. الْمُسْلِمُ أَخُو الْمُسْلِمِ».

تخريج: [إسناده حسن] أخرجه أبو داود، الأيمان والنذور، باب المعارض في الأيمان، ح: ٣٢٥٦ من حديث إسرائيل به، وصححه الحاكم: ٤/ ٢٩٩، ٣٠٠، والذهبي.

Comments:

- Ambiguity is to say something that has two meanings. The listener understands some other meaning, and the person talking means something different, in order to avoid telling a lie and to escape with his life.
- When life, property or honor is in danger a then ambiguous behavior to get away from enemies is allowed.
- Ambiguity is also allowed to save the life of another Muslim.

2120. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "The oath is only according to the intention of the one who requests the oath to be taken.'" (*Sahih*)

٢١٢٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَ هُشَيْمًا، عَنْ عَبْدِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا الْيَمِينُ عَلَى نِيَّةِ الْمُسْتَخْلِفِ».

تخریج: أخرجه مسلم، الأيمان، باب اليمين على نية المستخلف، ح: ١٦٥٣ عن أبي بكر بن أبي شيبة به.

Comments:

- It means ambiguity is not allowed in the case of an oath and using it in an oath will be considered a lie as well.
- The previous *Hadith* is apparently contradictory to this *Hadith*, but the meaning of the previous *Hadith* applies when a Muslim's life, property or honor is in danger, and this *Hadith* (2120) is about daily matters.

2121. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Your oath is as your companion understands it to be." (*Sahih*)

٢١٢١ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُشَيْمٌ: أَنَّ أَبَانَ عَبْدَ اللَّهِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَمِينُكَ عَلَى مَا يُصَدِّقُكَ بِهِ صَاحِبُكَ».

تخریج: أخرجه مسلم، الأيمان، الباب السابق، ح: ١٦٥٣ من حديث هشيم به.

Comments:

It means if one swore and said something that has two meanings, and he meant such a meaning which was true, but the listener did not understand the same meaning; and according to the listener's understanding of the meaning that oath was false, then this oath would be counted as false one. Only that purpose and meaning of oath will be relied for which it was required.

Chapter 15. The Prohibition Of Vows

(المعجم ١٥) - بَابُ النَّهْيِ عَنِ

النَّذْرِ (التحفة ١٥)

2122. It was narrated that 'Abdullâh bin 'Umar said: "The Messenger of Allâh ﷺ forbade vows and said: "They are just a means of taking wealth from the miserly.'" (*Sahih*)

٢١٢٢ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ مُضَوَّرٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَرَّةٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ النَّذْرِ. وَقَالَ: «إِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ اللَّئِيمِ».

تخریج: أخرجه البخاري، القدر، باب إلقاء العبد النذر إلى القدر، ح: ٦٦٠٨، ٦٦٩٣، ومسلم، النذر، باب النهي عن النذر، وأنه لا يرد شيئاً، ح: ٤/١٦٣٩ من حديث سفيان به.

2123. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Vows do not bring the son of Ādam anything unless it has been decreed for him. But he is dominated by Divine preordainment, and will get what is decreed for him. And (vows) are a means of making the miser give something, so what he desires becomes obtainable for him, which was not obtainable before his vow. And Allāh says: 'Spend, I will spend on you.' (Sahih)

٢١٢٣ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ: حَدَّثَنَا عُبَيْدُ اللَّهِ عَنْ سَفْيَانَ، عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ النَّذْرَ لَا يَأْتِي ابْنَ آدَمَ بِشَيْءٍ إِلَّا مَا قُدِّرَ لَهُ. وَلَكِنْ يَغْلِبُهُ الْقَدَرُ، مَا قُدِّرَ لَهُ. فَيَسْتَخْرِجُ بِهِ مِنَ الْبَخِيلِ فَيَسِّرُ عَلَيْهِ مَا لَمْ يَكُنْ يَسِّرُ عَلَيْهِ مِنْ قَبْلِ ذَلِكَ. وَقَدْ قَالَ اللَّهُ: أَنْفِقْ أَنْفِقْ عَلَيْكَ».

تخریج: أخرجه البخاري، الأيمان والنذور، باب الوفاء بالنذر وقول الله تعالى: ﴿يُوفُونَ بالنذر﴾ ح: ٦٦٩٤ من حديث أبي الزناد به.

Comments:

- A generous person always spends in the path of Allāh. He does not need to make a vow for conditional spending.
- Making a conditional vow is a habit of miserly people. A person making a vow says: "If such and such work gets done or such and such calamity is warded off, I shall give such and such money in charity," it is as if he is saying if such and such work is not done I shall not give in charity. Therefore, making a vow according to this mentality is disliked.

Chapter 16. Vows For Disobedience

2124. It was narrated from 'Imrān bin Husain that the Messenger of Allāh ﷺ said: "[There is no vow to commit disobedience and] no vow concerning that which the son of Ādam does not possess." (Sahih)

(المعجم ١٦) - يَابُ النَّذْرِ فِي الْمَعْصِيَةِ
(التحفة ١٦)

٢١٢٤ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا سَفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا أَيُّوبُ عَنْ أَبِي قِلَابَةَ، عَنْ عَمِّهِ، عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا نَذْرَ فِي مَعْصِيَةٍ. وَلَا نَذْرَ فِيمَا لَا يَمْلِكُ ابْنُ آدَمَ».

تخریج: أخرجه مسلم، النذر، باب لا وفاء لنذر في معصية الله ولا فيما لا يملك العبد، ح: ١٦٤١ من حديث أيوب به مطولاً.

Comments:

- a. A vow is made to please Allāh, therefore, if a person makes such a vow that is sinful, then this vow is next to nothing. It is illegal to fulfill it; for example: a person vows that I shall give to so-and-so son of mine more than other sons, or vows for something which is not worthy of reward according to *Shari'ah*; for example: making a vow to keep standing in the sun. One should not fulfill this vow, rather one should carry out expiation.
- b. Making a vow for something which one does not own; for example: vowing to slaughter someone's animal is incorrect. However if he thinks of buying that animal, and hopes that the owner will sell it, then he should slaughter it after owning it.

2125. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "There is no vow to commit disobedience, and the expiation (for such a vow) is the expiation for breaking an oath." (*Sahih*)

٢١٢٥ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بْنِ السَّرْحِ الْمِصْرِيُّ أَبُو طَاهِرٍ: حَدَّثَنَا ابْنُ وَهْبٍ: أَنَّ أَبَا يُوسُفَ، عَنِ ابْنِ شَيْهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا نَذْرَ فِي مَعْصِيَةٍ. وَكَفَّارَتُهُ كَفَّارَةُ يَوْمَيْنِ».

تخریج: [صحيح] أخرجه أبو داود، الأيمان والنذور، باب من رأى عليه كفارة إذا كان في معصية، ح: ٣٢٩١ من حديث ابن وهب به، أخرجه الترمذي، ح: ١٥٢٤، وقال: هذا لا يصح، لأن الزهري لم يسمع هذا الحديث من أبي سلمة * والزهري صرح بالسماع من أبي سلمة عند النسائي، ح: ٣٨٦٩.

2126. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "Whoever vows to obey Allāh, let him obey Him, and whoever vows to disobey Allāh, let him not disobey Him." (*Sahih*)

٢١٢٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ عُبَيْدِ اللَّهِ، عَنْ طَلْحَةَ بْنِ عَبْدِ الْمَلِكِ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ. وَمَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ فَلَا يَعْصِهِ».

تخریج: أخرجه البخاري، الأيمان والنذور، باب: النذر في الطاعة ﴿وما أنفقتم من نفقة أو نذرتم من نذر﴾ ح: ٦٦٩٦ من حديث طلحة به.

Chapter 17. One Who Makes A Vow But Does Not State It Specifically

2127. It was narrated from 'Uqbah bin 'Amir Al-Juhani that the Messenger of Allāh ﷺ said: "Whoever makes a vow and does not state it specifically, the expiation (for such a vow) is the expiation for breaking an oath." (Hasan)

تخريج: [حسن] * إسماعيل بن رافع تقدم، ح: ١٣٣٧، ولحديثه شاهد حسن، انظر الحديث

Comments:

An unspecified and unnamed vow is if a person says: 'I vow for Allāh.'

2128. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "Whoever makes a vow and does not state it specifically, the expiation (for such a vow) is the expiation for breaking an oath. Whoever makes a vow and is not able to fulfill it, the expiation for that is the expiation for breaking an oath. Whoever makes a vow and is able to fulfill it, let him do so." (Hasan)

تخريج: [حسن] أخرجه أبو داود، الأيمان والنذور، باب من نذر لا يطيقه، ح: ٣٣٢٢ من طريق آخر عن بكير به، وإسناده حسن.

Chapter 18. Fulfilling Vows

2129. It was narrated that 'Umar bin Khattāb said: "I made a vow during the Ignorance period and I asked the Prophet ﷺ (about it) after I became Muslim. He told me to fulfill my vow." (Sahih)

(المعجم ١٧) - بَابُ مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ (التحفة ١٧)

٢١٢٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ رَافِعٍ، عَنْ خَالِدِ ابْنِ يَزِيدَ، عَنْ عُقْبَةَ بْنِ عَامِرِ الْجُهَنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ، فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ».

٢١٢٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ مُحَمَّدٍ الصَّنَعَانِيُّ: حَدَّثَنَا خَارِجَةُ ابْنُ مُصْعَبٍ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِّ، عَنْ كُرَيْبٍ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ نَذَرَ نَذْرًا وَلَمْ يُسَمِّهِ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ. وَمَنْ نَذَرَ نَذْرًا لَمْ يُطِيقْهُ فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ. وَمَنْ نَذَرَ نَذْرًا أَطَاقَهُ فَلْيُفِ بِهِ».

(المعجم ١٨) - بَابُ الْوَفَاءِ بِالنَّذْرِ (التحفة ١٨)

٢١٢٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: نَذَرْتُ نَذْرًا فِي الْجَاهِلِيَّةِ.

فَسَأَلْتُ النَّبِيَّ ﷺ بَعْدَمَا أَسْلَمْتُ. فَأَمَرَنِي أَنْ أَوْفِيَ بِنَذْرِي.

تخريج: [صحيح] تقدم، ح: ١٧٧٢.

Comments:

- Vowing is a type of worship, and is a good deed, because 'Umar made a determined vow to do good before embracing Islam, therefore, the noble Prophet ﷺ ordered him to fulfill the vow to do the good deed.
- If a vow is made in the state of disbelief to do something which is a good deed in Islam as well, then this vow must be fulfilled after embracing Islam.

2130. It was narrated from Ibn 'Abbâs that a man came to the Prophet ﷺ and said: "O Messenger of Allâh, I vowed to offer a sacrifice at Buwânah." He said: "Do you intend any action of Ignorance period?" He said: "No." He said: "Then fulfill your vow." (*Hasan*)

٢١٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ عَبْدِ اللَّهِ ابْنُ إِسْحَاقَ الْجَوْهَرِيُّ. قَالَا: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ رَجَاءٍ: أَنَّ بَنَّا الْمُسْعُودِيَّ، عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا جَاءَ إِلَى النَّبِيِّ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي نَذَرْتُ أَنْ أَنْحَرَ بِبُؤَانَةَ. فَقَالَ: «فِي نَفْسِكَ شَيْءٌ مِنْ أَمْرِ الْجَاهِلِيَّةِ؟» قَالَ: لَا. قَالَ: «أَوْفِ بِنَذْرِكَ».

تخريج: [حسن] أخرجه الطبراني في الكبير: ١٢/٢٢، ٢٣، ح: ١٢٣٥٦ من حديث عبد الله بن رجاء به * المسعودي اختلط تقدم، ح: ٩٠٦، وحبیب عنین تقدم، ح: ٣٨٣، إن صح السند إليه، وله شواهد عند أبي داود، ح: ٣٣١٣ وغيره.

Comments:

- Having something from the pre-Islamic ignorance period in the heart, means for example, if he still specified a place because it used to be considered holy for some reason in the time of ignorance, and he had vowed to slaughter a camel there following the same assumed holiness.
- Buwânah is a sand-hill near the seashore situated beyond Yanbu.

2131. It was narrated from Maimunah bint Kardam Al-Yasâriyyah that her father met the Prophet ﷺ when she was riding behind him. He said: "I vowed to offer a sacrifice at Buwânah." The Messenger of Allâh ﷺ said: "Is there any idol there?" He said: "No." He said: "Fulfill your

٢١٣١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مَرْوَانَ بْنُ مُعَاوِيَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ الطَّائِفِيِّ، عَنْ مَيْمُونَةَ بِنْتِ كَرْدَمِ الْيَسَارِيَّةِ أَنَّ أَبَاهَا لَقِيَ النَّبِيَّ ﷺ وَهِيَ رَدِيمَةٌ لَهُ. فَقَالَ: إِنِّي نَذَرْتُ أَنْ أَنْحَرَ بِبُؤَانَةَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «هَلْ بِهَا وَثَنٌ؟» قَالَ: لَا.

vow." (*Hasan*)

Another chain with similar wording.

قَالَ: «أَوْفِ بِنَدْرِكَ».

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا ابْنُ دُكَيْنٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ يَزِيدَ بْنِ مِقْسَمٍ، عَنْ مَيْمُونَةَ بِنْتِ كَرْدَمٍ، عَنِ النَّبِيِّ ﷺ، بِنَحْوِهِ.

تخریج: [حسن] أخرجه أحمد: ۳۶۶/۶ من حديث الطائفي به، الرواية الثانية، وقال البوصيري: أنه منقطع، يزيد بن مقسم لم يسمع من ميمونة بنت كردم، وفي الرواية الأولى تدليس، انظر الحديث السابق، وله طريق آخر عند أبي داود، ح: ۳۳۱۴.

Comments:

- Fulfilling a vow is compulsory.
- If someone vowed and died without fulfilling it, the vow related to wealth should be fulfilled from the deceased's wealth, just as one's debt is paid after death from the wealth, and then the inheritance is divided.
- A vow related to physical worship should be fulfilled by a close heir.
- The offspring has more responsibility for fulfilling the parents' vow.

Chapter 19. One Who Dies With A Vow Left To Fulfill

(المعجم ۱۹) - بَابُ مَنْ مَاتَ وَعَلَيْهِ نَذْرٌ (التحفة ۱۹)

2132. It was narrated from Ibn 'Abbās that Sa'd bin 'Ubādah asked the Messenger of Allāh ﷺ about a vow which his mother had made, but she had died without fulfilling it. The Messenger of Allāh ﷺ said: "Fulfill it on her behalf." (*Sahih*)

۲۱۳۲ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمَيْحٍ: أَنْبَأَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنِ ابْنِ عَبَّاسٍ أَنَّ سَعْدَ بْنَ عَبَّادَةَ اسْتَفْتَى رَسُولَ اللَّهِ ﷺ فِي نَذْرٍ كَانَ عَلَى أُمِّهِ. تُوفِّيَتْ وَلَمْ تَقْضِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَقْضِهِ عَنْهَا».

تخریج: أخرجه البخاري، الرصايب، باب ما يستحب لمن توفي فجاءه أن يتصدقوا عنه، وقضاء النذر عن الميت، ح: ۲۷۶۱، ۶۶۹۸ من حديث ابن شهاب الزهري به، ومسلم، النذر، باب الأمر بقضاء النذر، ح: ۱۶۳۸.

2133. It was narrated from Jābir bin 'Abdullāh that a woman came to the Messenger of Allāh ﷺ and said: "My mother has died, and she had made a vow to fast, but

۲۱۳۳ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ بَكْرِ بْنِ أَبِي شَيْبَةَ: حَدَّثَنَا ابْنُ دُكَيْنٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ يَزِيدَ بْنِ مِقْسَمٍ، عَنْ مَيْمُونَةَ بِنْتِ كَرْدَمٍ، عَنِ النَّبِيِّ ﷺ، بِنَحْوِهِ.

she died before she could fulfill it. The Messenger of Allāh ﷺ said: 'Let her guardian fast on her behalf.' (*Da'if*)

أَتَتْ رَسُولَ اللَّهِ ﷺ فَقَالَتْ: إِنَّ أُمَّي تُوُفِّيَتْ وَعَلَيْهَا نَذْرٌ صِيَامٍ. فَتُوُفِّيَتْ قَبْلَ أَنْ تَقْضِيَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لِيَصُمْ عَنْهَا الْوَلِيُّ».

تخریج: [إسناده ضعيف] وضعفه البوصيري، وانظر، ح: ۳۳۰ لعلته، وحديث: من مات وعليه صيام صام عنه وليه، يغني عنه.

Chapter 20. One Who Vows To Go For Hajj Walking

(المعجم ۲۰) - بَابُ مَنْ نَذَرَ أَنْ يَحِجَّ مَاشِيًا (التحفة ۲۰)

2134. It was narrated from Abu Sa'eed Ar-Ru'aini that 'Abdullāh bin Mālik told him, that 'Uqbah bin 'Āmir told him, that his sister vowed to walk, barefoot and bareheaded, and he mentioned that to the Messenger of Allāh ﷺ. He said: "Order her to ride and to cover her head, and to fast for three days." (*Da'if*)

۲۱۳۴ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ زَحْرٍ، عَنْ أَبِي سَعِيدِ الرَّعِنِيِّ أَنَّ عَبْدَ اللَّهِ بْنَ مَالِكٍ أَخْبَرَهُ أَنَّ عَقْبَةَ بْنَ عَامِرٍ أَخْبَرَهُ أَنَّ أُمَّتَهُ نَذَرَتْ أَنْ تَمْشِيَ حَافِيَةً، غَيْرَ مُخْتَوِرَةٍ وَأَنَّهُ ذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «مُرَهَا فَلْتَرْكَبْ وَلْتَحْتَمِرْ وَلْتَصُمْ ثَلَاثَةَ أَيَّامٍ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الأيمان والنذور، باب من رأى عليه كفارة إذا كان في معصية، ح: ۳۲۹۳ من حديث يحيى به * عبيدالله بن زحر ضعفه الجمهور، وقال ابن معين: كل حديثه عندي ضعيف، وله متابعة ضعيفة عند أحمد: ۱۴۷/۴ من أجل ابن لهيعة تقدم، ح: ۳۳۰.

2135. It was narrated that Abu Hurairah said: "The Prophet ﷺ saw an old man walking between his two sons, and he said: 'What is the matter with him?' His sons said: 'A vow, O Messenger of Allāh.' He said: 'Let this old man ride, for Allāh has no need of you or your vow.'" (*Sahih*)

۲۱۳۵ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: رَأَى النَّبِيُّ ﷺ شَيْخًا يَمْشِي بَيْنَ ابْنَيْهِ. فَقَالَ: «مَا شَأْنُ هَذَا؟» قَالَ ابْنَاهُ: نَذَرْتُ، يَا رَسُولَ اللَّهِ قَالَ: «ارْكَبْ أَيُّهَا الشَّيْخُ فَإِنَّ اللَّهَ غَنِيٌّ عَنْكَ وَعَنْ نَذْرِكَ».

تخریج: أخرجه مسلم، التذکر. باب من نذر. أن يمشي إلى الكعبة، ح: ۱۶۴۳ من حديث

Comments:

- One should not make such a vow that is extremely and exceedingly hard to fulfill.
- If one feels that fulfilling a vow is getting out of reach, then one should break the vow, and carry out the expiation.

Chapter 21. One Who Mixes Obedience And Sin In His Vow

(المعجم ٢١) - بَابُ مَنْ خَلَطَ فِي نَذْرِهِ
طَاعَةً بِمَعْصِيَةٍ (التحفة ٢١)

2136. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ passed by a man in Makkah who was standing in the sun. He said: "What is this?" They said: "He vowed to fast and not to seek shade until night comes, and not to speak, and to remain standing." He said: "Let him speak and seek shade, and let him sit down, but let him complete his fast." (*Sahih*)

Another chain from Ibn 'Abbâs, from the Prophet ﷺ, with similar wording.

٢١٣٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا إِسْحَاقُ بْنُ مُحَمَّدٍ الْقُرَوِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ عَمْرٍو، عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو، عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ مَرَّ بِرَجُلٍ بِمَكَّةَ وَهُوَ قَائِمٌ فِي الشَّمْسِ. فَقَالَ: «مَا هَذَا؟» قَالُوا: نَذَرَ أَنْ يَصُومَ وَلَا يَسْتَظِلَّ إِلَى اللَّيْلِ. وَلَا يَتَكَلَّمَ. وَلَا يَرَالَ قَائِمًا. قَالَ: «لِيَتَكَلَّمَ وَلِيَسْتَظِلَّ وَلِيَجْلِسَ وَلِيَتِمَّ صَوْمَهُ».

حَدَّثَنَا الْحُسَيْنُ بْنُ مُحَمَّدٍ بْنِ شَيْبَةَ الْوَاسِطِيُّ: حَدَّثَنَا الْعَلَاءُ بْنُ عَبْدِ الْجَبَّارِ، عَنْ وَهْبٍ، عَنْ أَبِي يُوْبَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ نَحْوَهُ.

تخریج: أخرجه البخاري، الأيمان والنذور، باب النذر فيما لا يملك وفي معصية، ح: ٦٧٠٤ من حديث وهيب به، الرواية الثانية، وبها صح السند الأول.

Comments:

If the vow is of such a type, which includes legal and illegal things, then one should give up the illegal things and fulfill the vow of doing the legal ones. Because making a vow to avoid speaking, sitting and keeping away from shade was incorrect, so these things were prohibited, and observing fast is a permissible worship, therefore it was ordered to be fulfilled.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

12. The Chapters On Business Transactions

(المعجم ١٢) أَبْوَابُ التَّجَارَاتِ (التحفة ١٠)

Comments:

Linguistically *Bai'* means 'exchanging a commodity for another commodity'. The term *Bai'* is identified thus: 'It is to exchange property with mutual agreement.'

A transaction relating to sales and business has the following four principle factors:

- 1: The Seller: It is essential that the seller owns the commodity, understands the matter in hand and he/she is sane.
- 2: The Buyer: It is essential for the buyer too that he/she has the ability to make and exercise a deal.
- 3: The Commodity: The commodity being sold should be permissible and the commodity taken as price should also be permissible.
- 4: Words of Striking a Deal: Acceptance and liability, for example: a person says 'I sell this in exchange for such and such price,' and the buyer should say 'I buy it.'

Chapter 1. Encouragement To Earn A Living

(المعجم ١) - بَابُ الْحَثِّ عَلَى الْمَكَاسِبِ (التحفة ١)

2137. It was narrated from 'Āishah that the Messenger of Allāh ﷺ said: 'The best (most pure) food a man consumes is that which he has earned himself, and his child (and his child's wealth) is part of his earnings.'" (Sahih)

٢١٣٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ، وَ إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ حَبِيبٍ قَالُوا: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِنْ كَسْبِهِ. وَإِنَّ وَلَدَهُ مِنْ كَسْبِهِ».

تخريج: [صحيح] أخرجه النسائي: ٢٤١/٧، البيوع، باب الحث على الكسب، ح: ٤٤٥٦، ٤٤٥٧ من حديث الأعمش به، وصححه ابن حبان(موارد)، ح: ١٠٩٢، ١٠٩٣، وله شواهد كثيرة انظر، ح: ٢٢٩٠، ٢٢٩٢.

2140. It was narrated from Abu Hurairah that the Prophet ﷺ said: "The one who strives to support the widow and the poor is like a *Mujāhid* who fights in the cause of Allāh, and like one who stands in the night (in voluntary prayer) and fasts by day." (*Sahih*)

٢١٤٠ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ الدَّرَّازِيُّ، عَنْ ثَوْرِ بْنِ زَيْدِ الدَّبَلِيِّ، عَنْ أَبِي الْعَيْثِ مَوْلَى ابْنِ مَطِيحٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «السَّاعِي عَلَى الْأَرْمَلَةِ وَالْمَسْكِينِ كَالْمُجَاهِدِ فِي سَبِيلِ اللَّهِ، وَكَالَّذِي يَقُومُ اللَّيْلَ وَيَصُومُ النَّهَارَ».

تخريج: أخرجه البخاري، التفقات، باب فضل النفقة على الأهل ... الخ، ح: ٥٣٥٣، ومسلم، الزهد، باب فضل الإحسان إلى الأرملة والمسكين واليتيم، ح: ٢٩٨٢ من حديث ثور به .

Comments:

The best source of looking after a widow is to arrange her marriage, thus her honor will be protected as well, and also it will be a permanent arrangement for her and her children to be looked after, and to have a good upbringing. However, if her marriage seems impossible for some reason, then it is an obligation upon the Muslims to fulfill her and her children's lawful and reasonable needs in order to make them useful, responsible and positive members of the society.

2141. It was narrated from Mu'adh bin 'Abdullāh bin Khubaib, from his father, that his paternal uncle said: "We were sitting in a gathering, and the Prophet ﷺ came with traces of water on his head. One of us said to him: 'We see that you are of good cheer today.' He said: 'Yes, praise is to Allāh.' Then he spoke to the people about being rich. He said: 'There is nothing wrong with being rich for one who has piety, but good health, for one who has piety is better than riches, and being of good cheer is a blessing.'" (*Sahih*)

٢١٤١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا خَالِدُ بْنُ مَخْلَدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سُلَيْمَانَ عَنْ مُعَاذِ بْنِ عَبْدِ اللَّهِ بْنِ حُبَيْبٍ، عَنْ أَبِيهِ، عَنْ عَمِّهِ قَالَ: كُنَّا فِي مَجْلِسٍ. فَجَاءَ النَّبِيُّ ﷺ وَعَلَى رَأْسِهِ أَتْرُ مَاءٍ. فَقَالَ لَهُ بَعْضُنَا: تَرَاكَ الْيَوْمَ طَيِّبَ النَّفْسِ. فَقَالَ: «أَجَلٌ. وَالْحَمْدُ لِلَّهِ» ثُمَّ أَفَاضَ الْقَوْمُ فِي ذِكْرِ الْغَنَى. فَقَالَ: «لَا بَأْسَ بِالْغَنَى لِمَنِ اتَّقَى. وَالصَّحَّةُ لِمَنِ اتَّقَى خَيْرٌ مِنَ الْغَنَى. وَطَيِّبُ النَّفْسِ مِنَ النَّعِيمِ».

تخريج: [إسناده صحيح] أخرجه أحمد: ٥/ ٣٧٢، ٣٨١ من حديث عبدالله بن سليمان به، وصححه الحاكم: ٣/ ٢، والذهبي، والبوصيري.

Comments:

- a. A righteous person having fear of Allāh ﷻ earns his livelihood through lawful ways, and spends it in good causes, and in fulfilling lawful and reasonable needs, thus he earns reward in earning and in spending. The wealth is a great favor for such a person.
- b. A bad person does not distinguish between lawful and unlawful in earning a livelihood. He spends with pride, to show off, and he uses wealth for an unreasonable lavish lifestyle. Thus the gain of this wealth becomes a source of sin for him, and the spending of it multiplies his sins even more. The wealth is a test and a cause of destruction for such a person. May Allāh keep us safe! Amen.
- c. Health is a greater favor than wealth. Being in a state of good health, despite being less fortunate in respect to wealth, certainly allows more good deeds to be performed.

Chapter 2. Moderation In Seeking To Earn A Living

(المعجم ٢) - بَابُ الْاِقْتِصَادِ فِي طَلْبِ الْمَعِيشَةِ (التحفة ٢)

2142. It was narrated from Abu Humaid As-Sá'idi that the Messenger of Allāh ﷻ said: "Be moderate in seeking worldly things, for everyone will be facilitated for which he was created." (*Sahih*)

٢١٤٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ، عَنْ عُمَارَةَ بْنِ غَزِيَّةَ، عَنْ رَيْبَعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ عَبْدِ الْمَلِكِ بْنِ سَعِيدِ الْأَنْصَارِيِّ، عَنْ أَبِي حُمَيْدٍ السَّاعِدِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَجْمِلُوا فِي طَلْبِ الدُّنْيَا فَإِنَّ كُلًّا مُيسَّرٌ لِمَا خُلِقَ لَهُ».

تخریج: [صحیح] أخرجه ابن أبي عاصم في السنة، ح: ٤١٨ عن هشام بن عمار به، أخرجه البيهقي وغيره من حديث سليمان بن بلال عن ربيعة به، وصححه الحاكم على شرط الشيخين: ٢/٣، ووافقه الذهبي، وهو على شرط مسلم فقط، والله أعلم.

Comments:

'Be moderate in seeking worldly things' means to strive for earning lawful and one should not engage oneself fully in the earning that his/her attention for the Hereafter is driven away. It means to adopt a moderate manner of earning the worldly gain.

2143. It was narrated from Anas bin Mâlik that the Messenger of Allāh ﷻ said: 'The one who has the most concerns is the believer who is concerned about both his worldly affairs and his Hereafter.'" (*Da'if*)

٢١٤٣ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ بَهْرَامٍ: حَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدِ بْنِ عَثْمَانَ، زَوْجُ بِنْتِ الشَّعْبِيِّ: حَدَّثَنَا سُفْيَانُ عَنْ الْأَعْمَشِ، عَنْ يَزِيدِ الرَّقَاشِيِّ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ:

Abu 'Abdullah said: "This *Hadith* is *Gharib*' Ismâ'il, alone, has narrated it."

رَسُولُ اللَّهِ ﷺ: «أَعْظَمُ النَّاسِ هَمًّا، الْمُؤْمِنُ الَّذِي يَهُمُّ بِأَمْرِ دُنْيَاهُ وَأَمْرٍ آخِرَتِهِ».

قَالَ أَبُو عَبْدِ اللَّهِ: هَذَا حَدِيثٌ غَرِيبٌ. تَقَرَّرَ بِهِ إِسْمَاعِيلُ.

تخريج: [إسناده ضعيف] أخرجه ابن أبي الدنيا في الهم والحزن من حديث إسماعيل به، وانظر، ح: ١٠٨٠ لعلته، وفيه علة أخرى.

2144. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "O people, fear Allâh and be moderate in seeking a living, for no soul will die until it has received all its provision, even if it is slow in coming. So fear Allâh and be moderate in seeking provision; take that which is permissible and leave that which is forbidden." (*Sahih*)

٢١٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحِمَاصِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنِ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّهَا النَّاسُ اتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ. فَإِنَّ نَفْسًا لَنْ تَمُوتَ حَتَّى تَسْتَوْفِيَ رِزْقَهَا، وَإِنْ أَبْطَأَ عَنْهَا. فَاتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ. خُذُوا مَا حَلَّ، وَدَعُوا مَا حَرَّمَ».

تخريج: [صحيح] أخرجه ابن أبي عاصم في السنة، ح: ٤٢٠ من حديث الوليد به، وتابعه محمد بن بكر (المستدرک: ٤/٢) وغيره، وله شاهد حسن عند ابن حبان (موارد)، ح: ١٠٨٤، ١٠٨٥ وغيره، وصححه الحاكم، والذهبي.

Comments:

- a. A person caring for a lawful earning is never deprived of livelihood.
- b. Putting trust in Allâh, unlawful livelihood must be avoided.
- c. As the term of worldly life is appointed, which will not be increased or decreased; likewise livelihood is also fixed and specified. But the human earns reward or chastisement for its right or wrong strife.

Chapter 3. Fearing Allâh In Business

(المعجم ٣) - بَابُ التَّوَقُّفِ فِي التَّجَارَةِ (التحفة ٣)

2145. It was narrated that Qais bin Abu Gharazah said: "At the time of the Messenger of Allâh ﷺ we used to be called brokers, but the Messenger of Allâh ﷺ passed by us and called by a name that

٢١٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ شَقِيقٍ، عَنْ قَيْسِ بْنِ أَبِي عَزْرَةَ قَالَ: كُنَّا نُسَمَّى فِي عَهْدِ رَسُولِ اللَّهِ ﷺ، السَّمَايِرَةَ. فَمَرَّ بِنَا

was better than that. He said: 'O merchants, selling involves (false) oaths and idle talk, so mix some charity with it.'" (*Sahih*)

رَسُولُ اللَّهِ ﷺ فَسَمَّانَا بِأَسْمِهِ هُوَ أَحْسَنُ مِنْهُ .
فَقَالَ: «يَا مَعْشَرَ التُّجَّارِ إِنَّ الْبَيْعَ يَحْضُرُهُ
الْحَلْفُ وَاللَّغْوُ. فَشَوِّبُوهُ بِالصَّدَقَةِ».

تخریج: [صحیح] أخرجه أبو داود، البيوع، باب في التجارة يخالفها الحلف واللغو، ح: ٣٣٢٦ من حديث أبي معاوية به، وصححه الترمذي، ح: ١٢٠٨، وابن الجارود، ح: ٥٥٧، والحاكم ٥/٢، والذهبي * الأعمش صرح بالسماح (مشكل الآثار للطحاوي: ١٣/٣، ١٤)، وتابعه جماعة.

Comments:

This *Hadith* expresses the permissibility of a broker and commissioning agent, whereas the *Ahâdith* (2175-2177) are contrary to it. These *Ahâdith* can be reconciled thus; that helping a brother, out of sincerity without taking commission, in buying and selling the commodity is better, but receiving a salary or commission for it is disliked. Ibn Sirin, 'Atâ, Ibrâhim and Hasan, may Allâh have mercy on them, see no harm in the salary of an agent. Ibn Abbâs ؓ said: "There is no harm in saying, 'sell this clothe, and whatever is gained over such and such price is yours.'" Ibn Sirin said: "Sell this commodity for such and such, whatever the profit will be is yours. Or the profit will be divided between you and me.' There is no harm in it." The Prophet ﷺ said: "The Muslims are bound to their conditions." (*Sahih Al-Bukhâri: The Book of Hiring (37) Chapter: 14 The wages of a broker*)

2146. It was narrated from Ismâ'il bin 'Ubaid bin Rifâ'ah, from his father, that his grandfather Rifâ'ah said: "We went out with the Messenger of Allâh ﷺ, and the people were trading early in the morning. He called them: 'O merchants!' and when they looked up and craned their necks, he said: 'The merchants will be raised on the Day of Resurrection as immoral people, apart from those who fear Allâh and act righteously and speak the truth (i.e. those who are honest).'" (*Hasan*)

٢١٤٦ - حَدَّثَنَا يَحْيَى بْنُ حَمِيدٍ بْنِ كَاسِبٍ: حَدَّثَنَا يَحْيَى بْنُ سُلَيْمٍ الطَّائِفِيُّ، عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ بْنِ خُثَيْمٍ، عَنْ إِسْمَاعِيلَ بْنِ عُبَيْدِ بْنِ رِفَاعَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ رِفَاعَةَ قَالَ: نَخَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فَإِذَا النَّاسُ يَتَّبِعُونَ بُكْرَةً. فَتَادَاهُمْ: «يَا مَعْشَرَ التُّجَّارِ» فَلَمَّا رَفَعُوا أَبْصَارَهُمْ، وَمَدُّوا أَعْنَاقَهُمْ. قَالَ: «إِنَّ التُّجَّارَ يَبْعَثُونَ يَوْمَ الْقِيَامَةِ فُجَّارًا. إِلَّا مَنْ اتَّقَى اللَّهَ وَبَرَّ وَصَدَّقَ».

تخریج: [إسناده حسن] أخرجه الترمذي، البيوع، باب ماجاء في التجار وتسمية النبي ﷺ إياهم، ح: ١٢١٠ من حديث ابن خثيم به، وقال: هذا حديث حسن صحيح، وصححه ابن

حبان(موارد)، ح: ١٠٩٥، والحاكم: ٦/٢، والذهبي.

Chapter 4. If A Man Finds A Way Of Earning A Living, Let Him Stick With It

(المعجم ٤) - بَابُ: إِذَا قَسِمَ لِلرَّجُلِ رِزْقٌ مِنْ وَجْهِ فَلْيَلْزِمَهُ (التحفة ٤)

2147. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: 'Whoever achieves at something, let him stick with it.'" (*Da'if*)

٢١٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا قُرُوبُ أَبُو يُونُسَ، عَنْ هِلَالِ بْنِ جُبَيْرٍ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَصَابَ مِنْ شَيْءٍ، فَلْيَلْزِمَهُ».

تخريج: [إسناده ضعيف] أخرجه البخاري في التاريخ الكبير: ٢٠٦/٨ من حديث محمد بن عبدالله الأنصاري به، وقال البوصيري: هذا إسناد ضعيف * هلال مستور، وشك ابن حبان في سماعه من أنس (تقريب)، وفيه علة أخرى.

2148. It was narrated that Nâfi' said: I used to send trade goods to Shâm and Egypt, then I prepared to send trade goods to 'Irâq. I went to 'Âishah, the Mother of the Believers, and said to her: "O Mother of the Believers! I used to send trade goods to Shâm and I am preparing to send trade goods to 'Irâq." She said: "Do not do that. What is wrong with the way you have been doing it? I heard the Messenger of Allâh ﷺ say: 'If Allâh causes provision to come to one of you through a certain means, he should not leave it unless it changes or deteriorates.'" (*Da'if*)

٢١٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا أَبُو عَاصِمٍ: أَخْبَرَنِي أَبِي، عَنِ الزُّبَيْرِ بْنِ عُبَيْدٍ، عَنْ نَافِعٍ قَالَ: كُنْتُ أُجَهِّزُ إِلَى الشَّامِ وَإِلَى بَصْرَ. فَجَهَّزْتُ إِلَى الْعِرَاقِ. فَأَتَيْتُ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ فَقُلْتُ لَهَا: يَا أُمَّ الْمُؤْمِنِينَ كُنْتُ أُجَهِّزُ إِلَى الشَّامِ. فَجَهَّزْتُ إِلَى الْعِرَاقِ. فَقَالَتْ: لَا تَفْعَلْ. مَا لَكَ وَلِمَتَجَرَّكَ؟ فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا سَبَّ اللَّهُ لِأَحَدِكُمْ رِزْقًا مِنْ وَجْهِ، فَلَا يَدْعُهُ حَتَّى يَتَغَيَّرَ لَهُ، أَوْ يَتَكَرَّرَ لَهُ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ٢٤٦/٦ عن أبي عاصم به ببعض الاختلاف * والزبير بن عبيد مجهول كما في التقريب وغيره.

Chapter 5. Occupations

(المعجم ٥) - بَابُ الصَّنَاعَاتِ (التحفه ٥)

2149. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Allāh has not sent any Prophet but he was a shepherd." His Companions said to him: "Even you, O Messenger of Allāh?" He said: "Even me. I used to tend the sheep of the people of Makkah for a few *Qirâts*." (*Sahih*)

(One of the narrators) Suwaid said: "Meaning one *Qirât* for every sheep."

٢١٤٩ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَمْرُو بْنُ يَحْيَى بْنِ سَعِيدِ الْقُرَشِيِّ، عَنْ جَدِّهِ، سَعِيدِ بْنِ أَبِي أَحِيحَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا بَعَثَ اللَّهُ نَبِيًّا إِلَّا رَاعِي غَنَمٍ» قَالَ لَهُ أَصْحَابُهُ: وَأَنْتَ يَا رَسُولَ اللَّهِ! قَالَ: «وَأَنَا. كُنْتُ أَرْعَاهَا لِأَهْلِ مَكَّةَ بِالْقَرَارِيطِ».

قَالَ سُؤَيْدٌ: يَعْنِي كُلَّ شَاةٍ بِقِرَارِطٍ.

تخریج: أخرجه البخاري، الإجازة، باب رعي الغنم على قراريط، ح: ٢٢٦٢ من حديث عمرو بن يحيى به.

Comments:

- a. Physical work and labor is a lawful profession, provided a worker works honestly and he is not given work to do which is religiously unlawful.
- b. Work should not be started until the labor and salary is determined.
- c. Tending to goats and sheep was a profession of the Prophet ﷺ.
- d. *Qirât* is a type of currency, which is a twentieth or twenty-fourth of a Dinār. (See: *An-Nihâyah* of Ibn Athir, root word *Qirât*).

2150. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Zakariyyâ was a carpenter." (*Sahih*)

٢١٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْخُزَاعِيُّ، وَالْحَجَّاجُ، وَالْهَيْثَمُ بْنُ جَمِيلٍ قَالُوا: حَدَّثَنَا حَمَادٌ عَنْ نَابِتٍ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «كَانَ زَكَرِيَّا نَجَّارًا».

تخریج: أخرجه مسلم، الفضائل، باب: من فضائل زكرياء عليه السلام، ح: ٢٣٧٩ من حديث حماد بن سلمة به.

Comments:

- a. Carpentry and woodwork is a good profession, through which a believer can earn lawful livelihood with his hands. Prophet Nuh (Noah) also built a wooden ark with Allāh's command. (*Surah Hud* 11: 37-38).
- b. No profession should be disregarded. Disregard is that a person chooses

unlawful means to earn a livelihood or he/she adopts a profession which is unlawful according to *Shari'ah*.

2151. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "The image-makers will be punished on the Day of Resurrection and will be told: 'Give life to that which you have created.'" (*Sahih*)

٢١٥١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنَّ أَصْحَابَ الصُّوَرِ يُعَذَّبُونَ يَوْمَ الْقِيَامَةِ. يُقَالُ لَهُمْ: أَحْيُوا مَا خَلَقْتُمْ».

تخریج: أخرجه البخاري، التوحيد، باب قول الله تعالى: ﴿والله خلقكم وما تعملون...﴾ الخ، ح: ٧٥٥٧ من حديث الليث بن سعد به.

Comments:

- Drawing pictures of living animals is prohibited, regardless if it is drawn on paper, a wall or a piece of cloth, or a statue made of clay, stone, porcelain or plastic etc.
- The commandment of blowing life will be given to the artists just for the sake of making them ashamed, and to make clear the gravity of their crime, thus this commandment will in fact be a form of chastisement.

2152. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The most dishonest of people are the dyers and the goldsmiths."^[1] (*Da'if*)

٢١٥٢ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا عُمَرُ بْنُ هَارُونَ، عَنْ هَمَّامٍ، عَنْ فَرْقَدِ السَّبْحِيِّ، عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الشَّخِيرِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَكْذِبُ النَّاسِ الصَّبَّاعُونَ وَالصَّوَّاعُونَ».

تخریج: [إسناده ضعيف] أخرجه أبو داود الطيالسي، ح: ٢٥٧٤ عن همام به، وانظر، ح: ١٧٨١ لعلته.

Chapter 6. Hoarding And Importing

(المعجم ٦) - بَابُ الْحُكْرَةِ وَالْجَلْبِ

(التحفة ٦)

2153. It was narrated from 'Umar bin Khattāb that the Messenger of Allāh ﷺ said: "The importer is

٢١٥٣ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا أَبُو أَحْمَدَ: حَدَّثَنَا إِسْرَائِيلُ عَنْ عَلِيٍّ

[1] These two occupations are characterized as dishonest because they often tell people that their goods will be ready at a certain time then break that promise. The words translated as 'dyers and goldsmiths' may also refer to those who tell lies and invent fabrications. See explanation by Sindi.

blessed with provision and the hoarder is cursed." (*Da'if*)

ابن سالم بن ثوبان، عن علي بن زيد بن جُدعان، عن سعيد بن المسيب، عن عمر بن الخطاب قال: قال رسول الله ﷺ: «الجالب مرزوق والمحتكر ملعون».

تخريج: [إسناده ضعيف] أخرجه الدارمي: ٢/٢٤٩، ح: ٢٥٤٧ من حديث إسرائيل به، وضعفه البوصيري، والعسقلاني في التلخيص الحبير: ٣/١٣، وانظر، ح: ١١٦ لعلته * وعلي بن سالم ضعيف (تقريب).

2154. It was narrated from Ma'mar bin 'Abdullâh bin Nadlah that the Messenger of Allâh ﷺ said: "No one hoards but a sinner." (*Sahih*)

٢١٥٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ بْنِ نَضَلَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحْتَكِرُ إِلَّا خَاطِيءٌ».

تخريج: [صحيح] أخرجه الترمذي. البيوع، باب ماجاء في الاحتكار، ح: ١٢٦٧ من حديث يزيد بن هارون به، وقال: حسن صحيح، أخرجه مسلم، ح: ١٦٠٥ من طرق عن سعيد بن المسيب به.

Comments:

"Hoarding up" is when people are in more need of something, the trader holds back the stock in order to let the price increase, out of greed and selfishness. Such a person has a desire in his heart that the public get trapped in difficulty and he/she will take advantage of that to accumulate wealth. This type of desires does not suit a Muslim's dignity.

2155. It was narrated that 'Umar bin Khattâb said: "I heard the Messenger of Allâh ﷺ say: 'Whoever hoards food (and keeps it from) the Muslims, Allâh will afflict him with leprosy and bankruptcy.'" (*Hasan*)

٢١٥٥ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا أَبُو بَكْرِ الْحَنَفِيُّ: حَدَّثَنَا الْهَيْثَمُ بْنُ رَافِعٍ: حَدَّثَنِي أَبُو يَحْيَى الْمَكِّيُّ، عَنْ فُرُوحِ مَوْلَى عُثْمَانَ ابْنِ عَفَّانَ، عَنْ عَمْرِو بْنِ الْخَطَّابِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ اخْتَكَرَ عَلَى الْمُسْلِمِينَ طَعَامًا ضَرَبَهُ اللَّهُ بِالْجُدَامِ وَالْإِفْلَاسِ».

تخريج: [إسناده حسن] أخرجه أحمد: ١/٢١١ من حديث الهيثم به مطولاً، وصححه البوصيري، وقال المنذري في الترغيب والترهيب: ٢/٥٨٣ هذا إسناد جيد متصل ورواته ثقات،

وقال الحافظ في الفتح: ٣٤٨/٤ وإسناده حسن .

Chapter 7. The Wages Of The *Râqi*^[1]

(المعجم ٧) - بَابُ أَجْرِ الرَّاقِي

(التحفة ٧)

2156. It was narrated that Abu Sa'eed Al-Khudri said: "The Messenger of Allâh ﷺ sent us, thirty horsemen, on a military campaign. We camped near some people and asked them for hospitality but they refused. Then their leader was stung by a scorpion, and they said: 'Is there anyone among you who can recite *Ruqyah* for a scorpion sting?' I said: 'Yes, I can, but I will not recite *Ruqyah* for him until you give us some sheep.' They said: 'We will give you thirty sheep.' So we accepted them, and I recited *Al-Hamd* (i.e. *Al-Fâtihah*) over him seven times. Then he recovered, and I took the sheep. Then some doubts occurred within ourselves. Then we said: 'Let us not hasten (to make a decision concerning the sheep) until we come to the Prophet ﷺ.' So when we came back: 'I told him what I had done. He said: 'How did you know that it is a *Ruqyah*? Divide them up and give me a share as well.'" (*Sahih*)

٢١٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ جَعْفَرِ بْنِ إِيَّاسٍ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: بَعَثَنَا رَسُولُ اللَّهِ ﷺ ثَلَاثِينَ رَاكِبًا فِي سَرِيَّةٍ. فَتَزَلْنَا بِقَوْمٍ. فَسَأَلْنَاهُمْ أَنْ يَقْرُونَا. فَأَبَوْا. فَلَدَغَ سَيْدُهُمْ فَأَتُونَا فَقَالُوا: أَفِيكُمْ أَحَدٌ يَرْقِي مِنَ الْعُقْرَبِ؟ فَقُلْتُ: نَعَمْ. أَنَا. وَلَكِنْ لَا أَزْقِيهِ حَتَّى تُعْطُونَا عَنَمًا. قَالُوا: فَإِنَّا نُعْطِيكُمْ ثَلَاثِينَ شَاةً. فَصَلَّيْنَاهَا. فَقَرَأْتُ عَلَيْهِ الْحَمْدَ [الفاتحة] سِنْعَ مَرَّاتٍ. فَبَرِيءٌ وَقَبِضْتُ الْعَنَمَ. فَعَرَضَ فِي أَنْفُسِنَا مِنْهَا شَيْءٌ. فَقُلْنَا: لَا تَعَجَلُوا حَتَّى نَأْتِيَ النَّبِيَّ ﷺ. فَلَمَّا قَدِمْنَا ذَكَرْتُ لَهُ الَّذِي صَنَعْتُ. فَقَالَ: «أَوْمًا عَلِمْتَ أَنَّهَا رُقِيَّةٌ؟ اقْتَسِمُوهَا وَاضْرِبُوا لِي مَعَكُمْ سَهْمًا».

تخریج: (الف) [صحیح] أخرجه الترمذي، الطب، باب ماجاء في أخذ الأجر على التعويذ، ح: ٢٠٦٣ من حديث أبي معاوية به، وقال: هذا حديث حسن، وانظر الحديث الآتي.

[1] The one who administers *Ruqyah* (recitation of Qur'anic Verses as a means of curing disease).

Other chains with similar wording.

حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا هُشَيْمٌ: حَدَّثَنَا أَبُو يَشْرِ عَنْ ابْنِ أَبِي الْمُتَوَكَّلِ، عَنْ أَبِي الْمُتَوَكَّلِ، عَنْ أَبِي سَعِيدٍ، عَنِ النَّبِيِّ ﷺ بِنَحْوِهِ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي يَشْرِ، عَنْ ابْنِ الْمُتَوَكَّلِ، عَنْ أَبِي سَعِيدٍ، عَنِ النَّبِيِّ ﷺ بِنَحْوِهِ.
قَالَ أَبُو عَبْدِ اللَّهِ: وَالصَّوَابُ هُوَ أَبُو الْمُتَوَكَّلِ.

تخریج: (ب) أخرجه البخاري، الإجازة، باب ما يعطي في الرقية على أحياء العرب بفاتحة الكتاب، ح: ٢٢٧٦ من حديث أبي بشر به، وهو الأرجح من السند السابق، ومسلم، السلام، باب جواز أخذ الأجرة على الرقية بالقرآن والأذكار، ح: ٢٢٠١ من حديث هشيم به.

Comments:

- Ruqyah* (incantation) is to read Qur'anic Verses or supplications narrated from the Prophet ﷺ, and then to blow over a patient in order to seek cure through its blessing with the permission of Allāh ﷻ. It is called *Damm* in Urdu.
- Companions of the Prophet ﷺ would avoid a doubtful livelihood, which is requisition of Allāh's fear (*Taqwa*).
- If there is a doubt concerning an issue, it should be clarified from a religious scholar who is known to follow the *Sunnah*.
- Allāh's Messenger ﷺ asked that his share be reserved in order to satisfy his noble Companions ﷺ, and to terminate their uncertainty.

Chapter 8. Wages For Teaching Qur'ān

2157. It was narrated that 'Ubādah bin Sāmit said: "I taught people from *Ahlus-Suffah*^[1] the Qur'ān and how to write, and one of them gave me a bow. I said: 'It

(المعجم ٨) - بَابُ الْأَجْرِ عَلَى تَعْلِيمِ الْقُرْآنِ (التحفة ٨)

٢١٥٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدٌ ابْنُ إِسْمَاعِيلَ. قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا مُغِيرَةُ بْنُ زَيَْادٍ الْمُؤَصِّلِيُّ، عَنْ عِبَادَةَ بْنِ

[1] "They were the poor among the *Muhājirin*, and those who did not have a house to live in. So they would stay in a shady place in the mosque in Al-Madinah, where they resided." (*Ar-Nihāyah*). *Suff* means ledge, or molding.

is not money, and I can shoot (with it) for the sake of Allâh.' I asked the Messenger of Allâh ﷺ about it and he said: 'If it would please you to have a necklace of fire placed around your neck, then accept it.'" (Hasan)

نَسِيٍّ، عَنِ الْأَسْوَدِ بْنِ تَعْلَبَةَ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: عَلَّمْتُ نَاسًا مِنْ أَهْلِ الصُّفَّةِ الْقُرْآنَ وَالْكِتَابَةَ. فَأَهْدَى إِلَيَّ رَجُلٌ مِنْهُمْ قَوْسًا. فَقُلْتُ: لَيْسَتْ بِمَالٍ. وَأُرْمِي [عَنْهَا] فِي سَبِيلِ اللَّهِ. فَسَأَلْتُ رَسُولَ اللَّهِ ﷺ عَنْهَا. فَقَالَ: «إِنْ سَرَّكَ أَنْ تَطُوقَ بِهَا طَوْقًا مِنْ نَارٍ فَأَقْبُلْهَا».

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: في كسب المعلم، ح: ٣٤١٦ من حديث وكيع به، وصححه الحاكم: ٤١/٢، ٤٢، ورجاله موثقون عند الجمهور.

2158. It was narrated that Ubayy bin Ka'b said: "I taught a man the Qur'an, and he gave me a bow. I mentioned that to the Messenger of Allâh ﷺ and he said: 'If you accept it you will be accepting a bow of fire.' So I returned it." (Da'if)

٢١٥٨ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ ثَوْرِ بْنِ بَرِيدٍ: حَدَّثَنَا خَالِدُ بْنُ مَعْدَانَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ سَلَمٍ، عَنْ عَطِيَّةِ الْكَلَابِيِّ، عَنْ أَبِي بِنِ كَعْبٍ قَالَ: عَلَّمْتُ رَجُلًا الْقُرْآنَ. فَأَهْدَى إِلَيَّ قَوْسًا. فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «إِنْ أَخَذْتَهَا أَخَذْتَ قَوْسًا مِنْ نَارٍ» فَرَدَدْتُهَا.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ١٢٥/٦، ١٢٦ من حديث يحيى بن سعيد به، وعله بالانتقطاع * عطية عن أبي مرسل كما في جامع التحصيل وغيره، وفيه علة أخرى.

Comments:

- According to the majority of the scholars, accepting a salary for teaching the Noble Qur'an is allowed. The proof of it is that the Prophet ﷺ appointed the teaching of Qur'an as a dowry in the marriage of a Companion, who did not have anything to pay as dowry.
- It was narrated from Ibn Abbâs ؓ that the Prophet ﷺ said: "The most rightful thing for which a wage is charged is the Book of Allâh." (Sahih Al-Bukhâri: 2276). The title of Imam Bukhâri's chapter clarifies that he is making it clear that if taking a wage for *Ruqyah* (incantation) is correct then why not for teaching the Noble Qur'an, which requires even more hard work, so according to him, taking wages for teaching the Qur'an should definitely be permissible. (This is a one sided view; there is a more balanced view of other scholars mentioned in *Awmul-Mabud*, and *Usmani*)

**Chapter 9. Prohibition Of
The Price Of A Dog, The
Payment (Given) to A
Prostitute, The Payment
Made To A Soothsayer And
Studding A Stallion^[1]**

(المعجم ٩) - بَابُ التَّهْيِ عَنْ ثَمَنِ
الْكَلْبِ وَمَهْرِ الْبَغِيِّ وَحُلْوَانِ الْكَاهِنِ
وَعَسْبِ الْفَحْلِ (التحفة ٩)

2159. It was narrated from Abu Mas'ud that the Prophet ﷺ forbade the price of a dog, the payment (given to a prostitute) and the payment made to a soothsayer. (*Sahih*)

٢١٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدٌ
ابْنُ الصَّبَّاحِ؛ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ،
عَنِ الزُّهْرِيِّ، عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ،
عَنْ أَبِي مَسْعُودٍ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ ثَمَنِ
الْكَلْبِ وَمَهْرِ الْبَغِيِّ وَحُلْوَانِ الْكَاهِنِ.

تخريج: أخرجه البخاري، الطلاق، باب مهر البغي والنكاح الفاسد، ح: ٥٣٤٦، ومسلم، المسافة، باب تحريم ثمن الكلب وحلوان الكاهن ومهر البغي والنهي عن بيع السنور، ح: ١٥٦٧ من حديث سفیان به.

Comments:

- The trade of prohibited things is also prohibited.
- A *Kâhin* is a person who foretells about future events and claims to tell about the Unseen; fortune-tellers, palmists, astrologers, those making amulets and charms, those who open the book of omens, those who use parrots to choose a card of fortune, and other fortune card readers, all come under the term *Kâhin*.
- Some people (in the time of Ignorance) used to make their female slaves work as prostitutes and took it a source of income. Adultery (sexual relations out of marriage) is prohibited in Islam; whether this performed by paying money or in the name of love and friendship by mutual consent.
- Some people allowed trading in hunting dogs because of the permissibility of keeping them at home. According to this view, the trade in dogs, other than those for hunting is forbidden, because keeping them is impermissible. However, trade in any type of dogs should be avoided as precautionary measures and must not be practiced. Allâh ﷻ knows best!

2160. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade the price of a dog and studding a stallion." (*Sahih*)

٢١٦٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدٌ
ابْنُ طَرِيفٍ. قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ قُضَيْلٍ:
حَدَّثَنَا الْأَعْمَشُ، عَنْ أَبِي حَازِمٍ، عَنْ أَبِي

^[1] This refers to when the owner of a stallion rents it out to others to impregnate mares, and it applies to camels as well as horses. See explanation by Sindi.

هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ ثَمَنِ الْكَلْبِ وَعَسْبِ الْفَحْلِ.

تخريج: [صحيح] أخرجه الترمذي، البيهقي، باب ماجاء في كراهية ثمن الكلب والسنور، ح: ١٢٧٩ من حديث محمد بن فضيل به معلقاً، وعلله أبو حاتم الرازي في علله، ح: ٢٨٣٤ من جهة السند * وأما المتن فصحيح ثابت من طرق أخرى، انظر الحديث السابق وسنن النسائي: ٧/٣١٠، ٣١١ وغيرهما.

Comments:

Cows, buffalos and goats etc., are taken to male counterparts for breeding purposes and the owner of the male animal (i.e., stallion) charges something for the female animal to mate with his male animal; these charges are incorrect. It should be for the sake of Allāh. But if the owner of a female animal offers something with his own goodwill, then it is allowed to be taken. (See *Jāmi' At-Tirmidhi*: 1274)

2161. It was narrated from Abu Az-Zubair that Jābir said: "The Messenger of Allāh ﷺ forbade the price of a cat." (*Sahih*)

٢١٦١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا الْوَلِيدُ [بْنُ مَسْلَمَةَ]: أَبَانَا ابْنُ لَهَيْعَةَ، عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ ثَمَنِ السَّنُورِ.

تخريج: [صحيح] أخرجه النسائي: ٧/١٩٠، ١٩١، الصيد، الرخصة في ثمن كلب الصيد، ح: ٤٣٠٠، والبيهقي: ٦/٦ من طريقين عن حماد بن سلمة عن أبي الزبير به مطولاً، وعلله النسائي، وانظر، ح: ٣٩٥ لعلته المدمرة ولكن أخرج مسلم، ح: ١٥٦٩ من طريق آخر عن أبي الزبير قال: سألت جابراً عن ثمن الكلب والسنور؟ فقال: زجر النبي ﷺ عن ذلك، وبه صح الحديث.

Comments:

A cat is not as benefiting as a dog so its trade is unlawful, and the scholars who hold the view that the selling and buying of any dogs is forbidden also hold the view that the trade of cats is forbidden.

Chapter 10. Earnings Of A Cupper

(المعجم ١٠) - بَابُ كَسْبِ الْحَجَّامِ

(التحفة ١٠)

2162. It was narrated from Ibn 'Abbās that the Prophet ﷺ was treated with cupping and he gave him (the cupper) his wages. (*Sahih*)

٢١٦٢ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عَمْرٍو الْعَدَنِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ اخْتَجَمَ وَأَعْطَاهُ أَجْرَهُ.

Ibn Abu 'Umar was alone in

narrating it. That was said by Ibn Mâjah.^[1]

تَرَدَّ بِهِ ابْنُ أَبِي عَمَرَ وَحَدَّثَهُ. قَالَ ابْنُ مَاجَهَ .

تخریج: أخرجه البخاري، الإجارة، باب خراج الحجام، ح: ٢٢٧٨ وغيره، ومسلم، السلام، باب لكل داء دواء واستحباب التداوي، ح: ١٢٠٢ بعد، ح: ٢٢٠٨ من حديث ابن طائوس به.

Comments:

- The Companion who cupped the Prophet ﷺ was Abu Taibah ؓ. (*Sahih Al-Bukhâri*: 2102). His name was Nâfi'. (*Al-Akmâl fee Asmâ Al-Rijâl* by the compiler of *Mishkâtul-Masâbih*). He was a slave of the Banu Bayâdah tribe. The Messenger of Allâh ﷺ gave him a decent wage and he ؓ did him a further favor by telling his masters to decrease his *Kharâj*. *Kharâj* is a fixed amount of his earnings that he is required to give to his masters. (*Sahih Bukhâri* aforementioned reference)
- Cupping and being cupped is lawful and therefore its earning is lawful too.

2163. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ was treated with cupping and he told me to give the cupper his wages." (*Sahih*)

٢١٦٣ - حَدَّثَنَا عَمْرُو بْنُ عَلِيٍّ أَبُو حَفْصِ الصَّيْرِيِّ: حَدَّثَنَا أَبُو دَاوُدَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبَّادَةَ الْوَاسِطِيُّ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ. قَالَ: حَدَّثَنَا وَرْقَاءُ، عَنْ عَبْدِ الْأَعْلَى، عَنْ أَبِي جَمِيلَةَ، عَنْ عَلِيٍّ، قَالَ: اخْتَجَمَ رَسُولُ اللَّهِ ﷺ وَأَمَرَنِي فَأَعْطَيْتُ الْحَجَّامَ أَجْرَهُ.

تخریج: [صحيح] أخرجه عبدالله بن أحمد في زوائد المسند: ١٣٤/١ عن عمرو بن علي به، وهو في مسند أبي داود الطيالسي، ح: ١٥٣، وانظر، ح: ١٥٥٤ لعلته، وفيه علة أخرى، وضعفه البوصيري، وله طريق آخر عند ابن أبي شيبة: ٢٦٧/٦ عن أبي جميلة به، والحديث الآتي شاهد له.

2164. It was narrated from Anas bin Mâlik that the Prophet ﷺ was treated with cupping and gave the cupper his wages. (*Sahih*)

٢١٦٤ - حَدَّثَنَا عَبْدُ الْحَمِيدِ بْنُ يَسَّانِ الْوَاسِطِيُّ: حَدَّثَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ، عَنْ يُونُسَ، عَنْ ابْنِ سِيرِينَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ ﷺ اخْتَجَمَ وَأَعْطَى الْحَجَّامَ أَجْرَهُ.

^[1] That is, Muhammad bin Abu 'Umar Al-'Adani, from whom Ibn Mâjah heard the narration.

تخريج: [إسناده صحيح] أخرجه الطحاوي في معاني الآثار: ٤/١٣٠ من حديث خالد به، وقال البوصيري: هذا إسناده صحيح، رجاله ثقات على شرط البخاري، وللحديث طرق عن أنس عند البخاري ومسلم وغيرهما.

2165. It was narrated that Abu Mas'ud, 'Uqbah bin 'Amr, said: "The Messenger of Allâh ﷺ forbade the earnings of a cupper." (*Sahih*)

٢١٦٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمَزَةَ: حَدَّثَنِي الْأَوْزَاعِيُّ عَنِ الزُّهْرِيِّ، عَنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنِ أَبِي مَسْعُودٍ، عُمَةَ ابْنِ عَمْرٍو قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ كَسْبِ الْحَجَامِ.

تخريج: [صحيح] وللحديث شواهد عند النسائي: ٧/٣١٠، البيهقي، ح: ٤٦٧٧ وغيره، وأخرج مسلم، ح: ١٥٦٨ وغيره عن رافع بن خديج، رفعه: كسب الحجام خبيث.

2166. It was narrated from Harâm bin Muhayyisah that his father asked the Prophet ﷺ about the earnings of a cupper and he forbade him from that. Then he mentioned his need and he said: "Spend it on feeding your she-camels that draw water." (*Sahih*)

٢١٦٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَبَابَةُ [بْنُ سَوَّارٍ، عَنِ ابْنِ أَبِي ذُئْبٍ، عَنِ الزُّهْرِيِّ، عَنِ حَرَامِ بْنِ مَحِيصَةَ، عَنِ أَبِيهِ أَنَّهُ سَأَلَ النَّبِيَّ ﷺ عَنِ كَسْبِ الْحَجَامِ. فَنَهَاهُ عَنْهُ. فَذَكَرَ لَهُ الْحَاجَةَ. فَقَالَ: «اغْلِفْهُ نَوَاضِحَكَ».

تخريج: [صحيح] أخرجه أبو داود، البيهقي، باب: في كسب الحجام، ح: ٣٤٢٢ من حديث الزهري به، وصححه الترمذي، ح: ١٢٧٧، وله شاهد عند الحميدي، ح: ١٢٩٣ وغيره.

Comments:

- Cupping is a type of treatment; it is a special technique from which extra blood from the body is drained out.
- Earning by the practice of cupping is not unlawful, otherwise the Messenger of Allâh ﷺ would not have paid Abu Taibah ؓ for cupping. But it can be classified as disliked because of the Prophet's forbiddance. Also it is known from the command of feeding it to the camels that this earning is not unlawful rather it is disliked.

Chapter 11. What It Is Not Permissible To Sell

(المعجم ١١) - بَابُ مَا لَا يَحِلُّ بَيْعُهُ

(التحفة ١١)

2167. 'Atâ' bin Abu Rabâh said: I

٢١٦٧ - حَدَّثَنَا عَيْسَى بْنُ حَمَّادٍ الْمِصْرِيُّ:

heard Jābir bin ‘Abdullāh say: “In the Year of the Conquest, while he was in Makkah, the Messenger of Allāh ﷺ said: ‘Allāh and His Messenger have forbidden the sale of wines, meat of dead animals, pigs and idols.’ It was said to him: ‘O Messenger of Allāh, what do you think of the fat of dead animals, for it is used to caulk ships, it is daubed on animal skins and people use it to light their lamps?’ He said: ‘No, it is unlawful.’ Then the Messenger of Allāh ﷺ said: ‘May Allāh curse the Jews, for Allāh forbade them the fat (of animals) but they rendered it, (i.e. melted it) sold it and consumed its price.’” (*Sahih*)

أَبَانَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّهُ قَالَ: قَالَ عَطَاءُ بْنُ أَبِي رَاحٍ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ، عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ: «إِنَّ اللَّهَ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخَنْزِيرِ وَالْأَصْنَامِ» فَيَقِيلُ لَهُ، عِنْدَ ذَلِكَ: يَا رَسُولَ اللَّهِ! أَرَأَيْتَ سُحُومَ الْمَيْتَةِ، فَإِنَّهُ يُذْهَنُ بِهَا الشُّقْنُ، وَيُذْهَنُ بِهَا الْجُلُودُ، وَيَسْتَصْبِحُ بِهَا النَّاسُ؟ قَالَ: «لَا. هُنَّ حَرَامٌ». ثُمَّ قَالَ رَسُولُ اللَّهِ ﷺ: «فَاتَّلَ اللَّهُ الْيَهُودَ. إِنَّ اللَّهَ حَرَّمَ عَلَيْهِمُ السُّحُومَ فَاجْمَلُوهُ، ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ».

تخريج: أخرجه البخاري، المغازي، باب: (٥٢)، ح: ٤٢٩٦، ومسلم، المساقاة، باب: تحريم بيع الخمر والميتة والخنزير والأصنام، ح: ١٥٨١ من حديث الليث به.

Comments:

- As alcohol, dead animals and swine are forbidden to eat; similarly other use of these is also prohibited.
- Selling the prohibited things is unlawful as well as their revenue.
- Earning through false tricks and excuses does not make unlawful earning lawful; rather it makes the sin more evil and grave. (As many Muslims, particularly in the West, try to justify unlawful business of alcohol and intoxicants with silly excuses).

2168. It was narrated that Abu Umamah said: “The Messenger of Allāh ﷺ forbade selling or buying singing girls, and their wages, and consuming their price.” (*Da’if*)

٢١٦٨ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنُ يَحْيَى ابْنِ سَعِيدِ الْقَطَّانُ: حَدَّثَنَا هَاشِمُ بْنُ الْقَاسِمِ: حَدَّثَنَا أَبُو جَعْفَرٍ الرَّازِيُّ، عَنْ عَاصِمٍ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عُبَيْدِ اللَّهِ الْإِفْرِيقِيِّ، عَنْ أَبِي أُمَامَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْمُغَنِّيَاتِ وَعَنْ شِرَائِهِنَّ وَعَنْ كَسْبِهِنَّ وَعَنْ أَكْلِ أُمَّانِهِنَّ.

تخريج: [إسناده ضعيف معضل] أخرجه الترمذي، البيوع، باب ماجاء في كراهية بيع

المغنيات، ح: ١٢٨٢ بإسناد صحيح عن عبيدالله بن زحر الإفريقي عن علي بن يزيد عن القاسم عن أبي أمامة به بلفظ آخر، وهو المحفوظ، وانظر، ح: ٢٢٨ لعلته، وله شواهد ضعيفة عند الطبراني وغيره.

Comments:

- Some Arabs disliked music and singing even in the pre-Islamic period. So the ladies of the respected families used to avoid it, but the female slaves would sing to entertain their masters or their friends, and they would also make musical presentations to gain prizes.
- Singing and musical presentations are conducted in the name of art and profession, and are taken a source of income. It is unlawful from a religious perspective. Playing indecent roles in movies and the profession of modeling is also relevant to this prohibited category.

Chapter 12. What Was Narrated Concerning The Prohibition Of *Munâbadhah* And *Mulâmasah*

2169. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade two kinds of transactions: *Mulâmasah* and *Munâbadhah*. (*Sahih*)

2170. It was narrated from Abu Sa'eed Al-Khudri that the Messenger of Allâh ﷺ forbade *Mulâmasah* and *Munâbadhah*. (*Sahih*)

Sahl added: "Sufyân said: '*Mulâmasah* means when a man touches something with his hand without seeing it, and *Munâbadhah* means when he says: "Toss me what you have, and I will toss you what I have."

(المعجم ١٢) - بَابُ مَا جَاءَ فِي النَّهْيِ
عَنِ الْمُنَابَدَةِ وَالْمَلَامَسَةِ (التحفة ١٢)

٢١٦٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ وَ أَبُو أَسَامَةَ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَمْرٍو، عَنْ خُبَيْبِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَفْصِ بْنِ غَاصِمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعَتَيْنِ: عَنِ الْمَلَامَسَةِ وَالْمُنَابَدَةِ.

تخريج: [صحيح] تقدم، ح: ١٢٤٨.

٢١٧٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ سَهْلُ بْنُ أَبِي سَهْلٍ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنِ الْمَلَامَسَةِ وَالْمُنَابَدَةِ.

زَادَ سَهْلٌ: قَالَ سُفْيَانٌ: الْمَلَامَسَةُ أَنْ يَلْمَسَ الرَّجُلُ يَدَهُ الشَّيْءَ وَلَا يَرَاهُ. وَالْمُنَابَدَةُ أَنْ يَقُولَ: أَلْقِ إِلَيَّ مَا مَعَكَ، وَأَلْقِي إِلَيْكَ مَا مَعِي.

تخريج: أخرجه البخاري، الاستئذان، باب الجلوس كيفما تيسر، ح: ٦٢٨٤ من حديث سفیان به مطولاً.

Comments:

- The buyer has every right to check and try the commodity prior to purchase, in order to know the quality, be it good or bad, and to see if it has any defects or not; and the consumer will decide accordingly, if he should purchase it for such and such a reasonable price.
- The transaction that affects this statutory right of the purchaser is an unlawful transaction and illegal.
- Lottery and these types of other prize drawing schemes, which have an uncertainty in the outcome, are all unlawful.

Chapter 13. "A Man Is Not To Undersell The Sale Of His Brother, Nor Is He To Try To Out-Haggle His Brother."

(المعجم ١٣) - بَابُ: لَا يَبِيعُ الرَّجُلُ عَلَى بَيْعِ أَخِيهِ وَلَا يَسُومُ عَلَى سَوْمِهِ (التحفة ١٣)

2171. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Let one of you not undersell another."^[1] (Sahih)

٢١٧١ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَبِيعُ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ».

تخريج: أخرجه البخاري، البيوع، باب: لا يبيع على بيع أخيه ولا يسوم على سوم أخيه حتى يأذن له أو يترك، ح: ٢١٣٩، ومسلم، البيوع، باب تحريم بيع الرجل على بيع أخيه... إلخ، ح: ١٤١٢ من حديث مالك به، وهو في الموطأ (يحيى): ٦٨٣/٢.

Comments:

Requesting to cancel an already done deal is forbidden. It could be that a seller urges a buyer to return an item bought from another seller, so that he can then sell his own item to the buyer for a lesser price. Or a buyer urges a seller to cancel a deal that he has with another buyer for an item, so that he can purchase it, and is willing to pay a higher price than the former buyer. Both tricks are forbidden because such things cause quarrel and mischief.

2172. It was narrated from Abu Hurairah that the Prophet ﷺ said: "A man is not to undersell his brother, nor is he to try to out-haggle his brother." (Sahih)

٢١٧٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَبِيعُ

[1] Meaning: "Do not urge someone to cancel a sale already agreed upon so as to sell him your own goods."

الرَّجُلُ عَلَى بَيْعِ أَخِيهِ، وَلَا يَسُومُ عَلَى سَوْمِ
أَخِيهِ».

تخريج: [صحيح] تقدم، ح: ١٨٦٧ ببعضه.

Chapter 14. What Was Narrated Concerning The Prohibition Of *Najsh*^[1]

(المعجم ١٤) - بَابُ مَا جَاءَ فِي النَّهْيِ
عَنِ النَّجْشِ (التحفة ١٤)

2173. It was narrated from Ibn
'Umar that the Prophet ﷺ
forbade the *Najsh*. (Sahih)

٢١٧٣ - قَرَأْتُ عَلَى مُضْعَبِ بْنِ عَبْدِ
اللَّهِ الزُّبَيْرِيِّ، عَنْ مَالِكٍ؛ ح: وَحَدَّثَنَا أَبُو
حُدَّافَةَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ،
عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ النَّجْشِ.

تخريج: أخرجه البخاري، البيهقي، باب النجش، ومن قال: لا يجوز ذلك البيع، ح: ٢١٤٢،
ومسلم، البيهقي، باب تحريم بيع الرجل على بيع أخيه وسومه على سومه وتحريم النجش وتحريم
التصرية، ح: ١٥١٦ من حديث مالك به، وهو في الموطأ (يحي): ٦٨٤/٢.

Comments:

- Najsh* is that a person does not intend to buy the goods, but he offers a bid merely to incite another needy buyer into paying a higher price.
- It is forbidden because it is cheating and is a loss for the buyer.
- Selling goods through bidding and auction is lawful.

2174. It was narrated from Abu
Hurairah that the Prophet ﷺ said:
"Do not practice *Najsh*." (Sahih)

٢١٧٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ سَهْلُ بْنُ
أَبِي سَهْلٍ. قَالَ: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ،
عَنْ سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ
قَالَ: «لَا تَنَاجَشُوا».

تخريج: [صحيح] انظر، ح: ٢١٧٢.

Chapter 15. Prohibition Of A City-Dweller Selling On Behalf Of A Bedouin

2175. It was narrated from Abu
Hurairah that the Messenger of

(المعجم ١٥) - بَابُ النَّهْيِ أَنْ يَبِيعَ
حَاضِرٌ لِبَادٍ (التحفة ١٥)

٢١٧٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ

^[1] When a person praises merchandise in a manner intended to inflate the value, or he offers a high price for it in order to encourage a customer to outbid him for it.

Allâh ﷺ said: "A city-dweller should not sell for a Bedouin." (Sahih)

الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَبِيعُ حَاضِرٌ لِبَادٍ».

تخریج: انظر الحديث السابق، وأخرجه مسلم، البيهقي، باب تحريم بيع الحاضر للبادي، ح: ١٥٢٠ عن أبي بكر بن أبي شيبة به.

2176. It was narrated from Jābir bin 'Abdullāh that the Prophet ﷺ said: "A city-dweller should not sell for a Bedouin. Leave people to (engage in trade) and Allāh will grant them provision through one another." (Sahih)

٢١٧٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شَفِيَانُ بْنُ عُيَيْنَةَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا يَبِيعُ حَاضِرٌ لِبَادٍ. دَعَا النَّاسَ بَرَزُقُ اللَّهِ بَعْضَهُمْ مِنْ بَعْضٍ».

تخریج: [صحيح] أخرجه مسلم، البيهقي، باب تحريم بيع الحاضر للبادي، ح: ١٥٢٢ من حديث شفيان به.

2177. Ibn Tāwus narrated from his father that Ibn 'Abbās said: "The Messenger of Allāh ﷺ forbade a city-dweller to sell for a Bedouin." (Sahih)

٢١٧٧ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنْبَأَنَا مَعْمَرٌ، عَنْ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ.

I (Tāwus) said to Ibn 'Abbās: "What is meant by the words: 'A city-dweller selling for a Bedouin?' He said: "He should not be a broker for him."

قُلْتُ لِابْنِ عَبَّاسٍ: مَا قَوْلُهُ حَاضِرٌ لِبَادٍ؟ قَالَ: لَا يَكُونُ لَهُ سِمْسَارًا.

تخریج: أخرجه البخاري، البيهقي، باب: هل يبيع حاضر لبادٍ بغير أجر؟، ح: ٢١٥٨ وغيره من حديث عبدالرزاق به، ومسلم، البيهقي، الباب السابق، ح: ١٥٢١ من حديث معمر به.

Comments:

See the comments of *Hadith* 2145.

Chapter 16. Prohibition Of Meeting Traders On The Way

(المعجم ١٦) - بَابُ النَّهْيِ عَنِ تَلْقَى الْجَلْبِ (التحفة ١٦)

2178. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Do not meet the traders on the way, and whoever meets any of them and buys from him, the

٢١٧٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ. قَالَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ هِشَامِ بْنِ حَسَّانٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا تَلْقُوا

vendor has the choice of annulling the transaction when he comes to the marketplace.”
(*Sahih*)

الْأَجْلَابِ. فَمَنْ تَلَّقَى مِنْهُ شَيْئًا فَاشْتَرَى،
فَصَاحِبُهُ بِالْخِيَارِ، إِذَا أَتَى السُّوقَ.”

تخریج: أخرجه مسلم، البيوع، باب تحريم تلقي الجلب، ح: ١٥١٩ من حديث هشام بن حسان الفردوسي به باختلاف يسير.

Comments:

- The caravans with goods coming to town do not know the condition of the market. Townsman go out of the town to meet the caravans and buy the goods from the owner at a cheap price. It is forbidden.
- The logic behind its prohibition is that if the owner from the caravan would come to the market and discover a higher market value for his goods, he would feel regret for his loss. Another logic of its prohibition is that the owner of the goods would sell his items at the going rate as he is willing to offload the goods, whereas a townsman may have the intention of hoarding the goods to drive up the market value, and then sell them at an inflated price; this would create a loss to the public.

2179. It was narrated that Ibn ‘Umar said: “The Messenger of Allāh ﷺ forbade meeting traders on the way.” (*Sahih*)

٢١٧٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ
نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ
عَنْ تَلْقَى الْجَلْبِ.

تخریج: أخرجه مسلم، البيوع، الباب السابق، ح: ١٥١٧ من حديث عبيد الله به مطولاً بألفاظ مختلفة، والمعنى واحد.

2180. It was narrated that ‘Abdullāh bin Mas‘ud said: “The Messenger of Allāh ﷺ forbade meeting the owners of goods (away from the market).” (*Sahih*)

٢١٨٠ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا
يَحْيَى بْنُ سَعِيدٍ وَحَمَّادُ بْنُ مَسْعَدَةَ، عَنْ
سُلَيْمَانَ التَّمِيمِيِّ، ح: وَحَدَّثَنَا إِسْحَاقُ بْنُ
إِبْرَاهِيمَ بْنِ حَبِيبِ بْنِ الشَّهِيدِ: حَدَّثَنَا مُعْتَمِرُ
ابْنِ سُلَيْمَانَ قَالَ: سَمِعْتُ أَبِي. قَالَ: حَدَّثَنَا
أَبُو عُثْمَانَ التَّهْدِيُّ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ
قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ تَلْقَى الْبُيُوعِ.

تخریج: أخرجه البخاري، البيوع، باب النهي للبايع أن لا يحفل الإبل والبقر ... إلخ، ح: ٢١٤٩ من حديث معتمر وغيره، ومسلم، البيوع، باب تحريم تلقي الجلب، ح: ١٥١٨ من حديث سليمان التيمي به.

Chapter 17. The Two Parties To A Transaction Have The Choice (Of Annulling It) So Long As They Have Not Yet Parted

2181. It was narrated from 'Abdullāh bin 'Umar that the Messenger of Allāh said: "When two men enter into a transaction, each of them has the choice (of annulling it) so long as they have not yet parted and are still together, or one of them has given the option or choice to the other. Once he has accepted the terms of the other, then the transaction is binding. If they part after concluding the transaction and neither of them has rescinded the transaction, then the transaction is binding." (*Sahih*)

(المعجم ١٧) - بَابُ الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَفْتَرَقَا (التحفة ١٧)

٢١٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ الْمِصْرِيُّ: أَنبَأَنَا اللَّيْثُ بْنُ سَعْدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «إِذَا تَبَاعَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مَا لَمْ يَفْتَرَقَا وَكَانَا جَمِيعًا. أَوْ يُخَيَّرَ أَحَدُهُمَا الْآخَرَ. فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا عَلَى ذَلِكَ، فَقَدْ وَجَبَ الْبَيْعُ. وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا، وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ».

تخریج: أخرجه البخاري، البيوع، باب: إذا خير أحدهما صاحبه بعد البيع فقد وجب البيع، ح: ٢١١٢، ومسلم، البيوع، باب ثبوت خيار المجلس للمتبايعين، ح: ١٥٣١ من حديث الليث به.

Comments:

- As the deal is done and the goods are received once the price has been paid, the transaction is complete. But it is possible that the buyer, later on, feels that the purchase should not have been made at the previously agreed price, and he now wants to return the goods; or the seller realises that he should not have sold the goods, and he now wants them back. In this condition it is better for both parties to cancel the deal and exchange the goods and payment.
- There is a great reward for accepting the refund of the sold goods. (See *Hadith*: 2199).
- The right to return the goods or to cancel the deal is standing whilst the seller and the buyer are together in the same transactional meeting, (or one of them gives a choice to the other to cancel the deal until a certain period).

2182. It was narrated from Abu Barzah Al-Aslami that the Messenger of Allāh ﷺ said: "The

٢١٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ وَ أَحْمَدُ بْنُ الْمُقْدَامِ. قَالَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ عَنْ

two parties to a transaction have the choice (of annulling it) so long as they have not yet parted." (Sahih)

جَبِيلِ بْنِ مَرَّةَ، عَنْ أَبِي الْوُضَيْيِّ، عَنْ أَبِي بَرَزَةَ الْأَسْلَمِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا».

تخريج: [إسناده صحيح] أخرجه أبو داود، البيوع، باب: في خيار المتبايعين، ح: ٣٤٥٧ من حديث حماد به، وصححه ابن الجارود، ح: ٦١٩.

2183. It was narrated from Samurah that the Messenger of Allāh ﷺ said: "The two parties to a transaction have the choice (of annulling it) so long as they have not yet parted." (Hasan)

٢١٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ إِسْحَاقُ ابْنُ مَنْصُورٍ. قَالَ: حَدَّثَنَا عَبْدُ الصَّمَدِ: حَدَّثَنَا شُعْبَةُ عَنْ قَتَادَةَ، عَنْ الْحَسَنِ، عَنْ سَمُرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا».

تخريج: [إسناده حسن] أخرجه النسائي: ٢٥١/٧، ح: ٤٤٨٦، ٤٤٨٧ من حديث قتادة به * الحسن عن سمرة كتاب قاله النسائي (عون المعبود: ١٩/٢ وغيره) وبه بن أسد ويحيى القطان وغيرهم وذلك لا يقتضي الانقطاع (تهذيب التهذيب: ٢٣٤/٢، جامع التحصيل، ص: ١٦٥) لأن الرواية من كتاب إما إجارة وإما مناولة وكلاهما صحيح، وللتفصيل انظر نيل المقصود في التعليق على سنن أبي داود، ح: ٣٥٤ بسر الله لنا طبعه.

Chapter 18. A Transaction With The Option To Cancel

(المعجم ١٨) - بَابُ بَيْعِ الْخِيَارِ (التحفة ١٨)

2184. It was narrated that Jābir bin ‘Abdullāh said: "The Messenger of Allāh ﷺ bought a load of fodder from a Bedouin man. When the transaction was concluded, the Messenger of Allāh ﷺ said: 'Choose (either to go ahead or to cancel the transaction).' The Bedouin said: 'May Allāh grant you a long life of good transaction!'" (Da'if)

٢١٨٤ - حَدَّثَنَا حَزْمَةُ بْنُ يَحْيَى وَ أَحْمَدُ ابْنُ عِيْسَى الْمَضْرِبِيَانِ. قَالَ: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ جَرِيحٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: اشْتَرَى رَسُولُ اللَّهِ ﷺ مِنْ رَجُلٍ مِنَ الْأَعْرَابِ حِمْلَ خَبْطٍ. فَلَمَّا وَجِبَ الْبَيْعُ قَالَ رَسُولُ اللَّهِ ﷺ: «اخْتَرْ» فَقَالَ الْأَعْرَابِيُّ: عَمْرَكَ اللَّهُ بَيْعًا.

تخريج: [إسناده ضعيف] أخرجه الترمذي، البيوع، باب ماجاء في خيار المتبايعين، ح: ١٢٤٩ من حديث عبدالله بن وهب به، وقال: هذا حديث حسن غريب، وصححه الحاكم: ٢/٤٩ على شرط مسلم، ووافقه الذهبي، وقال الدارقطني: ٢١/٣ كلهم ثقات * ابن جريج صرح بالسماع، وانظر، ح: ٣٩٥ لعلته، وللحديث شواهد مرسله عند البيهقي وغيره.

Comments:

- Selling and buying a heap or a bundle of something without it being measured or weighed is allowed; because the estimate of the weight and quantity can be determined by observation.
- As the buyer has a statutory right to cancel the deal in the same transactional meeting, likewise the seller has the same right too.
- Advising for one's benefit is part of a Muslim's sincerity, particularly when a person does not know about the matter.

2185. It was narrated from Dâwud bin Sâlih Al-Madani that his father said: I heard Abu Sa'eed Al-Khudri say: "The Messenger of Allâh ﷺ said: 'Transactions may only be done by mutual consent.'" (*Sahih*)

٢١٨٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدَّمَشْقِيُّ: حَدَّثَنَا مَرْوَانَ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ ابْنُ مُحَمَّدٍ، عَنْ دَاوُدَ بْنِ صَالِحِ الْمَدَنِيِّ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ أَبَا سَعِيدِ الْخُدْرِيِّ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ».

تخریج: [إسناده صحيح] أخرجه البيهقي: ١٧/٦ من حديث عبدالعزیز الدرأودي به مطولاً وصححه ابن حبان(موارد)، ح: ١١٠٦، والبوصیري.

Comments:

If the seller or the buyer is forced into a transaction, but does not agree with it in his heart, then this transaction may be annulled.

Chapter 19. Parties To A Transaction Who Differ With One Another

2186. It was narrated from Qâsim bin 'Abdur-Rahmân from his father that 'Abdullâh bin Mas'ud sold one of the slaves from the state^[1] to Ash'ath bin Qais, and they differed concerning the price. Ibn Mas'ud said: "I sold him to you for twenty thousand," but Ash'ath bin Qais said: "I bought him from you for ten thousand." 'Abdullâh bin Qais said: "If you want, I will tell you a *Hadith* which I heard from the Messenger of Allâh ﷺ." He said:

(المعجم ١٩) - بَابُ الْبَيْعَانِ يَخْتَلِفَانِ
(التحفة ١٩)

٢١٨٦ - حَدَّثَنَا عَثْمَانُ بْنُ أَبِي شَيْبَةَ وَ مُحَمَّدُ ابْنُ الصَّبَّاحِ. قَالَا: حَدَّثَنَا هُشَيْمٌ: أَنَّ أَبَانَ ابْنَ أَبِي لَيْلَى، عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ بَاعَ مِنَ الْأَشْعَثِ ابْنَ قَيْسٍ رَقِيقًا مِنْ رَقِيقِ الْإِمَارَةِ. فَاتَّخَلَفَا فِي الثَّمَنِ. فَقَالَ ابْنُ مَسْعُودٍ: بِعْتِكَ بِعِشْرِينَ أَلْفًا. وَقَالَ الْأَشْعَثُ بْنُ قَيْسٍ: إِنَّمَا اشْتَرَيْتُ مِنْكَ بِعِشْرَةَ أَلْفٍ. فَقَالَ عَبْدُ اللَّهِ: إِنْ شِئْتَ حَدَّثْتُكَ بِحَدِيثٍ سَمِعْتُهُ مِنْ رَسُولِ اللَّهِ ﷺ.

^[1] *Imârah*. In the narration recorded by Abu Dâwud (no. 3512) it is 'from the *Khums* (one-fifth of the spoils of war).'

"Tell me it." He said: "I heard the Messenger of Allāh ﷺ say: 'If two parties to a transaction differ, and they have no proof, and the sale item remains (unredeemed), then what the seller says is valid. Or they may cancel the transaction.'" He said: "I want to cancel the transaction." And he cancelled it.

(*Hasan*)

تخریج: [حسن] أخرجه أبو داود، البيهقي، باب: إذا اختلف البيعان والمبيع قائم، ح: ٣٥١٢ من حديث هشيم بن محمد بن أبي ليلى لم ينفرد به تقدم، ح: ٨٥٤، تابعه عمر بن قيس الماصر (قط: ٢٢٠/٣ وغيره)، وصححه ابن الجارود، ح: ٦٢٤ وغيره.

Comments:

- Selling and buying for (interest free) credit is allowed. The dispute mentioned in the *Hadith* occurs when the commodity is received in advance, and the price is meant to be paid later.
- The matter regarding the dispute should be settled depending on the witnesses if available.
- If there is no witness, and it is possible to return the purchased commodity, either the seller's claim is to be accepted, or the deal is to be cancelled, and the commodity will be returned; both solutions are lawful.

Chapter 20. The Prohibition Of Selling What Is Not With You, And From Profiting On What You Do Not Possess

2187. It was narrated that Hakim bin Hizām said: "I said: 'O Messenger of Allāh, a man is asking me to sell him something that I do not possess. Shall I sell it to him?' He said: 'Do not sell what is not with you.'" (*Hasan*)

(المعجم ٢٠) - بَابُ النَّهْيِ عَنِ بَيْعِ مَا لَيْسَ عِنْدَكَ، وَعَنْ رِبْحِ مَا لَمْ يُضْمَنْ (التحفة ٢٠)

٢١٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي بَشِيرٍ. قَالَ: سَمِعْتُ يُوسُفَ بْنَ مَاهَكَ يُحَدِّثُ عَنْ حَكِيمِ بْنِ جَزَاهِمٍ قَالَ: قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! الرَّجُلُ يَسْأَلُنِي الْبَيْعَ وَلَيْسَ عِنْدِي. أَفَأَبِيعُهُ؟ قَالَ: (لَا تَبِعْ مَا لَيْسَ عِنْدَكَ).

تخریج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: في الرجل يبيع ما ليس عنده، ح: ٣٥١٣ من حديث أبي بشر به، وحسنه الترمذي، ح: ١٢٣٢، وصححه ابن حزم، وله طرق كثيرة عند ابن الجارود، ح: ٦٠٢ وغيره، فالحديث صحيح.

Comments:

- The explanation of the prohibited form is if the seller does not have the

commodity but he receives a fixed price in advance, and promises that when he will have the commodity available he will give it to the buyer. It is unknown if he will have that commodity, and even if he does, the buyer may not like it; or perhaps the commodity is of a low quality compared to the price the buyer has paid in advance. It will cause a dispute and argument between the two parties, so this form of transaction is unlawful.

- b. The purchase of an unspecified thing is also included in the aforementioned unlawful trade; for example: a person says, before throwing a net into the river; "Whatever number of fish get trapped in the net, I shall sell them to you for such and such a price." Despite the fact that it is unknown whether there will be many or few fish in the net, or if they will be small or large. Therefore, the deal can only be made once the fish are out of water. The uncertainty of the deal makes it unlawful. (See: *Ahâdith*: 2194-2195)
- c. If the type, quantity and quality of the commodity is determined, and the time of delivery is appointed, then to pay a price in advance and to collect the commodity later at the appointed time is permissible. It is called *Salam* or *Salaf* (absolute interest free credit). (See *Ahâdith*: 2280-2282)

2188. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'It is not permissible to sell something that is not with you, nor to profit from what you do not possess.'" (Sahih)

٢١٨٨ - حَدَّثَنَا أَبُو زُهَيْرٍ بْنُ مَرْوَانَ. قَالَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ؛ ح: وَحَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلِيَّةَ. قَالَ: حَدَّثَنَا أَبُو بَرٍّ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحِلُّ يَبِيعُ مَا لَيْسَ عِنْدَكَ، وَلَا رِبْحَ مَا لَمْ يُضْمَنْ».

تخریج: [إسناده صحيح] أخرجه أبو داود، البيهقي، ح: ٣٥٠٤ من حديث أبي بوب به، وصححه الترمذي، ح: ١٢٣٤، وابن الجارود، والحاكم، والذهبي.

Comments:

- a. A buyer is allowed to sell the purchased items to someone else, only after taking it in his control. Selling it before taking the control of it is not allowed.
- b. Control of things varies depending on the type of merchandise; as the control of transferable goods is to collect them. For example: to transfer the wheat away from the seller. As for the control of a purchase that cannot be transferred like a house; its control will be that the owner of the house moves out along with his things, and the buyer is allowed to move in to reside.

2189. It was narrated from 'Atâ' that 'Attâb bin Asid said that

٢١٨٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

when the Messenger of Allāh ﷺ sent him to Makkah, he forbade him from profiting off of what he did not possess. (*Da'if*)

مُحَمَّدُ بْنُ الْمُضَنَّبِيِّ، عَنْ لَيْثٍ، عَنْ عَطَاءٍ،
عَنْ عَتَّابِ بْنِ أُسَيْدٍ قَالَ: لَمَّا بَعَثَهُ رَسُولُ اللَّهِ
ﷺ إِلَى مَكَّةَ، نَهَاهُ عَنْ شَيْءٍ مَا لَمْ يَضْمَنْ.

تخریج: [إسناده ضعيف] وضعفه البوصيري، وقال: وعطاء هو ابن أبي رباح لم يدرك عتابة، انظر، ح: ٢٠٨ لعلته الأخرى.

Chapter 21. If Two Authorized Persons Make A Sale, Then The First Transaction Is The One That Is Valid

(المعجم ٢١) - بَابُ: إِذَا بَاعَ الْمُجْبِرَانِ
فَهُوَ لِلأَوَّلِ (التحفة ٢١)

2190. It was narrated from 'Uqbah bin 'Āmir or Samurah bin Jundab that the Messenger of Allāh ﷺ said: "Any man who sells to two men, it is for the one who was first."^[1] (*Hasan*)

٢١٩٠ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا
خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ،
عَنِ الْحَسَنِ، عَنْ عُثْمَةَ بْنِ عَامِرٍ أَوْ سَمُرَةَ بْنِ
جُنْدَبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «أَيُّمَا رَجُلٍ بَاعَ
بَيْعًا مِنْ رَجُلَيْنِ فَهُوَ لِلأَوَّلِ مِنْهُمَا».

تخریج: [حسن] أخرجه أبو داود، النكاح، ح: ٢٠٨٨ من حديث قتادة به، وحسنه الترمذي، ح: ١١١٠، وصححه ابن الجارود، وله شواهد، راجع سنن النسائي، ح: ٤٦٨٦ وغيره.

2191. It was narrated from Samurah that the Messenger of Allāh ﷺ said: "If two (separate) authorized persons make a sale (of the same thing), then the first transaction is the one that is valid." (*Hasan*)

٢١٩١ - حَدَّثَنَا الْحُسَيْنُ بْنُ أَبِي السَّرِيِّ
الْعُمَقَلَانِيُّ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَ:
حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سَعِيدُ بْنُ بَشِيرٍ، عَنْ
قَتَادَةَ، عَنِ الْحَسَنِ عَنْ سَمُرَةَ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «إِذَا بَاعَ الْمُجْبِرَانِ فَهُوَ
لِلأَوَّلِ».

تخریج: [حسن] انظر الحديث السابق.

Comments:

The example of a transaction made by two persons is that an item belongs to two partners. Each of the two sold it to different people without telling the other. Or the agent sold it, and the owner also sold the same thing to

^[1] "What was sold, or, for the first of the two purchasers." (Sindi) This is how they explain it, although it has a slightly different meaning than the following *Hadith*, and the chapter heading.

someone without informing the agent; in this case whoever made the deal first, his deal will be correct and the other's deal will be annulled. Allāh knows best!

Chapter 22 Prohibition On Earnest Money^[1]

(المعجم ٢٢) - بَابُ بَيْعِ الْعُرْبَانِ (التحفة ٢٢)

2192. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Prophet ﷺ forbade the deal involving earnest money. (*Hasan*)

٢١٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ. قَالَ: بَلَغَنِي عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ الْعُرْبَانِ.

تخريج: [حسن] أخرجه أبو داود، البيهقي، باب: في العربان، ح: ٣٥٠٢ من حديث مالك به، وهو في الموطأ: ٢/٦٠٩، رواه مالك عن الثقة عنده (ابن لهيعة كما في رواية ابن وهب) * وابن لهيعة صرح بالسماع، وتابعه الحارث بن عبد الرحمن بن أبي ذباب عند البيهقي وغيره، وإسناده حسن.

2193. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Prophet ﷺ forbade the deal involving earnest money. (*Hasan*)

٢١٩٣ - حَدَّثَنَا الْفَضْلُ بْنُ يَعْقُوبَ الرُّخَايِي: حَدَّثَنَا حَبِيبُ بْنُ أَبِي حَبِيبٍ، أَبُو مُحَمَّدٍ، كَاتِبُ مَالِكِ بْنِ أَنَسٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرٍ الْأَسْلَمِيُّ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ الْعُرْبَانِ.

Abu 'Abdullāh said: Earnest-money refers to when a man buys an animal for one hundred Dinār, then he gives the seller two Dinār in advance and says: "If I do not buy the animal, then the two Dinār are yours."

قَالَ أَبُو عَبْدِ اللَّهِ: الْعُرْبَانُ أَنْ يَشْتَرِيَ الرَّجُلُ دَابَّةً بِمِائَةِ دِينَارٍ، فَيُعْطِيهِ دِينَارَيْنِ عُرْبُونًا. فَيَقُولُ: إِنْ لَمْ أَشْتَرِ الدَّابَّةَ، فَالِدَيْنَارَانِ لَكَ.

And it was said that it refers, and Allāh knows best, to when a man buys something, and gives the seller a Dirham or less or more, and says: "If I take it (all well and good), and if I do not, then the Dirham is yours."

وَقِيلَ: يَعْنِي، وَاللَّهُ أَعْلَمُ: أَنْ يَشْتَرِيَ الرَّجُلُ الشَّيْءَ. فَيُدْفَعُ إِلَى الْبَائِعِ دِرْهَمًا أَوْ أَقَلَّ أَوْ أَكْثَرَ. وَيَقُولُ: إِنْ أَخَذْتَهُ، وَإِلَّا

[1] Earnest money: A kind of down payment which is counted towards the cost of the goods if the transaction is completed, and which is kept by the seller if the transaction is cancelled. This is commonly referred to as a non-refundable 'deposit' or 'down payment'.

فَالذَّرَهُمْ لَكَ .

Comments:

تخريج: [حسن] والحديث السابق شاهد له .

'Amir San'âni said in *Subulus-Salâm Sharh Bulughul-Marâm*: "The jurists are at variance regarding the permissibility of this transaction. Imam Mâlik and Shâ'fi'i declared it illegal due to the *Hadith* prohibiting it. They declared it illegal due to another reason as well; because it involves an unreasonable condition, it is cheating as well. It also involves a trick to consume others' wealth through unlawful means." This opinion seems to be correct; because the seller does not give anything or any benefit to the buyer in exchange for the deposit he receives from the buyer; and taking one's property without exchange is impermissible. Besides this, accepting the sold item back is rewarding. (See *Hadith*: 2199). The condition of deposit is made lest the purchaser return the bought merchandise. It is an act which keeps one away from doing a good deed, which cannot be appreciated.

Chapter 23. Prohibition Of Hasâh And Gharar Transactions^[1]

(المعجم ٢٣) - بَابُ النَّهْيِ عَنِ بَيْعِ
الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ (التحفة ٢٣)

2194. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ forbade *Gharar* transactions and *Hasâh* transactions." (*Sahih*)

٢١٩٤ - حَدَّثَنَا مُحَرَّرُ بْنُ سَلَمَةَ الْعَدَنِيُّ:
حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ عَبْدِ اللَّهِ،
عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ
قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْغَرَرِ وَعَنْ
بَيْعِ الْحَصَاةِ.

تخريج: أخرجه مسلم، البيهقي، باب بطلان بيع الحصاة والبيع الذي فيه غرر، ح: ١٥١٣ من حديث عبيدالله بن عمر به .

2195. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ forbade *Gharar* transactions." (*Sahih*)

٢١٩٥ - حَدَّثَنَا أَبُو كُرَيْبٍ وَابْنُ عَبَّاسٍ بْنُ عَبْدِ
الْعَظِيمِ الْعَدَنِيُّ. قَالَا: حَدَّثَنَا الْأَسْوَدُ بْنُ
عَامِرٍ: حَدَّثَنَا أَيُّوبُ بْنُ عُبَيْدَةَ، عَنْ يَحْيَى بْنِ

^[1] *Hasâh*: A transaction involving throwing pebbles, which may be understood in three ways: (i) the seller throws pebbles onto the goods and gives the buyer whatever the pebbles land on; (ii) the seller sells land then tells the purchaser that he will get the land as far as a pebble thrown by the seller reaches; (iii) the seller tells the purchaser that he has the option to change his mind until he (the seller) throws a pebble, at which point the transaction becomes binding.

Gharar: Selling goods which appear sound but contain some hidden fault, or concerning which something is unclear.

أبي كثير، عَنْ عَطَاءٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ:
نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْغَرَرِ.

تخریج: [صحیح] أخرجه الدارقطني: ١٥/٣ من حديث الأسود بن عامر، شاذان به، ضعفه البوصيري لضعف أيوب بن عتبة، والحديث السابق شاهد له.

Comments:

- All forms of transactions in which the quantity of the commodity being sold and bought cannot be estimated, are the transactions which involve uncertainty and cheating. For example: the sale of fish in water, or the sale of an unborn baby animal which is still in the female's womb. The transaction of uncertainty and cheating also includes the things which are impossible to handover to the buyer, like the sale of a lost animal.
- The deal of transaction done by throwing a pebble is a type of lottery, which was in vogue during the pre-Islamic period. For example: The seller would ask the customer to throw a pebble; and then whichever item amongst many got hit by the pebble would be sold for one hundred pounds; whilst those items varied in quantity, quality, value and price. Many modern forms of lottery are practised these days; as some companies introduce prize drawing schemes to increase the sale of their product. These all are under the rule of 'Transaction done by throwing a pebble'.

Chapter 24. Prohibition Of Buying What Is In The Wombs And Udders Of Cattle,^[1] And Whatever A Diver Is Going To Bring Up

2196. It was narrated that Abu Sa'eed Al-Khudri said: "The Messenger of Allāh ﷺ forbade selling what is in the wombs of cattle until they give birth, and selling what is in their udders unless it is measured out, and selling a slave who has fled, and selling spoils of war until it has been distributed, and selling *Sadaqah* until it has been received, and what a diver is going to bring up." (Hasan)

(المعجم ٢٤) - بَابُ النَّهْيِ عَنِ شِرَاءِ مَا فِي بُطُونِ الْأَنْعَامِ وَضُرُوعِهَا وَضُرْبَةِ الْعَائِصِ (التحفة ٢٤)

٢١٩٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا جَهْضَمُ بْنُ عَبْدِ اللَّهِ الْيَمَانِيُّ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ الْبَاهِلِيِّ، عَنْ مُحَمَّدِ بْنِ زَيْدِ الْعُبَيْدِيِّ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ شِرَاءِ مَا فِي بُطُونِ الْأَنْعَامِ حَتَّى تَفْضَعَ، وَعَمَّا فِي ضُرُوعِهَا. إِلَّا بِكَيْلٍ. وَعَنْ شِرَاءِ الْعَبْدِ وَهُوَ آبِقٌ، وَعَنْ شِرَاءِ الْمَعَانِمِ حَتَّى تَقْسَمَ، وَعَنْ شِرَاءِ الصَّدَقَاتِ

[1] The *An'ām* are domesticated grazing animals including camels as well as cows and sheep.

حَتَّى تُقْبَضَ، وَعَنْ ضَرِيَّةِ الْعَائِصِ.

تخریج: [حسن] أخرجه الترمذي، السير، باب في كراهية بيع المغانم حتى تقسم، ح: ١٥٦٣ من حديث حاتم به، وقال: غريب، محمد بن إبراهيم الباهلي مجهول (تقريب) وفي شيخه نظر، وللحديث شواهد كثيرة عند ابن أبي شيبة: ٤٣٥/١٣ وغيره.

Comments:

This *Hadith* is Weak; but the issue mentioned in it is authentic because the forms of sale mentioned in it are all transactions of uncertainty and cheating. However if milk is bought after measuring it, then it does not involve cheating, so it is a lawful sale.

2197. It was narrated from Ibn 'Umar that the Prophet ﷺ forbade selling *Hablul-Habalah*. (*Sahih*)

٢١٩٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ، عَنْ أَبِي يُونُسَ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ حَبْلِ الْحَبَلَةِ.

تخریج: [صحيح] أخرجه النسائي: ٢٩٣/٧، البيهقي، . بيع حبل الحبله، ح: ٤٦٢٧ من حديث سفیان به، وله شواهد عند البخاري وغيره.

Comments:

- Hablul-Habalah* is to sell and buy a baby of an animal before its birth, which is illegal; because it involves uncertainty and cheating. It is unknown whether the baby will be male or female, physically fit or defective.
- Payment of a loan should have a clear appointed time. Then if the debtor could not pay back at the appointed time, and asked for more time, or the deadline is not set at all; and then the debtor pays back according to the flexible ability; granting this type of flexibility to the debtor is a highly virtuous deed.

Chapter 25. Auctions

(المعجم ٢٥) - بَابُ بَيْعِ الْمَرْأِيَّةِ

(التحفة ٢٥)

2198. It was narrated from Anas bin Málík that a man from among the *Ansár* came to the Prophet ﷺ and begged from him. He said, "Do you have anything in your house?" He said: "Yes, a blanket, part of which we cover ourselves with and part we spread beneath us, and a bowl from which we drink water." He said: "Give them to me." So he brought them to him, and the Messenger of

٢١٩٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ: حَدَّثَنَا الْأَخْضَرُ بْنُ عَمَّارٍ: حَدَّثَنَا أَبُو بَكْرِ الْحَتَّابِيُّ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ جَاءَ إِلَى النَّبِيِّ ﷺ يَسْأَلُهُ. فَقَالَ: «لَكَ فِي بَيْتِكَ شَيْءٌ؟» قَالَ: بَلَى. جِلْسٌ نَلْسُ بِعَضْوَةٍ وَنَبْطٌ بِعَضْوَةٍ. وَقَدَحٌ نَشْرَبُ فِيهِ الْمَاءَ. قَالَ:

Allâh ﷺ took them in his hand and said, "Who will buy these two things?" A man said: "I will buy them for one Dirham." He said: "Who will offer more than a Dirham?" two or three times. A man said: "I will buy them for two Dirham." So he gave them to him and took the two Dirham, which he gave to the *Ansâri* and said: "Buy food with one of them and give it to your family, and buy an axe with the other and bring it to me." So he did that, and the Messenger of Allâh ﷺ took it and fixed a handle to it, and said: "Go and gather firewood, and I do not want to see you for fifteen days." So he went and gathered firewood and sold it, then he came back, and he had earned ten Dirham. (The Prophet ﷺ) said: "Buy food with some of it and clothes with some." Then he said: "This is better for you than coming with begging (appearing) as a spot on your face on the Day of Resurrection. Begging is only appropriate for one who is extremely poor or who is in severe debt, or one who must pay painful blood money."^[1] (*Hasan*)

«أُتِنِي بِهِمَا» قَالَ، فَأَتَاهُ بِهِمَا. فَأَخَذَهُمَا رَسُولُ اللَّهِ ﷺ بِيَدِهِ. ثُمَّ قَالَ: «مَنْ يَشْتَرِي هَذَيْنِ؟» فَقَالَ رَجُلٌ: أَنَا أَخَذَهُمَا بِدِرْهَمٍ. قَالَ: «مَنْ يَزِيدُ عَلَي دِرْهَمٍ؟» مَرَّتَيْنِ أَوْ ثَلَاثًا. قَالَ رَجُلٌ: أَنَا أَخَذَهُمَا بِدِرْهَمَيْنِ. فَأَعْطَاهُمَا إِيَّاهُ وَأَخَذَ الدَّرَاهِمَيْنِ، فَأَعْطَاهُمَا الْإِنصَارِيَّ، وَقَالَ: «اشْتَرِ بِأَحَدِهِمَا طَعَامًا فَأَبِئْهُ إِلَى أَهْلِكَ. وَاشْتَرِ بِالْآخَرِ قَدُومًا، فَأُتِنِي بِهِ» فَفَعَلَ. فَأَخَذَهُ رَسُولُ اللَّهِ ﷺ. فَشَدَّ فِيهِ عُودًا بِيَدِهِ وَقَالَ: «الذُّهَبُ فَاحْتَطِبْ وَلَا أَرَاكَ خَمْسَةَ عَشَرَ يَوْمًا» فَجَعَلَ يَحْتَطِبُ وَيَبِيعُ. فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دِرَاهِمٍ. فَقَالَ: «اشْتَرِ بِبَعْضِهَا طَعَامًا وَبِبَعْضِهَا ثَوْبًا». ثُمَّ قَالَ: «هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَجِيءَ وَالْمَسْأَلَةُ نُكْتَةً فِي وَجْهِكَ يَوْمَ الْقِيَامَةِ. إِنَّ الْمَسْأَلَةَ لَا تَصْلُحُ إِلَّا لِلَّذِي فَقِرَ مُذْنِعٍ، أَوْ لِلَّذِي عُرِمَ مُفْطَعٍ، أَوْ دَمٍ مُوجِعٍ».

تخريج: [إسناده حسن] أخرجه أبو داود، الزكاة، باب ما تجوز فيه المسألة، ح: ١٦٤١ من

حديث عيسى بن يونس به، وحسنه الترمذي، ح: ١٢١٨.

[1] 'Painful blood money' i.e., if the blood money is not paid, the killer will be executed and his family will suffer his loss.

Comments:

A calamity stricken person is allowed to make an appeal of financial support but taking beggary as a profession is unlawful. The Messenger of Allāh ﷺ said: "Begging is only allowed for three type of people: a person who took a loan (to set right someone else's matters and the loan was more than his financial capability) is allowed to make an appeal until he gets the required amount of money and then he should stop; the second person allowed to make financial appeal is the one who is afflicted by a calamity and all his property got ruined. He is allowed to do so until he finds means to fulfill the needs of his daily life. The third person having this is the one who is suffering from starvation; three wise and reliable individuals from among his people should certify the case that so-and-so is really suffering from starvation. (*Sahih Muslim: 1044*)

Chapter 26. Letting Someone Off

2199. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever agrees with a Muslim to cancel a transaction, Allāh will forgive his sins on the Day of Resurrection." (*Da'if*)

(المعجم ٢٦) - بَابُ الْإِقَالَةِ (التحفة ٢٦)

٢١٩٩ - حَدَّثَنَا زِيَادُ بْنُ يَحْيَى أَبُو
الْخَطَّابِ: حَدَّثَنَا مَالِكُ بْنُ سَعْتِ بْنِ
الْأَعْمَشِ عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَقَالَ مُسْلِمًا
أَقَالَ اللَّهُ عَثْرَتَهُ يَوْمَ الْقِيَامَةِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب: في فضل الإقالة، ح: ٣٤٦٠ من حديث الأعمش به، وصححه ابن حبان، والحاكم، والذهبي، وابن حزم وابن دقيق العيد، علته عننة الأعمش تقدم، ح: ١٧٨، وله شواهد ضعيفة.

Comments:

- If one is given a choice at the time of making the deal to annul the sale; for example: a person says to the other that you are allowed to cancel the deal within such and such time, then the person given the choice may use this right to cancel the sale within the fixed time.
- But if the condition of choice does not exist, and the buyer wants to return the bought commodity; or the seller wants it back for the exchange of the same price, then either of the two parties should accept the request of the other, and should exchange the commodity and price. It is a deed of great reward. It will be seen as a moral duty but not a legal responsibility.

Chapter 27. Whoever Does Not Like To Fix Prices

2200. It was narrated that Anas bin Mâlik said: "Prices rose

(المعجم ٢٧) - بَابُ مَنْ كَرِهَ أَنْ يُسَعَّرَ

(التحفة ٢٧)

٢٢٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا

during the time of the Messenger of Allâh ﷺ, and they said: 'O Messenger of Allâh, prices have risen, so fix the prices for us.' He said: 'Indeed Allâh is the *Musa'ir*,^[1] the *Qâbid*, (Restrainer) the *Bâsit*,^[2] the *Râzzâq* (Provider). And I am hopeful that I meet my Lord and none of you are seeking (recompense from) me for an injustice involving blood or wealth.'" (*Sahih*)

حَجَّاجٌ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ قَتَادَةَ وَحُمَيْدٍ وَثَابِتٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: غَلَا السُّعْرُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَقَالُوا: يَا رَسُولَ اللَّهِ قَدْ غَلَا السُّعْرُ، فَسَعِّرْ لَنَا. فَقَالَ: «إِنَّ اللَّهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ. إِنِّي لَأَرْجُو أَنْ أَلْقَى رَبِّي وَلَيْسَ أَحَدٌ يَطْلُبُنِي بِمَظْلَمَةٍ فِي دَمٍ وَلَا مَالٍ».

تخریج: [إسناده صحيح] أخرجه أبو داود، البيهقي، باب: في التسعير، ح: ٣٤٥١ من حديث حماد به، وصححه الترمذي، ح: ١٣١٤، وابن حبان (التلخيص الحبير)، وأورده الضياء المقدسي في الأحاديث المختارة.

2201. It was narrated that Abu Sa'eed said: "Prices rose at the time of the Messenger of Allâh ﷺ, and they said: 'Why do you not fix the food prices, O Messenger of Allâh?' He said: 'I hope that when I leave you, no one among you will be demanding restitution for a wrong that I have done to him.'" (*Sahih*)

٢٢٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ زَيْادٍ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: غَلَا السُّعْرُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَقَالُوا: لَوْ قَوْمَتْ، يَا رَسُولَ اللَّهِ قَالَ: «إِنِّي لَأَرْجُو أَنْ أَفَارِقَكُمْ وَلَا يَطْلُبُنِي أَحَدٌ مِنْكُمْ بِمَظْلَمَةٍ ظَلَمْتُهُ».

تخریج: [صحيح] أخرجه أحمد: ٨٥/٣، والخطيب في تاريخه: ٤٥١/٩ من طريقين عن الجريري عن أبي نضرة به نحوه، والحديث السابق شاهد له.

Comments:

- The affairs of trade should operate according to the economic law of demand and consumption, and import and export, which is better for the economy of the country; and the government should avoid interfering in it.
- If the traders do not take care of the needs of the public, due to the greed of excessive profit, then the government can get rid of the artificial inflation and shortage by providing the food stuff from the official stores for cheaper rates.

[1] "In *An-Nihâyah* he said: 'It is that He is the One who makes things inexpensive and expensive, He can not be opposed by anyone. So because of that it is not allowed to fix prices.'" (*Tuhfatul-Ahwaadhi*)

[2] "Meaning: He restricts sustenance and other than that from whom He wills, regarding what He wills, and how He wills, and He makes it unrestricted." (*Tuhfatul-Ahwaadhi*)

Chapter 28. Being Lenient During Transactions

2202. 'Uthmân bin 'Affân narrated that the Messenger of Allâh ﷺ said: "Allâh will admit to Paradise a man who was lenient when he sold and when he bought." (*Sahih*)

(المعجم ٢٨) - بَابُ السَّمَاخَةِ فِي الْبَيْعِ

(التحفة ٢٨)

٢٢٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبَانَ الْبُلْخِيُّ أَبُو بَكْرٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلِيَّةَ، عَنْ يُونُسَ بْنِ عُبَيْدٍ، عَنْ عَطَاءِ بْنِ فَرُوحٍ قَالَ: قَالَ عُثْمَانُ بْنُ عَفَّانَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَدْخَلَ اللَّهُ الْجَنَّةَ رَجُلًا كَانَ سَهْلًا، بَائِعًا وَمُسْتَرِيًّا».

تخريج: [اصحيح] أخرجه النسائي: ٣١٨/٧، ٣١٩، البيوع، حسن المعاملة والرفق في المطالبة، ح: ٤٧٠٠ من حديث إسماعيل بن عليّة به * عطاء بن فروخ لم يلق عثمان رضي الله عنه، قاله ابن المديني، والحديث الآتي شاهد له.

2203. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "May Allâh have mercy on a person who is lenient when he sells, lenient when he buys, and lenient when he asks for payment." (*Sahih*)

٢٢٠٣ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ بْنِ كَثِيرٍ بْنِ دِينَارِ الْحُمْصِيِّ: حَدَّثَنَا أَبِي: حَدَّثَنَا أَبُو غَسَّانَ مُحَمَّدُ بْنُ مُطَرِّفٍ، عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «رَحِمَ اللَّهُ عَبْدًا سَمَحًا إِذَا بَاعَ. سَمَحًا إِذَا اشْتَرَى. سَمَحًا إِذَا اقْتَضَى».

تخريج: أخرجه البخاري، البيوع، باب السهولة والسماحة في الشراء والبيع، ومن طلب حقًا فليطلبه في عفاف، ح: ٢٠٧٦ من حديث أبي غسان به.

Comments:

- Easiness and flexibility in sale is to give appropriate concession in price, and to give respite to the debtor; and if a buyer asks for an unreasonable concession, then the seller should excuse himself instead of making an argument. If a buyer wants to return the bought commodity, it should be taken back.
- Easiness in buying is that the buyer should not ask for an unreasonable reduction in price; and if there is a minor defect in the commodity, it should be overlooked. The price should be paid immediately according to the best ability. If seller misbehaves and shows harshness in sale, the buyer should not pay with the same token.

Chapter 29. Hagglng

2204. It was narrated that Qailah Umm Bani Anmâr said: "I came to the Messenger of Allâh ﷺ during one of his 'Umrah at Marwah and said: 'O Messenger of Allâh, I am a woman who buys and sells. When I want to buy something, I state a price less than I want to pay, then I raise it gradually until it reaches the price I want to pay. And when I want to sell something, I state a price more than I want, then I lower it until it reaches the price I want.' The Messenger of Allâh ﷺ said: 'Do not do that, O Qailah. When you want to buy something, state the price you want, whether it is given or not. And when you want to sell something, state the price you want, whether it is given or not.'" (Da'if)

تخریج: [إسناده ضعيف] أخرجه الطبراني في الكبير: ١٣/٢٥ من حديث يعلى به، وهو لئین الحديث كما في التقریب * وقال الذهبي في الكاشف: قيلة أم بني أنمار، صحابية، عنها عبدالله ابن عثمان بن خثيم مرسلًا، وقال البوصيري: منقطع .

2205. It was narrated that Jâbir bin 'Abdullâh said: "I was with the Prophet ﷺ on a military campaign, and he said to me: 'Will you sell this camel of yours for a Dinâr?' I said: 'O Messenger of Allâh, it is yours when I get to Al-Madinah.' He said: 'Then sell it for two Dinâr, may Allâh forgive you.' And he kept increasing the price for me, saying: 'May Allâh forgive you,' each time, until the

(المعجم ٢٩) - بَابُ السَّوْمِ (التحفة ٢٩)
 ٢٢٠٤ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا يَعْلَى بْنُ شَيْبٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَثْمَانَ بْنِ خَثِيمٍ، عَنْ قَيْلَةَ أُمِّ بَنِي أَنْمَارٍ قَالَتْ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي بَعْضِ عَمْرَةٍ عِنْدَ الْمَرْوَةِ. قُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي امْرَأَةٌ أُبِيعُ وَأُشْتَرَى. فَإِذَا أَرَدْتُ أَنْ أُبْتَاعَ الشَّيْءَ سُمْتُ بِهِ أَقْلَ مِمَّا أُرِيدُ. ثُمَّ زِدْتُ، ثُمَّ زِدْتُ حَتَّى أُبْلَغَ الَّذِي أُرِيدُ. وَإِذَا أَرَدْتُ أَنْ أُبِيعَ الشَّيْءَ سُمْتُ بِهِ أَكْثَرَ مِنَ الَّذِي أُرِيدُ. ثُمَّ وَضَعْتُ حَتَّى أُبْلَغَ الَّذِي أُرِيدُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَفْعَلِي يَا قَيْلَةَ إِذَا أَرَدْتِ أَنْ تَبْتَاعِي شَيْئًا فَاسْتَامِي بِهِ الَّذِي تُرِيدِينَ. أُعْطِيتِ أَوْ مَبِيعَتِ». فَقَالَ: «إِذَا أَرَدْتِ أَنْ تَبِيعِي شَيْئًا فَاسْتَامِي بِهِ الَّذِي تُرِيدِينَ. أُعْطِيتِ أَوْ مَبِيعَتِ».

٢٢٠٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا زَيْدُ بْنُ هَارُونَ، عَنِ الْمُجَرِّدِيِّ، عَنْ أَبِي نَضْرَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: كُنْتُ مَعَ النَّبِيِّ ﷺ فِي غَزْوَةٍ. فَقَالَ لِي: «أَتَبِيعُ نَاسِحَكَ هَذَا بَدِينَارًا، وَاللَّهِ يَغْفِرُ لَكَ؟» قُلْتُ: يَا رَسُولَ اللَّهِ! هُوَ نَاصِحُكَ إِذَا أَتَيْتُ الْمَدِينَةَ. قَالَ: «فَتَبِيعُهُ بَدِينَارَيْنِ، وَاللَّهِ يَغْفِرُ لَكَ». قَالَ: فَمَا زَالَ يَزِيدُنِي دِينَارًا دِينَارًا

amount reached twenty Dinâr. When I came to Al-Madinah, I took hold of the camel's head and brought it to the Prophet ﷺ and he said: 'O Bilâl, give him twenty Dinâr from the spoils of war.' And he said: 'Take your camel away and go to your people with it.'" (*Sahih*)

وَيَقُولُ، مَكَانَ كُلِّ دِينَارٍ: «وَاللَّهِ يَغْفِرُ لَكَ» حَتَّى بَلَغَ عَشْرِينَ دِينَارًا. فَلَمَّا أَتَيْتُ الْمَدِينَةَ أَحَذْتُ بِرَأْسِ النَّاضِحِ فَأَتَيْتُ بِهِ النَّبِيَّ ﷺ فَقَالَ: «يَا بِلَالُ أَعْطِهِ مِنَ الْغَنِيمَةِ عَشْرِينَ دِينَارًا»، وَقَالَ: «انْطَلِقْ بِنَاضِحِكَ فَادْهَبْ بِهِ إِلَى أَهْلِكَ».

تخريج: أخرجه مسلم، المساقاة، باب بيع البعير واستثناء ركوبه، ح: ١١٢/٧١٥ من حديث الجريري به مختصرًا، وعلقه البخاري، ح: ٢٧١٨.

Comments:

- To receive the price first and then to give the commodity to the buyer, is lawful; even though at that time the commodity is with the seller. But in this situation the mutual consent of seller and buyer is necessary.
- When doing a favor for a person in any sort of deal, it should be done in such a way that it looks like a normal business deal, and the person receiving the favor does not feel ashamed, as this is a matter of great courage, highness, generosity and dignity.

2206. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ forbade haggling before sunrise, and (he forbade) slaughtering animals that yield milk." (*Da'if*)

٢٢٠٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ سَهْلُ بْنُ أَبِي سَهْلٍ. قَالَ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى: أَنَّ بَنَانَ الرَّبِيعِ بْنِ حَبِيبٍ، عَنْ نَوْفَلِ بْنِ عَبْدِ الْمَلِكِ، عَنْ أَبِيهِ، عَنْ عَلِيٍّ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ السَّوْمِ قَبْلَ طُلُوعِ الشَّمْسِ. وَعَنْ ذَيْحِ ذَوَاتِ الدَّرِّ.

تخريج: [إسناده ضعيف] أخرجه ابن عدي في الكامل: ٩٩٥/٣ (ترجمة الربيع بن حبيب) من حديث عبيدالله بن موسى به، وقال: هذه الأحاديث ... ليست بالمحفوظة * نوفل مستور(تقريب)، والحديث ضعفه البوصيري.

Comments:

The purpose of slaughtering is for the use of the meat, and this purpose can be achieved by slaughtering an animal that does not give milk. Therefore, it is inappropriate to be deprived from the favor of milk.

Chapter 30. What Was Narrated About It Being Disliked To Swear Oaths When Buying And Selling

2207. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There are three to whom Allāh will not speak on the Day of Resurrection, nor will He look at them or purify them, and theirs will be a painful torment: A man who has surplus water in the desert but refuses to give any to a wayfarer; a man who sells a product to a man after 'Asr and swears by Allāh that he bought it for such and such amount, and he believes him, when that is not the case; and a man who swears allegiance to a ruler, and only does so for worldly gains, so if he gives him some of (these worldly benefits) he fulfills his oath of allegiance, and if he is not given anything, he does not uphold his oath of allegiance." (*Sahih*)

تخریج: أخرجه مسلم، الإيمان، باب بيان غلظ تحريم إسبال الإزار واليمن بالعطية وتفريق السلعة بالحلف... الخ، ح: ١٠٨٠ عن أبي بكر بن أبي شيبة وغيره به.

Comments:

- 'Neither speaking to nor looking at' means the talk of mercy and the look of kindness; otherwise Allāh will judge every action, good and bad; and nothing can be hidden before Him.
- 'Not to purify' means not to forgive sins.
- Giving water to the thirsty is a deed of great reward. Particularly, giving drinking water to the people at a place where it is not available easily is a source of high reward.
- A water spring in the desert is a grace of Allāh ﷺ. Occupying that spring water illegally and not letting the needy drink from it is mean spirited.
- Bearing false oath is a sin. Swearing a false oath after 'Asr prayer is an even worse sin; and such a grave sin is committed just for the assumed benefit of

(المعجم ٣٠) - بَابُ مَا جَاءَ فِي كَرَاهِيَةِ
الْإِيْمَانِ فِي الشَّرَاءِ وَالْبَيْعِ (التحفة ٣٠)

٢٢٠٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ
عَلِيُّ بْنُ مُحَمَّدٍ، وَ أَحْمَدُ بْنُ سِنَانٍ. قَالُوا:
حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ أَبِي
صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللَّهُ عَزَّ وَجَلَّ يَوْمَ
الْقِيَامَةِ، وَلَا يَنْظُرُ إِلَيْهِمْ، وَلَا يُزَكِّيهِمْ، وَلَهُمْ
عَذَابٌ أَلِيمٌ: رَجُلٌ عَلَى فَضْلِ مَاءٍ بِالْقَلَاءِ
يَمْنَعُهُ ابْنَ السَّبِيلِ. وَرَجُلٌ بَايَعَ رَجُلًا سَلْعَةً
بَعْدَ الْعَصْرِ فَحَلَفَ بِاللَّهِ لِأَخْذِهَا بِكَذَا وَكَذَا.
فَصَدَّقَهُ، وَهُوَ عَلَى غَيْرِ ذَلِكَ. وَرَجُلٌ بَايَعَ
إِمَامًا، لَا يَبَايِعُهُ إِلَّا لِدُنْيَا. فَإِنْ أَعْطَاهُ مِنْهَا
وَقِيَ لَهُ، وَإِنْ لَمْ يُعْطِهِ مِنْهَا لَمْ يَقِبْ لَهُ».

a small amount of money!!! Because there is no certainty that the customer will definitely buy something with the impression of his false oath. A false oath for this type of objective is an extremely indecent act; therefore, its punishment is severe too.

2208. It was narrated from Abu Dharr that the Prophet ﷺ said: "There are three to whom Allāh will not speak on the Day of Resurrection, nor will He look at them or purify them, and theirs will be a painful torment." I said: "Who are they, O Messenger of Allāh? For they are indeed losers." He said: "The one who lets his garment hang beneath his ankles, the one who reminds another of what he has given him, and the one who sells his product by means of false oaths." (*Sahih*)

٢٢٠٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ مُحَمَّدٌ بْنُ إِسْمَاعِيلَ . قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ الْمُسْعُودِيِّ، عَنْ عَلِيِّ بْنِ مُدْرِكٍ، عَنْ خَرَشَةَ ابْنِ الْحُرِّ، عَنْ أَبِي ذَرٍّ، عَنِ النَّبِيِّ ﷺ؛ ح: وَحَدَّثَنَا مُحَمَّدٌ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدٌ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَلِيِّ بْنِ مُدْرِكٍ، عَنْ أَبِي زُرْعَةَ بْنِ عَمْرٍو بْنِ جَرِيرٍ، عَنْ خَرَشَةَ بْنِ الْحُرِّ، عَنْ أَبِي ذَرٍّ، عَنِ النَّبِيِّ ﷺ قَالَ: «ثَلَاثَةٌ لَا يَكَلِّمُهُمُ اللَّهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ إِلَيْهِمْ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ» فَقُلْتُ: مَنْ هُمْ؟ يَا رَسُولَ اللَّهِ! فَقَدْ خَابُوا وَخَسِرُوا. قَالَ: «الْمُسْبِلُ إِزَارَهُ، وَالْمَتَّانُ عَطَاءَهُ، وَالْمُتَّفِقُ سَلْعَتَهُ بِالْحَلْفِ الْكَاذِبِ».

تخريج: أخرجه مسلم، الإيمان، الباب السابق، ح: ١٠٦ من حديث علي بن مدرك به.

Comments:

- It is forbidden for a man to lower his garment, trousers and pants below the ankles. A man must have the garment, trousers and pants above the ankles, which will leave the ankles uncovered. Declaring an act, that deserves such a severe punishment, to be merely disliked is incorrect.
- Swearing a false oath in the Name of Allāh is contrary to the regard of Allāh's Blessed Name, and disregarding Allāh's Name is a major sin.

2209. It was narrated from Abu Qatādah that the Messenger of Allāh ﷺ said: "Beware of swearing oaths when selling, for it may help you to make a sale but it destroys the blessing." (*Sahih*)

٢٢٠٩ - حَدَّثَنَا يَحْيَى بْنُ خَلْفٍ: حَدَّثَنَا عَبْدُ الْأَعْلَى؛ ح: وَحَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ . قَالَ: حَدَّثَنَا مُحَمَّدٌ بْنُ إِسْحَاقَ، عَنْ مَعْبِدِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ أَبِي قَتَادَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِيَّاكُمْ وَالْحَلْفَ فِي الْبَيْعِ . فَإِنَّهُ يَنْفِقُ ثُمَّ يَمَحُوقُ».

تخریج: [صحیح] أخرجه أحمد: ۲۹۷/۵، ۲۹۸ من حديث ابن إسحاق به، وصرح بالسماع، وله طريق آخر عند مسلم، ح: ۱۶۰۷ وغيره عن معبد بن كعب به.

Comments:

It is best that oaths be used rarely. It is not a good habit to keep swearing unnecessarily to sell goods.

Chapter 31. What Was Narrated Concerning One Who Sells A Pollinated Palm Tree Or A Slave Who Has Wealth

2210. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever buys a palm tree that has been pollinated, its fruits belong to the seller, unless the purchaser stipulated a condition." (*Sahih*)

Another chain from Ibn 'Umar, from the Prophet ﷺ, with similar wording.

(المعجم ۳۱) - بَابُ مَا جَاءَ فِيْمَنْ بَاعَ نَخْلًا مُؤَبَّرًا أَوْ عَبْدًا لَهُ مَالٌ (التحفة ۳۱)

۲۲۱۰ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ. قَالَ: حَدَّثَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ اشْتَرَى نَخْلًا قَدْ أُبْرِتَ فَتَمَرَّتْهَا لِلْبَّاعِ. إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ».

حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَنَانَ اللَّيْثُ بْنُ سَعْدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ، بِنَحْوِهِ.

تخریج: أخرجه البخاري، باب من باع نخلاً قد أبرت أو أرضاً مزروعةً بإجارة، ح: ۲۲۰۴، ومسلم، البيوع، باب من باع نخلاً عليها تمر، ح: ۱۵۴۳ من حديث مالك به، وأخرجه البخاري، ح: ۲۲۰۶ من حديث الليث به، ومسلم، ح: ۱۵۴۳ عن ابن رمح وغيره.

Comments:

- Male and female flowers of date trees grow on separate trees; if wind, flies and insects are the only means for the transfer of pollination of male and female flowers, then the yield of fruits gets reduced. Therefore the flowers of the male tree are taken and spread over the female tree and thus the trees bear more fruits. It is called artificial pollination.
- Artificial pollination is hard work, and the quantity of the produce depends on it. So if a tree is sold after artificial pollination is done, the hard work of the seller will go vain, therefore, it should be made clear at the time of transaction whether it is only the tree that is being sold or its fruit as well. If it is not cleared beforehand, then only the tree will be sold, and its fruit will legally belong to the seller. However, in the following years if a buyer does artificial pollination he will be the owner of the fruit as well.

2211. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from

۲۲۱۱ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَنَانَ اللَّيْثِ

Ibn 'Umar, that the Messenger of Allāh ﷺ said: "Whoever sells a palm tree that has been pollinated, its fruits belong to the seller, unless the purchaser stipulated a condition. And whoever buys a slave who has wealth, his wealth belongs to the seller, unless the purchaser stipulated a condition." (*Sahih*)

ابنُ سَعْدٍ، ح: وَحَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، جَمِيعًا عَنِ ابْنِ شِهَابِ الزُّهْرِيِّ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ بَاعَ نَخْلًا قَدْ أُبْرِتْ فَتَمَرَّتْهَا لِلَّذِي بَاعَهَا. إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ. وَمَنْ ابْتَاعَ عَبْدًا وَلَهُ مَالٌ، فَمَالُهُ لِلَّذِي بَاعَهُ. إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ.»

تخريج: أخرجه البخاري، المساقاة، باب الرجل يكون له ممر أو شرب في حائط أو في نخل، ح: ٢٣٧٩، ومسلم، البيوع، باب من باع نخلاً عليها تمر، ح: ٨٠/١٥٤٣ من حديث الليث به، أخرجه مسلم من حديث سفیان بن عيينة به مختصراً.

Comments:

- A slave sometimes needs wealth to fulfill his duties and the master gives him a reasonable amount of money to spend; or the master may be pleased with the service of his slave and give him some jewelry to wear for encouragement. In such cases, this wealth still belongs to the master, and it will not go with the slave if he is sold.
- If a buyer makes it clear that he is buying the slave along with the wealth; or trees along with the fruits; it is then apparent that the price will increase accordingly. In this case, according to the condition, the wealth or fruit will belong to the buyer.

2212. It was narrated from Nâfi' from Ibn 'Umar that the Prophet ﷺ said: "Whoever sells a palm tree and sells a slave." Mentioning both of them together.^[1]

٢٢١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْوَلِيدِ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَيْدِ رَبِّهِ بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «مَنْ بَاعَ نَخْلًا وَبَاعَ عَبْدًا جَمَعَهُمَا [جَمِيعًا].»

^[1] This narration is reported by Shu'bah, from 'Abd Rabbihî bin Sa'eed, from Nâfi'. In *Al-Kubra* (the Book of Freeing Slaves: Mention of a slave being freed while he has wealth) by Nasâ'i, after narrating it, Shu'bah said: "I narrated to him ('Abd Rabbihî) the narration of Ayyub, from Nâfi', that he narrated it to me with 'palm tree' from the Prophet ﷺ, and 'slave' from 'Umar. So 'Abd Rabbihî said: 'I do not know of the two of them together except from the Prophet ﷺ.' Then, another time he narrated it from the Prophet ﷺ, without any rebuke about it." So in this narration of Ibn Mâjah, from Shu'bah, from 'Abd Rabbihî, the statement: "Both of them together" is from the explanation of Shu'bah, and Allâh knows best.

تخريج: [إسناده صحيح] أخرجه أحمد: ٧٨/٢ عن محمد بن جعفر به، وهو في السنن الكبرى للنسائي، ح: ٤٩٨٢، أطول منه.

2213. It was narrated that 'Ubâdah bin Sâmîr said: "The Messenger of Allâh ﷺ ruled that the fruit of a palm tree belongs to the one who pollinated it, and that the wealth of a slave belongs to the one who sold him, unless the purchaser stipulated a condition." (*Da'if*)

٢٢١٣ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنِ خَالِدٍ التَّمِيمِيُّ أَبُو الْمُعَلِّسِ: حَدَّثَنَا الْفَضِيلُ بْنُ سَلِيمَانَ، عَنْ مُوسَى بْنِ عُقْبَةَ: حَدَّثَنِي إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عِبَادَةَ بْنِ الصَّامِتِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِثَمَرِ النَّخْلِ لِمَنْ أَبْرَهَهَا. إِلَّا أَنْ يَشْتَرِطَ الْمُتَبَاعُ. وَأَنَّ مَالَ الْمَمْلُوكِ لِمَنْ بَاعَهُ، إِلَّا أَنْ يَشْتَرِطَ الْمُتَبَاعُ.

تخريج: [إسناده ضعيف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٧، ٣٢٦/٥ من حديث الفضيل به مطولاً * إسحاق أرسل عن عبادة وهو مجهول الحال (تقريب).

Chapter 32. Prohibition Of Selling Fruits Before They Have Ripened

2214. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Do not sell fruits until they have ripened." And he forbade (both) the seller and the purchaser (to engage in such a transaction). (*Sahih*)

(المعجم ٣٢) - بَابُ النَّهْيِ عَنِ بَيْعِ الثَّمَارِ قَبْلَ أَنْ يَبْدُوَ صَلَاحَهَا
(التحفة ٣٢)

٢٢١٤ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ أَبَانَ اللَّيْثِ ابْنَ سَعْدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلَاحَهَا». نَهَى الْبَائِعَ وَالْمُشْتَرِيَ.

تخريج: [إسناده صحيح] أخرجه النسائي: ٢٦٢/٧، البيهقي، . بيع الثمر قبل أن يبدو صلاحه، ح: ٤٥٢٣ من حديث الليث به، وله طرق عند البخاري ومسلم وغيرهما عن نافع عن ابن عمر به نحو المعنى.

Comments:

- Selling and buying the fruit which is still on the trees is allowed.
- When trees get flowers, it looks as if the fruit will be enormous but lots of flowers just fall down. A lot of small fruit in its early age of growth falls down because of winds; and then sometimes it goes to waste because of unexpected rain. The fruit which is safe after all of these misfortunes is the real fruit that benefits the buyer. Therefore, the fruit of an orchard should be sold after passing these stages and a clear estimate is made regarding the quantity of fruit that is expected. This is interpreted in the *Hadith* by 'until they have ripened' as 'until the fruits are clearly in good condition'.

2215. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Do not sell fruits until they have ripened.'" (*Sahih*)

٢٢١٥ - حَدَّثَنَا أَحْمَدُ بْنُ عِيسَى الْمُضَرِّيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ، عَنْ يُونُسَ بْنِ يَزِيدَ، عَنِ ابْنِ شِهَابٍ: حَدَّثَنِي سَعِيدُ بْنُ الْمُسَيَّبِ وَ أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلاَحُهُ».

تخریج: أخرجه مسلم، البيوع، باب تحريم بيع الرطب بالتمر إلا في العرايا، ح: ١٥٣٨ من حديث ابن وهب به.

2216. It was narrated from Jâbir that the Prophet ﷺ forbade selling fruits until they have ripened. (*Sahih*)

٢٢١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ، عَنِ ابْنِ جُرَيْجٍ، عَنْ عَطَاءٍ، عَنْ جَابِرِ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهُ.

تخریج: أخرجه البخاري، البيوع، باب بيع الثمر على رؤوس النخل بالذهب أو الفضة، ح: ٢١٨٩ من حديث ابن جريج به مطولاً.

2217. It was narrated from Anas bin Mâlik that the Messenger of Allāh ﷺ forbade selling fruits until they have changed the color, and selling grapes until they have turned black, and selling grains until they have hardened. (*Da'if*)

٢٢١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا حَجَّاجٌ: حَدَّثَنَا حَمَّادٌ عَنْ حُمَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ بَيْعِ الثَّمَرَةِ حَتَّى تَزْهُوَ. وَعَنْ بَيْعِ الْعِنَبِ حَتَّى يَسْوَدَ، وَعَنْ بَيْعِ الْحَبِّ حَتَّى يَسْتَدَّ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في بيع الثمار قبل أن يبدو صلاحها، ح: ٣٣٧١ من حديث حماد بن سلمة به، وحسنه الترمذي، ح: ١٢٢٨، وصححه ابن حبان، والحاكم على شرط مسلم، ووافقه الذهبي * لم أجد تصريح سماع حميد الطويل تقدم، ح: ٨٦٦، فالسند معلل.

Comments:

- Different crops, grains and fruits have different ways to be judged before they are sold.
- The raw fruit of an orchard is green and later its real color begins to appear gradually. At this time, the danger of waste is little, and to sell them is safe and lawful. The real objective of changing the color is to let them grow big enough until they are out of climatic danger.

Chapter 33. Selling Fruits For Many Years Ahead^[1] And Crop Failure

2218. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ forbade selling for many years ahead. (*Sahih*)

(المعجم ٣٣) - بَابُ بَيْعِ الثَّمَارِ سِنِينَ

وَالجَائِحَةِ (التحفة ٣٣)

٢٢١٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدٌ بْنُ الصَّبَّاحِ . قَالَ: حَدَّثَنَا سُفْيَانُ عَنْ حُمَيْدِ الْأَعْرَجِ ، عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ بَيْعِ السِّنِينَ .

تخریج: أخرجه مسلم، المساقاة، باب وضع الجوائح، ح: ١٧/١٥٥٤ من حديث سفیان بن عیسیه به بلفظ: أن النبي ﷺ أمر بوضع الجوائح ، والمعنى واحد.

Comments:

- 'Selling for many years ahead' is, for example: to sell the fruits due for the next two or three years and to receive a price in advance; this is prohibited.
- The logic of its prohibition is that the situation of the produce in the following years is unknown; as well as whether there will be produce or not. It is also possible that the fruit will go to waste after the appearance and the buyer's money is then wasted as well. From this prospect, it is a sale of uncertainty and cheating.
- See *Ahâdith* 2194-2197 for detailed information about the sale which involves uncertainty and cheating.

2219. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: "Whoever sells fruits then the crop fails, should not take any of his brother's money. Why would any of you take the money of his Muslim brother?" (*Sahih*)

٢٢١٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يَحْيَى بْنُ حَمْرَةَ: حَدَّثَنَا نَوْزُ بْنُ يَزِيدَ، عَنِ ابْنِ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ بَاعَ ثَمَرًا فَأَصَابَتْهُ جَائِحَةٌ، فَلَا يَأْخُذُ مِنْ مَالِ أَخِيهِ شَيْئًا. عَلَامٌ يَأْخُذُ أَحَدَكُمْ مَالِ أَخِيهِ الْمُسْلِمِ؟» .

تخریج: أخرجه مسلم، المساقاة، باب وضع الجوائح، ح: ١٤/١٥٥٤ من حديث ابن جريج به بالفاظ مختلفة والمعنى واحد.

Comments:

The money is exchanged for merchandise; when the fruit of the orchard was sold it was not able to be used, which means the buyer did not collect

[1] Meaning, to take money in advance against the next two or three years of produce, prior to the existence of the produce. See explanation by Sindi.

it. It was merely a promise of giving fruit to the buyer; and as the fruit went to waste and the buyer did not get anything, but has paid the price in advance, or has promised to pay; thus he would pay the price and would not receive anything in exchange; therefore this type of sale is unlawful.

Chapter 34. Allowing More When Weighing Goods For Sale

(المعجم ٣٤) - بَابُ الرَّجْحَانِ فِي
الْوَزْنِ (التحفة ٣٤)

2220. It was narrated that Suwaid bin Qais said: "Makhrafah Al-'Abdi and I brought linens from Hajar.^[1] The Messenger of Allâh ﷺ came to us to bargain with us with some trousers. There was someone with me who weighed (the goods) in exchange for a wage. So the Prophet ﷺ said to the one weighing: 'Weigh and add more.'" (Sahih)

٢٢٢٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالُوا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفْيَانُ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ سُؤَيْدِ بْنِ قَيْسٍ قَالَ: جَلَبْتُ أَنَا وَمَخْرَفَةُ الْعُبَيْدِيِّ بَرًّا مِنْ هَجَرَ. فَجَاءَنَا رَسُولُ اللَّهِ ﷺ. فَسَاوَمَنَا سَرَاوِيلَ. وَعِنْدَنَا وَزَانٌ يَزِنُ بِالْأَجْرِ. فَقَالَ لَهُ النَّبِيُّ ﷺ: «يَا وَزَانُ زِنْ وَأَرْجِحْ».

تخریج: [صحیح] أخرجه أبو داود، البيهق، باب: في الرجحان في الوزن والوزن بالأجر، ح: ٣٣٣٦ من حديث سفیان الثوري به، وصححه الترمذي، ح: ١٣٠٥، وابن حبان (موارد)، ح: ١٤٤٤، وابن الجارود * سفیان تابعه قيس بن الربيع، والحديث الآتي شاهد له.

Comments:

- The business of cloths is religiously lawful.
- Business of import and export is permissible.
- Shalwâr (a loose Punjabi style trouser) is a good and decent dress.
- Taking a wage for weighing and measuring is allowed, as well as taking a wage for any work that involves physical labor.
- To keep the measuring part of a scale a little lower is good manners. But giving short measure in weight and measurement is dishonesty; and it is a major sin.

2221. It was narrated that Simâk bin Harb said: "I heard Mâlik, Abu Safwân bin 'Umairah, say: 'I bought a pair of trousers from the Messenger of Allâh ﷺ before the

٢٢٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ مُحَمَّدُ ابْنُ الْوَلِيدِ. قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ سِمَاكِ بْنِ حَرْبٍ. قَالَ:

[1] There are many places with this name, one of which is a village close to Al-Madinah.

Hijrah, and he weighed it for me and allowed more.'” (Sahih)

سَمِعْتُ مَالِكًا، أَبَا صَفْوَانَ بْنَ عُمَيْرَةَ قَالَ: بَعَثَ مِنْ رَسُولِ اللَّهِ ﷺ رَجُلًا سَرَاوِيلَ قَبْلَ الْهَجْرَةِ. فَوَزَنَ لِي، فَأَرْجَحَ لِي.

تخريج: [إسناده صحيح] أخرجه أبو داود، البيهقي، الباب السابق، ح: ٣٣٣٧ من حديث شعبة به، وصححه الحاكم: ٣١، ٣٠/٢ على شرط مسلم، ووافقه الذهبي.

Comments:

The translation of *Sarâwil*: Loose Punjabi trouser, pyjama and pants is correct. Its name may vary depending upon various locations, designs and styles.

2222. It was narrated from Jâbir bin ‘Abdullâh that the Messenger of Allâh ﷺ said: “When you weigh, allow more.” (Sahih)

٢٢٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الصَّمَدِ: حَدَّثَنَا شُعْبَةُ عَنْ مُحَارِبِ بْنِ دَثَارٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا وَزَنْتُمْ فَأَرْجِحُوا».

تخريج: [إسناده صحيح] أخرجه الضياء في المختارة (كما في كثر العمال، ح: ٩٤٤٢)، وقال البوصيري: هذا إسناده صحيح على شرط البخاري .

Chapter 35. Being Cautious With Regard To Weights And Measures

(المعجم ٣٥) - بَابُ التَّوَقِّي فِي الْكَيْلِ وَالْوَزْنِ (التحفة ٣٥)

2223. It was narrated that Ibn ‘Abbâs said: “When the Prophet ﷺ came to Al-Madinah, they were the worst people in weights and measures. Then Allâh, Glorious is He, revealed: “Woe to the *Mutaffifun* (those who give less in measure and weight)”,^[1] and they were fair in weights and measures after that. (Hasan)

٢٢٢٣ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ بَشْرِ بْنِ الْحَكَمِ، وَ مُحَمَّدُ بْنُ عَقِيلِ بْنِ حُوَيْلِدٍ. قَالَ: حَدَّثَنَا عَلِيُّ بْنُ الْحُسَيْنِ بْنِ وَاقِدٍ: حَدَّثَنِي أَبِي: حَدَّثَنِي يَزِيدُ النَّحْوِيُّ أَنَّ عِكْرِمَةَ حَدَّثَهُ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَمَّا قَدِمَ النَّبِيُّ ﷺ الْمَدِينَةَ كَانُوا مِنْ أَخْبَثِ النَّاسِ كَيْلًا. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ ﴿وَيْلٌ لِّلْمُطَفِّفِينَ﴾ [المطففين: ١] فَأَحْسَنُوا الْكَيْلَ بَعْدَ ذَلِكَ.

تخريج: [إسناده حسن] أخرجه النسائي في الكبرى، التفسير، سورة المطففين، ح: ١١٥٩٠

[1] *Al-Mutaffifin* 83:1.

عن محمد بن عقيل به، وصححه ابن حبان(موارد)، ح: ١٧٧٠، والحاكم: ٣٣/٢، والذهبي، وحسنه البوصيري.

Chapter 36. Prohibition Of Cheating

(المعجم ٣٦) - بَابُ النَّهْيِ عَنِ الْغِشِّ (التحفة ٣٦)

2224. It was narrated that Abu Hurairah said: "The Messenger of Allāh ﷺ passed by a man who was selling food. He put his hand in it and saw that there was something wrong with it. The Messenger of Allāh ﷺ said, 'He is not one of us who cheats.'" (Sahih)

٢٢٢٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شُفْيَانُ عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: مَرَّ رَسُولُ اللَّهِ ﷺ بِرَجُلٍ يَبِيعُ طَعَامًا. فَأَدْخَلَ يَدَهُ فِيهِ. فَإِذَا هُوَ مَغْشُوشٌ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ مِنَّا مَنْ غَشَّ».

تخريج: [إسناده صحيح] أخرجه أبو داود، البيهق، باب النهي عن الغش، ح: ٣٤٥٢ من حديث شفيان بن عيينة به، وصححه الحاكم: ٩، ٨/٢، على شرط مسلم، ووافقه الذهبي، أخرجه مسلم، ح: ١٠٢٢ وغيره عن إسماعيل بن جعفر عن العلاء به نحو المعنى.

Comments:

- The cheating involved in the grains was that some of the grains became wet because of rain. The seller put the dry grains at the top and thus the wet grains got covered beneath. (Sahih Muslim: 101)
- There are many forms of cheating, all of which are unlawful. For example: Trying to prove a lie as a truth with plausible conversation, presenting falsehood in the way of truth, not to disclose a defect in the goods, adulterating low quality products with that of fine quality; and then to sell it for the price of the finer quality.
- Using illegal means in exams like copying; or the examiner gives more marks to the student than what he/she deserves, are also a form of deception and cheating. It deprives the rightful people from their true right.

2225. It was narrated that Abu Hamrâ' said: "I saw the Messenger of Allāh ﷺ pass by a man having food in a vessel. He put his hand in it and said: 'Perhaps you are cheating. Whoever cheats us is not one of us.'" (Da'if)

٢٢٢٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا يُونُسُ بْنُ أَبِي إِسْحَاقَ، عَنْ [أبي] دَاوُدَ، عَنْ أَبِي الْحَمْرَاءِ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ ﷺ مَرَّ بِجَبَاتِ رَجُلٍ عِنْدَهُ طَعَامٌ فِي وِعَاءٍ. فَأَدْخَلَ يَدَهُ فِيهِ. فَقَالَ: «لَعَلَّكَ غَشَّيْتَنَا. مَنْ غَشَّيْنَا فَلَيْسَ مِنَّا».

تخريج: [إسناده ضعيف جداً] أخرجه الدولابي في الكنى: ٢٥/١، أبو نعيم الأصبهاني (كما في تهذيب الكمال، ق/٣/١٦٠٠) من حديث أبي نعيم الفضل بن دكين به * وأبو داود هو الأعمى كما في فتح الباب في الكنى والألقاب (لابن منده، ص: ٢٨٠) وغيره، وانظر، ح: ١٤٨٥ للجرح فيه.

Chapter 37. The Prohibition Of Selling Food Before Taking Possession Of It

2226. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "Whoever buys food, let him not sell it until he has taken full possession of it." (*Sahih*)

تخريج: أخرجه البخاري، البيوع، باب الكيل على البائع والمعطي، ح: ٢١٢٦، ٢١٣٦، ومسلم، البيوع، باب بطلان بيع المبيع قبل القبض، ح: ١٥٢٦ من حديث مالك به وهو في الموطأ (بحي): ٦٤٠/٢.

2227. It was narrated that Ibn 'Abbâs said: "The Messenger of Allâh ﷺ said: 'Whoever buys food, let him not sell it until he has taken full possession of it.'" (*Sahih*)

In his narration, (one of the narrators) Abu 'Awânah said: "Ibn 'Abbâs said: 'I think everything is like food.'"

2227 - حَدَّثَنَا عَمْرَانُ بْنُ مُوسَى اللَّيْثِيُّ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ؛ ح: وَحَدَّثَنَا بِشْرُ بْنُ مُعَاذِ الضَّرِيرِ: حَدَّثَنَا أَبُو عَوَانَةَ وَحَمَّادُ بْنُ زَيْدٍ. قَالَا: حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعُهُ حَتَّى يَسْتَوْفِيَهُ».

قَالَ أَبُو عَوَانَةَ، فِي حَدِيثِهِ: قَالَ ابْنُ عَبَّاسٍ: وَأَحْسِبُ كُلَّ شَيْءٍ مِثْلَ الطَّعَامِ.

تخريج: أخرجه البخاري، البيوع، باب بيع الطعام قبل أن يقبض ويبيع ما ليس عندك، ح: ٢١٣٥، ومسلم، البيوع، باب بطلان بيع المبيع قبل القبض، ح: ١٥٢٥ من حديث عمرو بن دينار به بألفاظ متقاربة.

2228. It was narrated that Jâbir said: "The Messenger of Allâh ﷺ forbade selling food bought by measure until two Sâ' have been measured - the Sâ' of the seller

(المعجم ٣٧) - بَابُ النَّهْيِ عَنِ بَيْعِ الطَّعَامِ قَبْلَ مَا لَمْ يُقْبَضْ (التحفة ٣٧)

٢٢٢٦ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عَمْرٍو أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ ابْتَاعَ طَعَامًا، فَلَا يَبِعُهُ حَتَّى يَسْتَوْفِيَهُ».

٢٢٢٧ - حَدَّثَنَا عَمْرَانُ بْنُ مُوسَى اللَّيْثِيُّ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ؛ ح: وَحَدَّثَنَا بِشْرُ بْنُ مُعَاذِ الضَّرِيرِ: حَدَّثَنَا أَبُو عَوَانَةَ وَحَمَّادُ بْنُ زَيْدٍ. قَالَا: حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعُهُ حَتَّى يَسْتَوْفِيَهُ».

قَالَ أَبُو عَوَانَةَ، فِي حَدِيثِهِ: قَالَ ابْنُ عَبَّاسٍ: وَأَحْسِبُ كُلَّ شَيْءٍ مِثْلَ الطَّعَامِ.

٢٢٢٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنِ ابْنِ أَبِي لَيْلَى، عَنِ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ بَيْعِ الطَّعَامِ

and the *Sâ'* of the buyer."^[1]
(*Da'if*)

حَتَّى يَجْرِيَ فِيهِ الصَّاعَانِ. صَاعُ الْبَائِعِ وَصَاعُ الْمُشْتَرِي.

تخريج: [إسناده ضعيف] أخرجه الدارقطني: ٨/٣ من حديث محمد بن أبي ليلى به، وانظر، ح: ٨٥٤ لعلته، وله شاهد عند البيهقي: ٣١٦/٥ من حديث أبي هريرة رضي الله عنه * فيه هشام بن حسان تقدم، ح: ١٦٧٦، ولم أجد تصريح سماعه، وباقي السند صحيح، وهو حسن بالشواهد.

Comments:

- Selling and buying without looking at the goods is a trade of such people who do not need the goods for themselves; and they make a profit without hard work. Thus the goods reach the consumers with expensive rates; and the real producers (like farmers) get a very low price.
- Measuring by two measures, means that it should be measured or weighed after the purchase, and then it should be handed over to the new buyer after measuring it again. The goods which are to be weighed should be weighed; and the goods which are to be counted should be counted before collection and they should be counted again before being handing over to the customer, so that no one is deceived at any point.

Chapter 38. Chapter Sales Involving Risk (Due To Its Amount Being Unknown)

(المعجم ٣٨) - بَابُ بَيْعِ الْمُجَازَفَةِ
(التحفة ٣٨)

2229. It was narrated that Ibn 'Umar said: "We used to buy food from troops of riders (i.e., the caravans) without knowing the amount, but the Messenger of Allâh ﷺ forbade us to sell it until it had been delivered to us."
(*Sahih*)

٢٢٢٩ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عَبْدِ اللَّهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: كُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكْبَانِ جِزَافًا. فَتَهَانَا رَسُولُ اللَّهِ ﷺ أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ.

تخريج: أخرجه مسلم، البيوع، باب بطلان بيع المبيع قبل القبض، ح: ٣٤/١٥٢٦ من حديث

عبدالله بن نمير به.

Comments:

- It is known from this *Hadith* that buying grains with an estimate, without measuring or weighing, is correct but measuring and weighing is better to avoid any uncertainty.
- After making the deal, the goods should be taken to one's control and transferred from there; and thereafter should be sold.

^[1] When someone purchases food that was measured for him, he can not sell it until he has measured it again for his customer. See no. 2230.

2230. It was narrated that ‘Uthmân bin ‘Affân said: “I used to sell dates in the marketplace, and I would say: ‘This was such and such an amount (when I bought it).’ I would give the purchaser a specific amount of dates according to the way it had been measured for me, and take my profit. Then I began to have some doubts about that, so I asked the Messenger of Allâh ﷺ, and he said: ‘When you name the amount, measure it in front of the purchaser.’” (*Hasan*)

٢٢٣٠ - حَدَّثَنَا عَلِيُّ بْنُ مَيْمُونٍ الرَّقِّيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدَ عَنْ ابْنِ لَهِيْعَةَ، عَنْ مُوسَى بْنِ وَرْدَانَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ عُمَانَ بْنِ عَفَّانَ قَالَ: كُنْتُ أبيعُ التَّمْرَ فِي السُّوقِ. فَأَقُولُ: كَلْتُ فِي وَسْقِي هَذَا كَذَا. فَأَذْفَعُ أَوْسَاقَ التَّمْرِ بِكَيْلِهِ وَأَخْذُ شِفِّي. فَدَخَلَنِي مِنْ ذَلِكَ شَيْءٌ. فَسَأَلْتُ رَسُولَ اللَّهِ ﷺ فَقَالَ: «إِذَا سَمَيْتَ الْكَيْلَ فَكَيْلُهُ».

تخريج: [إسناده حسن] أخرجه أحمد: ٦٢/١ عن يحيى بن إسحاق ثنا ابن لهيعة ثنا موسى ابن وردان به * ويحيى من قدماء أصحاب ابن لهيعة كما في التهذيب: ٣٦١/٢ حفص بن هاشم وتابعه ابن المبارك وغيره عن ابن لهيعة به، وله شاهد عند مسلم من حديث ابن عمر رضي الله عنهما به.

Comments:

- a. The commodity bought as a measure should be measured again at the time of sale in order to avoid doubt and uncertainty and so that the customer will be satisfied.
- b. If there is doubt in any issue of lawfulness or unlawfulness, it should be clarified by a scholar.

Chapter 39. The Blessing That Is Hoped For When Measuring Food

(المعجم ٣٩) - بَابُ مَا يُرْجَى فِي كَيْلِ الطَّعَامِ مِنَ الْبُرْكََةِ (التحفة ٣٩)

2231. It was narrated that ‘Abdullâh bin Busr Al-Mâzini said: “I heard the Messenger of Allâh ﷺ say: ‘Measure your food, may you be blessed therein.’” (*Sahih*)

٢٢٣١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ الْيَحْضَبِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُسْرِ الْمَازِنِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «كَيْلُوا طَعَامَكُمْ يُبَارِكْ لَكُمْ فِيهِ».

تخريج: أخرجه البخاري في التاريخ الكبير: ١٥١/١ من حديث إسماعيل (وغيره) به، وإسناده حسن، وله شواهد عند البخاري (في صحيحه، ح: ٢١٢٨) وغيره، انظر الحديث الآتي.

2232. It was narrated from Abu Ayyub that the Prophet ﷺ said: "Measure your food, may you be blessed therein." (*Sahih*)

٢٢٣٢ - حَدَّثَنَا عَمْرُو بْنُ عُمَانَ بْنِ سَعِيدِ ابْنِ كَثِيرٍ بْنِ دِينَارِ الْجَمْعِيِّ: حَدَّثَنَا بَقِيَّةُ بْنُ الْوَلِيدِ عَنْ بَحِيرِ بْنِ سَعْدٍ، عَنْ خَالِدِ بْنِ مَعْدَانَ، عَنِ الْمُقَدَّامِ بْنِ مَعْدِيكَرْبَ، عَنْ أَبِي أَيُّوبَ، عَنِ النَّبِيِّ ﷺ قَالَ: «كَيْلُوا طَعَامَكُمْ يُبَارَكْ لَكُمْ فِيهِ».

تخريج: [صحيح] أخرجه أحمد: ٤١٤/٥ من حديث بقية، حدثني بحير بن سعد به، أخرجه البخاري، ح: ٢١٢٨ من حديث ثور عن خالد بن معدان عن المقدم بن معدي كرب به، ولم يذكر أباً أيوب، رضي الله عنهما.

Chapter 40. Marketplaces And Entering Them

(المعجم ٤٠) - بَابُ الْأَسْوَاقِ وَدُخُولِهَا
(التحفة ٤٠)

2233. It was narrated that Abu Usaid said that the Messenger of Allāh ﷺ went to the market of Nabit,^[1] and looked at it, and said: "This is not a market for you." Then we went to another market and looked at it, and said: "This is not a market for you." Then he came back to this market and walked around in it, then he said: "This is your market. It will always be your market and no duty will be levied on it." (*Da'if*)

٢٢٣٣ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْجَزَامِيُّ: حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ سَعِيدٍ: حَدَّثَنِي صَفْوَانُ بْنُ سَلِيمٍ: حَدَّثَنِي مُحَمَّدٌ وَعَلِيُّ. [ابننا] الْحَسَنُ بْنُ أَبِي الْحَسَنِ الْبُرَادُ أَنَّ الزُّبَيْرَ بْنَ الْمُنْذِرِ بْنِ أَبِي أُسَيْدٍ [السَّاعِدِيِّ]: حَدَّثَهُمَا أَنَّ أَبَاهُ الْمُنْذِرَ حَدَّثَهُ عَنْ أَبِي أُسَيْدٍ أَنَّ أَبَا أُسَيْدٍ حَدَّثَهُ أَنَّ رَسُولَ اللَّهِ ﷺ ذَهَبَ إِلَى سُوقِ النَّبِيطِ. فَتَنَظَرَ إِلَيْهِ، فَقَالَ: «لَيْسَ هَذَا لَكُمْ بِسُوقٍ» ثُمَّ ذَهَبَ إِلَى سُوقٍ. فَتَنَظَرَ إِلَيْهِ فَقَالَ: «لَيْسَ هَذَا لَكُمْ بِسُوقٍ» ثُمَّ رَجَعَ إِلَى هَذَا السُّوقِ فَطَافَ فِيهِ ثُمَّ قَالَ: «هَذَا سُوقُكُمْ. فَلَا يَنْتَقِصَنَّ وَلَا يُضْرَبَنَّ عَلَيْهِ خَرَجٌ».

تخريج: [إسناده ضعيف] أخرجه ابن أبي عاصم في الأحاد والمثنائي: ٤٥٤/٣، ح: ١٩٠٨ عن إبراهيم بن المنذر به، وقال البوصيري: هذا إسناده ضعيف * إسحاق لين الحديث، والزبير بن المنذر بن أبي أسيد مستور (تقريب).

[1] Meaning, the market where the Nabateans sell.

2234. It was narrated that Salmân said: "I heard the Messenger of Allâh ﷺ saying: 'Whoever goes to the Morning prayer first thing in the morning, he goes out with the banner of faith, but whoever goes out to the marketplace first thing in the morning, he goes out under the banner of Iblis (Satan).'" (Da'if)

٢٢٣٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ الْعُرُقِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا عَيْسُ بْنُ مَيْمُونٍ: حَدَّثَنَا عَوْنُ الْعَقِيلِيِّ، عَنْ أَبِي عُمَانَ النَّهْدِيِّ، عَنْ سَلْمَانَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ عَدَا إِلَى صَلَاةِ الصُّبْحِ، عَدَا بِرَايَةِ الْإِيمَانِ. وَمَنْ عَدَا إِلَى السُّوقِ، عَدَا بِرَايَةِ إِبْلِيسَ».

تخريج: [إسناده ضعيف جداً] أخرجه الطبراني في الكبير: ٢٥٥/٦، ح: ٦١٤٦ من حديث عيسى بن، وقال البوصيري في عيسى: هو متفق على تضعيفه، وقال الهيثمي: هو ضعيف متروك.

2235. It was narrated from Sâlim bin 'Abdullâh bin 'Umar, from his father, that his grandfather told that the Messenger of Allâh ﷺ said: "Whoever says, when he enters the marketplace: 'Lâ ilâha illallâh wahdahu lâ sharika lahu, lahul-mulk wa lahul-hamdu, yuhyi wa yumitu, wa Huwa hayyun la yamutu, bi yadihil-khairu kulluhu, wa Huwa 'ala kulli shay'in Qadir (None has the right to be worshiped but Allâh alone, with no partner, to Him belongs all sovereignty and to Him is the praise, He gives life and gives death, and He is Ever-Living and does not die; in His Hand is all goodness and He is Able to do all things),' Allâh will record for him one million good deeds, and will erase from him one million bad deeds, and will build for him a house in Paradise." (Da'if)

٢٢٣٥ - حَدَّثَنَا بَشْرُ بْنُ مَعَاذِ الضَّرِيرِ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، مَوْلَى آلِ الرَّبِيعِ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عَمَرَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَالَ حِينَ يَدْخُلُ السُّوقَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ. لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ يُحْيِي وَيُمِيتُ، وَهُوَ حَيٌّ لَا يَمُوتُ. بِيَدِهِ الْخَيْرُ كُلُّهُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ - كَتَبَ اللَّهُ لَهُ أَلْفَ أَلْفِ حَسَنَةٍ، وَمَحَا عَنْهُ أَلْفَ أَلْفِ سَيِّئَةٍ. وَبَنَى لَهُ بَيْتًا فِي الْجَنَّةِ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، الدعوات، باب ما يقول إذا دخل السوق، ح: ٣٤٢٩ من حديث حماد بن * وعمرو ضعيف كما في التقريب، وله طريق آخر عند الترمذي،

ح: ٣٤٢٨، وفيه أزهر بن سنان وهو ضعيف (تقريب)، وللحديث شواهد ضعيفة عند الحاكم: ١/٥٣٨، ٥٣٩، وابن السني وغيرهما.

Comments:

- Going to the market for lawful needs is allowed.
- Remembering Allâh at a place where the atmosphere is unmindful of Allâh is a matter of enormous reward.
- A good deed performed according to the Sunnah, which apparently looks small, has a high status before Allâh ﷻ.
- Only those words and supplications should be chanted and remembered which are authentically reported from the Prophet ﷺ; self made and self introduced remembrances must be avoided.

Chapter 41. The Blessing That Is Hoped For When Starting One's Day Early

(المعجم ٤١) - بَابُ مَا يُرْجَى مِنْ
الْبِرْكََةِ فِي الْبُكُورِ (التحفة ٤١)

2236. It was narrated from Sakhr Al-Ghâmidi that the Messenger of Allâh ﷺ said: "O Allâh, bless my nation in their early mornings (i.e., what they do early in the morning)." (*Hasan*)

He said: "When he sent out a raiding party or an army, he would send them at the beginning of the day."

He said:^[1] "Sakhr was a man engaged in trade, and he used to send his goods out at the beginning of the day, and his wealth grew and increased."

٢٢٣٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا هُشَيْمٌ عَنْ يَعْلَى بْنِ عَطَاءٍ، عَنْ عُمَارَةَ بْنِ حَدِيدٍ، عَنْ صَخْرِ الْعَامِدِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اللَّهُمَّ بَارِكْ لِأُمَّتِي فِي بُكُورِهَا».

قَالَ: وَكَانَ إِذَا بَعَثَ سَرِيَّةً أَوْ جَيْشًا، بَعَثَهُمْ فِي أَوَّلِ النَّهَارِ.

قَالَ: وَكَانَ صَخْرٌ رَجُلًا تَاجِرًا. فَكَانَ يَبْعَثُ تِجَارَتَهُ فِي أَوَّلِ النَّهَارِ فَأَثْرَى وَكَثُرَ مَالُهُ.

تخريج: [إسناده حسن] أخرجه سعيد بن منصور في سننه، ح: ٢٣٨٢ عن هشيم به، ومن طريقه أخرجه أبو داود، ح: ٢٦٠٦، وصححه ابن خزيمة، وابن حبان.

Comments:

- Morning time is a blessed time; therefore it should be spent in good work. It should not get wasted in negligence and sleep.
- Opening a shop early in the morning is a source of blessing for the shopkeeper.

^[1] It is likely that the speaker here is 'Umârah bin Hadid who narrated it from Sakhr in this narration, as well as with Abu Dâwud, Tirmidhi, Ahmad and others.

2237. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "O Allāh, bless my nation early in the morning of Thursday." (Sahih)

٢٢٣٧ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُمَانَ الْعُمَانِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ مَيْمُونِ الْمَدَنِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزُّنَادِ، عَنْ أَبِيهِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اللَّهُمَّ بَارِكْ لِأُمَّتِي فِي بُكُورِهَا يَوْمَ الْخَمِيسِ».

تخریج: [إسناده ضعيف] أخرجه الحافظ المزي في تهذيب الكمال، ق: ١٢٨٠/٣ من حديث أبي مروان به، وقال البوصيري: هذا إسناد ضعيف * محمد بن ميمون لم أجد من وثقه، وقال صاحب التهذيب في حديثه: منكر .

2238. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "O Allāh, bless my nation in their early mornings." (Sahih)

٢٢٣٨ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدِ بْنِ كَاسِبٍ: حَدَّثَنَا إِسْحَاقُ بْنُ جَعْفَرِ بْنِ مُحَمَّدِ ابْنِ عَلِيٍّ بْنِ الْحُسَيْنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرِ الْجَدْعَانِيِّ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: «اللَّهُمَّ بَارِكْ لِأُمَّتِي فِي بُكُورِهَا».

تخریج: [صحيح] أخرجه الخطيب في موضح أوهام الجمع والتفريق: ٣١٨/١ من حديث يعقوب بن حميد ثنا إسحاق بن جعفر عن محمد بن عبد الرحمن بن أبي بكر يعني عن عبيد الله بن عمر عن نافع به، وهو الصواب، وكذا أخرجه الطبراني في الصغير وغيره عن إسماعيل بن أبي أويس عن محمد بن عبد الرحمن الجدعاني به * الجدعاني وأبوه ضعيفان كما في التهذيب وغيره، وانظر، ح: ٢٢٣٦.

Chapter 42. Selling The Musarrāh^[1]

(المعجم ٤٢) - بَابُ بَيْعِ الْمُسَرَّرَةِ
(التحفة ٤٢)

2239. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever buys a Musarrāh, he has the choice (of annulling the deal) for three days. If he returns

٢٢٣٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ حَسَّانٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ

^[1] A Musarrāh is a sheep or she-camel that is not milked for one or two days, to increase the amount of milk in its udder, so that it can then be sold for a higher price. This kind of deception and cheating is forbidden in Islam.

it, then he must also give a *Sâ'* of dates, not *Samrâ'*." Meaning wheat. (*Sahih*)

أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ ابْتَاعَ مُصْرَاةً، فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ. فَإِنْ رَدَّهَا، رَدَّ مَعَهَا صَاعًا مِنْ تَمْرٍ، لَا سَمْرَاءَ» يَعْنِي الْحِنْطَةَ.

تخریج: أخرجه مسلم، البيوع، باب حكم بيع المصراة، ح: ۲۶، ۲۵/۱۵۲۴ من طريقين عن

محمد بن سيرين به.

Comments:

- When people want to sell a milch animal (like: a cow, buffalo, goat or sheep etc.), they stop milking it two or three days in advance; due to which the udders become quite full with milk. Looking at the big udders, the buyer thinks that this cow, buffalo, goat or camel will give a good amount of milk; thus he buys it and pays a good price. It is a kind of deception, and deceiving someone is unlawful.
- Three days deadline is fixed to cancel this transaction. Because the first day's milking does not disclose the secret of cheating; as for the second day, the buyer may think that the milk was less probably because of the change of atmosphere, or because of less or more fodder; but if the milk is less on the third day as well, then it means the milk was definitely stopped by the seller from being milked, and this is how the deception was committed.
- Paying a *Sâ'* of dates to the owner at the time of returning the animal is ordered on moral ground; because if the owner feels anger due to the cancellation of transaction, it may soothe the anger to some limit. It is not the price of the milk used for three days. If the buyer benefits from milk, he feeds the animal and looked after its necessary needs as well.

2240. 'Abdullâh bin 'Umar said: "The Messenger of Allâh ﷺ said: 'Whoever buys a *Muhaffalah*,^[1] he has the choice (of annulling the deal) for three days. If he returns it, then he must also give wheat equal to twice the amount of its milk, or equal to the amount of its milk.'" (*Da'if*)

۲۲۴۰ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي السَّمَاوِيِّ: حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ: حَدَّثَنَا صَدَقَةُ بْنُ سَعِيدِ الْحَقْفِيِّ: حَدَّثَنَا جَمِيعُ ابْنِ عُمَيْرِ التَّمِيمِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَا أَيُّهَا النَّاسُ مَنْ بَاعَ مُحَفَّلَةً فَهُوَ بِالْخِيَارِ ثَلَاثَةَ أَيَّامٍ. فَإِنْ رَدَّهَا، رَدَّ مَعَهَا مِثْلِي لَبْنِهَا أَوْ قَالَ مِثْلَ لَبْنِهَا قَمَحًا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب من اشترى مصراة فكرهها،

[1] Meaning: *Musarrâh*. (Sindi)

ح: ٣٤٤٦ من حديث عبد الواحد به * صدقة وجميع ضعيفان ضعفهما الجمهور، راجع التهذيب وغيره.

2241. It was narrated that 'Abdullâh bin Mas'ud said: "I bear witness that the true and truly inspired one Abul-Qâsim ﷺ told us: 'Selling a *Muhaffalah* is *Khilâbah*, and *Khilâbah* is not lawful for the Muslim.'" (Ibn Mâjah said: "Meaning: 'Deception.')" (*Da'if*)

٢٢٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا الْمَسْعُودِيُّ عَنْ جَابِرٍ، عَنْ أَبِي الصُّحَى، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: أَشْهَدُ عَلَى الصَّادِقِ الْمَصْدُوقِ أَبِي الْقَاسِمِ ﷺ أَنَّهُ حَدَّثَنَا، قَالَ: «بَيْعُ الْمُحَفَّلَاتِ خِلَابَةٌ. وَلَا تَحِلُّ الْخِلَابَةُ لِمُسْلِمٍ». [قَالَ ابْنُ مَاجَةَ: يَعْنِي الْخَدِيعَةَ]

تخريج: [إسناده ضعيف جداً] أخرجه أحمد: ٤٣٣/١ عن وكيع به.

Chapter 43. A Slave's Earnings Belong To His Guarantor^[1]

2242. It was narrated from 'Āishah that the Messenger of Allāh ﷺ ruled that what a slave earns belongs to his guarantor. (*Hasan*)

(المعجم ٤٣) - بَابُ الْخَرَاجِ بِالضَّمَانِ (التحفة ٤٣)

٢٢٤٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ ابْنِ أَبِي ذَثْبٍ عَنْ مُحَمَّدِ بْنِ حُمَافِ بْنِ إِيمَاءَ بْنِ رَحْضَةَ الْعِفَارِيِّ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ خَرَاجَ الْعَبْدِ بِضَمَانِهِ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: فيمن اشترى عبداً فاستعمله ثم جد به عبداً، ح: ٣٥٠٨، ٣٥٠٩ من حديث ابن أبي ذئب به، وصححه الترمذي، ح: ١٢٨٥، وابن الجارود، ح: ٦٢٧، وابن حبان، ح: ١١٢٥ وغيرهم.

2243. It was narrated from 'Āishah that a man bought a slave and put him to work, then he found some defect in him, so he returned him. He (the seller) said: "O Messenger of Allāh, he put my slave to work." The Messenger of

٢٢٤٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُسْلِمُ بْنُ خَالِدِ الزُّنْجِيِّ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ رَجُلًا اشْتَرَى عَبْدًا فَاسْتَعْلَهُ. ثُمَّ وَجَدَ بِهِ عَيْبًا فَرَدَّهُ. فَقَالَ:

[1] i.e., his master who put him to work at the time he earned that income.

Allâh ﷺ said: "A slave's earnings belong to his guarantor." (*Da'if*)

يَا رَسُولَ اللَّهِ إِنَّهُ قَدْ اسْتَعْلَلَ غُلَامِي. فَقَالَ رَسُولُ اللَّهِ ﷺ: «الْخَرَّاجُ بِالضَّمَانِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهق، الباب السابق، ح: ٣٥١٠ من حديث مسلم الزنجي به، وصححه ابن الجارود، ح: ٦٢٦، وابن حبان (موارد)، ح: ١١٢٦، والحاكم: ٢/١٥، والذهبي، وأعله الذهبي.

Comments:

- If something is bought which brings in income, and then it is returned, the buyer will not give anything in return to the seller along with the commodity for the number of days he kept it and benefited from it. Only the milking animal is exempt from this rule; a *Sâ'* of dates will be given in return along with the animal.
- If the animal dies while in the charge of the buyer; or anything else goes to waste or is destroyed, then the buyer will bear this loss. If the buyer gets an income from it, he deserves it. The buyer will not return the income earned from that item when returning it to the seller.

Chapter 44. Contractual Obligation Regarding A Slave

(المعجم ٤٤) - بَابُ عَهْدَةِ الرَّقِيقِ

(التحفة ٤٤)

2244. It was narrated from Samurah bin Jundab that the Messenger of Allâh ﷺ said: "The contractual obligation regarding a slave lasts for three days."^[1] (*Da'if*)

٢٢٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنْ الْحَسَنِ، إِنَّ شَاءَ اللَّهِ، عَنْ سَمُرَةَ ابْنِ جُنْدَبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «عَهْدَةُ الرَّقِيقِ ثَلَاثَةُ أَيَّامٍ».

تخريج: [إسناده ضعيف] أخرجه الطبراني في الكبير: ٢١٠/٧، ح: ٦٨٧٤ من حديث محمد بن عبدالله بن نمير (وغيره) به، وانظر، ح: ٤٢٩، ١٧٥، لعلته، وله شاهد ضعيف، انظر الحديث الآتي.

2245. It was narrated from 'Uqbah bin 'Amir that the Messenger of Allâh ﷺ said: "There is no contractual obligation after four (days)." (*Da'if*)

٢٢٤٥ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُثَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ، عَنْ الْحَسَنِ، عَنْ عُقْبَةَ بْنِ عَامِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا عَهْدَةَ بَعْدَ أَرْبَعٍ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهق، باب في عهدة الرقيق، ح: ٣٥٠٦،

[1] Meaning, the seller is responsible for any defect found in the slave during that time.

٣٥٠٧ من حديث الحسن به، وقال المنذري: هذا منقطع، فإن الحسن لم يصح له سماع من عقبه.

Comments:

The meaning of the *Hadith* is when one buys a slave and then later finds a defect in him. If the buyer comes across the defect within three days and he wants to return him, then he may do so. He is not allowed to do so after three days. But this *Hadith* is Weak. It is a moral and religious duty of every seller to disclose, very clearly, the defect in whatever he sells.

Chapter 45. One Who Sells Defective Goods Should Point Out The Defect

2246. It was narrated that 'Uqbah bin 'Âmir said: "I heard the Messenger of Allâh ﷺ say: "The Muslim is the brother of another Muslim, and it is not permissible for a Muslim to sell his brother goods in which there is a defect, without pointing that out to him." (Sahih)

(المعجم ٤٥) - بَابُ مَنْ بَاعَ عَيْبًا
فَلْيُبَيِّنْهُ (التحفة ٤٥)

٢٢٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ: حَدَّثَنَا أَبِي: سَمِعْتُ يَحْيَى ابْنَ أُيُوبَ يُحَدِّثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ شُمَّاسَةَ، عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْمُسْلِمُ أَخُو الْمُسْلِمِ. وَلَا يَجِلُّ لِلْمُسْلِمِ بَاعَ مِنْ أَخِيهِ بَيْعًا، فِيهِ عَيْبٌ، إِلَّا بَيَّنَّهُ لَهُ».

تخريج: أخرجه مسلم، النكاح، باب تحريم الخطبة على خطبة أخيه حتى يأذن أو يترك، ح: ١٤١٤ من حديث يزيد بن أبي حبيب به مطولاً بالفاظ مختلفة، والمعنى واحد.

Comments:

- Every Muslim should be a well-wisher of other Muslims.
- Any defect and shortcoming in the commodity on sale should be disclosed; because it may be that the defect does not have any bearing for the objective for which the buyer requires.
- The price of a fine quality item should not be set upon one of lower quality.
- Disclosing a defect of any commodity is honesty, and honesty is an important quality of a Muslim.

2247. It was narrated that Wâthilah bin Asqa' said: "I heard the Messenger of Allâh ﷺ say: 'Whoever sells defective goods without pointing it out, he will remain subject to the wrath of Allâh, and the angels will continue to curse him.'" (Da'if)

٢٢٤٧ - حَدَّثَنَا عَبْدُ الرَّهْمَنِ بْنُ الصَّحَّاحِ: حَدَّثَنَا بَقِيَّةُ بْنُ الْوَلِيدِ، عَنْ مُعَاوِيَةَ بْنِ يَحْيَى، عَنْ مَكْحُولٍ وَ سُلَيْمَانَ بْنِ مُوسَى، عَنْ وَاثِلَةَ بْنِ الْأَسْقَعِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ بَاعَ عَيْبًا لَمْ يَبَيِّنْهُ، لَمْ يَزَلْ فِي مَقْتِ اللَّهِ، وَلَمْ تَزَلِ الْمَلَائِكَةُ تَلْعَنُهُ».

تخریج: [إسناده ضعيف] أخرجه الطبراني في الكبير: ٢٢/٥٤، ٥٥، ح: ١٢٩ من حديث عبد الوهاب به باختلاف السند، وتابعه موسى بن أيوب عنه، ح: ١٥٧ باختلاف السند، بقية عنن، وعبد الوهاب بن الضحاك متروك، وفيه علة أخرى.

Chapter 46. Prohibition Of Separating Captives

2248. It was narrated that 'Abdullâh bin Mas'ud said: "When captives were brought to him, the Prophet ﷺ would give the members of one family together (to one person), not wanting to separate them." (*Da'if*)

تخریج: [إسناده ضعيف جداً] أخرجه ابن أبي شيبه: ١٩٢/٧، ح: ٢٨٥٦ عن وكيع به، وانظر، ح: ٣٥٦ لعلته.

2249. It was narrated that 'Ali said: "The Messenger of Allâh ﷺ gave me two slaves who were brothers, and I sold one of them. He said: 'What happened with the two slaves?' I said: 'I sold one of them.' He said: 'Take him back.'" (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أحمد: ١٠٢/١ عن عفان وغيره، والترمذي، ح: ١٢٨٤ عن ابن مهدي، كلهم عن حماد بن سلمة به، وقال الترمذي: حسن غريب، أخرجه أبو داود، ح: ٢٦٩٦ من طريق آخر عن الحكم به بلفظ مختلف، وقال: ميمون لم يدرك علياً، وللحديث شواهد ضعيفة عند البيهقي: ١٢٧/٩ وغيره، وصححه الحاكم.

2250. It was narrated that Abu Musa said: "The Messenger of Allâh ﷺ cursed the one who separates a mother and her child, or a brother from his brother." (*Da'if*)

(المعجم ٤٦) - بَابُ النَّهْيِ عَنِ التَّفْرِيقِ بَيْنَ السَّبْيِ (التحفة ٤٦)

٢٢٤٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ مُحَمَّدٌ بْنُ إِسْمَاعِيلَ. قَالَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سُفْيَانُ عَنْ جَابِرِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: كَانَ النَّبِيُّ ﷺ، إِذَا أُتِيَ بِالسَّبْيِ، أَعْطَى أَهْلَ الْبَيْتِ جَمِيعًا. كَرَاهِيَةً أَنْ يُفْرَقَ بَيْنَهُمْ.

٢٢٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَفَّانُ عَنْ حَمَّادِ: أَنَّ أَبَانَ الْحَجَّاجَ عَنِ الْحَكَمِ، عَنْ مَيْمُونِ بْنِ أَبِي شَيْبٍ، عَنْ عَلِيِّ قَالَ: وَهَبَ لِي رَسُولُ اللَّهِ ﷺ غُلَامَيْنِ أَخَوَيْنِ. فَعِثْتُ أَحَدَهُمَا. فَقَالَ: «مَا فَعَلَ الْغُلَامَانِ؟» قُلْتُ: بَعْتُ أَحَدَهُمَا. قَالَ: «رُدَّهُ».

٢٢٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو بْنِ الْهَيَّاجِ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى: أَنَّ أَبَانَ إِبْرَاهِيمَ بْنَ إِسْمَاعِيلَ عَنْ طَلْحَةَ بْنِ عِمْرَانَ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ مَنْ فَرَّقَ بَيْنَ الْوَالِدَةِ وَوَلَدِهَا. وَبَيْنَ الْأَخِ

وَتَيْنَ أَخِيهِ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ١٢٨/٩ من حديث عبيد الله بن موسى به، وقال: إبراهيم بن إسماعيل بن مجمع هذا لا يحتج به، وانظر، ح: ١٠٦٩، والسند ضعفه البوصيري.

Chapter 47. Buying Slaves

(المعجم ٤٧) - بَابُ شِرَاءِ الرَّقِيقِ

(التحفة ٤٧)

2251. It was narrated that 'Abdul-Majid bin Wahb said: "Addá' bin Khâlid bin Hawdhah said to me: 'Shall I not read to you a letter that the Messenger of Allâh ﷺ wrote to me?' I said: 'Yes.' So he took out a letter. In it was: 'This is what 'Addâ' bin Khâlid bin Hawdhah bought [from] Muhammad the Messenger of Allâh ﷺ. He bought from him a slave' - or - 'a female slave, having no ailments, nor being a runaway, nor having any malicious behavior. Sold by a Muslim to a Muslim.'" (Hasan)

٢٢٥١ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبَادُ ابْنُ لَيْثٍ، صَاحِبُ الْكُرَائِسِيِّ: حَدَّثَنَا عَبْدُ الْمَجِيدِ بْنُ وَهَبٍ قَالَ: قَالَ لِي الْعَدَاءُ بْنُ خَالِدِ بْنِ هُوْدَةَ: أَلَا تَقْرَأُ كِتَابًا كَتَبَهُ لِي رَسُولُ اللَّهِ ﷺ؟ قَالَ: قُلْتُ: بَلَى. فَأَخْرَجَ لِي كِتَابًا. فَإِذَا فِيهِ: «هَذَا مَا اشْتَرَى الْعَدَاءُ ابْنُ خَالِدِ بْنِ هُوْدَةَ [مِنْ] مُحَمَّدٍ رَسُولِ اللَّهِ ﷺ. اشْتَرَى مِنْهُ عَبْدًا أَوْ أَمَةً. لَا دَاءَ وَلَا غَائِلَةَ وَلَا خَبِيئَةَ. بَيْعَ الْمُسْلِمِ لِلْمُسْلِمِ».

تخريج: [حسن] أخرجه الترمذي، البيوع، باب ما جاء في كتابة الشروط، ح: ١٢١٦ عن محمد بن بشار به، وقال: حسن غريب، وعلقه البخاري قبل، ح: ٢٠٧٩ بصيغة التمرير، وصححه ابن الجارود، ح: ١٠٢٨، المنتقى، وحسنه الحافظ في الفتح: ٣٥٠/١٢ * عباد بن ليث مختلف فيه، وتابعه المنهال بن بحر عند الحافظ في تعليق التعليق: ٢١٩/٣ وغيره.

Comments:

- A document should be composed when selling and buying something precious.
- 'Bought a male or a female slave', i.e., the document has the word written 'male slave' or 'female slave'; this doubt is from 'Abbâd bin Laith, who is a teacher of Imam Ibn Mâjah's teacher.
- The word *Ghâ'ilah* is explained through various meanings: i.e. she does not have a habit of running away, stealing or committing adultery or any other bad habit; this word also means she is not stolen property; and the third meaning is that the seller is not hiding any defect in the slave.

2252. It was narrated from 'Amr bin Shu'aib from his father that his grandfather told that the Messenger of Allāh ﷺ said: "When anyone of you buys a slave woman let him say: 'Allāhumma inni as'aluka khairahā wa khaira mā jabaltahā 'alaihi, wa a'udhu bika min sharriha wa sharri mā jabaltahā 'alaihi (O Allāh, I ask You for the goodness within her and the goodness that You have made her inclined towards, and I seek refuge with You from the evil within her and the evil that You have made her inclined towards).' And he should pray for blessing. And if anyone of you buys a camel then he should take hold of its hump and pray for blessing and say similar words." (Hasan)

Chapter 48. Bartering And Excesses Not Permitted In Hand-To-Hand Exchange

2253. It was narrated that Mālik bin Aws bin Hadathān Nasri said: "I heard 'Umar bin Al-Khattāb say: 'The Messenger of Allāh ﷺ said: "Exchanging gold for gold is usury, unless it is done on the spot. (Exchanging) wheat for wheat is usury, unless it is done on the spot. (Exchanging) barley for barley is usury unless it is done on the spot. (Exchanging) dates for dates is usury, unless it is done on the spot." (Sahih)

٢٢٥٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنِ ابْنِ عَجَلَانَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اشْتَرَى أَحَدُكُمْ الْجَارِيَةَ فَلْيَقُلْ: اللَّهُمَّ إِنِّي أَسْأَلُكَ خَيْرَهَا وَخَيْرَ مَا جَبَلْتَهَا عَلَيْهِ. وَأَعُوذُ بِكَ مِنْ شَرِّهَا وَشَرِّ مَا جَبَلْتَهَا عَلَيْهِ. وَلْيَدْعُ بِالْبِرْكَ. وَإِذَا اشْتَرَى أَحَدُكُمْ بَعِيرًا فَلْيَأْخُذْ بِذِرْوَةِ سَنَامِهِ وَلْيَدْعُ بِالْبِرْكَ وَلْيَقُلْ مِثْلَ ذَلِكَ».

تخريج: [حسن] تقدم، ح: ١٩١٨ .

(المعجم ٤٨) - بَابُ الصَّرْفِ وَمَا لَا يَجُوزُ مُتَفَاضِلًا يَدًا بِيَدٍ (التحفة ٤٨)

٢٢٥٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ بْنُ مُحَمَّدٍ، وَهَشَامُ بْنُ عَمَّارٍ، وَنَصْرُ بْنُ عَلِيٍّ، وَ مُحَمَّدُ بْنُ الصَّبَّاحِ. قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ النَّصْرِيِّ قَالَ: سَمِعْتُ عَمَرَ بْنَ الْخَطَّابِ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «الذَّهَبُ بِالذَّهَبِ رِبًا إِلَّا هَاءَ وَهَاءَ. وَالْبُرُّ بِالْبُرِّ رِبًا إِلَّا هَاءَ وَهَاءَ. وَالشَّعِيرُ بِالشَّعِيرِ رِبًا إِلَّا هَاءَ وَهَاءَ. وَالتَّمْرُ بِالتَّمْرِ رِبًا

إِلَّا هَاءَ وَهَاءَ».

تخریج: أخرجه البخاري، البيهقي، باب ما يذكر في بيع الطعام والحكرة، ح: ٢١٣٤، ومسلم، المساقاة، باب الصرف وبيع الذهب بالورق نقدًا، ح: ١٥٨٦ من حديث سفیان (وغيره).

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Comments:

- If the category of foodstuff is the same but the kinds are different, then it is lawful to exchange them for each other with two conditions; A): The quantity from both sides should be equal, for example: a *Sâ'* of a certain type of dates may be exchanged for a *Sâ'* of another kind of dates. But taking or giving two *Sâ'* of dates in exchange for one *Sâ'* of dates is unlawful. B) To exchange foodstuff with immediate payment that both parties exchange things in the same meeting.
- Gold and silver have the same rule. Gold for gold should be exchanged with the payment on the spot, and equal weight.
- But if the class is different, then it is allowed to decrease and increase the weight and quantity; for example: Barley in exchange for wheat, or silver for gold, the equality of quantity is not necessary in this form. But the exchange should be made with immediate payment from both sides.
- If a person owns a low quality wheat and he wants to buy a better quality; the lawful method to do so is that he should sell his wheat for cash and then should buy the required wheat with money.

2254. Muslim bin Yasâr and 'Abdullâh bin 'Ubaid said: "Ubâdah bin Sâmit and Mu'âwiyah happened to meet, either in a church or in a synagogue. 'Ubâdah bin Sâmit narrated to them and said: 'The Messenger of Allâh ﷺ forbade us from selling silver for silver, gold for gold, wheat for wheat, barley for barley, and dates for dates.'" - one of them said: "And salt for salt," but the other did not say it. - "And he commanded us to sell wheat for barley, or barley for wheat, hand-to-hand, however we wished." (*Sahih*)

٢٢٥٤ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا
يَزِيدُ بْنُ زُرَيْعٍ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ
ابْنُ خِدَاشٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلِيٍّ قَالَا:
حَدَّثَنَا سَلْمَةُ بْنُ عَلْقَمَةَ التَّمِيمِيُّ: حَدَّثَنَا
مُحَمَّدُ بْنُ سِيرِينَ أَنَّ مُسْلِمَ بْنَ بَسَارٍ وَ عَبْدِ
اللهِ بْنَ عُبَيْدٍ حَدَّثَاهُ قَالَا: جَمَعَ الْمَنْزِلَ بَيْنَ
عِبَادَةَ بْنِ الصَّامِتِ وَمَعَاوِيَةَ. إِمَّا فِي كِنِيسَةِ
وَإِمَّا فِي بَيْعَةٍ. فَحَدَّثَهُمْ عِبَادَةُ بْنُ الصَّامِتِ
قَالَ: نَهَانَا رَسُولُ اللهِ ﷺ عَنْ بَيْعِ الْوَرَقِ
بِالْوَرَقِ، وَالذَّهَبِ بِالذَّهَبِ، وَالْبُرِّ بِالْبُرِّ،
وَالشَّعِيرِ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، قَالَ
أَحَدُهُمَا: وَالْمِلْحَ بِالْمِلْحِ. وَلَمْ يَقُلْهُ الْآخَرُ

وَأَمَرَنَا أَنْ نَبِيعَ الْبُرِّ بِالشَّعِيرِ، وَالشَّعِيرَ بِالْبُرِّ
يَدًا بِيَدٍ، كَيْفَ شِئْنَا.

تخریج: [إسناده صحيح] أخرجه النسائي: ٢٧٤/٧، البيهقي، . بيع البر بالبر،
ح: ٤٥٦٤، ٤٥٦٥ من حديث يزيد وإسماعيل به، وللحديث طريق آخر عند مسلم وغيره.

Comments:

According to some scholars this rule applies only to the following things: Gold, silver, wheat, barley, dates and salt. In the opinion of other scholars the same rule applies to all other things also, which are not mentioned in the *Hadith*; that it is impermissible to exchange good quality things for lower quality or vice versa, or with an amount that is less or more.

2255. It was narrated from Abu Hurairah that the Prophet ﷺ said: '(Sell) silver for silver, gold for gold, barley for barley, wheat for wheat, like for like.' (*Sahih*)

٢٢٥٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
يَعْلَى بْنُ عُبَيْدٍ: حَدَّثَنَا فُضَيْلُ بْنُ غَزْوَانَ عَنِ
ابْنِ أَبِي نُعْمٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ
قَالَ: «الْفِضَّةُ بِالْفِضَّةِ وَالذَّهَبُ بِالذَّهَبِ
وَالشَّعِيرَ بِالشَّعِيرِ وَالْحِنْطَةَ بِالْحِنْطَةِ، مِثْلًا
بِمِثْلٍ».

تخریج: أخرجه مسلم، المساقاة، باب الصرف وبيع الذهب بالورق نقداً، ح: ٨٤/١٥٨٨ من
حديث فضيل به.

2256. It was narrated that Abu Sa'eed said: "The Prophet ﷺ used to give us dates from the collection (mixed)^[1] dates, and we would exchange them for dates that were better, and we add to the price.^[2] The Messenger of Allāh ﷺ said: 'It is not right to give one *Sā'* of dates for two *Sā'*, nor one Dirham for two Dirham. A Dirham for a Dirham and a Dinār for a Dinār is allowed; the only difference

٢٢٥٦ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ
سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي
سَلَمَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: كَانَ النَّبِيُّ ﷺ
يُرْزُقُنَا تَمْرًا مِنْ تَمْرِ الْجَمْعِ. فَتَسْتَبْدِلُ بِهِ تَمْرًا
هُوَ أَطْيَبُ مِنْهُ وَنَزِيدٌ فِي السَّعْرِ. فَقَالَ رَسُولُ
اللَّهِ ﷺ: «لَا يَصْلُحُ صَاعٌ تَمْرٍ بِصَاعَيْنِ، وَلَا
دِرْهَمٌ بِدِرْهَمَيْنِ. وَالذَّرْهَمُ بِالذَّرْهَمِ وَالدِّينَارُ
بِالدِّينَارِ. [وَأَلَّا فَضْلٌ بَيْنَهُمَا إِلَّا وَزْنًا].»

[1] "It is said that every type of date whose name is not known is called *Jam'*; and it is said that the *Jam'* refers to a mixture of dates comprised of various types, none of which are most desirable, and not mixed except due to their inferiority." (Sindi).

[2] Meaning that they would give more, or twice as much as this for that.

between them is in weight (i.e., the weight must be equal.”
(*Sahih*)

تخريج: أخرجه البخاري، البيهقي، باب بيع الخلط من التمر، ح: ٢٠٨٠، ومسلم، المساقاة، باب بيع الطعام مثلاً بمثل، ح: ١٥٩٥ من حديث يحيى (بن أبي كثير) عن أبي سلمة به.

Comments:

- When exchanging dates for dates, the weight should be equal, less or more weight is not allowed. The same is the case of other things; it is unlawful to exchange the same class foodstuff for less or more weight.
- The exchange of new currency notes for old ones, or the exchange of big notes for small ones should be on the basis of equality in numbers. Giving one hundred and ten old notes for exchange of one hundred new notes; or to belittle the value of coins in exchange for a note of one hundred is unlawful. Because the currency market makes no difference between the value of new notes and old ones, or in the value of coins.

Chapter 49. One Who Says That There Is No Usury Except In Credit

2257. It was narrated that Abu Hurairah said: "I heard Abu Sa'eed Al-Khudri say: 'A Dirham for a Dirham and a Dinâr for a Dinâr.' So I said: 'I heard Ibn 'Abbâs say something other than that.' He said: 'But I met Ibn 'Abbâs and said: "Tell me about what you say concerning exchange - is it something that you heard from the Messenger of Allâh ﷺ or something that you found in the Book of Allâh?" He said: "I did not find it in the Book of Allâh, and I did not hear it from the Messenger of Allâh; rather Usâmah bin Zaid told me that the Messenger of Allâh ﷺ said: "Usury is only in credit."^[1]

(المعجم ٤٩) - بَابُ مَنْ قَالَ لَا رَبًّا إِلَّا فِي النَّسِيئَةِ (التحفة ٤٩)

٢٢٥٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا سُمْيَانُ بْنُ عَمِيئَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: الدَّرْهَمُ بِالدَّرْهَمِ وَالدينَارُ بِالدِّينَارِ. فَقُلْتُ: إِنِّي سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ غَيْرَ ذَلِكَ: قَالَ: أَمَا إِنِّي لَقَيْتُ ابْنَ عَبَّاسٍ فَقُلْتُ: أَخْبِرْنِي عَنْ هَذَا الَّذِي تَقُولُ فِي الصَّرْفِ، أَشَيْءٌ سَمِعْتَهُ مِنْ رَسُولِ اللَّهِ ﷺ، أَمْ شَيْءٌ وَجَدْتَهُ فِي كِتَابِ اللَّهِ؟ فَقَالَ: مَا وَجَدْتُهُ فِي كِتَابِ اللَّهِ، وَلَا سَمِعْتُهُ مِنْ رَسُولِ اللَّهِ. وَلَكِنْ أَخْبَرَنِي أُسَامَةُ بْنُ زَيْدٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِنَّمَا الرَّبَا فِي النَّسِيئَةِ».

[1] Meaning on credit, when the payment is deferred.

تخريج: أخرجه البخاري، البيهقي، باب بيع الدينار بالدينار نساء، ح: ٢١٧٨، ٢١٧٩ من حديث عمرو بن دينار به، ومسلم، المساقاة، الباب السابق، ح: ١٥٩٦ من حديث سفيان به.

Comments:

- Exchange of gold for silver or silver for gold should be with the payment on the spot.
- The currency of different countries should be exchanged according to the current rate with immediate payment. If one has American dollars and he wants to exchange them for Saudi riyals; or a person says, 'you give me the dollars and I shall pay you tomorrow such and such amount of riyals'; it is not allowed.
- 'Interest involves only when the payment is made later' this is if the exchanged items are of a different class; for example: gold for silver, or if wheat for dates are exchanged. It is allowed to exchange them for different amounts, so the exchange of one gram of gold for ten or fifteen grams of silver, or the exchange of forty kilograms of wheat for eighty kilograms of barley is allowed, provided the payment is made on the spot from both parties. The exchange of the same class for more or less amount is not allowed, even if the payment is made on the spot. It is also unlawful to exchange forty kilograms of good quality wheat for eighty kilograms of lower quality, even though the payment is made immediately from both sides.

2258. It was narrated that Abu Jawzâ' said: "I heard him - meaning Ibn 'Abbâs - allowing exchange (of Dirhams for Dirham etc., if extra was given) and that was narrated from him. Then I heard that he has taken back this opinion. I met him in Makkah and said: 'I heard that you had taken back (your opinion).' He said: 'Yes. That was just my own opinion, but Abu Sa'eed narrated from the Messenger of Allâh ﷺ that he forbade exchange (of like items if extra is given).'" (*Sahih*)

٢٢٥٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَدَدَةَ: أَنَّ أَبَانَا حَمَّادَ
ابْنَ زَيْدٍ، عَنْ سُلَيْمَانَ بْنِ عَلِيٍّ الرَّبِيعِيِّ، عَنْ
أَبِي الْجَوْزَاءِ قَالَ: سَمِعْتُهُ يَأْمُرُ بِالصَّرْفِ.
يَعْنِي ابْنَ عَبَّاسٍ. وَيُحَدِّثُ ذَلِكَ عَنْهُ. ثُمَّ
بَلَغَنِي أَنَّهُ رَجَعَ عَنْ ذَلِكَ. فَلَقِيْتُهُ بِمَكَّةَ
فَقُلْتُ: إِنَّهُ بَلَغَنِي أَنَّكَ رَجَعْتَ. قَالَ: نَعَمْ.
إِنَّمَا كَانَ ذَلِكَ رَأْيًا مِنِّي. وَهَذَا أَبُو سَعِيدٍ
يُحَدِّثُ عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ نَهَى عَنِ
الصَّرْفِ.

تخريج: [إسناده صحيح] أخرجه أحمد: ٤٨/٣ من حديث سليمان الربيعي به.

Comments:

- Bai' Sarf* is to exchange gold for silver or silver for gold, or the exchange of one country's currency with the currency of other country.
- Currency of a country is one class, and the currency of another country is a

different class, although their name is same; for example: As Pakistani rupee and the Indian rupee are two different classes.

- c. It is an agreed view that the exchange of different classes of currency will be unlawful if one party pays cash on the spot and the other party promises to pay later; because the immediate payment from both sides is a condition. Another condition is that if the currency is of the same class, then the increase or decrease in the amount given and taken must not be practiced.

Chapter 50. Exchanging Gold For Silver

2259. It was narrated that Zuhri heard Mâlik bin Aws bin Hadathân say: "I heard 'Umar say: "The Messenger of Allâh ﷺ said: 'Gold for silver is usury, unless it is exchanged on the spot.'" (Sahih)

Abu Bakr bin Abu-Shaibah said: "I heard sufyan saying: 'Gold for silver.'" memorize (this).

Comments:

- The exchange of gold and silver is permissible provided the payment from both sides is made on the spot.
- If this condition does not exist, then the exchange of gold and silver is Islamically prohibited.

2260. It was narrated that Mâlik bin Aws bin Hadathân said: "I came saying. 'Who will exchange Dirham?' Talhah bin 'Ubaidullâh, who was with 'Umar bin Khattâb, said: 'Show us your gold, then come to us; when our treasure comes, we will give you your silver.' 'Umar said: 'No, by Allâh, you will give him silver (now), or give him back his gold, for the Messenger of Allâh ﷺ said: "Silver for gold is usury, unless it is exchanged on the spot.'" (Sahih)

(المعجم ٥٠) - بَابُ صَرْفِ الذَّهَبِ

بِالْوَرِقِ (التحفة ٥٠)

٢٢٥٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، سَمِعَ مَالِكَ ابْنَ أَوْسِ بْنِ الْحَدَثَانِ يَقُولُ: سَمِعْتُ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «الذَّهَبُ بِالْوَرِقِ رِبًا، إِلَّا هَاءَ وَهَاءَ».

قَالَ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: سَمِعْتُ سُفْيَانَ يَقُولُ: الذَّهَبُ بِالْوَرِقِ. احْفَظُوا.

تخریج: [صحيح] تقدم، ح: ٢٢٥٣.

٢٢٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنْبَأَنَا اللَّيْثُ ابْنُ سَعْدٍ، عَنِ ابْنِ شِهَابٍ، عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ قَالَ: أَقْبَلْتُ أَقُولُ: مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ، وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ: أَرِنَا ذَهَبَكَ. ثُمَّ اثْنًا، إِذَا جَاءَ خَازِنُنَا، نُعْطِكَ وَرَقَكَ.

فَقَالَ عُمَرُ: كَلَّا، وَاللَّهِ، لَتُعْطِيَنَّ وَرَقَهُ أَوْ لَتَرُدَّنَّ إِلَيْهِ ذَهَبَهُ. فَإِنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْوَرِقُ بِالذَّهَبِ رِبًا، إِلَّا هَاءَ وَهَاءَ».

تخریج: [صحيح] تقدم، ح: ٢٢٥٣.

Comments:

Talhah bin 'Uбайдullah ؓ is one of the ten noble Companions ؓ who were given the good news of Paradise in their life. Despite this great honor, he did not know this issue until 'Umar ؓ gave the explanation. Therefore, being a great scholar does not mean that there is not any issue which he does not know; or that it is impossible for him to make any mistake and in any issue.

2261. It was narrated from 'Umar bin Muhammad bin 'Ali bin Abi Tâlib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Dinâr for Dinar, Dirham for Dirham, with no increase between them. Whoever has need of silver, let him trade gold for it, and whoever has need of gold, let him trade silver for it, and let the transaction be done on the spot.'" (*Da'if*)

٢٢٦١ - حَدَّثَنَا أَبُو إِسْحَاقَ الشَّافِعِيُّ إِبْرَاهِيمُ
ابْنُ مُحَمَّدِ بْنِ الْعَبَّاسِ: حَدَّثَنِي أَبِي عَنْ أَبِيهِ
الْعَبَّاسِ بْنِ عُمَانَ بْنِ شَافِعٍ، عَنْ عُمَرَ بْنِ
مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ، عَنْ أَبِيهِ، عَنْ
جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الدِّينَارُ
بِالدِّينَارِ، وَالذَّرْهَمُ بِالذَّرْهَمِ، لَا فَضْلَ
بَيْنَهُمَا. فَمَنْ كَانَتْ لَهُ حَاجَةٌ بِوَرِقٍ،
فَلْيُضْطَرِّفْهَا بِذَهَبٍ. وَمَنْ كَانَتْ لَهُ حَاجَةٌ
بِذَهَبٍ، فَلْيُضْطَرِّفْهَا بِالْوَرِقِ. وَالصَّرْفُ هَاءَ
وَهَاءَ».

تخريج: [إسناده ضعيف] أخرجه الطبراني في الأوسط: ٧/١٨٣، ١٨٤، ح: ٦٣٤٣ من حديث إبراهيم بن محمد به، وقال البوصيري: هذا إسناد ضعيف * عباس بن عثمان لا يعرف حاله (تقريب).

Chapter 51. Exchanging Gold For Silver And Silver For Gold

2262. It was narrated that Ibn 'Umar said: "I used to sell camels, and I used to buy gold for silver and silver for gold, Dinâr for Dirham and Dirham for Dinâr. I asked the Prophet ﷺ about that, and he said: 'If you take one of them and give the other, then you and your companion should not separate until everything is clear (i.e., the exchange is completed).'" (*Hasan*)

(المعجم ٥١) - بَابُ اقْتِضَاءِ الذَّهَبِ مِنَ
الْوَرِقِ وَالْوَرِقِ مِنَ الذَّهَبِ (التحفة ٥١)
٢٢٦٢ - حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ
حَبِيبٍ، وَ سَفِيَانُ بْنُ وَكَيْعٍ، وَمُحَمَّدُ بْنُ عُيَيْدٍ
بْنُ بَعْزَلَةَ الْجَمَّالِيُّ. قَالُوا: حَدَّثَنَا عُمَرُ بْنُ
عُبَيْدِ الطَّنَافِيسِيِّ: حَدَّثَنَا عَطَاءُ بْنُ السَّائِبِ أَوْ
سِمَاكٌ وَلَا أَعْلَمُهُ إِلَّا سِمَاكٌ، عَنْ سَعِيدِ بْنِ
جُبَيْرٍ، عَنِ ابْنِ عُمَرَ قَالَ: كُنْتُ أُبِيعُ الْإِبِلَ.
فَكُنْتُ أَخُذُ الذَّهَبَ مِنَ الْفِضَّةِ، وَالْفِضَّةَ مِنَ
الذَّهَبِ. وَالذَّنَانِيرَ مِنَ الذَّرَاهِمِ، وَالذَّرَاهِمَ

Another chain with similar wording.

مِنَ الدَّنَانِيرِ. فَسَأَلْتُ النَّبِيَّ ﷺ فَقَالَ: «إِذَا أَخَذْتَ أَحَدَهُمَا وَأَعْطَيْتَ الْآخَرَ، فَلَا تُفَارِقْ صَاحِبَكَ وَبَيْتَكَ وَبَيْنَهُ لَيْسَ».

حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا يَعْقُوبُ ابْنُ إِسْحَاقَ: أَنَّ أَبَانَا حَمَّادُ بْنُ سَلَمَةَ، عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب في اقتضاء الذهب من الورق، ح: ٣٣٥٤، ٣٣٥٥ من حديث سماك به، وصححه ابن حبان (موارد)، ح: ١١٢٨، وابن الجارود، ح: ٦٥٥، والحاكم ٤٤/٢ على شرط مسلم، ووافقه الذهبي.

Comments:

The meaning of the *Hadith* is that the transaction of something was done for Dinâr, but the buyer paid the price in Dirham according to the exchange rate of Dinâr of the same day; it is lawful if the payment is made immediately in the same meeting.

Chapter 52. Prohibition Of Breaking Dirham And Dinâr

(المعجم ٥٢) - بَابُ النَّهْيِ عَنِ كَسْرِ الدَّرَاهِمِ وَالدَّنَانِيرِ (التحفة ٥٢)

2263. It was narrated from 'Alqamah bin 'Abdullâh that his father said: "The Messenger of Allâh ﷺ forbade breaking the coins of the Muslims that are in circulation among them, without any necessary reason."^[1] (*Da'if*)

٢٢٦٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ شُوَيْدُ بْنُ سَعِيدٍ، وَ هَارُونُ بْنُ إِسْحَاقَ. قَالُوا: أَنَّ أَبَانَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ ابْنِ فُضَّاءٍ، عَنْ أَبِيهِ، عَنْ عَلْقَمَةَ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِيهِ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ كَسْرِ سِكِّةِ الْمُسْلِمِينَ الْجَائِزَةِ بَيْنَهُمْ. إِلَّا مِنْ بَأْسٍ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب: في كسر الدراهم، ح: ٣٤٤٩ من حديث المعتمر به * محمد بن فضاء ضعيف، وأبوه مجهول (تقريب).

Comments:

The explanation of *Hadith* is that the coin of gold or silver which is official

[1] Since the coins were minted from silver and gold, they used to give a portion of them for some payments.

and is in circulation in the currency market, and also used for trade; it is unlawful to turn it into just normal gold or silver, because it disturbs the system that fulfills the needs of Muslims and the general public. However, if there is a genuine need to do so, for example, if the coin is unusable, in that case it might be dissolved into gold or silver.

Chapter 53. Selling Fresh Dates For Dried Dates

(المعجم ٥٣) - بَابُ بَيْعِ الرُّطْبِ بِالتَّمْرِ
(التحفة ٥٣)

2264. It was narrated from 'Abdullâh bin Yazid, the freed slave of Al-Aswad bin Sufyân, that Zaid, Abu 'Ayyâsh, the freed slave of Bani Zuhrah, told him that he asked Sa'd bin Abu Waqqâs about buying wheat with barley. Sa'd said to him: "Which of them is better?" He said: "Wheat." He told him not to do that and said: "I heard the Messenger of Allâh ﷺ being asked about buying fresh dates with dried dates, and he said: 'Do fresh dates decrease in weight when they become dry?' They said: 'Yes.' So he told them not to do that." (*Hasan*)

٢٢٦٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ وَوِاسِحَاقُ بْنُ سُلَيْمَانَ. قَالَ: حَدَّثَنَا مَالِكُ ابْنِ أَنَسٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدٍ، مَوْلَى الْأَسْوَدِ ابْنِ سُفْيَانَ أَنَّ زَيْدًا، أَبَا عَيَّاشٍ، مَوْلَى لَيْثِي زُهْرَةَ، أَخْبَرَهُ أَنَّهُ سَأَلَ سَعْدَ بْنَ أَبِي وَقَّاصٍ عَنِ اشْتِرَاءِ الْبَيْضَاءِ بِالتَّمْرِ. فَقَالَ لَهُ سَعْدٌ: أَيُّهُمَا أَفْضَلُ؟ قَالَ: الْبَيْضَاءُ. فَهَيَّانِي عَنْهُ وَقَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ سُئِلَ عَنِ اشْتِرَاءِ الرُّطْبِ بِالتَّمْرِ فَقَالَ: «أَيْتَنَصُّ الرُّطْبُ، إِذَا يَيْسُ؟» قَالُوا: نَعَمْ. فَهَيَّانِي عَنْ ذَلِكَ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: في الثمر بالتمر، ح: ٣٣٥٩ من حديث مالك به، وهو في الموطأ (رحمى): ٦٢٤/٢، وصححه الترمذي، ح: ١٢٢٥، وابن الجارود، ح: ٦٥٧، والحاكم: ٣٩، ٣٨/٢، والذهبي.

Comments:

- Sult* is a type of barley without any skin on it. It resembles wheat because of not having any skin; but its natural consumption quality is like barley. Anyhow it is counted from among the kinds of barley.
- The exchange of fresh and dry dates for each other is forbidden even though the payment is made on the spot.
- The dry and fresh dates apparently are the same class, and exchanging them for each other should be lawful, but this is not the case, and the reason of its prohibition is that they are not really equal in weight, despite their apparent look of equality in weight; because the fresh dates lose weight when they are dried.

Chapter 54. The *Muzābanah* and The *Muhāqalah*^[1]

(المعجم ٥٤) - بَابُ الْمُرَابَنَةِ وَالْمُحَاقَلَةِ

(التحفة ٥٤)

2265. It was narrated that 'Abdullāh bin 'Umar said: "The Messenger of Allāh ﷺ forbade the *Muzābanah*. The *Muzābanah* means when a man sells the dates of his grove when they are still on the tree, for a measure of dry dates,^[2] or, if it is grapes, he sells them when they are still on the vine, for a measure of raisins; or if it is a crop, he sells it for food, estimating the amount (of the crop in the field). He forbade all of these things." (*Sahih*)

٢٢٦٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: أَنَّ أَبَانَ الْلَيْثِ ابْنَ سَعْدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُرَابَنَةِ وَالْمُرَابَنَةُ أَنْ يَبِيعَ الرَّجُلُ تَمْرَ حَائِطِهِ، إِنْ كَانَتْ نَخْلًا، بِتَمْرٍ كَيْلًا. وَإِنْ كَانَتْ كَرْمًا، أَنْ يَبِيعَهُ بِزَيْبٍ كَيْلًا. وَإِنْ كَانَتْ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ. نَهَى عَنِ ذَلِكَ كُلِّهِ.

تخریج: أخرجه البخاري، البيوع، باب بيع الزرع بالطعام كيلاً، ح: ٢٢٠٥، ومسلم، البيوع، باب تحريم بيع الرطب بالتمر إلا في العراق، ح: ١٥٤٢/٧٦ من حديث الليث به.

Comments:

The *Muzābanah* transaction is when a person buys the fruits from an orchard of dates and pays a fixed amount of dry dates for it as price; or for example: he says: "I will buy all the crops about to ripen, of such and such field, for two thousand kilograms of wheat. It is unlawful because of the uncertainty of the produce of wheat in the field, if it is more than two thousand kilograms or less than that. This type of sale regarding the crops of field is called *Muhāqalah*; and the same type of transaction of the fruits of an orchard is called *Muzābanah*.

2266. It was narrated from Jābir bin 'Abdullāh that the Messenger of Allāh ﷺ forbade the *Muhāqalah* and the *Muzābanah*. (*Sahih*)

٢٢٦٦ - حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي الزُّبَيْرِ وَ سَعِيدِ بْنِ مَيْمَنَاءَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنِ الْمُحَاقَلَةِ وَالْمُرَابَنَةِ.

تخریج: أخرجه مسلم، البيوع، باب النهي عن المحاقلة والمزابنة... إلخ، ح: ١٥٣٦/٨٥

[1] The *Muzābanah*: Selling fruit that is still on the tree for a measured amount of the dried fruit. The *Muhāqalah*: Selling crops that have not yet ripened for food that has already been harvested.

[2] Estimating the amount of dates on the tree.

من حديث حماد بن زيد به .

2267. It was narrated that Râfi' bin Khadij said: "The Messenger of Allâh ﷺ forbade the *Muhâqalah* and the *Muzâbanah*." (*Hasan*)

٢٢٦٧ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيوع، باب: في التشديد في ذلك، ح: ٣٤٠٠ من حديث أبي الأحوص به * طارق بن عبد الرحمن وثقه الجمهور، وحديثه لا ينزل عن درجة الحسن.

Chapter 55. The Sale 'Arâyâ^[1] By Estimating Its Amount For Dry Dates.

(المعجم ٥٥) - بَابُ بَيْعِ الْعَرَايَا
بِخَرِصِهَا تَمْرًا (التحفة ٥٥)

2268. It was narrated from Sâlim from his father: "Zaid bin Thâbit narrated to me that the Messenger of Allâh ﷺ gave a concession regarding the sale of 'Arâyâ." (*Sahih*)

٢٢٦٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا شَفِيَانُ بْنُ عَيْثَةَ، عَنِ الزُّهْرِيِّ عَنْ سَالِمٍ، عَنْ أَبِيهِ: حَدَّثَنِي زَيْدُ بْنُ ثَابِتٍ أَنَّ رَسُولَ اللَّهِ ﷺ رَخَّصَ فِي الْعَرَايَا.

تخريج: أخرجه البخاري، البيوع، باب بيع المزابة وهي بيع التمر بالتمر وبيع الزبيب بالكرم وبيع العرايا، ح: ٢١٨٤، ومسلم، البيوع، باب تحريم بيع الرطب بالتمر إلا في العرايا، ح: ١٥٢٩ من حديث الزهري به .

2269. It was narrated from 'Abdullâh bin 'Umar that he said: "Zaid bin Thâbit told me that the Messenger of Allâh ﷺ gave a concession regarding the sale of the estimated harvest of 'Arâyâ in return for dried dates." (*Sahih*)

٢٢٦٩ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنبَأَنَا اللَّيْثُ ابْنُ سَعْدٍ، عَنْ بَحْيِيِّ بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ قَالَ: حَدَّثَنِي زَيْدُ بْنُ ثَابِتٍ أَنَّ رَسُولَ اللَّهِ ﷺ أَرَخَّصَ فِي بَيْعِ الْعَرِيَّةِ بِخَرِصِهَا تَمْرًا.

Yahya (one of the narrators) said: "The 'Arâyâ is when a man purchases dates on the trees for

قَالَ يَحْيَى: الْعَرِيَّةُ أَنْ يَشْتَرِيَ الرَّجُلُ تَمْرَ

[1] 'Arâyâ refers to trees of the coming harvest which are given as a gift, but the giver will be troubled by the recipient's coming to his grove to collect the dates, so he offers to sell him dried, measured dates in return for the coming harvest. This is the definition of Imâm Mâlik, see the definition after no. 2269 which follows, and those listed in *Sahih Al-Bukhâri* under chapter no. 84 in the Book of Sales.

food that his family has that is ripe, by estimating them (the dates)."

التَّخْلَاتِ بِطَعَامِ أَهْلِهِ رُطْبًا، بِخَرَصِهَا [تَمْرًا].

تخريج: أخرجه البخاري، المساقاة، باب الرجل يكون له ممر أو شرب في حائط أو في نخل، ح: ٢٣٨٠، ومسلم، البيوع، الباب السابق، ح: ١٥٣٩/٦١ من حديث يحيى بن سعيد به.

Comments:

It is a general rule that the exchange of dates for dates should be equal in weight and paid on the spot from both sides, but the issue of *Arâyâ* is exempt from this rule. The definition of *Arâyâ* according to Imâm Mâlik رحمه الله is that a person offers a tree of fresh dates to another person so that his household may benefit from fresh dates, but the frequency of the person into the orchard disturbs the owner, in this case the owner is allowed to buy the fruit of the gifted tree for dry dates. Another explanation mentioned (in *Sahih Al-Bukhâri, Hadith: 2192*) is that the fresh fruit of the tree will be estimated according to the weight it will have when it dries up, and then the tree will be taken back by paying that amount of dry dates. Thus the fresh dates still on the tree are bought for the dry dates, and the dry dates are paid in measure. It is to be known that the quantity of dates involved in this transaction must be less than five *Wasq*.

Chapter 56. Selling Animals For Animals On Credit

(المعجم ٥٦) - بَابُ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً (التلحفة ٥٦)

2270. It was narrated from Samurah bin Jundub that the Messenger of Allâh ﷺ forbade selling animals for animals on credit. (*Sahih*)

٢٢٧٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ بْنِ جُنْدُبٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً.

تخريج: [صحیح] أخرجه أبو داود، البيوع، باب: في الحيوان بالحيوان نسيئة، ح: ٣٣٥٦ من حديث قتادة به، وصححه الترمذي، ح: ١٢٣٧، وابن الجارود، ح: ٦١١، رواه شعبة عن قتادة به، كما في أربع نسخ من سنن الإمام النسائي رحمه الله، وانظر، ح: ٢١٨٣، وله شواهد عند ابن حبان(موارد)، ح: ١١١٣ وغيره.

2271. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: "There is nothing wrong with selling animals, one for two, hand to hand," but he disliked selling them on credit. (*Da'if*)

٢٢٧١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ وَ أَبُو خَالِدٍ، عَنْ حَجَّاجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ

قَالَ: «لَا بَأْسَ بِالْحَيَوَانِ، وَاحِدًا بِأُثْنَيْنِ، يَدًا
بِيَدٍ» وَكَرِهَهُ نَسِيئَةً.

تخريج: [إسناده ضعيف] أخرجه الترمذي، البيهقي، باب ما جاء في كراهية بيع الحيوان بالحيوان نسيئة، ح: ١٢٣٨ من حديث حجاج بن أرطاة به، وقال: هذا حديث حسن، والحديث السابق يعني عنه.

Comments:

- Exchange of an animal for an animal is allowed.
- The exchange of animals by both parties should be made immediately when exchanging an animal for an animal.
- The equality of numbers is not necessary when exchanging an animal for an animal, for example, two cows of a lower category can be given in exchange for one cow of a higher category. Or two goats of a lower breed can be given in exchange for one goat of good breed.

Chapter 57. Selling Animals For Animals, Of Different Kinds, Hand To Hand

(المعجم ٥٧) - بَابُ الْحَيَوَانِ بِالْحَيَوَانِ
مُتَّفَاضِلًا يَدًا بِيَدٍ (التحفة ٥٧)

2272. It was narrated from Anas that the Prophet ﷺ bought Safiyyah for seven slaves. (*Sahih*) (One of the narrators) 'Abdur-Rahmân said: "From Dihyah Kalbi."

٢٢٧٢ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا الْحُسَيْنُ بْنُ عُرْوَةَ؛ ح: وَحَدَّثَنَا أَبُو عَمْرٍو حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ. قَالَا: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ ثَابِتٍ، عَنْ أَنَسِ بْنِ النَّبِيِّ ﷺ اشْتَرَى صَفِيَّةَ بِسَبْعَةِ أَرْوَاسٍ.

قَالَ عَبْدُ الرَّحْمَنِ: مِنْ دِحْيَةَ الْكَلْبِيِّ.

تخريج: [إسناده صحيح] أخرجه أبو داود، الخراج، باب ما جاء في سهم الصفي، ح: ٢٩٩٧ من حديث حماد به، وصححه البوصيري، وأصله متفق عليه.

Comments:

- Safiyyah ﷺ was the daughter of the chief of her tribe. She was under the control of the Muslims because of her being a prisoner of war. She was given to Dihyah Kalbi as his share from the distribution of the war booty. The Messenger of Allâh ﷺ requested that, as she was a daughter of a chief; it is better if she was with him. So the Messenger of Allâh ﷺ bought her from Dihyah.
- The trade of male and female slaves was allowed, which Islam gradually brought to an end.
- There is a great reward for setting free male and female slaves alike; particularly when they are Muslims and good in conduct.

Chapter 58. Emphatic Prohibition Of Usury

(المعجم ٥٨) - بَابُ التَّغْلِيظِ فِي الرِّبَا

(التحفة ٥٨)

2273. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "On the night in which I was taken on the Night Journey (*Al-Isra'*), I came to people whose stomachs were like houses, in which there were snakes that could be seen from outside their stomachs. I said: 'Who are these, O Jibrá'il?' He said: 'They are the ones who consumed usury.'" (*Da'if*)

٢٢٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا الْحَسَنُ بْنُ مُوسَى، عَنْ حَمَادِ بْنِ سَلَمَةَ، عَنْ عَلِيِّ بْنِ زَيْدٍ، عَنْ أَبِي الصَّلْتِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَتَيْتُ، لَيْلَةَ أُسْرِي بِي، عَلَى قَوْمٍ بَطُونُهُمْ كَالْبُيُوتِ، فِيهَا الْحَيَاتُ تُرَى مِنْ خَارِجِ بَطُونِهِمْ. فَقُلْتُ: مَنْ هَؤُلَاءِ يَا جِبْرَائِيلُ؟ قَالَ: هَؤُلَاءِ أَكَلَةُ الرِّبَا».

تخريج: [إسناده ضعيف] أخرجه أحمد: ٢/٣٥٣، ٣٦٣ من حديث حماد به مطولاً، انظر، ح: ١١٦ لعلته * وأبوالصلت مجهول كما في التقريب (الكنى، ص: ٤١٢).

2274. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There are seventy degrees of usury, the least of which is equivalent to a man having intercourse with his mother." (*Hasan*)

٢٢٧٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ أَبِي مَعْشَرٍ، عَنْ سَعِيدِ الْمُقْبَرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الرِّبَا سَبْعُونَ حُوبًا. أَيْسَرُهَا أَنْ يَنْكِحَ الرَّجُلُ أُمَّهُ».

تخريج: [حسن] وقال البوصيري: هذا إسناده ضعيف، أبو معشر هو نجيح بن عبدالرحمن متفق على تضعيفه، وله شاهد قوي عند ابن الجارود، ح: ٦٤٧، وانظر الحديث الآتي.

Comments:

- Interest (or usury alike) is a great factor behind the destruction of a society. It has enormous aspects of economic and social damages and losses; that is why one single sin of interest or usury has been declared equal to seventy types of sins. This *Hadith* also shows that the sins are of different degrees.
- If the least sin is so huge and detestable, then what about the rest of the sixty-nine types of sins, how horrible they will be?!!
- The most distinctive quality of an Islamic society is sympathy and sincerity to others, while the theory of interest (or usury alike) is totally contrary to it.

2275. It was narrated from 'Abdullāh that the Prophet ﷺ

٢٢٧٥ - حَدَّثَنَا عَمْرُو بْنُ عَلِيٍّ الصَّيْرَفِيُّ، أَبُو حَفْصٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ

said: "There are seventy-three degrees of usury." (*Hasan*)

شُعْبَةَ، عَنْ زُبَيْدٍ، عَنْ إِبْرَاهِيمَ، عَنْ مَسْرُوقٍ،
عَنْ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ ﷺ قَالَ: «الرِّبَا ثَلَاثَةٌ
وَسَبْعُونَ بَابًا».

تخریج: [حسن] أخرجه الحاكم: ۳۷/۲ من حديث عمرو بن علي به بلفظ: الربا ثلاثة وسبعون باباً أيسرها مثل أن ينكح الرجل أمه وإن أربى الربا عرض الرجل المسلم، وضححه على شرط الشيخين، ووافقه الذهبي، وقال البوصيري: هذا إسناد صحيح .

Comments:

- There are various types of interest. Therefore, extraordinary precautionary measures should be taken in business, lest any dealing of interest gets involved.
- Islamic scholars should carefully examine the current categories of business according the teachings of the *Shari'ah* and should guide the Muslim nation accordingly; so that they do not, unknowingly, commit the offence of consuming interest.

2276. It was narrated that 'Umar bin Khattâb said: "The last thing to be revealed was the Verse on usury, but the Messenger of Allâh ﷺ died before he had explained it to us. So give up usury (interest) and doubtful things." (*Da'if*)

٢٢٧٦ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ:
حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدٌ عَنْ
قَتَادَةَ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ عُمَرَ بْنِ
الْخَطَّابِ قَالَ: إِنَّ آخِرَ مَا نَزَلَتْ آيَةُ الرِّبَا.
وَإِنَّ رَسُولَ اللَّهِ ﷺ قُبِضَ وَلَمْ يُفَسِّرْهَا لَنَا.
فَدَعُوا الرِّبَا وَالرِّبِيَّةَ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ۳۶/۱ من حديث سعيد بن أبي عروبة ثنا قتادة به، وانظر، ح: ۱۷۵ لعلته، وله طريق آخر عند الإسماعيلي كما في مسند الفاروق: ۵۷۱/۲، وإسناده ضعيف .

Comments:

- The regulations of interest were the latest in revelation among the issues of lawful and unlawful.
- The Messenger of Allâh ﷺ explained the interest properly, and he prohibited its contemporary various forms clearly. Despite that, there can be some forms of it which will be invented and introduced later, and the scholars will have to strive to clarify them through analogy. Therefore, the scholars should issue clear religious verdicts after scrutinizing these matters.

2277. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ cursed the one who consumes usury, the one

٢٢٧٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ: حَدَّثَنَا سِمَاكُ
ابْنُ حَرْبٍ قَالَ: سَمِعْتُ عَبْدِ الرَّحْمَنِ بْنَ عَبْدِ

who pays it, those who witness it and the one who writes it down. (Hasan)

اللَّهُ يُحَدِّثُ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَسُولَ اللَّهِ ﷺ لَعَنَ أَكْلَ الرِّبَا وَمُوكَلَّهُ وَشَاهِدِيهِ وَكَاتِبِيهِ.

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: في أكل الربا وموكله، ح: ٣٣٣٣ من حديث سماك به، وصححه الترمذي، ح: ١٢٠٦، وابن حبان، ح: ١١١٢، وللحديث شواهد كثيرة جدًا.

2278. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There will come a time when there will be no one left who does not consume usury (interest), and whoever does not consume it will nevertheless be affected by it." (Da'if)

٢٢٧٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلِيٍّ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ، عَنْ سَعِيدِ بْنِ أَبِي خَيْرَةَ، عَنِ الْحَسَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيَأْتِيَنَّ عَلَى النَّاسِ زَمَانٌ لَا يَبْقَى مِنْهُمْ أَحَدٌ إِلَّا أَكَلَ الرِّبَا. فَمَنْ لَمْ يَأْكُلْ، أَصَابَهُ مِنْ غُبَارِهِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب: في اجتناب الشبهات، ح: ٣٣٣١ من حديث سعيد به، وانظر، ح: ٧١ لعلته * والحسن لم يسمع من أبي هريرة رضي الله عنه عند الجمهور، قاله المنذري في الترغيب: ١٠/٣.

Comments:

- All forms of interest are unlawful, and cause the curse of Allāh.
- As taking interest is a major sin, likewise paying interest is a major sin too. Therefore, taking a loan on the basis of interest is unlawful; whether this interest-based loan is taken from banks or from business individuals.
- Helping in any unlawful cause in anyway is prohibited, and the helper will be as equally sinful as the doer.

2279. It was narrated from Ibn Mas'ud that the Prophet ﷺ said: "There is no one who deals in usury a great deal (to increase his wealth) but he will end up with little (i.e., his wealth will be decreased)." (Sahih)

٢٢٧٩ - حَدَّثَنَا الْعَبَّاسُ بْنُ جَعْفَرٍ: حَدَّثَنَا عَمْرُو بْنُ عَوْنٍ: حَدَّثَنَا يَحْيَى بْنُ أَبِي زَائِدَةَ، عَنْ إِسْرَائِيلَ، عَنْ رُكَيْنِ بْنِ الرَّبِيعِ بْنِ عَمِيَلَةَ، عَنْ أَبِيهِ، عَنِ ابْنِ مَسْعُودٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَا أَحَدٌ أَكْثَرَ مِنَ الرِّبَا إِلَّا كَانَ عَاقِبَتُهُ أَمْرَهُ إِلَى قَلَّةٍ».

تخريج: [إسناده صحيح] أخرجه الحاكم: ٣٧/٢ من حديث عمرو بن عون به، وصححه،

وواقفه الذهبي، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات .

Comments:

There is no blessing in unlawful earning.

Chapter 59. Payment In Advance For A Known Amount Or A Known Weight To Be Delivered At A Known Time

2280. It was narrated that Ibn 'Abbās said: "When the Prophet ﷺ came (to Al-Madinah), they used to pay in advance for dates, two or three years in advance. He said: 'Whoever pays in advance for dates, let him pay for a known amount or a known weight, to be delivered at a known time.'" (Sahih)

(المعجم ٥٩) - بَابُ السَّلْفِ فِي كَيْلِ مَعْلُومٍ وَوَزْنِ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ (التحفة ٥٩)

٢٢٨٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ، عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ، عَنْ أَبِي الْمُهَالِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَدِمَ النَّبِيُّ ﷺ وَهُمْ يُسَلِّفُونَ فِي التَّمْرِ، السَّنَيْنِ وَالثَّلَاثَ. فَقَالَ: «مَنْ أَسْلَفَ فِي تَمْرٍ فَلْيُسَلِّفْ فِي كَيْلِ مَعْلُومٍ وَوَزْنِ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ».

تخریج: أخرجه البخاري، السلم، باب السلم في وزن معلوم، ح: ٢٢٤٠، ٢٢٤١، ومسلم، المساقاة، باب السلم، ح: ١٦٠٤ من حديث سفیان به.

Comments:

- Receiving the price of goods in advance and to deliver the goods later at a fixed time is called *Bai'us-Salam* or *Bai'us-Salaf*.
- It is necessary for the permissibility of this transaction that the commodity being sold and bought, its quantity, quality, delivery, time of collection and other such matters, conditions and terms, should be discussed and specified beforehand, which later can be the cause of dispute.

2281. It was narrated from Muhammad bin Hamzah bin Yusuf bin 'Abdullāh bin Salām, from his father, that his grandfather 'Abdullāh bin Salām said: "A man came to the Prophet ﷺ and said, "The tribe of Banu so-and-so, who were descended from the Jews, have become Muslim, and they are starving, and I am afraid that they may

٢٢٨١ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا أَبُو لَيْدٍ بْنُ مُسْلِمٍ، عَنْ مُحَمَّدِ بْنِ حَمْرَةَ بْنِ يُونُسَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ سَلَامٍ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنَّ بَنِي فُلَانٍ أَسْلَمُوا، لِقَوْمٍ مِنَ الْيَهُودِ وَإِنَّهُمْ قَدْ جَاعُوا. فَأَخَافُ أَنْ يَرْتَدُّوا. فَقَالَ النَّبِيُّ ﷺ: «مَنْ

apostatize.' The Prophet ﷺ said: 'Who has something with him?' A Jewish man said: 'I have such and such, and he named it, and I think he said three hundred Dinâr for such and such an amount (of produce) from the garden of the tribe of Banu so-and-so.' The Messenger of Allâh ﷺ said: 'For such and such a price at such and such a time, but not from the garden of the tribe of Banu so-and-so.'" (*Da'if*)

عَنْهُ؟» فَقَالَ رَجُلٌ مِنَ الْيَهُودِ: عِنْدِي كَذَا وَكَذَا لِشَيْءٍ قَدْ سَمَّاهُ أَرَاهُ قَالَ ثَلَاثُمِائَةٍ دِينَارٍ بِسِعْرِ كَذَا وَكَذَا مِنْ حَائِطِ بَنِي فُلَانٍ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «بِسِعْرِ كَذَا وَكَذَا إِلَى أَجْلِ كَذَا وَكَذَا، وَلَيْسَ مِنْ حَائِطِ بَنِي فُلَانٍ».

تخريج: [إسناده ضعيف] أخرجه الطبراني: ٢٢٢/٥، ح: ٥١٤٧، وأبو يعلى، ح: ٧٤٩٦ وغيرهما من طرق عن الوليد حدثنا محمد بن حمزة به، ولم يصرح بالسماع المسلسل، وصححه ابن حبان (موارد)، ح: ٢١٠٥، والحاكم: ٦٠٥/٣، وتعقبه الذهبي، وضعفه البوصيري، وله طريق ضعيف عند الدارقطني في المؤتلف والمختلف: ١٣٨٨/٣.

2282. It was narrated that Abu Mujâlid said: "Abdullâh bin Shaddâd and Abu Barzah had a dispute about paying in advance. They sent me to 'Abdullâh bin Abu Awfa to ask him about it. He said: 'We used to make payments in advance at the time of the Messenger of Allâh ﷺ and the time of Abu Bakr and 'Umar, for wheat, barley, raisins and dates, to people who did not yet possess those things.' I asked Ibn Abzâ, and he said something similar." (*Sahih*)

٢٢٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَ عَبْدِ الرَّحْمَنِ بْنُ مَهْدِيٍّ. قَالَ: حَدَّثَنَا شُعْبَةُ قَالَ يَحْيَى: عَنْ عَبْدِ اللَّهِ ابْنِ أَبِي الْمُجَالِدِ. وَقَالَ عَبْدُ الرَّحْمَنِ: عَنْ أَبِي الْمُجَالِدِ قَالَ: امْتَرَى عَبْدُ اللَّهِ بْنُ شَدَّادٍ وَأَبُو بَرَزَةَ فِي السَّلَمِ. فَأَرْسَلُونِي إِلَى عَبْدِ اللَّهِ ابْنِ أَبِي أَوْفَى. فَسَأَلْتُهُ فَقَالَ: كُنَّا نُسَلِّمُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَعَهْدِ أَبِي بَكْرٍ وَعَهْمَرٍ فِي الْحِنْطَةِ وَالشَّعِيرِ وَالزَّبِيبِ وَالتَّمْرِ، عِنْدَ قَوْمٍ، مَا عِنْدَهُمْ.

فَسَأَلْتُ ابْنَ أَبِي بَرزَةَ. فَقَالَ: مِثْلَ ذَلِكَ.

تخريج: [صحيح] أخرجه أبو داود، البيهقي، باب في السلف، ح: ٣٤٦٥ عن محمد بن بشار به، وهو في صحيح البخاري، السلم، ح: ٢٢٤٥، ٢٢٤٢ وح: ٢٢٥٤، ٢٢٥٥.

Comments:

Bai'us-Salam and *Bai'us-Salaf* are two names of the same thing.

Bai'us-Salam is allowed. [This is a sale of something on interest-free credit according to Islamic terms and conditions. — *Usmani*]

Chapter 60. The One Who Has Paid In Advance For Something Should Not Exchange It For Something Else

2283. It was narrated from Abu Sa'eed that the Messenger of Allāh ﷺ said: "When you have paid in advance for something, do not exchange it for something else." (*Da'if*)

Another chain with similar wording.

(المعجم ٦٠) - بَابُ مَنْ أَسْلَمَ فِي شَيْءٍ فَلَا يَصْرِفُهُ إِلَى غَيْرِهِ (التحفة ٦٠)

٢٢٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا شُجَاعُ بْنُ الْوَلِيدِ: حَدَّثَنَا زِيَادُ بْنُ حَيْثَمَةَ، عَنْ سَعْدِ بْنِ سَعِيدٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَسْلَفْتَ فِي شَيْءٍ، فَلَا تَصْرِفْهُ إِلَى غَيْرِهِ».

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا شُجَاعُ ابْنُ الْوَلِيدِ، عَنْ زِيَادِ بْنِ حَيْثَمَةَ، عَنْ عَطِيَّةَ، عَنْ أَبِي سَعِيدٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فَذَكَرَ مِثْلَهُ. وَلَمْ يَذْكُرْ سَعْدًا».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب السلف يحول، ح: ٣٤٦٨ من حديث أبي بدر شجاع به، السند الأول، وحسنه الترمذي في العلال الكبير، وضعفه الحافظ ابن حجر (تلخيص: ٢٥/٣) وغيره، وانظر، ح: ٣٧ لعلته.

Chapter 61. If One Pays In Advance For A Specific Date Palm And It Does Not Yield Anything

2284. It was narrated that Najrāni said: "I said to 'Abdullāh bin 'Umar: 'Can I pay in advance for a date palm before it bears fruit?' He said: 'No.' I said: 'Why not?' He said: 'A man paid in advance for a grove of trees during the time of the Messenger of Allāh ﷺ, before they had produced any fruit, and they did not bear anything that year. The purchaser said: 'They belong to me until they produce,' but the

(المعجم ٦١) - بَابُ: إِذَا أَسْلَمَ فِي نَخْلٍ يَطْلُعُ بِعَيْنِهِ لَمْ يَطْلُعْ (التحفة ٦١)

٢٢٨٤ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ، عَنْ أَبِي إِسْحَاقَ، عَنِ النَّجْرَانِيِّ، قَالَ، قُلْتُ لِعَبْدِ اللَّهِ بْنِ عُمَرَ: أَسْلَمْتُ فِي نَخْلٍ قَبْلَ أَنْ يَطْلُعَ؟ قَالَ: لَا. قُلْتُ: لِمَ؟ قَالَ: إِنَّ رَجُلًا أَسْلَمَ فِي حَدِيقَةِ نَخْلٍ، فِي عَهْدِ رَسُولِ اللَّهِ ﷺ قَبْلَ أَنْ يَطْلُعَ النَّخْلُ. فَلَمْ يَطْلُعِ النَّخْلُ شَيْئًا، ذَلِكَ الْعَامَ. فَقَالَ الْمُشْتَرِي: هُوَ لِي حَتَّى يَطْلُعَ. وَقَالَ الْبَائِعُ: إِنَّمَا بَعَثْتُكَ النَّخْلَ هَذِهِ السَّنَةَ. فَاخْتَصَمَا إِلَيَّ

seller said: 'I only sold the trees to you for this year.' They referred their dispute to the Messenger of Allâh ﷺ, who said to the seller: 'Did he take anything from your date palms?' He said: 'No.' He said: 'Then why do you regard his wealth as lawful for you? Give back what you took from him, and do not take payment in advance for date palms until their usefulness appears.'" (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب في السلم في ثمرة بعينها، ح: ٣٤٦٧ من حديث أبي إسحاق السبيعي به * النجراني مجهول (تقريب: ٦٣٨)، وأبو إسحاق تقدم، ح: ١٠٣٩، ٤٦١.

Chapter 62. Paying For Animals In Advance

2285. It was narrated from Abu Râfi' that the Prophet ﷺ asked a man to give as a loan a young camel and said: "When the camels of the *Sadaqah* come, we will pay you back." When the camels came, he said: "O Abu Râfi', pay this man back for his young camel." But all I could find was a seven-year-old camel or that which is better. I told the Prophet ﷺ and he said: "Give it to him, for the best of people are those who are best in repaying." (*Sahih*)

تخریج: أخرجه مسلم، المساقاة، باب جواز اقتراض الحيوان واستحباب توفيته خيراً مما عليه، ح: ١٦٠٠ من حديث زيد به باختلاف يسير.

Comments:

a. Selling and buying on absolute interest free credit (according to Islamic terms and conditions) is allowed.

رَسُولِ اللَّهِ ﷺ. فَقَالَ لِلْبَّاعِ: «أَخَذَ مِنْ نَخْلِكَ شَيْئًا؟» قَالَ: لَا. قَالَ: «فِيمَ تَسْتَحِلُّ مَالَهُ؟ ارْزُدْ عَلَيْهِ مَا أَخَذْتَ مِنْهُ. وَلَا تُسَلِّمُوا فِي نَخْلٍ حَتَّى يَبْدُو صَلَاحُهُ».

(المعجم ٦٢) - بَابُ السَّلْمِ فِي الْحَيَوَانِ
(التحفة ٦٢)

٢٢٨٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُسْلِمُ بْنُ خَالِدٍ: حَدَّثَنَا زَيْدُ بْنُ أَسْلَمَ، عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي رَافِعٍ أَنَّ النَّبِيَّ ﷺ اسْتَسَلَفَ مِنْ رَجُلٍ بَكْرًا وَقَالَ: «إِذَا جَاءَتْ إِبِلُ الصَّدَقَةِ فَضَيْنَاكَ» فَلَمَّا قَدِمَتْ قَالَ: «يَا أَبَا رَافِعٍ اقْضِ هَذَا الرَّجُلَ بَكْرَهُ» فَلَمْ أَجِدْ إِلَّا رِبَاعِيًّا فَصَاعِدًا فَأَخْبَرْتُ النَّبِيَّ ﷺ فَقَالَ: «أَعْطِهِ. فَإِنَّ خَيْرَ النَّاسِ أَحْسَنُهُمْ قَضَاءً».

- b. Returning a better animal than the one taken is allowed; provided it is not conditioned before, and the payer is giving with his own pleasure, and the recipient does not ask for.
- c. As for the cash, the borrowed amount is to be returned only; no increase in it is allowed.

2286. Sa'eed bin Hâni' said: "I heard 'Irbâd bin Sâriyah say: 'I was with the Prophet ﷺ and a Bedouin said: "Pay me back for my young camel, and he gave him an older (i.e., better) camel." He said: 'O Messenger of Allâh! It is older (i.e., better) than my camel.' The Messenger of Allâh ﷺ said: "The best of people are those who are best in repaying."" (Sahih)

٢٢٨٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا زَيْدُ بْنُ الْحُبَابِ: حَدَّثَنَا مُعَاوِيَةُ بْنُ صَالِحٍ: حَدَّثَنِي سَعِيدُ بْنُ هَانِيءٍ قَالَ: سَمِعْتُ الْعُرْبَاضَ بْنَ سَارِيَةَ يَقُولُ: كُنْتُ عِنْدَ النَّبِيِّ ﷺ. فَقَالَ أَعْرَابِيٌّ: افْضِنِي بِكَرِيِّ. فَأَعْطَاهُ بَعِيرًا مُسِنًا. فَقَالَ الْأَعْرَابِيُّ: يَا رَسُولَ اللَّهِ هَذَا أَسْنُّ مِنْ بَعِيرِي. فَقَالَ رَسُولُ اللَّهِ ﷺ: «خَيْرُ النَّاسِ خَيْرُهُمْ قَضَاءً».

تخريج: [صحيح] أخرجه النسائي: ٧/٢٩١، ٢٩٢، البيوع، - استسلاف الحيوان واستقراضه، ح: ٤٦٢٣ من حديث معاوية به مطولاً، وصححه الحاكم: ٢/٣٠، وواقفه الذهبي، وإسناده حسن، وله شواهد عند البخاري: ٣/١٣٠، ح: ٢٣٠٥ وغيره.

Chapter 63. Partnership And Profit Sharing

(المعجم ٦٣) - بَابُ الشَّرْكَةِ وَالْمُضَارَبَةِ
(التحفة ٦٣)

2287. It was narrated that Sâ'ib said to the Prophet ﷺ: "You were my partner during the Ignorance period and you were the best of partners, you did not contend or dispute." (Da'if)

٢٢٨٧ - حَدَّثَنَا عُثْمَانُ وَ أَبُو بَكْرُ ابْنَا أَبِي شَيْبَةَ. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ، عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ، عَنْ مُجَاهِدٍ، عَنْ قَائِدِ السَّائِبِ، عَنِ السَّائِبِ قَالَ لِلنَّبِيِّ ﷺ: كُنْتُ شَرِيكِي فِي الْجَاهِلِيَّةِ. فَكُنْتُ خَيْرَ شَرِيكٍ. كُنْتُ لَا تُدَارِنِي وَلَا تُمَارِنِي.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الأدب، باب: في كراهية المرء، ح: ٤٨٣٦ من حديث سفيان الثوري به * مجاهد لم يسمعه من السائب رضي الله عنه بل سمعه من قائد، والقائد لم أجد له ترجمة وهو علة الخبر.

Comments:

- The partnership in business is allowed.
- Only those forms of trade of the pre-Islamic time, which the Messenger of Allāh ﷺ forbade are forbidden and the rest of them are allowed.
- The Messenger of Allāh ﷺ had attributes of good manners and characteristics before his mission of prophethood as well.

2288. It was narrated that 'Abdullāh said: "Sa'd, 'Ammār and I entered into a partnership on the day of Badr, (agreeing to share) whatever was allotted to us. 'Ammār and I did not get anything, but Sa'd got two men (slaves)." (*Da'if*)

٢٢٨٨ - حَدَّثَنَا أَبُو السَّائِبِ سَلْمُ بْنُ جُنَادَةَ: حَدَّثَنَا أَبُو دَاوُدَ الْحَفَرِيُّ، عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عُبَيْدَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: اشْتَرَكْتُ أَنَا وَسَعْدُ وَعَمَّارٌ، يَوْمَ بَدْرٍ، فِيمَا نُصِيبُ. فَلَمْ أَجِءْ أَنَا وَلَا عَمَّارٌ بِشَيْءٍ، وَجَاءَ سَعْدٌ بِرَجُلَيْنِ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب: في الشركة على غير رأس المال، ح: ٣٣٨٨ من حديث سفیان الثوري به * أبو إسحاق تقدم، ح: ٤٦٦، وأبو عبيدة لم يدرك أباه، انظر، ح: ١٤٧٨، ١٦٠٦.

2289. It was narrated from Sâlih bin Suhaib that his father said: "The Messenger of Allāh ﷺ said: "There are three things in which there is blessing: A sale with deferred payment; *Muqâradhah* (profit sharing); and mixing wheat with barley for one's house, but not for sale." (*Da'if*)

٢٢٨٩ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا يَشْرُ بْنُ ثَابِتِ بْنِ زَيْدِ بْنِ أَقْسَامٍ، عَنْ عَبْدِ الرَّحِيمِ بْنِ دَاوُدَ، عَنْ صَالِحِ بْنِ صُهَيْبٍ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثٌ فِيهِنَّ الْبَرَكَةُ. الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ وَأَخْلَاطُ الْبُرِّ بِالشَّعِيرِ، لِلْبَيْتِ، لَا لِلْبَيْعِ».

تخريج: [إسناده ضعيف جداً] أخرجه العقيلي: ٨٠/٣ من حديث نصر بن القاسم به، وقال في عبد الرحيم: مجهول بالنقل، حديثه غير محفوظ * ونصر مجهول (تقريب: ٥٢٢)، وصالح مجهول الحال (تقريب: ٢٣٠)، والحديث وضعفه البوصيري، والحافظ في بلوغ المرام، وأورده ابن الجوزي في الموضوعات: ٢/٢٤٨، ٢٤٩، وقال: موضوع، وقال البخاري في نصر: حديثه موضوع، وقال الذهبي: إسناده مظلم والمتن باطل.

Comments:

Muqâradhah has two explanations: a): To lend money or something to someone. b): To be a partner, i.e., one person invests money and the other does practical work, and the profit is divided between both according to the agreed percentage. This type of business is allowed.

Chapter 64. What A Man Is Entitled To Of His Son's Property

2290. It was narrated from 'Āishah that the Messenger of Allāh ﷺ said: "The best of your provision is what you earn, and your children are part of what you earn." (*Sahih*)

تخريج: [صحيح] أخرجه الترمذي، الأحكام، باب ما جاء أن الوالد يأخذ من مال ولده، ح: ١٣٥٨ من حديث يحيى بن زكريا بن أبي زائدة به، وقال: حسن صحيح، وصححه الذهبي، وهو مخرج في نيل المقصود، ح: ٣٥٢٨، وتخريج مسند الحميدي، ح: ٢٤٧.

Comments:

See also *Hadith* 2137.

2291. It was narrated from Jābir bin 'Abdullāh that a man said: "O Messenger of Allāh, I have wealth and a son, and my father wants to take all my wealth." He said: "You and your wealth belong to your father." (*Sahih*)

تخريج: [صحيح] أخرجه الطحاوي في معاني الآثار: ١٥٨/٤ من حديث عيسى بن يونس به، وصححه البوصيري، وابن الترمكاني في الجواهر النقي: ٤٨١/٧، والبخاري، ولم يصب من أعله، وله شواهد انظر الحديث الآتي.

2292. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Messenger of Allāh ﷺ and said: 'My father is taking all my wealth.' He said: 'You and your wealth belong to your father.' And the Messenger of Allāh ﷺ said: 'Your children are among the best of your earnings,

(المعجم ٦٤) - بَابُ مَا لِلرَّجُلِ مِنْ مَالٍ
وَلِدِهِ (التحفة ٦٤)

٢٢٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
ابْنُ أَبِي زَائِدَةَ، عَنِ الْأَعْمَشِ، عَنْ عُمَارَةَ بْنِ
عُمَيْرٍ، عَنْ عَمِّهِ، عَنْ عَائِشَةَ قَالَتْ: قَالَ
رَسُولُ اللَّهِ ﷺ: «إِنَّ أَطْيَبَ مَا أَكَلْتُمْ مِنْ
كَسْبِكُمْ. وَإِنَّ أَوْلَادَكُمْ مِنْ كَسْبِكُمْ».

٢٢٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
عِيسَى بْنُ يُونُسَ: حَدَّثَنَا يُونُسُ بْنُ إِسْحَاقَ،
عَنْ مُحَمَّدِ بْنِ الْمُكَدَّرِ، عَنْ جَابِرِ بْنِ عَبْدِ
اللَّهِ أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ! إِنَّ لِي مَالًا
وَوَلَدًا. وَإِنَّ أَبِي يُرِيدُ أَنْ يَجْتَنَحَ مَالِي.
فَقَالَ: «أَنْتَ وَمَالُكَ لِأَبِيكَ».

٢٢٩٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ يَحْيَى
ابْنُ حَكِيمٍ. قَالَا: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ:
أَبَانَا حَجَّاجٌ عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ،
عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ
فَقَالَ: إِنَّ أَبِي اجْتَنَحَ مَالِي. فَقَالَ: «أَنْتَ
وَمَالُكَ لِأَبِيكَ» وَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ

so eat from your wealth.'"
(*Sahih*)

أَوْلَادِكُمْ مِنْ أَطْيَبِ كَسْبِكُمْ. فَكُلُوا مِنْ
أَمْوَالِكُمْ».

تخریج: [صحیح] أخرجه أحمد: ۲/۲۰۴ من حديث حجاج (بن أرتاة) به، وتابعه حبيب المعلم عند أبي داود، ح: ۳۵۳۰ وغيره، وله طرق، وصححه ابن الجارود، ح: ۹۹۵.

Chapter 65. What A Woman Is Entitled To Of Her Husband's Wealth

(المعجم ۶۵) - بَابُ مَا لِلْمَرْأَةِ مِنْ مَالِ
رَوْجِهَا (التحفة ۶۵)

2293. It was narrated that 'Aishah said: "Hind came to the Prophet ﷺ and said: 'O Messenger of Allāh, Abu Sufyān is a stingy man and he does not give me enough for me and my child, except for what I take from his wealth without him realizing.' He said: "Take what is sufficient for you and your child, on a reasonable basis.'"
(*Sahih*)

۲۲۹۳ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ
بْنُ مُحَمَّدٍ، وَأَبُو عَمْرٍو الضَّرِيرُ. قَالُوا: حَدَّثَنَا
وَكَيْعٌ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ
عَائِشَةَ قَالَتْ: جَاءَتْ هِنْدٌ إِلَى النَّبِيِّ ﷺ
قَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ أَبَا سُفْيَانَ رَجُلٌ
شَحِيحٌ، وَلَا يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي، إِلَّا مَا
أَخَذْتُ مِنْ مَالِهِ، وَهُوَ لَا يَعْلَمُ. فَقَالَ: «خُذِي
مَا يَكْفِيكِ وَوَلَدِكَ بِالْمَعْرُوفِ».

تخریج: أخرجه مسلم، الأفضية، باب قضية هند، ح: ۱۷۱۴ من حديث وكيع، وغيره به.

Comments:

- It is the responsibility of a husband to fulfill the genuine necessities of his wife and children.
- It is not counted as backbiting, if someone's fault is disclosed just for the sake of seeking clear guidelines from Islamic prospects.
- A reasonable amount of a husband's wealth may be used without seeking his permission to fulfill the genuine daily needs.
- 'What is sufficient' will be specified depending upon the circumstances, atmosphere, financial condition of the husband and the type of need.

2294. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "When a woman spends" – and my father said:^[1]

۲۲۹۴ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ:
حَدَّثَنَا أَبِي وَأَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ
أَبِي وَائِلٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ:

[1] The speaker is Muhammad bin 'Abdullāh bin Numair, the Shaikh of Ibn Mājah in this narration. Muhammad narrated the *Hadith* from his father, and from Abu Mu'āwiyah.

- "When a woman feeds (the poor) from her husband's house, without spending too much, she will have her reward, and he will be rewarded likewise because he earned it, and she will be rewarded for what she spent. The same applies to the storekeeper, without anything being detracted from their rewards." (*Sahih*)

تخريج: أخرجه البخاري، الزكاة، باب أجر الخادم إذا تصدق بأمر صاحبه غير مفسد، ح: ١٤٣٧، ١٤٣٩ من حديث الأعمش به، ومسلم، الزكاة، باب أجر الخازن الأمين والمرأة إذا تصدقت من بيت زوجها... الخ، ح: ١٠٢٤ من حديث محمد بن عبدالله بن نمير به.

Comments:

- It is man's responsibility to bring home the livelihood.
- Although the livelihood is earned by the husband, the wife has full equal right to spend it.
- When spending, the wife must bear in mind that the wealth should not be squandered; it should not be spent for unlawful things; and should not be spent on that which the husband does not like. This is because such practice affects the financial condition of the household and the mutual relations will turn unpalatable.
- Khâzin* (translated as storekeeper) is a person who spends for the needs of the household with the permission of the master; he may be an employee or a member of the family, like a younger brother or son etc.

2295. Shurahbil bin Muslim Al-Khawâlânî said: I heard Abu Umâmah Al-Bâhili say: I heard the Messenger of Allâh ﷺ say: "No woman should spend anything from her house without her husband's permission." They said: "O Messenger of Allâh, not even food?" He said: "That is among the best of our wealth." (*Hasan*)

تخريج: [إسناده حسن] أخرجه الترمذي، الزكوة، باب ماجاء في نفقة المرأة من بيت زوجها، ح: ٦٧٠ من حديث إسماعيل به، وقال: حديث حسن، وأصله في سنن أبي داود، ح: ٣٥٦٥، وصححه ابن الجارود، ح: ١٠٢٣.

قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا أَنْفَقَتِ الْمَرْأَةُ وَقَالَ أَبِي فِي حَدِيثِهِ: إِذَا أَطْعَمَتِ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا، غَيْرَ مُفْسِدَةٍ، كَانَ لَهَا أَجْرُهَا. وَلَهُ مِثْلُهُ بِمَا اكْتَسَبَ. وَلَهَا بِمَا أَنْفَقَتْ. وَلِلْخَازِنِ مِثْلُ ذَلِكَ، مِنْ غَيْرِ أَنْ يُنْقَصَ مِنْ أَجُورِهِمْ شَيْئًا».

٢٢٩٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنِي شُرْحَبِيلُ بْنُ مُسْلِمِ الْخَوْلَانِيِّ قَالَ: سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تُنْفِقِ الْمَرْأَةُ مِنْ بَيْتِهَا شَيْئًا إِلَّا بِإِذْنِ زَوْجِهَا» قَالُوا: يَا رَسُولَ اللَّهِ! وَلَا الطَّعَامَ؟ قَالَ: «ذَلِكَ مِنْ أَفْضَلِ أَمْوَالِنَا».

Comments:

- a. The wife should seek her husband's permission for spending in charity.
- b. Foodstuff also means ready meals, chapatti, bread, curry, sausages, etc.; and other foodstuff like: wheat, barley, rice, etc., too.
- c. If the wife is certain, and has confidence in her husband's habit and circumstances, that the husband will not get angry for giving such and such charity, or helping the needy, then seeking his permission is not necessary. But if she suspects that the husband may not like such spending, then she should definitely seek his permission; for example: she wants to give jewelry in charity or a large amount of something, then she should certainly ask his permission.

Chapter 66. What A Slave May Give Away And Give In Charity

(المعجم ٦٦) - بَابُ مَا لِلْعَبْدِ أَنْ يُعْطِيَ وَيَتَصَدَّقَ (التحفة ٦٦)

2296. It was narrated from Muslim Al-Mulâ'i that he heard Anas bin Mâlik say: "The Messenger of Allâh ﷺ used to accept the invitation of a slave." (Da'if)

٢٢٩٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا سُفْيَانُ؛ ح: وَحَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا جَرِيرٌ عَنْ مُسْلِمِ الْمَلَّاحِيِّ، سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ: كَانَ رَسُولُ اللَّهِ ﷺ يُجِيبُ دَعْوَةَ الْمَمْلُوكِ.

تخریج: [إسناده ضعيف] أخرجه الترمذي، الجناز، باب آخر [في سنة عيادة المريض وشهود الجنائز]، ح: ١٠١٧ من حديث مسلم الأعور الملائي به، وقال: مسلم الأعور يضعف .

Comments:

This is a part of another *Hadith*, for the complete text see *Hadith*: 4178.

2297. It was narrated that 'Umair, the freed slave of Aabi Lahm, said: "My master used to give me, food and I would feed others from it, then he stopped me," - or he said: "He beat me. So I asked the Prophet ﷺ," - or - "he asked him and I said: 'I will not stop.' He said: 'Both of you will be rewarded.'" (Sahih)

٢٢٩٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ مُحَمَّدِ بْنِ زَيْدٍ، عَنْ عَمْرِؤِ مَوْلَى أَبِي اللَّحْمِ قَالَ: كَانَ مَوْلَايَ يُعْطِينِي الشَّيْءَ فَأَطْعِمُ مِنْهُ. فَمَنْعَنِي، أَوْ قَالَ: فَضْرَنِي. فَسَأَلْتُ النَّبِيَّ ﷺ، أَوْ سَأَلَهُ. فَقُلْتُ: لَا أَتَّهِي أَوْ لَا أَدْعُهُ فَقَالَ: «الْأَجْرُ بَيْنَكُمَا».

تخریج: أخرجه مسلم، الزكاة، باب ما أنفق العبد من مال مولاه، ح: ١٠٢٥ عن ابن أبي شيبه به.

Comments:

- The noble Companions used to look after their slaves as the children are looked after; and Aabi Lahm ؓ would give his slave good and healthy food to eat.
- Aabi Lahm, out of kindness, prevented his slave from giving this away in charity; because he wanted his slave to eat what was given to him.
- 'Umais would give the things in charity to others, which were given for himself. The Messenger of Allāh ﷺ liked this behavior on his behalf.
- The partnership in reward was due to the fact that the charity was done by 'Umais while the property in fact belonged to Aabi Lahm; this is how the master and slave shared the reward together.

Chapter 67. One Who Passes By The Livestock (Of Some People) Or A Garden – Can He Take Something From That?

2298. It was narrated that Abu Bishr Ja'far bin Abu Iyās said: "I heard 'Abbād bin Shurahbil, a man from Banu Ghubar, say: 'We suffered a year of famine, and I came to Al-Madinah. I came to one of its gardens and took an ear of corn, I rubbed it, ate some and put the rest in my garment. The owner of the garden came and beat me and took my garment. I came to the Prophet ﷺ and told him (what had happened). He said to the man: "You did not feed him when he was hungry and you did not teach him when he was ignorant.'" Then the Prophet ﷺ told him to give back his garment and ordered that a *Wasq* or half a *Wasq* of food be brought to him." (*Sahih*)

(المعجم ٦٧) - بَابُ مَنْ مَرَّ عَلَى مَاشِيَةٍ
[قَوْمٍ] أَوْ حَائِطٍ، هَلْ يُصِيبُ مِنْهُ؟
(التحفة ٦٧)

٢٢٩٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَبَابَةُ بْنُ سَوَّارٍ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ وَ مُحَمَّدُ بْنُ الْوَلِيدِ. قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي بَشْرِ جَعْفَرِ بْنِ إِتَاسٍ قَالَ: سَمِعْتُ عَبَّادَ بْنَ شُرْحَيْلٍ، رَجُلًا مِنْ بَنِي عَبْرٍ قَالَ: أَصَابَنَا عَامٌ مَحْمَصَةٌ. فَأَتَيْتُ الْمَدِينَةَ. فَأَتَيْتُ حَائِطًا مِنْ حَيْطَانِهَا. فَأَخَذْتُ سُنْبُلًا فَفَرَّقْتُهُ وَأَكَلْتُهُ وَجَعَلْتُهُ فِي كِسَائِي. فَجَاءَ صَاحِبُ الْحَائِطِ. فَضَرَبَنِي وَأَخَذَ ثَوْبِي. فَأَتَيْتُ النَّبِيَّ ﷺ فَأَخْبَرْتُهُ. فَقَالَ لِلرَّجُلِ: «مَا أَطْعَمْتَهُ إِذْ كَانَ جَائِعًا أَوْ سَاعِيًا. وَلَا عَلَّمْتَهُ إِذْ كَانَ جَاهِلًا» فَأَمَرَهُ النَّبِيُّ ﷺ فَرَدَّ إِلَيْهِ ثَوْبَهُ. وَأَمَرَ لَهُ بِوَسْقٍ مِنْ طَعَامٍ أَوْ نِصْفِ وَسْقٍ.

تخريج: [إسناده صحيح] أخرجه أبو داود، الجهاد، باب في ابن السبيل يأكل من التمر ويشرب من اللبن إذا مر به، ح: ٢٦٢١ عن محمد بن بشار به، وصححه الحاكم: ٤/١٣٣، والذهبي.

Comments:

- A needy person may take something to fulfill his need from someone's field or garden; but he is not allowed to carry anything away with him.
- The person who committed a mistake should be treated well after discovering his circumstances and dealing with his mistake.
- The noble Prophet ﷺ did not punish the owner of the field because he was right; but he ﷺ showed that his way of dealing was wrong.

2299. It was narrated that Râfi' bin 'Amr Al-Ghifârî said: "When I was a boy, I used to throw stones at our date-palm trees"^[1] - or he said: "the date-palm trees of the *Ansâr*." I was brought to the Prophet ﷺ and he said: 'O boy' - (one of the narrators) Ibn Kâsib said: He said: 'O my son - why are you throwing stones at the date-palm trees?' I said: 'So I can eat.' He said: 'Do not throw stones at the date-palm trees. Eat from what falls to the ground from them.' Then he patted me on the head and said: 'O Allâh, give him enough to eat.'" (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الجهاد، باب من قال إنه يأكل مما سقط، ح: ٢٦٢٢ من حديث معتمر به، وصححه الترمذي، ح: ١٢٨٨ * ابن أبي الحكم لم يوثقه غير الترمذي ولم يعرفه الذهبي، فهو مستور كما قال صاحب التقريب.

2300. It was narrated from Abu Sa'eed that the Prophet ﷺ said: "When you come to a shepherd, call him three times. If he answers (all well and good), otherwise drink (milk from the flock) without taking advantage. And when you come to a garden, call the owner of the garden three times. If he answers (all well and good), otherwise eat (from the

٢٢٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ وَ يَعْقُوبُ
ابْنُ حُمَيْدٍ بْنِ كَاسِبٍ. قَالَ: حَدَّثَنَا مُعْتَمِرُ بْنُ
سُلَيْمَانَ قَالَ: سَمِعْتُ ابْنَ أَبِي الْحَكَمِ
الْغِفَارِيِّ قَالَ: حَدَّثَنِي حَدَّثَنِي عَنْ عَمِّ أَبِيهَا
رَافِعِ بْنِ عَمْرِو الْغِفَارِيِّ قَالَ: كُنْتُ وَأَنَا غُلَامٌ
أَرْمِي نَخْلَنَا، أَوْ قَالَ: نَخْلَ الْأَنْصَارِ. فَأْتَيْتُ
بِي النَّبِيَّ ﷺ. فَقَالَ: «يَا غُلَامُ وَقَالَ ابْنُ
كَاسِبٍ: فَقَالَ يَا بُنَيَّ لِمَ تَرْمِي النَّخْلَ؟» قَالَ:
قُلْتُ: أَكُلُ. قَالَ: «فَلَا تَرْمِي النَّخْلَ. وَكُلْ
مِمَّا يَسْقُطُ فِي أَسْفَلِهَا» قَالَ: ثُمَّ مَسَحَ رَأْسِي
وَقَالَ: «اللَّهُمَّ أَشْعِ بَطْنَهُ».

٢٣٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا
زَيْدُ بْنُ هَارُونَ: أَنَّ أَبَانَ الْجَرِيرِيَّ، عَنْ أَبِي
نَضْرَةَ، عَنْ أَبِي سَعِيدٍ، عَنِ النَّبِيِّ ﷺ قَالَ:
«إِذَا أَتَيْتَ عَلَى رَاعٍ، فَتَادِهِ ثَلَاثَ مَرَّاتٍ. فَإِنْ
أَجَابَكَ، وَإِلَّا فَاشْرَبْ فِي غَيْرِ أَنْ تُفْسِدَ. وَإِذَا
أَتَيْتَ عَلَى حَائِطِ بُسْتَانٍ، فَتَادِ صَاحِبَ
الْبُسْتَانِ ثَلَاثَ مَرَّاتٍ. فَإِنْ أَجَابَكَ، وَإِلَّا فَكُلْ

[1] To knock some dates down to eat.

produce of the garden) without taking advantage." (*Da'if*)

في أَنْ لَا تُفْسِدَ.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٢١/٣ عن يزيد بن هارون به، وصححه الحاكم: ١٣٢/٤ على شرط مسلم، وقال البوصيري: هذا إسناده ضعيف، فيه الجريري، واسمه سعيد بن إياس، وقد اختلط بآخره، ويزيد بن هارون روى عنه بعد الاختلاط، وانظر الحديث الآتي.

Comments:

- It is not allowed to use anything from someone's field, orchard or herd without securing the permission of the owner.
- If the owner is not present, then one should try his best to call out loud for the owner to seek his/her permission.
- If the owner is not found, despite calling loud three times; then the fruit or milk may be used without the permission of the owner in extreme circumstances.
- This permission is limited; this permission may be taken as an advantage only to meet the current need. The advantage of this limited permission is to be used only when getting food through other legal means becomes almost impossible.

2301. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "When anyone of you passes by a garden, let him eat therefrom, but he should not carry any away in his garment." (*Da'if*)

٢٣٠١ - حَدَّثَنَا هَدِيَّةُ بْنُ عَبْدِ الْوَهَّابِ، وَ
أَيُّوبُ بْنُ حَسَّانِ الْوَأَسِطِيُّ، وَ عَلِيُّ بْنُ
سَلْمَةَ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ سَلِيمِ
الطَّائِفِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعِ،
عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا
مَرَّ أَحَدُكُمْ بِحَائِطٍ، فَلْيَأْكُلْ، وَلَا يَتَّخِذْ
حُبْنَةً».

تخريج: [إسناده ضعيف] أخرجه الترمذي، البيهقي، باب ماجاء في الرخصة في أكل الثمرة للمار بها، ح: ١٢٨٧ من حديث يحيى الطائفي به نحو المعنى، وقال: غريب، وطعن فيه يحيى بن معين وغيره، وقال البخاري: يحيى بن سليم يروي أحاديث عن عبيدالله، بهم فيها (هق: ٩/٣٥٩)، وقال النسائي: ليس به بأس وهو منكر الحديث عن عبيدالله بن عمر قلت: هو ضعيف الحديث عن عبيدالله، وحسن الحديث عن غير عبيدالله، وصحيح الحديث في رواية الحميدي عنه عن غير عبيدالله، وهو أعدل الأقوال فيه، وأخرج البيهقي بإسناد قوي عن عمر قال: من مر منكم بحائط فليأكل في بطنه ولا يتخذ حبنة وقال: صحيح بإسناده جميعاً، وراجع الفتح: ٩٠/٥.

Comments:

- The fruit from the orchard of someone may be eaten during hard times only to ward off hunger.
- Picking more than one's need from the fruit of someone's garden and to carry some away after eating it is not allowed, rather it will be an act of stealing.
- If the value of the stolen property is equal to a quarter of a Dinâr (approximately one gram gold), then the hand of the thief is to be cut off. (See *Hadith*: 2585)

Chapter 68. The Prohibition Of Taking Something Without The Permission Of The Owner

2302. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ stood up and said: "No one of you should milk from the livestock of another man without his permission. Would anyone of you like someone to break into his storeroom and take his food? The udders of their livestock store food for them, so none of you should milk the livestock of another man without his permission." (*Sahih*)

(المعجم ٦٨) - بَابُ النَّهْيِ أَنْ يُصِيبَ مِنْهَا شَيْئًا إِلَّا بِإِذْنِ صَاحِبِهَا (التحفة ٦٨)

٢٣٠٢ - حَدَّثَنَا مُحَمَّدٌ [بْنُ] رُمَحٍ قَالَ: أُنْبَأَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ قَامَ فَقَالَ: «لَا يَحِلُّ لَكُمْ مَأْشِيَةَ رَجُلٍ بغيرِ إِذْنِهِ. أَيُّ حُبِّ أَحَدِكُمْ أَنْ تُؤْتَى مَشْرَبَتُهُ فَيَكْسِرَ بَابَ خِرَاتِنِهِ، فَيَسْتَلَّ طَعَامَهُ؟ فَإِنَّمَا تَحْزَنُ لَهُمْ ضُرُوعُ مَوَاشِيهِمْ أَطْعَمَاتِهِمْ. فَلَا يَحْتَلِبَنَّ أَحَدُكُمْ مَأْشِيَةَ امْرِئٍ بِغَيْرِ إِذْنِهِ».

تخريج: أخرجه مسلم، اللقطة، باب تحريم حلب الماشية بغير إذن مالِكها، ح: ١٧٢٦ عن

محمد بن رمح به.

Comments:

- The important matters of daily life should be explained in the sermon.
- The sermon should be delivered while standing.
- The examples should be given for the explanation of the issue. It is prohibited to milk an animal without the permission of its owner.

2303. Abu Hurairah said: "While we were with the Messenger of Allâh ﷺ on a journey, we saw some camels with their udders tied, among some thorny trees. We rushed towards it, but the

٢٣٠٣ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ بِشْرِ بْنِ مَثُورٍ: حَدَّثَنَا عُمَرُ بْنُ عَلِيٍّ، عَنْ حَجَّاجٍ، عَنْ سَلِيطِ بْنِ عَبْدِ اللَّهِ الطَّهَوِيِّ، عَنْ دُهَيْلِ بْنِ عَوْفِ بْنِ شَمَّاحِ الطَّهَوِيِّ: حَدَّثَنَا أَبُو هُرَيْرَةَ

Messenger of Allâh ﷺ called us and we came back to him. He said: 'These camels belong to a family of Muslims, and this is their support (and blessing) after Allâh. Would you be happy if you went back to your vessels and found that what was in them had been taken away? Do you think that is fair?' They said: 'No.' He said: 'This is like that.' We said: 'What do you think if we are in need of food and drink?' He said: 'Eat but do not carry any away; drink but do not carry any away.'" (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أحمد: ٤٠٥/٢ من طريق حجاج بن أرطاة به، والحدیث وضعفه البخاری، والبوصیری * الحجاج تقدم، ح: ٤٩٦، ١١٢٩، وسليط، وذهيل مجهولان كما في التقريب.

Chapter 69. Keeping Livestock

(المعجم ٦٩) - بَابُ اتِّخَاذِ الْمَاشِيَةِ

(التحفة ٦٩)

2304. It was narrated from Umm Hânî' that the Prophet ﷺ said to her: "Keep sheep, for in them is blessing." (*Sahih*)

٢٣٠٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ أُمِّ هَانِيَةَ أَنَّ النَّبِيَّ ﷺ قَالَ لَهَا: «اتَّخِذِي حَنَمًا، فَإِنَّ فِيهَا بَرَكَةً».

تخریج: [إسناده صحيح] أخرجه الخطيب: ١١/٤ من حديث هشام به بلفظ: اتخذوا، وصححه البوصيري، وله طريق آخر عند أحمد: ٣٤٣/٦، وفيه من لم يعرفه الهيثمي: ٦٦/٤.

2305. It was narrated that 'Urwah Al-Bâriqi said in a *Marfu'*^[1] report: "Camels are the pride of their owners, and sheep are a blessing, and goodness is tied to the forelocks of horses until the Day of Resurrection." (*Sahih*)

٢٣٠٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ حُصَيْنِ، عَنْ عَامِرٍ، عَنْ عُرْوَةَ الْبَارِقِيِّ، يَرْفَعُهُ قَالَ: «الْإِبِلُ عِزٌّ لِأَهْلِهَا. وَالْغَنَمُ بَرَكَةٌ. وَالْخَيْرُ مَعْقُودٌ فِي نَوَاصِي الْخَيْلِ إِلَى يَوْمِ الْقِيَامَةِ».

[1] Meaning, he attributed it to the Prophet ﷺ.

تخریج: أخرجه البخاري، الجهاد والسير، باب الخيل معقود في نواصيها الخير إلى يوم القيامة، ح: ٢٨٥٠، ٣١١٩ وغيرهما، ومسلم، الإمارة، باب فضيلة الخيل وأن الخير معقود بنواصيها، ح: ١٨٧٣ عن محمد بن عبدالله بن نمير به، وقال البوصيري: هذا إسناد صحيح على شرط الشيخين فقد احتجا بجميع رواته.

Comments:

- There are enormous benefits of a camel. It is still highly important, particularly in the desert territories.
- The goats bear more kids and the kids grow faster; and also they eat any type of fodder and tree leaves, etc. Therefore, they prove to be the source of blessing.
- The blessing of horses is interpreted with 'reward and war spoils' in another *Hadith*; i.e. they work for *Jihād*. (See *Sahih Al-Bukhārī*: 2852).
- Breeding and keeping animals is a source of lawful earning.

2306. It was narrated from Ibn 'Umar رضي الله عنهما that the Messenger of Allāh ﷺ said: "Sheep are among the animals of Paradise.'" (*Da'if*)

٢٣٠٦ - حَدَّثَنَا عِصْمَةُ بْنُ الْفَضْلِ التَّيْسَابُورِيُّ، وَ مُحَمَّدُ بْنُ فِرَاسٍ، أَبُو هُرَيْرَةَ الصَّيْرَفِيُّ. قَالَ: حَدَّثَنَا حَرَمِيُّ بْنُ عُمَارَةَ: حَدَّثَنَا زُرَيْبِيُّ، إِمَامٌ مَسْجِدِ هِشَامِ بْنِ حَسَّانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سِيرِينَ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّاةُ مِنَ دَوَابِّ الْجَنَّةِ».

تخریج: [إسناده ضعيف جداً] أخرجه ابن عدي في الكامل: ١٠٩٤/٣ من حديث عصمة به، وضعفه ابن الجوزي في الواهيات ١٧٤/٢، ح: ١١٠٢، والبوصيري، وقال: زربي متفق على ضعفه، وله طريق آخر مظلم، عند الخطيب: ٤٣٥/٧.

Comments:

- It means it is a lawful animal. Its meat and milk is benefiting. Therefore, the goats should be bred and kept as livestock, and their meat and milk should be consumed.
- It may also mean that some of these animals are slaughtered and offered in the Name of Allāh and sacrificed at the occasion of '*Eid*'; and these actions become a source of achieving Paradise.
- One narrator in the chain of this *Hadith*, Zarbi bin 'Abdullāh, is Weak, and Imām Albānī did not mention this *Hadith* in *Da'if Ibn Mājah*. Therefore, its benefits have been mentioned. [I would like to say: This *Hadith* is authentic; therefore Shaikh Albānī did not mention it in *Da'if Ibn Mājah*; but he mentioned it to be authentic in *Sahihul-Jāmi As-Saghir wa Ziyadatuh*: 3619 and also in *Silsilatul-Ahādithus As-Sahihah*: 1128 – Usmani]

2307. It was narrated that Abu Hurairah said: "The Messenger of Allâh ﷺ commanded the rich to keep sheep, and he commanded the poor to keep chickens, and he said: 'When the rich keep chickens, then Allâh will give permission for the town to be destroyed.'" (Maudu')

٢٣٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا
عُثْمَانُ بْنُ عَبْدِ الرَّحْمَنِ: حَدَّثَنَا عَلِيُّ بْنُ
عُرْوَةَ، عَنِ الْمُقْبِرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ:
أَمَرَ رَسُولُ اللَّهِ ﷺ الْأَغْنِيَاءَ بِاتِّخَاذِ الْغَنَمِ.
وَأَمَرَ الْفُقَرَاءَ بِاتِّخَاذِ الدَّجَاجِ. وَقَالَ: «عِنْدَ
اتِّخَاذِ الْأَغْنِيَاءِ الدَّجَاجِ، يَأْذُنُ اللَّهُ بِهَلَاكِ
الْقَرْيَةِ».

تخريج: [إسناده موضوع] أخرجه أبو سعيد بن الأعرابي في المعجم من طريق عثمان بن عبد الرحمن الحراني به، وقال البوصيري: هذا إسناد ضعيف، علي بن عروة تركوه، وقال ابن حبان: يضع الحديث، وقال الحافظ في التقریب: متروك وله لون آخر عند ابن الجوزي في الموضوعات، أخرجه العقيلي من طريق آخر فيه كذاب ومتروك.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

13. The Chapters On Rulings

(المعجم ١٣) أَبْوَابُ الْأَحْكَامِ (التحفة ١١)

Chapter 1. Mention Of Judges

(المعجم ١) - بَابُ ذِكْرِ الْقُضَاةِ (التحفة ١)

2308. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever is appointed judge between the people, he has been slaughtered without a knife." (Hasan)

٢٣٠٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُعَلَّى بْنُ مَنصُورٍ، عَنْ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ، عَنْ عُمَانَ بْنِ مُحَمَّدٍ، عَنِ الْمُقْبِرِيِّ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ، فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في طلب القضاء، ح: ٣٥٧٢ من حديث عبدالله بن جعفر به، وصححه الحاكم: ٩١/٤، والذهبي، والعراقي، (تخريج الأحياء: ٣/٣١٦)، وله شواهد.

Comments:

- Judging people's disputes and making the right decisions is an important responsibility, yet it is a very sensitive one. The right decisions are a guarantor for permanent peace and tranquility in society, whereas the consequences of wrong decisions appear in the form of anarchy and mischief.
- 'Has been slaughtered without a knife' is an indication towards the sensitivity of its post, and the difficulties in the performance of this duty. Despite this, the presence of this system and the position of a judge in the society are necessary. Therefore he who has this ability, should accept this responsibility and should discharge this duty with justice as required.

2309. It was narrated from Anas bin Málík that the Messenger of Allāh ﷺ said: "Whoever asks to be appointed a judge, will be entrusted to himself, but whoever is forced to accept the position, an

٢٣٠٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ ابْنُ إِسْمَاعِيلَ. قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْرَائِيلُ، عَنْ عَبْدِ الْأَعْلَى، عَنْ بِلَالِ بْنِ أَبِي مُوسَى، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ

angel will come down to him and guide him.'” (Da’if)

اللَّهُ ﷻ: «مَنْ سَأَلَ الْقَضَاءَ وَكِلَإِ إِلَى نَفْسِهِ. وَمَنْ جُبِرَ عَلَيْهِ نَزَلَ إِلَيْهِ مَلَكٌ فَسَدَّدَهُ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب في طلب القضاء والتسرع إليه، ح: ٣٥٧٨ من حديث إسرائيل به، وأخرجه الترمذي، ح: ١٣٢٣، وله طريق آخر عند الترمذي، ح: ١٣٢٤، وحسنه، وفي الطريقين عبدالأعلى الثعلبي، وتقدم حاله، ح: ١٥٥٤.

2310. It was narrated that ‘Ali said: “The Messenger of Allāh ﷺ sent me to Yemen. I said: ‘O Messenger of Allāh, you are sending me to judge between them while I am a young man, and I do not know how to judge.’ He struck me on the chest with his hand and said: ‘O Allāh, guide his heart and make his tongue steadfast.’ And after that I never doubted in passing judgment between two people.” (Da’if)

٢٣١٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا يَعْلَى وَ أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَمْرِو بْنِ مُرَّةَ، عَنْ أَبِي الْبُخْتَرِيِّ، عَنْ عَلِيٍّ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. فَقُلْتُ: يَا رَسُولَ اللَّهِ تَبْعَنِي وَأَنَا شَابٌّ أَقْضِي بَيْنَهُمْ، وَلَا أَدْرِي مَا الْقَضَاءُ؟ قَالَ، فَضْرَبَ بِيَدِهِ فِي صَدْرِي. ثُمَّ قَالَ: «اللَّهُمَّ اهْدِ قَلْبَهُ وَثَبِّتْ لِسَانَهُ» قَالَ: فَمَا شَكَّكَتُ بَعْدُ فِي قَضَاءِ بَيْنِ اثْنَيْنِ.

تخریج: [إسناده ضعيف] * أبوالبختري سعيد بن فيروز لم يسمع من علي، ولم يدركه قاله أبوحاتم الرازي، فالسند مقطوع، وله شاهد عند أبي داود، ح: ٣٥٨٢، حسنه الترمذي، ح: ١٣٣١، وصححه الحاكم، والذهبي * وفيه حش بن المعتمر ضعفه الجمهور.

Comments:

- a. If an individual feels that he/she does not have the ability to discharge these obligations which are being assigned to him/her, then the person has the right to refuse the acceptance of the post.
- b. It will not be regarded as disobedience, to tell about one’s weakness or difficulties, to one’s elderly peer or to a person in charge.

Chapter 2. Emphatic Prohibition Against Injustice And Bribery

2311. It was narrated that ‘Abdullāh said: “The Messenger of Allāh ﷺ said: ‘There is no judge who judges between the people but on the Day of Resurrection an angel will come

(المعجم ٢) - بَابُ التَّغْلِيظِ فِي الْحَيْفِ وَالرُّشْوَةِ (التحفة ٢)

٢٣١١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ: حَدَّثَنَا مَجَالِدٌ عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا مِنْ حَاكِمٍ يَحْكُمُ

and take hold of the back of his head and raise his head towards the sky and if it said: "Throw him," he will throw him into an abyss the depth of forty autumns (years)." (Da'if)

بَيْنَ النَّاسِ إِلَّا جَاءَ يَوْمَ الْقِيَامَةِ، وَمَلَكَ أَخَذُ بِقَفَاهُ. ثُمَّ يَرْفَعُ رَأْسَهُ إِلَى السَّمَاءِ. فَإِنْ قَالَ أَلْقِهِ. أَلْقَاهُ فِي مَهْوَاةٍ أَرْبَعِينَ خَرِيفًا.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٤٣٠/١ عن يحيى به، وانظر، ح: ١١ لعلته، وضعفه البوصيري.

2312. It was narrated from 'Abdullâh bin Abu Awfa that the Messenger of Allâh ﷺ said: "Allâh is with the judge so long as he is not unjust, but if he rules unjustly, He entrusts him to himself." (Hasan)

٢٣١٢ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ بِلَالٍ، عَنْ عِمْرَانَ الْقَطَّانِ، عَنْ حُسَيْنِ، يَعْنِي ابْنَ عِمْرَانَ، عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ مَعَ الْقَاضِي، مَا لَمْ يَجْرُ. فَإِذَا جَارَ وَكَلَّهُ إِلَى نَفْسِهِ».

تخريج: [إسناده حسن] أخرجه الطبراني من طريقين عن محمد بن بلال به، كما في تهذيب الكمال (مطبوع: ٤٥٨/٦)، وأخرجه ابن عدي: ٢١٤٥/٦ عن ابن صاعد عن أحمد بن سنان القطان به، إلا أنه قال: حسين المعلم، ومن طريقه أخرجه البيهقي: ٨٨/١٠، والصواب: حسين بن عمران دون المعلم، وأخرجه الترمذي، ح: ١٣٣٠، والبيهقي وغيرهما من حديث عمرو بن عاصم ثنا عمران القطان عن الشيباني عن ابن أبي أوفى به، ولم يكن في السند حسينا، وقال الترمذي: غريب، وصححه ابن حبان (موارد)، ح: ١٥٤٠، والحاكم: ٩٣/٤، والذهبي.

Comments:

If a person has the intention of performing good work, he gets help and power from Allâh. Similarly, if a judge wants to make a correct decision, then Allâh guides him, and it becomes easy for him to find the truth. Despite having a good intention, if a mistake occurs then this mistake is forgiven.

2313. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "The curse of Allâh is upon the one who offers a bribe and the one who takes it." (Hasan)

٢٣١٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ، عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي سَلَمَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَعْنَةُ اللَّهِ عَلَى الرَّاشِي وَالْمُرْتَشِي».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في كراهية الرشوة، ح: ٣٥٨٠ من

حديث ابن أبي ذئب به، وصححه الترمذي، ح: ١٣٣٧، والحاكم: ١٠٢/٤، ١٠٣، والذهبي، وابن الجارود، ح: ٥٨٦.

Comments:

The dishonesty of bribery occurs when a person despite being wrong, wants the decision to be made in his favor; thus the one who bribes, deprives a rightful person of his right and also makes the judge sinful. This twofold sin deprives him of the mercy of Allāh.

Chapter 3. When The Judge Does His Best (To Reach A Verdict) And Gets It Right

(المعجم ٣) - بَابُ الْحَاكِمِ يَجْتَهِدُ
فِيصِيبُ الْحَقَّ (التحفة ٣)

2314. It was narrated from 'Amr bin 'Ās that he heard the Messenger of Allāh ﷺ say: "When the judge passes a judgment and does his best and gets it right, he will have two rewards, and if he passes a judgement and does his best and gets it wrong, he will have one reward." (*Sahih*)

Yazid (one of the narrators) said: "So I narrated it to Abu Bakr bin 'Amr bin Hazm. He said: 'This is how it was narrated to me by Abu Salamah from Abu Hurairah.'"

٢٣١٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ
الزَّيْرِ بْنِ مُحَمَّدٍ الدَّرَّاورِدِيُّ: حَدَّثَنَا يَزِيدُ بْنُ
عَبْدِ اللَّهِ بْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ
التَّيْبِيِّ، عَنْ بُسَيْرِ بْنِ سَعِيدٍ، عَنْ أَبِي قَيْسِ
مَوْلَى عَمْرِو بْنِ الْعَاصِ، عَنْ عَمْرِو بْنِ
الْعَاصِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا
حَكَمَ الْحَاكِمُ فَاجْتَهَدَ فَأَصَابَ فَلَهُ أَجْرَانِ.
وَإِذَا حَكَمَ فَاجْتَهَدَ فَأَخْطَأَ فَلَهُ أَجْرٌ».

قَالَ يَزِيدُ: فَحَدَّثْتُ بِهِ أَبَا بَكْرٍ بْنَ عَمْرِو
ابْنِ حَزْمٍ. فَقَالَ: هَكَذَا حَدَّثَنِيهِ أَبُو سَلَمَةَ عَنْ
أَبِي هُرَيْرَةَ.

تخریج: أخرجه البخاري، الاعتصام بالكتاب والسنة، باب أجر الحاكم إذا اجتهد فأصاب أو أخطأ، ح: ٧٣٥٢ من حديث ابن الهاد به، ومسلم، الأفضية، باب بيان أجر الحاكم إذا اجتهد، فأصاب أو أخطأ، ح: ١٧١٦ من حديث الدراوردي به.

Comments:

- Literally *Ijtihād* means to strive hard, and in this context it is to pay full due attention and strive hard with the utmost sincerity, in the light of the proofs and evidences, for giving the correct decision concerning the issue brought forward. It is the duty of the person who will make the decision that he tries his best to make the correct decision.
- If the later generation comes across a mistake that a scholar may have made in adopting a view about an issue, then they should act according to their own research; and they should have a good opinion about the scholar who made the mistake, that he did not intentionally judge the issue incorrectly.

2315. Abu Hâshim said: "Were it not for the *Hadith* of Ibn Buraidah from his father, from the Prophet ﷺ who said: 'Judges are of three types, two of whom will be in Hell and one will be in Paradise. The man who knows the truth and rules in accordance with it, will be in Paradise. The man who passes judgment on the people in ignorance will be in Hell, and the man who is unjust in judgment will be in Hell' – we would have said that if the judge does his best he will be in Paradise." (*Da'if*)

٢٣١٥ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوْبَةَ: حَدَّثَنَا خَلْفُ بْنُ خَلِيفَةَ: حَدَّثَنَا أَبُو هَاشِمٍ؛ قَالَ: لَوْلَا حَدِيثُ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «الْقَضَاءُ ثَلَاثَةٌ. اثْنَانِ فِي النَّارِ، وَوَاحِدٌ فِي الْجَنَّةِ. رَجُلٌ عَلِمَ الْحَقَّ فَقَضَى بِهِ فَهُوَ فِي الْجَنَّةِ. وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ. وَرَجُلٌ جَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ» - لَقَلْنَا: إِنَّ الْقَاضِيَ إِذَا اجْتَهَدَ فَهُوَ فِي الْجَنَّةِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب: في القاضي يخطيء، ح: ٣٥٧٣ من حديث خلف به، وله شاهد عند الطبراني (مجمع: ٤/١٩٣).

Comments:

- a. It is incorrect to give a decision after a minor hearing without the proper investigation in order to verify the truth.
- b. When it is certain that such and such party is in the right, then giving a decision in favor of the other party is injustice. Its chastisement is Hell. This injustice may sometimes give a temporary, worldly benefit and this type of benefit is a part of bribery, which results in a curse. (See *Hadith*: 2313)

Chapter 4. The Judge Should Not Pass A Judgement When He Is Angry

2316. It was narrated from 'Abdul-Malik bin 'Umair that he heard 'Abdur-Rahmân bin Abu Bakrah (narrate) from his father that the Messenger of Allâh ﷺ said: "Let the judge (*Qâdi*) not pass a judgment when he is angry." (*Sahih*)

In his narration, (one of the narrators) Hishâm said: "The judge (ruler) should not judge between two people when he is angry."

(المعجم ٤) - بَابُ: لَا يَحْكُمُ الْحَاكِمُ وَهُوَ غَضْبَانٌ (التحفة ٤)

٢٣١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدٌ ابْنُ عَبْدِ اللَّهِ بْنِ زَيْدٍ، وَأَحْمَدُ بْنُ ثَابِتِ الْجَحْدَرِيُّ قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عَمْرِوٍّ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرَةَ، عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَقْضِي الْقَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانٌ».

قَالَ هِشَامٌ، فِي حَدِيثِهِ: لَا يَتَّبِعِي لِلْحَاكِمِ

أَنْ يَقْضِيَ بَيْنَ اثْنَيْنِ وَهُوَ غَضَبَانٌ.

تخريج: أخرجه البخاري، الأحكام، هل يقضي القاضي أو يقضي وهو غضبان؟، ح: ٧١٥٨، ومسلم، الأفضية، باب كراهة قضاء القاضي وهو غضبان، ح: ١٧١٧ من حديث عبدالمك به.

Comments:

The intellectual faculty of a person does not remain stable in a state of anger; and due to sentimental factors, the reflection upon all aspects of the matter becomes almost impossible. So it is a risk, that the decision given in the state of anger may be incorrect.

Chapter 5. The Ruling Of A Judge Does Not Make What Is Forbidden Permissible Nor What Is Permissible Forbidden

(المعجم ٥) - بَابُ قَضِيَّةِ الْحَاكِمِ لَا تُحِلُّ حَرَامًا وَلَا تُحَرِّمُ حَلَالًا (التحفة ٥)

2317. It was narrated from Umm Salamah that the Messenger of Allâh ﷺ said: "You refer your disputes to me and I am only human. Perhaps some of you may be more eloquent in presenting your case than others, so I rule in your favor because of what I hear from you. If I pass a judgment in favor of one of you that detracts from his brother's rights, then he should not take it, because it is a piece of fire that is given to him which he will bring forth on the Day of Resurrection." (*Sahih*)

٢٣١٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ. وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ الْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ. وَإِنَّمَا أَقْضِي لَكُمْ عَلَى نَحْوِ مِمَّا أَسْمَعُ مِنْكُمْ. فَمَنْ قَضَيْتَ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا، فَلَا يَأْخُذْهُ. فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ. يَأْتِي بِهَا يَوْمَ الْقِيَامَةِ».

تخريج: أخرجه البخاري، الشهادات، باب من أقام البيعة بعد البيمين، ح: ٧١٦٩، ٦٩٦٧، ٦٦٨٠ من حديث هشام به، ومسلم، الأفضية، باب بيان أن حكم الحاكم لا يغير الباطن، ح: ١٧١٣ عن ابن أبي شيبه به.

Comments:

In the light of this *Hadith* the scholars formed a rule that: "the decision of a judge has an apparent implication, but does not change any true reality which is not visible"; so the decision of a judge does not make someone's thing lawful for another person. For example: If a person proves with the help of false witnesses, that his marriage took place with so-and-so woman; while in fact this was not the case, then the matrimonial relations of both man and woman will be unlawful. If he does so, he will be committing

adultery and will get punished for it on the Day of Judgement. Likewise, if a judge gives a decision that so-and-so woman is divorced; but in reality the husband did not divorce her, then the husband will not be sinful in the sight of Allâh for having matrimonial relations with his wife.

2318. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "I am only human, and some of you may be more eloquent in presenting your case than others. If I pass a judgment in his favor that detracts from his brother's rights, I am giving him a piece of fire." (*Hasan*)

٢٣١٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا أَنَا بَشَرٌ. وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ. فَمَنْ قَطَعْتَ لَهُ مِنْ حَقِّ أَخِيهِ قِطْعَةً. فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ».

تخریج: [إسناده حسن] أخرجه أحمد: ٣٣٢/٢ عن محمد بن بشر به، وصححه ابن حبان(موارد)، ح: ١١٩٧ من حديث محمد بن عمرو، وقال البوصيري: هذا إسناد صحيح .

Comments:

- a. Even the Messenger of Allâh ﷺ had the duty to act and give a decision according to the *Shari'ah*.
- b. 'That detracts from his brother's rights' means that a party was not given its full and deserved right, but rather some extra share mistakenly was given to the other party.

Chapter 6. One Who Claims Something That Does Not Belong To Him And Disputes About It

2319. It was narrated from Abu Dharr that he heard the Messenger of Allâh ﷺ say: "Whoever claims something that does not belong to him; he is not one of us, so let him take his place in Hell." (*Sahih*)

(المعجم ٦) - بَابُ مَنْ ادَّعَى مَا لَيْسَ لَهُ وَخَاصَمَ فِيهِ (التحفة ٦)

٢٣١٩ - حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ ابْنُ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ، أَبُو عُبَيْدَةَ: حَدَّثَنِي أَبِي عَنْ أَبِيهِ: حَدَّثَنَا الْحُسَيْنُ بْنُ دَكْوَانَ عَنْ عَبْدِ اللَّهِ بْنِ بَرْبُدَةَ قَالَ: حَدَّثَنِي يَحْيَى بْنُ يَعْمَرَ أَنَّ أَبَا الْأَسْوَدِ الدَّلِيلِيَّ حَدَّثَهُ عَنْ أَبِي دَرٍّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ ادَّعَى مَا لَيْسَ لَهُ فَلَيْسَ مِنَّا، وَلَتَبَيِّبُوا مَقْعَدَهُ مِنَ النَّارِ».

تخریج: أخرجه مسلم، الإيمان، باب بيان حال إيمان من قال لأخيه المسلم ياكافرا!، ح: ٦١

من حديث عبدالصمد به مطولاً .

Comments:

'Let him take his place in Hell' means that the person should be certain to go to Hell. Therefore, to avoid the chastisement of Hell, he should avoid committing this sin; and if this mistake has taken place, then he should escape Hell by restoring the right of the rightful person and by seeking sincere forgiveness.

2320. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever takes the wrongdoer's side in a dispute or supports wrongdoing, he will remain subject to the wrath of Allâh until he gives it up." (*Hasan*)

٢٣٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ نَعْلَبَةَ بْنِ سَوَاءٍ: حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ سَوَاءٍ، عَنْ حُسَيْنِ الْمُعَلَّمِ، عَنْ مَطَرِ الْوَرَّاقِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعَانَ عَلَى خُصُومَةٍ يَظْلِمُ أَوْ يُعِينُ عَلَى ظُلْمٍ لَمْ يَزَلْ فِي سَخَطِ اللَّهِ حَتَّى يَنْزِعَ».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في الرجل يعين على خصومة من غير أن يعلم أمرها، ح: ٣٥٩٨ من حديث مطر به.

Chapter 7. The Burden Of Proof Rests With The Plaintiff And An Oath Is Required From The One The Claim Is Made Against

2321. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "If the people were given what they claimed, some would have claimed the lives and property of men. But the one the claim is made against is obliged to swear an oath." (*Sahih*)

(المعجم ٧) - بَابُ: الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ (التحفة ٧)

٢٣٢١ - حَدَّثَنَا حَرَمَلَةُ بْنُ يَحْيَى الْمِصْرِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَنَّ ابْنَ جُرَيْجٍ، عَنِ ابْنِ أَبِي مُلَيْكَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ، ادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنِ الْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ».

تخريج: أخرجه البخاري، التفسير، باب ﴿إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ...﴾ الخ ، ح: ٤٥٥٢ من حديث ابن جريج به، ومسلم، الأفضية، باب اليمين على المدعى عليه، ح: ١٧١١ من حديث ابن وهب به.

Comments:

When the plaintiff is unable to bring the witnesses regarding a case, then the defendant will be asked to take the oath; and he will testify by swearing

in the Name of Allâh to prove his claim to be true.

- b. The decision cannot be made upon the oath of the plaintiff only rather he is first required to bring a witnesses.

2322. It was narrated that Ash'ath bin Qais said: "There was a dispute between myself and a Jewish man concerning some land, and he denied me my rights so I brought him to the Prophet ﷺ. The Messenger of Allâh ﷺ said to me: 'Do you have proof?' I said: 'No.' He said to the Jews, 'Swear an oath.' I said: 'If he swears an oath he will take my property.' Then Allâh, Glorious is He, revealed: 'Verily, those who purchase a small gain at the cost of Allâh's covenant and their oaths, they shall have no portion in the Hereafter (Paradise). Neither will Allâh speak to them nor look at them on the Day of Resurrection nor will He purify them, and they shall have a painful torment.'"^[1] (*Sahih*)

٢٣٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ،
وَعَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكِيعٌ وَأَبُو
مُعَاوِيَةَ. قَالَا: حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ،
عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: كَانَ بَيْنِي وَبَيْنَ
رَجُلٍ مِنَ الْيَهُودِ أَرْضٌ. فَجَحَلَنِي. فَقَدَّمْتُهُ
إِلَى النَّبِيِّ ﷺ. فَقَالَ لِي رَسُولُ اللَّهِ ﷺ:
«هَلْ لَكَ بَيِّنَةٌ؟» قُلْتُ: لَا. قَالَ لِلْيَهُودِيِّ:
«اخْلِفْ» قُلْتُ: إِذَا يَخْلِفُ فِيهِ فَيَذْهَبُ
بِمَالِي. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ: ﴿إِنَّ الَّذِينَ
يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلًا﴾ [آل
عمران: ٧٧] إِلَى آخِرِ الْآيَةِ.

تخریج: أخرجه البخاري، المساقاة، باب الخصومة في البئر والقضاء فيها،
ح: ٢٣٥٦، ٢٣٥٧. . . الخ، من حديث الأعمش به، ومسلم، الإيمان، باب وعيد من اقتطع حق
مسلم يمين فاجرة بالنار، ح: ١٣٨ عن ابن نمير به.

Comments:

- a. The judge is responsible to give a decision according to his best understanding of the dispute, on the basis of witnesses and evidences; he will not be sinful if he tried his best to give the right decision in the light of the Qur'an and *Hadiith*, even though the decision, mistakenly, happened to be incorrect. But if the claimant knew that the claim was false, he was then not allowed to take the other's right, although the decision had been made in his favor.
- b. 'Neither will Allâh speak to them' means He will not address him with mercy and pleasure, rather He will reckon him with anger, rebuke and admonition.

^[1] *Âl 'Imrân* 3:77.

Chapter 8. One Who Swears A False Oath In Order To Seize Wealth Unlawfully

2323. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "Whoever swears a false oath in order to seize the wealth of a Muslim unlawfully, he will meet Allâh when He is angry with him." (*Sahih*)

Comments:

- False oath is a major sin, particularly when its purpose is to wrongfully take the property of another person.
- Taking the property of a non-Muslim wrongfully is also a crime, but a Muslim taking the property of another Muslim by unlawful means is an even worst sin and offence.

2324. Abu Umâmah Al-Hârithi narrated that he heard the Messenger of Allâh ﷺ say: "No man seizes the wealth of a Muslim unlawfully by means of his (false) oath, but Allâh will deny Paradise to him and will doom him to Hell." A man among the people said: "O Messenger of Allâh, even if it is something small?" He said: "Even if it is a twig of an *Arâk* tree." (*Sahih*)

تخریج: أخرجه مسلم، الإيمان، باب وعيد من اقتطع حق مسلم بيمين فاجرة بالنار، ح: ۱۳۷ عن ابن أبي شيبة به.

Comments:

The fulfillment of human rights is also obligatory along with the fulfillment of the Rights of Allâh. Alongside *Shirk* (associating partners with Allâh) there are other sins for which Hell is prescribed for the perpetrator. He may be released after bearing sufficient punishment; and if he has good deeds

(المعجم ۸) - بَابُ مَنْ حَلَفَ عَلَى
يَمِينٍ فَاجْرَةٍ لِيَقْتَطِعَ بِهَا مَالًا (التحفة ۸)

۲۳۲۳ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ:
حَدَّثَنَا وَكَيْعٌ وَ أَبُو مُعَاوِيَةَ. قَالَ: حَدَّثَنَا
الْأَعْمَشُ عَنْ شَقِيقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ عَلَى
يَمِينٍ، وَهُوَ فِيهَا فَاجِرٌ، يَقْتَطِعُ بِهَا مَالَ
امْرِئٍ مُسْلِمٍ، لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضَبَانٌ».
تخریج: [صحیح] انظر الحديث السابق.

۲۳۲۴ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
أَبُو أُسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ مُحَمَّدِ بْنِ
كَعْبٍ أَنَّهُ سَمِعَ أَخَاهُ عَبْدِ اللَّهِ بْنِ كَعْبٍ أَنَّ
أَبَا أُمَامَةَ الْحَارِثِيَّ حَدَّثَهُ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ
ﷺ يَقُولُ: «لَا يَقْتَطِعُ رَجُلٌ حَقَّ امْرِئٍ مُسْلِمٍ
بِيَمِينِهِ، إِلَّا حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأَوْجَبَ لَهُ
النَّارَ». فَقَالَ رَجُلٌ مِنَ الْقَوْمِ: يَا رَسُولَ اللَّهِ
وَإِنْ كَانَ شَيْئًا يَسِيرًا؟ قَالَ: «وَإِنْ كَانَ سِوَاكَ
مِنْ أَرَاكٍ».

greater than the sin, he may be delivered because of it. Allâh may also forgive him with His special kindness. But the punishment for major *Shirk* and other such blasphemous deeds that brand one out of the fold of Islam is everlasting.

Chapter 9. Swearing An Oath At The Time Of Usurping People's Rights

2325. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: 'Whoever swears a false oath near this pulpit of mine, let him take his place in Hell, even if it is for a green twig.' (*Sahih*)

(المعجم ٩) - بَابُ الْيَمِينِ عِنْدَ مَقَاعِ
الْحَقُوقِ (التحفة ٩)

٢٣٢٥ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا
مَرْوَانَ بْنَ مُعَاوِيَةَ؛ ح: وَحَدَّثَنَا أَحْمَدُ بْنُ
ثَابِتِ الْجَحْدَرِيِّ: حَدَّثَنَا صَفْوَانُ بْنُ عَيْسَى.
قَالَ: حَدَّثَنَا هَاشِمُ بْنُ هَاشِمٍ عَنْ عَبْدِ اللَّهِ بْنِ
نِسْطَاسٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ
رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ بَيْنَيْنِ آئِمَةٍ، عِنْدَ
مِثْرِي هَذَا، فَلْيَتَّبِعُوا مَقْعَدَهُ مِنَ النَّارِ. وَلَوْ
عَلَى سِوَاكَ أَخْضَرَ».

تخريج: [إسناده صحيح] أخرجه أبو داود، الأيمان والندور، باب ماجاء في تعظيم اليمين عند منبر النبي ﷺ، ح: ٣٢٤٦ من حديث هاشم به، وضححه ابن حبان (موارد)، ح: ١١٩٢، وابن الجارود، ح: ٩٧٧، والحاكم: ٢٩٦/٤، ١٩٧، والذهبي، وله شواهد كثيرة.

Comments:

- Taking an oath and demanding an oath is allowed for solving mutual disputes and differences, providing the oath is true, and the sin is only involved if the oath is false.
- Committing an offence or sin at an honored and holy place, is worse in gravity than doing so at an ordinary place, and the punishment for it will be more severe.
- The place in the mosque around the pulpit is more respected and regarded holier. The Prophet ﷺ said: "Between my house (the room of 'Aishah ؓ) and my pulpit is a garden from the Gardens of Paradise." [*Sahih Al-Bukhâri* (1195) and *Sahih Muslim* (1390)]

2326. Muhammad bin Yahya, who is Abu Yunus Al-Qawi, said: I heard Abu Salamah say: I heard Abu Hurairah say: "The Messenger of Allâh ﷺ said: 'No man or woman swears a false oath beside this pulpit, even if it is for a fresh twig, but he will be

٢٣٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ زَيْدُ
ابْنُ أَرْزَمٍ. قَالَ: حَدَّثَنَا الضَّحَّاكُ بْنُ مَخْلَدٍ:
حَدَّثَنَا الْحَسَنُ بْنُ زَيْدِ بْنِ قُرُوحٍ؛ قَالَ مُحَمَّدُ
ابْنُ يَحْيَى: وَهُوَ أَبُو يُونُسَ الْقَوِيُّ، قَالَ:
سَمِعْتُ أَبَا سَلَمَةَ يَقُولُ: سَمِعْتُ أَبَا هُرَيْرَةَ

doomed to Hell.'” (*Sahih*)

يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحْلِفُ عِنْدَ هَذَا الْمَنْبَرِ عَبْدٌ، وَلَا أُمَّةٌ، عَلَى يَمِينِ أُمَّةٍ، وَلَوْ عَلَى سِوَاكَ رَطْبٍ، إِلَّا وَجَبَتْ لَهُ النَّارُ».

تخريج: [إسناده صحيح] أخرجه أحمد: ٥١٨، ٣٢٩/٢ عن الضحاك به، وصححه البوصيري، والمنذري في الترغيب والترهيب: ٦٢٥/٢، والحاكم: ٢٩٧/٤ على شرط الشيخين، وقال الذهبي: صحيح.

Chapter 10. What The People Of The Book Should Be Asked To Swear By

(المعجم ١٠) - بَابُ بِمَا يُسْتَحْلَفُ أَهْلُ الْكِتَابِ (التحفة ١٠)

2327. It was narrated from Barâ' bin 'Âzib that the Messenger of Allâh ﷺ called one of the Jewish scholars and said: "Swear by the One Who sent the Torah (Tawrâh) down to Musa." (*Sahih*)

٢٣٢٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ دَعَا رَجُلًا مِنْ عُلَمَاءِ الْيَهُودِ. فَقَالَ: «أَنْشُدْكَ بِالَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى».

تخريج: أخرجه مسلم، الحدود، باب رجم اليهود، أهل الذمة في الزنى، ح: ١٧٠٠ من حديث أبي معاوية به، وانظر، ح: ٢٥٥٨.

2328. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said to two Jews: "Swear by Allâh Who sent the Tawrâh down to Musa, peace be upon him." (*Da'if*)

٢٣٢٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ مُجَالِدٍ: أَنَّ بَنِي عَازِبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ لِيَهُودِيَيْنِ: «تَنْشُدُكُمَا بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى عَلَيْهِ السَّلَامُ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب: في رجم اليهوديين، ح: ٤٤٥٢ من حديث أبي أسامة به، وانظر، ح: ١١ لعلته.

Comments:

- The false oath is also forbidden in the religion of Jews and Christians. Therefore they can be asked to take an oath when needed.
- The non-Muslims should also be asked to swear only by Allâh ﷻ.
- The Jews respect the Torah and claim to have faith in it; the oath can be demanded from them according to their faith, but by using only such words that are not contrary to Islamic faith.

Chapter 11. When Two Men Claim Some Goods And Neither Of Them Has Any Proof

2329. It was narrated from Abu Hurairah that he said that two men laid claim to an animal, and neither of them had any proof, so the Prophet ﷺ commanded them to cast lots as to which of them should swear an oath. (*Da'if*)

(المعجم ١١) - بَابُ: الرَّجُلَانِ يَدْعِيَانِ
السَّلْعَةَ وَلَيْسَ بَيْنَهُمَا بَيِّنَةٌ (التحفة ١١)

٢٣٢٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ، عَنْ خِلَاسٍ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ ذَكَرَ أَنَّ رَجُلَيْنِ ادَّعِيَا دَابَّةً. وَلَمْ يَكُنْ بَيْنَهُمَا بَيِّنَةٌ. فَأَمَرَهُمَا النَّبِيُّ ﷺ أَنْ يَسْتَهْمَا عَلَى التَّمِينِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الأفضية، باب الرجلين يدعيان شيئاً وليس بينهما بيينة، ح: ٣٦١٦ من حديث سعيد به، انظر، ح: ٤٢٩، ١٧٥ لعلته.

Comments:

- Islamic law stipulates that the claimant should bring forward the witnesses, otherwise the defendant will take an oath.
- In the mentioned form in the *Hadith*, both parties are plaintiffs as well as defendants. Both parties have the right to swear in a situation like this. Therefore drawing lots will decide who should swear.

2330. It was narrated from Abu Musa that two men referred a dispute to the Messenger of Allāh ﷺ concerning an animal, and neither of them had proof, so he ruled that it should be divided in half. (*Hasan*)

٢٣٣٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، وَ مُحَمَّدُ بْنُ مَعْمَرٍ، وَ زُهَيْرُ بْنُ مُحَمَّدٍ. قَالُوا: حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ: حَدَّثَنَا [سَعِيدٌ] عَنْ قَتَادَةَ، عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ، عَنْ أَبِيهِ، عَنْ أَبِي مُوسَى أَنَّ رَسُولَ اللَّهِ ﷺ اخْتَصَمَ إِلَيْهِ رَجُلَانِ، بَيْنَهُمَا دَابَّةٌ. وَلَيْسَ لِيُؤاحِدٍ مِنْهُمَا بَيِّنَةٌ، فَجَعَلَهَا بَيْنَهُمَا نِصْفَيْنِ.

تخریج: [حسن] أخرجه أبو داود، الأفضية، باب الرجلين يدعيان شيئاً وليس بينهما بيينة، ح: ٣٦١٣ من حديث قتادة به، رواه شيبه عن قتادة به (السنن الكبرى للبيهقي: ٢٥٧/١٠، والمسند المطبوع للإمام أحمد: ٤/٤٠٢)، وله شواهد كثيرة جداً.

Chapter 12. A Person Who Has Something Stolen, And He Finds It In The Possession Of A Man Who Bought It

2331. It was narrated from Samurah bin Jundub that the Messenger of Allāh ﷺ said: "If a man loses something, or it is stolen from him, and he finds it in the possession of a man who bought it, then he has more right to it, and the one who bought it should ask for his money back from the one who sold it to him." (Da'if)

(المعجم ١٢) - بَابُ مَنْ سُرِقَ لَهُ شَيْءٌ، فَوَجَدَهُ فِي يَدِ رَجُلٍ، اشْتَرَاهُ (التحفة ١٢)

٢٣٣١ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا حَجَّاجٌ عَنْ سَعِيدِ بْنِ عُبَيْدِ بْنِ زَيْدِ بْنِ عُقْبَةَ، عَنْ أَبِيهِ، عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا ضَاعَ لِلرَّجُلِ مَتَاعٌ، أَوْ سُرِقَ لَهُ مَتَاعٌ، فَوَجَدَهُ فِي يَدِ رَجُلٍ يَبِيعُهُ، فَهُوَ أَحَقُّ بِهِ. وَيرْجِعُ الْمُشْتَرِي عَلَى الْبَائِعِ بِالثَّمَنِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٥١/٦ من حديث أبي معاوية ثنا الحجاج بن أروطة به، وضعفه البوصيري، وانظر، ح: ٤٩٦، ١١٢٩ لعلته.

Chapter 13. Ruling On Property Damaged By Livestock

2332. It was narrated from Ibn Shihâb that Ibn Muhayyisah Al-Ansârî told him that a she-camel belonging to Barâ' used to wander free. It entered a garden belonging to some people and caused some damage. The Messenger of Allāh ﷺ was told of that, and he ruled that property was to be protected by its owners during the day, but the owners of livestock were responsible for any damage caused by their animals during the night. (Da'if)

Another chain from Harâm bin Muhayyisah, from Barâ' bin 'Âzib, that a she-camel belonging to the family of Barâ' damaged

(المعجم ١٣) - بَابُ الْحُكْمِ فِيمَا أَفْسَدَتِ الْمَوَاشِي (التحفة ١٣)

٢٣٣٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ الْبُصْرِيُّ: أَنَّ أَبَا النَّبِثِ بْنِ سَعْدٍ، عَنْ ابْنِ شِهَابٍ أَنَّ ابْنَ مُحَيِّصَةَ الْأَنْصَارِيِّ أَخْبَرَهُ أَنَّ نَاقَةَ الْبَرَاءِ، كَانَتْ ضَارِيَةً، دَخَلَتْ فِي حَائِطِ قَوْمٍ. فَأَفْسَدَتْ فِيهَا. فَكَلَّمَ رَسُولُ اللَّهِ ﷺ فِيهَا. فَقَضَى أَنَّ حِفْظَ الْأَمْوَالِ عَلَى أَهْلِهَا بِالنَّهَارِ. وَعَلَى أَهْلِ الْمَوَاشِي مَا أَصَابَتْ مَوَاشِيَهُمْ بِاللَّيْلِ.

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ بْنِ عَفَّانَ: حَدَّثَنَا مُعَاوِيَةُ بْنُ هِشَامٍ، عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ ابْنِ عِيسَى، عَنْ الزُّهْرِيِّ، عَنْ حَرَامِ بْنِ مُحَيِّصَةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ نَاقَةَ لِالِ

something, and the Messenger of Allāh ﷺ issued a similar ruling.

الْبِرَاءِ أَفْسَدَتْ شَيْئًا. فَقَضَى رَسُولُ اللَّهِ ﷺ،
بِوَالِيهِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب المواشي تفسد زرع قوم، ح: ٣٥٧٠ من حديث ابن شهاب الزهري به * الأوزاعي تابعه مالك (الموطأ: ٢/٧٤٧، ٧٤٨) وغيره، ولم أجد تصريح سماع الزهري، وانظر، ح: ٧٠٧.

Comments:

The night is for rest, and during the night the animals are kept in enclosures. Therefore, if an animal enters into the field or garden of someone during night, it will be the negligence and fault of the owner of the animal. So he will be responsible to pay for the damage. Contrary to the night, if any damage is done during the day, it will be the fault of the owner of the garden or of the farmer; and the owner of the animal will not be responsible.

Chapter 14. Ruling Concerning One Who Breaks Something

(المعجم ١٤) - بَابُ الْحُكْمِ فِيْمَنْ كَسَرَ شَيْئًا (التحفة ١٤)

2333. It was narrated that a man from Banu Suwā'ah said: "I said to 'Āishah: "Tell me about the character of the Messenger of Allāh ﷺ." She said: 'Have you not read the Qur'ān: "And verily, you (O Muhammad) are on an exalted (standard of) character?"^[1] She said: "The Messenger of Allāh ﷺ was with his Companions, and I made some food for him, and Hafsa made some food for him, but Hafsa got there before me. So I said to the slave girl: "Overturn her bowl." She went and caught up with her, and she was about to put (the bowl) in front of the Messenger of Allāh ﷺ. She overturned it and the bowl broke, scattering the food. The Messenger of Allāh ﷺ

٢٣٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ قَيْسِ بْنِ وَهْبٍ، عَنْ رَجُلٍ مِنْ بَنِي سُوَّاءَ قَالَ: قُلْتُ لِعَائِشَةَ: أَخْبِرِينِي عَنْ خُلُقِ رَسُولِ اللَّهِ ﷺ. قَالَتْ: أَوْ مَا تَقْرَأُ الْقُرْآنَ: ﴿وَإِنَّكَ لَعَلَى خُلُقٍ عَظِيمٍ﴾؟ [القلم: ٤] قَالَتْ: كَانَ رَسُولُ اللَّهِ ﷺ مَعَ أَصْحَابِهِ. فَصَنَعْتُ لَهُ طَعَامًا. وَصَنَعَتْ لَهُ حَفْصَةُ طَعَامًا. قَالَتْ: فَسَبَقْتَنِي حَفْصَةُ. فَقُلْتُ لِلْجَارِيَةِ: انْطَلِقِي فَأَكْثِي قَضَعَتَهَا. فَاحْتَقَتْهَا وَقَدْ هَمَّتْ أَنْ تَضَعَ بَيْنَ يَدَيْ رَسُولِ اللَّهِ ﷺ فَأَكْفَأْتَهَا فَانْكَسَرَتِ الْقُضْعَةُ، وَانْتَشَرَ الطَّعَامُ. قَالَتْ: فَجَمَعَهَا رَسُولُ اللَّهِ ﷺ وَمَا فِيهَا مِنْ الطَّعَامِ عَلَى النَّطْعِ. فَأَكَلُوا. ثُمَّ بَعَثَ بِقَضَعَتِي. فَدَفَعَهَا إِلَيَّ حَفْصَةُ. فَقَالَ:

[1] Al-Qalam 68:4.

gathered the pieces and the food on the leather mat, and they ate. Then he sent for my bowl and gave it to Hafsa, and said: "Take this pot in place of your pot, and eat what is in it." And I did not see any expression of anger on the face of the Messenger of Allāh ﷺ." (Da'if)

«خُذُوا ظَرْفًا مَكَانَ ظَرْفِكُمْ وَكُلُوا مَا فِيهَا»
قَالَتْ: فَمَا رَأَيْتُ ذَلِكَ فِي وَجْهِ رَسُولِ اللَّهِ ﷺ.

تخريج: [إسناده ضعيف] أخرجه ابن أبي شيبة . شيخ المصنّف . في المصنّف: ١٤/ ٢١٤، ٢١٥ به، وضعفه البوصيري: لجهالة رجل من بني سؤاة .

2334. It was narrated that Anas bin Mālik said: "The Prophet ﷺ was with one of the Mothers of the Believers (his wives) and another (wife) sent a bowl containing food. She (the first wife) struck the hand of the Messenger and the bowl fell and broke. The Messenger of Allāh ﷺ took the two pieces and put them back together, then he started gathering up the food and putting it in (the bowl). He said: 'Your mother was jealous. Eat.' So they ate, and she (the wife who broke the bowl) brought the bowl that was in her house and gave the intact bowl to the Messenger, who left the broken bowl in the house of the one who broke it." (Sahih)

٢٣٣٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا حَمِيدٌ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ النَّبِيُّ ﷺ عِنْدَ إِحْدَى أُمَّهَاتِ الْمُؤْمِنِينَ. فَأَرْسَلَتْ أُخْرَى بِقِضْعَةٍ فِيهَا طَعَامٌ. فَضْرَبَتْ يَدَ الرَّسُولِ. فَسَقَطَتِ الْقِضْعَةُ فَأَنْكَسَرَتْ. فَأَخَذَ رَسُولُ اللَّهِ ﷺ الْكِسْرَتَيْنِ فَضَمَّ إِحْدَاهُمَا إِلَى الْأُخْرَى. فَجَعَلَ يَجْمَعُ فِيهَا الطَّعَامَ وَيَقُولُ: «عَارَتْ أُمُّكُمْ. كُلُوا» فَأَكَلُوا. حَتَّى جَاءَتْ بِقِضْعَتِهَا، الَّتِي فِي بَيْتِهَا. فَدَفَعَ الْقِضْعَةَ الصَّحِيحَةَ إِلَى الرَّسُولِ، وَتَرَكَ الْمَكْسُورَةَ فِي بَيْتِ الَّتِي كَسَرَتْهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، البيهقي، باب: فيمن أفسد شيئاً يغرّم مثله، ح: ٣٥٦٧، والنسائي، ح: ٣٤٠٧ عن محمد بن المثنى به، وأخرجه البخاري، والترمذي وغيرهما من طرق عن حميد به، وقال الترمذي، ح: ١٣٥٩ حسن صحيح ، وتابعه ثابت البناني عن أنس به (قط: ٤/ ١٥٣).

Chapter 15. A Man Fixing Wood To The Wall Of His Neighbor

(المعجم ١٥) - بَابُ الرَّجُلِ يَضَعُ خَشْبَةً عَلَى جِدَارِ جَارِهِ (التحفة ١٥)

2335. It was narrated that 'Abdur-Rahmān Al-A'raj said: "I heard Abu Hurairah narrating that the Prophet ﷺ said: 'When anyone of you asks his neighbor for permission to fix a piece of wood to his wall, he should not refuse him.' When Abu Hurairah told them this, they lowered their heads, and when he saw them he said: 'Why do I see you turning away from it? By Allāh, I will force you to accept it.'" (Sahih)

٢٣٣٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدُ ابْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ قَالَ: سَمِعْتُ أَبَا هُرَيْرَةَ، يُبَلِّغُ بِهِ النَّبِيَّ ﷺ، قَالَ: «إِذَا اسْتَأْذَنَ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشْبَةً فِي جِدَارِهِ فَلَا يَمْنَعُهُ» فَلَمَّا حَدَّثَهُمْ أَبُو هُرَيْرَةَ طَأَطَأُوا رُؤُوسَهُمْ. فَلَمَّا رَأَاهُمْ قَالَ: مَا لِي أَرَأَيْكُمْ عَنْهَا مُعْرِضِينَ. وَاللَّهِ لَأُزَيِّنَنَّ بِهَا بَيْنَ أَكْتَابِكُمْ.

تخریج: أخرجه البخاري، المظالم، باب لا يمنع جار جاره أن يغرز خشبة في جداره، ح: ٢٤٦٣ من حديث الزهري به، ومسلم، المساقاة، باب غرز الخشبة في جدار الجار، ح: ١٦٠٩ من حديث سفیان بن عيينة به.

Comments:

- Thrusting wood into the wall means, either to fix a peg, or to place a beam etc., on the wall to put a roof on it.
- Linguistically the Arabic text translates as: 'Keep hitting it on the shoulders' and it means whether you like it or not I shall keep telling you the rule of *Shari'ah* and you will have to act upon it.

2336. 'Ikrimah bin Salamah narrated that there were two brothers from among the sons of Mughirah. One of them swore an oath to set a slave free if the other one fixed a piece of wood to his wall. Mujammi' bin Yazid and many men from among the *Ansār* came and said: "We bear witness that the Messenger of Allāh ﷺ said: 'None of you should refuse to let his neighbor fix a piece of wood to his wall.'" He said: 'O my brother, judgment has been

٢٣٣٦ - حَدَّثَنَا أَبُو بَشِيرٍ، بِكُرِّ بْنِ خَلْفٍ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنِ عَمْرِو بْنِ دِينَارٍ أَنَّ هِشَامَ بْنَ يَحْيَى أَخْبَرَهُ أَنَّ عِكْرِمَةَ ابْنَ سَلَمَةَ أَخْبَرَهُ أَنَّ أَخْوَيْنَ مِنْ بَلْمُغِيْرَةَ أَعْتَقَ أَحَدَهُمَا أَنْ لَا يَغْرِزَ خَشْبًا فِي جِدَارِهِ. فَأَقْبَلَ مُجَمِّعُ بْنُ يَزِيدَ وَرَجَالَ كَثِيرٌ مِنَ الْأَنْصَارِ. فَقَالُوا: نَشْهَدُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشْبَةً فِي جِدَارِهِ» فَقَالَ: يَا أَخِي إِنَّكَ مَقْضِيٌّ

passed in your favor against me, but I have sworn an oath.' So go ahead and fix your wood to my wall."

لَكَ عَلَيَّ. وَقَدْ حَلَفْتُ. فَاجْعَلْ أُسْطُوَانًا دُونَ حَائِطِي أَوْ جِدَارِي. فَاجْعَلْ عَلَيْهِ خَشَبَكَ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ۳/ ۴۷۹، ۴۸۰ من حديث ابن جريج (أخبرني عمرو ابن دينار) به * عكرمة بن سلمة مجهول (تقريب)، وفيه علة أخرى، وأصل الحديث صحيح، انظر الحديث السابق.

Comments:

- a. Taking a conditional oath about one's own thing is permissible; for example: "If I do such and such work then my slave is free."
- b. The Companions and the *Tābi'in* (the successors) would end their dispute by listening to a *Hadith*, and would act in the light of *Hadith*; even if the decision was against them.
- c. One who has taken an oath, should not be forced to break it, but rather encouraged to fulfill it.

2337. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "No one of you should refuse to let his neighbor fix a piece of wood to his wall." (*Sahih*)

۲۳۳۷ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لَهِيْعَةَ، عَنْ أَبِي الْأَسْوَدِ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا يَمْنَعُ أَحَدَكُمْ جَارُهُ أَنْ يَغْرِزَ خَشَبَةً عَلَى جِدَارِهِ».

تخریج: [صحيح] أخرجه أحمد: ۱/ ۲۵۵ من حديث ابن لهيعة به، ولم أجد تصريح سماعه، وضعفه البوصيري، ولكن رواه أيوب وغيره عن عكرمة به، وله شواهد عند البخاري وغيره.

Chapter 16. When There Is A Dispute As To How Wide A Road Or Path Should Be

(المعجم ۱۶) - بَابُ: إِذَا تَشَاجَرُوا فِي قَدْرِ الطَّرِيقِ (التحفة ۱۶)

2338. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Make the path seven forearms length wide." (*Sahih*)

۲۳۳۸ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا مَتَّى بْنُ سَعِيدٍ الضُّبَيْعِيُّ عَنْ قَتَادَةَ عَنْ بُشَيْرِ بْنِ كَعْبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اجْعَلُوا الطَّرِيقَ سَبْعَةَ أَدْرَعٍ».

تخریج: [صحيح] أخرجه أبو داود، القضاء، باب: في القضاء، ح: ۳۶۳۳ من حديث المثني به، وصححه الترمذي، ح: ۱۳۵۶، وابن الجارود، ح: ۱۰۱۸، ولم أجد تصريح سماع

قتادة، ح: ١٧٥، وله شواهد عند مسلم، ح: ١٦١٣ وغيره.

2339. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "When you dispute concerning a path, make it seven forearms length wide." (*Sahih*)

٢٣٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ مُحَمَّدُ ابْنُ عُمَرَ بْنِ هِيَاجٍ. قَالَ: حَدَّثَنَا قَيْصَةُ: حَدَّثَنَا سُفْيَانُ عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اخْتَلَفْتُمْ فِي الطَّرِيقِ فَاجْعَلُوهُ سَبْعَةَ أَدْرُعٍ».

تخريج: [صحيح] أخرجه أحمد: ٢٣٥/١ من حديث سفيان الثوري به، وتابعه شريك النخعي مع عننته، وصححه البوصيري وانظر، ح: ١٧١ لعلته، وللحديث شواهد عند مسلم، ح: ١٦١٣ وغيره.

Comments:

- a. A forearm's length means the length from finger tips to the elbow, which is equal to one and half foot. The measure of seven forearms is equal to three yards or ten and half a feet.
- b. The current era is of cars, buses, trucks and other vehicles; therefore a suitable width of streets, roads and footpaths should be designed. At the time of drawing architectural plans for new settlements, the width of streets and roads must not be less than that mentioned in the *Hadith*.

Chapter 17. One Who Builds Something On His Own Property That Harms His Neighbor

(المعجم ١٧) - بَابُ مَنْ بَنَى فِي حَقِّهِ مَا يَضُرُّ بَجَارِهِ (التحفة ١٧)

2340. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ ruled: "There should be neither harming nor reciprocating harm." (*Da'if*)

٢٣٤٠ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدٍ التَّمِيمِيُّ، أَبُو الْمُعَلِّسِ: حَدَّثَنَا فَضِيلُ بْنُ سُلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنْ: «لَا ضَرَرَ وَلَا ضِرَارًا».

تخريج: [ضعيف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٧/٥ من حديث فضيل به، وانظر، ح: ٢٢١٣ لعلته، وله شواهد كثيرة جداً، ولم يصح منها شيء.

Comments:

- a. If someone tries to cause loss, hurt or annoyance, it is incorrect to retaliate with loss and annoyance, rather the arbitration of the wise and elderly, the council of arbitrators, or a religious court should be used as sources to fulfill

true rights, and to stop the person from making trouble.

- b. Many such issues that appeared after the noble Prophet ﷺ should be resolved in the light of these rules; if something causes loss to an individual, or it is a collective loss, or the public gets hurt, then this must be eliminated.

2341. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "There should be neither harming nor reciprocating harm." (*Da'if*)

٢٣٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنبَأَنَا مَعْمَرٌ عَنْ جَابِرِ الْجُعْفِيِّ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا ضَرَرَ وَلَا إِضْرَارَ».

تخريج: [إسناده ضعيف جداً] أخرجه أحمد: ٣١٣/١ عن عبدالرزاق به، وانظر، ح: ٣٥٦: علمته، وانظر الحديث السابق.

2342. It was narrated from Abu Sirmah that the Messenger of Allâh ﷺ said: "Whoever harms others, Allâh will harm him; and whoever causes hardship to others Allâh will cause hardship to him." (*Da'if*)

٢٣٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنبَأَنَا اللَّيْثُ ابْنُ سَعْدٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ ابْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ لَوْلُؤَةَ، عَنْ أَبِي صِرْمَةَ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «مَنْ ضَارَّ أَضْرَّ اللَّهُ بِهِ، وَمَنْ شَاقَّ شَقَّ اللَّهُ عَلَيْهِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب: في القضاء، ح: ٣٦٣٥ من حديث الليث به، وحسنه الترمذي، ح: ١٩٤٠ * لؤلؤة مولاة الأنصار وثقتها الترمذي، والهيثمي في المجموع: ١٠/١٧٨، ولحديثها شواهد كثيرة.

Comments:

- a. Muslims must care for each other's rest and peace, and must not try to hurt anyone.
- b. 'Allâh will cause hardship to him' also means He will punish him on Judgment Day and reckon him strictly. Another possible meaning is that he will get punishment for it in this life, and he will be swamped in difficulties from Allâh, and will bear losses.

Chapter 18. Two Men Who Lay Claim To A Hut

2343. It was narrated from Nimrân bin Jâriyah, from his father, that some people referred a dispute to the Prophet ﷺ about a hut, so that he could judge between them. He sent Hudhaifah

(المعجم ١٨) - بَابُ: الرَّجُلَانِ يَدْعِيَانِ فِي خُصْمٍ (التحفة ١٨)

٢٣٤٣ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ، وَعَمَّارُ ابْنُ خَالِدٍ الْوَاسِطِيُّ. قَالَا: حَدَّثَنَا أَبُو بَكْرِ بْنُ عِيَّاشٍ، عَنْ دَهْتَمِ بْنِ قُرَّانٍ، عَنْ نِمْرَانَ بْنِ جَارِيَةَ، عَنْ أَبِيهِ أَنَّ قَوْمًا اخْتَصَمُوا إِلَى النَّبِيِّ

to judge between them, and he ruled in favor of those who had the rope (with which the hut was binded together). When he went back to the Prophet ﷺ he told him (what he had done) and he said: "You did the right thing, and you did well." (*Da'if*)

﴿ فِي حُصٍّ كَانَ بَيْنَهُمْ. فَبَعَثَ حُدَيْفَةَ يَقْضِي بَيْنَهُمْ. فَقَضَى لِلَّذِينَ لِيْلَهُمُ الْقِمْطُ. فَلَمَّا رَجَعَ إِلَى النَّبِيِّ ﷺ أَخْبَرَهُ فَقَالَ: «أَصَبْتَ وَأَحْسَنْتَ.»

تخريج: [إسناده ضعيف جدًا] أخرجه الطبراني في الكبير: ٢٦٠/٢ من حديث أبي بكر بن عياش به، وقال الدارقطني: ٢٢٨/٤ لم يروه غير دهثم بن قران وهو ضعيف وقد اختلف في إسناده، وقال الحافظ في الإصابة: ٢١٨/١، ت: ١٠٤٨ ولا يعرف له رواية إلا من طريق دهثم ودهثم ضعيف جدًا انتهى * ونمران مجهول (تقريب)، وأبو بكر بن عياش ضعفه الجمهور، ولم يخرج عنه البخاري إلا متابعة.

Comments:

Shaikh Zuhair Shâ'waish said in the footnotes of *Da'if Ibn Mâjah*: 'Khuss is a hut made of reeds (a type of wild plant). The soft end of the reeds is on the same side of threads and strings. The leaves of the date tree and the skin are on the side of the owner and the hard and rough end is on the other side. This description tells that the claimant was wrong in claiming the ownership of the hut, because his beams were on the side of the hard and rough end.'

Chapter 19. One Who Stipulates The Condition Of *Khalâs*^[1]

2344. It was narrated from ("Uqbah bin 'Âmir or) Samurah bin Jundub that the Messenger of Allâh ﷺ said: "If a product is sold to two men, it is for the one who was first."^[2] (*Da'if*)

(One of the narrators) Abu Al-Walid said: "This *Hadith* shows that *Khalâs* is invalid."

(المعجم ١٩) - بَابُ مَنْ اشْتَرَطَ

الْخَلَاصَ (التحفة ١٩)

٢٣٤٤ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا أَبُو الْوَلِيدِ: حَدَّثَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سُمْرَةَ بِنِ جُنْدُبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا بَاعَ الْبَيْعُ مِنْ رَجُلَيْنِ، فَالْبَيْعُ لِلأَوَّلِ».

قَالَ أَبُو الْوَلِيدِ: فِي هَذَا الْحَدِيثِ إِبْطَالُ الْخَلَاصِ.

تخريج: [ضعيف] تقدم، ح: ٢١٩٠.

[1] *Khalâs*: A condition stipulating that the seller will deliver the product when it comes into his possession.

[2] "What was sold, or, for the first of the two purchasers." (Sindi). See no. 2190 where it preceded.

Comments:

The meaning of the *Hadith* is that if a person sells an item to someone; then the seller finds another customer who is willing to pay more, and asks the seller to take the item back somehow, and sell it to the new customer; this condition is wrong, as is the second transaction. Only the first sale is correct and legally lawful.

Chapter 20. Passing Judgment By Casting Lots

(المعجم ٢٠) - بَابُ الْقَضَاءِ بِالْقُرْعَةِ

(التحفة ٢٠)

2345. It was narrated from 'Imrân bin Husain that a man had six slaves, and he did not have any other wealth apart from them, and he set them free when he died. The Messenger of Allâh ﷺ divided them into groups, set two free and left four as slaves. (Sahih)

٢٣٤٥ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ، وَ
مُحَمَّدُ بْنُ الْمُثَنَّى. قَالَ: حَدَّثَنَا عَبْدُ الْأَعْلَى:
حَدَّثَنَا خَالِدُ الْحَدَّاءُ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي
الْمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا
كَانَ لَهُ سِتَّةُ مَمْلُوكِينَ. لَيْسَ لَهُ مَالٌ غَيْرُهُمْ.
فَأَعْتَقَهُمْ عِنْدَ مَوْتِهِ. فَجَزَّاهُمْ رَسُولُ اللَّهِ ﷺ.
فَأَعْتَقَ اثْنَيْنِ وَأَرْقَى أَرْبَعَةً.

تخريج: أخرجه مسلم، الأيمان، باب من أعتق شركا له في عبد، ح: ١٦٦٨ من حديث أبي

قِلَابَةَ به .

Comments:

- It is unlawful to give all of one's wealth in charity at the point of death. Just one third, maximum, of the whole inheritance may be given in charity; and donating less than one third is better. (See *Hadith*: 2708).
- This Companion set free all the slaves while he had the right to set free only two of them. Now every slave had the right to be counted among the two who were set free. It is known from the decision of the Prophet ﷺ, that when more than one claimant has an equal right of something, then the decision will be made by drawing lots.

2346. It was narrated from Abu Hurairah that two men disputed concerning a transaction, and neither of them had proof. The Messenger of Allâh ﷺ commanded them to draw lots as to which of them should swear an oath, whether they liked it or not. (Da'if)

٢٣٤٦ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ الْعَتَكِيُّ:
حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ،
عَنْ خِلَاسِ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ
أَنَّ رَجُلَيْنِ تَدَارَعَا فِي بَيْعٍ. لَيْسَ لَوَاحِدٍ
مِنْهُمَا بَيِّنَةٌ. فَأَمَرَهُمَا رَسُولُ اللَّهِ ﷺ أَنْ
يَسْتَهْمَا عَلَى الْيَمِينِ. أَحَبَّأُ ذَلِكَ أَمْ كَرِهَهَا.

تخریج: [ضعیف] تقدم، ح: ۲۳۲۹.

Comments:

- When the claimant is unable to bring the witness or his witnesses are unacceptable, then the defendant will be asked to take an oath.
- Both parties can be the claimants in the case mentioned in the *Hadith*; and both can be considered defendants as well. Now who will be the defendant and take an oath will be judged by drawing lots.

2347. It was narrated from 'Aishah that when the Prophet ﷺ traveled, he would cast lots among his wives (to decide which one would accompany him). (*Sahih*)

۲۳۴۷ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانَ، عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ عَنِ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا سَافَرَ أَقْرَعَ بَيْنَ نِسَائِهِ.

تخریج: [صحیح] تقدم، ح: ۱۹۷۰.

Comments:

Allāh granted special permission to the noble Prophet ﷺ, therefore, it was not compulsory for the Prophet ﷺ to appoint turns among his wives. (See *Al-Ahzāb* 33: 51), despite that, the Prophet ﷺ would fulfill justice with them. There is a lesson in it for the nation to take the utmost care of justice among wives and children.

2348. It was narrated that Zaid bin Arqam said: "A case was brought to 'Ali bin Abu Tālib when he was in Yemen, concerning three men who had had intercourse with a woman during one period of being free from menses. He asked two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." He asked another two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." Every time he asked two of them whether they affirmed that the child belonged to the third, they would say no. So he cast lots between them, and attributed the child to the one whose name was

۲۳۴۸ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ أَبَا عَبْدِ الرَّزَّاقِ: أَنَّ أَبَا تَالِبٍ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ خَيْرِ الْحَضْرَمِيِّ، عَنْ زَيْدِ بْنِ أَرْقَمٍ قَالَ: أُتِيَ عَلِيٌّ ابْنُ أَبِي طَالِبٍ، وَهُوَ بِالْيَمَنِ، فِي ثَلَاثَةِ [قَد] وَقَعُوا عَلَى امْرَأَةٍ فِي طَهْرٍ وَاحِدٍ. فَسَأَلَ اثْنَيْنِ. فَقَالَ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ فَقَالَا: لَا. ثُمَّ سَأَلَ اثْنَيْنِ. فَقَالَ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ فَقَالَا: لَا. فَجَعَلَ كُلَّمَا سَأَلَ اثْنَيْنِ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ قَالَ: لَا. فَأَقْرَعَ بَيْنَهُمْ. وَالْحَقُّ الْوَلَدَ بِالَّذِي أَصَابَتْهُ الْقُرْعَةُ. وَجَعَلَ عَلَيْهِ ثُلْثِي اللَّدِيَّةِ. فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَصَحَّحَكَ حَتَّى بَدَتْ نَوَاجِدُهُ.

chosen in this manner, and obliged him to pay two thirds of the *Diyah*.^[1] The Prophet ﷺ was told of this, and he smiled so broadly that his back teeth became visible. (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب من قال بالقرعة إذا تنازعا في الولد، ح: ٢٧٧٠ من حديث عبدالرزاق به، وسنده ضعيف من أجل عننة الثوري، ح: ١٦٢، وله شواهد ضعيفة.

Comments:

- a. A free human cannot be sold at all; therefore, the human cannot be priced. But in case of a mistaken killing, etc., the blood money is fixed at one hundred camels. 'Ali ﷺ proved this amount as a price of the victim.
- b. If a case were to come about for which there is no exact and precise information in the Qur'ân and *Hadith*, then the decision should be made in the light of dedicated jurisprudence and analogy. But following the juristic and analogical opinion, in the presence of clear and precise wording of the *Shari'ah*, is unlawful.
- c. Although the habit of laughing a lot is disliked, if a matter of happiness or surprise occurs, then laughing for it is not contrary to the virtue of a scholar or an elderly person.

Chapter 21. Those Who Detect A Family Likeness

(المعجم ٢١) - بَابُ الْقَافَةِ (التحفة ٢١)

2349. It was narrated that 'Āishah said: "The Messenger of Allāh ﷺ came in one day looking happy, and said: 'O 'Āishah, did you not see that Mujazziz Al-Mudlijji entered upon me and saw Usāmah and Zaid. There was a blanket over them and their faces were covered but their feet were exposed, and he said: 'These feet belong to one another.'" (*Sahih*)

٢٣٤٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَهَشَامُ بْنُ عَمَّارٍ، وَمُحَمَّدُ بْنُ الصَّبَّاحِ. قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: دَخَلَ رَسُولُ اللَّهِ ﷺ ذَاتَ يَوْمٍ مَسْرُورًا وَهُوَ يَقُولُ: «يَا عَائِشَةُ! أَلَمْ تَرَيَّ أَنَّ مُجَزَّزًا الْمُدَلِجِيَّ دَخَلَ عَلَيَّ فَرَأَى أُسَامَةَ وَزَيْدًا، عَلَيْهِمَا قَطِيعَةٌ، فَدَخَلَ عَطِيًّا رُؤُوسَهُمَا وَقَدْ بَدَتْ أَقْدَامُهُمَا. فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ، بَعْضُهَا مِنْ بَعْضٍ».

تخريج: أخرجه البخاري، الفرائض، باب القاتف، ح: ٦٧٧١ من حديث سفيان به، ومسلم،

[1] *Diyah*: blood money, in this case it refers to the value of the woman (who was a slave).

الرضاع، باب العمل بإلحاق القائف الولد، ح: ١٤٥٩ عن ابن أبي شيبه به.

Comments:

- Qā'if* (physiognomist) is a person who is well versed in the science of physiognomy; physiognomy is an art of judging a man's nature. A person with the art of physiognomy reads the facial features and apparent physical characteristics and thus he judges the nature of things. Particularly, a physiognomist tries to express his view regarding the lineage relationship between two individuals. In these days some expert human trackers (modern: detectives) who, in search for thieves, are able to recognise a suspicious person with the help of their footprints; are also a kind of *physiognomists*.
- In the time of Ignorance (the pre-Islamic period), if the people had a dispute about who a child belonged to, then they would ask the physiognomist (*Qā'if*) to express his judgement with regard to the lineage of the child. This *Hadith* is a proof that their assistance still can be sought in these days. [I say: This *Hadith* is a fundamental rule for using modern detective devices and other trusted scientific and technical methods; like DNA, drug probes, fingerprints and other methods used to track criminals etc. Islam is a religion that deals with all types of problems, and Islam has always been modern, and a pioneer until the Day of Judgment. — *Usmani*]
- Zaid ؓ, who was the adopted son of the Prophet ﷺ, had a white complexion, but his son Usamah had a brown complexion; about which some of the hypocrites made inappropriate comments. When an Arab expert physiognomist said that these two individuals have the same family lineage, i.e., they are father and son; it uprooted the false propaganda of the hypocrites. So the Prophet ﷺ was very much pleased.

2350. It was narrated from Ibn 'Abbās that the Quraish went to a sorceress and they said to her: "Tell us whose footprints most resemble those of the owner of *Al-Maqām* (the station of Ibrāhim)." She said: "If you spread a piece of cloth over this soft earth and walk over it, I will tell you." So they spread out a piece of cloth and the people walked over it. She saw the footprints of the Messenger of Allāh ﷺ and said: "This one most closely resembles him among you." After that twenty years passed, or as long as

٢٣٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ: حَدَّثَنَا إِسْرَائِيلُ: حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ قُرَيْشًا أَتُوا امْرَأَةً كَاهِنَةً. فَقَالُوا لَهَا: أَخْبِرِينَا أَشَبَهْنَا أَمَّا بِصَاحِبِ الْمَقَامِ. فَقَالَتْ: إِنْ أَنْتُمْ جَرَرْتُمْ كِسَاءَ عَلَى هَذِهِ السَّهْلَةِ، ثُمَّ مَشَيْتُمْ عَلَيْهَا: أَنْبَأْتُكُمْ. قَالَ، فَجَرُّوا كِسَاءً. ثُمَّ مَشَى النَّاسُ عَلَيْهَا. فَأَبْصَرَتْ أَثَرَ رَسُولِ اللَّهِ ﷺ. فَقَالَتْ: هَذَا أَقْرَبَكُمْ إِلَيْهِ شَبَهًا. ثُمَّ مَكَّنُوا بَعْدَ ذَلِكَ عَشْرِينَ سَنَةً، أَوْ مَا شَاءَ اللَّهُ، ثُمَّ بَعَثَ اللَّهُ

Allâh willed, then Allâh sent Muḥammad ﷺ (i.e., missioned him as the Prophet). (*Da'if*)

مُحَمَّدًا ﷺ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ۱/۳۳۲ من حديث إسرائيل به، وانظر، ح: ۱۷۱ لعلته ومع ذلك قال البوصيري: هذا إسناد صحيح، رجاله ثقات .

Chapter 22. Giving A Child The Choice Between His Parents

(المعجم ۲۲) - بَابُ تَخْيِيرِ الصَّبِيِّ بَيْنَ آبَوَيْهِ (التحفة ۲۲)

2351. It was narrated from Abu Hurairah that the Prophet ﷺ gave a child the choice between his father and his mother (i.e., which parent to live with). He said: "O boy, this is your mother and this is your father." (*Sahih*)

۲۳۵۱ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ زِيَادِ بْنِ سَعْدٍ، عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ، عَنْ أَبِي مَيْمُونَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ. وَقَالَ: «يَا غُلَامُ هَذِهِ أُمُّكَ وَهَذَا أَبُوكَ».

تخریج: [صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في تختيار الغلام بين أبويه إذا افترقا، ح: ۱۳۵۷ من حديث سفيان به، وقال: حسن صحيح ، وأخرجه أبو داود، ح: ۲۲۷۷ من حديث ابن جريج أخبرني زياد به، وإسناده صحيح .

2352. It was narrated from 'Abdul-Hamid bin Salamah, from his father, from his grandfather, that his parents referred their dispute to the Prophet ﷺ, and one of them was a disbeliever while the other a Muslim. He gave him the choice and he turned towards the disbeliever. He (the Prophet ﷺ) said: "O Allâh, guide him," and he turned towards the Muslim, and he ruled that he should go with that parent. (*Hasan*)

۲۳۵۲ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عُثَيْبَةَ، عَنْ عُمَانَ النَّبِيِّ، عَنْ عَبْدِ الْحَمِيدِ بْنِ سَلَمَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ آبُوهُ اخْتَصَمَا إِلَى النَّبِيِّ ﷺ. أَحَدُهُمَا كَافِرٌ وَالْآخَرُ مُسْلِمٌ. فَخَرَّجَهُ فَتَوَجَّهَ إِلَى الْكَافِرِ. فَقَالَ: «اللَّهُمَّ اهْدِهِ» فَتَوَجَّهَ إِلَى الْمُسْلِمِ. فَفَضَى لَهُ بِهِ.

تخریج: [حسن] أخرجه النسائي: ۶/۱۸۵، الطلاق، . إسلام أحد الزوجين وتخيير الولد، ح: ۳۵۲۵ من حديث عثمان البتي به، وقال البوصيري: هذا إسناد ضعيف، عبدالحميد وأبوه وجده لا يعرفون ، أخرجه أبو داود، ح: ۲۲۴۴ من حديث عبدالحميد بن جعفر(ابن عبدالله بن الحكم بن

رافع الأنصاري) عن أبيه عن جده رافع بن سنان به، وصححه الحاكم: ٢٠٦/٢، ٢٠٧، ووافقه الذهبي، وسنده صحيح إن ثبت سماع جعفر من جده لأمه رافع، والله أعلم.

Comments:

- If the husband or wife embraces Islam, and the other spouse persists in disbelief, then they will be separated; and the wife has the right to marry another man after passing the waiting period.
- If the wife waits for her husband to become a Muslim instead of marrying another man, they will be allowed to establish matrimonial relations again, whenever he embraces Islam, without a new marriage bond. (See *Hadith: 2009*)
- If a husband and wife get separated for some reason; maybe because of divorce or the cancellation of the marriage bond; in this case the child will be given the choice to go with whoever the child pleases. Or the judge will look at the circumstances, to determine who will be better for the child, and then will decide accordingly.

Chapter 23. Reconciliation

(المعجم ٢٣) - بَابُ الصُّلْحِ (التحفة ٢٣)

2353. Kathir bin 'Abdullâh bin 'Amr bin 'Awf narrated from his father that his grandfather said: "I heard the Messenger of Allâh ﷺ say: 'Reconciling between Muslims is permissible, except reconciliation that forbids something that is allowed, or allows something that is forbidden.'" (*Sahih*)

٢٣٥٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَالِدُ بْنُ مَخْلَدٍ: حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ. إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا».

تخريج: [صحيح] أخرجه الترمذي، الأحكام، باب ما ذكر عن رسول الله ﷺ في الصلح بين الناس، ح: ١٣٥٢ من حديث كثير به، وقال: حسن صحيح، وقال الذهبي في ميزان الاعتدال: ٤٠٧/٣، وأما الترمذي فروى من حديثه: الصلح جائز بين المسلمين وصححه، فلهاذا لا يعتمد العلماء على تصحيح الترمذي، وانظر، ح: ١٦٥ لعلته، ولكن كثيرا لم ينفرد به، أخرجه أبو داود، ح: ٣٥٩٤ من حديث الوليد بن رباح عن أبي هريرة به مثله، وإسناده حسن، وصححه ابن الجارود، ح: ٦٣٧، ٦٣٨، وابن حبان (موارد)، ح: ١١٩٩.

Comments:

- If there is a dispute among two individuals or two parties, the responsible people should not let it get worse; and they should try to make reconciliation as soon as possible.
- The reconciliation means that one of them accepts his right, maybe even less than the due, just for the sake of ending the dispute. It is a deed of enormous reward.

- c. Any condition which is contrary to the clear rules of the *Shari'ah* cannot be allowed; stipulating such a condition or acting upon it is prohibited.

Chapter 24. Preventing One Who Will Mishandle His Wealth

2354. It was narrated from Anas bin Mâlik that there was a man at the time of the Messenger of Allâh ﷺ whose mental faculties were lacking, and he used to buy and sell. His family came to the Prophet ﷺ and said, "O Messenger of Allâh, stop him." So the Prophet ﷺ called him, and told him not to do that. He said: "O Messenger of Allâh, I cannot bear to be away from business." He said, "If you engage in a transaction, then say: 'Take it (i.e. the goods) and don't cheat (me).'"^[1] (*Sahih*)

(المعجم ٢٤) - بَابُ الْحَجْرِ عَلَى مَنْ يُفْسِدُ مَالَهُ (التحفة ٢٤)

٢٣٥٤ - حَدَّثَنَا أَبُو زُرَّارَةَ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَجُلًا كَانَ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ، فِي عَقْدَيْهِ ضَعْفٌ، وَكَانَ يَبِيعُ، وَأَنَّ أَهْلَهُ أَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! احْجُرْ عَلَيْهِ. فَدَعَاهُ النَّبِيُّ ﷺ. فَتَهَاةً عَنْ ذَلِكَ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي لَا أَضِيرُ عَنِ الْبَيْعِ. فَقَالَ: «إِذَا بَايَعْتَ قُلْ: هَا. وَلَا خِلَابَةَ».

تخريج: [صحيح] أخرجه الترمذي، البيهقي، باب ماجاء في من يخدع في البيع، ح: ١٢٥٠ من حديث عبدالأعلى به، وقال: حسن صحيح غريب، وصححه ابن الجارود، ح: ٥٦٨، والحاكم: ١٠١/٤ على شرط الشيخين، ووافقه الذهبي، وانظر، ح: ١٧٥، ٤٢٩، لعلته، ولكن له شواهد عند البخاري، ومسلم وغيرهما، راجع الموطأ: ٦٨٥/٢ (وسنن أبي داود، ح: ٣٥٠٠، ٣٥٠١ نيل المقصود بتحقيقي).

Comments:

- 'And don't cheat' means if you deceive me in this transaction, and later I find out, then I have the right to cancel the transaction.
- Once he was hit in the head and his brain was affected, and that was the reason for him being deceived.
- The person who is mentally unstable can be banned from conducting business deals, and any transaction made by him may be annulled. After having been banned from doing so, whoever makes a business deal with him, will be responsible himself, because his relatives have the right to prove the deal, void.

^[1] The Prophet ﷺ told him to do that so that people would realize that he was not very smart, so they would be kind to him and treat him fairly, as people at that time were like brothers, and cared for others more than they cared for themselves.

2355. It was narrated that Muhammad bin Yahya bin Habbân said: "My grandfather was Munqidh bin 'Amr. He was a man who had suffered a head wound and lost the power of speech, but that did not stop him from engaging in trade. He was always being cheated, so he went to the Prophet ﷺ and told him about that. He said to him: 'When you buy something, say: "There should be no intention of cheating," and for every product you buy, you have the choice for three nights. If you are pleased with it, keep it, and if you are displeased then return it.'"
(*Hasan*)

٢٣٥٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَانَ قَالَ: هُوَ جَدِّي مُنْقِدُ بْنُ عَمْرٍو. وَكَانَ رَجُلًا قَدْ أَصَابَتْهُ أَمَةٌ فِي رَأْسِهِ فَكَسَرَتْ لِسَانَهُ. وَكَانَ لَا يَدْعُ عَلَى ذَلِكَ التَّجَارَةَ. وَكَانَ لَا يِرَالُ يُعِينُ. فَأَتَى النَّبِيَّ ﷺ فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ لَهُ: «إِذَا أَنْتَ بَايَعْتَ فَقُلْ: لَا خِلَابَةَ. ثُمَّ أَنْتَ فِي كُلِّ سَلْعَةٍ ابْتِغَيْتَهَا بِالْخِيَارِ ثَلَاثَ لَيَالٍ. فَإِنْ رَضِيتَ فَأَمْسِكْ، وَإِنْ سَخِطْتَ فَأَرُدُّهَا عَلَى صَاحِبِهَا».

تخریج: [حسن] أخرجه البخاري في التاريخ الكبير: ١٧/٨، ١٨ من حديث عبدالأعلى قال: نا محمد بن إسحاق قال حدثني محمد بن يحيى بن حبان به، وفي سماعه من جدة نظر، وللحديث شواهد كثيرة عند البخاري، ومسلم وغيرهما من غير تعين حبان بن منقذ أو عمرو بن رضی الله عنهما.

Comments:

A less wise person is allowed to buy and sell; however an officer appointed by the Islamic government has the authority to ban him from doing so.

Chapter 25. Bankruptcy Of A Poor Man, And Selling His Assets To Pay Off His Creditors

(المعجم ٢٥) - بَابُ تَفْلِيسِ الْمُعْجَمِ
وَالْبَيْعِ عَلَيْهِ لِغُرْمَائِهِ (التحفة ٢٥)

2356. It was narrated that Abu Sa'eed Al-Khudri said: "At the time of the Messenger of Allâh ﷺ, a man suffered loss of some fruit that he had purchased, and his debts increased. The Messenger of Allâh ﷺ said: 'Give him charity.' So the people gave him charity, but that was not enough to pay

٢٣٥٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَةُ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِّ، عَنْ عِيَّاضِ بْنِ عَبْدِ اللَّهِ ابْنِ سَعْدٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ فِي نِمْارٍ ابْتِغَاها. فَكَثُرَ دَيْنُهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ:

off his debts. The Messenger of Allāh ﷺ said: 'Take what you find, but you have no right to more than that,' meaning his creditors." (*Sahih*)

تَصَدَّقُوا عَلَيْهِ فَتَصَدَّقَ النَّاسُ عَلَيْهِ. فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «خُذُوا مَا وَجَدْتُمْ، وَلاَ تَكُنْ لَكُمْ إِلاَّ ذَلِكَ» يَعْنِي الْغُرْمَاءَ.

تخریج: أخرجه مسلم، المساقاة، باب استحباب الوضع من الدين، ح: ۱۵۵۶ من حديث

الليث به.

Comments:

- a. The person who has an enormous amount of debt due from him, and is unable to repay it, should be helped with charity, and he is also entitled to receive *Zakāt*.
- b. If the debt is huge, and the amount collected from the people is not enough to repay the debt, then whatever is available should be divided among the creditors according to the percentage of their debts; for example: if a debtor has an amount equal to half of the debt, then every creditor will receive half of his credit.
- c. When a possible amount has been repaid and the debtor has been declared bankrupt; thereafter, the creditors cannot demand more.

2357. It was narrated from Jābir bin 'Abdullāh that the Messenger of Allāh ﷺ rid Mu'ādh bin Jabal of his creditors, then he appointed him governor of Yemen. Mu'ādh said: "The Messenger of Allāh ﷺ settled my debts with my creditors using what wealth I had, then he appointed me as governor." (*Da'if*)

۲۳۵۷ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُسْلِمٍ بْنُ هُرْمَزٍ، عَنْ سَلَمَةَ الْمَكِّيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ خَلَعَ مُعَاذَ بْنَ جَبَلٍ مِنْ غُرْمَائِهِ. ثُمَّ اسْتَعْمَلَهُ عَلَى الْيَمَنِ. فَقَالَ مُعَاذٌ: إِنَّ رَسُولَ اللَّهِ ﷺ اسْتَخْلَصَنِي بِمَالِي ثُمَّ اسْتَعْمَلَنِي.

تخریج: [إسناده ضعيف] * عبدالله بن مسلم بن هرمز ضعيف كما في التقريب، وسلمة المكي قال البوصيري: لا يعرف حاله، وضعفه البوصيري.

Chapter 26. One Who Finds His Exact Property With A Man Who Has Become Bankrupt

(المعجم ۲۶) - بَابُ مَنْ وَجَدَ مَتَاعَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ (التحفة ۲۶)

2358. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever finds his

۲۳۵۸ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ

exact property with a man who has become bankrupt, then he has more right to it than anyone else.” (Sahih)

رُوحٌ: أَبَانَا اللَّيْثُ بْنُ سَعْدٍ، جَمِيعًا عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي بَكْرٍ بْنِ مُحَمَّدٍ بْنِ عَمْرٍو بْنِ حَزْمٍ، عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدَ مَتَاعَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ».

تخريج: أخرجه البخاري، الاستقراض، باب: إذا وجد ماله عند مفلس في البيع والقرض والوديعة فهو أحق به، ح: ٢٤٠٢، ومسلم، المساقاة، باب من أدرك ما باعه عند المشتري، وقد أفلس، فله الرجوع إليه، ح: ١٥٥٩ من حديث يحيى بن سعيد به.

2359. It was narrated from Abu Hurairah that the Prophet ﷺ said: “Any man who sells a product, then he finds the exact product with the man who has become bankrupt, and he has not taken any of its price, it belongs to him, but if he had taken any of its price, then he is like any other creditor.” (Sahih)

٢٣٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ، عَنْ مُوسَى بْنِ عُقْبَةَ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ ابْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «أَيُّمَا رَجُلٍ بَاعَ سِلْعَةً، فَأَدْرَكَ سِلْعَتَهُ بِعَيْنِهَا عِنْدَ رَجُلٍ، وَقَدْ أَفْلَسَ، وَلَمْ يَكُنْ قَبْضَ مِنْ ثَمَنِهَا شَيْئًا، فَهِيَ لَهُ. وَإِنْ كَانَ قَبْضَ مِنْ ثَمَنِهَا شَيْئًا، فَهُوَ أَسْوَأُ لِلْغَرَمَاءِ».

تخريج: [صحيح] انظر الحديث السابق * إسماعيل بن عياش ضعيف، والحديث السابق شاهد له.

Comments:

- If a person under such an enormous amount of debt, is unable to repay it; it is allowed to declare him bankrupt.
- Extra merchandise of the bankrupt person will be sold to repay the debt to the lenders.
- If an item belonging to a creditor is still present with the bankrupt (debtor); then this case has two aspects: A): If the bankrupt debtor did not pay anything towards the item at all, then the creditor will take the thing back; it will be considered as if nothing was sold and bought. B): If the bankrupt debtor has paid something, or the whole price for the item, then now it belongs to the debtor. Now when the households are shared by the creditors, if this thing falls into the share of the creditor, who was the real owner, then

this is fair enough, otherwise in whoever's share it falls, he will take it, and the creditor who initially owned it does not have any right upon it.

2360. It was narrated that Ibn Khaldah, who was a judge in Al-Madinah, said: We came to Abu Hurairah and asked him about a companion of ours who had become bankrupt. He said: "This is what the Prophet ﷺ ruled: 'Any man who dies or becomes bankrupt, the owner of the product has more right to it, if he finds the exact thing.' (Hasan)

٢٣٦٠ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُؤَذَّرِ الْجَزَائِيّ وَ عَبْدِ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشَقِيّ. قَالَ: حَدَّثَنَا بَنُو أَبِي فُدَيْكٍ، عَنِ ابْنِ أَبِي ذُئْبٍ، عَنْ أَبِي الْمُعْتَمِرِ بْنِ عَمْرٍو بْنِ رَافِعٍ، عَنِ ابْنِ خَلْدَةَ الزُّرَقِيِّ، وَكَانَ قَاضِيًا بِالْمَدِينَةِ قَالَ: جِئْنَا أَبَا هُرَيْرَةَ فِي صَاحِبٍ لَنَا قَدْ أَفْلَسَ. فَقَالَ: هَذَا الَّذِي قَضَى فِيهِ النَّبِيُّ ﷺ: «أَيُّمَا رَجُلٍ مَاتَ أَوْ أَفْلَسَ، فَصَاحِبُ الْمَتَاعِ أَحَقُّ بِمَتَاعِهِ. إِذَا وَجَدَهُ بِعَيْنِهِ».

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب في الرجل يفلس فيجد الرجل متاعه بعينه عنده، ح: ٣٥٢٣ من حديث ابن أبي ذئب به، وصححه ابن الجارود، ح: ٦٣٤، والحاكم: ٥٠، والذهبي * أبو المعتمر لم يعرفه ابن عبد البر، ووثقه ابن حبان، وابن الجارود، والحاكم وغيرهم، فحديثه لا ينزل عن درجة الحسن.

2361. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Any man who dies and has the property of another man, whether he paid something towards it or not, (the owner of those goods) is like any other creditor." (Hasan)

٢٣٦١ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ ابْنِ كَثِيرٍ بْنِ دِينَارِ الْجُمْصِيِّ: حَدَّثَنَا الْيَمَانُ ابْنُ عَدِيٍّ: حَدَّثَنِي الزُّبَيْدِيُّ مُحَمَّدُ بْنُ الْوَلِيدِ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرِئٍ مَاتَ وَعِنْدَهُ مَالٌ امْرِئٍ بِعَيْنِهِ، اقْتَضَى مِنْهُ شَيْئًا أَوْ لَمْ يَقْتَضِ، فَهُوَ أَسْوَأُ لِلْمُرَمَّاءِ».

تخريج: [حسن] أخرجه الدارقطني: ٢٩/٣ من حديث عمرو بن عثمان به، وقال: اليمان بن عدي ضعيف الحديث، وقال: ٢٢٩/٤: خالفه إسماعيل بن عياش عن الزبيدي، وموسى بن عقبة، واليمان بن عدي، وإسماعيل بن عياش ضعيفان، وللحديث شواهد كثيرة جدًا.

Comments:

If a person borrowed some cash from someone, and the borrower dies before using the cash; the lender cannot claim the whole amount of cash to be repaid to him only; for example: he claims that these are the same notes borrowed from him. This creditor will be just like the other creditors. If the other creditors are repaid fully then he will be repaid fully; otherwise if the

debt is more than the debtor's inheritance, the lender of cash will be paid a lesser amount in proportion to the amount paid to the other creditors. So, in this matter, the cash and other things are not treated equally; as in the case of goods, the creditor may take his goods back. As mentioned in *Hadith* 2359, comment c.

The Chapters On Testimonies

أَبْوَابُ الشَّهَادَاتِ

Comments:

Testimony is that a person tells an account about something accurately as he/she sees and hears.

- * Only those things should be informed of as testimony which have been seen by the eyes or heard by the ears. Uncertain testimony must not be given.
- * Two trustworthy persons should testify to the honesty and trustworthiness of the witness.
- * A false witness should be given some sort of punishment in order to make an example of him for other people in the future.

Chapter 27. To Give Testimony When One Has Not Been Asked To Do So Is Disliked

(المعجم ٢٧) - بَابُ كَرَاهِيَةِ الشَّهَادَةِ
لِمَنْ لَمْ يُسْتَشْهَدْ (التحفة ٢٧)

2362. 'Abdullāh bin Mas'ud said: "The Messenger of Allāh ﷺ was asked, 'Which of the people are best?' He said: 'My generation, then those that follow them, then those that follow them. Then there will come people whose testimony precedes their oath and whose oath precedes their testimony.'" (*Sahih*)

٢٣٦٢ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ وَ عَمْرُو
ابْنُ رَافِعٍ، قَالَا: حَدَّثَنَا جَرِيرٌ عَنْ مَنْصُورٍ،
عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدَةَ السُّلَمَانِيِّ قَالَ: قَالَ
عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: سَأَلَ رَسُولُ اللَّهِ ﷺ:
أَيُّ النَّاسِ خَيْرٌ؟ قَالَ: «قَرْنِي، ثُمَّ الَّذِينَ
يَلُونَهُمْ، ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ يَجِيءُ قَوْمٌ
تَبَلَّرُوا شَهَادَةً أَحَدِهِمْ يَمِينَهُ، وَيَمِينُهُ شَهَادَتُهُ».

تخريج: أخرجه البخاري، الشهادات، باب: لا يشهد على شهادة جور إذا أشهد،
ح: ٢٦٥٢، ٣٦٥١، ٦٦٥٨ وغيره، ومسلم، فضائل الصحابة، باب فضل الصحابة ثم الذين يلونهم،
ثم الذين يلونهم، ح: ٢٥٣٣ من حديث منصور به.

Comments:

- a. *Qarn* means the people of an era; i.e., people of a generation. Here the first *Qarn* (era) means the first generation of Islam, who were the noble Companions of the noble Prophet ﷺ; and those who succeeded them are the *Tābi'in* (the successors) and those who succeeded the *Tābi'in* are the *Taba' Tābi'in* (the successor of the successors); (i.e., first, second and third generations of Islam).
- b. The noble Companions are the most virtuous generation of the Muslim

Nation; a Companion who is smallest in status is more virtuous than the most righteous *Tābi'i* (successor).

- c. Hastening to take an oath before witnessing, and to bear witness before an oath means they will not understand the value, importance and consequences of it. So, they will take false oaths without any hesitation, and particularly, when testifying, to something, they will have no fear of taking a false oath. It is an awful bad habit.

2363. It was narrated that Jābir bin Samurah said: 'Umar bin Khattāb addressed us at Jābiyah and said: "The Messenger of Allāh ﷺ stood up among us as I stand among you, and said: 'Honor my Companions for my sake, then those who come after them, then those who come after them. Then lying will prevail until a man will give testimony without being asked to do so, and he will swear an oath without being asked to do so.'" (*Sahih*)

٢٣٦٣ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَّاحِ: حَدَّثَنَا جَرِيرٌ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ جَابِرِ بْنِ سَمُرَةَ. قَالَ: خَطَبَنَا عُمَرُ بْنُ الْخَطَّابِ بِالْجَابِيَةِ فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ قَامَ فِيْنَا مِثْلَ مَقَامِي فِيكُمْ فَقَالَ: «اِحْفَظُونِي فِي أَصْحَابِي. ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ يَفْشُو الْكَذِبُ حَتَّى يَشْهَدَ الرَّجُلُ وَمَا يُسْتَشْهَدُ. وَيَحْلِفَ وَمَا يُسْتَحْلَفُ».

تخريج: [إسناده صحيح] أخرجه أحمد: ٢٦/١، والنسائي في الكبرى، عن جرير (بن عبد الحميد) به، وتابعه جرير بن حازم عند النسائي في الكبرى وغيره (وصححه ابن حبان)، وقال أبو داود الطيالسي في مسنده: أخبرنا شعبة عن عبد الملك بن عمير قال: سمعت جابر بن سمرة قال: خطبنا عمر بالجابية به... إلخ كما في مسند الفاروق لابن كثير: ٥٥٤/٢، وللاثر شواهد كثيرة جداً تبلغ حد التواتر.

Comments:

- a. In the time of Companions, *Tābi'in* and the *Taba' Tābi'in*, in the society, good was overwhelming, whereas the evil was overwhelmed. The general people did not have the moral and behavioural corruption which appeared later; the mistakes that occurred in the earlier era were not that severe and damaging as ones those occurring among the later generations.
- b. The meaning of an oath not to be demanded, is that the witness will be determined to bear witness, but due to corruption and weakness of morality they will be unreliable; therefore they will not be accepted as a witness, and even their oaths will be regarded unreliable.

Chapter 28. A Man Who Has Testimony To Give, When The Person To Whom It Pertains Is Unaware Of That

(المعجم ٢٨) - بَابُ الرَّجُلِ عِنْدَهُ
الشَّهَادَةُ لَا يَعْلَمُ بِهَا صَاحِبِهَا
(التحفة ٢٨)

2364. Zaid bin Khâlid Al-Juhani said that he heard the Messenger of Allâh ﷺ say: "The best of witnesses is the one who gives his testimony before he is asked for it." (*Sahih*)

٢٣٦٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدٌ
ابْنُ عَبْدِ الرَّحْمَنِ الْجُعْفِيُّ قَالَا: حَدَّثَنَا زَيْدُ
ابْنُ الْحَبَابِ الْعُكْلِيُّ: أَخْبَرَنِي أَبِي بْنُ عَبَّاسٍ
ابْنُ سَهْلٍ بْنُ سَعْدِ السَّاعِدِيِّ: حَدَّثَنِي أَبُو
بَكْرٍ بْنُ عَمْرٍو بْنِ حَزْمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ
عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عُثْمَانَ بْنِ عَفَّانَ:
حَدَّثَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ: أَخْبَرَنِي
عَبْدُ الرَّحْمَنِ بْنُ أَبِي عَمْرَةَ الْأَنْصَارِيُّ أَنَّهُ
سَمِعَ زَيْدَ بْنَ خَالِدِ الْجُهَنِيِّ يَقُولُ: إِنَّهُ سَمِعَ
رَسُولَ اللَّهِ ﷺ يَقُولُ: «خَيْرُ الشُّهُودِ مَنْ أَدَّى
شَهَادَتَهُ قَبْلَ أَنْ يُسْأَلَهَا».

تخریج: أخرجه مسلم، الأفضية، باب بيان خير الشهود، ح: ١٧١٩ من حديث أبي بكر بن عمرو بن حزم به.

Comments:

It means a true witness, if he does not testify, then someone's right is at risk; this is because perhaps there are no other witnesses, or there is a witness, but he is unreliable.

Chapter 29. Witnessing Loans

(المعجم ٢٩) - بَابُ الْإِشْهَادِ عَلَى
الدَّيُونِ (التحفة ٢٩)

2365. It was narrated that Abu Sa'eed Al-Khudri recited this Verse: "O you who believe! When you contract a debt for a fixed period..." until: "then if one of you entrusts the other."^[1] Then

٢٣٦٥ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ يُوسُفَ
الْحَبِيرِيُّ، وَ جَمِيلُ بْنُ الْحَسَنِ الْعَتَكِيُّ.
قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ مَرْوَانَ الْعُجْلِيُّ:
حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي نَضْرَةَ، عَنْ أَبِيهِ،

^[1] Al-Baqarah 2:282-283.

he said: "This abrogates what came before."^[1] (*Hasan*)

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: تَلَا هَذِهِ الْآيَةَ: ﴿يَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدِينِكُمْ إِلَىٰ أَجَلٍ مُّسَمًّى﴾ حَتَّىٰ بَلَغَ: ﴿فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا﴾ [البقرة: ٢٨٢-٢٨٣] فَقَالَ: هَذِهِ نَسَخَتْ مَا قَبْلَهَا.

تخریج: [إسناده حسن] أخرجه ابن أبي حاتم في تفسيره: ٥٧٠/٢، وأبو داود في الناسخ والمنسوخ، والطبراني، ومن طريقه المزني في تهذيب الكمال (ق٢/٨٦٣) من حديث محمد بن مروان به، وقواه ابن كثير في تفسيره، وهذا اجتهاد من أبي سعيد الخدري رضي الله عنه، والله أعلم.

Comments:

This 'abrogation' does not mean the Terminological Abrogation. It is a partial abrogation that the first Verse commands for documenting any type of loan.

Chapter 30. The One Whose Testimony Is Not Permitted

(المعجم ٣٠) - بَابُ مَنْ لَا تُجْوزُ شَهَادَتُهُ (التحفة ٣٠)

2366. It was narrated from 'Amr bin Shu'aib from his father that his grandfather said that the Messenger of Allāh ﷺ said: "The testimony of a man or woman who is treacherous, or of one who has been subjected to one of the *Hadd* punishments of Islam, or of one who bears a grudge against his brother, is not permissible." (*Da'if*)

٢٣٦٦ - حَدَّثَنَا أَيُّوبُ بْنُ مُحَمَّدٍ الرَّقِّيُّ: حَدَّثَنَا مُعَمَّرُ بْنُ سَلِيمَانَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ ابْنُ يَحْيَى: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ قَالَ: حَدَّثَنَا حَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُجْوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا مَحْدُودٍ فِي الْإِسْلَامِ، وَلَا ذِي غَمْرٍ عَلَىٰ أَخِيهِ».

تخریج: [إسناده ضعيف] أخرجه أحمد: ٢٠٨/٢ عن يزيد بن هارون وغيره به، وانظر، ح: ٤٩٦، ١١٢٩ لعلته، وله شواهد ضعيفة، وأصل الحديث صحيح بلفظ: لا تجوز شهادة خائن ولا خائنة ولا زان ولا زانية ولا ذي غمير على أخيه أخرجه أبو داود، ح: ٣٦٠١ وغيره، وسنده

[1] Ibn Kathir said: "Abu Sa'eed, Sha'bi, Rabi' bin Anas, Hasan, Ibn Juraij, and Ibn Zaid said that recording such transactions was necessary before, but was then abrogated by Allāh's Statement," and he cited this portion of *Al-Baqarah* 2:283. See the *Tafsir* of Ibn Kathir, *Al-Baqarah* 2:283.

قوي كما قال الحافظ في التلخيص: ١٩٨/٤، وللحديث شواهد.

Comments:

- A person behaving treacherously with a trust is not reliable. So, his testimony is unacceptable in the court.
- If it is proven that the witness already has unpleasant terms against whom he is testifying, it makes the testimony doubtful. It is possible that due to enmity, he wants to take revenge by testifying against the opponent.

2367. It was narrated from Abu Hurairah that he heard the Messenger of Allāh ﷺ say: "The testimony of a Bedouin against a town-dweller is not permissible." (Sahih)

٢٣٦٧ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي نَافِعُ بْنُ يَزِيدَ، عَنِ ابْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَجُوزُ شَهَادَةُ بَدَوِيٍّ عَلَى صَاحِبِ قَرْيَةٍ».

تخریج: [إسناده صحيح] أخرجه أبو داود، القضاء، باب شهادة البدوي على أهل الأمصار، ح: ٣٦٠٢ من حديث ابن وهب به، وصححه ابن الجارود، ح: ١٠٠٩.

Comments:

- The fact of it, is that the Bedouins are generally at a low level in religion, morals and character; because they do not have the opportunity to sit in the company of the scholars and to learn about the religion. Therefore, there is more possibility they will not testify accurately.
- It is necessary that the witness is a trustworthy person.

Chapter 31. Passing Judgment On The Basis Of A Witness And An Oath

(المعجم ٣١) - بَابُ الْقَضَاءِ بِالشَّاهِدِ وَالْيَمِينِ (التحفة ٣١)

2368. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. [This is in the absence of two witnesses.] (Sahih)

٢٣٦٨ - حَدَّثَنَا أَبُو مُصْعَبٍ [الْمَدَنِيُّ]، أَحْمَدُ بْنُ عَبْدِ اللَّهِ الزُّهْرِيُّ، وَيَعْقُوبُ بْنُ إِبْرَاهِيمَ الدُّورِيُّ، قَالَا: حَدَّثَنَا عَبْدُ الْعَزِيزِ ابْنُ مُحَمَّدٍ الدَّرَاوَدِيُّ، عَنْ زَيْبَعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ.

تخریج: [إسناده صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في اليمين مع الشاهد، ح: ١٣٤٣ عن يعقوب بن إبراهيم به، وقال: حسن غريب، وصححه ابن الجارود، ح: ١٠٠٧، والحدیث منخرج في نيل المقصود، ح: ٣٦١٠، أخرجه أبو داود من حدیث الدراوردي به.

2369. It was narrated from Jābir that the Prophet ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. (*Sahih*)

٢٣٦٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ، عَنْ جَابِرٍ أَنَّ النَّبِيَّ ﷺ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ.

تخریج: [إسناده صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في اليمين مع الشاهد، ح: ١٣٤٤ عن محمد بن بشار به.

2370. It was narrated that Ibn 'Abbās said: "The Messenger of Allāh ﷺ passed judgment on the basis of a witness along with an oath (by the claimant)." (*Sahih*)

٢٣٧٠ - حَدَّثَنَا أَبُو إِسْحَاقَ الْهَرَوِيُّ إِبْرَاهِيمُ ابْنُ عَبْدِ اللَّهِ بْنِ حَاتِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْحَارِثِ الْمَخْزُومِيُّ: حَدَّثَنَا سَيْفُ بْنُ سَلِيمَانَ الْمَكِّيُّ: أَخْبَرَنِي قَيْسُ بْنُ سَعْدٍ، عَنْ عَمْرِو ابْنِ دِينَارٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالشَّاهِدِ وَالْيَمِينِ.

تخریج: أخرجه مسلم، الأفضية، باب وجوب الحكم بشاهد ويمين، ح: ١٧١٢ من حدیث سيف به.

2371. It was narrated from Surraq that the Prophet ﷺ allowed the testimony of a man along with the oath of the claimant. (*Sahih*)

٢٣٧١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَ جُوَيْرِيَةَ بْنَ أَسْمَاءَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدَ، مَوْلَى الْأُمَيْيَةِ، عَنْ رَجُلٍ مِنْ أَهْلِ مِصْرَ، عَنْ سُرْقِ بْنِ أَنَسٍ أَنَّ النَّبِيَّ ﷺ أَجَازَ شَهَادَةَ الرَّجُلِ وَيَمِينَ الطَّلِبِ.

تخریج: [إسناده ضعيف] أخرجه الطبراني: ١٦٦/٧، ح: ٦٧١٧ من حدیث جویریة بن أسماء (في الاصل المطبوع: إسماعیل وهو خطأ) به، وضعفه البوصيري لهجالة تابعیه، ولأصل الحدیث شاهد صحيح تقدم قبله، وفيه غنية عن مثل هذه الرواية المجهولة.

Comments:

- a. Two trustworthy witnesses are compulsory to prove a claim to be true.
- b. If the claimant has one witness only, he will then take one oath along with the witness, and thus the claim of the claimant will be proven.

Chapter 32. False Witness

(المعجم ٣٢) - بَابُ شَهَادَةِ الزُّورِ

(التحفة ٣٢)

2372. It was narrated that Khuraim bin Fâtik Al-Asadi said that the Prophet ﷺ prayed the Morning prayer, and when he had finished, he stood up and said: "Bearing false witness is equivalent to associating others with Allâh," three times. Then he recited this Verse: "And shun lying speech (false statements), *Hunafâ' Lillâh* (i.e., worshiping none but Allâh), not associating partners (in worship) to Him."^[1] (*Da'if*)

٢٣٧٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ عَيْدٍ: حَدَّثَنَا سَفْيَانُ الْعَصْفَرِيُّ عَنْ أَبِيهِ، عَنْ حَبِيبِ بْنِ النُّعْمَانَ الْأَسَدِيِّ، [عَنْ خُرَيْمِ بْنِ فَاتِكِ الْأَسَدِيِّ] قَالَ: صَلَّى النَّبِيُّ ﷺ الصُّبْحَ. فَلَمَّا انْصَرَفَ قَامَ قَائِمًا. فَقَالَ: «عَدَلْتُ شَهَادَةَ الزُّورِ بِالْإِشْرَاكِ بِاللَّهِ» ثَلَاثَ مَرَّاتٍ. ثُمَّ تَلَا هَذِهِ الْآيَةَ: ﴿وَلَجَسَنُوا قَوْلَكَ الزُّورَ ۚ حَقًّا لِلَّهِ عَيْرَ مُشْرِكِينَ بِهِ﴾ [الحج: ٣٠-٣١].

تخريج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب في شهادة الزور، ح: ٣٥٩٩ من حديث محمد بن عبيد به، وعلته جهالة حال أبي سفيان زياد العصفري، وشيخه حبيب بن النعمان، والله أعلم بحالهما.

Comments:

Bearing false witness is a major sin. There are several authentic *Ahâdith* concerning this issue. The three sins that the noble Prophet ﷺ declared 'the worst of the major sins' are: "Associating partners with Allâh, disobeying parents and bearing false witness." (See *Sahîh Al-Bukhârî*, The Testimonies, Chapter: What is mentioned concerning the false oath)

2373. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: 'The one who bears false witness will not move away (on the Day of Resurrection) until Allâh condemns him to Hell.'^[1] (*Da'if*)

٢٣٧٣ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقُرَاتِ، عَنْ مَحَارِبِ بْنِ دِنَارٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَنْ تَزُولَ قَدَمَا شَاهِدِ الزُّورِ حَتَّى يُوجِبَ اللَّهُ لَهُ النَّارَ».

تخريج: [ضعيف جداً] أخرجه أبو يعلى، ح: ٥٦٧٢ من حديث محمد بن القرات به، وسنده موضوع، وصححه الحاكم (٩٨/٤)، ووافقه الذهبي * سويد ضعيف وشيخه محمد بن القرات كذاب كما قال الإمام أحمد، ومحمد بن عبدالله بن عمار وغيرهما، وقال ابن حزم: ضعيف بالاتفاق، والحديث ضعفه البوصيري، وللحديث شاهد ضعيف جداً عند أبي نعيم في حلية

[1] *Al-Hajj* 22:30-31.

الأولياء (٧/٢٦٤).

Chapter 33. The Testimony Of The People Of The Book Against One Another

(المعجم ٣٣) - بَابُ شَهَادَةِ أَهْلِ
الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ (التحفة ٣٣)

2374. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ allowed the People of the Book to testify against one another. (*Da'if*)

٢٣٧٤ - حَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ أَجَازَ شَهَادَةَ أَهْلِ الْكِتَابِ، بَعْضِهِمْ عَلَى بَعْضٍ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ١٠/١٦٥ من حديث أبي خالد به، وقال: هو مما أخطأ فيه، وقال البوصيري: هذا إسناده ضعيف من أجل مجالد بن سعيد، وانظر، ح: ١١، وفيه علة أخرى ذكرها البيهقي كما تقدم في كلامه.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

14. The Chapters On Gifts

(المعجم ١٤) أَبْوَابُ الْهَبَاتِ (التحفة ...)

Hibah is that a person, willingly, gives his wealth or property to someone as a gift without asking for anything in exchange. Religiously, giving a gift is desirable, because it is such a good deed that Allāh urged His slaves for it.

If a father wants to give something to his children, he should necessarily treat all his children equally.

It is *Harām* (illegal) to take the gift back.

A father is allowed to take his gift back.

It is wrong even to hope for an exchange for a gift.

Chapter 1. A Man Giving A Gift To His Son

(المعجم ١) - بَابُ الرَّجُلِ يَنْحَلُّ وَلَدَهُ (التحفة ٣٤)

2375. It was narrated that Nu'mân bin Bashir said that his father took him to the Prophet ﷺ and said: "Bear witness that I have given Nu'mân such and such from my wealth." He said: "Have you given all your children something like that which you have given to Nu'mân?" He said: "No." He said: "Then let someone other than me bear witness to that." And he said: "Would you not like all your children to honor you equally?" He said: "Of course." He said: "Then do not do this." (*Sahih*)

٢٣٧٥ - حَدَّثَنَا أَبُو بَشِيرٍ، بَكَرُ بْنُ خَلْفٍ: حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنِ الشَّعْبِيِّ، عَنِ الثُّعْمَانَ بْنِ بَشِيرٍ قَالَ: أَنْطَلَقَ بِهِ أَبُوهُ يَحْمِلُهُ إِلَى النَّبِيِّ ﷺ. فَقَالَ: أَشْهَدُ أَنِّي قَدْ نَحَلْتُ الثُّعْمَانَ مِنْ مَالِي كَذَا وَكَذَا. قَالَ: «فَكُلَّ بَيْتِكَ نَحَلْتَ وَمِثْلَ الَّذِي نَحَلْتَ الثُّعْمَانَ؟» قَالَ: لَا. قَالَ: «فَأَشْهَدُ عَلَيَّ هَذَا غَيْرِي». قَالَ: «أَلَيْسَ يَسْرُكُ أَنْ يَكُونُوا لَكَ فِي الْبِرِّ سَوَاءٌ؟» قَالَ: بَلَى. قَالَ: «فَلَا إِذَا».

تخریج: أخرجه البخاري، الهبة وفضلها والتحريض عليها، باب الهبة للولد، ح: ٢٥٨٧، ٢٦٥٠، ومسلم، الهبات، باب كراهة تفضيل بعض الأولاد في الهبة، ح: ١٦٢٣ من حديث عامر الشعبي به.

2376. It was narrated from Nu'mân bin Bashir that his father gave him a gift of a slave, and he came to the Prophet ﷺ so that he could witness the gift. He said: "Have you given something to all of your children?" He said: "No." He said: "Then take back (your gift)." (*Sahih*)

٢٣٧٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، وَ مُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ: أَخْبَرَاهُ عَنِ النُّعْمَانِ بْنِ بَشِيرٍ أَنَّ أَبَاهُ نَحَلَهُ غُلَامًا. وَأَنَّهُ جَاءَ إِلَى النَّبِيِّ ﷺ يُشْهَدُهُ. فَقَالَ: «أَكُلُّ وَلَدِكَ نَحَلْتَهُ؟» قَالَ: لَا. قَالَ: «فَارُدُّهُ».

تخریج: أخرجه البخاري، الهبة وفضلها والتحريض عليها، باب الهبة للولد، ح: ٢٥٨٦، ومسلم، الهبات، الباب السابق، ح: ١٦٢٣ من حديث الزهري به.

Comments:

- a. Children should be treated equally. Equal treatment in daily needs is that everybody should be given according to one's needs, for example: if a child needs clothes, he should be provided with the clothes; whoever needs medical treatment he/she should be provided with it; moreover, the equality of giving gifts to children is also necessary.
- b. The parents may take back the gift given to the children.

Chapter 2. One Who Gives His Child A Gift Then Takes It Back

(المعجم ٢) - بَابُ مَنْ أَعْطَى وَلَدَهُ ثُمَّ رَجَعَ فِيهِ (التحفة ٣٥)

2377. It was narrated from Ibn 'Abbâs and Ibn 'Umar, who attributed the *Hadith* to the Prophet ﷺ, that he said: "It is not permissible for a man to give a gift then take it back, except what a father gives to his child." (*Sahih*)

٢٣٧٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ أَبُو بَكْرِ ابْنُ خَلَّادٍ الْبَاهِلِيُّ. قَالَ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ حُسَيْنِ الْمُعَلَّمِ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ وَ ابْنِ عُمَرَ. يَرْفَعَانِ الْحَدِيثَ إِلَى النَّبِيِّ ﷺ قَالَ: «لَا يَجُزُّ لِلرَّجُلِ أَنْ يُعْطِيَ الْعَطِيَّةَ ثُمَّ يَرْجِعَ فِيهَا. إِلَّا الْوَالِدَ فِيمَا يُعْطِي وَلَدَهُ».

تخریج: [إسناده صحيح] أخرجه الترمذي، البيوع، باب ما جاء في كراهية الرجوع في الهبة، ح: ٢١٣٢، ١٢٩٩، عن محمد بن بشار به، وقال: حسن صحيح، وصححه ابن الجارود، ح: ٩٩٤، وابن حبان، والحاكم: ٤٦/٢، والذهبي.

2378. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet of Allāh ﷺ said: "None of you should take back his gift, except a father (taking it back) from his son." (*Sahih*)

٢٣٧٨ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ، عَنْ عَامِرِ الْأَحْوَلِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ نَبِيَّ اللَّهِ ﷺ قَالَ: «لَا يَرْجِعُ أَحَدُكُمْ فِي هِبَتِهِ، إِلَّا الْوَالِدُ مِنْ وَلَدِهِ».

تخریج: [صحیح] أخرجه النسائي: ٢٦٤، ٢٦٥، الهبة، . رجوع الوالد فيما يعطي ولده ... الخ، ح: ٣٧١٩ من حديث سعيد بن أبي عروبة به، وتابعه عبدالوارث، وإبراهيم بن طهمان عن عامر الأحول به (السنن الكبرى للبيهقي: ١٧٩/٦).

Comments:

- It is not right to take back something given to someone as gift, whether the gift is something ordinary or precious.
- A father may take back something that he has given to his children.
- The same rule of taking a gift back from a child applies to the mother as well.
- Some scholars even included the maternal grandfather and grandmother, paternal grandfather and grandmother in the same rule.

Chapter 3. Lifelong Grant

(المعجم ٣) - بَابُ الْعُمْرَى (التحفة ٣٦)

2379. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There is no lifelong grant. Whoever is given something as a lifelong grant, it is his." (*Hasan*)

٢٣٧٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، عَنْ مُحَمَّدِ ابْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا عُمْرَى. فَمَنْ أُعْمِرَ شَيْئًا، فَهُوَ لَهُ».

تخریج: [إسناده حسن] أخرجه النسائي: ٢٧٧/٦ من طرق عن محمد بن عمرو به، وقال البوصيري: هذا إسناده صحيح، رجاله ثقات .

Comments:

- The Arab would sometimes say when doing a favor to someone: 'I give you the permission to reside in my house for your whole life.' It means "this house will be mine or it will be inherited by my heirs after your death," it is called 'Umrâ.
- The Messenger of Allāh ﷺ stated the 'Umrâ as a general charity. Now according to the *Shari'ah*, something given to someone as 'Umrâ will belong to whom it is given. It is wrong to stipulate the condition that 'it will come back to me after your death.'

2380. It was narrated that Jābir said: "I heard the Messenger of Allāh ﷺ say: 'Whoever gives a lifelong grant to a man, it belongs to him (the recipient) and to his heirs. His (the giver's) words put an end to his right to it, and it belongs to the one to whom it was given for life and to his heirs.'" (*Sahih*)

٢٣٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَابَنَا اللَّيْثُ ابْنَ سَعْدٍ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ أَعْزَمَ رَجُلًا عُمْرَى لَهُ وَلِعَقِبِهِ، فَقَدْ قَطَعَ قَوْلُهُ حَقَّهُ فِيهَا. فَهِيَ لِمَنْ أَعْزَمَ وَلِعَقِبِهِ».

تخريج: أخرجه البخاري، الهبة وفضلها والتحريض عليها، باب ما قيل في العمرى والرقبى، ح: ٢٦٢٥ من حديث أبي سلمة به، ومسلم، الهبات، باب العمرى، ح: ١٦٢٥ عن محمد بن رمح به.

Comments:

Whatever is given to someone for one's whole life, after the recipient's death, it will not be returned to the giver; instead it will be shared by the deceased's heirs, just like his/her remaining inheritance is divided among the heirs, according to their shares, because it has the status of *Hibah* according to the Islamic law. Therefore it will be regarded legal property of the recipient.

2381. It was narrated from Zaid bin Thābit that the Prophet ﷺ ruled that a gift given for life belongs to the heirs (of the recipient). (*Sahih*)

٢٣٨١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ عَنْ عُمَرُو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنْ حُجْرِ الْمُدَرِّبِيِّ، عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ النَّبِيَّ ﷺ جَعَلَ الْعُمْرَى لِلْوَارِثِ.

تخريج: [إسناده صحيح] أخرجه أبو داود، البيهقي، باب في الرقبى، ح: ٣٥٥٩ من حديث عمرو بن دينار به، وصححه ابن حبان، وهو مخرج في مسند الحميدي، ح: ٣٩٩ بتحقيقي.

Chapter 4. The Ruqba

(المعجم ٤) - بَابُ الرَّقْبَى (التحفة ٣٧)

2382. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "There is no *Ruqba*. Whoever is given a gift on the basis of *Ruqba*, it belongs to him, whether he lives or dies." (*Sahih*)

٢٣٨٢ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ بَابَنَا عَبْدُ الرَّزَّاقِ: أَنَّ بَابَنَا ابْنَ جُرَيْجٍ عَنْ عَطَاءٍ، عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا رُقْبَى. فَمَنْ أَرْقَبَ شَيْئًا فَهُوَ لَهُ، حَيَاتَهُ وَمَمَاتَهُ».

He (the narrator) said: "*Ruqba* is when one man says to another: 'When either of us dies.'"

قَالَ: وَالرُّقْبَى أَنْ يَقُولَ هُوَ لِلْآخَرِ: مِثِّي

وَمِنْكَ مَوْتًا.

تخریج: [صحيح] أخرجه النسائي: ٢٧٣/٦، العمري، . ذكر اختلاف ألفاظ الناقلين لخبر جابر في العمري، ح: ٣٧٦٣ من حديث عبدالرزاق به، وهو في مصنف عبدالرزاق: ١٩٦/٩، ح: ١٦٩٢٠ بطوله * ابن جريج صرح بالسماع، وحيب لم يسمع هذا الحديث من ابن عمر رضي الله عنه، والحديث صحيح بشواهد راجع نيل المقصود، ح: ٣٥٥٦ وغيره.

2383. It was narrated from Jābir bin ‘Abdullāh that the Messenger of Allāh ﷺ said: “*Umra* belongs to the one to whom it is given, and *Ruqba* belongs to the one to whom it is given.” (*Sahih*)

٢٣٨٣ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُشَيْمٌ؛ ح: وَحَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ قَالَ: حَدَّثَنَا دَاوُدُ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعُمْرَى جَائِزَةٌ لِمَنْ أُعْمِرَهَا. وَالرُّقْبَى جَائِزَةٌ لِمَنْ أُرْقِبَهَا».

تخریج: [صحيح] أخرجه أبو داود، البيهق، باب: في الرقبي، ح: ٣٥٥٨ من حديث هشيم به، وحسنه الترمذي، ح: ١٣٥١، وانظر، ح: ٣٩٥ لعلته، وللحديث شواهد.

Comments:

- The difference between *‘Umra* and *Ruqba* is that in the matter of *‘Umra*, the life of the recipient is considered, he will reside in the house as long he is alive, whether he dies before the giver or after. Whenever the recipient dies, the house is reversed to the giver or to his heirs. But *Ruqba* has a condition that the giver will take it back only if the recipient dies before; if the giver dies before the recipient, then the house will belong to the recipient.
- If someone wants to help a poor person, and he also wants the house to remain the property of the owner, he should then lend the house to the poor for a certain period; this period may be extended at the end of the previous period if the need is realized.

Chapter 5. Taking Back A Gift

(المعجم ٥) - بَابُ الرَّجُوعِ فِي الْهَبَةِ

(التحفة ٣٨)

2384. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: “The likeness of one who takes back his gift is that of a dog that eats until it is full and vomits; then it goes back to its vomit and eats it again.” (*Sahih*)

٢٣٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ عَوْفٍ، عَنْ خِلَاسٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ مَثَلَ الَّذِي يَعُودُ فِي عَطِيئِهِ، كَمَثَلِ الْكَلْبِ. أَكَلَ، حَتَّى إِذَا شَبِعَ قَاءً. ثُمَّ عَادَ فِي قَيْئِهِ، فَأَكَلَهُ».

تخریج: [صحیح] أخرجه أحمد: ٤٣٠، ٤٩٢ من حديث عوف الأعرابي به، وقال البوصيري: منقطع، خلاص بن عمرو الهجري لم يسمع من أبي هريرة شيئاً قلت: تابعه محمد بن سيرين عن أبي هريرة به عند أحمد: ٤٩٢/٢ وغيره، فالحديث صحيح.

2385. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ said: "The one who takes back his gift is like the one who goes back to his vomit." (*Sahih*)

٢٣٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، وَ مُحَمَّدُ ابْنُ الْمُثَنَّى قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ قَالَ: سَمِعْتُ قَتَادَةَ يُحَدِّثُ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعَائِدُ فِي هَبِّهِ كَالْعَائِدِ فِي قَيْئِهِ».

تخریج: أخرجه البخاري، الهبة وفضلها والتبريض عليها، باب: لا يحل لأحد أن يرجع في هبته وصدقته، ح: ٢٦٢١ من حديث شعبة به، ومسلم، الهبات، باب تحريم الرجوع في الصدقة بعد القبض إلا ما وهبه لولده وإن سفل، ح: ١٦٢٢ من حديث محمد بن بشار به.

2386. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "The one who takes back his gift is like the dog that goes back to its vomit." (*Sahih*)

٢٣٨٦ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ الْعُرَيْرِيُّ: حَدَّثَنَا يَزِيدُ بْنُ أَبِي حَكِيمٍ: حَدَّثَنَا الْعُمَرِيُّ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ ابْنِ عُمَرَ، عَنْ النَّبِيِّ ﷺ قَالَ: «الْعَائِدُ فِي هَبِّهِ كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ».

تخریج: [صحیح] * العريري مستور (تقريب)، وعبدالله بن عمر العمري ضعيف عابد(تقريب) في غير نافع، وانظر، ح: ٣٦٦، ١٢٩٩، ولحديثه شواهد صحيحة، انظر الحديث السابق.

Comments:

Hibah is to give something to someone without any exchange for it. Its objective is only and solely to gain Allāh's pleasure, and fair treatment to a believer. So taking it back is to spoil one's good deed, and it is a very bad habit to spoil a good deed deliberately.

Chapter 6. One Who Gives A Gift Hoping To Get Something Back In Return

(المعجم ٦) - بَابُ مَنْ وَهَبَ هِبَةً رَجَاءً تَوَابِهَا (التحفة ٣٩)

2387. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "A man has more right to his gift so long as he has

٢٣٨٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ ابْنُ إِسْمَاعِيلَ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا

not gotten something in return for it.” (Sahih)

إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ بْنِ مُجَمِّعِ بْنِ جَارِيَةَ الْأَنْصَارِيِّ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الرَّجُلُ أَحَقُّ بِهَيْبَتِهِ مَا لَمْ يُتَبَّ مِنْهَا».

تخريج: [إسناده ضعيف] أخرجه ابن أبي شيبة: ٦/٤٧٤ عن وكيع به، وقال البوصيري: هذا إسناده ضعيف لضعف إبراهيم بن إسماعيل بن مجمع وانظر، ح: ١٠٦٩، ٢٢٥٠.

Chapter 7. A Woman Giving Something Without Her Husband's Permission

(المعجم ٧) - بَابُ عَطِيَّةِ الْمَرْأَةِ بِغَيْرِ إِذْنِ زَوْجِهَا (التحفة ٤٠)

2388. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ said, in a sermon that he delivered: "It is not permissible for a woman to dispose of her wealth except with her husband's permission, once he has married her." (Sahih)

٢٣٨٨ - حَدَّثَنَا أَبُو يُوْسُفَ الرَّقْمِيُّ، مُحَمَّدُ بْنُ أَحْمَدَ الصَّنَدَلَانِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنِ الْمُشْتَّى بْنِ الصَّبَّاحِ، عَنْ عَمْرِو بْنِ شَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ، فِي خُطْبَةٍ خَطَبَهَا: «لَا يَجُوزُ لِمَرْأَةٍ فِي مَالِهَا، إِلَّا بِإِذْنِ زَوْجِهَا، إِذَا هُوَ مَلَكَ عِضْمَتَهَا».

تخريج: [صحيح] * المشى لم ينفرد به بل تابعه داود بن أبي هند، وحبيب المعلم عن عمرو به، أخرجه أبو داود، ح: ٣٥٤٦ وغيره، وصححه الحاكم: ٢/٤٧، والذهبي.

2389. It was narrated from 'Abdullāh bin Yahya, one of the sons of Ka'b bin Mālik, from his father, from his grandfather, that his grandmother Khairah, the wife of Ka'b bin Mālik, came to the Messenger of Allāh ﷺ with some jewelry belonging to her, and said, I am giving this in charity. The Messenger of Allāh ﷺ said to her: "It is not permissible for a woman to dispose of her wealth without her husband's permission. Did you

٢٣٨٩ - حَدَّثَنَا حَرَمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ، عَنْ عَبْدِ اللَّهِ بْنِ يَحْيَى رَجُلٌ مِنْ وَلَدِ كَعْبِ ابْنِ مَالِكٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ جَدَّتَهُ خَيْرَةَ، امْرَأَةَ كَعْبِ بْنِ مَالِكٍ أَتَتْ رَسُولَ اللَّهِ ﷺ بِحُلِيِّ لَهَا. فَقَالَتْ: إِنِّي تَصَدَّقْتُ بِهَذَا. فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «لَا يَجُوزُ لِلْمَرْأَةِ فِي مَالِهَا إِلَّا بِإِذْنِ زَوْجِهَا. فَهَلِ اسْتَأْذَنْتِ كَعْبًا؟» قَالَتْ: نَعَمْ. فَبَعَثَ رَسُولُ اللَّهِ ﷺ

ask Ka'b's permission?" She said: "Yes." So the Messenger of Allâh ﷺ sent for Ka'b bin Mâlik, her husband, and said, "Did you give Khairah permission to give her jewelery in charity?" He said: "Yes." So the Messenger of Allâh ﷺ accepted it from her. (*Da'if*)

إِلَى كَعْبِ بْنِ مَالِكٍ، زَوْجِهَا فَقَالَ: «هَلْ
أَذِنْتَ لِحَيْرَةَ أَنْ تَتَصَدَّقَ بِحُلِيِّهَا؟» فَقَالَ:
نَعَمْ. فَقَبِلَهُ رَسُولُ اللَّهِ ﷺ مِنْهَا.

تخريج: [إسناده ضعيف] أخرجه الطحاوي في معاني الآثار: ٤٥١/٤ من حديث الليث به، وقال ابن عبد البر: إسناده ضعيف، لا تقوم به الحجة، وضعفه البوصيري وغيره * عبدالله بن يحيى، وأبوه مجهولان (تقريب).

Comments:

- If a woman intends to give charity from her own wealth, it is better to ask the husband's permission.
- Imâm Bukhâri said that if a woman is wise enough, she may give charity to someone, even if her husband is at home, but this permission applies when a woman knows that her husband will have no objection against her giving it away, or he will not object for such and such amount; and she normally gives away the amount which her husband has no objection too.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

15. The Chapters On Charity

(المعجم ١٥) أَبْوَابُ الصَّدَقَاتِ (التحفة ...)

Chapter 1. Taking Back One's Charity

(المعجم ١) - بَابُ الرَّجُوعِ فِي الصَّدَقَةِ (التحفة ٤١)

2390. It was narrated from 'Umar bin Khattāb that the Messenger of Allāh ﷺ said: "Do not take back your charity." (*Sahih*)

٢٣٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا هِشَامُ بْنُ سَعْدٍ، عَنْ زَيْدِ ابْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا تَعُدُّ فِي صَدَقَتِكَ».

تخریج: أخرجه البخاري، الزكوة، باب: هل يشترى صدقته؟ ... إلخ، ح: ١٤٩٠، ٢٦٢٣، ٣٠٠٣، ومسلم، الهبات، باب كراهة شراء الإنسان ما تصدق به ممن تصدق عليه، ح: ١٦٢٠ من حديث زيد بن أسلم به.

2391. 'Abdullāh bin 'Abbās narrated that the Messenger of Allāh ﷺ said: "The likeness of the one who gives charity then takes it back is that of a dog who vomits then goes back and eats its vomit." (*Sahih*)

٢٣٩١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي أَبُو جَعْفَرٍ، مُحَمَّدُ بْنُ عَلِيٍّ: حَدَّثَنِي سَعِيدُ بْنُ الْمُسَيْبِ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ الْعَبَّاسِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَثَلُ الَّذِي يَتَصَدَّقُ ثُمَّ يَرْجِعُ فِي صَدَقَتِهِ، مَثَلُ الْكَلْبِ يَتِيءُ ثُمَّ يَرْجِعُ فَيَأْكُلُ قَيْئَهُ».

تخریج: [صحيح] تقدم، ح: ٢٣٨٥.

Comments:

Charity is a great virtuous deed. It is not good to take charity back once it is given. Taking it back is to annul the good of it. Annulling a virtuous deed is a great loss. Giving the example of a dog that vomits and eat its vomit shows that taking back charity is a most abhorrent deed and one should avoid it.

Chapter 2. One Who Gives Charity Then Finds His Gift Being Sold – Should He Buy It?

2392. It was narrated from ‘Umar bin ‘Abdullâh bin ‘Umar, meaning, from his father, from his grandfather ‘Umar, that he gave a horse in charity at the time of the Messenger of Allâh ﷺ, then he saw its owner selling it for a low price. He went to the Prophet ﷺ and asked him about that, and he said: “Do not buy what you gave in charity.” (*Sahih*)

(المعجم ٢) - بَابُ مَنْ تَصَدَّقَ بِصَدَقَةٍ فَوَجَدَهَا تَبَاعًا هَلْ يَشْتَرِيهَا (التحفة ٤٢)

٢٣٩٢ - حَدَّثَنَا تَمِيمُ بْنُ الْمُنْتَصِرِ الْوَاسِطِيُّ: حَدَّثَنَا إِسْحَاقُ بْنُ يُونُسَ، عَنْ شَرِيكٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ. يَعْنِي عَنْ أَبِيهِ، عَنْ جَدِّهِ عُمَرَ أَنَّهُ تَصَدَّقَ بِفَرَسٍ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَأَبْصَرَ صَاحِبَهَا يَبِيعُهَا بِكَسْرٍ. فَأَتَى النَّبِيَّ ﷺ، فَسَأَلَهُ عَنْ ذَلِكَ. فَقَالَ: «لَا تَبْتَغِ صَدَقَتَكَ».

تخریج: أخرجه البخاري في التاريخ الكبير: ١٦٨/٦ من حديث شريك القاضي به، وفيه: عمر بن عروة بن عمر بن عبدالله بن عمر عن أبيه ... الخ، ولعله تصحيف، وللحديث شواهد عند البخاري، ومسلم وغيرهما من حديث زيد بن أسلم عن أبيه عن عمر به.

Comments:

To give a thing in charity, and the desire to buy it back, shows that its attachment and love is still in the heart, which is wrong and against the basic philosophy of charity. Giving a dear thing in the Name of Allâh is only to seek His pleasure and approval, and keeping a desire for that thing in the heart is to undo the virtuous deed.

2393. It was narrated from Zubair bin ‘Awwâm that he gave a horse called Ghamr or Ghamrah to someone, then he saw one of its colts or fillies attributed to his horse being sold, but he refrained from (buying) it.^[1] (*Sahih*)

٢٣٩٣ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا بَرِيدُ بْنُ هَارُونَ: حَدَّثَنَا سُلَيْمَانُ التَّمِيمِيُّ عَنْ أَبِي عَثْمَانَ التَّهْلَبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ، عَنْ الزُّبَيْرِ بْنِ الْعَوَّامِ أَنَّهُ حَمَلَ عَلَى فَرَسٍ يُقَالُ لَهُ عَمْرٌ أَوْ عَمْرَةٌ. فَرَأَى مُهْرًا أَوْ مُهْرَةً مِنْ أَفْلَانِهَا يُبَاعُ، يُنْسَبُ إِلَى فَرَسِهِ، فَهَيَّأَ عَنْهَا.

^[1] He would not buy it because it was the offspring of what he gave in charity, this was stated in *Injâhul-Hâjjah*.

تخريج: [إسناده صحيح] أخرجه أحمد: ١/١٦٤ عن يزيد به، وقال البوصيري: هذا إسناد صحيح * عبدالله بن عامر، هو ابن ربيعة أو ابن كُريز وكلاهما ثقتان، والله أعلم.

Chapter 3. One Who Gives Something In Charity Then Inherits It

(المعجم ٣) - بَابُ مَنْ تَصَدَّقَ بِصَدَقَةٍ ثُمَّ وَرِثَهَا (التحفة ٤٣)

2394. It was narrated from 'Abdullâh bin Buraidah that his father said: "A woman came to the Prophet ﷺ and said: 'O Messenger of Allâh, I gave my mother a slave girl of mine, and she has died.' The Messenger of Allâh ﷺ said: 'Allâh has rewarded you, and returned to you your inheritance (without your seeking that).'" (*Sahih*)

٢٣٩٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ بْنِ عَطَاءٍ، عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ، عَنْ أَبِيهِ قَالَ: جَاءَتِ امْرَأَةٌ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنِّي تَصَدَّقْتُ عَلَى أُمِّي بِبَجَارِيَةٍ. وَإِنِّهَا مَاتَتْ. فَقَالَ: «أَجْرَكَ اللَّهُ، وَرَدَّ عَلَيْكَ الْمِيرَاثَ».

تخريج: [صحيح] تقدم من حديث عبدالرزاق عن سفيان الثوري به، ح: ١٧٥٩.

2395. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Prophet ﷺ and said: 'I gave my mother a garden of mine, and she has died and has no other heir but me.' The Messenger of Allâh ﷺ said: 'Your charity is valid and your garden has been returned to you.'" (*Sahih*)

٢٣٩٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الرَّقِيُّ: حَدَّثَنَا عُبَيْدُ اللَّهِ، عَنْ عَبْدِ الْكَرِيمِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي أُعْطِيتُ أُمِّي حَدِيقَةً لِي. وَإِنِّهَا مَاتَتْ وَلَمْ تَرَكَ وَارِثًا غَيْرِي. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَجَبَتْ صَدَقَتُكَ، وَرَجَعَتْ إِلَيْكَ حَدِيقَتُكَ».

تخريج: [إسناده صحيح] أخرجه أحمد: ٢/١٨٥ من حديث عبيدالله (بن عمرو الرقي) به وقال البوصيري: هذا إسناد صحيح إلى عمرو بن شعيب ومن يحتج بعمر بن شعيب عن أبيه عن جده فالإسناد صحيح عنده قلت: احتج به الجمهور كما حققته في جزء خاص وهو مذكور في تخريج مسند الحميدي.

Comments:

- Charity can be given to parents.
- If anything is given to parents in charity, and it comes back in inheritance, it is not the same as taking back charity, it is just the share of inheritance that is the right of the heir.

c. In this situation, the reward of the virtuous deed of giving charity is not invalidated.

Chapter 4. One Who Establishes A *Waqf* (An Endowment)

2396. It was narrated that Ibn 'Umar said: "Umar bin Khattāb acquired some land at Khaibar, and he came to the Prophet ﷺ and consulted him. He said: 'O Messenger of Allāh, I have been given some wealth at Khaibar and I have never been given any wealth that is more precious to me than it. What do you command me to do with it?' He said: 'If you wish, you can make it an endowment and give (its produce) in charity.' So 'Umar gave it on the basis that it would not be sold, given away or inherited, and (its produce) was to be given to the poor, to relatives, for freeing slaves, in the cause of Allāh, to wayfarers and to guests; and there was nothing wrong if a person appointed to be in charge of it consumed from it on a reasonable basis or feeding a friend, without accumulating it for himself." (*Sahih*)

(المعجم ٤) - بَابُ مَنْ وَقَفَ (التحفة ٤٤)

٢٣٩٦ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضِيُّ: حَدَّثَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ، عَنِ ابْنِ عَوْنٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: أَصَابَ عُمَرُ بْنُ الْخَطَّابِ أَرْضًا بِخَيْبَرَ. فَأَتَى النَّبِيَّ ﷺ فَاسْتَأْمَرَهُ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أَصَبْتُ مَالًا بِخَيْبَرَ. لَمْ أَصِبْ مَالًا قَطُّ هُوَ أَنفُسٌ عِنْدِي مِنْهُ. فَمَا تَأْمُرُنِي بِهِ؟ فَقَالَ: «إِنْ شِئْتَ حَسَبْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا» قَالَ: فَعَمِلَ بِهَا عُمَرُ عَلَيَّ أَنْ لَا يَبَاعَ أَصْلُهَا وَلَا يُوهَبَ وَلَا يُورَثَ. تَصَدَّقَ بِهَا لِلْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالصَّنْبِ. لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا. غَيْرَ مُمْتَوِّلٍ.

تخريج: أخرجه البخاري، الشروط، باب الشروط في الوقف، ح: ٢٧٣٧، ٢٧٧٢، ٢٧٧٣، ومسلم، الوصية، باب الوقف، ح: ١٦٣٢ من حديث ابن عون به.

Comments:

- Making a trust is lawful and permitted.
- An endowment is not property of anyone, but the person who makes the endowment has the right to manage it.
- 'Without accumulating it for himself' means not to make it a source of income for himself. The person appointed in charge can use endowment money only for his basic needs without being extravagant.

2397. It was narrated that Ibn 'Umar said: "Umar bin Khattâb said: 'O Messenger of Allâh, the one hundred shares of the Khaibar I have never been given any wealth that is more beloved to me than them, and I wanted to give them in charity.' The Prophet ﷺ said: 'Make it an endowment and give its produce in the cause of Allâh.'" (*Sahih*)

٢٣٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يَا رَسُولَ اللَّهِ إِنَّ الْمِائَةَ سَهْمٍ، الَّتِي بِخَيْبَرَ، لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَحَبُّ إِلَيَّ مِنْهَا. وَقَدْ أَرَدْتُ أَنْ أَتَصَدَّقَ بِهَا. فَقَالَ النَّبِيُّ ﷺ: «أَحْسِنِ أَصْلَهَا، وَسَبِّلْ ثَمَرَتَهَا».

تخریج: (الف) [صحیح] أخرجه النسائي: ٢٣٢/٦ من حديث سفیان بن عيينة به، الطريق الأول * سفیان تابعه عبدالعزيز بن محمد الدراوردي وغيره، والسند الآتي شاهد له.

(One of the narrators) Ibn Abu 'Umar (who narrated it from Sufyân, from 'Ubaidullâh bin 'Umar) said: "I found this *Hadith* in another location in my book from Sufyân, from 'Abdullâh, from Nâfi', from Ibn 'Umar who said: "Umar said." And he mentioned similarly." (*Sahih*)

قَالَ ابْنُ أَبِي عُمَرَ: فَوَجَدْتُ هَذَا الْحَدِيثَ فِي مَوْضِعٍ آخَرَ فِي كِتَابِي، عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ عُمَرُ. فَذَكَرَ نَحْوَهُ.

تخریج: (ب) [صحیح] أخرجه أحمد: ١١٤/٢، ١٥٦، ١٥٧ من طريقين آخرين عن عبدالله ابن عمر العمري به، وإسناده قوي، انظر، ح: ١٢٩٩، ٣٦٦.

Chapter 5. Borrowed Items

(المعجم ٥) - بَابُ الْعَارِيَةِ (التحفة ٤٥)

2398. Shurahbil bin Muslim said: I heard Abu Umâmah say: "I heard the Messenger of Allâh ﷺ say: 'Borrowed items are to be returned and an animal borrowed for milking is to be returned.'" (*Hasan*)

٢٣٩٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو: حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ قَالَ: سَمِعْتُ أَبَا أُمَامَةَ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَارِيَةُ مُؤَدَّاءٌ، وَالْمِئْتَةُ مَرْدُودَةٌ».

تخریج: [إسناده حسن] أخرجه الترمذي، البيهقي، باب ماجاء في أن العارية مؤداة، ح: ١٢٦٥ من حديث إسماعيل به باختلاف يسير، وقال: حسن غريب، وأخرجه أبو داود، ح: ٣٥٦٥ مطولاً، وصححه ابن الجارود، ح: ١٠٢٣، وله طريق آخر عند ابن حبان في صحيحه.

2399. It was narrated that Anas bin Mâlik said: "I heard the Messenger of Allâh ﷺ say: 'Borrowed items are to be returned and an animal borrowed for milking is to be returned.'" (Sahih)

٢٣٩٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ عَبْدِ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيَّانِ قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ شُعَيْبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ بَزِيدٍ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَارِيَةُ مُؤَدَّاةٌ وَالْمِنْحَةُ مُرْدُودَةٌ».

تخريج: [صحيح] أخرجه الطبراني في مسند الشاميين: ١/٣٦٠، ٣٦١ ح: ٦٢١ من حديث هشام بن عمار به، أخرجه الدارقطني: ٦٩/٤ من طريق آخر عن عبدالرحمن بن يزيد بن جابر به، وقال البوصيري: هذا إسناد صحيح رجاله ثقات قلت: سعيد بن أبي سعيد الساحلي - غير المقبري - مجهول كما في التقريب، ونبل المقصود، ح: ٥١١٥، والحديث السابق شاهد له.

2400. It was narrated from Samurah that the Messenger of Allâh ﷺ said: "The hand that takes is responsible for what it has taken until it returns it." (Da'if)

٢٤٠٠ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ؛ ح: وَحَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، جَمِيعاً عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ».

تخريج: [إسناده ضعيف] أخرجه الترمذي، البيهقي، باب ماجاء في أن العارية مؤدأة، ح: ١٢٦٦ من حديث ابن أبي عدي به، وقال: حسن صحيح، وصححه ابن الجارود، ح: ١٠٢٤، والحاكم على شرط البخاري: ٤٧/٢، ووافقه الذهبي * سعيد تقدم، ح: ٤٢٩، وقناة تقدم، ح: ١٧٥ مدلسان وعتنا.

Comments:

Debt, something borrowed, and entrusted things, must be returned after use. Their return is an obligation. Orders to return these things are there in the Noble Qur'an and Sound Traditions. It is mentioned in the Noble Qur'an, *Surah Al-Mu'minun*, Verse 8: "Those who are faithfully true to their trusts and to their covenants." (Those are indeed successful.)

Chapter 6. Items Placed In Trust

2401. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said:

(المعجم ٦) - بَابُ الْوَدِيعَةِ (التحفة ٤٦)

٢٤٠١ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ الْأَنْبَاطِيِّ: حَدَّثَنَا أَيُّوبُ بْنُ سُوَيْدٍ، عَنِ [الْمُنْتَهَى]، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ،

'Whoever is entrusted with an item for safekeeping, is not responsible for it (so long as he is not negligent).'" (Da'if)

عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُوْدِعَ وَدِيْعَةً، فَلَا ضَمَانَ عَلَيْهِ».

تخريج: [إسناده ضعيف] وقال البوصيري: هذا إسناد ضعيف لضعف المشى وهو ابن الصباح، والراوي عنه قلت: هما ضعيفان على الراجح، ورواه ابن لهيعة فيما ذكره البيهقي، وضعف ابن لهيعة مشهور بعد ثبوت السند إليه من غير رواية العبادلة، ورواه يزيد بن عبد الملك نحوه بإسناد ضعيف * ويزيد ضعيف أيضاً، فالحديث غير حسن.

Comments:

- a. Safeguarding an entrusted thing, and not breaking the trust, is the true character of a Muslim.
- b. If an entrusted thing is damaged or lost, its same substitute should be returned, and if it is damaged or lost by some mishap, and there is no negligence or carelessness from the trustee, then there is no replacement for it.

Chapter 7. When The One Who Is Entrusted With Something Engages In Trade With It And Makes A Profit

(المعجم ٧) - بَابُ الْأَمِينِ يَتَّجِرُ فِيهِ
فَيْرِيحُ (التحفة ٤٧)

2402. It was narrated from 'Urwah Al-Bâriqi that the Prophet ﷺ gave him a Dinâr to buy him a sheep, and he bought two sheep for him, then sold one of them for a Dinâr, and brought a Dinâr and a sheep to the Prophet ﷺ. The Messenger of Allâh ﷺ prayed for blessing for him. (Sahih)

٢٤٠٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ شَيْبِ بْنِ عُرْقَةَ، عَنْ عُرْوَةَ الْبَارِقِيِّ أَنَّ النَّبِيَّ ﷺ أَعْطَاهُ دِينَارًا يَسْتَرِي لَهُ شَاةً. فَاشْتَرَى لَهُ شَاتَيْنِ. فَبَاعَ إِحْدَاهُمَا بِدِينَارٍ. فَأَتَى النَّبِيَّ ﷺ بِدِينَارٍ وَشَاةٍ. فَدَعَا لَهُ رَسُولُ اللَّهِ ﷺ بِالْبَرَكَةِ.

He (one of the narrators) said: "If he had bought dust, he would have made a profit from it."

قَالَ: فَكَانَ لَوْ اشْتَرَى التُّرَابَ لَرَبِحَ فِيهِ.

تخريج: (الف) أخرجه البخاري، المناقب، باب ٢٨، ح: ٣٦٤٢ من حديث سفیان به، إلا أنه قال: شيب بن عرقدة قال: سمعت الحبي يتحدثون عن عروة به ... إلخ، انظر، الرواية الآتية.

(Another chain) from, 'Urwah bin Abu ja'd Al-Bâriqi who said: "Some trade arrived, so the Prophet ﷺ gave me a Dinâr." And he mentioned similarly. (Hasan)

حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ: حَدَّثَنَا حَبَّانُ بْنُ هِلَالٍ: حَدَّثَنَا سَعِيدُ بْنُ زَيْدٍ، عَنِ الزُّبَيْرِ بْنِ الْخَزِيمِ، عَنْ أَبِي لَيْسٍ لِمَا زَاةً بِنِ زَبَّارٍ، عَنْ عُرْوَةَ بْنِ أَبِي الْجَعْدِ الْبَارِقِيِّ قَالَ:

قَدِمَ جَلَبٌ، فَأَعْطَانِي النَّبِيُّ ﷺ دِينَارًا. فَذَكَرَ نَحْوَهُ.

تخریج: (ب) [سناده حسن] أخرجه أبو داود، البيهقي، باب: في المضارب يخالف، ح: ٣٣٨٥ من حديث سعيد بن زيد به.

Comments:

- a. Entrusted wealth can be used for personal purposes but after making it certain that it will be immediately returned on demand.
- b. Doing business with the entrusted wealth is allowed, but if there is a loss in it, the trader will bear it, and the full amount of the entrusted wealth will be returned. Similarly if there is a profit in this trade, it is for the trader. The trader by his own free will can offer some money or gift to the owner of the wealth, and it is legal to accept it.

Chapter 8. Transferring Debt

(المعجم ٨) - بَابُ الْحَوَالَةِ (التحفة ٤٨)

2403. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "(Wrongdoing) is when a rich man takes a long time to repay a debt, and if one of you is referred to a rich man (to collect a debt), he should accept that referral." (*Sahih*)

٢٤٠٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا شُقَيْبَانُ بْنُ عُيَيْنَةَ، عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الظُّلْمُ [مَطْلُ الْغَنِيِّ]. وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ».

تخریج: أخرجه البخاري، الحوالات، باب الحوالة، وهل يرجع في الحوالة، ح: ٢٢٨٧، ومسلم، المساقاة، باب تحريم مظل الغني وصحة الحوالة واستحباب قبولها إذا أحيل على مليء، ح: ١٥٦٤ من حديث مالك عن أبي الزناد من حديث أبي الزناد به، أخرجه النسائي، ح: ٤٦٩٢ من حديث سفيان بن عيينة به.

Comments:

- a. If one has enough sources to return the debt, it is a sin and moral crime to make a delay in return of debt.
- b. 'Should accept that referral' means if the debtor refers the lender to a wealthy man having good reputation to receive his money from him, he should accept this reference and contact him regarding his loan return. The lender can again make a demand from the debtor if he does not receive his money from the referred person.

2404. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "When a rich man takes too long to repay a debt, this is wrongdoing, and if the

٢٤٠٤ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوْبَةَ: حَدَّثَنَا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُيَيْنَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَطْلٌ

debt is transferred to a rich man, you should accept it.” (*Sahih*)

الْعَيْيَ ظَلْمٌ. وَإِذَا أُحِلَّتْ عَلَى مَلِيءٍ فَاتَّبِعْهُ» .

تخريج: [صحيح] أخرجه أحمد: ٧١/٢ من حديث هشيم: أنا يونس بن عبيد به مطولاً، وعلمته أن يونس لم يسمع من نافع شيئاً، فالسند منقطع كما قال البوصيري، ولكن له شواهد صحيحة، وبها صح الحديث.

Chapter 9. Guaranty

(المعجم ٩) - بَابُ الْكَفَالَةِ (التحفة ٤٩)

2405. Shurahbil bin Muslim Al-Khawlâni said: I heard Abu Umâmah Al-Bâhili say: “I heard the Messenger of Allâh ﷺ say: ‘The guarantor is responsible and the debt must be repaid.’”^[1] (*Hasan*)

٢٤٠٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ الْحَسَنُ ابْنُ عَرْفَةَ قَالَا: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَبَّاسٍ: حَدَّثَنِي شُرْحِبِيلُ بْنُ مُسْلِمٍ الْخَوْلَانِيُّ. قَالَ: سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الزَّعِيمُ غَارِمٌ، وَالذَّيْنُ مَقْضِيٌّ» .

تخريج: [حسن] تقدم، ح: ٢٣٩٨ ببعضه، وهذا طرف منه.

Comments:

- If a person act as a guarantor for guarantee to another person, saying that he will return the debt in time, or on demand, and the debtor fails to return it, the guarantor is responsible to return it. He should pay the debt from his own pocket and receive it later from the debtor.
- Payment of a debt is a must even if the debtor dies. It should be paid from his legacy, and if the legacy is not enough to cover the amount of debt, his heirs are responsible to pay off the debt.

2406. It was narrated from Ibn ‘Abbâs that during the time of the Messenger of Allâh ﷺ, a man pursued a debtor who owed him ten Dinâr, and he said: “I do not have anything to give you.” He (the creditor) said: “No, by Allâh, I will not leave you until you pay the debt or you bring me a guarantor.” Then he dragged him to the Prophet ﷺ and the Prophet

٢٤٠٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، عَنْ عَمْرٍو ابْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا لَزِمَ غَرِيمًا لَهُ بَعَشْرَةَ دِينَارٍ، عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَقَالَ: مَا عِنْدِي شَيْءٌ أُعْطِيكَهُ. فَقَالَ: لَا وَاللَّهِ لَا أَفَارِقُكَ حَتَّى تَقْضِيَنِي أَوْ تَأْتِيَنِي بِحَمِيلٍ. فَجَرَّهُ إِلَى النَّبِيِّ

[1] See no. 2398.

ﷺ said to him: "How long will you wait?" He said: "One month." The Messenger of Allāh ﷺ said: "I will be a guarantor for him." Then he came to him at the time the Prophet ﷺ had said, and the Prophet ﷺ said to him: "Where did you get this from?" He said: "From a mine." He said: "There is nothing good in it," and he paid the debt for him. (*Hasan*)

ﷺ. فَقَالَ لَهُ النَّبِيُّ ﷺ: «كَمْ تَسْتَظِرُّهُ؟»
فَقَالَ: شَهْرًا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «فَأَنَا
أَحْمِلُ لَهُ» فَبَجَاءَهُ فِي الْوَقْتِ الَّذِي قَالَ النَّبِيُّ
ﷺ. فَقَالَ لَهُ النَّبِيُّ ﷺ: «مِنْ أَيْنَ أَصَبْتَ
هَذَا؟» قَالَ: مِنْ مَعْدِنٍ. قَالَ: «لَا خَيْرَ فِيهَا»
وَقَضَاهَا عَنْهُ.

تخریج: [إسناده حسن] أخرجه أبو داود، البيهق، باب: في استخراج المعادن، ح: ٣٣٢٨ من حديث الدراوردي به، وانظر نيل المقصود، ح: ٣٥٣ لثوثيق عمرو بن أبي عمرو رحمه الله.

Comments:

- a. A lender can press the debtor to pay back the loan taken.
- b. To keep the wealth found from the mine is legal, but for him it was better to earn by working.
- c. If the guarantor pays the amount of the debt on behalf of the debtor, it is requited and the debtor is free from the obligation.

2407. It was narrated that 'Uthmān bin 'Abdullāh bin Mawhab said: "I heard 'Abdullāh bin Abu Qatādah narrate from his father that a corpse was brought to the Prophet ﷺ for him to offer the funeral prayer, and he said: 'Pray for your companion, for he owes a debt.' Abu Qatādah said: 'I will stand surety for him.' The Prophet ﷺ said: 'In full?' He said: 'In full.' And the debt he owed was eighteen or nineteen Dirham." (*Sahih*)

٢٤٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو
عَامِرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عُمَانَ بْنِ عَبْدِ اللَّهِ بْنِ
مَوْهَبٍ، قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي قَتَادَةَ،
عَنْ أَبِيهِ أَنَّ النَّبِيَّ ﷺ أُتِيَ بِجَنَازَةٍ لِيُصَلِّيَ
عَلَيْهَا. فَقَالَ: «صَلُّوا عَلَيَّ صَاحِبِكُمْ. فَإِنَّ
عَلَيْهِ دَيْنًا» فَقَالَ أَبُو قَتَادَةَ: أَنَا أَتَكْفُلُ بِهِ. قَالَ
النَّبِيُّ ﷺ: «بِالْوَفَاءِ؟» قَالَ: بِالْوَفَاءِ. وَكَانَ
الَّذِي عَلَيْهِ ثَمَانِيَةَ عَشَرَ أَوْ تِسْعَةَ عَشَرَ دِرْهَمًا.

تخریج: [إسناده صحيح] أخرجه الترمذي، الجناز، باب: ماجاء في الصلوة على المديون، ح: ١٠٦٩ من حديث شعبة به، وقال: حسن صحيح، وصححه ابن حبان(موارد)، ح: ١١٦١.

Comments:

- a. The funeral prayer should be offered for a person who committed a sin; and should not be buried without the prayer.

- b. Taking the responsibility on behalf of the deceased for payment of debt is legal and permitted, rather it is a favor for the deceased and his relatives.

Chapter 10. One Who Takes A Loan With The Intention Of Repaying It

2408. It was narrated that the Mother of the Believers Maimunah used to take out loans frequently, and some of her family said: "Do not do that," and they denounced her for that. She said: "No, I heard my Prophet ﷺ and my close friend say: "There is no Muslim who takes out a loan and Allâh knows that he intends to pay it back, but Allâh will pay it back for him in this world.'" (Hasan)

(المعجم ١٠) - بَابُ مَنْ آدَانَ دَيْنًا وَهُوَ يَنْوِي قَضَاءَهُ (التحفة ٥٠)

٢٤٠٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَمِيْدَةُ بْنُ حُمَيْدٍ، عَنْ مَنْصُورٍ، عَنْ زِيَادِ بْنِ عَمْرٍو بْنِ هِنْدٍ، عَنِ ابْنِ حُدَيْفَةَ، هُوَ عِمْرَانُ عَنْ أُمِّ الْمُؤْمِنِيْنَ مَيْمُونَةَ قَالَتْ: كَانَتْ تَدَانُ دَيْنًا. فَقَالَ لَهَا بَعْضُ أَهْلِهَا: لَا تَفْعَلِي. وَأَنْكَرَ ذَلِكَ عَلَيْهَا قَالَتْ: بَلَى. إِنِّي سَمِعْتُ نَبِيَّ وَحَلِيْلِي ﷺ يَقُولُ: «مَا مِنْ مُسْلِمٍ يَدَانُ دَيْنًا، يَعْلَمُ اللهُ مِنْهُ أَنَّهُ يُرِيدُ آدَاءَهُ، إِلَّا آدَاهُ اللهُ عَنْهُ فِي الدُّنْيَا».

تخریج: [حسن] أخرجه النسائي، البيوع، - التسهيل فيه، ح: ٤٦٩٠ من حديث منصور بن المعتمر به، وصححه ابن حبان (موارد)، ح: ١١٥٧، وسكت عليه الحافظ في الفتح: ٥٤/٥.

Comments:

- a. To borrow at the time of need is allowed and legal but it is better to avoid it.
- b. At the time of borrowing it should be the sincere intention to pay back the loan as soon as possible.
- c. Allâh ﷻ helps those who sincerely intend and try to repay the debt.

2409. It was narrated from 'Abdullâh bin Ja'far that the Messenger of Allâh ﷺ said: "Allâh will be with the borrower until he pays off his debt, so long as it (the loan) is not for something that Allâh dislikes." (Hasan)

٢٤٠٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ: حَدَّثَنَا ابْنُ أَبِي فَدَيْكٍ: حَدَّثَنَا سَعِيدُ بْنُ سَعْيَانَ مَوْلَى الْأَسْلَمِيِّينَ، عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللهِ بْنِ جَعْفَرٍ قَالَ: قَالَ رَسُولُ اللهِ ﷺ: «كَانَ اللهُ مَعَ الدَّائِنِ حَتَّى يَقْضِيَ دَيْنَهُ. مَا لَمْ يَكُنْ فِيْمَا يَكْرَهُ اللهُ».

He (the narrator) said: "Abdullâh bin Ja'far used to say to his store keeper (i.e., the one entrusted with his wealth): 'Go and take out a loan for me, for I

قَالَ: فَكَانَ عَبْدُ اللهِ بْنُ جَعْفَرٍ يَقُولُ لِحَازِرِهِ: اذْهَبْ فَخُذْ لِي بِدَيْنٍ. فَإِنِّي أَكْرَهُ أَنْ

would hate to spend the night without Allâh being with me, after I heard that from the Messenger of Allâh ﷺ." (Hasan)

أَيَّتْ لَيْلَةً إِلَّا وَاللَّهُ مَعِيَ. بَعْدَ الَّذِي سَمِعْتُ مِنْ رَسُولِ اللَّهِ ﷺ.

تخریج: [إسناده حسن] أخرجه الحاكم: ۲۳/۲ من حديث ابن أبي فديك به، وقال: صحيح الإسناد، وقال الذهبي: صحيح، وقال البوصيري: هذا إسناد صحيح، رجاله ثقات، وقال الحافظ في الفتح: ۵۴/۵ إسناده حسن * سعيد بن سفیان وثقه ابن حبان، والحاكم، واختلف قول الذهبي والعسقلاني فيه، فحديثه لا ينزل عن درجة الحسن، ولحديثه شواهد كثيرة.

Comments:

If there is a dire need of money for some good deed, one can borrow it, but one should not borrow for extravagant and worthless rites and customs, like un-Islamic customs in marriage and food parties after the burial etc. Such parties are innovations in Islam.

Chapter 11. One Who Takes A Loan With No Intention Of Repaying It

2410. Suhaib Al-Khair narrated that the Messenger of Allâh ﷺ said: "Any man who takes out a loan, having resolved not to pay it back, will meet Allâh as a thief." (Hasan)

(المعجم ۱۱) - بَابُ مَنْ آدَانَ دَيْنًا لَمْ يَتَوَقَّضْهُ (التحفة ۵۱)

۲۴۱۰ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا يُونُسُ بْنُ مُحَمَّدٍ بْنُ صَيْفِيٍّ بْنِ صُهَيْبِ الْخَيْرِ: حَدَّثَنِي عَبْدُ الْحَمِيدِ بْنُ زِيَادِ بْنِ صَيْفِيٍّ بْنِ صُهَيْبِ، عَنْ شُعَيْبِ بْنِ عَمْرٍو: حَدَّثَنَا صُهَيْبُ الْخَيْرِ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «أَيُّمَا رَجُلٍ يَدِينُ دَيْنًا، وَهُوَ مُجْمِعٌ أَنْ لَا يُؤْتِيَهُ إِيَّاهُ، لَقِيَ اللَّهَ سَارِقًا».

تخریج: (الف) [حسن] * يوسف وعبدالحميد ضعيفان كما سيأتي، ح: ۲۴۱۰ب، وشعيب مستور، ولم يوثقه غير ابن حبان، وللحديث شاهد حسن يأتي بعده.

Another chain with similar wording. (Hasan)

حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْجَزَامِيُّ: حَدَّثَنَا يُونُسُ بْنُ مُحَمَّدٍ بْنِ صَيْفِيٍّ، عَنْ عَبْدِ الْحَمِيدِ بْنِ زِيَادٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ صُهَيْبِ، عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

تخریج: (ب) [حسن] أخرجه العقيلي في الضعفاء: ۴/۵۱ من حديث إبراهيم بن المنذر به * يوسف بن محمد ضعفه البخاري، والعقيلي، وذكره الذهبي في ديوان الضعفاء، وثقه ابن حبان، وأبو حاتم، وضعفه راجح، وشيخه لين الحديث كما في التقريب، وللحديث شواهد منها ما أخرجه

الطبراني في الأوسط: ٥٠٦/٢، ح: ١٨٧٢، ١١٩/٧، ح: ٦٤٠٩ بإسناد حسن عن ميمون (ابن جابان) الكردي عن أبيه به مطولاً نحو المعنى، وقال الهيثمي (مجمع: ١٣٢/٤) ورجاله ثقات، فالحديث حسن، وحسنه البوصيري، وقال المنذري: ورواه ثقات (الترغيب: ٦٠٢/٢).

Comments:

- A person who borrows and purposely delays returning a debt, and desires not to pay it back, such a person, though in the eyes of law cannot be proved a thief, is an offender, and will be punished in the Hereafter.
- Allāh is All-Knowing, and knows what is in the hearts of His slaves; therefore, Muslims should not cheat each other. It is possible to cheat each other, but it is not possible to cheat Allāh.

2411. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever takes people's wealth with the intention of destroying it, Allāh will destroy him." (*Sahih*)

٢٤١١ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ ثَوْرِ بْنِ زَيْدِ الدَّبَلِيِّ، عَنْ أَبِي الْعَيْثِ، مَوْلَى ابْنِ مُطِيعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ أَخَذَ أَمْوَالَ النَّاسِ يُرِيدُ إِتْلَافَهَا، أَتْلَفَهُ اللَّهُ».

تخریج: أخرجه البخاري، الاستقراض وأداء الديون والحجر والتفليس، باب من أخذ أموال الناس يريد أداءها أو إتلافها، ح: ٢٣٨٧ من حديث ثور به.

Comments:

'With the intention of destroying it' means that he does not want to return it. For the lender it is destroyed because he will not get it back.

Chapter 12. Stern Warning Concerning Debt

(المعجم ١٢) - بَابُ التَّشْدِيدِ فِي الدَّيْنِ
(التحفة ٥٢)

2412. It was narrated from Thawbān, the freed slave of the Messenger of Allāh ﷺ, that the Messenger of Allāh ﷺ said: "Anyone whose soul leaves his body and he is free of three things, will enter Paradise: Arrogance, stealing from the spoils of war, and debt." (*Sahih*)

٢٤١٢ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ، عَنْ ثَوْبَانَ، مَوْلَى رَسُولِ اللَّهِ ﷺ، عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ قَالَ: «مَنْ فَارَقَ الرُّوحَ الْجَسَدَ، وَهُوَ بَرِيءٌ مِنْ ثَلَاثٍ، دَخَلَ الْجَنَّةَ: مِنَ الْكِبْرِ وَالغُلُولِ وَالدَّيْنِ».

تخريج: [صحيح] أخرجه الترمذي، السير، باب ماجاء في الغلول، ح: ١٥٧٣ من حديث سعيد بن أبي عروبة به، وصححه ابن حبان (موارد)، ح: ١٦٧٦، وقال محمد بن هارون الروياني في مسنده: ٤٠٤/١، ح: ٦١٢: أنا أبو الخطاب: نا يزيد بن زريع: نا سعيد بن أبي عروبة: نا قتادة به، وتابعه أبو عوانة عن قتادة به (هق: ١٠١/٩)، وصححه الحاكم على شرط الشيخين: ٢٦/٢، ووافقه الذهبي، وتابعهما همام، وأبان (مسند أحمد: ٢٧٦/٥)، وشعبة (أحمد: ٢٨١/٥، ٢٨٢) أطراف المسند: ٦٦٨/١ عن قتادة به، ورواية شعبة عن قتادة تدل على أن قتادة صرح بالسماع من شيخه كما هو مقرر في الأصول وحقته في التأسيس في مسألة التدليس وروى الحاكم في تاريخ نيسابور بإسناد صحيح عن شعبة قال: كفيتمكم تدليس ثلاثة: الأعمش وأبي إسحاق وقتادة ومن طريقه أخرجه محمد بن طاهر المقدسي في مسألة التسمية، ص: ٤٧، وسالم رمي بالتدليس ولا يثبت عنه .

Comments:

- Spoils of war is a common property of all the Muslims of a state prior to its distribution. As it is a mortal sin to steal it, in the same way making an embezzlement in the common property of Muslims is a mortal sin. As wealth of public treasury cannot be used for personal needs, in the same way, funds collected for mosques and religious schools, or for other welfare organizations, cannot be spent for personal needs. These funds should be used only for the purposes collected. Any officeholder of the welfare organization cannot spend it for any other purpose. Doing so is sure embezzlement.
- Intentionally not returning the debt is a mortal sin, and it is an obligation on every Muslim to avoid such a great sin.

2413. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The soul of the believer is attached to his debt until it is paid off." (*Hasan*)

٢٤١٣ - حَدَّثَنَا أَبُو مَرْوَانَ الثُّمَالِيُّ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنْ أَبِيهِ، عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ، حَتَّى يَقْضَى عَنْهُ».

تخريج: [إسناده حسن] أخرجه الترمذي، الجنائز، باب ماجاء أن نفس المؤمن معلقة بدينه حتى يقضى عنه، ح: ١٠٧٩ من حديث إبراهيم بن سعد به، وقال: هذا حديث حسن، وللحديث طرق صحح بعضها ابن حبان، ح: ١١٥٨ وغيره.

Comments:

'Is attached to his debt' means that the responsibility of debt remains on the deceased until the debt is paid off, or he is not allowed to enter the Paradise until the debt is not paid off.

2414. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever dies owing a Dinâr or a Dirham, it will

٢٤١٤ - حَدَّثَنَا مُحَمَّدُ بْنُ ثَعْلَبَةَ بْنِ سَوَاءٍ: حَدَّثَنَا عَمِّي مُحَمَّدُ بْنُ سَوَاءٍ، عَنْ حُسَيْنِ الْمُعَلِّمِ، عَنْ مَطْرِ الْوَرَّاقِ، عَنْ نَافِعٍ، عَنْ

be paid back from his good deeds, because then there will be no Dinâr or Dirham." (*Sahih*)

ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ مَاتَ وَعَلَيْهِ دِينَارٌ أَوْ دِرْهَمٌ قُضِيَ مِنْ حَسَنَاتِهِ. لَيْسَ ثَمَّ دِينَارٌ وَلَا دِرْهَمٌ».

تخریج: [صحیح] إسناده حسن، وله شاهد عند أحمد: ۷۰/۲، وصححه الحاكم: ۲۷/۲، والذهبي، وله طريق آخر عند أحمد: ۸۲/۲.

Comments:

- a. If the heirs of the deceased do not pay his debt, it remains the responsibility of the dead, and this debt will be paid off from his virtues on the Day of Resurrection, and it will be a big cause of trouble for him.
- b. Rights of human beings have great importance in religious affairs, and the settlements on the Day of Resurrection, regarding the dealings among the people in this world, will depend on their behavior with each other.
- c. Barter of virtues and sins will settle the matters of debt on the Day of Resurrection. The lender will get the virtues of the debtor equal to his debt. If the debtor does not have enough virtues to pay the debt, the sins of the lender will be transferred to the debtor's account.
- d. Rewards of virtuous deeds should be saved from being wasted. Bad deeds like oppression, tyranny, malice, doing some favor to someone, and then placing him under obligation, are negators of virtues, therefore, these should be avoided.

Chapter 13. If A Man Leaves Behind A Debt Or Children, Then Allâh And His Messenger Are Responsible For Them

(المعجم ۱۳) - بَابُ مَنْ تَرَكَ دَيْنًا أَوْ صَيَاغًا فَعَلَى اللَّهِ وَعَلَى رَسُولِهِ
(التحفة ۵۳)

2415. It was narrated from Abu Hurairah that if a believer died at the time of the Messenger of Allâh ﷺ and he had debts, the Messenger of Allâh ﷺ would ask: "Did he leave anything with which to pay off his debt?" If they said yes, then he would offer the funeral prayer for him, but if they said no, then he would say: "Pray for your companion." When Allâh granted His Prophet the conquests, he said: "I am nearer to the believers than their own selves. Whoever dies owing a

۲۴۱۵ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بْنِ السَّرْحِ الْمِصْرِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ كَانَ يَقُولُ، إِذَا تُوفِّيَ الْمُؤْمِنُ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ وَعَلَيْهِ الدَّيْنُ فَيَسْأَلُ: «هَلْ تَرَكَ لِدِينِهِ مِنْ قَضَاءٍ؟» فَإِنْ قَالُوا: نَعَمْ - صَلَّى عَلَيْهِ. وَإِنْ قَالُوا: لَا - قَالَ: «صَلُّوا عَلَيَّ صَاحِبِكُمْ». فَلَمَّا فَتَحَ اللَّهُ عَلَى رَسُولِهِ الْفَتْوحَ قَالَ: «أَنَا أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ. فَمَنْ تُوْفِّي وَعَلَيْهِ دَيْنٌ، فَعَلَيَّ

debt, I will pay it off for him, and whoever leaves behind wealth, it will be for his heirs." (Sahih)

تخریج: أخرجه مسلم، الفرائض، باب من ترك مالا فلورثته، ح: ۱۶۱۹ من حديث ابن وهب به.

Comments:

- a. The Noble Prophet's declining from offering a debtor's funeral prayer was a sort of warning for the people and showing the gravity of this sin.
- b. If someone dies as debtor and his heirs are poor and cannot pay his debt, it should be paid by the State from the public treasury.

2416. It was narrated from Jābir that the Messenger of Allāh ﷺ said: "Whoever leaves behind money, it is for his heirs, and whoever leaves behind a debt or children, I am responsible for them, and I am nearer to the believers."^[1] (Sahih)

۲۴۱۶ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سُفْيَانُ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ. وَمَنْ تَرَكَ دَيْنًا أَوْ ضَيَاعًا فَعَلَيَّ وَالْيَتَامَىٰ، وَأَنَا أَوْلَىٰ بِالْمُؤْمِنِينَ».

تخریج: [صحیح] أخرجه أبو داود، الخراج، باب في أرزاق الذرية، ح: ۲۹۵۴ من حديث سفیان الثوري به، وصححه ابن حبان، وأخرجه مسلم، ح: ۸۶۷ من طريق آخر عن جعفر بن محمد به.

Comments:

The Arabic word *Dayā'* includes those individuals who need care, like children, old people and the handicapped. They need someone to take care of them for survival.

Chapter 14. Giving Respite To One Who Is In Difficulty

(المعجم ۱۴) - بَابُ إِنْظَارِ الْمُعْسِرِ (التحفة ۵۴)

2417. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: Whoever is easy with (a debtor) who is in difficulty, Allāh will be easy with him in this world and in the Hereafter." (Sahih)

۲۴۱۷ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ يَسَّرَ عَلَيَّ مُعْسِرٍ يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ».

تخریج: أخرجه مسلم، الذكر والدعاء، باب فضل الاجتماع على تلاوة القرآن وعلى الذكر،

[1] See no. 45.

ح: ٢٦٩٩ من حديث أبي معاوية به مطولاً * والأعمش صرح بالسماع عنده.

Comments:

'Who is in difficulty' means the debtor who is poor and not in a position to pay back the debt. Such a person should be given more time to payback his debt or it should be waived.

2418. It was narrated from Buraidah Al-Aslami that the Prophet ﷺ said: "Whoever gives respite to one in difficulty, he will have (the reward of) an act of charity for each day. Whoever gives him respite after payment becomes due, will have (the reward of) an act of charity equal to (the amount of the loan) for each day." (*Sahih*)

٢٤١٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا أَبِي: حَدَّثَنَا الْأَعْمَشُ، عَنْ نَفِيعِ أَبِي دَاوُدَ، عَنْ بُرَيْدَةَ [الْأَسْلَمِيِّ] عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ أَنْظَرَ مُعْسِراً كَانَ لَهُ بِكُلِّ يَوْمٍ صَدَقَةٌ. وَمَنْ أَنْظَرَهُ بَعْدَ حِلِّهِ كَانَ لَهُ مِثْلُهُ، فِي كُلِّ يَوْمٍ صَدَقَةٌ».

تخريج: [صحيح] أخرجه أحمد: ٣٥١/٥ عن عبدالله بن نمير به * نفع كذاب متروك كما تقدم، ح: ١٤٨٥، ولحديثه شاهد صحيح عند أحمد: ٣٦٠/٥، وصححه الحاكم على شرط الشيخين: ٢/٢٢٩، ووافقه الذهبي، وإسناده صحيح على شرط مسلم فقط.

Comments:

- a. Giving respite means to fix a reasonable time for the repayment that is suitable and easy for the debtor to pay back the debt.
- b. After the expiry of the determined time, instead of pressing for repayment, giving more time is a good deed and brings reward from Allāh ﷻ.

2419. It was narrated from Abu Yasar, the Companion of the Prophet ﷺ that the Messenger of Allāh ﷻ said: "Whoever would like Allāh to shade him with His shade, let him give respite to one in difficulty, or waive repayment of the loan." (*Sahih*)

٢٤١٩ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدُّورَقِيُّ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ عَبْدِ الرَّحْمَنِ ابْنِ مُعَاوِيَةَ، عَنْ حَنْظَلَةَ بْنِ قَيْسٍ، عَنْ أَبِي الْيَسْرِ صَاحِبِ النَّبِيِّ ﷺ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَحَبَّ أَنْ يُظِلَّهُ اللَّهُ فِي ظِلِّهِ - فَلْيُنْظِرْ مُعْسِراً، أَوْ لِيَضَعْ لَهُ».

تخريج: [صحيح] أخرجه أحمد: ٤٢٧/٣ عن إسماعيل بن إبراهيم به، وأصله في صحيح مسلم، الزهد، باب حديث جابر الطويل وقصة أبي اليسر، ح: ٣٠٠٦ من طريق آخر عن أبي اليسر به، وبه صح الحديث (لأن عبدالرحمن بن معاوية الزرقى ضعيف على الراجح).

Comments:

- On the Day of Resurrection some people will be under the shade of Allâh's Throne. Shade of Allâh means the shade of Allâh's Throne.
- Getting a place under the shade of Allâh's Throne is a matter of great honor, as there will be no shade except the shade of Allâh's Throne. Everyone will feel the scorching heat of the sun according to one's sins, and comfort will only be found in the shade of Allâh's Throne.
- Waiving the debt is a great deed of getting reward from Allâh. If one cannot waive the debt, it is easy to give more time for the repayment of the loan.

2420. It was narrated from Hudhaifah that the Prophet ﷺ said: "A man died and it was said to him: 'What did you do?' Either he remembered or was reminded and said: 'I used to be easy going in coins and cash concerning collecting debts due, and I used to give respite to (the debtor) who was in difficulty. So, Allâh forgave him.'"

Abu Mas'ud said: "I heard that from the Messenger of Allâh ﷺ." (Sahih)

تخریج: أخرجه البخاري، الاستقراض، باب حسن التقاضي، ح: ۲۳۹۱، ومسلم، المساقاة، باب فضل إنظار المعسر والتجاوز في الاقتضاء من الموسر والمعسر، ح: ۱۵۶۰ من حديث شعبة به.

Comments:

- Allâh loves those who are easy with the people in recovering loans.
- Easy going in coin means not caring about the petty damages done to the coin and accepting such coins without any hesitation. People used to reject such coins at the time of the Noble Prophet ﷺ, as today people may refuse to accept currency with some damage.

Chapter 15. Asking In A Polite Manner And Taking One's Rights Without Behaving In An Indecent Manner

2421. It was narrated from Ibn 'Umar and 'Aishah that the

۲۴۲۰ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَامِرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ رِبَيعَ بْنَ جَرَّاشٍ يُحَدِّثُ عَنْ حَدِيثِهِ، عَنِ النَّبِيِّ ﷺ: «أَنَّ رَجُلًا مَاتَ. فَقِيلَ لَهُ: مَا عَمِلْتَ؟ فِيمَا ذَكَرَ أَوْ ذَكَرَ قَالَ: إِنِّي كُنْتُ أَنْجِزُ فِي السَّكَّةِ وَالنَّقْدِ، وَأُنْظِرُ الْمُعْسِرَ. فَغَفَرَ اللَّهُ لَهُ».

قَالَ أَبُو مَسْعُودٍ: أَنَا قَدْ سَمِعْتُ هَذَا مِنْ رَسُولِ اللَّهِ ﷺ.

(المعجم ۱۵) - بَابُ حُسْنِ الْمُطَالِبَةِ
وَأَخَذِ الْحَقِّ فِي عِفَافٍ (التحفة ۵۵)

۲۴۲۱ - حَدَّثَنَا مُحَمَّدُ بْنُ خَلْفِ الْعَسْقَلَانِيُّ وَ مُحَمَّدُ بْنُ يَحْيَى، قَالَا: حَدَّثَنَا ابْنُ أَبِي

Messenger of Allāh ﷺ said: "Whoever demands his rights let him do so in a decent manner as much as he can." (*Hasan*)

مَرِيَمَ: حَدَّثَنَا بِحَيْبِ بْنِ أَبِي بَرْ، عَنْ عَبْدِ اللَّهِ
ابْنِ أَبِي جَعْفَرٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عَمْرٍ
وَعَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ طَالَ
حَقًّا فَلْيَطْلُبْهُ فِي عَفَافٍ وَافٍ، أَوْ غَيْرِ وَافٍ».

تخريج: [إسناده حسن] أخرجه البيهقي: ٣٥٨/٥ من حديث سعيد بن أبي مريم به، وصححه ابن حبان (موارد)، ح: ١١٦٣، والحاكم على شرط البخاري: ٣٢/٢، ووافقه الذهبي.

2422. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said to the one who was entitled to something: "Take your rights in a decent manner, as much as you can." (*Hasan*)

٢٤٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُؤَمَّلِ بْنِ
الصَّبَّاحِ الْقَيْسِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ [مُحَبِّبِ]
الْقُرَشِيِّ: حَدَّثَنَا سَعِيدُ بْنُ السَّائِبِ الطَّائِفِيُّ،
عَنْ عَبْدِ اللَّهِ بْنِ يَامِينَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ
رَسُولَ اللَّهِ ﷺ قَالَ لِصَاحِبِ الْحَقِّ: «خُذْ
حَقَّكَ فِي عَفَافٍ وَافٍ، أَوْ غَيْرِ وَافٍ».

تخريج: [حسن] أخرجه الحاكم: ٣٢/٢، ٣٣ من حديث أبي همام محمد بن محبوب به، وقال البوصيري: هذا إسناده صحيح على شرط البخاري قلت: عبدالله بن يامين مجهول الحال وليس من رجال البخاري، وله شواهد عند ابن أبي شيبة: ٢٥١/٧ وغيره، والحديث السابق شاهد له .

Comments:

- It is natural to be concerned when the loan is not returned in time, even after giving more time, more than once, but to control one's anger is a great deed before Allāh.
- '*Afaf* (to keep away from the sin, '*Afaf* also means decent manners), in this case, means to ask the return of loan in a decent manner. One should not be hard and harsh in asking for the return of loan. The lender should receive only what is his due.

Chapter 16. Paying Off Debts In A Good Manner

(المعجم ١٦) - بَابُ حُسْنِ الْقَضَاءِ

(النصفه ٥٦)

2423. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The best of you – or among the best of you – are those who pay off their debts in the best manner." (*Sahih*)

٢٤٢٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
شَبَابَةُ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا
مُحَمَّدُ بْنُ جَعْفَرٍ، قَالَ: حَدَّثَنَا شُعْبَةُ عَنْ
سَلَمَةَ بْنِ كُهَيْلٍ: سَمِعْتُ أَبَا سَلَمَةَ بْنَ عَبْدِ

الرَّحْمَنِ يُحَلِّتُ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ خَيْرَكُمْ، أَوْ مِنْ خَيْرِكُمْ أَحْسَنُكُمْ قَضَاءً».

تخريج: أخرجه البخاري، الوكالة، باب الوكالة في قضاء الديون، ح: ٢٣٠٦ وغيره من حديث شعبة به، «مسلم، المساقاة، باب جواز اقتراض الحيوان واستحباب توفيته خيراً مما عليه، ح: ١٦٠١ عن محمد بن بشار به.

2424. Ismâ'il bin Ibrâhim bin 'Abdullâh bin Abi Rabi'ah Al-Makhzumi narrated from his father, from his grandfather, that the Prophet ﷺ borrowed thirty or forty thousand from him, when he fought at Hunain. When he came back he paid back the loan, then the Prophet ﷺ said to him: "May Allâh bless your family and your wealth for you. The reward for lending is repayment and words of praise." (*Hasan*)

٢٤٢٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ الْمَخْزُومِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ اسْتَسَلَفَ مِنْهُ، حِينَ غَزَا حُنَيْنًا، ثَلَاثِينَ أَوْ أَرْبَعِينَ أَلْفًا. فَلَمَّا قَدِمَ قَضَاهَا إِيَّاهُ. ثُمَّ قَالَ لَهُ النَّبِيُّ ﷺ: «بَارَكَ اللَّهُ لَكَ فِي أَهْلِكَ وَمَالِكَ. إِنَّمَا جَزَاءُ السَّلْفِ الْوُقَاءُ وَالْحَمْدُ».

تخريج: [إسناده حسن] أخرجه النسائي، البيوع، . الاستقراض، ح: ٤٦٨٧ من حديث إسماعيل به، ورواه أحمد: ٣٦/٤ عن وكيع به * إسماعيل بن إبراهيم بن عبد الرحمن بن عبدالله وثقه أبو داود، وابن حبان، وأبوه من رجال البخاري، ووثقه ابن حبان أيضاً، فحديثهما لا ينزل عن درجة الحسن، وقال العراقي: إسناده حسن (إتحاف السادة المتقين: ١١٤/٥).

Comments:

- a. It is allowed and legal to borrow at the time of need.
- b. Making the repayment with the best manners, means to make the repayment in time, and according to the promise.
- c. Giving a better thing in repayment is a sign of decent manners, it is legal and allowed, but to decide it before taking, or giving the loan is usury, which is a great sin.

Chapter 17. The One Who Has A Right Has Authority (Over The Debtor)

(المعجم ١٧) - بَابُ: لِصَاحِبِ الْحَقِّ سُلْطَانٌ (التحفة ٥٧)

2425. It was narrated that Ibn 'Abbâs said: "A man came to ask

٢٤٢٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى

the Prophet of Allāh ﷺ for some debt or some right, and he spoke harshly to him, and the Companions of the Messenger of Allāh ﷺ wanted to rebuke him. But the Messenger of Allāh ﷺ said: 'Let him be, for the one who is owed something has authority over the debtor, until it is paid off.'" (*Da'if*)

تخریج: [ضعیف] وضعفه البوصيري من أجل حشش بن المعتمر، وانظر، ح: ٢٣١٠، ولبعضه شاهد عند الزوار (كشف: ١٠٤/٢، ح: ١٣٠٧)، وإسناده حسن.

2426. It was narrated that Abu Sa'eed Al-Khudri said: "A Bedouin came to the Prophet ﷺ to ask him to pay back a debt that he owed him, and he spoke harshly, saying: 'I will make things difficult for you unless you repay me.' His Companions rebuked him and said: 'Woe to you, do you know who you are speaking to?' He said: 'I am only asking for my rights.' The Prophet ﷺ said: 'Why do you not support the one who has a right?' Then he sent word to Khawlah bint Qais, saying to her: 'If you have dates, lend them to us until our dates come, then we will pay you back.' She said: 'Yes, may my father be ransomed for you, O Messenger of Allāh!' So she gave him a loan, and he paid back the Bedouin and fed him. He (the Bedouin) said: 'You have paid me in full, may Allāh pay you in full.' He (the Prophet ﷺ) said: 'Those are the best of people. May that nation

الصَّغَايِي: حَدَّثَنَا مُعْتَمِرُ بْنُ شُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْشِ بْنِ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: جَاءَ رَجُلٌ يُطَلِّبُ نَبِيَّ اللَّهِ ﷺ بِدَيْنٍ، أَوْ بِحَقٍّ. فَتَكَلَّمَ بِبَعْضِ الْكَلَامِ. فَهَمَّ صَحَابَةُ رَسُولِ اللَّهِ ﷺ بِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «مَهْ. إِنَّ صَاحِبَ الدَّيْنِ لَهُ سُلْطَانٌ عَلَى صَاحِبِهِ، حَتَّى يُقْضِيَ».

٢٤٢٦ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عُمَانَ، أَبُو شَيْبَةَ: حَدَّثَنَا ابْنُ أَبِي عُبَيْدَةَ، أَطْنَهُ قَالَ: حَدَّثَنَا أَبِي عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: جَاءَ أَعْرَابِيٌّ إِلَى النَّبِيِّ ﷺ يَقْرَضُهُ دِينًا كَانَ عَلَيْهِ. فَاسْتَدَّ عَلَيْهِ، حَتَّى قَالَ لَهُ: أُخْرِجْ عَلَيْكَ إِلَّا قَضَيْتَنِي. فَانْتَهَرَهُ أَصْحَابُهُ وَقَالُوا: وَيْحَكَ تَدْرِي مَنْ تُكَلِّمُ؟ قَالَ: إِنِّي أَطَلِّبُ حَقِّي. فَقَالَ النَّبِيُّ ﷺ: «هَلَّا مَعَ صَاحِبِ الْحَقِّ كُتْمٌ؟» ثُمَّ أَرْسَلَ إِلَى خَوْلَةَ بِنْتِ قَيْسٍ فَقَالَ لَهَا: «إِنْ كَانَ عِنْدَكَ تَمْرٌ فَأَقْرِضِينَا حَتَّى يَأْتِينَا تَمْرُنَا فَتَقْضِيكَ» فَقَالَتْ: نَعَمْ. بِأَبِي أَنْتَ يَا رَسُولَ اللَّهِ!. قَالَ: فَأَقْرِضْتَهُ. فَقَضَى الْأَعْرَابِيُّ وَأَطْعَمَهُ. فَقَالَ: أَوْفَيْتَ. أَوْفَى اللَّهُ لَكَ. فَقَالَ: «أَوْلَيْكَ خِيَارُ النَّاسِ. إِنَّهُ لَا قُدْسَ أُمَّةٍ لَا يَأْخُذُ الضَّعِيفُ فِيهَا حَقَّهُ عَيْرَ مُتَعَمِّعٍ».

not be cleansed (of sin) among whom the weak cannot get their rights without trouble.” (Hasan)

تخریج: [أحسن] واصله البوصيري، وإسناده ضعيف لعلتين إحداهما شك الراوي، وانظر، ج: ١٧٨، وله شاهد حسن عند أحمد: ٢٦٨/٦ من حديث محمد بن إسحاق قال: حدثني هشام بن عروة عن أبيه عن عائشة به مطولاً، وتابعه يحيى بن عمير عن هشام به عند البيهقي: ٢٠/٦، وهو صندوق كما في الكاشف: ٣/٢٢٢.

Comments:

- a. A lender has the right to press the debtor for return, but it is recommended to be easy with him, and give him enough time to repay the loan. (See *Ahādith* 2417 and 2421)
- b. Unversed and rough creditors should be treated kindly, and their harshness should be tolerated.

Chapter 18. Imprisonment Because Of Debts And Pursuing Debtors

(المعجم ١٨) - بَابُ الصَّحْبِ فِي الدَّيْنِ وَالْمَلَاذِمَةِ (التحفة ٥٨)

2427. It was narrated from ‘Amr bin Sharid that his father said that the Messenger of Allāh ﷺ said: “If one who can afford it delays repayment, his honor and punishment become permissible.” (Hasan)

(One of the narrators) ‘Ali At-Tanāfisi said: ‘Honor’ means that it is permissible to make a complaint, and ‘punishment’ means that he may be imprisoned.

٢٤٢٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا وَبُرُّ بْنُ أَبِي دَلَيْلَةَ الطَّائِفِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ مَيْمُونِ بْنِ [مُسَيْكَةَ]، قَالَ وَكِيعٌ وَأَتَيْتُ عَلَيْهِ خَيْرًا عَنْ عَمْرٍو بْنِ الشَّرِيدِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الَّذِي الْوَاجِدُ يُجَلُّ عِرْضُهُ وَعُقُوبَتُهُ».

قَالَ عَلِيُّ الطَّائِفِيُّ: يُعْنِي عِرْضُهُ شِكَايَتُهُ، وَعُقُوبَتُهُ سَجْنَتُهُ.

تخریج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في الدين هل يخس به، ح: ٣٦٢٨ من حديث وبرة والنسائي، البيهقي، . مظل الغني، ح: ٤٦٩٤، ٤٦٩٣ من حديث وكيع به، وعلقه البخاري في صحيحه، وصححه ابن حبان، ح: ١١٦٤، والحاكم: ١٠٢/٤، والذهبي وقال الحافظ في الفتح: وإسناده حسن .

Comments:

- a. Repayment of the loan in time is necessary, and delay without a genuine cause must be avoided.
- b. If the debtor does not return the loan on time, a complaint can be lodged

against him with a *Qāzi* or the ruler of the time, and it is the duty of the ruler or *Qāzi* to provide justice to the claimant.

2428. Hirmās bin Habīb narrated from his father that his grandfather said: "I came to the Prophet ﷺ with a man who owed me money, and he said to me: 'Keep him.' Then he passed by me at the end of the day and said: 'What did your prisoner do, O brother of Banu Tamim?'" (*Da'if*)

٢٤٢٨ - حَدَّثَنَا هَرِمَةُ بْنُ عَبْدِ الْوَهَّابِ: حَدَّثَنَا النَّضْرُ بْنُ شُمَيْلٍ: حَدَّثَنَا الْهَرْمَاسُ بْنُ حَبِيبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ بِغَرِيمٍ لِي. فَقَالَ لِي: «الزَّمُهُ». ثُمَّ مَرَّ بِي آخِرَ النَّهَارِ فَقَالَ: «مَا فَعَلَ أَسِيرُكَ يَا أَخَا بَنِي تَمِيمٍ؟».

تخريج: [إسناده ضعيف] أخرجه أبو داود، القضاء، الباب السابق، ح: ٣٦٢٩ من حديث النضر به * هرماس بن حبيب، وأبوه مجهولان كما حققته في نيل المقصود، يسر الله لنا طبعه.

2429. It was narrated from 'Abdullāh bin Ka'b bin Mālik from his father that he demanded payment owed by Ibn Abi Hadrad in the mosque. Their voices became so loud that the Messenger of Allāh ﷺ heard them when he was in his house. He came out and called Ka'b who said: "Here I am, O Messenger of Allāh!" He said: "Waive this much of your loan," and gestured with his hand to indicate half. He said: "I will do that," and he said: "Get up and repay it." (*Sahih*)

٢٤٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ يَحْيَى ابْنُ حَكِيمٍ، قَالَا: حَدَّثَنَا عَثْمَانُ بْنُ عُمَرَ: أَنَّ أَبَا يُونُسَ بْنَ يَزِيدَ، عَنِ الرَّهْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ أَبِيهِ أَنَّهُ تَقَاضَى ابْنُ أَبِي حَدْرَدٍ دَيْنًا لَهُ عَلَيْهِ فِي الْمَسْجِدِ. حَتَّى ارْتَفَعَتْ أَصْوَاتُهُمَا، حَتَّى سَمِعَهُمَا رَسُولُ اللَّهِ ﷺ وَهُوَ فِي بَيْتِهِ. فَخَرَجَ إِلَيْهِمَا. فَتَادَى كَعْبًا. فَقَالَ: لَيْتَكَ يَا رَسُولَ اللَّهِ! قَالَ: «دَعْ مِنْ دَيْنِكَ هَذَا» وَأَوْمَأَ بِيَدِهِ إِلَى الشَّطْرِ. فَقَالَ: قَدْ فَعَلْتُ. قَالَ: «فَمُ فَاقْضِهِ».

تخريج: أخرجه البخاري، الصلاة، باب التقاضي والملازمة في المسجد، ح: ٤٥٧، ومسلم، المساقاة، باب استحباب الوضع من الدين، ح: ١٥٥٨ من حديث عثمان بن عمر به.

Comments:

- A lender can press the debtor to repay his loan.
- If the claimant waives a part of the loan, it is a matter of great reward from Allāh ﷻ.

Chapter 19. Lending

2430. It was narrated that Qais bin Rumi said: "Sulaimân bin Udhunân lent 'Alqamah one thousand Dirham until he got his salary. When he got his salary, he demanded that he pay him back and treated him harshly. He paid him back, and it was as if 'Alqamah was angry. Several months passed, then he came to him and said: 'Lend me one thousand Dirham until my salary comes.' He said: 'Yes, it would be an honor. O Umm 'Utbah! Bring me that sealed leather bag that you have.' He said: 'By Allâh, these are your Dirham that you paid back to me; I did not touch a single Dirham., 'What made you do what you did to me (i.e., treat me so harshly)?' He said: 'What I heard from you.' He said: 'What did you hear from me?' He said: 'I heard you narrated from Ibn Mas'ud that the Prophet ﷺ said: "There is no Muslim who lends something to another Muslim twice, but it will be like giving charity once."

He said: 'That is what Ibn Mas'ud told me.'" (*Sahih*)

تخریج: [ضعیف] أخرجه البيهقي: ٣٥٣/٥ من حديث سليمان بن يسير به مختصراً، وقال في سليمان: قال البخاري: وليس بالقوي، وقيس مجهول كما في التقريب، والسند ضعفه البوصيري، أخرجه أحمد: ٤١٢/١ بإسناد حسن عن ابن أذنان به نحو المعنى * وابن أذنان مستور لم أجد فيه توثيقاً يعتمد عليه، أخرجه البيهقي من طريق آخر عن ابن مسعود نحوه مرفوعاً، وقال: تفرد به عبدالله بن الحسين أبو حريز قاضي سجستان، وليس بالقوي بإسناد غريب عن أنس رفعه: قرض الشيء خيراً من صدقته، وفيه نظر من أجل تمام.

(المعجم ١٩) - بَابُ الْقَرْضِ (التحفة ٥٩)

٢٤٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ حَلْفٍ الْعَسْقَلَانِيُّ: حَدَّثَنَا يَعْلَى: حَدَّثَنَا سُلَيْمَانُ بْنُ يَسِيرٍ، عَنْ قَيْسِ بْنِ رُومِيٍّ قَالَ: كَانَ سُلَيْمَانُ بْنُ أَدْنَانَ يُقْرِضُ عَلْقَمَةَ أَلْفَ دِرْهَمٍ إِلَى عَطَائِهِ. فَلَمَّا [خَرَجَ عَطَاؤُهُ] تَقَاضَاهَا مِنْهُ وَاشْتَدَّ عَلَيْهِ، فَغَضِبَهُ. فَكَانَ عَلْقَمَةَ غَضِبَ. فَمَكَثَ أَشْهُرًا ثُمَّ أَنَاهُ فَقَالَ: أَقْرِضْنِي أَلْفَ دِرْهَمٍ إِلَى عَطَائِي. قَالَ: نَعَمْ. وَكَرَامَةً. يَا أُمَّ عَتْبَةَ هَلُمِّي تِلْكَ الْحَرِيظَةَ الْمُخْتَمَمَةَ الَّتِي عِنْدَكَ. فَجَاءَتْ بِهَا. فَقَالَ: أَمَا وَاللَّهِ إِنَّهَا لَدَرَاهِمُكَ الَّتِي قَضَيْتَنِي. مَا حَرَكْتُ مِنْهَا دِرْهَمًا وَاحِدًا. قَالَ: فَلِلَّهِ أَبُوكَ مَا حَمَلَكَ عَلَيَّ مَا فَعَلْتَ بِي؟ قَالَ: مَا سَمِعْتُ مِنْكَ. قَالَ: مَا سَمِعْتُ مِنِّي؟ قَالَ: سَمِعْتُكَ تَذَكُّرُ عَنِ ابْنِ مَسْعُودٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَتَيْهَا مَرَّةً». قَالَ: كَذَلِكَ أَنبَأَنِي ابْنُ مَسْعُودٍ.

Comments:

A reward is in store for lending to a person that is well off, but to lend a poor man and give him extra time for repayment is a cause of increase in reward. (See Chapter 14, *Ahâdith* 2417 to 2420)

2431. It was narrated from Anas bin Mâlik that the Messenger of Allâh ﷺ said: "On the night on which I was taken on the Night Journey (*Isra*), I saw written at the gate of Paradise: 'Charity brings a tenfold reward and a loan brings an eighteen fold reward.' I said: 'O Jibrîl! Why is a loan better than charity?' He said: 'Because the beggar asks when he has something, but the one who asks for a loan does so only because he is in need.'" (*Da'if*)

٢٤٣١ - حَدَّثَنَا عُمَيْدُ اللَّهِ بْنُ عَبْدِ الْكَرِيمِ: حَدَّثَنَا هِشَامُ بْنُ خَالِدٍ: حَدَّثَنَا خَالِدُ بْنُ يَزِيدَ: وَحَدَّثَنَا أَبُو حَاتِمٍ: حَدَّثَنَا هِشَامُ بْنُ خَالِدٍ: حَدَّثَنَا خَالِدُ بْنُ يَزِيدَ بْنِ أَبِي مَالِكٍ، عَنْ أَبِيهِ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «رَأَيْتُ لَيْلَةَ أُسْرِيَ بِي عَلَى بَابِ الْجَنَّةِ مَكْتُوبًا: الصَّدَقَةُ بِخَيْرٍ أَمْثَالِهَا. وَالْقَرْضُ بِثَمَانِيَةِ عَشْرٍ. فَقُلْتُ: يَا جِبْرِيلُ مَا بَالُ الْقَرْضِ أَفْضَلُ مِنَ الصَّدَقَةِ؟ قَالَ: لِأَنَّ السَّائِلَ يَسْأَلُ وَعِنْدَهُ. وَالْمُسْتَقْرِضُ لَا يَسْتَقْرِضُ إِلَّا مِنْ حَاجَةٍ».

تخریج: [إسناده ضعيف جدا] أخرجه ابن عدي في الكامل: ٣/ ٨٨٣ من حديث هشام بن خالد به، وقال البوصيري: هذا إسناده ضعيف، وقال ابن حبان في هذا الحديث: ليس بصحيح * خالد بن يزيد تكلم فيه فيما يروي عن أبيه، وقال ابن معين: لم يرض أن يكذب على أبيه حتى كذب على أصحاب رسول الله ﷺ (تهذيب)، وبعض حديثه شاهد عند الطبراني: ٨/ ٢٩٧، ح: ٧٩٧٦، والبيهقي في شعب الإيمان: ٣/ ٢٨٤، ح: ٣٥٦٤، وإسناده ضعيف، ولعلته انظر الحديث الآتي .

2432. It was narrated that Yahya bin Abu Ishâq Al-Hunâ'i said: "I asked Anas bin Mâlik: 'What if a man gives his brother a loan, then (the borrower) gives him a gift?' The Messenger of Allâh ﷺ said: 'If anyone of you borrows something then he gives (the lender) a gift or gives him a ride on his riding-beast, he should not accept the gift or the ride, unless they used to treat each other in that manner beforehand.'" (*Da'if*)

٢٤٣٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنِي عُبَيْدُ بْنُ حُمَيْدٍ الضَّبِّيُّ، عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ الْهَنْدَايِيِّ قَالَ: سَأَلْتُ أَنَسَ بْنَ مَالِكٍ: الرَّجُلُ مِمَّا يَقْرَضُ أَخَاهُ الْمَالَ فَيُهْدِي لَهُ؟ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اقْرَضَ أَحَدُكُمْ قَرْضًا فَأَهْدَى لَهُ، أَوْ حَمَلَهُ عَلَى الدَّابَّةِ، فَلَا يَرْكَبْهَا وَلَا يَقْبَلْهُ. إِلَّا أَنْ يَكُونَ جَرَى بَيْنَهُ وَبَيْنَهُ قَبْلَ ذَلِكَ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٥٠/٥ من حديث هشام به، ونقل عن المعمرى أن قوله: يحيى بن أبي إسحاق الهنائي وهم، أخرجه من طريق سعيد بن منصور ثنا إسماعيل به، وفيه: يزيد بن أبي يحيى * عقبه بن حميد ليس شامياً ورواية إسماعيل عن غير الشاميين ضعيفة، وانظر، ح: ٥٩٥.

Chapter 20. Paying A Debt On Behalf Of The Deceased

(المعجم ٢٠) - بَابُ آدَاءِ الدَّيْنِ عَنِ المَيِّتِ (التحفة ٦٠)

2433. It was narrated from Sa'd bin Atwal that his brother died, leaving behind three hundred Dirham and dependents. "I wanted to spend (the money) on his dependents, but the Prophet ﷺ said: 'Your brother is being detained by his debt, so pay it off for him.'" He said: "O Messenger of Allāh, I have paid it off apart from two Dinār, which a woman is claiming but she has no proof." He said: "Give them to her for she is telling the truth." (Hasan).

٢٤٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ: أَخْبَرَنِي عَبْدُ الْمَلِكِ أَبُو جَعْفَرٍ، عَنْ أَبِي نَضْرَةَ، عَنْ سَعْدِ ابْنِ الْأَطْوَلِ أَنَّ أَخَاهُ مَاتَ وَتَرَكَ ثَلَاثِمِائَةَ دِرْهَمٍ. وَتَرَكَ عِيَالًا. فَأَرَدْتُ أَنْ أَنْفِقَهَا عَلَى عِيَالِهِ. فَقَالَ النَّبِيُّ ﷺ: «إِنَّ أَخَاكَ مُحْتَبَسٌ بِدَيْنِهِ. فَأَقِضْ عَنْهُ». فَقَالَ: يَا رَسُولَ اللَّهِ! قَدْ أَدَيْتُ عَنْهُ إِلَّا دِينَارَيْنِ، أَدَعَيْتُهُمَا امْرَأَةً وَلَيْسَ لَهَا بَيِّنَةٌ. قَالَ: «فَأَعْطِهَا فَإِنَّهَا مُحَقَّةٌ».

تخریج: [حسن] أخرجه أحمد: ٧/٥ عن عفان به، وصححه الطبري، وقال: عبد الملك ذكره ابن حبان في الثقات، ولحديثه شاهد عند أحمد، والبيهقي: ١٤٢/١٠، وإسناده حسن.

Comments:

- a. An inheritance is distributed after paying off the debt of the deceased.
- b. The woman claimed that the deceased owed her two Dinār, and Sa'd bin Atwal was asking for proof or for witnesses for his own satisfaction, but she had no witness or proof to produce before Sa'd. To avoid such troublesome situations the matter of debt should be written before witnesses.
- c. The Noble Prophet knew, through revelation, that the claim of the woman was genuine, therefore, he ordered Sa'd to pay her.

2434. It was narrated from Jābir bin 'Abdullāh that his father died owing thirty Wasq to a Jewish man. Jābir bin 'Abdullāh asked him for respite but he refused. Jābir asked the Messenger of Allāh ﷺ to intercede for him with him, so the Messenger of Allāh ﷺ

٢٤٣٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا شُعَيْبُ بْنُ إِسْحَاقَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ وَهْبِ بْنِ كَيْسَانَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ أَبَاهُ تُوْفِيَ وَتَرَكَ عَلَيْهِ ثَلَاثِينَ وَسَقًا لِرَجُلٍ مِنَ الْيَهُودِ. فَاسْتَنْظَرَهُ

went and spoke to the Jew, asking him to accept dates in lieu of what was owed, but he refused. The Messenger of Allāh ﷺ spoke to him; but he refused to give respite. Then the Messenger of Allāh ﷺ went in among the date-palm trees and walked among them. Then he said to Jābir: "Pick (dates) for him and pay off what is owed to him in full." So he picked thirty *Wasq* of dates after the Messenger of Allāh ﷺ came back, and there were twelve *Wasq* more (than what was owed). Jābir came to the Messenger of Allāh ﷺ to tell him what had happened, and he found that the Messenger of Allāh ﷺ was absent. When the Messenger of Allāh ﷺ came back he came to him and told him that he had paid off the debt in full, and he told him about the extra dates. The Messenger of Allāh ﷺ said: "Tell 'Umar bin Khattāb about that." So Jābir went to 'Umar and told him, and 'Umar said to him: "I knew when the Messenger of Allāh ﷺ walked amongst them that Allāh would bless them for us." (*Sāhīh*)

جَابِرُ بْنُ عَبْدِ اللَّهِ. فَأَبَى أَنْ يُنْظِرَهُ. فَكَلَّمَ جَابِرٌ رَسُولَ اللَّهِ ﷺ لِيَسْمَعَ لَهُ إِلَيْهِ. فَجَاءَهُ رَسُولُ اللَّهِ ﷺ. فَكَلَّمَ الْيَهُودِيَّ لِيَأْخُذَ تَمَرَ تَخْلِيهِ بِالَّذِي لَهُ عَلَيْهِ. فَأَبَى عَلَيْهِ. فَكَلَّمَهُ رَسُولُ اللَّهِ ﷺ فَأَبَى أَنْ يُنْظِرَهُ. فَدَخَلَ رَسُولُ اللَّهِ ﷺ التَّخْلَ. فَمَسَى فِيهَا. ثُمَّ قَالَ لِجَابِرٍ: «جِدَّ لَهُ قَاوِفِهِ الَّذِي لَهُ» فَجَدَّ لَهُ، بَعْدَمَا رَجَعَ رَسُولُ اللَّهِ ﷺ، ثَلَاثِينَ وَسَقًا. وَفَضَلَ لَهُ اثْنَا عَشَرَ وَسَقًا. فَجَاءَ جَابِرٌ رَسُولَ اللَّهِ ﷺ لِيُخْبِرَهُ بِالَّذِي كَانَ. فَوَجَدَ رَسُولَ اللَّهِ ﷺ غَائِبًا. فَلَمَّا انْصَرَفَ رَسُولُ اللَّهِ ﷺ جَاءَهُ فَأَخْبَرَهُ أَنَّهُ قَدْ أَوْفَاهُ. وَأَخْبَرَهُ بِالْفَضْلِ الَّذِي فَضَلَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَخْبِرْ بِذَلِكَ عُمَرَ بْنِ الْخَطَّابِ» فَذَهَبَ جَابِرٌ إِلَى عُمَرَ فَأَخْبَرَهُ. فَقَالَ لَهُ عُمَرُ: لَقَدْ عَلِمْتُ حِينَ مَسَى فِيهِ رَسُولُ اللَّهِ ﷺ، لِيُبَارِكَنَّ اللَّهُ فِيهَا.

تخریج: أخرجه البخاري، الاستقراض، باب: إذا قاص أو جازفه في الدين تمرًا تمرًا أو غيره، ح: ٢٣٩٦ من حديث هشام به، وأبو داود، ح: ٢٨٨٤ عن طريق شعيب به.

Comments:

- Increase in food stuff is a miracle of the Noble Prophet, which occurred at different places and in various incidents.
- 'Umar's faith was so firm that he believed that this incident will end up in such and such manner as it did. This incident also shows the greatness of 'Umar bin Khattāb.
- A *Wasq* is equal to sixty *Sa'* which equal to four *Mudd* of weight or about 180 kilogram.

Chapter 21. Three Things Which, If A Person Takes Out A Loan Because Of Them, Allâh Will Pay It Off For Him

2435. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "A debt will be settled on the Day of Resurrection if the one who owes it dies, apart from three: A man who lost his strength fighting in the cause of Allâh, so he borrows in order to become strong again to fight the enemy of Allâh and his enemy. A man who sees a Muslim die and he cannot find anything with which to shroud him except by taking a loan. A man who fears Allâh if he stays single, so he gets married for fear of (losing) his religious commitment. Allâh will pay off the debt for these people on the Day of Resurrection." (*Da'if*)

(المعجم ٢١) - بَابُ: ثَلَاثٌ مِّنْ أَدَانٍ فِيهِنَّ قَضَى اللَّهُ عَنْهُ (الصفحة ٢١).

٢٤٣٥ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا رَشِيدُ بْنُ سَعْدٍ وَ عَبْدِ الرَّحْمَنِ الْمُحَارِبِيُّ وَ أَبُو أُسَامَةَ وَ جَعْفَرُ بْنُ عَوْنٍ، عَنِ ابْنِ أَنْعَمٍ، قَالَ أَبُو كُرَيْبٍ: [وَ] حَدَّثَنَا وَكِيعٌ عَنْ شَقِيانَ، عَنِ ابْنِ أَنْعَمٍ، عَنْ عُمَرَ بْنِ عَبْدِ الْمُعَاوِيَّ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الدَّيْنَ يُقْضَى مِنْ صَلَاحِهِ يَوْمَ الْقِيَامَةِ إِذَا مَاتَ. إِلَّا مَنْ تَدَيَّنَ فِي ثَلَاثٍ خِلَالَ: الرَّجُلُ تَضَعَفَ قُوَّتُهُ فِي سَبِيلِ اللَّهِ فَيَسْتَدِينُ يَتَقَوَّى بِهِ لِعَدُوِّ اللَّهِ وَعِدُوهُ. وَرَجُلٌ يَمُوتُ عَنْهُ مُسْلِمٌ، لَا يَجِدُ مَا يَكْفِيهِ وَيُؤَارِيهِ إِلَّا بِدَيْنٍ. وَرَجُلٌ خَافَ اللَّهَ عَلَى نَفْسِهِ الْعُرْبَةَ، فَيَنْكُحُ خَشْيَةَ عَلَى دِينِهِ. فَإِنَّ اللَّهَ يَقْضِي عَنْ هَؤُلَاءِ يَوْمَ الْقِيَامَةِ».

تخريج: [إسناده ضعيف] وضعفه البوصيري، وانظر، ح: ٥٤ لحال ابن أنعم وح: ٩٧٠ لحال المعافري.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

The Chapters On Pawning

(المعجم ١٦) **أَبْوَابُ الرُّهُونِ**
(التحفة ...)

Comments:

The act of pawning is to deposit something in pledge or as security or guaranty against a loan obtained, so that if the loan is not returned on time, the lender could make recovery of his money from that property.

The legitimacy of the pledge is proven in the Noble Qur'an and the Traditions of the Noble Prophet. In the Noble Qur'an there is: "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)."^[1] "Every person is a pledge for what he has earned."^[2] It means he is a pledge against his deeds. This also applies to that thing which is surrendered to the lender as surety and security of his loan.

Chapter 1. [Abu Bakr Bin Abi Shaibah Narrated To Us]^[3]

(المعجم ١) - [بَابُ: حَدَّثَنَا أَبُو بَكْرِ
ابْنُ أَبِي شَيْبَةَ] (التحفة ٦٢)

2436. It was narrated from 'Aishah that the Prophet ﷺ bought some food from a Jew with payment to be made later, and he pawned his armor for that. (Sahih)

٢٤٣٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ: حَدَّثَنِي الْأَسْوَدُ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إِلَى أَجَلٍ، وَرَهْنَهُ دِرْعَهُ.

تخریج: أخرجه البخاري، البيهقي، باب شراء الطعام إلى أجل، ح: ٢٢٠٠ من حديث حفص به، ومسلم، المساقاة، باب الرهن وجوازه في الحضرة كالسفر، ح: ١٦٠٣ عن ابن أبي شيبة.

2437. It was narrated that Anas said: "The Messenger of Allāh ﷺ pawned his armor to a Jew in Al-Madinah, and took barley for his

٢٤٣٧ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضِيُّ: حَدَّثَنِي أَبِي: حَدَّثَنَا هِشَامٌ عَنْ قَتَادَةَ، عَنْ أَنَسٍ قَالَ: لَقَدْ رَهَنَ رَسُولُ اللَّهِ ﷺ دِرْعَهُ عِنْدَ

[1] Al-Baqarah 2:283.

[2] At-Tur 52:21 and Al-Muddathir 74:38.

[3] Indicating the beginning of the first chain of the chapter.

family in return.” (Sahih)

يَهُودِيٍّ بِالْمَدِينَةِ. فَأَخَذَ لِأَهْلِهِ مِنْهُ شَعِيرًا.

تخريج: أخرجه البخاري، البيهقي، باب شراء النبي ﷺ بالنسيئة، ح: ٢٠٦٩ من طريق هشام

به.

2438. It was narrated from Asmā' bint Yazid that the Prophet died while his armor was pawned to a Jew for food. (Hasan)

٢٤٣٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ عَبْدِ الْحَمِيدِ بْنِ بَهْرَامَ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَسْمَاءَ بِنْتِ يَزِيدَ أَنَّ النَّبِيَّ ﷺ تُوُفِّيَ وَدِرْعُهُ مَرْهُونَةٌ عِنْدَ يَهُودِيٍّ بِطَعَامٍ.

تخريج: [إسناده حسن] أخرجه أحمد: ٤٥٣/٦ عن وكيع به، وحسنه البوصيري، وانظر،

ح: ١٤٩٦ لحال شهر بن حوشب رحمه الله.

2439. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ died while his armor was pawned to a Jew for thirty Sā's of barley. (Hasan)

٢٤٣٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُعَاوِيَةَ الْجُمَحِيُّ: حَدَّثَنَا ثَابِتُ بْنُ يَزِيدَ: حَدَّثَنَا هِلَالُ بْنُ خَبَابٍ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ مَاتَ وَدِرْعُهُ رَهْنٌ عِنْدَ يَهُودِيٍّ، بِثَلَاثِينَ صَاعًا مِنْ شَعِيرٍ.

تخريج: [حسن] وصححه صاحب الزوائد، وانظر تخريج النهاية. في الفتن والملاحم،

ح: ٢٤٩ لحال هلال بن خباب رحمه الله.

Chapter 2. The Pawned Animal May Be Ridden And Milked

(المعجم ٢) - بَابُ الرَّهْنِ مَرْكُوبٍ وَمَحْلُوبٍ. (التحفة ٢٣)

2440. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: “A mount may be ridden when it is pawned, and its milk may be drunk when it is pawned, but the one who rides it or milks it must pay for its upkeep.” (Sahih)

٢٤٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ زَكَرِيَّا، عَنِ الشَّعْبِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الظَّهْرُ يُرَكَّبُ إِذَا كَانَ مَرْهُونًا. وَلَبَنُ الدَّرِّ يُشْرَبُ إِذَا كَانَ مَرْهُونًا. وَعَلَى الَّذِي يُرَكَّبُ وَيُشْرَبُ، نَفَقَتُهُ».

تخريج: أخرجه البخاري، الرهن في الحضر، باب الرهن مركوب ومحلوب،

ح: ٢٥١١، ٢٥١٢ من حديث زكريا به.

Comments:

a. Pawned animal needs to be looked after. It has to be fed, otherwise it can

die or become sick or weak. In this way it will be a form of cruelty to the animal.

- b. If a car or any kind of conveyance is pawned, whoever takes the benefit from it will bear the expenditure of maintenance and fuel etc.

Chapter 3. Pawned Items Are Not To Be Forfeited

(المعجم ٣) - بَابُ: لَا يُغْلَقُ الرُّهُنُ

(التحفة ٦٤)

2441. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Do not forfeit items held in pledge." (Dā'if)

٢٤٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ حُمَيْدٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُخْتَارِ. عَنْ إِسْحَاقَ بْنِ رَاشِدٍ، عَنْ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يُغْلَقُ الرُّهُنُ».

تخریج: [إسناده ضعيف] أخرجه الدارقطني: ٣١٧/٣ من طريق زياد بن سعد عن الزهوي به مطولاً، وإسناده ضعيف لعلل ومع ذلك صححه ابن حبان (موارد)، ح: ١١٢٣، واللتحاکم: ٥١٧/٢ والذهبي، وحسنه الدارقطني، ورواه مالك في الموطأ: ٧٢٨/٢ عن الزهوي عن ابن المسيب به مرسلًا، وله شواهد كثيرة جدًا لم يصح منها شيء.

Comments:

Before the advent of Islam, it was customary that if the pawn was not returned on time, the pawned property would become the property of the lender, and even the delayed payment of the loan would not allow the borrower to take back his property. There is no logic to become the owner of the pledged property when the loan has been returned, though delayed.

Chapter 4. Wages Of Workers

(المعجم ٤) - بَابُ أَجْرِ الْأَجْرَاءِ

(التحفة ٦٥)

2442. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said:^[1] (Allāh says:) "I am the opponent of three on the Day of Resurrection, and if I am someone's opponent I will defeat him: A man who makes promises in My Name, then proves

٢٤٤٢ - حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا يَحْيَى بْنُ سُلَيْمٍ، عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدِ الْمَقْبُرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ. وَمَنْ كُنْتُ خَصْمَهُ

[1] This narration is a *Hadith Qudsi*, as clearly narrated by Ahmad (2:358) and Bukhārī (2227 and 2270) in which it says: "Allāh said: 'I am....'"

treacherous; a man who sells a free man and consumes his price; and a man who hires a worker, makes use of him, then does not give him his wages." (Sahih)

حَصَمْتُهُ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بِي، ثُمَّ غَدَرَ. وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَمَتَهُ. وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا، فَاسْتَوْفَى مِنْهُ وَلَمْ يُوفِهِ أَجْرَهُ.

تخریج: أخرجه البخاري، البيوع، باب إثم من باع حراً، ح: ٢٢٢٧ من حديث يحيى بن سليم به * ويحيى وثقه الجمهور في غير عبيد الله بن عمر، فحديثه لا ينزل عن درجة الحسن أبداً، انظر، ح: ٢٣٠١.

Comments:

- The three sins mentioned in the narration belong to the category of 'Rights of human beings' and they are ranked in the class of Major Sins'.
- To escape from the humiliation and punishment on the Day of Resurrection it is necessary to escape from these major sins.
- In an Islamic society, great importance has been given to justice and equity, rather the base and foundation of an Islamic society is justice and equity.
- All Muslims, collectively and individually, should exert themselves to create a true Muslim society, and they should do so as their religious obligation.

2443. It was narrated from 'Abdullāh bin 'Umar that the Messenger of Allāh ﷺ said: "Give the worker his wages before his sweat dries." (Sahih)

٢٤٤٣ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ اللَّحْمِيُّ: حَدَّثَنَا وَهْبُ بْنُ سَعِيدِ بْنِ عَطِيَّةَ السَّلَمِيِّ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَعْطُوا الْأَجِيرَ أَجْرَهُ، قَبْلَ أَنْ يَجِفَّ عَرَقُهُ».

تخریج: [صحیح] وضعه البوصيري، وانظر، ح: ٢٣٨ لعلته، وله شاهد عند الطحاوي في مشكل الآثار: ٤/١٤٣، وإسناده صحيح، وبه صحیح الحديث.

Comments:

- Wages of the laborer should be paid as soon as he finishes his work.
- Without a genuine cause, delaying payment of wages for labor is a great sin.

Chapter 5. Hiring A Worker In Return For Food

(المعجم ٥) - بَابُ إِجَارَةِ الْأَجِيرِ عَلَى طَعَامٍ بَطْنِهِ (التحفة ٦٦)

2444. It was narrated that 'Ali bin Rabāh said: "I heard 'Utābah bin Nuddar say: 'We were with

٢٤٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْأَحْمَصِيُّ: حَدَّثَنَا بَيْهَقِيُّ بْنُ الْوَلِيدِ، عَنْ مَسْلَمَةَ

the Messenger of Allāh ﷺ and he recited *Ta-Sin*.^[1] When he reached the story of Musa, he said: 'Musa ﷺ hired himself out for eight years, or ten, in return for his chastity and food in his stomach.' (Da'if)

ابْنُ عَلِيٍّ، عَنْ سَعِيدِ بْنِ أَبِي أَيُّوبَ، عَنِ الْحَارِثِ بْنِ زَيْدٍ، عَنْ عَلِيِّ بْنِ رَبِيعٍ قَالَ: سَمِعْتُ عُتْبَةَ بْنَ [الثَّدْرِ] يَقُولُ: كُنَّا عِنْدَ رَسُولِ اللَّهِ ﷺ قَرَأَ [طَسَرَ]. حَتَّى إِذَا بَلَغَ قِصَّةَ مُوسَى قَالَ: «إِنَّ مُوسَى ﷺ أَجَرَ نَفْسَهُ ثَمَانِي سِنِينَ، أَوْ عَشْرًا، عَلَى عِفَّةٍ فَرَجَحَهُ وَطَعَامٍ بَطْنِهِ».

تخريج: [إسناده ضعيف جداً] أخرجه الطبراني في الكبير: ١٧/١٣٥، ح: ٣٣٣. من طريق محمد بن المصفي به، وضعفه البوصيري، وإسناده ضعيف جداً منها ضعف مسلمة بن علي، فإنه متروك، انظر، ح: ٣٥١.

Comments:

'In return for his chastity' means the promise of marriage as it has been given in the Noble Qur'ân (*An-Nur* 24:32-33).

2445. Salim bin Hayyân said: I heard my father say: I heard Abu Hurairah say: "I grew up an orphan, and I emigrated as a poor man, and I was hired by the daughter of Ghazwân in return for food and a turn riding the camel. I would gather firewood for them when they stopped to camp and urge their camels along for them by singing when they rode. Praise is to Allāh Who has caused His religion to prevail and has made Abu Hurairah an *Imâm*." (*Salih*)

٢٤٤٥ - حَدَّثَنَا أَبُو عَمَرَ حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سَلِيمُ ابْنُ حَيَّانَ. سَمِعْتُ أَبِي يَقُولُ: سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: نَشَأْتُ يَتِيمًا، وَهَاجَرْتُ مَسْكِينًا، وَكُنْتُ أَجِيرًا لِابْنَةِ غَزْوَانَ بِطَعَامٍ بَطْنِي وَعَقَبَةِ رَجُلِي. أَحْطَبُ لَهُمْ إِذَا نَزَلُوا. وَأُخْدُو لَهُمْ إِذَا رَكِبُوا. فَالْحَمْدُ لِلَّهِ الَّذِي جَعَلَ الدِّينَ قَوْمًا، وَجَعَلَ أَبَا هُرَيْرَةَ إِمَامًا.

تخريج: أخرجه البخاري في التاريخ الكبير: ٣/٥٤، وابن سعد: ٤/٣٢٦، والبيهقي: ٦/١٢٠، وأبو نعيم في الحلية: ١/٣٧٩ من طرق عن سليم به، وقال البوصيري: هذا إسناده صحيح موقوف * حيان بن بسطام وثقه ابن حبان، ولحديثه شاهد صحيح عند ابن سعد، وشاهد آخر عند أبي نعيم في حلية الأولياء، وابن عساكر في تاريخ دمشق، وفيه ابن لهيعة المدلس.

[1] That is *Surat An-Naml* (27).

Chapter 6. A Man Who Draws A Bucket Of Water In Return For A Date And Stipulates That They Must Be Good Quality Dried Dates

(المعجم ٦) - بَابُ الرَّجُلِ يَسْتَقِي كُلَّ دَلْوٍ بِتَمْرَةٍ وَيَسْتَرْطُ جَلْدَةً (التحفة ٦٧)

2446. It was narrated that Ibn 'Abbâs said: "The Prophet of Allâh ﷺ was in need of food, and news of that reached 'Ali. He went out seeking work so that he could earn something to give to the Messenger of Allâh ﷺ. He came to a garden belonging to a Jewish man, and he drew seventeen buckets of water for him, each bucket for a date. The Jew gave him the option to take seventeen of his 'Ajwah dates (a high quality of dates) and he brought them to the Prophet of Allâh ﷺ." (Da'if)

٢٤٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّعْيَانِيُّ: حَدَّثَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ، عَنْ أَبِيهِ، عَنْ حَنْشٍ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: أَصَابَ نَبِيَّ اللَّهِ ﷺ حَصَاصَةٌ. فَبَلَغَ ذَلِكَ عَلِيًّا. فَخَرَجَ يَلْتَمِسُ عَمَلًا يُصِيبُ فِيهِ شَيْئًا لِيُتَيْتَ بِهِ رَسُولُ اللَّهِ ﷺ. فَأَتَى بَشَانًا لِرَجُلٍ مِنَ الْيَهُودِ. فَاسْتَقَى لَهُ سَبْعَةَ عَشَرَ دَلْوًا. كُلُّ دَلْوٍ بِتَمْرَةٍ. فَخَيَّرَهُ الْيَهُودِيُّ مِنْ تَمْرِهِ، سَبْعَ عَشْرَةَ عَجْوَةً. فَجَاءَ بِهَا إِلَيَّ نَبِيَّ اللَّهِ ﷺ.

تخريج: [إسناده ضعيف جدًا] أخرجه البيهقي ١١٩/٦ من حديث المعتمر به، وضعفه البوصيري * وحسين بن قيس، لقبه حنش. متروك كما في التقريب وغيره.

2447. It was narrated that 'Ali said: "I used to draw water, one bucket for a date, and I stipulated that they should be good quality, dried dates." (Da'if)

٢٤٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ: حَدَّثَنَا سُفْيَانُ بْنُ أَبِي إِسْحَاقَ، عَنْ أَبِي حَيَّةَ، عَنْ عَلِيِّ قَالَ: كُنْتُ أَذْلُو الدَّلْوُ بِتَمْرَةٍ. وَأَشْتَرْتُ أَنَّهَا جَلْدَةٌ.

تخريج: [إسناده ضعيف] أخرجه البزار في البحر الزخار: ٣١٢/٢، ح: ٧٣٨ من حديث سفيان الثوري به، وانظر، ح: ١٦٢، ٤٦، لعلته، وصححه البوصيري.

2448. It was narrated that Abu Hurairah said: "A man from among the Ansâr came and said: 'O Messenger of Allâh, why do I see that your color has changed?' He said: 'Hunger.' So the Ansâri

٢٤٤٨ - حَدَّثَنَا عَلِيُّ بْنُ الْمُنْذِرِ: حَدَّثَنَا مُحَمَّدُ بْنُ فَضِيلٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ، عَنْ جَدِّهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ مِنَ الْأَنْصَارِ فَقَالَ: يَا رَسُولَ اللَّهِ مَا لِي أَرَى

went to his dwelling, but he did not find anything in his dwelling, so he went out looking, and he found a Jew watering his date-palm trees. The *Ansâri* said to the Jew: 'Shall I water your trees?' He said: 'Yes.' He said: 'Every bucket for one date.' And the *Ansâri* stipulated that he would not take any dates that were black (rotten), hard and dried out or inferior, and he would only take good quality dates. He earned nearly two *Sâ's* (of dates), and he brought it to the Prophet ﷺ." (*Da'if*)

لَوْنَكَ مُتَكْفِنًا؟ قَالَ: «الْخَمْسُ» فَأَنْطَلَقَ الْأَنْصَارِيُّ إِلَى رَحْلِهِ. فَلَمْ يَجِدْ فِي رَحْلِهِ شَيْئًا. فَخَرَجَ يَطْلُبُ. فَإِذَا هُوَ بِيَهُودِيٍّ يَسْقِي نَخْلًا. فَقَالَ الْأَنْصَارِيُّ لِلْيَهُودِيِّ: أَسْقِي نَخْلَكَ؟ قَالَ: نَعَمْ. قَالَ: كُلُّ دَلْوٍ بِتَمْرَةٍ. وَاشْتَرَطَ الْأَنْصَارِيُّ أَنْ لَا يَأْخُذَ خَدِرَةً وَلَا تَارِزَةً وَلَا حَشْفَةً. وَلَا يَأْخُذَ إِلَّا جَلِيدَةً. فَاسْتَقَى بِتَحْوٍ مِنْ صَاعَيْنِ. فَجَاءَ بِهِ إِلَى النَّبِيِّ ﷺ.

تخريج: [إسناده ضعيف جداً] وضعفه البوصيري، وانظر، ح: ٢٦٠ لحال عبدالله بن سعيد المقبري.

Chapter 7. Lending Land In Return For One Third Or One Quarter (Of The Crop)

(المعجم ٧) - بَابُ الْمَزَارَعَةِ بِالثُّلْثِ وَالرُّبْعِ (التحفة ٦٨)

2449. It was narrated that Râfi' bin Khadij said: "The Messenger of Allâh ﷺ forbade *Muhâqalah* and *Muzâbanah*, and said: 'Only three may cultivate: A man who has land which he cultivates; a man who was given some land and cultivates what he was given; and a man who takes land on lease for gold or silver.'" (*Hasan*)

٢٤٤٩ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ. وَقَالَ: «إِنَّمَا يَزْرَعُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ، فَهُوَ يَزْرَعُهَا. وَرَجُلٌ مَتَّحَ أَرْضًا، فَهُوَ يَزْرَعُ مَا [مَتَّحَ]. وَرَجُلٌ اسْتَكْرَى أَرْضًا بِدَهَبٍ أَوْ فِضَّةٍ».

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب في التشديد في ذلك، ح: ٣٤٠٠ من حديث أبي الأحوص به * طارق هذا وثقه الجمهور، فحديثه لا ينزل عن درجة الحسن.

Comments:

- For the explanation of *Muhâqalah* and *Muzâbanah* see *Hadith* no. 2265: note b.
- As cash can be given to help a poor man for earning his livelihood, similarly a piece of land can be given to a poor farmer for his use, to make a permanent source of lawful earnings.

- c. Taking and giving a piece of land on the basis of division of produce between the cultivator and the landlord is lawful, but it is necessary to determine the terms and conditions beforehand to avoid the eruption of disputes.
- d. Gold and silver are the symbols of currency, because in the times of the Noble Prophet ﷺ, gold and silver Dinâr and Dirham, respectively were in use.

2450. It was narrated that ‘Amr bin Dinâr said: “I heard Ibn ‘Umar say: ‘We used to lend land for cultivation in return for a share of the harvest, and we did not see anything wrong with that, until we heard Râfi’ bin Khadij say: “The Messenger of Allâh ﷺ forbade it.” Then we stopped because of what he said.’”

٢٤٥٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدٌ بْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا سَفْيَانُ بْنُ عَيْثَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْتُ ابْنَ عَمَرَ يَقُولُ: كُنَّا نُبَاخِرُ وَلَا نَرَى بِذَلِكَ بِأَسَا. حَتَّى سَمِعْنَا رَافِعَ بْنَ خَدِيجٍ يَقُولُ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْهُ. فَرَكْنَاهُ لِقَوْلِهِ.

(Sahih) تخريج: أخرجه مسلم، البيهقي، باب كراء الأرض، ح: ١٥٤٧ من حديث سفیان بن زب.

Comments:

Mukhābarah means division of produce between the cultivator and the landlord. For example the produce is divided between the two, half and half or one third and two thirds, or as agreed upon. It is lawful and permitted. But the division of the produce on the basis of particular parts of land is unlawful. It is prohibited to divide the produce such that the produce of this part of land will go to the landlord, and produce from the other part of the land will go to the tiller. (See *Hadith* no.2458)

2451. ‘Atâ’ said: “I heard Jābir bin ‘Abdullāh say: Some men among us had extra land which they would rent out for one third or one quarter (of the crop). The Prophet ﷺ said: “Whoever has extra land, let him cultivate it (himself) or let him give it to his brother (for free, to cultivate it), and if he does not want to do that, let him keep his land.”

(Sahih)

٢٤٥١ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشَقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي عَطَاءٌ قَالَ: سَمِعْتُ جَابِرَ ابْنَ عَبْدِ اللَّهِ يَقُولُ: كَانَتْ لِرِجَالٍ مِنَّا فُضُولٌ أَرْضِينَ يُؤَاجِرُونَهَا عَلَى الثُّلُثِ وَالرُّبْعِ. فَقَالَ النَّبِيُّ ﷺ: «مَنْ كَانَتْ لَهُ فُضُولٌ أَرْضِينَ فَلْيُزِرْعَهَا أَوْ لِيُزِرِعَهَا أَخَاهُ. فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ».

تخريج: أخرجه البخاري، الحريث والمزارعة، باب ما كان من أصحاب النبي ﷺ يواسي بعضهم بعضاً في الزراعة والثمره، ح: ٢٣٤٠، ٢٦٣٢، ومسلم، البيهقي، باب كراء الأرض،

ح: ١٥٣٦/٨٩ من حديث الأوزاعي به.

2452. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever has land, let him cultivate it (himself) or let him give it to his brother (for free, to cultivate it), and if he does not want to do that, let him keep his land." (Sahih)

٢٤٥٢ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ: حَدَّثَنَا أَبُو تَوْبَةَ الرَّبِيعُ بْنُ نَافِعٍ: حَدَّثَنَا مَعَاوِيَةُ ابْنُ سَلَامٍ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا، أَوْ لِيُزِعْهَا أَخَاهُ، فَإِنْ أُمِرَ فَلْيَمْسِكْ أَرْضَهُ.

تخریج: أخرجه البخاري، الخريز والمزارعة، الطب السابغ، ح: ٤٣٤١، ومسلم، الشيخ،

الباب السابق، ح: ١٥٤٤ من حديث أبي توبة به.

Comments:

'Let him keep his land' means to let his land remain without cultivation. It is obvious that if the land remains without cultivation, it will produce nothing, and there will be no profit at all, and if it is given to someone to cultivate, it will be a great act of generosity.

Chapter 8. Leasing Out Land

(المعجم ٨) - بَابُ كِرَاءِ الْأَرْضِ

(التحفة: ٦٩)

2453. It was narrated from Ibn 'Umar that he used to lease out some land that belonged to him, for cultivation. Then someone came to him and told him that the Messenger of Allāh ﷺ had forbidden leasing out land for cultivation. Ibn 'Umar went, and I went with him, until he met him in Balāt,^[1] and asked him about that, and he told him that the Messenger of Allāh ﷺ had forbidden leasing out land for cultivation. So 'Abdullāh stopped leasing out land. (Sahih)

٢٤٥٣ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، وَابْنُ أَبِي سَامَةَ، وَمُحَمَّدُ بْنُ عُبَيْدٍ، عَنْ عُبَيْدِ اللَّهِ، أَوْ قَالَ عَبْدِ اللَّهِ بْنِ عَمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عَمَرَ أَنَّهُ كَانَ يُكْرِي أَرْضًا لَهُ، مَوَارِعًا، فَأَتَاهُ إِنْسَانٌ فَأَخْبَرَهُ، عَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ كِرَاءِ الْمَوَارِعِ، فَذَهَبَ ابْنُ عَمَرَ وَذَهَبَتْ مَعَهُ حَتَّى أَتَاهُ بِالْبَلَّاطِ. فَسَأَلَهُ عَنْ ذَلِكَ، فَأَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْ كِرَاءِ الْمَوَارِعِ. فَتَرَكَ عَبْدُ اللَّهِ كِرَاءَهَا.

[1] A place in Al-Madinah.

تخريج: أخرجه مسلم، البيوع، باب كراء الأرض، ح: ١٥٤٧ من حديث عبيد الله بن عمر به، وعلقه البخاري، ح: ٢٢٨٦ مختصراً، أخرجه البخاري، ح: ٢٢٨٦، ٢٣٤٤، ومسلم وغيرهما من طرق عن نافع به.

Comments:

- 'Leasing out land' means that the tiller will cultivate the land of the landlord according to a set treaty. The tiller, after collecting the produce will give a certain agreed upon amount of money to the landlord, and will keep the rest.
- Giving the land for free to cultivate is a better deed than leasing it out. The Noble Prophet ﷺ prohibited leasing out land, only to encourage the better gesture towards Muslim brothers, otherwise leasing out the land is lawful. (See *Hadith* no. 2456.)

2454. It was narrated that Jâbir bin 'Abdullâh said: "The Messenger of Allâh ﷺ addressed us and said: 'Whoever has land, let him cultivate it or allow someone else to cultivate it, and not rent it out.'" (*Sahih*)

٢٤٥٤ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ
ابْنِ كَثِيرٍ بْنِ دِينَارِ الْجَمِصِيِّ: حَدَّثَنَا ضَمْرَةُ
ابْنُ رَيْبَعَةَ، عَنِ ابْنِ شَوْذِبٍ، عَنْ مَطَرٍ، عَنْ
عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: خَطَبَنَا
رَسُولُ اللَّهِ ﷺ فَقَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ
فَلْيُزَعِّهَا أَوْ لِيُزَعِّهَا، وَلَا يُؤَاجِرْهَا».

تخريج: أخرجه مسلم، البيوع، باب كراء الأرض، ح: ١٥٣٦ من حديث مطر به.

2455. It was narrated from Abu Sufyân, the freed slave of Ibn Abu Ahmad, that he told him that he heard Abu Sa'eed Al-Khudri say: "The Messenger of Allâh ﷺ forbade *Muhâqalah*." (*Sahih*)
Muhâqalah means leasing out land.

٢٤٥٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا
مُطَرِّفُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا مَالِكٌ، عَنْ دَاوُدَ
ابْنِ الْحُصَيْنِ، عَنْ أَبِي سَفْيَانَ، مَوْلَى ابْنِ
أَبِي أَحْمَدَ أَنَّهُ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا سَعِيدِ
الْخُدْرِيِّ يَقُولُ: نَهَى رَسُولُ اللَّهِ ﷺ عَنِ
الْمُحَاقَلَةِ.

وَالْمُحَاقَلَةُ اسْتِئْكَرَاءُ الْأَرْضِ.

تخريج: أخرجه البخاري، البيوع، باب بيع المزبنة وهي بيع التمر بالتمر وبيع الزبيب بالكرم وبيع العرايا، ح: ٢١٨٦، ومسلم، البيوع، الباب السابق، ح: ١٥٤٦/١٥٥ من حديث مالك به.

Chapter 9. Concession Allowing Leasing Out Barren Land For Gold And Silver

(المعجم ٩) - بَابُ الرَّخْصَةِ فِي كِرَاءِ
الْأَرْضِ الْبَيْضَاءِ بِالذَّهَبِ وَالْفِضَّةِ
(التحفة ٧٠)

2456. It was narrated from Ibn 'Abbās that he heard that people were leasing out land more. He said: "Subhân-Allâh, the Messenger of Allâh ﷺ said: 'Why does not one of you lend it to his brother?' But he did not forbid leasing it out." (Sahih)

٢٤٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ أَبَانَ اللَّيْثِ
ابْنَ سَعْدٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عَبْدِ الْعَزِيزِ بْنِ
جُرَيْجٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ،
عَنِ ابْنِ عَبَّاسٍ أَنَّهُ لَمَّا سَمِعَ إِثْنَارَ النَّاسِ فِي
كِرَاءِ الْأَرْضِ - قَالَ: سُبْحَانَ اللَّهِ إِنَّمَا قَالَ
رَسُولُ اللَّهِ ﷺ: «أَلَا مَنَحَهَا أَحَدُكُمْ أَخَاهُ»
وَلَمْ يَنْهَ عَنْ كِرَائِهَا.

تخریج: أخرجه البخاري، الحرف والمزارعة، باب: (!)، ح: ٢٣٣٠، ٢٣٤٢، ٢٣٣٤،
ومسلم، البيوع، باب الأرض تمنح، ح: ١٥٠/١٢١ من حديث عمرو بن دينار به.

2457. It was narrated from Ibn 'Abbās that the Messenger of Allâh ﷺ said: "If one of you were to lend his brother his land, it would be better for him than taking such and such rent for it." (Sahih)

٢٤٥٧ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ
الْعَبْرِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنَّ أَبَانَ مَعْمَرٍ عَنِ
ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «لَأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ
أَرْضَهُ، خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا كَذَا وَكَذَا»
لَيْسَ مَعْلُومٌ.

Ibn 'Abbās said: "It is *Haql* (i.e., leasing land for cultivation), and in the dialect of the *Ansâr* it is called *Muhâqalah*."

فَقَالَ ابْنُ عَبَّاسٍ: هُوَ الْحَقْلُ. وَهُوَ بِلِسَانِ
الْأَنْصَارِ الْمُحَاقَلَةُ.

تخریج: أخرجه مسلم، البيوع، باب الأرض تمنح، ح: ١٥٠/١٢٢ من حديث عبد الرزاق به.

2458. It was narrated that Hanzalah bin Qais said: "I asked Râfi' bin Khadij and he said: 'We used to lease out land on the basis that you would have what is produced by this piece of land, and I would have what is produced by this (other) piece of

٢٤٥٨ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا
سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ
حَنْظَلَةَ بْنِ قَيْسٍ قَالَ: سَأَلْتُ رَافِعَ بْنَ خَدِيجٍ
قَالَ: كُنَّا نُكْرِي الْأَرْضَ عَلَى أَنْ لَكَ مَا
أَخْرَجَتْ هَذِهِ، وَلِي مَا أَخْرَجَتْ هَذِهِ. فَتَهَيَّنَا

land, and we were forbidden to lease it out on the basis of crop-sharing but he did not forbid us to rent out land for silver.” (Sahih)

تخريج: أخرجه البخاري، الحرث والمزارعة، باب ما يكره من الشروط في المزارعة، ح: ٢٣٣٢، ومسلم، البيوع، باب كراء الأرض بالذهب والورق، ح: ١٥٤٧ من حديث سفيان بن عيينة به .

Chapter 10. Kinds Of Cultivation That Are Disliked

2459. Râfi' bin Khadij narrated that his paternal uncle Zuhair said: “The Messenger of Allâh ﷺ forbade us from doing something that was convenient for us.” I said: “What the Messenger of Allâh ﷺ said is true.” He said that the Messenger of Allâh ﷺ said: “What do you do with your farms?” We said: “We rent them out for one third or one quarter of their yield, and a certain amount of wheat and barley.” He said: “Do not do that; cultivate them or let others cultivate them.” (Sahih)

تخريج: أخرجه البخاري، الحرث والمزارعة، باب ما كان من أصحاب النبي ﷺ يواسي بعضهم بعضاً في الزراعة والتمر، ح: ٢٣٣٩، ومسلم، البيوع، باب كراء الأرض بالطعام، ح: ١٥٤٨ من حديث الأوزاعي به .

2460. It was narrated from Usaid bin Zuhair, the paternal nephew of Râfi' bin Khadij, that Râfi' bin Khadij said: “If one of us did not need his land, he would give it (to someone else to cultivate) in return for one third, or one quarter, or one half of the yield, and he would stipulate (that he should receive) the produce

أَنْ نُكْرِيهَا بِمَا اشْتَرَجَتْ. وَأَمَّ نُنْتَهُ أَنْ نُكْرِيَ الْأَرْضَ بِالْوَرَقِ.

(المعجم ١٠) - بَابُ مَا يَكْرَهُ مِنْ

الْمُزَارَعَةِ (التحفة ٧١)

٢٤٥٩ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي أَبُو النَّجَّاشِيِّ أَنَّهُ سَمِعَ رَافِعَ ابْنَ خَدِيجٍ يُحَدِّثُ عَنْ عَمِّهِ ظَهْرٍ قَالَ: نَهَانَا رَسُولُ اللَّهِ ﷺ عَنْ أَمْرِ كَانَ لَنَا رَافِقًا. فَقُلْتُ: مَا قَالَ رَسُولُ اللَّهِ ﷺ فَهُوَ حَقٌّ. فَقَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا تَصْنَعُونَ بِمَحَاقِلِكُمْ؟» قُلْنَا: نُؤَاجِرُهَا عَلَى الثُّلُثِ وَالرُّبْعِ وَالْأَوْسُقِ مِنَ الْبُرِّ وَالشَّعِيرِ. فَقَالَ: «فَلَا تَفْعَلُوا. أَرْزَعُوهَا أَوْ أَرْزَعُوهَا».

٢٤٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: أَنَّ أَبَانَ بْنَ عَبْدِ الرَّزَّاقِ: أَنَّ أَبَانَ الثَّوْرِيَّ، عَنْ مَضْمُورٍ، عَنْ مُجَاهِدٍ، عَنْ أُسَيْدِ بْنِ ظَهْرٍ، ابْنِ أَخِي رَافِعِ ابْنِ خَدِيجٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: كَانَ أَحَدُنَا إِذَا اسْتَعْتَى عَنْ أَرْضِهِ أَعْطَاهَا بِالثُّلُثِ وَالرُّبْعِ وَالنِّصْفِ. وَاسْتَرَطَ ثَلَاثَ جَدَاوِلَ

grown on the banks of three streams, and the grains that remain in the ear after threshing, and the produce irrigated by a stream. Life at that time was hard, and he would work (the land) with iron and whatever Allâh willed, and he would benefit from it. Then Râfi' bin Khadij came to us and said: 'The Messenger of Allâh ﷺ forbade you to do something that may seem beneficial to you, but obedience to Allâh and obedience to His Messenger are more beneficial for you. The Messenger of Allâh ﷺ forbade *Haql*^[1] for you, and he said: "Whoever has no need of his land, let him give it to his brother (to cultivate) or let him leave it (uncultivated)." (*Sahih*)

وَالْقُصَارَةَ وَمَا يَسْقِي الرِّبْعُ. وَكَانَ الْعَيْشُ إِذْ ذَٰكَ شَدِيدًا. وَكَانَ يَعْمَلُ فِيهَا بِالْحَدِيدِ، وَمَا شَاءَ اللهُ. وَيُصِيبُ مِنْهَا مَنَفَعَةً، فَأَتَانَا رَافِعُ بْنُ خَدِيجٍ فَقَالَ: إِنَّ رَسُولَ اللهِ ﷺ نَهَاكُمْ عَنْ أَمْرٍ كَانَ لَكُمْ نَافِعًا. وَطَاعَةُ اللهِ وَطَاعَةُ رَسُولِهِ أَنْفَعُ لَكُمْ. إِنَّ رَسُولَ اللهِ ﷺ يَنْهَأكُمْ عَنِ الْحَقْلِ، وَيَقُولُ: «مَنْ اسْتَعْنَىٰ عَنِ أَرْضِهِ فَلَيْمَنَحَهَا أَحَاهُ، أَوْ لِيَدَعُ».

تخريج: [صحیح] أخرجه أبو داود، البيوع، باب في التشديد في ذلك، ح: ٣٣٩٨ من حديث منصور به.

Comments:

- a. The narration clears the concept of leasing out the land. Leasing out the land on one half or on one quarter is prohibited only on the conditional division of the produce, on the basis of particular parts of land. Usually the landlord keeps the produce of the piece of land which is more fertile, and is more productive. Since this is not fair, therefore, this kind of division is prohibited.
- b. Leasing out the land on one half or on one quarter is allowed, on the basis of the total produce gained from the land.

2461. Zaid bin Thâbit said: "May Allâh forgive Râfi' bin Khadij. By Allâh! I have more knowledge of *Ahâdith* than he does. Two men who had quarreled came to the Prophet ﷺ and he said: 'If this is

٢٤٦١ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدُّورِيُّ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِسْحَاقَ: حَدَّثَنِي أَبُو عِيْنَةَ ابْنُ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ، عَنِ الْوَلِيدِ بْنِ

[1] Leasing land in return for a share of the crops.

your situation, do not lease farms,' and what Râfi' bin Khadij heard was 'Do not lease farms.'" (Hasan)

أَبِي الْوَلِيدِ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ: يَغْفِرُ اللَّهُ لِرَافِعِ بْنِ خَدِيجٍ. أَنَا، وَاللَّهِ، أَغْلَمُ بِالْحَدِيثِ مِنْهُ. إِنَّمَا أَتَى رَجُلَانِ النَّبِيَّ ﷺ. وَقَدْ افْتَتَلَا. فَقَالَ: «إِنْ كَانَ هَذَا شَأْنَكُمْ فَلَا تُكْرُوا الْمَزَارِعَ» فَسَمِعَ رَافِعُ بْنُ خَدِيجٍ قَوْلَهُ: «فَلَا تُكْرُوا الْمَزَارِعَ».

تخریج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب: في المزارعة، ح: ٣٣٩٠ من حديث عبد الرحمن بن إسحاق به * أبو عبيدة وثقه ابن معين وغيره وتعديله راجح، والوليد وثقه أبو زرعة، والعجلي، وابن شاهين وغيرهم.

Chapter 11. Concession Allowing Cultivation For One Third And One Quarter (Of The Crop)

2462. It was narrated that 'Amr bin Dinâr said: I said to Tâwus: "O Abu 'Abdur-Rahmân, why do you not give up this *Mukhâbarah*^[1] because they claim that the Messenger of Allâh ﷺ forbade it." He said: "O 'Amr, I help them by taking their land and cultivating it, and giving them something in return, and Mu'âdh bin Jabal allowed people here to do that. The most knowledgeable of them — meaning Ibn 'Abbâs — told me that the Messenger of Allâh ﷺ did not forbid it, rather he said: 'For one of you to give (land) to his brother is better for him than if he were to take a set amount in rent for it.'" (Sahih)

(المعجم ١١) - بَابُ الرُّحْصَةِ فِي الْمَزَارَعَةِ بِالثُّلُثِ وَالرُّبْعِ (التحفة ٧٢)

٢٤٦٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ بَنِي سَفْيَانَ بْنَ عُيَيْنَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قُلْتُ لِيَطَاوُسٍ: يَا أَبَا عَبْدِ الرَّحْمَنِ! لَوْ تَرَكَتَ هَذِهِ الْمُخَابَرَةَ، فَإِنَّهُمْ يَزْعُمُونَ أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنْهَا. وَأَعْطَيْهِمْ. وَإِنَّ مُعَاذَ بْنَ جَبَلٍ أَخَذَ النَّاسَ عَلَيْهَا عِنْدَنَا. وَإِنَّ أَعْلَمَهُمْ بِعَنِّي ابْنَ عَبَّاسٍ أَخْبَرَنِي أَنَّ رَسُولَ اللَّهِ ﷺ لَمْ يَنْهَ عَنْهَا وَلَكِنْ قَالَ: «لَأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ، خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا أَجْرًا مَعْلُومًا».

تخریج: أخرجه من حديث عمرو بن دينار به، وانظر، ح: ٢٤٥٦.

[1] Leasing land in return for a share of the crops.

Comments:

- a. It is the duty of the scholars to explain the issues and satisfy the common public. In support of their point of view, they can give the references of other great scholars as Tâwus quoted the two Companions, Mu'âdh bin Jabal and Ibn Abbâs. These kind of references prove more affective and satisfy the common man.
- b. 'Set amount' means an agreement for a fixed amount.

2463. It was narrated from Tâwus that Mu'âdh bin Jabal leased some land during the time of the Messenger of Allâh ﷺ, Abu Bakr, 'Umar and 'Uthmân, in return for one third or one fourth (of the yield), and he was still doing that until this day of yours. (Da'if)

٢٤٦٣ - حَدَّثَنَا أَحْمَدُ بْنُ ثَابِتٍ الْجَحْدَرِيُّ: حَدَّثَنَا عَبْدُ الْوَهَّابِ عَنْ خَالِدٍ، عَنْ مُجَاهِدٍ، عَنْ طَاوُسٍ أَنَّ مَعَاذَ بْنَ جَبَلٍ أَكْرَى الْأَرْضَ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ، عَلَى الثُّلُثِ وَالرُّبْعِ فَهَوَّ يُعْمَلُ بِهِ إِلَى يَوْمِكَ هَذَا.

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناده صحيح رجاله ثقات ، قلت: طاوس لم يسمع من معاذ شيئاً كما قال ابن المديني وغيره، انظر جامع التحصيل للعلائي ص: ٢٠١ وغيره.

2464. It was narrated from Tâwus that Ibn 'Abbâs told that the Messenger of Allâh ﷺ merely said: "For one of you to give (land) to his brother is better for him than if he were to take a set amount in rent for it." (Sahih)

٢٤٦٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ وَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ شَمِيَانَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: إِنَّمَا قَالَ رَسُولُ اللَّهِ ﷺ: «لَأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ الْأَرْضَ، خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ خَرَجاً مَعْلُوماً».

تخریج: وانظر، ح: ٢٤٦٢، ٢٤٥٦.

Chapter 12. Renting Out Land In Return For Food

(المعجم ١٢) - بَابُ اسْتِكْرَاءِ الْأَرْضِ بِالطَّعَامِ (التحفة ٧٣)

2465. It was narrated that Râfi' bin Khadij said: We used to give land in return for food at the time of the Messenger of Allâh ﷺ, and some of my paternal uncles came

٢٤٦٥ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ يَعْلَى بْنِ حَكِيمٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: كُنَّا نَحَاقِلُ

to them and said: "The Messenger of Allāh ﷺ said: 'Whoever has land, he should not rent it out for a set amount of food.'" (*Sahih*)

عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَرَعَمَ أَنْ بَعْضَ
عُمُومِي أَنَاهُمْ فَقَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
«مَنْ كَانَتْ لَهُ أَرْضٌ، فَلَا يُكْرِمُهَا بِطَعَامٍ
مُسَمًّى».

تخریج: أخرجه مسلم، البيوع، باب كراء الأرض بالطعام، ح: ١٥٤٨ من حديث سعيد بن

أبي عروبة به.

Comments:

'Set amount of food' may mean one third or one fourth of the produce, or it may mean a certain fixed quantity of food stuff, like ten or twenty mounds of grain etc. Leasing out the land against a set amount of food instead of a certain amount of money is legal, as it has been discussed in detail in a previous chapter.

Chapter 13. Whoever Cultivates People's Land Without Their Permission

2466. It was narrated that Rāfi' bin Khadij said: "The Messenger of Allāh ﷺ said: 'Whoever cultivates people's land without their permission, he has no right to any of the produce, but he should be recompensed for his expenditure.'" (*Da'if*)

(المعجم ١٣) - بَابُ مَنْ زَرَعَ فِي أَرْضِ
قَوْمٍ بغيرِ إِذْنِهِمْ (التحفة ٧٤)

٢٤٦٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَامِرِ بْنِ زُرَّارَةَ:
حَدَّثَنَا شَرِيكٌ عَنْ أَبِي إِسْحَاقَ، عَنْ عَطَاءٍ،
عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بغيرِ إِذْنِهِمْ،
فَلَيْسَ لَهُ مِنَ الزَّرْعِ شَيْءٌ، وَتُرِدُّ عَلَيْهِ النَّقْطَةُ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في زرع الأرض بغير إذن صاحبها، ح: ٣٤٠٣ من حديث شريك القاضي به، ولم أجد تصريح سماعه، وتابعه قيس بن الربيع عند البيهقي: ١٣٦/٦، والحديث حسنه الترمذي، ح: ١٣٦٦، والخاري * عطاء لم يسمع من رافع رضي الله عنه (خطابي)، وأبو إسحاق عن تقدم، ح: ٤٦ وفيه علة أخرى، انظر، ح: ١٠٣٩، وله شواهد.

Comments:

In the situation mentioned in the narration, the cultivator will only get the expenditure which he has spent on seeds, manure, or hiring a tractor etc., but he will not get anything for his labor of tilling. This will be his punishment for not seeking permission in advance.

Chapter 14. Dealing With People Who Have Date-Palm Trees And Grape Vines

2467. It was narrated from Ibn

(المعجم ١٤) - بَابُ مُعَامَلَةِ النَّخِيلِ
وَالْكَرْمِ (التحفة ٧٥)

٢٤٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ وَ سَهْلٌ

'Umar that the Messenger of Allāh ﷺ entered into a contract with the people of Khaibar for one half of the fruits or crops yielded. (Sahih)

ابْنُ أَبِي سَهْلٍ وَ إِسْحَاقُ بْنُ مَثُورٍ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ عَامَلَ أَهْلَ خَيْبَرَ بِالشُّطْرِ مِمَّا يَخْرُجُ مِنْ تَمْرٍ أَوْ زَرْعٍ.

تخریج: أخرجه البخاري، الحرث والمزارعة، باب: إذا لم يشترط السنين في المزارعة، ح: ٢٣٢٩، ومسلم، المساقاة، باب المساقاة والمعاملة بجزء من الثمر والزرع، ح: ١٥٥١ من حديث يحيى القطان به.

2468. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ gave Khaibar to its people in return for one half of the yield of its palm trees and land. (Sahih)

٢٤٦٨ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوْبَةَ: حَدَّثَنَا هُشَيْمٌ عَنِ ابْنِ أَبِي لَيْلَى، عَنِ الْحَكَمِ بْنِ عُبَيْدَةَ، عَنْ مِقْسَمٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ أَعْطَى خَيْبَرَ أَهْلَهَا عَلَى النُّصْفِ. نَخْلَهَا وَأَرْضَهَا.

تخریج: [صحيح] أخرجه أحمد: ١/٢٥٠ من حديث هشيم به، إسناده ضعيف لعلل، وضعفه البوصيري، ولكن الحديث السابق شاهد له.

2469. It was narrated that Anas bin Mālik said: "When the Messenger of Allāh ﷺ conquered Khaibar, he gave it (to its people) in return for half (of its yield)." (Sahih)

٢٤٦٩ - حَدَّثَنَا عَلِيُّ بْنُ الْمُنْذِرِ: حَدَّثَنَا مُحَمَّدُ بْنُ فَضِيلٍ، عَنْ مُسْلِمِ الْأَعْوَرِ، عَنِ أَنَسِ بْنِ مَالِكٍ قَالَ: لَمَّا أَقْتَنَحَ رَسُولُ اللَّهِ ﷺ خَيْبَرَ أَعْطَاهَا عَلَى النُّصْفِ.

تخریج: [صحيح] إسناده ضعيف لضعف مسلم الأعور تقدم، ح: ٢٢٩٦، ولكن الحديث (٢٤٦٧) شاهد له.

Comments:

- This type of agreement regarding gardens is called *Masāqāt*. Whatever is the total produce of the garden, one half or one third, it is given to the person who is taking care of the garden and the rest is for the owner. Such an agreement regarding cultivation of land is called *Muzāra'ah*.
- The land of a non-Muslim country that comes under the control and possession of the Muslim victorious army, becomes the property of the Muslim State. For the development and settlement of this land, a contract can be made both with Muslim subjects or non-Muslim subjects of the country, but the land remains the property of the state. The tiller, according to the contract, has to submit the produce to the government, and then he

will receive his share from the state. If the tiller is a Muslim and receives the produce for which *Zakât* becomes due, he will have to pay one tenth as *Zakât*.

Chapter 15. Pollinating Palm Trees

2470. It was narrated from Simâk that he heard Musa bin Talhah bin 'Ubaidullâh narrating that his father said: "I passed by some palm trees with the Messenger of Allâh ﷺ and he saw some people pollinating the trees. He said: 'What are these people doing?' They said: 'They are taking something from the male part (of the plant) and putting it in the female part.' He said: 'I do not think that this will do any good.' News of that reached them, so they stopped doing it, and their yield declined. News of that reached the Prophet ﷺ and he said: 'That was only my thought. If it will do any good, then do it. I am only a human being like you, and what I think may be right or wrong. But when I tell you: "Allâh says," I will never tell lies about Allâh.'" (*Sahih*)

(المعجم ١٥) - بَابُ تَلْقِيحِ النَّخْلِ

(التحفة ٧٦)

٢٤٧٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى، عَنْ إِسْرَائِيلَ، عَنْ سِمَاكٍ أَنَّهُ سَمِعَ مُوسَى بْنَ طَلْحَةَ بْنَ عُبَيْدِ اللَّهِ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: مَرَرْتُ مَعَ رَسُولِ اللَّهِ ﷺ فِي نَخْلٍ. فَرَأَى قَوْمًا يُلْقِحُونَ النَّخْلَ. فَقَالَ: «مَا يَصْنَعُ هَؤُلَاءِ؟» قَالُوا: يَا أُخْدُونَ مِنَ الذَّكَرِ فَيَجْعَلُونَهُ فِي الْأُنثَى قَالَ: «مَا أَظُنُّ ذَلِكَ يُعْنِي شَيْئًا». فَبَلَّغَهُمْ، فَتَرَكُوهُ. فَتَرَلُّوا عَنْهَا. فَبَلَّغَ النَّبِيَّ ﷺ، فَقَالَ: «إِنَّمَا هُوَ الظَّنُّ. إِنْ كَانَ يُعْنِي شَيْئًا فَاصْنَعُوهُ. فَإِنَّمَا أَنَا بَشَرٌ مِثْلَكُمْ. وَإِنَّ الظَّنَّ يُخْطِئُ وَيُصِيبُ. وَلَكِنْ مَا قُلْتُ لَكُمْ: قَالَ اللَّهُ - فَلَنْ أَكْذِبَ عَلَى اللَّهِ».

تخریج: أخرجه مسلم، الفضائل، باب وجوب امتثال ما قاله شرعاً... الخ، ح: ٢٣٦١ من

حديث سماك به.

Comments:

- In worldly matters everything is permitted except those things that have been prohibited, but regarding worship, only that thing is permitted which has been taught by the Prophet ﷺ. Self-made rites and customs should not be made part of worship. These self-made rites are innovations in the religion. The Prophets were also human beings, therefore, in worldly matters, they did not give any importance to things of personal opinion.
- It is not necessary that a Prophet is always aware of the specific details of every profession, but in the matters of religion, Allâh guides His Prophets.

2471. It was narrated from 'Aishah that the Prophet ﷺ heard some sounds and said: "What is this noise?" They said: "Palm trees that are being pollinated." He said: "If they did not do that it would be better." So they did not pollinate them that year, and the dates did not mature properly. They mentioned that to the Prophet ﷺ and he said: "If it is one of your worldly matters then it is your affair, but if it is one of the matters of your religion, then refer to me." (*Sahih*)

٢٤٧١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا حَمَّادٌ: حَدَّثَنَا ثَابِتٌ عَنْ أَنَسِ بْنِ مَالِكٍ. وَ هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ سَمِعَ أَصْوَاتًا. فَقَالَ: «مَا هَذَا الصَّوْتُ؟» قَالُوا: التَّخْلُ يُؤَبِّرُونَهَا. فَقَالَ: «لَوْ لَمْ يَفْعَلُوا لَصَلَحَ» فَلَمْ يُؤَبِّرُوا عَامِئِدًا. فَصَارَ شَيْصًا. فَذَكَرُوا ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «إِنْ كَانَ شَيْئًا مِنْ أَمْرِ دُنْيَاكُمْ، فَشَأْنَكُمْ بِهِ. وَإِنْ كَانَ مِنْ أُمُورِ دِينِكُمْ، فِإِلَيَّ».

تخریج: أخرجه مسلم، الفضائل، الباب السابق، ح: ٢٣٦٣ من حديث حماد بن سلمة به.

Chapter 16. The Muslims Are Partners In Three Things

2472. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ said: "The Muslims are partners in three things: water, pasture and fire, and their price is unlawful." (*Da'if*)

Abu Sa'eed said: "This means flowing water."

(المعجم ١٦) - بَابُ: الْمُسْلِمُونَ

شُرَكَاءُ فِي ثَلَاثٍ (التحفة ٧٧)

٢٤٧٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ خِرَاشٍ بْنِ حَوْشَبِ الشَّيْبَانِيُّ، عَنِ الْعَوَّامِ بْنِ حَوْشَبِ، عَنْ مُجَاهِدٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْمَاءِ وَالْكَلْبِ وَالنَّارِ. وَثَمَنُهُ حَرَامٌ».

قَالَ أَبُو سَعِيدٍ: يَعْنِي الْمَاءَ الْجَارِيَّ.

تخریج: [إسناده ضعيف جداً] وقال الحافظ في التلخيص: ٦٥/٣ * وفيه عبدالله بن خراش متروك، وقد صححه ابن السكن، وقال البوصيري: هذا إسناده ضعيف، عبدالله بن خراش ضعفه أبو زرعة، والبخاري، والنسائي، وابن حبان وغيرهم، وانظر متن الحديث الآتي فإنه يغني عنه.

Comments:

- a. Here, water means running water, like the water of a river or fountain. Everyone has the right to use the water according to his needs, and it must be unrestrained for others to use. If someone has constructed a pond or dug a well or installed a water hand pump for his personal use, it is better for him to let other people use it. It is obvious that he has the first right over its use.

b. Everyone has the right to use wild grass for his animals and other uses, and similarly, everyone can use the wood of wild plants for fuel. After cutting the wild plant the cut wood becomes the property of the cutter, so he can sell it as well.

2473. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Three things cannot be denied to anyone: water, pasture and fire." (*Sahih*)

٢٤٧٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي الزُّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «ثَلَاثٌ لَا يُمْنَعَنَّ: الْمَاءُ وَالْكَلَأُ وَالنَّارُ».

تخریج: [صحیح] وصححه ابن حجر في التلخیص: ٦٥/٣، ح: ١٣٠٤، والبوصیري، وابن الملقن، ح: ٣١٠، وقال ابن كثير (الواقعة: ٧٣، ٤، ٣١٨) یاستاد جيد، قلت: ابن عیینة عنعن، وانظر، ح: ٢١١٣، ولحدیثه شواهد منها ما أخرجه أبو داود، ح: ٣٤٧٧ بلفظ: المسلمون شركاء في ثلاث: في الماء والكلأ والنار، وإسناده صحیح.

2474. It was narrated that 'Aishah said: "O Messenger of Allāh, what are the things which are not permissible to withhold?" He said: "Water, salt and fire." She said: "I said: 'O Messenger of Allāh, we know what water is, but what about salt and fire?'" He said: "O Humairā', whoever gives fire (to another), it is as if he has given in charity all the food that is cooked on that fire. And whoever gives salt, it is as if he has given in charity all that the salt makes good. And whoever gives a Muslim water to drink when water is available, it is as if he freed a slave; and whoever gives a Muslim water to drink when there is no water available, it is as if he brought him back to life." (*Da'if*)

٢٤٧٤ - حَدَّثَنَا عَمَّارُ بْنُ خَالِدِ الْوَاسِطِيِّ: حَدَّثَنَا عَلِيُّ بْنُ غُرَابٍ، عَنْ زُهَيْرِ بْنِ مَرْزُوقٍ، عَنْ عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ عَائِشَةَ أَنَّهَا قَالَتْ: يَا رَسُولَ اللَّهِ! مَا الشَّيْءُ الَّذِي لَا يَحِلُّ مِنْهُ؟ قَالَ: «الْمَاءُ وَالْمِلْحُ وَالنَّارُ» قَالَتْ: قُلْتُ: يَا رَسُولَ اللَّهِ! هَذَا الْمَاءُ قَدْ عَرَفْتَاهُ. فَمَا بَالُ الْمِلْحِ وَالنَّارِ؟ قَالَ: «يَا حُمَيْرَاءُ! مَنْ أَعْطَى نَارًا، فَكَأَنَّمَا تَصَدَّقَ بِجَمِيعِ مَا أَنْضَجَتْ تِلْكَ النَّارُ. وَمَنْ أَعْطَى مِلْحًا، فَكَأَنَّمَا تَصَدَّقَ بِجَمِيعِ مَا طَيَّبَتْ تِلْكَ الْمِلْحُ. وَمَنْ سَقَى مُسْلِمًا شَرِبَهُ مِنْ مَاءٍ، حَيْثُ يُوجَدُ الْمَاءُ، فَكَأَنَّمَا أَعْتَقَ رَقَبَةً. وَمَنْ سَقَى مُسْلِمًا شَرِبَهُ مِنْ مَاءٍ، حَيْثُ لَا يُوجَدُ الْمَاءُ، فَكَأَنَّمَا أَحْيَاهَا».

تخریج: [إسناده ضعيف] وضعفه البوصیري، وانظر، ح: ١١٦ لضعف ابن جلعان، وتلميذه مجهول (تقريب) * وعلي بن غراب مدلس، وله شاهدان ضعيفان جدًا.

Chapter 17. Giving Rivers And Springs To People

2475. It was narrated from Abyad bin Hammâl that he asked for a salt flat called the salt flat of the Ma'rib Dam to be given to him, and it was given to him. Then Aqra' bin Hâbis At-Tamimi came to the Messenger of Allâh ﷺ and said: "O Messenger of Allâh, I used to come to the salt flat during the Ignorance period and it was in a land in which there was no water, and whoever came to it took from it. It was (plentiful) like flowing water." So the Messenger of Allâh ﷺ asked Abyad bin Hammâl to give back his share of the salt flat. He said: "I give it to you on the basis that you make it charity given by me." The Messenger of Allâh ﷺ said: "It is a charity from you, and it is like flowing water, whoever comes to it may take from it."

(One of the narrators) Faraj said: "That is how it is today, whoever comes to it takes from it."

He said: "The Prophet ﷺ gave him land and palm trees in Jurf Murâd instead, when he took back the salt flat from him."

(Hasan)

تخريج: [إسناده حسن] أخرجه أبو داود، الخراج والفيء والإمارة، باب: في إقطاع الأرضين، ح: ٣٠٦٦ من حديث فرج بن سعيد به * فرج وأبوه وثقهما ابن حبان، والهشمي (مجمع: ١٠٦/٤)، وأخرجه الترمذي، ح: ١٣٨٠ من طريق آخر عن أبيض به، وقال: حسن غريب.

Comments:

a. The head of an Islamic State can give a piece of land to any Muslim as a gift. It is known as estate.

(المعجم ١٧) - بَابُ إِقْطَاعِ الْأَنْهَارِ وَالْعُيُونِ (التحفة ٧٨)

٢٤٧٥ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ: حَدَّثَنَا فَرْجُ بْنُ سَعِيدِ بْنِ عَلْقَمَةَ بْنِ سَعِيدِ بْنِ أَبِيضَ بْنِ حَمَّالٍ: حَدَّثَنِي عَمِّي ثَابِتُ بْنُ سَعِيدِ بْنِ أَبِيضَ بْنِ حَمَّالٍ، [عَنْ أَبِيهِ سَعِيدًا]، عَنْ أَبِيهِ أَبِيضَ بْنِ حَمَّالٍ أَنَّهُ اسْتَقْطَعَ الْمُلْحَ الَّذِي يُقَالُ لَهُ مِلْحٌ سَدِّ مَارِبٍ. فَاقْطَعَهُ لَهُ. ثُمَّ إِنَّ الْأَقْوَعَ بْنَ حَاسِبِ التَّمِيمِيِّ أَتَى رَسُولَ اللَّهِ ﷺ فَقَالَ: [يَا رَسُولَ اللَّهِ] إِنِّي قَدْ وَرَدْتُ الْمُلْحَ فِي الْجَاهِلِيَّةِ وَهُوَ بِأَرْضِ لَيْسَ بِهَا مَاءٌ. وَمَنْ وَرَدَهُ أَخَذَهُ. وَهُوَ مِثْلُ الْمَاءِ الْعِدِّ. فَاسْتَقَالَ رَسُولُ اللَّهِ ﷺ أَبِيضَ بْنَ حَمَّالٍ فِي قَطِيعِهِ فِي الْمُلْحِ. فَقَالَ: قَدْ أَقْلَنْتُكَ مِنْهُ عَلَى أَنْ تَجْعَلَهُ مِنِّي صَدَقَةً. فَقَالَ رَسُولُ اللَّهِ ﷺ: «هُوَ مِنْكَ صَدَقَةٌ. وَهُوَ مِثْلُ الْمَاءِ الْعِدِّ. مَنْ وَرَدَهُ أَخَذَهُ».

قَالَ فَرْجٌ: وَهُوَ الْيَوْمَ عَلَى ذَلِكَ. مَنْ وَرَدَهُ أَخَذَهُ.

قَالَ: فَقَطَعَ لَهُ النَّبِيُّ ﷺ أَرْضًا وَنَخْلًا، بِالْجُرْفِ جُرْفِ مُرَادٍ، مَكَانَهُ جِئْنَ أَقَالَهُ مِنْهُ.

- b. A thing that is in common use by the community should not be given as an estate.
 c. An endowment is not anyone's property but every member of the society has the right to take benefit from it.

Chapter 18. The Prohibition Of Selling Water

(المعجم ١٨) - بَابُ النَّهْيِ عَنِ بَيْعِ الْمَاءِ (التحفة ٧٩)

2476. It was narrated that Abu Minhâl said: "I heard 'Iyâs bin 'Abd Muzani say – when he saw people selling water: 'Do not sell water, for I heard the Messenger of Allâh ﷺ forbidding selling of water.'" (*Sahih*)

٢٤٧٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُمَيَّانُ بْنُ عُيَيْنَةَ عَنْ عَمْرٍو بْنِ دِينَارٍ، عَنْ أَبِي الْمُنْهَالِ: سَمِعْتُ إِيَّاسَ بْنَ عَبْدِ الْمُزَنِيِّ، وَرَأَى نَاسًا يَبِيعُونَ الْمَاءَ، فَقَالَ: لَا تَبِيعُوا الْمَاءَ. فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ نَهَى أَنْ يَبَاعَ الْمَاءَ.

تخریج: [صحیح] أخرجه أبو داود، البيهقي، باب: في بيع فضل الماء، ح: ٣٤٧٨ من حديث عمرو بن دينار به، وصححه الترمذي، ح: ١٢٧١، وابن الجارود، ح: ٥٩٤، وابن دقيق العيد، والحاكم: ٦١، ٤٤/٢، على شرط مسلم، ووافقه الذهبي.

2477. It was narrated that Jâbir said: "The Messenger of Allâh ﷺ forbade selling surplus water." (*Sahih*)

٢٤٧٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَابْنُ سَعِيدٍ الْجَوْهَرِيُّ، قَالَا: [حَدَّثَنَا وَكَيْعٌ:] حَدَّثَنَا ابْنُ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ فَضْلِ الْمَاءِ.

تخریج: أخرجه مسلم، المساقاة، باب تحريم بيع فضل الماء الذي يكون بالفلاة ويحتاج إليه ... الخ، ح: ١٥٦٥ من حديث وكيع به.

Comments:

- a. First come, first served is the basic principle of running water. Whose land comes first, in the way of flowing water, he has the first right to watering his fields and garden, and the water flow for use of others is made clear in chapter twenty.
 b. When water is transported from one place to another place, it can be sold at a reasonable price, just as the wood of wild plants and trees can be sold.

**Chapter 19. The Prohibition
Of Withholding Surplus
Water From Common
Pastureland**

(المعجم ١٩) - بَابُ النَّهْيِ عَنِ مَنَعِ
فَضْلِ الْمَاءِ لِيَمْنَعُ بِهِ الْكَلَاءُ (التحفة ٨٠)

2478. It was narrated from Abu Hurairah that the Prophet ﷺ said: "No one of you should withhold surplus water from common pastureland." (*Sahih*)

٢٤٧٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
سُمَيَّانُ عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي
هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ
فَضْلَ مَاءٍ، لِيَمْنَعُ بِهِ الْكَلَاءَ».

تخريج: أخرجه البخاري، المساقاة، باب من قال: إن صاحب الماء أحق بالماء حتى يروي ... الخ، ح: ٦٩٦٢، ٢٣٥٣، ومسلم، المساقاة، الباب السابق، ح: ١٥٦٦ من حديث أبي الزناد به.

2479. It was narrated from 'Aishah that the Messenger of Allāh ﷺ said: "Surplus water should not be withheld, and neither should surplus water from a well." (*Hasan*)

٢٤٧٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا
عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ حَارِثَةَ، عَنْ عَمْرَةَ،
عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا
يُمْنَعُ فَضْلُ الْمَاءِ، وَلَا يُمْنَعُ نَفْعُ الْبُئْرِ».

تخريج: [حسن] أخرجه البيهقي: ١٥٢/٦، ١٥٣ من حديث حارثة به، وقال: حارثة هذا ضعيف، وضعفه البوصيري من أجله، ولكنه لم ينفرد به، أخرج الحاكم: ٦٢، ٦١/٢ وغيره من طريق محمد بن أبي الرجال عن عمرة به، وصححه الحاكم، والذهبي، وإسناده حسن.

Comments:

- The fields and gardens which come first in the flow of water, have the first right to use the water.
- The Prophet's first decision gave Zubair his due right, at the same time needs of the second party were also given due consideration. It was suggested to Zubair to let the water flow for the second party's use. This type of reconciliation is legal.
- The second decision of the Prophet ﷺ was according to the principles of justice. The favor given to the *Ansâri* was taken back as punishment, and the decision was made according to the demand of justice.
- As it is a must to obey the Qur'anic commands, similarly it is a must to obey the orders of the Prophet ﷺ.

Chapter 20. Irrigation From Rivers And How Much Water May Be Retained

2480. It was narrated from 'Abdullāh bin Zubair that a man from among the *Ansār* had a dispute with Zubair in the presence of the Messenger of Allāh ﷺ concerning the streams of the Harrah with which he irrigated his palm trees. The *Ansāri* said: "Let the water flow," but he refused. So they referred their dispute to the Messenger of Allāh ﷺ. The Messenger of Allāh ﷺ said: "Irrigate (your trees) O Zubair, then let the water flow to your neighbor." The *Ansāri* became angry and said: "O Messenger of Allāh ﷺ, is it because he is your cousin (son of your paternal aunt)?" The expression of the Messenger of Allāh ﷺ changed, then he said: "O Zubair, irrigate (your trees) then retain the water until it reaches the walls." Zubair said: "I think this Verse was revealed concerning that: "But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission."^[1] (*Sahih*)

2481. It was narrated that

(المعجم ٢٠) - بَابُ الشَّرْبِ مِنَ
الْأَوْدِيَةِ وَمِقْدَارِ حَبْسِ الْمَاءِ (التحفة ٨)

٢٤٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أُنْبَأَنَا اللَّيْثُ
ابْنُ سَعْدٍ عَنِ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ بْنِ
الزُّبَيْرِ، عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ أَنَّ رَجُلًا مِنَ
الْأَنْصَارِ خَاصَمَ الزُّبَيْرَ عِنْدَ رَسُولِ اللَّهِ ﷺ فِي
شِرَازِ الْحَرَّةِ الَّتِي يَسْمُوقُونَ بِهَا النَّخْلَ. فَقَالَ
الْأَنْصَارِيُّ: سَرَّحِ الْمَاءَ يَمْرُ. فَأَبَى عَلَيْهِ.
فَاخْتَصَمَا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَقَالَ رَسُولُ
اللَّهِ ﷺ: «اسْقِ يَا زُبَيْرُ! ثُمَّ أَرْسِلِ الْمَاءَ إِلَى
جَارِكَ» فَغَضِبَ الْأَنْصَارِيُّ فَقَالَ: يَا رَسُولَ
اللَّهِ! إِنْ كَانَ ابْنُ عَمَّتِكَ؟ فَتَلَوْنَ وَجْهَ رَسُولِ
اللَّهِ ﷺ ثُمَّ قَالَ: «يَا زُبَيْرُ! اسْقِ، ثُمَّ اخْبِسِ
الْمَاءَ حَتَّى يَرْجِعَ إِلَى الْجَدْرِ» قَالَ: فَقَالَ
الزُّبَيْرُ: وَاللَّهِ إِنِّي لِأَحْسِبُ هَذِهِ الْآيَةَ نَزَلَتْ
فِي ذَلِكَ: ﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى
يُحْكَمُوا بِمَا شِجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا
فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا
سَلِيمًا﴾. [النساء: ٦٥]

تخريج: [صحيح] تقدم، ح: ١٥.

٢٤٨١ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْحِزْرَائِيُّ:

[1] *An-Nisā'* 4:65.

Tha'labah bin Abu Mālik said: "The Messenger of Allāh ﷺ ruled concerning the stream of Mahzur that the higher ground took precedence over the lower, so the higher ground should be irrigated until the water reached the ankles, then it should be released to those who were lower. (Hasan)

حَدَّثَنَا زَكَرِيَّا بْنُ مَنظُورٍ بْنُ نَعْلَبَةَ بْنِ أَبِي مَالِكٍ: حَدَّثَنِي مُحَمَّدُ بْنُ عَقَبَةَ بْنِ أَبِي مَالِكٍ، عَنْ عَمِّهِ نَعْلَبَةَ بْنِ أَبِي مَالِكٍ قَالَ: فَصَّى رَسُولُ اللَّهِ ﷺ فِي سَيْلٍ مَهْزُورٍ، الْأَعْلَى فَوْقَ الْأَسْفَلِ. يَسْقِي الْأَعْلَى إِلَى الْكُعْبَيْنِ، ثُمَّ يُرْسِلُ إِلَى مَنْ هُوَ أَسْفَلَ مِنْهُ.

تخریج: [حسن] وقال البوصيري: وإسناد حديثه ضعيف، زكريا بن منظور متفق على ضعفه * شيخه مستور، وأخرج ابن أبي عاصم في الأحاد والمثاني: ٢١٥/٤ ح: ٢٢٠٠، والطبراني في الكبير: ٨٦/٢ ح: ١٣٨٧ من حديث يعقوب بن حميد بن كاسب عن إسحاق بن إبراهيم (بن سعيد الصواف المدني) مولى مزينة عن صفوان بن سليم عن ثعلبة به نحو المعنى * وإسحاق لين الحديث كما في التقريب، وضعفه أبوزرعة، وأبو حاتم وغيرهما كما في التهذيب وغيره، فالسند ضعيف، وله طريق آخر عند الطبراني، ح: ١٣٨٦، وفيه محمد بن إسحاق، وهو صدوق مدلس وعنعن، وللحديث شواهد كثيرة عند أبي داود، ح: ٣٦٣٨ وغيره، وانظر الحديث الآتي.

Comments:

'Higher ground' means where fields or gardens come first in the flow of water, and 'lower ground' means where water reaches later. The owner of the higher ground can stop the water from going to others' fields until it reaches an ankle's height in his fields, and then he must release the water for others, and has no right to stop it.

2482. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ ruled concerning the stream of Mahzur that the water should be retained until it reached the ankles, then released. (Hasan)

٢٤٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ: أَنْبَأَنَا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ: حَدَّثَنِي أَبِي عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ فَصَّى فِي سَيْلٍ مَهْزُورٍ، أَنْ يُمْسِكَ حَتَّى يَبْلُغَ الْكُعْبَيْنِ، ثُمَّ يُرْسِلَ الْمَاءَ.

تخریج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في القضاء، ح: ٣٦٣٩ عن أحمد بن عبدة به.

2483. It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allāh ﷺ ruled concerning the irrigation of palm trees from streams, that the higher

٢٤٨٣ - حَدَّثَنَا أَبُو الْمُعَلِّسِ: حَدَّثَنَا فَضِيلُ ابْنِ سَلِيمَانَ: حَدَّثَنَا مُوسَى بْنُ عَقَبَةَ، عَنْ إِسْحَاقَ بْنِ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عُبَادَةَ بْنِ

ground should be irrigated before the lower, and that the water should be allowed to reach the ankles, then released to flow the nearest lower ground, and so on, until all the fields were watered or until the water ran out. (*Da'if*)

الصَّامِتِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى، فِي شُرْبِ التَّخْلِ مِنَ السَّيْلِ، أَنَّ الْأَعْلَى فَلَا عَلَى يَشْرَبُ قَبْلَ الْأَسْفَلِ، وَيَتْرَكُ الْمَاءَ إِلَى الْكَعْبَيْنِ، ثُمَّ يُرْسِلُ الْمَاءَ إِلَى الْأَسْفَلِ الَّذِي يَلِيهِ، وَكَذَلِكَ، حَتَّى تَنْقُضِيَ الْحَوَائِطُ أَوْ يَفْتَى الْمَاءُ.

تخریج: [ضعیف] وقال البوصيري: هذا إسناد ضعيف، إسحاق بن يحيى لم يدرك عبادة بن الصامت قاله البخاري .

Chapter 21. Distribution Of Water

(المعجم ٢١) - بَابُ قِسْمَةِ الْمَاءِ

(التحفة ٨٢)

2484. It was narrated from Kathir bin 'Abdullâh bin 'Amr bin 'Awf Al-Muzani, from his father, that his grandfather said: "The Messenger of Allâh ﷺ said: 'Start with the horses on the day that you bring (the animals to drink).'" (*Da'if*)

٢٤٨٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْحَرَامِيُّ: أَتَانَا أَبُو الْجَعْدِ عَبْدِ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ، عَنْ كَثِيرِ بْنِ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفِ الْمُزَنِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَبْدَأُ بِالْخَيْلِ يَوْمَ وَرَدَهَا».

تخریج: [إسناده ضعيف جدًا] وضعفه البوصيري، وانظر، ح: ١٦٥ لحال كثير بن عبد الله العوفي المزني، وفيه علة أخرى.

2485. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Every division that was allocated according to (the rules of) the Ignorance days, stands as it is, and every division that was allocated according to (the rules of) Islam, stands according to the rules of Islam." (*Hasan*)

٢٤٨٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ جَعْفَرٍ: حَدَّثَنَا مُوسَى بْنُ دَاوُدَ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ عَمْرٍو بْنِ دِينَارٍ، عَنْ أَبِي الشَّعْنَاءِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ قِسْمٍ قُسِمَ فِي الْجَاهِلِيَّةِ، فَهُوَ عَلَى مَا قُسِمَ. وَكُلُّ قِسْمٍ أَدْرَكَهُ الْإِسْلَامُ، فَهُوَ عَلَى قِسْمِ الْإِسْلَامِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الفرائض، باب فيمن أسلم على ميراث، ح: ٢٩١٤ من حديث موسى به، وقواه ابن عبد الهادي، والضياء المقدسي، وله شواهد كثيرة جدًا.

Comments:

- All sinful and wicked dealings regarding business and financial matters before embracing Islam are pardoned, and possession is considered legal.
- A common property that has been distributed before accepting Islam need not be redistributed among the heirs.

Chapter 22. The Land Around A Well (Which Belongs Only To The Well Owner)

(المعجم ٢٢) - بَابُ حَرِيمِ الْبُئْرِ
(التحفة ٨٣)

2486. It was narrated from 'Abdullāh bin Mughaffal that the Prophet ﷺ said: "Whoever digs a well, is entitled to forty forearms' length surrounding it as a resting place for his flocks." (*Hasan*)

٢٤٨٦ - حَدَّثَنَا الْوَلِيدُ بْنُ عَمْرٍو بْنِ سَكَيْنٍ:
حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى؛ ح:
وَحَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدِ بْنِ الصَّبَّاحِ: حَدَّثَنَا
عَبْدُ الْوَهَّابِ بْنُ عَطَاءٍ، قَالَ: حَدَّثَنَا
إِسْمَاعِيلُ الْمَكِّيُّ، عَنِ الْحَسَنِ، عَنْ عَبْدِ اللَّهِ
ابْنِ مُغَفَّلٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ حَفَرَ بُئْرًا
فَلَهُ أَرْبَعُونَ ذِرَاعًا عَطْنَا لِمَاشِيَتِهِ».

تخريج: [حسن] أخرجه الدارمي: ٢٧٣/٢ من حديث إسماعيل بن مسلم المكي به، وضعفه البوصيري، وانظر، ح: ٣٠١ لعلته، وأخرج البيهقي: ١٥٥/٦ بإسناد صحيح عن أبي هريرة قال: قال رسول الله ﷺ حريم البئر أربعون ذراعاً من جوانبها، كلها لأعطان الإبل والغنم وابن السبيل أول شارب، ولا يمنع فضل ماء ليمنع به الكلاب، قلت: أبو الحسن علي بن محمد بن علي المقرئ الأسفرائني، شيخ البيهقي المعروف بابن السقا الإمام الحافظ الناقد القاضي . . . من أولاد أئمة الحديث . . . حدث عنه البيهقي وجماعة (سير أعلام النبلاء: ١٧/٣٠٥، ٣٠٦)، وصحح له البيهقي كثيراً، انظر السنن الكبرى: ٤/٤٨٠، ٢٤٩، ٥٤/٤، ١٩٧/١٠، ٢٠٩، ٢١٠، فحديثه صحيح، وشيخه المحدث الثقة الرحال أبو محمد الحسن بن محمد بن إسحاق بن أزهر الأسفرائني والد أبي نعيم (النبلاء: ١٦/٥٠)، وشيخه يوسف بن يعقوب القاضي من كبار الثقات، ترجمته في تاريخ بغداد: ٣١٠/١٤، ٤١٢، والنبلاء: ٨٥/١٤ وغيرهما، ومن فوقه ثقات، فالسند صحيح، فالحديث بهذا الشاهد حسن.

Comments:

- When camels are watered, they drink the water and sit down near the well, after a short while they drink again, that is why the adjoining place of the well is reserved for animals, and for this reason, this place is considered the property of the person who owns the well.
- If someone digs up a well at a place which is no one's land, he is deemed to be the owner of that well, in addition to forty fore-arms' length of the surrounding area.

2487. It was narrated from Abu Sa'eed Al-Khudri that the Messenger of Allāh ﷺ said: "The land around a well (that is considered to be part of it) is the length of the well rope (in all directions)." (*Da'if*)

٢٤٨٧ - حَدَّثَنَا سَهْلُ بْنُ أَبِي الصُّغْدِيِّ: حَدَّثَنَا مَنْصُورُ بْنُ صُقَيْرٍ: حَدَّثَنَا ثَابِتُ بْنُ مُحَمَّدٍ، عَنْ نَافِعِ أَبِي غَالِبٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «حَرِيمُ الْبُئْرِ مَدُّ رِشَائِهَا».

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناده ضعيف، ثابت بن محمد انقلب على ابن ماجه، وصوابه محمد بن ثابت كما ذكره الذهبي في الكاشف، وقد ضعفه، ومنصور بن صُقَيْرٍ متفق على ضعفه، وانظر الحديث الآتي، ح: ٢٤٨٩.

Comments:

'Length of the well rope' means the rope which is dropped down in the well for pulling up water. This length is the measure for the place around the well for his flocks. This is a Weak narration.

Chapter 23. The Precincts Of Trees

(المعجم ٢٣) - بَابُ حَرِيمِ الشَّجَرِ
(التحفة ٨٤)

2488. It was narrated from 'Ubādah bin Sâmit that the Messenger of Allāh ﷺ ruled concerning one, two or three date palms belonging to a man among other palm trees – when they differ concerning entitlement to the surrounding land. He ruled that the land around each of those trees, as far as their leaves reach, measured from the bottom of the tree, belongs to the owner of the tree. (*Hasan*)

٢٤٨٨ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدِ التَّمِيمِيُّ، أَبُو الْمُتَمَلِّسِ: حَدَّثَنَا الْفَضِيلُ بْنُ سُلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عُبَيْدَةَ: أَخْبَرَنِي إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى فِي النَّخْلَةِ وَالنَّخْلَتَيْنِ وَالثَّلَاثَةِ لِلرَّجُلِ [فِي النَّخْلِ]. [فَيَحْتَلِفُونَ فِي حُقُوقِ ذَلِكَ. فَقَضَى أَنَّ لِكُلِّ نَخْلَةٍ مِنْ أَوْلِيَّكَ مِنَ الْأَسْفَلِ، مَبْلَغُ جَرِيدِهَا حَرِيمٌ لَهَا.

تخریج: [حسن] وضعفه البوصيري، وانظر، ح: ٢٤٨٣ لعلته، وللحديث شواهد عند أبي داود، ح: ٣٦٤٠ وغيره.

2489. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "The land around a date-palm tree, as far as its branches reach, belongs to the

٢٤٨٩ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ الصُّغْدِيِّ: حَدَّثَنَا مَنْصُورُ بْنُ صُقَيْرٍ: حَدَّثَنَا ثَابِتُ بْنُ مُحَمَّدٍ الْعَبْدِيُّ عَنْ ابْنِ عُمَرَ قَالَ:

owner of the tree." (*Da'if*)

قَالَ رَسُولُ اللَّهِ ﷺ: «حَرِيمُ النَّخْلَةِ مَدُّ جَرِيدَهَا».

تخريج: [إسناده ضعيف] وضعفه صاحب الزوائد، وانظر، ح: ٢٤٨٧ لعلته، وله شواهد.

Chapter 24. One Who Sells Property And Does Not Use The Money For Something Similar

(المعجم ٢٤) - بَابُ مَنْ بَاعَ عِقَارًا وَلَمْ يَجْعَلَ ثَمَنَهُ فِي مِثْلِهِ (التحفة ٨٥)

2490. It was narrated that Sa'eed bin Huraith said: "I heard the Messenger of Allāh ﷺ say: 'Whoever sells a house or property and does not use the money for something similar, deserves not to be blessed therein.'" (*Da'if*)

٢٤٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ سَعِيدِ ابْنِ حُرَيْثٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: [«مَنْ بَاعَ دَارًا أَوْ عِقَارًا فَلَمْ يَجْعَلَ ثَمَنَهُ فِي بَيْتِهِ كَانَ قَوْمٌ أَنْ لَا يَبَارَكَ فِيهِ»].

تخريج: (الف) [إسناده ضعيف] أخرجه أحمد: ٣٠٧/٤ عن وكيع به، وله شواهد.

Another chain with similar wording.

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عُبَيْدُ اللَّهِ ابْنُ عَبْدِ الْمَجِيدِ: حَدَّثَنِي إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ عَمْرِو بْنِ حُرَيْثٍ، عَنْ أَخِيهِ سَعِيدِ بْنِ حُرَيْثٍ، عَنِ النَّبِيِّ ﷺ، وَمِثْلَهُ.

تخريج: (ب) [إسناده ضعيف] أخرجه ابن عدي: ٢٨٤/١ من حديث عبيدالله بن عبدالمجيد، أبي علي الحنفي به، وهو الصواب * إسماعيل بن إبراهيم بن مهاجر ضعيف(تقريب)، ولكن تابعه أبو حمزة التسكري، محمد بن ميمون: ثقة فاضل، السنن الكبرى للبيهقي: ٣٤/٦، والسند إليه ضعيف من أجل محمد بن موسى بن حاتم، عبدالمملك بن عمير مدلس، انظر، ح: ٢١١٨ب، ولكنه صرح بالسماع(المعرفة والتاريخ ليعقوب بن سفيان الفارسي: ١/٢٩٤) في رواية إسماعيل عنه، وله شواهد.

2491. It was narrated from Hudhaifah bin Yamân that the Messenger of Allāh ﷺ said: "Whoever sells a house and does not use the money for something

٢٤٩١ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ عَمْرُو بْنُ رَافِعٍ، قَالَا: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ: حَدَّثَنَا أَبُو مَالِكٍ النَّخَعِيُّ، عَنْ يُونُسَ بْنِ مَيْمُونٍ،

similar will not be blessed therein." (Da'if)

عَنْ أَبِي عُبَيْدَةَ بْنِ حُدَيْفَةَ، عَنْ أَبِيهِ حُدَيْفَةَ بْنِ
الْيَمَانِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ بَاعَ
دَارًا وَلَمْ يَجْعَلْ ثَمَنَهَا فِي مِثْلِهَا، لَمْ يَبَارِكْ لَهُ
فِيهَا».

تخريج: [إسناده ضعيف] أخرجه البخاري في التاريخ الكبير: ٣٢٨/٨ من حديث مروان بن معاوية الفزاري به، وضعفه البوصيري من أجل يوسف بن ميمون (المخزومي)، ولكن تلميذه أبو مالك النخعي أضعف منه لأنه متروك، وانظر، ح: ١٩١٥ ولم ينفردا به، رواه شعبة عن يزيد بن أبي خالد عن أبي عبيدة به، أخرجه البخاري في التاريخ، والبيهقي: ٣٤، ٣٣/٦ وغيرهما، وسنده ضعيف، انظر، ح: ١٨٠٧، وفيه علة أخرى.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

The Chapters On Preemption

(المعجم ١٧) أَبْوَابُ الشَّفَعَةِ
(التحفة . . .)

Comments:

Preemption has been defined as the right of one partner to buy the share of the other partner or partners.

Preemption is proven in the *Sunnah* of the Prophet ﷺ and the consensus of the scholars of the Muslim nation. Jābir narrates the the Prophet ﷺ allowed the right of preemption in an undistributed property, but when the property is distributed, and the path is separate then there is no right of preemption. All the scholars agree that the right of preemption is legal.

All the Islamic commands and principles have reason and wisdom behind them. Rights and duties of all Muslims as individuals and as a community have been fixed by Islamic law, so that people may live with love and harmony among themselves. Among these wise instructions is the right of preemption. If one of the two shareholders of a property wishes to sell his share, he must consult his co-shareholder about it and give him an offer to buy his share. This friendly gesture will create an atmosphere of understanding between them, and save them from unwanted conflict. If the other shareholder buys the property, well and good, otherwise it can be sold to a third party and it will be legal.'

Chapter 1. One Who Sells A Property Should Notify His Partner (Of His Intention)

(المعجم ١) - بَابُ مَنْ بَاعَ رِبَاعًا
فَلْيُؤَدِّنْ شَرِيكَهُ (التحفة ٨٦)

2492. It was narrated that Jābir said: "The Messenger of Allāh ﷺ said: 'Whoever has a date-palm tree or land, should not sell it until he has offered it to his partner.'" (Sahih)

٢٤٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدٌ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَتْ لَهُ نَخْلٌ أَوْ أَرْضٌ فَلَا يَبِيعُهَا حَتَّى يَعْرضَهَا عَلَى شَرِيكِهِ».

تخريج: [إسناده صحيح] أخرجه النسائي، البيوع، . الشركة في النخل، ح: ٤٧٠٤ من حديث سفیان به * سفیان بن عيينة، وأبو الزبير صرحا بالسماع عند الحميدي، ح: ١٢٨١ بتحقيق)، وصححه ابن الجارود، ح: ٦٤١، وأخرجه مسلم، ح: ١٦٠٨ من طريقين آخرين عن أبي الزبير به نحو المعنى .

2493. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Whoever has land and wants to sell it, let him offer it to his neighbor." (*Sahih*)

٢٤٩٣ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ وَ الْعَلَاءُ بْنُ سَالِمٍ، قَالَا: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ بَانَا شَرِيكَ عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَأَرَادَ بِبِعْعَهَا، فَلْيُعْرِضْهَا عَلَى جَارِهِ».

تخریج: [صحيح] وصححه البوصيري، وفيه علة قاذحة، انظر، ح: ١٧١، والحديث السابق شاهد له.

Comments:

If there are two owners of a property and one of them wishes to sell his share, he must inform his co-shareholder and give him a chance to buy his share. They are supposed to cooperate each other in this matter. The neighbors also have the right of preemption, therefore, the neighbors should also be informed before any buying and selling occurs.

Chapter 2. Preemption By Virtue Of Being Neighbors

(المعجم ٢) - بَابُ الشُّفْعَةِ بِالْجَوَارِ (التحفة ٨٧)

2494. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: "The neighbor has more right to preemption of his neighbor, so let him wait for him even if he is absent, if they share a path." (*Da'if*)

٢٤٩٤ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا هُشَيْمٌ: أَنَّ بَانَا عَبْدَ الْمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْجَارُ أَحَقُّ بِشُّفْعَةِ جَارِهِ، يَنْتَظِرُ بِهَا وَإِنْ كَانَ غَائِبًا، إِذَا كَانَ طَرِيقَهُمَا وَاحِدًا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيوع، باب: في الشفعة، ح: ٣٥١٨ من حديث هشيم به، وحسنه الترمذي، ح: ١٣٦٩.

2495. It was narrated from Abu Râfî that the Prophet ﷺ said: "The neighbor has more right to property that is near." (*Sahih*)

٢٤٩٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ، عَنْ عَمْرٍو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْجَارُ أَحَقُّ بِسَقْبِهِ».

تخریج: أخرجه البخاري، الحيل، باب في الهبة والشفعة، ح: ٦٩٧٧ من طريق سفیان به مطولاً.

2496. It was narrated that Sharid bin Suwaid said: "I said: 'O Messenger of Allâh, (what do you think of) land owned by only one person but this land has neighbors?' He said: 'The neighbor has more right to property that is near.'" (*Sahih*)

٢٤٩٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ حُسَيْنِ الْمُعَلَّمِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ عَمْرِو بْنِ الشَّرِيدِ بْنِ سُوَيْدٍ، عَنْ أَبِيهِ شَرِيدِ بْنِ سُوَيْدٍ قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ! أَرْضٌ لَيْسَ فِيهَا لِأَحَدٍ قِسْمٌ، وَلَا شَرِيكَ إِلَّا الْجَوَارِ؟ قَالَ: «الْجَارُ أَحَقُّ بِسَقْيِهِ».

تخريج: [إسناده صحيح] أخرجه النسائي، البيهقي، ذكر الشفعة وأحكامها، ح: ٤٧٠٧ من

حديث حسين المعلم به.

Comments:

- The neighbor who has a common path to the property has more right of preemption than others.
- If at the time of selling a house or piece of land, the neighbor is absent or out of the town or village, the other party should wait for his arrival to give his right of preemption to him.

Chapter 3. If The Boundaries Have Been Fixed Then There Is No Preemption

2497. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ ruled concerning preemption of land that has not been divided; if the boundaries have been set then there is no preemption. (*Sahih*)

Another chain with similar wording.

Abu 'Asim said: (The chain of Sa'eed bin Musayyab is *Mursal* (i.e., having a break after the successor Sa'eed). (The chain of Abu Salamah from Abu Hurairah is *Muttasil* (i.e., unbroken & connected).

(المعجم ٣) - بَابُ: إِذَا وَقَعَتِ الْحُدُودُ
فَلَا شُفْعَةَ (التحفة ٨٨)

٢٤٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ عَبْدِ الرَّحْمَنِ بْنُ عُمَرَ، قَالَا: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالشُّفْعَةِ فِيمَا لَمْ يُقَسَم. فَإِذَا وَقَعَتِ الْحُدُودُ، فَلَا شُفْعَةَ.

حَدَّثَنَا مُحَمَّدُ بْنُ حَمَّادِ الطَّهْرَانِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ مَالِكِ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

قَالَ أَبُو عَاصِمٍ: سَعِيدُ بْنُ الْمُسَيَّبِ مُرْسَلٌ. وَأَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ مُتَّصِلٌ.

تخريج: [صحيح] أخرجه البيهقي ١٠٤، ١٠٣/٦ وغيره من طرق عن مالك به، وصححه جبان (موارد)، ح: ١١٥٢، والبوصيري، وأرسله جماعة عن مالك، وح: ٢٤٩٩ شاهد له.

2498. It was narrated from Abu Râfi' that the Messenger of Allâh ﷺ said: "The partner has more right to what is near him, so long as he is still a partner." (*Sahih*)

٢٤٩٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْأَجْرَاحِ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّرِيكُ أَحَقُّ بِسَمِيهِ مَا كَانَ».

تخريج: أخرجه البخاري، انظر، ح: ٢٤٩٥.

2499. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ ruled that preemption takes effect in all cases where land has not been divided. But if the boundaries have been set and the roads laid out, then there is no preemption." (*Sahih*)

٢٤٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الرَّزَّاقِيُّ عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إِنَّمَا جَعَلَ رَسُولُ اللَّهِ ﷺ الشُّفْعَةَ فِي كُلِّ مَا لَمْ يُسَمَّ. فَإِذَا وَقَعَتِ الْحُدُودُ وَصُرِّفَتِ الطَّرِيقُ، فَلَا شُفْعَةَ».

تخريج: أخرجه البخاري، البيوع، باب بيع الشريك من شريكه، ح: ٢٢١٣، ٢٢١٤ من حديث عبد الرزاق به.

Comments:

Ahâdith mentioned above show that only that neighbor who has a common path to the property has the right of preemption, and those neighbors who have nothing common in property have no right to preemption. It was made clear by mentioning that when property is divided and paths are separate then there is no right to preemption. Division of property and separation of paths makes them ordinary neighbors, and not allowed to enter in each other's deals.

Chapter 4. Requesting Preemption

(المعجم ٤) - بَابُ طَلْبِ الشُّفْعَةِ

(التحفة ٨٩)

2500. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Preemption is like undoing the 'Iqâl."^[1] (*Da'if*)

٢٥٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثِ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الْأَيْبَمَانِيِّ، عَنْ أَبِيهِ، عَنِ ابْنِ عَمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشُّفْعَةُ كَحَلِّ الْعِقَالِ».

^[1] *Iqâl* is the rope used to hobble a camel. It means that the opportunity may slip through your fingers if you do not hasten to take advantage of it, just as a camel released from the *Iqâl* will run away quickly. See explanation by Sindi.

تخريج: [إسناده ضعيف جداً] أخرجه البيهقي: ١٠٨/٦ من حديث محمد بن الحارث به، وقال: محمد بن الحارث البصري متروك ومحمد بن عبدالرحمن البيلماني ضعيف وضعفهما يحيى بن معين وغيره من أئمة أهل الحديث، والحديث وضعفه البوصيري وغيره.

2501. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "There is no preemption for a partner when his co-partner has beaten him to it (in another deal before), nor for a minor nor one who is absent." (Da'if)

٢٥٠١ - حَدَّثَنَا سُؤدُ بْنُ سَعِيدٍ، قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثِ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ، عَنْ أَبِيهِ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا شَفْعَةَ لِشَرِيكَ عَلَى شَرِيكِ إِذَا سَبَقَهُ بِالشَّرَاءِ. وَلَا لِصَغِيرٍ، وَلَا لِغَائِبٍ».

تخريج: [إسناده ضعيف جداً] أخرجه ابن عدي: ٢١٨٥، ٢١٨٨ من حديث محمد بن الحارث به، وضعفه البوصيري، وانظر الحديث السابق لعلته.

Comments:

'When a partner has beaten his co-partner' means that if there are three co-sharers of a property and one of them buys the share of his co-shareholder, the third has no right to preemption. This narration is Weak.

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

18. The Chapters On Lost Property

(المعجم ١٨) أَبْوَابُ اللَّقْطَةِ (التحفة ...)

Chapter 1. Lost Camels, Cattle And Sheep

(المعجم ١) - بَابُ ضَالَّةِ الْإِبِلِ وَالْبَقَرِ وَالْغَنَمِ (التحفة ٩٠)

2502. It was narrated from Mutarrif bin 'Abdullāh bin Shikhkhir that his father said: "The Messenger of Allāh ﷺ said: 'The lost animal of the Muslim may lead to the burning flame of Hell.'" (*Sahih*)

٢٥٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ حُمَيْدِ الطَّوِيلِ، عَنِ الْحَسَنِ، عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشَّخِيرِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ضَالَّةُ الْمُسْلِمِ حَرَقُ النَّارِ».

تخریج: [صحيح] أخرجه أحمد: ٢٥/٤ عن يحيى بن سعيد قال: ثنا حميد يعني الطويل: ثنا الحسن به ... الخ، وصححه ابن حبان (موارد)، ح: ١١٧١، والبوصيري، والضياء المقدسي في المختارة * الحسن تابعه قتادة عند أبي نعيم في الحلية: ٣٣/٩ وقبله الطبراني في الأوسط، ح: ٢/٣٢٩، ح: ١٥٧٠ رواه شعبة عنه، والسند صحيح إليه، وللحديث شواهد كثيرة.

Comments:

- Zāllah* is an animal that is separated from the herd, and lost, and its ownership is not known.
- Inanimate or lifeless thing are called *Luqatah*; details of such lost and found things will be discussed in the next chapter.

2503. It was narrated that Mundhir bin Jarir said: "I was with my father in Bawāzīj and the cows came back in the evening. He saw a cow and did not recognize it. He said: 'What is this?' He said: 'A cow that joined the herd.' And he issued orders that it be driven away until it disappeared from view. Then he

٢٥٠٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو حَيَّانَ التَّمِيمِيُّ: حَدَّثَنَا الضَّحَّاكُ خَالَ الْمُنْذِرِ بْنِ جَرِيرٍ، عَنِ الْمُنْذِرِ بْنِ جَرِيرٍ قَالَ: كُنْتُ مَعَ أَبِي بِالْبَوَازِيجِ. فَوَاحَتْ الْبَقْرَةُ. فَرَأَى بَقْرَةً أَنْكَرَهَا. فَقَالَ: مَا هَذِهِ؟ قَالُوا: بَقْرَةٌ لِحَقَّتْ بِالْبَقْرِ. قَالَ: فَأَمَرَ بِهَا فَطُرِدَتْ حَتَّى تَوَارَتْ.

said: 'I heard the Messenger of Allāh ﷺ say: "No one gives refuge to a stray animal but one who is also astray." (*Sahih*)

ثُمَّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يُؤْوِي الضَّالَّةَ إِلَّا ضَالٌّ».

تخريج: [صحيح] أخرجه النسائي في الكبرى: ٤١٦/٣، ح: ٥٨٠٠ من حديث يحيى بن سعيد به * والضحاك لم يوثقه غير ابن حبان وسقط ذكره من سند أبي داود، ح: ١٧٢٠، وله شاهد عند مسلم في صحيحه، ح: ١٧٢٥، وبه صح الحديث.

Comments:

This reproach is for the person who takes the animal with the intention of keeping it. But if he takes it with the intention to pronounce it and search for the owner, there is no harm in keeping it until the owner is found. In *Sahih Muslim* this narration is with these words: "Whoever gives refuge to a stray animal, he is also astray."

2504. It was narrated from Zaid bin Khâlid that the Prophet ﷺ was asked about a lost camel. He became angry and his cheeks turned red, and he said: "What does it have to do with you? It has its feet and its water supply, it can go and drink water and eat from the trees until its owner finds it." And he was asked about lost sheep, and he said: "Take it, for it will be for you or for your brother or for the wolf." And he was asked about lost property and he said: "Remember the features of its leather bag and strap, and announce it for one year, then if someone claims it, describing it to you with those features (give it to him), otherwise incorporate it into your own wealth." (*Sahih*)

٢٥٠٤ - حَدَّثَنَا إِسْحَاقُ بْنُ إِسْمَاعِيلَ بْنِ الْعَلَاءِ الْأَيْلِيِّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ. عَنْ يَزِيدَ مَوْلَى الْمُتَّبِعِ، عَنْ زَيْدِ ابْنِ خَالِدِ الْجُهَنِيِّ. فَلَقِيتُ رَبِيعَةَ فَسَأَلْتُهُ فَقَالَ: حَدَّثَنِي يَزِيدُ عَنْ زَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ، عَنِ النَّبِيِّ ﷺ قَالَ: سئِلَ عَنْ ضَالَّةِ الْإِبِلِ فَعَصَبَ وَاحْمَرَّتْ وَجَنَّتَاهُ فَقَالَ: «مَا لَكَ وَلَهَا؟ مَعَهَا الْوَلَدُ وَالسَّقَاءُ. تَرُدُّ الْمَاءَ وَتَأْكُلُ الشَّجَرَ. حَتَّى يَلْقَاهَا رَبُّهَا». وَسئِلَ عَنْ ضَالَّةِ الْغَنَمِ فَقَالَ: «خُذْهَا. فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذُّبِّ». وَسئِلَ عَنِ اللَّقْطَةِ فَقَالَ: «اعْرِفْ عِفَاصَهَا وَوَكَاةَهَا وَعَرِّفْهَا سَنَةً، فَإِنِ اعْتَرَفَتْ، وَإِلَّا فَاخْطُطْهَا بِمَالِكَ».

تخريج: أخرجه البخاري، الطلاق، باب حكم المفقود في أهله وماله، ح: ٥٢٩٢ من حديث سفیان بن عیینة، ومسلم، اللقطة، باب: معرفة العفاص والوكاء وحكم ضالة الغنم والإبل، ح: ١٧٢٢ من حديث يحيى بن سعيد به .

Comments:

- a. Catching a lost camel and keeping it in one's custody is not legal because a camel needs no one to take care of it.
- b. A sheep or goat cannot survive without care, so if you do not take the sheep or goat, someone else will take it, or a wolf will eat it. It is better to take it to save it from wild animals, and it is also possible that the owner will be found.
- c. Lost property means those precious things that are lost by the carelessness of the owner, like a large amount of currency, gold, precious ornaments etc.
- d. It is necessary to announce about the lost things up to one year, and one should try to find the owner during this period. After one year's search, things can be used. If later on the real owner is found, his property should be returned to him, or he should be given the price of that thing.

Chapter 2. Lost Property

(المعجم ٢) - بَابُ اللَّقْطَةِ (التحفة ٩١)

2505. It was narrated from 'Iyād bin Himār that the Messenger of Allāh ﷺ said: "Whoever finds lost property, let him ask one or two men of good character to witness it, then he should not alter it nor conceal it. If its owner comes along, then he has more right to it, otherwise it belongs to Allāh, Who gives it to whomsoever He wills." (*Sahih*)

٢٥٠٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ خَالِدِ الْحَدَّاءِ، عَنْ أَبِي الْعَلَاءِ، عَنْ مُطَرِّفٍ، عَنْ عِيَّاصِ بْنِ جِمَارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدَ لِقْطَةً فَلْيُشْهَدْ ذَا عَدْلٍ أَوْ ذَوْي عَدْلٍ. ثُمَّ لَا يُعَيِّرُهُ وَلَا يَكْتُمُ. فَإِنْ جَاءَ رَبُّهَا، فَهُوَ أَحَقُّ بِهَا. وَإِلَّا فَهُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ».

تخریج: [إسناده صحيح] أخرجه أبو داود، اللقطة، باب التعريف باللقطة، ح: ١٧٠٩ من حديث خالد الحداء به، وصححه ابن حبان(موارد)، ح: ١١٦٩.

Comments:

Making a witness is beneficial and helpful. Later on if the claimant of the bag or thing is found, and he objects about the contents of the bag or the amount or other defalcation with his lost thing, then the witness can confute his claim.

2506. It was narrated that Suwaid bin Ghafalah said: "I went out with Zaid bin Suhân and Salmân bin Rabi'ah, and when we were at 'Udhaib, I found a whip. They said to me:

٢٥٠٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سَمِيَّانُ عَنْ سَلْمَةَ بْنِ كُهَيْلٍ، عَنْ سُؤَيْدِ بْنِ عَفْفَةَ قَالَ: خَرَجْتُ مَعَ زَيْدِ بْنِ صُوحَانَ وَسَلْمَانَ بْنِ رَبِيعَةَ. حَتَّى إِذَا كُنَّا

'Throw it away,' but I refused. When we came to Al-Madinah I went to Ubayy bin Ka'b and told him about that. He said: 'You did the right thing. I found one hundred Dinâr that had been lost at the time of the Messenger of Allâh ﷺ, and I asked him about it. He said, "Announce it for a year." So I announced it, and I did not find anyone who recognized it. I asked him (again) and he said: "Announce it," but I did not find anyone who recognized it. He said: "Remember the features of its bag and strap, and how many it contains, then announce it for a year. If someone comes who describes it with those features, (give it to him), otherwise it is like your own property." (Sahih)

بِالْعُدَيْبِ، التَّقَطُّ سَوْطًا. فَقَالَ لِي: أَلْفِهِ. فَأَيُّتُ. فَلَمَّا قَدِمْنَا الْمَدِينَةَ أَتَيْتُ أُبَيَّ بْنَ كَعْبٍ. فَذَكَرْتُ ذَلِكَ لَهُ. فَقَالَ: أَصَبْتَ. التَّقَطُّ مِائَةٌ دِينَارٍ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَسَأَلْتُهُ. فَقَالَ: «عَرِّفْهَا سَنَةً» فَعَرَّفْتُهَا. فَلَمْ أَجِدْ أَحَدًا يَعْرِفُهَا. فَسَأَلْتُهُ. فَقَالَ: «عَرِّفْهَا» فَعَرَّفْتُهَا. فَلَمْ أَجِدْ أَحَدًا يَعْرِفُهَا. فَقَالَ: «اعْرِفْ وَعَاءَهَا وَوِكَاءَهَا وَعَدَدَهَا، ثُمَّ عَرِّفْهَا سَنَةً. فَإِنْ جَاءَ مَنْ يَعْرِفُهَا. وَإِلَّا، فَهِيَ كَسَبِيلِ مَالِكَ».

تخريج: أخرجه البخاري، كتاب في اللقطة، باب إذا أخبر رب اللقطة بالعلامة دفع إليه، ح: ٢٤٢٦، ٢٤٣٧، ومسلم، اللقطة، باب: معرفة العفاص والوكاء ... الخ، ح: ١٧٢٣ من حديث سلمة بن كهيل به.

Comments:

- Average precious thing needs to be announced up to one year but extra precious things should be announced for more than one year.
- Ordinary things need not to be announced.
- Now a days the announcement of lost things can be made on radio, TV and in newspapers. If the owner is found, claiming and receiving the expenditure of announcement from him is legal.

2507. It was narrated from Zaid bin Khâlid Al-Juhani that the Messenger of Allâh ﷺ was asked about lost property. He said: "Announce it for a year, then if someone describes it with its features, return it to him. If no one claims it, then remember the features of its leather bag and

٢٥٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو بَكْرِ الْحَقَوِيُّ؛ ح: وَحَدَّثَنَا حَرَمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ، قَالَ: حَدَّثَنَا الضَّبْحَاكُ بْنُ عُثْمَانَ الْقُرَشِيُّ: حَدَّثَنِي سَالِمُ أَبُو النَّضْرِ، عَنْ [بُسْرِ] بْنِ سَعِيدٍ، عَنْ زَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ أَنَّ رَسُولَ اللَّهِ ﷺ سئِلَ عَنِ

strap, and consume it (use it). Then if its owner comes along, give it to him." (*Sahih*)

اللَّقْطَةَ فَقَالَ: «عَرَفْتُهَا سَنَةً. فَإِنْ اغْتَرَفْتُ، فَأَذْهَمًا. فَإِنْ لَمْ تُعْتَرَفْ، فَأَعْرِفْ عِنَاصَهَا وَوَعَاءَهَا ثُمَّ كُلْهَا. فَإِنْ جَاءَ صَاحِبُهَا، فَأَذْهَمًا إِلَيْهِ».

تخريج: أخرجه مسلم، اللقطة، الباب السابق، ح: ١٧٢٢ من حديث ابن وهب، وأبي بكر الحنفي به.

Chapter 3. Picking Up What A Rat Brings Out

(المعجم ٣) - بَابُ التِّقَاطِ مَا أَخْرَجَ
الْجُرْدُ (التحفة ٩٢)

2508. It was narrated from Miqdâd bin 'Amr that he went out one day to Al-Baqi', which is the graveyard, to relieve himself. People used to go out to relieve themselves only every two or three days, and their feces was like that of a camel (because of hunger and rough food). Then he entered a ruin and while he was squatting to relieve himself, he saw a rat bringing a Dinâr out of a hole, then it went in and brought out another, until it had brought out seventeen Dinârs. Then it brought out a piece of red rag.

٢٥٠٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدِ بْنِ عَثْمَةَ: حَدَّثَنِي مُوسَى بْنُ يَعْقُوبَ الرَّمَعِيُّ: حَدَّثَنِي عَمَّتِي قُرَيْبَةُ بِنْتُ عَبْدِ اللَّهِ أَنَّ أُمَّهَا كَرِيمَةَ بِنْتُ الْمُقَدَّادِ بْنِ عَمْرٍو أَخْبَرَتْهَا عَنْ ضُبَاعَةَ بِنْتِ الزُّبَيْرِ، عَنِ الْمُقَدَّادِ بْنِ عَمْرٍو أَنَّهُ خَرَجَ ذَاتَ يَوْمٍ إِلَى الْبَيْعِ، وَهُوَ الْمَقْبَرَةُ، لِحَاجَتِهِ. وَكَانَ النَّاسُ لَا يَذْهَبُ أَحَدُهُمْ فِي حَاجَتِهِ إِلَّا فِي الْيَوْمَيْنِ وَالثَّلَاثَةِ. فَإِنَّمَا يَبْعُرُ كَمَا تَبْعُرُ الْإِبِلُ. ثُمَّ دَخَلَ خَرِبَةً. فَبَيْنَا هُوَ جَالِسٌ لِحَاجَتِهِ، إِذْ رَأَى جُرْدًا أَخْرَجَ مِنْ جُحْرِ دِينَارًا. ثُمَّ دَخَلَ فَأَخْرَجَ آخَرَ. حَتَّى أَخْرَجَ سَبْعَةَ عَشَرَ دِينَارًا. ثُمَّ أَخْرَجَ طَرْفَ خِرْقَةٍ حَمْرَاءَ.

Miqdâd said: "I picked up the rag and found another Dinâr inside it, thus completing eighteen Dinâr. I took them out and brought them to the Messenger of Allâh ﷺ, and told him what had happened. I said, 'Take its *Sadaqah* (charity), O Messenger of Allâh.' He said: 'Take them back, for no *Sadaqah* is due on them. May Allâh bless them for you.' Then he said: 'Perhaps you put your

قَالَ الْمُقَدَّادُ: فَسَلَّمْتُ الْخِرْقَةَ. فَوَجَدْتُ فِيهَا دِينَارًا. فَتَمَمْتُ ثَمَانِيَةَ عَشَرَ دِينَارًا. فَخَرَجْتُ بِهَا حَتَّى أَتَيْتُ بِهَا رَسُولَ اللَّهِ ﷺ. فَأَخْبَرْتُهُ خَبَرَهَا. فَقُلْتُ: خُذْ صَدَقَتَهَا، يَا رَسُولَ اللَّهِ قَالَ: «ارْجِعْ بِهَا. لَا صَدَقَةٌ فِيهَا. بَارَكَ اللَّهُ لَكَ فِيهَا». ثُمَّ قَالَ: «لَمَلَكْ

hand in the hole?' I said: 'No, by the One Who has honored you with the Truth.'" (*Da'if*)

He (the narrator) said: "And they did not run out before he died."

تخريج: [إسناده ضعيف] أخرجه أبو داود، الخراج، باب ماجاء في الركاز وما فيه، ح: ٣٠٨٧ من حديث موسى الزمعي به، قلت: قريبة مجهولة الحال.

أَتَبِعْتَ يَدَكَ فِي الْجُحْرِ؟ قُلْتُ: لَا. وَالَّذِي أَكْرَمَكَ بِالْحَقِّ.

قَالَ: فَلَمْ يَمَنْ آخِرُهَا حَتَّى مَاتَ.

Chapter 4. One Who Finds Buried Treasure

(المعجم ٤) - بَابُ مَنْ أَصَابَ رِكَازًا

(التحفة ٩٣)

2509. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "One fifth is due on buried treasure." (*Sahih*)

٢٥٠٩ - حَدَّثَنَا مُحَمَّدُ بْنُ مَيْمُونِ الْمَكِّيُّ، وَ هِشَامُ بْنُ عَمَّارٍ، قَالَا: حَدَّثَنَا سَفِيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدٍ وَ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «فِي الرِّكَازِ الْخُمْسُ».

تخريج: أخرجه مسلم، الحدود، باب جرح العجماء والمعدن والبشر جبار، ح: ١٧١٠ من حديث سفیان به.

2510. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ said: "One fifth is due on buried treasure." (*Sahih*)

٢٥١٠ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ الْجَهْضِيُّ: حَدَّثَنَا أَبُو أَحْمَدَ عَنِ إِسْرَائِيلَ، عَنْ سِمَاكٍ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِي الرِّكَازِ الْخُمْسُ».

تخريج: [صحيح] أخرجه أحمد: ٣١٤/١ من طريق إسرائيل به، ورواه عن أبي أحمد أيضًا كما في أطراف المسند: ٢٠٧/٣، وصححه البوصيري، ولكن سنده ضعيف، انظر، ح: ١٧١ لعلته، والحديث السابق شاهد له، وبه صح الحديث.

Comments:

Rikāz is buried treasure whose ownership and burial period is not known. Immediate payment of one fifth is due on such treasure, and the rest is the property of the founder.

2511. Sulaim bin Hayyān said: "I heard my father narrate from Abu Hurairah that the Prophet ﷺ said: 'Among those who came before you there was a man who bought

٢٥١١ - حَدَّثَنَا أَحْمَدُ بْنُ ثَابِتٍ الْجَحْدَرِيُّ: حَدَّثَنَا يَعْقُوبُ بْنُ إِسْحَاقَ الْهَضْرَمِيُّ: حَدَّثَنَا سَلِيمُ بْنُ حَيَّانَ. سَمِعْتُ أَبِي يُحَدِّثُ عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «كَانَ فِيمَنْ كَانَ

some property and found therein a jar of gold. He said: "I bought land from you, but I did not buy the gold from you." The man said: "Rather I sold you the land with whatever is in it." They referred their case to (a third) man who said: "Do you have children?" One of them said: "I have a boy." The other said: "I have a girl." He said: "Marry the boy to the girl, and let them spend on themselves from it and give in charity." (*Hasan*)

قَبَلَكُمْ رَجُلٌ اشْتَرَى عَقَارًا. فَوَجَدَ فِيهَا جَرَّةً مِنْ ذَهَبٍ. فَقَالَ: اشْتَرَيْتُ مِنْكَ الْأَرْضَ، وَلَمْ أَشْتَرِ مِنْكَ الذَّهَبَ. فَقَالَ الرَّجُلُ: إِنَّمَا بَعْتِكَ الْأَرْضَ بِمَا فِيهَا. فَتَحَاكَمَا إِلَى رَجُلٍ. فَقَالَ: أَلَكُمَا وَلَدٌ؟ فَقَالَ أَحَدُهُمَا: لِي غُلَامٌ. وَقَالَ الْآخَرُ: لِي جَارِيَةٌ. قَالَ: فَأَنْكِحَا الْغُلَامَ الْجَارِيَةَ. وَلْيُنْفِقَا عَلَى أَنْفُسِهِمَا مِنْهُ، وَلْيَتَصَدَّقَا».

تخريج: [إسناده حسن] * حيان بن بسطام وثقه ابن حبان، والبوصيري، انظر، ح: ٢٤٤٥ -

Comments:

- Buried treasure is the property of the person who found it, provided its ownership is not known.
- The total amount of the found treasure should not be used by the founder. Twenty percent of the total amount should be given as *Zakat*.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

19. The Chapters On Manumission (Of Slaves)

(المعجم ١٩) أَبْوَابُ الْعِتْقِ
(التحفة ...)

Comments:

'*Al-Itq'* means 'cease to be personal property and emancipation.' Imâm Azhari says '*Ataqa'* is derived from '*Ataqaal-Fars*: This phrase is used when a horse wins a race or when a young bird learns to fly and flies away. Young birds, when they learn to fly, are free to go anywhere and they are not dependent on their parents. The word '*Itq'* is used for a slave who is granted freedom, and allowed to go any where with his own free will.

'Manumission of slaves' means to emancipate a slave and free him from the disgrace and indignity of slavery.

There are three kinds of freedom enumerated below.

1. *Tadbir* or Policy: If a master promises his slave that he would be free after his death it is known as *Tadbir*.
2. *Mukâtabat* or Written Agreement: If a master writes an agreement with a slave to free him for a certain price, and the slave pays the agreed installments, then he is free. This known as *Mukâtabât*.
3. *Umm Walad* or Mother of a Son: A master who has sexual intercourse with his slave girl, and she gives birth to a son or daughter. This is known as *Umm Walad*.

Chapter 1. The *Mudabbar*^[1]

(المعجم ١) - بَابُ الْمُدَبَّرِ (التحفة ٩٤)

2512. It was narrated from Jâbir that the Messenger of Allâh ﷺ sold a *Mudabbar*. (*Sahih*)

٢٥١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَعَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، عَنْ سَلْمَةَ بْنِ كُهَيْلٍ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ أَنَّ رَسُولَ اللَّهِ ﷺ بَاعَ الْمُدَبَّرَ.

تخريج: أخرجه البخاري، البيهقي، باب بيع المدبر، ح: ٢٢٣٠ عن عبدالله بن نمير به.

[1] A slave promised his freedom after his master's death.

2513. It was narrated that Jâbir bin 'Abdullâh said: "A man among us promised freedom to a slave after his death, and he did not have any property other than him (this slave). So the Prophet ﷺ sold him, and Ibn (Nahhâm), a man from Banu 'Adi, bought him."

٢٥١٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: دَبَّرَ رَجُلٌ مِنَّا غُلَامًا. وَلَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ. فَبَاعَهُ النَّبِيُّ ﷺ. فَاشْتَرَاهُ ابْنُ [النَّحَامِ] رَجُلٌ مِنْ بَنِي عَدِي.

تخریج: أخرجه البخاري، البيهقي، باب بيع المدبر، ح: ٢٢٣١، ومسلم، الأيمان، باب جواز بيع المدبر، ح: ٩٩٧، بعد، ح: ١٦٦٨ من حديث سفیان به.

Comments:

Mudabbar means a slave who's master promised freedom after his death (*Fathul-Bari, Hadith 2230*)

2514. It was narrated from Ibn 'Umar that the Prophet ﷺ said: "The *Mudabbar* is part of the one third of the estate."^[1] (*Da'if*)

٢٥١٤ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلِيُّ بْنُ ظَبْيَانَ، عَنْ عُثَيْدِ اللَّهِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْمُدَبَّرُ مِنَ الثَّلَاثِ».

Ibn Mâjah said: I heard 'Uthmân – meaning Ibn Abu Shaibah – say: "This is a mistake," meaning the *Hadith*: "The *Mudabbar* is part of the one third of the estate." Abu 'Abdullâh (Ibn Mâjah) said: "There is no basis for it."

قَالَ ابْنُ مَاجَةَ: سَمِعْتُ عُثْمَانَ، يَعْنِي ابْنَ أَبِي شَيْبَةَ، يَقُولُ: هَذَا خَطَأٌ. يَعْنِي حَدِيثَ: «الْمُدَبَّرُ مِنَ الثَّلَاثِ».

قَالَ أَبُو عَبْدِ اللَّهِ: لَيْسَ لَهُ أَصْلٌ.

تخریج: [إسناده ضعيف جدًا] أخرجه البيهقي: ٣١٤/١٠ من طريق علي بن ظبيان به، وهو ضعيف كما في التقريب وغيره ورجع عن رفعه في رواية الشافعي، والموقوف هو الصحيح، وللمرفوع شاهد ضعيف جدًا عند البيهقي وغيره، وله شاهد مرسل ضعيف أيضًا.

Chapter 2. Umahâtul-Awlâd^[2]

(المعجم ٢) - بَابُ أُمَّهَاتِ الْأَوْلَادِ (التحفة ٩٥)

2515. It was narrated from Ibn

٢٥١٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ مُحَمَّدٌ بْنُ

[1] One third of the estate: i.e., the one third concerning which a person may leave instructions as to how it is to be disposed of after his death.

[2] *Umahâtul-Awlâd* (sing. *Umm Walad*): literally means 'mothers of children.' Slave women who bore their masters children.

'Abbās that the Messenger of Allāh ﷺ said: "Any man whose slave woman bears him a child, she will be free after he dies." (Da'if)

إِسْمَاعِيلَ، قَالَ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا شَرِيكٌ، عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ ابْنِ عَبَّاسٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا رَجُلٍ وَلَدَتْ أُمَّتُهُ مِنْهُ، فَهِيَ مُتَعَقَّةٌ عَنْ ذُبْرِ مِنْهُ».

تخریج: [إسناده ضعيف] أخرجه ابن أبي شيبة: ٤٣٦/٦ عن شريك به، وضعفه البوصيري، وانظر، ح: ١٦٢٨.

2516. It was narrated that Ibn 'Abbās said: "Mention was made of the mother of Ibrāhīm in the presence of the Messenger of Allāh ﷺ, and he said: 'Her son set her free.'" (Da'if)

٢٥١٦ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا أَبُو بَكْرِ، يَعْنِي النَّهْشَلِيَّ، عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: ذَكَرْتُ أُمَّ إِبْرَاهِيمَ عِنْدَ رَسُولِ اللَّهِ ﷺ. فَقَالَ: «أَعْتَمَهَا وَلَدَهَا».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٤٦/١٠ من طريق ابن أبي سبرة به، وقال: أبو بكر بن أبي سبرة ضعيف لا يحتج به، إلا أنه قد روى عن غيره عن حسين بهذا اللفظ، وأخرجه ابن سعد: ٢١٥/٨، والبيهقي وغيرهما من طرق عن حسين به، وانظر، ح: ١٦٢٨ لحاله، وللحديث طريق آخر ضعيف، وأخطأ من صححه.

2517. Jābir bin 'Abdullāh was heard to say: "We used to sell our slave women and the mothers of our children (Umahāt Awlādina) when the Prophet ﷺ was still living among us, and we did not see anything wrong with that." (Sahih)

٢٥١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ إِسْحَاقُ ابْنُ مَنصُورٍ، قَالَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ ابْنَ عَبْدِ اللَّهِ يَقُولُ: كُنَّا نَبِيعُ سَرَارِنَا وَأُمَّهَاتِ أَوْلَادِنَا، وَالنَّبِيُّ ﷺ فِيْنَا حَيًّا. لَا نَرَى بِذَلِكَ بَأْسًا.

تخریج: [إسناده صحيح] أخرجه أحمد: ٣٢١/٣ عن عبد الرزاق به، وتابعه عبد المجيد عند الشافعي (السنن المأثورة: ٢٩٣، ح: ٢٨٦)، وصححه البوصيري، وله شاهد عند الحاكم: ٢/١٨، ١٩، وصححه على شرط مسلم، ووافقه الذهبي.

Comments:

When the master copulates with his slave girl, a baby born as result of this copulation is free.

Chapter 3. The *Mukâtab*^[1]

2518. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "There are three who are all entitled to Allâh's help: the one who fights in the cause of Allâh; the *Mukâtab* who wants to pay (the price of his freedom); and the one who gets married seeking chastity." (*Sahih*)

(المعجم ٣) - يَابُ الْمَكَاتِبِ (التحفة ٩٦)

٢٥١٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَبْدِ اللَّهِ بْنُ سَعِيدٍ، قَالَا: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنِ ابْنِ عَجَلَانَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثَةٌ كُلُّهُمْ حَقٌّ عَلَى اللَّهِ عَوْنُهُ: الْغَازِي فِي سَبِيلِ اللَّهِ. وَالْمَكَاتِبُ الَّذِي يُرِيدُ الْأَدَاءَ. وَالنَّكَاحُ الَّذِي يُرِيدُ التَّعَفُّفَ».

تخریج: [إسناده صحيح] أخرجه الترمذي، فضائل الجهاد، باب ماجاء في المجاهد والناكح والمكاتب وعون الله إياهم، ح: ١٦٥٥ من حديث ابن عجلان به، وقال: حديث حسن، وأخرجه أحمد: ٤٣٧/٢ عن يحيى (القطان) عن ابن عجلان قال: حدثني سعيد عن أبي هريرة به... الخ.

Comments:

- If there is a written agreement between a slave and his master that the slave, in an agreed period, will pay the master a fixed and agreed upon price, then when this price is paid the slave becomes free.
- Jihâd* in the cause of Allâh depends on the sincerity of intention. If the Divine law is observed strictly while fighting, Allâh helps the warrior.
- Chastity is a remarkable characteristic of Islamic society and marriage is a vital and powerful source to maintain a pious and pure society.

2519. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: "Any slave who has made a contract to buy his freedom for one hundred *Uqiyyah* and pays it all except ten *Uqiyyah*; he is still a slave." (One *Uqiyyah* is equal to 40 Dirham.) (*Hasan*)

٢٥١٩ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُ اللَّهِ ابْنُ نُمَيْرٍ وَ مُحَمَّدُ بْنُ فَضِيلٍ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا عَبْدٍ كُوتِبَ عَلَى مِائَةِ أُوقِيَّةٍ، فَأَدَاَهَا إِلَّا عَشْرَ أُوقِيَّاتٍ، فَهُوَ رَقِيقٌ».

تخریج: [حسن] أخرجه أحمد: ١٧٨/٢ عن عبدالله بن نمير به، وضعفه البوصيري * الحجاج بن أرتاة لم ينفرد به، تابعه عباس الجريري عند أبي داود، ح: ٣٩٢٧، والبيهقي: ١٠/

[1] A slave with a written contract of manumission, according to which he will buy his freedom from his master.

٣٢٣ في رواية الثقتين، أو العلاء، الأول ثقة وهو الراجح والثاني مجهول، وللحديث شواهد حسنة عند أبي داود، ح: ٣٩٢٦، ٣٩٢٨ وغيره، فالحديث حسن، انظر الحديث الآتي.

Comments:

Islamic law is different for a slave and a free person. A slave who has not attained full freedom will be tried and judged under the law for slaves.

2520. It was narrated from Umm Salamah that the Prophet ﷺ said: "If anyone of you (women) has a *Mukâtab*, and he has enough (wealth) to pay off (his contract of manumission), she must veil herself from him." (*Hasan*)

٢٥٢٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ نَبْهَانَ، مَوْلَى أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ أَنَّهَا أَخْبَرَتْ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «إِذَا كَانَ لِأَخْدَانِكِنَّ مَكَاتِبَ، وَكَانَ عِنْدَهُ مَا يُؤَدِّي، فَلْتَحْتَجِبْ مِنْهُ».

تخريج: [إسناده حسن] أخرجه أبو داود، العتق، باب في المكاتب يؤدي بعض كتابته فيعجز أو يموت، ح: ٣٩٢٨ من حديث سفیان بن عیینة به، وصححه الترمذي، ح: ١٢٦١، وابن حبان، والحاكم: ٢١٩/٢، والذهبي، قلت: نبهان وثقة الذهبي في الكاشف، والترمذي، وابن حبان، والجمهور، فحديثه لا ينزل عن درجة الحسن * والزهري صرح بالسماح.

Comments:

In a previous narration it has been mentioned that a slave does not attain the manumission until he makes the full payment. Only having the required amount does not make it obligatory to veil herself from him.

2521. It was narrated from Hishâm bin 'Urwah, from his father, about 'Aishah, the wife of the Prophet ﷺ – that Barirah came to her when she was *Mukâtabah*, and her masters had written a contract of manumission for nine *Uqiyyah*. She ('Aishah) said: "If your masters wish I will pay them that in one sum, and the right of inheritance will belong to me."

٢٥٢١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ ابْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ، زَوْجِ النَّبِيِّ ﷺ أَنَّ بَرِيرَةَ أَتَتْهَا وَهِيَ مَكَاتِبَةٌ، فَذَكَرَتْهَا أَهْلُهَا عَلَى تَيْشِعِ أَوَاقٍ. فَقَالَتْ لَهَا: إِنْ شَاءَ أَهْلُكَ عَدَدْتُ لَهُمْ عَدَّةً وَاحِدَةً، وَكَانَ الْوَلَاءُ لِي. قَالَ: فَأَتَتْ أَهْلَهَا. فَذَكَرَتْ ذَلِكَ لَهُمْ. فَأَبَوْا إِلَّا أَنْ تَشْتَرِيَ الْوَلَاءَ لَهُمْ. فَذَكَرَتْ عَائِشَةَ ذَلِكَ لِلنَّبِيِّ ﷺ. فَقَالَ: «أَفْعَلِي» قَالَ: فَقَامَ النَّبِيُّ ﷺ فَحَطَبَ النَّاسَ. فَحَمِدَ اللَّهُ وَأَثْنَى

He said: "So she went to her masters and told them about that, but they insisted that the right of inheritance should belong to

them. ‘Āishah mentioned that to the Prophet ﷺ and he said: ‘Do it.’ Then the Prophet ﷺ stood up and addressed the people. He praised and glorified Allāh, then he said: ‘What is the matter with some people who stipulated conditions that are not in the Book of Allāh? Every condition that is not in the Book of Allāh is invalid, even if there are one hundred conditions. The Book of Allāh is more deserving of being followed and the conditions of Allāh are more binding. And the *Walā’* belongs to the one who manumits (the slave).’” (*Sahih*)

عَلَيْهِ. ثُمَّ قَالَ: «مَا بَالُ رِجَالٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ. كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةً شَرْطٍ. كِتَابُ اللَّهِ أَحَقُّ. وَشَرْطُ اللَّهِ أَوْثَقُ. وَالْوَلَاءُ لِمَنْ أَعْتَقَ».

تخريج: أخرجه مسلم، العتق، باب بيان أن الولاء لمن أعتق، ح: ١٥٠٤ من حديث هشام

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Comments:

- a. The Noble Prophet ﷺ asked ‘Āishah to accept their illegal and undue conditions, so that they may not back out of their promise of manumission.
- b. Even if the parties agree upon illegal terms the deal remains unlawful.
- c. Here the Book of Allāh means the orders revealed by Allāh. It includes the orders of the Noble Qur’ān and the orders prescribed by the Noble Prophet ﷺ based on revelation.
- d. ‘*Walā’*’ is the relationship between a slave and the one who manumits. By this relationship, the freed-slave is considered the family member of the one who freed them. If he dies without having any legal heir, his property goes to one who freed him.

Chapter 4. Manumission

(المعجم ٤) - بَابُ الْعِتْقِ (التحفة ٩٧)

2522. It was narrated that Shurahbil bin Simt said: I said to Ka’b: O Ka’b bin Murrah, tell us a *Hadith* from the Messenger of Allāh ﷺ, but be careful. He said: I heard the Messenger of Allāh ﷺ say: “Whoever frees a Muslim man, he will be his ransom from

٢٥٢٢ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَمْرِو بْنِ مُرَّةٍ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ شَرَحْبِيلِ بْنِ السَّمْطِ قَالَ: قُلْتُ لِكَعْبٍ: يَا كَعْبُ بْنُ مُرَّةٍ حَدَّثْنَا عَنْ رَسُولِ اللَّهِ ﷺ وَاحْدًا. قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ أَعْتَقَ

the Fire; each of his bones will suffice (as a ransom) for each of his bones. Whoever frees two Muslim women, they will be his ransom from the Fire; each of their two bones will suffice (as a ransom) for each of his bones.”
(*Da'if*)

امْرَأَةً مُسْلِمًا كَانَ فَكَاهَهُ مِنَ النَّارِ. يُجْزَىءُ
كُلُّ عَظْمٍ مِنْهُ بِكُلِّ عَظْمٍ مِنْهُ. وَمَنْ أَعْتَقَ
امْرَأَتَيْنِ مُسْلِمَتَيْنِ، كَانَتْمَا فَكَاهَهُ مِنَ النَّارِ.
يُجْزَىءُ بِكُلِّ عَظْمَيْنِ مِنْهُمَا عَظْمٌ مِنْهُ.

تخريج: [إسناده ضعيف] أخرجه النسائي، الجهاد، . ثواب من رمى بسهم في سبيل الله عزوجل، ح: ٣١٤٦ من حديث أبي معاوية به، وأخرجه أبو داود، ح: ٣٩٦٧ من طريق آخر عن عمرو به، وقال: سالم لم يسمع من شرحبيل، ولبعض الحديث شواهد صحيحة عند مسلم، ح: ١٥٠٩، والحميدي (ح: ٧٦٧ بتحقيقي) وغيرهما.

Comments:

- Shurahbil did not remain for a long period in the presence of the Noble Prophet ﷺ, so he acquired the knowledge of *Ahādith* from other Companions.
- Manumission of a slave saves one from the Hell-fire.
- Manumission of a slave girl is also a tremendous virtuous deed.

2523. It was narrated that Abu Dharr said: “I said: ‘O Messenger of Allāh, which slave is best?’ He said: ‘The one who is most precious to his master and most valuable in price.’” (*Sahih*)

٢٥٢٣ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانَ: حَدَّثَنَا أَبُو
مُعَاوِيَةَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ،
عَنْ أَبِي مُرَاوِحٍ، عَنْ أَبِي ذَرٍّ قَالَ: قُلْتُ: يَا
رَسُولَ اللَّهِ! أَيُّ الرِّقَابِ أَفْضَلُ؟ قَالَ:
«أَنْفُسُهَا عِنْدَ أَهْلِهَا، وَأَعْلَاهَا ثَمَنًا».

تخريج: أخرجه البخاري، العتق، باب أي الرقاب أفضل، ح: ٢٥١٨، ومسلم، الإيمان، باب بيان كون الإيمان بالله تعالى أفضل الأعمال، ح: ٨٤ من حديث هشام مطولاً.

Comments:

- Giving a precious thing in the way of Allāh is most virtuous and superior deed. In the same way, manumission of a precious and valuable slave girl is one of the best deeds.
- A precious and healthy animal given as charity brings more reward.

Chapter 5. If A Person Becomes The Master Of A *Mahram*, Then He Becomes Free

(المعجم ٥) - بَابُ مَنْ مَلَكَ ذَا رَحِمٍ
مَحْرَمٍ فَهُوَ حُرٌّ (التحفة ٩٨)

2524. It was narrated from Samurah bin Jundub that the Prophet ﷺ said: "Whoever becomes the master of a *Mahram* relative (with whom marriage is not lawful), he becomes free." (Hasan)

٢٥٢٤ - حَدَّثَنَا عُقْبَةُ بْنُ مُكْرَمٍ وَاسْحَاقُ بْنُ مَثُورٍ، قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ بَكْرِ بْنِ سَائِيٍّ عَنْ حَمَادِ بْنِ سَلَمَةَ، عَنْ قَتَادَةَ وَغَاصِمِ، عَنِ الْحَسَنِ، عَنْ سُمْرَةَ بْنِ جُنْدُبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ، فَهُوَ حُرٌّ».

تخريج: [حسن] أخرجه الترمذي، الأحكام، باب ماجاء فيمن ملك ذَا رحم محرم، ح: ١٣٦٥ عن عقبه بن مكرم به، وصححه ابن الجارود، ح: ٩٧٣، والحاكم: ٢/٢١٤، والذهبي كما في نيل المقصود، ح: ٣٩٤٩، وانظر، ح: ٢١٨٣.

2525. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever becomes the master of a *Mahram* relative, he becomes free." (Hasan)

٢٥٢٥ - حَدَّثَنَا زَائِدُ بْنُ سَعِيدٍ الرَّمْلِيُّ وَعَبِيدُ اللَّهِ بْنُ الْجَهْمِ الْأَنْمَاطِيُّ قَالَا: حَدَّثَنَا ضَمْرَةُ بْنُ رَبِيعَةَ عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ».

تخريج: [حسن] أخرجه الترمذي، الأحكام، الباب السابق، ح: ١٣٦٥ بغير سند عن ضمرة به، وقال: ولا يتابع ضمرة على هذا الحديث. وهو حديث خطأ عند أهل الحديث، والحديث السابق شاهد له.

Comments:

- An example of a *Mahram* relative becoming master is explained in the following example: Suppose there were two slave brothers, one of them was freed and later on he bought his brother. The second one will be freed because he is a *Mahram* relative. A *Mahram* relative cannot become a master. The same rule applies to a mother and son, father and daughter, brother and sister, niece, nephew, parental uncle and parental aunt.
- Right of property is through any mean - by payment, by way of gift, or inheritance - a slave or slave girl will be freed.

Chapter 6. Whoever Frees A Slave But Stipulates That He Should Serve Him

(المعجم ٦) - بَابُ مَنْ أَعْتَقَ عَبْدًا
وَاشْتَرَطَ خِدْمَتَهُ (التحفة ٩٩)

2526. It was narrated that Safinah – Abu 'Abdur-Rahmân – said: "Umm Salamah freed me, but stipulated that I should serve the Prophet ﷺ as long as he lived." (*Hasan*)

٢٥٢٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُعَاوِيَةَ الْجَمْعِيُّ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ عَنْ سَعِيدِ ابْنِ [جُمَهَانَ]، عَنْ سَفِينَةَ، أَبِي عَبْدِ الرَّحْمَنِ قَالَ: أَعْتَقْتَنِي أُمُّ سَلَمَةَ وَاشْتَرَطَتْ عَلَيَّ أَنْ أُحْدِمَ النَّبِيَّ ﷺ، مَا عَاشَ.

تخريج: [إسناده حسن] أخرجه أبو داود، العتق، باب: في العتق على شرط، ح: ٣٩٣٢ من حديث سعيد به، وصححه ابن الجارود، ح: ٩٧٦، والحاكم: ٢/٢١٣، ٢١٤، والذهبي.

Comments:

- Apparently putting a condition is against the spirit of manumission. Manumission means free from all conditions. In this case, putting a special condition was an honor for Safinah.
- Putting a condition on a slave at the time of his manumission to do some virtuous deed, is not against the spirit of manumission, rather it is an opportunity for him to do a righteous deed.
- Maybe 'stipulated' here means only a promise taken at the time of manumission.

Chapter 7. Whoever Frees His Share Of A Slave

(المعجم ٧) - بَابُ مَنْ أَعْتَقَ شِرْكَاءَ لَهُ
فِي عَبْدٍ (التحفة ١٠٠)

2527. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "Whoever frees his share of a slave or part of his share, must pay from his wealth if he has any wealth (in order to buy the rest of the slave's freedom). If he does not have wealth, then the slave should be asked to work for the price (of his freedom), without that causing him too much hardship." (*Sahih*)

٢٥٢٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ وَ مُحَمَّدُ بْنُ بَشِيرٍ عَنْ سَعِيدِ بْنِ أَبِي عُرْوَةَ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهْيِكٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعْتَقَ نَصِيبًا لَهُ فِي مَمْلُوكٍ، أَوْ شِقْصًا، فَعَلَيْهِ خَلَاصُهُ مِنْ مَالِهِ، إِنْ كَانَ لَهُ مَالٌ. فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ، اسْتَسْعَى الْعَبْدُ فِي قِيَمَتِهِ، غَيْرَ مَشْقُوقٍ عَلَيْهِ».

تخريج: أخرجه البخاري، الشركة، باب تقويم الأشياء بين الشركاء بقيمة عدل، ح: ٢٤٩٢، ٢٥٢٧، ومسلم، العتق، باب ذكر سعاية العبد، ح: ١٥٠٣ من حديث سعيد بن أبي عروبة به.

Comments:

- A slave can belong to more than one person. For example, a person is the father of two sons and has a slave. If he dies, the slave will be inherited by his two sons. Another example is that some persons contribute equal shares of money and buy a slave, then the slave is common property of all the shareholders.
- If one master of a common slave frees his share, the slave will still remain a slave for the rest of the co-owners.
- In such cases, one who frees his share should buy the shares of other co-owners with a fairly evaluated price, and free the slave to complete the manumission.
- Another way out is that the slave should work and earn money to pay other owners to be freed.
- A slave should not be forced to pay soon, he should be given proper time to pay the price, just as a debtor is given a chance to return the debt. It would be better if the slave is treated more sympathetically and given more time.

2528. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever frees his share of a slave, the price of the slave should be fairly evaluated, and he (the partner who initiated this process) should free him (in full, by giving the rest of his price to the other co-owners), if he has enough wealth to do so. Otherwise, he will have freed whatever he freed." (*Sahih*)

٢٥٢٨ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا
عُثْمَانُ بْنُ عُمَرَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ
نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ
ﷺ: «مَنْ أَعْتَقَ شُرَكَاءَ لَهُ فِي عَبْدٍ، أُقِيمَ عَلَيْهِ
بِقِيمَةِ عَدْلٍ. فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ إِنْ
كَانَ لَهُ مِنَ الْمَالِ مَا يَبْلُغُ ثَمَنَهُ، وَعَتَقَ عَلَيْهِ
الْعَبْدُ. وَإِلَّا، فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ.»

تخريج: أخرجه البخاري، العتق، باب: إذا أعتق عبداً بين اثنين أو أمةً بين الشركاء، ح: ٢٥٢٢، ومسلم، العتق، باب من أعتق شركاً له في عبد، ح: ١٥٠١ من حديث مالك به، وهو في الموطأ (يحيى) ٧٧٢/٢.

Comments:

- 'Fair evaluation' means that the price of a slave should be evaluated according to the local customs and circumstances. For instance, if one person is a master of half a share viz., 1/2, and the price is evaluated as one hundred Dinâr, he should pay fifty Dinâr to his co-owner/owners and buy the second half and free him.
- In the foregoing example, if one, who frees his share of a slave does not have the ability to pay the co-owners their share, in this situation the slave will be considered half free. If he is murdered, the blood money to be paid for him will be half, and half a share of the price of the slave will also be

charged, and in a case where distribution is not possible, he will be considered a slave as in the case of the *Mukâtab*. (Allâh knows better)

Chapter 8. One Who Frees A Slave Who Has Some Wealth

(المعجم ٨) - بَابُ مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ (التحفة ١٠١)

2529. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Whoever frees a slave who has some wealth, the slave's wealth belongs to him, unless the master stipulates that it will belong to him." (*Sahih*)

٢٥٢٩ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لَهَيْعَةَ. ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي مَرْيَمَ: أَنَّ بَنَاتَا اللَّيْثِ بْنِ سَعْدٍ، جَمِيعًا، عَنْ عُمَيْرِ بْنِ أَبِي جَعْفَرٍ، عَنْ بُكَيْرِ بْنِ الْأَشَّجِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ، فَمَالُ الْعَبْدِ لَهُ. إِلَّا أَنْ يَشْتَرِطَ السَّيِّدُ مَالَهُ، فَيَكُونَ لَهُ».

(One of the narrators) Ibn Lahî'ah said (in his narration): "Unless the master makes an exception for that."

وَقَالَ ابْنُ لَهَيْعَةَ: إِلَّا أَنْ يَسْتَشِينَهُ السَّيِّدُ.

تخريج: [إسناده صحيح] أخرجه أبو داود، العتق، فممن أعتق عبداً وله مال، ح: ٣٩٦٢ من حديث ابن وهب به.

Comments:

- a. Usually, the things in use of a slave belong to the master, since they were given to him for use in fulfillment of his services. When the slave is freed, all things in his use go back to his master.
- b. There may be a case that a master allows his slave to work and earn money, on the condition to pay him a part of this earned money, and allows him to use the rest of it for his own needs. In this case, the saved money will belong to the slave, and if he is freed he will keep the saved money. Manumission can also be conditional, the master can ask the slave to give him all his belongings and money before his manumission takes place.

2530. It was narrated from Ishâq bin Ibrâhim, from his grandfather 'Umar, who was the freed slave of Ibn Mas'ud, that 'Abdullâh said to him: "O 'Umar, I have set you free in a good way. I heard the Messenger of Allâh ﷺ say: 'Any man who frees a slave and

٢٥٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سَعِيدُ بْنُ مُحَمَّدِ بْنِ الْجَرْمِيِّ: حَدَّثَنَا الْمُطَّلِبُ بْنُ زِيَادٍ، عَنْ إِسْحَاقَ بْنِ إِبْرَاهِيمَ، عَنْ جَدِّهِ عُمَيْرٍ وَهُوَ مَوْلَى ابْنِ مَسْعُودٍ أَنَّ عَبْدَ اللَّهِ قَالَ لَهُ: يَا عُمَيْرُ! إِنِّي أَعْتَقْتُكَ عِتْقًا هَيِّئًا. إِنِّي

does not say anything about his (the slave's) wealth, it belongs to him (the slave).' So tell me, how much wealth do you have?" (*Da'if*)

Another chain with similar wording.

سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «أَيُّمَا رَجُلٍ أَعْتَقَ غُلَامًا، وَلَمْ يَسْمَ مَالَهُ، فَأَمَّا لَهُ؟ فَأَخْبِرْنِي مَا مَالُكَ؟»

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا الْمُطَّلِبُ بْنُ زِيَادٍ عَنْ إِسْحَاقَ بْنِ إِبْرَاهِيمَ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ لِبَدِيِّ. فَذَكَرَ نَحْوَهُ.

تخریج: [إسناده ضعيف] * إسحاق بن إبراهيم بن عمير وجده مجهولان كما في التقريب، لم يوثقهما غير ابن حبان، وتوثيق مسلمة لا شيء لأن مسلمة مجروح في نفسه، والأول ضعفه ابن الجارود وغيره.

Chapter 9. Freeing Illegitimate Children

(المعجم ٩) - بَابُ عِتْقِ وَلَدِ الزَّانَا

(التحفة ١٠٢)

2531. It was narrated from Maimunah bint Sa'd, the freed slave woman of the Prophet ﷺ, that the Messenger of Allāh ﷺ was asked about illegitimate children. He said: "Two sandals in which I wage *jihād* are better than freeing an illegitimate child." (*Da'if*)

٢٥٣١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا الْفَضْلُ بْنُ دُكَيْنٍ: حَدَّثَنَا إِسْرَائِيلُ عَنْ زَيْدِ بْنِ جُبَيْرٍ، عَنْ أَبِي يَزِيدَ الضَّنِّيِّ، عَنْ مَيْمُونَةَ بِنْتِ سَعْدٍ، مَوْلَاةِ النَّبِيِّ ﷺ أَنَّ رَسُولَ اللَّهِ ﷺ سُئِلَ عَنْ وَلَدِ الزَّانَا. فَقَالَ: «نَعْلَانِ أَجَاهِدُ فِيهِمَا، خَيْرٌ مِنْ أَنْ أُعْتِقَ وَلَدَ الزَّانَا».

تخریج: [إسناده ضعيف] أخرجه الحاكم: ٤/٤١ من حديث إسرائيل به، وقال البوصيري: هذا إسناد ضعيف * أبو يزيد الضني مجهول كما في التقريب وغيره، وقال عبدالغني بن سعيد: منكر الحديث .

Chapter 10. If One Wants To Free A Man Along With His Wife, He Should Start With The Man

(المعجم ١٠) - بَابُ مَنْ أَرَادَ عِتْقَ رَجُلٍ وَأَمْرَأَتِهِ فَلْيَبْدَأْ بِالرَّجُلِ (التحفة ١٠٣)

2532. It was narrated that 'Aishah had a male slave and a female slave who were married. She said: "O Messenger of Allāh, I want to free them both." The

٢٥٣٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا حَمَّادُ بْنُ مَسْعَدَةَ، ح وَحَدَّثَنَا مُحَمَّدُ بْنُ حَلْفٍ الْعَسْقَلَانِيُّ وَاسْحَاقُ بْنُ مَنْصُورٍ قَالَا: حَدَّثَنَا

Messenger of Allāh ﷺ said: “If you free them, then start with the man before the woman.” (Hasan)

عَبِيدُ اللَّهِ بْنِ عَبْدِ الْمَجِيدِ: حَدَّثَنَا عَبِيدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ أَنَّهَا كَانَ لَهَا غُلامٌ وَجَارِيَةٌ، زَوْجٌ. فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنِّي أُرِيدُ أَنْ أُعْتِقَهُمَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنْ أَعْتَقْتَهُمَا، فَأَبْدِي بِالرَّجُلِ قَبْلَ الْمَرْأَةِ».

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في المملوكين يعتقان معاً هل تخير امرأته؟، ح: ٢٢٣٧ من حديث عبيد الله به * عبيد الله بن عبد الرحمن وثقه الجمهور، وقال ابن عدي: حسن الحديث يكتب حديثه .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

20. The Chapters On Legal Punishments

(المعجم ٢٠) أَبْوَابُ الْحُدُودِ
(التحفة ١٢)

Comments:

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

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

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

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

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

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

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

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

Comments:

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

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

٢٥٣٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ أَبُو بَكْرٍ ابْنُ خَلَادٍ الْبَاهِلِيُّ قَالَا: حَدَّثَنَا وَكَيْعٌ عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ، وَهُوَ ابْنُ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَجْلُ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ، إِلَّا أَحَدٌ ثَلَاثَةَ نَفَرٍ: النَّفْسُ بِالنَّفْسِ، وَالتَّيْبُ الرَّانِي، وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ لِلْجَمَاعَةِ».

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

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

Comments:

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

Chapter 2. The Apostate Who Leaves His Religion

(المعجم ٢) - بَابُ الْمُرْتَدِّ عَنْ دِينِهِ

(التحفة ٢)

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

٢٥٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنبَأَنَا شَفِيَّانُ بْنُ عُيَيْنَةَ، عَنْ أَبِي بَرْ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ».

تخریج: أخرجه البخاري، الجهاد والسير، باب: لا يعذب بعذاب الله، ح: ٣٠١٧ من حديث

سفيان به.

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

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

تخریج: [إسناده حسن] أخرجه النسائي، الزكاة، باب من سأل بوجه الله عزوجل،

ح: ٢٥٦٩ من حديث بهز به.

Comments:

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

Chapter 3. Carrying Out The Hudud

(المعجم ٣) - بَابُ إِقَامَةِ الْحُدُودِ

(التحفة ٣)

2537. It was narrated from Ibn

٢٥٣٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

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

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

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

Comments:

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

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

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

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

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

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

٢٥٣٩ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا حَفْصُ بْنُ عَمْرٍو: حَدَّثَنَا الْحَكَمُ بْنُ أَبَانَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ جَحَدَ آيَةَ مِنَ الْقُرْآنِ، فَقَدْ حَلَّ صَرْبُ عُنُقِهِ. وَمَنْ قَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ، فَلَا سَبِيلَ لِأَحَدٍ عَلَيْهِ، إِلَّا أَنْ يُصِيبَ حَدًّا، فَيُقَامَ عَلَيْهِ».

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

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

٢٥٤٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْمَفْلُوحُ: حَدَّثَنَا عُيَيْدَةُ بْنُ الْأَسْوَدِ، عَنِ الْقَاسِمِ بْنِ الْوَلِيدِ، عَنْ أَبِي صَادِقٍ، عَنْ رَبِيعَةَ بْنِ نَاجِدٍ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَتَيْمُوا حُدُودَ اللَّهِ فِي الْقَرِيبِ وَالْبَعِيدِ. وَلَا تَأْخُذْكُمْ فِي اللَّهِ لَوْمَةٌ لَأَيِّمٍ».

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

Comments:

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

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

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

(*Sahih*)

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

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

(*Sahih*)

(المعجم ٤) - بَابُ مَنْ لَا يَجِبُ عَلَيْهِ

الْحُدُ (التحفة ٤)

٢٥٤١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ سُفْيَانَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ عَطِيَّةَ الْقُرَظِيَّ يَقُولُ: عُرِضْنَا عَلَى رَسُولِ اللَّهِ ﷺ يَوْمَ قُرَيْظَةَ. فَكَانَ مَنْ أَتَيْتَ قُتِلَ. وَمَنْ لَمْ يُنْتِ خَلِي سَبِيلَهُ. فَكُنْتُ فِيْمَنْ لَمْ يُنْتِ، فَخَلِي سَبِيلِي.

٢٥٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنَّ بَنَاءَ

سُفْيَانَ بْنِ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ عَطِيَّةَ الْقُرَظِيَّ يَقُولُ: فَهَذَا أَنَا ذَا بَيْنَ أَظْهُرِكُمْ.

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

Comments:

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

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

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

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

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

Comments:

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

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

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

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

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

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

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

تخریج: أخرجه مسلم، الذكر والدعاء، باب فضل الاجتماع على تلاوة القرآن وعلى الذكر، ح: ۲۶۹۹ من حديث أبي بكر بن أبي شيبة به مطولاً، انظر، ح: ۲۲۵ من هذا الكتاب.

Comments:

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

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

۲۵۴۵ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَّاحِ: حَدَّثَنَا وَكَيْعٌ عَنْ إِبْرَاهِيمَ بْنِ الْفَضْلِ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ لَهُ مَدْفَعًا».

تخریج: [إسناده ضعيف جداً] أخرجه أبو يعلى: ۱۱/۴۹۴، ح: ۶۶۱۸ من حديث وكيع به بلفظ: إدرءوا الحدود ما استطعتم، وضعفه البوصيري، وقال ابن حجر في إبراهيم بن الفضل المخزومي متروك (تقريب)، وله شواهد ضعيفة عند الترمذي، ح: ۱۴۲۴، وابن عدي: ۱/۲۳۳ وغيرهما.

Comments:

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

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

۲۵۴۶ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنِ كَاسِبٍ: أَنبَأَنَا مُحَمَّدُ بْنُ عُمَانَ الْجُمَحِيُّ: حَدَّثَنَا الْحَكَمُ بْنُ أَبَانَ عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ، عَنْ النَّبِيِّ ﷺ قَالَ: «مَنْ سَتَرَ عَوْرَةَ أَخِيهِ الْمُسْلِمِ، سَتَرَ اللَّهُ عَوْرَتَهُ يَوْمَ الْقِيَامَةِ. وَمَنْ كَشَفَ عَوْرَةَ أَخِيهِ الْمُسْلِمِ، كَشَفَ اللَّهُ عَوْرَتَهُ حَتَّى يَفْضَحَهُ بِهَا فِي بَيْتِهِ».

تخریج: [إسناده ضعيف] * محمد بن عثمان بن صفوان الجمحي ضعيف كما في التقريب وغيره، وح: ۲۵۴۴، ۲۲۵ يغني عنه.

Comments:

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

Chapter 6. Intercession Concerning Legal Punishments

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

(*Sahih*)

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

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

Comments:

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

(المعجم ٦) - بَابُ الشَّفَاعَةِ فِي الْحُدُودِ

(التحفة ٦)

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

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

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

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

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

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

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

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

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

Chapter 7. The Legal Punishment For Adultery

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

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

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

٢٥٤٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي هُرَيْرَةَ وَ زَيْدِ ابْنِ خَالِدٍ وَ شَيْبِلِ قَالُوا: كُنَّا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَأَتَاهُ رَجُلٌ فَقَالَ: أَنْشُدَكَ اللَّهَ لِمَا فَضَيْتَ بَيْنَنَا بِكِتَابِ اللَّهِ. فَقَالَ خَضَمُهُ، وَكَانَ أَفْقَهُ مِنْهُ: اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ. وَاتُّذِنَ لِي حَتَّى أَقُولَ. قَالَ: «قُلْ» قَالَ: إِنَّ ابْنِي كَانَ عَمِيفًا عَلَى هَذَا. وَإِنَّهُ زَنَى بِأَمْرَأَةٍ. فَأَقْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَخَادِمٍ. فَسَأَلْتُ رِجَالًا مِنْ أَهْلِ الْعِلْمِ. فَأُخْبِرْتُ أَنَّ عَلَى ابْنِي جَلْدَ مِائَةٍ وَتَعْرِيبَ عَامٍ. وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَالَّذِي نَفْسِي بِيَدِهِ لَا أَفْضِلَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ. الْمِائَةُ الشَّاةُ وَالْخَادِمُ رَدٌّ عَلَيْكَ. وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَعْرِيبُ عَامٍ. وَاعْدُوا يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا. فَإِنْ اعْتَرَفَتْ فَأَرْجُمَهَا».

قَالَ هِشَامٌ: فَعَدَا عَلَيْهَا، فَأَعْتَرَفَتْ، فَارْجَمَهَا.

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

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

Comments:

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

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

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

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

Comments:

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

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

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

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

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

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

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

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

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

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

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

Chapter 9. Stoning

(المعجم ٩) - بَابُ الرَّجْمِ (التحفة ٩)

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

(Sahih)

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

Comments:

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

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

٢٥٥٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ مُحَمَّدُ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَقَدْ خَشِيتُ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ، حَتَّى يَقُولَ قَائِلٌ: مَا أَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ، فَيَضْلُوا بِتَرْكِ فَرِيضَةٍ مِنْ فَرَايِضِ اللَّهِ. أَلَا وَإِنَّ الرَّجْمَ حَقٌّ إِذَا أَحْصَى الرَّجُلُ وَقَامَتِ الْبَيْتَةُ، أَوْ كَانَ حَمْلًا أَوْ اغْتِرَافًا. وَقَدْ قَرَأْتُهَا، الشَّيْخُ وَالشَّيْخَةُ إِذَا زَنَىا فَارْجَمُوهُمَا الْبَيْتَةَ، رَجَمَ رَسُولُ اللَّهِ ﷺ وَرَجَمْنَا بَعْدَهُ.

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

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

أَقْرَأَ أَرْبَعَ مَرَّاتٍ. فَأَمَرَ بِهِ أَنْ يُرْجَمَ. فَلَمَّا أَصَابَتْهُ الْحِجَارَةُ أَذْبَرَ يَسْتَدُّ. فَلَقِيَهُ رَجُلٌ بِيَدِهِ لَحْيَ جَمَلٍ. فَضْرَبَهُ فَضْرَعَهُ. فَذَكَرَ لِلنَّبِيِّ ﷺ فِرَارَهُ حِينَ مَسَّتْهُ الْحِجَارَةُ. قَالَ: «فَهَلَّا تَرَكَتُمُوهُ».

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

Comments:

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

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

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

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

Comments:

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

Chapter 10. Stoning A Jewish Man And Jewish Woman

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

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

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

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

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

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

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

Comments:

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

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

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

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

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

تخريج: [صحيح] تقدم، ح: ٢٣٢٧ مختصراً.

Comments:

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

Chapter 11. One Who Commits Immoral Actions Openly

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

2559. It was narrated from Ibn

٢٥٥٩ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدَّمَشَقِيُّ:

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

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

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

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

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

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

Comments:

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

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

^[2] Meaning her blatant misconduct.

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

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

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

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

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

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

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

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

Comments:

- Sodomy is one of the most immoral actions and a mortal sin. Its punishment is more severe than the punishment of illegal sexual intercourse.
- Mostly people call male to male sexual action *Liwat*, in Arabic, which is totally wrong, because this word is derived from the name of a pious Prophet Lut, he used to warn his people from this mortal sin. He forbade and threatened his people with severe punishment but his people refused to listen to him.

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

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

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

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

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

Comments:

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

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

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

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

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

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

Comments:

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

Chapter 14. Carrying Out Legal Punishment On Slave Women

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

(المعجم ١٤) - بَابُ إِقَامَةِ الْخُدُودِ عَلَى

الْإِمَاءِ (التحفة ١٤)

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

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

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

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

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

And *Dafir* means: rope.

اللَّهُ ﷻ قَالَ: «إِذَا زَنَّتِ الْأَمَةُ فَاجْلِدُوهَا. فَإِنْ زَنَّتْ فَاجْلِدُوهَا. فَإِنْ زَنَّتْ فَاجْلِدُوهَا. فَإِنْ زَنَّتْ فَاجْلِدُوهَا. ثُمَّ يَبْعُوهَا وَلَوْ بِضَفِيرٍ». وَالضَّفِيرُ الْحَبْلُ.

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

Comments:

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

Chapter 15. The Legal Punishment For Slander

(المعجم ١٥) - بَابُ حَدِّ الْقَذْفِ

(التحفة ١٥)

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

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

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

Comments:

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

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

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

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

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

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

Comments:

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

Chapter 16. The Legal Punishment For Drunkenness

(المعجم ١٦) - بَابُ حَدِّ السَّكَرَانِ
(التحفة ١٦)

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

٢٥٦٩ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا شَرِيكٌ عَنْ أَبِي حُصَيْنٍ، عَنْ عُمَيْرِ بْنِ سَعِيدٍ؛ ح: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا مُطَرِّفٌ، سَمِعْتُهُ، عَنْ عُمَيْرِ بْنِ سَعِيدٍ قَالَ: قَالَ عَلِيُّ

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

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

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

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

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

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

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

Comments:

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

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

٢٥٧١ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا ابْنُ عَلِيَّةَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ عَبْدِ اللَّهِ بْنِ الدَّانِجِ، سَمِعْتُ حُضَيْنَ بْنَ الْمُثَنِّرِ

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

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

الرَّقَاشِيّ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ ابْنُ أَبِي السُّوَارِبِ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ فَيْرُوزَ الدَّانَاجِ، قَالَ: حَدَّثَنِي حُضَيْنُ بْنُ الْمُثَنِّدِ، قَالَ: لَمَّا جِيءَ بِالرُّوَيْدِ بْنِ عُقَبَةَ إِلَى عُثْمَانَ، قَدْ شَهِدُوا عَلَيْهِ، قَالَ لِعَلِيِّ: دُونَكَ ابْنَ عَمِّكَ، فَأَقِمَّ عَلَيْهِ الْحَدَّ. فَجَلَدَهُ عَلِيُّ. وَقَالَ: جَلَدَ رَسُولُ اللَّهِ ﷺ أَرْبَعِينَ. وَجَلَدَ أَبُو بَكْرٍ أَرْبَعِينَ. وَجَلَدَ عُمَرُ ثَمَانِينَ. وَكُلُّ سَنَةٍ.

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

حديث عبدالعزيز بن المختار به.

Comments:

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

Chapter 17. One Who Drinks Wine Repeatedly

(المعجم ١٧) - بَابُ مَنْ شَرِبَ الْخَمْرَ

مِرَارًا (التحفة ١٧)

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

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

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

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

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

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

Comments:

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

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

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

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

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

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

ابْنُ عَبَّادَةَ إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ: «اجْلِدُوهُ ضَرْبَ مِائَةِ سَوْطٍ» قَالُوا: يَا نَبِيَّ اللَّهِ هُوَ أَوْضَعُفٌ مِنْ ذَلِكَ. لَوْ ضَرْبَتْهُ مِائَةٌ سَوْطٍ مَاتَ. قَالَ: «فَخُذُوا لَهُ [عِنَكًا] فِيهِ مِائَةٌ شِمْرَاخٍ، فَأَضْرِبُوهُ ضَرْبَةً وَاحِدَةً».

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

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

Comments:

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

Chapter 19. One Who Brandishes His Weapon

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

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

٢٥٧٥ - حَدَّثَنَا يَعْقُوبُ بْنُ حُمَيْدٍ بْنُ كَاسِبٍ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ، عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ، [عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ] قَالَ: وَحَدَّثَنَا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ، عَنِ ابْنِ عَجْلَانَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ، وَحَدَّثَنَا أَنَسُ بْنُ عِبَاصٍ،

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

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

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

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

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

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

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

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

Comments:

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

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

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

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

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

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

٢٥٧٨ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا حُمَيْدٌ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ أَنَسًا مِنْ غُرَيْبَةَ قَدِمُوا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَاجْتَوَوْا الْمَدِينَةَ. فَقَالَ: «لَوْ خَرَجْتُمْ إِلَى دَوْدَ لَنَا، فَشَرِبْتُمْ مِنْ أَلْبَانِهَا وَأَبْوَالِهَا» فَفَعَلُوا. فَأَرْتَدُّوا عَنِ الْإِسْلَامِ. وَقَتَلُوا رَاعِي رَسُولِ اللَّهِ ﷺ. وَأَسْتَأْفُوا دَوْدَهُ. فَبَعَثَ رَسُولُ اللَّهِ ﷺ فِي طَلَبِهِمْ. فَجَبَّيْهُمُ. فَفَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَرَ أَعْيُنَهُمْ وَتَرَكَهُمْ بِالْحَرَّةِ حَتَّى مَاتُوا.

٢٥٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالَا: حَدَّثَنَا إِبْرَاهِيمُ بْنُ أَبِي الْوَزِيرِ: حَدَّثَنَا الدَّرَّاورِدِيُّ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ قَوْمًا أَغَارُوا عَلَى لِقَاحِ رَسُولِ اللَّهِ ﷺ. فَفَطَعَ النَّبِيُّ ﷺ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَلَ أَعْيُنَهُمْ.

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

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

Comments:

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

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

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

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

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

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

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

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

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

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

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

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

Comments:

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

Chapter 22. The Legal Punishment For The Thief

(المعجم ٢٢) - بَابُ حَدِّ السَّارِقِ
(التحفة ٢٢)

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

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

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

Comments:

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

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

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

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

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

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

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

Comments:

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

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

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

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

Chapter 23. Hanging The Hand From The Neck

(المعجم ٢٣) - بَابُ تَعْلِيقِ الْيَدِ فِي

الْعُنُقِ (التحفة ٢٣)

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

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

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

Comments:

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

Chapter 24. A Thief Who Confesses

(المعجم ٢٤) - بَابُ السَّارِقِ يَتَعَرَّفُ

(التحفة ٢٤)

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

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

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

(Da'if)

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

فَلَانَ. فَطَهَّرَنِي. فَأَرْسَلَ إِلَيْهِمُ النَّبِيُّ ﷺ فَقَالُوا: إِنَّا افْتَقَدْنَا جَمَلًا لَنَا. فَأَمَرَ بِهِ النَّبِيُّ ﷺ فَقَطَعَتْ يَدَهُ.

قَالَ ثَعْلَبَةُ: أَنَا أَنْظَرُ إِلَيْهِ حِينَ وَقَعَتْ يَدُهُ وَهُوَ يَتَوَلَّى: الْحَمْدُ لِلَّهِ الَّذِي طَهَّرَ لِي مِنْكَ، أَرَدْتُ أَنْ تُدْخِلَنِي جَسَدِي النَّارَ.

Chapter 25. A Slave Who Steals

(المعجم ٢٥) - بَابُ الْعَبْدِ يَسْرِقُ

(الصفحة ٢٥)

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

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

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

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

٢٥٩٠ - حَدَّثَنَا جُبَارَةُ بْنُ الْمُغَلِّسِ: حَدَّثَنَا حَجَّاجُ بْنُ تَمِيمٍ عَنْ مَيْمُونِ بْنِ مِهْرَانَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ عَبْدًا مِنْ رَقِيقِ الْخُمُسِ سَرَقَ مِنَ الْخُمُسِ، فَرَفِعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ، فَلَمْ يَقْطَعْهُ وَقَالَ: «مَالُ اللَّهِ عَزَّ وَجَلَّ، سَرَقَ بَعْضُهُ بَعْضًا».

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

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

Chapter 26. Those Who Betray Trusts, Robbers and Pilferers

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

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

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

تخريج: [صحيح] أخرجه أبو داود، الحدود، باب القطع في الخلسة والخيانة، ح: ٤٣٩١-٤٣٩٢ من حديث ابن جريج به، وصرح بالسماع عند الدارمي: ١٧٥/٢ وغيره، وصححه الترمذي، ح: ١٤٤٨، وابن حبان (موارد)، ح: ١٥٠٤، ١٥٠٢ وغيرهما ورواه عمرو بن دينار عن جابر به عند ابن حبان وغيره، وأعله أبو داود وغيره بعله غير قاذحة.

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

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

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

Comments:

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

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

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

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

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

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

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

Comments:

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

Chapter 28. One Who Steals Something That Is Guarded

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

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

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

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

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

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

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

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

تخریج: [حسن] وهو في الموطأ (يحيى): ٢/٨٣٤، ٨٣٥، وله شاهد حسن عند أبي داود،

ح: ٤٣٩٤، وصححه ابن الجارود، ح: ٨٢٨.

Comments:

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

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

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

تخریج: [حسن] أخرجه أبو داود، اللقطة، باب التعريف باللقطة، ح: ١٧١١ من حديث أبي

أسامة به، وحسنه الترمذي، ح: ١٢٨٩، وصححه ابن الجارود، ح: ٨٢٧ من حديث عمرو بن شعيب به.

Comments:

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

Chapter 29. Prompting A Thief

(المعجم ٢٩) - بَابُ تَلْفِيقِ السَّارِقِ

(التحفة ٢٩)

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

٢٥٩٧ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ إِسْحَاقَ بْنِ أَبِي طَلْحَةَ: سَمِعْتُ أَبَا الْمُنْذِرِ، مَوْلَى أَبِي ذَرٍّ، يَذْكُرُ أَنَّ أَبَا أُمَيَّةَ حَدَّثَهُ أَنَّ رَسُولَ اللَّهِ ﷺ أَنَّى بِلِصٍّ، فَاعْتَرَفَ اعْتِرَافًا، وَلَمْ يَوْجَدْ مَعَهُ الْمَتَاعَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «مَا إِخَالِكَ سَرَقْتَ» قَالَ: بَلَى، ثُمَّ قَالَ: «مَا إِخَالِكَ سَرَقْتَ» قَالَ: بَلَى، فَأَمَرَ بِهِ فَقَطَّعَ. قَالَ [النَّبِيُّ ﷺ]: «قُلْ: أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ» قَالَ: أَسْتَغْفِرُ اللَّهَ وَأَتُوبُ إِلَيْهِ. قَالَ: «اللَّهُمَّ تَبَّ عَلَيْهِ» مَرَّتَيْنِ.

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

Chapter 30. One Who Is Coerced

(المعجم ٣٠) - بَابُ الْمُسْتَكْرَهَةِ

(التحفة ٣٠)

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

٢٥٩٨ - حَدَّثَنَا عَلِيُّ بْنُ مَيْمُونِ الرَّقِّي، وَ
أَيُّوبُ بْنُ مُحَمَّدٍ الْوَزَّانُ، وَ عَبْدِ اللَّهِ بْنُ
سَعِيدٍ، قَالُوا: حَدَّثَنَا مَعْمَرُ بْنُ سُلَيْمَانَ:
أَبْنَانَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَبْدِ الْجَبَّارِ بْنِ
وَأَيْلٍ، عَنْ أَبِيهِ قَالَ: اسْتَكْرَهَتْ امْرَأَةٌ عَلَى
عَهْدِ رَسُولِ اللَّهِ ﷺ. فَدَرَأَ عَنْهَا الْحَدَّ،
وَأَقَامَهُ عَلَى الَّذِي أَصَابَهَا. وَلَمْ يَذْكَرْ أَنَّهُ
جَعَلَ لَهَا مَهْرًا.

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

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

(المعجم ٣١) - بَابُ النَّهْيِ عَنِ إِقَامَةِ

الْحُدُودِ فِي الْمَسْجِدِ (التحفة ٣١)

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

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

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

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

٢٦٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَبْنَانَا عَبْدُ
اللَّهِ بْنُ لَيْبَةَ، عَنْ مُحَمَّدِ بْنِ عَجْلَانَ أَنَّهُ

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

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

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناده ضعيف لضعف ابن لهيعة، وانظر،

ح: ۳۳۰.

Comments:

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

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

(المعجم ۳۲) - بَابُ التَّعْزِيرِ (التحفة ۳۲)

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

۲۶۰۱ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ أَبَانَ اللَّيْثِ
ابْنَ سَعْدٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ بُكَيْرِ
ابْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِّ، عَنْ سُلَيْمَانَ بْنِ
يَسَارٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرِ بْنِ عَبْدِ
اللَّهِ، عَنْ أَبِي بُرْدَةَ بْنِ نِيَّارٍ أَنَّ رَسُولَ اللَّهِ ﷺ
كَانَ يَقُولُ: «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرِ
جَلْدَاتٍ، إِلَّا فِي حَدِّ مِنْ حُدُودِ اللَّهِ».

تخریج: أخرجه البخاري، الحدود، باب: كم التعزير والأدب، ح: ۶۸۴۸ من طريق الليث، ومسلم، الحدود، باب قدر أسواط التعزير، ح: ۱۷۰۸ من طريق بكير به.

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

۲۶۰۲ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا
إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنَا عَبَادُ بْنُ كَثِيرٍ،
عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ
أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا

تُعَزَّرُوا فَوْقَ عَشْرَةِ أَسْوَاطٍ».

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

Comments:

There are two kinds of punishments:

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

Chapter 33. The Legal Punishment Is Expiation

(المعجم ٣٣) - بَابُ: الْحَدِّ كَفَّارَةٌ

(التحفة ٣٣)

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

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

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

Comments:

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

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

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

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

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

تخریج: [إسناده ضعيف] أخرجه الترمذي، الإيمان، باب ماجاء لا يزني الزاني وهو مؤمن، ح: ٢٦٢٦ من حديث حجاج به، وقال: حسن غريب صحيح، وصححه الحاكم: ٧/١، والذهبي * أبو إسحاق عن تقدم، ح: ٤٦، ١٠٣٩.

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

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

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

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

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

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

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

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

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

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

Comments:

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

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

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

فَيَبِّصَهُ بِنِ حُرَيْثٍ، عَنِ سَلَمَةَ بْنِ الْمُحَبِّبِ قَالَ: قِيلَ لِأَبِي ثَابِتٍ، سَعْدُ بْنُ عُبَادَةَ، حِينَ نَزَلَتْ آيَةُ الْحُدُودِ، وَكَانَ رَجُلًا عَجُورًا: أَرَأَيْتَ لَوْ أَنَّكَ وَجَدْتَ مَعَ امْرَأَتِكَ رَجُلًا، أَيَّ شَيْءٍ كُنْتَ تَصْنَعُ؟ قَالَ: كُنْتُ ضَارِبَهُمَا بِالسَّيْفِ. أَتُنْظِرُ حَتَّى أَجِيءَ بِأَرْبَعَةٍ؟ إِلَى مَا ذَاكَ قَدْ قَضَى حَاجَتَهُ وَذَهَبَ. أَوْ أَقُولُ: رَأَيْتُ كَذَا وَكَذَا. فَتَضْرِبُونِي الْحَدَّ وَلَا تَقْبَلُوا لِي شَهَادَةً أَبَدًا. قَالَ: فَذَكِّرْ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «كَفَى بِالسَّيْفِ شَاهِدًا». ثُمَّ قَالَ: «لَا. إِنِّي أَخَافُ أَنْ يَتَّبَعَ فِي ذَلِكَ السَّكَرَانُ وَالْعَجِرَانُ».

قَالَ أَبُو عَبْدِ اللَّهِ، يَعْنِي ابْنَ مَاجَهَ: سَمِعْتُ أَبَا زُرْعَةَ يَقُولُ: هَذَا حَدِيثٌ عَلَيَّ بِنِ مُحَمَّدِ الطَّنَافِيسِيِّ. وَقَاتَنِي مِنْهُ.

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

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

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

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

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

Comments:

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

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

(المعجم ٣٥) - بَاب مَنْ تَزَوَّجَ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ (التحفة ٣٥)
 ٢٦٠٧ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا هُشَيْمٌ؛ ح: وَحَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، جَمِيعاً عَنْ أَشْعَثَ، عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مَرَّ بِي خَالِي، سَمَاهُ هُشَيْمٌ، فِي حَدِيثِهِ، الْحَارِثُ بْنُ عَمْرٍو وَقَدْ عَقَدَ لَهُ النَّبِيُّ ﷺ لِيَوَاءٍ. فَقُلْتُ لَهُ: أَيْنَ تَرِيدُ؟ فَقَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ. فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ.

٢٦٠٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ، ابْنُ أَخِي الْحُسَيْنِ الْجُعْفِيِّ: حَدَّثَنَا يُوسُفُ بْنُ مَنَازِلَ التَّمِيمِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ،

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

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

عَنْ خَالِدِ بْنِ أَبِي كَرِيمَةَ، عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ، عَنْ أَبِيهِ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ، أَنْ أَضْرِبَ عُنُقَهُ وَأُصْفِّيَ مَالَهُ.

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

Comments:

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

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

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

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

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

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

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

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

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

[2] See also no. 2712.

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

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

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

Comments:

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

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

٢٦١١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: أَنبَأَنَا
سُفْيَانُ عَنْ عَبْدِ الْكَرِيمِ، عَنْ مُجَاهِدٍ، عَنْ
عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
«مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ، لَمْ يَرِحْ رَائِحَةَ الْجَنَّةِ
وَإِنْ رِيحَهَا لِيُوجَدَ مِنْ مَسِيرَةِ خَمْسِمِائَةِ عَامٍ».

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

Comments:

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

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

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

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

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

٢٦١٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ؛ ح وَحَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ؛ ح: وَحَدَّثَنَا هَارُونُ بْنُ حَيَّانَ: أَنْبَأَنَا عَبْدُ الْعَزِيزِ بْنُ الْمُغِيرَةِ قَالَ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ عَقِيلِ بْنِ طَلْحَةَ السُّلَمِيِّ، عَنْ مُسْلِمِ بْنِ هَيْصَمٍ، عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ فِي وَفْدِ كِنْدَةَ، وَلَا يَرُونِي إِلَّا أَفْضَلَهُمْ. قُلْتُ: يَا رَسُولَ اللَّهِ! أَلَسْتُمْ مِنَّا؟ فَقَالَ: «نَحْنُ بَنُو النَّضْرِ بْنِ كِنَانَةَ، لَا نَقْفُو أُمَّتًا، وَلَا نَنْتَقِي مِنْ أَبِيئِنَّا».

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

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

Comments:

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

Chapter 38. Effeminate Men

(المعجم ٣٨) - بَابُ الْمُخْتَنِينَ

(التحفة ٣٨)

2613. Safwân bin Umayyah said:

٢٦١٣ - حَدَّثَنَا الْحَسَنُ بْنُ أَبِي الرَّيِّحِ

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

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

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

الْجُرْحَانِي: أَبَانَا عَبْدُ الرَّزَّاقِ: أَحْبَبْتَنِي يَحْيَى
ابْنُ الْعَلَاءِ أَنَّهُ سَمِعَ [بِشْرًا] بِنَ نُمَيْرٍ أَنَّهُ سَمِعَ
مَكْحُولًا يَقُولُ: إِنَّهُ سَمِعَ زَيْدَ بْنَ عَبْدِ اللَّهِ أَنَّهُ
سَمِعَ صَفْوَانَ بْنَ أُمَيَّةَ قَالَ: كُنَّا عِنْدَ رَسُولِ
اللَّهِ ﷺ. فَجَاءَهُ عَمْرُو بْنُ [مُرَّةَ] فَقَالَ: يَا
رَسُولَ اللَّهِ! إِنَّ اللَّهَ قَدْ كَتَبَ عَلَيَّ الشَّقْوَةَ.
فَمَا أُرَانِي أُرْزَقُ إِلَّا مِنْ دُفْيٍ يَكْفِي. فَأَذَّنَ لِي
فِي الْغِنَاءِ، فِيهِ غَيْرُ فَاحِشَةٍ. فَقَالَ رَسُولُ اللَّهِ
ﷺ: «لَا أَذْنُ لَكَ، وَلَا كِرَامَةَ، وَلَا نِعْمَةً
عَيْنٍ. كَذَبْتَ، أَيُّ عَدُوِّ اللَّهِ لَقَدْ رَزَقَكَ اللَّهُ
طَيِّبًا حَلَالًا، فَاخْتَرْتَ مَا حَرَّمَ اللَّهُ عَلَيْكَ مِنْ
رِزْقِهِ مَكَانَ مَا أَحَلَّ اللَّهُ عَزَّ وَجَلَّ لَكَ مِنْ
حَلَالِهِ. وَلَوْ كُنْتُ تَقَدَّمْتُ إِلَيْكَ لَفَعَلْتُ بِكَ
وَفَعَلْتُ. ثُمَّ عَنِي، وَتُبْتُ إِلَى اللَّهِ. أَمَا إِنَّكَ إِنْ
فَعَلْتَ، بَعْدَ التَّقْدِيمَةِ إِلَيْكَ، ضَرَبْتُكَ ضَرْبًا
وَجِيعًا، وَحَلَقْتُ رَأْسَكَ مُثَلَّةً، وَنَفَيْتُكَ مِنْ
أَهْلِكَ، وَأَخْلَعْتُ سَلْبَكَ نُهْبَةً لِفَتْيَانِ أَهْلِ
الْمَدِينَةِ».

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

فَلَمَّا وُلِّيَ، قَالَ النَّبِيُّ ﷺ: «هُؤُلَاءِ
الْعِصَاةُ. مَنْ مَاتَ مِنْهُمْ بِغَيْرِ تَوْبَةٍ، حَشَرَهُ اللَّهُ
عَزَّ وَجَلَّ يَوْمَ الْقِيَامَةِ كَمَا كَانَ فِي الدُّنْيَا
مُحْتَضًا عَرِيَانًا لَا يَسْتَتِرُ مِنَ النَّاسِ بِهَدْيَةٍ، كَلَّمَا
فَامَ صُرْعًا».

will fall to the ground.'” (Maudu’)

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

Comments:

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

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

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

تخريج: [صحيح] تقدم، ح: ١٩٠٢ .

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

21. The Chapters On Blood Money

(المعجم ٢١) أَبْوَابُ الدِّيَّاتِ

(التحفة ١٣)

Chapter 1. The Severity Of Killing A Muslim

(المعجم ١) - بَابُ التَّغْلِيظِ فِي قَتْلِ

مُسْلِمٍ ظَلَمًا (التحفة ١)

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

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

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

Comments:

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

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

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

دِمَها . لِأَنَّهُ أَوَّلُ مَنْ سَنَّ الْقَتْلَ .»

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

Comments:

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

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

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

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

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

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

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

Comments:

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

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

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

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

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

Comments:

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

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

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

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

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

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

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

٢٦٢١ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ: حَدَّثَنَا

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

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

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

Comments:

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

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

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

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

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

was the most knowledgeable of people on earth, and he was told of a man so he went to him and said: "I have killed ninety-nine people. Can I repent?" He said: "After ninety-nine people?!" He said: 'So he drew his sword and killed him, thus completing one hundred. Then the idea of repentance occurred to him (again), so he asked who was the most knowledgeable of people, and he was told of a man (so he went to him) and said: "I have killed one hundred people. Can I repent?" He said: "Woe to you, what is stopping you from repenting? Leave the evil town where you are living and go to a good town, such and such town and worship your Lord there." So he went out, heading for the good town, but death came to him on the road. The angels of mercy and the angels of punishment argued over him. *Iblis* (Satan) said: "I have more right to him, for he never disobeyed me for a moment." But the angels of mercy said: "He went out repenting."

(One of the narrators) Hammâm said: "Humaid At-Tawîl narrated to me from Bakr bin 'Abdullâh, that Abu Râfi' said: 'So Allâh sent an angel to whom they referred (the case). He said: "Look and see which of the two towns was he closer, and put him with its people."

(One of the narrators) Qatâdah said: "Hasan narrated to us: 'When death came to him he

قَلْبِي: «إِنَّ عَبْدًا قَتَلَ تِسْعَةً وَتِسْعِينَ نَفْسًا، ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ. فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فُدِّلَ عَلَى رَجُلٍ فَأَتَاهُ. فَقَالَ: إِنِّي قَتَلْتُ تِسْعَةً وَتِسْعِينَ نَفْسًا. فَهَلْ لِي مِنْ تَوْبَةٍ؟ قَالَ: بَعْدَ تِسْعَةٍ وَتِسْعِينَ نَفْسًا قَالَ: فَاتْتَضَى سَيْفُهُ فَقَتَلَهُ. فَأَكْمَلَ بِهِ الْمِائَةَ. ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ فَسَأَلَ عَنْ أَعْلَمِ أَهْلِ الْأَرْضِ. فُدِّلَ عَلَى رَجُلٍ. [فَأَتَاهُ] فَقَالَ: إِنِّي قَتَلْتُ مِائَةَ نَفْسٍ، فَهَلْ لِي مِنْ تَوْبَةٍ؟ قَالَ، فَقَالَ: وَيْحَكَ وَمَنْ يَحُولُ بَيْنَكَ وَبَيْنَ التَّوْبَةِ؟ أَخْرَجَ مِنَ الْقَرْيَةِ الْحَبِيبَةِ الَّتِي أَنْتَ فِيهَا، إِلَى الْقَرْيَةِ الصَّالِحَةِ، قَرْيَةٍ كَذَا وَكَذَا. فَأَعْبُدُ رَبَّكَ فِيهَا. فَخَرَجَ يُرِيدُ الْقَرْيَةَ الصَّالِحَةَ، فَعَرَضَ لَهُ أَجَلُهُ وَفِي الطَّرِيقِ. فَاخْتَصَمَتْ فِيهِ مَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْعَذَابِ. قَالَ إِبْلِيسُ: أَنَا أَوْلَى بِهِ، إِنَّهُ لَمْ يَعْصِنِي سَاعَةً قَطُّ. قَالَ، فَقَالَتْ مَلَائِكَةُ الرَّحْمَةِ: إِنَّهُ خَرَجَ تَائِبًا».

قَالَ هَمَّامٌ: فَحَدَّثَنِي حُمَيْدُ الطَّوِيلُ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي رَافِعٍ، قَالَ: بَعَثَ اللَّهُ عَزَّ وَجَلَّ مَلَكًا. فَاخْتَصَمُوا إِلَيْهِ ثُمَّ رَجَعُوا. فَقَالَ: انظُرُوا. أَيُّ الْقَرْيَتَيْنِ كَانَتْ أَقْرَبَ، فَأَلْحَقُوهُ بِأَهْلِهَا.

قَالَ قَتَادَةُ: فَحَدَّثَنَا الْحَسَنُ، قَالَ: لَمَّا حَضَرَهُ الْمَوْتُ اخْتَفَرَ بِنَفْسِهِ قَرُوبَ مِنَ الْقَرْيَةِ الصَّالِحَةِ، وَبَاعَدَ مِنْهُ الْقَرْيَةَ الْحَبِيبَةَ. فَأَلْحَقُوهُ بِأَهْلِ الْقَرْيَةِ الصَّالِحَةِ.

حَدَّثَنَا أَبُو الْعَبَّاسِ بْنُ عَبْدِ اللَّهِ بْنِ

strove and drew closer to the good town, and farther away from the evil town, so they put him with the people of the good town.” (Sahih)

Another chain from Hammâm, and he mentioned similarly.

إِسْمَاعِيلُ الْبَعْدَانِيُّ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا هَمَّامٌ، فَذَكَرَ نَحْوَهُ.

تخريج: أخرجه البخاري، أحاديث الأنبياء، باب: (٥٤)، ح: ٣٤٧٠، ومسلم، التوبة، باب قبول توبة القاتل، وإن كثر قتله، ح: ٢٧٦٦ من حديث قتادة به.

Comments:

- a. One who after committing a crime is afraid of Allâh’s justice, he should not be disappointed by religious scholars from Allâh’s mercy. They should encourage him to repent and ask Allâh’s mercy. Anyone who takes undue leave of Allâh’s mercy should be warned of severe punishment.
- b. True and sincere repentance may induce the mercy of Allâh to pardon mortal sins like bloodshed.
- c. One way of improvement of character is to leave the bad and impure environment and join the company of good people.

Chapter 3. If A Person’s Relative Is Killed, He Has The Choice Of Three Things

(المعجم ٣) - بَابُ مَنْ قُتِلَ لَهُ قَيْلٌ فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ (التحفة ٣)

2623. It was narrated from Abu Shuraih Al-Khuzâ'i that the Messenger of Allâh ﷺ said: "Whoever suffers from killing or wounding, has the choice of three things, and if he wants the fourth then restrain him. He may kill (the killer), or forgive him, or take the blood money. Whoever accepts any of these (options), then kills (the killer) after that will have the fire of Hell to abide therein forever." (Da'if)

٢٦٢٣ - حَدَّثَنَا مُحَمَّدٌ: حَدَّثَنَا عُمَانُ وَ أَبُو بَكْرِ ابْنَا أَبِي شَيْبَةَ: قَالََا: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ؛ ح: وَحَدَّثَنَا أَبُو بَكْرِ وَ عُمَانُ [ابْنَا] أَبِي شَيْبَةَ، قَالََا: حَدَّثَنَا جَرِيرٌ وَ عَبْدُ الرَّحِيمِ ابْنُ سَلِيمَانَ، جَمِيعًا عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنِ الْحَارِثِ بْنِ فَضِيلٍ، أَظَنَّهُ عَنِ ابْنِ أَبِي الْعَوَّجَاءِ، وَاسْمُهُ سَفْيَانُ عَنْ أَبِي شُرَيْحِ الْخَزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أُصِيبَ بِدَمٍ أَوْ خَيْلٍ، - وَالْخَيْلُ الْجِرَاحُ فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ. فَإِنْ أَرَادَ الرَّابِعَةَ، فَخَذُوا عَلَى يَدَيْهِ: أَنْ يَقْتُلَ أَوْ يَغْفُو أَوْ يَأْخُذَ الدِّيَةَ. فَمَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ فَعَادَ، فَإِنْ لَهُ

نَارَ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيهَا أَبَدًا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الإمام يأمر بالعتو في الدم، ح: ٤٤٩٦ من حديث ابن إسحاق به، وصرح بالسماع عند الطحاوي في معاني الآثار: ٣/ ١٧٤، ١٧٥ على تصحيح، وقع في السند * وسفيان بن أبي العوجاء ضعيف (تقريب وغيره)، ولبعض حديثه شاهد حسن عند أحمد: ٣٢/٤، وانظر الحديث الآتي.

Comments:

- a. 'Whoever suffers from killing or wounding' means that one of his relatives is killed or he himself is wounded. In both situations he can either have the killer killed for killing his relative, or take the blood money for his wound and he can forgive the offender. This issue is also proven by other arguments in other *Ahâdith*.
- b. 'The fourth' means an unlawful demand, like first accepting the blood money and finishing the matter, but later on finding an opportunity and killing the killer. If he does so, he is a killer and should be punished according to the law. Doing one thing (accepting the blood money) and then doing the other (killing the killer) means the same as explained above.

2624. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "If a person's relative is killed, he has the choice of two things: He may either have the killer killed, or he may demand the blood money." (*Sahih*)

٢٦٢٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيُّ: حَدَّثَنَا الْوَلِيدُ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يَقْتُلَ وَإِمَّا أَنْ يُفْدَى».

تخریج: أخرجه البخاري، اللقطة، باب: كيف تعرف لقطه أهل مكة، ح: ٢٤٣٤، ومسلم، الحج، باب تحريم مكة وتحريم صيدها وخلها وشجرها ولقطنها إلا لمنشد، على الدوام، ح: ١٣٥٥ من حديث الوليد بن مسلم به.

Comments:

- a. Killing in retaliation, and blood money, have been mentioned as identical things, as the third thing, forgiveness has been designated a higher status than the other two.
- b. Blood money is better than killing in retaliation, as there is also a segment of forgiveness in it. There is also a possibility of reduction in blood money by the heirs.
- c. The decision of killing or taking blood money is the right of the heirs. The court has nothing to do with this decision.
- d. Killing in retaliation is a punishment only for deliberate murder. The punishment for accidental murder is only blood money.

Chapter 4. One Who Is Killed Deliberately And His Heirs Accept The Blood Money

2625. It was narrated that Ziyād bin Sa'd bin Dumairah (said): "My father and my paternal uncle, who were present at Hunain with the Messenger of Allāh ﷺ, narrated to me: 'The Prophet ﷺ prayed *Zuhr*, then he sat beneath a tree. Aqra' bin Hâbis, who was the chief of Khindaf, came to him arguing in defense of Muhallim bin Jaththâmah. 'Uyainah bin Hisn came to him demanding vengeance for 'Âmir bin Adbat, who was from the tribe of Ashja'. The Prophet ﷺ said to them: 'Will you accept the blood money?'" But they refused. Then a man from Banu Laith, whose name was Mukaital, stood up and said: 'O Messenger of Allāh! By Allāh! This man who was killed in the early days of Islam is like sheep that come to drink but stones are thrown at them, so the last of them runs away (i.e., the murderer should be killed).' The Prophet ﷺ said: 'You will have fifty (camels) while we are travelling and fifty (camels) when we return.' So they accepted the blood money." (*Hasan*)

(المعجم ٤) - بَابُ مَنْ قَتَلَ عَمَدًا،
فَرَضُوا بِالذِّيَّةِ (التحفة ٤)

٢٦٢٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: حَدَّثَنِي مُحَمَّدُ بْنُ جَعْفَرٍ، عَنْ [زِيَادِ] بْنِ [سَعْدِ بْنِ] ضَمِيرَةَ: حَدَّثَنِي أَبِي وَعَمِّي، وَكَانَا شَهِدًا حَتِينًا مَعَ رَسُولِ اللَّهِ ﷺ، قَالَ: صَلَّى النَّبِيُّ ﷺ الظُّهْرَ. ثُمَّ جَلَسَ تَحْتَ شَجَرَةٍ. فَقَامَ إِلَيْهِ الْأَقْرَعُ بْنُ حَابِسٍ، وَهُوَ سَيْدُ خِنْدَفٍ، يَرُدُّ عَنْ دَمِ مُحَلِّمِ بْنِ جَثَّامَةَ. وَقَامَ عَيْشَةُ بْنُ حِصْنٍ يَطْلُبُ بِدَمِ عَامِرِ بْنِ الْأَضْبَطِ. وَكَانَ أَشْجَعِيًّا. فَقَالَ لَهُمُ النَّبِيُّ ﷺ: «تَقْبَلُونَ الدِّيَةَ؟» فَأَبَوْا. فَقَامَ رَجُلٌ مِنْ بَنِي لَيْثٍ، يُقَالُ لَهُ مُكَيْتَلٌ. فَقَالَ: يَا رَسُولَ اللَّهِ ﷺ وَاللَّهِ! مَا سَبَّهْتُ هَذَا الْقَتِيلَ، فِي غُرَّةِ الْإِسْلَامِ، إِلَّا كَعَنَمٍ وَرَدَّتْ، فَرُمِيَتْ، فَفَنَّرَ آخِرُهَا، فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ خَمْسُونَ فِي سَفَرِنَا، وَخَمْسُونَ إِذَا رَجَعْنَا» فَاقْبَلُوا الدِّيَةَ.

تخریج: [إسناده حسن] أخرجه أبو داود، الديات، باب الإمام يأمر بالعفو في الدم، ح: ٤٥٠٣ من حديث ابن إسحاق به، وصححه ابن الجارود، ح: ٧٧٧، وحسنه الحافظ في الإصابة: ٦٤/٣ * زياد بن سعد بن ضميرة وثقه ابن حبان، وابن الجارود وغيرهما، فحديثه لا ينزل عن درجة الحسن.

Comments:

- In the case of deliberate murder both the punishments, either taking blood money or killing in retaliation are lawful.
- There can be reconciliation in the case of blood money. Reduction is possible only with the consent of heirs, but increase is not permitted.
- There are only three types of situations in which a killing takes place: A) Deliberate killing. Meaning that the killer deliberately and intentionally attacks with a weapon and kills. In this situation the amount of blood money is fixed, as has been mentioned in the *Hadith*. B) Killing by mistake, in a manner that resembles intentionally killing. Meaning, to attack with such a weapon which usually does not kill, like a stick and rod etc. This situation is identical to deliberate killing, and the punishment is also the same. C) Killing by mistake or by accident. In this situation the intention is not to kill but it happens by accident, like one man fires at a deer and suddenly someone comes in the way and is killed, or as usually happens in road accidents. The punishment of this is blood money, which is one hundred young camels or their price. (See *Hadith* 2630)

2626. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allāh ﷺ said: "Whoever kills deliberately, he will be handed over to the heirs of the victim. If they want, they may kill him, or if they want, they may accept the blood money, which is thirty *Hiqqah*,^[1] thirty *Jadha'ah*^[2] and forty *Khalifah*.^[3] This is the blood money for deliberate slaying. Whatever is settled by reconciliation belongs to them, and that is a binding covenant.'" (*Hasan*)

٢٦٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ الدَّمَشْقِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سَلِيمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَمْدًا، دُفِعَ إِلَى أَوْلِيَاءِ الْقَتِيلِ. فَإِنْ شَاءُوا قَتَلُوا. وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ. وَذَلِكَ ثَلَاثُونَ حِقَّةً وَثَلَاثُونَ جَذَعَةً وَأَرْبَعُونَ خَلْفَةً. وَذَلِكَ عَقْلُ الْعَمْدِ. وَمَا صَوْلِحُوا عَلَيْهِ، فَهُوَ لَهُمْ. وَذَلِكَ تَشْدِيدُ الْعَقْلِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الدييات، باب ولي العمد يأخذ الدية، ح: ٤٥٠٦ من حديث محمد بن راشد به، وحسنه الترمذي، ح: ١٣٨٧.

[1] A three-year-old she-camel.

[2] A four-year-old she-camel.

[3] Pregnant she-camels which are halfway through their pregnancy.

Chapter 5. The Blood Money For What Appears To Be Intentional Due To Its Harshness

2627. It was narrated from 'Abdullāh bin 'Amr that the Prophet ﷺ said: "Killing by mistake that resembles intentionally, is killing with a whip or stick, for which the blood money is one hundred camels, of which forty should be pregnant she-camels in the middle of their pregnancies, with their young in their wombs." (*Sahih*)

(المعجم ٥) - بَابُ: دِيَّةٌ شَبِهَ الْعَمْدِ مُعَلَّظَةٌ (التحفة ٥)

٢٦٢٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَ مُحَمَّدُ بْنُ جَعْفَرٍ، قَالَ: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي يُوْب. سَمِعْتُ الْقَاسِمَ بْنَ رَبِيعَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو [عَمْرٍو] عَنِ النَّبِيِّ ﷺ قَالَ: «قَتِيلُ الْخَطَاِ شَبِيهُ الْعَمْدِ، قَتِيلُ السَّوْطِ وَالْعَصَا. مِائَةٌ مِنَ الْإِبِلِ. أَرْبَعُونَ مِنْهَا خَلْفَةٌ، فِي بَطْنِهَا أَوْلَادُهَا».

تخریج: (الف) [صحیح] أخرجه النسائي، القسامة، باب: كم دية شبه العمد ... الخ، ح: ٧٩٠٥ عن ابن بشار به.

Another chain with similar wording. (*Sahih*)

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا سُلَيْمَانُ ابْنُ حَرْبٍ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ خَالِدِ الْحَدَّاءِ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عُقْبَةَ بْنِ أَوْسٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

تخریج: (ب) [صحیح] أخرجه أبو داود، الديات، باب: في دية الخطأ شبه العمد، ح: ٤٥٤٧ من حديث سليمان به، وصححه ابن حبان (موارد)، ح: ١٥٢٦، وابن الجارود، ح: ٧٧٣، وابن القطان القاسمي (التلخيص الحبير: ١٥/٤).

Comments:

- a. Killing by mistake that resembles intentionally killing is named so because in this killing, the purpose of the killer is not to kill but to hurt only.
- b. 'With their young in their wombs' means pregnant she-camels. It has been repeated only for emphasis.

2628. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ stood up on the Day of the conquest of Makkah, on the

٢٦٢٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا شُعْبَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ جُدْعَانَ، سَمِعَهُ مِنَ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنِ ابْنِ عَمْرٍو أَنَّ

steps of the Ka'bah. He praised and glorified Allāh, then he said: "Praise is to Allāh Who has fulfilled His promise, granted victory to His slave and defeated the Confederates alone. The one who is killed by mistake is the one who is killed with a whip or a stick; for him the blood money is one hundred camels, of which forty should be pregnant she-camels with their youngs in their wombs. Every custom of Ignorance period, and every blood claim, is beneath these two feet of mine (i.e., is abolished), except for the custodianship of the Ka'bah and the provision of water for the pilgrims, which I confirm still belong to the people to whom they belonged before." (*Da'if*)

رَسُولَ اللَّهِ ﷺ قَامَ، يَوْمَ فَتَحَ مَكَّةَ، وَهُوَ عَلَى دَرَجِ الْكَعْبَةِ. فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ. فَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي صَدَّقَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الْأَحْزَابَ وَخَدَّهُ. أَلَا إِنَّ قَتِيلَ الْخَطَا، قَتِيلَ السَّوِطِ وَالْعَصَا: فِيهِ مِائَةٌ مِنَ الْإِبِلِ مِنْهَا أَرْبَعُونَ خَلْفَةً، فِي بَطُونِهَا أَوْلَادُهَا. أَلَا إِنَّ كُلَّ مَأْتَرَةٍ كَانَتْ فِي الْجَاهِلِيَّةِ، وَدَمٌ تَحْتِ قَدَمَيَّ هَاتَيْنِ. إِلَّا مَا كَانَ مِنْ سِدَائَةِ النَّبِيِّ وَسِقَايَةِ الْحَاجِّ. أَلَا إِنِّي قَدْ أَمْضَيْتُهُمَا لِأَهْلِهِمَا كَمَا كَانَا».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب في دية الخطأ شبه العمد، ح: ٤٥٤٩ من حديث ابن جلعان به، وهو ضعيف، ومن حديث ابن عيينة به تعليقاً، ح: ٤٥٤٩، وله شواهد منها الحديث السابق.

Comments:

- Allāh's promise means the conquest of Makkah and victory of Islam which was fulfilled in the life of the Noble Prophet ﷺ.
- Killing by mistake means the killing that resembles killing intentionally. It has been explained in this *Hadith* by mentioning a stick or whip.
- Before the conquest of Makkah different offices for public services related to the Sacred Ka'bah were with various tribes. All other offices were cancelled, but the office of the custodianship of Ka'bah and the office of provision of water for the pilgrims were not changed because there were no anti-Islamic beliefs or practices involved.

Chapter 6. The Blood Money For Killing By Mistake

2629. It was narrated from Ibn 'Abbās that the Prophet ﷺ set the blood money at twelve thousand (Dirham). (*Hasan*)

(المعجم ٦) - بَابُ دِيَةِ الْخَطَا (التحفة ٦)

٢٦٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُعَاذُ ابْنُ هَانِئٍ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ

عَنِ النَّبِيِّ ﷺ أَنَّهُ جَعَلَ الدِّيَّةَ اثْنَيْ عَشَرَ أَلْفًا.

تخريج: [إسناده حسن] أخرجه الترمذي، الديات، باب ماجاء في الدية، كم هي من الدراهم، ح: ١٣٨٨ عن ابن بشار به، وقال النسائي: محمد بن مسلم ليس بالقوي في الحديث، وهذا خطأ والصواب عن عكرمة: مرسل، قلت: بل هو صدوق حسن الحديث، من رجال مسلم وغيره، أخرجه أبو داود، ح: ٤٥٤٦ من طريقه به.

2630. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "Whoever is killed by mistake, his blood money in camels is thirty *Bint Makhād* (a one-year-old she-camel), thirty *Bint Labun* (a two-year-old she-camel), thirty *Hiqqah* (a three-year-old she-camel) and ten *Bani Labun* (two-year-old male camels)." The Messenger of Allāh ﷺ used to fix the value (of the blood money for accidental killing) among town-dwellers at four hundred Dinār or the equivalent value in silver. When he calculated the price in terms of camels (for Bedouins), it would vary from one time to another. When prices rose, the value (in Dinār) would rise; and when prices fell, the value (in Dinār) would fall. At the time of the Messenger of Allāh ﷺ the value was between four hundred and eight hundred Dinār, or the equivalent value in silver, eight thousand Dirham. And the Messenger of Allāh ﷺ ruled that if a person's blood money was paid in cattle, among those who kept cattle, the amount was two hundred cows; and if a person's

٢٦٣٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ الْمَرْوَزِيُّ: أَتَيْنَا بَرِيدَ بْنَ هَارُونَ: أَتَيْنَا مُحَمَّدَ بْنَ رَاشِدٍ، عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ قُتِلَ خَطَأً، فِدْيَتُهُ مِنَ الْإِبِلِ ثَلَاثُونَ بِنْتِ مَخَاضٍ وَثَلَاثُونَ ابْنَةَ لَبُونٍ وَثَلَاثُونَ حِقَّةً، وَعَشْرَةَ بَنِي لَبُونٍ». وَكَانَ رَسُولُ اللَّهِ ﷺ يَقُومُهَا عَلَى أَهْلِ الْبُقَرَى أَرْبَعِمِائَةَ دِينَارٍ، أَوْ عَدْلُهَا مِنَ الْوَرِقِ. وَيَقُومُهَا عَلَى أَزْمَانِ الْإِبِلِ، إِذَا عَلَتْ رَفَعَ فِي ثَمَنِهَا. وَإِذَا هَانَتْ نَقَصَ مِنْ ثَمَنِهَا. عَلَى نَحْوِ الزَّمَانِ مَا كَانَ. فَبَلَغَ قِيمَتُهَا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ مَا بَيْنَ الْأَرْبَعِمِائَةِ دِينَارٍ إِلَى ثَمَانِمِائَةِ دِينَارٍ. أَوْ عَدْلُهَا مِنَ الْوَرِقِ ثَمَانِيَةَ آلَافٍ دِرْهَمٍ. وَقَضَى رَسُولُ اللَّهِ ﷺ أَنَّ مَنْ كَانَ عَقْلُهُ فِي الْبُقَرَى، عَلَى أَهْلِ الْبُقَرَى، مَا تَنَّى بَقَرَةً. وَمَنْ كَانَ عَقْلُهُ فِي الشَّاءِ، عَلَى أَهْلِ الشَّاءِ، أَلْفِي شَاةٍ.

blood money was paid in sheep, among those who kept sheep, the value was two thousand sheep.

(Hasan)

تخريج: [إسناده حسن] أخرجه أبو داود، الديات، باب الدية كم هي؟، ح: ٤٥٤١ من حديث يزيد به.

Comments:

- a. Blood money is determined by the quantity of camels.
- b. If it not possible to pay in the form of camels then cows or goats can be paid.
- c. Payment is also possible in cash. Judge or the government are responsible to determine the price of one hundred camels.
- d. Increase or decrease in the price of the camels may affect the price in cash.

2631. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "The blood money of one who is killed by mistake is twenty *Hiqqah* (three-year-old she-camels), twenty *Jadha'ah* (four-year-old she-camels), twenty *Bint Makhâd* (one-year-old she-camel), twenty *Bint Labun* (two-year old she-camels) and twenty *Bani Makhâd* (one-year-old male camels)." (Da'if)

٢٦٣١ - حَدَّثَنَا عَبْدُ السَّلَامِ بْنُ عَاصِمٍ: حَدَّثَنَا الصَّبَّاحُ بْنُ مُحَارِبٍ: حَدَّثَنَا حَجَّاجُ بْنُ أَرْطَاةَ: حَدَّثَنَا زَيْدُ بْنُ جُبَيْرٍ، عَنْ خُشْفِ بْنِ مَالِكِ الطَّائِي، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِي دِيَةِ الْخَطِئِ عَشْرُونَ حِقَّةً وَعَشْرُونَ جَذَعَةً وَعَشْرُونَ بِنْتِ مَخَاضٍ وَعَشْرُونَ بِنْتِ لَبُونٍ وَعَشْرُونَ بَنِي مَخَاضٍ [أَدْكُورًا].»

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب الدية كم هي؟، ح: ٤٥٤٥ من حديث حجاج به، وانظر، ح: ٤٩٦، ١١٢٩، ٢٥٨٧.

2632. It was narrated from 'Krimah, from Ibn 'Abbâs, that the Prophet ﷺ set the blood money at twelve thousand (Dirham). He said:^[1] "This is what Allâh says: 'And they could not find any cause to do so except that Allâh and His Messenger had enriched them of His bounty.'^[2] He said: "By their taking the

٢٦٣٢ - حَدَّثَنَا الْعَبَّاسُ بْنُ جَعْفَرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سِنَانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عَمْرٍو بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ جَعَلَ الدِّيَةَ اثْنَيْ عَشَرَ أَلْفًا. قَالَ: وَذَلِكَ قَوْلُهُ: «وَمَا نَقَمُوا إِلَّا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ مِنْ فَضْلِهِ» [التوبة: ٧٤].

[1] The speaker is either 'Krimah, or Muhammad bin Sinân, and Allâh knows best.

[2] At-Taubah 9:74.

blood money."^[1] (Hasan)

قَالَ: بِأَخْذِهِمُ الدِّيَّةَ.

تخريج: [إسناده حسن] أخرجه ابن أبي حاتم الرازي في التفسير: ٦/١٨٤٥، توبة: ٩٤ من حديث محمد بن سنان الباهلي به، وانظر، ح: ٢٦٢٩، وهذا طرف منه.

Chapter 7. The Blood Money Must Be Paid By The 'Āqilah; If there Is No 'Āqilah, Then It Must Be Paid From The Treasury

(المعجم ٧) - بَابُ الدِّيَّةِ عَلَى الْعَاقِلَةِ
فَإِنْ لَمْ يَكُنْ عَاقِلَةً فَفِي بَيْتِ الْمَالِ
(التحفة ٧)

2633. It was narrated that Mughirah bin Shu'bah said: "The Messenger of Allāh ﷺ ruled that the blood money must be paid by the 'Āqilah." (Sahih)

٢٦٣٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا أَبِي، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدِ بْنِ نَضْلَةَ، عَنْ الْمُغِيرَةَ بْنِ شُعْبَةَ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالدِّيَّةِ عَلَى الْعَاقِلَةِ.

تخريج: أخرجه مسلم، القسامة والمحاربين، باب دية الجنين ووجوب الدية في قتل الخطأ وشبه العمدة على عاقلة الجاني، ح: ١٦٨٢ من حديث منصور به.

Comments:

- 'Āqilah' means the near male relatives on the father's side who are obliged to pay the blood money on behalf of any of the clan's members who kills a person.
- The first responsibility of the payment of blood money is with brothers and nephews, after them, the responsibility rests upon their son. Meaning the male members of one grandfather. After this, the responsibility goes to the brothers of the grandfather.
- Making blood money the responsibility of the 'Āqilah is to divide the due blood money into many easy shares, to lighten the burden of payment. In this way one person or one family is not overburdened.
- Another reason for collecting the blood money from the relatives is that they usually help each other in fights and disputes, they also understand that in case of bloodshed, they will have to pay their share of blood money, so naturally they will not allow any member of their tribe to commit this type of crime, rather they will stop him from doing such a crime.

2634. It was narrated from Miqdām Ash-Shāmi that the

٢٦٣٤ - حَدَّثَنَا يَحْيَى بْنُ دُرُومْتَ: حَدَّثَنَا

^[1] The last phrase appears to be from Muhammad bin Sinān, one of the narrators. And Allāh knows best. And most of the narrations of this *Hadith* mentioning the *Āyah* are from 'Ikrimah.

Messenger of Allāh ﷺ said: "I am the heir of the one who has no heir, and I will pay the blood money on his behalf and inherit from him, and the maternal uncle is the heir of the one who has no heir; he pays the blood money on his behalf and inherits from him." (Sahih)

حَمَادُ بْنُ زَيْدٍ عَنْ بُدَيْلِ بْنِ مَيْسَرَةَ، عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ، عَنْ رَاشِدٍ، عَنْ أَبِي عَامِرٍ الْهَوَزَنِيِّ، عَنِ الْمُقْدَامِ الشَّامِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَنَا وَارِثٌ مَنْ لَا وَارِثَ لَهُ. أَغْفِلُ عَنْهُ وَارِثُهُ. وَالْخَالَ وَارِثٌ مَنْ لَا وَارِثَ لَهُ. يَغْفِلُ عَنْهُ وَيَرِثُهُ».

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: في ميراث ذوي الأرحام، ح: ٢٨٩٩ من حديث بديل به، وصححه ابن الجارود، ح: ٩٦٥ وابن حبان (موارد)، ح: ١٢٢٥، والحاكم: ٣٤٤/٤ على شرط الشيخين، وتعليقه الذهبي، وصححه ابن القطان، وحسنه أبو زرعة الدمشقي، وله طريق آخر عند ابن حبان، ح: ١٢٢٦، وإسناده حسن.

Comments:

- a. The priority and shares of the heirs have been determined in the Noble Qur'an and the Sunnah of the Noble Prophet ﷺ. These heirs are called *Ashābul-Furu'd*, first responsibility holders. In the absence of these heirs, or after giving them their shares of inheritance, the rest of the property or wealth of the deceased goes to the *Asabah*, meaning those relatives of the deceased who are from the father's side, like the brother, nephew (son of brother) father's brother etc. In the absence of the *Asabah*, legacy goes to *Dhul-Arhām*. Meaning relatives of the deceased through the mother, like the maternal uncle, the mother's sister and the mother's father etc.
- b. As the priority is determined by the inheritance, the same priority remains in the payment of blood money.

Chapter 8. One Who Prevents The Next Of Kin Of The Slain From Exactng Retaliation Or Taking The Blood Money

2635. It was narrated from Ibn 'Abbās, who attributed it to the Prophet ﷺ: "Whoever kills out of folly or for tribal motives, using a rock, a whip, or a stick; he must pay the blood money for killing by mistake. Whoever kills deliberately, he is to be killed in retaliation. Whoever tries to prevent that, upon him is the

(المعجم ٨) - بَابُ مَنْ حَالَ بَيْنَ وَلِيِّ الْمُقْتُولِ وَبَيْنَ الْقَوْدِ أَوْ الدِّيَّةِ (التحفة ٨)

٢٦٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: حَدَّثَنَا سَلِيمَانُ بْنُ كَثِيرٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنْ ابْنِ عَبَّاسٍ، رَفَعَهُ إِلَى النَّبِيِّ ﷺ قَالَ: «مَنْ قَتَلَ فِي عَمِيَّةٍ أَوْ عَصِيَّةٍ بِحَجَرٍ أَوْ سَوْطٍ أَوْ عَصَا، فَعَلَيْهِ عَقْلُ الْخَطِيئِ. وَمَنْ قَتَلَ عَمْدًا فَهُوَ قَوْدٌ. وَمَنْ حَالَ بَيْنَهُ وَبَيْنَهُ، فَعَلَيْهِ لَعْنَةُ اللَّهِ

curse of Allâh, the angels and all the people, and no change nor equitable exchange will be accepted from him.”^[1] (*Sahih*)

وَالْمَلَائِكَةُ وَالنَّاسُ أَجْمَعِينَ. لَا يَقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ.

تخریج: [إسناده صحيح] أخرجه النسائي، القسامة، باب من قتل بحجر أو سوط، ح: ٤٧٩٤ عن محمد بن معمر به، وأخرجه أبو داود، ح: ٤٥٤٠ من حديث سليمان به.

Comments:

- Folly or tribal motives, means that two parties fight each other and they make use of stones, sticks clubs and whips etc. If someone is killed in this fight, it is very difficult to determine and pinpoint the killer, so no one can be killed in retaliation. In such cases blood money is the essential punishment.
- Killing in retaliation is a punishment fixed by Allâh in the revealed Divine law, therefore, putting up any kind of hindrances to it is a harshly censured crime.

Chapter 9. Actions For Which There Is No Retaliation

(المعجم ٩) - بَابُ مَا لَا قَوَدَ فِيهِ

(التحفة ٩)

2636. Nimrân bin Jâriyah narrated from his father that a man struck another man on the wrist with his sword and severed it, not at the joint. He appealed to the Prophet ﷺ who ordered that the *Diyah* be paid. The man said: “O Messenger of Allâh, I want retaliation.” He said: “Take the compensation and may Allâh bless you therein.” And he did not rule that he be allowed retaliation. (*Da'if*)

٢٦٣٦ - حَدَّثَنَا [مُحَمَّدُ بْنُ الصَّبَّاحِ وَ] عَمَّارُ بْنُ خَالِدِ الْوَاسِطِيِّ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عِيَّاشٍ، عَنْ دَهْمِ بْنِ قُرَّانَ: حَدَّثَنِي نِمْرَانَ ابْنُ جَارِيَةَ، عَنْ أَبِيهِ أَنَّ رَجُلًا ضَرَبَ رَجُلًا عَلَى سَاعِدِهِ بِالسَّيْفِ فَقَطَعَهَا مِنْ غَيْرِ مَفْصِلٍ. فَاسْتَعَدَى عَلَيْهِ النَّبِيُّ ﷺ. فَأَمَرَ لَهُ بِالذِّيَّةِ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أُرِيدُ الْقِصَاصَ. فَقَالَ: «خُذِ الذِّيَّةَ. بَارَكَ اللَّهُ لَكَ فِيهَا». وَكَمْ يُقْبَضُ لَهُ بِالْقِصَاصِ.

تخریج: [إسناده ضعيف جداً] أخرجه الطبراني: ٢/٢٦٠ من طريق أبي بكر بن عياش به، وتابعه أسد بن عمرو البجلي عنده، وانظر، ح: ٢٣٤٣ لحال دهثم.

[1] No *Sarf* – they say it means no repentance, which is changing from the state of disobedience to the state of obedience; and no *’Adl* – meaning no equity through ransoming. And it is said to be for the purpose of stressing the gravity of the wrong. See explanation by Sindi. See also no. 2712.

2637. It was narrated from 'Abbâs bin 'Abdul-Muttalib that the Messenger of Allâh ﷺ said: "There is no retaliation for a head wound that does not reach the brain, a spear wound that does not penetrate deeply, or a wound that dislocates a bone." (*Da'if*)

٢٦٣٧ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا رِشْدِينُ ابْنُ سَعْدٍ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ، عَنْ مُعَاذِ بْنِ مُحَمَّدٍ الْأَنْصَارِيِّ، عَنِ ابْنِ صُهَيْبَانَ، عَنِ الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَوْدَ فِي الْمَأْمُومَةِ وَلَا الْجَائِفَةِ وَلَا الْمُتَقَلِّةِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٦٥/٨ من طريق أبي يعلى عن أبي كريب به، وقال البوصيري: هذا إسناد ضعيف، رشدين بن سعد ضعفه ابن معين، وأبو حاتم الرازي، وأبو زرعة، والنسائي، وابن حبان، والنجورجاني، وابن يونس، وابن سعد، وأبو داود، والدارقطني وغيرهم، وله شاهد ضعيف في المطالب العالية، وروى البيهقي بإسناد حسن عن طلحة، رفعه: 'ليس في المأمومة قود'.

Comments:

There is retaliation for cuts and wounds that cannot be made equally deep and damaging, when there is a chance of causing more damage than the damage done, so compensation is punishment which is decided according the severity of wound.

Chapter 10. One Who Inflicts A Wound May Ransom Himself By Paying The Compensatory Money

2638. It was narrated from 'Āishah that the Messenger of Allâh ﷺ sent Abu Jahm bin Hudhaifah to collect *Sadaqah*. A man disputed with him concerning his *Sadaqah*, and Abu Jahm struck him and wounded his head. They came to the Prophet ﷺ and said: "Compensatory money, O Messenger of Allâh!" The Prophet ﷺ said: "You will have such and such," but they did not accept that. He said: "You will have such and such," and they agreed. Then the Prophet ﷺ said: "I am going to address the people

(المعجم ١٠) - بَابُ الْجَارِحِ يَفْتَدِي بِالْقَوْدِ (النخعة ١٠)

٢٦٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنْبَأَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَ أَبَا جَهْمَ بْنَ حُدَيْفَةَ مُصَدِّقًا. فَلَاجَهُ رَجُلٌ فِي صَدْقَتِهِ، فَضْرَبَهُ أَبُو جَهْمَ فَسَجَّهُ. فَأَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ كَذَا وَكَذَا» فَلَمْ يَرْضُوا. فَقَالَ: «لَكُمْ كَذَا وَكَذَا». فَرْضُوا. فَقَالَ النَّبِيُّ ﷺ: «إِنِّي خَاطِبٌ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ؟» قَالُوا: نَعَمْ. فَخَطَبَ النَّبِيُّ ﷺ فَقَالَ: «إِنَّ هَؤُلَاءِ اللَّئِيْسِينَ أَتَوْنِي يُرِيدُونَ الْقَوْدَ».

and tell them that you agreed." They said: "Yes." So the Prophet ﷺ addressed (the people) and said: "These people of Laith came to me seeking the compensatory money, and I have offered them such and such. Do you agree?" They said: "No." The Emigrants wanted to attack them, but the Prophet ﷺ told them not to, so they refrained. Then he called them and offered them more and said: "Do you agree?" They said: "Yes." He said: "I am going to address the people and tell them that you agreed." They said: "Yes." So the Prophet ﷺ addressed (the people) then said: "Do you agree?" They said: "Yes." (Da'if)

Ibn Mâjah said: "I heard Muhammad bin Yahyâ saying: 'Ma'mar alone has narrated this *Hadith*. I don't know anyone else that has narrated it."

فَعَرَضْتُ عَلَيْهِمْ كَذَا وَكَذَا. أَرْضَيْتُمْ؟» قَالُوا: لَا. فَهَمَّ بِهِمُ الْمُهَاجِرُونَ. فَأَمَرَ النَّبِيُّ ﷺ أَنْ يَكْفُوا. فَكَفُوا. ثُمَّ دَعَاهُمْ فَرَادَهُمْ. فَقَالَ: «أَرْضَيْتُمْ؟» قَالُوا: نَعَمْ. قَالَ: «إِنِّي خَاطِبٌ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ» قَالُوا: نَعَمْ. فَخَطَبَ النَّبِيُّ ﷺ ثُمَّ قَالَ: «أَرْضَيْتُمْ؟» قَالُوا: نَعَمْ.

قَالَ ابْنُ مَاجَهَ: سَمِعْتُ مُحَمَّدَ بْنَ يَحْيَى يَقُولُ: تَقَرَّدَ بِهَذَا مَعْمَرٌ. لَا أَعْلَمُ رَوَاهُ غَيْرُهُ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الذيات، باب العامل يصاب على يديه خطأ، ح: ٤٥٣٤ من حديث عبدالرزاق به، وهو في مصنفه، ح: ١٨٠٣٢، وصححه ابن الجارود، ح: ٨٤٥، ولم أجد تصريح سماع الزهري تقدم، ح: ٧٠٧، فيه، وباقي السند صحيح.

Comments:

- Retaliation is in order for cases involving wounds.
- Compensatory money is a better option instead of retaliation, in cases of cuts and wounds.
- In cases where the punishment is retaliation, the choice of taking blood money rests with the claimant.
- In the decisions made by the leader, where there is a possibility of public criticism or protest from the general public, the leader should make the decision according to the law and at the same time in a manner acceptable to the public.

Chapter 11. The Blood Money For A Fetus

(المعجم ١١) - بَابُ دِيَّةِ الْجَنِينِ

(التحفة ١١)

2639. It was narrated that Abu Hurairah said: "The Messenger of Allāh ﷺ ruled concerning a fetus that (the blood money) was a slave, male or female. The one against whom this verdict was passed said: 'Should we pay blood money for one who neither ate, drank, shouted, nor cried (at the moment of birth)? One such as this should be overlooked.' The Messenger of Allāh ﷺ said: 'This man speaks like a poet. (But the blood money for a fetus is) a slave, male or female.'"

٢٦٣٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشِيرٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، [عَنْ أَبِي سَلَمَةَ،] عَنْ أَبِي هُرَيْرَةَ قَالَ: فَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بِعُرَّةَ: عَبْدٌ أَوْ أَمَةٌ. فَقَالَ الَّذِي فَضَى عَلَيْهِ: أَنْعِقُلْ مَنْ لَا شَرِبَ وَلَا أَكَلَ. وَلَا صَاحَ وَلَا اسْتَهَلَّ. وَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ هَذَا لَيَقُولُ بِقَوْلِ شَاعِرٍ. فِيهِ عُرَّةٌ، عَبْدٌ أَوْ أَمَةٌ».

تخريج: [إسناده حسن] أخرجه الترمذي، والديات، باب ماجاء في دية الجنين، ح: ١٤١٠

من حديث محمد بن عمرو به، وقال: حسن صحيح.

Comments:

- Fetus here means fully developed embryo or simply a baby still in the mother's womb, and born later.
- Sometimes it happens that a pregnant woman is hurt and the baby in her womb dies before birth. This is considered murder.
- Blood money for a fetus (fully developed baby in the mother's womb) is a slave, male or female. If the mother dies as well, the killer has to pay the full blood money.

2640. It was narrated that Miswar bin Makhramah said: "Umar bin Khattâb consulted the people concerning a woman who had been caused to miscarry. Al-Mughirah bin Shu'bah said: 'I saw the Messenger of Allāh ﷺ rule that a slave, male or female, be given as blood money (for a fetus).' Umar said: 'Bring me someone who will testify alongside you. So he brought

٢٦٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ ابْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ الْمُسَوَّرِ بْنِ مَخْرَمَةَ قَالَ: اسْتَشَارَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ فِي إِمْلَاحِ الْمَرْأَةِ. - يَعْنِي سِقْطَهَا - . فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: شَهِدْتُ رَسُولَ اللَّهِ ﷺ فَضَى فِيهِ بِعُرَّةَ، عَبْدٌ أَوْ أَمَةٌ. فَقَالَ عُمَرُ: الْتَبَّيْ بِمَنْ يَشْهَدُ مَعَكَ. فَشَهِدَ مَعَهُ مُحَمَّدُ بْنُ

Muhammad bin Maslamah to testify alongside him.'” (*Sahih*)

سَلَمَةَ .

تخريج: أخرجه مسلم، الفسامة والمحاربين، باب دية الجنين ووجوب الدية في قتل الخطأ وشبه العمد ... الخ، ح: ١٦٨٣ عن ابن أبي شيبة به.

Comments:

‘Umar did not have any doubt about the narration of Mughirah, but he wanted to verify it because the issue was over a legal matter and it was necessary to confirm this point. The other reason behind this confirmation was to send a warning message to the general public, that if a statement of an eminent Companion can be questioned, the general public should be very careful and not quote any *Hadith* of the Noble Prophet ﷺ without proper proof and investigation.

2641. It was narrated from ‘Umar bin Khattâb that he asked the people about the ruling of the Prophet ﷺ concerning that – concerning a fetus. Hamal bin Mâlik bin Nâbighah stood up and said: “I was between my two wives and one of them struck the other with a tent-pole, killing her and her fetus. The Messenger of Allâh ﷺ ruled that the blood money for the fetus was a slave, and that she should be killed in retaliation.” (*Sahih*)

٢٦٤١ - حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ: أَخْبَرَنِي ابْنُ جُرَيْجٍ: حَدَّثَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ طَاوُسًا عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ نَشَدَ النَّاسَ فَضَاءَ النَّبِيِّ ﷺ فِي ذَلِكَ. - يَعْنِي فِي الْجَنِينِ - . فَقَامَ حَمَلُ بْنُ مَالِكِ بْنِ النَّابِغَةِ فَقَالَ: كُنْتُ بَيْنَ امْرَأَتَيْنِ لِي. فَضَرَبَتْ إِحْدَاهُمَا الْأُخْرَى بِمِطْحٍ فَكَلَّتْهَا، وَقَتَلَتْ جَنِينَهَا. فَقَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بَعْرَةَ، وَعَبْدًا. وَأَنْ تُقْتَلَ بِهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، الديات، باب دية الجنين، ح: ٤٥٧٢ من حديث أبي عاصم به.

Comments:

- The Noble Qur’ân and the word and practices of the Noble Prophet ﷺ are the basis of Islamic law.
- If any issue is not clear for judgment, it is necessary to seek the answer from the Noble Qur’ân and from the *Ahâdith* of the Prophet ﷺ.
- Killing a pregnant woman is a dual murder, killing of the mother and killing her baby, the punishment for killing a fully developed baby in mother’s womb is giving of a male or female slave, and the punishment for killing a mother is blood money, or killing in retaliation.

Chapter 12. Inheritance From The Blood Money

2642. It was narrated from Sa'eed bin Musayyab that 'Umar used to say: "The blood money is for the near male relatives from the father's side and the wife does not inherit anything from the blood money of her husband," until Ad-Dahhâk bin Sufyân wrote to him, and told him that the Prophet ﷺ ruled that the wife of Ashyam bin Dibâbi should inherit from the blood money of her husband. (*Sahih*)

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: في المرأة ترث من دية زوجها، ح: ٢٩٢٧ من حديث سفیان به، وصححه الترمذي، ح: ١٤١٥، وابن الجارود، ح: ٩٦٦، وله شواهد عند الطبراني: ٢٧٦/٥، ح: ٥٣١٥ وغيره.

Comments:

- Most probably 'Umar's opinion was based upon the principle that the blood money is to be paid by the killer's male relatives from the father's side, so it should be distributed among such relatives of the deceased, and the wife is not among such relatives, so she is a claimant of the blood money's share.
- Blood money is distributed among the heirs as the legacy is distributed among the heirs. There is no difference in the distribution of blood money and inheritance.
- Companions can make a mistake in explaining or understanding a legal issue, similar is the position of the later scholars, they also can make a mistake in understanding or explaining an issue. The scholars of today are advised to adopt the same behavior of their predecessors.

2643. It was narrated from 'Ubâdah bin Sâmî that the Prophet ﷺ ruled that Hamal bin Mâlik Hudhali Al-Lihyânî should inherit from his wife who was killed by his other wife. (*Da'if*)

(المعجم ١٢) - بَابُ: الْمِيرَاثِ مِنْ

الدِّيَةِ (التحفة ١٢)

٢٦٤٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ ابْنِ الْمُسَيْبِ أَنَّ عُمَرَ كَانَ يَقُولُ: الدِّيَةُ لِلْعَاقِلَةِ، وَلَا تَرِثُ الْمَرْأَةُ مِنْ دِيَةِ زَوْجِهَا شَيْئًا. حَتَّى كَتَبَ إِلَيْهِ الضَّحَّاكُ بْنُ سُفْيَانَ أَنَّ النَّبِيَّ ﷺ وَرَثَ امْرَأَةً أَشِيَمَ الصُّبَايِيَّ مِنْ دِيَةِ زَوْجِهَا.

٢٦٤٣ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدِ النَّمَيْرِيُّ:

حَدَّثَنَا الْفَضِيلُ بْنُ سَلِيمَانَ: حَدَّثَنَا مُوسَى بْنُ عَقَبَةَ عَنْ إِسْحَاقَ بْنِ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ أَنَّ النَّبِيَّ ﷺ قَضَى لِحَمَلِ ابْنِ مَالِكِ الْهُذَلِيِّ اللَّحْيَانِيِّ بِمِيرَاثِهِ مِنْ امْرَأَتِهِ الَّتِي قَتَلَتْهَا امْرَأَتُهُ الْأُخْرَى.

تخريج: [إسناده ضعيف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٦، ٣٢٧، أطراف المسند: ٢/٦٤٠ من حديث الفضيل به، وإسحاق لم يدرك عبادة رضي الله عنه كما قال البخاري وغيره.

Comments:

The blood money of a woman who is killed is also her legacy, that is why her husband gets a share from her inheritance, whereas the payment of blood money is made by killer's male relatives from her father's side, and the husband is not from the victim's such relatives, but is from her heirs whose share is fixed.

Chapter 13. The Blood Money Of A Disbeliever

(المعجم ١٣) - بَابُ دِيَّةِ الْكَافِرِ

(التحفة ١٣)

2644. It was narrated from 'Amr bin Shu'aib, from his father, that the Messenger of Allāh ﷺ ruled that the blood money for the People of the Book is half of that of the blood money for the Muslims, and they are the Jews and Christians. (Hasan)

٢٦٤٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عِيَّاشٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ عَقْلَ أَهْلِ الْكِتَابَيْنِ يَصْفُ عَقْلَ الْمُسْلِمِينَ، وَهُمْ الْيَهُودُ وَالنَّصَارَى.

تخريج: [إسناده حسن] * عبدالرحمن بن الحارث بن عبدالله بن عياش المخزومي صدوق، وتابعه أسامة بن زيد (الترمذي، ح: ١٤١٣، وقال: حسن).

Comments:

If a Jew or a Christian is killed, the blood money due is half the blood money of Muslim.

Chapter 14. The Killer Does Not Inherit

(المعجم ١٤) - بَابُ: الْقَاتِلُ لَا يَرِثُ

(التحفة ١٤)

2645. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The killer does not inherit." (Hasan)

٢٦٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ زُحَيْرٍ الْمِصْرِيُّ: أَنَّ أَبَانَ اللَّيْثُ بْنُ سَعْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي فَرُوهَ، عَنْ ابْنِ شِهَابٍ، عَنْ حُمَيْدٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْقَاتِلُ لَا يَرِثُ».

تخريج: [حسن] أخرجه الترمذي، الفرائض، باب ما جاء في إبطال ميراث القاتل، ح: ٢١٠٩ من حديث الليث به، وانظر، ح: ٣٤٥ لعلته، وله شاهد حسن عند أبي داود، ح: ٤٥٦٤ وغيره.

Comments:

A killer is deprived from the inheritance because many a time the intention behind the killing is to get the property of the victim. This law compels the killer to ponder over various aspects of murder. A) He will not get the share of the inheritance. B) There is a possibility of the punishment of death. C) If he escapes the sentence, he will have to pay his share of blood money. In this way he will be in a state of loss. Therefore, he may avoid committing the crime.

2646. It was narrated from 'Amr bin Shu'aib that Abu Qatadah, a man from Banu Mudlij, killed his son, and 'Umar took one hundred camels from him, thirty *Hiqqah*,^[1] thirty *Jadha'ah*^[2] and forty *Khalifah*.^[3] Then he said: "Where is the brother of the slain? I heard the Messenger of Allāh ﷺ say: 'The killer does not inherit.'" (*Hasan*)

٢٦٤٦ - حَدَّثَنَا أَبُو كُرَيْبٍ وَ عَبْدِ اللَّهِ بْنُ سَعِيدٍ الْكِنْدِيُّ، قَالَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ أَبَا قَتَادَةَ، رَجُلًا مِنْ بَنِي مُدَلِجٍ، قَتَلَ ابْنَهُ، فَأَخَذَ مِنْهُ عُمَرُ مِائَةَ مِنَ الْإِبِلِ. ثَلَاثِينَ حِقْفَةً، وَثَلَاثِينَ جَذَعَةً، وَأَرْبَعِينَ خَلْفَةً. فَقَالَ: أَيْنَ أَخُو الْمَقْتُولِ؟ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَيْسَ لِقَاتِلٍ مِيرَاثٌ».

تخريج: [حسن] أخرجه مالك في الموطأ (يحيى): ٨٦٧/٢ عن يحيى بن سعيد به، والسند منقطع، وله شاهد حسن عند أبي داود وغيره، وحسنه البوصيري.

Chapter 15. The Blood Money Of A Woman (Who Kills Someone) Must Be Paid By Her Male Relatives On Her Father's Side, And Her Inheritance Goes To Her Children

2647. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "The Messenger of Allāh ﷺ ruled that a woman's blood money (if she kills someone) should be paid by her male relatives on her father's

(المعجم ١٥) - بَابُ: عَقْلُ الْمَرْأَةِ عَلَى عَصَبَتِهَا، وَمِيرَاثُهَا لَوْلِدِهَا (التحفة ١٥)

٢٦٤٧ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ أَبَانَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنْ يُعْقَلَ الْمَرْأَةُ عَصَبَتِهَا، مَنْ كَانُوا. وَلَا

[1] A three-year-old she-camel.

[2] A four-year-old she-camel.

[3] Pregnant she-camels that are halfway through their pregnancy.

side, whoever they are, and they should not inherit anything from her, except what is left over after her heirs have taken their shares. If she is killed then her blood money is to be shared among her heirs, since they are the ones who may kill the one who killed her.” (Hasan)

2648. It was narrated that Jābir said: “The Messenger of Allāh ﷺ ruled that the blood money should be paid by the near male relations from the father’s side of the killer, and the such relatives of the slain woman said: ‘O Messenger of Allāh, her legacy is for us.’ He said: ‘No, her legacy is for her husband and children.’” (Da’if)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الديات، باب دية الجنين، ح: ٤٥٧٥ من حديث عبدالواحد به، وانظر، ح: ١١ لحال مجالد.

Chapter 16. The Retaliation For A Tooth

2649. It was narrated that Anas said: “Rubai’, the paternal aunt of Anas, broke the tooth of a girl and they (her family) asked (the girl’s family) to let her off, but they refused. They offered to pay compensatory money, but they refused. So they came to the Prophet ﷺ who ordered retaliation. Anas bin Nadr said: ‘O Messenger of Allāh, will the tooth of Rubai’ be broken? By the One Who sent you with the Truth, it will not be broken!’ The Prophet ﷺ said: ‘O Anas, what

يَرْتُوْنَا مِنْهَا شَيْئًا. إِلَّا مَا فَضَلَ عَنْ وَرَثَتِهَا. وَإِنْ قُتِلَتْ فَعَقَلُهَا بَيْنَ وَرَثَتِهَا. فَهُمْ يَقْتُلُونَ قَاتِلَهَا».

تخريج: [إسناده حسن] انظر، ح: ٢٦٢٦.

٢٦٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الْمُعَلَّى بْنُ أَسَدٍ: حَدَّثَنَا عَبْدُ الْوَّاحِدِ بْنُ زِيَادٍ: حَدَّثَنَا مُجَالِدٌ عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ قَالَ: جَعَلَ رَسُولُ اللَّهِ ﷺ الدِّيَةَ عَلَى عَاقِلَةِ الْقَاتِلَةِ. فَقَالَتْ عَاقِلَةُ الْمُمْتَوْلَةِ: يَا رَسُولَ اللَّهِ! مِيرَاثُهَا لَنَا. قَالَ: «لَا. مِيرَاثُهَا لِزَوْجِهَا وَوَلَدِهَا».

(المعجم ١٦) - بَابُ: الْقَصَاصِ فِي

السِّنِّ (التحفة ١٦)

٢٦٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَبُو مُوسَى: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ وَابْنُ أَبِي عَدِيٍّ، عَنْ حُمَيْدٍ، عَنْ أَنَسٍ قَالَ: كَسَرَتْ الرَّبِيعُ، عَمَّةُ أَنَسٍ، نَيْبَةَ جَارِيَةٍ. فَطَلَبُوا الْعَفْوَ، فَأَبَوْا. فَعَرَضُوا عَلَيْهِمُ الْأَرْضَ فَأَبَوْا. فَأَتَوْا النَّبِيَّ ﷺ، فَأَمَرَ بِالْقِصَاصِ. فَقَالَ أَنَسُ ابْنُ النَّضْرِ: يَا رَسُولَ اللَّهِ! تُكْسِرُ نَيْبَةَ الرَّبِيعِ؟ وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا تُكْسِرُ. فَقَالَ النَّبِيُّ ﷺ: «يَا أَنَسُ! كِتَابُ اللَّهِ الْقِصَاصُ». قَالَ: فَرَضِي الْقَوْمَ، فَعَفَوْا. فَقَالَ رَسُولُ اللَّهِ ﷺ:

Allâh has decreed is retaliation.' So the people accepted that and forgave her. The Messenger of Allâh ﷺ said: "There are among the slaves of Allâh those who, if they swear by Allâh, Allâh fulfills their oath.'" (*Sahih*)

«إِنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبْرَهُ».

تخریج: أخرجه البخاري، الصلح، باب الصلح في الدية، ح: ٢٧٠٣، ٤٤٩٩، ٤٥٠٠، ٤٦١١، ٦٨٩٤ من طرق عن حميد به، وصرح بالسماع عنده، وتابعه ثابت عند مسلم، ح: ١٦٧٥.

Comments:

- Retaliation is due for breaking a tooth. One can forgive the offender or accept compensatory money.
- Compensatory money for breaking a tooth is five camels.
- Anas bin Nadr said, "It will not be broken." This statement was not an expression of resentment against the decision, but it was an expression of strong confidence in Allâh's blessing, that the other party will accept the compensatory money, or forgive his aunt.

Chapter 17. The Compensatory Money For Teeth

2650. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "Teeth are all the same; the incisor and the molar are the same." (*Sahih*)

(المعجم ١٧) - بَابُ دِيَّةِ الْأَسْنَانِ
(التحفة ١٧)

٢٦٥٠ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ: حَدَّثَنَا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ: حَدَّثَنِي شُعْبَةُ عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَسْنَانُ سَوَاءٌ. الثَّنِيَّةُ وَالضَّرْسُ سَوَاءٌ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الديات، باب ديات الأعضاء، ح: ٤٥٥٩ عن العباس العنبري به.

2651. It was narrated from Ibn 'Abbâs that the Prophet ﷺ ruled that (the compensatory money) for a tooth was five camels. (*Sahih*)

٢٦٥١ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْبَلْبَاسِيُّ: حَدَّثَنَا عَلِيُّ بْنُ الْحَسَنِ بْنِ شَقِيقٍ: حَدَّثَنَا أَبُو حَمْرَةَ الْمُرَوَزِيُّ: حَدَّثَنَا يَزِيدُ النَّخَوِيُّ عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَضَى فِي السِّنِّ خَمْسًا مِنَ الْإِبِلِ.

تخريج: [إسناده صحيح] وقال البوصيري: هذا إسناده صحيح، رجاله ثقات .

Comments:

- The punishment for breaking a tooth is the payment of five camels.
- The punishment will increase according to the number of teeth broken. Meaning five camels for every broken tooth. This punishment may go up to a maximum limit in the case of all of the teeth.
- In compensation of tooth breaking, number of teeth broken are counted and not the utility of the tooth.

Chapter 18. The Compensatory Money For Fingers

(المعجم ١٨) - بَابُ دِيَّةِ الْأَصَابِعِ

(التحفة ١٨)

2652. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "This and this are the same" – meaning the pinky finger, ring finger and thumb. (*Sahih*)

٢٦٥٢ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَ مُحَمَّدُ بْنُ جَعْفَرٍ وَ ابْنُ [أَبِي] عَدِيٍّ، قَالُوا: حَدَّثَنَا شُعْبَةُ عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «هَذِهِ وَهَذِهِ سَوَاءٌ» يَعْنِي الْخِنْصَرَ وَالْبَنْصَرَ وَالْإِنْهَامَ.

تخريج: أخرجه البخاري، الدييات، باب دية الأصابع، ح: ٦٨٩٥ عن ابن بشار به مختصراً.

2653. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "The fingers are all the same, and (the compensatory money) for each of them is ten camels." (*Sahih*)

٢٦٥٣ - حَدَّثَنَا جَوَيْلُ بْنُ الْحَسَنِ الْعَتَكِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ مَطَرٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ كُلُّهُنَّ. فِيهِنَّ عَشْرٌ عَشْرٌ مِنَ الْإِبِلِ».

تخريج: [صحيح] أخرجه البيهقي: ٨/٨٩، ٩٢ من حديث سعيد عن مطر الوراق به مطولاً، وتابعه حسين المعلم (أبو داود، ح: ٤٥٦٢، وإسناده حسن)، وصححه ابن الجارود، ح: ٧٨١، وللحديث شواهد كثيرة جداً، منها ما أخرجه الترمذي، ح: ١٣٩١، وابن الجارود، ح: ٧٨٠ من حديث ابن عباس به نحو المعنى، وقال الترمذي: حسن صحيح، وطريق ابن ماجه حسنه البوصيري.

Comments:

- Compensatory money for cutting a finger is ten camels.

b. Compensatory money for each severed finger is ten camels.

2654. It was narrated from Abu Musa Al-Ash'ari that the Messenger of Allāh ﷺ said: "The fingers are the same." (*Sahih*)

٢٦٥٤ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجِّحِ السَّمَرَقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ شُمَيْلٍ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ غَالِبِ التَّمَّارِ، عَنْ حُمَيْدِ بْنِ هِلَالٍ، عَنْ مَسْرُوقِ بْنِ أَوْسٍ، عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ عَنِ النَّبِيِّ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الدييات، باب ديوات الأعضاء، ح: ٤٥٥٦ من حديث سعيد به، وصرح بالسماع عند البيهقي: ٩٢/٨، وللحديث طرق أخرى عند أبي داود وغيره، وصححه ابن حبان، ح: ١٥٢٧.

Chapter 19. A Wound That Exposes The Bone

(المعجم ١٩) - بَابُ الْمَوْضِحَةِ
(التحفة ١٩)

2655. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "For a wound that exposes the bone, is five; (the compensation) is five camels." (*Hasan*)

٢٦٥٥ - حَدَّثَنَا جَبِيْلُ بْنُ الْأَحْسَنِ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ، عَنْ مَطَرٍ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «فِي الْمَوْضِحِ خَمْسٌ خَمْسٌ مِنَ الْإِبِلِ».

تخریج: [حسن] انظر، ح: ٢٦٥٣، وهذا طرف منه.

Comments:

Ibn Athir said, "Compensation of five camels is only for the wounds of the head and face, compensatory money for wounds on other parts of the body that expose the whiteness of the bone is determined by the judge, or by the government, according to the severity of the wound." (*An-Nihâya*).

Chapter 10. If A Person Bites A Man And He Pulls Away His Hand And His Tooth Comes Out

(المعجم ٢٠) - بَابُ مِنْ عَضَّ رَجُلًا
فَنَزَعَ يَدَهُ فَتَدَّرَ تَنَائِيَاهُ (التحفة ٢٠)

2656. It was narrated that Ya'la and Salamah the sons of Umayyah said: "We went out with the

٢٦٥٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ

Messenger of Allāh ﷺ on the military expedition of Tabuk, and with us was a friend of ours. He fought with another man while we were on the road. The man bit the hand of his opponent, who pulled away his hand and the man's tooth fell out. He came to the Messenger of Allāh ﷺ demanding compensatory money for his tooth, and the Messenger of Allāh ﷺ said: 'Would anyone of you go and bite his brother like a stallion, then come demanding compensatory money? There is no compensatory money for this.'" Hence, the Messenger of Allāh ﷺ invalidated it (i.e. compensatory money in such a case). (Hasan)

إِسْحَاقَ، عَنْ عَطَاءٍ، عَنْ صَفْوَانَ بْنِ عَبْدِ اللَّهِ، عَنْ عَمِّهِ يَعْلَى وَ سَلَمَةَ ابْنَيْ أُمِّهِ قَالَا: خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ تَبُوكَ. وَمَعَنَا صَاحِبٌ لَنَا. فَاقْتَتَلَ هُوَ وَرَجُلٌ آخَرُ وَنَحْنُ بِالطَّرِيقِ. قَالَ: فَعَضَّ الرَّجُلُ يَدَ صَاحِبِهِ. فَجَذَبَ صَاحِبُهُ يَدَهُ مِنْ فِيهِ. فَطَرَحَ ثِيْبَهُ، فَأَتَى رَسُولَ اللَّهِ ﷺ يَلْتَمِسُ عَقْلَ ثِيْبِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «يَعْمِدُ أَحَدُكُمْ إِلَى أَخِيهِ فَيَمَضُّهُ كِعَضَّاضِ الْفَحْلِ. ثُمَّ يَأْتِي يَلْتَمِسُ الْعَقْلَ لَا عَقْلَ لَهَا» قَالَ: فَأَبْطَلَهَا رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده حسن] أخرجه النسائي، القسامة، ذكر الاختلاف على عطاء في هذا الحديث، ح: ٤٧٦٩ من حديث ابن إسحاق به، وصرح بالسماع عند أحمد: ٢٢٢/٤، ٢٢٣، وغيره، وله شواهد عند البخاري وغيره، انظر الحديث الآتي.

2657. It was narrated from 'Imrān bin Husain that a man bit another man on his forearm; he pulled his arm away and the man's tooth fell out. The matter was referred to the Prophet ﷺ, who invalidated it and said: 'Would one of you bite (another) like a stallion?'" (Sahih)

٢٦٥٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا عَضَّ رَجُلًا عَلَى ذِرَاعِهِ. فَتَرَخَ يَدَهُ، فَوَقَعَتْ ثِيْبُهُ. فَرَفَعَ إِلَى النَّبِيِّ ﷺ. فَأَبْطَلَهَا وَقَالَ: «يَقَضُّ أَحَدُكُمْ كَمَا يَقَضُّ الْفَحْلُ».

تخریج: أخرجه البخاري، الديات، باب إذا عض رجلاً ثنياه، ح: ٦٨٩٢، ومسلم، القسامة والمحاربين، باب الصائل على نفس الإنسان وعضوه إذا دفعه المصول عليه . . . الخ، ح: ١٦٧٣ من حديث قتادة به، وصرح بالسماع.

Comments:

- Everyone has the right to defend himself.
- If someone is hurt during an attack, the defender will not pay any penalty.

Chapter 21. A Muslim Should Not Be Killed For A Disbeliever

2658. It was narrated that Abu Juhaifah said: "I said to 'Ali bin Abu Tâlib: 'Do you have any knowledge that the people do not have?' He said: 'No, by Allâh, we only know what the people know, except that Allâh may bless a man with understanding of the Qur'ân or what is in this sheet, in which are mentioned the rulings on blood money from the Messenger of Allâh ﷺ, and it says that a Muslim should not be killed in retaliation for the murder of a disbeliever.'" (Sahih)

(المعجم ٢١) - بَابُ: لَا يُقْتَلُ مُسْلِمٌ

بِكَاْفِرٍ (التحفة ٢١)

٢٦٥٨ - حَدَّثَنَا عَلْقَمَةُ بْنُ عَمْرٍو الدَّارِمِيُّ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ مُطَرِّفٍ، عَنِ الشَّعْبِيِّ، عَنْ أَبِي جُحَيْفَةَ قَالَ: قُلْتُ لِعَلِيِّ بْنِ أَبِي طَالِبٍ: هَلْ عِنْدَكُمْ شَيْءٌ مِنَ الْعِلْمِ لَيْسَ عِنْدَ النَّاسِ؟ قَالَ: لَا. وَاللَّهِ مَا عِنْدَنَا إِلَّا مَا عِنْدَ النَّاسِ. إِلَّا أَنْ يُرَزِّقَ اللَّهُ رَجُلًا فَهَمَّا فِي الْقُرْآنِ. أَوْ مَا فِي هَذِهِ الصَّحِيفَةِ. فِيهَا الدِّيَاتُ عَنْ رَسُولِ اللَّهِ ﷺ وَأَنْ لَا يُقْتَلَ مُسْلِمٌ بِكَافِرٍ.

تخریج: أخرجه البخاري، العلم، باب كتابة العلم، ح: ٦٩٠٣، ٣٠٤٧، ١١١، من حديث

Comments:

مطرف به.

- It is falsely claimed that 'Ali bin Abu Tâlib had an extra internal secret knowledge of the metaphysical world which was additional to the existing knowledge of *Shari'at* (Divine law). Existing chains of Sufism or mysticism are based on this false concept. For the purification of mind and heart, whatever the Prophet ﷺ said is enough, and also available in the books of *Ahâdith*. There is no extra hidden knowledge.
- ‘Im Jafar* is also attributed to 'Ali bin Abu Tâlib by which people know their past and future. This is a baseless opinion. No one knows the future except Allâh. Believing that someone has complete knowledge of future, is a form of disbelief in many Verses of the Noble Qur'ân.
- If a Muslim kills a non-Muslim, he will not be killed in retaliation for the murder of a disbeliever. His punishment is blood money only.

2659. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: "A Muslim should not be killed in retaliation for the murder of a disbeliever." (Sahih)

٢٦٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا

حَاتِمُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَيَّاشٍ، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ».

تخريج: [صحيح] أخرجه أحمد: ٢/٢١٥ من حديث عبدالرحمن بن عياش به مطولاً، إسناده حسن، وانظر، ح: ٢٦٤٤ لتحقيق عبدالرحمن بن عياش رحمه الله، وللحديث طرق عن عمرو بن شعيب عند أبي داود، ح: ٤٥٠٦، وأحمد: ٢/١٧٨، ١٨٠، ١٩٢ وغيرهما، وانظر الحديث السابق فإنه شاهد له.

2660. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "A believer should not be killed in retaliation for the murder of a disbeliever, and a person who has a treaty should not be killed during the time of the treaty." (Sahih)

٢٦٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنَعَانِيُّ: حَدَّثَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْشٍ، عَنْ عِكْرَمَةَ، عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ».

تخريج: [صحيح] وضعفه البوصيري من أجل حنش، انظر، ح: ٢٤٤٦، وللحديث طرق عند أبي داود، ح: ٤٥٠٦، ٤٥٣٠، وابن حبان(موارد)، ح: ١٦٩٩ وغيرهما.

Comments:

- Security of non-Muslim minorities living in an Islamic state is the duty of the state.
- A non-Muslim living in a Muslim state under a treaty should not be killed, until and unless he commits a crime which breaks the treaty, like dishonoring the Noble Qur'ân or disgracing the Noble Prophet ﷺ. (Allâh forbid us)

Chapter 22. A Father Should Not Be Killed For His Son

(المعجم ٢٢) - بَابُ: لَا يُقْتَلُ الْوَالِدُ
بِوَالِدِهِ (التحفة ٢٢)

2661. It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "A father should not be killed for his son." (Da'if)

٢٦٦١ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يُقْتَلُ بِالْوَالِدِ الْوَالِدُ».

تخريج: [إسناده ضعيف] أخرجه الترمذي به، انظر، ح: ٢٥٩٩ من هذا الكتاب، وللحديث شواهد ضعيفة، انظر الحديث الآتي.

2662. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that 'Umar bin Khattâb said: "I heard the Messenger of Allâh ﷺ say: 'A father should not be killed for his son.'" (Da'if)

٢٦٦٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنْ عَمْرِو بْنِ الْخَطَّابِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يُقْتَلُ الْوَالِدُ بِالْوَالِدِ».

تخریج: [إسناده ضعيف] أخرجه الترمذي، الديات، باب ماجاء في الرجل يقتل ابنه يقاد منه أم لا، ح: ١٤٠٠ من حديث أبي خالد الأحمر به * والحجاج بن أرتاة تقدم حاله، ح: ٤٩٦، ١١٢٩، ٢٥٨٧، وعنن، وتابعه محمد بن عجلان به عند البيهقي: ٣٨/٨ وغيره، وصححه ابن الجارود، ح: ٧٨٨ وغيره، وابن عجلان عنن تقدم، ح: ١٩٦٧، وللحديث طرق أخرى، وقال عبدالحق الإشبيلي: هذه الأحاديث كلها معلولة، لا يصح منها شيء (تلخيص: ١٧/٤).

Comments:

If a son is killed by his father, he should not be killed in retaliation, he can be punished as has been mentioned in *Hadith* no. 2646.

Chapter 23. Can A Free Person Be Killed For A Slave?

(المعجم ٢٣) - بَابُ: هَلْ يُقْتَلُ الْحُرُّ

بِالْعَبْدِ؟ (التحفة ٢٣)

2663. It was narrated from Samurah bin Jundab that the Messenger of Allāh ﷺ said: "Whoever kills his slave, we will kill him, and whoever mutilates (his slave) we will mutilate him." (*Hasan*)

٢٦٦٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ بْنِ جُنْدَبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَا. وَمَنْ جَدَعَهُ جَدَعْنَا».

تخریج: [حسن] أخرجه أبو داود، الديات، باب من قتل عبده أو مثل به أيقاد منه؟، ح: ٤٥١٧ من طريق سعيد به، وتابعه شعبة وغيره (أبو داود، ح: ٤٥١٥، وحسنه الترمذي: ١٤١٤، صححه الحاكم على شرط البخاري: ٣٦٧/٤، ووافقه الذهبي) * حسن عن سمرة: حسن تقدم، ح: ٢١٨٣.

2664. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man killed his slave deliberately and with malice aforethought, so the Messenger of Allāh ﷺ gave him one hundred lashes, banished him for one year, and cancelled his share from among the Muslims." (*Da'if*)

٢٦٦٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا ابْنُ الطَّبَّاعِ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرُوةَ، عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُنَيْنٍ، عَنْ أَبِيهِ عَنْ عَلِيٍّ، وَعَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَا: قَتَلَ رَجُلٌ عَبْدَهُ عَمْدًا مُتَعَمِّدًا. فَجَلَدَهُ رَسُولُ اللَّهِ ﷺ مِائَةً. وَنَفَاهُ سَنَةً. وَمَحَا سَهْمَهُ مِنَ الْمُسْلِمِينَ.

تخریج: [إسناده ضعيف جدًا] وقال البوصيري: هذا إسناد ضعيف لضعف إسحاق بن أبي فروة تقدم، ح: ٣٤٥، وتدليس إسماعيل بن عياش، ح: ٧٥.

Chapter 24. Retaliation Upon The Killer Will Be Carried Out In The Same Manner As He Killed (His Victim)

2665. It was narrated from Anas bin Mâlik that a Jew crushed the head of a woman between two rocks and killed her, so the Messenger of Allâh ﷺ crushed his head between two rocks. (Sahih)

تخریج: أخرجه البخاري، الخصومات، باب ما يذكر في الإشخاص والخصومة بين المسلم واليهود، ح: ٢٤١٣، ٢٧٤٦، ٦٨٨٤، ومسلم، القسامة، باب ثبوت القصاص في القتل بالحجر وغيره... الخ، ح: ١٦٧٢ من حديث همام به.

2666. It was narrated from Anas bin Mâlik that a Jew killed a girl for her jewelry. He asked her (as she was dying): "Did so-and-so kill you?" and she gestured with her head to say no. Then he asked her again, and she gestured with her head to say no. He asked her a third time and she gestured with her head to say yes. So the Messenger of Allâh ﷺ killed him (by crushing his head) between two rocks. (Sahih)

(المعجم ٢٤) - بَابُ: يُقْتَلُ مِنَ الْقَاتِلِ
كَمَا قَتَلَ (التحفة ٢٤)

٢٦٦٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ هَمَّامِ بْنِ يَحْيَى، عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ يَهُودِيًّا رَضَّ رَأْسَ امْرَأَةٍ بَيْنَ حَجْرَيْنِ فَقَتَلَهَا. فَوَضَّحَ رَسُولُ اللَّهِ ﷺ رَأْسَهُ بَيْنَ حَجْرَيْنِ.

٢٦٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ؛ ح وَحَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: حَدَّثَنَا النَّضْرُ بْنُ شَمَيْلٍ، قَالَ: حَدَّثَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ يَهُودِيًّا قَتَلَ جَارِيَّةً عَلَى أَوْضَاحِ لَهَا. فَقَالَ لَهَا: «أَقْتَلِكِ فُلَانٌ؟» فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا. ثُمَّ سَأَلَهَا الثَّانِيَةَ. فَأَشَارَتْ بِرَأْسِهَا: أَنْ لَا. ثُمَّ سَأَلَهَا الثَّالِثَةَ. فَأَشَارَتْ بِرَأْسِهَا: أَنْ نَعَمْ. فَقَتَلَهُ رَسُولُ اللَّهِ ﷺ بَيْنَ حَجْرَيْنِ.

تخریج: أخرجه البخاري، الطلاق، باب الإشارة في الطلاق والأمور، ح: ٥٢٩٥ تعليقا، ٦٨٧٧، ٦٨٧٩، ومسلم، القسامة والمحاربين، الباب السابق، ح: ١٦٧٢ من حديث شعبة به.

Comments:

- Killing between two rocks means putting the head on one rock and hitting it with another rock, by which she was severely wounded and died.
- The killer should be killed in the same way as he killed.

Chapter 25. There Is No Retaliation Except With The Sword

2667. It was narrated from Nu'mân bin Bashir that the Messenger of Allâh ﷺ said: "There is no retaliation except with the sword." (*Da'if*)

(المعجم ٢٥) - بَابُ: لَا قَوْدَ إِلَّا

بِالسَّيْفِ (التحفة ٢٥)

٢٦٦٧ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ الْعُرْوَقِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ سُمْيَانَ، عَنْ جَابِرٍ، عَنْ أَبِي عَازِبٍ، عَنِ النَّعْمَانَ بْنِ بَشِيرٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا قَوْدَ إِلَّا بِالسَّيْفِ».

تخريج: [إسناده ضعيف جداً] أخرجه الطحاوي في معاني الآثار: ٣/١٨٤ من حديث أبي عاصم به * جابر الجعفي تقدم، ح: ٣٥٦، وأبو عازب مستور (تقريب)، وانظر الحديث الآتي.

2668. It was narrated from Abu Bakrah that the Messenger of Allâh ﷺ said: "There is no retaliation except with the sword." (*Da'if*)

٢٦٦٨ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ: حَدَّثَنَا الْحُرُّ بْنُ مَالِكٍ الْأَعْبَرِيُّ: حَدَّثَنَا مُبَارَكُ بْنُ فَضَالَةَ عَنِ الْحَسَنِ، عَنْ أَبِي بَكْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا قَوْدَ إِلَّا بِالسَّيْفِ».

تخريج: [إسناده ضعيف] * الحسن عنن تقدم، ح: ٧١، وفيه علة أخرى، وأخرج الدارقطني: ٣/١٠٥ بإسناد حسن عن مبارك عن الحسن مرسلًا، وقال: قال يونس: قلت للحسن! عنم أخذت هذا؟ قال: سمعت النعمان بن بشير يذكر ذلك، يعني أنه موقوف، والله أعلم.

Chapter 26. No Criminal Can Bring Punishment Upon Anyone Else (For His Crime)

2669. It was narrated from Sulaimân bin 'Amr bin Ahwas that his father said: I heard the Messenger of Allâh ﷺ saying during the Farewell pilgrimage: "No criminal commits a crime but he brings (the punishment for that) upon himself. No father can bring punishment upon his son by his crime, and no son can bring punishment upon his father." (*Hasan*)

(المعجم ٢٦) - بَابُ: لَا يَجْنِي أَحَدٌ

عَلَى أَحَدٍ (التحفة ٢٦)

٢٦٦٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ شَيْبِ بْنِ عَرْفَلَةَ، عَنْ سُلَيْمَانَ بْنِ عَمْرٍو بْنِ الْأَحْوَصِ، عَنْ أَبِيهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي حَجَّةِ الْوَدَاعِ: «أَلَا لَا يَجْنِي جَانٍ إِلَّا عَلَى نَفْسِهِ. لَا يَجْنِي وَالِدٌ عَلَى وَلَدِهِ، وَلَا مَوْلُودٌ عَلَى وَالِدِهِ».

تخریج: [إسناده حسن] أخرجه أحمد: ٤٩٩، ٤٩٨/٣ من حديث شبيب به، وأصله في سنن أبي داود، ح: ٣٣٣٤ وغيره.

2670. It was narrated that Târiq Al-Muhâribi said: "I saw the Messenger of Allâh ﷺ raising his hands until I saw the whiteness of his armpits, saying: 'No child should be punished because of his mother's crime, no child should be punished because of his mother's crime.'" (Sahih)

٢٦٧٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ يَزِيدَ بْنِ أَبِي زِيَادٍ: حَدَّثَنَا جَامِعُ بْنُ شَدَادٍ، عَنْ طَارِقِ الْمُحَارِبِيِّ قَالَ: رَأَيْتُ رَسُولَ اللَّهِ ﷺ يَرْفَعُ يَدَيْهِ، حَتَّى رَأَيْتُ بَيَاضَ إِبْطَيْهِ، يَقُولُ: «أَلَا لَا تَجْنِي أُمَّ عَلَى وَلَدٍ. أَلَا لَا تَجْنِي أُمَّ عَلَى وَلَدٍ».

تخریج: [إسناده صحيح] أخرجه الدارقطني: ٤٤، ٤٣/٣ من حديث ابن نمير به مطولاً، وصححه ابن حبان (موراد)، ح: ١٦٨٣، والحاكم: ٦١١، ٦١٢، والذهبي، والبوصيري، فائدة: رواه الفضل بن موسى عن يزيد بن زياد بن أبي الجعد عن أبي صخر جامع بن شداد عن طارق بن عبدالله المحاربي به.

2671. It was narrated that Khashkhâsh Al-'Anbari said: "I came to the Prophet ﷺ and my son was with me. He said: 'You will not be punished because of his crime and he will not be punished because of yours.'" (Sahih)

٢٦٧١ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا هُشَيْمٌ عَنْ يُونُسَ، عَنْ حُصَيْنِ بْنِ أَبِي الْحَرِّ، عَنِ الْخَشْخَاشِ الْعَنْبَرِيِّ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ وَمَعِيَ ابْنِي. فَقَالَ: «لَا تَجْنِي عَلَيْهِ، وَلَا يَجْنِي عَلَيْكَ».

تخریج: [صحيح] أخرجه أحمد: ٣٤٤، ٣٤٥/٤ عن هشيم: أنا يونس بن عبيد به، وقال: قال هشيم مرة يونس قال: أخبرني مخبر عن حصين بن أبي الحر (وانظر المسند: ٨١/٥)، فالسند ضعيف لجهالة المخبر، والحديث السابق شاهد له، وللحديث طريق آخر عند البيهقي: ٢٧/٨.

2672. It was narrated from Usâmah bin Sharik that the Messenger of Allâh ﷺ said: "No person will be punished because of another's crime." (Sahih)

٢٦٧٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عَقِيلٍ: حَدَّثَنَا عَمْرُو بْنُ عَاصِمٍ: حَدَّثَنَا أَبُو الْعَوَّامِ الْقَطَّانُ، عَنْ مُمَمِّدِ بْنِ جِحَادَةَ، عَنْ زِيَادِ بْنِ عَلَاقَةَ، عَنْ أَسَامَةَ بْنِ شَرِيكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَجْنِي نَفْسٌ عَلَى أُخْرَى».

تخریج: [إسناده حسن] وقال البوصيري: هذا إسناد صحيح رجاله ثقات، وأبو العوام اسمه عمران بن داود، وإن ضعفه النسائي فقد وثقه الجمهور.

Comments:

- A criminal is responsible for his crime; other relatives like the father or brother cannot be punished in his place.
- It is unlawful to pressure or torture the relatives of fugitives and criminals.
- A suspect can only be forced to a limit to confess his crime.
- A criminal or a suspect can be forced to a certain limit in order to get information about his companions. The suspect can only be pressed if some circumstantial evidences are available against him. (Allâh knows better.)

Chapter 27. Offences For Which There Is No Liability

(المعجم ٢٧) - بَابُ الْجِبَارِ
(التحفة ٢٧)

2673. It was narrated from Abu Hurairah that Allâh's Messenger ﷺ said: "The injuries caused by the beast are without liability,^[1] and wells are without liability, and mines are without liability." (Sahih)

٢٦٧٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شُعْبَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعَجْمَاءُ جَرَحُهَا جُبَارٌ. وَالْمَعْدِنُ جُبَارٌ. وَالْبُئْرُ جُبَارٌ».

تخریج: [صحيح] تقدم، ح: ٢٥٠٩.

2674. Kathir bin 'Abdullâh bin 'Amr bin 'Awf narrated from his father that his grandfather said: "I heard the Messenger of Allâh ﷺ say: "The injuries caused by the beast are without liability, and mines are without liability." (Sahih)

٢٦٧٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا خَالِدُ بْنُ مَخْلَدٍ: حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْعَجْمَاءُ جَرَحُهَا جُبَارٌ، وَالْمَعْدِنُ جُبَارٌ».

تخریج: [صحيح] أخرجه الطبراني: ١٧/١٤، ح: ٦٠ من حديث كثير به * كثير ضعيف جداً، متهم تقدم، ح: ١٦٥ والحديث السابق شاهد له.

2675. It was narrated that 'Ubadah bin Sâmit said: "The Messenger of Allâh ﷺ ruled that there is no liability for injuries caused by falling into a mines or a well, nor those caused by a beast." (Sahih)

٢٦٧٥ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدِ النَّمَيْرِيُّ: حَدَّثَنَا فَضِيلُ بْنُ سَلِيمَانَ: حَدَّثَنِي مُوسَى بْنُ عَقَبَةَ: حَدَّثَنِي إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنْ الْمَعْدِنَ جُبَارٌ، وَالْبُئْرَ جُبَارٌ،

[1] Meaning the owner of these is not liable for damages others suffer from them.

Al-'Ajma' are grazing live-stock (such as sheep, camels, cattle, goats), and others. *Al-Jubâr* is bloodshed with impunity (i.e. without liability).

شاهد ٢٦٧٣: وح: لعنته وح: ٢٦٤٣، وانظر، ح: ٢٦٤٣، لعنته وح: ٢٦٧٣ شاهد

وَالْعَجْمَاءُ جَرْحُهَا جُبَارٌ.

وَالْعَجْمَاءُ التَّيْمَةُ مِنَ الْأَنْعَامِ وَغَيْرِهَا. وَالْجُبَارُ هُوَ الْهَدْرُ الَّذِي لَا يُغْرَمُ.

تخریج: [صحیح] وقال البوصيري: مقطع ، وانظر، ح: ٢٦٤٣، لعنته وح: ٢٦٧٣ شاهد

2676. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "(The injuries caused by) a fire are without liability, and by falling into a well." (*Sahih*)

تخریج: [إسناده صحیح] أخرجه أبو داود، الديات، باب في النار تعدي، ح: ٤٥٩٤ من حديث عبدالرزاق به، وهو في الصحیفة الصحیحة للإمام همام بن منبه رحمه الله تقدم، ح: ١٣٨، وأصله متفق عليه.

٢٦٧٦ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا

عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنْ هَمَّامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّارُ جُبَارٌ، وَالْبُئْرُ جُبَارٌ».

Comments:

- a. Killing by an animal warrants no blood money. Meaning, if an animal unties itself from its peg and runs away out of the barn and hurts or kills someone, responsibility of hurting or killing will not fall on its owner, and he cannot be asked to pay the blood money.
- b. If a miner is killed in a mine by a cave-in or by falling rocks, the owner of the mine should not be held responsible. He is not liable to pay blood money.
- c. Similarly, if someone dies by falling in the well, the owner of the well is not held responsible for that mishap.
- d. Damages caused by fire are not claimable. The person who lit the fire for his needs will not be held responsible for the damages caused by the fire, because it was not his intention to hurt someone or destroy someone's property.

Chapter 28. Oaths

(المعجم ٢٨) - بَابُ الْقَسَامَةِ (التحفة ٢٨)

2677. It was narrated from Sahl bin Abu Hathmah from the elders of his people that 'Abdullâh bin Sahl and Muhayyisah set out for Khaibar because of some problem that had arisen. Someone came to Muhayyisah, and he told him that 'Abdullâh bin Sahl had been

٢٦٧٧ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا

بِشْرُ بْنُ عَمْرٍ: سَمِعْتُ مَالِكَ بْنَ أَنَسٍ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ ابْنَ سَهْلٍ بْنِ حَتِيفٍ، عَنْ سَهْلِ بْنِ أَبِي حَتْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كِبَرَاءِ قَوْمِهِ أَنَّ عَبْدَ

killed and thrown into a pit or well in Khaibar. He came to the Jews and said: "By Allāh, you killed him." They said: "By Allāh, we did not kill him." Then he went back to his people and told them about that. Then he and his brother Huwayyisah, who was older than him, and 'Abdur-Rahmān bin Sahl, came (to the Prophet ﷺ). Muhayyisah, who was the one who had been at Khaibar, went and he began to speak, but the Messenger of Allāh ﷺ said: "Let the elder speak first." So Huwayyisah spoke, then Muhayyisah spoke. The Messenger of Allāh ﷺ said: "Either (the Jews) will pay the blood money for your companion, or war will be declared on them." The Messenger of Allāh ﷺ sent a letter to that effect (to the Jews) and they wrote back saying: "By Allāh, we did not kill him." The Messenger of Allāh ﷺ said to Huwayyisah, Muhayyisah and 'Abdur-Rahmān: "Will you swear an oath establishing your claim to the blood money of your companion?" They said: "No." He said: "Should the Jews swear an oath for you?" They said: "They are not Muslims." So the Messenger of Allāh ﷺ paid the blood money himself, and he sent one hundred she-camels to them and some of them entered the house.

Sahl said: "A red she-camel from among them kicked me." (*Sahih*)

اللَّهُ بْنُ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إِلَى خَيْبَرَ مِنْ جَهْدِ أَصَابِهِمْ. فَأَتَى مُحَيِّصَةُ فَأُخْبِرَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَالْقَيْ فِي فَقِيرٍ أَوْ عَيْنِ بِخَيْبَرَ. فَأَتَى يَهُودَ، فَقَالَ: أَنْتُمْ، وَاللَّهِ قَتَلْتُمُوهُ. قَالُوا: وَاللَّهِ مَا قَتَلْنَاهُ. ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ. فَذَكَرَ ذَلِكَ لَهُمْ. ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حَوَيْصَةَ، وَهُوَ أَكْبَرُ مِنْهُ، وَعَبْدُ الرَّحْمَنِ بْنِ سَهْلٍ. فَذَهَبَ مُحَيِّصَةُ يَتَكَلَّمُ، وَهُوَ الَّذِي كَانَ بِخَيْبَرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِمُحَيِّصَةَ: «كَبِيرٌ، كَبِيرٌ» يُرِيدُ السَّنَّ. فَتَكَلَّمَ حَوَيْصَةُ. ثُمَّ تَكَلَّمَ مُحَيِّصَةُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِمَّا أَنْ تَدُلُّوا صَاحِبِكُمْ، وَإِمَّا أَنْ تُؤَدِّنُوا بِحَرْبٍ» فَكَتَبَ رَسُولُ اللَّهِ ﷺ فِي ذَلِكَ. فَكَتَبُوا: إِيَّا، وَاللَّهِ مَا قَتَلْنَاهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِحَوَيْصَةَ وَمُحَيِّصَةَ وَعَبْدِ الرَّحْمَنِ: «تَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟» قَالُوا: لَا. قَالَ: «فَتَحْلِفُ لَكُمْ يَهُودٌ؟» قَالُوا: لَيْسُوا بِمُسْلِمِينَ. فَوَدَّاهُ رَسُولُ اللَّهِ ﷺ مِنْ عِنْدِهِ. فَعَبَّتْ إِلَيْهِمْ رَسُولُ اللَّهِ ﷺ مِائَةَ نَاقَةٍ. حَتَّى أُذْخِلَتْ عَلَيْهِمُ الدَّارَ. قَالَ سَهْلٌ: فَلَقَدْ رَكَضَنِي مِنْهُ نَاقَةٌ حَمْرَاءُ.

تخریج: أخرجه البخاري، الأحكام، باب كتاب الحاكم إلى عماله والقاضي إلى أمنائه، ح: ٧١٩٢ من حديث مالك به، ومسلم، القسامة والمحاريين...، باب القسامة، ح: ٦/١٦٦٩ من حديث بشر بن عمر به.

Comments:

- a. If a person is killed, and it is not known who the killer is then fifty persons from the claimant tribe will swear about the suspect or suspects that they are murderers. If the claimants take an oath, the respondent will pay the blood money. If the claimant tribe does not take an oath, the defendant will swear that they have not killed him, and they are not aware of the killer, so they will be cleared from blame, and they will not have to pay the blood money, it will be paid from the public treasury. If the defendant tribe does not swear, they will have to present the murderer or pay the blood money.
- b. The oath of women, children and insane persons is not acceptable. If fifty persons are not available for taking the oath, the number of persons present will suffice, but they will have to complete the number of fifty oaths. (Footnote of *Sunnan Ibn Mâjah* by Muhammad Fuwâd Abdul-Bâqi.)

2678. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that Huwayyisah and Muhayyisah, the sons of Mas'ud, and 'Abdullâh and 'Abdur-Rahmân the sons of Sahl, went out to search for food in Khaibar. 'Abdullâh was attacked and killed, and mention of that was made to the Messenger of Allâh ﷺ. He said: "Will you swear an oath and establish your right to blood money?" They said: "O Messenger of Allâh, how can we swear an oath when we did not witness anything?" He said: "Do you want the Jews to swear that they are innocent?" They said: "O Messenger of Allâh, then they will kill us too." So the Messenger of Allâh ﷺ paid the blood money himself. (*Sahih*)

٢٦٧٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ حُوَيْصَةَ وَمُحَيِّصَةَ، ابْنَيْ مَسْعُودٍ وَعَبْدُ اللَّهِ وَعَبْدُ الرَّحْمَنِ، ابْنَيْ سَهْلِ. خَرَجُوا يَمْتَارُونَ بِخَيْبَرَ. فَعُدِيَ عَلَى عَبْدِ اللَّهِ، فَقُتِلَ. فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ فَقَالَ: «تُقْسِمُونَ وَتَسْتَحِقُّونَ؟» فَقَالُوا: يَا رَسُولَ اللَّهِ! كَيْفَ نُقْسِمُ وَلَمْ نَشْهَدْ؟ قَالَ: «فَتَبِّرُكُمْ يَهُودُ؟» قَالُوا: يَا رَسُولَ اللَّهِ! إِذَا تَقْتُلْنَا. قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ ﷺ مِنْ عَيْنِهِ.

تخریج: [صحیح] أخرجه ابن أبي شيبة: ٣٧٨/٩ عن أبي خالد به ضعفه البوصيري لعنة الحجاج بن أرتاة، ح: ٢٦٦٢، والحديث السابق شاهد له.

Chapter 29. Whoever Mutilates His Slave, Then He (The Slave) Is Free

2679. It was narrated from Salamah bin Rawh bin Zinbâ', that his grandfather came to the Prophet ﷺ and he had castrated a slave of his. The Prophet ﷺ manumitted the slave in compensation for having been mutilated. (*Sahih*)

(المعجم ٢٩) - بَابُ مَنْ مَثَّلَ بِعَبْدِهِ فَهُوَ جَرٌّ (التحفة ٢٩)

٢٦٧٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ قَالَ: حَدَّثَنَا عَبْدُ السَّلَامِ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرُورَةَ، عَنْ سَلَمَةَ بْنِ رَوْحِ بْنِ زَبَاعٍ، عَنْ جَدِّهِ أَنَّهُ قَدِمَ عَلَى النَّبِيِّ ﷺ وَوَدَّ أَحْصَى غُلَامًا لَهُ. فَأَعْتَقَهُ النَّبِيُّ ﷺ بِالْمَثَلَةِ.

تخريج: [صحیح] أخرجه الطبراني: ٥/٢٦٩، ح: ٥٣٠٢ من حديث عبدالسلام بن حرب به، وضعفه البوصيري من أجل إسحاق بن أبي فروة، ح: ٣٤٥، والحديث الآتي شاهد له.

2680. 'Amr bin Shu'aib narrated from his father that his grandfather said: "A man came to the Prophet ﷺ screaming. The Messenger of Allâh ﷺ said to him: 'What is the matter with you?' He said: 'My master saw me kissing a slave woman of his, so he cut off my penis.' The Prophet ﷺ said: "Take me to the man.' He was sought but could not be found, so the Messenger of Allâh ﷺ said: 'Go, for you are free.' He said: 'Who will protect me, O Messenger of Allâh? What if my master enslaves me again?' The Messenger of Allâh ﷺ said: 'Your protection will be (incumbent upon) every believer or Muslim.'" (*Hasan*)

٢٦٨٠ - حَدَّثَنَا رَجَاءُ بْنُ الْمُرَجَّى السَّمَرَقَنْدِيُّ: حَدَّثَنَا النَّضْرُ بْنُ سُمَيْلٍ: حَدَّثَنَا أَبُو حَمْرَةَ الصَّبْرِيُّ: حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ صَارِحًا فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «مَا لَكَ؟» قَالَ: سَيِّدِي رَأَى أُمَّبِلُ جَارِيَةً لَهُ، فَجَبَّ مَذَاكِيرِي. فَقَالَ النَّبِيُّ ﷺ: «عَلَيَّ بِالرَّجُلِ» فَطَلَبَ فَلَمْ يُقَدَّرْ عَلَيْهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِذْهَبْ.» فَأَنْتَ حُرٌّ قَالَ: عَلَى مَنْ نُصِرْتِي يَا رَسُولَ اللَّهِ! قَالَ يَقُولُ: أَرَأَيْتَ إِنْ اشْتَرَيْتَنِي مَوْلَايَ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «عَلَيَّ كُلُّ مُؤْمِنٍ أَوْ مُسْلِمٍ.»

تخريج: [إسناده حسن] أخرجه أبو داود، والديات، باب من قتل عبده أو مثل به، ح: ٤٥١٩ من حديث أبي حمزة به، وأخرجه أحمد، والطبراني، ح: ٥٣٠١ من طريق معمر، وابن جريج عن عمرو بن شعيب به.

Chapter 30. The Most Decent People In Killing Are The People Of Faith

(المعجم ٣٠) - بَابُ أَعْفَ النَّاسِ قِتْلَةَ،
أَهْلِ الْإِيمَانِ (التحفة ٣٠)

2681. 'Abdullâh said that the Messenger of Allâh ﷺ said: "The most decent of the people in killing are the people of faith." (Da'if)

٢٦٨١ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّورَقِيِّ: حَدَّثَنَا هُشَيْمٌ عَنْ مُغِيرَةَ، عَنْ شِبَاكِ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ قَالَ: قَالَ عَبْدُ اللَّهِ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ مِنْ أَعْفَ النَّاسِ قِتْلَةَ أَهْلِ الْإِيمَانِ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ١/٣٩٣ من حديث هشيم: أنبا مغيرة به، وانظر الحديث الأتي لعلته.

2682. It was narrated that 'Abdullâh that the Messenger of Allâh ﷺ said: "The most decent of the people in killing are the people of faith." (Da'if)

٢٦٨٢ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا غُلَظُّ بْنُ شُعْبَةَ، عَنْ مُغِيرَةَ، عَنْ شِبَاكِ، عَنْ إِبْرَاهِيمَ، عَنْ هُنَيِّ بْنِ نُوَيْرَةَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَعْفَ النَّاسِ قِتْلَةَ، أَهْلِ الْإِيمَانِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الجهاد، باب: في النهي عن المثلة، ح: ٢٦٦٦ من حديث مغيرة به، وانظر، ح: ٢٠٧٤ لتدليس إبراهيم النخعي * وهنّي بن نويرة مستور (تقريب)، وفيه علة أخرى.

Comments:

The Noble Prophet ﷺ said, "When you kill or when you slaughter, do it in a decent way." Whoever kills or slaughters, he should sharpen his knife to cause less pain to the animal. (See no. 3170)

Chapter 31. The Lives Of All Muslims Are Equal In Value

(المعجم ٣١) - بَابُ: الْمُسْلِمُونَ تَتَكَافَأُ دِمَاؤُهُمْ (التحفة ٣١)

2683. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "The blood of the Muslims is equal, they are one hand against others. The asylum offered by the lowest of them in status applies to them (all), and the return is

٢٦٨٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى الصَّنَعَانِيُّ: حَدَّثَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ أَبِيهِ، عَنْ حَنْسِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «الْمُسْلِمُونَ تَتَكَافَأُ دِمَاؤُهُمْ. وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ. يَسْعَى

granted to the farthest of them.”^[1] (*Sahih*)

بِدَمِّهِمْ أَدْنَاهُمْ، وَيُرَدُّ عَلَى أَقْصَاهُمْ».

تخریج: [صحیح] ضعفه البوصيري لضعف حنش، وللحديث طرق عند أبي داود وغيره، انظر، ح: ٢٦٦٠.

Comments:

- “The blood of Muslims is equal.” It means the killing in retaliation and blood money is equal for all Muslims. In this matter there is no difference at all between tribes, poor or rich, noble or common man, young or adult, all are equal in this regard, and the punishment is the same for everyone.
- If the lowest of the Muslims in status gives asylum to a non-Muslim it applies to all Muslims. In other words, he is under the protection of all Muslims.
- Whatever the quantity of booty a warrior collects, small or large, he cannot keep it in his custody. He must submit it to the leader of the army. He can claim only his share from the whole. He is bound to follow the principles of the spoils of war.

2684. It was narrated from Ma'qil bin Yasâr that the Messenger of Allâh ﷺ said: “The Muslims are one hand against others, and their blood is equal.” (*Sahih*)

٢٦٨٤ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ: حَدَّثَنَا أَنَسُ بْنُ عِيَاضٍ، أَبُو صَمْرَةَ، عَنْ عَبْدِ السَّلَامِ بْنِ أَبِي الْجُنُوبِ، عَنِ الْحَسَنِ، عَنْ مَعْقِلِ بْنِ يَسَارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمُسْلِمُونَ يَدٌ عَلَى مَنْ سِوَاهُمْ. وَتَكَافَأَ دِمَاؤُهُمْ».

تخریج: [صحیح] أخرجه ابن عدي: ١٩٦٨/٥ من طريق إبراهيم بن سعيد به، وفي المطبوع تصحيف فليصحح من هاهنا وضعفه البوصيري من أجل عبدالسلام بن أبي الجنوب، ضعفه ابن المديني، وأبو زرعة وغيرهما، والحديث السابق شاهد له.

2685. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather that the Messenger of Allâh ﷺ said: “The hand of the Muslims is over others, and their blood and wealth is equal in value. The (asylum granted by) the lowest of

٢٦٨٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عِيَّاشٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَدُ الْمُسْلِمِينَ عَلَى مَنْ سِوَاهُمْ. تَكَافَأَ دِمَاؤُهُمْ

^[1] They say it refers to the spoils of war, and that those captured by this army should be returned to it, or, that it deals with not discriminating between this group and that group when dividing the spoils of war. See explanation by Sindi.

them applies to the Muslims, and the Muslims return (the spoils of war) to the farthest of them.” (Hasan)

وَأَمْوَالُهُمْ. وَيُجِيرُ عَلَى الْمُسْلِمِينَ أَذْنَاهُمْ،
وَيُرَدُّ عَلَى الْمُسْلِمِينَ أَقْصَاهُمْ.”

تخریج: [إسناده حسن] انظر، ح: ٢٦٤٤.

Comments:

There will be a flag on the body of the offender on the Day of Resurrection who killed an asylum-granted non-Muslim. This flag will put him to shame and humiliation.

Chapter 32. One Who Kills A *Mu'ahid*^[1]

(المعجم ٣٢) - بَابُ مَنْ قَتَلَ مُعَاهِدًا

(التحفة ٣٢)

2686. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "Whoever kills a *Mu'ahid*, will not smell the fragrance of Paradise, even though its fragrance may be detected from a distance of forty years." (Sahih)

٢٦٨٦ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْحَسَنِ بْنِ عَمْرٍو، عَنْ مُجَاهِدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قَتَلَ مُعَاهِدًا، لَمْ يَرِحْ رَائِحَةَ الْجَنَّةِ وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا».

تخریج: أخرجه البخاري، الجزية والموادعة، باب إثم من قتل معاهدًا بغير جرم، ح: ٦٩١٤، ٣١٦٦ من حديث الحسن بن عمرو به.

2687. It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever kills a *Mu'ahid* who has the protection of Allâh and the protection of His Messenger, will not smell the fragrance of Paradise, even though its fragrance may be detected from a distance of seventy years." (Sahih)

٢٦٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مَعْدِيُّ بْنُ سُلَيْمَانَ: أَبَانَا ابْنُ عَجْلَانَ عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ قَتَلَ مُعَاهِدًا، لَهُ ذِمَّةُ اللَّهِ وَذِمَّةُ رَسُولِهِ، فَلَا يَرِاحُ رَائِحَةَ الْجَنَّةِ. وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ سَبْعِينَ عَامًا».

تخریج: [صحيح] أخرجه الترمذي، الدييات، باب ما جاء فيمن يقتل نفسًا معاهدًا، ح: ١٤٠٣ عن ابن بشار به، وقال: حسن صحيح * ومعدي ضعيف، وابن عجلان عنن تقدم، ح: ١٩٦٧، والحديث السابق شاهد له.

Comments:

a. Non-Muslim residents of an Islamic state are called *Mu'ahid*, meaning protected, because the state is responsible for their rights and their lives.

[1] One whom there is a covenant with.

- b. They get their rights with the orders of Allâh and His Messenger ﷺ.
 c. 'Will not smell the fragrance of Paradise' means that the offender will be away from Paradise. In the Hereafter there are only two places, Paradise and Hell. This is a warning that the offenders will enter Hell.

Chapter 33. One Who Offers Protection To A Man Then Kills Him

(المعجم ٣٣) - بَابُ مَنْ أَمِنَ رَجُلًا عَلَى دَمِهِ فَتَقَتَّلَهُ (التحفة ٣٣)

2688. It was narrated that Rifâ'ah bin Shaddâd Al-Qitbâni said: "Were it not for a word that I heard from 'Amr bin Hamiq Khuzâ'i, I would have separated the head of Al-Mukhtâr from his body. I heard him saying: "The Messenger of Allâh ﷺ said: 'If a man trusts someone with his life then he kills him, he will carry a banner of treachery on the Day of Resurrection.'" (*Sahih*)

٢٦٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ رِفَاعَةَ بْنِ شَدَّادِ الْقَيْطَانِيِّ قَالَ: لَوْلَا كَلِمَةٌ سَمِعْتُهَا مِنْ عَمْرِو بْنِ الْحَمِقِ الْخُزَاعِيِّ، لَمَسَيْتُ فِيمَا بَيْنَ رَأْسِ الْمُخْتَارِ وَجَسَدِهِ. سَمِعْتُهُ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَمِنَ رَجُلًا عَلَى دَمِهِ، فَتَقَتَّلَهُ فَإِنَّهُ يَحْمِلُ لَوَاءَ عَذْرِ يَوْمِ الْقِيَامَةِ».

تخریج: [صحیح] أخرجه النسائي في الكبرى: ٢٢٥/٥، ح: ٨٧٣٩ من حديث أبي عوانة به، وصححه البوصيري، قلت: عبد الملك بن عمير (٢١١٨ب) صرح بالسماع عند النسائي (الكبرى، ح: ٨٧٤١) إلا أنه قال: حدثني عامر بن شداد والصواب: رفاعه بن شداد، وتابعه إسماعيل السدي عن رفاعه به عند ابن حبان، ح: ١٦٨٢ وغيره، وللحديث طرق أخرى.

Comments:

- a. Killing after giving a promise of protection is a great sin.
 b. Mukhtâr bin 'Ubaid Thaqfi, after the martyrdom of Hussain ؑ, stood up with a slogan of revenge. Through this slogan, he gained popularity and the sympathies of the people. He then claimed to be a prophet, and mislead the people. Mus'ab bin Zubair killed him and ended his mischief.

2689. It was narrated that Rifâ'ah said: "I entered upon Mukhtâr in his palace and he said: 'Jibril has just left me.' Nothing stopped me from striking his neck (i.e., killing him) but a *Hadith* that I heard from Sulaimân bin Surad, according to which the Prophet ﷺ said: 'If a man trusts you with

٢٦٨٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا أَبُو نَيْلَى عَنْ أَبِي عَكَّاشَةَ، عَنْ رِفَاعَةَ قَالَ: دَخَلْتُ عَلَى الْمُخْتَارِ فِي قَصْرِهِ. فَقَالَ: قَامَ جِبْرِئِيلُ مِنْ عِنْدِي السَّاعَةَ. فَمَا مَتَنَيْ مِنْ ضَرْبِ عُنُقِهِ إِلَّا حَلِيتُ سَمِعْتُهُ مِنْ سُلَيْمَانَ بْنِ صُرْدِ بْنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «إِذَا

his life, then do not kill him.' That is what stopped me." (*Da'if*)

أَمْتِكَ الرَّجُلُ عَلَى دَمِهِ، فَلَا نَقْتُلُهُ، فَذَاكَ الَّذِي مَنَعَنِي مِنْهُ.

تخريج: [إسناده ضعيف] أخرجه البخاري في التاريخ الكبير: ٣/٣٢٣، وأحمد: ٦/٣٩٣، وابن عدي: ٤/١٤٨٩ من حديث أبي لیلی عبدالله بن ميسرة الحارثي الواسطي به، وضعفه البيهقي * عبدالله بن ميسرة ضعيف (تقريب)، وأبو عكاشة الهمداني مجهول، وقع في المسند أبو عكاشة وهو تصحيف، راجع أطراف المسند: ٢/٥٠٨ وهامشه، والحديث السابق يغني عنه.

Chapter 34. Pardoning The Killer

(المعجم ٣٤) - بَابُ الْعَفْوِ عَنِ الْقَاتِلِ (التحفة ٣٤)

2690. It was narrated that Abu Hurairah said: "A man killed (another) during the time of the Messenger of Allāh ﷺ, and that was referred to the Prophet ﷺ. He handed him over to the victim's next of kin, but the killer said: 'O Messenger of Allāh, by Allāh I did not mean to kill him.' The Messenger of Allāh ﷺ said to the next of kin: 'If he is telling the truth and you kill him, you will go to Hell.' So he let him go. He had been tied with a rope, and he went out dragging his rope, so he became known as *Dhan-Nis'ah* (the one with the rope). (*Sahih*)

٢٦٩٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَتَلَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. فَرَفَعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ. فَدَفَعَهُ إِلَى وَلِيِّ الْمَقْتُولِ. فَقَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ! وَاللَّهِ مَا أَرَدْتُ قَتْلَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْوَلِيِّ: «أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا ثُمَّ قَتَلْتَهُ، دَخَلْتَ النَّارَ» قَالَ: فَخَلَّى سَبِيلَهُ. قَالَ: وَكَانَ مَكْتُوفًا بِسِنْعَةٍ. فَخَرَجَ يَجْرُ نِسْعَتَهُ. فَسُمِّيَ ذَا النَّسْعَةِ.

تخريج: [صحيح] أخرجه أبو داود، اللديات، باب الإمام يأمر بالعفو في الدم، ح: ٤٤٩٨ من حديث أبي معاوية به، وصححه الترمذي، ح: ١٤٠٧ * الأعمش عنن تقدم، ح: ١٧٨ وتقوية بعض العلماء لروايته عن أبي صالح ليس بجيد كما حققته في نيل المقصود، ح: ٥١٧، ولكن لحديثه شاهد صحيح عند مسلم، ح: ١٦٨٠، وأبي داود، ح: ٤٥٠١ وغيرهما.

2691. It was narrated that Anas bin Málík said: "A man brought the killer of his relative to the Messenger of Allāh ﷺ, and the Messenger of Allāh ﷺ said: 'Pardon him,' but he refused. He

٢٦٩١ - حَدَّثَنَا أَبُو عُمَيْرٍ عَيْسَى بْنُ مُحَمَّدٍ النَّخَّاسُ، وَ عَيْسَى بْنُ يُونُسَ، وَ الْحُسَيْنُ بْنُ أَبِي السَّرِيِّ الْعَسْقَلَانِيُّ، قَالُوا: حَدَّثَنَا ضَمْرَةُ ابْنُ رَبِيعَةَ، عَنْ ابْنِ شَوْذَبٍ، عَنْ ثَابِتِ

said: 'Take the blood money,' but he refused. He said: 'Go and kill him, but then you will be like him.' Someone caught up with him and reminded him that the Messenger of Allāh ﷺ had said: 'Go and kill him, but then you will be like him.' So he let him go. (Sahih)

He (the killer) was seen, dragging his rope (with which he had been tied), going to his family. It was as if he had been fettered (with his hands behind his back).

(One of the narrators) Abu 'Umair said in his narration: "Ibn Shawdhab said, narrating from 'Abdur-Rahmān bin Qāsim: 'No one has the right after the Prophet ﷺ to say: "Go and kill him, but then you will be like him.""

Ibn Mājah said: This is the narration of the Ramliyīn, and is found only with them. (Meaning, the three who narrated this to Ibn Mājah were all from Ramlah.)

الْبُنَانِيُّ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أَتَى رَجُلٌ بِقَاتِلٍ وَوَلَّيَهُ إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ لَهُ النَّبِيُّ ﷺ: «اغْفُ» فَأَبَى. فَقَالَ: «خُذْ أَرْضًا» فَأَبَى. قَالَ: «فَادْهَبْ فَاقْتُلْ فَإِنَّكَ مِثْلُهُ». قَالَ: فَلَحِقَ بِهِ. فَقِيلَ لَهُ: إِنَّ رَسُولَ اللَّهِ ﷺ قَدْ قَالَ: «اقْتُلْ فَإِنَّكَ مِثْلُهُ» [قَالَ:] فَحَلَّى سَيْلَهُ.

قَالَ: فَرَوَيْ يَجْرُ نِسْعَتَهُ ذَاهِبًا إِلَى أَهْلِهِ. قَالَ: كَأَنَّهُ قَدْ كَانَ أَوْثَقَهُ.

قَالَ أَبُو عَمْرِو فِي حَدِيثِهِ: قَالَ ابْنُ شَوَدْبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ: فَلَيْسَ لِأَحَدٍ بَعْدَ النَّبِيِّ ﷺ أَنْ يَقُولَ: «اقْتُلْ فَإِنَّكَ مِثْلُهُ».

قَالَ ابْنُ مَاجَهَ: هَذَا حَدِيثُ الرَّمْلِيِّينَ، لَيْسَ إِلَّا عِنْدَهُمْ.

تخريج: [إسناده صحيح] أخرجه النسائي: ١٧/٨، والقاسمة، . ذكر اختلاف الناقلين لخبر

علقمه بن وائل، ح: ٤٧٣٤ عن عيسى بن يونس به.

Comments:

- Killing in retaliation is not the correct decision in the case of killing by mistake. Taking blood money or forgiving is a better decision.
- In the case of one killed by mistake, killing in retaliation is like murder, and liable to the same punishment as killing.
- This is a narration of 'Ramliyīn' means that all the narrators in this narration are of Ramlā. This is not a matter of distrust, rather it shows the keen interest of scholars of *Ahādīth* in investigation of narrations.

Chapter 35. Pardoning In Cases Of Retaliation

(المعجم ٣٥) - بَابُ الْعَفْوِ فِي الْقِصَاصِ (التحفة ٣٥)

2692. It was narrated that 'Atâ' bin Abu Maimunah said: "I only know it from Anas bin Mâlik who said: 'No case involving retaliation was referred to the Messenger of Allâh ﷺ but he enjoined forgiveness.'" (Sahih)

٢٦٩٢ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَتَيْنَا حَبَّانَ بْنَ هِلَالٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ بَكْرٍ الْمُرَزِيُّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ قَالَ: لَا أَعْلَمُهُ إِلَّا عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: مَا رُفِعَ إِلَى رَسُولِ اللَّهِ ﷺ شَيْءٌ فِيهِ الْقِصَاصُ، إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ.

تخريج: [إسناده صحيح] أخرجه أبو داود، الدييات، باب الإمام يأمر بالعفو في الدم، ح: ٤٤٩٧ من حديث عبدالله بن بكر به.

Commets:

- a. Killing in retaliation is a lawful action, but forgiving is better, and appreciated.
- b. The judge can give a suggestion of reconciliation or forgiveness to the parties but he cannot compel them to accept it. It's the right of the parties to accept or reject it.

2693. Abu Dardâ' said: "I heard the Messenger of Allâh ﷺ say: 'There is no man who suffers some (injury) on his body and forgives (the perpetrator), but Allâh will raise him one degree in status thereby, or erase from him one sin.'

٢٦٩٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ، عَنْ أَبِي السَّفَرِ قَالَ: قَالَ أَبُو الدَّرْدَاءِ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَا مِنْ رَجُلٍ يُصَابُ بِشَيْءٍ مِنْ جَسَدِهِ، فَيَتَصَدَّقُ بِهِ، إِلَّا رَفَعَهُ اللَّهُ بِهِ دَرَجَةً، وَحَطَّ عَنْهُ بِهِ حَطِيئَةً».

My own ears heard it and my heart memorized it." (Da'if)

سَمِعْتُهُ أُذُنَايَ، وَوَعَاهُ قَلْبِي.

تخريج: [إسناده ضعيف] أخرجه الترمذي، الدييات، باب ماجاء في العفو، ح: ١٣٩٣ من حديث يونس به * سعيد بن يحمدا أبوالسفر الكوفي ثقة لكنه أرسل عن أبي الدرداء كما في التهذيب وغيره، فالسند منقطع.

Chapter 36. A Pregnant Woman Deserving Retaliation

(المعجم ٣٦) - بَابُ الْحَامِلِ يَجِبُ عَلَيْهَا الْقَوْدُ (التحفة ٣٦)

2694. Mu'adh bin Jabal, Abu

٢٦٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا أَبُو

'Ubaidah bin Jarrâh, 'Ubâdah bin Sâmit and Shaddâd bin Aws narrated that the Messenger of Allâh ﷺ said: "If a woman kills someone deliberately, she should not be killed until she delivers what is in her womb, if she is pregnant, and until the child's sponsorship is guaranteed. And if a woman commits illegal sex, she should not be stoned until she delivers what is in her womb and until her child's sponsorship is guaranteed." (*Da'if*)

صَالِحٍ عَنِ ابْنِ لَهَيْعَةَ، عَنِ ابْنِ أَنْعَمٍ، عَنِ
عَبَادَةَ بْنِ نُسَيْبٍ، عَنِ عَبْدِ الرَّحْمَنِ بْنِ عَنَمٍ:
حَدَّثَنَا مُعَاذُ بْنُ جَبَلٍ، وَ أَبُو عُبَيْدَةَ بْنُ
الْجَرَّاحِ، وَ عَبَادَةُ بْنُ الصَّامِتِ، وَ شَدَّادُ بْنُ
أَوْسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْمَرْأَةُ، إِذَا
قَتَلَتْ عَمْدًا، لَا تُقْتَلُ حَتَّى تَضَعَ مَا فِي
بَطْنِهَا، إِنْ كَانَتْ حَامِلًا، وَحَتَّى تُكْفَلَ
وَلَدَهَا. وَإِنْ زَنَتْ، لَمْ تُرْجَمْ حَتَّى تَضَعَ مَا
فِي بَطْنِهَا، وَحَتَّى تُكْفَلَ وَلَدَهَا».

تخریج: [إسناده ضعيف] * ابن أنعم، ح: ٥٤ وابن لهيعة، ح: ٣٣٠ تقدم حالهما، وفيه علة
أخرى، وللحديث شاهد عند مسلم، ح: ٦٩٥، وأبي داود، ح: ٤٤٤٢ وغيرهما، وهو يغني عنه.

Comments:

Ghamidiyah happened to commit the crime of illegal sex and she appeared before the Prophet ﷺ and confessed her offence and also informed that she was pregnant. The Noble Prophet ﷺ delayed the punishment till the birth of the baby. After the birth when an *Ansâri* Companion took the responsibility of upbringing the child, and she was stoned to death. (*Sahih Muslim*: 1695)

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

In the Name of Allāh, the Most Beneficent, the Most Merciful

22. The Chapters On Wills

(المعجم ٢٢) أَبْوَابُ الْوَصَايَا
(التحفة ١٤)

To make a will means to take a pledge from one that he, the testator, in his life or after death will do this and this. This can be applied to another person as well.

It is carried out by appointing someone after one's death to gift one's property to someone. It can be property, wealth or anything of benefit in any shape.

The kinds of Wills are:

1. *Wājib* (Compulsory): This kind of will is compulsory to follow—that is carrying out the obligations like payment of debt, the return of entrusted things, expiations etc.
2. *Mustahab* (Desirable): Making a will for relatives other than heirs is commended.
3. *Mubah* (Permissible): Making a will for relatives other than heirs who are already rich is permitted.
4. *Makruh Tahrimi* (Undesirable to the point of being forbidden): Making a will for sinners and disbelievers in Allāh is not approved. (Allāh knows better.)

Chapter 1. Did The Messenger Of Allāh ﷺ Make A Will?

2695. It was narrated that 'Āishah said: "The Messenger of Allāh ﷺ did not leave behind a Dinār nor a Dirham, nor a sheep nor a camel, and he did not make a will concerning anything." (Sahih)

(المعجم ١) - [بَابُ] وَهَلْ أَوْصَى
رَسُولُ اللَّهِ ﷺ (التحفة ١)

٢٦٩٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا أَبِي وَ أَبُو مُعَاوِيَةَ؛ ح: وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، قَالَ أَبُو بَكْرٍ: وَ عَبْدِ اللَّهِ ابْنُ نُمَيْرٍ عَنِ الْأَعْمَشِ عَنِ شَقِيقٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: مَا تَرَكَ رَسُولُ اللَّهِ ﷺ دِينَارًا وَلَا دِرْهَمًا، وَلَا شَاةً وَلَا بَعِيرًا، وَلَا أَوْصَى بِشَيْءٍ.

تخريج: أخرجه مسلم، الوصية، باب ترك الوصية لمن ليس له شيء يوصي فيه، ح: ١٦٣٥ عن محمد بن عبدالله بن نمير به.

Comments:

- Allāh's Messenger ﷺ said, "My heirs will not inherit a Dinār or Dirham (i.e., money) for whatever I have, excluding adequate support of wives and wages of my employees, is to be given in charity." (*Sahih Al-Bukhārī*: 2776)
- There is an opinion that the Noble Prophet ﷺ made some particular wills, especially in favor of his caliphate. This opinion is totally wrong and baseless as 'Ali himself denied it. (See *Ahādīth* 2652 & 2698)

2696. It was narrated from Mālik bin Mighwal that Talhah bin Musarrif said: "I said to 'Abdullāh bin Abu Awfa: 'Did the Messenger of Allāh ﷺ make a will concerning anything?' He said: 'No.' I said: 'How come he told the Muslims to make wills?' He said: 'He enjoined (them to adhere to) the Book of Allāh.'" Mālik said: "Talhah bin Musarrif said: 'Huzail bin Shurahbil said: "Abu Bakr was granted leadership according to the will of Allāh's Messenger ﷺ?" (Rather) Abu Bakr wished that he found a covenant (in that regard) from Allāh's Messenger ﷺ, so he could fetter his nose with a (camel's) nose ring."^[1] (*Sahih*)

٢٦٩٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ عَنْ مَالِكِ بْنِ مِغْوَالٍ، عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ قَالَ: قُلْتُ لِعَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى: أَوْصَى رَسُولُ اللَّهِ ﷺ بِشَيْءٍ؟ قَالَ: لَا. قُلْتُ: فَكَيْفَ أَمَرَ الْمُسْلِمِينَ بِالْوَصِيَّةِ؟ قَالَ: أَوْصَى بِكِتَابِ اللَّهِ.

قَالَ مَالِكٌ: وَقَالَ طَلْحَةُ بْنُ مُصَرِّفٍ: قَالَ الْهَزَيْلُ بْنُ شُرَحْبِيلَ: أَبُو بَكْرٍ كَانَ يَتَأَمَّرُ عَلَى وَصِيِّ رَسُولِ اللَّهِ ﷺ؟ وَدَّ أَبُو بَكْرٍ أَنَّهُ وَجَدَ مِنْ رَسُولِ اللَّهِ ﷺ عَهْدًا، فَحَزَمَ أَنْفَهُ بِخِزَامٍ.

تخريج: أخرجه البخاري، الوصايا، باب الوصايا، ح: ٤٤٦٠، ٢٧٤٠ من حديث مالك بن مِغْوَالٍ به، ومسلم، الوصية، الباب السابق، ح: ١٦٣٤ من حديث وكيع به، وقول هزيل صحيح، وأخرجه أحمد: ٤/٤٨١، ٤٨٢ عن وكيع به.

Comments:

- The question was about the will of caliphate and Ibn Abu Awfa made it clear that the Prophet ﷺ never made such a will.
- The second question was about the ambiguities as the Noble Prophet ﷺ

[1] Meaning, that there was no will, and that Abu Bakr did not accept the position of leadership happily, and if the claims of the *Rawāfid* that there was a will ordering 'Ali to be the leader were true, then Abu Bakr would have been pleased and ready to follow behind him. See *Injāh Al-Hājjah* by 'Abdul-Ghani Dehlavi.

ordered the Muslims to make will, he must have made one particularly about the caliphate, that 'so-and-so will be the caliph after me.' The answer to this ambiguity was that the Noble Prophet ﷺ ordered acting upon the complete Qur'ân. There is an order in the Noble Qur'ân "Obey those who are in authority."

- c. The most important and foremost feature of Abu Bakr's nature was to follow the Noble Prophet ﷺ. Therefore, it was impossible that if the Prophet ﷺ had appointed 'Ali as his caliph, he could have dared to deny the orders of the Prophet ﷺ, rather he would have loved to go to any extent to obey the caliph appointed by the Prophet ﷺ.

2697. It was narrated that Anas bin Mâlik said: "What the Messenger of Allâh ﷺ most enjoined when he was dying and breathing his last was: The prayer; and those whom your right hands possess.'" (*Da'if*)

٢٦٩٧ - حَدَّثَنَا أَحْمَدُ بْنُ الْوُقْدَانَ: حَدَّثَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَتْ عَامَّةُ وَصِيَّةِ رَسُولِ اللَّهِ ﷺ حِينَ خَصَرْتَهُ الْوَفَاءَ، وَهُوَ يُرَغِرُ بِنَفْسِهِ: الصَّلَاةَ. وَمَا مَلَكَتْ أَيْمَانُكُمْ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ١١٧/٣ من حديث سليمان التيمي به، وصححه ابن حبان (موارد)، ح: ١٢٢٠، وحسنه البوصيري، وأخرجه أبو يعلى: ٣٤٧/٥، ح: ٢٩٩٠ عن أحمد ابن المقدم به، وتابعه هريم بن عبد الأعلى أبو حمزة الأسدي عنده (ص: ٣٠٩، ح: ٢٩٣٣) عن المعتمر به * قتادة عن عن تقدم، ح: ١٧٥، ولجديته شواهد، كلها ضعيفة انظر، ح: ١٦٢٥، والحديث الآتي وغيرهما، الله أعلم.

2698. It was narrated that 'Ali bin Abu Tâlib said: "The last words of the Prophet ﷺ were: The prayer; and those whom your right hands possess.'" (*Da'if*)

٢٦٩٨ - حَدَّثَنَا سَهْلُ بْنُ أَبِي سَهْلٍ: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ مُغِيرَةَ، عَنْ أُمِّ مُوسَى، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: كَانَ آخِرُ كَلَامِ النَّبِيِّ ﷺ: الصَّلَاةَ وَمَا مَلَكَتْ أَيْمَانُكُمْ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، الأدب، باب في حق المملوك، ح: ٥١٥٦ من حديث محمد بن فضيل به * مغيرة عن عن تقدم، ح: ١٣٠٢، وأم موسى مجهولة الحال، وللحديث شواهد كلها ضعيفة.

Comments:

- a. Prayer on time is among the most important obligations in Islam, therefore, the Noble Prophet ﷺ at the time of his departure from this world, emphasized offering prayers regularly and on time.

- b. Slaves belong to the most destitute class of society, but Islam gave them respect and honor, and they held highly esteemed posts in Islamic society. Kingship of Slave Dynasty, in the subcontinent is a well-known example.
- c. The last word which can be deemed the last will of the Noble Prophet ﷺ was "O Allāh (with) the highest companions."
- d. As we make wills regarding worldly matters, in the same way, we ought to make wills concerning duties of the faith.
- e. The last words or last will of the Noble Prophet ﷺ are equally concerned and relevant to this world and the Hereafter.

Chapter 2. Exhortation To Make A Will

(المعجم ٢) - بَابُ الْحَثِّ عَلَى الْوَصِيَّةِ (التحفة ٢)

2699. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "The Muslim man has no right to spend two nights, if he has something for which a will should be made, without having a written will with him." (Sahih)

٢٦٩٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا حَقَّ امْرِئٍ مُسْلِمٍ أَنْ يَبْتَئِنَ لَيْلَتَيْنِ وَلَهُ شَيْءٌ يُوصِي فِيهِ، إِلَّا وَوَصِيَّتَهُ مَكْتُوبَةً عِنْدَهُ».

تخريج: أخرجه مسلم، الوصية، باب: وصية الرجل مكتوبة عنده، ح: ١٦٢٧ من حديث ابن نمير به، أخرجه البخاري، الوصايا، باب الوصايا، ح: ٢٧٣٨ من حديث مالك به.

Comments:

- a. The reward and benefits of the will begin after death, when the commands of the will are carried out.
- b. No human knows the moment of his death, therefore, a will should always be kept ready. A Muslim should always be ready to welcome the moment of death.
- c. One can make changes at times, according to the circumstances, in a will written earlier.
- d. Written details of debt and matters entrusted to others should always be kept ready at hand.

2700. It was narrated from Anas bin Mâlik that the Messenger of Allāh ﷺ said: "The one who is deprived is the one who is deprived of a will." (Da'if)

٢٧٠٠ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا دُرَيْشُ بْنُ زَبَادٍ: حَدَّثَنَا يَزِيدُ الرَّقَاشِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْمَحْرُومُ مَنْ حُرِمَ وَصِيَّتَهُ».

تخريج: [إسناده ضعيف] وقال البوصيري: هذا إسناد ضعيف لضعف الرقاشي تقدم، ح: ١٠٨٠، والراوي عنه .

Comments:

The sense of the narration is that one who died without making a written will, remained deprived of the benefits he could have if he had written one. For example, if he had advised in the will to give charity to pay the debt etc., he could have availed the benefits after his death. The one who does not write the will, remains deprived of such blessing.

2701. It was narrated from Jābir bin ‘Abdullāh that the Messenger of Allāh ﷺ said: “Whoever dies leaving a will, he dies on the right path and *Sunnah*, and he dies with piety and witness, and he dies forgiven.” (*Da’if*)

٢٧٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْجَمْصِيُّ: حَدَّثَنَا يَعْقُوبُ بْنُ الْوَلِيدِ، عَنْ يَزِيدِ بْنِ عَوْفٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ مَاتَ عَلَى وَصِيَّتِهِ، مَاتَ عَلَى سَبِيلٍ وَسَيِّئَةٍ. وَمَاتَ عَلَى تَقَى وَشَهَادَةٍ. وَمَاتَ مَغْفُورًا لَهُ».

تخريج: [إسناده ضعيف جداً] وضعفه البوصيري، وأخرجه ابن عدي: ١٦٨٥/٥ عن بقية: حدثني يزيد بن عوف حدثني عمر بن صبح عن أبي الزبير عن جابر به ... الخ * يزيد مجهول (تقريب)، عمر بن صبح متروك، كذبه ابن راهويه (أيضاً)، ولعله لوضوح أمره أسقطه محمد ابن المصنفى، وكان يدللس كما في التقريب وغيره، وبقية تقدم، ح: ٧١٢، ٥٥١.

2702. It was narrated from Ibn ‘Umar that the Prophet ﷺ said: “The Muslim man has no right to spend two nights, if he has something for which a will should be made, without having a written will with him.” (*Sahih*)

٢٧٠٢ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا رَوْحٌ [عَنِ] ابْنِ عَوْنٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ بَيْتَ لَيْلَتَيْنِ، وَلَهُ شَيْءٌ يُوصِي بِهِ، إِلَّا وَوَصِيَّتَهُ مَكْتُوبَةً عِنْدَهُ».

تخريج: أخرجه البخاري من حديث مالك عن نافع به، انظر، ح: ٢٦٩٩ وأخرجه النسائي: ٢٣٩/٦، ح: ٣٦٤٧ بإسناد صحيح عن ابن المبارك عن ابن عون عن نافع عن ابن عمر قوله، يعني أنه موقوف، قلت: وقع في الأصل: روح بن عوف عن نافع، وفي النسخ الهندية، روح بن عون عن نافع، والصبواب: روح عن ابن عون عن نافع، والله أعلم * روح هو ابن عبادة، وهذا السند لم يذكره الإمام المزني رحمه الله في تحفة الأشراف: ١١٢/٦ .

Chapter 3. Injustice In Wills (المعجم ٣) - بَابُ الْحَيْفِ فِي الْوَصِيَّةِ (التحفة ٣)

2703. It was narrated from Anas

٢٧٠٣ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ

bin Mâlik that the Messenger of Allâh ﷺ said: "Whoever tries to avoid giving the inheritance to his heirs, Allâh will deprive him of his inheritance in Paradise on the Day of Resurrection." (*Da'if*)

الرَّحِيمِ بْنِ زَيْدِ الْعَمِيِّ، عَنْ أَبِيهِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ [فَرَّ] مِنْ مِيرَاثٍ وَارِثِهِ، قَطَعَ اللَّهُ مِيرَاثَهُ مِنَ الْجَنَّةِ يَوْمَ الْقِيَامَةِ».

تخریج: [إسناده ضعيف جداً] وقال البوصيري: هذا إسناد ضعيف لضعف زيد العمي وابنه

عبد الرحيم .

2704. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "A man may do the deeds of the people of goodness for seventy years, then when he makes his will, he is unjust in his will, so he ends (his life) with evil deeds and enters Hell. And a man may do the deeds of the people of evil for seventy years, then he is just in his will, so he ends (his life) with good deeds and enters Paradise."

Abu Hurairah said: "Recite, if you wish: 'These are the limits (set by) Allâh' up to His saying: 'a disgraceful torment'"^[1] (*Hasan*)

٢٧٠٤ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ بْنُ هَمَّامٍ: أَنبَأَنَا مَعْمَرٌ عَنْ أَشْعَثَ ابْنِ عَبْدِ اللَّهِ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْخَيْرِ سَبْعِينَ سَنَةً. فَإِذَا أَوْصَى حَافٍ فِي وَصِيَّتِهِ. فَيُخْتَمُ لَهُ بِشَرِّ عَمَلِهِ، فَيَدْخُلُ النَّارَ. وَإِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الشَّرِّ سَبْعِينَ سَنَةً. فَيُعْدَلُ فِي وَصِيَّتِهِ، فَيُخْتَمُ لَهُ بِخَيْرِ عَمَلِهِ، فَيَدْخُلُ الْجَنَّةَ».

قَالَ أَبُو هُرَيْرَةَ: وَافْرَأُوا إِنْ شِئْتُمْ: ﴿تِلْكَ حُدُودُ اللَّهِ﴾ إِلَى قَوْلِهِ: ﴿عَذَابٌ مُهِينٌ﴾

[النساء: ١٣، ١٤].

تخریج: [إسناده حسن] أخرجه أبو داود، الوصايا، باب ماجاء في كراهية الإضرار في الوصية، ح: ٢٨٦٧ من حديث أشعث به، وحسنه الترمذي، ح: ٢١١٧ قلت: شهر تقدم حاله، ح: ١٤٩٦، ولم يثبت الجرح المفسر، المسقط للعدالة فيه، وقضية السرقة لم تصح، وقال الذهبي في ديوان الضعفاء (ص: ١٤٥) شهر بن حوشب مختلف فيه وحديثه حسن . . . ، وقال العسقلاني في الفتح: ٦٥/٣ وشهر حسن الحديث وإن كان فيه بعض الضعف .

2705. It was narrated from Mu'awiyyah bin Qurrah, from his father that the Messenger of Allâh

٢٧٠٥ - حَدَّثَنَا يَحْيَى بْنُ عُمَرَ بْنِ سَعِيدِ ابْنِ كَثِيرٍ بْنُ دِينَارٍ الْحَمِصِيُّ: حَدَّثَنَا بَقِيَّةٌ عَنْ

[1] *An-Nisâ'* 4:13, 14.

you are still healthy and greedy for wealth, hoping for a long life and fearing poverty. Do not tarry until your soul reaches here and you say: "My wealth is for so-and-so," and "My wealth is for so-and-so," and it will be for them even though you dislike that.'" (*Sahih*)

بَلَعْتَ نَفْسَكَ هَهُنَا، قُلْتَ: مَالِي لِفُلَانٍ، وَمَالِي لِفُلَانٍ. وَهُوَ لَهُمْ، وَإِنْ كَرِهْتَ».

تخریج: أخرجه البخاري، الأدب، باب من أحق الناس بحسن الصحبة، ح: ٥٩٧١ من حديث عمارة به، ومسلم، البر والصلة والأدب، باب بر الوالدين وأيهما أحق به، ح: ٢٥٤٨ عن أبي بكر بن أبي شيبة به.

Comments:

- a. To emphasize one's point swearing by Allāh is legal.
- b. Before answering the question, saying words as a start of the talk attracts the listener's attention, as the Noble Prophet ﷺ said, "Yes you will certainly be told."
- c. An oath can only be taken by the Name of Allāh. It is not legal to take an oath over other than Allāh's Name, as in authentic *Ahādith* it has been made clear. The Prophet ﷺ said; "Verily! Allāh ﷻ forbids you to swear by your fathers. If one has to take an oath he should swear by Allāh or keep quite." (*Sahih Al-Bukhâri*: 6108.) In this *Hadith* the oath taken by the father is either before the time when it was prohibited, or just a part of Arabian culture, as a habitual custom. It was common in Arabia that during conversation some additional words or phrases without any particular intention were added.

2707. It was narrated that Busr bin Jahhâsh Al-Qurashi that the Prophet ﷺ spat in his palm then pointed to it with his index finger and said: "Allāh says: 'Do you think you can escape from My punishment, O son of Âdam, when I have created you from something like this? When your soul reaches here' – and (the Prophet ﷺ) pointed to his throat – 'You say: I give charity.' But it is too late for charity?'" (*Sahih*)

٢٧٠٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أُنْبَأَنَا حَرِيزُ بْنُ عُثْمَانَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ مَيْسَرَةَ، عَنْ جُبَيْرِ بْنِ نَفِيرٍ، عَنْ بَسْرِ بْنِ جَعْفَرِ بْنِ الْقُرَشِيِّ قَالَ: بَرَّقَ النَّبِيُّ ﷺ فِي كَفِّهِ. ثُمَّ وَضَعَ إِصْبَعَهُ السَّبَابَةَ وَقَالَ: «يَقُولُ اللَّهُ عَزَّ وَجَلَّ: أَمَى تُعْجِرُنِي، ابْنَ آدَمَ وَقَدْ خَلَقْتِكَ مِنْ مِثْلِ هَذِهِ. فَإِذَا بَلَعْتَ نَفْسَكَ [إِلَى] هَذِهِ - وَأَشَارَ إِلَيَّ حَلْقِهِ - قُلْتَ: أَتَصَدَّقُ. وَأَمَى أَوَانُ الصَّدَقَةِ؟».

تخریج: [إسناده صحيح] أخرجه أحمد: ٢١٠/٤ وغيره من طرق عن حريز به، وتابعه ثور ابن يزيد الرحبي عند الطبراني: ٣٢/٢، وصححه الحاكم: ٣٢٣/٤، ٥٠٢/٢، والذهبي، والبيهقي.

Comments:

- a. Allāh is the Creator of man, and has all authority and control over His creation. Man, in all his needs and requirements stands in need of Allāh and cannot do anything without His guidance.
- b. This is Allāh's mercy and favor, that He created man from a clot (a petty thing) and made him most eminent of all creation.

Chapter 5. Making A Will For One Third

(المعجم ٥) - بَابُ الْوَصِيَّةِ بِالثُّلْثِ

(التحفة ٥)

2708. It was narrated from 'Āmir bin Sa'd that his father said: "I became sick during the year of the Conquest, and was at death's door. The Messenger of Allāh ﷺ came to visit me and I said: 'O Messenger of Allāh, I have a great deal of wealth and no one will inherit from me apart from my daughter. Can I give two thirds of my wealth in charity?' He said: 'No.' I said: 'Then half?' He said: 'No.' I said: 'One third?' He said: 'One third, and one third is a lot. If you leave your heirs rich that is better than leaving them destitute and begging from people.'" (Sahih)

٢٧٠٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ الْحُسَيْنُ ابْنُ الْحَسَنِ الْمُرْزِيُّ، وَ سَهْلٌ قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ أَبِيهِ قَالَ: مَرَضْتُ عَامَ الْفَتْحِ حَتَّى أَشْفَيْتُ عَلَى الْمَوْتِ. فَعَادَنِي رَسُولُ اللَّهِ ﷺ. فَقُلْتُ: أَيُّ رَسُولِ اللَّهِ إِنَّ لِي مَالًا كَثِيرًا. وَلَيْسَ يَرْتَبِي إِلَّا ابْنَةٌ لِي. أَفَأَتَصَدَّقُ بِثُلْثِي مَالِي؟ قَالَ: «لَا» قُلْتُ: فَالْشُّطْرُ؟ قَالَ: «لَا» قُلْتُ: فَالثُّلُثُ؟ قَالَ: «الثُّلُثُ. وَالثُّلُثُ كَثِيرٌ. أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّمُونَ النَّاسَ».

تخریج: أخرجه البخاري، الفرائض، باب ميراث البنات، ح: ٦٧٣٣، ومسلم، الوصية، باب

الوصية بالثلث، ح: ١٦٢٨ من حديث سفیان به.

Comments:

- a. Visiting a sick person is a highly appreciated deed and it is a sick man's right that people should visit him.
- b. When one feels that his time of death is approaching near, he can make a will for giving alms from his wealth, but not more than one third.
- c. It is better if the will is made for less than one third. The Noble Prophet ﷺ, in spite of recommending one third deemed it 'a lot'. According to 'Abdullāh bin Abbās, one third is a large part, and will should be for less than one third.

2709. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Allāh has been

٢٧٠٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ طَلْحَةَ بْنِ عَمْرٍو، عَنْ عَطَاءٍ، عَنْ أَبِي

charitable with you over the disposal of one third of your wealth at the time of your death, so that you may be able to add to the record of your good deeds.”
(*Da'if*)

هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ، عِنْدَ وَفَاتِكُمْ، بِثُلُثِ أَمْوَالِكُمْ، زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٢٦٩/٦ من حديث طلحة بن عمرو به، وضعفه البوصيري من أجل طلحة تقدم، ح: ٨٥٧، وتابعه عقبة بن عبدالله الأصم عن عطاء به، عند أبي نعيم في الحلية: ٣/٣٢٢ * وعقبة ضعيف (تقريب)، وللحديث طرق كلها ضعيفة.

Comments:

- Divine laws of Islamic faith are equally beneficial for this world and the Hereafter.
- A dead person gets the rewards and benefits of his will when it is carried out after his death.

2710. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "(Allâh says:) O son of Âdam! I have given you two things which you do not deserve (except by the mercy of Allâh): I allow you to dispose of a share of your wealth when you are on your deathbed, in order to cleanse and purify you, and My slaves pray for you after your life is over." (*Da'if*)

٢٧١٠ - حَدَّثَنَا صَالِحُ بْنُ مُحَمَّدٍ بْنِ يَحْيَى ابْنِ سَعِيدِ الْقَطَّانِ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى: أَنَّ بَنَاتَنَا مُبَارَكُ بْنُ حَسَّانَ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: يَا ابْنَ آدَمَ ائْتَانِ لِمَ نَكُنْ لَكَ وَاحِدَةً مِنْهُمَا: جَعَلْتُ لَكَ نَصِيبًا مِنْ مَالِكَ حِينَ أَحَدْتُ بِكَ ظَمِيمِكَ، لِأَطْهَرَكَ بِهِ وَأَرْكَبِكَ. وَصَلَاةُ عِبَادِي عَلَيْكَ، بَعْدَ انْقِضَاءِ أَجَلِكَ».

تخریج: [إسناده ضعيف] أخرجه الدارقطني: ١٤٨/٤ من حديث عبيد الله بن موسى به * مبارك بن حسان وضعفه البيهقي (شعب الإيمان: ٥٧/٧)، والجمهور، وهي علة الخبر.

Comments:

Offering of funeral prayer for Muslims is an obligation and a blessing of Allâh on his deceased slave. Muslim brothers pray for him, and Allâh forgives His slave and elevates his status by accepting the prayers. 'Prayer' may mean the supplication which a Muslim makes for other Muslims brothers.

2711. It was narrated that Ibn 'Abbâs said: "I would like the people to reduce (the will) from

٢٧١١ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ ابْنِ

one third to one quarter, because the Messenger of Allāh ﷺ said: 'One third is a lot.' (Sahih)

عَبَّاسٍ قَالَ: وَدِدْتُ أَنَّ النَّاسَ غَضُّوا مِنْ الثُّلُثِ إِلَى الرَّبْعِ. لِأَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الثُّلُثُ كَبِيرٌ أَوْ كَثِيرٌ».

تخريج: أخرجه البخاري، الوصايا، باب الوصية بالثلث، ح: ٢٧٤٣ من حديث هشام، ومسلم، الوصية، باب الوصية بالثلث، ح: ١٦٢٩ من حديث وكيع به.

Chapter 6. There Is No Bequest For An Heir

(المعجم ٦) - بَابُ: لَا وَصِيَّةَ لِوَارِثِ (النحفة ٦)

2712. It was narrated from 'Amr bin Khârijah: "The Prophet ﷺ addressed them when he was on his camel. His camel was chewing its cud and its saliva was dripping between my shoulders. He said: 'Allāh has allocated for each heir his share of the inheritance, so it is not permissible (to make) a bequest for an heir. The child belongs to the bed and the adulterer gets the stone. Whoever claims to belong to someone other than his father, or (a freed slave) who claims that his *Walâ*^[1] is for other than his *Mawâli*, upon him will be the curse of Allāh, the angels and all the people, and no change nor equitable exchange will be accepted from him."^[2] Or he said: "No equitable exchange nor change." (Hasan)

٢٧١٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَ سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنَمٍ، عَنْ عَمْرِو بْنِ خَارِجَةَ أَنَّ النَّبِيَّ ﷺ خَطَبَهُمْ وَهُوَ عَلَى رَاحِلَتِهِ. وَإِنَّ رَاحِلَتَهُ لَتَقْضَعُ بِجُرْدِهَا. وَإِنَّ لُغَامَهَا لَيَسِيلُ بَيْنَ كَفَيْي قَالَ: «إِنَّ اللَّهَ قَسَمَ لِكُلِّ وَاوْرِثٍ نَصِيبَهُ مِنَ الْمِيرَاثِ. فَلَا يَجُوزُ لِوَارِثٍ وَصِيَّةٌ. الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ. وَمَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ، أَوْ تَوَلَّى غَيْرَ مَوَالِيهِ، فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ. لَا يُقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ» أَوْ قَالَ: عَدْلٌ وَلَا صَرْفٌ.

[1] Referring to the relationship of inheritance between the freed slave and the one who freed him. In most cases, the freed slave's tribe name will be the same as that of the one who freed him. See no. 2609.

[2] No *Sarf* – they say it means no repentance, which is changing from the state of disobedience to the state of obedience; and no *Adl* – meaning no equity through ransoming. And it is said to be for the purpose of stressing the gravity of the wrong. See explanation by Sindi. See no. 2635.

تخریج: [إسناده حسن] أخرجه الترمذي، الوصايا، باب ماجاء لا وصية لوارث، ح: ٢١٢١ من حديث قتادة به، وقال: حسن صحيح وأخرجه النسائي: ٢٤٧/٦، ح: ٣٦٧٢ من طريق شعبة عن قتادة به.

Comments:

- The share of inheritance for the relatives which has been fixed by Allāh, they must get it accordingly.
- In the case of the share of inheritance for relatives which have not been fixed by Allāh, making an adequate will for them is commanded.
- By making an excuse for an orphan grandson, allegations are placed on the system of Islamic inheritance. For example one man has two sons, one is alive and the other has died, but the son who has died has a son who is alive. It means the deceased has an orphan grandson who, according to the law of inheritance, is not liable to inherit anything from the property of his grandfather, because in the presence of a close relative from the father's side, a distant relative is not liable of getting any share. In such a rare and uncommon situation, making change in Divine law is a great audacity, whereas a legal way out is available in the laws of inheritance. A person, before his death, can advise giving his orphan grandson an adequate share of his wealth, or the legal heirs can give him some share from their own shares, as they think proper.
- To make a will in favor of legal heirs is not permitted, because if this will is in accordance with the law of inheritance, there is no need for it, as they get it automatically, and if this is not in accordance with the law of inheritance, it is not legal to carry out in and it will be dismissed by itself.
- This narration that the child belongs to the bed has already been explained in *Hadith* no. 2004.
- Bloodline relationship cannot be changed, that is why in Islam there is no concept of adoption. According to the Islamic point of view, to adopt someone as a son is a great sin.
- The relationship of *Walā* is also unchangeable. One who has freed a slave is his *Mawālī*, and a freed slave cannot say anyone else is his *Mawālī* as it is a great sin.

2713. Shurahbil bin Muslim Al-Khawlāni narrated from Abu Umāmah Al-Bāhili that he heard the Messenger of Allāh ﷺ say in his sermon, during the year of the Farewell pilgrimage: "Allāh has given each person who has rights his rights, and there is no bequest for an heir." (*Hasan*)

٢٧١٣ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ الْخَوْلَانِيُّ. سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي خُطْبَتِهِ، عَامَ حَجَّةِ الْوَدَاعِ: «إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ. فَلَا وَصِيَّةَ لَوَارِثٍ».

تخریج: [إسناده حسن] أخرجه أبو داود، الوصايا، باب ماجاء في الوصية للوارث،

ح: ٢٨٧٠، ٣٥٦٥ من حديث إسماعيل به، وحسنه الترمذي، ح: ٢١٢٠.

2714. It was narrated that Anas bin Mālik said: "I was under the she-camel of the Messenger of Allāh ﷺ and its saliva was dripping between my shoulders, and I heard him say: 'Allāh has given each person who has rights his rights, but there is no bequest for an heir.'" (Sahih)

٢٧١٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ شُعَيْبٍ بْنُ شَابُورٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ أَنَّهُ حَدَّثَهُ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: إِنِّي لَتَحْتِ نَاقَةَ رَسُولِ اللَّهِ ﷺ يَسِيلُ عَلَيَّ لُعَابُهَا. فَسَمِعْتُهُ يَقُولُ: «إِنَّ اللَّهَ قَدْ أَغْطَى كُلَّ ذِي حَقٍّ حَقَّهُ. أَلَا لَا وَصِيَّةَ لِيُورِثُ».

تخريج: [صحيح] أخرجه الدارقطني: ٦٩/٤ من حديث ابن جابر به * وسعيد بن أبي سعيد الساحلي (كما في السنن الكبرى لليهقي: ٢٦٥/٦، والدارقطني، وصرح به ابن عبد الهادي كما في هامش تحفة الأشرف: ١/٢٢٥)، وهو مجهول كما في التقريب، ولحديثه شواهد صحيحة، والحديث صححه البوصيري وغيره.

Chapter 7. Debts Before The Will

(المعجم ٧) - بَابُ: الدَّيْنِ قَبْلَ الوَصِيَّةِ (التحفة ٧)

2715. It was narrated that 'Ali said: "The Messenger of Allāh ﷺ ruled that the debts should be paid off before the execution of the will. You recite: '(The distribution in all cases is) after the payment of legacies he may have bequeathed or debts.'^[1] The sons of one mother (from the same father) inherit from one another, but not the sons from different mothers (but the same father)." (Da'if)

٢٧١٥ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالَّذِينَ قَبْلَ الوَصِيَّةِ. وَأَنْتُمْ تَقْرَؤُوهَا: ﴿مَنْ بَعْدَ وَصِيَّتِي يُؤْصِي بِهَا أَوْ دَيْنٌ﴾ [النساء: ١١] وَإِنَّ أَعْيَانَ بَنِي الْأُمِّ لَيَتَوَارَثُونَ دُونَ بَنِي الْعَلَاتِ.

تخريج: [إسناده ضعيف] أخرجه الترمذي، الفرائض، باب ماجاء في ميراث الإخوة من الأب والأم، ح: ٢٠٩٤ من حديث سفیان الثوري به، وتابعه سفیان بن عيينة (الترمذي، ح: ٢٠٩٥، ٢١٢٢ وغيره) * الحارث الأعور تقدم حاله، ح: ٩٥، وفيه علة أخرى، ولمفهوم الحديث شاهد حسن تقدم، ح: ٢٤٣٣.

[1] An-Nisā' 4:11.

Comments:

- The issue of debt is important and serious because it remains payable in life and after death as well, whereas the will is carried out after death. On the other hand, whatever the amount of debt is, it must be paid as a will is valid only up to one third of the total amount of legacy. The amount of debt may accede from one third of the legacy.
- First of all, from the wealth of the deceased, expenditure of shrouding and burial rites are deducted. After making the payment of debt from the remaining property, whatever is left, one third or less than one third is paid according to the will, and then the remaining is distributed among the heirs.
- The real brother and sister of the deceased are given priority over the step brothers and sisters.

Chapter 8. If A Person Dies Without Having Made A Will, Can Charity Be Given On His Behalf?

2716. It was narrated from Abu Hurairah that a man asked the Messenger of Allāh ﷺ: "My father died and left behind wealth, but he did not make a will. Will it expiate for him if I give charity on his behalf?" He said: "Yes." (*Sahih*)

(المعجم ٨) - بَابُ مَنْ مَاتَ وَلَمْ يُوصِ
هَلْ يُصَدَّقُ عَنْهُ؟ (التحفة ٨)

٢٧١٦ - حَدَّثَنَا أَبُو مَرْوَانَ مُحَمَّدُ بْنُ عُمَانَ
الْعُمَانِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ،
عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ
أَبِي هُرَيْرَةَ أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ ﷺ
قَالَ: إِنَّ أَبِي مَاتَ وَتَرَكَ مَالًا. وَلَمْ يُوصِ.
فَهَلْ يُكْفَرُ عَنْهُ أَنْ تَصَدَّقْتُ عَنْهُ؟ قَالَ:
«نَعَمْ».

تخریج: أخرجه مسلم، الوصية، باب وصول ثواب الصدقات إلى الميت، ح: ١٦٣٠ من حديث العلاء به.

2717. It was narrated from 'Aishah that a man came to the Prophet ﷺ and said: "My mother died unexpectedly and she had not made a will. I think that if she could have spoken, she would have given in charity. Will she have a reward if I give in charity on her behalf, and will I have a reward?" He said: "Yes." (*Sahih*)

٢٧١٧ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: حَدَّثَنَا
أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ
عَائِشَةَ أَنَّ رَجُلًا أَتَى النَّبِيَّ ﷺ فَقَالَ: إِنَّ أُمَّي
أَفْطَلْتِ نَفْسَهَا. وَلَمْ تُوصِ. وَإِنِّي أَطْنُهَا لَوْ
تَكَلَّمْتُ لَتَصَدَّقْتُ. فَلَهَا أَجْرٌ إِنْ تَصَدَّقْتُ
عَنْهَا، وَلِي أَجْرٌ؟ فَقَالَ: «نَعَمْ».

تخریج: أخرجه مسلم، الوصية، الباب السابق، ح: ۱۰۰۴ بعد، ح: ۱۶۳۰، والزكوة، باب وصول ثواب الصدقة عن الميت، إليه، ح: ۱۰۰۴ من حديث أبي أسامة به.

Comments:

- Nowadays banquets and feast parties are arranged in the name of sending reward to the dead person, this is not a correct Islamic way to send reward to the deceased. The amount spent on such parties and food should be given to the poor and needy.
- As deputizing is possible in life for payment of debt, or other matters relating to property or wealth, similarly another person may make a payment of debt for a dead person and release him from his obligation.

Chapter 9. Allāh's Saying:
"But if he is poor, let him
have for himself what is just
and reasonable."^[1]

(المعجم ۹) - بَابُ قَوْلِهِ: ﴿وَمَنْ كَانَ
 فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ﴾ [النساء: ۶]
 (التحفة ۹)

2718. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "A man came to the Prophet ﷺ and said: 'I do not have anything and I have no wealth, but I have an orphan (under my care) who has wealth.'" He said: "Eat from the wealth of your orphan, without being extravagant or use it for trade." He (the narrator) said: "And I think he said: 'Do not preserve your wealth using his instead.'" (Hasan)

۲۷۱۸ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِيِّ: حَدَّثَنَا
 رَوْحُ بْنُ عُبَادَةَ: حَدَّثَنَا حُسَيْنُ الْمُعَلَّمُ عَنْ
 عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ:
 جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: لَا أَجِدُ
 شَيْئًا. وَلَيْسَ لِي مَالٌ. وَلِي يَتِيمٌ لَهُ مَالٌ.
 قَالَ: «كُلْ مِنْ مَالِ يَتِيمِكَ. غَيْرَ مُسْرِفٍ وَلَا
 مُتَأَنِّلٍ مَالًا». قَالَ وَأَحْسِبُهُ قَالَ: «وَلَا تَقْيِي
 مَالَكَ بِمَالِهِ».

تخریج: [إسناده حسن] أخرجه أبو داود، الوصايا، باب ماجاء فيما لولي اليتيم أن ينال من مال اليتيم، ح: ۲۸۷۲ من حديث حسين المعلم به، وصححه ابن خزيمة، وابن الجارود، ح: ۹۵۲، وقال الحافظ في الفتح: ۲۴۱/۸ إسناده قوي.

Comments:

- If the guardian of an orphan is extremely poor and has nothing to use, he is allowed to use the wealth of the orphan, but only for basic necessities without being extravagant.
- Preserving one's wealth means using the wealth of the orphan instead of

[1] An-Nisā' 4: 6.

using his own wealth for personal gains or needs.

- c. Using wealth of an orphan is permitted for trade upon the condition of giving him his due share of the profit. It is not lawful for a guardian to keep the entire profit, or spend it extravagantly for his personal needs.