

AL-MUHALLA

كِتَابُ الْحُدُودِ

The Book of Prescribed Penalties (Hudud)

Abu Muhammed Ali Ibn Hazm Al-Andalusi · Arabic–English parallel edition

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[كِتَابُ الْحُدُودِ] [مَسْأَلَةٌ الْحُدُودُ فِي غَيْرِ النَّفْسِ وَالْأَعْضَاءِ سَبْعَةُ أَشْيَاءٍ]

٢١٦٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَمْ يَصِفْ اللَّهُ تَعَالَى حَدًّا مِنْ الْعُقُوبَةِ مَحْدُودًا لَا يَتَجَاوَزُ فِي النَّفْسِ، أَوْ الْأَعْضَاءِ، أَوْ الْبَشَرَةِ، إلَّا فِي سَبْعَةِ أَشْيَاءَ: وَهِيَ: الْمُحَارَبَةُ، وَالرِّدَّةُ، وَالزِّنَى، وَالْقَذْفُ بِالزِّنَى، وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ، وَتَنَاوُلُ الْخَمْرِ فِي شُرْبٍ أَوْ أَكْلٍ فَقَطْ - وَمَا عَدَا ذَلِكَ فَلَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودًا فِيهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ.

وَنَحْنُ - إنْ شَاءَ اللَّهُ - ذَاكِرُونَ مَا فِيهِ الْحُدُودُ مِمَّا ذَكَرْنَا بَابًا بَابًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - ثُمَّ نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَشْيَاءَ لَا حَدَّ فِيهَا، وَادَّعَى قَوْمٌ: أَنَّ فِيهَا حُدُودًا - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

ثُمَّ نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - قَبْلَ ذَلِكَ أَبْوَابًا تَدْخُلُ فِي جَمِيعِ الْحُدُودِ، أَوْ فِي أَكْثَرِهَا، فَإِنَّ جَمْعَهَا فِي كِتَابٍ وَاحِدٍ أَوْلَى مِنْ تَكْرَارِهَا فِي كُلِّ كِتَابٍ مِنْ كُتُبِ الْحُدُودِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهُوَ أَيْضًا - حَصْرُهَا لِمَنْ يَطْلُبُهَا، وَأَبْيَنُ لِاجْتِمَاعِهَا فِي مَكَانٍ وَاحِدٍ، إذْ لَيْسَ كِتَابٌ مِنْ كُتُبِ الْحُدُودِ أَوْلَى بِهَذِهِ الْأَبْوَابِ مِنْ سَائِرِ كُتُبِ الْحُدُودِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهِيَ: الْحَدِيثُ الْوَارِدُ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ» مَعَ سَائِرِ مَا ذُكِرَ فِيهِ مِنْ الْخَمْرِ، وَالسَّرِقَةِ، وَالنُّهْبَةِ.

وَهَلْ تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ أَمْ لَا؟ .

The Book of Ḥudūd Issue: The Ḥudūd other than those pertaining to life and limbs are seven in number.

Issue 2167: Abu Muhammad (may Allah have mercy on him) said: Allah the Exalted has not prescribed a defined punishment that must not be transgressed for offenses involving life, limbs, or skin except in seven matters: ḥirābah (waging war), apostasy, zinā (illicit intercourse), qadhf (false accusation of zinā), theft, denial of a loaned item, and consuming intoxicants solely by drinking or eating. Beyond these, there is no defined punishment prescribed by Allah the Exalted in such matters. There is no might nor power except with Allah.

And we—if Allah wills—will mention what pertains to the Hudud (prescribed punishments) from what we have mentioned, chapter by chapter—and success is from Allah, the Exalted—then we shall discuss—if Allah, the Exalted, wills—matters in which there is no prescribed punishment, though some people claim there are prescribed punishments in them—and in Allah, the Exalted, do we seek support.

Then we will mention—if Allah, the Exalted, wills—before that chapters that apply to all prescribed punishments or most of them, for compiling them in one book is preferable to repeating them in every book on prescribed punishments—and success comes only from Allah, the Exalted.

And it [the book] is also—due to its restriction of these chapters to those who seek them and its clarity in compiling them in one place—since no book on ḥudūd is more deserving of these chapters than all other books on ḥudūd. And with Allah, the Exalted, is success.

It is the reported ḥadīth, “An adulterer does not commit adultery while he is a believer,” along with the other sins mentioned therein concerning khamr (intoxicants), theft, and plunder.

Are the prescribed punishments (hudud) enforced in mosques or not?

Are the prescribed punishments expiation or not?

وَهَلْ الْحُدُودُ كَفَّارَةٌ أَمْ لَا؟ .

L39962–39964 وَاجْتِمَاعُ الْحُدُودِ مَعَ الْقَتْلِ، وَالتَّوْكِيلِ فِي إقَامَةِ الْحُدُودِ؟ وَهَلْ تُقَامُ الْحُدُودُ بِعِلْمِ الْحَاكِمِ أَمْ لَا؟ وَالسِّجْنُ فِي التُّهَمَةِ، وَالِامْتِحَانُ بِالضَّرْبِ، وَالِاعْتِرَافُ بِالْإِكْرَاهِ، وَمَا الْإِكْرَاهُ وَالِاسْتِتَابَةُ فِي الْحُدُودِ؟ وَمَتَى يُقَامُ الْحَدُّ عَلَى الْجَارِيَةِ وَالْغُلَامِ؟ وَاعْتِرَافُ الْعَبْدِ بِالْحَدِّ، وَالشَّهَادَةُ فِي الْحُدُودِ، وَالتَّأْجِيلُ فِي الْحَدِّ وَالتَّعَافِي فِي الْحُدُودِ قَبْلَ بُلُوغِهَا إلَى السُّلْطَانِ وَالتَّرْغِيبُ فِي إمَامَةِ مَنْ قَالَ: لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ - ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ - الرُّجُوعُ عَنْ الِاعْتِرَافِ بِالْحَدِّ؟ الِاعْتِرَاضُ عَلَى الْحَاكِمِ فِي حُكْمِهِ بِالْحَدِّ، هَلْ يُكْشَفُ وَيُسْأَلُ مَنْ ذُكِرَ عَنْهُ حَدٌّ أَمْ لَا؟ هَلْ تُقَامُ الْحُدُودُ عَلَى الْكُفَّارِ أَمْ لَا؟ كَيْفَ حَدُّ الْعَبْدِ مِنْ حَدِّ الْحُرِّ؟ كَيْفَ حَدُّ الْمُكَاتَبِ؟ ٢١٦٨ - مَسْأَلَةٌ: لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا تَرْجِعُوا بَعْدِي كُفَّارًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ أَنَا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ ثنا حَرْمَلَةُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ التُّجِيبِيُّ حَدَّثَنِي ابْنُ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: سَمِعْت أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ، وَسَعِيدُ بْنُ الْمُسَيِّبِ يَقُولَانِ قَالَ أَبُو هُرَيْرَةَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ» .

L39965 وَبِهِ - إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ رَافِعٍ، قَالَ ابْنُ رَافِعٍ: نا عَبْدُ الرَّزَّاقِ نا سُفْيَانُ بْنُ عُيَيْنَةَ، وَقَالَ ابْنُ الْمُثَنَّى: أَنَا ابْنُ أَبِي عَدِيٍّ عَنْ شُعْبَةَ، ثُمَّ اتَّفَقَ شُعْبَةُ، وَسُفْيَانُ كِلَاهُمَا عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ ذَكْوَانَ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ: أَنَّ النَّبِيَّ -

The combination of hudud punishments with capital punishment; delegation in implementing hudud; whether hudud punishments require the ruler's knowledge; imprisonment based on accusation; interrogation through beating; confessions under coercion; definitions of compulsion and exhortation to repent in hudud cases; circumstances for applying punishments to enslaved women and prepubescent males; a slave's confession regarding hudud offenses; testimony in hudud cases; postponement of punishments and mutual pardon in hudud matters before reaching authorities; encouraging adherence to the leadership of those who say: "Allah does not hold a servant accountable for a first sin"—"Avert hudud punishments in cases of ambiguity"; retracting hudud confessions; objecting to a judge's hudud ruling—whether to investigate and question the accused; applicability of hudud to non-Muslims; differences between slave and free persons' punishments; sentencing guidelines for mukatab slaves.

Issue 2168: The statements: "A fornicator does not fornicate while he is a believer" and "Do not revert to disbelief after me"—Abu Muhammad (Allah have mercy on him) narrated: Abdullah ibn Yusuf narrated to us, Ahmad ibn Fath narrated to us, Abdul-Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn al-Hajjaj narrated to us, Harmalah ibn Yahya ibn Ubaydillah ibn Umar al-Tujibi narrated to me, Ibn Wahb narrated to me, Yunus ibn Yazid narrated to me. From Ibn Shihāb, he said: I heard Abū Salamah ibn ʿAbd al-Raḥmān and Saʿīd ibn al-Musayyib both say that Abū Hurayrah reported: The Messenger of Allāh (peace be upon him) said, "The fornicator is not a believer at the time of committing fornication, the thief is not a believer at the time of stealing, and the drinker of intoxicants is not a believer at the time of drinking them."[1]

And with him—[narrated] in Muslim's Ṣaḥīḥ—Muhammad ibn al-Muthannā and Muhammad ibn Rāfiʿ reported. Ibn Rāfiʿ said: ʿAbd al-Razzāq narrated to us: Sufyān ibn ʿUyaynah narrated to us. Ibn al-Muthannā said: I narrate

[1] **Hadith references (L39962):** Sunan an-Nasai 4870; Sunan an-Nasai 5660; Sahih Muslim 57a.

via Ibn Abī ʿAdī, from Shuʿbah. Then Shuʿbah and Sufyān concurred—both transmitting from Sulaymān (al-Aʿmash)—from Dhakwān Abī Ṣāliḥ, from Abū Hurayrah: that the Prophet (peace be upon him) said, "The adulterer does not commit adultery at the moment he commits it while being a believer, the thief does not steal at the moment he steals while being a believer, and the drinker does not drink intoxicants at the moment he drinks them while being a believer—yet repentance remains available afterward." This is the wording of Shuʿbah.[2]

عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَالتَّوْبَةُ مَعْرُوضَةٌ بَعْدُ» هَذَا لَفْظُ شُعْبَةَ.

L39966 Sufyan said in his narration, attributing it to the Prophet: Ahmad ibn Muhammad ibn Abdullah al-Talmanaki narrated to us; Muhammad ibn Ahmad ibn Mufarrij narrated to us; Muhammad ibn Ayyub al-Raqqi narrated to us; Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar narrated to us; Muhammad ibn Umar ibn Hayyaj narrated to us; Abdullah ibn Musa al-Qaysi narrated to us; Mubarak ibn Hassan narrated from Ata', who narrated to us Abu Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "A killer is not a believer at the moment of killing, nor is a drinker a believer at the moment of drinking wine, nor is an adulterer a believer at the moment of committing adultery, nor is a thief a believer at the moment of stealing, nor is one who surreptitiously steals a believer at the moment of theft. Faith is stripped from him as a garment is stripped from his body. If he returns to faith, it returns to him; and when he returns, faith returns to him."

وَقَالَ سُفْيَانُ فِي حَدِيثِهِ، رَفَعَهُ: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلْمَنْكِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ ثنا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ ثنا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ ثنا مُحَمَّدُ بْنُ عُمَرَ بْنِ هَيَّاجٍ نا عَبْدُ اللَّهِ بْنُ مُوسَى الْقَيْسِيُّ نا مُبَارَكُ بْنُ حَسَّانَ عَنْ عَطَاءٍ نا أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَقْتُلُ الْقَاتِلُ حِينَ يَقْتُلُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَخْتَلِسُ خِلْسَةً وَهُوَ مُؤْمِنٌ، يُخْلَعُ مِنْهُ الْإِيمَانُ كَمَا يُخْلَعُ مِنْهُ سِرْبَالُهُ، فَإِذَا رَجَعَ إِلَى الْإِيمَانِ رَجَعَ إِلَيْهِ، وَإِذَا رَجَعَ رَجَعَ إِلَيْهِ الْإِيمَانُ» .

L39967–39969 Abdullah ibn Rabīʿ reported to us: Muḥammad ibn Muʿāwiyah reported to us: Aḥmad ibn Shuʿayb reported to us: ʿĪsā ibn Ḥammād ibn Zughbah reported to us: al-Layth—that is, Ibn Saʿd—from ʿUqayl ibn Khālid from al-Zuhrī from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām from Abū Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "An adulterer does not commit adultery while he is a believer at the time of the act, nor does a drinker consume wine while he is a believer at the time of drinking it, nor [...]." A thief steals at the moment of stealing while he is a believer, nor does he plunder in such a way that people raise their eyes toward him during the plundering while he is a believer.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عِيسَى بْنُ حَمَّادِ بْنِ زُغْبَةَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ شَارِبُهَا حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَنْتَهِبُ نُهْبَةً فَيَرْفَعُ النَّاسُ فِيهَا إِلَيْهِ أَبْصَارَهُمْ حِينَ يَنْتَهِبُهَا وَهُوَ مُؤْمِنٌ» .

[2] **Hadith references (L39965):** Sahih Muslim 57a.

L39970 From the chain of Aḥmad ibn Shuʿayb: I was informed by Isḥāq ibn Manṣūr and Muḥammad ibn Yaḥyā ibn ʿAbd Allāh al-Naysābūrī—and the wording is his—from Muḥammad ibn Kathīr from al-Awzāʿī from al-Zuhrī from Ḥumayd ibn ʿAbd al-Raḥmān [and Abū Salama ibn ʿAbd al-Raḥmān] and Saʿīd ibn al-Musayyab from Abū Hurayra, who said: The Messenger of Allah—peace and blessings be upon him—said, "A fornicator is not a believer at the moment he fornicates, a thief is not a believer at the moment he steals, a drinker is not a believer at the moment he drinks wine, and a plunderer is not a believer at the moment he seizes loot where people raise their eyes."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، وَمُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ - وَاللَّفْظُ لَهُ - عَنْ مُحَمَّدِ بْنِ كَثِيرٍ عَنِ الْأَوْزَاعِيِّ عَنِ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ [وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ] وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَزْنِي الزَّانِي وَهُوَ حِينَ يَزْنِي مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ وَهُوَ حِينَ يَسْرِقُ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ وَهُوَ حِينَ يَشْرَبُهَا مُؤْمِنٌ، وَلَا يَنْتَهِبُ نُهْبَةً يَرْفَعُ النَّاسُ فِيهَا أَبْصَارَهُمْ وَهُوَ حِينَ يَنْتَهِبُهَا مُؤْمِنٌ» .

L39971 From the narration of Ahmad ibn Shu'ayb: I am 'Abd al-Rahman ibn Muhammad ibn Salam; Ishaq al-Azraq informed us from al-Fadl ibn Ghazwan, from 'Ikrimah, from Ibn 'Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, "A servant does not commit adultery while being a believer at the time of doing so, nor drink wine while being a believer at the time of drinking it, nor steal while being a believer at the time of stealing." I said to Ibn 'Abbas: "How is faith stripped away from him?" He interlaced his fingers, then separated them, and said: "Like this. When he repents, faith returns to him like this"—and he interlaced his fingers again.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا إِسْحَاقُ الْأَزْرَقُ عَنِ الْفَضْلِ بْنِ غَزْوَانَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَزْنِي الْعَبْدُ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ. فَقُلْتُ لِابْنِ عَبَّاسٍ: كَيْفَ يُنْتَزَعُ الْإِيمَانُ مِنْهُ؟ فَشَبَّكَ أَصَابِعَهُ، ثُمَّ أَخْرَجَهَا، فَقَالَ: هَكَذَا، فَإِذَا تَابَ عَادَ إِلَيْهِ هَكَذَا، وَشَبَّكَ أَصَابِعَهُ» .

L39972 From the path of 'Abd al-Razzāq, from Ma'mar, from Hammām ibn Munabbih that he heard Abū Hurayrah say: "No thief steals while committing theft as a believer, nor does an adulterer commit adultery while performing the act as a believer, nor does any of you incur the punishment [for drinking wine] by drinking it while being a believer. By the One in whose hand is Muḥammad's soul, none of you plunders a coveted spoil on which believers have set their eyes while seizing it as a believer, nor does any of you misappropriate while doing so as a believer." Then Abū Hurayrah said: "Beware, beware!"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ «لَا يَسْرِقُ سَارِقٌ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَزْنِي زَانٍ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْحُدُودَ - يَعْنِي الْخَمْرَ - أَحَدُكُمْ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَا يَنْتَهِبُ أَحَدُكُمْ نُهْبَةً ذَاتَ شَرَفٍ يَرْفَعُ إِلَيْهِ الْمُؤْمِنُونَ أَعْيُنَهُمْ فِيهَا وَهُوَ حِينَ يَنْتَهِبُهَا مُؤْمِنٌ، وَلَا يَغُلُّ أَحَدُكُمْ حِينَ يَغُلُّ وَهُوَ مُؤْمِنٌ ثُمَّ قَالَ أَبُو هُرَيْرَةَ إِيَّاكُمْ إِيَّاكُمْ» .

L39973 From Abu Bakr ibn Abi Shaybah, who narrated from Yazid ibn Harun, from Muhammad ibn Ishaq, from Yahya ibn 'Abbad ibn 'Abdullah ibn al-Zubayr, from his father, who said: "We were with 'Aisha when a noisy crowd passed

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَحْيَى بْنِ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ قَالَ: «كُنَّا عِنْدَ عَائِشَةَ فَمَرَّ جَلَبَةٌ عَلَى بَابِهَا فَسَمِعَتْ

by her door. She heard the noise and said: 'What is this?' They replied: 'A man was flogged for drinking wine.' She said: 'Glory be to Allah! I heard the Messenger of Allah—peace and blessings be upon him—say: "The adulterer does not commit adultery while he is a believer at the time of committing it, the thief does not steal while he is a believer at the time of stealing, and the drinker (meaning wine) does not drink while he is a believer at the time of drinking it. Beware, beware of such acts¡'"'[3]

L39974–39975 Abū Muḥammad—may Allāh have mercy on him—said: This is a sound and firmly established narration, devoid of any hidden defect. It was transmitted from the Prophet—peace be upon him—by ʻĀ'ishah, Mother of the Believers, Ibn ʻAbbās, and Abū Hurayrah through the complete chains of transmission we have mentioned.

L39976 It was narrated from Abu Huraira by Sa'id ibn al-Musayyab, Abu Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham, Abu Salama, Humayd the two sons of Abd al-Rahman ibn Awf, Ata' ibn Yasar the brother of Sulayman ibn Yasar, Ata' ibn Abi Rabah, and Hammam ibn Munabbih.

L39977 Ikrimah narrated it from Ibn Abbas, and ʿAbbād ibn ʿAbdullāh narrated it from Umm al-Mu'minīn (the Mother of the Believers).

L39978 And it was narrated from the people, constituting a *mutawātir* transmission that necessitates the soundness of knowledge. Mentioned within it are: killing, adultery, wine, theft, plunder, and misappropriation of war spoils.

L39979 People have differed in interpreting the nature of this faith that departs from him when he commits these sins. It has been narrated through the chain of ʿAṭāʾ from Abū Hurayrah in a musnad report, as we mentioned earlier, that faith is stripped from him like his tunic is stripped away. When he returns, faith returns to him.

L39980 And it has been narrated to us from Ibn Abbas, as we have cited, that he interpreted the removal of faith from a person by interlocking his fingers

الصَّوْتَ، فَقَالَتْ: مَا هَذَا؟ فَقَالُوا: رَجُلٌ ضُرِبَ فِي الْخَمْرِ، فَقَالَتْ: سُبْحَانَ اللَّهِ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ - يَعْنِي الْخَمْرَ - حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ، فَإِيَّاكُمْ وَإِيَّاكُمْ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا أَثَرٌ صَحِيحٌ ثَابِتٌ، لَا مَغْمَزَ فِيهِ، رَوَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَابْنِ عَبَّاسٍ، وَأَبُو هُرَيْرَةَ، بِالْأَسَانِيدِ التَّامَّةِ الَّتِي ذَكَرْنَا.

وَرَوَاهُ عَنْ أَبِي هُرَيْرَةَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَأَبُو سَلَمَةَ، وَحُمَيْدٌ: ابْنَا عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَعَطَاءُ بْنُ يَسَارٍ أَخُو سُلَيْمَانَ بْنِ يَسَارٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَهَمَّامُ بْنُ مُنَبِّهٍ.

وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ عِكْرِمَةُ، وَعَنْ أُمِّ الْمُؤْمِنِينَ عَبَّادُ بْنُ عَبْدِ اللَّهِ.

وَرَوَاهُ عَنْ هَؤُلَاءِ: النَّاسُ، فَهُوَ نَقْلٌ تَوَاتَرَ يُوجِبُ صِحَّةَ الْعِلْمِ، وَذُكِرَ فِيهِ كَمَا أَوْرَدْنَا: الْقَتْلُ، وَالزِّنَى، وَالْخَمْرُ، وَالسَّرِقَةُ، وَالنُّهْبَةُ، وَالْغُلُولُ.

فَاخْتَلَفَ النَّاسُ فِي تَأْوِيلِهِ، وَمَا هُوَ هَذَا الْإِيمَانُ الَّذِي يُزَايِلُهُ حِينَ مُوَاقَعَتِهِ هَذِهِ الذُّنُوبَ: فَرُوِّينَا مِنْ طَرِيقِ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا كَمَا أَوْرَدْنَا آنِفًا أَنَّهُ يُخْلَعُ مِنْهُ الْإِيمَانُ كَمَا يُخْلَعُ سِرْبَالُهُ فَإِذَا رَجَعَ رَجَعَ إلَيْهِ الْإِيمَانُ.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ كَمَا أَوْرَدْنَا أَنَّهُ فَسَّرَ انْتِزَاعَ الْإِيمَانِ مِنْهُ: بِأَنْ شَبَّكَ أَصَابِعَ يَدَيْهِ بَعْضَهَا فِي بَعْضٍ، ثُمَّ زَايَلَهَا قَالَ: وَهَكَذَا، ثُمَّ رَدَّهَا وَقَالَ: فَإِذَا تَابَ عَادَ إلَيْهِ.

[3] **Hadith references (L39973):** Sahih al-Bukhari 6782.

- some into others - then separating them. He said: “In this manner,” then restored them to their original position and said: “When he repents, it returns to him.”

L39981 We have also narrated this from Ibn Abbas through the chain of Abd al-Razzaq from Sufyan al-Thawri from Ibrahim ibn Muhajir from Mujahid from Ibn Abbas that he would present the means of marriage to his slave and say: “Whoever among you desires marriage, I will arrange it for him, for no one commits fornication except that Allah removes the knot of faith from him. If He wills, He will restore it to him afterward, and if He wills, He will withhold it.”

وَرُوِّينَاهُ أَيْضًا فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِبْرَاهِيمَ بْنِ مُهَاجِرٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَعْرِضُ عَلَى مَمْلُوكِهِ الْبَاءَةَ، وَيَقُولُ: مَنْ أَرَادَ مِنْكُمْ الْبَاءَةَ زَوَّجْته؟ فَإِنَّهُ لَا يَزْنِي زَانٍ إِلَّا نَزَعَ اللَّهُ مِنْهُ رِبْقَةَ الْإِيمَانِ، فَإِنْ شَاءَ أَنْ يَرُدَّهُ إِلَيْهِ رَدَّهُ بَعْدُ، وَإِنْ شَاءَ أَنْ يَمْنَعَهُ مَنَعَهُ.

L39982 It has been narrated to us through the chain of ʻAbd al-Razzāq who informed us via Ibn Jurayj, who said: I heard ʻAṭā’ say: I heard Abū Hurayrah say: The one who commits adultery does not do so while believing during the act, nor does the one who steal do so while believing during the act, nor does the one who drinks wine do so while believing during the act. He said: I know nothing except that he added: When he abandons his sin, faith returns to him. He said: So I pressed him further. He replied: I know nothing except that he stated: Thus faith is withdrawn from him as long as he persists in his sin, but when he abandons it, faith returns to him.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءً يَقُولُ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: لَا يَزْنِي الزَّانِي وَهُوَ مُؤْمِنٌ حِينَ يَزْنِي، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ وَهُوَ مُؤْمِنٌ حِينَ يَشْرَبُ - قَالَ: لَا أَعْلَمُهُ إلَّا قَالَ: وَإِذَا اعْتَزَلَ خَطِيئَتَهُ رَجَعَ إلَيْهِ الْإِيمَانُ - قَالَ: فَرَاجَعْته؟ فَقَالَ: لَا أَعْلَمُهُ إلَّا قَالَ: فَيُنْتَزَعُ مِنْهُ الْإِيمَانُ مَا دَامَ عَلَى خَطِيئَتِهِ، فَإِذَا فَارَقَهَا رَجَعَ إلَيْهِ الْإِيمَانُ.

L39983–39985 Ibn Jurayj said: And Uthman ibn Abi Sulayman informed me that he heard Nāfiʻ ibn Jubayr ibn Muṭʻim. He says: One does not commit adultery while having faith at the moment of committing it. When he ceases to act upon it, his faith is restored – not when he repents from it, but when he stops the deed. He said: I considered that he related this from Ibn Abbas.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عُثْمَانُ بْنُ أَبِي سُلَيْمَانَ أَنَّهُ سَمِعَ نَافِعَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ يَقُولُ: لَا يَزْنِي وَهُوَ مُؤْمِنٌ حِينَ يَزْنِي، فَإِذَا زَايَلَهُ رَجَعَ إلَيْهِ الْإِيمَانُ لَيْسَ إذَا تَابَ مِنْهُ، وَلَكِنْ إذَا أَخَّرَ عَنْ الْعَمَلِ بِهِ - قَالَ: وَحَسِبْته أَنَّهُ ذَكَرَ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ.

L39986 From ʻAbd al-Razzāq from Maʻmar: Abdullah ibn Ṭāwus narrated to me from his father. He then mentioned this hadith and said, “If he does that, faith departs from him. It is said: Faith is like a shadow.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ طَاوُسٍ عَنْ أَبِيهِ، فَذَكَرَ هَذَا الْحَدِيثَ، وَقَالَ: فَإِذَا فَعَلَ ذَلِكَ زَالَ عَنْهُ الْإِيمَانُ، يُقَالُ: الْإِيمَانُ كَالظِّلِّ.

L39987 Ma’mar also mentioned this hadith from al-Zuhri; Qatadah; a man via ‘Ikrimah via Abu Hurayrah; and Abu Harun al-‘Abdi via Abu Sa‘id al-Khudri, from the Prophet, peace and blessings be upon him, who said: “This is a prohibition: While he is a believer, he must certainly not do—that is, let him not steal, commit adultery, or misappropriate war booty.”

وَذَكَرَ أَيْضًا مَعْمَرٌ هَذَا الْحَدِيثَ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ عَنْ أَبِي هُرَيْرَةَ، وَعَنْ أَبِي هَارُونَ الْعَبْدِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ

وَسَلَّمَ - قَالَ: هَذَا نَهْيٌ، يَقُولُ: حِينَ هُوَ مُؤْمِنٌ فَلَا يَفْعَلَنَّ - يَعْنِي: لَا يَسْرِقُ، وَلَا يَزْنِي، وَلَا يَغُلُّ» .

L39988 Abu Muhammad—may Allah have mercy on him—said: All these exegeses contain nothing except that faith departs from the doer at the time of the act, then returns to him in some of them if he repents and desists.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ التَّفَاسِيرُ كُلُّهَا لَيْسَ فِيهَا إِلَّا مُزَايَلَةُ الْإِيمَانِ لِلْفَاعِلِ حِينَ الْفِعْلِ، ثُمَّ رُجُوعُهُ فِي بَعْضِهَا إِلَيْهِ إِذَا تَابَ، وَإِذَا تَرَكَ.

L39989 None of these commentaries clarify what constitutes the fleeting faith that ceases to exist while committing these sins. We know that everything the Messenger of Allah - peace and blessings of Allah be upon him - stated is the clear truth, with no truth existing except it. Indeed, whoever commits an act while not being a believer at the moment of committing it has undoubtedly had faith depart from him, as stated by the Messenger of Allah - peace and blessings of Allah be upon him.

وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ التَّفَاسِيرِ بَيَانُ مَا هُوَ الْإِيمَانُ الزَّائِلُ حِينَ هَذِهِ الْمَعَاصِي؟ وَقَدْ عَلِمْنَا أَنَّ كُلَّ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ الْحَقُّ الْوَاضِحُ، الَّذِي لَا حَقِيقَةَ فِي غَيْرِهِ، وَأَنَّ مَنْ فَعَلَ شَيْئًا لَمْ يَكُنْ حِينَ فِعْلِهِ إِيَّاهُ مُؤْمِنًا، فَإِنَّ الْإِيمَانَ قَدْ فَارَقَهُ بِلَا شَكٍّ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L39990 However, it is incumbent upon us to know: what is this faith that is removed from him at the time of that action? This is so we may determine the legal ruling pertaining to such an actor—with the help of Allah, the Exalted, and by His grace. Thus, we examined this matter and found that people have diverged into four opinions regarding the interpretation of the term "faith." The orthodox school stated: Faith is a name that applies to three meanings: (1) affirmation by the heart, (2) utterance with the tongue, and (3) performing all acts of obedience—its obligatory and supererogatory acts—and abstaining from all prohibitions.

لَكِنْ يَجِبُ عَلَيْنَا أَنْ نَعْرِفَ مَا هَذَا الْإِيمَانُ الَّذِي يَزُولُ عَنْهُ فِي حِينِ ذَلِكَ الْفِعْلِ؟ لِنَعْلَمَ مِنْ ذَلِكَ حُكْمَ ذَلِكَ الْفَاعِلِ - بِعَوْنِ اللَّهِ تَعَالَى وَمِنْهُ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا النَّاسَ فِي تَفْسِيرِ لَفْظَةِ " الْإِيمَانِ " قَدْ افْتَرَقُوا عَلَى أَرْبَعَةِ أَقْوَالٍ: فَقَالَ أَهْلُ الْحَقِّ: الْإِيمَانُ اسْمٌ وَاقِعٌ عَلَى ثَلَاثَةِ مَعَانٍ -: أَحَدُهَا: الْعَقْدُ بِالْقَلْبِ - وَالْآخَرُ: النُّطْقُ بِاللِّسَانِ - وَالثَّالِثُ: عَمَلٌ بِجَمِيعِ الطَّاعَاتِ - فَرْضِهَا وَنَفْلِهَا - وَاجْتِنَابُ الْمُحَرَّمَاتِ.

L39991 A faction—mistaken—has said: "Faith is a term that applies only to two meanings: belief in the heart and utterance with the tongue. Acts of obedience and avoidance of prohibitions are but the laws of faith, not faith itself." This statement—though flawed—its proponent is not deemed a disbeliever.

وَقَالَتْ طَائِفَةٌ - مُخْطِئَةٌ -: إِنَّ الْإِيمَانَ اسْمٌ وَاقِعٌ عَلَى مَعْنَيَيْنِ، وَهُمَا: الْعَقْدُ بِالْقَلْبِ، وَالنُّطْقُ بِاللِّسَانِ فَقَطْ، وَأَنَّ أَعْمَالَ الطَّاعَاتِ، وَاجْتِنَابَ الْمُحَرَّمَاتِ: إِنَّمَا هِيَ شَرَائِعُ الْإِيمَانِ، وَلَيْسَتْ إِيمَانًا، وَهَذِهِ مَقَالَةٌ - وَإِنْ كَانَتْ فَاسِدَةً - فَصَاحِبُهَا لَا يُكَفَّرُ.

L39992 And two factions adopted two doctrinal positions through which they exited into unequivocal disbelief.

وَقَالَتْ طَائِفَتَانِ قَوْلَيْنِ خَرَجَا بِهِمَا إِلَى الْكُفْرِ صُرَاحًا:

L39993–39995 One of the two is Jahm ibn Ṣafwān al-Samarqandī and those who followed him in doctrine and trusted his authority, for indeed they asserted: "Faith

is...” It is belief with the heart alone, even if one openly declares disbelief, rejects prophethood, professes the Trinity, and worships through the Cross in the land of Islam without dissimulation.

أَحَدُهُمَا: جَهْمُ بْنُ صَفْوَانَ السَّمَرْقَنْدِيُّ، وَمَنْ قَلَّدَهُ وَائْتَمَّ بِهِ فَإِنَّهُمْ قَالُوا: الْإِيمَانُ هُوَ التَّصْدِيقُ بِالْقَلْبِ فَقَطْ، وَإِنْ أَعْلَنَ الْكُفْرَ، وَجَحَدَ النُّبُوَّةَ، وَصَرَّحَ بِالتَّثْلِيثِ، وَعَبَدَ الصَّلِيبَ فِي دَارِ الْإِسْلَامِ، دُونَ تَقِيَّةٍ.

L39996 The other is Muḥammad ibn Kirām as-Sijistānī and those who followed him and emulated him, for they stated: “Faith is affirmation with the tongue alone, even if one holds disbelief in his heart.”

وَالْآخَرُ: مُحَمَّدُ بْنُ كِرَامٍ السِّجِسْتَانِيُّ، وَمَنْ اتَّبَعَهُ وَاقْتَدَى بِهِ، فَإِنَّهُمْ قَالُوا: الْإِيمَانُ التَّصْدِيقُ بِاللِّسَانِ فَقَطْ، وَإِنْ اعْتَقَدَ الْكُفْرَ بِقَلْبِهِ.

L39997 It necessarily follows for the first group that Iblis is a believer, and that the Jews and Christians who fought against the Messenger of God—peace and blessings be upon him—are believing allies of God Almighty from among the people of Paradise, because all of these knew God Almighty in their hearts and affirmed the validity of His Messenger’s prophethood—peace and blessings be upon him—finding it written in their Torah and Gospel, or else God’s declaration regarding the soundness of Iblis’s knowledge of Him and the prophethood of the prophets—peace be upon them—would be falsely denied.

فَلَزِمَ الطَّائِفَةَ الْأُولَى: أَنَّ إِبْلِيسَ مُؤْمِنٌ، وَأَنَّ الْيَهُودَ وَالنَّصَارَى الَّذِينَ حَارَبُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُؤْمِنُونَ أَوْلِيَاءُ اللَّهِ تَعَالَى مِنْ أَهْلِ الْجَنَّةِ، لِأَنَّ كُلَّ هَؤُلَاءِ عَرَفُوا اللَّهَ تَعَالَى بِقُلُوبِهِمْ، وَعَرَفُوا صِحَّةَ نُبُوَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقُلُوبِهِمْ، وَجَدُوهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَاةِ، وَالْإِنْجِيلِ، أَوْ أَنْ يُكَذِّبَ اللَّهُ تَعَالَى فِي إِخْبَارِهِ بِصِحَّةِ عِلْمِ إِبْلِيسَ بِاللَّهِ تَعَالَى وَبِنُبُوَّةِ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ -.

L39998 It necessarily follows for the second group to assert that the hypocrites - about whom Allah the Exalted testified they are among the people of the Fire - are believers, friends of Allah the Exalted, and among the people of Paradise. This is sheer disbelief.

وَلَزِمَ الطَّائِفَةَ الثَّانِيَةَ: أَنَّ الْمُنَافِقِينَ الَّذِي شَهِدَ اللَّهُ تَعَالَى بِأَنَّهُمْ مِنْ أَهْلِ النَّارِ مُؤْمِنُونَ، أَوْلِيَاءُ اللَّهِ تَعَالَى، مِنْ أَهْلِ الْجَنَّةِ - وَهَذَا كُفْرٌ مُجَرَّدٌ.

L39999 Both statements constitute a breach of scholarly consensus and a contradiction of the people of Islam.

وَكِلَا الْقَوْلَيْنِ خَرْقٌ لِلْإِجْمَاعِ، وَمُخَالَفَةٌ لِأَهْلِ الْإِسْلَامِ.

L40000 Abū Muḥammad—may Allāh have mercy on him—said: It necessarily follows for those who assert that faith departs from the fornicator during his act of fornication, the murderer during his act of killing, the thief during his act of theft, the one who steals from war booty during his act of stealing, the drinker during his act of drinking, and the plunderer during his act of plundering: that faith is [defined as] affirmation. They must then say: The murderer, the fornicator, the thief, the one who steals from war booty, the plunderer, and the drinker—their affirmation of faith has been nullified, and whoever's affirmation of faith is nullified is an unbeliever.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَيَلْزَمُ مَنْ قَالَ: إنَّ الْإِيمَانَ الْمُزَايِلَ لِلزَّانِي فِي حِينِ زِنَاهُ، وَلِلْقَاتِلِ فِي حِينِ قَتْلِهِ، وَلِلسَّارِقِ فِي حِينِ سَرِقَتِهِ، وَلِلْغَالِّ فِي حِينِ غُلُولِهِ، وَلِلشَّارِبِ فِي حِينِ شُرْبِهِ، وَلِلْمُنْتَهِبِ فِي حَالِ نُهْبَتِهِ: أَنَّهُ التَّصْدِيقُ أَنْ يَقُولَ: الْقَاتِلُ، وَالزَّانِي، وَالْغَالُّ، وَالْمُنْتَهِبُ، وَالشَّارِبُ: قَدْ بَطَلَ تَصْدِيقُهُمْ وَمَنْ بَطَلَ تَصْدِيقُهُ فَهُوَ كَافِرٌ.

L40001 It would be incumbent that no zakāt be taken from any of these individuals, nor should they be allowed to pray in a mosque alongside Muslims, nor enter the Sacred Sanctuary, nor initiate marriage with a Muslim woman. If a relative of his dies while he is in such a state, he would not inherit him. This contradicts the consensus of the Companions and those deemed authoritative after them—and they do not hold this view—so does this mean those not among them? Abū Muḥammad—may Allah have mercy on him—said: Since the Messenger of Allah—peace and blessings be upon him—did not intend by his statement in this ḥadīth to declare the fornicator a disbeliever, nor the murderer a disbeliever, nor the plunderer a disbeliever, nor one who steals from booty a disbeliever, nor the drinker [of alcohol] a disbeliever, nor the thief a disbeliever.

فَيَلْزَمُهُ أَنْ لَا يُؤْخَذَ مِنْ أَحَدٍ مِنْ هَؤُلَاءِ زَكَاةٌ، وَلَا يُتْرَكَ يُصَلِّي فِي مَسْجِدٍ مَعَ الْمُسْلِمِينَ، وَلَا أَنْ يَدْخُلَ الْحَرَمَ، وَلَا أَنْ يَبْتَدِئَ نِكَاحَ مُسْلِمَةٍ، وَإِنْ مَاتَ لَهُ قَرِيبٌ فِي تِلْكَ الْحَالِ أَنْ لَا يَرِثَهُ - وَهَذَا خِلَافٌ لِإِجْمَاعِ الصَّحَابَةِ وَمَنْ يَعْتَدُّ بِهِ بَعْدَهُمْ، وَهُمْ لَا يَقُولُونَ هَذَا - يَعْنِي مَنْ لَمْ يَكُنْ مِنْهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يُرِدْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ الْمَذْكُورِ فِي هَذَا الْحَدِيثِ أَنَّ الزَّانِيَ كَافِرٌ، وَلَا أَنَّ الْقَاتِلَ كَافِرٌ، وَلَا أَنَّ الْمُنْتَهِبَ كَافِرٌ، وَلَا أَنَّ الْغَالَّ كَافِرٌ، وَلَا أَنَّ الشَّارِبَ كَافِرٌ، وَلَا أَنَّ السَّارِقَ كَافِرٌ.

L40002–40004 And it has been established that if they were disbelievers, they would be subject to what applies to the apostate from his religion: execution and separation. Regarding the wife and the fulfillment of the financial obligation, we thus know with certainty that he (peace be upon him) did not intend that the invalidation of the aforementioned oath would entail the invalidation of its ratification.

وَصَحَّ أَنَّهُمْ لَوْ كَانُوا كُفَّارًا لَلَزِمَهُمْ مَا يَلْزَمُ الْمُرْتَدَّ عَنْ دِينِهِ مِنْ الْقَتْلِ، وَفِرَاقِ الزَّوْجَةِ، وَاسْتِيفَاءِ الْمَالِ - فَبِيَقِينٍ نَدْرِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْنِ بِذَهَابِ الْإِيمَانِ الْمَذْكُورِ ذَهَابَ تَصْدِيقِهِ.

L40005 Moreover, by the necessity of innate perception, any Muslim who commits any of the aforementioned sins knows within himself that his conviction has not ceased and remains intact. For does not every statement contradicted by self-evident truth become one whose invalidity is certain? Thus, what we have said is confirmed: the faith that departs from him while performing

وَأَيْضًا - فَبِضَرُورَةِ الْحِسِّ يَدْرِي مَنْ وَاقَعَ شَيْئًا مِنْ الذُّنُوبِ الْمَذْكُورَةِ مِنْ الْمُسْلِمِينَ مِنْ نَفْسِهِ: أَنَّ تَصْدِيقَهُ لَمْ يَزُلْ، وَأَنَّهُ كَمَا كَانَ، وَكُلُّ قَوْلٍ تُكَذِّبُهُ الضَّرُورَةُ فَهُوَ قَوْلٌ

these deeds is none other than the faith defined exclusively as obedience to Allah the Exalted.

L40006 This is a matter observed with certainty, for adultery, murder, misappropriation, robbery, and drinking alcohol—none of these are obedience to God Almighty, and thus they are not faith. Since none of these are faith, the one who commits them is not a believer (that is, he is not obedient), as he has not performed obedience. Rather, he is disobedient and a transgressor. Whoever embodies faith is a believer, but all those we have mentioned, in committing these deeds, did not perform faith; thus, they are not believers.

L40007 This ḥadīth is one of the decisive proofs that all acts of obedience are expressions of faith, and that abandoning obedience is not faith—and success comes from Allah, the Exalted.

L40008 **The issue of implementing the ḥudūd (the divinely ordained punishments) in mosques.**

L40009 Issue 2169: Are legal punishments to be carried out in mosques or not? Abū Muḥammad—may Allāh have mercy on him—said: I am Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī. Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb al-Ṣamūt narrated to us; Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us. Abū Nashīṭ Muḥammad ibn Hārūn and al-Ḥasan ibn ʿArafah narrated to us. Abū Nashīṭ said: Abū al-Mughīrah ʿAbd al-Quddūs ibn al-Ḥajjāj narrated to us; Saʿīd ibn Bashīr reported from Qatādah. Ibn ʿArafah said: Abū Ḥafṣ ʿAmr ibn ʿAbd al-Raḥmān al-Abbār narrated to us from Ismāʿīl ibn Muslim. Then the chains of Qatādah and Ismāʿīl converged: both of them reporting from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās from the Prophet—peace and blessings be upon him—who said: "Legal punishments are not to be carried out in mosques, nor is a parent to be killed for their child."

L40010–40012 Abū Muḥammad—may Allah have mercy on him—said: Ismāʿīl ibn Muslim and Saʿīd ibn Bashīr are weak narrators. From him, it reaches al-Bazzār: Yūnus ibn Ṣāliḥ ibn Muʿādh narrated to us; Muḥammad ibn ʿUmar al-Wāqidī

مُتَيَقَّنُ السُّقُوطِ؟ فَقَدْ صَحَّ مَا قُلْنَا: إنَّ الْإِيمَانَ الْمُزَايِلَ لَهُ فِي حَالِ هَذِهِ الْأَفَاعِيلِ إنَّمَا هُوَ الْإِيمَانُ الَّذِي هُوَ الطَّاعَةُ لِلَّهِ تَعَالَى فَقَطْ.

وَهَذَا أَمْرٌ مُشَاهَدٌ بِالْيَقِينِ، لِأَنَّ الزِّنَى، وَالْقَتْلَ، وَالْغُلُولَ، وَالنُّهْبَةَ، وَشُرْبَ الْخَمْرِ، لَيْسَ شَيْءٌ مِنْهَا طَاعَةً لِلَّهِ تَعَالَى، فَلَيْسَتْ إيمَانًا، فَإِذْ لَيْسَ شَيْءٌ مِنْهَا إيمَانًا، فَفَاعِلُهَا لَيْسَ مُؤْمِنًا، بِمَعْنَى لَيْسَ مُطِيعًا، إذْ لَمْ يَفْعَلْ الطَّاعَةَ، لَكِنَّهُ عَاصٍ وَفَاسِقٌ، وَمَنْ فَعَلَ الْإِيمَانَ فَهُوَ مُؤْمِنٌ، وَكُلُّ مَنْ ذَكَرْنَا لَمْ يَفْعَلْ فِي فِعْلِهِ تِلْكَ الْأَفْعَالَ إيمَانًا، فَلَيْسَ مُؤْمِنًا.

وَهَذَا الْحَدِيثُ مِنْ الْحُجَجِ الْقَاطِعَةِ عَلَى أَنَّ الطَّاعَاتِ كُلَّهَا إيمَانٌ، وَأَنَّ تَرْكَ الطَّاعَةِ لَيْسَ إيمَانًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إقَامَة الْحُدُود فِي الْمَسَاجِد]

٢١٦٩ - مَسْأَلَةٌ: هَلْ تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا أَبُو نَشِيطٍ مُحَمَّدُ بْنُ هَارُونَ، وَالْحَسَنُ بْنُ عَرَفَةَ، قَالَ أَبُو نَشِيطٍ: نا أَبُو الْمُغِيرَةِ عَبْدُ الْقُدُّوسِ بْنُ الْحَجَّاجِ نا سَعِيدُ بْنُ بَشِيرٍ عَنْ قَتَادَةَ وَقَالَ ابْنُ عَرَفَةَ: نا أَبُو حَفْصٍ عَمْرُو بْنُ عَبْدِ الرَّحْمَنِ الْأَبَّارُ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ - ثُمَّ اتَّفَقَ قَتَادَةُ، وَإِسْمَاعِيلُ - كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ وَلَا يُقْتَلُ بِالْوَلَدِ الْوَالِدُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إسْمَاعِيلُ بْنُ مُسْلِمٍ، وَسَعِيدُ بْنُ بَشِيرٍ ضَعِيفَانِ - وَبِهِ - إلَى الْبَزَّارِ نا يُونُسُ بْنُ صَالِحِ بْنِ مُعَاذٍ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نا إسْحَاقُ بْنُ حَازِمٍ عَنْ أَبِي

narrated to us; Isḥāq ibn Ḥāzim narrated to us from Abi al-Aswad from Nāfiʿ ibn Jubayr ibn Muṭʿim from his father: "The Messenger of Allah (peace be upon him) forbade that the ḥudūd punishments be carried out in mosques."

الْأَسْوَدِ عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ عَنْ أَبِيهِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى أَنْ تُقَامَ الْحُدُودُ فِي الْمَسَاجِدِ» .

L40013 Muhammad ibn Umar al-Waqidi is discarded, being reported as a liar.

مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ سَاقِطٌ مَذْكُورٌ بِالْكَذِبِ.

L40014 From the transmission of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Muḥammad ibn ʿAbd Allāh narrated to us from al-ʿAbbās ibn ʿAbd al-Raḥmān ibn Ḥakīm ibn Ḥizām, who said: The Messenger of Allah (peace be upon him) said, "Ḥudūd are not to be carried out in the mosques." Muḥammad ibn ʿAbd Allāh and al-ʿAbbās are both unknown.

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ عَنْ الْعَبَّاسِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَكِيمِ بْنِ حِزَامٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ» - مُحَمَّدُ بْنُ عَبْدِ اللَّهِ، وَالْعَبَّاسُ: مَجْهُولَانِ.

L40015 Narrated to us by Wakīʿ, from Mubārak, from Ẓabyān ibn Ṣubayḥ al-Ḍabbī, who said: ʿAbdullāh ibn Masʿūd said: "Ḥudūd should not be carried out in mosques." —Ẓabyān is unknown as a narrator.

وَعَنْ وَكِيعٍ نا مُبَارَكٌ عَنْ ظَبْيَانَ بْنِ صُبَيْحٍ الضَّبِّيِّ، قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: لَا تُقَامُ الْحُدُودُ فِي الْمَسَاجِدِ - ظَبْيَانُ: مَجْهُولٌ.

L40016 From Waki': Sufyan al-Thawri narrated from Qays ibn Muslim from Tariq ibn Shihab, who said: A man came to 'Umar ibn al-Khattab in a ḥadd. He said: "Take him out of the mosque, then strike him."

وَعَنْ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ قَالَ: أَتَى عُمَرَ بْنَ الْخَطَّابِ رَجُلٌ فِي حَدٍّ، فَقَالَ: أَخْرِجَاهُ مِنْ الْمَسْجِدِ ثُمَّ اضْرِبَاهُ

L40017 Abu Muhammad (may Allah have mercy on him) said: This is a sound report; it is authentically established that the Messenger of Allah (peace be upon him) commanded the scenting of mosques and their purification.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا خَبَرٌ صَحِيحٌ، قَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِتَطْيِيبِ الْمَسَاجِدِ وَتَنْظِيفِهَا» .

L40018 "And He, the Exalted, said, 'In houses which Allah has permitted to be raised and where His name is mentioned' (24:36)."[1]

وَقَالَ تَعَالَى {فِي بُيُوتٍ أَذِنَ اللَّهُ أَنْ تُرْفَعَ وَيُذْكَرَ فِيهَا اسْمُهُ} [النور: ٣٦]

L40019 It is obligatory to preserve mosques, honor their status, and keep them clean. As for carrying out prescribed punishments therein—such as execution or amputation—which would defile the mosque with blood: it is unlawful to perform any such act within the mosque, as this constitutes neither purification nor cleaning. Similarly, "Allah's Messenger—may Allah bless him and grant him peace—commanded that Maʿīz be stoned in Al-Baqīʿ, outside the mosque."

فَوَجَبَ صَوْنُ الْمَسَاجِدِ، وَرَفْعُهَا، وَتَنْظِيفُهَا - فَمَا كَانَ مِنْ إقَامَةِ الْحُدُودِ فِيهِ تَقْذِيرٌ لِلْمَسْجِدِ بِالدَّمِ: كَالْقَتْلِ، وَالْقَطْعِ، فَحَرَامٌ أَنْ يُقَامَ شَيْءٌ مِنْ ذَلِكَ فِي الْمَسْجِدِ، لِأَنَّ ذَلِكَ لَيْسَ تَطْيِيبًا، وَلَا تَنْظِيفًا - وَكَذَلِكَ «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجْمِ مَاعِزٍ بِالْبَقِيعِ خَارِجَ الْمَسْجِدِ» .

[1] **Qur'an references (L40018):** Qur'an 24:36 (An-Nur).

L40020 As for ḥudūd punishments involving flogging alone, their execution is permissible both inside and outside the mosque. However, we prefer it to be carried out outside, out of concern that urine might issue from the person being flogged due to physical frailty, or other such emissions from them that cannot be guarded against.

L40021 The proof of this is the statement of Allah, the Exalted: "He has detailed for you what He has forbidden to you, except that to which you are compelled" [Al-An'am: 119]. If the implementation of the *ḥudūd* through flogging in mosques were forbidden, He would have clarified that to us in the Quran on the tongue of His Messenger—peace and blessings be upon him.[2]

L40022–40023 And among those who maintained the permissibility of executing hudud punishments through flogging in mosques are Ibn Abi Layla and others—a position we uphold—and with Allah, the Exalted, lies all success.

A Question: Do the Ḥudūd Constitute *Kafārah* for the One Upon Whom They Are Imposed, or Not?

L40025 Issue 2170: Do the ḥudūd punishments serve as an expiation for those upon whom they are carried out, or not? Abū Muḥammad—may Allah have mercy on him—said: Whoever commits a sin requiring a ḥadd punishment, and the prescribed punishment is carried out against him, what he incurred from that sin is lifted—whether he repented or not—except in the case of ḥirābah (waging war against society). For the liability of that sin remains upon him even if its punishment is carried out, and nothing lifts it from him except repentance to Allah the Exalted alone.

L40026 The proof of that is what we have narrated to us through the chain of Muslim: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Amr an-Naqid, Ishaq ibn Ibrahim, and Muhammad ibn Abdullah ibn Numayr—all of them from Sufyan ibn Uyaynah, from al-Zuhri, from Abu Idris al-Khawlani, from Ubada ibn al-Samit, who said: "We were with the Messenger of Allah—peace and blessings be upon him—in a gathering, and he said: 'Pledge allegiance to me that you will not associate anything with Allah, nor steal, nor commit

[2] **Qur'an references (L40021):** Qur'an 6:119 (Al-An'am).

وَأَمَّا مَا كَانَ مِنْ الْحُدُودِ جَلْدًا فَقَطْ، فَإِقَامَتُهُ فِي الْمَسْجِدِ جَائِزٌ، وَخَارِجَ الْمَسْجِدِ أَيْضًا جَائِزٌ، إلَّا أَنَّ خَارِجَ الْمَسْجِدِ أَحَبُّ إلَيْنَا، خَوْفًا أَنْ يَكُونَ مِنْ الْمَجْلُودِ بَوْلٌ لِضَعْفِ طَبِيعَتِهِ، أَوْ غَيْرِ ذَلِكَ مِمَّا لَا يُؤْمَنُ مِنْ الْمَضْرُوبِ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] فَلَوْ كَانَ إقَامَةُ الْحُدُودِ بِالْجَلْدِ فِي الْمَسَاجِدِ حَرَامًا لَفَصَّلَ لَنَا ذَلِكَ مُبَيَّنًا فِي الْقُرْآنِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِمَّنْ قَالَ بِإِقَامَةِ الْحُدُودِ بِالْجَلْدِ فِي الْمَسَاجِدِ: ابْنُ أَبِي لَيْلَى، وَغَيْرُهُ - وَبِهِ نَأْخُذُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ الْحُدُودُ كَفَّارَةٌ لِمَنْ أُقِيمَتْ عَلَيْهِ أَمْ لَا]

٢١٧٠ - مَسْأَلَةٌ: هَلْ الْحُدُودُ كَفَّارَةٌ لِمَنْ أُقِيمَتْ عَلَيْهِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ مَنْ أَصَابَ ذَنْبًا فِيهِ حَدٌّ فَأُقِيمَ عَلَيْهِ مَا يَجِبُ فِي ذَلِكَ فَقَدْ سَقَطَ عَنْهُ مَا أَصَابَ مِنْ ذَلِكَ - تَابَ أَوْ لَمْ يَتُبْ - حَاشَ الْمُحَارَبَةِ، فَإِنَّ إثْمَهَا بَاقٍ عَلَيْهِ وَإِنْ أُقِيمَ عَلَيْهِ حَدُّهَا، وَلَا يُسْقِطُهَا عَنْهُ إلَّا التَّوْبَةُ لِلَّهِ تَعَالَى فَقَطْ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسٍ، فَقَالَ تُبَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاَللَّهِ شَيْئًا وَلَا تَسْرِقُوا وَلَا تَزْنُوا وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ

adultery, nor take a life which Allah has forbidden except by right. Whoever among you fulfills this, his reward is upon Allah. Whoever commits any of these and was punished for it, that will be his expiation. Whoever commits any of these and Allah conceals it, his matter rests with Allah: if He wills, He will forgive him, and if He wills, He will punish him.”[3]

عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَسَتَرَهُ اللَّهُ عَلَيْهِ فَأَمْرُهُ إِلَى اللَّهِ، إِنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَذَّبَهُ» .

L40027 And through him to Muslim: Ismāʿīl ibn Sālim → Hushaym → Khalid al-Khaddāʾ → Abū Qilābah → Abū al-Ashʿath al-Ṣanʿānī → ʿUbādah ibn al-Ṣāmit, who said: “The Messenger of Allah—peace and blessings be upon him—took a pledge from us as he took from the women: that we would not associate anything with Allah, nor steal, nor commit adultery, nor kill our children, nor engage in backbiting. Whoever among you fulfills this, his reward lies with Allah. Whoever among you commits a _ḥadd_ offense and the punishment is executed upon him, that is his punishment. And whom Allah conceals [the sin], his matter is left to Allah—if He wills, He punishes him, and if He wills, He forgives him.”

وَبِهِ - إِلَى مُسْلِمٍ حَدَّثَنِي إِسْمَاعِيلُ بْنُ سَالِمٍ أَنَا هُشَيْمٌ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ - هُوَ الصَّنْعَانِيِّ - عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: أَخَذَ عَلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَخَذَ عَلَى النِّسَاءِ: أَنْ لَا نُشْرِكَ بِاللَّهِ شَيْئًا، وَلَا نَسْرِقَ، وَلَا نَزْنِيَ، وَلَا نَقْتُلَ أَوْلَادَنَا، وَلَا يَغْتَابَ بَعْضُنَا بَعْضًا - فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَتَى مِنْكُمْ حَدًّا فَأُقِيمَ عَلَيْهِ فَهُوَ عِقَابُهُ، وَمَنْ سَتَرَهُ اللَّهُ عَلَيْهِ فَأَمْرُهُ إِلَى اللَّهِ - إِنْ شَاءَ عَذَّبَهُ وَإِنْ شَاءَ غَفَرَ لَهُ» .

L40028 As for our specification of *muḥārabah* (waging war) among all the *ḥudūd* punishments, it is due to the statement of Allah the Exalted: {The recompense of those who wage war against Allah and His Messenger and spread corruption in the land} [Al-Mā’idah 5:33] up to His statement: {a great punishment} [Al-Baqarah 2:7]. Thus, Allah the Exalted has explicitly decreed in a text that permits no interpretation that, alongside the implementation of this punishment upon them—which brings them disgrace in this world—they will have along with that a great punishment in the Hereafter.[4]

وَأَمَّا تَخْصِيصُنَا الْمُحَارَبَةَ مِنْ جَمِيعِ الْحُدُودِ، فَلِقَوْلِ اللَّهِ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا} [المائدة: ٣٣] إِلَى قَوْلِهِ تَعَالَى {عَذَابٌ عَظِيمٌ} [البقرة: ٧] فَنَصَّ اللَّهُ تَعَالَى نَصًّا لَا يَحْتَمِلُ تَأْوِيلًا، عَلَى أَنَّهُمْ مَعَ إقَامَةِ هَذَا الْحَدِّ عَلَيْهِمْ، وَأَنَّهُ لَهُمْ خِزْيٌ فِي الدُّنْيَا، وَلَهُمْ مَعَ ذَلِكَ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ.

L40029–40030 Abū Muḥammad—may Allah have mercy on him—said: It is obligatory to apply all the texts exactly as they have been revealed, and not to abandon any part of them for another part, for none of them are more deserving of obedience than others. All of them are truth from Allah the Exalted, and abrogation is not permissible in any part of them. As for the ḥadīth of ‘Ubādah, it is a merit for us that our sins are expiated through the prescribed punishment, and merits are not abrogated, as they are neither commands

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ اسْتِعْمَالُ النُّصُوصِ كُلِّهَا كَمَا جَاءَتْ، وَأَنْ لَا يُتْرَكَ شَيْءٌ مِنْهَا لِشَيْءٍ آخَرَ وَلَيْسَ بَعْضُهَا أَوْلَى بِالطَّاعَةِ مِنْ بَعْضٍ، وَكُلُّهَا حَقٌّ مِنْ عِنْدِ اللَّهِ تَعَالَى - وَلَا يَجُوزُ النَّسْخُ فِي شَيْءٍ مِنْ ذَلِكَ: أَمَّا حَدِيثُ عُبَادَةَ - فَإِنَّهُ فَضِيلَةٌ لَنَا أَنْ تُكَفَّرَ عَنَّا الذُّنُوبُ بِالْحَدِّ، وَالْفَضَائِلُ لَا تُنْسَخُ، لِأَنَّهَا لَيْسَتْ أَوَامِرَ، وَلَا نَوَاهِيَ، وَإِنَّمَا

[3] **Qur’an references (L40026):** Qur’an 6:151 (Al-An’am); Qur’an 17:33 (Al-Isra).

[4] **Qur’an references (L40028):** Qur’an 5:33 (Al-Ma’idah); Qur’an 2:7 (Al-Baqarah).

nor prohibitions. Abrogation applies only to commands and prohibitions—whether they are conveyed through the wording of command and prohibition or through declarative statements whose meaning is that of command and prohibition.

L40031 As for the authenticated report, abrogation does not apply to it, for if it did, it would constitute falsehood—and it is impermissible to presume such a thing regarding any of the reports of Allah, the Exalted, or His Messenger (peace be upon him). As for the verse concerning waging war, the obligation of punishment in the Hereafter alongside worldly disgrace through executing the prescribed penalty upon them is a mere report from Allah, the Exalted, containing no element of command or prohibition. Thus, it remains safeguarded from the possibility of abrogation in any respect—and all praise is due to Allah, Lord of the worlds.

L40032 Abū Muḥammad—may Allāh have mercy on him—said: If someone adduces what we narrated—Aḥmad ibn ʿUmar al-ʿUdhri narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī narrated to us, Ibrāhīm ibn Duḥaym narrated to us, ʿAbd ibn Ḥumayd al-Kāshī narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar from Ibn Abī Dhiʾb from Saʿīd al-Maqburī from Abū Hurayrah—who said: The Messenger of Allāh (peace and blessings of Allāh be upon him) said: "I do not know if Tubbaʿ was a prophet or not. I do not know if Dhū al-Qarnayn was a prophet or not. And I do not know if the prescribed punishments are expiations for those subject to them or not."

L40033–40035 Ahmad ibn Umar al-Udhri, the second narrator, narrated to us: Muhammad ibn Abi Saʿid ibn Sakhtawayh al-Isfarayini - in his house in Mecca - narrated to us: ʿAbd al-ʿAziz ibn Jaʿfar ibn Saʿd narrated to us: I, Ahmad ibn Zanjuwayh ibn Musa, narrated to us... Dawud ibn Rashid narrated to us: Sayf ibn Harun narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Jarir ibn Abdullah, who said: "We pledged allegiance to the Messenger of Allah—peace and blessings be upon him—upon the same terms as the women's pledge. Whoever among us dies without committing any of those sins, Allah guarantees him Paradise. And whoever among us commits any of them and the ḥadd punishment is carried out on him, his judgment lies with Allah, the Exalted."

النَّسْخُ فِي الْأَوَامِرِ وَالنَّوَاهِي - سَوَاءٌ وَرَدَتْ بِلَفْظَةِ الْأَمْرِ وَالنَّهْيِ - أَوْ بِلَفْظِ الْخَبَرِ، وَمَعْنَاهُ الْأَمْرُ وَالنَّهْيُ.

وَأَمَّا الْخَبَرُ الْمُحَقَّقُ فَلَا يَدْخُلُ النَّسْخُ فِيهِ، وَلَوْ دَخَلَ لَكَانَ كَذِبًا - وَهَذَا لَا يَجُوزُ أَنْ يُظَنَّ بِشَيْءٍ مِنْ أَخْبَارِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَأَمَّا الْآيَةُ فِي الْمُحَارَبَةِ - فَإِنَّ وُجُوبَ الْعَذَابِ فِي الْآخِرَةِ مَعَ الْخِزْيِ فِي الدُّنْيَا بِإِقَامَةِ الْحَدِّ عَلَيْهِمْ: خَبَرٌ مُجَرَّدٌ مِنْ اللَّهِ تَعَالَى، لَا مَدْخَلَ فِيهِ لِلْأَمْرِ وَالنَّهْيِ فَأَمِنَ دُخُولُ النَّسْخِ فِي شَيْءٍ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ تَعَلَّقَ مُتَعَلِّقٌ بِمَا نا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ دُحَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ الْكَشِّيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا أَدْرِي أَتُبَّعٌ كَانَ نَبِيًّا أَمْ لَا؟ وَمَا أَدْرِي ذُو الْقَرْنَيْنِ أَنَبِيًّا كَانَ أَمْ لَا؟ وَمَا أَدْرِي الْحُدُودُ كَفَّارَاتٌ لِأَهْلِهَا أَمْ لَا؟» .

وَبِمَا ثَنَاهُ أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا مُحَمَّدُ بْنُ أَبِي سَعِيدِ بْنِ سَخْتَوَيْهِ الْإِسْفَرَايِينِيّ - فِي دَارِهِ بِمَكَّةَ - ثنا عَبْدُ الْعَزِيزِ بْنُ جَعْفَرِ بْنِ سَعْدٍ أَنَا أَحْمَدُ بْنُ زَنْجُوَيْهِ بْنِ مُوسَى نا دَاوُد بْنُ رَشِيدٍ نا سَيْفُ بْنُ هَارُونَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ قَالَ: «بَايَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَا بَايَعَتْ النِّسَاءُ، فَمَنْ مَاتَ مِنَّا وَلَمْ يَأْتِ بِشَيْءٍ مِنْهُنَّ: ضَمِنَ لَهُ الْجَنَّةَ، وَمَنْ مَاتَ مِنَّا وَأَتَى بِشَيْءٍ فَأُقِيمَ عَلَيْهِ الْحَدُّ: فَحِسَابُهُ عَلَى اللَّهِ تَعَالَى»

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَصَحِيحُ السَّنَدِ، وَمَا نَعْلَمُ لَهُ فِي وَقْتِنَا هَذَا عِلَّةً، إِلَّا أَنَّ الَّذِي لَا نَشُكُّ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَخْتَلِفُ قَوْلُهُ، وَلَا يَقُولُ إِلَّا الْحَقَّ، وَقَدْ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَصَحِّ سَنَدٍ مِمَّا أَوْرَدْنَا آنِفًا مِنْ طَرِيقِ عُبَادَةَ: «أَنَّ مَنْ أَصَابَ مِنَ الزِّنَى، وَالسَّرِقَةِ، وَالْقَتْلِ، وَالْغَصْبِ: شَيْئًا، فَأُقِيمَ عَلَيْهِ الْحَدُّ، فَهُوَ كَفَّارَةٌ لَهُ» فَمِنَ الْمُحَالِ أَنْ يَشُكَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ قَدْ قَطَعَ بِهِ، وَبَشَّرَ أُمَّتَهُ بِهِ، وَهُوَ وَحْيٌ مِنَ اللَّهِ تَعَالَى أَوْحَى إِلَيْهِ بِهِ.

L40036 Abū Muḥammad—may Allah have mercy on him—said: As for the ḥadīth of Abū Hurayrah, its chain is authentic, and we know of no hidden defect in it in our time. However, what we do not doubt is that the Messenger of Allah—peace and blessings of Allah be upon him—has no contradictions in his statements, nor does he speak except the truth. He—peace and blessings of Allah be upon him—declared through the most authentic chain we have cited earlier, via the transmission of ʿUbādah: "Whoever commits fornication, theft, murder, or usurpation, and the prescribed punishment is enforced upon him, it becomes an expiation for him." It is unthinkable that the Messenger of Allah—peace and blessings of Allah be upon him—would doubt something he conclusively affirmed, proclaimed as glad tidings to his Ummah, and which is a revelation from Allah the Exalted, communicated to him.

وَالْقَوْلُ عِنْدَنَا فِيهِ: أَنَّ أَبَا هُرَيْرَةَ لَمْ يَقُلْ أَنَّهُ سَمِعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الْكَلَامَ، وَقَدْ سَمِعَهُ أَبُو هُرَيْرَةَ مِنْ أَحَدِ الْمُهَاجِرِينَ، مِمَّنْ سَمِعَهُ ذَلِكَ الصَّاحِبُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَوَّلِ الْبَعْثِ، قَبْلَ أَنْ يَسْمَعَ عُبَادَةُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِنَّ الْحُدُودَ كَفَّارَةٌ» فَهَذَا صَحِيحٌ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُعَلِّمُ إِلَّا مَا عَلَّمَهُ اللَّهُ تَعَالَى، ثُمَّ أَعْلَمَهُ بَعْدَ ذَلِكَ مَا لَمْ يَكُنْ يَعْلَمُهُ حِينَئِذٍ، وَأَخْبَرَ بِهِ الْأَنْصَارَ، إِذْ بَايَعُوهُ قَبْلَ الْهِجْرَةِ، وَالْحُدُودُ حِينَئِذٍ لَمْ تَكُنْ نَزَلَتْ بَعْدُ، لَا حِينَ بَيْعَةِ عُبَادَةَ وَلَا قَبْلَ ذَلِكَ، وَإِنَّمَا نَزَلَتْ بِالْمَدِينَةِ بَعْدَ الْهِجْرَةِ، لَكِنَّ اللَّهَ تَعَالَى أَعْلَمَ رَسُولَهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ سَيَكُونُ لِهَذِهِ الذُّنُوبِ حُدُودٌ، وَعُقُوبَاتٌ - وَإِنْ كَانَ لَمْ يُعْلِمْهُ بِهَا - لَكِنَّهُ أَخْبَرَهُ أَنَّهَا كَفَّارَاتٌ لِأَهْلِهَا - هَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ - إِنْ صَحَّ حَدِيثُ أَبِي هُرَيْرَةَ وَلَمْ تَكُنْ فِيهِ عِلَّةٌ.

L40037 Our position regarding this is that Abū Hurayrah did not claim to have heard directly from the Messenger of Allah—peace and blessings be upon him. Rather, Abū Hurayrah heard it from one of the Emigrants—from the companion who had heard it from the Messenger of Allah—peace and blessings be upon him—during the early period of the prophetic mission, before ʿUbādah heard the Messenger of Allah—peace and blessings be upon him—say: "The hudud are an expiation." This confirms that he—peace and blessings be upon him—taught only what Allah the Exalted had taught him. Later, Allah informed him of matters he had not known at that time, which he then conveyed to the Anṣār when they pledged allegiance to him before the Hijrah. The hudud had not yet been revealed at that time—neither during ʿUbādah's pledge nor prior to it—but were revealed in Medina after the Hijrah. Nevertheless, Allah the Exalted had informed His Messenger—peace and blessings be upon him—that there would be hudud and punishments for these sins, though He had not yet informed him of their details. Rather, He told him they would serve as expiations for those liable to them. This is the truth that permits no alternative—provided Abū Hurayrah's narration is authentic and free from flaws.

وَأَمَّا حَدِيثُ جَابِرٍ - فَسَاقِطٌ لِأَنَّهُ مِنْ رِوَايَةِ دَاوُد بْنِ رَشِيدٍ - وَهُوَ ضَعِيفٌ.

L40038 As for the ḥadīth of Jābir—it is discarded (as it is transmitted through Dāwūd ibn Rashīd, a weak narrator).

L40039 Then, if it were authentic, the ruling regarding it would be like the rul-

ing concerning the hadith of Abū Hurayrah which we discussed earlier. At that time, the matter would have been clearer in the hadith of Jābir, because Jarīr's conversion to Islam occurred very late after the Conquest—he never witnessed the women's pledge that took place before the fighting, as Jarīr embraced Islam after the revelation of *al-Mā'idah*. Thus, the hadith of 'Ubādah became the decisive authority over all of that, informing from Allah the Exalted what other reports do not mention: that the prescribed punishments are an expiation for those subjected to them, except what Allah the Exalted has specifically designated.

L40040 **Question: Are the ḥudūd (fixed Islamic penalties) nullified by repentance or not?**

L40041–40042 Abu Muhammad—may Allah have mercy on him—said: Some scholars claimed that all prescribed punishments are nullified by repentance. This is a narration reported by Abu Abd al-Rahman al-Ash'ari from al-Shafi'i, who asserted this in Iraq but later retracted it in Egypt. The proponents of this view cited as evidence the narration transmitted via Abdullah ibn Rabi', via Muhammad ibn Mu'awiyah, via Ahmad ibn Shu'ayb, via Muhammad ibn Bashshar, via Abd al-Rahman ibn Mahdi, via Sufyan al-Thawri, via Zayd ibn Aslam, via Yazid ibn Nu'aym, from his father: "Ma'iz ibn Malik came to the Prophet—peace and blessings be upon him—and said: 'Apply Allah's decree upon me.' The Prophet—peace and blessings be upon him—turned away from him four times. Then Allah's Messenger—peace and blessings be upon him—ordered his stoning. When the stones struck him, he fled in haste. Abdullah ibn Anas emerged from his clan's assembly holding the donkey's jawbone, struck him, and knocked him down. He then came to the Prophet—peace and blessings be upon him—and informed him of the matter. The Prophet said: 'Why did you not leave him? Perhaps he might repent, and Allah would accept his repentance. O man, had you concealed his fault with your garment, it would have been better for you.'"

L40043 From Ḥumām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from Muḥammad ibn Waḍḍāḥ, from Abū Bakr ibn Abī Shaybah, from ʿAmr ibn Ḥammād ibn Ṭalḥah, from Asbāṭ ibn Naṣr, from Simāk, from

ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أَبِي هُرَيْرَةَ الَّذِي تَكَلَّمْنَا فِيهِ آنِفًا، وَالْأَمْرُ كَانَ حِينَئِذٍ فِي حَدِيثِ جَابِرٍ أَبْيَنُ، لِأَنَّ إِسْلَامَ جَرِيرٍ مُتَأَخِّرٌ جِدًّا بَعْدَ الْفَتْحِ، لَمْ يُدْرِكْ قَطُّ بَيْعَةَ النِّسَاءِ الَّتِي كَانَتْ قَبْلَ الْقِتَالِ، لِأَنَّ إِسْلَامَ جَرِيرٍ كَانَ بَعْدَ نُزُولِ " الْمَائِدَةِ " فَصَارَ حَدِيثُ عُبَادَةَ قَاضِيًا عَلَى كُلِّ ذَلِكَ، وَمُخْبِرًا عَنِ اللَّهِ تَعَالَى مَا لَيْسَ فِي سَائِرِ الْأَخْبَارِ: مِنْ أَنَّ الْحُدُودَ كَفَّارَةٌ لِأَهْلِهَا، حَاشَ مَا خَصَّهُ اللَّهُ تَعَالَى مِنْهَا

[مَسْأَلَة هَلْ تَسْقُطُ الْحُدُودُ بِالتَّوْبَةِ أَمْ لَا]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إنَّ الْحُدُودَ كُلَّهَا تَسْقُطُ بِالتَّوْبَةِ - وَهَذِهِ رِوَايَةٌ رَوَاهَا أَبُو عَبْدِ الرَّحْمَنِ الْأَشْعَرِيُّ عَنْ الشَّافِعِيِّ، قَالَهَا بِالْعِرَاقِ وَرَجَعَ عَنْهَا بِمِصْرَ - وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ: بِمَا نَاهِ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ يَزِيدَ بْنِ نُعَيْمٍ عَنْ أَبِيهِ: «أَنَّ مَاعِزَ بْنَ مَالِكٍ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَقِمْ عَلَيَّ كِتَابَ اللَّهِ؟ فَأَعْرَضَ عَنْهُ أَرْبَعَ مَرَّاتٍ، ثُمَّ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجْمِهِ، فَلَمَّا مَسَّتْهُ الْحِجَارَةُ خَرَجَ يَشْتَدُّ، وَخَرَجَ عَبْدُ اللَّهِ بْنُ أُنَيْسٍ مِنْ نَادِي قَوْمِهِ بِوَظِيفِ حِمَارٍ، فَضَرَبَهُ فَصَرَعَهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَدَّثَهُ بِأَمْرِهِ فَقَالَ أَلَا تَرَكْتُمُوهُ لَعَلَّهُ يَتُوبُ فَيَتُوبُ اللَّهُ عَلَيْهِ؟ يَا هَذَا لَوْ سَتَرْتَهُ بِثَوْبِكَ كَانَ خَيْرًا لَكَ» .

حَدَّثَنَا حُمَامٌ ثنا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَمْرُو بْنُ حَمَّادِ بْنِ طَلْحَةَ عَنْ أَسْبَاطِ بْنِ نَصْرٍ عَنْ سِمَاكٍ عَنْ

ʿAlqamah ibn Wāʾil ibn Ḥujr, from his father: A woman was approached by a man who committed zinā with her during the darkness of dawn while she was reluctantly proceeding to the mosque. She called for help from a passing man, causing her assailant to flee. Later, a large group passed by, and she sought their assistance. They apprehended the man she had initially sought help from, while the actual perpetrator had already escaped. They brought him to the Prophet (peace and blessings be upon him), where she testified that he had committed zinā with her. The group explained they had found him fleeing. The man claimed, “I only rushed to rescue her from her assailant, but these people detained me.” The woman declared, “He lies—he is the one who violated me.” The Prophet (peace and blessings be upon him) ordered, “Take him and stone him.” A man then stood and said, “Do not stone him—stone me instead, for I am the guilty one,” and confessed. Three individuals—the accused man, the rescuer, and the woman—stood before Allah’s Messenger (peace and blessings be upon him). He told the confessor, “Allah has forgiven you,” and commended the rescuer. ʿUmar asked, “Should we stone the one who confessed to zinā?” The Messenger of Allah (peace and blessings be upon him) replied, “No—he has repented to Allah the Exalted.” ʿAbdullāh ibn ʿUmar added in his narration: “Had the people of Medina repented similarly, it would have been accepted from them.”

عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ: «أَنَّ امْرَأَةً وَقَعَ عَلَيْهَا رَجُلٌ فِي سَوَادِ الصُّبْحِ وَهِيَ تَعْمِدُ إِلَى الْمَسْجِدِ عَنْ كُرْهٍ نَفْسِهَا، فَاسْتَغَاثَتْ بِرَجُلٍ مَرَّ عَلَيْهَا وَفَرَّ صَاحِبُهَا، ثُمَّ مَرَّ عَلَيْهَا قَوْمٌ ذَوُو عَدَدٍ، فَاسْتَغَاثَتْ بِهِمْ، فَأَدْرَكُوا الَّذِي اسْتَغَاثَتْ بِهِ، وَسَبَقَهُمُ الْآخَرُ، فَأَتَوْا بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَتْهُ: أَنَّهُ وَقَعَ عَلَيْهَا، وَأَخْبَرَهُ الْقَوْمُ: أَنَّهُمْ أَدْرَكُوهُ يَشْتَدُّ، فَقَالَ: إِنَّمَا كُنْتُ أَغَثْتُهَا عَلَى صَاحِبِهَا فَأَدْرَكَنِي هَؤُلَاءِ فَأَخَذُونِي، قَالَتْ: كَذَبَ، هُوَ الَّذِي وَقَعَ عَلَيَّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ فَقَامَ رَجُلٌ مِنَ النَّاسِ فَقَالَ: لَا تَرْجُمُوهُ وَارْجُمُونِي أَنَا الَّذِي فَعَلْتُ بِهَا الْفِعْلَ، فَاعْتَرَفَ، فَاجْتَمَعَ ثَلَاثَةٌ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي وَقَعَ عَلَيْهَا، وَالَّذِي أَغَاثَهَا، وَالْمَرْأَةُ، فَقَالَ أَمَّا أَنْتَ فَقَدْ غَفَرَ اللَّهُ لَكَ، وَقَالَ لِلَّذِي أَغَاثَهَا قَوْلًا حَسَنًا فَقَالَ لَهُ عُمَرُ: أَرْجُمُ الَّذِي اعْتَرَفَ بِالزِّنَى؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا، إِنَّهُ قَدْ تَابَ إِلَى اللَّهِ تَعَالَى زَادَ ابْنُ عُمَرَ فِي رِوَايَتِهِ لَوْ تَابَهَا أَهْلُ مَدِينَةٍ يَثْرِبَ لَقُبِلَ مِنْهُمْ» .

L40044–40046 From Abū ʿUmar Aḥmad ibn Qāsim: from my father, Qāsim ibn Muḥammad: from my grandfather, Qāsim ibn Aṣbagh: from al-Ḥārith ibn Abī Usāmah: from Abū al-Naḍr: from Abū Muʿāwiyah: from Layth ibn Abī Sulaym: from... Abu Burdah ibn Abi Musa al-Ashʿari narrated from Abu Malih ibn Usamah al-Hudhali from Wathilah ibn al-Asqaʿ, who said: “I was present with the Messenger of Allah (peace be upon him) one day when a man came to him and said: ’O Messenger of Allah, I have committed a _hadd_ of Allah the Exalted.’ The Prophet turned away from him. The man repeated his plea a second time, and again the Prophet turned away. When he came a third time, the Prophet turned away once more. Then the _iqamah_ was called for the prayer. When he concluded the prayer, the man approached a fourth time and said: ’I have committed a _hadd_ of Allah - so carry out Allah’s _hadd_

نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا أَبُو النَّضْرِ نا أَبُو مُعَاوِيَةَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِي مَلِيحِ بْنِ أُسَامَةَ الْهُذَلِيِّ عَنْ «وَاثِلَةَ بْنِ الْأَسْقَعِ قَالَ شَهِدْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَاتَ يَوْمٍ وَأَتَاهُ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَصَبْتُ حَدًّا مِنْ حُدُودِ اللَّهِ تَعَالَى، فَأَعْرَضَ عَنْهُ، ثُمَّ أَتَاهُ الثَّانِيَةَ فَأَعْرَضَ عَنْهُ ثُمَّ قَالَهَا الثَّالِثَةَ فَأَعْرَضَ عَنْهُ، ثُمَّ أُقِيمَتْ الصَّلَاةُ، فَلَمَّا قَضَى الصَّلَاةَ أَتَى الرَّابِعَةَ،

on me.' The Prophet said: 'Did you not perform purification (or ablution) well, then join us in prayer moments ago? Go, for it is your expiation.'"

فَقَالَ: أَصَبْتُ حَدًّا مِنْ حُدُودِ اللَّهِ فَأَقِمْ فِي حَدَّ اللَّهِ قَالَ: أَلَمْ تُحْسِنْ الطُّهُورَ - أَوْ الْوُضُوءَ - ثُمَّ شَهِدْتَ الصَّلاَةَ مَعَنَا آنِفًا؟ اذْهَبْ فَهِيَ كَفَّارَتُكَ» .

L40047 And through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us: Zayd ibn al-Ḥubāb narrated from ʿIkrimah ibn ʿAmmār; we received from Shaddād ibn ʿAbdullāh from al-Bāhilī, who said: I was with the Messenger of Allāh—peace and blessings be upon him—in the mosque when a man said to him, "I have committed an offense requiring a ḥadd punishment, so administer it to me." Then the prayer was established, and the Messenger of Allāh—peace and blessings be upon him—prayed in the mosque. Afterward, he left—with the man—and I followed him. The man said, "O Messenger of Allāh, enforce the ḥadd upon me, for I have indeed committed it." He replied, "Did you not perform ablution properly when you left your home and then attend the prayer with us?" The man said, "Yes." The Prophet said, "Then Allāh has forgiven your sin or waived your ḥadd."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا زَيْدُ بْنُ الْحُبَابِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ نا شَدَّادُ بْنُ عَبْدِ اللَّهِ عَنْ «الْبَاهِلِيِّ قَالَ كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَسْجِدِ فَقَالَ لَهُ رَجُلٌ: إنِّي أَصَبْتُ حَدًّا فَأَقِمْ عَلَيَّ وَأُقِيمَتْ الصَّلاَةُ فَصَلَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمَسْجِدِ ثُمَّ خَرَجَ - وَمَعَهُ الرَّجُلُ - وَتَبِعْتُهُ، فَقَالَ: يَا رَسُولَ اللَّهِ أَقِمْ عَلَيَّ حَدِّي فَإِنِّي أَصَبْتُهُ، فَقَالَ: أَلَيْسَ حِينَ خَرَجْتَ مِنْ مَنْزِلِكَ تَوَضَّأْتَ فَأَحْسَنْتَ الْوُضُوءَ وَشَهِدْتَ مَعَنَا الصَّلاَةَ؟ قَالَ: نَعَمْ، قَالَ: فَإِنَّ اللَّهَ قَدْ غَفَرَ لَكَ ذَنْبَكَ - أَوْ حَدَّكَ» .

L40048 Abu Muhammad—may Allah have mercy on him—said: We have been transmitted this report—containing "I committed adultery"—just as Al-Muhallab ibn Abi Sufrah al-Asadi al-Tamimi narrated to us, Abdullah ibn Ibrahim al-Asili informed us, Muhammad ibn Ahmad al-Sawwaf informed us, Ahmad ibn Harun ibn Rawh al-Baradhanji informed us, Muhammad ibn Abdul-Malik al-Wasiti informed us, from Amr ibn Asim, from Hammam ibn Yahya, from Ishaq ibn Abdullah ibn Abi Talhah, from Anas: "A man came to the Prophet—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, I have committed adultery—so impose the prescribed punishment upon me.' Then the prayer was established, and he prayed with the Prophet. The Prophet said to him: 'By your prayer, it has expiated for you.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا هَذَا الْخَبَرَ - وَفِيهِ " إنِّي زَنَيْت " كَمَا ثنا الْمُهَلَّبُ بْنُ أَبِي صُفْرَةَ الْأَسَدِيُّ التَّمِيمِيُّ ثنا عَبْدُ اللَّهِ بْنُ إبْرَاهِيمَ الْأَصِيلِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ الصَّوَّافُ نا أَحْمَدُ بْنُ هَارُونَ بْنِ رَوْحٍ الْبَرْذَنْجِيُّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ الْوَاسِطِيُّ نا عَمْرُو بْنُ عَاصِمٍ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ إسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ، إنِّي زَنَيْتُ فَأَقِمْ عَلَيَّ الْحَدَّ، ثُمَّ أُقِيمَتْ الصَّلاَةُ، فَصَلَّى مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ كَفَّرَ عَنْكَ بِصَلاَتِكَ» .

L40049 Abu Muhammad—may Allah have mercy on him—said: They said, "Allah the Exalted has stated: {The recompense of those who wage war against Allah and His Messenger and strive to spread corruption in the land} [5:33]—the

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - وَقَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى {إنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا} [المائدة: ٣٣] الْآيَةَ إلَى قَوْلِهِ: {إلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤]

verse up to His words: {except those who repent before you subdue them} [5:34]."[5]

L40050 They said: The textual evidence from the Quran is sound, and consensus confirms that the punishment for ḥirābah (waging war against society) is nullified by repentance before the authorities gain power over the offenders. It necessarily follows that all prescribed punishments—for adultery, theft, false accusation of unlawful sexual intercourse (qadhf), and drinking alcohol—are likewise [nullified], as they are all punishments for which repentance occurs before the authorities gain power over the offenders.

قَالُوا: فَصَحَّ النَّصُّ مِنْ الْقُرْآنِ وَصَحَّ الْإِجْمَاعُ بِأَنَّ حَدَّ الْمُحَارَبَةِ تُسْقِطُهُ التَّوْبَةُ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ، فَوَجَبَ أَنْ تَكُونَ جَمِيعُ الْحُدُودِ مِنْ: الزِّنَى، وَالسَّرِقَةِ، وَالْقَذْفِ، وَشُرْبِ الْخَمْرِ كَذَلِكَ، لِأَنَّهَا كُلَّهَا حُدُودٌ وَقَعَتْ التَّوْبَةُ قَبْلَ الْقُدْرَةِ عَلَى أَهْلِهَا.

L40051–40052 Abū Muḥammad—may Allāh have mercy on him—said: This is all that the adherents of this opinion can invoke as proof, while others have maintained that repentance does not nullify the prescribed punishments.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَحْتَجَّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ، وَذَهَبَ آخَرُونَ إلَى أَنَّ التَّوْبَةَ لَا تُسْقِطُ الْحُدُودَ.

L40053 They cited as evidence the narration transmitted by Ḥumām from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Bakr—that is, Ibn Ḥammād—who narrated from Musaddad, who narrated from Yaḥyā—that is, Ibn Saʿīd al-Qaṭṭān—from Hishām al-Dastuwāʾī, who narrated from Yaḥyā ibn Abī Kathīr, from Abī Qilābah, from Abī al-Muhallab, that ʿImrān ibn al-Ḥuṣayn reported to him: "A woman from Juhaynah came to the Prophet—peace and blessings of Allah be upon him—while pregnant from fornication. She said: 'I have incurred a ḥadd punishment. Carry it out upon me.' He summoned her guardian and instructed: 'Treat her kindly. When she delivers, bring her to me.' The guardian complied. After she gave birth, he brought her to the Messenger of Allah—peace and blessings of Allah be upon him and his family. The Prophet commanded that her garments be secured around her, then ordered her execution by stoning. He later prayed over her funeral. ʿUmar exclaimed: 'You pray over her when she committed fornication?' He replied: 'She repented with such sincerity that if divided among seventy people of Medina, it would suffice them. Have you found any deed more virtuous than her surrendering her life?'"

وَاحْتَجُّوا: بِمَا ناه حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ - هُوَ ابْنُ حَمَّادٍ - نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامٍ الدَّسْتُوَائِيِّ نا يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ حَدَّثَهُ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُبْلَى مِنْ الزِّنَا فَقَالَتْ: إنِّي أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ، فَدَعَا وَلِيَّهَا فَقَالَ أَحْسِنْ إلَيْهَا فَإِذَا وَضَعَتْ فَأْتِنِي بِهَا فَفَعَلَ فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشُكَّتْ عَلَيْهَا ثِيَابُهَا ثُمَّ أَمَرَ بِهَا فَرُجِمَتْ ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ عُمَرُ: تُصَلِّي عَلَيْهَا وَقَدْ زَنَتْ؟ فَقَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، هَلْ وَجَدْتَ شَيْئًا هُوَ أَفْضَلُ مِنْ أَنْ جَادَتْ بِنَفْسِهَا؟» .

L40054 From the chain of Muslim: Muhammad ibn al-Muthannā reported to us,

[5] **Qur'an references (L40049):** Qur'an 5:33 (Al-Ma'idah); Qur'an 5:34 (Al-Ma'idah).

saying: ʻAbd al-Aʻlā narrated to us that Dāwūd ibn Abī Naḍrah reported from Abī Saʻīd al-Khudrī: A man from Aslam named Māʻiz ibn Mālik came to the Messenger of Allah (peace and blessings of Allah be upon him) and said, “I have committed an immoral act. Carry out the punishment upon me.” The Prophet (peace and blessings of Allah be upon him) turned him away repeatedly. Then he inquired about him among his people, and they said, “We know no ill of him.” The remainder of the ḥadīth was narrated, which includes: “The Messenger of Allah (peace and blessings of Allah be upon him) commanded us to stone him.” People were divided into two groups concerning him: some said, “He is ruined—his sin has engulfed him,” while others said, “There is no repentance better than that of Māʻiz. He came to the Messenger of Allah (peace and blessings of Allah be upon him), placed his hand in the Prophet’s hand, and said, ‘Kill me with stones.’” He said, “They remained in this state for two or three days. Then the Messenger of Allah (peace and blessings of Allah be upon him) came while they were seated, greeted them, sat down, and said, ‘Seek forgiveness for Māʻiz ibn Mālik.’ They said, ‘May Allah forgive Māʻiz ibn Mālik.’ The Messenger of Allah (peace and blessings of Allah be upon him) then said, ‘He has repented a repentance that, if divided among a nation, would suffice them all.’”

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنِي عَبْدُ الْأَعْلَى نا دَاوُد بْنُ أَبِي نَضْرَةَ «عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَجُلًا مِنْ أَسْلَمَ يُقَالُ لَهُ: مَاعِزُ بْنُ مَالِكٍ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي أَصَبْتُ فَاحِشَةً فَأَقِمْهُ عَلَيَّ فَرَدَّهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِرَارًا ثُمَّ سَأَلَ قَوْمَهُ؟ فَقَالُوا: مَا نَعْلَمُ بِهِ بَأْسًا - فَذَكَرَ بَاقِيَ الْحَدِيثِ وَفِيهِ - فَأَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ نَرْجُمَهُ، فَكَانَ النَّاسُ فِيهِ فِرْقَتَيْنِ: قَائِلٌ يَقُولُ: هَلَكَ، لَقَدْ أَحَاطَتْ بِهِ خَطِيئَتُهُ، وَقَائِلٌ يَقُولُ: مَا تَوْبَةٌ أَفْضَلُ مِنْ تَوْبَةِ مَاعِزٍ، إِنَّهُ جَاءَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعَ يَدَهُ فِي يَدِهِ فَقَالَ: اقْتُلْنِي بِالْحِجَارَةِ، قَالَ: فَلَبِثُوا بِذَلِكَ يَوْمَيْنِ - أَوْ ثَلَاثَةً - ثُمَّ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُمْ جُلُوسٌ فَسَلَّمَ ثُمَّ جَلَسَ فَقَالَ اسْتَغْفِرُوا لِمَاعِزِ بْنِ مَالِكٍ؟ فَقَالُوا: غَفَرَ اللَّهُ لِمَاعِزِ بْنِ مَالِكٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ» .

L40055–40057 And from the chain of Muslim: Muḥammad ibn ʿAbdullāh ibn Numayr reported to us, from Bashīr ibn al-Muhājir, from ʿAbdullāh ibn Buraidah, from his father, that Māʻiz ibn Mālik came to the Messenger of Allāh—peace and blessings be upon him—and said: “O Messenger of Allāh, indeed I...” I have wronged myself and committed adultery, and I wish for you to purify me. He sent him back. Then he mentioned the hadith, and in it: The Ghamidiyyah woman came and said, “O Messenger of Allah, I have committed adultery; purify me.” But he turned her away. The next day, she said, “O Messenger of Allah, why do you turn me away as you turned away Maʻiz? By Allah, I am pregnant!” He said, “Then go now,” and the remainder of the account was related. When she weaned him, she brought the child to him with a piece of bread in his hand. She said, “O Prophet of Allah, I have weaned him, and he now eats food.” He handed the child to a man from the Muslims, then ordered that a pit be dug for her up to her chest and

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا بَشِيرُ بْنُ الْمُهَاجِرِ نا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ «أَنَّ مَاعِزَ بْنَ مَالِكٍ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَلَمْتُ نَفْسِي وَزَنَيْتُ وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي، فَرَدَّهُ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - فَجَاءَتْ الْغَامِدِيَّةُ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي قَدْ زَنَيْتُ فَطَهِّرْنِي، وَأَنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْغَدُ قَالَتْ: يَا رَسُولَ اللَّهِ لِمَ تَرُدُّنِي كَمَا رَدَدْتَ مَاعِزًا؟ فَوَاَللَّهِ إِنِّي لَحُبْلَى، قَالَ أَمَّا الْآنَ فَاذْهَبِي وَذَكَرَ بَاقِيَ الْخَبَرِ - فَلَمَّا فَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ - وَفِي يَدِهِ كِسْرَةُ خُبْزٍ - فَقَالَتْ: هَذَا يَا نَبِيَّ اللَّهِ قَدْ فَطَمْتُهُ، وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنْ الْمُسْلِمِينَ ثُمَّ أَمَرَ بِهَا فَحُفِرَ إِلَى صَدْرِهَا وَأَمَرَ النَّاسَ فَرَجَمُوهَا - فَأَقْبَلَ خَالِدُ بْنُ الْوَلِيدِ فَرَمَى رَأْسَهَا فَنَضَحَ

commanded the people to stone her. Khalid ibn al-Walid approached and threw at her head, causing blood to splash onto his face. He cursed her, and the Prophet of Allah—peace and blessings be upon him—heard him cursing her. He said, "Hold on, Khalid! By the One in whose hand is my soul, she has repented a repentance that, if an extortioner were to repent likewise, he would be forgiven." Then he ordered that funeral prayers be offered over her, and she was buried.[6]

الدَّمُ عَلَى وَجْهِ خَالِدٍ، فَسَبَّهَا، فَسَمِعَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَبَّهُ إِيَّاهَا، فَقَالَ: مَهْلًا يَا خَالِدُ، فَوَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ تَابَتْ تَوْبَةً لَوْ تَابَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ، ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ» .

L40058 They said: This Ma'iz's repentance was verified before stoning through the Messenger of Allah (peace be upon him) reporting it and affirming its acceptance. As for these two women – Al-Ghamidiyyah and Al-Juhayniyyah (may Allah be pleased with them both) – they repented in the most complete and sound manner, accepted by Allah the Exalted through the Prophet's (peace be upon him) report. Yet their repentance did not nullify the prescribed punishment for them.

قَالُوا: فَهَذَا مَاعِزٌ قَدْ صَحَّتْ تَوْبَتُهُ قَبْلَ الرَّجْمِ بِإِخْبَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ، وَبِأَنَّهَا مَقْبُولَةٌ - وَهَذِهِ الْغَامِدِيَّةُ، وَالْجُهَيْنِيَّةُ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ تَابَتَا أَتَمَّ تَوْبَةٍ وَأَصَحَّهَا، مَقْبُولَةً مِنْ اللَّهِ تَعَالَى بِإِخْبَارِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - وَلَمْ تُسْقِطْ هَذِهِ التَّوْبَةُ عَنْهُمْ الْحَدَّ.

L40059 They said: "Likewise, 'Did the Messenger of Allah—peace and blessings be upon him and his family—impose the hadd punishment on those who falsely accused Aisha—may Allah be pleased with her—of adultery?'" Abu Muhammad—may Allah have mercy on him—said: "When they differed regarding that—as we have mentioned—it became obligatory for us to examine that matter to discern the truth therein [and follow it] with the help of Allah the Exalted and His grace. Thus, we scrutinized the hadith cited by those who held that hudud are nullified by repentance."

قَالُوا: وَكَذَلِكَ أَيْضًا «حَدَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِينَ قَذَفُوا عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -؟» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا فِي ذَلِكَ - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ [فَنَتَّبِعَهُ] بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ: فَنَظَرْنَا فِي الْحَدِيثِ الَّذِي احْتَجَّ بِهِ مَنْ رَأَى الْحُدُودَ سَاقِطَةً بِالتَّوْبَةِ.

L40060 So we examined that and found it to be *mursal*, thus invalidating reliance on it.

فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَاهُ مُرْسَلًا، فَسَقَطَ التَّعَلُّقُ بِهِ.

L40061 Then we examined the ḥadīth of ʿAlqamah ibn Wāʾil and found it unsound because its chain includes Simāk ibn Ḥarb, who accepts talqīn, as affirmed by Shuʿbah and others, thus it is rejected.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَلْقَمَةَ بْنِ وَائِلٍ، فَوَجَدْنَاهُ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ، شَهِدَ بِذَلِكَ شُعْبَةُ، وَغَيْرُهُ، فَسَقَطَ.

L40062 Then we examined the hadith of Wathilah ibn al-Asqaʿ and found the first chain from a chain that includes Layth ibn Abi Sulaym, who is not strong.

ثُمَّ نَظَرْنَا فِي حَدِيثِ وَاثِلَةَ بْنِ الْأَسْقَعِ، فَوَجَدْنَا الْأَوَّلَ مِنْ طَرِيقٍ فِيهَا لَيْثُ بْنُ أَبِي سُلَيْمٍ، وَلَيْسَ بِالْقَوِيِّ.

[6] **Hadith references (L40055):** Sunan Abi Dawud 4442; Sahih Muslim 1695b.

L40063 As for the ḥadīth of al-Bāhilī, we found it transmitted through the chain of ʿIkrimah ibn ʿAmmār, and he is very weak in reliability.

وَأَمَّا حَدِيثُ الْبَاهِلِيِّ، فَوَجَدْنَاهُ مِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ، وَهُوَ ضَعِيفٌ جِدًّا.

L40064–40065 If it is said: "But you have narrated that it includes Zaynab?" We respond: Yes, though its chain includes men who are unknown. Moreover, even if it were established without a hidden defect, it would not constitute valid evidence, for there are aspects preventing its application: The first - that this incident may have occurred before the revelation of the punishment for adultery. Then the punishment for adultery was revealed, and thus the ruling necessitated the imposition of the punishment.

فَإِنْ قِيلَ: وَقَدْ رَوَيْتُمُوهُ بِأَنَّ فِيهِ زَيْنَبَ؟ قُلْنَا: نَعَمْ، وَفِيهِ مَنْ لَا يُعْرَفُ رِجَالُهُ، ثُمَّ أَنَّهُ لَوْ ثَبَتَ دُونَ عِلَّةٍ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ فِيهِ وُجُوهًا تَمْنَعُ مِنْ اسْتِعْمَالِهِ: أَحَدُهَا - أَنَّ مُمْكِنًا أَنْ يَكُونَ هَذَا قَبْلَ نُزُولِ حَدِّ الزِّنَى ثُمَّ نَزَلَ حَدُّ الزِّنَى فَكَانَ الْحُكْمُ لِإِيجَابِ الْحَدِّ.

L40066 If it is said: Is it also possible that after the revelation of the punishment for adultery, the punishment for adultery was then revealed, making the ruling apply to it and thereby abrogating what is in the narration of Maʿiz, al-Ghāmidiyyah, and al-Juhayniyyah? We say: When reports conflict, the obligation is to adopt the additional ruling. The additional ruling is that which introduces a ruling not previously obligatory in the foundational principle. The established foundational principle was undoubtedly that no punishment is imposed on anyone—whether repentant or not. Then came the explicit text imposing punishments comprehensively, and these texts were additional to the foundational principle. The narration of Maʿiz, al-Ghāmidiyyah, and al-Juhayniyyah subsequently emerged. The obligation of punishment on the repentant mentioned in them would constitute an addition to the report that drops the punishment for the repentant—but this would only hold if their narration had stated that the punishment was dropped due to repentance. How can this be when no such statement exists in it? It merely mentions the dropping of the punishment based solely on his prayer—a position they themselves do not uphold [rather, they contradict this ruling]. Thus, their reliance on this narration and those reports altogether is invalidated—and with Allah, the Exalted, lies all success.

فَإِنْ قِيلَ: وَمُمْكِنٌ أَيْضًا أَنْ يَكُونَ بَعْدَ نُزُولِ حَدِّ الزِّنَى ثُمَّ نَزَلَ حَدُّ الزِّنَى فَكَانَ الْحُكْمُ لَهُ وَيَكُونُ نَاسِخًا لِمَا فِي حَدِيثِ مَاعِزٍ، وَالْغَامِدِيَّةِ وَالْجُهَيْنِيَّةِ؟ قُلْنَا: إِنَّ الْوَاجِبَ إِذَا تَعَارَضَتْ الْأَخْبَارُ أَنْ يُؤْخَذَ بِالزَّائِدِ وَالزَّائِدُ: هُوَ الَّذِي جَاءَ بِحُكْمٍ لَمْ يَكُنْ وَاجِبًا فِي مَعْهُودِ الْأَصْلِ، وَكَانَ مَعْهُودُ الْأَصْلِ بِلَا شَكٍّ: أَنْ لَا حَدَّ عَلَى أَحَدٍ - تَائِبًا كَانَ أَوْ غَيْرَ تَائِبٍ - فَجَاءَ النَّصُّ: بِإِيجَابِ الْحُدُودِ جُمْلَةً، وَكَانَتْ هَذِهِ النُّصُوصُ زَائِدَةً عَلَى مَعْهُودِ الْأَصْلِ، وَجَاءَ حَدِيثُ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَيْنِيَّةِ، فَكَانَ مَا فِيهَا مِنْ إِيجَابِ الْحَدِّ عَلَى التَّائِبِ زَائِدًا عَلَى مَا فِي الْخَبَرِ الَّذِي فِيهِ إِسْقَاطُ الْحَدِّ عَنْ التَّائِبِ - هَذَا لَوْ كَانَ فِي حَدِيثِهِمْ أَنَّ الْحَدَّ سَقَطَ عَنْهُ بِالتَّوْبَةِ، فَكَيْفَ وَلَيْسَ هَذَا فِيهِ؟ وَإِنَّمَا فِيهِ إِسْقَاطُ الْحَدِّ بِصَلَاتِهِ فَقَطْ، وَهَذَا مَا لَا يَقُولُونَهُ [بَلْ هُمْ يُخَالِفُونَ لِهَذَا الْحُكْمِ] فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ، وَبِتِلْكَ الْأَخْبَارِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40067 If they say: Suppose you accept that the punishment for adultery applies, and regarding the punishment for false accusation—applying the punishment on one who has repented—then why do you not waive the punishment for theft and the punishment for consuming alcohol based on repentance, given that you have no text regarding their application upon the repentant among

فَإِنْ قَالُوا: هَبْكُمْ أَنَّ حَدَّ الزِّنَى قَدْ وَجَدْتُمْ فِيهِ، وَفِي حَدِّ الْقَذْفِ: إِقَامَةُ الْحَدِّ عَلَى مَنْ تَابَ، فَمِنْ أَيْنَ لَمْ تُسْقِطُوا حَدَّ السَّرِقَةِ، وَحَدَّ الْخَمْرِ بِالتَّوْبَةِ؟ وَلَا نَصَّ مَعَكُمْ فِي إِقَامَتِهَا عَلَى التَّائِبِ مِنْهَا؟ قُلْنَا: إِنَّ النَّصَّ قَدْ وَرَدَ جُمْلَةً بِإِقَامَةِ الْحُدُودِ فِي السَّرِقَةِ، وَالْخَمْرِ، وَالزِّنَى،

them? We reply: The text has come in general terms mandating the enforcement of the prescribed punishments for theft, alcohol consumption, adultery, and false accusation. Allah, the Exalted, did not distinguish between the repentant and the non-repentant. Moreover, no valid text whatsoever exists that addresses waiving the punishment from the repentant. Since this is the case, it is not permissible to exempt the repentant from the general command of Allah, the Exalted, to enforce the prescribed punishments based on opinion and analogy without a text or consensus. This is our primary basis for enforcing the prescribed punishments upon both the repentant and the non-repentant.

وَالْقَذْفِ، وَلَمْ يَسْتَثْنِ اللَّهُ تَعَالَى تَائِبًا مِنْ غَيْرِ تَائِبٍ، وَلَمْ يَصِحَّ نَصٌّ أَصْلًا بِإِسْقَاطِ الْحَدِّ عَنْ التَّائِبِ، فَإِذَا الْأَمْرُ كَذَلِكَ فَلَا يَحِلُّ أَنْ يُخَصَّ التَّائِبُ مِنْ عُمُومِ أَمْرِ اللَّهِ تَعَالَى بِإِقَامَةِ الْحُدُودِ بِالرَّأْيِ، وَالْقِيَاسِ دُونَ نَصٍّ وَلَا إجْمَاعٍ، فَهَذِهِ عُمْدَتُنَا فِي إقَامَةِ الْحُدُودِ عَلَى التَّائِبِ وَغَيْرِ التَّائِبِ.

L40068–40070 The accounts of Maʿiz, al-Ghāmidiyyah, and al-Juhaniyyah only corroborate our position on that matter... This follows what we require of it alongside the commands cited regarding implementing Ḥudūd (prescribed punishments), due to the Prophet's statement (peace and blessings be upon him): "Whoever changes his religion, kill him."

وَإِنَّمَا حَدِيثُ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ: مُؤَيِّدٌ لِقَوْلِنَا فِي ذَلِكَ فَقَطْ، وَلَوْ لَمْ يَأْتِ مَا احْتَجْنَا إلَيْهَا مَعَ الْأَوَامِرِ الْوَارِدَةِ بِإِقَامَةِ الْحُدُودِ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» .

L40071 And the Prophet's statement (peace be upon him): "A virgin with a virgin shall receive one hundred lashes and exile for a year; and a married person with a married person shall receive one hundred lashes and stoning."

وَقَوْلِهِ - عَلَيْهِ السَّلَامُ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L40072 And in accordance with the saying of the Most High: "The male thief and the female thief - cut off their hands" [Al-Mā'idah: 38].[7]

وَمَعَ قَوْله تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

L40073 And the words of the Most High: *"Then lash them eighty lashes"* [an-Nur 4].[8]

وَمَعَ قَوْله تَعَالَى {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] .

L40074 Along with the statement of the Messenger of Allah (peace be upon him): "If he drinks wine, then lash him"—the hadith.

وَمَعَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» الْحَدِيثَ.

L40075–40076 He—peace be upon him—did not single out any particular case from the general category of what he was commanded to establish the prescribed punishment for, distinguishing between a repentant person and others. "He

فَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - شَيْئًا مِنْ شَيْءٍ مِمَّا أَمَرَ بِإِقَامَةِ الْحَدِّ عَلَيْهِ تَائِبًا مِنْ غَيْرِهِ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[7] **Qur'an references (L40072):** Qur'an 5:38 (Al-Ma'idah).
[8] **Qur'an references (L40073):** Qur'an 24:4 (An-Nur).

does not speak from [his own] inclination. It is not but a revelation revealed" [An-Najm 3-4]. "And your Lord is not forgetful" [Maryam 64].[9]

L40077 Then we also examined their argument against those mentioned individuals, asserting that they have unanimously agreed repentance waives the punishment of the Hereafter—the greater punishment. Thus, if it waives the greater punishment, it is more fitting and obligatory that it waive the lesser punishment, which is the _ḥadd_ (prescribed punishment) in this world. We found all of this necessarily applying to everyone we mentioned, for they are proponents of analogy—as they claim—and if any analogy were ever valid in all of time, these analogies would be the soundest in existence.

ثُمَّ نَظَرْنَا أَيْضًا فِي احْتِجَاجِهِمْ عَلَى هَؤُلَاءِ الْمَذْكُورِينَ بِأَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّ التَّوْبَةَ تُسْقِطُ عَذَابَ الْآخِرَةِ - وَهُوَ الْعَذَابُ الْأَكْبَرُ - فَإِذَا أَسْقَطَتْ الْعَذَابَ الْأَكْبَرَ فَأَحْرَى وَأَوْجَبُ أَنْ تُسْقِطَ الْعَذَابَ الْأَقَلَّ، الَّذِي هُوَ الْحَدُّ فِي الدُّنْيَا فَوَجَدْنَا هَذَا كُلَّهُ لَازِمًا لِكُلِّ مَنْ ذَكَرْنَا، لِأَنَّهُمْ أَصْحَابُ قِيَاسٍ - بِزَعْمِهِمْ - وَلَوْ صَحَّ قِيَاسٌ يَوْمًا مَا مِنْ الدَّهْرِ لَكَانَتْ هَذِهِ الْمَقَايِيسُ أَصَحَّ قِيَاسٍ فِي الْعَالَمِ.

L40078 And how remote is this from their corrupt analogy: iron to gold in usury, the spinning of cotton to gold and silver in usury, their analogy of a wife's genitalia to the hand of a thief, and all their other irrational corrupt analogies.

وَأَيْنَ هَذَا مِنْ قِيَاسِهِمْ الْفَاسِدِ: الْحَدِيدُ عَلَى الذَّهَبِ فِي الرِّبَا، وَغَزْلُ الْقُطْنِ عَلَى الذَّهَبِ وَالْفِضَّةِ فِي الرِّبَا، وَقِيَاسِهِمْ فَرْجَ الزَّوْجَةِ عَلَى يَدِ السَّارِقِ، وَسَائِرِ قِيَاسَاتِهِمْ الْفَاسِدَةِ الَّتِي لَا تُعْقَلُ.

L40079 As for us, this does not bind us, because all analogy is invalid—it is impermissible to adopt any of it in the religion of Allah, the Exalted—and all praise is due to Allah, Lord of the worlds.

وَأَمَّا نَحْنُ فَلَا يَلْزَمُنَا هَذَا، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ لَا يَحِلُّ الْقَوْلُ بِشَيْءٍ مِنْهُ فِي دِينِ اللَّهِ تَعَالَى - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40080 The punishment of the Hereafter differs from worldly punishment, and it is not required that if one is invalidated the other must also be invalidated, since neither a Quranic Text, nor a Sunnah, nor a consensus has established such a ruling.

وَعَذَابُ الْآخِرَةِ غَيْرُ عَذَابِ الدُّنْيَا، وَلَيْسَ إذَا سَقَطَ أَحَدُهُمَا وَجَبَ أَنْ يَسْقُطَ الْآخَرُ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ.

L40081 Many sins have no prescribed worldly punishment, such as usurpation, declaring someone a disbeliever, consumption of swine flesh, disobedience to parents, and similar offenses. Yet this does not necessitate the absence of punishment for them in the Hereafter - rather, they incur the most severe punishment in the Hereafter.

وَكَثِيرٌ مِنْ الْمَعَاصِي لَيْسَ فِيهَا فِي الدُّنْيَا حَدٌّ، كَالْغَصْبِ - وَمَنْ قَالَ لِآخَرَ: يَا كَافِرُ - وَكَأَكْلِ لَحْمِ الْخِنْزِيرِ، وَعُقُوقِ الْوَالِدَيْنِ، وَغَيْرِ ذَلِكَ - وَلَيْسَ ذَلِكَ بِمُوجِبٍ أَنْ يَكُونَ فِيهَا فِي الْآخِرَةِ عِقَابٌ، بَلْ فِيهَا أَعْظَمُ الْعِقَابِ فِي الْآخِرَةِ.

L40082–40083 Thus, it is established that the rulings of the worldly life are unrelated to

فَصَحَّ أَنَّ أَحْكَامَ الدُّنْيَا غَيْرُ مُتَعَلِّقَةٍ بِأَحْكَامِ الْآخِرَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[9] **Qur'an references (L40076):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

those of the Hereafter—and success is from Allah, the Exalted.

L40084 They have argued using Allah's statement: "And those who accuse chaste women and then do not bring four witnesses..." [An-Nur: 4] up to His words: "Forgiving, Merciful" [Al-Baqarah: 173]. We found they have no valid argument in this verse, for Allah did not categorically abolish the prescribed punishment through repentance. Had He intended that, He would have stated "except those who repent" without adding "after that." When He said "after that" [Al-Baqarah: 52], He clarified that this repentance only occurs after receiving eighty lashes, incurring the label of transgression, and having testimony rejected—not before the lashes, as per the Quran's explicit text. Thus, repentance after the lashes waives everything except the lashes themselves, since the lashes have already been executed and cannot be waived afterward through repentance. Only the transgression and the ruling on accepting testimony are thereby waived.[10]

L40085 Moreover, after the revelation of this verse, the Messenger of Allah—may Allah bless him and his family and grant him peace—flogged Mistah ibn Uthathah, Hassan ibn Thabit, and Hamnah bint Jahsh. Thus, the argument for waiving the prescribed punishment by means of the repentance mentioned in the verse is nullified.

L40086 It has been established that only what is besides the prescribed punishment—namely sinful conduct and the disqualification of testimony alone—is nullified by it. Thus, all that these people have contentiously disputed about is invalidated. It has been confirmed that none of the prescribed punishments are waived through repentance, except the punishment for banditry, for which the textual evidence explicitly stipulates its nullification through repentance exclusively before the ability to subdue the perpetrators is established. As for repentance occurring after they are subdued or while authorities have power over them, the punishment for banditry is not waived in the slightest, because the text only nullifies this punishment through repentance prior to the establishment of power over them. All other cases remain subject to im-

وَقَدْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] إلَى قَوْله تَعَالَى: {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِي هَذِهِ الْآيَةِ: لِأَنَّ اللَّهَ تَعَالَى لَمْ يُسْقِطْ الْحَدَّ بِالتَّوْبَةِ مُطْلَقَةً، وَلَوْ أَرَادَ ذَلِكَ لَقَالَ (إلَّا الَّذِينَ تَابُوا) وَلَمْ يَقُلْ " مِنْ بَعْدِ ذَلِكَ " فَلَمَّا قَالَ تَعَالَى {مِنْ بَعْدِ ذَلِكَ} [البقرة: ٥٢] بَيَّنَ لَنَا تَعَالَى أَنَّ هَذِهِ التَّوْبَةَ لَا تَكُونُ إلَّا مِنْ بَعْدِ الْجَلْدِ ثَمَانِينَ، وَاسْتِحْقَاقُ اسْمِ الْفُسُوقِ، وَرَدُّ الشَّهَادَةِ، لَا قَبْلَ الْجَلْدِ بِنَصِّ الْقُرْآنِ، فَإِنَّمَا سَقَطَ بِالتَّوْبَةِ بَعْدَ الْجَلْدِ مَا عَدَا الْجَلْدَ، لِأَنَّ الْجَلْدَ قَدْ نَفَذَ فَلَا يَسْقُطُ بَعْدَهُ بِالتَّوْبَةِ إلَّا الْفِسْقُ، وَحُكْمُ قَبُولِ الشَّهَادَةِ فَقَطْ.

وَأَيْضًا: فَبَعْدَ نُزُولِ هَذِهِ الْآيَةِ جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِسْطَحَ بْنَ أُثَاثَةَ، وَحَسَّانَ بْنَ ثَابِتٍ، وَحَمْنَةَ بِنْتَ جَحْشٍ - فَبَطَلَ التَّعَلُّقُ فِي إسْقَاطِ الْحَدِّ بِالتَّوْبَةِ الْمَذْكُورَةِ فِي الْآيَةِ.

وَصَحَّ أَنَّهُ إنَّمَا سَقَطَ بِهَا مَا عَدَا الْحَدَّ - وَهُوَ الْفِسْقُ، وَرَدُّ الشَّهَادَةِ فَقَطْ - فَبَطَلَ كُلُّ مَا شَغَبَ هَؤُلَاءِ الْقَوْمُ بِهِ - وَصَحَّ أَنَّهُ لَا يَسْقُطُ بِالتَّوْبَةِ شَيْءٌ مِنْ الْحُدُودِ، حَاشَا حَدِّ الْحِرَابَةِ الَّذِي وَرَدَ النَّصُّ بِسُقُوطِهَا بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ فَقَطْ - وَأَمَّا بِالتَّوْبَةِ الْكَائِنَةِ مِنْهُمْ بَعْدَ الْقُدْرَةِ عَلَيْهِمْ، أَوْ مَعَ الْقُدْرَةِ عَلَيْهِمْ، فَلَا يَسْقُطُ بِذَلِكَ عَنْهُمْ حَدُّ الْمُحَارَبَةِ أَصْلًا، لِأَنَّ النَّصَّ لَمْ يُسْقِطْ الْحَدَّ عَنْهُمْ إلَّا بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِمْ فَقَطْ، وَبَقِيَ مَا عَدَا ذَلِكَ عَلَى إنْفَاذِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10]**Qur'an references (L40084):** Qur'an 24:4 (An-Nur); Qur'an 2:173 (Al-Baqarah); Qur'an 2:52 (Al-Baqarah).

plementing what Allah, the Most High, has ordained concerning them. And success is from Allah, the Most High, alone.

L40087 Ali, may God have mercy on him, said: "The evidence in our view regarding this matter is that whoever confesses to a Hadd punishment without specifying its nature, nothing whatsoever becomes incumbent upon him - as the Messenger of God, peace and blessings be upon him, did. If one states: 'A Hadd punishment involving only flogging is incumbent upon me,' flogging is also not imposed, because his action in that might lead others to assume it refers to a Hadd punishment requiring flogging - though this assumption is unfounded. Since this possibility exists, it becomes impermissible for us to hastily act upon it based on his invalidly granted permission, for God the Exalted had prohibited it prior to this invalid legitimization."

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَالدَّلِيلُ عِنْدَنَا فِي ذَلِكَ أَنَّ مَنْ أَقَرَّ بِحَدٍّ وَلَمْ يَقُلْ مَا هُوَ؟ فَلَا شَيْءَ عَلَيْهِ أَصْلًا كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنْ قَالَ: عَلَيَّ حَدٌّ فِيهِ الْجَلْدُ فَقَطْ: لَمْ يَقُمْ أَيْضًا جَلْدٌ، لِأَنَّهُ قَدْ يُظَنُّ فِي فِعْلِهِ ذَلِكَ أَنَّهُ حَدٌّ يُوجِبُ جَلْدًا - وَلَيْسَ كَمَا يُظَنُّ - فَإِذْ هُوَ مُمْكِنٌ فَلَا يَحِلُّ لَنَا بَشَرَتُهُ بِإِحْلَالِهِ لَنَا إيَّاهَا، لِأَنَّ تَحْرِيمَ اللَّهِ تَعَالَى لَهَا قَبْلَ إحْلَالِهِ الْفَاسِدِ.

L40088 If a man were to say to another, "Strike me, for I have made my skin lawful for you," striking him would not be permissible at all. This is because one cannot declare lawful for himself what Allah the Exalted has prohibited, nor declare prohibited from himself what Allah the Exalted has made lawful.

وَلَوْ أَنَّ امْرَأً قَالَ لِآخَرَ: اضْرِبْنِي فَقَدْ أَحْلَلْت لَك بَشَرَتِي؟ لَمْ يَحِلَّ ضَرْبُهُ أَصْلًا، لِأَنَّهُ لَيْسَ لَهُ أَنْ يَحِلَّ مِنْ نَفْسِهِ مَا حَرَّمَ اللَّهُ تَعَالَى مِنْهَا، وَلَا أَنْ يُحَرِّمَ مِنْهَا مَا أَحَلَّهُ اللَّهُ تَعَالَى.

L40089–40090 If someone liable to flogging for slanderous accusation of unlawful intercourse (qadhf), unlawful sexual intercourse (zina), or consuming intoxicants (khamr) were to say, "I have prohibited my body to you," his statement would be nonsensical and legally void.

وَلَوْ قَالَ مَنْ صَحَّ عَلَيْهِ الْجَلْدُ فِي الْقَذْفِ، أَوْ الزِّنَى، أَوْ الْخَمْرِ: قَدْ حَرَّمْت عَلَيْكُمْ بَشَرَتِي، لَكَانَ كَلَامُهُ هَذْرًا وَلَغْوًا.

L40091 Similarly, if he permits another person to kill himself or to cut off his hand, or if a woman permits her private part to a non-mahram.

وَكَذَلِكَ لَوْ أَحَلَّ لِآخَرَ قَتْلَ نَفْسِهِ أَوْ قَطْعَ يَدِهِ أَوْ أَحَلَّتْ الْمَرْأَةُ فَرْجَهَا لِأَجْنَبِيٍّ.

L40092 If a man were to declare his genitalia forbidden to his wife, or if she were to declare hers forbidden to him, then all such declarations would indeed be invalid, for there is no prohibition except what Allah the Exalted or His Messenger (peace be upon him) has prohibited. Allah the Exalted said: "And do not say regarding what your tongues falsely describe—'This is lawful and this is forbidden'—to fabricate lies against Allah" (16:116).[11]

أَوْ حَرَّمَ الرَّجُلُ فَرْجَهُ عَلَى امْرَأَتِهِ، أَوْ حَرَّمَتْ هِيَ فَرْجَهَا عَلَيْهِ، لَكَانَ كُلُّ ذَلِكَ بَاطِلًا، وَلَا حَرَامَ إلَّا مَا حَرَّمَ اللَّهُ تَعَالَى أَوْ رَسُولُهُ - عَلَيْهِ السَّلَامُ -، قَالَ اللَّهُ تَعَالَى {وَلا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلالٌ وَهَذَا حَرَامٌ لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ} [النحل: ١١٦]

L40093 If he says, "Upon me is a ḥadd punishment necessitated by God the Exalted: whether adultery, slanderous accusation (qadhf), or drinking wine," then he

فَإِنْ قَالَ عَلَيَّ لِلَّهِ تَعَالَى حَدٌّ يُوجِبُ: إمَّا زِنًا، وَإِمَّا قَذْفًا، وَإِمَّا شُرْبَ خَمْرٍ، فَهَذَا لَمْ يُحَقِّقْ وَلَا أَقَرَّ إقْرَارًا صَحِيحًا - وَلَيْسَ عَلَيْهِ إلَّا حَدُّ الْخَمْرِ، لِأَنَّهُ أَقَلُّ الْحُدُودِ الْوَاجِبَةِ عَلَيْهِ بِيَقِينٍ.

[11] **Qur'an references (L40092):** Qur'an 16:116 (An-Nahl).

has neither specified [the offense] nor properly confessed, and only the ḥadd punishment for wine is imposed upon him, because it is the least severe of the punishments definitively required upon him with certainty.

L40094 It is not permissible to impose any additional punishment on him based on doubt. Therefore, it is not permissible to lash him in any way until the applicable ḥadd is clarified, and he must describe it fully.

The Issue of Imprisonment in [the Matter of] the Accusation

L40095

L40096 2172 - Issue: Imprisonment on suspicion? Abū Muḥammad—may Allāh be pleased with him—said: Some people affirmed imprisonment on suspicion. They cited as evidence the narration narrated by Aḥmad ibn Qāsim from his father Qāsim ibn Muḥammad ibn Qāsim, from his grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Abī al-ʿAwwām, from Aḥmad ibn Ḥātim al-Ṭawīl, from Ibrāhīm ibn Khuthaym ibn ʿIrāk, from his father, from his grandfather, from Abū Hurayrah: "The Prophet—peace and blessings be upon him—imprisoned someone on suspicion as a precautionary measure [or he said: 'to confirm'], detaining them for a day and a night."

L40097 And through him—up to Qāsim ibn Aṣbagh: Ibn Waddāḥ narrated to us; Muḥammad ibn Ādam reported to me: Ibn al-Mubārak informed us from Bahz ibn Ḥakīm, from his father, from his grandfather, that the Prophet—may Allah's peace and blessings be upon him—detained on suspicion, then released him.

L40098–40100 Narrated via Abd al-Razzaq, from Ma'mar, from Bahz ibn Hakim, from his father, from his grandfather Mu'awiyah ibn Haydah, who said: "Allah's Messenger (peace and blessings be upon him) detained some people from his tribe under suspicion. A man from my tribe came to the Prophet (peace and blessings be upon him) while he was delivering a sermon and said: 'O Messenger of Allah, why do you detain my neighbors?' The Prophet (peace and blessings be upon him) remained silent. The man continued: 'People say you prohibit something but do it in secret.' The Prophet (peace and blessings be upon him) responded: 'What ...'" He said: "So I began to interpose be-

وَلَا يَحِلُّ أَنْ يَزْدَادَ عَلَيْهِ شَيْءٌ بِالشَّكِّ، فَلَا يَجُوزُ أَنْ يُجْلَدَ شَيْئًا حَتَّى يَتَبَيَّنَ مَا هُوَ الْحَدُّ الَّذِي عَلَيْهِ، وَيَصِفَهُ وَصْفًا تَامًّا.

[مَسْأَلَةُ السِّجْنُ فِي التُّهْمَةِ]

٢١٧٢ - مَسْأَلَةٌ: السِّجْنُ فِي التُّهْمَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَالَ قَوْمٌ: بِالسِّجْنِ فِي التُّهْمَةِ؟ وَاحْتَجُّوا: بِمَا ثنا أَحْمَدُ بْنُ قَاسِمٍ ثنا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ أَبِي الْعَوَّامِ ثنا أَحْمَدُ بْنُ حَاتِمٍ الطَّوِيلُ ثنا إبْرَاهِيمُ بْنُ خُثَيْمِ بْنِ عِرَاكٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَبَسَ فِي تُهْمَةٍ احْتِيَاطًا، أَوْ قَالَ: اسْتِظْهَارًا: يَوْمًا وَلَيْلَةً» .

وَبِهِ - إلَى قَاسِمِ بْنِ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ حَدَّثَنِي مُحَمَّدُ بْنُ آدَمَ نا ابْنُ الْمُبَارَكِ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ حَبَسَ فِي تُهْمَةٍ، ثُمَّ خَلَّى سَبِيلَهُ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ مُعَاوِيَةَ بْنِ حَيْدَةَ قَالَ «أَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسًا مِنْ قَوْمِهِ فِي تُهْمَةٍ فَحَبَسَهُمْ، فَجَاءَ رَجُلٌ مِنْ قَوْمِي إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ يَخْطُبُ فَقَالَ: يَا مُحَمَّدُ، عَلَى مَا تَحْبِسُ جِيرَتِي؟ فَصَمَتَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ نَاسًا يَقُولُونَ: إنَّكَ لَتَنْهَى عَنْ الشَّيْءِ وَتَسْتَخْلِي بِهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَقُولُ؟ فَجَعَلْتُ

tween them with speech, fearing he might hear it and invoke a supplication against my people that would leave them unsuccessful thereafter." He said: "The Prophet—peace and blessings of Allah be upon him—persisted until he comprehended it." He said: "They have indeed uttered it." One who spoke it among them said: "By Allah, had I done it, the responsibility would lie upon me rather than them. Leave his neighbors to him."

أَعْرِضُ بَيْنَهُمَا بِكَلَامٍ مَخَافَةَ أَنْ يَسْمَعَهَا فَيَدْعُوَ عَلَى قَوْمِي دَعْوَةً لَا يُفْلِحُونَ بَعْدَهُ، قَالَ: فَلَمْ يَزَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى فَهِمَهَا؟ قَالَ: قَدْ قَالُوهَا؟ وَقَالَ قَائِلُهَا مِنْهُمْ: وَاَللَّهِ لَوْ فَعَلْتُهَا لَكَانَ عَلَيَّ وَمَا كَانَ عَلَيْهِمْ، خَلُّوا لَهُ عَنْ جِيرَانِهِ» .

L40101 Through him to ʻAbd al-Razzāq, from Ibn Jurayj, who informed me: Yaḥyā ibn Saʻīd al-Anṣārī reported from ʻIrāk ibn Mālik, who said: "Two men from Banū Ghifār came until they alighted at a resting place in Dajinān from the waters of Medina. Some Ghatafānīs were present there with their livestock. By morning, the Ghatafānīs had lost two of their camels and accused the Ghifārīs of taking them. They came to the Messenger of Allāh (peace be upon him) and related their matter. He detained one Ghifārī and said to the other: 'Go and look for them!' Only a short time passed before he returned with them. The Prophet (peace be upon him and his family) said to one Ghifārī—I assumed he was the detained one—'Seek forgiveness for me?' The man replied: 'May Allāh forgive you, O Messenger of Allāh!' The Messenger of Allāh (peace be upon him and his family) said: 'And for you—and may you be slain in His path.' He said: 'He was killed on the day of Yamāma.'"

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عِرَاكِ بْنِ مَالِكٍ قَالَ: «أَقْبَلَ رَجُلَانِ مِنْ بَنِي غِفَارٍ حَتَّى نَزَلَا مَنْزِلًا بِضَجْنَانَ مِنْ مِيَاهِ الْمَدِينَةِ، وَعِنْدَهَا نَاسٌ مِنْ غَطَفَانَ مَعَهُمْ ظَهْرٌ لَهُمْ، فَأَصْبَحَ الْغَطَفَانِيُّونَ قَدْ أَضَلُّوا بَعِيرَيْنِ مِنْ إبِلِهِمْ فَاتَّهَمُوا بِهِمَا الْغِفَارِيِّينَ، فَأَقْبَلُوا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرُوا أَمْرَهُمْ، فَحَبَسَ أَحَدَ الْغِفَارِيِّينَ، وَقَالَ لِلْآخَرِ: اذْهَبْ فَالْتَمِسْ؟ فَلَمْ يَكُنْ إلَّا يَسِيرًا حَتَّى جَاءَ بِهِمَا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَحَدِ الْغِفَارِيِّينَ - حَسِبْتُ أَنَّهُ الْمَحْبُوسُ - اسْتَغْفِرْ لِي؟ فَقَالَ: غَفَرَ اللَّهُ لَكَ يَا رَسُولَ اللَّهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: وَلَكَ وَقَتَلَكَ فِي سَبِيلِهِ، قَالَ: فَقُتِلَ يَوْمَ الْيَمَامَةِ» .

L40102 Abu Muhammad—may Allah have mercy on him—said: A group of people adhered to this view, as we were informed through the transmission of Abd al-Razzaq from Ibn Jurayj, who said: Umar ibn Abd al-Aziz ibn Abdullah wrote a document I read: "If the possession is found with a suspect who says, 'I bought it,' then bind him tightly in prison with fetters. Do not release him by the document of anyone until Allah's command comes to him concerning the matter." Ibn Jurayj said: I mentioned this to ʿAṭāʾ, and he rejected it.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَهَبَ إلَى هَذَا قَوْمٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ بْنِ عَبْدِ اللَّهِ كِتَابًا قَرَأْته: إذَا وُجِدَ الْمَتَاعُ مَعَ الرَّجُلِ الْمُتَّهَمِ فَقَالَ: ابْتَعْته فَاشْدُدْهُ فِي السِّجْنِ وَثَاقًا، وَلَا تَحُلَّهُ بِكِتَابِ أَحَدٍ حَتَّى يَأْتِيَهُ فِيهِ أَمْرُ اللَّهِ تَعَالَى، قَالَ ابْنُ جُرَيْجٍ: فَذَكَرْت ذَلِكَ لِعَطَاءٍ فَأَنْكَرَهُ.

L40103 Others held the opinion prohibiting imprisonment based on mere suspicion, as narrated through Abd al-Razzaq from Ibn Jurayj, who said: I heard Abdullah ibn Abi Mulaykah state: Abdullah ibn Abi Amir informed me, saying: "I traveled with a group until we reached Dhu al-Marwah, where my travel bag was stolen. A suspected man accompanied us. My companions

وَذَهَبَ آخَرُونَ - إلَى الْمَنْعِ مِنْ الْحَبْسِ بِالتُّهَمَةِ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ أَبِي مُلَيْكَةَ يَقُولُ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي عَامِرٍ قَالَ: انْطَلَقْت فِي رَكْبٍ حَتَّى إذَا جِئْنَا ذَا الْمَرْوَةِ سُرِقَتْ عَيْبَةٌ لِي، وَمَعَنَا رَجُلٌ مُتَّهَمٌ، فَقَالَ

said: 'O so-and-so, return his bag!' He replied: 'I did not take it.' I went to Umar ibn al-Khattab and informed him. He asked: 'Who are your companions?' I listed them. He said: 'I suspect its owner is the one I am accusing?' I responded: 'Did you intend, O Commander of the Faithful, to have him brought shackled?' Umar retorted: 'Would you shackle him without proof? I will neither issue a decree nor investigate this matter.' He grew angry, refusing to write or inquire about it. Umar - may Allah be pleased with him - rejected shackling anyone without clear evidence."

أَصْحَابِي: يَا فُلَانُ اُرْدُدْ عَلَيْهِ عَيْبَتَهُ؟ فَقَالَ: مَا أَخَذْتهَا: فَرَجَعْت إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرْته، فَقَالَ: مَنْ أَنْتُمْ؟ فَعَدَدْتهمْ، فَقَالَ: أَظُنُّهَا صَاحِبُهَا لِلَّذِي أَتَّهِمُ؟ فَقُلْت: لَقَدْ أَرَدْت يَا أَمِيرَ الْمُؤْمِنِينَ أَنْ تَأْتِيَ بِهِ مُصَفَّدًا، فَقَالَ عُمَرُ: أَتَأْتِي بِهِ مَصْفُودًا بِغَيْرِ بَيِّنَةٍ، لَا أَكْتُبُ لَك فِيهَا، وَلَا أَسْأَلُك عَنْهَا، وَغَضِبَ وَمَا كَتَبَ لِي فِيهَا، وَلَا سَأَلَ عَنْهَا، فَأَنْكَرَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - أَنْ يُصَفَّدَ أَحَدٌ بِغَيْرِ بَيِّنَةٍ.

L40104–40106 Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found the aforementioned ḥadīths to lack valid authority. In any of them, because Ibrāhīm ibn Khuthaym is weak, Bahz ibn Ḥakīm is not strong, and the narration of ʿIrāk is mursal. Furthermore, even if it were authentic, it would contain evidence against imprisonment due to the Messenger of Allah's (peace be upon him) seeking forgiveness from that.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا الْأَحَادِيثَ الْمَذْكُورَةَ لَا حُجَّةَ فِي شَيْءٍ مِنْهَا، لِأَنَّ إبْرَاهِيمَ بْنَ خُثَيْمٍ ضَعِيفٌ، وَبَهْزُ بْنُ حَكِيمٍ لَيْسَ بِالْقَوِيِّ، وَحَدِيثَ عِرَاكٍ مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ فِيهِ الدَّلِيلُ عَلَى الْمَنْعِ مِنْ الْحَبْسِ لِاسْتِغْفَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ ذَلِكَ.

L40107 If they mention the ḥadīth of the Ghāmidiyya woman who said to the Messenger of Allah (peace and blessings be upon him), "Purify me," he replied, "Woe to you! Return, seek Allah's forgiveness, and repent to Him." She said, "Perhaps you are sending me back as you sent back Maʿiz ibn Mālik." She said, "I am pregnant from adultery." He asked, "Are you a previously married woman?" She answered, "Yes." He said, "We will certainly not stone you until you deliver what is in your womb." A man from the Anṣār undertook her care until she delivered. He then brought her to the Messenger of Allah (peace and blessings be upon him) and said, "The Ghāmidiyya woman has delivered." He responded, "Then should we not stone her and leave her child as an infant who has no one to nurse him?" A man from the Anṣār said, "I will take responsibility for nursing him." Then the Messenger of Allah (peace and blessings be upon him) commanded her stoning.

فَإِنْ ذَكَرُوا حَدِيثَ «الْمَرْأَةِ الْغَامِدِيَّةِ الَّتِي قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَهِّرْنِي، قَالَ: وَيْحَك، ارْجِعِي فَاسْتَغْفِرِي اللَّهَ وَتُوبِي إلَيْهِ، قَالَتْ: لَعَلَّك تَرُدُّنِي كَمَا رَدَدْتَ مَاعِزَ بْنَ مَالِكٍ، قَالَتْ: إنِّي حُبْلَى مِنْ الزِّنَى، قَالَ: أَثَيِّبٌ أَنْتِ؟ قَالَتْ: نَعَمْ، قَالَ: فَلَا نَرْجُمُنَّك حَتَّى تَضَعِي مَا فِي بَطْنِك، قَالَ: فَكَفَلَهَا رَجُلٌ مِنْ الْأَنْصَارِ حَتَّى وَضَعَتْ، فَأَتَى بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: قَدْ وَضَعَتْ الْغَامِدِيَّةُ قَالَ: إذًا لَا نَرْجُمُهَا وَنَدَعُ وَلَدَهَا صَغِيرًا لَيْسَ لَهُ مَنْ يُرْضِعُهُ؟ فَقَالَ رَجُلٌ مِنْ الْأَنْصَارِ: إلَيَّ رَضَاعُهُ، فَرَجَمَهَا» .

L40108 Abu Muhammad—may Allah have mercy on him—said: This provides no valid proof for their position, for the Messenger of Allah—peace and blessings be upon him—neither imprisoned her nor ordered such. Rather, it demon-

strates that the Ansari man solely undertook responsibility for her affairs and her custodianship.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَسْجِنْهَا وَلَا أَمَرَ بِذَلِكَ، لَكِنْ فِيهِ: أَنَّ الْأَنْصَارِيَّ تَوَلَّى أَمْرَهَا وَحِيَاطَتَهَا فَقَطْ.

L40109 Abu Muhammad (may Allah have mercy on him) said: If they mention Allah's statement—the Most High—"Then confine them to their houses until death claims them or Allah prescribes for them a way" [Quran 4:15], indeed this ruling has been abrogated by the consensus of the Ummah.[12]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] فَإِنَّ هَذَا حُكْمٌ مَنْسُوخٌ بِإِجْمَاعِ الْأُمَّةِ.

L40110 Ali, may God have mercy on him, said: When no valid argument remains for those who hold the view of imprisonment, it becomes obligatory to seek decisive evidence supporting the validity of the opposing opinion. We examined this matter and found that those who argue for imprisonment must fall into one of two cases: either the accused has no previously confirmed wrongdoing, or there exists a prior confirmed act of evil. If he is accused of murder, adultery, theft, drinking alcohol, or similar offenses, it is impermissible to imprison him, for God Almighty says: "Assumption avails nothing against the truth" [Jonah: 36].[13]

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يَبْقَ لِمَنْ رَأَى السِّجْنَ حُجَّةٌ، فَالْوَاجِبُ طَلَبُ الْبُرْهَانِ عَلَى صِحَّةِ الْقَوْلِ الْآخَرِ، فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَنْ قَالَ بِسَجْنِهِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إِمَّا أَنْ يَكُونَ مُتَّهَمًا لَمْ يَصِحَّ قَبْلَهُ شَيْءٌ، أَوْ يَكُونَ قَدْ صَحَّ قَبْلَهُ شَيْءٌ مِنْ الشَّرِّ، فَإِنْ كَانَ مُتَّهَمًا بِقَتْلٍ، أَوْ زِنًا، أَوْ سَرِقَةٍ، أَوْ شُرْبٍ، أَوْ غَيْرِ ذَلِكَ: فَلَا يَحِلُّ سَجْنُهُ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] .

L40111 The Messenger of Allah (peace be upon him) said, "Beware of suspicion, for suspicion is the most false of speech." Indeed, during the time of the Messenger of Allah (peace be upon him), there were those suspected of disbelief—they were the hypocrites—yet the Messenger of Allah (peace be upon him) did not detain any of them. And success comes only from Allah, the Most High.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» وَقَدْ كَانَ فِي زَمَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَّهَمُونَ بِالْكُفْرِ - وَهُمْ الْمُنَافِقُونَ - فَمَا حَبَسَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ أَحَدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40112–40113 An issue concerning one who has committed acts requiring prescribed punishments twice or more.

[مَسْأَلَة فِيمَنْ أَصَابَ حَدًّا مَرَّتَيْنِ فَصَاعِدًا]

L40114 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this matter, such as one who fornicates twice or more before the

؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي ذَلِكَ، كَمَنْ زَنَى مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ قَذَفَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ شَرِبَ الْخَمْرَ مَرَّتَيْنِ

[12] **Qur'an references (L40109):** Qur'an 4:15 (An-Nisa).
[13] **Qur'an references (L40110):** Qur'an 10:36 (Yunus).

prescribed punishment is enforced for it, or accuses of unchastity twice or more before the prescribed punishment is enforced for it, or drinks intoxicants twice or more before the prescribed punishment is enforced for it, or steals twice or more before the prescribed punishment is enforced for it, or denies a borrowed item twice or more before the prescribed punishment is enforced for it, or commits banditry twice or more before the prescribed punishment is enforced for it. One group said: In all these cases, only a single prescribed punishment is required. Another group said: A prescribed punishment is due for each offense.

L40115 Abū Muḥammad—may Allāh have mercy on him—said: "Is it not obligatory for us to examine this matter, so that we may know the truth and follow it by the help of Allāh the Exalted?" We then scrutinized the opinion of those who argue: "Does every action entail a ḥadd [prescribed punishment]?" and found them adducing as evidence the words of Allāh the Exalted: *"As for the adulteress and the adulterer, flog each of them with a hundred lashes"* [24:2].[14]

L40116 And the Most High said, "The male thief and the female thief: cut off their hands." [Al-Ma'idah: 38][15]

L40117 And He, the Exalted, said: "And those who falsely accuse chaste women and then do not produce four witnesses, flog them with eighty lashes" [An-Nur: 4].[16]

L40118–40120 We found the Messenger of Allah—peace and blessings of Allah be upon him—saying: "Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah related; Ahmad ibn Shu'ayb narrated; Muhammad ibn Rafi' transmitted; 'Abd al-Razzaq conveyed; Ma'mar narrated from Sahl ibn Abi Salih from his father from Abu Hurairah that he said: 'Whoever consumes intoxicants, flog him. If he does so again, flog him again, and if he repeats it, flog him once more.'" He mentioned the remainder of the report. They said: "By the explicit text of Allah's words (Exalted is He) and the words of

فَأَكْثَرَ قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ، أَوْ سَرَقَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُحَدَّ فِي ذَلِكَ، أَوْ جَحَدَ عَارِيَّةً مَرَّتَيْنِ فَأَكْثَرَ، قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ فِي ذَلِكَ أَوْ حَارَبَ مَرَّتَيْنِ فَأَكْثَرَ قَبْلَ أَنْ يُقَامَ عَلَيْهِ الْحَدُّ فِي ذَلِكَ؟ فَقَالَتْ طَائِفَةٌ: لَيْسَ فِي كُلِّ ذَلِكَ إِلَّا حَدٌّ وَاحِدٌ فَقَطْ - وَقَالَتْ طَائِفَةٌ: عَلَيْهِ لِكُلِّ مَرَّةٍ حَدٌّ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ؟ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لِكُلِّ فِعْلَةٍ حَدٌّ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢]

وَقَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَالَ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ ثنا عَبْدُ الرَّزَّاقِ ثنا مَعْمَرٌ عَنْ سَهْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ قَالُوا: فَوَجَبَ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ زَنَى الْجَلْدُ الْمَأْمُورُ بِهِ، وَعَلَى مَنْ سَرَقَ قَطْعُ يَدِهِ، وَعَلَى مَنْ قَذَفَ الْجَلْدُ الْمَأْمُورُ بِهِ وَعَلَى مَنْ شَرِبَ الْخَمْرَ الْجَلْدُ الْمَأْمُورُ

[14] **Qur'an references (L40115):** Qur'an 24:2 (An-Nur).
[15] **Qur'an references (L40116):** Qur'an 5:38 (Al-Ma'idah).
[16] **Qur'an references (L40117):** Qur'an 24:4 (An-Nur).

His Messenger—peace and blessings of Allah be upon him—the prescribed flogging applies to the unmarried adulterer, the cutting of the hand applies to the thief, the prescribed flogging applies to the slanderer, and to the one who..." He drank wine; the prescribed flogging became a legally established obligation upon him. Since this is the case, we know with certainty that if he commits adultery again, a second hadd becomes obligatory upon him. If he steals again, amputation of the hand becomes obligatory upon him for the second theft. If he falsely accuses someone again, a second hadd becomes obligatory upon him. If he drinks again, a second hadd necessarily becomes obligatory upon him—and thus it applies every time.

بِهِ، فَاسْتَقَرَّ ذَلِكَ فَرْضًا عَلَيْهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَبِيَقِينٍ نَدْرِي أَنَّهُ مَتَى زَنَى ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ، وَإِذَا سَرَقَ ثَانِيَةً وَجَبَ عَلَيْهِ بِالسَّرِقَةِ الثَّانِيَةِ قَطْعُ ثَانٍ، وَإِذَا قَذَفَ ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ، وَإِذَا شَرِبَ ثَانِيَةً وَجَبَ عَلَيْهِ حَدٌّ ثَانٍ وَلَا بُدَّ - وَهَكَذَا فِي كُلِّ مَرَّةٍ.

L40121 Abū Muḥammad—may Allah have mercy on him—said: As for their assertion that Allah the Exalted said, "The adulteress and the adulterer" [24:2], and His saying, the Exalted, "The male thief and the female thief" [5:38]—[17]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُهُمْ: إنَّ اللَّهَ تَعَالَى قَالَ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ وقَوْله تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ} [المائدة: ٣٨] الْآيَةَ.

L40122 And the statement of Allah, the Exalted: "And those who accuse chaste women..." [Al-Nur: 4] the verse.[18]

وقَوْله تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ.

L40123 The statement of the Messenger of Allah — peace and blessings be upon him — "If he drinks alcohol, flog him. Then if he drinks again, flog him again. Then if he drinks again, flog him again" — all of that is true, and whoever denies its wording or meaning becomes a disbeliever.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إذَا شَرِبَ فَاجْلِدُوهُ» فَكُلُّ ذَلِكَ حَقٌّ، وَيَكْفُرُ مَنْ أَنْكَرَ لَفْظَهُ وَمَعْنَاهُ.

L40124 As for their statement: "Thus, that became established as an obligation upon him" – this is a delusion of our associates, and we do not hold this view. Rather, we say: None of the aforementioned punishments – whether for illicit intercourse, false accusation, theft, or drinking intoxicants – becomes binding by the mere occurrence of the act itself. Rather, another condition must be added to it – namely, the confirmation of the act before the judge through the application of ḥudūd, either by his personal knowledge, testimony of upright witnesses, or the offender's confession. As for what is not confirmed before the judge, no punishment is imposed – neither lashing nor amputation whatsoever.

وَأَمَّا قَوْلُهُمْ: فَاسْتَقَرَّ ذَلِكَ فَرْضًا عَلَيْهِ، فَهَذَا وَهْمُ أَصْحَابِنَا، وَلَسْنَا نَقُولُ بِهَذَا، لَكِنْ نَقُولُ: إنَّهُ لَا يَجِبُ شَيْءٌ مِنْ الْحُدُودِ الْمَذْكُورَةِ بِنَفْسِ الزِّنَى، وَلَا بِنَفْسِ الْقَذْفِ، وَلَا بِنَفْسِ السَّرِقَةِ، وَلَا بِنَفْسِ الشُّرْبِ، لَكِنْ حَتَّى يَسْتَضِيفَ إلَى ذَلِكَ مَعْنًى آخَرَ - وَهُوَ ثُبُوتُ ذَلِكَ عِنْدَ الْحَاكِمِ بِإِقَامَةِ الْحُدُودِ، إمَّا بِعِلْمِهِ، وَإِمَّا بِبَيِّنَةٍ عَادِلَةٍ، وَإِمَّا بِإِقْرَارِهِ، وَأَمَّا مَا لَمْ يَثْبُتْ عِنْدَ الْحَاكِمِ فَلَا يَلْزَمُهُ حَدٌّ، لَا جَلْدٌ، وَلَا قَطْعٌ أَصْلًا.

L40125 The proof of this is that if the aforementioned Hudud punishments were

بُرْهَانُ ذَلِكَ: هُوَ أَنَّهُ لَوْ وَجَبَتْ الْحُدُودُ الْمَذْكُورَةُ بِنَفْسِ الْفِعْلِ لَكَانَ فَرْضًا عَلَى مَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ أَنْ يُقِيمَ الْحَدَّ عَلَى نَفْسِهِ لِيَخْرُجَ مِمَّا لَزِمَهُ، أَوْ أَنْ يُعَجِّلَ الْمَجِيءَ

[17] **Qur'an references (L40121):** Qur'an 24:2 (An-Nur); Qur'an 5:38 (Al-Ma'idah).

obligatory by the mere act itself, it would be incumbent upon whoever commits any such offense to either impose the punishment upon himself to absolve himself of what became binding, or to hasten to come before the ruler and inform him of his obligation so he may fulfill what is required of his legal liability—not his physical body. This is a position none in the entire community asserts without any disagreement whatsoever.

إِلَى الْحَاكِمِ فَيُخْبِرَهُ بِمَا عَلَيْهِ لِيُؤَدِّيَ مَا لَزِمَهُ فَرْضًا فِي ذِمَّتِهِ، لَا فِي بَشَرَتِهِ، وَهَذَا أَمْرٌ لَا يَقُولُهُ أَحَدٌ مِنْ الْأُمَّةِ كُلِّهَا بِلَا خِلَافٍ.

L40126 As for enforcing the hadd punishment upon oneself, this is forbidden by the consensus of the entire community. There is no disagreement that a thief may not amputate his own hand. Rather, if he were to do so, he would be considered by the entire community as disobedient to Allah the Exalted. For if the hadd punishment were an obligatory duty by virtue of the act itself, it would not be lawful for him to conceal himself, nor permissible for him to refrain from confessing for even the blink of an eye, in order to fulfill what is incumbent upon him.

أَمَّا إقَامَتُهُ الْحَدَّ عَلَى نَفْسِهِ فَحَرَامٌ عَلَيْهِ ذَلِكَ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، وَأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَيْسَ لِسَارِقٍ أَنْ يَقْطَعَ يَدَ نَفْسِهِ، بَلْ إنْ فَعَلَ ذَلِكَ كَانَ عِنْدَ الْأُمَّةِ كُلِّهَا عَاصِيًا لِلَّهِ تَعَالَى، فَلَوْ كَانَ الْحَدُّ فَرْضًا وَاجِبًا بِنَفْسِ فِعْلِهِ لَمَا حَلَّ لَهُ السَّتْرُ عَلَى نَفْسِهِ، وَلَا جَازَ لَهُ تَرْكُ الْإِقْرَارِ طَرْفَةَ عَيْنٍ، لِيُؤَدِّيَ عَنْ نَفْسِهِ مَا لَزِمَهُ.

L40127–40129 Indeed, Allah the Exalted and His Messenger—peace be upon him—have commanded the Imams and their governors to enforce the aforementioned prescribed punishments upon whoever commits acts warranting them. Through necessary certainty we know that Allah only commands them in such matters when the offense is conclusively established before them and validated with certainty: that for every act of fornication one commits, every false accusation of adultery one utters, and every instance of drinking alcohol. If one consumes intoxicants, commits any theft, engages in *ḥirābah*, or denies an entrusted item before the Imam becomes aware of it—no penalty is incumbent upon him. However, we maintain: Indeed, God Almighty has mandated that whoever commits fornication once or a thousand times—when the Imam becomes aware of it—receives one hundred lashes. Similarly, the false accuser of unchastity, the thief, the perpetrator of *ḥirābah*, the consumer of intoxicants, and one who denies an entrusted item—whether once or a thousand times—incur a single *ḥadd* punishment, provided the judge becomes fully aware of all these acts.

وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - الْأَئِمَّةَ وَوُلَاتَهُمْ بِإِقَامَةِ الْحُدُودِ الْمَذْكُورَةِ عَلَى مَنْ جَنَاهَا، وَبِيَقِينِ الضَّرُورَةِ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْهُمْ مِنْ ذَلِكَ إلَّا إذَا ثَبَتَ ذَلِكَ عِنْدَهُمْ، وَصَحَّ يَقِينًا أَنَّ لِكُلِّ زِنًا يَزْنِيهِ، وَكُلِّ قَذْفٍ يَقْذِفُهُ، وَكُلِّ شُرْبٍ يَشْرَبُهُ، وَكُلِّ سَرِقَةٍ يَسْرِقُهَا، وَكُلِّ حِرَابَةٍ يُحَارِبُ، وَكُلِّ عَارِيَةٍ يَجْحَدُهَا قَبْلَ عِلْمِ الْإِمَامِ بِذَلِكَ، فَلَمْ يَجِبْ عَلَيْهِ فِيهِ شَيْءٌ، لَكِنَّا نَقُولُ: إنَّ اللَّهَ تَعَالَى أَوْجَبَ عَلَى مَنْ زَنَى مَرَّةً، أَوْ أَلْفَ مَرَّةٍ - إذَا عَلِمَ الْإِمَامُ بِذَلِكَ - جَلْدَ مِائَةٍ، وَعَلَى الْقَاذِفِ، وَالسَّارِقِ، وَالْمُحَارِبِ، وَشَارِبِ الْخَمْرِ، وَالْجَاحِدِ مَرَّةً، وَأَلْفَ مَرَّةٍ حَدًّا وَاحِدًا، إذَا عَلِمَ الْحَاكِمُ ذَلِكَ كُلَّهُ.

L40130 Abū Muḥammad—may Allah have mercy on him—said: In the case where

[18] **Qur'an references (L40122):** Qur'an 24:4 (An-Nur).

the Imam or his deputy neglects, without necessity, to take action against one who committed any of those acts, then begins to implement the ḥadd punishment, but a necessity arises that prevents its completion, and the person then commits another act of the same category as the first—our opinion and that of our colleagues are the same: the first ḥadd punishment must be fully carried out upon him, and the Imam must necessarily initiate the second one thereafter.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا إنْ وَقَعَ عَلَى مَنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ تَضْيِيعٌ مِنْ الْإِمَامِ، أَوْ أَمِيرِهِ لِغَيْرِ ضَرُورَةٍ، ثُمَّ شَرَعَ فِي إقَامَةِ الْحَدِّ فَوَقَعَتْ ضَرُورَةٌ مَنَعَتْ مِنْ إتْمَامِهِ فَوَاقَعَ فِعْلًا آخَرَ مِنْ نَوْعِ الْأَوَّلِ، فَقَوْلُنَا، وَقَوْلُ أَصْحَابِنَا سَوَاءٌ: يَسْتَتِمُّ عَلَيْهِ الْحَدَّ الْأَوَّلَ، ثُمَّ يَبْتَدِئُ فِي الثَّانِي وَلَا بُدَّ.

L40131 The proof for this is that the entire ḥadd penalty had become obligatory through the Imam's knowledge or his deputy's [knowledge] while having the capacity to enforce the full ḥadd penalty. If the offender then commits another sin, the previously mandated ḥadd penalty does not absolve him.

بُرْهَانُ ذَلِكَ: أَنَّ الْحَدَّ كُلَّهُ قَدْ وَجَبَ بِعِلْمِ الْإِمَامِ، أَوْ أَمِيرِهِ مَعَ قُدْرَتِهِ عَلَى إقَامَةِ جَمِيعِ الْحَدِّ، ثُمَّ أَحْدَثَ ذَنْبًا آخَرَ، فَلَا يَجْزِي عَنْهُ حَدٌّ قَدْ تَقَدَّمَ وُجُوبُهُ.

L40132 Abū Muḥammad—may Allāh have mercy on him—said: We ask the opponents about their opinion concerning one who fornicates repeatedly, drinks alcohol repeatedly, falsely accuses a single person of unchastity repeatedly, steals repeatedly, or commits brigandage repeatedly—while the ruler is fully aware of all this and capable of enforcing the prescribed punishments, yet refrains from punishing him until he commits these acts—why do they impose only a single punishment on him? What distinguishes this from the view of those among them who say: If one intentionally breaks the fast and then has intercourse on multiple days during Ramaḍān, he must offer an expiation for each day? Or [the case of] one who swears numerous oaths on different matters, requiring an expiation for each oath? Or the view of those among them who say: If one declares ẓihār repeatedly, each declaration necessitates an expiation? And their unanimous position is that one who—while in iḥrām—kills game must offer a compensation for each animal killed. Indeed, some of them said: If he kills a single animal while in the state of qirān, he must offer two compensations.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَسْأَلُ الْمُخَالِفِينَ عَنْ قَوْلِهِمْ فِيمَنْ زَنَى مَرَّاتٍ، أَوْ شَرِبَ مَرَّاتٍ، أَوْ قَذَفَ مَرَّاتٍ إنْسَانًا وَاحِدًا، أَوْ سَرَقَ مَرَّاتٍ، أَوْ حَارَبَ مَرَّاتٍ - وَعَلِمَ الْإِمَامُ كُلَّ ذَلِكَ - وَقَدَرَ عَلَى إقَامَةِ الْحُدُودِ عَلَيْهِ، ثُمَّ لَمْ يُحَدَّ حَتَّى وَاقَعَ مَا ذَكَرْنَا، فَلَمْ يُوجِبُوا عَلَيْهِ إلَّا حَدًّا وَاحِدًا، مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ قَوْلِ مَنْ قَالَ مِنْهُمْ: إنْ أَفْطَرَ عَامِدًا فَوَطِئَ أَيَّامًا مِنْ شَهْرِ رَمَضَانَ أَنَّ عَلَيْهِ لِكُلِّ يَوْمٍ كَفَّارَةً؟ وَمَنْ حَلَفَ أَيْمَانًا كَثِيرَةً عَلَى أَشْيَاءَ مُخْتَلِفَةٍ فَعَلَيْهِ لِكُلِّ يَمِينٍ كَفَّارَةٌ؟ وَمَنْ قَالَ مِنْهُمْ: إنْ ظَاهَرَ مَرَّاتٍ كَثِيرَةً فَإِنَّ لِكُلِّ ظِهَارٍ كَفَّارَةً؟ وَقَوْلُهُمْ كُلُّهُمْ: إنَّ مَنْ أَصَابَ - وَهُوَ مُحْرِمٌ - صُيُودًا فَعَلَيْهِ لِكُلِّ صَيْدٍ جَزَاءٌ بَلْ قَالَ بَعْضُهُمْ: إنَّهُ لَوْ أَصَابَ صَيْدًا وَاحِدًا - وَهُوَ قَارِنٌ - فَعَلَيْهِ جَزَاءَانِ.

L40133–40135 If they have claimed consensus regarding the expiation for breaking the fast in Ramadan, it has revealed the ignorance or falsehood of the one making such a claim, for Zufar ibn al-Hudhayl and others among them maintains that whoever breaks their fast through intercourse or other means throughout all the days of... As for the month of Ramadan—if one has not atoned—only a single expiation is obligatory. This constitutes the obligation according to

فَإِنْ ادَّعَوْا فِي كَفَّارَةِ الْإِفْطَارِ فِي رَمَضَانَ إجْمَاعًا: ظَهَرَ جَهْلُ مَنْ ادَّعَى ذَلِكَ، أَوْ كَذِبُهُ، لِأَنَّ زُفَرَ بْنَ الْهُذَيْلِ وَغَيْرَهُ - مِنْهُمْ - يَرَى أَنَّ مَنْ أَفْطَرَ بِوَطْءٍ أَوْ غَيْرِهِ جَمِيعَ أَيَّامِ شَهْرِ رَمَضَانَ - وَلَمْ يُكَفِّرْ - فَلَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ فَقَطْ - وَهَذَا هُوَ الْوَاجِبُ

the view of Sa‘id ibn al-Musayyib, for the well-authenticated reports from him establish that the entire month of Ramadan is a single obligatory fast. Whoever breaks a single day of it must necessarily make up for it by fasting an entire month, and whoever breaks all of it must likewise fast one month with no additional requirement.

L40136 **A legal question regarding one who committed a ḥadd offense and then fled to the polytheists or apostatized.**

L40137 2174 - Issue: Concerning one who incurs a prescribed punishment, then joins the polytheists or apostatizes. Abu Muhammad (may Allah have mercy on him) said: Abd Allah ibn Rabi‘ narrated to us, Muhammad ibn Mu‘awiyah narrated to us, Ahmad ibn Shu‘ayb narrated to us: Qutaybah ibn Sa‘eed narrated to us, Humaid ibn ‘Abd al-Rahman → his father → Abu Ishaq al-Sabee‘i → Jarir ibn ‘Abd Allah al-Bajali, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, “If a slave flees [from servitude] to the polytheists, his blood becomes permissible.”[19]

L40138–40140 Abū Muḥammad—may Allah have mercy on him—said: This is the ruling we uphold. The term “slave” here encompasses every free person and slave, for we are all slaves of Allah the Exalted. Whoever relocates to the land of polytheism without compelling necessity is deemed a belligerent. This is the minimal status applicable to him—if he is not considered an apostate merely due to his abandonment of the Muslim community and defection to the land of polytheism. Yusuf ibn ʿAbd Allāh ibn ʿAbd al-Barr al-Namarī narrated to us via Khalf ibn al-Qāsim, Aḥmad ibn Saʿd al-Mihrānī, Aḥmad ibn ʿAbd al-Jabbār, and Abū Muʿāwiyah Muḥammad ibn Khāzim, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from Jarīr ibn ʿAbd Allāh al-Bajalī (of the Bajīla tribe), who said: The Messenger of Allāh (peace and blessings be upon him and his family) said, “I disavow every Muslim who resides in the midst of polytheists.”[20]

L40141 Abū Muḥammad—may Allah have mercy on him—said: “We will thor-

[19] **Hadith references (L40137):** Sunan Abi Dawud 4360; Mishkat al-Masabih 3549.
[20] **Hadith references (L40138):** Mishkat al-Masabih 3547.

- عَلَى قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ - لِأَنَّ الْمَحْفُوظَ عَنْهُ أَنَّ شَهْرَ رَمَضَانَ كُلَّهُ صَوْمٌ وَاحِدٌ، مَنْ أَفْطَرَ يَوْمًا مِنْهُ فَعَلَيْهِ قَضَاءُ جَمِيعِهِ يَقْضِي شَهْرًا، وَلَا بُدَّ، وَمَنْ أَفْطَرَهُ كُلَّهُ فَعَلَيْهِ شَهْرٌ وَاحِدٌ أَيْضًا وَلَا مَزِيدَ.

[مَسْأَلَةٌ فِيمَنْ أَصَابَ حَدًّا ثُمَّ لَحِقَ بِالْمُشْرِكِينَ أَوْ ارْتَدَّ]

٢١٧٤ - مَسْأَلَةٌ: فِيمَنْ أَصَابَ حَدًّا ثُمَّ لَحِقَ بِالْمُشْرِكِينَ أَوْ ارْتَدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ ثنا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَبَقَ الْعَبْدُ إلَى الشِّرْكِ فَقَدْ حَلَّ دَمُهُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَبِهَذَا نَأْخُذُ، وَالْعَبْدُ هَاهُنَا كُلُّ حُرٍّ وَعَبْدٍ، فَكُلُّنَا عَبِيدُ اللَّهِ تَعَالَى، وَمَنْ لَحِقَ بِأَرْضِ الشِّرْكِ بِغَيْرِ ضَرُورَةٍ فَهُوَ مُحَارِبٌ، هَذَا أَقَلُّ أَحْوَالِهِ إنْ سَلِمَ مِنْ الرِّدَّةِ بِنَفْسِ فِرَاقِهِ جَمَاعَةَ الْإِسْلَامِ، وَانْحِيَازِهِ إلَى أَرْضِ الشِّرْكِ: بِمَا حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ ثنا خَلَفُ بْنُ الْقَاسِمِ ثنا أَحْمَدُ بْنُ سَعْدٍ الْمِهْرَانِيُّ ثنا أَحْمَدُ بْنُ عَبْدِ الْجَبَّارِ ثنا أَبُو مُعَاوِيَةَ مُحَمَّدُ بْنُ خَازِمٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ مُقِيمٍ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَنَسْتَقْصِي الْكَلَامَ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي هَذَا فِي " كِتَابِ الرِّدَّةِ " مِنْ هَذَا الْكِتَابِ.

oughly examine the discussion—Allah, the Exalted, willing—on this topic in the *Book of Apostasy* of this book."

L40142 If someone says: "Since the Messenger of Allah—peace and blessings of Allah be upon him—specifically mentioned the runaway slave here, does this confirm that he intended this ruling exclusively for slaves?" We respond—by Allah's success: The term *abāq* is not restricted to slaves under our ownership alone. Rather, anyone who flees their master and owner is a runaway. Allah the Exalted is the Owner of all, and all are His slaves and owned slaves. Thus, whoever flees the community of Allah the Exalted and from the abode of Allah's religion to the abode of Allah's enemies—those who wage war against Allah the Almighty and Majestic—is a runaway.

L40143 The proof of this is Allah's statement, the Most High: *"And indeed, Jonah was among the messengers—when he absconded to the laden ship"* (Quran 37:139-140). For Allah, the Most High, designated the action of Jonah, His messenger (may Allah's prayers and peace be upon him)—who was a free man without disagreement—when he absconded in defiance of his Lord's command, as *ibāq*. Thus, it is established that *ibāq* applies juridically to every free person and slave. And with Allah, the Most High, lies all success.[21]

L40144 Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us from Muhammad ibn Qudamah from Jarir from al-Mughirah ibn Miqsam from al-Sha'bi, who said: Jarir ibn Abdullah used to narrate from the Prophet (peace be upon him), "If a slave flees, his prayer is not accepted, and if he dies, he dies a disbeliever." A slave belonging to Jarir fled, so he seized him and beheaded him.

L40145–40146 Abū Muḥammad—may Allah have mercy on him—said: The act of joining the polytheists does not nullify for the one who joins them any of the ḥudūd penalties he incurred before joining them, nor those he incurred after joining them. This is because Allah the Exalted ordained the ḥudūd penalties in the Quran through the revelation given to His Messenger—peace and blessings be upon him—and He did not dismiss them nor nullify them.

فَإِنْ قَالَ قَائِلٌ: إِنَّمَا ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَاهُنَا مَعَ ذِكْرِ الْعَبْدِ الْآبِقِ، فَصَحَّ أَنَّهُ إِنَّمَا عَنَى بِذَلِكَ الْمَمَالِيكَ فَقَطْ؟ قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: لَيْسَ الْإِبَاقُ لَفْظًا مَوْقُوفًا عَلَى الْمَمَالِيكِ الَّذِينَ لَنَا فَقَطْ، بَلْ كُلُّ مَنْ هَرَبَ عَنْ سَيِّدِهِ وَمَالِكِهِ فَهُوَ آبِقٌ، وَاَللَّهُ تَعَالَى مَالِكُ الْجَمِيعِ، وَالْكُلُّ عَبِيدُهُ وَمَمَالِيكُهُ، فَمَنْ هَرَبَ عَنْ جَمَاعَةِ اللَّهِ تَعَالَى، وَعَلَى دَارِ دِينِ اللَّهِ تَعَالَى إِلَى دَارِ أَعْدَاءِ اللَّهِ تَعَالَى الْمُحَارِبِينَ لِلَّهِ عَزَّ وَجَلَّ فَهُوَ آبِقٌ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَإِنَّ يُونُسَ لَمِنَ الْمُرْسَلِينَ - إِذْ أَبَقَ إِلَى الْفُلْكِ الْمَشْحُونِ} [الصافات: ١٣٩ - ١٤٠] فَقَدْ سَمَّى اللَّهُ تَعَالَى فِعْلَ يُونُسَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ حُرٌّ بِلَا خِلَافٍ - إِذْ فَرَّ عَنْ أَمْرِ رَبِّهِ تَعَالَى إِبَاقًا - فَصَحَّ أَنَّ الْإِبَاقَ لِكُلِّ حُرٍّ وَعَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ ثنا مُحَمَّدُ بْنُ مُعَاوِيَةَ ثنا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ قُدَامَةَ عَنْ جَرِيرٍ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ جَرِيرُ بْنُ عَبْدِ اللَّهِ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ وَإِنْ مَاتَ مَاتَ كَافِرًا؟ فَأَبَقَ غُلَامٌ لِجَرِيرٍ فَأَخَذَهُ فَضَرَبَ عُنُقَهُ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا يُسْقِطُ عَنْ اللَّاحِقِ بِالْمُشْرِكِينَ لِحَاقُهُ بِهِمْ شَيْئًا مِنْ الْحُدُودِ الَّتِي أَصَابَهَا قَبْلَ لِحَاقِهِ، وَلَا الَّتِي أَصَابَهَا بَعْدَ لِحَاقِهِ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ الْحُدُودَ فِي الْقُرْآنِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَرْسَلَهَا وَلَمْ يُسْقِطْهَا.

[21] **Qur'an references (L40143):** Qur'an 37:139 (As-Saffat); Qur'an 37:140 (As-Saffat).

وَكَذَلِكَ لَمْ يُسْقِطْهَا عَنِ الْمُرْتَدِّ، وَلَا عَنِ الْمُحَارِبِ، وَلَا عَنِ الْمُمْتَنِعِ، وَلَا عَنِ الْبَاغِي، إِذَا قُدِرَ عَلَى إِقَامَتِهَا عَلَيْهِمْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L40147 Likewise, He did not exempt the apostate, the combatant, the resistant, or the rebel from it, provided it is possible to enforce it upon them. “And your Lord is never forgetful.” [Maryam: 64].[22]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ يَسْتَثْنِيَ أَحَدًا مِنْ هَؤُلَاءِ لَمَا سَكَتَ عَنْ ذَلِكَ إِعْنَاتًا لَنَا، وَلَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، فَإِذْ لَمْ يُعْلِمْنَا بِذَلِكَ فَنَحْنُ نُقْسِمُ بِاللَّهِ تَعَالَى أَنَّ اللَّهَ تَعَالَى مَا أَرَادَ قَطُّ إِسْقَاطَ حَدٍّ أَصَابَهُ لَاحِقٌ بِالشِّرْكِ قَبْلَ لِحَاقِهِ، أَوْ أَصَابَهُ بَعْدَ لِحَاقِهِ بِهِمْ، أَوْ أَصَابَهُ مُرْتَدٌّ قَبْلَ رِدَّتِهِ أَوْ بَعْدَهَا، وَأَنَّ مَنْ خَالَفَ هَذَا فَمُخْطِئٌ عِنْدَ اللَّهِ تَعَالَى بِيَقِينٍ لَا شَكَّ فِيهِ.

L40148 We testify by the testimony of Allah the Exalted that if Allah, Mighty and Majestic, had willed to exempt anyone from these [people], He would not have remained silent about it to burden us, nor neglected it, nor disregarded it. Since He did not inform us of such exemption, we swear by Allah the Exalted that Allah the Exalted never intended to nullify a punishment that befell one who would later join polytheism before their adherence, or that befell them after joining it, or that befell an apostate before their apostasy or after it. Whoever contradicts this is erroneous in the sight of Allah the Exalted with certainty beyond doubt.

وَقَدْ صَحَّ النَّصُّ وَالْإِجْمَاعُ بِإِسْقَاطِهِ، وَهُوَ مَا أَصَابَهُ أَهْلُ الْكُفْرِ مَا دَامُوا فِي دَارِ الْحَرْبِ قَبْلَ أَنْ يَتَذَمَّمُوا أَوْ يُسْلِمُوا فَقَطْ، فَهَذَا خَارِجٌ بِفِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كُلِّ مَنْ أَسْلَمَ مِنْهُمْ، فَلَمْ يُؤَاخِذْهُمْ بِشَيْءٍ مِمَّا سَلَفَ لَهُمْ مِنْ قَتْلٍ، أَوْ زِنًا، أَوْ قَذْفٍ، أَوْ شُرْبِ خَمْرٍ، أَوْ سَرِقَةٍ، وَصَحَّ الْإِجْمَاعُ بِذَلِكَ.

L40149 The authentic text and consensus have authentically established the nullification of penalties for offenses committed by disbelievers as long as they remained in the abode of war before entering the covenant of dhimmah or simply submitting. This exemption is evidenced by the action of Allah’s Messenger (peace be upon him) toward every individual among them who embraced Islam, as he did not hold them accountable for past acts they had committed—whether killing, fornication, qadhf (false accusation of adultery), wine consumption, or theft—and a consensus is authentically established on this.

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] وَقَالَ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] .

L40150 If someone says: “Indeed, Allah, the Exalted, says: *Say to those who disbelieve: If they cease, what they did before will be forgiven them* [Al-Anfal 8:38].” And He, the Exalted, says: *Whoever allies with them among you, then he is of them* [Al-Ma’idah 5:51].[23]

فَصَحَّ بِهَذَا أَنَّ الْمُرْتَدَّ مِنَ الْكُفَّارِ بِلَا شَكٍّ فَإِذْ هُوَ مِنْهُمْ فَحُكْمُهُ حُكْمُهُمْ.

L40151 It is thereby established that the apostate is undoubtedly among the disbelievers. Thus, if he is among them, his ruling is the same as theirs.

وَذَكَرُوا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الضَّحَّاكُ - يَعْنِي أَبَا عَاصِمٍ النَّبِيلَ - أَنَا حَيْوَةُ بْنُ شُرَيْحٍ ثنا يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ شُمَامَةَ الْمَهْرِيِّ ثنا مُضَرُ ثنا «عَمْرُو بْنُ الْعَاصِ فِي سِيَاقَةِ الْمَوْتِ يَبْكِي طَوِيلًا، فَذَكَرَ الْحَدِيثَ، وَفِيهِ قَالَ فَلَمَّا جَعَلَ اللَّهُ الْإِسْلَامَ فِي

L40152–40154 They mentioned through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us; al-Ḍaḥḥāk—meaning Abū ʿĀṣim al-Nabīl—narrated to us;

[22] **Qur’an references (L40147):** Qur’an 19:64 (Maryam).
[23] **Qur’an references (L40150):** Qur’an 8:38 (Al-Anfal); Qur’an 5:51 (Al-Ma’idah).

Ḥaywah ibn Shurayḥ narrated to us; Yazīd ibn Abī Ḥabīb narrated from Shumāmah al-Mahrī; Muḍar narrated to us; ʿAmr ibn al-ʿĀṣ narrated—while on the brink of death, weeping at length. The narrator mentioned the ḥadīth, which included his statement: "When Allah caused Islam to enter my heart, I came to the Messenger of Allah—peace and blessings be upon him—and said: 'Extend your right hand that I may pledge allegiance to you.' He extended his right hand, but I withdrew mine. He asked: 'What is wrong, O ʿAmr?' I replied: 'I wished to stipulate a condition.' He said: 'What do you stipulate?' I said: 'That I be forgiven.' He said: 'Do you not know that Islam erases what preceded it, that migration erases what preceded it, and that pilgrimage erases what preceded it?'" He then mentioned the remainder of the discourse. From the chain of transmission of Muslim: Muḥammad ibn Ḥātim ibn Maymūn narrated to us from Ibrāhīm ibn Dīnār—and the wording is Ibrāhīm's—he said: Ḥajjāj—i.e., Ibn Muḥammad—, narrated to us from Ibn Jurayj, who informed me from Yaʿlā ibn Muslim: that he heard Saʿīd ibn Jubayr relate from Ibn ʿAbbās: "Some people among the polytheists had committed many killings and acts of adultery. They came to the Prophet—may Allah bless him and his family and grant him peace—and said, 'What you proclaim and invite to is good, but if only you could tell us whether there is expiation for what we have done?' Then was revealed: *{And those who do not invoke with Allah another deity nor kill the soul which Allah has forbidden [to be killed], except by right}* (Quran 25:68) up to His words: *{he will meet a great punishment}* (25:68), and *{Say, "O My servants who have transgressed against themselves [by sinning], do not despair of Allah's mercy"}* (39:53)—the verse."[24]

قَلْبِي أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: ابْسُطْ يَمِينَكَ فَلأُبَايِعْكَ، فَبَسَطَ يَمِينَهُ، فَقَبَضْتُ يَدِي فَقَالَ: مَا لَكَ يَا عَمْرُو؟ فَقُلْتُ: أَرَدْتُ أَنْ أَشْتَرِطَ، فَقَالَ: تَشْتَرِطُ مَاذَا؟ قُلْتُ: أَنْ يُغْفَرَ لِي، قَالَ: أَمَا عَلِمْتَ أَنَّ الإِسْلاَمَ يَهْدِمُ مَا قَبْلَهُ، وَأَنَّ الْهِجْرَةَ تَهْدِمُ مَا قَبْلَهَا، وَأَنَّ الْحَجَّ يَهْدِمُ مَا قَبْلَهُ» وَذَكَرَ بَاقِيَ الْكَلاَمِ وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ، لإِبْرَاهِيمَ بْنُ دِينَارٍ - وَاللَّفْظُ لإِبْرَاهِيمَ - قَالَ: ثنا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَعْلَى بْنُ مُسْلِمٍ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنِ ابْنِ عَبَّاسٍ «أَنَّ نَاسًا مِنْ أَهْلِ الشِّرْكِ قَتَلُوا فَأَكْثَرُوا وَزَنَوْا فَأَكْثَرُوا فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالُوا: إِنَّ الَّذِي تَقُولُ وَتَدْعُو إِلَيْهِ لَحَسَنٌ، وَلَوْ تُخْبِرُنَا أَنَّ لِمَا عَمِلْنَا كَفَّارَةً؟ فَنَزَلَ {وَالَّذِينَ لا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ} [الفرقان: ٦٨] إِلَى قَوْلِهِ {يَلْقَ أَثَامًا} [الفرقان: ٦٨] ، و {قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَى أَنْفُسِهِمْ لا تَقْنَطُوا مِنْ رَحْمَةِ اللَّهِ} [الزمر: ٥٣] الآيَةَ» .

L40155 Abū Muḥammad—may Allāh have mercy on him—said: "The entirety of the first verse extends up to His words *ḥasanāt* [al-Furqān: 70]."[25]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: تَمَامُ الآيَةِ الأُولَى إِلَى قَوْلِه {حَسَنَاتٍ} [الفرقان: ٧٠] .

L40156 And the other [verse]: "Indeed, Allah forgives all sins" (Quran 39:53, Surah Az-Zumar).[26]

وَالأُخْرَى {إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا} [الزمر: ٥٣] .

L40157 All of this is true, and they have no proof against it. Rather, they are bound

وَكُلُّ هَذَا حَقٌّ وَلَا حُجَّةَ لَهُمْ فِيهِ بَلْ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ - إِنْ شَاءَ اللَّهُ تَعَالَى.

[24] **Qur'an references (L40152):** Qur'an 25:68 (Al-Furqan); Qur'an 39:53 (Az-Zumar).
[25] **Qur'an references (L40155):** Qur'an 25:70 (Al-Furqan).
[26] **Qur'an references (L40156):** Qur'an 39:53 (Az-Zumar).

by what we clarify—if Allah, the Exalted, wills.

L40158 As for Allah's statement, the Exalted: {Say to those who have disbelieved, if they cease, what is past will be forgiven them} [Al-Anfāl 8:38] – yes, this is our position. We have not opposed them regarding this verse, nor is it the subject of our inquiry. Rather, our question is: should the prior Ḥudud punishments be implemented upon them or not? This verse contains no ruling whatsoever on this matter—neither through explicit Quranic text nor Sunnah. Indeed, the repentant among us is forgiven; Maʿīz is forgiven, as are the woman from Ghāmid and the woman from Juhaynah—their forgiveness is without doubt. Yet Allah's forgiveness for their sins did not nullify the worldly punishment ordained by Allah, the Exalted. Rather, Allah's forgiveness only removed from them the punishment of the Hereafter—the legal punishment itself was not waived. By the judgment of Allah's Messenger (peace and blessings be upon him), he enforced upon them the Ḥadd punishment for *zinā*, which Allah had already forgiven, despite his knowledge (peace and blessings be upon him) that they were forgiven.[27]

L40159–40161 The Messenger of Allah—peace and blessings of Allah be upon him—flogged Mistah ibn Uthathah for false accusation (qadhf), and he was a Badri who was forgiven. He flogged Al-Nu'man for drinking intoxicants (khamr), and he was a Badri who was forgiven. Umar—may Allah be pleased with him—flogged Qudamah ibn Ma'zun in the presence of the Companions—may Allah be pleased with them—for all he did related to intoxicants (khamr), and Qudamah was a Badri who was forgiven. Had the testimony against Al-Mughirah been completed, he would have been subjected to the hadd punishment—and he was a Badri who was forgiven for what he had done. Thus, it is confirmed that Allah the Exalted's forgiveness does not nullify the hudud punishments obligated in this worldly life. Whoever opposes this and claims: Repentance nullifies all Ḥudūd punishments, contradicting the ruling of the Messenger of Allah (may Allah's peace and blessings be upon him) which we mentioned. We have thoroughly examined this matter in a dedicated chapter a few chapters prior to this one.

أَمَّا قَوْلُ اللَّهِ تَعَالَى {قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ} [الأنفال: ٣٨] الْآيَةَ، فَنَعَمْ، هَكَذَا نَقُولُ، وَلَمْ نُخَالِفْهُمْ فِي هَذِهِ الْآيَةِ، وَلَا هِيَ مَسْأَلَتُنَا، وَإِنَّمَا مَسْأَلَتُنَا: هَلْ تُقَامُ عَلَيْهِمْ الْحُدُودُ السَّالِفَةُ أَمْ لَا؟ وَلَيْسَ فِي هَذِهِ الْآيَةِ مِنْ هَذَا حُكْمٌ أَصْلًا لَا بِنَصٍّ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَّةِ، وَأَنَّ التَّائِبَ مِنَّا مَغْفُورٌ لَهُ، وَأَنَّ مَاعِزًا مَغْفُورٌ لَهُ وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةَ: مَغْفُورٌ لَهُمَا بِلَا شَكٍّ، وَلَمْ تُسْقِطْ عَنْهُمْ مَغْفِرَةُ اللَّهِ تَعَالَى لَهُمْ ذَنْبَهُمْ: حَدَّ اللَّهِ تَعَالَى الْوَاجِبَ فِي الدُّنْيَا، وَإِنَّمَا أَسْقَطَتْ مَغْفِرَةُ اللَّهِ تَعَالَى عَنْهُمْ عَذَابَ الْآخِرَةِ فَقَطْ، وَلَمْ يَسْقُطْ عَنْهُمْ الْحَدُّ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِمْ مَعَ عِلْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مَغْفُورٌ لَهُمْ أَقَامَ عَلَيْهِمْ حَدَّ الزِّنَى الَّذِي قَدْ غَفَرَهُ اللَّهُ تَعَالَى لَهُمْ.

وَقَدْ جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِسْطَحَ بْنَ أُثَاثَةَ فِي الْقَذْفِ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ وَجَلَدَ النُّعْمَانَ فِي الْخَمْرِ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ، وَجَلَدَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قُدَامَةَ بْنَ مَظْعُونٍ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ، كُلُّ مَا فَعَلَ فِي الْخَمْرِ، وَلَوْ تَمَّتْ الشَّهَادَةُ عَلَى الْمُغِيرَةِ لَحَدَّهُ وَهُوَ بَدْرِيٌّ مَغْفُورٌ لَهُ مَا قَدْ فَعَلَ - فَصَحَّ أَنَّ الْمَغْفِرَةَ مِنْ اللَّهِ تَعَالَى لَا تُسْقِطُ الْحُدُودَ الْوَاجِبَةَ فِي الدُّنْيَا، وَمَنْ خَالَفَ هَذَا وَقَالَ: إنَّ التَّوْبَةَ تُسْقِطُ الْحُدُودَ كُلَّهَا خَالَفَ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، وَقَدْ تَقَصَّيْنَا هَذَا فِي بَابٍ مُفْرَدٍ لِذَلِكَ قَبْلَ هَذَا بِأَبْوَابٍ يَسِيرَةٍ.

[27] **Qur'an references (L40158):** Qur'an 8:38 (Al-Anfal).

L40162 As for Allah's statement, exalted is He: {And whoever takes them as allies among you, then he is indeed one of them} [Al-Mā'idah 5:51], they have no argument in this matter at all, because it does not mention the waiver of the ḥudūd for a slave who flees to them or apostatizes. Rather, it states that the apostate is one of the disbelievers, and there is no doubt about this among Muslims.[28]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] فَلَا حُجَّةَ لَهُمْ فِي هَذَا أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا إسْقَاطُ الْحُدُودِ عَلَى مَنْ أَبَقَ إلَيْهِمْ، أَوْ ارْتَدَّ، وَإِنَّمَا فِيهَا: أَنَّ الْمُرْتَدَّ مِنْ الْكُفَّارِ، وَهَذَا لَا شَكَّ فِيهِ عِنْدَ مُسْلِمٍ.

L40163 If they say: Yes, but since he was among them, he was judged by their ruling? We respond: This is evident to them, and the proof is your consensus with us that an apostate is not allowed to persist in his apostasy—unlike the Scriptuary polytheist who is permitted to remain in his disbelief if he pays the jizyah in humiliation while accepting the dhimma covenant. Moreover, no jizyah is accepted from an apostate at all according to your position. An apostate woman cannot be married, unlike a female Scriptuary polytheist. The slaughter of an apostate is not permissible to eat, unlike that of a Scriptuary polytheist. Nor is an apostate enslaved if captured, whereas the polytheist is enslaved upon capture. Thus, you have admitted the invalidity of your corrupt analogy, thereby nullifying any comparison between the apostate and the disbeliever in any of these aspects. It necessarily follows that you must not analogize him to them regarding the cessation of prescribed punishments, as this safeguards your analogy. It has become clear that in this matter, they neither followed textual evidence from the Quran or Sunnah, nor applied analogy consistently, nor relied on anything at all. And with Allah, the Exalted, lies all success.

فَإِنْ قَالُوا: بَلَى، وَلَكِنْ لَمَّا كَانَ مِنْهُمْ حُكِمَ لَهُ بِحُكْمِهِمْ؟ قُلْنَا: لَهُمْ هَذَا وَاضِحٌ، وَبُرْهَانُ ذَلِكَ: إجْمَاعُكُمْ مَعَنَا عَلَى أَنَّ الْمُرْتَدَّ لَا يُقَرُّ عَلَى رِدَّتِهِ، بِخِلَافِ الْمُشْرِكِ الْكِتَابِيِّ الَّذِي يُقَرُّ عَلَى كُفْرِهِ إذَا أَدَّى الْجِزْيَةَ صَاغِرًا وَتَذَمَّمَ، وَأَنَّهُ لَا يُقْبَلُ مِنْ الْمُرْتَدِّ جِزْيَةٌ أَصْلًا عِنْدَكُمْ، وَأَنَّهُ لَا تُنْكَحُ الْمُرْتَدَّةُ بِخِلَافِ الْمُشْرِكَةِ الْكِتَابِيَّةِ، وَأَنَّهُ لَا تُؤْكَلُ ذَبِيحَةُ الْمُرْتَدِّ بِخِلَافِ الْمُشْرِكِ الْكِتَابِيِّ، وَلَا يُسْتَرَقُّ الْمُرْتَدُّ إنْ سُبِيَ كَمَا يُسْتَرَقُّ الْمُشْرِكُ إنْ سُبِيَ - فَقَدْ أَقْرَرْتُمْ بِبُطْلَانِ قِيَاسِكُمْ الْفَاسِدِ فَأَبْطَلْتُمْ أَنْ يُقَاسَ الْمُرْتَدُّ عَلَى الْكَافِرِ فِي شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ، وَيَلْزَمُكُمْ أَنْ لَا تَقِيسُوهُ عَلَيْهِمْ فِي سُقُوطِ الْحُدُودِ، فَهُوَ أَحْوَطُ لِقِيَاسِكُمْ، وَلَاحَ أَنَّهُمْ فِي هَذِهِ الْمَسْأَلَةِ - لَا النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ اتَّبَعُوا، وَلَا الْقِيَاسَ طَرَدُوا، وَلَا تَعَلَّقُوا بِشَيْءٍ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40164 And it has been authentically established that the statement of Allah, the Most High, {And whoever takes them as allies among you, he is indeed one of them} [Al-Mā'idah: 51] is to be interpreted according to its apparent meaning—that such a person is solely one of the disbelievers. This is a truth undisputed by Muslims, with no two differing on it.[29]

وَصَحَّ أَنَّ قَوْلَ اللَّهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] إنَّمَا هُوَ عَلَى ظَاهِرِهِ بِأَنَّهُ كَافِرٌ مِنْ جُمْلَةِ الْكُفَّارِ فَقَطْ - وَهَذَا حَقٌّ لَا يَخْتَلِفُ فِيهِ اثْنَانِ مِنْ الْمُسْلِمِينَ.

L40165 If they claim that *jizyah* is not accepted from the apostate, his slaughtered animal is not eaten, and that enslaving him is prohibited on the basis of consensus, this indicates the ignorance or dishonesty of the one who makes

فَإِنْ ادَّعَوْا أَنَّ الْمُرْتَدَّ لَا تُقْبَلُ مِنْهُ جِزْيَةٌ، وَلَا تُؤْكَلُ ذَبِيحَتُهُ، وَلَا يُسْتَرَقُّ إجْمَاعًا: دَلَّ ذَلِكَ عَلَى جَهْلِ مَنْ ادَّعَى ذَلِكَ أَوْ كَذِبِهِ، فَقَدْ صَحَّ عَنْ بَعْضِ السَّلَفِ: أَخْذُ الْجِزْيَةِ مِنْهُمْ، وَعَنْ بَعْضِ الْفُقَهَاءِ: أَكْلُ ذَبِيحَتِهِ إنْ ارْتَدَّ إلَى دِينٍ صَابِئٍ.

[28] **Qur'an references (L40162):** Qur'an 5:51 (Al-Ma'idah).
[29] **Qur'an references (L40164):** Qur'an 5:51 (Al-Ma'idah).

such a claim. For it has been authentically reported that some of the *Salaf* took *jizyah* from apostates, and that some jurists deemed it permissible to eat his slaughtered animal if he apostatized to the Sabian faith.

وَأَبُو حَنِيفَةَ وَأَصْحَابُهُ يَقُولُونَ: إِنَّ الْمُرْتَدَّةَ إِذَا لَحِقَتْ بِأَرْضِ الْحَرْبِ سُبِيَتْ وَاسْتُرِقَّتْ وَلَمْ تُقْتَلْ، وَلَوْ أَنَّهَا هَاشِمِيَّةٌ أَوْ عَبْشَمِيَّةٌ.

L40166 Abu Hanifah and his companions assert that if a female apostate enters enemy territory, she is captured, enslaved, and not killed—even if she is a Hashimi or ʿAbd Shamsi woman.

حَدَّثَنَا حُمَامٌ ثنا ابْنُ مُفَرِّجٍ ثنا ابْنُ الْأَعْرَابِيِّ ثنا الدَّبَرِيُّ ثنا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عَامِلًا لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ أَسْلَمَ ثُمَّ ارْتَدَّ؟ فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ اسْأَلْهُ عَنْ شَرَائِعِ الْإِسْلَامِ، فَإِنْ كَانَ قَدْ عَرَفَهَا فَاعْرِضْ عَلَيْهِ الْإِسْلَامَ، فَإِنْ أَبَى فَاضْرِبْ عُنُقَهُ، وَإِنْ كَانَ لَمْ يَعْرِفْهَا فَغَلِّظْ عَلَيْهِ الْجِزْيَةَ وَدَعْهُ.

L40167–40169 Hammam narrated to us; Ibn Mufarrij narrated to us; Ibn al-Aʿrabī narrated to us; al-Dabarī narrated to us; ʿAbd al-Razzāq from Maʿmar from Simāk ibn al-Faḍl: A governor under ʿUmar ibn ʿAbd al-ʿAzīz wrote to him concerning a man who embraced Islam then apostatized—what should be done? ʿUmar ibn ʿAbd al-ʿAzīz wrote in response: "Question him about the ordinances of Islam." If he has known it, present Islam to him. If he refuses, execute him. If he has not known it, impose the *jizya* harshly upon him and spare him.

قَالَ مَعْمَرٌ: وَأَخْبَرَنِي قَوْمٌ مِنْ أَهْلِ الْجَزِيرَةِ: أَنَّ قَوْمًا أَسْلَمُوا ثُمَّ لَمْ يَمْكُثُوا إِلَّا قَلِيلًا حَتَّى ارْتَدُّوا؟ فَكَتَبَ فِيهِمْ مَيْمُونُ بْنُ مِهْرَانَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ رُدَّ عَلَيْهِمُ الْجِزْيَةَ وَدَعْهُمْ.

L40170 Ma'mar said: Some inhabitants of al-Jazirah informed me that a group embraced Islam but remained in it only briefly before apostatizing. Maymun ibn Mihran wrote to Umar ibn Abd al-Aziz concerning them, and Umar ibn Abd al-Aziz responded: "Impose the *jizyah* on them and leave them."

وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ عُمَرَ بْنِ الْخَطَّابِ.

L40171 And similar to this has been reported from ʿUmar ibn al-Khaṭṭāb.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا حَدِيثُ عَمْرِو بْنِ الْعَاصِ فَهُوَ عَلَيْهِمْ أَعْظَمُ حُجَّةً، لِأَنَّ فِيهِ تَسْوِيَةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ الْإِسْلَامِ وَالْهِجْرَةِ وَالْحَجِّ فِي أَنَّ كُلَّ وَاحِدٍ مِنْهَا يَهْدِمُ مَا قَبْلَهُ، وَهُمْ لَا يَخْتَلِفُونَ - وَلَا أَحَدَ نَعْلَمُهُ - فِي أَنَّ الْحَجَّ لَا يُسْقِطُ حَدًّا أَصَابَهُ الْمَرْءُ قَبْلَ حَجِّهِ وَلَمْ يَتُبْ مِنْهُ، وَلَمْ تَطُلْ مُدَّتُهُ دُونَهُ، فَمِنَ الْبَاطِلِ أَنْ يَتَحَكَّمُوا فِي حُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيَحْمِلُوا قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إِنَّ الْإِسْلَامَ يَهْدِمُ مَا قَبْلَهُ» عَلَى أَنَّ الْإِسْلَامَ يُسْقِطُ الْحُدُودَ الَّتِي وَاقَعَهَا

L40172 Abu Muhammad—may Allah have mercy on him—said: As for the ḥadīth of ʿAmr ibn al-ʿĀṣ, it constitutes a greater proof against them, for in it the Prophet (peace and blessings of Allah be upon him) equates Islam, migration, and Hajj in that each annuls what preceded it. They do not disagree—nor does anyone we know—that Hajj does not abolish prescribed penalties incurred by a person before performing Hajj if they did not repent from them and the period [for repentance] had not elapsed before performing it. It is therefore baseless for them to arbitrarily dictate Allah's ruling conveyed through His Messenger (peace and blessings of Allah be upon him) by interpreting his statement—peace be upon him—"Islam annuls what preceded it"

to mean that Islam abolishes prescribed penalties for acts committed before embracing Islam, while claiming Hajj does not abolish them. Both matters are reported from the Messenger of Allah (peace and blessings of Allah be upon him) in the same manner. This report opposes their stance, for the Messenger of Allah (peace and blessings of Allah be upon him) explicitly stated that Islam annuls what preceded it, migration annuls what preceded it, and Hajj annuls what preceded it. Yet they assert that apostasy to disbelief annuls prior prescribed penalties—by analogizing disbelief to Islam—and that migrating toward Satan by joining the abode of disbelief and people of war annuls prior prescribed penalties—by equating it with migration to Allah Almighty and the abode of Islam—while claiming Hajj does not annul what preceded it? This is sheer obstinacy, contradiction, and stubborn denial against the Messenger of Allah (peace and blessings of Allah be upon him).

الْعَبْدُ قَبْلَ إِسْلَامِهِ، وَيَجْعَلُ الْحَجَّ لَا يُسْقِطُهَا، وَكِلَا الْأَمْرَيْنِ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَجِيئًا وَاحِدًا، وَأَنَّ هَذَا الْخَبَرَ ضِدُّ قَوْلِهِمْ فِي هَذِهِ الْمَسْأَلَةِ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِنَّمَا أَخْبَرَ أَنَّ الْإِسْلَامَ يَهْدِمُ مَا قَبْلَهُ، وَأَنَّ الْهِجْرَةَ تَهْدِمُ مَا قَبْلَهَا، وَأَنَّ الْحَجَّ يَهْدِمُ مَا قَبْلَهُ، فَقَالُوا هُمْ: إِنَّ الرِّدَّةَ إِلَى الْكُفْرِ تَهْدِمُ مَا قَبْلَهَا مِنْ الْحُدُودِ الْوَاجِبَةِ قِيَاسًا لِلْكُفْرِ عَلَى الْإِسْلَامِ، وَأَنَّ الْهِجْرَةَ إِلَى الشَّيْطَانِ، وَاللِّحَاقَ بِدَارِ الْكُفْرِ وَأَهْلِ الْحَرْبِ، تَهْدِمُ مَا قَبْلَهَا مِنْ الْحُدُودِ، قِيَاسًا عَلَى الْهِجْرَةِ إِلَى اللَّهِ تَعَالَى وَإِلَى دَارِ الْإِسْلَامِ، وَأَنَّ الْحَجَّ لَا يَهْدِمُ مَا قَبْلَهُ؟ وَهَذَا عَيْنُ الْعِنَادِ وَالْخِلَافِ وَالْمُكَابَرَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L40173 As for the narration of Umar, he did not at all address the establishment or abolition of the prescribed punishments in that report; rather, he spoke about divine forgiveness.

وَأَمَّا حَدِيثُ عُمَرَ فَإِنَّهُ لَمْ يَتَكَلَّمْ قَطُّ فِي ذَلِكَ الْخَبَرِ فِي ثَبَاتِ الْحُدُودِ أَوْ سُقُوطِهَا، وَإِنَّمَا تَكَلَّمَ فِي الْمَغْفِرَةِ.

L40174 When we say that the forgiveness of God (Exalted be He) for sins does not annul the prescribed legal punishments for those sins except where a valid textual proof and consensus have explicitly mandated their annulment only, this applies exclusively to the belligerent disbeliever who embraces Islam anew.

وَإِذَا قُلْنَا: إِنَّ مَغْفِرَةَ اللَّهِ تَعَالَى لِلذُّنُوبِ لَا تُسْقِطُ الْحُدُودَ الْوَاجِبَةَ فِي تِلْكَ الذُّنُوبِ إِلَّا حَيْثُ صَحَّ النَّصُّ، وَالْإِجْمَاعُ بِإِسْقَاطِهَا فَقَطْ، وَلَيْسَ ذَلِكَ إِلَّا فِي الْحَرْبِيِّ الْكَافِرِ يَبْتَدِئُ الْإِسْلَامَ فَقَطْ.

L40175–40177 We say: Indeed, Islam and the sincere Hijrah to Allah, the Most High, and His Messenger (peace be upon him). And that the accepted Hajj destroys the sins preceding it. Among the characteristic of all that we have mentioned—proper Islam, sincere Hijrah, and the accepted Hajj—is that the one in this state repents from every sin that came before it.

وَنَحْنُ نَقُولُ: إِنَّ الْإِسْلَامَ وَالْهِجْرَةَ الصَّادِقَةَ إِلَى اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ السَّلَامُ - وَأَنَّ الْحَجَّ الْمَبْرُورَ يَهْدِمُ مَا قَبْلَهُ مِنْ الذُّنُوبِ، وَمِنْ صِفَةِ كُلِّ مَا ذَكَرْنَا مِنْ الْإِسْلَامِ الْحَسَنِ، وَالْهِجْرَةِ الصَّادِقَةِ - وَالْحَجِّ الْمَبْرُورِ أَنْ يَتُوبَ صَاحِبُ هَذِهِ الْحَالِ عَنْ كُلِّ ذَنْبٍ سَلَفَ قَبْلَهُ.

L40178 The proof of this is what was narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid, from Ibrāhīm ibn Aḥmad, from al-Farbarī, from al-Bukhārī, from Khallād ibn Yaḥyā, from Sufyān ibn Manṣūr and al-Aʿmash – both transmitting from Abū Wāʾil, from ʿAbd Allāh ibn Masʿūd, who said: "A

بُرْهَانُ ذَلِكَ: مَا حَدَّثَنَا بِهِ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا خَلَّادُ بْنُ يَحْيَى نا سُفْيَانُ بْنُ مَنْصُورٍ، وَالْأَعْمَشُ، كِلَاهُمَا عَنْ

man asked the Messenger of Allāh (peace and blessings be upon him and his family): 'Will we be held accountable for what we did in the pre-Islamic era?' He replied: 'Whoever does good in Islam will not be held accountable for what he did in the pre-Islamic era, but whoever does evil in Islam will be held accountable for the first deeds and the last.'"[30]

L40179 Abu Muhammad—may Allah have mercy on him—said: The ruling of *ihsān* (spiritual excellence) in Islam is repentance from every sin one committed during his days of disbelief. As for whoever persists in his disobedience, he has not perfected his Islam; rather, he has corrupted it. Similarly, whoever does not abandon what Allah the Exalted has forbidden has not completed his *hijrah* (emigration from sin). Every Hajj whose pilgrim persists in disobedience during it and fails to fulfill its due requirement of piety is not *mabrūr* (righteous/accepted). And success is from Allah, the Exalted.

L40180 ## The issue of seeking repentance in hudud.

L40181 2175 - Issue: Demanding repentance in hudud punishments and abstaining from imprisoning him? Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: Al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us: Ibn Jurayj said: I attended ʿAbd al-ʿAzīz ibn ʿAbd Allāh lashing a man as a hadd punishment for false accusation. When he concluded, Abū Bakr ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Rabīʿah said to him: "It is part of the procedure that he be asked to repent at that point." ʿAbd al-ʿAzīz then said to the lashed man: "Repent," and I assumed he said: "I repent to Allah."

L40182 Ibn Jurayj said: Some scholars from the people of Medina informed me that they unanimously agree that repentance is sought from anyone who commits the act of the people of Lot, commits fornication, falsely accuses of unchastity, drinks alcohol, steals, or commits highway robbery. Abd al-Razzaq said: Abu Bakr informed me, reporting from multiple sources, that Ibn al-Musayyab said: The established practice regarding the prescribed punishment is that the offender is called to repent after they have finished flogging him. Sa'id

[30] **Hadith references (L40178):** Sahih al-Bukhari 6921; Sahih Muslim 120b.

أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «قَالَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنُؤَاخَذُ بِمَا عَمِلْنَا فِي الْجَاهِلِيَّةِ؟ قَالَ: مَنْ أَحْسَنَ فِي الْإِسْلَامِ لَمْ يُؤَاخَذْ بِمَا عَمِلَ فِي الْجَاهِلِيَّةِ، وَمَنْ أَسَاءَ فِي الْإِسْلَامِ أُخِذَ بِالْأَوَّلِ وَالْآخِرِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَحُكْمُ الْإِحْسَانِ فِي الْإِسْلَامِ هُوَ التَّوْبَةُ مِنْ كُلِّ ذَنْبٍ أَسْلَفَهُ أَيَّامَ كُفْرِهِ، وَأَمَّا مَنْ أَصَرَّ عَلَى مَعَاصِيهِ: فَمَا أَحْسَنَ فِي إسْلَامِهِ بَلْ أَسَاءَ فِيهِ، وَكَذَلِكَ مَنْ لَمْ يَهْجُرْ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ، فَلَيْسَ تَامَّ الْهِجْرَةِ - وَكُلُّ حَجٍّ أَصَرَّ صَاحِبُهُ عَلَى الْمَعَاصِي فِيهِ فَلَمْ يُوفِ حَقَّهُ مِنْ الْبِرِّ، فَلَيْسَ مَبْرُورًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الِاسْتِتَابَةُ فِي الْحُدُودِ]

٢١٧٥ - مَسْأَلَةٌ: الِاسْتِتَابَةُ فِي الْحُدُودِ وَتَرْكُ سَجْنِهِ؟ حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: حَضَرْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ جَلَدَ إنْسَانًا الْحَدَّ فِي فِرْيَةٍ، فَلَمَّا فَرَغَ مِنْ ذَلِكَ قَالَ لَهُ أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ رَبِيعَةَ: إنَّ مِنْ الْأَمْرِ أَنْ يُسْتَتَابَ عِنْدَ ذَلِكَ، فَقَالَ عَبْدُ الْعَزِيزِ لِلْمَجْلُودِ: تُبْ، فَحَسِبْته أَنَّهُ قَالَ: أَتُوبُ إلَى اللَّهِ.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي بَعْضُ عُلَمَاءِ أَهْلِ الْمَدِينَةِ أَنَّهُمْ لَا يَخْتَلِفُونَ أَنَّهُ يُسْتَتَابُ كُلُّ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ، أَوْ زَنَى، أَوْ افْتَرَى، أَوْ شَرِبَ، أَوْ سَرَقَ، أَوْ حَارَبَ، قَالَ عَبْدُ الرَّزَّاقِ: وَأَخْبَرَنِي أَبُو بَكْرٍ عَنْ غَيْرِ وَاحِدٍ عَنْ ابْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: سُنَّةُ الْحَدِّ أَنْ يُسْتَتَابَ صَاحِبُهُ إذَا فَرَغَ مِنْ جَلْدِهِ، قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: إنْ قَالَ: قَدْ تُبْت - وَهُوَ غَيْرُ رَضِيٍّ - لَمْ تُقْبَلْ شَهَادَتُهُ.

ibn al-Musayyab said: If he says, “I have repented,” while being insincere, his testimony is not accepted.

L40183–40185 Abu Muhammad—may Allah have mercy on him—said: And with this we say, because repentance is an obligation from Allah, the Most High, upon every [...] For a sinner, and because calling to repentance is a duty upon every Muslim. Allah the Exalted said: **“O you who have believed, repent to Allah with sincere repentance, so that your Lord may expiate your misdeeds”** [At-Tahrim: 8], the verse.[31]

L40186 Since persistence in sin is definitively forbidden by the consensus of the entire Ummah, repentance and abandoning it are obligatory through the same consensus, with no disagreement on this matter. Allah the Exalted said: “Call to the way of your Lord with wisdom and good admonition” [An-Nahl: 125].[32]

L40187 And He, the Exalted, said: {Let there be among you a community calling to good} [Āl ʿImrān 104] the verse.[33]

L40188–40190 Abu Muhammad—may Allah have mercy on him—said: Since repentance constitutes the obligatory path of Allah the Exalted to be followed and belongs to goodness and righteousness, it becomes incumbent upon every Muslim to call others to it through the texts we have mentioned. Seeking the sinner’s repentance before executing the prescribed punishment upon him is obligatory, based on Allah’s statement: *“And hasten toward forgiveness from your Lord”* (Quran 3:133). Hastening to fulfill an obligation is itself obligatory. If the Imam or those present do not seek his repentance until after the punishment is carried out, it becomes obligatory to seek his repentance afterward—as we have mentioned. If he still does not repent and the punishment is executed, he must be called to repent. If he repents, he must be released absolutely, with no grounds for detention, for the right of Allah the Exalted—which no right supersedes except His own—has been fulfilled

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّ التَّوْبَةَ فَرْضٌ مِنْ اللَّهِ تَعَالَى عَلَى كُلِّ مُذْنِبٍ، وَلِأَنَّ الدُّعَاءَ إلَى التَّوْبَةِ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا تُوبُوا إِلَى اللَّهِ تَوْبَةً نَصُوحًا عَسَى رَبُّكُمْ أَنْ يُكَفِّرَ عَنْكُمْ سَيِّئَاتِكُمْ} [التحريم: ٨] الْآيَةَ.

وَإِذَا كَانَ هَذَا الْإِصْرَارُ عَلَى الذَّنْبِ حَرَامًا بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا الْمُتَيَقَّنِ: فَالتَّوْبَةُ وَالْإِقْلَاعُ فَرْضٌ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، لَا خِلَافَ فِي ذَلِكَ، قَالَ اللَّهُ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ} [النحل: ١٢٥] .

وَقَالَ تَعَالَى {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ} [آل عمران: ١٠٤] الْآيَةَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا كَانَتْ التَّوْبَةُ مِنْ سَبِيلِ اللَّهِ تَعَالَى الْمُفْتَرَضُ سُلُوكُهَا وَكَانَتْ مِنْ الْخَيْرِ وَالْمَعْرُوفِ: كَانَ فَرْضًا عَلَى كُلِّ مُسْلِمٍ أَنْ يَدْعُوَ إلَيْهَا بِالنُّصُوصِ الَّتِي ذَكَرْنَا، وَاسْتِتَابَةُ الْمُذْنِبِ قَبْلَ إقَامَةِ الْحَدِّ عَلَيْهِ وَاجِبَةٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَسَارِعُوا إِلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣] فَالْمُسَارَعَةُ إلَى الْفَرْضِ فَرْضٌ، فَإِنْ لَمْ يَسْتَتِبْهُ الْإِمَامُ، أَوْ مَنْ حَضَرَهُ إلَّا حَتَّى أُقِيمَ عَلَيْهِ الْحَدُّ، فَوَاجِبٌ أَنْ يُسْتَتَابَ بَعْدَ الْحَدِّ - عَلَى مَا ذَكَرْنَا - فَإِنْ لَمْ يَتُبْ فَأُقِيمَ عَلَيْهِ اُسْتُتِيبَ، فَإِنْ تَابَ أُطْلِقَ، وَلَا سَبِيلَ عَلَيْهِ بِحَبْسٍ أَصْلًا، لِأَنَّهُ قَدْ أُخِذَ حَقُّ اللَّهِ تَعَالَى مِنْهُ الَّذِي لَا حَقَّ لَهُ قَبْلَهُ سِوَاهُ، فَالزِّيَادَةُ عَلَى ذَلِكَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَهَذَا حَرَامٌ. ٢١٧٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ: لَا أَتُوبُ، فَقَدْ أَتَى مُنْكَرًا، فَوَاجِبٌ أَنْ يُعَزَّرَ عَلَى مَا نَذْكُرُهُ فِي " كِتَابِ

[31] **Qur’an references (L40183):** Qur’an 66:8 (At-Tahrim).
[32] **Qur’an references (L40186):** Qur’an 16:125 (An-Nahl).
[33] **Qur’an references (L40187):** Qur’an 3:104 (Ali ’Imran).

through the punishment. Any excess beyond this constitutes transgression against Allah's ordained limits, and this is forbidden.

Issue 2176: Abu Muhammad—may Allah have mercy on him—said: If he declares, "I will not repent," he has committed a reprehensible act. It then becomes obligatory to subject him to discretionary penalties, as we will detail in the *Book of Discretionary Penalties*—if Allah wills—based on the saying of the Messenger of Allah. The Prophet—peace and blessings of God be upon him—said: "Whoever among you sees an evil, let him change it with his hand if he is able; if not, then with his tongue; if not, then with his heart—and that is the weakest degree of faith." He must be beaten continuously until he repents—this being when he explicitly declares he will not repent. If this leads to his death, he is God's ritual sacrifice and one slain in the cause of truth. No liability falls upon the authority enforcing this, for they have acted righteously in what they did. God Almighty says: "There is no recourse against those who act righteously" (9:91). If he remains silent—neither saying "I repent" nor "I will not repent"—it becomes obligatory to imprison him and repeatedly demand repentance from him continuously until he verbally affirms repentance, whereupon he is to be released.[34]

L40191–40192 The proof of this is that the sin has been established against him, repentance has become obligatory upon him, and his repentance is not recognized except through his explicit utterance of it. Thus, as long as he has not declared it and persists in wrongdoing, it remains possible that he may repent inwardly or that he may not. Since both scenarios are possible, it is impermissible to strike him, because he has not committed a confirmed evil act, nor is it permissible to release him, as it is obligatory to summon him to repent until he does so. There is no means to detain him—and with Allah, the Exalted, lies all success, and thus forever. Whenever one repents and subsequently commits the same sin or another, two mursal narrations from the Messenger of Allah (peace be upon him) are cited concerning his summoning a thief to repent after amputating his hand. As narrated by Ḥammām: Ibn Mufarrij reported to us: Ibn al-Aʿrābī reported to us: al-Dabarī reported to us: ʿAbd al-Razzāq reported from Ibn Jurayj, Sufyān al-Thawrī, and Maʿmar. Ibn

[34]**Qur'an references (L40188):** Qur'an 3:133 (Ali 'Imran); Qur'an 9:91 (At-Tawbah).

التَّعْزِيرِ " إنْ شَاءَ اللَّهُ تَعَالَى، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» فَيَجِبُ أَنْ يُضْرَبَ أَبَدًا حَتَّى يَتُوبَ، هَذَا إنْ صَرَّحَ بِأَنْ لَا يَتُوبَ، فَإِذَا أَدَّى ذَلِكَ إلَى مَنِيَّتِهِ، فَذَلِكَ عَقِيرَةُ اللَّهِ، وَقَتِيلُ الْحَقِّ، لَا شَيْءَ عَلَى مُتَوَلِّي ذَلِكَ، لِأَنَّهُ أَحْسَنُ فِيمَا فَعَلَ بِهِ، وَقَدْ قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَإِنْ سَكَتَ وَلَمْ يَقُلْ: أَتُوبُ، وَلَا: لَا أَتُوبُ، فَوَاجِبٌ حَبْسُهُ وَإِعَادَةُ الِاسْتِتَابَةِ عَلَيْهِ أَبَدًا حَتَّى يَنْطِقَ بِالتَّوْبَةِ، فَيُطْلَقَ.

بُرْهَانُ ذَلِكَ: أَنَّهُ قَدْ صَحَّ مِنْهُ الذَّنْبُ، وَوَجَبَتْ عَلَيْهِ التَّوْبَةُ، وَلَا تُعْرَفُ تَوْبَتُهُ إلَّا بِنُطْقِهِ بِهَا، فَهُوَ مَا لَمْ يَنْطِقْ بِهَا وَبِالْإِصْرَارِ: فَمُمْكِنٌ أَنْ يَتُوبَ فِي نَفْسِهِ، وَمُمْكِنٌ أَنْ لَا يَتُوبَ، فَلَمَّا كَانَ كِلَا الْأَمْرَيْنِ مُمْكِنًا لَمْ يَحِلَّ ضَرْبُهُ، لِأَنَّهُ لَمْ يَأْتِ بِمُنْكَرٍ تَيَقَّنَ أَنَّهُ أَتَى بِهِ، وَلَمْ يَجُزْ تَسْرِيحُهُ، لِأَنَّ فَرْضًا عَلَيْهِ دُعَاؤُهُ إلَى التَّوْبَةِ حَتَّى يَتُوبَ، وَلَا سَبِيلَ إلَى إمْسَاكِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ وَهَكَذَا أَبَدًا مَتَى تَابَ ثُمَّ وَاقَعَ الذَّنْبَ أَوْ غَيْرَهُ، فَقَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَبَرَانِ مُرْسَلَانِ فِي أَنَّهُ اسْتَتَابَ السَّارِقَ بَعْدَ قَطْعِ يَدِهِ: كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ ابْنُ جُرَيْجٍ، وَسُفْيَانُ، كِلَاهُمَا: عَنْ أَبِي خَصْفَةَ، عَنْ مُحَمَّدِ بْنِ عُثْمَانَ بْنِ ثَوْبَانَ، وَقَالَ مَعْمَرٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، قَالَ أَيُّوبُ، وَابْنُ

Jurayj and Sufyān both transmitted from Abū Khaṣfah, from Muḥammad ibn ʿUthmān ibn Thawbān. Maʿmar reported from Ayyūb al-Sakhtiyānī. Ayyūb and Ibn Thawbān said: "A man who stole a cloak was brought to the Prophet (peace be upon him). It was said, 'O Messenger of Allah, has this man stolen?' The Prophet (peace be upon him) replied, 'I do not think so. Did you steal?' He said, 'Yes.' He said, 'Go, cut his hand and cauterize it, then bring him back to me.' They brought him back, and he said, 'I repent to Allah.' The Prophet said, 'O Allah, accept his repentance.'"

ثَوْبَانَ: «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ سَرَقَ شَمْلَةً فَقِيلَ يَا رَسُولَ اللَّهِ هَذَا سَرَقَ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا إخَالُهُ، أَسَرَقْتَ؟ قَالَ: نَعَمْ، قَالَ: فَاذْهَبُوا فَاقْطَعُوا يَدَهُ، ثُمَّ احْسِمُوهَا، ثُمَّ ائْتُونِي بِهِ، فَأَتَوْهُ بِهِ، فَقَالَ: إنِّي أَتُوبُ إلَى اللَّهِ، فَقَالَ: اللَّهُمَّ تُبْ عَلَيْهِ» .

L40193 And through him—to ʿAbd al-Razzāq from Maʿmar from Ibn al-Munkadir—that the Prophet, peace and blessings be upon him and his family, cut off a man's hand, then ordered the wound to be cauterized. He said to him: "Repent to Allah the Exalted!" The man replied: "I repent to Allah the Exalted." The Prophet, peace and blessings be upon him and his family, said: "When a thief's hand is cut off, it falls into the Fire. If he relapses [into theft], it follows him, but if he repents, it is withdrawn."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ الْمُنْكَدِرِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «قَطَعَ رَجُلًا ثُمَّ أَمَرَ بِهِ فَحُسِمَ قَالَ لَهُ تُبْ إلَى اللَّهِ تَعَالَى؟ فَقَالَ: أَتُوبُ إلَى اللَّهِ تَعَالَى، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّ السَّارِقَ إذَا قُطِعَتْ يَدُهُ وَقَعَتْ فِي النَّارِ، فَإِنْ عَادَ تَبِعَهَا، وَإِنْ تَابَ اسْتَشَالَهَا» .

L40194 Abd al-Razzaq said, "He stated: He withdrew her and reclaimed her."

قَالَ عَبْدُ الرَّزَّاقِ يَقُولُ اسْتَشَالَهَا اسْتَرْجَعَهَا.

L40195 Abū Muḥammad—may Allah have mercy on him—said: These two are *mursal* (narrations with incomplete chains), and there is no valid proof in a *mursal*. Valid proof is found only in the textual evidences we cited earlier. We cited these two solely to prevent any deceiver from exploiting what is in them regarding the formal seeking of repentance after amputation. And with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَانِ مُرْسَلَانِ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَإِنَّمَا الْحُجَّةُ فِيمَا أَوْرَدْنَا مِنْ النُّصُوصِ قَبْلُ، وَإِنَّمَا أَوْرَدْنَاهُمَا لِئَلَّا يُمَوِّهَ مُمَوِّهٌ بِمَا فِيهِمَا مِنْ الِاسْتِتَابَةِ بَعْدَ الْقَطْعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الِامْتِحَانُ فِي الْحُدُودِ وَغَيْرِهَا بِالضَّرْبِ أَوْ السِّجْنِ أَوْ التَّهْدِيدِ]

A legal issue regarding coercive interrogation in the context of Ḥudūd and other [legal categories] through beating, imprisonment, or intimidation.

L40198 Ali (may Allah have mercy on him) said: It is not permissible to subject anyone to interrogation through beating, imprisonment, or threats regarding any matter, because neither the Quran, an established Sunnah, nor consensus have prescribed this. Nor is it permissible to derive any aspect of religion except from these three textual sources. Rather, Allah the Exalted has prohibited such acts through His Messenger (peace and blessings of Allah be

؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: لَا يَحِلُّ الِامْتِحَانُ فِي شَيْءٍ مِنْ الْأَشْيَاءِ بِضَرْبٍ، وَلَا بِسَجْنٍ، وَلَا بِتَهْدِيدٍ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ ثَابِتَةٌ، وَلَا إجْمَاعٌ، وَلَا يَحِلُّ أَخْذُ شَيْءٍ مِنْ الدِّينِ، إلَّا مِنْ هَذِهِ الثَّلَاثَةِ النُّصُوصِ بَلْ قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْ ذَلِكَ عَلَى لِسَانِ

upon him) in the Prophet's statement: "Your blood, your wealth, your honor, and your physical integrity are inviolable to you."

رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوْلِهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L40199 Therefore, Allah the Exalted has forbidden harming human beings and honor. Thus, it is impermissible to strike a Muslim or insult him except for a right obligated by the Quran or the established Sunnah.

فَحَرَّمَ اللَّهُ تَعَالَى الْبَشَرَ، وَالْعِرْضَ، فَلَا يَحِلُّ ضَرْبُ مُسْلِمٍ، وَلَا سَبُّهُ إِلَّا بِحَقٍّ أَوْجَبَهُ الْقُرْآنُ، أَوْ السُّنَّةُ الثَّابِتَةُ.

L40200 And He, the Exalted, said: "So traverse its expanses and partake of His sustenance." [Al-Mulk: 15][35]

وَقَالَ تَعَالَى {فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ} [الملك: ١٥]

L40201 It is not permissible for anyone to prevent a Muslim from walking freely by imprisonment without a legitimate right obligated by the Quran or an established Sunnah.

فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَمْنَعَ مُسْلِمًا مِنْ الْمَشْيِ فِي الْأَرْضِ بِالسَّجْنِ بِغَيْرِ حَقٍّ أَوْجَبَهُ قُرْآنٌ أَوْ سُنَّةٌ ثَابِتَةٌ.

L40202 As for one in whose possession a valid right is confirmed but he denies and withholds it, he is an oppressor whose wrongdoing is certain. It becomes obligatory to strike him continuously until he surrenders what is due, in accordance with the statement of Allah's Messenger - peace be upon him: "Whoever among you witnesses an evil, let him correct it with his own hand if capable," and his directive - peace be upon him - to administer ten lashes or fewer for offenses below the ḥadd punishment, as we shall clarify in the "Chapter on Discretionary Punishments" if Allah wills. This ruling applies only when it is confirmed that the right is in his possession or its whereabouts are known, for the reasons we have mentioned.

وَأَمَّا مَنْ صَحَّ قِبَلَهُ حَقٌّ وَلَوَاهُ وَمَنَعَهُ، فَهُوَ ظَالِمٌ قَدْ تُيُقِّنَ ظُلْمُهُ، فَوَاجِبٌ ضَرْبُهُ أَبَدًا حَتَّى يَخْرُجَ مِمَّا عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» وَلِأَمْرِهِ - عَلَيْهِ السَّلَامُ - بِجَلْدِ عَشَرَةٍ فَأَقَلَّ فِيمَا دُونَ الْحَدِّ عَلَى مَا نَذْكُرُهُ فِي " بَابِ التَّعْزِيرِ " إِنْ شَاءَ اللَّهُ تَعَالَى، وَإِنَّمَا هَذَا فِيمَا صَحَّ أَنَّهُ عِنْدَهُ أَوْ يُعْلَمُ مَكَانُهُ، لِمَا ذَكَرْنَا.

L40203 As for one who is tasked solely with obtaining a confession from another when it is known that he knows the perpetrator, it is impermissible to impose this obligation upon him because this constitutes testimony. Whoever withholds testimony is indeed a sinner, according to the words of Allah the Exalted: "Do not conceal testimony, for whoever conceals it—his heart is sinful" [Al-Baqarah 2:283].[36]

وَأَمَّا مَنْ كُلِّفَ إقْرَارًا عَلَى غَيْرِهِ فَقَطْ - وَقَدْ عُلِمَ أَنَّهُ يَعْلَمُ الْجَانِيَ - فَلَا يَجُوزُ تَكْلِيفُهُ ذَلِكَ، لِأَنَّهَا شَهَادَةٌ، وَمَنْ كَتَمَ الشَّهَادَةَ فَإِنَّهُ فَاسِقٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ} [البقرة: ٢٨٣] .

L40204 When he is a deviant and sinful person, his statement is of no benefit,

[35] **Qur'an references (L40200):** Qur'an 67:15 (Al-Mulk).
[36] **Qur'an references (L40203):** Qur'an 2:283 (Al-Baqarah).

and it is not permissible to accept his testimony at that point. He remains discredited by this forever unless he repents. It is not permissible for anyone to be threatened nor intimidated by being sent to an oppressor who wrongs them—and success is from Allah, the Most High.

فَإِذْ هُوَ فَاسِقٌ آثِمٌ، فَلَا يَنْتَفِعُ بِقَوْلِهِ، لَا يَحِلُّ قَبُولُ شَهَادَتِهِ حِينَئِذٍ، وَهُوَ مُجَرَّحٌ بِذَلِكَ أَبَدًا مَا لَمْ يَتُبْ، فَلَا يَحِلُّ أَنْ يُهَدَّدَ أَحَدٌ، وَلَا أَنْ يُرَوَّعَ بِأَنْ يُبْعَثَ إلَى ظَالِمٍ يَعْتَدِي عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40205–40207 Abū Muḥammad—may Allah have mercy on him—said: There is no disagreement that all of this is forbidden for the *dhimmi* just as it is for the Muslim. If he is beaten until he confesses, there is a narration from some of the *Salaf* concerning this—**as transmitted to us** by ʿAbdullāh ibn Rabīʿ **from** Ibn Mufarrij **from** Qāsim ibn Aṣbagh **from** Ibn Waḍḍāḥ **from** Saḥnūn. Narrated Ibn Wahb from Ibn Abi Dhi'b from Ibn Shihab: Tariq had appointed Tha'lab al-Shami over Medina as his deputy. A man accused of theft was brought before Tha'lab, who continued flogging him until he confessed. He then sent to 'Abdullah ibn 'Umar ibn al-Khattab seeking his legal opinion. Ibn 'Umar said, "Do not cut his hand until the stolen item is produced."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا خِلَافَ فِي أَنَّ كُلَّ هَذَا حَرَامٌ فِي الذِّمِّيِّ كَمَا هُوَ فِي الْمُسْلِمِ، فَإِنْ ضُرِبَ حَتَّى أَقَرَّ، فَقَدْ جَاءَ عَنْ بَعْضِ السَّلَفِ فِي هَذَا: مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ ابْنِ شِهَابٍ: أَنَّ طَارِقًا كَانَ جَعَلَ ثَعْلَبًا الشَّامِيَّ عَلَى الْمَدِينَةِ يَسْتَخْلِفُهُ، فَأُتِيَ بِإِنْسَانٍ اُتُّهِمَ بِسَرِقَةٍ، فَلَمْ يَزَلْ يَجْلِدُهُ حَتَّى اعْتَرَفَ بِالسَّرِقَةِ، فَأَرْسَلَ إلَى عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ فَاسْتَفْتَاهُ؟ فَقَالَ ابْنُ عُمَرَ: لَا تَقْطَعْ يَدَهُ حَتَّى يُبْرِزَهَا.

L40208 Abū Muḥammad—may Allāh have mercy on him—said: If there is nothing but his confession alone, then it holds no weight, for imposing punishment based on a confession of this nature is not established by the Qur'ān, the Sunnah, or consensus. The inviolability of his skin and blood has been confirmed with certainty, so none of that may be lawfully violated except through an explicit textual ruling or consensus. If the confession is supplemented with evidence that establishes with certainty the validity of what he confessed to—and there is no doubt that he is the perpetrator—then it becomes obligatory to execute the ḥadd punishment upon him. Nevertheless, he retains the right to demand retaliation against whoever struck him—whether the ruler or another—because the striker wrongfully struck him without it being obligatory for him to be struck, which constitutes transgression. Allāh the Exalted said: "So whoever transgresses against you, transgress against them in the same measure" [Q. 2:194]. His own wrongdoing and the ḥadd punishment he is obligated to undergo—whether ordained by Allāh or owed to others—do not nullify his rightful claim against others for their injustice toward him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَا إنْ لَمْ يَكُنْ إلَّا إقْرَارُهُ فَقَطْ فَلَيْسَ بِشَيْءٍ، لِأَنَّ أَخْذَهُ بِإِقْرَارِ هَذِهِ صِفَتُهُ لَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَقَدْ صَحَّ تَحْرِيمُ بَشَرَتِهِ وَدَمِهِ بِيَقِينٍ، فَلَا يَحِلُّ شَيْءٌ مِنْ ذَلِكَ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ فَإِنْ اسْتَضَافَ إلَى الْإِقْرَارِ أَمْرٌ يَتَحَقَّقُ بِهِ يَقِينًا صِحَّةُ مَا أَقَرَّ بِهِ - وَلَا يُشَكُّ فِي أَنَّهُ صَاحِبُ ذَلِكَ - فَالْوَاجِبُ إقَامَةُ الْحَدِّ عَلَيْهِ، وَلَهُ الْقَوَدُ - مَعَ ذَلِكَ - عَلَى مَنْ ضَرَبَهُ - السُّلْطَانَ كَانَ أَوْ غَيْرَهُ - لِأَنَّهُ ضَرَبَهُ ظَالِمًا لَهُ دُونَ أَنْ يَجِبَ عَلَيْهِ ضَرْبٌ - وَهُوَ عُدْوَانٌ - وَقَدْ قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ} [البقرة: ١٩٤] الْآيَةَ، وَلَيْسَ ظُلْمُهُ، وَمَا وَجَبَ عَلَيْهِ مِنْ حَدِّ اللَّهِ تَعَالَى، أَوْ لِغَيْرِهِ، بِمُسْقِطِ حَقِّهِ عِنْدَ غَيْرِهِ فِي ظُلْمِهِ لَهُ، بَلْ يُؤْخَذُ مِنْهُ مَا عَلَيْهِ، وَيُعْطِي هُوَ مِنْ غَيْرِهِ.

Rather, what is due from him must be exacted, and he is to be given what is due to him from others.[37]

L40209 Similarly, Mālik and others said regarding the thief who is tested and produces the stolen item itself: Amputation is obligatory upon him if the item is of the type for which it is prescribed, unless he says: "Someone gave it to me, and I am handing it over to him; I only confessed because of the beating I suffered." In that case, he is not to be amputated.

L40210 Abū Muḥammad—may Allāh have mercy on him—said: "This is authentic, and he affirms it."

L40211 As for summoning the accused and implying suspicion without coercive threats that would compel confession, this is commendable and obligatory: "Like when God's Messenger - peace be upon him - sent for the Jewish man accused by the maidservant whose head was crushed. He was brought before him, and he - peace be upon him - persistently questioned him until he confessed, whereupon retaliation was enforced against him."

L40212 And as ʿAlī ibn Abī Ṭālib did when he separated the defendants in the murder case and privately spoke to one of them, then raised his voice by proclaiming *Allāhu Akbar* (the *takbīr*), causing the other to mistakenly believe he had confessed. He then summoned the next one, questioned him, and the latter confessed, until all of them confessed. This is acceptable, as it involved no coercion or physical coercion (ḍarb).

L40213 Mālik disliked this, but there is no justification for his dislike, as it involves no prohibited action. It is an act of a Companion with no known dissent from other Companions who reject it, and it is merely dislike.

L40214–40215 It was narrated to us by Yunus ibn Abdullah: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us, Ahmad ibn Khalid narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Yahya ibn Sa'id al-Qattan narrated to us, from Abu Hayyan Yahya ibn Sa'id al-Taymi, from his father, from al-Harith ibn Suwayd, from Abdullah

[37] **Qur'an references (L40208):** Qur'an 2:194 (Al-Baqarah).

وَهَكَذَا قَالَ مَالِكٌ، وَغَيْرُهُ، فِي السَّارِقِ يُمْتَحَنُ فَيُخْرِجُ السَّرِقَةَ بِعَيْنِهَا: أَنَّ عَلَيْهِ الْقَطْعُ إِذَا كَانَتْ مِمَّا يُقْطَعُ فِيهِ، إِلَّا أَنْ يَقُولَ: دَفَعَهَا إِلَيَّ إِنْسَانٌ أَدْفَعُهَا لَهُ، وَإِنَّمَا اعْتَرَفْتُ لِمَا أَصَابَنِي مِنْ الضَّرْبِ: فَلَا يُقْطَعُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا صَحِيحٌ، وَبِهِ يَقُولُ.

وَأَمَّا الْبَعْثَةُ فِي الْمُتَّهَمِ وَإِيهَامُهُ دُونَ تَهْدِيدٍ مَا يُوجِبُ عَلَيْهِ الْإِقْرَارَ فَحَسَنٌ وَاجِبٌ: «كَبَعْثِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَلْفَ الْيَهُودِيِّ - الَّذِي ادَّعَتْ الْجَارِيَةُ الَّتِي رَضَّ رَأْسَهَا - فَسِيقَ إلَيْهِ فَلَمْ يَزَلْ بِهِ - عَلَيْهِ السَّلَامُ - حَتَّى اعْتَرَفَ فَأَقَادَ مِنْهُ» .

وَكَمَا فَعَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ إذْ فَرَّقَ بَيْنَ الْمُدَّعَى عَلَيْهِمْ الْقَتْلُ وَأَسَرَّ إلَى أَحَدِهِمْ، ثُمَّ رَفَعَ صَوْتَهُ بِالتَّكْبِيرِ فَوَهِمَ الْآخَرُ أَنَّهُ قَدْ أَقَرَّ، ثُمَّ دَعَا بِالْآخَرِ فَسَأَلَهُ فَأَقَرَّ، حَتَّى أَقَرُّوا كُلُّهُمْ: فَهَذَا حَسَنٌ، لِأَنَّهُ لَا إكْرَاهَ فِيهِ، وَلَا ضَرْبَ.

وَقَدْ كَرِهَ هَذَا مَالِكٌ، وَلَا وَجْهَ لِكَرَاهِيَتِهِ، لِأَنَّهُ لَيْسَ فِيهِ عَمَلٌ مَحْظُورٌ، وَهُوَ فِعْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ يُنْكِرُ ذَلِكَ، وَإِنَّمَا الْكُرْهُ.

مَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا أَبُو حَيَّانَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ عَنْ أَبِيهِ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ: مَا مِنْ كَلَامٍ يَدْرَأُ عَنِّي سَوْطًا أَوْ سَوْطَيْنِ عِنْدَ سُلْطَانٍ إلَّا تَكَلَّمْت بِهِ.

ibn Mas'ud, who said: "There is no speech that can ward off from me a whip or two from a ruler except that which I have already spoken."

L40216 It is reported from Shurayḥ that he said: Imprisonment is discouraged, threatening is discouraged, shackling is discouraged, and beating is discouraged.

L40217 Abū Muḥammad—may Allāh have mercy on him—said: Every act that causes harm to a body or property, or by which a person is threatened concerning his son, father, family, or his Muslim brother, is considered makrūh. This is based on the statement of the Messenger of Allāh—peace and blessings be upon him: "A Muslim is the brother of another Muslim; he does not wrong him nor forsake him."

L40218 And due to what was transmitted to us via the chain in Al-Bukhārī: narrated by Musaddad, narrated by Yaḥyā—Ibn Saʿīd Al-Qaṭṭān—from Shuʿbah, from Qatādah, from Anas, from the Prophet (peace be upon him), who said: "None of you has true faith until he loves for his brother what he loves for himself."[38]

L40219 The issue of the testimony pertaining to the ḥudūd.

L40220 2178 - Issue: Testimony concerning prescribed punishments? Ali said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us from Sufyān al-Thawrī from ʿAlī ibn Kulayb from his father that ʿAlī ibn Abī Ṭālib used to order the witnesses - when they testified against a thief - to amputate him themselves as those entrusted with the matter. Abū Muḥammad (may Allah have mercy on him) said: This is not obligatory, for neither the Qur'ān nor an established Sunnah from the Messenger of Allah (peace and blessings be upon him) mandates it. However, obedience to the Imam or his leader is obligatory. Thus, if the Imam or his leader orders the witnesses or others to

[38] **Hadith references (L40218):** Sahih al-Bukhari 13; Jami at-Tirmidhi 2515; Sunan an-Nasai 5017.

وَعَنْ شُرَيْحٍ أَنَّهُ قَالَ: السِّجْنُ كَرْهٌ، وَالْوَعِيدُ كَرْهٌ، وَالْقَيْدُ كَرْهٌ، وَالضَّرْبُ كَرْهٌ.

وَقَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: كُلُّ مَا كَانَ ضَرَرًا فِي جِسْمٍ، أَوْ مَالٍ، أَوْ تُوُعِّدَ بِهِ الْمَرْءُ فِي ابْنِهِ، أَوْ أَبِيهِ، أَوْ أَهْلِهِ، أَوْ أَخِيهِ الْمُسْلِمِ، فَهُوَ كَرْهٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

وَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يُؤْمِنُ أَحَدُكُمْ حَتَّى يُحِبَّ لِأَخِيهِ مَا يُحِبُّ لِنَفْسِهِ» .

[مَسْأَلَةُ الشَّهَادَةُ عَلَى الْحُدُودِ]

٢١٧٨ - مَسْأَلَةٌ: الشَّهَادَةُ عَلَى الْحُدُودِ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ ثنا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَلِيِّ بْنِ كُلَيْبٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَأْمُرُ بِالشُّهُودِ إذَا شَهِدُوا عَلَى السَّارِقِ أَنْ يَقْطَعُوهُ يَلُونَ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ هَذَا بِوَاجِبٍ، لِأَنَّهُ لَا يُوجِبُهُ قُرْآنٌ، وَلَا سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ، لَكِنْ طَاعَةُ الْإِمَامِ أَوْ أَمِيرِهِ وَاجِبَةٌ، فَإِذَا أَمَرَ الْإِمَامُ أَوْ أَمِيرُهُ الشُّهُودَ، أَوْ غَيْرَهُمْ أَنْ يَقْطَعَهُ لَزِمَتْهُمْ الطَّاعَةُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

amputate him, obedience becomes obligatory upon them. And success is by Allah, the Exalted.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ فِي رَجُلَيْنِ شَهِدَا عَلَى ثَلَاثَةٍ أَنَّهُمْ سَرَقُوا، قَالَ: يُقْطَعُونَ.

L40221 And through him—up to Waki‘—from Isra’il, from Jabir al-Ju‘fi, from al-Sha‘bi: Regarding two men who testified against three individuals that they had stolen, he said: They are to be cut off.

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَكَذَا نَقُولُ - وَلَوْ شَهِدَ عَدْلَانِ عَلَى أَلْفِ رَجُلٍ، أَوْ أَكْثَرَ، بِقَتْلٍ، أَوْ بِسَرِقَةٍ، أَوْ بِحِرَابَةٍ، أَوْ بِشُرْبِ خَمْرٍ، أَوْ بِقَذْفٍ: لَوَجَبَ الْقَوَدُ، وَالْقَطْعُ، وَالْحَدُّ - فِي كُلِّ ذَلِكَ عَلَى جَمِيعِهِمْ بِشَهَادَةِ الشَّاهِدَيْنِ - وَلَا فَرْقَ بَيْنَ شَهَادَتِهِمَا عَلَيْهِمْ مُجْتَمَعِينَ، وَبَيْنَ شَهَادَتِهِمَا عَلَى كُلِّ وَاحِدٍ مِنْهُمْ عَلَى انْفِرَادِهِ.

L40222 Ali, may Allah have mercy on him, said: “This is our position: even if two just witnesses testify against a thousand men—or more—for murder, theft, highway robbery, drinking alcohol, or qadhf, then retaliation, amputation, and the prescribed ḥadd penalties would be obligatory—each according to its respective crime—upon all of them based on the testimony of the two witnesses. There is no distinction between their testimony against the group collectively and their testimony against each individual separately.”

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ عَدْلَيْنِ شَهِدَا عَلَى عُدُولٍ بِشَيْءٍ مِمَّا ذَكَرْنَا وَقَالَ الْمَشْهُودُ عَلَيْهِمْ: نَشْهَدُ عَلَيْهِمْ بِكَذَا وَكَذَا، مِثْلَ مَا شَهِدَ بِهِ الشَّاهِدَانِ عَلَيْهِمْ أَوْ شَيْئًا آخَرَ؟ لَمْ يُلْتَفَتْ إلَى شَهَادَةِ الْمَشْهُودِ عَلَيْهِمْ أَصْلًا - وَوَجَبَ إنْفَاذُ الْحُدُودِ وَالْحُقُوقِ عَلَيْهِمْ بِشَهَادَةِ السَّابِقَيْنِ إلَى الشَّهَادَةِ.

L40223–40224 Abū Muḥammad—may Allah have mercy on him—said: If two just witnesses were to testify against other just witnesses regarding any of the matters we have mentioned, and those against whom testimony was given were to say, “We testify against them with such-and-such”—whether identical to what the two witnesses testified against them or something else—their testimony would not be considered at all. The Ḥudūd, the prescribed penalties, and rights must instead be enforced against them based on the testimony of the two who testified first.

بُرْهَانُ ذَلِكَ: أَنَّ الْمَشْهُودَ عَلَيْهِمْ بِمَا ذَكَرْنَا قَدْ بَطَلَتْ عَدَالَتُهُمْ، وَصَحَّتْ جَرْحَتُهُمْ بِشَهَادَةِ الْعَدْلَيْنِ عَلَيْهِمْ بِمَا شَهِدَا بِهِ، مِمَّا يُوجِبُ الْحَدَّ، فَإِنَّ مَنْ ثَبَتَ عَلَيْهِ مَا يُوجِبُ الْحَدَّ، أَوْ بَعْضُ الْمَعَاصِي الَّتِي لَا تُوجِبُ حَدًّا، كَالْغَصْبِ، وَغَيْرِهِ: فَهُوَ مُجَرَّحٌ فَاسِقٌ بِيَقِينٍ، وَلَا شَهَادَةَ لِمُجَرَّحٍ فَاسِقٍ أَصْلًا.

L40225 The proof of this is that those against whom testimony has been established regarding what we mentioned have had their integrity invalidated and their discrediting confirmed by the testimony of two upright witnesses against them concerning acts that warrant the prescribed punishment. For whoever is confirmed to have committed an act requiring the prescribed punishment, or some transgressions that do not necessitate it—such as usurpation of property and other [transgressions]—is definitively discredited and a transgressor, and no testimony whatsoever is accepted from a discredited transgressor under any circumstance.

L40226 If those against whom testimony is given had their repentance validated after their actions, it would necessitate the restoration of their integrity. In that

فَلَوْ أَنَّ الْمَشْهُودَ عَلَيْهِمْ صَحَّتْ تَوْبَتُهُمْ بَعْدَ مَا كَانَ مِنْهُمْ: وَجَبَ بِذَلِكَ أَنْ تَعُودَ عَدَالَتُهُمْ، فَإِذَا كَانَ ذَلِكَ كَذَلِكَ، فَإِنَّ الشَّهَادَتَيْنِ مَعًا مَقْبُولَتَانِ، وَيَنْفُذُ عَلَى كِلَا الطَّائِفَتَيْنِ شَهِدَتْ بِهِ عَلَيْهَا الْأُخْرَى، إِلَّا أَنَّ كِلْتَا الشَّهَادَتَيْنِ شَهَادَةٌ وَاجِبَةٌ قَبُولُهَا بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، فِي أَمْرِهِ تَعَالَى بِالْحُكْمِ بِشَهَادَةِ الْعُدُولِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40227 If both groups testify against each other simultaneously—with neither testimony preceding the other—whether before two judges or in two cases before a single judge, they are also two valid and established testimonies. For indeed, both testimonies are invalidated with certainty beyond doubt, as neither holds greater merit for acceptance than the other. Were we to accept both, we would be consistently implementing rulings based on testimony from transgressors, since each testimony necessitates the transgression and disqualification of the other, and prevents the acceptance of the opposing testimony.

فَإِنْ شَهِدَتْ كِلْتَا الطَّائِفَتَيْنِ عَلَى الْأُخْرَى مَعًا لَمْ تَسْبِقْ إِحْدَى الشَّهَادَتَيْنِ الْأُخْرَى: إِمَّا عِنْدَ حَاكِمَيْنِ، وَإِمَّا فِي عَقْدَيْنِ عِنْدَ حَاكِمٍ وَاحِدٍ، فَهُمَا أَيْضًا شَهَادَتَانِ قَائِمَتَانِ صَحِيحَتَانِ، فَإِنَّ كِلْتَا الشَّهَادَتَيْنِ تَبْطُلُ بِيَقِينٍ لَا شَكَّ فِيهِ، لِأَنَّهُ لَيْسَتْ إِحْدَاهُمَا بِأَوْلَى بِالْقَبُولِ مِنْ الْأُخْرَى، فَلَوْ قَبِلْنَاهُمَا مَعًا، لَكُنَّا قَدْ صِرْنَا مُوقِنِينَ بِأَنَّنَا نُنَفِّذُ الشَّهَادَةَ الْآنَ دَأْبًا حُكْمًا بِشَهَادَةِ فُسَّاقٍ، لِأَنَّ كُلَّ شَهَادَةٍ مِنْهُمَا تُوجِبُ الْفِسْقَ وَالْجُرْحَةَ عَلَى الْأُخْرَى، وَالْمَنْعَ مِنْ قَبُولِ الشَّهَادَةِ الْأُخْرَى.

L40228 If we were to rule by arbitrarily alternating between the two testimonies, this would constitute the very essence of injustice and tyranny, since neither a scriptural text nor consensus mandates favoring one over the other. Whoever seeks to prefer a testimony here based on it being the more just of the two evidences or the greater in number holds an erroneous opinion, for Allah the Exalted has never ordained anything of this sort, nor has His Messenger (peace be upon him), nor has there been a consensus (Ijma) of the *Ummah* on it. Ruling in such a manner is not permissible.

وَلَوْ حَكَمْنَا بِإِحْدَى الشَّهَادَتَيْنِ عَلَى الْأُخْرَى مُطَارَفَةً لَكَانَ هَذَا عَيْنُ الظُّلْمِ وَالْجَوْرِ، إِذْ لَمْ يُوجِبْ تَرْجِيحَ إِحْدَاهُمَا عَلَى الْأُخْرَى نَصٌّ وَلَا إِجْمَاعٌ، وَمَنْ أَرَادَ أَنْ يُرَجِّحَ الشَّهَادَةَ هَاهُنَا بِأَعْدَلِ الْبَيِّنَتَيْنِ، أَوْ بِأَكْثَرِهِمَا عَدَدًا: فَهُوَ خَطَأٌ مِنْ الْقَوْلِ، لِأَنَّهُ لَمْ يُوجِبْ اللَّهُ تَعَالَى قَطُّ شَيْئًا مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَجْمَعَتْ الْأُمَّةُ عَلَيْهِ، وَالْحُكْمُ بِمِثْلِ هَذَا لَا يَجُوزُ.

The Issue of Testimony in Hadd Punishment After a Time

L40229

[مَسْأَلَةُ الشَّهَادَةِ فِي الْحَدِّ بَعْدَ حِينٍ]

L40230–40232 2179 - Issue: Regarding one who testifies in a ḥadd [punishment] after some time has passed. Abu Muhammad—may Allah have mercy on him—said: Narrated to us by Muhammad ibn Sa'id ibn Nubat, narrated to us by 'Abdullah ibn Nasr, narrated to us by... Qāsim ibn Aṣbagh reported to us from

٢١٧٩ - مَسْأَلَةٌ: مَنْ شَهِدَ فِي حَدٍّ بَعْدَ حِينٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ ثَنَا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ

Ibn Waḍḍāḥ, who reported to us from Mūsā ibn Muʿāwiyah, who reported to us from Wakīʿ, who reported to us from Misʿar ibn Kidām from Abū ʿAwn—he is Muḥammad ibn ʿAbdullāh al-Thaqafī—that ʿUmar ibn al-Khaṭṭāb said: "Whoever testifies against a man regarding a ḥadd punishment which he did not witness when it was committed, he testifies solely out of rancor."

ثنا وَكِيعٌ نا مِسْعَرُ بْنُ كِدَامٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ - قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَنْ شَهِدَ عَلَى رَجُلٍ بِحَدٍّ لَمْ يَشْهَدْ بِهِ حِينَ أَصَابَهُ، فَإِنَّمَا يَشْهَدُ عَلَى ضَغَنٍ.

L40233 From Ali, from Abdullah ibn Rabīʿ, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb, who said: It reached me from Rabīʿah that he ruled concerning a man who committed fornication in his youth - a group of upright people having become aware of it without reporting his case. He lived with this [unreported guilt] for years while his condition improved, then quarreled with a man who accused him of the act, producing clear evidence for it, whereupon he confessed. He is to be stoned, for neither the length of time nor the offender's subsequent display of respectable conduct nullifies the prescribed punishment incumbent upon his family. Ibn Wahb said: By "his youth" he meant his foolishness after reaching puberty.

قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: بَلَغَنِي عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي رَجُلٍ زَنَى فِي صِبَاهُ وَاطَّلَعَ عَلَى ذَلِكَ رَهْطٌ عُدُولٌ، فَلَمْ يَرْفَعُوا أَمْرَهُ، وَلَبِثَ بِذَلِكَ سِنِينَ، وَحَسُنَتْ حَالَتُهُ، ثُمَّ نَازَعَ رَجُلًا فَرَمَاهُ بِذَلِكَ، وَأَتَى عَلَى ذَلِكَ بِالْبَيِّنَةِ وَاعْتَرَفَ، فَإِنَّهُ يُرْجَمُ، لَا يَضَعُ الْحَدَّ عَنْ أَهْلِهِ طُولُ زَمَانٍ، وَلَا أَنْ يُحْدِثُ صَاحِبُ ذَلِكَ حُسْنَ هَيْئَةٍ - قَالَ ابْنُ وَهْبٍ: يُرِيدُ بِصِبَاهُ: سَفَهَهُ بَعْدَ الِاحْتِلَامِ.

L40234 Abu Muhammad—may Allah have mercy on him—said: Abu Hanifa and his companions said: If four upright, free, Muslim witnesses testify to adultery after a period of time, then no prescribed punishment is to be imposed upon him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إنْ شَهِدَ أَرْبَعَةٌ عُدُولٌ أَحْرَارٌ مُسْلِمُونَ بِالزِّنَى بَعْدَ مُدَّةٍ فَلَا حَدَّ عَلَيْهِ.

L40235 Abū Yūsuf said: The measure of the mentioned term is one month.

قَالَ أَبُو يُوسُفَ: مِقْدَارُ الْمُدَّةِ الْمَذْكُورَةِ شَهْرٌ وَاحِدٌ.

L40236 They said: If two upright, Muslim, and free men testify against him for theft after a period of time, there is no ḥadd punishment of amputation for him, but he must compensate for the property they testified he stole.

وَقَالُوا: إنْ شَهِدَ عَلَيْهِ عَدْلَانِ مُسْلِمَانِ حُرَّانِ بِسَرِقَةٍ بَعْدَ مُدَّةٍ فَلَا قَطْعَ عَلَيْهِ، لَكِنْ يَضْمَنُ مَا شَهِدَ عَلَيْهِ بِأَنَّهُ سَرَقَهُ.

L40237 If two witnesses testify against him for drinking wine, and the testimony occurs while the odor of wine is detectable from him or while he is intoxicated, the hadd punishment is enforced against him. However, if that testimony is given after the odor or intoxication has dissipated, no hadd punishment is imposed—unless they transported him to the Imam in another town and the odor or intoxication subsided en route, in which case the hadd punishment is implemented.

وَلَوْ شَهِدَا عَلَيْهِ بِشُرْبِ خَمْرٍ، فَإِنْ كَانَتْ الشَّهَادَةُ وَرِيحُ الْخَمْرِ تُوجَدُ مِنْهُ، أَوْ وَهُوَ سَكْرَانُ -: أُقِيمَ عَلَيْهِ الْحَدُّ - وَإِنْ كَانَتْ تِلْكَ الشَّهَادَةُ بَعْدَ ذَهَابِ الرِّيحِ أَوْ السُّكْرِ، فَلَا حَدَّ عَلَيْهِ إلَّا أَنْ يَكُونُوا حَمَلُوهُ إلَى الْإِمَامِ فِي مِصْرٍ آخَرَ، فَزَالَ الرِّيحُ أَوْ السُّكْرُ فِي الطَّرِيقِ: فَإِنَّهُ يُحَدُّ.

وَلَوْ شَهِدَ عَلَيْهِ بَعْدَ مُدَّةٍ طَوِيلَةٍ بِقَذْفٍ أَوْ جِرَاحَةٍ حُدَّ لِلْقَذْفِ، وَوَجَبَ عَلَيْهِ حُكْمُ تِلْكَ الْجِرَاحَةِ.

L40238 If, after a lengthy period, someone testified against him by accusing him of qadhf or injury, the hadd punishment for qadhf is imposed on the testifier, and the legal ruling pertaining to that injury becomes obligatory upon the testifier.

وَقَالَ الشَّافِعِيُّ، وَأَصْحَابُهُ، وَأَصْحَابُنَا: يُقَامُ عَلَيْهِ الْحَدُّ فِي كُلِّ ذَلِكَ.

L40239 Al-Shāfiʿī, his followers, and our companions held that the ḥadd is imposed in all such cases.

وَقَالَ الْأَوْزَاعِيِّ، وَاللَّيْثُ، وَالْحَسَنُ بْنُ حَيٍّ مِثْلَ ذَلِكَ.

L40240 According to Al-Awzaʿī, Al-Layth, and Al-Ḥasan ibn Ḥayyin, the same opinion was expressed.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِذْ قَدْ بَلَغَنَا هَاهُنَا فَلْنَتَكَلَّمْ - بِعَوْنِ اللَّهِ تَعَالَى - فِي حُكْمِ مَنْ اطَّلَعَ عَلَى حَدٍّ، أَهُوَ فِي حَرَجٍ إنْ كَتَمَ الشَّهَادَةَ أَمْ فِي سَعَةٍ مِنْ ذَلِكَ؟

L40241 Abu Muhammad—may God have mercy on him—said: Now that we have reached this point, let us discuss—with the help of God Almighty—the ruling regarding one who becomes aware of a hadd: is he under constraint if he conceals testimony, or is he in a state of leniency regarding that?

فَنَقُولُ: قَالَ اللَّهُ تَعَالَى {وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ} [الطلاق: ٢]

L40242–40243 So we say: Allah, the Most High, said: "Establish the testimony for Allah" [Surah At-Talaq (65:2)].[39]

وَقَالَ تَعَالَى {وَمَنْ أَظْلَمُ مِمَّنْ كَتَمَ شَهَادَةً عِنْدَهُ مِنَ اللَّهِ} [البقرة: ١٤٠] .

L40244 And He, the Exalted, said: *"And who is more unjust than one who conceals a testimony from Allah that is with him?"* [Al-Baqarah: 140].[40]

وَقَالَ تَعَالَى {وَلا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ} [البقرة: ٢٨٣] .

L40245 And He, the Exalted, said, "Do not conceal testimony, and whoever conceals it, then indeed he is sinful in heart." [Al-Baqarah 2:283][41]

وَقَالَ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

L40246 And He, the Exalted, said: 'Let not the witnesses refuse when they are called' [Al-Baqarah: 282].[42]

وَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ وَمَنْ كَانَ فِي حَاجَةِ أَخِيهِ كَانَ اللَّهُ فِي حَاجَتِهِ، وَمَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَةً فَرَّجَ اللَّهُ بِهَا عَنْهُ كُرْبَةً مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ، وَمَنْ سَتَرَ مُسْلِمًا سَتَرَهُ اللَّهُ يَوْمَ الْقِيَامَةِ» .

L40247 We found what was narrated through the path of Muslim: Qutaybah ibn Saʿid narrated to us, Layth—that is, Ibn Saʿd—narrated to us from ʿUqayl from al-Zuhri from Salim ibn ʿAbdullah ibn ʿUmar from his father that the Messenger of Allah—peace be upon him and his family—said: "A Muslim is the brother of a Muslim; he does not wrong him, nor forsake him. Whoever strives to fulfill his brother's need, Allah will attend to his need. Whoever relieves a Muslim of a hardship, Allah will relieve him through it of a hardship

[39] **Qur'an references (L40243):** Qur'an 65:2 (At-Talaq).
[40] **Qur'an references (L40244):** Qur'an 2:140 (Al-Baqarah).
[41] **Qur'an references (L40245):** Qur'an 2:283 (Al-Baqarah).
[42] **Qur'an references (L40246):** Qur'an 2:282 (Al-Baqarah).

from the hardships of the Day of Resurrection. And whoever conceals the faults of a Muslim, Allah will conceal him on the Day of Resurrection."[43]

L40248 Abū Muḥammad—may Allah have mercy on him—said: It is therefore obligatory to apply all these texts. We examined the matter and found that reconciling them—a task impermissible for anyone else—cannot occur except through one of two approaches: either the general scope of the aforementioned verses is specified by the report mentioned above, or the general scope of the report is specified by the verses. No other possibility exists, and one of these two approaches is necessary. If we specify the general scope of the verses with the report, the ruling would be that fulfilling all testimonies and proclaiming them is obligatory, except what pertains to concealing a Muslim in a ḥadd punishment, in which case concealment is more virtuous. If we specify the general scope of the report with the verses, the ruling would be that concealing a Muslim is commendable, except for fulfilling testimonies, which remains obligatory.

L40249 So we considered: that is, these two actions – the one upon which proof is established as valid – is to be adopted. For it is impermissible to adopt either of them exclusively over the other, nor is it permissible to combine them altogether. Rather, the truth lies in one of them without doubt.

L40250 So we examined this matter—with the assistance of Allah the Exalted—and concluded that concealing the faults of a Muslim, as urged in the ḥadīth, must be one of two aspects with no third option: either protecting him and concealing his wrongdoing when he commits an injustice he seeks through, in which case this becomes an obligatory duty—not merely recommended—like prayer and zakah.

L40251–40252 Or it may involve a sin a Muslim commits privately against his Lord, the Exalted. None of the scholars of Islam have deemed it permissible to conceal a Muslim's wrongdoing that harms another Muslim—such as one who seizes a Muslim's property through armed robbery and someone becomes aware

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ اسْتِعْمَالُ هَذِهِ النُّصُوصِ كُلِّهَا، فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا الْعَمَلَ فِي جَمْعِهَا - الَّذِي لَا يَحِلُّ لِأَحَدٍ غَيْرِهِ - لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يُخَصَّ عُمُومُ الْآيَاتِ الْمَذْكُورَةِ بِالْخَبَرِ الْمَذْكُورِ، وَإِمَّا أَنْ يُخَصَّ عُمُومُ الْخَبَرِ الْمَذْكُورِ بِالْآيَاتِ الْمَذْكُورَاتِ، إذْ لَا يُمْكِنُ أَلْبَتَّةَ غَيْرُ هَذَا وَلَا بُدَّ مِنْ أَحَدِ الْعَمَلَيْنِ، فَإِنْ خَصَّصْنَا عُمُومَ الْآيَاتِ بِالْخَبَرِ كَانَ الْقَوْلُ فِي ذَلِكَ أَنَّ الْقِيَامَ بِالشَّهَادَاتِ كُلِّهَا، وَالْإِعْلَانِ بِهَا فَرْضٌ، إلَّا مَا كَانَ مِنْهَا سَتْرُ الْمُسْلِمِ فِي حَدٍّ مِنْ الْحُدُودِ، فَالْأَفْضَلُ السَّتْرُ، وَإِنْ خَصَّصْنَا عُمُومَ الْخَبَرِ بِالْآيَاتِ كَانَ الْقَوْلُ فِي ذَلِكَ أَنَّ السَّتْرَ عَلَى الْمُسْلِمِ حَسَنٌ، إلَّا مَا كَانَ مِنْ أَدَاءِ الشَّهَادَاتِ فَإِنَّهُ وَاجِبٌ.

فَنَظَرْنَا: أَيْ هَذَيْنِ الْعَمَلَيْنِ هُوَ الَّذِي يَقُومُ الْبُرْهَانُ عَلَى صِحَّتِهِ فَيُؤْخَذُ بِهِ، إذْ لَا يَحِلُّ أَخْذُ أَحَدِهِمَا مُطَارَفَةً دُونَ الْآخَرِ، وَلَا يَجُوزُ أَنْ يَكُونَا جَمْعًا جَمِيعًا، بَلْ الْحَقُّ فِي أَحَدِهِمَا بِلَا شَكٍّ.

فَنَظَرْنَا فِي ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَا السَّتْرَ عَلَى الْمُسْلِمِ الَّذِي نُدِبْنَا إلَيْهِ فِي الْحَدِيثِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا يَسْتُرُهُ وَيَسْتُرُ عَلَيْهِ فِي ظُلْمٍ يَطْلُبُ بِهِ الْمُسْلِمُ، فَهَذَا فَرْضٌ وَاجِبٌ، وَلَيْسَ هَذَا مَنْدُوبًا إلَيْهِ، بَلْ هُوَ كَالصَّلَاةِ وَالزَّكَاةِ.

وَإِمَّا أَنْ يَكُونَ فِي الذَّنْبِ يُصِيبُهُ الْمُسْلِمُ مَا بَيْنَهُ وَبَيْنَ رَبِّهِ تَعَالَى، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ بِإِبَاحَةِ السَّتْرِ عَلَى مُسْلِمٍ فِي ظُلْمٍ ظَلَمَ بِهِ مُسْلِمًا، كَمَنْ أَخَذَ مَالَ مُسْلِمٍ بِحِرَابَةٍ وَاطَّلَعَ عَلَيْهِ إنْسَانٌ، أَوْ غَصَبَهُ امْرَأَتَهُ، أَوْ سَرَقَ حُرًّا، وَمَا أَشْبَهَهُ، فَهَذَا فَرْضٌ عَلَى كُلِّ

[43] **Hadith references (L40247):** Sahih al-Bukhari 6951.

of it, or who usurps his wife, or steals a free person, or similar acts. In such cases, it is incumbent upon every Muslim to act until injustices are returned to their rightful owners. We analyzed the mentioned hadith and determined it signifies an encouragement, not a compulsion, and a virtue, not an obligation. The apparent meaning indicates that a person may conceal a Muslim's sin involving a ḥadd offense witnessed by him, according to this textual report, provided he is not asked about that specific testimony. If he is asked, he is compelled to testify and must not conceal it. If he withholds it then, he is disobeying God, the Exalted.

L40253 This validates the agreement between the prophetic report and the verses, establishing that upholding testimony as due to Allah the Exalted, the prohibition of concealing it, and a person being a wrongdoer thereby apply only if summoned, not otherwise, as Allah the Exalted has said: "And let not the witnesses refuse when they are called" [Al-Baqarah: 282].[44]

L40254 Then we examined the aforementioned report from the Messenger of Allah—may Allah bless him and his family and grant him peace—which was narrated to us by Ḥammām, who narrated from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Ibrāhīm ibn Muḥammad, who narrated from Yaḥyā ibn Yaʿmar, who narrated from Ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, who narrated from his father, who narrated from ʿAbdullāh ibn ʿAmr ibn ʿUthmān, who narrated from Abū ʿAmrah al-Anṣārī—ʿAbd al-Raḥmān ibn Zayd ibn Khālid—that the Messenger of Allah—may Allah bless him and his family and grant him peace—said: "Shall I inform you of the best witnesses? It is one who comes forth with testimony before being asked, or who volunteers his testimony without being summoned."

L40255–40257 Abū Muḥammad—may Allāh have mercy on him—said: This constitutes a general ruling applicable to all testimonies, whether involving prescribed punishments or other matters. We found Allāh's statement: "O you who believe, be upholders of justice as witnesses for Allāh, even if against yourselves, your parents, or close relatives" (4:135). Allāh the Exalted equates the obligation for a person to give testimony against themselves, their par-

مُسْلِمٍ أَنْ يَقُومَ بِهِ حَتَّى يَرُدَّ الظُّلَامَاتِ إِلَى أَهْلِهَا؟ فَنَظَرْنَا فِي الْحَدِيثِ الْمَذْكُورِ فَوَجَدْنَاهُ نَدْبًا لَا حَتْمًا، وَفَضِيلَةً لَا فَرْضًا، فَكَانَ الظَّاهِرُ مِنْهُ أَنَّ لِلْإِنْسَانِ أَنْ يَسْتُرَ عَلَى الْمُسْلِمِ يَرَاهُ عَلَى حَدٍّ بِهَذَا الْخَبَرِ، مَا لَمْ يُسْأَلْ عَنْ تِلْكَ الشَّهَادَةِ نَفْسِهَا، فَإِنْ سُئِلَ عَنْهَا فَفَرْضٌ عَلَيْهِ إِقَامَتُهَا وَأَنْ لَا يَكْتُمَهَا، فَإِنْ كَتَمَهَا حِينَئِذٍ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى.

وَصَحَّ بِهَذَا اتِّفَاقُ الْخَبَرِ مَعَ الْآيَاتِ، وَأَنَّ إِقَامَةَ الشَّهَادَةِ لِلَّهِ تَعَالَى، وَتَحْرِيمَ كِتْمَانِهَا، وَكَوْنَ الْمَرْءِ ظَالِمًا بِذَلِكَ، فَإِنَّمَا هُوَ إِذَا دُعِيَ فَقَطْ، لَا إِذَا لَمْ يُدْعَ، كَمَا قَالَ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] .

ثُمَّ نَظَرْنَا فِي الْخَبَرِ الْمَذْكُورِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي حَدَّثَنَاهُ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ نا يَحْيَى بْنُ يَعْمُرَ نا ابْنُ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ عُثْمَانَ عَنْ أَبِي عَمْرَةَ الْأَنْصَارِيِّ - هُوَ عَبْدُ الرَّحْمَنِ بْنِ زَيْدِ بْنِ خَالِدٍ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «أَلَا أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ؟ الَّذِي يَأْتِي بِالشَّهَادَةِ قَبْلَ أَنْ يُسْأَلَهَا، أَوْ يُخْبِرُ بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا»

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَ هَذَا عُمُومًا فِي كُلِّ شَهَادَةٍ فِي حَدٍّ أَوْ غَيْرِ حَدٍّ، وَوَجَدْنَا قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَسَوَّى اللَّهُ تَعَالَى بَيْنَ وُجُوبِ أَدَاءِ الْمَرْءِ الشَّهَادَةَ عَلَى نَفْسِهِ، وَعَلَى وَالِدَيْهِ، وَأَقَارِبِهِ، وَالْأَبَاعِدِ، فَوَجَبَ مِنْ هَذِهِ النُّصُوصِ

[44] **Qur'an references (L40253):** Qur'an 2:282 (Al-Baqarah).

ents, relatives, and strangers. These textual proofs necessitate that no blame attaches to a person for withholding testimony when not asked—whether regarding a prescribed punishment or other matter. But when asked, testifying becomes obligatory upon them—be it for a prescribed punishment or otherwise. Moreover, if someone holds testimony for another person who is unaware of it, he must inform him, based on the Messenger of Allāh's—peace and blessings be upon him—statement: "Religion is sincere counsel." It was said: "To whom, O Messenger of Allāh?" He replied: "To Allāh, His Book, the leaders of Muslims, and their common folk." If the person for whom the testimony is given requests its performance, the witness becomes religiously obligated to comply, by virtue of Allāh's statement: "Let not the witnesses refuse when they are summoned" (2:282). And if he is not asked, he is not obligated to fulfill it—and success is from Allah, the Exalted.[45]

أَنَّ الشَّهَادَةَ لَا حَرَجَ عَلَى الْمَرْءِ فِي تَرْكِ أَدَائِهَا مَا لَمْ يُسْأَلْهَا - حَدًّا كَانَ أَوْ غَيْرَهُ - فَإِذَا سُئِلَهَا فَفَرْضٌ عَلَيْهِ أَدَاؤُهَا - حَدًّا أَوْ غَيْرَهُ وَأَنَّ مَنْ كَانَ لِإِنْسَانٍ عِنْدَهُ شَهَادَةٌ، وَالْمَشْهُودُ لَهُ لَا يَدْرِي بِهَا -: فَفَرْضٌ عَلَيْهِ إعْلَامُهُ بِهَا، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الدِّينُ النَّصِيحَةُ قِيلَ: لِمَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: لِلَّهِ وَلِكِتَابِهِ، وَلِأَئِمَّةِ الْمُسْلِمِينَ، وَعَامَّتِهِمْ» فَإِنْ سَأَلَهُ الْمَشْهُودُ أَدَاءَهَا لَزِمَهُ ذَلِكَ فَرْضًا، لِمَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ اللَّهِ تَعَالَى {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢] وَإِنْ لَمْ يُسْأَلْ لَمْ يَلْزَمْهُ أَنْ يُؤَدِّيَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40258 As for one who possesses testimony against a person accused of adultery, if another individual accuses that alleged adulterer—thereby rendering the accuser liable to the ḥadd punishment for false accusation—it is an absolute obligation upon the witness testifying regarding the accused adulterer to present their testimony. This obligation applies whether they are asked to testify or not, and regardless of the accuser's awareness of their testimony. Failure to testify at that time constitutes disobedience to Allah Almighty, in accordance with His statement: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah: 2].[46]

وَأَمَّا مَنْ كَانَتْ عِنْدَهُ شَهَادَةٌ عَلَى إنْسَانٍ بِزِنًى، فَقَذَفَ ذَلِكَ الزَّانِي إنْسَانٌ فَوَقَفَ الْقَاذِفُ عَلَى أَنْ يُحَدَّ لِلْمَقْذُوفِ، فَفَرْضٌ عَلَى الشَّاهِدِ عَلَى الْمَقْذُوفِ الزَّانِي أَنْ يُؤَدِّيَ الشَّهَادَةَ وَلَا بُدَّ، سُئِلَهَا أَوْ لَمْ يُسْأَلْهَا - عَلِمَ الْقَاذِفُ بِذَلِكَ أَوْ لَمْ يَعْلَمْ - وَهُوَ عَاصٍ لِلَّهِ تَعَالَى إنْ لَمْ يُؤَدِّهَا حِينَئِذٍ، لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L40259 And due to the statement of the Messenger of Allah (peace be upon him), "A Muslim is the brother of a Muslim; he neither wrongs him nor abandons him."

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ» .

L40260 And due to his statement—peace be upon him—"Help your brother, whether he was an oppressor or oppressed."

وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «انْصُرْ أَخَاكَ ظَالِمًا كَانَ أَوْ مَظْلُومًا» .

L40261 If he testifies to the validity of the qadhf (false accusation of unlawful intercourse) he made, he assists in lawfully enforcing the prescribed penalty without wrongdoing, supporting virtue and piety. But if he fails to testify,

فَهَذَا إذَا أَدَّى الشَّهَادَةَ الَّتِي عِنْدَهُ بِصِحَّةِ مَا قَذَفَ بِهِ، مُعِينٌ عَلَى إقَامَةِ حَدٍّ بِحَقٍّ غَيْرُ ظَالِمٍ بِهِ، مُعِينٌ عَلَى الْبِرِّ وَالتَّقْوَى - وَإِنْ لَمْ يُؤَدِّهَا: مُعِينٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَهُوَ ظَالِمٌ قَدْ أَسْلَمَهُ لِلظُّلْمِ، إذْ تَرَكَهُ يُضْرَبُ بِغَيْرِ حَقٍّ.

[45] **Qur'an references (L40255):** Qur'an 4:135 (An-Nisa); Qur'an 2:282 (Al-Baqarah).
[46] **Qur'an references (L40258):** Qur'an 5:2 (Al-Ma'idah).

he aids in sin and aggression, becoming unjust and delivering himself to injustice by abandoning him to be flogged without legal right.

فَإِنْ ذَكَرُوا: مَا ناه يُوسُفُ بْنُ عَبْدِ اللَّهِ وَغَيْرُهُ قَالُوا: حَدَّثَنَا مُحَمَّدُ بْنُ الْجَسُورِ ثنا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: «إِنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إِلَى أَبِي بَكْرٍ الصِّدِّيقِ فَقَالَ: إِنَّ الْآخَرَ زَنَى، فَقَالَ لَهُ أَبُو بَكْرٍ: هَلْ ذَكَرْتَ ذَلِكَ لِغَيْرِي؟ فَقَالَ: لَا، قَالَ أَبُو بَكْرٍ: فَتُبْ إِلَى اللَّهِ، وَاسْتَتِرْ بِسِتْرِ اللَّهِ، فَإِنَّ اللَّهَ يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ، فَلَمْ تَقِرَّ نَفْسُهُ حَتَّى أَتَى عُمَرَ بْنَ الْخَطَّابِ، فَقَالَ لَهُ كَمَا قَالَ لِأَبِي بَكْرٍ، فَقَالَ لَهُ عُمَرُ كَمَا قَالَ لَهُ أَبُو بَكْرٍ فَلَمْ تَقِرَّ نَفْسُهُ حَتَّى أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ الْآخَرَ زَنَى، قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: فَأَعْرَضَ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِرَارًا - كُلُّ ذَلِكَ يُعْرَضُ عَنْهُ - حَتَّى إِذَا أَكْثَرَ عَلَيْهِ؟ بَعَثَ إِلَى أَهْلِهِ، فَقَالَ: أَيَشْتَكِي، أَبِهِ جِنَّةٌ؟ فَقَالُوا: لَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَبِكْرٌ أَمْ ثَيِّبٌ؟ فَقَالُوا: بَلْ ثَيِّبٌ -: فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَ. قَالَ سَعِيدٌ: فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِرَجُلٍ مِنْ أَسْلَمَ يُقَالُ لَهُ هُزَالٌ: لَوْ سَتَرْتَهُ بِرِدَائِكَ لَكَانَ خَيْرًا لَكَ» .

L40262 When they mentioned what was narrated by Yusuf ibn Abdullah and others, they said: Muhammad ibn al-Jasur narrated to us, Qasim ibn Asbagh narrated to us, Mutarrif ibn Qays narrated to us, Yahya ibn Bukayr narrated to us, Malik ibn Anas narrated from Yahya ibn Sa'id al-Ansari from Sa'id ibn al-Musayyab, who said: A man from Aslam came to Abu Bakr al-Siddiq and said: "The other man committed adultery." Abu Bakr said to him: "Did you mention this to anyone else?" He said: "No." Abu Bakr said: "Then repent to Allah and seek cover under Allah's protection, for Allah accepts repentance from His servants." But his soul found no rest until he went to Umar ibn al-Khattab and spoke to him as he had spoken to Abu Bakr. Umar replied to him as Abu Bakr had done, yet his soul found no rest until he went to the Messenger of Allah (peace be upon him) and said: "The other man committed adultery." Sa'id ibn al-Musayyab said: The Messenger of Allah (peace be upon him) turned away from him repeatedly—each time turning away from him entirely—until the man persisted excessively. The Prophet then sent for his family and asked: "Does he complain of anything? Does he have madness?" They said: "No." The Messenger of Allah (peace be upon him) said: "Is he a virgin or non-virgin?" They said: "He is non-virgin." So the Messenger of Allah (peace be upon him) ordered that he be stoned. Sa'id said: The Messenger of Allah (peace be upon him) then said to a man from Aslam named Huzāl: "Had you covered him with your cloak, it would have been better for you."

قَالَ يَحْيَى: فَذَكَرْت هَذَا الْحَدِيثَ فِي مَجْلِسٍ فِيهِ يَزِيدُ بْنُ نُعَيْمِ بْنِ هُزَالٍ الْأَسْلَمِيُّ؟ فَقَالَ يَزِيدُ هُزَالٌ جَدِّي - وَهَذَا الْحَدِيثُ حَقٌّ قَالَ عَلِيٌّ: فَإِنَّ هَذَا الْحَدِيثَ مُرْسَلٌ لَمْ يُسْنِدْهُ سَعِيدٌ، وَلَا يَزِيدُ بْنُ نُعَيْمٍ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَوْ انْسَنَدَ لَمَا خَرَجَ مِنْهُ إلَّا أَنَّ السَّتْرَ، وَتَرْكَ الشَّهَادَةِ أَفْضَلُ فَقَطْ - هَذَا عَلَى أُصُولِ الْقَائِلِينَ بِالْقِيَاسِ إذَا سَلِمَ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40263–40265 Yahya said: I mentioned this hadith in a gathering where Yazid ibn Nu'aym ibn Huzal al-Aslami was present? Yazid said: Huzal is my grandfather—and this hadith is true. Ali said: This hadith is mursal, for neither Sa'īd nor Yazīd ibn Nu'aym transmitted it with a chain, and there is no conclusive evidence in a mursal report. Even if it were provided with a chain of transmission, it would not lead to anything except that covering oneself and abandoning testimony is only superior - this according to the principles of those who uphold analogy if their premises are conceded. And with Allah, the Exalted, lies success.

[مَسْأَلَة اخْتِلَافُ الشُّهُودِ فِي الْحُدُودِ]

٢١٨٠ - مَسْأَلَةٌ: اخْتِلَافُ الشُّهُودِ فِي الْحُدُودِ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا فِي ذَلِكَ، فَنَظَرْنَا فِي ذَلِكَ، فَالَّذِي نَقُولُ بِهِ: أَنَّ كُلَّ مَا تَمَّتْ بِهِ الشَّهَادَةُ، وَوَجَبَ الْقَضَاءُ بِهَا، فَإِنَّ كُلَّ مَا زَادَهُ الشُّهُودُ عَلَى ذَلِكَ فَلَا حُكْمَ لَهُ، وَلَا يَضُرُّ الشَّهَادَةَ اخْتِلَافُهُمْ، كَمَا لَا يَضُرُّهَا سُكُوتُهُمْ عَنْهُ - وَأَنَّ كُلَّ مَا لَا تَتِمُّ الشَّهَادَةُ إلَّا بِهِ -: فَهَذَا هُوَ الَّذِي يُفْسِدُهَا اخْتِلَافُهُمْ، فَالشَّهَادَةُ إذَا تَمَّتْ مِنْ أَرْبَعَةِ عُدُولٍ بِالزِّنَى عَلَى إنْسَانٍ بِامْرَأَةٍ يَعْرِفُونَهَا أَجْنَبِيَّةٍ، لَا يَشُكُّونَ فِي ذَلِكَ، ثُمَّ اخْتَلَفُوا فِي الْمَكَانِ، أَوْ فِي الزَّمَانِ، أَوْ فِي الْمَزْنِيِّ بِهَا، فَقَالَ بَعْضُهُمْ: أَمْسِ بِامْرَأَةٍ سَوْدَاءَ، وَقَالَ بَعْضُهُمْ: بِامْرَأَةٍ بَيْضَاءَ الْيَوْمَ -: فَالشَّهَادَةُ تَامَّةٌ، وَالْحَدُّ وَاجِبٌ، لِأَنَّ الزِّنَى قَدْ تَمَّ عَلَيْهِ، وَلَا يُحْتَاجُ فِي الشَّهَادَةِ إلَى ذِكْرِ مَكَان وَلَا زَمَانٍ، وَلَا إلَى ذِكْرِ الَّتِي زَنَى بِهَا - فَالسُّكُوتُ عَنْ ذِكْرِ ذَلِكَ وَذِكْرُهُ سَوَاءٌ - وَكَذَلِكَ فِي السَّرِقَةِ، وَلَوْ قَالَ أَحَدُهُمَا: أَمْسِ، وَقَالَ الْآخَرُ: عَامَ أَوَّلٍ، أَوْ قَالَ أَحَدُهُمَا: بِمَكَّةَ، وَقَالَ الْآخَرُ: بِبَغْدَادَ، فَالسَّرِقَةُ قَدْ صَحَّتْ، وَتَمَّتْ الشَّهَادَةُ فِيهَا - وَلَا مَعْنَى لِذِكْرِ الْمَكَانِ، وَلَا الزَّمَانِ، وَلَا الشَّيْءِ الْمَسْرُوقِ مِنْهُ - سَوَاءٌ اخْتَلَفَا فِيهِ، أَوْ اتَّفَقَا فِيهِ، أَوْ سَكَتَا عَنْهُ، لِأَنَّهُ لَغْوٌ، وَحَدِيثٌ زَائِدٌ، لَيْسَ مِنْ الشَّهَادَةِ فِي شَيْءٍ.

وَكَذَلِكَ فِي شُرْبِ الْخَمْرِ، وَفِي الْقَذْفِ: فَالْحَدُّ قَدْ وَجَبَ، وَلَا مَعْنَى لِذِكْرِ الْمَكَانِ، وَالْمَقْذُوفُ فِي ذَلِكَ، وَالْمَسْكُوتُ عَنْهُ وَذِكْرُهُ، وَالِاتِّفَاقُ عَلَيْهِ وَالِاخْتِلَافُ فِيهِ سَوَاءٌ.

The Issue of Discrepancies Among the Witnesses Regarding Ḥudūd

2180 - Issue: Discrepancies among witnesses in ḥudūd cases? Abū Muḥammad said: When they differed regarding this matter, we examined it. Our ruling is: For any testimony that is complete and necessitates judicial ruling, whatever the witnesses add beyond the essentials has no legal validity. Their discrepancy does not invalidate the testimony, just as their silence about such details does not harm it. And that whatever elements are essential for the testimony's validity - discrepancy regarding these invalidates the testimony. When four upright witnesses complete their testimony about adultery committed by a person with a woman they know to be unrelated, without doubting the act, then differ regarding the location, time, or the woman with whom adultery was committed - some stating "yesterday with a black woman" while others say "today with a white woman" - the testimony remains complete and the ḥadd punishment is obligatory. This is because the act of adultery has been established against him, and testimony does not necessitate mentioning location, time, or the woman with whom adultery was committed - silence about these details holds equal weight to mentioning them. Similarly, in theft cases: if one witness states "yesterday" while another says "last year," or one says "in Makkah" while another says "in Baghdad," the theft is confirmed and the testimony remains valid. Mention of location, time, or the item stolen from its owner holds no legal significance - whether witnesses differ, agree, or remain silent about these details - as this constitutes superfluous additions and extraneous statements that form no part of the testimony in any way.

Similarly, regarding drinking wine and the accusation of fornication (qadhf): the *ḥadd* punishment is obligatory, and specifying the place holds no significance. The ruling remains the same whether the accused is identified or not, the details are mentioned or omitted, or there is agreement or disagreement concerning them.

Abū Muḥammad—may Allah have mercy on him—said: Who would claim there is disagreement regarding this? He must then account for discrepancies

in the witnesses' descriptions of the clothing of the adulterer, the thief, the one who drinks intoxicants, and the false accuser. If one of them states, "He had a cap on his head," while the other says, "A turban," or one claims, "He wore a green garment," and the other says, "No, a red one," or one asserts, "It occurred in cloudy weather," and the other says, "In clear weather"—all of this has no bearing.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ ادَّعَى الْخِلَافَ فِي ذَلِكَ؟ فَيَلْزَمُهُ أَنْ يُرَاعِيَ اخْتِلَافَ الشُّهُودِ فِي لِبَاسِ الزَّانِي، وَالسَّارِقِ، وَالشَّارِبِ، وَالْقَاذِفِ، فَإِنْ قَالَ أَحَدُهُمَا: كَانَ فِي رَأْسِهِ قَلَنْسُوَةٌ، وَقَالَ الْآخَرُ: عِمَامَةٌ، أَوْ قَالَ أَحَدُهُمَا: كَانَ عَلَيْهِ ثَوْبٌ أَخْضَرُ، وَقَالَ الْآخَرُ: بَلْ أَحْمَرُ، وَقَالَ أَحَدُهُمَا: فِي غَيْمٍ، وَقَالَ الْآخَرُ: فِي صَحْوٍ - فَهَذَا كُلُّهُ لَا مَعْنَى لَهُ.

L40271–40273 If someone were to say: The purpose of considering discrepancies is solely that the testimony is about a single act. If they differ regarding the place, time, the one accused of *qadhf* (false accusation of adultery), the person with whom adultery was committed, the one from whom something was stolen, or the stolen item: then have they not testified to a single act? We respond: How has it occurred to you that the testimony in all such cases is about a single act? Which Qur'an, Sunnah, *ijmāʿ* (consensus), or *qiyās* (analogical reasoning) necessitates this? This is something for which there is no way to... The existence [of proof]; rather, the purpose is only to establish prohibited adultery, prohibited false accusation of adultery, prohibited theft, prohibited consumption of intoxicants, and prohibited disbelief – with nothing beyond this. The clarification is Allah's statement, the Exalted: {And those who accuse chaste women [of adultery] and then do not produce four witnesses} [an-Nur: 4].[47]

فَإِنْ قَالَ قَائِلٌ: إِنَّ الْغَرَضَ فِي مُرَاعَاةِ الِاخْتِلَافِ إِنَّمَا هُوَ أَنْ تَكُونَ الشَّهَادَةُ عَلَى عَمَلٍ وَاحِدٍ فَقَطْ، وَإِذَا اخْتَلَفُوا فِي الْمَكَانِ، أَوْ الزَّمَانِ، أَوْ الْمَقْذُوفِ، أَوْ الْمَزْنِيِّ بِهَا، أَوْ الْمَسْرُوقِ مِنْهُ، أَوْ الشَّيْءِ الْمَسْرُوقِ: فَلَمْ يَشْهَدُوا عَلَى عَمَلٍ وَاحِدٍ؟ قُلْنَا: مِنْ أَيْنَ وَقَعَ لَكُمْ أَنْ تَكُونَ الشَّهَادَةُ فِي كُلِّ ذَلِكَ عَلَى عَمَلٍ وَاحِدٍ، وَأَيُّ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ إجْمَاعٍ أَوْجَبَ ذَلِكَ؟ وَأَيُّ نَظَرٍ أَوْجَبَهُ؟ وَهَذَا مَا لَا سَبِيلَ إلَى وُجُودِهِ، بَلْ الْغَرَضُ إثْبَاتُ الزِّنَى الْمُحَرَّمِ، وَالْقَذْفِ الْمُحَرَّمِ، وَالسَّرِقَةِ الْمُحَرَّمَةِ، وَالشُّرْبِ الْمُحَرَّمِ، وَالْكُفْرِ الْمُحَرَّمِ فَقَطْ، وَلَا مَزِيدَ، وَبَيَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] الْآيَةَ.

L40274 Thus, this verse confirms that the legally required duty is solely to establish the adultery he accused her of. There is no legal weight to his explicit accusation or failure to specify it. He is therefore not obligated to present more than four witnesses to affirm the validity of his accusation of adultery. We do not differentiate whether it involved a single act or four acts, for all such acts constitute adultery.

فَصَحَّ بِهَذِهِ الْآيَةِ: أَنَّ الْوَاجِبَ إنَّمَا هُوَ إثْبَاتُ الزِّنَى فَقَطْ، وَهُوَ الَّذِي رَمَاهَا بِهِ، وَلَا مَعْنَى لِذِكْرِهِ الَّتِي رَمَاهَا وَلَا سُكُوتِهِ عَنْهُ، فَلَيْسَ عَلَيْهِ أَنْ يَأْتِيَ بِأَكْثَرَ مِنْ أَرْبَعَةِ شُهَدَاءَ: عَلَى أَنَّ الَّذِي رَمَاهَا بِهِ مِنْ الزِّنَى حَقٌّ، وَلَا نُبَالِي عَمَلًا وَاحِدًا كَانَ أَوْ أَرْبَعَةَ أَعْمَالٍ، لِأَنَّ كُلَّ ذَلِكَ زِنًا.

L40275 Similarly, if he is testified against for accusing a chaste woman of adultery, eighty lashes are established for him through the Quran. Allah, the Exalted, has not required the testimony to mention the time or the place. Therefore,

[47] **Qur'an references (L40271):** Qur'an 24:4 (An-Nur).

adding the mention of time and place is categorically invalid, because Allah, the Exalted, has not commanded it nor required its observance.

وَكَذَلِكَ إنْ شُهِدَ عَلَيْهِ بِالْقَذْفِ لِمُحْصَنَةٍ، فَقَدْ ثَبَتَ عَلَيْهِ بِالْقُرْآنِ ثَمَانُونَ جَلْدَةً، وَلَمْ يَحُدَّ اللَّهُ تَعَالَى أَنْ يَكُونَ فِي الشَّهَادَةِ ذِكْرُ الزَّمَانِ، وَلَا ذِكْرُ الْمَكَانِ فَالزِّيَادَةُ لِهَذَا بَاطِلٌ بِيَقِينٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ بِهِ، وَلَا بِمُرَاعَاتِهِ.

L40276 Similarly, Allah the Exalted said: "As for the thief, male or female, cut off their hands" [Al-Mā'idah 5:38]. This suffices us, and the validity of the testimony that she is a thief or he is a thief. We did not find Allah the Exalted mentioning time, place, the victim of theft, or the stolen property. Therefore, adhering to such considerations is invalid with absolute certainty beyond any doubt.[48]

وَكَذَلِكَ قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] فَحَسْبُنَا، وَصِحَّةُ الشَّهَادَةِ بِأَنَّهَا سَارِقَةٌ، أَوْ أَنَّهُ سَارِقٌ، وَلَمْ نَجِدْ اللَّهَ تَعَالَى ذَكَرَ الزَّمَانَ، أَوْ الْمَكَانَ، أَوْ الْمَسْرُوقَ مِنْهُ، أَوْ الشَّيْءَ الْمَسْرُوقَ، فَمُرَاعَاةُ ذَلِكَ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ.

L40277–40279 And similarly, the Messenger of Allah (peace be upon him) said, "If he drinks khamr, then lash him," thus mandating lashing as the punishment for drinking it. Concerning wine, if testimony concerning drinking wine is validated, then the ḥadd punishment is necessitated by the explicit command of the Messenger of Allah—peace and blessings be upon him—regarding this matter. It is invalid to consider specifying a place, time, attributes of the wine, or attributes of the container, since no explicit text has been established from Allah the Exalted or His Messenger—peace and blessings be upon him—regarding such matters. Therefore, considering such factors is undoubtedly void. All praise is due to Allah, Lord of the worlds.

وَهَكَذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» فَأَوْجَبَ الْجَلْدَ بِشُرْبِ الْخَمْرِ، فَإِذَا صَحَّتْ الشَّهَادَةُ بِشُرْبِ الْخَمْرِ فَقَدْ وَجَبَ الْحَدُّ، بِنَصِّ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَلَا مَعْنَى لِمُرَاعَاةِ ذِكْرِ مَكَانٍ، أَوْ زَمَانٍ، أَوْ صِفَةِ الْخَمْرِ، أَوْ صِفَةِ الْإِنَاءِ - إذْ لَمْ يَأْتِ نَصٌّ بِذَلِكَ عَنْ اللَّهِ تَعَالَى وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمُرَاعَاةُ ذَلِكَ بَاطِلٌ بِلَا شَكٍّ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40280 Abu Muhammad said: Similar precedents have been transmitted from the early predecessors. As narrated to us by Abdullah ibn Rabīʿ, narrated to us by Ibn Mufarrij, narrated to us by Qāsim ibn Aṣbagh, narrated to us by Ibn Waḍḍāḥ, narrated to us by Sahnūn, narrated to us by Ibn Wahb, on the authority of Al-Sarrī ibn Yaḥyā, who said: Al-Ḥasan al-Baṣrī narrated to us, saying: Al-Jārūd testified against Qudāmah ibn Maẓʿūn that he drank wine—while ʿUmar had appointed Qudāmah as governor of Bahrain. ʿUmar asked Al-Jārūd: "Who testifies with you?" He replied: "'Alqamah the eunuch." ʿUmar summoned ʿAlqamah and asked: "What do you testify?" ʿAlqamah responded: "Is the testimony of a eunuch even valid?" ʿUmar said: "What

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ نَحْوُ ذَلِكَ عَنْ السَّلَفِ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ حَدَّثَنَا ابْنُ مُفَرِّجٍ حَدَّثَنَا قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنَا ابْنُ وَضَّاحٍ حَدَّثَنَا سَحْنُونٌ حَدَّثَنَا ابْنُ وَهْبٍ أَنَا السَّرِيُّ بْنُ يَحْيَى قَالَ: حَدَّثَنَا الْحَسَنُ الْبَصْرِيُّ قَالَ: شَهِدَ الْجَارُودُ عَلَى قُدَامَةَ بْنِ مَظْعُونٍ أَنَّهُ شَرِبَ الْخَمْرَ - وَكَانَ عُمَرُ قَدْ أَمَّرَ قُدَامَةَ عَلَى الْبَحْرَيْنِ - فَقَالَ عُمَرُ لِلْجَارُودِ: مَنْ يَشْهَدُ مَعَك؟ قَالَ: عَلْقَمَةُ الْخَصِيُّ؟ فَدَعَا عَلْقَمَةَ، فَقَالَ لَهُ عُمَرُ: بِمَ تَشْهَدُ؟ فَقَالَ عَلْقَمَةُ: وَهَلْ تَجُوزُ شَهَادَةُ الْخَصِيِّ؟ قَالَ عُمَرُ: وَمَا يَمْنَعُهُ أَنْ تَجُوزَ شَهَادَتُهُ إذَا كَانَ مُسْلِمًا، قَالَ عَلْقَمَةُ:

[48] **Qur'an references (L40276):** Qur'an 5:38 (Al-Ma'idah).

prevents his testimony from being valid if he is Muslim?" ʿAlqamah said: "I saw him vomiting wine into a basin." ʿUmar declared: "No, by your Lord: he could not have vomited it unless he had drunk it!" He then ordered him to be flogged the *ḥadd* punishment. This was ʿUmar's ruling in the presence of the Companions (may Allah be pleased with them), with no recorded disagreement from them regarding enforcing the punishment based on two differing testimonies—one claiming he was seen drinking wine, the other not witnessing him drink it but seeing him vomit it. Yet we find them magnifying a Companion's dissent when it aligns with their *taqlīd*, while here they opposed ʿUmar ibn al-Khaṭṭāb, Al-Jārūd, and all present Companions. They bear no burden—and Allah suffices us, the Best Trustee.

The Issue of Confession Regarding the Ḥadd

L40281

L40282–40284 2181 - Issue: Confession to a hadd punishment after a period of time—which is superior: confession or self-concealment? Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding this. When they differed, it became obligatory for us to examine their points of disagreement to discern the truth therein and follow it—with the aid of Allah, the Exalted. We thus examined the evidence presented by the group advocating concealment and found the entire Ummah unanimously agrees that concealment is permissible and confession is permissible. They differed only concerning which is superior. No one among the people of Islam has ever stated that a confessor to an act requiring a hadd punishment is disobeying Allah, the Exalted, through their confession. Nor has any among the people of Islam ever asserted that one concealing what they have committed of a hadd offense is disobeying Allah, the Exalted. We then examined the reports that have been related on this matter and found none of them to be authentic. Except for a single report at its end, there is no proof for them in it, as we will clarify - if Allah, the Exalted, wills.

L40285 As for the narration of Hizāl which we introduced via the chain of Shuʿbah from Muḥammad ibn al-Munkadir from Ibn Hizāl from his father: it is *mursal* (a ḥadīth with a missing link in its chain) and thus cannot be used as valid proof.

رَأَيْته يَقِيءُ الْخَمْرَ فِي طَسْتٍ، قَالَ عُمَرُ: فَلَا وَرَبِّك مَا قَاءَهَا حَتَّى شَرِبَهَا: فَأَمَرَ بِهِ فَجُلِدَ الْحَدَّ، فَهَذَا حُكْمُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ فِي إقَامَةِ الْحَدِّ بِشَهَادَتَيْنِ مُخْتَلِفَتَيْنِ إحْدَاهُمَا: أَنَّهُ رَآهُ يَشْرَبُ الْخَمْرَ، وَالْأُخْرَى: أَنَّهُ لَمْ يَرَهُ يَشْرَبُهَا، لَكِنْ رَآهُ يَتَقَيَّؤُهَا - وَعَهِدْنَاهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا عُمَرَ بْنَ الْخَطَّابِ، وَالْجَارُودَ، وَجَمِيعَ مَنْ بِحَضْرَتِهِمَا مِنْ الصَّحَابَةِ، فَلَا مُؤْنَةَ عَلَيْهِمْ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة الأقرار بالحد]

٢١٨١ - مَسْأَلَةٌ: الْإِقْرَارُ بِالْحَدِّ بَعْدَ مُدَّةٍ، وَأَيُّهُمَا أَفْضَلُ الْإِقْرَارُ أَمْ الِاسْتِتَارُ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي ذَلِكَ، فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى -: فَنَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْمُخْتَارَةُ لِلسَّتْرِ، وَأَنَّ جَمِيعَ الْأُمَّةِ مُتَّفِقُونَ عَلَى أَنَّ السَّتْرَ مُبَاحٌ، وَأَنَّ الِاعْتِرَافَ مُبَاحٌ، إنَّمَا اخْتَلَفُوا فِي الْأَفْضَلِ، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ: إنَّ الْمُعْتَرِفَ بِمَا عَمِلَ مِمَّا يُوجِبُ الْحَدَّ: عَاصٍ لِلَّهِ تَعَالَى فِي اعْتِرَافِهِ، وَلَا قَالَ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ قَطُّ: إنَّ السَّاتِرَ عَلَى نَفْسِهِ مَا أَصَابَ مِنْ حَدٍّ: عَاصٍ لِلَّهِ تَعَالَى: فَنَظَرْنَا فِي تِلْكَ الْأَخْبَارِ الَّتِي جَاءَتْ فِي ذَلِكَ فَوَجَدْنَاهَا كُلَّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ، إلَّا خَبَرًا وَاحِدًا فِي آخِرِهَا، لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

وَأَمَّا خَبَرُ هُزَالٍ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ شُعْبَةَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ ابْنِ هِزَالٍ عَنْ أَبِيهِ: فَمُرْسَلٌ، فَلَا حُجَّةَ فِيهِ، لِأَنَّهُ مُرْسَلٌ.

وَكَذَلِكَ الَّذِي مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ ابْنِ الْمُنْكَدِرِ - وَيَزِيدَ بْنِ النَّعِيمِ أَيْضًا مُرْسَلٌ.

L40286 Similarly, the chain through Ibn al-Mubārak from Yaḥyā ibn Saʿīd from Ibn al-Munkadir — and Yazīd ibn al-Nuʿaym's narration is also mursal.

وَكَذَلِكَ حَدِيثُ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: مُرْسَلٌ أَيْضًا.

L40287 Similarly, the hadith of Mālik transmitted through Yaḥyā ibn Saʿīd al-Anṣārī is also *mursal*.

وَحَدِيثُ اللَّيْثِ عَنْ يَحْيَى بْنِ سَعِيدٍ مُرْسَلٌ أَيْضًا - فَبَطَلَ الِاحْتِجَاجُ بِرِوَايَةِ يَحْيَى بْنِ سَعِيدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40288 The narration of Al-Layth from Yaḥyā ibn Saʿīd is also *mursal* (disconnected). Therefore, citing the narration of Yaḥyā ibn Saʿīd as evidence was nullified. And success is by Allāh, the Most High.

ثُمَّ نَظَرْنَا فِي هَذَا الْخَبَرِ مِنْ طَرِيقِ عِكْرِمَةَ بْنِ عَمَّارٍ، فَوَجَدْنَاهُ لَا حُجَّةَ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ مُرْسَلٌ، وَالثَّانِي: أَنَّ عِكْرِمَةَ بْنَ عَمَّارٍ ضَعِيفٌ.

L40289 Then we examined this report through the transmission path of ʿIkrimah ibn ʿAmmār and found it to lack probative value due to two aspects: the first is that it is unanchored (mursal), and the second is that ʿIkrimah ibn ʿAmmār is weak (daʿīf) in narration.

ثُمَّ نَظَرْنَا فِيهِ مِنْ طَرِيقِ حِبَّانَ بْنِ هِلَالٍ عَنْ أَبَانَ بْنِ يَزِيدَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ يَزِيدَ بْنِ نُعَيْمِ بْنِ هَزَالٍ الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40290 Then we examined it through the chain of Hibbān ibn Hilāl from Abān ibn Yazīd from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf from Yazīd ibn Nuʿaym ibn Huzāl al-Anṣārī from ʿAbd Allāh ibn Dīnār, and we found it also to be mursal.

ثُمَّ نَظَرْنَا فِيهِ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ: فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40291 Then we scrutinized its transmission path via Ibn Jurayj from Yaḥyā ibn Saʿīd al-Anṣārī from ʿAbd Allāh ibn Dīnār, and determined it was mursal (a ḥadīth with a disconnected chain).

ثُمَّ نَظَرْنَا فِيهِ مِنْ رِوَايَةِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ حُمَيْدِ بْنِ هِلَالٍ: فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا.

L40292 Then we examined it through the narration of Maʿmar, on the authority of Ayyūb al-Sikhtiyānī, who narrated from Ḥumayd ibn Hilāl; we found it to be *mursal* as well.

ثُمَّ نَظَرْنَا فِيهِ مِنْ رِوَايَةِ الْحُبُلِّيِّ عَنْ أَبِي قِلَابَةَ - فَوَجَدْنَاهُ مُرْسَلًا.

L40293 Then we examined it in the narration of Al-Ḥubulī from Abu Qilabah—we found it to be *mursal*.

وَأَمَّا حَدِيثُ حَمَّادِ بْنِ سَلَمَةَ، فَفِيهِ أَبُو الْمُنْذِرِ لَا يُدْرَى مَنْ هُوَ - وَأَبُو أُمَيَّةَ الْمَخْزُومِيُّ وَلَا يُدْرَى مَنْ هُوَ؟ وَهُوَ أَيْضًا مُرْسَلٌ، وَحَتَّى لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ،

L40294–40296 As for the ḥadīth of Ḥammād ibn Salamah, it contains Abū al-Mundhir—whose identity is unknown—and Abū Umayyah al-Makhzūmī—whose identity is also unknown. Moreover, it is also a mursal narration. Even if this report were authentic, it would not constitute authoritative evidence for them, for it merely states, "I do not think you stole," and the Messenger of Allah—

peace and blessings be upon him—only speaks the truth. Thus, if it were authentically established that the Messenger of Allah—peace and blessings be upon him—said to the one brought to him accused of theft, "I do not think you stole," we would be upon... certainty that he—peace be upon him—was truthful in that, and that he actually presumes he did not steal, for this does not amount to prompting him, nor evidence that covering up is more virtuous. Thus, their reliance on this report is wholly nullified.

لأَنَّهُ لَيْسَ فِيهِ إِلَّا «مَا إِخَالُكَ سَرَقْتَ» وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقُولُ إِلَّا الْحَقَّ - فَلَوْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلَّذِي سِيقَ إِلَيْهِ بِالسَّرِقَةِ «مَا إِخَالُكَ سَرَقْتَ» لَكُنَّا عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ صَدَقَ فِي ذَلِكَ، وَأَنَّهُ عَلَى الْحَقِيقَةِ يَظُنُّ أَنَّهُ لَمْ يَسْرِقْ، وَلَيْسَ فِي هَذَا تَلْقِينٌ لَهُ، وَلَا دَلِيلٌ عَلَى أَنَّ السَّتْرَ أَفْضَلُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً.

As for the ḥadīth of Muslim regarding ijhād, it holds no legal authority for two reasons:

وَأَمَّا حَدِيثُ مُسْلِمٍ فِي الْإِجْهَادِ فَلَا حُجَّةَ فِيهِ لِوَجْهَيْنِ:

One of them is that it is from the narration of Muḥammad ibn ʿAbd Allāh, the nephew of al-Zuhrī, and he is weak.

أَحَدُهُمَا: أَنَّهُ مِنْ رِوَايَةِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ أَخِي الزُّهْرِيِّ، وَهُوَ ضَعِيفٌ.

The second is that even if it were valid, they would have no valid argument whatsoever regarding it, because the aforementioned independent legal reasoning refers merely to something a person mentions to boast about, for this narration does not indicate that the Imam reports it while confessing so that the Book of Allah the Exalted may be applied to him. Rather, it condemns brazenly flaunting sin - and this is unquestionably forbidden.

وَالثَّانِي: أَنَّهُ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّ الْإِجْهَادَ الْمَذْكُورَ إِنَّمَا هُوَ مَا ذَكَرَهُ الْمَرْءُ مُفْتَخِرًا بِهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهُ يُخْبِرُ بِهِ الْإِمَامُ مُعْتَرِفًا لِيُقَامَ عَلَيْهِ كِتَابُ اللَّهِ تَعَالَى، وَإِنَّمَا فِيهِ ذَمُّ الْمُجَاهَرَةِ بِالْمَعْصِيَةِ - وَهَذَا لَا شَكَّ فِيهِ حَرَامٌ.

Then we examined the ḥadīth of Muslim narrated by Ibn Shihāb from Abū Salama, and by Saʿīd ibn al-Musayyib from Abū Hurayrah: "The Messenger of Allah—peace be upon him—turned away from the confessor multiple times." We found it authentic, with no flaw in it that anyone could find. However, it contains no proof for their stance, for people are divided into two opinions regarding the reason behind the Messenger of Allah's—peace be upon him—turning away from him. One group said: He turned away solely because a confession to adultery cannot be valid except... Upon the full completion of four instances, a group said: He turned away from him (peace be upon him) because he suspected he was insane or had drunk wine. None among the Ummah has stated that when a confession to a ḥadd punishment is established with the ruler, it becomes permissible for him to conceal it and refrain from implementing it. Thus, their reliance on this report is in-

ثُمَّ نَظَرْنَا فِي حَدِيثِ مُسْلِمٍ الَّذِي رَوَاهُ ابْنُ شِهَابٍ عَنْ أَبِي سَلَمَةَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَضَ عَنْ الْمُعْتَرِفِ مَرَّاتٍ» فَوَجَدْنَاهُ صَحِيحًا لَا دَاخِلَةَ فِيهِ لِأَحَدٍ، إِلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ النَّاسَ فِي سَبَبِ إعْرَاضِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ عَلَى قَوْلَيْنِ: فَطَائِفَةٌ قَالَتْ: إنَّمَا أَعْرَضَ عَنْهُ، لِأَنَّ الْإِقْرَارَ بِالزِّنَى لَا يَتِمُّ إلَّا بِتَمَامِ أَرْبَعِ مَرَّاتٍ، وَطَائِفَةٌ قَالَتْ: إنَّمَا أَعْرَضَ عَنْهُ - عَلَيْهِ السَّلَامُ - لِأَنَّهُ ظَنَّ أَنَّ بِهِ جُنُونًا، أَوْ شَرِبَ خَمْرًا - وَلَمْ يَقُلْ أَحَدٌ مِنْ الْأُمَّةِ: أَنَّ الْحَاكِمَ إذَا ثَبَتَ عِنْدَهُ الْإِقْرَارُ بِالْحَدِّ جَازَ لَهُ أَنْ يَسْتُرَهُ وَلَا يُقِيمَهُ - فَبَطَلَ تَعَلُّقُهُمْ

validated. We will thoroughly examine the discussion on the authentication of one of these two perspectives after this—if Allah, the Exalted, wills.

بِهَذَا الْخَبَرِ، وَسَنَسْتَقْصِي الْكَلَامَ فِي تَصْحِيحِ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى.

L40303 Abū Muḥammad said: "Is there no report whatsoever left for this group to rely upon?" Then we examined what was narrated in that regard from the Companions (raḍiyallāhu ʿanhum) and found that none of it is authentic either. As for the narration from Abū Bakr and ʿUmar (raḍiyallāhu ʿanhumā) regarding their statement to al-Aslamī—"Seek cover through Allah's concealment"—it is not authentic, because it is transmitted via Saʿīd ibn al-Musayyab as a mursal narration.

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يبْقَ لِهَذِهِ الطَّائِفَةِ خَبَرٌ يَتَعَلَّقُونَ بِهِ أَصْلًا؟ ثُمَّ نَظَرْنَا فِيمَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَوَجَدْنَاهُ أَيْضًا لَا يَصِحُّ مِنْهُ شَيْءٌ: أَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فِي قَوْلِهِمَا لِلْأَسْلَمِيِّ: اسْتَتِرْ بِسَتْرِ اللَّهِ، فَلَا تَصِحُّ، لِأَنَّهَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مُرْسَلَةٌ.

L40304 Similarly, the narration of Ibrāhīm ibn Ṭahmān from Mūsā ibn ʻUqbah from ʻAbdullāh ibn Yazīd from Muḥammad ibn ʻAbd al-Raḥmān: that [the inclusion of] Abū Bakr renders the narration mursal.

وَكَذَلِكَ حَدِيثُ إبْرَاهِيمَ بْنِ طَهْمَانَ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا بَكْرٍ فَهُوَ مُرْسَلٌ.

L40305 Abu Muhammad said: Then we examined the evidence cited by the other group, and found the narration from the Companions that a group among them said: "No repentance is greater than that of Ma'iz. He came to the Messenger of Allah (may Allah bless him and grant him peace), placed his hand in his hand, and said: 'Stone me to death.'"

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُخْرَى، فَوَجَدْنَا الرِّوَايَةَ عَنْ الصَّحَابَةِ أَنَّ الطَّائِفَةَ مِنْهُمْ قَالَتْ: مَا تَوْبَةٌ أَفْضَلَ مِنْ تَوْبَةِ مَاعِزٍ: جَاءَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعَ يَدَهُ فِي يَدِهِ وَقَالَ: اُقْتُلْنِي بِالْحِجَارَةِ.

L40306 This was established as correct from the statement of a great group of the Companions—may Allah be pleased with them. Rather, were we to say that none of the Companions—may Allah be pleased with them—opposed this group, we would be truthful, for the other faction did not oppose them. They only said: "Ma'iz has surely perished; his sin has overwhelmed him"—thus they rejected the matter of the sin, not the act of confession. Therefore, we found that no authentic opposition to the merit of confession has been reported from any of the Companions—may Allah be pleased with them.

فَصَحَّ هَذَا مِنْ قَوْلِ طَائِفَةٍ عَظِيمَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بَلْ لَوْ قُلْنَا: إنَّهُ لَا مُخَالِفَ لِهَذِهِ الطَّائِفَةِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَصَدَقْنَا، لِأَنَّ الطَّائِفَةَ الْأُخْرَى لَمْ تُخَالِفْهَا، وَإِنَّمَا قَالَتْ: لَقَدْ هَلَكَ مَاعِزٌ، لَقَدْ أَحَاطَتْ بِهِ خَطِيئَتُهُ - فَإِنَّمَا أَنْكَرُوا أَمْرَ الْخَطِيئَةِ لَا أَمْرَ الِاعْتِرَافِ، فَوَجَدْنَا تَفْضِيلَ الِاعْتِرَافِ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُهُ.

L40307 Then we examined the evidences they cited from the traditions and found them to be of utmost authenticity and clarity, because the Messenger of Allah (peace be upon him) praised the repentance of Ma'iz and al-Ghamidiyyah. He (peace be upon him) mentioned that if Ma'iz's repentance were distributed

ثُمَّ نَظَرْنَا فِيمَا احْتَجُّوا بِهِ مِنْ الْآثَارِ: فَوَجَدْنَاهَا فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَمِدَ تَوْبَةَ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَذَكَرَ - عَلَيْهِ السَّلَامُ -: أَنَّ

among a nation, it would suffice them; that if an extortionist were to repent as sincerely as al-Ghamidiyyah did, he would be forgiven; and that if the repentance of al-Juhaniyyah were distributed among seventy people of Madinah, it would suffice them. Then he (peace be upon him) removed the ambiguity entirely, saying: "She found nothing better than to sacrifice herself for Allah."

L40308–40309 Therefore, it is firmly established that confessing a sin so that the ḥadd punishment may be carried out upon him is superior to concealing it, as the Prophet—may Allah bless him and grant him peace—declared that nothing surpasses the generosity of one who voluntarily confesses to Allah, the Exalted.

L40310 Abu Muhammad (may Allah have mercy on him) said: "And among the proofs of that also."

L40311 What we have narrated through the chain of Muslim: I am Yaḥyā ibn Yaḥyā, Abū Bakr ibn Abī Shaybah, ʿAmr al-Nāqid, Isḥāq ibn Ibrāhīm—he is Ibn Rāhawayh—and Muḥammad ibn ʿAbd Allāh ibn Numayr, all of whom reported from Sufyān ibn ʿUyaynah—with the wording belonging to ʿAmr—who said: Sufyān ibn ʿUyaynah said, from al-Zuhrī, from Abī Idrīs al-Khawlānī, from ʿUbādah ibn al-Ṣāmit, who said: "We were with the Messenger of Allah—peace be upon him—in a gathering when he said: 'Pledge to me that you will not associate anything with Allah, nor commit adultery, nor steal, nor kill a soul Allah has made sacred except by right. Whoever among you fulfills this pledge, his reward lies with Allah. Whoever commits any of these sins and is punished for it, that punishment will be an expiation for him. And whoever commits a sin which Allah has concealed for him, his matter rests with Allah: if He wills, He forgives him; and if He wills, He punishes him.'"[49]

L40312 Ali—may God have mercy on him—said: The difficulty is wholly resolved—praise be to God, Lord of the worlds—and validated through the explicit wording of God's Messenger's statement—peace and blessings be upon him—his notification to his community, and his sincere counsel to them through

[49] **Qur'an references (L40311):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra).

تَوْبَةَ مَاعِزٍ لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ - وَأَنَّ الْغَامِدِيَّةَ لَوْ تَابَ تَوْبَتَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ - وَأَنَّ الْجُهَنِيَّةَ لَوْ قُسِمَتْ تَوْبَتُهَا بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، ثُمَّ رَفَعَ - عَلَيْهِ السَّلَامُ - الْإِشْكَالَ جُمْلَةً، فَقَالَ: إنَّهَا لَمْ تَجِدْ أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ.

فَصَحَّ يَقِينًا أَنَّ الِاعْتِرَافَ بِالذَّنْبِ لِيُقَامَ عَلَيْهِ الْحَدُّ أَفْضَلُ مِنْ الِاسْتِتَارِ لَهُ بِشَهَادَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا أَفْضَلَ مِنْ جُودِ الْمُعْتَرِفِ بِنَفْسِهِ لِلَّهِ تَعَالَى.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمِنْ الْبُرْهَانِ عَلَى ذَلِكَ أَيْضًا.

مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ - وَاللَّفْظُ لِعَمْرٍو، قَالَ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ أَبِي إدْرِيسَ الْخَوْلَانِيِّ عَنْ «عُبَادَةَ بْنِ الصَّامِتِ قَالَ: كُنَّا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَجْلِسٍ، فَقَالَ: بَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاَللَّهِ شَيْئًا، وَلَا تَزْنُوا، وَلَا تَسْرِقُوا، وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، فَمَنْ وَفَّى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا فَسَتَرَهُ اللَّهُ عَلَيْهِ، فَأَمْرُهُ إلَى اللَّهِ، إنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَذَّبَهُ» .

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَصَحَّ بِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِعْلَامِهِ أُمَّتَهُ، وَنَصِيحَتِهِ إيَّاهُمْ بِأَحْسَنَ مَا عَلَّمَهُ رَبُّهُ تَعَالَى، أَنَّ مَنْ أَصَابَ حَدًّا فَسَتَرَهُ اللَّهُ عَلَيْهِ فَإِنَّ أَمْرَهُ إلَى اللَّهِ تَعَالَى - إنْ شَاءَ

the finest instruction his Lord Almighty taught him: that whoever incurs a prescribed punishment which God conceals for him, his matter rests with God Almighty—if He wills, He punishes him; if He wills, He forgives him—and that whoever has the prescribed punishment executed upon him, that sin has been expiated from him, and God Almighty has atoned for him. We necessarily know: that the certainty of forgiveness is superior to discretionary punishment in its permissibility or the torment of the Hereafter. How can all worldly punishment compare to a single dip in the Fire?—we seek refuge in God from it—let alone what exceeds that?

Abu Muhammad—may God have mercy on him—said: Thus, it is confirmed that a person's confession of his sin before the authority is superior to concealment with certainty, and that concealment is permissible by consensus—success is from God Almighty.

L40313 **The issue of mutually pardoning Hudud punishments before they reach the judge.**

L40314–40316 2182 - Issue: Should prescribed punishments be mutually pardoned before they reach the judge? Abu Muhammad (may Allah have mercy on him) said: I am Abdullah ibn Rabee', I am Umar ibn Abdul-Malik, I am Muhammad ibn Bakr, I am Abu Dawud, I am Sulayman ibn Dawud al-Mahri; Ibn Wahb informed us: I heard Ibn Jurayj narrating from Amr ibn Shu'ayb, from his father, from Abdullah ibn Amr ibn al-'Aas, that the Messenger of Allah—peace and blessings be upon him—said: "Pardon the prescribed punishments among yourselves, because whatever punishment reaches my knowledge has indeed become obligatory."[50]

L40317 From Hammam, from Abbas ibn Asbagh, from Muhammad ibn Abdul-Malik ibn Ayman, from Muhammad ibn Waddah, from Sahnun, from Ibn Wahb who said: I heard Ibn Jurayj narrating from Amr ibn Shuʿayb, from his father, from Abdullah ibn Amr ibn Al-ʿĀṣ that the Messenger of Allah - may Allah's peace and blessings be upon him - said: "Mutually pardon the

[50] **Hadith references (L40314):** Sunan Abi Dawud 4376; Sunan an-Nasai 4886; Mishkat al-Masabih 3568.

عَذَّبَهُ وَإِنْ شَاءَ غَفَرَ لَهُ - وَأَنَّ مَنْ أُقِيمَ عَلَيْهِ الْحَدُّ فَقَدْ سَقَطَ عَنْهُ ذَلِكَ الذَّنْبُ، وَكَفَّرَهُ اللَّهُ تَعَالَى عَنْهُ - وَبِالضَّرُورَةِ نَدْرِي: أَنْ يَقِينَ الْمَغْفِرَةِ أَفْضَلُ مِنْ التَّعْزِيرِ فِي إمْكَانِهَا أَوْ عَذَابِ الْآخِرَةِ، وَأَيْنَ عَذَابُ الدُّنْيَا كُلِّهَا مِنْ غَمْسَةٍ فِي النَّارِ؟ - نَعُوذُ بِاَللَّهِ مِنْهَا - فَكَيْفَ مِنْ أَكْثَرَ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ اعْتِرَافَ الْمَرْءِ بِذَنْبِهِ عِنْدَ الْإِمَامِ أَفْضَلُ مِنْ السَّتْرِ بِيَقِينٍ، وَأَنَّ السَّتْرَ مُبَاحٌ بِالْإِجْمَاعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة تَعَافُوا الْحُدُودَ قَبْلَ بُلُوغِهَا إلَى الْحَاكِمِ]

٢١٨٢ - مَسْأَلَةٌ: تَعَافُوا الْحُدُودَ قَبْلَ بُلُوغِهَا إلَى الْحَاكِمِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا عُمَرُ بْنُ عَبْدِ الْمَلِكِ أَنَا مُحَمَّدُ بْنُ بَكْرٍ أَنَا أَبُو دَاوُد أَنَا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ نا ابْنُ وَهْبٍ سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ عَمْرِو بْنِ الْعَاصِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «تَعَافُوا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ» .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «تَعَافُوا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ» .

prescribed punishments among yourselves; for whatever punishment reaches me, it becomes obligatory."[51]

L40318 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb informed me: Abdullah ibn Ahmad ibn Hanbal narrated to us: My father narrated to us: Muhammad ibn Ja'far narrated to us: Sa'eed—that is, Ibn Abi 'Arubah—narrated from Qatadah, from 'Ata' ibn Abi Rabah, from Tariq ibn Muraqqa', from Safwan ibn Umayyah: A man stole a cloak, and he brought him to the Prophet—may Allah the Exalted bless him and his family and grant him peace. He ordered him to be cut. He said, "O Messenger of Allah, I have pardoned him." He replied, "If only this had been before you brought him to me, O Abu Wahb!" Then the Messenger of Allah—may Allah bless him and grant him peace—cut him.

L40319 Abdullah ibn Rabee' narrated: Muhammad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Hilal ibn Al-'Ala' Al-Raqqi narrated: Husayn narrated: Zuhayr narrated: 'Abdul-Malik — who is Ibn Abi Bashir — narrated: 'Ikrimah narrated from Safwan ibn Umayyah that he performed Tawaf around the House, prayed, then folded his garment into his cloak and placed it under his head to sleep. A thief came and slipped it out from beneath his head. He seized him and brought him to the Prophet (peace be upon him), saying: "Has this one stolen my garment?" The Prophet (peace be upon him) asked him: "Did you steal this one's garment?" He said: "Yes." The Prophet (peace be upon him) said: "Take him and cut off his hand." Safwan said: "I did not intend for his hand to be cut off over my garment!" He replied: "Why was this not [settled] beforehand?"

L40320–40322 Narrated by Abdullah ibn Rabi' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Ahmad ibn Uthman ibn Hakim from Amr from Asbat from Simak from Humaid, the son of Safwan's sister, from Safwan ibn Umayyah. He said: "I was sleeping in the mosque on a striped cloak of mine worth thirty dirhams when a man came and snatched it from me. The man

[51] **Hadith references (L40317):** Sunan Abi Dawud 4376; Sunan an-Nasai 4886; Mishkat al-Masabih 3568.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا مُحَمَّدُ بْنُ جَعْفَرٍ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ طَارِقِ بْنِ مُرَقَّعٍ عَنْ صَفْوَانَ بْنِ أُمَيَّةَ «أَنَّ رَجُلًا سَرَقَ بُرْدَةً فَرَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ بِقَطْعِهِ، فَقَالَ: يَا رَسُولَ اللَّهِ قَدْ تَجَاوَزْتُ عَنْهُ، قَالَ فَلَوْلَا كَانَ هَذَا قَبْلَ أَنْ تَأْتِيَنِي بِهِ يَا أَبَا وَهْبٍ - فَقَطَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا هِلَالُ بْنُ الْعَلَاءِ الرَّقِّيُّ نا حُسَيْنٌ نا زُهَيْرٌ نا عَبْدُ الْمَلِكِ - هُوَ ابْنُ أَبِي بَشِيرٍ - أَنَا عِكْرِمَةُ عَنْ «صَفْوَانَ بْنِ أُمَيَّةَ أَنَّهُ طَافَ بِالْبَيْتِ فَصَلَّى ثُمَّ لَفَّ رِدَاءً لَهُ فِي بُرْدِهِ فَوَضَعَهُ تَحْتَ رَأْسِهِ فَنَامَ، فَأَتَاهُ لِصٌّ فَاسْتَلَّهُ مِنْ تَحْتِ رَأْسِهِ، فَأَخَذَهُ فَأَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ هَذَا سَرَقَ رِدَائِي؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَسَرَقْتَ رِدَاءَ هَذَا؟ قَالَ: نَعَمْ، قَالَ: اذْهَبَا بِهِ فَاقْطَعَا يَدَهُ - قَالَ صَفْوَانُ: مَا كُنْتُ أُرِيدُ أَنْ تُقْطَعَ يَدُهُ فِي رِدَائِي؟ قَالَ: فَلَوْ مَا كَانَ هَذَا قَبْلُ» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ عُثْمَانَ بْنِ حَكِيمٍ نا عَمْرٌو عَنْ أَسْبَاطٍ عَنْ سِمَاكٍ عَنْ حُمَيْدِ بْنِ أُخْتِ صَفْوَانَ عَنْ صَفْوَانَ بْنِ أُمَيَّةَ، قَالَ: «كُنْتُ نَائِمًا فِي الْمَسْجِدِ عَلَى خَمِيصَةٍ لِي ثَمَنُ ثَلَاثِينَ دِرْهَمًا، فَجَاءَ رَجُلٌ فَاخْتَلَسَهَا مِنِّي، فَأَخَذَ الرَّجُلَ فَأَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ لِيُقْطَعَ، فَأَتَيْتُهُ فَقُلْتُ لَهُ:

was seized and brought to the Prophet (peace be upon him), who ordered that his hand be cut off. I went to him and said: 'Will you cut off his hand for thirty dirhams? I waive the penalty and allow him to defer payment for its value.' He replied: 'Why did you not do this before bringing him to me?'"

L40323 Abdullah ibn Rabi' narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnun narrated to us: Ibn Wahb narrated to us from Amr ibn al-Harith that Amr ibn Dinar al-Makki narrated to him: "It was said to Safwan ibn Umayyah: 'One who does not emigrate has no religion.' He then went to the Messenger of Allah—peace and blessings be upon him—and entered his presence. He asked: 'What brings you?' Safwan replied: 'I was told that one who does not emigrate has no religion.' The Prophet said: 'I adjure you to return to the outskirts of Mecca.' Subsequently, a man was brought to the Messenger of Allah—peace and blessings be upon him—and the accuser said: 'This man stole my striped cloak.' The Messenger of Allah—peace and blessings be upon him—ordered: 'Cut off his hand.' Safwan interjected: 'I have forgiven him, O Messenger of Allah.' The Messenger of Allah—peace and blessings be upon him—responded: 'Why did you not do this before bringing him to me?'"

L40324 Yusuf ibn Abdullah narrated from Ahmad ibn Muhammad ibn al-Jasur, who narrated from Qasim ibn Asbagh, who narrated from Mutarrif ibn Qays, who narrated from Yahya ibn Bukayr, who narrated from Malik, who narrated from Ibn Shihab, who reported from Safwan ibn Abdullah ibn Safwan ibn Umayyah: Safwan ibn Umayyah was told, "Whoever does not emigrate will perish." He then traveled to Medina and slept in the mosque, using his cloak as a pillow. A thief stole his cloak, but Safwan apprehended him and brought him to the Messenger of Allah (peace be upon him). The Prophet ordered the thief's hand to be severed. Safwan protested, "I did not mean for this to happen! Is this not a ṣadaqah from me to him?" The Messenger of Allah (peace be upon him) responded, "Why did you not declare this before bringing him to me?"

L40325–40327 Abu Muhammad—may Allah have mercy on him—said: It is also reported therein from some of the Salaf, as we transmitted through the aforemen-

تَقْطَعُهُ مِنْ أَجْلِ ثَلَاثِينَ دِرْهَمًا، أَنَا أَضَعُهُ وَأُنْسِئُهُ ثَمَنَهَا؟ قَالَ: فَهَلَّا كَانَ هَذَا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ أَنَّ عَمْرَو بْنَ دِينَارٍ الْمَكِّيَّ حَدَّثَهُ: «أَنَّهُ قِيلَ لِصَفْوَانَ بْنِ أُمَيَّةَ: لَا دِينَ لِمَنْ لَمْ يُهَاجِرْ؟ فَأَقْبَلَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَخَلَ عَلَيْهِ، فَقَالَ: مَا أَقْدَمَكَ، قَالَ: قِيلَ لِي: إِنَّهُ لَا دِينَ لِمَنْ لَمْ يُهَاجِرْ، قَالَ فَأَقْسَمْتُ عَلَيْكَ لَتَرْجِعَنَّ إِلَى أَبَاطِيحِ مَكَّةَ - ثُمَّ جِيءَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ فَقَالَ: إِنَّ هَذَا سَرَقَ خَمِيصَتِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اقْطَعُوا يَدَهُ - قَالَ: عَفَوْتُ عَنْهُ يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

نا يُوسُفُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكٌ نا ابْنُ شِهَابٍ عَنْ صَفْوَانَ بْنِ عَبْدِ اللَّهِ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ أَنَّ صَفْوَانَ بْنَ أُمَيَّةَ، قِيلَ لَهُ: «إِنَّهُ مَنْ لَمْ يُهَاجِرْ هَلَكَ، فَقَدِمَ صَفْوَانُ بْنُ أُمَيَّةَ الْمَدِينَةَ فَنَامَ فِي الْمَسْجِدِ، وَتَوَسَّدَ رِدَاءَهُ، فَجَاءَ سَارِقٌ فَأَخَذَ رِدَاءَهُ، فَأَخَذَ صَفْوَانُ السَّارِقَ، فَجَاءَ بِهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُقْطَعَ يَدُهُ، فَقَالَ صَفْوَانُ: إِنِّي لَمْ أُرِدْهُ بِهَذَا، هُوَ عَلَيْهِ صَدَقَةٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَلَّا قَبْلَ أَنْ تَأْتِيَنِي بِهِ؟» .

tioned chain to Malik from Rabiʿah ibn Abī ʿAbd al-Raḥmān, that al-Zubayr ibn al-ʿAwwām encountered a man who had apprehended a thief. The man intended, "Should I take him to the Sultan?" Al-Zubayr interceded with him to release the thief, but the man replied: "No—not until I bring him before the Sultan." Thereupon al-Zubayr said to him: "If you bring him before the Sultan, may Allah curse the intercessor and the advocate." Abū Muḥammad—may Allāh have mercy on him—said: We examined the traditions from the Prophet—peace and blessings of Allāh be upon him—and found not a single one of them to be authentic at all. As for the first one, it is from ʿAmr ibn Shuʿayb, from his father, from ʿAmr, and it is a written document.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَجَاءَ فِيهِ أَيْضًا عَنْ بَعْضِ السَّلَفِ كَمَا رُوِّينَاهُ بِالسَّنَدِ الْمَذْكُورِ إلَى مَالِكٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ الزُّبَيْرَ بْنَ الْعَوَّامِ لَقِيَ رَجُلًا قَدْ أَخَذَ سَارِقًا وَهُوَ يُرِيدُ أَنْ يَذْهَبَ بِهِ إلَى السُّلْطَانِ؟ فَشَفَعَ لَهُ الزُّبَيْرُ لِيُرْسِلَهُ، فَقَالَ: لَا، حَتَّى أَبْلُغَ بِهِ إلَى السُّلْطَانِ، فَقَالَ لَهُ الزُّبَيْرُ: إذَا بَلَغْت بِهِ إلَى السُّلْطَانِ فَلَعَنَ اللَّهُ الشَّافِعَ وَالْمُشَفَّعَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي الْآثَارِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدْنَاهَا لَا يَصِحُّ مِنْهَا شَيْءٌ أَصْلًا: أَمَّا الْأَوَّلُ فَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَمْرٍو، وَهِيَ صَحِيفَةٌ.

L40328 As for the ḥadīth of Ṣafwān, nothing in it is authentic at all, for all its chains are discontinuous. This is because they are narrated through ʿAṭāʾ, ʿIkrimah, ʿAmr ibn Dīnār, and Ibn Shihāb—none of whom met Ṣafwān.

وَأَمَّا حَدِيثُ صَفْوَانَ فَلَا يَصِحُّ فِيهِ شَيْءٌ أَصْلًا، لِأَنَّهَا كُلُّهَا مُنْقَطِعَةٌ، لِأَنَّهَا عَنْ عَطَاءٍ، وَعِكْرِمَةَ، وَعَمْرِو بْنِ دِينَارٍ، وَابْنِ شِهَابٍ، وَلَيْسَ مِنْهُمْ أَحَدٌ أَدْرَكَ صَفْوَانَ.

L40329 As for the narration from 'Ata' via Tariq ibn Murtafi'—an unknown narrator—or from Asbat via Simak via Humayd, the nephew of Safwan (son of Safwan's sister): this constitutes a weak chain—a weak narrator from another weak narrator from an unknown narrator.

وَأَمَّا عَنْ عَطَاءٍ عَنْ طَارِقِ بْنِ مُرْتَفِعٍ وَهُوَ مَجْهُولٌ، أَوْ عَنْ أَسْبَاطٍ عَنْ سِمَاكٍ عَنْ حُمَيْدِ بْنِ أُخْتِ صَفْوَانَ وَهَذَا ضَعِيفٌ عَنْ ضَعِيفٍ عَنْ مَجْهُولٍ.

L40330 Ali said: Since there is no reliable tradition in this chapter to depend upon, the recourse is to seek the ruling on this issue from sources other than these specific traditions. We examined the matter and found that it has been established through the proofs we previously cited: that the prescribed punishment is not obligatory except after it reaches the Imam and its authenticity is confirmed before him.

قَالَ عَلِيٌّ: فَإِذْ لَيْسَ فِي هَذَا الْبَابِ أَثَرٌ يُعْتَمَدُ عَلَيْهِ، فَالْمَرْجُوعُ إلَيْهِ هُوَ طَلَبُ حُكْمِ هَذِهِ الْمَسْأَلَةِ مِنْ غَيْرِ هَذِهِ الْآثَارِ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا قَدْ صَحَّ بِالْبَرَاهِينِ الَّتِي قَدْ أَوْرَدْنَا قَبْلُ: أَنَّ الْحَدَّ لَا يَجِبُ إلَّا بَعْدَ بُلُوغِهِ إلَى الْإِمَامِ وَصِحَّتِهِ عِنْدَهُ.

L40331 Since the matter is as such, abandoning the pursuit of the person involved prior to that is permissible, because no prescribed punishment has yet been incurred for what he did. Reporting it is also permissible, as there is no textual evidence or consensus prohibiting it. Since both courses of action are permissible, the more preferable stance to us—without making it a formal legal ruling—is to pardon him if the act was a momentary lapse and kept pri-

فَإِذْ الْأَمْرُ كَذَلِكَ فَالتَّرْكُ لِطَلَبِ صَاحِبِهِ قَبْلَ ذَلِكَ مُبَاحٌ، لِأَنَّهُ لَمْ يَجِبْ عَلَيْهِ فِيمَا فَعَلَ حَدٌّ بَعْدُ - وَرَفْعُهُ أَيْضًا مُبَاحٌ، إذْ لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ، فَإِذْ كِلَا الْأَمْرَيْنِ مُبَاحٌ، فَالْأَحَبُّ إلَيْنَا - دُونَ أَنْ يُفْتَى بِهِ - أَنْ يُعْفَى عَنْهُ مَا كَانَ وَهْلَةً وَمَسْتُورًا، فَإِنْ أَذَى صَاحِبُهُ وَجَاهَرَ: فَرَفْعُهُ أَحَبُّ إلَيْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

vate. But if the person involved causes harm and publicizes it, then reporting it is more preferable to us—and success comes from Allah, the Exalted.

L40332 **Issue: Are ḥudūd punishments averted due to ambiguities, or not?**

L40333 2183 - Issue: Are Ḥudūd punishments warded off due to doubts or not? Abū Muḥammad (may Allāh have mercy on him) said: A group held the view that Ḥudūd punishments are warded off due to doubts. The most stringent in their adherence to this principle and its application were Abū Ḥanīfah and his followers, then the Mālikīs, and then the Shāfiʿīs.

L40334–40336 Our scholars have maintained that it is impermissible to avert the prescribed punishments due to doubt, nor to enforce them based on doubt. Rather, they are a right reserved exclusively for Allah the Exalted, and there is nothing beyond that. If the punishment is not definitively established, it is impermissible to enforce it based on doubt, due to the statement of the Messenger of Allah (peace and blessings be upon him): "Your blood, your wealth, your honor, and your bodies are inviolable." And when it is established... It is not permissible to avert the *ḥadd* through suspicion, as stated by Allah, the Exalted: "These are the limits ordained by Allah, so do not transgress them" (Q. 2:229).[52]

L40337 Abū Muḥammad—may God have mercy on him—said: When they differed as we have mentioned, it became obligatory for us to scrutinize the wording relied upon by its proponents: Is it valid or not?

L40338–40339 We examined it and found that it came through chains of transmission containing neither an explicit text nor a single word from the Prophet—peace and blessings of God be upon him and his family. Rather, it is narrated from some Companions through chains entirely devoid of merit: narrated by Hammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ibrāhīm al-Nakhaʿī, that ʿUmar ibn al-Khaṭṭāb said: "Avert the prescribed punishments as much as you are able."

[52]**Qur'an references (L40334):** Qur'an 2:229 (Al-Baqarah).

[مَسْأَلَة هَلْ تُدْرَأُ الْحُدُودُ بِالشُّبُهَاتِ أَمْ لَا]

٢١٨٣ - مَسْأَلَةٌ: هَلْ تُدْرَأُ الْحُدُودُ بِالشُّبُهَاتِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَهَبَ قَوْمٌ إلَى أَنَّ الْحُدُودَ تُدْرَأُ بِالشُّبُهَاتِ، فَأَشَدُّهُمْ قَوْلًا بِهَا وَاسْتِعْمَالًا لَهَا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، ثُمَّ الْمَالِكِيُّونَ، ثُمَّ الشَّافِعِيُّونَ.

وَذَهَبَ أَصْحَابُنَا إلَى أَنَّ الْحُدُودَ لَا يَحِلُّ أَنْ تُدْرَأَ بِشُبْهَةٍ، وَلَا أَنْ تُقَامَ بِشُبْهَةٍ وَإِنَّمَا هُوَ الْحَقُّ لِلَّهِ تَعَالَى وَلَا مَزِيدَ، فَإِنْ لَمْ يَثْبُتْ الْحَدُّ لَمْ يَحِلَّ أَنْ يُقَامَ بِشُبْهَةٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَإِذَا ثَبَتَ الْحَدُّ لَمْ يَحِلَّ أَنْ يُدْرَأَ بِشُبْهَةٍ لِقَوْلِ اللَّهِ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي اللَّفْظِ الَّذِي يَتَعَلَّقُ بِهِ مَنْ تَعَلَّقَ أَيَصِحُّ أَمْ لَا؟

فَنَظَرْنَا فِيهِ فَوَجَدْنَاهُ قَدْ جَاءَ مِنْ طُرُقٍ لَيْسَ فِيهَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَصٌّ، وَلَا كَلِمَةٌ، إنَّمَا هِيَ عَنْ بَعْضِ أَصْحَابِهِ مِنْ طُرُقٍ كُلُّهَا لَا خَيْرَ فِيهَا: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ

L40340 And with his narration — up to Sufyan al-Thawri, from al-Qasim ibn Abd al-Rahman, who said: Ibn Mas'ud said, "Ward off the hudud as much as you are able."

وَبِهِ - إِلَى سُفْيَانَ الثَّوْرِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ قَالَ ابْنُ مَسْعُودٍ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ

L40341 On the authority of Abū Hurayrah: Avert the ḥudūd as long as you find a means of averting them.

وَعَنْ أَبِي هُرَيْرَةَ ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ مَدْفَعًا

L40342 On the authority of Ibn ʿUmar, who said: Avoid applying the prescribed punishments when there are doubts.

عَنْ ابْنِ عُمَرَ قَالَ: ادْفَعُوا الْحُدُودَ بِالشُّبُهَاتِ

L40343 Narrated by Aisha: Avert the prescribed punishments from Muslims as much as you can.

وَعَنْ عَائِشَةَ ادْرَءُوا الْحُدُودَ عَنْ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ

L40344 On the authority of ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd, who would say: Ward off the hudūd from Allah's servants in matters where uncertainty arises for you.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ كَانَا يَقُولَانِ: ادْرَءُوا عَنْ عِبَادِ اللَّهِ الْحُدُودَ فِيمَا شُبِّهَ عَلَيْكُمْ

L40345 Abu Muhammad—may Allah have mercy on him—said: "All of them are invalid. As for the narration transmitted through the chain of Abd al-Razzaq, it is *mursal* (disconnected). The narration transmitted through the chain of Umar is likewise, because it is narrated by Ibrahim from Umar, and Ibrahim was not born until approximately fifteen years after Umar's death."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهِيَ كُلُّهَا لَا شَيْءَ: أَمَّا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ فَمُرْسَلٌ، وَالَّذِي مِنْ طَرِيقِ عُمَرَ كَذَلِكَ، لِأَنَّهُ عَنْ إبْرَاهِيمَ عَنْ عُمَرَ وَلَمْ يُولَدْ إبْرَاهِيمُ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ خَمْسَةَ عَشَرَ عَامًا

L40346 The other narration from Ibn Mas'ud is mursal, as it is transmitted via the chain of al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbdullāh ibn Mas'ūd.

وَالْآخَرُ الَّذِي عَنْ ابْنِ مَسْعُودٍ مُرْسَلٌ، لِأَنَّهُ مِنْ طَرِيقِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ

L40347 As for the narrations of Ibn Ḥabīb, they are a disgrace; even if there were nothing else in them besides him, it would suffice, for all of them are mursal.

وَأَمَّا أَحَادِيثُ ابْنِ حَبِيبٍ فَفَضِيحَةٌ، لَوْ لَمْ يَكُنْ فِيهَا غَيْرُهُ لَكَفَى فَكُلُّهَا مُرْسَلَةٌ

L40348 Abū Muḥammad—may God have mercy on him—said: From what we have discussed, it is evident that the wording they relied upon ("Avert the ḥudūd by doubts")—we do not know it to have been reported in any form from anyone at all, neither from a Companion nor from a Follower, except the discarded narration we presented through the chain of Ibrāhīm ibn al-Faḍl from ʿAbd Allāh ibn Dīnār from Ibn ʿUmar. And Ibrāhīm is deemed unreliable.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَحَصَلَ مِمَّا ذَكَرْنَا أَنَّ اللَّفْظَ الَّذِي تَعَلَّقُوا بِهِ لَا نَعْلَمُهُ رُوِيَ عَنْ أَحَدٍ أَصْلًا، وَهُوَ " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " لَا عَنْ صَاحِبٍ، وَلَا عَنْ تَابِعٍ إلَّا الرِّوَايَةُ السَّاقِطَةُ الَّتِي أَوْرَدْنَا مِنْ طَرِيقِ إبْرَاهِيمَ بْنِ الْفَضْلِ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ، وَإِبْرَاهِيمَ سَاقِطٌ

وَإِنَّمَا جَاءَ كَمَا تَرَى عَنْ بَعْضِ الصَّحَابَةِ مِمَّا لَمْ يَصِحَّ " ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ " وَهَذَا لَفْظٌ إنْ اُسْتُعْمِلَ أَدَّى إلَى إبْطَالِ الْحُدُودِ جُمْلَةً عَلَى كُلِّ حَالٍ - وَهَذَا خِلَافُ إجْمَاعِ أَهْلِ الْإِسْلَامِ، وَخِلَافُ الدِّينِ، وَخِلَافُ الْقُرْآنِ، وَالسُّنَنِ، لِأَنَّ كُلَّ أَحَدٍ هُوَ مُسْتَطِيعٌ عَلَى أَنْ يَدْرَأَ كُلَّ حَدٍّ يَأْتِيهِ فَلَا يُقِيمُهُ

L40349–40351 It is only reported, as you see, from some Companions in unauthenticated narrations: "Avert the hudud (prescribed penalties) as much as you can." This wording, if employed, would lead to the complete and universal nullification of the hudud in all cases—and this. Opposition to the consensus of the people of Islam, opposition to the religion, and opposition to the Quran and the Sunnahs, because everyone is capable of averting every hadd punishment that comes to him, so it would never be established.

فَبَطَلَ أَنْ يُسْتَعْمَلَ هَذَا اللَّفْظُ وَسَقَطَ أَنْ تَكُونَ فِيهِ حُجَّةٌ لِمَا ذَكَرْنَا

L40352 Therefore, it is invalid for this term to be used, and any authoritative evidence within it is rendered void due to what we have elaborated.

وَأَمَّا اللَّفْظُ الْآخَرُ فِي ذِكْرِ الشُّبُهَاتِ؟ فَقَدْ قُلْنَا: " ادْرَءُوا " لَا نَعْرِفُهُ عَنْ أَحَدٍ أَصْلًا، إلَّا مَا ذَكَرْنَا مِمَّا لَا يَجِبُ أَنْ يُسْتَعْمَلَ فَقَطْ، لِأَنَّهُ بَاطِلٌ لَا أَصْلَ لَهُ، ثُمَّ لَا سَبِيلَ لِأَحَدٍ إلَى اسْتِعْمَالِهِ، لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ مَا هِيَ تِلْكَ " الشُّبُهَاتِ " فَلَيْسَ لِأَحَدٍ أَنْ يَقُولَ فِي شَيْءٍ يُرِيدُ أَنْ يُسْقِطَ بِهِ حَدًّا " هَذَا شُبْهَةٌ " إلَّا كَانَ لِغَيْرِهِ أَنْ يَقُولَ: لَيْسَ بِشُبْهَةٍ، وَلَا كَانَ لِأَحَدٍ أَنْ يَقُولَ فِي شَيْءٍ لَا يُرِيدُ أَنْ يُسْقِطَ بِهِ حَدًّا: لَيْسَ هَذَا شُبْهَةً، إلَّا كَانَ لِغَيْرِهِ أَنْ يَقُولَ: بَلْ هُوَ شُبْهَةٌ، وَمِثْلُ هَذَا لَا يَحِلُّ اسْتِعْمَالُهُ فِي دِينِ اللَّهِ تَعَالَى، إنَّهُ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا مَعْقُولٌ، مَعَ الِاخْتِلَاطِ الَّذِي فِيهِ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40353 As for the other phrasing concerning the mention of doubts, we have stated: "Ward off"—we do not know of it being attributed to anyone at all, except what we mentioned, which should not be used only, for it is invalid and baseless. Furthermore, no one is permitted to employ it, as it does not clarify what those "doubts" are. Thus, no one may declare regarding something through which they seek to nullify a prescribed punishment, "This is a doubt," without another being entitled to say, "It is not a doubt." Similarly, no one may state regarding something through which they do not seek to nullify a prescribed punishment, "This is not a doubt," without another being entitled to say, "Rather, it is a doubt." It is not permissible to employ such phrasing in the religion of Allah, the Exalted. It is neither supported by the Qur'an, nor by any authentic Sunnah, nor a weak one, nor by a Companion's statement, nor by analogy, nor rational reasoning—particularly given the confusion inherent in it as we have elaborated. Success is attained solely through Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ شَغَبَ مُشْغَبٌ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا أُمُورٌ مُشْتَبِهَةٌ فَمَنْ تَرَكَ مَا اشْتَبَهَ عَلَيْهِ مِنْ الْإِثْمِ كَانَ لِمَا اسْتَبَانَ أَتْرَكُ، وَمَنْ اجْتَرَأَ عَلَى مَا يَشُكُّ فِيهِ مِنْ الْإِثْمِ أَوْشَكَ أَنْ يُوَاقِعَ مَا اسْتَبَانَ، وَالْمَعَاصِي حِمَى اللَّهِ، مَنْ يَرْتَعْ حَوْلَ الْحِمَى يُوشِكُ أَنْ يُوَاقِعَهُ» فَإِنَّ هَذَا صَحِيحٌ، وَبِهِ نَقُولُ، وَهُوَ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا تَرْكُ

L40354 Abu Muhammad—may Allah have mercy on him—said: If a disputant raises objections using what we narrated through al-Bukhārī's chain from the Messenger of Allah—peace and blessings be upon him—"Halal is evident, Haram is evident, and between them lie ambiguous matters. Whoever avoids what is uncertain to him of sin will have been more cautious in avoiding what is evident. Whoever ventures into what he doubts as sinful is on the verge of committing what is evident. Transgressions are Allah's preserve: whoever grazes near the sanctuary is on the verge of entering it"—then this is authentic, and we adhere to it. It is against them, not for them, for it merely

concerns abandoning what one finds ambiguous when unaware of its ruling before Allah—Exalted is He—regarding that for which He has made us worship Him. This is an obligation, and none may lawfully oppose it.

الْمَرْءِ مَا اشْتَبَهَ عَلَيْهِ، فَلَمْ يَدْرِ مَا حُكْمُهُ عِنْدَ اللَّهِ تَعَالَى فِي الَّذِي لَهُ تَعَبَّدْنَا بِهِ، وَهَذَا فَرْضٌ لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهُ

L40355–40357 And thus we say: Indeed, whoever is uncertain—"Is this thing prohibited or permissible?"—it is an act of piety for him to refrain from it. Whoever is uncertain—"Is this act obligatory or not?"—the ruling for him is not to consider it obligatory. Whoever is uncertain—"Has the *ḥadd* punishment become obligatory or not?"—his obligation is not to implement it, for honor and blood are inviolable according to the saying of the Messenger of Allah—peace and blessings be upon him—"Indeed..." Your blood, your wealth, your honor, and your bodily integrity are sacred to you. As for when the obligation of the prescribed punishment is established, it is not permissible for anyone to nullify it, for it is an obligation among the obligations prescribed by Allah, the Exalted.

وَهَكَذَا نَقُولُ: إنَّ مَنْ جَهِلَ - أَحَرَامٌ هَذَا الشَّيْءُ أَمْ حَلَالٌ؟ فَالْوَرَعُ لَهُ أَنْ يُمْسِكَ عَنْهُ، وَمَنْ جَهِلَ أَفَرْضٌ هُوَ أَمْ غَيْرُ فَرْضٍ؟ فَحُكْمُهُ أَنْ لَا يُوجِبَهُ، وَمَنْ جَهِلَ أَوَجَبَ الْحَدُّ أَمْ لَمْ يَجِبْ؟ فَفَرْضُهُ أَنْ لَا يُقِيمَهُ، لِأَنَّ الْأَعْرَاضَ وَالدِّمَاءَ حَرَامٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَمَّا إذَا تَبَيَّنَ وُجُوبُ الْحَدِّ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسْقِطَهُ، لِأَنَّهُ فَرْضٌ مِنْ فَرَائِضِ اللَّهِ تَعَالَى

L40358 Abu Muhammad—may Allah have mercy on him—said: We know of no one more audacious than them in enforcing Ḥudūd punishments based on suspicions and in circumstances where their enforcement is not obligatory upon them, yet they abandon them where Allah the Exalted and His Messenger (peace be upon him) made their application obligatory. We shall mention sufficient instances of this, Allah the Exalted willing. The first of these is the soul whose sanctity Allah the Exalted has magnified and whose killing He prohibited except by due right.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ أَحَدًا أَشَدَّ جَسْرًا عَلَى إقَامَةِ الْحَدِّ بِالشُّبُهَاتِ وَحَيْثُ لَا تَجِبُ إقَامَتُهَا مِنْهُمْ، ثُمَّ يُسْقِطُونَهَا حَيْثُ أَوْجَبَهَا اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -، وَنَحْنُ ذَاكِرُونَ مِنْ ذَلِكَ طَرَفًا كَافِيًا إنْ شَاءَ اللَّهُ تَعَالَى، فَأَوَّلُ ذَلِكَ النَّفْسِ الَّتِي عَظَّمَ اللَّهُ تَعَالَى أَمْرَهَا وَحَرَّمَ قَتْلَهَا إلَّا بِالْحَقِّ

L40359 As for the Malikis—they permit the killing of a protected life based on the claim of one who might seek to remedy himself against his enemy, relying on the oaths of two men from his clan even if they are the most wicked of creation. Yet they would not grant him even a decayed date pit through his mere claim, even if those same two men swore a thousand oaths in support and were the most righteous of creation. This constitutes the shedding of protected blood through a false suspicion—a suspicion so baseless that none surpasses it in worthlessness.

فَأَمَّا الْمَالِكِيُّونَ - فَقَتَلُوا النَّفْسَ الْمُحَرَّمَةَ بِدَعْوَى مَنْ لَعَلَّهُ يُرِيدُ أَنْ يَشْفِيَ نَفْسَهُ مِنْ عَدُوِّهِ مَعَ أَيْمَانِ رَجُلَيْنِ مِنْ عَشِيرَتِهِ وَإِنْ كَانَا أَفْسَقَ الْبَرِيَّةِ، وَهُمْ لَا يُعْطُونَهُ بِدَعْوَاهُ نَوَاةً مَعْفُونَةً، وَلَوْ حَلَفُوا مَعَ دَعْوَاهُ أَلْفَ يَمِينٍ وَكَانُوا أَصْلَحَ الْبَرِيَّةِ، هَذَا سَفْكُ الدَّمِ الْمُحَرَّمِ بِالشُّبْهَةِ الْفَاسِدَةِ الَّتِي لَا شُبْهَةَ أَبْرَدُ مِنْهَا

L40360 They kill based on testimony arising from strong suspicion without just testimony or the qasāmah (oath of collective condemnation), and they are not

granted two fals for their testimony. They kill the one who neglects prayer if he acknowledges it as an obligation. They kill the one who detains another until the latter is killed, yet they do not apply the ḥadd punishment to the one who detains a woman unless she is actually subjected to fornication. They kill the sorcerer without demanding his repentance, for it is merely trickery and a major sin equivalent to fornication, yet they do not kill the consumer of usury despite Allah's statement concerning it being more severe than His statement regarding sorcery. They kill the one who conceals disbelief without averting punishment from him through his declaration of repentance, yet they do not kill the one who openly professes disbelief if he declares repentance, though there is no difference. They kill a Muslim for killing a disbeliever if done treacherously, refusing to accept the guardian's pardon in such cases – contradicting the Quran, the Sunnah, and the application of prescribed punishments based on baseless doubt. They lash the pardoned killer one hundred times and exile him for a year.

وَيَقْتُلُونَ بِشَهَادَةِ اللَّوْثِ غَيْرِ الْعَدْلِ وَالْقَسَامَةِ، وَلَا يُعْطَوْنَ بِشَهَادَتِهِمْ فَلْسَيْنِ، وَيَقْتُلُونَ الْآبِيَ عَنْ الصَّلَاةِ إنْ أَقَرَّ بِهَا، وَأَنَّهَا فَرْضٌ، وَيَقْتُلُونَ الْمُمْسِكَ آخَرَ حَتَّى قُتِلَ، وَلَا يَحُدُّونَ الْمُمْسِكَ امْرَأَةً حَتَّى يُزْنَى بِهَا، وَيَقْتُلُونَ السَّاحِرَ دُونَ اسْتِتَابَةٍ، وَإِنَّمَا هِيَ حِيَلٌ، وَكَبِيرَةٌ كَالزِّنَى، وَلَا يَقْتُلُونَ آكِلَ الرِّبَا، وَقَوْلُ اللَّهِ تَعَالَى فِيهِ أَشَدُّ مِنْ قَوْلِهِ فِي السَّاحِرِ، وَيَقْتُلُونَ الْمُسْتَتِرَ بِالْكُفْرِ - وَلَا يَدْرَءُونَ عَنْهُ بِإِعْلَانِهِ التَّوْبَةَ، وَلَا يَقْتُلُونَ الْمُعْلِنَ بِالْكُفْرِ إذَا أَظْهَرَ التَّوْبَةَ، وَلَا فَرْقَ، وَيَقْتُلُونَ الْمُسْلِمَ بِالْكَافِرِ إذَا قَتَلَهُ غِيلَةً، وَلَا يُجِيزُونَ فِي ذَلِكَ عَفْوَ الْوَلِيِّ - وَهَذَا خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، وَإِقَامَةِ الْحُدُودِ بِالشُّبْهَةِ الْفَاسِدَةِ، وَيَجْلِدُونَ الْقَاتِلَ الْمَعْفُوَّ عَنْهُ مِائَةَ جَلْدَةٍ، وَيَنْفُونَهُ سَنَةً

L40361 As for the Hanafis—they kill a Muslim in retaliation for a disbeliever in defiance of Allah the Exalted and His Messenger—peace be upon him—and to protect the people of disbelief. They do not kill the disbeliever who insults the Prophet—peace and blessings of Allah be upon him and his family—in the presence of Muslims within their markets and mosques. Nor do they kill those among the disbelievers who openly revile Allah the Exalted before Muslims—and these are matters from which we seek refuge in Allah. They kill the Dhimmi—whose blood is inviolable except by legitimate justification—based on the testimony of two disbelievers.

وَأَمَّا الْحَنَفِيُّونَ - فَيَقْتُلُونَ الْمُسْلِمَ بِالْكَافِرِ خِلَافًا عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - عَلَيْهِ السَّلَامُ -، وَمُحَافَظَةً لِأَهْلِ الْكُفْرِ، وَلَا يَقْتُلُونَ الْكَافِرَ إذَا سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِحَضْرَةِ أَهْلِ الْإِسْلَامِ فِي أَسْوَاقِهِمْ وَمَسَاجِدِهِمْ، وَلَا يَقْتُلُونَ مِنْ أَهْلِ الْكُفْرِ مَنْ سَبَّ اللَّهَ تَعَالَى جِهَارًا بِحَضْرَةِ الْمُسْلِمِينَ - وَهَذِهِ أُمُورٌ نَعُوذُ بِاَللَّهِ مِنْهَا - وَيَقْتُلُونَ الذِّمِّيَّ الَّذِي قَدْ حَرُمَ دَمُهُ إلَّا بِالْحَقِّ بِشَهَادَةِ كَافِرَيْنِ

L40362–40364 As for adultery: the Malikis impose the Ḥadd punishment for adultery in cases of pregnancy—even if the pregnancy stems from coercion—and they stone [the offender]. A muḥṣan (married free man) who engages in anal intercourse with an unrelated woman, or commits sodomy—whether being muḥṣan or not—the authorities do not apply the hadd punishment to one who copulates with an animal, nor to a woman who engages in copulation with a dog. All such acts constitute wrongful sexual license. They do not apply the hadd punishment to a woman who has unlawful intercourse—while being mentally sound, adult, and acting voluntarily—with a boy who

وَأَمَّا الزِّنَى: فَإِنَّ الْمَالِكِيِّينَ - يَحُدُّونَ بِالْحَبَلِ وَلَعَلَّهُ مِنْ إكْرَاهٍ - وَيَرْجُمُونَ الْمُحْصَنَ إذَا وَطِئَ امْرَأَةً أَجْنَبِيَّةً فِي دُبُرِهَا، أَوْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ - وَلَا يَحُدُّونَ وَاطِئَ الْبَهِيمَةِ - وَلَا الْمَرْأَةَ تَحْمِلُ عَلَى نَفْسِهَا كَلْبًا - وَكُلُّ ذَلِكَ إبَاحَةُ فَرْجٍ بِالْبَاطِلِ، وَلَا يَحُدُّونَ الَّتِي تَزْنِي - وَهِيَ عَاقِلَةٌ بَالِغَةٌ مُخْتَارَةٌ - بِصَبِيٍّ لَمْ يَبْلُغْ، وَيَحُدُّونَ الرَّجُلَ إذَا زَنَى بِصَبِيَّةٍ مِنْ سِنِّ ذَلِكَ الصَّبِيِّ

has not reached puberty, but they do apply the hadd punishment to a man who commits unlawful intercourse with a girl of the same age as that non-pubescent boy.

وَأَنَّ ابْنَ الْقَاسِمِ لَا يَحُدُّ النَّصْرَانِيَّ، وَلَا الْيَهُودِيَّ، إذَا زَنَى بِمُسْلِمَةٍ، وَيُطْلِقُونَ الْحَرْبِيَّ النَّازِلَ عِنْدَنَا بِتِجَارَةٍ، وَالْمُتَذَمِّمَ يَغْرَمُ الْجِزْيَةَ عَلَى تَمَلُّكِ الْمُسْلِمَاتِ اللَّوَاتِي سَبَاهُنَّ قَبْلَ نُزُولِهِ، وَتَذَمُّمِهِ مِنْ حَرَائِرِ الْمُسْلِمَاتِ مِنْ الْقُرَشِيَّاتِ وَالْأَنْصَارِيَّاتِ، وَغَيْرِهِنَّ، وَعَلَى وَطْئِهِنَّ، وَبَيْعِهِنَّ صُرَاحًا مُبَاحًا - وَهَذِهِ قَوْلَةٌ مَا سُمِعَ بِأَفْحَشَ مِنْهَا؟ ٢١٨٤ - مَسْأَلَةٌ: وَأَمَّا السَّرِقَةُ: فَإِنَّ الْمَالِكِيِّينَ يَقْطَعُونَ فِيهَا الرِّجْلَيْنِ بِلَا نَصٍّ ثَابِتٍ وَلَا إجْمَاعٍ، وَيَقْطَعُونَ مَنْ دَخَلَ مَنْزِلَ إنْسَانٍ فَأَخْرَجَ مِنْهُ مَا يُسَاوِي ثَلَاثَةَ دَرَاهِمَ، وَقَالَ: إنَّ صَاحِبَ الدَّارِ أَرْسَلَنِي فِي هَذِهِ الْحَاجَةِ وَصَدَّقَهُ صَاحِبُ الدَّارِ، وَلَا يَلْتَفِتُونَ إلَى شَيْءٍ مِنْ هَذَا، أَوْ يَقْطَعُونَ يَدَهُ مُطَارَفَةً، وَيَقْطَعُونَ جَمَاعَةً سَرَقَتْ رُبْعَ دِينَارٍ فَقَطْ، وَرَأَوْا - فِي أَحَدِ أَقْوَالِهِمْ - أَنَّهُ إذَا غُلِطَ بِالسَّارِقِ فَقُطِعَتْ يَسَارُهُ أَنَّهُ تُقْطَعُ الْيَدُ الْأُخْرَى - فَقَطَعُوا يَدَيْهِ جَمِيعًا فِي سَرِقَةٍ وَاحِدَةٍ، وَمَا عَيَّنَ اللَّهُ تَعَالَى قَطُّ يُمْنَى مِنْ يُسْرَى، وَالْحَنَفِيُّونَ يَقْطَعُونَ فِيهَا الرِّجْلَ بَعْدَ الْيَدِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ

L40365 And that Ibn al-Qāsim does not apply the ḥadd punishment to a Christian or Jew who commits adultery with a Muslim woman. They release the harbī (non-Muslim from hostile territory) residing among us for trade. The one seeking dhimma status must pay jizya for owning Muslim women whom he captured before his arrival and seeking protection concerning free Muslim women among Qurayshītes, Anṣārī women, and others - including intercourse with them and openly selling them as lawful. Is there any statement more repugnant than this? [2184]

Issue: Regarding theft: The Mālikīs amputate both legs without any established textual proof or consensus. They amputate whoever enters a home and removes property worth three dirhams, even if he claims: "The owner sent me for this purpose" and the owner confirms it - while they disregard such evidence. Alternatively, they amputate his hand at the wrist. They amputate a group that stole merely a quarter dinar. In one of their opinions, if a thief's left hand is amputated by error, they amputate the other hand - thus severing both hands for one theft, though Allah the Exalted never designated right over left. The Ḥanafīs amputate the leg after the hand in theft cases without textual or consensual basis.

وَأَمَّا الْقَذْفُ: فَإِنَّ الْمَالِكِيِّينَ يَحُدُّونَ حَدَّ الْقَذْفِ، فِي التَّعْرِيضِ، وَيُسْقِطُونَ جَمِيعَ الْحُدُودِ بِالْقَتْلِ حَاشَا حَدَّ الْقَذْفِ، فَإِنْ كَانُوا يُسْقِطُونَ سَائِرَ الْحُدُودِ بِالشُّبْهَةِ، فَمَا بَالُهُمْ لَا يُسْقِطُونَ حَدَّ الْقَذْفِ أَيْضًا بِالشُّبْهَةِ؟ وَقَالُوا: إنَّمَا فَعَلْنَا ذَلِكَ خَوْفَ أَنْ يُقَالَ لِلْمَقْذُوفِ: لَوْ لَمْ يَكُنْ الَّذِي قَذَفَك صَادِقًا لَحُدَّ لَك، فَفِي أَيِّ دِينٍ وَجَدُوهَا مِنْ قُرْآنٍ أَوْ سُنَّةٍ أَوْ قِيَاسٍ؟ وَيَحُدُّونَ شَارِبَ الْخَمْرِ، وَلَوْ جَرْعَةً مِنْهُ خَوْفَ أَنْ يَقْذِفَ أَحَدًا بِالزِّنَى، وَهُوَ لَمْ

L40366 As for qadhf (false accusation of unlawful intercourse), the Mālikīs impose the hadd punishment for qadhf even in cases of insinuation. They nullify all hadd punishments due to killing except the hadd for qadhf. If they nullify other hadd punishments due to doubt, why do they not nullify the hadd for qadhf as well on grounds of doubt? They say: "We did this only out of fear that the accused might be told: 'Had your accuser not been truthful, the hadd would have been applied for you.'" In which religious sources did they find this ruling—whether in the Quran, Sunnah, or analogical reasoning? They impose the hadd punishment on a wine-drinker even for a single sip, fearing he might accuse someone of zinā (unlawful intercourse) even though

he has not yet accused anyone. What wonder is there in enforcing hadd punishments without doubt? They rely on a baseless narration transmitted from some Companions—God Almighty has already protected them from such narrations.

يَقْذِفْ أَحَدًا بَعْدُ، فَأَيُّ عَجَبٍ فِي إِقَامَةِ الْحُدُودِ بِلَا شُبْهَةٍ، وَيَتَعَلَّقُونَ بِرِوَايَةٍ سَاقِطَةٍ عَنْ بَعْضِ الصَّحَابَةِ، قَدْ أَعَاذَهُمْ اللَّهُ تَعَالَى مِنْ مِثْلِهَا

L40367 They impose the ḥadd penalty on whoever says to another: "You are not the son of so-and-so," if he denies his lineage to his father.

وَيَحُدُّونَ مَنْ قَالَ لِآخَرَ: لَسْت ابْنَ فُلَانٍ إذَا نَفَاهُ عَنْ أَبِيهِ

L40368–40370 They impose the ḥadd punishment on one who accuses his wife of adultery with a named individual, even though he has performed liʿān (a sworn oath of condemnation) against her. This directly contradicts the ruling of the Messenger of Allah (may Allah bless him and his family and grant him peace). They impose the *hadd* punishment on whoever accuses a person of *zinā* when that person contracted an invalid marriage of impermissible nature while being aware of its prohibition. Moreover, they impose the *hadd* punishment on whoever accuses a Muslim woman—whose pregnancy has become apparent—of *zinā*, while acknowledging that they neither take oaths nor conclusively establish that *zinā* occurred. Some among them hold that the *hadd* applies to one who says to another: "Your eye committed *zinā*" or "Your hand committed *zinā*." It has been authentically reported from the Prophet—peace and blessings of Allah be upon him and his family—that "the hands commit *zinā* through groping, the eyes commit *zinā* through gazing, and the private parts either confirm this or deny it."

وَيَحُدُّونَ مَنْ قَذَفَ امْرَأَتَهُ بِإِنْسَانٍ سَمَّاهُ، وَإِنْ لَاعَنَ امْرَأَتَهُ، وَهَذَا خِلَافٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُجَرَّدٌ وَيَحُدُّونَ مَنْ قَذَفَ إنْسَانًا نَكَحَ نِكَاحًا فَاسِدًا لَا يَحِلُّ مِثْلُهُ، وَهُوَ عَالِمٌ بِالتَّحْرِيمِ - هَذَا وَهُمْ يَحُدُّونَ مَنْ قَذَفَ امْرَأَةً مُسْلِمَةً ظَهَرَ بِهَا حَمْلٌ، وَهُمْ يُقِرُّونَ أَنَّهُمْ لَا يَحْلِفُونَ، وَلَا يَقْطَعُونَ أَنَّهُ مِنْ زِنًى، وَمِنْهُمْ مَنْ يَرَى الْحَدَّ عَلَى مَنْ قَالَ لِآخَرَ: زَنَتْ عَيْنُك، أَوْ زَنَتْ يَدُك - وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ الْيَدَيْنِ تَزْنِيَانِ وَزِنَاهُمَا الْبَطْشُ، وَالْعَيْنَيْنِ تَزْنِيَانِ وَزِنَاهُمَا النَّظَرُ، وَالْفَرْجُ يُصَدِّقُ ذَلِكَ أَوْ يُكَذِّبُهُ»

L40371 As for wine: the Malikis implement the hadd punishment for it based on the smell—and anyone with knowledge knows that whoever eats winter pears or some types of apples will find the smell of their mouth is the same as that of a wine drinker. Moreover, perhaps one filled his mouth with it without swallowing, leaving the smell, or perhaps he was deceived with it unknowingly. Then they administer lashes—the Malikis and Hanafis impose eighty lashes for wine, while the majority of the Companions maintained that the hadd punishment for it is forty. They did not dismiss the additional forty lashes on the basis of *shubha*, nor is this number mandated by the Quran, the Sunnah, or consensus (*ijma*).

وَأَمَّا الْخَمْرُ: فَإِنَّ الْمَالِكِيِّينَ يُقِيمُونَ الْحَدَّ فِيهِ بِالنَّكْهَةِ - وَكُلُّ مَنْ لَهُ مَعْرِفَةٌ يَدْرِي أَنَّ مَنْ أَكَلَ الْكُمَّثْرَى الشَّتْوِيَّ، وَبَعْضَ أَنْوَاعِ التُّفَّاحِ: أَنَّ نَكْهَةَ فَمِهِ، وَنَكْهَةَ شَارِبِ الْخَمْرِ: سَوَاءٌ - وَأَيْضًا فَلَعَلَّهُ مَلَأَ فَمَهُ مِنْهَا وَلَمْ يَجْرَعْهَا فَبَقِيَتْ النَّكْهَةُ، أَوْ لَعَلَّهُ دُلِّسَ عَلَيْهِ بِهَا وَهُوَ لَا يَدْرِي، ثُمَّ يَجْلِدُونَ - هُمْ وَالْحَنَفِيُّونَ فِي الْخَمْرِ: ثَمَانِينَ جَلْدَةً، وَجُمْهُورُ الصَّحَابَةِ عَلَى أَنَّ الْحَدَّ فِيهَا أَرْبَعُونَ، فَلَمْ يَدْرَءُوا الْأَرْبَعِينَ الزَّائِدَةَ بِالشُّبْهَةِ، وَلَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ

L40372 They impose eighty lashes—as we stated—for a slander he has not yet fab-

ricated, then subject him to the ḥudūd punishments, even though he might never falsely accuse anyone of unlawful sexual intercourse. There is no distinction between this and applying the ḥadd penalty for unlawful sexual intercourse he did not commit or theft he did not commit.

L40373 They, along with the Shāfiʿīs, impose the ḥadd punishment on a virtuous, knowledgeable interpreter who deems intoxicating nabīdh permissible, yet they accept his testimony and take knowledge from him. They do not impose ḥadd punishment on an interpreter in cases of shighār or mutʿah—even if he is knowledgeable about the prohibition—nor on two people mixing drinks, even if the act is unlawful, like a small quantity of wine.

L40374 **The issue of a slave's confession to an act entailing the *ḥadd* punishment.**

L40375–40377 2185 - Issue: The confession of a slave to an act that necessitates a prescribed punishment (ḥadd)? Abū Muḥammad—may Allāh have mercy on him—said: Have people differed regarding this? We examined the matter and found our companions stating: Allāh the Exalted said, {No soul earns [punishment] except against itself, and no bearer of burdens will bear the burden of another} [6:164]. The slave is property belonging to his master. Therefore, his confession to an act that would nullify part of his master's property rights constitutes imposing a burden on another, which is impermissible by the explicit text of the Qurʾān. Abū Muḥammad—may Allāh have mercy on him—said: This is a valid argument unless countered by evidence. We then examined further and found Allāh the Exalted stating, {Be upholders of justice, bearing witness for Allāh, even if against yourselves, or your parents, or close relatives} [4:135]. Thus, Allāh the Exalted commanded the acceptance of a person's testimony against himself and against his parents. And his relatives—people have not disputed that a person's testimony against himself is accepted without requiring another witness or an oath—regardless of whether he is immoral or upright, a believer or a disbeliever—and that his testimony against another is not accepted unless the conditions of moral integrity are met, along with another witness or the claimant's oath,

وَيَحُدُّونَ ثَمَانِينَ - كَمَا قُلْنَا - بِفِرْيَةٍ لَمْ يَفْتَرِهَا بَعْدُ، فَيُقَدِّمُونَ لَهُ الْحُدُودَ، وَلَعَلَّهُ لَا يَقْذِفُ أَحَدًا أَبَدًا، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ أَنْ يُقَدِّمُوا لَهُ حَدَّ زِنًى لَمْ يَكُنْ مِنْهُ، أَوْ حَدَّ سَرِقَةٍ لَمْ يَكُنْ مِنْهُ

وَيَحُدُّونَ - هُمْ وَالشَّافِعِيُّونَ: الْفَاضِلَ الْعَالِمَ الْمُتَأَوِّلَ إحْلَالَ النَّبِيذِ الْمُسْكِرِ، وَيَقْبَلُونَ مَعَ ذَلِكَ شَهَادَتَهُ، وَيَأْخُذُونَ الْعِلْمَ عَنْهُ - وَلَا يَحُدُّونَ الْمُتَأَوِّلَ فِي الشِّغَارِ، وَالْمُتْعَةِ - وَإِنْ كَانَ عَالِمًا بِالتَّحْرِيمِ - وَلَا فِي الْخَلِيطَيْنِ - وَإِنْ كَانَ حَرَامًا - كَالْخَمْرَةِ

[مَسْأَلَة اعْتِرَافُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ]

٢١٨٥ - مَسْأَلَةٌ: اعْتِرَافُ الْعَبْدِ بِمَا يُوجِبُ الْحَدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا أَصْحَابَنَا يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] وَالْعَبْدُ مَالٌ مِنْ مَالِ سَيِّدِهِ فَاعْتِرَافُهُ بِمَا يَجِبُ إبْطَالُ بَعْضِ مَالِ سَيِّدِهِ كَسْبٌ عَلَى غَيْرِهِ، فَلَا يَجُوزُ بِنَصِّ الْقُرْآنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا احْتِجَاجٌ صَحِيحٌ إنْ لَمْ يَأْتِ مَا يَدْفَعُهُ: فَنَظَرْنَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَأَمَرَ اللَّهُ تَعَالَى بِقَبُولِ شَهَادَةِ الْمَرْءِ عَلَى نَفْسِهِ وَعَلَى وَالِدَيْهِ، وَأَقْرِبَائِهِ - وَلَمْ يَخْتَلِفْ النَّاسُ فِي أَنَّ شَهَادَةَ الْمَرْءِ عَلَى نَفْسِهِ مَقْبُولَةٌ - دُونَ آخَرَ مَعَهُ دُونَ يَمِينٍ - تَلْزَمُهُ، سَوَاءٌ كَانَ فَاسِقًا، أَوْ عَدْلًا - مُؤْمِنًا كَانَ أَوْ كَافِرًا - وَأَنَّ شَهَادَتَهُ عَلَى غَيْرِهِ لَا تُقْبَلُ إلَّا بِشَرْطِ الْعَدَالَةِ، وَبِأَنْ يَكُونَ مَعَهُ غَيْرُهُ، أَوْ يَمِينُ الطَّالِبِ - عَلَى حَسَبِ اخْتِلَافِ النَّاسِ فِي ذَلِكَ - وَلَمْ يَخُصَّ اللَّهُ تَعَالَى عَبْدًا مِنْ حُرٍّ، فَلَمَّا وَرَدَ هَذَانِ

in accordance with differing scholarly opinions. Allah, the Exalted, has not distinguished between a slave and a free person. When these two divine texts were revealed, it became necessary to examine their application. We found our scholars stating: "He is a witness against himself, asserting a claim against another, so it is not accepted." Others opposed them, arguing: "Rather, he is a witness against himself, asserting a claim against himself—even if this results in a reduction of his master's property—and he did not intend his testimony to affect his master's property." We then analyzed these two interpretive approaches—since one must necessarily be adopted—and found our scholars' view that "asserting a claim against another" is valid only through an intermediary and derivative effect, not by the confession itself. Conversely, the opposing view holds validity through the incident itself, since the confession pertains solely to himself by its explicit wording—which reflects his apparent intent—while its extension to the master arises through interpretation, not the confession's literal meaning. Thus, the latter approach is the more correct and fitting of the two.[53]

L40378 If what our companions have said were valid, it would necessitate that a slave not be subjected to the prescribed punishment for adultery, theft, consuming intoxicants, false accusation of adultery, or highway robbery—even if clear evidence is established—and that he not be executed in retribution for murder, because in such cases he incurs a loss upon his master, and imposing the prescribed punishment entails deprivation of his master's property. This is a position none affirm—neither them nor anyone else.

L40379 **An issue concerning one who states, "Allah does not hold a servant accountable for the first sin."**

L40380 Issue 2186 – He who says: "Allah does not hold a servant accountable for the first sin he commits?" Abu Muhammad—may Allah have mercy on him—said: Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Saḥnūn narrated to us: Ibn Wahb narrated to us from Qurrah ibn ʿAbd al-Raḥmān al-Maʿāfirī from Ibn Shihāb, who said: A thief was brought to Abu Bakr al-Ṣiddīq. He

[53] **Qur'an references (L40375):** Qur'an 6:164 (Al-An'am); Qur'an 4:135 (An-Nisa).

النَّصَّانِ مِنْ عِنْدِ رَبِّ الْعَالَمِينَ: وَجَبَ أَنْ نَنْظُرَ فِي اسْتِعْمَالِهِمَا؟ فَوَجَدْنَا أَصْحَابَنَا يَقُولُونَ: هُوَ شَاهِدٌ عَلَى نَفْسِهِ، كَاسِبٌ عَلَى غَيْرِهِ: فَلَا يُقْبَلُ، وَوَجَدْنَا مَنْ خَالَفَهُمْ بِقَوْلٍ: بَلْ هُوَ شَاهِدٌ عَلَى نَفْسِهِ، كَاسِبٌ عَلَيْهَا، وَإِنْ أَدَّى ذَلِكَ إِلَى نَقْصٍ فِي مَالِ سَيِّدِهِ، وَلَمْ يَقْصِدْ الشَّهَادَةَ عَلَى مَالِ سَيِّدِهِ؟ فَنَظَرْنَا فِي هَذَيْنِ الِاسْتِعْمَالَيْنِ - إذْ لَا بُدَّ مِنْ اسْتِعْمَالِ أَحَدِهِمَا - فَوَجَدْنَا قَوْلَ أَصْحَابِنَا فِي أَنَّهُ كَاسِبٌ عَلَى غَيْرِهِ إنَّمَا يَصِحُّ بِوَاسِطَةٍ، وَبِإِنْتَاجٍ، لَا بِنَفْسِ الْإِقْرَارِ؟ وَوَجَدْنَا قَوْلَ مَنْ خَالَفَهُمْ يَصِحُّ بِنَفْسِ الْقِصَّةِ، لِأَنَّهُ إنَّمَا أَقَرَّ عَلَى نَفْسِهِ بِنَفْسِ لَفْظِهِ - وَهُوَ ظَاهِرُ مَقْصِدِهِ - وَإِنَّمَا يَتَعَدَّى ذَلِكَ إلَى السَّيِّدِ بِتَأْوِيلٍ لَا بِظَاهِرِ إقْرَارِهِ؟ فَكَانَ هَذَا أَصَحَّ الِاسْتِعْمَالَيْنِ، وَأَوْلَاهُمَا

وَلَوْ كَانَ مَا قَالُوهُ أَصْحَابُنَا لَوَجَبَ أَنْ لَا يُحَدَّ الْعَبْدُ فِي زِنًى، وَلَا فِي سَرِقَةٍ، وَلَا فِي خَمْرٍ، وَلَا فِي قَذْفٍ، وَلَا فِي حِرَابَةٍ - وَإِنْ قَامَتْ بِذَلِكَ بَيِّنَةٌ - وَأَنْ لَا يُقْتَلَ فِي قَوَدٍ، لِأَنَّهُ فِي ذَلِكَ كَاسِبٌ عَلَى غَيْرِهِ، وَفِي الْحَدِّ عَلَيْهِ إتْلَافٌ لِمَالِ سَيِّدِهِ؟ وَهَذَا مَا لَا يَقُولُونَهُ، لَا هُمْ وَلَا غَيْرُهُمْ

[مَسْأَلَة مَنْ قَالَ لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ]

٢١٨٦ - مَسْأَلَةٌ: مَنْ قَالَ: لَا يُؤَاخِذُ اللَّهُ عَبْدًا بِأَوَّلِ ذَنْبٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ قُرَّةَ بْنِ عَبْدِ الرَّحْمَنِ الْمَعَافِرِيِّ عَنْ ابْنِ شِهَابٍ قَالَ: أُتِيَ أَبُو بَكْرٍ الصِّدِّيقُ بِسَارِقٍ؟ فَقَالَ: اقْطَعُوا يَدَهُ فَقَالَ: أَقِلْنِيهَا يَا خَلِيفَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاَللَّهِ مَا

said: “Cut off his hand.” The thief pleaded: “Pardon me for this, O Caliph of the Messenger of Allah (peace and blessings of Allah be upon him). By Allah, I have never stolen before this!” Abu Bakr replied: “You lie! By the One in whose Hand is my soul, Allah does not overlook a believer’s first sin he commits.”

L40381 And through him, from Ibn Wahb, from Sufyan al-Thawri, from Humaid al-Tawil, from Anas ibn Malik, who said: A thief was brought to Umar ibn al-Khattab. He said: “By Allah, I have not stolen before this!” Umar replied: “You lie, by the Lord of Umar! Allah does not seize a servant for a first sin.”

L40382–40384 And by him—via Ibn Wahb from ʿAbdullāh ibn Samʿān in this context—and that ʿAlī ibn Abī Ṭālib said: To him: “Is Allah more forbearing than to punish His servant for the first sin, O Commander of the Faithful?” Thereupon, Umar ordered it, and it was amputated. When it was amputated, Ali ibn Abi Talib approached him and said: “I adjure you by Allah, how many times have you stolen?” He replied: “Twenty-one times”—[ghāfaṣahu: he surprised him and seized him unawares].

L40385 Abu Muhammad—may Allah have mercy on him—said: Allah does what He wills, and all His rulings are justice and righteousness. He conceals much or little for whoever He wills—whether by deferring [judgment] or as a favor—so that they may repent. He exacts recompense for a single sin or multiple sins—as a punishment or expiation on his behalf. {None can repel His judgment} [Ar-Raʿd 13:41], and {He is not questioned about what He does, but they will be questioned} [Al-Anbiya 21:23].[54]

L40386 The two chains from Abū Bakr and ʿAlī are weak: one is _mursal_ (disconnected), and the other is _mursal_ and _sāqiṭ_ (rejected). However, the chain from ʿUmar regarding that matter is sound—and to Allah belongs the command, before and after.

L40387 **The question of whether the ḥudūd punishments are to be**

[54] **Qur’an references (L40385):** Qur’an 13:41 (Ar-Ra’d); Qur’an 21:23 (Al-Anbya).

سَرَقْت قَبْلَهَا؟ فَقَالَ لَهُ أَبُو بَكْرٍ: كَذَبْت، وَالَّذِي نَفْسِي بِيَدِهِ مَا غَافَصَ اللَّهُ مُؤْمِنًا بِأَوَّلِ ذَنْبٍ يَعْمَلُهُ

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ بِسَارِقٍ فَقَالَ: وَاَللَّهِ مَا سَرَقْت قَبْلَهَا؟ فَقَالَ لَهُ عُمَرُ: كَذَبْت وَرَبِّ عُمَرَ، مَا أَخَذَ اللَّهُ عَبْدًا عِنْدَ أَوَّلِ ذَنْبٍ

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ سَمْعَانَ بِهَذَا، وَأَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ لَهُ: اللَّهُ أَحْلَمُ مِنْ أَنْ يَأْخُذَ عَبْدَهُ فِي أَوَّلِ ذَنْبٍ يَا أَمِيرَ الْمُؤْمِنِينَ؟ فَأَمَرَ بِهِ عُمَرُ فَقُطِعَ، فَلَمَّا قُطِعَ قَامَ إلَيْهِ عَلِيُّ بْنُ أَبِي طَالِبٍ فَقَالَ لَهُ: أَنْشُدُك اللَّهَ، كَمْ سَرَقْت مِنْ مَرَّةٍ؟ قَالَ لَهُ: إحْدَى وَعِشْرِينَ مَرَّةً -[غَافَصَهُ: فَاجَأَهُ وَأَخَذَهُ عَلَى غِرَّةٍ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: يَفْعَلُ اللَّهُ مَا يَشَاءُ، وَكُلُّ أَحْكَامِهِ عَدْلٌ وَحَقٌّ، فَقَدْ يَسْتُرُ اللَّهُ الْكَثِيرَ وَالْقَلِيلَ، عَلَى مَنْ يَشَاءُ - إمَّا إمْلَاءً وَإِمَّا تَفَضُّلًا - لِيَتُوبَ، وَيَأْخُذُ بِالذَّنْبِ الْوَاحِدِ، وَبِالذُّنُوبِ - عُقُوبَةً أَوْ كَفَّارَةً لَهُ {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] وَ {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣]

وَالْإِسْنَادَانِ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ: ضَعِيفَانِ، أَحَدُهُمَا مُرْسَلٌ، وَالْآخَرُ مُرْسَلٌ سَاقِطٌ، وَالْإِسْنَادُ فِي ذَلِكَ عَنْ عُمَرَ صَحِيحٌ - وَلِلَّهِ الْأَمْرُ مِنْ قَبْلُ وَمِنْ بَعْدُ.

[مَسْأَلَة هَلْ تُقَامُ الْحُدُودُ عَلَى أَهْلِ الذِّمَّةِ]

imposed on dhimmis.

L40388 Issue 2187: Are the hudud punishments applied to dhimmis? Abu Muhammad—may Allah have mercy on him—said: People have differed regarding this narration. It is narrated from Ali ibn Abi Talib that there is no hadd punishment for dhimmis in cases of adultery.

٢١٨٧ - مَسْأَلَةٌ: هَلْ تُقَامُ الْحُدُودُ عَلَى أَهْلِ الذِّمَّةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا الْخَبَرِ؟ فَجَاءَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي الزِّنَى

L40389 It has been reported from Ibn Abbas: No ḥadd punishment applies to dhimmis for theft.

وَجَاءَ عَنْ ابْنِ عَبَّاسٍ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي السَّرِقَةِ

L40390 Abu Hanifah said: No prescribed punishment is imposed upon protected non-Muslims for adultery or drinking wine—though they are subject to prescribed punishments for false accusation of adultery (qadhf) and theft, except for the non-Muslim under treaty obligation in theft, but he must compensate for it. His companion Muhammad ibn al-Hasan said: I do not prohibit the protected non-Muslim from adultery or drinking wine—but I prohibit him from singing.

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي الزِّنَى، وَلَا فِي شُرْبِ الْخَمْرِ - وَعَلَيْهِمْ الْحَدُّ فِي الْقَذْفِ، وَفِي السَّرِقَةِ، إلَّا الْمُعَاهَدَ فِي السَّرِقَةِ، لَكِنْ يَضْمَنُهَا، وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ صَاحِبُهُ: لَا أَمْنَعُ الذِّمِّيَّ مِنْ الزِّنَى، وَشُرْبِ الْخَمْرِ - وَأَمْنَعُهُ مِنْ الْغِنَاءِ

L40391 Mālik said: There is no prescribed punishment for dhimmis in cases of fornication nor in consuming intoxicants; and they are subject to the prescribed punishment for false accusation of fornication and theft.

وَقَالَ مَالِكٌ: لَا حَدَّ عَلَى أَهْلِ الذِّمَّةِ فِي زِنًى، وَلَا فِي شُرْبِ الْخَمْرِ - وَعَلَيْهِمْ الْحَدُّ فِي الْقَذْفِ، وَالسَّرِقَةِ

L40392 Al-Shafi'i, Abu Sulayman, and their companions said that the hadd penalty applies to them in all such cases.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: عَلَيْهِمْ الْحَدُّ فِي كُلِّ ذَلِكَ

L40393–40395 Hummam narrated to us from Ibn Mufarrij, who narrated from Abd al-A'la ibn Muhammad, who narrated from al-Dabari, who narrated from Abd al-Razzaq, who narrated from al-Thawri, who informed me through Simak ibn Harb, from Qabus ibn al-Mukhariq, from his father, who said: Muhammad ibn Abi Bakr wrote to Ali ibn Abi Talib asking him about two Muslims who apostatized, a Muslim who fornicated with a Christian woman, and a mukatab who died leaving an unpaid portion of his manumission contract and left free children? Ali responded in writing: "As for the two who..." If the two apostatize, then if they repent, otherwise strike their necks. As for the Muslim who commits adultery with a Christian woman, impose the prescribed punishment upon him, and refer the Christian woman to her religious community. As for the slave contracted for manumission, give his masters the remaining portion of his contract, and give his children,

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا عَبْدُ الْأَعْلَى بْنُ مُحَمَّدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا الثَّوْرِيُّ أَخْبَرَنِي سِمَاكُ بْنُ حَرْبٍ قَابُوسُ بْنُ الْمُخَارِقِ عَنْ أَبِيهِ قَالَ: كَتَبَ مُحَمَّدُ بْنُ أَبِي بَكْرٍ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ يَسْأَلُهُ عَنْ مُسْلِمَيْنِ تَزَنْدَقَا، وَعَنْ مُسْلِمٍ زَنَى بِنَصْرَانِيَّةٍ، وَعَنْ مُكَاتَبٍ مَاتَ وَتَرَكَ بَقِيَّةً مِنْ كِتَابَتِهِ، وَتَرَكَ وُلْدًا أَحْرَارًا؟ فَكَتَبَ إلَيْهِ عَلِيٌّ: أَمَّا اللَّذَانِ تَزَنْدَقَا فَإِنْ تَابَا وَإِلَّا فَاضْرِبْ أَعْنَاقَهُمَا - وَأَمَّا الْمُسْلِمُ الَّذِي زَنَى بِالنَّصْرَانِيَّةِ فَأَقِمْ عَلَيْهِ الْحَدَّ، وَارْفَعْ النَّصْرَانِيَّةَ إلَى أَهْلِ دِينِهَا - وَأَمَّا الْمُكَاتَبُ فَأَعْطِ مَوَالِيهِ بَقِيَّةَ كِتَابَتِهِ، وَأَعْطِ وُلْدَهُ الْأَحْرَارَ مَا بَقِيَ مِنْ مَالِهِ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ

who are free, what remains of his wealth. Narrated by Humam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj and Sufyan al-Thawri - both of whom narrated from 'Amr ibn Dinar from Mujahid: that Ibn 'Abbas did not consider the prescribed punishment applicable to slaves or dhimmis.

عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ: أَنَّ ابْنَ عَبَّاسٍ كَانَ لَا يَرَى عَلَى عَبْدٍ وَلَا عَلَى أَهْلِ الذِّمَّةِ حَدًّا

L40396 And from Rabīʿah that he said regarding the Jew and the Christian: "I do not consider the prescribed punishment for adultery applicable to the two of them." He said: "Was it not from fulfilling the _dhimma_ toward them to leave them to their coreligionists and legal systems, so their sins are upon them?" Abū Muḥammad—may Allah have mercy on him—said: "When they disagreed, did it not become obligatory for us to examine this matter to discern the truth so we may follow it? We therefore considered the stance of those who assert: 'Is there no prescribed punishment for a _dhimmi_?' and found them declaring: 'Allah the Exalted said: {If they come to you, judge between them or turn away from them. If you turn away from them, they will never harm you whatsoever. But if you judge, judge between them justly}' [5:42]."[55]

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الْيَهُودِيِّ، وَالنَّصْرَانِيِّ: لَا أَرَى عَلَيْهِمَا فِي الزِّنَى حَدًّا، قَالَ: وَقَدْ كَانَ مِنَ الْوَفَاءِ لَهُمْ بِالذِّمَّةِ أَنْ يُخَلَّى بَيْنَهُمْ وَبَيْنَ أَهْلِ دِينِهِمْ وَشَرَائِعِهِمْ، تَكُونُ ذُنُوبُهُمْ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ؟ فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَا حَدَّ عَلَى ذِمِّيٍّ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِ} [المائدة: ٤٢]

L40397 We found them asserting: "We have covenanted with them to leave them in their disbelief, and their disbelief encompasses every stipulation of their laws. Thus it becomes obligatory not to oppose them contrary to the terms of their covenant." Abū Muḥammad—may Allah have mercy on him—responded: "Do they possess any proof beyond this?" Upon examining their claim, we found it contains no valid evidence for either Ḥanafīs or Mālikīs, for the aforementioned Quranic verse is general in application, not specific. Yet they specified it by imposing prescribed punishments for theft, false accusation of unchastity against a Muslim (qadhf), and highway robbery, while abolishing punishments only for adultery and intoxicants. This constitutes arbitrary legislation not ordained by the Quran, nor by any Sunnah—whether authentic or weak—nor by consensus, nor by any Companion's ruling.

وَوَجَدْنَاهُمْ يَقُولُونَ: قَدْ عَاهَدْنَاهُمْ عَلَى التَّرْكِ لَهُمْ عَلَى كُفْرِهِمْ، وَكَانَ كُفْرُهُمْ يَدْخُلُ فِيهِ كُلُّ شَرِيطَةٍ مِنْ أَحْكَامِهِمْ، فَوَجَبَ أَنْ لَا يُعْتَرَضَ عَلَيْهِمْ بِخِلَافِ مَا عُوهِدُوا عَلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا تَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ فَلَمَّا نَظَرْنَا فِي ذَلِكَ وَجَدْنَاهُ لَا حُجَّةَ فِيهِ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ أَصْلًا، لِأَنَّ الْآيَةَ الْمَذْكُورَةَ عَامَّةٌ لَا خَاصَّةٌ، وَهُمْ قَدْ خَصُّوا فَأَوْجَبُوا عَلَيْهِمُ الْحَدَّ فِي السَّرِقَةِ، وَفِي الْقَذْفِ لِمُسْلِمٍ، وَفِي الْحِرَابَةِ، وَأَسْقَطُوا الْحَدَّ فِي الزِّنَى، وَفِي الْخَمْرِ فَقَطْ، وَهَذَا تَحَكُّمٌ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ لَا صَحِيحَةٌ وَلَا سَقِيمَةٌ وَلَا إِجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ

L40398–40400 If they said: Theft is an injustice, and they do not condone injustice against a Muslim or a dhimmi, and qadhf is a ruling between them and the Muslim—

فَإِنْ قَالُوا: السَّرِقَةُ ظُلْمٌ، وَلَا يَقِرُّونَ عَلَى ظُلْمِ مُسْلِمٍ، وَلَا عَلَى ظُلْمِ ذِمِّيٍّ، وَالْقَذْفُ حُكْمٌ بَيْنَهُمْ وَبَيْنَ الْمُسْلِمِ وَإِذَا كَانَ ذَلِكَ فَلَا خِلَافَ فِي أَنَّهُ يُحْكَمُ فِي ذَلِكَ بِحُكْمِ الْإِسْلَامِ؟

[55] **Qur'an references (L40396):** Qur'an 5:42 (Al-Ma'idah).

if that is the case, is there any dispute that judgment in that is to be rendered according to Islamic law? We replied to them: Similarly, adultery—if they commit it with the wife of a Muslim, his female slave, the wife of a dhimmi, or his female slave... For indeed, it is an injustice to the Muslim or his master, and likewise an injustice to the Dhimmi, and they must not be left to persist in injustice.

قُلْنَا لَهُمْ: وَكَذَلِكَ الزِّنَى إذَا زَنَوْا بِامْرَأَةِ مُسْلِمٍ، أَوْ بِأَمَتِهِ، أَوْ بِامْرَأَةِ ذِمِّيٍّ أَوْ أَمَتِهِ، فَإِنَّهُ ظُلْمٌ لِلْمُسْلِمِ، أَوْ سَيِّدِهَا، وَظُلْمٌ لِلذِّمِّيِّ كَذَلِكَ، وَلَا يَقَرُّونَ عَلَى ظُلْمٍ

L40401 "In any case, you have indeed specified the verse without evidence and neglected its evident meaning without authoritative proof."

وَعَلَى كُلِّ حَالٍ فَقَدْ خَصَّصْتُمْ الْآيَةَ بِلَا دَلِيلٍ وَتَرَكْتُمْ ظَاهِرَهَا بِلَا حُجَّةٍ

L40402 If they raise a dispute using the statements of Ali and Ibn Abbas—may Allah be pleased with them both—regarding this matter, we say to them: You have no valid proof in this, for the narration ascribed to Ali concerning it is not authentic. This is because it is transmitted through Simak ibn Harb—who is weak and susceptible to coaching—and then through Qabus ibn al-Mukhariq—a narrator of unknown reliability. Even if it were authentic, it would not constitute proof for them, for no valid proof exists in anyone's statement apart from that of the Messenger of Allah—peace and blessings be upon him.

فَإِنْ شَغَبُوا بِقَوْلِ عَلِيٍّ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِي ذَلِكَ؟ قُلْنَا لَهُمْ: لَا حُجَّةَ لَكُمْ فِي ذَلِكَ، لِأَنَّ الرِّوَايَةَ عَنْ عَلِيٍّ فِي ذَلِكَ لَا تَصِحُّ، لِأَنَّهَا عَنْ سِمَاكِ بْنِ حَرْبٍ - وَهُوَ ضَعِيفٌ يَقْبَلُ التَّلْقِينَ - ثُمَّ عَنْ قَابُوسِ بْنِ الْمُخَارِقِ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L40403 As for the narration from Ibn Abbas, it is more far-fetched, because there is no conclusive authority in anyone apart from the Messenger of Allah—may Allah bless him and grant him peace—and because they have opposed Ibn Abbas in this matter, since in it [the narration] there is: "There is no prescribed punishment for a slave" (a view they reject) and "There is no prescribed punishment for a dhimmi [non-Muslim citizen]." But they hold that the prescribed punishment does apply to him in cases of false accusation of unchastity (qadhf) and theft.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فَأَبْعَدُ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُمْ قَدْ خَالَفُوا ابْنَ عَبَّاسٍ فِي هَذِهِ الْقَضِيَّةِ، لِأَنَّ فِيهَا: لَا حَدَّ عَلَى عَبْدٍ، وَهُمْ لَا يَرَوْنَ هَذَا، وَلَا حَدَّ عَلَى ذِمِّيٍّ - وَهُمْ يَرَوْنَ الْحَدَّ عَلَيْهِ فِي الْقَذْفِ وَالسَّرِقَةِ

L40404 Abū Muḥammad—may Allāh have mercy on him—said: Since the two narrations from Mujāhid from Ibn ʿAbbās contradict each other, clinging to one over the other is invalidated, and it becomes obligatory to refer both back to the Book of Allāh the Exalted. Whichever of the two opinions is attested by the Qur'ān and the Sunnah is the truth. In any case, every opinion the Ḥanafīs and Mālikīs have disputed with is invalidated, leaving them with no proof whatsoever.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ تَعَارَضَتْ الرِّوَايَتَانِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ؟ فَقَدْ بَطَلَ التَّعَلُّقُ بِإِحْدَاهُمَا دُونَ الْأُخْرَى، وَوَجَبَ رَدُّهُمَا إلَى كِتَابِ اللَّهِ تَعَالَى، فَلِأَيِّ الْقَوْلَيْنِ شَهِدَ الْقُرْآنُ، وَالسُّنَّةُ فَهُوَ الْحَقُّ، وَعَلَى كُلِّ حَالٍ - فَقَدْ بَطَلَ كُلُّ قَوْلٍ شَغَبَ بِهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَلَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا

L40405 Since the verse is abrogated, even if it were established to be unequivocal, those who use it to abolish the enforcement of Ḥudūd punishments upon them would have no valid basis for this claim. For it merely permits discretionary judgment in resolving disputes between them—not comprehensive judgment over them entirely. The enforcement of Ḥudūd constitutes judgment upon them, not arbitration between them. Thus, these punishments bear no connection whatsoever to this verse under any interpretation. Consequently, all grounds for dependency on it collapse completely.

أَمَّا الْآيَةُ فَإِنَّهَا مَنْسُوخَةٌ، وَلَوْ صَحَّ أَنَّهَا مُحْكَمَةٌ لَمَا كَانَ لِمَنْ أَسْقَطَ بِهَا إِقَامَةَ الْحُدُودِ عَلَيْهِمْ مُتَعَلَّقٌ، لِأَنَّهُ إِنَّمَا فِيهَا التَّخْيِيرَ فِي الْحُكْمِ بَيْنَهُمْ، لَا فِي الْحُكْمِ عَلَيْهِمْ جُمْلَةً، وَإِقَامَةُ الْحُدُودِ حُكْمٌ عَلَيْهِمْ لَا حُكْمٌ بَيْنَهُمْ، فَلَيْسَ لِلْحُدُودِ فِي هَذِهِ الْآيَةِ مَدْخَلٌ أَصْلًا، بِوَجْهٍ مِنْ الْوُجُوهِ - فَسَقَطَ التَّعَلُّقُ بِهَا جُمْلَةً

L40406–40408 As for the covenants of those who have made pacts with others to rule by their laws, these are not the covenants of Allah the Exalted—rather, they are the covenant of Satan, the covenant of falsehood, and the covenant of misguidance. Muslims recognize neither contracts nor covenants except what Allah the Exalted has ordained in the Qur'an and the Sunnah. These are what Allah the Exalted has commanded to fulfill, as the Messenger of Allah—peace and blessings be upon him and his family—said: "Every condition not in the Book of Allah the Exalted is void." And he (peace be upon him) said, "Whoever does a deed not in accordance with our command, it is invalid."[56]

وَأَمَّا عُهُودُ مَنْ عَاهَدَهُمْ عَلَى الْحُكْمِ بِأَحْكَامِهِمْ، فَلَيْسَ ذَلِكَ عَهْدُ اللَّهِ تَعَالَى، بَلْ هُوَ عَهْدُ إبْلِيسَ وَعَهْدُ الْبَاطِلِ، وَعَهْدُ الضَّلَالِ، وَلَا يَعْرِفُ الْمُسْلِمُونَ عُقُودًا وَلَا عُهُودًا إلَّا مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ وَالسُّنَّةِ، فَهِيَ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» وَقَالَ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

L40409 And if they say: Allah, the Exalted, said, *"There is no compulsion in religion"* [Al-Baqarah: 256], we say: Yes, we do not compel them to Islam, nor to prayer, nor to Zakāh, nor to fasting, nor to Ḥajj. But whenever a ruling applies to them, we judge in it according to the ruling of Islam, in accordance with the command of Allah, the Exalted: *"And judge between them by what Allah has revealed, and do not follow their desires, and beware of them lest they tempt you away from some of what Allah has revealed to you"* [Al-Mā'idah: 49].[57]

وَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] قُلْنَا: نَعَمْ، مَا نُكْرِهُهُمْ عَلَى الْإِسْلَامِ، وَلَا عَلَى الصَّلَاةِ، وَلَا عَلَى الزَّكَاةِ، وَلَا عَلَى الصِّيَامِ، وَلَا الْحَجِّ، لَكِنْ مَتَى كَانَ لَهُمْ حُكْمٌ حَكَمْنَا فِيهِ بِحُكْمِ الْإِسْلَامِ، لِقَوْلِ اللَّهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ} [المائدة: ٤٩]

L40410 And Allah, the Exalted, said: "Do they seek the judgment of Jahiliyyah? And who is better than Allah in judgment for a people certain in faith?" [Al-Ma'idah: 50]. Thus, Allah, the Exalted, decreed through the words of His Messenger—peace be upon him—that you must not follow their desires. For

وَقَالَ تَعَالَى {أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ} [المائدة: ٥٠] ؟ فَافْتَرَضَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - أَنْ لَا نَتَّبِعَ أَهْوَاءَهُمْ، فَمَنْ تَرَكَهُمْ وَأَحْكَامَهُمْ: فَقَدْ اتَّبَعَ أَهْوَاءَهُمْ، وَخَالَفَ أَمْرَ اللَّهِ تَعَالَى فِي الْقُرْآنِ

[56] **Hadith references (L40406):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[57] **Qur'an references (L40409):** Qur'an 2:256 (Al-Baqarah); Qur'an 5:49 (Al-Ma'idah).

whoever abandons them and their rulings, by doing so, has indeed followed their desires and opposed the command of Him, the Exalted, in the Quran.[58]

The Juridical Issue Regarding the Hadd for Slaves.

[مَسْأَلَة حَدُّ الْمَمَالِيكِ]

2188 - Issue: What is the ḥadd punishment for slaves (mamālīk)? Abu Muhammad—may Allah have mercy on him—said: All ḥudūd penalties are of four categories, with no fifth: either death by crucifixion, killing by the sword, stoning with stones, and what is similar to it—or exile—or amputation—or flogging.

٢١٨٨ - مَسْأَلَةٌ: حَدُّ الْمَمَالِيكِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحُدُودُ كُلُّهَا أَرْبَعَةُ أَقْسَامٍ لَا خَامِسَ لَهَا: إمَّا إمَاتَةٌ بِصَلْبٍ، أَوْ بِقَتْلٍ بِسَيْفٍ، أَوْ بِرَجْمٍ بِالْحِجَارَةِ، وَمَا جَرَى مَجْرَاهَا - وَإِمَّا نَفْيٌ - وَإِمَّا قَطْعٌ - وَإِمَّا جَلْدٌ

The textual evidence is supported by the consensus of the entire Ummah that the punishment for a female slave—in certain aspects of flogging (specifically adultery while being *muḥṣan* [married])—is half the punishment prescribed for a free man and free woman in that case.

وَجَاءَ النَّصُّ وَإِجْمَاعُ الْأُمَةِ كُلِّهَا عَلَى أَنَّ حَدَّ الْمَمْلُوكَةِ الْأُنْثَى فِي بَعْضِ وُجُوهِ الْجَلْدِ - وَهُوَ الزِّنَى مَعَ الْإِحْصَانِ خَاصَّةً -: نِصْفُ حَدِّ الْحُرِّ وَالْحُرَّةِ فِي ذَلِكَ

They all unanimously agreed in accordance with the text that the prescribed punishment for bondservants in cases of killing and crucifixion is the same as that for free persons. The text also explicitly stipulates exile, for which there is no other ruling.

وَاتَّفَقُوا كُلُّهُمْ مَعَ النَّصِّ: أَنَّ حَدَّ الْمَمَالِيكِ فِي الْقَتْلِ وَالصَّلْبِ كَحَدِّ الْأَحْرَارِ - وَجَاءَ النَّصُّ أَيْضًا فِي النَّفْيِ الَّذِي لَيْسَ لَهُ أَمْرٌ سِوَاهُ

They differed regarding what remains beyond that according to what we will mention, if God, the Exalted, wills: A group maintained that the prescribed punishment for female slaves and male slaves—in matters other than those we have specified, and we exclude nothing—is exactly identical to that for free individuals. This is the opinion of our companions.

وَاخْتَلَفُوا فِيمَا عَدَا ذَلِكَ عَلَى مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى: فَذَهَبَتْ طَائِفَةٌ إلَى أَنَّ حَدَّ الْإِمَاءِ، وَالْعَبِيدِ - فِيمَا عَدَا مَا ذَكَرْنَا، وَلَا نُحَاشَ شَيْئًا - كَحَدِّ الْأَحْرَارِ سَوَاءً سَوَاءً، وَهُوَ قَوْلُ أَصْحَابِنَا

A group maintained that the ḥadd punishment for male slaves and female slaves—in all instances of flogging—amounts to half that of free men and free women, while the ḥadd punishment for male and female slaves in cases of amputation equals that of free men and free women. The group differed. These are: a group holds the opinion regarding freemen but does not hold it regarding slaves, women, female slaves, and free women.

وَقَالَتْ طَائِفَةٌ: حَدُّ الْعَبِيدِ، وَالْإِمَاءِ - فِي الْجَلْدِ كُلِّهِ - عَلَى النِّصْفِ مِنْ حَدِّ الْأَحْرَارِ وَالْحَرَائِرِ - وَحَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي الْقَطْعِ كَحَدِّ الْأَحْرَارِ وَالْحَرَائِرِ - فَاخْتَلَفَ هَؤُلَاءِ: فَطَائِفَةٌ تَقُولُ بِهِ فِي الْأَحْرَارِ، وَلَا تَقُولُ بِهِ فِي الْعَبِيدِ، وَالنِّسَاءِ، وَالْإِمَاءِ، وَالْحَرَائِرِ

As for those who uphold temporary exile in general, they disagreed—with one group ruling that the ḥadd punishment for enslaved women and men

فَالَّذِينَ يَقُولُونَ بِالنَّفْيِ الْمُؤَقَّتِ جُمْلَةً اخْتَلَفُوا: فَطَائِفَةٌ جَعَلَتْ حَدَّ الْإِمَاءِ وَالْعَبِيدِ فِيهِ نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ

[58] **Qur'an references (L40410):** Qur'an 5:50 (Al-Ma'idah).

in this case is half that of free individuals and free women, this being the opinion of al-Shāfiʿī and his companions.

وَطَائِفَةٌ جَعَلَتْ فِيهِ حَدَّ الْإِمَاءِ خَاصَّةً عَلَى النِّصْفِ مِنْ حَدِّ الْحَرَائِرِ، وَجَعَلَتْ فِيهِ حَدَّ الْعَبِيدِ كَحَدِّ الْأَحْرَارِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا

L40420 A group held in it that the prescribed punishment for female slaves specifically be half that of free women, and they held that the prescribed punishment for male slaves be like that for free men - this being the opinion of Abū Sulaymān and our companions.

أَمَّا الطَّائِفَةُ الَّتِي لَا تَقُولُ بِالنَّفْيِ الْمُؤَقَّتِ، فَهُمْ: أَبُو حَنِيفَةَ، وَأَصْحَابُهُ

L40421 As for the group that does not uphold the principle of temporary negation, they are Imam Abū Ḥanīfa and his companions.

وَأَمَّا الطَّائِفَةُ الَّتِي قَالَتْ بِهِ فِي الْأَحْرَارِ خَاصَّةً، وَلَمْ يَقُولُوا بِهِ فِي الْعَبِيدِ، وَلَا فِي الْإِمَاءِ، وَلَا فِي الْحَرَائِرِ، فَهُمْ: مَالِكٌ، وَأَصْحَابُهُ

L40422 As for the group that held this opinion regarding free people specifically, and did not hold it for male slaves, female slaves, nor even free women - they are Mālik and his companions.

وَقَالَتْ طَائِفَةٌ: حَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي جَلْدِ الزِّنَى عَلَى نِصْفِ حَدِّ الْأَحْرَارِ وَالْحَرَائِرِ، وَحَدُّ الْعَبِيدِ، وَالْإِمَاءِ فِي الْقَذْفِ كَحَدِّ الْحُرِّ، وَالْحُرَّةِ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَغَيْرِهِ

L40423 A group of scholars holds the opinion: The ḥadd punishment for male and female slaves in cases of adultery involving flogging is half that of free men and women, and their ḥadd punishment in cases of qadhf (false accusation of adultery) is equivalent to that of a free man and woman. This is an opinion reported from ʿUmar ibn ʿAbd al-ʿAzīz and others.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ إنَّهُ حَدُّ الْمَمَالِيكِ ذُكُورِهِمْ، وَإِنَاثِهِمْ فِي الْجَلْدِ، وَالنَّفْيِ الْمُؤَقَّتِ، وَالْقَطْعِ: عَلَى النِّصْفِ مِنْ حَدِّ الْحُرِّ وَالْحُرَّةِ - وَهُوَ كُلُّ مَا يُمْكِنُ أَنْ يَكُونَ لَهُ نِصْفٌ

L40424 Abū Muḥammad—may Allah have mercy on him—said: "The position we uphold is that the hadd punishment for male and female slaves in flogging, temporary exile, or amputation: half that of a free man or free woman. This applies to everything for which a half is possible."

وَأَمَّا مَا لَا يُمْكِنُ أَنْ يَكُونَ لَهُ نِصْفٌ مِنْ الْقَتْلِ بِالسَّيْفِ، أَوْ الصَّلْبِ، أَوْ النَّفْيِ الَّذِي لَا وَقْتَ لَهُ: فَالْمَمَالِيكُ، وَالْأَحْرَارُ فِيهِ سَوَاءٌ

L40425 As for what cannot have half—such as killing by the sword, crucifixion, or exile without a specified time—slaves and free persons are equal in this matter.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَمَّا أَقْوَالُ مَنْ ذَكَرْنَا فَالتَّنَاقُضُ فِيهَا ظَاهِرٌ لَا خَفَاءَ بِهِ، وَمَا نَعْلَمُ لَهُمْ شُبْهَةً أَصْلًا، وَسَنَذْكُرُ أَقْوَالَهُمْ إنْ شَاءَ اللَّهُ تَعَالَى - إلَّا أَنْ يَقُولَ قَائِلٌ: إنَّ الْقَطْعَ لَا يُمْكِنُ تَنْصِيفُهُ، فَهُوَ خَطَأٌ مِنْ قِبَلِ الْآثَارِ، وَمِنْ قِبَلِ الْحِسِّ وَالْمُشَاهَدَةِ

L40426 Abū Muḥammad—may Allāh have mercy on him—said: As for the statements of those we have mentioned, the contradiction within them is evident with no concealment. We do not recognize any valid doubt in their positions whatsoever, and we shall mention their statements—Allāh Exalted willing—except if someone were to say: "Amputation cannot be divided into halves,"

for this is erroneous in terms of transmitted traditions, sensory evidence, and observable reality.

فَأَمَّا مِنْ قِبَلِ الْحِسِّ وَالْمُشَاهَدَةِ: فَإِنَّ الْيَدَ مَعْرُوفَةُ الْمِقْدَارِ، فَقَطْعُ نِصْفِهَا مُمْكِنٌ ظَاهِرٌ بِالْعِيَانِ - وَهُوَ قَطْعُ الْأَنَامِلِ فَقَطْ وَيَبْقَى الْكَفُّ - وَقَدْ وَجَدْنَاهُمْ يُوقِعُونَ عَلَى الْأَنَامِلِ خَاصَّةً حُكْمَ الْيَدِ، فَلَا يَخْتَلِفُونَ فِيمَنْ قُطِعَتْ أَنَامِلُهُ كُلُّهَا أَنَّ لَهُ دِيَةَ يَدٍ، فَمَنْ قَطَعَ الْأَنَامِلَ خَاصَّةً فَقَدْ وَافَقَ النَّصَّ، لِأَنَّهُ قَطَعَ مَا يَقَعُ عَلَيْهِ اسْمُ يَدٍ - كَمَا أَمَرَهُ اللَّهُ تَعَالَى - وَقَطَعَ نِصْفَ مَا يُقْطَعُ مِنْ الْحُرِّ، كَمَا جَاءَ النَّصُّ أَيْضًا عَلَى مَا نَذْكُرُهُ - وَكَذَلِكَ الرِّجْلُ أَيْضًا لَهَا مِقْدَارٌ مَعْرُوفٌ، فَقَطْعُ نِصْفِهَا مُمْكِنٌ - وَهُوَ قَطْعُهَا مِنْ وَسَطِهَا مَعَ السَّاقِ فَقَطْ

L40427–40429 As for the perspective of sensory perception and observation: the hand has a known defined quantity, so cutting half of it is possible and evident through direct observation—meaning cutting only the fingers while leaving the palm (excluding the fingers) intact. We have found the jurists applying the ruling of the hand specifically to the fingers, and they do not differ concerning someone whose fingers are all cut off—agreeing that he is entitled to the *diya* of a hand. Thus, whoever cuts off specifically the fingers has adhered to the divine textual ruling, because he has cut off what is termed a hand—as Allah, the Exalted, has commanded him. Half of what is amputated from a free person is amputated, as the text explicitly stipulates what we will mention. Similarly, the leg has a defined measurement, so amputating half of it is feasible—specifically cutting it from the middle along with the shin only.

وَأَمَّا مِنْ طَرِيقِ الْآثَارِ: فَحَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَقْطَعُ الْيَدَ مِنْ الْأَصَابِعِ وَالرِّجْلَ مِنْ نِصْفِ الْقَدَمِ

L40430 As for transmitted reports via narrational chains: Hammām narrated to us via Ibn Mufarrij, via Ibn al-Aʿrabī, via al-Dabarī, via ʿAbd al-Razzāq, from Maʿmar, from Qatādah, that ʿAlī ibn Abī Ṭālib would amputate the hand from the fingers and the foot from the midfoot.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الْمِقْدَامِ، قَالَ: أَخْبَرَنِي مَنْ رَأَى عَلِيَّ بْنَ أَبِي طَالِبٍ يَقْطَعُ يَدَ رَجُلٍ مِنْ الْمِفْصَلِ

L40431 And with him: to Abd al-Razzaq from Sufyan al-Thawri from Abu al-Miqdam, who said: “Someone who saw Ali ibn Abi Talib informed me that he had cut off a man’s hand from the wrist joint.”

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ، قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ يَقْطَعُ الْقَدَمَ مِنْ مِفْصَلِهَا، وَكَانَ عَلِيٌّ يَقْطَعُ الْقَدَمَ - قَالَ ابْنُ جُرَيْجٍ: أَشَارَ لِي عَمْرٌو إلَى شَطْرِهَا

L40432 And through him—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, who said: Umar ibn al-Khattab would cut the foot at its ankle joint, while Ali would cut the foot. Ibn Jurayj said: Amr gestured to me toward the mid part of the foot.

L40433 Abu Muhammad—may Allah have mercy on him—said: Since there exists an explicit textual ruling from Ali—may Allah be pleased with him—regarding amputating the hand at the wrist joint and amputating it from the fingers,

it is obligatory to interpret this in opposition to an irrational contradiction. Rather, this applies to two distinct scenarios. The same opinion holds for the foot as well.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ جَاءَ النَّصُّ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَطْعُ الْيَدِ مِنْ الْمَفْصَلِ، وَقَطْعُهَا مِنْ الْأَصَابِعِ: فَالْوَاجِبُ حَمْلُ ذَلِكَ عَلَى خِلَافِ التَّنَاقُضِ الَّذِي لَا وَجْهَ لَهُ، لَكِنْ عَلَى أَنَّ ذَلِكَ فِي حَالَيْنِ مُخْتَلِفَيْنِ، وَهَكَذَا الْقَوْلُ فِي الْقَدَمِ أَيْضًا

L40434 Abū Muḥammad—may Allah have mercy on him—said: These people claim adherence to analogy, yet it is firmly established through textual evidence and consensus that the legal punishment for a married enslaved woman in adultery is half that of a married free woman. Similarly, it is established through textual evidence and consensus that the punishment for an enslaved man in cases of killing by the sword, crucifixion, and indefinite exile equals that of a free man. Thus, according to their foundational principles—to which they subscribe in advocating analogy—they ought to resolve disputed cases of amputation by aligning them with the category (free or enslaved) most analogous to the case.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَقَدْ صَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى أَنَّ حَدَّ الْأَمَةِ الْمُحْصَنَةِ فِي الزِّنَى نِصْفُ حَدِّ الْحُرَّةِ الْمُحْصَنَةِ، وَصَحَّ النَّصُّ وَالْإِجْمَاعُ أَنَّ حَدَّ الْعَبْدِ فِي الْقَتْلِ بِالسَّيْفِ، وَالصَّلْبِ: كَحَدِّ الْحُرِّ - وَكَذَلِكَ فِي النَّفْيِ غَيْرِ الْمُؤَقَّتِ، فَكَانَ يَلْزَمُهُمْ عَلَى أُصُولِهِمْ الَّتِي يَنْتَمُونَ إلَيْهَا فِي الْقَوْلِ بِالْقِيَاسِ عَلَى أَنْ يَجْعَلُوا مَا اُخْتُلِفَ فِيهِ مِنْ الْقَطْعِ مَرْدُودًا إلَى أَشْبَهِ الْجِنْسَيْنِ بِهِ

L40435 This is their foundational principle upon which they have concurred regarding legal analogy. When they adhere to this, it becomes obligatory to analogize amputation to flogging—not to capital punishment nor to indefinite exile. This is because killing cannot be halved, and similarly indefinite exile admits no division.

فَهَذِهِ عُمْدَتُهُمْ الَّتِي اتَّفَقُوا عَلَيْهَا فِي الْقِيَاسِ، فَإِذَا فَعَلُوا هَذَا وَجَبَ أَنْ يَكُونَ الْقَطْعُ مَقِيسًا عَلَى الْجَلْدِ، لَا عَلَى الْقَتْلِ، وَلَا عَلَى النَّفْيِ غَيْرِ الْمُؤَقَّتِ، وَذَلِكَ أَنَّ الْقَتْلَ لَا يَتَنَصَّفُ، وَكَذَلِكَ النَّفْيُ غَيْرُ الْمُؤَقَّتِ

L40436 As for flogging, it is halved, and amputation is halved. Thus, analogizing what is halved to something else halved is more appropriate than analogizing what is halved to what is not halved. This is the most valid analogy, if analogy were ever valid.

وَأَمَّا الْجَلْدُ فَيَتَنَصَّفُ وَالْقَطْعُ يَتَنَصَّفُ فَكَانَ قِيَاسُ مَا يَتَنَصَّفُ عَلَى مَا يَتَنَصَّفُ أَوْلَى مِنْ قِيَاسِ مَا يَتَنَصَّفُ عَلَى مَا لَا يَتَنَصَّفُ - هَذَا أَصَحُّ قِيَاسٍ لَوْ صَحَّ شَيْءٌ مِنْ الْقِيَاسِ يَوْمًا مَا

L40437–40439 Abu Muhammad—may Allah have mercy on him—said: We examined that so that the truth might become evident from it, and so that we may follow it. We found them claiming: Allah the Exalted states concerning female slaves, {If they commit indecency after being chaste, then upon them is half the punishment prescribed for chaste women} [An-Nisa: 25]. This ruling from Allah the Exalted cannot be contravened. He further declares, {The adulteress and the adulterer—flog each of them with a hundred lashes} [An-

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى فِي الْإِمَاءِ {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] فَكَانَ هَذَا مِنْ اللَّهِ تَعَالَى لَا يَحِلُّ خِلَافُهُ، وَقَالَ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] وَلَمْ يَخُصَّ اللَّهُ

Nur: 2]. In this verse, Allah the Exalted specified only female slaves, not male slaves. {Your Lord is never forgetful} [Maryam: 64]. He retained male slaves under the general ruling without specifying them as He explicitly specified female slaves. It is absurd to claim that Allah the Exalted intended to include male slaves in such specification alongside female slaves, yet mentioned only female slaves while withholding mention of male slaves—thereby imposing on us knowledge of the unseen and knowledge of what He has not informed us of. Far removed is Allah the Exalted from such a thing.[59]

L40440 Similarly, Allah, the Mighty and Sublime, said: "And those who accuse chaste women and then do not produce four witnesses—flog them eighty lashes" [an-Nur 24:4]. He, the Exalted, did not distinguish here between a female slave and a free woman, or between a slave and a free man.[60]

L40441 Among the falsehood is to claim that God Almighty intended male and female slaves not to receive eighty lashes for false accusation of unlawful sexual intercourse (qadhf) – with their punishment being less than that – then commanded us to lash those who commit false accusation eighty lashes without clarifying this distinction to us: Does this apply to a free man but not a slave? To a free woman but not a female slave? This contradicts His statement, the Exalted: {We have neglected nothing in the Book} [6:38].[61]

L40442 And the saying of the Most High, *as an explanation of all things* [Surah An-Nahl (16:89)].[62]

L40443 And Allah, the Most High, has said: "These are the limits of Allah, so do not transgress them." [Al-Baqarah: 229][63]

L40444 The punishment for false accusation (qadhf) is among the ḥudūd (prescribed limits) decreed by Allah the Exalted, and the punishment for fornication (zinā)

تَعَالَى مِنْ ذَلِكَ إِلَّا الْإِمَاءَ فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَأَبْقَى الْعَبِيدَ فَلَمْ يَخُصَّ كَمَا خَصَّ الْإِمَاءَ " وَمِنْ الْبَاطِلِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ يَخُصَّ الْعَبِيدَ مَعَ الْإِمَاءِ فَيَقْتَصِرَ عَلَى ذِكْرِ الْإِمَاءِ وَيُمْسِكَ عَنْ ذِكْرِ الْعَبِيدِ وَيُكَلِّفَنَا مِنْ ذَلِكَ عِلْمَ الْغَيْبِ وَمَعْرِفَةَ مَا عِنْدَهُ مِمَّا لَمْ يُعَرِّفْنَا بِهِ، حَاشَا لِلَّهِ تَعَالَى مِنْ هَذَا

وَكَذَلِكَ قَالَ اللَّهُ عَزَّ وَجَلَّ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] فَلَمْ يَخُصَّ تَعَالَى هَاهُنَا أَمَةً مِنْ حُرَّةٍ، وَلَا عَبْدًا مِنْ حُرٍّ

وَمِنْ الْبَاطِلِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ لَا تُجْلَدَ الْعَبِيدُ وَالْإِمَاءُ فِي الْقَذْفِ ثَمَانِينَ جَلْدَةً، وَيَكُونُ أَقَلَّ مِنْ ذَلِكَ، ثُمَّ يَأْمُرُنَا بِجَلْدِ مَنْ قَذَفَ ثَمَانِينَ جَلْدَةً، وَلَا يُبَيِّنُ ذَلِكَ لَنَا، أَفِي حُرٍّ دُونَ عَبْدٍ؟ وَفِي حُرَّةٍ دُونَ أَمَةٍ؟ وَهَذَا خِلَافُ قَوْلِهِ تَعَالَى {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨]

وقَوْلِهِ تَعَالَى {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

وَقَدْ قَالَ اللَّهُ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩]

فَكَانَ حَدُّ الْقَذْفِ مِنْ حُدُودِ اللَّهِ تَعَالَى، وَحَدُّ الزِّنَى مِنْ حُدُودِ اللَّهِ تَعَالَى فَلَا يَحِلُّ أَنْ يَتَعَدَّى مَا حَدَّ اللَّهُ تَعَالَى مِنْهَا؟ وَحَدَّ اللَّهُ تَعَالَى فِي الْقَذْفِ ثَمَانِينَ، وَفِي الزِّنَى مِائَةً، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَدَّى مَا حَدَّ اللَّهُ تَعَالَى فِي أَحَدِهِمَا إلَى مَا حَدَّ اللَّهُ تَعَالَى فِي الْآخَرِ

[59] **Qur'an references (L40437):** Qur'an 4:25 (An-Nisa); Qur'an 24:2 (An-Nur); Qur'an 19:64 (Maryam).
[60] **Qur'an references (L40440):** Qur'an 24:4 (An-Nur).
[61] **Qur'an references (L40441):** Qur'an 6:38 (Al-An'am).
[62] **Qur'an references (L40442):** Qur'an 16:89 (An-Nahl).
[63] **Qur'an references (L40443):** Qur'an 2:229 (Al-Baqarah).

is likewise among His ḥudūd. Is it then permissible to transgress the limits Allah the Exalted has set among them? Allah the Exalted has decreed eighty for false accusation and one hundred for fornication. It is not permissible for anyone to extend the punishment Allah has decreed for one of these offenses to the other.

L40445 There is clear evidence beyond doubt that imposing one of the two parties upon the other—whether in the case of a male or female slave, or a free man or woman—constitutes a transgression of the boundaries of Allah and equating what Allah, the Exalted, has made distinct between them.

L40446–40448 And Allah, the Exalted, said, "The male thief and the female thief: cut off their hands" [Al-Mā'idah 5:38]. Then you said: Verily The free man, the male slave, and the female slave are equal. Where then has your qiyas vanished—the qiyas by which you contradicted the Qur'an regarding the punishment for the male slave slanderer and the female slave slanderer? From where did it become obligatory for you to deem it easy to oppose Allah's decree, "So lash them eighty lashes" [24:4], through qiyas based on His statement, "But if they are married, then if they commit an immorality, upon them is half the punishment prescribed for chaste free women" [4:25], while considering it grave to oppose His command, "Cut their hands" [5:38], through qiyas based on the aforementioned verse [4:25]? This is utterly astonishing! Our companions said: "We have found Allah the Most High declaring, 'As for the male thief and the female thief, cut their hands as a recompense for what they have earned' [5:38]. Thus, how could it be conceivable that Allah the Most High would intend for the ruling concerning male and female slaves in this matter to differ from that of free men and women—and then fail to clarify it? This is a matter we have firmly concluded that Allah the Most High neither imposes upon us nor desires from us!"[64]

L40449 They said: We established that the Messenger of Allah—peace be upon him—stated, "If he drinks intoxicants, lash him," and he implemented a fixed pun-

فَوَاضِحٌ بِلَا شَكٍّ أَنَّ حَمْلَ أَحَدِهِمَا عَلَى الْآخَرِ فِي عَبْدٍ، أَوْ أَمَةٍ، أَوْ حُرٍّ، أَوْ حُرَّةٍ: فَقَدْ تَعَدَّى حُدُودَ اللَّهِ، وَسَوَّى مَا خَالَفَ اللَّهُ تَعَالَى بَيْنَهُمَا

وَقَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] فَقُلْتُمْ: إِنَّ الْحُرَّ، وَالْعَبْدَ، وَالْأَمَةَ سَوَاءٌ، فَأَيْنَ زَهَقَ عَنْكُمْ قِيَاسُكُمْ الَّذِي خَالَفْتُمْ بِهِ الْقُرْآنَ فِي حَدِّ الْعَبْدِ الْقَاذِفِ، وَالْأَمَةِ الْقَاذِفَةِ؟ وَمِنْ أَيْنَ وَجَبَ أَنْ تَسْتَسْهِلُوا مُخَالَفَةَ قَوْلِ اللَّهِ تَعَالَى {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] قِيَاسًا عَلَى قَوْلِه تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] وَعَظُمَ عِنْدَكُمْ أَنْ تُخَالِفُوا قَوْلَهُ {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] قِيَاسًا عَلَى قَوْلِهِ {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] إِنَّ هَذَا لَعَجَبٌ جِدًّا؟ قَالَ أَصْحَابُنَا: وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا} [المائدة: ٣٨] فَكَانَ مِنْ الْمُحَالِ أَنْ يُرِيدَ اللَّهُ تَعَالَى أَنْ يَكُونَ حُكْمُ الْعَبْدِ وَالْأَمَةِ فِي ذَلِكَ بِخِلَافِ حُكْمِ الْحُرِّ وَالْحُرَّةِ ثُمَّ لَا يُبَيِّنُهُ؟ هَذَا أَمْرٌ قَدْ تَيَقَّنَّا أَنَّ اللَّهَ تَعَالَى لَا يُكَلِّفُنَا إيَّاهُ، وَلَا يُرِيدُهُ مِنَّا؟

[64] **Qur'an references (L40446):** Qur'an 5:38 (Al-Ma'idah); Qur'an 24:4 (An-Nur); Qur'an 4:25 (An-Nisa).

ishment for consuming intoxicants through lashing, without distinguishing—peace be upon him—in that ruling between a free man and a slave, nor between a free woman and a slave woman—is this not the ruling clarified by Allah, the Exalted?

قَالُوا: وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إذَا شَرِبَ فَاجْلِدُوهُ» وَجَلَدَ فِي الْخَمْرِ حَدًّا مُؤَقَّتًا وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - بِذَلِكَ الْحُكْمِ حُرًّا مِنْ عَبْدٍ، وَلَا حُرَّةً مِنْ أَمَةٍ - وَهُوَ الْمُبَيِّنُ عَنْ اللَّهِ تَعَالَى؟

L40450 Abū Muḥammad—may Allāh have mercy on him—said: All that our companions have mentioned is true and sound if a firmly established Sunnah does not come demonstrating the soundness of what we have held. As for when an authentic Sunnah comes that establishes what we have stated, then it is obligatory to restrict oneself to what the Sunnah of the Messenger of Allāh—peace and blessings of Allāh be upon him, who elucidates for us the intent of our Lord, the Exalted—has brought. We examined this matter and found the narration transmitted by ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Ismāʿīl ibn Ibrāhīm ibn ʿUlayyah narrated to us, Yazīd ibn Hārūn narrated to us, Ḥammād ibn Salamah narrated from Ayyūb al-Sikhtiyānī, from ʿIkrimah, from Ibn ʿAbbās, from the Prophet—peace and blessings of Allāh be upon him—who said: "When a mukātab is subject to a legal punishment or inheritance, he inherits according to the proportion of his emancipation, and the legal punishment is imposed upon him according to the proportion of his emancipation."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ مَا ذَكَرَهُ أَصْحَابُنَا فَهُوَ حَقٌّ صَحِيحٌ - إنْ لَمْ تَأْتِ سُنَّةٌ ثَابِتَةٌ تُبَيِّنُ صِحَّةَ مَا ذَهَبْنَا إلَيْهِ - وَأَمَّا إنْ جَاءَتْ سُنَّةٌ صَحِيحَةٌ تُوجِبُ مَا قُلْنَاهُ، فَالْوَاجِبُ الْوُقُوفُ عِنْدَ مَا جَاءَتْ بِهِ السُّنَّةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُبَيِّنِ لَنَا مُرَادَ رَبِّنَا تَعَالَى، فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَا ثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ بْنِ عُلَيَّةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ»

L40451–40453 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah informed us: Ahmad ibn Shuʿayb informed us: Muhammad ibn ʿĪsa ad-Dimashqi informed us: Yazīd ibn Hārūn informed us: Ḥammād ibn Salamah informed us from Qatādah and Ayyūb as-Sikhtiyānī. Qatādah said from Khilās ibn ʿAmr reported from ʿAlī ibn Abī Ṭālib, and Ayyūb reported from ʿIkrimah from Ibn ʿAbbās. Then the narrations of ʿAlī and Ibn ʿAbbās converge, both tracing back to the Prophet (peace be upon him), who said: "A mukātab (a slave under a manumission contract) is freed in proportion to the amount he has paid toward it, the prescribed punishment (ḥadd) is imposed upon him in proportion to the portion of him that has been freed, and he inherits according to the same proportion."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ وَأَيُّوبَ السِّخْتِيَانِيِّ قَالَ قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ» .

L40454 Abū Muḥammad—may Allāh have mercy on him—said: "This is a remark-

able chain of transmission, as though illuminated by the radiance of the forenoon sun. We know of no one who criticized it in any way except some who claimed that Wuhaib transmitted it as mursal." Abū Muḥammad—may Allāh have mercy on him—said: "So what if Wuhaib transmitted it as mursal? He established a connected chain for the ruling concerning the mukatab (a contracted slave) regarding what we mentioned, and [the ruling] on the mukatab's blood money. Ḥammād ibn Salamah and Ḥammād ibn Zayd narrated it from Ayyūb, while ʿAlī ibn al-Mubārak and Yaḥyā ibn Abī Kathīr established a connected chain through ʿIkrimah, from Ibn ʿAbbās, from the Prophet—may Allāh's blessings and peace be upon him and his family."

L40455 Moreover, the Ḥanafīs and Mālikīs are in agreement that the *mursal* (a ḥadīth with a disconnected chain) is equivalent to the *musnad* (a ḥadīth with a continuous chain), with no distinction. According to their view, the *mursal* narration by Wuhaib ibn Khālid only adds strength. Since it has been authenticated and established, it necessarily obligates—by the explicit ruling of the Messenger of Allah (peace be upon him)—that the prescribed punishments for slaves, as a whole and generally for their males and females, differ universally from the prescribed punishments for free individuals, generally for their males and females. Since this is so, there is no valid opinion for anyone in the Ummah to claim that the punishment for slaves is half that of free individuals. Thus, this position becomes obligatory to uphold, and this is the view we maintain—with success granted by Allah, the Exalted.

L40456 **Issue: Does a master implement the Hudud upon his bondservants, or not?**

L40457 2189 - Issue: Should a master implement the prescribed punishments upon his slaves or not? Abū Muḥammad (may Allāh have mercy on him) said: People differed regarding this. A group maintained: The master implements all the prescribed punishments - from execution including those less severe - upon his slaves.

L40458 A group held the opinion that the master imposes hadd punishments on his slaves for fornication, drinking alcohol, and false accusation, but does not

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا إسْنَادٌ عَجِيبٌ، كَأَنَّ عَلَيْهِ مِنْ شَمْسِ الضُّحَى نُورًا، مَا نَدْرِي أَحَدًا غَمَزَهُ بِشَيْءٍ إلَّا أَنَّ بَعْضَهُمْ ادَّعَى أَنَّ وُهَيْبًا أَرْسَلَهُ. قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَكَانَ مَاذَا إذَا أَرْسَلَهُ وُهَيْبٌ؟ قَدْ أَسْنَدَ حُكْمَ الْمُكَاتَبِ فِيمَا ذَكَرْنَا، وَفِي دِيَتِهِ حَمَّادُ بْنُ سَلَمَةَ، وَحَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ، وَأَسْنَدَهُ عَلِيُّ بْنُ الْمُبَارَكِ وَيَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

وَأَيْضًا: فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، مُتَّفِقُونَ عَلَى أَنَّ الْمُرْسَلَ كَالْمُسْنَدِ وَلَا فَرْقَ، فَعَلَى قَوْلِهِمْ مَا زَادَهُ إرْسَالُ وُهَيْبِ بْنِ خَالِدٍ إلَّا قُوَّةً، فَإِذْ قَدْ صَحَّ، وَثَبَتَ فَقَدْ وَجَبَ ضَرُورَةً بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ حُدُودَ الْمَمَالِيكِ جُمْلَةً عُمُومًا لِذُكُورِهِمْ وَإِنَاثِهِمْ: مُخَالِفَةٌ لِحُكْمِ حُدُودِ الْأَحْرَارِ عُمُومًا لِذُكُورِهِمْ وَإِنَاثِهِمْ، وَإِذْ ذَلِكَ كَذَلِكَ فَلَا قَوْلَ لِأَحَدٍ مِنْ الْأُمَّةِ إلَى أَنَّ حَدَّ الْمَمَالِيكِ عَلَى النِّصْفِ مِنْ حُدُودِ الْأَحْرَارِ، فَكَانَ هَذَا وَاجِبًا الْقَوْلَ بِهِ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة هَلْ يُقِيمُ السَّيِّدُ الْحُدُودَ عَلَى مَمَالِيكِهِ أَمْ لَا]

٢١٨٩ - مَسْأَلَةٌ: هَلْ يُقِيمُ السَّيِّدُ الْحُدُودَ عَلَى مَمَالِيكِهِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقِيمُ السَّيِّدُ جَمِيعَ الْحُدُودِ مِنْ الْقَتْلِ فَمَا دُونَهُ عَلَى مَمَالِيكِهِ

impose the hadd punishment of amputation. They stated: He only imposes it when witnesses testify against the slave for that offense.

وَقَالَتْ طَائِفَةٌ: يَحُدُّ السَّيِّدُ مَمَالِيكَهُ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ، وَلَا يَحُدُّهُ فِي قَطْعٍ؟ قَالُوا: وَإِنَّمَا يَحُدُّهُ إِذَا شَهِدَ عَلَيْهِ بِذَلِكَ الشُّهُودُ

L40459 A group has opined that a master does not impose hadd punishments upon his slave in any matter whatsoever, for hadd punishments belong solely to the ruling authority.

وَقَالَتْ طَائِفَةٌ: لَا يَحُدُّ السَّيِّدُ مَمْلُوكَهُ فِي شَيْءٍ مِنَ الْأَشْيَاءِ، وَإِنَّمَا الْحُدُودُ إِلَى السُّلْطَانِ فَقَطْ

L40460–40462 The first opinion is narrated from Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabari, from ʿAbd al-Razzāq. From Maʾmar, from Ayyub al-Sikhtiyani, from Nafiʿ: Ibn Umar cut off the hand of his young male slave who stole, and he flogged another slave of his who committed fornication, without bringing their cases to the authorities.

فَالْقَوْلُ الْأَوَّلُ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَطَعَ يَدَ غُلَامٍ لَهُ سَرَقَ، وَجَلَدَ عَبْدًا لَهُ زَنَى مِنْ غَيْرِ أَنْ يَرْفَعَهُمَا

L40463 And via him: to Abd al-Razzaq from Ubayd Allah ibn Umar from Nafiʿ from Ibn Umar, who said: A slave girl belonging to Hafsa had cast a spell on her and confessed to it. So Hafsa informed Abd al-Rahman ibn Zayd ibn al-Khattab about her, and he killed her. But Uthman ibn Affan objected to her for this action. Ibn Umar said to him: "Why do you object against the Mother of the Believers? A woman cast a spell and confessed!" Then Uthman remained silent.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِنَّ جَارِيَةً لِحَفْصَةَ سَحَرَتْهَا وَاعْتَرَفَتْ بِذَلِكَ، فَأَخْبَرَتْ بِهَا عَبْدَ الرَّحْمَنِ بْنَ زَيْدِ بْنِ الْخَطَّابِ، فَقَتَلَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهَا عُثْمَانُ بْنُ عَفَّانَ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: مَا تُنْكِرُ عَلَى أُمِّ الْمُؤْمِنِينَ امْرَأَةٌ سَحَرَتْ فَاعْتَرَفَتْ؟ فَسَكَتَ عُثْمَانُ

L40464 And through him—to ʿAbd al-Razzaq, from ʿUbayd Allah ibn ʿUmar ibn Hafs ibn ʿAsim, from Nafiʿ, who said: A slave belonging to Ibn ʿUmar absconded. He passed by some servants of ʿA'ishah, the Mother of the Believers, stole a sack of dates from them, and rode their donkey to flee. He was brought to Ibn ʿUmar, who sent him to Saʿid ibn al-ʿAs—then governor of Medina. Saʿid said: "Shall a runaway slave's hand be cut off?" ʿA'ishah sent him a message: "My servant is your servant. He was merely hungry, and rode the donkey to escape. Do not cut his hand off." He said: So Ibn ʿUmar cut it off.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ قَالَ: أَبَقَ غُلَامٌ لِابْنِ عُمَرَ فَمَرَّ عَلَى غِلْمَةٍ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَسَرَقَ مِنْهُمْ جِرَابًا فِيهِ تَمْرٌ، وَرَكِبَ حِمَارًا لَهُمْ فَأُتِيَ بِهِ ابْنُ عُمَرَ فَبَعَثَ بِهِ إِلَى سَعِيدِ بْنِ الْعَاصِ - وَهُوَ أَمِيرٌ عَلَى الْمَدِينَةِ - فَقَالَ سَعِيدٌ: لَا يُقْطَعُ غُلَامٌ أَبَقَ؟ فَأَرْسَلَتْ إِلَيْهِ عَائِشَةُ: إِنَّمَا غِلْمَتِي غِلْمَتُكَ، وَإِنَّمَا جَاعَ، وَرَكِبَ الْحِمَارَ لِيَبْلُغَ عَلَيْهِ، فَلَا تَقْطَعْهُ؟ قَالَ: فَقَطَعَهُ ابْنُ عُمَرَ

L40465 And from Ibrāhīm al-Nakhaʿī that al-Nuʿmān ibn Muqarrin said to Ibn Masʿūd: "My slave woman committed zinā." He [Ibn Masʿūd] said: "Lash her." He [al-Nuʿmān] said: "But she is not muhsan?" He [Ibn Masʿūd] replied: "Her iḥṣān is her Islam."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ النُّعْمَانَ بْنَ مُقَرِّنٍ قَالَ: لِابْنِ مَسْعُودٍ أَمَتِي زَنَتْ؟ قَالَ: اجْلِدْهَا، قَالَ: إِنَّهَا لَمْ تُحْصَنْ؟ قَالَ: إِحْصَانُهَا إِسْلَامُهَا

قَالَ شُعْبَةُ: أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ بِهَذَا، وَفِيهِ: جَلَدَهَا خَمْسِينَ

L40466 Shuʿbah said: I am al-Aʿmash, from Ibrāhīm regarding this matter, and in the narration: he lashed her fifty lashes.

وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ وَغَيْرِهِ، قَالُوا: إِنَّ الرَّجُلَ يَجْلِدُ مَمْلُوكَتَهُ الْحُدُودَ فِي بَيْتِهِ، وَأَنَّ النُّعْمَانَ بْنَ مُقَرِّنٍ سَأَلَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَالَ: أَمَتِي زَنَتْ؟ قَالَ: اجْلِدْهَا خَمْسِينَ، قَالَ إِنَّهَا لَمْ تُحْصَنْ؟ قَالَ ابْنُ مَسْعُودٍ: إِحْصَانُهَا إِسْلَامُهَا

L40467 From Abdullah ibn Mas'ud and others, they said: A man may administer the hadd punishments to his female slave in his home. Al-Nu'man ibn Muqarrin asked Abdullah ibn Mas'ud, saying: "Did my female slave commit adultery?" He replied: "Flog her fifty times." He said: "Was she not muhsan?" Ibn Mas'ud said: "Her being muhsan is due to her Islam."

وَعَنْ ابْنِ وَهْبٍ نا ابْنُ جُرَيْجٍ: أَنَّ عَمْرَو بْنَ دِينَارٍ أَخْبَرَهُ: أَنَّ فَاطِمَةَ بِنْتَ رَسُولِ اللَّهِ كَانَتْ تَجْلِدُ وَلِيدَتَهَا خَمْسِينَ إِذَا زَنَتْ

L40468 And from Ibn Wahb, Ibn Jurayj narrated to us that Amr ibn Dinar informed him that Fāṭimah, the daughter of the Messenger of Allah, would lash her enslaved woman (umm walad) fifty times if she committed zinā.

وَعَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّهُ كَانَ يَجْلِدُ وَلَائِدَهُ خَمْسِينَ إِذَا زَنَيْنَ

L40469 From Anas ibn Mālik: that he would flog his concubines fifty lashes if they committed zinā.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا عَمْرُو بْنُ دِينَارٍ أَنَّ الْحَسَنَ بْنَ مُحَمَّدِ ابْنِ الْحَنَفِيَّةِ أَخْبَرَهُ: أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَتْ أَمَةً لَهَا الْحَدَّ زَنَتْ

L40470 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: ad-Dabarī narrated to us: ʿAbd ar-Razzāq narrated to us: Ibn Jurayj narrated to us: ʿAmr ibn Dīnār narrated that al-Ḥasan ibn Muḥammad ibn al-Ḥanafiyya informed him that Fāṭimah, the daughter of Muḥammad (may the peace and blessings of Allāh be upon him), flogged her slave girl the prescribed punishment; she had committed fornication.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ عَلْقَمَةُ، وَالْأَسْوَدُ يُقِيمَانِ الْحَدَّ عَلَى جَوَارِي قَوْمِهِمَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِيَ عَنْ بَعْضِ مَنْ ذَكَرْنَا، وَغَيْرِهِمْ: جَوَازُ عَفْوِ السَّيِّدِ عَنْ مَمَالِيكِهِ فِي الْحُدُودِ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ رَجُلٍ عَنْ سَلَّامِ بْنِ مِسْكِينٍ أَخْبَرَنِي عَنْ حَبِيبِ بْنِ أَبِي فَضَالَةَ أَنَّ صَالِحَ بْنَ كَرِيزٍ حَدَّثَهُ أَنَّهُ جَاءَ بِجَارِيَةٍ لَهُ زَنَتْ إِلَى الْحَكَمِ بْنِ أَيُّوبَ، قَالَ: فَبَيْنَمَا أَنَا جَالِسٌ إِذْ جَاءَ أَنَسُ بْنُ مَالِكٍ فَجَلَسَ فَقَالَ: يَا صَالِحُ مَا هَذِهِ الْجَارِيَةُ مَعَكَ؟ قُلْت: جَارِيَتُنَا بَغَتْ فَأَرَدْت أَنْ أَرْفَعَهَا إِلَى الْإِمَامِ لِيُقِيمَ عَلَيْهَا الْحَدَّ؟ قَالَ: لَا تَفْعَلْ، رُدَّ جَارِيَتَك، وَاتَّقِ اللَّهَ وَاسْتُرْ

L40471–40473 It is reported from Ibrāhīm al-Nakhaʿī that he said: Alqamah and al-Aswad, used to implement the prescribed punishment upon the captive women of their kinsfolk. Abū Muḥammad—may Allāh have mercy on him—said: It has been reported from some of those we mentioned and others that it is permissible for a master to pardon his slaves regarding the prescribed punishments. As narrated to us by Ḥummām, narrated to us by Ibn Mufarrij, narrated to us by Ibn al-Aʿrabī, narrated to us by al-Dabarī, narrated to us by ʿAbd al-Razzāq, from a man, from Sallām ibn Miskīn, who informed me from Ḥabīb ibn Abī Faḍālah that Ṣāliḥ ibn Kuraiz reported to him that he brought a slave girl of his who had committed unlawful intercourse to al-Ḥakam ibn Ayyūb. He said: While I was sitting, Anas ibn Mālik came and sat down. He said: "O Ṣāliḥ, what is this slave girl with you?" I said: "Our slave girl committed unlawful intercourse, and I intended to take her to the ruler so he could carry out the prescribed punishment upon her." He said:

"Do not do that. Return your slave girl, fear Allāh, and conceal her sin." I said: "I will not do so until I take her to the ruler." Anas said to him: "Do not do it, and obey me." Ṣāliḥ said: He persisted in urging me until I said to him: "I will return her provided you guarantee accountability for any sin incurred by me." Anas said: "Yes." He said: So I returned her.

عَلَيْهَا؟ قُلْت: مَا أَنَا بِفَاعِلٍ حَتَّى أَرْفَعَهَا، قَالَ لَهُ أَنَسٌ: لَا تَفْعَلْ وَأَطِعْنِي، قَالَ صَالِحٌ: فَلَمْ يَزَلْ يُرَاجِعُنِي حَتَّى قُلْت لَهُ: أَرُدُّهَا عَلَى أَنَّ مَا كَانَ عَلَيَّ مِنْ ذَنْبٍ فَأَنْتَ لَهُ ضَامِنٌ؟ فَقَالَ أَنَسٌ: نَعَمْ، قَالَ: فَرَدَدْتهَا

L40474 From Ibrahim al-Nakha'i concerning a female slave who commits adultery: he said, "She is to be lashed fifty times. If her master forgives her punishment, that is more preferable to us." 'Abd al-Razzaq said: "We adopt this view."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي الْأَمَةِ تَزْنِي، قَالَ: تُجْلَدُ خَمْسِينَ، فَإِنْ عَفَا عَنْهَا سَيِّدُهَا فَهُوَ أَحَبُّ إلَيْنَا، قَالَ عَبْدُ الرَّزَّاقِ: وَبِهِ نَأْخُذُ

L40475 Abū Muḥammad—may Allāh have mercy on him—said: These two narrations are discarded, for they are transmitted from unnamed narrators. As for one who differentiates between a woman with a husband and one without a husband.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَانِ أَثَرَانِ سَاقِطَانِ، لِأَنَّهُمَا عَمَّنْ لَمْ يُسَمَّ وَأَمَّا مَنْ فَرَّقَ بَيْنَ ذَاتِ الزَّوْجِ وَغَيْرِ ذَاتِ الزَّوْجِ

L40476 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said: Regarding the female slave who is not married, if she commits an immoral act, she is flogged half the punishment prescribed for free married women - her master flogs her. If she is among those who have husbands, her case is elevated to the Imam.

فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: فِي الْأَمَةِ إذَا كَانَتْ لَيْسَتْ بِذَاتِ زَوْجٍ فَظَهَرَ مِنْهَا فَاحِشَةٌ جُلِدَتْ نِصْفَ مَا عَلَى الْمُحْصَنَاتِ مِنْ الْعَذَابِ يَجْلِدُهَا سَيِّدُهَا فَإِنْ كَانَتْ مِنْ ذَوَاتِ الْأَزْوَاجِ رُفِعَ أَمْرُهَا إلَى الْإِمَامِ

L40477 From Rabi'ah that he said: The marital status of a female slave is that she has a husband. If a lewd act is alleged against her, her master's word is not accepted, while the husband defends his child, her lineage, and what is in his possession. Thus, the lewd act is not established against her except by the testimony of four witnesses, and the prescribed punishment is not carried out against her when confirmed except by the governing authority. Allah the Exalted said: {But if they [female slaves] are married and commit a lewd act, they shall receive half the punishment prescribed for chaste women} [An-Nisā' 4:25].[65]

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: إحْصَانُ الْمَمْلُوكَةِ أَنْ تَكُونَ ذَاتَ زَوْجٍ، فَيُذْكَرَ مِنْهَا فَاحِشَةٌ فَلَا يُصَدَّقُ عَلَيْهَا سَيِّدُهَا، وَالزَّوْجُ يَذُبُّ عَنْ وَلَدِهِ، وَعَنْ رَحِمِهَا، وَعَنْ مَا بِيَدِهِ، فَلَيْسَ يُقِيمُ الْفَاحِشَةَ عَلَيْهَا إلَّا بِشَهَادَةِ أَرْبَعَةٍ، وَلَا يُقِيمُ الْحَدَّ عَلَيْهَا إذَا ثَبَتَ إلَّا السُّلْطَانُ، قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40478–40480 As for those who differentiated between the flogging prescribed for adultery, consumption of intoxicants, and false accusation of unchastity, and the

وَأَمَّا مَنْ فَرَّقَ بَيْنَ الْجَلْدِ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ، وَبَيْنَ الْقَطْعِ فِي السَّرِقَةِ، فَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ: وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُمَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا

[65] **Qur'an references (L40477):** Qur'an 4:25 (An-Nisa).

cutting off of the hand prescribed for theft—this is the opinion of Mālik and al-Layth, and we do not know of anyone who held it before them. Abū Muḥammad—may Allāh have mercy on him—said: When they differed, we examined the matter to ascertain the truth so that we might follow it—by the grace of Allāh, the Exalted. We found Abū Ḥanīfah and his companions citing as evidence the report transmitted by ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Yaḥyā al-Bakkāʾ, from Muslim ibn Yasār, from Abū ʿAbdillāh—a man among the Companions of the Messenger of Allāh, peace and blessings be upon him and his family—who said: "Ibn ʿUmar used to instruct us to take from that scholar. He [Ibn ʿUmar] said: 'He is a scholar, so take from him.' I heard him [the endorsed scholar] say: 'Zakat, the ḥudūd, the fayʾ, and the Friday prayer are to be referred to the ruler.'"

فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِمَنِّ اللَّهِ تَعَالَى - فَوَجَدْنَا أَبَا حَنِيفَةَ، وَأَصْحَابَهُ، يَحْتَجُّونَ بِمَا: ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى الْبَكَّاءِ عَنْ مُسْلِمِ بْنِ يَسَارٍ عَنْ أَبِي عَبْدِ اللَّهِ - رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: كَانَ ابْنُ عُمَرَ يَأْمُرُنَا أَنْ نَأْخُذَ عَنْهُ، قَالَ: هُوَ عَالِمٌ فَخُذُوا عَنْهُ، فَسَمِعْته يَقُولُ: الزَّكَاةُ، وَالْحُدُودُ، وَالْفَيْءُ، وَالْجُمُعَةُ، إلَى السُّلْطَانِ

L40481 From Al-Ḥasan al-Baṣrī: He guaranteed these four: the Jumuʿah Prayer, charity, Ḥudūd, and adjudication.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ ضَمِنَ هَؤُلَاءِ أَرْبَعًا: الْجُمُعَةُ، وَالصَّدَقَةُ، وَالْحُدُودُ، وَالْحُكْمُ

L40482 Ibn Muhayriz said: The ḥudūd, fayʾ, zakāh, and Friday prayer are delegated to the ruler.

وَعَنْ ابْنِ مُحَيْرِيزٍ أَنَّهُ قَالَ: الْحُدُودُ، وَالْفَيْءُ، وَالزَّكَاةُ، وَالْجُمُعَةُ، إلَى السُّلْطَانِ

L40483 Abū Muḥammad—may Allāh have mercy on him—said: We are unaware of any specious argument they have apart from this, and none of this constitutes valid evidence for them. This is because none of what they mentioned states that masters are exempt from enforcing prescribed penalties on their slaves. Rather, the texts only mention prescribed penalties in general as being under the authority of the ruler—and this is what we assert. However, it specifies from that general ruling that the enforcement of prescribed penalties for slaves is delegated to their masters, provided there is evidence—if such evidence exists.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِمَّا ذَكَرُوا: أَنْ لَا يُقِيمَ الْحُدُودَ عَلَى الْمَمَالِيكِ سَادَاتُهُمْ، وَإِنَّمَا فِيهِ ذِكْرُ الْحُدُودِ عُمُومًا إلَى السُّلْطَانِ، وَهَكَذَا نَقُولُ، لَكِنْ يَخُصُّ مِنْ ذَلِكَ حُدُودَ الْمَمَالِيكِ إلَى سَادَاتِهِمْ بِدَلِيلٍ - إنْ وُجِدَ

L40484 Moreover, even if there had been anything in what they mentioned, it would not constitute authoritative evidence, for there is no authoritative evidence in the words of anyone apart from the Messenger of Allah—may Allah bless him and his family and grant him peace.

ثُمَّ أَيْضًا - لَوْ كَانَ فِيمَا ذَكَرُوهُ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L40485 Abu Muhammad—may Allah have mercy on him—said: As for the opin-

ion of Mālik and al-Layth regarding differentiating between flogging, hand amputation, and execution, we do not know of any foundational proof for them whatsoever. Nor do we recognize any precedent for this differentiation from a Companion, a successor, or any basis in the Quran, an authentic Sunnah, or even a weak one. Perhaps some of them might argue: A slave-owning master may discipline his male and female slaves through flogging as a disciplinary measure, but he may not amputate their hands as a form of punishment. Since the prescribed punishment for adultery, alcohol consumption, and false accusation of adultery (qadhf) is flogging, this authority belongs to masters because it is a prescribed punishment (ḥadd) entailing flogging.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ مَالِك، وَاللَّيْث، فِي التَّفْرِيقِ بَيْنَ الْجَلْدِ، وَالْقَطْعِ، وَالْقَتْلِ، فَلَا نَعْلَمُ لَهُمْ أَيْضًا حُجَّةً أَصْلًا، وَلَا نَدْرِي لَهُمْ فِي هَذَا التَّفْرِيقِ سَلَفًا مِنْ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا مُتَعَلَّقًا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَعَلَّ بَعْضَهُمْ أَنْ يَقُولَ: إنَّ السَّيِّدَ لَهُ جَلْدُ عَبِيدِهِ وَإِمَائِهِ أَدَبًا، وَلَيْسَ لَهُ قَطْعُ أَيْدِيهِمْ أَدَبًا، فَلَمَّا كَانَ الْحَدُّ فِي الزِّنَى، وَالْخَمْرِ، وَالْقَذْفِ جَلْدًا كَانَ ذَلِكَ لِلسَّادَاتِ، لِأَنَّهُ حَدٌّ، وَجَلْدٌ

L40486–40488 Abū Muḥammad—may Allāh have mercy on him—said: This statement is utterly corrupt due to the statement of the Messenger of Allāh—peace be upon him—"Indeed, only..." "Actions are by intentions, and every person shall have only what they intended. Thus, disciplinary flogging (taʿzīr) is categorically not the same as ḥadd flogging – and with Allah, the Most High, is success."

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا الْقَوْلُ فِي غَايَةِ الْفَسَادِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» فَجَلْدُ الْأَدَبِ هُوَ غَيْرُ جَلْدِ الْحَدِّ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L40489 Then we examined the opinion of Rabi'ah and found it to be a statement unsupported by any evidence—neither from the Qur'an nor from an authentic Sunnah. As for Rabi'ah's opinion that the husband may act on her behalf, it is a very spurious argument. Allah the Exalted has not granted the husband the act of objecting nor repelling what the Sunnah has established as incumbent upon her.

ثُمَّ نَظَرْنَا فِي قَوْلِ رَبِيعَةَ، فَوَجَدْنَاهُ قَوْلًا لَا تُؤَيِّدُهُ حُجَّةٌ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ: أَمَّا قَوْلُ رَبِيعَةَ فَإِنَّ لِلزَّوْجِ أَنْ يَنُوبَ عَنْهَا فَحُجَّةٌ زَائِفَةٌ جِدًّا، وَمَا جَعَلَ اللَّهُ تَعَالَى لِلزَّوْجِ اعْتِرَاضًا، وَلَا ذَبًّا فِيمَا جَاءَتْ السُّنَّةُ بِإِقَامَتِهِ عَلَيْهَا

L40490 As for those who hold that a master may impose all ḥadd punishments upon his slaves, we examined this matter and found: ʿAbdullāh ibn Yūsuf narrated to us, Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us, ʿĪsā ibn Ḥammād al-Miṣrī narrated to us, al-Layth ibn Saʿd from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Hurayrah, who said: "I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: 'If a slave woman belonging to any of you commits adultery and her adultery is conclusively established, let him lash her with the ḥadd punishment and not reproach her. Then if she commits adultery again, let

وَأَمَّا مَنْ رَأَى السَّيِّدَ يُقِيمُ جَمِيعَ الْحُدُودِ عَلَى مَمَالِيكِهِ، فَنَظَرْنَا فِيهِ فَوَجَدْنَا: مَا نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا عِيسَى بْنُ حَمَّادٍ الْمِصْرِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ إذَا

him lash her with the ḥadd punishment and not reproach her. Then if she commits adultery a third time, let him sell her even for a rope made of hair.'"

L40491 From Muslim as well: Al-Qa'nabī reported from Mālik, from Ibn Shihāb, from 'Ubayd Allāh ibn 'Utbah, from Abū Hurayrah that the Messenger of Allāh—peace and blessings be upon him—was asked about a female slave who commits adultery if she is not a muḥṣanah (a legally accountable woman). He said: "If she commits adultery, flog her. If she does so again, flog her. If she does so again, flog her. Then sell her, even if for a ḍafīr (palm-fiber rope)."

L40492 Ibn Shihāb said: And al-ḍafīr—the rope.

L40493 Ibn Shihab said: I do not know whether after the third or the fourth - and the reports concerning what we have mentioned are extremely numerous.

L40494–40496 Abū Muḥammad—may Allāh have mercy on him—said: Then we shall discuss—with the help of Allāh, the Exalted—what we mentioned in the aforementioned reports concerning the sale of the female slave who commits zinā. We say: Al-Layth narrated this ḥadīth from Sa'īd ibn Abī Sa'īd al-Maqburī, from his father, from Abū Hurayrah: "If she commits zinā the third time, he must sell her—even for a rope of animal hair." Similarly, 'Abd al-Razzāq narrated it from 'Ubayd Allāh ibn 'Umar, from Sa'īd ibn Abī Sa'īd, that he heard Abū Hurayrah. And likewise, Khalid ibn al-Harith narrated from Ibn 'Ajlan from Sa'id al-Maqburi from Abu Hurayrah. They did not mention flogging as the punishment for her third act of adultery but mentioned the sale alone.

L40497 From Abu Salih, from Abu Hurayrah: that the hadd punishment is carried out on her three times, then she is sold after the third time along with flogging - and this is how Sufyan ibn 'Uyaynah narrated it.

L40498 Ali said: Doubt must be nullified and the sale confirmed after the third time along with flogging - all transmission chains regarding this are supremely authentic. Whatever is authentically established from the Prophet (peace and blessings of Allah be upon him) originates from Allah the Exalted, for Allah

زَنَتْ أَمَةُ أَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا فَلْيَجْلِدْهَا الْحَدَّ، وَلَا يُثَرِّبْ عَلَيْهَا، ثُمَّ إِنْ زَنَتْ فَلْيَجْلِدْهَا الْحَدَّ وَلَا يُثَرِّبْ عَلَيْهَا، ثُمَّ إِنْ زَنَتْ الثَّالِثَةَ فَلْيَبِعْهَا لَوْ بِحَبْلٍ مِنْ شَعْرٍ»

وَعَنْ مُسْلِمٍ أَيْضًا: أَنَا الْقَعْنَبِيُّ أَنَا مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُئِلَ عَنْ الْأَمَةِ إذَا زَنَتْ وَلَمْ تُحْصَنْ؟ قَالَ: إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ بِيعُوهَا، وَلَوْ بِضَفِيرٍ»

قَالَ ابْنُ شِهَابٍ: وَالضَّفِيرُ - الْحَبْلُ

قَالَ ابْنُ شِهَابٍ: لَا أَدْرِي أَبَعْدَ الثَّالِثَةِ، أَوْ الرَّابِعَةِ - وَالْأَخْبَارُ فِيمَا ذَكَرْنَا كَثِيرَةٌ جِدًّا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَتَكَلَّمُ - بِعَوْنِ اللَّهِ تَعَالَى - فِيمَا ذَكَرْنَا فِي الْأَخْبَارِ الْمَذْكُورَةِ مِنْ بَيْعِ الْأَمَةِ الَّتِي تَزْنِي، فَنَقُولُ: إنَّ اللَّيْثَ رَوَى هَذَا الْحَدِيثَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: إنْ زَنَتْ الثَّالِثَةَ فَلْيَبِعْهَا - وَلَوْ بِحَبْلٍ مِنْ شَعْرٍ - وَهَكَذَا رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ وَهَكَذَا أَيْضًا - رَوَاهُ خَالِدُ بْنُ الْحَارِثِ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ، فَلَمْ يَذْكُرُوا زِنَاهَا الْمَرَّةَ الثَّالِثَةَ جَلْدًا، بَلْ ذَكَرُوا الْبَيْعَ فَقَطْ

وَعَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ أَنْ يُقَامَ الْحَدُّ عَلَيْهَا ثَلَاثَ مَرَّاتٍ، ثُمَّ تُبَاعُ بَعْدَ الثَّالِثَةِ مَعَ الْجَلْدِ - وَهَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ

قَالَ عَلِيٌّ: فَوَجَبَ أَنْ يُلْغَى الشَّكُّ وَيَسْتَقِرَّ الْبَيْعُ بَعْدَ الثَّالِثَةِ مَعَ الْجَلْدِ - وَالطُّرُقُ كُلُّهَا فِي ذَلِكَ فِي غَايَةِ الصِّحَّةِ، وَكُلُّ مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ عَنْ اللَّهِ

said: “He does not speak from inclination - it is but a revelation revealed” [An-Najm:3-4]. Since that is the case, his injunction (peace and blessings of Allah be upon him) regarding the sale in the third instance constitutes a recommended act.[66]

L40499 The proof of this is that his command to sell in the fourth time cannot possibly be except this, because if his command—peace and blessings be upon him—in the third time had been obligatory, he would not have permitted its detention until the fourth time.

تَعَالَى، قَالَ اللَّهُ تَعَالَى {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] فَإِذْ ذَلِكَ كَذَلِكَ فَأَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَيْعِ فِي الثَّالِثَةِ نَدْبٌ

بُرْهَانُ ذَلِكَ: أَمْرُهُ بِالْبَيْعِ فِي الرَّابِعَةِ لَا يُمْكِنُ أَلْبَتَّةَ إِلَّا هَذَا، لِأَنَّهُ لَوْ كَانَ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الثَّالِثَةِ فَرْضًا لَمَا أَبَاحَ حَبْسَهَا إِلَى الرَّابِعَةِ

[66] **Qur’an references (L40498):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).

L40500 As for the sale in the fourth scenario, it is a necessary obligation because the commands of the Prophet (may Allah bless him and grant him peace) are obligatory, based on the words of Allah the Exalted in the verse: “Let those who oppose his command beware” [An-Nur: 63].[1]

وَأَمَّا الْبَيْعُ فِي الرَّابِعَةِ فَفَرْضٌ لَا بُدَّ مِنْهُ، لِأَنَّ أَوَامِرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْفَرْضِ لِقَوْلِ اللَّهِ تَعَالَى {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ} [النور: ٦٣] الْآيَةَ

L40501 Abū Muḥammad—may Allāh have mercy on him—said: The ruler compels the owner to sell her, whether willing or reluctant, according to the valuation determined for her, without seeking increase or haggling—just as the Messenger of Allāh—peace and blessings be upon him and his family—commanded that she be sold even for a hair rope or a braided strand of hair if nothing beyond that is found. If she commits fornication while she is being offered for sale or before being offered, her punishment is also enforced due to the generality of his ruling—peace and blessings be upon him and his family—to lash her if she fornicates. Likewise, if the master is absent or dies, the heirs must necessarily sell her. If she belongs to minors, the guardian or custodian lashes her, based on the statement of the Messenger of Allāh—peace and blessings be upon him and his family—in Mālik’s narration from al-Zuhrī: “Lash her,” which applies generally to whoever assumes responsibility. Selling is not obligatory for a male slave if he fornicates, for the Messenger of Allāh—peace and blessings be upon him and his family—specifically ordained this for a female slave when she fornicates. “He does not speak from whim—it is but revelation inspired” (53:3-4).[2]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيُجْبِرُهُ السُّلْطَانُ عَلَى بَيْعِهَا أَحَبَّ أَمْ كَرِهَ بِمَا يَنْتَهِي إلَيْهِ الْعَطَاءُ فِيهَا، وَلَا يَتَأَتَّى بِهَا طَلَبُ زِيَادَةٍ، وَلَا سَوْقٍ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُبَاعَ - وَلَوْ بِحَبْلٍ مِنْ شَعْرٍ، أَوْ ضَفِيرٍ مِنْ شَعْرٍ - إذَا لَمْ يُوجَدْ فِيهَا إلَّا ذَلِكَ، فَإِنْ زَنَتْ فِي خِلَالِ تَعْرِيضِهَا لِلْبَيْعِ، أَوْ قَبْلَ أَنْ تُعْرَضَ حَدَّهَا أَيْضًا، لِعُمُومِ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِجَلْدِهَا إنْ زَنَتْ - وَكَذَلِكَ إنْ غَابَ السَّيِّدُ أَوْ مَاتَ، فَلَا بُدَّ مِنْ بَيْعِهَا عَلَى الْوَرَثَةِ ضَرُورَةً - فَإِنْ كَانَتْ لِصِغَارٍ جَلَدَهَا الْوَلِيُّ أَوْ الْكَافِلُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي رِوَايَةِ مَالِكٍ عَنْ الزُّهْرِيِّ فَاجْلِدُوهَا، فَهُوَ عُمُومٌ لِكُلِّ مَنْ قَامَ بِهِ، وَلَا يَلْزَمُ الْبَيْعُ فِي الْعَبْدِ إذَا زَنَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا أَمَرَ بِذَلِكَ الْأَمَةَ إذَا زَنَتْ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤]

L40502 “And whoever transgresses the limits of Allah has indeed wronged himself [Surah At-Talaq 1]. Likewise, if a female slave steals or drinks wine, she is to be given the prescribed punishment and her sale is not obligatory, for the text was revealed specifically regarding her adultery alone, and your Lord is not forgetful [Surah Maryam 64].”[3]

{وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَكَذَلِكَ إنْ سَرَقَتْ الْأَمَةُ أَوْ شَرِبَتْ الْخَمْرَ، فَإِنَّهَا تُحَدُّ وَلَا يَلْزَمُ بَيْعُهَا، لِأَنَّ النَّصَّ إنَّمَا جَاءَ فِي زِنَاهَا فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L40503–40505 Abu Muhammad, may Allah have mercy on him, said: If the master were to emancipate her once her fornication is legally established, his emancipation would not be executed; rather, it is... It is invalid, for he is commanded to sell

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ أَعْتَقَهَا السَّيِّدُ إذَا تَبَيَّنَ زِنَاهَا لَمْ يُنَفَّذْ عِتْقُهُ بَلْ هُوَ مَرْدُودٌ، لِأَنَّهُ مَأْمُورٌ بِبَيْعِهَا وَإِخْرَاجِهَا عَنْ مِلْكِهِ، فَهُوَ فِي عِتْقِهِ إيَّاهَا، أَوْ كِتَابَتِهِ لَهَا، أَوْ هِبَتِهِ إيَّاهَا، أَوْ الصَّدَقَةِ بِهَا، أَوْ إصْدَاقِهَا، أَوْ إجَارَتِهَا، أَوْ تَسْلِيمِهَا فِي شَيْءٍ بِصِفَةٍ غَيْرِ

[1] **Qur’an references (L40500):** Qur’an 24:63 (An-Nur).
[2] **Qur’an references (L40501):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[3] **Qur’an references (L40502):** Qur’an 65:1 (At-Talaq); Qur’an 19:64 (Maryam).

her and remove her from his ownership. Thus, if he engages in manumitting her, enters into a *kitābah* contract with her, gifts her, donates her as charity, gives her as *mahr*, leases her services, or transfers her ownership in a transaction other than sale—whether paid upfront or deferred, using gold dinars or silver dirhams—he has opposed the command of God's Messenger, peace and blessings be upon him and his family. He, peace be upon him, said: "Whoever performs an act not in accordance with our command, it is invalid." Likewise, if he makes a *tadbīr* for her and dies, or bequeaths her through a *waṣiyyah*, all such acts are void. The owner must necessarily sell her.[4]

L40506 Abū Muḥammad—may Allāh have mercy on him—said: It is impermissible for a master to enforce the ḥudūd upon his slaves except through conclusive evidence, the slaves' confession, or the soundness of his knowledge and certainty, based on the explicit wording of the Prophet's statement—peace and blessings of Allāh be upon him: "Then ascertain her adultery." And the authority to enforce the ḥudūd upon slaves is restricted only to upright individuals among the Muslims.

L40507 **Question: Which limbs are struck in the hudud?**

L40508 2190 - Issue: Which limbs are struck in the prescribed punishments? Abu Muhammad (may Allah have mercy on him) said: People have differed on this. Allah the Exalted said: "If you dispute over anything, refer it to Allah and the Messenger" [an-Nisāʾ 4:59] the verse. So we did, and we found that Allah the Exalted said: "Strike the adulteress and the adulterer with one hundred lashes each" [an-Nūr 24:2].[5]

L40509 And he said (peace be upon him), "If he drinks, then flog him."

L40510 And he—peace be upon him—said: "And for your son, one hundred lashes

[4]**Hadith references (L40503):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[5]**Qur'an references (L40508):** Qur'an 4:59 (An-Nisa); Qur'an 24:2 (An-Nur).

الْبَيْعِ - مِمَّا شَاءَ نَقْدًا أَوْ إِلَى أَجَلٍ - بِدَنَانِيرَ أَوْ بِدَرَاهِمَ: مُخَالِفٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ قَالَ - عَلَيْهِ السَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» وَكَذَلِكَ لَوْ دَبَّرَهَا فَمَاتَ، أَوْ أَوْصَى بِهَا، فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَا بُدَّ مِنْ بَيْعِهَا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا يَجُوزُ أَنْ يُقِيمَ الْحَدَّ السَّيِّدُ عَلَى مَمَالِيكِهِ إِلَّا بِالْبَيِّنَةِ، أَوْ بِإِقْرَارِ الْمَمَالِيكِ، أَوْ صِحَّةِ عِلْمِهِ وَيَقِينِهِ، عَلَى نَصِّ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَتَبَيَّنَ زِنَاهَا» وَلَا يُطْلَقُ عَلَى إقَامَةِ الْحُدُودِ عَلَى الْمَمَالِيكِ إلَّا أَهْلُ الْعَدَالَةِ، فَقَطْ مِنْ الْمُسْلِمِينَ

[مَسْأَلَةَ أَيُّ الْأَعْضَاءِ تُضْرَبُ فِي الْحُدُودِ]

٢١٩٠ - مَسْأَلَةٌ: أَيُّ الْأَعْضَاءِ تُضْرَبُ فِي الْحُدُودِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا؟ وَقَالَ اللَّهُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢]

وَقَالَ - عَلَيْهِ السَّلَامُ - «إذَا شَرِبَ فَاجْلِدُوهُ»

وَقَالَ - عَلَيْهِ السَّلَامُ - «وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ» وَسَنَذْكُرُ كُلَّ ذَلِكَ - إنْ شَاءَ اللَّهُ تَعَالَى - فَلَمْ نَجِدْ عَنْ اللَّهِ تَعَالَى، وَلَا

and exile for a year. As for a virgin [who commits zinā] with another virgin—one hundred lashes and exile for a year." We will mention all of that—if Allah the Exalted wills—so we have not found from Allah the Exalted nor from His Messenger—peace and blessings be upon him—any command specifying a particular limb to be struck instead of another, except the *ḥadd* of false accusation alone. For indeed, the Messenger of Allah—peace and blessings be upon him—said regarding it: "Produce evidence; otherwise, the *ḥadd* punishment will be applied to your back."

عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرًا بِأَنْ يَخُصَّ عُضْوًا بِالضَّرْبِ دُونَ عُضْوٍ إِلَّا حَدُّ الْقَذْفِ وَحْدَهُ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِيهِ «الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ»

L40511–40513 Narrated to us by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from ʿImrān ibn Yazīd al-Dimashqī, from Makhlad ibn al-Ḥusayn al-Asadī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, from Anas ibn Mālik, who said: "The first oath of condemnation (liʿān) in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn Sahmāʾ of committing adultery with his wife. He came to the Prophet—peace and blessings of Allāh be upon him—and informed him of this. The Prophet—peace and blessings of Allāh be upon him—repeatedly said to him: 'Produce evidence, or the ḥadd shall be applied to your back.' Thus, it became obligatory that the punishment for adultery not be specified [to a particular body part], and [the text breaks off here with an incomplete phrase:] 'and wine is a limb of...'" a limb, for had Allah the Exalted willed such a ruling, He would have made it clear through His Messenger (peace and blessings of Allah be upon him). However, it is obligatory and imperative to avoid the face, the male genitalia, and the vital points.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عِمْرَانُ بْنُ يَزِيدَ الدِّمَشْقِيُّ نا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَسَدِيُّ نا هِشَامُ بْنُ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «إِنَّ أَوَّلَ لِعَانٍ كَانَ فِي الْإِسْلَامِ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ سَحْمَاءَ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» يُرَدِّدُ ذَلِكَ عَلَيْهِ مِرَارًا فَوَجَبَ أَنْ لَا يُخَصَّ بِضَرْبِ الزِّنَى، وَالْخَمْرِ عُضْوٌ مِنْ عُضْوٍ، إِذْ لَوْ أَرَادَ اللَّهُ تَعَالَى ذَلِكَ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ يَجِبُ اجْتِنَابُ الْوَجْهِ وَلَا بُدَّ، وَالْمَذَاكِرِ، وَالْمَقَاتِلِ

L40514 As for the face: this is due to the narration transmitted to us via the chain of transmission recorded by Imam Muslim, from ʿAmr an-Nāqid and Zuhayr ibn Harb, who both narrated from Sufyān ibn ʿUyaynah, from Abī az-Zināḍ, from al-Aʿraj, from Abī Hurayrah, who said: The Messenger of Allah, peace be upon him, said, "When any of you strikes, let him avoid the face."

أَمَّا الْوَجْهُ - فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَمْرٌو النَّاقِدُ، وَزُهَيْرُ بْنُ حَرْبٍ قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا ضَرَبَ أَحَدُكُمْ فَلْيَجْتَنِبْ الْوَجْهَ»

L40515 As for the lethal points: striking them involves uncertainty [gharar], such as the heart, the testicles, and similar areas. It is impermissible to kill him nor expose him to such harm, due to the harm we fear from it. Success comes solely from Allah, the Most High.

وَأَمَّا الْمَقَاتِلُ: فَضَرْبُهَا غَرَرٌ، كَالْقَلْبِ، وَالْأُنْثَيَيْنِ، وَنَحْوِ ذَلِكَ - وَلَا يَحِلُّ قَتْلُهُ وَلَا التَّعْرِيضُ بِهِ، لِمَا نَخَافُ مِنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

The Question of the Method of Implementing the Ḥudūd.

[مَسْأَلَة كَيْفِيَّة ضَرْب الْحُدُود]

Issue 2191: How are the ḥudūd administered—standing or sitting? People have differed regarding this. Allah the Exalted said the verse: “But if you disagree over anything...” [An-Nisa’: 59].[6]

٢١٩١ - مَسْأَلَةٌ: كَيْف يُضْرَبُ الْحُدُودَ أَقَائِمًا أَمْ قَاعِدًا؟ اخْتَلَفَ النَّاسُ فِي ذَلِكَ وَقَالَ اللَّهُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ} [النساء: ٥٩] الْآيَةَ

As for those who maintain that Hudud punishments are to be administered to the offender while he is standing, they have mentioned regarding that matter...

أَمَّا مَنْ قَالَ بِأَنَّ الْحُدُودَ تُقَامُ عَلَى الْمَحْدُودِ وَهُوَ قَائِمٌ فَإِنَّهُمْ ذَكَرُوا فِي ذَلِكَ

Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farabari narrated to us: al-Bukhari narrated to us: Ismail ibn Abdullah narrated to us: Malik narrated from Nafi‘ from Ibn Umar, who mentioned the hadith of the two Jews whom the Messenger of Allah (ﷺ) stoned for adultery. Ibn Umar said: “I saw the man bending over the woman, shielding her from the stones.”

مَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ أَنَا إِبْرَاهِيمُ بْنُ أَحْمَدَ أَنَا الْفَرَبْرِيُّ أَنَا الْبُخَارِيُّ أَنَا إِسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ أَنَا مَالِكٌ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، فَذَكَرَ حَدِيثَ الْيَهُودِيَّيْنِ اللَّذَيْنِ رَجَمَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الزِّنَى، قَالَ ابْنُ عُمَرَ: «فَرَأَيْتُ الرَّجُلَ يَحْنِي عَلَى الْمَرْأَةِ يَقِيهَا الْحِجَارَةَ»

They mentioned the hadith of Abu Huraira concerning his being flogged with the prescribed punishment for false accusation of unchastity, in which he said: “By Allah! On the day I am struck eighty lashes while standing, I am indeed patient.”

وَذَكَرُوا حَدِيثَ أَبِي هُرَيْرَةَ فِي جَلْدِهِ حَدَّ الْقَذْفِ الَّذِي يَقُولُ فِي ذَلِكَ: لَعَمْرُك إنِّي يَوْمَ أُضْرَبُ قَائِمًا ثَمَانِينَ سَوْطًا، إنَّنِي لَصَبُورٌ

Then they presented the most extreme forms of muddled reasoning, saying: “Umar ibn al-Khattab’s instruction to the punishment administrator during the flogging—’Strike while giving each bodily member its due right’—indicates the punished person was standing.” They further argued: “The Hadith about the two Jews demonstrates the man was standing while the woman remained seated.” Abu Muhammad—may Allah have mercy on him—responded: “All of this constitutes evidence against them rather than supporting their position, as we shall clarify by Allah’s will. Regarding the Prophet’s (peace and blessings of Allah be upon him) Hadith about this matter, they were indeed the first to disobey him and oppose him, saying: ’It is not permissible to...’” The ḥadd punishment for adultery is enforced upon a Jewish man but not a Jewish woman. They interpreted the action of the Messen-

ثُمَّ أَتَوْا بِأَطْرَفَ مَا يَكُونُ مِنْ التَّخْلِيطِ؟ فَقَالُوا: إنَّ قَوْلَ عُمَرَ بْنِ الْخَطَّابِ لِلْجَلَّادِ فِي الْحَدِّ " اضْرِبْ وَأَعْطِ كُلَّ ذِي عُضْوٍ حَقَّهُ " دَلِيلٌ عَلَى أَنَّ الْمَجْلُودَ كَانَ قَائِمًا، وَقَالَ: فَدَلَّ حَدِيثُ الْيَهُودِيَّيْنِ عَلَى أَنَّ الرَّجُلَ كَانَ قَائِمًا، وَإِنَّهَا كَانَتْ قَاعِدَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكُلُّ هَذَا عَلَيْهِمْ لَا لَهُمْ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَمَّا حَدِيثُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ فَهُمْ أَوَّلُ مَنْ عَصَاهُ وَخَالَفَهُ، وَقَالُوا: لَا يَحِلُّ أَنْ يُقَامَ حَدُّ الزِّنَى عَلَى يَهُودِيٍّ وَلَا يَهُودِيَّةٍ، وَحَمَلُوا فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ عَلَى مَا لَمْ يَقْدِمُوا عَلَى إطْلَاقِهِ بِأَلْسِنَتِهِمْ، إمَّا أَنَّهُ عَلَى مَعْصِيَةِ اللَّهِ تَعَالَى وَإِمَّا أَنَّهُ

[6] **Qur’an references (L40517):** Qur’an 4:59 (An-Nisa).

ger of Allah—peace and blessings of Allah be upon him—in that matter as pertaining to what they refrained from openly declaring with their tongues: either as disobedience to Allah the Exalted or as enforcing provisions from the Torah from that which they are not permitted to enact. In any case, the Messenger of Allah—peace and blessings of Allah be upon him—did not rule in that matter by the command of Allah the Exalted, nor by revelation to him, nor by an obligation requiring adherence. They have no escape from this.

عَلَى إنْفَاذِ لِمَا فِي التَّوْرَاةِ، مِمَّا لَا يَجُوزُ لَهُمْ إنْفَاذُهُ، وَأَنَّهُ عَلَى كُلِّ حَالٍ لَمْ يَحْكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ بِأَمْرِ اللَّهِ تَعَالَى وَلَا بِوَحْيِهِ إلَيْهِ، وَلَا بِحَقٍّ يَجِبُ اتِّبَاعُهُ فِيهِ: لَا مَحِيدَ لَهُمْ مِنْ هَذَا

L40524 What they presumed about this is sheer falsehood, and there is no evidence in it that he was standing or that she was seated. Rather, he may have bent over her while in the bowing posture—which is the more apparent interpretation—or while leaning forward in a position close to sitting, and this too is very possible. As for him bending over her while standing and she is seated, this is absolutely impossible; it cannot occur at all. However, it may be possible for both to be standing, with him bending over her due to the man's greater height relative to the woman, or for both to be seated.

فَهَذَا الَّذِي ظَنُّوا مِنْ ذَلِكَ كَذِبٌ بَحْتٌ، وَمَا فِيهِ دَلِيلٌ عَلَى أَنَّهُ كَانَ قَائِمًا، وَلَا أَنَّهَا كَانَتْ قَاعِدَةً، بَلْ قَدْ يَحْنِي عَلَيْهَا وَهُوَ رَاكِعٌ - وَهُوَ الْأَظْهَرُ - أَوْ وَهُوَ مُنْكَبٌّ قَرِيبٌ مِنْ الْجُلُوسِ، وَهُوَ مُمْكِنٌ جِدًّا أَيْضًا، وَأَمَّا أَنْ يَحْنِيَ عَلَيْهَا وَهُوَ قَائِمٌ وَهِيَ قَاعِدَةٌ فَمُمْتَنِعٌ لَا يُمْكِنُ أَلْبَتَّةَ، وَلَا يَتَأَتَّى ذَلِكَ - وَقَدْ يُمْكِنُ أَنْ يَكُونَا قَائِمَيْنِ، وَيَحْنِي عَلَيْهَا بِفَضْلِ مَا لِلرَّجُلِ عَلَى الْمَرْأَةِ مِنْ الطُّولِ، وَقَدْ يُمْكِنُ أَنْ يَكُونَا قَاعِدَيْنِ

L40525 As for the ḥadīth of Abū Hurayrah, it contains no indication that he required him to stand upright when flogging was necessary, nor that the woman differs from the man.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ فَلَيْسَ فِيهِ: أَنَّ أَبَا هُرَيْرَةَ أَوْجَبَ عَلَيْهِ أَنْ يَقُومَ قَائِمًا، إذْ جَلَدَهُ وَلَا بُدَّ، وَلَا أَنَّ الْمَرْأَةَ بِخِلَافِ الرَّجُلِ

L40526 Abū Muḥammad—may Allah have mercy on him—said: Since there is neither a textual ruling nor consensus regarding any of this, we are certain that had Allah the Exalted willed the implementation of the ḥadd punishment to be restricted to a posture that does not go beyond standing or sitting, or to differentiate between a man and a woman, He would have clarified it on the tongue of His Messenger—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَا نَصَّ فِي شَيْءٍ مِنْ هَذَا، وَلَا إجْمَاعَ، فَقَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَكُونَ إقَامَةُ الْحَدِّ عَلَى حَالٍ لَا يَتَعَدَّى مِنْ قِيَامٍ أَوْ قُعُودٍ، أَوْ فَرَّقَ بَيْنَ رَجُلٍ وَامْرَأَةٍ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -

L40527 Thus, it is established that flogging for unlawful intercourse (zinā), false accusation (qadhf), alcohol consumption (khamr), and discretionary punishment (taʿzīr) is to be administered to both the woman and the man as circumstances allow, whether standing or sitting. If the individual resists, they are restrained. If they use their hands to block the blows—such as by encountering the instrument used to strike them and seizing it—their hands are restrained.

فَصَحَّ أَنَّ الْجَلْدَ فِي الزِّنَى، وَالْقَذْفِ، وَالْخَمْرِ، وَالتَّعْزِيرِ: يُقَامُ كَيْفَمَا تَيَسَّرَ عَلَى الْمَرْأَةِ وَالرَّجُلِ، قِيَامًا وَقُعُودًا، فَإِنْ امْتَنَعَ أَمْسَكَ، وَإِنْ دَفَعَ بِيَدَيْهِ الضَّرْبَ عَنْ نَفْسِهِ: مِثْلُ أَنْ يَلْقَى الشَّيْءَ الَّذِي يُضْرَبُ بِهِ فَيَمْسِكُهُ أُمْسِكَتْ يَدَاهُ

The Issue of the Manner of Striking in Ḥudūd Punishments.

[مَسْأَلَة صفة ضَرْب الْحُدُود]

L40528

2192 - Issue: The manner of striking? Abu Muhammad—may Allah have mercy on him—said: Some people permitted the drawing of blood during the whipping for prescribed punishments and discretionary punishments. However, no such practice is reported from the Companions. Rather, it is authentically established from ʻUmar—may Allah be pleased with him—as we previously mentioned: "If you do not find [evidence], then whip her," and no opposing view from the Companions—may Allah be pleased with them—is known regarding this. Our position concerning striking for adultery, false accusation, consumption of intoxicants, and discretionary punishments is that no bone should be broken, no skin torn, no blood drawn, and no flesh caused to rot. Rather, it should be a strike that is painful yet free from all such harm. Whoever transgresses by tearing the skin during such striking, drawing blood, or... If someone caused flesh to rot or broke his bone, retaliation (qisas) is incumbent upon the perpetrator, and likewise upon the one who ordered it if he commanded such an act.

L40529–40531

٢١٩٢ - مَسْأَلَةٌ: صِفَةُ الضَّرْبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَجَازَ قَوْمٌ أَنْ يُسَالَ الدَّمُ فِي جَلْدِ الْحُدُودِ، وَالتَّعْزِيرِ - وَهُوَ لَمْ يَأْتِ بِهِ عَنْ الصَّحَابَةِ شَيْءٌ مِنْ ذَلِكَ، بَلْ قَدْ صَحَّ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِمَّا قَدْ ذَكَرْنَاهُ قَبْلُ لَا تَجِدُ، فَاجْلِدْهَا، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالَّذِي نَقُولُ بِهِ فِي الضَّرْبِ فِي الزِّنَى، وَالْقَذْفِ، وَالْخَمْرِ، وَالتَّعْزِيرِ: أَنْ لَا يُكْسَرَ لَهُ عَظْمٌ، وَلَا أَنْ يُشَقَّ لَهُ جِلْدٌ، وَلَا أَنْ يُسَالَ الدَّمُ، وَلَا أَنْ يَعْفَنَ لَهُ اللَّحْمُ، لَكِنْ بِوَجَعٍ سَالِمٍ مِنْ كُلِّ ذَلِكَ، فَمَنْ تَعَدَّى فَشَقَّ فِي ذَلِكَ الضَّرْبِ جِلْدًا، أَوْ أَسَالَ دَمًا، أَوْ عَفَّنَ لَحْمًا، أَوْ كَسَرَ لَهُ عَظْمًا، فَعَلَى مُتَوَلِّي ذَلِكَ الْقَوَدُ، وَعَلَى الْآمِرِ أَيْضًا الْقَوَدُ إنْ أَمَرَ بِذَلِكَ

The proof of that is the statement of Allah, the Exalted: "Indeed, Allah has ordained a measure for everything." [At-Talaq: 3][7]

L40532

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا} [الطلاق: ٣]

We have thus ascertained with certainty that the application of the prescribed punishments has a maximum limit that cannot be exceeded and a minimum limit that cannot be reduced, as per the explicit text of the Qur'an. We sought this and found that the minimum measure is to cause pain; thus, anything falling short of causing pain is excluded from its measures (a matter uncontested by any scholar). The highest measure constitutes the utmost pain in adultery while safeguarding against all the consequences we mentioned, with the mitigation of pain being proportionate to what we have outlined.

L40533

فَعَلِمْنَا يَقِينًا أَنَّ لِضَرْبِ الْحُدُودِ قَدْرًا لَا يَتَجَاوَزُهُ وَقَدْرًا لَا يَنْحَطُّ عَنْهُ بِنَصِّ الْقُرْآنِ، فَطَلَبْنَا ذَلِكَ فَوَجَدْنَا أَدْنَى أَقْدَارِهِ أَنْ يُؤْلِمَ، فَمَا نَقَصَ عَنْ الْأَلَمِ فَلَيْسَ مِنْ أَقْدَارِهِ - وَهَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ - وَكَانَ أَعْلَى أَقْدَارِهِ نِهَايَةُ الْأَلَمِ فِي الزِّنَى مَعَ السَّلَامَةِ مِنْ كُلِّ مَا ذَكَرْنَا، ثُمَّ الْحَطِيطَةُ مِنْ الْأَلَمِ عَلَى حَسَبِ مَا وَصَفْنَا

As for the prohibition of all that we have mentioned, it is based on the statement of the Messenger of Allah (may Allah bless him and grant him peace): "Your blood, your wealth, your honor, and your bodies are sacred to you." Thus, the shedding of blood is prohibited by explicit textual injunction,

L40534

فَأَمَّا الْمَنْعُ مِنْ كُلِّ مَا ذَكَرْنَا، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَحُرِّمَتْ إسَالَةُ الدَّمِ نَصًّا إذْ هَرْقُ الدَّمِ

[7] **Qur'an references (L40532):** Qur'an 65:3 (At-Talaq).

for spilling blood is unlawful except what a text or consensus permits—and there is neither text nor consensus permitting bloodshed in any of the *hudud* punishments. Indeed, nor is this reported from any of the Tabi'een.

حَرَامٌ، إلَّا مَا أَبَاحَهُ نَصٌّ، أَوْ إجْمَاعٌ - وَلَا نَصَّ، وَلَا إجْمَاعَ عَلَى إبَاحَةِ إسَالَةِ الدَّمِ فِي شَيْءٍ مِنْ الْحُدُودِ - نَعَمْ، وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ

L40535 As for the decay of flesh: The Messenger of Allah—peace and blessings be upon him—explicitly decreed the prohibition of human skin; thus, none of it is lawful except what is permitted by a textual ruling or consensus. The textual ruling and consensus have only established its permissibility to alleviate pain. As for breaking bones—is there anyone in the Ummah who, without doubt, permits it in the execution of hudud punishments?

وَأَمَّا تَعَفُّنُ اللَّحْمِ: فَقَدْ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى تَحْرِيمِ الْبَشَرَةِ، فَلَا يَحِلُّ مِنْهَا إلَّا مَا أَحَلَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَإِنَّمَا صَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى إبَاحَتِهَا لِلْأَلَمِ فَقَطْ، وَأَمَّا كَسْرُ الْعِظَامِ، فَلَا يَقُولُ بِإِبَاحَتِهِ فِي ضَرْبِ الْحُدُودِ أَحَدٌ مِنْ الْأُمَّةِ بِلَا شَكٍّ؟

L40536 Abu Muhammad—may Allah have mercy on him—said: "Whoever disagrees with us regarding these matters, we ask them: Does the severity of striking in such cases constitute a prescribed punishment or not? If they say no, they have abandoned their own assertion, opposed the consensus, and it becomes incumbent upon them to permit flogging in all such instances with a whip filled with iron or lead—the one who strikes is killed. Yet none among the Ummah says this."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ خَالَفَنَا فِي هَذِهِ الْأَشْيَاءِ سَأَلْنَاهُ أَلشِدَّةُ الضَّرْبِ فِي ذَلِكَ حَدٌّ أَمْ لَا؟ فَإِنْ قَالُوا: لَا، تَرَكُوا قَوْلَهُمْ، وَخَالَفُوا الْإِجْمَاعَ، وَلَزِمَهُمْ أَنْ يُبِيحُوا أَنْ يُجْلَدَ فِي كُلِّ ذَلِكَ بِسَوْطٍ مَمْلُوءٍ حَدِيدًا أَوْ رَصَاصًا يُقْتَلُ مَنْ ضَرَبَهُ - وَهَذَا لَا يَقُولُهُ أَحَدٌ مِنْ الْأُمَّةِ

L40537 And if they say: "Indeed, this has a limit and a measure which they abide by, and it is not permissible to exceed it," they were asked about that. If they defined a limit therein other than what we defined, they would be imposing arbitrary rulings in matters of religion without proof.

وَإِنْ قَالُوا: إنَّ لِذَلِكَ حَدًّا وَقَدْرًا نَقِفُ عِنْدَهُ فَلَا يَحِلُّ تَجَاوُزُهُ: سُئِلُوا عَنْ ذَلِكَ، فَإِنْ حَدُّوا فِيهِ غَيْرَ مَا حَدَدْنَا كَانُوا مُتَحَكِّمِينَ فِي الدِّينِ بِلَا بُرْهَانٍ

L40538–40540 If they say, "The prescribed punishments were instituted solely as a deterrent?" We say to them: Far from it! That is not as you claim. Rather, Allah's deterrence is through His prohibitions and His warnings in... The Hereafter only. As for the prescribed punishments, Allah the Exalted has ordained them as He wills and has not informed us that they are for deterrence. Were they for deterrence as you claim, a thousand lashes would be more deterrent than a hundred, and eighty, and forty, and fifty. Cutting off both hands and both feet would be more deterrent than cutting off a single hand. Then we would say: they are an exemplary punishment, punishment, torment, retribution, and disgrace—as Allah the Exalted stated regarding those who wage

فَإِنْ قَالُوا: إنَّ الْحُدُودَ إنَّمَا جُعِلَتْ لِلرَّدْعِ؟ قُلْنَا لَهُمْ: كَلَّا، مَا ذَلِكَ كَمَا تَقُولُونَ، إنَّمَا رَدْعُ اللَّهِ تَعَالَى بِالتَّحْرِيمِ وَبِالْوَعِيدِ فِي الْآخِرَةِ فَقَطْ، وَأَمَّا بِالْحُدُودِ فَإِنَّمَا جَعَلَ اللَّهُ تَعَالَى كَمَا شَاءَ، وَلَمْ يُخْبِرْنَا اللَّهُ تَعَالَى أَنَّهَا لِلرَّدْعِ، وَلَوْ كَانَتْ لِلرَّدْعِ كَمَا تَدَّعُونَ لَكَانَ أَلْفُ سَوْطٍ أَرْدَعَ مِنْ مِائَةٍ وَمِنْ ثَمَانِينَ، وَمِنْ أَرْبَعِينَ، وَمِنْ خَمْسِينَ، وَلَكَانَ قَطْعُ الْيَدَيْنِ وَالرِّجْلَيْنِ أَرْدَعَ مِنْ قَطْعِ يَدٍ وَاحِدَةٍ، وَلَكُنَّا نَقُولُ: هِيَ نَكَالٌ وَعُقُوبَةٌ، وَعَذَابٌ، وَجَزَاءٌ، وَخِزْيٌ،

war [against Allah and His Messenger]: “The recompense of those who wage war against Allah and His Messenger and strive...” (Al-Ma’idah 5:33).[8]

كَمَا قَالَ اللَّهُ تَعَالَى فِي الْمُحَارَبَةِ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ} [المائدة: ٣٣] الْآيَةَ

L40541 And He, the Exalted, said: “They shall incur half the punishment prescribed for chaste women.” [An-Nisa: 25][9]

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40542 Allah, the Exalted, said concerning the slanderer of unchastity: “Indeed, those who desire that immorality should spread among those who have believed...” [An-Nur: 19] the verse.[10]

وَقَالَ تَعَالَى فِي الْقَاذِفِ {إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا} [النور: ١٩] الْآيَةَ

L40543 And the Exalted said, “The male thief and the female thief...” [Quran 5:38].[11]

وَقَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ} [المائدة: ٣٨] الْآيَةَ

L40544 And He, the Exalted, said the verse {The adulteress and the adulterer} [An-Nur: 2]. Indeed, the act of naming in the religion belongs to Allah, the Exalted, not to the people.[12]

وَقَالَ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ وَإِنَّمَا التَّسْمِيَةُ فِي الدِّينِ إِلَى اللَّهِ تَعَالَى، لَا إِلَى النَّاسِ

L40545 Thus, it is established that He, the Exalted, made it as He willed, where He willed, and He did not make it where He did not will.

فَصَحَّ أَنَّهُ تَعَالَى جَعَلَهَا كَمَا شَاءَ حَيْثُ شَاءَ، وَلَمْ يَجْعَلْهَا حَيْثُ لَمْ يَشَأْ

L40546 Abu Muhammad—may Allah have mercy on him—said: Since what we have mentioned has been established, and the specified measure of beating that must not be exceeded has been confirmed, it is thereby established that whoever exceeds that measure has transgressed the limits set by Allah the Exalted and is sinful in doing so. Disobedience to Allah the Exalted cannot compensate for obedience to Him. Therefore, since such a person is a transgressor, qisas (legal retaliation) becomes obligatory upon him. Allah the Exalted said: “So whoever aggressed against you, respond equivalently against him” [Al-Baqarah 2:194]. The transgressive beating undoubtedly cannot be fragmented. Since it cannot be fragmented—and it remains an act of disobedience—it is invalid for it to suffice in place of the hadd punishment, which constitutes obedience to Allah the Exalted. Thus, retaliation is imposed for

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا، وَصَحَّ مِقْدَارُ الضَّرْبِ الَّذِي لَا يَتَجَاوَزُ، فَقَدْ صَحَّ أَنَّ مَنْ تَجَاوَزَ ذَلِكَ الْمِقْدَارَ فَإِنَّهُ مُتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَهُوَ عَاصٍ بِذَلِكَ، وَلَا تُنْوِبُ مَعْصِيَةُ اللَّهِ تَعَالَى عَنْ طَاعَتِهِ، فَإِذْ هُوَ مُتَعَدٍّ فَعَلَيْهِ الْقَوَدُ، قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ} [البقرة: ١٩٤] الْآيَةَ فَضَرْبُ التَّعَدِّي لَا يَتَبَعَّضُ بِلَا شَكٍّ، فَإِذْ لَا يَتَبَعَّضُ - وَهُوَ مَعْصِيَةٌ - فَبَاطِلٌ أَنْ يُجْزِيَ عَنْ الْحَدِّ الَّذِي هُوَ طَاعَةٌ لِلَّهِ تَعَالَى فَيُقْتَصُّ لَهُ مِنْهُ، ثُمَّ يُقَامُ عَلَيْهِ الْحَدُّ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[8] **Qur’an references (L40538):** Qur’an 5:33 (Al-Ma’idah).
[9] **Qur’an references (L40541):** Qur’an 4:25 (An-Nisa).
[10] **Qur’an references (L40542):** Qur’an 24:19 (An-Nur).
[11] **Qur’an references (L40543):** Qur’an 5:38 (Al-Ma’idah).
[12] **Qur’an references (L40544):** Qur’an 24:2 (An-Nur).

it, and the hadd punishment must still necessarily be carried out upon him. And with Allah alone is success.[13]

L40547 **Question: By what means is the striking administered in the ḥadd?**

L40548 2193 - Issue: With what is flogging carried out in the prescribed punishment? Abū Muḥammad—may God have mercy on him—said: As for the proponents of opinion and analogy, they assert that all prescribed punishments are administered with a whip. However, Al-Shāfiʿī—may God have mercy on him—said: Except for wine, for indeed flogging in its case is done with what is authentically reported from the Prophet—peace be upon him—that he flogged in such instances.

L40549–40551 Abū Muḥammad—may Allāh have mercy on him—said: Those who held that lashing with a whip is indispensable in the prescribed punishments argued by citing [the chain]: from Hummām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, [...] Yahya ibn Abi Kathir said: "A man came to the Messenger of Allah—peace and blessings be upon him—and said: 'O Messenger of Allah, I have committed an offense requiring a prescribed punishment; inflict it upon me.' The Prophet—peace and blessings be upon him—called for a whip. A new whip with its thongs intact was brought to him. He said: 'No, a whip inferior to this.' Then a whip with a broken handle was brought to him. He said: 'No, a whip superior to this.' Finally, a whip between the two in severity was brought to him. He ordered that the man be flogged with it." He mentioned the narration.

L40552 And from Zayd ibn Aslam: "A man confessed to committing adultery, so the Messenger of Allah—peace and blessings of Allah be upon him—called for a whip. He was brought a broken whip, and he said: 'Above this.' Then he was brought a new whip whose end had not been cut, and he said: 'Between these two.' Then he was brought a worn whip that had become supple. He commanded that he be flogged with it, and he was flogged." He mentioned the remainder of the report.

[13] **Qur'an references (L40546):** Qur'an 2:194 (Al-Baqarah).

[مَسْأَلَة بِأَيِّ شَيْءٍ يَكُونُ الضَّرْبُ فِي الْحَدِّ]

٢١٩٣ - مَسْأَلَةٌ: بِأَيِّ شَيْءٍ يَكُونُ الضَّرْبُ فِي الْحَدِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا أَهْلُ الرَّأْيِ، وَالْقِيَاسِ، فَإِنَّهُمْ قَالُوا: الْحُدُودُ كُلُّهَا بِالسَّوْطِ، إلَّا الشَّافِعِيُّ - رَحِمَهُ اللَّهُ - قَالَ: إلَّا الْخَمْرَ، فَإِنَّهُ يُجْلَدُ فِيهَا بِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ جَلَدَ فِيهَا

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: احْتَجَّ مَنْ رَأَى الْجَلْدَ بِالسَّوْطِ وَلَا بُدَّ فِي الْحُدُودِ: بِمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ؟ فَدَعَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَوْطٍ، فَأُتِيَ بِسَوْطٍ جَدِيدٍ عَلَيْهِ ثَمَرَتُهُ، قَالَ: لَا، سَوْطٌ دُونَ هَذَا؟ فَأُتِيَ بِسَوْطٍ مَكْسُورِ الْعَجُزِ، فَقَالَ: لَا، سَوْطٌ فَوْقَ هَذَا؟ فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ، فَأَمَرَ بِهِ فَجُلِدَ» وَذَكَرَ الْخَبَرَ

وَعَنْ زَيْدِ بْنِ أَسْلَمَ «أَنَّ رَجُلًا اعْتَرَفَ عَلَى نَفْسِهِ بِالزِّنَى، فَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِسَوْطٍ، فَأُتِيَ بِسَوْطٍ مَكْسُورٍ، فَقَالَ: فَوْقَ هَذَا، فَأُتِيَ بِسَوْطٍ جَدِيدٍ لَمْ تُقْطَعْ ثَمَرَتُهُ، فَقَالَ: بَيْنَ هَذَيْنِ، فَأُتِيَ بِسَوْطٍ قَدْ رُكِبَ بِهِ وَلَانَ، فَأَمَرَ بِهِ فَجُلِدَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

L40553 Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Sahnūn narrated to us: Ibn Wahb narrated from Makhramah ibn Bukayr from his father, who said: I heard ʿUbaydullāh ibn Miqsam say: I heard Kuraib, the freed slave of Ibn ʿAbbās, narrate, or it was narrated on his authority, saying: "A man came to the Prophet (peace and blessings of Allah be upon him) and confessed to committing adultery, and the man was not a married person. The Messenger of Allah (peace and blessings of Allah be upon him) took a whip but found its tip too stiff, so he returned it. Then he took another whip and found it supple. The Prophet ordered him to be lashed one hundred times."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ قَالَ: سَمِعْت عُبَيْدَ اللَّهِ بْنَ مِقْسَمٍ يَقُولُ: سَمِعْت كُرَيْبًا مَوْلَى ابْنِ عَبَّاسٍ يُحَدِّثُ أَوْ يُحَدَّثُ عَنْهُ قَالَ «أَتَى رَجُلٌ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ عَلَى نَفْسِهِ بِالزِّنَى، وَلَمْ يَكُنْ الرَّجُلُ أَحْصَنَ، فَأَخَذَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَوْطًا فَوَجَدَ رَأْسَهُ شَدِيدًا فَرَدَّهُ، ثُمَّ أَخَذَ سَوْطًا آخَرَ فَوَجَدَهُ لَيِّنًا، فَأَمَرَ بِهِ فَجُلِدَ مِائَةً»

L40554 From Abu Uthman al-Nahdi, who said: Umar ibn al-Khattab was approached regarding a ḥadd punishment—I do not know which ḥadd it was—and a stiff whip was brought to him. He said: "I want something more flexible." A flexible whip was brought, and he said: "I want something firmer than this." Finally, a whip of medium severity was brought, and he said: "Strike without exposing your armpit."

وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ فِي حَدٍّ - مَا أَدْرِي مَا ذَلِكَ الْحَدُّ - فَأُتِيَ بِسَوْطٍ فِيهِ شِدَّةٌ، فَقَالَ: أُرِيدُ مَا هُوَ أَلْيَنُ فَأُتِيَ بِسَوْطٍ لَيِّنٍ، فَقَالَ: أُرِيدُ أَشَدَّ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ فَقَالَ: اضْرِبْ وَلَا يُرَى إبِطُك

L40555 On the authority of Abu Uthman al-Nahdi, who said: Umar ibn al-Khattab was approached concerning a ḥadd punishment, and a whip was brought to him. He shook it and said, "Bring me a softer whip than this." Another whip was brought, and he said, "Bring me a harsher whip than this." Then a whip between the two whips was brought. He said, "Strike without exposing your armpit, and give each limb its due."

وَعَنْ أَبِي عُثْمَانَ النَّهْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ فِي حَدٍّ فَأُتِيَ بِسَوْطٍ، فَهَزَّهُ فَقَالَ: ائْتُونِي بِسَوْطٍ أَلْيَنَ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ آخَرَ، فَقَالَ ائْتُونِي بِسَوْطٍ أَشَدَّ مِنْ هَذَا، فَأُتِيَ بِسَوْطٍ بَيْنَ السَّوْطَيْنِ، فَقَالَ: اضْرِبْ وَلَا يُرَى إبِطُك، وَأَعْطِ لِكُلِّ عُضْوٍ حَقَّهُ

L40556–40558 Abū Muḥammad—may Allah have mercy on him—said: "We know of no specious argument they have except what we have mentioned. As for the narrations attributed to the Messenger of Allah—peace and blessings be upon him—all of them are *mursal*, and there is no valid proof in a *mursal*. The weakest of them is the ḥadīth of Makhrama ibn Bukayr, for it is disconnected at three points in the chain, because Makhrama's hearing from [...]" The narration from his father is not valid, and Ibn Miqsam doubted whether he heard it directly from Kureib or it was conveyed to him from him. Moreover, it is a mursal narration from Kureib.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شُبْهَةً غَيْرَ مَا ذَكَرْنَا: أَمَّا الْآثَارُ - فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمُرْسَلَةٌ كُلُّهَا، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَأَضْعَفُهَا حَدِيثُ مَخْرَمَةَ بْنِ بُكَيْرٍ، لِأَنَّهُ مُنْقَطِعٌ فِي ثَلَاثَةِ مَوَاضِعَ، لِأَنَّ سَمَاعَ مَخْرَمَةَ مِنْ أَبِيهِ لَا يَصِحُّ، وَشَكَّ ابْنُ مِقْسَمٍ أَسَمِعَهُ مِنْ كُرَيْبٍ أَمْ بَلَغَهُ عَنْهُ؟ ثُمَّ هُوَ عَنْ كُرَيْبٍ مُرْسَلٌ

L40559 Then, even if it were valid, they would have no argument in any of these

texts, because none of them states that prescribed punishments are not to be flogged except with a whip of this specific description. Rather, they affirm that it is permissible for prescribed punishments to be administered only with a whip of such description - a point we do not contest. Thus, their reliance on the mentioned narrated traditions is invalidated.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِي شَيْءٍ مِنْهَا حُجَّةٌ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا: أَنْ لَا تُجْلَدَ الْحُدُودُ إلَّا بِسَوْطٍ هَذِهِ صِفَتُهُ، وَإِنَّمَا فِيهِ: أَنَّ الْحُدُودَ جَائِزٌ أَنْ يُضْرَبَ بِسَوْطٍ هَذِهِ صِفَتُهُ فَقَطْ، وَهَذَا أَمْرٌ لَا نَأْبَاهُ - فَسَقَطَ تَعَلُّقُهُمْ بِالْآثَارِ الْمَذْكُورَةِ

L40560 As for the narration from ʿUmar – may Allah be pleased with him – it is authentic, but there is no proof in it for them, nor is there proof in the statement of anyone besides the Messenger of Allah – peace and blessings be upon him.

وَأَمَّا الْأَثَرُ: عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَصَحِيحٌ إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L40561 When all their objections were dismissed, we examined what ruling was required in that matter and found that Allah, the Exalted, says regarding the fornicator and the fornicatress: *Lash each of them with a hundred lashes, and let a group of the believers witness their punishment* [An-Nur: 2].[14]

فَلَمَّا سَقَطَ كُلُّ مَا شَغَبُوا بِهِ نَظَرْنَا فِيمَا يَجِبُ فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ فِي الزَّانِي وَالزَّانِيَةِ {فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] إلَى قَوْله تَعَالَى {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢]

L40562 And the Exalted said: “Upon them is half of what is prescribed for the chaste free women concerning the punishment” [al-Nisāʾ 4:25].[15]

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥]

L40563 And he—peace be upon him—said, “Upon your son are a hundred lashes and exile for a year.”

وَقَالَ - عَلَيْهِ السَّلَامُ - «عَلَى ابْنِك جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ»

L40564 And the Exalted said regarding the accuser [of unchastity]: “Flog them with eighty lashes” [an-Nur 24:4].[16]

وَقَالَ تَعَالَى فِي الْقَاذِفِ {فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

L40565 The Messenger of Allah—may Allah’s peace and blessings be upon him—said, “If a female slave of one of you commits unlawful sexual intercourse, then let her be lashed.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا»

L40566 And he said, peace be upon him, “If he drinks, then lash him.”

وَقَالَ - عَلَيْهِ السَّلَامُ - «إذَا شَرِبَ فَاجْلِدُوهُ»

L40567–40569 He - peace be upon him - prohibited lashing more than ten strokes in non-ḥadd punishments, whereby we became absolutely certain beyond doubt that had Allah the Exalted willed the use of a specific whip for lashing in any of

وَنَهَى - عَلَيْهِ السَّلَامُ - أَنْ يُجْلَدَ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ فِي غَيْرِ حَدٍّ، فَأَيْقَنَّا يَقِينًا لَا يَدْخُلُهُ شَكٌّ: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَكُونَ الْجَلْدُ فِي شَيْءٍ مِمَّا ذَكَرْنَا بِسَوْطٍ دُونَ سَوْطٍ لَبَيَّنَهُ لَنَا عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فِي الْقُرْآنِ، وَفِي وَحْيٍ مَتْلُوٍ إلَيْنَا ثَابِتٍ،

[14] **Qur’an references (L40561):** Qur’an 24:2 (An-Nur).
[15] **Qur’an references (L40562):** Qur’an 4:25 (An-Nisa).
[16] **Qur’an references (L40564):** Qur’an 24:4 (An-Nur).

the aforementioned matters, He would have clarified it to us through His Messenger's tongue - peace be upon him - in the Quran or in authenticated revelation transmitted to us, just as He specified the manner of striking in zinā, and just as He specified the presence of a group of believers to witness the punishment therein. Since He the Exalted did not do so, we know with certainty that Allah the Exalted never intended striking in ḥadd punishments to be exclusively with a specific whip, to the exclusion of all other striking instruments. Therefore, given this reality, it is obligatory to strike the ḥadd punishment for zinā and qadhf with instruments that meet these specifications - whether a whip, a rope of hair, linen, hemp, wool, esparto grass, or similar materials, a leather strap, or a cane of bamboo or other wood - except for wine, in which case the lashing follows what has been transmitted from Allah's Messenger - may Allah's blessings and peace be upon him. As has been transmitted to us through the chain of Muslim: Muḥammad ibn al-Muthannā narrated from Muʿādh ibn Hishām (al-Dastuwaʾī) from Qatādah from Anas ibn Mālik that the Prophet—peace and blessings be upon him—administered the prescribed lashes for wine using palm fronds and sandals.[17]

L40570 And through the chain of Al-Bukhārī: Qutaybah ibn Saʿīd narrated from Abu Ḍamrah Anas ibn ʿIyāḍ, from Yazīd ibn al-Hādī, from Muḥammad ibn Ibrāhīm, from Abū Salamah, from Abū Hurayrah, who said: "A man who had drunk alcohol was brought to the Prophet (peace and blessings of Allah be upon him), so he said: 'Strike him!'" Abū Hurayrah said: "Among us were those striking with their hands, others with their sandals, and others with their garments." And he related the ḥadīth.

L40571 Abū Muḥammad—may Allāh have mercy on him—said: The lashing for wine specifically is to be administered with palm fronds, sandals, hands, or the edge of a garment—all such methods. This reflects the judge's opinion, and it is valid. In our view, there is no prohibition against using a whip for wine-related lashing provided it does not break [anything], cause wounds, or putrefy flesh. As we have reported via Muslim's chain: Aḥmad ibn ʿĪsā reported from Ibn Wahb, who informed me from ʿAmr ibn al-Ḥārith, from Bukayr ibn al-Ashajj, who said: While we were with Sulaymān ibn Yasār,

كَمَا بَيَّنَ صِفَةَ الضَّرْبِ فِي الزِّنَى، وَكَمَا بَيَّنَ حُضُورَ طَائِفَةٍ مِنْ الْمُؤْمِنِينَ لِلْعَذَابِ فِي ذَلِكَ، فَإِذْ لَمْ يَفْعَلْ ذَلِكَ تَعَالَى فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ أَنْ يَكُونَ الضَّرْبُ فِي الْحُدُودِ بِسَوْطٍ خَاصَّةً، دُونَ سَائِرِ مَا يُضْرَبُ بِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَالْوَاجِبُ أَنْ يُضْرَبَ الْحَدَّ فِي الزِّنَى وَالْقَذْفِ بِمَا يَكُونُ الضَّرْبُ بِهِ عَلَى هَذِهِ الصِّفَةِ، بِسَوْطٍ، أَوْ بِحَبْلٍ مِنْ شَعْرٍ، أَوْ مِنْ كَتَّانٍ، أَوْ مِنْ قُنَّبٍ، أَوْ صُوفٍ، أَوْ حَلْفَاءَ، وَغَيْرِ ذَلِكَ، أَوْ تَفِرٍ، أَوْ قَضِيبٍ مِنْ خَيْزُرَانَ، أَوْ غَيْرِهِ، إلَّا الْخَمْرَ، فَإِنَّ الْجَلْدَ فِيهَا عَلَى مَا جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُعَاذُ بْنُ هِشَامٍ - هُوَ الدَّسْتُوَائِيُّ - أَنَا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَ فِي الْخَمْرِ بِالْجَرِيدِ، وَالنِّعَالِ»

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا أَبُو ضَمْرَةَ أَنَسُ بْنُ عِيَاضٍ عَنْ يَزِيدَ بْنِ الْهَادِي عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَدْ شَرِبَ فَقَالَ اضْرِبُوهُ قَالَ أَبُو هُرَيْرَةَ: فَمِنَّا الضَّارِبُ بِيَدِهِ، وَالضَّارِبُ بِنَعْلِهِ، وَالضَّارِبُ بِثَوْبِهِ» وَذَكَرَ الْحَدِيثَ

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْجَلْدُ فِي الْخَمْرِ خَاصَّةً يَكُونُ بِالْجَرِيدِ، وَالنِّعَالِ، وَالْأَيْدِي، وَبِطَرْفِ الثَّوْبِ، كُلِّ ذَلِكَ، أَيْ ذَلِكَ رَأْيُ الْحَاكِمِ فَهُوَ حَسَنٌ، وَلَا يَمْتَنِعُ عِنْدَنَا أَنْ يُجْلَدَ فِي الْخَمْرِ أَيْضًا بِسَوْطٍ لَا يَكْسِرُ، وَلَا يَجْرَحُ، وَلَا يُعَفِّنُ لَحْمًا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَحْمَدُ بْنُ عِيسَى أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ قَالَ: بَيْنَمَا نَحْنُ عِنْدَ سُلَيْمَانَ بْنِ يَسَارٍ إذْ جَاءَ عَبْدُ الرَّحْمَنِ بْنُ جَابِرِ بْنِ عَبْدِ اللَّهِ فَحَدَّثَهُ

[17] **Hadith references (L40567):** Sunan Abi Dawud 4479.

فَأَقْبَلَ عَلَيْنَا فَقَالَ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ جَابِرٍ عَنْ أَبِيهِ عَنْ أَبِي بُرْدَةَ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشَرَةِ أَسْوَاطٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» فَاقْتَضَى هَذَا أَنَّ الضَّرْبَ بِالسَّوْطِ جَائِزٌ فِي كُلِّ حَدٍّ، وَفِي التَّعْزِيرِ، وَضَرْبِ الْخَمْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

'Abd al-Raḥmān ibn Jābir ibn 'Abdillāh came and narrated to him. He then turned to us and said: 'Abd al-Raḥmān ibn Jābir narrated to me from his father, from Abū Burdah al-Anṣārī, that he heard the Messenger of Allāh—peace and blessings of Allāh be upon him—say: "No one is to be lashed more than ten lashes except in a divinely prescribed punishment." This indicates that whipping is permissible in all prescribed punishments, for discretionary discipline (taʿzīr), and for wine-related offenses. Success comes solely from Allāh, the Exalted.[18]

[مَسْأَلَة جلد الْمَرِيض الْحُدُود]

L40572

The issue of applying flogging to a sick person within the framework of the prescribed punishments (ḥudūd).

٢١٩٤ - مَسْأَلَةٌ: هَلْ يُجْلَدُ الْمَرِيضُ الْحُدُودَ أَمْ لَا؟ وَإِنْ جُلِدَهَا كَيْفَ يُجْلَدُهَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُعَجَّلُ لَهُ ضَرْبُ الْحَدِّ - كَمَا أَنَّا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ أُتِيَ بِرَجُلٍ يَشْرَبُ الْخَمْرَ - وَهُوَ مَرِيضٌ - فَقَالَ: أَقِيمُوا عَلَيْهِ الْحَدَّ، فَإِنِّي أَخَافُ أَنْ يَمُوتَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَاحْتَمَلَ هَذَا أَنْ يَكُونَ إشْفَاقُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يَمُوتَ قَبْلَ أَنْ يُضْرَبَ الْحَدَّ فَيَكُونَ مُعَطِّلًا لِلْحَدِّ

L40573–40575

2194 - Issue: Should a sick person receive lashing for Ḥudūd crimes or not? And if he is to be lashed, how should it be administered? Abū Muḥammad—may God have mercy on him—said: People have differed regarding this matter. A group said: "The Ḥudūd punishment is carried out promptly for him"—as transmitted by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from ʿAbd Allāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father—that ʿUmar ibn al-Khaṭṭāb was presented with a man who drank wine while he was ill, whereupon he declared: "Inflict the punishment upon him, lest he die." Abu Muhammad—may God have mercy on him—said: This could imply that Umar's apprehension—may God be pleased with him—was that he might die before the punishment could be administered, thereby nullifying the prescribed penalty.

وَاحْتَمَلَ أَيْضًا: مِنْ أَنْ يَكُونَ يُصِيبُهُ مَوْتٌ مِنْهُ، فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مُحَمَّدَ بْنَ سَعِيدٍ أَيْضًا - قَالَ: أَنَا عَبْدُ اللَّهِ بْنُ نَصْرٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا مُوسَى بْنُ مُعَاوِيَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ: أَنَّ عُمَرَ قَالَ: اضْرِبُوهُ لَا يَمُوتُ

And it was also possible: that death might occur from it. So we investigated that matter and found Muhammad ibn Sa'id as well—he said: I am 'Abdullah ibn Nasr; I am Qasim ibn Asbagh; I am Ibn Waddah; I am Musa ibn Mu'awiyah; I am Waki'; I am Sufyan—and he mentioned this report, in which it states: that 'Umar said, "Strike him so that he does not die."

L40576

فَبَيَّنَ هَذَا أَنَّ إشْفَاقَ عُمَرَ كَانَ مِنْ كِلَا الْأَمْرَيْنِ

Thus, this clarifies that 'Umar's compassion arose from both considerations.

L40577

[18] **Hadith references (L40571):** Sahih Muslim 1708.

L40578 Abū Muḥammad—may Allāh have mercy on him—said: Given this, it has been established that he commanded him to be struck with a beating that does not kill him.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذَا كَانَ هَذَا، فَقَدْ ثَبَتَ أَنَّهُ أَمَرَ بِأَنْ يُضْرَبَ ضَرْبًا لَا يَمُوتُ مِنْهُ

L40579 And through him up to Waki‘: I, Sufyan, narrated from Ibn Jurayj from ‘Abdullāh ibn ‘Ubayd ibn ‘Umayr from his father that he would fulfill his vow with the most minimal type [of action].

وَبِهِ - إلَى وَكِيعٍ أَنَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ يَبَرُّ نَذْرَهُ بِأَدْنَى الضَّرْبِ

L40580 And through him—Sufyan reported to Waki‘, on the authority of Ibn Jurayj, on the authority of ʿAṭāʾ: “The ruling on the bundle of stalks applies generally to all people in the statement of the Most High: ’Take in your hand a bundle of stalks and strike with it, and do not break your oath’ (Quran 38:44, Sūrat Ṣād).”[19]

وَبِهِ - إلَى وَكِيعٍ أَنَا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: الضِّغْثُ لِلنَّاسِ عَامَّةً، فِي قَوْلِهِ تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤]

L40581 From Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, from Aḥmad ibn Duḥaym, from Ibrāhīm ibn Ḥammād, from Ismāʿīl ibn Isḥāq, from Ismāʿīl ibn Abī Uways, from his brother, from Sulaymān ibn Bilāl, from Hishām ibn ʿUrwah, from an attentive servant in their household. He said: The servant informed me that ʿUrwah swore to strike me such-and-such a number of blows. He then took fresh palm fronds in his hand and struck me with all of them.

أَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ أَنَا أَحْمَدُ بْنُ دُحَيْمٍ أَنَا إبْرَاهِيمُ بْنُ حَمَّادٍ أَنَا إسْمَاعِيلُ بْنُ إِسْحَاقَ أَنَا إسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ عَنْ أَخِيهِ عَنْ سُلَيْمَانَ بْنِ بِلَالٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ غُلَامٍ لَهُمْ يَفْهَمُ قَالَ: أَخْبَرَنِي ذَلِكَ الْغُلَامُ أَنَّ عُرْوَةَ حَلَفَ لَيَضْرِبُنِي كَذَا وَكَذَا ضَرْبَةً، فَأَخَذَ بِيَدِهِ شَمَارِيخَ فَضَرَبَنِي بِهَا جَمِيعًا

L40582 From Muhammad ibn ‘Ubayd, narrated to us from Isma‘il: Muhammad ibn Thawr reported from Ma‘mar from Qatadah concerning the Almighty’s statement, *“‘Take in your hand a bundle and strike with it, and do not break your oath’”* [Quran 38:44]. He said: “A twig containing ninety-nine twigs, originally totaling one hundred. He struck his wife with it, for he had sworn to strike her. Thus, the strike served as a fulfillment of his oath and a reduction of his wife’s hardship.” This is the opinion of Al-Shafi‘i.[20]

وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ أَنَا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِهِ تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] قَالَ: عُودًا فِيهِ تِسْعَةٌ وَتِسْعُونَ عُودًا، وَالْأَصْلُ تَمَامُ الْمِائَةِ، فَضَرَبَ بِهِ امْرَأَتَهُ، وَكَانَ حَلَفَ لِيَضْرِبَنَّهَا، فَكَانَتْ الضَّرْبَةُ تَحِلَّةً لِيَمِينِهِ، وَتَخْفِيفًا عَنْ امْرَأَتِهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ

وَقَالَتْ طَائِفَةٌ: يُؤَخَّرُ جَلْدُهُ حَتَّى يَبْرَأَ - وَهُوَ قَوْلُ مَالِكٍ

L40583 A group said: His flogging is delayed until he recovers, and that is the view of Mālik.

L40584–40586 And it is reported from Mujahid regarding the aforementioned verse: What Yahya ibn Abd al-Rahman ibn Mas’ud narrated via the mentioned chain of

وَجَاءَ عَنْ مُجَاهِدٍ فِي الْآيَةِ الْمَذْكُورَةِ: مَا نَاه يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ بِالْإِسْنَادِ الْمَذْكُورِ إلَى إسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ أَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ

[19] **Qur’an references (L40580):** Qur’an 38:44 (Sad).
[20] **Qur’an references (L40582):** Qur’an 38:44 (Sad).

transmission to Isma'il ibn Ishaq—I am Ali ibn Abdullah, I am Sufyan, from Ibn Abi Najih. From Mujāhid regarding the statement of the Exalted: *"Take in your hand a bunch and strike with it, and do not break your oath"* [Ṣād:44]. He said: "This is specifically for Ayyūb"; ʿAṭāʾ said: "This is universally applicable to people."[21]

مُجَاهِدٍ فِي قَوْله تَعَالَى {وَخُذْ بِيَدِكَ ضِغْثًا فَاضْرِبْ بِهِ وَلا تَحْنَثْ} [ص: ٤٤] قَالَ: هِيَ لِأَيُّوبَ خَاصَّةً - وَقَالَ عَطَاءٌ: هِيَ لِلنَّاسِ عَامَّةً

L40587 Abu Muhammad—may Allah have mercy on him—said: When they disagreed, we examined the matter to ascertain the truth so we might follow it—with the help of Allah, the Exalted. We found the faction that prevents carrying out the prescribed punishment against her until she recovers arguing with what Humaam narrated to us: I am Abbas ibn Asbagh, I am Muhammad ibn Abd al-Malik ibn Ayman, I am Abdullah ibn Ahmad ibn Hanbal, from his father, from Ghundar, from Shu'bah, who said: I heard Abd al-A'la al-Taghlibi narrate from Abu Jamilah, from Ali ibn Abi Talib: "A female slave committed adultery and became pregnant. Ali came to the Prophet—peace and blessings be upon him—and informed him. He said: 'Let her be until she gives birth'—or he said: 'until she delivers'—then flog her."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَا الطَّائِفَةَ الْمَانِعَةَ مِنْ إقَامَةِ الْحَدِّ عَلَيْهِ - حَتَّى يَبْرَأَ - يَحْتَجُّونَ: بِمَا ناه حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا غُنْدَرٌ أَنَا شُعْبَةُ قَالَ: سَمِعْت عَبْدَ الْأَعْلَى التَّغْلِبِيَّ يُحَدِّثُ عَنْ أَبِي جَمِيلَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ أَمَةً زَنَتْ فَحَمَلَتْ، فَأَتَى عَلِيٌّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَه فَقَالَ لَهُ: دَعْهَا حَتَّى تَلِدَ - أَوْ قَالَ حَتَّى تَضَعَ ثُمَّ اجْلِدْهَا»

L40588 From him to Ahmad ibn Hanbal: I am Waki', I am Sufyan, from al-A'lā at-Taghlibī, from Abū Jamīlah aṭ-Ṭahawī, from 'Alī: "A servant of the Prophet—peace and blessings of Allah be upon him—committed an offense. The Prophet—peace and blessings of Allah be upon him—commanded me to carry out the ḥadd punishment upon her. I came to her and found her bleeding had not ceased. I returned to him and informed him. He said: 'When her bleeding ceases, carry out the ḥadd punishment upon her. Carry out the ḥadd punishments upon those whom your right hands possess.'"[22]

وَبِهِ - إلَى أَحْمَدَ بْنِ حَنْبَلٍ أَنَا وَكِيعٌ أَنَا سُفْيَانُ عَنْ عَبْدِ الْأَعْلَى التَّغْلِبِيِّ عَنْ أَبِي جَمِيلَةَ الطَّهَوِيِّ عَنْ عَلِيٍّ «أَنَّ خَادِمًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَحْدَثَتْ فَأَمَرَنِي النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أُقِيمَ عَلَيْهَا الْحَدَّ فَأَتَيْتُهَا فَوَجَدْتُهَا لَمْ تَجِفَّ مِنْ دَمِهَا فَأَتَيْتُهُ فَأَخْبَرْتُهُ فَقَالَ: إذَا جَفَّتْ مِنْ دَمِهَا فَأَقِمْ عَلَيْهَا الْحَدَّ أَقِيمُوا الْحُدُودَ عَلَى مَا مَلَكَتْ أَيْمَانُكُمْ»

L40589 They said: "The Messenger of Allah—peace and blessings of Allah be upon him—did not rush to flog the pregnant servant until she delivered, so that the *ḥudūd* punishment commanded by Allah the Exalted could then be administered. Similarly, the woman [awaiting purification] whose bleeding had not stopped until it ceased."

قَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُعَجِّلْ جَلْدَ الْخَادِمِ الْحَامِلِ حَتَّى تَضَعَ فَتَجْلِدَ الْحَدَّ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ - وَكَذَلِكَ الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا حَتَّى يَجِفَّ عَنْهَا دَمُهَا

[21] **Qur'an references (L40584):** Qur'an 38:44 (Sad).
[22] **Hadith references (L40588):** Musnad Ahmad 736.

L40590–40592 Then we examined the statement of the second group who necessitate hastening the punishment according to what prevents the risk of death. We found them citing the narration transmitted by ʻAbdullāh ibn Rabīʻ: Muḥammad ibn Muʻāwiyah reported to us, from Aḥmad ibn Shuʻayb, from Aḥmad ibn Yūsuf al-Naysābūrī and Muḥammad ibn ʻUbaydullāh ibn Yazīd ibn Ibrāhīm al-Ḥarrānī – with the wording being his. Aḥmad said: From Aḥmad ibn Sulaymān. Muḥammad ibn ʻUbaydullāh said: My father narrated to me. Then Aḥmad ibn Sulaymān and ʻUbaydullāh ibn Yazīd concurred, both stating: From ʻAbdullāh ibn ʻAmr – the one from Raqqa – from Zayd ibn Abī Unaysah, from Abū Ḥāzim, from Sahl ibn Saʻd, who said: "A man who had committed adultery was brought to the Messenger of Allah – peace and blessings be upon him. He ordered him to be stripped, revealing a crippled man with withered calves. The Messenger of Allah – peace and blessings be upon him – said: 'What would flogging leave of this man?' He then called for bundles each containing one hundred palm stalks and struck him once with them." Narrated by Humam, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Yazid ibn Muhammad al-Uqayli in Mecca, from Abd al-Rahman ibn Hammad al-Thaqafi, from al-A'mash, from al-Sha'bi, from Alqamah, from Ibn Abbas, who said: "The Messenger of Allah—peace and blessings be upon him—passed by a frail woman who could not protect herself from whoever desired her. The Messenger of Allah—peace and blessings be upon him—asked: 'From whom?' She replied: 'From so-and-so,' naming a man weaker than herself. The Messenger of Allah—peace and blessings be upon him—sent for him, and he was brought forth. When questioned about the matter, he repeatedly confessed. The Messenger of Allah—peace and blessings be upon him—then ordered: 'Take one hundred bundles [of palm stalks] and strike him with them a single time.'"

L40593 Abū Muḥammad—may Allāh have mercy on him—said: The ḥadīth of Sahl ibn Saʻd is sound and constitutes valid evidence. If it is objected: "This known report contains Isrāʾīl in its chain"—as follows: I am ʿAbdullāh ibn Rabīʻ, I am Muḥammad ibn Muʻāwiyah, I am Aḥmad ibn Shuʻayb; Muḥammad ibn Wahb al-Ḥarrānī informed me; I am Muḥammad ibn Salamah; Abū ʿAbd al-Raḥīm—the maternal uncle of Muḥammad ibn Salamah—narrated to

ثُمَّ نَظَرْنَا فِي قَوْلِ الطَّائِفَةِ الثَّانِيَةِ الْمُوجِبَةِ تَعْجِيلَ الْحَدِّ عَلَى حَسَبِ مَا يُؤْمَنُ بِهِ الْمَوْتُ، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا نَاه عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ يُوسُفَ النَّيْسَابُورِيُّ، وَمُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ بْنِ يَزِيدَ بْنِ إِبْرَاهِيمَ الْحَرَّانِيُّ - وَاللَّفْظُ لَهُ - قَالَ أَحْمَدُ: أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ، وَقَالَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ: حَدَّثَنِي أَبِي ثُمَّ اتَّفَقَ أَحْمَدُ بْنُ سُلَيْمَانَ، وَعُبَيْدُ اللَّهِ بْنُ يَزِيدَ: قَالَا: أَنَا عَبْدُ اللَّهِ بْنُ عَمْرٍو - هُوَ الرَّقِّيُّ - عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِرَجُلٍ قَدْ زَنَى، فَأَمَرَ بِهِ فَجُرِّدَ، فَإِذَا رَجُلٌ مُقْعَدٌ، حَمْشُ السَّاقَيْنِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يُبْقِي الضَّرْبُ مِنْ هَذَا شَيْئًا، فَدَعَا بِأَثَاكِيلَ فِيهَا مِائَةُ شُمْرُوخٍ، فَضَرَبَهُ بِهَا ضَرْبَةً وَاحِدَةً» أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ بِمَكَّةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ حَمَّادٍ الثَّقَفِيُّ أَنَا الْأَعْمَشُ عَنِ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِامْرَأَةٍ ضَعِيفَةٍ لَا تَقْدِرُ أَنْ تَمْتَنِعَ مِمَّنْ أَرَادَهَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مِمَّنْ؟ قَالَتْ: مِنْ فُلَانٍ، فَذَكَرَتْ رَجُلًا ضَعِيفًا أَضْعَفَ مِنْهَا، فَبَعَثَ إِلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجِيءَ بِهِ فَسَأَلَهُ عَنْ ذَلِكَ؟ فَأَقَرَّ مِرَارًا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا أَثَاكِيلَ مِائَةً فَاضْرِبُوهُ بِهَا مَرَّةً وَاحِدَةً» .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: حَدِيثُ سَهْلِ بْنِ سَعْدٍ صَالِحٌ تَقُومُ بِهِ الْحُجَّةُ، فَإِنْ قِيلَ: إِنَّ هَذَا الْخَبَرَ الْمَعْرُوفَ فِيهِ إِسْرَائِيلُ: كَمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ وَهْبٍ الْحَرَّانِيُّ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ نِي أَبُو عَبْدِ الرَّحِيمِ - هُوَ

me; Zayd—who is Ibn Abī Unaysah—narrated to me from Abū Ḥāzim, from Abū Umāmah ibn Sahl ibn Ḥunayf, who said: "A pregnant girl was brought to the Messenger of Allāh—peace and blessings of Allāh be upon him. He asked her: 'Who fathered your child?' She replied: 'So-and-so, the paralyzed man.' They brought the man—a lean-bodied blind individual—whereupon he said: 'By Allāh, beating would leave nothing of this body!' The Prophet then ordered one hundred palm stalk bundles to be gathered. He was struck with them once." These refer to the palm spathes containing fibrous stems.

L40594 In numerous narrations—too lengthy to mention here—we have omitted them for that reason. Abu Muhammad, may Allah have mercy on him, said: When the narrations came as we mentioned, it became incumbent upon us to examine the matter. We found the ḥadīth of Abu Jumaylah from ʿAlī to be authentic, yet it contains no valid proof for their position whatsoever, for it merely states that the Messenger of Allah, peace and blessings be upon him, postponed the prescribed punishment for the pregnant woman and regarding the one who had not ceased her bleeding. This has no bearing whatsoever on the matter we are discussing, for the pregnant woman is not in a state of illness; rather, the concern is for her fetus, whose destruction is impermissible. The ruling for a healthy woman is to be flogged without mercy, while the ruling for the fetus is that no means should be taken to destroy it. Thus, the flogging must be postponed for her altogether, just as stoning is also delayed for the same reason.

L40595–40597 As for the woman whose bleeding has not ceased: this is after childbirth, during the flow of blood - a preoccupying state that wholly occupies her. One such as her should not be flogged in that condition, like one overcome by vomiting, or he is... In the case of defecation or urination—with no difference [in ruling]—and the cessation of that blood being imminent, lasting merely an hour or two, the hadith does not say "when she becomes pure"; rather, he said: "when she dries up from her blood."

L40598 Thus, it is nullified for them to have any connection whatsoever in any aspect of those two hadiths.

L40599 Since it has become untenable for that group to have any basis, it is in-

خَالُ مُحَمَّدِ بْنِ سَلَمَةَ - حَدَّثَنِي زَيْدٌ - هُوَ ابْنُ أَبِي أُنَيْسَةَ - عَنْ أَبِي حَازِمٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ قَالَ: «جِيءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِجَارِيَةٍ - وَهِيَ حُبْلَى - فَسَأَلَهَا مِمَّنْ حَمْلُكِ؟ فَقَالَتْ: مِنْ فُلَانٍ الْمُقْعَدِ، فَجِيءَ بِفُلَانٍ، فَإِذَا رَجُلٌ حَمْشُ الْجَسَدِ ضَرِيرٌ، فَقَالَ: وَاَللَّهِ مَا يُبْقِي الضَّرْبُ مِنْ هَذَا شَيْئًا، فَأَمَرَ بِأَثَاكِيلَ مِائَةً فَجُمِعَتْ، فَضُرِبَ بِهَا ضَرْبَةً وَاحِدَةً» وَهِيَ: شَمَارِيخُ النَّخْلِ الَّذِي يَكُونُ فِيهَا الْعُرُوقُ

وَفِي آثَارٍ كَثِيرَةٍ يَطُولُ ذِكْرُهَا جِدًّا، فَتَرَكْنَاهَا لِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا جَاءَتْ الْآثَارُ كَمَا ذَكَرْنَا: وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ؟ فَوَجَدْنَا حَدِيثَ أَبِي جَمِيلَةَ عَنْ عَلِيٍّ صَحِيحًا إلَّا أَنَّهُ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا، لِأَنَّهُ إنَّمَا فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَّرَ الْحَدَّ عَنْ الْحُبْلَى، وَعَنْ الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا - وَهَذَا لَيْسَ مِمَّا نَحْنُ فِيهِ فِي شَيْءٍ، لِأَنَّ الْحَامِلَ لَيْسَتْ مَرِيضَةً، وَإِنَّمَا خِيفَ عَلَى جَنِينِهَا الَّذِي لَا يَحِلُّ هَلَاكُهُ، وَحُكْمُ الصَّحِيحِ أَنْ تُجْلَدَ بِلَا رَأْفَةٍ، وَحُكْمُ الْجَنِينِ أَنْ لَا يُتَوَصَّلَ إلَى إهْلَاكِهِ: فَوَجَبَ تَأْخِيرُ الْجَلْدِ عَنْهَا جُمْلَةً، كَمَا يُؤَخَّرُ الرَّجْمُ أَيْضًا مِنْ أَجْلِهِ

وَأَمَّا الَّتِي لَمْ تَجِفَّ مِنْ دَمِهَا: فَإِنَّ هَذَا كَانَ إثْرَ الْوِلَادَةِ، وَفِي حَالِ سَيَلَانِ الدَّمِ، وَهَذَا شُغْلٌ شَاغِلٌ لَهَا، وَمِثْلُهَا أَنْ لَا تُجْلَدَ فِي تِلْكَ الْحَالِ، كَمَنْ ذَرَعَهُ الْقَيْءُ، أَوْ هُوَ فِي حَالِ الْغَائِطِ، أَوْ الْبَوْلِ، وَلَا فَرْقَ، وَانْقِطَاعُ ذَلِكَ الدَّمِ قَرِيبٌ، إنَّمَا هِيَ سَاعَةٌ أَوْ سَاعَتَانِ - وَلَمْ يَقُلْ فِي الْحَدِيثِ إذَا طَهُرَتْ، إنَّمَا قَالَ: إذَا جَفَّتْ مِنْ دَمِهَا

فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي شَيْءٍ مِنْ ذَيْنِك الْحَدِيثَيْنِ مُتَعَلَّقٌ أَصْلًا

cumbent upon us to examine—with Allah's assistance—the position upheld by the other group. We scrutinized the ḥadīth we mentioned concerning the flogging of a chronically ill patient with green palm branches containing a hundred date clusters. We found the chain of transmission we presented, through the narration of Sahl ibn Saʿd, to be a sound chain that upholds the evidence. We discovered them invoking as evidence the command of Ayyūb—peace be upon him and his family and grant him salvation.

فَإِذْ قَدْ سَقَطَ أَنْ يَكُونَ لِتِلْكَ الطَّائِفَةِ مُتَعَلَّقٌ، فَالْوَاجِبُ أَنْ نَنْظُرَ - بِعَوْنِ اللَّهِ فِيمَا قَالَتْ بِهِ الطَّائِفَةُ الْأُخْرَى: فَنَظَرْنَا فِي الْحَدِيثِ الَّذِي أَوْرَدْنَا مِنْ جَلْدِ الْمُزْمِنِ الْمَرِيضِ بِشَمَارِيخَ فِيهَا مِائَةُ عُثْكُولٍ: فَوَجَدْنَا الطَّرِيقَ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ سَهْلِ بْنِ سَعْدٍ طَرِيقًا جَيِّدًا تَقُومُ بِهِ الْحُجَّةُ، وَوَجَدْنَاهُمْ يَحْتَجُّونَ بِأَمْرِ أَيُّوبَ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L40600 Abū Muḥammad—may Allah have mercy on him—said: As for us, we do not cite the law of any prophet other than our Prophet (ﷺ) as evidence, for Allah the Exalted says: *{For each [community] among you We have appointed a divine law and an established way}* [Al-Mā'idah: 48].[23]

وَقَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا نَحْنُ فَلَا نَحْتَجُّ بِشَرِيعَةِ نَبِيٍّ غَيْرِ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقَوْلِ اللَّهِ تَعَالَى {لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا} [المائدة: ٤٨]

L40601 Now that we have firmly established in our book entitled "The Precision of the Fundamentals of Jurisprudence"

وَلَمَّا قَدْ أَحْكَمْنَا فِي كِتَابِنَا الْمَوْسُومِ بِ " الْإِحْكَامُ لِأُصُولِ الْأَحْكَامِ "

L40602 Abū Muḥammad—may Allāh have mercy on him—said: Even if no valid ḥadd punishment were established in this matter, Allāh's statement—Exalted is He—"Allāh does not burden a soul beyond its capacity" [al-Baqarah: 286] would necessitate that no one be lashed except according to their capacity for pain. This verse is a clear text on the matter, and it is fundamentally impermissible to contravene it.[24]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَحَتَّى لَوْ لَمْ يَصِحَّ فِي هَذَا حَدٌّ، لَكَانَ قَوْلُ اللَّهِ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] مُوجِبًا أَنْ لَا يُجْلَدَ أَحَدٌ إِلَّا عَلَى حَسَبِ طَاقَتِهِ مِنْ الْأَلَمِ، وَكَانَ نَصًّا جَلِيًّا فِي ذَلِكَ لَا يَجُوزُ مُخَالَفَتُهُ أَصْلًا.

L40603 And by necessity of reason, we know that a man over thirty years of age—strong in body and resilient in disposition—can endure corporal punishment according to his strength, which an eighty-year-old man, a fifteen-year-old boy, or a fourteen-year-old (if he has reached puberty and attained the legal age) cannot endure.

وَبِضَرُورَةِ الْعَقْلِ نَدْرِي أَنَّ ابْنَ نَيِّفٍ وَثَلَاثِينَ قَوِيَّ الْجِسْمِ، مُصَبَّرَ الْخُلُقِ، يَحْمِلُ مِنْ الضَّرْبِ مِنْ قُوَّتِهِ مَا لَا يَحْمِلُهُ الشَّيْخُ ابْنُ ثَمَانِينَ، وَالْغُلَامُ ابْنُ خَمْسَةَ عَشَرَ عَامًا، - وَأَرْبَعَةَ عَشَرَ عَامًا - إذَا بَلَغَ - وَأَصَابَ حَدًّا

L40604 Similarly, an elderly man or a young boy suffers pain from a flogging that causes no pain to a strong thirty-year-old man. Indeed, the latter would scarcely feel anything but a slight sensation, whereas it inflicts severe pain upon those two. Moreover, the punishment that pains the strong young man, if applied through flogging to a decrepit old man or a frail young boy,

وَكَذَلِكَ يُؤْلِمُ الشَّيْخَ الْكَبِيرَ، وَالْغُلَامَ الصَّغِيرَ، مِنْ الْجَلْدِ مَا لَا يُؤْلِمُ ابْنَ الثَّلَاثِينَ الشَّابَّ الْقَوِيَّ، بَلْ لَا يَكَادُ يَحُسُّ إلَّا حِسًّا لَطِيفًا مَا يُؤْلِمُ ذَيْنِك الْأَلَمَ الشَّدِيدَ وَأَنَّ الَّذِي يُؤْلِمُ الشَّابَّ الْقَوِيَّ، لَوْ قُوبِلَ بِهِ الشَّيْخُ الْهَرَمُ، وَالصَّغِيرُ النَّحِيفُ، مِنْ الْجَلْدِ لَقَتَلَهُمَا، هَذَا أَمْرٌ لَا يَدْفَعُهُ إلَّا مُدَافِعٌ لِلْحِسِّ وَالْمُشَاهَدَةِ

[23] **Qur'an references (L40600):** Qur'an 5:48 (Al-Ma'idah).
[24] **Qur'an references (L40602):** Qur'an 2:286 (Al-Baqarah).

would kill them both. This is undeniable except to those who deny sensory perception and observable evidence.

L40605–40607 We have found that the sick person is pained by the slightest thing which the healthy person does not perceive at all, except as the healthy person feels his clothes - which cannot cause him pain through their sensation whatsoever. His feeling pain from speech, from injury, and from a gentle touch of the hand corresponds to the severity of the illness. This is something about which there is no doubt at all. And whoever stubbornly opposes this only resists clear evidence, direct observation, and sensory perception.

L40608 We found that when a sick person incurs a ḥadd punishment for offenses such as adultery, false accusation [of adultery], or consuming alcohol, there can only be one of two outcomes with no third alternative: either the ḥadd punishment is expedited for him, or it is postponed. If they say, "It is postponed," we ask them: "Until when?" If they reply, "Until he recovers," we respond: "This is not a fixed timeframe, for recovery may come swiftly, be delayed, or never occur. This amounts to suspending ḥadd punishments, which is wholly impermissible, as it contradicts Allah's command to uphold them. Thus, the only remaining option is to expedite the ḥadd punishment, as we ourselves have stated. This is reinforced by Allah's decree: 'And hasten toward forgiveness from your Lord' (Surah Āl ʿImrān 3:133)."[25]

L40609 It is correct that the obligation requires flogging each individual according to the capacity Allah the Exalted has enjoined him to endure. Thus, whoever is extremely weak shall be struck once with a palm branch containing one hundred date spathes in a single strike, or similarly with one containing eighty spathes. In cases of wine consumption, flogging applies even if his weakness is severe, administered with the fringe of a garment according to each person's capability with no increase. With this, we state and conclusively assert: this constitutes the certain truth before Allah the Exalted, while whatever opposes it is false before Him. Through Him alone comes success.

L40610 **Question: How many times must ḥadd punishments be-**

[25] **Qur'an references (L40608):** Qur'an 3:133 (Ali 'Imran).

وَوَجَدْنَا الْمَرِيضَ يُؤْلِمُهُ أَقَلُّ شَيْءٍ مِمَّا لَا يَحُسُّهُ الصَّحِيحُ أَصْلًا، إلَّا كَمَا يَحُسُّ بِثِيَابِهِ الَّتِي لَيْسَ لِحِسِّهِ لَهَا فِي الْأَلَمِ سَبِيلٌ أَصْلًا، وَعَلَى حَسَبِ شِدَّةِ الْمَرَضِ يَكُونُ تَأَلُّمُهُ لِلْكَلَامِ، وَلِلتَّلَفِ، وَلِلْمَسِّ الْيَدِ بِلُطْفٍ، هَذَا مَا لَا شَكَّ فِيهِ أَصْلًا وَمَنْ كَابَرَ هَذَا فَإِنَّمَا يُكَابِرُ الْعِيَانَ، وَالْمُشَاهَدَةَ، وَالْحِسَّ

فَوَجَدْنَا الْمَرِيضَ إذَا أَصَابَ حَدًّا مِنْ زِنًى، أَوْ قَذْفٍ، أَوْ خَمْرٍ، لَا بُدَّ فِيهِ مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يُعَجَّلَ لَهُ الْحَدُّ، وَإِمَّا أَنْ يُؤَخَّرَ عَنْهُ؟ فَإِنْ قَالُوا: يُؤَخَّرُ؟ قُلْنَا لَهُمْ: إلَى مَتَى؟ فَإِنْ قَالُوا: إلَى أَنْ يَصِحَّ؟ قُلْنَا لَهُمْ: لَيْسَ هَذَا أَمَدٌ مَحْدُودٌ، وَقَدْ تَتَعَجَّلُ الصِّحَّةُ، وَقَدْ تُبْطِئُ عَنْهُ، وَقَدْ لَا يَبْرَأُ، فَهَذَا تَعْطِيلٌ لِلْحُدُودِ، وَهَذَا لَا يَحِلُّ أَصْلًا، لِأَنَّهُ خِلَافُ أَمْرِ اللَّهِ تَعَالَى فِي إقَامَةِ الْحُدُودِ، فَلَمْ يَبْقَ إلَّا تَعْجِيلُ الْحَدِّ كَمَا قُلْنَا نَحْنُ، وَيُؤَكِّدُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَسَارِعُوا إلَى مَغْفِرَةٍ مِنْ رَبِّكُمْ} [آل عمران: ١٣٣]

فَصَحَّ أَنَّ الْوَاجِبَ أَنْ يُجْلَدَ كُلُّ وَاحِدٍ عَلَى حَسَبِ وُسْعِهِ الَّذِي كَلَّفَهُ اللَّهُ تَعَالَى أَنْ يَصْبِرَ لَهُ، فَمَنْ ضَعُفَ جِدًّا جُلِدَ بِشِمْرَاخٍ فِيهِ مِائَةُ عُثْكُولِ جَلْدَةً وَاحِدَةً، أَوْ فِيهِ ثَمَانُونَ عُثْكَالًا كَذَلِكَ - وَيُجْلَدُ فِي الْخَمْرِ وَإِنْ اشْتَدَّ ضَعْفُهُ بِطَرْفِ ثَوْبٍ: عَلَى حَسَبِ طَاقَةِ كُلِّ أَحَدٍ وَلَا مَزِيدَ - وَبِهَذَا نَقُولُ وَنَقْطَعُ: أَنَّهُ الْحَقُّ عِنْدَ اللَّهِ تَعَالَى بِيَقِينٍ، وَمَا عَدَاهُ فَبَاطِلٌ عِنْدَ اللَّهِ تَعَالَى - وَبِهِ التَّوْفِيقُ

[مَسْأَلَة كَمْ مَرَّةٍ مِنْ الْإِقْرَارِ تَجِبُ الْحُدُودُ عَلَى الْمُقِرِّ]

come obligatory upon the confessor as a result of their confession?

L40611 2195. Issue: Upon how many instances of confession does the implementation of Ḥadd punishments become obligatory for the confessor? Abū Muḥammad – may Allāh have mercy on him – said: Scholars have differed regarding this matter. One group held that the implementation of Ḥadd punishments becomes obligatory through a single confession. This is the opinion of al-Ḥasan ibn Ḥayy, Ḥammād ibn Abī Sulaymān, ʿUthmān al-Battī, Mālik, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and all their companions.

L40612 A group has stated that the prescribed punishment for adultery is not enforced against anyone based on confession until they confess four times, the punishment of amputation for theft is not enforced until two confessions are made, and the punishment for consuming intoxicants requires two confessions—while for false accusation of adultery, once suffices—and this is an opinion narrated from Abu Yusuf, the companion of Abu Hanifah.

L40613–40615 Abū Muḥammad—may Allāh have mercy on him—said: When they differed—as we have mentioned—we examined what they had cited as proof. Every group adheres to its opinion. We examined the view of those who held that the prescribed punishment for adultery is not carried out with fewer than four confessions. We found them citing the narration via Muslim's chain: from ʿAbd al-Malik ibn Shuʿayb, from al-Layth ibn Saʿd, from my father, from my grandfather, from ʿUqayl ibn Khalid, from Ibn Shihab, from Abu Salamah ibn ʿAbd al-Rahman ibn ʿAwf and Saʿid ibn al-Musayyab—both of whom narrated from Abu Hurayrah: "A man came to the Messenger of Allah—peace and blessings be upon him—while he was in the mosque. The man called out, 'O Messenger of Allah, I have committed adultery!' The Prophet turned away. He repositioned himself to face him and repeated, 'O Messenger of Allah, I have committed adultery!' The Prophet turned away until the man confessed four times. When he testified against himself four times, the Prophet called him and asked, 'Are you insane?' He replied, 'No.' The Prophet asked, 'Are you a married person?' He said, 'Yes.' The Prophet then said, 'Take him away and stone him.'"

٢١٩٥ - مَسْأَلَةٌ: بِكَمْ مِنْ مَرَّةٍ مِنْ الْإِقْرَارِ تَجِبُ الْحُدُودُ عَلَى الْمُقِرِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: بِإِقْرَارِهِ مَرَّةً وَاحِدَةً تَجِبُ إقَامَةُ الْحُدُودِ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَعُثْمَانَ الْبَتِّيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ

وَقَالَتْ طَائِفَةٌ: لَا يُقَامُ عَلَى أَحَدٍ حَدُّ الزِّنَى بِإِقْرَارِهِ حَتَّى يُقِرَّ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ، وَلَا يُقَامُ عَلَيْهِ حَدُّ الْقَطْعِ، وَالسَّرِقَةِ حَتَّى يُقِرَّ بِهِ مَرَّتَيْنِ، وَحَدُّ الْخَمْرِ مَرَّتَيْنِ - وَأَمَّا فِي الْقَذْفِ فَمَرَّةٌ وَاحِدَةٌ - وَهُوَ قَوْلٌ رُوِيَ عَنْ أَبِي يُوسُفَ صَاحِبِ أَبِي حَنِيفَةَ

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّ الْحَدَّ لَا يُقَامُ فِي الزِّنَا بِأَقَلَّ مِنْ أَرْبَعِ مَرَّاتٍ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِطَرِيقِ مُسْلِمٍ نِي عَبْدُ الْمَلِكِ بْنُ شُعَيْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ نِي أَبِي عَنْ جَدِّي نِي عُقَيْلُ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعِيدِ بْنِ الْمُسَيَّبِ كِلَاهُمَا عَنْ أَبِي هُرَيْرَةَ «أَنَّهُ أَتَى رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ فِي الْمَسْجِدِ - فَنَادَاهُ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ؟ فَأَعْرَضَ عَنْهُ، فَتَنَحَّى تِلْقَاءَ وَجْهِهِ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ فَأَعْرَضَ عَنْهُ حَتَّى كَرَّرَ ذَلِكَ أَرْبَعَ مَرَّاتٍ، فَلَمَّا شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ شَهَادَاتٍ دَعَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ أَبِكَ جُنُونٌ؟ قَالَ: لَا، قَالَ: فَهَلْ أَحْصَنْتَ قَالَ: نَعَمْ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ»

L40616 Narrated to us Abdullah ibn Rabiʿ from Muhammad ibn Muʿawiyah from Ahmad ibn Shuʿayb from Muhammad ibn Hatim ibn Nuʿaym from Hibban (he is Ibn Musa) from Abdullah (he is Ibn al-Mubarak) from Hammad ibn Salamah from Abu al-Zubayr from Abd al-Rahman ibn Mudadd from Abu Hurairah: That Maʿiz came to a man named Huzal and said, "O Huzal, another person has committed adultery." He replied, "Go to the Messenger of Allah (peace and blessings be upon him) before a Quranic revelation is sent down concerning you." So he went to the Messenger of Allah (peace and blessings be upon him) and informed him that he himself had committed adultery. The Messenger turned away from him. He informed him again, and the Messenger turned away from him. He informed him again, and the Messenger turned away from him. This occurred four times in total. When he confessed the fourth time, the Messenger ordered him to be stoned. After he was stoned, he was taken to a tree where he was killed.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ نُعَيْمٍ أَنَا حِبَّانُ - هُوَ ابْنُ مُوسَى - أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُضَاضٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ مَاعِزًا أَتَى رَجُلًا يُقَالُ لَهُ: هُزَالٌ، فَقَالَ: يَا هُزَالُ إِنَّ الْآخَرَ قَدْ زَنَى، قَالَ: ائْتِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يَنْزِلَ فِيكَ قُرْآنٌ، فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ أَنَّهُ زَنَى؟ فَأَعْرَضَ عَنْهُ، ثُمَّ أَخْبَرَهُ فَأَعْرَضَ عَنْهُ، ثُمَّ أَخْبَرَهُ فَأَعْرَضَ عَنْهُ - أَرْبَعَ مَرَّاتٍ - فَلَمَّا كَانَ الرَّابِعَةُ أَمَرَ بِرَجْمِهِ، فَلَمَّا رُجِمَ أُتِيَ إِلَى شَجَرَةٍ فَقُتِلَ»

L40617–40619 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah informed us: Aḥmad ibn Shuʿayb informed us: Muḥammad ibn Ḥātim ibn Nuʿaym informed us: Ḥibbān—who is Ibn Mūsā—informed us: ʿAbdullāh ibn al-Mubārak narrated from Zakariyyā Abū ʿImrān al-Baṣrī—he is Ibn Salīm, the companion of al-Luʾluʾī—who said: I heard a learned elder narrating to ʿAmr ibn ʿUthmān al-Qurashī, who said: I am ʿAbd al-Raḥmān ibn Abī Bakr, from his father, who said: "I witnessed the Prophet (peace and blessings of Allah be upon him) standing on his she-mule when a pregnant woman came to him and said, 'She has committed adultery—stone her?' The Prophet (peace and blessings of Allah be upon him) said to her, 'Seek Allah's protection.' She left but returned again and said, 'Stone her?' The Prophet (peace and blessings of Allah be upon him) said to her, 'Seek Allah's protection.' She left again, then came a third time—while he was still standing on his she-mule—and seized the bridle, saying, 'I adjure you by Allah to stone her!' He said, 'Go until you give birth.' She left and delivered a boy, then brought him to the Prophet (peace and blessings of Allah be upon him). The Prophet (peace and blessings of Allah be upon him) took responsibility for him, then said..." "Go and purify yourself from the blood," so she went and purified herself from the blood. Then she returned, and the Prophet—peace be upon him and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ نُعَيْمٍ أَنَا حِبَّانُ - وَهُوَ ابْنُ مُوسَى - أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ زَكَرِيَّا أَبِي عِمْرَانَ الْبَصْرِيِّ - هُوَ ابْنُ سَلِيمٍ - صَاحِبِ اللُّؤْلُئِيِّ قَالَ: سَمِعْتُ شَيْخًا يُحَدِّثُ عَمْرَو بْنَ عُثْمَانَ الْقُرَشِيَّ قَالَ: أَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرٍ عَنْ أَبِيهِ قَالَ: «شَهِدْتُ النَّبِيَّ - عَلَيْهِ السَّلَامُ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَجَاءَتْهُ امْرَأَةٌ حُبْلَى فَقَالَتْ: إِنَّهَا قَدْ بَغَتْ فَارْجُمْهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَتِرِي بِسِتْرِ اللَّهِ فَذَهَبَتْ ثُمَّ رَجَعَتْ إِلَيْهِ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَقَالَتْ: أَرْجُمُهَا؟ فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَتِرِي بِسِتْرِ اللَّهِ فَرَجَعَتْ ثُمَّ جَاءَتْ الثَّالِثَةَ - وَهُوَ وَاقِفٌ عَلَى بَغْلَتِهِ - فَأَخَذَتْ بِاللِّجَامِ فَقَالَتْ: أَنْشُدُكَ اللَّهَ إِلَّا رَجَمْتَهَا، فَقَالَ: انْطَلِقِي حَتَّى تَلِدِي فَانْطَلَقَتْ فَوَلَدَتْ غُلَامًا، فَجَاءَتْ بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَفَلَهُ النَّبِيُّ - عَلَيْهِ السَّلَامُ - ثُمَّ قَالَ انْطَلِقِي فَتَطَهَّرِي مِنْ الدَّمِ فَانْطَلَقَتْ فَتَطَهَّرَتْ مِنْ الدَّمِ، ثُمَّ جَاءَتْ فَبَعَثَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى نِسْوَةٍ

his family—sent to some women, instructing them to verify her purification and check if she had become pure from the blood. They came and testified before the Prophet—peace be upon him and his family—to her purity. He—peace be upon him—then ordered a pit to be dug for her beside her side. He and the Muslims approached, and he gestured with his hand, picked up a pebble—resembling a chickpea—and threw it. He then said to the Muslims, “Stone her, but avoid her face.” They stoned her until she was buried under the stones. He then commanded her to be removed so that he could pray over her.

فَأَمَرَهُنَّ أَنْ يَسْتَبْرِئْنَهَا وَأَنْ يَنْظُرْنَ أَطَهُرَتْ مِنْ الدَّمِ؟ فَجِئْنَ فَشَهِدْنَ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِطُهْرِهَا، فَأَمَرَ لَهَا - عَلَيْهِ السَّلَامُ - بِحُفْرَةٍ إِلَى ثُنْدُوَتِهَا، ثُمَّ أَقْبَلَ هُوَ وَالْمُسْلِمُونَ فَقَالَ بِيَدِهِ: فَأَخَذَ حَصَاةً - كَأَنَّهَا حِمَّصَةٌ - فَرَمَاهَا بِهَا، ثُمَّ قَالَ لِلْمُسْلِمِينَ: ارْمُوهَا وَإِيَّاكُمْ وَوَجْهَهَا، فَرَمَوْهَا حَتَّى طُفِيَتْ، فَأَمَرَ بِإِخْرَاجِهَا حَتَّى صَلَّى عَلَيْهَا»

L40620 It has been narrated to us through the chain of Muslim, via Muhammad ibn Abdullah ibn Numayr and Abu Bakr ibn Abi Shaybah—both of whom stated that Abdullah ibn Numayr narrated to them, saying: Bishr ibn al-Muhajir narrated to me that Abdullah ibn Buraidah reported from his father: “Ma‘iz ibn Malik al-Aslami came to the Messenger of Allah (peace and blessings be upon him and his family) and said: ’O Messenger of Allah, I have wronged myself and committed adultery. I seek your purification.’ He turned him away. The next day, he returned and said: ’O Messenger of Allah, I have committed adultery.’ He turned him away a second time. The Messenger of Allah (peace and blessings be upon him and his family) then sent to his tribe and asked: ’Do you find any impairment in his intellect? Do you observe anything objectionable in him?’ They replied: ’We know him only as one of sound mind among our righteous people—in our view.’ When Ma‘iz came a third time, the Prophet again sent to inquire about him, and they informed him: ’There is no harm in him or his intellect.’ Upon his fourth arrival, a pit was dug for him, and he was ordered to be stoned.

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، كِلَاهُمَا يَقُولُ: إِنَّ عَبْدَ اللَّهِ بْنَ نُمَيْرٍ حَدَّثَهُ قَالَ: أَنَا بِشْرُ بْنُ الْمُهَاجِرِ أَنَا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ «أَنَّ مَاعِزَ بْنَ مَالِكٍ الْأَسْلَمِيَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَلَمْت نَفْسِي وَزَنَيْتُ، وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي، فَرَدَّهُ، فَلَمَّا كَانَ مِنْ الْغَدِ أَتَاهُ فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ زَنَيْتُ، فَرَدَّهُ الثَّانِيَةَ فَأَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى قَوْمِهِ فَقَالَ: أَتَعْلَمُونَ بِعَقْلِهِ بَأْسًا؟ أَتُنْكِرُونَ مِنْهُ شَيْئًا؟ فَقَالُوا: مَا نَعْلَمُهُ إِلَّا وَفِي الْعَقْلِ مِنْ صَالِحِينَا فِيمَا نَرَى، فَأَتَاهُ الثَّالِثَةَ، فَأَرْسَلَ إِلَيْهِمْ أَيْضًا فَسَأَلَ عَنْهُ، فَأَخْبَرُوهُ أَنَّهُ لَا بَأْسَ بِهِ، وَلَا بِعَقْلِهِ، فَلَمَّا كَانَ الرَّابِعَةَ: حَفَرَ لَهُ حُفْرَةً ثُمَّ أَمَرَ بِهِ فَرُجِمَ، فَجَاءَتْ الْغَامِدِيَّةُ فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ زَنَيْتُ فَطَهِّرْنِي، وَأَنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْغَدُ قَالَتْ: يَا رَسُولَ اللَّهِ أَتَرُدُّنِي، لَعَلَّكَ تُرِيدُ أَنْ تَرُدَّنِي كَمَا رَدَدْتَ مَاعِزًا، فَوَاَللَّهِ إِنِّي لَحُبْلَى، قَالَ لَهَا: لَا، أَمَّا الْآنَ فَاذْهَبِي حَتَّى تَلِدِي، فَلَمَّا وَلَدَتْ أَتَتْهُ بِالصَّبِيِّ فِي خِرْقَةٍ قَالَتْ: هَذَا قَدْ وَلَدْتُهُ قَالَ: فَاذْهَبِي فَأَرْضِعِيهِ حَتَّى تَفْطِمِيهِ، فَلَمَّا فَطَمَتْهُ أَتَتْ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةُ خُبْزٍ قَالَتْ: هَذَا يَا رَسُولَ اللَّهِ قَدْ فَطَمْتُهُ، وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنْ الْمُسْلِمِينَ ثُمَّ أَمَرَ بِهَا فَحُفِرَ لَهَا إِلَى صَدْرِهَا، وَأَمَرَ النَّاسَ فَرَجَمُوهَا»

Later, a woman from Ghamid approached and said: ’O Messenger of Allah, I have committed adultery. Purify me.’ He turned her away. The following day, she said: ’O Messenger of Allah! Do you perhaps intend to turn me away as you did Ma‘iz? By Allah, I am pregnant!’ He replied: ’As for now, go until you give birth.’ After delivering, she brought the infant wrapped in a cloth and said: ’Here is the child I bore.’ He instructed: ’Go and nurse him until you wean him.’ When she weaned him, she returned with the child holding a piece of bread and said: ’O Messenger of Allah, he is weaned and

now eats food.' The Prophet entrusted the child to a Muslim man, ordered a pit dug for her up to her chest, and commanded the people to stone her."

فَهَذَا هُوَ الْبَيَانُ الْجَلِيُّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِأَيِّ شَيْءٍ رَدَّ مَاعِزًا لِأَنَّ الْغَامِدِيَّةَ قَرَّرَتْهُ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّهُ رَدَّ مَاعِزًا، وَأَنَّهُ لَا يَحْتَاجُ إلَى تَرْدِيدِهَا، لِأَنَّ الزِّنَى الَّذِي أَقَرَّتْ بِهِ صَحِيحٌ ثَابِتٌ، وَقَدْ ظَهَرَتْ عَلَامَتُهُ - وَهِيَ حَبَلُهَا - فَصَدَّقَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ، وَأَمْسَكَ عَنْ تَرْدِيدِهَا - وَلَوْ كَانَ تَرْدِيدُهُ - عَلَيْهِ السَّلَامُ - مَاعِزًا مِنْ أَجْلِ أَنَّ الْإِقْرَارَ لَا يَصِحُّ بِالزِّنَى حَتَّى يَتِمَّ أَرْبَعَ مَرَّاتٍ لَأَنْكَرَ عَلَيْهَا هَذَا الْكَلَامَ، وَلَقَالَ لَهَا: لَا شَكَّ إنَّمَا أَرُدُّك كَمَا رَدَدْت مَاعِزًا لِأَنَّ الْإِقْرَارَ لَا يَتِمُّ إلَّا بِأَرْبَعِ مَرَّاتٍ - وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُقِرُّ عَلَى خَطَأٍ، وَلَا عَلَى بَاطِلٍ

L40621–40623 This is the clear explanation from the Messenger of Allah—may Allah's blessings and peace be upon him and his family—regarding why he rejected Maʿīz's confession because the Ghamīdiyyah woman affirmed it—peace be upon him—since the adultery she admitted was valid and established, and its sign—her pregnancy—had become evident. Thus, he did not require her to reiterate it and believed her. The Messenger of Allah—peace be upon him and his family—acted accordingly and refrained from repeating her confession. Had the Prophet's repetition—peace be upon him—in the case of Maʿiz been because a confession of adultery is not valid unless completed four times, he would have rejected her statement and said: "There is no doubt that I am only sending you back as I sent back Maʿiz, for the confession is not complete except after four times." He—peace be upon him—does not approve of error nor endorse falsehood.

فَصَحَّ يَقِينًا أَنَّهَا صَادِقَةٌ، فَإِنَّهَا لَا تَحْتَاجُ مِنْ التَّرْدِيدِ إلَى مَا احْتَاجَ إلَيْهِ مَاعِزٌ، وَلِذَلِكَ لَمْ يَرُدَّهَا - عَلَيْهِ السَّلَامُ - بَعْدَ هَذَا الْكَلَامِ

L40624 Thus, it became certain that she was truthful, for she did not require the repeated questioning that Maʿīz needed. For that reason, he (peace be upon him) did not dismiss her after this statement.

وَصَحَّ يَقِينًا أَنَّ تَرْدِيدَهُ - عَلَيْهِ السَّلَامُ - مَاعِزًا إنَّمَا كَانَ لِوَجْهَيْنِ: أَحَدُهُمَا - مَا نَصَّ - عَلَيْهِ السَّلَامُ - مِنْ تُهْمَتِهِ لِعَقْلِهِ فَسَأَلَ - عَلَيْهِ السَّلَامُ - قَوْمَهُ الْمَرَّةَ بَعْدَ الْمَرَّةِ هَلْ بِهِ جُنُونٌ؟ وَسُؤَالُهُ - عَلَيْهِ السَّلَامُ - هَلْ شَرِبَ خَمْرًا

L40625 It has been established with certainty that his (peace be upon him) repeated questioning of Ma'iz was for two aspects: one of them being what he (peace be upon him) explicitly stated regarding his accusation concerning his mind, so he (peace be upon him) asked his people time after time: "Is he insane?" and his (peace be upon him) asking whether he had consumed wine.

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ أَنَا يَحْيَى بْنُ يَعْلَى بْنِ الْحَارِثِ الْمُحَارِبِيُّ عَنْ غَيْلَانَ بْنِ جَامِعٍ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ «جَاءَ مَاعِزُ بْنُ مَالِكٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ طَهِّرْنِي، قَالَ: وَيْحَكَ ارْجِعْ فَاسْتَغْفِرْ اللَّهَ وَتُبْ، قَالَ: فَرَجَعَ غَيْرَ بَعِيدٍ، ثُمَّ جَاءَ فَقَالَ: يَا رَسُولَ اللَّهِ

L40626 As we have been narrated through the chain of Muslim: from Muḥammad ibn al-ʿAlāʾ from Yaḥyā ibn Yaʿlā ibn al-Ḥārith al-Muḥāribī from Ghaylān ibn Jāmiʿ from ʿAlqamah ibn Marthad from Sulaymān ibn Yazīd from his father, who said: "Maʿiz ibn Mālik came to the Messenger of Allah—peace be upon him and his family—and said: 'Purify me.' He replied: 'Shame on you! Return, seek Allah's forgiveness, and repent.' He withdrew briefly, then returned and said: 'O Messenger of Allah, purify me?' He repeated his response. When this occurred a fourth time, the Messenger of Allah—

peace be upon him and his family—asked: 'For what should I purify you?' He answered: 'From fornication.' The Messenger of Allah—peace be upon him and his family—inquired: 'Is he mad?' It was confirmed he was not insane. He then asked: 'Has he drunk wine?' A man rose and sniffed him but found no trace of wine. The Messenger of Allah—peace be upon him and his family—asked: 'Did you commit fornication?' He said: 'Yes.' Thereupon he ordered his execution by stoning." He also mentioned the rest of the report.

طَهِّرْنِي؟ فَقَالَ لَهُ مِثْلَ ذَلِكَ، حَتَّى إِذَا كَانَتْ الرَّابِعَةُ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: فِيمَ أُطَهِّرُكَ؟ قَالَ: مِنْ الزِّنَى، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَبِهِ جِنَّةٌ؟ فَأُخْبِرَ أَنَّهُ لَيْسَ بِمَجْنُونٍ، فَقَالَ: أَشَرِبَ خَمْرًا؟ فَقَامَ رَجُلٌ فَاسْتَنْكَهَهُ فَلَمْ يَجِدْ مِنْهُ رِيحَ خَمْرٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَزَنَيْتَ؟ قَالَ: نَعَمْ، فَأَمَرَ بِهِ فَرُجِمَ» وَذَكَرَ بَاقِيَ الْخَبَرِ

L40627 The other perspective is that the Messenger of Allah—may Allah bless him and his family and grant him peace—suspected he did not know what adultery entailed, so he sent him back for this reason and made him reaffirm. As I am Abdullah ibn Rabeeʿ, I am Muhammad ibn Muʿawiyah, I am Ahmad ibn Shuʿayb; Suwayd ibn Nasr reported to us, Abdullah ibn al-Mubarak reported to us from Maʿmar from Yahya ibn Abi Kathir from Ikrimah from Ibn Abbas: "A man from the Aslam tribe came to the Messenger of Allah—may Allah bless him and his family and grant him peace—and confessed to adultery. He said: 'Perhaps you kissed, winked, or gazed?'"

وَالْوَجْهُ الْآخَرُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اتَّهَمَهُ أَنَّهُ لَا يَدْرِي مَا الزِّنَى؟ فَرَدَّدَهُ لِذَلِكَ وَقَرَّرَهُ» : كَمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أرنا سُوَيْدُ بْنُ نَصْرٍ أرنا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ الْأَسْلَمِيَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى، فَقَالَ: لَعَلَّك قَبَّلْت أَوْ غَمَزْت أَوْ نَظَرْت»

L40628–40630 And through him — to Aḥmad ibn Shuʿayb — ʿAbdullāh ibn al-Haytham informed me from ʿUthmān al-Baṣrī; he narrated to us. Wahb ibn Jarir ibn Hazim said: My father narrated to me, saying: I heard Ya'la ibn Hakim narrating on the authority of Ikrimah, from Ibn Abbas, that the Prophet (peace be upon him and his family) said to Ma'iz ibn Malik: "Alas for you! Did you perhaps kiss, fondle, or gaze?" He said: "No." He said: "Did you have intercourse with her?" He said: "Yes," whereupon he ordered his stoning.

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ الْهَيْثَمِ عَنْ عُثْمَانَ الْبَصْرِيِّ أرنا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ قَالَ: حَدَّثَنِي أَبِي قَالَ سَمِعْتُ يَعْلَى بْنَ حَكِيمٍ يُحَدِّثُ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِمَاعِزِ بْنِ مَالِكٍ: وَيْحَكَ لَعَلَّكَ قَبَّلْتَ، أَوْ غَمَزْتَ، أَوْ نَظَرْتَ؟ قَالَ: لَا، قَالَ: فَنِكْتَهَا؟ قَالَ: نَعَمْ، فَعِنْدَ ذَلِكَ أَمَرَ بِرَجْمِهِ»

L40631 It has been established with certainty that the Prophet's (peace be upon him) repeated questioning of Māʿiz was not at all a consideration of completing the confession four times, but rather due to his suspicion regarding Māʿiz's mental state and his ignorance of what constitutes fornication. Thus, their reliance on the ḥadīth of Ibn Buraydah is invalidated. All praise is due to Allah, Lord of the worlds.

فَقَدْ صَحَّ يَقِينًا أَنَّ تَرْدِيدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لِمَاعِزٍ لَمْ يَكُنْ مُرَاعَاةً لِتَمَامِ الْإِقْرَارِ أَرْبَعَ مَرَّاتٍ أَصْلًا، وَإِنَّمَا كَانَ لِتُهْمَتِهِ إيَّاهُ فِي عَقْلِهِ، وَفِي جَهْلِهِ مَا هُوَ الزِّنَى - فَبَطَلَ تَعَلُّقُهُمْ بِحَدِيثِ ابْنِ بُرَيْدَةَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L40632–40634 As for the hadith of Abu Hurairah through the chain of Ibn Muḍāḍ, Ibn Muḍāḍ is unknown—his identity is undetermined. A sound narration from

Abu Hurairah exists that clarifies the falsity of their presumption, which we shall mention after completing our discourse on these reports (if Allah, the Exalted, wills), and it is as follows: I am Abdullah ibn Rabi', I am Muhammad ibn Muawiyah, I am Ahmad ibn Shu'ayb, I am Ishaq ibn Ibrahim—that is Ibn Rāhawayh—I am Abd al-Razzāq, I am Ibn Jurayj, who informed us that Abu al-Zubayr said: Abd al-Rahman ibn al-Sāmit, the cousin of Abu Hurairah, informed him that he heard Abu Hurairah say: "An Aslami man (a man from the tribe of Aslam) came to the Messenger of Allah—peace and blessings be upon him and his family—and confessed to adultery four times, declaring: 'I had unlawful sexual intercourse with a woman.' Each time, the Messenger of Allah—peace and blessings be upon him and his family—averted his gaze. On the fifth instance, the Prophet turned to him and asked: 'Did you marry her?' He replied: 'Yes.' The Prophet asked: 'Do you understand what adultery entails?' He answered: 'Yes. I engaged with her unlawfully as a man does with his wife lawfully.' The Prophet inquired: 'What do you seek by this confession?' He said: 'I desire purification.' Thereupon, the Messenger of Allah—peace and blessings be upon him and his family—ordered his stoning, and he was stoned. Later, the Prophet heard two companions remarking—one saying to the other: 'Observe this man whom Allah had veiled [his sin], yet his soul persisted until he was stoned like a dog.' The Messenger of Allah—peace and blessings be upon him and his family—remained silent toward them for a while. Then, passing a donkey carcass with raised legs, he called: 'Where are so-and-so and so-and-so?' They responded: 'We are here, O Messenger of Allah.' He commanded: 'Eat from this carcass.' They exclaimed: 'O Messenger of Allah, may Allah forgive you! Who would consume this?' The Prophet—peace and blessings be upon him and his family—said: 'The harm you inflicted upon this man's honor moments ago is graver than [eating] this carcass. By Him in whose hand my soul rests, he now resides in the rivers of Paradise.'" Abu Muhammad—may Allah have mercy on him—said: This is an authentic report. It demonstrates that the Messenger of Allah—may Allah bless him and his family and grant him peace—was not satisfied with affirming [the matter] four times, nor with his confession four times, until he confessed in the fifth instance. Then he was not satisfied with that until he asked him a sixth time: "Do you know what illicit sexual intercourse (zinā)

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ مِنْ طَرِيقِ ابْنِ مُضَاضٍ، فَإِنَّ ابْنَ مُضَاضٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَقَدْ جَاءَ عَنْ أَبِي هُرَيْرَةَ خَبَرٌ صَحِيحٌ بِبَيَانِ بُطْلَانِ ظَنِّهِمْ نَذْكُرُهُ بَعْدَ تَمَامِ كَلَامِنَا فِي هَذِهِ الْأَخْبَارِ - إِنْ شَاءَ اللَّهُ تَعَالَى، وَهُوَ -: مَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ قَالَ: إِنَّ عَبْدَ الرَّحْمَنِ بْنَ الصَّامِتِ ابْنَ عَمِّ أَبِي هُرَيْرَةَ أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: «جَاءَ الْأَسْلَمِيُّ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشَهِدَ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ بِالزِّنَى يَقُولُ: أَتَيْتُ امْرَأَةً حَرَامًا، وَكُلُّ ذَلِكَ يُعْرِضُ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقْبَلَ فِي الْخَامِسَةِ فَقَالَ لَهُ: أَنَكْتَحْتَهَا؟ قَالَ: نَعَمْ، قَالَ: فَهَلْ تَدْرِي مَا الزِّنَى؟ قَالَ: نَعَمْ، أَتَيْتُ مِنْهَا حَرَامًا مِثْلَ مَا يَأْتِي الرَّجُلُ مِنْ أَهْلِهِ حَلَالًا، قَالَ: فَمَا تُرِيدُ بِهَذَا الْقَوْلِ؟ قَالَ: أُرِيدُ أَنْ تُطَهِّرَنِي؟ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرْجَمَ فَرُجِمَ، فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجُلَيْنِ مِنْ أَصْحَابِهِ يَقُولُ أَحَدُهُمَا لِصَاحِبِهِ: انْظُرُوا إِلَى هَذَا الَّذِي سَتَرَ اللَّهُ عَلَيْهِ فَلَمْ تَدَعْهُ نَفْسُهُ حَتَّى رُجِمَ رَجْمَ الْكَلْبِ، فَسَكَتَ عَنْهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَاعَةً فَمَرَّ بِجِيفَةِ حِمَارٍ شَائِلٍ بِرِجْلَيْهِ، فَقَالَ: أَيْنَ فُلَانٌ وَفُلَانٌ؟ فَقَالَا: نَحْنُ يَا رَسُولَ اللَّهِ، فَقَالَ لَهُمَا: كُلَا مِنْ جِيفَةِ هَذَا الْحِمَارِ، فَقَالَا: يَا رَسُولَ اللَّهِ غَفَرَ اللَّهُ لَكَ مَنْ يَأْكُلُ هَذَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَا نِلْتُمَا مِنْ عِرْضِ هَذَا آنِفًا أَشَدُّ مِنْ هَذِهِ الْجِيفَةِ، فَوَالَّذِي نَفْسِي بِيَدِهِ إِنَّهُ الْآنَ فِي أَنْهَارِ الْجَنَّةِ» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا خَبَرٌ صَحِيحٌ، وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَكْتَفِ بِتَقْرِيرِهِ أَرْبَعَ مَرَّاتٍ، وَلَا بِإِقْرَارِهِ أَرْبَعَ مَرَّاتٍ، حَتَّى أَقَرَّ فِي الْخَامِسَةِ، ثُمَّ لَمْ

يَكْتَفِ بِذَلِكَ حَتَّى سَأَلَهُ السَّادِسَةَ: هَلْ تَعْرِفُ مَا الزِّنَى؟ فَلَمَّا عَرَفَ - عَلَيْهِ السَّلَامُ - أَنَّهُ يَعْرِفُ الزِّنَى لَمْ يَكْتَفِ بِذَلِكَ حَتَّى سَأَلَهُ السَّابِعَةَ، مَا يُرِيدُ بِهَذَا إِلَّا لِيَخْتَبِرَ عَقْلَهُ، فَلَمَّا عَرَفَ أَنَّهُ عَاقِلٌ صَحِيحُ الْعَرْضِ أَقَامَ عَلَيْهِ الْحَدَّ - وَفِي هَذَا الْخَبَرِ بَيَانُ بُطْلَانِ الرَّأْيِ مِنْ الصَّاحِبِ وَغَيْرِهِ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَنْكَرَ عَلَيْهِمَا مَا قَالَاهُ بِرَأْيِهِمَا مُجْتَهِدِينَ قَاصِدِينَ إِلَى الْحَقِّ - فَهَذَا يُبْطِلُ احْتِجَاجَ مَنْ احْتَجَّ بِمَا رُوِيَ عَنْ بُرَيْدَةَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

entails?" When he—peace be upon him—confirmed that the man understood zinā, he still did not consider it sufficient until he questioned him a seventh time. He intended this solely to test his mental competence. Once he verified that the man was rational and of sound reputation, he carried out the ḥadd punishment upon him. This report clarifies the invalidity of juristic opinion advanced by the Companion and others, for the Prophet—peace be upon him—reproached them for what they asserted through their independent legal reasoning (ijtihad), even though they were practicing ijtihad and sincerely seeking the truth. This refutes the argument of those who cite the narration from Buraidah as evidence. And success comes only from Allah, the Exalted.

L40635

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو غَسَّانَ الْمِسْمَعِيُّ أَنَا مُعَاذٌ - يَعْنِي ابْنَ هِشَامٍ الدَّسْتُوَائِيَّ - نِي أَبِي عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نِي أَبُو قِلَابَةَ أَنَّ أَبَا الْمُهَلَّبِ حَدَّثَهُ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ حُبْلَى مِنْ الزِّنَى - فَقَالَتْ: يَا نَبِيَّ اللَّهِ أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ؟ فَدَعَا نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلِيَّهَا فَقَالَ: أَحْسِنْ إِلَيْهَا، فَإِذَا وَضَعَتْ فَأْتِنِي بِهَا، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَشُكَّتْ عَلَيْهَا ثِيَابُهَا، وَأَمَرَ بِهَا فَرُجِمَتْ، ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ لَهُ عُمَرُ: أَتُصَلِّي عَلَيْهَا يَا نَبِيَّ اللَّهِ وَقَدْ زَنَتْ؟ قَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدَتْ أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ تَعَالَى؟» "

And through the chain of Muslim: I [am] Abu Ghassan al-Misma'i - I [received it from] Mu'adh - meaning ibn Hisham al-Dastuwa'iyy - from his father, from Yahya ibn Abi Kathir, from Abu Qilabah, that Abu al-Muhallab narrated to him from Imran ibn al-Husayn: "A woman from Juhaynah came to the Prophet of Allah (peace and blessings be upon him and his family) while pregnant from adultery. She said: 'O Prophet of Allah, I have incurred a prescribed punishment - execute it upon me.' The Prophet of Allah (peace and blessings be upon him and his family) summoned her guardian and said: 'Treat her well. When she delivers, bring her to me.' When she gave birth, the Messenger of Allah (peace and blessings be upon him and his family) commanded that her garments be tightly fastened around her, then ordered that she be stoned. He thereafter prayed the funeral prayer over her. Umar said: 'Do you pray over her, O Prophet of Allah, when she committed adultery?' He replied: 'She repented with such sincerity that were it distributed among the people of Medina, it would suffice them all. Has she attained anything greater than sacrificing her very self for Allah the Exalted?'"

L40636–40638

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ أَنَّهُمَا قَالَا «إِنَّ رَجُلَيْنِ مِنْ الْأَعْرَابِ أَتَيَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ أَحَدُهُمَا: يَا رَسُولَ اللَّهِ أَنْشُدُكَ اللَّهَ إِلَّا

From the narration chain of Muslim: I, Qutaybah, narrate from Al-Layth, from Ibn Shihab, from Ubayd Allah ibn Abd Allah ibn Utbah, from Abu Hurairah and Zayd ibn Khalid al-Juhani, that they both said: "Two Bedouin men came to the Messenger of Allah, peace and blessings of Allah be upon him and his family. One of them said: 'O Messenger of Allah, I adjure you by Allah to judge between us by the Book of Allah!' The other—who was

more knowledgeable—said: 'Yes, judge between us by the Book of Allah, and permit me?' The Messenger of Allah, peace and blessings of Allah be upon him and his family, said: 'Speak.' He said: 'My son was a hired worker for this man, yet he committed adultery with his wife.'" He mentioned the hadith, in which the Messenger of Allah, peace and blessings of Allah be upon him and his family, declared: "By the One in Whose Hand is my soul, I shall judge between you by the Book of Allah: As for the slave girl and the sheep, they shall be returned to you, while your son shall receive one hundred lashes and be exiled for a year." Go early, O Unays, to the wife of this man. If she confesses, then stone her? So he went to her in the morning, and she confessed. Then the Messenger of Allah (Allah's peace and blessings be upon him and his family) commanded concerning her, and she was stoned.

L40639 We found Buraidah, Imran ibn al-Husayn, Abu Hurairah, and Zayd ibn Khalid—all of whom transmitted from the Messenger of Allah (peace be upon him) the enforcement of the ḥadd punishment for zinā upon Al-Ghamidiyyah and Al-Juhayniyyah without hesitation, and upon the wife of the aforementioned man based on unconditional confession. This requires—necessarily—her stoning by what is termed a confession, which occurs once only.

L40640 It has been established that the Book of Allah mandates what His Messenger—peace and blessings be upon him—decreed regarding enforcing the prescribed punishment for adultery through an unequivocal confession without stipulating a specific number of confessions, based on the statement of Allah's Messenger—peace and blessings be upon him and his family—"I shall certainly judge between you both by the Book of Allah, the Most High," and he swore an oath to that effect. He then decreed stoning for the confession without stipulating a number.

L40641 Thus, it is established that if a valid confession is made once or a thousand times, it is entirely the same, and that enforcing the prescribed punishment is obligatory and necessary—and success is from Allah, the Exalted.

L40642 **Issue: Is exile included among the ḥudūd or not?**

قَضَيْتَ لِي بِكِتَابِ اللَّهِ؟ فَقَالَ لَهُ الْآخَرُ - وَهُوَ أَفْقَهُ مِنْهُ -: نَعَمْ، فَاقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ، وَإِيذَنْ لِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: قُلْ، فَقَالَ: إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ وَذَكَرَ الْحَدِيثَ وَفِيهِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: أَمَّا الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ، وَتَغْرِيبُ عَامٍ، وَاغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا؟ فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَرُجِمَتْ»

فَوَجَدْنَا بُرَيْدَةَ، وَعِمْرَانَ بْنَ الْحُصَيْنِ، وَأَبَا هُرَيْرَةَ، وَزَيْدَ بْنَ خَالِدٍ، كُلَّهُمْ قَدْ رَوَى عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إقَامَةَ الْحَدِّ فِي الزِّنَى عَلَى: الْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ، بِغَيْرِ تَرْدِيدٍ، وَعَلَى امْرَأَةِ هَذَا الْمَذْكُورِ بِالِاعْتِرَافِ الْمُطْلَقِ، وَهُوَ يَقْتَضِي - وَلَا بُدَّ - رَجْمَهَا بِمَا يَقَعُ عَلَيْهِ اسْمُ اعْتِرَافٍ، وَهُوَ مَرَّةٌ وَاحِدَةٌ فَقَطْ

وَصَحَّ أَنَّ كِتَابَ اللَّهِ يُوجِبُ مَا قَضَى بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إقَامَةِ الْحَدِّ فِي الزِّنَى بِالِاعْتِرَافِ الْمُطْلَقِ دُونَ تَحْدِيدِ عَدَدٍ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ تَعَالَى» وَأَقْسَمَ عَلَى ذَلِكَ، ثُمَّ قَضَى بِالرَّجْمِ فِي الِاعْتِرَافِ دُونَ عَدَدٍ

فَصَحَّ أَنَّهُ إذَا صَحَّ الِاعْتِرَافُ مَرَّةً أَوْ أَلْفَ مَرَّةٍ فَهُوَ كُلُّهُ سَوَاءٌ، وَأَنَّ إقَامَةَ الْحَدِّ وَاجِبٌ وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ هَلْ فِي الْحُدُودِ نَفْيٌ أَمْ لَا]

L40643 2196 – Issue: Is exile among the prescribed punishments (ḥudūd) or not? Abū Muḥammad—may Allah have mercy on him—said: Exile is prescribed in ḥirābah by the Quran, in zinā by the Sunnah, and some scholars have prescribed it for apostasy, alcohol consumption, and theft.

٢١٩٦ - مَسْأَلَةٌ: هَلْ فِي الْحُدُودِ نَفْيٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: النَّفْيُ يَقَعُ مِنْ الْحُدُودِ فِي الْمُحَارَبَةِ بِالْقُرْآنِ، وَفِي الزِّنَى بِالسُّنَّةِ، وَحَكَمَ بِهِ قَوْمٌ فِي الرِّدَّةِ، وَفِي الْخَمْرِ، وَالسَّرِقَةِ "

L40644 Abū Muḥammad—may God have mercy on him—said: We shall discuss each of these matters—if God Almighty wills—section by section. We say—and success is from God Almighty—: A school held that his exile constitutes his imprisonment. Another school held that he is to be exiled perpetually from one land to another.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَتَكَلَّمُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي كُلِّ ذَلِكَ فَصْلًا فَصْلًا، فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: وَقَالَتْ طَائِفَةٌ: نَفْيُهُ سَجْنُهُ - وَقَالَتْ طَائِفَةٌ: يُنْفَى أَبَدًا مِنْ بَلَدٍ إلَى بَلَدٍ

L40645 A group said: His banishment entails that he be pursued until he incapacitates them, so they cannot subdue him.

قَالَتْ طَائِفَةٌ: نَفْيُهُ هُوَ أَنْ يُطْلَبَ حَتَّى يُعْجِزَهُمْ فَلَا يَقْدِرُوا عَلَيْهِ

L40646–40648 I am Hammam, I am Ibn Mufarrij, I am Ibn al-A'rabi, I am al-Dabbari, I am Abd al-Razzaq, I am Ibrahim ibn Abi Yahya, from Dawud ibn al-Husayn, from Ikrimah, from Ibn Abbas, who said: "Concerning the combatant against society, if he flees and renders them incapable [of apprehending him], that constitutes his banishment." And with it—from ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAbd al-Karīm or another—he said: "I heard Saʻīd ibn Jubayr and Abū al-Shaʻthā' Jābir ibn Zayd saying: Exile is imposed when they evade capture. If they are apprehended, then the judgment of God, the Exalted, applies to them; otherwise, they are exiled until they return to their land."

كَمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: فِي الْمُحَارِبِ إنْ هَرَبَ وَأَعْجَزَهُمْ فَذَلِكَ نَفْيُهُ وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَوْ غَيْرِهِ، قَالَ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ، وَأَبَا الشَّعْثَاءِ جَابِرَ بْنَ زَيْدٍ يَقُولَانِ: إنَّمَا النَّفْيُ أَنْ لَا يُدْرَكُوا، فَإِذَا أُدْرِكُوا، فَفِيهِمْ حُكْمُ اللَّهِ تَعَالَى، وَإِلَّا نُفُوا حَتَّى يَلْحَقُوا بِبَلَدِهِمْ

L40649 From al-Zuhri regarding those who wage war (ḥirābah): they must be executed, crucified, have their limbs cut off, or exiled - with exile applying if they cannot be captured. From al-Dahhak concerning the Most High's statement "or be banished from the land" [5:33], he said: It means they are to be pursued until they are subdued.[26]

وَعَنْ الزُّهْرِيِّ أَنَّهُ قَالَ فِيمَنْ حَارَبَ: أَنَّ عَلَيْهِ أَنْ يُقْتَلَ، أَوْ يُصْلَبَ، أَوْ يُقْطَعَ، أَوْ يُنْفَى، فَلَا يُقْدَرُ عَلَيْهِ - وَعَنْ الضَّحَّاكِ فِي قَوْله تَعَالَى {أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣] قَالَ: هُوَ أَنْ يُطْلَبُوا حَتَّى يُعْجِزُوا

L40650 Abu Muhammad—may Allah have mercy on him—said: Al-Shāfiʻī holds this opinion. Others said: Exile is a ḥadd among the punishments for the muḥārib (brigand), as Al-Marjīyy ibn Zarwān wrote to me, stating: From Abū al-Ḥasan al-Raḥabī, from Abū Muslim al-Kātib, from ʻAbdullāh ibn Aḥmad

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا يَقُولُ الشَّافِعِيُّ - وَقَالَ آخَرُونَ: النَّفْيُ حَدٌّ مِنْ حُدُودِ الْمُحَارِبِ، كَمَا كَتَبَ إلَيَّ الْمَرْجِيُّ بْنُ زَرْوَانَ قَالَ: أَنَا أَبُو الْحَسَنِ الرَّحَبِيُّ أَنَا أَبُو مُسْلِمٍ الْكَاتِبُ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ أَنَا

[26] **Qur'an references (L40649):** Qur'an 5:33 (Al-Ma'idah).

ibn al-Mughallis, from ʿAbdullāh ibn Aḥmad ibn Ḥanbal, from his father, from Abū Muʿāwiyah, from Ḥajjāj, from ʿAṭiyyah al-ʿAwfī, from Ibn ʿAbbās, who said: When a man emerges as a brigand, spreads fear on the road, and seizes property: his hand and foot are to be cut off on opposite sides. If he seizes property and kills: his hand and foot are to be cut off on opposite sides, then he is executed and displayed. If he kills without seizing property: he is to be executed. If he spreads fear on the road without seizing property or killing: he is to be exiled.

أَبُو مُعَاوِيَةَ أَنَا حَجَّاجٌ عَنْ عَطِيَّةَ الْعَوْفِيِّ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا خَرَجَ الرَّجُلُ مُحَارِبًا فَأَخَافَ الطَّرِيقَ، وَأَخَذَ الْمَالَ: قُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ - وَإِذَا أَخَذَ الْمَالَ وَقَتَلَ: قُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ ثُمَّ صُلِبَ - وَإِذَا قَتَلَ وَلَمْ يَأْخُذْ الْمَالَ: قُتِلَ - وَإِذَا أَخَافَ الطَّرِيقَ وَلَمْ يَأْخُذْ مَالًا وَلَمْ يَقْتُلْ: نُفِيَ

L40651 Abū Muḥammad—may Allah have mercy on him—said: We examined the evidence cited by those who argue that banishment constitutes imprisonment. We found them asserting that Allah the Exalted stated: "or they be banished from the land" [Al-Mā'idah: 33].[27]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ قَالَ: إنَّ النَّفْيَ هُوَ السَّجْنُ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ اللَّهَ تَعَالَى قَالَ {أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣]

L40652 They said: Exile (al-nafy) in the language of the Arabs—the language in which the Quran was revealed—is defined as banishment (al-ibʿād).

قَالُوا: وَالنَّفْيُ فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ: هُوَ الْإِبْعَادُ

L40653 It is established that the obligation is to remove it from the land. They said: "It is not possible to remove it from the land entirely." Therefore, it becomes obligatory for us to do the utmost we can in that regard, based on the statement of the Messenger of Allah—peace be upon him and his family—"When I command you with a matter, do as much as you can."

فَصَحَّ أَنَّ الْوَاجِبَ إبْعَادُهُ مِنْ الْأَرْضِ، قَالُوا: وَلَا يُقْدَرُ عَلَى إخْرَاجِهِ مِنْ الْأَرْضِ جُمْلَةً، فَوَجَبَ أَنْ نَفْعَلَ مِنْ ذَلِكَ أَقْصَى مَا نَقْدِرُ عَلَيْهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ»

L40654 And due to the statement of Allah the Exalted: {So fear Allah as much as you are able} [At-Taghabun: 16], the utmost limit of what we can achieve in this regard is to remove him from every part of the earth we are capable of removing him from. The ultimate form of this restriction is imprisonment, for he is prohibited from all parts of the earth except his prison, which we cannot prevent him from occupying at all. Thus, we are obligated to fulfill what we can accomplish in this matter, and what we are unable to do of it is absolved from us.[28]

وَلِقَوْلِ اللَّهِ تَعَالَى {فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ} [التغابن: ١٦] فَكَانَ أَقْصَى مَا نَسْتَطِيعُ مِنْ ذَلِكَ إبْعَادَهُ عَنْ كُلِّ مَا قَدَرْنَا عَلَى إبْعَادِهِ مِنْهُ مِنْ الْأَرْضِ، وَغَايَةُ ذَلِكَ السَّجْنُ، لِأَنَّهُ مَمْنُوعٌ مِنْ جَمِيعِ الْأَرْضِ حَاشَا مَا كَانَ سِجْنُهُ الَّذِي لَمْ نَقْدِرْ عَلَى مَنْعِهِ مِنْهُ أَصْلًا، فَلَزِمَنَا مَا اسْتَطَعْنَا مِنْ ذَلِكَ، وَسَقَطَ عَنَّا مَا لَمْ نَسْتَطِعْ مِنْهُ

L40655–40657 And we only said: until he initiates repentance, because as long as he persists in waging war, he remains a combatant [muḥārib]. If he is a highway robber, the prescribed punishment for waging war (hirabah) must be applied to him.

وَإِنَّمَا قُلْنَا: حَتَّى يُحْدِثَ تَوْبَةً، لِأَنَّهُ مَا دَامَ مُصِرًّا عَلَى الْمُحَارَبَةِ فَهُوَ مُحَارِبٌ، فَإِذْ هُوَ مُحَارِبٌ فَوَاجِبٌ أَنْ يُجْزَى جَزَاءَ الْمُحَارِبِ، فَالنَّفْيُ عَلَيْهِ بَاقٍ مَا لَمْ يَتْرُكْ الْمُحَارَبَةَ بِالتَّوْبَةِ، فَإِذَا تَرَكَهَا سَقَطَ عَنْهُ جَزَاؤُهَا أَنْ يَتَمَادَى فِيهِ، إذْ قَدْ جُوزِيَ عَلَى مُحَارَبَتِهِ

[27] **Qur'an references (L40651):** Qur'an 5:33 (Al-Ma'idah).
[28] **Qur'an references (L40654):** Qur'an 64:16 (At-Taghabun).

Banishment remains incumbent upon him as long as he does not abandon warfare through repentance. If he desists from it, the punishment for it ceases to apply to him upon cessation, since he has already faced legal consequences for his act of waging war.

L40658 Abū Muḥammad—may Allāh have mercy on him—said: Then we examined the argument of those who assert that he must be perpetually exiled from one land to another. They argued: If we imprison him in a land or allow him to remain there without imprisonment, we have not expelled him from the earth as Allāh the Exalted commanded. Rather, we have acted in opposition to expulsion and banishment by settling him and confirming his presence in a single place on earth—and this contradicts the Qur'ān. Thus, by the explicit injunction of the Qur'ān, we are obligated to enforce his banishment and expulsion from the entire earth forever, to the extent of our ability. The ultimate aim is to prevent him from residing in any part of it as long as we can expel him from that location—then thus forever. If we could prevent him from settling for even an hour in any part of the earth, we would do so, and it would remain obligatory upon us to act thus for as long as he persists in waging war.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي حُجَّةِ مَنْ قَالَ: يُنْفَى أَبَدًا مِنْ بَلَدٍ إلَى بَلَدٍ أَنْ قَالَ: إنَّا إذَا سَجَنَّاهُ فِي بَلَدٍ، أَوْ أَقْرَرْنَاهُ فِيهِ - غَيْرَ مَسْجُونٍ - فَلَمْ نَنْفِهِ مِنْ الْأَرْضِ كَمَا أَمَرَ اللَّهُ تَعَالَى، بَلْ عَمِلْنَا بِهِ ضِدَّ النَّفْيِ، وَالْإِبْعَادِ، وَهُوَ الْإِقْرَارُ وَالْإِثْبَاتُ فِي الْأَرْضِ فِي مَكَانٍ وَاحِدٍ مِنْهَا - وَهَذَا خِلَافُ الْقُرْآنِ، فَوَجَبَ عَلَيْنَا بِنَصِّ الْقُرْآنِ أَنْ نَسْتَعْمِلَ إبْعَادَهُ وَنَفْيَهُ عَنْ جَمِيعِ الْأَرْضِ أَبَدًا، حَسَبَ طَاقَتِنَا، أَوْ غَايَةُ ذَلِكَ أَلَّا نُقِرَّهُ فِي شَيْءٍ مِنْهَا مَا دُمْنَا قَادِرِينَ عَلَى نَفْيِهِ مِنْ ذَلِكَ الْمَوْضِعِ - ثُمَّ هَكَذَا أَبَدًا، وَلَوْ قَدَرْنَا عَلَى أَنْ لَا نَدَعَهُ يَقَرُّ سَاعَةً فِي شَيْءٍ مِنْ الْأَرْضِ لَفَعَلْنَا ذَلِكَ، وَلَكَانَ وَاجِبًا عَلَيْنَا فِعْلُهُ مَا دَامَ مُصِرًّا عَلَى الْمُحَارَبَةِ

L40659 Abū Muḥammad (may Allah have mercy on him) said: This view is the soundest and most aligned with the Qur'an's apparent meaning, based on the proponent's argument that imprisonment constitutes an affirmation and legal acknowledgment, not a negation.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَ هَذَا الْقَوْلُ أَصَحَّ وَأَوْلَى بِظَاهِرِ الْقُرْآنِ لِمَا ذَكَرَ الْمُحْتَجُّ لَهُ مِنْ أَنَّ السَّجْنَ إثْبَاتٌ، وَإِقْرَارٌ لَا نَفْيٌ

L40660 The people of the language through which the Quran was revealed and by which Allah the Exalted addressed us have never recognized imprisonment being termed exile, nor exile being termed imprisonment. Rather, they are two distinct and divergent names. Allah the Exalted said: {So confine them in houses until death takes them or Allah appoints for them a way} [An-Nisa: 15].[29]

وَمَا عَرَفَ قَطُّ أَهْلُ اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ وَخَاطَبَنَا بِهَا اللَّهُ تَعَالَى: أَنَّ السَّجْنَ يُسَمَّى: نَفْيًا، وَلَا أَنَّ النَّفْيَ يُسَمَّى: سَجْنًا، بَلْ هُمَا اسْمَانِ مُخْتَلِفَانِ، مُتَغَايِرَانِ قَالَ اللَّهُ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] الْآيَةَ

L40661 And He, the Most High, said: {Then it occurred to them after they saw the signs that they must surely imprison him for a time. And there entered the prison with him two youths} [Yusuf: 35-36]. No one—neither ancient nor

وَقَالَ تَعَالَى {ثُمَّ بَدَا لَهُمْ مِنْ بَعْدِ مَا رَأَوُا الآيَاتِ لَيَسْجُنُنَّهُ حَتَّى حِينٍ - وَدَخَلَ مَعَهُ السِّجْنَ فَتَيَانِ} [يوسف: ٣٥ - ٣٦] فَمَا قَالَ أَحَدٌ - لَا قَدِيمٌ وَلَا حَدِيثٌ - أَنَّ حُكْمَ

[29] **Qur'an references (L40660):** Qur'an 4:15 (An-Nisa).

الزَّوَانِي كَانَ النَّفْيَ، إِذْ أَمَرَ اللَّهُ تَعَالَى بِحَبْسِهِنَّ فِي الْبُيُوتِ، وَلَا قَالَ قَطُّ أَحَدٌ: إِنَّ يُوسُفَ - عَلَيْهِ السَّلَامُ - نُفِيَ إِذْ حُبِسَ فِي السِّجْنِ - فَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ، بِالسَّجْنِ جُمْلَةً

modern scholars—has ever claimed that the punishment for female adulterers was exile, since Allah, the Most High, commanded their confinement in homes. Nor has anyone asserted that Yusuf—peace be upon him—was exiled when he was imprisoned. Thus, the claim that imprisonment constitutes exile altogether is invalidated.[30]

وَعَلَى كُلِّ حَالٍ فَالْوَاجِبُ أَنْ نَنْظُرَ فِي الْقَوْلَيْنِ اللَّذَيْنِ هُمَا إِمَّا نَفْيُهُ إِلَى مَكَان غَيْرِ مَكَانِهِ وَإِقْرَارُهُ هُنَالِكَ أَوْ نَفْيُهُ أَبَدًا، فَوَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: يُنْفَى مِنْ بَلَدٍ إِلَى بَلَدٍ وَيُقَرُّ هُنَالِكَ [أَنْ قَالُوا: أَنْتُمْ تَقُولُونَ بِتَكْرَارِ فِعْلِ الْأَمْرِ بَلْ يُجْزِي عِنْدَكُمْ إِيقَاعُهُ مَرَّةً وَاحِدَةً، وَإِذَا كَرَّرْتُمْ النَّفْيَ أَبَدًا فَقَدْ نَقَضْتُمْ أَصْلَكُمْ قَالَ عَلِيٌّ: وَهَذَا الَّذِي أَنْكَرُوهُ دَاخِلٌ عَلَيْهِمْ بِمَنْعِهِمْ الْمَنْفِيَّ مِنْ الرُّجُوعِ إِلَى مَنْزِلِهِ، فَهُمْ يُقِرُّونَ عَلَيْهِ اسْتِدَامَةَ تِلْكَ الْعُقُوبَةِ، فَقَدْ وَقَعُوا فِيمَا أَنْكَرُوا بِعَيْنِهِ

In any case, it is obligatory to examine the two positions: either banishing him to a location other than his place and keeping him there, or perpetual banishment. We found from the argument of those who said "He should be exiled from one territory to another and confirmed there" that they asserted: "You claim the necessity of repeating the command's enactment, yet you consider its execution once sufficient. If you impose perpetual banishment, you have contradicted your foundational principle." Ali said: "This which they denied now applies to them through their prevention of the exiled person from returning to his home, for they thereby uphold the continuation of that punishment. Thus, they have fallen into the very act they condemned."

نَعَمْ، وَالتَّكْرَارُ أَيْضًا لَازِمٌ لِمَنْ قَالَ بِنَفْيِهِ أَوْ سَجْنِهِ سَوَاءً سَوَاءً]

Yes, and repetition is also required for whoever asserts its denial or imprisonment, equally, equally.]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَقُولُ: إِنَّ الْمُحَارِبَ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا نَفْيَهُ حَرْبًا عَلَى مُحَارَبَتِهِ فَإِنَّهُ مَا دَامَ مُصِرًّا فَهُوَ مُحَارِبٌ وَمَا دَامَ مُحَارِبًا فَالنَّفْيُ حَدٌّ مِنْ حُدُودِهِ قَالَ اللَّهُ تَعَالَى {وَلَمْ يُصِرُّوا عَلَى مَا فَعَلُوا} [آل عمران: ١٣٥] فَمَنْ فَعَلَ الْمُحَارَبَةَ فَبِلَا شَكٍّ نَدْرِي أَنَّهُ فِي حَالِ نَوْمِهِ، وَأَكْلِهِ، وَاسْتِرَاحَتِهِ، وَمَرَضِهِ: أَنَّهُ مُحَارِبٌ، كَمَا كَانَ لَمْ يَسْقُطْ عَنْهُ الِاسْمُ الَّذِي وَسَمَهُ اللَّهُ تَعَالَى بِهِ، وَحُقَّ عَلَيْهِ الْحَدُّ بِهِ

Abū Muḥammad—may Allah have mercy on him—said: We affirm: The brigand (muharib) against whom Allah the Exalted has mandated exile as a penalty for his warfare—so long as he persists, he remains a brigand. As long as he is a brigand, exile is a prescribed punishment for him. Allah the Exalted stated: *"and they did not persist in what they had done"* [Āl ʿImrān 3:135]. Thus, whoever commits brigandage—we know without doubt that during his sleep, eating, rest, or illness, he remains a brigand as he was. The designation Allah the Exalted has imposed upon him does not cease, and the punishment for it is rightfully incurred due to his acts.[31]

هَذَا مَا لَا خِلَافَ فِيهِ، فَهُوَ بَعْدَ الْقُدْرَةِ عَلَيْهِ فِي حَالِ إِصْرَارِهِ عَلَى الْمُحَارَبَةِ بِلَا شَكٍّ، لَا يَسْقُطُ عَنْهُ الْإِثْمُ إِلَّا بِتَوْبَةٍ أَوْ نَصٍّ أَوْ إِجْمَاعٍ

This is undisputed: after having the capability to desist, yet persisting in warfare without doubt, the sin is not lifted from him except through repentance, textual evidence, or consensus.

[30] **Qur'an references (L40661):** Qur'an 12:35 (Yusuf); Qur'an 12:36 (Yusuf).

[31] **Qur'an references (L40666):** Qur'an 3:135 (Ali 'Imran).

L40668 The prescribed punishment remains upon him until it is waived through repentance or the ruling is nullified by scriptural text or consensus. This punishment is only carried out by cutting off his hand and foot from opposite sides, with unanimous agreement that no additional amputation may be reimposed upon him. The scriptural text prohibits prescribing another punishment for his prior offense.

فَالْحَدُّ بَاقٍ عَلَيْهِ حَتَّى يَسْقُطَ بِالتَّوْبَةِ أَوْ يَسْقُطَ عَنْهُ الْحُكْمُ بِالنَّصِّ أَوْ الْإِجْمَاعِ فَلَيْسَ ذَلِكَ إلَّا بِقَطْعِ يَدِهِ وَرِجْلِهِ مِنْ خِلَافٍ، بِلَا خِلَافٍ مِنْ أَحَدٍ فِي أَنَّهُ لَا يُجَدَّدُ عَلَيْهِ قَطْعٌ آخَرُ، وَيَمْنَعُ النَّصُّ مِنْ أَنْ يُحْدِثَ لَهُ حَدًّا آخَرَ عَلَى مَا سَلَفَ مِنْهُ

L40669 Abū Muḥammad—may Allāh have mercy on him—said: Then we found that those who advocated its expulsion and abandonment to the place they expelled it had contradicted the Qurʾān, for He affirmed it in that place, and affirmation is contrary to expulsion. Thus, they affirmed it on earth, leaving no valid opinion except the one we have verified—which is the opinion of al-Ḥasan al-Baṣrī, and this is the position we uphold.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ وَجَدْنَا مَنْ قَالَ: بِنَفْيِهِ وَتَرْكِهِ فِي الْمَكَانِ الَّذِي يَنْفِيهِ إلَيْهِ - قَدْ خَالَفَ الْقُرْآنَ فِي أَنَّهُ أَقَرَّهُ فِي ذَلِكَ الْمَكَانِ، وَالْإِقْرَارُ خِلَافُ النَّفْيِ، فَقَدْ أَقَرُّوهُ فِي الْأَرْضِ فَلَمْ يَبْقَ إلَّا الْقَوْلُ الَّذِي صَحَّحْنَاهُ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَبِهِ نَقُولُ

L40670 Therefore, it is obligatory that he be permanently expelled from every place on earth and not be left to settle except during the time of his eating, sleeping, and what is indispensable for him - including rest without which he would die - and the period of his illness, in accordance with the words of Allah the Exalted: "And cooperate in righteousness and piety" [Al-Mā'idah: 2].[32]

فَالْوَاجِبُ أَنْ يُنْفَى أَبَدًا مِنْ كُلِّ مَكَانٍ مِنْ الْأَرْضِ، وَأَنْ لَا يُتْرَكَ يَقَرُّ إلَّا مُدَّةَ أَكْلِهِ، وَنَوْمِهِ، وَمَا لَا بُدَّ لَهُ مِنْهُ مِنْ الرَّاحَةِ الَّتِي إنْ لَمْ يَنَلْهَا مَاتَ، وَمُدَّةَ مَرَضِهِ، لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢]

L40671 It is obligatory that he not be killed nor neglected, but he must be perpetually exiled until he demonstrates repentance. If he does so, the exile is lifted from him, and he is permitted to return to his place. This is the ruling of the Quran. Whenever he demonstrates repentance, whether sooner or later, the exile is lifted from him. And success comes from Allah, the Most High.

فَوَاجِبٌ أَنْ لَا يُقْتَلَ، وَأَنْ لَا يُضَيَّعَ، لَكِنْ يُنْفَى أَبَدًا حَتَّى يُحْدِثَ تَوْبَةً، فَإِذَا أَحْدَثَهَا سَقَطَ عَنْهُ النَّفْيُ، وَتُرِكَ يَرْجِعُ إلَى مَكَانِهِ - فَهَذَا حُكْمُ الْقُرْآنِ، وَمَتَى أَحْدَثَ التَّوْبَةَ مِنْ قُرْبٍ أَوْ بُعْدٍ سَقَطَ عَنْهُ النَّفْيُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40672 ٢١٩٧ - Issue:

٢١٩٧ - مَسْأَلَةٌ:

L40673–40675 As for the exile of the adulterer? People have differed concerning it. A group said: The non-muḥṣan adulterer—the free man and the free woman—is to be flogged one hundred lashes and exiled for a year. A married woman and a woman not married are equal in that. As for the male slave, he is like the free man. As for the female slave, she is to be lashed fifty times and exiled for six months. This is the opinion of al-Shāfiʿī, his companions, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, and Ibn Abī Laylā.

وَأَمَّا نَفْيُ الزَّانِي؟ فَإِنَّ النَّاسَ اخْتَلَفُوا فِيهِ: فَقَالَتْ طَائِفَةٌ: الزَّانِي غَيْرُ الْمُحْصَنِ، يُجْلَدُ مِائَةً، وَيُنْفَى سَنَةً - الْحُرُّ، وَالْحُرَّةُ ذَاتُ الزَّوْجِ، وَغَيْرُ ذَاتِ الزَّوْجِ، فِي ذَلِكَ سَوَاءٌ - وَأَمَّا الْعَبْدُ الذَّكَرُ فَكَالْحُرِّ، وَأَمَّا الْأَمَةُ فَتُجْلَدُ خَمْسِينَ وَنَفْيُ سِتَّةِ أَشْهُرٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَابْنِ أَبِي لَيْلَى.

[32] **Qur'an references (L40670):** Qur'an 5:2 (Al-Ma'idah).

وَقَالَتْ طَائِفَةٌ: يُنْفَى الرَّجُلُ الزَّانِي جُمْلَةً، وَلَا تُنْفَى النِّسَاءُ.

L40676 A group held that the male fornicator is to be exiled categorically, whereas women are not subject to exile.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L40677 And this is the opinion of Al-Awzaʿī.

وَقَالَتْ طَائِفَةٌ: يُنْفَى الْحُرُّ الذَّكَرُ، وَلَا تُنْفَى الْمَرْأَةُ الْحُرَّةُ - ذَاتَ زَوْجٍ كَانَتْ أَوْ غَيْرَ ذَاتِ زَوْجٍ - وَلَا الْأَمَةُ، وَلَا الْعَبْدُ - وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ.

L40678 A group held that the free man is to be exiled, while the free woman—whether married or unmarried—is not exiled, nor the female slave, nor the male slave. This is the opinion of Mālik and his followers.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ عَلَى زَانٍ أَصْلًا - لَا عَلَى ذَكَرٍ، وَلَا عَلَى أُنْثَى، وَلَا حُرٍّ، وَلَا عَبْدٍ، وَلَا أَمَةٍ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L40679 A group stated that there is no exile at all for any fornicator—neither for a male nor a female, nor for a free person (whether male or female), nor for an enslaved man or woman. This is the opinion of Abū Ḥanīfah and his followers.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَحْنُ ذَاكِرُونَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ فِي ذَلِكَ عَنْ الْمُتَقَدِّمِينَ فَمِنْ ذَلِكَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْعَلَاءِ أَبُو كُرَيْبٍ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ سَمِعْت عُبَيْدَ اللَّهِ بْنَ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ضَرَبَ وَغَرَّبَ، وَإِنَّ أَبَا بَكْرٍ ضَرَبَ وَغَرَّبَ، وَإِنَّ عُمَرَ ضَرَبَ وَغَرَّبَ» .

L40680 Abū Muḥammad—may Allah have mercy on him—said: We shall mention—by Allah the Exalted's will—what has been transmitted regarding this matter from the predecessors. Among these is what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn al-ʿAlāʾ Abū Kuraib narrated to us: ʿAbdullāh ibn Idrīs al-Awdī said: I heard ʿUbaydullāh ibn ʿUmar ibn Ḥafṣ ibn ʿĀṣim narrate from Nāfiʿ, from Ibn ʿUmar, who said: "Indeed, the Messenger of Allah—peace and blessings be upon him and his family—imposed flogging and exile. And indeed Abū Bakr imposed flogging and exile. And indeed ʿUmar imposed flogging and exile."

أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ أَنَّ رَجُلًا وَقَعَ عَلَى جَارِيَةٍ بِكْرٍ فَأَحْبَلَهَا فَاعْتَرَفَ وَلَمْ يَكُنْ أَحْصَنَ فَأَمَرَ بِهِ أَبُو بَكْرٍ فَجَلَدَهُ مِائَةً ثُمَّ نُفِيَ.

L40681 I am Humaam, I am Ibn Mufarrij, I am Ibn al-A'rabi, I am al-Dabari, I am 'Abd al-Razzaq, from Ibn Jurayj, from Musa ibn 'Uqbah, from Nafi', from Safiyyah bint Abi 'Ubayd: A man committed zinā with a virgin slave girl and she became pregnant. He confessed, and he was not a married man. Abu Bakr ordered him to be lashed one hundred times and then exiled.

وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: أَتَى رَجُلٌ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَخْبَرَهُ أَنَّ أُخْتَهُ أَحْدَثَتْ - وَهِيَ فِي سِتْرِهَا وَأَنَّهَا حَامِلٌ - فَقَالَ عُمَرُ: أَمْهِلْهَا حَتَّى إذَا وَضَعَتْ وَاسْتَقَلَّتْ فَآذِنِّي بِهَا، فَلَمَّا وَضَعَتْ جَلَدَهَا مِائَةً وَغَرَّبَهَا إلَى الْبَصْرَةِ عَامًا.

L40682 From Urwah ibn al-Zubayr, on the authority of Aisha, the Mother of the Believers, that she said: A man came to Umar ibn al-Khattab and informed him that his sister had committed adultery while in seclusion and that she was pregnant. Umar said: "Delay until she delivers and has recovered, then inform me." When she delivered, he lashed her one hundred times and exiled her to Basra for a year.

L40683 From the narration of Malik, from Ibn Shihab: that Umar ibn al-Khattab imposed exile for one year in cases of fornication. Ibn Wahb reported that Ibn Shihab said: “This ruling remained enacted by the Sunnah until Marwan exiled during his governorship of Medina. Afterward, the people abandoned it.”

وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ غَرَّبَ فِي الزِّنَى سَنَةً. قَالَ ابْنُ وَهْبٍ، قَالَ ابْنُ شِهَابٍ: ثُمَّ لَمْ يَزَلْ ذَلِكَ الْأَمْرُ تَمْضِي بِهِ السُّنَّةُ حَتَّى غَرَّبَ مَرْوَانُ فِي إِمْرَتِهِ بِالْمَدِينَةِ - ثُمَّ تَرَكَ ذَلِكَ النَّاسُ.

L40684–40685 From Ibn Wahb: Jarir ibn Hazim informed me, from Al-Hasan ibn Umara, from Al-Ala ibn Badr, from Kulthum ibn Jubayr, who said: A man among us married a woman, and she committed adultery before he consummated the marriage. Ali ibn Abi Talib flogged her one hundred lashes and banished her for a year to the river of Karbala. When she returned, he handed her over to her husband and said: “She is your wife. Divorce her if you wish, or keep her if you prefer.”

وَعَنْ ابْنِ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ كُلْثُومِ بْنِ جُبَيْرٍ قَالَ، تَزَوَّجَ رَجُلٌ مِنَّا امْرَأَةً فَزَنَتْ قَبْلَ أَنْ يَدْخُلَ بِهَا، فَجَلَدَهَا عَلِيُّ بْنُ أَبِي طَالِبٍ مِائَةَ سَوْطٍ وَنَفَاهَا سَنَةً إِلَى نَهْرِ كَرْبَلَاءَ فَلَمَّا رَجَعَتْ دَفَعَهَا إِلَى زَوْجِهَا، وَقَالَ: امْرَأَتُك فَإِنْ شِئْت فَطَلِّقْ، وَإِنْ شِئْت فَأَمْسِكْ.

L40686 From Ibn Shihab, from Yahya ibn Abd al-Rahman ibn Hatib, from his father: When Hatib died, he emancipated those among his slaves who prayed and fasted. He had a Nubian slave woman who had prayed and fasted—though she was a non-Arab who did not understand the religion—when suddenly her pregnancy became apparent, startling her master. He went to Umar in distress. Umar said to him, “You are the man who brings no good!” Umar then sent for her and asked, “Are you pregnant?” She replied, “Yes, by Mar‘ush for two dirhams,” confessing to it. Ali ibn Abi Talib, Uthman ibn Affan, and Abd al-Rahman ibn Awf were present with Umar when she was brought in. Umar said, “Advise me.” Uthman, who was seated, reclined as if to distance himself. Ali and Abd al-Rahman said, “The ḥadd punishment applies to her.” Umar asked, “Advise me, Uthman!” He replied, “Your two brothers have already advised you.” Umar insisted, “Advise me yourself!” Uthman said, “She confessed as one unaware of the implications, and the ḥadd punishment only applies to those who act knowingly.” Umar then ordered her to be flogged one hundred lashes and exiled.

وَعَنْ ابْنِ شِهَابٍ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ عَنْ أَبِيهِ أَنَّ حَاطِبًا تُوُفِّيَ وَأَعْتَقَ مَنْ صَلَّى مِنْ رَقِيقِهِ وَصَامَ، وَكَانَتْ لَهُ وَلِيدَةٌ نُوبِيَّةٌ قَدْ صَلَّتْ وَصَامَتْ - وَهِيَ أَعْجَمِيَّةٌ لَمْ تَفْقَهْ - فَلَمْ يَرُعْهُ إِلَّا حَمْلُهَا، فَذَهَبَ إِلَى عُمَرَ فَزِعًا، فَقَالَ لَهُ عُمَرُ: أَنْتَ الرَّجُلُ الَّذِي لَا تَأْتِي بِخَيْرٍ، فَأَرْسَلَ إِلَيْهَا عُمَرُ: أَحَبِلْتِ؟ فَقَالَتْ: نَعَمْ، مِنْ مَرْعُوشٍ بِدِرْهَمَيْنِ، فَإِذَا هِيَ تَسْتَهِلُّ بِهِ، وَصَادَفَتْ عِنْدَهُ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَعُثْمَانَ بْنَ عَفَّانَ، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، فَقَالَ: أَشِيرُوا عَلَيَّ، وَعُثْمَانُ جَالِسٌ فَاضْطَجَعَ، فَقَالَ عَلِيٌّ، وَعَبْدُ الرَّحْمَنِ: قَدْ وَقَعَ عَلَيْهَا الْحَدُّ، قَالَ: أَشِرْ عَلَيَّ يَا عُثْمَانُ؟ قَالَ: قَدْ أَشَارَ عَلَيْك أَخَوَاك، قَالَ: أَشِرْ عَلَيَّ أَنْتَ؟ قَالَ: أَرَاهَا تَسْتَهِلُّ بِهِ كَأَنَّهَا لَا تَعْلَمُهُ، وَلَيْسَ الْحَدُّ إِلَّا عَلَى مَنْ عَلِمَهُ، فَأَمَرَ بِهَا فَجُلِدَتْ مِائَةً وَغَرَّبَهَا.

L40687 It is narrated from ʿAṭāʾ that he said: An unmarried person is to be lashed one hundred times and exiled for a year.

وَعَنْ عَطَاءٍ قَالَ: الْبِكْرُ تُجْلَدُ مِائَةً وَتُنْفَى سَنَةً.

L40688 From Abdullah ibn Mas’ud regarding a virgin male who commits fornication

وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فِي الْبِكْرِ يَزْنِي بِالْبِكْرِ يُجْلَدَانِ مِائَةً وَيُنْفَيَانِ سَنَةً.

with a virgin female: they are to be flogged one hundred times and banished for a year.

L40689 It is reported from Ibn ʿUmar that he enforced the ḥadd punishment upon his female slave for zinā and exiled her to Fadak.

L40690–40692 Abu Muhammad—may God have mercy on him—said: As for those who did not hold that view—regarding the chain: from Hammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Abū Ḥanīfah, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī—who reported: ʿAlī ibn Abī Ṭālib ruled concerning a virgin male who fornicates with a virgin female that if they are detained among the youths, they shall be exiled. From Ibrāhīm al-Nakhaʿī: ʿAlī ibn Abī Ṭālib said regarding the umm al-walad—when her master emancipates her or dies, then she commits fornication—that she is to be lashed but not exiled? Abu Muhammad—may God have mercy on him—said: When they disagreed, we examined this matter to discern the truth and follow it—with God Almighty's assistance. We considered the opinion of those who prescribe exile within the ḥadd punishment for fornication, citing what we narrated through Muslim's chain: from Qutaybah, from Layth, from Ibn Shihāb, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd. From Abu Huraira and Zayd ibn Khalid that they said: "A Bedouin man came to the Messenger of Allah—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, I adjure you by Allah **to** judge between us by the Book of Allah!' The other disputant, who was more knowledgeable than him, said: 'Yes, judge between us by the Book of Allah **and** permit me to speak.' The Messenger of Allah—peace and blessings of Allah be upon him—said to him: 'Speak.' He said: 'My son was a hired worker for this man and committed adultery with his wife. I was informed that my son deserved stoning, so I ransomed him with a hundred sheep and a slave girl. Then I asked knowledgeable people, and they informed me that my son should receive a hundred lashes and exile for a year, and that this man's wife deserved stoning.' The Messenger of Allah—peace and blessings of Allah be upon him **and his family**—said: 'By the One in whose Hand is my soul, I will indeed judge between you by the Book of Allah! The slave girl and the sheep are to be returned to you. Your son

وَعَنْ ابْنِ عُمَرَ أَنَّهُ حَدَّ مَمْلُوكَةً لَهُ فِي الزِّنَى وَنَفَاهَا إِلَى فَدَكَ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ لَمْ يَرَ ذَلِكَ: فَكَمَا أَنَا حُمَامٌ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْبِكْرِ يَزْنِي بِالْبِكْرِ، فَإِنْ حَبَسَهُمَا مِنْ الْفِتْيَانِ يُنْفَيَانِ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي أُمِّ الْوَلَدِ إذَا أَعْتَقَهَا سَيِّدُهَا، أَوْ مَاتَ فَزَنَتْ: أَنَّهَا تُجْلَدُ وَلَا تُنْفَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ بِالتَّغْرِيبِ مِنْ حَدِّ الزِّنَى يَذْكُرُونَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ أَنَا لَيْثٌ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ أَنَّهُمَا قَالَا «إنَّ رَجُلًا مِنْ الْأَعْرَابِ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَنْشُدُكَ اللَّهَ إلَّا قَضَيْتَ لِي بِكِتَابِ اللَّهِ؟ فَقَالَ: الْخَصْمُ الْآخَرُ وَهُوَ أَفْقَهُ مِنْهُ: نَعَمْ فَاقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ وَائْذَنْ لِي فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْ: قَالَ: إنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَزَنَى بِامْرَأَتِهِ وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ، فَسَأَلْتُ أَهْلَ الْعِلْمِ فَأَخْبَرُونِي أَنَّمَا عَلَى ابْنِي جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمَ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالَّذِي نَفْسِي بِيَدِهِ لَأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ: الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ

shall receive a hundred lashes and exile for a year. **Go in the morning**, O Unays, to this man's wife. If she confesses, stone her.' He said: 'Unays went to her in the morning, and she confessed. He then ordered her to be stoned, and she was stoned.'"

L40693 Abu Muhammad—may Allah have mercy on him—said: And thus it has been narrated to us through the chains of Maʿmar, Ṣāliḥ ibn Kaysān, Yūnus ibn Yazīd, Sufyān ibn ʿUyaynah, and Mālik ibn Anas—all of them from al-Zuhrī through this chain of transmission.

L40694 Through the chain of Muslim: Yaḥyā ibn Yaḥyā al-Tamīmī reported from Hushaym, from Manṣūr, from al-Ḥasan, from Ḥiṭṭān ibn ʿAbd Allāh al-Raqāshī, from ʿUbādah ibn al-Ṣāmit, who said: "The Messenger of Allah (peace be upon him) declared: 'Learn from me, learn from me: Allah has ordained a punishment for them. The virgin with the virgin shall receive one hundred lashes and exile for a year. The non-virgin with the non-virgin shall receive one hundred lashes and stoning.'"

L40695 And from the chain of Muslim: I am ʿAmr al-Nāqid; I am Hushaym via this same chain (isnād).

L40696 From the chain of Imam Muslim: Muhammad ibn al-Muthanna and Muhammad ibn Bashar—both transmitting from Abd al-A'la—Sa'id ibn Abi Arubah reported to us from Qatadah, from al-Hasan, from Hittan ibn Abdullah, from Ubada ibn al-Samit, who said: "When revelation descended upon the Prophet of Allah (peace be upon him), he would become troubled, and his face would darken. He said: One day, revelation came to him, and he remained in that state. When it subsided, he said: 'Take this from me. Allah has established a way for them [women]: the married person with the married person, and the virgin with the virgin. The married person is to be flogged a hundred lashes then stoned; the virgin is to be flogged a hundred lashes then banished for a year.'"

L40697–40699 I am Abdullah ibn Rabee', I am Muhammad ibn Mu'awiyah, I am Ahmad ibn Shu'ayb, I am Muhammad ibn Abd al-A'la. Yazid ibn Zura'—he is Ibn Zuraiq—narrated from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan from Hittan ibn 'Abdullah al-Raqashi from 'Ubadah ibn al-Samit, who said: "When

وَتَغْرِيبُ عَامٍ، وَاغْدُ يَا أُنَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمْهَا؟ قَالَ: فَغَدَا عَلَيْهَا فَاعْتَرَفَتْ، فَأَمَرَ بِهَا فَرُجِمَتْ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ مَعْمَرٍ، وَصَالِحِ بْنِ كَيْسَانَ، وَيُونُسَ بْنِ يَزِيدَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَمَالِكِ بْنِ أَنَسٍ، كُلِّهِمْ عَنِ الزُّهْرِيِّ بِهَذَا الْإِسْنَادِ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ أَنَا هُشَيْمٌ عَنْ مَنْصُورٍ عَنِ الْحَسَنِ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا عَنِّي، خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَمْرٌو النَّاقِدُ أَنَا هُشَيْمٌ بِهَذَا الْإِسْنَادِ مِثْلَهُ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ جَمِيعًا عَنْ عَبْدِ الْأَعْلَى نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ «كَانَ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أُنْزِلَ عَلَيْهِ كُرِبَ لِذَلِكَ، وَتَرَبَّدَ لَهُ وَجْهُهُ، قَالَ: فَأُنْزِلَ عَلَيْهِ ذَاتَ يَوْمٍ، فَبَقِيَ كَذَلِكَ، فَلَمَّا سُرِّيَ عَنْهُ قَالَ: خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا: الثَّيِّبُ بِالثَّيِّبِ، وَالْبِكْرُ بِالْبِكْرِ، الثَّيِّبُ جَلْدُ مِائَةٍ ثُمَّ رَجْمٌ بِالْحِجَارَةِ، الْبِكْرُ جَلْدُ مِائَةٍ ثُمَّ نَفْيُ سَنَةٍ» .

أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى أَنَا يَزِيدَ - هُوَ ابْنُ زُرَيْعٍ - أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ حِطَّانَ

revelation descended upon the Messenger of Allah—peace and blessings of Allah be upon him—he would become distressed, and his face would darken. One day, revelation descended upon him. When it was lifted from him, he said: 'Learn from me: Allah has prescribed a ruling for them. The virgin with the virgin: one hundred lashes and exile for a year. The previously married with the previously married: one hundred lashes and stoning.'"

بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا أُنْزِلَ عَلَيْهِ كُرِبَ لِذَلِكَ وَتَرَبَّدَ لَهُ وَجْهُهُ، فَنَزَلَ عَلَيْهِ ذَاتَ يَوْمٍ فَلَقِيَ ذَلِكَ فَلَمَّا سُرِّيَ عَنْهُ قَالَ: خُذُوا عَنِّي: قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L40700 Abu Muhammad—may Allah have mercy on him—said: It was also narrated by Shu'bah and Hishām al-Dastawā'ī, both of them from Qatādah through his chain: I am 'Abdullāh ibn Rabī', I am Muḥammad ibn Mu'āwiyah, I am Aḥmad ibn Shu'ayb, I am Muḥammad ibn Ismā'īl ibn Ibrāhīm ibn 'Ulayyah and Muḥammad ibn Yaḥyā ibn 'Abdillāh. Ibn 'Ulayyah said: I am 'Abd al-Raḥmān ibn Mahdī, from 'Abd al-'Azīz ibn 'Abdillāh ibn Abī Salamah. Muḥammad ibn Yaḥyā said: I am Ya'qūb ibn Ibrāhīm ibn Sa'd ibn Ibrāhīm ibn 'Abd al-Raḥmān ibn 'Awf, from his father, from Ṣāliḥ ibn Kayṣān. Then the chains of Ṣāliḥ and Ibn Abī Salamah converge, both of them from al-Zuhrī, from 'Ubaydillāh ibn 'Abdillāh ibn 'Utbah ibn Mas'ūd, from Zayd ibn Khālid al-Juhanī, who said: "I heard the Messenger of Allah—peace and blessings be upon him—command regarding an unmarried person who commits fornication: one hundred lashes and banishment for a year."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَرَوَاهُ أَيْضًا شُعْبَةُ، وَهِشَامٌ الدَّسْتُوَائِيُّ، كِلَاهُمَا عَنْ قَتَادَةَ بِإِسْنَادِهِ أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ بْنِ عُلَيَّةَ، وَمُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ، قَالَ ابْنُ عُلَيَّةَ: أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ، وَقَالَ مُحَمَّدُ بْنُ يَحْيَى: أَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ، ثُمَّ اتَّفَقَ صَالِحٌ، وَابْنُ أَبِي سَلَمَةَ، كِلَاهُمَا عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ قَالَ: «سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ فِيمَنْ لَمْ يُحْصِنْ إِذَا زَنَى بِجَلْدِ مِائَةٍ وَتَغْرِيبِ عَامٍ» .

L40701 And through his chain—to Ahmad ibn Shu'ayb: I am Muhammad ibn Rafi', I am Hujayr, I am al-Layth from 'Uqayl ibn Khalid from Ibn Shihab from Sa'id ibn al-Musayyib from Abu Hurayrah from the Messenger of Allah—peace and blessings of Allah be upon him—"that he ruled regarding one who committed fornication while not being muhsan (a chaste/married person) to be exiled for one year combined with the enforcement of the hadd punishment upon him." Abu Muhammad—may Allah have mercy on him—said: These were manifestly corroborated reports transmitted by three Companions—may Allah be pleased with them: 'Ubadah ibn al-Samit, Abu Hurayrah, and Zayd ibn Khalid al-Juhani—affirming the obligation of one year's exile alongside one hundred lashes for the unmarried fornicator. This ruling was accompanied by the Prophet's—peace and blessings of Allah be upon him—

وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ أَنَا حُجَيْرٌ أَنَا اللَّيْثُ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ «رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَضَى فِيمَنْ زَنَى وَلَمْ يُحْصِنْ أَنْ يُنْفَى عَامًا مَعَ إِقَامَةِ الْحَدِّ عَلَيْهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَتْ هَذِهِ آثَارٌ مُتَظَاهِرَةٌ رَوَاهَا ثَلَاثَةٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عُبَادَةُ بْنُ الصَّامِتِ، وَأَبُو هُرَيْرَةَ، وَزَيْدُ بْنُ خَالِدٍ الْجُهَنِيُّ بِإِيجَابِ تَغْرِيبِ عَامٍ مَعَ جَلْدِ مِائَةٍ عَلَى الزَّانِي الَّذِي لَمْ يُحْصِنْ، مَعَ إِقْسَامِ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِاللَّهِ تَعَالَى

solemn oath by Allah the Exalted in his judgment, declaring it to be "the Book of Allah the Exalted," while the Book of Allah is both His revelation and His legal decree. Moreover, Allah the Exalted states in the Quran: *He does not speak from desire—it is nothing but revelation inspired* (al-Najm 53:3-4). Thus, this constitutes the explicit text of the Quran, for every utterance of the Messenger of Allah—peace and blessings of Allah be upon him—originates from divine revelation conveyed by Allah the Exalted.[33]

L40702–40703 And He, the Exalted, said, "Slave women shall incur half the prescribed penalty applicable to chaste free women." [An-Nisa: 25][34]

L40704 He (peace be upon him) distinguished between the Ḥadd of a slave and the Ḥadd of a free person in the Hadith of Ibn Abbas. As per what we presented earlier in the chapter on the Ḥadd of slaves, the text establishes that their male and female slaves are subject to half the Ḥadd of a free man and a free woman—which is fifty lashes and six months of exile.

L40705 Abu Muhammad (may Allah have mercy on him) said: We then examined the position of those who do not uphold exile for women and slaves. We found them citing the previously mentioned hadith with its chain—making its repetition unnecessary—which states (peace be upon him): "If a slave woman of yours commits fornication, let him lash her and not reproach her." This provides them no valid argument, because it is a general hadith that others have explicitly interpreted. For it only states "let him lash her" without specifying the number of lashes. Thus it is established that the Prophet (peace be upon him) referred the explanation of this commanded lashing to the Quran and to the hadith detailing rulings concerning slaves within prescribed punishments (ḥudūd). Therefore, the Prophet's silence (peace be upon him) regarding exile in this particular narration cannot invalidate the exile he (peace be upon him) definitively ordained for those who commit fornication while not in a state of marital protection (muḥṣan).

L40706 Similarly, his silence (may Allah's peace and blessings be upon him) regarding specifying the exact number of lashes she should receive does not constitute

فِي قَضَائِهِ بِهِ أَنَّهُ كِتَابُ اللَّهِ تَعَالَى وَكِتَابُ اللَّهِ تَعَالَى هُوَ وَحْيُهُ وَحُكْمُهُ مَعَ أَنَّ اللَّهَ تَعَالَى يَقُولُ فِي الْقُرْآنِ {وَمَا يَنْطِقُ عَنِ الْهَوَى - إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٣ - ٤] فَهَذَا نَصُّ الْقُرْآنِ، فَإِنَّ كُلَّ مَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَنْ وَحْيٍ مِنَ اللَّهِ تَعَالَى يَقُولُهُ.

وَقَالَ تَعَالَى {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] .

وَفَرَّقَ - عَلَيْهِ السَّلَامُ - بَيْنَ حَدِّ الْمَمْلُوكِ، وَحَدِّ الْحُرِّ فِي حَدِيثِ ابْنِ عَبَّاسٍ، وَعَلَى الَّذِي أَوْرَدْنَا قَبْلُ فِي بَابِ حَدِّ الْمَمَالِيكِ فَصَحَّ النَّصُّ أَنَّ عَلَى الْمَمَالِيكِ ذُكُورِهِمْ وَإِنَاثِهِمْ - نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ، وَذَلِكَ جَلْدُ خَمْسِينَ وَنَفْيُ سِتَّةِ أَشْهُرٍ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ التَّغْرِيبَ عَلَى النِّسَاءِ وَالْمَمَالِيكِ، فَوَجَدْنَاهُمْ يَذْكُرُونَ الْخَبَرَ الَّذِي قَدْ أَوْرَدْنَاهُ قَبْلُ بِإِسْنَادِهِ، فَأَغْنَى عَنْ تَرْدَادِهِ، وَهُوَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا وَلَا يُثَرِّبْ» فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّهُ خَبَرٌ مُجْمَلٌ فَسَّرَهُ غَيْرُهُ، لِأَنَّهُ إنَّمَا فِيهِ " فَلْيَجْلِدْهَا " وَلَمْ يَذْكُرْ فِيهِ عَدَدَ الْجَلْدِ كَمْ هُوَ؟ فَصَحَّ أَنَّهُ إنَّمَا أَحَالَ - عَلَيْهِ السَّلَامُ - بَيَانَ الْجَلْدِ الْمَأْمُورِ بِهِ فِيهِ عَلَى الْقُرْآنِ، وَعَلَى الْخَبَرِ الَّذِي فِيهِ بَيَانُ حُكْمِ الْمَمْلُوكِ فِي الْحُدُودِ، فَإِذْ هُوَ كَذَلِكَ، فَلَيْسَ سُكُوتُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذِكْرِ التَّغْرِيبِ فِي ذَلِكَ الْخَبَرِ: حُجَّةً فِي إبْطَالِ التَّغْرِيبِ الَّذِي قَدْ صَحَّ أَمْرُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهِ فِيمَنْ زَنَى وَلَمْ يُحْصَنْ.

كَذَلِكَ لَيْسَ فِي سُكُوتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذِكْرِ عَدَدِ جَلْدِهَا كَمْ هُوَ: حُجَّةٌ فِي إسْقَاطِ مَا قَدْ صَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ أَنَّ حَدَّهَا نِصْفُ حَدِّ الْحُرَّةِ.

[33]**Qur'an references (L40701):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[34]**Qur'an references (L40703):** Qur'an 4:25 (An-Nisa).

evidence for abrogating what has been authentically established from him (peace be upon him) - that her ḥadd is half that of a free woman.

وَأَيْضًا - فَإِنَّ هَذَا الْخَبَرَ، لَيْسَ فِيهِ: أَنْ لَا تَغْرِيبَ، وَلَا أَنَّ التَّغْرِيبَ سَاقِطٌ عَنْهَا، لَكِنَّهُ مَسْكُوتٌ عَنْهُ فَقَطْ، وَإِذَا لَمْ يَكُنْ فِيهِ نَهْيٌ عَنْ تَغْرِيبِهَا، فَلَا يَجُوزُ أَنْ يَكُونَ هَذَا الْخَبَرُ مُعَارِضًا لِلْأَخْبَارِ الَّتِي فِيهَا النَّفْيُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40707 Moreover, this report does not state that there is no exile, nor that exile is waived for her; rather, it is simply silent on the matter. Since there is no prohibition against exiling her in it, this report cannot conflict with those reports in which there is negation of exile. And success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُهُمْ: إنَّ حَقَّ السَّيِّدِ فِي خِدْمَةِ عَبْدِهِ وَأَمَتِهِ، وَحَقَّ أَهْلِ الْمَرْأَةِ فِيهَا، فَلَا يَجُوزُ قَطْعُ حُقُوقِهِمْ بِنَفْيِ الْعَبْدِ، وَالْأَمَةِ، وَالْمَرْأَةِ؟ فَيُقَالُ لَهُمْ: لَيْسَ بِشَيْءٍ، لِأَنَّ حَقَّ الزَّوْجَةِ وَالْوَلَدِ أَيْضًا فِي زَوْجِهَا وَابْنِهِمْ، فَلَا يَجُوزُ قَطْعُهُ بِنَفْيِهِمْ.

L40708 Abū Muḥammad—may Allāh have mercy on him—said: Some of them argued: "Does the master's right to the service of his male and female slaves, and the right of a woman's family over her, not make it impermissible to terminate their rights by exiling the male slave, female slave, or woman?" They are told: This is baseless, for the right of the wife and child is also inherent in her husband and their son, and it cannot be severed by exiling them.

فَإِنْ ادَّعَوْا أَنَّ حَدِيثَ عُبَادَةَ مَنْسُوخٌ بِقَوْلِ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ؟ وَقَالُوا: لِأَنَّ حَدِيثَ عُبَادَةَ «خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» ؟ قَالُوا: صَحَّ أَنَّ هَذَا الْخَبَرَ كَانَ بَعْدَ قَوْلِ اللَّهِ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] الْآيَةَ.

L40709–40710 If they claimed that the ḥadīth of ʿUbādah is abrogated by Allah's statement {The adulteress and the adulterer...} [An-Nūr 24:2], and argued: "Because the ḥadīth of ʿUbādah states: 'Take from me, for Allah has prescribed a punishment for them'"—they replied: "It is authenticated that this report originated after Allah's statement {As for those women among you who commit adultery...} [An-Nisā' 4:15]."[35]

قَالَ: فَكَانَ السَّبِيلُ مَا ذُكِرَ فِي حَدِيثِ عُبَادَةَ مِنْ الْجَلْدِ وَالرَّجْمِ وَالتَّغْرِيبِ.

L40711 He said: Thus, the ruling was as stated in the Hadith of ʿUbādah concerning flogging, stoning, and exile.

ثُمَّ جَاءَ قَوْلُ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ، فَكَانَ نَاسِخًا لِخَبَرِ عُبَادَةَ.

L40712 Then came the verse of Allah, the Exalted: {The adulteress and the adulterer...} [An-Nur: 2] [...], thereby abrogating the hadith reported by Ubada.[36]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كَلَامٌ جَمَعَ التَّخْلِيطَ وَالْكَذِبَ، أَمَّا التَّخْلِيطُ: فَدَعْوَاهُمْ النَّسْخَ، وَأَمَّا الْكَذِبُ: فَهُوَ التَّحَكُّمُ مِنْهُمْ فِي أَوْقَاتِ نُزُولِ الْآيَةِ، وَمَا فِي خَبَرِ عُبَادَةَ بِلَا بُرْهَانٍ.

L40713 Abū Muḥammad—may God have mercy on him—said: This statement combines muddled reasoning and falsehood. As for the muddled reasoning, it is their claim of abrogation. As for the falsehood, it is their arbitrary assertions about the timing of the verse's revelation and what is in the narration of Ubāda without proof.

[35] **Qur'an references (L40710):** Qur'an 4:15 (An-Nisa); Qur'an 24:2 (An-Nur).
[36] **Qur'an references (L40712):** Qur'an 24:2 (An-Nur).

L40714 We clarify that—by the power of Allah Almighty and His might—and say: Their claim that the report of ʿUbāda occurred before the revelation of the verse due to what it contains—"Take from me, for Allah has appointed a way for them [women]"—is conjecture on their part. Allah Almighty has forbidden to assert based on conjecture, as He says: {They follow not except conjecture and what [their] souls desire} [An-Najm: 23].[37]

وَنَحْنُ نُبَيِّنُ ذَلِكَ - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ - فَنَقُولُ: إِنَّ دَعْوَاهُمْ أَنَّ خَبَرَ عُبَادَةَ كَانَ قَبْلَ نُزُولِ الْآيَةِ مِنْ أَجْلِ مَا فِيهِ «خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» فَظَنٌّ مِنْهُمْ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى الْقَطْعَ بِالظَّنِّ بِقَوْلِهِ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ} [النجم: ٢٣] .

L40715 And He, the Exalted, said: "And indeed, assumption does not avail against the truth at all." [An-Najm: 28][38]

وَقَالَ تَعَالَى {وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L40716 And by his saying—may Allah bless him and grant him peace—"Beware of suspicion, for indeed suspicion is the worst of false tales."

وَبِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L40717 However, the correct opinion in this matter is that definitively asserting whether the ḥadīth of ʿUbāda ibn al-Ṣāmit preceded the revelation of the verse *"As for the adulteress and the adulterer"* [al-Nūr: 2], or whether the revelation of this verse preceded the ḥadīth of ʿUbāda—it remains possible that ʿUbāda's ḥadīth predated the revelation of the aforementioned verse.[39]

لَكِنَّ الْقَوْلَ الصَّحِيحَ فِي هَذَا الْمَكَانِ، هُوَ أَنَّ الْقَطْعَ بِأَنَّ حَدِيثَ عُبَادَةَ كَانَ قَبْلَ نُزُولِ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ، أَوْ بِأَنَّ نُزُولَ هَذِهِ الْآيَةِ كَانَ قَبْلَ حَدِيثِ عُبَادَةَ، فَمِنْ الْمُمْكِنِ أَنْ يَكُونَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ.

L40718–40719 It is permissible that the revelation of the verse preceded the ḥadīth of ʿUbādah, and all of that is equal—whichever occurred, none of it opposes another, nor does any part conflict with another. There is no contradiction between the verse and the ḥadīth—as we shall clarify, Allah, Exalted, willing. Thus we say: If the ḥadīth of ʿUbādah preceded the revelation of the verse, then the ruling in the ḥadīth of ʿUbādah regarding flogging, exile, and stoning is confirmed. The verse mentioned part of what is in the ḥadīth of ʿUbādah, and Allah, Exalted, has directed us to the remainder of the ḥadd punishment as established in the ḥadīth of ʿUbādah.

وَجَائِزٌ أَنْ يَكُونَ نُزُولُ الْآيَةِ قَبْلَ حَدِيثِ عُبَادَةَ، وَكُلُّ ذَلِكَ سَوَاءٌ، أَيَّ ذَلِكَ كَانَ لَا يَعْتَرِضُ بَعْضُهُ عَلَى بَعْضٍ، وَلَا يُعَارِضُ شَيْءٌ مِنْهُ شَيْئًا، وَلَا خِلَافَ بَيْنَ الْآيَةِ وَالْحَدِيثِ - عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى - فَنَقُولُ: إِنَّهُ إِنْ كَانَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ، فَقَدْ صَحَّ مَا فِي حُكْمِ حَدِيثِ عُبَادَةَ مِنْ الْجَلْدِ، وَالتَّغْرِيبِ، وَالرَّجْمِ، وَكَانَتْ الْآيَةُ وَرَدَتْ بِبَعْضِ مَا فِي حَدِيثِ عُبَادَةَ، وَأَحَالَنَا اللَّهُ تَعَالَى فِي بَاقِي الْحَدِّ عَلَى مَا سَلَفَ فِي حَدِيثِ عُبَادَةَ.

L40720 Just as the verse was not considered by them to prevent stoning—which is mentioned in the ḥadīth of ʿUbāda before the revelation of the verse (according to their claim) even though it is not mentioned in it—similarly, it does not prevent exile, which is mentioned in the ḥadīth of ʿUbāda before

وَكَمَا لَمْ تَكُنْ الْآيَةُ مَانِعَةً عِنْدَهُمْ مِنْ الرَّجْمِ الَّذِي ذُكِرَ فِي حَدِيثِ عُبَادَةَ قَبْلَ نُزُولِهَا - بِزَعْمِهِمْ - وَلَمْ يُذْكَرْ فِيهَا، فَكَذَلِكَ لَيْسَتْ مَانِعَةً مِنْ التَّغْرِيبِ الَّذِي ذُكِرَ فِي حَدِيثِ عُبَادَةَ قَبْلَ نُزُولِهَا - بِزَعْمِهِمْ - وَلَمْ يُذْكَرْ فِيهَا، وَلَا فَرْقَ.

[37] **Qur'an references (L40714):** Qur'an 53:23 (An-Najm).
[38] **Qur'an references (L40715):** Qur'an 53:28 (An-Najm).
[39] **Qur'an references (L40717):** Qur'an 24:2 (An-Nur).

the revelation of the verse (according to their claim) even though it is not mentioned in it. There is no distinction.

L40721 This is the ruling that may not be transgressed if the hadith of ʾUbāda preceded the revelation of the verse, as they claimed. But if the hadith of ʾUbāda occurred after the revelation of the verse, then it indeed brought forth what is in the verse regarding flogging, along with the addition of stoning and exile - all of which are legally established. The statement of Allah's Messenger (peace and blessings be upon him) in ʾUbāda's hadith, "Allah has ordained a way for them," does not necessitate that the hadith must have occurred before the verse's revelation. Rather, the verse may have been revealed with part of what Allah the Exalted ordained for them, after which Allah's Messenger (peace and blessings be upon him) clarified the complete way in ʾUbāda's hadith - namely the stoning and exile which are added to the flogging mentioned in the verse. And with Allah the Exalted lies all success.

L40722 The issue of one who incurred a Ḥadd without knowing of its prohibition.

L40723–40725 2198 - Issue: Who commits an act requiring a prescribed punishment without knowing its prohibition? Abu Muhammad—may Allah have mercy on him—said: Whoever commits a prohibited act—whether it entails a prescribed punishment or not—while ignorant of Allah's prohibition of it is not held accountable—no sin, prescribed punishment, or blame—for it. However, they must be instructed. If they repeat the act, Allah's prescribed punishment is applied. If they claim ignorance, their case is examined. If that is possible, no prescribed punishment is imposed at all—though some have advocated his swearing an oath, but we hold that neither prescribed punishment nor oath is required. If it is certain they are lying, is their claim disregarded? Abu Muhammad said: The evidence for this is Allah's statement: *"That I may warn you thereby and whoever it reaches"* (6:19). Thus, the obligation is incumbent upon those who have received the warning, not those it does not reach. Allah also said: *"Allah does not burden a soul beyond its capacity"* (2:286). It is beyond anyone's capacity to know what has not reached them, for such knowledge is [...] Regarding the unseen, if that is not within one's

هَذَا هُوَ الْحُكْمُ الَّذِي لَا يَجُوزُ تَعَدِّيهِ إنْ كَانَ حَدِيثُ عُبَادَةَ قَبْلَ نُزُولِ الْآيَةِ، كَمَا ادَّعَوْا - وَإِنْ كَانَ حَدِيثُ عُبَادَةَ بَعْدَ نُزُولِ الْآيَةِ، فَقَدْ جَاءَ بِمَا فِي الْآيَةِ مِنْ الْجَلْدِ، وَزِيَادَةِ الرَّجْمِ، وَالتَّغْرِيبِ، وَكُلُّ ذَلِكَ حَقٌّ، وَلَمْ يَكُنْ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ عُبَادَةَ «قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا» بِمُوجِبٍ أَنْ يَكُونَ قَبْلَ نُزُولِ الْآيَةِ وَلَا بُدَّ، بَلْ قَدْ تَنْزِلُ الْآيَةُ بِبَعْضِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لَهُنَّ، ثُمَّ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ عُبَادَةَ تَمَامَ السَّبِيلِ، وَهُوَ الرَّجْمُ، وَالتَّغْرِيبُ الْمُضَافَانِ إلَى مَا فِي الْآيَةِ مِنْ الْجَلْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مَنْ أَصَابَ حَدًّا وَلَمْ يَدْرِ بِتَحْرِيمِهِ]

٢١٩٨ - مَسْأَلَةٌ: مَنْ أَصَابَ حَدًّا وَلَمْ يَدْرِ بِتَحْرِيمِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ أَصَابَ شَيْئًا مُحَرَّمًا - فِيهِ حَدٌّ أَوْ لَا حَدَّ فِيهِ - وَهُوَ جَاهِلٌ بِتَحْرِيمِ اللَّهِ تَعَالَى لَهُ فَلَا شَيْءَ عَلَيْهِ فِيهِ - لَا إثْمَ وَلَا حَدَّ وَلَا مَلَامَةَ - لَكِنْ يُعَلَّمُ، فَإِنْ عَادَ أُقِيمَ عَلَيْهِ حَدُّ اللَّهِ تَعَالَى، فَإِنْ ادَّعَى جَهَالَةً نُظِرَ، فَإِنْ كَانَ ذَلِكَ مُمْكِنًا فَلَا حَدَّ عَلَيْهِ أَصْلًا - وَقَدْ قَالَ قَوْمٌ بِتَحْلِيفِهِ، وَلَا نَرَى عَلَيْهِ حَدًّا، وَلَا تَحْلِيفًا - وَإِنْ كَانَ مُتَيَقَّنًا أَنَّهُ كَاذِبٌ لَمْ يُلْتَفَتْ إلَى دَعْوَاهُ؟ قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَإِنَّ الْحُجَّةَ عَلَى مَنْ بَلَغَتْهُ النِّذَارَةُ لَا مَنْ لَمْ تَبْلُغْهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَيْسَ فِي وُسْعِ أَحَدٍ أَنْ يَعْلَمَ مَا لَمْ يَبْلُغْهُ، لِأَنَّهُ عِلْمُ غَيْبٍ،

capacity, then Allah does not burden anyone beyond their capacity. Thus, they are not obligated in that matter, so there is no sin upon them for what they have not been tasked with, nor any ḥadd punishment, nor any blame.[40]

L40726 This obligation is lifted only from those capable of knowing and capable of ignorance, based on the words of the Messenger of Allah—may Allah bless him and grant him peace—: "Verily, your blood, your wealth, your honor, and your physical integrity are inviolable for you."

L40727 Numerous reports from the early generations exist regarding this matter. As narrated from Sa'īd ibn al-Musayyib: A governor appointed by 'Umar ibn al-Khaṭṭāb wrote to him informing that a man had confessed to adultery before him. 'Umar responded: "Ask him whether he knew it was prohibited. If he affirms this, implement the ḥadd punishment upon him. If he denies it, inform him that it is prohibited. If he subsequently repeats it, then implement the ḥadd punishment upon him."

L40728 From Al-Haytham ibn Badr, from Harqus, who said: A woman came to Ali ibn Abi Talib and said, "My husband has committed adultery with my slave girl." The husband, who was present, responded: "She has spoken the truth. The slave girl and her wealth are now lawful for him." Ali then said to him: "Go and do not repeat it," as if he had waived the prescribed punishment from him due to ignorance.

The Issue of the Apostate: Its Definition and Ruling

L40729

L40730 2199 - Issue: Apostates. Abu Muhammad—may Allah have mercy on him—said: Concerning every individual authentically established to have been a Muslim—renouncing all religions except the religion of Islam—and subsequently confirmed to have apostatized from Islam by adopting a scriptural religion, a non-scriptural religion, or abandoning religion altogether: people have differed regarding his ruling. Some scholars said: He is not to be offered repentance. Others said: He is to be offered repentance. Another group differentiated between one who concealed his apostasy and one who proclaimed it publicly. Yet another group distinguished between one born

[40]**Qur'an references (L40723):** Qur'an 6:19 (Al-An'am); Qur'an 2:286 (Al-Baqarah).

وَإِذَا لَمْ يَكُنْ ذَلِكَ فِي وُسْعِهِ فَلَا يُكَلِّفُ اللَّهُ أَحَدًا إِلَّا مَا فِي وُسْعِهِ، فَهُوَ غَيْرُ مُكَلَّفٍ تِلْكَ الْقِصَّةَ، فَلَا إِثْمَ عَلَيْهِ فِيمَا لَمْ يُكَلَّفْهُ، وَلَا حَدَّ وَلَا مَلَامَةَ.

وَإِنَّمَا سَقَطَ هَذَا عَمَّنْ يُمْكِنُ أَنْ يَعْلَمَ، وَيُمْكِنُ أَنْ يَجْهَلَ، فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَدْ جَاءَتْ فِي هَذَا عَنْ السَّلَفِ آثَارٌ كَثِيرَةٌ: كَمَا رُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عَامِلًا لِعُمَرَ بْنِ الْخَطَّابِ كَتَبَ إلَى عُمَرَ يُخْبِرُهُ: أَنَّ رَجُلًا اعْتَرَفَ عِنْدَهُ بِالزِّنَى؟ فَكَتَبَ إلَيْهِ عُمَرُ، أَنْ سَلْهُ: هَلْ كَانَ يَعْلَمُ أَنَّهُ حَرَامٌ، فَإِنْ قَالَ: نَعَمْ، فَأَقِمْ عَلَيْهِ الْحَدَّ، وَإِنْ قَالَ: لَا، فَأَعْلِمْهُ أَنَّهُ حَرَامٌ، فَإِنْ عَادَ فَاحْدُدْهُ.

وَعَنْ الْهَيْثَمِ بْنِ بَدْرٍ عَنْ حَرْقُوصٍ قَالَ: أَتَتْ امْرَأَةٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَتْ: إنَّ زَوْجِي زَنَى بِجَارِيَتِي، فَقَالَ: صَدَقَتْ، هِيَ وَمَالُهَا لِي حِلٌّ، فَقَالَ لَهُ عَلِيٌّ: اذْهَبْ وَلَا تَعُدْ، كَأَنَّهُ دَرَأَ عَنْهُ الْحَدَّ بِالْجَهَالَةِ؟

[مَسْأَلَة الْمُرْتَدّ تَعْرِيفه وَحُكْمه]

٢١٩٩ - مَسْأَلَةٌ: الْمُرْتَدِّينَ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: كُلُّ مَنْ صَحَّ عَنْهُ أَنَّهُ كَانَ مُسْلِمًا مُتَبَرِّئًا مِنْ كُلِّ دِينٍ - حَاشَ دِينِ الْإِسْلَامِ ثُمَّ ثَبَتَ عَنْهُ أَنَّهُ ارْتَدَّ عَنْ الْإِسْلَامِ، وَخَرَجَ إلَى دِينٍ كِتَابِيٍّ، أَوْ غَيْرِ كِتَابِيٍّ، أَوْ إلَى غَيْرِ دِينٍ، فَإِنَّ النَّاسَ اخْتَلَفُوا فِي حُكْمِهِ؟ فَقَالَتْ طَائِفَةٌ: لَا يُسْتَتَابُ - وَقَالَتْ طَائِفَةٌ: يُسْتَتَابُ، وَفَرَّقَتْ طَائِفَةٌ بَيْنَ مَنْ أَسَرَّ رِدَّتَهُ وَبَيْنَ مَنْ أَعْلَنَهَا - وَفَرَّقَتْ طَائِفَةٌ بَيْنَ مَنْ وُلِدَ فِي الْإِسْلَامِ ثُمَّ ارْتَدَّ، وَبَيْنَ مَنْ أَسْلَمَ بَعْدَ كُفْرِهِ ثُمَّ ارْتَدَّ.

into Islam who later apostatized and one who embraced Islam after prior disbelief and subsequently apostatized.

وَنَحْنُ ذَاكِرُونَ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ: فَأَمَّا مَنْ قَالَ: لَا يُسْتَتَابُونَ، فَانْقَسَمُوا قِسْمَيْنِ: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْمُرْتَدُّ، تَابَ أَوْ لَمْ يَتُبْ، رَاجَعَ الْإِسْلَامَ أَوْ لَمْ يُرَاجِعْ.

L40731–40733 We shall mention—if Allah the Exalted wills—what He, the Exalted, has facilitated for His remembrance. As for those who said, "They are not to be called to repent," they were divided into two groups. A group held the opinion: The apostate must be executed, whether he repented or not, or retracted his apostasy or not.

وَقَالَتْ طَائِفَةٌ: إِنْ بَادَرَ فَتَابَ قُبِلَتْ مِنْهُ تَوْبَتُهُ، وَسَقَطَ عَنْهُ الْقَتْلُ، وَإِنْ لَمْ تَظْهَرْ تَوْبَتُهُ أُنْفِذَ عَلَيْهِ الْقَتْلُ.

L40734 A group said: If he hastens to repent, his repentance is accepted and the death penalty is waived. If his repentance does not manifest, the death penalty is implemented against him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ، فَإِنَّهُمْ انْقَسَمُوا أَقْسَامًا: فَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ مَرَّةً فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40735 As for those who maintained that he should be summoned to repent, they split into groups: one group said, "We summon him to repent once; if he repents, [it is accepted]; otherwise, we kill him."

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ ثَلَاثَ مَرَّاتٍ، فَإِنْ تَابَ، وَإِلَّا قَتَلْنَاهُ.

L40736 A group said: We formally demand his repentance three times. If he repents; otherwise, we will execute him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ شَهْرًا، فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40737 And a group said: We grant him a month to repent. If he repents, well and good; otherwise, we will kill him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ ثَلَاثَةَ أَيَّامٍ فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40738 And a group said: We grant him three days to repent. If he repents, [well and good]; otherwise, we kill him.

وَطَائِفَةٌ قَالَتْ: نَسْتَتِيبُهُ مِائَةَ مَرَّةٍ، فَإِنْ تَابَ وَإِلَّا قَتَلْنَاهُ.

L40739 And a faction said: "We demand that he repent a hundred times. If he repents, then; otherwise, we will kill him."

وَطَائِفَةٌ قَالَتْ: يُسْتَتَابُ أَبَدًا، وَلَا يُقْتَلُ.

L40740 A group maintained that he must perpetually be called to repent and not be executed.

فَأَمَّا مَنْ فَرَّقَ بَيْنَ الْمُسِرِّ وَالْمُعْلِنِ: فَإِنَّ طَائِفَةً قَالَتْ: مَنْ أَسَرَّ رِدَّتَهُ قَتَلْنَاهُ دُونَ اسْتِتَابَةٍ، وَلَمْ نَقْبَلْ تَوْبَتَهُ، وَمَنْ أَعْلَنَهَا قَبِلْنَا تَوْبَتَهُ.

L40741 As for those who differentiate between the concealed apostate and the open one: a group has stated, "Whoever conceals his apostasy, we execute him without inviting repentance and do not accept his repentance, while whoever openly declares it, we accept his repentance."

L40742 A faction said: If the secretive sinner admits and is sincere in his intention, we accept his repentance. But if he neither admits nor is sincere in his

intention, we kill him and do not accept his repentance. They said: As for the public sinner, his repentance is accepted.

وَطَائِفَةٌ قَالَتْ: إِنْ أَقَرَّ الْمُسِرُّ وَصَدَقَ النِّيَّةَ قَبِلْنَا تَوْبَتَهُ، وَإِنْ لَمْ يُقِرَّ وَلَا صَدَقَ النِّيَّةَ قَتَلْنَاهُ وَلَمْ نَقْبَلْ تَوْبَتَهُ - قَالَ هَؤُلَاءِ: وَأَمَّا الْمُعْلِنُ فَتُقْبَلُ تَوْبَتُهُ.

L40743 And a group said: There is no distinction between those who conceal [sins] and those who commit them openly in any aspect of this matter: another group accepted the repentance of both together—whether the concealer acknowledged or did not acknowledge.

وَطَائِفَةٌ قَالَتْ: لَا فَرْقَ بَيْنَ الْمُسِرِّ وَالْمُعْلِنِ فِي شَيْءٍ مِنْ ذَلِكَ: فَطَائِفَةٌ قَبِلَتْ تَوْبَتَهُمَا مَعًا - أَقَرَّ الْمُسِرُّ أَوْ لَمْ يُقِرَّ.

L40744 And a group did not accept the repentance of one [acting] secretly or openly. Abu Muhammad—may Allah have mercy on him—said: They also differed concerning the disbelieving *dhimmi* or the *harbi* when both of them abandon one disbelief for another. A group said: They are left in that state and neither is prevented from it.

وَطَائِفَةٌ: لَمْ تَقْبَلْ تَوْبَةَ مُسِرٍّ وَلَا مُعْلِنٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاخْتَلَفُوا أَيْضًا فِي الْكَافِرِ الذِّمِّيِّ، أَوِ الْحَرْبِيِّ يَخْرُجَانِ مِنْ كُفْرٍ إِلَى كُفْرٍ: فَقَالَتْ طَائِفَةٌ: يُتْرَكَانِ عَلَى ذَلِكَ، وَلَا يُمْنَعَانِ مِنْهُ.

L40745 And a group said: The two are not to be left in that state at all.

وَقَالَتْ طَائِفَةٌ: لَا يُتْرَكَانِ عَلَى ذَلِكَ أَصْلًا.

L40746–40748 Then these people divided into two groups: A group said: If the *dhimmi* returns to the religion he had abandoned, he is spared; otherwise, he is killed.

ثُمَّ افْتَرَقَ هَؤُلَاءِ فِرْقَتَيْنِ: فَقَالَتْ طَائِفَةٌ: إِنْ رَجَعَ الذِّمِّيُّ إِلَى دِينِهِ الَّذِي خَرَجَ عَنْهُ تُرِكَ، وَإِلَّا قُتِلَ.

L40749 A group has said: Nothing is accepted from him except Islam alone—otherwise he must be killed. He is not left in the religion he turned to, nor permitted to return to the religion he abandoned. If he embraces Islam, he is spared; if he refuses, he must inevitably be killed.

وَقَالَتْ طَائِفَةٌ: لَا يُقْبَلُ مِنْهُ شَيْءٌ غَيْرُ الْإِسْلَامِ وَحْدَهُ، وَإِلَّا قُتِلَ، وَلَا يُتْرَكُ عَلَى الدِّينِ الَّذِي خَرَجَ إِلَيْهِ، وَلَا يُتْرَكُ أَيْضًا أَنْ يَرْجِعَ إِلَى الَّذِي خَرَجَ عَنْهُ، لَكِنْ إِنْ أَسْلَمَ تُرِكَ، وَإِنْ أَبَى قُتِلَ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ نِي حَمَّادُ بْنُ مَسْعَدَةَ نا قُرَّةُ - هُوَ ابْنُ خَالِدٍ - عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَهُ إِلَى الْيَمَنِ ثُمَّ أَرْسَلَ مُعَاذَ بْنَ جَبَلٍ بَعْدَ ذَلِكَ فَلَمَّا قَدِمَ قَالَ: يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَيْكُمْ، فَأَلْقَى لَهُ أَبُو مُوسَى

Abū Muḥammad—may Allāh have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Muḥammad ibn Bashshār, from Ḥammād ibn Masʿadah, from Qurrah—that is, Ibn Khālid—from Ḥumayd ibn Hilāl, from Abū Burdah ibn Abī Mūsā al-Ashʿarī, from his father:

"The Prophet—peace and blessings of Allāh be upon him—sent him to Yemen, then later dispatched Muʿādh ibn Jabal. When Muʿādh arrived, he proclaimed: 'O people, I am the messenger of the Messenger of Allāh—peace and blessings of Allāh be upon him—to you!' Abū Mūsā placed a cushion for him to sit upon. A man who had been a Jew, then embraced Islam, then

apostatized was brought forth. Muʿādh declared: ’I will not sit until he is slain—the decree of Allāh and His Messenger!’—repeating this three times. When the man was killed, Muʿādh sat down.”[41]

L40750 From the chain of Al-Bukhari: He reported to us from Yahya ibn Sa‘id Al-Qattan, from Qurrah ibn Khalid, who said: Humaid ibn Hilal narrated to me, informing me that Abu Burdah ibn Abi Musa Al-Ash‘ari reported from Abu Musa Al-Ash‘ari that the Messenger of Allah—peace and blessings be upon him—said to him: “Go yourself, O Abu Musa—or O ‘Abdullah ibn Qays—to Yemen.” Then he sent Mu‘adh ibn Jabal after him. When Mu‘adh arrived to him, he placed a cushion for him. He said: There was a man bound. He asked: “What is this?” He replied: “He was a Jew who embraced Islam then reverted to Judaism.” Mu‘adh said: “I will not sit until he is killed—this is the judgment of Allah and His Messenger!” repeating this three times. He then commanded that he be killed, in a hadith.

L40751 From Ayyub al-Sikhtiyānī, from ʿIkrimah, who said: ʿAlī ibn Abī Ṭālib was brought some heretics, and he burned them. When this reached Ibn ʿAbbās, he said: “Had I been in his position, I would not have burned them, due to the prohibition of the Messenger of Allah (peace be upon him): ’Do not punish with Allah’s punishment.’ And I would have killed them.” He then related the remainder of the ḥadīth.

L40752–40754 And from Abu ‘Amr al-Shaybani: A man from Banu ‘Ijl embraced Christianity, so ‘Uyaynah ibn Furqad al-Sulami wrote to ‘Ali ibn Abi Talib regarding this matter. ‘Ali instructed that the man be brought to him. He was brought and laid before him—a man wearing coarse woolen garments, shackled in iron chains. ‘Ali engaged him in prolonged discourse. And he was silent—so he said, “I do not know what you are saying, except that I know Jesus is the Son of God.” When he said this, Ali rose to him and subdued him. When the people saw this: that Ali had subdued him, they stood and joined in subduing him. Ali said, “Seize him!” So they seized him until they killed him. Then Ali ordered that he be burned with fire.

وِسَادَةً لِيَجْلِسَ عَلَيْهَا، فَأُتِيَ بِرَجُلٍ كَانَ يَهُودِيًّا فَأَسْلَمَ ثُمَّ كَفَرَ، فَقَالَ مُعَاذٌ: لَا أَجْلِسُ حَتَّى يُقْتَلَ: قَضَاءُ اللَّهِ وَرَسُولِهِ - ثَلَاثَ مَرَّاتٍ - فَلَمَّا قُتِلَ قَعَدَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ قُرَّةَ بْنِ خَالِدٍ، قَالَ: حَدَّثَنِي حُمَيْدُ بْنُ هِلَالٍ أَخْبَرَنِي أَبُو بُرْدَةَ بْنُ أَبِي مُوسَى الْأَشْعَرِيُّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ «اذْهَبْ أَنْتَ يَا أَبَا مُوسَى، أَوْ يَا عَبْدَ اللَّهِ بْنَ قَيْسٍ إِلَى الْيَمَنِ ثُمَّ أَتْبَعَهُ مُعَاذَ بْنَ جَبَلٍ، فَلَمَّا قَدِمَ عَلَيْهِ أَلْقَى لَهُ وِسَادَةً، قَالَ: وَإِذَا رَجُلٌ مُوثَقٌ، فَقَالَ: مَا هَذَا؟ قَالَ: كَانَ يَهُودِيًّا فَأَسْلَمَ ثُمَّ تَهَوَّدَ، قَالَ: لَا أَجْلِسُ حَتَّى يُقْتَلَ: قَضَاءُ اللَّهِ وَرَسُولِهِ - ثَلَاثَ مَرَّاتٍ - فَأَمَرَ بِهِ فَقُتِلَ» فِي حَدِيثٍ.

وَعَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِزَنَادِقَةٍ فَأَحْرَقَهُمْ، فَبَلَغَ ذَلِكَ ابْنَ عَبَّاسٍ فَقَالَ: لَوْ كُنْت أَنَا لَمْ أُحْرِقْهُمْ، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُعَذِّبُوا بِعَذَابِ اللَّهِ» وَلَقَتَلْتهمْ، وَذَكَرَ بَاقِيَ الْحَدِيثِ.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ أَنَّ رَجُلًا مِنْ بَنِي عِجْلٍ تَنَصَّرَ، فَكَتَبَ بِذَلِكَ عُيَيْنَةَ بْنُ فَرْقَدٍ السُّلَمِيُّ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَكَتَبَ عَلِيٌّ: أَنْ يُؤْتَى بِهِ، فَجِيءَ بِهِ حَتَّى طُرِحَ بَيْنَ يَدَيْهِ رَجُلٌ - أَشْعَرُ عَلَيْهِ ثِيَابُ صُوفٍ - مَوْثُوقٌ فِي الْحَدِيدِ، فَكَلَّمَهُ عَلِيٌّ فَأَطَالَ كَلَامَهُ وَهُوَ سَاكِتٌ - فَقَالَ: لَا أَدْرِي مَا تَقُولُ؟ غَيْرَ أَنِّي أَعْلَمُ أَنَّ عِيسَى ابْنُ اللَّهِ، فَلَمَّا قَالَهَا قَامَ إِلَيْهِ عَلِيٌّ فَوَطِئَهُ، فَلَمَّا رَأَى النَّاسُ: أَنَّ عَلِيًّا قَدْ وَطِئَهُ قَامُوا فَوَطِئُوهُ، فَقَالَ عَلِيٌّ: أَمْسِكُوا، فَأَمْسَكُوا حَتَّى قَتَلُوهُ، ثُمَّ أَمَرَ بِهِ عَلِيٌّ فَأُحْرِقَ بِالنَّارِ.

[41] **Qur’an references (L40749):** Qur’an 7:158 (Al-A’raf).

L40755 Anas ibn Malik reported: Abu Musa al-Ash'ari sent me to Umar ibn al-Khattab during the conquest of Tustar. Umar questioned me - six individuals from the tribe of Bakr ibn Wa'il had apostatized from Islam and joined the polytheists - asking, "What became of the group from Bakr?" I began discussing another matter to divert his attention from them. He repeated, "What became of the group from Bakr ibn Wa'il?" I replied, "O Commander of the Faithful, they are people who apostatized from Islam and joined the polytheists. Their fate is none but execution." Umar said, "Had I captured them peacefully, it would have been dearer to me than all the gold or silver the sun has ever risen upon" - and he mentioned the remainder of the report.

وَعَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: بَعَثَنِي أَبُو مُوسَى الْأَشْعَرِيُّ بِفَتْحِ تُسْتَرَ إِلَى عُمَرَ بْنِ الْخَطَّابِ، فَسَأَلَنِي عُمَرُ - وَكَانَ نَفَرٌ سِتَّةٌ مِنْ بَكْرِ بْنِ وَائِلٍ قَدْ ارْتَدُّوا عَنِ الْإِسْلَامِ وَلَحِقُوا بِالْمُشْرِكِينَ - فَقَالَ: مَا فَعَلَ النَّفَرُ مِنْ بَكْرٍ؟ قَالَ: فَأَخَذْت فِي حَدِيثٍ آخَرَ لِأَشْغَلَهُ عَنْهُمْ، فَقَالَ: مَا فَعَلَ النَّفَرُ مِنْ بَكْرِ بْنِ وَائِلٍ؟ قُلْت: يَا أَمِيرَ الْمُؤْمِنِينَ قَوْمٌ ارْتَدُّوا عَنِ الْإِسْلَامِ، وَلَحِقُوا بِالْمُشْرِكِينَ، مَا سَبِيلُهُمْ إلَّا الْقَتْلُ؟ فَقَالَ عُمَرُ: لَأَنْ أَكُونَ أَخَذْتهمْ سِلْمًا أَحَبُّ إلَيَّ مِمَّا طَلَعَتْ عَلَيْهِ الشَّمْسُ مِنْ صَفْرَاءَ أَوْ بَيْضَاءَ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L40756 As for those who said: He should be given one opportunity to repent; if he repents, he is spared—otherwise he is to be executed—this ruling derives from the narration we transmitted via Abd al-Razzaq's chain: from Ma'mar, from al-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utba ibn Mas'ud, from his father, who stated: Ibn Mas'ud arrested a group of Iraqi apostates. He consulted Uthman regarding them, and Uthman responded: "Present them with the true religion and the testimony that there is no deity but Allah. If they accept it, release them; if they reject it, execute them." Some accepted and were spared, while others rejected and were executed.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ مَرَّةً، فَإِنْ تَابَ وَإِلَّا قُتِلَ: لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: أَخَذَ ابْنُ مَسْعُودٍ قَوْمًا ارْتَدُّوا عَنِ الْإِسْلَامِ مِنْ أَهْلِ الْعِرَاقِ، فَكَتَبَ فِيهِمْ إلَى عُثْمَانَ، فَرَدَّ إلَيْهِ عُثْمَانُ: أَنْ اعْرِضْ عَلَيْهِمْ دِينَ الْحَقِّ، وَشَهَادَةَ أَنْ لَا إلَهَ إلَّا اللَّهُ، فَإِنْ قَبِلُوهَا، فَخَلِّ عَنْهُمْ وَإِنْ لَمْ يَقْبَلُوهَا، فَاقْتُلْهُمْ - فَقَبِلَهَا بَعْضُهُمْ فَتَرَكَهُ، وَلَمْ يَقْبَلْهَا بَعْضُهُمْ فَقَتَلَهُ.

L40757 From Abu Amr al-Shaybani, who said: An elderly man who had been Christian, embraced Islam, then apostatized from Islam was brought before Ali ibn Abi Talib. Ali said to him: "Perhaps you apostatized merely to seize inheritance and then return to Islam?" The man said: "No." Ali said: "Or perhaps you proposed to a woman, so they refused to marry her to you, and you wished to marry her and then return to Islam?" The man said: "No." Ali said: "Then return to Islam?" The man said: "No, not until I meet the Messiah." Ali then ordered him to be beheaded and handed over his inheritance to his Muslim children.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِشَيْخٍ كَانَ نَصْرَانِيًّا فَأَسْلَمَ، ثُمَّ ارْتَدَّ عَنِ الْإِسْلَامِ؟ فَقَالَ لَهُ عَلِيٌّ: لَعَلَّك إنَّمَا ارْتَدَدْت لِأَنْ تُصِيبَ مِيرَاثًا ثُمَّ تَرْجِعَ إلَى الْإِسْلَامِ؟ قَالَ: لَا، قَالَ: فَلَعَلَّك خَطَبْت امْرَأَةً فَأَبَوْا أَنْ يُزَوِّجُوكَهَا فَأَرَدْت أَنْ تَزَوَّجَهَا ثُمَّ تَعُودَ إلَى الْإِسْلَامِ؟ قَالَ: لَا، قَالَ: فَارْجِعْ إلَى الْإِسْلَامِ؟ قَالَ: لَا، حَتَّى أَلْقَى الْمَسِيحَ، قَالَ: فَأَمَرَ بِهِ عَلِيٌّ فَضُرِبَتْ عُنُقُهُ، وَدَفَعَ مِيرَاثَهُ إلَى وُلْدِهِ الْمُسْلِمِينَ.

L40758 From Abu Amr al-Shaybani: Al-Miswar al-Ijli apostatized to Christianity after becoming Muslim, so Utbah ibn Abi Waqqas sent him to Ali. Ali demanded his repentance, but he did not repent, so Ali killed him. The Chris-

tians requested his corpse for thirty thousand, but Ali refused and burned him.

وَعَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ الْمِسْوَرَ الْعِجْلِيَّ تَنَصَّرَ بَعْدَ إِسْلَامِهِ فَبَعَثَ بِهِ عُتْبَةُ بْنُ أَبِي وَقَّاصٍ إِلَى عَلِيٍّ فَاسْتَتَابَهُ فَلَمْ يَتُبْ، فَقَتَلَهُ، فَسَأَلَهُ النَّصَارَى جِيفَتَهُ بِثَلَاثِينَ أَلْفًا، فَأَبَى عَلِيٌّ وَأَحْرَقَهُ.

L40759–40761 As for the one who said, "He is to be called to repent three times," this ruling derives from what was narrated to us through ʿAbd al-Razzāq's transmission from Ibn Jurayj, who reported from Sulaymān ibn Mūsā that he informed him... It was conveyed to the narrator from Uthman ibn Affan that a man disbelieved after having believed. Uthman summoned him to Islam three times, but he refused, so Uthman killed him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ ثَلَاثَ مَرَّاتٍ: فَلِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ مُوسَى أَنَّهُ بَلَغَهُ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّهُ كَفَرَ إِنْسَانٌ بَعْدَ إِيمَانِهِ، فَدَعَاهُ إِلَى الْإِسْلَامِ - ثَلَاثًا - فَأَبَى، فَقَتَلَهُ.

L40762 And through him—up to Abd al-Razzaq via Ibn Jurayj—Hayyan narrated to me from Ibn Shihab: that he said: If a Muslim commits shirk, he is called to Islam three times; if he refuses, his neck is to be struck.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي حَيَّانُ عَنِ ابْنِ شِهَابٍ: أَنَّهُ قَالَ: إِذَا أَشْرَكَ الْمُسْلِمُ دُعِيَ إِلَى الْإِسْلَامِ - ثَلَاثَ مَرَّاتٍ - فَإِنْ أَبَى ضُرِبَتْ عُنُقُهُ.

L40763 As for those who hold the opinion that he should be given three days to repent—if he repents, he is spared; otherwise, he is to be executed—this is the opinion of Mālik, his followers, and one of the two opinions of al-Shāfiʿī.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ ثَلَاثَةَ أَيَّامٍ، فَإِنْ تَابَ وَإِلَّا قُتِلَ، فَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L40764 As for the one who said: he must be summoned to repent once. If he repents, [well and good]; otherwise, he is to be killed—this is the opinion of al-Ḥasan ibn Ḥayyin.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ مَرَّةً فَإِنْ تَابَ وَإِلَّا قُتِلَ: فَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L40765 As for the one who said "He should be given a month to repent" - it has been narrated to us through the chain of ʿAbd al-Razzāq: I am ʿUthmān, from Saʿīd ibn Abī ʿArūbah, from Abū al-ʿAlā', from Abū ʿUthmān al-Nahdī that ʿAlī gave a man who apostatized after embracing Islam a month to repent. When he refused, ʿAlī executed him.

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ شَهْرًا فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا عُثْمَانُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَبِي الْعَلَاءِ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ: أَنَّ عَلِيًّا اسْتَتَابَ رَجُلًا كَفَرَ بَعْدَ إِسْلَامِهِ شَهْرًا؟ فَأَبَى، فَقَتَلَهُ.

L40766 This has been reported from Mālik and some of the adherents of his school of thought.

وَقَدْ رُوِيَ هَذَا عَنْ مَالِكٍ، وَعَنْ بَعْضِ أَهْلِ مَذْهَبِهِ.

L40767 As for those who said, "He is to be given two months to repent," this is as narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb from Ḥumayd ibn Hilāl from Abū Burdah, who said: "Muʿādh ibn Jabal came to Abū Mūsā al-Ashʿarī from Yemen, and there was a man with

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ شَهْرَيْنِ: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ أَبِي بُرْدَةَ قَالَ: «قَدِمَ عَلَى أَبِي مُوسَى الْأَشْعَرِيِّ مُعَاذُ بْنُ جَبَلٍ

him. He asked, 'Who is this?' They replied, 'A man who was a Jew, then embraced Islam, then reverted to Judaism. We have been urging him back to Islam for two months—I think he said—.' Muʿādh said, 'By Allah, I will not sit until you behead him!' So he was beheaded. Then Muʿādh said, 'This is the decree of Allah and His Messenger.'"

مِنْ الْيَمَنِ وَإِذَا بِرَجُلٍ عِنْدَهُ، فَقَالَ: مَا هَذَا؟ فَقَالَ رَجُلٌ كَانَ يَهُودِيًّا فَأَسْلَمَ، ثُمَّ تَهَوَّدَ وَنَحْنُ نُرِيدُهُ عَلَى الْإِسْلَامِ، مُنْذُ - أَحْسِبُهُ قَالَ - شَهْرَيْنِ، قَالَ مُعَاذٌ: وَاللَّهِ لَا أَقْعُدُ حَتَّى تَضْرِبُوا عُنُقَهُ، فَضُرِبَتْ عُنُقُهُ، ثُمَّ قَالَ مُعَاذٌ: قَضَاءُ اللَّهِ وَرَسُولِهِ.»

L40768 Abdul-Wahhāb—he is the son of ʿAṭāʾ al-Khaffāf—narrated to us: Saʿīd narrated from Ayyūb from Ḥumayd ibn Hilāl that Muʿādh ibn Jabal came to Abū Mūsā in Yemen and found with him a man who had apostatized to Judaism. Abū Mūsā had been inviting him to Islam for two months. Muʿādh said, "By Allah, I will not rest until I kill him—the judgment of Allah and His Messenger."

حَدَّثَنَا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - أَنَا سَعِيدٌ عَنْ أَيُّوبَ عَنْ حُمَيْدِ بْنِ هِلَالٍ «أَنَّ مُعَاذَ بْنَ جَبَلٍ قَدِمَ عَلَى أَبِي مُوسَى الْيَمَنَ فَوَجَدَ عِنْدَهُ رَجُلًا قَدْ تَهَوَّدَ وَعَرَضَ عَلَيْهِ أَبُو مُوسَى الْإِسْلَامَ شَهْرَيْنِ، فَقَالَ مُعَاذٌ: وَاللَّهِ لَا أَجْلِسُ حَتَّى أَقْتُلَهُ، قَضَاءَ اللَّهِ وَرَسُولِهِ.»

L40769–40771 As for the one who said, "He is to be perpetually called to repentance without being killed" — then because ʿAbdullāh ibn Rabīʿ narrated from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Dāwūd — that is, Ibn Abī Hind — from al-Shaʿbī, from... Anas ibn Malik reported that Abu Musa al-Ash'ari killed Juhaynah the Liar and his companions. Anas said: "I came to Umar ibn al-Khattab, and he asked: 'What became of Juhaynah and his companions?'" Anas said: "I pretended not to hear him three times, then I said: 'O Commander of the Faithful, was there no alternative but to kill them?' Umar replied: 'Had you brought them to me, I would have offered them Islam. If they had repented, [it would suffice]; otherwise, I would have imprisoned them.'"

وَأَمَّا مَنْ قَالَ: يُسْتَتَابُ أَبَدًا دُونَ قَتْلٍ: فَلِمَا أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ أَنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ أَنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ سَلَمَةَ أَنَا دَاوُد - هُوَ ابْنُ أَبِي هِنْدٍ - عَنْ الشَّعْبِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَتَلَ جُحَيْنَةَ الْكَذَّابَ، وَأَصْحَابَهُ، قَالَ أَنَسٌ: فَقَدِمْتُ عَلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ: مَا فَعَلَ جُحَيْنَةُ، وَأَصْحَابُهُ؟ قَالَ: فَتَغَافَلْت عَنْهُ - ثَلَاثَ مَرَّاتٍ، فَقُلْت: يَا أَمِيرَ الْمُؤْمِنِينَ، وَهَلْ كَانَ سَبِيلٌ إلَّا الْقَتْلُ؟ فَقَالَ عُمَرُ: لَوْ أَتَيْت بِهِمْ لَعَرَضْت عَلَيْهِمْ الْإِسْلَامَ، فَإِنْ تَابُوا وَإِلَّا اسْتَوْدَعْتهمْ السِّجْنَ.

L40772 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, who said: Muḥammad ibn ʿAbd al-Raḥmān ibn ʿAbd al-Qārī informed me from his father, who said: Majzaʾah ibn Thawr—or Shaqīq ibn Thawr—came to ʿUmar to announce the conquest of Tustar. ʿUmar said to him: "Was there any significant event to report?" He replied: "None, save that an Arab man apostatized, so we struck his neck." ʿUmar said: "Woe to you! Why did you not confine him behind a clay wall, make an aperture in it, feed him a loaf of bread daily through it, and give him a jug of water for three days? Then

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ الْقَارِيِّ عَنْ أَبِيهِ، قَالَ: قَدِمَ مَجْزَأَةُ بْنُ ثَوْرٍ، أَوْ شَقِيقُ بْنُ ثَوْرٍ عَلَى عُمَرَ يُبَشِّرُهُ بِفَتْحِ تُسْتَرَ فَقَالَ لَهُ عُمَرُ: هَلْ كَانَتْ مُغْرِبَةٌ يُخْبِرُنَا بِهَا؟ قَالَ: لَا إلَّا أَنَّ رَجُلًا مِنْ الْعَرَبِ ارْتَدَّ فَضَرَبْنَا عُنُقَهُ، قَالَ عُمَرُ: وَيْحَكُمْ، فَهَلَّا طَيَّنْتُمْ عَلَيْهِ بَابًا، وَفَتَحْتُمْ لَهُ كُوَّةً فَأَطْعَمْتُمُوهُ

on the third day, you could have offered him Islam anew, so that he might perhaps return. O Allah, I was not present, did not command, and had no knowledge."

كُلَّ يَوْمٍ مِنْهَا رَغِيفًا، وَسَقَيْتُمُوهُ كُوزًا مِنْ مَاءٍ ثَلَاثَةَ أَيَّامٍ، ثُمَّ عَرَضْتُمْ عَلَيْهِ الْإِسْلَامَ فِي الثَّالِثَةِ، فَلَعَلَّهُ أَنْ يَرْجِعَ، اللَّهُمَّ لَمْ أَحْضُرْ، وَلَمْ آمُرْ، وَلَمْ أَعْلَمْ.

L40773 As for he who said forty days: this is based on what was narrated to us through Ibn Waḍḍāḥ's chain: I, Sahnoon ibn Wahb, from Maslamah ibn ʿAlī from a man from Qatādah that a Jewish man embraced Islam then apostatized. Abū Mūsā al-Ashʿarī imprisoned him for forty days while urging him to Islam. When Muʿādh ibn Jabal came and saw him with Abū Mūsā, he said: "I will not dismount until you strike his neck!" He did not dismount until the man's neck was struck.

وَأَمَّا مَنْ قَالَ: أَرْبَعِينَ يَوْمًا: فَلِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ عَنْ رَجُلٍ عَنْ قَتَادَةَ أَنَّ رَجُلًا يَهُودِيًّا أَسْلَمَ ثُمَّ ارْتَدَّ عَنِ الْإِسْلَامِ، فَحَبَسَهُ أَبُو مُوسَى الْأَشْعَرِيُّ أَرْبَعِينَ يَوْمًا يَدْعُوهُ إِلَى الْإِسْلَامِ، فَأَتَاهُ مُعَاذُ بْنُ جَبَلٍ فَرَآهُ عِنْدَهُ فَقَالَ: لَا أَنْزِلُ حَتَّى تَضْرِبَ عُنُقَهُ؟ فَلَمْ يَنْزِلْ حَتَّى ضُرِبَتْ عُنُقُهُ.

L40774 As for one who shifts from one disbelief to another, Abu Hanifah and Malik both held that his status is affirmed, and he is not challenged.

وَأَمَّا مَنِ ارْتَدَّ مِنْ كُفْرٍ إِلَى كُفْرٍ، فَإِنَّ أَبَا حَنِيفَةَ، وَمَالِكًا قَالَا جَمِيعًا: يُقَرُّ عَلَى ذَلِكَ وَلَا يُعْتَرَضُ عَلَيْهِ.

L40775 And Al-Shafi'i, Abu Sulayman, and their followers said: They are not to be confirmed in that.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا يُقَرُّ عَلَى ذَلِكَ.

L40776 Then the statements of Al-Shāfiʿī differed: At one point he said, "If he returns to the apostasy for which he was condemned, otherwise he is killed, unless he embraces Islam." At another point he stated, "His reversion to the religion he abandoned is not accepted; he must choose either Islam or the sword." Is this the position held by our companions? Abū Muḥammad—may Allah have mercy on him—said: We examined the opinion of those who maintain he is called to repent once—if he repents, otherwise he is killed. We found them quoting Allah's words: "Invite to the way of your Lord with wisdom and good exhortation, and dispute with them in the most courteous manner" [16:125].[42]

ثُمَّ اخْتَلَفَ قَوْلُ الشَّافِعِيِّ: فَمَرَّةً قَالَ: إِنْ رَجَعَ إِلَى الْكُفْرِ الَّذِي تَذَمَّمَ عَلَيْهِ، وَإِلَّا قُتِلَ، وَإِلَّا أَنْ يُسْلِمَ - وَمَرَّةً قَالَ: لَا يُقْبَلُ مِنْهُ الرُّجُوعُ إِلَى الدِّينِ الَّذِي خَرَجَ عَنْهُ، لَا بُدَّ لَهُ مِنَ الْإِسْلَامِ أَوِ السَّيْفِ - وَبِهَذَا يَقُولُ أَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إِنَّهُ يُسْتَتَابُ مَرَّةً، فَإِنْ تَابَ وَإِلَّا قُتِلَ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ} [النحل: ١٢٥].

L40777 And He, the Exalted, said, "And do good" (22:77).[43]

وَقَالَ تَعَالَى {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧].

L40778–40779 And He, the Exalted, said: {Let there be among you a community who call

وَقَالَ تَعَالَى: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ} [آل عمران: ١٠٤] الْآيَةَ.

[42] **Qur'an references (L40776):** Qur'an 16:125 (An-Nahl).
[43] **Qur'an references (L40777):** Qur'an 22:77 (Al-Hajj).

to good} [Āl ʿImrān 3:104] the verse.[44]

فَكَانَتْ الِاسْتِتَابَةُ فِعْلَ خَيْرٍ وَدُعَاءً إلَى سَبِيلِ رَبِّنَا بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ، وَدُعَاءً إلَى الْخَيْرِ، وَأَمْرًا بِالْمَعْرُوفِ وَنَهْيًا عَنْ الْمُنْكَرِ، فَكَانَ ذَلِكَ وَاجِبًا، وَكَانَ فَاعِلُهُ مُصْلِحًا.

L40780 Thus, calling to repentance was an act of goodness—a summons to our Lord's path through wisdom and kind exhortation, a summons to virtue, enjoining what is right and forbidding what is wrong. Therefore, this became obligatory, and whoever fulfills it is a rectifier.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِعَلِيٍّ «لَأَنْ يَهْدِيَ اللَّهُ بِهُدَاكَ رَجُلًا وَاحِدًا خَيْرٌ لَكَ مِنْ حُمْرِ النَّعَمِ» .

L40781 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that he said to Ali: "For Allah to guide a single person through your guidance is better for you than red camels."

قَالُوا: فَهَذَا لَا يَنْبَغِي أَنْ يُزْهَدَ فِيهِ.

L40782 They said: Therefore, it is not fitting to renounce [asceticism] in this.

قَالُوا: وَقَدْ فَعَلَهُ عَلِيٌّ، وَعُثْمَانُ، وَابْنُ مَسْعُودٍ - وَرُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، فَعَارَضَهُمْ مَنْ قَالَ: لَا أَسْتَتِيبُهُ بِأَنْ قَالُوا: بِأَنَّ الدُّعَاءَ إلَى سَبِيلِ اللَّهِ تَعَالَى لَا يَخْلُو مِنْ أَنْ يَجِبَ مَرَّةً، أَوْ عَدَدًا مَحْدُودًا، أَوْ أَكْثَرَ مِنْ مَرَّةٍ، أَوْ أَبَدًا مَا امْتَدَّ الْعُمْرُ بِلَا نِهَايَةٍ، وَلَا سَبِيلَ إلَى قِسْمٍ رَابِعٍ.

L40783 They said, "Did ʿAli, ʿUthmān, and Ibn Masʿūd do so—and was it reported from Abū Bakr and ʿUmar [to have been practiced] in the presence of the other Companions—may Allah be pleased with them?" Abū Muḥammad—may Allah have mercy on him—said: "We know of no argument for them other than this whatsoever. Those who said, 'I do not demand his repentance [as a precondition],' countered them by arguing: Inviting to the way of Allah the Exalted cannot escape being obligatory either once, a limited number of times, more than once, or perpetually for as long as life persists indefinitely. There is no valid basis for a fourth category."

قَالَ: فَإِنْ قُلْتُمْ: إنَّهُ يَجِبُ أَبَدًا مَا امْتَدَّ بِهِ الْعُمْرُ بِلَا نِهَايَةٍ: تَرَكْتُمْ قَوْلَكُمْ وَصِرْتُمْ إلَى قَوْلِ مَنْ رَأَى أَنْ يُسْتَتَابَ الْمُرْتَدُّ أَبَدًا، وَلَا يُقْتَلَ - وَهَذَا لَيْسَ هُوَ قَوْلَكُمْ، وَلَوْ كَانَ لَكُنَّا قَدْ أَبْطَلْنَاهُ آنِفًا، وَلَوْ كَانَ هَذَا أَيْضًا لَبَطَلَ الْجِهَادُ جُمْلَةً، لِأَنَّ الدُّعَاءَ كَانَ يَلْزَمُ أَبَدًا مُكَرَّرًا بِلَا نِهَايَةٍ، وَهَذَا قَوْلٌ لَا يَقُولُهُ مُسْلِمٌ أَصْلًا، وَلَيْسَ دُعَاءُ الْمُرْتَدِّ - وَهُوَ أَحَدُ الْكُفَّارِ - بِأَوْجَبَ مِنْ دُعَاءِ غَيْرِهِ مِنْ أَهْلِ الْكُفْرِ الْحَرْبِيِّينَ - فَسَقَطَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40784 He said: If you claim that it is perpetually obligatory as long as life continues without end, you have abandoned your own doctrine and adopted the view of those who hold that the apostate must be summoned to repent indefinitely and not killed—yet this is not your position at all. Had it been your view, we would have refuted it earlier. And if this too were the case, jihad as a whole would be invalidated, because the summons to Islam would then need to be perpetually and endlessly repeated—a position no Muslim would ever assert. Summoning the apostate—who is among the disbelievers—to Islam is no more obligatory than summoning other warring disbelievers. Thus, this argument is invalidated—and success is through Allah alone, the Exalted.

L40785 And if you say, "It is obligatory to perform it a defined number of times

[44] **Qur'an references (L40779):** Qur'an 3:104 (Ali 'Imran).

more than once," you would be claiming without proof, and this is false, due to the statement of Allah, the Exalted: "Say, 'Produce your proof if you are truthful'" [Surah Al-Baqarah 2:111].[45]

L40786 The opinion of those who said he should be summoned to repent twice is no more valid than the view of those who said three times, nor than those who said four times, five times, or more than that.

L40787–40788 All these statements are without proof; thus, this particular claim was dismissed without doubt.

L40789 There remains only the opinion of those who say: "Is he to be invited once?" It is then said to him: "Indeed, whoever embraced Islam then apostatized - the call to Islam had already been extended to him when he first embraced it, without doubt, whether he was a newcomer to Islam or when he reached maturity and learned the precepts of the religion. This is without doubt."

L40790 We have stated that repetition is not obligatory; therefore, the prescribed punishment must be enforced upon him, since we—both us and you—have agreed on the obligation to execute him if he does not return to Islam. Thus, diverting from this duty and delaying it by offering him a chance to repent and supplicating for him does not justify abandoning the enforcement of the punishment—is this not impermissible? They responded: We have not prohibited supplicating for him to embrace Islam during this process, provided it does not delay enforcing the rightful punishment upon him or neglect it. Our discussion is: Is supplicating for him and offering him a chance to repent an obligatory duty or not? Herein lies our disagreement: You have deemed it obligatory without proof, whereas we have neither deemed it obligatory nor have we prohibited it. If you argue: "We supplicate for him once after the initial supplication," you would have no stronger claim than one who argues: "Rather, supplicate for him a second time after this instance," or than one who argues: "Rather, a third time after the second."

L40791 Or of those who said: Rather, the fourth after the third—and so forth perpetually.

وَإِنْ قُلْتُمْ: إِنَّهُ يَجِبُ عَدَدًا مُحَدَّدًا أَكْثَرَ مِنْ مَرَّةٍ: كُنْتُمْ قَائِلِينَ بِلَا دَلِيلٍ، وَهَذَا بَاطِلٌ، لِقَوْلِ اللَّهِ تَعَالَى {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

وَلَيْسَ قَوْلُ مَنْ قَالَ: يُسْتَتَابُ مَرَّتَيْنِ بِأَوْلَى مِمَّنْ قَالَ: ثَلَاثَةً، وَلَا مِمَّنْ قَالَ: أَرْبَعًا، أَوْ خَمْسًا، أَوْ أَكْثَرَ مِنْ ذَلِكَ.

وَكُلُّ هَذِهِ الْأَقْوَالِ بِلَا بُرْهَانٍ، فَسَقَطَ هَذَا الْقَوْلُ بِلَا شَكٍّ.

فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: يُدْعَى مَرَّةً؟ فَيُقَالُ لَهُ: إِنَّ مَنْ أَسْلَمَ ثُمَّ ارْتَدَّ: قَدْ تَقَدَّمَ دُعَاؤُهُ إِلَى الْإِسْلَامِ حِينَ أَسْلَمَ بِلَا شَكٍّ، إِنْ كَانَ دَخِيلًا فِي الْإِسْلَامِ، أَوْ حِينَ بَلَغَ، وَعَلِمَ شَرَائِعَ الدِّينِ، هَذَا مَا لَا شَكَّ فِيهِ.

وَقَدْ قُلْنَا: إِنَّ التَّكْرَارَ لَا يَلْزَمُ، فَالْوَاجِبُ إِقَامَةُ الْحَدِّ عَلَيْهِ، إِذْ قَدْ اتَّفَقْنَا - نَحْنُ وَأَنْتُمْ - عَلَى وُجُوبِ قَتْلِهِ إِنْ لَمْ يُرَاجِعْ الْإِسْلَامَ، فَالِاشْتِغَالُ عَنْ ذَلِكَ وَتَأْخِيرُهُ بِاسْتِتَابَةٍ، وَدُعَاءٍ: لَا يُلْزِمَانِ تَرْكَ الْإِقَامَةِ عَلَيْهِ - وَهَذَا لَا يَجُوزُ؟ قَالُوا: وَنَحْنُ لَمْ نَمْنَعْ مِنْ دُعَائِهِ إِلَى الْإِسْلَامِ فِي خِلَالِ ذَلِكَ دُونَ تَأْخِيرٍ لِإِقَامَةِ الْحَقِّ عَلَيْهِ، وَلَا تَضْيِيعٍ لَهُ، وَإِنَّمَا كَلَامُنَا: هَلْ يَجِبُ دُعَاؤُهُ وَاسْتِتَابَتُهُ فَرْضًا أَمْ لَا؟ فَهَاهُنَا اخْتَلَفْنَا، فَأَوْجَبْتُمُوهُ بِلَا بُرْهَانٍ، وَلَمْ نُوجِبْ نَحْنُ وَلَا مَنَعْنَا؟ فَإِنْ قُلْتُمْ: نَدْعُوهُ مَرَّةً بَعْدَ الدُّعَاءِ الْأَوَّلِ السَّالِفِ: لَمْ تَكُونُوا بِأَوْلَى مِمَّنْ قَالَ: بَلْ أَدْعُوهُ مَرَّةً ثَانِيَةً أَيْضًا بَعْدَ هَذِهِ الْمَرَّةِ؟ أَوْ مِمَّنْ قَالَ: بَلْ الثَّالِثَةُ بَعْدَ الثَّانِيَةِ.

أَوْ مِمَّنْ قَالَ: بَلْ الرَّابِعَةُ بَعْدَ الثَّالِثَةِ - وَهَكَذَا أَبَدًا.

[45] **Qur'an references (L40785):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

فَبَطَلَ بِلَا شَكٍّ مَا أَوْجَبْتُمْ فَرْضًا مِنْ اسْتِتَابَتِهِ مَرَّةً وَاحِدَةً فَأَكْثَرَ.

L40792 Therefore, without doubt, the obligation you imposed to demand his repentance once or more has been rendered void.

قَالَ: وَأَمَّا قَوْلُكُمْ: فَإِنَّهُ قَدْ رُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَصَحَّ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَكُمْ فِي هَذَا: أَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ - فَلَا تَصِحُّ، لِأَنَّ الطَّرِيقَ فِي كِلْتَيْ الرِّوَايَتَيْنِ عَنْ ابْنِ لَهِيعَةَ وَهُوَ سَاقِطٌ.

L40793 He said: As for your assertion that it has been narrated from Abū Bakr and ʿUmar and established from ʿUthmān, ʿAlī, and Ibn Masʿūd in the presence of the Companions—may Allah be pleased with them—there is no valid proof for you in this. As for the narration from Abū Bakr, it is not valid because the chain in both narrations traces back to Ibn Lahīʿah, and he is rejected.

وَأَمَّا الْحُكْمُ فِي أَهْلِ الرِّدَّةِ: فَهُوَ أَمْرٌ مَشْهُورٌ، نَقْلُ الْكَوَافِّ لَا يَقْدِرُ أَحَدٌ عَلَى إنْكَارِهِ، إلَّا أَنَّهُ لَا حُجَّةَ لَكُمْ فِيهِ، لِأَنَّ أَهْلَ الرِّدَّةِ كَانُوا قِسْمَيْنِ: قِسْمًا لَمْ يُؤْمِنْ قَطُّ كَأَصْحَابِ مُسَيْلِمَةَ، وَسَجَاحَ، فَهَؤُلَاءِ حَرْبِيُّونَ لَمْ يُسْلِمُوا قَطُّ، لَا يَخْتَلِفُ أَحَدٌ فِي أَنَّهُمْ تُقْبَلُ تَوْبَتُهُمْ وَإِسْلَامُهُمْ.

L40794 As for the ruling concerning apostates: it is a widely recognized matter, transmitted by scholarly consensus which none can deny. However, this contains no proof for you, for apostates were of two categories: those who never believed at all, such as the followers of Musaylimah and Sajāḥ. These are belligerents who never embraced Islam at all. None disputes that their repentance and embracing Islam are accepted.

وَالْقِسْمُ الثَّانِي: قَوْمٌ أَسْلَمُوا وَلَمْ يَكْفُرُوا بَعْدَ إسْلَامِهِمْ، لَكِنْ مَنَعُوا الزَّكَاةَ مِنْ أَنْ يَدْفَعُوهَا إلَى أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فَعَلَى هَذَا قُوتِلُوا.

L40795–40796 The second category: people who embraced Islam and did not apostatize after their conversion, but withheld the Zakat from being paid to Abu Bakr (may Allah be pleased with him) as the rightful authority. For this reason, they were combated.

وَلَا يَخْتَلِفُ الْحَنَفِيُّونَ، وَلَا الشَّافِعِيُّونَ: فِي أَنَّ هَؤُلَاءِ لَيْسَ لَهُمْ حُكْمُ الْمُرْتَدِّ أَصْلًا، وَهُمْ قَدْ خَالَفُوا فِعْلَ أَبِي بَكْرٍ فِيهِمْ، وَلَا يُسَمِّيهِمْ أَهْلَ رِدَّةٍ.

L40797 Neither the Hanafis nor the Shafi'is differ regarding the ruling that these individuals are not subject to apostasy rulings at all. They have opposed Abu Bakr's action regarding them, nor do they designate them as people of apostasy.

وَدَلِيلُ مَا قُلْنَا: شِعْرُ الْحُطَيْئَةِ الْمَشْهُورُ الَّذِي يَقُولُ فِيهِ:

L40798 And the evidence for what we have stated is the famous poem of Al-Ḥuṭayʾah in which he says:

أَطَعْنَا رَسُولَ اللَّهِ مَا كَانَ بَيْنَنَا ... فَيَا لَهْفَنَا مَا بَالُ دِينِ أَبِي بَكْرِ

L40799 We obeyed the Messenger of Allah as long as he was among us... Alas, our anguish! What has become of the faith of Abu Bakr?

أَيُورِثُهَا بَكْرًا إذْ مَاتَ بَعْدَهُ ... فَتِلْكَ لَعَمْرُ اللَّهِ قَاصِمَةُ الظَّهْرِ

L40800 Does he inherit her while she is a virgin if he dies after him? By Allah's life, that is a backbreaker!

وَإِنَّ الَّتِي طَالَبْتُمْ فَمُنِعْتُمْ ... لَكَالتَّمْرِ أَوْ أَحْلَى لَدَيَّ مِنْ التَّمْرِ

L40801 What you demanded but were denied... Is like the dates—or sweeter to me than dates!

L40802 My saddle and I are a ransom for Banī Bakr ibn Dhawdān... At dusk, I am

slain, Abu Bakr drives forth with spears.

فِدًا لِبَنِي بَكْرِ بْنِ ذُودَانَ رَحْلِي وَنَا ... قَتِي عَشِيَّةَ يَحْدِي بِالرِّمَاحِ أَبُو بَكْرِ

L40803 He acknowledges the Messenger of Allah—may Allah bless him and grant him peace—as you see. It is indeed plausible that Al-Ashʿath is among these individuals and others, and it is not far-fetched that among them were entire peoples who apostatized collectively, such as those who believed in Tulayhah and similar factions. However, this is unsupported. Even if it were deemed sound, it would not constitute a valid argument, for disagreement on this matter exists among the Companions—may Allah be pleased with them.

فَهُوَ مُقِرٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا تَرَى، فَقَدْ يُمْكِنُ أَنْ يَكُونَ الْأَشْعَثُ مِنْ هَؤُلَاءِ وَغَيْرُهُ وَمَا يَبْعُدُ أَنْ يَكُونَ فِيهِمْ قَوْمٌ ارْتَدُّوا جُمْلَةً، كَمَنْ آمَنَ بِطُلَيْحَةَ، وَنَحْوِ هَؤُلَاءِ، إلَّا أَنَّ هَذَا لَا يَنْسَنِدُ؟ فَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الْخِلَافَ فِي ذَلِكَ مَوْجُودٌ بَيْنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L40804 And whoever said that the killing of the apostate is obligatory, without mentioning the invitation to repent or its acceptance, as we have cited from Muʿādh, Abū Mūsā, Anas, Ibn ʿAbbās, and Maʿqil ibn Muqrin.

وَمَنْ قَالَ: بِقَتْلِ الْمُرْتَدِّ وَلَا بُدَّ، دُونَ ذِكْرِ اسْتِتَابَةٍ أَوْ قَبُولِهَا: كَمَا أَوْرَدْنَا عَنْ مُعَاذٍ، وَأَبِي مُوسَى، وَأَنَسٍ، وَابْنِ عَبَّاسٍ، وَمَعْقِلِ بْنِ مُقَرِّنٍ.

L40805 Among them are those who held the position of perpetual demand for repentance and imposing imprisonment alone—as authentically established from ʿUmar through what we previously cited. The obligation to fight constitutes a separate ruling distinct from the obligation to kill after possessing the capability. For combating those who rebel against Muslims, withhold a right from him, or wage war to defend it is an obligatory duty without disagreement. There is no valid argument against Abū Bakr (may Allah be pleased with him) fighting the apostates, as this is undoubtedly a right. We do not oppose you in this matter. Fundamentally, no authentic report exists from Abū Bakr stating he captured an apostate from Islam who did not resist the call to repentance—then if he repented, he would spare him; otherwise, he would kill him. This is something they cannot find.

وَمِنْهُمْ مَنْ قَالَ: بِالِاسْتِتَابَةِ أَبَدًا وَإِيدَاعِ السِّجْنِ فَقَطْ: كَمَا قَدْ صَحَّ عَنْ عُمَرَ مِمَّا قَدْ أَوْرَدْنَا قَبْلُ، وَوُجُوبُ الْقِتَالِ: هُوَ حُكْمٌ آخَرُ غَيْرُ وُجُوبِ الْقَتْلِ بَعْدَ الْقُدْرَةِ، فَإِنَّ قِتَالَ مَنْ بَغَى عَلَى الْمُسْلِمِ، أَوْ مَنَعَ حَقًّا قِبَلَهُ، وَحَارَبَ دُونَهُ: فَرْضٌ وَاجِبٌ بِلَا خِلَافٍ - وَلَا حُجَّةَ فِي قِتَالِ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَهْلَ الرِّدَّةِ، لِأَنَّهُ حَقٌّ بِلَا شَكٍّ، وَلَمْ نُخَالِفْكُمْ فِي هَذَا، وَلَا يَصِحُّ - أَصْلًا - عَنْ أَبِي بَكْرٍ أَنَّهُ ظَفِرَ بِمُرْتَدٍّ عَنْ الْإِسْلَامِ غَيْرِ مُمْتَنِعٍ بِاسْتِتَابَةٍ، فَتَابَ، فَتَرَكَهُ، أَوْ لَمْ يَتُبْ فَقَتَلَهُ - هَذَا مَا لَا يَجِدُونَهُ.

L40806–40808 As for one who exchanges one disbelief for another? Abu Muhammad—may Allah have mercy on him—said: "People have differed regarding those who left one disbelief for another." Then Abu Hanifah and Malik said... And Abu Thawr held the view that they are left upon that, and no objection is made against them.

وَأَمَّا مَنْ بَدَّلَ كُفْرًا بِكُفْرٍ آخَرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ خَرَجَ مِنْ كُفْرٍ إلَى كُفْرٍ؟ فَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ وَأَبُو ثَوْرٍ: أَنَّهُمْ يُقَرُّونَ عَلَى ذَلِكَ وَلَا يُعْتَرَضُ عَلَيْهِمْ.

L40809 Al-Shāfiʿī, Abū Sulaymān, and their adherents ruled: They do not permit them to do so at all.

قَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا يُقَرُّونَ عَلَى ذَلِكَ أَصْلًا.

L40810 Then they differed—a group of Al-Shāfiʿī's companions said: His covenant is annulled, and he is expelled to the abode of war. If he is captured thereafter? On one occasion he stated: If he returns to his scriptural religion from which he had apostatized, his freedom shall be confirmed and he shall be left unmolested.

ثُمَّ اخْتَلَفُوا - فَقَالَتْ طَائِفَةٌ مِنْ أَصْحَابِ الشَّافِعِيِّ: يُنْبَذُ إِلَيْهِ عَهْدُهُ، وَيُخْرَجُ إِلَى دَارِ الْحَرْبِ، فَإِنْ ظُفِرَ بِهِ بَعْدَ ذَلِكَ؟ فَمَرَّةً قَالَ: إِنْ رَجَعَ إِلَى دِينِهِ الْكِتَابِيِّ الَّذِي خَرَجَ مِنْهُ أُقِرَّ عَلَى حُرِّيَّتِهِ وَتُرِكَ.

L40811 He is not spared; rather, nothing is accepted from him except Islam or the sword.

وَمَرَّةً قَالَ: لَا يُتْرَكُ بَلْ لَا يُقْبَلُ مِنْهُ إِلَّا الْإِسْلَامُ أَوْ السَّيْفُ.

L40812 Our scholars say this—except that they do not deem it permissible to affiliate him with the abode of war, but rather he is compelled to profess Islam; otherwise, he is to be killed. Abū Muḥammad (may Allāh have mercy on him) said: When they differed, we examined the matter and found those who stated: "They are to be left in that state," citing as evidence the verse: *"And those who disbelieve are allies of one another"* [Al-Anfāl: 73], and His command—the Exalted—to proclaim while addressing all disbelievers: *"Say: 'O disbelievers! I do not worship what you worship, nor are you worshippers of what I worship'"* [Al-Kāfirūn: 1-3], to the end of the surah.[46]

وَبِهَذَا يَقُولُ أَصْحَابُنَا - إِلَّا أَنَّهُمْ لَا يَرَوْنَ إلْحَاقَهُ بِدَارِ الْحَرْبِ، بَلْ يُجْبَرُ عَلَى الْإِسْلَامِ وَإِلَّا قُتِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَنْ قَالَ: إنَّهُمْ يُقَرُّونَ عَلَى ذَلِكَ، يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَأَمْرِهِ تَعَالَى أَنْ يَقُولَ مُخَاطِبًا لِجَمِيعِ الْكُفَّارِ {قُلْ يَا أَيُّهَا الْكَافِرُونَ - لا أَعْبُدُ مَا تَعْبُدُونَ - وَلا أَنْتُمْ عَابِدُونَ مَا أَعْبُدُ} [الكافرون: ١ - ٣] ، إلَى آخِرِ السُّورَةِ.

L40813 They said: Thus, Allah the Exalted decreed all disbelief to be a single creed.

قَالُوا: فَجَعَلَ اللَّهُ تَعَالَى الْكُفْرَ كُلَّهُ دِينًا وَاحِدًا.

L40814 They said: And Allah, the Exalted, has said, "There is no compulsion in religion" [Al-Baqarah: 256]. Thus, this was clear in prohibiting forcing him to abandon his disbelief.[47]

قَالُوا: وَقَدْ قَالَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَكَانَ هَذَا ظَاهِرًا يَمْنَعُ مِنْ إكْرَاهِهِ عَلَى تَرْكِ كُفْرِهِ.

L40815 They said: When one is compelled to abandon the disbelief he had adopted, this situation necessarily entails one of two scenarios—and there is no third possibility for them. Either he is compelled to return to the religion he originally abandoned—as Al-Shāfiʿī held in one of his two opinions—or he is compelled to return to Islam, as Al-Shāfiʿī stated in his second opinion and as maintained by your jurist school. If he is compelled to return to his original religion, he is thereby compelled to affirm belief in disbelief and to revert to the state of disbelief.

قَالُوا: وَلَا يَخْلُو إذَا أُجْبِرَ عَلَى تَرْكِ الْكُفْرِ الَّذِي خَرَجَ إلَيْهِ مِنْ أَحَدِ وَجْهَيْنِ، وَلَا ثَالِثَ لَهُمَا: إمَّا أَنْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى دِينِهِ الَّذِي خَرَجَ عَنْهُ - كَمَا قَالَ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ - أَوْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ، كَمَا قَالَ هُوَ فِي قَوْلِهِ الثَّانِي، وَأَصْحَابُكُمْ، فَإِنْ أُجْبِرَ عَلَى الرُّجُوعِ إلَى دِينِهِ فَقَدْ أُجْبِرَ عَلَى اعْتِقَادِ الْكُفْرِ، وَعَلَى الرُّجُوعِ إلَى الْكُفْرِ.

[46] **Qur'an references (L40812):** Qur'an 8:73 (Al-Anfal); Qur'an 109:1 (Al-Kafirun); Qur'an 109:2 (Al-Kafirun); Qur'an 109:3 (Al-Kafirun); Qur'an 109:5 (Al-Kafirun).

[47] **Qur'an references (L40814):** Qur'an 2:256 (Al-Baqarah).

قَالُوا: وَاعْتِقَادُ جَوَازِ هَذَا كُفْرٌ؟ قَالُوا: إنْ أُكْرِهَ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ فَكَيْفَ يَجُوزُ أَنْ يُجْبَرَ عَلَى ذَلِكَ دُونَ سَائِرِ أَهْلِ الْكُفْرِ مِنْ أَهْلِ الذِّمَّةِ، وَلَا فَرْقَ بَيْنَهُ وَبَيْنَهُمْ، فَهُوَ كَافِرٌ، وَهُمْ كُفَّارٌ، وَلَا فَرْقَ؟

L40816 They said: "Is believing in the permissibility of this considered apostasy?" They responded: "If he is coerced into reverting to Islam, how is it permissible to compel him alone without compelling the rest of the disbelievers among the dhimmah? For there is no distinction between him and them—he is a disbeliever, and they are disbelievers—with no distinction?"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُلُّ مَا شَغَبُوا بِهِ مِنْ النُّصُوصِ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: أَرَأَيْت مَنْ أَحْدَثَ فِي نَصْرَانِيَّةٍ، أَوْ يَهُودِيَّةٍ، أَوْ مَجُوسِيَّةٍ: رَأْيًا لَمْ يَخْرُجْ بِهِ عَنْ جُمْلَتِهِمْ أَتُجْبِرُونَهُ عَلَى تَرْكِ ذَلِكَ الرَّأْيِ وَالرُّجُوعِ إلَى جُمْلَتِهِمْ، أَوْ إلَى الْإِسْلَامِ؟ وَأَرَأَيْتُمْ مَنْ خَرَجَ مِنْ مَلْكَانِيَّةٍ إلَى نُسْطُورِيَّةٍ، أَوْ يَعْقُوبِيَّةٍ، أَوْ قَادُونِيَّةٍ، أَوْ مَعْدُونِيَّةٍ، فَدَانَ بِعُبُودِيَّةِ الْمَسِيحِ، وَأَنَّهُ نَبِيُّ اللَّهِ، وَأَنَّ اللَّهَ تَعَالَى وَحْدَهُ لَا شَرِيكَ لَهُ؟ أَتُجْبِرُونَهُ عَلَى الرُّجُوعِ إلَى التَّثْلِيثِ، أَوْ إلَى الرُّجُوعِ إلَى الْقَوْلِ بِأَنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ؟ وَكَذَلِكَ مَنْ خَرَجَ مِنْ رَبَّانِيَّةٍ إلَى عَامَانِيَّةٍ، أَوْ إلَى عِيسَوِيَّةٍ، أَتُجْبِرُونَهُ عَلَى الرُّجُوعِ عَنْ الْإِيمَانِ بِمُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْكُفْرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا مَوَّهُوا بِهِ مِنْ التَّشْنِيعِ وَكُلُّ هَذَا عَائِدٌ عَلَيْهِمْ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L40817–40818 Abū Muḥammad—may Allāh have mercy on him—said: This encompasses all the textual proofs they have objected with. However, some of them said: What is your view regarding one who introduces an opinion within Christianity, Judaism, or Zoroastrianism without departing from their collective doctrine? Would you compel him to abandon that opinion and return to their collective doctrine or to Islam? And what is your view regarding one who transitions from Melkite Christianity to Nestorianism, Jacobitism, Qadūniyya, or Maʿdūniyya, professing the servanthood of Christ; that he is the Prophet of Allāh; and that Allāh the Exalted alone has no partner? Would you compel him to return to Trinitarianism or to return to the belief that Allāh is Christ, the son of Mary? Similarly, what of one who leaves Rabbanite Judaism for Amanism or Isawism—would you compel him to abandon belief in Muḥammad—peace and blessings of Allāh be upon him—and return to disbelief? Abū Muḥammad—may Allāh have mercy on him—said: This is all they have disguised as vilification, and all of this will rebound upon them, as we will clarify, if Allāh the Exalted wills.

أَمَّا قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا أَنَّهُمْ كُلُّهُمْ أَوْلِيَاءُ بَعْضِهِمْ لِبَعْضٍ فَقَطْ، وَلَيْسَ فِي هَذِهِ الْآيَةِ حُكْمُ إقْرَارِهِمْ، وَلَا حُكْمُ قَتْلِهِمْ، وَلَا حُكْمُ مَا يُفْعَلُ بِهِمْ فِي شَيْءٍ مِنْ أُمُورِهِمْ أَصْلًا.

L40819 As for the statement of Allah, the Exalted, {And those who disbelieve are allies of one another} [Al-Anfāl: 73], it is true, and there is no argument for them in it, for it contains nothing except that they are all merely allies of one another. This verse does not contain any ruling concerning their acknowledgment, nor a ruling concerning their killing, nor any ruling at all regarding what is done to them in any of their affairs.[48]

وَكَذَلِكَ قَوْلُهُ تَعَالَى: قُلْ يَا أَيُّهَا الْكَافِرُونَ [الكافرون: ١] إلَى آخِرِهَا لَيْسَ فِيهَا إلَّا أَنَّا بُرَآءُ مِنْ كُلِّ مَا يَعْبُدُونَ، وَلَيْسَ فِيهَا أَنَّهُمْ عَلَى حَقٍّ، وَلَا أَنَّهُمْ عَلَى بَاطِلٍ، وَلَا أَنَّهُمْ مُخَلَّدُونَ فِي النَّارِ، وَلَا أَنَّهُمْ لَا يُخَلَّدُونَ فِيهَا، وَلَا أَنَّهُمْ مُؤْمِنُونَ، وَلَا أَنَّهُمْ كُفَّارٌ، وَلَا أَنَّهُمْ مُشْرِكُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُشْرِكِينَ، وَلَا أَنَّهُمْ مُوَحِّدُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُوَحِّدِينَ، وَلَا أَنَّهُمْ مُسْلِمُونَ، وَلَا أَنَّهُمْ لَيْسُوا مُسْلِمِينَ، وَلَا أَنَّهُمْ عَلَى هُدًى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى هُدًى، وَلَا أَنَّهُمْ عَلَى ضَلَالٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى ضَلَالٍ، وَلَا أَنَّهُمْ عَلَى شَيْءٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى شَيْءٍ، وَلَا أَنَّهُمْ عَلَى دِينٍ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى دِينٍ، وَلَا أَنَّهُمْ عَلَى دِينِ اللَّهِ تَعَالَى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى دِينِ اللَّهِ تَعَالَى، وَلَا أَنَّهُمْ عَلَى الْإِسْلَامِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْإِسْلَامِ، وَلَا أَنَّهُمْ عَلَى الْحَقِّ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْحَقِّ، وَلَا أَنَّهُمْ عَلَى الْبَاطِلِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْبَاطِلِ، وَلَا أَنَّهُمْ عَلَى الْهُدَى، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الْهُدَى، وَلَا أَنَّهُمْ عَلَى الضَّلَالِ، وَلَا أَنَّهُمْ لَيْسُوا عَلَى الضَّلَالِ

from all disbelievers in worship and religion. This surah includes none of the rulings pertaining to them—neither rulings that acknowledge them nor rulings that abandon their acknowledgment.[49]

وَكَذَلِكَ قَوْله تَعَالَى {قُلْ يَا أَيُّهَا الْكَافِرُونَ} [الكافرون: ١] إلَى آخِرِهَا لَيْسَ فِيهَا أَيْضًا إلَّا أَنَّنَا مُبَايِنُونَ لِجَمِيعِ الْكُفَّارِ فِي الْعِبَادَةِ، وَالدِّينِ، وَلَيْسَ فِي هَذِهِ السُّورَةِ شَيْءٌ مِنْ أَحْكَامِهِمْ، لَا مِنْ إقْرَارِهِمْ وَلَا مِنْ تَرْكِ إقْرَارِهِمْ.

L40821 Allah the Exalted has said, addressing us: "Whoever among you takes them as allies is indeed one of them" [Al-Mā'idah: 51]. Thus, whoever among us takes them as allies is of them, as He, the Exalted, has stated: "They are allies of one another" [Al-Mā'idah: 51].[50]

وَقَدْ قَالَ اللَّهُ تَعَالَى مُخَاطِبًا لَنَا {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] فَمَنْ تَوَلَّاهُمْ مِنَّا فَهُوَ مِنْهُمْ، كَمَا قَالَ تَعَالَى إنَّ {بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [المائدة: ٥١] .

L40822 Why did they not leave the apostate among us who reverted to them in his apostasy, given Allah the Exalted's informing that he is of them? If this verse is not a proof for affirming the apostate among us who reverted to them in that state, then those two texts are no proof for the confusion they sought to create by citing them - that one who exits from one disbelief to another among them is to be confirmed in it. And with Allah, the Exalted, is success.

فَهَلَّا تَرَكُوا الْمُرْتَدَّ إلَيْهِمْ مِنَّا عَلَى رِدَّتِهِ؟ بِإِخْبَارِ اللَّهِ تَعَالَى أَنَّهُ مِنْهُمْ، فَإِنْ لَمْ تَكُنْ هَذِهِ الْآيَةُ حُجَّةً فِي إقْرَارِ الْمُرْتَدِّ مِنَّا إلَيْهِمْ عَلَى ذَلِكَ، ذَانِكَ النَّصَّانِ لَيْسَا بِحُجَّةٍ فِيمَا أَرَادُوا التَّمْوِيهَ بِإِيرَادِهِمَا مِنْ أَنَّ الْخَارِجَ مِنْهُمْ مِنْ كُفْرٍ إلَى كُفْرٍ يُقَرُّ عَلَى ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40823–40825 Abu Muhammad—may Allah have mercy on him—said: As for the words of Allah, the Exalted, "There is no compulsion in religion" [Al-Baqarah: 256], they have no valid proof in this matter, for there is unanimous agreement in the entire Ummah that this verse does not apply... Its apparent meaning; because the community unanimously agrees on compelling the apostate to abandon his religion. Some scholars argue he should be coerced but not executed, while others maintain he should be coerced and executed.[51]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ هَذِهِ الْآيَةَ لَيْسَتْ عَلَى ظَاهِرِهَا، لِأَنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى إكْرَاهِ الْمُرْتَدِّ عَنْ دِينِهِ، فَمِنْ قَائِلٍ: يُكْرَهُ وَلَا يُقْتَلُ، وَمِنْ قَائِلٍ، يُكْرَهُ وَيُقْتَلُ.

L40826 If they say: "The apostate among us has departed based on another argument contrary to the ruling of this verse?" We respond: "Similarly, if an apostate among them departs from one disbelief to another disbelief based on another argument contrary to the ruling of this verse, then it is as you say. Otherwise, it is as you have stated." Those who cite Allah's words, "And those who disbelieve are allies of one another" [Al-Anfal: 73], and His words, "For

فَإِنْ قَالُوا: خَرَجَ الْمُرْتَدُّ مِنَّا بِدَلِيلٍ آخَرَ عَنْ حُكْمِ هَذِهِ الْآيَةِ؟ قُلْنَا لَهُمْ: وَكَذَلِكَ إنْ خَرَجَ الْمُرْتَدُّ مِنْهُمْ مِنْ كُفْرٍ إلَى كُفْرٍ بِدَلِيلٍ آخَرَ عَنْ حُكْمِ هَذِهِ الْآيَةِ، وَإِلَّا فَهُوَ كَمَا قُلْتُمْ، وَإِنَّ الْمُحْتَجِّينَ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَبِقَوْلِ اللَّهِ تَعَالَى {لَكُمْ دِينُكُمْ وَلِيَ دِينِ} [الكافرون: ٦] فِي أَنَّ الْكُفْرَ كُلَّهُ مِلَّةٌ وَاحِدَةٌ وَشَيْءٌ وَاحِدٌ: هُمْ أَوَّلُ مَنْ نَقَضَ الِاحْتِجَاجَ وَخَالَفَهُ، وَفَرَّقُوا بَيْنَ أَحْكَامِ أَهْلِ الْكُفْرِ، فَكُلُّهُمْ

[49] **Qur'an references (L40820):** Qur'an 109:1 (Al-Kafirun).
[50] **Qur'an references (L40821):** Qur'an 5:51 (Al-Ma'idah).
[51] **Qur'an references (L40823):** Qur'an 2:256 (Al-Baqarah).

you is your religion, and for me is my religion" [Al-Kafirun: 6], claiming all disbelief constitutes a single creed and one entity, are the first to invalidate their own argument and contradict it. They drew distinctions between the rulings for disbelievers, yet all agree with us in consensus that among them are those whose women may be married and whose slaughtered animals may be eaten, and others whose women may not be married nor their slaughtered animals eaten.

Abu Muhammad (may Allah have mercy on him) said: "As for their claim that one compelled to abandon the disbelief they apostatized toward must face one of two outcomes—either being compelled to revert to the original disbelief they left or to embrace Islam—we affirm this. Our position is that they must inevitably and without exception be compelled to return to Islam and are not permitted to revert to the disbelief they originally departed from."[52]

L40827 As for their statement: "How can it be permissible for one to be compelled to embrace Islam given what we have mentioned?" Our response—and success comes only from Allah, the Exalted—is: If no proof from the Qur'an and Sunnah is established regarding the obligation to compel him, otherwise, it is your assertion.

L40828 Abu Muhammad—may Allah have mercy on him—said: Similarly, their assertion that if someone leaves a sect of the Christians to join another denomination, we do not oppose this regarding what we will clarify later—God willing (Exalted is He).

L40829 Now, what remains is the discussion concerning their argument based on Allah's statement, the Most High: "There is no compulsion in religion" [Al-Baqarah: 256]. We found people adhering to two positions.[53]

L40830 One of the two is that it is abrogated, and the second is that it is specified.

L40831–40833 As for those who claim it is abrogated—he argues that the Messenger of Allah (peace be upon him) did not accept from the polytheists—it is said to them,

مُجْمِعٌ مَعَنَا عَلَى: أَنَّ مِنْ أَهْلِ الْكُفْرِ مَنْ تُنْكَحُ نِسَاؤُهُمْ، وَتُؤْكَلُ ذَبَائِحُهُمْ، وَأَنَّ مِنْهُمْ مَنْ لَا تُنْكَحُ نِسَاؤُهُمْ، وَلَا تُؤْكَلُ ذَبَائِحُهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُهُمْ: لَا يَخْلُو مَنْ أُجْبِرَ عَلَى تَرْكِ الْكُفْرِ الَّذِي خَرَجَ إلَيْهِ مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يُجْبَرَ عَلَى الرُّجُوعِ إلَى الْكُفْرِ الَّذِي خَرَجَ مِنْهُ، وَإِمَّا أَنْ يُجْبَرَ عَلَى الْإِسْلَامِ؟ فَنَعَمْ: أَنَّهُ لَا يَخْلُو مِنْ أَحَدِهِمَا - وَالَّذِي نَقُولُ بِهِ: فَإِنَّهُ يُجْبَرُ عَلَى الرُّجُوعِ إلَى الْإِسْلَامِ وَلَا بُدَّ، وَلَا يُتْرَكُ يَرْجِعُ إلَى الدِّينِ الَّذِي خَرَجَ مِنْهُ.

وَأَمَّا قَوْلُهُمْ: كَيْفَ يَجُوزُ أَنْ يُجْبَرَ عَلَى الْإِسْلَامِ مَعَ مَا ذَكَرْنَا؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّهُ إنْ لَمْ يَقُمْ بُرْهَانٌ مِنْ الْقُرْآنِ وَالسُّنَّةِ عَلَى وُجُوبِ إجْبَارِهِ، وَإِلَّا فَهُوَ قَوْلُكُمْ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَذَلِكَ قَوْلُهُمْ: إنْ خَرَجَ مِنْ فِرْقَةٍ مِنْ النَّصَارَى إلَى فِرْقَةٍ أُخْرَى فَإِنَّنَا لَا نَعْتَرِضُ عَلَيْهِمْ عَلَى مَا نُبَيِّنُهُ بَعْدُ - إنْ شَاءَ اللَّهُ تَعَالَى.

فَبَقِيَ الْآنَ الْكَلَامُ فِي احْتِجَاجِهِمْ بِقَوْلِ اللَّهِ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] فَوَجَدْنَا النَّاسَ عَلَى قَوْلَيْنِ:

أَحَدُهُمَا: أَنَّهَا مَنْسُوخَةٌ، وَالثَّانِي: أَنَّهَا مَخْصُوصَةٌ.

فَأَمَّا مَنْ قَالَ: إنَّهَا مَنْسُوخَةٌ، فَيَحْتَجُّ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْبَلْ مِنْ الْوَثَنِيِّينَ؟ فَيُقَالُ لَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - لَمْ يَخْتَلِفْ مُسْلِمَانِ فِي أَنَّ رَسُولَ اللَّهِ

[52] **Qur'an references (L40826):** Qur'an 8:73 (Al-Anfal); Qur'an 109:6 (Al-Kafirun).
[53] **Qur'an references (L40829):** Qur'an 2:256 (Al-Baqarah).

and with Allah alone is all success: no two Muslims have differed that the Messenger of Allah (peace be upon him) did not... The Prophet would accept nothing from the Arab idolaters except Islam or the sword until he (peace be upon him) died, thus demonstrating coercion in religion. Therefore, this verse is abrogated.

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْبَلْ مِنْ الْوَثَنِيِّينَ مِنْ الْعَرَبِ إلَّا الْإِسْلَامَ أَوْ السَّيْفَ - إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ - فَهُوَ إكْرَاهٌ فِي الدِّينِ، فَهَذِهِ الْآيَةُ مَنْسُوخَةٌ.

L40834 As for those who said it is specific, they stated that it was revealed particularly concerning the Jews and Christians, as narrated from Umar ibn al-Khattab that he said to an elderly Christian woman: "O respected elderly woman, embrace Islam and attain salvation, for Allah the Exalted has sent Muhammad (peace and blessings be upon him) to us with the truth." The old woman replied: "And I am an elderly woman nearing death?" Umar said: "O Allah, bear witness. There is no compulsion in [accepting] the religion."

وَأَمَّا مَنْ قَالَ: إنَّهَا مَخْصُوصَةٌ، فَإِنَّهُمْ قَالُوا: إنَّمَا نَزَلَتْ فِي الْيَهُودِ وَالنَّصَارَى خَاصَّةً، كَمَا رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ لِعَجُوزٍ نَصْرَانِيَّةٍ: أَيَّتُهَا الْعَجُوزُ أَسْلِمِي تَسْلَمِي، إنَّ اللَّهَ تَعَالَى بَعَثَ إلَيْنَا مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْحَقِّ؟ فَقَالَتْ الْعَجُوزُ: وَأَنَا عَجُوزٌ كَبِيرَةٌ وَأَمُوتُ إلَى قَرِيبٍ؟ قَالَ عُمَرُ: اللَّهُمَّ اشْهَدْ، لَا إكْرَاهَ فِي الدِّينِ.

L40835 And it is narrated to us from Ibn Abbas that he said: A woman vowed that if her child survived, she would Judaize him. When Banu al-Nadir were expelled, among them were some of the children of the Ansar. The Ansar said: "We will not leave our children [with them]," whereupon Allah the Exalted revealed: "There is no compulsion in religion" [Al-Baqarah: 256].[54]

وَبِمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَتْ امْرَأَةٌ تَجْعَلُ عَلَى نَفْسِهَا إنْ عَاشَ وَلَدُهَا تُهَوِّدُهُ، فَلَمَّا أُجْلِيَتْ بَنُو النَّضِيرِ كَانَ فِيهِمْ مِنْ أَبْنَاءِ الْأَنْصَارِ، فَقَالَتْ الْأَنْصَارُ: لَا نَدَعُ أَبْنَاءَنَا، فَأَنْزَلَ اللَّهُ تَعَالَى {لا إِكْرَاهَ فِي الدِّينِ} [البقرة: ٢٥٦] .

L40836 It has been authentically established that the Messenger of Allah, peace and blessings be upon him, fought the disbelievers until his death, until those among them who were to accept Islam had done so.

فَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَاتَلَ الْكُفَّارَ إلَى أَنْ مَاتَ - عَلَيْهِ السَّلَامُ - حَتَّى أَسْلَمَ مَنْ أَسْلَمَ مِنْهُمْ.

L40837 It was authentically established from him (the Prophet) that there was a report about coercion in religion. Then after that, the verse was revealed: {When the sacred months have passed, then kill those who associate partners with Allah wherever you find them} up to His saying, the Most High: {then let them go their way} [9:5].[55]

وَصَحَّ عَنْهُ الْإِكْرَاهُ فِي الدِّينِ، ثُمَّ نَزَلَ بَعْدَ ذَلِكَ {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] الْآيَةَ إلَى قَوْله تَعَالَى {فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] .

L40838 And the words of the Most High were revealed: "Fight those who do not believe in Allah nor in the Last Day" up to His words: "until they give the jizyah with their own hands while they are humiliated" (Quran 9:29).[56]

وَنَزَلَ قَوْله تَعَالَى {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ} [التوبة: ٢٩] إلَى قَوْله تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩]

[54] **Qur'an references (L40835):** Qur'an 2:256 (Al-Baqarah).
[55] **Qur'an references (L40837):** Qur'an 9:5 (At-Tawbah).
[56] **Qur'an references (L40838):** Qur'an 9:29 (At-Tawbah).

فَإِنْ قَالَ قَائِلٌ: فَأَيْنَ أَنْتُمْ مِنْ قَوْلِه تَعَالَى {فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ} [الأنفال: ٥٨] .

L40839 If someone says: "Where do you stand regarding the saying of the Exalted: {Cast back to them on equal terms} [Al-Anfal: 58]?"[57]

فَيُقَالُ لَهُمْ: لَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ هَذِهِ الْآيَةَ نَزَلَتْ قَبْلَ نُزُولِ " بَرَاءَةٌ " فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّ " بَرَاءَةٌ " نَسَخَتْ كُلَّ حُكْمٍ تَقَدَّمَ، وَأَبْطَلَتْ كُلَّ عَهْدٍ سَلَفَ بِقَوْلِ تَعَالَى {كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ} [التوبة: ٧] وَإِنَّمَا كَانَتْ آيَةُ النَّبْذِ عَلَى سَوَاءٍ أَيَّامَ كَانَتْ الْمُهَادَنَاتُ جَائِزَةً، وَأَمَّا بَعْدَ نُزُولِ {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] فَلَا يَحِلُّ تَرْكُ مُشْرِكٍ أَصْلًا، إِلَّا بِأَنْ يُقْتَلَ، أَوْ يُسْلِمَ، أَوْ يُنْبَذَ إِلَيْهِ عَهْدُهُ بَعْدَ التَّمَكُّنِ مِنْ قَتْلِهِ حَيْثُ وُجِدَ، إِلَّا أَنْ يَكُونَ مِنْ أَبْنَاءِ الَّذِينَ أُوتُوا الْكِتَابَ فَيُقَرَّ عَلَى الْجِزْيَةِ وَالصَّغَارِ، كَمَا أَمَرَ اللَّهُ تَعَالَى، أَوْ يَكُونَ مُسْتَجِيرًا فَيُجَارَ حَتَّى يُقْرَأَ عَلَيْهِ الْقُرْآنُ، ثُمَّ يُرَدَّ إِلَى مَأْمَنِهِ وَلَا بُدَّ، إِلَى أَنْ يُسْلِمَ، وَلَا يُتْرَكَ أَكْثَرَ مِنْ ذَلِكَ، أَوْ رَسُولًا فَيُتْرَكَ مُدَّةَ أَدَاءِ رِسَالَتِهِ، وَأَخْذِ جَوَابِهِ، ثُمَّ يُرَدَّ إِلَى بَلَدِهِ، وَمَا عَدَا هَؤُلَاءِ فَالْقَتْلُ وَلَا بُدَّ، أَوْ الْإِسْلَامُ، كَمَا أَمَرَ اللَّهُ تَعَالَى فِي نَصِّ الْقُرْآنِ، وَمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L40840–40842 They will be told: No two people dispute that this verse was revealed before the revelation of "Barā'ah." Given this undeniable fact, "Barā'ah" has abrogated every prior ruling and annulled every previous covenant by Allah's statement: {How can there be a covenant for the polytheists with Allah and His Messenger, except for those with whom you made a covenant at the Sacred Mosque?} [9:7]. The verse of treaty termination applied uniformly during the period when temporary peace treaties were permissible. However, after the revelation of {When the sacred months have passed, kill the polytheists wherever you find them} [9:5], it is impermissible to leave any polytheist under any circumstance unless he is killed, embraces Islam, or his covenant is repudiated by Muslims after they are capable of killing him wherever he is found—except if he is among the descendants of those given the Scripture, in which case he is permitted to remain [in Islamic lands] provided he pays the jizyah (poll tax) and accepts humiliation, as Allah the Most High has commanded; or if he seeks protection, in which case he is granted protection until the Quran is recited to him, after which he must be returned to his place of safety without fail until he embraces Islam, and he may not be allowed to stay beyond the period required [to convey the Quran]; or if he is an envoy, in which case he is left for the duration of delivering his message and receiving its reply. Then he is to be returned to his country. As for those other than these, they must either accept Islam or be executed, in accordance with what Allah, the Exalted, has commanded in the text of the Quran and what has been authentically established from the Messenger of Allah (peace be upon him).[58]

فَإِنْ ذَكَرُوا: مَا أَنَا حُمَامٌ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ أَنَا أَحْمَدُ بْنُ خَالِدٍ أَنَا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ أَنَا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ أَنَا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: حَيْثُ رُفِعَ إِلَى عَلِيٍّ فِي يَهُودِيٍّ تَزَنْدَقَ وَنَصْرَانِيٍّ تَزَنْدَقَ؟ قَالَ: دَعُوهُ يَحُوَّلُ مِنْ دِينٍ إِلَى دِينٍ.

L40843 If the chain is traced back: From Ḥumām, from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from Aḥmad ibn Khālid, from ʿUbaydullāh ibn Muḥammad al-Kashwārī, from Muḥammad ibn Yūsuf al-Ḥudhāfī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: "In cases referred to ʿAlī concerning a Jew who

[57] **Qur'an references (L40839):** Qur'an 8:58 (Al-Anfal).
[58] **Qur'an references (L40840):** Qur'an 9:7 (At-Tawbah); Qur'an 9:5 (At-Tawbah).

adopted heresy or a Christian who adopted heresy, he ruled: 'Let him convert from one religion to another.'"

L40844 Abū Muḥammad—may Allah have mercy on him—said: This is not authentically established from ʿAlī, for the chain of transmission is broken. Ibn Jurayj was not born until over thirty years after the death of ʿAlī ibn Abī Ṭālib—may Allah be pleased with him. No one after the Messenger of Allah—peace be upon him—holds infallible authority. How many sound statements of ʿAlī have they opposed! And true guidance comes only from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَمْ يَصِحَّ عَنْ عَلِيٍّ، لِأَنَّهُ مُنْقَطِعٌ وَلَمْ يُولَدْ ابْنُ جُرَيْجٍ إِلَّا بَعْدَ نَحْوِ نَيِّفٍ وَثَلَاثِينَ عَامًا مِنْ مَوْتِ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَلَا حُجَّةَ فِي أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ مِنْ قَوْلَةٍ لِعَلِيٍّ صَحِيحَةٍ قَدْ خَالَفُوهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The Inheritance of the Apostate

[مَسْأَلَة مِيرَاثُ الْمُرْتَدِّ]

L40845

L40846 **Issue 2200**: The inheritance of the apostate? Abū Muḥammad—may God have mercy on him—said: "People differed regarding his inheritance. A group held that it belongs to his heirs from among the Muslims." _Narrated by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Mūsā ibn Masʿūd Abū Ḥudhayfah, from Sufyān, from Simāk ibn Ḥarb, from Dithār ibn Yazīd ibn ʿUbayd ibn al-Abraṣ al-Asadī_, ʿAlī ibn Abī Ṭālib said: "The inheritance of the apostate belongs to his children."

٢٢٠٠ - مَسْأَلَةٌ: مِيرَاثُ الْمُرْتَدِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِيرَاثِهِ: فَقَالَتْ طَائِفَةٌ: هُوَ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ: كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُوسَى بْنُ مَسْعُودٍ أَبُو حُذَيْفَةَ أَنَا سُفْيَانُ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ دِثَارِ بْنِ يَزِيدَ بْنِ عُبَيْدِ بْنِ الْأَبْرَصِ الْأَسَدِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مِيرَاثُ الْمُرْتَدِّ لِوَلَدِهِ.

L40847 And from Al-A'mash from Al-Shaybani, who said: An elderly man who had been a Christian, embraced Islam, and later renounced Islam was brought to Ali ibn Abi Talib. Ali said to him: "Perhaps you renounced Islam only to obtain an inheritance and then return to it." He replied: "No." Ali said: "Or perhaps you proposed to a woman, and they refused to let you marry her, so you intended to marry her and then return to Islam." He said: "No." Ali said: "Return to Islam!" He said: "No, until I meet the Messiah?" So Ali ordered that he be executed, and he was beheaded. He then handed over his inheritance to his children among the Muslims. A similar account is reported from Ibn Masʿud.

وَعَنْ الْأَعْمَشِ عَنْ الشَّيْبَانِيِّ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِشَيْخٍ كَانَ نَصْرَانِيًّا فَأَسْلَمَ، ثُمَّ ارْتَدَّ عَنْ الْإِسْلَامِ، فَقَالَ لَهُ عَلِيٌّ: لَعَلَّك إنَّمَا ارْتَدَدْت، لِأَنْ تُصِيبَ مِيرَاثًا ثُمَّ تَرْجِعَ إلَى الْإِسْلَامِ، قَالَ: لَا، قَالَ: فَلَعَلَّك خَطَبْت امْرَأَةً فَأَبَوْا أَنْ يُزَوِّجُوكَهَا فَأَرَدْت أَنْ تَزَوَّجَهَا ثُمَّ تَعُودَ إلَى الْإِسْلَامِ، قَالَ: لَا، قَالَ: فَارْجِعْ إلَى الْإِسْلَامِ؟ قَالَ: لَا، حَتَّى أَلْقَى الْمَسِيحُ؟ فَأَمَرَ بِهِ فَضُرِبَتْ عُنُقُهُ، فَدَفَعَ مِيرَاثَهُ إلَى وَلَدِهِ مِنْ الْمُسْلِمِينَ - وَعَنْ ابْنِ مَسْعُودٍ بِمِثْلِهِ.

L40848 A group held this opinion, among them: Al-Layth ibn Saʿd and Isḥāq ibn

وَقَالَتْ طَائِفَةٌ بِهَذَا، مِنْهُمْ: اللَّيْثُ بْنُ سَعْدٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

Rahawayh.

L40849 Al-Awzaʿī said: If he is killed in the land of Islam, his wealth belongs to his Muslim heirs.

L40850–40851 A group has stated: If he has an heir sharing his religion, that heir is most entitled to his estate. Otherwise, his wealth belongs to his Muslim heirs. As we have reported through the chain of ʻAbd al-Razzāq from Isḥāq ibn Rāshid: ʻUmar ibn ʻAbd al-ʻAzīz issued a ruling concerning a Muslim man who was captured and converted to Christianity. If this is confirmed, his wife inherits from him and observes a waiting period of three menstrual cycles. His wealth is to be handed over to his Muslim heirs. I do not know of it. He said: Unless he has an heir sharing his religion in a territory, in which case that heir is most entitled to it.

L40852 A group held that his inheritance belongs solely to the people of his religion. As narrated to us through Abd al-Razzaq's transmission chain: Maʻmar reported from Qatādah, who said: "The apostate's inheritance belongs to the people of his religion."

L40853 Abd al-Razzaq said: Ibn Jurayj informed us, saying: People are divided into two groups. Among them are those who say: The inheritance of the apostate belongs to the Muslims, for when he apostatizes, his assets are suspended, and nothing can be obtained from him until it is determined whether he will embrace Islam or persist in disbelief. Among them are al-Nakhaʿī, al-Shaʿbī, and al-Ḥakam ibn ʿUtayba. Another group says it goes to the people of his religion. A group said: If he returns to Islam, his wealth remains his; but if he is killed, his wealth goes to the Muslim public treasury (bayt al-māl), not to his disbelieving heirs. This opinion was held by Rabīʿa, Mālik, Ibn Abī Laylā, and al-Shāfiʿī.

L40854 A group said: If he returns to Islam, his wealth remains his; if killed, it passes to his heirs among the disbelievers. Abu Sulayman and our associates said this.

L40855 Abu Hanifa and his companions said: If the apostate is killed, his wealth belongs to his Muslim heirs, and his wife inherits from him like all his other heirs. If he flees and joins the land of war, leaving his wealth with us, the

وَقَالَ الْأَوْزَاعِيِّ: إِنْ قُتِلَ فِي أَرْضِ الْإِسْلَامِ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ لَهُ وَارِثٌ عَلَى دِينِهِ فَهُوَ أَحَقُّ بِهِ، وَإِلَّا فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِسْحَاقَ بْنِ رَاشِدٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ فِي رَجُلٍ مِنْ الْمُسْلِمِينَ أُسِرَ فَتَنَصَّرَ إِذَا عَلِمَ ذَلِكَ تَرِثُ مِنْهُ امْرَأَتُهُ، وَتَعْتَدُّ ثَلَاثَةَ قُرُوءٍ، وَدَفْعُ مَالِهِ إِلَى وَرَثَتِهِ مِنْ الْمُسْلِمِينَ لَا أَعْلَمُهُ، قَالَ: إِلَّا أَنْ يَكُونَ لَهُ وَارِثٌ عَلَى دِينِهِ فِي أَرْضٍ فَهُوَ أَحَقُّ بِهِ.

وَقَالَتْ طَائِفَةٌ: مِيرَاثُهُ لِأَهْلِ دِينِهِ فَقَطْ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ قَتَادَةَ قَالَ: مِيرَاثُ الْمُرْتَدِّ لِأَهْلِ دِينِهِ.

قَالَ عَبْدُ الرَّزَّاقِ: أَنْبَأَنَا ابْنُ جُرَيْجٍ قَالَ: النَّاسُ فَرِيقَانِ، مِنْهُمْ مَنْ يَقُولُ: مِيرَاثُ الْمُرْتَدِّ لِلْمُسْلِمِينَ، لِأَنَّهُ سَاعَةَ يَكْفُرُ يُوقَفُ، فَلَا يُقْدَرُ مِنْهُ عَلَى شَيْءٍ حَتَّى يُنْظَرَ أَيُسْلِمُ أَمْ يَكْفُرُ؟ مِنْهُمْ النَّخَعِيُّ: وَالشَّعْبِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ - وَفَرِيقٌ يَقُولُ: لِأَهْلِ دِينِهِ. وَقَالَتْ طَائِفَةٌ: إِنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ لَهُ، وَإِنْ قُتِلَ فَمَالُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ لَا لِوَرَثَتِهِ مِنْ الْكُفَّارِ - قَالَ بِهَذَا رَبِيعَةُ، وَمَالِكٌ، وَابْنُ أَبِي لَيْلَى، وَالشَّافِعِيُّ.

وَقَالَتْ طَائِفَةٌ: إِنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ لَهُ، وَإِنْ قُتِلَ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْكُفَّارِ - قَالَ بِهَذَا أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

judge shall rule accordingly, emancipate the mothers of his children and his mudabbar slaves, and distribute his wealth among his Muslim heirs in accordance with the Book of Allah, the Exalted. If he returns as a Muslim, he takes from his wealth whatever he finds in the possession of his heirs, with no liability upon them for what they consumed. This applies to what was in his possession before apostasy. As for what he acquired during his apostasy and was then killed or died, it becomes fay for the Muslims.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إِنْ قُتِلَ الْمُرْتَدُّ فَمَالُهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَتَرِثُهُ زَوْجَتُهُ كَسَائِرِ وَرَثَتِهِ، وَإِنْ فَرَّ وَلَحِقَ بِأَرْضِ الْحَرْبِ وَتَرَكَ مَالَهُ عِنْدَنَا فَإِنَّ الْقَاضِيَ يَقْضِي بِذَلِكَ، وَيُعْتِقُ أُمَّهَاتِ أَوْلَادِهِ وَمُدَبَّرِهِ وَيَقْسِمُ مَالَهُ بَيْنَ وَرَثَتِهِ مِنْ الْمُسْلِمِينَ عَلَى كِتَابِ اللَّهِ تَعَالَى، فَإِنْ جَاءَ مُسْلِمًا أَخَذَ مِنْ مَالِهِ مَا وَجَدَ فِي أَيْدِي وَرَثَتِهِ، وَلَا ضَمَانَ عَلَيْهِمْ فِيمَا اسْتَهْلَكُوهُ، هَذَا فِيمَا كَانَ بِيَدِهِ قَبْلَ الرِّدَّةِ - وَأَمَّا مَا اكْتَسَبَهُ فِي حَالِ رِدَّتِهِ ثُمَّ قُتِلَ أَوْ مَاتَ فَهُوَ فَيْءٌ لِلْمُسْلِمِينَ.

L40856 A group of scholars maintained that the property of an apostate at the moment of apostasy belongs to all Muslims—whether he is killed, dies, flees to the land of war, returns to Islam, or [any other outcome]. In all these circumstances, the ruling applies equally.

وَقَالَتْ طَائِفَةٌ: مَالُ الْمُرْتَدِّ سَاعَةَ يَرْتَدُّ لِجَمِيعِ الْمُسْلِمِينَ - قُتِلَ، أَوْ مَاتَ، أَوْ لَحِقَ بِأَرْضِ الْحَرْبِ، أَوْ رَاجَعَ الْإِسْلَامَ - كُلُّ ذَلِكَ سَوَاءٌ.

L40857 This is the opinion of some of Mālik's companions. Ibn Shaʿbān mentioned this from him [Mālik], and Ashhab also held this view.

وَهُوَ قَوْلُ بَعْضِ أَصْحَابِ مَالِكٍ، ذَكَرَ ذَلِكَ ابْنُ شَعْبَانَ عَنْهُ، وَأَشْهَبُ.

L40858–40860 Abu Muhammad (may Allah have mercy on him) said: When they differed, we considered the matter, and what was established from the Messenger of Allah... The Prophet Muhammad - peace and blessings be upon him - [stated] as a barrier preventing the Muslim children of an apostate - they being Muslims - from inheriting their apostate father's wealth, since he is a disbeliever whereas they remain Muslims. A group of narrators related this ḥadīth to me, including: Abdullah ibn Rabiʿ reported to me, Muhammad ibn Isḥāq ibn al-Sulaym reported to me, Ibn al-Aʿrābī reported to me, Abū Dāwūd reported to me, Musaddad reported to me, Sufyān reported to me from al-Zuhrī from Ali ibn al-Ḥusayn from Amr ibn Uthmān ibn Affān from Usāmah ibn Zayd from the Prophet - peace and blessings be upon him - who said: "A Muslim does not inherit a disbeliever, nor does a disbeliever inherit a Muslim."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا نَظَرْنَا فِي ذَلِكَ، فَكَانَ الثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَنَّهُ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ: مَانِعًا مِنْ تَوْرِيثِ وَلَدِ الْمُرْتَدِّ - وَهُمْ مُسْلِمُونَ - مَالَ أَبِيهِمْ الْمُرْتَدِّ، لِأَنَّهُ كَافِرٌ وَهُمْ مُسْلِمُونَ - أَنَا بِهَذَا الْحَدِيثِ جَمَاعَةٌ، وَمِنْ جُمْلَتِهِمْ: مَا أَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ بْنِ السَّلِيمِ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا أَبُو دَاوُد أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ» .

L40861 This is a general statement from him (peace be upon him), from which no apostate has been excluded. *"And your Lord is not forgetful"* [19:64]. Had Allah willed to exclude apostates from this ruling, He would not have

هَذَا عُمُومٌ مِنْهُ - عَلَيْهِ السَّلَامُ - لَمْ يُخَصَّ مِنْهُ مُرْتَدٌّ مِنْ غَيْرِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَرَادَ اللَّهُ أَنْ يَخُصَّ الْمُرْتَدَّ مِنْ ذَلِكَ لَمَا أَغْفَلَهُ، وَلَا أَهْمَلَهُ، بَلْ قَدْ

neglected it. Rather, Allah the Exalted has urged that the apostate is among the disbelievers through His saying: *"Whoever among you allies with them is indeed one of them"* [5:51].[59]

L40862 Thus, this statement is invalidated entirely, and success is from Allah, the Most High.

L40863 **The Ruling on the Apostate's Will and the Administration of His Affairs.**

L40864 Issue 2201: The will of an apostate and his disposition of property? Abu Muhammad said: Any will made by him before or during his apostasy, conforming to piety and Islamic law - all such wills are effective regarding his property that was not seized until his execution, for it remains his property and the legal status of his dispositions is valid. If he is executed or dies, his will becomes binding through his death before that property is seized.

L40865 As for when we seize it before his death—whether it is a slave, a dhimmi, or property—all of it belongs to the Muslim community. No testament can be executed regarding it, because once the testament becomes binding upon his death, that property is no longer his afterwards, and no one's testament can be executed pertaining to what he does not own.

L40866 **Issue: Is one who has voluntarily gone to the land of war to cause hardship to the Muslims deemed an apostate?**

L40867–40869 2202 – Issue: If someone voluntarily goes to the territory of war (dār al-ḥarb), causing discord against the Muslims, is he an apostate because of that or not? And if someone seeks reinforcement from the people of war against the people of Islam – even without leaving the abode of Islam (dār al-Islām) – is he an apostate because of that or not? Abū Muḥammad said: I am ʿAbdullāh ibn Rabīʿ, I am Muḥammad ibn Muʿāwiyah, I am Aḥmad ibn Shuʿayb, I am Muḥammad ibn Qudāmah from Jarīr from Mughīrah from al-Shaʿbī, who said: Jarīr used to narrate from the Prophet – may Allah's peace

[59] **Qur'an references (L40861):** Qur'an 19:64 (Maryam); Qur'an 5:51 (Al-Ma'idah).

حَضَّ اللَّهُ تَعَالَى عَلَى أَنَّ الْمُرْتَدَّ مِنْ جُمْلَةِ الْكُفَّارِ بِقَوْلِهِ تَعَالَى {وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ} [المائدة: ٥١] .

فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وَصِيَّةُ الْمُرْتَدِّ وَتَدْبِيرِهِ]

٢٢٠١ - مَسْأَلَةٌ: وَصِيَّةُ الْمُرْتَدِّ وَتَدْبِيرِهِ؟ قَالَ أَبُو مُحَمَّد: كُلُّ وَصِيَّةٍ أَوْصَى بِهَا قَبْلَ رِدَّتِهِ، أَوْ فِي حِينِ رِدَّتِهِ، بِمَا يُوَافِقُ الْبِرَّ وَدِينَ الْإِسْلَامِ، فَكُلُّ ذَلِكَ نَافِذٌ فِي مَالِهِ الَّذِي لَمْ يُقْدَرْ عَلَيْهِ حَتَّى قُتِلَ، لِأَنَّهُ مَالُهُ وَحُكْمُهُ نَافِذٌ - فَإِذَا قُتِلَ أَوْ مَاتَ، فَقَدْ وَجَبَتْ فِيهِ وَصَايَاهُ بِمَوْتِهِ قَبْلَ أَنْ يُقْدَرَ عَلَى ذَلِكَ الْمَالِ.

وَأَمَّا إذَا قَدَرْنَا عَلَيْهِ قَبْلَ مَوْتِهِ مِنْ عَبْدٍ، وَذِمِّيٍّ، أَوْ مَالٍ، فَهُوَ لِلْمُسْلِمِينَ كُلُّهُ، لَا تَنْفُذُ فِيهِ وَصِيَّةٌ، لِأَنَّهُ إذَا وَجَبَتْ الْوَصِيَّةُ بِمَوْتِهِ لَمْ يَكُنْ ذَلِكَ الْمَالُ لَهُ بَعْدُ، وَلَا تَنْفُذُ وَصِيَّةُ أَحَدٍ فِيمَا لَا يَمْلِكُهُ.

[مَسْأَلَة مَنْ صَارَ مُخْتَارًا إلَى أَرْضِ الْحَرْبِ مُشَاقًّا لِلْمُسْلِمِينَ أَمُرْتَدٌّ هُوَ]

٢٢٠٢ - مَسْأَلَةٌ: مَنْ صَارَ مُخْتَارًا إلَى أَرْضِ الْحَرْبِ، مُشَاقًّا لِلْمُسْلِمِينَ أَمُرْتَدٌّ هُوَ بِذَلِكَ أَمْ لَا؟ وَمَنْ اعْتَضَدَ بِأَهْلِ الْحَرْبِ عَلَى أَهْلِ الْإِسْلَامِ - وَإِنْ لَمْ يُفَارِقْ دَارَ الْإِسْلَامِ - أَمُرْتَدٌّ هُوَ بِذَلِكَ أَمْ لَا؟ قَالَ أَبُو مُحَمَّد: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ قُدَامَةَ عَنْ جَرِيرٍ عَنْ مُغِيرَةَ عَنْ الشَّعْبِيِّ قَالَ: كَانَ جَرِيرٌ يُحَدِّثُ

and blessings be upon him – If a slave flees, his prayer is not accepted, and if he dies, he dies in a state of disbelief. A servant of Jarīr fled, so Jarīr seized him and beheaded him.

عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهُ صَلَاةٌ، وَإِنْ مَاتَ مَاتَ كَافِرًا، فَأَبَقَ غُلَامٌ لِجَرِيرٍ، فَأَخَذَهُ فَضَرَبَ عُنُقَهُ» .

L40870 And through him to Ahmad ibn Shu'ayb: Qutaybah reported from Humaid ibn 'Abd al-Rahman from his father from Abu Ishaq from al-Sha'bi from Jarir ibn 'Abd Allah al-Bajali, who said: The Messenger of Allah (peace be upon him) said, "If a slave absconds to polytheism, it becomes permissible to shed his blood."[60]

وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ أَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي إِسْحَاقَ عَنْ الشَّعْبِيِّ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا أَبَقَ الْعَبْدُ إِلَى الشِّرْكِ فَقَدْ حَلَّ دَمُهُ» .

L40871 From the transmission of Muslim: I, Ali ibn Hujr al-Sa'di, narrate from Ismail—meaning ibn Ulayyah—from Mansur ibn Abd al-Rahman, from al-Sha'bi, from Jarir that he heard him say: Any slave who flees from his masters has committed disbelief until he returns to them. Mansur said: By Allah, this has indeed been narrated from the Prophet—peace and blessings of Allah be upon him—but I dislike having this narration attributed to me here in Basra.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ أَنَا إِسْمَاعِيلُ - يَعْنِي ابْنَ عُلَيَّةَ - عَنْ مَنْصُورِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ عَنْ جَرِيرٍ أَنَّهُ سَمِعَهُ يَقُولُ: أَيُّمَا عَبْدٍ أَبَقَ مِنْ مَوَالِيهِ فَقَدْ كَفَرَ حَتَّى يَرْجِعَ إِلَيْهِمْ - قَالَ مَنْصُورٌ: قَدْ وَاَللَّهِ رُوِيَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنْ أَكْرَهُ أَنْ يُرْوَى عَنِّي هَاهُنَا بِالْبَصْرَةِ.

L40872 Abdullah ibn Rabi' narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-A'rabi narrated to us: Abu Dawud narrated to us: Hannad ibn al-Sari narrated to us: Abu Mu'awiyah—he is Ibn Abi Khazim al-Darir—narrated from Isma'il ibn Abi Khalid from Qays ibn Abi Hazim from Jarir ibn Abdullah al-Bajali, who said: "The Messenger of Allah—peace and blessings be upon him—sent a military detachment to Khatham. Some of them sought refuge by prostrating, but they were swiftly killed. When this reached the Prophet—peace and blessings be upon him—he ordered half the blood money for them and said: 'I disavow any Muslim who settles amidst polytheists.' They said: 'O Messenger of Allah, their two fires are not visible to each other.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا أَبُو دَاوُد أَنَا هَنَّادُ بْنُ السَّرِيِّ أَنَا أَبُو مُعَاوِيَةَ - هُوَ ابْنُ أَبِي خَازِمٍ الضَّرِيرُ - عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً إِلَى خَثْعَمَ فَاعْتَصَمَ نَاسٌ مِنْهُمْ بِالسُّجُودِ فَأَسْرَعَ فِيهِمْ الْقَتْلَ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ لَهُمْ بِنِصْفِ الْعَقْلِ، وَقَالَ: أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ، قَالُوا: يَا رَسُولَ اللَّهِ لَا تَتَرَاءَى نَارُهُمَا» .

L40873 Abu Muhammad—may Allah have mercy on him—said: The hadith of al-Sha'bi from Jarir, which we previously mentioned, is transmitted through the chain of Mansur ibn 'Abd al-Rahman from al-Sha'bi and is mawqoof—

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدِيثُ الشَّعْبِيِّ عَنْ جَرِيرٍ الَّذِي قَدَّمْنَا هُوَ مِنْ طَرِيقِ مَنْصُورِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ مَوْقُوفٌ عَلَى جَرِيرٍ، فَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

[60] **Hadith references (L40870):** Sunan Abi Dawud 4360; Mishkat al-Masabih 3549.

a narration attributed to a Companion, not the Prophet. Thus, there is no basis for preoccupation with it.

L40874–40876 This is transmitted through the chain of Mughīrah from al-Shaʿbī as an authenticated report, except it contains the statement: "Indeed the servant becomes a disbeliever by his remaining," which outwardly refers to the owned servant, since in conventional terms a free person is not described as an absconder. However, Abū Isḥāq's narration from al-Shaʿbī in this report clarifies that it applies to both the free person and the servant, explaining the specific absconding that causes disbelief - namely, absconding to the land of polytheism. The act of distancing applies to everyone, for all are servants of Allah Almighty, as we have transmitted through the chain of Muslim: I am Isḥāq ibn Ibrāhīm al-Ḥanẓalī, from Sufyān ibn ʿUyaynah. From al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah: I heard the Prophet - peace and blessings of Allah be upon him - say: "Allah the Exalted said: 'I have divided the Ṣalāh between Myself and My servant into two halves, and My servant shall have what he asked. So when the servant says: "All praise is due to Allah, Lord of the worlds," Allah says: "My servant has praised Me."'"[61]

L40877 The statement of the Exalted, "When the slave says" - He intended by this both the free person and the enslaved, without doubt.

L40878 The term "absconding" is also applied to a free person. Allah the Exalted said: {When he absconded to the laden ship} [As-Saffat: 140]. Thus, the Exalted informed about His free messenger Yunus ibn Matta—may Allah's peace and blessings be upon him—that he absconded when he left in anger about his Lord the Exalted's command.[62]

L40879 We have known that whoever departs from the abode of Islam to the abode of war has indeed fled from Allah the Exalted, from the Imam of the Muslims, and their community. His Hadith (peace and blessings be upon him) clarifies this: "He is free from responsibility toward any Muslim who settles among polytheists," and he (peace be upon him) only disavows a disbeliever. Allah

[61] **Qur'an references (L40874):** Qur'an 1:2 (Al-Fatihah).
[62] **Qur'an references (L40878):** Qur'an 37:140 (As-Saffat).

وَهُوَ مِنْ طَرِيقِ مُغِيرَةَ عَنْ الشَّعْبِيِّ مُسْنَدٌ، إلَّا أَنَّ فِيهِ: إنَّ الْعَبْدَ بِإِقَامَتِهِ يَكُونُ كَافِرًا، فَظَاهِرُهُ فِي الْمَمْلُوكِ، لِأَنَّ الْحُرَّ لَا يُوصَفُ بِإِبَاقٍ - فِي الْمَعْهُودِ - لَكِنَّ رِوَايَةَ أَبِي إِسْحَاقَ عَنْ الشَّعْبِيِّ فِي هَذَا الْخَبَرِ بَيَانُ أَنَّهُ فِي الْحُرِّ وَالْمَمْلُوكِ، وَبَيَانُ الْإِبَاقِ الَّذِي يَكْفُرُ بِهِ، وَهُوَ إبَاقُهُ إلَى أَرْضِ الشِّرْكِ، وَالْبُعْدُ وَاقِعٌ عَلَى كُلِّ أَحَدٍ، لِأَنَّ كُلَّ أَحَدٍ عَبْدُ اللَّهِ تَعَالَى: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إبْرَاهِيمَ الْحَنْظَلِيُّ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ " سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «قَالَ اللَّهُ تَعَالَى: قَسَمْتُ الصَّلَاةَ بَيْنِي وَبَيْنَ عَبْدِي نِصْفَيْنِ، وَلِعَبْدِي مَا سَأَلَ، فَإِذَا قَالَ الْعَبْدُ: الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، قَالَ اللَّهُ: حَمِدَنِي عَبْدِي» .

فَقَوْلُهُ تَعَالَى (إذَا قَالَ الْعَبْدُ) عَنِيَ بِهِ الْحُرَّ وَالْمَمْلُوكَ - بِلَا شَكٍّ -.

وَالْإِبَاقُ مُطْلَقٌ عَلَى الْحُرِّ أَيْضًا قَالَ اللَّهُ تَعَالَى {إِذْ أَبَقَ إِلَى الْفُلْكِ الْمَشْحُونِ} [الصافات: ١٤٠] فَأَخْبَرَ تَعَالَى عَنْ رَسُولِهِ الْحُرِّ يُونُسَ بْنِ مَتَّى - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَبَقَ إذْ خَرَجَ مُغَاضِبًا لِأَمْرِ رَبِّهِ تَعَالَى.

وَقَدْ عَلِمْنَا أَنَّ مَنْ خَرَجَ عَنْ دَارِ الْإِسْلَامِ إلَى دَارِ الْحَرْبِ فَقَدْ أَبَقَ عَنْ اللَّهِ تَعَالَى، وَعَنْ إمَامِ الْمُسْلِمِينَ وَجَمَاعَتِهِمْ، وَيُبَيِّنُ هَذَا حَدِيثُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَبْرَأُ إلَّا مِنْ كَافِرٍ، قَالَ اللَّهُ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

the Exalted said: {The believing men and believing women are allies of one another} [At-Tawbah: 71].[63]

L40880 Abu Muhammad—may God have mercy on him—said: Thus, it is established that whoever willingly enters the abode of disbelief and war while waging hostilities against adjacent Muslims, becomes an apostate through this act, subject to all apostasy rulings: the obligation to execute him when captured, the permissibility of confiscating his wealth, the dissolution of his marriage, and other such rulings. For the Messenger of God—peace and blessings be upon him—did not disavow any Muslim.

L40881 As for one who fled to the land of war due to injustice he feared, did not fight the Muslims, nor aided them against them, and found no one among the Muslims who would grant him protection, there is no blame upon him, for he is compelled by necessity and forced.

L40882 We have mentioned that Muhammad ibn Muslim ibn Shihab al-Zuhri was resolved that if Hisham ibn Abd al-Malik died, he would flee to Byzantine territory, because al-Walid ibn Yazid—who succeeded Hisham as ruler—had vowed to kill him if he could get hold of him. Whoever is in such a circumstance is excused.

L40883 Similarly, whoever among the Muslims resides in the lands of India, Sindh, China, the Turks, the lands of the Sudan, and the Byzantines, and is unable to depart from there due to a heavy burden, lack of wealth, physical weakness, or an impassable path, he is excused.

L40884–40885 If there is someone there who wages war against the Muslims and aids the disbelievers through service or writing, he is a disbeliever—even if he resides there solely to seek worldly benefits, being like a dhimmi to them, despite being capable of joining the Muslim community and their land. He is not far from disbelief, and we see no excuse for him—we ask Allah for well-being.

L40886 The same does not apply to those residing under the rule of extremist

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ بِهَذَا أَنَّ مَنْ لَحِقَ بِدَارِ الْكُفْرِ وَالْحَرْبِ مُخْتَارًا مُحَارِبًا لِمَنْ يَلِيهِ مِنْ الْمُسْلِمِينَ، فَهُوَ بِهَذَا الْفِعْلِ مُرْتَدٌّ لَهُ أَحْكَامُ الْمُرْتَدِّ كُلُّهَا: مِنْ وُجُوبِ الْقَتْلِ عَلَيْهِ، مَتَى قُدِرَ عَلَيْهِ، وَمِنْ إبَاحَةِ مَالِهِ، وَانْفِسَاخِ نِكَاحِهِ، وَغَيْرِ ذَلِكَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَبْرَأْ مِنْ مُسْلِمٍ.

وَأَمَّا مَنْ فَرَّ إلَى أَرْضِ الْحَرْبِ لِظُلْمٍ خَافَهُ، وَلَمْ يُحَارِبْ الْمُسْلِمِينَ، وَلَا أَعَانَهُمْ عَلَيْهِمْ، وَلَمْ يَجِدْ فِي الْمُسْلِمِينَ مَنْ يُجِيرُهُ، فَهَذَا لَا شَيْءَ عَلَيْهِ، لِأَنَّهُ مُضْطَرٌّ مُكْرَهٌ.

وَقَدْ ذَكَرْنَا أَنَّ الزُّهْرِيَّ مُحَمَّدَ بْنَ مُسْلِمِ بْنِ شَهَابٍ: كَانَ عَازِمًا عَلَى أَنَّهُ إنْ مَاتَ هِشَامُ بْنُ عَبْدِ الْمَلِكِ لَحِقَ بِأَرْضِ الرُّومِ، لِأَنَّ الْوَلِيدَ بْنَ يَزِيدَ كَانَ نَذَرَ دَمَهُ إنْ قَدَرَ عَلَيْهِ، وَهُوَ كَانَ الْوَالِي بَعْدَ هِشَامٍ فَمَنْ كَانَ هَكَذَا فَهُوَ مَعْذُورٌ.

وَكَذَلِكَ: مَنْ سَكَنَ بِأَرْضِ الْهِنْدِ، وَالسِّنْدِ، وَالصِّينِ، وَالتُّرْكِ، وَالسُّودَانِ وَالرُّومِ، مِنْ الْمُسْلِمِينَ، فَإِنْ كَانَ لَا يَقْدِرُ عَلَى الْخُرُوجِ مِنْ هُنَالِكَ لِثِقَلِ ظَهْرٍ، أَوْ لِقِلَّةِ مَالٍ، أَوْ لِضَعْفِ جِسْمٍ، أَوْ لِامْتِنَاعِ طَرِيقٍ، فَهُوَ مَعْذُورٌ.

فَإِنْ كَانَ هُنَاكَ مُحَارِبًا لِلْمُسْلِمِينَ مُعِينًا لِلْكُفَّارِ بِخِدْمَةٍ، أَوْ كِتَابَةٍ: فَهُوَ كَافِرٌ - وَإِنْ كَانَ إنَّمَا يُقِيمُ هُنَالِكَ لِدُنْيَا يُصِيبُهَا، وَهُوَ كَالذِّمِّيِّ لَهُمْ، وَهُوَ قَادِرٌ عَلَى اللِّحَاقِ بِجَمْهَرَةِ الْمُسْلِمِينَ وَأَرْضِهِمْ، فَمَا يَبْعُدُ عَنْ الْكُفْرِ، وَمَا نَرَى لَهُ عُذْرًا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[63] **Qur'an references (L40879):** Qur'an 9:71 (At-Tawbah).

disbelievers or those who emulate them, for in the land of Egypt, Qayrawan, and others, Islam remains outwardly manifest. Their rulers do not openly renounce Islam but rather claim affiliation to it, though in reality they are disbelievers.

وَلَيْسَ كَذَلِكَ: مَنْ سَكَنَ فِي طَاعَةِ أَهْلِ الْكُفْرِ مِنْ الْغَالِيَةِ، وَمَنْ جَرَى مَجْرَاهُمْ، لِأَنَّ أَرْضَ مِصْرَ وَالْقَيْرَوَانِ، وَغَيْرَهُمَا، فَالْإِسْلَامُ هُوَ الظَّاهِرُ، وَوُلَاتُهُمْ عَلَى كُلِّ ذَلِكَ لَا يُجَاهِرُونَ بِالْبَرَاءَةِ مِنْ الْإِسْلَامِ، بَلْ إلَى الْإِسْلَامِ يَنْتَمُونَ، وَإِنْ كَانُوا فِي حَقِيقَةِ أَمْرِهِمْ كُفَّارًا.

L40887 As for one who willingly resides in the land of the Qarmatians, he is unquestionably a disbeliever, for they openly profess disbelief and renounce Islam, and we seek refuge in Allah from that.

وَأَمَّا مَنْ سَكَنَ فِي أَرْضِ الْقَرَامِطَةِ مُخْتَارًا فَكَافِرٌ بِلَا شَكٍّ، لِأَنَّهُمْ مُعْلِنُونَ بِالْكُفْرِ وَتَرْكِ الْإِسْلَامِ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L40888 As for one who resides in a land where certain heretical desires leading to disbelief become manifest, he is not a disbeliever, for the name of Islam is manifest there under all circumstances—such as monotheism, affirmation of the message of Muḥammad (peace and blessings of Allah be upon him), renunciation of every religion other than Islam, establishment of prayer, fasting in Ramaḍān, and all other divine laws that constitute Islam and faith—and all praise belongs to Allah, Lord of the worlds.

وَأَمَّا مَنْ سَكَنَ فِي بَلَدٍ تَظْهَرُ فِيهِ بَعْضُ الْأَهْوَاءِ الْمُخْرِجَةِ إلَى الْكُفْرِ، فَهُوَ لَيْسَ بِكَافِرٍ، لِأَنَّ اسْمَ الْإِسْلَامِ هُوَ الظَّاهِرُ هُنَالِكَ عَلَى كُلِّ حَالٍ، مِنْ التَّوْحِيدِ، وَالْإِقْرَارِ بِرِسَالَةِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْبَرَاءَةِ مِنْ كُلِّ دِينٍ غَيْرِ الْإِسْلَامِ وَإِقَامَةِ الصَّلَاةِ، وَصِيَامِ رَمَضَانَ، وَسَائِرِ الشَّرَائِعِ الَّتِي هِيَ الْإِسْلَامُ وَالْإِيمَانُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L40889 The statement of the Messenger of Allah—peace be upon him—"I disavow every Muslim who resides among the polytheists," clarifies what we have mentioned, and that he—peace be upon him—intended none but the abode of war by this. Otherwise, why would he—peace be upon him—appoint his agents over Khaibar when they were all Jews?

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ أَقَامَ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ» يُبَيِّنُ مَا قُلْنَاهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - إنَّمَا عَنَى بِذَلِكَ دَارَ الْحَرْبِ، وَإِلَّا فَقَدْ اسْتَعْمَلَ - عَلَيْهِ السَّلَامُ - عُمَّالَهُ عَلَى خَيْبَرَ، وَهُمْ كُلُّهُمْ يَهُودُ.

L40890 When the People of the Dhimma are in their cities where others do not mix with them, the one residing among them—whether to exercise authority over them or for trade—is not called a disbeliever or a wrongdoer. Rather, he is a virtuous Muslim, and their land is a domain of Islam, not a domain of polytheism. This is because the domain is ascribed to the dominant authority over it, the ruler within it, and its owner.

وَإِذَا كَانَ أَهْلُ الذِّمَّةِ فِي مَدَائِنِهِمْ لَا يُمَازِجُهُمْ غَيْرُهُمْ فَلَا يُسَمَّى السَّاكِنُ فِيهِمْ - لِإِمَارَةٍ عَلَيْهِمْ، أَوْ لِتِجَارَةٍ - بَيْنَهُمْ: كَافِرًا، وَلَا مُسِيئًا، بَلْ هُوَ مُسْلِمٌ حَسَنٌ، وَدَارُهُمْ دَارُ إسْلَامٍ، لَا دَارُ شِرْكٍ، لِأَنَّ الدَّارَ إنَّمَا تُنْسَبُ لِلْغَالِبِ عَلَيْهَا، وَالْحَاكِمُ فِيهَا، وَالْمَالِكُ لَهَا.

L40891 If a militant disbeliever were to dominate a territory among the domains of Islam, allowing the Muslims within it to retain their status under his rule—while he is the ruler over it, exercising sole and unrestricted control over its governance, and openly professing a religion other than Islam—then all

who aid him and remain with him would apostatize by doing so, even if he professes to be Muslim, due to the rationale we have elaborated.

L40892–40894 As for the one from among the Muslims who are of the frontier people whose protective zeal drove him to seek assistance from the polytheists... Regarding the Ḥarbīs, he permitted them to kill any Muslim who opposed him, seize their wealth, or take them captive. If his faction prevails and the disbelievers act as his followers, he is doomed to perish in extreme corruption yet does not thereby become a disbeliever, for he has not committed any act necessitating disbelief per the Quran or consensus. But if the disbelievers' rule governs him, he becomes a disbeliever thereby, as previously established. If both sides are equally matched with neither ruling over the other, we do not deem him a disbeliever in this case—and Allah knows best. The true disbeliever from whom the Messenger of Allah—peace and blessings be upon him and his household—dissociated himself is one who resides among the polytheists. And success is from Allah, the Exalted.

L40895 **The Juristic Issue of Defining the Dissemblers (Munāfiqūn) and Apostates (Murtaddūn).**

L40896 2203 – Issue: Who are the hypocrites and apostates? Some said: The Messenger of God—peace and blessings be upon him—knew the hypocrites and recognized them as apostates who disbelieved after professing Islam. A man confronted him under the custom of tajwīr (protection), and he allocated shares not for God's sake—a valid apostasy—yet the Prophet did not kill him.

L40897 They said: Thus, it is established that there is no prescribed killing for an apostate. For if killing were obligatory, the Messenger of Allah - peace and blessings of Allah be upon him - would have carried it out upon the hypocrites who were apostates, concerning whom Allah the Exalted said:

وَلَوْ أَنَّ كَافِرًا مُجَاهِدًا غَلَبَ عَلَى دَارٍ مِنْ دُورِ الْإِسْلَامِ، وَأَقَرَّ الْمُسْلِمِينَ بِهَا عَلَى حَالِهِمْ، إلَّا أَنَّهُ هُوَ الْمَالِكُ لَهَا، الْمُنْفَرِدُ بِنَفْسِهِ فِي ضَبْطِهَا، وَهُوَ مُعْلِنٌ بِدِينٍ غَيْرِ الْإِسْلَامِ لَكَفَرَ بِالْبَقَاءِ مَعَهُ كُلُّ مَنْ عَاوَنَهُ، وَأَقَامَ مَعَهُ - وَإِنْ ادَّعَى أَنَّهُ مُسْلِمٌ - لِمَا ذَكَرْنَا.

وَأَمَّا مَنْ حَمَلَتْهُ الْحَمِيَّةُ مِنْ أَهْلِ الثَّغْرِ مِنْ الْمُسْلِمِينَ فَاسْتَعَانَ بِالْمُشْرِكِينَ الْحَرْبِيِّينَ، وَأَطْلَقَ أَيْدِيَهُمْ عَلَى قَتْلِ مَنْ خَالَفَهُ مِنْ الْمُسْلِمِينَ، أَوْ عَلَى أَخْذِ أَمْوَالِهِمْ، أَوْ سَبْيِهِمْ، فَإِنْ كَانَتْ يَدُهُ هِيَ الْغَالِبَةُ وَكَانَ الْكُفَّارُ لَهُ كَأَتْبَاعٍ، فَهُوَ هَالِكٌ فِي غَايَةِ الْفُسُوقِ، وَلَا يَكُونُ بِذَلِكَ كَافِرًا، لِأَنَّهُ لَمْ يَأْتِ شَيْئًا أَوْجَبَ بِهِ عَلَيْهِ كُفْرًا: قُرْآنٌ أَوْ إجْمَاعٌ، وَإِنْ كَانَ حُكْمُ الْكُفَّارِ جَارِيًا عَلَيْهِ فَهُوَ بِذَلِكَ كَافِرٌ عَلَى مَا ذَكَرْنَا، فَإِنْ كَانَا مُتَسَاوِيَيْنِ لَا يَجْرِي حُكْمُ أَحَدِهِمَا عَلَى الْآخَرِ فَمَا نَرَاهُ بِذَلِكَ كَافِرًا - وَاَللَّهُ أَعْلَمُ - وَإِنَّمَا الْكَافِرُ الَّذِي بَرِئَ مِنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - هُوَ الْمُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة التَّعْرِيف بالمنافقين والمرتدين]

٢٢٠٣ - مَسْأَلَةٌ: مَنْ الْمُنَافِقِينَ، وَالْمُرْتَدِّينَ؟ قَالَ قَوْمٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَرَفَ الْمُنَافِقِينَ، وَعَرَفَ أَنَّهُمْ مُرْتَدُّونَ كَفَرُوا بَعْدَ إسْلَامِهِمْ - وَوَاجَهَهُ رَجُلٌ بِالتَّجْوِيرِ، وَأَنَّهُ يُقَسِّمُ قِسْمَةً لَا يُرَادُ بِهَا وَجْهُ اللَّهِ - وَهَذِهِ رِدَّةٌ صَحِيحَةٌ فَلَمْ يَقْتُلْهُ.

قَالُوا: فَصَحَّ أَنْ لَا قَتْلَ عَلَى مُرْتَدٍّ، وَلَوْ كَانَ عَلَيْهِ قَتْلٌ لَأَنْفَذَ ذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُنَافِقِينَ الْمُرْتَدِّينَ الَّذِينَ قَالَ اللَّهُ تَعَالَى فِيهِمْ {إذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] .

{When the hypocrites come to you} [Al-Munāfiqūn: 1] to His words: {so they do not comprehend} [At-Tawbah: 87].[64]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ كُلَّ آيَةٍ تَعَلَّقَ بِهَا مُتَعَلِّقٌ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَّفَ الْمُنَافِقِينَ بِأَعْيَانِهِمْ، وَمُبِينُونَ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ - أَنَّهُمْ قِسْمَانِ: قِسْمٌ - لَمْ يُعَرِّفْهُمْ قَطُّ - عَلَيْهِ السَّلَامُ -.

L40898 Abū Muḥammad—may Allāh have mercy on him—said: This is all the evidence they have cited. We—by the will of Allāh the Exalted—will enumerate every verse cited by those who argue that the Messenger of Allāh—peace and blessings be upon him—identified hypocrites by their persons. With Allāh's aid and support, we clarify that they comprise two categories: a category whom he—peace and blessings be upon him—never identified at all.

وَقِسْمٌ آخَرُ - افْتَضَحُوا، فَعَرَّفَهُمْ فَلَاذُوا بِالتَّوْبَةِ، وَلَمْ يُعَرِّفْهُمْ - عَلَيْهِ السَّلَامُ - أَنَّهُمْ كَاذِبُونَ أَوْ صَادِقُونَ فِي تَوْبَتِهِمْ فَقَطْ.

L40899 And another group—they were disgraced, so he made them aware, and they resorted to repentance. Yet he (peace be upon him) did not inform them that they were lying or truthful in their repentance only.

فَإِذَا بَيَّنَّا هَذَا - بِعَوْنِ اللَّهِ تَعَالَى - بَطَلَ قَوْلُ مَنْ احْتَجَّ بِأَمْرِ الْمُنَافِقِينَ فِي أَنَّهُ لَا قَتْلَ عَلَى مُرْتَدٍّ، وَبَقِيَ قَوْلُ: مَنْ رَأَى الْقَتْلَ بِالتَّوْبَةِ.

L40900 When we have clarified this—with the help of God, the Exalted—the argument of those who cite the matter of the hypocrites to claim that there is no execution for apostates is invalidated, and remains the view of those who hold that killing is warranted despite repentance.

وَأَمَّا إنَّهُ لَا يَسْقُطُ بِالتَّوْبَةِ، وَالْبُرْهَانُ عَلَى الصَّحِيحِ مِنْ ذَلِكَ، فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40901 As for it not being nullified by repentance, and the evidence supporting the correct opinion regarding that, we say. And with Allah, the Exalted, is success.

قَالَ اللَّهُ تَعَالَى: {وَمِنَ النَّاسِ مَنْ يَقُولُ آمَنَّا بِاللَّهِ وَبِالْيَوْمِ الآخِرِ} [البقرة: ٨] إلَى قَوْله تَعَالَى {فَمَا رَبِحَتْ تِجَارَتُهُمْ وَمَا كَانُوا مُهْتَدِينَ} [البقرة: ١٦] .

L40902–40903 Allah, the Exalted, said: "And among the people are those who say, 'We believe in Allah and the Last Day'" [Al-Baqarah: 8] up to His saying, the Exalted: "So their trade has brought no profit, nor have they been guided" [Al-Baqarah: 16].[65]

فَهَذِهِ أَوَّلُ آيَةٍ فِي الْقُرْآنِ فِيهَا ذِكْرُ الْمُنَافِقِينَ، وَلَيْسَ فِي شَيْءٍ مِنْهَا دَلِيلٌ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَهُمْ، وَلَا عَلَى أَنَّهُ لَمْ يَعْرِفْهُمْ، فَلَا مُتَعَلَّقَ فِيهَا لِأَحَدٍ مِنْ أَهْلِ الْقَوْلَيْنِ الْمَذْكُورَيْنِ.

L40904 This is the first verse in the Qur'an that mentions the hypocrites. There is no indication in any part of it that the Messenger of Allah (PBUH) recognized them, nor that he failed to recognize them. Therefore, this verse provides no grounds for either of the two aforementioned positions.

[64] **Qur'an references (L40897):** Qur'an 63:1 (Al-Munafiqun); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun).

[65] **Qur'an references (L40903):** Qur'an 2:8 (Al-Baqarah); Qur'an 2:16 (Al-Baqarah).

L40905 Allah the Exalted said: {O you who believe, do not take close allies from outside your faith} [Āl ʿImrān: 118] until His saying: {Indeed, Allah fully comprehends all they do} [Āl ʿImrān: 120]. This verse provides proof that these people can be known, for Allah the Exalted informed us they are outsiders through His words {from outside your faith} [Āl ʿImrān: 118]. Since they are outsiders, they could be Jews who are exposed.[66]

قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَّخِذُوا بِطَانَةً مِنْ دُونِكُمْ} [آل عمران: ١١٨] إِلَى قَوْله تَعَالَى: {إِنَّ اللَّهَ بِمَا يَعْمَلُونَ مُحِيطٌ} [آل عمران: ١٢٠] فَفِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى أَنَّ هَؤُلَاءِ الْقَوْمَ مُمْكِنٌ أَنْ يَكُونُوا مَعْرُوفِينَ، لِأَنَّ اللَّهَ تَعَالَى أَخْبَرَنَا أَنَّهُمْ مِنْ غَيْرِنَا بِقَوْلِهِ تَعَالَى {مِنْ دُونِكُمْ} [آل عمران: ١١٨] فَإِذْ هُمْ مِنْ غَيْرِنَا فَمُمْكِنٌ أَنْ يَكُونُوا مِنْ الْيَهُودِ مَكْشُوفِينَ.

L40906 It is possible that His saying, Exalted is He, about them—that they said, *"We have believed"* [Quran 2:14]—refers to what they had.[67]

وَمُمْكِنٌ أَنْ يَكُونَ قَوْله تَعَالَى عَنْهُمْ أَنَّهُمْ {قَالُوا آمَنَّا} [البقرة: ١٤] أَيْ بِمَا عِنْدَهُمْ.

L40907 It may indeed also be possible that they are among the hypocrites who outwardly show adherence to Islam.

وَقَدْ يُمْكِنُ أَيْضًا: أَنْ يَكُونُوا مِنْ الْمُنَافِقِينَ الْمُظْهِرِينَ لِلْإِسْلَامِ.

L40908 It is possible that Allah the Exalted commanded us not to take them as confidants if He made us aware of this from them, and the first opinion is clearer and stronger in accordance with the apparent meaning of the verse.

وَمُمْكِنُ أَنَّ اللَّهَ تَعَالَى أَمَرَنَا أَنْ لَا نَتَّخِذَهُمْ بِطَانَةً إذَا أَطْلَعَنَا مِنْهُمْ عَلَى هَذَا، وَالْوَجْهُ الْأَوَّلُ أَظْهَرُ وَأَقْوَى لِظَاهِرِ الْآيَةِ.

L40909 And since both are possible, there is no basis in this verse for those who claim that the Messenger of Allah—may Allah bless him and grant him peace—knew the hypocrites by their identities and knew that their inner selves were hypocrisy.

وَإِذْ كِلْتَاهُمَا مُمْكِنٌ فَلَا مُتَعَلَّقَ فِي هَذِهِ الْآيَةِ لِمَنْ ذَهَبَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ الْمُنَافِقِينَ بِأَعْيَانِهِمْ، وَيَدْرِي أَنَّ بَاطِنَهُمْ النِّفَاقُ.

L40910 And the Exalted said: "Have you not seen those who claim that they..." [Quran 4:60] until His statement: "...until they seek your judgment in what they dispute..." [Quran 4:65].[68]

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ} [النساء: ٦٠] إلَى قَوْله تَعَالَى: {حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ} [النساء: ٦٥] .

L40911 It has been authentically reported from the Messenger of Allah—peace and blessings of Allah be upon him—: "Three traits: whoever possesses them is a pure hypocrite"—as recorded in *Sahih Muslim* and others—"When he speaks, he lies; when he promises, he breaks it; and when entrusted, he betrays—even if he fasts, prays, and falsely claims to be a Muslim."

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ثَلَاثٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا» فِي كِتَابِ مُسْلِمٍ وَغَيْرِهِ «إذَا حَدَّثَ كَذَبَ وَإِذَا وَعَدَ أَخْلَفَ وَإِذَا اُؤْتُمِنَ خَانَ وَإِنْ صَامَ وَصَلَّى وَزَعَمَ أَنَّهُ مُسْلِمٌ» .

[66] **Qur'an references (L40905):** Qur'an 3:118 (Ali 'Imran); Qur'an 3:120 (Ali 'Imran).
[67] **Qur'an references (L40906):** Qur'an 2:14 (Al-Baqarah).
[68] **Qur'an references (L40910):** Qur'an 4:60 (An-Nisa); Qur'an 4:65 (An-Nisa).

وَمِنْ طَرِيقِ مُسْلِمٍ أَيْضًا - نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَا جَمِيعًا: نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا الْأَعْمَشُ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَرْبَعٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَمَنْ كَانَتْ فِيهِ خَلَّةٌ مِنْهُنَّ كَانَتْ فِيهِ خَلَّةٌ مِنْ نِفَاقٍ حَتَّى يَدَعَهَا: إِذَا حَدَّثَ كَذَبَ، إِذَا وَعَدَ أَخْلَفَ، إِذَا عَاهَدَ غَدَرَ، وَإِذَا خَاصَمَ فَجَرَ» .

L40912–40914 And from the chain of Muslim as well: Abu Bakr ibn Abi Shaybah and Muhammad ibn Abdullah ibn Numayr both narrated to us, saying altogether: Abdullah ibn Numayr narrated to us, Al-Aʿmash narrated to us, from Abdullah ibn Murrah, from Masruq, from Abdullah ibn Amr ibn Al-ʿAs, who said: The Messenger of Allah (peace and blessings be upon him) said, “Four: whoever possesses them is a hypocrite.” “Purely, whoever has within him a trait from these carries a trait of hypocrisy until he renounces it: when he narrates, he lies; when he promises, he breaks it; when he covenants, he betrays; and when he disputes, he acts immorally.”

فَقَدْ صَحَّ أَنَّ هَاهُنَا نِفَاقًا لَا يَكُونُ صَاحِبُهُ كَافِرًا، وَنِفَاقًا يَكُونُ صَاحِبُهُ كَافِرًا، فَيُمْكِنُ أَنْ يَكُونَ هَؤُلَاءِ الَّذِينَ أَرَادُوا التَّحَاكُمَ إِلَى الطَّاغُوتِ لَا إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُظْهِرِينَ لِطَاعَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُصَاةً بِطَلَبِ الرُّجُوعِ فِي الْحُكْمِ إِلَى غَيْرِهِ مُعْتَقِدِينَ لِصِحَّةِ ذَلِكَ، لَكِنْ رَغْبَةً فِي اتِّبَاعِ الْهَوَى، فَلَمْ يَكُونُوا بِذَلِكَ كُفَّارًا بَلْ عُصَاةً، فَنَحْنُ نَجِدُ هَذَا عِيَانًا عِنْدَنَا، فَقَدْ نَدْعُو نَحْنُ عِنْدَ الْحَاكِمِ إِلَى الْقُرْآنِ وَإِلَى سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتِ عَنْهُمْ بِإِقْرَارِهِمْ فَيَأْبَوْنَ ذَلِكَ وَيَرْضَوْنَ بِرَأْيِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، هَذَا أَمْرٌ لَا يُنْكِرُهُ أَحَدٌ، فَلَا يَكُونُونَ بِذَلِكَ كُفَّارًا، فَقَدْ يَكُونُ أُولَئِكَ هَكَذَا حَتَّى إِذَا بَيَّنَ اللَّهُ تَعَالَى أَنَّهُمْ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَا شَجَرَ بَيْنَهُمْ، وَجَبَ أَنَّ مَنْ وَقَفَ عَلَى هَذَا قَدِيمًا وَحَدِيثًا، وَإِلَى يَوْمِ الْقِيَامَةِ فَأَبَى وَعَنَدَ فَهُوَ كَافِرٌ؟ وَلَيْسَ فِي الْآيَةِ: أَنَّ أُولَئِكَ عَنَدُوا بَعْدَ نُزُولِ هَذِهِ الْآيَةِ، فَإِذْ لَا بَيَانَ فِيهَا فَلَا حُجَّةَ فِيهَا لِمَنْ يَقُولُ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَرَفَهُمْ أَنَّهُمْ مُنَافِقُونَ وَأَقَرَّهُمْ.

L40915 It has been established that there exist here two types of hypocrisy: one whose perpetrator is not a disbeliever, and another whose perpetrator is a disbeliever. Thus, it is plausible that those who sought judgment from Taghut instead of the Prophet—peace be upon him—while outwardly displaying obedience to the Messenger of Allah—peace be upon him—were merely disobedient by seeking recourse in judgment to others, believing in its validity yet driven by desire to follow their whims. They did not thereby become disbelievers but remained disobedient. We witness this reality manifestly among us: when we stand before a judge, calling him to the Quran and the Sunnah of Allah’s Messenger—peace be upon him—as established through their own acknowledgment, they reject this and instead prefer the opinions of Abū Ḥanīfah, Mālik, and al-Shāfiʿī. This is an undeniable fact, yet they do not thereby become disbelievers. Thus, those [mentioned in the verse] might have been like this until Allah the Exalted clarified that they do not truly believe unless they refer their disputes to the Messenger of Allah—peace be upon him. It then becomes obligatory that whoever confronts this truth—whether in earlier times, recent times, or until the Day of Resurrection—yet refuses and persists in obstinacy is a disbeliever. The verse does not specify that those [hypocrites] persisted in obstinacy after its revelation. Since there is no explicit clarification within it, the verse cannot serve as proof for those who claim that the Messenger of Allah—peace be upon him—recognized them as hypocrites and confirmed them.

L40916 And He, the Exalted, said: {And they say, “Obedience,” but when they depart from you, a group of them secretly plotted by night} [An-Nisa: 81] up to

His saying, the Exalted: {and sufficient is Allah as a Sufficient Trustee} [An-Nisa: 81]. This contains no explicit text indicating that they were outwardly professing faith; rather, they may have been openly disbelieving, feigning obedience to maintain peace. Since there is no explicit text here, it provides no proof for those who claim that he (peace be upon him) knew them and was aware that their covenant was rooted in hypocrisy.[69]

L40917 And the Almighty said: {Why are you divided into two factions concerning the hypocrites?} [An-Nisa: 88] to His words: {As for those, We have granted you a manifest authority over them.} [An-Nisa: 91].[70]

L40918 It has been narrated to us through the chain of al-Bukhari: Abu al-Walid—al-Tayalisi—reported to us; Shu'bah reported to us from 'Adi ibn Thabit, who said: I heard 'Abdullah ibn Yazid narrating from Zayd ibn Thabit, who said: "When the Messenger of Allah (peace and blessings be upon him) set out for Uhud, some people who had accompanied him turned back. The companions of the Messenger of Allah (peace and blessings be upon him) split into two groups: one group saying, 'We fight them,' and the other group saying, 'We do not fight them.' Thereupon the verse was revealed: *What is the matter with you that you are divided into two groups concerning the hypocrites?* [Quran 4:88]." This is an authentic isnad, and Allah the Exalted called those people hypocrites.[71]

L40919–40921 As for the statement of the Most High in this verse, connected to that context: "They wish that you would disbelieve as they have disbelieved, so that you may become equal" (4:89). To His statement, the Exalted: "So Allah has not made for you any cause against them" [An-Nisa: 90], it could have been assumed that He meant those hypocrites by this, and this would have been the most apparent interpretation were it not for His words, the Exalted: "So do not take from among them allies until they emigrate in the cause of Allah" [An-Nisa: 89]. This utterly clarifies that it introduces

وَقَالَ تَعَالَى {وَيَقُولُونَ طَاعَةٌ فَإِذَا بَرَزُوا مِنْ عِنْدِكَ بَيَّتَ طَائِفَةٌ} [النساء: ٨١] إِلَى قَوْله تَعَالَى: {وَكِيلا} [النساء: ٨١] فَهَذَا لَيْسَ فِيهِ نَصٌّ عَلَى أَنَّهُمْ كَانُوا يُظْهِرُونَ الْإِيمَانَ، بَلْ لَعَلَّهُمْ كَانُوا كُفَّارًا مُعْلِنِينَ، وَكَانُوا يَلْتَزِمُونَ الطَّاعَةَ بِالْمُسَالَمَةِ، فَإِذْ لَا نَصَّ فِيهَا فَلَا حُجَّةَ فِيهَا لِمَنْ ادَّعَى أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَعْرِفُهُمْ وَيَدْرِي أَنَّ عَقْدَهُمْ النِّفَاقَ.

وَقَالَ تَعَالَى {فَمَا لَكُمْ فِي الْمُنَافِقِينَ فِئَتَيْنِ} [النساء: ٨٨] إِلَى قَوْلِهِ: {وَأُولَئِكُمْ جَعَلْنَا لَكُمْ عَلَيْهِمْ سُلْطَانًا مُبِينًا} [النساء: ٩١] .

وَقَدْ رُوِّينَا عَنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَدِيِّ بْنِ ثَابِتٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ يَزِيدَ يُحَدِّثُ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: «لَمَّا خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أُحُدٍ رَجَعَ نَاسٌ مِمَّنْ خَرَجَ مَعَهُ، وَكَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِرْقَتَيْنِ: فِرْقَةٌ تَقُولُ: نُقَاتِلُهُمْ، وَفِرْقَةٌ تَقُولُ: لَا نُقَاتِلُهُمْ، فَنَزَلَتْ {فَمَا لَكُمْ فِي الْمُنَافِقِينَ فِئَتَيْنِ} [النساء: ٨٨] » فَهَذَا إسْنَادٌ صَحِيحٌ، وَقَدْ سَمَّى اللَّهُ تَعَالَى أُولَئِكَ: مُنَافِقِينَ.

وَأَمَّا قَوْله تَعَالَى فِي هَذِهِ الْآيَةِ مُتَّصِلًا بِذَلِكَ {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] إلَى قَوْله تَعَالَى: {فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلا} [النساء: ٩٠] فَقَدْ كَانَ يُمْكِنُ أَنْ يُظَنَّ أَنَّهُ تَعَالَى عَنَى بِذَلِكَ أُولَئِكَ الْمُنَافِقِينَ، وَهُوَ كَانَ الْأَظْهَرَ لَوْلَا قَوْله تَعَالَى {فَلا تَتَّخِذُوا مِنْهُمْ أَوْلِيَاءَ حَتَّى يُهَاجِرُوا فِي سَبِيلِ اللَّهِ} [النساء: ٨٩] فَهَذَا يُوَضِّحُ غَايَةَ الْإِيضَاحِ أَنَّهُ ابْتِدَاءُ حُكْمٍ فِي قَوْمٍ آخَرِينَ غَيْرِ أُولَئِكَ الْمُنَافِقِينَ، لِأَنَّ أُولَئِكَ

[69] **Qur'an references (L40916):** Qur'an 4:81 (An-Nisa).
[70] **Qur'an references (L40917):** Qur'an 4:88 (An-Nisa); Qur'an 4:91 (An-Nisa).
[71] **Qur'an references (L40918):** Qur'an 4:88 (An-Nisa).

كَانُوا مِنْ سُكَّانِ الْمَدِينَةِ بِلَا شَكٍّ، وَلَيْسَ عَلَى سُكَّانِ الْمَدِينَةِ هِجْرَةٌ، بَلْ الْهِجْرَةُ كَانَتْ إلَى دَارِهِمْ.

فَإِذَا كَانَ ذَلِكَ كَذَلِكَ فَحُكْمُ الْآيَةِ كُلِّهَا أَنَّهَا فِي قَوْمٍ كُفَّارٍ لَمْ يُؤْمِنُوا بَعْدُ، وَادَّعُوا أَنَّهُمْ آمَنُوا وَلَمْ يُهَاجِرُوا، وَكَانَ الْحُكْمُ حِينَئِذٍ: أَنَّ مَنْ آمَنَ وَلَمْ يُهَاجِرْ لَمْ يَنْتَفِعْ بِإِيمَانِهِ، وَكَانَ كَافِرًا كَسَائِرِ الْكُفَّارِ وَلَا فَرْقَ، حَتَّى يُهَاجِرَ، إلَّا مَنْ أُبِيحَ لَهُ سُكْنَى بَلَدِهِ، كَمَنْ بِأَرْضِ الْحَبَشَةِ، وَالْبَحْرَيْنِ، وَسَائِرِ مَنْ أُبِيحَ لَهُ سُكْنَى أَرْضِهِ، إلَّا الْمُسْتَضْعَفِينَ، قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ وَلَايَتِهِمْ مِنْ شَيْءٍ حَتَّى يُهَاجِرُوا} [الأنفال: ٧٢] .

وَقَدْ قَالَ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] فَقَدْ قَطَعَ اللَّهُ تَعَالَى الْوِلَايَةَ بَيْنَنَا وَبَيْنَهُمْ، فَلَيْسُوا مُؤْمِنِينَ.

وَقَالَ تَعَالَى {إنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ} [النساء: ٩٧] إلَى قَوْلِهِ {إلا الْمُسْتَضْعَفِينَ} [النساء: ٩٨] الْآيَةَ.

فَإِنْ قَالَ قَائِلٌ: مَعْنَى {حَتَّى يُهَاجِرُوا فِي سَبِيلِ اللَّهِ} [النساء: ٨٩] أَيْ حَتَّى يُجَاهِدُوا مَعَكُمْ، بِخِلَافِ فِعْلِهِمْ حِينَ انْصَرَفُوا عَنْ أُحُدٍ وَأَرَادُوا أَنْ يَجْعَلُوا الْآيَةَ كُلَّهَا فِي الْمُنَافِقِينَ الْمُنْصَرِفِينَ عَنْ أُحُدٍ؟ قِيلَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَذَا مُمْكِنٌ، وَلَكِنْ قَدْ قَالَ تَعَالَى {فَخُذُوهُمْ وَاقْتُلُوهُمْ حَيْثُ وَجَدْتُمُوهُمْ} [النساء: ٨٩] فَأَخْبِرُونَا هَلْ فَعَلَ ذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - فَقَتَلَ الرَّاجِعِينَ عَنْ أُحُدٍ حَيْثُ وَجَدَهُمْ؟ وَهَلْ أَخَذَهُمْ أَمْ لَا؟ فَإِنْ

a ruling concerning another group distinct from those hypocrites, for those hypocrites were unquestionably residents of Madinah, and no emigration is required of Madinah's inhabitants - rather, emigration was directed toward their own abode [Madinah].[72]

L40922 If that is the case, the ruling of the entire verse indicates it concerns people who were disbelievers, had not yet believed, claimed they believed, and did not emigrate. The ruling at that time was: whoever believed but did not emigrate would derive no benefit from his faith and would be considered a disbeliever like all other disbelievers - no different from them - until he emigrated, except those permitted to remain in their land such as those in the land of Abyssinia, Bahrain, and all others granted this permission, except the oppressed. Allah the Exalted said: "As for those who believed but did not emigrate, you owe them no guardianship until they emigrate" [Al-Anfāl: 72].[73]

L40923 Allah the Exalted has said, *"The believing men and believing women are allies of one another"* [At-Tawbah: 71]. Thereby, Allah the Exalted has severed the bond of allegiance between us and them, for they are not believers.[74]

L40924 And He, the Exalted, said: "As for those whose souls the angels seize while they are wronging themselves—[the angels] will ask, 'What was your circumstance?'" [An-Nisa 4:97] up to His words: "except the vulnerable" [An-Nisa 4:98], thus completing the verse.[75]

L40925 If someone says: The meaning of {until they emigrate in the cause of Allah} [4:89] is that they should strive alongside you, contrary to their action when they turned back from Uhud, intending to attribute the entire verse exclusively to the hypocrites who deserted during Uhud? It is said to him—and by Allah, the Exalted, success is His alone—: This is conceivable, but Allah the Exalted has stated {capture them and kill them wherever you find them} [4:89]. Then inform us: Did the Prophet—peace be upon him—kill

[72] **Qur'an references (L40919):** Qur'an 4:89 (An-Nisa); Qur'an 4:90 (An-Nisa).
[73] **Qur'an references (L40922):** Qur'an 8:72 (Al-Anfal).
[74] **Qur'an references (L40923):** Qur'an 9:71 (At-Tawbah).
[75] **Qur'an references (L40924):** Qur'an 4:97 (An-Nisa); Qur'an 4:98 (An-Nisa).

those who turned back from Uhud wherever he encountered them? Did he capture them or not? If they claim he did so, they utter a falsehood unmistakable to all. No Muslim doubts that he—peace be upon him—killed none of them nor renounced their pledge toward any of them.[76]

L40926 And if they say: He—peace be upon him—did not do that, nor did the believers do so?

L40927–40928 They were told: "You have spoken the truth, and it is not permissible for any Muslim to believe that the Prophet—peace be upon him—disobeyed the command of his Lord. The Almighty commanded him that if they turned away, he should kill them wherever he found them, yet he did not do so. This constitutes apostasy on the part of anyone who believes it without doubt."

L40929 If they say: "They did not turn away but rather repented, returned, and fought?" It is said to them: "The ruling of hypocrisy has undoubtedly been lifted from them, and they have undoubtedly attained the judgment of openly professing [faith] per the verse's outward meaning. Thus, their reliance on this verse is entirely invalidated regarding the claim that he—peace be upon him—knew the hypocrites. However, in God's words: {Except those who join a people with whom you have a treaty, or those who come to you with their hearts constrained} [An-Nisa: 90] to His words: {Then Allah has not given you a way against them} [An-Nisa: 90], there is a clear explanation that these people were never from the Aws or the Khazraj, for they had no community hostile to the Prophet—peace be upon him—nor were they ever linked to a people bound by a covenant with the Prophet—peace be upon him—through an established treaty. This is in addition to God's statement: {But if they withdraw from you and do not fight you} [An-Nisa: 90] to His words: {a way} [Al Imran: 97]. Indeed, this clearly demonstrates that they were neither from the Ansar nor the hypocrites, but rather disbelievers who openly professed their disbelief."[77]

L40930 Unless someone argues: Indeed, the statement of the Almighty, *"Except

قَالُوا: قَدْ فَعَلَ ذَلِكَ، كَذَبُوا كَذِبًا لَا يَخْفَى عَلَى أَحَدٍ، وَمَا عِنْدَ مُسْلِمٍ شَكٌّ فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقْتُلْ مِنْهُمْ أَحَدًا وَلَا نَبَذَ الْعَهْدَ إِلَى أَحَدٍ مِنْهُمْ.

وَإِنْ قَالُوا: لَمْ يَفْعَلْ ذَلِكَ - عَلَيْهِ السَّلَامُ - وَلَا الْمُؤْمِنُونَ؟

قِيلَ لَهُمْ: صَدَقْتُمْ، وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - خَالَفَ أَمْرَ رَبِّهِ، فَأَمَرَهُ تَعَالَى إِنْ تَوَلَّوْا بِقَتْلِهِمْ، حَيْثُ وَجَدَهُمْ، فَلَمْ يَفْعَلْ، وَهَذَا كُفْرٌ مِمَّنْ ظَنَّهُ بِلَا شَكٍّ.

فَإِنْ قَالُوا: لَمْ يَتَوَلَّوْا بَلْ تَابُوا وَرَجَعُوا وَجَاهَدُوا؟ قِيلَ لَهُمْ: فَقَدْ سَقَطَ حُكْمُ النِّفَاقِ عَنْهُمْ - بِلَا شَكٍّ - وَحَصَلَ لَهُمْ حُكْمُ الْإِعْلَامِ بِظَاهِرِ الْآيَةِ - بِلَا شَكٍّ - فَقَدْ بَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ جُمْلَةً فِي أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ يَعْرِفُ الْمُنَافِقِينَ. وَلَكِنْ فِي قَوْلِهِ تَعَالَى {إِلا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ أَوْ جَاءُوكُمْ حَصِرَتْ صُدُورُهُمْ} [النساء: ٩٠] إِلَى قَوْلِهِ تَعَالَى: {فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلا} [النساء: ٩٠] بَيَانٌ جَلِيٌّ بِأَنَّ هَؤُلَاءِ لَمْ يَكُونُوا قَطُّ مِنَ الْأَوْسِ وَلَا مِنَ الْخَزْرَجِ، لِأَنَّهُمْ لَمْ يَكُنْ لَهُمْ قَوْمٌ مُحَارِبُونَ لِلنَّبِيِّ - عَلَيْهِ السَّلَامُ - وَلَا نُسِبُوا قَطُّ إِلَى قَوْمٍ مُعَاهِدِينَ النَّبِيَّ - عَلَيْهِ السَّلَامُ - بِمِيثَاقٍ مَعْقُودٍ، هَذَا مَعَ قَوْلِهِ تَعَالَى {فَإِنِ اعْتَزَلُوكُمْ فَلَمْ يُقَاتِلُوكُمْ} [النساء: ٩٠] إِلَى قَوْلِهِ تَعَالَى {سَبِيلا} [آل عمران: ٩٧] فَإِنَّ هَذَا بَيَانٌ جَلِيٌّ عَلَى أَنَّهُمْ مِنْ غَيْرِ الْأَنْصَارِ، وَمِنْ غَيْرِ الْمُنَافِقِينَ، لَكِنْ مِنَ الْكُفَّارِ الْمُجَاهِرِينَ بِالْكُفْرِ.

[76] **Qur'an references (L40925):** Qur'an 4:89 (An-Nisa).
[77] **Qur'an references (L40929):** Qur'an 4:90 (An-Nisa); Qur'an 3:97 (Ali 'Imran).

those who join a people with whom you have a covenant”* [4:90], constitutes a disconnected exception from the preceding mention of *“others”* [4:91]. In any case, the legal ruling of hypocrisy has ceased to apply to those individuals if that is the case.[78]

L40931 If it is said: If the matter is as you claim—that in Allah’s words {They wish you would disbelieve as they disbelieved, so you may become equal} [An-Nisā’:89] refers to a group of disbelievers other than those—does it suffice us that the Exalted has labeled those who revert [to disbelief] as “hypocrites,” thus making them known as such? It was said to him—and with Allah, the Exalted, lies all success: We have indeed stated that hypocrisy is of two distinct types: one applies to those who outwardly manifest disbelief while inwardly concealing faith, and another to those who display outwardly what contradicts their inward state in matters unrelated to religion, without thereby becoming disbelievers. It was once said to Ibn ‘Umar: “When we enter the presence of the ruler and he issues a judgment we deem unjust, should we remain silent?” He replied: “We, the companions of Allah’s Messenger—peace and blessings be upon him—count this as hypocrisy. We do not know what you count it as.” We previously mentioned the saying of Allah’s Messenger: “Three traits—whoever possesses them is a pure hypocrite, even if he prays, fasts, and claims ’I am Muslim.’”[79]

L40932–40933 Since the matter is as such, it is not permissible for us to conclusively judge them with disbelief—which is the antithesis of Islam—except by explicit textual evidence. However, we do declare conclusively regarding them what Allah the Most High has decreed: the designation of hypocrisy, deviation, reversion to misguidance, and opposition to divine guidance. We neither add nor transgress beyond what Allah the Most High has textually established through our own opinions. Success is attained through Allah the Most High.

L40934 And Allah, the Most High, said: “Announce to the hypocrites that they will

إِلَّا أَنْ يَقُولَ قَائِلٌ: إِنَّ قَوْله تَعَالَى {إِلا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٠] اسْتِثْنَاءٌ مُنْقَطِعٌ مِمَّا قَبْلَهُ فِي قَوْلِ {آخَرِينَ} [النساء: ٩١] وَعَلَى كُلِّ حَالٍ فَقَدْ سَقَطَ حُكْمُ النِّفَاقِ عَلَى أُولَئِكَ إنْ كَانَ هَكَذَا.

فَإِنْ قِيلَ: فَإِنْ كَانَ الْأَمْرُ كَمَا قُلْتُمْ أَنَّ فِي قَوْله تَعَالَى {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] أَنَّهُ فِي قَوْمٍ مِنْ الْكُفَّارِ غَيْرِ أُولَئِكَ، فَحَسْبُنَا أَنَّهُ تَعَالَى قَدْ سَمَّى أُولَئِكَ الرَّاجِعِينَ " مُنَافِقِينَ " فَصَارُوا مَعْرُوفِينَ؟ قِيلَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: وَقَدْ قُلْنَا إنَّ النِّفَاقَ قِسْمَانِ: قِسْمٌ لِمَنْ يُظْهِرُ الْكُفْرَ وَيُبْطِنُ الْإِيمَانَ، وَقِسْمٌ لِمَنْ يُظْهِرُ غَيْرَ مَا يُضْمِرُ فِيمَا سِوَى الدِّينِ وَلَا يَكُونُ بِذَلِكَ كَافِرًا، وَقَدْ قِيلَ لِابْنِ عُمَرَ: إنَّا نَدْخُلُ عَلَى الْإِمَامِ فَيَقْضِي بِالْقَضَاءِ فَنَرَاهُ جَوْرًا فَنَمْسِكُ؟ فَقَالَ: إنَّا مَعْشَرَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُدُّ هَذَا نِفَاقًا، فَلَا نَدْرِي مَا تَعُدُّونَهُ أَنْتُمْ؟ وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «ثَلَاثٌ مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَإِنْ صَلَّى وَإِنْ صَامَ وَقَالَ إنِّي مُسْلِمٌ» .

فَإِذَا كَانَ الْأَمْرُ كَذَلِكَ، فَلَا يَجُوزُ أَنْ نَقْطَعَ عَلَيْهِمْ بِالْكُفْرِ الَّذِي هُوَ ضِدُّ الْإِسْلَامِ إلَّا بِنَصٍّ، وَلَكِنَّا نَقْطَعُ عَلَيْهِمْ بِمَا قَطَعَ اللَّهُ تَعَالَى بِهِ مِنْ اسْمِ النِّفَاقِ، وَالضَّلَالَةِ، وَالْإِرْكَاسِ، وَخِلَافِ الْهُدَى - وَلَا نَزِيدُ وَلَا نَتَعَدَّى مَا نَصَّ اللَّهُ تَعَالَى عَلَيْهِ بِآرَائِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ اللَّهُ تَعَالَى {بَشِّرِ الْمُنَافِقِينَ بِأَنَّ لَهُمْ عَذَابًا أَلِيمًا} [النساء: ١٣٨] إلَى قَوْلِهِ: {أَجْرًا عَظِيمًا} [النساء: ٤٠] .

[78] **Qur’an references (L40930):** Qur’an 4:90 (An-Nisa); Qur’an 4:91 (An-Nisa).
[79] **Qur’an references (L40931):** Qur’an 4:89 (An-Nisa).

have a painful punishment" [An-Nisa:138] up to the verse where He says: "a great reward" [An-Nisa:40].[80]

قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ فَمُنَافِقُونَ النِّفَاقَ الَّذِي هُوَ الْكُفْرُ، فَلَا شَكَّ لِنَصِّهِ تَعَالَى عَلَى أَنَّهُمْ مُذَبْذَبُونَ، لَا إِلَى الْمُؤْمِنِينَ، وَلَا إِلَى الْمُجَاهِرِينَ بِالْكُفْرِ فِي نَارِ جَهَنَّمَ، وَأَنَّهُمْ أَشَدُّ عَذَابًا مِنْ الْكُفَّارِ، بِكَوْنِهِمْ فِي الدَّرْكِ الْأَسْفَلِ مِنْ النَّارِ.

L40935 Abu Muhammad said: As for these, they are hypocrites with the hypocrisy that constitutes disbelief. There is no doubt—by the decree of the Exalted—that they are wavering in the Fire of Hell, belonging neither to the believers nor to those who openly profess disbelief, and that their punishment is more severe than that of the disbelievers, due to their being in the lowest level of the Fire.

وَلَكِنْ لَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْآيَاتِ كُلِّهَا أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ، بِأَعْيَانِهِمْ، وَعَرَفَ نِفَاقَهُمْ، إذْ لَا دَلِيلَ عَلَى ذَلِكَ، فَلَا حُجَّةَ فِيهَا لِمَنْ ادَّعَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ، وَعَرَفَ نِفَاقَهُمْ.

L40936 However, none of all these verses indicate that he—peace be upon him—knew them individually or knew their hypocrisy, as there is no evidence for that. Therefore, there is no proof in them for anyone who claims he—peace be upon him—knew them and knew their hypocrisy.

ثُمَّ لَوْ كَانَ ذَلِكَ لَكَانَ قَوْله تَعَالَى {إنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الْأَسْفَلِ مِنَ النَّارِ} [النساء: ١٤٥] إلَى قَوْله تَعَالَى {أَجْرًا عَظِيمًا} [النساء: ٤٠] مُوجِبًا لِقَبُولِ تَوْبَتِهِمْ إذَا تَابُوا - وَهُمْ قَدْ أَظْهَرُوا التَّوْبَةَ، وَالنَّدَمَ، وَالْإِقْرَارَ بِالْإِيمَانِ بِلَا شَكٍّ، فَبَطَلَ عَنْهُمْ بِهَذَا حُكْمُ النِّفَاقِ جُمْلَةً فِي الدُّنْيَا، وَبَقِيَ بَاطِنُ أَمْرِهِمْ إلَى اللَّهِ تَعَالَى.

L40937 Then, if that were the case, the statement of the Exalted, *"Indeed, the hypocrites will be in the lowest depth of the Fire"* [4:145] up to His saying, *"a great reward"* [4:40], would necessitate the acceptance of their repentance if they repent - and they have outwardly displayed repentance, remorse, and affirmation of faith without doubt. Thus, the ruling of hypocrisy would have been entirely invalidated for them in this world, and the inner reality of their condition would remain with Allah, the Exalted.[81]

وَهَذِهِ الْآيَةُ تَقْضِي عَلَى كُلِّ آيَةٍ فِيهَا نَصٌّ بِأَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ مُنَافِقًا بِعَيْنِهِ، وَعَرَفَ نِفَاقَهُ، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَى أَوْلِيَاءَ بَعْضُهُمْ} [المائدة: ٥١] إلَى قَوْله تَعَالَى {فَأَصْبَحُوا خَاسِرِينَ} [المائدة: ٥٣] .

L40938 This verse overrules every verse containing an explicit text indicating that he—peace be upon him—recognized a specific hypocrite by sight and acknowledged his hypocrisy. Allah the Exalted said: "O you who believe, do not take the Jews and Christians as allies. Some of them..." [Al-Ma'idah 5:51] up to His statement: "So they became losers" [Al-Ma'idah 5:53].[82]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَأَخْبَرَ اللَّهُ تَعَالَى عَنْ قَوْمٍ يُسَارِعُونَ فِي الَّذِينَ كَفَرُوا حَذَرًا أَنْ تُصِيبَهُمْ دَائِرَةٌ، وَأَخْبَرَ تَعَالَى عَنْ الَّذِينَ آمَنُوا أَنَّهُمْ يَقُولُونَ لِلْكَافِرِينَ {أَهَؤُلَاءِ الَّذِينَ أَقْسَمُوا بِاللَّهِ جَهْدَ أَيْمَانِهِمْ إنَّهُمْ لَمَعَكُمْ} [المائدة: ٥٣] يَعْنُونَ الَّذِينَ يُسَارِعُونَ فِيهِمْ، قَالَ اللَّهُ تَعَالَى {حَبِطَتْ أَعْمَالُهُمْ فَأَصْبَحُوا خَاسِرِينَ} [المائدة: ٥٣] فَهَذَا لَا يَكُونُ إلَّا خَبَرًا

L40939–40941 Abū Muḥammad—may Allāh have mercy on him—said: Allāh the Exalted informed about a people who hasten toward the disbelievers out of fear that a calamity might befall them. He the Exalted informed about the believers that they say to the disbelievers, "Are these the ones who swore by Allāh with their

[80] **Qur'an references (L40934):** Qur'an 4:138 (An-Nisa); Qur'an 4:40 (An-Nisa).
[81] **Qur'an references (L40937):** Qur'an 4:145 (An-Nisa); Qur'an 4:40 (An-Nisa).
[82] **Qur'an references (L40938):** Qur'an 5:51 (Al-Ma'idah); Qur'an 5:53 (Al-Ma'idah).

most solemn oaths that they are truly with you?" [Al-Mā'idah: 53] - referring to those who hasten toward them. Allāh the Exalted declared: "Their deeds have been nullified, and they have become losers" [Al-Mā'idah: 53]. This can only be a report concerning people who displayed inclination toward the disbelievers, thereby becoming disbelievers themselves—those whose deeds have failed—and they are in most cases recognized as such. However, the statement of Him, the Exalted: "Then they will become remorseful for what they concealed within themselves" [Al-Mā'idah: 52]... An evidence of their remorse for what had passed from them, and that repentance is presented to them as in the verse we mentioned before this—and success is by Allah, the Exalted.[83]

عَنْ قَوْمٍ أَظْهَرُوا الْمَيْلَ إِلَى الْكُفَّارِ فَكَانُوا مِنْهُمْ كُفَّارًا خَائِبِي الْأَعْمَالِ وَلَا يَكُونُونَ فِي الْأَغْلَبِ إِلَّا مَعْرُوفِينَ، لَكِنَّ قَوْله تَعَالَى {فَيُصْبِحُوا عَلَى مَا أَسَرُّوا فِي أَنْفُسِهِمْ نَادِمِينَ} [المائدة: ٥٢] دَلِيلٌ عَلَى نَدَامَتِهِمْ عَلَى مَا سَلَفَ مِنْهُمْ، وَأَنَّ التَّوْبَةَ لَهُمْ مَعْرُوضَةٌ عَلَى مَا فِي الْآيَةِ الَّتِي ذَكَرْنَا قَبْلَ هَذِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40942 And He, the Most High, said: *{Prepare against them whatever of capability you can gather}* [8:60] to His words: *{You do not know them; We know them}* [9:101].[84]

وَقَالَ تَعَالَى {وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ} [الأنفال: ٦٠] إلَى قَوْله تَعَالَى {لا تَعْلَمُهُمْ نَحْنُ نَعْلَمُهُمْ} [التوبة: ١٠١]

L40943 Abū Muḥammad said: These verses undoubtedly concern the hypocrites. Allāh the Exalted has explicitly affirmed that Muslims do not recognize them—while the Messenger of Allāh (peace be upon him) is addressed by this discourse alongside the Muslims without doubt—thus he does not know them, though Allāh the Exalted knows them. He the Exalted said: "If it had been an immediate worldly gain or an attainable journey, they would have followed you" [9:42] until His statement: "reluctant" [9:48]. Abū Muḥammad—may Allāh have mercy on him—said: The beginning of the verse only indicates that they swear false oaths while knowingly aware of their falsehood in that, and that they thereby destroy themselves. This is the trait of every sinner in their sin.[85]

قَالَ أَبُو مُحَمَّد: فَهَذِهِ فِي الْمُنَافِقِينَ بِلَا شَكٍّ، وَقَدْ نَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ الْمُسْلِمِينَ لَا يَعْلَمُونَهُمْ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُخَاطَبٌ بِهَذَا الْخِطَابِ مَعَ الْمُسْلِمِينَ بِلَا شَكٍّ فَهُوَ لَا يَعْلَمُهُمْ، وَاَللَّهُ تَعَالَى يَعْلَمُهُمْ، وَقَالَ تَعَالَى {لَوْ كَانَ عَرَضًا قَرِيبًا وَسَفَرًا قَاصِدًا لَاتَّبَعُوكَ} [التوبة: ٤٢] إلَى قَوْله تَعَالَى {كَارِهُونَ} [التوبة: ٤٨] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ فِي أَوَّلِ الْآيَةِ إلَّا أَنَّهُمْ يَحْلِفُونَ كَاذِبِينَ وَهُمْ يَعْلَمُونَ كَذِبَهُمْ فِي ذَلِكَ، وَأَنَّهُمْ يُهْلِكُونَ أَنْفُسَهُمْ بِذَلِكَ، وَهَذِهِ صِفَةُ كُلِّ عَاصٍ فِي مَعْصِيَتِهِ.

L40944 In the verse is also Allah the Exalted's reproaching of His Prophet (peace be upon him) for his permission to them.

وَفِي الْآيَةِ أَيْضًا: مُعَاتَبَةُ اللَّهِ تَعَالَى نَبِيَّهُ - عَلَيْهِ السَّلَامُ - عَلَى إذْنِهِ لَهُمْ.

L40945 As for the words of the Most High, "Those who believe in Allah and the Last Day do not ask your permission" [At-Tawbah: 44] up to His statement, "they

وَأَمَّا قَوْله تَعَالَى {لا يَسْتَأْذِنُكَ الَّذِينَ يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [التوبة: ٤٤] إلَى قَوْله تَعَالَى {يَتَرَدَّدُونَ} [التوبة: ٤٥] فَإِنَّ وَجْهَ هَذِهِ الْآيَةِ الَّتِي يَجِبُ أَنْ لَا تُصْرَفَ عَنْهُ إلَى غَيْرِهِ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ: أَنَّهُ فِي الْمُسْتَأْنَفِ، لِأَنَّ لَفْظَهَا لَفْظُ الِاسْتِقْبَالِ.

[83] **Qur'an references (L40939):** Qur'an 5:53 (Al-Ma'idah); Qur'an 5:52 (Al-Ma'idah).
[84] **Qur'an references (L40942):** Qur'an 8:60 (Al-Anfal); Qur'an 9:101 (At-Tawbah).
[85] **Qur'an references (L40943):** Qur'an 9:42 (At-Tawbah); Qur'an 9:48 (At-Tawbah).

hesitate" [At-Tawbah: 45], the intended meaning of this verse—which must not be interpreted contrary to its apparent meaning without explicit textual evidence or consensus—is that it pertains to the newly initiated action, for its wording is in the future form.[86]

وَلَا خِلَافَ فِي هَذِهِ الْآيَةِ أَنَّهَا نَزَلَتْ بَعْدَ تَبُوكَ، وَلَمْ يَكُنْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ تَبُوكَ غَزْوَةٌ أَصْلًا، وَلَكِنَّا نَقْطَعُ عَلَى أَنَّهَا لَوْ كَانَتْ هُنَاكَ غَزْوَةٌ بَعْدَ تَبُوكَ وَبَعْدَ نُزُولِ الْآيَةِ فَاسْتَأْذَنَ قَوْمٌ مِنْهُمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْقُعُودِ دُونَ عُذْرٍ لَهُمْ فِي ذَلِكَ لَكَانُوا بِلَا شَكٍّ مُرْتَابَةً قُلُوبُهُمْ كُفَّارًا بِاَللَّهِ تَعَالَى وَبِالْيَوْمِ الْآخِرِ مُتَرَدِّدِينَ فِي الرَّيْبِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L40946 There is no disagreement that this verse was revealed after Tabuk, and the Messenger of Allah—peace be upon him—undertook no military expedition whatsoever after Tabuk. However, we conclusively assert that if there had been an expedition after Tabuk and after the revelation of this verse, and a group among them sought the Prophet's—peace be upon him and his family—permission to remain behind without any excuse, they would without doubt have been those whose hearts were filled with doubt, disbelieving in Allah the Exalted and the Last Day, wavering in uncertainty—thereby nullifying their claim to this verse's applicability.

ثُمَّ قَوْله تَعَالَى {وَلَوْ أَرَادُوا الْخُرُوجَ لَأَعَدُّوا لَهُ عُدَّةً} [التوبة: ٤٦] إلَى قَوْله تَعَالَى {كَارِهُونَ} [التوبة: ٤٨] فَهَذِهِ أَخْبَارٌ عَمَّا خَلَا لَهُمْ وَعَنْ سَيِّئَاتٍ اقْتَرَفُوهَا، وَلَيْسَ فِيهَا شَيْءٌ يُوجِبُ لَهُمْ الْكُفْرَ، حَتَّى لَوْ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40947 Then His Exalted saying: {If they had intended to go forth, they would have made preparations for it} [At-Tawbah: 46] up to His Exalted saying: {unwillingly} [At-Tawbah: 48]. These are divine accounts of what they left behind and the sins they committed. There is nothing in them that necessitates their disbelief, even if they were known individually—and success is from Allah, the Exalted.[87]

وَقَوْله تَعَالَى {وَمِنْهُمْ مَنْ يَقُولُ ائْذَنْ لِي} [التوبة: ٤٩] إلَى قَوْله تَعَالَى {وَهُمْ فَرِحُونَ} [التوبة: ٥٠].

L40948 And His saying, the Most High: "Grant me permission" to "while they are rejoicing" [at-Tawbah: 49–50].[88]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ قِيلَ: إنَّ هَذِهِ الْآيَةَ نَزَلَتْ فِي الْحُرِّ بْنِ قَيْسٍ - وَهَذَا لَا يَنْسَنِدُ أَلْبَتَّةَ، وَإِنَّمَا هُوَ مُنْقَطِعٌ مِنْ أَخْبَارِ الْمَغَازِي، وَلَكِنْ عَلَى كُلِّ حَالٍ يُقَالُ: هَذَا كَانَ مَعْرُوفًا بِلَا شَكٍّ.

L40949–40950 Abu Muhammad—may Allah have mercy on him—said: It has been said that this verse was revealed concerning al-Ḥurr ibn Qays. This [report] has no chain of transmission whatsoever; it is merely a disconnected chain from the reports of the military expeditions. In any case, it is said that this was undoubtedly well-known.

وَلَيْسَ فِي الْآيَةِ أَنَّهُ كَفَرَ بِذَلِكَ، وَلَكِنَّهُ عَصَى و (٠٠٠) وَأَذْنَبَ، وَبَلَى {وَإِنَّ جَهَنَّمَ لَمُحِيطَةٌ بِالْكَافِرِينَ} [التوبة: ٤٩]

L40951 The verse does not state that he disbelieved thereby, but he disobeyed [...]

[86] **Qur'an references (L40945):** Qur'an 9:44 (At-Tawbah); Qur'an 9:45 (At-Tawbah).
[87] **Qur'an references (L40947):** Qur'an 9:46 (At-Tawbah); Qur'an 9:48 (At-Tawbah).
[88] **Qur'an references (L40948):** Qur'an 9:49 (At-Tawbah); Qur'an 9:50 (At-Tawbah).

and sinned. *"And indeed, Jahannam encompasses the disbelievers"* (Quran 9:49).[89]

وَلَا يَجُوزُ أَنْ يُقْطَعَ بِهَذَا النَّصِّ عَلَى أَنَّ ذَلِكَ الْقَائِلَ كَانَ مِنْ الْكَافِرِينَ.

L40952 It is not permissible to decisively conclude based on this text that the one who uttered that statement was among the disbelievers.

وَأَمَّا الَّذِي أَخْبَرَ اللَّهُ تَعَالَى بِأَنَّهُ إنْ أَصَابَتْ رَسُولَهُ - عَلَيْهِ السَّلَامُ - سَيِّئَةٌ وَمُصِيبَةٌ تَوَلَّوْا وَهُمْ فَرِحُونَ، أَوْ أَنَّهُ إنْ أَصَابَتْهُ حَسَنَةٌ سَاءَتْهُمْ، فَهَؤُلَاءِ كُفَّارٌ بِلَا شَكٍّ، وَلَيْسَ فِي الْآيَةِ نَصٌّ عَلَى أَنَّ الْقَائِلَ: ائْذَنْ لِي وَلَا تَفْتِنِّي، كَانَ مِنْهُمْ، وَلَا فِيهَا نَصٌّ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ وَعَرَفَ نِفَاقَهُمْ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L40953 As for the one whom Allah, the Exalted, has informed that if evil or calamity befalls His Messenger (peace be upon him), he turns away rejoicing, or that if a blessing befalls him, it grieves him - these are undoubtedly disbelievers. There is no explicit text in the verse stating that the one who said, "Grant me permission and do not put me to trial," was among them, nor does it state that he (peace be upon him) knew them and recognized their hypocrisy. Thus, their reliance on this verse is invalidated.

وَقَالَ تَعَالَى {قُلْ أَنْفِقُوا طَوْعًا أَوْ كَرْهًا لَنْ يُتَقَبَّلَ مِنْكُمْ} [التوبة: ٥٣] إلَى قَوْلِهِ {يُفْرَقُونَ} [البقرة: ١٠٢] ؟ قَالَ أَبُو مُحَمَّد: أَمَّا هَؤُلَاءِ فَكُفَّارٌ بِلَا شَكٍّ، مُظْهِرُونَ لِلْإِسْلَامِ، وَلَكِنْ لَيْسَ فِي الْآيَةِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَهُمْ بِأَعْيَانِهِمْ، وَلَا دَلِيلَ فِيهَا عَلَى ذَلِكَ أَصْلًا، وَإِنَّمَا هِيَ صِفَةٌ وَصَفَهَا اللَّهُ تَعَالَى فِيهِمْ لِيُمَيِّزُوهَا مِنْ أَنْفُسِهِمْ.

L40954 And He, the Exalted, said: {Say, "Spend willingly or unwillingly; it will never be accepted from you"} [9:53] up to His statement {they sow discord} [2:102]. Abu Muhammad said: As for these individuals, they are undoubtedly disbelievers, outwardly professing Islam. However, the verse does not indicate that the Prophet (peace be upon him) knew them individually, nor does it provide any proof for that at all. Rather, it is a description that God, the Exalted, ascribed to them so that they might recognize these traits within themselves.[90]

وَلَيْسَ فِي قَوْله تَعَالَى {فَلا تُعْجِبْكَ أَمْوَالُهُمْ وَلا أَوْلادُهُمْ} [التوبة: ٥٥] دَلِيلٌ عَلَى أَنَّهُ كَانَ يَعْرِفُهُمْ بِأَعْيَانِهِمْ، وَأَنَّهُ كَانَ يَعْرِفُ نِفَاقَهُمْ، بَلْ قَدْ كَانَ لِلْفُضَلَاءِ مِنْ الْأَنْصَارِ - رَضِيَ اللَّهُ عَنْهُمْ - الْأَمْوَالُ الْوَاسِعَةُ، وَالْأَوْلَادُ النُّجَبَاءُ الْكَثِيرُ: كَسَعْدِ بْنِ عُبَادَةَ، وَأَبِي طَلْحَةَ، وَغَيْرِهِمَا - فَهَذِهِ صِفَةٌ عَامَّةٌ يَدْخُلُ فِيهَا الْفَاضِلُ الصَّادِقُ، وَالْمُنَافِقُ، فَأَمَرَ تَعَالَى فِي الْآيَةِ أَنْ لَا تُعْجِبَهُ أَمْوَالُهُمْ، وَلَا أَوْلَادُهُمْ، عُمُومًا، لِأَنَّ اللَّهَ تَعَالَى يُرِيدُ أَنْ يُعَذِّبَ الْمُنَافِقِينَ مِنْهُمْ بِتِلْكَ الْأَمْوَالِ وَيَمُوتُوا كُفَّارًا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L40955 There is no evidence in the statement of Allah the Most High, "So let not their wealth or their children impress you" [At-Tawbah 9:55], indicating that the Prophet knew them personally or that he was aware of their hypocrisy. Rather, even the virtuous among the Anṣār—may Allah be pleased with them—such as Saʿd ibn ʿUbādah, Abū Ṭalḥah, and others, possessed vast wealth and noble and numerous children. Thus, this is a general description encompassing both the virtuous, truthful one and the hypocrite. In this verse, Allah the Most High commanded the Prophet not to be impressed by their wealth or children in a general sense, for Allah intends to punish

[89] **Qur'an references (L40951):** Qur'an 9:49 (At-Tawbah); Qur'an 29:54 (Al-'Ankabut).
[90] **Qur'an references (L40954):** Qur'an 9:53 (At-Tawbah); Qur'an 2:102 (Al-Baqarah).

the hypocrites among them with that wealth, and they will inevitably die as disbelievers. And success is from Allah, the Most High.[91]

L40956 And He, the Exalted, said: {And among them are those who criticize you concerning the charities} [At-Tawbah: 58] up to His statement: {desirous} [At-Tawbah: 59]?[92]

L40957–40958 Abū Muḥammad—may Allāh have mercy on him—said: And this does not indicate in the least—neither by scriptural text nor evidence—that whoever does this is guilty of disbelief. However, it is undoubtedly a sin.

L40959 And He, the Exalted, said, "And among them are those who harm the Prophet" [At-Tawbah: 61] up to His words, the Exalted: "That is the great humiliation" [At-Tawbah: 61–63].[93]

L40960 He said: This verse does not contain evidence for the disbelief of one who said at that time, "Indeed the Messenger of Allah—peace and blessings be upon him—is receptive." Rather, the disbeliever is only one who says that and harms the Messenger of Allah—peace and blessings be upon him—after the revelation of the prohibition against that and the Quran's revelation stating that whoever does that is a disbeliever, and that whoever opposes Allah the Exalted and His Messenger—peace and blessings be upon him—will have Hellfire as his eternal abode.

L40961 It has been narrated that 'Umar said to the Messenger of Allah (peace be upon him), "By Allah, O Messenger of Allah, you are indeed more beloved to me than anyone else except myself." Thereupon, the Messenger of Allah (peace be upon him) spoke words whose meaning was that a person does not truly believe until the Prophet is more beloved to him than his own self. 'Umar then said, "As for now, you are indeed more beloved to me than my own self."

L40962 Abu Muhammad said: It is not valid to assert that anyone who returns to harming the Messenger of Allah (may Allah bless him and grant him peace)

وَقَالَ تَعَالَى {وَمِنْهُم مَنْ يَلْمِزُكَ فِي الصَّدَقَاتِ} [التوبة: ٥٨] إلَى قَوْله تَعَالَى {رَاغِبُونَ} [التوبة: ٥٩] ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَا يَدُلُّ أَلْبَتَّةَ لَا بِنَصٍّ، وَلَا بِدَلِيلٍ عَلَى كُفْرِ مَنْ فَعَلَ هَذَا، وَلَكِنَّهَا مَعْصِيَةٌ بِلَا شَكٍّ.

وَقَالَ تَعَالَى {وَمِنْهُمُ الَّذِينَ يُؤْذُونَ النَّبِيَّ} [التوبة: ٦١] إلَى قَوْله تَعَالَى {ذَلِكَ الْخِزْيُ الْعَظِيمُ} [التوبة: ٦٣] .

قَالَ: وَهَذِهِ الْآيَةُ لَيْسَ فِيهَا دَلِيلٌ عَلَى كُفْرِ مَنْ قَالَ حِينَئِذٍ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُذُنٌ، وَإِنَّمَا يَكُونُ كَافِرًا مَنْ قَالَ ذَلِكَ، وَآذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ نُزُولِ النَّهْيِ عَنْ ذَلِكَ، وَنُزُولِ الْقُرْآنِ بِأَنَّ مَنْ فَعَلَ ذَلِكَ فَهُوَ كَافِرٌ، وَأَنَّ مَنْ حَادَّ اللَّهَ تَعَالَى وَرَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَهُ جَهَنَّمُ خَالِدًا فِيهَا.

فَقَدْ جَاءَ أَنَّ عُمَرَ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّك لَأَحَبُّ إلَيَّ مِنْ كُلِّ أَحَدٍ إلَّا نَفْسِي، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَلَامًا مَعْنَاهُ أَنَّهُ لَا يُؤْمِنُ حَتَّى يَكُونَ أَحَبَّ إلَيْهِ مِنْ نَفْسِهِ، فَقَالَ لَهُ عُمَرُ: أَمَّا الْآنَ فَأَنْتَ أَحَبُّ إلَيَّ مِنْ نَفْسِي.

قَالَ أَبُو مُحَمَّد: لَا يَصِحُّ أَنَّ أَحَدًا عَادَ إلَى أَذَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُحَادَّتِهِ بَعْدَ مَعْرِفَتِهِ بِالنَّازِلِ فِي ذَلِكَ مِنْ عِنْدِ اللَّهِ تَعَالَى إلَّا كَانَ كَافِرًا.

[91] **Qur'an references (L40955):** Qur'an 9:55 (At-Tawbah).
[92] **Qur'an references (L40956):** Qur'an 9:58 (At-Tawbah); Qur'an 9:59 (At-Tawbah).
[93] **Qur'an references (L40959):** Qur'an 9:61 (At-Tawbah); Qur'an 9:63 (At-Tawbah).

or openly opposing him—after knowing what Allah the Exalted has revealed regarding this matter—could do so unless he is a disbeliever.

وَلَا خِلَافَ فِي أَنَّ امْرَأً لَوْ أَسْلَمَ وَلَمْ يَعْلَمْ شَرَائِعَ الْإِسْلَامِ فَاعْتَقَدَ أَنَّ الْخَمْرَ - حَلَالٌ، وَأَنْ لَيْسَ عَلَى الْإِنْسَانِ صَلَاةٌ، وَهُوَ لَمْ يَبْلُغْهُ حُكْمُ اللَّهِ تَعَالَى لَمْ يَكُنْ كَافِرًا بِلَا خِلَافٍ يُعْتَدُّ بِهِ، حَتَّى إذَا قَامَتْ عَلَيْهِ الْحُجَّةُ فَتَمَادَى حِينَئِذٍ بِإِجْمَاعِ الْأُمَّةِ فَهُوَ كَافِرٌ.

L40963 There is no disagreement that if a man accepts Islam while unaware of the divine laws of Islam—believing wine to be permissible or that prayer is not obligatory—as long as Allah the Exalted's ruling has not been conveyed to him, he is not deemed a disbeliever (there being no valid disagreement on this matter). But when the proof is established against him and he persists obstinately, then by the consensus of the Ummah, he becomes a disbeliever.

وَيُبَيِّنُ هَذَا قَوْله تَعَالَى فِي الْآيَةِ الْمَذْكُورَةِ {يَحْلِفُونَ بِاللَّهِ لَكُمْ لِيُرْضُوكُمْ وَاللَّهُ وَرَسُولُهُ أَحَقُّ أَنْ يُرْضُوهُ إنْ كَانُوا مُؤْمِنِينَ} [التوبة: ٦٢] فَقَدْ أَخْبَرَهُمْ تَعَالَى أَنَّهُمْ إنْ كَانُوا مُؤْمِنِينَ فَإِرْضَاءُ اللَّهِ وَرَسُولِهِ أَحَقُّ عَلَيْهِمْ مِنْ إرْضَاءِ الْمُسْلِمِينَ فَصَحَّ هَذَا بِيَقِينٍ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ.

L40964 This is clarified by the statement of Allah, the Exalted, in the mentioned verse: "They swear by Allah to you to please you, but it is more deserving for them to please Allah and His Messenger if they are believers" [At-Tawbah: 62]. Allah, the Exalted, has informed them that if they are believers, then pleasing Allah and His Messenger is more incumbent upon them than pleasing the Muslims. Thus, this is conclusively affirmed. And in Allah, the Exalted, we seek help.[94]

وَقَالَ تَعَالَى {يَحْذَرُ الْمُنَافِقُونَ أَنْ تُنَزَّلَ عَلَيْهِمْ سُورَةٌ تُنَبِّئُهُمْ بِمَا فِي قُلُوبِهِمْ قُلِ اسْتَهْزِئُوا إِنَّ اللَّهَ مُخْرِجٌ مَا تَحْذَرُونَ} [التوبة: ٦٤] قَالَ: وَهَذِهِ الْآيَةُ أَيْضًا لَا نَصَّ فِيهَا عَلَى قَوْمٍ بِأَعْيَانِهِمْ فَلَا مُتَعَلَّقَ فِيهَا لِأَحَدٍ فِي هَذَا الْمَعْنَى.

L40965 And He, the Exalted, said: {The hypocrites fear that a surah will be revealed concerning them, informing them of what is in their hearts. Say, "Continue mocking! Indeed, Allah will bring forth what you fear"} [At-Tawbah 9:64]. He said: This verse, too, does not explicitly specify any particular individuals; thus, there is no basis for anyone to use it as evidence in this regard.[95]

وَقَالَ تَعَالَى {وَلَئِنْ سَأَلْتَهُمْ لَيَقُولُنَّ إِنَّمَا كُنَّا نَخُوضُ وَنَلْعَبُ} [التوبة: ٦٥] إلَى قَوْله تَعَالَى {كَانُوا مُجْرِمِينَ} [التوبة: ٦٦] .

L40966 And He, the Exalted, said: "And if you ask them, they will surely say, 'We were only jesting and playing'" [At-Tawbah:65] up to His Exalted words: "they were evildoers" [At-Tawbah:66].[96]

قَالَ أَبُو مُحَمَّد: هَذِهِ بِلَا شَكٍّ فِي قَوْمٍ مَعْرُوفِينَ كَفَرُوا بَعْدَ إيمَانِهِمْ وَلَكِنَّ التَّوْبَةَ مَبْسُوطَةٌ لَهُمْ بِقَوْلِهِ تَعَالَى {إِنْ نَعْفُ عَنْ طَائِفَةٍ مِنْكُمْ نُعَذِّبْ طَائِفَةً بِأَنَّهُمْ كَانُوا مُجْرِمِينَ} [التوبة: ٦٦] فَصَحَّ أَنَّهُمْ أَظْهَرُوا التَّوْبَةَ وَالنَّدَامَةَ وَاعْتَرَفُوا بِذَنْبِهِمْ، فَمِنْهُمْ مَنْ قَبِلَ اللَّهُ تَعَالَى تَوْبَتَهُ فِي الْبَاطِنِ عِنْدَهُ لِعِلْمِهِ تَعَالَى بِصِحَّتِهَا، وَمِنْهُمْ مَنْ لَمْ تَصِحَّ تَوْبَتُهُ فِي الْبَاطِنِ فَهُمْ

L40967–40968 Abu Muhammad said: This [matter] is undoubtedly regarding a known group who disbelieved after having believed. However, repentance remains accessible to them by the words of the Exalted: *"If We spare a group among you, We will punish another group because they were wrongdoers"* [Qur'an 9:66]. Thus, it is established that they outwardly demonstrated repentance,

[94] **Qur'an references (L40964):** Qur'an 9:62 (At-Tawbah).
[95] **Qur'an references (L40965):** Qur'an 9:64 (At-Tawbah).
[96] **Qur'an references (L40966):** Qur'an 9:65 (At-Tawbah); Qur'an 9:66 (At-Tawbah).

remorse, and confession of their sin. Among them are those whose repentance Allah the Exalted accepted inwardly by Him, through His knowledge of its validity. Others had invalid repentance inwardly; these are the ones punished in the Hereafter. As for outwardly, they all repented according to the explicit text of the verse—and success is from Allah, the Exalted.[97]

الْمُعَذَّبُونَ فِي الْآخِرَةِ، وَأَمَّا فِي الظَّاهِرِ فَقَدْ تَابَ جَمِيعُهُمْ بِنَصِّ الْآيَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40969 And He, the Exalted, said: "The hypocrite men and hypocrite women" [at-Tawbah: 67] until His statement, the Exalted: "an enduring punishment" [al-Mā'idah: 37].[98]

وَقَالَ تَعَالَى {الْمُنَافِقُونَ وَالْمُنَافِقَاتُ} [التوبة: ٦٧] إلَى قَوْله تَعَالَى {عَذَابٌ مُقِيمٌ} [المائدة: ٣٧] .

L40970 He said: This is a general description that did not aim to identify specific individuals, and this is an obligatory right upon every male hypocrite and female hypocrite - and success comes only from Allah, the Exalted.

قَالَ: فَهَذِهِ صِفَةٌ عَامَّةٌ لَمْ يَقْصِدْ بِهَا إلَى التَّعْرِيفِ لِقَوْمٍ بِأَعْيَانِهِمْ، وَهَذِهِ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُنَافِقٍ وَمُنَافِقَةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L40971 And the Exalted said, "O Prophet, strive against the disbelievers and the hypocrites and be harsh upon them" [At-Tawbah 9:73] until the words of the Exalted: "and no supporter" [Al-Baqarah 2:107].[99]

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ} [التوبة: ٧٣] إلَى قَوْله تَعَالَى {وَلا نَصِيرٍ} [البقرة: ١٠٧] .

L40972 He said: This is a verse—Allah the Exalted commanded His Messenger (peace and blessings be upon him) to strive against the disbelievers and hypocrites. Striving may be through speech, admonition, and decisive argument, as narrated by Abdullah ibn Rabīʿ, from Muḥammad ibn Isḥāq, from Ibn al-Aʿrābī, from Abū Dāwūd, from Mūsā ibn Ismāʿīl, from Ḥammād (Ibn Salamah), from Ḥumayd, from Anas, that the Messenger of Allah (peace and blessings be upon him) said: "Strive against the polytheists with your wealth, your lives, and your tongues."

قَالَ: فَهَذِهِ آيَةٌ أَمَرَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمُجَاهَدَةِ الْكُفَّارِ وَالْمُنَافِقِينَ، وَالْجِهَادُ قَدْ يَكُونُ بِاللِّسَانِ، وَالْمَوْعِظَةِ، وَالْحُجَّةِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ حُمَيْدٍ عَنْ أَنَسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ وَأَلْسِنَتِكُمْ» .

L40973 Abu Muhammad said: This verse indicates that these individuals were known individually and that they uttered the word of disbelief and apostatized after embracing Islam. However, when Allah the Exalted stated, *"If they repent, it is better for them, and if they turn away, Allah will punish

قَالَ أَبُو مُحَمَّد: وَهَذِهِ الْآيَةُ تَدُلُّ عَلَى أَنَّ هَؤُلَاءِ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ وَأَنَّهُمْ قَالُوا كَلِمَةَ الْكُفْرِ وَكَفَرُوا بَعْدَ إسْلَامِهِمْ، وَلَكِنْ لَمَّا قَالَ اللَّهُ تَعَالَى {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ وَإِنْ يَتَوَلَّوْا يُعَذِّبْهُمُ اللَّهُ عَذَابًا أَلِيمًا} [التوبة: ٧٤] صَحَّ أَنَّ اللَّهَ تَعَالَى بَذَلَ لَهُمْ التَّوْبَةَ وَقَبِلَهَا مِمَّنْ أَحَاطَهَا مِنْهُمْ وَكُلُّهُمْ بِلَا شَكٍّ أَظْهَرَ التَّوْبَةَ.

[97] **Qur'an references (L40968):** Qur'an 9:66 (At-Tawbah).
[98] **Qur'an references (L40969):** Qur'an 9:67 (At-Tawbah); Qur'an 5:37 (Al-Ma'idah).
[99] **Qur'an references (L40971):** Qur'an 9:73 (At-Tawbah); Qur'an 66:9 (At-Tahrim); Qur'an 2:107 (Al-Baqarah).

them with a painful punishment”* [9:74], it is established that Allah the Exalted granted them repentance and accepted it from those among them who fulfilled its conditions. All of them, without doubt, openly repented.[100]

L40974 And the proof of that: their oath and their denial, so they have no valid claim in this verse—and success is from Allah, the Exalted.

L40975–40976 And He, the Exalted, said, **“And among them are those who made a covenant with Allah: ‘If He should give us from His bounty...’”** [at-Tawbah 9:75] until His Exalted statement: **“...they lie.”** [al-Baqarah 2:10].[101]

L40977–40979 He said: This is also a trait mentioned by Allah the Exalted, recognized by anyone who embodies it personally, containing neither explicit textual evidence nor indication that its subject is specifically identified. Though we have been transmitted an unreliable report claiming it was revealed concerning Thaʿlabah ibn Ḥāṭib – this is invalid, for Thaʿlabah is a known Badr veteran. The narration states: Ḥammām narrated to us from Yaḥyā ibn Mālik ibn ʿĀ’idh, from al-Ḥasan ibn Abī Ghassān, from Zakariyyā ibn Yaḥyā al-Bājī, from Sahl al-Sukkari, from Aḥmad ibn al-Ḥasan al-Kharrāz, from Miskīn ibn Bukayr, from Maʿān ibn Rifāʿah al-Salāmī, from ʿAlī ibn Yazīd, from al-Qāsim ibn ʿAbd al-Raḥmān, from Abī Umāmah, who said: “Thaʿlabah ibn Ḥāṭib brought his Zakāt to ʿUmar, who refused it, stating: ‘The Prophet – peace and blessings of Allah be upon him – did not accept it, nor did Abū Bakr, so how could I?’” Abū Muḥammad said: This is undoubtedly false, for Allah the Exalted commanded the collection of Zakāt payments from Muslims’ wealth, and the Prophet – peace upon him – ordained at his death that no two religions remain in the Arabian Peninsula. Thus, Thaʿlabah must either be a Muslim – obligating Abū Bakr and ʿUmar to collect his Zakāt without exception – or a disbeliever, necessitating his expulsion from the Peninsula. Therefore, this narration is unquestionably invalid. Among its transmitters are Maʿān ibn Rifāʿah, al-Qāsim ibn ʿAbd al-Raḥmān, and ʿAlī ibn Yazīd (known as Abū ʿAbd al-Malik al-Alhānī) – all deemed weak. Miskīn ibn Bukayr is not strong. Allah the Exalted said: “Those who ridicule the

وَبُرْهَانُ ذَلِكَ: حَلِفُهُمْ وَإِنْكَارُهُمْ فَلَا مُتَعَلَّقَ لَهُمْ فِي هَذِهِ الْآيَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {وَمِنْهُمْ مَنْ عَاهَدَ اللَّهَ لَئِنْ آتَانَا مِنْ فَضْلِهِ} [التوبة: ٧٥] إلَى قَوْله تَعَالَى {يَكْذِبُونَ} [البقرة: ١٠] .

قَالَ: وَهَذِهِ أَيْضًا صِفَةٌ أَوْرَدَهَا اللَّهُ تَعَالَى يَعْرِفُهَا كُلُّ مَنْ فَعَلَ ذَلِكَ مِنْ نَفْسِهِ، وَلَيْسَ فِيهَا نَصٌّ وَلَا دَلِيلٌ، عَلَى أَنَّ صَاحِبَهَا مَعْرُوفٌ بِعَيْنِهِ، عَلَى أَنَّهُ قَدْ رُوِّينَا أَثَرًا لَا يَصِحُّ، وَفِيهِ أَنَّهَا نَزَلَتْ فِي ثَعْلَبَةَ بْنِ حَاطِبٍ - وَهَذَا بَاطِلٌ، لِأَنَّ ثَعْلَبَةَ بَدْرِيٌّ مَعْرُوفٌ، وَهَذَا أَثَرٌ: نا حُمَامٌ نا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ نا الْحَسَنُ بْنُ أَبِي غَسَّانَ نا زَكَرِيَّا بْنُ يَحْيَى الْبَاجِيُّ نِي سَهْلٌ السُّكَّرِيُّ نا أَحْمَدُ بْنُ الْحَسَنِ الْخَرَّازُ نا مِسْكِينُ بْنُ بُكَيْرٍ نا مَعَانُ بْنُ رِفَاعَةَ السَّلَامِيُّ عَنْ عَلِيِّ بْنِ يَزِيدَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ قَالَ: «جَاءَ ثَعْلَبَةُ بْنُ حَاطِبٍ بِصَدَقَتِهِ إلَى عُمَرَ فَلَمْ يَقْبَلْهَا وَقَالَ: لَمْ يَقْبَلْهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَبُو بَكْرٍ، وَلَا أَقْبَلُهَا؟» قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ بِلَا شَكٍّ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِقَبْضِ زَكَوَاتِ أَمْوَالِ الْمُسْلِمِينَ، وَأَمَرَ - عَلَيْهِ السَّلَامُ - عِنْدَ مَوْتِهِ أَنْ لَا يَبْقَى فِي جَزِيرَةِ الْعَرَبِ دِينَانِ، فَلَا يَخْلُو ثَعْلَبَةُ مِنْ أَنْ يَكُونَ مُسْلِمًا فَفَرَضَ عَلَى أَبِي بَكْرٍ، وَعُمَرَ قَبْضَ زَكَاتِهِ وَلَا بُدَّ، وَلَا فُسْحَةَ فِي ذَلِكَ - وَإِنْ كَانَ كَافِرًا فَفَرَضَ أَنْ لَا يُقِرَّ فِي جَزِيرَةِ الْعَرَبِ - فَسَقَطَ هَذَا الْأَثَرُ بِلَا شَكٍّ، وَفِي رُوَاتِهِ: مَعَانُ بْنُ رِفَاعَةَ وَالْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ، وَعَلِيُّ بْنُ يَزِيدَ - وَهُوَ أَبُو عَبْدِ الْمَلِكِ الْأَلْهَانِيُّ - وَكُلُّهُمْ ضُعَفَاءُ، وَمِسْكِينُ بْنُ بُكَيْرٍ لَيْسَ بِالْقَوِيِّ. وَقَالَ

[100] **Qur’an references (L40973):** Qur’an 9:74 (At-Tawbah).
[101] **Qur’an references (L40976):** Qur’an 9:75 (At-Tawbah); Qur’an 2:10 (Al-Baqarah).

willing contributors among the believers regarding charities..." [9:79] up to His words: "...transgressors" [5:59]. He also said: "And never pray over any of them who dies..." [9:84] until His statement: "...and they died while persisting in transgression" [9:84]. Abū Muḥammad said: We have cited this verse here – though it appears later in the Quran – due to its thematic connection with the preceding context, as both pertain to ʻAbdullāh ibn Ubayy. We shall address both collectively, Allah willing. Abū Muḥammad said: These verses indicate that they mocked the voluntary contributors among the believers... They mock them—and this is not disbelief, with no disagreement from anyone among the people of the Sunnah. As for Allah's statement, {Ask forgiveness for them or do not ask forgiveness for them} [Quran 9:80] up to His words {the transgressors} [Quran 2:26], and His statement {And never pray over any of them who dies, ever} [Quran 9:84] up to His words {transgressors} [Quran 5:59], this does not indicate that they persisted in disbelief until their death. Rather, it decisively demonstrates that their act of mocking those who believed is unforgivable because they had disbelieved previously. Thus, their past disbelief necessitated that their disparagement of the eager volunteers among the believers and their mockery of those who could only muster their utmost effort—even if they repented from their disbelief—would not be forgiven, and that they died in transgression, not disbelief. This is undoubtedly the meaning of the verse. The proof for this is the narration transmitted by Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Abu Usamah narrated to us, Ubaydullah—that is, Ibn Umar—narrated to us from Nafi' from Ibn Umar, who said: "When Abdullah ibn Ubayy ibn Salul died, his son Abdullah came to the Messenger of Allah (peace be upon him) and asked him to give him a shirt to shroud his father. He gave it to him. Then he requested him to pray over him? The Messenger of Allah (peace be upon him) rose to pray over him, but Umar stood, seized the garment of the Messenger of Allah (peace be upon him), and said: 'O Messenger of Allah, will you pray over him when Allah has forbidden you to do so?' The Messenger of Allah (peace be upon him) replied: 'Allah the Exalted granted me a choice, saying: {Ask forgiveness for them or do not ask forgiveness for them} [Quran 9:80] up to His words {seventy times} [Quran 9:80], and I will exceed seventy.' Umar said: 'Is he not a hypocrite?' The Messenger of Allah (peace be

تَعَالَى {الَّذِينَ يَلْمِزُونَ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ فِي الصَّدَقَاتِ} [التوبة: ٧٩] إِلَى قَوْله تَعَالَى {فَاسِقُونَ} [المائدة: ٥٩] . وَقَالَ تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {وَمَاتُوا وَهُمْ فَاسِقُونَ} [التوبة: ٨٤] . قَالَ أَبُو مُحَمَّد: قَدَّمْنَا هَذِهِ الْآيَةَ وَهِيَ مُؤَخَّرَةٌ عَنْ هَذَا الْمَكَانِ، لِأَنَّهَا مُتَّصِلَةُ الْمَعَانِي بِالَّتِي ذَكَرْنَا قَبْلَهَا، لِأَنَّهُمَا جَمِيعًا فِي أَمْرِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ - ثُمَّ نَذْكُرُ الْقَوْلَ فِيهِمَا جَمِيعًا - إِنْ شَاءَ اللَّهُ تَعَالَى. قَالَ أَبُو مُحَمَّد: هَذِهِ الْآيَاتُ فِيهَا: أَنَّهُمْ يَلْمِزُونَ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ، وَيَسْخَرُونَ مِنْهُمْ - وَهَذَا لَيْسَ كُفْرًا بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ السُّنَّةِ. وَأَمَّا قَوْله تَعَالَى {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] إِلَى قَوْله تَعَالَى {الْفَاسِقِينَ} [البقرة: ٢٦] . وَقَوْله تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {فَاسِقُونَ} [المائدة: ٥٩] . فَإِنَّ هَذَا لَا يَدُلُّ عَلَى تَمَادِيهِمْ عَلَى الْكُفْرِ إِلَى أَنْ مَاتُوا، وَلَكِنْ يَدُلُّ يَقِينًا عَلَى أَنَّ فِعْلَهُمْ ذَلِكَ مِنْ سُخْرِيَّتِهِمْ بِالَّذِينَ آمَنُوا غَيْرُ مَغْفُورٍ لَهُمْ، لِأَنَّهُمْ كَفَرُوا فِيمَا خَلَا، فَكَانَ مَا سَلَفَ مِنْ كُفْرِهِمْ مُوجِبًا أَنْ يُغْفَرَ لَهُمْ لَمْزُهُمُ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ، وَسُخْرِيَّتُهُمْ بِالَّذِينَ لَا يَجِدُونَ إِلَّا جَهْدَهُمْ - وَإِنْ تَابُوا مِنْ كُفْرِهِمْ - وَأَنَّهُمْ مَاتُوا عَلَى الْفِسْقِ لَا عَلَى الْكُفْرِ، بَلْ هَذَا مَعْنَى الْآيَةِ بِلَا شَكٍّ. بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو أُسَامَةَ نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: «لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ ابْنُ سَلُولَ جَاءَ ابْنُهُ عَبْدُ اللَّهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهُ أَنْ يُعْطِيَهُ قَمِيصًا يُكَفِّنُ فِيهِ أَبَاهُ فَأَعْطَاهُ ثُمَّ سَأَلَهُ أَنْ يُصَلِّيَ عَلَيْهِ؟ فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُصَلِّيَ عَلَيْهِ، فَقَامَ عُمَرُ وَأَخَذَ بِثَوْبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَيْهِ وَقَدْ نَهَاكَ اللَّهُ أَنْ تُصَلِّيَ عَلَيْهِ؟ فَقَالَ رَسُولُ

upon him) prayed over him, after which Allah revealed: {And never pray over any of them who dies, ever, nor stand at his grave} [Quran 9:84]." Muslim said: Muhammad ibn al-Muthanna narrated to us, Yahya—that is, Ibn Sa'id al-Qattan—narrated to us from Ubaydullah ibn Umar with the same chain and meaning, adding: "Thus, he abandoned praying over them."[102]

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا خَيَّرَنِي اللَّهُ تَعَالَى فَقَالَ {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] إِلَى قَوْله تَعَالَى {سَبْعِينَ مَرَّةً} [التوبة: ٨٠] وَسَأَزِيدُ عَلَى السَّبْعِينَ قَالَ: إِنَّهُ مُنَافِقٌ؟ فَصَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَنْزَلَ اللَّهُ تَعَالَى {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا وَلا تَقُمْ عَلَى قَبْرِهِ} [التوبة: ٨٤] » قَالَ مُسْلِمٌ: نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بِإِسْنَادِهِ وَمَعْنَاهُ، وَزَادَ «فَتَرَكَ الصَّلَاةَ عَلَيْهِمْ»

L40980–40986 Abū Muḥammad said: Yūsuf ibn ʿAbd Allāh ibn ʿAbd al-Barr narrated to us, saying: Khālaf ibn al-Qāsim narrated to us: Ibn al-Ward narrated to us: Ibn ʿAbd al-Raḥīm al-Raqqī narrated to us: From ʿAbd al-Malik ibn Hishām, from Ziyād ibn ʿAbd Allāh al-Bakkaʾī, from Muḥammad ibn Isḥāq al-Zuhrī, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, from Ibn ʿAbbās, who said: "I heard ʿUmar ibn al-Khaṭṭāb say: When ʿAbd Allāh ibn Ubayy died, the Messenger of Allāh—peace and blessings be upon him—was asked to attend his funeral." When he was called to pray over him, the Messenger of Allah—peace and blessings be upon him—stood up. When he positioned himself to pray, I shifted until I stood directly facing him and said, "O Messenger of Allah, will you pray over Allah's enemy, Abdullah ibn Ubayy, the one who said such-and-such on such-and-such day, and the one who said such-and-such on such-and-such day?" I listed his misdeeds day by day until I had enumerated many. He said, "O Umar, step back from me. I was given a choice and I chose. It was said to me: *'Ask forgiveness for them or do not ask forgiveness for them'* [Quran 9:80]. If I knew that exceeding seventy would secure his forgiveness, I would exceed it." Then the Messenger of Allah—peace and blessings be upon him—prayed over him and walked with the bier until he stood at his grave until the burial was completed. He said, "I marveled at myself and my boldness toward the Messenger of Allah—peace and blessings be upon him—and Allah and His Messenger know best. By

قَالَ أَبُو مُحَمَّد: ونا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ قَالَ: نا خَلَفُ بْنُ الْقَاسِمِ نا ابْنُ الْوَرْدِ نا ابْنُ عَبْدِ الرَّحِيمِ الرَّقِّيِّ عَنْ عَبْدِ الْمَلِكِ بْنِ هِشَامٍ عَنْ زِيَادِ بْنِ عَبْدِ اللَّهِ الْبَكَّائِيِّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ دُعِيَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلصَّلَاةِ عَلَيْهِ فَقَامَ إِلَيْهِ فَلَمَّا وَقَفَ إِلَيْهِ يُرِيدُ الصَّلَاةَ تَحَوَّلْتُ حَتَّى قُمْتُ فِي صَدْرِهِ فَقُلْتُ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَى عَدُوِّ اللَّهِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ؟ الْقَائِلِ كَذَا يَوْمَ كَذَا، وَالْقَائِلِ كَذَا فِي يَوْمِ كَذَا، أُعَدِّدُ أَيَّامَهُ حَتَّى إِذَا أَكْثَرْتُ عَلَيْهِ قَالَ يَا عُمَرُ أَخِّرْ عَنِّي إِنِّي قَدْ خُيِّرْتُ فَاخْتَرْتُ قَدْ قِيلَ لِي {اسْتَغْفِرْ لَهُمْ أَوْ لا تَسْتَغْفِرْ لَهُمْ} [التوبة: ٨٠] فَلَوْ أَعْلَمُ أَنِّي إِنْ زِدْت عَلَى السَّبْعِينَ غُفِرَ لَهُ لَزِدْتُ قَالَ: ثُمَّ صَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَشَى مَعَهُ حَتَّى قَامَ عَلَى قَبْرِهِ حَتَّى فَرَغَ مِنْهُ، قَالَ: فَعَجِبْتُ لِي وَلِجُرْأَتِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاَللَّهُ وَرَسُولُهُ أَعْلَمُ، فَوَاَللَّهِ مَا كَانَ إِلَّا يَسِيرًا حَتَّى نَزَلَتْ هَاتَانِ الْآيَتَانِ {وَلا تُصَلِّ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا وَلا تَقُمْ عَلَى قَبْرِهِ} [التوبة: ٨٤] إِلَى قَوْله تَعَالَى {وَهُمْ فَاسِقُونَ} [التوبة: ٨٤] فَمَا صَلَّى رَسُولُ اللَّهِ

[102] **Qur'an references (L40977):** Qur'an 9:79 (At-Tawbah); Qur'an 9:84 (At-Tawbah); Qur'an 9:80 (At-Tawbah); Qur'an 5:59 (Al-Ma'idah); Qur'an 2:26 (Al-Baqarah).

Allah, it was not long before these two verses were revealed: *‘Never pray over any of them who dies, nor stand at their grave’* [Quran 9:84] up to His saying: *‘And they are defiantly disobedient’* [Quran 9:84]. Thereafter, the Messenger of Allah—peace and blessings be upon him—never prayed over a hypocrite until Allah took his soul.”

Abdullah ibn Rabi‘ narrated to us: Muhammad ibn Mu‘awiyah narrated to us: Ahmad ibn Shu‘ayb narrated to us: Muhammad ibn Abdullah ibn al-Mubarak narrated to us: Hujayr ibn al-Muthanna narrated to us: al-Layth ibn Sa‘d narrated to us from ‘Uqayl ibn Khalid from Ibn Shihab from ‘Ubaydullah ibn Abdullah ibn ‘Utbah ibn Mas‘ud from Ibn ‘Abbas from ‘Umar ibn al-Khattab, who said: “When Abdullah ibn Ubayy ibn Salul died, the Messenger of Allah—peace and blessings be upon him—was summoned to pray over him. When he stood, I rose and said, ‘O Messenger of Allah, will you pray over Ibn Ubayy?’ I mentioned his words on such-and-such day, enumerating his offenses. The Messenger of Allah—peace and blessings be upon him—smiled and said, ‘Step back, O Umar.’ When I pressed him further, he said, ‘I was given a choice and I chose. If I knew that exceeding seventy would secure his forgiveness, I would exceed it.’ The Messenger of Allah—peace and blessings be upon him—then prayed over him and departed. It was not long before the two verses from Surah At-Tawbah were revealed. ‘Umar said, ‘I marveled at my boldness toward the Messenger of Allah—peace and blessings be upon him—’ and Allah and His Messenger know best.”

Ahmad ibn ‘Umar ibn Anas al-‘Udhri narrated to us: Abu Dhar al-Harawi narrated to us: Abdullah ibn Ahmad ibn Hamawayh al-Sarakhsi narrated to us: Ibrahim ibn Khuraym narrated to us: ‘Abd ibn Humayd narrated to us: Ibrahim ibn al-Hakam narrated to us from his father from ‘Ikrimah, who said: “When Abdullah ibn Ubayy neared death, Ibn ‘Abbas said: The Messenger of Allah—peace and blessings be upon him and his family—entered upon him, and they conversed. Abdullah ibn Ubayy said, ‘I comprehend your words, but grant me this favor today: shroud me in this shirt of yours and pray over me.’ Ibn ‘Abbas said: He shrouded him...” The Messenger of Allah—peace and blessings be upon him—clothed him in his shirt and prayed over him“—And Allah knows best—”whatever prayer that was. The Messenger

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مُنَافِقٍ حَتَّى قَبَضَهُ اللَّهُ تَعَالَى» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا حُجَيْرُ بْنُ الْمُثَنَّى نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنِ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنِ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ «لَمَّا تُوُفِّيَ عَبْدُ اللَّهِ بْنُ أُبَيِّ ابْنُ سَلُولَ دُعِيَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُصَلِّيَ عَلَيْهِ فَلَمَّا قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَثَبْتُ، ثُمَّ قُلْتُ: يَا رَسُولَ اللَّهِ أَتُصَلِّي عَلَى ابْنِ أُبَيٍّ؟ وَقَالَ يَوْمَ كَذَا: كَذَا وَكَذَا، أُعَدِّدُ عَلَيْهِ، فَتَبَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: أَخِّرْ عَنِّي يَا عُمَرُ، فَلَمَّا أَكْثَرْتُ عَلَيْهِ قَالَ: إِنِّي خُيِّرْتُ فَاخْتَرْتُ فَلَوْ عَلِمْتُ أَنِّي إِنْ زِدْتُ عَلَى السَّبْعِينَ غُفِرَ لَهُ لَزِدْتُ عَلَيْهَا، فَصَلَّى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ انْصَرَفَ، فَمَا مَكَثَ إِلَّا يَسِيرًا حَتَّى نَزَلَتْ الْآيَتَانِ مِنْ بَرَاءَةٍ الْمَذْكُورَتَانِ، قَالَ عُمَرُ: فَعَجِبْتُ مِنْ جُرْأَتِي عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَاَللَّهُ أَعْلَمُ. حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا إِبْرَاهِيمُ بْنُ الْحَكَمِ عَنْ أَبِيهِ عَنْ عِكْرِمَةَ قَالَ «لَمَّا حَضَرَ عَبْدَ اللَّهِ بْنَ أُبَيٍّ الْمَوْتُ، قَالَ ابْنُ عَبَّاسٍ: فَدَخَلَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَرَى بَيْنَهُمَا كَلَامٌ فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ أُبَيٍّ: قَدْ أَفْقَهُ مَا تَقُولُ وَلَكِنْ مُنَّ عَلَيَّ الْيَوْمَ وَكَفِّنِّي بِقَمِيصِكَ هَذَا، وَصَلِّ عَلَيَّ؟ قَالَ ابْنُ عَبَّاسٍ: فَكَفَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَمِيصِهِ وَصَلَّى عَلَيْهِ» - وَاَللَّهُ أَعْلَمُ - أَيَّ صَلَاةٍ كَانَتْ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَخْدَعْ إِنْسَانًا قَطُّ غَيْرَ أَنَّهُ قَالَ يَوْمَ الْحُدَيْبِيَةِ: كَلِمَةً حَسَنَةً، قَالَ الْحَكَمُ: فَسَأَلْت عِكْرِمَةَ مَا هَذِهِ الْكَلِمَةُ؟ قَالَ: قَالَتْ قُرَيْشٌ: يَا أَبَا حَبَّابٍ

of Allah—peace and blessings be upon him—never deceived anyone except when he spoke a kind word during the day of Al-Hudaybiyah." Al-Hakam said: "I asked Ikrimah, 'What was this word?' He replied: 'The Quraysh said: "O Abu Habbab, we have prevented Muhammad from circumambulating this House, but we grant you permission." He responded: "No, I follow the exemplary model of the Messenger of Allah—peace and blessings be upon him and his family."'"

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: 'Abdul-Jabbar ibn Al-'Ala' ibn 'Abdul-Jabbar narrated from Sufyan ibn 'Uyaynah from 'Amr ibn Dinar, who heard Jabir say: "The Prophet—peace and blessings be upon him and his family—came to the grave of 'Abdullah ibn Ubayy after he had been placed in his grave pit. He stood there, ordered him removed from it, placed him on his knees, clothed him in his own shirt, and blew gently upon him with his saliva"—And Allah knows best?

Abu Muhammad—may Allah have mercy on him—said: "All this confirms the validity of our position for several reasons: First—the apparent meaning of the verse, as we stated, indicates they had disbelieved earlier and died in depravity. Second—Allah the Exalted categorically forbade the Prophet—peace and blessings be upon him and his family—and the believers from seeking forgiveness for polytheists, as He said: {It is not for the Prophet and those who believe to seek forgiveness for the polytheists} [9:113] until His words: {companions of the Blaze} [2:119]. Had Ibn Ubayy and the others mentioned been among those whom the Prophet—peace and blessings be upon him—knew with certainty to be disbelievers, he would neither have sought forgiveness for them nor prayed over them. No Muslim may presume that the Prophet—peace and blessings be upon him—disobeyed his Lord in this matter. Thus, it is certain he—peace be upon him—never knew that 'Abdullah ibn Ubayy and the others mentioned were inwardly disbelievers."

We received through Muslim: Harmalah ibn Yahya At-Tujibi narrated to us: 'Abdullah ibn Wahb narrated to us: Yunus narrated from Ibn Shihab, who informed me that Sa'id ibn Al-Musayyib ibn Hawr narrated from his father, who said: "When Abu Talib's death approached, the Messenger of

إِنَّا قَدْ مَنَعْنَا مُحَمَّدًا طَوَافَ هَذَا الْبَيْتِ، وَلَكِنَّا نَأْذَنُ لَكَ؟ فَقَالَ: لَا، لِي فِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أُسْوَةٌ حَسَنَةٌ". حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدُ الْجَبَّارِ بْنُ الْعَلَاءِ بْنِ عَبْدِ الْجَبَّارِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ وَسَمِعَ جَابِرًا يَقُولُ: «أَتَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَبْرَ عَبْدِ اللَّهِ بْنِ أُبَيٍّ - وَقَدْ وُضِعَ فِي حُفْرَتِهِ - فَوَقَفَ فَأَمَرَ بِهِ فَأُخْرِجَ مِنْ حُفْرَتِهِ، فَوَضَعَهُ عَلَى رُكْبَتَيْهِ، وَأَلْبَسَهُ قَمِيصَهُ، وَنَفَثَ عَلَيْهِ مِنْ رِيقِهِ» ، وَاللَّهُ أَعْلَمُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّهُ يُوجِبُ صِحَّةَ مَا قُلْنَاهُ لِوُجُوهٍ: أَحَدُهَا - ظَاهِرُ الْآيَةِ كَمَا قُلْنَا مِنْ أَنَّهُمْ كَفَرُوا قَبْلُ، وَمَاتُوا عَلَى الْفِسْقِ. وَالثَّانِي - أَنَّ اللَّهَ تَعَالَى قَدْ نَهَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالْمُؤْمِنِينَ عَنْ الِاسْتِغْفَارِ جُمْلَةً لِلْمُشْرِكِينَ بِقَوْلِهِ تَعَالَى {مَا كَانَ لِلنَّبِيِّ وَالَّذِينَ آمَنُوا أَنْ يَسْتَغْفِرُوا لِلْمُشْرِكِينَ} [التوبة: ١١٣] إلَى قَوْله تَعَالَى {أَصْحَابِ الْجَحِيمِ} [البقرة: ١١٩] فَلَوْ كَانَ ابْنُ أُبَيٍّ وَغَيْرُهُ مِنْ الْمَذْكُورِينَ مِمَّنْ تَبَيَّنَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمْ كُفَّارٌ - بِلَا شَكٍّ - لَمَا اسْتَغْفَرَ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا صَلَّى عَلَيْهِ. وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ خَالَفَ رَبَّهُ فِي ذَلِكَ، فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَعْلَمْ قَطُّ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ وَالْمَذْكُورِينَ كُفَّارٌ فِي الْبَاطِنِ؟ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا حَرْمَلَةُ بْنُ يَحْيَى التُّجِيبِيُّ نا عَبْدُ اللَّهِ بْنُ وَهْبٍ نا يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ بْنِ حَوْرٍ عَنْ أَبِيهِ قَالَ: «لَمَّا حَضَرَتْ أَبَا طَالِبٍ الْوَفَاةُ جَاءَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدَ عِنْدَهُ أَبَا جَهْلٍ، وَعَبْدَ اللَّهِ بْنَ أَبِي أُمَيَّةَ بْنِ الْمُغِيرَةِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا

Allah—peace and blessings be upon him—came to him and found Abu Jahl and ʻAbdullah ibn Abi Umayyah ibn Al-Mughirah present. The Messenger of Allah—peace and blessings be upon him—said: ʼO uncle, declare: There is no god but Allah—a phrase by which I may testify for you before Allah.ʼ Abu Jahl and ʻAbdullah ibn Abi Umayyah interjected: ʼDo you abandon the faith of ʻAbdul-Muttalib?ʼ The Messenger of Allah—peace and blessings be upon him—continued to insist...“ They presented it to him and repeated that statement to him until Abū Ṭālib—in his final words to them—said: ”Upon the religion of ʿAbd al-Muṭṭalib.“ Thereupon the Messenger of Allāh—peace and blessings of Allāh be upon him—declared: ”By Allāh, I will surely seek forgiveness for you as long as I am not prohibited from doing so.“ Then Allāh the Exalted revealed: {It is not for the Prophet and those who have believed...} [9:113] to affirm this prohibition. Abū Muḥammad said: This confirms beyond doubt that the prohibition against seeking forgiveness for polytheists was revealed in Makkah. Thus, it is established with certainty that he—peace and blessings of Allāh be upon him—did not hold conviction that ʿAbdullāh ibn Ubayy was a polytheist. Had he been certain he was a polytheist, he would not have prayed over him at all nor sought forgiveness for him. Likewise, ʿUmar ibn al-Khaṭṭāb's enumeration of ʿAbdullāh ibn Ubayy ibn Salūl's statements—No, had he considered him a disbeliever, he would have explicitly declared so, confronted him directly, and would not have engaged others at length. Third: Ibn ʿAbbās doubted, and Jābir [shared this], while ʿUmar marveled at the opposition to the Prophet—peace and blessings of Allāh be upon him and his family—regarding his praying over ʿAbdullāh ibn Ubayy, while acknowledging that the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—possessed greater knowledge. Fourth: Allāh the Exalted prohibited only His Prophet—peace and blessings of Allāh be upon him and his family—from praying over them and seeking forgiveness for them, without prohibiting other Muslims. We do not deny this, for the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—would not pray over one indebted without means for repayment yet commanded Muslims to pray over them. This establishes with certainty that the verses' meaning is their disbelief due to their statements—a fact known to the Prophet—peace and blessings of Allāh

عَمِّ قُلْ: لَا إِلَهَ إِلَّا اللَّهُ كَلِمَةً أَشْهَدُ لَكَ بِهَا عِنْدَ اللَّهِ؟ فَقَالَ أَبُو جَهْلٍ، وَعَبْدُ اللَّهِ بْنُ أَبِي أُمَيَّةَ: أَتَرْغَبُ عَنْ مِلَّةِ عَبْدِ الْمُطَّلِبِ، فَلَمْ يَزَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْرِضُهَا عَلَيْهِ وَيُعِيدَانِ عَلَيْهِ تِلْكَ الْمَقَالَةَ، حَتَّى قَالَ أَبُو طَالِبٍ، آخِرُ مَا كَلَّمَهُمْ بِهِ: عَلَى مِلَّةِ عَبْدِ الْمُطَّلِبِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَا وَاللَّهِ لَأَسْتَغْفِرَنَّ لَكَ مَا لَمْ أُنْهَ عَنْكَ فَأَنْزَلَ اللَّهُ تَعَالَى {مَا كَانَ لِلنَّبِيِّ وَالَّذِينَ آمَنُوا} [التوبة: ١١٣] الْآيَةَ؟»

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ النَّهْيَ عَنْ الِاسْتِغْفَارِ لِلْمُشْرِكِينَ نَزَلَ بِمَكَّةَ - بِلَا شَكٍّ - فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُوقِنْ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ مُشْرِكٌ وَلَوْ أَيْقَنَ أَنَّهُ مُشْرِكٌ لَمَا صَلَّى عَلَيْهِ أَصْلًا، وَلَا اسْتَغْفَرَ لَهُ، وَكَذَلِكَ تَعْدِيدُ عُمَرَ بْنِ الْخَطَّابِ مَقَالَاتِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ ابْنِ سَلُولَ: لَا، وَلَوْ كَانَ عِنْدَهُ كَافِرًا لَصَرَّحَ بِذَلِكَ، وَقَصَدَ إلَيْهِ، وَلَمْ يُطَوِّلْ بِغَيْرِهِ. وَالثَّالِثُ - شَكَّ ابْنُ عَبَّاسٍ، وَجَابِرٌ، وَتَعَجَّبَ عُمَرُ مِنْ مُعَارَضَةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي صَلَاتِهِ عَلَى عَبْدِ اللَّهِ بْنِ أُبَيٍّ، وَإِقْرَارِهِ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْرَفُ مِنْهُ. وَالرَّابِعُ - أَنَّ اللَّهَ تَعَالَى إنَّمَا نَهَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّلَاةِ عَلَيْهِمْ وَالِاسْتِغْفَارِ لَهُمْ فَقَطْ، وَلَمْ يَنْهَ سَائِرَ الْمُسْلِمِينَ عَنْ ذَلِكَ، وَهَذَا لَا نُنْكِرُهُ، فَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُصَلِّي عَلَى مَنْ عَلَيْهِ دَيْنٌ لَا يُتْرَكُ لَهُ وَفَاءٌ وَيَأْمُرُ الْمُسْلِمِينَ بِالصَّلَاةِ عَلَيْهِمْ. فَصَحَّ يَقِينًا بِهَذَا أَنَّ مَعْنَى الْآيَاتِ إنَّمَا هُوَ أَنَّهُمْ كَفَرُوا بِذَلِكَ مِنْ قَوْلِهِمْ، وَعَلِمَ بِذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَالْمُسْلِمُونَ. ثُمَّ تَابُوا فِي ظَاهِرِ الْأَمْرِ، فَمِنْهُمْ مِنْ عَلِمَ اللَّهُ تَعَالَى أَنَّ بَاطِنَهُ كَظَاهِرِهِ فِي التَّوْبَةِ، وَمِنْهُمْ مَنْ عَلِمَ اللَّهُ تَعَالَى أَنَّ بَاطِنَهُ خِلَافُ ظَاهِرِهِ، وَلَمْ يَعْلَمْ ذَلِكَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَلَا أَحَدٌ مِنْ الْمُسْلِمِينَ، وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

be upon him—and the Muslims. They then ostensibly repented. Among them were those whose inward state Allāh knew matched their outward repentance, and others whose inward state Allāh knew contradicted their appearance—though neither the Prophet—peace and blessings of Allāh be upon him—nor any Muslim knew this. This is manifestly clear—and success comes solely from Allāh the Exalted.[103][104]

L40987 And He, the Exalted, said, "Those who remained behind rejoiced at their sitting in opposition to the Messenger of Allah" [At-Tawbah: 81], and the statement of the Exalted, "while they were disbelievers" [At-Tawbah: 55].[105]

L40988 He said: The statement of Allah, the Exalted, {Those who stayed behind rejoiced} [At-Tawbah: 81] contains no explicit text indicating they disbelieved through that act. Rather, they committed a major sin from the gravest sins, and they were thereby disobedient and transgressors.[106]

L40989 And indeed, Allah, the Exalted, has mentioned these [people] by name in Sūrat al-Fatḥ.

L40990–40992 And the Most High clarified this which We have said there, with an elaboration beyond what He had reminded them of here, as He, the Exalted, said: "Those who stayed behind among the Bedouins will say to you" [Al-Fath 48:11]. To the statement of Allah, the Exalted, {a painful punishment} [An-Nisa: 18], Allah decreed that those who stayed behind—whom He commanded His Prophet (peace be upon him) never to pray over any of them who died at all—disbelieved in Allah and His Messenger. These are those whom Allah commanded His Prophet (peace be upon him) not to be pleased by their wealth or children, and whose souls He intended to take while they were disbelievers: that their repentance is accepted if they repent outwardly in their apparent affairs, and in the ruling regarding their inner state—that whoever among them had sincere repentance and obeyed when summoned

وَقَالَ تَعَالَى {فَرِحَ الْمُخَلَّفُونَ بِمَقْعَدِهِمْ خِلافَ رَسُولِ اللَّهِ} [التوبة: ٨١] إِلَى قَوْله تَعَالَى {وَهُمْ كَافِرُونَ} [التوبة: ٥٥] .

قَالَ فَقَوْلُهُ تَعَالَى {فَرِحَ الْمُخَلَّفُونَ} [التوبة: ٨١] الْآيَةَ لَيْسَ فِيهَا نَصٌّ عَلَى أَنَّهُمْ كَفَرُوا بِذَلِكَ، وَلَكِنَّهُمْ أَتَوْا كَبِيرَةً مِنْ الْكَبَائِرِ كَانُوا بِهَا عُصَاةً فَاسِقِينَ.

وَقَدْ ذَكَرَ اللَّهُ تَعَالَى هَؤُلَاءِ بِأَعْيَانِهِمْ فِي سُورَةِ الْفَتْحِ.

وَبَيَّنَ تَعَالَى هَذَا الَّذِي قُلْنَاهُ هُنَالِكَ بِزِيَادَةٍ عَلَى مَا ذَكَرَهُمْ بِهِ هَاهُنَا، فَقَالَ تَعَالَى {سَيَقُولُ لَكَ الْمُخَلَّفُونَ مِنَ الأَعْرَابِ} [الفتح: ١١] إلَى قَوْله تَعَالَى {عَذَابًا أَلِيمًا} [النساء: ١٨] فَنَصَّ اللَّهُ تَعَالَى عَلَى أَنَّ أُولَئِكَ الْمُخَلَّفِينَ الَّذِينَ أَمَرَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يُصَلِّيَ عَلَى أَحَدٍ مِنْهُمْ مَاتَ أَبَدًا، وَأَنَّهُمْ كَفَرُوا بِاَللَّهِ وَبِرَسُولِهِ، وَالَّذِينَ أَمَرَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا تُعْجِبَهُ أَمْوَالُهُمْ وَلَا أَوْلَادُهُمْ، وَأَنَّهُ تَعَالَى أَرَادَ أَنْ تَزْهَقَ أَنْفُسُهُمْ وَهُمْ كَافِرُونَ: أَنَّهُمْ مَقْبُولَةٌ تَوْبَتُهُمْ إنْ تَابُوا فِي ظَاهِرِ أَمْرِهِمْ، وَفِي الْحُكْمِ بِأَنَّ بَاطِنَهُمْ: أَنَّ مَنْ كَانَ مِنْهُمْ صَحِيحَ التَّوْبَةِ مُطِيعًا إذَا دُعِيَ بَعْدَ مَوْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الْجِهَادِ فَسَيُؤْتِيهِ أَجْرًا عَظِيمًا، وَأَنَّ مَنْ تَوَلَّى عَذَّبَهُ اللَّهُ تَعَالَى عَذَابًا أَلِيمًا.

[103] **Hadith references (L40980):** Sahih Muslim 24a.

[104] **Qur'an references (L40980):** Qur'an 9:80 (At-Tawbah); Qur'an 9:84 (At-Tawbah); Qur'an 9:113 (At-Tawbah); Qur'an 2:119 (Al-Baqarah).

[105] **Qur'an references (L40987):** Qur'an 9:81 (At-Tawbah); Qur'an 9:55 (At-Tawbah).

[106] **Qur'an references (L40988):** Qur'an 9:81 (At-Tawbah).

to jihad after the death of the Messenger of Allah (peace be upon him) will be granted a great reward, and that whoever turns away, Allah will inflict on him a painful punishment.[107]

L40993 Thus, what we have stated is correct—that they disbelieved, and the Messenger of Allah (peace be upon him) knew they had disbelieved, then they repented, and he accepted their repentance. Yet, after their repentance, he (peace be upon him) could not discern who among them was truthful in the secret of their affair or in whom disbelief resided in the inner aspect of their belief. This is the truth, which none may deviate from, as evidenced by the texts we previously cited—and success is by Allah, the Exalted.

L40994 And He, the Exalted, said: {When a sūrah is revealed [saying], "Believe in Allah"} [At-Tawbah: 86] up to His saying, the Exalted: {so they do not comprehend} [At-Tawbah: 87]. Abū Muḥammad (may Allah have mercy on him) said: These are the exact texts of the verses we mentioned, and we have already spoken about them. And He, the Exalted, said: {The excuse-makers among the Bedouins came} [At-Tawbah: 90] up to His saying: {a painful punishment} [Al-Baqarah: 10].[108]

L40995 He said: This verse clarifies what we have stated in explicit terms, because He, the Exalted, has informed that some of them are disbelievers, though all of them are sinners. As for those among them who harbored disbelief inwardly, neither the Prophet—peace be upon him—knew about them, nor did anyone among them know about them except Allah the Exalted alone.

L40996 And the Most High said, "Indeed, the blame rests only upon those who seek permission from you" [At-Tawbah: 93] up to His saying "from the transgressing people" [At-Tawbah: 96]. Abu Muhammad—may Allah have mercy on him—said: This [verse] is similar to the preceding one, and we have already stated: Among them were those who disbelieved, so those are the ones upon whose hearts Allah has sealed. However, Allah, the Most High, postponed

فَصَحَّ مَا قُلْنَاهُ مِنْ أَنَّهُمْ كَفَرُوا فَعَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمْ كَفَرُوا ثُمَّ تَابُوا فَقَبِلَ تَوْبَتَهُمْ، وَلَمْ يَعْرِفْ - عَلَيْهِ السَّلَامُ - بَعْدَ التَّوْبَةِ مَنْ مِنْهُمْ الصَّادِقُ فِي سِرِّ أَمْرِهِ، وَلَا مَنْ مِنْهُمْ الْكُفْرُ فِي بَاطِنِ مُعْتَقَدِهِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ بِشَهَادَةِ النُّصُوصِ، كَمَا أَوْرَدْنَا آنِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {وَإِذَا أُنْزِلَتْ سُورَةٌ أَنْ آمِنُوا بِاللَّهِ} [التوبة: ٨٦] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ نَصُّ الْآيَاتِ الَّتِي ذَكَرْنَا أَيْضًا وَقَدْ تَكَلَّمْنَا فِيهَا، وَقَالَ تَعَالَى {وَجَاءَ الْمُعَذِّرُونَ مِنَ الأَعْرَابِ} [التوبة: ٩٠] إلَى قَوْله تَعَالَى {عَذَابٌ أَلِيمٌ} [البقرة: ١٠] .

قَالَ: وَهَذِهِ الْآيَةُ تُبَيِّنُ مَا قُلْنَاهُ نَصًّا، لِأَنَّهُ تَعَالَى أَخْبَرَ أَنَّ بَعْضَهُمْ كُفَّارٌ، إلَّا أَنَّ كُلَّهُمْ عُصَاةٌ، فَأَمَّا الْمُبْطِنُونَ لِلْكُفْرِ مِنْهُمْ فَلَمْ يَعْلَمْهُمْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَلَا عَلِمَهُمْ أَحَدٌ مِنْهُمْ إلَّا اللَّهُ تَعَالَى فَقَطْ.

وَقَالَ تَعَالَى {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَسْتَأْذِنُونَكَ} [التوبة: ٩٣] إلَى قَوْلِهِ {عَنِ الْقَوْمِ الْفَاسِقِينَ} [التوبة: ٩٦] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ كَالَّتِي قَبْلَهَا، وَقَدْ قُلْنَا: إنَّ فِيهِمْ مَنْ كَفَرَ، فَأُولَئِكَ الَّذِينَ طَبَعَ اللَّهُ عَلَى قُلُوبِهِمْ، وَلَكِنَّ اللَّهَ تَعَالَى أَرْجَأَ أَمْرَهُمْ بِقَوْلِهِ تَعَالَى {وَسَيَرَى اللَّهُ عَمَلَكُمْ وَرَسُولُهُ} [التوبة: ٩٤] .

[107] **Qur'an references (L40990):** Qur'an 48:11 (Al-Fath); Qur'an 9:84 (At-Tawbah); Qur'an 4:18 (An-Nisa).

[108] **Qur'an references (L40994):** Qur'an 9:86 (At-Tawbah); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun); Qur'an 9:90 (At-Tawbah); Qur'an 2:10 (Al-Baqarah).

His judgment on them by His saying: “Allah and His Messenger will see your deeds” [At-Tawbah: 94].[109]

L40997 Thus, what we have said is correct, and all the verses are in harmony. All praise is due to Allah, Lord of the worlds.

L40998–40999 Similarly, the Exalted has informed that {Their refuge is Hellfire as a recompense for what they used to acquire} [At-Tawbah 9:95]. Hellfire serves as a recompense both for disbelief and for disobedience. Similarly, the Exalted is not pleased with the evildoers, even if they are not disbelievers.[110]

فَصَحَّ مَا قُلْنَاهُ وَاتَّفَقَتْ الْآيَاتُ كُلُّهَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَكَذَلِكَ أَخْبَرَ تَعَالَى أَنَّ {وَمَأْوَاهُمْ جَهَنَّمُ جَزَاءً بِمَا كَانُوا يَكْسِبُونَ} [التوبة: ٩٥] وَجَهَنَّمُ تَكُونُ جَزَاءً عَلَى الْكُفْرِ وَتَكُونُ جَزَاءً عَلَى الْمَعْصِيَةِ، وَكَذَلِكَ لَا يَرْضَى تَعَالَى عَنْ الْقَوْمِ الْفَاسِقِينَ، وَإِنْ لَمْ يَكُونُوا كَافِرِينَ.

[109] **Qur’an references (L40996):** Qur’an 9:93 (At-Tawbah); Qur’an 9:96 (At-Tawbah); Qur’an 16:108 (An-Nahl); Qur’an 47:16 (Muhammad); Qur’an 9:94 (At-Tawbah).

[110] **Qur’an references (L40999):** Qur’an 9:95 (At-Tawbah).

L41000 He, the Exalted, said: “The desert Arabs are the most severe in disbelief and hypocrisy” [Surah At-Tawbah 9:97] up to His words: “Indeed, Allah is Forgiving, Merciful” [Surah At-Tawbah 9:99]. Abu Muhammad said: “Do these verses not explicitly confirm what we have asserted—that there are hidden disbelievers among them inwardly?” Abu Muhammad—may Allah have mercy on him—said: “None knows their secret except Allah Himself, but His Messenger—peace be upon him—does not.”[1]

وَقَالَ تَعَالَى {الأَعْرَابُ أَشَدُّ كُفْرًا وَنِفَاقًا} [التوبة: ٩٧] إِلَى قَوْله تَعَالَى {إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] ؟ قَالَ أَبُو مُحَمَّد: وَهَذِهِ الْآيَاتُ كُلُّهَا تُبَيِّنُ نَصَّ مَا قُلْنَاهُ مِنْ أَنَّ فِيهِمْ كُفَّارًا فِي الْبَاطِنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا يَعْلَمُ سِرَّهُمْ إِلَّا اللَّهُ تَعَالَى، وَأَمَّا رَسُولُهُ - عَلَيْهِ السَّلَامُ - فَلَا.

L41001 And He, the Exalted, said, {And among those around you from the Bedouins are hypocrites} [At-Tawbah: 101] until His statement, the Exalted, {All-Hearing, All-Knowing} [Al-Baqarah: 127]. Abu Muḥammad said: This verse explicitly clarifies the text of what we said with a clarity that none may lawfully oppose. It establishes that the Prophet—peace be upon him—did not know the hypocrites, neither from the Bedouins nor from the people of Medina. Rather, Allah, the Exalted, knows them, and among them are those who repent, so Allah, the Exalted, forgives them. The Prophet—may Allah’s blessings and peace be upon him and his family—was commanded to collect zakāt from all of them based on the outward manifestation of Islam.[2]

وَقَالَ تَعَالَى {وَمِمَّنْ حَوْلَكُمْ مِنَ الأَعْرَابِ مُنَافِقُونَ} [التوبة: ١٠١] إِلَى قَوْله تَعَالَى {سَمِيعٌ عَلِيمٌ} [البقرة: ١٨١] ؟ قَالَ أَبُو مُحَمَّد: هَذِهِ الْآيَةُ مُبَيِّنَةٌ نَصَّ مَا قُلْنَاهُ بَيَانًا لَا يَحِلُّ لِأَحَدٍ أَنْ يُخَالِفَهُ مِنْ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - لَا يَعْلَمُ الْمُنَافِقِينَ - لَا مِنْ الْأَعْرَابِ، وَلَا مِنْ أَهْلِ الْمَدِينَةِ - وَلَكِنَّ اللَّهَ تَعَالَى يَعْلَمُهُمْ، وَأَنَّ مِنْهُمْ مَنْ يَتُوبُ فَيَعْفُو اللَّهُ تَعَالَى عَنْهُ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَأْمُورٌ بِأَخْذِ زَكَوَاتِ جَمِيعِهِمْ عَلَى ظَاهِرِ الْإِسْلَامِ.

L41002 And He, the Exalted, said: {As for those who took a mosque [for] harm and disbelief} [9:107] up to His statement: {until their hearts are cut asunder, and Allah is All-Knowing, All-Wise} [9:110]. Abu Muhammad—may Allah have mercy on him—said: This passage is like the one before it. It indicates that their construction of the mosque was intended for disbelief. Then they professed repentance, so Allah the Exalted knew the truthfulness of those who were truthful in this matter and the deceit of those who lied in it.[3]

وَقَالَ تَعَالَى {وَالَّذِينَ اتَّخَذُوا مَسْجِدًا ضِرَارًا وَكُفْرًا} [التوبة: ١٠٧] إِلَى قَوْله تَعَالَى {إِلا أَنْ تَقَطَّعَ قُلُوبُهُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ} [التوبة: ١١٠] ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذِهِ كَالَّتِي قَبْلَهَا، وَفِيهَا، أَنَّ بُنْيَانَهُمْ لِلْمَسْجِدِ قَصَدُوا بِهِ الْكُفْرَ، ثُمَّ أَظْهَرُوا التَّوْبَةَ، فَعَلِمَ اللَّهُ تَعَالَى صِدْقَ مَنْ صَدَقَ فِيهَا، وَكَذِبَ مَنْ كَذَبَ فِيهَا.

L41003 Indeed, {Their structure which they built will not cease to be a cause of doubt in their hearts unless their hearts are cut asunder} [At-Tawbah: 110]. Allah the Exalted has already decreed that whoever commits a sin, it is possible He will not forgive him ever until He punishes him for it, and this is the requirement of this verse.[4]

وَنَعَمْ {لا يَزَالُ بُنْيَانُهُمُ الَّذِي بَنَوْا رِيبَةً فِي قُلُوبِهِمْ إِلا أَنْ تَقَطَّعَ قُلُوبُهُمْ} [التوبة: ١١٠] وَقَدْ قَدَّمَ اللَّهُ تَعَالَى أَنَّ مَنْ أَذْنَبَ ذَنْبًا فَمُمْكِنٌ أَنْ لَا يَغْفِرَهُ لَهُ أَبَدًا حَتَّى يُعَاقِبَهُ عَلَيْهِ، وَهَذَا مُقْتَضَى هَذِهِ الْآيَةِ.

[1] **Qur’an references (L41000):** Qur’an 9:97 (At-Tawbah); Qur’an 2:173 (Al-Baqarah).
[2] **Qur’an references (L41001):** Qur’an 9:101 (At-Tawbah); Qur’an 2:181 (Al-Baqarah).
[3] **Qur’an references (L41002):** Qur’an 9:107 (At-Tawbah); Qur’an 9:110 (At-Tawbah).
[4] **Qur’an references (L41003):** Qur’an 9:110 (At-Tawbah).

L41004 And the Most High said, “When a chapter [sūrah] is revealed, some of them say...” [at-Tawbah 9:124] up to His words, “they do not understand” [al-A‘raf 7:179]—how is this reconciled?[5]

L41005–41006 Abu Muhammad—may Allah have mercy on him—said: “These [texts] provide no evidence whatsoever that those who affirm this are known as specific individuals. Rather, it is an attribute Allah the Exalted has ascribed to them, which they recognize intrinsically, solely upon hearing it.”

L41007 And He, the Exalted, said: {And they say, “We believe in Allah and the Messenger”} [An-Nur: 47] up to His statement, the Exalted: {they are the triumphant} [At-Tawbah: 20]. Abu Muhammad said: There is no clarification in this verse that they are known by their individual identities; rather, it is a description such that whoever hears it recognizes it from himself. And it is expressed in two aspects.[6]

L41008 One of them is that the one who does so is a disbeliever—when he shuns the ruling of the Messenger of Allah (may Allah’s blessings and peace be upon him and his family) and adopts a creed of not accepting it. This is pure disbelief.

L41009 The second view—divided into two divisions:

L41010 One of the two [scenarios] is when the perpetrator acts on his desires in oppression and self-favoritism, fully aware of the moral repugnance of his actions in that regard while believing the truth contradicts his deeds—such a person is a transgressor, not a disbeliever.

L41011 The second - is that one does so by emulating a person while being deeply infatuated with glorifying and loving them, deluding oneself that they are upon the truth. All these aspects exist among people. The people of these latter two categories are erring transgressors but not disbelievers. The meaning of Allah’s statement, {And those are not the believers} [Al-Mā’idah 5:43], is that they are not those who are obedient, for all obedience to Allah is faith, and all faith is obedience to Allah. Thus, whoever is not obedient to Allah

وَقَالَ تَعَالَى {وَإِذَا مَا أُنْزِلَتْ سُورَةٌ فَمِنْهُمْ مَنْ يَقُولُ} [التوبة: ١٢٤] إلَى قَوْله تَعَالَى {لا يَفْقَهُونَ} [الأعراف: ١٧٩] ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ لَا دَلِيلَ فِيهَا أَصْلًا عَلَى أَنَّ الْقَائِلِينَ بِذَلِكَ مَعْرُوفُونَ بِأَعْيَانِهِمْ لَكِنَّهَا صِفَةٌ وَصَفَهَا اللَّهُ تَعَالَى يَعْرِفُونَهَا مِنْ أَنْفُسِهِمْ إذَا سَمِعُوهَا فَقَطْ.

وَقَالَ تَعَالَى {وَيَقُولُونَ آمَنَّا بِاللَّهِ وَبِالرَّسُولِ} [النور: ٤٧] إلَى قَوْله تَعَالَى {هُمُ الْفَائِزُونَ} [التوبة: ٢٠] ؟ قَالَ أَبُو مُحَمَّد: لَيْسَ فِي هَذِهِ الْآيَةِ بَيَانٌ أَنَّهُمْ مَعْرُوفُونَ بِأَعْيَانِهِمْ وَإِنَّمَا هِيَ صِفَةٌ مَنْ سَمِعَهَا عَرَفَهَا مِنْ نَفْسِهِ، وَهِيَ تَخْرُجُ عَلَى وَجْهَيْنِ:

أَحَدُهُمَا - أَنْ يَكُونَ مَنْ فَعَلَ ذَلِكَ كَافِرًا وَهُوَ أَنْ يَعْتَقِدَ النِّفَارَ عَنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَيَدِينُ بِأَنْ لَا يَرْضَى بِهِ فَهَذَا كُفْرٌ مُجَرَّدٌ.

وَالْوَجْهُ الثَّانِي - يَنْقَسِمُ قِسْمَيْنِ:

أَحَدُهُمَا - أَنْ يَكُونَ فَاعِلُ ذَلِكَ مُتَّبِعًا لِهَوَاهُ فِي الظُّلْمِ وَمُحَابَاةِ نَفْسِهِ عَارِفًا بِقُبْحِ فِعْلِهِ فِي ذَلِكَ وَمُعْتَقِدًا أَنَّ الْحَقَّ فِي خِلَافِ فِعْلِهِ - فَهَذَا فَاسِقٌ، وَلَيْسَ كَافِرًا.

وَالثَّانِي - أَنْ يَفْعَلَ ذَلِكَ مُقَلِّدًا لِإِنْسَانٍ فِي أَنَّهُ قَدْ شَغَفَهُ تَعْظِيمُهُ إيَّاهُ وَحُبُّهُ مُوهِمًا نَفْسَهُ أَنَّهُ عَلَى حَقٍّ، وَهَذِهِ الْوُجُوهُ كُلُّهَا مَوْجُودَةٌ فِي النَّاسِ فَأَهْلُ هَذَيْنِ الْقِسْمَيْنِ الْآخَرَيْنِ مُخْطِئُونَ عُصَاةٌ وَلَيْسُوا كُفَّارًا وَيَكُونُ مَعْنَى قَوْله تَعَالَى {وَمَا أُولَئِكَ بِالْمُؤْمِنِينَ} [المائدة: ٤٣] أَيْ وَمَا أُولَئِكَ بِالْمُطِيعِينَ، لِأَنَّ كُلَّ طَاعَةٍ لِلَّهِ تَعَالَى فَهُوَ إيمَانٌ، وَكُلُّ إيمَانٍ طَاعَةٌ

[5] **Qur’an references (L41004):** Qur’an 9:124 (At-Tawbah); Qur’an 7:179 (Al-A’raf).
[6] **Qur’an references (L41007):** Qur’an 24:47 (An-Nur); Qur’an 9:20 (At-Tawbah).

in a specific matter is not a believer in that precise matter, even if they are believers in other matters wherein they obey Allah.[7]

L41012 And He, the Exalted, said, {O Prophet, fear Allah} [Al-Ahzab: 1] to His saying, the Exalted, {All-Knowing, All-Wise} [An-Nisa: 11]? Abu Muhammad—may Allah have mercy on him—said: The apparent meaning of this verse entails that the desires of the disbelievers and hypocrites are known, and it is that all believers would disbelieve.[8]

L41013 Allah the Exalted said: "They wish you would disbelieve as they disbelieved, so you would all be alike." [An-Nisā': 89] Since their desires are evident, He ordained upon the Prophet—peace and blessings of Allah be upon him—and every Muslim not to obey them in matters recognized to stem from their intent, even if they do not explicitly advise him regarding it.[9]

L41014–41016 It is not permissible for anyone to think that the disbelievers and hypocrites came to the Messenger of Allah (peace and blessings of Allah be upon him and his family). They advised him with an opinion, hoping that he would follow them in it. Since the matter stands thus, the verse does not indicate that the hypocrites were known by their specific identities to the Messenger of Allah (peace and blessings be upon him) in such a way that he knew them to be hypocrites. But rather, their characteristics were known collectively, and among their attributes without doubt was their desire that all people would be unbelievers.

L41017 And He, the Exalted, said: {When the hypocrites and those in whose hearts is disease said} [Al-Anfal: 49] the verse. Abu Muhammad (may Allah have mercy on him) said: This also does not clarify that they are people identifiable by their specific identities; rather, it is a narrative about those who said that.[10]

لِلَّهِ تَعَالَى، فَمَنْ لَمْ يَكُنْ مُطِيعًا لِلَّهِ تَعَالَى فِي شَيْءٍ مَا فَهُوَ غَيْرُ مُؤْمِنٍ فِي ذَلِكَ الشَّيْءِ بِعَيْنِهِ - وَإِنْ كَانَ مُؤْمِنًا فِي غَيْرِ ذَلِكَ مِمَّا هُوَ فِيهِ مُطِيعٌ لِلَّهِ تَعَالَى.

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ اتَّقِ اللَّهَ} [الأحزاب: ١] إلَى قَوْله تَعَالَى {عَلِيمًا حَكِيمًا} [النساء: ١١] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذِهِ الْآيَةُ يَقْتَضِي ظَاهِرُهَا أَنَّ أَهْوَاءَ الْكَافِرِينَ وَالْمُنَافِقِينَ مَعْرُوفَةٌ، وَهُوَ أَنْ يَكْفُرَ جَمِيعُ الْمُؤْمِنِينَ.

قَالَ تَعَالَى {وَدُّوا لَوْ تَكْفُرُونَ كَمَا كَفَرُوا فَتَكُونُونَ سَوَاءً} [النساء: ٨٩] فَإِذْ أَهْوَاؤُهُمْ مَعْرُوفَةٌ فَفَرَضَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى كُلِّ مُسْلِمٍ أَنْ لَا يُطِيعَهُمْ فِي ذَلِكَ مِمَّا قَدْ عَرَفَ أَنَّهُ مُرَادُهُمْ، وَإِنْ لَمْ يُشِيرُوا عَلَيْهِ فِي ذَلِكَ بِرَأْيٍ.

وَلَا يَجُوزُ أَنْ يَظُنَّ ظَانٌّ أَنَّ الْكُفَّارَ وَالْمُنَافِقِينَ أَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُشِيرِينَ عَلَيْهِ بِرَأْيٍ رَاجِينَ أَنْ يَتْبَعَهُمْ فِيهِ، فَإِذْ الْأَمْرُ كَذَلِكَ فَلَيْسَ فِي الْآيَةِ بَيَانٌ أَنَّ الْمُنَافِقِينَ كَانُوا مَعْرُوفِينَ بِأَعْيَانِهِمْ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدْرِي أَنَّهُمْ مُنَافِقُونَ، وَلَكِنَّهُمْ مَعْرُوفَةٌ صِفَاتُهُمْ جُمْلَةً، وَمِنْ صِفَاتِهِمْ بِلَا شَكٍّ إرَادَتُهُمْ أَنْ يَكُونَ كُلُّ النَّاسِ كُفَّارًا.

وَقَالَ تَعَالَى {إِذْ يَقُولُ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [الأنفال: ٤٩] الْآيَةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا أَيْضًا لَيْسَ فِيهِ بَيَانٌ بِأَنَّهُمْ قَوْمٌ مَعْرُوفُونَ بِأَعْيَانِهِمْ وَإِنَّمَا هُوَ خَبَرٌ عَنْ قَائِلِينَ قَالُوا ذَلِكَ.

[7] **Qur'an references (L41011):** Qur'an 5:43 (Al-Ma'idah); Qur'an 24:47 (An-Nur).
[8] **Qur'an references (L41012):** Qur'an 33:1 (Al-Ahzab); Qur'an 4:11 (An-Nisa).
[9] **Qur'an references (L41013):** Qur'an 4:89 (An-Nisa).
[10] **Qur'an references (L41017):** Qur'an 8:49 (Al-Anfal).

وَقَالَ تَعَالَى {وَإِذْ قَالَتْ طَائِفَةٌ مِنْهُمْ يَا أَهْلَ يَثْرِبَ لا مُقَامَ لَكُمْ فَارْجِعُوا} [الأحزاب: ١٣] ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا أَيْضًا مُمْكِنٌ أَنْ يَقُولَهُ يَهُودُ، وَمُمْكِنٌ أَنْ يَقُولَهُ أَيْضًا قَوْمٌ مُسْلِمُونَ خَوَرًا وَجُبْنًا، وَإِذْ كُلُّ ذَلِكَ مُمْكِنٌ فَلا يَجُوزُ الْقَطْعُ مِنْ أَجْلِ هَذِهِ الْآيَةِ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُ أَنَّهُمْ مُنَافِقُونَ.

L41018 And He, the Exalted, said: {And when a faction among them said, "O people of Yathrib, there is no abode for you, so turn back"} [Al-Ahzab: 13]. Abu Muhammad said: This could also have been said by Jews, or by some Muslims out of weakness and cowardice. Since all these possibilities exist, it is impermissible to assert definitively based on this verse that the Messenger of Allah (may Allah bless him and grant him peace) knew they were hypocrites.[11]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَيَسْتَأْذِنُ فَرِيقٌ مِنْهُمُ النَّبِيَّ} [الأحزاب: ١٣] إلَى قَوْله تَعَالَى {وَكَانَ عَهْدُ اللَّهِ مَسْئُولا} [الأحزاب: ١٥] فَإِنَّ هَذَا قَدْ رُوِيَ أَنَّهُ كَانَ نَزَلَ فِي بَنِي حَارِثَةَ، وَبَنِي سَلَمَةَ - وَهُمْ الْأَفَاضِلُ الْبَدْرِيُّونَ الْأُحُدِيُّونَ - وَلَكِنَّهَا كَانَتْ وَهْلَةً فِي اسْتِئْذَانِهِمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْخَنْدَقِ، وَقَوْلُهُمْ {إِنَّ بُيُوتَنَا عَوْرَةٌ} [الأحزاب: ١٣] وَفِيهِمَا نَزَلَتْ {إِذْ هَمَّتْ طَائِفَتَانِ مِنْكُمْ أَنْ تَفْشَلا وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] .

L41019 As for the verse of Allah, the Exalted: {And a group of them seek permission from the Prophet} [Al-Ahzab: 13] up to His saying: {And the covenant of Allah is to be questioned} [Al-Ahzab: 15], it has been narrated that this was revealed concerning Banū Ḥārithah and Banū Salamah—they being the virtuous participants of Badr and Uḥud—but there was a moment of fear in their seeking permission from the Prophet (peace and blessings of Allah be upon him) during the Battle of the Trench, and their statement: {Indeed, our homes are unprotected} [Al-Ahzab: 13]. Concerning them both was revealed: {When two factions among you were on the verge of losing heart, though Allah was their Guardian} [Āl ʿImrān: 122]. As narrated by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid from Ibrāhīm ibn Aḥmad from al-Farabrī from al-Bukhārī from ʿAlī ibn ʿAbd Allāh from Sufyān ibn ʿUyaynah.[12]

كَمَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ

قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: فِينَا نَزَلَتْ {إِذْ هَمَّتْ طَائِفَتَانِ مِنْكُمْ أَنْ تَفْشَلا وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] قَالَ جَابِرٌ: نَحْنُ الطَّائِفَتَانِ بَنُو حَارِثَةَ وَبَنُو سَلَمَةَ.

L41020 Amr ibn Dinar said: I heard Jabir ibn Abdullah saying: "Concerning us was revealed *'When two parties among you were about to lose courage, and Allah was their Protector'* [Quran 3:122]." Jabir said: "We are the two parties—Banu Harithah and Banu Salamah."[13]

قَالَ جَابِرٌ: وَمَا نُحِبُّ أَنَّهَا لَمْ تَنْزِلْ لِقَوْلِهِ تَعَالَى {وَاللَّهُ وَلِيُّهُمَا} [آل عمران: ١٢٢] ؟ قَالَ أَبُو مُحَمَّدٍ: مَعَ أَنَّهُ لَيْسَ فِي الْآيَةِ أَنَّ هَذَا كُفْرٌ أَصْلًا، فَبَطَلَ التَّعَلُّقُ بِهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41021 Jābir said: "Do we not dislike that it had not been revealed, due to His statement—the Exalted—'And Allah is the Protector of both of them' [Āl ʿImrān: 122]?" Abū Muḥammad said: "Even though the verse does not indicate that

[11] **Qur'an references (L41018):** Qur'an 33:13 (Al-Ahzab).

[12] **Qur'an references (L41019):** Qur'an 33:13 (Al-Ahzab); Qur'an 33:15 (Al-Ahzab); Qur'an 3:122 (Ali 'Imran).

[13] **Qur'an references (L41020):** Qur'an 3:122 (Ali 'Imran).

this constitutes disbelief at all, invoking it as evidence is invalidated, and divine success is with Allah, the Exalted."[14]

L41022 And He, the Exalted, said, {Allah certainly knows those among you who hinder} [Al-Ahzab: 18] to His saying, the Exalted, {and that is easy for Allah} [An-Nisa: 30].[15]

L41023–41024 Abu Muhammad said: This contains no evidence that it pertains to people known by their specific identities; rather, it describes a trait recognized within themselves by those among them who hear this verse. However, Allah's statement shortly thereafter: {So that Allah may reward the truthful for their truthfulness and punish the hypocrites if He wills or accept their repentance} [Al-Ahzab: 24] is a clear exposition of the availability of repentance for them. All these individuals, without any disagreement from anyone in the Ummah, are confessors of Islam who take refuge in repentance regarding what has been established against them – from statements constituting disbelief or disobedience.[16]

L41025 Thus, the reliance on this verse is invalidated for whoever alleges that the Messenger of Allah (may Allah bless him and grant him peace) knew them by their specific identities and knew that they held disbelief inwardly in their hearts.

L41026 Allah the Exalted said: {And do not obey the disbelievers and the hypocrites} [Al-Ahzab: 1] until His statement, the Exalted: {And sufficient is Allah as a Trustee} [An-Nisa: 81]? Abu Muhammad said: We have previously addressed our statement regarding the statement of Allah the Exalted: {And do not obey the disbelievers and the hypocrites} [Al-Ahzab: 1].[17]

L41027 And He, the Exalted, said: {Cease harming them and rely upon Allah, for Allah suffices as a Trustee.} [Al-Ahzab: 48] No two Muslims disagree that there is no obligation to refrain from fighting disbelievers, humbling them,

وَقَالَ تَعَالَى {قَدْ يَعْلَمُ اللَّهُ الْمُعَوِّقِينَ مِنْكُمْ} [الأحزاب: ١٨] إلَى قَوْله تَعَالَى {وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا} [النساء: ٣٠] .

قَالَ أَبُو مُحَمَّد: فَهَذِهِ لَيْسَ فِيهَا دَلِيلٌ عَلَى أَنَّهَا فِي قَوْمٍ مَعْرُوفِينَ بِأَعْيَانِهِمْ وَلَكِنَّهَا صِفَةٌ يَعْرِفُهَا مِنْ نَفْسِهِ مَنْ سَمِعَ مِنْهُمْ هَذِهِ الْآيَةَ، إلَّا أَنَّ قَوْلَ اللَّهِ تَعَالَى بَعْدَهَا بِيَسِيرٍ {لِيَجْزِيَ اللَّهُ الصَّادِقِينَ بِصِدْقِهِمْ وَيُعَذِّبَ الْمُنَافِقِينَ إنْ شَاءَ أَوْ يَتُوبَ عَلَيْهِمْ} [الأحزاب: ٢٤] بَيَانٌ جَلِيٌّ عَلَى بَسْطِ التَّوْبَةِ لَهُمْ، وَكُلُّ هَؤُلَاءِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ مُعْتَرِفٌ بِالْإِسْلَامِ، لَائِذٌ بِالتَّوْبَةِ فِيمَا صَحَّ عَلَيْهِمْ، مِنْ قَوْلٍ يَكُونُ كُفْرًا وَمَعْصِيَةً.

فَبَطَلَ التَّعَلُّقُ بِهَذِهِ الْآيَةِ لِمَنْ ادَّعَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَعْرِفُهُمْ بِأَعْيَانِهِمْ، وَيَعْرِفُ أَنَّهُمْ يَعْتَقِدُونَ الْكُفْرَ فِي بَاطِنِهِمْ.

قَالَ اللَّهُ تَعَالَى {وَلا تُطِعِ الْكَافِرِينَ وَالْمُنَافِقِينَ} [الأحزاب: ١] إلَى قَوْله تَعَالَى {وَكَفَى بِاللَّهِ وَكِيلا} [النساء: ٨١] ؟ قَالَ أَبُو مُحَمَّدٍ: قَدْ مَضَى قَوْلُنَا فِي قَوْله تَعَالَى {وَلا تُطِعِ الْكَافِرِينَ وَالْمُنَافِقِينَ} [الأحزاب: ١] .

وَقَالَ تَعَالَى {وَدَعْ أَذَاهُمْ وَتَوَكَّلْ عَلَى اللَّهِ وَكَفَى بِاللَّهِ وَكِيلا} [الأحزاب: ٤٨] لَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّهُ لَيْسَ عَلَى تَرْكِ قِتَالِ الْكَافِرِينَ وَإِصْغَارِهِمْ وَدُعَائِهِمْ إلَى الْإِسْلَامِ وَلَكِنْ فِيمَا عَدَا ذَلِكَ، وَقَالَ تَعَالَى {لَئِنْ لَمْ يَنْتَهِ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [الأحزاب: ٦٠] إلَى قَوْله تَعَالَى {وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلا} [الأحزاب: ٦٢] ؟ قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْآيَةُ فِيهَا كِفَايَةٌ لِمَنْ عَقَلَ وَنَصَحَ نَفْسَهُ، لِأَنَّ اللَّهَ تَعَالَى قَطَعَ بِأَنَّهُ إنْ لَمْ

[14] **Qur'an references (L41021):** Qur'an 3:122 (Ali 'Imran).
[15] **Qur'an references (L41022):** Qur'an 33:18 (Al-Ahzab); Qur'an 4:30 (An-Nisa); Qur'an 4:169 (An-Nisa); Qur'an 33:19 (Al-Ahzab); Qur'an 33:30 (Al-Ahzab).
[16] **Qur'an references (L41024):** Qur'an 33:24 (Al-Ahzab).
[17] **Qur'an references (L41026):** Qur'an 33:1 (Al-Ahzab); Qur'an 33:48 (Al-Ahzab); Qur'an 4:81 (An-Nisa).

and calling them to Islam, but they differ regarding matters beyond this. He, the Exalted, said: {If the hypocrites and those in whose hearts is sickness do not desist...} [Al-Ahzab: 60] up to His words: {And you will never find any change in Allah's way.} [Al-Ahzab: 62]? Abu Muhammad said: This verse suffices for whoever reasons rightly and seeks to better himself, for Allah decreed that if the hypocrites, those with diseased hearts, and the rumor-mongers in Medina do not desist, He will surely urge His Messenger - peace be upon him - against them. They will not dwell near him in the city except briefly. He, the Exalted, informed that if they persist, they will be accursed wherever found—seized and slain mercilessly. The grammatical case of "accursed" is a circumstantial accusative describing their state while dwelling near him—meaning they will not remain in his vicinity except briefly, being accursed.[18]

يَنْتَهِ الْمُنَافِقُونَ، وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ، وَالْمُرْجِفُونَ فِي الْمَدِينَةِ: لَيُغْرِيَنَّ بِهِمْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَا يُجَاوِرُونَهُ فِيهَا إِلَّا قَلِيلًا، فَأَخْبَرَ تَعَالَى أَنَّهُمْ يَكُونُونَ إِنْ لَمْ يَنْتَهُوا مَلْعُونِينَ أَيْنَمَا ثُقِفُوا أُخِذُوا وَقُتِّلُوا تَقْتِيلًا - وَإِعْرَابُ - مَلْعُونِينَ - أَنَّهُ حَالٌ لِمُجَاوَرَتِهِمْ - مَعْنَاهُ لَا يُجَاوِرُونَهُ إِلَّا قَلِيلًا مَلْعُونِينَ.

L41028 If Allah the Exalted had willed other than this, He would have said: "Cursed ones" as the predicate of an elided subject. Then He, the Exalted, affirmed that this is His Sunnah which does not change.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى غَيْرَ هَذَا لَقَالَ: مَلْعُونُونَ عَلَى خَبَرِ ابْتِدَاءٍ مُضْمَرٍ ثُمَّ أَكَّدَ تَعَالَى بِأَنَّ هَذَا هُوَ سُنَّتُهُ تَعَالَى الَّتِي لَا تَتَبَدَّلُ.

L41029–41031 Then we ask those who claim that the Messenger of Allah—peace be upon him and his family—knew them individually and knew their hypocrisy: Did they cease or not? If he says they ceased, he reverts to the truth, and it is confirmed that they repented while he did not know their inner reality... None knows the validity of repentance or its falsehood except Allah the Exalted alone—He has no partner—and the Messenger of Allah (may Allah bless him and his family and grant him peace) never knew at all except the apparent reality which is Islam, or [except] disbelief they renounced—then openly professed repentance from it.

فَنَسْأَلُ مَنْ قَالَ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلِمَهُمْ بِأَعْيَانِهِمْ وَعَلِمَ نِفَاقَهُمْ، هَلْ انْتَهَوْا أَوْ لَمْ يَنْتَهُوا؟ فَإِنْ قَالَ: انْتَهَوْا، رَجَعَ إِلَى الْحَقِّ، وَصَحَّ أَنَّهُمْ تَابُوا وَلَمْ يَعْلَمْ بَاطِنَهُمْ - فِي صِحَّةِ التَّوْبَةِ أَوْ كَذِبِهَا - إِلَّا اللَّهُ تَعَالَى وَحْدَهُ لَا شَرِيكَ لَهُ، وَلَمْ يَعْلَمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَطُّ إِلَّا الظَّاهِرَ الَّذِي هُوَ الْإِسْلَامُ، أَوْ كُفْرًا رَجَعُوا عَنْهُ فَأَظْهَرُوا التَّوْبَةَ مِنْهُ.

L41032 And if he said, "They did not desist," he would not be far from disbelief, for he lies about Allah the Exalted and states that He—Exalted is He—has altered His Sunnah which He has declared He does not alter, or that His Messenger—peace be upon him—has altered it.

وَإِنْ قَالَ: لَمْ يَنْتَهُوا، لَمْ يَبْعُدْ عَنْ الْكُفْرِ، لِأَنَّهُ يَكْذِبُ اللَّهَ تَعَالَى، وَيُخْبِرُ أَنَّهُ تَعَالَى بَدَّلَ سُنَّتَهُ الَّتِي قَدْ أَخْبَرَ أَنَّهُ لَا يُبَدِّلُهَا أَوْ بَدَّلَهَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -.

L41033 Abu Muhammad said: Everyone who acknowledges this truth, upon whom

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ مَنْ وَقَفَ عَلَى هَذَا وَقَامَتْ عَلَيْهِ الْحُجَّةُ ثُمَّ تَمَادَى فَهُوَ كَافِرٌ، لِأَنَّهُ مُكَذِّبٌ لِلَّهِ تَعَالَى، أَوْ مُجَوِّرٌ لِرَسُولِهِ - عَلَيْهِ السَّلَامُ - وَكِلَا الْأَمْرَيْنِ كُفْرٌ.

[18] **Qur'an references (L41027):** Qur'an 33:48 (Al-Ahzab); Qur'an 33:60 (Al-Ahzab); Qur'an 33:62 (Al-Ahzab); Qur'an 48:23 (Al-Fath).

the definitive proof has been established, yet persists is a disbeliever, for he either denies Allah the Exalted or slanders His Messenger (peace be upon him) - and both are disbelief.

قَالَ أَبُو مُحَمَّدٍ: وَلَقَدْ بَلَغَنِي عَنْ بَعْضِ مَنْ خَذَلَهُ اللَّهُ تَعَالَى أَنَّهُ تَلَا هَذِهِ الْآيَةَ ثُمَّ قَالَ: مَا انْتَهَوْا وَلَا أَغْرَاهُ بِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: نَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ هَذَا، فَإِنَّ قَائِلَهُ آفِكٌ كَاذِبٌ، عَاصٍ لِلَّهِ تَعَالَى لَا يَحِلُّ لَهُ الْكَلَامُ فِي الدِّينِ - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L41034 Abu Muhammad said: It has reached me that some of those whom Allah the Exalted has abandoned recited this verse and then said: "Have they not ceased, and did He not deter them?" Abu Muhammad said: We absolve ourselves before Allah the Exalted from this, for its speaker is a deviant fabricator, a liar, disobedient to Allah the Exalted. It is not permissible for him to speak about religion—and we ask Allah the Exalted for well-being.

وَقَالَ تَعَالَى {وَمِنْهُمْ مَنْ يَسْتَمِعُ إِلَيْكَ} [الأنعام: ٢٥] إلَى قَوْله تَعَالَى {وَاتَّبَعُوا أَهْوَاءَهُمْ} [محمد: ١٤] ؟ قَالَ أَبُو مُحَمَّدٍ: مَنْ عَصَى اللَّهَ تَعَالَى فَقَدْ طَبَعَ عَلَى قَلْبِهِ فِي الْوَجْهِ الَّذِي عَصَى فِيهِ، وَلَوْ لَمْ يَطْبَعْ عَلَى قَلْبِهِ فِيهِ لَمَا عَصَى؟ فَقَدْ يُمْكِنُ أَنْ يَكُونَ هَؤُلَاءِ مُنَافِقِينَ فَإِعْلَانُهُمْ بِالتَّوْبَةِ مَاحٍ لِمَا تَقَدَّمَ فِي الظَّاهِرِ، وَاَللَّهُ أَعْلَمُ بِالْبَاطِنِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41035 And He, the Exalted, said: {And among them are those who listen to you} [Al-Anʿām 6:25] up to His statement, the Exalted: {and followed their desires} [Al-Qaṣaṣ 28:50]. Abu Muhammad said: Whoever disobeys Allah, the Exalted, has sealed his heart in the aspect in which he disobeyed, for if Allah had not sealed his heart in that aspect, he would not have disobeyed. It is possible that these individuals are hypocrites. Their public declaration of repentance erases what preceded outwardly, but Allah knows best what is hidden. And by Allah, the Exalted, is divine enablement.[19]

وَقَالَ تَعَالَى {فَإِذَا أُنْزِلَتْ سُورَةٌ مُحْكَمَةٌ} [محمد: ٢٠] إلَى قَوْلِهِ {فَلَوْ صَدَقُوا اللَّهَ لَكَانَ خَيْرًا لَهُمْ} [محمد: ٢١] ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَالَّذِي قَبْلَهُ إمَّا أَنْ يَكُونَ هَذَا النَّظَرُ يُبَيِّنُ مُعْتَقَدَهُمْ وَإِظْهَارَهُمْ الْإِسْلَامَ تَوْبَةً تَصِحُّ بِهِ قَبُولُهُمْ عَلَى ظَاهِرِهِمْ وَإِنْ لَمْ يَكُنْ ذَلِكَ النَّظَرُ دَلِيلًا يَتَمَيَّزُونَ بِهِ فَهُمْ كَغَيْرِهِمْ وَلَا فَرْقَ.

L41036 And He, the Exalted, said: {When a decisive surah is revealed} [Surah Muhammad (47):20] until His statement: {Had they been truthful to Allah, it would have been better for them} [Surah Muhammad (47):21]. Abu Muhammad said: This is analogous to the prior case. Either this consideration clarifies their creed and their outward manifestation of Islam as a valid repentance through which their acceptance [by the community] is sound based on their outward compliance—or if this consideration does not serve as definitive proof to distinguish them, then they are like others, with no distinction.[20]

وَقَالَ تَعَالَى {إِنَّ الَّذِينَ ارْتَدُّوا عَلَى أَدْبَارِهِمْ} [محمد: ٢٥] إلَى قَوْله تَعَالَى {وَاَللَّهُ يَعْلَمُ إِسْرَارَهُمْ} [محمد: ٢٦] ؟ قَالَ أَبُو مُحَمَّدٍ: هَذِهِ صِفَةٌ مُجْمَلَةٌ لِمَنْ ارْتَدَّ مُعْلِنًا أَوْ مُسِرًّا، وَلَا دَلِيلَ فِيهَا عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ أَنَّهُمْ مُنَافِقُونَ مُسِرُّونَ لِلْكُفْرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41037–41039 And He, exalted is He, said: {Indeed, those who turned back on their backs} [Muhammad: 25] until His verse: {And Allah knows their secrets} [Muhammad: 26]? Abu Muhammad said: This is a concise description of whoever

[19] **Qur'an references (L41035):** Qur'an 6:25 (Al-An'am); Qur'an 47:16 (Muhammad); Qur'an 47:14 (Muhammad).

[20] **Qur'an references (L41036):** Qur'an 47:20 (Muhammad); Qur'an 47:21 (Muhammad).

apostatizes openly or secretly, and there is no evidence in it that he. (Peace be upon him), he knew they were hypocrites secretly concealing disbelief. And with Allah the Exalted is all success.[21]

قَالَ تَعَالَى {أَمْ حَسِبَ الَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ} [محمد: ٢٩] إلَى قَوْله تَعَالَى {وَاللَّهُ يَعْلَمُ أَعْمَالَكُمْ} [محمد: ٣٠] ؟ قَالَ أَبُو مُحَمَّد: قَدْ بَيَّنَ اللَّهُ تَعَالَى: أَنَّهُ لَوْ شَاءَ أَرَاهُمْ نَبِيَّهُ - عَلَيْهِ السَّلَامُ - وَهَذَا لَا شَكَّ فِيهِ ثُمَّ قَالَ تَعَالَى {وَلَتَعْرِفَنَّهُمْ فِي لَحْنِ الْقَوْلِ} [محمد: ٣٠] فَهَذَا كَالنَّظَرِ الْمُتَقَدِّمِ إنْ كَانَ لَحْنُ الْقَوْلِ بُرْهَانًا يَقْطَعُ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى أَنَّهُمْ مُنَافِقُونَ، فَإِظْهَارُهُمْ خِلَافُ ذَلِكَ الْقَوْلِ وَإِعْلَانُهُمْ الْإِسْلَامَ تَوْبَةٌ فِي الظَّاهِرِ - كَمَا قَدَّمْنَا - وَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - لَا يَقْطَعُ بِلَحْنِ قَوْلِهِمْ عَلَى ضَمِيرِهِمْ، فَإِنَّمَا هُوَ ظَنٌّ يَعْرِفُهُ فِي الْأَغْلَبِ لَا يَقْطَعُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L41040 He, the Exalted, said: _“Or do those in whose hearts is a disease think...”_ [47:29] up to His statement: _“And Allah indeed knows your deeds”_ [47:30]. Abu Muhammad said: Allah, the Exalted, has clarified that had He willed, He would have shown them His Prophet—peace and blessings be upon him—and this is beyond doubt. Then He, the Exalted, said: _“And you will assuredly recognize them by the tone of speech”_ [47:30]. This resembles the earlier consideration: if the tone of speech constitutes definitive proof by which the Messenger of Allah—may Allah’s blessings and peace be upon him and his family—judges conclusively that they are hypocrites, then their outward display contradicting that speech and their public profession of Islam constitutes apparent repentance—as we previously established. But if he—peace and blessings be upon him—does not conclusively discern their concealed intentions through the tone of their speech, then this is a presumption he recognizes in most cases without absolute certainty—and with Allah, the Exalted, lies all success.[22]

قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا فِي " بَرَاءَة، وَالْفَتْحِ قَوْلَ اللَّهِ تَعَالَى {سَيَقُولُ لَكَ الْمُخَلَّفُونَ} [الفتح: ١١] الْآيَاتِ كُلَّهَا، وَبَيَّنَّا أَنَّ اللَّهَ تَعَالَى وَعَدَهُمْ بِقَبُولِ التَّوْبَةِ وَالْأَجْرِ الْعَظِيمِ إنْ تَابُوا وَأَطَاعُوا لِمَنْ دَعَاهُمْ بَعْدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - إلَى الْجِهَادِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41041 Abu Muhammad said: We have mentioned in Surah Barā’ah (At-Tawbah) and Surah Al-Fath the words of Allah the Most High, {Those who remained behind will say to you...} [Al-Fath: 11] and all the verses, and we clarified that Allah the Most High promised them acceptance of repentance and immense reward if they repent and obey those who, after the Prophet (peace be upon him), called them to jihad. And success is from Allah, the Most High.[23]

وَقَالَ تَعَالَى {قَالَتِ الْأَعْرَابُ آمَنَّا} [الحجرات: ١٤] إلَى قَوْله تَعَالَى {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] ؟

L41042 And the Most High said, “The Bedouins said, ‘We have believed’” (49:14) up to His statement, the Most High, “He is Forgiving and Merciful” (2:173)?[24]

[21] **Qur’an references (L41037):** Qur’an 47:25 (Muhammad); Qur’an 47:26 (Muhammad).

[22] **Qur’an references (L41040):** Qur’an 47:29 (Muhammad); Qur’an 47:30 (Muhammad).

[23] **Qur’an references (L41041):** Qur’an 48:11 (Al-Fath).

[24] **Qur’an references (L41042):** Qur’an 49:14 (Al-Hujurat); Qur’an 2:173 (Al-Baqarah).

L41043 Abu Muhammad said: This is evidence that they surrendered to Allah, the Exalted, out of compulsion, and faith had not entered their hearts. Yet Allah, the Exalted, has extended repentance to them within the very verse through His statement: *"If you obey Allah and His Messenger, He will not diminish anything from your deeds"* [Al-Hujurat: 14]. Thus, their outward display of obedience to Allah, the Exalted, and His Messenger—peace be upon him—brings them into the rulings of Islam and nullifies that the Messenger—peace be upon him—could have known their inner thoughts.[25]

قَالَ أَبُو مُحَمَّد: هَذَا دَلِيلٌ عَلَى أَنَّهُمْ اسْتَسْلَمُوا لِلَّهِ تَعَالَى غَلَبَةً وَلَمْ يَدْخُلْ الْإِيمَانُ فِي قُلُوبِهِمْ، وَلَكِنَّ اللَّهَ تَعَالَى قَدْ بَسَطَ لَهُمْ التَّوْبَةَ فِي الْآيَةِ نَفْسِهَا بِقَوْلِهِ تَعَالَى {وَإِنْ تُطِيعُوا اللَّهَ وَرَسُولَهُ لا يَلِتْكُمْ مِنْ أَعْمَالِكُمْ شَيْئًا} [الحجرات: ١٤] فَإِظْهَارُهُمْ الطَّاعَةَ لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - مُدْخِلٌ لَهُمْ فِي حُكْمِ الْإِسْلَامِ وَمُبْطَلٌ لَأَنْ يَكُونَ - عَلَيْهِ السَّلَامُ - عَرَفَ بَاطِنَهُمْ.

L41044 And He, the Exalted, said: {On the Day when the hypocrite men and the hypocrite women will say} [Al-Hadid: 13] up to the words of Him, the Exalted: {and vain desires deluded you} [Al-Hadid: 14].[26]

وَقَالَ تَعَالَى {يَوْمَ يَقُولُ الْمُنَافِقُونَ وَالْمُنَافِقَاتُ} [الحديد: ١٣] إلَى قَوْله تَعَالَى {وَغَرَّتْكُمُ الأَمَانِيُّ} [الحديد: ١٤] .

L41045–41047 Abu Muhammad said: This is a narration concerning the Day of Resurrection and an account that they were with the Muslims in worldly life. This clarifies that they were not known to the Prophet (peace and blessings be upon him and his family) nor to the Muslims. This verse corresponds to what has been narrated to us through the chain of Muslim ibn al-Hajjaj: Zuhayr ibn Harb reported to us, [who reported] from Ya'qub ibn Ibrahim ibn Sa'd. My father narrated to us from Ibn Shihāb, from 'Aṭā' ibn Yazīd al-Laythī, that Abū Hurayrah informed him: The Messenger of Allah—may Allah's peace and blessings be upon him and his family—said in a ḥadīth: "Allah will gather people on the Day of Resurrection and declare: 'Whoever worshipped anything, let them follow it?' Then those who worshipped the sun will follow the sun, those who worshipped the moon will follow the moon, those who worshipped the false deities will follow the false deities. This nation will remain, with its hypocrites among them." He mentioned the ḥadīth.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ حِكَايَةٌ عَنْ يَوْمِ الْقِيَامَةِ، وَإِخْبَارٌ بِأَنَّهُمْ كَانُوا فِي الدُّنْيَا مَعَ الْمُسْلِمِينَ، وَهَذَا يُبَيِّنُ أَنَّهُمْ لَمْ يَكُونُوا مَعْرُوفِينَ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عِنْدَ الْمُسْلِمِينَ، وَهَذِهِ الْآيَةُ يُوَافِقُهَا: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ ابْنِ شِهَابٍ عَنْ عَطَاءِ بْنِ يَزِيدَ اللَّيْثِيِّ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ «فَيَجْمَعُ اللَّهُ النَّاسَ يَوْمَ الْقِيَامَةِ فَيَقُولُ: مَنْ كَانَ يَعْبُدُ شَيْئًا فَلْيَتْبَعْهُ؟ فَيَتْبَعُ مَنْ يَعْبُدُ الشَّمْسَ الشَّمْسَ، وَيَتْبَعُ مَنْ يَعْبُدُ الْقَمَرَ الْقَمَرَ، وَيَتْبَعُ مَنْ يَعْبُدُ الطَّوَاغِيتَ الطَّوَاغِيتَ، وَتَبْقَى هَذِهِ الْأُمَّةُ فِيهَا مُنَافِقُوهَا» وَذَكَرَ الْحَدِيثَ.

L41048 And He, the Exalted, said: {Have you not seen those who were forbidden from private conversation, then they return to what they were forbidden and conspire in sin, aggression, and disobedience to the Messenger? When they come to you, they greet you with a greeting not ordained by God, while they

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ نُهُوا عَنِ النَّجْوَى} [المجادلة: ٨] إلَى قَوْله تَعَالَى {فَبِئْسَ الْمَصِيرُ} [المجادلة: ٨] ؟ قَالَ أَبُو مُحَمَّد: هَؤُلَاءِ مَعْرُوفُونَ بِلَا شَكٍّ، وَلَكِنَّ التَّوْبَةَ لَهُمْ مَبْسُوطَةٌ كَمَا ذَكَرْنَا فِي سَائِرِ الْآيَاتِ.

[25] **Qur'an references (L41043):** Qur'an 49:14 (Al-Hujurat).
[26] **Qur'an references (L41044):** Qur'an 57:13 (Al-Hadid); Qur'an 57:14 (Al-Hadid).

say to themselves, “Why does God not punish us for what we say?” Hell will suffice them—they will burn in it—so wretched is the destination} [Al-Mujadilah: 8]? Abu Muhammad said: These are well-known without doubt, but repentance is open to them, as we have mentioned in the rest of the verses.[27]

L41049 And He, the Exalted, said: “Have you not seen those who ally themselves with a people with whom Allah is angry?” [Al-Mujadilah: 14] up to His statement in [Al-Baqarah: 27]: “They are the losers.” Abu Muhammad said: This describes a people who have not embraced Islam but renounce allegiance to the disbelievers. If they are known for disbelief, repentance is extended to them, as the Exalted mentioned in the rest of the verses we have recited before—and success is from Allah, the Exalted.[28]

L41050–41052 And He, the Exalted, said: {Have you not considered those who act hypocritically} [Al-Hashr: 11] until His statement, the Exalted: {their strife among themselves is intense} [Al-Hashr: 14]? Abu Muhammad said: This could be a secret Allah informed him (the Prophet) of and exposed the hypocrite, without naming its speaker, and it is possible that he (the hypocrite) realized, so repentance remains open to them as we mentioned in the other verses. And He, the Exalted, said: {When the hypocrites come to you} [Al-Munafiqoon: 1] until His statement, the Exalted: {but the hypocrites do not know} [Al-Munafiqoon: 8]? Abu Muhammad said: This was revealed concerning Abdullah ibn Ubayy, as we were narrated through Al-Bukhari’s chain: from Amr ibn Khalid, from Zuhayr ibn Muawiyah, from Abu Ishaq—Al-Sabi’i—who said: I heard Zayd ibn Arqam say: “We journeyed with the Messenger of Allah—peace and blessings be upon him and his family—on an expedition where the people were afflicted with hardship. Abdullah ibn Ubayy said: ’Do not spend on those around the Messenger of Allah until they scatter from him,’ and he said: ’If we return to Medina, the mightier will surely expel the weaker from it.’ I went to the Prophet—peace and blessings be upon him and his family—and informed him. He sent for Abdullah ibn Ubayy, who strenuously swore he had not done it. They said: ’He lied.’” Zayd said, “O

[27] **Qur’an references (L41048):** Qur’an 58:8 (Al-Mujadila).

[28] **Qur’an references (L41049):** Qur’an 58:14 (Al-Mujadila); Qur’an 2:27 (Al-Baqarah).

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ تَوَلَّوْا قَوْمًا غَضِبَ اللَّهُ عَلَيْهِمْ} [المجادلة: ١٤] إِلَى قَوْله تَعَالَى {هُمُ الْخَاسِرُونَ} [البقرة: ٢٧] ؟ قَالَ أَبُو مُحَمَّد: وَهَذِهِ صِفَةُ قَوْمٍ لَمْ يُسْلِمُوا إِلَّا أَنَّهُمْ يَتَبَرَّءُونَ مِنْ مُوَالَاةِ الْكُفَّارِ، فَإِنْ كَانُوا مَعْرُوفِينَ بِالْكُفْرِ فَالتَّوْبَةُ لَهُمْ مَبْسُوطَةٌ، كَمَا ذَكَرَ تَعَالَى فِي سَائِرِ الْآيَاتِ الَّتِي تَلَوْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَالَ تَعَالَى {أَلَمْ تَرَ إِلَى الَّذِينَ نَافَقُوا} [الحشر: ١١] إِلَى قَوْله تَعَالَى {بَأْسُهُمْ بَيْنَهُمْ شَدِيدٌ} [الحشر: ١٤] ؟ قَالَ أَبُو مُحَمَّد: هَذَا قَدْ يَكُونُ سِرًّا عَلَّمَهُ اللَّهُ مِنْهُ وَفَضَحَهُ وَلَمْ يُسَمِّ قَائِلَهُ وَيُمْكِنُ أَنْ يَكُونَ قَدْ عَرَفَ فَالتَّوْبَةُ لَهُمْ مَبْسُوطَةٌ كَمَا ذَكَرْنَا فِي سَائِرِ الْآيَاتِ، وَقَالَ تَعَالَى {إِذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إِلَى قَوْله تَعَالَى {وَلَكِنَّ الْمُنَافِقِينَ لا يَعْلَمُونَ} [المنافقون: ٨] ؟ قَالَ أَبُو مُحَمَّد: هَذَا نَزَلَ فِي عَبْدِ اللَّهِ بْنِ أُبَيٍّ، كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ خَالِدٍ نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا أَبُو إِسْحَاقَ هُوَ السَّبِيعِيُّ قَالَ: سَمِعْتُ زَيْدَ بْنَ أَرْقَمَ قَالَ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي سَفَرٍ أَصَابَ النَّاسَ فِيهِ شِدَّةٌ فَقَالَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ: لَا تُنْفِقُوا عَلَى مَنْ عِنْدَ رَسُولِ اللَّهِ حَتَّى يَنْفَضُّوا مِنْ حَوْلِهِ، وَقَالَ: لَئِنْ رَجَعْنَا إِلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ؟ فَأَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ، فَأَرْسَلَ إِلَى عَبْدِ اللَّهِ بْنِ أُبَيٍّ، فَاجْتَهَدَ يَمِينَهُ مَا فَعَلَ، فَقَالُوا: كَذَبَ زَيْدٌ يَا رَسُولَ اللَّهِ، فَوَقَعَ فِي نَفْسِي مِمَّا قَالَ شِدَّةٌ،

Messenger of Allah," and what he said caused deep distress within me, until Allah the Exalted revealed my confirmation regarding [the verse] "When the hypocrites come to you [63:1]." Then the Prophet—may Allah bless him and his family and grant him peace—called them so he could seek forgiveness for them. But they averted their heads.[29]

L41053 He said: The statement of Allah, {like propped-up planks} [Al-Munafiqun: 4], refers to men who were the most comely in appearance. As narrated to us through Al-Bukhari's chain of transmission: from Ali ibn Abdullah, from Sufyan, who reported that Amr ibn Dinar said: I heard Jabir ibn Abdullah say: "We were on an expedition when a man from the Muhajireen struck a man from the Ansar in a demeaning manner. The man said: 'Leave it, for it is foul.' Abdullah ibn Ubayy heard this and exclaimed: 'They've done it now! By Allah, if we return to Medina, the mightier will surely expel the weaker from it!' This reached the Prophet (peace and blessings of Allah be upon him and his family), so Umar stood and said: 'O Messenger of Allah, let me strike the neck of this hypocrite!' The Prophet (peace and blessings of Allah be upon him and his family) replied: 'Leave him, lest people say that Muhammad kills his companions.'" Sufyan said: I memorized this from Umar, who said: I heard Jabir state: "We were with the Prophet (peace and blessings of Allah be upon him and his family)." Abu Muhammad said: As for Allah's statement, {When the hypocrites come to you} [Al-Munafiqun: 1] up to His saying, {so they do not understand} [Surah At-Tawbah, 9:87], these are people who apostatized without doubt after their belief, as Allah Almighty explicitly testifies to their apostasy. However, repentance for them is mentioned with certainty in the verse, and in the authentic hadith narrated by Zayd ibn Arqam.[30]

L41054 As for the textual evidence, it is His statement - the Exalted: "Were the

حَتَّى أَنْزَلَ اللَّهُ تَعَالَى تَصْدِيقِي فِي إِذَا جَاءَكَ الْمُنَافِقُونَ فَدَعَاهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِيَسْتَغْفِرَ لَهُمْ؟ فَلَوَّوْا رُءُوسَهُمْ» .

قَالَ: وَقَوْلُهُ {خُشُبٌ مُسَنَّدَةٌ} [المنافقون: ٤] كَانُوا رِجَالًا أَجْمَلَ شَيْءٍ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كُنَّا فِي غَزَاةٍ فَكَسَعَ رَجُلٌ مِنْ الْمُهَاجِرِينَ رَجُلًا مِنْ الْأَنْصَارِ: فَقَالَ: دَعُوهَا فَإِنَّهَا مُنْتِنَةٌ، فَسَمِعَ ذَلِكَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ فَقَالَ: فَعَلُوهَا، أَمَا وَاَللَّهِ لَئِنْ رَجَعْنَا إلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَامَ عُمَرُ فَقَالَ: يَا رَسُولَ اللَّهِ دَعْنِي أَضْرِبُ عُنُقَ هَذَا الْمُنَافِقِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: دَعْهُ لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» ، فَقَالَ سُفْيَانُ: فَحَفِظْتُهُ مِنْ عُمَرَ، وَقَالَ: سَمِعْتُ جَابِرًا قَالَ: كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ اللَّهِ تَعَالَى {إِذَا جَاءَكَ الْمُنَافِقُونَ} [المنافقون: ١] إلَى قَوْله تَعَالَى {فَهُمْ لا يَفْقَهُونَ} [التوبة: ٨٧] فَهُمْ قَوْمٌ كَفَرُوا بِلَا شَكٍّ بَعْدَ إيمَانِهِمْ ارْتَدُّوا بِشَهَادَةِ اللَّهِ تَعَالَى عَلَيْهِمْ بِذَلِكَ، إلَّا أَنَّ التَّوْبَةَ لَهُمْ بِيَقِينٍ مَذْكُورَةٌ فِي الْآيَةِ، وَفِيمَا رَوَاهُ زَيْدُ بْنُ أَرْقَمَ مِنْ الْحَدِيثِ الثَّابِتِ.

أَمَّا النَّصُّ فَقَوْلُهُ تَعَالَى {يَسْتَغْفِرْ لَكُمْ رَسُولُ اللَّهِ لَوَّوْا رُءُوسَهُمْ} [المنافقون: ٥] .

[29] **Qur'an references (L41050):** Qur'an 59:11 (Al-Hashr); Qur'an 59:14 (Al-Hashr); Qur'an 63:1 (Al-Munafiqun); Qur'an 63:8 (Al-Munafiqun); Qur'an 63:7 (Al-Munafiqun).

[30] **Qur'an references (L41053):** Qur'an 63:8 (Al-Munafiqun); Qur'an 63:1 (Al-Munafiqun); Qur'an 9:87 (At-Tawbah); Qur'an 63:3 (Al-Munafiqun); Qur'an 63:4 (Al-Munafiqun).

Messenger of Allah to seek forgiveness for you, they would still turn their heads away" [Al-Munāfiqūn 5].[31]

وَأَمَّا مَنْعُ اللَّهِ تَعَالَى مِنْ الْمَغْفِرَةِ لَهُمْ، فَإِنَّمَا هُوَ بِلَا شَكٍّ فِيمَا قَالُوهُ مِنْ ذَلِكَ الْقَوْلِ، لَا فِي مُرَاجَعَةِ الْإِيمَانِ بَعْدَ الْكُفْرِ، فَإِنَّ هَذَا مَقْبُولٌ مِنْهُمْ بِلَا شَكٍّ.

L41055 As for Allah's denial of forgiveness to them, it is undoubtedly due to the statement they uttered, not because of returning to faith after disbelief, for this [act of returning] is undoubtedly accepted from them.

بُرْهَانُ ذَلِكَ: مَا سَلَفَ فِي الْآيَاتِ الَّتِي قَدَّمْنَا قَبْلُ، وَأَيْضًا إطْلَاقُهُمْ فِيهِ نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - عَلَى الِاسْتِغْفَارِ لَهُمْ بِقَوْلِهِ {سَوَاءٌ عَلَيْهِمْ أَسْتَغْفَرْتَ لَهُمْ أَمْ لَمْ تَسْتَغْفِرْ لَهُمْ لَنْ يَغْفِرَ اللَّهُ لَهُمْ} [المنافقون: ٦] وَهُمْ قَدْ أَظْهَرُوا الْإِيمَانَ بِلَا شَكٍّ، وَاَللَّهُ أَعْلَمُ بِنِيَّاتِهِمْ.

L41056 The proof of that is what preceded in the verses we cited earlier, as well as the hypocrites' assertion regarding His Prophet, may Allah bless him and his family and grant him peace, that seeking forgiveness for them would benefit them, as in His saying: *"It is the same for them whether you seek forgiveness for them or do not seek forgiveness for them; Allah will never forgive them"* [Al-Munāfiqūn: 6], though the hypocrites had undoubtedly professed faith outwardly. And Allah knows best their intentions.[32]

بُرْهَانُ ذَلِكَ: مَا قَدْ ذَكَرْنَاهُ قَبْلُ مِنْ شَكِّ جَابِرٍ، وَابْنِ عَبَّاسٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ابْنِ أُبَيٍّ بِعَيْنِهِ صَاحِبِ هَذِهِ الْقِصَّةِ.

L41057–41058 The proof of this is what we previously mentioned concerning the doubt of Jabir, Ibn Abbas, and Umar—may Allah be pleased with them—about Ibn Ubayy himself, the one involved in this incident.

وَكَذَلِكَ الْخَبَرُ عَنْ جَابِرٍ إذْ «قَالَ عُمَرُ لِلنَّبِيِّ - عَلَيْهِ السَّلَامُ - دَعْنِي أَضْرِبُ عُنُقَ هَذَا الْمُنَافِقِ - يَعْنِي عَبْدَ اللَّهِ بْنَ أُبَيٍّ» فَلَيْسَ فِي هَذَا دَلِيلٌ أَنَّهُ حِينَئِذٍ مُنَافِقٌ، لَكِنَّهُ قَدْ كَانَ نَافَقَ بِلَا شَكٍّ وَقَدْ قَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - مِثْلَ هَذَا فِي مُؤْمِنٍ بَرِئَ مِنْ النِّفَاقِ جُمْلَةً - وَهُوَ حَاطِبُ بْنُ بَلْتَعَةَ - وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - «دَعْهُ لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» دَلِيلٌ بَيِّنٌ عَلَى تَحْرِيمِ دَمِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ ابْنِ سَلُولَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - " دَعْهُ " وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يَجُوزُ أَنْ يَأْمُرَ بِأَنْ يَدَعَ النَّاسُ فَرْضًا وَاجِبًا.

L41059 Similarly, the report from Jabir that "Umar said to the Prophet (peace be upon him), 'Let me strike the neck of this hypocrite'—referring to Abdullah ibn Ubayy"—does not indicate he was a hypocrite at that time, though he had undoubtedly practiced hypocrisy. Umar (may Allah be pleased with him) had similarly spoken about a believer entirely free from hypocrisy—namely Hatib ibn Balta'ah. The statement of the Messenger of Allah (peace and blessings be upon him and his family), "Leave him, lest people say that Muhammad kills his companions," constitutes clear evidence for the prohibition of shedding Abdullah ibn Ubayy ibn Salul's blood through his saying (peace be upon him), "Leave him." It is impermissible for him (peace be upon him) to command people to abandon a binding obligation.[33]

[31] **Qur'an references (L41054):** Qur'an 63:5 (Al-Munafiqun).

[32] **Qur'an references (L41056):** Qur'an 63:6 (Al-Munafiqun).

[33] **Hadith references (L41059):** Sahih al-Bukhari 4907; Sahih al-Bukhari 4905; Sahih Muslim 2584b.

L41060 Similarly, his statement—peace be upon him—"Let not people say that Muhammad kills his companions" constitutes a clear explanation through its apparent wording, decisively affirming the soundness of their inner faith concerning the unseen—that 'Abdullāh ibn Ubayy was among the companions of Allah's Messenger—blessings and peace be upon him and his family—by virtue of his outward Islam, being counted among the Muslim companions subject to Islam's rulings, those whose blood Allah the Exalted has forbidden except by its rightful due. With certainty we know that had ibn Ubayy's blood been permissible, Allah's Messenger—blessings and peace be upon him and his family—would not have shown him favor, and had his execution been obligatory, he—peace be upon him—would not have neglected it. Whoever imagines that Allah's Messenger—blessings and peace be upon him and his family—refrains from killing those among his companions deserving execution has committed disbelief, rendering his blood permissible to shed and his wealth forfeit, due to his false attribution to Allah's Messenger—blessings and peace be upon him and his family—and opposition to Allah the Exalted. By Allah, Allah's Messenger—blessings and peace be upon him and his family—did execute his noble companions—those decisively granted faith and destined for Paradise—when execution became legally mandated for them, such as Mā'iz, the Ghamidiyyah woman, and the Juhayniyyah woman—Allah was pleased with them. Thus, it constitutes certain falsehood, pure misguidance, and sheer transgression—but rather explicit disbelief—for any Muslim to believe or suppose that Allah's Messenger—blessings and peace be upon him and his family—would kill virtuous Muslims among his companions, assured inhabitants of Paradise, through the vilest method of stoning; or execute al-Ḥārith ibn Suwayd al-Anṣārī in retribution for al-Mujaddar ibn Khiyār al-Balawī based on his—peace be upon him—knowledge without others being aware; or command Unays to stone the woman if she confessed.

وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» بَيَانٌ جَلِيٌّ بِظَاهِرِ لَفْظِهِ، مَقْطُوعٌ عَلَى غَيْبَةٍ بِصِحَّةِ بَاطِنٍ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ مِنْ جُمْلَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِظَاهِرِ إِسْلَامِهِ، وَأَنَّهُ مِنْ جُمْلَةِ الصَّحَابَةِ الْمُسْلِمِينَ الَّذِينَ لَهُمْ حُكْمُ الْإِسْلَامِ، وَالَّذِينَ حَرَّمَ اللَّهُ تَعَالَى دِمَاءَهُمْ إِلَّا بِحَقِّهَا؟ وَبِيَقِينٍ نَدْرِي أَنَّهُ لَوْ حَلَّ دَمُ ابْنِ أُبَيٍّ لَمَا حَابَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَوْ وَجَبَ عَلَيْهِ لَمَا ضَيَّعَهُ - عَلَيْهِ السَّلَامُ -؟ وَمَنْ ظَنَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْتُلُ مَنْ وَجَبَ عَلَيْهِ الْقَتْلُ مِنْ أَصْحَابِهِ فَقَدْ كَفَرَ، وَحَلَّ دَمُهُ وَمَالُهُ، لِنِسْبَتِهِ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْبَاطِلَ، وَمُخَالَفَةِ اللَّهِ تَعَالَى، وَاَللَّهِ: لَقَدْ قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْحَابَهُ الْفُضَلَاءَ الْمَقْطُوعَ لَهُمْ بِالْإِيمَانِ وَالْجَنَّةِ، إِذْ وَجَبَ عَلَيْهِمْ الْقَتْلُ، كَمَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَيْنِيَّةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ، وَالضَّلَالِ الْبَحْتِ، وَالْفُسُوقِ الْمُجَرَّدِ: بَلْ مِنْ الْكُفْرِ الصَّرِيحِ: أَنْ يَعْتَقِدَ، أَوْ يَظُنَّ - مَنْ هُوَ مُسْلِمٌ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقْتُلُ مُسْلِمِينَ فَاضِلِينَ مِنْ أَهْلِ الْجَنَّةِ مِنْ أَصْحَابِهِ أَشْنَعَ قِتْلَةٍ بِالْحِجَارَةِ، وَيَقْتُلُ الْحَارِثَ بْنَ سُوَيْدٍ الْأَنْصَارِيَّ قِصَاصًا بِالْمُجَدَّرِ بْنِ خِيَارٍ الْبَلَوِيِّ بِعِلْمِهِ - عَلَيْهِ السَّلَامُ - دُونَ أَنْ يَعْلَمَ ذَلِكَ أَحَدٌ، وَالْمَرْأَةَ الَّتِي أَمَرَ أُنَيْسًا بِرَجْمِهَا، إِنْ اعْتَرَفَتْ.

L41061 And by cutting off the hand of the Makhzumi Woman—he declared: "If it were Fatimah, I would have cut off her hand."

وَبِقَطْعِ يَدِ الْمَخْزُومِيَّةِ - وَيَقُولُ «لَوْ كَانَتْ فَاطِمَةُ لَقَطَعْتُ يَدَهَا» .

L41062–41063 And by his saying—peace be upon him—"The Children of Israel were destroyed only because when a weak person among them committed an offense

وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «إِنَّمَا هَلَكَتْ بَنُو إِسْرَائِيلَ بِأَنَّهُمْ كَانُوا إِذَا أَصَابَ الضَّعِيفُ مِنْهُمْ الْحَدَّ أَقَامُوهُ عَلَيْهِ، وَإِذَا أَصَابَهُ الشَّرِيفُ تَرَكُوهُ» .

requiring the ḥadd punishment, they would carry it out on him, but when a noble person committed it, they would abandon it."

L41064 Then he—peace be upon him—does this, neglecting to establish the obligatory right of executing the apostate against a disbeliever whom he knows has now apostatized. He is not content with this until he prays over him and seeks forgiveness for him—while knowing he is a disbeliever.

ثُمَّ يَفْعَلُ هُوَ - عَلَيْهِ السَّلَامُ - ذَلِكَ، وَيُعَطِّلُ إقَامَةَ الْحَقِّ الْوَاجِبِ فِي قَتْلِ الْمُرْتَدِّ عَلَى كَافِرٍ يَدْرِي أَنَّهُ ارْتَدَّ الْآنَ، ثُمَّ لَا يَقْنَعُ بِهَذَا حَتَّى يُصَلِّيَ عَلَيْهِ، وَيَسْتَغْفِرَ لَهُ - وَهُوَ يَدْرِي أَنَّهُ كَافِرٌ.

L41065 Allah the Exalted had previously forbidden him from seeking forgiveness for the disbelievers.

وَقَدْ تَقَدَّمَ نَهْيُ اللَّهِ تَعَالَى لَهُ عَنْ الِاسْتِغْفَارِ لِلْكُفَّارِ.

L41066 We testify by the testimony of Allah the Exalted that whoever adheres to this [belief] and professes it is a disbeliever, polytheist, apostate - whose blood and wealth are lawful [to be taken]. We disavow to Allah the Exalted from him and his allegiance. Whoever ascribes hypocrisy to him without disagreement, then the ruling for those below his rank is undoubtedly more obscure. Thus, the ambiguity in these Verses is lifted - and all praise is due to Allah.

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى بِأَنَّ مَنْ دَانَ بِهَذَا وَاعْتَقَدَهُ فَإِنَّهُ كَافِرٌ، مُشْرِكٌ، مُرْتَدٌّ، حَلَالُ الدَّمِ وَالْمَالِ - نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْهُ وَمِنْ وِلَايَتِهِ - مَنْ يَظُنُّ بِهِ النِّفَاقَ بِلَا خِلَافٍ، فَالْأَمْرُ فِيمَنْ دُونَهُ بِلَا شَكٍّ أَخْفَى - فَارْتَفَعَ الْإِشْكَالُ فِي هَذِهِ الْآيَاتِ - وَلِلَّهِ الْحَمْدُ.

L41067 It has been authentically established that after ʻAbdullah ibn Ubayy and those who assisted him in that disbelieved, they displayed repentance and professed Islam. The Messenger of Allah—may Allah bless him and grant him peace—accepted that from them, not knowing their inner state: Did they remain upon the disbelief they were on, or the repentance they displayed? But Allah the Exalted is All-Knowing of that, and He, without doubt, is the One Who will recompense them for it on the Day of Resurrection.

وَصَحَّ أَنَّ عَبْدَ اللَّهِ بْنَ أُبَيٍّ بَعْدَ أَنْ كَفَرَ هُوَ وَمَنْ سَاعَدَهُ عَلَى ذَلِكَ أَظْهَرُوا التَّوْبَةَ وَالْإِسْلَامَ، فَقَبِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ مِنْهُمْ، وَلَمْ يَعْلَمْ بَاطِنَهُمْ عَلَى مَا كَانُوا عَلَيْهِ مِنْ الْكُفْرِ؟ أَمْ عَلَى مَا أَظْهَرُوا مِنْ التَّوْبَةِ؟ وَلَكِنَّ اللَّهَ تَعَالَى عَلِيمٌ بِذَلِكَ، وَهُوَ بِلَا شَكٍّ الْمُجَازِي عَلَيْهِ يَوْمَ الْقِيَامَةِ.

L41068 And the Exalted said: "O Prophet, strive against the disbelievers and the hypocrites and be harsh upon them" [At-Tawbah: 73]. Abu Muhammad said: This resolves into two categories with no third: As for one whom he [the Prophet] knows individually to be a hypocrite and has disbelieved, he (peace be upon him) strives against him personally with his tongue, being harsh upon him until he repents. As for one not known specifically to be a hypocrite, he strives against them collectively by describing their traits, condemning hypocrisy, and calling to repentance.[34]

وَقَالَ تَعَالَى {يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ} [التوبة: ٧٣] ؟ قَالَ أَبُو مُحَمَّد: هَذَا يَخْرُجُ عَلَى وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: أَمَّا مَنْ يَعْلَمُ أَنَّهُ مُنَافِقٌ وَكَفَرَ فَإِنَّهُ - عَلَيْهِ السَّلَامُ - يُجَاهِدُهُ بِعَيْنِهِ بِلِسَانِهِ، وَالْإِغْلَاظُ عَلَيْهِ حَتَّى يَتُوبَ - وَمَنْ لَمْ يَعْلَمْهُ بِعَيْنِهِ جَاهَدَهُ جُمْلَةً بِالصِّفَةِ، وَذَمِّ النِّفَاقِ، وَالدُّعَاءِ إلَى التَّوْبَةِ.

[34] **Qur'an references (L41068):** Qur'an 9:73 (At-Tawbah); Qur'an 66:9 (At-Tahrim).

L41069–41071

It is sheer falsehood to claim that the Messenger of Allah—peace and blessings of Allah be upon him—knew that a specific individual was a hypocrite persistently engaged in hypocrisy yet failed to combat him, thereby disobeying his Lord Most High and opposing His command. Whoever holds this belief is a disbeliever, for he attributes contempt toward Allah's command to His Messenger—peace and blessings of Allah be upon him. Abu Muhammad said: "This encompasses everything the Quran states regarding the hypocrites, which we have exhaustively investigated—all praise is due to Allah, Lord of the worlds. There remain narrations that we shall now mention, Allah the Most High willing." We have been narrated through the chain of Al-Bukhari: Sa'id ibn 'Ufayr narrated to us, from Al-Layth ibn Sa'd, from 'Uqayl, from Ibn Shihab, who informed me that Mahmud ibn Rabi' Al-Ansari reported that 'Itban ibn Malik—one of those who witnessed Badr—said in a hadith: "The Messenger of Allah—may the peace and blessings of Allah be upon him—and Abu Bakr came to me when the sun was high. He added: 'We kept him for a porridge we had prepared.' He continued: 'A considerable number of men gathered in the house. Someone among them asked: "Where is Malik ibn Ad-Dikhshan—or ibn Dikhshan¿' Some of them said: "That is a hypocrite who does not love Allah and His Messenger." The Messenger of Allah—may the peace and blessings of Allah be upon him—said: "Do not say that. Do you not see that he has declared: 'There is no god but Allah,' seeking thereby the Face of Allah¿' He replied: "Allah and His Messenger know best. We only observe his outward demeanor and his counsel directed toward the hypocrites." The Messenger of Allah—may the peace and blessings of Allah be upon him and his family—said: "Indeed, Allah has forbidden the Fire from consuming anyone who declares: 'There is no god but Allah,' seeking thereby the Face of Allah the Exalted.""

Abdullah ibn Rabi' narrated to us: Ibn Ishaq ibn As-Sulaym narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Abdullah ibn Masrrah narrated to us: Mu'adh ibn Hisham Ad-Dastawā'ī narrated to us: My father narrated from Qatadah, from 'Ubaydullah ibn Buraidah, from his father, who said: The Messenger of Allah—may the peace and blessings of

وَمِنْ الْبَاطِلِ الْبَحْتِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعْلَمُ أَنَّ فُلَانًا بِعَيْنِهِ مُنَافِقٌ مُتَّصِلُ النِّفَاقِ ثُمَّ لَا يُجَاهِدُهُ، فَيَعْصِي رَبَّهُ تَعَالَى، وَيُخَالِفُ أَمْرَهُ - وَمَنْ اعْتَقَدَ هَذَا فَهُوَ كَافِرٌ، لِأَنَّهُ نَسَبَ الِاسْتِهَانَةَ بِأَمْرِ اللَّهِ تَعَالَى إلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -، قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا فِي الْقُرْآنِ مِنْ ذِكْرِ الْمُنَافِقِينَ قَدْ تَقَصَّيْنَاهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَبَقِيَتْ آثَارٌ نَذْكُرُهَا الْآنَ إنْ شَاءَ اللَّهُ تَعَالَى: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ عُفَيْرٍ نِي اللَّيْثُ هُوَ ابْنُ سَعْدٍ - نا عُقَيْلٌ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي مَحْمُودُ بْنُ رَبِيعٍ الْأَنْصَارِيُّ أَنَّ «عِتْبَانَ بْنَ مَالِكٍ - مِمَّنْ شَهِدَ بَدْرًا - قَالَ فِي حَدِيثٍ فَغَدَا عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ حِينَ ارْتَفَعَ النَّهَارُ، قَالَ: وَحَبَسْنَاهُ عَلَى خَزِيرَةٍ صَنَعْنَاهَا لَهُ، قَالَ: فَثَابَ فِي الْبَيْتِ رِجَالٌ ذَوُو عَدَدٍ، فَاجْتَمَعُوا، فَقَالَ قَائِلٌ مِنْهُمْ: أَيْنَ مَالِكُ بْنُ الدُّخْشُنِ - أَوْ ابْنُ دَخْشُنٍ - فَقَالَ بَعْضُهُمْ: ذَلِكَ مُنَافِقٌ لَا يُحِبُّ اللَّهَ وَرَسُولَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَقُلْ ذَلِكَ، أَلَا تَرَاهُ قَدْ قَالَ: لَا إلَهَ إلَّا اللَّهُ يُرِيدُ بِذَلِكَ وَجْهَ اللَّهِ قَالَ: اللَّهُ وَرَسُولُهُ أَعْلَمُ، فَإِنَّا نَرَى وَجْهَهُ وَنَصِيحَتَهُ إلَى الْمُنَافِقِينَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِنَّ اللَّهَ قَدْ حَرَّمَ عَلَى النَّارِ مَنْ قَالَ: لَا إلَهَ إلَّا اللَّهُ يَبْتَغِي بِهَا وَجْهَ اللَّهِ تَعَالَى» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا بْنُ إِسْحَاقَ بْنِ السُّلَيْمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا عَبْدُ اللَّهِ بْنُ مَسَرَّةَ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ نا أَبِي عَنْ قَتَادَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا تَقُولُوا لِلْمُنَافِقِ: سَيِّدًا، فَإِنَّهُ إنْ يَكُ سَيِّدًا فَقَدْ أَسْخَطْتُمْ رَبَّكُمْ» .

Allah be upon him and his family—said: “Do not call the hypocrite ’master,’ for if he were truly a master, you would have angered your Lord.”

L41072 From the narration of Muslim: Zuhayr ibn Harb narrated to us, Jarir—who is Ibn Abd al-Hamid—narrated to us from Mansur ibn al-Mu’tamir from Abu Wa’il from Ibn Mas’ud, who said: “On the day of Hunayn, the Messenger of Allah—peace and blessings of Allah be upon him—favored certain people in the distribution. He gave Al-Aqra’ ibn Habis one hundred camels and gave Uyaynah ibn Hisn the same. He gave to some nobles of the Arabs and favored them in the distribution that day. A man said: ’By Allah, this is a division where justice was not upheld, nor was the Face of Allah sought in it.’ I said: ’By Allah, I will certainly inform the Messenger of Allah—peace and blessings of Allah be upon him and his family—of this.’ So I came to him and relayed what the man had said. The face of the Messenger of Allah—peace and blessings of Allah be upon him and his family—changed until it became like saffron. Then he said: ’Who will uphold justice if Allah and His Messenger do not? May Allah have mercy on Moses. He was wronged far more than this, yet he remained patient.’”

L41073 Ibn Masʿūd said: I said, “No doubt, I will not transmit to him a ḥadīth after that.”

L41074–41076 From the chain of Muslim, it was narrated to us by Muḥammad ibn al-Muthannā and Muḥammad ibn Rumḥ. Muḥammad ibn Rumḥ ibn al-Muhājir said. Al-Layth ibn Saʿd narrated from Yaḥyā ibn Saʿīd al-Anṣārī from Abū al-Zubayr from Jābir. Ibn al-Muthannā said: ʿAbd al-Wahhāb narrated to us from ʿAbd al-Ḥamīd al-Thaqafī, who said: I heard Yaḥyā ibn Saʿīd al-Anṣārī say: From me, Abū al-Zubayr, that he heard Jābir ibn ʿAbd Allāh say: “A man came to al-Jiʿrānah after returning from Ḥunayn while Bilāl’s garment contained silver—and the Messenger of Allah, peace and blessings be upon him, was taking from it to give to the people. The man said: ‘O Muḥammad, be just!’ He replied: ‘Woe to you! Who would be just if I were not just?’ ‘Umar ibn al-Khaṭṭāb said: ‘Let me, O Messenger of Allah, kill this dissenter!’ He said: ‘Allah forbid that people should say I kill my companions. Indeed, this man and his companions recite the Quran—their recitation does not

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ عَنِ ابْنِ مَسْعُودٍ قَالَ: «لَمَّا كَانَ يَوْمُ حُنَيْنٍ آثَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسًا فِي الْقِسْمَةِ، فَأَعْطَى الْأَقْرَعَ بْنَ حَابِسٍ مِائَةً مِنَ الْإِبِلِ، وَأَعْطَى عُيَيْنَةَ بْنَ حِصْنٍ مِثْلَ ذَلِكَ، وَأَعْطَى نَاسًا مِنْ أَشْرَافِ الْعَرَبِ وَآثَرَهُمْ يَوْمَئِذٍ فِي الْقِسْمَةِ، فَقَالَ رَجُلٌ: وَاللَّهِ إِنَّ هَذِهِ لَقِسْمَةٌ مَا يُعْدَلُ فِيهَا، مَا أُرِيدُ بِهَا وَجْهَ اللَّهِ، قَالَ فَقُلْتُ: وَاللَّهِ لَأُخْبِرَنَّ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فَأَتَيْتُهُ فَأَخْبَرْتُهُ بِمَا قَالَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى كَانَ كَالصِّرْفِ ثُمَّ قَالَ مَنْ يَعْدِلُ إِذَا لَمْ يَعْدِلِ اللَّهُ وَرَسُولُهُ، يَرْحَمُ اللَّهُ مُوسَى لَقَدْ أُوذِيَ بِأَكْثَرَ مِنْ هَذَا فَصَبَرَ» .

قَالَ ابْنُ مَسْعُودٍ: قُلْتُ: لَا جَرَمَ، لَا أَرْفَعُ إِلَيْهِ بَعْدَهَا حَدِيثًا.

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ رُمْحٍ قَالَ مُحَمَّدُ بْنُ رُمْحِ بْنِ الْمُهَاجِرِ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، وَقَالَ ابْنُ الْمُثَنَّى: نا عَبْدُ الْوَهَّابِ عَنْ عَبْدِ الْحَمِيدِ الثَّقَفِيِّ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ: أَنَا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: «أَتَى رَجُلٌ بِالْجِعْرَانَةِ مُنْصَرَفَهُ مِنْ حُنَيْنٍ وَفِي ثَوْبِ بِلَالٍ فِضَّةٌ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْبِضُ مِنْهَا يُعْطِي النَّاسَ فَقَالَ: يَا مُحَمَّدُ اعْدِلْ؟ قَالَ وَيْلَكَ وَمَنْ يَعْدِلُ إِذَا لَمْ أَكُنْ أَعْدِلُ؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: دَعْنِي يَا رَسُولَ اللَّهِ فَأَقْتُلَ هَذَا الْمُنَافِقَ؟ فَقَالَ: مَعَاذَ اللَّهِ أَنْ يَتَحَدَّثَ النَّاسُ

pass beyond their throats. They slip away from it as an arrow slips through prey.’”[35]

أَنِّي أَقْتُلُ أَصْحَابِي، إِنَّ هَذَا وَأَصْحَابَهُ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ يَمْرُقُونَ مِنْهُ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ» .

L41077 Through the chain of Al-Bukhari: Muhammad narrated to us: I am Makhlad ibn Yazid. Ibn Jurayj informed us; Amr ibn Dinar informed me that he heard Jabir ibn Abdullah saying: “We campaigned with the Messenger of Allah—peace and blessings of Allah be upon him and his family—while many Muhajireen had joined him until their numbers grew. Among the Muhajireen was a mocker who struck an Ansari man. The Ansar became enraged with intense anger until they rallied together. The Ansari shouted: ’O Ansar!’ and the Muhajiri shouted: ’O Muhajireen!’ The Prophet—peace and blessings of Allah be upon him and his family—came out and said: ’What is this call of the Age of Ignorance? What troubles them?’ He was informed about the Muhajiri striking the Ansari. The Prophet—peace and blessings of Allah be upon him and his family—said: ’Leave this matter, for it is evil.’ Abdullah ibn Ubayy ibn Salul then declared: ’They have rallied against us! If we return to Medina, the mightier among them will surely expel the lowlier.’ Umar ibn Al-Khattab said: ’O Prophet of Allah, should we not kill this wicked one?’—referring to Abdullah ibn Ubayy. The Prophet—peace and blessings of Allah be upon him and his family—responded: ’No, otherwise people will say: ”Muhammad kills his companions.“”[36]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ أَنَا مَخْلَدُ بْنُ يَزِيدَ أَخْبَرَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ ثَابَ مَعَهُ نَاسٌ مِنَ الْمُهَاجِرِينَ حَتَّى كَثُرُوا، وَكَانَ مِنَ الْمُهَاجِرِينَ رَجُلٌ لَعَّابٌ فَكَسَعَ أَنْصَارِيًّا فَغَضِبَتِ الْأَنْصَارُ غَضَبًا شَدِيدًا حَتَّى تَدَاعَوْا، فَقَالَ الْأَنْصَارِيُّ: يَا لَلْأَنْصَارِ؟ وَقَالَ الْمُهَاجِرِيُّ: يَا لَلْمُهَاجِرِينَ؟ فَخَرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: مَا بَالُ دَعْوَى الْجَاهِلِيَّةِ مَا شَأْنُهُمْ؟ فَأُخْبِرَ بِكَسْعَةِ الْمُهَاجِرِيِّ الْأَنْصَارِيَّ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - دَعُوهَا فَإِنَّهَا خَبِيثَةٌ؟ فَقَالَ عَبْدُ اللَّهِ بْنُ أُبَيٍّ ابْنُ سَلُولَ: قَدْ تَدَاعَوْا عَلَيْنَا لَئِنْ رَجَعْنَا إِلَى الْمَدِينَةِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: أَلَا تَقْتُلُ يَا نَبِيَّ اللَّهِ هَذَا الْخَبِيثَ؟ - لِعَبْدِ اللَّهِ بْنِ أُبَيٍّ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا يَتَحَدَّثُ النَّاسُ: أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ» .

L41078–41080 From the transmission of Muslim: Qutaybah ibn Saʿīd narrated to us: ʿAbd al-Wāḥid – that is Ibn Ziyād – narrated to us from ʿUmārah ibn al-Qaʿqāʿ from ʿAbd al-Raḥmān ibn Abī Nuʿm, who said: I heard Abū Saʿīd al-Khudrī say: “‘Alī ibn Abī Ṭālib sent to the Messenger of God – may God’s blessings and peace be upon him and his family – a gold piece wrapped in a coarse tanned hide that had not been purified of its dust. He divided it among four men: ʿUyaynah ibn Badr, al-Aqraʿ ibn Ḥābis, Zayd al-Khayl – but he was uncertain about the fourth – when a man among his companions said: ’We were more entitled to this than these.’ When this reached the Prophet – may God’s blessings and peace be upon him and his family – he said:

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْوَاحِدِ - هُوَ ابْنُ زِيَادٍ - عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعْمٍ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنَ الْيَمَنِ بِذُهَيْبَةٍ فِي أَدِيمٍ مَقْرُوظٍ لَمْ تُحَلَّصْ مِنْ تُرَابِهَا، فَقَسَمَهَا بَيْنَ أَرْبَعَةِ نَفَرٍ: عُيَيْنَةَ بْنِ بَدْرٍ، وَالْأَقْرَعِ بْنِ حَابِسٍ، وَزَيْدِ الْخَيْلِ - وَشَكَّ فِي الرَّابِعِ - فَقَالَ رَجُلٌ مِنْ أَصْحَابِهِ: كُنَّا نَحْنُ أَحَقَّ بِهَا مِنْ هَؤُلَاءِ، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: أَلَا تَأْمَنُونِي وَأَنَا

[35] **Hadith references (L41074):** Sahih Muslim 1063a.

[36] **Qur’an references (L41077):** Qur’an 63:8 (Al-Munafiqun).

'Will you not trust me, when I am trustworthy in... [text ends here at 'in...']'" From the heavens, news comes to me morning and evening. A man then stood up—sunken-eyed, with protruding cheekbones, a prominent forehead, thick-bearded, shaven-headed, and with his lower garment rolled up—and said: "O Messenger of Allah, fear Allah!" He replied: "Woe to you! Am I not the most deserving of the people of the earth to fear Allah?" The man then turned away. Khalid ibn al-Walid said: "O Messenger of Allah, shall I strike his neck?" He responded: "Perhaps he is one who prays." Khalid said: "How many are those who pray but say with their tongues what is not in their hearts?" The Messenger of Allah—peace and blessings be upon him and his family—said: "I have not been commanded to probe into the hearts of people, nor to split open their bellies. From the descendants of this man will emerge a people who recite the Book of Allah fluently—it does not go beyond their throats. They will abandon the religion as an arrow passes through the game."

أَمِينٌ فِي السَّمَاءِ، يَأْتِينِي خَبَرُ السَّمَاءِ صَبَاحًا وَمَسَاءً، فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ، مُشْرِفُ الْوَجْنَتَيْنِ، نَاشِزُ الْجَبْهَةِ، كَثُّ اللِّحْيَةِ، مَحْلُوقُ الرَّأْسِ، مُشَمِّرُ الْإِزَارِ، فَقَالَ: يَا رَسُولَ اللَّهِ اتَّقِ اللَّهَ. فَقَالَ: وَيْلَكَ، أَوَلَسْتُ أَحَقَّ أَهْلِ الْأَرْضِ أَنْ يَتَّقِيَ اللَّهَ؟ ثُمَّ وَلَّى الرَّجُلُ، فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: يَا رَسُولَ اللَّهِ أَلَا أَضْرِبُ عُنُقَهُ؟ فَقَالَ: لَعَلَّهُ أَنْ يَكُونَ يُصَلِّي. قَالَ خَالِدٌ: وَكَمْ مِنْ مُصَلٍّ يَقُولُ بِلِسَانِهِ مَا لَيْسَ فِي قَلْبِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنِّي لَمْ أُؤْمَرْ أَنْ أَنْقُبَ عَنْ قُلُوبِ النَّاسِ، وَلَا أَشُقَّ بُطُونَهُمْ، إِنَّهُ يَخْرُجُ مِنْ ضِئْضِئِ هَذَا قَوْمٌ يَتْلُونَ كِتَابَ اللَّهِ رَطْبًا، لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ» .

L41081 Muhammad ibn Sa'id ibn Nabat narrated to us, Ahmad ibn Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar narrated to us, Muhammad ibn Ja'far narrated to us, Shu'bah said: I heard Qatadah narrating from Abu Nadrah from Qays ibn Abbad: I said to Ammar: What is your view concerning this fighting of yours? Is it an opinion you devised, for opinions may err or be correct? Or did the Messenger of Allah—peace and blessings of Allah be upon him and his family—entrust you with a specific injunction? He replied: The Messenger of Allah—peace and blessings of Allah be upon him and his family—did not entrust us with anything he did not entrust to all people universally. The Messenger of Allah—peace and blessings of Allah be upon him and his family—said (I believe he said): Hudhayfah narrated to me—that there are twelve hypocrites in my Ummah who will not enter Paradise nor sense its fragrance until a camel passes through the eye of a needle. Eight of them will be sufficiently marked by a fiery mark—a lamp from the Fire that appears between their shoulder blades and protrudes from their backs.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ: قَالَ: سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَبِي نَضْرَةَ «عَنْ قَيْسِ بْنِ عَبَّادٍ قُلْتُ لِعَمَّارٍ: أَرَأَيْتَ قِتَالَكُمْ هَذَا؟ أَرَأْيٌ رَأَيْتُمُوهُ، فَإِنَّ الرَّأْيَ يُخْطِئُ وَيُصِيبُ؟ أَوَعَهِدَ إِلَيْكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالَ: مَا عَهِدَ إِلَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شَيْئًا لَمْ يَعْهَدْهُ إِلَى النَّاسِ كَافَّةً، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، أَحْسَبُهُ قَالَ: حَدَّثَنِي حُذَيْفَةُ: أَنَّهُ قَالَ: فِي أُمَّتِي اثْنَا عَشَرَ مُنَافِقًا لَا يَدْخُلُونَ الْجَنَّةَ وَلَا يَجِدُونَ رِيحَهَا حَتَّى يَلِجَ الْجَمَلُ فِي سَمِّ الْخِيَاطِ، ثَمَانِيَةٌ مِنْهُمْ يَكْفِيهِمْ الرَّسْلَةُ، سِرَاجٌ مِنْ النَّارِ يَظْهَرُ بَيْنَ أَكْتَافِهِمْ حَتَّى يَنْجُمَ مِنْ ظُهُورِهِمْ» .

L41082 Muhammad ibn Sa'id ibn Nabaat narrated to us: Ahmad ibn Abd al-Basir

narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abu Ahmad—who is al-Zubayri—narrated to us, from Sufyan al-Thawri, from Salamah ibn Kuhayl, from Iyad ibn Iyad, from his father, from Ibn Mas'ud, who said: "The Messenger of Allah—peace and blessings be upon him and his family—addressed us in a sermon and spoke therein as Allah the Exalted willed. Then he said: 'There are hypocrites among you. Let whoever I name stand up.' He then called out: 'Rise, O so-and-so! Rise, O so-and-so! Rise, O so-and-so!'—until he had named thirty-six men. Then he declared: 'There are indeed among you and within you [hypocrites], so seek Allah's protection!' Later, Umar encountered a veiled man with whom he was acquainted. He asked: 'What troubles you?' The man recounted the Prophet's words—peace and blessings be upon him and his family. Umar responded: 'Perish you for this entire day!'"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ عِيَاضِ بْنِ عِيَاضٍ أَبِيهِ عَنِ ابْنِ مَسْعُودٍ قَالَ «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ فِي خُطْبَتِهِ مَا شَاءَ اللَّهُ تَعَالَى، ثُمَّ قَالَ: إِنَّ مِنْكُمْ مُنَافِقِينَ فَمَنْ سَمَّيْتُ فَلْيَقُمْ؟ ثُمَّ قَالَ: قُمْ يَا فُلَانُ، قُمْ يَا فُلَانُ، قُمْ يَا فُلَانُ - حَتَّى عَدَّ سِتَّةً وَثَلَاثِينَ - ثُمَّ قَالَ: إِنَّ مِنْكُمْ وَإِنَّ فِيكُمْ، فَسَلُوا اللَّهَ الْعَافِيَةَ؟ فَمَرَّ عُمَرُ بِرَجُلٍ مُقَنَّعٍ قَدْ كَانَ بَيْنَهُ وَبَيْنَهُ مَعْرِفَةٌ، قَالَ: مَا شَأْنُكَ؟ فَأَخْبَرَهُ بِمَا قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ عُمَرُ: تَبًّا لَكَ سَائِرَ الْيَوْمِ» .

L41083–41084 And through the chain of Muslim: Al-Hasan ibn Ali Al-Hulwani narrated to us, Ibn Abi Maryam narrated to us: I, Muhammad ibn Ja'far, was informed by Zayd ibn Aslam from Ata ibn Yasar from Abu Sa'id Al-Khudri: "There was a man among the hypocrites during the time of the Messenger of Allah—peace and blessings be upon him and his household—who, whenever the Messenger of Allah—peace and blessings be upon him and his household—went forth, they would stay behind, taking delight in their refusal contrary to the Messenger of Allah—peace and blessings be upon him and his household. When the Prophet—peace and blessings be upon him and his household—returned, they would make excuses to him, swear oaths, and seek praise for deeds they never performed. Therefore, do not think them safe from the punishment."[37]

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا ابْنُ أَبِي مَرْيَمَ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَخْبَرَنِي زَيْدُ بْنُ أَسْلَمَ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: «أَنَّ رَجُلًا مِنَ الْمُنَافِقِينَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ إِذَا خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَخَلَّفُوا عَنْهُ وَفَرِحُوا بِمَقْعَدِهِمْ خِلَافَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِذَا قَدِمَ النَّبِيُّ - عَلَيْهِ السَّلَامُ - اعْتَذَرُوا إِلَيْهِ وَحَلَفُوا وَأَحَبُّوا أَنْ يُحْمَدُوا بِمَا لَمْ يَفْعَلُوا، فَلَا تَحْسَبَنَّهُمْ بِمَفَازَةٍ مِنَ الْعَذَابِ» .

L41085 And via the chain of Muslim: From Zuhayr ibn Harb, from Ahmad al-Kufi, from al-Walid ibn Jumay', from Abu al-Tufayl who said: "There arose a dispute between a man from the people of al-Aqabah and Hudhayfah, such as commonly occurs among people. The man said: 'I adjure you by Allah - how many were the companions of al-Aqabah?' The people urged him: 'Answer him since he has asked you.' Hudhayfah responded: 'We were informed they

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ أَنَا أَحْمَدُ الْكُوفِيُّ نا الْوَلِيدُ بْنُ جُمَيْعٍ نا أَبُو الطُّفَيْلِ قَالَ: «كَانَ بَيْنَ رَجُلٍ مِنْ أَهْلِ الْعَقَبَةِ وَبَيْنَ حُذَيْفَةَ مَا يَكُونُ بَيْنَ النَّاسِ فَقَالَ: أَنْشُدُكَ اللَّهَ، كَمْ كَانَ أَصْحَابُ الْعَقَبَةِ؟ فَقَالَ لَهُ الْقَوْمُ: أَخْبِرْهُ إِذْ سَأَلَكَ؟ قَالَ - يَعْنِي حُذَيْفَةَ -: كُنَّا نُخْبَرُ أَنَّهُمْ أَرْبَعَةَ عَشَرَ، فَإِنْ كُنْتَ فِيهِمْ فَقَدْ كَانَ الْقَوْمُ خَمْسَةَ عَشَرَ، وَأَشْهَدُ

[37] **Qur'an references (L41084):** Qur'an 3:188 (Ali 'Imran).

numbered fourteen. If you were among them, the group would have been fifteen. I testify by Allah that twelve of them constituted a party for Allah and His Messenger. On the Day when witnesses rise, were three excused and three excused?' They replied: 'We neither heard the caller of the Messenger of Allah - may Allah bless him and his family and grant peace - nor knew the people's intent.'"

بِاللَّهِ أَنَّ اثْنَيْ عَشَرَ مِنْهُمْ حِزْبٌ لِلَّهِ وَلِرَسُولِهِ، وَيَوْمَ يَقُومُ الْأَشْهَادُ، وَعَذَرَ ثَلَاثَةً، وَعَذَرَ ثَلَاثَةً؟ قَالُوا: مَا سَمِعْنَا مُنَادِيَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا عَلِمْنَا بِمَا أَرَادَ الْقَوْمُ؟» قَالَ أَبُو مُحَمَّد: لَيْسَتْ هَذِهِ الْعَقَبَةُ الْفَاضِلَةُ الْمَحْمُودَةُ قَبْلَ الْهِجْرَةِ، تِلْكَ كَانَتْ لِلْأَنْصَارِ خَالِصَةً شَهِدَهَا مِنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - سَبْعُونَ رَجُلًا وَثَلَاثُ نِسْوَةٍ، وَلَمْ يَشْهَدْهَا أَحَدٌ مِنْ غَيْرِهِمْ إِلَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحْدَهُ، وَالْعَبَّاسُ عَمُّهُ، وَهُوَ غَيْرُ مُسْلِمٍ يَوْمَئِذٍ، لَكِنَّهُ شَفَقَةً عَلَى ابْنِ أَخِيهِ.

Abu Muhammad remarked: This is not the eminent and commendable al-Aqabah preceding the Hijrah. That event was exclusively for the Ansar, witnessed by seventy men and three women from them (may Allah be pleased with them). No one else attended except the Messenger of Allah - may Allah bless him and his family and grant peace - alone, and his uncle al-Abbas, who remained non-Muslim at the time yet attended out of compassion for his nephew.

L41086 From the chain of Muslim: Abu Kurayb—Ja'far ibn Ghiyath—narrated to us from al-A'mash from Abu Sufyan from Jabir: "The Messenger of Allah—peace and blessings be upon him and his family—returned from a journey. When he neared Medina, a violent wind arose that nearly buried the rider. He reported that the Messenger of Allah—peace and blessings be upon him and his family—said: 'This wind was sent upon the death of a hypocrite.' Upon entering Medina, lo, a prominent hypocrite had indeed died!"

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ جَعْفَرُ بْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدِمَ مِنْ سَفَرٍ، فَلَمَّا كَانَ قُرْبَ الْمَدِينَةِ هَاجَتْ رِيحٌ تَكَادُ أَنْ تَدْفِنَ الرَّاكِبَ، فَزَعَمَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: بُعِثَتْ هَذِهِ الرِّيحُ لِمَوْتِ مُنَافِقٍ، وَقَدِمَ الْمَدِينَةَ، فَإِذَا عَظِيمٌ مِنْ الْمُنَافِقِينَ قَدْ مَاتَ؟» قَالَ أَبُو مُحَمَّد: وَأَحَادِيثُ مَوْقُوفَةٌ عَلَى حُذَيْفَةَ فِيهَا: أَنَّهُ كَانَ يَدْرِي الْمُنَافِقِينَ، وَأَنَّ عُمَرَ سَأَلَهُ: أَهُوَ مِنْهُمْ؟ قَالَ: لَا، وَلَا أُخْبِرُ أَحَدًا بَعْدَك بِمِثْلِ هَذَا، وَأَنَّ عُمَرَ كَانَ يَنْظُرُ إلَيْهِ فَإِذَا حَضَرَ حُذَيْفَةُ جِنَازَةً حَضَرَهَا عُمَرُ، وَإِنْ لَمْ يَحْضُرْهَا حُذَيْفَةُ لَمْ يَحْضُرْهَا عُمَرُ، وَفِي بَعْضِهَا مِنْهُمْ: شَيْخٌ لَوْ ذَاقَ الْمَاءَ مَا وَجَدَ لَهُ طَعْمًا: كُلُّهَا غَيْرُ مُسْنَدَةٍ.

Abu Muhammad said: There are narrations attributed to Hudhayfah stating he knew the hypocrites. Umar asked him: "Am I among them?" He replied: "No, nor have I informed anyone after you of such a matter." It is also mentioned that Umar would follow his example—if Hudhayfah attended a funeral, Umar attended it, and if Hudhayfah abstained, Umar abstained. Some narrations describe an elder among them who, were he to taste water, would not perceive its flavor—all these lack complete chains of transmission (non-musnad).

L41087–41088 On the authority of Hudhayfah, who said: A man from the hypocrites died, and I did not attend his funeral. Someone said, "He is one of them." Umar then asked me, "Am I one of them?" I replied, "No."

وَعَنْ حُذَيْفَةَ قَالَ: مَاتَ رَجُلٌ مِنْ الْمُنَافِقِينَ فَلَمْ أَذْهَبْ إلَى الْجِنَازَةِ فَقَالَ: هُوَ مِنْهُمْ، فَقَالَ لَهُ عُمَرُ: أَنَا مِنْهُمْ؟ قَالَ: لَا.

L41089–41091 From Muhammad ibn Ishaq, from Asim ibn Umar ibn Qatadah ibn An-

Nu'man al-Ẓafarī, who said: I said to Mahmud ibn Labid: "Did people recognize hypocrisy among themselves?" He replied: "Yes, by Allah! A man would recognize it in his brother, his father, his paternal cousin, and his clansmen, yet they would cover for one another concerning it." Mahmud said: "A man from my tribe informed me about a man from the hypocrites whose hypocrisy was well-known. He would travel with the Messenger of Allah (peace be upon him and his family) wherever he went. When the incident of the stone occurred and the Messenger of Allah (peace be upon him and his family) supplicated as he supplicated, Allah sent a cloud that rained until the people were satiated. We turned to him and said: 'Woe to you! Can anything remain after this?' He replied: 'It was merely a passing cloud.' Then the Messenger of Allah (peace be upon him and his family) traveled until partway along the path, his she-camel went astray. The companions of the Messenger of Allah (peace be upon him and his family) went out to search for it, while with the Messenger of Allah (peace be upon him and his family) was a man from his companions named 'Umārah ibn Hazm—a participant of Aqabah, a Badri veteran from Banu 'Amr ibn Makhzum—who was in the company of Yazid ibn Nasib al-Qaynuqā'ī, a known hypocrite. While in 'Umārah's group, Yazid said: 'Does Muhammad claim to be a prophet, informing you of news from the heavens, yet not know where his she-camel is?' The Messenger of Allah (peace be upon him and his family) said to 'Umārah, who was beside him: 'A man has said: "This Muhammad claims to be a prophet who informs you of heavenly matters, yet he does not know where his she-camel is." By Allah, I know only what Allah teaches me. He has guided me to it—it is in this valley, in such-and-such ravine, held back by a tree gripping its reins. Go forth until you bring it to me.' They went and brought it. 'Umārah ibn Hazm returned to his group and said: 'By Allah! The most astonishing thing is what the Messenger of Allah (peace be upon him and his family) just told us regarding the statement of a speaker—Allah informed him of exactly what Yazid ibn Nasib said.' A man from 'Umārah's group who had not been present with the Messenger of Allah (peace be upon him and his family) said: 'Yazid, by Allah, uttered these words before you returned!' 'Umārah seized Yazid by the neck, shouting: 'O servants of Allah!

وَعَنْ مُحَمَّدِ بْنِ إِسْحَاقَ ثَنِي «عَاصِمُ بْنُ عُمَرَ بْنِ قَتَادَةَ بْنِ النُّعْمَانِ الظَّفَرِيُّ، قَالَ: قُلْت لِمَحْمُودِ بْنِ لَبِيدٍ: هَلْ كَانَ النَّاسُ يَعْرِفُونَ النِّفَاقَ فِيهِمْ؟ قَالَ: نَعَمْ، وَاَللَّهِ إنْ كَانَ الرَّجُلُ لَيَعْرِفُهُ مِنْ أَخِيهِ، وَمِنْ أَبِيهِ، وَمِنْ بَنِي عَمِّهِ، وَمِنْ عَشِيرَتِهِ، ثُمَّ يُلْبِسُ بَعْضُهُمْ بَعْضًا عَلَى ذَلِكَ - قَالَ مَحْمُودٌ: لَقَدْ أَخْبَرَنِي رَجُلٌ مِنْ قَوْمِي عَنْ رَجُلٍ مِنْ الْمُنَافِقِينَ مَعْرُوفٍ نِفَاقُهُ كَانَ يَسِيرُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَيْثُ سَارَ، فَلَمَّا كَانَ مِنْ أَمْرِ الْحَجَرِ مَا كَانَ، وَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حِينَ دَعَا فَأَرْسَلَ اللَّهُ السَّحَابَةَ فَأَمْطَرَتْ حَتَّى ارْتَوَى النَّاسُ، أَقْبَلْنَا عَلَيْهِ نَقُولُ: وَيْحَك أَبَعْدَ هَذَا شَيْءٌ؟ قَالَ: سَحَابَةٌ مَارَّةٌ، ثُمَّ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَارَ حَتَّى كَانَ بِبَعْضِ الطَّرِيقِ ضَلَّتْ نَاقَتُهُ، فَخَرَجَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي طَلَبِهَا، وَعِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجُلٌ مِنْ أَصْحَابِهِ يُقَالُ لَهُ: عُمَارَةُ بْنُ حَزْمٍ، وَكَانَ عَقَبِيًّا بَدْرِيًّا - وَهُوَ مِنْ بَنِي عَمْرِو بْنِ مَخْزُومٍ - وَكَانَ فِي رَحْلِ يَزِيدَ بْنِ نَصِيبٍ الْقَيْنُقَاعِيِّ وَكَانَ مُنَافِقًا، فَقَالَ يَزِيدُ - وَهُوَ فِي رَحْلِ عُمَارَةَ - وَعُمَارَةُ عِنْدَ النَّبِيِّ - عَلَيْهِ السَّلَامُ -: أَلَيْسَ مُحَمَّدٌ يَزْعُمُ أَنَّهُ نَبِيٌّ وَيُخْبِرُكُمْ عَنْ خَبَرِ السَّمَاءِ، وَلَا يَدْرِي أَيْنَ نَاقَتُهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَعُمَارَةُ عِنْدَهُ: إنَّ رَجُلًا قَالَ: هَذَا مُحَمَّدٌ يُخْبِرُكُمْ أَنَّهُ نَبِيٌّ وَيَزْعُمُ أَنَّهُ يُخْبِرُكُمْ بِخَبَرِ السَّمَاءِ - هُوَ لَا يَدْرِي أَيْنَ نَاقَتُهُ - وَإِنِّي وَاَللَّهِ مَا أَعْلَمُ إلَّا مَا عَلَّمَنِي اللَّهُ، وَقَدْ دَلَّنِي عَلَيْهَا - وَهِيَ فِي هَذَا الْوَادِي مِنْ شِعْبِ كَذَا وَكَذَا - وَقَدْ حَبَسَتْهَا شَجَرَةٌ بِزِمَامِهَا، فَانْطَلِقُوا حَتَّى تَأْتُونِي بِهَا؟ فَذَهَبُوا فَجَاءُوا بِهَا، فَرَجَعَ عُمَارَةُ بْنُ حَزْمٍ إلَى رَحْلِهِ، فَقَالَ: وَاَللَّهِ لَأَعْجَبُ شَيْءٍ حَدَّثَنَاهُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - آنِفًا عَنْ مَقَالَةِ قَائِلٍ أَخْبَرَهُ اللَّهُ عَنْهُ كَذَا وَكَذَا - لِلَّذِي قَالَ يَزِيدُ

There is a hidden hypocrite in my company, and I was unaware! Leave, O enemy of Allah! Do not accompany me!'"

From Zayd ibn Wahb (via al-Bukhārī's chain), who said: We were with Hudhayfa when he said: "None remain of the companions addressed by this verse—{So fight the leaders of disbelief} [9:12] until {they desist} [9:12]—except three." Hudhayfa added: "And none remain of the hypocrites except four." He said... A Bedouin said to him: "You companions of Muhammad inform us of things we do not know. So who are these people breaking into our homes and stealing our fodder?" He replied: "Those are the transgressors. Yes, none remain of them except four: an old man who, if he drank water, would find it cold?" Abu Muhammad said: "This is all that has been related to us of the accounts, and there is no proof whatsoever in any of them."[38]

L41092 As for the ḥadīth of Mālik ibn al-Dikhshan, it is authentic and constitutes the greatest evidence against them, because the Messenger of Allah—peace and blessings be upon him and his family—stated that the testimony of divine oneness protects its possessor. Thus, the Messenger of Allah—peace be upon him—said: "We have been forbidden from fighting those who pray."

L41093 As for the ḥadīth of Buraydah al-Aslamī, "Do not call the hypocrite 'master,'" this constitutes a general ruling applicable to the entire community, and none can remain unaware of this. Since this is the case, when we recognize a hypocrite and are prohibited from calling him "master," he is not a hypocrite but rather one who openly flaunts disbelief. However, if we claim to know who the hypocrite is—while we neither possess knowledge of the unseen nor comprehend what lies in his innermost thoughts—then he would be openly declared as such, not merely concealing it.

بْنُ نَصِيبٍ فَقَالَ رَجُلٌ مِمَّنْ كَانَ فِي رَحْلِ عُمَارَةَ وَلَمْ يَحْضُرْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: يَزِيدُ، وَاللَّهِ قَالَ هَذِهِ الْمَقَالَةَ قَبْلَ أَنْ تَأْتِيَ؟ فَأَقْبَلَ عُمَارَةُ عَلَى يَزِيدَ يَجَأُ فِي عُنُقِهِ وَيَقُولُ: يَا آلَ عِبَادِ اللَّهِ، إِنَّ فِي رَحْلِي الرَّاهِبَةَ، وَمَا أَشْعُرُ، اُخْرُجْ، أَيْ عَدُوَّ اللَّهِ مِنْ رَحْلِي فَلَا تَصْحَبْنِي» ؟ وَعَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: كُنَّا عِنْدَ حُذَيْفَةَ - وَهُوَ مِنْ طَرِيقِ الْبُخَارِيِّ - فَقَالَ حُذَيْفَةُ: مَا بَقِيَ مِنْ أَصْحَابِ هَذِهِ الْآيَةِ إِلَّا ثَلَاثَةٌ، يَعْنِي قَوْلَه تَعَالَى {فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] إِلَى قَوْلِهِ {يَنْتَهُونَ} [التوبة: ١٢] قَالَ حُذَيْفَةُ: وَلَا بَقِيَ مِنْ الْمُنَافِقِينَ إِلَّا أَرْبَعَةٌ، فَقَالَ لَهُ أَعْرَابِيٌّ: إِنَّكُمْ أَصْحَابُ مُحَمَّدٍ تُخْبِرُونَنَا بِمَا لَا نَدْرِي، فَمَا هَؤُلَاءِ الَّذِينَ يَنْقُرُونَ بُيُوتَنَا، وَيَسْرِقُونَ أَعْلَافَنَا؟ قَالَ: أُولَئِكَ الْفُسَّاقُ، أَجَلْ، لَمْ يَبْقَ مِنْهُمْ إِلَّا أَرْبَعَةٌ: شَيْخٌ كَبِيرٌ لَوْ شَرِبَ الْمَاءَ وَجَدَ لَهُ بَرْدًا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا حَضَرَنَا ذِكْرُهُ مِنْ الْأَخْبَارِ، وَلَيْسَ فِي شَيْءٍ مِنْهَا حُجَّةٌ أَصْلًا.

أَمَّا حَدِيثُ مَالِكِ بْنِ الدِّخْشَنِ فَصَحِيحٌ وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ شَهَادَةَ التَّوْحِيدِ تَمْنَعُ صَاحِبَهَا وَهَكَذَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «نُهِينَا عَنْ قِتَالِ الْمُصَلِّينَ» .

وَأَمَّا حَدِيثُ بُرَيْدَةَ الْأَسْلَمِيِّ «لَا تَقُولُوا لِلْمُنَافِقِ سَيِّدًا» فَإِنَّ هَذَا عُمُومًا لِجَمِيعِ الْأُمَّةِ، وَلَا يَخْفَى هَذَا عَلَى أَحَدٍ - وَإِذْ الْأَمْرُ كَذَلِكَ فَإِذَا عَرَفْنَا الْمُنَافِقَ وَنُهِينَا أَنْ نُسَمِّيَهُ " سَيِّدًا " فَلَيْسَ مُنَافِقًا بَلْ مُجَاهِرًا، وَإِذَا عَرَفْنَا مَنْ الْمُنَافِقُ؟ وَنَحْنُ لَا نَعْلَمُ الْغَيْبَ؟ وَلَا مَا فِي ضَمِيرِهِ فَهُوَ مُعْلِنٌ لَا مُسِرٌّ.

[38] **Qur'an references (L41089):** Qur'an 9:12 (At-Tawbah).

وَقَدْ يَكُونُ هَذَا الْحَدِيثُ أَيْضًا عَلَى وَجْهٍ آخَرَ - وَهُوَ أَنَّ النَّبِيَّ - عَلَيْهِ السَّلَامُ - قَدْ صَحَّ عَنْهُ أَنَّ خِصَالًا مَنْ كُنَّ فِيهِ كَانَ مُنَافِقًا خَالِصًا وَقَدْ ذَكَرْنَاهَا قَبْلُ.

L41094 This ḥadīth may also be interpreted another way: that it is authentically established from the Prophet (peace be upon him) that whoever possesses these traits becomes a pure hypocrite, as we have mentioned before.

وَلَيْسَ هَذَا نِفَاقُ الْكُفْرِ، لَكِنَّهُ مُنَافِقٌ لِإِظْهَارِهِ خِلَافَ مَا يُضْمِرُهُ فِي هَذِهِ الْخِلَالِ الْمَذْكُورَةِ فِي كَذِبِهِ، وَغَدْرِهِ، وَفُجُورِهِ، وَإِخْلَافِهِ، وَخِيَانَتِهِ - وَمَنْ هَذِهِ صِفَاتُهُ فَلَا يَجُوزُ أَنْ يُسَمَّى سَيِّدًا، وَمَنْ سَمَّاهُ سَيِّدًا فَقَدْ أَسْخَطَ اللَّهَ تَعَالَى بِإِخْبَارِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِذَلِكَ.

L41095 This is not the hypocrisy of disbelief, but he is a hypocrite for outwardly displaying the opposite of what he conceals in these mentioned traits: his lying, betrayal, immorality, breaking promises, and treachery. Whoever possesses these attributes must not be called a master, and whoever calls him a master has angered God Almighty by the report of the Messenger of God (may God bless him and his family and grant him peace) concerning that.

وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ - فَإِنَّ الْقَائِلَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَعْدِلْ، وَلَا أَرَادَ وَجْهَ اللَّهِ تَعَالَى فِيمَا عَمِلَ فَهُوَ كَافِرٌ مُعْلِنٌ بِلَا شَكٍّ.

L41096 As for the ḥadīth of Ibn Masʿūd: indeed, whoever claims that the Messenger of Allah (may Allah bless him and his family and grant him peace) neither acted justly nor sought the Face of Allah the Exalted in his actions is, without doubt, an avowed disbeliever.

وَكَذَلِكَ الْقَائِلُ فِي حَدِيثِ جَابِرٍ إِذْ اسْتَأْذَنَ عُمَرُ فِي قَتْلِهِ إِذْ قَالَ: اعْدِلْ يَا رَسُولَ اللَّهِ؟ فَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عُمَرَ عَنْ ذَلِكَ، وَأَخْبَرَ بِأَنَّهُ لَا يَقْتُلُ أَصْحَابَهُ.

L41097 Similarly, the one who spoke in Jabir's narration when ʿUmar sought permission to kill him when he said, "Be just, O Messenger of Allah?" Thereupon, the Messenger of Allah—peace and blessings be upon him and his family—forbade ʿUmar from that and informed him that he does not kill his companions.

وَكَذَلِكَ أَيْضًا اسْتِئْذَانُ عُمَرَ فِي قَتْلِ عَبْدِ اللَّهِ بْنِ أُبَيٍّ أَنَّ هَؤُلَاءِ صَارُوا بِإِظْهَارِهِمْ الْإِسْلَامَ بَعْدَ أَنْ قَالُوا مَا قَالُوا: حُرِّمَتْ دِمَاؤُهُمْ وَصَارُوا بِذَلِكَ جُمْلَةَ أَصْحَابِهِ - عَلَيْهِ السَّلَامُ -.

L41098–41099 Similarly, Umar's request for permission to kill ʿAbdullāh ibn Ubayy demonstrates that these individuals – after uttering their statements – had their blood rendered inviolable through their outward profession of Islam, thereby joining the collective body of the Prophet's Companions (peace be upon him).

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا مَا احْتَجَّ بِهِ مَنْ رَأَى أَنَّ الْمُرْتَدَّ لَا يُقْتَلُ أَصْلًا، لِأَنَّ هَؤُلَاءِ مُرْتَدُّونَ بِلَا شَكٍّ، وَلَمْ يَقْتُلْهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَقَدْ قَتَلَ أَصْحَابُهُ الْفُضَلَاءَ، كَمَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ، إذْ وَجَبَ الْقَتْلُ عَلَيْهِمْ، وَلَوْ كَانَ الْقَتْلُ عَلَى هَؤُلَاءِ الْمُرْتَدِّينَ لَمَا ضَيَّعَ ذَلِكَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ

L41100 Abu Muhammad said: This is the argument of those who hold that the apostate should not be killed at all, for these individuals were undoubtedly apostates, yet the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not kill them, though his noble companions executed individuals such as Ma'iz, Al-Ghamidiyyah, and Al-Juhayniyyah when the death penalty was mandated for them. If killing were obligatory for these apostates, how could he have overlooked that at all? Abu Muhammad said: We respond—and success lies with Allah, the Exalted—that there is no

disagreement among the Ummah that it is impermissible for a Muslim to label a disbeliever who openly claims to be a companion of the Messenger of Allah—peace and blessings of Allah be upon him and his family—nor to affirm that he is one of the Prophet's companions—peace be upon him. For the Prophet—peace be upon him—praised his companions.

لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يُسَمِّيَ كَافِرًا مُعْلِنًا بِأَنَّهُ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا أَنَّهُ مِنْ أَصْحَابِ النَّبِيِّ - عَلَيْهِ السَّلَامُ -، وَهُوَ - عَلَيْهِ السَّلَامُ - قَدْ أَثْنَى عَلَى أَصْحَابِهِ.

L41101 It has been confirmed that they outwardly professed Islam, thereby rendering their blood inviolable according to the apparent ruling, while their inner state—whether truthful or deceitful—is known only to God Almighty. If they were truthful in their repentance, they are truly his companions in the eyes of people based on their outward [profession], and in the sight of God Almighty—both inwardly and outwardly. These are the ones about whom the Messenger of God—peace and blessings be upon him and his family—said: "If any of us were to spend gold equal to Mount Uḥud, it would not equal half a mudd of one of theirs." But if they were lying, they are outwardly Muslims, while in the sight of God Almighty, they are disbelievers.

فَصَحَّ أَنَّهُمْ أَظْهَرُوا الْإِسْلَامَ، فَحُرِّمَتْ بِذَلِكَ دِمَاؤُهُمْ فِي ظَاهِرِ الْأَمْرِ، وَبَاطِنُهُمْ إلَى اللَّهِ تَعَالَى فِي صِدْقٍ أَوْ كَذِبٍ، فَإِنْ كَانُوا صَادِقِينَ فِي تَوْبَتِهِمْ فَهُمْ أَصْحَابُهُ حَقًّا عِنْدَ النَّاسِ ظَاهِرُهُمْ، وَعِنْدَ اللَّهِ تَعَالَى بَاطِنُهُمْ وَظَاهِرُهُمْ، فَهُمْ الَّذِينَ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُمْ لَوْ أَنْفَقَ أَحَدُنَا مِثْلَ أُحُدٍ ذَهَبًا مَا بَلَغَ نَصِيفَ مُدِّ أَحَدِهِمْ، وَإِنْ كَانُوا كَاذِبِينَ، فَهُمْ فِي الظَّاهِرِ مُسْلِمُونَ، وَعِنْدَ اللَّهِ تَعَالَى كُفَّارٌ.

L41102 The same applies to the statement regarding the narration of Abu Sa'id which we have mentioned, when Khalid sought his permission to kill a man, and the Prophet (peace be upon him) said: "No, perhaps he is praying." The Prophet's prohibition to Khalid against killing him has been authentically established. If killing him had been permissible, the Messenger of Allah (peace and blessings be upon him and his family) would not have prohibited him from that. The Messenger of Allah (peace and blessings be upon him and his family) informed him of the reason preventing his killing - which is that he might be praying. Khalid said to him: "Many a worshipper utters with his tongue what is not in his heart." He (peace be upon him) informed him: "I was not sent to pry into people's hearts; I judge by what is apparent." He (peace be upon him) informed us that he does not know what lies in their hearts, and that their outward conduct fundamentally prevents their being killed.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ أَبِي سَعِيدٍ الَّذِي قَدْ ذَكَرْنَاهُ إذْ اسْتَأْذَنَهُ خَالِدٌ فِي قَتْلِ الرَّجُلِ فَقَالَ: لَا، لَعَلَّهُ أَنْ يَكُونَ يُصَلِّي، فَقَدْ صَحَّ نَهْيُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لِخَالِدٍ عَنْ قَتْلِهِ، وَلَوْ حَلَّ قَتْلُهُ لَمَا نَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ، وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالسَّبَبِ الْمَانِعِ مِنْ قَتْلِهِ - وَهُوَ أَنَّهُ لَعَلَّهُ يُصَلِّي - فَقَالَ لَهُ خَالِدٌ: رُبَّ مُصَلٍّ يَقُولُ بِلِسَانِهِ مَا لَيْسَ فِي قَلْبِهِ، فَأَخْبَرَهُ: أَنَّهُ لَمْ يُبْعَثْ لِيَشُقَّ عَنْ قُلُوبِ النَّاسِ فَإِنَّمَا عَلَيْهِ الظَّاهِرُ - وَأَخْبَرَنَا - عَلَيْهِ السَّلَامُ - أَنَّهُ لَا يَدْرِي مَا فِي قُلُوبِهِمْ، وَأَنَّ ظَاهِرَهُمْ مَانِعٌ مِنْ قَتْلِهِمْ أَصْلًا.

L41103–41105 This report has come through an unsound chain, and in it, it is mentioned that he—peace and blessings be upon him—commanded Abū Bakr and 'Umar to kill him. One found him bowing, and the other found him prostrating, so the two left the man. Then he commanded 'Alī to kill him, so he went

وَقَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقٍ لَا تَصِحُّ، وَفِيهِ: «أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَ أَبَا بَكْرٍ، وَعُمَرَ، بِقَتْلِهِ، فَوَجَدَهُ يَرْكَعُ، وَوَجَدَهُ الْآخَرُ يَسْجُدُ فَتَرَكَاهُ، وَأَمَرَ عَلِيًّا بِقَتْلِهِ فَمَضَى فَلَمْ

but did not... He would find him, and that he—peace be upon him—said: "If he were killed, not even two of my community would disagree." This is baseless, and there is no justification for concerning oneself with it.

L41106 As for the narration of ʻAmmār, "There are twelve hypocrites in my nation," it does not state that the Messenger of Allah—peace and blessings be upon him and his family—knew them by their persons. Rather, it is a report describing their number alone, with no clarification in it that they were identified by their names. Therefore, reliance upon this narration is invalid—and success is from Allah, the Exalted.

L41107 As for the ḥadīth of Ibn Masʿūd, it is not authentic, for we have narrated it via the chain of Qāsim ibn Aṣbagh: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us, Abū Nuʿaym narrated to us, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from a man, from his father, from Ibn Masʿūd, and he mentioned this ḥadīth.

L41108 Sufyan said concerning this man whose father's name was not mentioned: I think he is Iyad ibn Iyad, for Abu Nuʻaym reported from Sufyan that the man is considered of uncertain reliability.

L41109 Then, even if their claim were valid, they would have no argument in it, for they have been exposed and their affair has become public. Thus, they are not hypocrites but rather openly professing. Therefore, there must inevitably be one of two options - with no third option for them: either they have repented, thereby sparing their blood through that repentance, or they have not repented, which pertains to the view of those who do not advocate for the killing of apostates in accordance with what we previously explained.

L41110 As for the ḥadīth of Abū Saʿīd, it merely indicates that they are not safe from the punishment, and this is beyond doubt. It does not contain any indication that the Messenger of Allāh—may Allāh bless him and his family and grant him peace—knew their disbelief.

L41111 As for the narration of Hudhayfah, it is invalid because it is transmitted through al-Walid ibn Jumayʿ—who is an abandoned narrator—and we do not consider him to have knowledge of who fabricated the hadith. He narrated

يَجِدْهُ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: لَوْ قُتِلَ لَمْ يَخْتَلِفْ مِنْ أُمَّتِي اثْنَانِ» وَهَذَا لَا يَصِحُّ أَصْلًا، وَلَا وَجْهَ لِلِاشْتِغَالِ بِهِ.

وَأَمَّا حَدِيثُ عَمَّارٍ «فِي أُمَّتِي اثْنَا عَشَرَ مُنَافِقًا» فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَهُمْ بِأَعْيَانِهِمْ وَهُوَ إِخْبَارٌ بِصِفَةٍ عَنْ عَدَدٍ فَقَطْ لَيْسَ فِيهِمْ بَيَانُ أَنَّهُمْ عُرِفُوا بِأَسْمَائِهِمْ فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا حَدِيثُ ابْنِ مَسْعُودٍ فَإِنَّهُ لَا يَصِحُّ فَإِنَّنَا قَدْ رُوِّينَاهُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ رَجُلٍ عَنْ أَبِيهِ عَنْ ابْنِ مَسْعُودٍ، فَذَكَرَ هَذَا الْحَدِيثَ.

وَقَالَ سُفْيَانُ عَنْ هَذَا الرَّجُلِ الَّذِي لَمْ يُسَمِّ عَنْ أَبِيهِ: أَرَاهُ عِيَاضُ بْنُ عِيَاضٍ، فَقَدْ أَخْبَرَ أَبُو نُعَيْمٍ عَنْ سُفْيَانَ: أَنَّهُ مَشْكُوكٌ فِيهِ.

ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُمْ قَدْ انْكَشَفُوا وَاشْتَهَرَ أَمْرُهُمْ، فَلَيْسُوا مُنَافِقِينَ، بَلْ هُمْ مُجَاهِرُونَ فَلَا بُدَّ مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونُوا تَابُوا فَحُقِنَتْ دِمَاؤُهُمْ بِذَلِكَ، وَإِمَّا أَنَّهُمْ لَمْ يَتُوبُوا فَهُوَ مِمَّا تَعَلَّقَ بِهِ مَنْ لَا يَرَى قَتْلَ الْمُرْتَدِّ عَلَى مَا ذَكَرْنَا.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ فَإِنَّمَا فِيهِ أَنَّهُمْ لَيْسُوا مَأْمُونِينَ مِنْ الْعَذَابِ وَهَذَا مَا لَا شَكَّ فِيهِ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَ كُفْرَهُمْ.

reports alleging that Abu Bakr, ʿUmar, ʿUthman, Talḥah, and Saʿd ibn Abi Waqqas—may Allah be pleased with them—intended to kill the Prophet—peace and blessings of Allah be upon him and his family—and throw him from the cliff in Tabuk. This is the fabricated falsehood whose inventor Allah the Exalted condemns. Thus, reliance on it is invalidated, and all praise is due to Allah, Lord of the worlds.

وَأَمَّا حَدِيثُ حُذَيْفَةَ فَسَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ الْوَلِيدِ بْنِ جُمَيْعٍ - وَهُوَ هَالِكٌ - وَلَا نَرَاهُ يَعْلَمُ مَنْ وَضَعَ الْحَدِيثَ فَإِنَّهُ قَدْ رَوَى أَخْبَارًا فِيهَا أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَطَلْحَةَ، وَسَعْدَ بْنَ أَبِي وَقَّاصٍ - رَضِيَ اللَّهُ عَنْهُمْ - أَرَادُوا قَتْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِلْقَاءَهُ مِنْ الْعَقَبَةِ فِي تَبُوكَ - وَهَذَا هُوَ الْكَذِبُ الْمَوْضُوعُ الَّذِي يَطْعَنُ اللَّهُ تَعَالَى وَاضِعَهُ - فَسَقَطَ التَّعَلُّقُ بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L41112–41114 As for the ḥadīth of Jābir, its narrator is Abū Sufyān Ṭalḥah ibn Nāfiʿ—who is weak. Moreover, even if it were authentic, it would not constitute proof, for there is nothing in it except the gusting of the wind upon the death of a great one among the prominent hypocrites. This merely indicates the exposure of his affair after his death, so it did not at all establish certainty that the Messenger of Allah—peace and blessings of Allah be upon him—knew of his hypocrisy during his lifetime. Therefore, it is impermissible to assert definitive judgments based on conjecture regarding the Messenger of Allah—peace and blessings of Allah be upon him and his family. As for The mawqūf narration attributed to Ḥudhayfah is not authentic. Even if it were authentic, it would undoubtedly align with what we have clarified - that their hypocrisy was established and they sought refuge in repentance. Neither Ḥudhayfah nor anyone else asserted certainty about their inward state, so he refrained from praying over them out of pious restraint.

وَأَمَّا حَدِيثُ جَابِرٍ فَرَاوِيه أَبُو سُفْيَانَ طَلْحَةُ بْنُ نَافِعٍ وَهُوَ ضَعِيفٌ، ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ إلَّا هُبُوبُ الرِّيحِ لِمَوْتِ عَظِيمٍ مِنْ عُظَمَاءِ الْمُنَافِقِينَ، فَإِنَّمَا فِي هَذَا انْكِشَافُ أَمْرِهِ بَعْدَ مَوْتِهِ فَلَمْ يُوقِنْ قَطُّ، بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ نِفَاقَهُ فِي حَيَاتِهِ، فَلَا يَجُوزُ أَنْ يَقْطَعَ بِالظَّنِّ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمَّا الْمَوْقُوفَةُ عَلَى حُذَيْفَةَ - فَلَا تَصِحُّ وَلَوْ صَحَّتْ لَكَانَتْ بِلَا شَكٍّ عَلَى مَا بَيَّنَّا مِنْ أَنَّهُمْ صَحَّ نِفَاقُهُمْ وَعَاذُوا بِالتَّوْبَةِ، وَلَمْ يَقْطَعْ حُذَيْفَةُ وَلَا غَيْرُهُ عَلَى بَاطِنِ أَمْرِهِمْ، فَتَوَرَّعَ عَنْ الصَّلَاةِ عَلَيْهِمْ.

L41115 In some narrations, it is mentioned that ʿUmar asked him: “Am I among them?” He replied: “No, and I will not inform anyone else after your time.” This is false, as you see, because it constitutes pure falsehood to claim that ʿUmar doubted his own convictions to the extent of not knowing whether he was a hypocrite or not. Likewise, no two Muslims have ever disagreed that there were no hypocrites among the Emigrants before the conquest of Mecca, for hypocrisy existed solely among people of the Aws and Khazraj tribes. Thus, the falsehood of this report became evident.

وَفِي بَعْضِهَا أَنَّ عُمَرَ سَأَلَهُ: أَنَا مِنْهُمْ؟ فَقَالَ لَهُ: لَا، وَلَا أُخْبِرُ أَحَدًا غَيْرَك بَعْدَك - وَهَذَا بَاطِلٌ كَمَا تَرَى، لِأَنَّ مِنْ الْكَذِبِ الْمَحْضِ أَنْ يَكُونَ عُمَرُ يَشُكُّ فِي مُعْتَقَدِ نَفْسِهِ حَتَّى لَا يَدْرِي أَمُنَافِقٌ هُوَ أَمْ لَا؟ وَكَذَلِكَ أَيْضًا لَمْ يَخْتَلِفْ اثْنَانِ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ جَمِيعَ الْمُهَاجِرِينَ قَبْلَ فَتْحِ مَكَّةَ لَمْ يَكُنْ فِيهِمْ مُنَافِقٌ، إنَّمَا كَانَ النِّفَاقُ فِي قَوْمٍ مِنْ الْأَوْسِ وَالْخَزْرَجِ فَقَطْ - فَظَهَرَ بُطْلَانُ هَذَا الْخَبَرِ.

L41116 As for the ḥadīth of Maḥmūd ibn Labīd, it is disconnected. Nevertheless, it only states that they used to recognize the hypocrites among them. Given this

context, this is not hypocrisy but rather well-known disbelief and manifest apostasy—this constitutes proof for those who maintain that an apostate should not be killed.

وَأَمَّا حَدِيثُ مَحْمُودِ بْنِ لَبِيدٍ فَمُنْقَطِعٌ، وَمَعَ هَذَا فَإِنَّمَا فِيهِ: أَنَّهُمْ كَانُوا يَعْرِفُونَ الْمُنَافِقِينَ مِنْهُمْ، وَإِذْ الْأَمْرُ كَذَلِكَ فَلَيْسَ هَذَا نِفَاقًا بَلْ هُوَ كُفْرٌ مَشْهُورٌ، وَرِدَّةٌ ظَاهِرَةٌ - هَذَا حُجَّةٌ لِمَنْ رَأَى أَنَّهُ لَا يُقْتَلُ الْمُرْتَدُّ.

L41117 As for the narration of Hudhayfah, "None remained of the companions of this verse except three," it is authentic, but there is no proof in it for them, because the explicit text of the verse commands that they be fought until they desist. Thus, we know with certainty that if they had not desisted, the fighting against them would not have been abandoned, as Allah, the Exalted, commanded.

وَأَمَّا حَدِيثُ حُذَيْفَةَ " لَمْ يَبْقَ مِنْ أَصْحَابِ هَذِهِ الْآيَةِ إلَّا ثَلَاثَةٌ " فَصَحِيحٌ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ فِي نَصِّ الْآيَةِ أَنْ يُقَاتِلُوا حَتَّى يَنْتَهُوا، فَبِيَقِينٍ نَدْرِي أَنَّهُمْ لَوْ لَمْ يَنْتَهُوا لَمَا تُرِكَ قِتَالُهُمْ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L41118 Similarly, his statement "that none of the hypocrites remained except four" - there is no doubt among any of the people that those four were outwardly professing Islam, and that none knows the unseen of hearts except Allah Almighty. Thus, they were among those who displayed repentance with certain conviction, then Allah Almighty knows best what was in their souls. Abu Muhammad said: This clarifies what we have narrated through Al-Bukhari's chain: 'Umar ibn Hafs ibn Ghiyath narrated to us from his father from Al-A'mash from Ibrāhīm An-Nakha'ī from Al-Aswad, who said: We were in the gathering of 'Abdullāh ibn Mas'ūd when Ḥudhayfah came and stood before us, greeted us, then said: "Hypocrisy was indeed revealed upon people better than you." Al-Aswad said: "Glory be to Allah! Allah Almighty says: {Indeed, the hypocrites will be in the lowest depth of the Fire} [4:145]." 'Abdullāh ibn Mas'ūd smiled, and Ḥudhayfah sat in a corner of the mosque. Then 'Abdullāh stood, causing the companions to disperse. Ḥudhayfah threw pebbles at me, so I approached him. He said: "I marveled at his laughter when he knew what I meant: 'Allah revealed hypocrisy upon people who were better than you, then they repented, and Allah accepted their repentance.'"[39]

وَكَذَلِكَ أَيْضًا قَوْلُهُ " أَنَّهُ لَمْ يَبْقَ مِنْ الْمُنَافِقِينَ إلَّا أَرْبَعَةٌ " فَلَا شَكَّ عِنْدَ أَحَدٍ مِنْ النَّاسِ أَنَّ أُولَئِكَ الْأَرْبَعَةَ كَانُوا يُظْهِرُونَ الْإِسْلَامَ، وَأَنَّهُ لَا يَعْلَمُ غَيْبَ الْقُلُوبِ إلَّا اللَّهُ تَعَالَى، فَهُمْ مِمَّنْ أَظْهَرَ التَّوْبَةَ بِيَقِينٍ لَا شَكَّ فِيهِ، ثُمَّ اللَّهُ تَعَالَى أَعْلَمُ بِمَا فِي نُفُوسِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: وَيُبَيِّنُ هَذَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نِي إبْرَاهِيمُ النَّخَعِيُّ عَنْ الْأَسْوَدِ قَالَ: كُنَّا فِي حَلْقَةِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَجَاءَ حُذَيْفَةُ حَتَّى قَامَ عَلَيْنَا فَسَلَّمَ، ثُمَّ قَالَ: لَقَدْ أُنْزِلَ النِّفَاقُ عَلَى قَوْمٍ خَيْرٍ مِنْكُمْ، قَالَ الْأَسْوَدُ: سُبْحَانَ اللَّهِ، إنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الأَسْفَلِ مِنَ النَّارِ} [النساء: ١٤٥] فَتَبَسَّمَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ، وَجَلَسَ حُذَيْفَةُ فِي نَاحِيَةِ الْمَسْجِدِ، فَقَامَ عَبْدُ اللَّهِ فَتَفَرَّقَ الصَّحَابَةُ، فَرَمَانِي حُذَيْفَةُ بِالْحَصَى فَأَتَيْته، فَقَالَ حُذَيْفَةُ: عَجِبْت مِنْ ضَحِكِهِ وَقَدْ عَلِمَ مَا قُلْت " لَقَدْ أَنْزَلَ اللَّهُ النِّفَاقَ عَلَى قَوْمٍ كَانُوا خَيْرًا مِنْكُمْ ثُمَّ تَابُوا فَتَابَ اللَّهُ عَلَيْهِمْ.

L41119–41120 We have been narrated through the chain of Al-Bukhārī: Ādam ibn Abī

[39] **Qur'an references (L41118):** Qur'an 4:145 (An-Nisa).

Iyās narrated to us, from Shu'bah, from Wāṣil al-Aḥdab, from Abū Wā'il Shaqīq ibn Salamah, from Ḥudhayfah ibn al-Yamān, who said: "Indeed the hypocrites today are worse than those during the era of Allah's Messenger (peace and blessings be upon him). They used to conceal [it] then, but today they openly proclaim it."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم بْنُ أَبِي إيَاسٍ نا شُعْبَةُ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ أَبِي وَائِلٍ شَقِيقِ بْنِ سَلَمَةَ عَنْ حُذَيْفَةَ بْنِ الْيَمَانِ قَالَ: إنَّ الْمُنَافِقِينَ الْيَوْمَ شَرٌّ مِنْهُمْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا حِينَئِذٍ يُسِرُّونَ وَالْيَوْمَ يَجْهَرُونَ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَانِ أَثَرَانِ فِي غَايَةِ الصِّحَّةِ، فِي أَحَدِهِمَا بَيَانٌ أَنَّ الْمُنَافِقِينَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانُوا يُسِرُّونَ، وَفِي الثَّانِي أَنَّهُمْ تَابُوا - فَبَطَلَ تَعَلُّقُ مَنْ تَعَلَّقَ بِكُلِّ آيَةٍ وَكُلِّ خَبَرٍ وَرَدَ فِي الْمُنَافِقِينَ.

Abū Muḥammad said: These are two reports of utmost authenticity. The first clarifies that the hypocrites during the era of Allah's Messenger (peace and blessings be upon him) used to conceal, while the second indicates that they repented. Thus, the argument of those who clung to every verse and every report concerning hypocrites becomes invalid.

L41121 It has been established that they are two divisions: either a division whose inner reality is not known—in which case no ruling is made upon such a person in the Hereafter—or a division whose inner reality is known and exposed, so he sought refuge in repentance.

وَصَحَّ أَنَّهُمْ قِسْمَانِ: إمَّا قِسْمٌ لَمْ يُعْلَمْ بَاطِنُ أَمْرِهِ، فَهَذَا لَا حُكْمَ لَهُ فِي الْآخِرَةِ، وَقِسْمٌ عُلِمَ بَاطِنُ أَمْرِهِ وَانْكَشَفَ فَعَاذَ بِالتَّوْبَةِ.

L41122 They said: "Indeed, the one who accused the Messenger of Allah—peace be upon him—of injustice by claiming he did not act equitably and did not intend his distribution for Allah's sake is an apostate beyond doubt—a manifest case. None of the reports mention his repentance from this or his execution; rather, they mention the prohibition against killing him." We replied: "This is true, as you state. However, the response lies in the fact that Allah—Exalted be He—had not yet commanded the killing of apostates at that time. For this reason, the Messenger of Allah—peace be upon him—did not kill him and prohibited his execution. Later, Allah commanded him to kill whoever apostatized from his religion, and thus the prohibition on killing them was abrogated."

قَالُوا: إنَّ الَّذِي جَوَّرَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: إنَّهُ لَمْ يَعْدِلْ، وَلَا أَرَادَ بِقِسْمَتِهِ وَجْهَ اللَّهِ مُرْتَدٌّ لَا شَكَّ فِيهِ، مُنْكَشِفُ الْأَمْرِ، وَلَيْسَ فِي شَيْءٍ مِنْ الْأَخْبَارِ أَنَّهُ تَابَ مِنْ ذَلِكَ، وَلَا أَنَّهُ قُتِلَ، بَلْ فِيهَا النَّهْيُ عَنْ قَتْلِهِ؟ قُلْنَا: أَمَّا هَذَا فَحَقٌّ، كَمَا قُلْتُمْ، لَكِنَّ الْجَوَابَ فِي هَذَا أَنَّ اللَّهَ - تَعَالَى - لَمْ يَكُنْ أَمَرَ بَعْدُ بِقَتْلِ مَنْ ارْتَدَّ، فَلِذَلِكَ لَمْ يَقْتُلْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِذَلِكَ نَهَى عَنْ قَتْلِهِ، ثُمَّ أَمَرَهُ اللَّهُ تَعَالَى بَعْدَ ذَلِكَ بِقَتْلِ مَنْ ارْتَدَّ عَنْ دِينِهِ فَنُسِخَ تَحْرِيمُ قَتْلِهِمْ.

L41123 The evidence for that is what we have narrated through the chain in Sahih Muslim: Hannad ibn al-Sari reported to us, Abu al-Ahwas reported to us from Sa'id ibn Masruq from 'Abd al-Rahman ibn Abi Nu'aym from Abu Sa'id al-Khudri, who said: "Ali—while he was in Yemen—sent a piece of gold in its raw form to the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him) divided it among four men: al-Aqra' ibn Habis al-Hanzali, 'Uyaynah ibn Badr al-Fazari, 'Alqamah ibn 'Ulathah al-'Amiri, and

بُرْهَانُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ السَّرِيِّ نا أَبُو الْأَحْوَصِ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعَيْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «بَعَثَ عَلِيٌّ - وَهُوَ بِالْيَمَنِ - بِذُهَيْبَةٍ فِي تُرْبَتِهَا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَسَمَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَرْبَعَةِ نَفَرٍ: الْأَقْرَعِ بْنِ حَابِسٍ الْحَنْظَلِيِّ، وَعُيَيْنَةَ

Zayd al-Khayr al-Ta'i, one of the Banu Nabhan." He mentioned the hadith, and in it: "Then a man with a thick beard, high cheekbones, sunken eyes, a protruding forehead, and a shaved head came and said: 'Fear Allah, O Muhammad!' The Messenger of Allah (peace be upon him) replied: 'Who would obey Allah if I disobeyed Him? Do you trust me with the people of the earth but not yourselves?' A man sought permission to kill him—they thought it was Khalid ibn al-Walid—but the Messenger of Allah (peace be upon him) said: 'From the progeny of this man will emerge a people who recite the Quran, yet it will not pass beyond their throats. They will kill the people of Islam and call to the worship of idols. They will exit Islam as swiftly as an arrow pierces its target. If I live to confront them, I will surely annihilate them as thoroughly as the annihilation of 'Ad.'"[40]

بْنِ بَدْرٍ الْفَزَارِيِّ، وَعَلْقَمَةَ بْنِ عُلاَثَةَ الْعَامِرِيِّ، وَزَيْدِ الْخَيْرِ الطَّائِيِّ أَحَدِ بَنِي نَبْهَانَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: فَجَاءَ رَجُلٌ كَثُّ اللِّحْيَةِ مُشْرِفُ الْوَجْنَتَيْنِ غَائِرُ الْعَيْنَيْنِ نَاتِئُ الْجَبِينِ مَحْلُوقُ الرَّأْسِ فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ يُطِعِ اللَّهَ إِنْ عَصَيْتُهُ؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ، وَلَا تَأْمَنُونِي، فَاسْتَأْذَنَ رَجُلٌ فِي قَتْلِهِ - يَرَوْنَ أَنَّهُ خَالِدُ بْنُ الْوَلِيدِ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ مِنْ ضِئْضِئِ هَذَا قَوْمًا يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ يَقْتُلُونَ أَهْلَ الْإِسْلَامِ وَيَدَعُونَ أَهْلَ الْأَوْثَانِ يَمْرُقُونَ مِنَ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» .

L41124–41125 Hisham ibn Sa'id narrated to us: from Abd al-Jabbar ibn Ahmad: al-Hasan ibn al-Husayn al-Bujayrami narrated to us: Ja'far ibn Muhammad narrated to us: Yunus ibn Habib narrated to us: Abu Dawud al-Tayalisi narrated to us: Sallam ibn Sulayman—he is Abu al-Ahwas—from Sa'id ibn Masruq, from Abd al-Rahman ibn Abi Nu'aym, from Abu Sa'id al-Khudri: "Ali sent a piece of gold in its soil to the Prophet—peace be upon him. The Prophet—peace be upon him and his family—divided it among four men: Uyaynah ibn Hisn ibn Badr al-Fazari, Alqamah ibn Ulathah al-Kilabi, al-Aqra ibn Habis al-Tamimi, and Zayd al-Khayr al-Ta'i. The Quraysh and the Ansar grew angry, saying, 'He gives to the chieftains of Najd and disregards us?' The Messenger of Allah—peace be upon him and his family—responded, 'I gave to them only to reconcile their hearts.' A man with deep-set eyes, shaven head, raised cheekbones, and a projecting forehead stood up and said, 'Fear Allah, O Muhammad!' The Messenger of Allah—peace be upon him and his family—retorted, 'Who would obey Allah if I disobeyed Him? Does He entrust me with the people of the earth while you distrust me?' Umar sought permission to kill him, but the Prophet forbade it. Then the Messenger of Allah—peace be upon him and his family—declared, 'From the loins of this

حَدَّثَنَا هِشَامُ بْنُ سَعِيدٍ أَنَا عَبْدُ الْجَبَّارِ بْنُ أَحْمَدَ نا الْحَسَنُ بْنُ الْحُسَيْنِ الْبُجَيْرَمِيُّ نا جَعْفَرُ بْنُ مُحَمَّدٍ نا يُونُسُ بْنُ حَبِيبٍ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا سَلَّامُ بْنُ سُلَيْمَانَ - هُوَ أَبُو الْأَحْوَصِ - عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعَيْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ عَلِيًّا بَعَثَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذُهَيْبَةٍ فِي تُرْبَتِهَا فَقَسَمَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَ أَرْبَعَةِ نَفَرٍ، بَيْنَ: عُيَيْنَةَ بْنِ حِصْنِ بْنِ بَدْرٍ الْفَزَارِيِّ، وَعَلْقَمَةَ بْنِ عُلاَثَةَ الْكِلاَبِيِّ وَالْأَقْرَعِ بْنِ حَابِسٍ التَّمِيمِيِّ، وَزَيْدِ الْخَيْرِ الطَّائِيِّ، فَغَضِبَتْ قُرَيْشٌ وَالْأَنْصَارُ، وَقَالُوا: يُعْطِي صَنَادِيدَ أَهْلِ نَجْدٍ وَيَدَعُنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: إِنَّمَا أَعْطَيْتُهُمْ أَتَأَلَّفُهُمْ، فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ، مَحْلُوقُ الرَّأْسِ مُشْرِفُ الْوَجْنَتَيْنِ، نَاتِئُ الْجَبِينِ، فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَمَنْ يُطِيعُ اللَّهَ إِنْ عَصَيْتُهُ أَنَا؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ وَلَا تَأْمَنُونِي؟ فَاسْتَأْذَنَ عُمَرُ فِي قَتْلِهِ، فَأَبَى، ثُمَّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَخْرُجُ مِنْ ضِئْضِئِ

[40] **Hadith references (L41123):** Sahih Muslim 1064a; Sunan an-Nasai 2578.

man will emerge a people who recite the Quran without it passing beyond their throats. They will abandon Islam as an arrow pierces through its target, killing the Muslims and summoning the idol-worshippers. By Allah, if I live to meet them, I will annihilate them as the tribe of ‘Ad was annihilated.”’

هَذَا قَوْمٌ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَمْرُقُونَ مِنْ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، يَقْتُلُونَ أَهْلَ الْإِسْلَامِ، وَيَدْعُونَ أَهْلَ الْأَوْثَانِ، وَاَللَّهِ لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» .

L41126 Abu Muhammad said: Thus, it has been confirmed, as you see, through the established chain of narration: Umar ibn al-Khattab and Khalid ibn al-Walid sought permission from the Messenger of Allah—peace be upon him—to kill this apostate, but he did not grant them permission. He—peace be upon him—immediately declared that a group would emerge from his progeny whom, if the Prophet encountered them, he would kill, for they would slip out of Islam as an arrow pierces through its target. Thus he had apostatized, and whoever apostatizes after having embraced Islam, their re-entry into it becomes as impossible as an arrow re-entering the target after passing through it—thereby he has apostatized.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ كَمَا تَرَى الْإِسْنَادُ الثَّابِتُ: أَنَّ هَذَا الْمُرْتَدَّ اسْتَأْذَنَ عُمَرُ بْنُ الْخَطَّابِ، وَخَالِدُ بْنُ الْوَلِيدِ فِي قَتْلِهِ فَلَمْ يَأْذَنْ لَهُمَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ، وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - فِي فَوْرِهِ ذَلِكَ: أَنَّهُ سَيَأْتِي مِنْ ضِئْضِئِهِ عِصَابَةٌ إنْ أَدْرَكَهُمْ قَتَلَهُمْ، وَأَنَّهُمْ يَمْرُقُونَ مِنْ الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، فَقَدْ خَرَجَ عَنْهُ، وَمَنْ خَرَجَ عَنْهُ بَعْدَ كَوْنِهِ فَدُخُولُهُ كَدُخُولِ السَّهْمِ فِي الرَّمِيَّةِ، فَقَدْ ارْتَدَّ عَنْهُ.

L41127 The Prophet’s warning—peace be upon him—concerning the obligation to kill the apostate was validated, as he had learned from Allah the Exalted that He would command this at that time. Thus what we have said was established: that killing one who apostatized was forbidden. For this reason, he—peace be upon him—prohibited it and did not permit it, neither to ‘Umar nor to Khalid.

فَصَحَّ إنْذَارُ النَّبِيِّ - عَلَيْهِ السَّلَامُ - بِوُجُوبِ قَتْلِ الْمُرْتَدِّ، وَأَنَّهُ قَدْ عَلِمَ عَنْ اللَّهِ تَعَالَى أَنَّهُ سَيَأْمُرُ بِذَلِكَ الْوَقْتِ - فَثَبَتَ مَا قُلْنَاهُ مِنْ أَنَّ قَتْلَ مَنْ ارْتَدَّ كَانَ حَرَامًا - وَلِذَلِكَ نَهَى عَنْهُ - عَلَيْهِ السَّلَامُ - وَلَمْ يَأْذَنْ بِهِ لَا لِعُمَرَ، وَلَا لِخَالِدٍ.

L41128–41130 Then he - peace be upon him - vowed that his killing would become permissible and that slaying whoever apostatizes would become obligatory. Thus, the abrogation of that state was conclusively validated, and it was indeed abrogated through what we have narrated from Ibn Abbas, Ibn Mas’ud, Uthman, and Mu’adh from the Messenger of Allah - peace and blessings be upon him and his family. Abu Muhammad - may Allah have mercy on him - said: Therefore, since this claim that the apostate should not be killed has been invalidated, And it has been established that whoever says, “He has adhered to an abrogated text,” only the opinion of those who say he must be asked to repent remains, and we have mentioned it.

ثُمَّ إنَّهُ - عَلَيْهِ السَّلَامُ - نَذَرَ بِأَنَّهُ سَيُبَاحُ قَتْلُهُ، وَأَنَّهُ سَيَجِبُ قَتْلُ مَنْ يَرْتَدُّ فَصَحَّ يَقِينًا نَسْخُ ذَلِكَ الْحَالِ، وَقَدْ نُسِخَ ذَلِكَ بِمَا رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ مَسْعُودٍ، وَعُثْمَانَ، وَمُعَاذٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْمَقَالَةُ مِنْ أَنْ لَا يُقْتَلَ الْمُرْتَدُّ، وَصَحَّ أَنَّهُ مَنْ قَالَ: إنَّهُ تَعَلَّقَ بِمَنْسُوخٍ، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: يُسْتَتَابُ، وَقَدْ ذَكَرْنَاهُ.

L41131 The Legal Ruling on the Ḥadd for Zinā

[مَسْأَلَة حَدُّ الزِّنَى]

L41132 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted said, “And do not approach unlawful sexual intercourse. Indeed, it is a grave immorality” [Al-Isra 17:32]. And He the Exalted said, “And those who do not commit unlawful sexual intercourse” [Al-Furqan 25:68] the verse.[41]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَلا تَقْرَبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً} [الإسراء: ٣٢] وَقَالَ تَعَالَى {وَلا يَزْنُونَ} [الفرقان: ٦٨] الْآيَةَ.

L41133 The Exalted has forbidden adultery, deemed it one of the gravest sins, and threatened with the Fire for it.

حَرَّمَ تَعَالَى الزِّنَى وَجَعَلَهُ مِنْ الْكَبَائِرِ، تَوَعَّدَ فِيهِ بِالنَّارِ.

L41134 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbarī narrated to us: al-Bukhari narrated to us: Muhammad ibn al-Muthanna narrated to us: Ishaq ibn Yusuf narrated to us: al-Fadl ibn Ghazwan narrated from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace be upon him and his family—said: “A servant [of Allah] is not a faithful believer while committing adultery, nor while stealing, nor while drinking, nor while killing.”

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا إِسْحَاقُ بْنُ يُوسُفَ نا الْفَضْلُ بْنُ غَزْوَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزْنِي الْعَبْدُ حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ، وَلَا يَقْتُلُ حِينَ يَقْتُلُ وَهُوَ مُؤْمِنٌ» .

L41135 Ikrimah said: I asked Ibn Abbas, “How is faith withdrawn from him?” He replied, “Like this”—interlacing his fingers and then pulling them apart—“but if he repents, it returns to him like this”—and he interlaced his fingers again.

قَالَ عِكْرِمَةُ قُلْت لِابْنِ عَبَّاسٍ كَيْفَ يُنْتَزَعُ الْإِيمَانُ مِنْهُ قَالَ هَكَذَا - وَشَبَّكَ بَيْنَ أَصَابِعِهِ ثُمَّ أَخْرَجَهَا - فَإِنْ تَابَ عَادَ إلَيْهِ هَكَذَا، وَشَبَّكَ بَيْنَ أَصَابِعِهِ.

L41136 And through the chain of Al-Bukhārī: Ādam narrated to us, Shu‘bah narrated to us from Al-A‘mash from Dhakwān—he is Abū Ṣāliḥ—from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: “No adulterer commits adultery at the moment of sinning while he is a believer, no thief steals at the moment of theft while he is a believer, and no one drinks alcohol at the moment of drinking while he is a believer—yet repentance remains accessible.”[42]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ - عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ حِينَ يَشْرَبُ وَهُوَ مُؤْمِنٌ - وَالتَّوْبَةُ مَعْرُوضَةٌ» .

L41137 I am ʿAbdullāh ibn Rabīʿ al-Tamīmī. Muḥammad ibn Muʿāwiyah al-Marwānī narrated to us. I am Aḥmad ibn Shuʿayb. I am Isḥāq ibn Rāhawayh. Al-Walīd ibn Muslim narrated to us from al-Awzāʿī, who said: Saʿīd ibn al-Musayyab, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, and Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām all narrated to me from Abū Hurayrah,

أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَانِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أَنَا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْأَوْزَاعِيِّ قَالَ: ثني سَعِيدُ بْنُ الْمُسَيِّبِ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، كُلُّهُمْ حَدَّثُونِي عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا يَزْنِي الزَّانِي حِينَ يَزْنِي

[41] **Qur’an references (L41132):** Qur’an 17:32 (Al-Isra); Qur’an 25:68 (Al-Furqan).
[42] **Hadith references (L41136):** Sahih al-Bukhari 6782.

from the Prophet—peace and blessings of Allāh be upon him and his family—who said: "A fornicator does not fornicate while he is a believer at the moment he fornicates. A thief does not steal while he is a believer at the moment he steals. A drinker does not drink wine while he is a believer at the moment he drinks it. Nor does one seize a prized plunder—while the Muslims turn their eyes toward it—while he is a believer at the moment he seizes it."[43]

وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ، وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ، وَلَا يَنْتَهِبُ نُهْبَةً ذَاتَ شَرَفٍ فَيَرْفَعُ الْمُسْلِمُونَ إِلَيْهَا أَبْصَارَهُمْ حِينَ يَنْتَهِبُهَا وَهُوَ مُؤْمِنٌ» .

L41138–41139 Abu Muhammad—may Allah have mercy on him—said: Faith is all obedience. Any obedience through which a servant obeys his Lord constitutes faith, and by performing it, he is a believer. Any disobedience through which a servant disobeys his Lord does not constitute faith, and by committing it, he is not a believer. Faith and obedience are one. Thus, "he is not a believer" means "he is not obedient to Allah the Exalted." If negating faith here entailed affirming disbelief, it would necessitate executing the thief and those mentioned with him on charges of apostasy—but no one says this, nor did the Messenger of Allah—peace and blessings be upon him and his family—ever act accordingly.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْإِيمَانُ هُوَ جَمِيعُ الطَّاعَةِ، فَأَيُّ طَاعَةٍ أَطَاعَ الْعَبْدُ بِهَا رَبَّهُ فَهِيَ إِيمَانٌ وَهُوَ بِفِعْلِهِ إِيَّاهَا مُؤْمِنٌ، وَأَيُّ مَعْصِيَةٍ عَصَى بِهَا الْعَبْدُ رَبَّهُ فَلَيْسَتْ إِيمَانًا، فَهُوَ بِفِعْلِهِ إِيَّاهَا غَيْرُ مُؤْمِنٍ، وَالْإِيمَانُ وَالطَّاعَةُ شَيْءٌ وَاحِدٌ، فَمَعْنَى لَيْسَ مُؤْمِنًا: لَيْسَ مُطِيعًا لِلَّهِ تَعَالَى، وَلَوْ كَانَ نَفْيُ الْإِيمَانِ هَاهُنَا إِيجَابًا لِلْكُفْرِ لَوَجَبَ قَتْلُ السَّارِقِ وَمَنْ ذُكِرَ مَعَهُ عَلَى الرِّدَّةِ - هَذَا لَا يَقُولُهُ أَحَدٌ، وَلَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L41140 Hammam narrated to us from Abbas ibn Asbagh, who narrated from Muhammad ibn Abd al-Malik ibn Ayman, who narrated from Muhammad ibn Isma'il al-Tirmidhi, who narrated from al-Humaydi, who narrated from Sufyan ibn Uyaynah, from al-A'mash, from Abdullah ibn Murrah, from Masruq, from Abdullah ibn Mas'ud, that the Messenger of Allah - peace and blessings be upon him and his family - said: "It is impermissible to kill a Muslim who testifies that there is no god but Allah and that Muhammad is the Messenger of Allah, except in three cases: a man who apostatizes after embracing faith, commits adultery after marriage, or [as] retribution for murder."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ إِلَّا فِي إِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إِيمَانِهِ، أَوْ زَنَى بَعْدَ إِحْصَانِهِ، أَوْ نَفْسٌ بِنَفْسٍ» .

L41141 It has been narrated that 'Uthmān—may Allah be pleased with him—said while besieged in his house: "Why are you killing me? I heard the Messenger of Allah—peace and blessings be upon him and his family—say: 'It is unlawful to shed the blood of a Muslim person except for one of three reasons: a

وَقَدْ رُوِيَ «عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ وَهُوَ مَحْصُورٌ فِي الدَّارِ: بِمَ تَقْتُلُونِي؟ وَقَدْ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ

[43] **Hadith references (L41137):** Sahih al-Bukhari 6782.

person who disbelieves after faith, commits adultery after marriage, or kills a soul so he is killed for it.'"

إِلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إِيمَانٍ، أَوْ زَنَى بَعْدَ إِحْصَانٍ، أَوْ قَتَلَ نَفْسًا فَقُتِلَ بِهَا» .

L41142 Abu Muhammad (may Allah have mercy on him) said: Allah the Exalted has magnified some types of adultery over others, though all of it is grave, but sins vary in magnitude. Thus Allah emphasized the severity of adultery with a neighbor's lawful wife, adultery with a mujahid's wife, and adultery with an old man's wife.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَعَظَّمَ اللَّهُ تَعَالَى بَعْضَ الزِّنَى عَلَى بَعْضٍ، وَكُلُّهُ عَظِيمٌ، وَلَكِنَّ الْمَعَاصِيَ بَعْضَهَا أَكْبَرُ مِنْ بَعْضٍ، فَعَظَّمَ اللَّهُ الزِّنَى بِحَلِيلَةِ الْجَارِ، وَبِامْرَأَةِ الْمُجَاهِدِ، وَزِنَى الشَّيْخِ.

L41143 It was narrated to us through the chain of Muslim ibn Ibrāhīm: Isḥāq ibn Ibrāhīm reported from Jarīr, from Manṣūr, from Abī Wā'il, from ʿAmr ibn Shuraḥbīl, from ʿAbdullāh ibn Masʿūd, who said: "I asked the Messenger of Allah—may Allah bless him and his family and grant him peace—'Which sin is gravest before Allah, the Exalted?' He replied: 'To set up a rival to Allah when He created you.' I asked: 'Then which?' He said: 'To kill your child for fear they would share your sustenance.' I asked: 'Then which?' He answered: 'To commit adultery with your neighbor's spouse.'"

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ أَبِي وَائِلٍ عَنْ عَمْرِو بْنِ شُرَحْبِيلَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «سَأَلْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيُّ الذَّنْبِ أَعْظَمُ عِنْدَ اللَّهِ تَعَالَى؟ قَالَ: أَنْ تَدْعُوَ لِلَّهِ نِدًّا وَهُوَ خَلَقَكَ، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: أَنْ تَقْتُلَ وَلَدَكَ مَخَافَةَ أَنْ يُطْعَمَ مَعَكَ، قُلْتُ: ثُمَّ أَيٌّ؟ قَالَ: أَنْ تُزَانِيَ بِحَلِيلَةِ جَارِكَ» .

L41144–41146 And with him (to Muslim): Abu Bakr ibn Abi Shaybah reported to us from Waki' from Sufyan from 'Alqamah ibn Marthad from Sulayman ibn Buraydah from his father, who reported that the Messenger of Allah (peace be upon him and his family) said, "The sanctity of..." The wives of the mujahideen hold the same inviolability as the sanctity of their mothers for those who stay behind. There is no man among those who stay behind who assumes responsibility for a mujahid's family and then betrays him concerning them, except that he will stand before him on the Day of Resurrection, and the mujahid will take from his deeds whatever he wills. What then do you think?[44]

وَبِهِ - إلَى مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «حُرْمَةُ نِسَاءِ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ كَحُرْمَةِ أُمَّهَاتِهِمْ، وَمَا مِنْ رَجُلٍ مِنْ الْقَاعِدِينَ يَخْلُفُ رَجُلًا مِنْ الْمُجَاهِدِينَ فِي أَهْلِهِ فَيَخُونُهُ فِيهِمْ إلَّا وَقَفَ لَهُ يَوْمَ الْقِيَامَةِ فَيَأْخُذُ مِنْ عَمَلِهِ مَا شَاءَ، فَمَا ظَنُّكُمْ؟» .

L41147 Abdullah ibn Rabee' narrated to us from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Muhammad ibn al-Muthanna from Muhammad ibn Ja'far from Shu'bah from Mansur, who said: I heard Rib'i ibn Hirash narrating from Zayd ibn Ẓabyān, who attributed it to Zirr from the Prophet (peace and blessings be upon him and his family), who said: "Three whom

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ مَنْصُورٍ قَالَ سَمِعْت رِبْعِيَّ بْنَ حِرَاشٍ يُحَدِّثُ عَنْ زَيْدِ بْنِ ظَبْيَانَ

[44] **Hadith references (L41144):** Sahih Muslim 1897a; Mishkat al-Masabih 3798.

Allah loves, and three whom He hates. As for the three whom Allah hates: the elderly adulterer, the arrogant poor man, and the oppressive wealthy man."

L41148 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us: Aḥmad ibn Shuʿayb narrated to us: Muḥammad ibn al-ʿAlā narrated to us: Abū Muʿāwiyah narrated from al-Aʿmash from Abū Ḥāzim from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said: "Three whom Allah will neither look upon nor purify, and theirs will be a painful punishment: an adulterous old man, a lying king, and an arrogant ruler."[45]

L41149 Aḥmad ibn Shuʿayb said — and I am ʿAbd al-Raḥmān ibn Muḥammad ibn Salām — Muḥammad ibn Rabīʿah narrated to us from al-Aʿmash, from Abū Ḥāzim, from Abū Hurayrah, from the Prophet (ṣallā Allāhu ʿalayhi wa-sallam). He cited it, stating therein: "The elderly fornicator, the lying leader, and the arrogant tax-collecting agent."

L41150 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Abu Dawud Al-Hizami narrated to us: Arim—who is Muhammad ibn Al-Fadl—narrated to us: Hammad ibn Zayd narrated to us: Ubaydullah ibn Umar narrated from Sa'eed ibn Abi Sa'eed Al-Maqburi from Abu Hurairah that the Messenger of Allah—peace and blessings be upon him—said: "Four are detested by Allah: the merchant who habitually swears false oaths, the poor yet haughty, the old man who commits adultery, and the oppressive leader."

L41151 2205 - Issue: What is unlawful sexual intercourse? Ali said: Allah the Exalted said, "And those who guard their private parts, except from their spouses" [Al-Mu'minun: 5-6] until His statement, "Then those are the transgressors" [Al-Mu'minun: 7]. It is authentically reported that the Messenger of Allah (peace and blessings be upon him) said, "The child belongs to the

[45]**Qur'an references (L41148):** Qur'an 2:174 (Al-Baqarah); Qur'an 3:77 (Ali 'Imran).

رَفَعَهُ إِلَى زِرٍّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «ثَلَاثَةٌ يُحِبُّهُمْ اللَّهُ، وَثَلَاثَةٌ يُبْغِضُهُمْ: الثَّلَاثَةُ الَّذِينَ يُبْغِضُهُمْ اللَّهُ: الشَّيْخُ الزَّانِي، وَالْفَقِيرُ الْمُخْتَالُ، وَالْغَنِيُّ الظَّلُومُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «ثَلَاثَةٌ لَا يَنْظُرُ اللَّهُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ: شَيْخٌ زَانٍ، وَمَلِكٌ كَذَّابٌ، وَعَائِلٌ مُسْتَكْبِرٌ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ وَأَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا مُحَمَّدُ بْنُ رَبِيعَةَ نا الْأَعْمَشُ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَقَالَ فِيهِ: «الشَّيْخُ الزَّانِي، وَالْإِمَامُ الْكَذَّابُ، وَالْعَائِلُ الْمُخْتَالُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَبُو دَاوُد الْحِزَامِيُّ نا عَارِمٌ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ - نا حَمَّادُ بْنُ زَيْدٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَرْبَعَةٌ يُبْغِضُهُمْ اللَّهُ: الْبَيَّاعُ الْحَلَّافُ، وَالْفَقِيرُ الْمُخْتَالُ، وَالشَّيْخُ الزَّانِي، وَالْإِمَامُ الْجَائِرُ» .

٢٢٠٥ - مَسْأَلَةٌ: مَا الزِّنَى؟ قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ - إلا عَلَى أَزْوَاجِهِمْ} [المؤمنون: ٥ - ٦] إلَى قَوْلِهِ {فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا تَقَدَّمَ.

marriage bed, and the stone is for the adulterer." We have previously mentioned this with its chain of transmission in earlier sections.[46]

فَصَحَّ أَنَّهُ لَيْسَ الْوَطْءُ إلَّا مُبَاحًا لَا يُلَامُ فَاعِلُهُ، أَوْ عَهرًا فِي غَيْرِ الْفِرَاشِ وَهَاهُنَا وَطْآنِ آخَرَانِ: أَحَدُهُمَا - مَنْ وَطِئَ فِرَاشًا مُبَاحًا فِي حَالٍ مُحَرَّمَةٍ، كَوَاطِئِ الْحَائِضِ، وَالْمُحْرِمَةِ، وَالْمُحْرِمِ، وَالصَّائِمِ فَرْضًا، وَالصَّائِمَةِ كَذَلِكَ، وَالْمُعْتَكِفِ، وَالْمُعْتَكِفَةِ، وَالْمُشْرِكَةِ - فَهَذَا عَاصٍ وَلَيْسَ زَانِيًا بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، إلَّا أَنَّهُ وَطِئَ فِرَاشًا حُرِّمَ بِوَجْهٍ مَا، فَإِذَا ارْتَفَعَ ذَلِكَ الْوَجْهُ حَلَّ لَهُ وَطْؤُهَا. وَالثَّانِي - مَنْ جَهِلَ، فَلَا ذَنْبَ لَهُ، وَلَيْسَ زَانِيًا - فَبَعْدَ هَذَيْنِ الْوَطْأَيْنِ فَلَيْسَ إلَّا مَنْ وَطِئَ امْرَأَتَهُ الْمُبَاحَةَ بِعَقْدِ نِكَاحٍ صَحِيحٍ، أَوْ بِمِلْكِ يَمِينٍ صَحِيحٍ يَحِلُّ فِيهِ الْوَطْءُ، أَوْ عَاهِرٌ - وَهُوَ مَنْ وَطِئَ مَنْ لَا يَحِلُّ النَّظَرُ إلَى مُجَرَّدِهَا، وَهُوَ عَالِمٌ بِالتَّحْرِيمِ: فَهَذَا هُوَ الْعَاهِرُ الزَّانِي - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41152–41153 It has been established that sexual intercourse is either permissible—where the doer incurs no blame—or fornication outside the marital bed. Here, two other categories exist: The first is intercourse in a lawful marital bed during a prohibited state, such as with a menstruating woman, a woman in iḥrām, a man in iḥrām, one observing obligatory fasting, a woman similarly observing obligatory fasting, a man in iʿtikāf, a woman in iʿtikāf, or a polytheist woman. In such cases, the person is sinful but not an adulterer by the unanimous consensus of the entire Ummah, except that he engaged in intercourse in a marital bed prohibited under a specific consideration. When that consideration ceases, intercourse with her becomes permissible. The second category involves one who acts out of ignorance, incurring no sin and not being deemed an adulterer. Beyond these two, there remains only lawful intercourse with a wife through a valid marriage contract, with a slave woman lawfully possessed under valid ownership permitting intercourse, or the fornicator—who is one that engages in intercourse with a woman whose mere body it is impermissible to gaze upon while being aware of the prohibition: this is the fornicator-adulterer. And success comes only from Allah, the Exalted.

٢٢٠٦ - مَسْأَلَةٌ: حَدُّ الزِّنَى: قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] الْآيَةَ إلَى قَوْله تَعَالَى: {فَأَعْرِضُوا عَنْهُمَا} [النساء: ١٦] ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَصَحَّ النَّصُّ وَالْإِجْمَاعُ عَلَى أَنَّ هَذَيْنِ الْحُكْمَيْنِ مَنْسُوخَانِ بِلَا شَكٍّ، ثُمَّ اخْتَلَفَ النَّاسُ: فَقَالَتْ طَائِفَةٌ: إنَّ قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] نَاسِخٌ لِقَوْلِهِ {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] إلَى قَوْله تَعَالَى {أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] وَحَمَلَ مَنْ قَالَ هَذَا قَوْلَهُ عَزَّ وَجَلَّ {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ} [النساء: ١٦] عَلَى أَنَّ الْمُرَادَ بِهِ الزَّانِي وَالزَّانِيَةُ.

L41154 2206 - Issue: The Hadd Punishment for Zina: Ali, may Allah have mercy on him, said: Allah the Exalted stated, {As for those of your women who commit immoral acts...} [An-Nisa 4:15] up to His saying, {then turn away from the two of them} [An-Nisa 4:16]. Abu Muhammad, may Allah have mercy on him, said: The textual evidence and consensus conclusively establish that these two rulings are abrogated without doubt. Then people differed; a group said that the verse {And the two who commit this immorality among you, punish them both} [An-Nisa 4:16] abrogates the previous verse {As for those of your women who commit immoral acts...} [An-Nisa 4:15] up to His saying, {or Allah will create for them [women] a way} [An-Nisa 4:15]. Those who held this view interpreted His saying, {And the two who commit this immorality

[46] **Qur'an references (L41151):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun).

among you} [An-Nisa 4:16] as referring to the male and female offenders of zina.[47]

L41155–41157 Others said: Neither of the two rulings abrogates the other. However, Allah the Exalted's statement *"Then confine them to their houses"* [Quran 4:15] applies to female fornicators—non-virgin women and virgins. As for His statement *"As for the two who commit it among you, discipline them both"* [Quran 4:16]—does this constitute the ruling for male fornicators specifically, whether non-virgin men or virgins? Abu Muhammad—may Allah have mercy on him—said: This is the opinion of Ibn Abbas and others: As narrated to us by Abu Sa'id al-Ja'fari, narrated to us by Muhammad ibn Ali al-Idfawi al-Muqri, narrated to us by Abu Ja'far Ahmad ibn Muhammad ibn Isma'il al-Nahwi, narrated to us by Bakr ibn Sahl, narrated to us by Abdullah ibn Salih, narrated to us by Mu'awiyah ibn Salih, from Ali ibn Abi Talhah, from Ibn Abbas, who said regarding Allah's statement: "And those women among you who commit immoral acts, call four male witnesses from among you against them. If they testify, then confine them in houses" [Quran 4:15]. For when a woman committed adultery, she would be confined in the house until death. Then Allah later revealed: "The adulteress and the adulterer—flog each of them with a hundred lashes" [Quran 24:2]. If they are married, they are to be stoned. This is the way Allah has prescribed for them.[48]

L41158 Ibn Abbas said: Regarding the words of the Exalted, "As for the two among you who commit it, punish them both" [An-Nisa: 16], when the man committed adultery, he would be punished through public humiliation and beating with sandals. Then Allah the Exalted revealed afterward, "The adulteress and the adulterer—flog each of them with a hundred lashes" [An-Nur: 2]. If they were muḥṣan (chaste and married), they were to be stoned according to the established Sunnah of Allah's Messenger—peace be upon him. Narrated by Abu Sa'id al-Ja'fari from Muhammad ibn 'Ali al-Udfuwi from Abu Ja'far Ahmad ibn Muhammad ibn Isma'il from Ahmad ibn Muhammad from

[47] **Qur'an references (L41154):** Qur'an 4:15 (An-Nisa); Qur'an 4:16 (An-Nisa).

[48] **Qur'an references (L41155):** Qur'an 4:15 (An-Nisa); Qur'an 4:16 (An-Nisa); Qur'an 24:2 (An-Nur).

وَقَالَ آخَرُونَ: لَيْسَ أَحَدُ الْحُكْمَيْنِ نَاسِخًا لِلْآخَرِ، لَكِنَّ قَوْله تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ} [النساء: ١٥] هَذَا كَانَ حُكْمَ الزَّوَانِي مِنْ النِّسَاءِ - ثَيِّبَاتُهُنَّ وَأَبْكَارُهُنَّ - وَقَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] هَذَا حُكْمُ الزَّانِينَ مِنْ الرِّجَالِ خَاصَّةً الثَّيِّبَ مِنْهُمْ وَالْبِكْرَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلُ ابْنِ عَبَّاسٍ وَغَيْرِهِ: كَمَا نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي الْمُقْرِي نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ نا بَكْرُ بْنُ سَهْلٍ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ} [النساء: ١٥] . فَكَانَتْ الْمَرْأَةُ إذَا زَنَتْ تُحْبَسُ فِي الْبَيْتِ حَتَّى تَمُوتَ. ثُمَّ أَنْزَلَ اللَّهُ تَعَالَى بَعْدَ ذَلِكَ {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] وَإِنْ كَانَا مُحْصَنَيْنِ رُجِمَا، فَهَذَا السَّبِيلُ الَّذِي جَعَلَ اللَّهُ لَهُمَا.

قَالَ ابْنُ عَبَّاسٍ: وقَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] فَكَانَ الرَّجُلُ إذَا زَنَى أُوذِيَ بِالتَّعْيِيرِ وَضَرْبِ النِّعَالِ، فَأَنْزَلَ اللَّهُ تَعَالَى بَعْدَ هَذَا {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ} [النور: ٢] فَإِنْ كَانَا مُحْصَنَيْنِ رُجِمَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الْأُدْفُوِيُّ نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ ثنا أَحْمَدُ بْنُ مُحَمَّدٍ أَنَا سَلَمَةُ - هُوَ ابْنُ شَبِيبٍ - نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] قَالَ: نَسَخَتْهَا الْحُدُودُ - وَقَالَ قَتَادَةُ

Salama—that is, Ibn Shayb—from ʻAbd al-Razzaq from Maʻmar from Qatada concerning Allah's words, "Confine them to their homes until death claims them or Allah appoints a way for them" [An-Nisa: 15]. He said: This ruling was abrogated by the ḥudūd. Qatada also said regarding the Exalted's words, "As for the two among you who commit it, punish them both" [An-Nisa: 16]: Was this abrogated by the ḥudūd? Abu Muhammad—may Allah have mercy on him—said: This is the correct position, for Allah's words, "As for those among your women who commit adultery" [An-Nisa: 15] up to His words, "Confine them to their homes until death claims them or Allah appoints a way for them" [An-Nisa: 15] pertain exclusively to rulings concerning women and contain no legal provisions regarding men whatsoever.[49]

أَيْضًا: فِي قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] نَسَخَتْهَا الْحُدُودُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا هُوَ الْقَوْلُ الصَّحِيحُ، لِأَنَّ قَوْله تَعَالَى {وَاللاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ} [النساء: ١٥] إلَى قَوْلِهِ {فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلا} [النساء: ١٥] إنَّمَا فِيهِ حُكْمُ النِّسَاءِ فَقَطْ، وَلَيْسَ فِيهَا حُكْمُ الرِّجَالِ أَصْلًا.

L41159–41161 Then Allah, Exalted be He, appended to it His statement: {And as for the two who commit it among you, punish them both} [Quran 4:16]. Thus, this constituted an additional ruling specific to men, supplementing the preceding rulings regarding women. It is absolutely impermissible to assert regarding anything in the Quran that it is abrogated by such-and-such, or that it abrogates such-and-such, except with certainty, for this constitutes an assertion about the intent of Allah, Exalted be He. It is impossible to discern the intent of Allah, Exalted be He, from us, except through a Quranic text or an established Sunnah from the Messenger of Allah—peace and blessings be upon him and his family—for the Sunnah is through revelation from Allah, Exalted be He. Or by a certain consensus of all the Companions — may Allah the Exalted be pleased with them — who stated it based on definitive instruction from the Messenger of Allah — may Allah send blessings upon him and his family and grant him peace — which was established for them in that matter, or by necessity, which occurs when one becomes certain that one of the two texts was revealed after the other, rendering their simultaneous application impossible. Thus we know with certainty that Allah the Exalted has abrogated the ruling of the first through the latter text. Similarly, what came from the Messenger of Allah — may Allah the Exalted send blessings

ثُمَّ عَطَفَ اللَّهُ تَعَالَى عَلَيْهَا مُتَّصِلًا بِهَا قَوْله تَعَالَى {وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا} [النساء: ١٦] فَكَانَ هَذَا حُكْمًا زَائِدًا لِلرِّجَالِ مُضَافًا إلَى مَا قَبْلَهُ مِنْ حُكْمِ النِّسَاءِ، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُقَالَ فِي شَيْءٍ مِنْ الْقُرْآنِ: إنَّهُ مَنْسُوخٌ بِكَذَا، وَلَا أَنَّهُ نَاسِخٌ لِكَذَا إلَّا بِيَقِينٍ، لِأَنَّهُ إخْبَارٌ عَنْ مُرَادِ اللَّهِ تَعَالَى، وَلَا يُمْكِنُ أَنْ يُعْلَمَ مُرَادُ اللَّهِ تَعَالَى مِنَّا، إلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، فَإِنَّهَا بِوَحْيٍ مِنْ اللَّهِ تَعَالَى، أَوْ بِإِجْمَاعٍ مُتَيَقَّنٍ مِنْ جَمِيعِ الصُّحْبَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - قَالُوهُ عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَهُمْ ذَلِكَ، أَوْ بِضَرُورَةٍ، وَهُوَ أَنْ يَتَيَقَّنَ تَأْخِيرَ أَحَدِ النَّصَّيْنِ بَعْدَ الْآخَرِ، وَلَا يُمْكِنُ اسْتِعْمَالُهُمَا جَمِيعًا: فَنَدْرِي حِينَئِذٍ بِيَقِينٍ أَنَّ اللَّهَ تَعَالَى أَبْطَلَ حُكْمَ الْأَوَّلِ بِالنَّصِّ الْآخَرِ - وَكَذَلِكَ مَا جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فَرْقَ.

[49] **Qur'an references (L41158):** Qur'an 4:16 (An-Nisa); Qur'an 24:2 (An-Nur); Qur'an 4:15 (An-Nisa).

upon him and his family and grant him peace — follows the same principle, and there is no distinction.[50]

فَمَنْ أَخْبَرَ عَنْ مُرَادِ اللَّهِ تَعَالَى مِنَّا بِشَيْءٍ مِنْ دِينِ اللَّهِ تَعَالَى بِغَيْرِ أَحَدِ هَذِهِ الْوُجُوهِ فَقَدْ أَخْبَرَ عَنِ اللَّهِ تَعَالَى بِمَا لَا عِلْمَ لَهُ، وَهَذَا هُوَ الْكَذِبُ عَلَى اللَّهِ تَعَالَى بِلَا شَكٍّ: أَخْبَرَ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ تَعَالَى عَنْ نَفْسِهِ.

L41162 Whoever reports about Allah the Exalted's intent concerning us regarding any matter of His religion without relying on one of these aspects has indeed reported about Allah the Exalted what he has no knowledge of. This is lying upon Allah the Exalted without doubt—he has stated about Him what He has not stated about Himself.

فَصَحَّ يَقِينًا: أَنَّ حُكْمَ النِّسَاءِ الزَّوَانِي كَانَ الْحَبْسَ فِي الْبُيُوتِ حَتَّى يَمُتْنَ، أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا بِحُكْمٍ آخَرَ وَأَنَّ حُكْمَ الرِّجَالِ الزُّنَاةِ كَانَ الْأَذَى، هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ مِنَ الْأُمَّةِ، ثُمَّ نُسِخَ هَذَا كُلُّهُ بِالْحُدُودِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنَ الْأُمَّةِ، وَلَيْسَ مَعَنَا يَقِينٌ بِأَنَّ حَبْسَ الزَّوَانِي مِنَ النِّسَاءِ نُسِخَ بِالْأَذَى، ثُمَّ نُسِخَ عَنْهُنَّ الْأَذَى بِالْحَدِّ، هَذَا مَا لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ، وَلَا أَوْجَبَتْهُ ضَرُورَةٌ فَلَمْ يَجُزِ الْقَوْلُ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L41163 It is established with certainty that the ruling for adulterous women was confinement in their homes until death or until Allah ordained another ruling for them, and that the ruling for adulterous men was disciplinary punishment. This is beyond doubt among the Ummah. Subsequently, all these rulings were abrogated by the prescribed legal punishments without any disagreement within the Ummah. There is no certainty that the confinement of adulterous women was abrogated by disciplinary punishment, which was later replaced for them by the hadd punishment. This position lacks support in the Quran, Sunnah, consensus, nor is it compelled by any necessity. Therefore, asserting it is impermissible. Success comes solely from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا صَحَّ بِالنَّصِّ وَالْإِجْمَاعِ أَنَّ الْحَبْسَ وَالْأَذَى مَنْسُوخَانِ عَنِ الزَّوَانِي وَالزُّنَاةِ بِالْيَقِينِ الَّذِي لَا شَكَّ فِيهِ بِالْحُدُودِ وَجَبَ أَنْ نَنْظُرَ فِي النَّاسِخِ مَا هُوَ؟ فَوَجَدْنَا النَّاسَ قَدْ أَجْمَعُوا عَلَى أَنَّ الْحُرَّ الزَّانِيَ، وَالْحُرَّةَ الزَّانِيَةَ - إِذَا كَانَا غَيْرَ مُحْصَنَيْنِ - فَإِنَّ حَدَّهُمَا مِائَةُ جَلْدَةٍ - ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: وَمَعَ الْمِائَةِ جَلْدَةٍ نَفْيُ سَنَةٍ.

L41164 Abū Muḥammad said: Since it has been firmly established through textual evidence and consensus that imprisonment and corporal punishment are abrogated for female fornicators and male fornicators with a certainty beyond doubt through the ḥudūd punishments, it became necessary to examine the abrogating ruling. We found that people unanimously agree that a free male fornicator and a free female fornicator—if they are not muḥṣan—are to receive a ḥudūd punishment of one hundred lashes. Then they disagreed: a group said, "Along with the hundred lashes, there is exile for one year."

وَقَالَتْ طَائِفَةٌ: هَذَا عَلَى الرَّجُلِ، وَأَمَّا الْمَرْأَةُ فَلَا نَفْيَ عَلَيْهَا.

L41165 A group said: This applies to the man. As for the woman, no banishment is imposed on her.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ فِي ذَلِكَ، لَا عَلَى رَجُلٍ وَلَا امْرَأَةٍ، ثُمَّ اتَّفَقُوا كُلُّهُمْ، حَاشَ مَنْ لَا يُعْتَدُّ بِهِ بِلَا خِلَافٍ، وَلَيْسَ هُمْ عِنْدَنَا مِنَ الْمُسْلِمِينَ، فَقَالُوا: إِنَّ عَلَى الْحُرِّ وَالْحُرَّةِ

L41166 A group said: There is no exile in that, neither for a man nor a woman. Then all of them agreed—excluding those whose opinions are disregarded without any disagreement, for they are not considered Muslims in our view—and

[50] **Qur'an references (L41159):** Qur'an 4:16 (An-Nisa).

- إِذَا زَنَيَا وَهُمَا مُحْصَنَانِ - الرَّجْمَ حَتَّى يَمُوتَا - ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: عَلَيْهِمَا مَعَ الرَّجْمِ الْمَذْكُورِ جَلْدُ مِائَةٍ لِكُلِّ وَاحِدٍ مِنْهُمَا.

they said: Upon the free man and free woman who commit adultery while being chaste (muḥṣan), the punishment is stoning until they die. Then they differed: A group said: They must each receive one hundred floggings along with the aforementioned stoning.

وَقَالَتْ طَائِفَةٌ: لَيْسَ عَلَيْهِمَا إِلَّا الرَّجْمُ، وَلَا جَلْدَ عَلَيْهِمَا.

L41167 And a group said: There is nothing imposed upon them except stoning, and no flogging.

وَقَالَتْ الْأَزَارِقَةُ مِنْ الْخَوَارِجِ: لَيْسَ عَلَيْهِمَا إِلَّا الْجَلْدُ فَقَطْ، وَلَا رَجْمَ عَلَى زَانٍ أَصْلًا.

L41168–41169 The Azariqa, a sect of the Khawarij, asserted: The two [adulterers] are only subject to flogging, and there is no stoning at all for one who commits *zina*.

ثُمَّ وَجَدْنَا الْأُمَّةَ قَدْ اتَّفَقَتْ - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ -: عَلَى أَنَّ الْأَمَةَ إذَا أُحْصِنَتْ فَعَلَيْهَا خَمْسُونَ جَلْدَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا نَدْرِي أَحَدًا أَوْجَبَ عَلَيْهَا مَعَ ذَلِكَ الرَّجْمَ، وَلَا يُقْطَعُ عَلَى أَنَّ الْمَنْعَ مِنْ رَجْمِهَا إجْمَاعٌ - وَاَللَّهُ أَعْلَمُ.

L41170 Then we found the scholarly community had unanimously agreed—without dissent from any of them—that if a female slave is a muḥṣanah, she is to receive fifty lashes. Abū Muḥammad—may Allah have mercy on him—said: We do not know of anyone who imposed stoning upon her alongside that, nor can it be decisively established that precluding her stoning constitutes a consensus—and Allah knows best.

ثُمَّ اخْتَلَفُوا: فَقَالَتْ طَائِفَةٌ: عَلَيْهَا نَفْيُ سِتَّةِ أَشْهُرٍ مَعَ الْجَلْدِ.

L41171 Then they disagreed: a group maintained that she must be banished for six months alongside flogging.

وَقَالَتْ طَائِفَةٌ: لَا نَفْيَ عَلَيْهَا مَعَ ذَلِكَ أَصْلًا.

L41172 And a group said: There is no exile upon her in such a case at all.

ثُمَّ اخْتَلَفُوا فِي الْأَمَةِ إذَا لَمْ تُحْصَنْ وَزَنَتْ: فَقَالَتْ طَائِفَةٌ: عَلَيْهَا خَمْسُونَ جَلْدَةً وَنَفْيُ سِتَّةِ أَشْهُرٍ.

L41173 Then they differed concerning the female slave who is not in a state of legal chastity and commits adultery: A group held that she must receive fifty lashes and six months of temporary banishment.

وَقَالَتْ طَائِفَةٌ: لَيْسَ عَلَيْهَا إِلَّا خَمْسُونَ جَلْدَةً فَقَطْ وَلَا نَفْيَ عَلَيْهَا.

L41174 A school of thought maintains: she is liable for fifty lashes with no banishment required of her.

وَقَالَتْ طَائِفَةٌ: لَا شَيْءَ عَلَيْهَا، لَا جَلْدَ وَلَا نَفْيَ أَصْلًا.

L41175 A faction of scholars maintained: There is no punishment upon her—neither flogging nor exile whatsoever.

ثُمَّ اخْتَلَفُوا فِي حَدِّ الْعَبْدِ إذَا زَنَى - وَهُوَ مُحْصَنٌ أَوْ غَيْرُ مُحْصَنٍ: فَقَالَتْ طَائِفَةٌ: حَدُّهُ كَحَدِّ الْأَمَةِ عَلَى حَسَبِ اخْتِلَافِهِمْ فِي النَّفْيِ مَعَ الْجَلْدِ، أَوْ إسْقَاطِ النَّفْيِ.

L41176 Then they differed concerning the punishment for a male slave who commits fornication—whether he is muḥṣan (having legal protection) or not. A group of scholars maintained: His punishment corresponds to that of a female slave in the same way, based on their disagreement over whether banishment (nafy) should accompany flogging or be omitted.

L41177 A school of thought said: The slave's ḥadd punishment is like that of a free man, namely stoning or exile.

وَقَالَتْ طَائِفَةٌ: حَدُّهُ كَحَدِّ الْحُرِّ الرَّجْمُ أَوْ النَّفْيُ.

L41178 They differed regarding the punishment for one who is partially free and partially enslaved if they commit adultery among male and female slaves. A group said: His punishment matches that of a fully enslaved male slave—either flogging or stoning and exile—while a fully enslaved female slave's punishment is flogging.

وَاخْتَلَفُوا فِي حَدِّ مَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ إذَا زَنَى مِنْ الْعَبِيدِ وَالْإِمَاءِ: فَقَالَتْ طَائِفَةٌ: حَدُّهُ حَدُّ الْعَبْدِ التَّامِّ الرِّقِّ، أَوْ الرَّجْمُ وَالنَّفْيُ، وَالْأَمَةِ التَّامَّةِ الرِّقِّ.

L41179–41181 A group of scholars said: Should he be subjected to flogging and exile according to the proportion of his free status and enslaved status? Abu Muhammad—may Allah have mercy on him—said: We—if Allah the Exalted wills—will mention all these matters individually, thoroughly examine the evidence every group has presented to support its position, and clarify—with Allah's assistance— Exalted is He—the correctness of the position concerning that [is established] through proofs from the Qur'an and the Sunnah, as we have done in the rest of this book of ours—and all praise be to Allah, Lord of the worlds. In Him, the Most High, we seek help and take refuge.[51]

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ مِنْ الْجَلْدِ وَالنَّفْيِ بِحِسَابِ مَا فِيهِ مِنْ الْحُرِّيَّةِ وَبِحِسَابِ مَا فِيهِ مِنْ الرِّقِّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَنَحْنُ - إنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ جَمِيعَ هَذِهِ الْمَسَائِلِ مَسْأَلَةً مَسْأَلَةً وَمُتَقَصُّونَ مَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا، وَمُبَيِّنُونَ - بِعَوْنِ اللَّهِ تَعَالَى - صَوَابَ الْقَوْلِ فِي ذَلِكَ بِالْبَرَاهِينِ مِنْ الْقُرْآنِ، وَالسُّنَّةِ، كَمَا فَعَلْنَا فِي سَائِرِ كِتَابِنَا هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَبِهِ تَعَالَى نَسْتَعِينُ، وَنَعْتَصِمُ.

L41182

A legal issue: the prescribed punishment for a free man and a free woman who are not muḥṣanayn (i.e., neither married nor in a state of lawful sexual relations).

[مَسْأَلَةُ حَدُّ الْحُرِّ وَالْحُرَّةِ غَيْرِ الْمُحْصَنَيْنِ]

L41183 2207 - Issue: What is the punishment for a free *non-muḥṣan* man and a free *non-muḥṣana* woman? Abū Muḥammad—may Allah have mercy on him—said: Allah the Exalted states: *"The fornicatress and the fornicator—lash each of them with a hundred lashes, and do not let pity for them sway you in the religion of Allah, if you believe in Allah and the Last Day. Let a group of the believers witness their punishment"* (24:2). Abū Muḥammad—may Allah have mercy on him—said: The text is as you see [in the verse], and none among the Muslims (people of the Qiblah) disagree that lashing is the ruling for the fornicator who is a free *non-muḥṣan* and the fornicatress who is a free *non-muḥṣana*. The disagreement among scholars concerns only whether exile is imposed on them, as we mentioned, or not. We have thoroughly examined this topic in compiled chapters presented prior to our

٢٢٠٧ - مَسْأَلَةٌ: حَدُّ الْحُرِّ وَالْحُرَّةِ غَيْرِ الْمُحْصَنَيْنِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَجَاءَ النَّصُّ كَمَا تَرَى، وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ أَهْلِ الْقِبْلَةِ فِي أَنَّ الْجَلْدَ حُكْمُ الزَّانِي الْحُرِّ غَيْرِ الْمُحْصَنِ، وَالزَّانِيَةِ الْحُرَّةِ غَيْرِ الْمُحْصَنَةِ، وَإِنَّمَا اخْتَلَفَ النَّاسُ فِي هَلْ عَلَيْهِمَا نَفْيٌ كَمَا ذَكَرْنَا أَمْ لَا؟ وَهَذَا بَابٌ قَدْ تَقَصَّيْنَاهُ فِي أَبْوَابٍ مَجْمُوعَةٍ صَدَّرْنَا بِهَا قَبْلُ كَلَامَنَا فِي الْمُرْتَدِّينَ ذَكَرْنَا فِيهَا كُلَّ حُكْمٍ يَخْتَصُّ بِهِ حَدَّانِ

[51] **Qur'an references (L41179):** Qur'an 37:182 (As-Saffat).

discussion on apostates, where we detailed every ruling specific to two or more punishments and traced narrations there with their chains of transmission. Here, Allah willing, we will mention a concise summary of that.[52]

مِنْ الْحُدُودِ فَصَاعِدًا وَتَقَصَّيْنَا هُنَالِكَ الْآثَارَ بِأَسَانِيدِهَا، وَنَذْكُرُ هَاهُنَا إنْ شَاءَ اللَّهُ تَعَالَى جُمْلَةً مُخْتَصَرَةً مِنْ ذَلِكَ.

L41184 Divine enablement is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41185 We say: It has been authenticated that the Messenger of Allah—peace be upon him—said, "If a virgin commits adultery with a virgin: one hundred lashes and exile for a year; and if a married person commits adultery with a married person: one hundred lashes and stoning."

فَنَقُولُ: إنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

L41186 It has been authentically reported from him—peace be upon him—through the chain of Az-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utbah ibn Mas'ud, from Zayd ibn Khalid: that he heard the Messenger of Allah—peace and blessings be upon him—commanding regarding one who commits fornication and is not a muḥṣan: "He is to be flogged one hundred lashes and exiled for a year."

وَصَحَّ عَنْهُ - عَلَيْهِ السَّلَامُ - مِنْ طَرِيقِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ «عَنْ زَيْدِ بْنِ خَالِدٍ: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ فِيمَنْ زَنَى وَلَمْ يُحْصَنْ بِجَلْدِ مِائَةٍ وَتَغْرِيبِ عَامٍ» .

L41187 From al-Zuhri, from Sa'id ibn al-Musayyab, from Abu Hurairah: "The Messenger of Allah—peace and blessings of Allah be upon him—ruled that one who committed fornication and was not a muhsan should be exiled for a year, along with the imposition of the ḥadd punishment upon him."

وَعَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيمَنْ زَنَى وَلَمْ يُحْصَنْ بِأَنْ يُنْفَى عَامًا مَعَ إقَامَةِ الْحَدِّ عَلَيْهِ» .

L41188 It has been authentically reported that he (peace be upon him) said to the man whose son committed adultery with a hired woman: "Your son is to receive one hundred lashes and be exiled for a year, and the woman [involved] is to be stoned."

وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ لِلَّذِي زَنَى ابْنُهُ بِامْرَأَةِ مُسْتَأْجَرَةٍ: عَلَى ابْنِك جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَعَلَى امْرَأَةِ هَذَا الرَّجْمُ» .

L41189 It is authentically established that ʿUmar ibn al-Khaṭṭāb lashed a woman with one hundred lashes for committing fornication and exiled her for a year.

وَصَحَّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ امْرَأَةً زَنَتْ مِائَةَ جَلْدَةٍ وَغَرَّبَهَا عَامًا ".

L41190–41191 It has also been similarly narrated from Ali ibn Abi Talib and other Companions—may Allah be pleased with them—and no contrary report has been transmitted from any of the Companions—may Allah be pleased with them—except a narration from Ali: "There is no exile for the umm al-walad (enslaved mother of her master's child)." He only stated concerning two un-

وَرُوِيَ أَيْضًا مِثْلُ ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يُرْوَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ ذَلِكَ إلَّا رِوَايَةً عَنْ عَلِيٍّ: لَيْسَ عَلَى أُمِّ الْوَلَدِ نَفْيٌ - وَإِنَّمَا قَالَ فِي الْبِكْرَيْنِ يَزْنِيَانِ: حَسْبُهُمَا مِنْ الْفِتْنَةِ أَنْ يُنْفَيَا.

[52] **Qur'an references (L41183):** Qur'an 24:2 (An-Nur).

married individuals who fornicate: “Sufficient for them as a deterrent from fitnah (temptation) is exile.”

L41192 From Ibn Abbas: “Whoever commits fornication is flogged and sent away.” Abu Muhammad—may God have mercy on him—said: Ibn Abbas’s statement “Whoever commits fornication is flogged and sent away” does not serve as evidence that he does not require exile in his view. Rather, his statement “and sent away” may intend that he is sent to another land.

وَعَنْ ابْنِ عَبَّاسٍ: مَنْ زَنَى جُلِدَ وَأُرْسِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَيْسَ قَوْلُ ابْنِ عَبَّاسٍ “ مَنْ زَنَى جُلِدَ وَأُرْسِلَ ” دَلِيلًا عَلَى أَنَّهُ لَا يُوجِبُ النَّفْيَ عِنْدَهُ، بَلْ قَدْ يَكُونُ قَوْلُهُ “ وَأُرْسِلَ ” يُرِيدُ بِهِ أَنْ يُرْسَلَ إلَى بَلَدٍ آخَرَ.

L41193 Similarly, ʿAlī’s statement, “Exiling them both suffices for them from the discord,” is based on the obligation of exile, and that suffices for them both from the trial.

وَكَذَلِكَ قَوْلُ عَلِيٍّ “ حَسْبُهُمَا مِنْ الْفِتْنَةِ أَنْ يُنْفَيَا ” يَخْرُجُ عَلَى إيجَابِ النَّفْيِ، وَأَنَّ ذَلِكَ حَسْبُهُمَا مِنْ الْبَلَاءِ.

L41194 Allah the Exalted said: {Alif-Lam-Meem. Do the people think they will be left to say, “We believe,” without being tested?} [Al-Ankabut: 1-2] up to His statement: {And He will surely expose the liars.} [Al-Ankabut: 3]. The narration from him regarding the *umm al-walad* (a slave woman who bore her master’s child) not being expelled if she commits adultery is invalid, as we discussed earlier. Abu Muhammad—may Allah have mercy on him—said: “Both opinions are unsubstantiated assertions.”[53]

قَالَ اللَّهُ تَعَالَى {الم - أَحَسِبَ النَّاسُ أَنْ يُتْرَكُوا أَنْ يَقُولُوا آمَنَّا وَهُمْ لا يُفْتَنُونَ} [العنكبوت: ١ - ٢] إلَى قَوْله تَعَالَى {وَلَيَعْلَمَنَّ الْكَاذِبِينَ} [العنكبوت: ٣] وَالرِّوَايَةُ عَنْهُ فِي أَنَّ أُمَّ الْوَلَدِ لَا تُنْفَى إذَا زَنَتْ لَا تَصِحُّ عَلَى مَا ذَكَرْنَا قَبْلُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكِلَا الْقَوْلَيْنِ دَعْوَى بِلَا بُرْهَانٍ.

L41195 Among the astonishing things of this world is that people have taken the forty lashes—which ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) introduced **within** the ḥadd punishment for khamr (alcoholic intoxicants) **as a form of taʿzīr** (discretionary punishment)—and transformed it into an obligatory ḥadd, despite the fact that he himself (may Allah be pleased with him) would lash forty times on one occasion, sixty on another, and eighty on another.

وَمِنْ عَجَائِبِ الدُّنْيَا أَنْ يَجْعَلُوا الْأَرْبَعِينَ الَّتِي زَادَهَا عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فِي حَدِّ الْخَمْرِ عَلَى سَبِيلِ التَّعْزِيرِ حَدًّا وَاجِبًا مُفْتَرَضًا، وَهُوَ - رَضِيَ اللَّهُ عَنْهُ - يَجْلِدُ مَرَّةً أَرْبَعِينَ، وَمَرَّةً سِتِّينَ، وَمَرَّةً ثَمَانِينَ.

L41196–41198 Likewise, ʻUthmān after him, ʻAlī, and others among the Companions—may Allah be pleased with them—then apply a limit obligated by Allah, the Exalted, through His Messenger—peace and blessings of Allah be upon him and his family—and make it a discretionary punishment. All of this is audacity in advancing claims without proof. They allege that the Messenger of Allah—

وَكَذَلِكَ عُثْمَانُ بَعْدَهُ، وَعَلِيٌّ، وَغَيْرُهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - ثُمَّ يَأْتُونَ إلَى حَدٍّ افْتَرَضَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيَجْعَلُونَهُ تَعْزِيرًا، كُلُّ ذَلِكَ جُرْأَةٌ عَلَى الدَّعْوَى بِلَا بُرْهَانٍ، وَادَّعُوا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَلْيَجْلِدْهَا» وَلَمْ يَقُلْ “ فَلْيَنْفِهَا ” دَلِيلًا عَلَى نَسْخِ

[53] **Qur’an references (L41194):** Qur’an 29:2 (Al-’Ankabut); Qur’an 29:1 (Al-’Ankabut); Qur’an 29:3 (Al-’Ankabut).

peace and blessings of Allah be upon him and his family—said, "If a slave woman of any of you commits adultery, let him lash her," without saying "let him exile her," as evidence for the abrogation of exile. Abū Muḥammad—may Allah have mercy on him—said: This is sheer falsehood, because this is a concise report that deferred... In it, the Messenger of Allah—may Allah bless him and grant him peace—applied [the ruling] against others, yet he did not mention exile nor the number of lashes. If this constitutes evidence for abolishing exile, it equally constitutes evidence for abolishing the number of lashes. If it does not serve as evidence for abolishing the number of lashes—since it remains unmentioned—then it likewise cannot be evidence for abrogating exile merely due to its omission. The reports supplement one another, and the rulings of Allah the Exalted and His Messenger—peace be upon him—are all valid. It is impermissible to discard some rulings for others; rather, it is obligatory to integrate them and implement all collectively. Abu Muhammad—may Allah have mercy on him—said: As for Mālik's abolition of exile for slaves, female slaves, and women while restricting it to free men, this constitutes an unfounded distinction lacking valid evidence. For the judgment and command of the Messenger of Allah—may Allah bless him and grant him peace—universally prescribed exile for every fornicator not in a chaste state (muḥṣan). Neither Allah the Exalted nor His Messenger—may Allah bless him and grant him peace—distinguished between women and men, nor between slaves and free individuals. {And your Lord is never forgetful} [19:64].[54]

التَّغْرِيبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مِنْ الْبَاطِلِ الْمَحْضِ، لِأَنَّ هَذَا خَبَرٌ مُجْمَلٌ أَحَالَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى غَيْرِهِ، فَلَمْ يَذْكُرْ نَفْيًا، وَلَا عَدَدَ الْجَلْدِ، فَإِنْ كَانَ دَلِيلًا عَلَى إسْقَاطِ التَّغْرِيبِ فَهُوَ أَيْضًا دَلِيلٌ عَلَى إسْقَاطِ عَدَدِ مَا يُجْلَدُ، وَإِنْ لَمْ يَكُنْ دَلِيلًا عَلَى إسْقَاطِ عَدَدِ مَا يُجْلَدُ، لِأَنَّهُ لَمْ يُذْكَرْ فِيهِ، فَلَيْسَ أَيْضًا دَلِيلًا عَلَى نَسْخِ النَّفْيِ وَإِنْ لَمْ يُذْكَرْ فِيهِ، وَالْأَخْبَارُ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ، وَأَحْكَامُ اللَّهِ تَعَالَى وَأَحْكَامُ رَسُولِهِ - عَلَيْهِ السَّلَامُ - كُلُّهَا حَقٌّ وَلَا يَحِلُّ تَرْكُ بَعْضِهَا لِبَعْضٍ، بَلْ الْوَاجِبُ ضَمُّ بَعْضِهَا إلَى بَعْضٍ وَاسْتِعْمَالُ جَمِيعِهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا إسْقَاطُ مَالِكٍ النَّفْيَ عَنْ الْعَبِيدِ، وَالْإِمَاءِ، وَالنِّسَاءِ، وَإِثْبَاتُهُ إيَّاهُ عَلَى الْحُرِّ، فَتَفْرِيقٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لِأَنَّ قَضَاءَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَمْرَهُ قَدْ وَرَدَ عُمُومًا بِالنَّفْيِ عَلَى كُلِّ مَنْ زَنَى وَلَمْ يُحْصَنْ، وَلَمْ يَخُصَّ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - امْرَأَةً مِنْ رَجُلٍ، وَلَا عَبْدًا مِنْ حُرٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L41199 Allah the Exalted has said concerning female slaves: "They shall receive half the punishment prescribed for free, chaste married women" [An-Nisa 4:25].[55]

وَقَدْ قَالَ اللَّهُ تَعَالَى فِي الْإِمَاءِ {فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] .

L41200 Thus, it is established that upon them [the women] falls half the banishment imposed on a muhsan [chaste free person]. Likewise, the command of Allah's Messenger (may Allah's blessings and peace be upon him and his family) to impose the punishment on a mukatab [contractually bound slave] proportionally based on the portion he has paid toward the free person's punishment

فَصَحَّ أَنَّ عَلَيْهِنَّ مِنْ النَّفْيِ نِصْفُ مَا يَنْفِي الْمُحْصَنَ، وَكَذَلِكَ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنْ يُقَامَ الْحَدُّ عَلَى الْمُكَاتَبِ بِنِسْبَةِ مَا أَدَّى مِنْ حَدِّ الْحُرِّ، وَبِنِسْبَةِ مَا لَمْ يُؤَدِّ مِنْ حَدِّ الْعَبْدِ. فَبَطَلَ كُلُّ مَا خَالَفَ حُكْمَ اللَّهِ تَعَالَى وَحُكْمَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[54] **Qur'an references (L41196):** Qur'an 19:64 (Maryam).
[55] **Qur'an references (L41199):** Qur'an 4:25 (An-Nisa).

and the unpaid portion of the slave's punishment. Therefore, every ruling contradicting the judgment of Allah the Most High and the judgment of His Messenger (may Allah's blessings and peace be upon him and his family) is void. And true success is only granted by Allah the Most High.

L41201 **The legal issue concerning a free man and a free woman who commit adultery while being married.**

L41202 The Prescribed Penalty for the Free Man and Free Woman Who Are Muḥṣan (2208) – Issue: Abu Muhammad—may Allah have mercy on him—said: A group said: If a free man and a free woman commit adultery while they are muḥṣan [i.e., married and free], they shall be stoned until they die.

L41203 A group of scholars opined: The two are to be lashed, then stoned to death.

L41204 As for the Azāriqa, they are not among the sects of Islam, for they are those about whom the Messenger of Allah—peace and blessings be upon him—foretold, stating they would exit the religion as an arrow passes through its target. They asserted: There is no stoning whatsoever; it is only flogging.

L41205–41206 As for the one from whom only stoning is reported without flogging: Muhammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbaġ narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us from Yaḥyā ibn Abī Kathīr al-Saqqā from al-Zuhrī that Abū Bakr (may Allah be pleased with him) and ʿUmar stoned [the offenders] and did not administer flogging.

L41207 And through him to Waki', Al-'Umari—who is 'Abdullāh ibn 'Umar—narrated to us from Nāfi', from Ibn 'Umar, who said: "Verily, 'Umar stoned [someone] and did not flog [them]."

L41208 And through his chain up to Waki', al-Thawrī narrated to us from Mughīrah from Ibrāhīm al-Nakha'ī, who said: "He is to be stoned and not lashed."

L41209 From Abd al-Razzaq, from Ma'mar, from al-Zuhri, that he rejected lashing combined with stoning - and holding this opinion are al-Awza'i, Sufyan al-

[مَسْأَلَة الْحُرُّ وَالْحُرَّةُ إِذَا زَنَيَا وَهُمَا مُحْصَنَانِ]

حَدُّ الْحُرِّ وَالْحُرَّةِ الْمُحْصَنَيْنِ ٢٢٠٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: الْحُرُّ وَالْحُرَّةُ إِذَا زَنَيَا - وَهُمَا مُحْصَنَانِ - فَإِنَّهُمَا يُرْجَمَانِ حَتَّى يَمُوتَا.

وَقَالَتْ طَائِفَةٌ: يُجْلَدَانِ ثُمَّ يُرْجَمَانِ حَتَّى يَمُوتَا.

فَأَمَّا الْأَزَارِقَةُ - فَلَيْسَ مِنْ فِرَقِ الْإِسْلَامِ، لِأَنَّهُمْ الَّذِينَ أَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُمْ بِأَنَّهُمْ يَمْرُقُونَ مِنْ الدِّينِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ فَإِنَّهُمْ قَالُوا: لَا رَجْمَ أَصْلًا وَإِنَّمَا هُوَ الْجَلْدُ فَقَطْ.

فَأَمَّا مَنْ رُوِيَ عَنْهُ الرَّجْمُ فَقَطْ دُونَ جَلْدٍ: فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نِي يَحْيَى بْنُ أَبِي كَثِيرٍ السَّقَّا عَنْ الزُّهْرِيِّ أَنَّ أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - وَعُمَرَ: رَجَمَا وَلَمْ يَجْلِدَا.

وَبِهِ - إلَى وَكِيعٍ نا الْعُمَرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنَّ عُمَرَ رَجَمَ وَلَمْ يَجْلِدْ.

وَبِهِ - إلَى وَكِيعٍ نا الثَّوْرِيُّ عَنْ مُغِيرَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: يَرْجُمُ وَلَا يَجْلِدُ.

Thawri, Abu Hanifa, Malik, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, and their followers.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّهُ كَانَ يُنْكِرُ الْجَلْدَ مَعَ الرَّجْمِ وَبِهِ - يَقُولُ الْأَوْزَاعِيِّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ.

L41210 As for the one for whom both stoning and flogging were jointly narrated: As narrated to us by Abū ʻUmar Aḥmad ibn Qāsim, from his father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn ʻAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār, from Muḥammad ibn Jaʻfar Ghundar, from Shuʻbah through Salamah ibn Kuhayl from al-Shaʻbī: ʻAlī ibn Abī Ṭālib flogged Shuraḥah on Thursday and stoned her on Friday, declaring, "I flog her by Allah's Book, and I stone her by the saying of Allah's Messenger—peace and blessings be upon him."

وَأَمَّا مَنْ رُوِيَ عَنْهُ الرَّجْمُ وَالْجَلْدُ مَعًا: فَكَمَا نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ جَلَدَ شُرَاحَةَ يَوْمَ الْخَمِيسِ وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، فَقَالَ: أَجْلِدُهَا بِكِتَابِ اللَّهِ، وَأَرْجُمُهَا بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41211 Hammam narrated to us from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Ismail ibn Ishaq al-Qadi from Abd al-Wahid ibn Ziyad from Hafs ibn Ghiyath from al-A'mash from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud from his father, who said: I saw Ali ibn Abi Talib call for Shurahah. He flogged her on Thursday and stoned her on Friday, saying: "I flogged her in accordance with the Book of Allah and stoned her in accordance with the Sunnah of the Messenger of Allah - peace and blessings be upon him."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي أَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ أَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ الْأَعْمَشِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: رَأَيْت عَلِيَّ بْنَ أَبِي طَالِبٍ دَعَا بِشُرَاحَةَ فَجَلَدَهَا يَوْمَ الْخَمِيسِ وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، فَقَالَ: جَلَدْتهَا بِكِتَابِ اللَّهِ وَرَجَمْتهَا بِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41212 Muhammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Ismāʿīl ibn Abī Khālid reported from ʿAmr ibn Murrah from ʿAlī ibn Abī Ṭālib that he said: "I flog her according to the Book, and I stone her according to the Sunnah."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: أَجْلِدُهَا بِالْكِتَابِ، وَأَرْجُمُهَا بِالسُّنَّةِ.

L41213 From Al-Sha'bi, from Ubayy ibn Ka'b that he said: "If a previously married woman commits adultery, I lash her and then stone her."

وَعَنْ الشَّعْبِيِّ عَنْ أُبَيِّ بْنِ كَعْبٍ أَنَّهُ قَالَ: فِي الثَّيِّبِ تَزْنِي أَجْلِدُهَا ثُمَّ أَرْجُمُهَا.

L41214–41215 And through him—Al-Ḥasan Al-Baṣrī says: Ḥumām informed us, Ibn Mufarrij informed us, Ibn Al-Aʿrābī informed us: Al-Dabarī informed us, from

وَبِهِ - يَقُولُ الْحَسَنُ الْبَصْرِيُّ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: «أُوحِيَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا، الثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ، وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ» ، وَكَانَ الْحَسَنُ يُفْتِي بِهِ.

This is the view of Al-Ḥasan ibn Ḥayyin, Ibn Rāhawayh, Abū Sulaymān, and all our companions.

وَبِهِ يَقُولُ الْحَسَنُ بْنُ حَيٍّ، وَابْنُ رَاهْوَيْهِ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

Here is a third opinion: If a married person is elderly, he is flogged and stoned. If he is young, he is stoned but not flogged - as narrated from Abū Dharr, who said: "The two elderly married ones are flogged and stoned, the two married ones are stoned, and the two unmarried fornicators are flogged and banished."

هَاهُنَا قَوْلٌ ثَالِثٌ: أَنَّ الثَّيِّبَ إنْ كَانَ شَيْخًا جُلِدَ وَرُجِمَ، فَإِنْ كَانَ شَابًّا رُجِمَ وَلَمْ يُجْلَدْ - كَمَا رُوِيَ عَنْ أَبِي ذَرٍّ قَالَ: الشَّيْخَانِ يُجْلَدَانِ وَيُرْجَمَانِ، وَالثَّيِّبَانِ يُرْجَمَانِ، وَالْبِكْرَانِ يُجْلَدَانِ وَيُنْفَيَانِ.

From Ubayy ibn Kaʿb, who said: "Some are flogged and stoned; some are stoned without flogging; and some are flogged without stoning." Qatadah explained it, stating: "The older married person is flogged and stoned if he commits illicit intercourse; the young married person is stoned if he commits illicit intercourse; and the young person who is not married is flogged if he commits illicit intercourse."

وَعَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: يُجْلَدُونَ، وَيُرْجَمُونَ وَلَا يُجْلَدُونَ، وَيُجْلَدُونَ وَلَا يُرْجَمُونَ - وَفَسَّرَهُ قَتَادَةُ، قَالَ: الشَّيْخُ الْمُحْصَنُ يُجْلَدُ وَيُرْجَمُ إذَا زَنَى، وَالشَّابُّ الْمُحْصَنُ يُرْجَمُ إذَا زَنَى، وَالشَّابُّ إذَا لَمْ يُحْصَنْ جُلِدَ.

From Masruq, he said: "The two virgins are to be flogged and exiled, the two previously married individuals are to be stoned and not flogged, and the two elderly individuals are to be flogged and stoned?" Abu Muhammad—may Allah have mercy on him—said: "These are opinions as you can observe. As for the opinion of those who do not consider stoning valid at all, it is a rejected view because it contradicts what is established from the Messenger of Allah—peace and blessings be upon him and his family. A Quranic verse had been revealed concerning it, but its wording was textually abrogated while its ruling remained. Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: 'Abd al-Razzaq narrated from Sufyan al-Thawri from 'Asim ibn Abi al-Najud from Zirr ibn Hubaysh, who said: Ubayy ibn Ka'b said to me, 'How many verses do you

وَعَنْ مَسْرُوقٍ قَالَ: الْبِكْرَانِ يُجْلَدَانِ وَيُنْفَيَانِ، وَالثَّيِّبَانِ يُرْجَمَانِ وَلَا يُجْلَدَانِ، وَالشَّيْخَانِ يُجْلَدَانِ وَيُرْجَمَانِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ أَقْوَالٌ كَمَا تَرَى: فَأَمَّا قَوْلُ مَنْ لَمْ يَرَ الرَّجْمَ أَصْلًا فَقَوْلٌ مَرْغُوبٌ عَنْهُ، لِأَنَّهُ خِلَافُ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ كَانَ نَزَلَ بِهِ قُرْآنٌ وَلَكِنَّهُ نُسِخَ لَفْظُهُ وَبَقِيَ حُكْمُهُ: حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: قَالَ لِي أُبَيُّ بْنُ كَعْبٍ: كَمْ تَعُدُّونَ سُورَةَ الْأَحْزَابِ؟ قُلْت: إمَّا ثَلَاثًا وَسَبْعِينَ آيَةً، أَوْ أَرْبَعًا وَسَبْعِينَ آيَةً، قَالَ: إنْ كَانَتْ لَتُقَارِنُ

count in Surah al-Ahzab?' I said, 'Either seventy-three or seventy-four verses.' He said, 'Yet it once rivaled Surah al-Baqarah in length or was even longer, and it contained the verse of stoning.' I said, 'O Abu al-Mundhir, what is the verse of stoning?' He said, 'If an elderly man and an elderly woman commit adultery, stone them both decisively as a deterrent from Allah, and Allah is Almighty and Wise.'" 'Ali said: "This chain of narration is as luminous as the sun, with no flaw in it."

سُورَةَ الْبَقَرَةِ، أَوْ هِيَ أَطْوَلُ مِنْهَا، وَإِنْ كَانَ فِيهَا لَآيَةُ الرَّجْمِ؟ قُلْت: أَبَا الْمُنْذِرِ وَمَا آيَةُ الرَّجْمِ؟ قَالَ: إِذَا زَنَى الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ نَكَالًا مِنْ اللَّهِ وَاَللَّهُ عَزِيزٌ حَكِيمٌ؟ " قَالَ عَلِيٌّ: هَذَا إسْنَادٌ صَحِيحٌ كَالشَّمْسِ لَا مَغْمَزَ فِيهِ.

L41220–41222 And also narrated to us... Abdullah ibn Rabīʿ narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: from Mu'awiyah ibn Salih al-Ash'ari: Mansur—that is, Ibn Abi Muzahim—narrated to us: Abu Hafs—that is, Umar ibn Abd al-Rahman—narrated to us from Mansur—that is, Ibn al-Mu'tamir—from Asim ibn Abi al-Najud from Zirr ibn Hubaysh, who said: Ubayy ibn Ka'b said to me: "How many do you count in Surah al-Ahzab?" I said: "Seventy-three." Ubayy said: "It certainly equaled Surah al-Baqarah in length or longer, and in it was the verse of stoning: 'The elderly man and the elderly woman, if they commit adultery, stone them both certainly as an exemplary punishment from Allah, and Allah is Mighty and Wise?'"

وَحَدَّثَنَا أَيْضًا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُعَاوِيَةُ بْنُ صَالِحٍ الْأَشْعَرِيُّ نا مَنْصُورٌ - هُوَ ابْنُ أَبِي مُزَاحِمٍ - نا أَبُو حَفْصٍ - هُوَ عُمَرُ بْنُ عَبْدِ الرَّحْمَنِ - عَنْ مَنْصُورٍ - هُوَ ابْنُ الْمُعْتَمِرِ - عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ زِرِّ بْنِ حُبَيْشٍ قَالَ: قَالَ لِي أُبَيُّ بْنُ كَعْبٍ: كَمْ تَعُدُّونَ سُورَةَ الْأَحْزَابِ؟ قُلْت: ثَلَاثًا وَسَبْعِينَ، فَقَالَ أُبَيٌّ: إنْ كَانَتْ لَتَعْدِلُ سُورَةَ الْبَقَرَةِ أَوْ أَطْوَلَ، وَفِيهَا آيَةُ الرَّجْمِ " الشَّيْخُ وَالشَّيْخَةُ إذَا زَنَيَا فَارْجُمُوهُمَا أَلْبَتَّةَ نَكَالًا مِنْ اللَّهِ وَاَللَّهُ عَزِيزٌ حَكِيمٌ "؟

L41223 This is Sufyan al-Thawri and Mansur: they testified regarding Asim without falsehood, thus being the two trustworthy imams, the two eminent Badrites. Asim did not bear false witness against Zirr, nor did Zirr bear false witness against Ubayy. Abu Muhammad (may God have mercy on him) said: Rather, its wording was abrogated while its ruling remained. Had its wording not been abrogated, Ubayy ibn Ka'b would certainly have taught it to Zirr without doubt. Yet he informed him only that it once held equivalence to Surah al-Baqarah, without stating its present equivalence—thereby confirming the abrogation of its wording.

فَهَذَا سُفْيَانُ الثَّوْرِيُّ، وَمَنْصُورٌ: شَهِدَا عَلَى عَاصِمٍ وَمَا كَذَبَا، فَهُمَا الثِّقَتَانِ، الْإِمَامَانِ، الْبَدْرَانِ - وَمَا كَذَبَ عَاصِمٌ عَلَى زِرٍّ، وَلَا كَذَبَ زِرٌّ عَلَى أُبَيٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَكِنَّهَا نُسِخَ لَفْظُهَا وَبَقِيَ حُكْمُهَا، وَلَوْ لَمْ يُنْسَخْ لَفْظُهَا لَأَقْرَأَهَا أُبَيُّ بْنُ كَعْبٍ زِرًّا بِلَا شَكٍّ، وَلَكِنَّهُ أَخْبَرَهُ بِأَنَّهَا كَانَتْ تَعْدِلُ سُورَةَ الْبَقَرَةِ، وَلَمْ يَقُلْ لَهُ: إنَّهَا تَعْدِلُ الْآنَ - فَصَحَّ نَسْخُ لَفْظِهَا.

L41224 Ali said: This has been narrated through various chains, including: Abdullah ibn Rabee' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Muhammad ibn al-Muthanna narrated to us, Muhammad ibn Ja'far, known as Ghundar, narrated to us, Shu'bah narrated from Qatadah from Yunus ibn Jubayr from Kathir ibn al-Salt, who said: Zayd ibn Thabit said to me: I heard the Messenger of Allah—peace and blessings

قَالَ عَلِيٌّ: وَقَدْ رُوِيَ هَذَا مِنْ طُرُقٍ، مِنْهَا: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ كَثِيرِ بْنِ الصَّلْتِ، قَالَ: قَالَ لِي زَيْدُ بْنُ ثَابِتٍ: سَمِعْت رَسُولَ اللَّهِ

be upon him—say: “If an elderly married man and an elderly married woman commit adultery, stone them both without exception.” Umar said: When this was revealed, I went to the Messenger of Allah—peace and blessings be upon him—and said: “Will you write it down for me?” Shu’bah said: It was as if he disliked that. Umar then said: Do you not see that if an elderly man has not attained [the status of] muḥṣan, he is flogged, and if a young man commits adultery after attaining [the status of] muḥṣan, he is stoned?

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِذَا زَنَى الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ قَالَ عُمَرُ: لَمَّا نَزَلَتْ أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: أَكْتِبْنِيهَا؟» قَالَ شُعْبَةُ: كَأَنَّهُ كَرِهَ ذَلِكَ؟ فَقَالَ عُمَرُ: أَلَا تَرَى أَنَّ الشَّيْخَ إِذَا لَمْ يُحْصَنْ جُلِدَ، وَأَنَّ الشَّابَّ إِذَا زَنَى وَقَدْ أَحْصَنَ رُجِمَ؟ .

L41225 Ali – may Allah have mercy on him – said: “This is a good chain of narration.”

قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَذَا إِسْنَادٌ جَيِّدٌ.

L41226–41228 Ali said: Some people presumed that the omission of the stoning verse occurred for a reason other than this—they believed it was lost without abrogation—and they argued by citing the following chain: Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported to us, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Ṣamūt. Ahmad ibn Umar ibn Abd al-Khaliq al-Bazzar narrated to us: Yahya ibn Khalaf narrated to us: Abd al-A’la ibn Abd al-A’la narrated to us from Muhammad ibn Ishaq from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm and Abd al-Rahman ibn al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq. Abdullah narrated from Amrah bint Abd al-Rahman, and Abd al-Rahman narrated from his father. Then the chains of al-Qasim ibn Muhammad and Amrah converged, both narrating from Aisha, the Mother of the Believers, who said: “The verse of stoning and breastfeeding was indeed revealed, and they were written on a sheet beneath my bed. When the Messenger of Allah (peace and blessings be upon him) died, we became preoccupied with his death, whereupon a domestic animal entered and consumed it?” Abu Muhammad said: “This is an authentic Hadith, though not as they presumed. For when the stoning verse was revealed, it was preserved, recognized, and implemented by the Messenger of Allah (peace and blessings be upon him), except that the Quranic scribes did not transcribe it in the Mushaf, nor did they incorporate its wording into the Quran. Umar ibn al-Khattab had inquired about this matter—as we mentioned—but the Messenger of Allah (peace and blessings be upon him) did not respond to him regarding it.”

قَالَ عَلِيٌّ: وَقَدْ تَوَهَّمَ قَوْمٌ أَنَّ سُقُوطَ آيَةِ الرَّجْمِ إِنَّمَا كَانَ لِغَيْرِ هَذَا، ظَنُّوا أَنَّهَا تَلِفَتْ بِغَيْرِ نَسْخٍ - وَاحْتَجُّوا بِمَا -: ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا يَحْيَى بْنُ خَلَفٍ نا عَبْدُ الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، وَعَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، قَالَ عَبْدُ اللَّهِ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَقَالَ عَبْدُ الرَّحْمَنِ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعَمْرَةُ، كِلَاهُمَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَقَدْ نَزَلَتْ آيَةُ الرَّجْمِ وَالرَّضَاعَةِ، فَكَانَتَا فِي صَحِيفَةٍ تَحْتَ سَرِيرِي، فَلَمَّا مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَشَاغَلْنَا بِمَوْتِهِ فَدَخَلَ دَاجِنٌ فَأَكَلَهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حَدِيثٌ صَحِيحٌ وَلَيْسَ هُوَ عَلَى مَا ظَنُّوا، لِأَنَّ آيَةَ الرَّجْمِ إِذْ نَزَلَتْ حُفِظَتْ، وَعُرِفَتْ، وَعَمِلَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ لَمْ يَكْتُبْهَا نُسَّاخُ الْقُرْآنِ فِي الْمُصْحَفِ، وَلَا أَثْبَتُوا لَفْظَهَا فِي الْقُرْآنِ، وَقَدْ سَأَلَ عُمَرُ بْنُ الْخَطَّابِ ذَلِكَ - كَمَا أَوْرَدْنَا - فَلَمْ يُجِبْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى ذَلِكَ.

L41229 The copy of its wording was validated, and the sheet on which it was written

remained—as ʿĀ’ishah, may Allah be pleased with her, said—until a domestic fowl ate it, for no one had any need of it.

فَصَحَّ نَسْخُ لَفْظِهَا وَبَقِيَتْ الصَّحِيفَةُ الَّتِي كُتِبَتْ فِيهَا - كَمَا قَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - فَأَكَلَهَا الدَّاجِنُ، وَلَا حَاجَةَ بِأَحَدٍ إلَيْهَا.

L41230 This is likewise the ruling concerning the verse pertaining to breastfeeding, and there is no distinction.

وَهَكَذَا الْقَوْلُ فِي آيَةِ الرَّضَاعَةِ وَلَا فَرْقَ.

L41231 The proof of this is that they preserved it as we have mentioned. If it had been recorded in the Quran, a domestic fowl's consumption of the page would not have prevented - from their preservation - its inclusion in the Quran. And success is from Allah, the Exalted.

وَبُرْهَانُ هَذَا: أَنَّهُمْ قَدْ حَفِظُوهَا كَمَا أَوْرَدْنَا، فَلَوْ كَانَتْ مُثْبَتَةً فِي الْقُرْآنِ لَمَا مَنَعَ أَكْلُ الدَّاجِنِ لِلصَّحِيفَةِ مِنْ إثْبَاتِهَا فِي الْقُرْآنِ مِنْ حِفْظِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41232 With certainty, we know that no two Muslims differ in affirming that Allah the Exalted obligated the conveyance of revelation upon His Messenger (peace be upon him) and that he (peace and blessings be upon him) indeed conveyed it as commanded. Allah the Exalted said: {O Messenger, proclaim what has been revealed to you from your Lord. If you do not, you will have failed to deliver His message} [Al-Ma'idah 5:67].[56]

فَبِيَقِينٍ نَدْرِي أَنَّهُ لَا يَخْتَلِفُ مُسْلِمَانِ فِي أَنَّ اللَّهَ تَعَالَى افْتَرَضَ التَّبْلِيغَ عَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ بَلَّغَ كَمَا أُمِرَ، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ} [المائدة: ٦٧] .

L41233 And He, the Exalted, said, {Indeed, We have sent down the Reminder, and indeed, We are its guardians} [Al-Hijr: 9].[57]

وَقَالَ تَعَالَى {إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ} [الحجر: ٩] .

L41234–41236 And He, the Exalted, said: {We will cause you to recite, so you will not forget, except what Allah wills} [Al-A'la: 6–7]. And He, the Exalted, said: {Whatever verse We abrogate or cause to be forgotten, We bring better than it or similar to it} [Al-Baqarah: 106]. Thus, it is established that the verses that were abrogated—had the Messenger of Allah, peace and blessings of Allah be upon him, been commanded to convey them, he would have conveyed them. Had he conveyed them, they would have been preserved. Had they been preserved, his death would not have harmed them, just as his death, peace and blessings of Allah be upon him, did not harm all that he conveyed exclusively of the Quran. Even if he, peace and blessings of Allah be upon him, did not convey them, or conveyed them only for them to be forgotten by him and the people, or did not... They forgot it, but the Prophet—peace be upon him—did not command that it be written in the Quran; thus, it is

وَقَالَ تَعَالَى {سَنُقْرِئُكَ فَلا تَنْسَى - إِلا مَا شَاءَ اللَّهُ} [الأعلى: ٦ - ٧] وَقَالَ تَعَالَى {مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا} [البقرة: ١٠٦] فَصَحَّ أَنَّ الْآيَاتِ الَّتِي ذَهَبَتْ لَوْ أُمِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَبْلِيغِهَا لَبَلَّغَهَا، وَلَوْ بَلَّغَهَا لَحُفِظَتْ، وَلَوْ حُفِظَتْ مَا ضَرَّهَا مَوْتُهُ، كَمَا لَمْ يَضُرَّ مَوْتُهُ - عَلَيْهِ السَّلَامُ - كُلَّ مَا بَلَّغَ فَقَطْ مِنْ الْقُرْآنِ، وَإِنْ كَانَ - عَلَيْهِ السَّلَامُ - لَمْ يُبَلِّغْ، أَوْ بَلَّغَهُ فَأُنْسِيه هُوَ وَالنَّاسُ، أَوْ لَمْ يَنْسَوْهُ، لَكِنْ لَمْ يَأْمُرْ - عَلَيْهِ السَّلَامُ - أَنْ يُكْتَبَ فِي الْقُرْآنِ فَهُوَ مَنْسُوخٌ بِيَقِينٍ مِنْ عِنْدِ اللَّهِ تَعَالَى، لَا يَحِلُّ أَنْ يُضَافَ إلَى الْقُرْآنِ.

[56] **Qur'an references (L41232):** Qur'an 5:67 (Al-Ma'idah).
[57] **Qur'an references (L41233):** Qur'an 15:9 (Al-Hijr).

abrogated with certainty from Allah the Exalted. It is not permissible to add it to the Quran.[58]

L41237 Abū Muḥammad—may Allah have mercy on him—said: A group transmitted the ruling of stoning from the Prophet—peace and blessings of Allah be upon him. As narrated to us by ʿAbdullāh ibn Rabīʿah: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Muḥammad ibn Yaḥyā ibn ʿAbdillāh al-Naysābūrī narrated to us; Bishr ibn ʿUmar al-Zahrānī narrated to us from Mālik, from al-Zuhrī, from ʿUbaydillāh ibn ʿAbdillāh ibn ʿUtbah, from Ibn ʿAbbās: "'Umar ibn al-Khaṭṭāb said: 'Allah sent Muḥammad—peace and blessings of Allah be upon him—and revealed the Book to him. Among what was revealed was the verse of stoning. We recited it, preserved it in memory, and the Messenger of Allah—peace and blessings of Allah be upon him—carried out stoning, and we did so after him. I fear that if time prolongs for people, someone will say: "We do not find the verse of stoning in the Book of Allah," thereby abandoning an obligation Allah revealed. Verily, stoning in the Book of Allah is a rightful punishment for whoever commits adultery if they are muḥṣan (chaste and lawfully married), whether male or female, when conclusive evidence is established, or there is pregnancy, or confession.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رَوَى الرَّجْمَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَاعَةٌ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى بْنُ عَبْدِ اللَّهِ النَّيْسَابُورِيُّ نا بِشْرُ بْنُ عُمَرَ الزَّهْرَانِيُّ نا مَالِكٌ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنَّ اللَّهَ بَعَثَ مُحَمَّدًا وَأَنْزَلَ عَلَيْهِ الْكِتَابَ فَكَانَ فِيمَا أَنْزَلَ آيَةُ الرَّجْمِ، فَقَرَأْنَاهَا وَوَعَيْنَاهَا، وَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ، وَأَخْشَى إنْ طَالَ بِالنَّاسِ زَمَانٌ أَنْ يَقُولَ قَائِلٌ: مَا نَجِدُ آيَةَ الرَّجْمِ فِي كِتَابِ اللَّهِ تَعَالَى فَيَتْرُكُ فَرِيضَةً أَنْزَلَهَا اللَّهُ، وَأَنَّ الرَّجْمَ فِي كِتَابِ اللَّهِ حَقٌّ عَلَى مَنْ زَنَى إذَا أَحْصَنَ مِنْ الرِّجَالِ وَالنِّسَاءِ، إذَا قَامَتْ الْبَيِّنَةُ، أَوْ كَانَ الْحَبَلُ، أَوْ الِاعْتِرَافُ» .

L41238 Through him to Ahmad ibn Shuʿayb: I am Muhammad ibn Mansur al-Makki, narrated to us by Sufyan ibn ʿUyaynah, from al-Zuhri, from ʿUbayd Allah ibn ʿAbd Allah ibn ʿUtbah, from Ibn ʿAbbas, who said: "I heard ʿUmar say: 'I feared that time might prolong for people until someone says: "We do not find stoning in Allah's Book," thereby causing them to stray by abandoning an obligation Allah revealed. Indeed, stoning is a prescribed punishment for whoever commits adultery if they are muhsan, when there is evidence, pregnancy, or confession. We have recited it: "The elderly man and elderly woman: stone them both certainly." The Messenger of Allah (peace be upon him) enacted stoning, and we continued it after him.'"

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ الْمَكِّيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ عُمَرَ يَقُولُ: قَدْ خَشِيتُ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ حَتَّى يَقُولَ قَائِلٌ: مَا نَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ؟ فَيَضِلُّ بِتَرْكِ فَرِيضَةٍ أَنْزَلَهَا اللَّهُ، أَلَا وَإِنَّ الرَّجْمَ حَقٌّ عَلَى مَنْ زَنَى إذَا أَحْصَنَ، وَكَانَتْ الْبَيِّنَةُ، أَوْ كَانَ الْحَبَلُ، أَوْ الِاعْتِرَافُ، وَقَدْ قَرَأْنَاهَا الشَّيْخُ وَالشَّيْخَةُ فَارْجُمُوهُمَا أَلْبَتَّةَ وَقَدْ رَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ» .

L41239 Abdullah ibn Rabi' informed us: Umar ibn Abd al-Malik informed us:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ

[58] **Qur'an references (L41234):** Qur'an 87:6 (Al-A'la); Qur'an 2:106 (Al-Baqarah); Qur'an 87:7 (Al-A'la).

Muhammad ibn Bakr informed us: Sulayman ibn al-Ash'ath informed us: Musaddad informed us: Yahya ibn Sa'id al-Qattan reported from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan from Hittan ibn Abdullah al-Raqashi from 'Ubadah ibn al-Samit, who said: The Messenger of Allah (peace and blessings be upon him) said: "Learn from me, learn from me. Allah has indeed ordained a prescribed punishment for them: if a married person commits adultery with another married person, they shall be flogged one hundred times and stoned to death; if a virgin commits adultery with another virgin, they shall be flogged one hundred times and banished for one year."

حطَّانَ بْنِ عَبْدِ اللَّهِ الرَّقَاشِيِّ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا، الثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَرَجْمٌ بِالْحِجَارَةِ، وَالْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ» .

L41240–41242 It was narrated to us via the chain of Muslim: from 'Abd al-Malik ibn Shu'ayb ibn al-Layth ibn Sa'd, from his father, from his grandfather, from 'Uqayl, from Ibn Shihāb, from Abū Salama ibn 'Abd al-Raḥmān ibn 'Awf and Sa'īd ibn al-Musayyib, from Abū Hurayra—that a man from the Muslims came to the Messenger of Allah (peace be upon him) while he was in the mosque and called out: "O Messenger of Allah, I have committed adultery." He then mentioned the hadith, which includes that the Messenger of Allah (peace be upon him) said to him... "Have you been married?" He replied, "Yes." Then the Messenger of Allah (peace be upon him) said, "Take him away and then stone him."

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ نا أَبِي عَنْ جَدِّي نا عُقَيْلٌ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ «أَتَى رَجُلٌ مِنْ الْمُسْلِمِينَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ بِالْمَسْجِدِ فَنَادَاهُ: يَا رَسُولَ اللَّهِ، إنِّي زَنَيْتُ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ فَهَلْ أَحْصَنْتَ؟ قَالَ: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ» .

[مَسْأَلَة حَدُّ الْأَمَةِ الْمُحْصَنَةِ]

The Issue of the Ḥadd (Prescribed Punishment) of the Chaste Enslaved Woman.

L41243

L41244 2209 – Issue: What is the prescribed punishment for the chaste female slave? Abū Muḥammad said: Allāh the Exalted states: *"But if they attain chastity, then if they commit an indecency, upon them is half the punishment prescribed for chaste free women"* [al-Nisā' 4:25]. With certainty, we understand that Allāh intended: If they enter lawful marriage and have intercourse, then upon them is half the punishment of chaste free women. The chaste free woman is liable to one hundred lashes and stoning. By necessity, we recognize that stoning cannot be divided, leaving half of the hundred lashes upon them. Thus, the chaste female slave is obligated to receive fifty lashes exclusively.[59]

٢٢٠٩ - مَسْأَلَةٌ: حَدُّ الْأَمَةِ الْمُحْصَنَةِ؟ قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] فَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى أَرَادَ فَإِذَا تَزَوَّجْنَ وَوُطِئْنَ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْحَرَائِرِ الْمُحْصَنَاتِ مِنْ الْعَذَابِ، وَالْحُرَّةُ الْمُحْصَنَةُ فَإِنَّ عَلَيْهَا جَلْدَ مِائَةٍ وَالرَّجْمَ، وَبِالضَّرُورَةِ نَدْرِي أَنَّ الرَّجْمَ لَا نِصْفَ لَهُ، فَبَقِيَ عَلَيْهِنَّ نِصْفُ الْمِائَةِ، فَوَجَبَ عَلَى الْأَمَةِ الْمُحْصَنَةِ جَلْدُ خَمْسِينَ فَقَطْ.

[59] **Qur'an references (L41244):** Qur'an 4:25 (An-Nisa).

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَوْجَبْتُمْ عَلَيْهَا نَفْيَ سِتَّةِ أَشْهُرٍ، أَمِنْ هَذِهِ الْآيَةِ أَمْ مِنْ غَيْرِهِ؟ فَجَوَابُنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ الْقَائِلِينَ إنَّ عَلَى الْأَمَةِ نَفْيَ سِتَّةِ أَشْهُرٍ قَالُوا: إنَّ ذَلِكَ وَاجِبٌ عَلَيْهِنَّ مِنْ هَذِهِ الْآيَةِ.

L41245 If it is asked: On what basis have you obligated her to a six-month waiting period—is it from this verse or another source? Our answer—and with Allah's success—is that those who hold the obligation of a six-month waiting period upon the enslaved woman have said: This is indeed incumbent upon them by virtue of this verse.

وَقَالُوا: إنَّ " الْإِحْصَانَ " اسْمٌ يَقَعُ عَلَى الْحُرَّةِ الْمُطَلَّقَةِ فَقَطْ، فَإِنْ كَانَ هَذَا كَمَا قَالُوا فَالنَّفْيُ وَاجِبٌ عَلَى الْإِمَاءِ الْمُحْصَنَاتِ مِنْ هَذِهِ الْآيَةِ، لِأَنَّ مَعْنَى الْآيَةِ: فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْحَرَائِرِ مِنْ الْعَذَابِ، وَعَلَى الْحَرَائِرِ هُنَا مِنْ الْعَذَابِ جَلْدُ مِائَةٍ، وَمَعَهُ نَفْيُ سَنَةٍ، أَوْ رَجْمٌ، وَالرَّجْمُ يَنْتَصِفُ أَصْلًا، لِأَنَّهُ مَوْتٌ، وَالْمَوْتُ لَا نِصْفَ لَهُ أَصْلًا وَكَذَلِكَ الرَّجْمُ، لِأَنَّهُ قَدْ يَمُوتُ الْمَرْجُومُ مِنْ رَمْيَةٍ وَاحِدَةٍ، وَقَدْ لَا يَمُوتُ مِنْ أَلْفِ رَمْيَةٍ، وَمَا كَانَ هَكَذَا فَلَا يُمْكِنُ ضَبْطُ نِصْفِهِ أَبَدًا، وَإِذْ لَا يُمْكِنُ هَذَا فَقَدْ أَمِنَّا أَنْ يُكَلِّفَنَا اللَّهُ تَعَالَى مَا لَا نُطِيقُ لِقَوْلِهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L41246 They said: "Indeed, 'al-iḥṣān' is a term that applies exclusively to free divorced women. If this is as they claim, then exile is obligatory for enslaved married women based on this verse, for the verse's meaning is: 'Upon them is half the punishment prescribed for free women.' For free women here, the punishment is one hundred lashes combined with exile for a year, or stoning. Stoning inherently cannot be divided, as it is death, and death inherently has no half. Similarly, stoning cannot be precisely measured, for the stoned person may die from a single strike or survive a thousand strikes. Since such a punishment cannot be precisely determined, it is inherently impossible to fix half of it. Given this impossibility, we are assured that God Almighty does not burden us with what we cannot bear, in accordance with His statement: *'Allah does not burden a soul beyond its capacity'* [Al-Baqarah 2:286]."[60]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» أَوْ كَمَا قَالَ - عَلَيْهِ السَّلَامُ -، فَسَقَطَ الرَّجْمُ وَبَقِيَ الْجَلْدُ وَالنَّفْيُ سَنَةٍ - وَكِلَاهُمَا لَهُ نِصْفٌ، فَعَلَى الْأَمَةِ نِصْفُ مَا عَلَى الْحُرَّةِ مِنْهَا؟

L41247 And due to the statement of Allah's Messenger, peace be upon him, "When I command you with something, fulfill it to the best of your ability," or as he said, peace be upon him, stoning is no longer applicable while flogging and exile for one year remains. Each of these punishments is halved, so does the female slave receive half the penalty prescribed for the free woman in these cases?

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِنْ كَانَ " الْإِحْصَانُ " لَا يَقَعُ فِي اللُّغَةِ إلَّا عَلَى الْحُرَّةِ فَقَطْ، فَالنَّفْيُ لَا يَجِبُ عَلَى الْإِمَاءِ مِنْ هَذِهِ الْآيَةِ؟ وَمَا نَعْلَمُ " الْإِحْصَانَ " فِي اللُّغَةِ الْعَرَبِيَّةِ وَالشَّرِيعَةِ يَقَعُ إلَّا عَلَى مَعْنَيَيْنِ: عَلَى الزَّوَاجِ الَّذِي يَكُونُ فِيهِ الْوَطْءُ - فَهَذَا إجْمَاعٌ لَا خِلَافَ فِيهِ - وَعَلَى الْعَقْدِ فَقَطْ، وَلَا نَعْلَمُهُ يَقَعُ عَلَى الْحُرَّةِ الْمُطَلَّقَةِ فَقَطْ، فَلَا يَجُوزُ أَنْ يَقْطَعَ فِي الدِّينِ إلَّا بِيَقِينٍ؛ لِأَنَّهُ إخْبَارٌ عَنْ اللَّهِ تَعَالَى، وَلَا يَحِلُّ لِمَنْ لَهُ تَقْوَى أَوْ

L41248–41250 Abu Muhammad—may God have mercy on him—said: If "iḥṣān" in the Arabic language applies exclusively to free women, would female slaves then be exempt from punishment under this verse? We affirm that "iḥṣān" in Arabic and the Sharīʿa applies only to two meanings: first... The marriage in which intercourse occurs—and this is a matter of consensus without disagreement—applies solely to the contractual aspect. We do not know of this ruling being applied exclusively to a divorced woman. Thus, it is impermissible to judge definitively in religious matters except with certainty, for

[60] **Qur'an references (L41246):** Qur'an 2:286 (Al-Baqarah).

it constitutes attributing a statement to Allah, the Exalted. It is not lawful for anyone possessing piety or intellect to attribute anything to Allah, the Exalted, except with certainty. By Allah, we ourselves are nothing like those who claim that religious rulings are derived merely from conjectures. However, a prescribed punishment is obligatory for female slaves if they commit adultery with someone other than their master, as per the narration reported by ʻAbdullāh ibn Rabīʻ, narrated by Muḥammad ibn Muʻāwiyah, narrated by Aḥmad ibn Shuʻayb, who was informed by Muḥammad ibn Ismāʻīl ibn Ibrāhīm ibn ʻUlayyah, narrated by Yazīd ibn Hārūn, narrated by Ḥammād ibn Salamah, from Ayyūb al-Sikhtiyānī, from ʻIkrimah, from Ibn ʻAbbās, from the Prophet—peace and blessings be upon him—who said: "If a slave under a manumission contract (mukātab) becomes subject to a legal punishment or entitlement to inheritance, he inherits proportionally to the degree of his freedom, and the legal punishment is applied to him proportionally to the degree of his freedom."

عَقْلٌ: أَنْ يُخْبِرَ عَنْ اللهِ تَعَالَى إِلَّا بِيَقِينٍ، وَلَسْنَا وَاَللَّهِ نَحْنُ كَمَنْ يَقُولُ: إنَّ الدِّينَ مَأْخُوذٌ بِالظُّنُونِ فَقَطْ، وَلَكِنَّ " النَّفْيَ " وَاجِبٌ عَلَى الْإِمَاءِ إذَا زَنَيْنَ مِنْ مَوْضِعٍ آخَرَ، وَهُوَ الْخَبَرُ الَّذِي: ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ بْنِ عُلَيَّةَ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» .

L41251 And through him - to Ahmad ibn Shu'ayb: I am Muhammad ibn Isa al-Dimashqi. Yazid ibn Harun narrated to us: Hammad ibn Salamah narrated to us from Ayyub al-Sikhtiyani and Qatadah. Qatadah said: From Khilas ibn Amr, from Ali ibn Abi Talib. Ayyub said: From Ikrimah, from Ibn Abbas. Then they both concurred: Ali and Ibn Abbas - both from the Prophet (peace and blessings be upon him) - who said: "The mukatab (a slave contracted for freedom) is emancipated proportionally to what he has paid, the prescribed punishment is imposed upon him proportionally to his degree of emancipation, and he inherits proportionally to his degree of emancipation." This is a chain of transmission of utmost authenticity. Therefore, it necessarily follows that the female slave's punishment proportionally corresponds to that of the free woman generally in all that entails half the punishment of the free woman. Thus, it necessarily follows that the punishment for a married female slave is half that of a free woman - regarding exile and flogging - with no exclusion whatsoever, because the Messenger of Allah (peace and blessings be upon him) specified no exclusion, nor did any individual from the ummah reach consensus to specify it, nor does the Quran specify any ex-

وَبِهِ - إلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ، قَالَ قَتَادَةُ: عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ: عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَا: عَلِيٌّ، وَابْنُ عَبَّاسٍ، كِلَاهُمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا عَتَقَ مِنْهُ، وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ» وَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، فَوَجَبَ ضَرُورَةً أَنْ يَكُونَ حَدُّ الْأَمَةِ بِنِسْبَتِهِ مِنْ حَدِّ الْحُرَّةِ عُمُومًا فِي جَمِيعِ مَا لَهُ نِصْفٌ مِنْ حَدِّ الْحُرَّةِ، فَوَجَبَ ضَرُورَةً أَنَّ حَدَّ الْأَمَةِ الْمُتَزَوِّجَةِ نِصْفُ حَدِّ الْحُرَّةِ، مِنْ - النَّفْيِ وَالْجَلْدِ - وَأَنْ لَا يُخَصَّ مِنْ ذَلِكَ شَيْءٌ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَخُصَّ مِنْ ذَلِكَ، وَلَا أَحَدٌ مِنْ الْأُمَّةِ أَجْمَعَ عَلَى تَخْصِيصِهِ، وَلَا جَاءَ الْقُرْآنُ بِتَخْصِيصِهِ، فَوَجَبَ نَفْيُهَا سِتَّةَ أَشْهُرٍ، وَجَلْدُهَا خَمْسُونَ جَلْدَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

clusion. Therefore, her exile lasts six months, and her flogging is fifty lashes. And by Allah, the Most High, is success.

L41252–41254 ٢٢١٠ - مَسْأَلَةٌ: حَدُّ الْمَمْلُوكِ إذَا زَنَى، وَهَلْ عَلَيْهِ وَعَلَى الْأَمَةِ الْمُحْصَنَةِ رَجْمٌ أَمْ لَا؟
قَالَ أَبُو مُحَمَّد: اخْتَلَفَ النَّاسُ فِي الْمَمْلُوكِ الذَّكَرِ إذَا زَنَى: فَقَالَتْ طَائِفَةٌ: إنَّ حَدَّهُ حَدُّ الْحُرِّ مِنْ الْجَلْدِ وَالنَّفْيِ وَالرَّجْمِ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ نا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ قَالَ: قَدِمْت الْمَدِينَةَ وَقَدْ أَجْمَعُوا عَلَى عَبْدٍ زَنَى - وَقَدْ أُحْصِنَ بِحُرَّةٍ - أَنَّهُ يُرْجَمُ، إلَّا عِكْرِمَةُ فَإِنَّهُ قَالَ: عَلَيْهِ نِصْفُ الْحَدِّ.

L41255 Mujāhid said: A male slave's chastity is affirmed when he marries a free woman, and a female slave's chastity is affirmed when a free man marries her. This is the position upheld by all scholars of our school.

قَالَ مُجَاهِدٌ: وَإِحْصَانُ الْعَبْدِ أَنْ يَتَزَوَّجَ الْحُرَّةَ، وَإِحْصَانُ الْأَمَةِ أَنْ يَتَزَوَّجَهَا الْحُرُّ - وَبِهَذَا يَأْخُذُ أَصْحَابُنَا كُلُّهُمْ.

L41256 Abu Thawr said: The chaste female slave and the chaste male slave are to be stoned, unless a scholarly consensus prevents it.

وَقَالَ أَبُو ثَوْرٍ: الْأَمَةُ الْمُحْصَنَةُ وَالْعَبْدُ الْمُحْصَنُ عَلَيْهِمَا الرَّجْمُ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ إجْمَاعٌ.

L41257 Al-Awzaʿī said: If a male slave achieves marital protection (iḥṣān) through marriage to a free woman, he is subject to stoning even if not emancipated. But if he is married to a female slave, he is not subject to stoning if he commits adultery, even if he is later freed. Similarly, he also stated: If a female slave achieves marital protection (iḥṣān) through marriage to a free man, she is subject to stoning even if not emancipated. She cannot achieve marital protection (iḥṣān) through marriage to a male slave.

وَقَالَ الْأَوْزَاعِيِّ: إذَا أُحْصِنَ الْعَبْدُ بِزَوْجَةٍ حُرَّةٍ فَعَلَيْهِ الرَّجْمُ، وَإِنْ لَمْ يُعْتَقْ، فَإِنْ كَانَ تَحْتَهُ أَمَةٌ لَمْ يَجِبْ عَلَيْهِ الرَّجْمُ إنْ زَنَى وَإِنْ عَتَقَ - وَكَذَلِكَ قَالَ أَيْضًا: إذَا أُحْصِنَتْ الْأَمَةُ بِزَوْجٍ حُرٍّ فَعَلَيْهَا الرَّجْمُ، وَإِنْ لَمْ تُعْتَقْ، وَلَا تَكُونُ مُحْصَنَةً بِزَوْجِ عَبْدٍ.

L41258 Abu Hanifa, Malik, al-Shafi'i, and Ahmad said: The ḥadd punishment for a muḥṣan [married] slave, a non-muḥṣan slave, or a female slave—stoning is not prescribed in any of these cases.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ: حَدُّ الْعَبْدِ الْمُحْصَنِ، وَغَيْرِ الْمُحْصَنِ، وَالْأَمَةِ: لَا رَجْمَ فِي شَيْءٍ مِنْ ذَلِكَ؟

L41259 Abū Muḥammad said: When they differed as we mentioned, it became necessary for us to examine what our companions cited as evidence for their opinion. We found them saying: "{The adulteress and the adulterer...} [Quran 24:2, An-Nur]" - the verse.[61]

L41260 The Messenger of Allah—peace and blessings of Allah be upon him—said, "A virgin shall receive one hundred lashes and exile for a year, and a married person shall receive one hundred lashes and stoning."

L41261 They said: The Quran and the Sunnah came with general rulings that may not be particularized except by what Allah the Exalted and His Messenger—peace be upon him—have specified. We found the explicit text of the Quran and the Sunnah confirmed in particularizing female slaves within the scope of this ruling, stipulating that chaste female slaves incur half the liability incumbent upon chaste free women. Similarly, the explicit text concerning the female slave who has not been chaste exists. Thus, we particularized the ruling regarding female slaves based on the Quran and the Sunnah, while the male slave remains [under the general ruling], as "your Lord is not forgetful" [19:64].[62]

L41262 We know with certainty that if Allah, the Exalted, had intended to specify male slaves, He would have mentioned them as He mentioned female slaves, and He would not have neglected that nor disregarded it—and all analogy is entirely invalid, and it is a claim without proof.

L41263–41264 And every argument they raise contentiously concerning proving the Quran—even if it were valid for them, though none of it from them is valid for them at all—would not necessitate specifying the Quran by means of any of it, nor permit reporting about the intent of Allah the Exalted, since it is not permissible to know the unseen aspects of anyone through *qiyas*.

L41265 They said: It is therefore obligatory that the ruling for the slave is the same as that of the free person in the *ḥadd* for *zinā* (illicit sexual intercourse, extramarital).

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فِيمَا احْتَجَّ بِهِ أَصْحَابُنَا لِقَوْلِهِمْ، فَوَجَدْنَاهُمْ يَقُولُونَ {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» .

قَالُوا: فَجَاءَ الْقُرْآنُ وَالسُّنَّةُ بِعُمُومٍ لَا يَحِلُّ أَنْ يُخَصَّ مِنْهُ إِلَّا مَا خَصَّهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -، فَوَجَدْنَا النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ قَدْ صَحَّ بِتَخْصِيصِ الْإِمَاءِ مِنْ جُمْلَةِ هَذَا الْحُكْمِ بِأَنَّ عَلَى الْمُحْصَنَاتِ مِنْهُنَّ نِصْفَ مَا عَلَى الْمُحْصَنَاتِ الْحَرَائِرِ، وَكَذَلِكَ النَّصُّ الْوَارِدُ فِي الْأَمَةِ الَّتِي لَمْ تُحْصَنْ، فَخَصَّصْنَا الْإِمَاءَ بِالْقُرْآنِ وَالسُّنَّةِ، وَبَقِيَ الْعَبْدُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ الْعَبِيدَ لَذَكَرَهُمْ كَمَا ذَكَرَ الْإِمَاءَ، وَلَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَدَعْوَى بِلَا بُرْهَانٍ.

وَكُلُّ مَا يَشْغَبُونَ بِهِ فِي إثْبَاتِ الْقُرْآنِ فَحَتَّى لَوْ صَحَّ لَهُمْ - وَهُوَ لَا يَصِحُّ لَهُمْ مِنْهُ شَيْءٌ أَصْلًا - لَمَا كَانَ فِي شَيْءٍ مِنْهُ إيجَابُ تَخْصِيصِ الْقُرْآنِ بِهِ، وَلَا إبَاحَةُ الْإِخْبَارِ عَنْ مُرَادِ اللَّهِ تَعَالَى، إذْ لَا يَجُوزُ أَنْ يُعْرَفَ مَغِيبُ أَحَدٍ بِقِيَاسٍ.

قَالُوا: فَوَجَبَ أَنْ يَكُونَ حُكْمُ الْعَبْدِ كَحُكْمِ الْحُرِّ فِي حَدِّ الزِّنَى.

[61] **Qur'an references (L41259):** Qur'an 24:2 (An-Nur).
[62] **Qur'an references (L41261):** Qur'an 19:64 (Maryam).

ثُمَّ نَقُولُ لِأَصْحَابِ الْقِيَاسِ: قَدْ أَجْمَعْتُمْ عَلَى أَنَّ حَدَّ الْعَبْدِ كَحَدِّ الْحُرِّ فِي الرِّدَّةِ، وَفِي الْمُحَارَبَةِ، وَفِي قَطْعِ السَّرِقَةِ، فَيَلْزَمُكُمْ - عَلَى أُصُولِكُمْ فِي الْقِيَاسِ - أَنْ تَرُدُّوا مَا اُخْتُلِفَ فِيهِ مِنْ حُكْمِهِ فِي الزِّنَى إِلَى مَا اتَّفَقْتُمْ فِيهِ مِنْ حُكْمِهِ فِي الرِّدَّةِ، وَالْمُحَارَبَةِ، وَالسَّرِقَةِ: بِالْقَتْلِ رَجْمًا، وَالْقَتْلِ صَلْبًا أَوْ بِالسَّيْفِ: أَشْبَهَ بِالْقَتْلِ رَجْمًا بِالْجَلْدِ، قَالُوا: لَا، وَلَا سِيَّمَا الْمَالِكِيُّونَ الْمُشْغِبُونَ بِإِجْمَاعِ أَهْلِ الْمَدِينَةِ، وَهَذَا إِجْمَاعٌ - إِلَّا عِكْرِمَةُ - قَدْ خَالَفُوهُ.

L41266 Then we say to the proponents of analogical reasoning: You have unanimously agreed that the prescribed punishment for a slave equals that of a free person in cases of apostasy, banditry, and theft (where amputation applies). By your principles of analogy, you must consequently extend the disputed rulings regarding his punishment for adultery to the agreed rulings in apostasy, banditry, and theft—applying execution methods (stoning, crucifixion, or the sword for apostasy and banditry) rather than flogging. They replied: No—particularly the contentious Malikis, who invoke the consensus of Medina's scholars. This is a consensus—except for Ikrimah, whom the Malikis opposed.

فَإِنْ قَالُوا: إِنَّ رَاوِيَ هَذَا الْخَبَرِ لَيْثُ بْنُ أَبِي سُلَيْمٍ وَلَيْسَ بِالْقَوِيِّ؟ قُلْنَا لَهُمْ: رُبَّ خَبَرٍ احْتَجَجْتُمْ فِيهِ لِأَنْفُسِكُمْ بِلَيْثٍ وَمَنْ هُوَ دُونَ لَيْثٍ، كَجَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» وَلَيْثٌ أَقْوَى مِنْ جَابِرٍ بِلَا شَكٍّ.

L41267 If they say: "The narrator of this report is Layth ibn Abi Sulaym, and he is not strong?" We say to them: Perhaps a report you have cited as evidence for yourselves relies on Layth or those below him in reliability, such as what is narrated by Jabir al-Ju'fi from al-Sha'bi: "No one should lead the prayer while sitting after me." Yet Layth is undoubtedly stronger than Jabir.

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّ بِهِ أَبُو ثَوْرٍ فَوَجَدْنَا مِنْ حُجَّتِهِ أَنْ قَالَ: قَالَ اللَّهُ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] ؟ قُلْنَا: أَمَرَ اللَّهُ تَعَالَى بِالْمُخَالَفَةِ بَيْنَ حَدِّ الْأَمَةِ وَحَدِّ الْحُرَّةِ فِيمَا لَهُ نِصْفٌ، وَلَيْسَ ذَلِكَ إِلَّا الْجَلْدُ وَالتَّغْرِيبُ فَقَطْ، وَأَمَّا الرَّجْمُ فَلَا نِصْفَ لَهُ أَصْلًا، فَلَمْ يَكُنْ لِلرَّجْمِ فِي هَذِهِ الْآيَةِ دُخُولٌ أَصْلًا وَلَا ذِكْرٌ.

L41268 Then we examined the evidence presented by Abū Thawr and found among his arguments his statement: Allāh the Exalted said, *"But if they commit unlawful sexual intercourse after being married, then upon them is half the punishment prescribed for chaste free women"* [al-Nisāʾ 4:25]. We responded: Allāh the Exalted commanded differentiation between the punishment of the enslaved woman and the free woman in matters where half the punishment applies, and this pertains only to flogging and banishment. As for stoning, it has no half whatsoever. Thus stoning has no connection to this verse at all, nor is it mentioned therein.[63]

وَكَذَلِكَ لَمْ يَكُنْ لَهُ ذِكْرٌ فِي قَوْلِهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي} [النور: ٢] الْآيَةَ.

L41269 Similarly, there was no mention regarding him in the verse of the Most High: "The fornicatress and the fornicator" [24:2].[64]

وَوَجَدْنَا الرَّجْمَ قَدْ جَاءَتْ بِهِ سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ أُحْصِنَ.

L41270 And we found that stoning was established in the Sunnah of the Messenger of Allah (peace be upon him) for one who is married (muḥṣan).

وَكَذَلِكَ جَاءَ - عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ، مِنَ الصَّحَابَةِ: الرَّجْمُ عَلَى مَنْ أُحْصِنَ جُمْلَةً، وَلَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ، وَلَا حُرَّةً مِنْ أَمَةٍ.

L41271 Similarly, it has been reported from 'Umar—may Allah be pleased with him—and other Companions that stoning is prescribed generally for a married

[63] **Qur'an references (L41268):** Qur'an 4:25 (An-Nisa).
[64] **Qur'an references (L41269):** Qur'an 24:2 (An-Nur).

person (muḥṣan), and they made no exception for a free man over a male slave, nor a free woman over a female slave.

L41272 Therefore, stoning is obligatory for every free, legally competent married person—whether a free man, a male slave, a free woman, or a female slave—by the universal ruling established in this matter, except that the flogging of the female slave is half that of the free woman, and her exile is half the duration of the free woman's.

فَوَجَبَ أَنْ يَكُونَ الرَّجْمُ وَاجِبًا عَلَى كُلِّ مَنْ أُحْصِنَ مِنْ حُرٍّ أَوْ عَبْدٍ، أَوْ حُرَّةٍ أَوْ أَمَةٍ، بِالْعُمُومِ الْوَارِدِ فِي ذَلِكَ، إِلَّا أَنَّ جَلْدَ الْأَمَةِ نِصْفُ جَلْدِ الْحُرَّةِ، وَنَفْيُهَا نِصْفُ أَمَدِ الْحُرَّةِ.

L41273–41274 Abū Muḥammad—may Allāh have mercy on him—said: We examined these two evidences and found them valid, since no authentic textual proof contradicts them. We then investigated this matter and found that the Messenger of Allāh—peace and blessings of Allāh be upon him—stated: "When a mukātab commits a ḥadd offense or becomes entitled to inheritance, he inherits according to the portion of his emancipation, and the ḥadd punishment is enforced upon him according to the portion of his emancipation." We have already mentioned this with its chain of transmission connected to it in the preceding adjacent chapter, making its repetition unnecessary.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي هَذَيْنِ الِاحْتِجَاجَيْنِ فَوَجَدْنَاهُمَا صَحِيحَيْنِ، إِذْ لَمْ يَرِدْ نَصٌّ صَحِيحٌ يُعَارِضُهُمَا - فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «إِذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ، وَأُقِيمَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ فَأَغْنَى عَنْ إِعَادَتِهِ.

L41275 The wording of the Messenger of Allah—peace and blessings be upon him—and his ruling in this report establish that the legal status of slaves regarding ḥadd punishments differs from that of free individuals as a whole. For if the rulings were the same, there would have been no meaning whatsoever to the Messenger of Allah's statement—peace and blessings be upon him—that "the ḥadd punishment is imposed upon him in accordance with the portion of him that has been freed," nor would the mukātab (a slave contracted for freedom) who has partially been freed be treated as if he were entirely free. This contradicts the ruling of the Messenger of Allah—peace and blessings be upon him.

فَاقْتَضَى لَفْظُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمُهُ فِي هَذَا الْخَبَرِ حُكْمَ الْمَمَالِيكِ فِي الْحَدِّ بِخِلَافِ حُكْمِ الْأَحْرَارِ جُمْلَةً إِذْ لَوْ كَانَ ذَلِكَ سَوَاءً لَمَا كَانَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ «يُقَامَ عَلَيْهِ الْحَدُّ بِحِسَابِ مَا عَتَقَ مِنْهُ» مَعْنًى أَصْلًا، وَلَكَانَ الْمُكَاتَبُ الَّذِي عَتَقَ بَعْضُهُ كَأَنَّهُ حُرٌّ كُلُّهُ، هَذَا خِلَافُ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41276 Abū Muḥammad—may Allāh have mercy on him—said: Since it is confirmed that the legal ruling concerning apostates in prescribed punishments differs from that governing free persons, there remain only two scenarios—no third exists—and one of them must apply. Either no prescribed punishment whatsoever applies to slaves, and this is invalid due to the evidence we also cited with its chain of transmission in the adjoining chapter. Its chain is: ʿAb-

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ أَنَّ حُكْمَ أَهْلِ الرِّدَّةِ فِي الْحُدُودِ خِلَافُ حُكْمِ الْحُرِّ، فَلَيْسَ إِلَّا أَحَدُ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا، وَلَا بُدَّ مِنْ أَحَدِهِمَا: إِمَّا أَنْ لَا يَكُونَ عَلَى الْمَمَالِيكِ حَدٌّ أَصْلًا، وَهَذَا بَاطِلٌ بِمَا أَوْرَدْنَاهُ أَيْضًا بِإِسْنَادِهِ فِي الْبَابِ الْمُتَّصِلِ بِهَذَا

dullāh ibn Rabīʿ from Muḥammad ibn Muʿāwiyah from Aḥmad ibn Shuʿayb from ʿAbd al-Raḥmān ibn Muḥammad ibn Salām from Isḥāq ibn Yūsuf al-Azraq from Sufyān al-Thawrī from al-Aʿlā—Ibn ʿAbd al-Aʿlā al-Taghlibī—from Maysarah—Ibn Jamīlah—from ʿAlī ibn Abī Ṭālib, who reported that the Messenger of Allāh—peace and blessings be upon him—said: "Apply the prescribed punishments to those whom your right hands possess." This was a general principle requiring the implementation of prescribed punishments upon male and female slaves.

L41277–41279 Alternatively, that slaves have a prescribed punishment differing from the rulings applicable to free persons—and this is the correct position, since the other argument has been invalidated, leaving only this. The truth necessarily lies in one of the two positions—given the existence of the two textual proofs we mentioned—which obligate enforcing the prescribed punishments upon those whom our right hands possess, and that their punishments differ from those of free persons. Since this is undeniably obligatory, it becomes necessary to specify the punishment for slaves contrary to the rulings for free persons in matters of prescribed punishments. Thus, the consensus of those who uphold this position—the people of truth—is validated: that the punishment for slaves is half that of a free person. This constitutes sound evidence, alongside the definitive consensus encompassing all Muslims: that the punishment for male and female slaves is neither less nor more than half the punishment of a free person. No textual proof has ever stipulated this—thereby forming a validated, definitive consensus invalidating the opinion that the punishment for a slave... Whether the punishment for a male or female slave is less than half that of a free person or more than half that of a free person—is this nullified by the aforementioned texts? Abu Muhammad—may Allah have mercy on him—said: Were it not for the textual evidence from the Messenger of Allah—peace be upon him—establishing the enforcement of prescribed punishments upon those whom our right hands possess, these punishments would have been wholly waived for them. Since the prescribed punishments have been confirmed as applicable to them, it is impermissible to enforce upon them anything not mandated by a textual evidence or consensus. There exists neither textual evidence nor consensus

الْبَابِ وَإِسْنَادُهُ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى التَّغْلِبِيَّ - عَنْ مَيْسَرَةَ - هُوَ ابْنُ جَمِيلَةَ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَقِيمُوا الْحُدُودَ عَلَى مَا مَلَكَتْ أَيْمَانُكُمْ» فَكَانَ هَذَا عُمُومًا مُوجِبًا لِوُقُوعِ الْحُدُودِ عَلَى الْعَبِيدِ وَالْإِمَاءِ.

وَإِمَّا أَنْ يَكُونَ لِلْمَمَالِيكِ حَدٌّ مُخَالِفٌ لِحُكْمِ حُدُودِ الْأَحْرَارِ، وَهَذَا هُوَ الْحَقُّ، إذْ قَدْ بَطَلَ الْوَجْهُ الْآخَرُ وَلَمْ يَبْقَ إلَّا هَذَا، وَالْحَقُّ فِي أَحَدِهِمَا وَلَا بُدَّ - مَعَ وُرُودِ هَذَيْنِ النَّصَّيْنِ اللَّذَيْنِ ذَكَرْنَا - مِنْ وُجُوبِ إقَامَةِ الْحُدُودِ عَلَى مَا مَلَكَتْ أَيْمَانُنَا، وَأَنَّهُمْ فِي ذَلِكَ بِخِلَافِ حُدُودِ الْأَحْرَارِ، فَإِذْ قَدْ وَجَبَ هَذَا - بِلَا شَكٍّ - فَلَمْ يَكُنْ بُدٌّ مِنْ تَحْدِيدِ حَدِّ الْمَمَالِيكِ بِخِلَافِ حُكْمِ الْأَحْرَارِ فِي الْحُدُودِ، فَقَدْ صَحَّ إجْمَاعُ الْقَائِلِينَ بِهَذَا الْقَوْلِ - وَهُمْ أَهْلُ الْحَقِّ -: عَلَى أَنَّ الْمَمَالِيكَ فِي الْحَدِّ نِصْفُ حَدِّ الْحُرِّ، فَكَانَ هَذَا حُجَّةً صَحِيحَةً مَعَ صِحَّةِ الْإِجْمَاعِ الْمُتَيَقَّنِ عَلَى إطْبَاقِ جَمِيعِ أَهْلِ الْإِسْلَامِ: عَلَى أَنَّ حَدَّ الْعَبْدِ وَالْأَمَةِ لَيْسَ يَكُونُ أَقَلَّ مِنْ نِصْفِ حَدِّ الْحُرِّ، وَلَا أَكْثَرَ مِنْ نِصْفِ حَدِّ الْحُرِّ، وَلَمْ يَأْتِ بِهَذَا نَصٌّ قَطُّ - فَهَذَا إجْمَاعٌ صَحِيحٌ مُتَيَقَّنٌ عَلَى إبْطَالِ الْقَوْلِ بِأَنْ يَكُونَ حَدُّ الْمَمْلُوكِ أَوْ الْمَمْلُوكَةِ أَقَلَّ مِنْ نِصْفِ حَدِّ الْحُرِّ، أَوْ أَكْثَرَ مِنْ نِصْفِ حَدِّ الْحُرِّ - فَبَطَلَ بِالنُّصُوصِ الْمَذْكُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْلَا نَصُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى إقَامَةِ الْحُدُودِ عَلَى مَا مَلَكَتْ أَيْمَانُنَا لَكَانَتْ الْحُدُودُ عَنْهُمْ سَاقِطَةً جُمْلَةً، فَإِذْ قَدْ صَحَّتْ الْحُدُودُ عَلَيْهِمْ فَلَا يَجُوزُ أَنْ يُقَامَ عَلَيْهِمْ مِنْهَا إلَّا مَا أَوْجَبَهُ عَلَيْهِمْ نَصٌّ أَوْ إجْمَاعٌ، وَلَا نَصَّ وَلَا إجْمَاعَ بِوُجُوبِ الرَّجْمِ عَلَيْهِمْ، وَلَا بِإِيجَابِ أَزْيَدَ مِنْ خَمْسِينَ جَلْدَةً وَنَفْيِ نِصْفِ سَنَةٍ، فَوَجَبَ

requiring stoning for them, nor imposing more than fifty lashes and exile for half a year. Therefore, it is obligatory to adhere to what the textual evidence and consensus have mandated and to waive what lacks textual evidence or consensus—and success is from Allah, the Exalted.

L41280 Abu Muhammad—may Allah have mercy on him—said: It is established by what we have mentioned that Allah's statement—the Exalted—{As for the fornicatress and the fornicator, strike each of them with a hundred lashes} [24:2], refers exclusively to free men and free women. Similarly, the statement of the Messenger of Allah—peace be upon him—"A virgin with a virgin is a hundred lashes and exile for a year, and a previously married person with a previously married person is a hundred lashes and stoning," was intended by him—peace be upon him—exclusively for free men and free women, neither male slaves nor female slaves.[65][66]

L41281 As for he who does not authenticate the ḥadīth we cited from the Messenger of Allah—peace and blessings be upon him—regarding "the ḥadd punishment being imposed on a mukātab slave in proportion to the degree of his emancipation," and who does not authenticate the ruling based on the statement of the Messenger of Allah—peace and blessings be upon him—"the virgin with a virgin: one hundred lashes and exile for a year, and the previously married with the previously married: one hundred lashes and stoning," and who relies solely on the ḥadīths concerning the stoning of Māʿiz, Al-Ghāmidiyyah, and Al-Juhaniyyah—may Allah be pleased with them—then he has no escape from the evidence presented by Abū Thawr and our companions. Moreover, we find absolutely no evidence for abolishing stoning in the case of a muḥṣan female slave or a muḥṣan male slave. If he resorts to analogy and says, "I analogize the male slave to the female slave," it is said to him: All analogy is entirely invalid. Even if analogy were valid, you would have no valid analogy to rely on for abolishing stoning at all, for the statement of Allah the Exalted, *"But if they commit adultery after attaining chastity, they shall suffer half the punishment prescribed for chaste free women"* (4:25), contains no explicit text or indication supporting the abolition of stoning

الْأَخْذُ بِمَا أَوْجَبَهُ النَّصُّ وَالْإِجْمَاعُ وَإِسْقَاطُ مَا لَا نَصَّ فِيهِ وَلَا إجْمَاعَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ بِمَا ذَكَرْنَا أَنَّ قَوْلَ اللَّهِ تَعَالَى {الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا} [النور: ٢] الْآيَةَ إنَّمَا عَنَى بِلَا شَكٍّ الْأَحْرَارَ وَالْحَرَائِرَ، وَكَذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» إنَّمَا عَنَى بِهِ - عَلَيْهِ السَّلَامُ - الْأَحْرَارَ وَالْحَرَائِرَ لَا الْعَبِيدَ وَلَا الْإِمَاءَ.

وَأَمَّا مَنْ لَمْ يُصَحِّحْ الْحَدِيثَ الَّذِي أَوْرَدْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ «يُقَامُ الْحَدُّ عَلَى الْمُكَاتَبِ بِقَدْرِ مَا عَتَقَ» وَلَمْ يُصَحِّحْ الْحُكْمَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ» وَلَمْ يَعْتَمِدْ فِي الرَّجْمِ إلَّا عَلَى الْأَحَادِيثِ الْوَارِدَةِ فِي رَجْمِ مَاعِزٍ، وَالْغَامِدِيَّةِ، وَالْجُهَنِيَّةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّهُ لَا مُخَلِّصَ لَهُمْ مِنْ دَلِيلِ أَبِي ثَوْرٍ وَأَصْحَابِنَا، وَلَا نَجِدُ أَلْبَتَّةَ دَلِيلًا عَلَى إسْقَاطِ الرَّجْمِ عَنْ الْأَمَةِ الْمُحْصَنَةِ وَالْعَبْدِ الْمُحْصَنِ؟ فَإِنْ رَجَعَ إلَى الْقِيَاسِ فَقَالَ: أَقِيسُ الْعَبْدَ عَلَى الْأَمَةِ؟ قِيلَ لَهُ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَمَا كَانَ لَكُمْ هَاهُنَا وَجْهٌ مِنْ الْقِيَاسِ تَتَعَلَّقُونَ بِهِ فِي إسْقَاطِ الرَّجْمِ أَصْلًا، لِأَنَّ قَوْلَ اللَّهِ تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] لَيْسَ فِيهِ نَصٌّ وَلَا دَلِيلٌ عَلَى إسْقَاطِ الرَّجْمِ عَنْهَا، وَلَا نَجِدُ دَلِيلًا عَلَى

[65] **Hadith references (L41280):** Sahih Muslim 1690a.
[66] **Qur'an references (L41280):** Qur'an 24:2 (An-Nur).

for them. We find no evidence whatsoever for abolishing it, especially those who claim that "her being muḥṣanah is defined by her being Muslim," which would also necessitate that every free Muslim woman must necessarily be considered muḥṣanah, even if she has never been married, since her iḥṣān is likewise equated with her Islam.[67]

L41282–41283 Among the absurd and untenable falsehoods is that a slave woman's Islam would constitute chastity for her, while a free woman's Islam would not constitute chastity. Since this conclusion is necessarily established, the aforementioned verse - Allah's statement *"If they attain chastity, then upon them, if they commit indecency, is half the punishment of the chaste women"* [4:25] - must refer to unmarried slave women and free women. This is because proponents of this doctrine restrict the term "chaste women" here solely to free women who have not married, maintaining that only such women have half the punishment relative to chaste women.[68]

L41284 As for stoning—which in their view is the punishment exclusively for married women, while other punishments exist for them according to their perspective—there is no mitigation for it. If this becomes binding upon them by the requirement of their doctrine, then it remains obligatory for the enslaved woman made chaste through marriage and the free woman made chaste through marriage to be subject to stoning. This obligation exists solely because the Prophet—peace and blessings of God be upon him and his family—stoned those who were muhsan (chaste and married). Success comes solely from God, the Most High.

L41285 A juristic case: A man and woman were discovered engaging in intercourse. They claimed marital status, but this is not legally recognized.

L41286 2211 - Issue: A woman and a man were found, with the man having intercourse with her. She said, "He is my husband," and he said, "She is my wife"—though this was not known. Abū Muḥammad—may Allāh have mercy

[67] **Qur'an references (L41281):** Qur'an 4:25 (An-Nisa).
[68] **Qur'an references (L41283):** Qur'an 4:25 (An-Nisa).

إِسْقَاطِه أَصْلًا، وَلَا سِيَّمَا مَنْ قَالَ: إِحْصَانُهَا هُوَ إِسْلَامُهَا، وَأَنَّهُ أَيْضًا يَلْزَمُهُ أَنْ تَكُونَ كُلُّ حُرَّةٍ مُسْلِمَةٍ مُحْصَنَةً وَلَا بُدَّ، وَإِنْ لَمْ تَتَزَوَّجْ قَطُّ، لِأَنَّ إِحْصَانَهَا أَيْضًا إِسْلَامُهَا.

وَمِنْ الْبَاطِلِ الْمُحَالِ أَنْ يَكُونَ إِسْلَامُ الْأَمَةِ إِحْصَانًا لَهَا، وَلَا يَكُونُ إِسْلَامُ الْحُرَّةِ إِحْصَانًا لَهَا، فَإِذَا وَجَبَ هَذَا وَلَا بُدَّ، فَوَاجِبٌ أَنْ تَكُونَ الْآيَةُ الْمَذْكُورَةُ، يَعْنِي قَوْله تَعَالَى {فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ} [النساء: ٢٥] اللَّوَاتِي لَمْ يَتَزَوَّجْنَ مِنْ الْإِمَاءِ وَالْحَرَائِرِ، لِأَنَّ أَهْلَ هَذِهِ الْمَقَالَةِ لَا يَرَوْنَ الْمُحْصَنَاتِ هَاهُنَا إلَّا الْحَرَائِرَ اللَّوَاتِي لَمْ يَتَزَوَّجْنَ فَهُنَّ عِنْدَهُمْ اللَّوَاتِي لِعَذَابِهِنَّ نِصْفٌ.

وَأَمَّا الرَّجْمُ الَّذِي هُوَ عِنْدَهُمْ عَذَابُ الْمُتَزَوِّجَاتِ فَقَطْ عَذَابٌ عَلَيْهِنَّ عِنْدَهُمْ غَيْرُهُ، فَلَا نِصْفَ لَهُ، فَإِذَا لَزِمَهُمْ هَذَا وَاقْتَضَاهُ قَوْلُهُمْ، فَوَاجِبٌ أَنْ تَبْقَى الْأَمَةُ الْمُحْصَنَةُ بِالزَّوَاجِ وَالْحُرَّةُ الْمُحْصَنَةُ بِالزَّوَاجِ: عَلَى وُجُوبِ الرَّجْمِ الَّذِي إنَّمَا وَجَبَ عِنْدَهُمْ بِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَجَمَ مَنْ أُحْصِنَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وُجِدَتْ امْرَأَةٌ وَرَجُلٌ يَطَؤُهَا فادعيا الزَّوْجِيَّة وَذَلِكَ لَا يَعْرِف]

٢٢١١ - مَسْأَلَةٌ: وُجِدَتْ امْرَأَةٌ وَرَجُلٌ يَطَؤُهَا؟ فَقَالَتْ: هُوَ زَوْجِي وَقَالَ هُوَ: هِيَ زَوْجَتِي - وَذَلِكَ لَا يُعْرَفُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِمَا كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ

أَصْبَغَ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا دَاوُد بْنُ يَزِيدَ الزَّعَاوِيُّ عَنْ أَبِيهِ أَنَّ رَجُلًا وَامْرَأَةً وُجِدَا فِي " حَرْبِ مِرْدَاسٍ " فَرُفِعَا إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: ابْنَةُ عَمِّي تَزَوَّجْتَهَا، فَقَالَ لَهَا عَلِيٌّ: مَا تَقُولِينَ؟ فَقَالَ لَهَا النَّاسُ: قُولِي نَعَمْ، فَقَالَتْ: نَعَمْ، فَدَرَأَ عَنْهُمَا.

on him—said: "People differed regarding this. A group said: 'No ḥadd punishment is imposed on them.'" Just as narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by ʿAbdullāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, narrated by Dāwūd ibn Yazīd al-Zaʿāwī, from his father: A man and a woman were found during the battle of Mirdās and were brought to ʿAlī ibn Abī Ṭālib. The man said, "She is the daughter of my paternal uncle; I married her." ʿAlī asked her, "What do you say?" People urged her, "Say yes." She said, "Yes," so he averted the ḥadd punishment from them.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ سُلَيْمَانَ أَنَّهُمَا قَالَا فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي: أَنَّهُ لَا حَدَّ عَلَيْهِ - قَالَ شُعْبَةُ: فَذَكَرْتُ ذَلِكَ لِأَيُّوبَ السِّخْتِيَانِيِّ، فَقَالَ: ادْرَءُوا الْحُدُودَ مَا اسْتَطَعْتُمْ؟ .

L41287 Muhammad ibn Saʿid ibn Nabat narrated to us → Ahmad ibn ʿAwn Allah → Qasim ibn Asbagh → Muhammad ibn ʿAbd al-Salam al-Khushani → Muhammad ibn Bashshar Bundār → Muhammad ibn Jaʿfar Ghundar → Shuʿbah, from al-Hakam ibn ʿUtaybah and Hammad ibn Sulayman, that they both said regarding a man discovered (in seclusion) with a woman who claims, "She is my wife": There is no prescribed punishment upon him. Shuʿbah said: I mentioned that to Ayyub al-Sakhtiyānī, and he said: Avert the prescribed punishments as much as you are able.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ.

L41288 Abu Muhammad—may Allah have mercy on him—said: And by this position speak Abu Hanifah and al-Shafi'i.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِمَا الْحَدُّ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي، فَقَالَ إِبْرَاهِيمُ: إِنْ كَانَ كَمَا يَقُولُ لَمْ يُقَمْ عَلَى فَاجِرٍ حَدٌّ.

L41289–41291 A group said: The ḥadd punishment is upon both of them: As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, narrated to us by ʿAbdullāh ibn Naṣr, narrated to us by Qāsim ibn Aṣbagh, narrated to us by Ibn Waḍḍāḥ, narrated to us by Mūsā ibn Muʿāwiyah, narrated to us by Wakīʿ, from Sufyān al-Thawrī, from... Al-Mughīrah from Ibrāhīm al-Nakhaʿī regarding a man found with a woman, then he says: "She is my wife." Ibrāhīm said: "If it is as he claims, no ḥadd punishment is enforced upon the fornicator."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ فَيَقُولُ: هِيَ امْرَأَتِي قَالَ: عَلَيْهِ الْحَدُّ.

L41292 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAwn Allāh narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn Bashshār narrated to us: Muḥammad ibn Jaʿfar narrated to us: Shuʿbah narrated from al-Mughīrah from Ibrāhīm al-Nakhaʿī concerning a man discovered with a woman who

claims, “She is my wife.” He stated: “The ḥadd punishment is obligatory upon him.”

L41293 Abdullah ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Saḥnūn narrated to us, Ibn Wahb narrated from several authorities from Al-Awzāʿī, who said: I asked Ibn Shihāb about a man found with a woman, and he says: “I have married her.” He replied: “He is asked to provide evidence. If he brings his evidence, otherwise the prescribed punishment is applied to him.” This is the position upheld by Mālik and his companions.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ غَيْرِ وَاحِدٍ عَنْ الْأَوْزَاعِيِّ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنْ الرَّجُلِ يُوجَدُ مَعَ الْمَرْأَةِ؟ فَيَقُولُ: تَزَوَّجْتهَا فَقَالَ: يَسْأَلُ الْبَيِّنَةَ، فَإِنْ جَاءَ بِبَيِّنَتِهِ وَإِلَّا وَقَعَ عَلَيْهِ الْحَدُّ - وَبِهِ يَقُولُ، مَالِكٌ، وَأَصْحَابُهُ.

L41294 Uthman al-Batti said: If the two are unknown, no ḥadd is imposed upon them. If they are known, then if it was previously observed that he entered her and that was mentioned, no ḥadd is imposed upon him. But if none of that existed, then the ḥadd is imposed upon both of them.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إنْ كَانَا لَا يُعْرَفَانِ فَلَا حَدَّ عَلَيْهِمَا، فَإِنْ كَانَا مَعْرُوفَيْنِ فَإِنْ كَانَ يُرَى قَبْلَ ذَلِكَ يُدْخَلُ إلَيْهَا وَيُذْكَرُ ذَلِكَ، فَلَا حَدَّ عَلَيْهِ، وَإِنْ لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ فَعَلَيْهِمَا الْحَدُّ.

L41295 Abū Muḥammad—may Allāh have mercy on him—said: When they differed as we mentioned, it became obligatory to examine this matter. We found those who asserted that no ḥadd punishment applies to the two of them, arguing that it is an opinion transmitted from ʿAlī ibn Abī Ṭālib in the presence of the Companions, with none among them opposing him. Therefore, it is impermissible to contravene this ruling.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا مَنْ قَالَ: لَا حَدَّ عَلَيْهِمَا يَحْتَجُّ بِأَنْ قَالَ: هُوَ قَوْلٌ رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ بِحَضْرَةِ الصَّحَابَةِ وَلَا مُخَالِفَ لَهُ مِنْهُمْ، فَلَا يَجُوزُ تَعَدِّيه.

L41296 They said: Ward off the hudud (prescribed punishments) by means of doubts, for this [dismissal] is necessitated by a strong doubt.

وَقَالُوا: ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ وَأَوْجَبَ هَذِهِ شُبْهَةً قَوِيَّةً.

L41297 They said: There is no disagreement among any members of the Ummah that if a man were found having intercourse with a female slave known to belong to someone else, and the one whose ownership of her is recognized said to him: “He had indeed purchased her from me,” while the man likewise asserted this, and she herself confirmed it—there would be no ḥadd punishment upon either of them. Is this case analogous to that? Abū Muḥammad—may Allah have mercy on him—said: We know of no proof for their position except what we have mentioned. None of this constitutes proof for them. As for their claim that this is a statement narrated from ʿAlī, this provides

وَقَالُوا: لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ رَجُلًا لَوْ وُجِدَ يَطَأُ أَمَةً مَعْرُوفَةً لِغَيْرِهِ فَقَالَ الَّذِي عُرِفَ مِلْكُهَا لَهُ: قَدْ كَانَ اشْتَرَاهَا مِنِّي، وَقَالَ هُوَ كَذَلِكَ، وَأَقَرَّتْ هِيَ بِذَلِكَ: أَنَّهُ لَا حَدَّ عَلَيْهِمَا - فَهَذَا مِثْلُهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا قَوْلُهُمْ: إنَّهُ قَوْلٌ رُوِيَ عَنْ عَلِيٍّ، فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهَذَا لَا يَلْزَمُنَا.

no proof for them, for no proof lies in anyone apart from the Messenger of Allah—peace and blessings be upon him. Thus, this does not obligate us.

L41298–41300 As for their statement, "Ward off the hudud as much as possible," the invalidity of this assertion has been firmly established, and that it has no... It is permissible to avert a prescribed punishment due to legal doubt, but not to implement it based on doubt in the divine law of Allah the Exalted. Verily, it is solely the truth and absolute certainty. The mere fact that this statement is not found in the Quran or Sunnah suffices to invalidate the claim of those who say "Avert the prescribed punishments due to doubts." The Quran and Sunnah instead prohibit [the spilling of] a Muslim's blood and violation of his bodily integrity until a prescribed punishment from Allah the Exalted is proven against him. Once proven, it becomes entirely impermissible to avert it, and thus [one] is disobedient to Allah the Exalted.

L41301 As for their analogy comparing this to a known female slave belonging to a man—where another man is found with her claiming, "She has come under my ownership," while her master asserts the same claim—and their appeal to juristic consensus in this matter: this constitutes a claim based on conjecture and is invalid. We have not found Malik's well-known ruling regarding someone against whom evidence is established for taking property stealthily from its secured place, who then alleges that the owner authorized this or gifted it, even if the owner acknowledges the claim—that such a plea is disregarded, and his hand must inevitably be amputated. Abu Muhammad (may Allah have mercy on him) said: Our position is that if a man is found with a woman he has had intercourse with, and evidence establishes the act, and he claims she is his wife or female slave—which she corroborates—then if they are strangers or known individuals, no penalty applies to them. They are neither questioned nor investigated, nor are they scrutinized about anything. This is because the consensus—reliably transmitted by trustworthy narrators—confirms that people migrated to Allah's Messenger (peace and blessings be upon him) individually and in groups from Yemen's farthest regions and all Arab lands, bringing their families, wives, female slaves, and male slaves. None were barred from claiming a woman as his wife or slave, nor was anyone compelled to produce evidence for such a claim.

وَأَمَّا قَوْلُهُمْ: " ادْرَءُوا الْحُدُودَ مَا أَمْكَنَكُمْ " فَقَدْ ثَبَتَ بُطْلَانُ هَذَا الْقَوْلِ، وَأَنَّهُ لَا يَحِلُّ دَرْءُ حَدٍّ بِشُبْهَةٍ وَلَا إقَامَتُهُ بِشُبْهَةٍ فِي دِينِ اللَّهِ تَعَالَى، وَإِنَّمَا هُوَ الْحَقُّ وَالْيَقِينُ فَقَطْ، وَيَكْفِي مِنْ بُطْلَانِ قَوْلِ مَنْ قَالَ " ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ " أَنَّهُ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ - وَإِنَّمَا جَاءَ الْقُرْآنُ وَالسُّنَّةُ بِتَحْرِيمِ دَمِ الْمُسْلِمِ وَبَشَرَتِهِ حَتَّى يَثْبُتَ عَلَيْهِ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى، فَإِذَا ثَبَتَ لَمْ يَحِلَّ دَرْؤُهُ أَصْلًا، فَيَكُونُ عَاصِيًا لِلَّهِ تَعَالَى.

وَأَمَّا قَوْلُهُ فِي تَنْظِيرِهِمْ ذَلِكَ بِالْأَمَةِ الْمَعْرُوفَةِ لِإِنْسَانٍ فَيُوجَدُ مَعَهَا رَجُلٌ فَيَقُولُ: قَدْ صَارَتْ إلَيَّ وَمَلَكْتُهَا، وَيَقُولُ سَيِّدُهَا بِذَلِكَ، وَدَعْوَاهُمْ الْإِجْمَاعَ فِي ذَلِكَ: قَوْلٌ بِالظَّنِّ لَا يَصِحُّ، وَمَا عَهِدْنَا قَوْلَ مَالِكٍ الْمَشْهُورِ فِيمَنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ بِأَنَّهُ أَخْرَجَ مِنْ حِرْزِهِ مَالًا مُسْتَتِرًا بِذَلِكَ، فَادَّعَى أَنَّ صَاحِبَ ذَلِكَ الشَّيْءِ أَمَرَهُ بِذَلِكَ، أَوْ أَنَّهُ وَهَبَهُ، وَأَقَرَّ صَاحِبُ الْمَالِ بِذَلِكَ: بِأَنَّهُ لَا يَلْتَفِتُ إلَى ذَلِكَ: بَلْ تُقْطَعُ يَدُهُ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ: أَنَّ مَنْ وُجِدَ مَعَ امْرَأَةٍ يَطَؤُهَا وَقَامَتْ الْبَيِّنَةُ بِالْوَطْءِ، فَقَالَ هُوَ: إنَّهَا امْرَأَتِي، أَوْ قَالَ: أَمَتِي، فَصَدَّقَتْهُ فِي ذَلِكَ، فَإِنْ كَانَا غَرِيبَيْنِ، أَوْ يُعْرَفَانِ، فَلَا شَيْءَ عَلَيْهِمَا، وَلَا يُعْرَضُ لَهُمَا وَلَا يُكْشَفَانِ عَنْ شَيْءٍ، لِأَنَّ الْإِجْمَاعَ قَدْ صَحَّ بِنَقْلِ الْكَوَافِّ: أَنَّ النَّاسَ كَانُوا يُهَاجِرُونَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَفْذَاذًا وَمُجْتَمِعِينَ، مِنْ أَقَاصِي الْيَمَنِ، وَمِنْ جَمِيعِ بِلَادِ الْعَرَبِ - بِأَهْلِيهِمْ وَنِسَائِهِمْ وَإِمَائِهِمْ

وَعَبِيدِهِمْ - فَمَا حِيلَ بَيْنَ أَحَدٍ وَبَيْنَ مَنْ زَعَمَ أَنَّهَا امْرَأَتُهُ أَوْ أَمَتُهُ، وَلَا كُلِّفَ أَحَدٌ عَلَى ذَلِكَ بَيِّنَةً.

L41302–41304 ثُمَّ عَلَى هَذَا إجْمَاعُ جَمِيعِ أَهْلِ الْإِسْلَامِ، وَجَمِيعِ أَهْلِ الْأَرْضِ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَى يَوْمِنَا هَذَا لَا يَزَالُ النَّاسُ يَرْحَلُونَ بِأَهْلِيهِمْ وَإِمَائِهِمْ وَرَقِيقِهِمْ، وَلَا يُكَلَّفُ أَحَدٌ مِنْهُمْ بَيِّنَةً عَلَى ذَلِكَ، بَلْ تُصَدَّقُ أَقْوَالُهُمْ فِي ذَلِكَ - مُسْلِمِينَ كَانُوا أَوْ كُفَّارًا - فَإِذْ قَدْ صَحَّ النَّصُّ بِهَذَا وَالْإِجْمَاعُ فَلَا يَجُوزُ مُخَالَفَةُ ذَلِكَ، فَإِنْ كَانَتْ مَعْرُوفَةً فِي الْبَلَدِ، وَمَعْرُوفٌ أَنَّهُ لَا زَوْجَ لَهَا، فَإِنْ أَمْكَنَ مَا يَقُولُ، فَلَا شَيْءَ عَلَيْهِمَا، لِأَنَّ أَصْلَ دِمَائِهِمَا وَأَبْشَارِهِمَا عَلَى التَّحْرِيمِ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ إبَاحَةُ مَا حَرَّمَ اللَّهُ تَعَالَى إلَّا بِيَقِينٍ لَا شَكَّ فِيهِ - وَإِنْ كَانَ كَذِبُهُمَا فِي ذَلِكَ مُتَيَقَّنًا فَالْحَدُّ وَاجِبٌ عَلَيْهِمَا - وَإِنْ قَالَ: هِيَ أَمَتِي، وَصَدَّقَهُ صَاحِبُهَا الَّذِي عُرِفَ مِلْكُهَا لَهُ، وَأَقَرَّ أَنَّهُ قَدْ كَانَ وَهَبَهَا لَهُ، أَوْ كَانَ بَاعَهَا مِنْهُ: صُدِّقَ وَلَا شَيْءَ عَلَيْهِمَا فِي ذَلِكَ، فَإِنْ كَذَّبَهُ حُدَّ، إلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ عَلَى صِحَّةِ دَعْوَاهُ، فَلَوْ قَالَ: هِيَ أَمَتِي، وَقَالَتْ هِيَ: بَلْ أَنَا زَوْجَتُهُ، أَوْ قَالَ: هِيَ زَوْجَتِي، وَقَالَتْ هِيَ: بَلْ أَنَا أَمَتُهُ، أَوْ قَالَتْ: بَلْ أُمُّ وَلَدِهِ - فَقَدْ اتَّفَقَا عَلَى صِحَّةِ الْفِرَاشِ فَلَا حَدَّ فِي ذَلِكَ، وَهِيَ عَلَى الْحُرِّيَّةِ حَتَّى يُقِيمَ هُوَ بَيِّنَةً بِمِلْكِهِ لَهَا، فَإِنْ لَمْ يَفْعَلْ حَلَفَ لَهَا فِيمَا يَدَّعِيهِ مِنْ الزَّوْجِيَّةِ، وَفُرِّقَ بَيْنَهُمَا، لِأَنَّ الْمِلْكَ قَدْ بَطَلَ إذَا لَمْ تَقُمْ بَيِّنَةٌ، وَالنَّاسُ عَلَى الْحُرِّيَّةِ حَتَّى يَصِحَّ الرِّقُّ، وَالزَّوْجِيَّةُ لَمْ تَثْبُتْ - لَا بِإِقْرَارِهِمَا وَلَا بِبَيِّنَةٍ - وَإِنَّمَا يُحْكَمُ عَلَيْهِمَا مِنْ الْآنَ، وَأَمَّا إذَا كَانَتْ أَمَةً مَعْرُوفَةً لِإِنْسَانٍ، فَأَنْكَرَ سَيِّدُهَا خُرُوجَهَا عَنْ مِلْكِهِ

Then, upon this is the consensus of all people of Islam and all inhabitants of the earth from the era of Allah's Messenger—peace and blessings be upon him—until our present day. People continually journey with their families, female slaves, and slaves, none being obligated to produce evidence for this. Rather, their statements are accepted in this matter—whether they are Muslims or unbelievers. Since the textual proof and consensus have been firmly established, opposing this is impermissible. If she is known in the locality, and it is established that she has no husband—if his claim is feasible—no penalty falls upon them. This is because the foundational principle governing their blood and bodies is inviolability, per the statement of Allah's Messenger—peace and blessings be upon him: "Your blood, your wealth, your honor, and your bodies are inviolable to you." Thus, it is impermissible to legitimize what Allah the Exalted has forbidden except through indubitable certainty. If their falsehood in this matter is conclusively proven, the ḥadd punishment becomes obligatory upon them. If he states, "She is my female slave," and her owner confirms it by acknowledging having gifted her to him or sold her to him, his testimony is accepted with no penalty upon them. Should the owner refute his assertion, the ḥadd is imposed unless he produces evidence substantiating his claim. Were he to say... She is my slave-girl, while she says: "Rather, I am his wife," or he says: "She is my wife," while she says: "Rather, I am his slave-girl," or she says: "Rather, I am his umm walad" - they agree upon the lawfulness of cohabitation, so no hadd penalty applies. She remains presumed free until he presents evidence of his ownership over her. If he fails to do so, he must swear an oath regarding his claim of marriage, and they are separated. Ownership becomes invalid without evidence, and people are presumed free until valid enslavement is established. Marriage remains unproven - neither by their mutual admission nor by evidence - with judgment applied from now. If she is a known slave belonging to someone else, and her master denies her transfer from his ownership to the man found with her, the hadd penalty applies to her and the man unless he

presents evidence. The man may compel her master to swear an oath, and this is obligatory.

إِلَى الَّذِي وُجِدَ مَعَهَا، فَالْحَدُّ عَلَيْهَا وَعَلَى الَّذِي وُجِدَ مَعَهَا، إِلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ عَلَى ذَلِكَ، وَلَهُ عَلَى سَيِّدِهَا الْيَمِينُ وَلَا بُدَّ.

A legal question concerning a man found in seclusion with a woman when her father or brother affirmed the validity of marriage on his behalf.

[مَسْأَلَةٌ فِيمَنْ وُجِدَ مَعَ امْرَأَةٍ فَشَهِدَ لَهُ أَبُوهَا أَوْ أَخُوهَا بِالزَّوْجِيَّةِ]

Abū Muḥammad—may God have mercy on him—said: If a man—whether known or unknown—is found having intercourse with a known woman, and both he and she claim marriage, and her father or brother testifies to this on their behalf, then Mālik said: The ḥadd punishment applies to them. Our companions said: If the two who testified for them are upright, the marriage contract is valid, and the ḥadd punishment is nullified—and this is the position we adopt. If they are not upright, the ḥadd punishment applies to them unless there is clear evidence or public acknowledgment of the marriage's validity. For certainty has been established that they are not spouses and that she is forbidden to him. Thus, the prohibition cannot transition to permissibility, nor can their spousal status be recognized except through certainty derived from clear evidence or public acknowledgment.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ وُجِدَ يَطَأُ امْرَأَةً مَعْرُوفَةً - وَهُوَ مَجْهُولٌ أَوْ مَعْرُوفٌ - فَادَّعَى هُوَ وَهِيَ الزَّوْجِيَّةَ، وَشَهِدَ لَهُمَا بِذَلِكَ أَبُوهَا أَوْ أَخُوهَا فَإِنَّ مَالِكًا قَالَ: عَلَيْهِمَا الْحَدُّ، وَقَالَ أَصْحَابُنَا: إنْ كَانَ اللَّذَانِ شَهِدَا لَهُمَا عَدْلَيْنِ صَحَّ الْعَقْدُ، وَبَطَلَ الْحَدُّ - وَبِهَذَا نَأْخُذُ، فَإِنْ لَمْ يَكُونَا عَدْلَيْنِ، فَالْحَدُّ عَلَيْهِمَا مَا لَمْ يَكُنْ عَلَى صِحَّةِ النِّكَاحِ بَيِّنَةٌ، أَوْ اسْتِفَاضَةٌ، لِأَنَّ الْيَقِينَ صَحَّ أَنَّهُمَا غَيْرُ زَوْجَيْنِ، وَأَنَّهَا حَرَامٌ عَلَيْهِ، فَلَا يَنْتَقِلُ التَّحْرِيمُ إلَى التَّحْلِيلِ، وَلَا يَنْتَقِلَانِ إلَى حُكْمِ الزَّوْجِيَّةِ إلَّا بِيَقِينٍ مِنْ بَيِّنَةٍ أَوْ اسْتِفَاضَةٍ.

[Issue: Should the Imam and others pray the funeral prayer over the stoned individual or not?]

[مَسْأَلَةٌ هَلْ يُصَلِّي الْإِمَامُ وَغَيْرُهُ عَلَى الْمَرْجُومِ أَمْ لَا]

Issue 2213: Should the Imam and others pray over one who has been stoned or not? Abu Muhammad—may Allah have mercy on him—said: From Abdullah ibn Yusuf, from Ahmad ibn Fath, from Abdul Wahhab ibn Isa, from Ahmad ibn Muhammad, from Ahmad ibn Ali, from Muslim ibn Al-Hajjaj, from Muhammad ibn Al-Muthanna, from Abdul A'la, from Dawud, from Abu Nadrah, from Abu Sa'id Al-Khudri: A man from Aslam named Ma'iz ibn Malik—whom the Messenger of Allah (peace be upon him) stoned—then Abu Sa'id mentioned the full account of the hadith. The Messenger of Allah (peace be upon him) stood to deliver an evening sermon and said: "Whenever we embark on expeditions in Allah's cause, does a man shirk [his duty] and stay behind among our families with a bleating like the bleating of a he-goat?

٢٢١٣ - مَسْأَلَةٌ: هَلْ يُصَلِّي الْإِمَامُ وَغَيْرُهُ عَلَى الْمَرْجُومِ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا دَاوُد عَنْ أَبِي نَضْرَةَ «عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَجُلًا مِنْ أَسْلَمَ يُقَالُ لَهُ مَاعِزُ بْنُ مَالِكٍ رَجَمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ - ثُمَّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطِيبًا مِنْ الْعَشِيِّ فَقَالَ: أَوَكُلَّمَا انْطَلَقْنَا غُزَاةً فِي سَبِيلِ اللَّهِ تَخَلَّفَ رَجُلٌ فِي عِيَالِنَا لَهُ

I swear, if I am brought any man who does this, I will punish him severely." He neither sought forgiveness for him nor cursed him.[69]

L41309–41311 Narrated to us Hammam from Ibn Mufarrij from Ibn Al-Aʿrabī from Al-Dabarī from ʿAbd Al-Razzāq from Ibn Jurayj. Abdullah ibn Abi Bakr informed me; he was informed by Ayyub from Abu Umamah ibn Sahl ibn Hunayf al-Ansari that the Messenger of Allah—peace and blessings be upon him—prayed the Dhuhr prayer on the day he ordered Maʿiz to be stoned. He prolonged the first two rak'ahs of Dhuhr until the people were nearly unable to endure due to the prolonged standing. When he concluded, he ordered Maʿiz to be stoned. He was not killed until Umar ibn al-Khattab struck him with a camel's jawbone, hitting his head and killing him. As his soul departed, a man asked, "Will you pray over him, O Messenger of Allah?" He replied, "No." The next day, he prayed Dhuhr and prolonged the first two rak'ahs as he had done the day before—or he delayed due to matters. When he concluded, he said, "Pray over your companion." So the Prophet—peace be upon him—and the people prayed over him.

L41312 Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, 'Abd al-Razzaq narrated from Ma'mar from al-Zuhri from Abu Salama from Jabir ibn 'Abd Allah: "A man from Aslam came to the Prophet — peace and blessings be upon him — and confessed to adultery. The Prophet turned away — and he related the hadith, which included — The Prophet — peace and blessings be upon him — ordered him to be stoned at the Musalla. When the stones made him stumble, he fled but was overtaken and stoned until he died. The Prophet — peace and blessings be upon him — spoke favorably of him but did not perform the funeral prayer over him."

L41313 Abu Muhammad—may Allah have mercy on him—said: A group of people adopted this view and stated: "The Imam does not pray over them, but others besides the Imam do." Others held the opinion that the Imam prays over the

نَبِيبٌ كَنَبِيبِ التَّيْسِ، عَلَى أَنْ لَا أُوتَى بِرَجُلٍ فَعَلَ ذَلِكَ إِلَّا نَكَّلْتُ بِهِ قَالَ: فَمَا اسْتَغْفَرَ لَهُ وَلَا سَبَّهُ» .

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ أَخْبَرَنِي أَيُّوبُ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ الْأَنْصَارِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَلَّى الظُّهْرَ يَوْمَ أَمَرَ بِمَاعِزٍ يُرْجَمُ فَطَوَّلَ الْأُولَيَيْنِ مِنْ الظُّهْرِ حَتَّى كَادَ النَّاسُ يَعْجِزُونَ عَنْهَا مِنْ طُولِ الْقِيَامِ، فَلَمَّا انْصَرَفَ أَمَرَ بِهِ فَرُجِمَ، فَلَمْ يُقْتَلْ حَتَّى رَمَاهُ عُمَرُ بْنُ الْخَطَّابِ بِلَحْيِ بَعِيرٍ فَأَصَابَ رَأْسَهُ فَقَتَلَهُ، فَقَالَ رَجُلٌ لِمَاعِزٍ حِينَ فَاضَتْ نَفْسُهُ: أَتُصَلِّي عَلَيْهِ يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، فَلَمَّا كَانَ الْغَدُ صَلَّى الظُّهْرَ فَطَوَّلَ الرَّكْعَتَيْنِ الْأُولَتَيْنِ كَمَا طَوَّلَهُمَا بِالْأَمْسِ، أَوْ أَخَّرَ بِأَشْيَاءَ، فَلَمَّا انْصَرَفَ قَالَ: صَلُّوا عَلَى صَاحِبِكُمْ فَصَلَّى عَلَيْهِ النَّبِيُّ - عَلَيْهِ السَّلَامُ - وَالنَّاسُ» .

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرِ بْنَ عَبْدِ اللَّهِ «أَنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى فَأَعْرَضَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ - فَأَمَرَ بِهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُجِمَ بِالْمُصَلَّى، فَلَمَّا أَذْلَقَتْهُ الْحِجَارَةُ فَرَّ فَأُدْرِكَ فَرُجِمَ حَتَّى مَاتَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْرًا وَلَمْ يُصَلِّ عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَذَهَبَ إلَى هَذَا قَوْمٌ فَقَالُوا: لَا يُصَلِّي عَلَيْهِ الْإِمَامُ وَيُصَلِّي عَلَيْهِ غَيْرُهُ - وَذَهَبَ آخَرُونَ إلَى أَنَّ الْإِمَامَ يُصَلِّي عَلَى الْمَرْجُومِ وَالْمَرْجُومَةِ كَسَائِرِ الْمَوْتَى وَلَا فَرْقَ.

[69] **Hadith references (L41308):** Sahih Muslim 1694a.

stoned man and stoned woman just as he prays over all other deceased, without any distinction.

L41314 We have been narrated through the chain of al-Bukhārī: Mahmūd narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from al-Zuhrī from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf from Jābir, who said: "A man from the tribe of Aslam came to the Prophet—peace and blessings of Allāh be upon him—and confessed to committing adultery. The Prophet turned away from him until he testified against himself four times." He mentioned the ḥadīth, and in it: "The Prophet ordered him to be stoned at the muṣallā. When the stones made him slip, he fled but was caught and stoned until he died. The Prophet—peace and blessings of Allāh be upon him—spoke well of him and prayed over him."

L41315 Abū Muḥammad—may Allāh have mercy on him—said: This is among the matters in which Maḥmūd ibn Ghaylān and Isḥāq ibn Ibrāhīm al-Dabariyy differed from ʿAbd al-Razzāq. Al-Dabariyy's report from him states, "He did not pray over him," while Maḥmūd's report states, "He prayed over him." Allāh knows best which of the two erred.

L41316–41318 Through Muslim's transmission: Muḥammad ibn ʿAbd Allāh ibn Numayr reported to us, my father reported to us, ʿAbd Allāh ibn Buraidah reported to us from his father. He mentioned the hadith of Al-Ghamidiyya: the Messenger of Allah (peace be upon him) commanded the people to stone her. Then he commanded concerning her, prayed over her, and she was buried.

L41319 From the narration of Muslim: Abu Ghassān al-Mismaʿī narrated to us from Muʿādh—meaning Ibn Hāshim al-Dastuwāʾī—from his father, from Yaḥyā ibn Abī Kathīr, from Abū Qilābah, that Abū al-Muhallab narrated to him from ʿImrān ibn al-Ḥuṣayn, "A woman from Juhaynah came to the Prophet of Allah—peace be upon him—while she was pregnant from fornication," and he mentioned the ḥadīth—in which it states: "The Messenger of Allah—peace be upon him—ordered her to be stoned, so she was stoned. Then he performed the funeral prayer over her. ʿUmar ibn al-Khaṭṭāb said to him: 'Do you pray over her, O Prophet of Allah, when she committed unlawful intercourse?' He replied: 'She repented so sincerely that if her repentance were distributed

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مَحْمُودٌ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرٍ قَالَ «إِنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاعْتَرَفَ بِالزِّنَى فَأَعْرَضَ عَنْهُ حَتَّى شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ - فَذَكَرَ الْحَدِيثَ وَفِيهِ - فَأَمَرَ بِهِ فَرُجِمَ بِالْمُصَلَّى فَلَمَّا أَذْلَقَتْهُ الْحِجَارَةُ فَرَّ فَأُدْرِكَ فَرُجِمَ حَتَّى مَاتَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيْرًا وَصَلَّى عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا مِمَّا اخْتَلَفَ فِيهِ مَحْمُودُ بْنُ غَيْلَانَ، وَإِسْحَاقُ بْنُ إبْرَاهِيمَ الدَّبَرِيُّ عَلَى عَبْدِ الرَّزَّاقِ، فَرِوَايَةُ الدَّبَرِيِّ عَنْهُ فِي هَذَا الْخَبَرِ " وَلَمْ يُصَلِّ عَلَيْهِ " وَرِوَايَةُ مَحْمُودٍ عَنْهُ فِي هَذَا الْخَبَرِ " وَصَلَّى عَلَيْهِ " فَاَللَّهُ أَعْلَمُ أَيُّهُمَا وَهِمَ؟

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عَبْدُ اللَّهِ بْنُ بُرَيْدَةَ عَنْ أَبِيهِ فَذَكَرَ حَدِيثَ «الْغَامِدِيَّةِ وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ النَّاسَ فَرَجَمُوهَا، ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو غَسَّانَ الْمِسْمَعِيُّ نا مُعَاذٌ - يَعْنِي ابْنَ هَاشِمٍ الدَّسْتُوَائِيَّ - نِي أَبِي عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نِي أَبُو قِلَابَةَ أَنَّ أَبَا الْمُهَلَّبِ حَدَّثَهُ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ حُبْلَى مِنْ الزِّنَى وَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهَا فَرُجِمَتْ ثُمَّ صَلَّى عَلَيْهَا، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: أَتُصَلِّي عَلَيْهَا يَا نَبِيَّ اللَّهِ وَقَدْ زَنَتْ؟ قَالَ: لَقَدْ تَابَتْ تَوْبَةً لَوْ

among seventy of the people of Medina, it would suffice them. Can you find anything better than her having sacrificed her life generously for Allah?'"

قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدْتَ بِأَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ؟» .

L41320 In these narrations, there is the funeral prayer of the Messenger of Allah over the Juhayniyyah woman by himself without any disagreement, his command to perform the funeral prayer over the Ghamidiyyah woman without any disagreement, and his funeral prayer over Ma'iz—may Allah be pleased with him—with disagreement. These narrations are of the highest authenticity—and this is the view of Ali ibn Abi Talib—may Allah be pleased with him—when Shurahah was stoned, they said: "What should we do with her?" He replied: "Treat her as you would treat your women who die in your homes." Abu Muhammad—may Allah have mercy on him—said: "What we do with our women when they die in our homes is to wash them, shroud them, and have the Imam and others perform the funeral prayer over them—a matter on which there is no disagreement from anyone of the Ummah—and success is from Allah, the Most High."

فَفِي هَذِهِ الْآثَارِ صَلَاةُ رَسُولِ اللَّهِ عَلَى الْجُهَيْنِيَّةِ بِنَفْسِهِ بِلَا خِلَافٍ، وَأَمْرُهُ بِالصَّلَاةِ عَلَى الْغَامِدِيَّةِ بِلَا خِلَافٍ، وَصَلَاتُهُ عَلَى مَاعِزٍ - رَضِيَ اللَّهُ عَنْهُ - بِاخْتِلَافٍ، وَهَذِهِ الْآثَارُ فِي غَايَةِ الصِّحَّةِ - وَبِهَذَا يَقُولُ عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - رُجِمَ شُرَاحَةُ فَقَالُوا: كَيْفَ نَصْنَعُ بِهَا؟ قَالَ: اصْنَعُوا بِهَا كَمَا تَصْنَعُونَ بِنِسَائِكُمْ إذَا مُتْنَ فِي بُيُوتِكُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَصْنَعُ بِنِسَائِنَا إذَا مُتْنَ فِي بُيُوتِنَا هُوَ أَنْ يُغَسَّلْنَ وَيُكَفَّنَ وَيُصَلِّيَ عَلَيْهِنَّ الْإِمَامُ وَغَيْرُهُ - هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنْ الْأُمَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي امْرَأَةٍ أحلت نَفْسَهَا أَوْ دلست بنفسها لأجنبي أَوْ تَزَوَّجَ رَجُل بخامسة]

A legal issue concerning a woman who contracted herself, or a woman who deceived a non-mahram by herself, or a man who married a fifth wife.

L41322–41324 2214 - Issue: Concerning a woman who permits herself unlawfully, a man who marries a fifth wife, a woman who conceals her defects, or one who deceitfully offers herself to a stranger. Abu Muhammad—may Allah have mercy on him—said: Abdullah ibn Rabi' narrated to us: Ibn Mufarrij narrated to us; Qasim ibn Asbagh narrated to us; Ibn Waddah narrated to us; Sahnun narrated to us; Ibn Wahb narrated from Yunus ibn Yazid from Ibn Shihab, who said regarding a woman who tells a man, "I am lawful for you," and he then touches her based on that, resulting in a child: the man is to be stoned, and the child does not inherit from him. Abu Muhammad said: No one may permit what Allah the Exalted has forbidden. Her self-permission is void—this is sheer adultery. They incur both stoning and flogging if they are legally protected (muḥṣan), and no child is ever legally affiliated in such a case if—No marriage contract existed. If both parties were unaware [of the ruling],

٢٢١٤ - مَسْأَلَةٌ: فِي امْرَأَةٍ أَحَلَّتْ نَفْسَهَا، أَوْ تَزَوَّجَ رَجُلٌ خَامِسَةً، أَوْ دَلَّسَتْ، أَوْ دَلَّسَتْ بِنَفْسِهَا لِأَجْنَبِيٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي الْمَرْأَةِ تَقُولُ لِلرَّجُلِ: إنِّي حِلٌّ لَك، فَيَمَسُّهَا عَلَى ذَلِكَ فَتَلِدُ مِنْهُ: أَنَّهُ يُرْجَمُ وَلَا يَرِثُهُ ذَلِكَ الْوَلَدُ؟ قَالَ أَبُو مُحَمَّدٍ: لَيْسَ لِأَحَدٍ أَنْ يُحِلَّ مَا حَرَّمَ اللَّهُ تَعَالَى، فَإِحْلَالُهَا نَفْسَهَا بَاطِلٌ وَهُوَ زِنًى مَحْضٌ وَعَلَيْهِ الرَّجْمُ وَالْجَلْدُ إنْ كَانَا مُحْصَنَيْنِ وَلَا يُلْحَقُ

no penalty is incurred by them. If one was unaware and the other knew [the ruling], the ḥadd punishment applies solely to the aware party, excluding the unaware one.

L41325 It is narrated from Bukayr ibn al-Ashajj that he said regarding a woman who went to her female slave, prepared her in her own appearance, placed her in her bridal chamber, and then her husband came and had intercourse with her: The woman is to be publicly disciplined, there is no flogging for the man, and the female slave incurs the *ḥadd* punishment for *zinā* if she was aware that this act was unlawful.

L41326 If a woman were to disguise herself to a stranger who then has intercourse with her believing her to be his wife, she is an adulteress. She is to be stoned and flogged if she is a married woman, or flogged and banished if unmarried. The child is not attributed [to the man] in that case. Abu Muhammad said concerning a woman found with a man while having a husband, who claimed "He married me": Hammam narrated from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from 'Abd al-Razzaq, from Ibn Jurayj, who said: Some of the people of Kufa informed me that 'Ali ibn Abi Talib stoned a woman who had a husband. She had gone to another land and married [someone], believing without doubt that she had received news of her husband's death or divorce.

L41327 Ibn Shihāb reported that he said: Regarding a free woman who was married to a slave, then moved to another land and married a man — we deem the ḥadd applicable to her. We do not deem anything incumbent upon the man who married her, nor upon the one who married her off, if he did not know that she had a husband.

L41328 Abu Muhammad—may Allah have mercy on him—said: As for one who marries a fifth wife, Humaam reported to us: Ibn Mufarrij reported to us, Ibn al-A'rabī reported to us, al-Dabariyy reported to us, 'Abd al-Razzāq reported from Ma'mar from al-Zuhrī regarding a man who marries a fifth wife. He said: He must be flogged. If he divorces his fourth wife with one or two divorces and then marries a fifth wife before the waiting period of the divorced woman has concluded, he must be flogged one hundred lashes.

فِي هَذَا وَلَدٌ أَصْلًا إذَا لَمْ يَكُنْ عَقْدٌ، فَإِنْ كَانَا جَاهِلَيْنِ فَلَا شَيْءَ عَلَيْهِمَا، وَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا وَالْآخَرُ عَالِمًا، فَالْحَدُّ عَلَى الْعَالِمِ دُونَ الْجَاهِلِ.

وَعَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّهُ قَالَ فِي امْرَأَةٍ انْطَلَقَتْ إلَى جَارِيَتِهَا فَهَيَّأَتْهَا بِهَيْئَتِهَا وَجَعَلَتْهَا فِي حَجْلَتِهَا وَجَاءَ زَوْجُهَا فَوَطِئَهَا، قَالَ: تُنْكَلُ الْمَرْأَةُ وَلَا جَلْدَ عَلَى الرَّجُلِ وَعَلَى الْجَارِيَةِ حَدُّ الزِّنَى إنْ كَانَتْ تَدْرِي أَنَّ ذَلِكَ لَا يَحِلُّ.

وَلَوْ أَنَّ امْرَأَةً دَلَّسَتْ نَفْسَهَا لِأَجْنَبِيٍّ فَوَطِئَهَا يَظُنُّ أَنَّهَا امْرَأَتُهُ: فَهِيَ زَانِيَةٌ تُرْجَمُ وَتُجْلَدُ إنْ كَانَتْ مُحْصَنَةً أَوْ تُجْلَدُ وَتُنْفَى، إنْ كَانَتْ غَيْرَ مُحْصَنَةٍ وَلَا يَلْحَقُ الْوَلَدُ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فِي امْرَأَةٍ وُجِدَتْ مَعَ رَجُلٍ وَلَهَا زَوْجٌ فَقَالَتْ: تَزَوَّجَنِي: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي بَعْضُ أَهْلِ الْكُوفَةِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَجَمَ امْرَأَةً كَانَتْ ذَاتَ زَوْجٍ فَجَاءَتْ أَرْضًا فَتَزَوَّجَتْ وَلَمْ تَشُكَّ أَنَّ مَا جَاءَهَا مَوْتُ زَوْجِهَا وَلَا طَلَاقُهُ.

وَعَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ: نَرَى فِي امْرَأَةٍ حُرَّةٍ كَانَتْ تَحْتَ عَبْدٍ فَتَحَوَّلَتْ أَرْضًا أُخْرَى فَتَزَوَّجَتْ رَجُلًا، قَالَ: نَرَى عَلَيْهَا الْحَدَّ وَلَا نَرَى عَلَى الَّذِي تَزَوَّجَهَا شَيْئًا، وَلَا عَلَى الَّذِي أَنْكَحَهَا إنْ كَانَ لَا يَعْلَمُ أَنَّهَا كَانَ لَهَا زَوْجٌ؟ .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ تَزَوَّجَ خَامِسَةً، فَإِنَّ حُمَامًا قَالَ: حَدَّثَنَا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي الرَّجُلِ يَتَزَوَّجُ الْخَامِسَةَ؟ قَالَ: يُجْلَدُ، فَإِنْ طَلَّقَ رَابِعَةً مِنْ نِسَائِهِ طَلْقَةً أَوْ طَلْقَتَيْنِ ثُمَّ تَزَوَّجَ الْخَامِسَةَ قَبْلَ انْقِضَاءِ عِدَّةِ الَّتِي طَلَّقَ: جُلِدَ مِائَةً

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ ابْنُ شِهَابٍ: فِي رَجُلٍ نَكَحَ الْخَامِسَةَ فَدَخَلَ بِهَا، قَالَ: إِنْ كَانَ قَدْ عَلِمَ ذَلِكَ أَنَّ الْخَامِسَةَ لَا تَحِلُّ: رُجِمَ، وَإِنْ كَانَ جَاهِلًا جُلِدَ أَدْنَى الْحَدَّيْنِ، وَلَهَا مَهْرُهَا بِمَا اسْتَحَلَّ مِنْهَا، ثُمَّ يُفَرَّقُ بَيْنَهُمَا وَلَا يَجْتَمِعَانِ أَبَدًا، فَإِنْ وَلَدَتْ لَمْ يَرِثْهُ وَلَدُهَا.

L41329 And through him—to Abd al-Razzaq from Ibn Jurayj, who said: Ibn Shihab said regarding a man who married a fifth wife and consummated the marriage: If he knew that the fifth wife is unlawful, he is to be stoned. If he was ignorant, he is to be flogged as the lesser of the two punishments, and she is entitled to her dowry for the intimacy he unlawfully took from her. They are to be permanently separated and forbidden from reuniting. If she bears a child, her child does not inherit from him.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الَّذِي يَنْكِحُ الْخَامِسَةَ مُتَعَمِّدًا قَبْلَ أَنْ تَنْقَضِيَ عِدَّةُ الرَّابِعَةِ مِنْ نِسَائِهِ: أَنَّهُ يُجْلَدُ مِائَةً وَلَا يُنْفَى.

L41330 From Ibrāhīm al-Nakhaʿī regarding one who intentionally marries a fifth wife before the waiting period of his fourth wife has concluded: he is to be flogged one hundred lashes and not exiled.

وَقَالَ آخَرُونَ غَيْرَ هَذَا: كَمَا رُوِيَ عَنِ الْأَوْزَاعِيِّ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنِ الرَّجُلِ يَتَزَوَّجُ الْأُخْتَ عَلَى الْأُخْتِ، وَالْخَامِسَةَ - وَهُوَ يَعْلَمُ أَنَّهُ حَرَامٌ - قَالَ: يُرْجَمُ إِنْ كَانَ مُحْصَنًا.

L41331–41332 Others have stated a different opinion, as narrated by Al-Awzāʿī, who said: "I asked Ibn Shihāb about a man who marries one sister while still married to another, and the fifth wife—while knowing it is forbidden." He replied: "He is to be stoned to death if he is married [a muḥṣan]."

قَالَ ابْنُ وَهْبٍ: وَسَمِعْت اللَّيْثَ يَقُولُ ذَلِكَ.

L41333 Ibn Wahb said: And I heard al-Layth say that.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ وَأَصْحَابُنَا: يُرْجَمُ إِلَّا أَنْ يُعْذَرَ بِجَهْلٍ؟

L41334 Malik, al-Shāfiʿī, and our school's scholars said: He is to be stoned unless excused due to ignorance?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَوَجَدْنَا مَنْ قَالَ: لَا حَدَّ عَلَى مَنْ تَزَوَّجَ خَامِسَةً يَحْتَجُّ بِمَا ذَكَرْنَا فِي أَوَّلِ الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ فِي الْكَلَامِ فِي الْمَرْأَةِ تَتَزَوَّجُ وَلَهَا زَوْجٌ وَالرَّدُّ عَلَيْهِ قَدْ ذَكَرْنَاهُ هُنَالِكَ أَيْضًا بِمَا جُمْلَتُهُ أَنَّهُ لَيْسَ زَوَاجًا، لِأَنَّ اللَّهَ تَعَالَى حَرَّمَهُ، وَإِذْ لَيْسَ زَوَاجًا فَهُوَ عَهْرٌ، فَإِذَا هُوَ عَهْرٌ فَعَلَيْهِ حَدُّ الزِّنَى وَعَلَيْهَا كَذَلِكَ إِنْ كَانَا عَالِمَيْنِ بِأَنَّ ذَلِكَ لَا يَحِلُّ وَلَا يَلْحَقُ فِيهِ الْوَلَدُ أَصْلًا، فَإِنْ كَانَا جَاهِلَيْنِ فَلَا حَدَّ فِي ذَلِكَ لِمَا ذَكَرْنَا وَيَلْحَقُ الْوَلَدُ، وَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا وَالْآخَرُ عَالِمًا فَالْحَدُّ عَلَى الْعَالِمِ وَلَا شَيْءَ عَلَى الْجَاهِلِ، وَأَمَّا مَنْ قَالَ: إِنَّهُ يُجْلَدُ

L41335 Abū Muḥammad—may Allāh have mercy on him—said: When they differed—as we mentioned—it became obligatory to examine this matter. We found those who argue that no punishment is prescribed for one who marries a fifth wife. They cite as evidence what we mentioned at the beginning of the preceding chapter connected to this discussion regarding a woman who marries while already having a husband. We have already refuted this position there, the essence being that such a union is not a valid marriage, for Allāh the Exalted has prohibited it. Since it is not a valid marriage, it constitutes illicit intercourse (zina). Therefore, if it is zina, the prescribed punishment for zina applies to him and to her as well—provided they both knowingly acknowledged its impermissibility—and the child is not legally attributed to the father in such a case at all. If they were ignorant [of the prohibition], no punishment applies for the reasons we stated, and the child is attributed

[to the father]. If one was ignorant and the other aware, the punishment applies to the aware party alone, with no penalty for the ignorant one. As for those who claim he is to receive the lesser of the two punishments, this is baseless due to our earlier clarification: he is either guilty of zina or not. If guilty, the full punishment for zina applies. If not, no penalty is incurred, for sexual intimacy is unlawful except through what is sanctioned by the Qur'ān or Sunnah. And success is only through Allāh, the Exalted.

أَدْنَى الْحَدَّيْنِ فَلَيْسَ بِشَيْءٍ لِمَا ذَكَرْنَا هُنَالِكَ مِنْ أَنَّهُ زَانٍ أَوْ غَيْرُ زَانٍ، فَإِنْ كَانَ زَانِيًا فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا، وَإِنْ كَانَ غَيْرَ زَانٍ فَلَا شَيْءَ عَلَيْهِ، لِأَنَّ بَشَرَتَهُ حَرَامٌ إِلَّا بِقُرْآنٍ أَوْ بِسُنَّةٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of a woman who married during her ʿiddah.

L41336

[مَسْأَلَة امْرَأَةٌ تَزَوَّجَتْ فِي عِدَّتِهَا]

L41337 Issue 2215: A woman who married during her waiting period? And a man who pronounced three divorces—before or after consummation—and then had intercourse? Abu Muhammad—may God have mercy on him—said: It is reported from Sa'id ibn al-Musayyab that a woman married during her waiting period, and the matter was brought to Umar ibn al-Khattab. He struck her without imposing the *hadd* punishment and separated them.

٢٢١٥ - مَسْأَلَةٌ: امْرَأَةٌ تَزَوَّجَتْ فِي عِدَّتِهَا؟ وَمَنْ طَلَّقَ ثَلَاثًا قَبْلَ الدُّخُولِ أَوْ بَعْدَهُ ثُمَّ وَطِئَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: رُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ امْرَأَةً تَزَوَّجَتْ فِي عِدَّتِهَا فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَضَرَبَهَا دُونَ الْحَدِّ، وَفَرَّقَ بَيْنَهُمَا.

L41338 From al-Sha'bi that he said regarding a woman who was intentionally married [by others] during her waiting period: "There is no ḥadd punishment upon her." And from Ibrahim al-Nakha'i a similar statement? Abu Muhammad—may God have mercy on him—said: "The chain of transmission (isnād) to Umar is disconnected, for Sa'id did not hear directly from Umar—may God be pleased with him—except [for] hearing his announcement of Nu'man ibn Muqarrin's death from the pulpit."

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: فِي امْرَأَةٍ نُكِحَتْ فِي عِدَّتِهَا عَمْدًا، قَالَ: لَيْسَ عَلَيْهَا حَدٌّ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ بِمِثْلِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْإِسْنَادُ إلَى عُمَرَ مُنْقَطِعٌ، لِأَنَّ سَعِيدًا لَمْ يَلْحَقْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - سَمَاعًا إلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقَرِّنٍ عَلَى الْمِنْبَرِ.

L41339–41341 A woman in her waiting period (ʿiddah) must be in one of three situations: either she is aware that [marital relations] are impermissible, she is ignorant of the prohibition [during the waiting period], or she has erred regarding the waiting period's duration. If she was ignorant [of the prohibition] or mistaken about the waiting period, then no... [text cut off]. There is nothing upon her because she did not intentionally commit the forbidden act, and her testimony prevails in cases of inadvertent error under all circumstances. If she knew that this was impermissible and did not err regarding the waiting period, then she is an adulteress subject to stoning. It is possible that ʿUmar—may Allah be pleased with him—could strike her as a discretionary

وَلَا تَخْلُو النَّاكِحَةُ فِي عِدَّتِهَا بِأَنْ تَكُونَ عَالِمَةً بِأَنَّ ذَلِكَ لَا يَحِلُّ، أَوْ تَكُونَ جَاهِلَةً بِأَنَّ ذَلِكَ مُحَرَّمٌ، أَوْ غَلِطَتْ فِي الْعِدَّةِ: فَإِنْ كَانَتْ جَاهِلَةً، أَوْ غَلِطَتْ فِي الْعِدَّةِ: فَلَا شَيْءَ عَلَيْهَا، لِأَنَّهَا لَمْ تَعْمَدْ الْحَرَامَ، وَالْقَوْلُ قَوْلُهَا فِي الْغَلَطِ عَلَى كُلِّ حَالٍ - فَإِنْ كَانَتْ عَالِمَةً بِأَنَّ ذَلِكَ لَمْ يَحِلَّ، وَلَمْ تَغْلَطْ فِي الْعِدَّةِ: فَهِيَ زَانِيَةٌ وَعَلَيْهَا الرَّجْمُ - وَقَدْ يُمْكِنُ أَنْ يَضْرِبَهَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - تَعْزِيرًا لِتَرْكِهَا التَّعَلُّمَ مِنْ دِينِهَا مَا يَلْزَمُهَا؛ فَهُوَ مَكَانُ التَّعْزِيرِ.

punishment for neglecting to learn what is obligatory upon her from her religion, for this is a situation for discretionary punishment.

L41342 As for those who abolish the hadd penalty for intentional acts in such matters, if they adhere consistently to their position, they would logically be required to adopt Abū Ḥanīfa's ruling regarding the annulment of the hadd penalty for one who marries his mother—knowing she is his mother and that she is forbidden—and similarly for one who marries his daughter, his sister, or women already married to others, intentionally doing so without securing divorce or annulment of their existing marriages. This constitutes unrestricted permission for zinā—indeed, it is a belittlement of the Book of Allah Almighty. As for those who abolish the hadd penalty in some of these cases while enforcing it in others, this is contradiction.

L41343 If they cite ʿUmar's position, we have already stated: There is no report from ʿUmar confirming her knowledge of the waiting period's completion or the prohibition—thus they have no basis for this claim. Abū Muḥammad—may Allah have mercy on him—said: The ruling concerning all this is unified: every invalid contract is impermissible. Consequently, sexual intercourse therein is unlawful, and no valid marriage is established by it. They remain strangers as they were originally. Intercourse within such a contract by one knowingly transgressing the prohibition is sheer and absolute fornication, entailing the full punishment consisting of stoning, flogging, or discretionary correction. No child is affiliated thereby under any circumstance, nor is there any dowry or application of marital rulings. If the individual was ignorant, no prescribed punishment applies, and none of the marital rulings take effect except the child's affiliation alone—by consensus. Success is attained solely through Allah, the Exalted.

L41344 As for one who pronounces three divorces and then engages in intercourse: if he was aware this is impermissible, the full hadd punishment for fornication is incumbent upon him and likewise upon her, for she is now a stranger. If he was ignorant, there is no liability upon him, and the child is not legally ascribed to him here, because he engaged in intercourse in the absence of any marital contract with her—neither a valid nor an invalid one. And with Allah, the Exalted, is success.

وَأَمَّا مَنْ أَسْقَطَ الْحَدَّ فِي الْعَمْدِ فِي ذَلِكَ، فَإِنَّهُ إنْ طَرَدَ قَوْلَهُ لَزِمَهُ الْمَصِيرُ إلَى قَوْلِ أَبِي حَنِيفَةَ فِي سُقُوطِ الْحَدِّ عَمَّنْ تَزَوَّجَ أُمَّهُ - وَهُوَ يَدْرِي أَنَّهَا أُمُّهُ وَأَنَّهَا حَرَامٌ - وَعَمَّنْ تَزَوَّجَ ابْنَتَهُ كَذَلِكَ، أَوْ أُخْتَهُ كَذَلِكَ، وَتَزَوَّجَ نِسَاءَ النَّاسِ - وَهُنَّ تَحْتَ أَزْوَاجِهِنَّ عَمْدًا دُونَ طَلَاقٍ، وَلَا فَسْخٍ - وَهَذَا هُوَ الْإِطْلَاقُ عَلَى الزِّنَى، بَلْ هُوَ الِاسْتِخْفَافُ بِكِتَابِ اللَّهِ تَعَالَى، وَأَمَّا مَنْ أَسْقَطَ الْحَدَّ فِي بَعْضِ ذَلِكَ وَأَوْجَبَهُ فِي بَعْضٍ، فَتَنَاقُضٌ.

فَإِنْ تَعَلَّقُوا بِعُمَرَ فَقَدْ قُلْنَا: إنَّهُ لَيْسَ فِي الْأَثَرِ عَنْ عُمَرَ أَنَّهَا كَانَتْ عَالِمَةً بِانْقِضَاءِ الْعِدَّةِ وَلَا بِالتَّحْرِيمِ - فَلَا مُتَعَلَّقَ لَهُمْ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْقَوْلُ فِي ذَلِكَ كُلِّهِ وَاحِدٌ، وَهُوَ أَنَّ كُلَّ عَقْدٍ فَاسِدٍ لَا يَحِلُّ، فَالْفَرْجُ بِهِ لَا يَحِلُّ، وَلَا يَصِحُّ بِهِ زَوَاجٌ، فَهُمَا أَجْنَبِيَّانِ كَمَا كَانَا، وَالْوَطْءُ فِيهِ مِنْ الْعَالِمِ بِالتَّحْرِيمِ زِنًى مُجَرَّدٌ مَحْضٌ، وَفِيهِ الْحَدُّ كَامِلًا مِنْ: الرَّجْمِ أَوْ الْجَلْدِ، أَوْ التَّعْزِيرِ - وَلَا يَلْحَقُ فِيهِ وَلَدٌ أَصْلًا وَلَا مَهْرَ فِيهِ، وَلَا شَيْءَ مِنْ أَحْكَامِ الزَّوْجِيَّةِ - وَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ، وَلَا يَقَعُ فِي ذَلِكَ شَيْءٌ مِنْ أَحْكَامِ الزَّوْجِيَّةِ إلَّا لِحَاقَ الْوَلَدِ فَقَطْ، لِلْإِجْمَاعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ طَلَّقَ ثَلَاثًا ثُمَّ وَطِئَ فَإِنْ كَانَ عَالِمًا أَنَّ ذَلِكَ لَا يَحِلُّ، فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا وَعَلَيْهَا كَذَلِكَ، لِأَنَّهَا أَجْنَبِيَّةٌ، فَإِنْ كَانَ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ، وَلَا يَلْحَقُ الْوَلَدُ هَاهُنَا، لِأَنَّهُ وَطِئَ فِيمَا لَا عَقْدَ لَهُ مَعَهَا - لَا صَحِيحًا وَلَا فَاسِدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

The Jurisprudential Issue of a Woman Marrying Her Slave

[مَسْأَلَة مَنْ تَزَوَّجَتْ عَبْدَهَا]

L41345

L41346–41348 Issue 2216: A woman who marries her slave. Abu Muhammad—may God have mercy on him—said: Muhammad ibn Sa'id ibn Nabāt narrated to us from 'Abdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Mu'āwiyah, from Wakī', from Sufyān al-Thawrī, from Jābir al-Ju'fī, from al-Ḥakam ibn 'Utaybah, that 'Umar ibn al-Khaṭṭāb ruled concerning a woman who married her slave. He administered disciplinary punishment (ta'zīr) to her and forbade men from marrying her. Via his chain to Wakī': Al-Aswad ibn Shaybān narrated to us from Abū Nawfal from Abū 'Aqrab, who said: A woman came to 'Umar ibn al-Khaṭṭāb and said, "O Commander of the Faithful, I am a woman as you see—other women are more beautiful than I am. I have a slave whose integrity I trust, so I wished to marry him." 'Umar sent for the slave, gave him a severe beating, and ordered him sold in a foreign land.

٢٢١٦ - مَسْأَلَةٌ: مَنْ تَزَوَّجَتْ عَبْدَهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ فِي امْرَأَةٍ تَزَوَّجَتْ عَبْدَهَا فَعَزَّرَهَا وَحَرَّمَهَا عَلَى الرِّجَالِ - وَبِهِ إلَى وَكِيعٍ نا الْأَسْوَدُ بْنُ شَيْبَانَ عَنْ أَبِي نَوْفَلٍ عَنْ أَبِي عَقْرَبٍ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي امْرَأَةٌ كَمَا تَرَى، غَيْرِي مِنْ النِّسَاءِ أَجْمَلُ مِنِّي، وَلِي عَبْدٌ قَدْ رَضِيت أَمَانَتَهُ، فَأَرَدْت أَنْ أَتَزَوَّجَهُ؟ فَبَعَثَ عُمَرُ إلَى الْعَبْدِ فَضَرَبَهُ ضَرْبًا، وَأَمَرَ بِالْعَبْدِ فَبِيعَ فِي أَرْضِ غُرْبَةٍ.

L41349 And from Ibn Shihab from Ibn Sam'an, he said: Abu al-Zubayr narrated from Jabir ibn Abdullah al-Ansari that a woman came to Umar ibn al-Khattab—while we were at al-Jabiyah—who had married her slave. He was deeply disturbed by her action and intended to stone her, then he forcibly separated them and said to the woman: "Is it not unlawful for you [to have] those whom your right hand possesses?" Abu Muhammad—may Allah have mercy on him—said: The ruling regarding all such cases is uniform: any marriage not sanctioned by Allah the Exalted is impermissible to contract. If it occurs, it is invalidated perpetually, for it is neither a valid nor lawful marriage. If intercourse occurs within such a marriage, the one knowingly transgressing its prohibition is an adulterer—whether he, she, or both—and is liable to the full ḥadd punishment for adultery. As for the ignorant party, no penalty falls upon them, and the child is legally affiliated by consensus. Whoever accuses the ignorant party of adultery is himself subjected to the ḥadd punishment, for they are not adulterers—had they been adulterers, they would have incurred the adultery penalty. It is unlawful for a woman to marry her slave. If he has intercourse with her, then as we stated: If she was aware

وَعَنْ ابْنِ شِهَابٍ عَنْ ابْنِ سَمْعَانَ قَالَ: كَانَ أَبُو الزُّبَيْرِ يُحَدِّثُ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ أَنَّهُ قَالَ: جَاءَتْ امْرَأَةٌ إلَى عُمَرَ بْنِ الْخَطَّابِ - وَنَحْنُ بِالْجَابِيَةِ نَكَحَتْ عَبْدَهَا، فَتَلَهَّفَ عَلَيْهَا وَهَمَّ بِرَجْمِهَا، ثُمَّ فَرَّقَ بَيْنَهُمَا، وَقَالَ لِلْمَرْأَةِ: لَا يَحِلُّ لَك مِلْكُ يَمِينِك؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْقَوْلُ فِي هَذَا كُلِّهِ وَاحِدٌ، كُلُّ نِكَاحٍ لَمْ يُبِحْهُ اللَّهُ تَعَالَى فَلَا يَجُوزُ عَقْدُهُ، فَإِنْ وَقَعَ، فُسِخَ أَبَدًا، لِأَنَّهُ لَيْسَ نِكَاحًا صَحِيحًا جَائِزًا، فَإِنْ وَقَعَ فِيهِ الْوَطْءُ، فَالْعَالِمُ بِتَحْرِيمِهِ زَانٍ عَلَيْهِ الْحَدُّ حَدُّ الزِّنَى كَامِلًا - فَهُوَ أَوْ هِيَ أَوْ كِلَاهُمَا - وَمَنْ كَانَ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ، وَالْوَلَدُ فِيهِ لَاحِقٌ لِلْإِجْمَاعِ وَمَنْ قَذَفَ الْجَاهِلَ حُدَّ لِأَنَّهُ لَيْسَ زَانِيًا، وَلَوْ كَانَ زَانِيًا لَحُدَّ حَدَّ الزِّنَى وَلَا يَحِلُّ لِلْمَرْأَةِ عَبْدُهَا، فَإِنْ وَطِئَهَا فَكَمَا قُلْنَا: إنْ كَانَتْ عَالِمَةً أَنَّ هَذَا لَا يَحِلُّ فَهِيَ زَانِيَةٌ وَتُرْجَمُ، وَيَجْلِدُهَا - إنْ كَانَتْ مُحْصَنَةً - أَوْ تُجْلَدُ

of this prohibition, she is an adulteress and is stoned. He flogs her if she is a muhsanah (a free, married woman), or she is flogged and exiled if she is non-muhsanah. The slave is likewise treated accordingly, and the child is not legally affiliated. If she was ignorant, no penalty applies to her, and the child is affiliated with her. As for separation, it is absolutely obligatory. As for imposing a prohibition upon men, this does not become binding thereby, for Allah the Exalted has not ordained it, nor has His Messenger—peace and blessings be upon him.

وَتُنْفَى - إنْ كَانَتْ غَيْرَ مُحْصَنَةٍ - وَالْعَبْدُ كَذَلِكَ، وَلَا يَلْحَقُ الْوَلَدُ، فَإِنْ كَانَتْ جَاهِلَةً فَلَا شَيْءَ عَلَيْهَا، وَيَلْحَقُ الْوَلَدُ بِهَا - أَمَّا التَّفْرِيقُ فَلَا بُدَّ مِنْهُ، وَأَمَّا التَّحْرِيمُ عَلَى الرِّجَالِ فَلَا يَحْرُمُ بِذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41350 If she emancipates him on the condition that he marries her, the manumission is invalid and rejected, as it is contingent upon a condition not found in the Book of Allah the Exalted. When the condition becomes void, every contract that was not contracted except with that condition becomes void, and the contract cannot be upheld. This is because the contracting party never bound themselves to it independently of the condition. Therefore, it is impermissible to enforce upon them a contract they never formally obligated themselves to, as neither the Quran, nor an authentic Sunnah, nor consensus obligates this.

فَإِنْ أَعْتَقَتْهُ بِشَرْطِ أَنْ يَتَزَوَّجَهَا فَالْعِتْقُ بَاطِلٌ مَرْدُودٌ، لِأَنَّهُ عُلِّقَ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَإِذَا بَطَلَ الشَّرْطُ بَطَلَ كُلُّ عَقْدٍ لَمْ يُعْقَدْ إلَّا بِذَلِكَ الشَّرْطِ، وَلَا يَجُوزُ إنْفَاذُ الْعَقْدِ، لِأَنَّ الْعَاقِدَ لَهُ لَمْ يَعْقِدْهُ قَطُّ مُنْفَرِدًا مِنْ الشَّرْطِ، فَلَا يَحِلُّ أَنْ يُمْضِيَ عَلَيْهِ عَقْدٌ لَمْ يَعْقِدْهُ عَلَى نَفْسِهِ قَطُّ، لِأَنَّهُ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا إجْمَاعٌ.

L41351 If she emancipates him without stipulation and then he marries her in a valid marriage, is that permissible? Abū Muḥammad—may Allah have mercy on him—said: If they ask, "From what basis did you mandate the ḥadd punishment - when ʿUmar ibn al-Khaṭṭāb did not apply it in that matter - and no dissenter from the Companions—may Allah be pleased with them—is known regarding him?"

فَإِنْ أَعْتَقَتْهُ بِغَيْرِ شَرْطٍ ثُمَّ تَزَوَّجَهَا زَوَاجًا صَحِيحًا فَهُوَ جَائِزٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالُوا: مِنْ أَيْنَ أَوْجَبْتُمْ الْحَدَّ - وَعُمَرُ بْنُ الْخَطَّابِ لَمْ يَحُدَّ فِي ذَلِكَ - وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ؟

L41352–41353 We said: Indeed, ʿUmar—may Allah be pleased with him—had resolved to stone her, and if stoning her had not been obligatory, he would not have resolved to do so. He only refrained from stoning her because he recognized her ignorance without any doubt.

قُلْنَا: إنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - قَدْ هَمَّ بِرَجْمِهَا فَلَوْلَا أَنَّ الرَّجْمَ عَلَيْهَا كَانَ وَاجِبًا مَا هَمَّ، وَإِنَّمَا تَرَكَ رَجْمَهَا إذْ عَرَفَ جَهْلَهَا بِلَا شَكٍّ.

L41354 We also do not consider anyone's statement as valid proof besides the Messenger of Allah—peace be upon him. However, since you cite as proof the statement of ʿUmar—may Allah be pleased with him—it becomes incumbent upon you to prohibit it for men permanently, as reported from ʿUmar. And success comes only from Allah, the Exalted.

وَنَحْنُ أَيْضًا لَا نَرَى حُجَّةً فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنْ إذْ تَحْتَجُّونَ بِقَوْلِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَيَلْزَمُكُمْ أَنْ تُحَرِّمُوهَا عَلَى الرِّجَالِ فِي الْأَبَدِ، كَمَا جَاءَ عَنْ عُمَرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْمُحَلِّلِ وَالْمُحَلَّلُ لَهُ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ عَنْ الْأَعْمَشِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ عَنْ قَبِيصَةَ بْنِ جَابِرٍ الْأَسَدِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا أُوتَى بِمُحَلِّلٍ أَوْ مُحَلَّلٍ لَهُ إلَّا رَجَمْته؟

قَالَ أَبُو مُحَمَّدٍ: عَهِدْنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَكُلُّهُمْ قَدْ خَالَفُوا عُمَرَ بْنَ الْخَطَّابِ وَهُمْ يُقَلِّدُونَهُ فِيمَا هُوَ عَنْهُ مِنْ طَرِيقٍ لَا تَصِحُّ؟ وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: أَنَّ كُلَّ نِكَاحٍ انْعَقَدَ سَالِمًا مِمَّا يُفْسِدُهُ، وَلَمْ يُشْتَرَطْ فِيهِ التَّحْلِيلُ وَالطَّلَاقُ فَهُوَ نِكَاحٌ صَحِيحٌ تَامٌّ لَا يُفْسَخُ - وَسَوَاءٌ اشْتَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ أَوْ لَمْ يَشْتَرِطْ - لِأَنَّ كُلَّ نَاكِحٍ لِمُطَلَّقَةٍ ثَلَاثًا فَهُوَ مُحَلِّلٌ وَلَا بُدَّ، فَالتَّحْلِيلُ الْمُحَرَّمُ هُنَا: هُوَ مَا انْعَقَدَ عَقْدًا غَيْرَ صَحِيحٍ.

وَأَمَّا إذَا عُقِدَ النِّكَاحُ عَلَى شَرْطِ التَّحْلِيلِ ثُمَّ الطَّلَاقِ فَهُوَ عَقْدٌ فَاسِدٌ، وَنِكَاحٌ فَاسِدٌ، فَإِنْ وَطِئَ فِيهِ، فَإِنْ كَانَ عَالِمًا أَنَّ ذَلِكَ لَا يَحِلُّ فَعَلَيْهِ الرَّجْمُ وَالْحَدُّ، لِأَنَّهُ زِنًا، وَعَلَيْهَا إنْ كَانَتْ عَالِمَةً مِثْلُ ذَلِكَ، وَلَا يَلْحَقُ الْوَلَدُ - فَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ، وَلَا صَدَاقَ، وَالْوَلَدُ لَاحِقٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of the muḥallil (interim spouse facilitating remarriage) and the muḥallal lahu (the original husband seeking to remarry his divorced wife).

Abu Muhammad—may Allah have mercy on him—said: Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn 'Awn Allah narrated to us: Qasim ibn Asbagh narrated to us: Muhammad ibn 'Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bishar narrated to us: Yahya ibn Sa'id al-Qattan narrated to us: Shu'bah narrated to us from al-A'mash, from al-Musayyib ibn Rafi', from Qabisah ibn Jabir al-Asadi, who said: 'Umar ibn al-Khattab said: "If a man hired to perform tahlil or the one who commissioned him is brought before me, I will sentence them to stoning."

Abū Muḥammad said: We have observed the Ḥanafīs, Mālikīs, and Shāfi'īs magnify the Companion's dissent when it aligns with their adherence, yet all of them have opposed 'Umar ibn al-Khaṭṭāb while adhering to him in matters transmitted through unauthenticated chains? What we affirm—and with Allah, the Exalted, is success—is that every marriage contract established soundly, free from invalidating elements, without stipulating the tahleel or divorce within it, is a valid and complete marriage that cannot be annulled—whether such a condition was stipulated before the contract or not—for every man who marries a thrice-divorced woman is inevitably a muhallil. The prohibited tahleel here is that which is contracted as an invalid contract.

As for when a marriage is contracted on the condition of [tahleel] (a temporary marriage to permit remarriage to a former spouse) followed by divorce, it constitutes an invalid contract and an invalid marriage. If intercourse takes place within such a marriage, then if the husband was aware of its impermissibility, he is subject to stoning (rajm) and the prescribed punishment (hadd) for adultery (zinā). The same applies to the wife if she was aware. The child is not attributed to him. If the husband was ignorant, no prescribed punishment (hadd) is imposed, nor is any bridal gift (mahr) due, and the child is legally recognized. And with Allah, the Exalted, lies success.

The same ruling applies to every invalid contract due to shighar, mut'ah,

and contracts stipulating conditions not established in the Book of Allah, the Exalted—whatever such conditions may be. And by Allah, the Exalted, is success attained. 2218

وَهَكَذَا الْقَوْلُ فِي كُلِّ عَقْدٍ فَاسِدٍ بِالشِّغَارِ، وَالْمُتْعَةِ وَالْعَقْدِ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، أَيُّ شَرْطٍ كَانَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ٢٢١٨ -

L41360 **The issue of a woman hired for fornication, or for service and a female servant.**

[مَسْأَلَةُ الْمُسْتَأْجَرَةُ لِلزِّنَى أَوْ لِلْخِدْمَةِ وَالْمُخْدِمَةِ]

L41361–41362 Abu Muhammad said: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us, Ibn Jurayj narrated to us, Muhammad ibn al-Harith ibn Sufyan from Abu Salama ibn Sufyan: A woman came to Umar ibn al-Khattab and said, "O Commander of the Faithful, I went out herding my sheep when a man met me. He scooped for me a handful of dates, then scooped another handful, then scooped another handful, then he had intercourse with me?" Umar said, "What did you say?" She repeated it. Umar ibn al-Khattab, gesturing with his hand, said, "A dowry! A dowry! A dowry!"—then he dismissed her case.

قَالَ أَبُو مُحَمَّد: حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ سُفْيَانَ: أَنَّ امْرَأَةً جَاءَتْ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ أَقْبَلْت أَسُوقُ غَنَمًا لِي فَلَقِيَنِي رَجُلٌ فَحَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ، ثُمَّ حَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ ثُمَّ حَفَنَ لِي حَفْنَةً مِنْ تَمْرٍ، ثُمَّ أَصَابَنِي؟ فَقَالَ عُمَرُ: مَا قُلْت؟ فَأَعَادَتْ، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ وَيُشِيرُ بِيَدِهِ: مَهْرٌ مَهْرٌ مَهْرٌ - ثُمَّ تَرَكَهَا.

L41363 And through him—to 'Abd al-Razzāq from Sufyān ibn 'Uyaynah from al-Walīd ibn 'Abd Allāh—who is Ibn Jumayy—from Abū al-Ṭufayl: that a woman was struck by hunger, so she came to a shepherd and asked him for food. He refused her unless she gave herself to him. She said: "So he scooped three scoops of dates for me," and she mentioned that she had suffered severe hardship from hunger. She informed 'Umar, so he proclaimed "Allāhu Akbar" and said: "Dowry, dowry, dowry!" and he averted the prescribed punishment from her.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الْوَلِيدِ بْنِ عَبْدِ اللَّهِ - وَهُوَ ابْنُ جُمَيْعٍ - عَنْ أَبِي الطُّفَيْلِ أَنَّ امْرَأَةً أَصَابَهَا الْجُوعُ فَأَتَتْ رَاعِيًا فَسَأَلَتْهُ الطَّعَامَ؟ فَأَبَى عَلَيْهَا حَتَّى تُعْطِيَهُ نَفْسَهَا، قَالَتْ: فَخَثَى لِي ثَلَاثَ حَثَيَاتٍ مِنْ تَمْرٍ وَذَكَرَتْ أَنَّهَا كَانَتْ جَهِدَتْ مِنْ الْجُوعِ، فَأَخْبَرَتْ عُمَرَ، فَكَبَّرَ وَقَالَ: مَهْرٌ مَهْرٌ مَهْرٌ - وَدَرَأَ عَنْهَا الْحَدَّ؟

L41364 Abū Muḥammad—may God have mercy on him—said: Abū Ḥanīfah held this view, maintaining that unlawful sexual relations (zinā) apply only to casual encounters. As for acts involving a gift or hire, he considered them neither zinā nor subject to ḥadd punishment.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَدْ ذَهَبَ إلَى هَذَا أَبُو حَنِيفَةَ وَلَمْ يَرَ الزِّنَى، إلَّا مَا كَانَ مُطَارَفَةً، وَأَمَّا مَا كَانَ فِيهِ عَطَاءٌ أَوْ اسْتِئْجَارٌ فَلَيْسَ زِنًى وَلَا حَدَّ فِيهِ.

L41365 Abū Yūsuf, Muḥammad, Abū Thawr, our fellow scholars, and the rest of the jurists have said: All of it constitutes illicit sexual intercourse, and the ḥadd punishment applies to it.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ، وَأَبُو ثَوْرٍ، وَأَصْحَابُنَا، وَسَائِرُ النَّاسِ، هُوَ زِنًى كُلُّهُ وَفِيهِ الْحَدُّ.

L41366 As for the Malikis and Shafi'is, we have observed them condemning disagreement with a Companion for whom no dissenter is known—when it

aligns with their taqlid (adherence to a school)—and they themselves opposed 'Umar, may Allah be pleased with him, though no dissenter among the Companions, may Allah be pleased with them, is known regarding him. Rather, they consider such a case as consensus, citing as evidence the silence of the present Companions in the absence of objection to it.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَعَهِدْنَا بِهِمْ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - إِذَا وَافَقَ تَقْلِيدَهُمْ - وَهُمْ قَدْ خَالَفُوا عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، بَلْ هُمْ يَعُدُّونَ مِثْلَ هَذَا إجْمَاعًا، وَيَسْتَدِلُّونَ عَلَى ذَلِكَ بِسُكُوتِ مَنْ بِالْحَضْرَةِ مِنْ الصَّحَابَةِ عَنْ النَّكِيرِ لِذَلِكَ.

L41367 If they say: "Abū al-Ṭufayl mentioned in his report that hunger had exhausted her," we respond: "This too is a position you yourselves reject, nor do you consider it an excusing circumstance that nullifies the prescribed punishment. Thus, you gain no concession through Abū al-Ṭufayl's narration - particularly since his report does not state that ʿUmar pardoned her due to necessity, but rather that he waived the punishment because of the dates he gave her, with ʿUmar designating those dates as her dowry."

فَإِنْ قَالُوا: إنَّ أَبَا الطُّفَيْلِ ذَكَرَ فِي خَبَرِهِ أَنَّهَا قَدْ كَانَ جَهَدَهَا الْجُوعُ؟ قُلْنَا لَهُمْ: وَهَذَا أَيْضًا أَنْتُمْ لَا تَقُولُونَ بِهِ، وَلَا تَرَوْنَهُ عُذْرًا مُسْقِطًا لِلْحَدِّ، فَلَا رَاحَةَ لَكُمْ فِي رِوَايَةِ أَبِي الطُّفَيْلِ مَعَ أَنَّ خَبَرَ أَبِي الطُّفَيْلِ لَيْسَ فِيهِ أَنَّ عُمَرَ عَذَرَهَا بِالضَّرُورَةِ، بَلْ فِيهِ: أَنَّهُ دَرَأَ الْحَدَّ مِنْ أَجْلِ التَّمْرِ الَّذِي أَعْطَاهَا وَجَعَلَهُ عُمَرُ مَهْرًا.

L41368–41370 As for the Ḥanafī followers practicing *taqlīd* of Abū Ḥanīfa in this matter, they represent one of the world's strangest phenomena with scarcely any parallel: they follow ʿUmar's juristic precedent in waiving the *ḥadd* punishment here by deeming three small handfuls of dates a valid *mahr*, yet they opposed this very ruling by invalidating such an amount—or even larger multiples of it—in a valid marriage. Rather, they prohibited anything less than ten dirhams as dower in such cases – this constitutes true belittlement, selectively adopting the Companion's rulings when it suits them and abandoning them when it does not. What religion is this? Shame on such practice! For they assert that the dower in lawful marriage must be no less than ten dirhams, yet accept a dirham or less as dower in illicit relations. This is nothing but paving the way for adultery, permitting forbidden intercourse, aiding Satan in facilitating major sins. By this logic, whenever an adulterer or adulteress wishes to commit adultery openly, they may do so with impunity by giving her a dirham as hire for adultery.

وَأَمَّا الْحَنَفِيُّونَ الْمُقَلِّدُونَ لِأَبِي حَنِيفَةَ فِي هَذَا فَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا يَكَادُ يُوجَدُ لَهَا نَظِيرٌ: أَنْ يُقَلِّدُوا عُمَرَ فِي إسْقَاطِ الْحَدِّ هَاهُنَا بِأَنَّ ثَلَاثَ حَثَيَاتٍ مِنْ تَمْرٍ مَهْرٌ، وَقَدْ خَالَفُوا هَذِهِ الْقَضِيَّةَ بِعَيْنِهَا فَلَمْ يُجِيزُوا فِي النِّكَاحِ الصَّحِيحِ مِثْلَ هَذَا وَأَضْعَافَهُ مَهْرًا، بَلْ مَنَعُوا مِنْ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ فِي ذَلِكَ - فَهَذَا هُوَ الِاسْتِخْفَافُ حَقًّا، وَالْأَخْذُ بِمَا اشْتَهَوْا مِنْ قَوْلِ الصَّاحِبِ حَيْثُ اشْتَهَوْا، وَتَرْكُ مَا اشْتَهَوْا تَرْكُهُ مِنْ قَوْلِ الصَّاحِبِ إذَا اشْتَهَوْا، فَمَا هَذَا دِينًا؟ وَأُفٍّ لِهَذَا عَمَلًا، إذْ يَرَوْنَ الْمَهْرَ فِي الْحَلَالِ لَا يَكُونُ إلَّا عَشَرَةَ دَرَاهِمَ لَا أَقَلَّ، وَيَرَوْنَ الدِّرْهَمَ فَأَقَلَّ مَهْرًا فِي الْحَرَامِ، إلَّا أَنَّ هَذَا هُوَ التَّطْرِيقُ إلَى الزِّنَى، وَإِبَاحَةُ الْفُرُوجِ الْمُحَرَّمَةِ، وَعَوْنٌ لِإِبْلِيسَ عَلَى تَسْهِيلِ الْكَبَائِرِ، وَعَلَى هَذَا لَا يَشَاءُ زَانٍ وَلَا زَانِيَةٌ أَنْ يَزْنِيَا عَلَانِيَةً إلَّا فَعَلَا وَهُمَا فِي أَمْنٍ مِنْ الْحَدِّ، بِأَنْ يُعْطِيَهَا دِرْهَمًا يَسْتَأْجِرُهَا بِهِ لِلزِّنَى.

L41371 The flagrant evildoers have devised a ploy of highway robbery (ḥirābah) by keeping with them a wicked adulteress and a boy given to prostitution, then

فَقَدْ عَلِمُوا الْفُسَّاقُ حِيلَةً فِي قَطْعِ الطَّرِيقِ، بِأَنْ يُحْضِرُوا مَعَ أَنْفُسِهِمْ امْرَأَةَ سَوْءٍ زَانِيَةً وَصَبِيًّا بِغَاءً، ثُمَّ يَقْتُلُوا الْمُسْلِمِينَ كَيْفَ شَاءُوا، وَلَا قَتْلَ عَلَيْهِمْ مِنْ أَجْلِ الْمَرْأَةِ الزَّانِيَةِ وَالصَّبِيِّ الْبِغَاءِ، فَكُلَّمَا اسْتَوْقَرُوا مِنَ الْفِسْقِ خَفَّتْ أَوْزَارُهُمْ وَسَقَطَ الْخِزْيُ وَالْعَذَابُ عَنْهُمْ.

slaying the Muslims as they will—with no execution mandated against them on account of the adulterous woman and the prostituting boy. Thus, the more entrenched they become in depravity, the lighter their burdens of sin grow, and disgrace and punishment are abolished from them.

L41372 ثُمَّ عَلَّمُوهُمْ وَجْهَ الْحِيلَةِ فِي الزِّنَى، وَذَلِكَ أَنْ يَسْتَأْجِرَهَا بِتَمْرَتَيْنِ وَكِسْرَةِ خُبْزٍ لِيَزْنِيَ بِهَا ثُمَّ يَزْنِيَانِ فِي أَمْنٍ وَذِمَامٍ مِنَ الْعَذَابِ بِالْحَدِّ الَّذِي افْتَرَضَهُ اللَّهُ تَعَالَى.

"Then they taught them the method of legal subterfuge for adultery: to hire her for [the price of] two dates and a piece of bread, thereby enabling the two to commit adultery under [the illusion of] security and a guarantee of immunity from the ḥadd punishment prescribed by Allah, the Exalted."

L41373 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي وَطْءِ الْأُمَّهَاتِ وَالْبَنَاتِ، بِأَنْ يَعْقِدُوا مَعَهُنَّ نِكَاحًا ثُمَّ يَطَئُونَهُنَّ عَلَانِيَةً آمِنِينَ مِنَ الْحُدُودِ.

Then they taught them the stratagem for engaging in intercourse with mothers and daughters by contracting a marriage with them, then having intercourse with them openly, secure from the prescribed punishments.

L41374 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي السَّرِقَةِ أَنْ يَنْقُبَ أَحَدُهُمْ نَقْبًا فِي الْحَائِطِ وَيَقِفَ الْوَاحِدُ دَاخِلَ الدَّارِ وَالْآخَرُ خَارِجَ الدَّارِ، ثُمَّ يَأْخُذَ كُلَّ مَا فِي الدَّارِ فَيَضَعَهُ فِي النَّقْبِ، ثُمَّ يَأْخُذُهُ الْآخَرُ مِنَ النَّقْبِ، وَيَخْرُجَا آمِنِينَ مِنَ الْقَطْعِ.

Then they taught them the trick employed in theft: one of them would dig a hole in the wall, one would stand inside the house and the other outside. The one inside would take everything in the house and place it into the hole, then the other would take it from the hole. Thus they would both remain secure from the punishment of hand amputation.

L41375 ثُمَّ عَلَّمُوهُمُ الْحِيلَةَ فِي قَتْلِ النَّفْسِ الْمُحَرَّمَةِ بِأَنْ يَأْخُذَ عُودًا صَحِيحًا فَيَكْسِرَ بِهِ رَأْسَ مَنْ أَحَبَّ حَتَّى يَسِيلَ دِمَاغُهُ وَيَمُوتَ وَيَمْضِيَ آمِنًا مِنَ الْقَوَدِ وَمِنْ غُرْمِ الدِّيَةِ مِنْ مَالِهِ.

Then they taught them the method of unlawfully killing a soul by taking a solid stick and smashing with it the head of whomever they choose until his brain spills out and he dies, thereby escaping retaliation and the liability of blood money from his own wealth.

L41376 وَنَحْنُ نَبْرَأُ إِلَى اللَّهِ تَعَالَى هَذِهِ الْأَقْوَالَ الْمَلْعُونَةَ، وَمَا قَالَ أَئِمَّةُ الْمُحَدِّثِينَ مَا قَالُوا بَاطِلًا - وَنَسْأَلُ اللَّهَ السَّلَامَةَ.

We declare our innocence to Allah the Exalted from these accursed statements, for the imams of the Muhaddithīn did not speak falsely—and we ask Allah for safety.

L41377 وَلَوْ أَنَّهُمْ تَعَلَّقُوا فِي كُلِّ مَا ذَكَرْنَا بِقُرْآنٍ أَوْ سُنَّةٍ لَأَصَابُوا، بَلْ خَالَفُوا الْقُرْآنَ وَالسُّنَّةَ، وَمَا تَعَلَّقُوا بِشَيْءٍ إِلَّا بِتَقْلِيدٍ مُهْلِكٍ، وَرَأْيٍ فَاسِدٍ، وَاتِّبَاعِ الْهَوَى الْمُضِلِّ؟

If only they had clung to the Quran or Sunnah in all that we have mentioned—they would have succeeded! Yet they opposed the Quran and Sunnah, clinging only to ruinous imitation, corrupt judgment, and the following of misguiding desires?

L41378–41379 قَالَ أَبُو مُحَمَّدٍ—رَحِمَهُ اللَّهُ—: الْحُدُودُ

Abū Muḥammad—may Allāh have mercy on him—said: The prescribed pun-

ishment for adultery is obligatory upon both the hirer and the hired [prostitute]. Indeed, their sin is greater than that of the adulterer and adulteress who engage in it without hiring, for the hirer and hired commit adultery just as others do, with no distinction. Moreover, they compound their sin by adding another forbidden act—unlawful acquisition of wealth—to the act of adultery itself.

L41380 As for the female servant [kept] for many years, it has been narrated from Ibn al-Mājishūn—a disciple of Mālik—that no ḥadd punishment is imposed on the master if he fornicates with her. This is a corrupt opinion, and in addition to its corruption, it is baseless. As for its corruption: it abolishes the ḥadd punishment that Allah the Exalted has mandated for adultery.

L41381 As for the nullification of the punishment—it is distinguishing between a female servant serving for an extended duration and one serving briefly, wherein one is required to specify that time span which nullifies the prescribed penalty—the period during which the punishment is annulled. If a duration is set, this constitutes overstepping by asserting falsehood without evidence; whereas leaving it undefined becomes prohibited, as it ascribes to the Lawgiver rulings He has not decreed in matters He has not addressed—and these are confusions from which we seek refuge with Allah.

L41382 The full ḥadd punishment is obligatory upon the master and the female servant, even if he employed her as a servant for as long as Noah lived among his people—because he committed unlawful sexual intercourse with one who is not his lawful spouse—and success is from Allah, the Most High.

L41383 **The issue of one who commits adultery with a woman and then marries her.**

L41384 2219 - Issues: such as the following:

L41385 Ali said: Whoever commits fornication with a woman and then marries her, the hadd is not waived for him because of that, for Allah the Exalted has prescribed it as an obligation upon him, nor does marrying her preclude it.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَحَدُّ الزِّنَى وَاجِبٌ عَلَى الْمُسْتَأْجِرِ وَالْمُسْتَأْجَرَةِ، بَلْ جُرْمُهُمَا أَعْظَمُ مِنْ جُرْمِ الزَّانِي وَالزَّانِيَةِ بِغَيْرِ اسْتِئْجَارٍ، لِأَنَّ الْمُسْتَأْجِرَ وَالْمُسْتَأْجَرَةَ زَنَيَا كَمَا زَنَى غَيْرُ الْمُسْتَأْجِرِ وَلَا فَرْقَ، وَزَادَ الْمُسْتَأْجِرُ وَالْمُسْتَأْجَرَةُ عَلَى سَائِرِ الزِّنَى حَرَامًا آخَرَ - وَهُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ.

وَأَمَّا الْمُخْدِمَةُ - فَرُوِيَ عَنْ ابْنِ الْمَاجِشُونِ صَاحِبِ مَالِكٍ: أَنَّ الْمُخْدِمَةَ سِنِينَ كَثِيرَةً لَا حَدَّ عَلَى الْمُخْدِمِ إذَا وَطِئَهَا - وَهَذَا قَوْلٌ فَاسِدٌ وَمَعَ فَسَادِهِ سَاقِطٌ: أَمَّا فَسَادُهُ - فَإِسْقَاطُهُ الْحَدَّ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي الزِّنَى.

وَأَمَّا سُقُوطُهُ - فَتَفْرِيقُهُ بَيْنَ الْمُخْدِمَةِ مُدَّةً طَوِيلَةً، وَالْمُخْدِمَةِ مُدَّةً قَصِيرَةً، وَيُكَلَّفُ تَحْدِيدَ تِلْكَ الْمُدَّةِ الْمُسْقِطَةِ لِلْحَدِّ الَّتِي يَسْقُطُ فِيهَا الْحَدُّ، فَإِنْ حَدَّ مُدَّةً كَانَ مُتَزَيِّدًا مِنْ الْقَوْلِ بِالْبَاطِلِ بِلَا بُرْهَانٍ، وَإِنْ لَمْ يَحُدَّ شَيْئًا كَانَ مُحَرِّمًا مُوجِبًا شَارِعًا مَا لَا يَدْرِي فِيمَا لَا يَدْرِي - وَهَذِهِ تَخَالِيطُ نَعُوذُ بِاَللَّهِ مِنْهَا.

وَالْحَدُّ كَامِلٌ وَاجِبٌ عَلَى الْمُخْدِمِ وَالْمُخْدِمَةِ، وَلَوْ أَخْدَمَهَا عُمْرَ نُوحٍ فِي قَوْمِهِ - لِأَنَّهُ زَنَى وَعَهَرَ مَنْ لَيْسَتْ لَهُ فِرَاشًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَنْ زَنَى بِامْرَأَةٍ ثُمَّ تَزَوَّجَهَا]

٢٢١٩ - مَسَائِلُ: مِنْ نَحْوِ هَذَا:

قَالَ عَلِيٌّ: مَنْ زَنَى بِامْرَأَةٍ ثُمَّ تَزَوَّجَهَا لَمْ يَسْقُطْ الْحَدُّ بِذَلِكَ عَنْهُ، لِأَنَّ اللَّهَ تَعَالَى قَدْ أَوْجَبَهُ عَلَيْهِ فَلَا يُسْقِطُهُ زَوَاجُهُ إيَّاهَا.

L41386 Likewise, if he commits zinā with a slave woman and then purchases her—this is the opinion of the majority of scholars.

وَكَذَلِكَ إِذَا زَنَى بِأَمَةٍ ثُمَّ اشْتَرَاهَا - وَهُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ.

L41387 Abu Hanifah said: "Is there no legal penalty for him in both issues?"

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَيْهِ فِي كِلْتَا الْمَسْأَلَتَيْنِ؟

L41388–41390 Abū Muḥammad—may Allāh have mercy on him—said: "Is this among those great calamities?" If they say: "How do we apply the *ḥadd* punishment in the case of intercourse with his wife and slave woman?" We respond: "We do not apply the *ḥadd* punishment for his intercourse with them (two)—since they are his wife and slave woman—but rather we apply it in the case of intercourse he engages in with them (two) who are neither his wife nor slave woman." Then, by this corrupt reasoning, it would necessarily follow that whoever falsely accuses a woman of adultery and then marries her must be subjected to *liʿān*. No ḥadd punishment is imposed on him, and if he engages in illicit intercourse with her and she conceives, then marries her or purchases her (as a slave), the child is legally affiliated with him. Otherwise, how could he deny parentage of a child borne by his wife from him or a child borne by his female slave from him? If they say: "He is not a child of the bed?" we respond: "You are correct," and for this reason, we impose the ḥadd punishment on him for the prior unlawful intercourse, since it was not intercourse of the bed?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ مِنْ تِلْكَ الطَّوَامِّ؟ فَإِنْ قَالُوا: كَيْفَ نَحُدُّهُ فِي وَطْءِ امْرَأَتِهِ وَأَمَتِهِ؟ قُلْنَا لَهُمْ: لَمْ نَحُدَّهُ فِي وَطْئِهِ لَهُمَا - وَهُمَا امْرَأَتُهُ وَأَمَتُهُ - وَإِنَّمَا نَحُدُّهُ فِي الْوَطْءِ الَّذِي كَانَ مِنْهُ لَهُمَا - وَهُمَا لَيْسَتَا امْرَأَتَهُ وَلَا أَمَتَهُ ثُمَّ يَلْزَمُهُمْ عَلَى هَذَا الِاعْتِلَالِ الْفَاسِدِ: أَنَّ مَنْ قَذَفَ امْرَأَةً ثُمَّ تَزَوَّجَهَا أَنْ يُلَاعَنَ وَلَا حَدَّ عَلَيْهِ، وَأَنَّهُ إِنْ زَنَى بِهَا فَحَمَلَتْ ثُمَّ تَزَوَّجَهَا أَوْ اشْتَرَاهَا أَنْ يُلْحَقَ بِهِ الْوَلَدُ، وَإِلَّا فَكَيْفَ يَنْفِي عَنْهُ وَلَدَ امْرَأَتِهِ مِنْهُ أَوْ وَلَدَ أَمَتِهِ مِنْهُ؟ فَإِنْ قَالُوا: لَيْسَ ابْنَ فِرَاشٍ؟ قُلْنَا: صَدَقْتُمْ، وَلِذَلِكَ نَحُدُّهُ عَلَى الْوَطْءِ السَّالِفِ، لِأَنَّهُ لَمْ يَكُنْ وَطْءَ فِرَاشٍ؟

L41391 Abu Muhammad—may Allah have mercy on him—said: If a man commits adultery with a free woman or a slave woman and then kills her, he is subject to the full punishment for adultery, as well as retaliation, blood money, or market value. For all of these are rights Allah, the Exalted, has obligated; they are not nullified by corrupt opinions.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَوْ زَنَى بِامْرَأَةِ حُرَّةٍ أَوْ أَمَةٍ ثُمَّ قَتَلَهَا فَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا - وَالْقَوَدُ أَوْ الدِّيَةُ وَالْقِيمَةُ، لِأَنَّهَا كُلَّهَا حُقُوقٌ أَوْجَبَهَا اللَّهُ تَعَالَى، فَلَا تُسْقِطُهَا الْآرَاءُ الْفَاسِدَةُ.

L41392 It has been reported from Abu Hanifah that the punishment for adultery is remitted if he kills her. Nothing more astonishing than this calamity has been heard: that one commits adultery and becomes liable to the punishment, yet when he adds the major sin of killing a person - which Allah the Exalted has forbidden - to the major sin of adultery, the punishment for adultery is waived from him. We declare our innocence before Allah the Exalted from such a notion, and we praise Him abundantly for preservation from it, and in Him we seek help.

وَرُوِيَ عَنْ أَبِي حَنِيفَةَ أَنَّ حَدَّ الزِّنَى يَسْقُطُ إِذَا قَتَلَهَا - فَمَا سُمِعَ بِأَعْجَبَ مِنْ هَذِهِ الْبَلِيَّةِ: أَنْ يَكُونَ يَزْنِي فَيَلْزَمُ الْحَدَّ، فَإِذَا أَضَافَ إِلَى كَبِيرَةِ الزِّنَى كَبِيرَةَ الْقَتْلِ لِلنَّفْسِ الَّتِي حَرَّمَ اللَّهُ تَعَالَى: سَقَطَ عَنْهُ حَدُّ الزِّنَى - نَبْرَأُ إِلَى اللَّهِ تَعَالَى مِنْ ذَلِكَ، وَنَحْمَدُهُ عَلَى السَّلَامَةِ مِنْهَا كَثِيرًا، وَبِهِ نَسْتَعِينُ.

[مَسْأَلَة مَنْ وَطِئَ امْرَأَةَ أَبِيهِ أَوْ حَرِيمَتَهُ بِعَقْدِ زَوَاجٍ أَوْ بِغَيْرِ عَقْدٍ]

A legal issue regarding one who has sexual intercourse with his father's wife or his female mahram, whether by a marriage contract or without a contract.

٢٢٢٠ - مَسْأَلَةٌ: وَمَنْ وَطِئَ امْرَأَةَ أَبِيهِ أَوْ حَرِيمَتَهُ، بِعَقْدِ زَوَاجٍ أَوْ بِغَيْرِ عَقْدٍ؟

2220. Issue: What is the ruling for one who has intercourse with his father's wife or a female forbidden to him (ḥarīmah), whether through a marriage contract or without one?

قَالَ أَبُو مُحَمَّد: نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ الرَّقِّيّ، وَإِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ، قَالَ الرَّقِّيّ: نا عُتْبَةُ بْنُ عَمْرٍو الرَّقِّيّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ عَدِيّ بْنِ ثَابِتٍ عَنْ يَزِيدَ بْنِ الْبَرَاءِ بْنِ عَازِبٍ عَنْ أَبِيهِ، وَقَالَ إِبْرَاهِيمُ: نا هُشَيْمٌ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ الْبَرَاءِ بْنِ عَازِبٍ، ثُمَّ اتَّفَقَا - وَاللَّفْظُ لِهُشَيْمٍ - قَالَ: مَرَّ بِي عَمِّي الْحَارِثُ بْنُ عَمْرٍو وَقَدْ عَقَدَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ لَهُ: أَيْ عَمِّ أَيْنَ بَعَثَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: بَعَثَنِي إلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ، فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ؟»

Abu Muhammad said: Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Zuhayr narrated to us, Abdullah ibn Ja'far al-Raqqi and Ibrahim ibn Abdullah narrated to us. Abdullah ibn Ja'far al-Raqqi said: Utbah ibn Amr al-Raqqi narrated to us from Zayd ibn Abi Unaysah from Adi ibn Thabit from Yazid ibn al-Bara' ibn Azib from his father. Ibrahim ibn Abdullah said: Hushaym narrated to us from Ash'ath ibn Sawwar from al-Bara' ibn Azib. Then their narrations converged—and the wording is Hushaym's—who said: My uncle al-Harith ibn Amr passed by me after the Messenger of Allah—peace and blessings be upon him—had appointed him. I said to him: "O uncle, where has the Messenger of Allah—peace and blessings be upon him—sent you?" He replied: "He sent me to a man who married his father's wife and commanded me to behead him."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الْخَبَرُ مِنْ طَرِيقِ الرِّقِّيْنِ صَحِيحٌ نَقِيُّ الْإِسْنَادِ.

Abū Muḥammad—may Allāh have mercy on him—said, "This report, transmitted via the path of al-Riqayn, is authentic with a pure chain of transmission."

وَأَمَّا مِنْ طُرُقِ هُشَيْمٍ فَلَيْسَتْ بِشَيْءٍ، لِأَنَّ أَشْعَثَ بْنَ سَوَّارٍ ضَعِيفٌ.

As for Hushaym's chains of transmission, they are unreliable, for Ash'ath ibn Sawwār is weak.

وَبِهِ - إلَى أَحْمَدَ بْنِ زُهَيْرٍ نا يُوسُفُ بْنُ مَنَازِلَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ نا خَالِدُ بْنُ أَبِي كَرِيمَةَ «عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعَثَ أَبَاهُ - هُوَ جَدُّ مُعَاوِيَةَ - إلَى رَجُلٍ أَعْرَسَ بِامْرَأَةِ أَبِيهِ فَضَرَبَ عُنُقَهُ وَخَمَّسَ مَالَهُ» .

And through him—to Ahmad ibn Zuhayr—Yusuf ibn Manazil narrated to us, Abdullah ibn Idris narrated to us, Khalid ibn Abi Karimah narrated to us, from Muawiyah ibn Qurrah, from his father, that the Messenger of Allah—peace and blessings be upon him and his family—sent his father—he being Muawiyah's grandfather—to a man who had married his father's wife, and he struck his neck and took one-fifth of his wealth.

Ahmad ibn Ibrahim said: Yahya ibn Ma'in said: This hadith is ṣaḥīḥ, and

those who narrated it. He brought him before Muawiyah, and it is invalid. Ibn Idris had sent him to a group and attributed it to others.

قَالَ أَحْمَدُ بْنُ إِبْرَاهِيمَ: قَالَ يَحْيَى بْنُ مَعِينٍ: هَذَا الْحَدِيثُ صَحِيحٌ، وَمَنْ رَوَاهُ فَأَوْقَفَهُ عَلَى مُعَاوِيَةَ فَلَيْسَ بِشَيْءٍ، قَدْ كَانَ ابْنُ إِدْرِيسَ أَرْسَلَهُ لِقَوْمٍ وَأَسْنَدَهُ لِآخَرِينَ.

L41402 Ibn Maʿīn said: Yūsuf ibn Manāzil is trustworthy. Ḥumām narrated to us; ʿAbbās ibn Aṣbagh narrated to us; Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us; ʿAbd Allāh ibn Aḥmad ibn Ḥanbal and Abū Qilābah narrated to us. Abū Qilābah said: al-Mughīrah ibn Bakkār narrated to us; Shuʿbah narrated to us: I heard al-Rabīʿ ibn al-Rukayn say: I heard ʿAdī ibn Thābit narrate from al-Barāʾ, who said: "Some people passed by us. We asked: 'Where are you headed?' They replied: 'The Messenger of Allah (may Allah bless him and his family and grant him peace) sent us to a man who approached his father's wife, to strike his neck.'"

قَالَ ابْنُ مَعِينٍ: وَيُوسُفُ بْنُ مَنَازِلَ ثِقَةٌ نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَبُو قِلَابَةَ، قَالَ أَبُو قِلَابَةَ: حَدَّثَنَا الْمُغِيرَةُ بْنُ بَكَّارٍ نا شُعْبَةُ سَمِعْتُ الرَّبِيعَ بْنَ الرُّكَيْنِ يَقُولُ: سَمِعْتُ عَدِيَّ بْنَ ثَابِتٍ يُحَدِّثُ عَنِ «الْبَرَاءِ، قَالَ: مَرَّ بِنَا نَاسٌ يَنْطَلِقُونَ قُلْنَا: أَيْنَ تُرِيدُونَ؟ قَالُوا: بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى رَجُلٍ أَتَى امْرَأَةَ أَبِيهِ أَنْ نَضْرِبَ عُنُقَهُ؟»

L41403 Abū Muḥammad—may Allāh have mercy on him—said: These are authentic narrations that establish binding proof. It does not detract from their validity that ʿAdī ibn Thābit narrated them once from Al-Barāʾ and another time from Yazīd ibn Al-Barāʾ from his father, for he heard it from Al-Barāʾ and heard it from Yazīd ibn Al-Barāʾ, thus narrating it once from the former and once from the latter. Sufyān ibn ʿUyaynah similarly did this, relating a ḥadīth once from Al-Zuhrī and another time from Maʿmar from Al-Zuhrī. He said: People have differed regarding this matter. A group said: Whoever marries his mother, daughter, a woman forbidden to him by close kinship, or commits fornication with any of them—all these acts are equivalent. All constitute fornication, and the marriage is entirely a marriage contract if he was aware of the prohibition. The full punishment for fornication applies to him, and the child is not legally attributed to the marriage.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذِهِ آثَارٌ صِحَاحٌ تَجِبُ بِهَا الْحُجَّةُ وَلَا يَضُرُّهَا أَنْ يَكُونَ عَدِيُّ بْنُ ثَابِتٍ حَدَّثَ بِهِ مَرَّةً عَنِ الْبَرَاءِ، وَمَرَّةً عَنْ يَزِيدَ بْنِ الْبَرَاءِ عَنْ أَبِيهِ فَقَدْ يَسْمَعُهُ مِنْ الْبَرَاءِ وَيَسْمَعُهُ مِنْ يَزِيدَ بْنِ الْبَرَاءِ فَيُحَدِّثُ بِهِ مَرَّةً عَنْ هَذَا وَمَرَّةً عَنْ هَذَا، فَهَذَا سُفْيَانُ بْنُ عُيَيْنَةَ يَفْعَلُ ذَلِكَ، يَرْوِي الْحَدِيثَ عَنِ الزُّهْرِيِّ مَرَّةً، وَعَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ مَرَّةً، قَالَ: وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: مَنْ تَزَوَّجَ أُمَّهُ أَوْ ابْنَتَهُ أَوْ حَرِيمَتَهُ أَوْ زَنَى بِوَاحِدَةٍ مِنْهُنَّ، فَكُلُّ ذَلِكَ سَوَاءٌ، وَهُوَ كُلُّهُ زِنًى، وَالزَّوَاجُ كُلُّهُ زَوَاجٌ إِذَا كَانَ عَالِمًا بِالتَّحْرِيمِ، وَعَلَيْهِ حَدُّ الزِّنَى كَامِلًا، وَلَا يَلْحَقُ الْوَلَدُ فِي الْعَقْدِ.

L41404 This is the opinion of Al-Hasan, Malik, Al-Shafi'i, Abu Thawr, Abu Yusuf, and Muhammad ibn Al-Hasan (the two companions of Abu Hanifah), except that Malik differentiated between intercourse in such cases through a marriage contract and intercourse in some of these cases through ownership by the right hand. He said: If a man owns his niece (daughter of his brother or sister), his paternal aunt, maternal aunt, his father's wife, the wife of his biological son, his own foster mother through breastfeeding, his foster daughter

وَهُوَ قَوْلُ الْحَسَنِ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - صَاحِبِي أَبِي حَنِيفَةَ - إِلَّا أَنَّ مَالِكًا فَرَّقَ بَيْنَ الْوَطْءِ فِي ذَلِكَ بِعَقْدِ النِّكَاحِ، وَبَيْنَ الْوَطْءِ فِي بَعْضِ ذَلِكَ بِمِلْكِ الْيَمِينِ، فَقَالَ: فِيمَنْ مَلَكَ بِنْتَ أَخِيهِ، أَوْ بِنْتَ أُخْتِهِ، وَعَمَّتِهِ، وَخَالَتِهِ، وَامْرَأَةَ أَبِيهِ، وَامْرَأَةَ ابْنِهِ بِالْوِلَادَةِ، وَأُمَّهُ نَفْسِهِ مِنَ الرَّضَاعَةِ، وَابْنَتَهُ

مِنْ الرَّضَاعَةِ، وَأُخْتَهُ مِنْ الرَّضَاعَةِ وَهُوَ عَارِفٌ بِتَحْرِيمِهِنَّ، وَعَارِفٌ بِقَرَابَتِهِنَّ مِنْهُ ثُمَّ وَطِئَهُنَّ كُلَّهُنَّ عَالِمًا بِمَا عَلَيْهِ فِي ذَلِكَ، فَإِنَّ الْوَلَدَ لَاحِقٌ بِهِ، وَلَا حَدَّ عَلَيْهِ، لَكِنْ يُعَاقَبُ.

through breastfeeding, or his foster sister through breastfeeding, while being fully aware of their prohibition and their familial relation to him, and then engages in intercourse with all of them knowing the legal rulings incumbent upon him in that matter, then the child is legally attributed to him, no hadd punishment is applied, but he receives discretionary punishment.

وَرَأَى: أَنْ مِلْكَ أُمِّهِ الَّتِي وَلَدَتْهُ، وَابْنَتِهِ، وَأُخْتِهِ، بِأَنَّهُنَّ حَرَائِرُ سَاعَةَ يَمْلِكُهُنَّ، فَإِنْ وَطِئَهُنَّ حُدَّ حَدَّ الزِّنَى.

L41405 He maintained the view that the ownership of his mother who bore him, his daughter, and his sister—given they are free women at the time he owns them—entails that if he engages in sexual intercourse with them, he must receive the ḥadd punishment prescribed for zinā.

وَقَالَ أَبُو حَنِيفَةَ: لَا حَدَّ عَلَيْهِ فِي ذَلِكَ كُلِّهِ، وَلَا حَدَّ عَلَى مَنْ تَزَوَّجَ أُمَّهُ الَّتِي وَلَدَتْهُ، وَابْنَتَهُ، وَأُخْتَهُ، وَجَدَّتَهُ، وَعَمَّتَهُ، وَخَالَتَهُ، وَبِنْتَ أَخِيهِ، وَبِنْتَ أُخْتِهِ - عَالِمًا بِقَرَابَتِهِنَّ مِنْهُ، عَالِمًا بِتَحْرِيمِهِنَّ عَلَيْهِ، وَوَطِئَهُنَّ كُلَّهُنَّ: فَالْوَلَدُ لَاحِقٌ بِهِ، وَالْمَهْرُ وَاجِبٌ لَهُنَّ عَلَيْهِ، وَلَيْسَ عَلَيْهِ إِلَّا التَّعْزِيرُ دُونَ الْأَرْبَعِينَ فَقَطْ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، قَالَا: فَإِنْ وَطِئَهُنَّ بِغَيْرِ عَقْدِ نِكَاحٍ فَهُوَ زِنًى، عَلَيْهِ مَا عَلَى الزَّانِي مِنْ الْحَدِّ.

L41406–41408 Abū Ḥanīfa said: There is no ḥadd punishment upon him for any of that, nor is there a ḥadd punishment upon one who marries his mother who bore him, his daughter, his sister, his grandmother, his paternal aunt, his maternal aunt, his brother's daughter, or his sister's daughter—knowing their relation to him and their prohibition for him—and then has intercourse with all of them. The child is legally attributed to him, and the dowry... He is legally responsible toward them and is only liable for a taʿzīr punishment of less than forty lashes—this being the opinion of Sufyan al-Thawri. The two scholars said: If he has intercourse with them without a valid marriage contract, it constitutes fornication, and he incurs the ḥadd punishment prescribed for a fornicator.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ فِي مَنْ زَنَى بِذَاتِ مَحْرَمٍ: يُرْجَمُ عَلَى كُلِّ حَالٍ. وَقَالَ إِبْرَاهِيمُ النَّخَعِيُّ، وَالْحَسَنُ: حَدُّهُ حَدُّ الزِّنَى.

L41409 Narrated to us Ḥammām; informed us Ibn Mufarrij; informed us Ibn al-Aʿrabī; informed us al-Dabarī; from ʿAbd al-Razzāq, from Maʿmar, from Qatādah, from Saʿīd ibn al-Musayyab that he said regarding one who commits *zinā* with a woman within the prohibited degree of marriage (*dhāt maḥram*): "They are to be stoned regardless of marital status." Ibrāhīm al-Nakhaʿī and al-Ḥasan said: "His *ḥadd* is the *ḥadd* prescribed for *zinā*."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَوْفٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - نِي عَمْرُو بْنُ أَبِي هِنْدٍ، قَالَ: إنَّ رَجُلًا أَسْلَمَ وَتَحْتَهُ أُخْتَانِ، فَقَالَ لَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَتُفَارِقَنَّ إحْدَاهُمَا، أَوْ لَأَضْرِبَنَّ عُنُقَك.

L41410 And with it—from Abd al-Razzaq from Ma'mar from Awf—he is Ibn Abi Jamilah—[Nafi'] from Amr ibn Abi Hind, who said: A man embraced Islam while married to two sisters, so Ali ibn Abi Talib said to him: "You must divorce one of them, or I will behead you."

L41411 Jābir ibn Zayd Abū al-Sha'thā', Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh

said: Anyone who knowingly engages in intercourse with his forbidden female relative, fully aware of the prohibition and her kinship to him—whether he does so under the name of marriage, by right-hand possession, or under any other pretext—must inevitably be killed, whether he is muḥṣan (married) or not. Abū Muḥammad—may Allāh have mercy on him—said: Since they differed as we mentioned, it became necessary to examine the matter so the truth may emerge, and we may follow it—Allāh willing. We began with the evidence presented by Abū Ḥanīfah and those who adopted his view regarding his opinion. We found them asserting: "The term 'zinā' differs from the term 'nikāḥ,' so it is obligatory for zinā to have a ruling distinct from nikāḥ."

وَقَالَ جَابِرُ بْنُ زَيْدٍ أَبُو الشَّعْثَاءِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، كُلُّ مَنْ وَطِئَ حَرِيمَتَهُ عَالِمًا بِالتَّحَرُّمِ عَالِمًا بِقَرَابَتِهَا مِنْهُ، فَسَوَاءٌ وَطِئَهَا بِاسْمِ نِكَاحٍ، أَوْ بِمِلْكِ يَمِينٍ، أَوْ بِغَيْرِ ذَلِكَ، فَإِنَّهُ يُقْتَلُ وَلَا بُدَّ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ فَنَتَّبِعَهُ - إِنْ شَاءَ اللَّهُ تَعَالَى - فَبَدَأْنَا بِمَا احْتَجَّ بِهِ أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ لِقَوْلِهِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إِنَّ اسْمَ " الزِّنَى " غَيْرُ اسْمِ " النِّكَاحِ " فَوَاجِبٌ أَنْ يَكُونَ لَهُ غَيْرُ حُكْمِهِ.

L41412 If you say: He committed adultery with his mother—then the punishment for adultery applies to him. If you say: He married his mother, marriage being distinct from adultery, no prescribed punishment applies. Rather, it is a void marriage subject to the rulings of invalid marriage: annulment of the punishment, establishment of filiation, and obligation of the dowry. We know of no other obfuscation in their argument besides this—it is corrupt speech, baseless argumentation, and reprehensible conduct. As for the statement "The term 'adultery' differs from 'marriage,'" this is undeniably true. However, marriage remains what Allah the Exalted has commanded and permitted—the pure lawful act and blessed practice.

فَإِذَا قُلْتُمْ: زَنَى بِأُمِّهِ - فَعَلَيْهِ مَا عَلَى الزَّانِي؟ وَإِذَا قُلْتُمْ: تَزَوَّجَ أُمَّهُ، فَالزَّوَاجُ غَيْرُ الزِّنَى فَلَا حَدَّ فِي ذَلِكَ، وَإِنَّمَا هُوَ نِكَاحٌ فَاسِدٌ، فَحُكْمُهُ حُكْمُ النِّكَاحِ الْفَاسِدِ، مِنْ سُقُوطِ الْحَدِّ، وَلِحَاقِ الْوَلَدِ، وَوُجُوبِ الْمَهْرِ - وَمَا نَعْلَمُ لَهُمْ تَمْوِيهًا غَيْرَ هَذَا، وَهُوَ كَلَامٌ فَاسِدٌ، وَاحْتِجَاجٌ فَاسِدٌ، وَعَمَلٌ غَيْرُ صَالِحٍ: وَأَمَّا قَوْلُهُ " إِنَّ اسْمَ الزِّنَى غَيْرُ اسْمِ الزَّوَاجِ " فَحَقٌّ لَا شَكَّ فِيهِ، إِلَّا أَنَّ الزَّوَاجَ هُوَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ وَأَبَاحَهُ - وَهُوَ الْحَلَالُ الطَّيِّبُ وَالْعَمَلُ الْمُبَارَكُ.

L41413–41415 As for every contract or intercourse that Allah the Exalted has neither commanded nor permitted—rather, He has forbidden it—it is invalid, forbidden, sinful, and misguided. Whoever calls that "marriage" is a lying, slanderous transgressor, and it is not... The act of naming in the Sharīʿah does not belong to us—nor is there any honor—for it belongs solely to Allah the Exalted. Allah the Almighty said: "They are but names you have named—you and your fathers—for which Allah has sent down no proof." [An-Najm:23] Abū Muḥammad—may Allah have mercy on him—said: As for one who labels every invalid contract and invalid intercourse—being sheer zinā (illicit intercourse)—as marriage, to seek a means through this name to permit what Allah the Exalted has prohibited or to abolish Allah's ordained punishments, he is like one who calls a pig a ram to deem it lawful through this label, or

وَأَمَّا كُلُّ عَقْدٍ أَوْ وَطْءٍ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا أَبَاحَهُ بَلْ نَهَى عَنْهُ، فَهُوَ الْبَاطِلُ وَالْحَرَامُ وَالْمَعْصِيَةُ وَالضَّلَالُ - وَمَنْ سَمَّى ذَلِكَ زَوَاجًا فَهُوَ كَاذِبٌ آفِكٌ مُتَعَدٍّ، وَلَيْسَتْ التَّسْمِيَةُ فِي الشَّرِيعَةِ إلَيْنَا - وَلَا كَرَامَةَ - إنَّمَا هِيَ إلَى اللَّهِ تَعَالَى قَالَ اللَّهُ عَزَّ وَجَلَّ {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ} [النجم: ٢٣] قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا مَنْ سَمَّى كُلَّ عَقْدٍ فَاسِدٍ وَوَطْءٍ فَاسِدٍ - وَهُوَ الزِّنَى الْمَحْضُ - زَوَاجًا، لِيَتَوَصَّلَ بِهِ إلَى إبَاحَةِ مَا حَرَّمَ اللَّهُ تَعَالَى، أَوْ إلَى إسْقَاطِ حُدُودِ

like one who calls wine “nabīdh” or “ṭilāʾ (a type of alcoholic drink)” to permit it by this name, or like one who calls a synagogue or church a mosque, or like one who labels Judaism as Islam—and this constitutes renouncing Islam entirely and invalidating the contract of the Sharīʿah. No falsehood is greater than the claim: “This is an invalid marriage” or “This is invalid ownership,” for this is speech that contradicts itself. If it were indeed a marriage or ownership, then it is indeed valid and lawful, since Allah the Exalted has permitted marriage and ownership.[70]

اللَّهِ تَعَالَى، إِلَّا كَمَنْ سَمَّى الْخِنْزِيرَ: كَبْشًا، لِيَسْتَحِلَّهُ بِذَلِكَ الِاسْمِ، وَكَمَنْ سَمَّى الْخَمْرَ: نَبِيذًا، أَوْ طِلَاءً، لِيَسْتَحِلَّهَا بِذَلِكَ الِاسْمِ، وَكَمَنْ سَمَّى الْبَيْعَةَ وَالْكَنِيسَةَ: مَسْجِدًا، وَكَمَنْ سَمَّى الْيَهُودِيَّةَ: إِسْلَامًا - وَهَذَا هُوَ الِانْسِلَاخُ مِنَ الْإِسْلَامِ وَنَقْضُ عَقْدِ الشَّرِيعَةِ، وَلَيْسَ فِي الْمُحَالِ أَكْثَرُ مِنْ قَوْلِ الْقَائِلِ: هَذَا نِكَاحٌ فَاسِدٌ، وَهَذَا مِلْكٌ فَاسِدٌ، لِأَنَّ هَذَا كَلَامٌ يَنْقُضُ بَعْضُهُ بَعْضًا، وَلَئِنْ كَانَ نِكَاحًا أَوْ مِلْكًا فَإِنَّهُ لَصَحِيحٌ حَلَالٌ، لِأَنَّ اللَّهَ تَعَالَى أَحَلَّ الزَّوَاجَ، وَالْمِلْكَ.

L41416 And He, the Exalted, said: {Except with their spouses or those whom their right hands possess} [Al-Mu’minun: 6]. Thus, whatever constitutes marriage or lawful possession is lawful, permissible, permitted, and pure, with neither blame nor sin in it. But whatever entails blame and sin is neither marriage nor permissible possession permitting intercourse—nor is there any dignity—rather, it is sheer transgression and sheer adultery, nothing but a bed or forbidden fornication. Should a day ever arise where we speak of a “void marriage” or “void possession,” this would merely be recounting their own assertions and discussing their interpretations.[71]

وَقَالَ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] فَمَا كَانَ زَوَاجًا وَمِلْكَ يَمِينٍ فَهُوَ حَلَالٌ، طَلْقٌ، وَمُبَاحٌ، طَيِّبٌ، وَلَا مَلَامَةَ فِيهِ، وَلَا مَأْثَمَ، وَكُلُّ مَا كَانَ فِيهِ اللَّوْمُ وَالْإِثْمُ فَلَيْسَ زَوَاجًا، وَلَا مِلْكًا مُبَاحًا لِلْوَطْءِ - وَلَا كَرَامَةَ - بَلْ هُوَ الْعُدْوَانُ وَالزِّنَى الْمُجَرَّدُ، لَا شَيْءَ إِلَّا فِرَاشٌ، أَوْ عَهْرٌ حَرَامٌ، فَإِنْ وَجَدَ لَنَا يَوْمًا مَا أَنْ نَقُولَ: نِكَاحٌ فَاسِدٌ، أَوْ زَوَاجٌ فَاسِدٌ، أَوْ مِلْكٌ فَاسِدٌ، فَإِنَّمَا هُوَ حِكَايَةُ أَقْوَالٍ لَهُمْ، وَكَلَامٌ عَلَى مَعَانِيهِمْ.

L41417 As the Almighty has said: *The recompense for an evil deed is an evil of equal measure* (42:40).[72]

كَمَا قَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠]

L41418 And as He, the Exalted, said: {So whoever attacks you, then attack him in the same manner as he has attacked you} [Al-Baqarah: 194] and {Allah mocks them} [Al-Baqarah: 15]. The Muslims know that recompense is not evil, that retaliation (qisas) is not aggression, and that countering Allah the Exalted in the face of mockery is not blameworthy. Rather, it is a right.[73]

وَكَمَا قَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَ {اللَّهُ يَسْتَهْزِئُ بِهِمْ} [البقرة: ١٥] وَقَدْ عَلِمَ الْمُسْلِمُونَ أَنَّ الْجَزَاءَ لَيْسَ بِسَيِّئَةٍ، وَأَنَّ الْقِصَاصَ لَيْسَ عُدْوَانًا، وَأَنَّ مُعَارَضَةَ اللَّهِ تَعَالَى عَلَى الِاسْتِهْزَاءِ لَيْسَ مَذْمُومًا، بَلْ هُوَ حَقٌّ.

[70] **Qur’an references (L41413):** Qur’an 53:23 (An-Najm).
[71] **Qur’an references (L41416):** Qur’an 23:6 (Al-Mu’minun); Qur’an 70:30 (Al-Ma’arij).
[72] **Qur’an references (L41417):** Qur’an 42:40 (Ash-Shuraa).
[73] **Qur’an references (L41418):** Qur’an 2:194 (Al-Baqarah); Qur’an 2:15 (Al-Baqarah).

فَصَحَّ مِنْ هَذَا أَنَّ كُلَّ عَقْدٍ لَمْ يَأْمُرْ بِهِ اللَّهُ تَعَالَى فَمَنْ عَقَدَهُ فَهُوَ بَاطِلٌ - وَإِنْ وَطِئَ فِيهِ، فَإِنْ كَانَ عَالِمًا بِالتَّحْرِيمِ، عَالِمًا بِالسَّبَبِ الْمُحَرِّمِ: فَهُوَ زَانٍ مُطْلَقٌ.

L41419 Thus, it is evident from this that any contract not ordained by Allah the Exalted is void if someone enters into it. Even if intercourse occurs within it, if the individual is aware of the prohibition and the reason for its prohibition, then he is an absolute fornicator.

وَهَكَذَا الْقَوْلُ فِيمَنْ نَكَحَ نِكَاحَ مُتْعَةٍ: أَوْ شِغَارٍ، أَوْ مَوْهُوبَةٍ، أَوْ عَلَى شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، أَوْ بِصَدَاقٍ: لَا يَحِلُّ، مَنْ جَهِلَ التَّحْرِيمَ فِي شَيْءٍ مِنْ ذَلِكَ، بِأَنْ لَمْ تَبْلُغْهُ، أَوْ بِتَأْوِيلٍ لَمْ تَقُمْ عَلَيْهِ الْحُجَّةُ، فِي فَسَادِهِ، فَهُوَ مَعْذُورٌ، لَا حَدَّ عَلَيْهِ، وَمَنْ قَذَفَهُ فَعَلَيْهِ الْحَدُّ.

L41420 The same ruling applies to one who contracts a marriage of mut'ah, shighar, mawhubah, a marriage stipulating a condition not found in the Book of Allah the Exalted, or with an invalid dowry: such marriages are void. Whoever is ignorant of the prohibition in any of these matters—whether due to the ruling not reaching him or through an interpretation unsupported by evidence regarding its invalidity—is excused, and no ḥadd punishment is imposed upon him. But whoever accuses him of fornication, the ḥadd punishment falls upon the accuser.

كَمَنْ دَخَلَ بَلَدًا فَتَزَوَّجَ امْرَأَةً لَا يَعْرِفُهَا، فَوَجَدَهَا أُمَّهُ أَوْ ابْنَتَهُ: فَهَذَا يَلْحَقُ فِيهِ الْوَلَدُ، وَلَا يُحَدُّ فِيهِ حَدٌّ بِالْإِجْمَاعِ - وَبِهَذَا بَطَلَ قَوْلُ أَبِي حَنِيفَةَ الْمَذْكُورُ، وَقَوْلُ مَالِكٍ الَّذِي وَصَفْنَا فِي وَطْءِ الْحَرِيمَةِ بِمِلْكِ الْيَمِينِ.

L41421–41422 Like one who enters a city and marries a woman he does not know, then discovers her to be his mother or daughter: in this case, the child is legally recognized as his offspring, and no _ḥadd_ punishment is applied by consensus. This invalidates Abū Ḥanīfah's aforementioned opinion and Mālik's position which we described regarding intercourse with a woman forbidden due to kinship through right-hand possession.

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ احْتِجَاجِ بَعْضِ مَنْ لَقِينَاهُ مِنْ الْمَالِكِيِّينَ بِقَوْلِهِ تَعَالَى: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] ؟ قِيلَ لَهُمْ: إنْ كُنْتُمْ تَعَلَّقْتُمْ بِهَذِهِ الْآيَةِ فِي إلْحَاقِ الْوَلَدِ بِمَنْ وَطِئَ عَمَّتَهُ، وَخَالَتَهُ، وَذَوَاتَ مَحَارِمِهِ، فَإِنَّهَا مِنْ مِلْكِ الْيَمِينِ: فَأَبِيحُوا الْوَطْءَ الْمَذْكُورَ، وَأَسْقِطُوا عَنْهُ الْمَلَامَةَ جُمْلَةً - فَهَذَا هُوَ نَصُّ الْآيَةِ، فَلَوْ فَعَلُوا ذَلِكَ لَكَفَرُوا بِلَا خِلَافٍ مِنْ أَحَدٍ - وَإِذْ لَمْ يَفْعَلُوا ذَلِكَ، وَلَا أَسْقَطُوا الْمَلَامَةَ، وَلَا أَبَاحُوا لَهُ ذَلِكَ قَدْ ظَهَرَ تَمْوِيهُهُمْ فِي إيرَادِ هَذِهِ الْآيَةِ فِي غَيْرِ مَوْضِعِهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: فَأَنْتُمْ تَقُولُونَ " إنَّ الْمَمْلُوكَةَ الْكِتَابِيَّةَ لَا يَحِلُّ وَطْؤُهَا وَإِنْ

L41423 The utmost wonder lies in the argumentation of some Malikis we encountered who cite Allah's words: {Except with their spouses or those their right hands possess} [Al-Mu'minun:6]. They were confronted: "If you cling to this verse to establish paternity for one who fornicates with his paternal aunt, maternal aunt, or female mahrams - claiming these fall under 'those their right hands possess' - thereby permitting such intercourse and wholly absolving him of blame, then this constitutes the explicit text of the verse. Were they to do this, they would undoubtedly commit disbelief without disagreement from anyone. Since they neither do this, nor absolve blame, nor permit such acts, does not their deception in citing this verse out of context become evident?"

Abu Muhammad (may Allah have mercy on him) responded: "Should an objector say: 'You yourselves claim that intercourse with an enslaved Jewish or Christian woman is unlawful, yet if one does so, no ḥadd punishment

applies and the child is attributed to him. What differentiates this from one who fornicates with the female relatives we mentioned, where you impose the ḥadd penalty for zinā and deny paternity?'"[74]

وَطِئَهَا فَلَا حَدَّ عَلَيْهِ وَالْوَلَدُ لَاحِقٌ " فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ وَطِئَ أَحَدًا مِنْ ذَوَاتِ مَحَارِمِهِ الَّتِي ذَكَرْنَا فَأَوْجَبْتُمْ فِي كُلِّ هَذَا حَدَّ الزِّنَى، وَلَمْ تُلْحِقُوا الْوَلَدَ؟

L41424 We said: The distinction herein is that Allah, the Exalted, permitted the ownership of enslaved individuals in general, while prohibiting close kin by blood, breastfeeding, and marriage ties, and married women—all under a single, consistent prohibition. Thus, their very persons are entirely forbidden under one prohibition: neither touching them, nor gazing upon nakedness, nor any form of enjoyment whatsoever is permitted, for they are prohibited in their very persons.

قُلْنَا: إنَّ الْفَرْقَ فِي ذَلِكَ: هُوَ أَنَّ اللَّهَ تَعَالَى أَبَاحَ مِلْكَ الْيَمِينِ جُمْلَةً، وَحَرَّمَ ذَوَاتَ الْمَحَارِمِ بِالنَّسَبِ، وَالرَّضَاعِ، وَالصِّهْرِ، وَالْمُحْصَنَاتِ مِنْ النِّسَاءِ، تَحْرِيمًا وَاحِدًا مُسْتَوِيًا: فَحُرِّمَتْ أَعْيَانُهُنَّ كُلِّهِنَّ تَحْرِيمًا وَاحِدًا، وَلَمْ يَحِلَّ مِنْهُنَّ لَمْسٌ، وَلَا رُؤْيَةُ عُرْيَةٍ، وَلَا تَلَذُّذٌ أَصْلًا، لِأَنَّهُنَّ مُحَرَّمَاتُ الْأَعْيَانِ.

L41425 And He, the Exalted, said: {And do not marry polytheistic women until they believe} [Al-Baqarah: 221]. Thus, He prohibited only marriage to them, for marriage is nothing but the contract of wedlock. As for intercourse itself, if we own them, their persons are not prohibited to us, as there is no explicit text nor consensus on that. Only intercourse with them is prohibited, while the rest remains permissible through ownership by the right hand: such as a female slave, a menstruating woman, a woman in a state of ritual consecration, a woman observing an obligatory fast, a woman in obligatory iʿtikāf, and a woman pregnant by someone other than her master—with no distinction.[75]

وَقَالَ تَعَالَى: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] فَإِنَّمَا حَرَّمَ فِيهِنَّ النِّكَاحَ فَقَطْ، وَالنِّكَاحُ لَيْسَ إلَّا عَقْدَ الزَّوَاجِ، أَمَّا الْوَطْءُ فَقَطْ، فَإِذَا مَلَكْنَاهُنَّ فَلَمْ تُحَرَّمْ عَلَيْنَا أَعْيَانُهُنَّ، إذْ لَا نَصَّ فِي ذَلِكَ، وَلَا إجْمَاعَ، وَإِنَّمَا حُرِّمَ وَطْؤُهُنَّ فَقَطْ، وَبَقِيَ سَائِرُ ذَلِكَ عَلَى التَّحْلِيلِ بِمِلْكِ الْيَمِينِ: كَالْمَمْلُوكَةِ، وَالْحَائِضِ، وَالْمُحْرِمَةِ، وَالصَّائِمَةِ فَرْضًا، وَالْمُعْتَكِفَةِ فَرْضًا، وَالْحَامِلِ مِنْ غَيْرِ السَّيِّدِ، وَلَا فَرْقَ.

L41426–41428 Since none of these women were prohibited due to kinship, they remained a marital bed in matters other than intercourse. Thus, intercourse—even if forbidden—occurs within a marital bed where only intercourse itself is prohibited, and every act of intercourse outside of… Inherently prohibited intercourse is not considered ʿihr nor zinā. Rather, ʿihr refers exclusively to that which falls under the category of inherently prohibited intercourse. And success comes from Allah, the Exalted.

فَلَمَّا لَمْ يَكُنْ فِي وَاحِدَةٍ مِنْ هَؤُلَاءِ مُحَرَّمَةُ الْعَيْنِ كُنَّ فِرَاشًا فِي غَيْرِ الْوَطْءِ، فَكَانَ الْوَطْءُ - وَإِنْ كَانَ حَرَامًا - فَهُوَ فِي فِرَاشٍ لَمْ يُحَرَّمْ فِيهِ إلَّا الْوَطْءُ فَقَطْ وَكُلُّ وَطْءٍ فِي غَيْرِ مُحَرَّمِ الْعَيْنِ فَلَيْسَ عِهْرًا، وَلَا زِنًى، وَإِنَّمَا الْعِهْرُ: مَا كَانَ فِي مُحَرَّمَةِ الْعَيْنِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41429 He said: Then we examined the position of those who mandated the ḥadd punishment for intercourse with one's mother through a marriage contract, equivalent to the punishment for adultery with women unrelated to her, and

قَالَ: ثُمَّ نَظَرْنَا فِيمَنْ أَوْجَبَ الْحَدَّ فِي وَطْءِ الْأُمِّ بِعَقْدِ النِّكَاحِ كَحَدِّ الزِّنَى بِغَيْرِهَا مِنْ الْأَجْنَبِيَّاتِ، وَقَوْلِ مَنْ أَوْجَبَ فِي ذَلِكَ الْقَتْلَ - أَحْصَنَ أَوْ لَمْ يُحْصِنْ - فَوَجَدْنَا الْخَبَرَ

[74] **Qur'an references (L41423):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).
[75] **Qur'an references (L41425):** Qur'an 2:221 (Al-Baqarah).

the view of those who mandated execution for such an act—whether the perpetrator was a married person (muḥṣan) or not. We found the narration regarding the execution of one who marries his father's wife to be established, and the legal argument based on it is sound. Thus, ruling by it became obligatory, and no one has the leeway to deviate from it.

فِي قَتْلِ مَنْ أَعْرَسَ بِامْرَأَةِ أَبِيهِ ثَابِتًا وَالْحُجَّةُ بِهِ قَائِمَةٌ، فَوَجَبَ الْحُكْمُ بِهِ، وَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْهُ.

L41430 Among the statements of the opponents regarding that matter was their saying: "It is possible that the one who married his father's wife did so while considering it lawful. If this is the case, then do we not oppose you in that?"

فَكَانَ مِنْ قَوْلِ الْمُخَالِفِ فِي ذَلِكَ أَنْ قَالُوا: قَدْ يُمْكِنُ أَنْ يَكُونَ ذَلِكَ الَّذِي أَعْرَسَ بِامْرَأَةِ أَبِيهِ قَدْ فَعَلَ ذَلِكَ مُسْتَحِلًّا لَهُ، فَإِنْ كَانَ هَذَا فَنَحْنُ لَا نُخَالِفُكُمْ فِي ذَلِكَ؟

L41431 We said to them: This addition by whoever fabricated it is a sheer lie against the Messenger of Allah—peace and blessings be upon him—and against the Companions who narrated it—may Allah be pleased with them. Had this been the case, the narrator would have stated: "The Messenger of Allah—peace and blessings be upon him and his family—sent us to a man who apostatized and took his father's wife as lawful, so we executed him for apostasy." Since the narrator did not mention this, the addition is plainly false. Thus, this addition constitutes an unfounded assumption absent from the original narration.

فَقُلْنَا لَهُمْ: إِنَّ هَذِهِ الزِّيَادَةَ مِمَّنْ زَادَهَا كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُجَرَّدٌ، وَعَلَى مَنْ رَوَى ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَوْ كَانَ ذَلِكَ لَقَالَ الرَّاوِي: بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى رَجُلٍ ارْتَدَّ فَاسْتَحَلَّ امْرَأَةَ أَبِيهِ، فَقَتَلْنَاهُ عَلَى الرِّدَّةِ، فَإِذَا لَمْ يَقُلْ ذَلِكَ الرَّاوِي، فَهُوَ كَذِبٌ مُجَرَّدٌ، فَهَذِهِ الزِّيَادَةُ ظَنُّ مَا لَيْسَ فِيهِ.

L41432 It is established that whoever has intercourse with his father's wife—whether through a contract termed marriage or without any contract, as stated in the wording of the aforementioned hadith—must be executed, and this is obligatory and necessary. The confiscation of one-fifth of his wealth is obligatory, and the remainder goes to his heirs—if he had not apostatized—or to the Muslims—if he had apostatized.

فَصَحَّ مَنْ وَطِئَ امْرَأَةَ أَبِيهِ بِعَقْدٍ سِمَاهُ نِكَاحًا - أَوْ بِغَيْرِ عَقْدٍ كَمَا جَاءَتْ أَلْفَاظُ الْحَدِيثِ الْمَذْكُورِ - فَقَتْلُهُ وَاجِبٌ وَلَا بُدَّ، وَتَخْمِيسُ مَالِهِ فَرْضٌ، وَيَكُونُ الْبَاقِي لِوَرَثَتِهِ - إنْ كَانَ لَمْ يَرْتَدَّ - أَوْ لِلْمُسْلِمِينَ، إنْ كَانَ ارْتَدَّ.

L41433 If they say: "We have not found anything like this in the sources?" We respond: "We recognize no sources except the Quran, the Sunnah, and consensus. This report is a source in itself. But inform us: in which sources have you found that one who knowingly marries his mother—while knowing she is his mother—or his daughter while knowing she is his daughter, or his sister, or any of his mahram relatives—knowing the prohibition in all such cases—then consummates these marriages incurs no legal punishment, yet the dowry is obligatory for them against him, and the child is legally ascribed to him? We know this only outside Islam." Abu Muhammad—may

فَإِنْ قَالُوا: لَمْ نَجِدْ مِثْلَ هَذَا فِي الْأُصُولِ؟ قُلْنَا لَهُمْ: لَا أَصْلَ عِنْدَنَا إلَّا الْقُرْآنُ، وَالسُّنَّةُ، وَالْإِجْمَاعُ، فَهَذَا الْخَبَرُ أَصْلٌ فِي نَفْسِهِ - وَلَكِنْ أَخْبِرُونَا: فِي أَيِّ الْأُصُولِ وَجَدْتُمْ أَنَّ مَنْ تَزَوَّجَ أُمَّهُ - وَهُوَ يَدْرِي أَنَّهَا أُمُّهُ - أَوْ ابْنَتَهُ - وَهُوَ يَدْرِي أَنَّهَا ابْنَتُهُ أَوْ أُخْتَهُ - أَوْ إحْدَى ذَوَاتِ مَحَارِمِهِ - وَهُوَ يَدْرِي عَالِمٌ بِالتَّحْرِيمِ فِي كُلِّ ذَلِكَ: فَوَطِئَهُنَّ فَلَا حَدَّ عَلَيْهِ، وَالْمَهْرُ وَاجِبٌ لَهُنَّ عَلَيْهِ، وَالْوَلَدُ لَاحِقٌ بِهِ، فَمَا نَدْرِي هَذَا إلَّا فِي غَيْرِ الْإِسْلَامِ.

Allah have mercy on him—said: “As for us, it is impermissible to transgress Allah’s ordained limits. We therefore rule: whoever has intercourse with his father’s wife—whether by contract or without contract, or contracted her under the name of nikāh even without consummation—must inevitably be executed regardless of being a muḥṣan or not. A fifth of his property is taken. This ruling applies equally whether she was his mother or not, and irrespective of whether his father had consummated marriage with her.”

L41434–41435 As for one who has intercourse with someone other than his father’s wife from among the rest of his female *mahrams*—such as his mother who gave birth to him through adultery or through a contract in the name of an invalid marriage with his father (she is his mother, not his father’s wife), or his sister, daughter, paternal aunt, maternal aunt, or any one of his *mahrams* through affinity or foster kinship—whether through a marriage contract or without a contract: he is an adulterer, and only the *ḥadd* punishment applies to him. If he is a *muhsan*, he is to be flogged and stoned, just as with unrelated women, because he committed adultery. As for one who is unaware regarding all such matters, there is no punishment upon him.

L41436 **A legal issue concerning one who makes lawful for another sexual access to the private part of his female slave.**

L41437 Abū Muḥammad—may God have mercy on him—said: Whether a woman permits her female slave to her husband, a mahram permits his female slave to his mahram, or a stranger does so—we have already mentioned Sufyān’s opinion on this matter, which is extremely evidently erroneous. This is because he deemed the child to be owned by the owner of his mother, and he was correct in this. However, he then affiliated the child’s lineage to the one who had intercourse with his mother—and this is an egregious error—because the Messenger of God—peace and blessings be upon him—said, “The child belongs to the marital bed, and stoning is for the adulterer.”

L41438 And He, the Almighty and Majestic, has clarified: What constitutes lawful marital relations and what constitutes illicit relations? He, the Exalted,

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا نَحْنُ فَلَا يَجُوزُ أَنْ نَتَعَدَّى حُدُودَ اللَّهِ فِيمَا وَرَدَتْ بِهِ، فَنَقُولُ: إنَّ مَنْ وَقَعَ عَلَى امْرَأَةِ أَبِيهِ - بِعَقْدٍ أَوْ بِغَيْرِ عَقْدٍ أَوْ عَقَدَ عَلَيْهَا بِاسْمِ نِكَاحٍ وَإِنْ لَمْ يَدْخُلْ بِهَا - فَإِنَّهُ يُقْتَلُ وَلَا بُدَّ - مُحْصَنًا كَانَ أَوْ غَيْرَ مُحْصَنٍ - وَيُخَمَّسُ مَالُهُ، وَسَوَاءٌ أُمُّهُ كَانَتْ أَوْ غَيْرَ أُمِّهِ، دَخَلَ بِهَا أَبُوهُ أَوْ لَمْ يَدْخُلْ بِهَا.

وَأَمَّا مَنْ وَقَعَ عَلَى غَيْرِ امْرَأَةِ أَبِيهِ مِنْ سَائِرِ ذَوَاتِ مَحَارِمِهِ - كَأُمِّهِ الَّتِي وَلَدَتْهُ مِنْ زِنًى أَوْ بِعَقْدٍ بِاسْمِ نِكَاحٍ فَاسِدٍ مَعَ أَبِيهِ - فَهِيَ أُمُّهُ وَلَيْسَتْ امْرَأَةَ أَبِيهِ، أَوْ أُخْتَهُ، أَوْ ابْنَتَهُ، أَوْ عَمَّتَهُ، أَوْ خَالَتَهُ أَوْ وَاحِدَةً مِنْ ذَوَاتِ مَحَارِمِهِ بِصِهْرٍ، أَوْ رَضَاعٍ - فَسَوَاءٌ كَانَ ذَلِكَ بِعَقْدٍ أَوْ بِغَيْرِ عَقْدٍ: هُوَ زَانٍ، وَعَلَيْهِ الْحَدُّ فَقَطْ، وَإِنْ أُحْصِنَ عَلَيْهِ الْجَلْدُ وَالرَّجْمُ كَسَائِرِ الْأَجْنَبِيَّاتِ لِأَنَّهُ زَنَى، وَأَمَّا الْجَاهِلُ فِي كُلِّ ذَلِكَ فَلَا شَيْءَ عَلَيْهِ.

[مَسْأَلَة مِنْ أَحَلَّ لِآخَرَ فَرْجَ أَمَتِهِ]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: سَوَاءٌ كَانَتْ امْرَأَةً أَحَلَّتْ أَمَتَهَا لِزَوْجِهَا، أَوْ ذِي رَحِمٍ مَحْرَمٍ أَحَلَّ أَمَتَهُ لِذِي رَحِمِهِ، أَوْ أَجْنَبِيٍّ فَعَلَ ذَلِكَ: فَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ فِي ذَلِكَ وَهُوَ ظَاهِرُ الْخَطَأِ جِدًّا، لِأَنَّهُ جَعَلَ الْوَلَدَ مَمْلُوكًا لِمَالِكِ أُمِّهِ، وَأَصَابَ فِي هَذَا، ثُمَّ جَعَلَهُ لَاحِقَ النَّسَبِ بِوَاطِئِ أُمِّهِ - وَهَذَا خَطَأٌ فَاحِشٌ - لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

وَبَيَّنَ عَزَّ وَجَلَّ مَا هُوَ الْفِرَاشُ وَمَا هُوَ الْعِهْرُ؟ فَقَالَ تَعَالَى: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] إلَى قَوْله تَعَالَى: {هُمُ الْعَادُونَ} [المؤمنون: ٧] .

said: “And those who guard their private parts” [Al-Mu’minun: 5] up to His statement: “those who transgress” [Al-Mu’minun: 7].[76]

L41439 Therefore, this woman whose guardian has permitted another man lawful sexual access to her is neither a wife to him nor among those whom the latter’s right hand possesses—and this is invalid, for Allah the Exalted says: “And do not consume your wealth among yourselves wrongfully” [Al-Baqarah: 188].[77]

L41440 The Messenger of Allah—peace and blessings of Allah be upon him—said: “Indeed, your lives and wealth are sacred and forbidden to violate.”

L41441 We know that the one who permitted sexual relations did not free the slave, nor did he willingly surrender ownership of them, nor did he ever approve of that. Is it lawful, then, that he was content with permitting sexual relations alone?

L41442–41443 He is not obligated to anyone else, nor is anything binding on him except what he has explicitly consented to. Even if what his soul was content with in permitting sexual relations is unlawful, he is not bound by it, for what is unlawful is invalid, according to the statement of Allah’s Messenger—peace and blessings be upon him: “Whoever introduces into this matter of ours what is not part of it, it is rejected.” Therefore, the gift of sexual access is not enforceable upon him.[78]

L41444 As for the slave, he has never agreed to relinquish ownership of her; thus, it is impermissible to take her from him without his free consent, except by a scriptural text that mandates this or consensus?

L41445 Abū Muḥammad—may Allāh have mercy on him—said: If the matter is as we have described, then the child is not attributed [to the father], and the prescribed punishment is obligatory—unless he is unaware of the prohibition of what he did. And with Allāh, the Most High, is success.

فَهَذِهِ الَّتِي أَحَلَّ مَالِكُهَا فَرْجَهَا لِغَيْرِهِ لَيْسَتْ زَوْجَةً لَهُ، وَلَا مِلْكَ يَمِينٍ لِلَّذِي أَحَلَّتْ لَهُ - وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَدْ عَلِمْنَا أَنَّ الَّذِي أَحَلَّ الْفَرْجَ لَمْ يَهَبْ الرَّقَبَةَ وَلَا طَابَتْ نَفْسُهُ بِإِخْرَاجِهَا عَنْ مِلْكِهِ، وَلَا رَضِيَ بِذَلِكَ قَطُّ، فَإِنْ كَانَ مَا طَابَتْ بِهِ نَفْسُهُ مِنْ إبَاحَةِ الْفَرْجِ وَحْدَهُ حَلَالًا؟

فَلَا يَلْزَمُهُ سِوَاهُ، وَلَا يَنْفُذُ عَلَيْهِ غَيْرُ مَا رَضِيَ بِهِ فَقَطْ، وَإِنْ كَانَ مَا طَابَتْ بِهِ نَفْسُهُ مِنْ إبَاحَةِ الْفَرْجِ حَرَامًا، فَإِنَّهُ لَا يَلْزَمُهُ، وَالْحَرَامُ مَرْدُودٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَلَا يَنْفُذُ عَلَيْهِ هِبَةُ الْفَرْجِ.

وَأَمَّا الرَّقَبَةُ فَلَمْ يَرْضَ قَطُّ بِإِخْرَاجِهَا عَنْ مِلْكِهِ، فَلَا يَحِلُّ أَخْذُهَا لَهُ بِغَيْرِ طِيبِ نَفْسِهِ، إلَّا بِنَصٍّ يُوجِبُ ذَلِكَ أَوْ إجْمَاعٍ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذَا الْأَمْرُ كَمَا ذَكَرْنَا فَالْوَلَدُ غَيْرُ لَاحِقٍ، وَالْحَدُّ وَاجِبٌ، إلَّا أَنْ يَكُونَ جَاهِلًا بِتَحْرِيمِ مَا فَعَلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[76] **Qur’an references (L41438):** Qur’an 23:5 (Al-Mu’minun); Qur’an 70:29 (Al-Ma’arij); Qur’an 23:7 (Al-Mu’minun).

[77] **Qur’an references (L41439):** Qur’an 2:188 (Al-Baqarah).

[78] **Hadith references (L41443):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L41446 2222 – Question: Who permitted another person to have lawful access to the private part of his female slave?

٢٢٢٢ - مَسْأَلَةٌ: مَنْ أَحَلَّ فَرْجَ أَمَتِهِ لِغَيْرِهِ؟

L41447 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs say: Ibn ʿAbbās said, "If a man's wife, daughter, or sister makes lawful for him her female slave, he must have intercourse with her while she is hers, and he must place it between her thighs?"

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: قَالَ ابْنُ عَبَّاسٍ: إِذَا أَحَلَّتْ امْرَأَةُ الرَّجُلِ، أَوْ ابْنَتُهُ، أَوْ أُخْتُهُ لَهُ جَارِيَتَهَا فَلْيُصِبْهَا وَهِيَ لَهَا، فَلْيَجْعَلْ بِهِ بَيْنَ وِرْكَيْهَا؟ .

L41448 Ibn Jurayj said: Ibn Tāwūs informed me from his father that he saw no harm in it, stating: "It is lawful. If she gives birth, her child is free; the enslaved woman belongs to his wife, and the husband owes nothing."

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى بِهِ بَأْسًا، وَقَالَ: هُوَ حَلَالٌ فَإِنْ وَلَدَتْ فَوَلَدُهَا حُرٌّ، وَالْأَمَةُ لِامْرَأَتِهِ، وَلَا يَغْرَمُ الزَّوْجُ شَيْئًا.

L41449 Ibn Jurayj said: Ibrahim ibn Abi Bakr informed me via Abd al-Rahman ibn Zādawayh from Tawus that he said: The child is more permissible than food. If she gives birth, her child—whom she has made lawful for him—belongs to him, while she remains under her original master.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي إِبْرَاهِيمُ بْنُ أَبِي بَكْرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ زَادَوَيْهِ عَنْ طَاوُسٍ أَنَّهُ قَالَ: هُوَ أَحَلَّ مِنَ الطَّعَامِ، فَإِنْ وَلَدَتْ فَوَلَدُهَا الَّذِي أَحَلَّتْ لَهُ، وَهِيَ لِسَيِّدِهَا الْأَوَّلِ.

L41450 Ibn Jurayj said: 'Aṭā' ibn Abī Rabāḥ reported to me that it was the practice that a man would permit his slave girl to his young male servant, his son, and his brother—and a woman would permit hers to her husband.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءُ بْنُ أَبِي رَبَاحٍ قَالَ: كَانَ يُفْعَلُ، يُحِلُّ الرَّجُلُ وَلِيدَتَهُ لِغُلَامِهِ، وَابْنِهِ، وَأَخِيهِ - وَتُحِلُّهَا الْمَرْأَةُ لِزَوْجِهَا.

L41451 Ata said: "I do not like that it be done, nor has it reached me from a reliable narrator." He said: "But has it reached me that a man would send his slave woman with his guest?"

قَالَ عَطَاءٌ: وَمَا أُحِبُّ أَنْ يُفْعَلَ، وَمَا بَلَغَنِي عَنْ ثِبَتٍ، قَالَ: وَقَدْ بَلَغَنِي أَنَّ الرَّجُلَ كَانَ يُرْسِلُ بِوَلِيدَتِهِ إِلَى ضَيْفِهِ؟

L41452–41454 Abu Muhammad—may Allah have mercy on him—said: "This is the opinion—and Sufyan al-Thawri likewise held it." Malik and his companions said: There is no prescribed punishment for that matter at all.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا قَوْلٌ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَقَالَ مَالِكٌ، وَأَصْحَابُهُ: لَا حَدَّ فِي ذَلِكَ أَصْلًا.

L41455 Then his statement differed regarding the legal ruling on this matter: at one instance he said, "It belongs to its owner - the one who permitted it - as long as it has not conceived. But if it conceives, its value is assessed against the one to whom it was permitted."

ثُمَّ اخْتَلَفَ قَوْلُهُ فِي الْحُكْمِ فِي ذَلِكَ: فَمَرَّةً قَالَ: هِيَ لِمَالِكِهَا الْمُبِيحِ مَا لَمْ تَحْمِلْ، فَإِنْ حَمَلَتْ قُوِّمَتْ عَلَى الَّذِي أُبِيحَتْ لَهُ.

L41456 And once he said: The ruling is established based on his first intercourse

وَمَرَّةً قَالَ: تُقَامُ بِأَوَّلِ وَطْئِهِ عَلَى الَّذِي أُبِيحَتْ لَهُ حَمَلَتْ أَوْ لَمْ تَحْمِلْ.

with the one lawfully permitted to him, whether the wife conceives or not.

وَقَالَتْ طَائِفَةٌ: إِذَا أَحَلَّتْ فَقَدْ صَارَ مِلْكُهَا لِلَّذِي أُحِلَّتْ لَهُ بِكُلِّيَّتِهَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ مُجَاهِدٍ، وَعَمْرِو بْنِ عُبَيْدٍ، قَالَ ابْنُ مُجَاهِدٍ عَنْ أَبِيهِ: وَقَالَ عَمْرٌو عَنِ الْحَسَنِ، ثُمَّ اتَّفَقَا: إِذَا أُحِلَّتِ الْأَمَةُ لِإِنْسَانٍ فَعِتْقُهَا لَهُ، وَيَلْحَقُ بِهِ الْوَلَدُ.

L41457 A group said: If she makes herself lawful, her ownership becomes entirely that of the one to whom she was made lawful, as has been narrated to us through the aforementioned chain from ʿAbd al-Razzāq from Maʿmar from Ibn Mujāhid and ʿAmr ibn ʿUbayd. Ibn Mujāhid reported from his father, and ʿAmr reported from al-Ḥasan; then they both agreed: If a female slave is made lawful to a man, her emancipation becomes his exclusive right, and the child is legally affiliated with him.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ قَيْسٍ: أَنَّ الْوَلِيدَ بْنَ هِشَامٍ أَخْبَرَهُ أَنَّهُ سَأَلَ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ؟ فَقَالَ: امْرَأَتِي أَحَلَّتْ جَارِيَتَهَا لِأَبِيهَا، قَالَ: فَهِيَ لَهُ - فَهَذَا قَوْلٌ ثَانٍ.

L41458 And through him [the preceding narrator], the chain extends to Abd al-Razzaq from Ibn Jurayj, who said: Abdullah ibn Qays informed me that al-Walīd ibn Hishām informed him that he asked Umar ibn Abd al-Azīz, who replied: “My wife has transferred her slave girl to her father.” He said: “She now belongs to him.” This is a second view.

وَذَهَبَ آخَرُونَ إِلَى غَيْرِ هَذَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي الرَّجُلِ يُحِلُّ الْجَارِيَةَ لِلرَّجُلِ؟ فَقَالَ: إِنْ وَطِئَهَا جُلِدَ مِائَةً - أَحْصَنَ أَوْ لَمْ يُحْصِنْ وَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَلَا يَرِثُهُ، وَلَهُ أَنْ يَفْتَدِيَهُ - لَيْسَ لَهُمْ أَنْ يَمْنَعُوهُ.

L41459 Others held a differing opinion, as we have narrated through the aforementioned chain from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, regarding a man who makes a female slave lawful for another man. He said: If he has intercourse with her, he is to be flogged one hundred lashes—whether he is a muḥṣan (a legally protected person, typically married) or not. The child is not attributed to him, nor does the child inherit from him. He has the right to redeem the child by purchasing his freedom, and the owners are not permitted to prevent him from doing so.

وَقَالَ آخَرُونَ: بِتَحْرِيمِ ذَلِكَ جُمْلَةً: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ عُمَرَ فَقَالَ: إِنَّ أُمِّي كَانَتْ لَهَا جَارِيَةٌ، وَإِنَّهَا أَحَلَّتْهَا لِي أَنْ أَطَأَهَا عَلَيْهَا؟ قَالَ: لَا تَحِلُّ لَك إِلَّا مِنْ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ تَتَزَوَّجَهَا وَإِمَّا أَنْ تَشْتَرِيَهَا، وَإِمَّا أَنْ تَهَبَهَا لَك “.

L41460 Others said: That is entirely prohibited, as narrated through the aforementioned chain from Abd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Sabi’i from Sa’id ibn al-Musayyab, who said: A man came to Ibn Umar and asked: “My mother had a slave girl whom she permitted me to cohabit with for her sake?” He replied: “She is not lawful for you except by one of three means: either marry her, purchase her, or have her gifted to you by your mother.”

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ ابْنَ عُمَرَ قَالَ: لَا يَحِلُّ لَك أَنْ تَطَأَ إِلَّا فَرْجًا لَك إِنْ شِئْت بِعْتَ، وَإِنْ شِئْت وَهَبْتَ، وَإِنْ شِئْت أَعْتَقْتَ.

L41461–41462 And by him—from Abd al-Razzaq, from Ma’mar, from Qatadah—that Ibn Umar said: It is unlawful for you to have intercourse except with a female slave you own. If you wished, you could sell her; if you wished, gift her; or if you wished, free her.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: لَا تُعَارُ الْفُرُوجُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ ابْنِ عَبَّاسٍ فَهُوَ عَنْهُ وَعَنْ طَاوُسٍ فِي غَايَةِ الصِّحَّةِ، وَلَكِنَّا لَا نَقُولُ بِهِ، إذْ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ - إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٥ - ٦] الْآيَةَ إلَى قَوْلِهِ {هُمُ الْعَادُونَ} [المؤمنون: ٧] فَقَوْلُ اللَّهِ أَحَقُّ أَنْ يُتَّبَعَ.

L41463 And through him—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, who said: "Should private parts be exposed?" Abu Muhammad—may Allah have mercy on him—said: As for the statement of Ibn Abbas, it is narrated from him and from Tawus with the highest authenticity, but we do not adhere to this view, since there is no authoritative evidence in the opinion of anyone apart from the Messenger of Allah—peace and blessings be upon him. Allah the Exalted has said: *And those who guard their private parts—except from their spouses or those their right hands possess* [23:5-6]—until His words: *they are the transgressors* [23:7]. Thus, Allah's word is most deserving of adherence.[79]

وَأَمَّا قَوْلُ مَالِك فَظَاهِرُ الْخَطَأِ، وَمَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ - وَيَبْطُلُ قَوْلُهُ فِي التَّقْوِيمِ بِمَا يَبْطُلُ بِهِ قَوْلُ مَنْ رَأَى أَنَّ الْمِلْكَ يَنْتَقِلُ بِالْإِبَاحَةِ، إلَّا أَنَّ قَوْلَ مَالِكٍ: زَادَ إيجَابَ الْقِيمَةِ فِي ذَلِكَ.

L41464 As for Mālik's opinion, it is clearly incorrect, and we know of no one who held it before him. His stance on valuation is nullified by the same grounds that nullify the view of those who assert that ownership is transferred through mere permissibility, except that Mālik's statement goes further by imposing the value in that matter.

وَأَمَّا قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالْحَسَنِ، وَمُجَاهِدٍ قَدْ تَقَدَّمَ إبْطَالُنَا إيَّاهُ بِأَنَّهُ لَا يَحِلُّ أَنْ يَلْزَمَ الْمَرْءُ فِي مَالِهِ مَا لَمْ يَلْتَزِمْهُ، إلَّا أَنْ يُلْزِمَهُ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ، فَمَنْ أَبَاحَ الْفَرْجَ وَحْدَهُ فَلَمْ يُبِحْ الرَّقَبَةَ، فَلَا يَحِلُّ إخْرَاجُ مِلْكِ الرَّقَبَةِ عَنْ يَدِهِ بِالْبَاطِلِ - وَلَيْسَ إلَّا أَحَدُ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا جَوَازُ هِبَتِهِ فَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَإِمَّا إبْطَالُهُ فَهُوَ قَوْلُ ابْنِ عُمَرَ فَالرَّقَبَةُ فِي كِلَا الْوَجْهَيْنِ بَاقِيَةٌ عَلَى مِلْكِ مَالِكِهَا، لَا يَحِلُّ سِوَى ذَلِكَ أَصْلًا.

L41465 As for the statements of Umar ibn Abd al-Aziz, al-Hasan, and Mujahid, we have previously invalidated their position because it is impermissible to impose obligations upon a person regarding their property that they have not voluntarily undertaken, unless such an obligation is established by a textual injunction or consensus. Therefore, whoever permits sexual access alone without permitting ownership of the enslaved person, it is unlawful to unjustly deprive them of ownership of the enslaved person. There are only two possibilities with no third alternative: either the permissibility of gifting the enslaved person, which is the opinion of Ibn Abbas, or the invalidation of such a gift, which is the opinion of Ibn Umar. In both scenarios, the enslaved person remains under the ownership of their owner, and no other course of action is permissible at all.

وَأَمَّا قَوْلُ الزُّهْرِيِّ خَطَأٌ أَيْضًا لَا يَخْلُو وَطْءُ الْفَرْجِ الَّذِي أُحِلَّ لَهُ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ زَانِيًا فَعَلَيْهِ حَدُّ الزِّنَى مِنْ الرَّجْمِ وَالْجَلْدِ أَوْ الْجَلْدِ وَالتَّغْرِيبِ - أَوْ يَكُونَ غَيْرَ زَانٍ فَلَا شَيْءَ عَلَيْهِ.

L41466 As for Az-Zuhri's statement, it is also incorrect. Lawful sexual intercourse permitted to him must fall into one of two scenarios with no third possibility: either he is a fornicator, in which case he is subject to the punishment for

[79] **Qur'an references (L41463):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

unlawful intercourse consisting of either stoning and flogging or flogging and exile, or he is not a fornicator, in which case no punishment applies to him.

L41467–41469 As for limiting to one hundred lashes, there is no basis for it. The child is not legally affiliated to him in this case at all—whether the child was ignorant or knowledgeable—because this relationship does not constitute a lawful matrimonial bond, nor does he possess a valid marriage contract. He is also not liable for a bridal gift, because his wealth is illicit except by explicit textual evidence or consensus, and neither textual evidence nor consensus imposes a bridal gift obligation upon him in this situation— The muḥallil (facilitator of lawful remarriage) incurs taʿzīr (discretionary punishment) if he is knowledgeable. But if they are ignorant, or if one of them is ignorant, then there is no penalty whatsoever upon the ignorant one.

وَأَمَّا الِاقْتِصَارُ عَلَى مِائَةِ جَلْدَةٍ فَلَا وَجْهَ لَهُ، وَلَا يَلْحَقُ الْوَلَدُ هَاهُنَا أَصْلًا - جَاهِلًا كَانَ أَوْ عَالِمًا - لِأَنَّهَا لَيْسَتْ فِرَاشًا أَصْلًا، وَلَا لَهُ فِيهَا عَقْدٌ، وَلَا مَهْرَ عَلَيْهِ أَيْضًا، لِأَنَّ مَالَهُ حَرَامٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَمْ يُوجِبْ عَلَيْهِ الْمَهْرَ هَاهُنَا نَصٌّ وَلَا إجْمَاعٌ - وَعَلَى الْمُحَلِّلِ التَّعْزِيرُ إنْ كَانَ عَالِمًا فَإِنْ كَانُوا جُهَّالًا، أَوْ أَحَدُهُمْ فَلَا شَيْءَ عَلَى الْجَاهِلِ أَصْلًا.

A legal issue concerning situations where the witnesses to adultery do not complete four in number.

L41470

[مَسْأَلَةٌ إذَا كَانَ الشُّهُودُ فِي الزِّنَى لَا يُتِمُّونَ أَرْبَعَةً]

L41471 Issue 2223: Are the witnesses in adultery not four in number?

٢٢٢٣ - مَسْأَلَةٌ: الشُّهُودُ فِي الزِّنَى لَا يُتِمُّونَ أَرْبَعَةً؟

L41472 Abū Muḥammad—may Allāh have mercy on him—said: A group said, "If the witnesses do not complete four, they shall be subjected to the *qadhf* penalty." As narrated by ʿAbdullāh ibn Rabīʿ from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from ʿAlī ibn Zayd ibn Judʿān, from ʿAbd al-Raḥmān ibn Abī Bakrah:

Abū Bakrah, Ziyād, Nāfiʿ, and Shibl ibn Maʿbad were in an upper room of Abū ʿAbdullāh's house while a man was below. A gust of wind blew open the door, causing the curtain to fall—and there was a man between her thighs? Some said, "The two have been afflicted with what you see," so they pledged to uphold their testimony. When the ʿAṣr prayer time arrived, the man sought to lead the prayer, but Abū Bakrah prevented him, declaring, "By Allāh, you shall not lead us in prayer after what we witnessed!" The people urged, "Let him lead, for he is the commander. Write to ʿUmar about this." They wrote to ʿUmar, who commanded, "Come before me."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: إذَا لَمْ يُتِمَّ الشُّهُودُ أَرْبَعَةً حُدُّوا حَدَّ الْقَذْفِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ: أَنَّ أَبَا بَكْرَةَ وَزِيَادًا، وَنَافِعًا، وَشِبْلَ بْنَ مَعْبَدٍ، كَانُوا فِي دَارِ أَبِي عَبْدِ اللَّهِ فِي غُرْفَةٍ وَرَجُلٌ فِي أَسْفَلِ ذَاكَ، إذْ هَبَّتْ رِيحٌ فَتَحَتْ الْبَابَ وَوَقَعَتْ الشَّقَّةُ، فَإِذَا رَجُلٌ بَيْنَ فَخْذَيْهَا؟ فَقَالَ بَعْضُهُمْ: قَدْ ابْتُلِيَا بِمَا تَرَوْنَ، فَتَعَاهَدُوا وَتَعَاقَدُوا عَلَى أَنْ يَقُومُوا بِشَهَادَتِهِمْ، فَلَمَّا حَضَرَتْ صَلَاةُ الْعَصْرِ أَرَادَ الرَّجُلُ أَنْ يَتَقَدَّمَ فَيُصَلِّيَ بِالنَّاسِ فَمَنَعَهُ أَبُو بَكْرَةَ، وَقَالَ: لَا وَاَللَّهِ لَا تُصَلِّي بِنَا، وَقَدْ رَأَيْنَا مَا رَأَيْنَا؟ فَقَالَ النَّاسُ: دَعُوهُ فَلْيُصَلِّ فَإِنَّهُ

الْأَمِيرُ، وَاكْتُبُوا بِذَلِكَ إِلَى عُمَرَ؟ فَكَتَبُوا إِلَى عُمَرَ؟ فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ اُقْدُمُوا عَلَيَّ؟ فَلَمَّا قَدِمُوا شَهِدَ عَلَيْهِ أَبُو بَكْرَةَ، وَنَافِعٌ، وَشِبْلٌ، وَقَالَ زِيَادٌ: قَدْ أُرِيت رِعَةَ سِيِّهِ، وَرَأَيْت وَرَأَيْت، وَلَكِنْ لَا أَدْرِي أَنَكَحَهَا أَمْ لَا؟ فَجَلَدَهُمْ عُمَرُ، إلَّا زِيَادًا فَقَالَ أَبُو بَكْرَةَ: أَلَسْتُمْ قَدْ جَلَدْتُمُونِي؟ قَالُوا: بَلَى، قَالَ: فَأَشْهَدُ بِاَللَّهِ أَلْفَ مَرَّةٍ لَقَدْ فَعَلَ؟ فَأَرَادَ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَجْلِدَهُ الثَّانِيَةَ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنْ كَانَتْ شَهَادَةُ أَبِي بَكْرَةَ شَهَادَةَ: رَجُلَيْنِ فَارْجُمْ صَاحِبَك وَإِلَّا فَقَدْ جَلَدْتُمُوهُ.

Upon their arrival, Abū Bakrah, Nāfiʿ, and Shibl testified against him. Ziyād said, “I saw the movement of his garment—I saw and I saw—but I do not know whether he had intercourse with her or not.” ʿUmar ordered them flogged except Ziyād. Abū Bakrah protested, “Did you not flog me?” They affirmed, and he swore, “By Allāh a thousand times—he did it!” When ʿUmar moved to flog him again, ʿAlī ibn Abī Ṭālib interjected, “If Abū Bakrah’s testimony holds the weight of two men’s, stone your companion. If not, you have already flogged him.”

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ قَالَ: شَهِدَ عَلَى الْمُغِيرَةِ بْنِ شُعْبَةَ ثَلَاثَةٌ بِالزِّنَى وَنَكَلَ زِيَادٌ، فَجَلَدَ عُمَرُ الثَّلَاثَةَ، وَقَالَ لَهُمْ: تُوبُوا تُقْبَلْ شَهَادَتُكُمْ؟ فَتَابَ اثْنَانِ وَلَمْ يَتُبْ أَبُو بَكْرَةَ - فَكَانَتْ لَا تُقْبَلُ شَهَادَتُهُ - وَأَبُو بَكْرَةَ أَخُو زِيَادٍ لِأُمِّهِ - فَحَلَفَ أَبُو بَكْرَةَ أَنْ لَا يُكَلِّمَ زِيَادًا أَبَدًا، فَلَمْ يُكَلِّمْهُ حَتَّى مَاتَ.

L41473–41474 Humam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A’rabi narrated to us, al-Dabari narrated to us: ʿAbd al-Razzaq narrated to us from Ma’mar from al-Zuhri from Ibn al-Musayyib, who said: Three individuals testified against al-Mughirah ibn Shu’bah for adultery, and Ziyad withdrew his testimony. ʿUmar flogged the three and said to them: “Repent, and your testimony will be accepted.” Two repented, but Abu Bakrah did not repent, so his testimony remained invalid. Abu Bakrah was Ziyad’s maternal brother. He swore never to speak to Ziyad again and maintained this oath until Abu Bakrah died.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ عَنْ أَبِي الْوَضَّاحِ قَالَ: شَهِدَ ثَلَاثَةُ نَفَرٍ عَلَى رَجُلٍ وَامْرَأَةٍ بِالزِّنَى، وَقَالَ الرَّابِعُ: رَأَيْتهمَا فِي ثَوْبٍ وَاحِدٍ، فَإِنْ كَانَ هَذَا زِنًى فَهُوَ ذَاكَ، فَجَلَدَ عَلِيٌّ الثَّلَاثَةَ وَعَزَّرَ الرَّجُلَ وَالْمَرْأَةَ؟

L41475 And through the chain of ʿAbd al-Razzāq from Maʿmar from Budayl al-ʿUqaylī from Abū al-Waḍḍāḥ, who said: Three men testified against a man and woman regarding adultery, while the fourth said: “I saw them both in a single garment. If this constitutes adultery, then it is indeed that.” So ʿAlī flogged the three and imposed taʿzīr (discretionary punishment) upon the man and woman?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ - رَحِمَهُ اللَّهُ: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا.

L41476 Abu Muhammad—may Allah have mercy on him, may Allah have mercy on him—said: “And this is the opinion of Abu Hanifah, Al-Shafi’i, and their companions.”

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا: لَا يُحَدُّ الشَّاهِدُ بِالزِّنَى أَصْلًا - كَانَ مَعَهُ غَيْرُهُ أَوْ لَمْ يَكُنْ؟

L41477 Abu Thawr, Abu Sulayman, and all our companions said: The witness is not to be subjected to the hadd punishment for adultery at all—whether there are others with him or not.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعُهُ بِعَوْنِ اللَّهِ تَعَالَى، فَوَجَدْنَا مَنْ قَالَ: يُحَدُّ الشُّهُودُ إذَا لَمْ يُتِمُّوا أَرْبَعَةً، بِأَنْ ذَكَرُوا: مَا ناه حُمَامٌ نا ابْنُ الْمُفَرِّجِ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَضَاءُ اللَّهِ وَرَسُولِهِ أَنْ لَا تُقْبَلَ شَهَادَةُ ثَلَاثَةٍ، وَلَا اثْنَيْنِ، وَلَا وَاحِدٍ، عَلَى الزِّنَى وَيُجْلَدُونَ ثَمَانِينَ جَلْدَةً، وَلَا تُقْبَلُ لَهُمْ شَهَادَةٌ أَبَدًا حَتَّى يَتَبَيَّنَ لِلْمُسْلِمِينَ مِنْهُمْ تَوْبَةٌ نَصُوحٌ وَإِصْلَاحٌ» .

L41478 Abū Muḥammad—may Allāh have mercy on him—said: When they disagreed, it became necessary for us to examine the evidence each faction cited for their position so the truth might manifest itself, enabling us to follow it with the help of Allāh, the Exalted. We found those who argued: "The witnesses are to be subjected to the hadd punishment if they fail to complete four," citing the narration transmitted by Ḥummām, on the authority of Ibn al-Mufarrij, on the authority of Ibn al-Aʿrabī, on the authority of al-Dabarī, on the authority of ʿAbd al-Razzāq, on the authority of Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: The Messenger of Allāh—peace and blessings be upon him—declared: "The ruling of Allāh and His Messenger is that the testimony of three, two, or one is not accepted regarding zinā. They are to be lashed eighty lashes, and no testimony is ever accepted from them until sincere repentance and reform on their part becomes evident to the Muslims."

وَقَالُوا: حُكْمُ عُمَرَ بْنِ الْخَطَّابِ بِحَضْرَةِ عَلِيٍّ وَعِدَّةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُنْكِرُ ذَلِكَ عَلَيْهِ مِنْهُمْ أَحَدٌ، فَكَانَ هَذَا إجْمَاعًا، وَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، إلَّا أَنَّ بَعْضَهُمْ ذَكَرَ «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلَّذِي رَمَى امْرَأَتَهُ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

L41479 They said: The ruling of Umar ibn al-Khattab in the presence of Ali and several Companions—may Allah be pleased with them—was not denied by any of them, thus constituting a consensus. This is all they tried to pass off as evidence, for we know they have no argument beyond this. However, some of them mentioned "the statement of Allah's Messenger—peace and blessings be upon him—to the man who accused his wife: 'Produce the proof, otherwise you will bear the _hadd_ punishment.'"

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا خَبَرُ عَمْرِو بْنِ شُعَيْبٍ فَمُنْقَطِعٌ أَقْبَحُ انْقِطَاعٍ لِأَنَّهُ لَمْ يَذْكُرْ مَنْ بَيْنَهُ وَبَيْنَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، وَلَا عِنْدَ الشَّافِعِيِّ، فَلَا يَجُوزُ لَهُمْ أَنْ يَحْتَجُّوا عَلَيْنَا بِهِ، لِأَنَّنَا لَا نَقُولُ بِهِ أَصْلًا، فَيُلْزِمُونَا إيَّاهُ عَلَى أَصْلِنَا، وَهُمْ لَا يَقُولُونَ بِهِ فَيَحْتَجُّوا بِهِ عَلَى أُصُولِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ " إنَّهُ لَا حَدَّ عَلَى الشَّاهِدِ سَوَاءٌ كَانَ وَحْدَهُ - لَا أَحَدَ مَعَهُ - أَوْ اثْنَيْنِ كَذَلِكَ، أَوْ ثَلَاثَةً كَذَلِكَ " فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ

L41480–41482 Abū Muḥammad—may Allāh have mercy on him—said: All of this contains no valid proof for them. As for the report... The narration from ʿAmr ibn Shuʿayb is severed by the worst form of discontinuity, for he did not mention those between him and the Messenger of Allah—peace and blessings of Allah be upon him. There is no evidence in our view, nor in Al-Shāfiʿī's view, regarding a mursal narration. Thus, it is impermissible for them to cite it as evidence against us, since we do not accept it at all. How then can they impose it upon us according to our principles while they themselves do not uphold it, yet cite it as evidence based on their own principles?

Abū Muḥammad—may Allah have mercy on him—said: We then examined the statement of those who claim, "There is no ḥadd punishment upon the witness, whether he is alone (with no one else), two in the same manner, or three in the same manner." We found them asserting: Allah the Exalted

said, {As for those who accuse chaste women and then do not produce four witnesses, lash them with eighty lashes} [24:4].[80]

تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤]

L41483 The Messenger of Allah, peace be upon him, said, "The burden of evidence lies on the accuser of adultery; otherwise, the ḥadd shall be inflicted on your back."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لِلْقَاذِفِ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

L41484 It has been established with certainty, without any doubt, by the explicit texts of Allah the Exalted and His Messenger—may Allah bless him and grant him peace—that the ḥadd punishment applies solely to the accuser who makes the accusation, and not to the witnesses or the evidence.

فَصَحَّ يَقِينًا لَا مِرْيَةَ فِيهِ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْحَدَّ إنَّمَا هُوَ عَلَى الْقَاذِفِ الرَّامِي، لَا عَلَى الشُّهَدَاءِ، وَلَا عَلَى الْبَيِّنَةِ.

L41485 It has been authentically established that the Messenger of Allah—peace and blessings be upon him—said: "Your blood, your wealth, your honor, and your bodies are inviolable to you, as inviolable as this day of yours in this month of yours." Thus, the bodily sanctity of a witness is inviolable beyond any doubt. Neither a Quranic text nor an authentic Sunnah states that a witness in a case of adultery is to be flogged if there is no corroborating evidence alongside him. The Quran and Sunnah have distinguished between a witness who provides clear evidence and a false accuser of adultery. It is therefore absolutely impermissible for the ruling applicable to one to apply to the other. This is the definitive ruling of the Quran and the established Sunnah.

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا مِنْ شَهْرِكُمْ هَذَا» فَبَشَرَةُ الشَّاهِدِ حَرَامٌ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، وَلَمْ يَأْتِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، يُجْلَدُ الشَّاهِدُ فِي الزِّنَى إذَا لَمْ يَكُنْ مَعَهُ غَيْرُهُ - وَقَدْ فَرَّقَ الْقُرْآنُ، وَالسُّنَّةُ، بَيْنَ الشَّاهِدِ مِنْ الْبَيِّنَةِ وَبَيْنَ الْقَاذِفِ الرَّامِي، فَلَا يَحِلُّ أَلْبَتَّةَ أَنْ يَكُونَ لِأَحَدِهِمَا حُكْمُ الْآخَرِ - فَهَذَا حُكْمُ الْقُرْآنِ وَالسُّنَّةِ الثَّابِتَةِ.

L41486 As for consensus (ijmāʿ)—the entire Ummah agrees without dissent—that when witnesses testify one after another and amount to four just individuals, no ḥadd punishment is imposed upon him.

وَأَمَّا الْإِجْمَاعُ - فَإِنَّ الْأُمَّةَ كُلَّهَا مُجْمِعَةٌ - بِلَا خِلَافٍ مِنْ أَحَدٍ - عَلَى أَنَّ الشُّهُودَ إذَا شَهِدُوا وَاحِدًا بَعْدَ وَاحِدٍ، فَتَمُّوا عُدُولًا أَرْبَعَةً، فَإِنَّهُ لَا حَدَّ عَلَيْهِ.

L41487–41488 Similarly, they unanimously agreed—with no dissent whatsoever—that if a thousand just witnesses were to accuse a woman or a man of adultery, whether together or separately, the ḥadd punishment for false accusation would be imposed upon all of them if they did not produce four witnesses. If they produced four witnesses, the ḥadd punishment would be waived for the accusers. Thus, indeed, the certain consensus, about which there is no doubt, has been firmly established.

وَكَذَلِكَ أَجْمَعُوا - بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ - لَوْ أَنَّ أَلْفَ عَدْلٍ قَذَفُوا امْرَأَةً أَوْ رَجُلًا كَذَلِكَ بِالزِّنَى مُجْتَمِعِينَ، أَوْ مُفْتَرِقِينَ: أَنَّ الْحَدَّ عَلَيْهِمْ كُلِّهِمْ حَدُّ الْقَذْفِ إنْ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ، فَإِنْ جَاءُوا بِأَرْبَعَةِ شُهَدَاءَ: سَقَطَ الْحَدُّ عَنْ الْقَذْفَةِ - فَقَدْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ الَّذِي لَا شَكَّ فِيهِ.

[80] **Qur'an references (L41480):** Qur'an 24:4 (An-Nur).

وَأَمَّا الْمُخَالِفُونَ لَنَا فِي الْجُمْلَةِ عَلَى الْفَرْقِ بَيْنَ حُكْمِ الْقَاذِفِ وَبَيْنَ حُكْمِ الشَّاهِدِ وَأَنَّ الْقَاذِفَ لَيْسَ شَاهِدًا، وَأَنَّ الشَّاهِدَ لَيْسَ قَاذِفًا، فَقَدْ صَحَّ الْإِجْمَاعُ عَلَى هَذَا بِلَا شَكٍّ، وَصَحَّ الْيَقِينُ بِبُطْلَانِ قَوْلِ مَنْ قَالَ: بِأَنْ يُحَدَّ الشَّاهِدُ وَالشَّاهِدَانِ وَالثَّلَاثَةُ، إذَا لَمْ يُتِمُّوا أَرْبَعَةً، لِأَنَّهُمْ لَيْسُوا قَذَفَةً، وَلَا لَهُمْ حُكْمُ الْقَاذِفِ - وَهَذَا هُوَ الْإِجْمَاعُ حَقًّا، الَّذِي لَا يَجُوزُ خِلَافُهُ.

L41489 As for those who oppose us in general regarding the distinction between the ruling concerning one who commits qadhf (false accusation of unlawful intercourse) and the ruling concerning a witness—that the one who commits qadhf is not a witness and the witness is not one who commits qadhf—consensus (ijmāʿ) has been definitively established on this without doubt. It has been irrevocably confirmed that the claim of those who assert a single witness, two witnesses, or three witnesses should be subjected to the ḥadd punishment if they fail to reach four witnesses is false, because they are neither guilty of qadhf nor subject to the ruling applicable to one who commits qadhf. This constitutes the true and rightful consensus, which cannot be contravened.

وَأَمَّا طَرِيقُ النَّظَرِ - فَنَقُولُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّهُ لَوْ كَانَ مَا قَالُوا لَمَا صَحَّتْ فِي الزِّنَا شَهَادَةٌ أَبَدًا، لِأَنَّهُ كَانَ الشَّاهِدُ الْوَاحِدُ إذَا شَهِدَ بِالزِّنَى صَارَ قَاذِفًا عَلَيْهِ الْحَدُّ - عَلَى أَصْلِهِمْ - فَإِذْ قَدْ صَارَ قَاذِفًا فَلَيْسَ شَاهِدًا، فَإِذَا شَهِدَ الثَّانِي - فَكَذَلِكَ أَيْضًا - يَصِيرُ قَاذِفًا - وَهَذَا فَاسِدٌ كَمَا تَرَى، وَخِلَافٌ لِلْقُرْآنِ فِي إيجَابِ الْحُكْمِ بِالشَّهَادَةِ بِالزِّنَى، وَخِلَافُ السُّنَّةِ الثَّابِتَةِ بِوُجُوبِ قَبُولِ الْبَيِّنَةِ فِي الزِّنَى، وَخِلَافُ الْإِجْمَاعِ الْمُتَيَقَّنِ بِقَبُولِ الشَّهَادَةِ فِي الزِّنَى، وَخِلَافُ الْحِسِّ وَالْمُشَاهَدَةِ فِي أَنَّ الشَّاهِدَ لَيْسَ قَاذِفًا، وَالْقَاذِفَ لَيْسَ شَاهِدًا.

L41490–41492 As for the method of juristic consideration—we declare, and success comes only from Allah the Exalted—were their claim valid, testimony in adultery cases could never be valid. For according to their juristic basis, a single witness testifying to adultery would become an accuser subject to the ḥadd punishment. Once deemed an accuser, he cannot be considered a witness. If a second witness testifies, he too becomes an accuser—a conclusion that is invalid as you can see. This contradicts the Quran's obligation to establish judgment through testimony in adultery cases, opposes the established Sunnah requiring acceptance of clear evidence in adultery, and conflicts with the certain consensus regarding acceptance of... Testimony in cases of zinā; the distinction between sensory perception and direct witnessing lies in the fact that the witness is not an accuser of zinā, and the accuser of zinā is not a witness.

وَأَيْضًا فَنَقُولُ لَهُمْ: أَخْبِرُونَا عَنْ الشَّاهِدِ إذَا شَهِدَ عَلَى آخَرَ بِالزِّنَى - وَهُوَ عَدْلٌ: مَاذَا هُوَ الْآنَ عِنْدَكُمْ: أَشَاهِدٌ أَمْ قَاذِفٌ؟ أَمْ لَا شَاهِدَ وَلَا قَاذِفَ؟ وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: وَهُوَ شَاهِدٌ؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا هُوَ الْحَقُّ، وَإِذْ هُوَ شَاهِدٌ فَلَيْسَ قَاذِفًا حِينَ نَطَقَ بِالشَّهَادَةِ، فَمِنْ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَصِيرَ قَاذِفًا إذَا سَكَتَ وَلَمْ يَأْتِ بِثَلَاثَةِ عُدُولٍ إلَيْهِ، وَلَيْسَ فِي الْمُحَالِ أَكْثَرُ مِنْ أَنْ يَكُونَ شَاهِدًا لَا قَاذِفًا، فَإِنْ تَكَلَّمَ بِإِطْلَاقِ الزِّنَى

L41493 Moreover, we say to them: Inform us about a witness who testifies against another for adultery—while being upright himself—what is his status in your view now: Is he a witness or a slanderer? Or neither a witness nor a slanderer? There is no possibility for a third category. If they say, "He is a witness," we reply: You are correct, and this is the true ruling. Since he is a witness, he is not a slanderer at the moment of giving testimony. It is utterly impossible for him to become a slanderer if he remains silent and fails to produce three upright witnesses. There is no greater impossibility than him being a witness—not a slanderer—when he accuses the defendant

of adultery, then becomes a slanderer—not a witness—if he refrains from speech and does not utter a single letter? This is an absolute impossibility, beyond any ambiguity. If they say, "He is a slanderer," they have undeniably affirmed the obligation of imposing the ḥadd upon the slanderer, and thus the punishment becomes irrevocably binding upon him.

L41494 **Issue: Four witnesses testified to adultery against a woman, one of whom was her husband.**

L41495 Issue 2224: Four witnesses testified against a woman for adultery, one being her husband. Abu Muhammad—may Allah have mercy on him—said: People differed concerning this. A group held: "This does not constitute valid testimony. The husband must undergo liʿān (mutual cursing)," as transmitted from Ibn Abbas when asked about four witnesses testifying to a woman's adultery with her husband among them. He replied: "The husband undergoes liʿān while the others receive the ḥadd punishment." A similar ruling is narrated from Ibrāhīm al-Nakhaʿī. This is the view of Mālik, al-Shāfiʿī, and al-Awzāʿī in one of his two opinions.

L41496 Other scholars said: If they are credible witnesses, then the testimony is valid and the woman is to be subjected to the ḥadd punishment. As narrated to us from al-Ḥasan al-Baṣrī regarding four men who testified against a woman for adultery—one of them being her husband—he said: If they come forward together, the husband's testimony is the most valid among them.

L41497–41498 It is narrated from Al-Shaʿbī that he ruled regarding four individuals who testified against a woman for adultery (one of whom was her husband) that their testimony was deemed valid, and they safeguarded themselves against retaliation.

L41499 Al-Hakam ibn Utaybah stated regarding four individuals who testify against a woman for adultery—one of whom is her husband—that there must be someone with them to bring her. This is the position adopted by Abu Hanifah and Al-Awza'i (in one of his two opinions?). Abu Muhammad—may Allah have mercy on him—said: Since they disagreed as we mentioned, it became necessary to examine the evidence each group cited for their opinion. We

عَلَى الْمَشْهُودِ عَلَيْهِ، ثُمَّ يَصِيرُ قَاذِفًا لَا شَاهِدًا إِذَا لَمْ يَتَكَلَّمْ وَلَا نَطَقَ بِحَرْفٍ؟ ؟ فَهَذَا مُحَالٌ لَا إِشْكَالَ فِيهِ، وَإِنْ قَالُوا هُوَ قَاذِفٌ؟ فَقَدْ ذَكَرُوا وُجُوبَ الْحَدِّ عَلَى الْقَاذِفِ بِلَا شَكٍّ، فَقَدْ وَجَبَ الْحَدُّ عَلَيْهِ.

[مَسْأَلَة شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ أَحَدُهُمْ زَوْجُهَا]

٢٢٢٤ - مَسْأَلَةٌ: شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ، أَحَدُهُمْ: زَوْجُهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَيْسَتْ شَهَادَةً وَيُلَاعَنُ الزَّوْجُ: كَمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ فِي أَرْبَعَةِ شُهَدَاءَ شَهِدُوا بِالزِّنَى عَلَى امْرَأَةٍ، وَأَحَدُهُمْ زَوْجُهَا؟ قَالَ: يُلَاعَنُ الزَّوْجُ، وَيُحَدُّ الْآخَرُونَ - وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ بِمِثْلِهِ - وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَالْأَوْزَاعِيُّ - فِي أَحَدِ قَوْلَيْهِ.

وَقَالَ آخَرُونَ: إنْ كَانُوا عُدُولًا فَالشَّهَادَةُ تَامَّةٌ، وَتُحَدُّ الْمَرْأَةُ: كَمَا رُوِّينَا عَنْ الْحَسَنِ الْبَصْرِيِّ فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى أَحَدُهُمْ زَوْجُهَا؟ قَالَ: إذَا جَاءُوا مُجْتَمِعِينَ، الزَّوْجُ أَجْوَزُهُمْ شَهَادَةً.

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى - أَحَدُهُمْ زَوْجُهَا - أَنَّهُ قَدْ جَازَتْ شَهَادَتُهُمْ، وَأَحْرَزُوا ظُهُورَهُمْ.

وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ - فِي أَرْبَعَةٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى أَحَدُهُمْ زَوْجُهَا حَتَّى يَكُونَ مَعَهُمْ مَنْ يَجِيءُ بِهَا - وَبِهَذَا يَأْخُذُ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ، فِي أَحَدِ قَوْلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ كُلُّ قَائِلٍ

مِنْهُمْ لِقَوْلٍ، فَوَجَدْنَا كِلْتَا الطَّائِفَتَيْنِ تَتَعَلَّقُ بِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ} [النور: ٦] وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لِهِلَالِ بْنِ أُمَيَّةَ الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ»

found that both groups rely on the words of Allah the Exalted: {As for those who accuse their wives but have no witnesses except themselves...} [24:6] and on the statement of the Messenger of Allah—peace and blessings be upon him and his family—to Hilal ibn Umayyah: "Produce conclusive evidence, or else the punishment will be on your back."[81]

[81] **Qur'an references (L41499):** Qur'an 24:6 (An-Nur).

فَنَظَرْنَا فِي هَذَيْنِ النَّصَّيْنِ فَوَجَدْنَاهُمَا: إِنَّمَا نَزَلَا فِي الزَّوْجِ إِذَا كَانَ رَامِيًا قَاذِفًا، إِلَّا إِذَا كَانَ شَاهِدًا، هَذَا نَصُّ الْآيَةِ، وَنَصُّ الْخَبَرِ، فَلَيْسَ حُكْمُ الزَّوْجِ إِذَا كَانَ شَاهِدًا لَا قَاذِفًا رَامِيًا، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ شَهَادَةِ الزَّوْجِ فِي غَيْرِهِمَا.

L41500 We examined these two texts and found that they pertain to the husband when he is one who falsely accuses of adultery (qadhf), unless he is a witness. This is the explicit wording of the Quranic verse and the Prophetic report. Therefore, the ruling for the husband when he is a witness differs from when he is engaged in false accusation. Thus, it becomes obligatory for us to seek the legal ruling regarding the husband's testimony in scenarios outside these two contexts.

فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ} [النور: ٤] فَشَرَطَ اللَّهُ تَعَالَى عَلَى الْقَاذِفِ إِنْ لَمْ يَأْتِ بِأَرْبَعَةِ شُهَدَاءَ أَنْ يُجْلَدَ، وَلَمْ يَخُصَّ تَعَالَى أُولَئِكَ الْأَرْبَعَةَ الشُّهَدَاءَ أَنْ لَا يَكُونَ مِنْهُمْ زَوْجُهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L41501 We found Allah, the Exalted, saying: {And those who accuse chaste women and then do not bring four witnesses—lash them} [24:4]. Thus, Allah, the Exalted, stipulated upon the false accuser that if they do not bring four witnesses, they must be lashed. He did not specify that her husband must be excluded from those four witnesses, {and your Lord is not forgetful} [19:64].[1]

وَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ لَا يَكُونَ الزَّوْجُ أَحَدَ أُولَئِكَ الشُّهَدَاءِ لَبَيَّنَ ذَلِكَ وَلَمَا كَتَمَهُ، وَلَا أَهْمَلَهُ، فَإِذْ عَمَّ اللَّهُ تَعَالَى وَلَمْ يَخُصَّ فَالزَّوْجُ وَغَيْرُ الزَّوْجِ فِي ذَلِكَ سَوَاءٌ بِيَقِينٍ لَا شَكَّ فِيهِ.

L41502 If Allah, the Exalted, had willed that the husband not be one of those witnesses, He would have made it clear and not concealed it, nor left it unaddressed. Since Allah, the Exalted, generalized and did not specify, the husband and non-husband are equal in that with unequivocal certainty.

فَصَحَّ مِنْ هَذَا أَنَّ الزَّوْجَ إِنْ قَذَفَ امْرَأَتَهُ فَعَلَيْهِ حَدُّ الْقَذْفِ إِلَّا أَنْ يُلَاعِنَ، أَوْ يَأْتِيَ بِأَرْبَعَةِ شُهَدَاءَ سَوَاءٌ، لِأَنَّهُ قَاذِفٌ، وَرَامٍ - وَالْقَاذِفُ وَالرَّامِي: مُكَلَّفٌ أَنْ يُخَلِّصَ نَفْسَهُ بِأَرْبَعَةِ شُهَدَاءَ وَلَا بُدَّ - وَهَكَذَا الْأَجْنَبِيُّ وَلَا فَرْقَ، إِذَا قَذَفَ، فَلَا بُدَّ مِنْ أَرْبَعَةِ غَيْرِهِ، فَإِنْ جَاءَ الزَّوْجُ شَاهِدًا لَا قَاذِفًا، فَهُوَ كَالْأَجْنَبِيِّ الشَّاهِدِ وَلَا فَرْقَ، لَا حَدَّ عَلَيْهِ وَلَا لِعَانَ أَصْلًا، لِأَنَّهُ لَمْ يَرْمِهَا، وَلَا قَذَفَهَا، فَإِنْ كَانَ عَدْلًا وَجَاءَ مَعَهُ بِثَلَاثَةِ شُهُودٍ، فَقَدْ تَمَّتْ الشَّهَادَةُ، وَوَجَبَ الرَّجْمُ عَلَيْهَا، لِأَنَّهُمْ أَرْبَعَةُ شُهُودٍ - كَمَا أَمَرَ اللَّهُ تَعَالَى - وَبِهِ نَأْخُذُ.

L41503–41505 From this, it is established that if a husband accuses his wife [of adultery], he incurs the legal punishment for false accusation unless he performs liʿān or equally produces four witnesses. This is because he is both an accuser and a slanderer—and such a person, being legally responsible, must absolve himself by producing four witnesses without exception. The same applies to a third party without distinction. If he makes an accusation, he must provide four witnesses other than himself. If the husband presents himself as a witness rather than an accuser, he is treated like a third-party witness without distinction: no punishment is imposed upon him, nor is liʿān required. In principle, because he neither accused her nor charged her with adultery. If he is a just person and brings three witnesses with him, the testimony is complete, and stoning becomes obligatory upon her, because he and the

[1] **Qur'an references (L41501):** Qur'an 24:4 (An-Nur); Qur'an 19:64 (Maryam).

three witnesses together constitute four witnesses—as Allah the Exalted has commanded—and this is the position we adopt.

L41506 As for the stipulation of al-Ḥakam ibn ʻUṭaybah that there must be someone with them to produce them, this has no basis, since neither Allah the Exalted nor His Messenger (peace be upon him) ordained it. That fifth person cannot exist outside one of three cases with no fourth possibility: either being a false accuser [of adultery], a witness, or a volunteer who is neither a false accuser nor a witness.

وَأَمَّا اشْتِرَاطُ الْحَكَمِ بْنِ عُتَيْبَةَ - مِنْ أَنْ يَكُونَ مَعَهُمْ مَنْ يَأْتِي بِهِمْ، فَلَا مَعْنَى لَهُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَلَا يَخْلُو ذَلِكَ الْخَامِسُ مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا: إمَّا أَنْ يَكُونَ قَاذِفًا - وَإِمَّا أَنْ يَكُونَ شَاهِدًا - وَإِمَّا أَنْ يَكُونَ مُتَطَوِّعًا لَا قَاذِفًا وَلَا شَاهِدًا.

L41507 If he is a slanderer [qadhif], it is forbidden and void to obligate witnesses to follow a slanderer who precedes them or to order that a chaste woman or man be slandered, in order to thereby establish the testimony.

فَإِنْ كَانَ قَاذِفًا - فَمِنْ الْحَرَامِ وَالْبَاطِلِ أَنْ يَلْزَمَ الشُّهُودُ أَنْ يَأْتِيَ قَاذِفًا يَتَقَدَّمُهُمْ، أَوْ يَأْمُرَ بِقَذْفِ الْمُحْصَنَةِ وَالْمُحْصَنِ، لِيَتَوَصَّلَ بِذَلِكَ إلَى إقَامَةِ الشَّهَادَةِ.

L41508 If that fifth is a witness, this constitutes a requirement for five witnesses—and this is contrary to the Quran, the Sunnah, and the consensus.

وَإِنْ كَانَ ذَلِكَ الْخَامِسُ شَاهِدًا - فَهَذَا إيجَابُ خَمْسَةِ شُهُودٍ - وَهَذَا خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ.

L41509 If he was acting voluntarily—neither as a false accuser [of unchastity] nor as a testifier—then this is invalid, because Allah the Exalted has not obligated it, nor has His Messenger (peace and blessings be upon him). Does the arbitrator's ruling on this matter thereby lapse?

وَإِنْ كَانَ مُتَطَوِّعًا لَا قَاذِفًا وَلَا شَاهِدًا - فَهَذَا بَاطِلٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْهُ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَقَطَ قَوْلُ الْحَكَمِ فِي ذَلِكَ؟

L41510 Abū Muḥammad—may Allāh have mercy on him—said: The ruling in this matter follows three scenarios: If the husband is a qādhif (false accuser of adultery), he must produce four witnesses in any case; otherwise, he faces the ḥadd punishment or undergoes the liʿān process. If he is not a qādhif but presents one witness, then if this witness is upright and accompanied by three other upright individuals, it constitutes a complete testimony, requiring the full ḥadd punishment for adultery upon the accused.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَالْحُكْمُ فِي هَذَا عَلَى ثَلَاثَةِ أَوْجُهٍ: إذَا كَانَ الزَّوْجُ قَاذِفًا فَلَا بُدَّ مِنْ أَرْبَعَةِ شُهُودٍ سَوَاءٍ وَإِلَّا حُدَّ أَوْ يُلَاعِنُ فَإِنْ لَمْ يَكُنْ قَاذِفًا لَكِنْ جَاءَ شَاهِدًا فَإِنْ كَانَ عَدْلًا وَمَعَهُ ثَلَاثَةُ عُدُولٍ فَهِيَ شَهَادَةٌ تَامَّةٌ وَعَلَى الْمَشْهُودِ عَلَيْهَا حَدُّ الزِّنَى كَامِلًا.

L41511 If the husband is not just, or if he is just but among those with him there is someone unjust, or if he does not provide three witnesses besides himself, and the testimony remains incomplete, then no liability is upon the accused. The witnesses are not accusers of adultery (qadhf), thus no ḥadd applies to

وَإِنْ كَانَ الزَّوْجُ غَيْرَ عَدْلٍ، أَوْ كَانَ عَدْلًا وَكَانَ فِي الَّذِينَ مَعَهُ غَيْرُ عَدْلٍ أَوْ لَمْ يُتِمَّ ثَلَاثَةً سِوَاهُ وَالشَّهَادَةُ لَمْ تَتِمَّ فَلَا عَلَى الْمَشْهُودِ، وَلَيْسَ الشُّهُودُ قَذْفَةً، فَلَا حَدَّ عَلَيْهِمْ، وَلَا حَدَّ عَلَى الزَّوْجِ، وَلَا لِعَانَ، لِأَنَّهُ لَيْسَ قَاذِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ:

them, nor to the husband, nor is there any liʿān, for he is not a false accuser of adultery (qādhif)—and with Allah, the Exalted, is success:

[مَسْأَلَة شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ وَشَهِدَ أَرْبَعَةُ نِسْوَةٍ أَنَّهَا عَذْرَاءُ]

L41512 **Case: Four men testified that a woman committed adultery, and four women testified that she is a virgin.**

٢٢٢٥ - مَسْأَلَةٌ: شَهِدَ أَرْبَعَةٌ بِالزِّنَى عَلَى امْرَأَةٍ، وَشَهِدَ أَرْبَعَةُ نِسْوَةٍ أَنَّهَا عَذْرَاءُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهَا، كَمَا رُوِّينَا عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي أَرْبَعَةِ رِجَالٍ عُدُولٍ شَهِدُوا عَلَى امْرَأَةٍ بِالزِّنَى وَشَهِدَ أَرْبَعُ نِسْوَةٍ بِأَنَّهَا بِكْرٌ، فَقَالَ: أُقِيمُ عَلَيْهَا الْحَدَّ، وَعَلَيْهَا خَاتَمٌ مِنْ رَبِّهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عَلَى الْإِنْكَارِ مِنْهُ لِإِقَامَةِ الْحَدِّ عَلَيْهَا.

L41513–41515 2225 - Issue: Four men testified that a woman had committed adultery, while four women testified that she was a virgin. Abū Muḥammad—may Allah have mercy on him—said: "People differed regarding this. A juristic group held: 'There is no ḥadd upon her,' as we have been narrated from al-Shaʿbī that he said concerning four men..." Upright witnesses testified that a woman committed adultery, while four women testified she was a virgin. He said: "Should I impose the prescribed punishment on her when she bears a seal from her Lord?" Abū Muḥammad—may Allah have mercy on him—said: "This reflects his denial of imposing the punishment on her."

وَقَالَتْ طَائِفَةٌ: تُحَدُّ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ حَدَّثَنَا ابْنُ وَضَّاحٍ نا سَحْنُونٌ حَدَّثَنَا ابْنُ وَهْبٍ عَنْ الْحَارِثِ بْنِ نَبْهَانَ فِي أَرْبَعَةٍ شَهِدُوا بِالزِّنَى عَلَى امْرَأَةٍ، وَنَظَرَ النِّسَاءُ إلَيْهَا فَقُلْنَ: إنَّهَا عَذْرَاءُ، قَالَ: آخُذُ بِشَهَادَةِ الرِّجَالِ، وَأَتْرُكُ شَهَادَةَ النِّسَاءِ، وَأُقِيمُ عَلَيْهِمَا الْحَدَّ.

L41516 A group said: The ḥadd is to be applied—as ʿAbd Allāh ibn Rabīʿ informed us; Ibn Mufarrij informed us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Saḥnūn narrated to us; Ibn Wahb narrated to us from al-Ḥārith ibn Nabhān—regarding four men who testified to adultery against a woman. The women inspected her and said she was a virgin. He said: I accept the testimony of the men and disregard the testimony of the women, and I enforce the ḥadd upon the woman and the accused man.

وَبِإِسْقَاطِ الْحَدِّ عَنْهَا يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إلَّا زُفَرُ، وَبِهِ - يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ.

L41517 Regarding the waiver of the ḥadd punishment from her, Abū Ḥanīfah and his companions hold this opinion except Zufar—and with this opinion also say Sufyān al-Thawrī and al-Shāfiʿī.

وَقَالَ مَالِكٌ: وَزُفَرُ بْنُ الْهُذَيْلِ، وَأَصْحَابُنَا: تُحَدُّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا، وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَوَجَدْنَا مَنْ رَأَى إيجَابَ الْحَدِّ عَلَيْهَا يَقُولُ: قَدْ صَحَّتْ الْبَيِّنَةُ عَلَيْهَا بِمَا يُوجِبُ الْحَدَّ بِنَصِّ الْقُرْآنِ، فَلَا يَجُوزُ أَنْ يُعَارِضَ أَمْرَ رَبِّهِ تَعَالَى بِشَيْءٍ - وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟

L41518 Malik said: "Zufar ibn al-Hudhayl and our fellow jurists said: 'Should she be subjected to the hadd punishment?'" Abu Muhammad—may Allah have mercy on him—said: "Since they differed as we mentioned, it became obligatory for us to examine this matter. We found that those who advocated imposing the hadd upon her argued: 'Valid evidence based on the Quran's text has been established against her, mandating the hadd. Thus, it is impermissible to oppose the command of his Lord, the Exalted, with anything—and what other argument do they even have?'"

L41519 The others opposed them by stating: There is no difference of opinion that if it is established that the witnesses are liars or mistaken, then the testimony is not valid—rather, it is null and void—and it is unlawful to rule by falsehood. But rather, Allah the Exalted has commanded the implementation of testimony only when it is valid in its outward form to us, not when its nullity is established to us. Since its nullity has been established to us in this case, it is impermissible to judge by it?

فَعَارَضَهُمْ الْآخَرُونَ - بِأَنْ قَالُوا: بِأَنْ لَا خِلَافَ أَنَّهُ إذَا صَحَّ أَنَّ الشُّهُودَ - كَاذِبُونَ أَوْ وَاهِمُونَ - فَإِنَّ الشَّهَادَةَ لَيْسَتْ حَقًّا: بَلْ هِيَ بَاطِلٌ، وَلَا يَحِلُّ الْحُكْمُ بِالْبَاطِلِ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِإِنْفَاذِ الشَّهَادَةِ إذَا كَانَتْ حَقًّا عِنْدَنَا فِي ظَاهِرِهَا، لَا إذَا صَحَّ عِنْدَنَا بُطْلَانُهَا، وَهَذِهِ قَدْ صَحَّ عِنْدَنَا بُطْلَانُهَا فَلَا يَجُوزُ الْحُكْمُ بِهَا؟

L41520 Abū Muḥammad—may God have mercy on him—said: God the Exalted declared, *"Be upholders of justice, witnesses for God"* [4:135]. It is therefore obligatory that if testimony appears to us—in its outward aspect—to be truthful, and nothing arises to invalidate it, we must judge by it. If it is established to us that it is not truthful, it is an obligation upon us not to judge by it, for ruling by falsehood is impermissible. This is the truth beyond doubt.[2]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] فَوَاجِبٌ إذَا كَانَتْ الشَّهَادَةُ عِنْدَنَا - فِي ظَاهِرِهَا - حَقًّا، وَلَمْ يَأْتِ شَيْءٌ يُبْطِلُهَا أَنْ يُحْكَمَ بِهَا، وَإِذَا صَحَّ عِنْدَنَا أَنَّهَا لَيْسَتْ حَقًّا فَفَرْضٌ عَلَيْنَا أَنْ لَا نَحْكُمَ بِهَا، إذْ لَا يَحِلُّ الْحُكْمُ بِالْبَاطِلِ، هَذَا هُوَ الْحَقُّ الَّذِي لَا شَكَّ فِيهِ.

L41521–41523 Then we examined the witnesses testifying that she is a virgin, so it became incumbent upon the women to establish the attribute of her virginity. If the women say, "It is a hymen, necessarily ruptured by the insertion of the glans, and that it is a membrane at the entrance of the vagina," we are certain of the witnesses' falsehood and their error; thus, it is unlawful to uphold the ruling based on their testimony.

ثُمَّ نَظَرْنَا فِي الشُّهُودِ لَهَا أَنَّهَا عَذْرَاءُ فَوَجَبَ أَنْ يُقَرِّرَ النِّسَاءُ عَلَى صِفَةِ عُذْرَتِهَا، فَإِنْ قُلْنَ: إنَّهَا عُذْرَةٌ، يُبْطِلُهَا إيلَاجُ الْحَشَفَةِ وَلَا بُدَّ، وَأَنَّهُ صِفَاقٌ عِنْدَ بَابِ الْفَرْجِ، فَقَدْ أَيْقَنَّا بِكَذِبِ الشُّهُودِ، وَأَنَّهُمْ وَهِمُوا فَلَا يَحِلُّ إنْفَاذُ الْحُكْمِ بِشَهَادَتِهِمْ.

L41524 And if they say: Indeed, it is a deep-seated hymen within the vagina, not invalidated by the insertion of the glans, then the possibility of the witnesses' truthfulness is affirmed, for the ḥadd punishment becomes obligatory upon the insertion of the glans. Thus, the ḥadd punishment is carried out against her at that point, because we have not ascertained the witnesses' lying or their error - and success is from Allah, the Most High.

وَإِنْ قُلْنَ: إنَّهَا عُذْرَةٌ وَاغِلَةٌ فِي دَاخِلِ الْفَرْجِ، لَا يُبْطِلُهَا إيلَاجُ الْحَشَفَةِ، فَقَدْ أَمْكَنَ صِدْقُ الشُّهُودِ، إذْ بِإِيلَاجِ الْحَشَفَةِ يَجِبُ الْحَدُّ، فَيُقَامُ الْحَدُّ عَلَيْهَا حِينَئِذٍ، لِأَنَّهُ لَمْ نَتَيَقَّنْ كَذِبَ الشُّهُودِ وَلَا وَهْمَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41525 The Issue of Enforcing the Ḥadd and His Stoning for the Fornicator.

[مَسْأَلَة حُضُور حَدّ الزاني ورجمة]

L41526 Issue 2226: What is the number of people required to witness the hadd punishment for adultery or its execution by stoning?

٢٢٢٦ - مَسْأَلَةٌ: كَمْ الطَّائِفَةُ الَّتِي تَحْضُرُ حَدَّ الزَّانِي أَوْ رَجْمَهُ؟

[2] **Qur'an references (L41520):** Qur'an 4:135 (An-Nisa).

L41527 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted said: {And let a group of the believers witness their punishment} [An-Nur 24:2]; he said: {And the punishment shall be averted from her by her bearing four testimonies by Allah that he is indeed among the liars} [An-Nur 24:8].[3]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] قَالَ {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ} [النور: ٨].

L41528 Thus, it has been established that the punishment for illicit sexual acts is flogging, and alongside it stoning and exile may apply.

فَصَحَّ أَنَّ عَذَابَ الزُّنَاةِ الْجَلْدُ، وَمَعَ الْجَلْدِ الرَّجْمُ وَالنَّفْيُ.

L41529 Then the scholars differed concerning the size of the group that Allah the Exalted ordained to witness the mentioned punishment. A group held that it is one from among the people - if it increases, then it is permissible; this is the opinion of Ibn Abbas.

ثُمَّ اخْتَلَفَ الْعُلَمَاءُ فِي مِقْدَارِ الطَّائِفَةِ الَّتِي افْتَرَضَ اللَّهُ تَعَالَى أَنْ تَشْهَدَ الْعَذَابَ الْمَذْكُورَ - فَقَالَتْ طَائِفَةٌ: هِيَ وَاحِدٌ مِنْ النَّاسِ، فَإِنْ زَادَ فَجَائِزٌ - وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ.

L41530 As reported by al-Thawrī from Ibn Abī Najīḥ from Mujāhid, who said: “A single man constitutes a group,” and this is the opinion stated by our companions.

كَمَا رَوَى الثَّوْرِيُّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: الطَّائِفَةُ رَجُلٌ، وَبِهَذَا يَقُولُ أَصْحَابُنَا.

L41531 A group said: The group is two and upwards. As we have been narrated from ʿAṭāʾ, who said: “Two and upwards”—and this is the view held by Isḥāq ibn Rāhawayh.

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ اثْنَانِ فَصَاعِدًا. كَمَا رُوِّينَا عَنْ عَطَاءٍ قَالَ: اثْنَانِ فَصَاعِدًا - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهَوَيْهِ.

L41532–41533 A group said: three and above, as we have narrated from Ibn Shihāb. Ibn Wahb said: I heard Shimr ibn Numayr narrating from al-Ḥusayn ibn ʿUbayd Allāh ibn Ḍamīrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib the same ruling—exactly the same—that the group is three and above. Al-Shāfiʿī upholds this view in one of his two opinions.

وَقَالَتْ طَائِفَةٌ: ثَلَاثَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ ابْنِ شِهَابٍ. وَقَالَ ابْنُ وَهْبٍ: سَمِعْت شِمْرَ بْنَ نُمَيْرٍ يُحَدِّثُ عَنْ الْحُسَيْنِ بْنِ عُبَيْدِ اللَّهِ بْنِ ضَمِيرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِثْلَهُ - سَوَاءً سَوَاءً - أَنَّ الطَّائِفَةَ ثَلَاثَةٌ فَصَاعِدًا - وَبِهِ يَقُولُ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ.

L41534 A group said: “A ṭāʾifah is a group without specifying a number, as we were narrated from Maʿmar via Qatādah, who heard the verse {And let a group of the believers witness their punishment} [an-Nur 24:2] and explained: ’A group of the Muslims.’”[4]

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - نَفَرٌ دُونَ أَنْ يَحُدُّوا عَدَدًا، كَمَا رُوِّينَا عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّهُ سَمِعَ {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] قَالَ: نَفَرٌ مِنْ الْمُسْلِمِينَ.

L41535 A group held that a *ṭāʾifah* is four and upwards, as reported from al-Layth

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - أَرْبَعَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ اللَّيْثِ بْنِ سَعْدٍ. وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - خَمْسَةٌ فَصَاعِدًا، كَمَا رُوِّينَا عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ.

[3] **Qur’an references (L41527):** Qur’an 24:2 (An-Nur); Qur’an 24:8 (An-Nur).
[4] **Qur’an references (L41534):** Qur’an 24:2 (An-Nur).

ibn Saʿd. Another group held that a *ṭāʾifah* is five and upwards, as reported from Rabīʿah ibn Abī ʿAbd al-Raḥmān.

L41536 A group said: The group is ten individuals, as narrated from Al-Hasan Al-Basri that he said: Does "group" mean ten? Abu Muhammad—may Allah have mercy on him—said: When they differed as we mentioned, it was incumbent to investigate this. We found all opinions cannot be used as proof except the view of Mujahid and Ibn Abbas—that the group refers to one or more. We found this view to be necessitated by conclusive evidence from the Quran, consensus, and linguistic principles.

L41537 As for the Quran, Allah the Exalted says: "And if two factions among the believers fight, then make settlement between them. But if one of them transgresses against the other..." [Al-Ḥujurāt 49:9]. Here the Exalted has clearly clarified through an explicit text that He intended by "the two factions" here two or more, as evidenced by His statement at the verse's beginning "they fought," His saying "if one of them transgresses against the other" [Al-Ḥujurāt 49:9], and His saying at the verse's end "make peace between your two brothers" [Al-Ḥujurāt 49:10]. Another proof is His statement: "And let a group of the believers witness their punishment" [An-Nūr 24:2]. With certainty we know that had Allah the Exalted intended by that a prescribed number, He would have clarified it, made it known to us, and not left us groping blindly until we conjecture false assumptions—far is Allah the Exalted from such. And success is from Allah, the Exalted.[5]

Issue: The Ḥadd for Qadhf

L41538–41539

L41540 Issue: The prescribed punishment for false accusation of zinā (fornication) – which is qadhf (defamation of chastity) –. Allah, the Most High, says: "And those who accuse chaste women and then do not bring four witnesses, flog

[5] **Qur'an references (L41537):** Qur'an 49:9 (Al-Hujurat); Qur'an 49:10 (Al-Hujurat); Qur'an 24:2 (An-Nur).

وَقَالَتْ طَائِفَةٌ: الطَّائِفَةُ - عَشْرَةٌ، كَمَا رُوِيَ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: الطَّائِفَةُ عَشْرَةٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فَوَجَدْنَا جَمِيعَ الْأَقْوَالِ لَا يُحْتَجُّ بِهَا إلَّا قَوْلُ مُجَاهِدٍ، وَابْنِ عَبَّاسٍ، وَهُوَ أَنَّ الطَّائِفَةَ: وَاحِدٌ فَصَاعِدًا - فَوَجَدْنَاهُ قَوْلًا يُوجِبُهُ الْبُرْهَانُ مِنْ الْقُرْآنِ، وَالْإِجْمَاعِ، وَاللُّغَةِ.

فَأَمَّا الْقُرْآنُ - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى} [الحجرات: ٩] الْآيَةَ، فَبَيَّنَ تَعَالَى نَصًّا جَلِيًّا أَنَّهُ أَرَادَ بِالطَّائِفَتَيْنِ هُنَا الِاثْنَيْنِ فَصَاعِدًا: بِقَوْلِهِ فِي أَوَّلِ الْآيَةِ (اقْتَتَلُوا) وَبِقَوْلِهِ تَعَالَى {فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى} [الحجرات: ٩] وَبِقَوْلِهِ تَعَالَى فِي آخِرِ الْآيَةِ {فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] وَبُرْهَانٌ آخَرُ - وَهُوَ أَنَّ اللَّهَ تَعَالَى قَالَ {وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ} [النور: ٢] وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِذَلِكَ عَدَدًا مِنْ عَدَدٍ لَبَيَّنَهُ، وَلَأَوْقَفَنَا عَلَيْهِ، وَلَمْ يَدَعْنَا نَخْبِطُ فِيهِ خَبْطَ عَشْوَاءَ، حَتَّى تَتَكَهَّنَ فِيهِ الظُّنُونُ الْكَاذِبَةُ، حَاشَ لِلَّهِ تَعَالَى مِنْ هَذَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حَدُّ الْقَذْفُ]

مَسْأَلَةٌ: حَدُّ الرَّمْيِ بِالزِّنَى - وَهُوَ الْقَذْفُ - قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] إلَى قَوْله تَعَالَى {غَفُورٌ رَحِيمٌ} [البقرة: ١٧٣] .

them with eighty lashes" [An-Nur: 4] up to His statement, the Most High: "the Forgiving, the Merciful" [Al-Baqarah: 173].[6]

L41541 Abū Muḥammad—may Allah have mercy on him—said: "In this verse are many rulings that must be comprehended by seeking knowledge of them, believing in them, and acting upon them with the aid of Allah the Exalted. Among them are: to know what constitutes the false accusation of adultery that necessitates the rulings mentioned in the verse—flogging, invalidation of testimony, and being declared a transgressor—and that such accusation is among the major sins; to identify the chaste women for whom this ruling of flogging, invalidation of testimony, and being deemed transgressors is necessitated when they are accused; to determine the number of lashes prescribed, their manner of administration, and who is obligated to carry out the flogging; to ascertain when it becomes impermissible to accept their testimony, in what matters their testimony is rejected, and the implications of their moral transgression; to recognize which of these rulings are nullified by repentance; and to understand the manner of repentance required from this sin."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَفِي هَذِهِ الْآيَةِ أَحْكَامٌ كَثِيرَةٌ يَجِبُ الْوُقُوفُ عَلَيْهَا بِأَنْ تَطْلُبَ عِلْمَهَا، وَأَنْ تَعْتَقِدَ، وَأَنْ يُعْمَلَ بِهَا بِعَوْنِ اللَّهِ تَعَالَى عَلَى ذَلِكَ: فَمِنْهَا - مَعْرِفَةُ مَا هُوَ الرَّمْيُ الَّذِي يُوجِبُ الْحُكْمَ الْمَذْكُورَ فِي الْآيَةِ، مِنْ الْجَلْدِ، وَإِسْقَاطِ الشَّهَادَةِ، وَالْفِسْقِ، وَأَنَّ الْقَذْفَ مِنْ الْكَبَائِرِ، وَمِنْ الْمُحْصَنَاتِ اللَّوَاتِي يَجِبُ لِرَمْيِهِنَّ الْحُكْمُ الْمَذْكُورُ فِي الْآيَةِ مِنْ الْجَلْدِ، وَإِسْقَاطِ الشَّهَادَةِ، وَالْفِسْقِ، وَعَدَدِ الْجَلْدِ، وَصِفَتِهِ؟ وَمَنْ الْمَأْمُورُ بِالْجَلْدِ؟ وَمَتَى يَمْتَنِعُ مِنْ قَبُولِ شَهَادَتِهِمْ، وَفِي مَاذَا يَمْتَنِعُ مِنْ قَبُولِهَا، وَفِسْقِهِمْ، وَمَا يَسْقُطُ بِالتَّوْبَةِ مِنْ الْأَحْكَامِ الْمَذْكُورَةِ وَمَا صِفَةُ التَّوْبَةِ مِنْ ذَلِكَ؟

L41542 And we, if Allah the Exalted wills, will mention all of that—with the help of Allah the Exalted—through clear proofs from the Quran and the established Sunnahs pertaining to that. There is no power nor strength except with Allah.

وَنَحْنُ إنْ شَاءَ اللَّهُ تَعَالَى نَذْكُرُ كُلَّ ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - بِالْبَرَاهِينِ الْوَاضِحَةِ مِنْ الْقُرْآنِ، وَالسُّنَنِ الثَّابِتَةِ فِي ذَلِكَ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ.

L41543 2228 - Issue: What are ar-ramy and al-qadhf?

٢٢٢٨ - مَسْأَلَةٌ: مَا الرَّمْيُ، وَالْقَذْفُ؟

L41544 Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted mentioned this ruling by the name of "accusation of adultery" in the aforementioned verse, and it is established that "slander" and "accusation of adultery" are two names for a single meaning. This was transmitted from Abdullah ibn Rabee' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Ishaq ibn Ibrahim—that is, Ibn Rahawayh—from Abd al-A'la—that is, Ibn Abd al-A'la al-Sulami—who said: Hisham—that is, Ibn Hassan—was asked about a man who accuses his wife of adultery. Hisham narrated to us from Muhammad—meaning Ibn Sirin—who said: I asked Anas ibn Malik

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَكَرَ اللَّهُ تَعَالَى هَذَا الْحُكْمَ بِاسْمِ " الرَّمْيِ " فِي الْآيَةِ الْمَذْكُورَةِ، وَصَحَّ أَنَّ " الْقَذْفَ، وَالرَّمْيَ " اسْمَانِ لِمَعْنًى وَاحِدٍ: لِمَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى السُّلَمِيُّ - قَالَ: «سُئِلَ هِشَامٌ - هُوَ ابْنُ حَسَّانَ - عَنْ الرَّجُلِ يَقْذِفُ امْرَأَتَهُ؟ فَحَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ - يَعْنِي ابْنَ سِيرِينَ - قَالَ: سَأَلْتُ أَنَسَ بْنَ مَالِكٍ عَنْ

[6] **Qur'an references (L41540):** Qur'an 24:4 (An-Nur); Qur'an 2:173 (Al-Baqarah).

about that—and I believed he had knowledge of it—so he said: Hilal ibn Umayyah accused his wife of adultery with Sharik ibn Sahma', who was the brother of al-Bara' ibn Malik. He was the first to engage in mutual cursing, so the Messenger of Allah—peace and blessings be upon him and his family—conducted the mutual cursing between them. Then he said: "Observe the child. If she gives birth to a fair-skinned child with bright eyes, he belongs to Hilal ibn Umayyah. But if she gives birth to a dark-skinned child with curly hair and thin calves, he belongs to Sharik ibn Sahma'." Anas said: "I was informed that she gave birth to a dark-skinned child with curly hair and thin calves."

ذَلِكَ - وَأَنَا أَرَى أَنَّ عِنْدَهُ مِنْ ذَلِكَ عِلْمًا - فَقَالَ: إِنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ امْرَأَتَهُ بِشَرِيكِ ابْنِ سَحْمَاءَ، وَكَانَ أَخَا الْبَرَاءِ بْنِ مَالِكٍ، وَكَانَ أَوَّلَ مَنْ لَاعَنَ، فَلَاعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَهُمَا، ثُمَّ قَالَ أَبْصِرُوهُ، فَإِنْ جَاءَتْ بِهِ أَبْيَضَ، نَضَّ الْعَيْنَيْنِ، فَهُوَ لِهِلَالِ بْنِ أُمَيَّةَ، وَإِنْ جَاءَتْ بِهِ أَكْحَلَ جَعْدًا حَمْشَ السَّاقَيْنِ فَهُوَ لِشَرِيكِ ابْنِ سَحْمَاءَ. قَالَ أَنَسٌ: فَأُنْبِئْتُ أَنَّهَا جَاءَتْ بِهِ أَكْحَلَ جَعْدًا حَمْشَ السَّاقَيْنِ» .

L41545–41546 Abdullah ibn Rabīʿ narrated to us from Muḥammad ibn Muʿāwiyah from Muḥammad ibn Sīrīn from Anas ibn Mālik, who said: The first instance of mutual cursing (liʿān) in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn Saḥmāʾa of adultery with his (Hilāl's) wife. He came to the Prophet—peace be upon him—and informed him of this. The Prophet—peace be upon him—said to him: "Bring four witnesses, or else the ḥadd punishment shall be inflicted upon your back." And Anas related the narration of the mutual cursing.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ «أَنَسِ بْنِ مَالِكٍ، قَالَ: أَوَّلُ لِعَانٍ كَانَ فِي الْإِسْلَامِ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ سَحْمَاءَ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَ بِذَلِكَ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعَةُ شُهَدَاءَ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» وَذَكَرَ حَدِيثَ اللِّعَانِ.

L41547 Abu Muhammad—may Allah have mercy on him—said: Now this Anas ibn Malik is an authority in language and in transmitting religious teachings. He referred to the stoning (ramy) as qadhf (casting), though there is no disagreement about this from any linguist nor among any of the people of the religious community.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا أَنَسُ بْنُ مَالِكٍ حُجَّةٌ فِي اللُّغَةِ وَفِي النَّقْلِ فِي الدِّيَانَةِ قَدْ سَمَّى الرَّمْيَ: قَذْفًا، مَعَ أَنَّهُ لَا خِلَافَ فِي ذَلِكَ مِنْ أَحَدٍ مِنْ أَهْلِ اللُّغَةِ، وَلَا بَيْنَ أَحَدٍ مِنْ أَهْلِ الْمِلَّةِ.

L41548 Similarly, there is no disagreement among any of the people of Islam that the "accusation (qadhf)" mentioned in the aforementioned verse - which necessitates flogging, sinfulness, and invalidation of testimony - refers specifically to the false allegation of illicit sexual relations between a man and a woman.

وَكَذَلِكَ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ فِي أَنَّ " الرَّمْيَ " الْمَذْكُورَ فِي الْآيَةِ الْمَذْكُورَةِ الْمُوجِبَ لِلْجَلْدِ وَالْفِسْقِ، وَسُقُوطِ الشَّهَادَةِ هُوَ الرَّمْيُ بِالزِّنَى بَيْنَ الرِّجَالِ وَالنِّسَاءِ.

L41549 Then the scholars differed regarding whether false accusations unrelated to adultery necessitate a hadd punishment or not.

ثُمَّ اخْتَلَفَ الْعُلَمَاءُ فِي الرَّمْيِ بِغَيْرِ الزِّنَى أَيُوجِبُ حَدًّا أَمْ لَا؟

L41550 A group said: There is no *ḥadd* except in falsely accusing someone of adultery alone, and there is no *ḥadd* in other matters—not in denying the lineage of a father or grandfather, nor in falsely accusing someone of sodomy,

فَقَالَتْ طَائِفَةٌ: لَا حَدَّ إِلَّا فِي الرَّمْيِ بِالزِّنَى فَقَطْ، وَلَا حَدَّ فِي غَيْرِ ذَلِكَ، لَا فِي نَفْيِ عَنْ نَسَبِ أَبٍ أَوْ جَدٍّ، وَلَا فِي رَمْيٍ بِلُوطِيَّةٍ، وَلَا فِي رَمْيٍ بِبِغَاءٍ، وَلَا فِي رَمْيِ رَجُلٍ بِوَطْءٍ فِي دُبُرِ امْرَأَةٍ، وَلَا فِي إِتْيَانِ بَهِيمَةٍ، وَلَا فِي رَمْيِ امْرَأَةٍ أَنَّهَا أُتِيَتْ فِي دُبُرِهَا، وَلَا فِي رَمْيِهَا بِبَهِيمَةٍ، وَلَا فِي رَمْيٍ بِكُفْرٍ، وَلَا بِشُرْبِ خَمْرٍ، وَلَا فِي شَيْءٍ أَصْلًا - وَهُوَ قَوْلُ أَصْحَابِنَا.

nor in falsely accusing someone of prostitution, nor in falsely accusing a man of anal intercourse with a woman, nor in bestiality, nor in falsely accusing a woman of anal penetration, nor in falsely accusing her of bestiality, nor in falsely accusing someone of apostasy, nor for drinking wine, nor in anything at all—and this is the opinion of our companions.

وَقَالَ قَائِلُونَ فِي بَعْضِ مَا ذَكَرْنَا: إِيجَابُ الْجَلْدِ، وَنَحْنُ نَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ مِنْ ذَلِكَ، وَبَيَانِ الْحَقِّ إِنْ شَاءَ اللَّهُ تَعَالَى - وَبِهِ نَسْتَعِينُ.

L41551 And some have said regarding some of what we have mentioned: "The obligation of flogging," and we shall mention—if Allah the Exalted wills—what Allah the Exalted has facilitated for mention concerning this matter, and expound the truth—if Allah the Exalted wills—and in Him we seek help.

[مَسْأَلَةُ النَّفْيُ عَنْ النَّسَبِ]

The Issue of Disavowal Concerning Lineage

L41552

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ نَفَى آخَرَ عَنْ نَسَبِهِ: فَقَالَتْ طَائِفَةٌ: فِيهِ الْحَدُّ - وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِيهِ، فَأَمَّا مَنْ أَوْجَبَ فِيهِ الْحَدَّ - فَهُوَ كَمَا قَالَ ابْنُ مَسْعُودٍ: لَا حَدَّ إِلَّا فِي اثْنَيْنِ: أَنْ يَقْذِفَ مُحْصَنَةً، أَوْ يَنْفِيَ رَجُلًا عَنْ أَبِيهِ، وَإِنْ كَانَتْ أُمُّهُ أَمَةً.

L41553 Abū Muḥammad—may Allāh have mercy on him—said: People differed regarding one who denies another's paternity. A group held that the ḥadd applies in this case, while another group maintained there is no ḥadd. Those who ruled that the ḥadd is obligatory cite Ibn Masʿūd's declaration: "There is no ḥadd except in two matters: falsely accusing a chaste woman of adultery, or denying a person's relation to their father—even if their mother was an enslaved woman."

وَعَنْ الشَّعْبِيِّ فِي الرَّجُلِ يَنْفِي الرَّجُلَ مِنْ نَخْذِهِ، قَالَ: لَيْسَ عَلَيْهِ حَدٌّ إِلَّا أَنْ يَنْفِيَهُ مِنْ أَبِيهِ - وَعَنْ الشَّعْبِيِّ، وَالْحَسَنِ قَالَا جَمِيعًا: يُضْرَبُ الْحَدَّ.

L41554–41556 From Ash-Shaʿbi regarding a man who denies another man [as being] from his lineage: No ḥadd punishment is incurred upon him except for denying him. From his father, and from al-Shaʿbī and al-Ḥasan, who both said: The ḥadd is to be imposed.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ نَفَى رَجُلًا عَنْ أَبِيهِ - كَانَ أَبُوهُ مَا كَانَ - فَعَلَيْهِ الْحَدُّ - وَمَنْ قَالَ لِرَجُلٍ مِنْ بَنِي تَمِيمٍ لَسْتَ مِنْهُمْ - وَهُوَ مِنْهُمْ - أَوْ لِرَجُلٍ مِنْ بَنِي بَكْرٍ لَسْتَ مِنْهُمْ - وَهُوَ مِنْهُمْ - فَعَلَيْهِ الْحَدُّ.

L41557 From Ibrahim al-Nakhāʿī, who said: Whoever denies a man's lineage to his father—regardless of who his father was—the *ḥadd* punishment applies to him. And whoever says to a man from Banū Tamīm or Banū Bakr, "You are not from them," when he is indeed one of them—the *ḥadd* punishment applies to him.

L41558 From Ibrahim al-Nakhaʿī regarding a man who denied another man's pa-

ternity: He said to him, “You are not to your father,” and his mother was Christian or a slave woman - he ruled: The man is not to be flogged.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ نَفَى رَجُلًا عَنْ أَبِيهِ، قَالَ لَهُ: لَسْتَ لِأَبِيك وَأُمُّهُ نَصْرَانِيَّةٌ أَوْ مَمْلُوكَةٌ - قَالَ: لَا يُجْلَدُ.

L41559 From the narration of Abd al-Razzaq: Ibn Jurayj said: I heard Hafs ibn Umar ibn Rabiʿ say: A legal dispute arose between my father and a Jew regarding a pre-emption right. My father said to the Jew, “A Jew, son of a Jew!” The Jew replied, “Yes, by Allah! I am a Jew, son of a Jew—since many men do not even know their fathers?” The local governor wrote to Umar ibn Abd al-Aziz—who was the governor of Medina—about this matter. He responded: “If the one who said this to him has a known father, then apply the hadd punishment to the Jew.” They struck him eighty lashes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: سَمِعْتُ حَفْصَ بْنَ عُمَرَ بْنِ رَبِيعٍ يَقُولُ: كَانَ بَيْنَ أَبِي وَبَيْنَ يَهُودِيٍّ مُرَافَعَةٌ فِي الْقَوْلِ فِي شُفْعَةٍ، فَقَالَ أَبِي لِلْيَهُودِيِّ: يَهُودِيٌّ ابْنُ يَهُودِيٍّ، فَقَالَ: أَجَلْ، وَاَللَّهِ إنِّي الْيَهُودِيُّ ابْنُ الْيَهُودِيِّ، إذْ لَا يَعْرِفُ رِجَالٌ كَثِيرٌ آبَاءَهُمْ؟ فَكَتَبَ عَامِلُ الْأَرْضِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ عَامِلُ الْمَدِينَةِ - بِذَلِكَ، فَكَتَبَ، فَقَالَ: إنْ كَانَ الَّذِي قَالَ لَهُ ذَلِكَ يُعْرَفُ أَبُوهُ، فَحُدَّ الْيَهُودِيَّ، فَضَرَبَهُ ثَمَانِينَ سَوْطًا.

L41560 And from Ibn Jurayj that he said: Ibn Shihab was asked about a man addressed as “O son of a metalworker”—though his father was not a metalworker. He said: We hold that he should be lashed the hadd.

وَعَنْ ابْنِ جُرَيْجٍ أَنَّهُ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ رَجُلٍ قِيلَ لَهُ: يَا ابْنَ الْقَيْنِ - وَلَمْ يَكُنْ أَبُوهُ قَيْنًا - قَالَ: نَرَى أَنْ يُجْلَدَ الْحَدَّ.

L41561 As for those from whom it has been narrated that no prescribed punishment applies in such cases: as narrated to us via Abd al-Razzaq’s chain from Ibrahim ibn Muhammad, from Ishaq ibn Abdullah, from Makhul—Muadh ibn Jabal and Abdullah ibn Amr ibn al-As (may Allah be pleased with them both) jointly stated: “The prescribed punishment applies solely to the word that has no alternative interpretation and has only one meaning.” From Ali ibn Abi Talib (may Allah be pleased with him) it is related: “If the punishment reaches ’perhaps’ or ’maybe,’ then the punishment is suspended.”

وَأَمَّا مَنْ رُوِيَ عَنْهُ: أَنَّهُ لَا حَدَّ فِي ذَلِكَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ إسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ مَكْحُولٍ أَنَّ مُعَاذَ بْنَ جَبَلٍ، وَعَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَا جَمِيعًا: لَيْسَ الْحَدُّ إلَّا فِي الْكَلِمَةِ لَيْسَ لَهَا مُصَرَّفٌ، وَلَيْسَ لَهَا إلَّا وَجْهٌ وَاحِدٌ: وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: إذَا بَلَغَ الْحَدُّ - لَعَلَّ وَعَسَى - فَالْحَدُّ مُعَطَّلٌ.

L41562 It has been narrated from Ibn Abbas—may Allah be pleased with him—regarding someone who called a man “O Nabataean” that no *hadd* punishment applies to him.

وَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - فِيمَنْ قَالَ لِرَجُلٍ: يَا نَبَطِيُّ أَنَّهُ لَا حَدَّ عَلَيْهِ.

L41563 And from ʻAṭāʼ ibn Abī Rabāḥ that he was asked about a man who said to another man, “O Nabatean, and O slave of the sons of so-and-so,” and ʻAṭāʼ did not see anything in it.

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ لِرَجُلٍ: يَا نَبَطِيُّ، وَيَا عَبْدَ بَنِي فُلَانٍ، فَلَمْ يَرَ عَطَاءٌ فِيهِ شَيْئًا.

L41564 It is reported from Ash-Sha'bi that he was asked about a man who said, "By my life, O Nabatean." Ash-Sha'bi did not see any issue in that and said, "We are all Nabateans"—and this is the view held by our scholars.

وَعَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ الرَّجُلِ قَالَ لَعَمْرِي: يَا نَبَطِيُّ، فَلَمْ يَرَ الشَّعْبِيُّ فِي ذَلِكَ شَيْئًا، وَقَالَ: كُلُّنَا نَبَطٌ - وَبِهِ يَقُولُ أَصْحَابُنَا؟

L41565–41566 Abū Muḥammad—may Allāh have mercy on him—said: When they differed as we mentioned, it became obligatory for us to examine this matter so that we might know the truth and thereby follow it. We found al-Zuhrī stating regarding a man's denial of his father or his lineage—as we previously cited from him—that the Sunnah upon the denier, according to the Book of Allāh the Exalted and the Sunnah of His Prophet—peace be upon him—is to produce four witnesses. We then examined: Do we find support for what al-Zuhrī mentioned in the Book of Allāh the Exalted?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ، فَوَجَدْنَا الزُّهْرِيَّ يَقُولُ فِي نَفْيِ الْمَرْءِ عَنْ أَبِيهِ، أَوْ عَنْ نَسَبِهِ - كَمَا أَوْرَدْنَا عَنْهُ قَبْلَ ذَلِكَ أَنَّ السُّنَّةَ عَلَى النَّافِي فِي كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ نَبِيِّهِ - عَلَيْهِ السَّلَامُ -: أَنْ يَأْتِيَ بِأَرْبَعَةِ شُهَدَاءَ: فَنَظَرْنَا هَلْ نَجِدُ هَذَا الَّذِي ذَكَرَ الزُّهْرِيُّ فِي كِتَابِ اللَّهِ تَعَالَى؟

L41567 We did not find it at all; rather, we found in it the prescribed punishment and the obligation of four witnesses for accusing chaste women. Thus, we found the lineage denier—a person denying his lineage—did not accuse a chaste woman at all. As for Al-Zuhri—even though he is, in our view, one of the virtuous Imams—he is a human who errs as others err, makes mistakes, and is sometimes correct. On the contrary, we found the explicit text of the Quran contradicting Al-Zuhri's opinion, because it waives the punishment from one who accuses chaste women if he says to the son of a slave woman or the son of a disbeliever, "O son of an adulteress," yet imposed it in a situation where the Quran does not mandate it—if he says to him, "You are not your father's son"—thus rendering their entire argument invalid. If they say, "Is the lineage denier necessarily an accuser of adultery?"

فَلَمْ نَجِدْهُ أَصْلًا، وَإِنَّمَا وَجَدْنَا فِيهِ الْحَدَّ، وَوُجُوبَ أَرْبَعَةِ شُهَدَاءَ عَلَى رَمْيِ الْمُحْصَنَاتِ فَوَجَدْنَا النَّافِيَ إنْسَانًا عَنْ نَسَبِهِ، فَلَمْ يَرْمِ مُحْصَنَةً أَصْلًا، وَالزُّهْرِيُّ - وَإِنْ كَانَ عِنْدَنَا أَحَدُ الْأَئِمَّةِ الْفُضَلَاءِ - فَهُوَ بَشَرٌ يَهِمُ كَمَا يَهِمُ غَيْرُهُ، وَيُخْطِئُ وَيُصِيبُ، بَلْ وَجَدْنَا نَصَّ الْقُرْآنِ مُخَالِفًا لِقَوْلِ الزُّهْرِيِّ، لِأَنَّهُ يُسْقِطُ الْحَدَّ عَمَّنْ رَمَى الْمُحْصَنَاتِ إذَا قَالَ لِابْنِ أَمَةٍ، أَوْ ابْنِ كَافِرَةٍ: يَا ابْنَ الزَّانِيَةِ، وَأَوْجَبَهُ حَيْثُ لَيْسَ فِي الْقُرْآنِ إيجَابُهُ إذَا قَالَ لَهُ: لَسْتَ لِأَبِيكَ - فَسَقَطَ تَعَلُّقُهُمْ بِذَلِكَ جُمْلَةً. فَإِنْ قَالُوا: النَّافِي قَاذِفٌ وَلَا بُدَّ؟

L41568 We said: No, he is not a false accuser of zinā, nor has he accused anyone thereof. He may deny lineage by legally claiming paternity, asserting the child belongs to others through valid marriage. Pre-Islamic Arabs practiced this, so no accusation of zinā exists here whatsoever. His denial could mean the mother was coerced - that she conceived where zinā cannot apply, like

قُلْنَا: لَا، مَا هُوَ قَاذِفٌ، وَلَا قَذَفَ أَحَدًا، وَقَدْ يَنْفِيهِ عَنْ نَسَبِهِ بِأَنَّهُ اسْتَلْحَقَ، وَأَنَّهُ مِنْ غَيْرِهِمْ ابْنُ نِكَاحٍ صَحِيحٍ، فَقَدْ كَانَتْ الْعَرَبُ تَفْعَلُ هَذَا، فَلَا قَذَفَ هَاهُنَا أَصْلًا، وَقَدْ يَكُونُ نَفْيُهِ لَهُ بِأَنْ أَرَادَ الِاسْتِكْرَاهَ لِأُمِّهِ، وَأَنَّهَا حَمَلَتْ بِهِ فِي حَالَةٍ لَا يَكُونُ لِلزِّنَى فِيهِ

intercourse with a sleeping woman, intoxicated woman, unconscious woman, or unaware woman. Thus, the denier is wholly exempt from being deemed a false accuser of zinā.

L41569 Then we examined—is there in the Sunnah any basis for them? We found what was narrated by Ahmad ibn Qasim, who narrated from his father Qasim ibn Muhammad ibn Qasim, who narrated from my grandfather Qasim ibn Asbagh, who narrated from Ibn Waddah, who narrated from Sahnun, who narrated from Ibn Wahb, who informed me through Haywah ibn Shurayh, from Salim ibn Ghaylan, from Yahya ibn Sa'id al-Ansari, from Sulayman ibn Yasar, from one of the Companions of the Prophet—peace and blessings be upon him—that "the Messenger of Allah—peace and blessings be upon him—flogged a man for calling another: 'O son of the madwoman!'" Abu Muhammad said: We scrutinized this report and found they have no connection to it whatsoever on several grounds. The first is that it is *mursal* [a hadith with an incomplete chain], and no proof can be established through a *mursal* report.

L41570 The second: through the chain of Sālim ibn Ghaylān al-Tujībī—he is unknown [as a reliable narrator] and was not declared trustworthy.

L41571–41572 The third is that even if it were valid, it would not constitute proof, because it does not state that he—peace be upon him—imposed the ḥadd punishment on him. It merely states that he flogged him. Thus, it is invalid to interpret this as meaning he imposed the ḥadd punishment. We do not object, in that regard, to punishing anyone who insults a Muslim, for it is an evil to be eradicated by physical intervention. Consequently, their claim to have any proof in it is invalidated—rather, it invalidates their position.

L41573 And indeed, Yunus ibn Abd al-A'la—who had a more precise memory than Sahnun and was more knowledgeable in Hadith than him—narrated this report, yet he did not transmit it to the Messenger of Allah—peace and blessings be upon him.

L41574 As narrated by ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb: I, Yūnus ibn ʿAbd al-Aʿlā, narrated that Ibn Wahb informed us, from Ibn Ḥaywah ibn Shurayḥ, from Sālim ibn Ghaylān at-Tujībī,

دُخُولٌ، كَالنَّائِمَةِ تُوطَأُ، أَوْ السَّكْرَى، أَوْ الْمُغْمَى عَلَيْهَا، أَوْ الْجَاهِلَةِ، فَقَدْ بَطَلَ أَنْ يَكُونَ النَّافِي قَاذِفًا جُمْلَةً وَاحِدَةً.

ثُمَّ نَظَرْنَا - هَلْ فِي السُّنَّةِ لَهُمْ مُتَعَلَّقٌ؟ فَوَجَدْنَا: مَا ناه أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي حَيْوَةُ بْنُ شُرَيْحٍ عَنْ سَالِمِ بْنِ غَيْلَانَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَلَدَ رَجُلًا أَنْ دَعَا آخَرَ: يَا ابْنَ الْمَجْنُونِ» ؟ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي هَذَا الْخَبَرِ فَوَجَدْنَاهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ أَصْلًا مِنْ وُجُوهٍ: أَوَّلُهَا: إنَّهُ مُرْسَلٌ وَلَا تَقُومُ بِمُرْسَلٍ حُجَّةٌ.

وَالثَّانِي: مِنْ طَرِيقِ سَالِمِ بْنِ غَيْلَانَ التُّجِيبِيِّ وَهُوَ مَجْهُولٌ لَمْ يُعَدَّلْ.

وَثَالِثُهَا: أَنَّهُ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - جَلَدَهُ الْحَدَّ، إنَّمَا فِيهِ: أَنَّهُ جَلَدَهُ، فَلَا يَحِلُّ أَنْ يُرَادَ فِيهِ: أَنَّهُ جَلَدَهُ الْحَدَّ، وَنَحْنُ لَا نَأْبَى مِنْ ذَلِكَ مَنْ سَبَّ مُسْلِمًا، لِأَنَّهُ مُنْكَرٌ يُغَيَّرُ بِالْيَدِ، فَبَطَلَ أَنْ تَكُونَ لَهُمْ فِيهِ حُجَّةٌ، بَلْ هُوَ عَلَيْهِمْ.

وَقَدْ رَوَى هَذَا الْخَبَرَ يُونُسُ بْنُ عَبْدِ الْأَعْلَى - وَهُوَ أَحْفَظُ مِنْ سَحْنُونَ، وَأَعْرَفُ بِالْحَدِيثِ مِنْهُ، فَلَمْ يُبَلِّغْهُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

from Yaḥyā ibn Saʿīd, from Sulaymān ibn Yasār, who said: "One of the Companions of the Messenger of Allah—may Allah bless him and his family and grant him peace—flogged a man because he called another: 'O son of the madman!'" Abū Muḥammad—may Allah have mercy on him—said: "This resembles what we mentioned earlier, for it does not specify that he imposed the prescribed punishment. Prescribed punishments are not enforced based on false presumptions. Additions to the ḥadīth are falsehood, and the claim that the mentioned punishment amounted to eighty lashes is undeniably a lie from whoever asserted it."

كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يُونُسُ بْنُ عَبْدِ الْأَعْلَى أَخْبَرَنَا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ حَيْوَةُ بْنُ شُرَيْحٍ عَنْ سَالِمِ بْنِ غَيْلَانَ التُّجِيبِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: إنَّ بَعْضَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَلَدَ رَجُلًا أَنْ دَعَا آخَرَ: يَا ابْنَ الْمَجْنُونِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا أَيْضًا كَالَّذِي ذَكَرْنَا قَبْلُ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ جَلَدَهُ الْحَدَّ، وَالْحُدُودُ لَا تُقَامُ بِالظُّنُونِ الْكَاذِبَةِ، وَالزِّيَادَةُ فِي الْحَدِيثِ كَذِبٌ، وَتَبْلِيغُ الْحَدِّ الْمَذْكُورِ إلَى ثَمَانِينَ كَذِبٌ بِلَا شَكٍّ مِمَّنْ قَطَعَ بِذَلِكَ.

L41575 Thus, their reliance on this report is entirely invalidated. Then, upon examining this, we found that Allah, the Exalted, has ordained the ḥadd for accusing of adultery, which the sound Sunnah has brought, and it has been confirmed by definitive consensus. Thus, this became the truth in which there is no doubt.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ جُمْلَةً. ثُمَّ نَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ أَوْجَبَ فِي الْقَذْفِ بِالزِّنَى الْحَدَّ، وَجَاءَتْ بِهِ السُّنَّةُ الصَّحِيحَةُ، وَصَحَّ بِهِ الْإِجْمَاعُ الْمُتَيَقَّنُ، فَكَانَ هَذَا هُوَ الْحَقَّ الَّذِي لَا شَكَّ فِيهِ.

L41576 We found the Messenger of Allah—peace and blessings be upon him—to have declared, "Indeed, your blood, your wealth, your honor, and your bodies are sacred and inviolable to you." The Exalted has said, *"These are the limits set by Allah, so do not transgress them"* [Al-Baqarah 2:229], and He has said, *"And do not transgress. Indeed, Allah does not love the transgressors"* [Al-Baqarah 2:190]. Thus, Allah the Exalted has prohibited transgression, and striking the bodies without evidence is a form of transgression. He the Exalted has also forbidden the transgression of His limits, and enacting a *ḥadd* punishment without evidence is a transgression of the limits set by Allah the Exalted. And success comes only from Allah, the Exalted.[7]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» وَقَدْ قَالَ تَعَالَى {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا} [البقرة: ٢٢٩] وَقَالَ تَعَالَى {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] فَحَرَّمَ اللَّهُ تَعَالَى الْعُدْوَانَ، وَضَرْبَ الْأَبْشَارِ بِغَيْرِ بُرْهَانٍ مِنْ الْعُدْوَانِ، وَحَرَّمَ تَعَالَى أَنْ تُتَعَدَّى حُدُودُهُ، وَإِثْبَاتُ حَدٍّ بِغَيْرِ بُرْهَانٍ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حُكْم القذف]

The Ruling on *Qadhf*

L41577–41578

L41579 Issue: Is accusing believing women among the major sins, and is a person's

[7] **Qur'an references (L41576):** Qur'an 2:229 (Al-Baqarah); Qur'an 2:190 (Al-Baqarah); Qur'an 5:87 (Al-Ma'idah).

engagement in insulting his parents among the major sins? Abu Muhammad—may Allah have mercy on him—said: Allah the Exalted stated in the verse: "If you avoid the major sins you are forbidden, We shall expiate your minor sins" [al-Nisā' 4:31].[8]

مَسْأَلَةٌ: قَذْفُ الْمُؤْمِنَاتِ مِنْ الْكَبَائِرِ، وَتَعَرُّضُ الْمَرْءِ لِسَبِّ أَبَوَيْهِ مِنْ الْكَبَائِرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ} [النساء: ٣١] الْآيَةَ.

L41580 And He, the Exalted, said: "And those who avoid the major sins and shameful deeds" [Ash-Shūrā: 37] the verse.[9]

وَقَالَ تَعَالَى {وَالَّذِينَ يَجْتَنِبُونَ كَبَائِرَ الإِثْمِ وَالْفَوَاحِشَ} [الشورى: ٣٧] الْآيَةَ.

L41581 As it was narrated to us through the chain of Muslim: Hārūn ibn Saʿīd al-Aylī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl informed me from Thawr ibn Yazīd from Abū al-Ghayth from Abū Hurayrah from the Messenger of Allah—peace and blessings of Allah be upon him—who said: "Avoid the seven deadly sins." Someone asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing sorcery, unjustly killing a soul sanctified by Allah, devouring the wealth of orphans, consuming usury, fleeing from the battlefield, and falsely accusing chaste, innocent believing women of adultery."[10][11]

وَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ قِيلَ: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ» .

L41582 And Allah, the Exalted, said: "Indeed, those who accuse chaste, unaware, believing women are cursed in this world and the Hereafter." [An-Nur: 23][12]

وَقَالَ اللَّهُ تَعَالَى: {إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لُعِنُوا فِي الدُّنْيَا وَالآخِرَةِ} [النور: ٢٣] الْآيَةَ.

L41583 Abū Muḥammad—may Allāh have mercy on him—said: It is confirmed that falsely accusing chaste, innocent believing women of unchastity is among the grave sins necessitating divine curse in this world and the Hereafter, and the grievous punishment in the Hereafter. This ruling applies equally to falsely accusing enslaved women and free women, for Allāh the Exalted did not exclude any believing woman over another.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَصَحَّ أَنَّ قَذْفَ الْمُؤْمِنَاتِ الْمُحْصَنَاتِ الْبَرِيئَاتِ مِنْ الْكَبَائِرِ الْمُوجِبَةِ لِلَّعْنَةِ فِي الدُّنْيَا وَالْآخِرَةِ، وَالْعَذَابِ الْعَظِيمِ فِي الْآخِرَةِ، وَدَخَلَ فِيهَا قَذْفُ الْأَمَةِ وَالْحُرَّةِ دُخُولًا مُسْتَوِيًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ مُؤْمِنَةً مِنْ مُؤْمِنَةٍ.

L41584 There remains the ruling regarding false accusation of unchastity against disbelieving women. We hold that Allah the Exalted stated: _"And those who

وَبَقِيَ قَذْفُ الْكَافِرَةِ فَوَجَدْنَا اللَّهَ تَعَالَى قَالَ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً} [النور: ٤] الْآيَةَ - فَهَذَا عُمُومٌ تَدْخُلُ فِيهِ الْكَافِرَةُ وَالْمُؤْمِنَةُ، فَوَجَبَ أَنَّ قَاذِفَهَا فَاسِقٌ إلَّا أَنْ يَتُوبَ.

[8] **Qur'an references (L41579):** Qur'an 4:31 (An-Nisa).
[9] **Qur'an references (L41580):** Qur'an 42:37 (Ash-Shuraa).
[10] **Hadith references (L41581):** Sahih Muslim 89.
[11] **Qur'an references (L41581):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).
[12] **Qur'an references (L41582):** Qur'an 24:23 (An-Nur).

accuse chaste women [of misconduct] and then do not produce four witnesses - lash them with eighty lashes"_ [An-Nur: 4]. This verse establishes a general ruling that includes both disbelieving and believing women. Therefore, it is obligatory that the one who commits _qadhf_ against such women be deemed a transgressor unless he repents.[13]

L41585 It was narrated to us through the chain of Muslim: Muḥammad ibn al-Walīd ibn ʿAbd al-Ḥamīd narrated to us, Muḥammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us, ʿUbayd Allāh ibn Abī Bakr said: I heard Anas ibn Mālik say, "Allah's Messenger—peace and blessings be upon him—mentioned the major sins and was asked about them? He said: 'Associating partners with Allah, murder, and undutifulness to parents.' He said: 'Shall I inform you of the greatest of the major sins? It is false testimony'—or he said: 'bearing false witness.'" Shuʿbah said: "My strongest assumption is that he said 'bearing false witness.'"

L41586–41587 From the narration of Muslim: I am Umar ibn Muhammad ibn Bukayr al-Naqid, he informed us Isma'il ibn Ulayya, he informed us Sa'id al-Jurayri, he informed us Abd al-Rahman ibn Abi Bakrah, from his father, who said: "We were in the presence of the Messenger of Allah—peace be upon him—when he said: 'Shall I inform you of the gravest of major sins?'—three times—'Associating partners with Allah, disobedience to parents, and false testimony or false speech.' The Messenger of Allah—peace be upon him—was reclining, then he sat upright and persisted in repeating it until we said: 'Would that he ceased.'" Abu Muhammad—may Allah have mercy on him—said: "The narrator's uncertainty between the Prophet's—peace be upon him—mention of 'false testimony' or 'false speech' does not nullify anything in the rulings derived from these two narrations. Whichever it was, the meaning is one and consistent, for every statement a person makes without narrating [something heard] constitutes a testimony, and every testimony a person gives is inherently a statement. Thus, speech is testimony, and testimony is speech. This [mentioned] testimony refers to the articulated utterance, not the testimony adjudicated in court. Allah the Exalted says: 'Their testimony will be recorded, and they will be questioned' (Az-Zukhruf 43:19), and He says:

[13] **Qur'an references (L41584):** Qur'an 24:4 (An-Nur).

وَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْوَلِيدِ بْنِ عَبْدِ الْحَمِيدِ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ نا عُبَيْدُ اللَّهِ بْنُ أَبِي بَكْرٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ قَالَ «ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَبَائِرَ، وَسُئِلَ عَنْ الْكَبَائِرِ؟ فَقَالَ: الشِّرْكُ بِاَللَّهِ، وَقَتْلُ النَّفْسِ، وَعُقُوقُ الْوَالِدَيْنِ - قَالَ: أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الْكَبَائِرِ، قَوْلُ الزُّورِ - أَوْ قَالَ: شَهَادَةُ الزُّورِ» قَالَ شُعْبَةُ: وَأَكْبَرُ ظَنِّي أَنَّهُ قَالَ - شَهَادَةُ الزُّورِ ".

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عُمَرُ بْنُ مُحَمَّدِ بْنِ بُكَيْرٍ النَّاقِدُ نا إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ «كُنَّا عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الْكَبَائِرِ - ثَلَاثًا - الْإِشْرَاكُ بِاَللَّهِ وَعُقُوقُ الْوَالِدَيْنِ - وَشَهَادَةُ الزُّورِ أَوْ قَوْلُ الزُّورِ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُتَّكِئًا فَجَلَسَ، فَمَا زَالَ يُكَرِّرُهَا حَتَّى قُلْنَا: لَيْتَهُ سَكَتَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ شَكُّ الرَّاوِي بَيْنَ قَوْلِهِ - عَلَيْهِ السَّلَامُ - شَهَادَةَ الزُّورِ أَوْ قَوْلَ الزُّورِ بِمُحِيلٍ شَيْئًا مِنْ حُكْمِ هَذَيْنِ الْخَبَرَيْنِ فَأَيُّ ذَلِكَ كَانَ فَالْمَعْنَى فِيهِ وَاحِدٌ لَا يَخْتَلِفُ، لِأَنَّ كُلَّ قَوْلٍ قَالَهُ الْمَرْءُ غَيْرَ حَاكٍ فَقَدْ شَهِدَ بِهِ، وَكُلُّ شَهَادَةٍ يَشْهَدُ بِهَا الْمَرْءُ فَقَدْ قَالَهَا فَالْقَوْلُ شَهَادَةٌ، وَالشَّهَادَةُ قَوْلٌ، وَهَذِهِ الشَّهَادَةُ هِيَ غَيْرُ الشَّهَادَةِ الْمَحْكُومِ بِهَا، قَالَ اللَّهُ تَعَالَى {سَتُكْتَبُ شَهَادَتُهُمْ وَيُسْأَلُونَ} [الزخرف: ١٩] وَقَالَ تَعَالَى {فَإِنْ شَهِدُوا فَلا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] فَهَذِهِ الشَّهَادَةُ هِيَ الْقَوْلُ الْمَقُولُ، لَا الْمُؤَدَّاةُ عِنْدَ الْحَاكِمِ بِصِفَةٍ مَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

'If they testify, do not testify with them' (Al-An'am 6:150). This testimony denotes the spoken assertion, not the formal legal testimony. And with Allah alone is success."[14][15]

L41588 It has been established that accusing an innocent disbelieving woman is unequivocally a false statement without any disagreement from anyone, and false speech is among the major sins, as clarified by the Messenger of Allah (peace be upon him).

L41589 It has been narrated to us through the chain transmitted by Muslim: Qutaybah ibn Sa'id narrated to us from Laith ibn Sa'd from Ibn al-Hādī from Sa'd ibn Ibrāhīm ibn 'Abd al-Rahmān ibn 'Awf from Humayd ibn 'Abd al-Rahmān from 'Abdullāh ibn 'Amr ibn al-'Ās that the Messenger of Allah—peace and blessings be upon him—said: "Is reviling one's parents among the gravest major sins?" They asked: "O Messenger of Allah, how could a man revile his parents?" He responded: "Yes. If he curses another man's father, the latter will curse the instigator's father. If he curses another's mother, the latter will curse the instigator's mother."

L41590 Thus, it is established that the aforementioned insult constitutes one of the major sins, even if it does not amount to *qadhf* (false accusation of adultery).

L41591 Abū Muḥammad—may Allāh have mercy on him—said: As for one who accuses a person of what he has done, it is not qadhf (false accusation of fornication). However, it constitutes backbiting if the person is absent, and harm if he is present. This is a matter upon which there is no disagreement—and success is granted by Allāh, the Exalted.

L41592 The Obligatory Ruling for Falsely Accusing Chaste Women of Adultery.

L41593 2231 - Question: Who are the chaste women for whom accusing them of adultery incurs the punishment prescribed by Allah, the Exalted, in the Quran?

فَصَحَّ أَنَّ قَذْفَ الْكَافِرَةِ الْبَرِيئَةِ قَوْلُ زُورٍ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَقَوْلُ الزُّورِ مِنْ الْكَبَائِرِ، كَمَا بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثُ بْنُ سَعْدٍ عَنْ ابْنِ الْهَادِي عَنْ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ مِنْ أَكْبَرِ الْكَبَائِرِ شَتْمُ الرَّجُلِ وَالِدَيْهِ؟ قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ يَشْتُمُ الرَّجُلُ وَالِدَيْهِ؟ قَالَ: نَعَمْ، يَسُبُّ أَبَا الرَّجُلِ فَيَسُبُّ أَبَاهُ، وَيَسُبُّ أُمَّهُ فَيَسُبُّ أُمَّهُ» .

فَصَحَّ أَنَّ السَّبَّ الْمَذْكُورَ مِنْ الْكَبَائِرِ، وَإِنْ لَمْ يَكُنْ قَذْفًا؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ رَمَى الْمَرْءَ بِمَا فَعَلَ فَلَيْسَ قَذْفًا، لَكِنَّهُ غَيْبَةٌ إنْ كَانَ غَائِبًا، وَأَذًى إنْ كَانَ حَاضِرًا، هَذَا مَا لَا خِلَافَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الواجب بقذف المحصنات]

٢٢٣١ - مَسْأَلَةٌ: مَنْ الْمُحْصَنَاتُ الْوَاجِبُ بِقَذْفِهِنَّ مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِي الْقُرْآنِ؟

[14] **Hadith references (L41587):** Sahih Muslim 87.
[15] **Qur'an references (L41587):** Qur'an 43:19 (Az-Zukhruf); Qur'an 6:150 (Al-An'am).

L41594–41595 Abu Muhammad said: Allah the Exalted stated, {And those who accuse chaste women and then do not produce four witnesses—flog them} [An-Nur:4]. The apparent meaning indicates that "the chaste women" mentioned here: they are women, as this expression employs the feminine plural form. At this point, the advocates of qiyas raised an objection against us, saying: "The text only specifies the hadd punishment of flogging for slandering a woman. What basis do you have for flogging one who accuses a man of unlawful sexual intercourse (zinā)? This constitutes qiyas on your part, yet you reject qiyas?" Abu Muhammad—may Allah have mercy on him—replied: Our scholars responded to them with answers here, each of which is convincing and sufficient, thereby invalidating their specious objection—all praise belongs to Allah, Lord of the worlds.[16]

L41596 One of those answers is that our early scholars stated: The textual evidence prescribes the hadd punishment for falsely accusing women of unchastity, and consensus has validated the hadd punishment for one who falsely accuses a man of unchastity. Consensus is valid and a foundational principle among the principles we rely upon, for Allah the Exalted has obligated us to follow consensus. Consensus derives solely from definitive instruction by the Messenger of Allah—peace and blessings be upon him.

L41597 Some of our companions said: Rather, the explicit wording of the verse is general, encompassing both men and women, and Allah the Exalted intended "the chaste female souls (al-muḥṣanāt)." They said: The proof of this position and the evidence for its validity is Allah's statement elsewhere: {And chaste women (al-muḥṣanāt) from among the women} [4:24]. They argued: Had the term "al-muḥṣanāt" (feminine plural) applied exclusively to women, the phrase "from among the women" in Allah's statement would be superfluous - Far is Allah from that! Thus, it is confirmed that "al-muḥṣanāt" applies to both women and men. Therefore, Allah the Exalted clarified His intent there by specifying "from among the women," while leaving the matter in the verse of qadhf (false accusation) stated concisely.[17]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ} [النور: ٤] الْآيَةَ، فَكَانَ ظَاهِرُ هَذَا أَنَّ " الْمُحْصَنَاتِ الْمَذْكُورَاتِ: هُنَّ النِّسَاءُ " لِأَنَّ هَذَا اللَّفْظَ جَاءَ بِجَمْعِ الْمُؤَنَّثِ فَاعْتَرَضَ عَلَيْنَا أَصْحَابُ الْقِيَاسِ هَاهُنَا وَقَالُوا لَنَا: إنَّ النَّصَّ إنَّمَا وَرَدَ بِجَلْدِ الْحَدِّ مِنْ قَذْفِ امْرَأَةٍ، فَمِنْ أَيْنَ لَكُمْ أَنْ تَجْلِدُوا مَنْ قَذَفَ رَجُلًا بِالزِّنَى؟ وَمَا هَذَا إلَّا قِيَاسٌ مِنْكُمْ، وَأَنْتُمْ تُنْكِرُونَ الْقِيَاسَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَجَابَهُمْ أَصْحَابُنَا هَاهُنَا بِأَجْوِبَةٍ كُلُّ وَاحِدٍ مِنْهَا مُقْنِعٌ كَافٍ، مُبْطِلٌ لِاعْتِرَاضِهِمْ هَذَا الْفَاسِدِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَأَحَدُ تِلْكَ الْأَجْوِبَةِ: أَنَّ مَنْ تَقَدَّمَ مِنْ أَصْحَابِنَا، قَالَ: جَاءَ النَّصُّ بِالْحَدِّ عَلَى قَذْفِ النِّسَاءِ وَصَحَّ الْإِجْمَاعُ بِحَدِّ مَنْ قَذَفَ رَجُلًا وَالْإِجْمَاعُ حَقٌّ وَأَصْلٌ مِنْ أُصُولِنَا الَّتِي نَعْتَمِدُ عَلَيْهَا وَقَدْ افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا اتِّبَاعَ الْإِجْمَاعِ، وَالْإِجْمَاعُ لَيْسَ إلَّا عَنْ تَوْقِيفٍ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَالَ بَعْضُ أَصْحَابِنَا: بَلْ نَصُّ الْآيَةِ عَامٌّ لِلرِّجَالِ وَالنِّسَاءِ وَإِنَّمَا أَرَادَ اللَّهُ تَعَالَى النُّفُوسَ الْمُحْصَنَاتِ قَالُوا: وَبُرْهَانُ هَذَا الْقَوْلِ وَدَلِيلُ صِحَّتِهِ قَوْلُ اللَّهِ تَعَالَى فِي مَكَانٍ آخَرَ {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ} [النساء: ٢٤] قَالُوا: فَلَوْ كَانَتْ لَفْظَةُ " الْمُحْصَنَاتُ " لَا تَقَعُ إلَّا عَلَى النِّسَاءِ لَمَا كَانَ لِقَوْلِ اللَّهِ تَعَالَى " مِنْ النِّسَاءِ " مَعْنًى وَحَاشَ لِلَّهِ مِنْ هَذَا فَصَحَّ أَنَّ الْمُحْصَنَاتِ يَقَعُ عَلَى النِّسَاءِ وَالرِّجَالِ فَبَيَّنَ اللَّهُ تَعَالَى مُرَادَهُ هُنَالِكَ بِأَنْ قَالَ " مِنْ النِّسَاءِ " وَأَجْمَلَ الْأَمْرَ فِي آيَةِ الْقَذْفِ إجْمَالًا.

[16] **Qur'an references (L41595):** Qur'an 24:4 (An-Nur).
[17] **Qur'an references (L41597):** Qur'an 4:24 (An-Nisa).

قَالُوا: فَإِنْ قَالَ قَائِلٌ: وَإِنَّ قَوْله تَعَالَى {مِنَ النِّسَاءِ} [آل عمران: ١٤] كَقَوْلِهِ تَعَالَى {وَغَرَابِيبُ سُودٌ} [فاطر: ٢٧] وَ {عَشَرَةٌ كَامِلَةٌ} [البقرة: ١٩٦] ؟ قُلْنَا: لَا يَجُوزُ أَنْ يُحْمَلَ كَلَامُ اللَّهِ تَعَالَى عَلَى تَكْرَارٍ لَا فَائِدَةَ أُخْرَى فِيهِ إلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ إجْمَاعٍ، وَلَيْسَ مَعَكُمْ شَيْءٌ مِنْ هَذَا فِي دَعْوَاكُمْ أَنَّ قَوْله تَعَالَى {مِنَ النِّسَاءِ} [آل عمران: ١٤] تَكْرَارٌ لَا فَائِدَةَ فِيهِ؟

L41598–41599 They said: If someone were to say, “Indeed, the word of Allah the Exalted {from the women} [Āl ʿImrān: 14] is like His word {and intensely black} [Fāṭir: 27] and {ten complete days} [al-Baqarah: 196]?” We replied: It is impermissible to construe the speech of Allah the Exalted as repetition containing no other benefit in it except through a Quranic text, Sunnah, or consensus. Yet you possess none of these to substantiate your assertion that His word {from the women} [Āl ʿImrān: 14] constitutes purposeless repetition.[18]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا جَوَابٌ حَسَنٌ، وَأَمَّا الْأَوَّلُ فَلَا نَقُولُ بِهِ، لِأَنَّهُ حَتَّى لَوْ صَحَّ الْإِجْمَاعُ عَلَى وُجُوبِ الْحَدِّ عَلَى قَاذِفِ الرَّجُلِ لَمَا كَانَ فِي الْآيَةِ احْتِجَاجٌ وَإِيجَابًا الْحَدَّ عَلَى قَاذِفِ الْعَبْدِ وَقَاذِفِ الْكَافِرَةِ، لِأَنَّهُ لَا إجْمَاعَ عَلَى ذَلِكَ؟

L41600 Abu Muhammad—may God have mercy on him—said: “This is a good answer. As for the first, we do not adopt it, because even if consensus were established on the obligation of the prescribed penalty for slandering a free man, there would be no proof in the verse. However, we impose the penalty on one who slanders a slave and a non-Muslim woman, since there is no consensus on that to preclude it.”

وَأَمَّا جَوَابُنَا الَّذِي نَعْتَمِدُ عَلَيْهِ وَنَقْطَعُ عَلَى صِحَّتِهِ، وَأَنَّهُ مُرَادُ اللَّهِ تَعَالَى بِالْبُرْهَانِ الْوَاضِحِ فَهُوَ أَنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ بِقَوْلِهِ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ} [النور: ٤] الْفُرُوجَ الْمُحْصَنَاتِ. بُرْهَانُ ذَلِكَ: أَنَّ الْأَرْبَعَةَ الشُّهُودِ الْمَذْكُورِينَ لَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ شَهَادَتَهُمْ الَّتِي يُكَلَّفُونَهَا هِيَ أَنْ يَشْهَدُوا بِأَنَّهُمْ رَأَوْا فَرْجَهُ فِي فَرْجِهَا وَالِجًا خَارِجًا - وَالْإِجْمَاعُ قَدْ صَحَّ بِأَنَّ مَا عَدَا هَذِهِ الشَّهَادَةَ لَيْسَتْ شَهَادَةً بِزِنًى وَلَا يَبْرَأُ بِهَا الْقَاذِفُ مِنْ الْحَدِّ.

L41601 As for our definitive response—which we rely upon and affirm decisively its correctness, being the intended meaning of God Almighty through clear proof—it is that God Almighty in His statement {And those who accuse chaste women and then do not produce four witnesses} [24:4] specifically refers to accusations against the chastity of women. The proof of this is that the Ummah unanimously agrees that the four witnesses mentioned must testify that they saw the male genitalia penetrating and exiting the female genitalia. Consensus has been soundly established that any testimony other than this does not constitute testimony of adultery, nor does it absolve the slanderer from the prescribed penalty.[19]

فَصَحَّ أَنَّ الرَّمْيَ الْمَذْكُورَ إنَّمَا هُوَ الْفُرُوجُ فَقَطْ.

L41602 Thus, it became clear that the aforementioned stoning pertains solely to illicit sexual relations.

وَأَيْضًا، بُرْهَانٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَا رَأَيْت أَشْبَهَ بِاللَّمَمِ مِمَّا قَالَ أَبُو هُرَيْرَةَ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ اللَّهَ كَتَبَ عَلَى

L41603–41605 And also, another proof—as was narrated to us in Ṣaḥīḥ Muslim via the chain: Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) reported to us: ʿAbd al-Razzāq reported to us from Maʿmar, from Ibn Ṭāwūs, from his father, from Ibn

[18] **Qur’an references (L41599):** Qur’an 3:14 (Ali ’Imran); Qur’an 35:27 (Fatir); Qur’an 2:196 (Al-Baqarah).

[19] **Qur’an references (L41601):** Qur’an 24:4 (An-Nur).

ابْنِ آدَمَ حَظَّهُ مِنْ الزِّنَى أَدْرَكَ ذَلِكَ لَا مَحَالَةَ فَزِنَى الْعَيْنَيْنِ النَّظَرُ، وَزِنَى اللِّسَانِ النُّطْقُ، وَالنَّفْسُ تَمَنَّى وَتَشْتَهِي، وَالْفَرْجُ يُصَدِّقُ ذَلِكَ أَوْ يُكَذِّبُهُ» ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزِّنَى إلَّا لِلْفَرْجِ فَقَطْ وَأَبْطَلَهُ عَنْ جَمِيعِ أَعْضَاءِ الْجِسْمِ - أَوَّلِهَا عَنْ آخِرِهَا - إلَّا أَنْ يُصَدِّقَهُ فِيهَا الْفَرْجُ.

‘Abbās, who said: “I have not seen...” The closest to minor sins is what Abū Hurayrah reported, for the Prophet—peace and blessings of Allah be upon him—said: “Allah has decreed for the son of Adam his share of zina [i.e., illicit sexual transgression], which he will inevitably encounter. The zina of the eyes is looking [with desire], the zina of the tongue is speaking [sinful words], the soul covets and craves, and the genitals either confirm this [by acting] or deny it.” Abū Muḥammad—may Allah have mercy on him—said: The Messenger of Allah—peace and blessings of Allah be upon him—did not assign zina except to the genitals alone, negating its attribution to all other body parts—from the first to the last—unless the genitals confirm it [by acting] through those parts.[20]

فَصَحَّ يَقِينًا أَنَّ النَّفْسَ وَالْقَلْبَ وَجَمِيعَ أَعْضَاءِ الْجَسَدِ، حَاشَ الْفَرْجَ لَا رَمْيَ فِيهَا، وَلَا قَذْفَ أَصْلًا، وَأَنَّهُ لَا رَمْيَ إلَّا لِلْفُرُوجِ فَقَطْ، فَإِذْ لَا شَكَّ فِي هَذَا وَلَا مِرْيَةَ، فَالْمُرَادُ مِنْ قَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] هِيَ بِلَا شَكٍّ " الْفُرُوجُ " الَّتِي لَا يَقَعُ " الرَّمْيُ " إلَّا عَلَيْهَا، لَا يَكُونُ الزِّنَى الْمَرْمِيُّ بِهِ إلَّا مِنْهَا؟

L41606 It was conclusively established that the soul, heart, and all bodily limbs—excluding the private parts—are not subject to accusations of fornication, nor any false accusation of _zinā_ whatsoever, and that there is no accusation of fornication except for the private parts alone. Since there is no doubt or uncertainty in this, the intended meaning of Allah’s words {And those who accuse chaste women} [An-Nūr: 4] refers unequivocally to the “private parts,” for accusations of fornication pertain exclusively to them—can the alleged fornication originate except from them?[21]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِنْ قَالَ قَائِلٌ: إنَّ " الْمُحْصَنَاتِ " نَعْتٌ وَلَا يُفْرَدُ النَّعْتُ عَنْ ذِكْرِ الْمَنْعُوتِ؟

L41607 Abū Muḥammad—may Allāh have mercy on him—said: If someone were to say: “‘Married women’ is an adjective—and an adjective cannot be isolated from the noun it describes?”

قُلْنَا: هَذَا خَطَأٌ، لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، لِأَنَّ الْقُرْآنَ وَأَشْعَارَ الْعَرَبِ مَمْلُوءٌ مِمَّا جَاءَ فِي ذَلِكَ، بِخِلَافِ هَذَا.

L41608 We said: This is an error, for it is an unsubstantiated claim, since the Quran and the poetry of the Arabs are replete with what appears in that regard, unlike this claim.

قَالَ اللَّهُ تَعَالَى {وَالصَّائِمِينَ وَالصَّائِمَاتِ} [الأحزاب: ٣٥] .

L41609 Allah, the Exalted, said, “And the fasting men and the fasting women” [Al-Ahzab: 35].[22]

وَقَالَ اللَّهُ تَعَالَى {إِنَّ الْمُصَّدِّقِينَ وَالْمُصَّدِّقَاتِ} [الحديد: ١٨] . وَمِثْلُ هَذَا كَثِيرٌ مِمَّا ذَكَرَ اللَّهُ تَعَالَى النَّعْتَ دُونَ ذِكْرِ الْمَنْعُوتِ.

L41610 And Allah, the Exalted, said: *“Indeed, the charitable men and women”*

[20] **Hadith references (L41603):** Sahih Muslim 2657b.
[21] **Qur’an references (L41606):** Qur’an 24:4 (An-Nur).
[22] **Qur’an references (L41609):** Qur’an 33:35 (Al-Ahzab).

[Al-Hadid 18]. Much among what Allah, the Exalted, has mentioned follows this pattern—He states the descriptive term but omits the noun it describes.[23]

L41611 The poet said:

وَقَالَ الشَّاعِرُ:

L41612 Nor women who place ivory above their wrists.

وَلَا جَاعِلَاتِ الْعَاجِ فَوْقَ الْمَعَاصِمِ

L41613 He mentioned the attribute but omitted the qualified noun, and we know of no grammarian who has ever prohibited this at all. We mentioned this solely to preclude any obfuscator from obfuscating.

فَذَكَرَ النَّعْتَ وَلَمْ يَذْكُرْ الْمَنْعُوتَ وَمَا نَعْلَمُ نَحْوِيًّا مَنَعَ مِنْ هَذَا أَصْلًا، وَإِنَّمَا ذَكَرْنَا هَذَا لِئَلَّا يُمَوِّهَ مُمَوِّهٌ.

L41614–41617 Moreover, this objection rebounds on them, because from their statements: "He intended the chaste women." In any case, He has omitted the described noun and confined Himself to the descriptive term, with no difference between His limiting, Exalted be He, to mentioning "chaste women" and omitting "private parts" according to our position, or His omitting "women" according to their claim. Thus their objection collapses entirely, and our position—which we applied to the aforementioned first verse regarding their assertion—is supported by the explicit text and the established consensus as we have explained.

ثُمَّ إِنَّ هَذَا الِاعْتِرَاضَ رَاجِعٌ عَلَيْهِمْ، لِأَنَّ مِنْ قَوْلِهِمْ: إِنَّهُ أَرَادَ " النِّسَاءَ الْمُحْصَنَاتِ " فَعَلَى كُلِّ حَالٍ قَدْ حَذَفَ الْمَنْعُوتَ وَاقْتَصَرَ عَلَى النَّعْتِ وَلَا فَرْقَ بَيْنَ اقْتِصَارِهِ تَعَالَى عَلَى ذِكْرِ " الْمُحْصَنَاتِ " وَحَذْفِ الْفُرُوجِ عَلَى قَوْلِنَا، أَوْ حَذْفِ " النِّسَاءِ " عَلَى قَوْلِهِمْ - فَسَقَطَ اعْتِرَاضُهُمْ جُمْلَةً، وَقَوْلُنَا نَحْنُ الَّذِي حَمَلْنَا عَلَيْهِ الْآيَةَ الْأُولَى مِنْ دَعْوَاهُمْ، لِأَنَّ قَوْلَنَا يَشْهَدُ لَهُ النَّصُّ وَالْإِجْمَاعُ عَلَى مَا ذَكَرْنَا.

L41618 As for their claim that Allah the Exalted intended "women" by that—it is a baseless claim devoid of proof, neither from textual sources nor scholarly consensus. For they restrict their interpretation and nullify the hadd punishment for slanderers of various categories of women—such as female slaves, disbelievers, minors, and the insane—thereby directly invalidating their claim despite its complete absence of evidence. And success comes only from Allah the Exalted.

وَأَمَّا دَعْوَاهُمْ أَنَّ اللَّهَ تَعَالَى أَرَادَ بِذَلِكَ " النِّسَاءَ " فَدَعْوَى عَارِيَةٌ لَا بُرْهَانَ عَلَيْهَا، لَا مِنْ نَصٍّ وَلَا إِجْمَاعٍ، لِأَنَّهُمْ يَخُصُّونَ تَأْوِيلَهُمْ هَذَا، وَيُسْقِطُونَ الْحَدَّ عَنْ قَاذِفِ نِسَاءٍ كَثِيرَةٍ: كَالْإِمَاءِ، وَالْكَوَافِرِ، وَالصِّغَارِ، وَالْمَجَانِينِ، فَقَدْ أَفْسَدُوا دَعْوَاهُمْ مِنْ قُرْبٍ مَعَ تَعَرِّيهَا مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41619 [Issue of Qadhf (False Accusation of Unlawful Sexual Intercourse) Pertaining to Male and Female Slaves]

[مَسْأَلَةَ قَذْفُ الْعَبِيدِ وَالْإِمَاءِ]

L41620–41622 Issue 2232: The false accusation of adultery against male and female slaves. Abu Muhammad said: Scholars have differed concerning one who falsely accuses a male or female slave of adultery. A group stated: There is no ḥadd

[23] **Qur'an references (L41610):** Qur'an 57:18 (Al-Hadid).

upon him, as narrated from al-Nakhaʿī and al-Shaʿbī that they both jointly said: One who falsely accuses a slave woman who has borne her master a child of unlawful sexual intercourse shall not be flogged.

٢٢٣٢ - مَسْأَلَةٌ: قَذْفُ الْعَبِيدِ وَالْإِمَاءِ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِيمَنْ قَذَفَ عَبْدًا أَوْ أَمَةً بِالزِّنَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِ كَمَا رُوِيَ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ أَنَّهُمَا قَالَا جَمِيعًا: لَا يُضْرَبُ قَاذِفُ أُمِّ وَلَدٍ.

L41623 From Hammad ibn Abi Sulayman, who said: If a man says to another man whose mother is an umm walad or a Christian, “You are not your father’s son,” he is not to be flogged, because the denial pertains to the mother.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: إذَا قَالَ رَجُلٌ لِرَجُلٍ أُمُّهُ أُمُّ وَلَدٍ أَوْ نَصْرَانِيَّةٌ: لَسْت لِأَبِيك؟ لَمْ يُضْرَبْ، لِأَنَّ النَّفْيَ وَقَعَ عَلَى الْأُمِّ.

L41624 And from Ibn Sirin, he said: Ubaydullah ibn Ziyad sought to lash the false accuser of an *umm walad*—an enslaved woman who bore her master a child—for *zinā*, but none supported him in that.

وَعَنْ ابْنِ سِيرِينَ قَالَ: أَرَادَ عُبَيْدُ اللَّهِ بْنُ زِيَادٍ أَنْ يُضْرَبَ قَاذِفُ أُمِّ وَلَدٍ، فَلَمْ يُتَابِعْهُ عَلَى ذَلِكَ أَحَدٌ.

L41625 It has been reported from ʻAṭāʼ, al-Ḥasan, and al-Zuhrī that there is no prescribed punishment for one who falsely accuses an *umm walad*?

وَقَدْ رُوِيَ عَنْ عَطَاءٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ: لَا حَدَّ عَلَى قَاذِفِ أُمِّ وَلَدٍ؟

L41626 Ali said: Among those who held that the *ḥadd* punishment does not apply to one who slanders a male slave or a female slave are Abū Ḥanīfah, Mālik, al-Awzāʿī, Sufyān al-Thawrī, ʿUthmān al-Battī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and their followers.

قَالَ عَلِيٌّ: وَمِمَّنْ لَمْ يَرَ الْحَدَّ عَلَى قَاذِفِ الْعَبْدِ وَالْأَمَةِ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَعُثْمَانُ الْبَتِّيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L41627 A group held the opinion that the prescribed punishment is obligatory in this matter. Hammam narrated: Ibn Mufarrij narrated: Ibn al-A’rabi narrated: al-Dabari narrated: ’Abd al-Razzaq narrated from Ma’mar from Ayyub al-Sikhtiyani from Nafi’, the freed slave of Ibn ’Umar, who said: A commander asked Ibn ’Umar, “What about a man who slandered a man’s *umm walad*?” Ibn ’Umar replied: “He is to be subjected to the prescribed punishment by flogging, humiliated.”

وَقَالَتْ طَائِفَةٌ بِإِيجَابِ الْحَدِّ فِي ذَلِكَ - نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: إنَّ أَمِيرًا مِنْ الْأُمَرَاءِ سَأَلَ ابْنَ عُمَرَ عَنْ رَجُلٍ قَذَفَ أُمَّ وَلَدٍ لِرَجُلٍ؟ فَقَالَ ابْنُ عُمَرَ: يُضْرَبُ الْحَدَّ صَاغِرًا.

L41628 Al-Hasan al-Basri said: A husband may invoke mutual cursing (liʿān) against a female slave, and if he accuses her of unchastity while she remains a slave, he is to be flogged, because she is his wife. Abu Muhammad said: This is the view held by our companions, and this chain of narration from Ibn Umar is among the most authentic chains found in ḥadīth. When they differed as we have mentioned, it became obligatory to examine the evidence each group

وَعَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: الزَّوْجُ يُلَاعِنُ الْأَمَةَ، وَإِنْ قَذَفَهَا - وَهِيَ أَمَةٌ - جُلِدَ، لِأَنَّهَا امْرَأَتُهُ؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا يَقُولُ أَصْحَابُنَا، وَهَذَا الْإِسْنَادُ عَنْ ابْنِ عُمَرَ مِنْ أَصَحِّ إسْنَادٍ يُوجَدُ فِي الْحَدِيثِ فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ

cited to discern the truth in the matter and follow it—by the assistance and subtle kindness of God Almighty. We then examined the position of those who did not deem the ḥadd punishment applicable to one who accuses a female slave or a male slave of unchastity, but we found nothing they could rely upon except what was reported to us through Bukhārī's chain: Musaddad narrated to us, Yahya ibn Saʿīd al-Qaṭṭān narrated to us from al-Fuḍayl ibn Ghazwān from Ibn Abi Nuʿm from Abu Hurayrah, who said: "I heard Abu al-Qasim—peace and blessings be upon him—say: 'Whoever accuses his slave of what he is innocent of will be flogged on the Day of Resurrection unless it is as he says.'"[24]

لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعُهُ - بِعَوْنِ اللَّهِ تَعَالَى وَلُطْفِهِ: فَنَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ الْحَدَّ عَلَى قَاذِفِ الْأَمَةِ وَالْعَبْدِ، فَلَمْ نَجِدْ لَهُمْ شَيْئًا يُمْكِنُ أَنْ يَتَعَلَّقُوا بِهِ، إِلَّا مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنِ الْفُضَيْلِ بْنِ غَزْوَانَ عَنِ ابْنِ أَبِي نُعْمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ " سَمِعْتُ أَبَا الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ قَذَفَ مَمْلُوكَهُ وَهُوَ بَرِيءٌ مِمَّا قَالَ، جُلِدَ يَوْمَ الْقِيَامَةِ إِلَّا أَنْ يَكُونَ كَمَا قَالَ» .

L41629–41631 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿawiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: I am Suwayd ibn Nasr. I am ʿAbdullāh ibn al-Mubārak, from al-Fuḍayl ibn Ghazwān, from Abī Nuʿm, who narrated that he said: Abū al-Qāsim—peace be upon him—said, "Whoever falsely accuses his slave of fornication while innocent of the allegation, divine punishment will be imposed upon him on the Day of Judgment, unless the slave is actually guilty of what the accuser claimed."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنِ الْفُضَيْلِ بْنِ غَزْوَانَ عَنْ أَبِي نُعْمٍ: أَنَّهُ حَدَّثَهُ أَنَّهُ قَالَ: قَالَ أَبُو الْقَاسِمِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَذَفَ مَمْلُوكَهُ بَرِيئًا مِمَّا قَالَ أُقِيمَ عَلَيْهِ الْحَدُّ يَوْمَ الْقِيَامَةِ، إِلَّا أَنْ يَكُونَ كَمَا قَالَ» .

L41632 From Al-Ḥasan, from Ibn ʿUmar, who said: "Whoever accuses his slave, there is a ḥadd punishment on his back from Allah the Exalted on the Day of Resurrection - if He wills, He will enforce it, and if He wills, He will forgive him?"

وَعَنِ الْحَسَنِ عَنِ ابْنِ عُمَرَ قَالَ: مَنْ قَذَفَ مَمْلُوكَهُ كَانَ لِلَّهِ تَعَالَى فِي ظَهْرِهِ حَدٌّ يَوْمَ الْقِيَامَةِ، إِنْ شَاءَ آخَذَهُ، وَإِنْ شَاءَ عَفَا عَنْهُ؟

L41633 Abu Muhammad said: Perhaps they claim scholarly consensus, or they say: "There is no inviolability for a male slave or a female slave," and they frequently bring forth such things.

قَالَ أَبُو مُحَمَّدٍ: وَلَعَلَّهُمْ يَدَّعُونَ الْإِجْمَاعَ، أَوْ يَقُولُونَ: لَا حُرْمَةَ لِلْعَبْدِ وَلَا لِلْأَمَةِ، فَكَثِيرًا مَا يَأْتُونَ بِمِثْلِ هَذَا.

L41634 If they claim consensus, they are contradicted by what has been narrated to us from Ibn Umar through the most authentic chain of transmission. We do not know of any statement of theirs attributed to a single Companion whatsoever, except for a narration whose place in our primary sources we are currently unable to determine.

فَإِنِ ادَّعَوُا الْإِجْمَاعَ أَكْذَبَهُمْ مَا رُوِّينَا عَنِ ابْنِ عُمَرَ بِأَصَحِّ طَرِيقٍ، وَمَا نَعْلَمُ قَوْلَهُمْ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ أَصْلًا، إِلَّا رِوَايَةً لَا نَقِفُ الْآنَ عَلَى مَوْضِعِهَا مِنْ أُصُولِنَا.

L41635 It is narrated from Abu Burda that he had a daughter by a free woman and a daughter by an umm walad. The daughter of the free woman would accuse

[24] **Hadith references (L41628):** Sahih al-Bukhari 6858; Mishkat al-Masabih 3351.

the daughter of the umm walad of fornication, so he freed her mother and said to the daughter of the free woman: “Accuse her now if you can?” As for the group of Followers we previously mentioned, they opposed them [the earlier scholars] in most of their opinions. Regarding the narration from Abu Burda—there is no basis for their argument in it, for it does not state that there is no prescribed punishment for her accuser. Perhaps the judge of his time did not enforce the prescribed punishment for accusing an umm walad—thus their reliance on this is invalid.

عَنْ أَبِي بُرْدَةَ - أَنَّهُ كَانَتْ لَهُ ابْنَةٌ مِنْ حُرَّةٍ، وَابْنَةٌ مِنْ أُمِّ وَلَدٍ، فَكَانَتْ ابْنَةُ الْحُرَّةِ تَقْذِفُ ابْنَةَ أُمِّ الْوَلَدِ، فَأَعْتَقَ أُمَّهَا، وَقَالَ لِابْنَةِ الْحُرَّةِ: اقْذِفِيهَا الْآنَ إِنْ قَدِرْتِ؟ وَعَنْ نَفَرٍ مِنْ التَّابِعِينَ قَدْ ذَكَرْنَاهُمْ خَالَفُوهُمْ فِي أَكْثَرِ أَقْوَالِهِمْ: فَأَمَّا الرِّوَايَةُ عَنْ أَبِي بُرْدَةَ - فَلَا مُتَعَلَّقَ لَهُمْ بِهَا، لِأَنَّهُ لَيْسَ فِيهَا أَنَّهُ لَا حَدَّ فِيهَا عَلَى قَاذِفِهَا، وَلَعَلَّ حَاكِمَ وَقْتِهِ كَانَ لَا يَرَى الْحَدَّ عَلَى قَاذِفِ أُمِّ الْوَلَدِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا.

L41636 As for their statement, “There is no inviolability for a male slave or a female slave,” this is foolish speech, for a believer possesses immense sanctity. Many an uncouth slave may be better than a Qurayshi leader in the sight of Allah, the Exalted. Allah said: “O mankind, We have created you from a male and a female” [Al-Hujurat: 13] - continuing to His words - “Indeed, the most noble of you in the sight of Allah is the most righteous among you” [Al-Hujurat: 13].[25]

وَأَمَّا قَوْلُهُمْ " لَا حُرْمَةَ لِلْعَبْدِ وَلَا لِلْأَمَةِ " فَكَلَامٌ سَخِيفٌ، وَالْمُؤْمِنُ لَهُ حُرْمَةٌ عَظِيمَةٌ، وَرُبَّ عَبْدٍ جِلْفٍ خَيْرٌ مِنْ خَلِيفَةٍ قُرَشِيٍّ عِنْدَ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى} [الحجرات: ١٣] الْآيَةَ إلَى قَوْلِهِ {إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ} [الحجرات: ١٣] .

L41637 All people, at birth, are children of Adam and his spouse. Then people become distinguished through their moral character and faiths - not by their lineages, not by their physical attributes.

وَالنَّاسُ كُلُّهُمْ فِي الْوِلَادَةِ أَوْلَادُ آدَمَ وَامْرَأَتِهِ، ثُمَّ تَفَاضَلَ النَّاسُ بِأَخْلَاقِهِمْ وَأَدْيَانِهِمْ، لَا بِأَعْرَاقِهِمْ، وَلَا بِأَبْدَانِهِمْ.

L41638–41640 The Messenger of Allah (peace be upon him) said: “Indeed, your blood, your wealth, your honor, and your flesh are sacred to you.” He (peace be upon him) equated the sanctity of honor for the free person and the slave in explicit textual terms, particularly in this matter. Do the Hanafis—who mandate qisas against a free person for [harming] a slave and against a free woman for [harming] a female slave—thereby affirm the equal inviolability of both?

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَسَوَّى - عَلَيْهِ السَّلَامُ - بَيْنَ حُرْمَةِ الْعِرْضِ مِنْ الْحُرِّ وَالْعَبْدِ نَصًّا، وَلَا سِيَّمَا الْحَنَفِيُّونَ الْمُوجِبُونَ الْقَوَدَ عَلَى الْحُرِّ لِلْعَبْدِ، وَعَلَى الْحُرَّةِ لِلْأَمَةِ، فَقَدْ أَثْبَتُوا حُرْمَتَهُمَا سَوَاءً؟

L41641 Ali said: “There are differing opinions among them regarding these issues. If a man says to his wife: ’You committed adultery during your disbelief,’ or says: ’You committed adultery while you were a slave’...”

قَالَ عَلِيٌّ: أَقْوَالٌ لَهُمْ فِي هَذِهِ الْمَسَائِلِ، قَدْ اُخْتُلِفَ فِيهَا، فَمَنْ قَالَ لِامْرَأَتِهِ: زَنَيْت فِي كُفْرِك أَوْ قَالَ: زَنَيْت وَأَنْتِ أَمَةٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ أَنَّهُ سَأَلَ ابْنَ شِهَابٍ عَنْ رَجُلٍ

[25] **Qur’an references (L41636):** Qur’an 49:13 (Al-Hujurat).

Abdullah ibn Rabiʿ narrated to us, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb: Yūnus informed me that he asked Ibn Shihāb about a man who accused his wife of adultery, saying to her: "You committed adultery while you were a slave or a Christian woman?" Ibn Shihāb replied: "If he does not produce clear evidence for this, he is subjected to the hadd punishment of eighty lashes."

قَذَفَ امْرَأَتَهُ فَقَالَ لَهَا: زَنَيْت وَأَنْتِ أَمَةٌ أَوْ نَصْرَانِيَّةٌ؟ فَقَالَ ابْنُ شِهَابٍ: إنْ لَمْ يَأْتِ عَلَى ذَلِكَ بِالْبَيِّنَةِ جُلِدَ الْحَدَّ ثَمَانِينَ.

L41642 And according to this—Abu Hanifah, Sufyan, Malik, al-Awza'i, and their companions state.

وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَمَالِكٌ، وَالْأَوْزَاعِيُّ، وَأَصْحَابُهُمْ.

L41643 Al-Shāfiʿī and his followers said: There is no ḥadd upon him.

وَقَالَ الشَّافِعِيُّ، وَأَصْحَابُهُ: لَا حَدَّ عَلَيْهِ.

L41644 Abu Hanifah, his disciples, Sufyan, al-Shafi'i, and his disciples ruled regarding one who says, "You [masculine verb] committed adultery when you [feminine] were a minor," or says, "You [masculine verb] committed adultery when you [feminine] were compelled under duress," that no ḥadd punishment applies.

قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: فِيمَنْ قَالَ: زَنَيْت وَأَنْتِ صَغِيرَةٌ، أَوْ قَالَ: زَنَيْت وَأَنْتِ مُكْرَهَةٌ أَنْ لَا حَدَّ.

L41645 Malik said: "The prescribed punishment is also incumbent upon him for his statement: 'You committed adultery while you were coerced.'" Abu Muhammad said: As for the position of Abu Hanifah and his companions, it is evidently contradictory, because they assert there is no prescribed punishment for one who accuses an enslaved woman, a non-Muslim woman, or a female minor of adultery. Yet they made a distinction here by imposing the punishment on one who says: "You committed adultery when you were an enslaved woman," while refraining from imposing it on one who says: "You committed adultery when you were a female minor."

وَقَالَ مَالِكٌ: عَلَيْهِ الْحَدُّ أَيْضًا فِي قَوْلِهِ: زَنَيْت وَأَنْتِ مُكْرَهَةٌ؟ قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُمْ يَقُولُونَ: لَا حَدَّ عَلَى قَاذِفِ الْأَمَةِ، وَالْكَافِرَةِ، وَالصَّغِيرَةِ - ثُمَّ فَرَّقُوا هَاهُنَا فَحَدُّوا مَنْ قَالَ: زَنَيْت وَأَنْتِ أَمَةٌ، وَلَمْ يَحُدُّوا مَنْ قَالَ: زَنَيْت وَأَنْتِ صَغِيرَةٌ.

L41646 "If they say, 'He accused her of adultery only when she was a free Muslim woman?'"

فَإِنْ قَالُوا: إنَّمَا قَذَفَهَا وَهِيَ حُرَّةٌ مُسْلِمَةٌ؟

L41647 It was said: And likewise, he accused her of adultery only while she was an adult.

قِيلَ: وَكَذَلِكَ إنَّمَا قَذَفَهَا وَهِيَ بَالِغٌ.

L41648 If they say: "Indeed, the coerced woman is not an adulteress, and similarly the minor female [is not]?" They are told: "Then now, the ḥadd punishment becomes obligatory upon him when his lie is confirmed with certainty."

فَإِنْ قَالُوا: إنَّ الْمُكْرَهَةَ لَيْسَتْ زَانِيَةً، وَكَذَلِكَ الصَّغِيرَةُ؟ قِيلَ لَهُمْ: فَالْآنَ يُوجَبُ عَلَيْهِ الْحَدُّ إذَا صَحَّ كَذِبُهُ بِيَقِينٍ.

L41649 **On the issue of falsely accusing a minor, an insane person,**

[مَسْأَلَة قَذف الصَّغِير أَوْ الْمَجْنُون أَوْ الْمَجْبُوب وَغَيْرهمْ]

٢٢٣٣ - مَسْأَلَةٌ: فِيمَنْ قَذَفَ صَغِيرًا أَوْ مَجْنُونًا، أَوْ مُكْرَهًا، أَوْ مَجْبُوبًا، أَوْ رَتْقَاءَ، أَوْ قَرْنَاءَ، أَوْ بِكْرًا، أَوْ عِنِّينًا؟ قَالَ أَبُو مُحَمَّد: أَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا ابْنُ وَضَّاحٍ أَنَا سَحْنُونٌ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضٍ اللَّيْثِيُّ عَنْ ابْنِ هِشَامٍ أَنَّهُ قَالَ فِي صَبِيَّةٍ افْتُرِيَ عَلَيْهَا أَوْ افْتَرَتْ؟ قَالَ: إذَا قَارَبَتْ الْحَيْضَ أَوْ مَسَّهَا الرَّجُلُ جُلِدَ قَاذِفُهَا الْحَدَّ.

وَقَالَ مَالِكٌ: إذَا بَلَغَ مِثْلُهَا أَنْ يُوطَأَ: جُلِدَ قَاذِفُهَا الْحَدَّ، وَكَذَلِكَ يُجْلَدُ قَاذِفُ الْمَجْنُونِ - وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، وَالْحَسَنُ بْنُ حَيٍّ: لَا حَدَّ عَلَى قَاذِفِ صَغِيرٍ، وَلَا مَجْنُونٍ؟

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ. وَقَدْ قُلْنَا: إنَّ " الْإِحْصَانَ " فِي لُغَةِ الْعَرَبِ: هُوَ الْمَنْعُ، وَبِهِ سُمِّيَ الْحِصْنُ حِصْنًا، يُقَالُ: دِرْعٌ حَصِينَةٌ - وَقَدْ أَحْصَنَ فُلَانٌ مَالَهُ: إذَا أَحْرَزَهُ وَمَنَعَ مِنْهُ. قَالَ تَعَالَى {لا يُقَاتِلُونَكُمْ جَمِيعًا إلا فِي قُرًى مُحَصَّنَةٍ} [الحشر: ١٤] . وَالصِّغَارُ: مُحَصَّنُونَ بِمَنْعِ اللَّهِ تَعَالَى لَهُمْ مِنْ الزِّنَى، وَبِمَنْعِ أَهْلِيهِمْ، وَكَذَلِكَ الْمَجَانِينُ - وَكَذَلِكَ الْمَجْبُوبُ، وَالرَّتْقَاءُ، وَالْقَرْنَاءُ، وَالْعِنِّينُ - وَقَدْ يَكُونُ كُلُّ هَؤُلَاءِ مُحَصَّنِينَ بِالْعِفَّةِ. وَأَمَّا الْبِكْرُ وَالْمُكْرَهُ فَمُحَصَّنَانِ بِالْعِفَّةِ، فَإِذَا كُلُّ هَؤُلَاءِ يَدْخُلُونَ فِي جُمْلَةِ " الْمُحْصَنَاتِ " بِمَنْعِ الْفُرُوجِ مِنْ الزِّنَى، فَعَلَى قَاذِفِهِمْ الْحَدُّ، وَلَا سِيَّمَا الْقَائِلُونَ: إنَّ الْحُرِّيَّةَ إحْصَانٌ، وَكُلَّ حُرَّةٍ مُحْصَنَةٌ، فَإِنَّ الصَّغِيرَةَ الْحُرَّةَ، وَالْمَجْنُونَةَ،

a castrated individual, or others besides them of unlawful sexual intercourse (zina).

L41650–41652 2233 - Issue: Regarding one who falsely accuses of unchastity a minor, an insane person, a coerced person, a castrated person, a woman with a congenitally closed vagina, a woman with an intact hymen, a virgin, or an impotent man? Abu Muhammad said: I am ʿAbdullāh ibn Rabīʿ, I am Ibn Mufarrij, I am Qāsim ibn Aṣbagh, I am Ibn Waddāḥ, I am... Sahnun said: I am Ibn Wahb. Yazid ibn Iyad al-Laythi informed me on the authority of Ibn Hisham, who was asked concerning a young girl: "Was she falsely accused, or did she falsely accuse?" He replied: "If she approaches menstruation or a man touched her, the accuser is to be flogged with the ḥadd."

L41653 Malik said: When a girl reaches the age of lawful intercourse, the one who falsely accuses her of zinā is subjected to the ḥadd of flogging. Likewise, the one who falsely accuses an insane person of zinā is flogged. However, Abū Ḥanīfah, al-Shāfiʿī, their followers, and al-Ḥasan ibn Ḥayy said: There is no ḥadd upon one who falsely accuses a minor or an insane person of zinā.

L41654 Ali said: Allah the Exalted stated, {And those who accuse protected women} [An-Nur: 4], the verse. We have stated: "Al-Iḥṣān" in the Arabic language denotes protection, and the fortress is termed ḥiṣn for this reason. It is said: "A fortified shield"—and when someone safeguards their wealth, it is said: "He has fortified his wealth," meaning he secured it. Allah the Exalted said: {They will not fight you collectively except within fortified towns} [Al-Hashr: 14]. Minors are protected as Allah prevents fornication concerning them and through their guardians' restraint. Similarly, the insane, the eunuch, the woman with an imperforate hymen, the woman with a vaginal septum, and the sexually incapacitated man—all these may be protected by their chastity. As for the virgin and the coerced, they are protected through such chastity. Thus, all these individuals fall under the category of "protected women" due to the safeguarding of their private parts from illicit intercourse. Therefore, the prescribed punishment applies to their slanderers, particularly according to those who assert: "Free status constitutes protection," and every free woman is protected. Indeed, the minor free girl, the insane woman, the

وَالرَّتْقَاءَ، وَسَائِرَ مَنْ ذَكَرْنَاهُمْ مُحَصَّنُونَ، وَإِسْقَاطُ الْحَدِّ عَنْ قَاذِفِهِمْ خَطَأٌ مَحْضٌ لَا إِشْكَالَ فِيهِ.

فَمَا عَلِمْنَا لَهُمْ حُجَّةً أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّ مَنْ قَذَفَ مَنْ ذَكَرْنَا فَقَدْ تَيَقَّنَّا كَذِبَهُ؟ فَقُلْنَا لَهُمْ: صَدَقْتُمْ، وَالْآنَ حَقًّا وَجَبَ الْحَدُّ عَلَى الْقَاذِفِ، إذْ قَدْ صَحَّ كَذِبُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

قَالَ أَبُو مُحَمَّد: وَهَذَا مَكَانٌ عَظُمَتْ فِيهِ غَفْلَةُ مَنْ أَغْفَلَهُ، لِأَنَّ الْقَذْفَ لَا يَخْلُو مِنْ أَحَدِ أَوْجُهٍ ثَلَاثَةٍ لَا رَابِعَ لَهَا، إمَّا أَنْ يَكُونَ صَادِقًا، وَقَدْ صَحَّ صِدْقُهُ فَلَا خِلَافَ فِي أَنَّهُ لَا حَدَّ عَلَيْهِ - أَوْ يَكُونَ مُمْكِنًا صِدْقُهُ، وَمُمْكِنًا كَذِبُهُ فَهَذَا عَلَيْهِ الْحَدُّ بِلَا خِلَافٍ لِإِمْكَانِ كَذِبِهِ فَقَطْ وَلَوْ صَحَّ صِدْقُهُ لَمَا حُدَّ - أَوْ يَكُونُ كَاذِبًا قَدْ صَحَّ كَذِبُهُ، فَالْآنَ حَقًّا طَابَتْ النَّفْسُ عَلَى وُجُوبِ الْحَدِّ عَلَيْهِ بِيَقِينٍ، إذْ الْمَشْكُوكُ فِي صِدْقِهِ أَوْ كَذِبِهِ لَا بُدَّ لَهُ مِنْ أَحَدِهِمَا ضَرُورَةً، فَلَوْ كَانَ صَادِقًا لَمَا صَحَّ عَلَيْهِ حَدٌّ أَصْلًا - فَصَحَّ يَقِينًا، إذْ قَدْ سَقَطَ الْحَدُّ عَنْ الصَّادِقِ أَنَّهُ بَاقٍ عَلَى الْكَذِبِ، إذْ لَيْسَ إلَّا صَادِقًا أَوْ كَاذِبًا، وَهَذَا فِي غَايَةِ الْبَيَانِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَة كَافِرٌ قَذَفَ مُسْلِمًا أَوْ كَافِرًا]

٢٢٣٤ - مَسْأَلَةٌ: كَافِرٌ قَذَفَ مُسْلِمًا أَوْ كَافِرًا؟ قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا وُجُوبَ الْحَدِّ عَلَى مَنْ قَذَفَ كَافِرًا فَإِذَا قَذَفَ الْكَافِرُ مُسْلِمًا، قَدْ ذَكَرْنَا فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا

L41654 woman with an imperforate hymen, and all others we have mentioned are protected. Exempting their slanderers from the prescribed punishment constitutes a sheer error without any ambiguity.[26]

L41655 So we know no argument for them beyond [the fact] that they said: "Whoever slanders those we have mentioned, we have ascertained with certainty his falsehood?" We responded to them: "You have spoken truthfully—and now, in truth, the hadd punishment becomes obligatory upon the slanderer, since his falsehood has been verified—and with Allah, the Exalted, lies all attainment of correctness?"

L41656–41658 And this is a matter wherein the negligence of those who overlooked it is grave, for false accusation (qadhf) cannot exist except within one of three categories with no fourth: Either the accuser is truthful with confirmed veracity - here there is no disagreement that no ḥadd applies to him; or his claim could potentially be true or false - here the ḥadd is unanimously applied solely due to the mere possibility of his falsehood (for were his truthfulness confirmed, he would not be punished); or he is a confirmed liar - here the mind is now indeed at ease regarding the certain obligation of ḥadd upon him. As for one whose truthfulness or falsehood remains doubtful, he must inevitably... [text incomplete] One of the two is necessarily the case. If he were truthful, no ḥadd punishment would apply to him whatsoever—thus it is confirmed with certainty, since the punishment is lifted from the truthful one while acknowledging his persistence in lying, given there exists only truthfulness or falsehood. This represents the utmost clarity, and all praise belongs to Allah, Lord of the worlds.

L41659 **Issue regarding a disbeliever who falsely accuses a Muslim or a disbeliever of unchastity.**

L41660 2234 - Issue: What is the ruling if a non-Muslim falsely accuses a Muslim or another non-Muslim of unchastity? Abu Muhammad said: We have previously mentioned the obligation of imposing the prescribed punishment on one who falsely accuses a non-Muslim of unchastity. If a non-Muslim

[26] **Qur'an references (L41654):** Qur'an 24:4 (An-Nur); Qur'an 59:14 (Al-Hashr).

falsely accuses a Muslim of unchastity, we have stated earlier in this book the obligation to judge non-Muslims by the laws of Islam, based on Allah's saying: "And judge between them by what Allah has revealed" [Al-Mā'idah 5:49].[27]

وُجُوبَ الْحُكْمِ عَلَى الْكُفَّارِ بِحُكْمِ الْإِسْلَامِ، لِقَوْلِ اللَّهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

L41661 And by the words of Allah, the Exalted: "Fight them until there is no persecution and the religion is entirely devoted to Allah" [Al-Anfal 8:39].[28]

وَبِقَوْلِهِ تَعَالَى {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

L41662 We have mentioned the obligation to kill any disbeliever who insults a Muslim due to their violation of the covenant and annulment of the dhimma, based on Allah's statement: "until they pay the jizyah with willing submission while they are humbled" [Quran 9:29]. Thus, Allah has mandated their humiliation. If they depart from this state of humiliation, there is no dhimma for them. When there is no dhimma, it is lawful to kill them, enslave them, and their wealth: it becomes lawful. If they insult a Muslim, they have departed from humiliation and have humiliated the Muslim. The dhimma is thereby nullified for whoever among them commits this act, and there is no dhimma for him.

وَقَدْ ذَكَرْنَا وُجُوبَ قَتْلِ مَنْ سَبَّ مُسْلِمًا مِنْ الْكُفَّارِ لِنَقْضِهِمْ الْعَهْدَ وَفَسْخِهِمْ الذِّمَّةَ، لِقَوْلِ اللَّهِ تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] . فَافْتَرَضَ اللَّهُ تَعَالَى إصْغَارَهُمْ، فَإِذَا خَرَجُوا عَنْ الصَّغَارِ فَلَا ذِمَّةَ لَهُمْ، وَإِذَا لَمْ تَكُنْ لَهُمْ ذِمَّةٌ فَقَتْلُهُمْ وَسَبْيُهُمْ، وَأَمْوَالُهُمْ: حَلَالٌ، وَإِذَا سَبُّوا مُسْلِمًا فَقَدْ خَرَجُوا عَنْ الصَّغَارِ، وَأَصْغَرُوا الْمُسْلِمَ، فَقَدْ بَرِئَتْ الذِّمَّةُ مِمَّنْ فَعَلَ ذَلِكَ مِنْهُمْ، وَلَا ذِمَّةَ لَهُ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْحَاقُ بْنُ خَالِدٍ، قَالَ: سَأَلْت الشَّعْبِيَّ عَنْ يَهُودِيَّةٍ افْتَرَتْ عَلَى مُسْلِمٍ؟ قَالَ: تُضْرَبُ الْحَدَّ.

Muhammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us; Isḥāq ibn Khālid said: I asked al-Shaʿbī about a Jewish woman who slandered a Muslim. He replied: She is to be subjected to the ḥadd punishment.[29]

L41663 And through him—to Waki'—Sufyan al-Thawri narrated to us from Tariq ibn 'Abd al-Rahman, who said: "I witnessed al-Sha'bi striking a Christian who falsely accused a Muslim of unchastity: he flogged him eighty—why?" Abu Muhammad said: "As for the ḥadd—it is obligatory without doubt, for it is Allah's decree against every accuser of unchastity. The execution is also obligatory, as we mentioned, due to the breach of the dhimma covenant, whether the offender is a man or a woman—they must both be executed,

وَبِهِ - إلَى وَكِيعٍ حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: شَهِدْت الشَّعْبِيَّ ضَرَبَ نَصْرَانِيًّا قَذَفَ مُسْلِمًا، فَجَلَدَهُ ثَمَانِينَ؟ قَالَ أَبُو مُحَمَّد: أَمَّا الْحَدُّ - فَوَاجِبٌ بِلَا شَكٍّ، لِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى عَلَى كُلِّ قَاذِفٍ، وَالْقَتْلُ وَاجِبٌ كَمَا ذَكَرْنَا لِنَقْضِ الذِّمَّةِ سَوَاءٌ كَانَ رَجُلًا أَوْ امْرَأَةً لَا بُدَّ مِنْ قَتْلِهِمَا، إلَّا أَنْ يُسْلِمَا فَيُتْرَكَا عَنْ الْقَتْلِ لَا عَنْ الْحَدِّ.

[27] **Qur'an references (L41660):** Qur'an 5:49 (Al-Ma'idah).
[28] **Qur'an references (L41661):** Qur'an 8:39 (Al-Anfal).
[29] **Qur'an references (L41662):** Qur'an 9:29 (At-Tawbah).

unless they embrace Islam, in which case they are exempted from execution but not from the ḥadd."

L41664 If someone were to say: Why did you not detain the woman and refrain from killing her, given the Messenger of Allah's prohibition (peace be upon him) against killing women? Since she violated her covenant by insulting Muslims, she has reverted to enemy status. If she reverts to this status, no covenant applies to her, and the sole recourse is enslavement?

فَإِنْ قَالَ قَائِلٌ: هَلَّا أَوْقَفْتُمْ الْمَرْأَةَ وَلَمْ تَقْتُلُوهَا، لِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ قَتْلِ النِّسَاءِ؟ وَلِأَنَّهَا إذَا نَقَضَتْ ذِمَّتَهَا بِسَبِّ الْمُسْلِمِ فَقَدْ عَادَتْ حَرْبِيَّةً، وَإِذَا عَادَتْ حَرْبِيَّةً فَلَا ذِمَّةَ لَهَا فَلَيْسَ عَلَيْهَا إلَّا الِاسْتِرْقَاقُ؟

L41665–41666 We said—and with Allah, the Exalted, lies all success—: The ruling concerning belligerents prior to entering a covenant differs from their ruling after violating their covenant. For their ruling before covenanting is combat. When we overpower them, the options are to release without ransom, accept ransom, kill, or maintain their protected status under the covenant—this applies to men. Similarly, it applies to women except killing. As for after violating the covenant, there remains only killing or embracing Islam exclusively, based on Allah's statement: {If they break their oaths after their covenant and defame your religion, then fight the leaders of disbelief until they desist} [9:12]. Thus Allah, the Exalted, obligated fighting them after their oath-breaking until they completely abandon their disbelief. It is impermissible here to limit their cessation to partial renunciation of their disbelief instead of total abandonment, as no evidence necessitates this. We are certain that if they desist from disbelief, their bloodshed becomes forbidden. Neither textual proof nor consensus exists indicating that partial cessation from some aspects of their disbelief while persisting in others would restore their right to preservation.[30]

قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ حُكْمَ الْحَرْبِيِّ قَبْلَ التَّذَمُّمِ غَيْرُ حُكْمِهِ بَعْدَ نَقْضِهِمْ الذِّمَّةَ، لِأَنَّ حُكْمَهُمْ قَبْلَ التَّذَمُّمِ الْمُقَاتَلَةُ، فَإِذَا قَدَرْنَا عَلَيْهِمْ، فَإِمَّا الْمَنُّ وَإِمَّا الْفِدَاءُ، وَإِمَّا الْقَتْلُ، وَإِمَّا الْإِبْقَاءُ عَلَى الذِّمَّةِ - هَذَا فِي الرِّجَالِ، وَكَذَلِكَ فِي النِّسَاءِ حَاشَ الْقَتْلَ، وَأَمَّا بَعْدَ نَقْضِ الذِّمَّةِ فَلَيْسَ إلَّا الْقَتْلُ، أَوْ الْإِسْلَامُ فَقَطْ، لِقَوْلِ اللَّهِ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] فَافْتَرَضَ اللَّهُ تَعَالَى قِتَالَهُمْ بَعْدَ نَكْثِ أَيْمَانِهِمْ مِنْ بَعْدِ عَهْدِهِمْ حَتَّى يَنْتَهُوا - وَلَا يَجُوزُ أَنْ يُخَصَّ الِانْتِهَاءُ هَاهُنَا عَنْ بَعْضِ مَا هُمْ عَلَيْهِ دُونَ جَمِيعِ مَا هُمْ عَلَيْهِ، إذْ لَا دَلِيلَ يُوجِبُ ذَلِكَ، وَنَحْنُ عَلَى يَقِينٍ أَنَّنَا إذَا انْتَهَوْا عَنْ الْكُفْرِ فَقَدْ حُرِّمَتْ دِمَاؤُهُمْ، وَلَا نَصَّ مَعَنَا وَلَا إجْمَاعَ عَلَى أَنَّهُمْ إنْ انْتَهَوْا عَنْ بَعْضِ مَا هُمْ عَلَيْهِ دُونَ بَعْضٍ عَادُوا إلَى حُكْمِ الِاسْتِبْقَاءِ.

L41667 We have thoroughly examined this in the "Book of Jihad" within multiple sections of our legal code (*dīwān*). The ruling for the woman in this case is equivalent to her ruling if she commits an act warranting capital punishment after the covenant of protection—such as adultery after attaining marital protection (*iḥṣān*), murder, or other similar offenses.

وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْجِهَادِ " فِي مَوَاضِعَ مِنْ دِيوَانِنَا وَحُكْمُ الْمَرْأَةِ فِي ذَلِكَ حُكْمُهَا إذَا أَتَتْ بَعْدَ الذِّمَّةِ بِشَيْءٍ يُبِيحُ الدَّمَ مِنْ زِنًى بَعْدَ إحْصَانٍ، وَقَتْلِ نَفْسٍ، أَوْ غَيْرِ ذَلِكَ.

L41668 As for when a disbeliever slanders another disbeliever, is only the hadd punishment applicable, based on the general ruling of Allah's command re-

وَأَمَّا إذَا قَذَفَ الْكَافِرُ كَافِرًا فَلَيْسَ إلَّا الْحَدُّ فَقَطْ، عَلَى عُمُومِ أَمْرِ اللَّهِ تَعَالَى فِيمَنْ قَذَفَ مُحْصَنَةً بِنَصِّ الْقُرْآنِ؟

[30] **Qur'an references (L41666):** Qur'an 9:12 (At-Tawbah).

garding one who slanders a chaste woman, as established by the explicit text of the Qur'an?

L41669 Abū Muḥammad—may Allah have mercy on him—said: It is astonishing that someone would hold that there is no ḥadd punishment for a disbeliever who fornicates with a Muslim woman, nor for a disbelieving woman when a Muslim fornicates with her, and would not apply the ḥadd punishment to a disbeliever for drinking wine—yet would apply the ḥadd punishment to a disbeliever who falsely accuses a Muslim man or woman of fornication (qadhf). I wonder what it is that distinguishes between the rulings of these ḥadd punishments according to them?

L41670 If they say, "Is the prescribed punishment for *qadhf* (false accusation of unchastity) a right belonging to the Muslim?"

L41671 We said to them: Also state that the *ḥadd* punishment for a disbeliever who fornicates with a Muslim woman is a right owed to that Muslim woman's father, her husband, and her mother—with no distinction. How astonishing it is that those who would cut off a disbeliever's hand for stealing from another disbeliever do not impose the *ḥadd* punishment on him for falsely accusing a Muslim of fornication! These are absurdities without parallel. They have contradicted the Quran's explicit texts, abandoned the *qiyās* they profess to uphold and argue by, arbitrarily differentiating between these rulings without analogizing some to others—all without evidence. Success comes only from Allah, the Exalted.

L41672 **A legal case concerning one who says to a woman, "Your husband did not find you to be a virgin [at the time of marriage]."**

L41673–41675 2235 - Issue: Concerning one who says to a woman, "Did your husband not find you a virgin?" Abu Muhammad—may Allah have mercy on him—said: The people have disagreed regarding this. A group said: There is no legal punishment (ḥadd) for that, nor is it considered qadhf (false accusation of adultery). Similarly, if a man makes such a statement to a woman he married, liʿān is not imposed on him because of this.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْعَجَبُ مِمَّنْ يَرَى أَنَّهُ لَا حَدَّ عَلَى كَافِرٍ إذَا زَنَى بِمُسْلِمَةٍ، وَلَا عَلَى كَافِرَةٍ إذَا زَنَى بِهَا مُسْلِمٌ، وَلَا يَرَى الْحَدَّ عَلَى كَافِرٍ فِي شُرْبِ الْخَمْرِ - ثُمَّ يَرَى الْحَدَّ عَلَى الْكَافِرِ إذَا قَذَفَ مُسْلِمًا أَوْ مُسْلِمَةً، فَلَيْتَ شِعْرِي مَا الَّذِي فَرَّقَ بَيْنَ أَحْكَامِ هَذِهِ الْحُدُودِ عِنْدَهُمْ؟

فَإِنْ قَالُوا: إنَّ الْحَدَّ فِي الْقَذْفِ حَقٌّ لِلْمُسْلِمِ؟

قُلْنَا لَهُمْ: وَقُولُوا أَيْضًا: إنَّ حَدَّ الْكَافِرِ إذَا زَنَى بِمُسْلِمَةٍ حَقٌّ لِأَبِي تِلْكَ الْمُسْلِمَةِ، وَلِزَوْجِهَا، وَأُمِّهَا وَلَا فَرْقَ - وَالْعَجَبُ أَيْضًا مِمَّنْ قَطَعَ يَدَ الْكَافِرِ إذَا سَرَقَ مِنْ كَافِرٍ، ثُمَّ لَا يَحُدُّهُ لَهُ إذَا قَذَفَهُ، وَهَذِهِ عَجَائِبُ لَا نَظِيرَ لَهَا؟ خَالَفُوا فِيهَا نُصُوصَ الْقُرْآنِ، وَتَرَكُوا الْقِيَاسَ الَّذِي إلَيْهِ يَدْعُونَ، وَبِهِ يَحْتَجُّونَ، إذْ فَرَّقُوا بَيْنَ هَذِهِ الْأَحْكَامِ، وَلَمْ يَقِيسُوا بَعْضَهَا عَلَى بَعْضٍ بِغَيْرِ دَلِيلٍ فِي كُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِامْرَأَةٍ لَمْ يَجِدْك زَوْجُك عَذْرَاءَ]

٢٢٣٥ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِامْرَأَةٍ: لَمْ يَجِدْك زَوْجُك عَذْرَاءَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِي ذَلِكَ وَلَيْسَ قَذْفًا. وَكَذَلِكَ لَوْ قَالَ رَجُلٌ لِامْرَأَةٍ تَزَوَّجَهَا، فَلَا يُلَاعِنُ بِهَذَا.

وَقَالَتْ طَائِفَةٌ: هُوَ قَذْفٌ، وَيُحَدُّ، وَيُلَاعِنُ الزَّوْجَ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: احْتَجَّ مَنْ رَآهُ قَذْفًا بِمَا نا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَنْصُورٍ الطُّوسِيُّ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدٍ نا أَبِي عَنْ ابْنِ إِسْحَاقَ قَالَ: وَذَكَرَ طَلْحَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «تَزَوَّجَ رَجُلٌ مِنْ الْأَنْصَارِ امْرَأَةً مِنْ بَنِي الْعَجْلَانِ فَبَاتَ عِنْدَهَا لَيْلَةً فَلَمَّا أَصْبَحَ لَمْ يَجِدْهَا عَذْرَاءَ فَرَفَعَ شَأْنَهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَا الْجَارِيَةَ، فَقَالَتْ: بَلْ كُنْت عَذْرَاءَ، فَأَمَرَ بِهِمَا فَتَلَاعَنَا، وَأَعْطَاهَا الْمَهْرَ» قَالَ الْبَزَّارُ: لَا نَعْلَمُهُ رُوِيَ إلَّا مِنْ هَذَا الطَّرِيقِ؟

A group maintained: "It constitutes an accusation of unchastity (qadhf) incurring the prescribed penalty (ḥadd). Does the husband then undertake the oath of imprecation (liʿān)?"

Abū Muḥammad—may Allāh have mercy on him—said: Those who regarded it as an accusation of adultery (qadhf) cited the report transmitted by Aḥmad ibn Muḥammad al-Ṭalamankī, who stated: Via Ibn Mufarrij, from Muḥammad ibn Ayyūb, from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār, from Muḥammad ibn Manṣūr al-Ṭūsī, from Yaʿqūb ibn Ibrāhīm ibn Saʿd, from Ubay, via Ibn Isḥāq, who said: He mentioned Ṭalḥa, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "A man from the Anṣār married a woman from Banū al-ʿAjlān. He spent the night with her, and at dawn, he discovered she was not a virgin. He brought her case to the Prophet—peace and blessings of Allāh be upon him. The Prophet summoned the woman, and she declared: 'No, I was a virgin!' He then ordered them to perform liʿān, and granted her the dowry." Al-Bazzār remarked: "Is it not known to be narrated except through this chain?"

قَالَ عَلِيٌّ: وَهَذَا لَيْسَ بِشَيْءٍ لِوَجْهَيْنِ:

أَحَدُهُمَا - أَنَّ ابْنَ إِسْحَاقَ لَمْ يَصِحَّ سَمَاعُهُ لِذَلِكَ مِنْ طَلْحَةَ، فَهُوَ مُنْقَطِعٌ.

Ali said: "This is invalid for two aspects:"

One of them is that Ibn Isḥāq's hearing from Ṭalḥah is not established, thus it is discontinuous.

وَالثَّانِي - أَنَّ طَلْحَةَ هَذَا لَمْ يَنْسُبْهُ وَهُوَ - وَاَللَّهُ أَعْلَمُ - طَلْحَةُ بْنُ عَمْرٍو الْمَكِّيُّ، فَهُوَ الَّذِي يَرْوِي عَنْ أَصْحَابِ ابْنِ عَبَّاسٍ، وَهُوَ مَشْهُورٌ بِالْكَذِبِ، وَإِلَّا فَهُوَ عَلَى كُلِّ حَالٍ مَجْهُولٌ - فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَذَهَابُ الْعُذْرَةِ يَكُونُ بِغَيْرِ الزِّنَى، أَوْ بِغَيْرِ وَطْءٍ كَوَقْعَةٍ، أَوْ غَيْرِ ذَلِكَ، فَلَمَّا لَمْ يَكُنْ ذَهَابُ الْعُذْرَةِ زِنًى لَمْ يَكُنْ الرَّمْيُ بِهِ رَمْيًا، وَلَا قَذْفًا، فَإِذْ لَيْسَ رَمْيًا وَلَا قَذْفًا فَلَا حَدَّ فِيهِ، وَلَا لِعَانَ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْحَدَّ وَاللِّعَانَ بِالزِّنَى، لَا بِمَا سِوَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - هُوَ قَوْلُ أَصْحَابِنَا وَغَيْرِهِمْ - وَبِهَذَا نَقُولُ.

The second point is that this Talḥah's lineage was omitted—and he is, Allah knows best, Talḥah ibn ʿAmr al-Makkī. He is the one who narrates from the companions of Ibn ʿAbbās and is notorious for lying; otherwise, in any case, he is unknown—thus reliance on this report is invalidated. Abū Muḥammad (may Allah have mercy on him) said: The breaking of the hymen may occur without fornication or without intercourse, such as through a fall or other cause. Since the breaking of the hymen is not fornication, accusing someone of this does not constitute a valid accusation of zinā nor a false accusation of fornication. Therefore, as it is neither a valid accusation nor a false accusation, there is no prescribed punishment nor liʿān for it, because Allah the Exalted has ordained the prescribed punishment and liʿān solely for fornication, not for anything else—and success comes only from Allah. This is the opinion of our companions and other scholars, and this is what we uphold.

[مَسْأَلَة التَّعْرِيض هَلْ فِيهِ حَدّ أَوْ تَحْلِيف]

، أَمْ لَا حَدَّ فِيهِ وَلَا تَحْلِيف؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي التَّعْرِيضِ أَفِيه حَدٌّ أَمْ لَا؟ فَقَالَتْ طَائِفَةٌ: فِيهِ حَدُّ الْقَذْفِ كَامِلًا كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّ عُمَرَ كَانَ يَجْلِدُ فِي التَّعْرِيضِ بِالْفَاحِشَةِ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ صَفْوَانَ، وَأَيُّوبَ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ حَدَّ فِي التَّعْرِيضِ، قَالَ ابْنُ أَبِي مُلَيْكَةَ: وَالَّذِي حَدَّهُ عُمَرُ فِي التَّعْرِيضِ - هُوَ عِكْرِمَةُ بْنُ عَامِرِ بْنِ هِشَامِ بْنِ عَبْدِ مَنَافِ بْنِ عَبْدِ الدَّارِ - هَجَا وَهْبَ بْنَ زَمْعَةَ بْنِ الْأَسْوَدِ بْنِ الْمُطَّلِبِ بْنِ أَسَدِ بْنِ عَبْدِ الْعُزَّى فَعَرَّضَ بِهِ فِي هِجَائِهِ.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ سَمِعْت مُعَاوِيَةَ بْنَ صَالِحٍ يُحَدِّثُ عَنْ كَثِيرِ بْنِ الْحَارِثِ عَنْ الْقَاسِمِ مَوْلَى عَبْدِ الرَّحْمَنِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ فِي التَّعْرِيضِ وَقَالَ: إنَّ حِمَى اللَّهِ لَا تُرْعَى حَوَاشِيهُ. وَبِهِ - إلَى ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ، وَعَمْرُو بْنُ الْحَارِثِ، قَالَ مَالِكٌ: عَنْ أَبِي الرِّجَالِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَقَالَ عَمْرٌو: عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَتْ عَمْرَةُ، وَيَحْيَى: إنَّ رَجُلَيْنِ اسْتَبَّا فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ فَقَالَ أَحَدُهُمَا: مَا أَبِي بِزَانٍ، وَلَا أُمِّي بِزَانِيَةٍ، فَاسْتُفْتِيَ فِي ذَلِكَ عُمَرُ بْنُ الْخَطَّابِ؟ فَقَالَ قَائِلٌ: مَدَحَ أَبَاهُ وَأُمَّهُ، وَقَالَ آخَرُونَ: قَدْ كَانَ لِأَبِيهِ وَأُمِّهِ مَدْحٌ سِوَى هَذَا، نَرَى أَنْ يُجْلَدَ الْحَدَّ، فَجَلَدَهُ عُمَرُ ثَمَانِينَ.

L41681–41682 **The issue of equivocal speech: does it entail a prescribed punishment or requiring an oath?**

L41683 Or is there no prescribed punishment nor oath required in it? Abu Muhammad—may Allah have mercy on him—said: People have disagreed regarding insinuation—does it entail a ḥadd punishment or not? A group said: It entails the full ḥadd punishment for false accusation of unchastity (qadhf). As per the narration from Hammam via Ibn Mufarrij, via Ibn al-Aʿrabī, via al-Dabarī, via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father ʿAbd Allāh ibn ʿUmar, who said: "'Umar used to administer lashes for insinuation involving sexual immorality." Via the same chain extending back to ʿAbd al-Razzāq: Ibn Jurayj narrated, reporting that Ibn Abī Mulaykah informed him from Ṣafwān and Ayyūb, from ʿUmar ibn al-Khaṭṭāb, that he imposed the ḥadd punishment for insinuation. Ibn Abī Mulaykah said: "'Umar imposed the ḥadd punishment on ʿIkrimah ibn ʿĀmir ibn Hishām ibn ʿAbd Manāf ibn ʿAbd al-Dār for insinuation—he composed satirical verses against Wahb ibn Zamʿah ibn al-Aswad ibn al-Muṭṭalib ibn Asad ibn ʿAbd al-ʿUzzā and alluded to impropriety in his poetry."

L41684 Abdullah ibn Rabee' narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnoon narrated to us: Ibn Wahb narrated: I heard Muawiyah ibn Muṣāliḥ narrating from Kathir ibn al-Harith from al-Qasim, the freed slave of Abd al-Rahman: that Umar ibn al-Khattab administered lashes for indirect defamation and said, "Indeed, the sanctity of Allah is not safeguarded by merely guarding its peripheries." Through the same chain up to Ibn Wahb: Malik and Amr ibn al-Harith informed me. Malik said: from Abu al-Rijal from his mother Amrah bint Abd al-Rahman. Amr said: from Yahya ibn Sa'eed al-Ansari. Amrah said, and Yahya said: Two men exchanged insults during the time of Umar ibn al-Khattab. One of them said, "My father is not a fornicator, nor is my mother a fornicator." Umar ibn al-Khattab was asked for a legal ruling on this. One person said, "He defended his father and mother." Others said, "His father and mother could have been praised in ways other than this. We believe he should receive the ḥadd punishment of lashes." Umar lashed him eighty times.

وَبِهِ - إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي رَجُلٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ مَسْلَمَةَ بْنَ مَخْلَدٍ جَلَدَ الْحَدَّ فِي التَّعْرِيضِ. وَبِهِ - إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي سَعِيدُ بْنُ أَيُّوبَ عَنْ عَطَاءٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي صَالِحٍ الْغِفَارِيِّ أَنَّ عَمْرَو بْنَ الْعَاصِ جَلَدَ رَجُلًا الْحَدَّ كَامِلًا فِي أَنْ قَالَ لِآخَرَ: يَا ابْنَ ذَاتِ الدَّايَةِ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا غَيْرُ وَاحِدٍ عَنْ جَابِرٍ عَنْ طَرِيفٍ الْعُكْلِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ عَرَّضَ عَرَّضْنَا لَهُ بِالسَّوْطِ.

To Ibn Wahb—a man from the people of knowledge informed me that Maslamah ibn Makhlad administered the hadd punishment by flogging for indirect accusation. To Ibn Wahb—Saʿīd ibn Ayyūb narrated to me, from ʿAṭāʾ, from ʿAmr ibn Dīnār, from Abū Ṣāliḥ al-Ghifārī, that ʿAmr ibn al-ʿĀṣ administered the full hadd punishment upon a man for saying to another: "O son of the midwife!" Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, from multiple narrators, from Jābir, from Ṭarīf al-ʿUklī, from ʿAlī ibn Abī Ṭālib, who said: "Whoever makes an indirect accusation, we will confront him with the whip."

L41685–41686

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمٍ عَنِ ابْنِ سِيرِينَ عَنْ سَمُرَةَ قَالَ: مَنْ عَرَّضَ عَرَّضْنَا لَهُ.

And through him as far as Wakīʿ: Sufyān al-Thawrī reported from ʿĀṣim, from Ibn Sīrīn, from Samurah, who said: "Whoever hints, We will hint toward him."

L41687

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ هِشَامٍ يَقُولُ: قَالَ رَجُلٌ فِي إِمَارَةِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ لِرَجُلٍ: إِنَّكَ تُسَرِّي عَلَى جَارَاتِكَ؟ قَالَ: وَاللَّهِ مَا أَرَدْتُ إِلَّا نَخَلَاتٍ كَانَ يَسْرِقُهُنَّ، فَجَلَدَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ قَالَ أَبُو مُحَمَّدٍ: وَبِإِيجَابِ الْحَدِّ فِي التَّعَرُّضِ يَقُولُ مَالِكٌ - وَهُوَ قَوْلُ رَبِيعَةَ أَيْضًا - وَقَالَ آخَرُونَ لَا حَدَّ فِي التَّعْرِيضِ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرِ بْنِ قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي الرِّجَالِ عَنْ أُمِّهِ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ قَالَ: نَازَعَ رَجُلٌ رَجُلًا؟ فَقَالَ: أَمَّا أَبِي فَلَيْسَ بِزَانٍ، وَلَا أُمِّي بِزَانِيَةٍ، فَرُفِعَ إِلَى عُمَرَ، فَشَاوَرَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: مَا نَرَى عَلَيْهِ حَدًّا، مَدَحَ أَبَاهُ وَأُمَّهُ؟ فَضَرَبَهُ عُمَرُ. وَبِهِ - إِلَى وَكِيعٍ نا الْمَسْعُودِيُّ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: لَا حَدَّ إِلَّا فِي اثْنَيْنِ: أَنْ

Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated to us: Ibn Jurayj said: I heard Muḥammad ibn Hishām say: A man said to another during the caliphate of ʿUmar ibn ʿAbd al-ʿAzīz: "Do you secretly consort with your female neighbors?" The man replied: "By Allah, I intended nothing but some palm trees he was stealing." So ʿUmar ibn ʿAbd al-ʿAzīz imposed the prescribed punishment on him. Abū Muḥammad said: Mālik holds the view that the prescribed punishment is obligatory for indirect insinuation — which is also the opinion of Rabīʿah — while others say there is no prescribed punishment for indirect allusion. As narrated by Muḥammad ibn Saʿīd ibn Nabāt: ʿAbdullāh ibn Naṣr ibn Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Sufyān al-Thawrī narrated from Abū al-Rijāl from his mother ʿAmrah bint ʿAbd al-Raḥmān, who said: A man disputed with another and said: "As for my father, he is not an adulterer, nor is my mother an adulteress." The matter was brought to ʿUmar, who consulted the companions of the Messenger of Allah — peace and blessings be upon him. They said: "We see no prescribed punishment for him—he praised his father and mother!" Yet ʿUmar struck him. And through the same chain up to Wakīʿ: al-Masʿūdī nar-

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rated from al-Qāsim ibn ʿAbd al-Raḥmān, who said: ʿAbdullāh ibn Masʿūd stated: "There is no prescribed punishment except in two cases: when a man accuses a chaste married woman (of adultery) or denies a man's lineage from his father." Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Ibrāhīm ibn Muḥammad from Isḥāq ibn ʿAbdullāh from Makhūl: that Muʿādh ibn Jabal... Abdullah ibn Amr ibn al-As said: The hadd penalty applies only to unambiguous speech permitting no interpretative flexibility. Through the chain reaching Ibrahim ibn Muhammad from his companion from al-Dahhak ibn Muzahim, Ali ibn Abi Talib said: When the hadd penalty depends on expressions like "la'alla" (perhaps) and "'asa" (maybe), it becomes void. Abdullah ibn Rabi' narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, al-Hajjaj ibn al-Minhal narrated to us, Hammad ibn Salama narrated to us from Yunus ibn Ubayd from Humayd ibn Hilal: A man insulted another, saying, "O son of a spotted ewe" - meaning male genitalia. Uthman demanded, "Produce witnesses against him!" The case was escalated to Umar. The man persisted in reviling Uthman, prompting Umar to strike him with a whip while commanding, "Cease mentioning Umar!" Upon learning the man's mother had multiple marriages, Umar averted the hadd penalty from him. Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bashshar (Bindar) narrated to us, Muhammad ibn Ja'far (Ghundar) narrated to us, Shu'ba narrated to us from Abu Maymunah Salamah ibn al-Muhabbaq from Ibn Abi Maymunah from Salamah ibn al-Muhabbaq, who said: "In Medina, I tied my camel. A man untied it, so I struck his chest and said, 'O you who fornicate with your mother!' He took me to Abu Hurayrah, whose wife remarked, 'Had you insinuated indirectly! But you were explicit.' Abu Hurayrah then administered the hadd penalty of eighty lashes. I declared, 'By your life, if I endure eighty lashes while standing, I am indeed patient!'" Muhammad ibn Sa'id ibn Nabat narrated to us: Abdullah ibn Ahmad narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, Isra'il narrated to us from Jabir from Amir al-Sha'bi

يَقْذِفَ مُحْصَنَةً، أَوْ يَنْفِي رَجُلًا مِنْ أَبِيهِ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنْ مَكْحُولٍ: أَنَّ مُعَاذَ بْنَ جَبَلٍ، وَعَبْدَ اللَّهِ بْنَ عَمْرِو بْنِ الْعَاصِ قَالَا جَمِيعًا: لَيْسَ يُحَدُّ إِلَّا فِي الْكَلِمَةِ الَّتِي لَهَا مُصَرَّفٌ، وَلَيْسَ لَهَا إِلَّا وَجْهٌ وَاحِدٌ. وَبِهِ - إِلَى إِبْرَاهِيمَ بْنِ مُحَمَّدٍ عَنْ صَاحِبٍ لَهُ عَنِ الضَّحَّاكِ بْنِ مُزَاحِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا بَلَغَ الْحَدُّ لَعَلَّ وَعَسَى، فَالْحَدُّ مُعَطَّلٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ حُمَيْدِ بْنِ هِلَالٍ أَنَّ رَجُلًا شَاتَمَ رَجُلًا، فَقَالَ: يَا بْنَ شَامَّةَ الْوَذْرِ - يَعْنِي ذُكُورَ الرِّجَالِ - فَقَالَ لَهُ عُثْمَانُ: أَشْهِدْ عَلَيْهِ، أَشْهِدْ عَلَيْهِ؟ فَرَفَعَهُ إِلَى عُمَرَ، فَجَعَلَ الرَّجُلُ يَقَعُ فِي عُثْمَانَ فَيَنَالُ مِنْهُ، فَقَالَ عُمَرُ: أَعْرِضْ عَنْ ذِكْرِ عُثْمَانَ، فَجَعَلَ لَا يَنْزِعُ، فَعَلَاهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: أَعْرِضْ عَنْ ذِكْرِ عُثْمَانَ، وَسَأَلَ عَنْ أُمِّ الرَّجُلِ؟ فَإِذَا هِيَ قَدْ تَزَوَّجَتْ أَزْوَاجًا فَدَرَأَ عَنْهُ الْحَدَّ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بِنْدَارٌ - نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - نا شُعْبَةُ عَنْ أَبِي مَيْمُونَةَ سَلَمَةَ بْنِ الْمُحَبَّقِ نا ابْنُ أَبِي مَيْمُونَةَ نا سَلَمَةُ بْنُ الْمُحَبَّقِ قَالَ: قَدِمْت الْمَدِينَةَ فَعَقَلْت رَاحِلَتِي، فَجَاءَ إِنْسَانٌ فَأَطْلَقَهَا فَجِئْت فَلَهَزْت فِي صَدْرِهِ وَقُلْت: يَا نَائِكَ أُمِّهِ، فَذَهَبَ بِي إِلَى أَبِي هُرَيْرَةَ وَامْرَأَتُهُ قَاعِدَةٌ فَقَالَتْ لِي امْرَأَتُهُ: لَوْ كُنْت عَرَّضْت، وَلَكِنَّك أَحْقَمْت، قَالَ: فَجَلَدَنِي أَبُو هُرَيْرَةَ الْحَدَّ ثَمَانِينَ، فَقُلْت: لَعَمْرُك، إِنِّي يَوْمَ أُجْلَدُ قَائِمًا ثَمَانِينَ سَوْطًا إِنِّي لَصَبُورٌ. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنْ

regarding a man who said to another, “You lead men to your wife” - ruling this as ta‘zir (discretionary punishment), not a hadd. Through Waki‘: Sufyan reported from al-Mughirah from Ibrahim al-Nakha‘i, who said: “Indirect allusions warrant punishment.” Through Waki‘: Sufyan al-Thawri reported from Isma‘il ibn Abi Khalid from Amir al-Sha‘bi: “If told, ’Ten have claimed you,’ no flogging applies.” Hammam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A‘rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated to us, Ibn Jurayj narrated to us. He said: I said to ʿAṭāʾ, “What about indirect allusion?” He replied, “There is no prescribed punishment for it.” ʿAṭāʾ and ʿAmr ibn Dīnār said, “It entails deterrent punishment.” Ibn Jurayj said: I asked him, “Should he be made to swear that he intended such and such?” He answered, “No.” Ibn Jurayj said: I asked ʿAṭāʾ, “A man said to his paternal brother, ’You are not my brother.’” He replied, “He is not subjected to the prescribed punishment.” Through the same chain to ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī regarding a man who told another, “O son of a slave” or “O slave,” then claimed, “I meant ’Abdullāh by it”—al-Zuhrī said: “He is made to swear by Allah that he intended nothing else. No prescribed punishment applies, but if he refuses to swear, he is flogged.” Al-Zuhrī added: “If one says to another, ’O son of the weaver,’ ’O son of the tailor,’ ’O son of the cobbler,’ insulting him through a profession, he must swear by Allah that he did not intend to deny lineage but only referenced his father’s work. If he swears, he is released. If he refuses, the prescribed punishment is applied.” Through the same chain to ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ismāʿīl ibn Abī Khālid, who was asked about a man who said to another, “You are an adopted child.” He ruled: “No prescribed punishment applies. Even if he said, ’Six men claim you,’ no punishment would follow.” Qatādah said: “If a man tells another, ’I perceive you as an adulterer,’ he receives discretionary punishment, not the prescribed penalty. All indirect allusions incur discretionary punishment per Qatādah’s view.” Saʿīd ibn al-Musayyib said: “The prescribed punishment applies only to one who explicitly establishes its grounds.” Abū Muḥammad—may Allah have mercy on him—stated: “There is no prescribed punishment for indirect allusion. This is the position of Sufyān al-Thawrī, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their followers.” When differences arose as mentioned,

عَامِرٍ الشَّعْبِيِّ فِي رَجُلٍ قَالَ لِرَجُلٍ: إنَّك تَقُودُ الرِّجَالَ إلَى امْرَأَتِك، قَالَ: التَّعْزِيرُ، وَلَيْسَ يُحَدُّ. وَبِهِ - إلَى وَكِيعٍ نا سُفْيَانُ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي التَّعْرِيضِ عُقُوبَةٌ - وَبِهِ إلَى وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ عَامِرٍ الشَّعْبِيِّ قَالَ: لَوْ قَالَ لَهُ: ادَّعَاك عَشَرَةٌ، لَمْ يُضْرَبْ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: التَّعْرِيضُ، قَالَ: لَيْسَ فِيهِ حَدٌّ، قَالَ عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: فِيهِ نَكَالٌ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لَهُ: يُسْتَحْلَفُ مَا أَرَادَ كَذَا وَكَذَا؟ قَالَ: لَا، قَالَ ابْنُ جُرَيْجٍ: وَقُلْت لِعَطَاءٍ: رَجُلٌ قَالَ لِأَخِيهِ ابْنِ أَبِيهِ: لَسْت بِأَخِي، قَالَ: لَا يُحَدُّ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ قَالَ لِآخَرَ: يَا ابْنَ الْعَبْدِ، أَوْ أَيُّهَا الْعَبْدُ، قَالَ: إنَّمَا عَنَيْتُ بِهِ عَبْدَ اللَّهِ، قَالَ: يُسْتَحْلَفُ بِاَللَّهِ مَا أَرَادَ إلَّا ذَلِكَ، وَلَا حَدَّ عَلَيْهِ، فَإِنْ نَكَلَ جُلِدَ. وَقَالَ الزُّهْرِيُّ: فَلَوْ قَالَ لِآخَرَ: يَا ابْنَ الْحَائِكِ، يَا ابْنَ الْخَيَّاطِ، يَا ابْنَ الْإِسْكَافِ يُعَيِّرُهُ بِبَعْضِ الْأَعْمَالِ، قَالَ: يُسْتَحْلَفُ بِاَللَّهِ مَا أَرَادَ نَفْيَهُ، وَمَا أَرَادَ إلَّا عَمَلَ أَبِيهِ، فَإِنْ حَلَفَ تُرِكَ، وَإِنْ نَكَلَ حُدَّ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ: أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ لِآخَرَ: إنَّك لَدَعِيٌّ قَالَ: لَيْسَ عَلَيْهِ حَدٌّ - وَلَوْ قَالَ لَهُ: ادَّعَاك سِتَّةٌ، لَمْ يَكُنْ عَلَيْهِ حَدٌّ. قَالَ قَتَادَةُ: لَوْ قَالَ رَجُلٌ لِرَجُلٍ: إنِّي أَرَاك زَانِيًا، عُزِّرَ، وَلَمْ يُحَدَّ - وَالتَّعْرِيضُ كُلُّهُ يُعَزَّرُ فِيهِ فِي قَوْلِ قَتَادَةَ. وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إنَّمَا جُعِلَ الْحَدُّ عَلَى مَنْ نَصَبَ الْحَدَّ نَصْبًا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بِأَنْ لَا حَدَّ فِي التَّعْرِيضِ، يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - فَلَمَّا اخْتَلَفُوا كَمَا

we examined the matter and found proponents of the prescribed punishment citing ʿUmar's action before the Companions—may Allah be pleased with them. ʿAlī countered: "This provides no grounds for them, for explicit disagreement among the Companions—may Allah be pleased with them—is established, as we conveyed through Wakīʿ's chain. Indeed, ʿUmar—may Allah be pleased with him—said, 'Avert the prescribed punishment from one who says, "O son of the woman with deformed ears."' As for ʿAlī ibn Abī Ṭālib and Samurah, reports state: "Whoever alludes, we allude to him." This does not prove they meant the prescribed punishment. Thus, reliance on the actions of ʿUmar, ʿAlī, and Samurah—may Allah be pleased with them—is wholly invalid.

L41693–41698 We examined whether they had any argument besides this and discovered them mentioning Allah's statement: {O you who believe, do not say "rāʿinā"} [Al-Baqarah: 104]. They argued that the disbelievers would say "rāʿinā" to the Messenger of Allah—peace and blessings of Allah be upon him—intending "foolishness," thereby making an implicit allusion. Thus, they claimed Allah prohibited implicit allusion. Abu Muhammad responded: This verse constitutes a proof against them, not for them, for several reasons. First: We do not dispute their claim that implicit allusion is impermissible, which would warrant their citation of this verse. Our disagreement lies solely in whether it entails a legal punishment. Even if their deduction from this verse were valid, it contains only a prohibition against implicit allusion without any mention of imposing a punishment whatsoever. Thus, their distortion through this verse becomes evident. Second: Allah the Exalted did not prescribe a punishment for those who made this implicit allusion. How then can they cite it as evidence for mandating a punishment? Third: Allah the Exalted prohibited the utterance of "rāʿinā" to those entirely unsuspected of implicit allusion—namely the Companions, may Allah be pleased with them. This conclusively demonstrates that He did not forbid the term "rāʿinā" due to implicit allusion, but solely by His will without any underlying cause. Consequently, the legal punishment for this is entirely baseless. Their reliance on the verse is wholly invalidated, and it stands as a proof against them—is not success from Allah, the Exalted? Abu Muhammad said: When the position of those advo-

ذَكَرْنَا، نَظَرْنَا فَوَجَدْنَا مَنْ رَأَى الْحَدَّ فِيهِ يَقُولُ: هَذَا فِعْلُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ عَلِيٌّ: وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ، لِأَنَّهُ قَدْ صَحَّ الْخِلَافُ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - نَصًّا، كَمَا ذَكَرْنَا أَيْضًا مِنْ طَرِيقِ وَكِيعٍ، نَعَمْ، وَعَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - ادْرَءُوا الْحَدَّ عَمَّنْ قَالَ لِآخَرَ: يَا ابْنَ شَامَّةِ الْوَذْرِ. وَأَمَّا عَلِيُّ بْنُ أَبِي طَالِبٍ، وَسَمُرَةُ، فَإِنَّهُ جَاءَ عَنْهُمَا: مَنْ عَرَّضَ عَرَّضْنَا لَهُ وَلَيْسَ فِي هَذَا بَيَانُ أَنَّهُمَا أَرَادَا الْحَدَّ. فَبَطَلَ تَعَلُّقُهُمْ بِفِعْلِ عُمَرَ، وَعَلِيٍّ، وَسَمُرَةَ - رَضِيَ اللَّهُ عَنْهُمْ - جُمْلَةً.

فَنَظَرْنَا هَلْ لَهُمْ حُجَّةٌ غَيْرُ هَذَا؟ فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقُولُوا رَاعِنَا} [البقرة: ١٠٤] الْآيَةَ. قَالُوا: وَكَانَ الْكُفَّارُ يَقُولُونَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاعِنَا، يُرِيدُونَ مِنْ " الرُّعُونَةِ " وَهَذَا تَعْرِيضٌ، فَنَهَى عَنْ التَّعْرِيضِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ لِوُجُوهٍ: أَوَّلُهَا: أَنَّا لَمْ نُخَالِفْهُمْ فِي أَنَّ " التَّعْرِيضَ " لَا يَجُوزُ، فَيَحْتَجُّوا بِهَذَا، وَإِنَّمَا خَالَفْنَاهُمْ فِي هَلْ فِيهِ حَدٌّ أَمْ لَا؟ وَلَيْسَ فِي هَذِهِ الْآيَةِ لَوْ صَحَّ اسْتِدْلَالُهُمْ بِهَا إلَّا النَّهْيُ عَنْ التَّعْرِيضِ فَقَطْ وَلَيْسَ فِيهَا إيجَابُ حَدٍّ فِيهِ أَصْلًا، فَظَهَرَ تَمْوِيهُهُمْ بِالْآيَةِ. وَالثَّانِي: أَنَّ اللَّهَ تَعَالَى لَمْ يَحُدَّ الَّذِينَ عَرَّضُوا بِهَذَا التَّعْرِيضِ فَكَيْفَ يَحْتَجُّونَ بِهَا فِي إيجَابِ الْحَدِّ. وَالثَّالِثُ: أَنَّ اللَّهَ تَعَالَى إنَّمَا نَهَى عَنْ قَوْلِ " رَاعِنَا " مَنْ لَا يُظَنُّ بِهِ تَعْرِيضٌ أَصْلًا، فَهُمْ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -. فَصَحَّ يَقِينًا أَنَّهُ لَمْ يَنْهَ عَزَّ وَجَلَّ عَنْ لَفْظَةِ " رَاعِنَا " مِنْ أَجْلِ التَّعْرِيضِ، بَلْ كَمَا شَاءَ تَعَالَى، لَا لِعِلَّةٍ أَصْلًا، وَالْحَدُّ فِي ذَلِكَ سَاقِطٌ لَا يَنْسَنِدُ أَصْلًا. فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَةِ جُمْلَةً، وَصَحَّ أَنَّهَا حُجَّةٌ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا بَطَلَ قَوْلُ مَنْ رَأَى الْحَدَّ فِي التَّعْرِيضِ:

cating punishment for implicit allusion was refuted, we examined the view of the opposing group. We found them citing Allah's statement: {There is no blame on you for what you implicitly propose regarding marriage to women or conceal within yourselves} [Al-Baqarah: 235] up to His words: {until the prescribed term reaches its end} [Al-Baqarah: 235]. Here, Allah the Exalted distinguishes between the rulings for explicit speech and implicit speech—a distinction unmistakable to any sound intellect. Since these are two distinct matters, neither sharing the ruling of the other, it is entirely impermissible to impose upon one what applies to the other absent a textual proof or consensus. They also cited the narration transmitted to us via Muslim—from Abu al-Ṭāhir and Ḥarmalah (the wording being Ḥarmalah's)—who said... All of them: Ibn Wahb narrated to us, Yunus informed me from Ibn Shihab from Abu Salamah ibn Abd al-Rahman from Abu Hurayrah: "A Bedouin came to the Messenger of Allah (peace be upon him) and said, 'O Messenger of Allah, my wife has given birth to a black child, and I reject him.' The Prophet (peace be upon him) asked him, 'Do you have camels?' He replied, 'Yes.' He asked, 'What are their colors?' He said, 'Red.' He asked, 'Is there any dappled gray among them?' He answered, 'Yes.' The Messenger of Allah (peace be upon him) said, 'How did that occur?' He responded, 'Perhaps, O Messenger of Allah, a hereditary trait caused it.' The Prophet (peace be upon him) said, 'And this child—perhaps a hereditary trait caused him.'"

Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq narrated from Ma'mar from al-Zuhri, who said: Sa'id ibn al-Musayyab narrated from Abu Hurayrah: "A man came to the Prophet (peace be upon him) and said, 'My wife has given birth to a black child'—he was hinting at disavowing him. The Prophet (peace be upon him) asked, 'Do you have camels?' He said, 'Yes.' He asked, 'What are their colors?' He replied, 'Red.' He asked, 'Is there any dappled gray among them?' He said, 'Yes, there are some gray ones.' He asked, 'How do you explain that?' He answered, 'I do not know—perhaps a hereditary trait caused it.' The Messenger of Allah (peace be upon him) said, 'And this child—perhaps a hereditary trait caused him.'" He did not permit him to disown the child.

وَجَبَ أَنْ نَنْظُرَ فِي قَوْلِ الطَّائِفَةِ الْأُخْرَى، فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ} [البقرة: ٢٣٥] إلَى قَوْله تَعَالَى {حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ} [البقرة: ٢٣٥] فَفَرَّقَ عَزَّ وَجَلَّ بَيْنَ حُكْمِ التَّصْرِيحِ وَبَيْنَ حُكْمِ التَّعْرِيضِ تَفْرِيقًا لَا يَخْتَلُّ عَلَى ذِي حِسٍّ سَلِيمٍ، وَإِذَا كَانَا شَيْئَيْنِ مُخْتَلِفَيْنِ لَيْسَ لِأَحَدِهِمَا حُكْمُ الْآخَرِ فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُجْعَلَ فِي أَحَدِهِمَا مَا جُعِلَ فِي الْآخَرِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ. وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ - وَاللَّفْظُ لِحَرْمَلَةَ - قَالَا جَمِيعًا: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ أَعْرَابِيًّا أَتَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ إنَّ امْرَأَتِي وَلَدَتْ غُلَامًا أَسْوَدَ وَأَنَا أُنْكِرُهُ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَلْ لَك مِنْ إبِلٍ؟ قَالَ: نَعَمْ، قَالَ: مَا أَلْوَانُهَا؟ قَالَ: حُمْرٌ، قَالَ: فَهَلْ فِيهَا مِنْ أَوْرَقَ؟ قَالَ: نَعَمْ، قَالَ رَسُولُ اللَّهِ فَأَنَّى هُوَ؟ فَقَالَ لَعَلَّهُ يَا رَسُولَ اللَّهِ نَزَعَهُ عِرْقٌ لَهُ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَعَلَّهُ نَزَعَهُ عِرْقٌ لَهُ» حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ نِي سَعِيدُ بْنُ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: وَلَدَتْ امْرَأَتِي غُلَامًا أَسْوَدَ - وَهُوَ حِينَئِذٍ يُعَرِّضُ بِأَنْ يَنْفِيَهُ - فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَك إبِلٌ؟ قَالَ: نَعَمْ، قَالَ: مَا أَلْوَانُهَا؟ قَالَ: حُمْرٌ، قَالَ: أَفِيهَا أَوْرَقُ؟ قَالَ: نَعَمْ، فِيهَا ذَوْدٌ وُرْقٌ قَالَ: مِمَّ ذَاكَ تَرَى؟ قَالَ: لَا أَدْرِي لَعَلَّهُ أَنْ يَكُونَ نَزَعَهُ عِرْقٌ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَعَلَّهُ أَنْ يَكُونَ نَزَعَهُ عِرْقٌ» وَلَمْ يُرَخِّصْ لَهُ فِي الِانْتِفَاءِ مِنْهُ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا

أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَخْبَرَنِي النَّضْرُ بْنُ شُمَيْلٍ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا هَارُونُ بْنُ زِيَادٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَيْرٍ عَنِ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إِنَّ تَحْتِي امْرَأَةً جَمِيلَةً لَا تَرُدُّ يَدَ لَامِسٍ؟ قَالَ: طَلِّقْهَا، قَالَ: إِنِّي لَا أَصْبِرُ عَنْهَا، قَالَ: فَأَمْسِكْهَا» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ الْأَحَادِيثُ كُلُّهَا فِي غَايَةِ الصِّحَّةِ مُوجِبَةٌ أَنَّهُ لَا شَيْءَ فِي التَّعْرِيضِ أَصْلًا، لِأَنَّ الْأَعْرَابِيَّ الَّذِي ذَكَرَ أَنَّ امْرَأَتَهُ وَلَدَتْ وَلَدًا أَسْوَدَ وَعَرَّضَ بِنَفْيِهِ وَكَانَ مِنْ بَنِي فَزَارَةَ - ذَكَرَ ذَلِكَ الزُّهْرِيُّ - فَلَمْ يَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ حَدًّا وَلَا لِعَانًا - وَكَذَلِكَ الَّذِي قَالَ: " إِنَّ امْرَأَتِي لَا تَرُدُّ يَدَ لَامِسٍ " فَلَمْ يَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ حَدًّا وَلَا لِعَانًا - وَقَدْ أَوْجَبَ - عَلَيْهِ السَّلَامُ - الْحَدَّ وَاللِّعَانَ عَلَى مَنْ صَرَّحَ - وَكَذَلِكَ قَوْلُهُ - عَلَيْهِ السَّلَامُ - «لَوْلَا مَا سَبَقَ مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلَهَا شَأْنٌ» . وَقَالَ - عَلَيْهِ السَّلَامُ - «لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُ هَذِهِ» تَعْرِيضٌ صَحِيحٌ، وَأَنْكَرُ لِلْمُنْكَرِ دُونَ تَصْرِيحٍ، لَكِنْ بِظَنٍّ لَا يُحْكَمُ بِهِ وَلَا يُقْطَعُ بِهِ - وَكَذَلِكَ قَوْلُ ابْنِ عَبَّاسٍ: تِلْكَ امْرَأَةٌ كَانَتْ تُظْهِرُ السُّوءَ فِي الْإِسْلَامِ، تَعْرِيضٌ صَحِيحٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ عَنْ عَائِشَةَ قَالَتْ «اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ، وَعَبْدُ بْنُ زَمْعَةَ فِي ابْنِ أَمَةِ زَمْعَةَ فَقَالَ سَعْدٌ: أَوْصَانِي أَخِي عُتْبَةُ إِذَا قَدِمْتُ مَكَّةَ فَأَنْظُرُ ابْنَ أَمَةِ زَمْعَةَ فَهُوَ ابْنِي، وَقَالَ عَبْدٌ: هُوَ ابْنُ أَمَةِ أَبِي وُلِدَ عَلَى فِرَاشِ أَبِي؟ فَرَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَبَهًا بَيِّنًا بِعُتْبَةَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَلَدُ لِلْفِرَاشِ وَاحْتَجِبِي مِنْهُ يَا سَوْدَةُ» فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَشَارَ إِشَارَةً لَمْ

Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb informed me, Ishaq ibn Ibrahim (Ibn Rahawayh) informed me, al-Nadr ibn Shumayl narrated to us, Hammad ibn Salamah narrated to us, Harun ibn Ziyad narrated from Abdullah ibn Abdullah ibn Umayr from Ibn Abbas: "A man said, 'O Messenger of Allah, my wife is beautiful but does not repel the touch of admirers.' He said, 'Divorce her.' The man replied, 'I cannot endure separation from her.' He said, 'Then keep her.'"

Abu Muhammad (may Allah have mercy on him) said: All these rigorously authenticated narrations establish that mere implication holds no legal consequence. The Bedouin—from the Fazarah tribe, as al-Zuhri noted—who claimed his wife bore a black child and hinted at disavowing him was not prescribed any punishment or *li'ān* (mutual cursing) by the Messenger of Allah (peace be upon him). Similarly, the man who stated, "My wife does not repel the touch of admirers" received no prescribed punishment or *li'ān*. Yet the Prophet (peace be upon him) mandated punishment and *li'ān* for explicit accusations, as he (peace be upon him) said: "Were it not for what Allah decreed in His Book, there would be a matter between her and me." He (peace be upon him) also said: "If I were to stone anyone without evidence, I would stone this woman"—both being instances of implication. Authentic, and denouncing evil without explicit mention, but based on uncertainty that is neither judicially enforceable nor definitive. Similarly, Ibn Abbas's statement – "That was a woman who used to manifest immorality in Islam" – constitutes a valid implication. Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated from Ahmad ibn Shu'ayb, from Ishaq ibn Ibrahim, from Sufyan ibn 'Uyaynah, from Al-Zuhri, from 'Aishah, who said: "Sa'd ibn Abi Waqqas and 'Abd ibn Zam'ah disputed over the son of Zam'ah's slave woman. Sa'd said: 'My brother 'Utbah instructed me upon arriving in Makkah to care for the son of Zam'ah's slave woman, for he is my son.' 'Abd said: 'He is the son of my father's slave woman, born on his bed.' The Messenger of Allah—peace and blessings be upon him—observed a clear resemblance to 'Utbah and declared: 'The child belongs to the bed. Seclude yourself from him, O Sawdah.'" Here, the Messenger of Allah—peace and blessings be upon him—implied an indication without decisive ruling,

opposing it by presuming the child originated from ‘Utbah’s semen, yet he did not deem a hadd punishment applicable against Sa‘d ibn Abi Waqqas for attributing Zam‘ah’s child to his brother. These narrations, transmitted by a group of Companions—may Allah be pleased with them—including ‘Aishah, Abu Hurayrah, Anas, and Ibn Abbas, attain the level of recurrent transmission, establishing certainty and invalidating the view that implications incur hadd penalties. They confirm that one who implies without cause—whether voicing grievance (as in the Bedouin’s case), exercising scrupulousness (as regarding Zam‘ah’s slave woman’s son), or denouncing evil (per Ibn Abbas’s and Anas’s narrations)—bears no sin, disapproval, or prohibition, for the Messenger of Allah—peace and blessings be upon him—stated this, and it was uttered in his presence without objection. As for scholarly consensus: the entire Ummah agrees unanimously. Malikis collectively affirm that when a man or woman manifests immorality—such as unrelated individuals secluding together or a man covertly entering a woman’s home—Muslims must denounce this and report it to the authority. This is undeniably implication; otherwise, what precisely do they condemn? It is utterly astonishing that they apply hadd penalties for implications while imposing no consequences for explicit false accusations of unchastity—such as enforcing the hadd for adultery upon a pregnant woman without established proof of fornication. They claim to suspend hadd punishments due to doubts, yet contradict this in two instances: enforcing the hadd for false accusation upon those implying without explicitness, and the hadd for adultery upon a pregnant woman lacking a husband or master. And is all success not with Allah the Exalted?[31]

يَقْطَعْ بِهَا، بَلْ خَالَفَ وَظَنَّ أَنَّهُ مِنْ مَاءِ عُتْبَةَ، وَلَمْ يَرَ حَدًّا عَلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ، إِذْ نَسَبَ وَلَدَ زَمْعَةَ إِلَى أَخِيهِ. فَهَذِهِ آثَارٌ رَوَاهَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - جَمَاعَةٌ عَائِشَةُ، وَأَبُو هُرَيْرَةَ، وَأَنَسٌ، وَابْنُ عَبَّاسٍ، فَصَارَتْ فِي حَدِّ التَّوَاتُرِ مُوجِبَةً لِلْعِلْمِ، مُبْطِلَةً قَوْلَ مَنْ رَأَى: أَنَّ فِي التَّعْرِيضِ حَدًّا، بَلْ صَحَّ بِهَا: أَنَّ مَنْ عَرَّضَ لِغَيْرِ سَبَبٍ لَكِنْ لِشَكْوَى عَلَى حَدِيثِ الْأَعْرَابِيِّ، أَوْ تَوَرُّعًا عَلَى حَدِيثِ ابْنِ وَلِيدَةِ - زَمْعَةَ - أَوْ إِنْكَارًا لِلْمُنْكَرِ عَلَى حَدِيثِ ابْنِ عَبَّاسٍ، وَعَلَى حَدِيثِ أَنَسٍ، فَلَا شَيْءَ فِي ذَلِكَ أَصْلًا، لَا إِثْمَ وَلَا كَرَاهِيَةَ وَلَا إِنْكَارَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ، وَقِيلَ بِحَضْرَتِهِ فَلَمْ يُنْكِرْهُ. وَأَمَّا طَرِيقُ الْإِجْمَاعِ - فَإِنَّ الْأُمَّةَ كُلَّهَا لَا تَخْتَلِفُ، وَالْمَالِكِيُّونَ فِي جُمْلَتِهِمْ عَلَى أَنَّ مَنْ أَظْهَرَ السُّوءَ مِنْ رَجُلٍ، أَوْ امْرَأَةٍ، كَانْفِرَادِ الْأَجْنَبِيَّيْنِ، وَدُخُولِ الرَّجُلِ مَنْزِلَ الْمَرْأَةِ تَسَتُّرًا، فَوَاجِبٌ عَلَى الْمُسْلِمِينَ إنْكَارُ ذَلِكَ، وَرَفْعُهُ إلَى الْإِمَامِ، وَهَذَا بِيَقِينٍ تَعْرِيضٌ، وَإِلَّا فَأَيُّ شَيْءٍ يُنْكِرُونَ مِنْ ذَلِكَ. وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّهُمْ يَرَوْنَ الْحَدَّ فِي التَّعْرِيضِ وَهُمْ يُصَرِّحُونَ بِالْقَذْفِ وَلَا يَرَوْنَ فِي ذَلِكَ شَيْئًا، وَذَلِكَ إقَامَتُهُمْ حَدَّ الزِّنَى عَلَى الْحُبْلَى وَمَا ثَبَتَ قَطُّ عَلَيْهَا زِنًا، فَهُمْ يَدَّعُونَ أَنَّهُمْ يُسْقِطُونَ الْحُدُودَ بِالشُّبُهَاتِ وَهَذَانِ مَكَانَانِ أَقَامُوا الْحَدَّ بِالشُّبُهَاتِ فِيهِمَا، وَهُمَا: حَدُّ الْقَذْفِ عَلَى مَنْ عَرَّضَ وَلَمْ يُصَرِّحْ - وَحَدُّ الزِّنَا عَلَى مَنْ حَمَلَتْ وَلَا زَوْجَ لَهَا وَلَا سَيِّدَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L41699–41700 Abu Muhammad said: It has been established that there is absolutely no ḥadd whatsoever for indirect implication. If the person alluded to states, “I will make him swear he intended to accuse me of unchastity,” he has no right to do so, and no oath is required here at all. This is because he did not actually accuse him of unchastity but merely filed a claim alleging he intended to

قَالَ أَبُو مُحَمَّد: وَصَحَّ أَنْ لَا حَدَّ فِي التَّعْرِيضِ أَصْلًا؟ فَإِنْ قَالَ الْمُعَرَّضُ بِهِ: أُحَلِّفُهُ مَا أَرَادَ قَذْفِي، لَمْ يَكُنْ لَهُ ذَلِكَ، وَلَا يَحْلِفُ هَاهُنَا أَصْلًا، لِأَنَّهُ لَمْ يَقْذِفْهُ، وَإِنَّمَا ادَّعَى عَلَيْهِ أَنَّهُ أَرَادَ قَذْفَهُ فَقَطْ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ مَنْ ادَّعَى عَلَى

[31] **Qur’an references (L41694):** Qur’an 2:104 (Al-Baqarah); Qur’an 2:235 (Al-Baqarah).

do so. There is no disagreement among the entire Ummah that if someone claims another harbored the intention to accuse of unchastity without acting on it, no oath is required in that case. This rests on the valid consensus that whoever harbors such an intention without uttering it incurs no ḥadd whatsoever—even if a person admits to such an intention upon himself. The one making the implication neither uttered the accusation of unchastity nor is there any basis for ḥadd in this matter. As for one who claims another explicitly accused him of unchastity while the accused denies it, no oath is required here either, because this ruling falls under the divinely ordained ḥudūd and rights of Allah—not the rights of individuals. The accused may instead swear by Allah that he neither harmed nor insulted you, thereby being acquitted. Success comes only from Allah, the Most High.

آخَرَ أَنَّهُ أَضْمَرَ قَذْفَهُ وَلَمْ يَقْذِفْهُ، فَإِنَّهُ لَا تَحْلِيفَ فِي ذَلِكَ، لِصِحَّةِ الْإِجْمَاعِ عَلَى أَنَّ مَنْ أَضْمَرَ قَذْفًا وَلَمْ يَنْطِقْ بِهِ، فَإِنَّهُ لَا حَدَّ فِي ذَلِكَ أَصْلًا، حَتَّى أَقَرَّ بِذَلِكَ امْرُؤٌ عَلَى نَفْسِهِ - وَهَذَا الْمُعَرِّضُ فَلَمْ يَنْطِقْ بِالْقَذْفِ وَلَا شَيْءَ فِي ذَلِكَ أَصْلًا. وَأَمَّا مَنْ ادَّعَى عَلَيْهِ أَنَّهُ صَرَّحَ بِالْقَذْفِ وَهُوَ مُنْكِرٌ فَلَا تَحْلِيفَ فِي ذَلِكَ أَيْضًا؛ لِأَنَّ الْحَدَّ فِي ذَلِكَ مِنْ حُدُودِ اللَّهِ تَعَالَى وَحُقُوقِهِ لَا مِنْ حُقُوقِ الْآدَمِيِّينَ، فَإِنَّمَا يَحْلِفُ بِاللَّهِ مَا آذَيْتُك، وَلَا شَتَمْتُك وَيَبْرَأُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Falsely accusing of adultery a person against whom adultery has been proven, whether the hadd was imposed upon him or not.

[مَسْأَلَةٌ قَذَفَ إنْسَانًا قَدْ ثَبَتَ عَلَيْهِ الزِّنَا وَحُدَّ فِيهِ أَوْ لَمْ يُحَدَّ]

2237 - Issue: Concerning one who accuses of adultery a person upon whom adultery has been established, whether subjected to the hadd punishment or not. Abū Muḥammad said: Narrations exist regarding this matter, such as: Ḥammām reported to us; Ibn Mufarrij reported to us; Ibn al-Aʿrābī reported to us; al-Dabarī reported to us; ʿAbd al-Razzāq reported from Maʿmar from al-Zuhrī from Ibn al-Musayyab, who said: If a man is flogged for a hadd punishment, then someone reviles him for it after it is observed that he has abandoned the offense, the reviler is subjected to disciplinary punishment. Through the same chain to ʿAbd al-Razzāq: Ibn Jurayj reported from ʿAṭāʾ, who said: Whoever publicizes an act of adultery incurs disciplinary punishment, even if truthful. From al-Zuhrī: He said: If a man incurred a hadd punishment for an offense during polytheism, then embraced Islam, and someone reviles him for it in Islam, he is subjected to disciplinary punishment. From Yaḥyā ibn Saʿīd al-Anṣārī: Two men came before ʿUmar ibn ʿAbd al-ʿAzīz. One said: "He is an illegitimate child (born of adultery)." The other lowered his head. ʿUmar asked: "What is this man saying?" He remained silent and confessed. ʿUmar ordered the speaker to be struck on the

٢٢٣٧ - مَسْأَلَةٌ: مَنْ قَذَفَ إنْسَانًا قَدْ ثَبَتَ عَلَيْهِ الزِّنَا وَحُدَّ فِيهِ أَوْ لَمْ يُحَدَّ قَالَ أَبُو مُحَمَّدٍ: قَدْ جَاءَتْ فِي هَذَا آثَارٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ قَالَ: إذَا جُلِدَ الرَّجُلُ فِي حَدٍّ ثُمَّ أُونِسَ مِنْهُ تَرْكُهُ فَعَيَّرَهُ بِهِ إنْسَانٌ نُكِّلَ بِهِ. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: عَلَى مَنْ أَشَاعَ الْفَاحِشَةَ نَكْلٌ، وَإِنْ صَدَقَ. وَعَنْ الزُّهْرِيِّ: قَالَ: لَوْ أَنَّ رَجُلًا أَصَابَ حَدًّا فِي الشِّرْكِ ثُمَّ أَسْلَمَ فَعَيَّرَهُ بِهِ رَجُلٌ فِي الْإِسْلَامِ نَكَلَ. وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: دَخَلَ رَجُلَانِ عَلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ أَحَدُهُمَا: إنَّهُ وَلَدُ زِنًا؟ فَطَأْطَأَ الْآخَرُ رَأْسَهُ، فَقَالَ عُمَرُ: مَا يَقُولُ هَذَا؟ فَسَكَتَ، وَاعْتَرَفَ، فَأَمَرَ عُمَرُ بِالْقَائِلِ ذَلِكَ لَهُ فَلَمْ يَزَلْ يُجَأُ قَفَاهُ حَتَّى خَرَجَ مِنْ الدَّارِ. وَعَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ: لَا نَرَى عَلَى

back of his neck until he was driven out of the residence. From Ibn Shihāb: He said: We hold that the hadd punishment of flogging does not apply to one who accuses a man [of adultery] after the accuser swears by Allāh: "I intended by my statement nothing other than the offense for which he was subjected to the hadd punishment."

مَنْ قَذَفَ رَجُلًا جُلِدَ الْحَدَّ بَعْدَ أَنْ يَحْلِفَ الْقَاذِفُ بِاللَّهِ مَا أَرَدْت حِينَ قُلْت لَهُ مَا قُلْت إلَّا الْأَمْرَ الَّذِي جُلِدَ فِيهِ الْحَدَّ.

L41703–41706 Ibn Shihab said regarding a man who called another "O son of the fornicator" — when the latter's grandmother had committed fornication — that he must swear by Allah, besides whom there is no god but He, that he intended none but his grandmother who had perpetrated it, and then there would be no liability upon him. From Sufyan al-Thawri that he said regarding a man who was flogged with the prescribed punishment (ḥadd) and then someone said to him, "O fornicator," that he should be subjected to the durrah and disciplined. Among our scholars, some say: When the prescribed punishment is executed, the slanderer is flogged. Is Ibn Abī Laylā among those who advocated flogging him? Abū Muḥammad said: Our position — and with Allah, the Exalted, lies success — is that Allah, the Exalted, said, "Indeed, those who desire that immorality should spread among the believers will have a painful punishment" [24:19]. We previously mentioned in our book the statement of Allah's Messenger — peace and blessings be upon him — regarding a man whose female slave committed fornication: "Let him flog her but not reproach her persistently." This confirms that persistent reproach against a fornicator is forbidden, that spreading immorality is forbidden, and that harming a Muslim is impermissible — without disagreement — except in ways Allah, the Exalted, has sanctioned. Thus, it is established that whoever insults a Muslim by referencing fornication, theft, or disobedience they committed — intending harm rather than admonishing them through gracious admonition privately — must be disciplined, for this is an evil act. Allah's Messenger — peace and blessings be upon him — said, "Whoever among you sees evil, let him change it with his hand if he is able; if not, then with his tongue." This ḥadīth elucidates our earlier text, as it permits changing evils by hand or tongue. Whoever rebukes another for their actions in the course of enjoining good and forbidding evil is acting rightly, but whoever admonishes contrary to this approach has committed an evil act —

وَقَالَ ابْنُ شِهَابٍ فِي رَجُلٍ قَالَ لِآخَرَ: يَا ابْنَ الزَّانِيَةِ - وَكَانَتْ جَدَّتُهُ قَدْ زَنَتْ - أَنَّهُ يَحْلِفُ بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ أَنَّهُ لَمْ يُرِدْ إلَّا جَدَّتَهُ الَّتِي أَحْدَثَتْ ثُمَّ لَا يَكُونُ عَلَيْهِ شَيْءٌ. وَعَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ يُجْلَدُ الْحَدَّ فَيَقُولُ لَهُ رَجُلٌ: يَا زَانِي، قَالَ: يُسْتَجَبْ بِالدُّرَّةِ وَيُعَزَّرُ - وَمِنَّا مَنْ يَقُولُ: إذَا أُقِيمَ الْحَدُّ جُلِدَ مَنْ قَذَفَ - وَمِمَّنْ قَالَ بِجَلْدِهِ: ابْنُ أَبِي لَيْلَى؟ قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّ اللَّهَ تَعَالَى قَالَ {إنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ} [النور: ١٩] وَقَدْ ذَكَرْنَا فِيمَا سَلَفَ مِنْ كِتَابِنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي تَزْنِي أَمَتُهُ «فَلْيَجْلِدْهَا وَلَا يُثَرِّبْ» فَصَحَّ أَنَّ التَّثْرِيبَ عَلَى الزَّانِي حَرَامٌ، وَأَنَّ إشَاعَةَ الْفَاحِشَةِ حَرَامٌ، وَلَا يَحِلُّ - بِلَا خِلَافٍ - أَذَى الْمُسْلِمِ بِغَيْرِ مَا أَمَرَ اللَّهُ تَعَالَى أَنْ يُؤْذَى بِهِ. فَصَحَّ مِنْ هَذَا أَنَّ مَنْ سَبَّ مُسْلِمًا بِزِنًا كَانَ مِنْهُ، أَوْ بِسَرِقَةٍ كَانَتْ مِنْهُ، أَوْ مَعْصِيَةٍ كَانَتْ مِنْهُ، وَكَانَ ذَلِكَ عَلَى سَبِيلِ الْأَذَى - لَا عَلَى سَبِيلِ الْوَعْظِ وَالتَّذْكِيرِ الْجَمِيلِ سِرًّا: لَزِمَهُ الْأَدَبُ؛ لِأَنَّهُ مُنْكَرٌ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» فَهَذَا الْحَدِيثُ بَيَانُ مَا قَدَّمْنَا نَصًّا؛ لِأَنَّ فِيهِ أَبَاحَ تَغْيِيرَ الْمُنْكَرَاتِ بِالْيَدِ وَاللِّسَانِ، فَمَنْ بَكَّتَ آخَرَ بِمَا فَعَلَ عَلَى سَبِيلِ الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ فَهُوَ مُحْسِنٌ، وَمَنْ ذَكَّرَهُ عَلَى غَيْرِ هَذَا الْوَجْهِ فَقَدْ أَتَى مُنْكَرًا - فَفَرْضٌ عَلَى النَّاسِ تَغْيِيرُهُ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّ

obligating people to rectify it, for Allah's Messenger — peace and blessings be upon him — said, "Your blood, wealth, honor, and bodies are inviolable." Thus, every person's honor is inviolable except where a textual proof or consensus permits. The honor of the disobedient and others is equal — and with Allah, the Exalted, lies success. Abū Muḥammad said: If someone accuses another of a type of fornication differing from what was proven against them and clarifies... That being established, the *ḥadd* punishment is incumbent upon the slanderer—whether the accused of *zinā* was subjected to the *ḥadd* for the act proven against him or not—because he is *muḥṣan* (legally protected) from every *zinā* not proven against him. We have stated that "*iḥṣān*" denotes prevention; thus, whoever is prevented by something or refrains from it is *muḥṣan* from it. Since he is *muḥṣan*, the *ḥadd* punishment is obligatory upon him by the explicit decree of the Quran.[32]

L41707 **A legal issue concerning someone who repudiates paternity.**

L41708 2238 - Issue: Concerning one who denies paternity. Ali said: From Muhammad ibn Sa'id ibn Nabat, from Abdullah ibn Nasr, from Qasim ibn Asbagh, from Ibn Waddah, from Musa ibn Mu'awiyah, from Waki', from Al-Mas'udi, from Al-Qasim ibn Abd al-Rahman: That Abu Bakr al-Siddiq — may Allah be pleased with him — was brought a man who disowned his father. Abu Bakr said: "Strike the head, for Satan is in the head." Abu Muhammad said: Those who assert the obligation of imposing the *hadd* punishment for denying lineage or paternity must apply the full punishment for *qadhf* upon whoever denies his father or disavows his child. Otherwise, they contradict themselves. As for us, we have previously clarified that in such cases only *ta'zir* applies, with no *hadd* in this matter — and by Allah, the Exalted, is success.

L41709 **A legal case concerning one who says to another, "You are the son of so-and-so," ascribing his lineage to his uncle or another person.**

دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» . فَصَحَّ أَنَّ عِرْضَ كُلِّ أَحَدٍ حَرَامٌ إِلَّا حَيْثُ أَبَاحَهُ النَّصُّ أَوْ الْإِجْمَاعُ، وَسَوَاءٌ عِرْضُ الْعَاصِي وَغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَذَفَ إنْسَانٌ إنْسَانًا قَدْ زَنَى بِزِنًا غَيْرِ الَّذِي ثَبَتَ عَلَيْهِ، وَبَيَّنَ ذَلِكَ، وَصَرَّحَ، فَعَلَى الْقَاذِفِ الْحَدُّ - سَوَاءٌ حُدَّ الْمَقْذُوفُ فِي الزِّنَى الَّذِي صَحَّ عَلَيْهِ أَوْ لَمْ يُحَدَّ -؛ لِأَنَّهُ مُحْصَنٌ عَنْ كُلِّ زِنًا لَمْ يَثْبُتْ عَلَيْهِ، وَقَدْ قُلْنَا إنَّ " الْإِحْصَانَ " هُوَ الْمَنْعُ فَمَنْ مَنَعَ بِشَيْءٍ أَوْ امْتَنَعَ مِنْهُ فَهُوَ مُحْصَنٌ عَنْهُ، فَإِذْ هُوَ مُحْصَنٌ فَعَلَيْهِ الْحَدُّ بِنَصِّ الْقُرْآنِ.

[مَسْأَلَة فِيمَنْ انْتَفَى مِنْ أَبِيهِ]

٢٢٣٨ - مَسْأَلَةٌ: فِيمَنْ انْتَفَى مِنْ أَبِيهِ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ - رَضِيَ اللَّهُ عَنْهُ - أُتِيَ بِرَجُلٍ انْتَفَى عَنْ أَبِيهِ فَقَالَ أَبُو بَكْرٍ: اضْرِبْ الرَّأْسَ، فَإِنَّ الشَّيْطَانَ فِي الرَّأْسِ قَالَ أَبُو مُحَمَّدٍ: يَلْزَمُ الْقَائِلِينَ بِإِيجَابِ الْحَدِّ فِي النَّفْيِ عَنْ الْأَبِ، أَوْ عَنْ النَّسَبِ: أَنْ يُقِيمَ حَدَّ الْقَذْفِ كَامِلًا عَلَى مَنْ انْتَفَى مِنْ أَبِيهِ، أَوْ عَلَى مَنْ نَفَى وَلَدَهُ مِنْ نَفْسِهِ، وَإِلَّا فَقَدْ تَنَاقَضُوا - وَأَمَّا نَحْنُ، فَقَدْ بَيَّنَّا قَبْلُ أَنَّ هَاهُنَا التَّعْزِيرُ فَقَطْ، وَلَا حَدَّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِآخَرَ أَنْتَ ابْنُ فُلَانٍ وَنَسَبَهُ إلَى عَمِّهِ أَوْ غَيْرِهِ]

[32] **Qur'an references (L41704):** Qur'an 24:19 (An-Nur).

L41710–41712

2239 - Issue: If someone says to another, “You are the son of so-and-so” - attributing him to his paternal uncle, maternal uncle, his mother’s husband, or a stranger - Abu Muhammad said: Some people stated that the ḥadd punishment applies in all these cases. This is erroneous. The ruling here is that when such attribution follows the path of truth and goodness, it constitutes a virtuous deed and commendable speech. However, if intended as insult, harm, or insinuation, only discretionary punishment applies, with no ḥadd penalty. The proof for this is Allah’s words recounting Jacob’s sons (peace be upon him) when they said: *“We worship your God and the God of your fathers Abraham, Ishmael, and Isaac”* [Al-Baqarah: 133]. Here they designated his uncle Ishmael (peace be upon him) as his father, yet neither Allah Almighty nor Jacob (peace be upon him), a prophet of Allah, objected to this. Allah also says: *“The faith of your father Abraham”* [Al-Hajj: 78], though we know with certainty that there are people among the Muslims who have no genealogical tie to Abraham (peace be upon him). Regarding attribution to a mother’s husband, Ahmad ibn Muhammad ibn Abd Allah al-Ṭalamankī said: Narrated from Ibn Mufarrij, who narrated from... Muhammad ibn Ayyūb al-Ṣamūt narrated to us: Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us: Ibrāhīm ibn Saʿīd al-Jawharī narrated to us: Abū Usāmah narrated to us: Muḥammad ibn ʿAmr narrated from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf: “Abū Ṭalḥah prepared a meal for the Prophet—peace and blessings of Allah be upon him—and sent Anas ibn Mālik. He came until he entered the mosque where the Messenger of Allah—peace and blessings of Allah be upon him—was among his companions, and said: ’Has your father invited us?’ He replied: ’Yes.’ The Prophet said: ’Rise.’” Anas said: “I came to Abū Ṭalḥah,” and he narrated the ḥadīth. Ḥumām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated from Ibn Jurayj from Hishām ibn ʿUrwah ibn al-Zubayr from his father, who said: “Umm ʿUmayr bint Saʿd was married to al-Julās ibn Suwayd. During the expedition of Tabūk, al-Julās ibn Suwayd said: ’If what Muḥammad says is true, then we are worse than donkeys.’ ʿUmayr heard this and said: ’By Allah, I fear that if I do not report this to the Prophet—peace and blessings of Allah be upon him—revelation will descend concerning him, and I will be implicated in his sin. What an excellent father he is to

٢٢٣٩ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: أَنْتَ ابْنُ فُلَانٍ - وَنَسَبَهُ إلَى عَمِّهِ، أَوْ خَالِهِ، أَوْ زَوْجِ أُمِّهِ، أَوْ أَجْنَبِيٍّ قَالَ أَبُو مُحَمَّدٍ: قَالَ قَوْمٌ: فِي كُلِّ هَذَا الْحَدُّ - وَهُوَ خَطَأٌ، وَلَكِنَّ الْحُكْمَ فِي هَذَا: أَنَّ مَا كَانَ مِنْ ذَلِكَ عَلَى سَبِيلِ الْحَقِّ وَالْخَيْرِ، فَهُوَ فِعْلٌ حَسَنٌ وَقَوْلٌ حَسَنٌ، وَأَمَّا مَا كَانَ مِنْ ذَلِكَ مُشَاتَمَةً، أَوْ أَذًى، أَوْ تَعْرِيضًا، فَفِيهِ التَّعْزِيرُ فَقَطْ، وَلَا حَدَّ فِي ذَلِكَ، بُرْهَانُ مَا ذَكَرْنَا: قَوْلُ اللَّهِ تَعَالَى حَاكِيًا عَنْ وَلَدِ يَعْقُوبَ - عَلَيْهِ السَّلَامُ - إذْ قَالُوا {نَعْبُدُ إِلَهَكَ وَإِلَهَ آبَائِكَ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ} [البقرة: ١٣٣] فَجَعَلُوا عَمَّهُ إسْمَاعِيلَ - عَلَيْهِ السَّلَامُ - أَبًا لَهُ، وَلَمْ يُنْكِرْ اللَّهُ تَعَالَى ذَلِكَ، وَلَا يَعْقُوبُ - عَلَيْهِ السَّلَامُ - وَهُوَ نَبِيُّ اللَّهِ تَعَالَى. وَقَالَ تَعَالَى {مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ} [الحج: ٧٨] وَقَدْ عَلِمْنَا يَقِينًا أَنَّ فِي الْمُسْلِمِينَ خَلَائِقَ لَيْسَ لِإِبْرَاهِيمَ - عَلَيْهِ السَّلَامُ - فِي وِلَادَتِهِمْ نَسَبٌ. وَأَمَّا زَوْجُ الْأُمِّ - فَإِنَّ أَحْمَدَ بْنَ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيَّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا إبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ نا أَبُو أُسَامَةَ نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ «أَنَّ أَبَا طَلْحَةَ صَنَعَ طَعَامًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ أَنَسَ بْنَ مَالِكٍ فَجَاءَ حَتَّى دَخَلَ الْمَسْجِدَ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَصْحَابِهِ - فَقَالَ دَعَانَا أَبُوكَ؟ فَقَالَ: نَعَمْ، قَالَ: قُومُوا» قَالَ أَنَسٌ: فَأَتَيْت أَبَا طَلْحَةَ، فَذَكَرَ الْحَدِيثَ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ قَالَ «كَانَتْ أُمُّ عُمَيْرِ بِنْتُ سَعْدٍ عِنْدَ الْجُلَاسِ بْنِ سُوَيْدٍ فَقَالَ الْجُلَاسُ بْنُ سُوَيْدٍ فِي غَزْوَةِ تَبُوكَ: إنْ كَانَ مَا يَقُولُ مُحَمَّدٌ حَقًّا لَنَحْنُ أَشَرُّ مِنْ الْحَمِيرِ، فَسَمِعَهَا عُمَيْرٌ فَقَالَ: وَاَللَّهِ إنِّي لَأَخْشَى إنْ لَمْ أَرْفَعْهَا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَنْزِلَ الْقُرْآنُ فِيهِ، وَأَنْ

me!' He informed the Prophet—peace and blessings of Allah be upon him—who summoned al-Julās and confronted him. They exchanged oaths, and revelation descended upon the Prophet—peace be upon him—and everyone fell silent, motionless (as was their practice during revelation) until it ceased. The Prophet—peace and blessings of Allah be upon him—then recited: {They swear by Allah that they did not speak, yet they certainly uttered words of disbelief} [9:74] up to His saying: {But if they repent, it will be better for them} [9:74]. Al-Julās said: 'Seek acceptance of my repentance, O Messenger of Allah! I repent to Allah and testify to His truth.'" 'Urwah said: "'Umayr remained esteemed thereafter until he died." Abū Muḥammad said: "Here, the Messenger of Allah—peace and blessings of Allah be upon him—refers to a stepfather as a father and attributes the child of one's wife to him, calling him 'your father.' This is Anas and 'Umayr ibn Sa'd—people of linguistic precision and piety—affirming this. Abū Muḥammad said: 'This is the opinion of Abū Ḥanīfah, Abū Sulaymān, our companions, and the position we adopt.'"[33]

L41713 **A legal issue concerning one who says to another: O sodomite or O effeminate one.**

L41714 2240. Issue: Regarding one who says to another: "O sodomite?" or "O effeminate man (mukhannath)." Ali said: Muhammad ibn Sa'id ibn Nabat reported to us from 'Abdullah ibn Nasr reported to us from Qasim ibn Asbagh reported to us from Ibn Waddah reported to us from Musa ibn Mu'awiyah reported to us from Waki' reported to us from Abu Hilal from Qatadah that a man said to Abu al-Aswad al-Du'ali: "O sodomite?" He replied: "May Allah have mercy on Lot." Through the same chain up to Abu Hilal, then from 'Ikrimah regarding a man who said to another: "O sodomite?" 'Ikrimah said: "He is not subject to a hadd punishment."

L41715–41718 From Al-Zuhri and Qatadah, both of whom said regarding a man who ad-

[33] **Qur'an references (L41710):** Qur'an 2:133 (Al-Baqarah); Qur'an 22:78 (Al-Hajj); Qur'an 9:74 (At-Tawbah).

أَخْلَطَ بِخِطْبَتِهِ، وَلَنِعْمَ الْأَبُ هُوَ لِي، فَأَخْبَرَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - الْجُلَاسَ فَعَرَّفَهُ فَتَحَالَفَا فَجَاءَ الْوَحْيُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَكَتُوا فَلَمْ يَتَحَرَّكْ أَحَدٌ - كَذَلِكَ كَانُوا يَفْعَلُونَ لَا يَتَحَرَّكُونَ إِذَا نَزَلَ الْوَحْيُ - فَرُفِعَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ {يَحْلِفُونَ بِاللَّهِ مَا قَالُوا وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ} [التوبة: ٧٤] إِلَى قَوْلِهِ {فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ} [التوبة: ٧٤] فَقَالَ الْجُلَاسُ: اسْتَتِبْ لِي رَبِّي يَا رَسُولَ اللَّهِ، فَإِنِّي أَتُوبُ إِلَى اللَّهِ، وَأَشْهَدُ لَهُ بِصِدْقٍ، قَالَ عُرْوَةُ: فَمَا زَالَ عُمَيْرٌ مِنْهَا بِعَلْيَاءَ حَتَّى مَاتَ» قَالَ أَبُو مُحَمَّدٍ: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: " عَنْ الرَّبِيبِ أَبٌ، وَيَنْسُبُ إِلَى الرَّجُلِ ابْنَ امْرَأَتِهِ " فَيَقُولُ لَهُ: أَبُوك - وَهَذَا أَنَسٌ، وَعُمَيْرُ بْنُ سَعْدٍ مِنْ أَهْلِ اللُّغَةِ وَالدِّيَانَةِ يَقُولَانِ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ - وَأَصْحَابِنَا - وَبِهِ نَأْخُذُ.

[مَسْأَلَةٌ فِيمَنْ قَالَ لِآخَرَ يَا لُوطِيُّ أَوْ يَا مُخَنَّثُ]

٢٢٤٠ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِآخَرَ: يَا لُوطِيُّ، أَوْ يَا مُخَنَّثُ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا أَبُو هِلَالٍ عَنْ قَتَادَةَ أَنَّ رَجُلًا قَالَ لِأَبِي الْأَسْوَدِ الدُّؤَلِيِّ: يَا لُوطِيُّ؟ قَالَ يَرْحَمُ اللَّهُ لُوطًا. وَبِهِ - إِلَى أَبِي هِلَالٍ عَنْ عِكْرِمَةَ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ عِكْرِمَةُ: لَيْسَ عَلَيْهِ حَدٌّ.

وَعَنْ الزُّهْرِيِّ، وَقَتَادَةَ أَنَّهُمَا قَالَا جَمِيعًا فِي رَجُلٍ قَالَ لِرَجُلٍ: يَا لُوطِيُّ؟ أَنَّهُ لَا يُحَدُّ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَقَالَ آخَرُونَ: لَا حَدَّ فِي ذَلِكَ إِلَّا أَنْ

يُبَيِّنَ: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ: أَخْبَرَنِي ابْنُ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ: لَا حَدَّ عَلَيْهِ حَتَّى يَقُولَ: إنَّك لَتَصْنَعُ بِفُلَانٍ، وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِآخَرَ: يَا لُوطِيُّ؟ قَالَ: نِيَّتُهُ يُسْأَلُ عَمَّا أَرَادَ بِذَلِكَ. وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْحَدُّ - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سَعِيدُ بْنُ حَسَّانَ عَنْ عَبْدِ الْحَمِيدِ بْنِ جُبَيْرِ بْنِ شَيْبَةَ أَنَّ رَجُلًا قَالَ لِرَجُلٍ: يَا لُوطِيُّ؟ فَرُفِعَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَجَعَلَ عُمَرُ يَقُولُ: يَا لُوطِيُّ، يَا مُحَمَّدِيُّ - فَكَأَنَّهُ لَمْ يَرَ عَلَيْهِ الْحَدَّ، وَضَرَبَهُ بِضْعَةَ عَشَرَ سَوْطًا، ثُمَّ أَرْسَلَ إلَيْهِ مِنْ الْغَدِ فَأَكْمَلَ لَهُ الْحَدَّ. وَبِهِ - إلَى وَكِيعٍ نا أَبُو هِلَالٍ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الرَّجُلِ يَقُولُ لِلرَّجُلِ: يَا لُوطِيُّ؟ قَالَ: عَلَيْهِ الْحَدُّ. وَبِهِ - إلَى وَكِيعٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي فِعْلِ قَوْمِ لُوطٍ؟ قَالَ: يُجْلَدُ مَنْ فَعَلَهُ وَمَنْ رَمَى بِهِ وَبِهِ - إلَى وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الرَّجُلِ يَقُولُ لِلرَّجُلِ: يَا لُوطِيُّ؟ قَالَ: يُجْلَدُ؟ قَالَ أَبُو مُحَمَّدٍ: قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ: يُجْلَدُ، لَيْسَ فِيهِ بَيَانُ أَنَّهُمَا أَرَادَا الْحَدَّ، وَقَدْ يُمْكِنُ أَنْ يُرِيدَا جَلْدَ تَعْزِيرٍ. وَبِإِيجَابِ الْحَدِّ عَلَى مَنْ رَمَى بِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ. وَهُوَ الْخَارِجُ عَلَى قَوْلِ أَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ فَوَجَدْنَا هَذِهِ الْمَسْأَلَةَ - يَعْنِي مَنْ رَمَى آخَرَ: بِأَنَّهُ يَنْكِحُ الرِّجَالَ، أَوْ بِأَنَّهُ يَنْكِحُهُ الرِّجَالُ - إنَّمَا هِيَ مُعَلَّقَةٌ بِالْوَاجِبِ فِي قَوْمِ لُوطٍ، فَإِنْ كَانَ زَنَى فَالْوَاجِبُ فِي الرَّمْيِ بِهِ حَدُّ الْقَذْفِ بِالزِّنَى، وَإِنْ كَانَ لَيْسَ

dresses another as “O sodomite (Lūṭī)!” that he is not liable to the *ḥadd* punishment—this being the view of Abū Ḥanīfah, Abū Sulaymān, and our companions. Others held that no *ḥadd* applies unless the accuser specifies the act, as transmitted through the cited chain to ʿAbd al-Razzāq: Ibn Jurayj reported to me, stating, “I asked ʿAṭāʾ about a man who said to another, ’O sodomite (Lūṭī)!’ He replied, ’No *ḥadd* penalty is incurred unless he explicitly states, ”You commit sodomy with so-and-so.“” Through the same chain to ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: concerning a man who said to another, “O sodomite (Lūṭī)!” he ruled, “His intention must be scrutinized regarding the meaning of his words.” Another group affirmed the applicability of the *ḥadd*—as narrated by Muḥammad ibn Saʿīd ibn Nabāt, from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Saʿīd ibn Ḥassān, from ʿAbd al-Ḥamīd ibn Jubayr ibn Shaybah: A man said to another, “O sodomite (Lūṭī)!” The case was brought before ʿUmar ibn ʿAbd al-ʿAzīz, who remarked, “O sodomite (Lūṭī)! O ‘Muḥammadan’!”—as if he did not consider the *ḥadd* applicable; yet he ordered the man to receive a dozen or so lashes. The following day, he summoned him and imposed the full *ḥadd* punishment. Through this chain to Wakīʿ, from Abū Hilāl, from al-Ḥasan al-Baṣrī: regarding a man who says to another, “O sodomite (Lūṭī)!” he ruled, “The *ḥadd* penalty applies.” Through this chain to Wakīʿ, from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, from Manṣūr, from Ibrāhīm al-Nakhaʿī: concerning the act of Lot’s people, he stated, “The one who commits it and the one who accuses another of it are to be flogged.” Through this chain to Wakīʿ, from Isrāʾīl, from Jābir, from ʿĀmir al-Shaʿbī: regarding a man who says to another, “O sodomite (Lūṭī)!” he ruled, “He is to be flogged.” Abū Muḥammad said: The rulings of Ibrāhīm al-Nakhaʿī and al-Shaʿbī—“He is to be flogged”—do not specify whether they intended the *ḥadd* penalty, as it is plausible they referred to disciplinary flogging (*taʿzīr*). Mālik and al-Shāfiʿī maintain that the *ḥadd* is obligatory for one who levels such an accusation, diverging from the position of Abū Yūsuf and Muḥammad ibn al-Ḥasan. Abū Muḥammad said: Given their disagreement, it became necessary to examine the issue. We determined that this matter—accusing someone of engaging in or being subjected to sodomy—hinges on

زَنَى فَلَا يَجِبُ فِي الرَّمْيِ بِهِ حَدُّ الْقَذْفِ بِالزِّنَا - وَسَنَسْتَقْصِي الْكَلَامَ فِي هَذِهِ الْمَسْأَلَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي بَابٍ مُفْرَدٍ لَهُ إثْرَ كَلَامِنَا فِي حَدِّ السَّرِقَةِ، وَحَدِّ الْخَمْرِ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ - وَهُوَ لَيْسَ عِنْدَنَا زِنًا فَلَا حَدَّ فِي الرَّمْيِ بِهِ. وَأَمَّا أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ فَهُوَ عِنْدَهُمَا زِنًا أَوْ مَقِيسٌ عَلَى الزِّنَا فَالْحَدُّ عِنْدَهُمَا فِي الْقَذْفِ بِهِ. وَأَمَّا مَالِكٌ، وَالْأَشْهَرُ مِنْ أَقْوَالِ الشَّافِعِيِّ فَهُوَ عِنْدَهُمْ خَارِجٌ مِنْ حُكْمِ الزِّنَا، لِأَنَّهُمَا يَرَيَانِ فِيهِ الرَّجْمَ - أَحْصَنَ أَوْ لَمْ يُحْصَنْ - فَإِذْ هُوَ عِنْدَهُمْ لَيْسَ زِنًا، وَإِنَّمَا حُكْمُهُ الْمُحَارَبَةُ أَوْ الرِّدَّةُ، لِأَنَّهُ لَا يُرَاعَى فِيهِ إحْصَانٌ مِنْ غَيْرِهِ، فَكَانَ الْوَاجِبُ - عَلَى قَوْلِهِمَا - أَنْ لَا يَكُونَ فِيهِ حَدُّ الزِّنَا - وَهُوَ مِمَّا تَنَاقَضُوا فِيهِ أَفْحَشَ تَنَاقُضٍ، فَلَمْ يَتَّبِعُوا فِيهِ نَصًّا وَلَا قِيَاسًا. فَإِنْ قَالُوا: إنَّ الرَّمْيَ بِذَلِكَ حُرِّمَ؟ قُلْنَا: نَعَمْ، وَإِثْمٌ، وَلَكِنْ لَيْسَ كُلُّ حَرَامٍ، وَإِثْمٍ: تَجِبُ فِيهِ الْحُدُودُ، فَالْغَصْبُ حَرَامٌ وَلَا حَدَّ فِيهِ، وَأَكْلُ الْخِنْزِيرِ حَرَامٌ وَلَا حَدَّ فِيهِ، وَالرَّمْيُ بِالْكُفْرِ حَرَامٌ وَلَا حَدَّ فِيهِ. وَأَمَّا مَنْ قَالَ لِآخَرَ: يَا مُخَنَّثُ فَإِنَّ الْقَاضِي حُمَامَ بْنَ أَحْمَدَ قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ أَبِي سُفْيَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَالَ لِرَجُلٍ مِنْ الْأَنْصَارِ: يَا يَهُودِيُّ، فَاضْرِبُوهُ عِشْرِينَ، وَمَنْ قَالَ لِرَجُلٍ: يَا مُخَنَّثُ فَاضْرِبُوهُ عِشْرِينَ» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا لَيْسَ بِشَيْءٍ، وَذَلِكَ، لِأَنَّهُ مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ. ثُمَّ هُوَ أَيْضًا مِنْ رِوَايَةِ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ فِي غَايَةِ السُّقُوطِ. وَلَوْ كَانَ هَذَا صَحِيحًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَوْجَبْنَاهُ حَدًّا، وَلَكِنَّهُ لَا يَصِحُّ، فَلَا يَجِبُ الْقَوْلُ بِهِ، وَلَا حَدَّ فِي شَيْءٍ مِمَّا

the legal ruling governing such acts... The people of Lut: if he committed fornication, then the prescribed punishment for slander through accusation of fornication becomes obligatory. If he did not commit fornication, no prescribed punishment for slander applies—and we shall elaborate exhaustively on this matter, God willing, in a dedicated chapter following our discussion on the punishment for theft and the punishment for wine (there is no power nor might except with Allah). Since in our view this act is not classified as fornication, no prescribed punishment applies to accusations thereof. As for Abu Yusuf and Muhammad ibn al-Hasan, they consider it either fornication or analogous to fornication, thus mandating the prescribed punishment for slander in their school. Malik and the predominant opinion in al-Shafi'i's positions regard it as outside the ruling of fornication, since they both impose stoning for it—regardless of the perpetrator's chaste status—thus deeming it not fornication but rather subject to the ruling of banditry or apostasy, as chaste status is not considered in this context. Consequently, according to their view, the prescribed punishment for fornication does not apply—a position marked by severe contradiction, adhering neither to textual evidence nor legal analogy. Should they argue that such accusation is prohibited, we respond: True, it is sinful, but not every prohibited or sinful act incurs prescribed punishments. Usurpation is prohibited yet has no prescribed punishment; eating pork is prohibited yet has no prescribed punishment; accusing someone of disbelief is prohibited yet has no prescribed punishment. Regarding one who says to another, "O effeminate man!"—Judge Humam ibn Ahmad reported: Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, 'Abd al-Razzaq narrated from Ibrahim ibn Muhammad ibn Abi Yahya from Dawud ibn al-Husayn from Abu Sufyan, who said: The Messenger of Allah (peace be upon him) stated, "Whoever says to a man of the Ansar, 'O Jew!' strike him twenty lashes, and whoever says to a man, 'O effeminate one!' strike him twenty lashes." Abu Muhammad (may Allah have mercy on him) remarked: This narration is invalid, being a disconnected chain (mursal), which cannot serve as legal proof. Moreover, it is transmitted through Ibrahim ibn Abi Yahya—a narrator of severely weak status. Had this been authentically established from the Messenger of Allah (peace be upon him), we would have upheld it as a prescribed punishment. However, since

it lacks authenticity, it is not binding, and no prescribed punishment applies to any of these cases—only discretionary discipline for the harm caused, as it constitutes reprehensible conduct, and rectifying evil is obligatory by the decree of the Messenger of Allah (peace be upon him). Success is attained solely through Allah, the Exalted.

L41719 **A jurisprudential case regarding one who threw an animal at a person.**

L41720 2241. Issue: What is the ruling regarding someone who causes an animal to injure a person?

L41721–41722 Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ narrated to us via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb via Ibn Abī Dhi'b from al-Zuhrī that he said: "Whoever accuses a person of bestiality incurs the ḥadd punishment." Up to Ibn Wahb via Ibn Samʿān from al-Zuhrī, who said: "One accused of that—meaning bestiality—receives eighty lashes." Ḥammām narrated to us via Ibn Mufarrij via Ibn al-Aʿrābī via al-Dabarī via ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: "Whoever slanders a man with bestiality is lashed with the ḥadd punishment for slanderous fabrication." A group held that no ḥadd applies to this—as we reported through ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir al-Juʿfī, who said: "I asked al-Shaʿbī about a man accused of bestiality or found upon an animal. He replied: 'No ḥadd applies to him.'" ʿAbd Allāh ibn Rabīʿ narrated to us via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb, who informed me via Yūnus ibn Yazīd from Rabīʿah, who said regarding one accused of bestiality: "He has been slandered with a grave allegation. The accuser merits severe exemplary punishment, contingent on the ruler's judgment in the matter." As for the Ḥanafīs, Mālikīs, Shāfiʿīs, and our Ẓāhirī adherents, they maintain no ḥadd applies to this whatsoever—a contradiction from the Ḥanafīs, Mālikīs, and Shāfiʿīs, as they impose ḥadd for accusations of the act of Lot's people yet reject it for bestiality. All of this is disputed, as we have documented. No textual proof exists mandating ḥadd for such accusations—success is by Allāh the Exalted alone. Abū Muḥammad—may Allāh have mercy on him—

ذَكَرُوا - وَإِنَّمَا هُوَ التَّعْزِيرُ فَقَطْ لِلْأَذَى، لِأَنَّهُ مُنْكَرٌ، وَتَغْيِيرُ الْمُنْكَرِ وَاجِبٌ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة فِيمَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ]

٢٢٤١ - مَسْأَلَةٌ: مَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا ابْنُ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ أَنَّهُ قَالَ: مَنْ رَمَى إنْسَانًا بِبَهِيمَةٍ، فَعَلَيْهِ الْحَدُّ. وَبِهِ - إلَى ابْنِ وَهْبٍ نا ابْنُ سَمْعَانَ عَنْ الزُّهْرِيِّ قَالَ: مَنْ رُمِيَ بِذَلِكَ - يَعْنِي بِبَهِيمَةٍ - جُلِدَ ثَمَانِينَ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قَذَفَ رَجُلًا بِبَهِيمَةٍ جُلِدَ حَدَّ الْفِرْيَةِ. وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِي ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ قَالَ: سَأَلْت الشَّعْبِيَّ عَنْ رَجُلٍ قُذِفَ بِبَهِيمَةٍ أَوْ وُجِدَ عَلَيْهَا؟ قَالَ: لَيْسَ عَلَيْهِ حَدٌّ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِيمَنْ يُقْذَفُ بِبَهِيمَةٍ؟ قَالَ: قَدْ قُذِفَ بِقَوْلٍ كَبِيرٍ، وَالْقَائِلُ أَهْلٌ لِلنَّكَالِ الشَّدِيدِ، وَرَأْيِ السُّلْطَانِ فِيهِ. وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، وَأَصْحَابُنَا الظَّاهِرِيُّونَ، فَلَا يَرَوْنَ فِي ذَلِكَ حَدًّا أَصْلًا - وَهَذَا تَنَاقُضٌ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ فِي ذَلِكَ، إذْ يَرَوْنَ الْحَدَّ عَلَى مَنْ قُذِفَ بِفِعْلِ قَوْمِ لُوطٍ، وَلَا يَرَوْنَ الْحَدَّ عَلَى مَنْ قُذِفَ بِبَهِيمَةٍ - وَكُلُّ ذَلِكَ

said: “They find no ruling from the Companions—may Allāh be pleased with them—obligating ḥadd for accusing one of the act of Lot’s people, while we demonstrate from the Companions’ positions the obligation of ḥadd where they deny it, as we shall detail—Allāh the Exalted willing.”

مُخْتَلَفٌ فِيهِ كَمَا أَوْرَدْنَا. وَكُلُّ ذَلِكَ لَا نَصَّ فِي إِيجَابِ الْحَدِّ فِي الرَّمْيِ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ لَا يَجِدُونَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إِيجَابَ حَدٍّ عَلَى مَنْ رَمَى إنْسَانًا بِفِعْلِ قَوْمِ لُوطٍ، وَنَحْنُ نُوجِدُهُمْ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إيجَابَ حَدٍّ حَيْثُ لَا يُوجِبُونَهُ، كَمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى؛

[مَسْأَلَة فِيمَنْ فَضَّلَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ أَوْ افْتَرَى عَلَى الْقُرْآنِ]

L41723 **A legal issue concerning one who prefers another over Abu Bakr the Truthful or ascribes falsehood to the Quran.**

L41724–41728 2242 – An issue concerning one who prefers [someone] over Abu Bakr al-Siddiq or fabricates lies against the Quran? As narrated to us by Ahmad ibn ʿUmar ibn Anas al-ʿUdhri, via ʿAbd Allah ibn al-Husayn ibn ʿIqal, via Ibrahim ibn Muhammad al-Dinawari, via Muhammad ibn Ahmad ibn al-Jahm, via Abu Qilabah, via Muhammad ibn Bishar (Bindar), via Muhammad ibn Jaʿfar (Ghundar), via Shuʿbah from Husayn ibn ʿAbd al-Rahman from Ibn Abi Layla. That al-Jarūd ibn al-‘Alā’ al-‘Abdī said: “Is Abū Bakr better than ‘Umar?” A man from the descendants of Ḥājib ibn ‘Uṭārid said: “‘Umar is better than Abū Bakr.” When this reached ‘Umar, he struck the Ḥājibī with a whip until his leg was split open and said: “You said: ‘Umar is better than Abū Bakr.’ Verily, Abū Bakr was the companion of Allah’s Messenger—peace and blessings of Allah be upon him—and was the most virtuous of people in such-and-such matters. Whoever says otherwise is liable to the ḥadd punishment for slanderers.” Abū Muḥammad—may Allah have mercy on him—said: “This is as found in al-‘Udhri’s book: ‘from the descendants of Ḥājib ibn ‘Uṭārid’—which is erroneous. The correct version is: from the descendants of ‘Uṭārid ibn Ḥājib ibn Zurārah.” ‘Alī said: “In this report, ‘Umar only stated that Abū Bakr was the most virtuous of people in such-and-such matters—things he mentioned—not in absolute terms. A person may be superior in one matter while another surpasses him in others. For example, Bilāl was tortured for Allah’s sake in ways Abū Bakr was not, and he fought strenuously in ways Abū Bakr did not, yet Abū Bakr is generally better than him—alongside many other matters.”

٢٢٤٢ - مَسْأَلَةٌ: فِيمَنْ فَضَّلَ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ، أَوْ افْتَرَى عَلَى الْقُرْآنِ؟ كَمَا نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارٌ - نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ - نا شُعْبَةُ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ أَبِي لَيْلَى: أَنَّ الْجَارُودَ بْنَ الْعَلَاءِ الْعَبْدِيَّ قَالَ: أَبُو بَكْرٍ خَيْرٌ مِنْ عُمَرَ؟ فَقَالَ رَجُلٌ مِنْ وَلَدِ حَاجِبِ بْنِ عُطَارِدَ: عُمَرُ خَيْرٌ مِنْ أَبِي بَكْرٍ: فَبَلَغَ عُمَرَ، فَضَرَبَ بِالدِّرَّةِ الْحَاجِبِيَّ حَتَّى شَغَرَ بِرِجْلِهِ؟ وَقَالَ: قُلْتَ: عُمَرُ خَيْرٌ مِنْ أَبِي بَكْرٍ، إنَّ أَبَا بَكْرٍ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ أَخْيَرَ النَّاسِ فِي كَذَا وَكَذَا - مَنْ قَالَ غَيْرَ ذَلِكَ وَجَبَ عَلَيْهِ حَدُّ الْمُفْتَرِي قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَكَذَا فِي كِتَابِ الْعُذْرِيِّ: مِنْ وَلَدِ حَاجِبِ بْنِ عُطَارِدَ - وَهُوَ خَطَأٌ - وَالصَّوَابُ: مِنْ وَلَدِ عُطَارِدَ بْنِ حَاجِبِ بْنِ زُرَارَةَ قَالَ عَلِيٌّ: إنَّمَا أَخْبَرَ عُمَرُ فِي هَذَا الْخَبَرِ: أَنَّ أَبَا بَكْرٍ أَخْيَرُ النَّاسِ فِي كَذَا وَكَذَا - أَشْيَاءُ ذَكَرَهَا - لَا عَلَى الْعُمُومِ، وَقَدْ يَكُونُ الْمَرْءُ خَيْرًا فِي شَيْءٍ مَا مِنْ آخَرَ خَيْرٌ مِنْهُ فِي أَشْيَاءَ، فَقَدْ عُذِّبَ بِلَالٌ فِي اللَّهِ تَعَالَى بِمَا لَمْ يُعَذَّبْ أَبُو بَكْرٍ، وَجَالَدَ عَلَى مَا لَمْ يُجَالِدْ أَبُو بَكْرٍ، وَأَبُو بَكْرٍ خَيْرٌ مِنْهُ عَلَى الْعُمُومِ - وَفِي أَشْيَاءَ غَيْرِ

Through the aforementioned chain—from Ibn al-Jahm: Muḥammad ibn Bishr narrated to us; al-Haytham and al-Ḥakam both narrated to us, jointly stating: Shihāb ibn Khirāsh narrated to us from al-Ḥajjāj ibn Dīnār from Abū Maʿshar from Ibrāhīm, who said: "I heard ʿAlqamah strike his hand upon Kufa's pulpit and say: 'I heard ʿAlī—peace be upon him—declare: "It has reached me that some people prefer me over Abū Bakr and ʿUmar. Whoever utters such a thing is a slanderer, liable to the ḥadd punishment for slanderers."'"

Through the same chain—from Ibn al-Jahm: Abū Qilābah narrated to us; al-Ḥajjāj ibn al-Minhāl narrated to us; Muḥammad ibn Ṭalḥah narrated to us from Abū ʿUbaydah ibn Ḥajal that ʿAlī ibn Abī Ṭālib said: "If I am presented with any man who prefers me over Abū Bakr and ʿUmar, I will lash him with the ḥadd punishment for slanderers."

Muḥammad ibn Saʿīd ibn Nabāt narrated to us; ʿAbdullāh ibn Naṣr narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Mūsā ibn Muʿāwiyah narrated to us; Wakīʿ narrated to us; Ismāʿīl ibn Abī Khālid narrated from ʿĀmir al-Shaʿbī, who said: "'Umar sought their counsel regarding wine. ʿAbd al-Raḥmān ibn ʿAwf said: 'For one who fabricates against the Qur'ān, I opine he should be lashed eighty times.'"

ʿAbdullāh ibn Rabīʿ narrated to us; ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us; Aḥmad ibn Khālid narrated to us; ʿAlī ibn ʿAbd al-ʿAzīz narrated to us; al-Ḥajjāj ibn al-Minhāl narrated to us; Ḥammād ibn Salamah narrated from ʿAṭāʾ ibn al-Sāʾib from Juḥādah ibn Dithār that some companions of Allah's Messenger—peace and blessings of Allah be upon him—drank wine in Syria, and Yazīd ibn Abī Sufyān [...] He wrote to ʿUmar concerning them and mentioned the ḥadīth—which included that they cited as evidence against ʿUmar the words of Allah the Exalted: *"There is no blame upon those who believe and do righteous deeds for what they consumed when they feared Allah and believed and did righteous deeds, then feared Allah and believed"* (5:93). ʿUmar consulted the people about them. He asked ʿAlī, "What is your opinion?" ʿAlī replied, "I hold that they have legislated in Allah's religion what He did not authorize. If they assert its permissibility, execute them, for they have permitted what Allah the Exalted has forbid-

هَذَا كَثِيرَةٌ. وَبِالسَّنَدِ الْمَذْكُورِ - إِلَى ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ بِشْرٍ نا الْهَيْثَمُ، وَالْحَكَمِ، قَالَا جَمِيعًا: نا شِهَابُ بْنُ خِرَاشٍ عَنْ الْحَجَّاجِ بْنِ دِينَارٍ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ قَالَ: سَمِعْت عَلْقَمَةَ ضَرَبَ بِيَدِهِ عَلَى مِنْبَرِ الْكُوفَةِ، قَالَ: سَمِعْت عَلِيًّا - عَلَيْهِ السَّلَامُ - يَقُولُ: بَلَغَنِي أَنَّ قَوْمًا يُفَضِّلُونَنِي عَلَى أَبِي بَكْرٍ، وَعُمَرَ؟ مَنْ قَالَ شَيْئًا مِنْ هَذَا فَهُوَ مُفْتَرٍ، عَلَيْهِ مَا عَلَى الْمُفْتَرِي. وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا أَبُو قِلَابَةَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا مُحَمَّدُ بْنُ طَلْحَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ حَجَلٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا أُوتَى بِرَجُلٍ فَضَّلَنِي عَلَى أَبِي بَكْرٍ، وَعُمَرَ، إِلَّا جَلَدْتُهُ حَدَّ الْمُفْتَرِي. حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ عَامِرٍ الشَّعْبِيِّ، قَالَ: اسْتَشَارَهُمْ عُمَرُ فِي الْخَمْرِ؟ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: مَنْ افْتَرَى عَلَى الْقُرْآنِ أَرَى أَنْ يُجْلَدَ ثَمَانِينَ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ جُحَادَةَ بْنِ دِثَارٍ أَنَّ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَرِبُوا الْخَمْرَ بِالشَّامِ وَأَنَّ يَزِيدَ بْنَ أَبِي سُفْيَانَ كَتَبَ فِيهِمْ إِلَى عُمَرَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّهُمْ احْتَجُّوا عَلَى عُمَرَ بِقَوْلِ اللَّهِ تَعَالَى {لَيْسَ عَلَى الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ جُنَاحٌ فِيمَا طَعِمُوا إِذَا مَا اتَّقَوْا وَآمَنُوا وَعَمِلُوا الصَّالِحَاتِ ثُمَّ اتَّقَوْا وَآمَنُوا} [المائدة: ٩٣] فَشَاوَرَ فِيهِمْ النَّاسَ، فَقَالَ لِعَلِيٍّ: مَاذَا تَرَى؟ فَقَالَ: أَرَى أَنَّهُمْ قَدْ شَرَعُوا فِي دِينِ اللَّهِ مَا لَمْ يَأْذَنْ بِهِ، فَإِنْ زَعَمُوا أَنَّهَا حَلَالٌ فَاقْتُلْهُمْ، فَإِنَّهُمْ قَدْ أَحَلُّوا مَا حَرَّمَ اللَّهُ تَعَالَى، وَإِنْ زَعَمُوا أَنَّهَا حَرَامٌ فَاجْلِدْهُمْ ثَمَانِينَ ثَمَانِينَ، فَقَدْ افْتَرَوْا عَلَى اللَّهِ الْكَذِبَ، وَقَدْ أَخْبَرَ اللَّهُ تَعَالَى بِحَدِّ مَا يُفْتَرَى بِهِ بَعْضُنَا عَلَى بَعْضٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

den. If they assert its prohibition, lash them eighty lashes each, for they have fabricated lies against Allah. Has Allah the Exalted not informed us of the ḥadd punishment for what one falsely attributes to another?" Abū Muḥammad—may Allah have mercy on him—said: They (meaning the Ḥanafīs and Mālikīs) greatly revere the opinion and ruling of a Companion if it conforms to their blind adherence and capricious whims. Yet here they have opposed the Companions—may Allah be pleased with them—for they do not consider the ḥadd punishment for slander applicable to those who prefer ʿUmar over Abū Bakr, nor to those who prefer ʿAlī over both, nor to those who fabricate lies against Allah the Exalted and against the Quran. Rather, they deem execution only for one who alters the religion, or nothing at all if the person engages in interpretation. Moreover, they cite the statements of ʿAlī and ʿAbd al-Raḥmān in these two reports to affirm eighty lashes as the ḥadd punishment for wine—and indeed to affirm analogical reasoning—while contradicting them in imposing the ḥadd punishment for slander upon those who fabricate lies against Allah. If the statements of ʿAlī and ʿAbd al-Raḥmān constitute proof for establishing the ḥadd punishment for wine and for analogical reasoning, then they equally constitute proof for imposing the ḥadd punishment for slander upon those who fabricate lies against Allah the Exalted and against the Quran.[34]

هُمْ يُعَظِّمُونَ - يَعْنِي الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - قَوْلَ الصَّاحِبِ وَحُكْمَه إذَا وَافَقَ تَقْلِيدَهُمْ وَأَهْوَاءَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا يَرَوْنَ عَلَى مَنْ فَضَّلَ عُمَرَ عَلَى أَبِي بَكْرٍ حَدَّ الْفِرْيَةِ، وَلَا عَلَى مَنْ فَضَّلَ عَلِيًّا عَلَيْهِمَا حَدَّ الْفِرْيَةِ، وَلَا يَرَوْنَ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى وَعَلَى الْقُرْآنِ، حَدَّ الْفِرْيَةِ، لَكِنْ يَرَوْنَ الْقَتْلَ إنْ بَدَّلَ الدِّينَ، أَوْ لَا شَيْءَ إنْ كَانَ مُتَأَوِّلًا. هَذَا، وَهُمْ يَحْتَجُّونَ بِقَوْلِ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ، فِي هَذَيْنِ الْخَبَرَيْنِ فِي إثْبَاتِ ثَمَانِينَ فِي حَدِّ الْخَمْرِ، نَعَمْ، وَفِي إثْبَاتِ الْقِيَاسِ؟ وَقَدْ خَالَفُوهُمَا فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ كَذِبًا. فَلَئِنْ كَانَ قَوْلُ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ، حُجَّةً فِي إيجَابِ حَدِّ الْخَمْرِ، وَفِي الْقِيَاسِ، فَإِنَّهُ حُجَّةٌ فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى كَذِبًا وَعَلَى الْقُرْآنِ.

L41729 And if the statement of the two is not a proof for imposing the ḥadd for fabrication against one who fabricates against Allah the Exalted and the Quran, then their statement is not a proof for imposing analogy, nor for imposing eighty [lashes] for intoxicants—with no distinction. Success comes from Allah the Exalted. This indicates to whoever is fair to himself that not every fabrication warrants the ḥadd. Since this is so, there is no ḥadd except for fabrication involving adultery, due to the soundness of the textual evidence and the consensus thereon. Success comes from Allah the Exalted.

وَلَئِنْ كَانَ قَوْلُهُمَا لَيْسَ بِحُجَّةٍ فِي إيجَابِ حَدِّ الْفِرْيَةِ عَلَى مَنْ افْتَرَى عَلَى اللَّهِ تَعَالَى، وَعَلَى الْقُرْآنِ، فَمَا قَوْلُهُمَا حُجَّةً فِي إيجَابِ الْقِيَاسِ، وَلَا فِي إيجَابِ ثَمَانِينَ فِي الْخَمْرِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَهَذَا يُلِيحُ لِمَنْ أَنْصَفَ نَفْسَهُ أَنَّهُ لَيْسَ كُلُّ فِرْيَةٍ يَجِبُ فِيهَا الْحَدُّ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا حَدَّ إلَّا فِي الْفِرْيَةِ بِالزِّنَا، لِصِحَّةِ النَّصِّ، وَالْإِجْمَاعِ عَلَى ذَلِكَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عَفْوُ الْمَقْذُوفِ عَنْ الْقَاذِفِ]

The Jurisprudential Issue of the Falsely Accused Person's Forgiveness of the Slanderer.

L41730

L41731–41732 Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ

[34] **Qur'an references (L41724):** Qur'an 5:93 (Al-Ma'idah).

informed us, Ibn Mufarrij informed us, Qāsim ibn Aṣbagh informed us, Ibn Waḍḍāḥ informed us, Saḥnūn informed us, Ibn Wahb reported to me from Yūnus ibn Yazīd, from Rabīʿah, who said regarding a man who tells the Imam: "So-and-so has slandered me" or "has accused my mother of adultery," and the Imam asks: "Did you do it?" The man replies: "Yes, I did." The other party then says: "I have pardoned him." It is incumbent upon the Imam to say to the one slandered against: "You know best"—without probing into it, lest he expose a private matter whose exposure is impermissible. If the accuser returns seeking that ḥadd punishment, it becomes his right.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِلْإِمَامِ: افْتَرَى عَلَيَّ فُلَانٌ، أَوْ رَمَى أُمِّي؟ فَيَقُولُ الْإِمَامُ: أَفَعَلْتَ؟ فَيَقُولُ: نَعَمْ، قَدْ فَعَلْتُ، فَيَقُولُ الْآخَرُ: قَدْ أَعْفَيْتُهُ؟ فَيَنْبَغِي لِلْإِمَامِ أَنْ يَقُولَ لِلْمُفْتَرَى عَلَيْهِ: أَنْتَ أَبْصَرُ - وَلَا يَكْشِفُهُ لَعَلَّهُ يَكْشِفُ غِطَاءً لَا يَحِلُّ كَشْفُهُ، فَإِنْ عَادَ يَلْتَمِسُ ذَلِكَ الْحَدَّ كَانَ ذَلِكَ لَهُ.

L41733 And through him—to Ibn Wahb from Malik ibn Anas—that Zuraiq ibn al-Hakam narrated to him. He said: A man named Misbah falsely accused his son, saying to him: "O fornicator!" The son brought this matter to me, so I ordered that the father be flogged. The father then said: "By Allah, if I am flogged, I will confess to fornication myself!" When he said this to me—it perplexed me—I wrote to Umar ibn Abd al-Aziz, informing him of the situation. Umar wrote back to me: "Permit the son to pardon his father." Zuraiq said: I then wrote to Umar ibn Abd al-Aziz concerning parents who falsely accuse their son—is his pardon of them permissible? Umar wrote back to me: "Enforce for him the ruling of Allah Almighty, unless he wishes to conceal it out of mercy."

وَبِهِ - إِلَى ابْنِ وَهْبٍ نِي مَالِكُ بْنُ أَنَسٍ أَنَّ زُرَيْقَ بْنَ الْحَكَمِ حَدَّثَهُ. قَالَ: افْتَرَى رَجُلٌ - يُقَالُ لَهُ مِصْبَاحٌ - عَلَى ابْنِهِ، فَقَالَ لَهُ: يَا زَانِي، فَرَفَعَ ذَلِكَ إِلَيَّ فَأَمَرْت بِجَلْدِهِ، فَقَالَ: وَاَللَّهِ لَئِنْ جَلَدْتُهُ لَأُقِرَّنَّ عَلَى نَفْسِي بِالزِّنَا؟ فَلَمَّا قَالَ ذَلِكَ لِي أَشْكَلَ عَلَيَّ؟ فَكَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَذْكُرُ ذَلِكَ لَهُ، فَكَتَبَ عُمَرُ إِلَيَّ: أَنْ أَجِزْ عَفْوَهُ فِي نَفْسِهِ؟ قَالَ زُرَيْقٌ: فَكَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَفْتَرِي عَلَيْهِ أَبَوَاهُ، أَيَجُوزُ عَفْوُهُ عَنْهُمَا؟ فَكَتَبَ عُمَرُ إِلَيَّ: خُذْ لَهُ بِكِتَابِ اللَّهِ تَعَالَى، إِلَّا أَنْ يُرِيدَ سَتْرًا

L41734 Ḥummām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq reported from Maʿmar, from Ismāʿīl ibn Umayyah, who informed me: Zuraiq ibn Ḥakīm informed me that ʿUmar ibn ʿAbd al-ʿAzīz wrote to him concerning a man who slandered his son: "Lash him unless his son pardons him." Ibn Zuraiq said: "I assumed this applied specifically to the father. Thus, I wrote to ʿUmar seeking clarification: ʿIs this for all people generally or specifically for the father?'" He wrote back to me: "Rather, it is a general ruling for all people."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ أَخْبَرَنِي زُرَيْقُ بْنُ حَكِيمٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَيْهِ فِي رَجُلٍ قَذَفَ ابْنَهُ: أَنْ اجْلِدْهُ، إِلَّا أَنْ يَعْفُوَ ابْنُهُ عَنْهُ. قَالَ ابْنُ زُرَيْقٍ: فَظَنَنْت أَنَّهَا لِلْأَبِ خَاصَّةً، فَكَتَبْت إِلَى عُمَرَ أُرَاجِعُهُ: لِلنَّاسِ عَامَّةً أَمْ لِلْأَبِ خَاصَّةً؟ فَكَتَبَ إِلَيَّ: بَلْ لِلنَّاسِ عَامَّةً.

L41735 Others said: There is no pardon for anyone in that, as we have transmitted through the cited chain from ʿAbd al-Razzāq, from ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: "There is no pardon regarding any

part of the *ḥudūd* after they reach the Imam, for their implementation is from the *Sunnah*."

وَقَالَ آخَرُونَ: لَا عَفْوَ فِي ذَلِكَ لِأَحَدٍ، كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا عَفْوَ فِي الْحُدُودِ عَنْ شَيْءٍ مِنْهَا بَعْدَ أَنْ تَبْلُغَ الْإِمَامَ، فَإِنَّ إِقَامَتَهَا مِنَ السُّنَّةِ.

L41736 And according to him—to ʿAbd al-Razzāq [who narrates] from Maʿmar and Ibn Jurayj, both of whom [narrate] from al-Zuhrī—who said: When prescribed punishments reach the Sultan's authority, it is impermissible for anyone to pardon them. Ibn Jurayj and Maʿmar stated this—meaning the false accusation of unchastity (qadhf)—and this opinion has been transmitted from al-Ḥasan al-Baṣrī. Abū Sulaymān and our companions hold this view, as do al-Awzāʿī and al-Ḥasan ibn Ḥayy.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ كِلَاهُمَا عَنِ الزُّهْرِيِّ، قَالَ: إِذَا بَلَغَتْ الْحُدُودُ السُّلْطَانَ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَعْفُوَ عَنْهَا قَالَ ابْنُ جُرَيْجٍ، وَمَعْمَرٌ - يَعْنِي الْفِرْيَةَ - وَقَدْ رُوِيَ هَذَا الْقَوْلُ عَنِ الْحَسَنِ الْبَصْرِيِّ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ.

L41737 Abu Hanifa and his disciples said: It is impermissible to pardon the hadd punishment for qadhf (false accusation of unchastity).

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَجُوزُ الْعَفْوُ عَنِ الْحَدِّ فِي الْقَذْفِ.

L41738–41739 It is narrated from Abū Yūsuf—in one of his two opinions—and from al-Shāfiʿī and his companions, Aḥmad ibn Ḥanbal and his companions, that pardon in this matter is permissible both before the matter reaches the Imam and after it has reached him. Mālik said regarding one who slanders another and the accusation is established before the Imam, and the slandered person wishes to pardon the slanderer: "He is not permitted to pardon unless he intends to conceal something about himself, fearing that what he was accused of might be proven against him. In that case, his pardon is permissible." Mālik said: "If the slandered person wishes to delay the implementation of the punishment against the slanderer for his own sake or for his parents' sake, he may do so and may enforce it whenever he desires." He added: "If he pardons him and later wishes to enforce it, he is no longer entitled to do so." Abū Muḥammad—may Allah have mercy on him—said: "Since they differed as we have mentioned, it became incumbent upon us to examine this matter. We found that this disagreement revolves around one of two perspectives, with no third option: either the punishment for slander is among the rights of Allah the Exalted, like the punishment for adultery, intoxicants, theft, and

وَرُوِيَ عَنْ أَبِي يُوسُفَ - فِي أَحَدِ قَوْلَيْهِ - وَعَنِ الشَّافِعِيِّ، وَأَصْحَابِهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِ: أَنَّ الْعَفْوَ فِي ذَلِكَ جَائِزٌ قَبْلَ بُلُوغِ الْأَمْرِ إِلَى الْإِمَامِ، وَبَعْدَ بُلُوغِهِ إِلَيْهِ. وَقَالَ مَالِكٌ فِيمَنْ قَذَفَ آخَرَ فَثَبَتَ ذَلِكَ عِنْدَ الْإِمَامِ فَأَرَادَ الْمَقْذُوفُ أَنْ يَعْفُوَ عَنِ الْقَاذِفِ؟ قَالَ: لَا يَجُوزُ لَهُ الْعَفْوُ، إِلَّا أَنْ يُرِيدَ سَتْرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يَثْبُتَ عَلَيْهِ مَا رُمِيَ بِهِ، فَيَجُوزُ عَفْوُهُ حِينَئِذٍ. قَالَ مَالِكٌ: فَإِنْ أَرَادَ الْمَقْذُوفُ أَنْ يُؤَخِّرَ إِقَامَةَ الْحَدِّ عَلَى الْقَاذِفِ لَهُ أَوْ لِأَبَوَيْهِ كَانَ ذَلِكَ لَهُ، وَيَأْخُذُهُ بِهِ مَتَى أَحَبَّ، قَالَ: فَإِنْ عَفَا عَنْهُ ثُمَّ أَرَادَ أَخْذَهُ لَمْ يَكُنْ لَهُ أَخْذُهُ بِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا هَذَا الِاخْتِلَافَ مَرْجِعَهُ إِلَى أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إِمَّا أَنْ يَكُونَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ اللَّهِ تَعَالَى، كَالْحَدِّ فِي الزِّنَا، وَالْحَدِّ فِي الْخَمْرِ، وَالْحَدِّ فِي السَّرِقَةِ، وَالْحَدِّ فِي الْمُحَارَبَةِ - وَإِمَّا أَنْ يَكُونَ مِنْ حُقُوقِ النَّاسِ، كَالْقِصَاصِ فِي الْأَعْضَاءِ، وَالْجِنَايَاتِ عَلَى الْأَمْوَالِ.

highway robbery; or it is among the rights of people, like retaliation for injuries to body parts and monetary crimes."

L41740 If the prescribed punishment for false accusation (qadhf) is among the rights of God Almighty—like all other ḥudūd—then no one may pardon it, for no personal right exists in such matters. There is no distinction between one who steals another's property; one who commits adultery with his female servant and falsely accuses him; or one who coerces a woman, steals property from her wealth, and falsely accuses her. There was no disagreement that a man cannot pardon adultery committed with his female servant, thereby waiving the prescribed punishment for adultery. Likewise, neither party may pardon one who steals their property or engages in highway robbery (muḥārabah) against them, thereby waiving the prescribed punishments for theft or banditry (muḥārabah).

فَإِنْ كَانَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ اللَّهِ تَعَالَى كَسَائِرِ الْحُدُودِ، فَلَا يَجُوزُ لِأَحَدٍ عَفْوٌ فِيهِ؛ لِأَنَّهُ لَا حَقَّ لَهُ فِيهِ، وَلَا فَرْقَ بَيْنَ مَنْ سَرَقَ مَالَ إنْسَانٍ، أَوْ زَنَى بِأَمَتِهِ وَافْتَرَى عَلَيْهِ، أَوْ بِامْرَأَةٍ أَكْرَهَهَا، وَسَرَقَ مَالًا مِنْ مَالِهَا، وَافْتَرَى عَلَيْهَا، فَلَمْ يَخْتَلِفُوا فِي أَنَّهُ لَيْسَ لِلرَّجُلِ أَنْ يَعْفُوَ عَنْ الزِّنَا بِأَمَتِهِ فَيَسْقُطُ عَنْهُ حَدُّ الزِّنَا بِذَلِكَ، وَلَا لَهُمَا أَنْ يَعْفُوَا عَمَّنْ سَرَقَ مَالَهُمَا، أَوْ قَطَعَ عَلَيْهِمَا الطَّرِيقَ، فَيَسْقُطُ عَنْهُ حَدُّ السَّرِقَةِ بِذَلِكَ، وَحَدُّ الْمُحَارَبَةِ.

L41741 The one who arbitrarily distinguishes between *qadhf* (false accusation of unchastity) and what we have mentioned is imposing rulings in religion without proof. If the *ḥadd* punishment for *qadhf* is considered among people's rights, then their pardon regarding their rights is permissible. We examined Mālik's statement and found it apparently contradictory. For if - according to him - the *ḥadd* punishment for *qadhf* is among the rights of God Almighty, then the pardon of the one falsely accused becomes impermissible - whether they intend to conceal [the accusation] or not - because God Almighty has not granted the victim authority to nullify any of the *ḥadd* punishments ordained by Him.

وَالْمُفَرِّقُ بَيْنَ الْقَذْفِ وَبَيْنَ مَا ذَكَرْنَا: مُتَحَكِّمٌ فِي الدِّينِ بِلَا دَلِيلٍ. وَإِنْ كَانَ الْحَدُّ فِي الْقَذْفِ مِنْ حُقُوقِ النَّاسِ: فَعَفْوُ النَّاسِ عَنْ حُقُوقِهِمْ جَائِزٌ: فَنَظَرْنَا فِي قَوْلِ مَالِكٍ، فَوَجَدْنَاهُ ظَاهِرَ التَّنَاقُضِ؛ لِأَنَّهُ إنْ كَانَ حَدُّ الْقَذْفِ عِنْدَهُ مِنْ حُقُوقِ اللَّهِ تَعَالَى - فَلَا يَجُوزُ عَفْوُ الْمَقْذُوفِ - أَرَادَ سَتْرًا أَوْ لَمْ يُرِدْ: لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لَهُ إسْقَاطَ حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

L41742–41743 If the matter pertains to human rights, forgiveness is permissible for every person regarding their own right—whether they intended concealment or not. To those who support this manifestly erroneous opinion, we say: What difference exists between this and one who forgives the man who had intercourse with his female slave—while intending to conceal himself, fearing the involved party might produce evidence that she was taken by force from him and is now in his possession? Or between this and one who forgives the thief of his property—intending to conceal himself, fearing the thief might present evidence of justice proving the property in his possession was stolen from him, and that it originally belonged to the one from whom another stole it?

وَإِنْ كَانَ مِنْ حُقُوقِ النَّاسِ فَالْعَفْوُ جَائِزٌ لِكُلِّ أَحَدٍ فِي حَقِّهِ - أَرَادَ سَتْرًا أَوْ لَمْ يُرِدْ - وَيُقَالُ لِمَنْ نَصَرَ هَذَا الْقَوْلَ الظَّاهِرَ الْخَطَأِ: مَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ مَنْ عَفَا عَنْ الزَّانِي بِأَمَتِهِ - وَهُوَ يُرِيدُ تَسَتُّرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يُقِيمَ الْوَاطِئُ لَهَا بَيِّنَةً بِأَنَّهَا لَهُ غَصَبَهَا مِنْهُ الَّذِي هِيَ بِيَدِهِ الْآنَ؟ وَبَيْنَ مَنْ عَفَا عَنْ سَارِقِ مَتَاعِهِ وَهُوَ يُرِيدُ سَتْرًا عَلَى نَفْسِهِ خَوْفَ أَنْ يُقِيمَ الَّذِي سَرَقَهُ مِنْهُ بَيِّنَةَ عَدْلٍ أَنَّ الَّذِي كَانَ بِيَدِهِ سَرَقَهُ مِنْهُ، وَأَنَّهُ مَالٌ مِنْ مَالِ

هَذَا الَّذِي سَرَقَهُ آخَرُ، فَهَلْ بَيْنَ شَيْءٍ مِنْ هَذَا كُلِّهِ فَرْقٌ هَذَا مَا لَا يُعْرَفُ أَصْلًا، فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً، لِتَنَاقُضِهِ، وَلِتَعَرِّيهِ مِنْ الْأَدِلَّةِ، وَلِأَنَّهُ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا عَنْ أَحَدٍ مِنْ التَّابِعِينَ. ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ: فَوَجَدْنَاهُ قَدْ تَنَاقَضَ، لِأَنَّهُ جَعَلَهُ مِنْ حُقُوقِ اللَّهِ تَعَالَى، وَلَمْ يُجِزْ الْعَفْوَ عَنْهُ أَصْلًا، فَأَصَابَ فِي ذَلِكَ - ثُمَّ تَنَاقَضَ مُنَاقَضَةً ظَاهِرَةً فَقَالَ: لَا حَدَّ عَلَى الْقَاذِفِ إلَّا أَنْ يُطَالِبَهُ الْمَقْذُوفُ، فَجَعَلَهُ بِهَذَا الْقَوْلِ مِنْ حُقُوقِ الْمَقْذُوفِ، وَأَسْقَطَهُ بِأَنْ لَمْ يَطْلُبْهُ - وَهَذَا تَخْلِيطٌ ظَاهِرٌ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ - وَقَدْ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَمَّا نَزَلَ عُذْرِي قَامَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ فَأَمَرَ بِالْمَرْأَةِ وَالرَّجُلَيْنِ فَضُرِبُوا حَدَّهُمْ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَامَ حَدَّ الْقَذْفِ وَلَمْ يُشَاوِرْ عَائِشَةَ أُمَّنَا - رَضِيَ اللَّهُ عَنْهَا - أَنْ تَعْفُوَ أَمْ لَا؟ فَلَوْ كَانَ لَهَا فِي ذَلِكَ حَقٌّ لَمَا عَطَّلَهُ - عَلَيْهِ السَّلَامُ - وَهُوَ أَرْحَمُ النَّاسِ، وَأَكْثَرُهُمْ حَضًّا عَلَى الْعَفْوِ فِيمَا يَجُوزُ فِيهِ الْعَفْوُ - فَصَحَّ أَنَّ الْحَدَّ مِنْ حُقُوقِ اللَّهِ تَعَالَى، لَا مَدْخَلَ لِلْمَقْذُوفِ فِيهِ أَصْلًا وَلَا عَفْوَ لَهُ عَنْهُ.

Is there any distinction among all these cases? This has no basis in principle, thus invalidating this opinion entirely due to its contradictions, absence of evidence, and lack of any known foundation among the Companions—may Allah be pleased with them—or the Successors.

Upon examining Abū Ḥanīfah's view, we found it contradictory. He classified it as a right of Allah the Exalted, prohibiting forgiveness entirely—a position in which he was correct. Yet he contradicted himself blatantly by stating: "No ḥadd punishment is imposed on a slanderer unless the slandered party demands it," thereby treating it as a right of the slandered individual and annulling it if not pursued. This constitutes evident confusion.

Abū Muḥammad—may Allah have mercy on him—said: They possess no valid argument here. ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Qutaybah ibn Saʿīd narrated to us, Muḥammad ibn Abī ʿAdiyy narrated to us, from Muḥammad ibn Isḥāq, from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from ʿAmrah bint ʿAbd al-Raḥmān, from ʿĀ'ishah, the Mother of the Believers, who said: "When my exoneration was revealed, the Prophet—peace and blessings of Allah be upon him—ascended the pulpit, ordered the woman and the two men to be brought forth, and they were subjected to the prescribed punishment."

Abū Muḥammad—may Allah have mercy on him—commented: Here, Allah's Messenger—peace and blessings of Allah be upon him—enforced the punishment for slander without consulting ʿĀ'ishah, our Mother—may Allah be pleased with her—about whether to forgive or not. Had she held any right in this matter, he—peace be upon him—would not have neglected it, for he was the most merciful of people and the most ardent in urging forgiveness where permissible. This confirms that the ḥadd punishment is solely a right of Allah the Exalted, with no entitlement whatsoever for the slandered party to influence it or grant pardon.

وَأَمَّا مِنْ طَرِيقِ الْإِجْمَاعِ، فَإِنَّ الْأُمَّةَ مُجْمِعَةٌ عَلَى تَسْمِيَةِ الْجَلْدِ الْمَأْمُورِ بِهِ فِي الْقَذْفِ حَدًّا، وَلَمْ يَأْتِ نَصٌّ، وَلَا إجْمَاعٌ بِأَنَّ لِإِنْسَانٍ حُكْمًا فِي إسْقَاطِ حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى

L41744–41746 As for the path of consensus, the Ummah is unanimously agreed upon designating the prescribed flogging in cases of false accusation of unlawful intercourse as a hadd punishment. No textual evidence has been established,

nor any consensus, indicating that any human possesses authority to annul any of the divinely ordained punishments of Allah the Exalted. Therefore, it is established that there is no room for pardon in such cases. As for the path of rational analysis: were it among the rights of humans, the aforementioned pardon in this matter would not... It is absolutely impermissible except for the slandered person regarding the specific slander directed at them, not regarding slander directed at others such as their deceased father or mother. This is because there is no dispute that one cannot waive a right belonging to another—yet they permit a person to pardon someone who slandered their deceased father or mother. This is invalid and a contradiction in their reasoning, given that these scholars are proponents of analogical reasoning (qiyas). They unanimously agree that the theft victim cannot pardon the thief from amputation of their hand, nor can the victim of highway robbery pardon the highway robber, nor can the husband pardon the adulterer who committed adultery with his wife or his female slave. What distinction, then, exists between slander and the punishment for theft? Similarly, the victim of highway robbery cannot pardon the highway robber.

- فَصَحَّ أَنَّهُ لَا مَدْخَلَ لِلْعَفْوِ فِيهِ. وَأَمَّا مِنْ طَرِيقِ النَّظَرِ، فَلَوْ كَانَ مِنْ حُقُوقِ النَّاسِ لَكَانَ الْعَفْوُ الْمَذْكُورُ فِي ذَلِكَ لَا يَجُوزُ أَلْبَتَّةَ إلَّا مِنْ الْمَقْذُوفِ فِيمَا قُذِفَ بِهِ، لَا فِيمَا قُذِفَ بِهِ غَيْرُهُ مِنْ أَبِيهِ، وَأُمِّهِ؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَا يَجُوزُ عَفْوُ أَحَدٍ عَنْ حَقِّ غَيْرِهِ - وَهُمْ يُجِيزُونَ عَفْوَ الْمَرْءِ عَنْ قَاذِفِ أَبِيهِ الْمَيِّتِ، وَأُمِّهِ الْمَيِّتَةِ - وَهَذَا فَاسِدٌ، وَتَنَاقُضٌ مِنْ الْقَوْلِ، وَالْقَوْمُ أَهْلُ قِيَاسٍ. قَدْ اتَّفَقُوا عَلَى أَنَّهُ لَا عَفْوَ لِلْمَسْرُوقِ مِنْهُ مِنْ قَطْعِ يَدِ سَارِقِهِ، وَلَا لِلْمَقْطُوعِ عَلَيْهِ فِي الطَّرِيقِ فِي الْعَفْوِ عَنْ الْقَاطِعِ عَلَيْهِ لِلْمُحَارِبِ لَهُ، وَلَا لِلْمَزْنِيِّ بِامْرَأَتِهِ، وَأَمَتِهِ، عَنْ الزَّانِي بِهِمَا فَأَيُّ فَرْقٍ بَيْنَ الْقَذْفِ وَحَدِّ السَّرِقَةِ، وَلَا لِلْمَقْطُوعِ عَلَيْهِ الطَّرِيقُ فِي الْعَفْوِ عَنْ الْقَاطِعِ.

L41747 As for what is reported from the Companions—may Allah be pleased with them—ʻUmar flogged Abū Bakrah, Nāfiʻ, and Shibl ibn Maʻbad when he saw them as perpetrators of false accusation, without consulting al-Mughīrah in this matter, nor did he recognize any right for al-Mughīrah to pardon or other. Thus, the opinion of those who deemed pardon universally applicable in such cases is invalidated—and success is from Allah, the Exalted.

وَأَمَّا مَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّ عُمَرَ جَلَدَ أَبَا بَكْرَةَ، وَنَافِعًا، وَشِبْلَ بْنَ مَعْبَدٍ، إذْ رَآهُمْ قَذَفَةً - وَلَمْ يُشَاوِرْ فِي ذَلِكَ الْمُغِيرَةَ - وَلَا رَأَى لَهُ حَقًّا فِي عَفْوٍ أَوْ غَيْرِهِ. فَبَطَلَ قَوْلُ مَنْ رَأَى الْعَفْوَ فِي ذَلِكَ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ قَالَ لِامْرَأَتِهِ يَا زَانِيَةُ فَقَالَتْ زَنَيْتُ مَعَك]

A legal issue concerning one who says to his wife, "O adulteress!" and she responds, "I committed adultery with you."

L41749 2244. Issue: Concerning one who says to his wife, "O adulteress!" and she responds, "I committed adultery with you," or if he says to a man, "O adulterer!" and the latter retorts, "You are more adulterous than I am." Abū Muḥammad—may Allāh have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Qatādah, who said regarding a man who told his female slave,

٢٢٤٤ - مَسْأَلَةٌ: فِيمَنْ قَالَ لِامْرَأَتِهِ: يَا زَانِيَةُ؟ فَقَالَتْ: زَنَيْتُ مَعَك، أَوْ قَالَ ذَلِكَ لِرَجُلٍ، فَقَالَ: أَنْتَ أَزْنَى مِنِّي قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ قَالَ فِيمَنْ قَالَ لِأَمَتِهِ: يَا زَانِيَةُ، فَقَالَتْ: زَنَيْتُ بِك، قَالَ:

"O adulteress!" and she replied, "I committed adultery with you": She is to be flogged ninety lashes. Through the same chain to Ḥammād ibn Salamah, from Abū Ḥurrah, from al-Ḥasan, concerning a free woman who told another, "I committed adultery with you": She is to be flogged two hadd punishments. Abū Muḥammad said: If a man says to a woman, or a woman says to a man, "I committed adultery with you," this constitutes a plain confession of zinā (adultery) rather than qadhf (false accusation), for the speaker merely discloses their own sin without attributing adultery to the addressed party. A man may commit adultery with a woman while she is intoxicated, insane, coerced, or ignorant—while he is aware—and likewise a woman may commit adultery with a man under such circumstances. This resembles a man who buys a female slave and has intercourse with her, only to discover she is free: she is deemed an adulteress, but he is not deemed an adulterer. Therefore, the speaker of this phrase—if uttered as a confession—incurs only the hadd punishment for zinā, nothing more. If said insultingly, the speaker is neither a slanderer nor a confessor; thus no hadd applies—neither for adultery nor false accusation—but they incur discretionary punishment (taʿzīr) solely for causing harm.

تُجْلَدُ تِسْعِينَ. وَبِهِ - إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي حُرَّةَ عَنْ الْحَسَنِ فِي امْرَأَةٍ حُرَّةٍ قَالَتْ لِآخَرَ: زَنَيْت بِك، قَالَ: تُجْلَدُ حَدَّيْنِ قَالَ أَبُو مُحَمَّد: إذَا قَالَ الرَّجُلُ لِلْمَرْأَةِ، أَوْ قَالَتْ الْمَرْأَةُ لِلرَّجُلِ: زَنَيْت بِك، فَهَذَا اعْتِرَافٌ مُجَرَّدٌ بِالزِّنَا وَلَيْسَ قَذْفًا؛ لِأَنَّهُ مَنْ قَالَ هَذَا اللَّفْظَ فَإِنَّمَا أَخْبَرَ عَنْ نَفْسِهِ، أَنَّهُ زَنَى وَلَمْ يُخْبِرْ عَنْ الْمَقُولِ لَهُ بِزِنًا أَصْلًا، وَقَدْ يَزْنِي الرَّجُلُ بِالْمَرْأَةِ وَهِيَ سَكْرَى، أَوْ مَجْنُونَةٌ، أَوْ مَغْلُوبَةٌ، أَوْ وَهِيَ جَاهِلَةٌ وَهُوَ عَالِمٌ، وَتَزْنِي الْمَرْأَةُ بِالرَّجُلِ كَذَلِكَ. وَكَمَنْ ابْتَاعَ أَمَةً فَإِذَا بِهَا حُرَّةٌ، فَهِيَ زَانِيَةٌ، وَلَيْسَ هُوَ زَانِيًا - فَقَائِلُ هَذَا الْقَوْلِ إنْ قَالَهُ مُعْتَرِفًا فَعَلَيْهِ حَدُّ الزِّنَا فَقَطْ، وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ، وَإِنْ قَالَهُ لَهَا شَاتِمًا فَلَيْسَ قَاذِفًا وَلَا مُعْتَرِفًا، فَلَا حَدَّ عَلَيْهِ - لَا لِلزِّنَى وَلَا لِلْقَذْفِ - وَلَكِنْ يُعَزَّرُ لِلْأَذَى فَقَطْ.

If he said to her, "We committed adultery together," or if she said that to him, then if he said it insultingly, this constitutes a valid instance of qadhf (false accusation of adultery), and only the hadd punishment for qadhf applies to him. But if he said it as a confession, only the hadd punishment for adultery applies to him.

L41750–41751

فَلَوْ قَالَ لَهَا: زَنَيْنَا مَعًا، أَوْ قَالَتْ لَهُ ذَلِكَ، فَهَذَا إنْ كَانَ قَالَهُ شَاتِمًا فَهُوَ قَذْفٌ صَحِيحٌ عَلَيْهِ حَدُّ الْقَذْفِ فَقَطْ، وَإِنْ قَالَهُ مُعْتَرِفًا فَعَلَيْهِ حَدُّ الزِّنَا فَقَطْ.

Similarly, it is incumbent upon the woman if she makes such a statement, with no distinction. ʿAbdullāh ibn Rabīʿ narrated to us: Ibn Mufarrij narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Sahnūn narrated to us: Ibn Wahb informed me: Yūnus ibn Yazīd reported from al-Zuhrī and Rabīʿah, who both said regarding one who says to another, "I deem you an adulterer," and the other responds, "You are more adulterous than me"—they being chaste—both must be flogged with the hadd penalty together. Rabīʿah added: "No man can be more adulterous than another until he becomes an adulterer." Mālik said: "They are both to be flogged with the hadd penalty together." Abū Muḥammad—may Allāh have mercy on

L41752

وَكَذَلِكَ عَلَى الْمَرْأَةِ إنْ قَالَتْ ذَلِكَ وَلَا فَرْقَ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ، قَالَا جَمِيعًا فِيمَنْ قَالَ لِآخَرَ: إنِّي أَرَاك زَانِيًا، فَقَالَ لَهُ الْآخَرُ: أَنْتَ أَزْنَى مِنِّي - وَهُمَا عَفِيفَانِ - فَإِنَّهُمَا يُجْلَدَانِ الْحَدَّ مَعًا - زَادَ رَبِيعَةُ: لَا يَكُونُ رَجُلٌ أَزْنَى مِنْ رَجُلٍ حَتَّى يَكُونَ زَانِيًا - وَقَالَ مَالِكٌ: يُضْرَبَانِ الْحَدَّ جَمِيعًا. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا

him—said: As for Rabīʿah's statement "No man can be more adulterous than another until he becomes an adulterer," this is erroneous. Common linguistic usage contradicts this. Allāh the Exalted said: "Is Allāh better, or what they associate [with Him]?" [27:59], though there is no good whatsoever in what they associate. He also said: "The companions of Paradise on that Day are better in abode and fairer in resting place" [25:24], though there is no good at all in dwelling in the Fire, nor any measure of fair resting therein—we seek refuge with Allāh from it. The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "Allāh's Book holds greater truth, and Allāh's covenant is more binding," though no reliability exists in covenants made for other than Allāh, nor does any truth in religion lie outside the Book of Allāh the Exalted. As for the Sunnah and consensus, they are encompassed within Allāh's Book, for all of this constitutes Allāh's justice. Examining this matter, we find that when one says to another, "You are more adulterous than me," this contains no self-admission of adultery. Rather, it constitutes valid slander. Thus, flogging him with the hadd penalty for slander is obligatory—success comes solely from Allāh the Exalted.[35]

L41753 **A legal issue concerning a woman who claims that a named individual compelled her to commit fornication with him.**

L41754–41762 2245 - Issue: Regarding one who claimed that so-and-so coerced her, ʿAlī said: Narrated by Ḥummām; narrated by Ibn Mufarrij; narrated by Ibn al-Aʿrābī; narrated by al-Dabarī; narrated by ʿAbd al-Razzāq; narrated by Maʿmar. From Al-Zuhri and Qatadah, both said collectively: Regarding a woman who slanders a man by claiming he overpowered her, while the man denies it and she has no evidence, she is to be flogged with the ḥadd punishment for slander (qadhf). Abdullah ibn Rabiʿ narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdul-Aziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated to us from Qatadah that a man forced himself upon a woman, and she screamed. A mu'adhdhin came and testified on her behalf before Umar ibn Abdul-Aziz that he heard her scream, so he did not flog

[35]**Qur'an references (L41752):** Qur'an 27:59 (An-Naml); Qur'an 25:24 (Al-Furqan).

قَوْلُ رَبِيعَةَ " لَا يَكُونُ رَجُلٌ أَزْنَى مِنْ رَجُلٍ حَتَّى يَكُونَ زَانِيًا " خَطَأٌ، وَالْمُسْتَعْمَلُ فِي اللُّغَةِ غَيْرُ هَذَا: قَالَ اللَّهُ تَعَالَى {آللَّهُ خَيْرٌ أَمَّا يُشْرِكُونَ} [النمل: ٥٩] وَلَا خَيْرَ أَصْلًا فِيمَا يُشْرِكُونَ. وَقَالَ تَعَالَى {أَصْحَابُ الْجَنَّةِ يَوْمَئِذٍ خَيْرٌ مُسْتَقَرًّا وَأَحْسَنُ مَقِيلا} [الفرقان: ٢٤] وَلَيْسَ فِي الْقَرَارِ فِي النَّارِ خَيْرٌ أَصْلًا، وَلَا فِيهَا مِنْ حُسْنِ الْمَقِيلِ لَا كَثِيرٌ وَلَا قَلِيلٌ - نَعُوذُ بِاَللَّهِ مِنْهَا. وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَلَيْسَ فِي شَرْطٍ لِغَيْرِ اللَّهِ شَيْءٌ مِنْ الثِّقَةِ، وَلَا فِي غَيْرِ كِتَابِ اللَّهِ تَعَالَى فِي الدِّينِ شَيْءٌ مِنْ الْحَقِّ. وَأَمَّا السُّنَّةُ وَالْإِجْمَاعُ - فَهُمَا دَاخِلَانِ فِي كِتَابِ اللَّهِ تَعَالَى، لِأَنَّ كُلَّ ذَلِكَ عَدْلُ اللَّهِ تَعَالَى، فَنَظَرْنَا فِي هَذَا: فَوَجَدْنَا مَنْ قَالَ لِآخَرَ: أَنْتَ أَزْنَى مِنِّي، لَيْسَ فِيهِ اعْتِرَافٌ عَلَى نَفْسِهِ بِالزِّنَا، وَإِنَّمَا هُوَ قَذْفٌ صَحِيحٌ، فَوَاجِبٌ جَلْدُهُ حَدَّ الْقَذْفِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِيمَنْ ادَّعَتْ أَنَّ فُلَانًا اسْتَكْرَهَهَا عَلَى الزِّنَا بِهَا]

٢٢٤٥ - مَسْأَلَةٌ: فِيمَنْ ادَّعَتْ أَنَّ فُلَانًا اسْتَكْرَهَهَا قَالَ عَلِيٌّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ قَالَا جَمِيعًا: فِي امْرَأَةٍ قَذَفَتْ رَجُلًا بِنَفْسِهَا أَنَّهُ غَلَبَهَا عَلَى نَفْسِهَا، وَالرَّجُلُ يُنْكِرُ ذَلِكَ، وَلَيْسَ لَهَا بَيِّنَةٌ: فَإِنَّهَا تُضْرَبُ حَدَّ الْفِرْيَةِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا قَتَادَةُ أَنَّ رَجُلًا اسْتَكْرَهَ امْرَأَةً فَصَاحَتْ؟ فَجَاءَ مُؤَذِّنٌ فَشَهِدَ لَهَا عِنْدَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ سَمِعَ صِيَاحَهَا، فَلَمْ يَجْلِدْهَا. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا

her. Abdullah ibn Rabiʿ narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnūn narrated to us: Ibn Wahb informed me from Umayrah ibn Abi Najiyah from Yazid ibn Abi Habibah from Umar ibn Abdul-Aziz: A woman came to him and said, "So-and-so forced himself upon me." He said, "Did anyone hear you or see you?" She said, "No." So he flogged her [in response to] the man's denial—the man being Amr ibn Muslim or Ishaq ibn Muslim, the freed slave of Amr ibn Uthman. Ibn Wahb said: I asked Malik about a woman who says, "So-and-so forced himself upon me." He said, "If the accused is not someone publicly associated with such behavior, she is flogged the ḥadd punishment. If he is publicly known for immorality, the matter is investigated." Abu Muhammad—may Allah have mercy on him—said: Here, they hold that the accused should face prolonged imprisonment, discretionary punishment (taʿzīr), and payment of a dowry equivalent to her peer. These opinions differ: (1) She is flogged the ḥadd punishment for slander if she lacks evidence—this is the view of Al-Zuhri and Qatadah; (2) The punishment is waived for her based on a single witness hearing her scream—this is reported from Umar ibn Abdul-Aziz—otherwise, she is flogged; (3) The punishment is averted by evidence of him being found alone with her, physical marks on her, or hearing her screams—this is the view of Rabiʿah and Yahya ibn Saʿid Al-Ansari, who added that the accused man should be severely punished if any such evidence emerges; otherwise, the woman is flogged for slander; (4) If the accused is of upright character, she is flogged. If he is publicly known for immorality, she is exempt, he is imprisoned indefinitely, and he must pay a dowry equivalent to her peer—this is the view of Malik. Abū Muḥammad—may Allah have mercy on him—said: As for Mālik's opinion, its erroneous nature is evident. This is because he differentiated in legal claims between one referred to as virtuous and one accused of immorality, even though neither the Quran, the Sunnah, consensus, analogy, nor the opinion of any Companion necessitates such a distinction. The entire Ummah has unanimously agreed that if a man claims a debt against another, and the defendant denies it, the defendant must take an oath—even if he were one of the Companions, may Allah be pleased with them. Indeed, ʿAlī, ʿUmar, ʿUthmān, Ibn ʿUmar, and others—may Allah be pleased with them—ruled that the oath is binding. There is no one more

ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي عُمَيْرَةُ بْنُ أَبِي نَاجِيَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبَةَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَتَتْهُ امْرَأَةٌ فَقَالَتْ: إنَّ فُلَانًا اسْتَكْرَهَنِي عَلَى نَفْسِي؟ فَقَالَ: هَلْ سَمِعَكِ أَحَدٌ أَوْ رَآكِ؟ قَالَتْ: لَا، فَجَلَدَهَا بِالرَّجُلِ - وَهُوَ عَمْرُو بْنُ مُسْلِمٍ، أَوْ إِسْحَاقُ بْنُ مُسْلِمٍ مَوْلَى عَمْرِو بْنِ عُثْمَانَ - قَالَ ابْنُ وَهْبٍ: سَأَلْت مَالِكًا عَنْ الْمَرْأَةِ تَقُولُ: إنَّ فُلَانًا أَكْرَهَنِي عَلَى نَفْسِي؟ قَالَ: إنْ كَانَ لَيْسَ مِمَّا يُشَارُ إلَيْهِ بِذَلِكَ، جُلِدَتْ الْحَدَّ، وَإِنْ كَانَ مِمَّا يُشَارُ إلَيْهِ بِالْفِسْقِ نُظِرَ فِي ذَلِكَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَاهُنَا يَرَوْنَ عَلَيْهِ السِّجْنَ الطَّوِيلَ، وَالْأَدَبَ، وَغُرْمَ مَهْرِ مِثْلِهَا - وَهَذِهِ أَقْوَالٌ تَدُورُ عَلَى وُجُوهٍ: إمَّا جَلْدُهَا حَدَّ الْقَذْفِ إنْ لَمْ يَكُنْ لَهَا بَيِّنَةٌ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَقَتَادَةَ. وَإِمَّا إسْقَاطُ الْحَدِّ عَنْهَا بِشَهَادَةِ وَاحِدٍ: أَنَّهُ سَمِعَ صِيَاحَهَا فَقَطْ - وَهُوَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَإِلَّا فَتُجْلَدُ. وَإِمَّا أَنْ يَدْرَأَ عَنْهَا الْحَدَّ بِأَنْ يُرَى مَعَهَا خَالِيًا، وَيُؤَثِّرَ فِيهِ أَثَرًا، أَوْ يَسْمَعَ صِيَاحَهَا - وَهُوَ قَوْلُ رَبِيعَةَ - وَهُوَ أَيْضًا قَوْلُ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَزَادَ: أَنْ يُعَاقَبَ الرَّجُلُ الْمُدَّعَى عَلَيْهِ - إنْ كَانَ ذَلِكَ - أَشَدَّ الْعُقُوبَةِ إنْ ظَهَرَ بِشَيْءٍ مِمَّا ذَكَرْنَا، وَإِلَّا فَالْحَدُّ عَلَى الْمَرْأَةِ حَدُّ الْقَذْفِ. وَإِمَّا أَنْ يَنْظُرَ، فَإِنْ كَانَ الْمُدَّعَى عَلَيْهِ مِنْ أَهْلِ الْعَافِيَةِ جُلِدَ حَدَّ الْقَذْفِ - وَإِنْ كَانَ مِمَّنْ يُشَارُ إلَيْهِ بِالْفِسْقِ فَلَا شَيْءَ عَلَيْهَا، وَيُسْجَنُ هُوَ وَيُطَالُ سِجْنُهُ، وَيَغْرَمُ مَهْرَ مِثْلِهَا - وَهُوَ قَوْلُ مَالِكٍ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُ مَالِكٍ - فَظَاهِرُ الْخَطَأِ، لِأَنَّهُ فَرَّقَ فِي الِادِّعَاءِ بَيْنَ الْمُشَارِ إلَيْهِ بِالْخَيْرِ، وَالْمُشَارِ إلَيْهِ بِالْفِسْقِ، وَلَمْ يُوجِبْ الْفَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ وَقَدْ أَجْمَعَتْ الْأُمَّةُ كُلُّهَا عَلَى أَنَّ رَجُلًا يَدَّعِي دَيْنًا عَلَى آخَرَ، وَالْمُدَّعَى عَلَيْهِ مُنْكِرٌ: فَإِنَّهُ يَحْلِفُ - وَلَوْ أَنَّهُ أَحَدُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَدْ قَضَى بِالْيَمِينِ

virtuous than them, nor anyone further removed from suspicion. A claim of denying property, oppression, or usurpation is like a claim of coercion in adultery; there is no difference, for all these are forbidden and sinful. The Messenger of Allah—peace and blessings be upon him—said: "If people were granted their claims merely by asserting them, others would claim the blood and wealth of people. But the oath is upon the one against whom the claim is made." He also said to two disputing Companions: "Either you present evidence, or he must take an oath." The entire Ummah, including Mālik, agrees that if a righteous, virtuous, and just Muslim—even if he were one of the Companions, may Allah be pleased with them—claims property against a Jew or Christian without evidence, the Jew or Christian is absolved by their oath. Conversely, if a disbeliever makes such a claim against a Muslim, the Muslim would be required to take an oath. How, then, can the judge rule in her favor based solely on her claim, obligating him to pay her dower merely because he is a transgressor? Yet no one is more transgressing than a disbeliever, for Allah says: "The disbelievers are the transgressors." These are two aspects of the error.

A third error is ruling to imprison and punish him without evidence—a clear and undeniable injustice. A fourth is that the judge either believes her or disbelieves her, with no third option. If he believes her, he must enforce the ḥadd punishment for adultery upon her; otherwise, he contradicts himself and neglects a divine penalty. If he disbelieves her, on what grounds does he imprison him, obligate him to pay her dower, cause her to wrongfully consume wealth, and seize his property without right?

A fifth error is that if she speaks and the accused is known for uprightness, he flogs her for false accusation of adultery. If time passes and pregnancy becomes apparent, he stones her if she is married. This is an injustice unheard of. By a ruling more heinous than the one discussed, and a constriction in religion that Allah the Exalted has never ordained therein. None is recorded to have made this distinction before Mālik—and with Allah alone is success. Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found Allah the Exalted stating: {If you dispute over anything, refer it to Allah and the Messenger} [4:59]. We did so and found Allah the

عَلِيٌّ وَعُمَرُ، وَعُثْمَانُ وَابْنُ عُمَرَ، وَغَيْرُهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا أَحَدَ أَفْضَلُ مِنْهُمْ، وَلَا أَبْعَدَ مِنْ التُّهْمَةِ، وَالدَّعْوَى بِجَحْدِ الْمَالِ، وَالظُّلْمِ، وَالْغَصْبِ كَالدَّعْوَى بِالْغَلَبَةِ فِي الزِّنَا، وَلَا فَرْقَ، لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ، وَمَعْصِيَةٌ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ أُعْطِيَ قَوْمٌ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ» وَقَالَ - عَلَيْهِ السَّلَامُ - لِصَاحِبِ مِنْ أَصْحَابِهِ اخْتَصَمَا «بَيِّنَتُك أَوْ يَمِينُهُ» وَقَدْ أَجْمَعَتْ الْأُمَّةُ، وَمَالِكٌ مَعَهُمْ عَلَى أَنَّ مُسْلِمًا بَرًّا فَاضِلًا عَدْلًا - وَلَوْ أَنَّهُ أَحَدُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: ادَّعَى مَالًا عَلَى يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ، وَلَا بَيِّنَةَ لَهُ أَنَّ الْيَهُودِيَّ، أَوْ النَّصْرَانِيَّ: يَبْرَأُ مِنْ ذَلِكَ بِيَمِينِهِ، وَأَنَّ الْكَافِرَ لَوْ ادَّعَى ذَلِكَ عَلَى الْمُسْلِمِ لَأُحْلِفَ لَهُ، فَكَيْفَ يَقْضِي لَهَا بِدَعْوَاهَا، فَيُغَرِّمُهُ مَهْرَهَا مِنْ أَجْلِ أَنَّهُ فَاسِقٌ، وَلَا فَاسِقَ أَفْسَقُ مِنْ كَافِرٍ، قَالَ اللَّهُ تَعَالَى الْكَافِرُونَ هُمْ الْفَاسِقُونَ فَهَذَانِ وَجْهَانِ مِنْ الْخَطَأِ؟ وَثَالِثٌ - وَهُوَ الْقَضَاءُ عَلَيْهِ بِالسِّجْنِ وَالْعُقُوبَةِ دُونَ بَيِّنَةٍ - وَهَذَا ظُلْمٌ ظَاهِرٌ لَا خَفَاءَ بِهِ. وَرَابِعٌ - هُوَ أَنَّهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ يُصَدِّقُهَا أَوْ يُكَذِّبُهَا، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ - فَإِنْ كَانَ يُصَدِّقُهَا فَيَنْبَغِي لَهُ أَنْ يُقِيمَ عَلَيْهَا حَدَّ الزِّنَا وَإِلَّا فَقَدْ تَنَاقَضَ وَضَيَّعَ حَدًّا لِلَّهِ تَعَالَى، وَإِنْ كَانَ يُكَذِّبُهَا فَبِأَيِّ مَعْنًى يَسْجُنُهُ وَيُغَرِّمُهُ مَهْرَ مِثْلِهَا، فَيُؤَكِّلُهَا الْمَالَ بِالْبَاطِلِ، وَيَأْخُذُ مَالَهُ بِغَيْرِ حَقٍّ. وَخَامِسٌ - وَهُوَ أَنَّهُ إنْ تَكَلَّمَتْ - وَكَانَ الْمُدَّعَى عَلَيْهِ مَعْرُوفًا بِالْعَافِيَةِ: جَلَدَهَا حَدَّ الْقَذْفِ، وَإِنْ مَكَثَتْ، فَظَهَرَ بِهَا حَمْلٌ: رَجَمَهَا إنْ كَانَتْ مُحْصَنَةً - وَهَذَا ظُلْمٌ مَا سُمِعَ بِأَشْنَعَ مِنْهُ، وَحَرَجٌ فِي الدِّينِ لَمْ يَجْعَلْهُ اللَّهُ تَعَالَى قَطُّ فِيهِ، وَلَا يُحْفَظُ عَنْ أَحَدٍ فَرَّقَ هَذَا التَّفْرِيقَ قَبْلَ مَالِكٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. قَالَ أَبُو مُحَمَّدٍ -

Exalted has ordained the ḥadd punishment for anyone who accuses another of fornication unless they produce evidence. We then considered the case of a woman who complains that someone overpowered her sexually. She must either be making an accusation of unchastity (qadhf) or not. If she is making such an accusation, the ḥadd punishment is undoubtedly obligatory upon her, as there is consensus that one who accuses even a morally corrupt person of unchastity incurs the ḥadd punishment, just as with accusing a virtuous person—no distinction exists. Qadhf entails intentional defamation and censure. However, this woman is not making an accusation of unchastity but rather lodging a legal claim. Since she is not engaging in qadhf, no ḥadd punishment applies to her. She must nevertheless provide evidence. If she produces it, the ḥadd punishment for fornication is executed upon the accused. If she fails, no penalty whatsoever falls upon him—no imprisonment, disciplinary punishment, or financial liability—for his wealth is inviolable, his person protected, and his freedom to move about the earth lawful, as Allah the Exalted says: {Walk through its spacious expanses} [67:15]. Should someone argue: "If no evidence exists, judge against him by oath based on this textual report," we respond: With Allah's guidance—her claim combines her personal right and Allah's right, wherein she holds no authority to alter terms. Her right pertains to the transgression against her, while Allah's right pertains to the act of fornication. Thus, the accused must swear regarding her right, declaring: "By Allah, I did not transgress against you nor wrong you"—thereby absolving himself. He may not swear regarding fornication itself, as all agree no one may swear concerning a right they have no stake in. There is no disagreement that if one says: "You seized a dinar from me and Zayd," the oath pertains solely to the claimant's share, not Zayd's—and likewise in all matters. As for distinguishing between defamation and complaint: all agree that if one addresses another—whether initially or during[...] A conversation between them—"O oppressor, O usurper! [You claim] he is a wrongdoer"—so some say: disciplinary correction is incumbent upon him, while others say: another may respond to him with the same [words]. They do not differ regarding one who complains about another, stating: "He wronged me and seized my property unjustly," that no penalty applies to him and he is not deemed a wrongdoer in doing so. Thus, the validity of

رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا - فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ أَوْجَبَ الْحَدَّ عَلَى مَنْ رَمَى أَحَدًا بِالزِّنَا، إلَّا أَنْ يَأْتِيَ بِبَيِّنَةٍ. ثُمَّ نَظَرْنَا فِي الَّتِي تَشْتَكِي بِإِنْسَانٍ: أَنَّهُ غَلَبَهَا عَلَى نَفْسِهَا؟ فَوَجَدْنَاهَا لَا تَخْلُو مِنْ أَنْ تَكُونَ قَاذِفَةً، أَوْ تَكُونَ غَيْرَ قَاذِفَةٍ، فَإِنْ كَانَتْ قَاذِفَةً فَالْحَدُّ وَاجِبٌ عَلَيْهَا بِلَا شَكٍّ، إذْ لَا خِلَافَ فِي أَنَّ قَاذِفَ الْفَاسِقِ يَلْزَمُهُ الْحَدُّ، كَقَاذِفِ الْفَاضِلِ، وَلَا فَرْقَ. وَالْقَذْفُ هُوَ مَا قُصِدَ بِهِ الْعَيْبُ وَالذَّمُّ وَهَذِهِ لَيْسَتْ قَاذِفَةً إنَّمَا هِيَ مُشْتَكِيَةٌ مُدَّعِيَةٌ، وَإِذْ لَيْسَتْ قَاذِفَةً فَلَا حَدَّ لِلْقَذْفِ عَلَيْهَا، وَلَكِنْ تُكَلَّفُ الْبَيِّنَةَ، فَإِنْ جَاءَتْ بِهَا أُقِيمَ عَلَيْهِ حَدُّ الزِّنَا، وَإِنْ لَمْ تَأْتِ بِهَا فَلَا شَيْءَ عَلَيْهِ أَصْلًا، لَا سِجْنَ، وَلَا أَدَبَ، وَلَا غَرَامَةَ؛ لِأَنَّ مَالَهُ مُحَرَّمٌ، وَبَشَرَتُهُ مُحَرَّمَةٌ، وَمُبَاحٌ لَهُ الْمَشْيُ فِي الْأَرْضِ، قَالَ اللَّهُ تَعَالَى {فَامْشُوا فِي مَنَاكِبِهَا} [الملك: ١٥] . فَإِنْ قَالَ قَائِلٌ: فَإِنْ لَمْ تَكُنْ بَيِّنَةٌ فَاقْضُوا عَلَيْهِ بِالْيَمِينِ بِهَذَا الْخَبَرِ؟ قُلْنَا: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّ دَعْوَاهَا انْتَظَمَ حَقًّا لَهَا وَحَقًّا لِلَّهِ تَعَالَى، لَيْسَ لَهَا فِيهِ دُخُولٌ وَلَا خُرُوجٌ؟ فَحَقُّهَا: التَّعَدِّي عَلَيْهَا وَظُلْمُهَا، وَحَقُّ اللَّهِ تَعَالَى: هُوَ الزِّنَا، فَوَاجِبٌ أَنْ يَحْلِفَ لَهَا فِي حَقِّهَا، فَيَحْلِفُ بِاَللَّهِ مَا تَعَدَّيْت عَلَيْك فِي شَيْءٍ، وَلَا ظَلَمْتُك وَتَبْرَأُ ذِمَّتُهُ. وَلَا يَجُوزُ أَنْ يَحْلِفَ بِاَللَّهِ مَا زَنَى؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّ أَحَدًا لَا يَحْلِفُ فِي حَقٍّ لَيْسَ لَهُ فِيهِ مَدْخَلٌ. وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ مَنْ قَالَ: إنَّك غَصَبْتَنِي وَزَيْدًا دِينَارًا، فَإِنَّهُ إنَّمَا يَحْلِفُ لَهُ فِي حَقِّهِ مِنْ الدِّينَارِ لَا فِي حَقِّ زَيْدٍ، وَهَكَذَا فِي كُلِّ شَيْءٍ. وَأَمَّا الْفَرْقُ بَيْنَ الذَّمِّ وَالشَّكْوَى، فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ - ابْتِدَاءً أَوْ فِي كَلَامٍ بَيْنَهُمَا - يَا ظَالِمُ، يَا غَاصِبُ، أَنَّهُ مُسِيءٌ - فَمِنْ قَائِلٍ: عَلَيْهِ الْأَدَبُ، وَمِنْ قَائِلٍ: لِآخَرَ أَنْ يَقُولَ لَهُ مِثْلَ ذَلِكَ. وَلَا يَخْتَلِفُونَ فِيمَنْ شَكَا بِآخَرَ فَقَالَ:

distinguishing between lodging a legitimate complaint and the transgression involving verbal abuse and false accusation of unchastity is established—and success comes only from Allah, the Exalted.[36]

L41763 **A legal issue concerning one who falsely accuses of unlawful sexual intercourse while intoxicated.**

L41764–41766 2246 - Issue: Regarding one who falsely accuses [someone] while intoxicated. Abu Muhammad—may Allah have mercy on him—said: We have mentioned in many places the ruling concerning the intoxicated person—that he is not held accountable for anything whatsoever except the prescribed ḥadd punishment for wine alone. However, we shall briefly present the essence of our evidence for this—Allah willing. He said: Allah the Exalted declares: {O you who believe, do not approach prayer while you are intoxicated until you know what you are saying} [4:43]. Thus Allah—the Most Truthful Witness—testifies that the intoxicated person does not comprehend what he utters. Since he lacks awareness of his speech, nothing is incumbent upon him. No one in the Ummah disputes that if a person utters a phrase whose meaning he does not grasp—even if its implication is disbelief, false accusation, or divorce—he is not held accountable for any of that. Therefore, as the intoxicated person is unaware of his speech, it is impermissible to hold him liable for anything he says, whether a false accusation or otherwise. Should they object: "This was before the prohibition of intoxicants?" We reply: Yes—what then? The entire Ummah unanimously agrees without dissent that the ruling of this verse remains in force, un-abrogated, and that it is unlawful for an intoxicated person to approach prayer until he comprehends his speech. Likewise, no two of the children of Adam dispute that the intoxicated person's state of being unaware of his speech persists as it was, for Allah the Exalted has not altered his inherent condition. If they argue: "He brought this upon himself?" We respond: Yes, but this objection holds no merit for several reasons. First: This is an argument that does not establish a legal ruling, as neither Quranic text, Sunnah, nor consensus supports this reasoning. Second: We ask you about one who was coerced into drinking wine, his

[36]**Qur'an references (L41754):** Qur'an 4:59 (An-Nisa); Qur'an 67:15 (Al-Mulk).

ظَلَمَنِي وَأَخَذَ مَالِي بِغَيْرِ حَقٍّ، أَنَّهُ لَا شَيْءَ عَلَيْهِ وَأَنَّهُ لَيْسَ مُسِيئًا بِذَلِكَ فَصَحَّ الْفَرْقُ بَيْنَ الشَّكْوَى وَبَيْنَ الِاعْتِدَاءِ بِالسَّبِّ وَالْقَذْفِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِيمَنْ قَذَفَ وَهُوَ سَكْرَانُ]

٢٢٤٦ - مَسْأَلَةٌ: فِيمَنْ قَذَفَ وَهُوَ سَكْرَانُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ ذَكَرْنَا فِي مَوَاضِعَ كَثِيرَةٍ حُكْمَ السَّكْرَانِ وَأَنَّهُ غَيْرُ مُؤَاخَذٍ بِشَيْءٍ أَصْلًا إلَّا حَدَّ الْخَمْرِ فَقَطْ، إلَّا أَنَّنَا نَذْكُرُ عُمْدَةَ حُجَّتِنَا فِي ذَلِكَ بِاخْتِصَارٍ - إنْ شَاءَ اللَّهُ تَعَالَى قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَشَهِدَ اللَّهُ تَعَالَى وَهُوَ أَصْدَقُ شَاهِدٍ: أَنَّ السَّكْرَانَ لَا يَدْرِي مَا يَقُولُ، وَإِذْ لَمْ يَدْرِ مَا يَقُولُ فَلَا شَيْءَ عَلَيْهِ، وَلَمْ يَخْتَلِفْ أَحَدٌ مِنْ الْأُمَّةِ فِي أَنَّ امْرَأً لَوْ نَطَقَ بِلَفْظٍ لَا يَدْرِي مَعْنَاهُ - وَكَانَ مَعْنَاهُ كُفْرًا، أَوْ قَذْفًا، أَوْ طَلَاقًا - فَإِنَّهُ لَا يُؤَاخَذُ بِشَيْءٍ مِنْ ذَلِكَ، فَإِذَا كَانَ السَّكْرَانُ لَا يَدْرِي مَا يَقُولُ، فَلَا يَجُوزُ أَنْ يُؤَاخَذَ بِشَيْءٍ مِمَّا يَقُولُ، قَذْفًا كَانَ أَوْ غَيْرَ قَذْفٍ. فَإِنْ قَالُوا: كَانَ هَذَا قَبْلَ تَحْرِيمِ الْخَمْرِ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَالْأُمَّةُ كُلُّهَا مُجْمِعَةٌ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْهَا عَلَى أَنَّ حُكْمَ هَذِهِ الْآيَةِ بَاقٍ لَمْ يُنْسَخْ، وَأَنَّهُ لَا يَحِلُّ لِسَكْرَانَ أَنْ يَقْرَبَ الصَّلَاةَ حَتَّى يَدْرِيَ مَا يَقُولُ. وَكَذَلِكَ لَا يَخْتَلِفُ اثْنَانِ مِنْ وَلَدِ آدَمَ فِي أَنَّ حَالَ السَّكْرَانِ فِي أَنَّهُ لَا يَدْرِي مَا يَقُولُ بَاقٍ كَمَا كَانَ لَمْ يُحِلَّهُ اللَّهُ تَعَالَى عَنْ صِفَتِهِ. فَإِنْ قَالُوا: هُوَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ قُلْنَا: نَعَمْ، وَهَذَا لَا فَائِدَةَ لَكُمْ فِيهِ لِوُجُوهٍ: أَوَّلُهَا - أَنَّ هَذَا تَعَلُّلٌ لَا يُوجِبُ حُكْمًا، لِأَنَّهُ لَمْ يَأْتِ بِهَذَا التَّعْلِيلِ قُرْآنٌ، وَلَا سُنَّةٌ وَلَا إجْمَاعٌ الثَّانِي - إنَّا نَسْأَلُكُمْ عَمَّنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، فَفُتِحَ فَمُهُ كَرْهًا

mouth forced open with hooks and wine poured into him until he became intoxicated. There is no dispute that such a person is not sinful, nor that he did not voluntarily ingest it. Thus, his ruling should—by your principles—differ from that of one who drank willingly. You must therefore absolve this coerced individual of liability for anything he uttered in that state of intoxication; otherwise, you would contradict yourselves.

Third: We ask you about one who consumed balādhur (marking nut) and went mad, or overdosed until the sinews of his legs were severed and he became unable to walk. Should such an insane person be accorded the rulings applicable to the insane—nullifying all legal obligations—or do the obligations remain binding because he brought this upon himself? Similarly, does one who intentionally or sinfully disabled his legs in disobedience to Allah Almighty receive the rulings of those unable to walk—such as sitting for prayer, exemption from Hajj, and other matters—or does none of this exemption apply to him because he caused his own condition? Their position—without dispute—holds that both are treated like all other insane persons and those unable to walk. Thus, their argument that the intoxicated individual "brought it upon himself" collapses.

It is authentically established that Ḥamzah (may Allah be pleased with him) said to the Messenger of Allah (peace be upon him), ʿAlī ibn Abī Ṭālib, and Zayd ibn Khālid while intoxicated: "Are you not but slaves of my fathers?" Yet he was not censured for this. Had he uttered this while sane, it would have been disbelief—far removed is he from such! This confirms that an intoxicated person who loses discernment bears no liability—neither for slander nor anything else—for he is like one insane, devoid of reason.

If they contend: "Some Companions (may Allah be pleased with them) reportedly said, 'When he drinks, he becomes intoxicated; when intoxicated, he raves; when he raves, he slanders; and when he slanders, he is flogged eighty lashes,'" we reply: Far be it from Allah that any Companion would utter such falsehood! By Allah, they are far nobler, wiser, and more knowledgeable than to espouse such baseless absurdity. Their own consensus suffices—that one who raves bears no punishment, even if he blasphemes or slanders. Yet they

بِأَكَالِيبَ وَصُبَّ فِيهِ الْخَمْرُ حَتَّى سَكِرَ، فَإِنَّ هَذَا لَا خِلَافَ فِي أَنَّهُ غَيْرُ آثِمٍ، وَلَا فِي أَنَّهُ لَمْ يُدْخِلْهُ عَلَى نَفْسِهِ، فَيَنْبَغِي أَنْ يَكُونَ حُكْمُهُ عِنْدَكُمْ بِخِلَافِ حُكْمِ مَنْ أَدْخَلَهُ عَلَى نَفْسِهِ، فَلَا تُلْزِمُوا هَذَا الْمُكْرَهَ شَيْئًا مِمَّا قَالَ فِي ذَلِكَ السُّكْرِ، وَإِلَّا فَقَدْ تَنَاقَضْتُمْ. وَالثَّالِثُ - إِنَّا نَسْأَلُكُمْ عَمَّنْ شَرِبَ الْبَلَاذِرَ فَجُنَّ، أَوْ تَزَيَّدَ فَقُطِعَ عَصَبُ سَاقَيْهِ فَأُقْعِدَ، أَيَكُونُ لِذَلِكَ الْمَجْنُونِ حُكْمُ الْمَجَانِينِ فِي سُقُوطِ جَمِيعِ الْأَحْكَامِ عَنْهُ، أَوْ تَكُونُ الْأَحْكَامُ لَازِمَةً لَهُ مِنْ أَجْلِ أَنَّهُ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ؟ وَهَلْ يَكُونُ لِلَّذِي أَبْطَلَ سَاقَيْهِ عَمْدًا أَوْ أَشَرًا وَمَعْصِيَةً لِلَّهِ تَعَالَى حُكْمُ الْمُقْعَدِ فِي الصَّلَاةِ وَسُقُوطِ الْحَجِّ وَغَيْرِ ذَلِكَ؟ أَمْ لَا يَسْقُطُ عَنْهُ شَيْءٌ مِنْ ذَلِكَ مِنْ أَجْلِ إِدْخَالِهِ ذَلِكَ عَلَى نَفْسِهِ؟ فَمِنْ قَوْلِهِمْ - بِلَا خِلَافٍ - إِنَّ لَهُمَا حُكْمَ سَائِرِ الْمَجَانِينِ، وَسَائِرِ الْقَاعِدِينَ. فَبَطَلَ تَعَلُّقُهُمْ بِأَنَّ السَّكْرَانَ أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ. وَقَدْ صَحَّ «أَنَّ حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلِعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ خَالِدٍ: هَلْ أَنْتُمْ إِلَّا عَبِيدٌ لِآبَائِي - وَهُوَ سَكْرَانُ - فَلَمْ يُعَنِّفْهُ عَلَى ذَلِكَ» وَلَوْ قَالَهَا صَحِيحًا لَكَفَرَ بِذَلِكَ، وَحَاشَ لَهُ مِنْ ذَلِكَ. فَصَحَّ أَنَّ السَّكْرَانَ إِذَا ذَهَبَ تَمْيِيزُهُ فَلَا شَيْءَ عَلَيْهِ - لَا فِي الْقَذْفِ وَلَا فِي غَيْرِهِ -؛ لِأَنَّهُ مَجْنُونٌ لَا عَقْلَ لَهُ. فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِذَا شَرِبَ سَكِرَ، وَإِذَا سَكِرَ هَذَى، وَإِذَا هَذَى افْتَرَى، وَإِذَا افْتَرَى جُلِدَ ثَمَانِينَ؟ قُلْنَا: حَاشَى لِلَّهِ أَنْ يَقُولَ صَاحِبٌ هَذَا الْكَلَامَ الْفَاسِدَ؟ هُمْ وَاَللَّهِ، أَجَلُّ، وَأَعْقَلُ، وَأَعْلَمُ، مِنْ أَنْ يَقُولُوا هَذَا السُّخْفَ الْبَاطِلَ، وَيَكْفِي مِنْهُ إِجْمَاعُهُمْ عَلَى أَنَّ مَنْ هَذَى فَلَا حَدَّ عَلَيْهِ، وَلَوْ كَفَرَ، أَوْ قَذَفَ، فَهُمْ يَحْتَجُّونَ بِمَا هُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَأَحْضَرُ مُبْطِلٍ لِحُكْمِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا. وَسَنَتَكَلَّمُ - إِنْ شَاءَ اللَّهُ تَعَالَى - فِي إِبْطَالِ هَذَا الْخَبَرِ مِنْ طَرِيقِ إِسْنَادِهِ،

cite what they themselves first contradicted and invalidated—we seek refuge in Allah from such [a contradiction].

We shall discuss—Allah willing—the invalidation of this report in our treatment of the hadd punishment for wine in this work, examining its weak chain of transmission, its inconsistency, and its intrinsic corruption. If they ask: "Who can verify he was truly intoxicated? Perhaps he feigned drunkenness?"...[37]

L41767–41768 They were told: "State this exact thing regarding the insane person - for who knows he is insane? Perhaps he is feigning foolishness. Yet you do not say this; rather, you absolve him of legal obligations and *ḥudūd*. The condition through which insanity is ascertained in the madman is precisely the same through which intoxication is recognized in the drunkard, with no distinction - namely, when one reaches such confusion in speech and actions that it becomes certain he cannot regain a sober, rational state due to such a condition. Such a person is undoubtedly a mentally incompetent person and an intoxicated one, as Allah the Exalted said: 'Until you know what you are saying' [4:43]. Whoever babbles incoherently does not know what he says. Success comes from Allah, the Exalted."[38]

L41769 An issue concerning a father who falsely accuses his son, the mother of his slave children (umm walad), or the mother of his son of unlawful sexual intercourse (qadhf).

L41770 Issue 2247: A father accusing his son, the mother of his slaves, or the mother of his son. Abu Muhammad - may Allah have mercy on him - said: We have mentioned the ruling of Umar ibn Abd al-Aziz: "The one who accuses his son incurs hadd punishment." Those who mandated this hadd include Malik, al-Awzaʿi, Abu Sulayman, and our companions. Another group said: "No hadd punishment applies to the father in such cases." As narrated by Hammam via Ibn Mufarrij via Ibn al-Aʿrabi via Abu Yaʿqub al-Dabari via Abd al-Razzaq

[37] **Qur'an references (L41764):** Qur'an 4:43 (An-Nisa).
[38] **Qur'an references (L41768):** Qur'an 4:43 (An-Nisa).

وَمِنْ تَخَاذُلِهِ وَفَسَادِهِ فِي كَلَامِنَا فِي " حَدّ الْخَمْرِ " مِنْ دِيوَانِنَا هَذَا إنْ شَاءَ اللَّهُ تَعَالَى فَإِنْ قَالُوا: وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ، وَلَعَلَّهُ تَسَاكَرَ؟

قِيلَ لَهُمْ: قُولُوا هَذَا بِعَيْنِهِ فِي الْمَجْنُونِ: وَمَنْ يَدْرِي أَنَّهُ مَجْنُونٌ، وَلَعَلَّهُ مُتَحَامِقٌ، وَأَنْتُمْ لَا تَقُولُونَ هَذَا، بَلْ تُسْقِطُونَ عَنْهُ الْأَحْكَامَ وَالْحُدُودَ، فَالْحَالُ الَّتِي تُدْرَى فِي الْمَجْنُونِ أَنَّهُ مَجْنُونٌ، بِمِثْلِهَا يُدْرَى فِي السَّكْرَانِ أَنَّهُ سَكْرَانُ وَلَا فَرْقَ - وَهِيَ: إنَّهُ إذَا بَلَغَ مِنْ نَفْسِهِ مِنْ التَّخْلِيطِ فِي كَلَامِهِ وَأَفْعَالِهِ حَيْثُ يُوقَنُ أَنَّهُ لَا يَبْلُغُهُ مِنْ نَفْسِهِ الْمُمَيِّزَ الصَّاحِي حَيَاءً مِنْ مِثْلِ تِلْكَ الْحَالِ - فَهَذَا بِلَا شَكّ أَحْمَقُ، وَسَكْرَانُ، كَمَا قَالَ اللَّهُ تَعَالَى {حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَمَنْ خَلَطَ فِي كَلَامِهِ فَلَيْسَ يَعْلَمُ مَا يَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي الْأَبِ يَقْذِفُ ابْنَهُ أَوْ أُمَّ عَبِيدِهِ أَوْ أُمَّ ابْنِهِ]

٢٢٤٧ - مَسْأَلَةٌ: الْأَبُ يَقْذِفُ ابْنَهُ، أَوْ أُمَّ عَبِيدِهِ، أَوْ أُمَّ ابْنِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَدْ ذَكَرْنَا حُكْمَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: يُحَدُّ مَنْ قَذَفَ ابْنَهُ - وَأَوْجَبَ الْحَدَّ فِي ذَلِكَ: مَالِكٌ، وَالْأَوْزَاعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَى الْأَبِ فِي ذَلِكَ: كَمَا نَا حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نَا أَبُو يَعْقُوبَ الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا افْتَرَى الْأَبُ عَلَى الِابْنِ فَلَا يُحَدُّ.

via Ibn Jurayj via Ata', who stated: "When a father accuses his son, he is not subjected to hadd punishment."

L41771 And through him—to Abd al-Razzaq from Sufyan al-Thawri, from one who heard al-Hasan say: "No hadd punishment applies to a father for his son." Through him—Abu Hanifa, al-Shafi'i, Ahmad ibn Hanbal, their companions, al-Hasan ibn Hayy, and Ishaq ibn Rāhawayh hold this opinion. Sufyan al-Thawri said regarding a father who accuses his son of adultery: "They deem it preferable to avert the punishment from him." Concerning a woman who commits adultery (as a married woman) and kills her child, he said: "The hadd punishment is averted from her." Abu Muhammad—may Allah have mercy on him—said: "Since they differed as we mentioned, it became obligatory to examine this matter. We examined the view of those who held that a father is not subjected to hadd punishment for his son: We found them citing Allah's words: *'And treat parents with kindness. Do not say to them "uff" nor scold them, but speak to them gracious words. Lower to them the wing of humility out of mercy*' (Quran 17:23–24). They argued: 'Striking a parent with whips constitutes neither kindness nor righteousness, nor does this align with lowering the wing of mercy to them.'"[39]

L41772–41773 They also analogized the waiving of the ḥadd penalty for slander by a parent against his child to their waiving of retaliation from him if he kills his child, and their waiving of retaliation from him for bodily harm against his child to their waiving of the ḥadd penalty from him for stealing from his own property.

L41774 Regarding their waiving of the ḥadd punishment for his adultery with his *umm walad* (enslaved mother of his child), Abū Muḥammad—may Allah have mercy on him—said: "We know of no foundational basis for their position whatsoever—and all of this contains no evidence for them—as we shall clarify, Allah willing. As for Allah's Exalted injunction to show kindness to parents by not uttering 'Uff' to them, not rebuking them, and lowering the wing of humility out of mercy for them: this is an indisputable truth no Muslim may deviate from. Yet none of this necessitates waiving the ḥadd

[39] **Qur'an references (L41771):** Qur'an 17:23 (Al-Isra); Qur'an 17:24 (Al-Isra).

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: لَيْسَ عَلَى الْأَبِ لِابْنِهِ حَدٌّ. وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَالْحَسَنُ بْنُ حَيٍّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ فِي الْأَبِ يَقْذِفُ ابْنَهُ: إنَّهُمْ يَسْتَحِبُّونَ الدَّرْءَ عَنْهُ - وَقَالَ فِي الْمَرْأَةِ تَزْنِي - وَهِيَ مُحْصَنَةٌ - وَتَقْتُلُ وَلَدَهَا: إنَّهُ يُدْرَأُ عَنْهَا الْحَدُّ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ - فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّهُ لَا يُحَدُّ الْأَبُ لِابْنِهِ: فَوَجَدْنَاهُمْ يَقُولُونَ قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إحْسَانًا - فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا - وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٨٣ - ٢٤] قَالُوا: وَلَيْسَ مِنْ الْإِحْسَانِ، وَلَا مِنْ الْبِرِّ: ضَرْبُهُمَا بِالسِّيَاطِ، وَلَا هَذَا مِنْ خَفْضِ الْجَنَاحِ لَهُمَا مِنْ الرَّحْمَةِ.

وَقَاسُوا أَيْضًا إسْقَاطَ الْحُدُودِ فِي الْقَذْفِ عَنْ الْوَالِدِ فِي قَذْفِهِ لِوَلَدِهِ عَلَى إسْقَاطِهِمْ الْقَوَدَ عَنْهُ إنْ قَتَلَهُ - وَإِسْقَاطِهِمْ الْقِصَاصَ عَنْهُ لِوَلَدِهِ فِيمَا دُونَ النَّفْسِ عَلَى إسْقَاطِهِمْ الْحَدَّ عَنْهُ فِي سَرِقَتِهِ مِنْ مَالِهِ.

وَعَلَى إسْقَاطِهِمْ الْحَدَّ فِي زِنَاهُ بِأُمِّ وَلَدِهِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا - وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ - عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى. أَمَّا وَصِيَّةُ اللَّهِ تَعَالَى بِالْإِحْسَانِ إلَى الْأَبَوَيْنِ بِأَنْ لَا يُقَالَ لَهُمَا: أُفٍّ، وَلَا يُنْهَرَا، وَيُخْفَضَ لَهُمَا جَنَاحُ الذُّلِّ مِنْ الرَّحْمَةِ: فَحَقٌّ لَا يَحِيدُ عَنْهُ مُسْلِمٌ، وَلَيْسَ يَقْتَضِي شَيْءٌ مِنْ ذَلِكَ إسْقَاطَ الْحَدِّ عَنْهُ فِي الْقَذْفِ لِوَلَدِهِ؛ لِأَنَّهُ لَا يَخْتَلِفُ النَّاسُ فِي أَنَّ إمَامًا لَهُ وَالِدٌ قَدِمَ إلَيْهِ فِي قَذْفٍ،

أَوْ فِي سَرِقَةٍ أَوْ فِي زِنًا، أَوْ فِي قَوَدٍ، فَإِنْ فَرَضَا عَلَى الْوَلَدِ إقَامَةَ الْحَدِّ عَلَى وَالِدِهِ فِي كُلِّ ذَلِكَ وَأَنَّ ذَلِكَ لَا يُسْقِطُ عَنْهُ مَا افْتَرَضَ اللَّهُ تَعَالَى لَهُ عَلَيْهِ مِنْ الْإِحْسَانِ، وَالْبِرِّ، وَأَنْ لَا يَنْهَرَهُ، وَلَا يَقُلْ لَهُ: أُفٍّ، وَأَنْ يَخْفِضَ لَهُ جَنَاحَ الذُّلِّ مِنْ الرَّحْمَةِ، وَأَنْ يَشْكُرَ لَهُ وَلِلَّهِ عَزَّ وَجَلَّ - وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَقَدْ أَمَرَ مَعَ ذَلِكَ بِإِقَامَةِ الْحَدِّ عَلَى مَنْ أَمَرَنَا بِرَحْمَتِهِ. وَقَالَ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ} [النساء: ٣٦] الْآيَةَ. وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ ذَا الْقُرْبَى يُحَدُّ فِي قَذْفِ ذِي الْقُرْبَى وَأَنَّ ذَلِكَ لَا يُضَادُّ الْإِحْسَانَ الْمَأْمُورَ بِهِ، بَلْ إقَامَةُ الْحَدِّ عَلَى الْوَالِدَيْنِ فَمِنْ دُونِهِمَا إحْسَانٌ إلَيْهِمَا وَبِرٌّ بِهِمَا؛ لِأَنَّهُ حُكْمُ اللَّهِ تَعَالَى الَّذِي لَوْلَاهُ لَمْ يَجِبْ بِرُّهُمَا. فَسَقَطَ تَعَلُّقُهُمْ بِالْآيَاتِ الْمَذْكُورَاتِ.

وَأَمَّا قِيَاسُهُمْ إسْقَاطَ حَدِّ الْقَذْفِ عَلَى إسْقَاطِهِمْ عَنْ الْوَالِدِ حَدَّ الزِّنَا فِي زِنَاهُ بِأَمَةِ وَلَدِهِ، وَعَلَى إسْقَاطِهِمْ عَنْهُ حَدَّ السَّرِقَةِ فِي سَرِقَةِ مَالِ وَلَدِهِ، وَعَلَى إسْقَاطِهِمْ الْقَوَدَ عَنْهُ فِي قَتْلِهِ إيَّاهُ، وَجَرْحِهِ إيَّاهُ فِي أَعْضَائِهِ - فَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؛ لِأَنَّهُ قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، وَنَصْرٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَاحْتِجَاجٌ مِنْهُ لِقَوْلٍ لَهُمْ فَاسِدٍ، بِقَوْلٍ لَهُمْ آخَرَ فَاسِدٍ، لَا يُتَابِعُونَ عَلَيْهِ، وَلَا أَوْجَبَهُ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ الْحُدُودُ وَالْقَوَدُ وَاجِبَانِ عَلَى الْأَبِ لِلْوَلَدِ فِي كُلِّ مَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَلَمَّا سَقَطَ قَوْلُهُمْ لِتَعَرِّيهِ عَنْ الْبُرْهَانِ رَجَعْنَا إلَى الْقَوْلِ الثَّانِي، فَوَجَدْنَاهُ صَحِيحًا؛ لِأَنَّ اللَّهَ تَعَالَى قَالَ {وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ} [النور: ٤] الْآيَةَ، فَلَمْ يَقُلْ تَعَالَى: إلَّا الْوَالِدَ

punishment for falsely accusing one's child of zinā. For there is no disagreement that if a parent is brought before a judge for false accusation, theft, adultery, or retribution (qisas)—and if the two [authorities] obligate the child to enforce the ḥadd punishment upon the parent in all such cases—this does not negate the child's duty to show kindness, dutiful care, avoidance of rebuke or saying 'Uff,' lowering the wing of humility out of mercy, and gratitude owed to the parent—and to Allah Almighty. Allah states: 'Severe against the disbelievers, compassionate among themselves' (48:29), while simultaneously commanding the enforcement of ḥadd punishments upon those He ordered us to show mercy to. He also says: 'Show kindness to parents, relatives, orphans, and the needy' (4:36). No one in the Ummah disputes that a relative may receive the ḥadd punishment for falsely accusing another relative of zinā, and that this does not conflict with the commanded kindness. Rather, enforcing the ḥadd punishment upon parents or those below them constitutes kindness and dutifulness toward them, for it is Allah's ruling—without which their dutifulness would not even exist as an obligation. Thus their reliance on the aforementioned verses is invalidated."[40]

L41775 As for their analogy of dropping the punishment for false accusation (qadhf) based on their dropping the punishment for unlawful intercourse (zina) from the father when he commits it with his child's female slave, their dropping the punishment for theft from him when he steals his child's property, and their dropping retaliation (qawd) from him when he kills his child or injures him in his bodily limbs—this is an analogy, and all analogy is invalid. For it is an analogy of error to error, upholding falsehood through falsehood, and an argument from him for a corrupt opinion using another corrupt opinion, which they are not to be followed in, nor is it mandated by any textual evidence or consensus. Rather, the prescribed punishments and retaliation are obligatory upon the father for the child in all that we have mentioned—and success is from Allah, the Exalted.

L41776–41777 When their argument was invalidated for lacking proof, we reverted to the second opinion and found it sound. For Allah the Exalted stated: *"And those who accuse chaste women..."* **[this verse]** [24:4], yet He did not say

[40] **Qur'an references (L41774):** Qur'an 48:29 (Al-Fath); Qur'an 4:36 (An-Nisa).

“except a father regarding his child,” while *“your Lord is never forgetful”* [19:64]. Had Allah the Exalted intended to exempt the father from the ḥadd penalty for accusing his child, He would have clarified this and not omitted it, until it is discerned by one whose argument lacks proof. Thus, it is certain that since Allah the Exalted spoke generally without specification, He undoubtedly intended that **the parent** be subjected to the ḥadd penalty for **the child** and **the child** for **the parent** without doubt. We also find Him the Exalted stating: *“O you who believe, be steadfast upholders of justice, witnesses for Allah even if against yourselves or both parents and relatives...”* [4:135]. Here Allah the Exalted obligated upholding justice toward parents and relatives as with strangers, encompassing ḥadd penalties and other rulings—and with Allah, the Exalted, lies all success.[41]

L41778 Ḥammām narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrābī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz informed me, from his father, ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: “There is no pardon permissible for the prescribed punishments (ḥudūd), nor for any part of them after they are reported to the Imam, for their implementation is part of the Sunnah.” This is the statement of a Companion, and no opposing view is known from them. And they revered such an opinion when it contradicted their own school of thought—though here they opposed it, because ʿUmar ibn al-Khaṭṭāb applied the ḥudūd universally and did not specify exceptions. Abū Muḥammad—may Allah have mercy on him—said: Similarly, they differed regarding one who falsely accuses the mother of his son of fornication. Abū Ḥanīfah, his companions, al-Shāfiʿī, and his companions said: “The child does not have the right to subject his father to the legal punishment for that.”

L41779–41781 Malik said: He may enforce the ḥadd punishment for that. Abū Ḥanīfa, al-Shāfiʿī, and their followers said regarding one who slanders the mother of a slave of his: He has no right to impose the ḥadd punishment upon his slave for that. Abū Thawr, Abū Sulaymān, and our companions said: He may enforce the ḥadd punishment for that. The discourse concerning these two

[41] **Qur’an references (L41777):** Qur’an 24:4 (An-Nur); Qur’an 19:64 (Maryam); Qur’an 4:135 (An-Nisa).

لِوَلَدِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . فَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ تَخْصِيصَ الْأَبِ بِإِسْقَاطِ الْحَدِّ عَنْهُ لِوَلَدِهِ لَبَيَّنَ ذَلِكَ، وَلَمَا أَهْمَلَهُ، حَتَّى يَتَفَطَّنَ لَهُ مَنْ لَا حُجَّةَ فِي قَوْلِهِ. فَصَحَّ يَقِينًا أَنَّ اللَّهَ تَعَالَى إذْ عَمَّ وَلَمْ يَخُصَّ، فَإِنَّهُ أَرَادَ أَنْ يُحَدَّ الْوَالِدُ لِوَلَدِهِ وَالْوَلَدُ لِوَالِدِهِ بِلَا شَكٍّ، وَوَجَدْنَاهُ تَعَالَى يَقُولُ {يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالْأَقْرَبِينَ} [النساء: ١٣٥] فَأَوْجَبَ اللَّهُ تَعَالَى الْقِيَامَ بِالْقِسْطِ عَلَى الْوَالِدَيْنِ، وَالْأَقْرَبِينَ كَالْأَجْنَبِيِّينَ، فَدَخَلَ فِي ذَلِكَ الْحُدُودُ وَغَيْرُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا عَفْوَ عَنِ الْحُدُودِ، وَلَا عَنْ شَيْءٍ مِنْهَا بَعْدَ أَنْ تَبْلُغَ الْإِمَامَ فَإِنَّ إقَامَتَهَا مِنَ السُّنَّةِ. فَهَذَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا خَالَفَ تَقْلِيدَهُمْ - وَقَدْ خَالَفُوهُ هَاهُنَا، لِأَنَّ عُمَرَ بْنَ الْخَطَّابِ عَمَّ جَمِيعَ الْحُدُودِ، وَلَمْ يَخُصَّ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَذَلِكَ اخْتَلَفُوا: فِيمَنْ قَذَفَ أُمَّ ابْنِهِ؟ فَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: لَيْسَ لِلْوَلَدِ أَنْ يَأْخُذَ أَبَاهُ بِذَلِكَ.

وَقَالَ مَالِكٌ: لَهُ أَنْ يَأْخُذَهُ بِذَلِكَ وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا: فِيمَنْ قَذَفَ أُمَّ عَبْدٍ لَهُ لَيْسَ لَهُ أَنْ يَأْخُذَ عَبْدُهُ الْحَدَّ فِي ذَلِكَ. وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَهُ أَنْ يَأْخُذَهُ بِذَلِكَ. وَالْكَلَامُ فِي هَاتَيْنِ الْمَسْأَلَتَيْنِ كَالْكَلَامِ فِي الَّتِي قَبْلَهُمَا وَقَدْ بَيَّنَّا أَنَّ حَدَّ الْقَذْفِ: حَدٌّ لِلَّهِ تَعَالَى، لَا لِلْمَقْذُوفِ، فَإِذْ هُوَ كَذَلِكَ فَأَخْذُهُ وَاجِبٌ عَلَى كُلِّ

issues is like the discourse concerning the two that preceded them. We have clarified that the prescribed punishment for false accusation of unchastity is a right due to Allah the Exalted, not to the accused person. Since this is the case, applying the punishment remains obligatory under all circumstances—whoever among the Muslims carries it out—because Allah the Exalted commanded flogging the false accuser eighty lashes without stipulating that it must be executed by a specific individual among the people to the exclusion of others. Therefore, specifying some of those who carry it out while excluding others constitutes an opinion of the utmost corruption. It is a position invented for them, for we know none among the Companions—may Allah be pleased with them—who upheld it, nor does it possess any foundational proof whatsoever—neither from the Qur'an nor the Sunnah.

حَالٍ - قَامَ بِهِ مَنْ قَامَ بِهِ مِنْ الْمُسْلِمِينَ -؛ لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِجَلْدِ الْقَاذِفِ ثَمَانِينَ، لَمْ يَشْتَرِطْ بِهِ قَائِمًا مِنْ النَّاسِ دُونَ غَيْرِهِ، فَكَانَ تَخْصِيصُ مَنْ خَصَّ بَعْضَ الْقَائِمِينَ بِهِ دُونَ بَعْضٍ قَوْلًا فِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلٌ مُخْتَرَعٌ لَهُمْ، مَا نَعْلَمُ أَحَدًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ بِهِ، وَلَا لَهُ حُجَّةٌ أَصْلًا - لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ.

L41782 There is no consensus, analogy, or underlying rationale—and whatever resembles this is invalid—and success comes only from God Almighty. Abū Muḥammad—may God have mercy on him—said: The ruling among Ḥanafī jurists regarding the removal of the prescribed punishment from a grandfather who slanders his grandchild mirrors their ruling concerning one who slanders the direct parents. Remarkably, the Ḥanafīs have differentiated between the legal status of children versus grandchildren in apostasy cases—ruling that an apostate's children must be compelled to embrace Islam yet not executed, while grandchildren are neither compelled nor executed. Abū Yūsuf, Muḥammad ibn al-Ḥasan, and al-Shāfiʿī distinguished between a father and grandfather in inheritance matters. How then did they end up with this contradiction here, treating fathers and grandfathers as equivalent, and sons and grandsons alike? These scholars claim adherence to analogical reasoning—yet this constitutes an unparalleled contradiction—and success comes only from God Almighty.

وَلَا إجْمَاعٍ، وَلَا قِيَاسٍ، وَلَا مَعْنًى - وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَالْحُكْمُ عِنْدَ الْحَنَفِيِّينَ فِي إسْقَاطِ الْحَدِّ عَنْ الْجَدِّ إذَا قَذَفَ وَلَدَ الْوَلَدِ، كَالْحُكْمِ فِي قَاذِفِ الْأَبَوَيْنِ الْأَدْنَيْنِ. وَالْعَجَبُ بِأَنَّ الْحَنَفِيِّينَ قَدْ فَرَّقُوا بَيْنَ حُكْمِ الْوَلَدِ وَبَيْنَ حُكْمِ وَلَدِ الْوَلَدِ فِي الْمُرْتَدِّ، فَجَعَلُوا وَلَدَ الْمُرْتَدِّ يُجْبَرُ عَلَى الْإِسْلَامِ وَلَا يُقْتَلُ، وَجَعَلُوا وَلَدَ وَلَدِهِ لَا يُجْبَرُ وَلَا يُقْتَلُ. وَفَرَّقَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، بَيْنَ الْأَبِ فِي الْمِيرَاثِ - وَبَيْنَ الْجَدِّ - فَمِنْ أَيْنَ وَقَعَ لَهُمْ التَّنَاقُضُ هَاهُنَا؟ فَسَوَّوْا بَيْنَ الْأَبِ وَالْجَدِّ، وَبَيْنَ الِابْنِ وَابْنِ الِابْنِ؟ وَالْقَوْمُ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ - وَهَذَا تَنَاقُضٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نَازَعَ آخَرَ فَقَالَ لَهُ الْكَاذِبُ بَيْنِي وَبَيْنَك ابْنُ زَانِيَةٍ]

An issue arose where one disputed with another, and the liar said to him, "Between me and you is the son of an adulteress!"

L41784 2248 - Issue: If someone disputes with another and says to them, "The liar between me and you is the son of a fornicatress," or says, "a child of fornica-

tion," or "a bastard," or "a fornicator"—some scholars have held that no hadd punishment applies. Abu Muḥammad said: If he initiated this statement before the other party disputed with him, no hadd punishment falls upon the speaker, as he has not yet falsely accused anyone. But if he said this after the dispute, he is unquestionably a false accuser of unchastity, incurring the hadd punishment, because—in his view—the disputant is undeniably a liar. Similarly, if he declared, "Whoever was present today on this path is the son of a fornicatress," and someone had indeed been present from there, he is indisputably a false accuser of that person, thus incurring the hadd punishment. If he made such a statement in a subsequent case, no hadd punishment applies, for when he uttered it, he was not a false accuser. It is impossible for him to retroactively become a false accuser through silence after not being one when he spoke. This reasoning is patently invalid. Success comes only from God, the Exalted.

٢٢٤٨ - مَسْأَلَةٌ: مَنْ نَازَعَ آخَرَ، فَقَالَ لَهُ: الْكَاذِبُ بَيْنِي وَبَيْنَك ابْنُ زَانِيَةٍ أَوْ قَالَ: وَلَدُ زِنًا، أَوْ زَنِيمٌ، أَوْ زَانٍ - فَقَدْ قَالَ قَائِلُونَ: لَا حَدَّ عَلَيْهِ قَالَ أَبُو مُحَمَّد: إنْ كَانَ قَالَ ذَلِكَ مُبْتَدِئًا قَبْلَ أَنْ يُنَازِعَهُ الْآخَرُ فَلَا حَدَّ عَلَى الْقَائِلِ؛ لِأَنَّهُ لَمْ يَقْذِفْ بَعْدُ أَحَدًا، وَإِنْ قَالَ ذَلِكَ بَعْدَ الْمُنَازَعَةِ فَهُوَ قَاذِفٌ لَهُ بِلَا شَكٍّ، فَعَلَيْهِ الْحَدُّ؛ لِأَنَّ الْمُنَازِعَ لَهُ كَاذِبٌ عِنْدَهُ بِلَا شَكٍّ. وَهَكَذَا لَوْ قَالَ: مَنْ حَضَرَ الْيَوْمَ عَلَى هَذَا الطَّرِيقِ فَهُوَ ابْنُ زَانِيَةٍ وَقَدْ كَانَ حَضَرَ مِنْ هُنَالِكَ أَحَدٌ: فَهُوَ قَاذِفٌ لَهُ بِلَا شَكٍّ، فَعَلَيْهِ الْحَدُّ - فَلَوْ قَالَ ذَلِكَ فِي الْمُسْتَأْنَفِ فَلَا حَدَّ عَلَيْهِ؛ لِأَنَّهُ إذَا لَفَظَ بِذَلِكَ لَمْ يَكُنْ قَاذِفًا، أَوْ مِنْ الْمُحَالِ أَنْ يَصِيرَ قَاذِفًا - وَهُوَ سَاكِتٌ - بَعْدَ أَنْ لَمْ يَكُنْ قَاذِفًا إذَا نَطَقَ - وَهَذَا بَاطِلٌ، لَا خَفَاءَ بِهِ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41785–41786

Issue: A man committed qadhf (false accusation of adultery) against an unrelated woman (non-maḥram) and his wife, then after the accusation, both the unrelated woman and his wife committed adultery.

[مَسْأَلَة قَذَفَ أَجْنَبِيَّةً وَامْرَأَتَهُ ثُمَّ زَنَتْ الْأَجْنَبِيَّةُ وَامْرَأَتُهُ بَعْدَ الْقَذْفِ]

L41787

Issue: If a man slanders an unrelated woman and his own wife, and both women subsequently commit adultery after the slander, he must necessarily receive the full hadd punishment for slandering the unrelated woman. He must also necessarily perform the oath of condemnation (liʿān) if he wishes to deny paternity of his wife's child or if the hadd punishment for adultery is confirmed against her. If he refuses (after being lashed for slandering the unrelated woman), the child is legally ascribed to him, and his wife incurs no consequences—neither oath of condemnation, hadd punishment, nor imprisonment—nor does he face further punishment, having already received the hadd. If he has not yet been lashed, he must perform the oath of condemnation to deny paternity. If he refuses, he is lashed for the slander. If they perform the oath of condemnation together, the hadd punishment for

مَسْأَلَةٌ: مَنْ قَذَفَ أَجْنَبِيَّةً وَامْرَأَتَهُ، ثُمَّ زَنَتْ الْأَجْنَبِيَّةُ وَامْرَأَتُهُ بَعْدَ الْقَذْفِ، فَعَلَيْهِ حَدُّ الْقَذْفِ كَامِلًا لِلْأَجْنَبِيَّةِ وَلَا بُدَّ - وَيُلَاعِنُ وَلَا بُدَّ - إنْ أَرَادَ أَنْ يَنْفِيَ حَمْلَ زَوْجَتِهِ، أَوْ إنْ ثَبَتَ عَلَيْهَا الْحَدُّ، فَإِنْ أَبَى - وَقَدْ جُلِدَ لِلْأَجْنَبِيَّةِ - فَالْحَمْلُ لَاحِقٌ بِهِ، وَلَا شَيْءَ عَلَى زَوْجَتِهِ - لَا لِعَانَ، وَلَا حَدَّ، وَلَا حَبْسَ - وَلَا عَلَيْهِ بَعْدُ؛ لِأَنَّهُ قَدْ حُدَّ. وَإِنْ كَانَ لَمْ يُجْلَدْ، لَاعَنَ إنْ أَرَادَ أَنْ يَنْفِيَ الْحَمْلَ عَنْهُ، فَإِنْ أَبَى جُلِدَ الْحَدَّ فَإِنْ الْتَعَنَ وَالْتَعَنَتْ الْمَرْأَةُ: جُلِدَ حَدَّ الزِّنَا. وَجُمْلَةُ هَذَا - أَنَّ مَنْ قَذَفَهُ قَاذِفٌ ثُمَّ زَنَى الْمَقْذُوفُ: لَمْ يَسْقُطْ ذَلِكَ الزِّنَا مَا قَدْ وَجَبَ مِنْ الْحَدِّ عَلَى قَاذِفِهِ؛ لِأَنَّهُ زِنًا غَيْرُ الَّذِي رَمَاهُ بِهِ، فَهُوَ إذَا رَمَى

adultery is averted. The essence is: If a slanderer slanders someone, and the slandered person later commits adultery, this subsequent adultery does not nullify the hadd punishment already incumbent on the slanderer, because the adultery occurred after the act he accused them of. Thus, if one slanders a chaste man or woman, the hadd punishment for slander is necessarily obligatory—and no established hadd punishment is nullified except by explicit textual evidence (naṣṣ) or consensus (ijmāʿ). Here, there exists neither textual evidence nor consensus to nullify it after its obligation is established by text. The same ruling applies to the wife without distinction: he is lashed for slandering her—even if she commits adultery—unless he performs the oath of condemnation, and she necessarily receives the hadd punishment for adultery. Success comes only from Allah, the Most High.

L41788 **An issue: He said to another, "O adulterer!" Then a person said to him, "You have spoken the truth" or "Yes."**

L41789 2250. Issue: If someone says to another, "O fornicator!" and a person responds, "You have spoken the truth," or says, "Yes," then according to Abū Ḥanīfah and all his companions except Zufar ibn al-Hudhayl, no ḥadd punishment applies to the one who said, "You have spoken the truth." They stated: If he said, "You have spoken the truth—he is as you claimed," both are to be subjected to ḥadd punishment. Zufar said regarding both scenarios: "Both are to be subjected to ḥadd punishment." Abū Muḥammad—may Allah have mercy on him—said: There is no distinction between the two scenarios. If someone argues that the statement "You have spoken the truth" could affirm something other than the accusation of fornication (qadhf), it is said to him: Similarly, the statement "You have spoken the truth—he is as you claimed" could refer to another claim made by this accuser unrelated to the accusation. There is no difference. Abū Muḥammad—may Allah have mercy on him—said: Our position—and success is from Allah, the Exalted—is that if it is conclusively established that the one who said "You have spoken the truth," "Yes," "He is as you claimed," or "Yes, by Allah" heard the accusation and understood it, he has undeniably admitted to it, and the ḥadd punishment becomes obligatory upon him. Similarly, if someone is asked, "Did you sell your house to Zayd for a hundred dinars?" and he responds, "Yes," "You

رَامٍ مُحْصَنًا أَوْ مُحْصَنَةً: فَعَلَيْهِ الْحَدُّ وَلَا بُدَّ - وَلَا يَسْقُطُ حَدٌّ قَدْ وَجَبَ إِلَّا بِنَصٍّ، أَوْ إِجْمَاعٍ، وَلَا نَصَّ، وَلَا إِجْمَاعَ هَاهُنَا أَصْلًا عَلَى سُقُوطِهِ، بَعْدَ وُجُوبِهِ بِنَصٍّ. وَكَذَلِكَ الْقَوْلُ فِي الزَّوْجَةِ وَلَا فَرْقَ: أَنَّهُ يُجْلَدُ لَهَا لِلْقَذْفِ - وَإِنْ زَنَتْ - إِلَّا أَنْ يُلَاعِنَ، وَتُحَدُّ هِيَ لِلزِّنَى وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ يَا زَانٍ فَقَالَ لَهُ إِنْسَانٌ صَدَقْت أَوْ نَعَمْ]

٢٢٥٠ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: يَا زَانٍ؟ فَقَالَ لَهُ إِنْسَانٌ: صَدَقْت، أَوْ قَالَ: نَعَمْ فَإِنَّ أَبَا حَنِيفَةَ وَجَمِيعَ أَصْحَابِهِ - إِلَّا زُفَرَ بْنَ الْهُذَيْلِ - قَالُوا: لَا حَدَّ عَلَى الْقَائِلِ: صَدَقْت - قَالُوا: فَلَوْ قَالَ لَهُ: صَدَقْت، هُوَ كَمَا قُلْت؟ حُدَّا جَمِيعًا - قَالَ زُفَرُ فِي كِلْتَا الْمَسْأَلَتَيْنِ: يُحَدَّانِ جَمِيعًا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا فَرْقَ بَيْنَ الْمَسْأَلَتَيْنِ وَمَنْ قَالَ: إنَّهُ فِي قَوْلِهِ لَهُ: صَدَقْت، يُمْكِنُ أَنْ يُصَدِّقَهُ فِي غَيْرِ رَمْيِهِ بِالزِّنَا؟ قِيلَ لَهُ: وَكَذَلِكَ قَوْلُهُ: صَدَقْت، هُوَ كَمَا قُلْت؟ مُمْكِنٌ أَنْ يَعْنِيَ بِذَلِكَ قَوْلًا آخَرَ قَالَهُ هَذَا الْقَاذِفُ مِنْ غَيْرِ الْقَذْفِ، وَلَا فَرْقَ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ إنْ تَيَقَّنَ أَنَّ الْقَائِلَ: صَدَقْت، أَوْ نَعَمْ، أَوْ هُوَ كَمَا قُلْت، أَوْ إي وَاَللَّهِ: أَنَّهُ سَمِعَ الْقَذْفَ وَفَهِمَهُ، فَهُوَ مُقِرٌّ بِلَا شَكٍّ، وَعَلَيْهِ الْحَدُّ. وَكَذَلِكَ مَنْ قِيلَ لَهُ: أَبِعْت دَارَك مِنْ زَيْدٍ بِمِائَةِ دِينَارٍ؟ فَقَالَ: نَعَمْ، أَوْ قَالَ: صَدَقْت، أَوْ قَالَ: إي وَاَللَّهِ، أَوْ مَا أَشْبَهَ هَذَا: فَإِنَّهُ إقْرَارٌ صَحِيحٌ بِلَا

have spoken the truth," "Yes, by Allah," or similar phrases, this constitutes a valid admission without doubt. The same applies if he utters this in response to one who said to him, "You divorced your wife," "You married off so-and-so," or "You gifted a man such-and-such."

L41790–41791 Thus, in every matter—if doubt arises, whether one heard the accusation of adultery or not, or understood it or not—no legal punishment is incurred in such a case, because he has mumbled and assumes he uttered different words. Likewise, in all that we have mentioned beyond this, there is no distinction. The Prophet—peace and blessings of Allah be upon him and his family—said, "Your blood, your wealth, your honor, and your physical integrity are inviolable to you." Thus, it is established that it is not permissible for anything we have mentioned to be made lawful except with certainty free from doubt. And success is from Allah, the Exalted.

L41792 **Case: He said to another, "You committed sexual immorality with so-and-so (a woman)"; or he said, "You defied moral bounds with her."**

L41793 2251. Issue: If someone says to another, "You fornicated with so-and-so," or says, "You engaged in sodomy with her," then Abū Ḥanīfah, al-Shāfiʿī, and their followers ruled there is no ḥadd for this. Abū Muḥammad—may Allah have mercy on him—said: If these two phrases can have a meaning other than zinā, their view is correct. But if they cannot be understood except as zinā, then is the ḥadd applicable? When we examined them, we found they can refer to having anal intercourse with her—thus the ḥadd is waived. Similarly, if he said, "I had intercourse with her in a forbidden manner," there is no distinction [in the ruling]. ʿAlī said: If one were to state this about himself, he would not be confessing to zinā, as we clarified. And success is from Allah, the Exalted.

L41794 **[Issue: If someone says to another (a man), "You have committed adultery" (zanayti) with a kasrah on the tā', or says to a woman, "You have committed adultery" (zanayta) with a fatḥah on the tā'.]**

شَكٍّ - أَوْ قَالَ ذَلِكَ مُجَاوِبًا لِمَنْ قَالَ لَهُ: طَلَّقْت امْرَأَتَك، أَوْ أَنْكَحْت فُلَانَةَ، أَوْ وَهَبْت امْرَأً كَذَا وَكَذَا.

فَهَكَذَا فِي كُلِّ شَيْءٍ - وَإِنْ وَقَعَ شَكٌّ - أَسَمِعَ الْقَذْفَ، أَوْ لَمْ يَسْمَعْهُ - وَفَهِمَهُ، أَوْ لَمْ يَفْهَمْهُ: فَلَا حَدَّ فِي ذَلِكَ، لِأَنَّهُ قَدْ بَهُمَ وَيَظُنُّ أَنَّهُ قَالَ كَلَامًا آخَرَ. وَهَكَذَا فِي جَمِيعِ مَا ذَكَرْنَا مِنْ غَيْرِ ذَلِكَ وَلَا فَرْقَ. وَقَدْ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ أَنَّهُ لَا يَحِلُّ أَنْ يُسْتَبَاحَ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ فَجَرْتَ بِفُلَانَةَ أَوْ قَالَ فَسَقْت بِهَا]

٢٢٥١ - مَسْأَلَةٌ: مَنْ قَالَ لِآخَرَ: فَجَرْتَ بِفُلَانَةَ، أَوْ قَالَ: فَسَقْت بِهَا فَإِنَّ أَبَا حَنِيفَةَ، وَالشَّافِعِيَّ، وَأَصْحَابَهُمَا قَالُوا: لَا حَدَّ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنْ كَانَ لِهَذَيْنِ اللَّفْظَيْنِ وَجْهٌ غَيْرُ الزِّنَا فَكَمَا قَالُوا، وَإِنْ كَانَ لَا يُفْهَمُ مِنْهُمَا غَيْرُ الزِّنَا فَالْحَدُّ فِي ذَلِكَ؟ فَلَمَّا نَظَرْنَا فِيهِمَا وَجَدْنَاهُمَا يَقَعَانِ عَلَى إتْيَانِهَا فِي الدُّبُرِ - فَسَقَطَ الْحَدُّ فِي ذَلِكَ. وَكَذَلِكَ لَوْ قَالَ: جَامَعْتهَا حَرَامًا، وَلَا فَرْقَ قَالَ عَلِيٌّ: فَلَوْ أَخْبَرَ بِهَذَا عَنْ نَفْسِهِ لَمْ يَكُنْ مُعْتَرِفًا بِالزِّنَا كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَالَ لِآخَرَ زَنَيْتِ بِكَسْرِ التَّاءِ أَوْ قَالَ لِامْرَأَةٍ زَنَيْتَ بِفَتْحِ التَّاءِ]

L41795 2252 - Issue: If a man says to another, “You have committed adultery (zanayti)”—with a kasrah on the tāʾ—or says to a woman, “You have committed adultery (zanayta)”—with a fatḥah on the tāʾ—then if he is not eloquent in Arabic, he must be subjected to the ḥadd punishment without exception. If he is eloquent and proficient in this degree of Arabic, he is asked: “Whom did you address?” If he responds, “I addressed someone other than her,” or “I addressed someone other than him,” no penalty is incurred, because this aligns with the apparent meaning of his statement. This is because addressing a female requires the verb to end with a kasrah on the tāʾ (zanayti), while addressing a male requires a fatḥah (zanayta). Thus, if he addresses her with a fatḥah, he did not address her, and if he addresses him with a kasrah, he did not address him. However, if he admits that he addressed her with that statement, he is punished with the ḥadd penalty, as this constitutes an accusation of adultery against her. Success is from Allah, the Exalted.

٢٢٥٢ - مَسْأَلَةٌ: وَمَنْ قَالَ لِآخَرَ: زَنَيْتِ - بِكَسْرِ التَّاءِ - أَوْ قَالَ لِامْرَأَةٍ: زَنَيْتَ - بِفَتْحِ التَّاءِ - فَإِنْ كَانَ غَيْرَ فَصِيحٍ: حُدَّ وَلَا بُدَّ. وَإِنْ كَانَ فَصِيحًا يُحْسِنُ هَذَا الْمِقْدَارَ مِنْ الْعَرَبِيَّةِ سُئِلَ: مَنْ خَاطَبْتَ؟ فَإِنْ قَالَ: خَاطَبْتُ غَيْرَهَا، أَوْ قَالَ: خَاطَبْتُ غَيْرَهُ، فَلَا شَيْءَ عَلَيْهِ؛ لِأَنَّ هَذَا هُوَ ظَاهِرُ كَلَامِهِ؛ لِأَنَّ خِطَابَ الْمُؤَنَّثِ لَا يَكُونُ إلَّا بِكَسْرِ التَّاءِ، فَإِذَا خَاطَبَهَا بِفَتْحِ التَّاءِ فَلَمْ يُخَاطِبْهَا، وَخِطَابُ الرَّجُلِ بِفَتْحِ التَّاءِ، فَإِذَا خَاطَبَهُ بِكَسْرِهَا فَلَمْ يُخَاطِبْهُ - وَإِنْ أَقَرَّ: أَنَّهُ خَاطَبَهَا بِذَلِكَ، حُدَّ؛ لِأَنَّهُ حِينَئِذٍ قَاذِفٌ لَهَا - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة قَذَفَ إنْسَانًا قَدْ زَنَى الْمَقْذُوفُ وَعُرِفَ أَنَّهُ صَادِقٌ فِي ذَلِكَ]

L41796 **A legal case where a person accuses another of unlawful sexual intercourse (zina), the accused had indeed committed it, and it is established that the accuser is truthful in that.**

L41797–41801 2253 – Issue: If someone accuses a person [of zinā], and the accused has indeed committed zinā, and it is established that the accuser is truthful in this—then all scholars agree that it is impermissible to seek the hadd punishment against the accuser—except Mālik, who held that the hadd punishment may still be sought against him. Abū Muḥammad—may Allāh have mercy on him—said: This is a statement manifestly corrupt and evidently flawed, leaving no room for obscurity. There is no disagreement that one established as truthful in making an accusation of adultery incurs no ḥadd punishment. Thus, if the accused knows his accuser is truthful, he recognizes no punishment is due. Therefore, demanding punishment from such an accuser constitutes certain injustice, and permitting this demand amounts to permitting confirmed wrongdoing. There is no distinction between this case and witnesses who hear the accuser while knowing his truthfulness—there being no disagreement that it is unlawful for them to testify to the accusation,

٢٢٥٣ - مَسْأَلَةٌ: مَنْ قَذَفَ إنْسَانًا قَدْ زَنَى الْمَقْذُوفُ وَعُرِفَ أَنَّهُ صَادِقٌ فِي ذَلِكَ - فَجَمِيعُ الْعُلَمَاءِ عَلَى أَنَّهُ لَا يَحِلُّ طَلَبُهُ بِذَلِكَ الْحَدِّ - إلَّا مَالِكًا فَإِنَّهُ قَالَ: لَهُ طَلَبُهُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ ظَاهِرُ الْفَسَادِ بَيِّنُ الْحَوَالَةِ لَا خَفَاءَ بِهِ؛ لِأَنَّهُ لَا خِلَافَ فِي أَنَّ مَنْ عُرِفَ صِدْقُهُ فِي الْقَذْفِ فَلَا حَدَّ عَلَيْهِ، فَإِذَا عَرَفَ الْمَقْذُوفُ أَنَّ قَاذِفَهُ صَادِقٌ فَقَدْ عَرَفَ أَنَّهُ لَا حَدَّ عَلَيْهِ، فَمُطَالَبَتُهُ إيَّاهُ ظُلْمٌ بِيَقِينٍ، وَإِبَاحَةُ طَلَبِهِ لَهُ إبَاحَةٌ لِلظُّلْمِ الْمُتَيَقَّنِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ شُهُودٍ سَمِعُوا الْقَاذِفَ وَهُمْ يَعْلَمُونَ صِدْقَهُ بِلَا خِلَافٍ فِي أَنَّهُمْ لَا يَحِلُّ لَهُمْ أَنْ يَشْهَدُوا بِالْقَذْفِ؛ لِأَنَّ شَهَادَتَهُمْ تُؤَدِّي إلَى الظُّلْمِ. وَكَذَلِكَ مَنْ كَانَ لَهُ أَبٌ فَقَتَلَ أَبُوهُ إنْسَانًا ظُلْمًا، وَأَخَذَ مَالَهُ ظُلْمًا، فَأَتَى وَلَدُ الْمَقْتُولِ الْمَأْخُوذِ مَالُهُ

as their testimony leads to injustice. Similarly, if a man's father wrongfully kills someone and seizes their property, and the heir of the slain man whose property was taken kills the murderer and reclaims the property he had wrongfully taken from him, it remains unlawful for the heir of the retaliated party to seek retribution—neither for bloodshed nor for the reclaimed property that had been unlawfully seized. Whoever differentiates between any aspect of these rulings errs. Allāh the Exalted said: "Be upholders of justice" [4:135], thus forbidding unjust conduct. He also said: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2]. No sin or transgression is greater than knowingly persisting when one is aware that his accuser of unchastity did not lie, then demanding of him what is demanded of those given to lying. And success is by Allah, the Most High. If they say, "He has indeed wronged him," we respond: "True, but no fixed punishment applies to such wronging; it entails only discretionary punishment."[42]

فَقَتَلَ قَاتِلَ أَبِيهِ، وَأَخَذَ مَالَهُ الَّذِي كَانَ لِأَبِيهِ، فَإِنَّهُ لَا يَحِلُّ لِوَلَدِ هَذَا الْمُسْتَقَادِ مِنْهُ: بِأَنْ يَطْلُبَ الْمُسْتَقِيدَ - لَا بِدَمٍ، وَلَا بِمَا أَخَذَ مِنْ مَالِهِ الَّذِي أَخَذَ مِنْهُ بِبَاطِلٍ، وَاسْتَرْجَعَهُ مِنْهُ بِحَقٍّ. وَمَنْ فَرَّقَ بَيْنَ شَيْءٍ مِنْ هَذِهِ الْوُجُوهِ فَهُوَ مُخْطِئٌ - وَقَدْ قَالَ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] الْآيَةَ فَحَرَّمَ اللَّهُ تَعَالَى الْقِيَامَ بِغَيْرِ الْقِسْطِ. وَكَذَلِكَ قَالَ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَلَيْسَ فِي الْإِثْمِ وَالْعُدْوَانِ أَكْثَرُ مِنْ أَنْ يَدْرِيَ أَنَّ قَاذِفَهُ لَمْ يَكْذِبْ ثُمَّ يُطَالِبُهُ بِمَا يُطَالِبُ بِهِ أَهْلَ الْكَذِبِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ قَالُوا: إنَّهُ قَدْ آذَاهُ قُلْنَا: نَعَمْ، وَلَيْسَ فِي الْأَذَى حَدٌّ، وَإِنَّمَا فِيهِ التَّعْزِيرُ فَقَطْ.

"An issue where a man accused his wife of adultery and initiated the liʿān oath procedure, then repeated the accusation before the liʿān process was completed."

[مَسْأَلَة قَذَفَ زَوْجَتَهُ فَأَخَذَ فِي اللِّعَانِ ثُمَّ أَعَادَ قذفها قَبْل أَنْ تتم التعانها]

2254. Issue: Abu Muhammad—may Allah have mercy on him—said: If a man accuses his wife and initiates the mutual imprecation (liʿān), then after commencing it and completing part of it—whether a small portion, most of it, or the majority—he repeats his accusation against her before she completes her liʿān, he must restart the liʿān from the beginning. This is because Allah the Exalted states: "As for those who accuse their wives but have no witnesses except themselves…" (24:6). Allah has ordained liʿān only after the husband's accusation. Therefore, after accusing his wife, he must fulfill the procedure as commanded by Allah. Since she has not completed her liʿān after his liʿān was completed, she remains his wife as she was provided the liʿān is not finalized. His renewed accusation constitutes a fresh charge against her. Consequently, he must present four sworn testimonies and the fifth invoking Allah's curse upon himself if lying. If he refuses and retracts, the accuser (husband) must

٢٢٥٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ قَذَفَ زَوْجَتَهُ فَأَخَذَ فِي اللِّعَانِ، فَلَمَّا شَرَعَ فِيهِ وَمَضَى بَعْضُهُ - أَقَلُّهُ، أَوْ أَكْثَرُهُ، أَوْ جُلُّهُ - أَعَادَ قَذْفَهَا قَبْلَ أَنْ تُتِمَّ هِيَ الْتِعَانَهَا، فَلَا بُدَّ لَهُ مِنْ ابْتِدَاءِ اللِّعَانِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ} [النور: ٦] الْآيَةَ. فَلَمْ يَجْعَلْ اللَّهُ تَعَالَى الِالْتِعَانَ إلَّا بَعْدَ رَمْيِ الزَّوْجَةِ، فَلَا بُدَّ بَعْدَ رَمْيِ الزَّوْجَةِ بِأَنْ يَأْتِيَ بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ، كَمَا أَمَرَ بِهِ، وَهِيَ مَا لَمْ تُتِمَّ الْتِعَانَهَا بَعْدَ تَمَامِ الْتِعَانِهِ زَوْجَتَهُ كَمَا كَانَتْ، فَهُوَ فِي تَجْدِيدِ قَذْفِهَا رَامٍ زَوْجَتَهُ، فَلَا بُدَّ لَهُ مِنْ شَهَادَةِ أَرْبَعِ شَهَادَاتٍ وَالْخَامِسَةِ، فَإِنْ أَبَى وَنَكَلَ: حُدَّ الْمَقْذُوفُ

[42] **Qur'an references (L41797):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

inevitably be subjected to the ḥadd punishment. However, if he accuses her of adultery while being certain of his own falsehood, he is to be punished with the ḥadd, and no liʿān is permitted whatsoever. For Allah says: “Cooperate in righteousness and piety, and do not cooperate in sin and aggression…” (5:2).[43]

وَلَا بُدَّ - فَإِنْ رَمَاهَا بِزِنًا يُتَيَقَّنُ أَنَّهُ كَاذِبٌ فِيهِ حُدَّ وَلَا لِعَانَ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L41804 There is no sin and transgression greater than compelling someone to swear false oaths when the one present or the judge is certain that in doing so he is a false accuser of adultery. This is aiding in sin and transgression. Allah the Exalted said: “When you judge between people, judge with justice” [An-Nisa: 58]. Meanwhile, she remains his wife as she was, and no separation occurs except after they complete the mutual imprecation we mentioned. If he accuses her and the judge is certain he is truthful, nor is it permissible for him to rule by mutual imprecation. Rather, the prescribed punishment is carried out upon her while she remains his wife—as she was; he inherits from her and she inherits from him, due to our earlier explanation that no separation occurs except after their mutual imprecation. Thus, it is established that mutual imprecation does not apply to one who accuses his wife of adultery where the accusation could possibly be truthful or false. However, if his falsehood is conclusively known, it is impermissible to neglect enforcing Allah’s obligatory punishment upon him, impermissible to assist him in sinful false oaths, and impermissible to command him to do so. And success is by Allah, the Exalted.[44]

وَلَيْسَ مِنْ الْإِثْمِ وَالْعُدْوَانِ أَكْثَرُ مِنْ أَنْ يُكَلَّفَ أَنْ يَأْتِيَ بِأَيْمَانٍ كَاذِبَةٍ، يُوقِنُ مَنْ حَضَرَ أَوْ الْحَاكِمُ: أَنَّهُ فِيهَا قَاذِفٌ، فَهَذَا عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ. وَقَالَ تَعَالَى {وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ} [النساء: ٥٨] وَهِيَ مَعَ ذَلِكَ امْرَأَتُهُ كَمَا كَانَتْ وَلَا فُرْقَةَ إلَّا بَعْدَ أَنْ يَتِمَّ الْتِعَانُهُمَا عَلَى مَا ذَكَرْنَا. فَلَوْ رَمَاهَا وَأَيْقَنَ الْحَاكِمُ أَنَّهُ صَادِقٌ فَلَا يَحِلُّ لَهُ الْحُكْمُ بِاللِّعَانِ أَيْضًا، لَكِنْ يُقَامُ الْحَدُّ عَلَيْهَا وَهِيَ امْرَأَتُهُ - كَمَا كَانَتْ - يَرِثُهَا وَتَرِثُهُ لِمَا ذَكَرْنَا مِنْ أَنَّهُ لَا فُرْقَةَ إلَّا بَعْدَ الْتِعَانِهِمَا. فَصَحَّ بِهَذَا أَنَّهُ لَا لِعَانَ فِيمَنْ رَمَى امْرَأَتَهُ بِزِنًا مُمْكِنٍ أَنْ يَكُونَ فِيهِ صَادِقًا، وَيُمْكِنُ أَنْ يَكُونَ فِيهِ كَاذِبًا - فَأَمَّا إذَا تُيُقِّنَ كَذِبُهُ فَلَا يَحِلُّ تَعْطِيلُ وَاجِبِ حَدِّ اللَّهِ عَنْهُ، وَلَا يَحِلُّ عَوْنُهُ عَلَى الْأَيْمَانِ الْكَاذِبَةِ الْآثِمَةِ، وَلَا يَحِلُّ أَمْرُهُ بِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Falsely accusing a group of fornication (zina) or if a person is found repeatedly engaging in sexual intercourse with non-māḥram women.

[مَسْأَلَة قَذَفَ جَمَاعَةً أَوْ وُجِدَ يَطَأُ النِّسَاءَ الْأَجْنَبِيَّاتِ مَرَّةً بَعْدَ مَرَّةٍ]

L41806 2255 - Issue: If someone falsely accuses a group of unchastity, was found repeatedly having sexual intercourse with non-maḥram women, was found to have stolen multiple times, or was seen drinking wine repeatedly—and he testified to all these acts—but provides proof confirming the truthfulness of his accusation against all except one individual, or all except one [of the

٢٢٥٥ - مَسْأَلَةٌ: مَنْ قَذَفَ جَمَاعَةً، أَوْ وُجِدَ يَطَأُ النِّسَاءَ الْأَجْنَبِيَّاتِ مَرَّةً بَعْدَ مَرَّةٍ، أَوْ وُجِدَ يَسْرِقُ مَرَّاتٍ، أَوْ رُئِيَ يَشْرَبُ الْخَمْرَ مَرَّاتٍ، فَشَهِدَ بِكُلِّ ذَلِكَ، فَأَقَامَ بَيِّنَةً عَلَى صِدْقِهِ فِي قَذْفِهِ مَنْ قَذَفَ إلَّا وَاحِدًا، أَوْ صَدَّقَهُ جَمِيعُهُمْ، إلَّا وَاحِدًا، فَعَلَيْهِ الْحَدُّ فِي الْقَذْفِ وَلَا بُدَّ، لِأَنَّ الْحَدَّ فِي قَذْفِ أَلْفٍ أَوْ فِي قَذْفِ وَاحِدٍ: حَدٌّ وَاحِدٌ، وَلَا مَزِيدَ

[43] **Qur’an references (L41803):** Qur’an 24:6 (An-Nur); Qur’an 5:2 (Al-Ma’idah).
[44] **Qur’an references (L41804):** Qur’an 4:58 (An-Nisa).

accused] corroborate his accusation, the ḥadd punishment for false accusation is necessarily due. For the ḥadd punishment for falsely accusing a thousand individuals or one individual is a single penalty, with no increase beyond our prior ruling. Similarly, if he provides evidence that all women he was found to have lain with were his female slaves except one, the ḥadd punishment for adultery is necessarily due. For the ḥadd punishment for adultery with a thousand women or one woman is a single penalty, with no increase, as previously established. Likewise, if he proves that all he stole was his property except for some of it, his hand must necessarily be amputated. For the ḥadd punishment for a thousand thefts or a single theft meeting the legal criteria is one penalty, as established. Similarly, if he proves that every instance of his drinking occurred while mentally incapacitated or under medical necessity except one instance, he must necessarily receive forty lashes. For the ḥadd punishment for drinking a thousand times or a single sip is one penalty, as outlined. Success comes solely from Allah, the Exalted.

عَلَى مَا قَدَّمْنَا. وَكَذَلِكَ لَوْ أَقَامَ بَيِّنَةً عَلَى أَنَّ جَمِيعَ أُولَئِكَ اللَّوَاتِي وُجِدَ يَطَأُهُنَّ إِمَاؤُهُ إِلَّا وَاحِدَةً، فَعَلَيْهِ حَدُّ الزِّنَا وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي الزِّنَا بِأَلْفٍ، أَوْ فِي الزِّنَا بِوَاحِدَةٍ: حَدٌّ وَاحِدٌ، وَلَا مَزِيدَ، عَلَى مَا قَدَّمْنَا. وَكَذَلِكَ لَوْ أَقَامَ بَيِّنَةً عَلَى كُلِّ مَا سَرَقَ: أَنَّهُ مَالُهُ أَخَذَهُ حَاشَ بَعْضَ ذَلِكَ، فَإِنَّهُ يُقْطَعُ بِهِ وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي أَلْفِ سَرِقَةٍ، وَفِي سَرِقَةٍ وَاحِدَةٍ: حَدٌّ وَاحِدٌ عَلَى مَا قَدَّمْنَا، وَكَذَلِكَ لَوْ أَقَامَ الْبَيِّنَةَ عَلَى أَنَّ كُلَّ مَا شَرِبَ مِنْ ذَلِكَ كَانَ فِي غَيْرِ عَقْلِهِ، أَوْ كَانَ فِي ضَرُورَةٍ لِعِلَاجٍ أَوْ غَيْرِهِ، إِلَّا مَرَّةً وَاحِدَةً: فَعَلَيْهِ جَلْدُ الْأَرْبَعِينَ وَلَا بُدَّ؛ لِأَنَّ الْحَدَّ فِي شُرْبِ أَلْفِ مَرَّةٍ، وَفِي جَرْعَةٍ: حَدٌّ وَاحِدٌ، كَمَا قَدَّمْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.