

**Critical Study and Edition of  
Al -Ṭuruq Al-Ḥukmiyya fi'l-Siyāsa al-Shar'īyya  
Ḥisba chapter**

**Of**

**Imām Shams al-Dīn b. Muḥammad b. Abū Bakr**

**Ibn Qayyim al-Jawziyya**

**(IQJ)**

**By**

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**PART ONE**

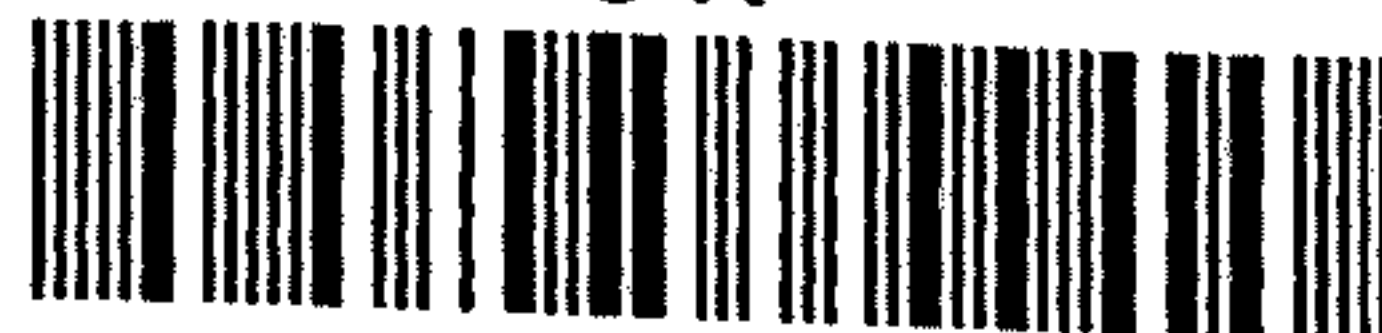
**A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS  
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# DEDICATION

To my parents,

For their optimism, support and constant  
supplication, May

Allah grant them both Jannat ul Firdous.  
Amin.

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- ii. A glossary of a selection of Scholars mentioned in the manuscript;
- iii. Summaries of all five chapters;
- iv. A map of the Mamlūk territory;
- v. A list of Sultans who reigned at the time of IQJ;
- vi. Copies of manuscripts;

## Bibliography



## Method of Transliteration

The following system has been employed in transliterating the Arabic words and names used in the text.

ء	'	ز	z	ف	f
ب	b	س	s	ق	q
ت	t	ش	sh	ك	k
ث	th	ص	ṣ	ل	l
ج	j	ض	ḍ	م	m
ح	ḥ	ط	ṭ	ن	n
خ	kh	ظ	ẓ	هـ	h
د	d	ع	‘	و	w
ذ	dh	غ	gh	ي	y
ر	r				

Long Vowels: ا ā

و ū

ي ī

Short Vowels: َ a

ِ i

ُ u

-The Arabic Muslim names have generally been transliterated except for those untransliterated names which have already been used in English literature, such as Islam and Sunna.

-The *hamza* was ignored when it is maftūḥ or maksūr in the beginning of words such as, Aḥmad, Anṣār and Amwāl; also Iṣlāḥ and Ilbās.

-The definite article “al” is generally written, even though when it is used prior to sun letters and after vowels, e.g. al-shams (not ash-shams). However, (wa al-) is written as (wa'l-) and (li al-) is written as (li'l) and (fi al) is written as (fi'l).

## Abstract

The perspectives on the Islamic institution of Hisba are varied and sometimes controversial. The relationship between this mechanism, the Muslim faith and the practicalities of the everyday life is complex and more far-reaching than many scholars have acknowledged.

The current capitalist trend is perhaps largely responsible for contemporary social upheaval and a rising crime rate. Due to enormous leaps in the progress of science and technology, social disharmony can manifest itself in much more threatening ways than was possible in previous centuries. This study has perhaps evolved in response to a state of affairs that appears to have become divorced from both spirituality and the addressing of real issues. The research sheds light on the stabilising characteristics of hisba and gains insight into the positive outcomes of its application. Via the studying of the famed scholar and jurist IQJ<sup>1</sup> who lived and worked from 691 AH/1293 CE to 751 AH/1350CE. His work TH<sup>2</sup> specifically illuminates the doctrine of Islam and its inseparable link with hisba, outlining in precise and comprehensive detail the benefits to the Muslim nation of a correct implementation of justice and the indisputable efficiency of the philosophy of enjoining good and proscribing evil.

The study is divided into two parts, the second part involving research of an original manuscript dated 797 AH written by IQJ. Part one contains an introduction, 5 chapters and 4 appendices.

The first chapter offers a historical background to the potential, religious and social climate at the time of the author. The second examines the name and fame of the author, his specific family environment, his academic life, the tutors who

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<sup>1</sup> It means Ibn Qayyim al-Jawziyya.

<sup>2</sup> Its mean al-Ṭuruq al-Ḥukmiyya the title of the manuscript.

influenced his study and the students who benefited from his knowledge. Chapter Three attempts to define the Islamic term 'Hisba', examining the various connotations and derivations of the expression. This chapter looks at the nature and aims of Hisba in Islamic law and a brief introduction to the role of the Muhtasib. In Chapter four, the methodology of IQJ is discussed in some detail, his philosophy of Hisba and his concept of the prerequisites and role of the Muhtasib are closely examined. Chapter Five focuses on IQJ's manuscript TH, discussing the researcher's reasons for its choice and elaborating on the style and content of the document. This is followed by a conclusion and four appendices:

- i. A glossary of Arabic terms used in the manuscript;
- ii. A glossary of a selection of Scholars mentioned in the manuscript;
- iii. A map of the Mamlak territory;
- iv. A list of Sultans who reigned at the time of IQJ.

Finally, the bibliography concludes the thesis. The second part of the study consists of the Arabic edition of the manuscript, which consists of 24 chapters.



## Introduction

The first thirteen years of the Prophet Mohammed's mission was particularised by the task of persuading the Makka to reject idolatry and to single out Allāh alone for worship. It was not until the establishment of a fledging state in Madina that the revelation contained laws, injunctions and prohibitions. Amongst those things with which the Prophet and the Muslims were ordered with was enjoining what is good and prohibiting what is evil.<sup>1</sup> From this point onwards the status of enjoining good and forbidding evil and its place in Islam became manifest, until it became one of the most important characteristics that is unique to the Muslim Nation. Hisba is encompassed all woks of life, and its implementation brought about righteousness and success for all humankind. Indeed, it became one of the compulsory acts of the Muslim state and the Muslim countries that the Caliphs ruled over, and the princes after them. They singled out the duty of enjoining the good and forbidding the evil as a specialized field in the role of *Hisba*.

Humanity in contemporary times suffers from ever changing and ever failing methodologies that when implemented have harmed as often as helped due to the complexities of the human psyche that is torn between hope and fear, and between furthering personal gains at the cost of the greater good of the community. The laws of Islam aim to protect society and keep it in order so that good can triumph and evil can be eradicated. It is for this every reason that we notice the scholars and the Imāms of the Muslims giving such great importance to this subject, not only in speech but also in action. Of those who were prominent in this regard was Imām IQJ who passed away in 751AH. He has a great deal of research in almost every field of knowledge, not to mention this particular field that he is renowned for.

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<sup>1</sup> Qru'ān 3:110

TH is a testament to the sharpness of the author's understanding of the Maqasid of Islamic law and that is made more clear in his detailed exposition of the principles and rules of *Hisba* and his profound knowledge in the areas of agreement and disagreement of the scholars of Islam.

## Aims and Objectives

This thesis attempts to expand on the previous research conducted by the writer, whose specialist topics at B.A. and M.A. levels were *usul al-dīn*, *da'wa* and *Iḥtisāb*. The writer hypothesises that there are some limitations within previous studies of the nature of *Hisba* and he has deemed it apt to concentrate his work on further clarification of this complex Islamic institution. There are apparent loopholes in the understanding of *Hisba* as a technical term and a resultant lack of acknowledgement of its role as a comprehensive system which encompasses all aspects of human life.

The writer aims to examine various texts pertaining to the subject of *Hisba* and highlight the diverse and sometimes questionable notions as to its definition. Some scholars limited their study of *Hisba* to the realm of the market place, inferring that this institution was relevant only to social – economic factors. The ordering of good and the forbidding of evil was thus viewed in terms of physical malpractice within the bounds of buying and selling. Other scholars limited their study to the surveillance of dishonest and immoral practices that came under the jurisdiction of the *Muḥtasib*, illustrating his position of “orderer” and “prohibiter” within the institution of *Hisba*.

In the light of these restricted and compartmentalised viewpoints, the researcher wishes to elaborate upon the multi-faceted essence of *Hisba*, emphasising its all embracing nature in Islamic law. This study entailed wide reading on the topic of *Hisba* and the collecting of as much relevant material as possible, in the form of published texts and documents in manuscript format. The reading of *al-Ṭuruq*



*Hukmiyya* by IQJ was a revelation and inspiration, this work being a unique journey into the intricacies of *Hisba*. Enthusiasm to edit this text was increased upon discovery that more than nine of the editions had undergone no academic editing.

Shaikh Ibn Duhayyish, a judge in Makka in 1354A.H, informed the researcher of the existence of a copy in manuscript form, which he subsequently obtained, being further fired to edit such an immensely important scholarly document. Ibn Duhayyish had himself compared a printed copy with this specific manuscript and discovered that the former contained a number of omissions (several pages in one place) and various examples of errors & distortions. He suggested that TH might be reprinted, (based upon this manuscript and other similar copies) accurately edited and the readers' attention drawn to this.

#### Research Methods and Related Problems

The bulk of the research was reliant upon the copy of the manuscript found in the 'Arif Hikmat library in Madina. This dated back to the year 797 AH, i.e. 46 years after the author. The manuscript had inevitably suffered much wear and tear over the centuries and the consequent smudging hampered ready assimilation of the text. The lack of dots on certain letters furthered impeded reading and the writer expended a vast amount of time and effort in deciphering the text. This copy, considered as the original, was then compared with four other copies and any differences delineated in the footnotes.

Correlating the various texts demanded travel to several different countries and the eventual acquisition of nine manuscripts. The difference in the content between the copies necessitated close examination and comparison, which led to classification according to the place where the copy was found, the time of writing and the various similarities contained.



This resolved the problem of any duplicated information, thus avoiding the overfilling of footnotes with explanatory remarks. Ultimately all variant readings of the text were compiled and referenced in the footnotes. In order to facilitate reference to the original 'Arif Hikmat library manuscript, the beginning of the pages of the original were indicated with waahid alif and waahid baa and two small lines were used to indicate sentences which have been inserted. More complicated words and expressions were vocalised and some spellings altered in order to make them conform with modern orthography. An attempt was made to clarify any difficult vocabulary. IQJ presents the subject of Hisba in his book TH by dividing it into a number of parts, each containing a topic the details of which are then dealt with and discussed. However, IQJ did not give titles to these sections, so much thought was given to the compilation of titles to each section in order to make it easier for the reader to make links between the various topics<sup>2</sup>.

All the Quranic verses have been quoted as they are written in the Holy Book and referenced, as were the various a hadith which were extracted directly from the sources indicated by the author. A short biography is provided of all the persons of note mentioned in the original manuscript and also the details of place names mentioned in the original manuscript. Finally the issue of the manuscript's name. The manuscript has become known under the name of *Al-Turuq al-Hukmiyya fi'l-siyāsa al-shar'iyya* (The paths of governance, [a treatise] on the policies of the Divine Law). Scholars who were the contemporaries of IQJ have mentioned the work under this title e.g.:- *Ibn Miḥliḥ*, *Ibn Rajb*, *Ibn al-'Imād*, *Hajī Khaḥfa*, and *Ḥamid al-Faqī*. *Al-Baghḍādī*, however, refers to this book as *Tadbīr al-ri'āsa fi'l-qawā'id al-Hukmiyya bi'l-Dhaka' wa'l-Qariha*. The book both in modern and classical times was known as *Al-Turuq al-Hikmiyya*. *Muḥammad Ḥamid al-Faqhi* entitled the book thus when he edited and published it in the year 1953, a title which has continued in subsequent reprints and rereleases. In addition, *Shaikh al-Faqhi* added yet another name

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<sup>2</sup> See chapter 5, subheading: the contents of the edited portion of the manuscript.

*Al-Firāsa al-Marhiyya fī 'Ahkām al-Siyāsa al-Shar'iyya*. Despite the three different titles IQJ's is generally acknowledged as TH, largely due to it being so entitled at the same time of the author.

## Summary of the research

The research has encompassed the following aspects:

The era in which IQJ lived with regard to the political, academic, religious, social and economic climate.

A biography of the author comprising his name, his birth, his upbringing, his scholarly life, his teachers, his students, the tributes to him, the reasons for his fame, his academic methodology, his morals and to conclude, a list of his works.

The definition of *hisba*, its aims, its nature, the working methods of the *Muhtasib* and the position of enjoining what is right and forbidding what is wrong in Islam; also the difference between religion and *hisba*, and the ruling pertinent to both of them.

IQJ's methodology of regarding *hisba* and the prerequisites and working methods of the *Muhtasib*; detailing the punishments which can be implemented under his jurisdiction.

# **Chapter One**

## **Political, Religious and Social Climate Prevalent at the time of Influence Ibn Qayyim al-Jawziyya**

**1.1 Introduction**

**1.2 Political Environment**

**1.3 Religious Environment**

**1.4 Social Environment**

**Endnotes**



## *Chapter 1. Political, Religious and Social Climate Prevalent at the time of Ibn Qayyim al-Jawziyya*

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### **1.1 Introduction**

In the first half of the second Islamic century, the lands of Syria and Egypt<sup>1</sup> were under the rule of the Abbasid Caliphate, based in Baghdad<sup>2</sup>; the Caliph had ultimate responsibility for the well-being of his citizens. Hence, due to the highly influential nature of his position, any shortcomings on his part were unlikely to escape public attention.

The Abbasid Caliphate met its downfall around 490AH/1097AD<sup>3</sup>. A succession of corrupt rulers failed to maintain their credibility. A Caliph who refused to fraternise with his people, preferring to immerse himself in worldly pleasures, only served to intensify any dissatisfaction and social dysfunction. It was perhaps inevitable that such weakness of rule should result in a struggle for change.

The governors of Syria and Egypt took up independent rulership, with Ṣalāḥ al-Dīn eventually establishing a state in the lands of Egypt.<sup>4</sup> Known as the Ayyubid State, this newly founded area was to become renowned for its strength and, ultimately, for its resistance to the Crusaders who threatened its cultural equanimity. Ṣalāḥ al-Dīn strove to set up a strong army to protect the lands of the Muslims from the potential dangers that threatened it. He established an army of Mamlūks who were instructed in the art of fighting and weaponry from a young age.<sup>5</sup> Upon the death of Ṣalāḥ al-Dīn, differences and divisions emerged within the Ayyubid State. Conflict between leaders over the rulership of their districts resulted in a vul-

nerability that led to their inability to resist both the Crusader campaigns and the malevolent flow of Mongol attacks. The Muslim historian, Ibn al-Athīr remarked about this plight, “So the lands of Egypt, Syria, and other that them, were on the verge of being taken [from the Muslims], had it not been for the grace of Allāh, Exalted is He, and His help to them.”<sup>6</sup>

As the Mongols were on the verge of conquering the land of Egypt, it was the power and strength of the Mamlūks which enabled resistance; halting their advance in Egypt and thereafter containing them and finally eliminating their threat altogether. Consequently, the rule went to the Mamlūks who established a state that ruled Egypt, Syria and the Ḥijāz<sup>7</sup> for almost three centuries.

It was in the shade of the Mamlūk State that our author Ibn Qayyim al-Jawziyya lived. He witnessed the turmoil and the ensuing social upheaval, which had a pronounced effect on the people and their immediate environment. It is my intention to examine in more detail, these circumstances which affected the life of the author.

## **1.2 The Political Environment**

The political situation is regarded as one of the most important facets of rulership, because of its influence upon the various aspects of life. Political stability generally enables social, economic and cultural advancement. Conversely, conflict amongst those in power shakes the equilibrium of the structure allowing the appearance of social fissures. History, both ancient and modern, bears witness to the fact that when there is political instability, this is followed by social, economical and cultural instability too. This has a negative effect, damaging the society and harming the people. The negative effects of the corrupt caliphate were gradually replaced by a more positive political awareness.

The most outstanding political events which had the greatest influence upon the society in that period were probably:-

- The battle with the Crusaders.



- The Mongol attacks.
- The various struggle for power.
- The political role of the scholars.

### 1.3 Battles with the Crusaders:

For two centuries the Eastern Coast of the Mediterranean Sea had witnessed battles between the European countries and the Islamic countries. The Crusades began after a sermon was given by Pope Urban II, in the city of Clairmont in France.<sup>8</sup> Ostensibly, it was in response to a request by the Byzantine Emperor to help re-open the pilgrimage route to Jerusalem, which had been blocked by the Seljūk Turks. In fact, as Muḥammad Kurd 'Alī and 'Abd al-'Adhīm 'Abd al-Salām opined, the reasons were not only religious, but equally they were politically and economically motivated. Both the nobility and common people responded to the Pope's call.<sup>9</sup> These Crusader campaigns began at the end of the fifth Century, in 491AH/1098AD.

The result of the first of these campaigns was the occupation of Edessa, Antioch, Tripoli, then Jerusalem - the place towards which the Crusaders prayed and the location of the Church of the Holy Sepulchre.<sup>10</sup> "The Crusaders went on to kill the Muslims in Jerusalem, occupying the city for approximately one week. In this period they savagely murdered more than seventy thousand Muslims, amongst them common people, Imāms, scholars, worshippers and ascetic, both in and around al-Aqṣā Mosque itself. They also pillaged an unquantifiable amount of booty."<sup>11</sup> The success of this and the ensuing campaigns, was doubtless due to the periods of weakness that afflicted the body of the Muslim's State, resulting from conflict and division. 'Abd al-'Azīm 'Abd al-Salām quotes the English orientalist, Gibb, saying, "As for the first Crusader campaign, it is indebted to a large extent to the weakness of resistance that it faced. This is a reality that all contemporary historians accept."<sup>12</sup>

The Muslims were not united and as such could not present a consolidated front against invasion. Divided attitudes expedited sedition. The historian Lynn Bolo points out, "Had time gone back slightly for the first Crusader campaign, the Saljūks power would have resisted

them, and had it gone forward slightly it would have been probable that Zanky or Nūr al-Dīn would have thrown them into the very sea that they had come from.” The two eras that Bolo refers to were redolent of a commitment to the Islamic faith and adherence to Divine Guidance, which produced a period of cultural stability. But, as Lynn Bolo asserts, “But it was one of the happiest occasions for the Europeans to have decided to move upon the Holy lands at this time in which the system in the Islamic state had become disturbed.”<sup>13</sup> However, this state of affairs did not endure, for in the year 529AH/1135AD. ‘Imād al-Dīn Zanky managed to open Edessa, which is located in the North Eastern part of the Mediterranean coast.<sup>14</sup> Soon after came Ṣalāḥ al-Dīn who united the ranks the Muslims. He fought the Crusaders in the year 583AH/1186AD in the battle of Hittin<sup>15</sup> and liberated Jerusalem from the clutches of the Crusaders.<sup>16</sup> However, after the death of Ṣalāḥ al-Dīn<sup>17</sup>, the Muslims became divided and once again fell prey to selfish, personal power struggle.

Al-Kāmil, the son of Ṣalāḥ al-Dīn’s brother, presented Jerusalem to the Crusaders in the year 625AH/1228AD.<sup>18</sup> Shihāb al-Dīn al-Maqdisī stated, “The news came that sultan al-Kāmil expelled the Muslims from Jerusalem and gave it to the Franks, the non-Arabs. He also made an agreement with them that they hand over some villages to them. So they helped him and joined him with their king Ambrūr. This was a huge blows suffered by the Muslims, and it was a reason for the hearts of the people of Damascus<sup>19</sup> to have been turned against al-Kāmil and those with him.”<sup>20</sup>

It was not until the Mamluk army had fought the Mongols and entered Syria, led by Berbers, the Mamluk Sultan, that the district of Qaysārya, Jaffa, Arsuf, Safad, the city of Ramla<sup>21</sup>, Shemal, Tarāblus and Antioch was reclaimed from the Crusaders. This took place between 663AH/1265AD - 669AH/1271AD. Sultan Qaylawūn followed him and opened the castle of al-Marqab, al-Ladhiqiye, Tarāblus between 684AH - 688AH/1285AD - 1289AD.<sup>22</sup> After him came his son Al-Ashraf and he opened Sayda, Beirut, Sūr, and ‘Akka.<sup>23</sup> The Sultans of the Mamlūk managed to expel those remaining Crusaders from the rest of the districts of the lands of Syria in the year 690 AH/1291AD.<sup>24</sup> In 702AH/1382AD the Mamlūk pushed the Crusaders out of the island of Awrād.<sup>25</sup> The Crusaders, under the leadership of the King of



France, attacked the Muslims via Dimyat, Egypt, but the attempt resulted in failure. A second attempt was made by way of Tunis to progress onto Egypt and Syria, but the King fell ill and died in Tunis. His untimely demise heralded the cessation of the campaigns.<sup>26</sup> Having begun in the year 490AH/1097AD and continued until the year 690AH/1291AD, these Crusader campaigns inevitably had a huge effect on the Muslims, especially for those inhabiting the sites of conflict and their direct neighbours.

The aforementioned social and political issues were all relevant to Imam Ibn Qayyim al-Jawziyya who was brought up in an era in which scholars held a distinguished role and an esteemed status. The political duty of such contemporary scholars will be discussed further.

#### **1.4 The Mongol Attacks**

In the middle of the seventh Century the Abbasid caliphate was struck from the direction of the East by vicious Mongol attacks that conquered the Eastern part of the Muslim lands of Syria. The Mongols, led by Hulagu,<sup>27</sup> turned to the capital of the Abbasid Caliphate, Baghdad, which was conquered in the year 656AH/1258AD.<sup>28</sup> Again the enemy was victorious against a spiritually divided people whose lack of social cohesion left them vulnerable.

Hypocrites proliferated;<sup>29</sup> some historical works state that Hulagu entered Baghdad killing and ordering the beheading of Islamic scholars. He killed approximately twenty four thousand people of scholarship.<sup>30</sup> The killing, stealing and the taking of women and children continued for at least thirty days. No one escaped save those who hid. Hulagu then ordered for the dead to be counted and the tally reached over a million and eight hundred thousand.<sup>31</sup> There was a simultaneous trail of devastation as the invaders destroyed mosques, schools and homes, burning books and throwing them into the river. Ibn al-Athīr revealed the enormity of the chaos, "This catastrophic event and this great calamity; never has such a horror been witnessed!"<sup>32</sup>

Thus the Abbasid caliphate in Baghdad was vanquished as a result of heedlessness, distance

from Allah, and traitors and hypocrites gaining rule over the lands and the lives of the slaves of Allah. Baghdad had been the home of the caliphate and the scholarly capital of the Muslims, it had now become a state with no affiliation to faith.<sup>33</sup> Al-Tūsī had allowed philosophers, fortune tellers, naturalists and magicians to reside there, and he handed the stipends for schools, mosques and religious lodges (*al-rubūt*, sing. *al-ribāt*)<sup>34</sup> over to them.<sup>35</sup>

Ibn Qayyim al-Jawziyya perceived the main reason for the vanquishing of the Abbaasid Caliphate in Baghdad as the betrayal of the hypocrite Rāfidites whose words had an adverse influence on the Caliphate; he writes, “Would the swords of the polytheists from the army of Hulagu, and the likes of Tartars, ever have appeared had it not been for their presence? Indeed, because of their crimes mosques were closed, Holy Books were burnt and Muslims were killed; their scholars, worshippers, and their Caliph! Furthermore, their alliance with the polytheists and with the Christians are well-known to the elite and the common folk alike.”<sup>36</sup>

Ibn Qayyim al-Jawziyya was preceded by his Shaykh Ibn Taymiyya, affirming that those refusing the Book of Allah and the Sunna of His Messenger (may blessings and peace be upon him) were the people of religious innovation and heresies (*ahl al-bidaʿ*) and, “that they are at war with all Muslims. They have used the contradictory creeds of the Christians, polytheists Turks and the Tarter to assist them. They have also made it permissible to shed the blood of the Muslims, as well as to take their wealth and their families.”<sup>37</sup> Hulagu made a further attempt in the year 658AH/1260AD towards Aleppo, north of the lands of Syria and conquered it in the month of Safar of the same year.<sup>38</sup> He proceeded towards Damascus, surrounding and cutting it off for two consecutive months.

The inhabitants experienced enormous hardships, and were forced to surrender in the Spring of the year 658AH/1260AD. Hence, most of the lands of Syria and its capital had fallen under Mongol rule. Here was a chance for Hulagu. He prepared his armies to conquer the lands of Egypt, sending envoys to Cairo with messages full of threats. It was at this time that news of his brother Khan the great Tarter’s death reached his ears. He left Syria for Tarter, to attend the election of the next great Khan, a position he desired greatly. However, he was to be dis-



appointed, as Katabgha had succeeded over the Mongoloid armies in Syria.<sup>39</sup> The Emir of the Mamlūk, Sayf al-Dīn Quttuz, rose to fight the Mongol. He killed the messengers of Hoalaako and crucified them publically. He sent an envoy under the emirate of Berbersu Berbers in the direction of Gaza, he himself being involved in this expedition, moving towards 'Akka. He met the armies of the Mongol at 'Ayn Jālūt and an extremely bloody and heated battle ensued. The Mongol leader, Katabgha was killed and the Mongols suffered a defeat so absolute that it was unprecedented in their history. The Muslims were delighted with the victory of the Mamlūk armies which then entered Damascus on the 27th of Ramadan in the year 658AH - 1260 AD. Whoever was left of the Mongol, fled from Syria fearing for his safety.<sup>40</sup> Historians noted that the battle of 'Ayn Jālūt saved the Christian world from the Tartars at a time when it was not easy for any country in Europe to persevere against them or resist them.<sup>41</sup> This battle was sufficient to vanquish the Mongols, yet the struggle of power between the Mamlūk further caused a state of weakness.<sup>42</sup> This encouraged the Tartars to renew their attacks upon the lands of Syria under the leadership of Ghaazaan. However, some of the Muslim scholars, like the Shaykh of Islam IbnTaymiyya, aroused the spiritual sentiments of the common people and the soldiers, creating a positive and cohesive attitude that aided their resistance of the Tartars and the final vanquishing of their enemy in the famous battle of Shuqhab.<sup>43</sup>

Ibn Qayyim al-Jawziyya, at the age of eleven, witnessed this battle and lived through the concluding phases of the destruction of the Muslim lands by the Mongols. The Mamlūks had finally put an end to it and they continued to rule until the death of our author, Ibn Qayyim al-Jawziyya.

### **1.5 Mamlūk Rule and the Struggle for Power**

The Mamlūk, the Sultans of Egypt, were able to establish their presence upon Syria following the defeat of the Mongol in the battle of 'Ayn Jālūt. However the armies had not rested they returned with their leader Quttuz, remaining a threat until, in the year 658AH/1260AD, Berbers killed him. He then ruled until the year 676AH/1277AD during which time foreign and interior political issues had stabilised. Berbers, a brave and strong leader, then died being



succeeded by two of his sons who ruled for less than three years<sup>44</sup> and subsequently by Mansūr Muḥammad Qaylawūn, who held power for almost eleven years 678-689AH/1279-1290AD. Sultan Mansūr produced a Sultanic family who continued to rule over Egypt for more than a hundred years.<sup>45</sup> His posterity inherited power and remained in sovereignty for all of Ibn Qayyim al-Jawziyya's life.

During that period, the lands were governed by twelve rulers. Of them, some were exiled, some removed, there were those who were killed and others who had died. After the death of Al-Mansūr Muḥammad Qaylawūn the ensuing period was synonymous with political disturbance. There was a struggle for power between the sons of Sultan Qaylawūn and some Amīrs; whilst the deputies of the sultanate in the lands of Syria opposed the Mamlūk rule whenever opportunity allowed them.<sup>46</sup> The political climate remained unstable until Sultan al-Nāṣir Muḥammad, son of Sultan Qaylawūn succeeded as ruler of Egypt.<sup>47</sup> He continued in power until 741AH/1340 AD;<sup>48</sup> an important era in the life of Ibn Qayyim al-Jawziyya.

After the death of al-Nāṣir Muḥammad, the remaining sons of the Sultan wrangled continually, unable to reconcile their differences.<sup>49</sup> During the last ten years of Ibn Qayyim al-Jawziyya's life, the rule was succeeded by seven of the sons of Sultan al-Nāṣir Muḥammad, each striving for personal ambition, vying with each other for power, to the point of attempted fratricide! They became puppets in the hands of their deputies, whose self-motivated manipulation further disturbed the equilibrium of the Muslim lands.<sup>50</sup> Thus the sons of al-Nāṣir Muḥammad became Sultans, who lacked continuity and wielded power superficially.<sup>51</sup> Sa'īd Āshūr said, "And this is the well-known picture that history accords to the era of the sons of al-Nāṣir Muḥammad. It becomes apparent that the lands have become looted by a group of Mamlūk Amīrs playing with the Sultans and maintaining a negative status quo. As for the common people, they could only observe as spectators."<sup>52</sup>

Oppression was widespread between the Amīrs and the landowners. Selfishness had become a distinctive trait amongst the wealthy in that period, thus exacerbating corruption. Deception became a social norm; deceit in trading transactions, deceit in contracts, usury etc, all result-

became a social norm; deceit in trading transactions, deceit in contracts, usury etc, all resulting in a total lack of respect for the property and lives of others. Thus materialistic attitudes and egocentric values germinated and grew. Ibn Qayyim al-Jawziyya addressed these issues in his works, bemoaning the widespread diseases in the body of the nation and illustrating the consequences of such a corrupt social structure.

Ibn Qayyim al-Jawziyya's book, *Al-Turuq al-Hukmiyya fi'l-Siyāsa al-Shar'iyya* (in particular, the section related to public duties in Islam, or *hisba*), debates the malediction within the society of which he was a member. He emphasised the folly of transgressing against the Sacred Law of Islam (*sharī'a*) as perpetrated by the common people, and calls for a return to the ethics of *hisba*. In order to clarify the aims of Ibn Qayyim al-Jawziyya, one cannot divorce his philosophy from the political climate that was prevalent at his time. It is therefore imperative to discuss his scholarly role within a wider context.

## 1.6 The Political Role of the Scholars

The preceding historical comments have highlighted the plight of the Muslims as they lived through the horrors perpetrated in Jerusalem and Baghdad. Amongst the slaughtered was a large number of scholars, whose knowledge was lost forever as they lay amongst almost one hundred thousand victims! Those in control had failed to embrace their faith and had thus become misguided and vulnerable; victory was delayed due to their disregard of the teachings of Islam.<sup>53</sup>

Scholars had an influential role in political activity after the fall of the Abbaasid Caliphate, being propitiates of Islamic legal duty and having insight into the real consequences of the Crusader campaigns and Mongoloid attacks.<sup>54</sup> An example of this is in the personage of the Imām, the Sultan of the Scholars, 'Izz al-Dīn ibn 'Abd al-Salām.<sup>55</sup> He openly contested Quttuz's stance regarding the collecting of taxes from the common people in order to fund the fight against the Mongol, this later entailed the removal of ornaments from his house & the houses of his Amīrs.<sup>56</sup> Quttuz subsequently abided by the Imām's judgement.<sup>57</sup> In response to



the efficacy of ‘Izz al-Dīn ibn ‘Abd al-Salām, the Berbers strove to take the pledge of Sultan for himself after the killing of Quttuz, coercing the support of the Emirs, the judges and other members of the upper class. He would have succeeded had not ‘Izz al-Dīn ibn ‘Abd al-Salām refused to comply maintaining that Berbers status, as a slave had not yet been reversed, “O Rukn al-Dīn! I know you as the slave of al-Banduqqdar.” Berbers summoned witnesses who testified that he had passed from the ownership of al-Banduqqdar and was now a free man. Thus the pledge was completed.<sup>58</sup> It was declared that some Amīrs still remained in slavery, their voices generally being disregarded, so in order to resolve this, they were bought, freed and their valuables placed in the treasury. The deputy Sultan, Shaykh ‘Izz al-Dīn stood and sold them one by one in a public auction.<sup>59</sup> It has been reported that Berbers admitted, on the death of Shaykh ‘Izz al-Dīn ibn ‘Abd al-Salām in 660AH/1262CE., “My rule has been unconfirmed until now.”<sup>60</sup>

The death of ‘Izz al-Dīn ibn ‘Abd al-Salām did not however result in the demise of scholastic influence. A scholar in the lands of Syria named Muḥī al-Nawawī<sup>61</sup> attempted to sway the attitudes of Sultan al-Zāhir Berbers. An Islamic legal verdict (*fatwa*) had been issued which furthered his own interests and al-Nawawī rose-up and opposed this injustice, saying, “They have given you a false verdict.”<sup>62</sup> He disputed the ethics of taking from the common man in order to finance war and decried the motives behind such a verdict. He suggested that Berbers first use his personal wealth from the palace and, “when your coffers are empty, then I will give you a verdict for taking money from the flock.” Enraged, Berbers banished him from Damascus, saying, “Leave my country”. Al-Nawawī replied, “I hear and I obey,” and subsequently departed for Nawā. The scholars told Berbers that he is one of our greatest scholars and from the righteous, he is a goodly example to all; bring him back to Damascus. Berbers complied and ordered his return, however, the Shaykh refused, saying, “I will not return whilst Berbers is there.” A month later Berbers died.<sup>63</sup> Thus, scholars of high calibre enjoyed respect and status from both the rulers and the masses; their ideologies having positive effects upon the politics of the ruling class of that period.

Imam Al-Nawawī died in the same year as Berbers yet still, the political journey of the schol-



ars was unimpeded. If anything, their role intensified to meet the renewal of the Mongol attacks against the lands of Syria at the time of Sultan al-Nāṣir Muḥammad. It was at this juncture that the Shaykh of Islam Ibn Taymiyya's fame spread.

His academic ability was to have a profound effect upon the personality of his student Ibn Qayyim al-Jawziyya. In the year 699AH/1300AD, Ibn Taymiyya stood up to Qazan, the leader and king of the Tartars. His unrelenting opposition to the king's tyranny eventually resulted in the release of Muslim prisoners of war. Ibn Taymiyya also asked him to consider the release of the Jews and Christians, because the word of Islam also speaks on behalf of the People of the Book (*ahl al-kitāb*), "They have what we have and share the same demands."<sup>64</sup>

In the year 702AH/1302AD Qazan returned to fight the Muslims in which Ibn Taymiyya played an inspirational role; this scholar having inspired the common people and stirred the Sultan to emerge and face the Tartars. In the battle of Shuqhub,<sup>65</sup> Ibn Taymiyya issued a ruling about the permissibility to fight the Tartars, because countering them was similar to countering the Kharijites. His words instilled the people with the courage needed to oppose the Tartars and through which their resolve were greatly strengthened.<sup>66</sup> Ibn Taymiyya expounded on the virtue of courage, rebuking those who flinch from it. Allāh, majestic is He, explained: *O believers! What is the matter with you when you are told to march forth in God's cause? Are you weighed down to the ground? Are you more satisfied with the worldly life than with the life to come?*<sup>67</sup> Allāh, Exalted is He, also taught: *Fight in God's cause against those who fight you; but do not provoke hostility, God does not love the aggressors.*<sup>68</sup> Ibn Taymiyya even condoned the breaking of fast at Ramaḍān for the duration of the battle. He himself ate in front of the soldiers and Amīr to indicate the necessity of sustenance if physical strength was to be maintained.<sup>69</sup> Thus the distinguished political role of Ibn Taymiyya became firmly established at the time of Sultan Al-Nāṣir Muḥammad ibn Qaylawūn. Subsequently there was little evidence of political conflict and the pursual of scholarly activities gradually began to receive credit. Ibn Qayyim al-Jawziyya was brought up in this stable environment wherein Islamic disciplines flourished in each of the lands of Syria and Egypt. Damascus also became a centre for learning offering a wealth of knowledge to those students who wished to pursue various branches

pices. Establishments to further religious study were on the increase, as was the wealth of books and literature that were published at that time. That period may well have been one of the richest periods of writing, filling the scholastic vacuum that the Tartars had left in Baghdad.

### **1.7 Scholarly Environment at the time of the Author**

Ibn Qayyim al-Jawziyya was born in the shade of the Mamlūk rule, which governed Egypt, Syria and the Ḥijāz. The Mamlūk State was responsible for the subduing of the Mongol movement and the cleansing of the Crusader emirates which had suffocated the lands of Syria.<sup>70</sup> Egypt, Syria and the Ḥijāz had all come under Mamlūk rule by the beginning of the eighth Islamic century; these being the pinnacle of centres amongst those seeking an intellectual life. Its abundance of well-built schools and mosques greatly improved the quality of religious studies in the various branches of Islamic Law, such as Qur'anic exegesis (*tafsīr*), *ḥadīth*, jurisprudence (*fiqh*), language, the knowledge of inheritance (*farā'id*), as well as the other branches of knowledge that were amongst the salient characteristics of that age.<sup>71</sup> The Muslim author, Maḥmūd Shākir, accredits this scholarly revival to the political and spiritual difficulties undergone by those Muslims whose faith had been physically attacked.<sup>72</sup> The violent occurrences in Baghdad and Jerusalem had united Muslims, revealing the necessity to heed the scholars and stand together in the face of adversity against the transgressors had increased the confidence of the common people both in their scholars and in their striving for the acquisition of knowledge. Those holding positions of respect understood the importance of knowledge and were insightful enough to facilitate its spread. Thus ensued the establishment of scholarly institutions that attracted both scholars and students of knowledge, the former being responsible for their upkeep and financing.<sup>73</sup> Syria - in particular Damascus, which was the home of Ibn Qayyim al-Jawziyya - was the focal point of knowledge, with scholars abounding there. Amongst the most distinguished scholarly institutions in Egypt and Syria were its schools, hospices (*khanqas*) and lodges.<sup>74</sup>

[1] *Scholarly Institutions in Egypt:*



i. Mosques; amongst the most famous in this period were: the mosque of ‘Amr,<sup>75</sup> the mosque of Ibn Tulun,<sup>76</sup> the mosque of al-Azhar,<sup>77</sup> and the mosque of al-Ḥakīm.<sup>78</sup>

ii. Schools; amongst the most famous in this period were: the Ṣālahiyya school (*madrasah*),<sup>79</sup> the Kamiliyya school,<sup>80</sup> the Ṭāhiriyya school,<sup>81</sup> the Manṣūriyya school<sup>82</sup> and the Nāṣiriyya school.<sup>83</sup>

iii. Hospices;<sup>84</sup> amongst these were: the Sa‘īd al-Su‘adā khanqa,<sup>85</sup> the Rukn al-Dīn Berbers al-Jāshinkar khanqa,<sup>86</sup> and the Shīkhu khanaqa.<sup>87</sup>

iv. Lodges;<sup>88</sup> amongst them: the Baghdādiyya ribāt<sup>89</sup> and the al-Āthār ribāt.<sup>90</sup>

[2] *Scholarly institutions in Syria:*

i. Mosques; amongst the most famous in this period were the Amawiyya mosque in Damascus and the Amawiyya mosque in Aleppo.

ii. Schools; amongst the most famous of them were: the Dhāhiriyya school,<sup>91</sup> the ‘Ādiliyya al-Kubrā school,<sup>92</sup> the Atbākiyya school,<sup>93</sup> the Sadriyya school,<sup>94</sup> the Jawziyya school,<sup>95</sup> the Diyā’iyya school.<sup>96</sup>

Also distinguished at that time were a number of academic specialists whose teachings benefited a widely dispersed population of students enormously; their effects are still in evidence today. The historian Maḥmūd Shākir suggested that this may have been the most prolific of literary eras.<sup>97</sup> Some of these scholars, hadīth masters (*ḥuffāz*) and *mujtahids* were:

1 - ‘Izz al-Dīn ‘Abd al-Salām, the Shāfi‘ī jurist and *mujtahid* and the shaykh of the Shāfi‘ī school of thought (*madhhab*) in his time. He was born in the year 577AH and died 660AH.<sup>98</sup>

2 - Al-Dimyātī, Sharaf al-Dīn ‘Abd al-Mu‘min, the Shāfi‘ī. The hadith master and linguist.



Born in the year 613AH and died in Cairo, in the year 705AH.<sup>99</sup>

3 - Ibn Khāllikān, Aḥamd ibn Muḥammad al-ʿIrbalī, the Shāfiʿī. The supreme judge, jurist and historian. Born in the year 608AH, and died in Damascus, 681AH.<sup>100</sup>

4 - Ibn Daqīq al-ʿĪd. A ḥadīth master, jurist and supreme judge. He was an academic leader and was the most dedicated student of ʿIzz al-Dīn ʿAbd al-Salām. He was born in the year 625AH and passed away in the year 702AH.<sup>101</sup>

5 - Ibn Manzūr, Muḥammad ibn Makram. A linguist and grammarian; he also held the post of judge. He was born in the year 630AH and died in the year 711AH.<sup>102</sup>

6 - Muḥī al-Dīn al-Nawawī, Shaykh of the Shāfiʿī school and one of the greatest jurists of his age. Born in the year 631AH and died in the year 676AH.<sup>103</sup>

7 - Ibn Jamāʿa, Muḥammad ibn Ibrāhīm al-Ḥamawī, the Shāfiʿī; the Shaykh of Islam, the jurist and supreme judge. He was born in Ḥamā in the year 639AH and died in the year 733AH.<sup>104</sup>

8 - Al-Mizzī, Jamāl al-Dīn Qaḍāʿī; the ḥadīth master. Born in Aleppo in the year 639AH and died in Damascus in the year 742AH.<sup>105</sup>

9 - Ibn Taymiyya, Aḥmad ibn ʿAbd al-Ḥalīm. The Shaykh of Islam, jurist, ḥadīth master, *mujtahid* and *mujāhid* (one who wages *jihād* in the Path of Allāh). Born in Harrān in the year 661AH and died in Damascus, in the year 728AH.<sup>106</sup>

10 - Abū Shāma, Shihāb al-Dīn ʿAbd al-Raḥmān ibn ʿIsmāʿīl. The ḥadīth master, jurist, historian and *mujtahid*. He was born in the year 599AH and passed away in 665AH.<sup>107</sup>

11 - Al-Dhahabī, Muḥammad ibn Aḥmad ibn ʿUthmān. The ḥadīth master, historian, critic and Shaykh of the ḥadīth scholars. Born in Damascus in the year 673AH and died in Damascus in the year 748AH.<sup>108</sup>

12 - Ibn Qayyim al-Jawziyya, Muhammad ibn Abū Bakr. Born in Damascus in the year 691AH and died in Damascus in the year 751AH.<sup>109</sup>

The aforementioned wrote copiously on their specific subject areas. It can be noted that the topic of Islamic legal studies superceded other studies, the Faith being close to the hearts of all. Likewise the attention paid to the Arabic language was of paramount importance, it being the key to the understanding of Islamic legal studies. Further evidence of a scholarly revival

the key to the understanding of Islamic legal studies. Further evidence of a scholarly revival lies in the acceleration of book sales at that time. There was an active market for literary merchandise and an ensuing production of wealth.<sup>110</sup> For example, Muḥammad ibn Shākiri ibn Aḥmad, Ṣalāḥ al-Dīn al-Dārānī, the author of the book, *Fawāt al-Wafīyyāt*, had been impecunious until he commenced trading in literary works. It was in such an environment that Ibn Qayyim al-Jawziyya's zest for knowledge gained momentum. His motivation was nurtured by his family, his school and the major intellectuals and jurists of his time. He was to become a bright star in the heavens of academia, guiding others along the path to knowledge and righteousness.

### 1.8 The Religious Environment

Differences in creed and methodology are inevitable in any culture and these were most evident in the societies of Syria and Egypt. Damascus and Cairo; (especially Damascus, the dwelling place of Ibn Qayyim al-Jawziyya;) witnessed sect differences, belief conflicts and ideological disputes. That period was renowned for a growth in the areas of dispute between the followers of the schools of jurisprudence. People had become extremely bigotted in the allegiance shown to their own school and tended to ignore other schools at the expense of truth and evidence. The increase of this conflict was condoned by some rulers who encouraged and festered such bigotry to others. The Ayyubids had taken care to spread the Shāfi'ī school because they themselves were Shāfi'ī; they established special schools making each school a religious endowment, or *waqf*.<sup>111</sup> They also maintained the spread the Ash'arī creed and made it the official creed for the state, decrying any other path of thought. The Ash'arīs had gained strength in the lands of Egypt and Syria. Indeed, whoever dared to oppose them was accused of having the wrong creed and considered to be an enemy of the leaders of the Faith and the scholars who supported the view of theological rhetoric (*kalām*).<sup>112</sup>

More and more people fell under this influence and came to accept the Ash'arī foundation i.e. raising the status of the intellect and advocating reliance upon the science of *kalām* and philosophy. Of these sects were the Jahmiyya, Mu'tazila, and the various sub-sects of the



Bāṭiniyya school; such as the Ismāīliyya, Nuṣayriyya, Durūz and ūthe Rāfiḍites.<sup>113</sup> Even the Sufi movement developed within these ideologies. Such movements, schools and sects had a significant impact upon Muslims, diverting them from orthodoxy. Only the Ḥanbalī school retained its strength and credibility, adhering closely to the Islamic Law.<sup>114</sup> At that time, Ḥanbalī scholars, amongst whom was ibn Taymiyya, disputed the Ash‘arī creed. He opened people’s eyes to the revealed texts of their Faith and to the necessity of returning to the fountain of the Message and to the very niche of prophethood; which is none other than the book of Allāh and the Sunna of His Messenger.

The Shaykh expounded the ‘traps’ into which people of all ranks had fallen. He highlighted the contradictions implicit within the various schools, emphasising the necessity of a strict adherence to the traditional acts of worship. He openly denounced mystical practices, revealing the dangers and folly of magic and the acknowledgment of myths. He sought to prevent the sacrificial slaughter and the swearing of oaths to other than Allāh. He opposed the consumption of alcohol and other intoxicating beverages, such as nabīdh, and would spill any wine he saw onto the ground.<sup>115</sup> The principles of his school were established upon the texts of the Book and the Sunna in the study of the creed, whilst the Ash‘arīs gave priority to intellectual evidence in such study.<sup>116</sup> He heeded the words of Allāh, Exalted is He, *O People of the Book! Do not overstep the bounds of truth in your religion; and do not follow the whims of the people who went astray in times gone by, who misled many and strayed from the even way.* [al-Qur‘ān 5:77]. Also: *So judge between them according to what God has sent down and do not follow their whims.* [al-Qur‘ān 5:49].

He authored numerous books and treatises;<sup>117</sup> his most renowned student, Ibn Qayyim al-Jawziyya, perpetuated his Shaykh’s legacies after the latter’s demise. He took on the school disputes, encouraging every citizen to return to the book and the Sunna of the Messenger in order that they may comprehend the rulings of their faith. He warned them about the dangers of personal desires and the blind pursual of them. He showed the scholars the benefits of reasoned opinion in the matters of the Faith and *ijtihād*, and he invited those who were suitably equipped both scholastically and spiritually - to enter its gates, along with Ibn Taymiyya.<sup>118</sup> He warned against enmity and extremism, asserting that the people had a duty concerning the



Jawziyya's dedication to the truth of the Islamic principle is perhaps concrete proof of his desire of seeking Allāh's Divine pleasure.

### 1.9 The Social Environment

There were three distinct social divisions during this era; a class of rulers (*hukkām*), a class of scholars (*ulemā*) and the masses (*āmma*):

*The Rulers:* In the year 668AH/1269AD rulership passed to the Mamluk Sultans, after the overthrow of the Tartar at 'Ayn Jālūt and the lands of Syria. The Sultans of the Mamlūk utilised the generally weak state of the lands and their victories over the Tartars and the Crusaders to instill their rule and dominate the treasury of the state.<sup>121</sup> The spread of districts was distributed between the Mamlūk, the emir and their followers. The Mamlūk rulers sought favour from scholars and facilitated the future of serious study, especially in the lands of Syria and Egypt.<sup>122</sup> Berbersu Berbers alleviated the burden of heavy taxation and offered reprieve to prisoners, especially the political; for example, King Mansūr, his mother and his brother.<sup>123</sup> He strove to strengthen his rule and obtain support from the people; foreseeing a much more stable internal situation.

*The Scholars:* These played a distinguished and active role in society, especially as rectifiers of the spiritual void left by previous invaders. The common and the higher class supported their scholars asking them for rulings, taking guidance from their opinions, and relying upon their advice. Scholars' words had a great effect upon general life, especially in a political respect. Some scholars of that time included 'Izz al-Dīn ibn 'Abd al-Salām, Muhyi al-Dīn al-Nawawī, and Taqī al-Dīn Ibn Taymiyya. This class actively participated in the revival and the renewal of the role of scholars in society. The ordinary people began to realise the great value of these men, accepting their views and extolling their worth. Those ruling class also embraced them, acknowledging their status.

*The Masses:* The common people were farmers, manufacturers and traders. Ibn

*The Masses:* The common people were farmers, manufacturers and traders. Ibn Khaldūn described them in these words, “They are the ones upon whom rests the responsibility of labour, strife and the hardships of human life.”<sup>124</sup> Each group valued the traditions that combined to mould its character. Such individual customs dictate the behavioural patterns of its group members and can thus influence the social structure as a whole. At the onset of Mamlūk rule, many such traditions which contradicted the fundamentals of Islamic Law and its rulings; migrated along with the people to the lands of the Sultanate of the Mamlūk and their cities. Al-Maqrīzī stated, “Immigration increased in the days of Berbersu Berbers so that the lands of Egypt and Syria were flooded by groups of people, and their customs and ways spread.”<sup>125</sup> Such immigration was perhaps responsible for the appearance of prostitution and its resultant concept of ‘tax-off.’ “This is money that prostitutes pay. The prostitute has her name recorded with a woman called the guarantor. Even the most distinguished person in Egypt would not be able to keep her from prostitution and participating in lewdness.”<sup>126</sup>

Many other contradictions to Islamic Law were in evidence, including: [i] Amassing wealth in ways that are prohibited by the Sacred Law, such as through deceit, bribery or usury. [ii] Taking people’s money through trickery, forging money, or having a monopoly on a merchandise. [iii] Prevalence of singing, consuming wine and other intoxicating beverages. [iv] Free-mixing of men and women in public places, etc.

It was within such a social and moral situation that Ibn Qayyim al-Jawziyya oversaw the guidance of the people, clarifying the negative consequences of unlawful dealings and moral failings. He emphasised the necessity of forbidding such violations and imbued the person responsible for *hisba*<sup>127</sup> with the power to enforce this. He thoroughly discussed the erroneous nature of desires that were alien to the Sacred Law, resorting to physical prohibition as well as verbal and written enforcement in order to curb them.<sup>128</sup>

The writer of this thesis will detail the academic and spiritual journey undertaken by Ibn Qayyim al-Jawziyya in his quest for Allāh’s reward; may Allāh shower mercy upon him.



## ENDNOTES TO CHAPTER I

1. Egypt (*miṣr*): a country located in the north-east of Africa. It was conquered by 'Amr ibn al-Āṣ in 18-19AH/640AD., during the Caliphate of 'Umar ibn al-Khaṭṭāb. It is now known as the Arab Republic of Egypt, with the city of Cairo (*al-qāhira*) as its capital. The prestige of al-Azhar university has often given the pronouncements of the Egyptian religious leaders a great weight in the Muslim world; during the last few centuries Cairo has been the cultural capital of the Arab world. Consult: *The Europa Year Book 1998*, vol.1, pp.1207ff.; Stamp; *Longman Dictionary of Geography*, pp.133ff.; Glasse; *The Concise Encyclopedia of Islam*, p.107.
2. The capital city of Iraq, situated on both sides of the Tigris river; the origins of the pre-Islamic name is not clear. The actual city, founded by the second Abbasid Caliph, Abū Ja'far al-Manṣūr, continued to be the centre of the Abbasid Caliphate and the cultural metropolis of the Muslim world, until it was conquered by the Mongols in 655-656AH/1258AD. After this date it became a provincial centre until 1339AH/1921AD., when it became the capital of modern-day Iraq. See: Seltzer et al.; *The Columbia Lippincott Gazetteer of the World*, p.140; *Longman Dictionary of Geography*, pp.39ff.; Donzel; *Islamic Desk Reference*, p.47.
3. It was in this year that the Crusaders began their attacks against the Muslim world.
4. 'Ashur; *Miṣr wa'l-Shām fi 'Asr al-Ayyūbiyyīn*, pp.29-48
5. Abū Shāma; *Kitāb al-Rawḍatayn*, vol.2, pp.229ff.
6. Ibn al-Athīr; *al-Kāmil*, vol.12, p.147.
7. The north-western area of the Arabian Peninsular and the birthplace and spiritual centre of Islam. The areas around the two Holy mosques of Makka and Madina are sacred areas which only the Muslims are allowed to enter. From the beginning of Islam, the region was under the control of the Muslim rulers, initially the Four-Rightly Guided Caliphs, then the Umayyads, and, until 655AH/1258AD., the Abbasids. It then fell to the Egyptians and in 922AH/1517AD., to the Ottomans. Al-Sharīf al-Ḥusayn ibn 'Alī reigned over it from 1334-1342AH/1916-1924AD. Since 1343AH/1925AD. the region is now part of the territory of Saudi Arabia. Consult: *Islamic Desk Reference*, p.133.
8. Lenman; *Dictionary of World History*, pp.244-247; Kurd 'Alī; *Khutat al-Shām*, vol.1, p.237.
9. 'Abd al-'Azīm; *Ibn Qayyim al-Jawziyya Asruhu wa Manhajuhu*, p.26.
10. Kurd 'Alī; *Khutat al-Shām*, vol.1, p.282.
11. *ibid* p.282.
12. 'Abd al-'Azīm; *Ibn Qayyim al-Jawziyya Asruhu wa Manhajuhu*, p.27.
13. *ibid* p.28.
14. al-Qalānāsī; *Dhayl Tārīkh Dimishq*, p.284.
15. al-Maqrizī; *al-Sulūk*, vol.1, p.93; Abū Shāma; *Kitāb al-Rawḍatayn*, vol.2 p.76; al-Katīb; *al-Fath al-Qissi*, pp.2-3; King; *The King Hospitallers*, pp.125-126; Stevenson; *The Crusaders in the East*, p.249.
16. Ibn Kathīr; *al-Bidāya wa'l-Nihāya*, vol.12, p.323.
17. He died on the 1st of March, 589AH/1193AD. See: Ibn Shaddād, *al-Nawādir*, p.410; Runciam; *A History of the Crusades*, vol.3, pp.11-18.
18. Stevenson; *The Crusades in the East*, p.314.
19. The capital of modern-day Syria and a major Middle-Eastern city from early medieval times and onwards. In 14AH/635AD. Khālid ibn al-Walīd conquered it from the Byzantines. It was made the capital of the Umayyad Caliphate by Mu'āwiya bin Abū Sufyān in 35AH/656AD. The Umayyad Grand Mosque was built by the Caliph, Walīd bin 'Abd al-Mālik. When the Abbasids defeated the Umayyads at the battle of the Zad river, in 132AH/750AD., the capital of the Empire shifted from Damascus to the newly-founded city of Baghdad. Despite this, Damascus remained an important city throughout Islamic history, and was recognized as such by succeeding dynasties; such as the Ayyubids and the Mamlūks. See: *The Columbia Lippincott Gazetteer of the World*, p.485; *The Concise Encyclopedia of Islam*, p.91.



21. al-'Aynī; *Aqd al-Jumān*, events of the year 664AH.
22. Stevenson; *The Crusades in the East*, p.339.
23. Kurd 'Alī; *Khutat al-Shām*, vol.2, p.127.
24. al-Maqrizī; *al-Sulūk*, vol.1, p.162; Ibn Taghrī Bardī; *al-Nujūm al-Zahisa*, vol.8, pp.6-7; 'Āshūr; *al-Ḥaraka al-Salibiyya*, vol.2, p.1183.
25. Maḥmūd Shākīr, *al-Tārikh al-Islāmiyya*, vol.7, p.19; *al-Bidāya wa'l-Nihāya*, Events of the year 702AH.
26. *Khutat al-Shām*, vol.2, p.129.
27. He was one of the leaders of the pagan Mongols that hailed from the Mongolian plains, near Lake Baikal, in northern China. He conquered that region, united its people, and went on to lead them in fighting the East. He once remarked: "We are the soldiers of Allāh upon his land He created us out of His Divine wrath and set us upon whomsoever incurs His anger. So we show no mercy to those who weep, nor do we relent to those who complain. You have heard that we have conquered territories; we have purified the lands from corruption and have slaughtered most of the inhabitants." See: *Qiyām Dawla al-Mamālik al-Ūlā*, p.254.
28. *al-Tārikh al-Islāmiyya*, vol.7, p.28.
29. See: *al-Bidāya wa'l-Nihāya*, vol.13, p.203; al-Qānūjī; *Abjad al-'Ulūm*, vol.2, p.108.
30. Ibn Batūta; *al-Riḥla*, p.245; *Qiyām Dawla al-Mamālik al-Ūlā*, pp.152-154; al-Maqrizī; *al-Khutāt*, vol.3, p.93.
31. *al-Najūm al-Zāhira fī Malūk Miṣr wa'l-Qāhira*, vol.7, p.50.
32. *al-Kāmil*, vol.12, p.137.
33. See: al-Khudrī; *Muhādarāt Tārikh al-Umma al-Islāmiyya*, p.482.
34. A lodge where those who wage *jihād* in Allāh's Path reside. there is a reference to it in the Sunna. The Prophet, may Allāh's blessings and peace be upon him, assigned for those amongst his Companions that were impoverished, a part of the mosque for them to live. They were known as 'People of the Veranda (*aṣḥāb al-ṣuffa*). Consult: *Maqrzī; Khutat*, vol.3, p.422.
35. *al-Bidāya wa'l-Nihāya*, vol.13, 267.
36. Ibn Qayyim al-Jawziyya; *Madārij al-Sālikīn*, vol.1, p.72; and *Ighātha al-Lahfān*, vol.2, p.267.
37. Ibn Taymiyya; *al-Radd 'ala'l-Akhnā'ī*, p.192.
38. *al-Tārikh al-Islāmiyya*, vol.7, p.28.
39. *ibid* vol.7, p.29.
40. *ibid* vol.7, p.30.
41. 'Abd al-'Azīz al-Maraghī; *Min 'Alām al-Islāmī Ibn Taymiyya*, p.12; Bakr Abū Zayd; *Ibn Qayyim al-Jawziyya 'Aṣruhu wa Manhajuhu*, p.31.
42. This shall be discussed futher in the section, 'Struggle for Power.'
43. For details of this: *al-Bidāya wa'l-Nihāya*, events of the year 702AH/1302AD; al-Fayrūzabādī; *al-Qāmūs al-Muḥīt*, section Bā', part Shīn.
44. *al-Tārikh al-Islāmiyya*, vol.7, p.12.
45. Refer to the family-tree of al-Mansūr Muḥammad Qaylawūn.
46. 'Āshūr; *al-Asru al-Mamlūkiyya*, pp.103-139.
47. *al-Bidāya wa'l-Nihāya*, vol.14, pp.190-286.
48. *al-Tārikh al-Islāmiyya*, vol.7, p.12.
49. *al-'Aṣr al-Mamlūkiyya*, pp.125-132.
50. Muḥammad ibn 'Iyās al-Ḥanafī al-Miṣrī; *Badā'ī' al-Zuhūr*, pp.156-165.
51. *al-Tārikh al-Islāmiyya*, vol.7, p.12.
52. *al-'Aṣr al-Mamlūkiyya*, p.132; abridged
53. *al-Tārikh al-Islāmiyya*, vol.7, p.11; slightly editing.
54. *ibid*
55. He is known by the honourific title, 'Sultan of the Scholars.' He was born in Damascus, in 577AH. he visited Baghdad in 599AH and returned to Damascus a month later. He began giving sermons in the Damascus Mosque. He disagreed with al-Ṣāliḥ for handing over al-Safad to the Crusaders, so he cesased supplicating

for him. Al-Ṣāliḥ was enraged and subsequently imprisoned him. On his release he proceeded to Egypt to take up jurisprudence. he passed away in the year 600AH., in Cairo. Consult: *al-Tāriḫ al-Islāmiyya*, vol.7, p.30.

56. *al-Bidāya wa'l-Nihāya*, vol.13, p.244, events of the year 657AH.
57. *al-Tāriḫ al-Islāmiyya*, vol.7, p.30.
58. Muḥammad Rizq Salīm; *Aṣru Salāṭin al-Mamālik*, vol.3, p.182.
59. Tāj al-Dīn Subkī; *Ṭabaqāt al-Shāfi'iyya*, vol.5, pp.84-85.
60. *Ibn Qayyim al-Jawziyya 'Aṣruhu wa Manhajuhu*, p.54.
61. He was born in the village of Nawā in the land of Syria, 631AH. He was an eminent scholar of jurisprudence and ḥadīth. He died in the year 676AH. See: *al-Tāriḫ al-Islāmiyya*, vol.7, p.31.
62. Jalāl al-Dīn al-Suyūṭī; *Ḥusn al-Muhādḍara fī Akhbār Miṣr wa'l-Qāhira*, vol.2, p.66.
63. *ibid* vol.2, p.71.
64. Muḥammad Abū Zahra; *Tāriḫ al-Madhāhib al-Fiqhiyya*, p.459.
65. *al-Bidāya wa'l-Nihāya*, vol.14, p.23.
66. *ibid* vol.14, pp.23-24, with slight editing.
67. Qur'ān 9:38-39
68. Qur'ān 2:190
69. *al-Bidāya wa'l-Nihāya*, vol.14, p.26.
70. 'Alī Ibrāhīm Ḥasan; *Dirāsāt fī Tāriḫ al-Mamālik*, vol.1, p.11
71. Dr. Bashār 'Awād Ma'rūf; *al-Dhahabī wa Manhajuhu*, p.75
72. *al-Tāriḫ al-Islāmiyya*, vol.7, p.16.
73. *ibid* vol.7, pp.15-18
74. *ibid* vol.7, p.16
75. al-Maqrizī; *al-Khuṭat*, vol.4, p.4.
76. *ibid* vol.4, p.36
77. *ibid* vol.4, p.49.
78. *ibid* vol.4, p.57.
79. *Ḥusn al-Muhādḍara*, vol.2, pp.140-141.
80. *ibid* vol.2, p.142.
81. al-Maqrizī; *al-Khuṭat*, vol.4, pp.216-218.
82. *ibid* vol.4, p.218.
83. *ibid* vol.4, p.222.
84. Hospice (*khanqa*): a residence, home or lodge for worship. These began to be built around the fourth century AH. See: al-Maqrizī; *al-Khuṭat*, vol.4, pp.271-283.
85. Founded in the year 569AH. See: *Ḥusn al-Muhādḍara*, vol.2, pp.140-141.
86. Founded in 706AH. Consult: al-Maqrizī; *al-Khuṭat*, vol.3, p.226.
87. Founded in 756AH. *ibid* vol.4, p.293.
88. *ibid*
89. Founded in the year 684AH. See: *ibid*.
90. Founded in 806AH. See: *Ḥusn al-Muhādḍara*, vol.2, p.147.
91. Founded in the year 670AH. See: al-Nu'aymī; *al-Dāris fī Tāriḫ al-Madāris*, vol.1, p.359.
92. *al-Bidāya wa'l-Nihāya*, vol.13, p.82, events of 612AH.
93. *ibid* vol.13, p.185, events of 640AH.
94. *ibid* vol.13, p.244, events of 657AH.
95. *ibid* vol.13, p.38, events of 597AH.
96. *ibid* vol.13, p.193, events of 643AH.
97. *al-Tāriḫ al-Islāmiyya*, vol.7, p.16.
98. *al-Bidāya wa'l-Nihāya*, vol.13, p.82, events of 660AH.



99. ibid vol.14, p.44, events of 705AH.
100. ibid vol.13, p.336, events of 681AH.
101. ibid vol.14, p.130, events of 702AH.
102. Ibn Ḥajr al-'Asqalānī; *al-Durar al-Kāmina*, vol.4, p.262.
103. *al-Bidāya wa'l-Nihāya*, vol.13, p.310, events of 676AH.
104. *al-Bidāya wa'l-Nihāya*, vol.14, p.178, events of 733AH
105. ibid vol.14, p.209, events of 742AH.
106. ibid vol.14, p.148, events of 728AH.
107. ibid vol.13, p.279, events of 665AH.
108. ibid vol.14, p.243, events of 748AH.
109. ibid vol.14, p.252, events of 751AH.
110. *Ibn Qayyim al-Jawziyya Asruhu wa Manhajuhu*, p.49.
111. al-Mundharī; *al-Takmila*, p.38.
112. *al-Bidāya wa'l-Nihāya*, vol.14, pp.28-49.
113. ibid vol.13, pp.196-202.
114. *al-Dāris*, vol.2, pp.29-126.
115. *al-Bidāya wa'l-Nihāya*, vol.14, pp.11-37.
116. Abū Zahra; *Ibn Taymiyya*, p.25.
117. Such as *al-'Aqida al-Wāṣitiyya*, *al-'Aqida al-Ḥamawiyya*, *Dar' al-Ta'arud al-'Aql ma'a'l-Naql* and *Minhāj al-Sunnah al-Nabawiyya*.
118. See: Ibn Taymiyyah; *Raf' al-Malām 'an al-A'imma al-A'lām*.
119. Consult: Ibn Qayyim al-Jawziyyah; *A'lām al-Muwaqqi'in*.
120. Consult: *A'lām al-Muwaqqi'in* and *Zād al-Ma'ād*
121. *Ibn Qayyim al-Jawziyya Asruhu wa Manhajuhu*, p.54.
122. *Ḥusn al-Muhādara*, vol.2, p.67.
123. 'Āshur; *Tārikh al-Mamālik fī Miṣr wa'l-Shām*, p.89; *Badā'i' al-Zuhūr*, vol.1, p.311.
124. Ibn Khaldūn; *al-Muqaddima*, p.434.
125. Aḥmad Mukhtār al-'Abādī; *Qiyām Dawla al-Mamālik al-'Ulā fī Miṣr wa Shām*, p.219.
126. *Badā'i' al-Zuhūr*, p.150.
127. See: Ibn Qayyim al-Jawziyya; *Turuq al-Ḥukmiyya*.
128. Consult: *A'lām al-Muwaqqi'in*, *Ighātha al-Lahfān* and *Jawāb al-Kāfi*.



## **Chapter two**

### **Ibn Qayyim al-Jawziyya's Scholastic Endeavour**

**2.1 His Name and Renown**

**2.2 His Early Years**

**2.3 His Scholastic Life**

**2.4 His Studies**

**2.5 IQJ's Teachers And Tutors**

**2.6 His Students**

**2.7 His Scholar's Praises For Him**

**2.8 His Literary Technique**

**2.9 His Character and Faith**

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**Endnotes**

## Chapter 2. Ibn Qayyim al-Jawziyya's Scholastic Endeavour

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### 2.1 His Name and Reknown<sup>1</sup>

The author's name is Shams al-Dīn Muḥammad ibn Abū Bakr ibn Ayyūb ibn Sa'd ibn Ḥurayz<sup>2</sup> ibn Makkī<sup>3</sup> al-Zura'ī.<sup>4</sup> He became known as Ibn Qayyim al-Jawziyya because his father was the rector (*qayyim*)<sup>5</sup> of the Jawziyya School (*madrasa*) in Damascus.<sup>6</sup>

Those who described and extolled his fame included both his contemporaries, as well as his student; such as: Ibn Rajab, al-Ḥanbalī,<sup>7</sup> al-Ṣafadī,<sup>8</sup> Ibn Kathīr,<sup>9</sup> al-Dhahabī,<sup>10</sup> Ibn 'Ābidīn,<sup>11</sup> al-Buhūtī,<sup>12</sup> al-Subkī,<sup>13</sup> al-Ya'murī,<sup>14</sup> al-Iraqī,<sup>15</sup> al-Ṭarābulṣī,<sup>16</sup> and al-Mawsū'a al-Fiqhiyya al-Kuwaytiyya.<sup>17</sup>

The scholars of his era also knew him as Ibn al-Qayyim; a name which was used by later generations. He was mentioned as such, by al-Qurāfī,<sup>18</sup> al-Zayla'ī,<sup>19</sup> al-Maqdisī,<sup>20</sup> al-Mardāwī,<sup>21</sup> al-Futūḥī,<sup>22</sup> al-Haytamī,<sup>23</sup> al-Ramlī al-Egyptī,<sup>24</sup> al-Bahūtī,<sup>25</sup> al-Āmawī,<sup>26</sup> al-Kharshī,<sup>27</sup> al-Nafrāwī,<sup>28</sup> al-Khādīmī,<sup>29</sup> al-San'ānī,<sup>30</sup> al-Afārīnī,<sup>31</sup> al-Ujaylī,<sup>32</sup> al-Ruhaybānī,<sup>33</sup> al-'Attār,<sup>34</sup> al-Shawkānī,<sup>35</sup> Ibn Ḥajr<sup>36</sup> and al-Suyūtī.<sup>37</sup>

Some considered his name to be Ibn al-Qayyim al-Jawziyya (such as al-Ya'murī, and al-Haytamī).<sup>38</sup> However, this title contains an apparent grammatical contradiction of the traditional linguistic rules of Arabic; thus to the purist such an inconsistency would be deemed incorrect. The use of the definite article is inappropriate when a further name is added to an existing one; neither should one incorporate two individual definitions in one Arabic word.<sup>39</sup>



However, having examined the previous evidence, it is apparent that despite the varied derivations, Ibn Qayyim al-Jawziyya was primarily recognized as Ibn al-Qayyim by his contemporaries and by future scholars, his lengthier title having arisen perhaps for two reasons:

Firstly: His family and descendants became widely known by this name. Secondly: Many others were known by the same surname, Ibn al-Qayyim, such as Abū Bakr Muḥammad bin ‘Alī al-Ḥussayn Ibn al-Qayyim al-Ḥanbalī (d.480AH).<sup>40</sup> Also, Baha al-Dīn ‘Alī ibn ‘Isā al-Tha‘labī Ibn al-Qayyim al-Shāfi‘ī al-Egyptī (d.710).<sup>41</sup> So in order to avoid confusion, it would be perhaps more accurate to afford him the title of Ibn Qayyim al-Jawziyya throughout the course of this dissertation.<sup>42</sup>

Al-Jawziyya is the school (*madrasa*) which was overseen by the author’s father, Abū Bakr, named after the man who made it an endowment and trust (*waqf*), Ibn al-Jawzī, Muhyi al-Dīn Yūsuf ibn Abu’l-Faraj ‘Abd al-Raḥmān ibn ‘Alī ibn Muḥammad ibn ‘Alī ibn ‘Ubayd Allāh al-Jawziyya al-Qurashī al-Bakrī al-Baghdādī, al-Ḥanbalī; who died in the year 656AH. The site of the ancient school still stands in Damascus in the area of al-Buzuriyya, although no one is aware of any future plans for its re-development.

## 2.2 His Early Years

IQJ was born in Damascus<sup>43</sup> in the year 691AH/1292AD on the 7th day in the month of Safar.<sup>44</sup> He was brought up in a household of knowledge and piety where Abū Bakr, his father, being renowned for his righteousness, piety, worship and virtue. As rector (*qayyim*) of the Jawziyya school, he was loved and respected by the people who recognised his innate sense of justice and duty. Abū Bakr had vast knowledge, the fundamentals of which he passed on to his son IQJ; the latter being particularly inspired by studies of duty and obligation. Thus IQJ spent his formative years within an environment that instilled in him the virtues of scholastic attainment and the qualities necessary to live a righteous life.

IQJ’s first son, ‘Abd Allāh continued to pursue the family’s quest for knowledge, becoming

famous for his phenomenal powers of memorization. At the age of nine he had memorised the Qur'ān, revealing himself to have had astonishing tenacity and motivation for one so young. 'Abd Allāh eventually taught in the Sadriyya school after the death of his father. The second son Ibraheem also taught at the Sadriyya school. His intellectual ability again reflected the family traits, and not only did he become a competent grammarian, but also a jurist. Thus Abū Bakr had been the inspiration and instigator of a house-hold of knowledge. Amidst this richly cultured atmosphere, the author flourished to become one of the most important figures of his time.

### 2.3 His Scholastic Life

IQJ began seeking knowledge at the age of six, and learnt some of the Qur'ān with al-Shihāb al-'Ābir.<sup>45</sup> He was keen to benefit from the diverse knowledge of the scholars of his time, paying particular attention to Islamic Doctrine (*'aqīda*), *tawhīd*, *ḥadīth*, Qur'anic exegesis, jurisprudence, and laws of inheritance. He also studied the fundamentals of jurisprudence (*usūl al-fiqh*), *kalām*, and the intricacies of the Arabic language. His student, Ibn Rajab said of him, "He gained the understanding<sup>44</sup> of the Ḥanbalī school and mastered the sciences of Islam."<sup>46</sup> Ibn Kathīr, the famous exegetist stated, "He pursued knowledge in a number of disciplines, striving diligently day and night."<sup>47</sup>

### 2.4 His Studies

IQJ acquired his understanding of the sciences from many famous scholars. He recited the Qur'ān to al-Shihāb al-'Ābir;<sup>48</sup> he studied Arabic with the Tunisian scholar, Majd al-Dīn and Abu'l-Faḥ al-Ba'labakī.<sup>49</sup> He studied exegesis with the Shaykh of Islam Ibn Taymiyya<sup>50</sup> and learnt *ḥadīth* from Fāṭima bint Jawhar,<sup>51</sup> Ibn 'Abd al-Dāyim,<sup>52</sup> Ibn Taymiyya<sup>53</sup> and the *ḥadīth* master, al-Mizzī.<sup>54</sup> He studied *tawhīd* with the Shaykh of Islam Ibn Taymiyya<sup>55</sup> and with al-Safī al-Hindī.<sup>56</sup> He pursued, the study of inheritance under his father,<sup>57</sup> Ibn Taymiyya<sup>58</sup> and al-Majd al-Harrānī;<sup>59</sup> the leading Ḥanbalī scholar of his time. He studied jurisprudence with Abu'l-Faḥ al-Ba'labakī,<sup>60</sup> Shaykh al-Islam Ibn Taymiyya,<sup>61</sup> Majd al-Harrānī,<sup>62</sup> Sharaf al-Dīn;



the brother of Ibn Taymiyya.<sup>63</sup> He studied *usūl al-fiqh* from al-Safī al-Hindī,<sup>64</sup> Ibn Taymiyya<sup>65</sup> and al-Majd al-Harrānī.<sup>66</sup> As for *kalām*, he studied this with the Shaykh of Islam Ibn Taymiyya.<sup>67</sup>

Dr. Bakr Abū Zayd says of IQJ, “We shall doubtless see him as a central figure in the study circles of many great shaykhs, displaying an unquenchable thirst and ambition to master the various Islamic sciences.”<sup>68</sup>

## 2.5 IQJ's Teachers and Tutors

IQJ's intellectual development and scholarly maturity were directly influenced by the following:-

- 1 - Qayyim al-Jawziyya, his father; Abū Bakr ibn Ayyūb.(d.700AH).<sup>69</sup>
- 2 - Al-Shihāb al-‘Ābir (d.697).<sup>70</sup>
- 3 - Fāṭima bint al-Ba‘lī Shaykh Ibrāhīm ibn Maḥmūd b. Jawhar al-Baṭā’ihī (d.711).<sup>71</sup>
- 4 - Abū Naṣr; al-Shirāzī Muḥammad ibn ‘Imād al-Dīn (d.714).<sup>72</sup>
- 5 - Al-Hindī; Muḥammad al-Safī al-Dīn ibn ‘Abd al-Raḥīm ibn Muḥammad ‘Arbawī (d.715).<sup>73</sup>
- 6 - Al-Maqdisī, al-Ḥanbalī; Taqī al-Dīn Abu’l-Faḍl ibn Qudāma (d.715).<sup>74</sup>
- 7 - Al-Dimishqī, al-Shāfi‘ī; Abu’l-Fidā’ Ismā‘īl ibn Yūsuf al-Qays (d.716).<sup>75</sup>
- 8 - Zayn al-Dīn Abū Bakr, al-Maqdisī; Aḥmad ibn ‘Abd al-Dā’im b. Ni‘ma (d.718).<sup>76</sup>
- 9 - Sharaf al-Dīn ‘Īsā ibn ‘Abd al-Raḥmān al-Muṭ‘im. (d.719).<sup>77</sup>
- 10 - Sharaf al-Dīn, ‘Abd Allāh ibn ‘Abd al-Ḥalīm ibn Taymiyya (d.727).<sup>78</sup>
- 11 - Abu’l-Ma‘ālī Kamāl al-Dīn al-Shāfi‘ī; Muḥammad b. ‘Alī al-Zamalkānī (d.727).<sup>79</sup>
- 12 - Taqī al-Dīn Aḥmad b. ‘Abd al-Ḥalīm b. Taymiyya; the Shaykh of Islam (d.728).<sup>80</sup>
- 13 - Al-Harrānī; Majd al-Dīn Ismā‘īl b.al-Farrā’ (d.729).<sup>81</sup>
- 14 - Al-Nabulsī; Zayn al-Dīn Ayyūb b. Ni‘ma (d.730).<sup>82</sup>
- 15 - Al-Hamawī, al-Shāfi‘ī; Badr al-Dīn Muḥammad b. Ibrāhīm b. Jamā‘a (d.733).<sup>83</sup>
- 16 - Al-Shāfi‘ī; Jamāl al-Dīn Yūsuf b. Zakī al-Dīn b. ‘Abd al-Raḥmān al-Quḍā’ī (d.742).<sup>84</sup>
- 17 - Al-Maqdisī, al-Ḥanbalī; Shams al-Dīn, Muḥammad b. Mufliḥ b. Mufarraḥ (d.763).<sup>85</sup>



## 2.6 His Students:

Such was the mental agility and spiritual awareness of IQJ that it was inevitable that others should come to receive tutorage from him. He drew students from afar, not only Damascus, but Cairo, Qawnuwa, Fās and Andalusia. The varied nature of his capabilities proffered a source of learning to those who sought knowledge. The fact that IQJ had taught in both the Sadariyya and the Jawziyya schools increased the magnitude of his merit; these two institutions representing a much sought after education. It was the aim of IQJ's students to strive to achieve something of his high standard. The most distinguished of these pupils included:

1 - The supreme judge al-Qunawī al-Shāfi'ī, 'Alā al-Dīn 'Alī ibn Ismā'il ibn Yūsuf. He studied under IQJ and was impressed by him, praising his research and honouring him. He died in 729AH.<sup>86</sup>

2 - Sharaf al-Dīn, 'Abd Allāh ibn Muḥammad ibn Abū Bakr ibn al-Qayyim; "The noble Ḥanbalī jurist. He possessed a sharp, keen intellect; issued rulings; studied and debated. He was a prestigious scholar."<sup>87</sup> He died in the year 756AH., at the age of 33 years.<sup>88</sup>

3 - The Shāfi'ī jurist, Qur'anic exegetist, linguist and grammarian, Taqī al-Dīn 'Alī ibn 'Abd al-Kāfi ibn Tamām. Al-Suyūtī said of him, "He wrote about one hundred and fifty books, one of which was the exegesis of the Qur'ān." He died in the year 756AH.<sup>89</sup>

4 - The Qurayshī, al-Maqrī, al-Tilmisānī; Muḥammad ibn Muḥammad ibn Aḥmad ibn Abū Bakr. He died in the year 759AH.<sup>90</sup>

5 - Local judge at Fās, the Qurashī; Muḥammad ibn Ahmad ibn Abū Bakr ibn Yaḥyā ibn 'Abd al-Raḥmān. He died in the year 759AH.<sup>91</sup>

6 - The Shāfi'ī Abu'l-Ṣafā, Khalīl ibn Aybak ibn 'Abd Allāh al-Ṣafadī. He said of his shaykh, IQJ, "I kept company with him and learned from him, especially in the field of Arabic and the fundamentals of jurisprudence."<sup>92</sup> He died in the year 764AH.<sup>93</sup>

7 - Burhān al-Dīn, Ibrāhīm ibn Muḥammad ibn Abū Bakr ibn al-Qayyim. Ibn Kathīr stated about him, "He was respected in the field of grammar and jurisprudence, following his father's way; he studied in various places." He died in the year 767 AH.<sup>94</sup>

8 - The Shāfi'ī 'Imād al-Dīn Ismā'il ibn 'Umar Ibn Katheer. He authored a famous Qur'anic exegesis, as well as *al-Bidāya wa'l-Nihāya*. He passed away in the year 774AH.<sup>95</sup>

9 - Zayn al-Dīn, the Ḥanbalī scholar of Baghdad; ‘Abd al-Raḥmān ibn Aḥmad ibn Rajab. He acquired knowledge from IQJ and reaped benefits from it. As a diligent pupil, he listened to his teacher’s works astutely, including the *Nūniyya* ode. His biography of IQJ is regarded as one of the most detailed and comprehensive. Later biographers, such as Ibn Ḥajr, Ibn ‘Imād and al-Alūsī referred extensively to the work of Ibn Rajab. He died in 795AH.<sup>96</sup>

10 - Al-Nablusī, al-Ḥanbalī; Muḥammad ibn ‘Abd al-Qādir ibn ‘Uthmān ibn ‘Abd al-Raḥmān; the author of *Mukhtaṣar Ṭabaqāt al-Ḥanābila*. He died in the year 797AH.<sup>97</sup>

11 - Al-Ghazī, al-Shāfi‘ī; Muḥammad ibn Muḥammad, who died in the year 808AH.<sup>98</sup>

12 - The Shāfi‘ī; Muḥammad ibn Ya‘qūb ibn Muḥammad Muhyī al-Dīn al-Fayrūzabādī. He is the author of the famous Arabic dictionary, *al-Qāmūs*. He died in the year 817AH.<sup>99</sup>

There was a group of scholars inspired by IQJ to write their own books, including a biography;<sup>100</sup> for example the Ḥanbalī ḥadīth scholar, Muḥammad ibn ‘Uthmān;<sup>101</sup> Muḥammad ibn Shahwān;<sup>102</sup> ‘Izz al-Dīn ibn Jamā‘a;<sup>103</sup> and Taqī al-Dīn ibn Shuqayr.<sup>104</sup>

From an early age, IQJ had embarked upon the collecting of books of knowledge. The eventual extent of his diverse library was unquantifiable, this in itself providing evidence of his insatiable desire for mental stimulation and the furtherance of his education. His reading was expansive and continuous; demonstrating the vast breadth of his knowledge of Islam and its pertinent sciences. IQJ researched extensively, examining the varied opinions of others and assimilating conflicting evidence to help form his own conclusions. However he admitted that few works had escaped his collection, “With regards Imām Aḥmad’s words and rulings, more than thirty volumes were written that Allāh, Exalted is He, has blessed us with; we have most of them.”<sup>105</sup>

IQJ had also collected some of his Shaykh Ibn Taymiyya’s books and he wrote a treatise where in he listed the names of his works. IQJ’s renowned poem, or ode, *al-Nūniyya*<sup>106</sup> makes reference also to some of his Shaykh’s works. Ibn Rajab corroborates the extent of IQJ’s interest in book collecting, “He cherished knowledge; reading and writing books, as well as collecting them. He collected books that no other person had.”<sup>107</sup> Ibn Kathīr informs us that, “He col-



lected titles both ancient and contemporary, eventually acquiring an amount of which a tenth of a tenth was not possible for any other person to attain.”<sup>108</sup> Ibn Ḥajr states that IQJ was “enamoured by collecting books and thus he obtained so many that they could not be counted.”<sup>109</sup>

## 2.7 The Scholars’ Praise for Him

It is of no surprise that we find scholars full of praise for his academic achievement and great status within the diverse disciplines of Islam.

Ibn Rajab says, “I saw no one who was as knowledgeable as him, nor more knowledgeable of the meanings of the Qur’ān, the Sunna and the realities of belief. He is not infallible, but I have not seen in this context the like of him.”<sup>110</sup> He continues, “He gained a deep understanding of the Ḥanbalī school and mastered the Islamic disciplines.”<sup>111</sup>

The Ibn Ḥajr said, “He was widely read, learned and knowledgeable in the differences of opinion and views of the Pious Predecessors.”<sup>112</sup>

Al-Ṣafadī stated, “He became one of the major Imams in the science of *tafsīr*, *ḥadīth*, fundamentals of *fiqh*, *kalām*, subsidiaries and Arabic; no one has succeeded Shaykh Taqī al-Dīn Ibn Taymiyya like him.”<sup>113</sup>

Imām al-Suyūtī opined, “He authored, debated and became a master. He has become one of the major Imāms.”<sup>114</sup>

Ibn Taghrī Bardī affirmed, “He was distinguished in the various sciences, in *tafsīr*, *fiqh*, Arabic, grammar and *ḥadīth*.”<sup>115</sup>

Dr ‘Awad Allāh Hijāzī says of IQJ’s ode, *al-Nūniyya*; a poem expounding the Islamic beliefs and doctrine, “It is but evidence for a mighty intellect!”<sup>116</sup>

Dr Bakr Abū Zayd also corroborates, “Anyone who has studied the life of IQJ and read his sciences, would find a great mind, ripe intellect and impressive genius.”<sup>117</sup>

The above accolades reflect a high level of scholastic achievement that could only be gained via IQJ’s absolute commitment and resolution. The reasons for this self-discipline and determination may have to do with some of the following:

*i. The Specific Environment:* It has been previously mentioned that IQJ had been brought up in a home of knowledge and piety, an environment instrumental in the nurturing of his interest in Islamic legal studies. This in addition to the fact that his father was the shaykh of the Hanbalīs and the rector of the Jawziyya School, may have combined to cultivate a constant quest for the improvement of his skills, both academic and spiritual.

*ii. The General Environment:* The period that IQJ lived in had witnessed a marked activity in the scholarly movement. As a result, the houses of knowledge had increased, as had schools and an interest in authorship. Dr ‘Umar Mūsa Bāsha described this scholarly revival, “We have not witnessed in the history of Islamic civilization such a time of cultural and literary ripeness.”<sup>118</sup>

*iii. His Adherence to the Teachings of Ibn Taymiyya:* Ibn Kathīr reveals that, “when the Shaykh of Islam Ibn Taymiyya returned from Egypt, in 721AH, IQJ kept constant companionship with him until the shaykh died, thus he gleaned much knowledge from him.”<sup>119</sup> Ibn al-Taymiyya became his mentor and close companion; this relationship enabling IQJ to study at the hands of a master and further his scholastic development, whilst enjoying a close friendship. IQJ paid tribute to his teacher in the *Nūniyya*, acknowledging the positive influence he had had upon him, yet admitting that he could never repay the debt he owed to the shaykh. Al-Muqrī, a student of IQJ, confirms the friendship, “I saw Ibn al-Qayyim - the pride of the Hanbalīs in Damascus - and he is the greatest friend of ibn al-Taymiyya.”<sup>120</sup> Ibn Hājir furthers the evidence of the shaykh’s influence, “If Ibn Taymiyya had no other virtues except his student Ibn al-Qayyim, then this would be proof enough of his great status.”<sup>121</sup> Such was the



esteem with which IQJ was held, that all who had been involved in his education were deemed to be of great academic worth.

It may be concluded that IQJ had been born into the right place at the right time. His circumstances dictated that he need not travel far to discover the knowledge that he sought. Dr Bakr Abū Zayd asserts, “Fortunate is he whose sustenance is brought to his own doorstep.”<sup>122</sup> Ibn Baṭūta journeyed to Damascus and noticed a growth in the construction of scholastic and religious establishments, saying, “The people of Damascus competed in building mosques, schools etc., whoever sought knowledge or a sanctuary for worship, would be successful there.”<sup>123</sup> Ibn Jubayr, in his book *Rihla*, extols the virtues of Damascus as a seat of learning, “Whoever wishes for success from amongst the youth of West Africa, let him travel to this land to seek knowledge. Here he will find many ways of accomplishing this task.”<sup>124</sup> Thus we have further evidence of the facilities available to IQJ and this suggests that unlike most scholars of that era, he had little need to travel in search of knowledge. Traditionally, a scholar must widen his horizons in order to achieve a higher level; IQJ conversely had access to local scholars and the ensuing opportunities for debate, narration and teachings that could all facilitate a climb up the ‘chain of transmission.’

IQJ’s biographers only deal with his travels related to pilgrimage and his stay in Makka, again suggesting that his locality of Damascus provided a requisite scholastic atmosphere. However, his book *Hidāyat al-Hayāra* reveals, “I had a debate in Egypt with the most prestigious of Jewish scholars.”<sup>125</sup> And in his work, *Ighāthat al-Lahfān*, “I studied once with some of the leaders of medicine in Egypt.”<sup>126</sup> I suggest that the aforementioned reinforces the hypothesis that his initial education was received locally and only then did he journey to put his knowledge into practice. He remained in Damascus to benefit from the wisdom of the famous scholars of his time.<sup>127</sup>

## 2.8 His Literary Technique

From these he drew knowledge until he gained proficiency in the Ḥanbalī *madhhab*<sup>128</sup> and

subsequently became one of the most famous scholars of the Ḥanbalīs. However he refuted extremist treatment of the schools of thoughts (*madhhabs*) and called for the prioritisation of an adherence to authentic evidences,<sup>129</sup> as affirmed in the Qur'ān and the Sunna. So he rebutted the prohibited forms of *taqlīd* and rebuked those who practiced such.

He raised this matter in some of his books, one of them being *A'lām al-Muwaqqi'in*, in which he expanded the discourse concerning *ijtihād* and following a *madhhab*. However, rather than criticise the Four Imams and their contemporary students, he praised them and their statements, and alluded to their opinions. This is particularly evident in his book *Turuq al-Ḥukmiyya fi'l-Siyāsa al-Shar'iyya* - which is the area of our study. However IQJ was selective when faced with ambiguity and contradictory opinions. His methodology entailed the "calling of solid evidence with respect to scholars of repute."<sup>130</sup> Thus IQJ theorised that despite the inevitability of diverse thought amongst scholars, one must finally accept authentic proof. IQJ says in this respect, "and a matter may present itself often in a differing light from that of the *madhhab*. Yet there is no reason why we would give a ruling in contradiction to what we believe. We would mention the soundest *madhhab*, support it, pronounce it to be correct and acknowledge that it is best to be followed."<sup>131</sup>

Thus, the methodology of IQJ is established in knowledge, founded upon authentic evidences. IQJ highlighted the necessity of those competent, to forsake *taqlīd*, thus emphasising the wisdom of questioning knowledge that is not founded upon evidence. He carried the banner of learning, illustrating his philosophy in both words and actions. Imām al-Shawkānī describes IQJ's methodology, "He adheres to the authentic evidences and works with them in a manner independent of personal opinion. He aims for truth, remaining uninfluenced by others."<sup>132</sup> Dr Bakr Abū Zayd - a specialist in his works - asserts, "Ibn al-Qayyim had truly developed intellectual freedom in the area of Islamic legal sciences, by referring them back to their first source and root spring. So Ibn al-Qayyim had sifted through facts, researched new events and treated matters of creed and all Islamic legal sciences. He thereby offered the people great knowledge and a ripe intellect that was constructed upon the soundest of fundamentals and guided scholarly research method. Such was the extent of his mastery, that any scholar study-



ing his work would remain loyal to the ideals of IQJ.”<sup>133</sup> *Turuq al-Hukmiyya* is a fine example of such an influential text, critics of this confirming the author’s treatment of many matters as redolent of that of an experienced specialist. An example of his powers of argument:-

When examining the subject of pricing, he portrayed the multiplicity of facets involved, enumerating each and offering comprehensible reasons for their benefits, or otherwise. He had the ability to illustrate the options, examine their consequences and to conclude with a sound and credible solution. The section in his book, *Turuq al-Hukmiyya*, which relates to Public Duties in Islam (*hisba*), is so comprehensive that scholars need only study this to enrich their understanding. Although IQJ authored around ninety texts, the topic of *hisba* occurs nowhere else. IQJ embraced this methodology in his scholarly life; established upon knowledge and not extremism to the *madhhab*. He assimilated evidence even if it was in a *madhhab* other than his. Successive scholars held him in high esteem, respected his sciences and pursued their ethics. Amongst those who acknowledged the significance of his methodology was the eminent scholar al-Shawkānī, “He took nothing but the evidence relying primarily upon it for result. He was fair and went with the evidence in most of his research, not relying upon less concrete opinion. When he was fully conversant with a topic, he had the ability to write innovatively and profoundly about it. Those who wished to take their *madhhab* from the evidence were delighted with it.”<sup>134</sup>

Scholars of the various *madhhabs* and differing groups learned from him, e.g. Ḥanafī, Mālikī and Shafī‘ī scholars, just as some Zaydīs and Ba‘thī scholars drew from his philosophy. These latter scholars were in addition to scholars of his *madhhab*, the Ḥanbalīs. Researching into the works of both IQJ and Ibn Taymiyya, it becomes apparent that the pupil came to supercede the master, the knowledge of the Shaykh having been expanded upon and analysed critically and minutely.

## 2.9 His Character and Faith

The bearer of knowledge must act in accordance with his principles. IQJ is one of the schol-

ars whose action and wisdom were inextricably linked. He displayed no differentiation between knowledge, action and virtue. This lack of hypocrisy ensured that he was perceived as possessing only good attributes and praiseworthy character. He hailed from a noble family that was renowned for goodness and virtue (and he acknowledged responsibility for continuing these qualities.) Ibn Kathīr, one of his closest colleagues describes him, “He recited beautifully, his personality being full of warmth. He did not envy anyone, and despite circumstance, he always remained patient. Prevalent in him were goodness and virtuous character.”<sup>135</sup>

In the area of worship and asceticism he was humble before Allāh, Exalted is He. IQJ was amongst the scholars who followed this way in his scholarly life, since worship is the goal of knowledge. After praying the Fajr Prayer, he would sit in his place engaging in Allāh’s remembrance (*dhikr*) until day rose, saying, ‘this is my rest; if I do not partake of it, my strength would fail me.’<sup>136</sup> He also used to say, “Through patience and poverty leadership in the Faith is achieved.”<sup>137</sup> His student, Ibn Kathīr extols his spirituality, “I know of no scholar in our time who is a greater worshipper than him.”<sup>138</sup> Another of his students, Ibn Rajab, also alludes to his pious nature, “May Allāh’s mercy be upon him, he is known for worship, night prayer and prolonging the prayer to great levels. He would bow in remembrance and humility before Allāh; he would open himself to Him and place himself between His Hands upon the doorstep of His worship. I never saw anyone like him.”<sup>139</sup>

He visited Makka and there is written evidence of his worship and circumambulating of the house, that is impressive. Ibn Rajab said, “He performed pilgrimage many times and went to Makka. His family would publicise the zeal of his worship and the number of his circumambulations, these were impressive.”<sup>140</sup> Indeed, whoever reads the works of IQJ, will acknowledge that “he had a heart fortified with certainty in Allāh and humility, servitude, reliance and repentant to Him. Also that worship had instilled in him the place of medicine, treatment and the necessity of the training of the soul.”<sup>141</sup> On concluding his book, *Miftāḥ Dār al-Sa‘āda wa’l Wilāyat al-‘Ilm wa’l-Irāda*, IQJ stated, “Allāh had blessed me when I secluded myself for Him at His House and I threw myself at His door, poor and destitute, when I presented myself to His winds at His House and I was present day and night. No one may fail who shall put his



needs before Him, hang his hopes in Him, stay at his door and abide in His sanctuary.”<sup>142</sup>

## 2.10 IQJ's Achievements

IQJ's practical life was linked to his scholarly life, his actions adhering unswervingly to his quest for knowledge and spirituality. We are able to quantify this as follows:

- Rectorship
- Giving Sermons
- Teaching
- Issuing Legal Verdicts (*fatāwā*)
- Writing

*Rectorship:* IQJ took up the leadership of the Jawziyya School, becoming its rector; a position held formerly by his father. Ibn Kathīr confirms this, “He is the Imām of the Jawziyya, and the son of its rector.”<sup>143</sup>

*Sermons:* He became the regular orator (*khatīb*), of the mosque that was founded by Najm al-Dīn ibn Khallikān,<sup>144</sup> being the first to have done so.<sup>145</sup>

*Teaching:* IQJ began teaching at an early age. He embarked upon this during the lifetime of his shaykh, Ibn Taymiyya. His student, Ibn Rajab, says, “A great many people took knowledge from him, from the time of his shaykh until he died.” Ibn ‘Abd al-Hādī,<sup>146</sup> Ibn Kathīr and al-Dhahabī were amongst those who respected and learned from IQJ. Ibn Kathīr comments, “Our friend, al-Zar‘ī, the Imām, the eminent scholar and rector of the Jawziyya; Muḥammad ibn Abū Bakr ibn Ayyūb, taught at the Ṣadriyya.”<sup>147</sup>

*Legal Verdicts:* IQJ lived at a time rich in Islamic legal sciences and general knowledge, although simultaneously suffused with differences in creed, disputes in *madhhab* and blind extremism. IQJ had taken up the methodology of his shaykh Ibn Taymiyya in issuing *fatāwā*, raising the flag of the Book and the Sunna in all his rulings. This resulted in controversy at

times, and, at one point he was thrown into prison as a result of his proposals. Amongst these was his ruling on divorce; saying the word thrice consecutively counts only as one pronouncement.<sup>148</sup> Also his ruling forbidding preparation to travel to al-Khalil.<sup>149</sup> Ibn Rajab explains, “He was imprisoned for a while for forbidding preparation to travel (in a form of pilgrimage) to al-Khalil.”<sup>150</sup>

*Writing:* The writing of IQJ is infused with beauty and magnetism; qualities not noticed by his friends alone, but also admitted by those of differing philosophies. Ibn Ḥajr stated, “All of his works were popular amongst the groups.”<sup>151</sup> Ibn Rajab said. “He wrote many great works on the various sciences. He also greatly loved knowledge, writing it, and studying it.”<sup>152</sup> IQJ had covered a number of the sciences. His work on the science of doctrine and the science of *kalām* amounted to eighteen; he wrote four books pertaining to Islamic legal politics; fiqh and its fundamentals was researched in at least thirteen of his works; his studies in education, character and morals exceeded twenty three tomes, as he examined in depth the importance of social awareness to the life of the individual. In the area of the Quran and its sciences, he produced nine works, and his studies of the Sunna, amounted to approximately six. In addition he compiled encyclopaedias that encompassed different sciences; e.g. *Zād al-Ma’ād fī Hadī Khayr al-‘Ibād* and *Badā’i’ al-Fawā’id*. Both these works were highly rated by later scholars. He penned four works on the subject of medicine and a further four explaining its ‘tool studies’ particularly pertinent to the Arabic language. His remaining sixteen works examined various other disciplines.

The following details the extensive treatises and texts produced by IQJ:

### Doctrine and the Science of *Kalām*

1. *‘Ijtimā’ al-Juyūsh al-Islāmiyya ‘alā Ghazw al-Mu’attila wa’l-Jahmiyya.*
2. *Hādī al-‘Arwāḥ ilā Bilād al-‘Afrāḥ.*
3. *Al-Rūḥ.*
4. *Shifā’ al-‘Alīl fī Masā’il al-Qadā’ wa’l-Qadr wa’l-Ḥikma wa’l-Ta’līl.*
5. *Al-Sawā’iq al-Mursala al-Munazzala ila’l-Jahmiyya wa’l-Mu’attila.*



6. *Al-Kāfiya al-Shāfiya fi'l-Intisār li'l-Firqa al-Nājiya.*
7. *Miftāḥ Dār al-Sa'āda wa Manshūr Wilāyat al-'Ilm wa'l-Irāda.*
8. *Hidāyat al-Ḥayārā fi'l-Radd 'ala'l-Yahūd wa'l-Naşārā.*
9. *Jawābāt 'Ābid al-Şulbān wa anna mā hum 'alayh Dīn al-Shayṭān.*
10. *Sharḥ al-Asmā' al-Ḥusnā.*
11. *Al-Kabā'ir.*
12. *Al-Rūḥ wa'l-Nafs.*
13. *Al-Futūḥāt al-Qudsiyya.*
14. *Al-Jawāb al-Shāfi li man Sa'ala 'an Thamarat al-Du'ā idhā kāna ma qad Quddira Wāqi'.*
15. *Rabī al-Abrār fi'l-Şalāt 'ala'l-Nabī al-Mukhtār.*
16. *Al-Şirāt al-Mustaqīm fi Ahkām Ahl al-Jahīm.*
17. *Ṭarīqat al-Başā'ir ilā Ḥadiqat al-Sarā'ir fi Nazm al-Kabā'ir.*
18. *Al-Fath al-Qudsi.*

### Islamic Legal Politics

19. *Ahkām Ahl al-Dhimma.*
20. *Al-Ṭuruq al-Ḥakmiyya fi'l-Siyāsa al-Shar'iyya Tadbīr al-Ri'āsa fi'l-Qawā'id al-Ḥukmiyya.*
21. *Sharḥ Nukat al-Hamāsa (Muqtadā al-Siyāsa fi Sharḥ Nukat al-Hamāsa).*
22. *Tadbīr al-Ri'āsa fi'l-Qawā'id al-Ḥukmiyya bi'l-Dhakā' wa'l-Qarīḥa.*

### Fiqh and its Fundamentals

23. *Ighāthat al-Lahfān fi Ḥukm Ṭalāq al-Ghadbān.*
24. *Ḥukm Tārik al-Şalāt.*
25. *Ḥukm Ighmām Hilāl Ramadān.*
26. *Raf' al-Yadayn fi'l-Şalāt.*
27. *Al-Ijtihād wa'l-Taqlīd.*
28. *Al-I'lām bi Ittisā' Ṭuruq al-Ahkām.*
29. *Al-Ta'liq 'ala'l-Ahkām.*
30. *Tafdīl al-Rajul li ba'di Waladihi fi'l-Niḥal, Ḥukm Tafdīl ba'd al-Awlād 'alā ba'd fi'l-'Aṭiyya.*
31. *Al-Ḥāmil hal Tahīd?*

32. *Ṭalāq al-Hā'id.*
33. *Al-Fatāwā.*
34. *Kashf al-Ghiṭā' 'inda Ḥukm Samā' al-Ghinā'.*
35. *Nikāḥ al-Muḥrim.*

### Spiritual, Ethical and Moral Cultivation

36. *Ighāthat al-Lahfān min Maṣā'id al-Shayṭān.*
37. *Tuḥfat al-Mawdūd bi Aḥkām al-Mawlūd.*
38. *Al-Jawāb al-Kāfi li man Sa'ala 'an al-Dawā al-Shāfi.*
39. *Rawḍat al-Muḥibbīn wa Nuzhat al-Mushtāqīn.*
40. *Ṭariq al-Hijratayn wa Bāb al-Sa'adatayn.*
41. *'Iddat al-Ṣābirīn wa Dhakhīrat al-Shākirīn.*
42. *Madārij al-Sālikīn fī Manāzil al-Sā'irīn bayna Manāzil Iyyaka Na'budu wa Iyyaka Nasta'in.*
43. *Al-Taḥbīr fīma Yaḥillu wa Yaḥrumu min Libās al-Ḥarīr.*
44. *Tuḥfat al-Nāzilīn bi Jiwāri Rabb al-'Ālamīn.*
45. *Ḥurmat al-Samā'.*
46. *Rabī' al-Abrār fī'l-Ṣalāt 'ala'l-Nabī al-Mukhtār.*
47. *Al-Ṣabr wa'l-Sukn.*
48. *Al-Farq bayna Khulla wa'l-Mahabba wa Munāzarat al-Khalīl li Qawmih.*
49. *Al-Mawrid al-Ṣāfi wa'l-Zill al-Wāfi.*
50. *Iqtidā' al-Dhikr bi Ḥusūl al-Khayr wa Daf' al-Shar.*
51. *Dawā' al-Qulūb.*
52. *Zād al-Musāfirīn ilā Manāzil al-Su'adā fī Ḥadyi Khātam al-Anbiyā'.*
53. *'Aqd Muḥkam al-Aḥibbā' bayna'l-Kalim al-Ṭayyib wa'l-Amal al-Ṣāliḥ al-Marfū' ilā Rabb al-Samā'.*
54. *Qurrat 'Uyūn al-Muḥibbīn wa Rawḍat Qulūb al-'Ārifīn.*
55. *Al-Kalim al-Ṭayyib wa'l-'Amal al-Ṣāliḥ.*
56. *Nūr al-Mu'min wa Ḥayātuh.*



## The Qur'ān and its Sciences

57. *Amthāl al-Qur'ān.*
58. *Al-Tibyān fī Aqsām al-Qur'ān.*
59. *Al-Risāla al-Tabūkiyya.*
60. *Al-Risāla al-Shāfiya fī Ahkām al-Mu'awwidhatayn.*
61. *Al-Ījāz fī'l-Majāz.*
62. *Uṣūl al-Tafsīr.*
63. *Al-Tuhfa al-Makkiya.*
64. *Raf' al-Tanzīl.*
65. *Sharḥ Asmā' al-Kitāb al-'Azīz.*

## The Sunna and its Related Sciences

66. *Tahdhīb Mukhtaṣar Sunan Abū Dāwūd.*
67. *Al-Manār al-Munīf fī'l-Tamyīz bayna'l-Ṣaḥīḥ wa'l-Ḍa'īf.*
68. *Al-Jāmi' bayn'l-Sunan wa'l-Āthār.*
69. *Jalā' al-Afhām fī'l-Ṣalāt wa'l-Salām 'alā Khayr al-Anām.*
70. *Al-Sunna wa'l-Bid'a.*
71. *Fawā'id fī'l-Kalām 'alā Ḥadīth al-Ghumāma wa Ḥadīth al-Ghazāla wa'l Ḍabb wa ghayrih.*

## Encyclopaediac Works

72. *Zād al-Ma'ād fī Hadyi Khayr al-'Ibād.*
73. *Badā'i' al-Fawā'id.*
74. *A'lām al-Muwaqqi'in.*

## Medicine and Contemporary Sciences

75. *Butlān al-Kīmyā min Arba'in Wajh.*
76. *Ṭibb al-Qulūb.*
77. *Al-Ṭā'ūn.*

## Language, Grammar and Linguistics

78. *Ma'ānī al'Adawāt wa'l-Aḥruf.*
79. *Al-Kāfiya al-Shāfiya fī'l-Naḥw.*

80. *Al-Amānī al-Makkiyya.*

81. *Al-Fath al-Makki.*

### Books on General Topics

82. *Fadl al-'Ilm wa Ahlihi.*

83. *Asmā' Mu'allifāt Ibn Taymiyya.*

84. *Bayān al-Istidlāl 'alā Buṭlān Ishtirāt 'Ilal al-Sibāq wa'l-Nidāl.*

85. *Tafdīl Makka 'ala'l-Madīna.*

86. *Al-Hāwī.*

87. *Al-Risāla al-Ḥalabiyya fi'l-Ṭarīqa al-Muḥammadiyya.*

88. *Risalāt Ibn al-Qayyim ilā Aḥad Ikhwānih.*

89. *Al-Furūsiyya.*

90. *Al-Furūsiyya al-Shar'iyya.*

91. *Al-Fawā'id.*

92. *Al-Masā'il al-Ṭarābulsiyya.*

93. *Mawlid al-Nabī Ṣalla Allāh 'Alayhi wa Sallam.*

94. *Al-Mahdī.*

95. *Al-Muhadhab.*

96. *Naqd al-Manqūl wa'l-Mahk al-Mumayyaz bayna'l-Maqbūl wa'l-Mardūd.*

97. *Al-Lamḥa fi'l-Radd 'alā Ibn Ṭalḥa.*

An indepth awareness of IQJ's life, learning and influences will allows one to better understand his writings and the background that they were set in, hence I have dwealt upon his life and scholarship in some detail.



## ENDNOTES TO CHAPTER 2

1. Books that include a biography of Ibn Qayyim al-Jawziyya:
  - al-Şafadī (d.764AH); *al-Wāfi bi al-Wafiyāt*, vol.2, pp.170-172.
  - al-Ḥusaynī (d.765); *Dhayl al-'Ibar*, vol.5, p.282.
  - Ibn Kathīr (d.774); *al-Bidāya wa'l-Nihāya*, vol.14, p.234.
  - Ibn Rāfi' (d.774); *al-Wafiyāt*, vol.2, pp.6-7.
  - Ibn Rajab (d.795); *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.447.
  - Ibn Nāsir al-Dīn (d.842); *al-Radd al-Wāfir*, p.68.
  - Al-Maqrīzī (d.845), *al-Sulūk li Ma'rifat Duwal al-Mulūk*, vol.2, p.834.
  - Ibn Hajr (d.852); *al-Durar al-Kāmina*, vol.3, p.4.
  - Ibn Taghrī Bardī (d.874); *al-Nujūm al-Zāhira*, vol.10, p.249.
  - al-Biqāi (d.885); *Sirr al-Rūh*, intro.
  - al-Sakhāwī (d.902); *al-Ḍaw' al-Lāmi'*, vol.1, p.422.
  - al-Suyūti (d.911); *Bughyāt al-Wu'ā*, vol.1, p.62.
  - al-Nu'aymī (d.927); *Tanbih al-Ṭālib*, vol.2, p.90.
  - al-Dāwūdī (d.945); *Ṭabaqāt al-Mufasssirin*, vol.2, p.91.
  - Ṭasqqabandī Zāda (d.968); *Miftāḥ al-Sa'āda*, vol.1, p.120.
  - Ibn al-Hūwārī (d.1000); *Ziyādāt al-Shām*, p.71.
  - Ibn al-'Imād (d.1089); *Shadharāt al-Dhahab*, vol.6, p.168.
  - al-Shawkānī (d.1250), *al-Badr al-Ṭāli'*, vol.2, p.143.
  - al-Qanūjī (d.1307); *Abjad al-'Ulūm*, vol.3, p.142; al-Tāj al-Mukallal, p.416.
  - al-'Alūsī (d.1317); *Jalā al-'Aynayn*, p.19.
  - Ibn 'Isā (d.1329); *Sharḥ Nūniyyat Ibn al-Qayyim*, intro.
  - al-Baghdādī (d.1339); *Hadiyyat al-'Ārifīn*, vol.2, p.158.
  - 'Abd al-Qādir Ibn Badrān (d.1346); *Munādmāt al-Aṭlāl*, p.227.
2. *al-Wāfi bi al-Wafiyāt*, vol.2, p.270.
3. He is Zayn al-Dīn, *al-Durar al-Kāmina*, vol.2, p.434.
4. *al-Ḍaw' al-Lām'*, vol.11, p.204.
5. Rector (*qayyim*), one who is in charge of a matter. See: al-Zubaydī; *Tāj al-'Arūs*; al-Rāzī; *Mukhtār al-Şiḥāḥ*, p.558.
6. *al-Bidāya wa'l-Nihāya*, vol.14, p.95.
7. *Ṭabaqāt al-Ḥanābila*, vol., p.442.
8. *al-Wāfi bi al-Wafiyāt*, vol.3, p.61.
9. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
10. *Dhayl al-'Ibar*, vol.5, p.282.
11. In his *Ḥāshiya Radd al-Mukhtār*, vol.2, p.243.
12. In *Kashāf al-Qinā 'alā Matn al-'Iqnā'*, vol.2, p.139.
13. *Fatāwā al-Subkī*, vol.2, p.77.
14. In *Tabṣirat al-Hukkām*, vol.1, p.240.
15. In *Ṭarḥ al-Tathrib*, vol.4, p.182.
16. In *Mu'in al-Hukkām*, p.68.
17. vol.2, p.265.
18. *Tabyīn al-Haqā'iq Sharḥ Kanz al-Daqā'iq*, vol.2, p.3.
19. *Anwār al-Burūq fī Anwā' al-Furūq*, vol.1, p.136.
20. *al-Furū'*, vol.1, p.465.
21. *al-Inṣāf*, vol.1, p.35.
22. *al-Zawājir 'an 'Iqtirāf al-Kabā'ir*, vol.1, p.162.

23. *Tuhfat al-Muhtāj bi Sharḥ al-Minhāj*, vol.2, p.66; and *al-Fatāwā al-Fiqhiyya al-Kubrā*, vol.3, p.200.
24. *Nihāyat al-Muhtāj*, vol.1, p.364.
25. *Kashāf alQinā 'alā Matn al-'Iqnā'*, vol.1, p.20.
26. *Ghamz 'Uyūn al-Baṣā'ir*, vol.4, p.59.
27. *Sharḥ Mukhtaṣar Khalīl*, vol.3, p.163.
28. *al-Fawākih al-Dawānī*, vol.1, p.98.
29. *al-Baryiqatun Maḥmūdiyya*, vol.2, p.106.
30. *Subl al-Salām*, vol.2, p.708.
31. *Ghawthā' al-Albāb*, vol.2, p.576.
32. *Futūḥāt al-Wahhāb*, vol.5, p.2.
33. *Maṭālib 'Ulū al-Nuhā*, vol.6, p.636.
34. In his *Hāshiya*, vol.1, p.303.
35. *Nayl al-Awṭār*, vol.8, p.248.
36. *Fath al-Bārī*, vol.2, p.283.
37. *al-Ḥāwī li'l-Fatāwī*, vol.2, p.574.
38. *Tabṣirat al-Hukkām*, vol.2, p.293 and *al-Fatāwā al-Fiqhiyya al-Kubrā*, vol.3, p.200 respectively.
39. *al-Zajjāj*; *al-Jumal fi'l-Naḥw*, p.96.
40. *Shadharāt al-Dhahab*, vol.3, p.364.
41. *al-'Ibar*, vol.5, p.56 and *al-Durar al-Kāmina*, vol.3, p.164.
42. Throughout the rest of this dissertation, the name Ibn Qayyim al-Jawziyya will be abbreviated to IQJ.
43. *al-Tārikh al-Islāmī*, vol.7, p.17.
44. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
39. *al-Zajjāj*; *al-Jumal fi'l-Naḥw*, p.96.
40. *Shadharāt al-Dhahab*, vol.3, p.364.
41. *al-'Ibar*, vol.5, p.56 and *al-Durar al-Kāmina*, vol.3, p.164.
42. Throughout the rest of this dissertation, the name Ibn Qayyim al-Jawziyya will be abbreviated to IQJ.
43. *al-Tārikh al-Islāmī*, vol.7, p.17.
44. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
45. *Zād al-Ma'ād*, vol.3, p.31. As for al-Shihāb al-'Ābir, he is Aḥmad ibn 'Abd al-Raḥmān al-Nāblūsī al-Ḥanbalī.  
Refer to: *Shadhrāt al-Dhahab*, vol.5, p.437.
46. *Dhayl Tabaqāt al-Ḥanābila*, vol.2, p.448.
47. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
48. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
49. *ibid*
50. *Ṭabaqāt al-Mufassirīn*, vol.2, p.91.
51. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448.
52. *al-Dhahabī*; *al-'Ibar*, vol.5, p.98.
53. *Ṭabaqāt al-Mufassirīn*, vol.2, p.91.
54. *al-Bidāya wa'l-Nihāya*, vol.14, p.178.
55. *Ṭabaqāt al-Mufassirīn*, vol.2, p.91.
56. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
57. *ibid*
58. *Ṭabaqāt al-Mufassirīn*, vol.2, p.91.
59. *Shadharāt al-Dhahab*, vol.6, p.89.
60. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
61. *Ṭabaqāt al-Mufassirīn*, vol.2, p.91.
62. *Shadharāt al-Dhahab*, vol.6, p.89.
63. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.



64. ibid
65. *Ṭabaqāt al-Mufasssirin*, vol.2, p.91.
66. *Shadharāt al-Dhahab*, vol.6, p.89.
67. *Ṭabaqāt al-Mufasssirin*, vol.2, p.91.
68. *Ibn Qayyim al-Jawziyya 'Asruhu wa Manhajuhu*, pp.31-32.
69. *al-Bidāya wa'l-Nihāya*, vol.14, p.95; *al-Durar al-Kāmina*, vol.1, p.472.
70. *Shadharāt al-Dhahab*, vol.5, p.437.
71. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448; *Ṭabaqāt al-Mufasssirin*, vol.2, p.91.
72. *Shadharāt al-Dhahab*, vol.6, p.33.
73. *al-Bidāya wa'l-Nihāya*, vol.14, p.65; *al-Durar al-Kāmina*, vol.4, p.132.
74. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448; *Ṭabaqāt al-Mufasssirin*, vol.2, p.91.
75. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270; *al-Durar al-Kāmina*, vol.4, p.21.
76. *Shadharāt al-Dhahab*, vol.6, p.48; *al-Wāfi bi'l-Wafiyāt*, vol.2, p.70; *al-Durar al-Kāmina*, vol.3, p.338.
77. *Shadharāt al-Dhahab*, vol.6, p.52.
78. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270.
79. *al-Durar al-Kāmina*, vol.4, p.74; *Shadharāt al-Dhahab*, vol.6, p.79.
80. *al-Bidāya wa'l-Nihāya*, vol.14, p.135.
81. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270; *Shadharāt al-Dhahab*, vol.6, p.89.
82. *Shadharāt al-Dhahab*, vol.6, p.93.
83. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270; *Shadharāt al-Dhahab*, vol.6, p.105.
84. *al-Dhahabī, Tadhkirat al-Ḥuffāz*, vol.4, p.1498.
85. *Shadharāt al-Dhahab*, vol.6, p.93; *Jalā' al-'Aynayn*, p.38.
86. *al-Durar al-Kāmina*, vol.2, p.27; *Bughyat al-Wu'ā*, vol.2, p.149.
87. *Shadharāt al-Dhahab*, vol.6, p.180.
88. *al-Durar al-Kāmina*, vol.2, p.396.
89. *al-Wāfi bi'l-Wafiyāt*, vol.1, p.332.
90. *al-Maqri; Nafḥ al-Ṭib*, vol.5, p.254, 281.
91. *Bughyat al-Wu'ā*, vol.1, p.21.
92. *Shadharāt al-Dhahab*, vol.6, p.200.
93. ibid
94. *al-Wafiyāt*, vol.2, p.6; *al-Durar al-Kāmina*, vol.1, p.58.
95. *al-Durar al-Kāmina*, vol.1, p.373; *al-Radd al-Wāfir*, p.92.
96. *al-Durar al-Kāmina*, vol.2, p.428; *al-Radd al-Wāfir*, p.106.
97. *al-Durar al-Kāmina*, vol.4, p.20; *Shadharāt al-Dhahab*, vol.6, p.249.
98. *Bughyat al-Wu'ā*, vol.1, p.222; *al-Daw' al-Lāmi'*, vol.9, p.18.
99. *al-Badr al-Ṭālī'*, vol.2, p.280.
100. *al-Durar al-Kāmina*, vol.2, p.108 and vol.3, p.191.
101. *Ibn Qayyim al-Jawziyya; Tuhfat al-Mawdūd*, p.138
102. *A'lām al-Muwaqqi'in*, vol.4, p.117.
103. *Zād al-Ma'ād*, vol.1, p.50.
104. *Rawḍat al-Muḥibbīn*, p.273.
105. *Bakr Abū Zayd; Ibn Qayyim al-Jawziyya Ḥayātuhu wa Atharuhu*, p.37.
106. *Ibn Qayyim al-Jawziyya; al-Nūniyya*, vol.2, p.297.
107. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.449.
108. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
109. *al-Durar al-Kāmina*, vol.4, p.22
110. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448.
111. ibid

112. *al-Durar al-Kāmina*, vol.4, p.21.
113. *al-Wāfi bi'l-Wafiyāt*, vol.2, p.270
114. *Bughyat al-Wu'ā*, vol.1, p.63.
115. *al-Nujūm al-Zāhira*, vol.1, p.249.
116. *Ibn al-Qayyim*, p.48.
117. *Ibn Qayyim al-Jawziyya Ḥayātuhu wa Atharuhu*, p.4; edited.
118. *al-Adab fī Bilād al-Shām*, p.120.
119. *al-Bidāya wa'l-Nihāya*, vol.14, p.202; *al-Nujūm al-Zāhira*, vol.10, p.249.
120. *Anwār al-Burūq*, vol.1, p.136.
121. *al-Durar al-Kāmina* vol.4, p.23
122. *Ibn Qayyim al-Jawziyya*, p.33.
123. Ibn Baṭūta; *al-Rihla*, p.74.
124. Ibn Jubayr; *Rihla*, p.200.
125. p.124.
126. vol.1, p.17.
127. See: *al-Dāris fī Tārīkh al-Madāris* and *Munādamat al-'Aṭāl* to see how Damascus was then in the midst of a rich, scholarly revival; in terms of mosques, schools, libraries, as well as religious endowments and trusts.
128. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448.
129. *al-Badr al-Ṭālī*, vol.2, p.143.
130. Bakr Abū Zayd; *Ibn Qayyim al-Jawziyya*, p.54.
131. *A'lām al-Muwaqqi'in*, vol.4, p.177.
132. *al-Badr al-Ṭālī*, vol.2, p.143.
133. *Ibn Qayyim al-Jawziyya*, p.4.
134. *al-Badr al-Ṭālī*, vol.2, p.144.
135. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
136. *al-Durar al-Kāmina*, vol.4, p.21.
137. *al-Durar al-Kāmina*, vol.4, p.21.
138. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
139. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.448.
140. *ibid* vol.2, p.449.
141. *Ibn Qayyim al-Jawziyya Ḥayātuhu wa Atharuhu*, p.25.
142. *Miftāḥ Dār al-Sa'āda*
143. *al-Bidāya wa'l-Nihāya*, vol.14, p.202.
144. *al-Bidāya wa'l-Nihāya*, vol.14, p.151.
145. *Munādamāt 'Aṭāl*, p.376.
146. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.449.
147. *al-Bidāya wa'l-Nihāya*, vol.14, p.175.
148. *Ighāthat al-Lahafān*, vol.1, p.83; *A'lām al-Muwaqqi'in*, vol.3, p.41, *Zād al-Ma'ād*, vol.4, p.51.
149. *Ṭariq al-Hijratayn*, vol.1, p.9; *Sharḥ Qaṣida Ibn al-Qayyim*, vol.1, p.5.
150. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.4, p.448.
151. *al-Durar al-Kāmina*, vol.4, p.22.
152. *Dhayl Ṭabaqāt al-Ḥanābila*, vol.2, p.449.



## **Chapter three**

### ***Hisba* Public Duties in Islam**

**3.1 *Ḥisba* in Arabic**

**3.2 The Nature and Aims of *Ḥisba***

**3.3 *Al-Ma 'ruf* and *Al-Munkar*: A Linguistic Perspective**

**3.4 *Ḥisba* in Islamic Legal Terminology**

**3.5 The Institution of *Ḥisba***

**3.6 The Origin of the office and the duties of the *Muḥtasib***

**Endnotes**

## Chapter 3. *Ḥisba: Public Duties in Islam*

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Before embarking on any explanations of the concept of *ḥisba*, it would be useful to examine its literal definition and to ascertain the significance of these various connotations on its theory, philosophy and practical applications.

### 3.1 *Ḥisba* in Arabic

*Ḥisba* in the phonetic manner is transliterated here using the orthographic sign, *kasra*, after the (Ḥ).<sup>1</sup> It is a noun, which is derived from the adverbial noun. '*al-iḥtisāb*,'<sup>2</sup> meaning one who is anticipating reward. *Al-iḥtisāb* is a derivation of *al-ḥasab*,<sup>3</sup> which means 'computation' or 'measurement;' rooted in the verb, *ḥasaba*; to measure. These derivatives afford some clue as to the nature of *ḥisba*; its aims, its theory and the required attributes of the person who is involved in its implementation. This would indicate a technical relationship between the linguistic and grammatical meanings, all of which will be mentioned. Dr. Imām states that *ḥisba* has four meanings in the Arabic language,<sup>4</sup> but having researched this word, the writer finds at least six.

*i. To Anticipate Reward:*<sup>5</sup> It is reported in a ḥadīth that the Prophet of Allāh said, "Whoever fasts in Ramaḍān with belief and anticipating (*iḥtisāb*) reward, Allāh shall forgive his past and future sins."<sup>6</sup>

*ii. To Test:*<sup>7</sup> Translation of a traditional saying, "Women perform *iḥtisāb* to discover what men feel for them." This means that they test the men.



iii. *To Forbid:*<sup>8</sup> Translation of a saying “One person has performed *iḥtisāb* upon another.” In this case he has forbidden the other person to perform an evil action.

iv. *To Expect:*<sup>9</sup> From the Qur’ān, ‘*However, the Punishment of Allāh came to them from where they did not iḥtisāb*’<sup>10</sup> Here *iḥtisāb* means to expect.

v. *To Have Confidence In:*<sup>11</sup> A translation of a saying is, “Some person is not taken as *iḥtisāb*.” Meaning that others do not have confidence in him.

vi. *To Plan:*<sup>12</sup> A translation of a saying is, “Some person is of good *ḥisba*.” meaning that he is a good planner; he has foresight. The previous linguistic meanings, illustrate something of *ḥisba*; its aims, and the purpose and characteristics of the work of the one who performs it.

### 3.2 The Nature and Aims of *Ḥisba*

i. *Its Nature:* Proofs presented in the Qur’ān and the Sunna indicate that *ḥisba* is based on the principle of enjoining the good and forbidding the evil (*al-amr bi’l-ma’rūf wa’l-nahī ‘an al-munkar*) with which - for the benefit of humanity - Allāh sent His Messengers, revealed His Books and described this nation (*umma*). The Prophet Muḥammad, blessings and peace be upon him, appears to have been the first to practice *ḥisba* in Islam, this being confirmed by the words of Allāh, “*Those who follow the Messenger, the unlettered Prophet, whom they find mentioned in the Torah and the Gospel; he commands them with what is right and forbids them from what is wrong, he permits them what is wholesome and forbids them from what is abhorrent.*”<sup>13</sup>

#### Implementation of *Ḥisba* by the Prophet, Blessings and Peace be upon Him.

Evidence of the Prophet’s implementation of *ḥisba* is so copious that the writer has selected the following example to illustrate some relevant areas:

- Affairs of his Household (*ahl al-bayt*).<sup>14</sup>
- Islamic greeting.<sup>15</sup>
- Etiquettes of eating.<sup>16</sup>
- Etiquettes of walking in the street.<sup>17</sup>
- Etiquettes of the mosque.<sup>18</sup>
- Dress.<sup>19</sup>
- Personal

grooming.<sup>20</sup> ● Rights of slaves.<sup>21</sup> ● Worship.<sup>22</sup> ● Creed.<sup>23</sup> ● The marketplace.

An example of this last point being: The Prophet, may Allāh's peace and blessings be upon him, once passed through the market place and once passed by a heap of edible corn being sold in the market place. He thrust his hands into the heap, whereupon his fingers felt some moisture. He then asked the owner of the corn as to what this was. the owner replied that some of the corn had become soaked with rain. At this the Prophet, may Allāh's peace and blessings be upon him, remarked, "Why didn't you place the soaked corn at the top of the heap so that it could be seen by people. He who deceives us is not from us." <sup>24</sup>

### **Implementation of *Ḥisba* by the Rightly-Guided Caliphs**

*Ḥisba* continued after the death of the Prophet and became a defining characteristic of the Rightly Guided Caliphs (*al-khulafā al-rāshidīn al-mahdiyyīn*) who were, Abū Bakr, 'Umar, 'Uthmān and 'Alī, may Allāh be pleased with them all. History bears witness to their upholding the practice of *ḥisba*, acknowledging its importance in the preservation of Islam and its positive contribution to the furtherance of the *umma*.

*i. Abū Bakr al-Ṣiddīq's Implementation of Ḥisba:* Abū Bakr himself carried out *iḥtisāb* against those who refused to pay the Wealth-Tax (*zakāh*); those who claimed prophethood; and the apostates. History is replete with evidence for his practice of *ḥisba* and his rooting out strife.<sup>25</sup> Similarly, he practised *ḥisba* with 'Umar b. al-Khaṭṭāb, when the latter said to him during the Apostacy War, "O Successor to the Messenger of God! Unite the people and treat them with gentleness." Abū Bakr replied, "Is a titan (*jabbār*) of the pre-Islamic period (*jahiliyya*) going to be a weakling (*khawwār*) in Islam? The Revelation has ended and the Religion has been perfected - am I to let it become deficient under me?"<sup>26</sup> He also practised *ḥisba* with 'Umar when he conveyed to him the request of the Ansār to find a man older than Usāma to lead them in the army that the Prophet had assembled just before his death. Abū Bakr made for 'Umar, grabbing him by his beard and said, "May your mother be bereaved of you, O son of al-Khaṭṭāb! The Prophet appointed him and you order me to dismiss him?" In the same manner, Abū Bakr ordered the expulsion of an effeminate man (*mukhannath*) from Madina, and



he was duly expelled.<sup>27</sup>

ii. *‘Umar b. al-Khaṭṭāb’s Implementation of Ḥisba*: ‘Umar b. al-Khaṭṭāb attached so much importance to the matter of *ḥisba* that some thought that he was the first to practise it in Islam.<sup>28</sup> Al-Ṭabarī reports, “He was the first to carry a staff and to strike with it,”<sup>29</sup> either to teach,<sup>30</sup> or to instil discipline.<sup>31</sup> Ibn Abī Shayba mentions an incident that ‘Awf ibn Mālīk came to ‘Umar wearing a gold ring, whereupon ‘Umar struck him on his hand with a staff.<sup>32</sup> In another incident, ‘Umar struck a man who had overloaded his animal, asserting, “You have over-burdened your beast.”<sup>33</sup> Such was the vital importance attached to *ḥisba* by ‘Umar, that he continued practising it, even on his deathbed. Present, was a young man whose lower garment (*izār*) was trailing on the ground. ‘Umar addressed him, “O son of my brother, raise-up your garment. That is better for your garment and more pious in front of your Lord.”<sup>34</sup> ‘Umar would also implement *ḥisba* on those who would arrive late for the Friday prayer, saying, “What time is this?”<sup>35</sup>

iii. *‘Uthmān b. ‘Affān’s Implementation of Ḥisba*: ‘Uthmān implemented *ḥisba* in a variety of areas, one example being his *iḥtisāb* of Muḥammad b. Ja‘far b. Abū Ṭālib for wearing clothes dyed with safflower (*‘usfur*).<sup>36</sup> Similarly, there is his *iḥtisāb* of women who went out on the lesser pilgrimage (*‘umra*) and the Pilgrimage (*hajj*) whilst in their period of *‘idda*, these he would send back.<sup>37</sup> During that era, pigeon racing became popular; however, this preoccupation kept people from their religious duties and as it involved climbing onto the roofs of houses, the sport also violated the privacy of others. ‘Uthmān ordered the slaughter of all pigeons used for this purpose in order to protect the religion and safeguard people’s privacy.<sup>38</sup>

iv. *‘Alī b. Abū Ṭālib’s Implementation of Ḥisba*: Alī was greatly concerned with the matter of *ḥisba*. He would walk around the marketplace carrying a staff, commanding the people to fear Allāh and to conduct their business honestly, advising them to keep their weights and measures precisely.<sup>39</sup> He would say, “Sell your goods but do not swear oaths, for oaths make a transaction dubious and nullify its blessings.” Once, some date sellers came and ‘Alī noticed a maid-servant crying. He asked her, “What makes you cry?” She replied, “A man sold me some dates for a dirham, and my master bade me to return them, but the man refuses to take them back.”

So ‘Alī said to him, “Take back your dates and give her a dirham, for she has no say in the matter.” The man consequently returned her money.<sup>40</sup> He would also pass through the streets calling out, “To prayer! To prayer!”, consolidating the importance of prayer in Islam. He would also take it upon himself to wake people for the Dawn Prayer. ‘Alī had the habit of examining those who wished to speak in public, in an attempt to prevent unsuitable people from doing so. He once saw al-Ḥasan al-Basrī preaching to the people and so decided to test him, asking, “What is the pillar of the Religion?” Al-Ḥasan replied, “Piety.” He then asked, “What is its ruin?” He replied, “Greed.” Then ‘Alī said, “Speak now, if you wish.” Ibn Kathīr relates ‘Alī’s *ihtisāb* to a man of unbecoming appearance who was standing outside the mosque. He said to him, “Raise up your lower garment and cut your hair, if you are a Muslim.”

### **The Prophet and the Rightly-Guided Caliphs Delegating Others to Fullfil the Duty of *Ḥisba***

The aforementioned examples demonstrate that the Prophet and the Rightly Guided Caliphs implemented *ḥisba* in various spheres of everyday life. They practised it themselves at every level of the definition of the word. This included admonition, advice, censure, threats of corporal punishment, implementation of corporal punishment, the taking up of arms, and the changing of an evil with ones own hands. In fact, such was their concern for the matter of *ḥisba* that they did not stop even on their deathbeds. Moreover, not satisfied with mere personal implementation of *ḥisba*, they also appointed others who were to take responsibility for its application.

*i. The Prophet’s Delegation:* The Prophet delegated the matter of *ḥisba* to a number of his Companions. He appointed Sa‘id b. Sa‘id b. al-‘Ās to supervise the marketplace of Makka,<sup>41</sup> also his brother Hakm ibn Sa‘id b. al-‘Ās.<sup>42</sup> ‘Abd Allāh ibn ‘Umar was entrusted with the task of dealing with the remaining stocks of wine in Madina, which he disposed of entirely. ‘Alī was appointed as *muḥtasib* over idols (which were smashed), graves (which were levelled), and pictures (which were effaced).<sup>43</sup>



ii. *Abu Bakr's Delegation*: Abū Bakr sent his armies to combat the problems caused by the apostates, appointing eleven commanders to lead eleven regiments. Dr Faḍl Ilāhi Zahir says, "The *jihād* of Abū Bakr and his companions to sever the roots of apostacy is the essence of *iḥtisāb*; in fact, it is its pinnacle."<sup>44</sup>

iii. *'Umar's Delegation*: Among the most notable examples of 'Umar's delegation of others, is his appointment of 'Abd Allāh b. 'Utbah ibn Mas'ūd al-Hudhalī, al-Sā'ib b. Yazīd, and Sulaymān ibn Abū Khaythama to oversee the implementation of *ḥisba* in the marketplace at Madina. Al-Hindī said that this is the origin of the practice of delegating the implementation of *ḥisba*.<sup>45</sup>

iv. *'Uthmān's Delegation*: Not satisfied with simply implementing *ḥisba* on his own, 'Uthmān appointed a man from Banū Layth to implement the prohibition of pigeon racing,<sup>46</sup> having already ordered the slaughter of racing pigeons.<sup>47</sup> As the popularity of the intoxicant called *nabīdh*, increased, he appointed one of his companions to oversee its prevention. However, as the practice of drinking became more widespread, 'Uthmān ordered the flogging of those who were found guilty. Similarly, he appointed al-Harith b. al-'Ās to oversee the marketplace.

v. *'Alī's Delegation*: 'Alī delegated the implementation of *ḥisba* to Abu'l-Hayyāj al-Asadī, instructing him, "In truth, I am entrusting you with that which the Prophet entrusted to me: you must not pass by a statue without destroying it, nor a moundrd grave without levelling it."<sup>48</sup>

The aforementioned incidents illustrate that the nature of *ḥisba* is synonymous with the responsibility of all Muslim leaders to perpetuate that ideology which was engendered by the Prophet, may blessings and peace be upon him, and his Rightly-Guided Caliphs.

II. *Its Aims*: Numerous Arabic texts refer to the nature of *ḥisba*, yet all scholastic definitions concur that its underlying principle affords a method via which the Muslim can come closer to Allāh. This is the foundation of *al-iḥtisāb* as is described in the Islamic Law. It is a position

that is verified by the following *ḥadīth*: “Whosoever fasts in *Ramadhān* with belief and *iḥtisāb*, his previous sins will be forgiven.”<sup>49</sup> The Prophet, may peace and blessings be upon him, also said, “Whoever performs night prayer in *Ramadhān* with belief and *iḥtisāb*, his previous sins will be forgiven.”<sup>50</sup>

As for the aims, they may be divided into two categories:

*Firstly*: The seeking of reward from Allāh for the action of the person who performs *ḥisba*.

*Secondly*: The admonishing of those who do not act in accordance with Islamic legal rulings and those who display any shortcomings in their adherence to the laws.

These actions are assessed according to the Book of Allāh and the Sunna of His Messenger, may Allāh’s blessing and peace be upon him, with the intention of emphasising that the word and faith of Allāh must supercede all others. To achieve such an aim, one must take into account actions that are concordant with the Islamic Law; enjoining its practice and warning and prohibiting whatever is contrary to it.

*The Pre-requisites and Methodology of one Performing Ḥisba*: The one performing *ḥisba* must be vigilant over other people by interacting with them and having awareness of their lifestyles, thus enjoining upon them adherence to the orders and prohibitions of the Islamic Law. This is only achievable when the aim and purpose of *ḥisba* is fully understood by its implementor. The following mechanisms are pertinent to one who performs *ḥisba*:-

a. The ability to assess the likelihood of an outcome and acting accordingly.

At the first sign of contradictory behaviour, it is the duty of the one performing *ḥisba* to inform the offender and seek further information about him in a manner concordant with the principles of the Islamic Law. By doing this he has fulfilled his responsibility of preserving the faith and protecting society. It is incumbent upon him to summon aid from trusted and righteous



people who have the experience to help him perform his duty. Al-Saqatī said, “It is for the one performing *ḥisba* to appoint helpers whom he trusts, to inform him about undisclosed affairs of traders.”<sup>51</sup> Al-Shīzarī adds, “The assistants to the one performing *ḥisba* have to be known for their righteousness, experience, and knowledge; imbuing confidence and trust.”<sup>52</sup>

#### *b.* The Ability to Take One to Account.

Inherent in *ḥisba* is the concept of accountability; thus one who has contravened the order and prohibition of the Islamic Law must be taken to account. The preservation of the Islamic legal system is based upon this premise.

Amongst the derivatives of the word *ḥasaba*, we find *al-ḥasab*; a term suggestive of ‘pride of the forefathers.’<sup>53</sup> We may thus ascertain that *ḥisba* also embraces the concept of pride, this being a further element that dissuades the society from social aberration and deviancy.

### **3.3 *Ma’rūf* and *Munkar*: A Linguistic Perspective**

Concerning the term *ma’rūf*, al-Zajjāj said, “*Al-ma’rūf* is opposite to *al-munkar* (evil).”<sup>54</sup> It denotes what is desirable in both words and actions. It is also said to be, “A noun embracing all that is known of obedience to Allāh, coming close to Him in action and being righteous towards other people and all that the Islamic Law has proscribed.”<sup>55</sup> The author of *al-Mu’jam al-Wasīt* referred to *ma’rūf* as, “A term for any action, the good of which is known through the intellect or the Islamic Law.”<sup>56a</sup> Al-Sunamī stated that *ma’rūf* is, “whatever agrees with the Qur’ān, Sunna and the intellect (*‘aql*).”<sup>56b</sup> IQJ concurs with the aforementioned meanings, defining *ma’rūf* as, “what intellects know and what instincts affirm as goodness.”<sup>57</sup> In *Zād al-Ma’ād* he defines it as “what sound intellects and uncorrupted instincts know and affirm to be of goodness and benefit.”<sup>58</sup> Ibn al-Athīr stated, “*ma’rūf* is a noun which suggests all that is known for obeying Allah, drawing near to Him in action, and treating others righteously.”<sup>59</sup> Al-Sa’dī said, “*ma’rūf* is the goodness understood by the Islamic Law and the intellect.”<sup>60</sup>

Concerning *al-munkar*: The term *munkar* is the opposite of *ma'rūf* and it encompasses every situation that the Islamic Law perceives as bad and prohibited.<sup>61</sup> Al-Fayrūzabādī defined *munkar*, "It is all that Islamic Law deems as bad, prohibited, and repugnant. It also pertains to any action that sound minds or the Islamic Law prohibits."<sup>62</sup> IQJ stated, "*Munkar* is that action which is instinctively abhorred."<sup>63</sup> He further defined it as, "an action that goes against one's nature and mentality, and that action which one's instincts affirms to be wrong."<sup>64</sup> In *Al-Mawsū'a al-Fiqhiyya al-Kuwaytiyya*, it states about *munkar* that it is "a bad action."<sup>65</sup>

### 3.4 *Hisba* in Islamic Legal Terminology

The status of enjoining good (*ma'rūf*) and forbidding evil (*munkar*) in Islamic legislation developed to preserve Muslim social organisation, bringing prosperity and cohesion, whilst deflecting negative influences. This is apparent in two aspects:

*Firstly*: the wholeness and completeness that the Islamic Faith has encompassed in all aspects of life, as Allāh, Exalted is He, said, *This day have I perfected your Faith for you, completed My favour upon you, and have chosen Islam as a way of life for you.*<sup>66</sup>

The protection and benefits offered by Islam may envelop and profit all believers. The messenger of Allāh, may Allāh's blessing and peace be upon him, taught, "*Truly Allāh sends to this nation at the beginning of each hundred years one who will reform its Faith.*"<sup>67</sup> IQJ comments, "Had it not been for Allāh's guarantee to preserve His Faith, and His guarantee to establish one who will reform and give life to those whom the transgressors have caused to die, and revive those ideals that the ignorant have extinguished, then the pillars of Islam would have been demolished and its structure would have fallen. However, Allāh is One of Favour upon all creation."<sup>68</sup>

Hence the duty of *hisba* is founded upon the principle of enjoining good and prohibiting evil in order to protect the Faith. This ethic acts as a safety valve and creates an impenetrable boundary within which Muslim identity and faith may be preserved. The continual admon-



ishing of evil as a matter of strict principle will eventually establish enormous social benefits.<sup>69</sup> IQJ maintained, “It is not permitted for the people of good to mix with the people of evil without admonishing them, otherwise they would be seen as condoning evil. So we fear the descent of Allāh’s wrath upon such a group.”<sup>70</sup> Allāh confirms this, *Allāh has cursed those who disbelieved from the children of Israel upon the tongue of David and Jesus, son of Mary. This is for their disobedience and transgression. They did not forbid the evil actions of others and there is no sin more abhorrent than this.*<sup>71</sup>

The Messenger of Allāh, may Allāh’s blessing and peace be upon him, said, “*Truly if people see evil and ignore it, then they may all receive His punishment.*”<sup>72</sup> To emphasise the value of the Qur’anic tenet, the Messenger (may Allāh’s blessing and peace be upon him), took the pledge with the people and established the enjoining of good and the forbidding of evil as part of it. In doing so, he created an environment in which every Muslim must strive to fulfill his obligations to the society.<sup>73</sup>

The superiority of this Muslim nation is founded on the establishment of enjoining good and forbidding evil. Allāh verifies this, *You are the best of nations ever raised up for humanity; you enjoin the good, forbid the evil, and believe in Allāh.*<sup>74</sup> Al-Qurṭubī said, “So ordering and prohibiting are amongst the specific descriptions of the believers.”<sup>75</sup> Allāh said, *Believing men and believing women are helpers of one another, enjoining the good and forbidding the evil.*<sup>76</sup> Evidence from the noble Qur’ān and the Sunna concerning the theory of enjoining the good and forbidding the evil and its practical establishment is incontestable. Islamic legal proofs from the Qur’anic verses and prophetic injunctions are the foundation upon which this concept is established, therefore their relationship is inextricably bound. Only through orders and prohibitions can human life retain morality and receive protection from evil, corruption and misguidance. Such laws are specifically pertinent to those whose inherent nature is less than righteous. Legislation is beneficial in the reforming of transgressors, ordering conformity and teaching respect for those in authority.<sup>77</sup>

For this reason the Qur’ān illustrates the importance of the orders and prohibitions, these

being the foundation of Islamic law and the prerequisites for a sound Muslim society. Allāh said, *Let there arise from amongst you a group of people who encourage all that is positive; enjoining the good and forbidding the evil, those are the successful ones.*<sup>78</sup>

Prior to an examination of the ruling of *ḥisba* in Islam, it may be useful to establish whether or not one can differentiate between the concept of enjoining good and forbidding evil and the institution of *ḥisba*. Many scholars place both concept and institution under one heading, making no distinction between the two. However, the ordaining of the proper and the forbidding of the improper is incumbent upon every able muslim, thus the responsibility for this is a collective one. It can however become an individual responsibility when no-one else undertakes it and such a situation would indicate the necessity for an objective authority. It may thus be appropriate to view the enjoining of the good and the forbidding of the evil as a general ruling concept and *ḥisba* as a specific institution which has the authority of implementation.

The enjoining of good and forbidding of evil may range from obligatory to permissible to prohibited. The duty of *ḥisba*, is obligatory and there is a specific obligation upon the performer. Enjoining the good and forbidding the evil may be implemented by any Muslim, but *ḥisba*, is duty of the Sultan which must be discharged by the authority who is appointed by the head of state. Care must be taken in the explanations of the preceding terms as there are apparent differences which may need further clarification.

*i. The Ruling of Enjoining the Good and Forbidding the Evil and Ḥisba in Islam:* The Ḥanbalī scholar, Ibn Badrān helps identify the difference between specific obligation and general obligation. General obligation and specific obligation both encompass acts of worship and the aims of bringing benefit. The difference between them is that the aim of general obligation is to achieve benefit, and the aim of specific obligation is upon those individuals performing an act of worship.<sup>83</sup> The Qur'ān clarifies this; The specific obligation may be defined as an action that brings recurring benefits, e.g. prayer, which is beneficial in the acquisition of humility to Allāh. The benefits of worship recur each time prayer recurs. As for general obligation; a resultant benefit may not recur; for example the saving of a drowning person is an isolated



occurrence. The next person to enter the sea does not benefit from the preceding incident. So the obligation of the life-saver is classified as general (other examples being the covering of the naked and the feeding of the hungry). IQJ has emphasised the fact that the aim of enjoining the good and forbidding the evil entails the actual removal of evil as failure to act properly would result in contradiction. To abandon the performing of enjoining the evil and forbidding al-munkar would mean the loss of benefit, especially for those who viewed its implementation as lying within the jurisdiction of someone else. In order to receive the benefits of general obligation, it is necessary to actively participate in the forbidding of the evil therefore the concept developed into a legislation that could issue specific demands and decrease the incidence of crime.

One may say that the ruling of enjoining the good and forbidding the evil is an obligation due to of the proofs which we have already presented from the noble Qur'ān and the Prophetic Sunna and verified by the consensus of the scholars. However jurists have conflicting opinions as to the designation of 'obligation'. Is the onus on every able Muslim to implement specific obligation in isolation? Would general obligation be compulsory for every Muslim, unless it is implemented by another party? To shed light on these questions, it may be useful to mention briefly the various thoughts of scholars, the opinion of IQJ and the chosen option in the practical ruling of *ḥisba*.

## ii) General obligation.

The majority of scholars theorise that enjoining the good and forbidding the evil is a general obligation<sup>84</sup>; as do the majority of jurists<sup>85</sup>, al-Mawardī,<sup>86</sup> Abū Ya'ālā al-Farā'<sup>87</sup>, al-Jassās<sup>88</sup>, Ibn al- 'Arabī<sup>89</sup>, al-Ghazālī<sup>90</sup>, al-Qurtubī<sup>91</sup>, al-Nawawī<sup>92</sup>, al-Suyūṭī<sup>93</sup>, al-Shawkānī<sup>94</sup>, al-Alūsī,<sup>95</sup> and others.

## iii) Specific obligation

Other scholars theorise that enjoining the good and forbidding the evil is a specific obligation.

Amongst these are Ibn Ḥazm,<sup>96</sup> al-Zajjāj,<sup>97</sup> Ibn Mufliḥ,<sup>98</sup> Ibn Kathīr,<sup>99</sup> al-Tilmisānī,<sup>100</sup> Muḥammad ‘Abduh<sup>101</sup> and his student Rashīd Riḍā<sup>102</sup> and Muḥammad Abū Zahra.<sup>103</sup>

#### iv) Undefined Obligation

There are those who perceive the necessity of examining specific circumstances prior to classification. Such scholars differ in their rulings upon enjoining the good and forbidding the evil, taking into account the specific action, circumstance of those appointed, change in circumstances and knowledge of what makes enjoining and forbidding obligatory. Further detail may clarify their reasoning.

Jalāl al-Dīn al-Balqīnī, al-Athru’ī and Ibn Ḥajr al-Ḥaythamī perceived in the words of the latter, “Enjoining the good and forbidding the evil is obligatory in enjoining a compulsory act and forbidding a prohibited act and permissible in enjoining a permissible act and forbidding an improper act.”<sup>104</sup> Ibn Mufliḥ stated, “Admonishment for omitting that which is compulsory and doing that which is prohibited, is compulsory, whilst ignoring what is permissible and doing what is disliked, is permissible.”<sup>105</sup> The aforementioned designed their rulings in accordance with the circumstances which dictated the type of *al-iḥtisāb*. However some scholars differentiated between actions in terms of enjoining and forbidding, dividing this into two modes of thought. For the compulsory duty, enjoining it is compulsory and for the permissible act, enjoining it is permissible. This concurs with the former view, however in the case of forbidding, these scholars designated only one definition i.e. all forbidding is compulsory. This is advised by Abū ‘Alī al-Jubā’ī from the Mu‘tazilites.<sup>106</sup>

#### v) Circumstances of those appointed.

Here the scholars looked at the circumstances of those appointed for the task of enjoining good and forbidding evil and made their rulings accordingly. If the one appointed is ‘able’ to remove the evil, it is specifically obligatory upon him to do so. IQJ stated, “It becomes a specific obligation upon the one who has the capability.”<sup>107</sup> Linked to those responsible for per-



sonal duties, are family members and those responsible for public duties such as the duty of *ḥisba*, here there is a specific responsibility for *al-iḥtisāb*.<sup>108</sup>

vi) Change in social circumstances.

‘Abd al-‘Azīz b. Bāz<sup>109</sup> maintained that when evil predominates and ignorance is rife, as in today’s society, then enjoining good and forbidding evil becomes a specific obligation.

vii) Knowing when to act.

This occurs when one comes to realize that a good action has been omitted, or an evil act has been committed; in this case enjoining and forbidding is specifically obligated upon the person involved. Al-Nawawī said, “Enjoining the good and forbidding the evil is a general obligation. It then may become specific if he is the only person in a position to act.”<sup>110</sup>

viii) Summary

From this we see that the ruling for enjoining the good and forbidding the evil has varied between specific obligation in some cases and general obligation in others. Consequently it may be assumed that there are three scholastic opinions as to the intricacies of enjoining the good and forbidding the evil.

*a) First school of thought.* One group of scholars regarded enjoining the good and forbidding the evil as one of the fundamental actions of Islam, therefore requiring an Islamic legal ruling. Based on this, they viewed its ruling as a specific obligation.

*b) Second school of thought.* Another group of scholars regarded enjoining the good and forbidding the evil as the major means of preservation and protection of the faith and Muslim society. So they perceived it as an action and suggested that, if the action is obligatory in doing or obligatory in leaving then *ḥisba* is obligatory. If it is permissible to act or not to act, then *ḥisba* is permissible.

c) *Third school of thought*: In this case, scholars classified the specific obligation entailed enjoining the good and forbidding the evil into two categories: ability, and authority. A third category allows general obligation when no other authority is present to establish a ruling. Amongst those of this opinion are the Shaykh of Islam Ibn Taymiyya and his student IQJ. They both state, “The matter on which obligation is judged is the ability. So what is obligatory for the able person is not obligatory for the unable.”<sup>111</sup> They agreed that, “This is obligatory upon every able muslim. It is a general obligation and it becomes a specific obligation upon the one able when there is no other authority established by the state or the Sultan. Upon him is an obligation which is not upon others.”<sup>112</sup>

#### ix) IQJ's ruling of *hisba*

We ascertain that IQJ perceives *hisba* as a specific obligation which falls upon the actor of it. The duty of *hisba* is a state appointment and this managerial duty is linked to a relevant ability and authority, which upholds the preservation of the faith and enforces social adherence to the rulings of Islamic Law. The researcher is in favour of this ruling of *hisba* in Islam and would like to conclude this section with a clarification by Ibn al-‘Arabī, “A Muslim must adhere to two obligations: the first obligation is the establishing of obedience and the refuting of disobedience; and the second obligation is to advise others on matters about which they are ignorant.”<sup>113</sup> These tenets encourage the people to obey orders and adhere to the principles of *hisba* and thus the Islamic faith, both these being inextricably linked in their essence.

### 3.5 The Institution of *Hisba*

The multi-faceted nature of *hisba* has resulted in its inclusion in a diversity of sources. Relevant information is found not only in works pertaining to public morality, but also in those concerned with trade or commercial law. Some offer only general explanation of *hisba* and the position of the muhtasib, outlining the religious and judicial aspects of his job. Other works offer a more detailed analysis of the relevant duties within his supervisory capacity as trustee.



i) A General Overview of *Ḥisba*.

The more generalised works regarding *ḥisba* are very numerous; first appearing in the 5th/11th century, two centuries after the establishment of the office.<sup>114</sup> The two most important books are *al-Aḥkam al-Sultaniyya* of al-Mawardi and the *Iḥyā' 'Ulūm al-Dīn* of al-Ghazālī. Other works include:-

- *al-Fasl fi'l-Milal* of Ibn Hazm
- *al-Risāla fi'l- Ḥisba* by Ibn al-Taymiyya
- *Nihāya* of al-Nuwayrī
- *Mu'īd al-Niam* by Ibn Jamā'a al-Subkī
- *Nisāb fi'l-Iḥtisāb* of al-Sinamī
- *Muqaddima* of Ibn Khaldūn.<sup>115</sup>

The second category of books is devoted to the practical aspects relevant to the position of *muḥtasib*, some being treatises expressly intended for his enlightenment. Examples include: *Aḥkām al-Sūq* of Yaḥya b. 'Umar and the Zaydī manual. In its broadest sense, *ḥisba* is the obligation of every Muslim to promote good and to fight evil employing legal intervention “one must obey the public authority when this exists.”<sup>116</sup>

One school of thought suggests that the concept of *ḥisba* has had in practice only an insignificant influence and it is difficult to understand under what conditions its theory developed.<sup>117</sup>

There is disagreement amongst academics as to the origins of *ḥisba* as outlined in the ‘Theory and the Practice of Market Law in Medieval Islam’ by Dr. M.Izzi Dien. One school of thought promotes the theory that it is rooted in the institution associated with the Hellenistic agoranomos. G.E Von Grunebaum considers that *muḥtasib* as an Islamised version of the Roman agoranomos adopted by Muslims as *ṣāhib al-suq*.<sup>118</sup> This is disputed by the academics Cl.Cahen and M.Talbi<sup>119</sup> who maintain that there is no concrete evidence to support this theory. Foster also maintains that most of the municipal functions of the audile of Rome existed

in Greek city life, but according to him, generally one or two of them had been traced as officially entitled agoranomos. There were other officials holding different titles who were responsible for other functions.<sup>120</sup> Foster further states that, "it can be safely assumed that the word (agoranomos) in that sense ceased to exist with the office by the end of the third century". Foster assumes that the word agoranomos does not appear in inscriptions after the fourth century.<sup>121</sup> He maintains that, "the connection of any functionary called 'agoranomos' and the Islamic *muhtasib* seems impossible."<sup>122</sup>

What must be remembered however, is that the commercial centre of any village or town would also have been the hub of social activity. It would have included the Mosque, school, medical facilities, and so on.

In the writer's opinion, *hisba* incorporates an all embracing concept of law which influences the whole of Muslim social behaviour and as such, is not restricted to socio-economic factors, but also upholds public morality.

If one accepts that the meaning of 'agora' or market place represents more than simply buying, selling, weights and measures etc, but actually defines the entire social life of the populace and its human interaction, then one must conclude that *hisba* encompasses the whole of human existence and thus governs social behaviour.

IQJ in his publication *al-Ṭuruq al-Ḥukmiyya fi'l-Siyāsa al-Shar'iyya* describes the individual areas of social and institutional life such as the law, the Mosque, worship and business etc. which come under the influence of *hisba*. The writer wishes to hypothesise that IQJ's theories led him to conclude that *hisba* involves more than a simplistic domain of compartmentalised institutions, but embodies a completely holistic doctrine which governs the whole of human activity.

Dr. M.Izzi Dien in his publication 'Theory and the Practice of Market Law in Medieval Islam' suggests an alternative definition of *hisba*. "*Hisba* is an administrative supervision applied by



an officer appointed by the government. This supervision covers the deeds and actions of individuals in order to harmonise them with the Islamic law.” Iḥtisāb can be described as the execution of his duties of supervision, as sanctioned by the government. There are further definitions of the word *ḥisba* in two different editions of EL: the first describing *ḥisba* as market law, similar to the Hellenistic agoranomos. It contains a limited interpretation, which is used by those authors who deal with Muslim law. The second maintains that the word *ḥisba* is not a Qur’anic term but is defined as the duty of each individual Muslim to promote good and forbid evil, referring to the *muḥtasib* in specific conjunction with the market place.

The term *ḥisba* has its origins in the word, ‘calculation,’ and there is no written evidence to suggest any alteration to this interpretation, nor to refute its links to the demographic spread of Islamic culture. In the Language of Islam, *ḥisba* is a religious duty based on the ensuing three tenets: The anticipation of Allāh’s reward; the denunciation of any indecent acts committed by others, and the contemplation of the consequence of an actions. All three are encompassed in the parlance of Islam. The root of *ḥisba*, which is the word ḥasaba, to calculate, or to take account, indicates the concept that one must be accountable for one’s self and actions.

The Qur’ān promotes strongly the principle of living within the basic tenets of *ḥisba* by creating a community, which adheres to them. The Muslim effect on the institution of *ḥisba* has been great; the chief priorities being the promotion of human welfare and prosperity. Muslims regard *ḥisba* as a religious institution which fulfills the purpose of Islam. It governs trading and social interaction, both being integral parts of the Sacred Law., which is pivotal to the regulation of Muslim life. This centrality of *ḥisba* to the practice of Islam is doubtless responsible for its initial establishment and consequent cultural status. Scholars felt compelled to offer treatises about both the theoretical and practical aspects of the institution of *ḥisba*, thus fulfilling the spiritual needs of worshippers throughout the history of Islam.

Al-Mawardī has defined the institution of *ḥisba* as the enforcement of good behaviour when it is not openly practised by the people, and the forbidding of wrong doing when it is commonly practised.<sup>123</sup>

The scholar, al-Shayzārī, acknowledges the contribution of *ḥisba* to the betterment of the people in both their religious life and general well being, emphasising the duty of enjoining the good and forbidding the evil and the improvement of the living conditions of the citizens under the jurisdiction of *ḥisba*. The later writings of al-Sanamī examine the legal implications of *ḥisba*, outlining its two crucial functions:-1) management of the affairs of people, 2) enforcement of the revealed law.<sup>124</sup>

Haji Khalifah's definition of *ḥisba* reveals an opposing school of thought. He questions the validity of the aforementioned scientifically based theories, disputing that *ḥisba* is founded on specific knowledge.<sup>125</sup>

The jurisdiction of *ḥisba* has been interpreted differently by eminent scholars. Al-Mawardi restricts the jurisdiction of *ḥisba* to disputes related to weights and measures, fraud in sales and non-payment of debts.<sup>126</sup> Others, such as Dr. Surtī<sup>127</sup> restrict the jurisdiction of *ḥisba* as generally related to socio-economic dealings, which, in order to simplify matters may be categorised into six groups. (Although the following topics maybe interchangeable due to the complex and mobile nature of the jurisdiction of *ḥisba*),

#### **Weights and Measures:**

Gold and silver coins.

Sale of consumable food.

Flour mills.

Pharmaceutical industries.

Medicine.

#### **Fraud:**

Prices .

The rights of vendor and customer

Non payment of debts.



### **Professions Related to Worship:**

The callers to prayer.

Preachers.

Astronomers.

Judges

Accredited witnesses.

### **Professions Related to Health and Medicine:**

Phlebotomists.

Cuppers.

Pharmacists.

Physicians.

### **Various Other Professions:**

Brokers.

Barbers.

Civil governors.

Military commanders.

### **Services :**

Roads

Public highways

Street lighting.

Hygiene.

Welfare.

Public baths.

Bookshops.

Scribes.

ii) The contribution of Western Scholars to the study of *hisba*.

There are at least two different schools of thought concerning the inherent duties of the *muhtasib*. First, it must be considered whether or not Muslim law covers both religious and secular matters in relation to the duties of the *muhtasib*.

This view was presented by B.R. Foster when he wrote "The *muhtasib* had a whole set of other duties that appear uniquely Islamic and which were derived from the claim of Muslim law to regulate every aspect of an individual's public and private life."<sup>128</sup> However, because of the nature and scope of Islam, together with the view that Islam does not restrict itself to religion but regulates the entire life of a believer, the views of R.P. Bookley which encompass a second school of thought must be considered. He regards the duties of the *muhtasib* as purely secular.<sup>129</sup> Many difficulties arise when trying to reconcile these two opposing schools of thought.

### iii) Origin of the institution of *hisba*.

With regard to the origin of *hisba*, there is overwhelming evidence as to its inception. The Prophet Muḥammad (peace and blessings be upon him) in order to enable the people to follow Allāh's teaching, initiated *hisba* by entreating the people to behave according to its order in the Qur'ān. Muḥammad not only taught this, but actually lived his own life according to the Sunna. As mentioned earlier, in order to supervise *hisba* the Prophet employed Sa'īd b. Sa'īd b. al-Ās and 'Umar b. al-Khaṭṭāb (after the conquest of Makka) as market inspectors in Makka and Madina respectively. This is reported by Ibn 'Abd al-Barr in his *Isti'āb*. Moreover, following the Prophet Muḥammad, peace and blessings be upon him, and the Four Rightly-Guided Caliphs were reported as having adopted *hisba* in their state-policy. In the light of this of evidence, it becomes clear that the institution of *hisba* emerged during the Prophet's lifetime.<sup>130</sup>

### iv) The Development of *Hisba*

*Hisba* during the Umayyad period (96H-714AD).

During this period the role of the *muhtasib* evolved from that of market inspector to that of



an arbiter, ultimately becoming a profession in its own right. There is evidence of the title of *muhtasib* being given to the person carrying out the function of market inspection. At that time ziyad Ibn Abih, appointed a *muhtasib* at the Baṣra market. Later in (714AD), Al-Walīd b. ‘Abd al-Malik employed Ibn Ḥarmala, as *muhtasib* at the Madina market. Even later, but still during the Umayyad regime, the role of *muhtasib* evolved to a higher status, when this office was conferred on Dawūd b. ‘Alī b. ‘Abd Allāh. Eventually, when Ibn Hubayra was the ruler of Wāsit (103-106H), the post of market supervisor had become known as *wilāyat al-sūq*, an even higher office, which was granted to ‘Īsā b. ‘Abd al-Raḥmān, and then to Iyas b. Mu‘āwiya.<sup>131</sup> By this time the *muhtasib* was not only a market supervisor; he also undertook the arbitration of any disputes between employers and their employees.<sup>132</sup> *Ḥisba* is a term which defines the duty of each muslim citizen to promote righteousness and to defy evil. Embodied in this concept is the *muhtasib* whose function it is to uphold and apply the rules of *ḥisba*.

### 3.6 The Origin of the Office and the Duties of the *Muhtasib*.

The origin is not clear, as originally neither the word *ḥisba* nor *Muhtasib* were used. The *muhtasib* was called (*‘āmil al-sūq*) or (*ṣāhib al-sūq*) and he had two tasks:- controller of the market place and trustee of social order.<sup>133</sup> He judged matters of dispute, holding inquiries to ascertain truth, when offences demanded some policing. The *muhtasib* was primarily concerned with obvious and incontestable facts, not responsible for the holding of inquiries, but authorised to utilise his authority to intervene when he saw fit, without waiting for a complaint.<sup>134</sup> In addition to the affairs of the market, it was incumbent upon the *muhtasib* to supervise the performance of religious obligation, the propriety of the behaviour between the sexes in the street and to the baths, and the application of discriminatory measures against the *dhimmis*.<sup>135</sup> The basic and permanent duty of the *muhtasib* was the administration of the market place (*sūq*). Specifically having control of weights and measures; a diverse and complex area which lent itself to potential fraudulence. The *muhtasib* must divine and counteract any dishonesty which might manifest itself both in the manufacture and in the sale of commodities, including the emergence of counterfeit coins. He checked prices, but had no power to fix

them. He must also ensure that merchants did not deceive the customers over the quality or pricing of the merchandise. It was within his jurisdiction to ensure that the traders did not indulge in any operation which was connected to the prohibited practice of usury (*riba*) and he oversaw the dealings of pharmacists and physicians.

School masters who were deemed to be excessively severe, were warned or consequently punished under the ruling of the *muhtasib*, who had ultimate control in his resident locality. It was within his domain to ensure building safety; both construction and repair work must be undertaken so as to avoid danger to the public and the impeding of pedestrians or vehicles. He was also responsible for the cleaning of the streets and maintenance of the water supply and its regular distribution.

### **Manuals of *Hisba*.**

The manual of *hisba* list the principal trades and for each of these they provide the muhtasib with the practical guidance necessary for him to assess the quality of the products and to trace malpractice's or poor workmanship.

### **Who Appoints the *Muhtasib*?**

The *muhtasib* was appointed by the state, some times directly, but more often through the governors of the judges.<sup>136</sup>

### **The Character of the *Muhtasib*.**

The major attributes required of the *muhtasib* were honesty and a detailed understanding of the law. These prerequisites often meant that he was a jurist (*faqih*). In order to function adequately, it was necessary for the *muhtasib* to have an assistant and a good working relationship with a judge and police. He was generally considered as a specialist subordinate of the judge; the status of the latter being rather more esteemed than that of the *muhtasib*.



## **Penalty Enforcement.**

The *muhtasib* could generally enforce the following punishments:- reprimand; beating; public humiliation; confiscation of faulty products; banishment of repeated offenders.<sup>137</sup>

## ***Muhtasib* pre IQJ.**

From the Saljukid period in Irano-turkish territory, the office was more usually entitled *ihtisab*. After the crusades, the Latin east adopted the position in a limited and lay form, which was known as *mathesep*.<sup>138</sup>

## ***Muhtasib* at the time of IQJ.**

At the end of the Middle Ages, the office of *muhtasib* tended to decline in esteem under the Mamlūks. It was, like other offices, obtained by payment; the purchaser recouping his losses from the merchants by means of illegal taxes.

## ***Muhtasib* post IQJ**

The *muhtasib* continued to hold sway through the greater part of the Muslim world until the reforms of the modern period; for example, his existence was still in evidence at the beginning of the 20th century in Morocco and at Bukhārā.

## ENDNOTES TO CHAPTER 3

1. Ibn Manzūr; *Lisān al-'Arab*, vol.1, p.630.
2. Ibn al-Athīr; *Al-Nihāya fī Gharīb al-Ḥadīth*, vol.1, p.381.
3. *Lisān al-'Arab*, vol.1, p.630.
4. Dr. Imām Muḥammad Kamāl; *Uṣūl al-Ḥisba fī l-Islām*, p.14.
5. ibid.
6. al-Bukhārī, *Ṣaḥīḥ*, vol.1, p.92, no.38
7. *Lisān al-'Arab*, vol.1, p.630; Jār Allāh al-Zamakhsharī; *Asās al-Balāgha*, p.83.
8. *Lisān al-'Arab*, vol.1, p.632.
9. al-Qurṭubī; *al-Jāmi li Aḥkām al-Qur'ān*, vol.18, p.3.
10. Qur'ān, 59:2
11. al-Jawharī; *Al-Ṣiḥāḥ*, vol.1, p.110.
12. *Lisān al-'Arab*, vol.1, p.631; *Asās al-Balāgha*, p.83; *al-Qāmūs al-Muḥīt*, part Bā, section Ḥā.
13. Qur'ān 7:157
14. al-Bukhārī; *Ṣaḥīḥ*, vol.1, p.84, no.30; Muslim; *Ṣaḥīḥ*, vol.3, pp.1280-1281, no.1658.
15. Aḥmad; *al-Musnad*, vol.1, p.361, no.241.
16. Muslim; *Ṣaḥīḥ*, vol.3, p.1599, no.2022.
17. Abū Dāwūd, *Sunan*,
18. *al-Musnad*, vol.1, pp.192-193, no.79
19. ibid, vol.9, pp.93-96, no.6263.
20. Muslim; *Ṣaḥīḥ*, vol.3, p.1755, no.6263.
21. al-Bukhārī; *Ṣaḥīḥ*, vol.1, p.84, no.30; Muslim; *Ṣaḥīḥ*, vol.3, pp.1280-1281, no.1658.
22. al-Bukhārī; *Ṣaḥīḥ*, vol.1, p.265, no.126.
23. al-Bukhārī; *Ṣaḥīḥ*, vol.8, p.15, no.4287.
24. Muslim; *Ṣaḥīḥ*, vol.1, p.99, no.102.
25. *al-Bidāya wa'l-Nihāya*, vol.6, pp.343-355; al-Ṭabarī; *Tārīkh al-Umam wa'l-Mulūk*, vol.3, pp.247-248; Ibn Ḥazm; *Jawāmi' al-Sira*, p.340.
26. Al-Tabrizī; *Mishkāṭ al-Maṣābiḥ*, vol.3, p.1701, no.6025.27. 'Abd al-Razzāq al-San'ānī; *al-Musannaf*, vol.11, p.246, no.20465.
28. al-Qalqashandī; *Ṣubḥ al-A'sha*, vol.5, p.452.
29. al-Ṭabarī; *Tārīkh al-Umam wa'l-Mulūk*, vol.4, p.209 and *Tārīkh al-Khulafā'*, p.268.
30. Muslim, *Ṣaḥīḥ*, vol.1, p.573, no.736
31. Refer to: *Kanz al-'Ummāl*, vol.3, p.176.
32. Ibn Abī Shayba; *al-Musannaf*, vol.8, p.279, no.5197.
33. al-Khallāl; *al-Amr bi'l-Ma'rūf wa'l-Nahī 'an al-Munkar*, p.45.
34. al-Bukhārī; *Ṣaḥīḥ*, vol.7, p.60, no.5198.
35. *al-Musnad*, vol.1, p.241, no.199.
36. ibid, vol.1, p.384, no.517.
37. 'Abd al-Razzāq; *al-Musannaf*, vol.7, p.33, no.12071.
38. al-Bukhārī; *al-Adab al-Mufrad*, no.1307.
39. Ibn Sa'd; *al-Ṭabaqāt al-Kubrā*, vol.3, p.28.
40. *al-Bidāya wa'l-Nihāya*,
41. Ibn Hajr; *al-Isāba fī Tamayīz al-Ṣahāba*, vol.3, p.97.
42. Khalifah b. Khayāt; *Tārīkh*, no.97.
43. *al-Musnad*, no.6165, 657.
44. *Al-Ḥisba fī l-Asr al-Nabawi wa 'Aṣr al-Khulafā' al-Rāshidīn*, p.19.



45. *Kanz al-'Ummāl*, no.14467.
46. *al-Bidāya wa'l-Nihāya*, vol.7, p.214.
47. Possible reasons for this have already preceeded.
48. Muslim; *Ṣaḥīḥ*, vol.2, p.666, no.38.
49. al-Bukhārī; *Ṣaḥīḥ*, vol.1, p.92, no.38.
50. al-Bukhārī; *Ṣaḥīḥ*, vol.1, p.92, no.37.
51. *Ādāb al-Ḥisba*, manuscript, paper catalogued a9 (*alif, tis'a*).
52. Al-Shirāzī; *Nihāyat al-Rutba fī Ṭalab al-Ḥisba*, p.12.
53. *Al-Ṣiḥāḥ*, vol.1, p.109.
54. *Lisān al-'Arab*,
55. al-Zajjāj, *al-Jumal fī'l-Naḥw*, vol.9, p.39; al-Aṣbahānī; *al-Mufradāt fī Gharīb al-Qur'ān*, p.331.
- 56a. vol.2, p.595.
- 56b. Al-Sunamī; *Niṣāb al-Iḥtisāb*, p.98.
57. *Miftāḥ Dār al-Sa'āda*, vol.2, p.6.
58. *Zād al-Ma'ād*, vol.3, p.16L
59. *al-Mawsū'a al-Fiqhiyya al-Kuwaytiyya* vol.6, p.247.
60. *Taysīr al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān*, vol.1, p.406.
61. *Lisān al-'Arab*, vol.3, p.715.
62. *Tāj al-'Arūs*; vol.3, p.5
63. *Madārij al-Sālikīn*, vol.1, p.371.
64. *Miftāḥ Dār al-Sa'āda*, vol.2, p.6.
65. vol.6, p.247.
66. Qur'ān, 5:3
67. Abū Dāwūd, Sunan
68. *Madārij al-Sālikīn*, vol.3, p.79
69. Its details are referred to in "The Importance of Ḥisba," which occurs later in this section.
70. IQJ; *Aḥkām Ahl al-Dhimma*, vol.3, p.1245.
71. Qur'ān, 5:78-79.
72. al-Tirmidhī, Sunan
73. *Zād al-Ma'ād*, vol.3, p.46.
74. *Al-Ṭuruq al-Ḥukmiyya*, edited.
75. al-Qurṭubī; *Jāmi' al-Aḥkām*, vol.4, p.47
76. Qur'ān, 9:71
77. Ibn Taymiyya; *al-Ḥisba fī'l-Islām*, p.9
78. Qur'ān 3:110
83. *Al-Ṭuruq al-Ḥukmiyya*, edited:
84. Refer to: Ibn Ḥazm; *al-Faṣl fī'l-Milal wa'l-Ahwā' wa'l-Nihal*, vol.4. p.171.
85. 'Abd al-Qādir Awda; *al-Tashrī' al-Jinā'iyya al-Islāmiyya*, vol.1. p.493.
86. *al-Aḥkām al-Sulṭāniyya*, p.240.
87. *al-Aḥkām al-Sulṭāniyya*, p.284
88. *Aḥkām al-Qur'ān*, vol.2, pp.33-34.
89. *Aḥkām al-Qur'ān*, vol.2, p.122.
90. *Ihyā' 'Ulūm al-Dīn*, vol.2, p.307.
91. *al-Jāmi' li Aḥkām al-Qur'ān*, vol.4, p.165.
92. *Sharḥ Ṣaḥīḥ Muslim*, vol.2, p.23.
93. *al-'Ikhlīl*, p.72
94. *Fath al-Qadīr*, vol.1, p.337.
95. *Rūḥ al-Ma'ānī*, vol.3, p.21.

96. *al-Muhallā*,
97. *Jawāhir al-Ihsān fī Tafṣīr al-Qur'ān*, vol.1, p.297.
98. *al-Ādāb al-Shar'iyya*, vol.1, p.174.
99. *Mukhtaṣar Tafṣīr Ibn Kathīr*, vol.1, p.306.
100. *Tuhfat al-Nādhir wa Ghunyat al-Dhākir*, p.4.
101. *ibid*.
102. *Tafṣīr al-Manār*, vol.4, p.26.
103. *al-Da'wat al-Islām*, p.42.
104. *al-Qurāfī; al-Zawājir*, vol.2, p.168.
105. *Ādāb al-Shar'iyya*, vol.1, p.194.
106. *Sharḥ Uṣūl al-Khamsa*, p.146.
107. *TH*, p.4
108. *Al-Mawsū'a al-Fiqhiyya al-Kuwaytiyya*, vol.6, p.248.
109. He was one of the scholars of this century. See: Ibn Bāz; *al-Da'wa ilā Allāh*, p.16.
110. *Sharḥ Ṣaḥīḥ Muslim*, vol.2, p.23.
111. *Al-Ḥisba fi'l-Islām*, p.12; *al-Turuq al-Ḥukmiyya*.
112. *ibid*
113. *Aḥkām al-Qur'ān*, vol.2, p.122
114. *Encyclopaedia Islamic*, vol.3, p.486.
115. *ibid*
116. *ibid* vol.3, p.487.
117. *ibid*
118. See for example, N. Ziyada; *al-Ḥisba wa'l-Muḥtasib fi'l-Islām*, p.31.
119. G.E. von Gruebaum, *Classical Islam* (trans. Katherine Watson), pp.100-101.
120. *Encyclopaedia Islamic*, vol.3, p.487.
121. Foster, *Op. cit*, p.135.
122. *ibid*
123. *al-Aḥkām al-Sulṭaniyya*, p.
124. *al-Nihāyat al-Rutbaha*, p.
125. *Kashf al-Zunūn*, p.
126. *al-Aḥkām al-Sulṭaniyya*, pp.9-10.
127. M.I.H.I Surty; *The Institution of Ḥisba and its Impact on Health Sciences from the Seventh to the Thirteenth Century AD*. pp.5-18.
128. Foster; *Agronomos, Muhtasib: Journal of the Economic and Social History of the Orient*, 13, pp.122-124.
129. R.P.Bookley; *The Muhtasib: Arabica*, 39, pp.81-117.
130. *al-Ḥisba fi'l-Islām*, pp.46-47.
131. *Al-Tabari*, vol2 pp.24-25
132. *ibid* vol 7, p.203
133. See: *Encyclopaedia Islamic*, vol.3, p.487.
134. *ibid*
135. *ibid*
136. *ibid*, vol.3, p.488
137. *ibid*
137. *ibid*



## **Chapter four**

### **Ibn Qayyim al-Jawziyya's perspective on *Hisba***

**4.1 The Author's methodology of *Hisba***

**4.2 Required Characteristics of the *Muhtasib***

**4.3 The Jurisdiction of the *Muhtasib***

**Endnotes**

## Chapter 4. Ibn Qayyim al-Jawziyya's Perspective on *Ḥisba*

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### 4.1 The Author's Methodology of *Ḥisba*

The continued development of the theory and format of *ḥisba* throughout the history of the Muslim World, has inspired eminent scholars to examine its relevant facets and most have identified two differing methodologies regarding the study of *ḥisba*:<sup>1</sup>

*The First Methodology:* This method examines the fundamental principles of *ḥisba* within Sharia and explains the foundation of *fiqh*, whilst offering an explanation of the condition and character of the *muḥtasib*. The role of the *muḥtasib*, his work and extent of power are discussed at length.<sup>2</sup> Examples of those who studied this topic are al-Mawardī, Abū Ya'lā al-Farrā', Ghazālī, Ibn Taymiyya, Ibn Khaldūn, al-Nuwayrī and al-Qalqashandī.

*The Second Methodology:* This method is primarily concerned with economic factors of society and the practical aspects of *ḥisba*. It deals with complexities of trading and industry, illustrating the numerous jobs and professions relevant to these sectors. There are detailed explanations of the legislative measures that may be enforced to protect both vendor and customer from any discrepancies and malpractice in the areas of weights and measures, prices, consumables and gold and silver coins.<sup>3</sup> Amongst the Muslim scholars who have followed this methodology are: Shyirazī, Ibn al-Ukhwa, al-Sunāmī and Ibn Bassān.

In his book, *al-Ṭuruq al-Ḥukmiyya* IQJ explains that the first methodology encompasses the basic meanings of *ḥisba* in conjunction with the conditions of the *muḥtasib*. He establishes the



origin of *ḥisba* and discusses its subject matter whilst explaining the consequences. IQJ's style of writing clearly demonstrates scholastic ability; his application of concise detail proffering an in-depth analysis of the diverse theories of famous scholars regarding the subject of *ḥisba*. IQJ's skillful application of succinct language omits no relevant detail and is a testimony to his scholarship. His methodology may be highlighted as follows:-

- Main references were the Qur'ān, the Sunna, the opinions of the Companions, and the Scholars.
- Provides the theoretical foundation for *ḥisba*.
- Establishes the relationship between *ḥisba* and justice.
- Reveals a strong focus on economics.
- The powers and limitations of the *muḥtasib*.

#### *1. The Qur'ān, the Sunna, the Opinions of the Companions, and the Scholars:*

The methodology of IQJ, is heavily dependent upon the evidences from the Qur'ān, the Sunna, the opinions of the Companions (*ṣaḥāba*) and the followers (*tābi'īn*). His methodology was based frequently on the latter and on the works of the Four Imāms. He studied the relevant opinions, before analysing these and examining the basis upon which they were held. Subsequently he would either prioritise one theory or give his own opinion based on what he viewed as the stronger evidence. In his discourse on the opinion of the Four Imāms, IQJ delves below the superficial; preferring to permeate the initial facade of a subject, identify any hidden curricular and elucidate upon them. He retains an open mind, never allowing his opinions to restrict him to one school of thought even though he himself was Ḥanbalī, he never allowed his school to effect his opinion. He scrutinises all the various evidences, and either chooses one based on the strongest evidence or forms his own. The reader is exposed to the minutiae of subject meaning, giving credence to the eventual opinion of the author, which is certainly based upon the Qur'ān and Sunna and thus intellectually acceptable. The above methodology can not only be clearly seen in his book *al-Ṭuruq al-Ḥukmiyya (TH)*, but also in many of his other works.

## 2. IQJ Theory Consolidation and Viewing:

IQJ approaches the subject of *ḥisba* from an analytical angle rather than the mere listing of its detailed practical application. We see from his book *TH*, in particular, that he does consolidate the duty of the *muḥtasib* to *ḥisba* and examines his function and work, unlike the work, *Nihayat al-Iḥtisāb* and *Ma'ālim al-Qurba*, who's authors concentrate on the practical element of *ḥisba*.

## 3. *Ḥisba* and Justice

IQJ links *ḥisba* and justice coherently, theorising that the two aspects are inextricably bound. He perceives the main purpose of *ḥisba* as being the establishment of a justice, which must fulfill the criteria expounded by the Qur'ān.<sup>4</sup> The *muḥtasib* can give judgement of *ḥisba* upon the people who transgress the law and in cases where obligatory duties have been abandoned. Therefore, *ḥisba* is responsible for the correct legislative procedure being performed by the *muḥtasib*. Islam recognised that a state builds its power upon justice; as a result it is essential for *ḥisba* and justice to be interconnected. IQJ perceives the necessity for all departments and ministers in the Islamic state to consider their roles as religious duties. He states that the qualities necessary to constitute a 'good' official, include fairness, honesty, knowledge and a dedication to the following of Allāh and His Messenger. Such a person is then deemed to be of *al-Abrār al-'Adilīn*,<sup>5</sup> conversely, one who leans towards ignorance and injustice is considered to be of *al-Zālimīn al-Mu'atdīn*.<sup>6,7</sup> The *muḥtasib*'s work is to establish justice between people, the justice of Allāh .

## 4. Strong Focus on Economics:

IQJ has focused on the subject of economics when discussing *ḥisba* in *TH*. The role of the *muḥtasib* is to ensure that justice prevails in the field of trade, and that oppression is removed from Islamic society. The areas of economics are complex; the *muḥtasib* being concerned with:- Supervising the market, industry and trading; monitoring the money market and false currency; law of supply and demand; supervision of the method of selling; considering the economic value of various professions; restricting the market to certain traders; buying of cartels and the negative impact on the market; traders joining forces and monopolising the market;



monopoly; and pricing. IQJ discusses each of the above, detailing the associated implications.

#### *5. Power and Limitation of the Muhtasib*

IQJ examines the power of an appointed *muhtasib* to pass sentence on offenders. This power is a part of the *ta'zīr* that the Sacred Law (*sharī'a*) grants to a *muhtasib*. Generally people fear the power of mortal authority more than the commands of the Qur'ān. IQJ explains the different types of *ta'zīr*, revealing the benefits of their implementation.

In conclusion, the methodology employed by IQJ in his analysis of *ḥisba*, affords insight into his social awareness. He displayed a profound knowledge and understanding of Islam, which is reflected in his treatment of social, economic and moral factors and his wish to unify all under the guidance of Allāh.

#### **4.2 Required Characteristics of the *Muhtasib***

*Ḥisba* is an integral part of the Sacred Law; forbidding evil and enjoining good. The authorised person entitled *muhtasib*<sup>8</sup> has the power to give orders which should be obeyed by the general public - his role being the establishment of justice. There are certain criteria that a person must meet in order to achieve this position.

a. The conditions delineated by IQJ illustrate that the holder of this office must be of Muslim faith.

IQJ recognised *ḥisba* as part of Islamic Law, regulated within the proscriptions of the Sacred Law. In his book *Aḥkam Ahl al-Dhimma*, he recorded laws which prohibit the Jews and the Christians from taking positions of authority, above the Muslims, and also from dealing with Muslim affairs.<sup>9</sup> IQJ believed that the delegation of authoritative roles to non-Muslims would contradict the Sacred Law, a fact that should be made known to all Muslims. IQJ says "giving positions of authority is directly linked to protectorate, so giving authority to non-Muslims can be viewed as the forming of friendly relations. Allah has judged that whoever befriends them is from amongst them. True faith cannot be achieved without separation thus such giv-

ing of authority is directly opposed the two cannot be reconciled.”<sup>10</sup> To support this view he refers to the Qur’ān.<sup>11</sup> Giving such position to the people of the book, not only offers them preference but also makes them superior to the Muslims. IQJ identified that the issuing of authority must lie within the bounds prescribed by Allāh.<sup>12</sup>

IQJ theorises that the issuing of non-Muslims with positions of authority is counter productive, eventually raising their status above that of the Muslim, “we must oppose the kuffur and never give honour to them.”<sup>13</sup> He also states, “it is not possible to have enmity with the unbelievers (*kuffār*) while at the same time offering friendship.”<sup>14</sup>

**An Accountable Person (*taklīf*):**<sup>15</sup> A person in a position of authority must be able to perform his authorised duties and should not make any excuse for relinquishing these unless there are extenuating factors permitted by the Sacred Law. IQJ obligates the *ḥisba* on the authorities, as the Prophet commanded the *umma* to forbid evil because the opposition of evil leads to good, a creed promoted by Allāh and his Messenger.<sup>16</sup> IQJ states in his text, that it is a duty for the *umma* to oppose evil and only the authorised and accountable person should perform this duty. Thus accountability is an essential requirement of the *muḥtasib*.

**Capability:** This is a condition of *ḥisba*. The performance of Sacred Law can vary according to knowledge and ability.<sup>17</sup> A person who has capability must encourage good and forbid evil, both practically and verbally, this being mandated by the *ḥisba*.<sup>18</sup> The prophet Muhammad, may blessings and peace be upon him, observes in his narration, “*He who sees evil must change it with his hands. If he is unable to do so then he should speak out against it; however if this is also not possible, then he should at least disapprove of it in his heart, but this is the weakest form of faith.*”<sup>19</sup> This *ḥadīth* indicates that the work, performed by the *muḥtasib*, varies according to the knowledge and abilities of those who are legally capable to carry out the task. The person in authority has greater power than those who are less knowledgeable or even illiterate.

IQJ concluded, that the performing of *ḥisba* is the duty of each capable Muslim, “enjoining good and forbidding evil is obligatory upon every capable Muslim if the authorities are inef-



fective in that.”<sup>20</sup> Therefore, it is obligatory for the person who is in the position of the *muhtasib* to perform his work and specialities with the express purpose of protecting the ethical foundations upon which the state has been built. Conversely IQJ states that if a capable person does not enjoin good and forbid evil then he is at fault, “There are many who believe in Allāh but at the same time abandon their duties. Such persons have the capability to perform these acts, yet decide to leave alone that which does not concern them, wrongly assuming that such lack of concern may please Allāh.”<sup>21</sup>

***An Implementor of Justice:*** IQJ acknowledged the necessity of a state legislative system, whilst admitting the fallibility of human kind. In general, no one is perfect so we try to choose the lesser of the two evils.<sup>22</sup> However, the person in authority must be able to identify, order and protect the people from harm. IQJ maintains the importance of the consultation of ‘good’ advisors, reminding the people that Allāh will only support those who do good, particularly the governors who are performing good and forbidding evil.<sup>23</sup> Hence, he views justice as a fundamental part of the authority, which upholds the state. He pointed out that the whole infrastructure of the country could be easily demolished if authority were unjust. To neglect this fundamental duty would engender dissolution and the eventual rise of evil. A misguided selection of authority may lead to poor implementation of the law and subsequently the system and the rights of the people would be damaged. So it is of paramount importance to find the best person for the position of authority. IQJ maintains that despite efforts to fulfil this goal, malevolent forces may still be in evidence. He sees the solution as an adherence to patience and the continuation of striving, even in difficult conditions. Social cohesion can be retained if all uphold the policies of good. Disintegration of the legal system would effect the whole state adversely.

#### b. The Manners of the *Muhtasib* as Defined by IQJ

The *muhtasib* should be well mannered and possess the correct etiquettes, thereby being an example to others. He should work for the Islamic State and must display the following attributes;

1) Sincerity of intention (*ikhlas*).

IQJ deemed it necessary for the *muhtasib* to uphold absolutely the divine intentions of Allāh;<sup>24</sup> any lack of sincerity on his part would result in withdrawal of holy guidance. Such insincerity of intention would prevent the *muhtasib* from fulfilling the essential principle of *hisba* i.e., the enjoining of good and the forbidding of evil. IQJ placed great importance upon intention and is quoted as saying it can be said that intention is the skeletal frame upon which the body is built.<sup>25</sup>

2) Gentleness (*rifq*).

When kindness is an integral factor of action, then the latter will have a positive effect. Without gentleness the consequences of words and actions may be negative and the *muhtasib* would be in danger of losing his credibility amongst the people. Kind and gentle law enforcement on the part of the *muhtasib* is more likely to engender obedience. Allah says in the Qur'ān, *Hold to forgiveness; command what is right ('urf), but turn away from the ignorant.*<sup>26</sup> IQJ comments on this verse: "The order with Urf (is known by the sane and innate person). If the *muhtasib* is to enjoin that which is good, he must order with kindness, not with any harshness or vehemence."<sup>27</sup> 'Umar b. 'Abd al-'Azīz would speak to the people on Friday prayers and say, "surely one of the most beloved qualities is kindness in the state. Whenever someone is kind to another, Allāh will be kind to him on the day of judgement."<sup>28</sup>

3) Patient Perseverance (*ṣabr*).

This is an important requirement for the *muhtasib* who may be vulnerable in his capacity as an enjoiner of good and forbidding of evil. He must display a patient attitude if he is to influence those transgressors who threaten social stability. Impatience can cloud judgement and result in irrational actions or decision making. The *muhtasib* should have the ability to consider all matters calmly thus avoiding potentially malicious confrontations which would impede the thorough investigation of cases. IQJ maintains that when contemplating both major and minor tribulations in Islamic history, we find that the primary cause of the problems is the absence of patience.<sup>29</sup>



#### 4) Self-awareness and Self-discipline

The *muhtasib* must act in accordance with his own words, as this will generate trust, confidence and respect from the public. He must abide strictly to principle, as any hint of 'double standards' would damage his credibility as a good leader. IQJ has stated that it is not enough to order that which is right if the *muhtasib* is not the first to follow this particular rule himself. When he acts accordingly, the general public will readily accept his orders.<sup>30</sup> Only when the *muhtasib* sets an appropriate example will his work be accepted by the people and by Allāh.

### 4.3 The Jurisdiction of the *Muhtasib*

The Definition of *Ta'zīr* (Discretionary Punishment): Unlike the fixed punishments (*ḥudūd*), *ta'zīr* contains a much less specific definition. The offences of *ḥudūd* are prescribed by Allāh; revealed both in the Qur'ān and the Sunna. *Ta'zīr* is a discretionary punishment and as such offers some flexibility in its practice.

Etymologically, *ta'zīr* is derived from the verb *azar*, which means to prevent, to respect and to reform; it can be defined as a method of reform.<sup>31</sup> Scholars agree that *ta'zīr* may be applicable to acts of disobedience that do not belong to *ḥadd* (singular form of *ḥudūd*). It may be applied for example to punish those who have ignored their Islamic duties i.e. the abandoning of prayer or the engaging in forbidden acts; with the aim of encouraging offenders to return to their duties.<sup>32</sup>

Implementation of *Ta'zīr*: The nature of crime is so complex and diverse that scholars, including IQJ, perceive no minimum punishment for the lowest *ta'zīr*.<sup>33</sup> Offences are varied in character and influenced by a number of external factors - impact, time, place etc. IQJ maintains that the amount of *ta'zīr* should be varied according to circumstance, whilst still enforcing its main objectives of prevention, deterrence and reform. Implementation is incumbent upon the judges and the *muhtasib* and due to the discretionary nature of *ta'zīr*, these relevant authorities must possess the attributes detailed earlier. IQJ stated that the amount of *ta'zīr* can not be pre-determined, but must be justified in accordance with the type and size of the crime.<sup>34</sup> Not

only must the relevant authority determine the actual punishment, but it has the traditional right to determine from the outset whether an act is criminal or not. "Transgressions cannot be foreseen; hence this right has been granted to the ruler or judge to meet the needs of the society and protect it against every kind of transgression."<sup>35</sup>

The discretionary nature of *ta'zīr* is evident in the following examples:-

'Umar b. al-Khaṭṭāb ordered 40 extra lashes for an offender who drank alcohol, and was enforced because he saw the situation as necessitating this.<sup>36</sup> On another occasion he shaved the head of a man who was trying to seduce women.<sup>37</sup> IQJ has examined the opinion of the scholars concerning the highest *ta'zīr*. The first opinion is that *ta'zīr* should not exceed 10 lashes.<sup>38</sup> The second is that *ta'zīr* should not reach the minimum level of punishment set in Islamic Law.<sup>39</sup> The third opinion states that under a similar category of offence the amount of *ta'zīr* should not reach the level of the actual *hadd*, or prescribed punishment.<sup>40</sup> For example punishment for an unmarried man and woman found kissing should not reach the level of the punishment given for illicit sexual relations (*zina*).

To conclude, the amount of *ta'zīr* must be determined according to public interest, as well as to the types of crime. IQJ maintained that *ta'zīr* must be authorised by the *muḥtasib*; to improve public interest and halt the spread of evil.<sup>41</sup>

*Types of Ta'zīr:* We know from the previous chapter that the *muḥtasib* has the power to implement *tazīr* and that it can reach the highest level without restriction. However the punishment should suit the type of crime and it can be applied in the form of a non-physical punishment; financial penalty or physical punishment, as long as it is in the interest of protecting the public. The *muḥtasib* should have the choice to apply any of the methods in order to achieve public safety and to prevent criminality. IQJ classified *ta'zīr* into the following three categories:

- Non-physical punishment



- Financial Penalty (or confiscation of assets)
- Physical Punishment

Because the sentence of *ta'zīr* varies according to the nature of the crime, scholars gave the *muhtasib* the power to implement legal actions which may range from mild to severe, the punishments reflecting the type of offence and its impact upon society.

#### Non-Physical Punishment

This type of *ta'zīr* is implemented with the intention of rehabilitating the offender and offering opportunity for reform. This, the mildest of punishments, may be applied to a variety of offences where the culprit has misbehaved or ignored his duty. It is left to the discretion of the *muhtasib* to decide which of the following would be an appropriate course of action:

##### i) Reproof.

This method is used by the *muhtasib* to discourage irresponsible behaviour and to rehabilitate certain groups of people who are generally sound members of society. For example Umar b. al-Khaṭṭāb used this form of punishment to give a reminder to 'Uthmān b. 'Affān when he arrived late for the Friday (*jumu'a*) Prayer, by saying "What time do you think this is?"<sup>42</sup> IQJ maintains that verbal reproof is a form of *ta'zīr*.<sup>43</sup>

##### ii) Verbal Caution:

The *muhtasib* generally used this method for first time offenders. He can summon the offender, give advice, and also threaten to use more severe methods of punishment if re-offence occurs.<sup>44</sup> For example Umar b. al-Khaṭṭāb gave a verbal caution and threatened to use capital punishment upon a poet if he continued to write erotic poetry.<sup>45</sup>

##### iii) Social Boycott:

The *muhtasib* can use this method on repeat offenders who continue to commit the crime despite previous reminders or cautions. He may pass a sentence of social boycott, warning the public to stay away from the offender until he refrains from his acts. This method has been

approved by the Sacred Law. For example, the Prophet punished three Companions who did not go on the Tabūk expedition.<sup>46</sup> IQJ stated that the Prophet used this method of punishment to admonish those committing minor offences.<sup>47</sup>

#### iv) Public humiliation:

This may be employed by the *muhtasib* to punish offenders who commit more serious crimes. Public humiliation may encourage a return to good citizenship; ‘Umar b. al-Khaṭṭāb used this *ta‘zīr* for offenders who gave false testimony. This serious offence once warranted the tying of the perpetrator to a donkey and the parading of him in public with a blackened face.<sup>48</sup>

#### 2: The Financial penalty

In the past, jurists from opposing schools of thought have disputed the legality of the financial penalty as a *ta‘zīr* punishment, claiming that its initial conception at the beginning of Islam, was later abrogated. Ibn Taymiyya, and subsequently his pupil IQJ, strongly contested this opinion, maintaining that there was evidence from the actions and decisions of both the Prophet and his companions. To substantiate the claim, IQJ added, “These are well-known cases which have been accurately reported. Those who claim that financial punishment was abrogated are wrong. Their view may be refuted by the cases ascribed to great Companions of the Prophet. Neither the Qur’ān nor the Sunna can help them in supporting their claim, nor is there any consensus about it. Even if there were a consensus, it would have no power to abrogate the Sunna ...”<sup>49</sup>

According to the evidence of IQJ, Islamic Law does condone the elements of financial penalty; both ‘fine’ and ‘seizure’ of property.

Having examined IQJ’s work, *TH*, it is possible to break down this *ta‘zīr* into 6 categories:-

#### i) Breakage

The *muhtasib* has the jurisdiction to break and destroy any forbidden assets that he sees fit. The story of Abraham, peace be upon him, as told by Allāh,<sup>50</sup> details the breaking of false stat-



ues into tiny fragments and IQJ presents this as evidence of the justification of such punishment.<sup>51</sup> The Prophet condoned the breaking of all clay vessels that were used for the preserving of alcohol,<sup>52</sup> this *ta'zīr* being employed to destroy the forbidden. The Messengers of Allah pursued the objectives of rooting-out and obliterating the forbidden; The Prophet maintaining that Allah ordered the breaking of musical instruments, statues and crosses.<sup>53</sup> Similarly, the prophets were also united upon destroying the same evil. The Sahabas also implemented this type of *ta'zīr* e.g. Abū 'Ubaydah requested that Anas bin Mālik break all alcohol jars when alcohol had been forbidden.<sup>54</sup>

IQJ cites the following as further evidence of the permissibility of this *ta'zīr*:-

The implementation of *ta'zīr* by Imām Aḥmad b. Ḥanbal, Abū Yūsuf, Muḥammad b. al-Ḥasan and Ishāq b. Rahawayah also other groups (*ahl al-ḥadīth*). Judge Shurayḥ was approached by a man who desired financial recompense for the breaking of his lure. The judge refused compensation on the grounds that the instrument was forbidden anyway.<sup>55</sup>

Imām Aḥmed was once asked for his opinion on the breaking of Lutes and Lures. His response was an affirmation of its justification, he also gave permission for stale bread to be broken up and discarded.<sup>56</sup> We may conclude that the author approved this type of punishment, deeming it to be a beneficial practice within the Islamic legal system.<sup>57</sup>

## ii) Destruction

The aim of this punishment, again implemented by the *muḥtasib*, is the destruction of forbidden objects. Any statues and pictures that are not permissible to the Islamic faith are unacceptable and thus subject to destruction. Imam Ali gave permission for this *ta'zīr* in order to deter evil work. He told Abu'l-Hayāj al-Asdī that the Prophet had sent him to destroy false statues and to level raised graves.<sup>58</sup> IQJ alludes to the Prophet's own use of this punishment; eg. demolishing the *Dirār* Mosque (erected to divide Muslims) in order to retain Islamic unity.<sup>59</sup>

The *muḥtasib* has the power to destroy the clothes of women whom he views as potential

seductresses, blackening their faces to prevent them from appearing in public. IQJ views this *ta'zīr* as the minimal form of financial penalty and explains that it can also be used in the case of literature that is deemed indecent.<sup>60</sup> Unsuitable books are those which threaten the morals and ethics of Islamic society and as such are damaging to the structure and therefore warrant destruction.<sup>61</sup>

iii) Tearing / Splitting.

The *muhtasib* may employ this *ta'zīr* upon tearable items that contravene what is permissible. Clothes, cloth, paper pictures etc. are all subject to tearing if they are inappropriate to Islamic morality. The Prophet split a gourd containing alcohol and ordered 'Abd Allāh b. 'Umar to find any more such objects in the market place and to eradicate them in a similar manner.<sup>62</sup> 'Umar b. al-Khaṭṭāb used this *ta'zīr* on finding a silk shirt on the back of 'Abd al-Raḥmān b. 'Awf's son. Silk is a prohibited material and even children may be punished if their clothing is unacceptable.

iv) Throwing out / discarding.

This *ta'zīr* is used by the *muhtasib* to deter the offender. The Prophet once ordered a man to throw away his gold ring<sup>63</sup> and in another case, he ordered a woman to release her camel because she had cursed it.<sup>64</sup> Umar b. al-Khaṭṭāb discarded milk that had been watered down by the vendor. IQJ recorded an incident when Imām Aḥmad was asked his opinion on the practice of chess playing. He disputed its permissibility and condoned the throwing away of the chess set when the players refused to detest.<sup>65</sup>

v) Confiscation

This form of *ta'zīr* could be utilised by the *muhtasib* to punish those who refused to carry out their duties. It was primarily implemented to deal with those groups of people who did not pay the zakat. The Prophet confiscated half of the wealth of those who refused to pay the *zakāh*.<sup>66</sup> IQJ mentioned Ibn Ḥabīb of the Mālikī school of thought's words in allowing this form of punishment to confiscate all of the wealth of a fraudster.



#### vi) Double penalty

The *muhtasib* is empowered to enforce a double penalty at his own discretion. IQJ offers evidence of this *ta'zīr* being practised by the Prophet and maintains that all six categories of 'Financial Punishment' can be justified in this way. The Prophet issued a double penalty on a man who had stolen an item. Rather than demanding the *ḥadd* punishment of *sariqa*; the cutting off of the hand, he gave a double penalty; feeling that the severity of the crime only warranted *ta'zīr*.<sup>67</sup> The Prophet also issued a double penalty to a person who kept an item belonging to another<sup>68</sup> and also to a man who had failed to pay the *zakat*.<sup>69</sup> IQJ concluded that the *muhtasib* has the right to enforce the various types of financial punishment on any offender who disobeys Islamic law. He has justified this *ta'zīr*, with evidence from the practices of the Prophet (peace be upon him), the Rightly-Guided Caliphs and others of the Companions.<sup>70</sup> Its objectives are the restraint and deterral of offenders in order to procure overall social equilibrium.

#### 3. Physical Punishment.

The *muhtasib* may apply this penalty to any adult offender whose misdemeanours warrant some severity. This *ta'zīr* is a physical deterrent which manifests itself in two forms.

##### a) *ta'zīr* causing bodily harm.

i) The death penalty (*ta'zīr bi'l-qatl*).

ii) Flogging. (*al-jald*).

iii) Shaving of the head.

##### b) *ta'zīr* restricting personal freedom.

i) imprisonment (*ḥabs*).

ii) Exile from the country of origin/ banishment. (*al-nafi*)

iii) Expulsion from the Market Place/The banning of Trade. (*al-ṭard*)

ra.) The death penalty (*ta'zīr bi'l-qatl*) can only be enforced by judges and others who have the required authority. The *muhtasib* may carry out the sentence, but IQJ states that he should not be given the authority to pass sentence.<sup>71</sup> Imposed upon the most serious of crimes, this

penalty raises conflicting opinion between jurists, who are often opposed to its implementation as a *ta'zīr* punishment. However, if it is impossible to protect others from a repeated offender who is undeterred by other forms of *ta'zīr* and it is the only remaining solution to safeguard the welfare of the local and surrounding communities, then Islamic Law sanctions this system of control. The Maliki school states that the death penalty is permissible in certain cases e.g.:-

- Spying for the enemy.
- The propagation of heretical doctrines
- Engaging in practices that serve to split the community
- Habitual wickedness that is not prevented by other measures.

IQJ reveals in *TH* that, the Shafi'ī and Ḥanbalī schools allow the death penalty to be imposed in the same cases for which it is allowed by the Mālikis. Imām Abū Ḥanīfa, however, condoned the death penalty for the following cases:-

- Habitual homosexuality.
- The murderer on whom qisas (the punishment for homicide and injuries) cannot be imposed
- The habitual theft of the same mans goods, the offender not being prevented by other punishments.

IQJ suggests that the following evidence justifies the existence of this penalty.

- In the *Ṣaḥīḥ* collection the Prophet recommended, if homage was being paid to two caliphs, the execution of the second of them.
- The prophet stated that whosoever should attempt to disunite the Islamic nation, may have his neck smitten by a sword.
- The Prophet also ordered the execution of one who revealed himself to be a continual liar.
- The Prophet ordered the death penalty for any man who married his stepmother.
- The Prophet permitted the execution of anyone who continually imbibed alcohol. He must have four prior warnings and if these failed to reform the offender, then the sentence should



be implemented.

It may be concluded that any offences relating to overt sexual depravity, the undermining of the Islamic state and the continual denial of the teachings of Islam may, at the discretion of the jurists, incur the death sentence.

## ii) Flogging.

This penalty is common in Islamic penal law and can be sentenced and carried out by the *muhtasib*. Its implementation is generally observed when a Muslim fails to perform his obligatory Islamic duties<sup>72</sup> e.g. prayer and is also used as a deterrent to one who poses a threat to the community.<sup>73</sup>

As a *ḥadd* punishment, the number of lashes may vary; eg. up to 100 for the previously unmarried person who commits fornication.<sup>74</sup> As a *ta'zīr* punishment, the maximum number of lashes is a controversial topic amongst the different schools, varying from 10 to 99 lashes. Ibn Taymiyya and IQJ examined various prophetic reports and concluded that the ḥadīth forbidding more than 10 lashes may have been misinterpreted rather than abrogated as some believed, "They saw this *hadith* as relevant to the relations between father and son, husband and wife, and master and servant, i.e. relationship in which one may need to use some means of punishment for disciplinary reasons. In such cases, if the appropriate means is beating, it must not exceed 10 lashes. But this report has nothing to do with the relationship between the individual and the state, and the amount of *ta'zīr* punishment, if it happens to be flogging, is left to the authority concerned."<sup>75</sup>

IQJ maintains that the total amount of lashes may be divided and thus issued on separate days, to enable the offender to return to the fulfilling of his obligatory duties.

Some traditional evidence of the imposing of this *ta'zīr*.

- The Prophet ordered that anyone having sexual intercourse with his wife's slave must be flogged.<sup>76</sup>

- Abū Bakr ordered the flogging of a man who was found sleeping with a strange woman. He

issued one hundred lashes.<sup>77</sup>

- ‘Umar Ibn Khaṭṭāb personally flogged a man who was guilty of overburdening his animal with baggage.<sup>78</sup>

### iii) Shaving of the Head.

This *ta‘zīr* is applied with the express purpose of preventing vanity. There is no prophetic evidence of this penalty, but it may have first appeared during the Caliphate of ‘Umar b. al-Khaṭṭāb; an era of prosperity that saw an increase in attention to personal appearance. Offences of seduction consequently manifested themselves and warranted a suitable amount of *ta‘zīr*. There is evidence that the caliph punished Nāṣr b. al-Ḥajjāj in this way in order to curb his flirtatiousness; his hair emphasising his attractiveness to women.<sup>79</sup>

## b) *Ta‘zīr* Restricting Personal Freedom:

### i) Imprisonment.

It is within the jurisdiction of the *muḥtasib* to confine offenders who are a menace to others.<sup>80</sup> Those who abandon their Islamic duties e.g. Prayer may be incarcerated, as may those whose offences are committed in public.<sup>81</sup> The *muḥtasib* has the power to confine a woman to her own home for no other offence than dressing seductively in the street.<sup>82</sup>

IQJ sanctions imprisonment as a *ta‘zīr* in relevant cases, where it may be more effective than flogging.<sup>83</sup> ‘Umar b. al-Khaṭṭāb, during the more prosperous era, bought a house in Makka and converted it into a jail so that offenders may be adequately detained<sup>84</sup>. ‘Alī b. Abū Ṭālib would confine any tribal member whose disobedience warranted this; asserting- “The aim of this restriction is the prevention of evil. The Islamic treasury should cover the living expenses of the offenders family until the time of his release.”<sup>85</sup>

### ii) Exile/Banishment

The purpose of this *ta‘zīr* is to remove the offender completely from his locality; the *muḥtasib* ordering this when it is beneficial to the general community.<sup>86</sup> The Prophet originally issued



the order for banishment, when he exiled “feminine males from Medina.<sup>87</sup> ‘Umar b. al-Khaṭṭāb also used exile as a punishment for Nāṣr b. al-Ḥajjāj when he banished him to Basra (Iraq).<sup>88</sup> He also sent Subaigh b. Asl to Kufa.<sup>89</sup> IQJ states that a ruler has the right to banish effeminate men, as this is a successful method of control. Where exile is not feasible, than these offenders must be imprisoned to prevent them from being hazardous to society.<sup>90</sup>

iii) The Banning of Trade.

The *muḥtasib* holds the right to prevent anyone from trading if they transgress the rules of market law. IQJ also attributes this particular power of *ta‘zīr* to the *‘ṣāhib al-sūq*,’ whose position is that of Market overseer. Any malpractice associated with trade may result in a short-term or permanent ban for the perpetrator.<sup>91</sup>

c) *Ta‘zīr* Using Fire.

This punishment may be issued by the Judge; the *muḥtasib* being eligible only for its enforcement. As in the case of other penalties, the *ta‘zīr* is intended to combat the spread of evil within society; both acting as a deterrent to potential offenders and hindering the re-offending of the initial perpetrator.

IQJ has collated evidence from prophetic verses and from other scholars to justify the permissibility of *ta‘zīr* involving fire.

The Prophet ordered the burning of the two orange dresses, belonging to ‘Abd Allāh b. ‘Umar by placing them in a burning kiln.<sup>92</sup> He gave orders to burn all the booty that was retained by the soldiers, the latter not having had the Prophet’s permission. The Prophet declared his desire to burn the houses of those Muslims who failed to attend congregational prayer, however he refrained from this act for the sake of the resident women and children.<sup>93</sup> ‘Umar offended the Prophet by reading the Torah (al-Tawrat) and was subsequently ordered to burn the relevant pages.<sup>94</sup> These references demonstrate the Prophet’s philosophy of destroying that which is evil and forbidden. The Ṣahāba, as well as the Caliphs, followed the teachings of the Prophet pertaining to the implementation of punishment with fire. Imām Aḥmad, a

respected scholar, stated the permissibility of employing fire as a cleanser of evil, illustrating his approval by permitting the burning of all books which were designated as unsuitable by Sacred Law.<sup>95</sup> IQJ reveals (in *TH*) that Imām Aḥmad viewed such literature as the ultimate offence for the *umma*.<sup>96</sup>

In conclusion, both statutory punishments (*ḥudūd*) and discretionary punishments (*ta'zīr*) are imposed in order to ordain what is fitting and proscribe what is improper within the Islamic society. IQJ acknowledges that both reward and punishment are homogeneous with the deed in Allāh's Sacred Law. Any punishment must be designed to suit the crime, thus the varying forms of *ta'zīr* have been established to deal with such a range of offences, generally having the authority to classify an individual offence and order its corresponding penalty. IQJ corroborates his ideologies with reference both to prophetic verses and the views of other scholars, maintaining that the law of *ta'zīr* must serve both as a preventative deterrent and a reformative mechanism that aims to enforce the moral standards recommended by Islamic Law, and ultimately it is the role of the *muḥtasib* to uphold this.



## ENDNOTES TO CHAPTER 4

1. Izzi Dien; *The Theory and the Practice of Market Law in Medieval Islam*, p36.
2. Mohammed Al-Mubarak; *al-Dawla wa Nizām al-Ḥisba 'inda Ibn Taymiyya*, pp.84-92.
3. M.I.H.I. Surty, *The Institute of Hisba*, pp.5-18.
4. *When you judge between people, judge with justice.* Qur'ān 4:58. We are also told: *And this He commands you; judge you between them by what Allāh revealed and follow not their vain desires.* Qur'ān 5:49. Justice is the binding principle of Islam, as the Prophet said: "Allāh has reserved a great place in the Hereafter for those who met out justice to themselves, their families and in their work." Reported by Muslim.
5. A dispenser of justice and righteousness.
6. A wicked oppressor.
7. *al-Ṭurūq al-Ḥukmiyya*, p.7. (from hence forth it will be abridged to *TH*)
8. *TH*, p.4
9. Ibn Qayyim al-Jawziyya; *Aḥkām Ahl al-Dhimma*, vol.1, p.208.
10. *ibid*, vol.1, p.242.
11. Refer to: Qur'ān 5:51.
12. Refer to: Qur'ān 58:22
13. *Aḥkām Ahl al-Dhimma*, vol.1, p.242.
14. *ibid*
15. The *muḥtasib* must be sane and adult.
16. *A'lām al-Muwaqqi'īn*, vol.3, p.15.
17. *ibid*, vol.2, p.22.
18. *A'lām al-Muwaqqi'īn*, vol.2, p.157.
19. Muslim, *Ṣaḥīḥ*, no.49.
20. *TH*, p.3
21. *Ighāthat al-Luhfān*, vol.2, p.177.
22. In cases of conflict, accept the greater of the two goods and the lesser of the two evils. *TH*, p.6
23. *TH*, p.6
24. *A'lām al-Muwaqqi'īn*, vol.2, p.163.
25. *ibid*, vol.4, p.199.
26. Qur'ān 7:199.
27. *Zād al-Ma'ād*, vol.3, p.162.
28. Ibn Abī Shayba, *al-Muṣannaf*, vol.8, p.240.
29. *A'lām al-Muwaqqi'īn*, vol.3, p.15.
30. *A'lām al-Muwaqqi'īn*, vol.2, p.161.
31. *al-Qāmūs al-Muḥīt*, vol.2, p.152; Dr. Qalaji, *Ibn Taymiyya's Encyclopedia of Fiqh*, vol.1, p.448.
32. *TH*, p.77; Ibn Qudāma al-Maqdisī; *al-Mughnī*, vol.8, p.324.
33. *TH*, p.77
34. *A'lām al-Muwaqqi'īn*, vol.2, p.29; *TH*, p.77.
35. Ibn Nujaym; *al-Ashbāḥ wa'l-Nazā'ir*, vol.2, p.164.
36. *A'lām al-Muwaqqi'īn*, vol.2, p.48.
37. *Ighāthat al-Luhfān*, vol.1, p.331.
38. This is the opinion of the Ḥanbalī madhhab.
39. This being the opinion of Abū Ḥanifa, al-Shāfi'ī and Aḥmad.
40. This is the opinion of al-Shāfi'ī and Aḥmad.
41. This is the view of Ibn Taymiyya and IQJ; *TH*, p.77.
42. Muslim; *Ṣaḥīḥ*,

43. TH, p.77.
44. Ibn Bassām; *Nihāyat al-Rutba*, p.14.
45. TH, p.16
46. See: Qur'ān, 9:118
47. TH, p.79.
48. TH, p.177; *al-Ḥisba fi'l-Islam*, p.54.
49. al-Faqhi; TH, pp.287-288.
50. Qur'ān 21:58.
51. TH, p.97.
52. TH, p.97
53. Aḥmad, *al-Musnad*, vol.5, p.257.
54. al-Bukhārī; *Ṣaḥīḥ*, no.2464.
55. TH, p.101.
56. TH, p.93.
57. TH, p.92.
58. TH, p.99; Muslim, *Ṣaḥīḥ*, no.969.
59. TH, p.80.
60. TH, p.116.
61. TH, p.107.
62. TH, p.110; *al-Musnad*, vol.2, 132.
63. Muslim, *Ṣaḥīḥ*, no.2090.
64. *al-Ḥisba fi'l-Islām*, p.60.
65. TH, p.92.
66. TH, p.86.
67. TH, p.80.
68. TH, p.80.
69. TH, p.80.
70. *A'lām al-Muwaqqi'in*, vol.2, pp.117-118.
71. TH, p.9.
72. Ibn Marshad; *al-Ḥisba*, p.155; al-Qarnī; *al-Ḥisba fi'l-Mādī wa'l-Ḥādīr*, vol.1, p.138.
73. TH, p.10.
74. al-Tirmidhī, *Sunan*, vol.4, p.54.
75. Ibn Taymiyya; *al-Siyāsa al-Shar'iyya*, p.125.
76. al-Tirmidhī; *Sunan*, vol.4, p.54.
77. *al-Ḥisba fi'l-Islām*, pp.45-46.
78. ibid.
79. *A'lām al-Muwaqqi'in*, vol.4, p.374.
80. TH, p.19
81. TH, p.10.
82. TH, p.8.
83. TH, p.1.
84. *Ighāthat al-Luhfān*, vol.p.333.
85. Abū Yūsuf; *Kitāb al-Kharaj*, p.150.
86. TH, p.77.
87. TH, p.79.
88. TH, p.79.
89. *al-Ḥisba fi'l-Islām*, p.46.
90. *A'lām al-Muwaqqi'in*, vol.4, p.377.



91. *TH*, p.4
92. *TH*, p.6.
93. *TH*, p.2.
94. *TH*, p.9.
95. *ibid*
96. *ibid*

## **Chapter Five**

**A focus Upon Ibn Qayyim al-Jawziyya's ~~of~~ manuscript**

**5.1 Intorduction**

**5.2 IQJ's Methodology of Critical analysis**

**5.3 Sources of IQJ's works**

**5.4 Copies**

**Endnotes**



## Chapter 5. A Focus upon *Al-Ṭuruq al-Ḥukmiyya*

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### 5.1 Introduction

Having examined the author's general philosophy, the writer intends this section as a specific enquiry into this important text.

#### *i. Reasons for Writing:*

The Shāfi'ī and Ḥanbalī schools of thought were considered to be the two most widespread in Egypt and Syria during IQJ's life. However, in *TH* he makes repeated references to Imām Mālik and prominent scholars of the Mālikī school, particularly in the area of price setting. Scholars of North West Africa and Andalusia feature prominently and *TH* can be found among the papers entitled *al-Masā'il al-Tarablūsiyya* which was written by IQJ for the people of Tripoli. Such evidence leads one to conclude that IQJ wrote this book for the people of North-West Africa. Muḥammad bin Aḥmad bin Qāsim al-Uqbānī, a North-West African scholar (d.871AH/1466AD) made reference to the book when discussing the subject of *ḥisba*. The writing of *TH* was a response to a question from North-West Africa that was put forward to IQJ, namely: Is it permissible for a judge to make a judgment using only circumstantial evidence? So IQJ replied to this question by writing *TH*.

#### *ii. Time of Writing*

IQJ wrote his book *TH* after the death of his mentor, Ibn Taymiyya in 728AH. There is weighty evidence to support this opinion; such as:

1. *TH* is mentioned in *Masā'il al-Ṭuruq al-Ṭarabulsiyya*, when answering the people of North West Africa. It would seem evident that had Ibn Taymiyya still been alive, any correspondence on such matters of legality would have been addressed to him, or at least referred for his personal scrutiny. The Sheikh was held in high esteem and it is unlikely that his pupil would be consulted in preference to the renowned master.

2. When referring to the ideas stated by Ibn Taymiyya, IQJ uses a terminology which suggests that he had passed away by then; e.g. 'may Allāh have mercy on him,' or, 'may Allāh sanctify his soul.'<sup>1</sup>

### *iii. Renown and Methodology:*

*TH* is considered to be one of IQJ's greatest works. It is unique in so far as it covers the field of Islamic political law and the methodology of establishing proof and *ḥisba*. Indeed this book is perhaps the first of its kind, particularly in its dealing with the subject of passing judgment by employing deduction to establish justice, and its examination how the *muḥtasib* works within the boundaries of the law when using this methodology to implement the objectives of the *sharī'a*. The book also contains a comprehensive summary of the principles of judicial investigation and the regulations for evidence and the etiquettes of the judge and the *muḥtasib*, as well as their rights and their duties. This book combines the judicial rulings and evidences from Islamic law, and it brings together the aims of the religion and the objectives of Islamic law and detailing solutions to emerging and changing issues and for these reasons *TH* is considered unique among those books dealing with the rulings on evidences in Islamic jurisprudence. IQJ also discusses many related branches of jurisprudence whilst relating the laws of *ḥisba* and the methods of its management.

## **5.2 IQJ's Methodology of Critical Analysis**

The Author address issues in a succinct, yet systematic manner. He refers to the sayings of the Pious Predecessors (*salaf*) and the Imams of the varying schools of thought, then delineates the points about which there is either agreement or controversy. In the case of that latter, IQJ pays



particular attention to the details of the differing opinions, looking at the evidence for each and distinguishing between them in terms of authenticity. He analyses each facet critically, even redressing issues, until he concludes with an outcome that is based on the evidence which carries most weight. His research is rooted unerringly in evidence gleaned from the Qur'ān and the Sunna. *TH* reflects subject matter and methodology that are irrefutably offered for the advancement of the muslim nation.<sup>2</sup> The establishment of an ordered society will result in cultural and political security, thus justice is pivotal to the maintenance of these. Allāh revealed this through the book, his messengers and the four rightly guided Caliphs. Abū Bakr famously stated, "Those who are weak, are strong in my eyes because there is truth and justice for them. The strong amongst you are weak, because truth and justice will prevent them if Allāh wills." Justice had been established in the Islamic state when the legal system was corresponded to the Sacred Law. Indeed, history testifies that the muslim judges came to exemplify true justice.

*Contents of the Manuscript TH:* This manuscript deals with:-

- justice
- *ḥisba*
- prosecution
- evidence - irrefutable, circumstantial etc.
- methods of deduction - all of which are detailed to guide the judge and muhtasib in the enactment of the duties.

Deduction, circumstantial evidence and particularly Islamic politics are discussed in detail. IQJ illustrates the various ways in which evidence can be used and he emphasises that there is no limit whatsoever to any specific number.

*Main Themes:*

- Concept of prosecution and numerous types of misdeeds.
- Punishments: *ḥudūd*, *qisās* and *ta'zīr*.
- The Ruler: method of implementing justice

- *Ḥisba* as a type of justice, particularly in the cases of rulings between people where no case needs to be brought forward for prosecution.

He describes the importance of *hisba* as being a trust (*wilāya*) and that the trustee of *hisba* must prevent and forbid evil in the society, whether that be in terms of worship, trade, social, welfare or healthcare. He discussed the concept of *ta'zīr*, and the employment of financial punishments in *ta'zīr*. He concludes his work by discussing the means of drawing lots as a method of ruling. He illustrates situations where this is applicable, and offers evidence from the *sharī'a* to justify this.

*The Contents of the Edited Portion of the Manuscript:* The themes of TH revolve around the establishment and administration of justice and the fact that it takes place either through litigation (by way of cases presented before the judges and presided over by the chief judge), or by way of direct intervention on the part of the *muḥtasib*, which does not entail legal action (but simultaneously protecting the rights of Allāh and those of the people). IQJ presents the subject of *hisba* by dividing TH into a number of unspecified sections, each pertaining to a topic that is subsequently analysed. For the sake of clarity, and ease of reference the following titles have been added to each section:

- The administration of justice which does not depend on legal action
- Public duties: Generalities and particulars
- The Acquisition of commodities
- Pricing regulations
- Regulations for the renting out of inns on the roadside
- Scholars forbidding the participation of partners
- The responsibility of the authorities for ensuring that employers carry out their duties.
- The ruler takes care of his workers
- The rules and regulations concerning partnerships
- The reasons why price fixing did not take place in the time of the Prophet.
- The strife amongst workers that results from price fixing



- The limitation of price fixing
- The principles of the limitation of price fixing in the opinion of those who see it as permissible.
- The necessity of tending to the needs of those who are in distress
- The need for punishments to be in accordance with the dictates of the situation
- Financial punishments
- The rights of Allah and its composite parts
- Subversive literature
- The opinion of the scholars with regard to those who permit evil
- The prevention by the authorities of the mixing between men and women in the market place.
- The prohibition of the authorities of pigeon racing from the roofs of people's houses
- Further regulations regarding pigeons
- Gastric ailments and the retreat of the afflicted person

### **Why *TH* is attributed to IQJ:**

The conclusion that author composed *TH* rests on the following reasons:-

- 1 - The style and methods of composition are comparable to those evident in IQJ's other works
- 2 - The fame of the book during the time of the author. His student Ibn Rajab counted this book among those which IQJ had written and also indicated that it comprised one volume.<sup>3</sup>
- 3 - The use of direct quotations from *TH* in the works of a number of scholars are attributed to IQJ. Among these is Alā' al-Dīn Abu'l-Ḥasan al-Naradmī (d.885AH/1480 CAD)

### **5:3 Sources of IQJ's Work**

*TH*, according to IQJ, is composed of other books, well-known narrations and the sayings of wise men. More than sixty two sources are used. The author refers to the titles of some of his sources and he quotes Ibn Taymiyya without specifically mentioning him. In a few cases, he quotes his sources directly or indirectly without stating authors or titles.

An attempt is made to present prominent books, which the author has quoted frequently in his work. Some of the sources are quoted directly and others quoted with the authority of other scholars:

(A) Published Sources (22)

- *al-Tārīkh wa'l-Ma'rifa*, by Abū Yūsuf Ya'qūb ibn Sufyān al-Fasawī .4
- *al-Ja'mah*, by Ibn Wahab.<sup>5</sup>
- *Kitāb al-Nawādir*, by Muḥammad b. Ḥassān al-Jawharī.<sup>6</sup>
- *al-Mughnī*, by Ibn Qudāma al-Maqdisī.<sup>7</sup>
- *al-Bayān*, by Ibn Rushd al-Qurtubī.<sup>8</sup>
- *al-Tārīkh al-Kabiir*, by Muhammad b. Ismail al-Bukhārī.<sup>9</sup>
- *al-Muharrar*, by Abu'l-Barakat ibn Taymiyya.<sup>10</sup>
- *al-Muhala*, by Ibn Hazm.<sup>11</sup>
- *al-Mukhtaṣar*, by al-Kharqī.<sup>12</sup>
- *Masā'il al-Imām Aḥmad*, by Abū Dāwūd.<sup>13</sup>
- *Masā'il al-Imam Aḥmad*, by 'Abd Allāh, son of Imām Aḥmad.<sup>14</sup>
- *al-Wādiḥ fi'l-Sunan wa'l-Fiqh*, by 'Abd al-Mālik b. Habīb al-Sulamī.<sup>15</sup>
- *al-Mudawana al-Kubrā*, by 'Abd al-Salām b. Sa'īd al-Tanukhī.<sup>16</sup>
- *al-Muwatta*, by Mālik b. Anas al-Asbahī.<sup>17</sup>
- *al-Jāmi' al-Ṣaḥīḥ*, by Muḥammad b. Ismā'il al-Bukhārī.<sup>18</sup>
- *Ṣaḥīḥ Muslim*, by Muslim b. al-Hajāj al-Naysabūrī.<sup>19</sup>
- *Sunan*, by Abū Dāwūd al-Sijistānī.<sup>20</sup>
- *al-Jāmi' al-Ṣaḥīḥ*, by Muḥammad b. 'Īsā al-Tirmidhī.<sup>21</sup>
- *al-Sunan al-Kubra*, by Aḥmad b. Yazid b. Ali al-Nasā'ī.<sup>22</sup>
- *Sunan Ibn Māja*, by Muhammad b. Yazid ibn Māja.<sup>23</sup>
- *Sunan al-Dāraqutnī*, by al-Daraqutnī.<sup>24</sup>
- *Sunan al-Kubra*, Abū Bakr Aḥmad b. al-Hussayn al-Bayhaqī.<sup>25</sup>

(B) Unpublished Manuscripts (32)

*al-Shāfi*, by Abū Bakr 'Abd al-'Azīz



*al-Funūn*, by Ibn ‘Aqīl al-Ḥanbalī.

*Kitāb al-Qadā*, by Shuraih b. Yūnus

*al-Qadā bi Shāhid wa’l-Yamīm*, by al-Baghdādī

*al-Majmū‘a*, by Ibn Kanāna

*al-Jam‘a*, by Aḥmad b. Muḥammad al-Khallāl

*Tafsīr Ibn Mazyan*, (*Tafsīr al-Muwata*), by Abū Zakariyya Yaḥya b. Ibrāhīm b. Mazyan

*al-Tāliq al-Muharar*, by Ibn Taymiyya

*al-Nawāzil*, by Suhnun Abū Sa‘īd al-Tanukhī.

*al-Nuwad wa’l-Ziyādat*, by Abū Muḥammad b. Abū Zayd al-Qayrawānī.

Masā’il al-Imām Aḥmad

Riwāyat Aḥmad b. Abū ‘Ubayd

Riwāyat Aḥmad b. al-Qāsim

Riwāyat Aḥmad b. al-Hussain al-Tirmidhī.

Riwāyat Ishāq b. Ibrāhīm

Riwāyat Ishāq b. Mansūr al-Kawsadī.

Riwāyat Ismā‘īl b. Sa‘īd al-Shalanjī.

Riwāyat Ja‘far b. Muḥammad al-Nasā’ī.

Riwāyat Abu’l-Hārith.

Riwāyat Ḥarb.

Riwāyat Ḥanbal b. Ishāq.

Riwāyat al-Khallāl.

Riwāyat Abū Saqr

Riwāyat Abū Ṭālib

Riwāyat ‘Abd Allāh b. Muḥammad al-Baghawī.

Riwāyat ‘Alī b. Sa‘īd

Riwāyat al-Faḍl b. ‘Abd al-Sumūd

Riwāyat Muḥammad b. al-Hassān

Riwāyat al-Marwazī.

Riwāyat b. Mushaysh

Riwāyat Muhanna b. Yaḥya al-Shāmī.

Riwāyat ‘Abd al-Mālik al-Maymūnī.

Riwāyat Yūsuf b. Mūsā.

### **Other Authors Published Version of TH**

This manuscript has had many published editions. The first publication, was by Dār al-Kutub al-‘Arabiyya in the 20th century, and was edited by Muḥammad ‘Abdu. In his version there appear to be many errors and even some of the text is omitted. This was perhaps due to the poor quality of the manuscript, that was used.<sup>26</sup>

Al-Faqhi followed from Muhammad ‘Abdu’s work and edited a book which rectified the mistakes that he had identified. He used two manuscripts in his edition to do this. The first manuscript was undated, but al-Faqhi theorised that it was more likely to have been written at the beginning of the 14th century AH, and the second manuscript in 1338 AH. This is the first work to mention the manuscripts which the author used, published in 1953 AD.

Subsequently Dr. Jamil Ghazi published the book in 1977, to correct the al-Faqhi’s errors. He claimed to have found an earlier version of the manuscript dated 811AH, 60 years after the death of IQJ. He also claimed it to be the oldest discovered manuscript, but it transpired that this was a copy of the original 811AH script, which was copied in 1303 AH. However, both books were edited using the ancient manuscripts.

Ahmed al Za’wbi based his work on the aforementioned books, without referring to the old manuscripts. Other authors followed this second methodology.

A third type of published book emerged, compiled by authors who published without reference to the manuscripts, nor even to the previous publications! An example of such a writer is Ibrāhīm Ramaḍān, Zakariyya ‘Aumayruat, Hazim al-Qāḍi, Bahij Ghazawi and Bashir Muhammad ‘Ayun.



The following books have been used in compiling into conserting the manuscripts for TH

-Tārīkh al-Adab al-‘Arabī.<sup>27</sup>

-al-Maktab al-Azharia.<sup>28</sup>

-Fahras Makhtūtāt Jāmi‘at al-Malik Sa‘ūd.<sup>29</sup>

-Fahras al-Masawarat bi Qisim al-Makhtūtāt.<sup>30</sup>

-Fahras Maktabat, Chesterbetty.<sup>31</sup>

-Kitab al-Thābit.

Original Copy that has been used in this Research:

**Saudi Arabia: ‘Arif Hikmat**

MS no. 159-(A)

Subject of MS: Islamic politics

Title of MS: al-Ṭuruq al-Ḥukmiyya fi’l-Siyāsa al-Shar‘īa

Location of document written: Hamat, Syria

Copying start date: 24th/Shawwāl/797AH

Copying finish date: 24th/Dhu’l-Qa‘da/797AH

Number of pages: 293 L

Lines per page: 14

Author: Muḥammad b. Abū Bakr b. Ayyūb, Ibn Qayyim al-Jawwziya

Copyist: ‘Abd al-Raḥmān b. Aḥmad b. ‘Abd al-Raḥmān al-Tedmori

Description:

- The first page contains names of those to whom the book belonged, and also some untidy markings.
- In the main body of the text there are commentaries and notes.
- The text has indexed tables which appear to be more recent additions to the main text because they are written in a different font.
- There is also is a description of the author which appears to be written in a different font.
- The writing is of an old style, and dots appear to be missing from some of the letters. It is

written as (*naskh*).

- There are also some blotches of ink throughout the text.
- The last page has some notes about the author and is believed to be recent in comparison to original manuscript.
- There also is some notes comparing with the original document.

#### 5.4 Copies of the Arabic manuscripts used in the study

##### 1 Dublin: Chester Beatty Library

MS no. 5013

Subject of MS: Rules of guidance for governors

Title of MS: al-Ṭuruq al-Ḥukmiyya fi'l-Siyāsa al-Shar'īa

Location of document written: Unknown

Copying start date: Unknown

Copying finish date: (claimed) 19th/Dhu'l-Hijja/850AH (7/March/1447CE)

Number of pages: 151 L

Lines per page: 18

Author: Muḥammad b. Abū Bakr b. Ayyūb, Ibn Qayyim al-Jawwziya

Copyist: Unknown

Reviser: Karl Brockelmann

During the conducting of personal research, the writer discovered a clear which appears to have been written by a student. Each time the Prophet is mentioned, he sends peace and blessings (*ṣalawāt*) on him and everytime the followers are mentioned he asks God to have mercy on them. The handwriting is legible, and there are 422 differences between this copy and the original.

The writer spoke to his supervisor Dr Izzi Dien regarding the dating of the manuscript by the library as circa 850AH, 19 Dhu al-Hijah, which was referenced by Brockelmann ii 106 suppli ii 126.



It is apparent that there is a distinct discrepancy here that the 'tamaluk' or 'belonging' marks displays the dates 826AH and 833AH suggesting that the 850AH is erroneous.

Description:

- First page has some water dampness on the left hand side. There are also three consecutive owners of the manuscript. The first being in 826 AH, the second in 833AH and the final one 950 AH.

Main body of the text contains some commentaries and notes.

- The writing is of an old style, clear scholarís (naskh)
- The first few pages of the text display damp damage.
- Last page of the manuscript has a finishing date by the copyist:-13th of Dhu'l-Hijja 800AH, disproving Brockelmann's date of 19th Dhu'l-Hijjah 850AH.
- At the end are two extra pages which have some 'belonging' marks, the first in the year 953AH and the second in the year 969AH.

## **2 Kuwait: Ministry of Awqaf/Manuscript dept.**

MS no. 219 (kh)

Subject of MS: Rules for Governors

Title of MS: al-Ṭuruq al-Ḥukmiyya fi'l-Aqdiya al-Sharī'a

Location of document written: Unknown

Copying start date: Unknown

Copying finish date: Thursday/6th/Jamad al-Awwāl/1226AH

Number of pages: 143 L

Lines per page: 22

Author: Muḥammad b. Abū Bakr b. Ayyūb, Ibn Qayyim al-Jawwziya

Copyist: 'Abd al-Raḥmān b. Nāṣir b. Bassām

Description:

- First page has some missing words, the title is different. In the writer's opinion, the person who wrote this title is al-Sheikh Ibn al-Duhayan al-Kuwaiti, because there are 'belonging' marks in evidence which were written in the same handwriting as the title.
- There is very little commentary and the main body of manuscript shows damp damage on

the edges, and small blotches of ink.

- The writing is of an old style, clear scholar's (*naskh*).
- Last page of the manuscript has some dampness.
- It also displays the date of the finishing of the document.

### 3. Saudi Arabia: King Fahd Library.

MS no.44/86

Subject of MS: Unknown.

Title of MS: *al-Ṭuruq al-Ḥukmiyya*.

Location of Document written: Unknown.

Copying Start Date: Unknown.

Copying Finish date: Tuesday 13th Rajab, 1227AH.

Number of Pages: 212p.

Lines per Page: 23.

Author: Muhammad b. Abū Bakr b. Ayyūb b. Sa'īd al-Zur'ay, Ibn Qayyim al-Jawziyya

Copyist: 'Abd al-'Azīz b. 'Abd al-Latīf b. Muḥammad b. Ma'auf al-Bahili.

Description:

- On the first page the title of the book is only *al-Ṭuruq al-Ḥukmiyya*. The name of the author Ibn Qayyim al-Jawziyya, and there are notes by the judge of Makka, whose name is Ibn Duhaysh. He compared this copy and al-Faqhi's published book, and he advised to republish it and take benefit from his manuscript, because it was necessary to correct al-Faqhi's mistakes. There is also a 'belonging' mark to this Judge in 4th Sha'bān, 1353AH. Also there is a stamp mark from Saudi Library from Riyadh, MS no.44/86, 24th Jamad Awwal, 1372AH.
- The main text has a lot of comments and notes, as well as ink blotches.
- The writing is of an old style, clear scholar's (*naskh*).
- Last page of the manuscript has some unclear ink blotches and the name of the person who wrote it and the finishing date. The Judge put his comparison notes with al-Faqhi's book and wrote a note giving the date of completion, 25th Sha'bān, 1360AH.

### 4. Kuwait: Ministry of Awqaf/Manuscript Dept.



MS no.174(kh)

Subject of MS: Rules for Govenors.

Title of MS: al-Ṭuruq al-Ḥukmiyya fi'l-Siyāsa al-Sharī'a.

Location of Document written: Unknown.

Copying Start Date: Unknown.

Copying Finish date: 1228AH.

Number of Pages: 158L.

Lines per Page: 21.

Author: Muhammad b. Abū Bakr b. Ayyūb b. Sa'īd Ibn Qayyim al-Jawziyya

Copyist: None

Description:

- First page 'belonging' marks written by the same handwriting as the one who wrote the title. The title, al-Ṭuruq al-Ḥukmiyya is written in red. There is dampness on the front. There is a belonging mark saying, 'Abd Allāh b. Khalaf b. Duhayyān al-Ḥanbalī, in Dhu'l-Hijja, 1313AH. We also have *waqf* to people of knowledge in 11th Shawwāl, 1324AH. Two Encyclopedia Library stamsp from Ministry of Awqaf.
- The writing is naskh clear writing.
- There is some commentary and some missing words. The main body, the titles of the chapter in red. There is some dampness.

##### 5. Dār al-Kutub al-Miṣriyya: Egypt:

MS no.603

Subject of MS: Uṣūl al-Fiqh.

Title of MS: al-Ṭuruq al-Ḥukmiyya fi'l-Siyāsa al-Sharī'a.

Location of Document written: Unknown.

Copying Start Date: Unknown.

Copying Finish date: 1302AH.

Number of Pages: 217l.

Lines per Page: 15.

Author: Muhammad b. Abū Bakr b. Ayyūb b. Sa'īd al-Zur'ay.

Copyist: Aḥmad al-Masirī.

Description:

- Some papers lost at the beginning of the manuscript.
- The main body of the script is very similar to the original, but there are many missing words.

Very little commentary.

- The writing is of North West Africa style and clear, but some words are unclear. He puts spaces between two chapters without writing chapter notifications.
- Last page has some ink blotches and 'belonging' marks to Najm al-Dīn al-Maltī.

The other manuscripts were compared with the manuscript original and where indicated as following

manuscript no. 1 =

manuscript no 2 =

manuscript no 3 =

manuscript no 4 =

manuscript no 5 =



## ENDNOTES TO CHAPTER 5

1. See: al faqi, *TH*, p.150.
2. Qur'ān, 57:25.
3. *Dhayl Ṭabaqāt al-Ḥanābila*; vol.2, p.450.
4. Edited by Jalāl Mansūr; Dār al-Kutub al-'Almiyya, 1999.
5. Published, one part only.
6. Edited by al-Murād Muḥammad, Dār al-Qalam, Damascus, 1993.
7. Edited by Dr. al-Turkī, Cairo, 1986.
8. Edited by Hagi Muḥammad, Dār al-Gharab al-Islāmī, 1985
9. Dār al-Kutub al-'Almiyya
10. Dār al-Kitāb al-'Arabī, Beirut.
11. Edited by Iḥyā' al-Turāth al-'Arabī, Dār al-Afāq al-Jadīd.
12. Dar al-Kitāb al-'Arabī, Beirut.
13. Tahqiq b. 'Awadullāh, Maktabat Ibn Taymiyya.
14. Edited by Zuhayr al-Shawaysh, al-Maktabat al-Islāmī, Beirut.
15. Edited by 'Azīz al-Idrīs, Dār al-Ḥusayniyya, al-Ribāt, 1994.
16. Dār al-Kutub al-'Almiyya, Beirut.
17. Edited by Fu'ād 'Abd al-Bāqī, Dār al-Fikr, Beirut.
18. Dār al-Salām, Riyad, 1999.
19. Edited by Fu'ād 'Abd al-Bāqī, Dār al-Ḥadīth, cairo 1991.
20. Edited by Sudqī Muḥammad, Dār al-Fikr, Beirut, 1994.
21. Edited by Aḥmad Shākir, Dār al-Kutub al-'Almiyya, Beirut.
22. Edited by Sulaymān al-Badrānī, Dār al-Kutuib al-'Almiyya, Beirut.
23. Edited by Sudqī Muḥammad b. Jamīl al-'Atar, Dār al-Fikr, Beirut, 1995.
24. Published.
25. Dār al-Ma'rifa, Beirut, 1992.
28. Faharas al-Kutub al-Mawjuda bi'l-Maktabah al-Azhariyya (1947AD/1366AH), Mata Ba'at al-Azhar, 1947.
29. Qism al-Fiḥ al-Islāmī wa Uṣūluhu, Imādat Shu'ūn al-Maktabat Jam'at al-Malik Sa'ud, Riyad.
30. Markaz al-Markaz al-malik Faisal li'l-Buhūth wa'l-Dirāsāt, al-Adad al-Thānī, Second Print, 1994.
31. Dublin.

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# In Summary

## Chapter One:

### Introduction

A general background to the political climate in Syria and Egypt; illustrating a corrupt caliphate that led to the vulnerability of the nation. The situation was finally stabilised by the mamluks, who remained in power during the lifetime of the author.

### Political Environment

A more detailed assessment of the causes and effects of the conflicts with the crusades and the Mongols. This section emphasises the importance of political stability in all areas of social existence and outlines the problems raised within an atmosphere of disharmony and decreased spiritual awareness. There follows a resume of the internal power struggles and corruption within the mamaluk rule and IQJ's reaction to these; leading to an examination of the political role of the scholar and the academic environment and influences that were pertinent to the author.

### Religious Environment

A discussion of the development of diverse schools of thought and the spread of the Ash'arryy creed, with its inherent contradictions to the philosophy of IQJ. This section highlights the author's objective to "re-route" Islamic thinking.

### Social Environment

A break down of the class structure and a brief outline of how and why social ethics had undergone a shift in direction. This is revealed as having been detrimental to the people; further illustrating IQJ's reasoning for the need of reform and a return to the orthodox principles of Islam.

## Chapter Two:

### Name and Fame

An attempt to analyse the various forms of title afforded to the author and the writer's decision to refer to him as IQJ for the purposes of his dissertation. This section verifies the eminent position held by IQJ within contemporary academic circles.

### The Early Years

An examination of IQJ's family life, as he grew up in a pious and academic household in Damascus. This section offers some explanation of the author's eventual scholastic attainment. He was inspired by other family members, he displayed a commitment to obligation and mental skills which manifested themselves at a very early age, both in himself and in his own children.

### Scholastic Life

A perusal of IQJ's achievements from the age of six, outlining his mental ability and motivation to further his own knowledge and that of others. This section reveals his adherence to the Islamic faith and resultant urge to learn as much as possible from scholars of repute.

### IQJ's Tutors

A closer examination of those individuals involved in the author's intellectual advancement.

### IQJ's Students

This section outlines some of his most distinguished pupils, their personal achievements and their tributes to their teacher. Also examined is IQJ's insatiable appetite for collecting other scholarly works and the resultant collation of a vast academic library; the latter enabling him to study diverse schools of thought and draw his own well-informed conclusions.

### Tributes to IQJ



The specific tributes, made by eminent scholars, emphasise IQJ's status as a great philosopher and writer, revealing the positive influences of Ibn Taymiyya on the life and work of the author. It is also evident that IQJ had little need to travel in order to study because Damascus housed all the resources necessary for him to attain enlightenment.

### Literary Technique

This section deals with IQJ's unerring quest for the implementation of authentic evidence. His methodology entails the scrutinising of the Qur'an and sunna as a means of collating satisfactory 'proofs' for his ideologies.

### Character and Faith

An examination of IQJ's personality-a factor that can not be divorced from his dedication to Islam. He was a man of strong principle and thus his character reflected virtuous qualities that were not contradictory to his creed.

### Author's Achievements

This is a resume of his life's work, culminating in a comprehensive list of his written texts; spiritual and academic.

## Chapter Three:

### Hisba in Arabic

This explores to define the word in terms of its various roots and derivations, examining six connotations in order to explain Hisba both in the context of its literal meaning and that of its function within shari'a.

### The Nature and Aims of Hisba

This part outlines the proofs evident in the Qur'an and Sunna, detailing examples of its implementation. It summarises the aim of Hisba as a mechanism by which the ideals of the Islamic faith can be met. This section identifies the required abilities and character of one who is to perform Hisba and the methods he must employ to ensure public adherence to the orders and prohibitions of shari'a.

### **Al-Ma'ruf and Al-Munkar - an Arabic perspective**

**This section provides definitions of the terms and examines those facets of life which are either desirable or abhorrent in the context of Islam.**

### **Hisba in Islamic Legal Terminology**

**This section provides closer reference to the principles of enjoining good and prohibiting evil and attempts to describe the essentials with reference to prophetic verses. The writer looks closely at the ruling, identifying three areas of muslim obligation - specific, general and undefined; the implementation of which divided varying schools of thought. This concludes with IQJ's own ruling of Hisba.**

### **The Institution of Hisba**

**This segment offers a general history as illustrated in a variety of written sources, which serve to highlight conflicting views amongst academics. Some perceive only the academic nature of the institution, whilst others, including IQJ see hisba as having an all-embracing essence that involves more than the obvious socio-economic factors. This section examines the development of the institution and the involvement of the Muhtasib.**

### **The Origin of the Office and the Duties of the Muhtasib**

**Here the Muhtasib's jurisdiction is discussed. This part of the chapter examines the scope of his authority and details his capacities as a law enforcer and upholder of public morality.**

## **Chapter Four:**

### **The Author's Methodology of Hisba**

**This section examines two differing methodologies employed by scholars and then focuses on IQJ's works, specifically T.H. which reveals the author's personal approach to hisba. IQJ's methodology is based on evidences from The Book, The Sunna and the works of the four Imams and displays an analytical approach which encompasses all relevant aspects, re-iterating the author's theory of the multi-faceted nature of hisba.**



### **Required Characteristics of the Muhtasib**

This outlines IQJ's theories as to the necessary features desirable in such an influential authority, he details the prescribed faith, personality, intelligence, commitment and etiquette which must form the attributes of the Muhtasib.

### **The Jurisdiction of the Muhtasib**

This lengthy section analyses the complex penal system over which the muhtasib holds sway. Included are the definitions of Hadd and Ta'zir punishments, the latter being examined in detail, as the implementation of these generally fall under the jurisdiction of the Muhtasib. The notions of prevention, deterrence and reform are of paramount importance, thus the aforementioned attributes of the Muhtasib are essential if these are to be implemented. Ta'zirs range from mild rebuke to severe corporal punishment and ultimately capital punishment, each being justified by reference to prophetic verses. This chapter concludes with IQJ's philosophy that the punishment must be designed to fit the crime and it is the role of the Muhtasib to ensure just practice in the upholding of Islamic law.

### **Chapter Five:**

#### **Focus on IQJ's Manuscript TH**

This ultimate section reflects the research conducted on the manuscripts of IQJ and other scholars. It illumines the aptitude of the author, not only as a literary master, but as a skilled analyst and devout Muslim. This chapter outlines the themes of TH and the sources used by IQJ in its compilation. Also included is mention of other published versions of TH and some controversial findings as to dating and authorship.

## **Conclusion**

Hisba maybe perceived as a social safety valve that prevents the overflow of negative circumstances which would be detrimental to the peace and prosperity of the Muslim nation.

The most salient points that have manifested themselves throughout this research into the life of IQJ and his perspective on hisba, maybe summarized as follows:-

His scholastic approach, sound intellect and open mind; when combined with his solid foundation in the Divine Law, facilitate his thorough and non-bigoted analysis of every issue.

IQJ concentrated in the theoretical aspect of hisba, detailing its concepts, rules, principles and objectives.

IQJ focused on the socio-economic aspect of hisba and stressed the importance of combining it with justice.

The research has revealed IQJ's comprehensive approach to hisba, as he emphasises the employment of both intellectual and traditional proofs. He achieved outstanding results because of his ability to conceptualise in a non-judgemental manner, whilst remaining constant to the ideals of Sharica. IQJ presents a positive image of Islam, not only in its ideal form but also in its practical manifestations, whilst simultaneously demonstrating that the true solutions to social problems lie in the faithful observance of the Divinely revealed laws. His didactic approach embraces not only the letter of the law, but upholds the fulfilment of the spirit of the Shari'a.

IQJ employs a scientific methodology in his discussion of the particularities of hisba relying on the proofs found in the Quran and the Sunna and the traditions handed down from the scholars of Islam. It is rare to find any matter discussed by IQJ which is not illustrated by prophetic reasoning. It also becomes apparent that IQJ shows a marked objectivity treatment issues in TH. He analyses the sayings of scholars and relates these



word for word, criticising those which are distortions of the shari'a, finally presenting a reformed opinion supported by correct evidence.

IQJ directs the rulers and the ruled to the importance of applying justice in all their dealings. Due to this, he stresses the prerequisites of a Muhtasib and the absolute necessity of him being a Muslim if hisba is to be implemented properly.

He reveals that:

Hisba is an Islamic system, due to its origins in divine law and its historical development. It is a safety valve, guaranteeing the security of the Ummah, the key to its welfare and the reason behind its success, honour and strength.

The duty of hisba is an Islamic duty founded upon the basis of the book of Allah and the sunna of the messenger of Allah and the consensus of the scholars of the Ummah.

Hisba is one of the most important devices of the state which it must nurture and implement, just like the other devices used in various aspects of life. There can be no doubt that the society which applies the system of hisba is the best of human societies.

The system of hisba has firm, unchanging goals which are not affected by any change in time or place, for it upholds principles which are built upon solid foundations and immutable divine teachings. The principles of hisba therefore cannot undergo any change nor can they be replaced. As for the means through which these principles are applied; these may undergo development and may be replaced with others depending on the circumstances of time and place.

The dominant characteristic of the system of hisba is an administrative one. It therefore necessitates an authority which will administrate its affairs and implement policies. It is not enough to expect people to apply hisba on their own, voluntarily. Uthman (RA) said, "Verily Allah induces obedience from the people through a government [which applies

the laws of the Qur'an] in a way which cannot be done through the Qur'an [on its own].”

The Muhtasib appointed by the authorities has powers which a voluntary Muhtasib does not have. The term Muhtasib is more properly applied to the employed functionary who implements hisba rather than to the volunteer.

As is clearly demonstrated in TH, enjoining what is right and forbidding what is wrong is a concept far broader and more comprehensive than hisba. Hisba cannot be compartmentalised into separate aspects of daily life, rather it is a comprehensive system, which combines a wide variety of domains and numerous fields of specialisation.



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## I. A glossary of Arabic terms used in the manuscript.

- ‘Adl An adjective which is derived from the word "adala (justice). Different scholar of law have established various definitions. According to Mawardi's definition it describes a person who is in a perfect religious and moral state’. Another author observes that adil is a person who obeys the moral and religious law; this last definition is the one, which has come to be accepted .The antonym of adl, is fisq.<sup>1</sup>[A214]
- Amīr (emir) (plur. 'Umarā', from the root amara, "to command"). It means commander; prince, emir; title of the princes of a ruling house.<sup>2</sup> [A230]
- Bayt. Also Dar. There is an important difference between bayt and dar and their implications. Dar is a serai with an enclosure. If a person purchases a dar, he is in entitled to the upper storeys and the offices because the term dar Signifies a place situated within an enclosure, of which the upper storey is a component part. Bayt, on the contrary, simply signifies any place of residence normally suitable for one family, as the covered shelter where one may spent the night. Contrary to the dar, the upper storey of a bayt can not be included in the purchase of a house, unless by express specification. If a person purchases a bayt in a dar, he is not entitled to the use of the road unless he has stipulated the rights and appendages, or the great and small accoutrements belonging to it. Marghinani,<sup>3</sup>[A218]

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<sup>1</sup> EI 2"1"209.

<sup>2</sup> Hans Wehr, A Dictionary of Modern written Arabic, p. 27; Islamic Desk Reference, p. 92.

<sup>3</sup> Hidayah:3:66-7. Hamilton, Hidayah:294. Ei2:1:139.



- Bayt al-Mal. The house of wealth or treasure. Not all state revenue belongs to the Bayt al-Mal, but only that which belongs to the community as a whole and the purpose for which it is used depends on the discretion of the imam or his delegate.<sup>4</sup>[A218]
- Bid'a. A novelty or innovation in religion; heresy or schism; a belief or practice for which there is no precedent in the time of the Prophet. Some Muslims feel that every innovation must be wrong but some allowance has to be made between a bid'a which is good (hasana) and one which is bad (sayyi'a).<sup>5</sup>[A240]
- Bid'a In a strict sense, the word indicates a belief or practice for which there is no precedent in the time of the Prophet (PBUH). According to al-Shāfi'ī, it means any innovation which runs contrary to the Qur'ān and the Tradition of the Prophet.<sup>6</sup> [A240]
- Darura. Necessity. In the works of fiqh it has a narrow meaning when used to denote what may be called the technical state of necessity. A person finding himself in a dangerous position is permitted to do something normally forbidden.<sup>7</sup>[A218]
- Fuqahā The term indicates a specialist in Islamic Law and its branches.<sup>8</sup>[B224]
- Al-Faqīr The word, in the Qur'ān, signifies a needy person. In mystic terminology it means a person who lives for God alone. In popular parlance the term is used for a poor man, a pauper or a beggar.<sup>9</sup> [A254]

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<sup>4</sup> EI2:1:1141.

<sup>5</sup> Hughes, Dictionary: 42<sup>5</sup>.

<sup>6</sup> Al-Miṣbāḥ al-Munīr, vol. I, p. 53; Islamic Desk Reference, p. 172.

<sup>7</sup> EI1:2:163.

<sup>8</sup> Islamic Desk Reference, p. 105.

<sup>9</sup> Ibid, p. 95.

- Fasid. Fasid or Batil are interchangeable, but the distinction between the two terms is the principal characteristic of the Hanafi theory of nullity (butlan). Batil denotes an act which lacks one of the elements essential of the existence of any legal activity. In the doctrine of the other three orthodox schools, the term are synonymous. According to the Hanafis , a sale is invalid (fasid) when it is lawful with respect to its quality, when the subject is not of an appreciable nature.<sup>10</sup>[A226]
- Al-Fay' This term, in Islamic conception, means war booty gained from unbelievers without fighting.<sup>11</sup> [A257]
- Fitna (plur. "fitan". This Arabic word, which means "trial, test or temptation", appears frequently in the Holy Qur'ān with the meaning of an external test of faith. It generally refers to the series of events which included the murder of the Caliph 'Uthmān and the conflict between 'Alī b. Abū Ṭālib and Mu'āwiyā b. Abū Sufyān. This first major struggle within the Muslim community is often called the first, or the great, trial.<sup>12</sup> [B251]
- Al-Jizya A tax formerly levied on non-Muslim adult males from Dhimmis, "Ahl al-Dhimma", who were able to pay it, provided that they belonged to a religion recognised as divinely revealed, that is, they were people of the book "Ahl al-Kitāb". The infirm and poor were excluded from paying the Jizya. The basis of the Jizya is the Holy Qur'ān, (Sura, IX: 29). It was normally understood to be a tax for civil

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<sup>10</sup> EI2:2:829. Hamilton, Hidayah:266.

<sup>11</sup> Ibn Rushd, Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid, vol. I, p. 493; Deeb al-Khudrawi, A Dictionary of Islamic Terms, p. 333.

<sup>12</sup> Islamic Desk Reference, p. 103; A Popular Dictionary of Islam, p. 83.



protection and the upkeep of the army, but it did in practice sometimes take on the aspect of a tribute.<sup>13</sup> [B247]

- Al-Jumu‘a The day of the week when Muslims gather to perform congregationally al-Jumu‘a prayer in the Mosque, and listen to a sermon there from the prayer leader “al-Imām”. Attendance at this prayer is a duty incumbent on all male, adult, free, resident Muslims. If possible, it should be held in the Great Mosque (al-Masjid al-Jāmi‘), and frequent attendance is required. Business transactions are suspended during this prayer time.<sup>14</sup>[A216]
- Hadd. Hindrance, impediment, limit, boundary, or frontier. Hadd has become to mean in a narrow, technical sense the punishment of certain acts which have been forbidden or sanctioned by punishment in the Quran and have thereby become crimes against religion.<sup>15</sup>[A215]
- Hakim. A just ruler. <sup>16</sup>[B238]
- Ijara. The use and enjoyment of property for a time, including hire, rental and lease<sup>17</sup>[A220]
- Ijma. The unanimous consent of the learned doctors (mujtahidun). Ijma is the collective opinion, while ijtiḥad is the deduction made by a single mutahid.<sup>18</sup>[A225]

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<sup>13</sup> Al-Māwardī, *Al-Aḥkām al-Sultāniyya*, p. 142; S. Al-Jamal, *Ḥāshiyat al-Jamal ‘Alā Sharḥ al-Manhaj*, vol. V, p. 211; Al-Shirbīnī, *Al-Iqnā‘ fī Ḥall Alfāz Abū Shujā‘*, vol. II, p. 261.

<sup>14</sup> The Concise Encyclopaedia of Islam, p. 133 f.; Islamic Desk Reference, p. 104; A Popular Dictionary of Islam, p. 260.

<sup>15</sup> EI2:3:20.

<sup>16</sup> Hughes, Dictionary:160.

<sup>17</sup> Huges, Dictionary s.v. *ijarah*: 197; *hire*:175.

<sup>18</sup> Huges, Dictionary:197.

- Iqrar. Acknowledgement, confession. A theological term used for the admission of a sin. The limit of the muhtasib's authority, which Sunami suggests here has been enforced by many succeeding scholars who wrote on the subject of hisba.<sup>19</sup>[B215]
- Istihsan. Literally 'approving'. A term used in the exegesis of the Quran and of the hadith. It implies the rejection of qiyas and the admission of the law of expediency.[B225]
- Kaffara. Atonement or expiation. It usually consist of releasing a slave, fasting a number of days, or else feeding and clothing a certain number of poor people. This technical term, which is employed in the Quran four times, is said to have been borrowed from Hebrew:kappura.<sup>20</sup>[A221]
- Al-Kuffār (Also, "Kāfirūn". sing. "Kāfir", "Infidl"). In most passages of the Holy Qur'ān, the term refers to unbelievers, who are threatened with God's punishment and hell.<sup>21</sup> [p. 58] Mahr. Hebrew mohar, Syriac mahara (bridal gift), means the dower or settlement of money or property on the bride without which the marriage would not be legal.<sup>22</sup>[A244]
- Al-Masjid The word of "Masjid", Mosque, refers to the place of public prayer. Al-Masjid al-Ḥarām "the Sacred Mosque" is the temple at Mecca, which contains the Ka'ba, in which is placed al-Ḥajar al-Aswad "the Black Stone". The term Bayt Allāh

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<sup>19</sup> For examples see Mawardi, Ahkam:242; Farra, Ahkam:270. Hughes, Dictionary:215.

<sup>20</sup> EI1:2:618. EI2:4:406.

<sup>21</sup> A Dictionary of Modern Written Arabic, p. 833; Islamic Desk Reference, p. 172; A Popular Dictionary of Islam, p. 139.

<sup>22</sup> EI1:3:137. EI2:6:78-80. Hughes, Dictionary:307.

“the House of God” is applied to the whole enclosure, although it more specially denotes the Ka‘ba itself.<sup>23</sup> [A253]

- Milk. Possession, property. Not Quranic but in regular use in later fiqh terminology, denoting ownership. <sup>24</sup>[A221]
- Najash. Raising the price of a commodity without intending to sell it at that price but in order to force another buyer to pay more<sup>25</sup>. [A217]
- Nasij. Clothe fabric. Fabric of silk with gold stitching or brocade<sup>26</sup>[B222]
- Al-Naşārā, “the Christians” (Sing. “naşrānī”), “Nazarenes”. An Arabic name for Christians. Today the formal name is “Masīhiyyūn”, from “Masīḥ” (Messiah), a usage established by Christian missionaries.<sup>27</sup> [A215]
- Qadi. A judge in both civil and criminal law. There is now some division between secular and religious law and in this division the qadi deals with only religious matters, family law, and inheritance. The qadi is a Muslim scholar who must lead a blameless life and be conversant in sacred law. <sup>28</sup>[B215]

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<sup>23</sup> A Dictionary of Islamic Terms, p. 189; A Dictionary of Religious Terms, p. 186; Islamic Desk Reference, p.275 f.

<sup>24</sup> EI1:3:497. EI2:7:60.

<sup>25</sup> . Lisan al-Arab:8:243

<sup>26</sup> . Dozy, Supplement:2:666.

<sup>27</sup> The Concise Encyclopaedia of Islam, p. 298; Shorter Encyclopaedia of Islam, p. 440 ff.; Islamic Desk Reference, p. 67 f.

<sup>28</sup> EI:2:606s.v. Kadi.



- Qassam. The person who applies the qisma. Qisma is the partition, which involves a separation, in articles of weight measurement of capacity.<sup>29</sup> It applies to joint property in whatsoever manner it is obtained acquired. It more immediately relates to the distribution of inheritance.<sup>30</sup> The judge according to Hanafi law should refer to the qisma if one of the partners request it.<sup>31</sup> The magistrate must appoint a public partitioner (qassam) and appoint him a salary. The qadi must not compel the people always to be the same person. The qadi must not compel the people always to accept one particular person as their partitioner because the transactions which pass between the partners and the partitioner are a kind of contract and it is not lawful to compel any person to enter into a contract.<sup>32</sup>[B221]
- Qiyas. Comparison, deduction by analogy; one of the roots of the fiqh. Analogical reasoning of the learned with regard to the Quran, hadith and ijma<sup>33</sup>[B225]
- Raqiq (Also, “‘Abd”), “slave”. Islam has never preached the abolition of slavery as a doctrine, but it has endeavored to moderate the institution and mitigate its legal and moral aspects. Spiritually, the slave has the same value as the free man, and the same eternity is in store for his soul. The Holy Qur’ān and the Tradition make the emancipation of slaves a meritorious act.<sup>34</sup> [A221]
- Al-Ribā (From the root “rabā”, “to grow, increase, exceed”). Usury or profit (interest) from the loan of money or goods, which is totally prohibited. To stay

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<sup>29</sup>Hamilton, Hidayat: 565; Marghinani, Hidayat: 4:41.

<sup>30</sup> Hamilton’s commentary on the Hidayat: 565

<sup>31</sup> Hamilton, Hidayat: 566; Marghinani, Hidayat: 4:41.

<sup>32</sup> Hamilton, Hidayat: 566; Marghinani, Hidayat: 4:42

<sup>33</sup> . Hughes, Dictionary:482. EI:2:1051

kiyas.

<sup>34</sup> Shorter Encyclopaedia of Islam, p. 1 ff.; The Concise Encyclopaedia of Islam, p. 373; Islamic Desk Reference, p. 420.

within the letter of the religious law and to soothe consciences, some banks today offer the solution of muḍāraba “sleeping partnership”; this defines the placing of capital as a co-investment.<sup>35</sup> [A217]

- Al-Salaf Men of piety and faith in past generations.<sup>36</sup> In the Islamic side the term signifies the Companions of the Prophet (PBUH), the Followers, and their Followers.<sup>37</sup> [A226]
- Shirak. Straps.<sup>38</sup>[A223]
- Al -M ūshikun (“Polytheism”, “Idolatry”). The Holy Qur’ān uses this term in direct contrast to the profession of the Oneness of God and expressly declares polytheism to be the sin for which Allāh has no forgiveness. Tradition literature reflects the hostile feeling against the polytheists “al-mushrikūn”, who in the law books are generally regarded as outlaws. In a later period it was recognised that all unbelievers are not the same and are not to be treated alike.<sup>39</sup> [A215]
- Shubha. The resemblance of an unlawful act, which has been committed, to another, lawful one, and therefore, subjectively speaking, the presumption of a bona fides in the accused. Duress is widely recognised, particularity in the case of drinking wine or unlawful sexual intercourse. Schacht, introduction.[A227]

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<sup>35</sup> The Concise Encyclopaedia of Islam, p. 335; Sābiq, Al-Sayyid, Fiḥ al-Sunna, vol. III, p. 281, 284.

<sup>36</sup> Hughes, Dictionary:561.

<sup>37</sup> Al-Harawī, Dhamm al-Kalām Talkhīṣ al-Suyūṭī fī Ṣawn al-Manṭiq vol. I, p. 119; The Theory and the Practice of Market Law in Medieval Islam, p. 151.

<sup>38</sup> Muḥit:2:319.

<sup>39</sup> Islamic Desk Reference, p. 344; A Popular Dictionary of Islam, p. 231.

- Shuf'a. The power of possessing property which is for sale. It only applies to immovable property. it applies first to a co-owner, then to a sharer in the appendages of the property (e.g. right of water), and then to a neighbour. <sup>40</sup> [B233]
- Tanbur. A musical instrument similar to the lute but having a long neck. The word is of Persian origin. <sup>41</sup>[A244]
- Tatif. Paying less for a commodity than it is worth. It can also mean any kind of cheating in weights and measures. <sup>42</sup>[A216]
- Al-Tawba "Repentance". The word, often used in the Holy Qur'ān, originally means "return" and is used either in connection with God, who turns with forgiveness to the penitent, or for someone who turns to God with repentance. Its validity depends on three conditions: a conviction, remorse and a firm resolution to abstain from sin in the future. Sin being an offence against God, repentance is necessary for salvation. <sup>43</sup> [B251]
- Al-Tawrāt, "the Torah": This term is used in the Holy Qur'ān to denote a holy scripture revealed to the Prophet Moses "Mosā"(PBUH) after the time of Abraham "Ibrāhīm" and Jacob "Ya'qūb" and afterwards confirmed by Jesus "'Īsā". The Tawrāt also contained a prophecy of the coming of the Prophet (PBUH). The Holy Qur'ān (II: 75; V: 13) has mentioned that the real Tawrāt was changed after the time of Moses. <sup>44</sup> [A248]

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<sup>40</sup> Hughes, Dictionary:582.

<sup>41</sup> Jawaliqi, Mu'raab:223.

<sup>42</sup> Lisan al-Arab:11:126.

<sup>43</sup> Islamic Desk Reference, p. 374.

<sup>44</sup> Ibid, p. 453.



- Al-Ta‘zīr, Discretionary punishment
- A punishment intended to prevent the culprit from relapsing. Many crimes, now punished by this, were counted as sins in the Holy Qur’ān and for them there was no ḥadd punishment<sup>45</sup>. The kind and amount of ta‘zīr is left to the discretion of the judge.<sup>46 47</sup>. [B238]
- Ulamā’ (Sing. “‘ālim”, “scholar”). It is used as a title for Muslim doctors of divinity or law. They form the theocratic element of the government and their “fatwas” or decisions, regulate life.<sup>48</sup> [B220]
- ‘Ummāl (Sing. “‘āmil”). One of the meanings of this Arabic word is governors or rulers, whom the Caliph installed in the states of his Caliphate. The other meaning of this word is workers, labourers or workmen. It is also used to refer to the one who collects Ṣadaqa, ‘Āmil.<sup>49</sup> [A216]
- Uquba. Punishment or chastisement, a legal terms for punishment inflicted at the discretion of the magistrate.<sup>50</sup>. [B216]
- Wali. In ordinary use it can mean ‘protector, benefactor, companion’, or’ friend. In a religious connection the best translation would be ‘saint’. A person meriting this title

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<sup>45</sup> Hughes, dictionary:655.

<sup>46</sup> EI1:4:710. Farra, Ahkam:263-8.

<sup>47</sup> The Theory and the Practice of Market Law in Medieval Islam, p. 138.

<sup>48</sup> The Theory and the Practice of Market Law in Medieval Islam, p. 136.

<sup>49</sup> Al-Miṣbāḥ al-Munīr, vol. II, p. 588; Mukhtār al-Ṣiḥāḥ, p. 455.

<sup>50</sup> Hughes, dictionary:655.

is thought to be free from passion, have influence with God, and be able to work miracle<sup>51</sup> [A213]

- Wuzir' A title of minister and of dignitaries in several Near Eastern kingdoms. The office of minister to the Caliph developed in power, especially in the period of the 'Abbāsids under the Barmakids. The Arabic word today has the sense of a minister in a government.<sup>52</sup> [A213]
- Yawm al-Qiyāma, the Day of Resurrection The cataclysmic events and upheavals of this day are frequently and graphically described in the Holy Qur'ān. This day also has many other names, some of which are (Yawm al-Ḥisāb) the day of judgement and (al-Yawm al-'Ākhir) the last day. Yawm al-Qiyāma and its events constitute the necessary beliefs, which determine the content of the Muslim faith.<sup>53</sup> [B223]
- Za'farān "Saffron". A certain dye and perfume.<sup>54</sup> [B241]
- Zinā The Arabic word means both adultery and fornication. The Holy Qur'ān, the Tradition and Muslim law forbid any sexual intercourse between persons who are not in a state of matrimony.<sup>55</sup> It requires the testimony of four witnesses before punishment can be administered.<sup>56</sup> [B253]

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<sup>51</sup> EI.1:4:1109.

<sup>52</sup> Lisān al-'Arab, vol. VI, p. 4824; Islamic Desk Reference, p. 477; Al-Mu'jam al-Wasīṭ, vol. II, p. 1028; A Popular Dictionary of Islam, p. 258.

<sup>53</sup> Islamic Desk Reference, p. 374; A Popular Dictionary of Islam, p. 260.

<sup>54</sup> Lisān al-'Arab, vol. III, p. 1833; Mukhtār al-Şiḥāḥ, p. 272; Arabic-English Lexicon, vol. I, p. 1231.

<sup>55</sup> Islamic Desk Reference, p. 103 f.; A Popular Dictionary of Islam, p. 265.

## II. A glossary of selection of Scholars mentioned in the manuscripts.

- ‘Abd Allah b. Mas‘ūd: A well-known Companion of the Prophet (PBUH) and an early convert. His name was ‘Abd Allah b. Mas‘ūd b. Ghāfil b. Ḥarh, Abu ‘Abd al-Raḥmān. He was the first one to recite the Quran aloud in Mecca. He became an administrator in Kufa. During the Caliphate, ‘Uthmān b. ‘Uaffān, he travelled to Medina, where he died in 32 A. H. / 653 A. D. when he was 60 years of age. He narrated 848 Ḥadīth in the Prophetic Tradition books.<sup>57</sup> [B225]
- Abd Allah b. ‘Umar: One of the Companions of the Prophet (PBUH) and the son of ‘Umar b. al-Khaṭṭāb, the second Caliph. His name was ‘Abd Allah b. ‘Umar b. al-Khaṭṭāb al-‘Adawī, Abū ‘Abd al-Raḥmān. He was one of the noblest pre-Islamic Qurashī families. ‘Abd Allah was a man of high moral qualities who refused to become Caliph, after the killing of ‘Uthman. He was born in Mecca in 10 B. H. / 613 A. D., and died there in 73 A. H. / 692 A. D. He narrated 2637 Ḥadīth in the Prophetic Tradition books.<sup>58</sup> [A240]
- Abū Bakr al-Ṣiddīq: The first Caliph, who held together the Muslim community after the death of the Prophet (PBUH). His name was ‘Abd Allah b. Abū Quḥāfa ‘Uthmān b. ‘Āmir b. Ka‘b al-Tamīmī, al-Qurashī, Abū Bakr. Originally a rich merchant of Mecca he was the second, after Khadīja, to believe in the mission of the Prophet, and accompanied the Prophet (PBUH) on his Hijra from Mecca to Medina. Celebrated as being the closest personal friend of the Prophet and as having an unswerving loyalty to him and an unshakeable belief in every aspect of the Prophetic mission, he was known as the faithful

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<sup>56</sup> EI1:4:1227. Hghes, Dictionary:713.

<sup>57</sup> Ḥilyat al-Awliyā’, vol. I, p. 124 ff.; Al-Iṣāba fī Tamyīz al-Ṣaḥāba, vol. IV, p. 129 ff.; Ibn al-Athīr, ‘Usd al-Ghaba fī Ma‘rifat al-Ṣaḥāba, vol. III, p. 256 ff.; The Concise Encyclopaedia of am, p. 173 ff.

<sup>58</sup> Ḥilyat al-Awliyā’, vol. I, p. 292 ff.; Al-Iṣāba, vol. IV, p. 107; ‘Usd al-Ghāba, vol. III, p. 227 ff.; Al-A‘lām, vol. IV, p. 108.



(al-Şiddīq).he wae born in Mevva in 51B.H. / 573 A.D. and died in medina in 13 A. H. / 634 A. D. <sup>59</sup> [B224]

- Abū Dāwūd: One of the greatest Tradition scholars in his time. His name was Sulaymān b. al-Ash'ath b. Ishāq b. Bashīr al-Asdī, al-Sajistānī, Abū Dāwūd. His book, "al-Sunan", is one of the six famous Tradition books. He was born in 202 A. H. / 817 A. D. He was originally from Sajistān. Beside his book "al-Sunan" he wrote many books such as "al-Marāsīl", "Kitāb al-Zuhd" and "al-Ba'th". He died in al-Başra in 275 A. H. / 889 A. D. <sup>60</sup> [A232]
- Abū Ḥanīfa: The founder of the Ḥanafī School of Law, which today has the largest following among the Muslim community. He was one of the great jurists of ām, and one of the historic Sunnī Mujtahids. His name was al-Nu'mān b. Thābit al-Tamīmī, al-Kūfī, Abū Ḥanīfa. He was one of the four Imāms of the Sunna. He was born in al-Kūfa in 80 A. H. / 699 A. D. and grew up there. He studied with J'far al-Şādiq in Medina, as well as with other teachers elsewhere. He died in Baghdad in 150 A. H. / 767 A. D. He refused to be a judge (qāḍī) more than one time, because of his extreme fear of Allah. <sup>61</sup> [A221]
- Abū Hurayra: A Companion of the Prophet (PBUH). His name was 'Abd Allah, (or 'Abd al-Raḥmān) b. Şakhr al-Dawsī. He was known as Abū Hurayra, because He was very fond of cats and always kept a kitten with him. Abū Hurayra had a very good memory and lived close to the Prophet (PBUH), so he is considered to be a source of more Ḥadīth than any other individual. He was born in 21 B.H. / 602 A. D., and grew up orphaned. He

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<sup>59</sup> Ḥilyat al-Awliyā', vol. 1, p. 28ff.; Al-Işāba, vol. IV, p. 101 ff.; Usd al-Ghāba, vol. III, p. 205 ff.; Al-A'lām, vol. IV, p. 102.

<sup>60</sup> Ṭabaqāt al-Ḥuffāz, P. 261 f.; Mu'jam al-Mu'allifīn, vol. IV, p. 255; Al-A'lām, vol. III, p. 122.

<sup>61</sup> Ibn al-'Imād, Shadharāt al-Dhahab, vol. II, p. 229 ff.; Ṭabaqāt al-Ḥuffāz, p. 73 f.; Siyar A'lām al-Nubalā', vol. XI, p. 390 ff.; The Concise Encyclopaedia of am, p. 19 f.

converted to Islam in 7 A. H. / 628-9 A. D. He narrated 5374 Ḥadīth in the Prophetic Tradition books. He died in Medina in 59 A. H. / 679 A. D.<sup>62</sup> [A232]

- Abū Mūsā al-Ash‘arī: A Companion of the Prophet (PBUH). His name was ‘Abd Allah b. Qays b. Salīm b. Ḥaḍār b. Ḥarb, Abū Mūsā, from Banī al-Ash‘ar, in Qaḥṭān. At the advent of Islam, he came to Mecca and acceded to Islam. He was a governor of al-Baṣra by ‘Umar b. al-Khaṭṭāb in 17 A. H. / 638 A. D., and then al-Kūfa by ‘Uthmān b. ‘Affān. He was born in 21 B.H. / 602 A. D., and died in al-Kūfa in 44 A. H. / 665 A. D. He narrated 355 Ḥadīth in the Prophetic Tradition books.<sup>63</sup> [A223]
- Abū Sa‘īd al-Khudrī: A Companion of the Prophet (PBUH). His name was Sa‘d b. Mālik b. Sinām al-Khudrī al-Anṣārī al-Khazrajī, Abū Sa‘īd. He narrated many Ḥadīth, because he lived close to the Prophet (PBUH). The number of Ḥadīth he has narrated in the Prophetic Tradition books is 1170. He was born in Medina in 74 A. H. / 693 A. D.<sup>64</sup> [B225]
- Abū ‘Ubayda b. al-Jarrāḥ: A famous Companion of the Prophet (PBUH) and one of the ten to whom Paradise was promised. His name was ‘Āmir b. al-Jarrāḥ b. Hilāl al-Fahrī, al-Qurashī, Abū ‘Ubayda. He embraced ām very early and distinguished himself by his bravery and unselfishness, on account of which the Prophet named him al-Amīn. He accompanied the Prophet (PBUH) on all his battles. He was the commander of the Muslim army, which conquered Syria (al-Shām). He was born in Mecca in 40 A. H. / 584 A. D. and died in Syria in 18 A. H. / 639 A. D.<sup>65</sup> [B251]
- Abu Yusuf Ya‘qub b. Ibrahim al-Ansari: One of the founders of Hanafī school of law. He was appointed qadi to Bagdad and held this appointment until his death. His treatise on

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<sup>62</sup> Ḥilyat al-Awliyā’, vol. I, p. 376 ff.; The Concise Encyclopaedia of am, p. 20; Al-A‘lām, vol. III, p. 308.

<sup>63</sup> Ḥilyat al-Awliyā’, vol. I, p. 256 ff.; Al-Iṣāba fī Tamyīz al-Ṣaḥāba, vol. IV, p. 119; ‘Uṣd al-Ghāba, vol. V, p. 309 ff.; Al-A‘lām, vol. IV, p. 114.

<sup>64</sup> Ḥilyat al-Awliyā’, vol. I, p. 369 ff.; Tahdhīb al-Tahdhīb, vol. III, p. 416 f.; ‘Uṣd al-Ghāba, vol. V, p. 211 f.

<sup>65</sup> Ḥilyat al-Awliyā’, vol. I, p. 100 ff.; Al-Iṣāba, vol. IV, p. 11 ff.; Shorter Encyclopaedia of am, p. 12.

public finance, taxation, criminal justice and other subjects is entitled Kitab al-kharaj. he died in 182/798-9.<sup>66</sup>[B224]

- Ahmad b. Hanbal al-Shaybani: the eponym of the Hanbali school of law. he was whipped during the caliphate of Al-163-241/780-1-855-6. Ma'mun because of the crisis over whether the Quran was created or not.<sup>67</sup> [B224]
- 'Ā'isha: The daughter of Abū Bakr, and the favorite wife of the Prophet (PBUH). Her name was 'Ā'isha bint Abū Bakr al-Ṣiddīq, 'Abd Allah b. 'Uthmān. As a wife of the Prophet she had the title 'Umm al-Mu'minīn (Mother of the believers). She was born in Mecca in 9 B. H. / 613 A. D. 'Ā'isha was betrothed to the Prophet at the age of six or seven, after the death of Khadīja. The marriage was consummated after the Hijra. She was eighteen when the Prophet (PBUH) died. Towards the end of her life she was often consulted on matters of Ḥadīth and Sunna. She died in Medina in 58 A. H. / 678 A. D. She narrated 2210 Ḥadīth.<sup>68</sup> [B247]
- Alī b. Abū Ṭālib: A member of the house of Hāshim, cousin of the Prophet (PBUH), who was to become his son-in-law, and eventually the fourth rightly guided Caliph. His name was 'Alī b. Abū Ṭālib b. 'Abd al-Muṭṭalib al-Hāshimī, al-Qurashī, Abū al-Ḥasan. One of the first converts to īm. He became a Caliph after the killing of 'Uthmān b. 'Affān in 35 A. H. / 656 A. D. He was born in Mecca in 23 B.H. / 600 A. D. and killed by 'Abd al-Raḥmān b. Ma'jam in 40 A. H. / 661 A. D. He narrated 586 Ḥadīth from the Prophet (PBUH).<sup>69</sup> [B222]

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<sup>66</sup> EI2:1:164

<sup>67</sup> Sifat al-safwa:1:336 EI2:1:272

<sup>68</sup> Al-Iṣāba, vol. VIII, p. 139 ff.; Ibn Sa'd, The Women of Madina, p. 43 ff.; Malik, F. H., Wives of the Holy Prophet, p. 88 ff.; Kaḥḥāla, U. R., A'lām al-Nisā', vol. III, p. 139 ff.

<sup>69</sup> Ḥilyat al-Awliyā', vol. I, p. 61 ff.; Al-Iṣāba, vol. IV, p. 269 ff.; 'Usd al-Ghāba, vol. IV, p. 16 ff.; The Concise Encyclopaedia of Islam, p. 33 f.



- Anas b. Mālik: He was a personal servant of the Prophet (PBUH). His name was Anas b. Mālik b. al-Nadr b. ḌamḌam al-Najjārī, al-Khazrajī, al-Anṣārī, Abū Thumāma, or Abū Ḥamza. He was a known Companion, born in Medina in 10 B.H. / 612 A. D. After the Prophet (PBUH) died he moved to Damascus, then to al-Baṣra where he died in 93 A. H. / 712 A. D. He narrated 2286 Ḥadīth in the Prophetic Tradition books.<sup>70</sup> [B250]
- Aṣḅagh: A great scholar of the Mālikī School of Law from Egypt. His name was Aṣḅagh b. al-Faraj b. Sa‘īd b. Nāfi‘. He wrote many books. Aṣḅagh died in Egypt in 225 A. H. / 840 A. D.<sup>71</sup> [A255]
- Al-Bayhaqī: A well-known traditionist. His name was Aḥmad b. al-Ḥusayn b. ‘Alī, Abū Bakr. He was born in Bayhaq, in Naysābūr, in 384 A. H. / 994 A. D. and grew up there. He travelled to Baghdad, al-Kūfa, Mecca and many others. Al-Bayhaqī was the author of many books, some of which are “al-Sunan al-Kubrā” and “al-Sunan al-Ṣuḡhrā”. He died in Naysābūr in 458 A. H. / 1066 A. D. and his corpse was moved to Khusrawjird, his village in Bayhaq, where it was buried.<sup>72</sup> [A255]
- Al-Bukhārī: One of the greatest traditionists. His name was Muḥammad b. Ismā‘īl b. Ibrāhīm b. al-Mughīra al-Bukhārī, Abū ‘Abd Allah. He was born in Bukhārā in 194 A. H. / 810 A. D. and grew up an orphan. In 210 A. H. / 825 A. D. he started a long journey to collect the Ḥadīth of the Prophet (PBUH). He visited Khurasān, Iraq, Egypt and al-Shām collecting around 100.000 Ḥadīth, and then chose the ones he trusted to put in his famous book “al-Jāmi‘ al-Ṣaḥīḥ”, which is the most important and trustworthy book in Tradition “Ḥadīth”. Al-Bukhārī is also the author of some other books, some of which

<sup>70</sup> Al-Iṣāba, vol. I, p. 71, Siyar A‘lām al-Nubalā’, vol. III, p. 395 ff.; Al-A‘lām, vol. II, p. 24 f.

<sup>71</sup> Ṭabaqāt al-Ḥuffāz, p. 200; Mu‘jam al-Mu‘allifīn, vol. II, p. 302; Al-A‘lām, vol. I, p. 333.

<sup>72</sup> Ṭabaqāt al-Ḥuffāz, p. 433f.; Al-A‘lām, vol. I, p. 116.

are “al-Adab al-Mufrad” and “al-Ḍu‘afā’”. He died in Khartank, two parasangs from Samarqand, in 256 A. H. / 870 A. D.<sup>73</sup> [B244]

- Al-Hasan al-Basri: A Tabi‘i who met many Companions of the Prophet. He was born in Medina and died <sup>74</sup>21-110/641-2-728-9.in Basra. He was a well-known Sufi.[A254]
- Ḥāṭib b. Abū Balta‘a: A Companion of the Prophet (PBUH). His name was Ḥāṭib b. Abū Balta‘a al-Lakhmī. He accompanied the Prophet on all his battles. The Prophet (PBUH) sent him with his hook to al-Muqawqis in Egypt. He was born in 35 B. H. / 586 A. D. and died in Medina in 30 A. H. / 650 A. D.<sup>75</sup> [B228]
- Ibn ‘Abbās: One of the greatest Companion scholars, called “Ḥabr al-‘Umma”, the doctor of the nation, because of his doctrine of Quranic exegesis. His name was ‘Abd Allah b. ‘Abbās b. ‘Abd al-Muṭṭalib al-Qurashī, al-Hāshimī, Abū al-‘Abbās. He was born in Mecca in 3 B.H. / 618-9 A. D. and grew up at the beginning of the time of the Prophethood, living close to the Prophet (PBUH), so that he narrated many Ḥadīth from him. He died in al-Ṭā‘if in 68 A. H. / 687 A. D.<sup>76</sup> [B218]
- Ibn Ḥabīb: A scholar of Fiqh, history and literature from al-Andalus. His name was ‘Abd al-Malik b. Ḥabīb b. Sulaymān b. Hārūn al-Sulamī, al-Ilbīrī, al-Qurṭubī, Abū Marawān. He was originally from Ṭulayṭila, from Banū Sulaymān or one of their slaves, born in Ilbīra in 174 A. H. / 790 A. D. He lived in Qurṭuba and visited Egypt and then returned to al-Andalus, where he died in Qurṭuba in 238 A. H. / 853 A. D. Ibn Ḥabīb was an eminent scholar of the Mālikī School of Law. He wrote many books in both Fiqh and

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<sup>73</sup> Tadhkirat al-Ḥuffāz, vol. II, p. 122; Tahdhīb al-Tahdhīb, vol. IX, p. 41 ff.; Ṭabaqāt al-Ḥuffāz, p. 248 f.; Shorter Encyclopaedia of Islam, p. 65.

<sup>74</sup> Arberry, Muslim saints:19 Gal:sup:1:102

<sup>75</sup> Tahdhīb al-Tahdhīb, vol. II, p. 147; ‘Usd al-Ghāba, vol. I, p. 360 ff.; Al-A‘lām, vol. II, p. 159.

<sup>76</sup> Ḥilyat al-Awliyā’, vol. I, p. 314 ff.; Al-Iṣāba, vol. IV, p. 90; Tahdhīb al-Tahdhīb, vol. V, p. 242 ff.; ‘Usd al-Ghāba, vol. III, p. 192 ff.

history, some of which are “Tafsīr Muwaṭṭa’ Mālik” and “Ḥurūb al-ām”.<sup>77</sup> al-Aḥkām”.

He died in 456 A. H. / 1064 A. D.<sup>78</sup> [b231]

- Ibn al-Mubarak, Abu Abdu al-Rahman al-Marwazi al-Hanzali 37A He died in 118/736-7. He was very fond on tanbur playing until he saw in a dream the Quranic verses inviting him to become a good believer. After this he devoted his life to mysticism.<sup>79</sup> [B249]
- Ibn Rushd: An eminent jurist of the Mālikī School of Law and the grandfather of Ibn Rushd al-Ḥafīd, the philosopher. His name was Muḥammad b. Aḥmad b. Rushd, Abū al-Walīd, known as “Ibn Rushd al-Jadd or Ibn Rushd al-Faqīh”. He was born in Qurṭuba in 450 A. H. / 1058 A. D. Ibn Rushd wrote many books on Fiqh, some of which are “al-Bayān wal-Taḥṣīl” and “Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid”. He died in Qurṭuba in 520 A. H. / 1126 A. D.<sup>80</sup> [A241]
- Ibn Sīrīn: A Follower of the Prophet (PBUH) and one of great scholars of Baṣra. His name was Muḥammad b. Sīrīn al-Baṣrī al-Anṣārī, Abū Bakr. He was born in Baṣra in 33 A. H. / 653 A. D. His father was a slave of Anas b. Mālik. He was known for his wide knowledge about the interpretation of dreams. He died in Baṣra in 110 A. H. / 719 A. D.<sup>81</sup> [A250]
- Ibn Wahb: A scholar of Ḥadīth and Fiqh from Egypt. His name was ‘Abd Allah b. Wahb b. Muslim al-Fahrī al-Miṣrī, Abū Muḥammad. He was born in Egypt in 125 A. H. / 743 A. D. He was one of Mālik b. Anas’ friends. Ibn Wahb was a trustworthy Memorizer

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<sup>77</sup> Tahdhīb al-Tahdhīb, vol. VI, p. 347 f.; Mu‘jam al-Mu‘allifīn, vol. VI, p. 181; Al-A‘lām, vol. IV, p. 157.

<sup>78</sup> Ibn Ḥazm, Al-Fiṣal Fī al-Milal wal-Ahwā’ wal-Niḥal, the Introduction, vol. I, p. 3 ff.; Ṭabaqāt al-Ḥuffāz, p. 436 f.; The Concise Encyclopaedia of Islam, p. 171.

<sup>79</sup> GAL:Sup:1:256 Arberry, Muslim saints:124

<sup>80</sup> Mu‘jam al-Mu‘allifīn, vol. VIII, p. 228; Al-A‘lām, vol. V, p. 316 f.

<sup>81</sup> Ḥilyat al-Awliyā’, vol. II, p. 193 ff.; Tahdhīb al-Tahdhīb, vol. IX, p. 190; Ṭabaqāt al-Ḥuffāz, p. 31 f.; Shadharāt al-Dhahab, vol. II, p. 52 ff.



“Ḥāfiẓ”, and was the author of (al-Jāmi‘) and (al-Muwaṭṭa’), both are on Ḥadīth. He died in Egypt in 197 A. H. / 813 A. D.<sup>82</sup> [A242]

- Jābir b. ‘Abd Allah: A well-known Companion of the Prophet (PBUH). His name was Jābir b. ‘Abd Allah b. ‘Amr b. Ḥarām, al-Khazrajī, al-Anṣārī, al-Salamī. He fought in nineteen battles and narrated 1540 Ḥadīth in the Prophetic Tradition books of al-Bukhārī and Muslim. He was born in 16 B.H. / 607 A. D. and died in 78 A. H. / 697 A. D.<sup>83</sup> [B257]
- Mālik b. Anas: The founder of the Mālikī School of Law. His name was Mālik b. Anas b. Mālik al-Aṣḥabī al-Ḥimayrī, Abū ‘Abd Allah. He was born in Medina in 93 A. H. / 711 A. D. He received Traditions from Sahl b. Sa‘d, who was one of the last surviving Companions. Mālik studied with Ja‘far al-Ṣādiq, the great scholar and descendant of the Prophet (PBUH). One of his famous books is al-Muwaṭṭa’, which is the earliest collection of Ḥadīth, and the first book of Fiqh. He died in Medina in 179 A. H. / 795 A. D.<sup>84</sup> [A226]
- Muadh b. Jabal b. Amru: He taught hadith to Abd al-Rahman b. Ghanam and Masruq. he died of bubonic plague. 19bB 20BH - AH 18/603-4 - 639-40<sup>85</sup> [B234]
- Muḥammad b. ‘Alī al-Tirmidhī: A scholar of Tradition and theology from Tirmidh. His name was Muḥammad b. ‘Alī b. al-Ḥasan b. Bishr, Abū ‘Abd Allah, known as “ al-Ḥakīm al-Tirmidhī”. He was the author of many books, some of which are “Nawādir al-

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<sup>82</sup> Tadhkirat al-Ḥuffāẓ, vol. I, p. 279; Ḥilyat al-Awliyā’, vol. VIII, p. 324 ff.; Tahdhīb al-Tahdhīb, vol. VI, p. 65 ff.; Mu‘jam al-Mu‘allifīn, vol. VI, p. 162.

<sup>83</sup> Tahdhīb al-Tahdhīb, vol. II, p. 37 f.; Al-A‘lām, vol. II, p. 104.

<sup>84</sup> Ḥilyat al-Awliyā’, vol. VI, p. 316 ff.; Tahdhīb al-Tahdhīb, vol. X, p. 5 ff.; Siyar A‘lām al-Nubalā’, vol. VIII, p. 48 ff.; Ṭabaqāt al-Ḥuffāẓ, p. 89 f.; Al-A‘lām, vol. V, p. 257.

<sup>85</sup> Tadhkirat al-huffaz:1:19 Zirikli:8:166 Sifat al-safwa:1:489 - 502

'Uṣūl fī Aḥādīth al-Rasūl" and "al-Riyāḍa wa Adab al-Nafs". He died around 320 A. H. / 932 A. D.<sup>86</sup> [A251]

- Muhammad b. al-Hasan al-Shaybani: An outstanding Hanafi scholar who studied fiqh with Abu Hanifa. He composed many works on Hanafi law. When the word Muhammad occurs in the books of Hanafi law it always means this man. He was appointed as qadi in Raqqa by al-Rashid. 5B 131 or 135 - 189/748 or 752-3-804-5.<sup>87</sup> [B224]
- Al-Nakh'i, Ibrahim b. Yazid: A well-known faqih of Kufa who also narrated hadith. He died while hiding from Hjjaj. 42 A 46 - 96/666-7-714-5<sup>88</sup> [A223]
- Nasr b. Muhammad al-Marwazi: whose real name was Muhammad b. Nasr al-Marwazi 66A 202-294/817-8-906-7. A friend of Abu Hanifa and eminent traditionist and theologian. He composed many treaties, including one concerning the differences of opinion between Abu Hanifa, Ali, and Ibn Masud.<sup>89</sup> [B224]
- Sa'd b. Abu Waqqas b. Malik b. Kilab: He entered in Islam at the age of 17. 53A 23 BH-AH 55/599-600-674-5 He became a great army general and a Companion of Prophet.<sup>90</sup> [B240]
- Sa'īd b. Jubayr: A great scholar of the Followers "al-Tābi'ūn". His name was Sa'īd b. Jubayr al-Asadī al-Kūfī, Abū 'Abd Allah. He was originally from al-Ḥabasha. He was

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<sup>86</sup> Ṭabaqāt al-Ḥuffāz, p. 282; Mu'jam al-Mu'allifīn, vol. X, p. 315; Al-A'lām, vol. VI, p. 272.

<sup>87</sup> Luknawi:6:163 Qutlubugha:54 GAL:Sup:1:288-9

<sup>88</sup> Sifat al-safwa:3:86 Ibn S'ad, Tabaqat:6:270 Tadhkirat al-huffaz:1:73

<sup>89</sup> Tahdhib al-tahdhib:9:489 GAL:Sup:1:258,305 Sifat al-safwa:4:147-8

<sup>90</sup> Sifat al-safwa:1:356-61

born in 45 A. H. / 665 A. D. and murdered by al-Ḥajjāj in Wāsiṭ in 95 A. H. / 714 A. D. He was educated by ‘Abd Allah b. ‘Abbās and Ibn ‘Umar.<sup>91</sup> [B250]

- Sa’id b. al-Musayyab b Hazn: An eminent narrator of hadith and an outstanding faqih from Medina. He transmitted 29B 13-94/634-5-712-3 hadith from Uthman and Ali. He is reported to have met Qatade b Di’ama b. Qatada .<sup>92</sup> [B228]
- ‘Umar b. ‘Abd al-‘Azīz: He was an Umayyad Caliph after Sulaymān b. ‘Abd al-Malik. His name was ‘Umar b. ‘Abd al-‘Azīz b. Mrawān b. ‘Abd al-Ḥakam al-’Umawī al-Qurashī, Abū Ḥafṣ. He was known with the justice in his rule as his grandmother, ‘Umar b. al-Khaṭṭāb, so he was sometimes called “the fifth rightly-guided Caliph”. He was born in Medina in 61 A. H. / 681 A. D. and grew up there. He was made a governor of Medina by al-Walīd b. ‘Abd al-Malik, and al-Shām by Sulaymān b. ‘Abd al-Malik. ‘Umar b. ‘Abd al-‘Azīz became a Caliph in 99 A. H. / 718 A. D. and continued until he died in 101 A. H. / 720 A. D.<sup>93</sup> [A229]
- ‘Umar b. al-Khaṭṭāb: A well-known Companion of the Prophet (PBUH) and the second rightly-guided Caliph. His name was ‘Umar b. al-Khaṭṭāb b. Nufayl al-Qurashī al-‘Adawī, Abū Ḥafṣ. He was resolute, strong-willed and courageous. ‘Umar converted to Islam about five years before the Prophet’s Migration (al-Hijra). He was the first to be called Amīr al-Mu’minīn, and known to be a just man. He was born in 40 B.H. / 584 A. D. and murdered with a knife in 23 A. H. / 644 A. D. by Abū Lu’lu’a, the slave of al-Mughīra b. Shu’ba, while he was praying al-Fajr with Muslims in the Prophetic Mosque.<sup>94</sup> [B214]

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<sup>91</sup> Ḥilyat al-Awliyā’, vol. IV, p. 272 ff.; Ṭabaqāt al-Ḥuffāz, p. 31; Siyar A’lām al-Nubalā’, vol. IV, p. 321 ff.; Al-A’lām, vol. III, p. 93.

<sup>92</sup> Tadhkirat al huffaz:1:56 Hilyat al-awliya:3:161-176

<sup>93</sup> Ḥilyat al-Awliyā’, vol. V, p. 253 ff.; Tahdhīb al-Tahdhīb, vol. VII, p. 475; Ṭabaqāt al-Ḥuffāz, p. 46; Shadharāt al-Dhahab, vol. II, p. 5 ff.; Al-A’lām, vol. V, p. 50.



- Uthmān b. 'Affān : A famous Companion of the Prophet (PBUH) and the third rightly-guided Caliph. His name was 'Uthmān b. 'Affān b. Abū al-'Āṣ b. 'Umayya al-Qurashī. He was one of the ten Companions to whom Paradise was promised. 'Uthmān was called Dhū al-Nūrayn because he had, at different times, married two daughters of the Prophet (PBUH), 'Umm Kulthūm and Ruqayya. He became a Caliph after 'Umar b. al-Khaṭṭāb was killed in 23 A. H. / 644 A. D. 'Uthmān was born in Mecca in 47 B.H. / 577 A. D. and murdered in Medina in 35 A. H. / 656 A. D.<sup>95</sup> [B254]
- Zayd b. Thabit b. al-Dahhak: A Companion of the Prophet and one of the scribes who wrote the Quran . He narrated 92 hadith which are all recorded in the Sahihayn. 11 BH - AH 45/621-3-665-6<sup>96</sup> [B225]

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<sup>94</sup> Al-Iṣāba, vol. IV, p. 279 f.; Ḥilyat al-Awliyā', vol. I, p. 38 ff.; The Concise Encyclopaedia of Islam, p. 407 f.

<sup>95</sup> Al-Iṣāba, vol. IV, p. 223 f.; Ḥilyat al-Awliyā', vol. I, p. 55 ff.; Al-A'lām, vol. IV, p. 210.

<sup>96</sup> Sifat al-safwa :1:704-707 Zirikli:3:96

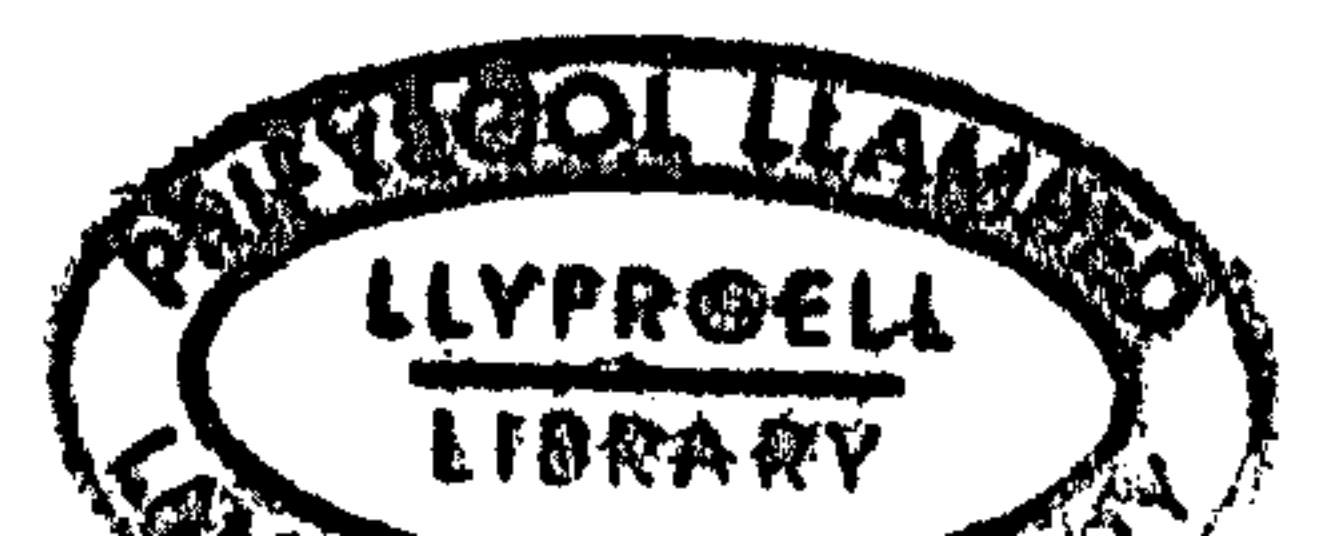


Table of Mamluk sultans who ruled from the time of al-Nāṣir Muhammad  
until the end of Baharī Mamluk's State in 792 A. H. /1390 A. D. \*

Mamluk rulers	A. H.	A. D.	Time
Al-Nāṣir Muhammad (first time)	693 – 694	1293 – 1294	1 year
Al-ʿĀdil Zīn al-Dīn Kutbugha	694 – 696	1294 – 1296	2 years
Al-Manṣūr Ḥusām al-Dīn Lājīn	696 – 698	1296 – 1298	2 years
Al-Nāṣir Muḥammad (second time)	698 – 708	1298 – 1308	10 years
Al-Muzaffar Baybars al-Jāshankīr	708 – 709	1308 – 1309	1 year
Al-Nāṣir Muḥammad (third time)	709 – 741	1309 – 1341	32 years
Al-Manṣūr Abū Bakr b. al-Nāṣir	741 – 742	1341 – 1341	Less than one year
Al-Ashraf ʿAlāddīn Kajak b. al-Nāṣir	742 – 742	1341 – 1342	Less than one year
Al-Nāṣir Aḥmad b. al-Nāṣir	742 – 743	1342 – 1342	Less than one year
Al-Ṣāliḥ Ismāʿīl b. al-Nāṣir	743 – 746	1342 – 1345	3 years
Al-Kāmil Shaʿbān b. al-Nāṣir	746 – 747	1345 – 1346	Less than one year
Al-Muzaffar Ḥājī b. al-Nāṣir	747 – 748	1346 – 1347	Less than one year
Al-Nāṣir al-Ḥasan (first time)	748 – 752	1347 – 1351	4 years
Al-Ṣāliḥ Ṣāliḥ b. al-Nāṣir	752 – 755	1351 – 1354	3 years
Al-Nāṣir al-Ḥasan (second time)	755 – 762	1354 – 1361	7 years
Al-Manṣūr Muḥammad b. Ḥājī	762 – 764	1361 – 1363	2 years
Al-Ashraf Shaʿbān b. Ḥusayn	764 – 778	1363 – 1376	14 years
Al-Manṣūr ʿAlī b. al-Ashraf Shaʿbān	778 – 783	1376 – 1381	5 years
Al-Ṣāliḥ Ḥājī b. al-Ashraf Shaʿbān	783 – 784	1381 – 1382	1 year
Barqūq (from Burjī Mamluks)	784 – 791	1382 – 1389	7 years
Al-Ṣāliḥ Ḥājī b. al-Ashraf Shaʿbān	791 – 792	1389 - 1390	Less than one year

\* See: Encyclopaedia of Islam, vol. VI, pp. 328 f., Shakir, Al-Tarikh al-Islami, Al-Ahd al-Mamluki, vol. VII, pp. 35 f., Al-Asr al-Mamaliki fi Misr wal-Sham, p. 392.

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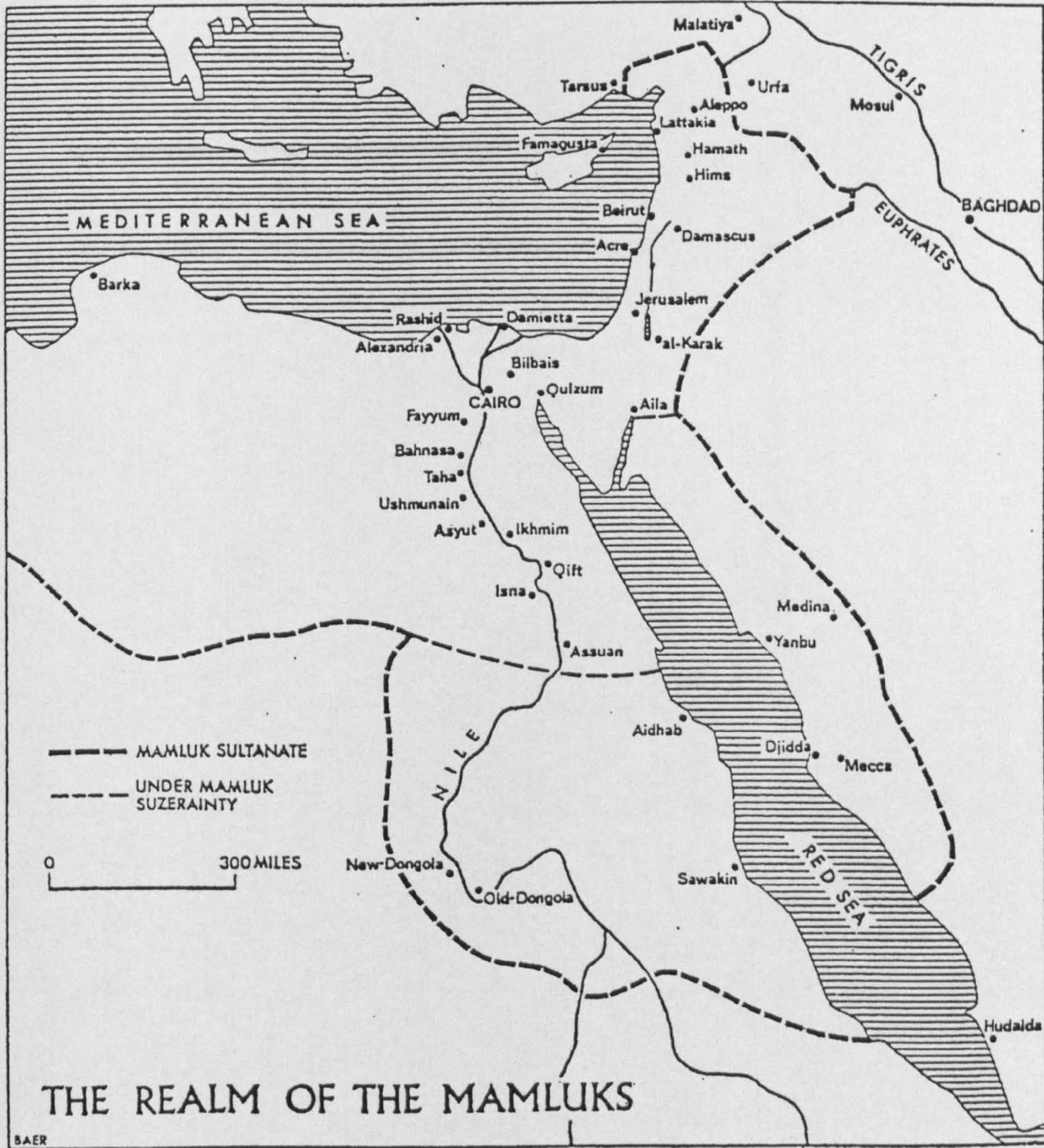
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Ashtor, E., *A Social and Economic History of the Near East in the Middle Ages*, p. 281.



بسم الله الرحمن الرحيم

# كتاب الطواف الحميم

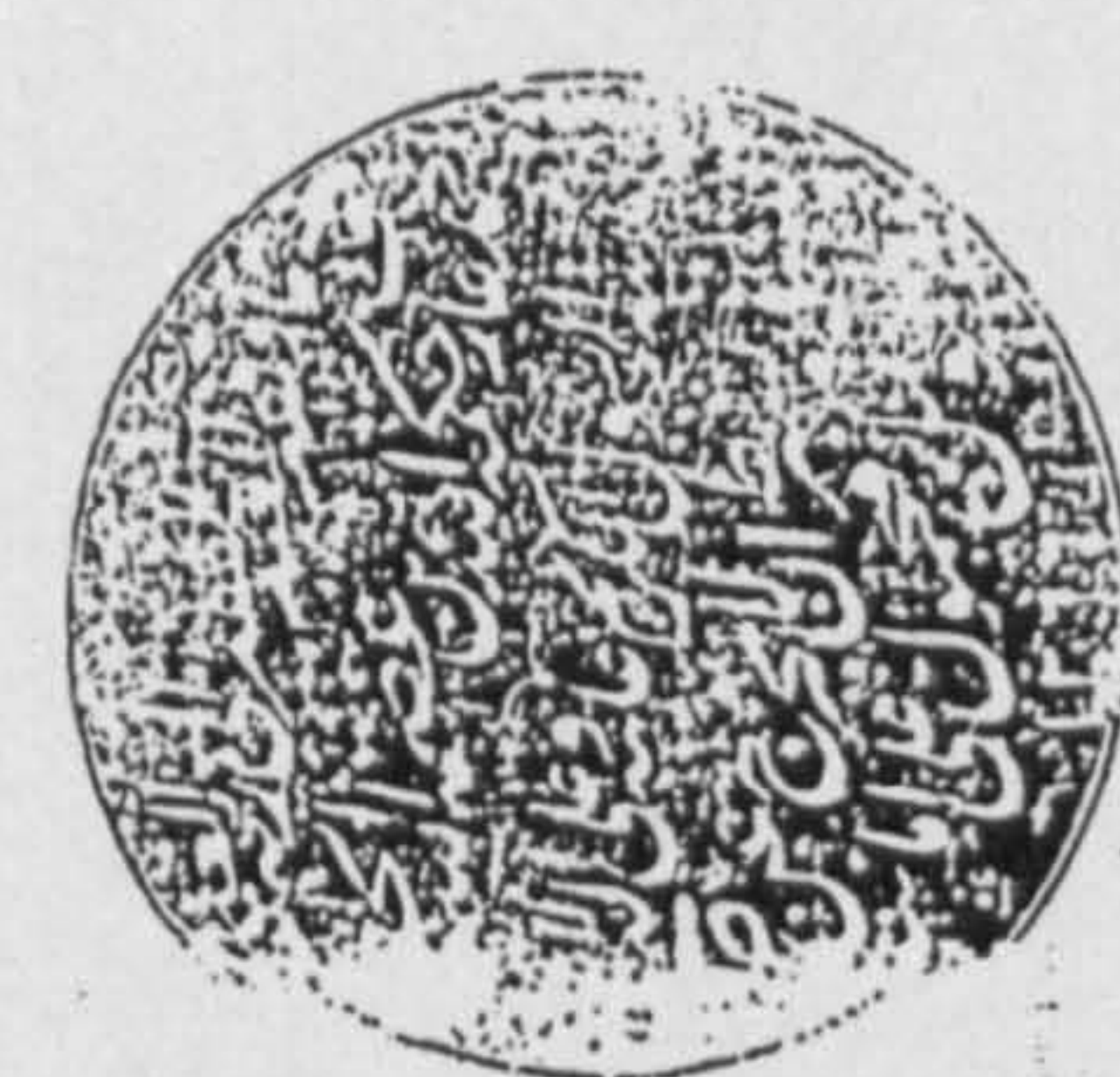
من الأئمة العالم العلامة الحجة  
رجحان الفزان ذي القرنين الورع  
الحسان شمس الدين أبو عبد الله  
محمد بن قيس الجوزيني  
رحمة الله عليه



بدأت في نسخي قبيل الظهر يوم الأربعاء أربع عشرين شهر  
شوال سنة سبع وتسعين وست مائة

المهنة طبع في المطبع  
عاد هذا الكتاب بعد ما روي عنه في النسخة الأولى  
عند الفاضل الخليلي في سنة ١٢٠٢  
وقد روي عنه في نسخة أخرى في سنة ١٢٠٢  
من المجلد الرابع من كتابه في علم الفقه  
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الذي هو كتاب الفقه في علم الفقه

مكتبة فقه المنيا  
١٤٥٥





كتاب الطرق المشهورة

تصنيف الشيخ الامام العالم العلامة

للهامه سيد الخنازير وفارس المعاني والادب

توحيات القرآن ذي المنون النبوي المختار

ومن سارت بفوائده الغزيرة المبركة

لبي الزهر واي عبادة محمدا

تم لجزوه نخه لشمس

واسكنه شيخ جته

بمنه وكرمه

امين

٨٣٣

مكتبة الخليلي

مكتبة الخليلي

هذا هو النص...



١٤٢

الطريق الحكيم في الاقضية الشرعية للامام  
المحقق شمس الدين محمد بن قسيم الجوزية  
الكنبلي الدمشقي المتوفى

٧٥١

رحمة الله تعالى

وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم تسليما كثيرا

في ملك الفقير عبد الله بن خلف الشنبلي  
لطف الله به وفتح عليه امين  
سنة ١٣٧٠



ح ١٧٤

مكتبة الادب الكونيني

# كتاب الطرق الحكيمة

تأليف الشيخ الإمام جمال الدين السيد

الحفاظ شمس الدين ابن عبد الله

محمد بن قيم الجوزية رحمه الله

بالهجر والخصا وانسك

فسيح المغان

وكرم

ابن

...

إلى الذم والحق  
مكتبة من فضل  
القصر الشريف  
من وحياتنا  
تأليف الشيخ  
...

الحمد لله  
الجليل  
...



وزارة الأوقاف والشؤون الإسلامية  
مكتبة الموسوعة الفقهية  
رقم التصنيف  
رقم التسجيل

الموسوعة الفقهية

الصفحة الاولى من النسخة " ج "



منه خصوصاً  
ممنوع عمومياً - أصول الفقه

١٧٥٨ تاريخ ٢٤١٥٨ ٦١٢



اذ اظهر له انه تطلب وزمماضه وزمبساله عن الامور التي لا يملكها الا الله  
الحاكم فقل ذلك خطأ من صواب هذه المسئلة كبرين  
النفع جليل القدر ان اهمها للحاكم او الموالي اضع مختلفا كثيرا  
وامام باطلا كبيرا وان توسع فيها وجعل معونة تملينا دون الاوضاع  
الشرعية وتبع في انواع من الظلم والفساد وقد سئل ابو الوفاء  
عن عقيل عن هذه المسئلة تنال ليد ذلك حكما بالفراخه  
بل حكم بالامارات واذا انما يلزم الشرع وحدت في محور العقول  
عما ذلك وقد ذهب مالك رحمه الله الى التوصل بالافترار  
بما يراه الحاكم ذلك مستند الى قوله تعالى ان كان  
مبينه قد من قبله صدقت وهو من الكاذبين ومتى  
حكما بعقد الازح وكثر الخشب في الحائط ومعاقده التخط  
في الحصر وما يفتح الرفة والرجل في الدعاوي وفي مسئلة العطا  
والدماغ ان الاحتقان في الحبلد والنजार والخباط اذا انما زعمنا  
في المنشار والقدر وم الطبخ والنجاز اذا انما زعمنا في  
القدر ونحو ذلك فقل ذلك لا اعتمادا على الامارات وقد



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رقم الصفحة

الفصل

١١٩

فصل في منع ولي الأمر اللاعبين بالحمام على رؤوس الناس

١٢١

فصل في منع الرجل من اتخاذ الحمام في الأبرجة إذا أفسدت

الزرع

١٢٥

فصل في الأمراض المعدية وعزل المصاب

## الفهرس المتعلق بالجزء المحقق " الحسبة "

رقم الصفحة	الفصل
١	فصل في الحكم في ما لا يتوقف على الدعوى
٨	فصل في عموم الولايات وخصوصها
١٩	فصل في تلقي السلع
٢٤	فصل في حكم التسعير
٢٦	فصل في حكم إيجار الحانوت على الطريق
٢٧	فصل في احتكار البيع
٢٩	فصل في منع الأئمة اشتراك القسّامون
٣٣	فصل في إلزام ولي الأمر أرباب الصناعات بالقيام بأعمالهم
٣٥	فصل في محاسبة الإمام لعماله
٤٣	فصل في أحكام المشاركات والمساقاة والمزارعة
٥٠	فصل في المانع لوقوع التسعير في زمن الرسول ﷺ
٥١	فصل في تنازع العمال في التسعير
٦٠	فصل في تحديد التسعير
٦٢	فصل في صفة تحديد التسعير عند من جوزه
٦٦	فصل في وجوب بذل الحاجيات للمضطر
٧٧	فصل في الحكم بالعقوبة والتعزير على حسب مقتضيات الأحوال
٨٠	فصل في مشروعية التعزير بالعقوبات المالية
٩٠	فصل في حقوق الله وأقسامها
١٠٢	فصل في عدم ضمان إتلاف الكتب المضلة وتحريقها
١١٢	فصل في رأي الأئمة في الفاسق يأوي إليه أهل الفسق
١١٤	فصل في منع ولي الأمر الاختلاط بين الرجال والنساء في الأسواق



وحكى بعض رؤساء<sup>(١)</sup> الأطباء<sup>(٢)</sup> أنه أجلس ابن أخ له للكحل<sup>(٣)</sup> فكان<sup>(٤)</sup> ينظر في عين الرمد فيرمد،<sup>(٥)</sup> فقال له اترك الكحل ، فتركه فلم يعرض له رمد ، قال لأن<sup>(٦)</sup> الطبيعة نقاله.

وذكر البيهقي وغيره « أن رسول الله ﷺ تزوج امرأة من غفار، فدخل عليها فأمرها فتعرت ثيابها، فرأى بياضا عند ثديها فأنحاز النبي ﷺ عن الفراش، فلما أصبح قال الحقي [٢٥٨/ب] بأهلك وحمل لها صداقها». <sup>(٧)</sup>

(١) في (أ) رؤساء ، و (د) رؤساء، وفي الأصل [روسا].

(٢) في (د) الاطباء، و في الأصل [الأطبا].

(٣) في (هـ) للاكحل .

(٤) في (ب) فكان [ساقطة] .

(٥) في (د) و (هـ) رضي الله عنه [ساقطة] ، وفي الأصل [رضى الله عنه].

(٦) في (ب) لئن ، و (هـ) لين .

(٧) رواه البيهقي (٢١٣/٧).

فإن<sup>(١)</sup> هذا يدل على جواز الأمرين ، وهذا في حق طائفة<sup>(٢)</sup> وهذا في حق طائفة<sup>(٣)</sup> فمن قوى توكله واعتماده ويقينه<sup>(٤)</sup> من الأمة أخذ بالحديث<sup>(٥)</sup> ومن ضعف عن ذلك أخذ بالحديث الآخر، وهذه<sup>(٦)</sup> سنة، وهذه<sup>(٧)</sup> سنة وبالله التوفيق.

فإذا أراد [أ/٢٥٨] أهل الدار أن يؤاكلوا<sup>(٨)</sup> المجذومين ويشاربوهم ويضاجعوهم<sup>(٩)</sup> فلهم ذلك، وإن أرادوا بجانبهم ومباعدتهم فلهم ذلك وفي قولهم<sup>(١٠)</sup> « لا تديموا النظر إلى المجذومين »، فائدة عظيمة،<sup>(١١)</sup> وهي أن الطبيعة نقالة ، فإذا أدام النظر إلى المجذوم خيفَ عليه أن يُصيبهم<sup>(١٢)</sup> ذلك بنقل<sup>(١٣)</sup> الطبيعة وقد جرب<sup>(١٤)</sup> الناس أن المُجامع إذا نظر إلى شيء<sup>(١٥)</sup> عند الجماع وأدام النظر إليه ، انتقل منه<sup>(١٦)</sup> إلى الولد.

(١) في (ب) فان [ ساقطة ] .

(٢) و في الأصل [طائفة].

(٣) في (ب) وهذا في حق طائفة [ ساقطة ] ، وفي الأصل [طائفة].

(٤) في (هـ) غير واضحة .

(٥) في (د) و (هـ) بهذا اليت .

(٦) في (د) وهذا .

(٧) في (د) وهذا .

(٨) في (هـ) تواكلهم، و في الأص [يواكلهم].

(٩) في (أ) و (ب) و (هـ) يشار بوهم و يضاجعوهم .

(١٠) في (هـ) قوله .

(١١) في (أ) و (ب) و (د) و (هـ) فائدة طيبة عظيمة .

(١٢) في (أ) و (ب) و (د) و (هـ) يصيبه .

(١٣) في (هـ) بفقل .

(١٤) في (د) جرت ، و (هـ) حرب .

(١٥) في (هـ) الشيء .

(١٦) في (أ) و (ب) و (د) و (هـ) منه صفة .



فأرسل إليه<sup>(١)</sup> النبي ﷺ إنا قد بايعناك فارجع<sup>(٢)</sup>.

وفي<sup>(٣)</sup> أبي داود الطيالسي<sup>(٤)</sup> حدثنا<sup>(٥)</sup> أبي<sup>(٦)</sup> الزناد، عن محمد بن عبد الله

القرشي، عن أبيه عن ابن<sup>(٧)</sup> عباس<sup>(٨)</sup> عن النبي ﷺ قال « لا تديموا<sup>(٩)</sup> النظر إليهم<sup>(١٠)</sup> يعني المجذومين. »<sup>(١١)</sup> ومحمد هذا هو محمد بن<sup>(١٢)</sup> عبد الله بن<sup>(١٣)</sup> عمرو بن<sup>(١٤)</sup> عثمان.

ولا تعارض<sup>(١٥)</sup> بين هذا وبين ما رواه مفضل بن فضالة عن حبيب بن<sup>(١٦)</sup> الشهيد

عن ابن<sup>(١٧)</sup> المنكدر عن جابر « أن رسول الله ﷺ أخذ بيده<sup>(١٨)</sup> مجذوم ، فوضعها معه في قصعه ، وقال ،<sup>(١٩)</sup> كل بسم الله ، وتوكلا عليه<sup>(٢٠)</sup> »

(١) في (ب) اليه [ ساقطة ] .

(٢) رواه مسلم برقم (٢٢٣١).

(٣) في (ب) و (د) و (هـ) وفي مسند .

(٤) في (د) الطيالسي .

(٥) في (ب) ثنا بن .

(٦) في (د) و (هـ) ابن أبي .

(٧) في (ب) و (هـ) بن .

(٨) في (أ) رضى الله عنهما .

(٩) في (ب) لا تطيلوا .

(١٠) في (د) الى هم .

(١١) رواه أبو داود الطيالسي برقم (٢٦٠١).

(١٢) في (د) ابن .

(١٣) في (د) ابن .

(١٤) في (د) ابن .

(١٥) في (هـ) يعارض .

(١٦) في (أ) ابن .

(١٧) في (هـ) بن .

(١٨) في (أ) و (د) و (هـ) بيد .

(١٩) في (هـ) فقال .

(٢٠) رواه أبو داود برقم (٣٩٢٥). والحديث ضعيف أورده ابن الجوزي في الأحاديث الواهية (٣٨٦/٢).

وقال أصبغ<sup>(١)</sup> ليس على مرضى<sup>(٢)</sup> الحواضر<sup>(٣)</sup> الخروج منها إلى ناحية أخرى،<sup>(٤)</sup> ولكن إن كفاهم الإمام المؤنة منعوا من مخالطة الناس بلزوم بيوتهم والتنحي عنهم.

وقال ابن حبيب<sup>(٥)</sup> يحكم عليهم بتنحيهم ناحية إذا كثروا،<sup>(٦)</sup> وهو الذي عليه فقهاء<sup>(٧)</sup> الأمصار.

قلت يشهد لهذا الحديث<sup>(٨)</sup> الصحيح الذي<sup>(٩)</sup> رواه البخاري من حديث سعيد ابن ميناء عن أبي هريرة<sup>(١٠)</sup> قال قال رسول الله ﷺ « لا عدوى<sup>(١١)</sup> ولا هامة ولا صفر، وفرّ من المجذوم فرارك من الأسد، أو قال من الأسود ». <sup>(١٢)</sup>  
وروى مسلم في صحيحه من [٢٥٧/ب] حديث معلى بن عطاء<sup>(١٣)</sup> عن عمرو ابن الشريد<sup>(١٤)</sup> عن أبيه، قال « كان في وفد ثقيف رجل مجذوم،

(١) في (د) اصبع .

(٢) في (ب) مرضا .

(٣) في (هـ) الحواظ .

(٤) في (ب) و (د) و (هـ) اخرى [ساقطة] .

(٥) في (أ) و (د) ابن حبيب، و في الأصل [بن حبيب] .

(٦) في (هـ) اكثروا .

(٧) في (ب) فقهاء، و (د) فقهاء، و في الأصل [فقهاء] .

(٨) في (ب) قلت هذا اليث .

(٩) في (هـ) وهو ما .

(١٠) في (أ) رضى الله عنهم .

(١١) في (ب) لا عدوى ولا طيرة .

(١٢) رواه البخاري برقم (٥٧٠٧) .

(١٣) و في الأصل [عطا] .

(١٤) في (ب) بن شريد، و (هـ) بن الشريك، و في الأصل [ابن الشريد] .



وقال ابن حبيب<sup>(١)</sup> عن مطرف في الجذامي،<sup>(٢)</sup> وأما<sup>(٣)</sup> الواحد والنفر اليسير، فلا يخرجون من الحاضرة، ولا من قرية ولا من سوق، ولا من مسجد جامع، لأن عمر<sup>(٤)</sup> لم يعزم على المرأة وهي تطوف بالبيت، وكذلك معيقب الدوسي<sup>(٥)</sup> وقد جعله رضي الله عنه<sup>(٦)</sup> على بيت المال، وكان يؤاكلة<sup>(٧)</sup> و يجالسه<sup>(٨)</sup> ويقول له، « كل مما يليك » فإذا كثروا رأيت أن يتخذوا لأنفسهم موزعا، كما صنع بمرضى مكة، ولا يُمنعون من الأسواق [٢٥٧/أ] لتجاركم، وشراء<sup>(٩)</sup> حوايجهم، أو<sup>(١٠)</sup> الطواف للسؤال، إذا لم يكن إمام يرزقهم من<sup>(١١)</sup> الفسي،<sup>(١٢)</sup> ولا يمنعون من الجمعة، ويُمنعون من غير ذلك. وروى سحنون: أنهم لا يجمعون<sup>(١٣)</sup> مع الناس الجمعة<sup>(١٤)</sup>.

و أما مرضى القرى<sup>(١٥)</sup> فلا يخرجون عنها وإن كثروا،<sup>(١٦)</sup> ولكن يمنعون من أذى الناس.

(١) في (أ) و (د) ابن حبيب، و في الأصل [بن حبيب].

(٢) و في الأصل [الجذمي].

(٣) في (د) و (هـ) أما .

(٤) في (أ) رضى الله عنه .

(٥) في (د) الدوشي .

(٦) في (أ) و (ب) و (د) و (هـ) عمر .

(٧) و في الأصل [يواكله].

(٨) في (أ) و (د) و (هـ) يجالسه و يواكله.

(٩) في (ب) و (هـ) وشراء، و في الأصل [شرى].

(١٠) في (هـ) و .

(١١) في (أ) و (ب) و (د) و (هـ) من، و في الأصل [في].

(١٢) في (د) الفسيء .

(١٣) في (أ) لا يجمعون الجمعة .

(١٤) في (هـ) في الجمعة .

(١٥) في (د) القرى [ساقطة] .

(١٦) في (هـ) اكثروا .

فیتأذي بذلك أهل القرية، وأرادوا<sup>(١)</sup> منعهم من ذلك كله<sup>(٢)</sup>. قال أما من المسجد فلا يُمنعون الصلاة<sup>(٣)</sup> فيه، ولا من الجلوس، ألا<sup>(٤)</sup> ترى إلى قول عمر بن<sup>(٥)</sup> الخطاب<sup>(٦)</sup> للمرأة المبتلاة لما رأها تطوف بالبيت مع الناس «لو جلست في بيتك لكان خيرا لك» ولم يعزم [ب/٢٥٦] عليها بالنهي عن الطواف، ودخول البيت، وأما استقاؤهم<sup>(٧)</sup> من مائهم<sup>(٨)</sup> و ورودهم المورد للوضوء<sup>(٩)</sup> غير<sup>(١٠)</sup> ذلك ينعون، ويجعلون لأنفسهم صحيحا<sup>(١١)</sup> يستقي لهم الماء<sup>(١٢)</sup> في آنية ثم يُفرغها في أنيتهم، قال رسول الله ﷺ «لا ضرر ولا ضرار»<sup>(١٣)</sup> وذلك ضرر بالأصحاء، فأرى أن يحال بينهم وبين ذلك، ألا ترى أنه يفرق بينه وبين زوجته ويُحال بينه وبين وطء<sup>(١٤)</sup> جواريه<sup>(١٥)</sup> للضرر فهذا منه.

(١) وفي الأصل [وأراد].

(٢) في (أ) بالكلية .

(٣) في (أ) و (ب) و (هـ) من الصلاة ، و (د) من الصلوة .

(٤) في (د) الى .

(٥) في (أ) و (د) ابن .

(٦) في (أ) رضى الله عنه .

(٧) في (ب) استقاؤهم ، و (د) استقاؤهم ، و (هـ) استقاؤهم، وفي الأصل [استقاؤهم].

(٨) في (ب) مائهم، وفي الأصل [مايهم].

(٩) في (ب) للوضوء ، و (د) للوضؤ ، و (هـ) للوضو .

(١٠) في (أ) و (ب) و (د) و (هـ) وغير .

(١١) في (د) صحيحا [ساقطة] .

(١٢) في (أ) و (ب) الماء ، و (هـ) الماء، وفي الأصل [الماء].

(١٣) رواه ابن ماجه برقم (٢٣٤١).

(١٤) في (د) و (هـ) وطى، و في الأصل [وطى].

(١٥) في (د) حواريه .



## فصل (١) في الأمراض المعدية وعزل المصاب

في المرض المعدي كالجذام إذا استضر الناسُ بأهله، قال ابن وهب<sup>(٢)</sup> في المبتلى [٢٥٦/أ] يكون له في منزله سهمٌ، وله حظ<sup>(٣)</sup> في شرب فأراد من معه في<sup>(٤)</sup> المنزل إخرجه منه، وزعموا أن إستقاءه<sup>(٥)</sup> من ماينهم<sup>(٦)</sup> الذي يشربون<sup>(٧)</sup> مضر بهم، فطلبوا إخرجه من المنزل.

قال ابن<sup>(٨)</sup> وهب إذا كان له مال أمر أن يشتري لنفسه من يقوم بأمره، ويخرج في حوائجه<sup>(٩)</sup> ويلزم هو بيته فلا يخرج، وإن لم يكن له مال خرج من المنزل إذا لم يكن فيه شيء<sup>(١٠)</sup>، ويُنفق عليه من بيت المال.

وقال عيسى في قوم ابتلوا<sup>(١١)</sup> بالجذام وهم في قرية، موردهم واحد، ومسجدهم واحد، فيأتون المسجد فيصلون فيه، ويجلسون فيه معهم، ويردون الماء<sup>(١٢)</sup> ويتوضأون<sup>(١٣)</sup>.

(١) في (هـ) فصل [ساقطة] .

(٢) في (أ) ابن وهب، وفي الأصل [بن وهب].

(٣) في (د) ولم حظ .

(٤) في (ب) من معه من في .

(٥) في (ب) استقائه ، و (د) استقاؤه، وفي الأصل [استقاه].

(٦) في (ب) ماينهم، و في الأصل [ماينهم].

(٧) في (أ) يشربونه .

(٨) في (د) ابن، وفي الأصل [بن].

(٩) وفي الأصل [حوائجه].

(١٠) في (ب) و (د) شيء، و في الأصل [شي].

(١١) وفي الأصل [إبتلوا].

(١٢) وفي الأصل [الماء].

(١٣) في (د) و (هـ) الماء و يتوضؤون، وفي الأصل [يتوضؤون].

الحية و لم يشترط في قتلهن أن يكون<sup>(١)</sup> حال المباشر<sup>(٢)</sup>.

- (١) في (د) ان يكون [ ساقطة ] .  
(٢) في (أ) و (ب) و (د) و (هـ) المباشرة .



فإن قيل، فهل [٢٥٥/ب] تُسَوِّغون قتلها لذلك ، <sup>(١)</sup> قلنا نعم، إذا كان ذلك عادةً لها.

وقال ابن <sup>(٢)</sup> عقيل، وبعض الشافعية، إنما تُقتل حال مباشرتها للجناية فأما في حال سكونها و عدم صولها فلا.

والصحيح خلاف هذا، وإنما تقتل، وإن كانت ساكنة، كما يقتل من طبعه الفساد <sup>(٣)</sup> والأذى <sup>(٤)</sup> في حال سكونه، ولا ينتظر مباشرته <sup>(٥)</sup>.

وقد روى أبو داود <sup>(٦)</sup> والترمذي من حديث أبو <sup>(٧)</sup> سعيد <sup>(٨)</sup> عن النبي ﷺ قال « يقتل المحرم السبع العادي » <sup>(٩)</sup> وقال <sup>(١٠)</sup> هذا الحديث <sup>(١١)</sup> حسن، والمهرة <sup>(١٢)</sup> سبع.

وفي الصحيحين عنه ﷺ « خمس فواسق يقتلن في الحل والحرم الحدأة، والفأر، <sup>(١٣)</sup> والحية ، والغراب الأبقع، والكلب العقور » <sup>(١٤)</sup> وفي لفظ العقرب <sup>(١٥)</sup> بدل

- (١) في (د) و (هـ) كذلك .
- (٢) في (أ) و (د) ابن، وفي الأصل [بن].
- (٣) في (أ) و (ب) و (د) و (هـ) الفساد [ساقطة] .
- (٤) في (أ) و (ب) من طبعه الأذى .
- (٥) في (د) مباشرتها .
- (٦) في (د) ابو داود .
- (٧) في (أ) و (ب) و (د) و (هـ) أبي .
- (٨) في (أ) رضى الله عنه .
- (٩) رواه أبو داود برقم (١٨٤٨)، و رواه الترمذي برقم (٨٣٨).
- (١٠) في (د) و (هـ) قال .
- (١١) في (أ) و (ب) و (هـ) يث .
- (١٢) في (هـ) والمغيره .
- (١٣) في (أ) و (ب) و (د) و (هـ) الفأرة .
- (١٤) رواه البخاري برقم (١٨٢٦) ، و رواه مسلم برقم (١١٩٩).
- (١٥) في (ب) والعقرب .

قلت، قول [أ/٢٥٥] مطرف أصح و أفقه، لأن حراسة<sup>(١)</sup> الزرع والحوايط من الطيور أمرٌ مُتَعَسَّرٌ جدا، بخلاف حراستها من البهائم، [و] قياس الطير على البهائم لا يَصِحُّ .

وقال أصبغ عن ابن<sup>(٢)</sup> القاسم هي كالماشية ، وإن أضرت .

والقياس أن صاحبها يضمن ما أتلفت من الزرع مطلقا، لأنه باتخاذها صار متسببا في إتلاف<sup>(٣)</sup> زرع<sup>(٤)</sup> الناس، بخلاف المواشي؛ فإنه يمكن صونها وضبطها، فإذا أنفلتت بغير إختياره بها، أو<sup>(٥)</sup> أفسدت<sup>(٦)</sup>، فلا ضمان عليه، لأن التقصير من أصحاب الحوايط، وأما الطيور فلا يمكن أصحاب الحوايط التحفظ منها . فإن قيل، فما تقولون في السنور<sup>(٧)</sup> إذا أكلت الطيور، وأكفأت القدور، فهل<sup>(٨)</sup> على مقتنيها ضمان ما تتلفه<sup>(٩)</sup> من ذلك نهارا.<sup>(١٠)</sup> ذكره أصحاب أحمد، وهو أصح وجهين<sup>(١١)</sup> للشافعية، لأنها في معنى الكلب العقور، فوجب إلحاقها به، ولأن<sup>(١٢)</sup> من شأنها أن تضبط وتربط، فأرسالها تفريط، وإن لم يكن ذلك من عادتها بل فعلته نادرا فلا ضمان، ذكره في المغني وهو أصح الوجهين للشافعية .

(١) في (ب) و (هـ) حراسته .

(٢) في (ب) و (هـ) بن .

(٣) في (أ) و (د) و (هـ) إلى إتلاف ، و (ب) لاتلاف .

(٤) في (ب) زروع .

(٥) في (د) و .

(٦) في (هـ) فسدت .

(٧) في (ب) النسورة .

(٨) في (أ) و (ب) و (د) و (هـ) قيل .

(٩) في (ب) اتلفته .

(١٠) في (أ) و (ب) و (د) و (هـ) من ذلك ليلا و نهارا ، و (ب) (او نهار) .

(١١) في (أ) و (د) و (هـ) الوجهين .

(١٢) في (ب) و لانها .



## فصل<sup>(١)</sup> في منع الرجل من اتخاذ الحمام في الأبرجة إذا أفسدت الزرع

واختلف الفقهاء<sup>(٢)</sup> هل يمنع الرجل من اتخاذ الحمام في الأبرجة<sup>(٣)</sup> إذا أفسدت  
بذراً الناس وزرعهم،<sup>(٥)</sup> فقال ابن<sup>(٦)</sup> حبيب عن مطرف، في النحل يتخذها الرجل في  
القرية ويتخذ<sup>(٧)</sup> الكوى<sup>(٨)</sup> للعصافير تأوي إليهم،<sup>(٩)</sup> وكذلك الحمام في إيذائها<sup>(١٠)</sup>  
وإفسادها الزرع، يمنع من اتخاذ ما يضر الناس<sup>(١١)</sup> في زرعهم، لأن هذا طائر<sup>(١٢)</sup> لا  
يُقدر<sup>(١٣)</sup> الاحتزار منه.

وقال ابن<sup>(١٤)</sup> كنانة في المجموعة لا يُمنع أحد من اتخاذ برج الحمام، وإن تأذى<sup>(١٥)</sup> به  
جيرانه، وكذلك العصافير والدجاج، وعلى أهل الزرع والحوايط أن يحرسوها<sup>(١٦)</sup> بالنهار.

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (هـ) الفقهاء .

(٣) في (د) الأبرجة .

(٤) في (هـ) زرع .

(٥) في (هـ) وبذرهم .

(٦) في (أ) و (د) ابن، وفي الأصل [بن] .

(٧) في (أ) و (د) ويتخذ فيه ، و (ب) و (هـ) ويتخذ فيها .

(٨) في (هـ) الكري .

(٩) في (أ) و (ب) و (د) و (هـ) يأوي إليها .

(١٠) في (ب) إيذائها .

(١١) في (ب) بالناس .

(١٢) وفي الأصل [طائر] .

(١٣) في (ب) و (د) لا يقدر على .

(١٤) في (أ) و (د) ابن، و في الأصل [بن] .

(١٥) في (د) و (هـ) تادى .

(١٦) في (ب) يحرسونها .

وكان شريح<sup>(١)</sup> لا يُجيز شهادة صاحب حمام ولا حَمَّام.

وقال ابن<sup>(٢)</sup> المبارك عن سفيان<sup>(٣)</sup> سمعنا أن اللعب بالجلاهق،<sup>(٤)</sup> واللعب بالحمام من عمل قوم لوط.<sup>(٥)</sup>

وذكر البيهقي عن أسامة بن<sup>(٦)</sup> زيد قال « شهدت عمر<sup>(٧)</sup> يأمر بالحمام الطيارة<sup>(٨)</sup> فيُذبحن، ويُترك<sup>(٩)</sup> المقصصات<sup>(١٠)</sup>».

(١) في (ب) شريحا .

(٢) في (أ) و (ب) ابن، وفي الأصل [بن].

(٣) في (هـ) سفين .

(٤) في (ب) بالخلاهو ، و (د) بالهلاهق .

(٥) في (أ) لوط عليه السلام .

(٦) في (أ) و (د) و (هـ) ابن .

(٧) في (أ) رضى الله عنه .

(٨) في (ب) الطيار .

(٩) في (هـ) ويتركن .

(١٠) رواه البيهقي، في السنن الكبرى (٢١٣/١٠).



## فصل (١) في منع ولي الأمر اللاعبين بالحمام

### على رؤوس الناس

وعليه أن يمنع اللاعبين بالحمام على رؤوس<sup>(٢)</sup> الناس، فإنهم يتوسلون بذلك إلى الإشراف عليهم، والتطلع على عوراتهم، وقد روى أبو داود<sup>(٣)</sup> في سننه من حديث أبي هريرة<sup>(٤)</sup> عن النبي صلى الله عليه وسلم إنه رأى رجلاً يتبع<sup>(٥)</sup> حمامة فقال « شيطان يتبع<sup>(٦)</sup> شيطانه ». <sup>(٧)</sup>

وقال إبراهيم<sup>(٨)</sup> النخعي : ( من لعب بالحمام<sup>(٩)</sup> لم يمت حتى يذوق ألم الفقر ).

وقال الحسن « شهدت عثمان بن<sup>(١٠)</sup> عفان رضي الله عنه وهو يخطب، وهو يأمر بذبح الحمام، وقتل [ب/٢٥٤] الكلاب » ذكره البخاري.

وقال خالد الخذاء<sup>(١١)</sup> عن بعض التابعين قال كان ملاعب آل فرعون الحمام.

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (ب) رؤوس ، وفي الأصل [روس].

(٣) في (د) أبو داود .

(٤) في (د) و (هـ) رضي الله عنه .

(٥) في (ب) و (د) يبيع .

(٦) في (ب) و (د) يبيع .

(٧) رواه أبو داود (٤٩٤٠).

(٨) في (ب) و (د) إبراهيم .

(٩) في (أ) و (ب) و (د) و (هـ) بالحمام الطياره .

(١٠) في (د) ابن .

(١١) في (ب) الاد ، و (هـ) الا، وفي الأصل [الحداء].

حدثنا<sup>(١)</sup> عبدالرحمن<sup>(٢)</sup> بن<sup>(٣)</sup> زيد العمي<sup>(٤)</sup> عن أبيه عن سعيد بن جبير عن ابن عباس<sup>(٥)</sup> قال، قال رسول الله ﷺ « ما طَفَّفَ قومٌ كَيْلاً ، ولا بَخَسُوا<sup>(٦)</sup> ميزاناً، إلا منعهم الله القطر، ولا ظهر في قوم الزنا إلا ظهر فيهم الموت، ولا ظهر في قوم عمل قوم لوط إلا ظهر فيهم الخسف، وما ترك قوم الأمر بالمعروف والنهي عن المنكر إلا لم ترفع أعمارهم ولم يسمع<sup>(٧)</sup> دعائهم<sup>(٨)</sup> ». <sup>(٩)</sup>

(١) في (هـ) ثنا .

(٢) في (أ) ابراهيم .

(٣) في (د) ابن .

(٤) في (ب) المعمر .

(٥) في (أ) و (د) ابن، وفي الأصل [بن] .

(٦) في (هـ) نحوا .

(٧) في (أ) و (ب) و (د) و (هـ) يسمع، وفي الأصل [اسمع] .

(٨) في (ب) دعائهم ، و (د) دعاءهم، وفي الأصل [دعائهم] .

(٩) رواه ابن ابي الدنيا .



ولما اختلطت البغايا بعسكر موسى، وفشا<sup>(١)</sup> فيه الفاحشة أرسل الله إليهم<sup>(٢)</sup>  
الطاعون، فمات في يوم واحد سبعون<sup>(٣)</sup> ألفاً، والقصة مشهورة في كل<sup>(٤)</sup> التفاسير.  
فمن أعظم أسباب الموت العام كثرة الزنا، بسبب تمكين النساء<sup>(٥)</sup> من  
اختلاطهن بالرجال، و المشي بينهم متبرجات متجملات، ولو يعلم<sup>(٦)</sup> أولياء<sup>(٧)</sup> الأمر  
ما في ذلك من فساد الدنيا و الرعية قبل الدين لكانوا أشد شي<sup>(٨)</sup> منعا لذلك<sup>(٩)</sup>.  
قال عبد الله بن مسعود رضي الله عنه<sup>(١٠)</sup> إذا ظهر الزنا في قرية<sup>(١١)</sup> أذن بملاكها.  
وقال عبد الله<sup>(١٢)</sup> ابن أبي الدنيا حدثنا<sup>(١٣)</sup> إبراهيم<sup>(١٤)</sup> [٢٥٤/أ] ابن الأشعث<sup>(١٥)</sup>

- (١) في (ب) فشا .
- (٢) في (أ) و (ب) و (د) و (هـ) عليهم .
- (٣) في (ب) وسبعون .
- (٤) في (هـ) كتب .
- (٥) في (د) النساء، وفي الأصل [النسا].
- (٦) في (أ) و (ب) و (د) و (هـ) ولو علم .
- (٧) في (ب) اولياء، و (د) اولياء، وفي الأصل [اوليا].
- (٨) في (ب) شيئا، و (د) شيء، وفي الأصل [شي].
- (٩) في (ب) من ذلك .
- (١٠) في (ب) رضي الله عنه [ساقطة] .
- (١١) في (ب) بقرية .
- (١٢) في (ب) عبد الله [ساقطة] .
- (١٣) في (ب) ثنا .
- (١٤) في (ب) و (د) ابراهيم، وفي الأصل [ابراهيم].
- (١٥) في (ب) و (هـ) بن .

وقال الخلال في جامعه أخبرني محمد بن يحيى الكحال، أنه قال لأبي عبد الله أرى الرجل السوء<sup>(١)</sup> مع المرأة<sup>(٢)</sup> قال صح به<sup>(٣)</sup>.

وقد أخبر النبي ﷺ « أن المرأه إذا تطيبت وخرجت من بيتها فهي زانية »<sup>(٤)</sup>.

و يمنع<sup>(٥)</sup> المرأة إذا أصابت بخورا أن تشهد عشاء<sup>(٦)</sup> الآخرة في المسجد.<sup>(٧)</sup>

وقال « المرأة [٢٥٣/ب] إذا خرجت إستشرفها<sup>(٨)</sup> الشيطان »<sup>(٩)</sup>.

ولاريب أن تمكن<sup>(١٠)</sup> النساء<sup>(١١)</sup> من إختلاطهن بالرجال أصل كل بليه وشر، وهو من أعظم أسباب نزول العقوبات العامة، كما أنه من أسباب فساد أمور<sup>(١٢)</sup> العامة والخاصه، و إختلاط الرجال بالنساء<sup>(١٣)</sup> سبب لكثرة الفواحش والزنا، وهو من أسباب الموت العام، والطواعين المتصلة.

(١) في (ب) السوى ، و (د) السوء، وفي الأصل [السو].

(٢) في (ب) المرة .

(٣) في (ب) صحه .

(٤) رواه أبو داود برقم (٤١٧٣).

(٥) في (أ) و (ب) و (د) و (هـ) ومنع .

(٦) في (ب) العشا ، (د) عشاء، وفي الأصل [عشا].

(٧) رواه مسلم برقم (٤٤٤).

(٨) في (هـ) استرقها .

(٩) رواه الترمذي برقم (١١٧٣).

(١٠) في (أ) و (ب) و (د) و (هـ) تمكين .

(١١) في (د) و (هـ) النساء، وفي الأصل [النسا].

(١٢) في (د) و (هـ) امور، وفي الأصل [الأمور].

(١٣) في (ب) و (د) بالنساء، وفي الأصل [النسا].



وفي حديث آخر إنه قال للنساء<sup>(١)</sup> «لكن حافات الطريق»<sup>(٢)</sup>.

ويجب عليه منع النساء<sup>(٣)</sup> من الخروج متزينات متجملات،<sup>(٤)</sup> ومنعهن من الثياب التي يَكُنُّ بها كاسيات عاريات، كالثياب الواسعة<sup>(٥)</sup> والرقاق،<sup>(٦)</sup> ومنعهن من حديث [أ/٢٥٣] الرجال في الطرقات، ومنع الرجال من ذلك. وإن رأى ولي الأمر أن يُفسد على المرأة إذا تجملت وتزينت وخرجت<sup>(٧)</sup> ثيابها بجبر ونحوه، فقد رخص في ذلك بعض الفقهاء<sup>(٨)</sup> وأصاب، وهذا من أدنى عقوبتهن المالية.

وله أن يحبس المرأة إذا أكثرت الخروج من مترها، ولا سيما إذا خرجت متجملة، بل إقرار النساء<sup>(٩)</sup> على ذلك إعانه لمن<sup>(١٠)</sup> على الإثم،<sup>(١١)</sup> والله<sup>(١٢)</sup> سائل<sup>(١٣)</sup> ولي الأمر عن ذلك.

وقد منع أمير المؤمنين عمر بن<sup>(١٤)</sup> الخطاب رضي الله عنه النساء<sup>(١٥)</sup> من المشي في طريق الرجال، والاختلاط بهم في الطريق. فعلى ولي الأمر أن يقتدي به في ذلك.

(١) في (أ) و (د) للنساء، و في الأصل [النساء].

(٢) رواه أبو داود برقم (٥٢٧٢). وحسنه الألباني، ينظر سلسلة الأحاديث الصحيحة، برقم (٨٥٦).

(٣) في (ب) و (هـ) النساء.

(٤) في (ب) متجملات [ساقطة].

(٥) في (أ) و (د) و (هـ) كالثياب الواسعة، و (ب) كالثياب الواسعات، و في الأصل [الواسعة].

(٦) في (د) الرقاق.

(٧) في (أ) و (ب) و (د) و (هـ) خرجت [ساقطة].

(٨) في (ب) الفقهاء، و (د) الفقهاء، و في الأصل [الفقهاء].

(٩) في (ب) و (د) النساء و في الأصل [النساء].

(١٠) في (هـ) لهم.

(١١) في (أ) و (ب) و (د) و (هـ) على الإثم والمعصية.

(١٢) في (أ) الله سبحانه.

(١٣) و في الأصل [السائل].

(١٤) في (أ) و (د) ابن.

(١٥) في (د) النساء، و في الأصل [النساء].

## فصل<sup>(١)</sup> في منع ولي الأمر الاختلاط بين الرجال والنساء في الأسواق

ومن ذلك أن ولي الأمر<sup>(٢)</sup> يجب عليه<sup>(٣)</sup> أن يمنع<sup>(٤)</sup> اختلاط الرجال بالنساء<sup>(٥)</sup> في الأسواق، والفُرَج، ومجامع الرجال.

قال مالك<sup>(٦)</sup> رحمه الله<sup>(٧)</sup> أرى للإمام<sup>(٨)</sup> أن يتقدم إلى الصنّاع في قعود النساء إليهم، وأرى أن لا يترك المرأة الشابة تجلس إلى الصنّاع، فأما المرأة المتجالة<sup>(٩)</sup> والخادم<sup>(١٠)</sup> الدون، الذي<sup>(١١)</sup> لا يتهم على القعود، ولا يُتهم من يقعد عنده فإني لا أرى بذلك بأساً، انتهى.

فالإمام مسؤول<sup>(١٢)</sup> عن ذلك، والفتنة به عظيمة، قال<sup>(١٣)</sup> صلى الله عليه وسلم «ما تركت بعدي فتنة أضر على الرجال من النساء»<sup>(١٤)</sup>.

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (أ) أولي الأمر [ والظاهر من السياق أن ولي الأمر أصح كما هو في الأصل، والله أعلم ] :

(٣) في (د) عليه [ ساقطة ] .

(٤) في (د) و (هـ) يمنع من .

(٥) في (ب) ، (د) بالنساء ، و (هـ) النساء، و في الأصل [ بالنساء ] .

(٦) في (أ) ملك .

(٧) في (أ) و (ب) و (د) و (هـ) رحمه الله ورضي عنه .

(٨) في (هـ) الامام .

(٩) في (د) و (هـ) المنحاله .

(١٠) في (ب) و الخادون .

(١١) في (ب) الذي [ ساقطة ] .

(١٢) في (أ) و (هـ) مسول ، و (د) مسؤل، و في الأصل [ مسوول ] .

(١٣) في (أ) قال النبي .

(١٤) رواه البخاري برقم (٥٠٩٦)، و رواه مسلم برقم (٢٧٤٠).



متزله، ولو لم تكن<sup>(١)</sup> الدار له، وكان فيها بكراء<sup>(٢)</sup> أُخْرِجَ منها وأُكْرِيتَ عليه، ولم يُفْسَخْ كراؤه<sup>(٣)</sup> فيها، قاله<sup>(٤)</sup> في كراء<sup>(٥)</sup> الدور من المدونه.

وقد روى يحيى<sup>(٦)</sup> بن يحيى<sup>(٧)</sup> أنه قال أرى أن يُحْرَقَ بيت الخَمَّار<sup>(٨)</sup> قال وقد أخبرني بعض أصحابنا أن مالك<sup>(٩)</sup> كان يستحب أن يحرق بيت المسلم الخمار الذي يبيع الخمر، قيل له فالنصراني يبيع<sup>(١٠)</sup> الخمر من المسلمين قال<sup>(١١)</sup> إذا تقدم إليه فلم ينته فأرى أن يُحرق عليه بيته بالنار.<sup>(١٢)</sup>

قال حدثني<sup>(١٣)</sup> الليث أن عمر [٢٥٢/ب] بن<sup>(١٤)</sup> الخطاب<sup>(١٥)</sup> «حَرَقَ بيت رويشد الثقفي،<sup>(١٦)</sup> لأنه كان يبيع الخمر، وقال له أنت فُوَيْسِقٌ ولست<sup>(١٧)</sup> بروَيْشِدٍ».

(١) في (ب) و (هـ) يكن .

(٢) في (د) بكراء، وفي الأصل [بكرا].

(٣) في (ب) ولم يفسخ كراؤه [ساقطة] ، و (د) كراؤه، وفي الأصل [كراؤه].

(٤) في (هـ) باله ..

(٥) في (أ) و (ب) و (د) و (هـ) كرى، وفي الأصل [كرا].

(٦) في (ب) يحيى .

(٧) في (أ) ابن .

(٨) في (ب) الخمر .

(٩) في (أ) و (ب) مالكا .

(١٠) في (أ) و (ب) يبيع .

(١١) في (ب) قال [ساقطة] .

(١٢) في (د) تحرق .

(١٣) في (د) و (هـ) وثني .

(١٤) في (هـ) بن، وفي الأصل [ابن].

(١٥) في (أ) رضى الله عنه .

(١٦) في (د) القفي .

(١٧) في (ب) لا .

## فصل (١) في رأي الأئمة في الفاسق يأوي إليه أهل الفسق

وقال (٢) ابن أبي عمر (٣) قال ابن (٤) القاسم سئل (٥) مالك (٦) رحمه الله، عن فاسق [٢٥٢/أ] يأوي (٧) إليه أهل الفسق والخمر ما نصنع (٨) به، قال يُخرج من منزله وتُكرى عليه (٩) الدار والبيوت، قال فقلت ألا تباع، قال لا، لعله (١٠) يتوب، فيرجع إلى منزله، قال ابن (١١) القاسم يتقدم إليه مره، أو مرتين، أو ثلاثا، (١٢) فإن لم ينته اخرج واكرى عليه.

قال (١٣) ابن (١٤) رشد قد قال (١٥) مالك في الواضحة أنها تُباع عليه، خلاف قوله في هذه الرواية، قال وقوله فيها أصح، لما ذكره من أنه قد يتوب ويرجع (١٦) إلى

(١) في (هـ) فصل [ساقطة].

(٢) في (ب) وقال ابو عمر .

(٣) في (هـ) بن ابي العمر .

(٤) في (ب) و (هـ) بن .

(٥) في (ب) سئل، وفي الأصل [سئل].

(٦) في (أ) ملك

(٧) في (ب) ياءوي، و (د) و (هـ) ياوي .

(٨) في (أ) و (ب) و (د) ما يصنع .

(٩) في (هـ) يكرى علي .

(١٠) في (أ) قال لعله .

(١١) في (د) ابن، وفي الأصل [بن].

(١٢) في (د) ثلاثا، وفي الأصل [ثلاثا].

(١٣) في (هـ) وقال .

(١٤) في (ب) و (هـ) بن .

(١٥) في (د) قال قد .

(١٦) في (هـ) وترجع .



وفي الصحيحين عن أنس بن <sup>(١)</sup> مالك <sup>(٢)</sup> قال « كنت أسقي أبا عبيدة بن <sup>(٣)</sup> الجراح، و أبا <sup>(٤)</sup> طلحة، وأبي ابن <sup>(٥)</sup> كعب شرابا من فضيخ <sup>(٦)</sup> وتمر، فأتاهم آتٍ ، فقال إن الخمر <sup>(٧)</sup> قد حُرمت، فقال أبو طلحة يا أنس قم إلى هذه الجرة فاكسرها، فقمتم إلى مهراس لنا، فضربتها بأسفله حتى تكسرت ». <sup>(٨)</sup>

وفي سنن النسائي و أبي داود عن أبي هريرة <sup>(٩)</sup> قال، <sup>(١٠)</sup> « علمت أن رسول الله صلى الله عليه وسلم كان يصوم في بعض الأيام التي كان يصومها، فَتَحَيَّنْتُ فِطْرَهُ بنبيذ <sup>(١١)</sup> صنعته في دنان، <sup>(١٢)</sup> فلما كان المساء <sup>(١٣)</sup> جئته <sup>(١٤)</sup> أحملها إليه - فذكر الحديث - ثم قال، فرفعتها إليه، فإذا هو ينش، <sup>(١٥)</sup> فقال خذ هذه فاضرب <sup>(١٦)</sup> بما الحايط، فإن هذا شراب من لا يؤمن بالله واليوم الآخر <sup>(١٧)</sup> ». <sup>(١٨)</sup>

(١) في (هـ) بن، وفي الأصل [ابن].

(٢) في (أ) ملك .

(٣) في (د) ابن .

(٤) في (ب) ابي .

(٥) في (هـ) بن .

(٦) في (أ) و (ب) نضيخ ، و (د) فصيخ ، و (هـ) غير واضحة .

(٧) في (ب) و (د) الخمرة .

(٨) رواه البخاري برقم (٢٤٦٤)، و رواه مسلم برقم (١٩٨٠).

(٩) في (أ) رضى الله عنه .

(١٠) في (ب) قا .

(١١) في (د) بنيد ، و (هـ) غير واضحة .

(١٢) في (هـ) دنا .

(١٣) في (د) المساء، وفي الأصل [المسا].

(١٤) في (ب) و (هـ) جيته .

(١٥) في (د) ينس .

(١٦) في (هـ) واضرب .

(١٧) في (أ) و (د) و (هـ) ولا باليوم الآخر، وفي الأصل [الأخر].

(١٨) رواه النسائي (٣٠١/٨)، وأبو داود برقم (٣٧١٦).

رسول الله صلى الله عليه وسلم بالمدينة وما عرفت المدينة إلا يومئذ<sup>(١)</sup> فأمر بالزقاق فشقت، ثم قال لعنت الخمر<sup>(٢)</sup> وشاربها ، وساقها ، وبائعها،<sup>(٣)</sup> ومبتاعها ، وحاملها « الحديث.

وفي<sup>(٤)</sup> المسند أيضا عن ضمرة بن<sup>(٥)</sup> حبيب قال، قال عبدالله بن<sup>(٦)</sup> عمر «أمرني

رسول الله ﷺ أن آتية بمديّة، فأتيته بها، فأرسل بها فأهرقت، ثم أعطانيها، وقال أغدها<sup>(٧)</sup> علي، ففعلت ، فخرج بأصحابه إلى أسواق المدينة وفيها زقاق خمر، قد جلبت من الشام، فأخذ المدينة<sup>(٨)</sup> مني، فشق ما كان من تلك الزقاق بحضرته، ثم أعطانيها<sup>(٩)</sup> وأمر أصحابه الذين كانوا معه أن يمضوا معي، وأن<sup>(١٠)</sup> يعاونوني، وأمرني أن [٢٥١ ب/ب] آتي الأسواق كلها، فلا أجد فيها زق<sup>(١١)</sup> خمر إلا شققته، فلم أترك في أسواقها زقا<sup>(١٢)</sup> إلا شققته «.<sup>(١٣)</sup>

(١) في (د) يومئذ، وفي الأصل [يومئذ].

(٢) في (أ) و (ب) و (د) و (هـ) الخمر .

(٣) وفي الأصل [و بايعها].

(٤) في (د) و (هـ) و [ساقطة] .

(٥) في (د) ابن .

(٦) في (هـ) بن، وفي الأصل [بن].

(٧) في (أ) غدها ، و (ب) اعدھا .

(٨) في (ب) المذبة .

(٩) في (د) وقال : أغدها علي ، ففعلت ، فخرج بأصحابه إلى أسواق المدينة ، وفيها زقاق خمر ، قد جلبت

من الشام ، فأخذ المدينة مني ، فشق ما كان من تلك الزقاق بحضرته [ ساقطة ] .

(١٠) في (ب) و (د) و (هـ) و ان [ ساقطة ] .

(١١) في (د) رق .

(١٢) في (د) رقا .

(١٣) رواه أحمد في مسنده (١٣٢/٢).



وقد روى عبد الله بن أبي الهذيل<sup>(١)</sup> قال (كان عبد الله بن<sup>(٢)</sup> مسعود<sup>(٣)</sup> يحلف بالله أن التي أمر بها رسول الله ﷺ حين حُرمت الخمر أن تكسر دنانها، وأن تُكفَى<sup>(٤)</sup> ثم<sup>(٥)</sup> التمر والزبيب) <sup>(٦)</sup> رواه الدارقطني في السنن بإسناد صحيح.

عن<sup>(٧)</sup> أنس بن مالك<sup>(٨)</sup> عن أبي طلحة أنه قال « يا نبي الله إني اشتريت<sup>(٩)</sup> خمرا لأيتام في حجري، <sup>(١٠)</sup> قال أهرق الخمر، وَاكْسِرِ الدنان » [٢٥١:أ] رواه الترمذي من حديث ليث بن<sup>(١١)</sup> أبي سليم عن يحيى<sup>(١٢)</sup> بن عباد عنه .

وفي مسند أحمد من حديث أبي طعمة<sup>(١٣)</sup> قال سمعت عبد الله ابن<sup>(١٤)</sup> عمر<sup>(١٥)</sup> يقول : « مر<sup>(١٦)</sup> رسول الله ﷺ بالمربد، <sup>(١٧)</sup> فإذا بزقاق<sup>(١٨)</sup> فيها<sup>(١٩)</sup> خمر، فدعاني

- (١) في (د) الهديل .
- (٢) في (د) ابن .
- (٣) في (أ) رضى الله عنه .
- (٤) في (ب) و (هـ) يكفى .
- (٥) في (د) لمن ، و (هـ) من التمر .
- (٦) رواه الدارقطني (٢٥٣/٤).
- (٧) في (أ) و (ب) و (د) وعن .
- (٨) في (أ) ملك .
- (٩) في (د) استريت .
- (١٠) في (ب) جري .
- (١١) في (أ) ابن .
- (١٢) في (ب) يحيى .
- (١٣) في (أ) طعمه ، و (د) ابي طلحة .
- (١٤) في (هـ) بن .
- (١٥) في (أ) رضى الله عنه .
- (١٦) في (أ) [ فراغ ، و (ب) و (د) و (هـ) مر [ ساقطة ]، وفي الحديث [لقبت].
- (١٧) في (أ) و (ب) و (د) و (هـ) المربد، وفي الأصل [المريد].
- (١٨) في (ب) زقاق ، و (د) بالزقاق، وفي الأصل [بازقاق].
- (١٩) في (هـ) على المربد فيها .

قال<sup>(١)</sup> أبو طالب قلت نمر<sup>(٢)</sup> على<sup>(٣)</sup> المسكر القليل أو الكثير أكسره، قال نعم تكسره.<sup>(٤)</sup> قال<sup>(٥)</sup> محمد بن<sup>(٦)</sup> حرب قلت لأبي عبد الله لقي<sup>(٧)</sup> رجلا<sup>(٨)</sup> ومعه قرابة مغطاة، قال<sup>(٩)</sup> بريبة،<sup>(١٠)</sup> قالت<sup>(١١)</sup> نعم، قال تكسره.<sup>(١٢)</sup>

وقال<sup>(١٣)</sup> في رواية ابن<sup>(١٤)</sup> منصور في الرجل يرى الطنبور و<sup>(١٥)</sup> الطبل مغطا والقنينة،<sup>(١٦)</sup> إذا كان، يعني يتبين<sup>(١٧)</sup> أنه طنبور أو طبل،<sup>(١٨)</sup> أو فيها مسكر كسره.

- (١) في (أ) و (ب) وقال .
- (٢) في (د) يمر .
- (٣) في (أ) و (ب) يمر علي .
- (٤) في (ب) يكسره .
- (٥) في (أ) و (ب) و (د) و (هـ) وقال .
- (٦) في (د) ابن .
- (٧) في (أ) من لقي .
- (٨) في (ب) رجل .
- (٩) في (ب) قا .
- (١٠) في (هـ) رايته .
- (١١) في (ب) و (د) قال .
- (١٢) في (أ) يكسره .
- (١٣) ف (ب) قال [ ساقطة ] .
- (١٤) في (أ) و (ب) و (هـ) بن .
- (١٥) في (هـ) او .
- (١٦) في (د) العينته .
- (١٧) في (ب) انه تبين .
- (١٨) في (ب) طنبورا او طبلا .



فكيف الرأي وكلام أحمد<sup>(١)</sup> في هذا كثير جدا، قد ذكره الخلال في<sup>(٢)</sup> كتاب العلم.  
ومسئلة وضع الكتاب<sup>(٣)</sup> فيها تفصيل، ليس هذا موضعه، وإنما كره أحمد ذلك،  
و<sup>(٤)</sup> منع منه لما فيه من الاشتغال به، والإعراض عن القرآن<sup>(٥)</sup> والسنة، والذب عنهما،  
وإبطال الآراء والمذاهب المخالفة لهما فلا بأس بما،<sup>(٦)</sup> وقد تكون واجبة و مستحبة  
ومباحة، بحسب إقتضاء [الحال]<sup>(٧)</sup> والله أعلم.

**والمقصود** أن هذه الكتب المشتملة على الكذب والبدع<sup>(٨)</sup> يجب إتلافها و  
إعدامها، وهي أولى بذلك من إتلاف آلات اللهو والمعازف، [٢٥٠/ب] وإتلاف أنية  
الخمير، فإن ضررها أعظم من ضرر هذه، ولا ضمان في كسر أواني الخمر وشق زقاقه.  
قال : المروذي : قلت<sup>(٩)</sup> لأبي عبد الله، لو رأيت مُسكراً<sup>(١٠)</sup> في قنينة<sup>(١١)</sup> أو<sup>(١٢)</sup>  
قراية، تُكسّر،<sup>(١٣)</sup> أو تُصَّب، قال تُكسّر.

(١) في (أ) رضى الله عنه .

(٢) في (د) وفي .

(٣) في (د) و (هـ) الكتب .

(٤) في (هـ) و [ساقطة] .

(٥) في (هـ) الكتاب .

(٦) في (ب) بما .

(٧) في (أ) و (هـ) اقتضا الحال، و (ب) اقتضاء الحاجة، و (د) اقتضاء الحال، وفي الأصل [اقتضا].

(٨) في (أ) و (ب) و (د) البدعة .

(٩) في (ب) فقلت .

(١٠) في (ب) مكسرا .

(١١) في (د) كلمة غير واضحة .

(١٢) في (هـ) أو في .

(١٣) في (ب) اتكسر .

كتاباً<sup>(١)</sup> فجاء<sup>(٢)</sup> أبو فلان فوضع كتاباً، وجاء<sup>(٣)</sup> فلان فوضع كتاباً<sup>(٤)</sup> فهذا  
 (٥) لا انقضاء<sup>(٦)</sup> له ، كلما جاء<sup>(٧)</sup> رجل وضع كتاباً،<sup>(٨)</sup> وهذه الكتب وَضَعُهَا بدعة<sup>(٩)</sup>  
 كلما جاء<sup>(١٠)</sup> رجل وضع كتاباً<sup>(١١)</sup> وترك حديث رسول الله ﷺ وأصحابه، ليس إلا  
 الاتباع والسنن، وحديث رسول الله صلى الله عليه وسلم وأصحابه،<sup>(١٢)</sup> وعاب [٢٥٠] /  
 [أ] وضع الكتب وكرهه كراهة شديدة .

وقال المروزي<sup>(١٣)</sup> في موقع<sup>(١٤)</sup> آخر قال أبو عبد الله يضعون البدع في كتبهم،  
 إنما أحذر<sup>(١٥)</sup> عنها أشد التحذير ، قلت إنهم يحتجون بمالك أنه وضع كتاباً ، فقال  
 أبو عبد الله هذا ابن<sup>(١٦)</sup> عون والتميمي ويونس وأيوب ، هل وضعوا كتاباً،<sup>(١٧)</sup> هل  
 كان في الدنيا مثل هؤلاء،<sup>(١٨)</sup> وكان ابن<sup>(١٩)</sup> سرين وأصحابه لا يكتبون الحديث،

- (١) في (أ) و (ب) و (د) و (هـ) كتاباً، وفي الأصل [فلاناً].
- (٢) في (ب) فجاء ، و (د) فجاء ، و (هـ) جآ .
- (٣) في (د) وجاء ، و (هـ) فجا، وفي الأصل [فجا] ، وفي الأصل [وجا]..
- (٤) في (أ) و (ب) و جا فلان فوضع كتاباً [ساقطة] .
- (٥) في (هـ) وهذا .
- (٦) في (ب) لا نقضياً ، و (د) لا انقضاء، وفي الأصل [لا انقضاء].
- (٧) في (ب) جاء ، و (هـ) جآ .
- (٨) في (أ) هذه العبارة متأخرة عن العبارة التالية .
- (٩) في (أ) هذه العبارة متقدمة عن العبارة السابفة .
- (١٠) في (د) جاء، وفي الأصل [جا].
- (١١) في (ب) وهذه الكتب وضعها بدعة كلما جا فلان وضع كتاباً [ساقطة] .
- (١٢) في (ب) ليس إلا الاتباع والسنن، ويث رسول الله صلى الله عليه وسلم وأصحابه [ساقطة] .
- (١٣) في (هـ) المروزي .
- (١٤) في (ب) و (د) و (هـ) موضع .
- (١٥) في (هـ) حذر .
- (١٦) في (ب) بن .
- (١٧) في (هـ) كتباً .
- (١٨) في (ب) و (د) هؤلاء ، و (هـ) هؤلاء، وفي الأصل [هؤلاء].
- (١٩) في (أ) و (د) ابن، وفي الأصل [بن].



فعل<sup>(١)</sup> ذاء، أو أحد من التابعين وأغلظ [٢٤٩/ب] وشدد في أمره، وقال<sup>(٢)</sup> انهوا  
الناس عنه، وعليكم بالحديث.

قال<sup>(٣)</sup> في رواية ابن الحارث<sup>(٤)</sup> ما كتبتُ من هذه الكتب الموضوعه شيئاً<sup>(٥)</sup> قط.

وقال محمد بن زيد<sup>(٦)</sup> المشتملي<sup>(٧)</sup> سألت أحمد رجلاً، فقال أكتب كتب الرأي قال<sup>(٨)</sup>  
لا تفعل، عليك بالحديث والآثار، فقال له السائل<sup>(٩)</sup> إن ابن المبارك قد كتبها، فقال له  
أحمد ابن<sup>(١٠)</sup> المبارك لم<sup>(١١)</sup> يتزل من السماء،<sup>(١٢)</sup> إنما<sup>(١٣)</sup> أمرنا أن نأخذ العلم من فوق .

وقال عبد الله بن<sup>(١٤)</sup> أحمد<sup>(١٥)</sup> سمعت أبي ذكر وضع الكتب فقال أكرهها،  
هذا أبو فلان وضع<sup>(١٦)</sup>

(١) في (ب) وضع .

(٢) في (هـ) قال .

(٣) في (أ) و (ب) و (د) و (هـ) وقال .

(٤) في (ب) بن الحارث، وفي الأصل [الحارث].

(٥) في (د) شيء، وفي الأصل [شيء].

(٦) في (ب) محمد بن يزيد، و (د) محمد ابن يزيد .

(٧) في (د) المشتملي .

(٨) في (هـ) فقال .

(٩) وفي الأصل [السائل].

(١٠) في (أ) و (ب) بن .

(١١) في (ب) ثم .

(١٢) في (ب) و (د) السماء، وفي الأصل [السماء].

(١٣) في (أ) وإنما .

(١٤) في (أ) و (د) ابن .

(١٥) في (ب) حمد .

(١٦) في (هـ) الكتب فقال : أكرهها ، هذا أبو فلان وضع [ساقطة] .

وقال عبد الله بن أحمد سمعت أبي يقول هذه الكتب بدعةٌ وَضَعُهَا <sup>(١)</sup>. وقال إسحاق <sup>(٢)</sup> ابن منصور سمعت أبا عبد الله يقول لا يعجبني شيء <sup>(٣)</sup> من وضع الكتب، <sup>(٤)</sup> فهو مبتدع.

وقال المروزي <sup>(٥)</sup> حدثنا <sup>(٦)</sup> محمد بن <sup>(٧)</sup> أبي بكر المقدمي، حدثنا <sup>(٨)</sup> حماد بن <sup>(٩)</sup> زيد قال، قال لي ابن <sup>(١٠)</sup> عون يا حماد، هذه الكتب تُضَلُّ.

وقال الميموني ذكرت أبا عبد الله خطأ <sup>(١١)</sup> الناس في العلم، فقال وأي الناس لا يُخْطئُ و لا سيما من وضع الكتب ، فهو أكثر خطأ.

وقال إسحاق <sup>(١٢)</sup> سمعت أبا عبد الله وسأله <sup>(١٣)</sup> قوم من أردبيل عن رجل يقال <sup>(١٤)</sup>

له عبدالرحيم، وضع كتابا ، فقال أبو عبد الله هل أحدٌ من أصحاب رسول الله ﷺ

(١) في (هـ) ووضعها .

(٢) في (أ) اسحاق ابن، وفي الأصل [اسحق].

(٣) في (د) و (هـ) شيء، وفي الأصل [شي].

(٤) في (أ) و (ب) و (د) و (هـ) ومن وضع شيا (شيئا) من الكتب [ زائدة ] .

(٥) في (ب) المروي .

(٦) في (ب) و (د) ثنا .

(٧) في (د) ابن .

(٨) في (ب) و (د) ثنا .

(٩) في (د) ابن .

(١٠) في (أ) و (ب) و (د) ابن، وفي الأصل [بن].

(١١) وفي الأصل [خطأ].

(١٢) في (ب) اسحق .

(١٣) في (ب) وسئله .

(١٤) في (ب) فقال .



حرق الصحابة<sup>(١)</sup> جميع المصاحف المخالفة لمصحف عثمان،<sup>(٢)</sup> لما خافوا على الأمة من الاختلاف، فكيف لو رأوا<sup>(٣)</sup> هذه الكتب التي أوقعت الخلاف بين الأمة والتفرقت.

وقال الخلال أخبرني محمد بن<sup>(٤)</sup> أبي هارون<sup>(٥)</sup> أن أبا الحارث<sup>(٦)</sup> حدثهم قال،

قال أبو عبد الله أهلكهم وضع<sup>(٧)</sup> الكتب، تركوا آثار رسول الله ﷺ، وأقبلوا على الكلام وقال أخبرني أحمد بن محمد<sup>(٨)</sup> بن واصل المقرئ قال سمعت أبا عبد الله، وسأل<sup>(٩)</sup> عن الرأي، فرفع صوته و قال [أ/٢٤٩] لا يثبتُ شيءٌ<sup>(١٠)</sup> من الرأي، عليكم بالقرآن والحديث والآثار.

وقال في رواية ابن مشيش<sup>(١١)</sup> أن أبا عبد الله سأله<sup>(١٢)</sup> رجل فقال، أكتب الرأي،

فقال<sup>(١٣)</sup> ما تصنع بالرأي عليك بالسنن فتعلمها وعليك بالأحاديث المعروفة.

(١) في (أ) رضى الله عنهم .

(٢) في (أ) رضى الله عنه .

(٣) في (هـ) أكثر هذه [ زائدة ] .

(٤) في (هـ) بن، وفي الأصل [ابن].

(٥) وفي الاصل [هرون].

(٦) في (ب) ابا الحارث، وفي الأصل [الحارث]. .

(٧) في (هـ) وضعوا .

(٨) في (أ) و (ب) و (د) و (هـ) محمد بن أحمد .

(٩) في (ب) و (د) سئل ، و (هـ) سئل .

(١٠) في (د) شيء، وفي الأصل [شي].

(١١) في (أ) و (د) ابن مسيس ، و (هـ) بن مسيس .

(١٢) في (ب) سئله .

(١٣) في (ب) و (هـ) قال .

## فصل (١) في عدم ضمان إتلاف الكتب المضلة وتحريقها

وكذلك لا ضمان في تحريق (٢) الكتب المضلة وإتلافها. قال المروزي (٣) قلت لأحمد استعرت كتابا فيه أشياء (٤) ردية، ترى أن أحرقه أو أخرقه، قال نعم، وقد (( رأى النبي ﷺ بيد عمر (٥) كتاباً اكتتبه من التوراة، (٦) وأعجبه موافقته للقرآن فتمعر وجهه النبي (٧) ﷺ حتى ذهب به عمر (٨) إلى التنور فألقاه فيه ))، (٩) فكيف لو رأى [٢٤٨] ب/ النبي ﷺ ما صنّف بعده من الكتب التي يُعارض (١٠) بما مافي القرآن والسنة والله (١١) المستعان، وقد (( أمر النبي ﷺ مَنْ كَتَبَ عَنْهُ شَيْئاً (١٢) أَنْ يَمْحُوهُ )) (١٣) ثم أذن في كتابة سننه ولم يأذن في غير ذلك فكل هذه الكتب (١٤) المتضمنة لمخالفة الكتاب والسنة غير مأذون فيها، بل مأذون في محققها وإتلافها، وما على الأمة أضر منها، وقد

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (ب) لتحريق .

(٣) في (هـ) المروزي .

(٤) في (ب) اشياء، و (د) اشياء، وفي الأصل [أشياء].

(٥) في (أ) رضى الله عنه، و (هـ) بن الخطاب رضى الله عنه [ زائدة ] .

(٦) في (د) و (هـ) التورية .

(٧) في (ب) رسول الله .

(٨) في (أ) رضى الله عنه .

(٩) رواه أحمد في مسنده (١٧٣/٣) .

(١٠) في (د) تعارض .

(١١) في (أ) و (ب) و (هـ) فالله .

(١٢) في (أ) و (د) و (هـ) غير القرآن [ زائدة ] .

(١٣) رواه مسلم برقم (٣٠٠٤) .

(١٤) في (هـ) المضلة [ زائدة ] .



على<sup>(١)</sup> مَحَقِّ المَحَلِّ المَحْرَمِّ واتِّلاَفِهِ بالكَلِيَّةِ. وَكَذَلِكَ الصَّحَابَةُ رَضِيَ اللهُ عَنْهُمْ، فَلَا التَّفَاتِ  
إِلَى مَا خَالَفَ ذَلِكَ، وَقَدْ قَالَ [أ/٢٤٨] المَرُودِيُّ<sup>(٢)</sup> قَلْتُ لِأَبِي عَبْدِ اللَّهِ، دُفِعَ إِلَيَّ إِبْرِيْقُ  
فِضَّةٍ لِأَبِيْعَهُ، تَرَى أَنْ أَكْسِرَهُ، أَوْ أَبِيعَهُ كَمَا هُوَ قَالَ أَكْسِرُهُ.

وَقَالَ قَيْلٌ لِأَبِي عَبْدِ اللَّهِ أَنْ رَجَلًا دَعَا<sup>(٣)</sup> قَوْمًا، فَجِيءَ<sup>(٤)</sup> بِطُسْتٍ<sup>(٥)</sup> فِضَّةٍ<sup>(٦)</sup>  
وَإِبْرِيْقٍ فَكْسَرَهُ،<sup>(٧)</sup> فَأَعْجَبَ أَبَا عَبْدِ اللَّهِ كَسْرَهُ.

وَقَالَ بَعْثَنِي أَبُو عَبْدِ اللَّهِ إِلَى رَجُلٍ بِشَيْءٍ،<sup>(٨)</sup> فَدَخَلْتُ عَلَيْهِ، فَأَتَى<sup>(٩)</sup> بِمَكْحَلَةٍ  
رَأْسُهَا مُفَضَّضٌ، فَقَطَعْتُهَا،<sup>(١٠)</sup> فَأَعْجَبَهُ ذَلِكَ، وَتَبَسَّمَ.

وَوَجْهُ ذَلِكَ أَنَّ الصَّنَاعَةَ مَحْرَمَةٌ، فَلَا قِيَمَةَ لَهَا وَلَا حَرَمَةَ. وَأَيْضًا فَتَعْطِيلُ هَذِهِ  
الْهَيْئَةِ<sup>(١١)</sup> مَطْلُوبٌ، فَهُوَ بِذَلِكَ مُحْسِنٌ، وَمَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ.

(١) فِي (أ) وَ (هـ) كَلَّمَهُ عَلَى .

(٢) فِي (هـ) المَرُودِيُّ .

(٣) فِي (أ) وَ (ب) وَ (هـ) دَعَى ، وَ (د) دَعَى .

(٤) فِي (ب) وَ (د) فَجِيءَ، وَ فِي الْأَصْلِ [فَجِيءَ].

(٥) فِي (أ) وَ (د) وَ (هـ) بِطُسْتٍ .

(٦) فِي (ب) فِضَّةٌ [سَاقِطَةٌ] .

(٧) فِي (د) وَ (هـ) فَكْسَرَهُ .

(٨) فِي (ب) وَ (د) وَ (هـ) بِشَيْءٍ، وَ فِي الْأَصْلِ [بِشَيْءٍ].

(٩) فِي (ب) فَأَتَى .

(١٠) فِي (أ) فَقَطَعْتُهَا .

(١١) فِي (ب) الْمُهْبَةُ ، (هـ) الْحَرَمَةُ .

« لا تدخل الملائكة بيتا فيه كلب ولا صورة »<sup>(١)</sup>. في صحيح البخاري<sup>(٢)</sup> عن

عائشة<sup>(٣)</sup> رضي الله عنها<sup>(٤)</sup>: « أن رسول الله صلوات الله عليه وسلم كان لا يترك [في بيته] شيئا<sup>(٥)</sup> فيه تصاليب<sup>(٦)</sup> إلا قضبه<sup>(٧)</sup>،<sup>(٨)</sup>.

وفي الصحيحين عن أبي هريرة رضي الله عنه قال قال رسول الله صلوات الله عليه وسلم:

« والذي نفسي بيده ليوشكن أن يتزل فيكم ابن<sup>(٩)</sup> مريم حكماً عدلاً، مُقسِطاً<sup>(١٠)</sup> فيكسر الصليب، ويقتل الخنزير، ويضع الجزية<sup>(١١)</sup> وهؤلاء<sup>(١٢)</sup> رسل الله، صلوات الله وسلامه عليهم إبراهيم<sup>(١٣)</sup> وموسى وعيسى ونخاتم المرسلين<sup>(١٤)</sup> محمد صلوات الله وسلامه عليه<sup>(١٥)</sup> عليهم<sup>(١٦)</sup>.

(١) رواه البخاري برقم (٣٢٢٥)، ورواه مسلم برقم (٢٦٠٦).

(٢) في (أ) و (هـ) الصحيح .

(٣) في (ب) عائشة .

(٤) في (ب) رضي الله عنها [ساقطة] .

(٥) في (أ) و (د) و (هـ) في بيته شيئاً ، و (ب) في بيته ، وشياً [ساقطة] ، وفي الأصل [شيئاً] .

(٦) في (د) و (هـ) تصليب .

(٧) في (أ) و (ب) و (د) و (هـ) قصه، وفي الأصل [قضبه] .

(٨) رواه البخاري برقم (٣٤٤٨).

(٩) في (ب) و (هـ) بن .

(١٠) في (أ) و (ب) و (د) و (هـ) مقسطاً [ساقطة] .

(١١) رواه البخاري برقم (٣٤٤٨)، ورواه مسلم برقم (١٥٥).

(١٢) في (أ) فهؤلاء ، و (ب) فهؤلاء ، و (د) فهؤلاء ، و (هـ) فهولا ، وفي الأصل [وهؤلاء] .

(١٣) في (ب) إبراهيم [ساقطة] ، و (د) إبراهيم .

(١٤) في (د) النبيين .

(١٥) في (أ) و (د) و (هـ) صلى الله عليه وسلم .

(١٦) في (أ) و (ب) كلهم .



والمقصود أن إتلاف المال على وجه التعزير والعقوبة ليس بمنسوخ ، وقد قال أبو الهياج الأسدي قال لي علي بن (١) أبي طالب « ألا أبعثك على ما (٢) بعثني عليه رسول الله ﷺ أن لا أدع تمثالا إلا طمسته، ولا قبرا مشرفا إلا سويته » (٣) رواه مسلم. وهذا يدل على طمس الصور (٤) في أي شيء (٥) كانت، (٦) وهدم (٧) القبور المشرفة، وإن كانت من حجارة أو آجر أو لبن.

قال المروزي قلت لأحمد ، الرجل يكتري البيت ، فيرى فيه تصاوير ، ترى (٨) أن يحكها (٩) قال نعم، وحجته هذا الحديث الصحيح.

وروى البخاري في صحيحه عن ابن (١٠) عباس رضي الله عنهما:

« أن [٢٤٧/ب] النبي ﷺ لما رأى الصور في البيت لم يدخل حتى أمر بما فمحيت » (١١).

وفي الصحيحين أن النبي ﷺ (١٢) قال: (١٣)

- (١) في (أ) و (د) ابن .
- (٢) في (هـ) من .
- (٣) رواه مسلم برقم (٩٦٩).
- (٤) في (أ) الصورة ، و (ب) و (د) و (هـ) الصور، وفي الأصل [القبور].
- (٥) في (أ) و (ب) و (د) و (هـ) في أي شيء، وفي الأصل [في شيء].
- (٦) في (ب) كان .
- (٧) في (ب) هذه .
- (٨) في (د) يرى .
- (٩) في (أ) و (ب) و (د) و (هـ) يحكه .
- (١٠) في (هـ) بن .
- (١١) رواه البخاري برقم (١٦٠١).
- (١٢) في (ب) رسول الله .
- (١٣) في (هـ) لما رأى الصور في البيت لم يدخل حتى أمر بما فمحيت . وفي (الصحيحين) أن النبي [ساقطة].

المجاورة<sup>(١)</sup> لها تأثير<sup>(٢)</sup> في الامتهان والإكرام، وقد<sup>(٣)</sup> قال تعالى: ﴿وَقَدْ نَزَّلَ عَلَيْكُمْ فِي الْكِتَابِ أَنْ إِذَا سَمِعْتُمْ آيَاتِ اللَّهِ يُكْفَرُ بِهَا وَيُسْتَهْزَأُ<sup>(٤)</sup> بِهَا فَلَا تَقْعُدُوا مَعَهُمْ<sup>(٥)</sup> حَتَّىٰ يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ إِنَّكُمْ إِذَا مِثْلَهُمْ﴾<sup>(٦)</sup> و «سئل<sup>(٧)</sup> النبي ﷺ عن القوم يكونون بين المشتركين،<sup>(٨)</sup> يؤاكلوهم<sup>(٩)</sup> ويشاربونهم فقال هم منهم»<sup>(١٠)</sup> هذا<sup>(١١)</sup> أو معناه.

[٢٤٧/أ] فاذا كان هذا في المجاورة المنفصلة فكيف المجاورة<sup>(١٢)</sup> التي صارت جزءاً<sup>(١٣)</sup> من أجزاء<sup>(١٤)</sup> المحرم،<sup>(١٥)</sup> أو لصيقة به<sup>(١٦)</sup> وتأثير الجوار ثابت<sup>(١٧)</sup> عقلاً وشرعاً وعرفاً.

- (١) في (د) المجاورة .
- (٢) في (د) تأثير .
- (٣) في (هـ) قد [ساقطة] .
- (٤) في (ب) و (د) يستهزئ ، و (هـ) يستهزى .
- (٥) في (ب) الى قوله انكم اذا مثلهم .
- (٦) من سورة النساء، آية ١٠٤ .
- (٧) في (هـ) فسئل .
- (٨) في (أ) بين القوم .
- (٩) في (هـ) يواكلوهم [ساقطة] .
- (١٠) رواه أحمد في مسنده (٥٠/٢) .
- (١١) في (د) فهذا .
- (١٢) في (د) المجاورة .
- (١٣) في (هـ) جزوا، وفي الأصل [جزا] .
- (١٤) في (ب) جزء من الاجزاء ، و (د) جزء من اجزاء ، و (هـ) من اجزا [ساقطة] ، وفي الأصل [اجزا] .
- (١٥) في (هـ) من المحرم .
- (١٦) في (ب) بها .
- (١٧) في (د) الجواز بانث .



وأيضاً فالقياس يقتضي ذلك ، لأن محل<sup>(١)</sup> الضمان هو ما قَبِلَ المعاوضة، وما نحن فيه لا يقبلها البتة ، فلا يكون مضموناً، [٢٤٦/ب] وإنما قلنا لا يقبل<sup>(٢)</sup> المعاوضة،<sup>(٣)</sup> لأن النبي ﷺ قال « أن الله حرم بيع الخمر والميتة<sup>(٤)</sup> والخنزير والأصنام »<sup>(٥)</sup> وهذا نص، وقال<sup>(٦)</sup> «إن الله إذا حرم شيئاً<sup>(٧)</sup> حرم ثمنه<sup>(٨)</sup>» والملاهي محرمات بالنص، فحرم<sup>(٩)</sup> بيعها.

وأما قبول<sup>(١٠)</sup> ما فوق الحد المَبطل للصورة<sup>(١١)</sup> لجعله<sup>(١٢)</sup> آنيه فلا يثبت به وجوب الضمان،<sup>(١٣)</sup> لسقوط حرمة، حيث صار جزء<sup>(١٤)</sup> المحرم أو ظرفاً<sup>(١٥)</sup> له،<sup>(١٦)</sup> كما أمر به النبي ﷺ من كسر دينان الخمر ، وشق ظروفها،<sup>(١٧)</sup> فلا ريب<sup>(١٨)</sup> أن

(١) في (د) محمل .

(٢) في (د) تقبل .

(٣) في (هـ) وما نحن فيه لا يقبلها البتة ، فلا يكون مضموناً ، وإنما قلنا : لا يقبل المعاوضة [ ساقطة ] .

(٤) في (أ) بيع الميتة والخمر .

(٥) رواه البخاري برقم (٢٢٣٦)، و رواه مسلم (١٥٨١).

(٦) في (هـ) قال .

(٧) في (د) شيئاً، وفي الأصل [شياً].

(٨) رواه أبو داود برقم (٣٤٨٨).

(٩) في (ب) فحرام ، و (د) يحرم .

(١٠) في (هـ) قبل .

(١١) في (هـ) الصورة .

(١٢) في (أ) و (ب) و (د) و (هـ) يجعله .

(١٣) في (أ) سقط [ الضمان ] .

(١٤) في (د) جزء ، و (هـ) جزو، وفي الأصل [جز].

(١٥) في (د) و (هـ) طرفاً .

(١٦) في (ب) أو طرق منه .

(١٧) في (ب) ظروفها .

(١٨) في (أ) و (ب) و (د) ولا ريب .

وقال <sup>(١)</sup> عن خليته إبراهيم <sup>(٢)</sup> عليه السلام <sup>(٣)</sup> (فجعلهم جذاذاً) <sup>(٤)</sup> وهو  
الفتات، وذلك نص في الاستيصال.

و روى الإمام <sup>(٥)</sup> أحمد في مسنده، والطبراني في المعجم، من حديث الفرغ <sup>(٦)</sup> ابن <sup>(٧)</sup>  
فضالة عن علي بن يزيد عن القاسم عن أبي أمامة رضي الله عنه قال ، قال رسول الله صلى الله عليه وسلم : « إن  
الله بعثني رحمه للعالمين، وهدى للعالمين، وأمرني بمحَقِّ المعازف والمزامير والأوثان،  
والصلب وأمر الجاهلية » <sup>(٨)</sup> لفظ الطبراني . والفرج حمصي، قال أحمد في رواية هو ثقة،  
وقال يحيى ليس به بأس، وتكلم فيه آخرون، وعلي بن يزيد <sup>(٩)</sup> دمشقى ضعفه غير  
واحد، وقال أبو مسهر <sup>(١٠)</sup> وهو بلديه لا أعلم إلا خيراً أو هو أعرف به، <sup>(١١)</sup> والمَحَقُّ  
نمائية الإتلاف .

(١) في (ب) فقال .

(٢) في (ب) و (د) ابراهيم، وفي الأصل [ابراهيم].

(٣) في (ب) عليه السلام [ساقطة] .

(٤) من سورة الأنبياء ، آية ٥٨ .

(٥) في (ب) الاما ، و (هـ) الامام [ساقطة] .

(٦) في (هـ) الفرغ .

(٧) في (د) ابن .

(٨) رواه أحمد في مسنده (٢٥٧/٥)، ورواه أبو داود الطيالسي في معجمه برقم (١١٣٤). وقد ضعف ابن قيم

الجوزية مسنده وهذا أول موطن يحكم على بعض رجال الحديث، وخاصة في القسم المتعلق في موضوع

الحسبة .

(٩) في (د) ابن زيد ، و (هـ) بن زيد .

(١٠) في (ب) ابو مشهر .

(١١) في (أ) و (ب) و (د) و (هـ) وهو به اعرف .



وقال أصحاب الشافعي يضمن ما بيته وبين الحد المبطل للصورة، وما دون ذلك  
فغير مضمون، لأنه مُستحق الإزالة، وما فوقه <sup>(١)</sup> فقابل المتمول <sup>(٢)</sup> لِتَأْتِي <sup>(٣)</sup> الانتفاع به،  
والمنكر إنما هو الهية <sup>(٤)</sup> المخصوصة ، فتزول <sup>(٥)</sup> بزوالها، ولهذا أجبنا الضمان في الصائل <sup>(٦)</sup>  
بما زاد عن <sup>(٧)</sup>.

قدر الحاجة في الدفع ، وكذا الحكم في البغاة <sup>(٨)</sup> في اتباع مُدْبِرِهِمْ <sup>(٩)</sup> والإجهاز  
على جريهم، والميئة في حل <sup>(١٠)</sup> المخصصة، لا يزداد على قدر الحاجة في <sup>(١١)</sup> ذلك كله.

قال أصحاب <sup>(١٢)</sup> القول الأول قد أخبر الله سبحانه عن كلمه <sup>(١٣)</sup> موسى عليه  
السلام أنه حَرَقَ العِجْلَ الذي عُبد من دون الله ، ونسفه في اليم، وكان من ذهب ]  
٢٤٦/أ[ وفضه وذلك مُحَقَّ <sup>(١٤)</sup> له بالكُليَّة .

(١) في (هـ) وما قبله .

(٢) في (هـ) الميمون .

(٣) في (د) لتأتي ، و (هـ) لياتي .

(٤) في (ب) الهية ، و (هـ) غير واضحة .

(٥) في (أ) و (د) فيزول .

(٦) وفي الأصل [الصائل].

(٧) في (د) و (هـ) على .

(٨) في (ب) البغات .

(٩) في (أ) مدرهم .

(١٠) في (د) و (هـ) حال .

(١١) في (هـ) الي .

(١٢) في (ب) اصحابنا .

(١٣) في (هـ) كلمه .

(١٤) في (د) يحق .

قلت<sup>(١)</sup> والطنبور الصغير يكون مع الصبي ، قال يكسر أيضا ، قلت أمرُ في السوق ، فأرى الطنبور يباع<sup>(٢)</sup> أكسره ، قال ما أراك تقوى ،<sup>(٣)</sup> إن قويت أي فافعل ، قلت أدعى لغسل الميت ، فأسمع صوت طبل ، قال إن قدرت على كسره ، وإلا فاخرج .

وقال في رواية إسحق<sup>(٤)</sup> ابن<sup>(٥)</sup> منصور في الرجل يرى الطنبور والطبل والقينة<sup>(٦)</sup> قال إذا كان طنبور أو طبل<sup>(٧)</sup> وفيها مسكر<sup>(٨)</sup> أكسره<sup>(٩)</sup>.

وفي مسائل<sup>(١٠)</sup> صالح قال أبي يقتل الخنزير ،<sup>(١١)</sup> ويكسر [٢٤٥/ب] الصليب . وهذا قول أبي يوسف ، ومحمد بن<sup>(١٢)</sup> الحسن ، وإسحاق<sup>(١٣)</sup> ابن<sup>(١٤)</sup> راهوية ، وأهل الظاهر ، وطائفة<sup>(١٥)</sup> من أهل الحديث ، وجماعة من السلف ، وهو قول قضاة العدل . قال أبو حصين كسر رجل<sup>(١٦)</sup> طنبوراً فخاصمه إلى شريح ، فلم يَضْمَنَّهُ شيئا<sup>(١٧)</sup>.

(١) في (هـ) قلت [ساقطة] .

(٢) في (أ) و (د) تباع .

(٣) في (ب) تقو ، و (هـ) تقوي .

(٤) في (أ) اسحاق .

(٥) في (د) ابن ، وفي الأصل [بن] .

(٦) في (أ) أو قينه ، و (ب) والقينة ، و (د) و (هـ) غير واضحة .

(٧) في (د) فراغ .

(٨) في (د) مكسر .

(٩) وفي الأصل [كسره] .

(١٠) في (ب) و (د) و (هـ) مسايل .

(١١) في (هـ) ويفسد الخمر [زائدة] .

(١٢) في (د) ابن .

(١٣) في (أ) اسحاق ، وفي الأصل [اسحق] .

(١٤) في (ب) و (هـ) بن .

(١٥) في (ب) وطائفة ، وفي الأصل [طائفة] .

(١٦) في (ب) كسر رجلا .

(١٧) في (ب) شيء ، و (د) و (هـ) شيئا ، وفي الأصل [شيا] .



عن الرجل يرى الطنبور والمنكر أيكسره ، قال لا بأس. وقال أبو الصقر <sup>(١)</sup> سألت <sup>(٢)</sup> أبا عبد الله عن رجل رأى عوداً أو طنبوراً فكسره ، ما عليه ، قال قد أحسن ، وليس عليه في كسره شيء <sup>(٣)</sup> قال [أ/٢٤٥] جعفر ابن <sup>(٤)</sup> محمد سألت <sup>(٥)</sup> أبا عبد الله عن <sup>(٦)</sup> كسر الطنبور والعود فلم ير عليه شيء <sup>(٧)</sup> وقال إسحاق بن <sup>(٨)</sup> إبراهيم <sup>(٩)</sup> سئل أحمد <sup>(١٠)</sup> عن الرجل يرى طنبوراً <sup>(١١)</sup> أو طبلاً مغطى أيكسره ، قال إذا تبين <sup>(١٢)</sup> أنه طنبور أو طبلاً <sup>(١٣)</sup> كسره. وقال أيضاً سألت <sup>(١٤)</sup> أبا عبد الله عن الرجل يكسر الطنبور ، أو الطبل عليه في ذلك شيء ، <sup>(١٥)</sup> قال يكسر هذا كله ، وليس يلزمه شيء. <sup>(١٦)</sup>

وقال المروزي <sup>(١٧)</sup> سألت <sup>(١٨)</sup> أبا عبد الله عن كسر الطنبور قال يكسر ، <sup>(١٩)</sup>

- (١) في (ب) ابو الظفر .
- (٢) في (ب) سئلت .
- (٣) في (ب) شيئاً ، و (د) شيء ، و (هـ) وليس عليه شيء في كسره ، وفي الأصل [شيء].
- (٤) في (ب) بن .
- (٥) في (ب) سئلت .
- (٦) في (ب) و (د) عن .
- (٧) في (ب) فلم يرد عليه شيء ، و (د) شيء ، وفي الأصل [شيء].
- (٨) في (أ) و (د) ابن .
- (٩) في (هـ) ابراهيم .
- (١٠) في (هـ) سيل احمد .
- (١١) في (ب) و (د) الطنبور .
- (١٢) في (أ) و (ب) تبين له .
- (١٣) في (أ) طنبور او طبل .
- (١٤) في (ب) سئلت .
- (١٥) في (هـ) شيء .
- (١٦) في (ب) وليس يلزمه شيء [ساقطة] ، و (د) شيء ، وفي الأصل [شيء].
- (١٧) في (هـ) المروزي .
- (١٨) في (ب) سئلت .
- (١٩) في (ب) و (د) قال يكسر [ساقطة] .

قال الأثرم سمعت <sup>(١)</sup> [٢٤٤/ب] أبا عبد الله يسأل عن رجل كسر عودا كان مع أمة لإنسان ، فهل يغرمه ، أو يُصلحه، قال لا أرى <sup>(٢)</sup> عليه بأساً أن يكسره، ولا يغرمه ولا يُصلحه، قيل <sup>(٣)</sup> فطاعتها ، قال ليس لها <sup>(٤)</sup> طاعة في هذا . وقال أبو داود سمعت أحمد يسأل <sup>(٥)</sup> عن قوم يلعبون بالشطرنج، فنهاهم <sup>(٦)</sup> فلم يتنهبوا، فأخذ الشطرنج فرمى <sup>(٧)</sup> به، قال قد أحسن . قيل فليس عليه شيء ، قال لا . قيل له وكذلك إن كسر عودا أو طنبوراً قال نعم.

وقال عبد الله سمعت أبي في رجل يرى <sup>(٨)</sup> مثل الطنبور أو العود، أو الطبل، أو ما أشبه <sup>(٩)</sup> هذا، ما يصنع به، قال إذا كان مكشوفاً <sup>(١٠)</sup> فاكسره .  
وقال يوسف ابن <sup>(١١)</sup> موسى، وأحمد بن <sup>(١٢)</sup> الحسن أن أبا <sup>(١٣)</sup> عبد الله سئل <sup>(١٤)</sup>

(١) في (ب) لانسانا . ويظهر أن الناسخ لهذه النسخة وراق أو كاتب ليس له دراية في العلوم ، والذي يدل على ذلك كثرة الشطب في النسخة ، والأخطاء النحوية فيها .

(٢) في (د) ار شيء .

(٣) في (أ) و (ب) قيل له .

(٤) في (د) لها [ ساقطة ] .

(٥) في (أ) و (د) و (هـ) سيل ، و (ب) و (د) و (هـ) سئل .

(٦) في (د) فبهاهم .

(٧) في (ب) فرما .

(٨) في (ب) أو طنبوراً ؟ قال : نعم وقال عبدالله : سمعت ابي في رجل يري [ ساقطة ] ، وفي الأصل [ يري ] .

(٩) في (د) ما أشبه ذلك .

(١٠) في (ب) مكسوفاً .

(١١) في (ب) و (هـ) بن .

(١٢) في (د) ابن .

(١٣) في (أ) ان با .

(١٤) في (هـ) سيل .



والعقوبات البدنية تارة تكون<sup>(١)</sup> جزاءً<sup>(٢)</sup> على ما مضى، كقطع السارق، وتارة تكون دفعا عن الفساد<sup>(٣)</sup> المستقبل، وتارة تكون مركبة، كقتل القاتل. وكذلك،<sup>(٤)</sup> فإن منها ما هو من باب<sup>(٥)</sup> إزالة المنكر، وهي تنقسم كالبدنية إلى إتلاف، وإلى تغيير، وإلى تمليك الغير. فالأول المنكرات من الأعيان والصور، يجوز إتلاف محلها تبعاً لها، مثل الأصنام المعبودة من دون الله، لما كانت صورها منكراً جاز إتلاف مادتها، فإذا كانت<sup>(٦)</sup> حجراً أو خشباً ونحو<sup>(٧)</sup> ذلك، جاز<sup>(٨)</sup> تكسيرها وتحريقها،<sup>(٩)</sup> وكذلك آلات الملاهي كالطنبور يجوز إتلافها عند أكثر الفقهاء،<sup>(١٠)</sup> وهو مذهب مالك،<sup>(١١)</sup> وأشهر<sup>(١٢)</sup> الروايتين عن أحمد .

(١) في (هـ) تكون تارة .

(٢) في (د) جزء ، و (هـ) جزا .

(٣) في (د) الفساد [ ساقطة ] .

(٤) في (هـ) فكذلك .

(٥) في (هـ) باب [ ساقطة ] .

(٦) في (ب) كان .

(٧) في (ب) او نحو .

(٨) في (هـ) صورها [ زائدة ] .

(٩) في (أ) تحريقها [ ساقطة ] . هناك توافق كبير بين النسخة (أ) و (ب) واختلاف في بعضها الآخر وهذه

يظهر لي أنا النسختين تسختا من نسخة وا ولم تنسخا من بعضهما والله اعلم . ومما يقوي هذا الاحتمال

افتراق التسخين في الترضي على العلماء مثلاً ، وفي الرسم كان يكتب مالك (ملك) والفقهاء (الفقها)

ونحوه .

(١٠) في (ب) الفقهاء، و (د) الفقهاء، وفي الأصل [الفقها].

(١١) في (أ) ملك .

(١٢) في (هـ) واكثر .

## فصل في حقوق الله وأقسامها

قال شيخ الإسلام ابن <sup>(١)</sup> تيمية رحمة الله عليه، واجبات الشريعة التي هي حق الله تعالى ثلاثة <sup>(٢)</sup> أقسام عبادات، كالصلوات والزكاة <sup>(٣)</sup> والصيام، وعقوبات إما مقدورة وإما <sup>(٤)</sup> مفروضة، <sup>(٥)</sup> وكفارات.

وكل واحد من أقسام الواجبات ينقسم <sup>(٦)</sup> إلى بدني، و إلى مالي، و إلى مركب منهما .

فالعبادات البدنية كالصلاة <sup>(٧)</sup> والصيام، والمالية كالزكاة، والمركبة <sup>(٨)</sup> كالحج.

والكفارات المالية كالإطعام، والبدنية كالصيام، والمركبة كالهدي [أ/٢٤٤] يذبح ويقسم.

والعقوبات البدنية كالقتل والقطع، والمالية كإتلاف أوعية الخمر، <sup>(٩)</sup> والمركبة كجلد السارق من غير حرز، وتضعيف الغرم عليه وكتل الكفار وأخذ أموالهم.

(١) في (ب) بن .

(٢) في (ب) و (د) ثلاثون وفي الأصل [ثله].

(٣) في (ب) كالصلاة والزكاة .

(٤) في (ب) او اما .

(٥) في (أ) و (ب) و (د) مفوضه .

(٦) في (ب) تنقسم .

(٧) في (أ) كالصلاة .

(٨) في (د) و الزكية .

(٩) في (ب) الخمر [ساقطة] .



مُسْتَعْمِلُهَا فَلَمْ يَنْتَهَ ، ثُمَّ أَنْكَرَ ابْنَ (١) الْقَطَانَ ذَلِكَ ، وَقَالَ لَا يَحِلُّ هَذَا فِي مَالِ مُسْلِمٍ بِغَيْرِ إِذْنِهِ ، إِنَّمَا (٢) يُؤَدَّبُ فَاعِلٌ ذَلِكَ بِالْإِخْرَاجِ مِنَ السُّوقِ . [ب/٢٤٣] وَأَنْكَرَ الْقَاضِي أَبُو الْأَصْبَعِ (٣) عَلَى ابْنِ (٤) الْقَطَانَ ، وَقَالَ هَذَا اضْطِرَابٌ فِي جَوَابِهِ ، وَتَنَاقُضٌ مِنْ قَوْلِهِ ، لِأَنَّ جَوَابَهُ فِي الْمَلَا حَفِّ (٥) .

بِإِحْرَاقِهَا بِالنَّارِ أَشَدَّ مِنْ إِعْطَائِهَا (٦) لِلْمَسَاكِينِ ، قَالَ وَابْنُ (٧) عَتَابٍ أَضْبَطَ لِأَصْلِهِ فِي ذَلِكَ وَاتَّبَعَ لِقَوْلِهِ .

وَفِي تَفْسِيرِ ابْنِ مَزِينِ (٨) قَالَ عَيْسَى قَالَ مَالِكٌ فِي الرَّجْلِ يَجْعَلُ فِي مَكْيَالِهِ زَفْتًا (٩) أَنَّهُ يُقَامُ مِنَ السُّوقِ ، فَإِنَّهُ أَشَقُّ عَلَيْهِ ، يَرِيدُ مِنْ أَدْبِهِ الضَّرْبَ وَالسَّجْنَ .

(١) فِي (ب) بِن .

(٢) فِي (ب) وَ (د) وَ إِنَّمَا .

(٣) فِي (ب) أَبُو الْأَصْبَعِ .

(٤) فِي (أ) ابْنِ ، وَفِي الْأَصْلِ [بِن] .

(٥) فِي (ب) الْمَلَا حَمِ الرَّدِيهِ ، وَفِي الْأَصْلِ [الْمَلَا حَم] .

(٦) فِي (ب) اعْطَائِهَا ، وَفِي الْأَصْلِ [اعْطَائِهَا] .

(٧) فِي (ب) بِن .

(٨) فِي (ب) بِن مَزِينِ .

(٩) فِي (ب) زَيْتًا .

وقد عرفت أنه ليس مع من ادعى النسخ نص<sup>(١)</sup> ولا إجماع،<sup>(٢)</sup> والعجب أنه قد ذكر نص مالك<sup>(٣)</sup> وفعل عمر،<sup>(٤)</sup> ثم جعل [قول] ابن القاسم<sup>(٥)</sup> أولى، ونسخ النصوص<sup>(٦)</sup> بلا نسخ، فقول عمر و علي والصحابة ومالك<sup>(٧)</sup> وأحمد أولى بالصواب بل هو إجماع الصحابة فان ذلك اشتهر<sup>(٨)</sup> عنهم<sup>(٩)</sup> في قضايا متعددة جدا ولم ينكره منهم منكر، وعمر يفعله بحضرتهم وهم يقرءونه،<sup>(١٠)</sup> ويساعدونه عليه، ويصوبونه في فعله ، والمتأخرون<sup>(١١)</sup> كلما استبعدوا شيئا،<sup>(١٢)</sup> قالوا منسوخ ومتروك العمل به، وقد أفتى ابن<sup>(١٣)</sup> القطان في الملاحف الردية<sup>(١٤)</sup> النسخ، بالإحراق.<sup>(١٥)</sup> وأفتى<sup>(١٦)</sup> ابن<sup>(١٧)</sup> عتاب فيها بتقطيعها خرقا، وإعطائها<sup>(١٨)</sup> للمساكين،<sup>(١٩)</sup> إذا تقدم إلى

- (١) في (د) لا نص .
- (٢) في (أ) و (ب) و (د) ولا إجماع، وفي الأصل [جماع].
- (٣) في (أ) ملك .
- (٤) في (ب) ابن عمر .
- (٥) في (أ) و (ب) و (د) قول ابن القاسم، وفي الأصل [بن].
- (٦) في (أ) و (ب) و (د) النصوص، وفي الأصل [المنسوخ].
- (٧) في (أ) ملك .
- (٨) في (أ) اشهر .
- (٩) في (ب) اشهر عندهم .
- (١٠) في (ب) يقرءونه .
- (١١) في (ب) و (د) والمتأخرون .
- (١٢) في (ب) كل ما استبعدوا شيئا ، (د) شيئا، وفي الأصل [شيا].
- (١٣) في (د) ابن، وفي الأصل [بن].
- (١٤) وفي الأصل [الملاحم الردية].
- (١٥) في (أ) و (ب) الاحراق بالنار ، و (د) بالاحراق بالنار .
- (١٦) في (ب) افتا .
- (١٧) في (أ) ابن، وفي الأصل [بن].
- (١٨) في (ب) و (د) و اعطائها، وفي الأصل [اعطايتها].
- (١٩) في (ب) المساكين [ساقطة] .

من ذلك ما روي عن النبي ﷺ في مانع الزكاة<sup>(١)</sup> « إنا اخذوا<sup>(٢)</sup> وشطر ماله، عزمة من عزمات<sup>(٣)</sup> ربنا ». «

روي<sup>(٤)</sup> عنه<sup>(٥)</sup> في حريسة النخيل<sup>(٦)</sup> « أن فيها غرامة مثلها وجلدات نكال ». «

وما روي عنه « أن<sup>(٧)</sup> من وُجِدَ يصيد في حرم المدينة شيئا،<sup>(٨)</sup> فلمن وجدته<sup>(٩)</sup> سلبه<sup>(١٠)</sup> ». «

ومثل هذا كثير في الأبدان<sup>(١١)</sup> نسخ ذلك كله، و الإجماع على أنه لا يجب، وعادة<sup>(١٢)</sup> العقوبات في الأبدان، فكان قول ابن القاسم أولى بالصواب استحبابا<sup>(١٤)</sup> [أ/٢٤٣] والقياس أن لا يُتصدق من ذلك بقليل ولا بكثير،<sup>(١٥)</sup> انتهى كلامه.

(١) في (د) الزكوة .

(٢) في (أ) و (ب) و (د) انا اخذوها، وفي الأصل [إذا اخذوها].

(٣) في (د) غرمة من غرمات .

(٤) في (ب) وروي .

(٥) في (د) وعنه روى .

(٦) في (د) الخيل .

(٧) في (ب) انه .

(٨) في (ب) و (د) شيئا، وفي الأصل [شيا].

(٩) في (د) وه .

(١٠) رواه مسلم برقم (١٣٦٤).

(١١) في (أ) و (ب) و (د) في الأبدان [ساقطة] .

(١٢) في (أ) و (ب) عادت .

(١٣) في (أ) ابن ، و (د) بن [ساقطة] ، وفي الأصل [بن].

(١٤) في (ب) استحسانا .

(١٥) في (ب) و (د) ولا كثير .



كان <sup>(١)</sup> يسيرا أو كثيرا، و<sup>(٢)</sup> لأنه تساوي <sup>(٣)</sup> في ذلك بين الزعفران واللبن والمسك قليله وكثيره. وخالفه ابن <sup>(٤)</sup> القاسم، فلم ير أن يتصدق من ذلك إلا بما كان يسيرا إذا <sup>(٥)</sup> كان هو الذي غشه، فأما <sup>(٦)</sup> من وجد عنده من ذلك شيء <sup>(٧)</sup> [٢٤٢/ب] مغشوش لم يغشه هو، وإنما اشتراه، أو وهب له، أو ورثه <sup>(٨)</sup> فلا <sup>(٩)</sup> خلاف أنه لا يتصدق بشيء <sup>(١٠)</sup> من ذلك، والواجب أن يباع ممن يُؤمّن <sup>(١١)</sup> أن يبيعه من غير مدلسا، <sup>(١٢)</sup> وكذلك ما وجب أن يتصدق به من المسك والزعفران على الذي غشه.

وقول ابن <sup>(١٣)</sup> القاسم في أنه لا يتصدق من ذلك إلا بالشيء <sup>(١٤)</sup> اليسير أحسن من قول مالك، <sup>(١٥)</sup> لأن الصدقة <sup>(١٦)</sup> بذلك من العقوبات في الأموال، وذلك <sup>(١٧)</sup> أمر كان في أول الإسلام.

(١) في (د) و (هـ) كان ذلك .

(٢) في (هـ) و [ساقطة] .

(٣) في (أ) و (ب) و (د) لانه يساوي ، و (هـ) مساوي .

(٤) في (أ) و (د) ابن، و في الأصل [بن].

(٥) في (أ) و (ب) و (د) و (هـ) وذلك اذا .

(٦) في (هـ) و اما .

(٧) في (د) شيء، و في الأصل [شي].

(٨) في (د) و ورثه .

(٩) في نسخة (هـ) لوحة ١٩٠ ساقطة من المخطوط .

(١٠) في (د) بشيء، و في الأصل [شي].

(١١) و في الأصل [يومن].

(١٢) في (أ) و (ب) و (د) غيره مدلسا به .

(١٣) في (ب) بن .

(١٤) في (د) بالشيء، و في الأصل [الشي].

(١٥) في (أ) ملك .

(١٦) في (ب) المصدق .

(١٧) في (أ) وكان ذلك .

وروي عن مالك <sup>(١)</sup> أن المستحسن <sup>(٢)</sup> عنده، أن يُتصدق به، إذ في ذلك عقوبة الغاش بإتلافه عليه، ونفع <sup>(٣)</sup> المساكين بإعطائهم <sup>(٤)</sup> إياه ولا يُهراق.

وقيل لمالك فالزعفران والمسك، أتراه <sup>(٥)</sup> مثله قال ما أشبهه <sup>(٦)</sup> بذلك، إذا <sup>(٧)</sup> كان هو الذي غشه، فهو كاللبن.

قال ابن <sup>(٨)</sup> القاسم هذا في الشيء <sup>(٩)</sup> الخفيف ثمنه، <sup>(١٠)</sup> فأما إذا كثر ثمنه فلا أرى <sup>(١١)</sup> ذلك، وعلى صاحبه العقوبة، لأنه يذهب في ذلك أموال عظام، تزيد <sup>(١٢)</sup> في الصدقة بكثيره. <sup>(١٣)</sup>

قال ابن <sup>(١٤)</sup> رشد قال بعض الشيوخ وسواء <sup>(١٥)</sup> على مذهب مالك <sup>(١٦)</sup>

- (١) في (أ) ملك .
- (٢) في (ب) المستحن .
- (٣) في (هـ) ويقع .
- (٤) في (ب) و (د) و (هـ) باعطائهم، وفي الأصل [باعطائهم].
- (٥) في (هـ) اراه .
- (٦) في (د) ما اشبه .
- (٧) في (ب) ان .
- (٨) في (أ) و (د) ابن، وفي الأصل [بن].
- (٩) في (د) الشيء، وفي الأصل [الشي].
- (١٠) في (د) و (هـ) منه .
- (١١) في (ب) فلا ادري .
- (١٢) في (ب) يريد .
- (١٣) في (ب) تكبيره، و (د) بكسره .
- (١٤) في (أ) و (د) ابن، وفي الأصل [بن].
- (١٥) في (ب) سواء، (د) سواء، وفي الأصل [سوا].
- (١٦) في (أ) ملك .

ابن<sup>(١)</sup> حبيب فقلت لمطرف وابن<sup>(٢)</sup> الماجشون فما<sup>(٣)</sup> وجه . فما وجه الصواب عندكما فيمن غش أو نقص في الوزن،<sup>(٤)</sup> قالوا يعاقب بالضرب والحبس و الإخراج من السوق، وما كسد<sup>(٥)</sup> من الخبز واللبن، أو غش في المسك<sup>(٦)</sup> والزعفران فلا يفرق ولا ينهب.

قال ابن<sup>(٧)</sup> حبيب ولا يرُدُّه الإمام [عليه] وليأمر<sup>(٨)</sup> ثقةً ببيعه عليه<sup>(٩)</sup> ممن يأمن أن لا يُغشَّ به،<sup>(١٠)</sup> ويكسر الخبز<sup>(١١)</sup> إذا كثر،<sup>(١٢)</sup> ثم يسلمه<sup>(١٣)</sup> لصاحبه، ويباع عليه العسل والسمن واللبن الذي<sup>(١٤)</sup> يغشه ممن يأكله، ويبين له غشه، وهكذا<sup>(١٥)</sup> [أ/٢٤٢] العمل في كل ما غشَّ من التجارات، وهو إيضاح ما استوضحته<sup>(١٦)</sup> من أصحاب مالك<sup>(١٧)</sup> وغيرهم.

(١) في (أ) و (د) ابن، وفي الأصل [بن].

(٢) في (ب) بن .

(٣) في (هـ) مما .

(٤) في (أ) و (ب) و (د) و (هـ) من الوزن .

(٥) في (ب) كثر، و (د) كبر، و (هـ) وما كر، وفي الأصل [كسر].

(٦) في (أ) و (ب) و (د) و (هـ) من المسك .

(٧) في (ب) و (هـ) بن .

(٨) في (هـ) و ليامر .

(٩) في (ب) عليه [ساقطة] .

(١٠) في (أ) و (ب) و (د) و (هـ) ان يغش به .

(١١) في (ب) الخبز [ساقطة] .

(١٢) في (د) كبر، و (هـ) كر .

(١٣) في (هـ) نسياله .

(١٤) في (ب) والذي .

(١٥) في (هـ) وهكذي .

(١٦) في (ب) ماستوضحته .

(١٧) في (أ) ملك .



ومحال<sup>(١)</sup> أن الإجماع ينسخ السنة ولكن لو ثبت الإجماع لكان دليلاً على نص ناسخ<sup>(٢)</sup>.

قال ابن<sup>(٣)</sup> رشد<sup>(٤)</sup> في كتاب البيان له، ولصاحب الحسبة الحكم على من غش في أسواق المسلمين<sup>(٥)</sup> في خبز أو لبن أو عسل، أو غير ذلك [٢٤١/ب] من السلع، مما ذكر<sup>(٦)</sup> أهل العلم في ذلك. فقد قال مالك<sup>(٧)</sup> في المدونه «إن عمر بن<sup>(٨)</sup> الخطاب<sup>(٩)</sup> [كان] يطرح<sup>(١٠)</sup> اللبن المغشوش في الأرض»، أدباً لصاحبه، وكره<sup>(١١)</sup> ذلك في رواية ابن<sup>(١٢)</sup> القاسم، ورأى أن<sup>(١٣)</sup> يتصدق به، ومنع من ذلك في رواية أشهب<sup>(١٤)</sup> وقال<sup>(١٥)</sup> لا يجل ذنب من الذنوب مال إنسان، وإن قتل نفساً. وذكر ابن<sup>(١٦)</sup> الماجشون عن مالك<sup>(١٧)</sup> في الذي غش اللبن<sup>(١٨)</sup> مثل الذي تقدم في رواية أشهب، قال

(١) في (ب) محاله .

(٢) في (ب) ما نسخ .

(٣) في (أ) ابن، وفي الأصل [بن].

(٤) في (ب) بن رشيد، و (د) ابن رشيد .

(٥) في (ب) في أموال أسواق المسلمين .

(٦) في (أ) و (ب) و (د) و (هـ) ذكره .

(٧) في (أ) ملك .

(٨) في (أ) و (د) ابن .

(٩) في (أ) رضى الله عنه .

(١٠) في (ب) و (د) و (هـ) كان يطرح، وفي الأصل [يطرح].

(١١) في (هـ) وذكره .

(١٢) في (ب) و (هـ) بن .

(١٣) في (ب) إلا .

(١٤) في (هـ) بن أشهب .

(١٥) في (د) قال .

(١٦) في (أ) و (د) ابن، وفي الأصل [بن].

(١٧) في (أ) ملك .

(١٨) في (د) غش اللبن [ساقطة] .

ومثل<sup>(١)</sup> : « تحريق عمر<sup>(٢)</sup> قصر سعد بن<sup>(٣)</sup> أبي وقاص، لما احتجب فيه عن الرعية ».

وهذه قضايا صحيحة معروفة، [٢٤١/أ] وليس يسهل دعوى نسخها. ومن قال إن العقوبة<sup>(٤)</sup> المالية منسوخة، وأطلق ذلك، فقد غلط على مذاهب الأئمة<sup>(٥)</sup> نقلاً واستدلالاً، فأكثر هذه المسائل<sup>(٦)</sup> شائعة<sup>(٧)</sup> في مذهب أحمد وغيره،<sup>(٨)</sup> وكثير<sup>(٩)</sup> منها شائع<sup>(١٠)</sup> في مذهب مالك،<sup>(١١)</sup> وفعل الخلفاء<sup>(١٢)</sup> الراشدين وأكابر الصحابة لها بعد موته<sup>(١٣)</sup> مبطل<sup>(١٤)</sup> أيضاً لدعوى نسخها، والمدعون للنسخ ليس معهم كتاب ولا سنة، ولا إجماع يصح دعواهم، إلا أن يقول أحدهم مذهب أصحابنا عدم جوازها، فمذهب أصحابه عيار على القبول والرد، وإذا ارتفع عن هذه الطبقة، ادعى أنها منسوخة بالإجماع، وهذا غلط أيضاً فإن الأمة لم تجمع<sup>(١٥)</sup> على نسخها،

(١) في (ب) و (د) مثل [ساقطة] .

(٢) في (أ) رضى الله عنه .

(٣) في (د) ابن .

(٤) في (أ) و (ب) و (د) و (هـ) العقوبات .

(٥) وفي الأصل [الأئمة] .

(٦) وفي الأصل [المسائل] .

(٧) في (أ) المسائل شائعة، و (ب) المسئلة شائعة، و (د) المسائل شائعة، وفي الأصل [شايعة] .

(٨) في (أ) و (د) و (هـ) غيره [ساقطة] . .

(٩) في (ب) كثير [مكائما فراغ] .

(١٠) في (د) و (هـ) ساينغ .

(١١) في (أ) عند ملك، و (ب) عند مالك .

(١٢) في (ب) الخلفاء، و (د) الخلفاء، وفي الأصل [الخلفاء] .

(١٣) في (هـ) ثبوته .

(١٤) في (ب) تبطل .

(١٥) في (هـ) يجمع .

- ومثل : « حرمان السلب الذي أساء<sup>(١)</sup> على نائبه<sup>(٢)</sup> ». .
- ومثل : « إضعاف الغرم على سارق ما لا قطع فيه<sup>(٣)</sup> من الثمر والكثير<sup>(٤)</sup> ». .
- ومثل : « إضعافه<sup>(٥)</sup> الغرم على كاتم الضالة<sup>(٦)</sup> ». .
- ومثل : « أخذ<sup>(٧)</sup> شطر مال مانع الزكاة ، عزمة من عزمات الرب<sup>(٨)</sup> تبارك وتعالى ». .
- ومثل : « أمر<sup>(٩)</sup> لابس<sup>(١٠)</sup> خاتم الذهب بطرحه ، فطرحه<sup>(١١)</sup> ، فلم يعرض له<sup>(١٢)</sup> ». .
- ومثل : « تحريق موسى صلى الله عليه وسلم<sup>(١٣)</sup> العجل وإلقا برادته<sup>(١٤)</sup> في اليم<sup>(١٥)</sup> ». .
- ومثل : « قطع نخيل اليهود ، إغاضة<sup>(١٥)</sup> لهم<sup>(١٦)</sup> ». .
- ومثل : « تحريق عمر وعلي رضي الله عنهما المكان الذي يباع فيه<sup>(١٧)</sup> الخمر<sup>(١٧)</sup> ». .

- (١) في (د) اساء، وفي الأصل [أسا].
- (٢) وفي الأصل [نايه].
- (٣) في (أ) يقطع فيه .
- (٤) في (ب) . ومثل : إضعاف الغرم على سارق ما لا قطع فيه من الثمر و الكثير [ساقطة] .
- (٥) في (ب) اضعاف .
- (٦) في (د) على سارق ما لا قطع فيه من الثمر و الكثير . ومثل : إضعافه [ساقطة] .
- (٧) في (ب) أخذ .
- (٨) في (ب) ربنا .
- (٩) في (أ) و (د) امره ، و (ب) امر [ساقطة] .
- (١٠) في (د) لابس .
- (١١) في (هـ) فطرحه .
- (١٢) رواه مسلم برقم (٢٠٩٠) .
- (١٣) في (أ) و (ب) و (د) و (هـ) عليه السلام .
- (١٤) في (أ) و (ب) والقاء برادته .
- (١٥) في (أ) و (هـ) اعاضة ، و (ب) واضاعة .
- (١٦) رواه البخاري برقم (٢٣٢٦) ، و رواه مسلم برقم (١٧٤٦) .
- (١٧) في (هـ) فيه ، وفي الأصل [في] .



## فصل (١) في مشروعية التعزير بالعقوبات المالية

وأما التعزير بالعقوبات المالية، فمشروع أيضاً في مواضع مخصوصة في مذهب مالك وأحمد، وأحد قولي الشافعي، وقد جاءت (٢) السنة، عن رسول الله ﷺ، وعن أصحابه بذلك في مواضع منها: «إباحته ﷺ سلب الذي يصطاد في حرم المدينة لمن وجدته» (٣).

ومثل: «أمره ﷺ بكسر دنان الخمر وشق ظروفها» (٤).

ومثل: «أمره لعبد الله بن عمر (٥) [٢٤٠/ب] بأن يحرق الثوبين المعصفرين»

ومثل: «أمره يوم خيبر بكسر القدور التي طبخ فيها لحم (٦) الحمر الأنسيه. ثم استأذنه في غسلها، فأذن لهم» (٧). فدل على جواز الأمرين، لأن العقوبة بالكسر لم تكن واجبة.

ومثل: «هدمه مسجد الضرار» (٨).

ومثل: «تحريق متاع الغال».

(١) في (هـ) فصل [ساقطة] .

(٢) في (ب) جاءت ، و (د) جاءت، وفي الأصل [جات].

(٣) رواه أبو داود برقم (٢٠٣٧).

(٤) في (ب) أمره صلى الله عليه وسلم بكسر دنان الخمر وشق ظروفها [ساقطة] ، و (هـ) ظروفها، وفي الأصل [ضروفها].

(٥) في (د) ابن عمرو ، و (هـ) بن عمرو .

(٦) في (ب) لحوم و (هـ) لحم [ساقطة] .

(٧) رواه البخاري برقم (٢٤٧٧) ، و رواه مسلم برقم (١٨٠٢).

(٨) إرواء الغليل : (٥ - ٢٧٠).

الكذب، وقال لقوم أرسلني إليكم رسول الله ﷺ أن أحكم في نسائكم<sup>(١)</sup> وأموالكم» وسأله  
عمن لم ينته من<sup>(٢)</sup> شرب الخمر فقال « من لم ينته عنها فاقتلوه »<sup>(٣)</sup> و « أمر بقتل شاربها  
بعد الثالثة، أو الرابعة » و « أمر بقتل الذي تزوج امرأة أبيه » و « أمر بقتل الذي اتهم  
بجاريته حتى تبين له<sup>(٤)</sup> أنه خصي »<sup>(٥)</sup>.

وأبعد الأئمة<sup>(٦)</sup> من التعزير [أ/٢٤٠] بالقتل أبو حنيفة، ومع ذلك فيجوز التعزير به<sup>(٧)</sup>  
للمصلحه، كقتل المكثّر من اللواط، وقتل القاتل بالمثل.

ومالك<sup>(٨)</sup> يرى تعزير الجاسوس المسلم بالقتل، ووافقه بعض أصحاب<sup>(٩)</sup> أحمد،

ويرى<sup>(١٠)</sup> أيضاً هو وجماعة من أصحاب أحمد والشافعي قتل الداعية إلى البدعة.<sup>(١١)</sup>

وعزر أيضاً صلى الله عليه وسلم بالهجر وعزر بالنفي، كما أمر بإخراج المخنثين من

المدينة ونفيهم، وكذلك الصحابة من بعده، كما فعل عمر رضي الله عنه بالأمر<sup>(١٢)</sup> بهجر<sup>(١٣)</sup> صبيغ،

ونفي نصر بن<sup>(١٤)</sup> الحجاج.<sup>(١٥)</sup>

(١) في (ب) نسائكم، وفي الأصل [نسايتكم].

(٢) في (د) و (هـ) عن .

(٣) رواه أبو داود برقم (٣٦٨٣).

(٤) في (هـ) له [ساقطة] .

(٥) رواه مسلم برقم (٢٧٧١).

(٦) وفي الأصل [الأئمة].

(٧) في (د) بالقتل ابو حنيفة ومع ذلك يجوز التعزير به [ساقطة] .

(٨) في (هـ) وملك .

(٩) في (هـ) اصحاب، وفي الأصل [اصحابه].

(١٠) في (ب) و (هـ) ويروى .

(١١) في (هـ) البدعية .

(١٢) في (هـ) بالأمر [ساقطة] .

(١٣) في (هـ) كالهجر .

(١٤) في (أ) و (د) ابن .

(١٥) في (ب) و (د) و (هـ) حجاج .

والتعزير منه ما يكون بالتوبيخ، والزجر والكلام ومنه ما يكون بالحبس، ومنه ما يكون بالنفي عن الوطن، ومنه ما يكون بالضرب. وإذا كان على ترك واجب كأداء<sup>(١)</sup> الديون،<sup>(٢)</sup> والأمانات، والزكاة والصلاة، فإنه يضرب مرة بعد مرة،<sup>(٣)</sup> [٢٣٩/ب] ويُفَرِّقُ الضرب عليه يوماً بعد يوم، حتى يؤدي الواجب. وإن كان ذلك على جرم<sup>(٤)</sup> ماض فعل منه مقدار الحاجة وليس لأقله حد، وقد تقدم الخلاف في أكثره، وإنه<sup>(٥)</sup> يسوغ<sup>(٦)</sup> بالقتل إذا لم تدفع<sup>(٧)</sup> المفسدة إلا<sup>(٨)</sup> به، مثل<sup>(٩)</sup> قتل المفرق لجماعة<sup>(١٠)</sup> المسلمين، والداعي إلى غير كتاب الله وسنة رسوله.

وفي الصحيح عن النبي ﷺ «إذابويع للخليفتين،<sup>(١١)</sup> فاقتلوا الآخر منهما»<sup>(١٢)</sup>.  
وقال «من جاءكم<sup>(١٣)</sup> وأمركم على رجل واحد، يريد أن يفرق جماعتكم، فاضربوا عنقه بالسيف كائنا<sup>(١٤)</sup> من كان»<sup>(١٥)</sup> و «أمر بقتل رجل تعمد عليه<sup>(١٦)</sup>

- (١) في (هـ) كاداء، وفي الأصل [كأدا].
- (٢) في (ب) كالديون .
- (٣) في (هـ) بعد مرة [ساقطة] .
- (٤) في (هـ) محرم .
- (٥) وفي الأصل [وأن].
- (٦) في (هـ) تسوغ .
- (٧) في (أ) و (ب) و (د) تندفع .
- (٨) في (أ) و (ب) و (د) الا ، وفي الأصل [إلى].
- (٩) في (أ) و (ب) و (د) مثل [ساقطة] .
- (١٠) في (هـ) للجماعة .
- (١١) في (ب) الخليفتين .
- (١٢) رواه مسلم برقم (١٨٥٣).
- (١٣) في (ب) جاءكم، وفي الأصل [جاكم].
- (١٤) وفي الأصل [كائنا].
- (١٥) رواه مسلم برقم (١٨٥٢).
- (١٦) في (هـ) علي .



## [٢٣٩/أ] فصل (١) في الحكم بالعقوبة والتعزير

### على حسب مقتضيات الأحوال

والمقصود أن هذه أحكام شرعية لها طرق شرعية، لا تتم (٢) مصلحة (٣) إلا بها، ولا تتوقف (٤) على مدّع (٥) ومدّعى (٦) عليه، بل لو توقفت على ذلك فسدت مصالح الأمة، واختل النظام، بل يحكم فيها مُتَوَلِّي ذلك بالأمارات (٧) والعلامات الظاهرة والقرائن (٨) البينة.

ولما كان الأمر بالمعروف والنهي عن المنكر لا، يتم إلا بالعقوبات الشرعية "فإن الله يزع بالسلطان ما لا يزع بالقرآن" وإقامة الحدود واجب على ولاية الأمور. والعقوبة تكون على فعل محرم، أو ترك واجب.

والعقوبات كما تقدم منها مقدر، و غير مقدر، (٩) وتختلف مقاديرها وأجناسها وصفاتها باختلاف أحوال الجرائم، (١٠) وكبرها، وصغرها، وبحسب حال المذنب (١١) في نفسه.

(١) في (هـ) فصل [ساقطة].

(٢) في (هـ) يتم.

(٣) في (أ) و (ب) و (د) و (هـ) مصلحة الأمة.

(٤) في (ب) و (د) يتوقف.

(٥) في (هـ) على مدعي.

(٦) في (هـ) و مدعا، ووفي الأصل [مدعا].

(٧) في (أ) و (ب) و (د) و (هـ) بالامارات، وفي الأصل [الأمانات].

(٨) في (أ) القران، وفي الأصل [القراين].

(٩) في (ب) مقدور وغير مقدور.

(١٠) وفي الأصل [الجرائم].

(١١) في (هـ) المذهب.

بدخول<sup>(١)</sup> صاحب<sup>(٢)</sup> الشجرة، ومصلحة صاحب الشجرة بأخذ القيمة ، وإن كان عليه في ذلك ضرر يسير، فضرر<sup>(٣)</sup> صاحب الأرض ببقائها<sup>(٤)</sup> في بستانه أعظم، فإن الشارع الحكيم يدفع أعظم<sup>(٥)</sup> الضررين بأيسرهما فهذا هو الفقه والقياس والمصلحة، وإن أباه من أباه .

**والمقصود** أن هذا دليل على وجوب البيع حاجة<sup>(٦)</sup> المشتري ، وأين حاجة هذا من حاجة عموم الناس إلى الطعام وغيره. والحكم في المعاوضة على المنافع إذا احتاج إليها<sup>(٧)</sup> كمنافع الدور ، والطحن، والخبز، وغير ذلك حكم المعاوضة على الأعيان.

وجماع الأمر أن مصلحة الناس إذا لم تتم<sup>(٨)</sup> إلا بالتسعير<sup>(٩)</sup> سعر عليهم، تسعير عدل لاوكس ولاشطط وإذا اندفعت حاجتهم وقامت<sup>(١٠)</sup> مصلحتهم بدونه لم يفعل<sup>(١١)</sup> وبالله التوفيق .

(١) في (ب) من دخول .

(٢) في (د) صاحب [ ساقطة ] .

(٣) في (ب) وضرر .

(٤) في (ب) ببقائها ، و (هـ) لبقائها، وفي الأصل [بقايتها].

(٥) في (د) ١ .

(٦) في (أ) و (هـ) لحاجة .

(٧) في (أ) و (ب) و (د) و (هـ) الناس إليها .

(٨) في (د) و (هـ) يتم .

(٩) في (ب) و (هـ) بالسعر .

(١٠) في (هـ) فقامت .

(١١) في (هـ) ويفعل .

منه، لكن لكونهم جاهلين بالقيمه، أو غير مماكسين، والبيع يعتبر فيه الرضا، والرضا<sup>(١)</sup> يتبع<sup>(٢)</sup> العلم، ومن لم يعلم أنه غبن<sup>(٣)</sup> فقد يرضى،<sup>(٤)</sup> وقد لا يرضى،<sup>(٥)</sup> فإذا علم أنه غبن<sup>(٦)</sup> ورضي، فلا بأس بذلك<sup>(٧)</sup> وفي السنن :

« أن رجلاً كانت له شجرة في أرض غيره وكان صاحب الأرض يتضرر بدخول صاحب الشجرة، فشكى ذلك إلى النبي ﷺ، فأمره<sup>(٨)</sup> أن يقبل بدلها<sup>(٩)</sup> أو يتبرع له<sup>(١٠)</sup> بها، فلم يفعل<sup>(١١)</sup> فأذن لصاحب الأرض أن يقلعها، وقال لصاحب الشجرة إنما أنت مضار<sup>(١٢)</sup>». وصاحب القياس الفاسد يقول لا يجب عليه أن يبيع<sup>(١٣)</sup> شجرته،<sup>(١٤)</sup> ولا يتبرع بها، ولا يجوز لصاحب<sup>(١٥)</sup> الأرض أن يقلعها، لأنه تصرف في ملك الغير بغير إذنه، إجباراً على المعاوضة عليه، وصاحب [٢٣٨/ب] الشرع أوجب عليه إذا لم يتبرع بها أن يبيعها، لما في ذلك من مصلحة صاحب الأرض بخلاصه من تأذيه

(١) في (هـ) الرضى .

(٢) في (ب) و (د) و (هـ) بيع .

(٣) في (ب) انه قد غبن .

(٤) في (ب) يرضا ، و (هـ) رضى .

(٥) في (ب) يرضا .

(٦) في (ب) انه قد غبن .

(٧) في (ب) في ذلك .

(٨) في (هـ) فأمر .

(٩) في (د) و (هـ) بدلها .

(١٠) في (هـ) له [ ساقطة ] .

(١١) في (ب) فلم يقبل .

(١٢) رواه أبو داود برقم (٣٦٣٦). وهو حديث ضعيف.

(١٣) في (هـ) يجب عليه أن [ ساقطة ] .

(١٤) في (هـ) لا يبيع على ان يجب شجرته ، [ ولعله خطأ من الناسخ ، لان العبارة لا تستقيم و المعنى غير واضح ] .

(١٥) في (أ) و (ب) و (د) و (هـ) لصاحب، وفي الأصل [وصاحب].



وقالت طائفة <sup>(١)</sup> بل نهي عن ذلك لما فيه من ضرر المشتري إذا تلقاه المتلقي، فاشترى به <sup>(٢)</sup> فباعه <sup>(٣)</sup> في الجملة، فقد نهي النبي ﷺ عن البيع والشراء <sup>(٤)</sup> الذي جنسه حلال، حتى يعلم البائع <sup>(٥)</sup> بالسعر، وهو ثمن المثل، ويعلم المشتري بالسلعة. وصاحب القياس الفاسد يقول للمشتري أن يشتري حيث شاء، <sup>(٦)</sup> وقد اشترى من البائع، <sup>(٧)</sup> كما يقول، له أن يتوكل للبائع <sup>(٨)</sup> الحاضر <sup>(٩)</sup> وغير الحاضر، <sup>(١٠)</sup> ولكن الشارع راعى <sup>(١١)</sup> المصلحة العامة، فإن الجالب إذا لم يعرف السعر كان جاهلاً بثمن المثل، فيكون المشتري [أ/٢٣٨] غاراً له. وألحق مالك <sup>(١٢)</sup> و <sup>(١٣)</sup> أحمد <sup>(١٤)</sup> بذلك كل مسترسل فإنه بمرتلة الجالب الجاهل بالسعر. فتبين أنه يجب على الإنسان أن لا يبيع مثل هؤلاء <sup>(١٥)</sup> إلا بالسعر <sup>(١٦)</sup> المعروف، وهو ثمن المثل وإن لم يكونوا محتاجين إلى الابتاع

- (١) في (ب) طائفة، و (هـ) طائفه، وفي الأصل [طائفه].
- (٢) في (ب) به.
- (٣) في (ب) و (د) و (هـ) باعه.
- (٤) في (أ) الشراء، و (ب) الشراء، و (هـ) الشراء، وفي الأصل [الشري].
- (٥) في (ب) الناس، وفي الأصل [البائع].
- (٦) في (ب) شاء، و (د) شاء، وفي الأصل [شا].
- (٧) وفي الأصل [البائع].
- (٨) وفي الأصل [البائع].
- (٩) في (ب) للحاضر.
- (١٠) في (د) وغير الحاضر [ساقطة].
- (١١) في (أ) و (ب) و (هـ) راعي، وفي الأصل [راعا].
- (١٢) في (أ) ملك.
- (١٣) في (د) و [ساقطة].
- (١٤) في (أ) رضى الله عنهما.
- (١٥) في (ب) هؤلاء، هؤلاء، وفي الأصل [هؤولا].
- (١٦) في (د) فتبين أنه يجب على الإنسان: أن لا يبيع مثل هؤلاء إلا بالسعر [ساقطة].

أغلى<sup>(١)</sup> الثمن على المشتري فنهاه عن التوكل له، مع أن<sup>(٢)</sup> جنس الوكاله مباح، لما في ذلك من زيادة السعر على الناس، ونهى عن<sup>(٣)</sup> تلقي الجالب، وجعل للبائع<sup>(٤)</sup> إذا هبط السوق الخيار، ولهذا كان أكثر الفقهاء<sup>(٥)</sup> على أنه نهي عن ذلك لما فيه من ضرر<sup>(٦)</sup> البائع هنا،<sup>(٧)</sup> فإذا لم يكن قد عرف السعر، وتلقاه المتلقي قبل إتيانه إلى السوق اشتراه المشتري بدون ثمن المثل فغبنه<sup>٨</sup> فأثبت النبي ﷺ [٢٣٧/ب] الخيار لهذا البائع، ثم فيه<sup>(٩)</sup> عن أحمد<sup>(١٠)</sup> روايتان<sup>(١١)</sup> كما تقدم، إحداهما: <sup>(١٢)</sup> أن الخيار يثبت<sup>(١٣)</sup> له مطلقاً، سواء<sup>(١٤)</sup> غبن<sup>(١٥)</sup> أو لم يغبن<sup>(١٦)</sup> وهو ظاهر مذهب الشافعي. والثانية أنه<sup>(١٧)</sup> إنما يثبت<sup>(١٨)</sup> له عند الغبن، وهي<sup>(١٩)</sup> ظاهر المذهب.

(١) في (ب) أغلى، و (د) اغلا .

(٢) في (هـ) ان [ ساقطة ] .

(٣) في (هـ) ان .

(٤) وفي الأصل [البائع].

(٥) في (ب) الفقهاء، و (د) و (هـ) الفقهاء، وفي الأصل [الفقهاء].

(٦) في (أ) و (ب) ضرر.

(٧) في (أ) و (ب) هنا [ ساقطة ] .

(٨) في (هـ) معيشه .

(٩) في (د) فيه [ ساقطة ] .

(١٠) في (أ) رضى الله عنه .

(١١) في (د) فيه روايتان .

(١٢) في (أ) و (هـ) ايهما، و (ب) اهما .

(١٣) في (هـ) ثبت .

(١٤) وفي الأصل [سوا].

(١٥) في (د) سوا عين .

(١٦) في (د) يعبن .

(١٧) في (هـ) انه .

(١٨) في (د) ثبت، و (هـ) تثبت .

(١٩) في (ب) وهو .

حنيفة ظاهر، حيث لا يرى الحجر على الحر. ومن باع منهم بما قدره الإمام صح،<sup>(١)</sup> لأنه غير مكره عليه .

قالوا : وهل يبيع القاضي على المحتكر طعامه من غير رضاه فعلى الخلاف المعروف [في] بيع<sup>(٢)</sup> مال المديون،<sup>(٣)</sup> قيل يبيع ها هنا<sup>(٤)</sup> بالاتفاق، لأن أبا حنيفة<sup>(٥)</sup> يرى الحجر لدفع [٢٣٧/أ] الضرر العام، والسعر لما غلا<sup>(٦)</sup> على عهد رسول الله<sup>ص</sup> وطلبوا منه التسعير فامتنع ، لم يذكر أنه كان<sup>(٨)</sup> هناك من<sup>(٩)</sup> عنده طعام امتنع من بيعه ، بل عامة من كان يبيع الطعام إنما هم جالبون يبيعونه<sup>(١٠)</sup> إذا هبطوا السوق، ولكن<sup>(١١)</sup> « نهي النبي<sup>ص</sup> أن يبيع حاضر<sup>(١٢)</sup> لباد<sup>(١٣)</sup> » أي يكون له سمساراً<sup>(١٤)</sup> ، وقال « دعوا الناس يرزق الله بعضهم من بعض »<sup>(١٥)</sup> فنهى الحاضر العالم بالسعر أن يتوكل للبادي الجالب للسلعة ،<sup>(١٦)</sup> لأنه إذا توكل لهم مع خبرته بجاجة الناس

(١) في (أ) وصح .

(٢) في (ب) يبيع ، و (د) و (هـ) في بيع .

(٣) في (هـ) الديون .

(٤) في (ب) و (هـ) ههنا .

(٥) في (أ) رضى الله عنه .

(٦) في (ب) غلى

(٧) في (أ) و (د) و (هـ) النبي .

(٨) في (هـ) ان هناك ، كان [ساقطة] .

(٩) في (هـ) من كان .

(١٠) في (ب) يبيعهم .

(١١) في (أ) و (ب) لكن .

(١٢) في (هـ) حاضرا .

(١٣) في (د) البادي .

(١٤) في (هـ) سمسار .

(١٥) رواه مسلم برقم (١٥٢٢) .

(١٦) في (ب) للسلعة ، وفي الأصل [السلعة] .



فلو مُكِّنَ من عنده سلعة<sup>(١)</sup> يحتاج الناس<sup>(٢)</sup> إليها أن يبيع بما شاء<sup>(٣)</sup> كان ضرر الناس أعظم ، ولهذا قال الفقهاء<sup>(٤)</sup> إذا اضطر الإنسان إلى طعام الغير وجب عليه بذله بثمان المثل.

وأبعدُ الأئمة<sup>(٥)</sup> عن إيجاب المعاوضة وتقديرها هو الشافعي، و مع هذا فإنه يوجب على من اضطر الإنسان إلى طعامه<sup>(٦)</sup> أن يبذله<sup>(٧)</sup> بثمان المثل ، وتنازع أصحابه في جواز تسعير الطعام ، [٢٣٦/ب] إذا كان بالناس إليه حاجة، ولهم فيه وجهان.

وقال أصحاب أبي حنيفة<sup>(٨)</sup> لا ينبغي للسلطان أن يسعر<sup>(٩)</sup> على الناس، إلا إذا تعلق به حق<sup>(١٠)</sup> ضرر العامة ، فإذا رفع إلى القاضي أمر المحتكر ببيع<sup>(١١)</sup> ما فضل من قوته وقوت أهله ، على اعتبار السعر في ذلك، فمناه<sup>(١٢)</sup> عن الاحتكار ، فإن أبي حنيفة وعزره على مقتضى رأيه، زجرا له ودفعا لضر<sup>(١٣)</sup> عن<sup>(١٤)</sup> الناس. قالوا فإن تعدى أرباب الطعام ، وتجاوزوا القيمة تعديا فاحشا، وعجز القاضي عن صيانة حقوق المسلمين إلا بالتسعير<sup>(١٥)</sup> سَعْرُهُ حينئذ بمشورة أهل الرأي والبصيرة. وهذا على أصل أبي

(١) في (ب) سلعة .

(٢) في (هـ) الناس. [ساقطة] .

(٣) في (ب) شاء ، و (د) شاء ، وفي الأصل [بما شا].

(٤) في (ب) الفقهاء ، و (د) الفقهاء ، و في الأصل [الفقهاء].

(٥) وفي الأصل الأئمة.

(٦) في (أ) و (ب) و (د) و (هـ) طعامه، وفي الأصل [طعام].

(٧) في (أ) و (ب) و (د) و (هـ) يبذله له .

(٨) في (د) ابو حنيفة .

(٩) في (ب) يسع .

(١٠) في (ب) حتى . وهو خطأ من الناسخ ويظهر أن الناسخ وراق وليس نطالب علم . والله اعلم .

(١١) في (د) يبيع .

(١٢) وفي الأصل [ومناه].

(١٣) في (أ) و (ب) و (د) و (هـ) للضرر .

(١٤) في (هـ) على .

(١٥) في (أ) و (ب) و (د) و (هـ) بالسعر .

أنه يجوز فإذا <sup>(١)</sup>. أخذ <sup>(٢)</sup> عند التحمل، لم يأخذه عند الأداء. <sup>(٣)</sup> والمقصود أن ما قدره النبي ﷺ من الثمن في سراية العتق هو لأجل تكميل الحرية، وهو حق الله، <sup>(٤)</sup> وما احتاج إليه الناس، حاجة عامة فالحق <sup>(٥)</sup> فيه لله، وذلك في الحقوق والحدود.

فأما الحقوق فمثل حقوق المساجد ومال الفيء <sup>(٦)</sup> والوقف على أهل الحاجات [ ٢٣٦/أ ] وأموال الصدقات والمنافع العامة. وأما الحدود فمثل حد المحاربة، والسرقه، والزنا، وشرب الخمر المسكر.

وحاجة المسلمين إلى الطعام واللباس وغير ذلك مصلحة عامة، و <sup>(٧)</sup> ليس الحق فيها لواحد بعينه، فيقدر <sup>(٨)</sup> الثمن فيها <sup>(٩)</sup> بثمن المثل على من وجب <sup>(١٠)</sup> عليه البيع أولى من تقديره لتكميل الحرية، <sup>(١١)</sup> لكن تكميل الحرية وجبت على الشريك المعتق، ولو تقدر <sup>(١٢)</sup> فيها الثمن لتضرر بطلب الشريك الآخر، <sup>(١٣)</sup> فإنه يطلب ما شاء، <sup>(١٤)</sup> وهنا عموم الناس يشترون [الطعام] والثياب <sup>(١٥)</sup> لأنفسهم وغيرهم،

(١) في (هـ) فإن .

(٢) في (أ) و (ب) و (د) فإن أخذه .

(٣) في (ب) الأداء .

(٤) في (أ) الله تعالى ، و (د) لله .

(٥) في (ب) بالحق .

(٦) في (ب) و (هـ) ومال الفيء .

(٧) في (د) و (هـ) و [ ساقطة ] .

(٨) في (أ) فتعذر .

(٩) في (هـ) فيها [ ساقطة ] .

(١٠) في (أ) ما وجب .

(١١) في (د) لكن تكميل الحرية [ ساقطة ] .

(١٢) في (أ) و (ب) و (د) و (هـ) ولو لم يقدر .

(١٣) في (ب) الاجر .

(١٤) في (ب) ما شاء ، و (د) ما شاء ، وفي الأصل [ ما شا ] .

(١٥) في (أ) و (ب) و (د) و (هـ) يشترون الطعام والثياب .

وأيضاً فإن بذل منافع البدن تجب عند الحاجة، كتعليم العلم و إفتاء<sup>(١)</sup> الناس، وأداء<sup>(٢)</sup> الشهادة والحكم بينهم، والجهاد والأمر بالمعروف والنهي عن المنكر، وغير ذلك من منافع الأبدان. وكذلك من أمكنه إنجاء<sup>(٣)</sup> إنسان من مهلكة [٢٣٥/ب] وجب عليه أن يخلصه ، فإن ترك ذلك مع قدرته عليه أثم وضمنه. فلا يمتنع<sup>(٤)</sup> وجوب بذل منافع الأموال للمحتاج، و[قد] قال<sup>(٥)</sup> تعالى: ( ولا يَأب<sup>(٦)</sup> الشهداء إذا ما دعوا)<sup>(٧)</sup> وقال تعالى: <sup>(٨)</sup> ( ولا يَأب<sup>(٩)</sup> كاتب ولا شهيد<sup>(١٠)</sup> أن يكتب كما علمه الله)<sup>(١١)</sup> وللفقهاء<sup>(١٢)</sup> في أخذ الجعل<sup>(١٣)</sup> على الشهادة أربع<sup>(١٤)</sup> أقوال ، وهي أربعة أوجه في مذهب أحمد،<sup>(١٥)</sup> وإحداها<sup>(١٦)</sup> أنه لا يجوز مطلقاً، والثاني أنه<sup>(١٧)</sup> يجوز عند الحاجة، والثالث أنه لا يجوز<sup>(١٨)</sup> إلا أن يتعين<sup>(١٩)</sup> عليه،<sup>(٢٠)</sup> والرابع<sup>(٢١)</sup>

(١) في (ب) و افتاء ، و (د) و افتاء ، وفي الأصل [و افتاء].

(٢) في (ب) و ادا [ساقطة] ، و (د) و اداء ، وفي الأصل [ادا].

(٣) في (أ) و (ب) نجاء ، و (د) انجاء، وفي الأصل [انجاء].

(٤) في (هـ) يمنع .

(٥) في (أ) و (ب) و (د) و (هـ) وقد قال ، وفي الأصل [وقال].

(٦) في (ب) يابا .

(٧) من سورة البقرة، آية ٢٦٢.

(٨) في (أ) و (ب) و (د) و (هـ) تعالى [ساقطة] .

(٩) في (ب) يابا .

(١٠) في (أ) و (ب) و (د) و (هـ) ولا شهيد [ساقطة] .

(١١) من سورة {البقرة} ٢٦٢ .

(١٢) في (هـ) للفقهاء .

(١٣) في (هـ) الاجرة الجعل .

(١٤) في (ب) و (د) و (هـ) أربعة .

(١٥) في (أ) رضى الله عنه .

(١٦) في (أ) و (ب) و (د) و (هـ) اها .

(١٧) في (أ) و (د) و (هـ) انه [ساقطة] .

(١٨) في (ب) و (هـ) انه يجوز .

(١٩) في (ب) تتعين .

(٢٠) في (هـ) والثاني صحوز عند الحاجة [زائدة] .

(٢١) في (د) و (هـ) الرابع .



وفي الصحيحين عنه <sup>(١)</sup> أنه قال « لا يمنع <sup>(٢)</sup> جار <sup>(٣)</sup> جاره أن يغرز خشبة في جداره». <sup>(٤)</sup> ولو <sup>(٥)</sup> احتاج إلى إجراء <sup>(٦)</sup> مائة <sup>(٧)</sup> في أرض غيره من غير ضرر لصاحب الأرض، فهل يجبر على ذلك، على روايتين عن أحمد، <sup>(٨)</sup> والإجبار قول عمر بن الخطاب رضي الله عنه وغيره من الصحابة. وقد قال جماعة من الصحابة والتابعين، إن زكاة الحلي عاريتة، فإذا لم يعره <sup>(١٠)</sup> فلا بد من زكاته، <sup>(١١)</sup> وهذا وجه في مذهب أحمد.

قلت <sup>(١٢)</sup> وهو الراجح، وإنه لا يخلو الحلي من زكاة أو عارية. والمنافع التي يجب بذلها نوعان، منها ما هو حق المال، كما ذكرنا في الخيل والإبل والحلي. ومنها ما يجب لحاجة الناس.

(١) في (ب) و (د) عنه [ساقطة] .

(٢) في (ب) و (هـ) بمنع .

(٣) في (د) جارا .

(٤) رواه البخاري برقم (٢٤٦٣)، ورواه مسلم برقم (١٠٦٩).

(٥) في (د) و (هـ) ولو، وفي الأصل [لو].

(٦) في (د) اجر، و (هـ) اجرا .

(٧) في (ب) و (د) مائة، وفي الأصل [ماية].

(٨) في (أ) رضي الله عنه .

(٩) في (د) ابن .

(١٠) في (ب) يعيره .

(١١) في (ب) زكويه .

(١٢) وهذا ترجيح ابن القيم في المسائل التي يذكرها، فهو يعرض ويرجح. وهذا مما يدل على اجتهاده .

قال ابن مسعود وابن عباس وغيرهما من الصحابة،<sup>(٣)</sup> هو إعارة القدر والدلو<sup>(٤)</sup> ونحوهما.<sup>(٥)</sup> وفي الصحيحين<sup>(٦)</sup> عن النبي ﷺ وذكر الخيل قال «هي لرجل أجر، ولرجل ستر، وعلى رجل وزر، فأم الذي هي له أجر فرجل ربطها في سبيل الله، وأما الذي هي له ستر<sup>(٧)</sup> فرجل ربطها تغنيا وتعففا، ولم ينس حق الله في رقابها،<sup>(٨)</sup> ولا<sup>(٩)</sup> في ظهورها»<sup>(١٠)</sup>.

وفي الصحيحين عنه أيضا «من حق الإبل إعارة دلوها، وإطراق<sup>(١١)</sup> فحلها»<sup>(١٢)</sup>. وفي الصحيح<sup>(١٣)</sup> عنه «أنه نهي عن عسب الفحل»<sup>(١٤)</sup> أي عن أخذ الأجرة [أ/٢٣٥] عليه، والناس يحتاجون إليه،<sup>(١٥)</sup> فأوجب بذله مجانا، ومنع من أخذ الأجرة عليه.

(١) في (ب) و (هـ) بن .

(٢) في (أ) و (ب) بن .

(٣) تفسير ابن كثير ، ٤-٦٩٨ .

(٤) في (د) والدلو الناس .

(٥) في (أ) و (ب) و (هـ) والفاس ونحوها .

(٦) في (هـ) الصحيح .

(٧) في (هـ) وعلى رجل وزر ، فأما الذي هي له أجر: فرجل ربطها في سبيل الله ، وأما الذي هي له ستر [ساقطة] .

(٨) في (ب) وقائها .

(٩) في (ب) ولي .

(١٠) رواه البخاري برقم (٢٣٧١) ، ورواه مسلم برقم (٩٨٧) .

(١١) في (هـ) اطراف .

(١٢) رواه مسلم برقم (٩٨٨) ، ولم أجده في البخاري .

(١٣) في (ب) و (د) الصحيحين ، والصحيح كما هو في الأصل .

(١٤) رواه البخاري برقم (٢٢٨٤) .

(١٥) في (د) إليه [ساقطة] .

## فصل (١) في وجوب بذل الحاجيات للمضطر

فإذا (٢) قُدِّرَ أن قوما اضطروا إلى السكنى في بيت إنسان و (٣) لا يجدون سواه، أو التزول في خان مملوك ، أو استعارة ثياب يَسْتَدْفُونَ بها، أو رَحَى (٤) للطحن، أو دلو لترع الماء ، أو قدر أو فأس أو غير ذلك ، وجب على صاحبه بذله بلا (٥) نزاع، لكن هل [ ٢٣٤/ب ] له أن يأخذ عليه أجرا. فيه قولان للعلماء (٦) وهما وجهان لأصحاب أحمد . ومن جوز له أخذ الأجر (٧) حرم عليه أن يأخذ (٨) زيادة على أجر (٩) المثل. (١٠) قال (١١) شيخنا (١٢) والصحيح أنه يجب عليه بذل ذلك مجانا ، كما دل عليه الكتاب والسنة قال

تعالى ﴿ فَوَيْلٌ لِلْمُصَلِّينَ \* الَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ \* الَّذِينَ هُمْ يُرَاؤُونَ ﴾ (١٣)  
وَيَمْنَعُونَ الْمَاعُونَ ﴿ (١٤)

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (هـ) فا [ زائدة ] .

(٣) في (د) و [ ساقطة ] .

(٤) في (ب) رحاء .

(٥) في (د) بلى .

(٦) في (د) للعلماء ، و (هـ) للعلماء ، وفي الأصل [ للعلماء ] .

(٧) في (ب) و (د) و (هـ) الاجرة .

(٨) في (أ) و (ب) و (د) يطلب .

(٩) في (ب) الاجرة ، و (د) و (هـ) اجرة .

(١٠) في (د) المثل [ ساقطة ] .

(١١) في (ج) و (د) و (هـ) و (ز) و (ح) الشيخ [ ساقطة ] ، وفي الأصل [ الشيخ ] زائدة.

(١٢) في (أ) قال شيخنا رضى الله عنه .

(١٣) في (ب) يراؤون ، و (د) يراؤن .

(١٤) من سورة الماعون، آية ٤-٧ .



فكيف إذا كانت الحاجة بالناس <sup>(١)</sup> إلى التملك أعظم ، وهم إليها أضرب مثل حاجة المضطر إلى الطعام والشراب واللباس وغيره. <sup>(٢)</sup> وهذا الذي أمر به النبي ﷺ [أ/٢٣٤] من تقويم الجميع قيمة المثل <sup>(٣)</sup> هو حقيقة التسعير. وكذلك سلط <sup>(٤)</sup> الشريك على انتزاع الشقص المشفوع من يد المشتري بثمنه الذي ابتاعه به <sup>(٥)</sup> لا بزيادة <sup>(٦)</sup> عليه، لأجل مصلحة التكميل <sup>(٧)</sup> لواحد، فكيف بما هو أعظم من ذلك فإذا جوز له انتزاعه منه بالثمن الذي وقع عليه العقد، <sup>(٨)</sup> لا بما شاء <sup>(٩)</sup> المشتري من الثمن، لأجل هذه المصلحة الضرورية، <sup>(١٠)</sup> فكيف إذا اضطر إلى ما عنده من طعام وشراب ولباس وآلة حرب وكذلك <sup>(١١)</sup> إذا اضطر الحاج إلى ما عند <sup>(١٢)</sup> الناس من آلات السفر وغيرها، فعلى ولي الأمر أن يجبرهم على ذلك بثمن المثل لا بما يريدونه <sup>(١٣)</sup> من الثمن، وحديث العتق أصل في ذلك كله .

(١) في (ب) الناس [ساقطة] .

(٢) في (ب) وغيره [ساقطة] .

(٣) في (هـ) العدل .

(٤) في (أ) و (د) تسلط ، و (هـ) تسليط .

(٥) في (ب) به [ساقطة] .

(٦) في (هـ) لا يزاده .

(٧) في (أ) و (ب) و (د) و (هـ) التكميل .

(٨) في (أ) وقع العقد عليه .

(٩) في (ب) شاء ، و (هـ) شآ .

(١٠) في (أ) و (ب) الجزويه ، و (د) الحرويه ، و (هـ) الجزية .

(١١) في (ب) إذا اضطر إلى ما عنده من طعام وشراب ولباس وآلة حرب ؟ وكذلك [ساقطة] .

(١٢) في (ب) اذ اضطر الى ما عنده الناس .

(١٣) في (أ) و (ب) و (د) و (هـ) لا بما يريدونه ، وفي الأصل [لا يزيدونه] .

العبد قوم عليه قيمة عدل»<sup>(١)</sup> لا وكس ولا شطط ، فأعطى شركاه<sup>(٢)</sup> حصصهم<sup>(٣)</sup> وعتق عليه العبد فلم يمكن المالك أن يساوم المعتق بالذي يريد، لما<sup>(٤)</sup> وجب عليه<sup>(٥)</sup> أن يملك شريكه المعتق نصيبه الذي لم يعتقه لتكميل الحرية في العبد قَدَّرَ عَوَضَهُ ، بأن يقوم جميع العبد قيمة عدل ، ويعطيه قسطه<sup>(٦)</sup> من القيمة،<sup>(٧)</sup> فإن [٢٣٣ ب/ب] حق الشريك في نصف القيمة ، لا في قيمة النصف عند الجمهور. وصار هذا الحديث أصلاً في أن مالا يمكن قسمة عينه ، فإنه يباع ويُقَسَّمُ ثمنه ، إذا طلب أحد الشركاء<sup>(٨)</sup> ذلك ، ويجبر الممتنع على البيع ، وحكى بعض المالكية ذلك إجماعاً ، وصار أصلاً في أن من وجبت عليه المعاوضة أجبر على أن يعاوض بثمن المثل، ولا بما يريد<sup>(٩)</sup> من الثمن، وصار<sup>(١٠)</sup> أصلاً في جواز إخراج الشيء<sup>(١١)</sup> من ملك صاحبه قهراً بثمنه، للمصلحة الراجحة، كما في الشفعة، وأصلاً في وجوب تكميل العتق<sup>(١٢)</sup> بالسراية مهما<sup>(١٣)</sup> أمكن.

والمقصود أنه إذا كان الشارع يوجب إخراج الشيء<sup>(١٤)</sup> عن ملك مالكة بعوض المثل، لمصلحة تكميل العتق، ولم يمكن المالك من المطالبة بالزيادة على القيمة،

(١) رواه البخاري برقم (٢٤٩١)، رواه مسلم برقم (١٥٠١).

(٢) في (د) شركاءه .

(٣) في (ب) فأعطا شركاؤه حصتهم .

(٤) في (أ) و (ب) و (د) و (هـ) فانه لما .

(٥) في (هـ) صاحبه [ زائدة ] .

(٦) في (هـ) قسط .

(٧) في (هـ) الغنيمة .

(٨) في (ب) و (د) الشركاء ، و (هـ) الشركاء، وفي الأصل [الشركاء].

(٩) في (ب) و (د) و (هـ) بما يريد .

(١٠) في (أ) و (ب) و (د) و (هـ) صار [ ساقطة ] .

(١١) في (د) الشيء ، وفي الأصل [الشيء].

(١٢) في (ب) المعتق .

(١٣) في (أ) منهما .

(١٤) في (د) الشيء ، وفي الأصل [الشيء].

عليهم من غير رضى ، بما لا ربح لهم فيه أدى ذلك إلى فساد الأسعار، <sup>(١)</sup> وإخفاء <sup>(٢)</sup> الأوقات ، وإتلاف أموال الناس. قال شيخنا <sup>(٣)</sup> فهذا الذي تنازعوا فيه، وأما إذا امتنع الناس من بيع ما يجب عليهم بيعه، فهنا يؤمرون <sup>(٤)</sup> بالواجب، ويعاقبون على تركه، وكذلك كل من وجب عليه أن يبيع بثمان المثل فامتنع.

ومن احتج على منع التسعير مطلقاً بقول النبي ﷺ [أ/٢٣٣] « إن الله هو المسعر القابض الباسط، وإني <sup>(٥)</sup> لأرجو أن ألقى الله وليس أحد منكم يطلبني بمظلمة في دم ولا مال » قيل له هذه قضية معينة، وليست لفظاً عاماً، ولأن <sup>(٧)</sup> الشيء <sup>(٨)</sup> إذا قلَّ رَغِبَ <sup>(٩)</sup> الناس في المزايدة فيه ، فإذا بذله صاحبه كما جرت به العادة، ولكن الناس تزايدوا، <sup>(١٠)</sup> فهنا لا يسعر عليهم. <sup>(١١)</sup>

وقد ثبت في الصحيحين أن النبي ﷺ منع من الزيادة على ثمن المثل في عتق الحصة من العبد المشترك، فقال: « من أعتق شركا له في عبد وكان له <sup>(١٢)</sup> ما يبلغ ثمن

- (١) في (ب) عليهم من غير رضى ، بما لا ربح لهم فيه : أدى ذلك إلى فساد الأسعار ، [ساقطة] .
- (٢) في (د) إخفاء ، و الأصل [إخفا].
- (٣) في (أ) رضى الله عنه .
- (٤) في (د) يؤمرون ، وفي الأصل [يؤمرون] .
- (٥) في (هـ) وفي .
- (٦) في (د) و (هـ) و [ساقطة] .
- (٧) في (أ) و (ب) و (ج) و (د) و (هـ) وليس فيها ان امتنع من بيع ما الناس يحتاجون اليه ومعلوم ان [إضافة] ، وفي (د) بيع الناس ما يحتاجون ، وفي الأصل [ليس].
- (٨) في (د) الشيء ، وفي الأصل [الشيء].
- (٩) في (ب) الشيء إذا قل رغب .
- (١٠) في (د) و (هـ) تزايدوا فيه .
- (١١) في (ب) عليهم [ساقطة] .
- (١٢) في (هـ) من المال [زائدة] .



## فصل (١) في صفة تحديد التسعير عند من جوّزه

وأما صفة ذلك [٢٣٢/ب] عند من جوّزه ، فقال ابن (٢) حبيب ينبغي للإمام أن يجمع وجوه أهل السوق (٣) ذلك الشيء، (٤) ويحضر غيرهم، استظهارا على صدقهم، فيسألهم (٥) كيف يشترون وكيف يبيعون فينازلهم (٦) إلى ما فيه لهم وللعمامة (٧) سداداً، حتى يرَضُوا به، ولا يُجْبِرُ على التسعير، ولكن عن رضى. قال أبو الوليد (٨) ووجه هذا أن به (٩) يتوصل إلى معرفة مصالح البائعين (١٠) والمشتريين ، ويجعل للباعة في ذلك (١١) من الربح ما يقوم بهم، (١٢) ولا يكون فيه إجحاف (١٣) بالناس، وإذا (١٤) سعر

(١) في (هـ) فصل [ساقطة] .

(٢) في (أ) و (د) ابن ، وفي الأصل [بن].

(٣) في (أ) و (د) أهل سوق .

(٤) في (د) الشيء ، وفي الأصل [الشيء].

(٥) في (ب) فيسألهم .

(٦) في (أ) و (ب) و (د) فينازلهم ، و (هـ) فينازلهم ، وفي الأصل [فينازلهم].

(٧) في (هـ) و العمامة .

(٨) في (أ) و (ب) أبو الوليد ، وفي الأصل [أبو وليد].

(٩) في (ب) به [ساقطة] .

(١٠) وفي الاصل [البائعين].

(١١) في (هـ) ويجعل في ذلك للباعة .

(١٢) في (هـ) به .

(١٣) في (ب) اجحافا .

(١٤) في (أ) بالناس اذا سعر .

عليهم،<sup>(١)</sup> ولا يجبر الناس على البيع، و<sup>(٢)</sup> إنما يمنعون من البيع بغير السعر الذي يجده<sup>(٣)</sup> ولي الأمر، على حسب ما يرى من المصلحة فيه للبايع والمشتري . وأما الجمهور فاحتجوا بما رواه أبو داود وغيره من حديث العلاء بن<sup>(٤)</sup> عبد الرحمن عن أبيه عن أبي ربيعة قال «جاء<sup>(٥)</sup> رجل إلى رسول الله ﷺ فقال يا رسول الله<sup>(٦)</sup> الله سعر لنا، فقال بل أدعو<sup>(٧)</sup> الله،<sup>(٨)</sup> ثم جاء<sup>(٩)</sup> رجل فقال<sup>(١٠)</sup> يا رسول الله<sup>(١١)</sup> سعر لنا، قال<sup>(١٢)</sup> بل الله يرفع ويخفض ، وإني لأرجو أن ألقى الله وليست لاحد عندي<sup>(١٣)</sup> مظلمة .»<sup>(١٤)</sup> قالوا ولأن<sup>(١٥)</sup> إجبار<sup>(١٦)</sup> الناس على ذلك ظلم لهم.

- (١) في (هـ) عليهم [ساقطة] .
- (٢) في (د) و (هـ) و [ساقطة] .
- (٣) في (د) يجده .
- (٤) في (أ) و (د) ابن .
- (٥) في (ب) جاء ، و (د) جاء ، وفي الأصل [جا] .
- (٦) في (هـ) يرسول .
- (٧) في (د) و (هـ) ادعوا .
- (٨) في (هـ) الى الله .
- (٩) في (د) جاءه ، وفي الأصل [جاه] .
- (١٠) في (هـ) فقالوا .
- (١١) في (هـ) يرسول .
- (١٢) في (أ) و (هـ) فقال .
- (١٣) في (ب) وليست لاحد عندي ، والأصل [وليست عندي لاحد] .
- (١٤) رواه أبو داود برقم (٣٤٥٠) .
- (١٥) في (ب) لان ، وفي الأصل [لين] .
- (١٦) في (هـ) اجبار .

## فصل (١) في تحديد التسعير

وأما المسألة (٢) الثانية التي تنازعوا فيها من التسعير ، فهي أن يجد لأهل السوق حدا لا يتجاوزونه، مع قيامهم بالواجب. فهذا منعه منه الجمهور، حتى مالك (٣) نفسه في المشهور عنه، ونقل المنع أيضا عن عمر (٤) وسالم و القاسم (٥) بن محمد .

وروى أشهب عن مالك (٦) في صاحب السوق يُسَعَّر (٧) على الجزارين لحم الضأن بكذا، (٨) ولحم الإبل (٩) بكذا، (١٠) [أ/٢٣٢] وإلا أخرجوا (١١) من السوق، (١٢) قال إذا سعر عليهم قدر ما يرى من شرائهم (١٣) فلا بأس به، ولكن [لا] (١٤) يقوموا (١٥) من السوق . واحتج أصحاب هذا القول بأن في هذا مصلحة للناس بالمنع من غلاء السعر

- (١) في (هـ) فصل [ ساقطة ] .
- (٢) في (ب) و (هـ) المسئلة ، وفي الأصل [المسالة] .
- (٣) في (هـ) ملك .
- (٤) في (أ) و (ب) و (د) و (هـ) ابن عمر .
- (٥) في (هـ) القسم .
- (٦) في (أ) ملك .
- (٧) في (د) بسعر .
- (٨) في (هـ) بكذا [ ساقطة ] .
- (٩) في (ب) الايل .
- (١٠) في (هـ) بكذي .
- (١١) في (ب) و (د) و (هـ) والا خرجوا .
- (١٢) في (ب) من السوق [ ساقطة ] .
- (١٣) في (د) شرائهم ، وفي الأصل [شرايهم] .
- (١٤) وفي الأصل [لن يقاموا] .
- (١٥) في (أ) و (ب) و (د) و (هـ) ان يقوموا .



أهل السوق، إن أرخص<sup>(١)</sup> تركوا، وإن أرخص أكثرهم، قيل لمن بقي إما أن<sup>(٢)</sup>  
تبيعوا كيبيعهم، وإما أن ترفعوا.

قال ابن<sup>(٣)</sup> حبيب<sup>(٤)</sup> وهذا في المكيل والموزون، مأكولاً كان أو غيره، دون ما  
لا يكال ولا يوزن،<sup>(٦)</sup> لأنه لا يمكن<sup>(٧)</sup> تسعيره، لعدم التماثل فيه.

قال أبو الوليد إذا كان<sup>(٨)</sup> المكيل والموزون متساويين، فإذا<sup>(٩)</sup> اختلف<sup>(١٠)</sup> لم  
يؤمر<sup>(١١)</sup> صاحب الجيد أن يبيعه<sup>(١٢)</sup> بسعر الدون.

(١) في (أ) و (ب) و (د) و (هـ) أرخص بعضهم .

(٢) في (د) أن [ساقطة] .

(٣) في (ب) و (هـ) بن .

(٤) وفي الأصل [الحبيب] .

(٥) في (هـ) لا [ساقطة] .

(٦) في (هـ) ولا يزن .

(٧) في (أ) و (د) لم يمكن ، و (ب) لمن يمكن .

(٨) في (ب) إلا ان كان .

٩ في (د) و (هـ) إذا .

(١٠) في (أ) و (ب) إذا اختلف .

(١١) في الأصل [يؤمر] .

(١٢) في (هـ) يبيعه .

مالك<sup>(١)</sup> ولكن من حط سعرا ، فقال البغداديون<sup>(٢)</sup> أراد من باع خمسة بدرهم والناس يبيعون ثمانية ، وقال قوم من البصريين<sup>(٣)</sup> أراد من باع ثمانية ، والناس يبيعون خمسة ، فيفسد على أهل السوق بيعهم ، وربما أدى إلى الشغب<sup>(٤)</sup> والخصومة . قال وعندى أن الأمرين جميعاً ممنوعان ؛ لأن من باع ثمانية والناس يبيعون خمسة ، أفسد على أهل السوق بيعهم ، وربما أدى إلى الشغب<sup>(٥)</sup> والخصومة ، فمنع<sup>(٦)</sup> الجميع مصلحة . قال أبو وليد ولاخلاف أن ذلك حكم أهل السوق .

وأما الجالب ففي كتاب محمد لا يمنع الجالب أن يبيع في السوق دون بيع الناس ، وقال ابن<sup>(٧)</sup> حبيب ما عدا القمح والشعير بسعر الناس وإلا رفعوا ، وأما جالب [ ٢٣١ ب/ ] القمح والشعير<sup>(٨)</sup> فيبيع كيف شاء ،<sup>(٩)</sup> إلا أن لهم<sup>(١٠)</sup> في أنفسهم<sup>(١١)</sup> حكم

(١) في (أ) ملك .

(٢) في (هـ) البغداديون .

(٣) يذكر ابن القيم رحمه الله في كتاب بدائع الفوائد ، اختلاف البصريين والكوفيين ثم يقول بمدها ( وسنفرد إن شاء الله تعالى كتابا للحكم بين البصريين و الكوفيين فيما اختلفوا فيه وبيان الراجح من ذلك ) ، ينظر: بدائع الفوائد (٢٨/٣) .

(٤) في (د) الشعب .

(٥) في (د) الشعب .

(٦) في (د) فمع .

(٧) في (ب) بن .

(٨) في (ز) بسعر الناس وإلا رفعوا ، وأما جالب القمح والشعير [ ساقطة ] .

(٩) في (أ) شا ، و (ب) شاء .

(١٠) في (ب) اذا اذن لهم .

(١١) في (هـ) حكم أهل السوق . وأما الجالب : ففي كتاب محمد : لا يمنع الجالب أن يبيع في السوق دون بيع الناس ، وقال ابن حبيب : ما عدا القمح والشعير بسعر الناس وإلا رفعوا ، وأما جالب القمح والشعير: فيبيع كيف شاء ، إلا أن لهم في أنفسهم [ ساقطة ] .

وآخره ، وبه أقول ، لأن الناس مُسلطون على أموالهم ، ليس لأحد أن يأخذها أو شيئاً<sup>(١)</sup> منها بغير طيب أنفسهم إلا في المواضع<sup>(٢)</sup> التي تُلزِمهم ، وهذا ليس منها.

وعلى قول مالك<sup>(٣)</sup> فقال أبو الوليد الباجي الذي يؤمر<sup>(٤)</sup> به من حط عنه أن يلحق به هو السعر الذي عليه جمهور الناس ، فإذا انفرد منهم الواحد ، والعدد اليسير بحط السعر<sup>(٥)</sup> أمروا<sup>(٦)</sup> باللحاق بسعر الناس أو ترك البيع ، فإن<sup>(٧)</sup> زاد في السعر<sup>(٨)</sup> واحد و عدد<sup>(٩)</sup> يسير لم يأمر<sup>(١٠)</sup> الجمهور باللحاق<sup>(١١)</sup> بسعره ،<sup>(١٢)</sup> لأن<sup>(١٣)</sup> المراعى<sup>(١٤)</sup> حال الجمهور ، وبه تقوم<sup>(١٥)</sup> المبيعات.

وهل [أ/٢٣١] يقام من زاد في السوق أي<sup>(١٦)</sup> في قدر المبيع بالدرهم ، كما يقام<sup>(١٧)</sup> من نقص منه . قال ابن<sup>(١٨)</sup> القصار المالكي اختلف أصحابنا في قول

(١) في (ب) و (د) شيئا ، وفي الأصل [شيئا] .

(٢) في (هـ) الموضع .

(٣) في (أ) ملك .

(٤) في (أ) و (ب) و (د) يؤمر .

(٥) في (هـ) الذي عليه جمهور الناس ، فإذا انفرد منهم الواحد ، والعدد اليسير بحط السعر [ساقطة] .

(٦) في الأصل [أمروا] .

(٧) في (هـ) فاذا .

(٨) في (د) التسعر .

(٩) في (أ) و (ب) و (هـ) او عدد .

(١٠) في (أ) و (ب) و (د) يؤمر .

(١١) في (هـ) بالآلحاق .

(١٢) في (ب) لسعره .

(١٣) في (أ) لين .

(١٤) في (ب) المراعات ، و (هـ) المراعى ، وفي الأصل [المراعى] .

(١٥) في (د) يقوم .

(١٦) في (أ) [من غير] أي .

(١٧) في (د) يقال .

(١٨) في (أ) و (د) ابن ، وفي الأصل [بن] .



( أنه مر بحاطب ابن <sup>(١)</sup> أبي بلتعة بسوق المصلى، وبين يديه غراتان <sup>(٢)</sup> فيهما زيب، فسأله عن سعرهما فقال له <sup>(٣)</sup> مُدَّيْنٍ لكل درهم، فقال له عمر قد حَدَّثْتُ بِعِيرٍ جاءت <sup>(٤)</sup> من الطائف <sup>(٥)</sup> تحمل <sup>(٦)</sup> زيباً، وهم يَعْتَرُونَ بسعرك، فإما أن ترفع في السعر، وإما أن تدخل زيبك البيت، فتبيعه كيف شئت، <sup>(٧)</sup> فلما رجع عمر حاسب نفسه، ثم أتى حاطباً في داره، فقال إن الذي قلت لك ليس <sup>(٨)</sup> عزمة [٢٣٠/ب] مني، ولا قضاء، <sup>(٩)</sup> إنما هو الشيء <sup>(١٠)</sup> أردت به الخير لأهل البلد فحيث شيت فبع، وكيف شيت <sup>(١١)</sup> فبع).

قال الشافعي وهذا الحديث مقتضاه <sup>(١٢)</sup> ليس بخلاف لما رواه مالك، <sup>(١٣)</sup> ولكنه روى بعض الحديث أو رواه عنه من رواه، وهذا أتى <sup>(١٤)</sup> بأول <sup>(١٥)</sup> الحديث

(١) في (هـ) بن .

(٢) في (أ) و (ب) و (د) و (هـ) غراتان .

(٣) في (د) لهم .

(٤) في (أ) و (ب) و (ج) و (د) و (هـ) و (ز) و (ح) جاءت [ساقطة] .

(٥) في (هـ) الطائف .

(٦) في (ب) يحملون .

(٧) في (ب) شيت، وفي الأصل [شيت] .

(٨) في (ب) ليست .

(٩) في (د) قضاء، وفي الأصل [قضا] .

(١٠) في (أ) و (ب) و (د) و (هـ) شيء .

(١١) في (ب) شيت، وفي الأصل [شيت] .

(١٢) في (ب) منتقضا، و (د) مشقفا، وفي الأصل [مستقفا و] .

(١٣) في (أ) ملك .

(١٤) في (أ) و (ب) و (د) و (هـ) اتى، وفي الأصل [أتا] .

(١٥) في (ب) تأويل .

ولا يجوز<sup>(١)</sup> عند أحد من العلماء<sup>(٢)</sup> أن يقول لهم لا تبيعوا إلا بكذا وكذا،  
ربحتم أو خسرتم، من غير [أ٢٣٠] أن ينظر إلى ما يشترون به،<sup>(٣)</sup> ولا أن يقول لهم فيما  
قد اشتروه لا تبيعوه<sup>(٤)</sup> إلا بكذا وكذا،<sup>(٥)</sup> مما هو مثل الثمن أو أقل.

وإذا ما<sup>(٦)</sup> ضرب لهم الربح على قدر ما يشترون لم يتركهم أن يغلوا في  
الشراء،<sup>(٧)</sup> وإن لم يزيدوا في الربح على القدر الذي حد لهم، قد<sup>(٨)</sup> يتساهلون في  
الشراء<sup>(٩)</sup> إذا علموا أن الربح لا يفوتهم.

وأما الشافعي فإنه عارض في ذلك<sup>(١٠)</sup> بما رواه عن الدراوردي عن داود بن<sup>(١١)</sup>

صالح التمار،<sup>(١٢)</sup> عن القاسم<sup>(١٣)</sup> بن<sup>(١٤)</sup> محمد عن عمر<sup>رضي الله عنه</sup> :

- (١) في (هـ) تجوز .
- (٢) في (د) العلماء ، و (هـ) العلماء .
- (٣) في (ب) ما يشترونه .
- (٤) في (د) ولا يبيعوه .
- (٥) في (هـ) بكذي وكذي .
- (٦) في (أ) و (ب) و (د) و (هـ) ما [ ساقطة ] .
- (٧) في (أ) الشراء ، في الأصل [ الشرا ] .
- (٨) في (أ) و (ب) و (د) و (هـ) فانهم قد .
- (٩) في (أ) الشراء ، وفي الأصل [ الشرا ] .
- (١٠) في (أ) و (ب) عارض ذلك .
- (١١) في (د) ابن .
- (١٢) في (د) التمار .
- (١٣) في (هـ) القسم .
- (١٤) في (أ) و (د) ابن .

وممن <sup>(١)</sup> زوى عنه ذلك من السلف عبدالله ابن <sup>(٢)</sup> عمر، والقاسم بن <sup>(٣)</sup> محمد،  
وسالم بن <sup>(٤)</sup> عبد الله.

وقيل إنهم في هذا بخلاف الجالين، <sup>(٥)</sup> لا يتركون على البيع باختيارهم إذا أغلوا على  
الناس ولم يقتنعوا <sup>(٦)</sup> من الربح بما يشبهه.

وعلى صاحب السوق الموكل بمصلحته أن يعرف ما يشترون به ، فيجعل لهم من الربح  
ما يشبهه، وينهاهم أن يزيدوا على ذلك ، ويتفقد السوق أبدا ، فيمنعهم من الزيادة على  
الربح الذي جعل لهم ، فمن خالف أمره عاقبه وأخرجه <sup>(٧)</sup> من السوق. وهذا قول  
مالك <sup>(٨)</sup> في رواية أشهب ، وإليه ذهب ابن <sup>(٩)</sup> حبيب ، وقاله ابن <sup>(١٠)</sup> المسيب ويحيى  
ابن <sup>(١١)</sup> سعيد والليث بن <sup>(١٢)</sup> سعد وربيعة.

(١) في (هـ) ومما .

(٢) في (أ) و (د) ابن .

(٣) في (أ) و (د) ابن .

(٤) في (هـ) بن ، وفي الأصل [ابن] .

(٥) في (أ) الجالين .

(٦) في (د) يقتنعوا .

(٧) في (ب) أو أخرجه .

(٨) في (أ) ملك .

(٩) في (هـ) بن .

(١٠) في (ب) و (هـ) بن .

(١١) في (أ) و (د) ابن .

(١٢) في (أ) و (د) ابن .



مما يبيع به عامتهم إما أن تبيع بما تبيع<sup>(١)</sup> العامة، وإما أن ترفع<sup>(٢)</sup> من السوق، كما فعل عمر بن الخطاب<sup>(٣)</sup> بخطاب بحاطب ابن<sup>(٤)</sup> أبي بلتعة، إذ مر به وهو يبيع زيباً له في السوق فقال له إما أن تزيد في السعر،<sup>(٥)</sup> وإما أن ترفع من سوقنا. لأنه كان يبيع بالدرهم الواحد أقل<sup>(٦)</sup> مما كان يبيع<sup>(٧)</sup> به أهل السوق.

وأما أهل الحوانيت والأسواق، الذين يشترون من الجلابين وغيرهم جملة<sup>(٨)</sup> ويبيعون ذلك على أيديهم مقطعاً، مثل اللحم والأدم والفواكه. فقليل أنهم كالجلابين لا يسعر لهم شيء<sup>(٩)</sup> من بيعاتهم، وإنما يقال لمن شذ [٢٢٩/ب] منهم وخرج عن الجمهور إما أن<sup>(١٠)</sup> تبيع كما يبيع الناس، وإما أن ترفع من السوق، وهو قول مالك<sup>(١١)</sup> في [هذه] الرواية<sup>(١٢)</sup>.

(١) في (ب) تبيع به، و (د) يبيع بما يبيع .

(٢) في (أ) و (د) يرفع .

(٣) - في (أ) و (د) ابن .

(٤) في (أ) ابن .

(٥) في (هـ) السعر [ساقطة] .

(٦) في الأصل [أغلا] ولعله من الصواب أن يقول "أقل" لمناسبة السياق .

(٧) في (ب) ما يبيع .

(٨) في (هـ) يشترون الجملة .

(٩) في (د) شيء، و في الأصل [شيء] .

(١٠) في الأصل [ان] .

(١١) في (أ) مالك .

(١٢) في (أ) و (ب) و (د) و (هـ) في هذه الرواية .

ترفع من <sup>(١)</sup> سوقنا <sup>(٢)</sup> .

قال مالك <sup>(٣)</sup> لو أن رجلاً أراد فساد السوق فحط عن سعر الناس لرأيت <sup>(٤)</sup> أن يقال له إما لحقت بسعر الناس وإما رفعت، وإما أن يقال <sup>(٥)</sup> [أ/٢٢٩] للناس كلهم <sup>(٦)</sup> لا تبيعوا إلا بسعر كذا <sup>(٧)</sup> فليس ذلك بالصواب ، وذكر حديث عمر بن <sup>(٨)</sup> عبدالعزيز في أهل الأبله <sup>(٩)</sup> حين حط سعرهم لمنع البحر، <sup>(١٠)</sup> فكتب نخل <sup>(١١)</sup> بينهم وبين ذلك فإنما السعر بيد الله.

قال ابن <sup>(١٢)</sup> رشد في كتاب البيان أما [الجلابون] <sup>(١٣)</sup> فلا خلاف في أنه <sup>(١٤)</sup> لا يسعر عليهم شيء <sup>(١٥)</sup> مما جلبوه، <sup>(١٦)</sup> للبيع وإنما يقال لمن شذ <sup>(١٧)</sup> منهم، فباع بأغلا <sup>(١٨)</sup>

(١) في (د) عن .

(٢) رواه مالك في الموطأ ، (٦٥١/٢).

(٣) في (أ) ملك .

(٤) في (ب) لريت :

(٥) في (ب) يقال ، وفي الأصل [يقول] .

(٦) في (أ) و (ب) و (د) و (هـ) كلهم يعني ، وفي الأصل [كلهم لا يعني] .

(٧) في (هـ) كذي .

(٨) في (أ) و (د) ابن .

(٩) في (ب) اليله .

(١٠) في (ب) النحر .

(١١) في (ب) خلى ، و (هـ) حل .

(١٢) في (ب) بن .

(١٣) في (أ) و (ب) و (د) و (هـ) الجلابون ، وفي الأصل [الجلابون] .

(١٤) في (هـ) انهم .

(١٥) في (ب) و (د) شيء ، وفي الأصل [شيء] .

(١٦) في (د) جلبوا .

(١٧) في (أ) و (ب) شهد .

(١٨) في (ب) باعلا ، و (هـ) بأغلي .

## فصل (١) في تنازع العلماء في التسعير

وقد تنازع العلماء (٢) في التسعير في مسألتين: (٣)

إحداهما (٤) إذا كان للناس سعر غالب ، فأراد بعضهم أن يبيع بأغلى من ذلك ، فإنه يمنع من ذلك ، (٥) وهل يمنع من النقصان على قولين لهم. احتج مالك (٧) رحمه الله بما رواه في موطأه (٨) عن يونس (٩) بن (١٠) سيف عن سعيد بن المسيب:

« أن (١١) عمر (١٢) بن (١٣) الخطاب (١٤) مر بجاطب بن (١٥) أبي بلتعة، وهو يبيع زيباً له بالسوق ، فقال له (١٦) عمر بن (١٧) الخطاب (١٨) إما أن تزيد في السعر، وإما أن

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (د) العلماء ، (هـ) العلماء .

(٣) في ( ) و (هـ) مسألتين .

(٤) في (أ) و (هـ) احديهما .

(٥) في (أ) و (ب) و (د) عند مالك .

(٦) في (ج) عند مالك [ زائدة ] .

(٧) في (أ) ملك .

(٨) في (ب) و (ج) الموطأ ، وفي الأصل [ موطأه ] .

(٩) في (أ) يوسف .

(١٠) في (أ) و (د) ابن .

(١١) في (ب) عن .

(١٢) في (هـ) بن الخطاب [ ساقطة ] .

(١٣) في (أ) و (د) ابن .

(١٤) في (أ) رضي الله عنه .

(١٥) في (أ) و (د) ابن .

(١٦) في (ب) له [ ساقطة ] .

(١٧) في (د) ابن .

(١٨) في (أ) فقال عمر ابن الخطاب له ، و (ب) فقال عمر رضي الله عنه .



## فصل (١) في المانع لوقوع التسعير زمن الرسول ﷺ

وإنما لم يقع التسعير في زمن النبي ﷺ بالمدينة، لأنهم لم يكن عندهم من يطحن ويخبز بكرة،<sup>(٢)</sup> و<sup>(٣)</sup> لا من يبيع<sup>(٤)</sup> طحيناً وخبزاً، بل كانوا يشترون<sup>(٥)</sup> ويطحنونه ويخبزونه في بيوتهم وكان من قدم بالحب لا [٢٢٨/ب] يتلقاه أحد، بل يشترونه<sup>(٦)</sup> الناس من الجالبيين،<sup>(٧)</sup> ولهذا جاء<sup>(٨)</sup> في الحديث: «الجالب مرزوق، والمحتكر ملعون».<sup>(٩)</sup> وكذلك لم يكن في المدينة<sup>(١٠)</sup> حايك،<sup>(١١)</sup> بل كان يقدم عليهم بالثياب من الشام واليمن وغيرهما، فيشترونها ويلبسونها.

(١) في (هـ) فصل [ساقطة] .

(٢) في (أ) و (ج) و (د) بكرة .

(٣) في (هـ) أو .

(٤) في (أ) لا يبيع .

(٥) في (أ) و (ب) و (ج) و (د) و (هـ) يشترون الحب .

(٦) في (أ) و (ب) و (ج) و (د) و (هـ) و (ز) و (ح) يشتريه .

(٧) في (أ) و (ب) و (ج) و (د) و (هـ) الجلابيين .

(٨) في (ب) جاء ، و (ج) و (د) جاء ، (هـ) جآ ، وفي الأصل [جا] .

(٩) رواه ابن ماجه برقم (٢١٥٣) وضعفه الالباني، ينظر غاية المرام، حديث رقم (٣٢٧) .

(١٠) في (أ) بالمدينة .

(١١) في الأصل [حايك] .

ويقوم<sup>(١)</sup> عليها ، وهذا لا يكاد يفعله إلا قليل من الناس ، لأنه قد يخسر ماله ، ولا يحصل له شيء،<sup>(٢)</sup> بخلاف المشاركة ، فإنهما يشتركان في المغنم والمغرم ، فهي<sup>(٣)</sup> أقرب إلى العدل .

وهذه المسألة<sup>(٤)</sup> ذكرت<sup>(٥)</sup> [أ/٢٢٨] طردا ، وإلا فالمقصود أن الناس إذا احتاجوا إلى أرباب الصناعات كالفلاحين وغيرهم، أُجبروا<sup>(٦)</sup> على ذلك بأجرة المثل. وهذا من التسعير الواجب، فهذا تسعير<sup>(٧)</sup> في الأعمال. وأما التسعير في الأموال فإذا احتاج الناس إلى سلاح للجهاد وآلات، فعلى أربابه أن يبيعوا<sup>(٨)</sup> بعوض المثل، ولا يُمكنون من حبسه إلا بما يريدون من الثمن.

والله تعالى قد أوجب الجهاد بالنفس والمال، فكيف لا<sup>(٩)</sup> يجب على أرباب السلاح بذله بقيمته ، ومن أوجب على العاجز ببذنه أن يخرج من ماله ما يحج به الغير<sup>(١٠)</sup> عنه، ولم يوجب على المستطيع بماله<sup>(١١)</sup> أن يخرج ما يجاهد به الغير، فقوله ظاهر التناقض. وهذا إحدى الروايتين عن الإمام أحمد،<sup>(١٢)</sup> وهو الصواب<sup>(١٣)</sup>.

(١) في (ب) و (ج) أو يقوم .

(٢) في (ب) و (ج) شيء ، وفي الأصل [شي] .

(٣) في (ب) وهو ، و (ج) فهو .

(٤) في (ب) و (ج) و (هـ) المسئلة .

(٥) في (ب) ذكرة .

(٦) في (هـ) اخبروا .

(٧) في (ب) التسعير :

(٨) في (أ) و (ب) و (ج) و (هـ) يبعوه .

(٩) في (د) لا [ ساقطة ] .

(١٠) في (ج) للغير .

(١١) في (أ) بماله [ ساقطة ] .

(١٢) في (أ) رضي الله عنه .

(١٣) في (أ) وهو الصواب [ ساقطة ] .

انفسخت الإجارة بموته <sup>(١)</sup> أولى.

الثاني أن المعير لو أذن في الإجارة جازت <sup>(٢)</sup> الإجارة، <sup>(٣)</sup> وولي الأمر يأذن للمقطع في الإجارة، فإنه <sup>(٤)</sup> إنما أقطعهم <sup>(٥)</sup> لينتفعوا بها، إما بالمزاعة <sup>(٦)</sup> وإما بالإجارة، ومن منع الانتفاع بها بالإجارة <sup>(٧)</sup> والمزاعة [٢٢٧/ب] فقد أفسد على المسلمين دينهم ودنياهم، وألزم الجند والأمراء <sup>(٨)</sup> أن يكونوا هم الفلاحين، وفي ذلك من الفساد ما فيه. وأيضاً فإن الإقطاع قد يكون دوراً وحوانيت، لا ينتفع بها المقطع إلا بالإجارة، <sup>(٩)</sup> فإذا لم تصح إجارة الإقطاع تعطلت <sup>(١٠)</sup> منافع ذلك بالكلية، وكون الإقطاع معرضاً لرجوع الإمام <sup>(١١)</sup> فيه، <sup>(١٢)</sup> مثل كون الموهوب للولد معرضاً لرجوع الوالد <sup>(١٣)</sup> فيه، وكون الصداق قبل الدخول معرضاً لرجوع نصفه أو كله إلى الزوج، وذلك لا يمنع صحة الإجارة بالإتفاق، فليس مع المبطل نص ولا قياس، ولا مصلحة ولا نظير. وإذا أبطلوا المزاعة والإجارة لم يبق بيد الجند <sup>(١٤)</sup> إلا أن يستأجروا من أموالهم من يزرع الأرض

- (١) في (ح) على الصحيح — فلأن يجوز للمقطع أن يوجر الإقطاع وإن انفسخت الإجارة بموته [ساقطة].
- (٢) في (ب) جازة .
- (٣) في (ب) الاجرة .
- (٤) في (ب) و (ج) فانهم .
- (٥) في (ب) قطعهم .
- (٦) في (ج) و (د) و (هـ) بالزراعة .
- (٧) في (أ) الانتفاع بالاجارة .
- (٨) في (ج) و (د) الامراء ، في الأصل [الامرا] .
- (٩) في (د) باجارة .
- (١٠) في (أ) و (ب) و (ج) و (د) و (هـ) عطلت .
- (١١) في الأصل [الامام] .
- (١٢) في (ب) فيه [ساقطة] .
- (١٣) في (أ) الأب .
- (١٤) في (أ) و (ب) و (ج) و (د) مع الجند .



وشبهته<sup>(١)</sup> أن المقطع لا يملك المنفعة، فيصير كالمستعير لا يجوز أن يكرى<sup>(٢)</sup>  
الأرض المعارة،<sup>(٣)</sup> وهذا القياس خطأ<sup>(٤)</sup> من وجهين:  
أحدهما أن المستعير لم تكن المنفعة<sup>(٥)</sup> حقاً له، وإنما تبرع<sup>(٦)</sup> المعير<sup>(٧)</sup> بها، وأما  
أراضي المسلمين. فمنفعتُها حق<sup>(٨)</sup> للمسلمين، وولي الأمر قاسم بينهم حقوقهم، ليس  
متبرعاً لهم كالمعير،<sup>(٩)</sup> فالمقطع<sup>(١٠)</sup> مُستوفي<sup>(١١)</sup> المنفعة بحكم الاستحقاق، كما يستوفي  
الموقوف<sup>(١٢)</sup> عليه منافع الوقف وأولى.<sup>(١٣)</sup>  
وإذا جاز للموقوف عليه أن يُؤجر<sup>(١٤)</sup> الوقف<sup>(١٥)</sup> وإن أمكن أن يموت فتتفسخ  
الإجارة بموته على الصحيح فلأن<sup>(١٦)</sup> يجوز للمقطع أن يؤجر<sup>(١٧)</sup> الإقطاع وإن

(١) في (ب) شبهته .

(٢) في (هـ) كرى .

(٣) في (ب) فيصير كالمستعير ، لا يجوز أن يكرى الأرض المعارة [ ساقطة ] ، وكذا الحال في (ج) غير أن هناك  
تصويماً في هامش النسخة (ج) . والذين يظهر ان النسخة (ج) قد نقلت من النسخة (ب) والله أعلم .

(٤) في (ب) خطأ ، و في الأصل [خطأ] .

(٥) في (ب) المنعة .

(٦) في (د) يترع .

(٧) في (ب) و (ج) تعبر المعير .

(٨) في (ج) حقا .

(٩) في (ب) المعير .

(١٠) في (ب) و (ج) و (هـ) والمقطع ، و (د) والمقطوع .

(١١) في (ج) يستوفي .

(١٢) في (د) الموقوف .

(١٣) في (د) و والى .

(١٤) في (ب) و (د) يؤجر .

(١٥) في (ز) وإذا جاز للموقوف عليه أن يؤجر الوقف [ ساقطة ] .

(١٦) في (ب) و (ج) فلا .

(١٧) في الأصل [يؤجر] .

والعلماء <sup>(١)</sup> مختلفون <sup>(٢)</sup> في جواز <sup>(٣)</sup> هذا <sup>(٤)</sup> وهذا، <sup>(٥)</sup> والصحيح جوازها، <sup>(٦)</sup>  
سواء <sup>(٧)</sup> أكانت الأرض إقطاعاً أم <sup>(٨)</sup> غيره.

قال <sup>(٩)</sup> شيخ الإسلام ابن <sup>(١٠)</sup> تيمية <sup>(١١)</sup> وما علمت أحداً <sup>(١٢)</sup> من علماء <sup>(١٣)</sup>  
الإسلام [و] الأئمة الأربعة <sup>(١٤)</sup> ولا غيرهم قال إجارة الإقطاع لا تجوز، <sup>(١٥)</sup> وما زال  
المسلمون يؤجرون <sup>(١٦)</sup> أقطاعهم قرناً بعد قرن، من زمن <sup>(١٧)</sup> الصحابة إلى زمننا هذا،  
حتى حدث بعض <sup>(١٨)</sup> أهل زماننا فابتدع القول [٢٢٧/أ] ببطلان إجارة الإقطاع.

(١) في (د) العلماء ، وفي الأصل [العلماء] .

(٢) في (ب) و (ج) و (د) يختلفون .

(٣) في (أ) جوازها .

(٤) في (أ) ذا .

(٥) في (ب) هذا [ساقطة] .

(٦) في (أ) و (ب) و (ج) و (د) و (هـ) جوازهما .

(٧) في (هـ) سوا .

(٨) في (د) و (هـ) او .

(٩) في (هـ) وقال .

(١٠) في (ب) و (ج) و (هـ) بن .

(١١) في (أ) رضي الله عنه .

(١٢) في (ب) و (ج) و (د) و (هـ) أحدا .

(١٣) في (ب) و (هـ) علماً ، و (ج) و (د) علماء ، وفي الأصل [علماً] .

(١٤) في (أ) و (ب) و (ج) و (د) من الأئمة الأربعة ، و (هـ) من الأئمة الأربعة .

(١٥) في (ح) وما علمت أحد من علماء الإسلام الأئمة الأربعة ولا غيرهم قال: إجارة الإقطاع لا تجوز

[ساقطة] ، و (د) لا يجوز .

(١٦) في (ب) و (ج) و (د) يؤجرون .

(١٧) في (ج) زمن [ساقطة] .

(١٨) في (ب) بعض [ساقطة] .

(٤) في فاسدها أجرة المثل، بل هو جز (٥) شائع (٦) من الربح ، فيجب في الفاسد (٧) نظيره. (٨)

قال شيخ الإسلام (٩) وغيره من الفقهاء (١٠) والمزارعة (١١) أجل (١٢) من المؤاجرة، (١٣) وأقرب إلى (١٤) العدل ، فإنهما يشتركان في المغنم والمغرم بخلاف المؤاجرة. (١٥) فإن صاحب الأرض تُسَلَّمُ (١٦) له الأجرة، والمستأجر قد يحصل له زرع، وقد لا يحصل .

- (١) في (أ) و (ب) و (ج) و (هـ) في .
- (٢) في (د) وكذلك يجب به المضاربة الفاسدة ربح المثل .
- (٣) في (ب) و (د) المساقات .
- (٤) في (أ) و (ب) و (ج) و (د) و (هـ) فيجب .
- (٥) في (ب) جزء ، و (ج) جزؤ ، و (د) جزؤ .
- (٦) في الأصل [شائع] .
- (٧) في (ب) و (ج) و (د) الفاسدة .
- (٨) في (ب) نظيره [ساقطة] .
- (٩) في (د) ابن تيمية [زائدة] .
- (١٠) في (ب) الفقهاء ، و (ج) الفقهاء ، وفي الأصل [الفقهاء] .
- (١١) في (هـ) الزراعة .
- (١٢) في (د) اجل ، و (هـ) اجر .
- (١٣) في الأصل [المؤاجرة] .
- (١٤) في الأصل [إلى] .
- (١٥) في (ز) وأقرب إلى العدل ، فإنهما يشتركان في المغنم والمغرم بخلاف المؤاجرة [ساقطة] .
- (١٦) في (أ) يسلم .



وأما جمهور السلف والفقهاء،<sup>(١)</sup> فقالوا ليس ذلك من باب الإجارة في شيء،<sup>(٢)</sup> بل هو<sup>(٣)</sup> من باب المشاركات، التي مقصود كل منها<sup>(٤)</sup> مثل مقصود صاحبه، بخلاف الإجارة، فإن هذا مقصوده<sup>(٥)</sup> العمل، وهذا مقصوده<sup>(٦)</sup> الأجرة، ولهذا كان الصحيح أن هذه المشاركات إذا فسدت وجب فيها نصيب المثل، لا أجرة المثل،<sup>(٧)</sup> فيجب من الربح والنماء<sup>(٨)</sup> في فاسدها نظير ما يجب في صحيحها، لا أجرة<sup>(٩)</sup> مقدرة، فإن لم يكن ربح ولا نماء<sup>(١٠)</sup> لم يجب شيء<sup>(١١)</sup> فإن أجرة المثل قد تستغرق رأس المال وأضعافه<sup>(١٢)</sup> وهذا ممتنع.

فإن قاعدة الشرع أنه يجب في الفاسد من العقود نظير ما يجب في الصحيح،<sup>(١٣)</sup> وفي البيع الفاسد إذا فات ثمن المثل، وفي الإجارة الفاسدة أجرة المثل،<sup>(١٤)</sup> فكذلك<sup>(١٥)</sup>

يجب به<sup>(١)</sup> المضاربة [٢٢٦/ب] الفاسدة ربح المثل،<sup>(٢)</sup> وفي المساقاة<sup>(٣)</sup> والمزارعة الفاسدة نصيب المثل، فإن الواجب في صحيحها ليس هو أجرة مسماة فتجب<sup>(٤)</sup> في

(١) في (ب) الفقهاء، و (د) الفقهاء، و في الأصل الفقهاء .

(٢) في (ب) و (ج) و (د) شيء، و في الأصل شي .

(٣) في (ب) و (ج) و (ز) و (ح) هو [ ساقطة ] .

(٤) في (أ) و (ب) و (ج) منهما .

(٥) في (هـ) مقصود .

(٦) في (هـ) مقصود .

(٧) في (ج) المثل [ ساقطة ] .

(٨) في الأصل [النما] .

(٩) في (ب) لاجرة .

(١٠) في (ب) و (د) و (هـ) ولا نما، و في الأصل [نما] .

(١١) في (ب) و (ج) و (د) شيء، و في الأصل [شي] .

(١٢) في (د) واصعافه .

(١٣) في (أ) و (ب) و (ج) و (د) و (و) و (ز) و (ح) في الصحيح منها، كما يجب في النكاح الفاسد مهر

المثل، وهو نظير ما يجب في الصحيح. [ ويظهر لي ان هذه النسخ قد نسخت من بعضها ] والله أعلم .

(١٤) في (د) ربح المثل .

(١٥) في (هـ) وكذلك .

## فصل (١) في أحكام المشاركات والمساقاة والمزارعة

وقد ظنت طائفة (٢) من الناس أن هذه المشاركات من باب الإجارة بعوض مجهول، فقالوا القياس يقتضي تحريمها، ثم (٣) منهم من حرم المساقاة (٤) والمزارعة وأباح المضاربة استحساناً للحاجة، لأن الدراهم لا تؤجر، (٥) كما يقول أبو حنيفة. ومنهم من أباح المساقاة (٦) إما مطلقاً، كقول مالك (٧) والشافعي (٨) في القديم، أو على النخل والعنب خاصة، كالجديد (٩) له، لأن (١٠) الشجرة لا تُمكن (١١) إيجارها بخلاف الأرض، [٢٢٦/أ] وأباحوا ما يحتاج إليه من المزارعة (١٢) تبعاً للمساقاة، (١٣) ثم (١٤) منهم من قدر ذلك بالثلث، كقول مالك. (١٥) ومنهم من اعتبر كون الأرض أغلب، (١٦) كقول الشافعي.

- (١) في (هـ) فصل [ساقطة] .
- (٢) في (ب) طائفة، وفي الأصل [طايفة] .
- (٣) في (هـ) صر [زائدة] .
- (٤) في (ب) و (د) المساقات .
- (٥) في (هـ) لا توجد، وفي الأصل [توَجِر] .
- (٦) في (ب) و (د) المساقات .
- (٧) في (أ) ملك .
- (٨) في (ب) وللشافعي .
- (٩) في (د) و (هـ) الحديد .
- (١٠) في (أ) و (د) لين .
- (١١) في (أ) و (ب) و (ج) و (د) و (هـ) الشجر لا يمكن .
- (١٢) في (هـ) الزراعة .
- (١٣) في (ب) و (ج) المساقات .
- (١٤) في (ب) ثم [ساقطة] .
- (١٥) في (أ) ملك .
- (١٦) في (ب) غلب .

الليث بن (١) سعد الذي نهي عنه النبي ﷺ (٢) من ذلك، أمر إذا نظر ذو (٣)  
البصيرة بالحلال [و] الحرام (٤) فيه جوازه.

(١) في (أ) و (د) و (هـ) ابن .

(٢) في (ح) كما قال الليث بن سعد الذي نهي عنه النبي [ساقطة] .

(٣) في (ب) ذوو .

(٤) في (ب) والحرام .



والذين منعوا الزراعة<sup>(١)</sup> منهم من احتج بأن النبي ﷺ : «نهي عن المخابرة»<sup>(٢)</sup> .

ولكن الذي فهم عنه<sup>(٣)</sup> هو الظلم، فإنهم كانوا يشترطون لرب الأرض زرع بقعة بعينها، ويشترطون ما على الماديانات<sup>(٤)</sup> وأقبال الجداول وشيء<sup>(٥)</sup> من التبن يختص<sup>(٦)</sup> به صاحب الأرض ، ويقسمان<sup>(٧)</sup> الباقي. وهذا الشرط باطل بالنص والإجماع. فإن المعاملة مبناهما على العدل من الجانبين ، وهذه المعاملات من [٢٢٥/ب] جنس المشاركات، لا من باب المعاوضات .

والمشاركة العادلة هي أن يكون لكل واحد من الشريكين جزء<sup>(٩)</sup> شائع<sup>(١٠)</sup> فإذا

جعل لأحدهما شيء<sup>(١١)</sup> مقدر كان ظلماً. فهذا هو الذي فهم عنه النبي ﷺ ، كما قال

(١) في (هـ) الزراعة .

(٢) رواه البخاري برقم (٢٣٨١) ، ورواه مسلم برقم (١٥٣٦) .

(٣) في (د) عنه فهمي .

(٤) في (ج) وبقعة .

(٥) في (ب) و (د) و (هـ) الماديانات .

(٦) في (هـ) شيء ، في الأصل [شيء] .

(٧) السن يختص .

(٨) في (ج) ويقسمان .

(٩) في (ب) و (ج) جزؤ ، و (د) جزء ، وفي الأصل [جز] .

(١٠) في (د) سايع ، و (هـ) شائع ، وفي الأصل [شائع] .

(١١) في (ج) ، و (د) شيء ، وفي الأصل [شيء] .

وكان النبي ﷺ قد عامل أهل خيبر بشرط<sup>(١)</sup> ما يخرج منها من ثمر و زرع حتى مات.<sup>(٢)</sup>

ولم تزل تلك المعاملة حتى أجلاهم عمر عن خيبر،<sup>(٣)</sup> وكان قد شارطهم أن يعمروها من أموالهم، وكان البذر منهم لا من [أ/٢٢٥] النبي ﷺ.

ولهذا كان الصحيح من أقوال العلماء<sup>(٤)</sup> أن البذر يجوز أن يكون من العامل كما مضت به السنة، بل قد قال طائفة<sup>(٥)</sup> من الصحابة لا يكون البذر إلا من العامل، لفعل النبي ﷺ، ولأنهم أجروا البذر مجرى النفع والماء.<sup>(٦)</sup>

والصحيح أنه يجوز أن يكون من رب الأرض، وأن يكون من العامل، وأن يكون منهما. وقد ذكر البخاري في صحيحه أن عمر بن<sup>(٧)</sup> الخطاب رضي الله عنه<sup>(٨)</sup> [عامل الناس على إن جاء عمر بالبذر من عنده فله الشطر وإن جاءوا بالبذر فلهم كذا].

(١) في (أ) و (ب) و (ج) و (د) بشرط .

[وهناك فرق في المعنى بين الشرط و الشطر ، والذي دلت عليه الأدلة أن الرسول محمد قد اتفق معها على شطر ما يخرج من الثمر

فقد جاء في السنة كما رواه محمد بن اسماعيل البخاري .....]

(٢) رواه البخاري برقم (٢٢٨٥) ، و رواه مسلم برقم (١٥٥١) .

(٣) في (هـ) بشرط ما يخرج منها من ثمر و زرع حتى مات ، ولم تزل تلك المعاملة حتى أجلاهم عمر عن خيبر [ساقطة] .

(٤) في (ج) العلماء ، (د) و (هـ) العلماء ، وفي الأصل [العلماء] .

(٥) في (ب) طائفة ، وفي الأصل [طائفة] .

(٦) في (ب) الماء ، و (ج) و (د) الماء ، وفي الأصل [الماء] .

(٧) في (أ) و (د) ابن .

(٨) في المطبوع من نسخة محمد حامد الفقي ( عامل الناس على إن جاء عمر بالبذر من عنده فله الشطر وإن

جاءوا بالبذر فلهم كذا ) ينظر : (ص/٢٥٠) ، و هذه الزيادة غير موجودة في كل من النسخ التالية : (أ) ،

(ب) ، (ج) ، (د) ، (هـ) .

ابن ثابت وغيرهم، وهي مذهب فقهاء<sup>(١)</sup> الحديث كأحمد بن<sup>(٢)</sup> حنبل وإسحق<sup>(٣)</sup> بن<sup>(٤)</sup>  
 راهويه ومحمد بن إسماعيل<sup>(٥)</sup> البخاري وداود<sup>(٦)</sup> بن<sup>(٧)</sup> علي ومحمد بن<sup>(٨)</sup> إسحق<sup>(٩)</sup>  
 ابن<sup>(١٠)</sup> خزيمة وأبي بكر بن<sup>(١١)</sup> المنذر ومحمد بن<sup>(١٢)</sup> نصر المروزي، وهي<sup>(١٣)</sup> مذهب  
 عامة<sup>(١٤)</sup> أئمة المسلمين،<sup>(١٥)</sup> كالليث بن<sup>(١٦)</sup> سعد وابن<sup>(١٧)</sup> أبي ليلى وأبو<sup>(١٨)</sup> يوسف  
 ومحمد بن<sup>(١٩)</sup> الحسن وغيرهم.

(١) في (ب) فقهاء ، و (ج) فقهاء ، وفي الأصل [فقهاء] .

(٢) في (د) ابن .

(٣) في (أ) اسحاق [بالألف] .

(٤) في (د) ابن .

(٥) في (د) ابن اسماعيل .

(٦) في (ب) أبي داود .

(٧) في (د) ابن .

(٨) في (د) ابن .

(٩) في (أ) اسحاق [بالألف] .

(١٠) في (ج) و (د) ابن .

(١١) في (أ) و (د) ابن .

(١٢) في (أ) و (د) ابن .

(١٣) في (هـ) على .

(١٤) في (أ) عامة الائمة .

(١٥) في (ب) و (د) عامة ائمة الاسلام ، و (ج) عامة أهل الإسلام ، و (هـ) عام ائمة الاسلام ، وفي الأصل  
 [أئمة] المسلمين .

(١٦) في (ب) بن ، وفي الأصل [ابن] .

(١٧) في (ب) بن .

(١٨) في (ب) و (ج) ابي .

(١٩) في (د) ابن .



أن يركبوا الظلم والإثم،<sup>(١)</sup> ويمنعوا البركة وسعة الرزق، فيجتمع<sup>(٢)</sup> لهم عقوبة الآخرة ونزع البركة في<sup>(٣)</sup> الدنيا.

فإن قيل وما الذي شرعه الله ورسوله، وفعل الصحابة، حتى يفعله من وفقه الله. قيل المزارعة<sup>(٤)</sup> العادلة، التي يكون المقطع والفلاح فيها على حد سواء<sup>(٥)</sup> من العدل، لا يختص أحدهما بشيء<sup>(٦)</sup> من هذه الرسوم التي ما أنزل الله بها من سلطان، وهي التي<sup>(٧)</sup> أخربت<sup>(٨)</sup> البلاد [و] أفسدت العباد، ومنعت الغيث، وأزالت<sup>(٩)</sup> البركات، وعرضت [٢٢٤/ب] أكثر الجند والأمراء<sup>(١٠)</sup> لأكل الحرام، وإذا نبت الجسد على الحرام فالنار أولى به.

وهذه المزارعة العادلة هي عمل المسلمين على عهد النبي ﷺ، وعهد<sup>(١١)</sup> خلفائه<sup>(١٢)</sup> الراشدين وهي عمل آل أبي بكر و آل عمر و آل عثمان و آل علي وغيرهم من بيوت المهاجرين، وهي قول أكابر الصحابة، كابن<sup>(١٣)</sup> مسعود وأبي بن كعب وزيد

(١) في (ب) الإثم [ساقطة] .

(٢) في (هـ) فيجمع .

(٣) في (هـ) من .

(٤) في (هـ) الزراعة .

(٥) في الأصل سوا .

(٦) في (أ) و (ب) و (ج) و (د) عن الآخر بشي، وفي الأصل بشي .

(٧) في (ج) الذي .

(٨) في (ب) أخرجت، وفي الأصل أخربت .

(٩) في (أ) و (ج) إزالة .

(١٠) في (ج) الامراء، و (د) الامراء، وفي الأصل الامرا .

(١١) في (د) عهد [ساقطة] .

(١٢) في (ب) الخلفاء، و (ج) الخلفا، وخلفايه .

(١٣) في (ب) كآبي . و الظاهر أنه خطأ، والصواب أنه ابن مسعود، والله أعلم .

صناعته الفلاحة أن يقوم بها، ألزم الجند [أ/٢٢٤] بأن لا يظلموا<sup>(١)</sup> الفلاح ،  
كما يلزم<sup>(٢)</sup> الفلاح بأن يفلح<sup>(٣)</sup>.

ولو اعتمد<sup>(٤)</sup> الجند والأمراء<sup>(٥)</sup> مع الفلاحين ما شرعه الله ورسوله وجاءت<sup>(٦)</sup> به  
السنة، وفعله الخلفاء<sup>(٧)</sup> الراشدين<sup>(٨)</sup>، لأكلوا من فوقهم ومن<sup>(٩)</sup> تحت أرجلهم، وفتح الله  
عليهم بركات من السماء<sup>(١٠)</sup> والأرض، و<sup>(١١)</sup> كان الذي يحصل لهم من المغل<sup>(١٢)</sup>  
أضعاف<sup>(١٣)</sup> ما يحصلونه<sup>(١٤)</sup> بالظلم والعدوان، ولكن يأبى جهله<sup>(١٥)</sup> وظلمهم إلا<sup>(١٦)</sup>

(١) في (هـ) يطلقوا .

(٢) في (ج) يلزموا .

(٣) في (ب) يفلح .

(٤) في (د) في .

(٥) في (ج) و (د) الامراء ، وفي الأصل [الامرا] .

(٦) في (ب) جاءت ، و (ج) و (د) جاءت ، وفي الأصل [جات] .

(٧) في (ب) الخلفا ، و (ج) الخلفاء ، وفي الأصل الخلفاء .

(٨) في (ب) الراشدين .

(٩) في (أ) الأصل ( و من و من تحت ، و الظاهر أن (ومن) الثانية [ زائدة ] ، أما في (أ) ، (ب) ، (ج) ، (د) ،

(هـ) ومن تحت ، ولعله (ومن) الثانية خطأ من الناسخ .

(١٠) في (أ) و (هـ) بركات السما ، و (ب) و (ج) و (ز) بركات السماء ، و (د) و (ح) المساء ، وفي

الأصل [السما] .

(١١) في (د) و (ح) و [ ساقطة ] .

(١٢) في (ب) بالغل ، و (ج) المغال .

(١٣) في (ب) و (ج) أضعاف أضعاف .

(١٤) في (أ) ما يخلصون ، وفي (ب) يخلصونه .

(١٥) في (أ) و (ب) و (ج) و (د) و (هـ) لهم جهلهم .

(١٦) في (ب) الا ، وفي الأصل [إلى] .

كان بغيراً له رغاء، <sup>(١)</sup> وإن كانت <sup>(٢)</sup> بقرة لها خوار، وإن كانت شاة <sup>(٣)</sup> تيعر، <sup>(٤)</sup> ثم رفع يديه إلى السماء، <sup>(٥)</sup> وقال اللهم هل بلغت <sup>(٦)</sup> قالها مرتين، أو ثلاثاً. <sup>(٧)</sup> « <sup>(٨)</sup>

والمقصود أن هذه الأعمال متى لم يقم بها إلا شخص صارت <sup>(٩)</sup> فرض عين <sup>(١٠)</sup> عليه، فإذا <sup>(١١)</sup> كان الناس محتاجين إلى فلاحه قوم أو نساجتهم أو بنائهم، <sup>(١٢)</sup> صارت هذه الاعمال مستحقة عليهم، يجبرهم <sup>(١٣)</sup> ولي الأمر عليها بعوض المثل، ولا يمكنهم من مطالبة الناس بزيادة عن <sup>(١٤)</sup> عوض المثل، <sup>(١٥)</sup> ولا يمكن الناس من ظلمهم، بأن يعطوهم دون حقهم. كما إذا احتاج الجند المرصدون للجهاد إلى <sup>(١٦)</sup> فلاحه أرضهم، وألزم من

(١) في (د) رغاء، وفي الأصل [رغا].

(٢) في (أ) كان.

(٣) في (ج) شاتا.

(٤) في (ب) تتغر.

(٥) في (ب) و (ج) و (د) السماء، و (هـ) السماء، وفي الأصل [السماء].

(٦) في (أ) و (ج) و (د) و (هـ) اللهم هل بلغت، اللهم هل بلغت.

(٧) في (ب) ثلاث، و (د) و (هـ) ثلاثا، وفي الأصل [ثلاثا].

(٨) رواه البخاري برقم (٩٢٥)، و رواه مسلم برقم (١٨٣٢).

(٩) في (ب) صارت [ساقطة].

(١٠) في (أ) و (ب) و (ج) و (د) و (هـ) فرضا معينا.

(١١) في (د) فان.

(١٢) في (ب) و (ج) بنائهم، و (د) بنائتهم، وفي الأصل [بنائهم].

(١٣) في (د) نجبرهم.

(١٤) في (أ) و (د) على.

(١٥) في (ح) ولا يمكنهم من مطالبة الناس بزيادة عن عوض المثل [ساقطة].

(١٦) في (ج) و الى.



## فصل (١) في محاسبة الإمام لعماله

وكان النبي ﷺ يستوفي الحساب على عماله ، يحاسبهم (٢) على المُستخرج والمصروف، كما في الصحيحين عن أبي حميد الساعدي، أن النبي ﷺ: « استعمل رجلاً (٣) من الأزد، يقال (٤) له ابن (٥) اللتبية، على الصدقات فلما رجع حاسبه، فقال هذا لكم وهذا أُهدي (٦) إليّ ، فقال النبي ﷺ ما بال الرجل نستعمله (٧) على العمل مما ولانا الله فيقول هذا [٢٢٣/ب] لكم وهذا أُهدي (٨) إليّ، أفلا قعد في بيت أبيه وأمه، فينظر أيهدي (٩) إليه أم لا، والذي نفسي بيده، لا نستعمل (١٠) رجلاً على العمل مما ولانا الله فيغل (١١) منه شيئاً (١٢) إلا جاء (١٣) به (١٤) يوم القيامة يحمله على رقبتة، إن

(١) في (هـ) فصل [ساقطة] .

(٢) في (ب) يحاسب .

(٣) في (ب) رجل .

(٤) في (هـ) تقال :

(٥) في (ب) بن .

(٦) في الأصل [أهدي] .

(٧) في (د) يستعمله .

(٨) في (د) و (هـ) اهدى ، وفي الأصل [أهدي] .

(٩) في (ب) أيهدا .

(١٠) في (ب) و (د) يستعمل .

(١١) في (أ) و (ب) و (ج) و (د) و (هـ) فيقبل .

(١٢) في (هـ) شيا .

(١٣) في (ب) جاء ، و (ج) و (د) جاء ، وفي الأصل [جا] .

(١٤) في (أ) و (ب) و (ج) و (د) و (هـ) به [ساقطة] .

وكذلك كان يُؤمَّر<sup>(١)</sup> على السرايا، ويبعث السُّعَاةَ على الأموال الزكوية، فيأخذونه ممن هي عليه، ويدفعونها<sup>(٢)</sup> إلى مستحقيها،<sup>(٣)</sup> فيرجع الساعي إلى<sup>(٤)</sup> المدينة وليس معه إلا سوط،<sup>(٥)</sup> ولا يأتي بشيء<sup>(٦)</sup> من الأموال إذا وجد لها موضعا يَضَعُها.

- (١) في (ب) يامر، و (ج) و (د) يؤمر، وفي الأصل [يؤمر].  
(٢) في (ب) و (ج) ويدفعها.  
(٣) في (د) و (هـ) مستحقها.  
(٤) في الأصل [إلى].  
(٥) في (هـ) سوطه.  
(٦) في (ب) و (ج) و (د) بشيء، و (هـ) شي، وفي الأصل [بشي].

## فصل (١) في إلزام ولي الأمر أرباب الصناعات بالقيام بأعمالهم

ومن ذلك أن يحتاج الناس إلى صناعة طائفة<sup>(٢)</sup> كالفلاحة والنساجة والبناء<sup>(٣)</sup> وغير ذلك، فلولي الأمر أن يلزمهم بذلك<sup>(٤)</sup> بأجرة مثلهم<sup>(٥)</sup> فإنه لا تتم<sup>(٦)</sup> مصلحة الناس إلا بذلك .

ولهذا قالت طائفة<sup>(٧)</sup> من أصحاب أحمد والشافعي، إن تعلم هذه الصناعات فرض على الكفاية<sup>(٨)</sup> لحاجة الناس إليها، وكذلك تجهيز الموتى ودفنهم<sup>(٩)</sup>، وأنواع الولايات العامة والخاصة التي لا تقوم مصلحة<sup>(١٠)</sup> الأمة إلا بها. وكان النبي ﷺ يتولى أمر ما يليه بنفسه، ويولي فيما [٢٢٣/أ] بعد عنه، كما ولي على مكة عتاب ابن<sup>(١١)</sup> أسيد ، وعلى الطائف عثمان بن<sup>(١٢)</sup> أبي العاص الثقفي، وعلى قرى<sup>(١٣)</sup> عرينه خالد بن سعيد بن<sup>(١٤)</sup> العاص ، وبعث عليا ومعاذ بن جبل وأبا موسى إلى اليمن،

(١) في (هـ) فصل [ساقطة] .

(٢) في (ب) و (ج) طائفة ، وفي الأصل [طائفة] .

(٣) في (ب) البناء، و (ج) و (هـ) البناء، و (د) البناء ، وفي الأصل [والبناء] .

(٤) في (ج) ذلك .

(٥) في (ب) ما مثلهم .

(٦) في (د) و (هـ) . يتم .

(٧) في (ب) و (ج) و (د) طائفة ، وفي الأصل [طائفة] .

(٨) في (ب) فرض كفاية .

(٩) في (د) كذلك .

(١٠) في (ب) لا تقوم به مصلحة .

(١١) في (أ) و (ج) ابن .

(١٢) في (هـ) ابن .

(١٣) في (ب) قرى .

(١٤) في (أ) ابن .



وكذلك يمنع المشتريين من الاشتراك في شيء<sup>(١)</sup> لا يشتريه غيرهم ، لما في ذلك من ظلم البائع. وأيضا فإذا كانت الطائفة<sup>(٢)</sup> التي تشتري نوعا من السلع أو تباعها قد تواطؤوا<sup>(٣)</sup> على<sup>(٤)</sup> أن يهضموا<sup>(٥)</sup> ما يشترونه، فيشترونه بدون<sup>(٦)</sup> ثمن المثل ، ويبيعوا<sup>(٧)</sup> ما يبيعونه بأكثر من [٢٢٢/ب] ثمن المثل، ويقتسموا<sup>(٨)</sup> ما يشتركون فيه من الزيادة، كان إقرارهم<sup>(٩)</sup> على ذلك<sup>(١٠)</sup> معاونة لهم على الظلم والعدوان، وقد قال تعالى :

﴿ وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ﴾<sup>(١١)</sup>.

ولاريب أن هذا أعظم إثما وعدوانا من تلقي السلع، وبيع الحاضر للبادي، ومن

النجش<sup>(١٢)</sup>.

- (١) في (ب) و (د) شيء ، وفي الأصل [شيء] .
- (٢) في (ب) الطائفة ، و (د) الطائفة [ ساقطة ] ، وفي الاصل [ طائفة ] .
- (٣) في الأصل [تواطوا] .
- (٤) في (د) على [ ساقطة ] .
- (٥) في (أ) و (ب) و (ج) و (د) يهضموا ، (هـ) يتضموا ، وفي الأصل [يهتضموا] .
- (٦) في (د) بدون [ ساقطة ] ، (هـ) بثن دون .
- (٧) في (د) ويبيعون .
- (٨) في (أ) و (ج) ويقتسمون .
- (٩) في الأصل [اقرارهم] .
- (١٠) في (هـ) باكثر من ثمن المثل ، ويقتسموا ما يشتركون فيه من الزيادة : كان اقرارهم على ذلك [ تكرر] .
- (١١) من سورة المائدة ، آية ( ٢ ) .
- (١٢) في (د) النجس .

وأما شركة <sup>(١)</sup> الدالين ففيها أمر آخر، <sup>(٢)</sup> وهو أن الدلال وكيل صاحب  
السلعة في بيعها، فإذا شارك <sup>(٣)</sup> غيره في بيعها كان توكيلا له فيما وكل فيه، فإن قلنا  
ليس <sup>(٤)</sup> للوكيل أن يوكل لم تصح الشركة، وإن قلنا له <sup>(٥)</sup> أن يوكل صحّت <sup>(٦)</sup>. فعلى  
والي الحسبة أن يعرف هذه الأمور، <sup>(٧)</sup> ويراعئها، ويراعئ مصالح الناس. وهيئات  
هيئات، ذهب <sup>(٨)</sup> ما <sup>(٩)</sup> هنالك.

والمقصود أنه إذا منع <sup>(١٠)</sup> القسامين <sup>(١١)</sup> ونحوهم من الشركة، لما فيها <sup>(١٢)</sup> من  
التواطئ <sup>(١٣)</sup> على إغلاء <sup>(١٤)</sup> الأجرة، فمنع البائعين الذين تواطؤوا <sup>(١٥)</sup> على أن <sup>(١٦)</sup> لا  
يبيعوا إلا <sup>(١٧)</sup> بثمن مُقدَّر <sup>(١٨)</sup> أولى وأحرى.

- (١) في (ب) شراكة .
- (٢) في الأصل [امر اخر] .
- (٣) في (ب) شك .
- (٤) في (ب) أليس .
- (٥) في (هـ) له [ساقطة] .
- (٦) في (ب) صحة :
- (٧) في الأصل [الامور] .
- (٨) في (هـ) وهب .
- (٩) في (د) ما [ساقطة] .
- (١٠) في (ب) إذ امتنع .
- (١١) في (أ) و (د) القسامون ، و (ب) و (ج) و (هـ) القاسمون .
- (١٢) في (أ) و (ب) و (ج) و (د) و (هـ) فيه .
- (١٣) في الأصل [التواطئ] .
- (١٤) في (ب) اعلا ، وفي الأصل [إغلا] .
- (١٥) في الأصل [تواطوا] .
- (١٦) في الأصل [ان] .
- (١٧) في الأصل [الا] .
- (١٨) في (ج) و (د) و (هـ) قدره ، وفي الأصل [مقدره] .

متميز،<sup>(١)</sup> لا يقع في ذلك اشتراك ولا تعاون<sup>(٢)</sup> فأى<sup>(٣)</sup> وجه<sup>(٤)</sup> يستحق أحدهما  
أجرة عمل<sup>(٥)</sup> صاحبه، وذلك<sup>(٦)</sup> بخلاف الاشتراك في سائر الصنائع،<sup>(٧)</sup> فإنه يمكن أحد  
الشريكين أن يعمل بعض العمل والآخر<sup>(٨)</sup> بعضه، ولهذا إذا اختلفت بعض<sup>(٩)</sup>  
الصنائع<sup>(١٠)</sup> لم تصح الشركة على أحد الوجهين، لتعذر<sup>(١١)</sup> اشتراكهما في العمل، ومن  
صححها<sup>(١٢)</sup> نظر إلى أنهما<sup>(١٣)</sup> يشتركان فيما يتم به صناعة كل واحد منهما من<sup>(١٤)</sup>  
الحفظ والنظر إذا خرج لحاجة، فيقع الإشتراك فيما يتم به<sup>(١٥)</sup> [أ/٢٢٢] عمل كل  
واحد منهما، وإن لم يقع في عين العمل.

- (١) في (ب) والتحمل و الأدا متميز .
- (٢) في (هـ) يعاون .
- (٣) في (د) فباي .
- (٤) في (ب) فأى وجه يكون وجه ، و (ج) فاي وجه يكون .
- (٥) في (هـ) على عمل .
- (٦) في (أ) و (ج) و (د) و (هـ) وهذا .
- (٧) في الأصل [سائر الصايغ] .
- (٨) في الأصل [الآخر] .
- (٩) في (ب) و (ج) و (د) و (هـ) بعض [ساقطة] .
- (١٠) في (أ) ولهذا اختلف الصنایع ، وفي الأصل [الصنایع] .
- (١١) في (ب) لتعدد .
- (١٢) في (هـ) الصنایع لم تصح الشركة على احد الوجهين [ زائدة ] .
- (١٣) في (ب) نظر أنهما ، و (د) ايهما .
- (١٤) في (د) على .
- (١٥) في (ب) و (ج) يقيم به .



## فصل (١) في منع الأئمة اشتراك القسامون ونحوهم .

ومن ها هنا (٢) مَنَعَ غير واحد من العلماء (٣) كأبي حنيفة وأصحابه القسامين (٤)  
الذين يقسمون العقار وغيره بالأجر (٥) أن (٦) يشتركوا، فإنهم إذا اشتركوا [٢٢١/ب]  
والناس يحتاجون إليهم أغلوا عليهم الأجرة .

قلت وكذلك (٧) ينبغي لوالي الحسبة أن يمنع مُغسلي الموتى (٨) والحمالين لهم  
بالاشتراك (٩)، لما في ذلك من إغلا (١٠) الأجر (١١) عليهم وكذلك اشتراك كل طائفة (١٢)  
يحتاج الناس إلى منافعهم ، كالشهود والدالين وغيرهم ، على أن في شركة الشهود  
مبطلا آخر (١٣)، فإن عمل كل واحد (١٤) منهم متميزا (١٥) عن عمل الآخر (١٦)، لا  
يمكن الإشتراك فيه (١٧) فإن الكتابة متميزة والتحمل متميز، والأداء (١٨)

(١) في (هـ) فصل [ساقطة] .

(٢) في (ب) ومن هنا .

(٣) في (ب) العلماء ، و (د) العلماء ، العلماء .

(٤) في (أ) القاسمين .

(٥) في (أ) و (ج) و (د) و (هـ) بالأجرة .

(٦) في (ب) ولا .

(٧) في (ب) ولذلك .

(٨) في (ب) و (ج) و (د) و (هـ) الموتى ، وفي الأصل [الموتى] .

(٩) في (ب) و (ج) و (د) و (هـ) من الاشتراك .

(١٠) في (ب) اغلاء ، و (ج) اغلأ .

(١١) في (أ) و (ب) و (ج) و (د) و (هـ) الأجرة .

(١٢) في (هـ) طائفة .

(١٣) في الأصل [اخر] .

(١٤) في (هـ) و الدالين وغيرهم ؛ على أن في شركة الشهود مبطلا اخر ؛ فإن عمل كل واحد [ساقطة] .

(١٥) في (أ) و (ج) متميز ، و (ب) يتميز .

(١٦) في الأصل [الآخر] .

(١٧) في (أ) [من غير] فيه .

(١٨) في الأصل [الأداء] .

فالتسعير في مثل هذا واجب بلا نزاع، وحقيقته <sup>(١)</sup> إلزامهم بالعدل ، ومنعهم من الظلم.

وهذا كما أنه لا يجوز الإكراه على البيع [٢٢١/أ] بغير حق، فيجوز أو <sup>(٢)</sup> يجب الإكراه عليه بحق ، مثل بيع المال <sup>(٣)</sup> لقضاء <sup>(٤)</sup> الدين الواجب، والنفقة الواجبة ، ومثل البيع للمضطر <sup>(٥)</sup> إلى طعام أو لباس ، ومثل الغراس والبناء <sup>(٦)</sup> في <sup>(٧)</sup> ملك الغير، فإن لرب الأرض أن يأخذه بقيمة المثل ، ومثل الأخذ بالشفعة ، فإن للشفيع أن يملك الشقص بثمانه قهرا ، وكذلك السراية في العتق <sup>(٨)</sup> فإنها تخرج الشقص <sup>(٩)</sup> من ملك <sup>(١٠)</sup> الشريك قهرا ويوجب <sup>(١١)</sup> على المعتق المعاوضة عليها قهرا، وكل من وجب عليه شيء <sup>(١٢)</sup> من الطعام واللباس والرقيق <sup>(١٣)</sup> والمركوب بحج <sup>(١٤)</sup> أو كفارة أو نفقة فمضى وجده بثمان المثل وجب عليه شراؤه <sup>(١٥)</sup> وأجبر على ذلك ، ولم يكن له أن يمتنع حتى يبذل له مجانا ، أو بدون ثمن المثل .

(١) في (أ) و (ج) وحقيقته .

(٢) في الأصل [أو].

(٣) وقد فرق ابن القيم بين النقد والمال ، فجعل النقد ميزان المال يتجر به ولا يتجر فيه و المال فهو الموزون وهو سلعة التجارة المتجر فيه .

(٤) في (ب) لقضاء ، و (ج) لقضاً ، و (هـ) لقضاً .

(٥) في (أ) المضطر .

(٦) في (أ) البناء ، (د) البناء، وفي الأصل [البناء] .

(٧) في (أ) و (ب) و (ج) و (د) الذي في .

(٨) في (ب) بالعتق .

(٩) في (أ) الشقص بثمانه .

(١٠) في (ج) ملك [ساقطة] .

(١١) في (أ) و (د) وتوجب ، وفي (ج) و يجب .

(١٢) في (ب) و (ج) شيء ، وفي الأصل [شيء] .

(١٣) في (د) والرقيق و الملبوس .

(١٤) في (ب) لحج .

(١٥) في (ج) و (د) شراؤه ، في الأصل [شراؤه] .

## فصل (١) في احتكار البيع

ومن ذلك أن يُلْزَمَ الناس أن لا يبيع (٢) الطعام أو (٣) غيره من الأصناف إلا ناس معروفون ، فلا تُباع (٤) تلك السلع إلا لهم ، ثم يبيعونها هم (٥) بما يريدون ، فلو باع غيرهم ذلك (٦) مُنِعَ وعُوقِبَ ، فهذا من البغي في الأرض والفساد ، والظلم الذي يُحْبَسُ (٧) به قَطْرُ السماء (٨) .

وهؤلاء (٩) يجب التسعير عليهم، وأن لا يبيعوا إلا بقيمة المثل، ولا يشتروا إلا بقيمة المثل (١٠) بلا تردد في ذلك عند أحد من العلماء (١١) .

لأنه (١٢) إذا منع غيرهم بيع (١٣) ذلك النوع أو يشتري به، (١٤) فلو سَوَّغَ (١٥) لهم أن يبيعوا بما شاءوا (١٦) أو يشتروا بما شاءوا (١٧) كان ذلك ظلماً للناس ظلماً للبايعين الذين يريدون بيع تلك السلع ، وظلماً للمشتريين منهم .

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (ب) أن يبيع ، و (هـ) لا يبيعوا .

(٣) في (أ) ولا .

(٤) في (هـ) ولا يباع .

(٥) في (ب) و (ج) هم [ ساقطة ] .

(٦) في (ب) ذلك [ ساقطة ] ، و (ج) فلو باع ذلك غيرهم .

(٧) في (أ) لا يحبس . [ والصواب الذي في الأصل ] .

(٨) في (ج) السماء ، و (هـ) السما ، وفي الأصل [ السماء ] .

(٩) في (ج) هؤلاء ، و (د) وهؤلاء ، وفي الأصل [ هؤلاء ] .

(١٠) في (د) ولا يشتروا الا بقيمة المثل [ ساقطة ] .

(١١) في (ب) و (هـ) العلماء ، و (ج) العلماء ، و (د) العلماء ، وفي الأصل [ العلماء ] .

(١٢) في (ب) و (ج) لأنهم .

(١٣) في (ب) يبيع .

(١٤) في (ب) يشتريه .

(١٥) في (د) شرع .

(١٦) في (ب) شاءوا ، و (ج) و (د) شاءوا ، وفي الأصل [ شاءوا ] .

(١٧) في (ب) شاءوا ، و (ج) و (د) شاءوا ، وفي الأصل [ شاءوا ] .



## فصل (١) في حكم إيجار الحانوت على الطريق

وَمِنْ أَقْبَحِ الظُّلْمِ إِيجَارُ (٢) الحانوتِ على الطريق أو في القرية ، بأجرة معينة على أن لا يبيعَ أحدٌ غيره ، فهذا ظلم حرام (٣) على المؤجر والمستأجر ، وهو نوع من أخذ أموال الناس قهراً ، وأكلها بالباطل، [٢٢٠/ب] وفاعله قد يُحَجَّرُ (٤) واسعاً ، فيُخافُ عليه أن يحجر الله عنه رحمته ، كما حَجَّرَ على الناس فضله ورزقه .

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (ب) اتخاذاً ، و (د) انجاراً ، و (هـ) اجاراً .

(٣) في (أ) على الحرام .

(٤) في (ب) و (ج) و (د) يحجر .

الرازق (١) الباسط المعسر (٢) وإني لأرجو أن ألقى الله ولا يطلبني أحد بمظلمة ظلمتها إياه في دم ولا مال .» (٣) رواه أبو داود والترمذي وصححه .

فإذا كان الناس يبيعون سلعهم على الوجه المعروف من غير ظلم منهم ، وقد ارتفع السعر إما لقلة الشيء ، وإما (٤) لكثرة الخلق فهذا إلى الله ، فالزام (٥) أن يبيعوا بقيمة بعينها إكراهًا بغير حق .

وأما الثاني فمثل أن يمتنع أرباب السلع (٦) من بيعها مع ضرورة الناس إليها ، إلا بزيادة على القيمة المعروفة ، فهذا يجب عليهم بيعها بقيمة المثل ، ولا معنى للتسعير إلا إلزامهم بقيمة المثل (٧) والتسعير هاهنا إلزام بالعدل الذي ألزمهم الله به (٨) .

(١) في (أ) الرزاق .

(٢) في (ب) الرزاق المسعر .

(٣) رواه أبو داود برقم (٣٤٥١) ، و الترمذي برقم (١٣١٤) ، و ابن ماجه برقم (٢٢٠٠) وصححه الألباني .

(٤) في (هـ) وما .

(٥) في (ج) و (د) و (هـ) فالزام الناس .

(٦) في (د) السلع .

(٧) في (ب) و (ج) ولا معنى للتسعير الا الزامهم بقيمة المثل [ ساقطة ] .

(٨) في (ب) الذي ألزمه الله .

## فصل في حكم التسعير

وأما التسعير فمناه ما هو ظلم محرم، ومنه (١) ما هو (٢) عدل جائز (٣) . فإذا تضمن (٤) ظلم الناس وإكراههم بغير حق على البيع بثمن لا يرضونه ، أو منعهما مما أباح (٥) الله (٦) لهم ، فهو حرام .

وإذا (٧) تضمن العدل بين الناس، مثل إكراههم على ما يجب عليهم من المعاوضة بثمن المثل، ومنعهما مما يحرمُ عليهم من أخذ (٨) الزيادة على عوض المثل، فهو جائز، (٩) بل واجب.

فأما (١٠) القسم الأول فمثل ما روى أنس قال: « غلا (١١) السعر على عهد النبي (١٢) ﷺ، فقالوا يا رسول الله ، لو سعرت لنا ؟ [٢٢٠/أ] فقال إن الله هو (١٣) لقابض (١٤)

- (١) في (ج) ومنها .
- (٢) في (أ) [من غير] ما هو .
- (٣) في (د) جائز .
- (٤) في (ب) ضمن .
- (٥) في (أ) و (ب) و (ج) و (د) و (هـ) أباحه .
- (٦) في (ب) تعالى .
- (٧) في (ب) و (ج) و (د) فإذا .
- (٨) في (هـ) أخذ [ساقطة] .
- (٩) في (د) و (هـ) جائز .
- (١٠) في (أ) وأما .
- (١١) في (ب) غلي .
- (١٢) في (أ) رسول الله .
- (١٣) في (ب) هو المسعر .
- (١٤) في (ب) و (ج) و (هـ) القابض الباسط .



ولو أُضْطِرَّ إلى طعامه وشرابه ، فحبسه عنه حتى مات جوعاً وعطشاً ضمنه  
بالدية عند الإمام أحمد <sup>(١)</sup> ، واحتج بفعل عمر بن <sup>(٢)</sup> الخطاب <sup>(٣)</sup> ، <sup>(٤)</sup> وقيل له أتذهب <sup>(٥)</sup>  
إليه <sup>(٦)</sup> ؟ فقال <sup>(٧)</sup> أي والله .

(١) في (أ) رضي الله عنه .

(٢) في (أ) ابن .

(٣) في (ب) الخطاب [ ساقطة ] .

(٤) في (أ) و (ب) رضي الله عنه .

(٥) في (هـ) تذهب .

(٦) في (هـ) إليه [ ساقطة ] .

(٧) في (أ) و (د) قال .

ولهذا كان لولي الأمر أن يُكرِّه المحتكرين على بيع ما عندهم بقيمة المثل ، عند  
 ضرورة الناس إليه ، مثل من عنده طعام لا يحتاج <sup>(١)</sup> والناس في مخمصة ، أو سلاح لا  
 يحتاج إليه ، والناس يحتاجون إليه للجهاد <sup>(٢)</sup> أو غير ذلك ، فإن <sup>(٣)</sup> من أُضطرَّ إلى طعامٍ  
 غيره <sup>(٤)</sup> أَخَذَ <sup>(٥)</sup> منه بغير اختياره بقيمة المثل ، ولو امتنع من بيعه إلا بأكثر من سعره  
 فأخذ منه <sup>(٦)</sup> بما طلب ، لم تجب <sup>(٧)</sup> عليه إلا قيمة مثله .

وكذلك من أُضطرَّ إلى الاستدانة من الغير، فأبى <sup>(٨)</sup> أن يُعطيَه إلا بربا ، أو معاملةٍ  
 ربويةٍ ، فأخذ منه بذلك لم يستحقَّ عليه إلا مقدار رأس ماله .  
 وكذلك إذا أُضطرَّ إلى منافع [٢١٩/ب] ماله ، كالحیوان والقدر والفاس  
 ونحوها، وجب <sup>(٩)</sup> عليه <sup>(١٠)</sup> بذلها له مجانا <sup>(١١)</sup> ، في أحد <sup>(١٢)</sup> الوجهين ، وهو الأصح ،  
 وبأجرة المثل في الآخر.

(١) في (أ) و (ب) و (ج) و (هـ) لا يحتاج إليه .

(٢) في (هـ) في الجهاد .

(٣) في (أ) و (ب) و (ج) و (د) و (هـ) فإنه .

(٤) في (د) غيره .

(٥) في (ج) أخذه .

(٦) في (ب) منه [ساقطة] .

(٧) في (ب) و (ج) و (د) يجب .

(٨) في (ج) و (هـ) فأبا .

(٩) في (أ) و (ب) و (ج) و (د) و (هـ) وجب ، وفي الأصل [ويجب] .

(١٠) في (هـ) عليها .

(١١) في (هـ) و مجانا .

(١٢) في (ب) و (ج) إحدى .

ومن ذلك نهي النبي ﷺ : « أن يبيع الحاضر للبادي <sup>(١)</sup> ، وقال دعوا الناس يَرْزُقُ <sup>(٢)</sup> الله بعضهم من بعض ». <sup>(٣)</sup> قيل لابن عباس ما معنى قوله لا يبيع حاضر لباد <sup>(٤)</sup> ، <sup>(٥)</sup> قال لا يكون له سمساراً <sup>(٦)</sup> ، وهذا النهي لما فيه من ضرر المشتري .

فإن المقيم إذا وكله <sup>(٧)</sup> القادم في بيع سلع <sup>(٨)</sup> يحتاج الناس إليها ، والقادم لا يعرف السعر أضراً ذلك بالمشتري <sup>(٩)</sup> . كما أن النهي عن تلقي الجلب لما فيه من الإضرار [أ/٢١٩] بالبائعين <sup>(١٠)</sup> .

ومن ذلك الإحتكار لما يحتاج الناس إليه . وقد روى مسلم في صحيحه عن معمر ابن عبدالله أن النبي ﷺ قال : « لا يحتكر إلا خاطيء » <sup>(١١)</sup> .

فإن المحتكر الذي يعتمد إلى شراء <sup>(١٢)</sup> ما يحتاج إليه الناس <sup>(١٣)</sup> من الطعام فيحبسه <sup>(١٤)</sup> عنهم ، ويريد <sup>(١٥)</sup> إغلاؤه <sup>(١٦)</sup> عليهم ، هو ظالم لعموم الناس .

(١) في (ب) حاضر لبادي ، و (د) البادي .

(٢) في (ب) يسترزق .

(٣) رواه مسلم برقم (١٥٢٢) .

(٤) في (ب) لبادي ، و (ج) البادي .

(٥) رواه البخاري برقم (٢١٦٣ و ٢٢٧٤) ، و رواه مسلم برقم (١٥٢١) .

(٦) في (أ) سمسار .

(٧) في (ب) كل ، و (ج) وكله ، في الأصل [وكل] .

(٨) في (أ) و (ب) و (ج) و (د) سلعة .

(٩) في (هـ) المشتري .

(١٠) في (د) بالبائعين .

(١١) رواه مسلم برقم (١٦٠٥) .

(١٢) في (أ) و (ب) شري ، و (د) شراء ، و (هـ) شر ، وفي الأصل [شرا] .

(١٣) في (ب) الناس إليه .

(١٤) في (أ) و (ب) و (ج) و (د) و (هـ) فيحبسه ، وفي الأصل [فيحبسهم] .

(١٥) في (د) يزيد .

(١٦) في (ب) اغلاؤه .



وكذلك<sup>(١)</sup> يثبت<sup>(٢)</sup> الخيار للمشتري<sup>(٣)</sup> المسترسل إذا غش، وفي الحديث:

(غبن<sup>(٤)</sup> المسترسل ربا) <sup>(٥)</sup>. في تفسيره قولان: أحدهما أنه الذي لا يعرف قيمة السلعة. والثاني<sup>(٦)</sup> وهو المنصوص عن أحمد أنه لا يماكس بل [٢١٨/ب] يسترسل إلى البائع<sup>(٧)</sup>، ويقول أعطني هذا.

وليس لأهل السوق أن يبيعوا المماكس بسعر، ويبيعوا المسترسل بسعر<sup>(٨)</sup>، وهذا مما يجب على<sup>(٩)</sup> الحسبة إنكاره، وهذا بمنزلة تلقي السلع، فإن القادم جاهل بالسعر.

ومن هذا تلقي أسواق الحجيج الجلب من الطريق، وسبقهم إلى المنازل يشترون الطعام والعلف، ثم يبيعونه كما<sup>(١٠)</sup> يريدون. فيمنعهم ولي<sup>(١١)</sup> الحسبة من التقدم لذلك، حتى يقدم الركب، لما في ذلك من مصلحة الركب، ومصلحة الجالب، ومتى اشتروا<sup>(١٢)</sup> شيئاً من ذلك منعه من بيعه<sup>(١٣)</sup> بالغبن<sup>(١٤)</sup> الفاحش.

(١) في (د) و (هـ) كذلك، وفي الأصل [لذلك].

(٢) في (ب) وكذلك يثبت، وفي الأصل [ثبت].

(٣) في (أ) و (ب) و (د) و (هـ) الخيار للمشتري، وفي (ج) وكذلك يثبت للمشتري الخيار، وفي الأصل [المشتري].

(٤) في (د) عين.

(٥) رواه البيهقي (٥ / ٣٤٩) وضعفه.

(٦) في (هـ) الثانية.

(٧) في الأصل [البائع].

(٨) في (أ) و (ب) و (ج) و (د) و (هـ) بغيره.

(٩) في (أ) و (ب) و (ج) و (د) و (هـ) والي.

(١٠) في (د) بما.

(١١) في (أ) و (ج) والي.

(١٢) في (ب) اشترو.

(١٣) في الأصل [بيعة].

(١٤) في (د) بالعين.

## فصل (١) في تلقي السلع

من (٢) المنكرات تلقي السلع قبل أن تجيء (٣) إلى السوق ، فإن النبي (٤) نهي عن ذلك (٥) ، لما فيه تغيير (٦) البائع (٧) فإنه لا يعرف السعر فيشتري منه المشتري بدون القيمة (٨) ولذلك (٩) أثبت له (١٠) النبي (١١) الخيار إذا دخل إلى السوق (١٢) .

ولا نزاع في ثبوت الخيار له مع الغبن (١٣) وأما ثبوته بلا غبن (١٤) ففيه عن أحمد (١٥) روايتان : أحدهما (١٦) يثبت (١٧) وهو قول الشافعي لظاهر الحديث ، والثانية لا يثبت لعدم الغبن (١٨) .

- (١) في (هـ) فصل [ ساقطة ] .
- (٢) في (ب) و (د) و (هـ) ومن .
- (٣) في (ب) تجيء .
- (٤) في (ب) و (ج) و (د) و (هـ) صلى الله عليه وسلم .
- (٥) رواه البخاري برقم ( ٢٤٦٥ ) ، و رواه مسلم برقم ( ١٥١٨ ) .
- (٦) في (ب) و (ج) و (د) من تغيير .
- (٧) في الأصل [ البائع ] .
- (٨) في (د) القيمة .
- (٩) في (د) كذلك .
- (١٠) في (د) له [ ساقطة ] .
- (١١) في (ب) و (ج) و (د) و (هـ) صلى الله عليه وسلم .
- (١٢) في (ب) دخل السوق .
- (١٣) في (د) العين .
- (١٤) في (د) عين .
- (١٥) في (أ) احمد رضي الله عنه .
- (١٦) في (د) و (هـ) احدهما .
- (١٧) في (ب) أحدهما يثبت [ ساقطة ] ، و (هـ) ثبت .
- (١٨) في (د) العين .

فعلى والى الحسبة إنكار ذلك جميعه ، والنهيُ عنه، وعقوبة فاعلهُ ، ولا يتوقف ذلك على دعوى<sup>(١)</sup> ومدعى عليه ، فإن ذلك من<sup>(٢)</sup> المنكرات التي يجب على ولي<sup>(٣)</sup> الأمر إنكارها<sup>(٤)</sup>، والنهي عنها.

(١) في (ج) ولا يتوقف على ذلك دعوى .

(٢) في (هـ) في .

(٣) في (أ) و (ب) و (ج) و (د) ولي ، وفي الأصل [والى] .

(٤) في (ب) و (د) و (هـ) إنكارها [ساقطة] .



ومنها ما يكون ثلاثية<sup>(١)</sup> وهي<sup>(٢)</sup> أن يدخل<sup>(٣)</sup> أحد<sup>(٤)</sup> بينهما محلا للربا، فيشتري السلع<sup>(٥)</sup> منه آكل الربا، ثم يبيعها<sup>(٦)</sup> لمعطي<sup>(٧)</sup> الربا إلى أجل، ثم يعيدها إلى صاحبها بنقص دراهم يستعيدها<sup>(٨)</sup> المحلل.

وهذه المعاملات منها ما يكون<sup>(٩)</sup> هو<sup>(١٠)</sup> حرام بالاتفاق، مثل التي<sup>(١١)</sup> باع<sup>(١٢)</sup> فيها المبيع قبل القبض الشرعي، أو بغير الشرط [الشرعي]<sup>(١٣)</sup>، أو يقلب<sup>(١٤)</sup> فيها الدين على المعسر، فإن المعسر يجب إنظاره، ولا تجوز الزيادة عليه بمعاملة<sup>(١٥)</sup> ولا غيرها<sup>(١٦)</sup>، ومتى استحل المرابي قلب الدين<sup>(١٧)</sup> يجب أن [أ/٢١٨] يُستتاب، فإن تاب وإلا قتل، وأخذ ماله فيئا<sup>(١٨)</sup> لبيت المال.

(١) في (هـ) ثلاثة .

(٢) في (ج) وهو . .

(٣) في (ج) يدخل .

(٤) في (أ) و (ب) و (ج) و (د) و (هـ) أحد [ساقطة] .

(٥) في (أ) و (ب) و (ج) و (د) و (هـ) السلعة .

(٦) في (ب) يعطيها .

(٧) في (ب) المعطي .

(٨) في (د) يستعيدها .

(٩) في (ب) و (ج) و (د) و (هـ) يكون [ساقطة] .

(١٠) في (ج) ما هو .

(١١) في (هـ) الذي .

(١٢) في (أ) و (ب) و (ج) و (هـ) يباع، و (د) تباع .

(١٣) في (أ) و (ج) و (د) و (هـ) الشرط الشرعي .

(١٤) في (د) أو يغلب .

(١٥) في (ب) معاملة .

(١٦) في (هـ) ولا غيرها .

(١٧) في (أ) و (ج) و (د) و (هـ) [زيادة] وقال للمدين إما أن تقضيي وإما أن تزيد في الدين والمدة فهو

كافر، و (ب) وقال للمدين إما أن تقضيي وإما أن تزيد ....

(١٨) في (د) فيئا، في الأصل [فيئا] .

ومنها ما تكون <sup>(١)</sup> ثنائية <sup>(٢)</sup> وهي أن تكون <sup>(٣)</sup> من اثنين ، مثل أن يجمع الى  
القرض بيعة <sup>(٤)</sup> أو إجارة <sup>(٥)</sup> أو مساقاة أو مزارعة ونحو ذلك . وقد ثبت عن النبي  
ﷺ أنه قال : « لا يحل <sup>(٦)</sup> سلف وبيع <sup>(٧)</sup> ، ولا شرطان في بيع <sup>(٨)</sup> ولا ربح ما لم يضمن  
، ولا بيع <sup>(٩)</sup> ماليس عندك » <sup>(١٠)</sup> قال الترمذي حديث صحيح .

وفي سنن أبي داود عن النبي ﷺ أنه <sup>(١١)</sup> قال <sup>(١٢)</sup> : « من باع بيعتين في بيعة فله <sup>(١٣)</sup>  
أو كسهما أو الربا » <sup>(١٤)</sup> .

- (١) في (ب) و (د) و (هـ) ما يكون .
- (٢) في (ب) و (د) و (هـ) ثنائية ، و (ج) ثنائه ، وفي الأصل [ثنائه] .
- (٣) في (أ) و (ب) أن يكون .
- (٤) في (د) تبعاً .
- (٥) في (هـ) اجازة .
- (٦) في (هـ) يحلف .
- (٧) في (ب) ولا بيع .
- (٨) في (ب) و (ج) ولا شرطان في بيع [ساقطة] .
- (٩) في (أ) و (ب) و (د) ولا تبع .
- (١٠) رواه أبو داود برقم : ( ٣٤٠٥ ) ، و الترمذي برقم : ( ١٢٣٤ ) .
- (١١) في (أ) و (د) و (هـ) أنه [ساقطة] .
- (١٢) في (ب) و (ج) أنه قال [ساقطة] .
- (١٣) في (د) فلو .
- (١٤) رواه أبو داود برقم ( ٣٤٦١ ) ، وحسنه الألباني .

آدم أن يصنعوها،<sup>(١)</sup> لكن يُشَبِّهون بها<sup>(٢)</sup> على سبيل الغش ، وهذا حقيقة الكيمياء<sup>(٣)</sup>، فإنها<sup>(٤)</sup> ذهب مُشَبَّه .

ويدخل في المنكرات ما نهي الله عنه ورسوله من العقود المحرمة، مثل عقود<sup>(٥)</sup> الربا صريحا واحتيالا، وعقود الميسر، كبيع<sup>(٦)</sup> الغرر، كجبل الحبله والملاسة والمنازعة، والنجش وهو أن يزيد في السلعة من لا يريد شراها ، وتصرية الدابة اللبون، وسائر<sup>(٧)</sup> أنواع التدليس .

وكذلك سائر<sup>(٨)</sup> الحيل المحرمة على أكل الربا، وهي ثلاثة<sup>(٩)</sup> أقسام :

احدها ما يكون من واحد ، كما اذا باع سلعة<sup>(١٠)</sup> بنسيئة<sup>(١١)</sup> ثم [٢١٧/ب] اشتراها منه بأقل من ثمنها<sup>(١٢)</sup> نقداً ، حيلة على الربا .

(١) وقوله (ان يصنعوها) ان قصد الابداع والخلق فهذا صحيح ، اما صنعها بمعنى تشكيلها والاستفادة منها بمختلف المصنوعات فهذا ممكن ، لقوله تعالى وألنا لهم الحديد ، وذلك لداود عليه السلام ، فالأفضل أن يقال يخلقوها .

(٢) في (أ) و (ب) و (ج) و (د) بما [ ساقطة ] .

(٣) في (ج) الكيمياء ، و (د) الكيما ، وفي الأصل [الكيمياء] .

(٤) في (أ) و (ب) و (ج) و (د) و (هـ) إنما .

(٥) في (هـ) ما عقود .

(٦) في (ب) كبيع .

(٧) في الأصل [سائر] .

(٨) في الأصل [سائر] .

(٩) في (ب) و (ج) و (د) ثلاثة ، وفي الأصل [ثلاثة] .

(١٠) في (أ) و (ب) و (ج) و (د) و (هـ) باعه سلعة .

(١١) في (د) بنسيه .

(١٢) في (ب) بأقل ثمنها .



شيئاً<sup>(١)</sup> فيقدر العباد أن يخلقوا كخلقه<sup>(٢)</sup> قال تعالى<sup>(٣)</sup> فيما حكى<sup>(٤)</sup> عنه رسوله<sup>(٥)</sup> :  
(ومن<sup>(٦)</sup> أظلم ممن ذهب يخلق خلقاً<sup>(٧)</sup> كخلقي<sup>(٨)</sup> [أ/٢١٧] فليخلقوا<sup>(٩)</sup> شعيرة)<sup>(١٠)</sup> .

ولهذا كانت المصنوعات كالطبايح والملابس والمساكن غير مخلوقة إلا بتوسط الناس ،  
قال تعالى<sup>(١١)</sup> : ﴿وآيَةٌ لَهُمْ أَنَّا حَمَلْنَا ذُرِّيَّتَهُمْ فِي الْفُلِّ الْمَشْحُونِ \* وَخَلَقْنَا لَهُمْ مِنْ مِثْلِهِ<sup>(١٢)</sup> مَا يَرْكَبُونَ﴾<sup>(١٣)</sup> .

وقال تعالى : <sup>(١٤)</sup> ، <sup>(١٥)</sup> ﴿أَتَعْبُدُونَ<sup>(١٦)</sup> مَا تَنْحِتُونَ \* وَاللَّهُ خَلَقَكُمْ وَمَا تَعْمَلُونَ

<sup>(١٧)</sup>﴾ <sup>(١٨)</sup> . وكانت<sup>(١٩)</sup> المخلوقات من المعادن والنبات والدواب غير مقدورة لبني

(١) في (ب) و (د) شيئاً ، في الأصل [شياً] .

(٢) في (أ) الخلق .

(٣) في (ج) قال الله تعالى .

(٤) في (د) يحكي .

(٥) في (هـ) ورسوله .

(٦) في (هـ) فمن .

(٧) في (ج) خلقاً [ساقطة] .

(٨) في (ب) [من] قال تعالى فيما حكى عنه رسوله ، ومن أظلم ممن ذهب يخلق خلقاً كخلقي [ساقطة] .

(٩) في (أ) و (ب) و (ج) و (د) و (هـ) ذرة فليخلقوا [زيادة] .

(١٠) رواه البخاري برقم (٥٩٥٣) ، و رواه مسلم برقم (٢١١١) .

(١١) في (ج) قال الله تعالى .

(١٢) في (ج) من مثله من مثله .

(١٣) من سورة يس ، آية (٤٤ - ٤٥) .

(١٤) في (ج) و (د) تعالى [ساقطة] .

(١٥) في (هـ) قال [زائدة] .

(١٦) في (أ) و (ب) و (ج) و (د) أتعبدون .

(١٧) في (أ) تعلمون ، [الصواب كما هو في الأصل] .

(١٨) من سورة الصافات ، آية (٩٥ - ٩٦) .

(١٩) في (أ) وكان .

بذلك يَدْخُلُ على الناس من الفساد ما لا يعلمه إلا الله، بل الواجب أن تكون<sup>(١)</sup> النقودُ  
رؤوسَ<sup>(٢)</sup> الأموال<sup>(٣)</sup>

يُتجر بها ولا<sup>(٤)</sup> يتجر فيها.

وإذا حَرَّمَ<sup>(٥)</sup> السلطان سكة أو نقدا<sup>(٦)</sup> منع من الإختلاط بما أذن في المعاملة به. ومعظم  
ولايته<sup>(٧)</sup> وقاعدتها<sup>(٨)</sup> الإنكار على هؤلاء<sup>(٩)</sup> الزغلية وأرباب الغش في المطاعم والمشارب  
والملابس وغيرها،<sup>(١٠)</sup> فإن هؤلاء<sup>(١١)</sup> يُفسدون مصالح الأمة، والضررُ بهم عامٌّ لا يمكن  
الإحترازُ منه، فعليه أن لا<sup>(١٢)</sup> يُهمل أمرهم، وأن يُنكَلَ بهم وأمثالهم<sup>(١٣)</sup> ولا يرفع عنهم  
عقوبته، فإن البلية بهم عظيمةٌ، والمضرةُ بهم شاملة، ولا سيما هؤلاء<sup>(١٤)</sup> الكيماويين  
الذين<sup>(١٥)</sup> يغشون النقود والجواهر، والعطر والطيب وغيرها<sup>(١٦)</sup> يُضاهون<sup>(١٧)</sup>  
بزغلتهم وغشهم خلق الله، والله تعالى لم يخلق

(١) في (هـ) يكون.

(٢) في (ب) و (د) رؤس، وفي الأصل [روس].

(٣) في (هـ) اموال.

(٤) في (أ) و (ب) و (ج) و (د) و (هـ) لا.

(٥) في (د) جزم.

(٦) في (ب) و (ج) ونقدا [ساقطة].

(٧) في (د) ولايتها.

(٨) في (ج) وعادتها، و (د) وقاعدتها.

(٩) في (هـ) هؤلاء.

(١٠) في (ب) غيرهما.

(١١) في (هـ) هؤلاء.

(١٢) في (د) لا [ساقطة].

(١٣) في (أ) و (د) و (هـ) أمثالهم.

(١٤) في (ب) و (ج) هؤلاء، وفي الأصل [هؤلاء].

(١٥) في (ج) الكيماويين.

(١٦) في (ج) وغيرهما.

(١٧) في (أ) و (ب) يظاهون، وفي (ج) يظاهون.

ينهي عن الخيانة، وتطفيف المكيال<sup>(١)</sup> والميزان، والغش<sup>(٢)</sup> في الصناعات<sup>(٣)</sup> والبياعات<sup>(٤)</sup>. يتفقد<sup>(٥)</sup> أحوال<sup>(٦)</sup> المكايل والموازن، وأحوال الصناع الذين يصنعون الأطعمة والألبسة<sup>(٧)</sup> والآلات<sup>(٨)</sup>، فيمنعهم<sup>(٩)</sup> من صناعة المحرّم على<sup>(١٠)</sup> الإطلاق، كآلات الملاهي وثياب الحرير للرجال، ويمنع من اتخاذ أنواع المنكرات<sup>(١١)</sup> ويمنع<sup>(١٢)</sup> صاحب كل صناعة<sup>(١٣)</sup> من [٢١٦/ب] الغش في صناعته، ويمنع من [إفساد]<sup>(١٤)</sup> نقود الناس وتغييرها<sup>(١٥)</sup> ويمنع من جعل النقود<sup>(١٦)</sup> متجراً<sup>(١٧)</sup>، فإنه<sup>(١٨)</sup>

- (١) في (هـ) الكيل .  
(٢) في (أ) الغبن .  
(٣) في (ب) الصناعات .  
(٤) (د) السات .  
(٥) في (د) وينعقد :  
(٦) في (د) احوال .  
(٧) في (أ) و (ب) و (ج) و (د) و (هـ) الملابس .  
(٨) في (هـ) اللات .  
(٩) في (هـ) ويمنعهم .  
(١٠) في الأصل علي .  
(١١) في (أ) و (ب) و (ج) و (د) المسكرات .  
(١٢) في (أ) و (ب) و (ج) و (د) و (هـ) المحرم [ ساقطة ] . وفي الأصل انخرم [ ولعلها زائدة لأن المعنى لا يستقيم ] .  
(١٣) في (ب) و (ج) كل صاحب صناعة .  
(١٤) في (أ) و (ب) و (ج) و (د) و (هـ) إفساد ، في الأصل إفساد [ ساقطة ] .  
(١٥) في (ج) وتغييرها .  
(١٦) في (أ) [ فراغ ، ويظهر انه سقط ] ، و (هـ) متجرا [ ساقطة ] .  
(١٧) في (ب) و (د) متجرا [ ساقطة ] .  
(١٨) في (ب) و (ج) و (د) و (هـ) فان .



ويتعاهد الأئمة <sup>(١)</sup> المؤذنين فمن فرط <sup>(٢)</sup> منهم [أ/٢١٦] فيما يجب عليه من حقوق الأمة وخرج عن المشروع <sup>(٣)</sup> ألزمه به ، واستعان <sup>(٤)</sup> فيما يعجز عنه بوالي الحرب والقاضي .

واعتناء <sup>(٥)</sup> ولاية الأمور بإلزام الرعية بإقام الصلاة <sup>(٦)</sup> أهم من كل شيء <sup>(٧)</sup> فإنها <sup>(٨)</sup> عماد الدين، وأساسه وقاعدته، وكان عمر بن <sup>(٩)</sup> الخطاب رضي الله عنه : «يكتب إلى عماله أن أهم أمركم عندي الصلاة» <sup>(١٠)</sup> فمن حفظها وحافظ عليها حفظ دينه ، ومن ضيعها كان لما سواها أشد إضاعة <sup>(١١)</sup> .

ويأمر بالجمعة والجماعة ، وأداء <sup>(١٢)</sup> الأمانة والصدق ، والنصح في الأقوال والأعمال .

(١) في الأصل [ الأئمة ] .

(٢) في (هـ) مرض .

(٣) في (أ) و (ب) و (ج) و (د) و (هـ) المشروع ، في الأصل [الشروع] .

(٤) في (هـ) واشتغال .

(٥) في (ب) و (ج) اعتناء ، و (د) اغنياء ، في الأصل [ اعتنا ] .

(٦) في (أ) و (ب) و (ج) و (هـ) باقامة الصلاة .

(٧) في (ب) شيء . .

(٨) في (د) فإنها .

(٩) في (أ) و (د) ابن .

(١٠) في (أ) و (ب) و (ج) و (هـ) الصلاة .

(١١) رواه مالك في الموطأ ، (٦،٧/١) .

(١٢) في (ب) و أداء ، و (د) اداء ، وفي الأصل [وأدا] .

وأما ولاية الحسبة فخاصتها الأمرُ بالمعروف والنهي عن المنكر فيما ليس من خصائص (١) الولاية والقضاة وأهل الديوان ونحوهم.

فعلى متولي الحسبة أن يأمر العامة بالصلوات الخمس في مواقيتها، ويعاقب من لم يصلي (٢) بالضرب والحبس ، وأما القتل (٣) فيلغى غيره.

(١) في الأصل [ خصائص ] .

(٢) في (هـ) لم يصل .

(٣) في (هـ) الضرب .

فولاية الحرب في هذه الأزمنة وهذه البلاد الشامية والمصرية وما جاورها (١)،  
تختص (٢) بإقامة الحدود من القتل والقطع والجلد ، ويدخل فيهما (٣) الحكم في دعاوى (٤)  
الثُّمِّ (٥) التي ليس فيها شهود و لا إقرار. كما تختص (٦) ولاية القضاء (٧) بما فيه كُتَّاب  
وشهود أو إقرار من الدعاوى (٨) التي (٩) تتضمن إثباتَ الحقوق والحكمَ بإيصالها إلى  
أربابها ، والنظرَ في الأبخاع والأموال التي ليس لها ولي معين ، والنظرَ في حال نُظَّارِ  
الوقف (١٠) وأوصياء (١١) اليتامى (١٢) وغير ذلك . وفي بلاد أُخَرَ (١٣) كبلاد الغرب (١٤)  
ليس لولي (١٥) الأمر (١٦) مع القاضي حكمٌ في شيء (١٧) إنما هو مُنْفَذٌ لما يأمر به (١٨)  
مُتَوَلِّي القضاء (١٩).

(١) في (أ) و (ب) و (د) و (هـ) وما جاورها .

(٢) في (ج) يختص .

(٣) في (ب) و (ج) و (د) و (هـ) فيها .

(٤) في الأصل [ دعاوي ] .

(٥) في (ب) التهمة .

(٦) في (د) و (هـ) يختص .

(٧) في الأصل [ القضا ] .

(٨) في الأصل [ الدعاوي ] .

(٩) في (ج) الذي .

(١٠) في (أ) و (ب) و (ج) و (د) الوقوف .

(١١) في (د) واوصياء ، و (هـ) واوصياء ، في الأصل [ اوصيا ] .

(١٢) في (ب) و (ج) و (د) و (هـ) اليتامى ، في الأصل [ اليتاما ] .

(١٣) في (د) آخر .

(١٤) في (أ) و (ب) و (د) العرب ، وفي (ج) بعض المغرب .

(١٥) في (هـ) لوالى .

(١٦) في (أ) و (ب) و (د) و (هـ) الحرب .

(١٧) في الأصل [ شي ] .

(١٨) في (د) لما به يامر .

(١٩) في (د) القضاء ، (هـ) قضاء ، في الأصل [ القضا ] .



## فصل<sup>(١)</sup> في عموم الولايات وخصوصها

إذا عُرف هذا فعموم الولايات وخصوصها وما يستفيده المتولي<sup>(٢)</sup> في الولاية<sup>(٣)</sup> يُتَلَقَّى<sup>(٤)</sup> من الألفاظ والأحوال و العرف وليس لذلك<sup>(٥)</sup> حد في<sup>(٦)</sup> الشرع . فقد يدخل في ولاية القضاء<sup>(٧)</sup> في بعض الأزمنة والأمكنة ما يدخل في ولاية الحرب في زمان ومكان آخر وبالعكس ، وكذلك الحسبه،<sup>(٨)</sup> وولاية المال .

وجميع هذه الولايات في الأصل ، ولايات دينية ومناصب شرعية ، فمن عدل في ولاية من هذه الولايات وساسها بعلم وعدل ، وأطاع الله ورسوله بحسب الإمكان، فهو من الأبرار<sup>(٩)</sup> العادلين ، ومن حكم فيها بجهل وظلم،<sup>(١٠)</sup> فهو من الظالمين المعتدين<sup>(١١)</sup> .

قال تعالى: ﴿ إِنَّ الْأَبْرَارَ لَفِي نَعِيمٍ وَإِنَّ الْفُجَّارَ لَفِي جَحِيمٍ ﴾<sup>(١٢)</sup> .

(١) في (هـ) فصل [ ساقطة ] .

(٢) في (د) المولى .

(٣) في (أ) و (ب) و (ج) و (د) و (هـ) بالولاية .

(٤) في (ج) متلقى .

(٥) في (هـ) كذلك .

(٦) في (هـ) لي . .

(٧) في الأصل [ القضا ] .

(٨) في (هـ) الحشيه .

(٩) في (ب) الأمرا ، وفي (ج) الامراء .

(١٠) في (د) او ظلم .

(١١) في الأصل [ و ] .

(١٢) من سورة الانفطار ، الآيتان (١٢ - ١٣) .

فقد خان الله ورسوله وجماعة المؤمنين»<sup>(١)</sup> .

والغالب أنه لا يوجد الكامل في ذلك ، فيجب تحري<sup>(٢)</sup> خير الخيرين، [٢١٥/أ] ودفْع شر الشرين .

وقد كان الصحابة رضى الله عنهم يفرحون بانتصار<sup>(٣)</sup> الروم والنصارى على الجوس عبّاد النار، لأن النصارى أقرب إليهم من أولئك<sup>(٤)</sup> . وكان يوسف الصديق عليه السلام نائباً<sup>(٥)</sup> لفرعون مصر وهو وقومه مشركون ، وفَعَلَ من الخير والعدل ما قَدَرَ عليه، ودعاهم إلى الإيمان بحسب الإمكان .

(١) ينظر كتاب الحسبة في الإسلام ، ص (١٤) .

(٢) في الأصل [ لا تحري ] .

(٣) في (هـ) بانظار .

(٤) في (هـ) أولئك .

(٥) في (ج) و (د) نائبا ، في الأصل [ نايبا ] .

وقال تعالى : ﴿ لَسْفَعاً <sup>(١)</sup> بِالنَّاصِيَةِ \* نَاصِيَةٍ كَاذِبَةٍ خَاطِئَةٍ <sup>(٢)</sup> ﴾ <sup>(٣)</sup>

وقال <sup>(٤)</sup> النبي ﷺ : «عليكم بالصدق فإن الصدق يهدي إلى البر وإن البر يهدي إلى الجنة، وإياكم والكذب فإن الكذب يهدي إلى الفجور وإن <sup>(٥)</sup> الفجور يهدي إلى النار» <sup>(٦)</sup>.

ولهذا يجب على كل <sup>(٧)</sup> ولي أمر أن يستعين في ولايته بأهل الصدق والعدل ، أو الأمثل <sup>(٨)</sup> فالأمثل <sup>(٩)</sup> وإن كان فيه كذب وفجور، « فإن الله <sup>(١٠)</sup> يؤيد <sup>(١١)</sup> هذا الدين بالرجل الفاجر » و «بأقوام لا خلاق لهم» <sup>(١٢)</sup>.

قال <sup>(١٣)</sup> عمر <sup>(١٤)</sup> رضي الله عنه : «من قلد رجلاً على عصابة، وهو يجد في تلك العصابة من هو أرضى الله منه <sup>(١٥)</sup>»

(١) في (ج) لسفعا .

(٢) في (د) خاطيه .

(٣) من سورة العلق آية ( ١٥ ، ١٦ ) .

(٤) في (ب) و (ج) قال .

(٥) في (ب) و (ج) وإن [ساقطة] .

(٦) رواه البخاري برقم ( ٦٠٩٤ ) ، و رواه مسلم برقم ( ٢٦٠٧ ) .

(٧) في (أ) من غير [كل] .

(٨) في (ب) فالأمثل . في (ج) والأمثل .

(٩) في (هـ) والأمثل .

(١٠) في (ج) فالله .

(١١) في (د) يؤيد ، في الأصل [يؤيد] .

(١٢) طرف من حديث رواه البخاري برقم ( ٣٠٦٢ ) ، و رواه مسلم برقم ( ١١١ ) .

(١٣) في (ب) وقال :

(١٤) في (هـ) بن الخطاب [ساقطة] .

(١٥) في (ج) أرضى منه الله .



ومدار الولايات كلها على الصدق في<sup>(١)</sup> الإخبار والعدل في الإنشاء<sup>(٢)</sup> ، وهما قرينان في كتاب الله وسنة رسوله ﷺ<sup>(٣)</sup> .

وقال<sup>(٤)</sup> تعالى: ﴿ وَتَمَّتْ كَلِمَتُ رَبِّكَ صِدْقًا وَعَدْلًا ﴾<sup>(٥)</sup> .

وقال النبي ﷺ<sup>(٦)</sup> لما ذكر الأمرا<sup>(٧)</sup> [٢١٤/ب] الظلمة : ((من صدقهم بكذبهم وأعانهم على ظلمهم فليس مني ولست منه، ولا يرد على الحوض،<sup>(٨)</sup> ومن لم يصدقهم بكذبهم ولم يعنهم على ظلمهم فهو مني وأنا منه وسيرد على الحوض))<sup>(٩)</sup> .

وقال<sup>(١٠)</sup> تعالى: ﴿ هَلْ أُنَبِّئُكُمْ عَلَىٰ مَن تَنَزَّلُ الشَّيَاطِينُ ؟ تَنَزَّلُ عَلَىٰ كُلِّ أَفَّاكٍ أَثِيمٍ ﴾<sup>(١١)</sup> .

فالأفك: الكاذب،<sup>(١٢)</sup> والأثيم: الظالم الفاجر<sup>(١٣)</sup> .

- (١) في (هـ) في [ساقطة] .
- (٢) في (د) الانسا، في الاصل [الانشاء] .
- (٣) في (أ) و (ج) و (د) و (هـ) صلى الله عليه وسلم [ساقطة] .
- (٤) في (أ) و (ب) و (ج) و (د) قال ، و (هـ) قال في الاخبار .
- (٥) في (ب) و (ج) كلمة ، في الأصل [كلمات] .
- (٦) من سورة الأنعام آية (١١٥) .
- (٧) في (ج) النبي [ساقطة] .
- (٨) في (ب) أمر . و (ج) الأمراء ، و (د) الامراء .
- (٩) في (أ) و (ب) و (ج) و (د) و (هـ) ومن لم يصدقهم بكذبهم ولم يعنهم على ظلمهم فهو مني وأنا منه وسيرد على الحوض .
- (١٠) رواه الترمذي برقم (٢٢٥٩) .
- (١١) في (ج) وقال الله .
- (١٢) من سورة الشعراء آية (٢٢١ ، ٢٢٢) .
- (١٣) في (هـ) فالأفك الكذاب .
- (١٤) في (هـ) الفاجر الظالم .

وهذا واجب على كل مسلم قادر، وهو فرض كفاية، ويصير فرض عين على<sup>(١)</sup> القادر الذي لم يقم به غيره من ذوي الولاية والسلطان، [٢١٤/أ] فعليهم<sup>(٢)</sup> من الوجوب ما ليس على غيرهم . فإن مناط الوجوب هو القدرة، فيجب على القادر ما لا يجب على العاجز.

قال تعالى: ﴿ فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ ﴾<sup>(٣)</sup> .

وقال النبي صلى الله عليه وسلم: « إذا أمرتكم بأمر فأتوا منه ما استطعتم »<sup>(٤)</sup> .

وجميع الولايات الإسلامية مقصودها الأمر بالمعروف والنهي عن المنكر. لكن<sup>(٥)</sup> من المتولين<sup>(٦)</sup> من تكون منزلته<sup>(٧)</sup> الشاهد المؤتمن والمطلوب منه الصدق، مثل صاحب الديوان الذي وظيفته<sup>(٨)</sup> أن يكتب المستخرج المصروف، والنقيب والعريف الذي وظيفته<sup>(٩)</sup> إخبار ولي الأمر بالأحوال . ومنهم من يكون بمنزلة الأمر<sup>(١٠)</sup> المطاع والمطلوب منه العدل، مثل الأمير والحاكم والمحتسب .

(١) في الأصل [علي].

(٢) في (ب) فعليهم [ساقطة].

(٣) من سورة التغابن آية ١٦ .

(٤) رواه البخاري برقم (٧٢٨٨) ، و رواه مسلم (١٣٣٧) .

(٥) في (هـ) لكن [ساقطة] .

(٦) في (ب) من المتولي .

(٧) في (أ) و (ب) و (ج) و (د) و (هـ) من يكون بمنزلة .

(٨) في الأصل [ وظيفته ] .

(٩) في الأصل [ وظيفته ] .

(١٠) في (أ) و (ب) و (د) فراغ، والظاهر أنه الأمر، والله أعلم، و (هـ) الأمر [ساقطة] .

وقوله <sup>(١)</sup> ﷺ «القضاء ثلاثة» <sup>(٢)</sup> ، <sup>(٣)</sup> .

وقوله «من ولي القضاء <sup>(٤)</sup> فقد ذبح بغير سكين» <sup>(٥)</sup> .

وقوله ﷺ ((المقسطون عند الله على منابر من نور عن <sup>(٦)</sup> يمين الرحمن - وكلتا يديه يمين الذين يعدلون في حكمهم وأهليهم <sup>(٧)</sup> وما ولوا <sup>(٨)</sup>)) <sup>(٩)</sup> .

والمقصود أن الحكم بين الناس في النوع الذي لا يتوقف على <sup>(١٠)</sup> الدعوى <sup>(١١)</sup> هو المعروف بولاية الحسبة. وقاعدته وأصله هو الأمر بالمعروف والنهي عن المنكر الذي بعث الله به رسوله، <sup>(١٢)</sup> وأنزل به كتابه، <sup>(١٣)</sup> ووصف به <sup>(١٤)</sup> هذه الأمة وفضلها [لأجله] <sup>(١٥)</sup> على سائر <sup>(١٦)</sup> الأمم التي أخرجت للناس .

(١) في (ج) وقول النبي .

(٢) في (ب) و (ج) و (د) ثلاثة .

(٣) رواه أبو داود برقم ( ٣٥٧٣ ) ، وابن ماجه برقم (٢٣١٥) . وصححه الألباني .

(٤) في (د) و (هـ) القضاء .

(٥) رواه أبو داود برقم (٣٥٧١ ، ٣٥٧٢ ) ، والترمذي ( ١٣٢٥ ) ، وابن ماجه ( ٢٣٠٨ ) ، وحسنه الألباني .

(٦) في (ب) و (ج) عن [ساقطة] .

(٧) في (هـ) وأهليهم [ ساقطة ] .

(٨) في (ب) وما ولو .

(٩) رواه مسلم ( ١٨٢٧ ) .

(١٠) في (ب) عليه . و في (ج) لا تتوقف عليه ، في الأصل [ علي ] .

(١١) في الأصل [ الدعوي ] .

(١٢) في (ب) و (هـ) رسله .

(١٣) في (ب) و (ج) و (د) و (هـ) وأنزل به كته .

(١٤) في (هـ) نفسه علي [ زائدة ] .

(١٥) في (أ) و (ج) و (د) و (هـ) لأجله ، في (ب) به .

(١٦) في الأصل [ساير] .



لاستخراجه وتحصيله<sup>(١)</sup> ممن هو عليه تسمى ولايته ولاية الشد،<sup>(٢)</sup> والمتولي لفصل الخصومات وإثبات الحقوق والحكم في الفروج والأنكحة والطلاق والنفقات ، وصحة العقود وبطلانها هو المخصوص باسم الحاكم والقاضي، وإن كان هذا الاسم يتناول كل حاكم بين اثنين وقاض بينهما ، فيدخل أصحاب هذه الولايات<sup>(٣)</sup> جميعهم تحت قوله تعالى: ﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ﴾<sup>(٤)</sup>.

وتحت قوله: ﴿ فَلَا تَخْشَوْا النَّاسَ وَآخِشُوا النَّاسَ ﴾<sup>(٥)</sup> ولا تشتروا بآياتي ثمناً قليلاً ومن لم يحكم بما أنزل الله<sup>(٦)</sup> فأولئك هم الكافرون<sup>(٧)</sup> ﴿<sup>(٨)</sup> وقوله: ﴿ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ﴾<sup>(٩)</sup> .  
وقوله: ﴿ فَأُولَٰئِكَ هُمُ الفَاسِقُونَ ﴾<sup>(١٠)</sup> .  
وتحت قوله: ﴿ وَأَنْ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ ﴾<sup>(١١)</sup> ﴿<sup>(١٢)</sup>.

(١) في (أ) وتخليصه.

(٢) لاحظ الباحث أن الكتب المطبوعة قد سمت هذه الولاية، ولاية السر ، والظاهر أنها ولاية الشد، وهي أقرب إلى معنى المؤلف.

(٣) في (ب) أصحاب الولايات .

(٤) سورة النساء - الآية (٥٨) .

(٥) في (د) و (هـ) ولا .

(٦) في (ب) و (هـ) واخشوني ، وفي الأصل [واخشون] .

(٧) في (هـ) فأولئك هم الكافرون فأولئك هم الظالمون [ساقطة] .

(٨) من سورة المائدة ، آية (٤٤) .

(٩) من سورة المائدة ، آية (٤٥) .

(١٠) من سورة المائدة ، آية (٤٦) .

(١١) في (ب) أهوائهم ، وفي (ج) أهواهم ، وفي (د) أهواءهم ، في الأصل [أهواهم] .

(١٢) من سورة المائدة ، آية (٤٩) .

## [٢١٢/ب] (١) فصل في الحكم في ما لا يتوقف على الدعوى

هذا (٢) كله في الحكم بين الناس في الدعوى، (٣) وأما الحكم بينهم فيما لا يتوقف على (٤) الدعوى (٥) فهو المسمى بالحسبة، والمتولي له والي الحسبة.

وقد جرت [٢١٣/أ] العادة بإفراد (٦) هذا النوع بولاية خاصة، كما أفردت (٧) ولاية (٨) المظالم بولاية خاصة، والمتولي لها (٩) يسمى (١٠) متولي (١١) المظالم، وولاية المال قبضاً وصرفاً بولاية خاصة، والمتولي لذلك (١٢) يسمى وزيراً وناظرَ البلد، والمتولي لإحصاء (١٣) المال ووجوهه وضبطه (١٤) تسمى (١٥) ولايته (١٦) ولاية استيفاء، (١٧) والمتولي

(١) هذا الترقيم حسب صفحات المخطوط "الأصل".

(٢) في (ج) وهذا.

(٣) في (د) الدعوى، و (هـ) دعاوي، في الأصل [الدعوى].

وهذا إشارة إلى ما تقدم من حديث المؤلف عن ولاية القضاء، وأما نوع من أنواع الحكم بين الناس.

(٤) في (هـ) عليه.

(٥) في الأصل [الدعوى].

(٦) في (هـ) باقرار.

(٧) في (هـ) آقرت.

(٨) في (د) ولا، وهو خطأ ولعله سقط من النسخ.

(٩) في (أ) له.

(١٠) في (هـ) متولي المظالم، وولاية المال قبضاً وصرفاً بولاية خاصة، والمتولي لذلك يسمى [ساقطة].

(١١) في (أ) و (ب) و (ج) و (د) والي.

(١٢) في (د) كذلك.

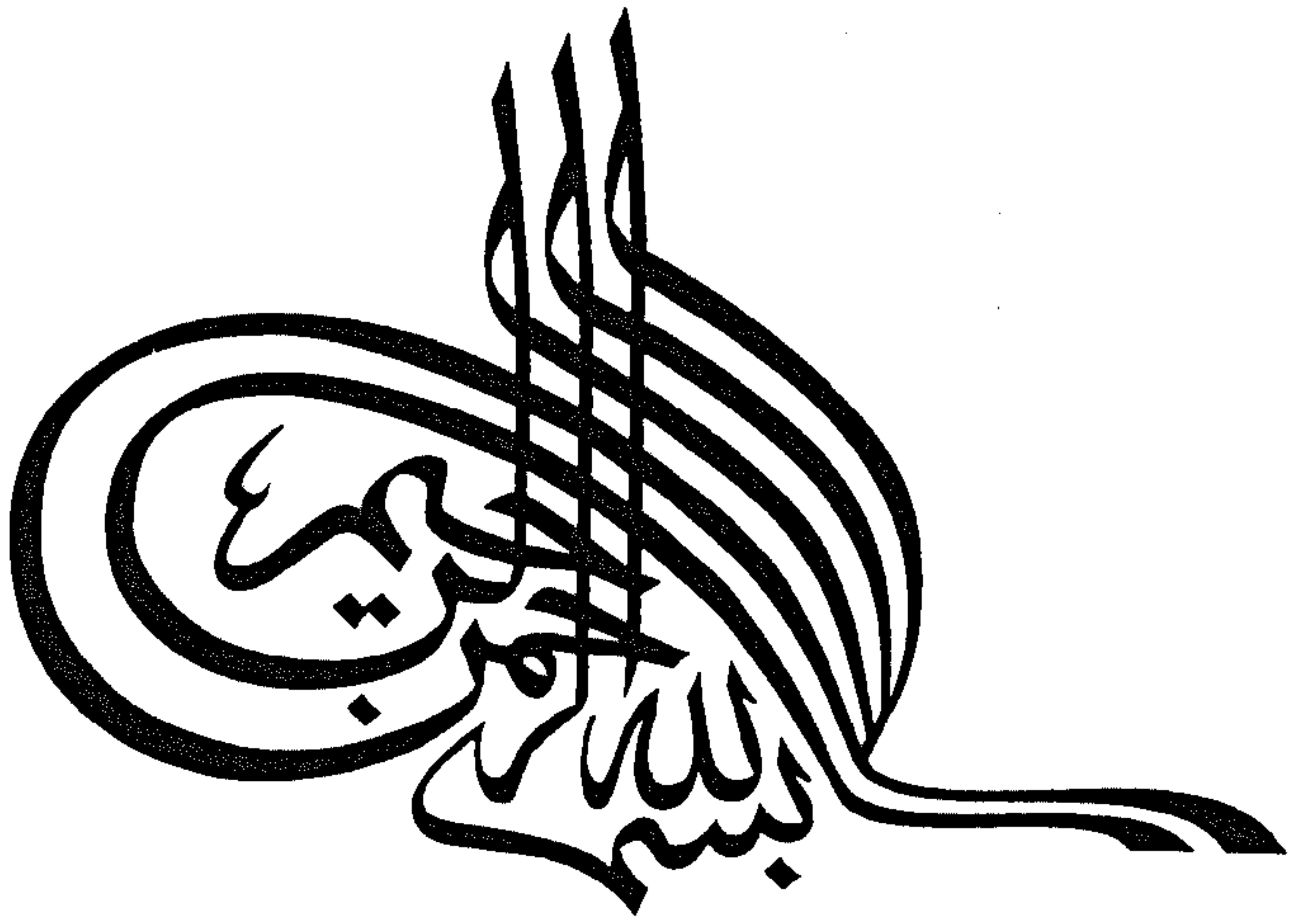
(١٣) في (ب) و (د) لإحصاء، وفي الأصل [إحصاء].

(١٤) في (هـ) وضبط.

(١٥) في (هـ) يسمى.

(١٦) في (هـ) ولاية استيفاء، والمتولي لاستخراجه وتحصيله ممن هو عليه، تسمى ولايته [ساقطة].

(١٧) في (ب) و (ج) و (د) استيفاء، وفي الأصل [استيفاء].





جامعة ويلز - لا مبيتر

قسم دراسات الأديان

# الطرق الحُكْمِيَّة في السياسة الشرعية

قسم الحسبة

للإمام العلامة

شمس الدين أبي عبد الله محمد بن أبي بكر

ابن قيم الجوزية

٥٦٩١ هـ - ٥٧٥١ هـ

الجزء الثاني

PART TWO

دراسة وتحقيق

عبد الحميد بن خليفة الشايجي

١٤٢٢ هـ - ٢٠٠١ م