

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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﴿ مَا قَرَطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ثُمَّ إِلَىٰ رَبِّهِمْ يُحْشَرُونَ ﴾

الأنعام : 38

﴿ ma farratna fee alkitabī min shay-in thumma
ila rabbihim yuhsharoon ﴾

Al-An`m : 38

﴿ *We have not neglected in the Register a thing,
then unto their God they will be gathered* ﴾

Al-An`m : 38

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Editorial

With the help of God and His success comes out the twelfth issue of the Journal of Taseel of Science, which includes many topics in different disciplines, we ask God Almighty to satisfy the readers and find in this issue their needs.

The first topic is (Ekhtiyarat Abi Hassan Taher bin Abdul Moneim Fii Osoul AL Qiraa't AL Thamani «Al Tadhkira Fii AL Qiraa't AL Thamani»), written by Dr. Shuaib Idris Emma Almandlawi, who presented his research from the ideas of Al Tadhkira book, and he gave a brief introduction of the life of Imam Ibn Ghalboon, adding his choices and stated his tests in the eight readings, also he stood on the aims of that tests and directed it possibly as god simplified for him.

The second topic on (takfir); atonement , its causes, conditions and prohibitions, written by Dr. Ahmad Muhammad Al-Zubair Al-Hassan, in which the researcher recites the Quranic verses and the prophetic Hadiths related to the subject.

The third topic by Professor Dr. Muhammad Hasballah. The impact of fundamentalists' disagreement on the evidence of what is forbidden, on the disagreement of jurists in juristic branches.

The fourth topic: The responsibility of the management of torturous (comparative study) written by Dr. Ahmed Al-Zain Ahmad Hamed The research dealt with the personal responsibility of the public employee when a malicious act was issued outside the framework of public office whether it was intended to achieve a personal interest or was a deliberate act of the researcher dealt with the responsibility of the Department of Justice and Their cases as required by law.

The fifth topic is the purposes of Sharia in the preservation of public money, written by Dr. Ali Muhammad Ali Al-Sadiq, in which he clarifies the principles and conditions that must be provided to those who pay this money and the rules of disbursing this public money, and clear penalties for those who infringe on this public money. That is since the state of the Prophet peace be upon him.

The sixth topic was entitled scientific miracle of the Holy Quran and the Sunnah and what was raised around it, explaining the views of the influential and opponents of scientific miracles, as the researcher explained the importance of scientific miracle and controls developed by scientists to

search, and the researcher where some aspects of the scientific miracle of the Holy Quran.

The seven topic on the example of the Caliph Umar may Allah be pleased with him (study and analysis), explaining the ability of the faithful Omar, may Allah be pleased with him ability to send the example and strike in its places.

The eighth topic of contemporary studies on DNA and its use in the (hudood) crimes , Dr. Sheikh Hamidi Al-Faki and Dr. Moez Haroon Mohamed, in which the researchers discussed the views of the various scientific and scientific scholars.

The ninth topic by Dr. Mohammed Ismail, the views of scientists in the rule of hair transplant and a link explaining the legitimacy of the process of plastic surgery and clarify the statements of scientists in this and the views of doctors and the researcher touched on the expected damage to the individual and society.

Ekhtiyarat Abi Hassan Taher bin Abdul Moneim Fii Osoul AL Qiraa't AL Thamani (AL Tadhkira Fii AL Qiraa't AL Thamani)

Dr. Shuaib Idris Emma Almandlawi ¹

Abstract

The researcher gives a brief introduction of the life of Imam Ibn Ghalboon, and then added the statement of his choices and his growing up, then the researcher stated the eight readings and their origin and the origins of his book in respect to the eight readings, followed by the order of the chapters and sections according to what recognized by the scholars of readings, the researcher's recommendations and results presented in the conclusion of the research.

Introduction

Praise be to Allaah, who breaks the grain apart, prayer and peace be upon his prophet and his companions who sacrifice on the sake of Allah(swt). Allah says in the Holy (We have, without doubt, sent down the Message; and We will assuredly guard it [from corruption].). AL Higr 9
Therefore, I hope to be one of them and joining the people of the Koran, and those who are devoted to it.

The most science that deserves to be cross someone's mind is the science that relates to the Holy Quran, Allah says (This is the Book; in it is guidance sure, without doubt, to those who fear Allah;) AL Baqara².

This study is focusing on a famous book of readings in the eight readings, it is (Kitab AL Tadhkira) and the most famous writer of this art, Abul Hassan Taher bin Abdel Moneim ibn Ghalbon, he and his father were the most prominent in readings (Qira'at), and he was being taught by his father, Makki bin Abi Talib, and the student of the son of Ghalbon Othman bin Said al-Dani, so I have chosen this book of this science to focus on his choices in the readings that was investigated in his book mentioned above. This study includes: The Introduction,

Reasons for choosing the subject, objectives, importance, problem, questions, methodology and the limits of the study.

- **The first topic:** Biography of Ibn Ghalbon.
- **The second topic:** His choices and their origin.

1- Assistant Professor, Department of Readings, University of the Holy Quran and Taseel of science..

2- Magamoo al fatawee-Taymiyyah.

- **The third topic:** the choices of Ibn Ghalbon in AL Osool .
- **The conclusion:** The conclusions and recommendations.

Reasons for choosing this topic:

As soon as you skim through (Kitab ALTadhkira) which was written by Ibn Ghalbon, immediately you know and recognize that this is the distinguished Imam of the readings (Qiraa't) because he was the student who was taught by the well known Imam Othman bin Said al-Dani, and people have received all of what he wrote with consent and acceptance; to recognize the choices of this Imam in the field of readings and its implications through his book -ALTadhkira- it is worthy of study and exploration of what contained inside, and is still the field of research in the science of readings, and this in itself motivated to search in this area and to reveal and pick up its pearls and jewelers.

Objectives of the study :

The purpose of this study is to follow the choices of Imam Abi Hassan Taher bin Abdul Moneim bin Ghalbon through his book (ALTadhkira) in the Eight Readings, and to investigate the implications of those choices.

The importance of the study :

This study directs the choices of this Imam, and shows the acceptance and the satisfaction, people do read all what was chosen by Ibn Ghalbon today, the complexity of this study sometimes compared between the choice of Ibn Ghalbon and other scholars.

The questions of the study:

The questions of this study arise from the following:

1. Are all the attributions of the ten well-known readers accepted?
2. Are all the choices that were mentioned by Ibn Ghalbon today acceptable or not?
3. Is all that reached us in the stomach of famous books read today or that some read it and the other?
4. What are the criteria for selecting the former imams?
5. What are the reasons and motives for choosing when imams ?.
6. What are the reasons that made what inside some of the books a return is not read today.

Study Approach :

Follow the researcher to study this subject inductive and descriptive method; by tracking and extracting the choices of this imam from its mazanha,

and analyze and study a scientific study according to what is followed in scientific research.

The limits of the study :

In terms of choice, the researcher depends on what the Imam Ibn Ghalebun chooses , but in terms of practical application, this study is applied to (Kitab AL Tadhkira) in the eight readings of Imam Ibn Ghalboun in the fundamentals of the readings that what his book has included .

Terms of study :

- Letter: Each word has a difference way of reading among readers.
- Fundamentals: they are the steady whole rules as the disagreement among the readers about the two Hamzat in a word.
- Choice: Selection of a certain aspect of reading.

Previous studies :

Some Imams stated previous studies in the selection of readings as the study written by Dr. Mustafa Al-Sulaimi entitled (AL Ekhtiyarat wa AL Enfiradatb ALWaridah fii Kitab Ghayat AL Nihaya Li Ibn al-Jazri), as well as what was written by Dr. Babiker Mohammed Tom, entitled (Ekhtiyarat AL Jubirimin khilal Kitabihi Kanz AL Ma'ani), and this study is based on what Ibn Ghalebun has chosen in his book (AL Tadhkira) in the eight readings, the researcher didn't find any study submitted in this topic.

The first topic : Who is Ibn Ghalbon

His name is Tahir bin Abdul Moneim bin Ubaidullah bin Ghalbon, his nick name was Abu AL Hassana, and he was one of the distinguished scholars of readings.¹

Ibn Ghalboun grew up in scholars scientific life because of the existence of the scientific atmosphere at that time, his father was one of the well-known scholars of reading, in which he wrote useful classifications, his son Ibn Ghalboun received the science at the beginning of his scientific life from his father, and then continued his scientific career.

Ibn Ghalboun was born in Halab and went to look for knowledge every were, then he went to Egypt with his father and lived there, as well he went to AL Bisra, he mentioned this in his books. Al-Dhahabi mentioned that Ibn Ghaleboun had gone to Baghdad he said: «Ibn Ghalboun went to Baghdad and met Abu Bakr al-Qai'tei there.² «Ibn Ghalboun learned from famous scholars such as his father, al-Husayn Ibn Khalawiyah, 'Atiq ibn Masha'allah,'

1- Ghayat AL Nihaya fii Tabagat AL Qura'a- Dar AL Kutub AL Ilmiya Beirut 1982.

2- Marifat AL Qura'a AL Kibar ala AL Tabaqat wa AL Asa'ar Beirut Lebanon 1997.

Abd Allah ibn al-Mubarak. And a number of scholars learned from him for example Al Dani Othman Ibn Saeed, Abu AL Fadle Abdul Rahman AL Razi, Abu Adu Allahi Mohammed Ibn Ahmad AL Guzwini and others¹.

A number of scholars appreciated what he had done for example his student AL Dani Othman ibn Saeed who said about him: «We did not see any one at that time like him, in his understanding, knowledge and say the truth² we wrote about him a lot.» Ibn al-Jazri said: «He was a good scholar, trusted and his arguments are always the best.»³.

AL Dhahabi described him in his book(AL Eber) he said: «Sheikh of the Egyptian Diyars in the readings»⁴

Ibn Ghalboun died in (399) after a scientific life full of science and knowledge at an old age, he left huge scientific wealth⁵.

The second topic: Definition of the term choice (AL Ekhtiyar) and its origin.

The word choice in the language revolves around the presentation of one object over the other, and the choice means the selection of something⁶. Jaber bin Abdullah said: «The Messenger of Allah - may Allah bless him and grant him peace - teaches us Istikkara, as he teaches us a chapter from the Holy Quran.»⁷.

The meaning of the choice in respect to scientists' opinion which is not far from the linguistic meaning, which means that the reader choses one aspect of reading either it is common and spread or the reader thinks that it is the best of all styles of reading. Imam Makki bin Abi Talib said: «And those who chose a type of reading, they did so because they follow a certain group of others, and each one chose what he read and narrated as an aspect of choice ...»⁸. In the same sense, Imam Nafie said: «I looked at what two of them agreed upon and then I took, until I wrote this aspect of reading in these letters.»

Many of the Imams confronted to the selectio(AL Ekhtiyar), some of them gained success because Allah helped them, but the selections of others remained in the pages of books; and no one has gone through them.

1- Ghayat al Nihaya Ibn AL Jurzi 339 /1.

2- Marifat al Qura'a al Kibar Lil Dhahabi p.207.

3- Ghayat al Nihaya Ibn AL Jurzi 339/ 1.

4- AL Ibar fii Khabar mn Ghabar AL Hafidh AL Dhahabi Beirut 195/ 2.

5- Marifat AL Qura'a AL Kibar wa AL Ibar fii Khabar mn Ghabar.

6- AL Ibar fii Khabar mn Ghabar.

7- AL Sihah Taj AL Lughah wa Taj AL Arabia.

8- AL Ibana an Ma'ani AL Qira'at.Dar Nahdat Misr p.89.

The choice is only of those who are qualified and competent, it should not go beyond the limits of the chosen according to Imams, and it should not be against the congregation of the nation.

The choice has been attributed to Imams who are earlier times of peace such as Mujahid ibn Jabr, Talha bin Masbir, Qatada bin Da'ama and others. The third topic: the choices of Ibn Ghalboun in the Principles.

The first question is the separation between the two chapters (Surah). Ibn Ghalebun said: «I also choose to follow Worsh, Ibn Amer and Abu Amr in five places, in which the Sura is connected with the next, for example Surat ALAnfal with Bra'a and AL Waqia with AL Hadeed.

The second issue:

The difference in (Mad AL Meem) at the beginning of Surat Aal Emran according to Warsh in particular, Ibn Ghalbon said : «Both of the reading styles are good, but I used both of them»¹.

The third issue:

Contracting (Edgham) The letter Waw into what comes next or bringing it out, this can be presented in the verse (When they crossed the river,- He and the faithful ones with him) AL Baqara 249. Ibn Gholboon said (what is true is the contraction (Edgham) and this was narrated by Ibn Omer). Some of the narrators did not agree about this point, some of them preferred the contraction of the letter Waw, others thought that it should be brought out. Mujahid is one of them he preferred bringing out the letter Waw, but Imam AL Shatibi did not agree with Mujahid

The fourth issue:

Contracting (Edgham) the letter Al-Hah into the letter Ayn: this can be presented in the verse «(Only he who is saved far from the Fire) ([Al-Imran: 185]. Ibn Ghalboun said: «Yazidi narrated that there should be a connection of the letter Ha'a into it the letter Ayn, or bringing it out»².

The researcher believes that both of contracting the letter Ha'a into the letter Ayn or bringing it out is correct.

The fifth issue:

Contracting (Edgham) the letter Al-Hah into the letter Ayn « this can be presented in the verse «(Christ Jesus the son of Mary) ([Al-Nisa'a: 171]. And the verse (In that case there is no blame on either of them if they re-unite)» [Al-Baqarah: 230] Ibn Ghalebun said: AL Gasim bin Adul Warith, an Ibi Omer an Al-Yazidi, an Abi Amro narrated that the contraction is in

1- AL Tadhkira – Ibn Gholboon 71/ 1.

2- Hirz Val Amani – AL Shatibi (129- 130).

the verse (Christ Jesus the son of Mary) ([Al-Nisa'a: 171]. And the verse (In that case there is no blame on either of them if they re-unite) « [Al-Baqarah: 230] and others narrated that there were a bringing out of the letter Waw.

In the opinion of the researcher that the choice of Ibn Ghalbon in this matter is true.

The two faces were proved by the readers for this letter in al- Soudi from (tareg); the way of Al-Shatabiyya, and from Al-Duri and Al-Soudi from (tareg); way of Taybeh. Ibn Ghalbon chose (al-edgham);insertion, diphthongize .

But, (alja'mhor), the group of the scholars chose the manifestation, it was reported by Al-Duri in more than one hundred of the ways of his (126), and by Al-Soudi in more than twenty ways of his (28)¹.

The twelfth question is: (edgham); insertion diphthongize, of Al-Ta'i in Al-Tha', and its manifestation from His saying: «(وَأَتُوا الزَّكَاةَ)» And give out al-zka't «[Al-Baqarah: 83] and He said: (التَّوْرَةَ); taura't, [al-jumu'ah: 5] it differed from them in them ... and it is taken to show in both places the light of the unclosing with the lightness of the (alif); before it»².

In general, these two letters differed between insertion and manifestation in the (tareg);way of Al-Duri and Al-Soudi. However, in these two letters the selection of Ibn Habash, is (al-edgham);insertion. and the choice of the son of Mujahid, followed by Ibn Ghalbon, is manifestation. The selection of Ibn Ghalbon agrees with the most readers and methods, it was (111) from (tareg); way of Al-Duri and the in (23) way to al- Soudi.

The thirteenth question: (edgham); insertion of al-Ta'a and its representation, Ibn Ghalbon said there is difference in it, because Ibn Mojahed took manifestation, while Dajuni took (al-edgham);insertion³. The general people of Baghdad took these two letters in manifestation, , and took Ibn Sha'tebi to al-Soudi⁴.

In the opinion of the researcher that the right to be for manifestation, due to the large of those who took it, contrary to the (edgham); insertion.

The fourteenth question: Mediation and extended the letter of extension and softness that comes after the clipping hamza Ibn Ghalboun said: «... and that Na'fee, may God have mercy on him, did not see the (eshba'); satisfaction of the extended letters of the extension which are after Hamza, like ; (أدم) A'dam

1- Ekhtilaf wegoh al-nashr, by Bashir Ahmed Ahmed, published by Dar Al Sahaba - Tanta - I / 1, 2009, p. 192.

2- Al-tazkera' Ibn Ghalbon 1/ 85.

3- Al-nashr in the ten readings of Ibn al-Jazari, 1/ 232.

4- Al-Bayan al-Dani, p. 177.

and others.»^C

This type of extension is known as the extension of the (البدل) ; appositive, because the letter of extension is often changed from Hamza , and to the readers there are three degrees shortness, mediation, saturation, and these faces from the Warsh of Al-azrag (tareg), way Imam Shati said:

وما بعد همز ثابت أو مغير فقصر وقد يروى لورش مطولا
 ووسطه قوم كآمن هؤلاء آلهة أتى للإيمان مثلا¹

That means: After a constant (hamza)or vowel there is shortness and in Warsh it is length.

Ibn al-Jazri said:

وازرق إن بعد همز حرف مد
 فالأن أتوا إي ءآمنتهم رأى مد له واقصر ووسط كئى

That means: Azrag elongate , shortest, and meditate , after (hamza) letter, as in (نأى) (na'a); far

Ibn Ghalboun chose the shortness of apposition and denied the increase in its duration on the amount of shortness and invalidated it, , but the increase was received from imams such as Hzali and Aldani and Ahwazi and others.

In the opinion of the researcher that the right with the(jamhoor al owlma); majority of scientists who extended the character of the (ma'd) in that the increase on the minors; for its sophistication and frequency, and no face to deny it, as Ibn al-Jazri, contrary to what Ibn Ghalbon went to choose.

The fifteenth question: The extension and the lack of it when the first of the two hamzas is dropped in ; (جاء أمرنا); our order came , or when eases and makes it in between like;(هؤلاء إن); if these are.

Ibn Ghalbun said in the first: «Both sides are good, but I have read and I take it.» He said in the second, «Both sides are good, but I have not read and I take it».

Imam Al-Shatby permitted the two sides in this matter and did not indicate the cause of weighting he said:

وان حرف مد قبل همز مغير يجز قصره والمد مازال أعدلا

That means: if elongation letter comes before (hamza) ,it can be shortened also, it can be extended, and that is still fair.

Imam Ibn al-Jazri, considered presenting the face of the extension if it had a residual effect, and this should be done in the face of the facilitation and ease. He said in Taybat al-nashr:

والمد أولى إن تغير السبب وبقي الأثر أو فاقصر أحب

In the opinion of the researcher that what Ibn al-Jazri went to is the

1- The ticket to Ibn Ghalboun p.

aspects of the matter and what Ibn Ghalbon, went to the remaining of hamza, because it increases strength for the reason, and dropping it weakening the reason.

The sixteenth question: easing (الهمزة); hamza or substituting it (ياء) as in (مستهزءون); the time of the, (waqf); pause. It is permissible in the word, (مستهزءون); mockers three aspects: First: ease the (همزة), hamza in between, which is the doctrine of Sebwayeh, and the second face: replacing the hamza (ياء), ya' pure, which went to al-A'khfash, and the third: the deletion of hamza with the transfer of movement to (الزي); Zai Imam Shati said :

ابدلا والاحفش بعد الكسر ذا الضم
حكى فيهما كاليا وكالواو اعضلا بياء وعنه الواو عكسه

(The ticket to Ibn Ghalbon 1122/. Shatbyya House, House no. (208) Good publication of Ibn al-Jazri, House No. (174)

The ticket to Ibn Ghalboun

Ghaith Al - Nafa in the seven readings of the investigator on Nuri Sfaxi by Gamal al - Din Muhammad Sharaf, edition of Dar Al - Sahaba in Tanta, in 2004. P

Ibn Ghalboun chose the face of the ease and ruled out the substitution..

The researcher believes that both faces ease and substitution - in these words and the like is true and frequent receiving the acceptance .

The seventeenth question: Achieving the (الهمزة); hamza or moving its movement at the end of the pause, such as; (الأرض); land, and the achievement of hamza or ease it if they are mediumas in; (بأيكم); byany , Ibn Ghalbon: «... and that they good¹.»

Tibi said indicating this:

وقفا على مقرون ال لجمزة² ومنع التحقيق دون سكتة

In the opinion of the researcher not to read Hamza's and stood on without silence for violating the general consensus readers.

Al - Fath Al - Rahmani Explanation of the meanings of the meanings, Bhakbh Abdul Razek Ali Ibrahim, edition of Dar Dia - Tanta, I / 1, in 2003.

As for the mediating, (همزة); hamzah, it is permissible to work on the two sides: And what Ibn Ghalebone has said is contrary to as I said above.

1- The measure of wishes and congratulations, House (245- 246).

2- The ticket to Ibn Ghalboun.(Published in the ten readings, to Shams al-Din Abi al-Khair Ibn al-Jazri, Mohammed bin Mohammed bin Yusuf, investigation: Ali Mohammed al-Dhnaa, publishing the largest printing press, 1 /487).

The eighteenth question: Replacement and facilitation and ease in,(همزة); hamza .

Ibn Ghalboun said: «... Hasham and Hamzah are replacing these,(همزات) Hamzat - in the pause,(Waqf) - the letters of which the movement of what preceded it and the first saying is the best.»¹

The book of the holy Quran went to portray (الهمزة); hamza as if it was moving in the form of movement before it, and came out of this section some words from that word (الملا), in chapter (المؤمنون); the believer and all that In chapter (النمل);ants.²

The author of al-dhman said:

في النمل عن كل ولفظ تفتوا

ومع أولى المؤمنين الملوأ

On this word, it is permissible to do five things:

- 1- Replace it (alif),a' on the analogy measurement.
- 2- Replacing it consonant,(wa'w),o with pure silence.
- 3- Replace it ,(wa'w),o with eshmam.
- 4- Replace it,(wa'w),o with al-roa'm.
- 5- Ease it with al-roa'm.

Ibn Ghalboun tended to choose the face of the substitution, and the researcher believes that all five faces are correct, taken and read.

(The ticket to Ibn Ghalbon 1 / 162163-.

Al-Hieran Guide to the Supplier of Hazem, by Abu Ishaq Ibrahim bin Ahmed Sulaiman Al-Marghani Al-Tounsi Al-Malki, by Zakaria Omairat, published by Dar Al-Kuttab Al-Ulmia-Beirut-T / 2, 2012, p.

The nineteenth question: the pause with (الهمز); hama or (الياء); ya' in His saying of the word the: (تبوءا) . Ibn Ghalboun said: «As for the hadeeth narrated by : Ubayd Allah from his father and all from Hobayra, he said that he paused, (تبويأ) with jaa';(يا)³.

The Persian said: Abu Taher told me: I asked Abu al-Abbas al-Ashnani about the pause (waqf), and he said: «Narrated by Habira, did not know it and denied it, and told me the pause (waqf), is like a link»⁴. Al-Shatby said in support of what al-Dani said and what Ibn Ghalboun chose:

مع المد قطع السحر حكم تبوءا بيا وقف حفص لم يصح فيحمالا⁵

1- The ticket to Ibn Ghalbon 1 / 162- 163.

2- Al-Hieran Guide to the Supplier of Hazem, by Abu Ishaq Ibrahim bin Ahmed Sulaiman Al-Marghani Al-Tounsi Al-Malki, by Zakaria Omairat, published by Dar Al-Kuttab Al-Ulmia-Beirut-T / 2, 2012, p.

3- The ticket to Ibn Ghalboun, p. 168.

4- Al-Bayan al-Dani, p. 549.

5- Al-Shatibiya, House no. (751)..

In the opinion of the researcher that the choice of Ibn Ghalbon is correct in this matter, it should be taken.

The twentieth question: Returning the deleted,(الف); a' for meeting of two consonant like; (راء القمر) . Ibn Ghalboun said in al-tazkera: «The first face - the finest»).

All the readers agree on the returning,(الف); a' . Ibn Ghalboun explained his choice in which the public agreed with two signs:

- 1- Because not to return ,(الف); a' to the act prejudices by the deletion of its(لام),L and the movement .
- 2- That the readers have taken care of the presence of the(الساكنين); the two consonant .

Like the saying in (راء القمر) which is the choice of the son of Ghalbon.

The twenty-first question: Opening, unclose in[ra']; [r] or between the two words of: (فراق); parting and (مراء); the parting (ذراعا) (سراعا) (طهرا) (ساحران).

Ibn Ghalbon said in all this opening, unclose is good.¹

The ancient scholars used (al-ft'h); opening, unclose to emphatic the pronunciation the letter (ra')..

After knowing the terminology of Ibn Ghalboun in lengthening and amplification we refer to the four questions above:

- 1- The first issue: the word (فراق) parting and so on.

Warsh read the way of al-azrag in lighting the letter (ra').. if it is opened or clipped after the original. Imam Shatibi said:

وما حرف الاستعلاء بعد فراؤه لكلهم الترخيم فيها تذلا

- 2- The second issue: the word (سراعا), rush this word falls under the rule of (al-targeg); attenuate for al-Azrag.
- 3- The third issue: the word (مراء)-hypocrite this word falls under the rule of the above one.
- 4- The fourth issue: the words (طهرا)- Ibn Ghulbun went to choose it to exaggerate it, and so recited al-Dani

Introduction to the Origins of Readings by Imam Abu Al-Asba :Abd Al-Aziz Bin Ali Al-Mutahi, by Tawfiq Ahmed Al-Abqari, published by Sheikh Al-Sheikh Heritage Library, 2004 edition, pp. 43 -44 (Al-Shatabiya, House No. 35)

(Published by Ibn al-Jazri, 2/ 73. Jamaj al-Bayan, p. 353). Summarizing the phrases in the sequence of references, by Imam Abi Hassan bin Khalaf

- 1- The ticket to Ibn Ghalbon, p: 223- 224 (Published in the ten readings of Ibn al-Jazri 2/ 68).

bin Abdullah bin Balima, by the investigation of Gamal al-Din Muhammad Sharaf, published Dar al-Sahaba - Tanta - p: 33.

(Al-Bayan al-Dani, p. 353). A summary of the phrases in the sequence of references, by Imam Abi Hasan Ibn Khalaf, p. 33.

Al-Bayan Mosque, p.353.

Conclusion

Praise be to Allah, Who helped me to a accomplished this research.

The best view of Imam Shatibee, where he said:

وبالله حولي واعتصامي وقوتي وما لي إلا ستره متجللا
فيا رب أنت الله حسبي وعدتي عليك اعتمادا ضارعا متوكلا

This means:

And God is around me and my sit-in and my strength , I seek only His protection . O Lord, you are my God, my glory, and my promise to you, My dependence shall be on.

Viewing the choices of Ibn Ghalbon in his book al-tazkira', the researcher concluded his study by the following:

Ibn Ghaleboun`s book is a major source of (qira't); readings today, especially as it was adopted by the scholar Ibn al-Jazri in his book (al-nashr); which is one of the most readable books today.

Ibn Ghalboun has mixed some of the letters of the origin, and put them in the (f'rsh); of the letters, in contradiction to the methodology that has been applied to them, in which the origins of the readings were mentioned first and then the letters were drawn.

Ibn Ghaleboun deposited his book a number of readings, which today are considered as abnormal readings, not used.

Ibn Ghalbun disagreed with the readers sometimes, as he did in preventing the triangulation of the Surah.

(Al-Shatabiya, House no. 9394-)

Finally, the researcher recommends the following:

Researchers should refer to the previous books and study them deeply to extract the treasures of knowledge. Hold comparison between the former writers to have a good opinion and their unique scientific direction.

Stand up with the,(qira't); readings in the previous books to find out the causes of their anomalies and violations of what people today.

Study manuscripts in the field of(qira't); readings and achieve them for the benefit of researchers and students of science.

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Takfeer (Atonement) .. Definition- conditions and Prohibition

Dr. Ahmed Mohammed Zubair Hassan

Abstract

This study aims to know (Takfeer) atonement, its causes, conditions, and Prohibition, and to address the complexities that characterized some books of (ageida) faith, that talk about this issue . Key issues have been offered about (Takfeer) atonement, its causes, conditions, and Prohibition , based on the Quran and Sunnah, and aided by scholars opinions. The research followed the inductive analytical method that fits this kind of studies, it has cared for the collection of Quranic verses and hadith related to the subject of study. The study reached to important findings , that contribute in atonement causes, conditions Prohibition, and contribute to the establishment of curriculum for the development of researches, especially after the intensification of the need for knowledge, studies about legitimacy. The study also concluded valuable scientific recommendations.

Introduction

Praise be to Allah, peace and blessings be upon the Messenger of Allah and his family and his companions, companions, and who followed them until the Day of religion. The phenomenon of atonement, which have plagued the Islamic world is one of dilemmas in the collection of the Muslim-line. We must distinguish between public atonement (absolute) and appointed (specific) atonement. Ibn Taymiyyah¹ may Allah have mercy on him says (the atonement has terms and contraindications), for this I wanted to write about the causes conditions, and Prohibition, of (Takfeer) atonement ,so as not any Muslim dare to atonement his Muslim brother².

First: The reasons for choosing the subject and its importance:

1. There are many who engaged in this issue in isolation from legitimate or most controls, especially when they judgment on individuals and communities.
2. Scarcity of research in this topic, whether in the field of atonement controls in general, or causes, or conditions.
3. Ignorance of many Muslims about conditions and contraindications of atonement.

1- Tabagat al hanabella Ibn ragab second volum-1372.

2- Magamoo al fatawee-Taymiyyah.

4. Address some of the deviations in this subject.

Second, previous studies:

Methods of atonement, the causes , conditions and inhibition, in this regard , as I know this research has not been preceded. Except some studies in terms of the interpretation of the verses that talk about atonement, to explain the meaning of words and verses, in addition to that ,there are another studies deal with the subject from other angles, and other dimension.

Third: the methodology

The research followed inductive, analytical method which is based on collecting and analyzing texts, then access to the results.

Fourth: The structure of the research:

The research plan consists of an introduction, five sections, a conclusion, an index of sources and references.

First topic: the definition of atonement

The second topic: control of atonement

The third topic: the causes of atonement

Section IV topic: Terms of atonement

Section V topic: contraindications of atonement

The epilogue, include the following:

First; results

Second: Recommendations

List of references

The first topic

Definition of atonement

First requirement

The linguist cal definition of atonement

Kافر : disbelief : the opposite of faith, believe in Allah and we have rejected the idol¹. The infidel man : ungrateful for the blessed. Kافر: disbelief, also means veil, screen and shield. Labied² said; If you threw a hand in an unbeliever wants the night; because it covers everything, and disbelief denial of grace, which is the antithesis of Thanksgiving³.

1- Lessan al arab –Ibn manthzor –dar sader Beirut-p.234.

2- Tameez al sahaba –Ibn hagar-dar nahata –Egypt-p.675 .

3- Al mosbah al moneer- al rafee- daral kotob- Beirut-p.647.

The second requirement

The idiomatical Definition of Atonement :

Ibn Hazm¹ God`s mercy upon him defines disbelief in acomprehensive words; « in religion: the status of denying something which God exalted has enjoined , and believed in it after the right argument reaching his hear without his tongue².

Sobki³ says : «atonement rule legit caused by the denial of the Godhead, or oneness, or a prophet mission.»

Ibn-Algayem says; «Blasphemy is denying what the apostle was doing, whether it matters that you call it scientific or practical brought by the Prophet Muhammad, peace be upon him.

Sheikh Abdul Rahman al-Saadi⁴ said: « disbelief is the denial of brought by the Prophet, or the denial in part.

The second topic

Posting atonement

The first requirement

The Sunnis and the group of the scholars did not disbelieve disobedience, even if he did a sin, and this is what the consensus of the Sunnis and the group of the scholars say. Imam Saponey⁵ said; «The Sunnis and the group of the scholars do not eject one out of Islam if he acted heinous sin,or major sin which is not polytheism;»

The Almighty says; Because the origin of disbelief is the deliberate denial. God said: (but to explain infidels breaststroke, they wrath of God and having a great punishment) did not disbelieve someone unless there is an evidence from the Quran and Sunnah on his infidels, and if he dies on this state, his fate is to God, if He wishes forgive him, unlike other sects which consider perpetrator disbelief. The Prophet, peace be upon him; warned from that, he said; (any person said to his brother, O faithless he was the one that was, he said,)

Sunnis and the group of scholars differentiate on judgment between absolute fads sin or disbelievers and the on someone who proved his conversion to Islam with certainty-issued by the heresy , they do not judge him unless to show him the truth. (who proven his certainty of Islam do not go away

1- Seyar a`lam al noballa- al zahabee-v.18-p.184- Beirut .

2- Al ahakam fe usol al ahakam –ibn hazm-v.1-p.45 .

3- Al dorar al kamena-ibn hagar-v-3-dar al kotob -Egypt.

4- Al irsnad le marefat al ahakam- makatabat al ma`ref- Riyad .

5- Tabagat al shafeyea – Sobk-v. 4.p.271.

with suspicion)¹ . On this light went our righteous forebears, they did not atonement people ,so when Ali bin Abi Talib, may Allah be pleased with him was asked about the people of Nahrawan whether they disbelief he said they escaped from disbelief..... they are our brothers).

Ibn Taymiyyah may Allah have mercy on him, said :(statements that atone who says it, he may not be informed the right positive words to know to know the truth and, may be with him, and did not prove he has or has not been able to know them, may have suspicious....)

To atone the ignorant and the like may not be until after the establishment of proof against them, the argument should be on the level of understanding until their minds grasp the argument and evidence².

The second requirement

Atonement is legal judgment is not abstract opinion, because it is legitimate issues not mental. It is not pure say, it is the right of God and His Messenger not right for any slaves, to infidel any Muslim . Ibn-Al wazeer³ God mercy upon him said: (the atonement is not purely aural entrance of the mind, that the evidence of infidelity is only acoustically categorically, no conflict in it).

The Third requirement

We should not atonement who is contrary to the Sunnis and group of the scholars of breach, but we judgment him by his violation, or a fad or the committed sin, and this is what has been the way of Sunnis and the group of the scholars. Atonement is forbidden, it is the right of God, as well as His Messenger)

The Fourth requirement:

Iman (faith) is more than seventy branches the uppermost is saying there is no god but Allah and Mohammed is the messenger of Allah, and the lowest is the removal of the harmful objects from the road and modesty is a branch of iman) . As well disbelief has multiple and varying levels and degrees, it is opposite of faith. Ibn al-Qayyim God`s mercy upon him, explains that : (disbelief has a base and branches ...).

1- Dr Al fetan-shekh baker Abi zeid – second. Edition - dar alesma.

2- Magamoo al fatawee-Taymiyyah-v-23-p.326-Cairo.

3- Al-badr al ta`lee –al shawwkabt-v.2-p.81 Beirut .

It is our duty to status texts in their positions and interpret them as intended, by established scientists workers.

The Fifth requirement:

Atonement judgment should not be for each one of the individual people or communities, but is due to religious scholars unswerving in forensic science, acclaimed to them and credited with God . God said:

﴿وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ الَّذِينَ أُوتُوا الْكِتَابَ لَتُبَيِّنُنَّهُ لِلنَّاسِ وَلَا تَكْمُوهُنَّ فَبُذِّبُوهُ وَرَاءَ ظُهُورِهِمْ وَأَشْرَوْا بِهِ مِمَّا قَلِيلًا فَبُئْسَ مَا يَشْتُرُونَ﴾ (آل عمران، 187)

(God received a pledge from those who were given the Scripture: «You shall proclaim it to the people, and not conceal it.» But they disregarded it behind their backs, and exchanged it for a small price. What a miserable exchange they made)¹.

﴿إِنَّ الَّذِينَ يَكْمُونَ مَا أَنْزَلْنَا مِنَ الْبَيِّنَاتِ وَالْهُدَىٰ مِنْ بَعْدِ مَا بَيَّنَّاهُ لِلنَّاسِ فِي الْكِتَابِ أُولَٰئِكَ يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللَّاعِنُونَ﴾ (البقرة ، 159)

(Those who suppress the proofs and the guidance We have revealed, after We have clarified them to humanity in the Scripture-those-God curses them, and the cursers curse them)².

﴿وَمَا أَرْسَلْنَا مِنْ قَبْلِكَ إِلَّا رِجَالًا نُوحِي إِلَيْهِمْ فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾ (النحل ، 43)

(We did not send before you except men whom We inspired. So ask the people of knowledge, if you do not know)³.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا ضَرَبْتُمْ فِي سَبِيلِ اللَّهِ فَتَبَيَّنُوا وَلَا تَقُولُوا لِمَنْ أَلْفَىٰ إِلَيْكُمْ السَّلَامَ لَسْتَ مُؤْمِنًا تَبْغُونَ عَرَضَ الْحَيَاةِ الدُّنْيَا فَعِنْدَ اللَّهِ مَغَامٌ كَثِيرٌ كَذَٰلِكَ كُنْتُمْ مِنْ قَبْلُ فَعَفَىٰ اللَّهُ عَلَيْكُمْ فَتَبَيَّنُوا إِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا﴾ (النساء ، 94)

(O you who believe! When you journey in the way of God, investigate, and do not say to him who offers you peace, «You are not a believer,» aspiring for the goods of this world. With God are abundant riches. You yourselves were like this before, and God bestowed favor on you; so investigate. God is well aware of what you do)⁴.

﴿وَالَّذِينَ يُؤْذُونَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ بَغَيْرِ مَا اكْتَسَبُوا فَقَدْ احْتَمَلُوا بُهْتَانًا وَإِثْمًا مُبِينًا﴾ (الاحزاب ، 58)

(Those who harm believing men and believing women, for acts they did not commit, bear the burden of perjury and a flagrant)⁵.

The sixth requirement

Stern warning, and forbidding certain mistrust for a Muslim as well as to harm him, not apostate and impulsive him without argument or proof from the book and Sunna,

1- Surat A'1 Imran 187.

2- Surat Al Baqarah 159.

3- Surat Al Nahal 43.

4- Surat An-Nisa 94.

5- Surat Al Ahzab-58.

Allah says: (O ye who believe, if you strike in the cause of God and you do not say who gave you peace, you are not a believer. When God gives you many gains as well as you were before, it is God's gift to you. If God is what you do expect).

Hadith has been frequent in the Prevention of Muslim atonement unjustly, of which.:

Saying of the prophet (peace be upon him:) man must not say to man you are disbeliever....

The third topic

Reasons for atonement

First requirement

Ignorance of religion

Ibn Taymiyyah said, the causes of atonement is due to ignorance of religion, in reply to a people of innovation who permitted to call people for help instead of Allah, this is the way they pursued. They disbelieve the pious in their bid`ah, they even disbelieve Othman bin Affan and Ali ibn Abi Talib, and both of the immigrants and supporters and the rest of the faithful, the Kharijites assembled to atone Ali may Allah be pleased with him, as well as invented preference of Ali may Allah be pleased with him, on the three. Even disbelieve Abu-Baker, Omar and Osman¹.

The second requirement

The lack of jurisprudence in religion

Not anyone should speak about atonement except the established people of forensic sciences, it is not a field of ignorant people. the; because if, they introduce themselves in this track, they will wrong and unfair themselves and their fellow Muslims. The prophet peace be upon him said; (God will not take of science away from slaves but take it via catching scholars and scientists, and when people were left without scientists they took ignorant people as warheads...)².

The third requirement

The Power and the Bully

This means that one who has less doctrine, but has strength and muscles, wants every order to be by a physical force not scientific, so if someone enters

1- Ibn taymiyyah-2-v. al dar al elmeya –Dalhi-p.487.

2- Saheh al bukharee.1.v.36.

in this field he will make serious mistake. For this reason, youth, as they are the most essential ingredients in the community, and because they have strength and power, they should be well educated and oriented, youth is the most fertile stages of life. Prophet Muhammad, peace be upon him said (seven Allah will shade them on, when no shade but His) said of those young man grew up in the worship of Allah. Also he said: (take five before five) and he mentioned youth before old age.

The stage of youth characterizes by activity and vigor and strength, which if properly exploited by the young people themselves or the governors, the state will benefit a lot. But if these energies remained in disarray or non-employment, then the extremism, terrorism, takfir ideas find fertile ground for growth.

The fourth requirement

Injustice and corruption reality on some Muslim regimes:

This injustice admittedly enthusiastic young people, to wander away to see the injustice inflicted on him and his brothers from the Muslim rulers. He will disobey, and get out on them and fight, contrary to the Sunnis. Al-Garadawee said; (that people who are religious faithful, protectors, zealous, they did not accept what they see in the community in terms of ethical, political corruption and tyranny, they are reform seekers, eager to guide their nation, though they sinned and strayed way).

The fifth requirement

Love of fame and leadership

Most people tend to fame and leadership they love, this world instead of the hereafter. Since most young people tend to temperance and moderation, but some of them violate the agreed upon by most of the peers or colleagues, and adhere extreme ideas and throwing immunized and chaste women, and understand Islamic law on the face extreme not realistic it is not rational, because they imagine that the adoption of anomalous ideas makes them the leaders of the community or thought.

The sixth Requirement

Deviation from moderation leads to atonement

Moderation definition in language: the building true center shows on justice and equity, and the fairest thing its middle and central¹.

1- Madareg al-salekeen ibn al gayem-v.2-p296-Cairo.

And idiomatically : Ibn al- Jawziyyah said: (taking center subject between excessiveness and moderate) The construction of the world`s interests and the afterlife ,is the control of this Justice . Moderation is straighter path, and deviation is against moderation. Alla almighty says;

﴿إِنَّ الَّذِينَ قَالُوا رَبُّنَا اللَّهُ ثُمَّ اسْتَقَامُوا تَتَنَزَّلُ عَلَيْهِمُ الْمَلَائِكَةُ أَلَّا تَخَافُوا وَلَا تَحْزَنُوا وَأَبْشِرُوا بِالْجَنَّةِ الَّتِي كُنتُمْ تُوعَدُونَ﴾ (هصلت : 30)

(Surely, those who say: «Our Lord is God,» and then go straight, the angels will descend upon them: «Do not fear, and do not grieve, but rejoice in the news of the Garden which you were promised. He says addressing His Messenger, peace be upon him)¹.

Atonement is a case out for integrity and Delinquency for Justice.

The fourth topic

Terms of atonement

First requirement

Indication of the Quran and Sunnah that this word, or deed, or to quit is Kofr (atone)

If it is not proved that this word, or deed, or quit Kofr under the sign of the Quran and Sunnah, it is not permissible for one to be judged as disbeliever, because that is a say to God without knowledge, Allah said:

﴿قُلْ إِنَّمَا حَرَّمَ رَبِّي الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْإِثْمَ وَالْبَغْيَ بَعْدَ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزَّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ﴾ (الأعراف، 33)

Say, (My Lord has forbidden immoralities-both open and secret-and sin, and unjustified aggression, and that you associate with God anything for which He revealed no sanction, and that you say about God what you do not know)². Also Allah almighty said:

﴿وَلَا تُنْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا﴾ (الإسراء، 36)

(And do not occupy yourself with what you have no knowledge of. The hearing, and the sight, and the brains-all these will be questioned)³.

The second requirement

Proof and Confirmation of Act by Grown-up

If did not prove by grown-up it is not permissible to judge through conjecture. Also Allah almighty said:

﴿وَلَا تُنْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا﴾ (الإسراء، 36)

(And do not occupy yourself with what you have no knowledge of. The hearing, and the sight, and the brains-all these will be questioned)⁴.

1- Surat Fussilat 30.

2- Surat Al-A`raf 33.

3- Surat Al-Isra 36.

4- Surat Al-Isra 36.

Because it leads to infallible blood without right. The prophet peace be upon him said; (Any man who said to his brother; O faithless lost by one; if he said, and only it returned to him).

Third requirement Reaching argument.

And if you do not inform him of the argument, he does not judge a disbeliever. The verse SAY ;

﴿قُلْ أَيُّ شَيْءٍ أَكْبَرُ شَهَادَةً قُلِ اللَّهُ شَهِيدٌ بَيْنِي وَبَيْنَكُمْ وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ لِأُنذِرَكُمْ بِهِ وَمَنْ بَلَغَ أَتَيْتُكُمْ لَتَشْهَدُنَّ أَنَّ مَعَ اللَّهِ آلهَةً أُخْرَى قُلْ لَأَشْهَدُ قُلْ إِنَّمَا هُوَ إِلَهُ وَاحِدٌ وَأَنِّي بَرِيءٌ مِمَّا تُشْرِكُونَ﴾ (الأنعام: 19)

(Say, «What thing is more solemn in testimony?» Say, «God is Witness between you and me. This Quran was revealed to me, that I may warn you with it, and whomever it may reach. Do you indeed testify that there are other gods with God?» Say, «I myself do not testify.» Say, «He is but One God, and I am innocent of your idolatry»)¹.

The prophet peace be upon him said: (and whose myself in His Hand anyone heard me of this nation I mean nation Dawa` - Jew or Christian then dies not believing in me but, he was in Fire

But if he did not inform of the argument and does not converted to the religion of Islam, he is not treated in the world the treatment of Muslim, while in the Hereafter ,his fate is to God. Scholars stressed the need of the reach of the argument.

Ibn Taymiyyah may Allah have mercy on him says: (statements that atone who says: It may not be informed to him or may did not to know the right positive word, and may not proved what he has, or has not been able to understand them, may have suspicion ion.

﴿وَمَا كَانَ رَبُّكَ مُهْلِكَ الْقُرَى حَتَّى يَبْعَثَ فِي أُمِّهَا رَسُولًا يَتْلُو عَلَيْهِمْ آيَاتِنَا وَمَا كُنَّا مُهْلِكِي الْقُرَى إِلَّا وَأَهْلُهَا ظَالِمُونَ﴾ (القصص: 59)

(Your Lord never destroys cities without first sending a messenger in their midst, reciting to them Our revelations. And We never destroy the cities, unless their people are wrongdoers)².

The summary of what has already been said, There must be valid a argument denies those who held him any suspicion or interpretation, and thus realize great responsibility that placed upon the scholars and preachers.

1- Surat Al-An`am 19.

2- Surat Al-Qasas 59.

The fourth requirement

Closing to one what he means, then he does not know what to say to the severity of joy, or sadness, or fear, or otherwise. The verse:

﴿ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاُخْوَانَكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا﴾ (الأحزاب، 5)

(Call them after their fathers; that is more equitable with God. But if you do not know their fathers, then your brethren in faith and your friends. There is no blame on you if you err therein, barring what your hearts premeditates. God is Forgiving and the Messenger of Allah, peace be upon him said: «God is the most joy of repentance of His slave when he repent...»¹.

The fifth requirement

Demand

To be aware and to know about the prohibiting thing.

The sixth requirement

To be at his choice , so as not to be forced to say or do what may atone him; as the Almighty said;

﴿مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ﴾ (النحل، 106)

(Whoever renounces faith in God after having believed-except for someone who is compelled, while his heart rests securely in faith-but whoever willingly opens up his heart to disbelief-upon them falls wrath from God, and for them is a tremendous)².

The Fifth Topic

Contraindications atonement

First requirement

Ignorance

Ignorance comes in several meanings, including: free oneself from knowledge , and learning and that is a well-known, also including: to believe in a thing other than what it is, also doing something other than the right to do. Almighty said:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِمِجَالَةٍ فَتُصْحَبُوا عَلَيَّ مَا فَعَلْتُمْ بَادِينَ﴾ (الحجرات، 6)

(O you who believe! If a troublemaker brings you any news, investigate, lest you harm people out of ignorance, and you become regretful for what you have done)³.

1- Surat Al-Ahzab 5.

2- Surat An-Nahl 106.

3- Surat Al-Hujura't 6.

The most obvious evidence to consider ignorance excuse , what is proven that the Messenger of Allah, peace be upon him, said: (The man who never did not work good, said to his family if i died burn me, then throw half on land and half in the sea, , and when the man died, they did as instructed, ordered, then God gathered what they are, then the exists in His Hands, and then said: why have you done this? the man said: from Your awe Lord, and you know God ,then Allah almighty forgave him).

The second requirement

The Error

Error is the opposite of correct, Allah almighty said: .: verse:
 ﴿ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانِكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا﴾ (الأحزاب، 5)

(Call them after their fathers; that is more equitable with God. But if you do not know their fathers, then your brethren in faith and your friends. There is no blame on you if you err therein, barring what your hearts premeditates. God is Forgiving and the Messenger of Allah, peace be upon him said: «God is the most joy of repentance of His slave when he repent...»¹

Unless deliberately, and error: What intentionally, wanted the right thing became to others, said Umayyad. (raising from my ummah (nation) mistakes and forgetfulness).

It was understood that the sunna people considered error prevents the excuse of atonement by vast amount of evidence,

- His saying: Almighty said;

﴿وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِنَّا لَمَّا كَانُوا خَطَاءً كَبِيرًا﴾ (الإسراء، 31)
(And do not kill your children for fear of poverty. We provide for them, and for you. Killing them is a grave sin)².

Lord said :

﴿قَالُوا يَا أَبَانَا اسْتَغْفِرْ لَنَا ذُنُوبَنَا إِنَّا كُنَّا خَاطِئِينَ﴾ (يوسف، 97)
(They said, «Father; pray for the forgiveness of our sins; we were indeed at fault.»)³.

Texts has shown from the Quran and Sunna to excuse the wrong, and ignorant and who misinterpreted, they will not be atoned ,but, only after setting the argument .

1- Surat Al-Ahzab 5.

2- Surat Al-Isra 31.

3- Surat Yusuf 97.

The third requirement

Interpretation

Interpretation in language means to return, and came back, reference and determination. The interpretation is the activation of the first construed, returned the rule to his family.

Allah almighty says:

(Do they only interpreted on construed say who forgot before may come apostles of our Lord came to the right, he says, which accrues to him at the time and resurrected Nchorhm).

The meaning of interpretation in scholars convention, has three meanings:

The first: (It is meant the reality of what is construed speech is interpreted to ,though superficially approved, and this is the meaning that is intended by interpretation in the Quran and Sunna, Allah almighty said;

«هَلْ يَنْظُرُونَ إِلَّا نَأْوِيلَهُ يَوْمَ يَأْتِي تَأْوِيلَهُ يَقُولُ الَّذِينَ نَسُوهُ مِنْ قَبْلُ قَدْ جَاءَتْ رُسُلُ رَبِّنَا بِالْحَقِّ قَهْلَ لَنَا مِنْ شَفَعَاءَ فَيَسْتَفْعِمُونَا أَوْ رُدُّونَا أَوْ نَعْمَلْ غَيْرَ الَّذِي كُنَّا نَعْمَلُ قَدْ خَسِرُوا أَنفُسَهُمْ وَصَلَّ عَنْهُمْ مَا كَانُوا يَفْتَرُونَ» (الأعراف، 53)

(Are they waiting for anything but its fulfillment? The Day its fulfillment comes true, those who disregarded it before will say, «The messengers of our Lord did come with the truth. Have we any intercessors to intercede for us? Or, could we be sent back, to behave differently from the way we behaved before?» They ruined their souls, and what they used to invent has failed them)¹.

The second: the intended word of interpretation, is (Interpretation), this is the convention of many commentators. Mujahid said ; that`s established in science know the interpretation of like, he wanted it`s interpretation and its meaning, and this is something known by those who are firmly grounded.

The Third: that the intended word (interpretation): not taking the superficial direct meaning, as evidenced , but taking the contrary. This interpretation is not only contrary to what is indicated by the word and illustrated, and the designation , this interpretation was not known by the predecessors, but known by the interpretation of latecomers who are engaged with the Islamic Jurisprudence and speech, this is the interpretation that the nation`s predecessor and imams agreed to.

Ibn Hajar² in the definition of highly plausible interpretation says: (scholars said: any interpreter was excused in his interpretation, he is not a sinful, if interpreted palatable ...

1- Surat Al-A`raf 53.

2- Shazarat al zahab-alemad alhanbaly –v.7-dar alfekre-Beirut –p.270.

Sheik Abdul-Rahman al-Saadi Said : (Muslim interpreters who have gone astray and have sinned in the understanding of what came in the Quran and Sunnah, and have faith in the messenger, and they believe his sincerity in everything he said and what he said was really committed to it, but they have sinned in some news reporting issues or process, are not to judge them with the provisions of the unbelievers)¹.

If it appears that the interpretation is of excuse in the matter of atonement, this does not mean that all who claimed interpretation is absolutely excused, but requires the interpretation should not be at the origin of religion, which is the worship of Allah alone with no partner.. Ibn Hazm² says: (For those who are not people of Islam from a Christian or a Jew or a magician... there is no excuse Originally for their interpretation.

The fourth requirement

Coercion

The coercion is two languages, in what language came it is permissible, it means hatred, hardship³.

We note from the foregoing, that the meanings of coercion, means hardship, oppression and coercion, and inconsistent with satisfaction, love and choice.

Ibn -hagar - may God have mercy on him said; in the definition of coercion (... coercion is all the so-called in language coercion, and knew by sense is compulsion, threaten to kill those who do not believe him to enforce what has vowed to do, menacing by beating).

Ibn Hajar - may Allah have mercy on him - said: (is requiring third parties, something not want). Originally the Almighty said:

﴿مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ﴾ (التحل، 106)

(Whoever renounces faith in God after having believed-except for someone who is compelled, while his heart rests securely in faith-but whoever willingly opens up his heart to disbelief-upon them falls wrath from God, and for them is a tremendous)⁴

The well known in the cause of descent was narrated by Abu Ubaidah bin Mohammed bin Ammar bin Yasser his father said: (The disbelievers took Ammar bin Yasir, they did not leave him tell he insulted the Prophet, peace

1- Al ershad –al seade- akatabat alreyad-1400-p.256.

2- Al-dor-ibn hozam-1408-makatabat al torath-Makka-p.441.

3- Almesbah almoner-alfayomee-2 v.p.643.

4- Surat An-Nahl 106.

be upon him, and said their gods are all right, then, they left him, and when, he came to the Messenger of Allah God peace be upon him, he said, : what`s behind you? he said: evil, O Messenger of Allah, I have not left so, till I got you, and said their gods are fine, he said: How do you find your heart, he said, reassured by faith, he said, if they returned that returned)

But we should know that, though it may say infidelity or do because of coercion – but to be patient is better and greater in reward.

Conclusion

Praise be to God who helped me, and helped me to accomplish this research, through which I was able to shed light on the atonement, its causes, conditions and prohibitions Dr. Qaradawi said: (atonement who is worthy of atonement). Hence we should atone disbelievers who profess disbelief without modesty, and those who outwardly adhere Islam and inwardly desolation of faith, those are called in the eyes of Islam the hypocrites who say with their tongues and did not believe in their hearts, or their actions, did not believe their words .They are in the hell in the afterlife . The infidels who must be atoned without equivocation , are the following items: 1 Communists determined to communism, those who believe in the philosophy and system of life, that contradict explicit doctrine of Islam and Sharia and values, and who believe that religion is the opium of the people...2 secularists rulers , and the men of secular parties, who , openly refuse law of God, and proclaim that the state should be separated from religion. 3. Druze and Christian , and Ismailia. Ibn Taymiyyah said about them: they are disbelieves than the Jews and Christians¹.

First results:

- Atonement without proof is harmful phenomenon of Islamic and Muslim thought.
- There are many reasons why some launch atonement, generally due to the young age and bully and force, or the predominance of bad ideas , besides, lack of religion sciences, and jurisprudence .
- Emphasized the importance of studying the conditions and contraindications of atonement.

1- Fatawee moasyra Alqaradawee-v.1- almakatab alislamee-1993.p.99.

Second: Recommendations:

- The need for disclosure vanities atonement without proof or evidence, and distinguish it from permissible atonement, through dialogue meetings, conferences, seminars and scientific legitimacy, and the media, especially the international information network (the Internet).
- clarify the knowledge that vanities atonement is a conduct of the nation scholars , and whatever ,they raised they soon fade.
- I recommend that the Association of Muslim Scholars must intensify their research and scientific studies to defeat intolerance ideas, using the scientific method, based upon the mental persuasion and forensic evidence.

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The impact of fundamentalists' disagreement on the evidence of what is forbidden, on the disagreement of jurists in juristic branches

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Research Summary

In this research, the researcher has been studying the impact of fundamentalists' disagreement on the evidence of what is forbidden, on the disagreement of jurists in juristic branches because the purpose behind the study of the principles is to know the provisions of the branches, and the disagreement with this issue of fundamentalism has resulted in many disagreements in many juristic branches, this research has stated some of these disagreements such as Praying on extorted land, and the provision of supererogatory prayers at the three adversity times, and the provision of fasting on the day of slaughtering, and the provision of sales on corrupted conditions, the provision of sales containing usury, and the provision of Shighar marriage, the provision of AL Muhalil marriage and the provision of the judge's rule when he is angry.

The scholars disagree with the provision of Praying on extorted on three ways, and the most preferable opinion is that it is allowed.

And that regarding the provision of supererogatory prayers at the three adversity times, scholars have three different opinions, and the preferable opinion is that praying during such times is forbidden.

And that regarding the provision of fasting on the day of slaughtering, scholars differed in two ways, and the preferable opinion is that fasting during the mentioned time is not true.

And scholars differed in the provision of sales on corrupted conditions on two ways, the preferable one is that it is not correct.

And scholars differed in the provision of sales containing usury, and public scholars agree that it is invalid and forbidden.

And scholars differed in the provision of Shighar marriage, two different opinions on this rule, but the preferable one is that it is invalid.

And scholars differed in the provision of AL Muhalil marriage on five opinions, the preferable opinion is that it is invalid.

And scholars differed in the provision of the judge's rule when he is angry, two different opinions on this rule, first the rule is adversity, and it is true and valid if it agrees with the right.

Introduction

Praise be to God, who makes the understanding of His law easy for people, and make those who understand its origins are the best of all, prayer and peace be upon the Prophet who was sent to lighten the path of right for people with God's permission.

The fundamentals of jurisprudence is a matter of legal provisions and it is the basic of (Ijtihad) and the main purpose of it, is intended to extract sections from its rules¹, because he who does not understand how the deduct these rules and its proves, will find it more difficult to expand such rules, because the partial cases derived from the origins has their specific rules and evidence², and this is why the researcher has been trying to study the problem of "The impact of fundamentalists' disagreement on the evidence of what is forbidden, on the disagreement of jurisprudents in juristic branches".

Importance of the subject: The importance of this topic is that it deals with an important issue, a statement of the impact of fundamentalists' disagreement on the evidence of what is forbidden, on the disagreement of jurisprudents in juristic branches, as well as how to deduct these branches on the fundamental rules.

Research goals:

- 1- In order to gain God's please through working on his has prescribed Shara.
- 2- Illustrating how to deduct juristic branches on fundamental base.
- 3- Show how deducting branches from the origins is an important science and this will contribute to the extraction of the provisions of the emerging issues.

Research Methodology:

In this research The researcher adopted the inductive analytical approach, where he collected the sayings of the fundamentalists in the matter and ordered them, then giving reasons why they were selected and what are the preferable opinions.

Introduction:

Forward: on the evidence of what is forbidden

First theme : its impact on worship.

First requirement: its impact on prayer.

The second requirement: its impact on fasting.

1- AL Tamheed fii takhreeg al Froua ala AL Osoul. P46.

2- Takhreeg al Froua ala AL Osoul. Abi AL MANAGIB.

The second theme: its impact on sales.

The first requirement: selling on invalid condition.

The second requirement: the rule of sale containing the usury.

The third theme: its impact on marriage.

First requirement: shighar marriage.

The second requirement: its impact on adultery.

The fourth theme : its impact on the judiciary.

The provision of the judge`s rule when he is angry which disrupting understanding.

Conclusion.

Forward: on the evidence of what is forbidden

First: technical meaning, it means that the forbidden which has not improved and has no evidence¹ , do the legal impacts which take place as a result of this be approved or no? and what type of those impacts? Are they devotes or interactions?²

Second: The doctrines of the fundamentalists in the case:

Fundamentalists differed in this case, Zarkashi said that there are five doctrines³, to nine doctrines:

1. First doctrine: that the prohibition requires the invalidity of the forbidden, whether for itself or for other, and this is the doctrine of Hanbali⁴ ,, Ibn Hazm⁵, Abu Hashim⁶ , and others.
2. Second doctrine: that the prohibition requires absolute invalidity whether it is devotes or transaction, and this is the view of Malikis⁷ and El-Shafeis, Abu Muzaffar Sam`ani⁸, and the companions of Abu Hanifa like Karkhi, said Abu Bakr al-Razi (the doctrine of our companions that forbidding indicates invalidity of contracts, unless there are evidence of permission)⁹, is the view of the group of Mutakalimeen¹⁰.
3. Third doctrine: that the prohibition does not require originally invalidity and this invalidity needs an evidence rather than forbidden, this is the

1- Tashneef AL Masamia Sharh Jami AL Jawami. AL Zarkashi 320 /1.

2- Athar AL Ekhtilaf fii AL Gawaid AL Osouliap 245.

3- AL Bahr AL Muheet fii Osoul AL FIGH.

4- Al Odda FII Osoul AL FIGH.

5- Al Ihkam fii Osoul AL Ahkam p320 /3.

6- AL Bahr AL Muheet- previous .

7- Ihkam AL FUSOUL FII Ahkam AL Osoul 126 /1.

8- Qawati AL Adilla fii Osoul AL Fighp 336 /1.

9- AL Fusoul fii AL Osoul.p336 /1.

10- AL Tagreeb wa AL Ershad AL Sagheer,p 339 /2.

view of most jurists¹, Imam Abu Hanifa and more of his companions such as Muhammad ibn al-Hasan and Abu al-Hasan al-Karkhi², and the judge Albaqlani of Maliki³, and many of Shaafa`is, such as Shaashi⁴. Imam of Haremein has chosen it in AL talkhees⁵, and al-Ghazali⁶, it is also the view of Abu Abdullah al-Basri, and the Judge Abdul-Jabbar from Mu`tazilite.

4. Fourth doctrine: that the prohibition indicates invalidity in devotes and it does not indicate it in transactions, and this is the doctrine of Abu AL Hussein AL Bisri from Mu`tazilite^{7, 8} and the Imam Al-Razi,⁹ and his followers¹⁰, AL Beidawi is one of them¹¹.
5. The Fifth doctrine: that if the prohibition is in respect to devotes it indicates absolute invalidity, and when it relates to something included in transaction is returned to something or excluded and close to it, in this case forbidden is invalid. This doctrine is supported by AL Sabki¹², Ibn Burhan¹³, and Zarkashi¹⁴ who pointed out that if the case is doubtful it is invalid.

First theme

The impact of the case in respect to devotes

First Requirement

Its impact on the pray

First case: the provision of praying on the extorted land.

First : stating the branch on disagreement on the fundamentalist base.

This branch is the most important sections in which the effect of the difference in this matter appears, Imam of the Holy Haremein said: (The investigators agree that the absolute statement of the forbidding include the invalidity and by this opinion they had disagreed with many of the Mu`tazila

1- AL Mahsoul- Imam AL Razi.401 /2.

2- Osoul al Figh p 65.

3- AL Tagreeb wa AL Ershad.

4- Al Ihkam fii Osoul AL Ahkam.

5- AL Talkhees fii Osoul AL Figh p 154.

6- AL Mustasfi fii Osoul AL Figh- AL Ghazali 25 /2.

7- AL Mutanad fii Osoul AL Figh 171 /1.

8- AL Mahsoul Imam AL Razi.

9- AL Tahseeel min AL Mahsoul 336 /1.

10- MINHAJ al wusoul Ela Elm ALOsoul433 /1.

11- Jama AL Jawami fii Osoul AL Figh 327- 331/ 2.

12- AL Gheith AL Hami Sharh Jama AL Jawami.281 /1.

13- Tashneef al Masami bi Jami AL Jawami319 /1.

14- AL Burhan fii Osoul AL Figh p199 /1.

and some companions of Abu Hanifa, and the intention of this issue does not appear unless the talk includes prayer in the extorted land)¹, Abu Zeid al dabusi said: (forbidding is of four sections ... until he said : the fourth section concerns selling at call time to pray on Friday, and to pray on extorted land)², said Zarkashi: (I know that forbidding is of two parts: one not to be on itself, such as selling during the time of calling to pray on Friday).³ Shawkaani said : (the Prevention of something does not relate to itself, it connects with something external such as to pray on extorted land)⁴.

Second: The doctrines of the jurists in this question: The scholars differed on the ruling on praying on the extorted land into three :

The first doctrine: that prayer on the extorted land is and this is the view of the majority of scholars such as Hanafis⁵, and Malikis⁶ and the Shafi's⁷.

Evidence: The scholars of this doctrine give the following evidence:

The first evidence: Scholars said that if a person doesn't pray, but he fasts, this does not mean that his fasting is incorrect⁸, and that forbidden to pray on the extorted land does not relate to pray itself but to an excluded thing, that is the extorted land on which pray takes place⁹.

Second evidence: it is that the action has two aspects, and it is permissible on one side and forbidden on the other, as the case of praying on an extorted land, regarding pray it is required, in respect to the place (extorted land) it is not permissible¹⁰. that if the action is of different faces it is considered as contradictory¹¹.

Objection of this evidence is that he is considered disobedient from the side of an extorted action¹².

The response to this objection: that he was made disobedient because he is benefit from the extorted land, whereas on the other hand he was made as a devote, from the point of view that he has done his prayer, and this prove that they are different faces of one act¹³.

1- AL Burhan fii Osoul AL Figh 199 /1.

2- Tagweem AL Adilla fii Osoul AL Figh.

3- AL Bahr al Muheet fii OSOUL al figh.163 - 164 /2.

4- Ershad AL Fuhool Litaheeg AL Hag min ELM al Osoul.111- 112.

5- AL Mabsoot 1592/, Hashiyat Rad AL Muhtar Ala AL Dur al Mukhtar.502 /2.

6- AL Dhakheera fii froua AL Figh AL Maliki 163 /1.

7- Al Majmoua Sharh AL Muhadhab.AL Naawi p 164 /2.

8- AL Fusoul fii al Osoul341 /1.

9- Tagweem AL Adilla 52.

10- Kashf AL Asrar 281 /1.

11- Lubab AL Mahsoul fii Elm AL Osoul 234 /1.

12- Kashf AL Asrar 281 /1.

13- Kashf AL Asrar- previous.

Third evidence: that prayer and extorting are two different activities and one of them is not considered as essential of the other, and they became one unit at the time of existence, and an action at the time of existence is neither permissible nor forbidden ¹.

Fourth evidence: that prohibition wording to pray has been added to the pray and in fact to pray is not an activity that is prohibited, what is prohibited is to pray on an extorted place because. This hurts the owner of the land ².

The second doctrine: that prayer on the extorted land is void and must be done again and this is the view of the Hanbali³, AL Zahiriya⁴, Mu` tazila and chosen by Abu Hussein AL Basri and Abu Hashim⁵.

They gave the following evidence:

The first evidence: that the prohibition is due to a considerable condition in devotion, because to pray on a place is regarded as a part of the activity itself, don't you think that if someone prays on a impure cloth or at a wrong time of pray, the pray is invalid⁶, because forbidding returned to the significant condition, and doesn't return to the same act.

Second directory: that prayer on the property of others is a kind of disobedience, whereas prayer itself is a kind of obedience, so how can one act can be an obedience and disobedience at the same time?, and this confirms that the prohibition requires the execution of the act, and the order requires its existence, how it is to be imagined that one action exists and non-exist at the same time⁷.

This evidence is objected: that if the act has two different faces, the first may be required and the other is adversity⁸.

Third evidence: that prayer on an extorted land is correct either because it is included under devotion, or intended as it was replaced under devotion, and the first is void, because devotion does not take place in void situations, and the second is refuted because of the absence of evidence and it should be prayed again in both cases if the time of praying is still available or it has passed⁹.

1- Sharh AL Ma`alim fii Osoul AL Figh 392 /1.

2- Mizan AL Osoul fii Nataij AL Ogoalp 231.

3- Daleel AL Talib , Nail AL Matalib,30 /1.

4- AL Muhalla Bila`athat , 491 /2.

5- AL Muttamad fii Osoul AL Fighp 181 /1.

6- AL Odda fii Osoul AL Figh 287 /1.

7- Al Tamheed fii Osoul AL Figh.279 /1.

8- Kashf AL asrar 379 /1.

9- AL Muttamad fii Osoul AL Figh185- 186 /1.

Fourth evidence: that the commission of the forbidden action when it is under devotion makes this devotion invalid¹.

The objection to this evidence: that the prayer is true only when someone has intended to do it perfectly².

The third doctrine: The judge Abu Bakr Albaqlani³, and Imam AL Razi⁴ agree that prayer on the extorted land is incorrect.

Evidence: that prayer on the extorted land is not allowed, because promotion and prevention cannot be enjoined in the same action⁵.

What is preferable: After viewing the doctrines and sayings of scholars on the matter is clear to us that the preferable view is that prayer on the extorted land is true, this opinion is supported by the judge Albaqlani⁶, and AL Razi⁷, and others.

The second issue: the rule of supererogatory prayers at the three adversity times:

First: The graduation of the branch at the base:

Forbidden to pray during certain times was mentioned in some of the prophet's Hadith such as : Muslim narrated from Ibn Umar, peace be upon him, said: the prophet, peace be upon him said that (Do not pray when the sunrises or sets)⁸ and Oqba'a Ben Amer also said (the messenger of God, peace be upon him, forbade us to pray or to bury our dead people during three times, while the sun goes up, at mid-noon, and when the sun goes down)⁹.

So scholars disagreed about prayer basing on disagreement between fundamentalists about the evidence of forbidding indicated that the forbidden is itself invalid, for instance praying during the times that it is forbidden¹⁰, AL Tilmisani said that : (as well as prayer in the prohibited times and places in all these cases there is a dispute on the basis that forbidding indicates invalidity of what is forbidden)¹¹, and many fundamentalists, based on the disagreement among them, some of those scholars are : Abu Muzaffar Sam`ani¹², AL

1- AL Mustasfi fii Osoul AL Figh 234 /1.

2- Lubab AL Mahsoul p 234.

3- AL Tagreeb wa AL Irshad 360 /2.

4- AL Maalim fii Osoul AL Figh 387 /1.

5- AL Mahsool fii Osoul AL Figh 394.

6- AL Tagreeb wa AL Irshad 355 /2.

7- AL Mahsool fii Osoul AL Figh.

8- Saheeh Muslim 567- 568 /1.

9- Saheeh Muslim 568- 569 /1.

10- Osoul al Figh p 71.

11- Miftah AL WSOUL Ela Bina`a AL FROUA ala AL Osoul 41.

12- Qawati AL Adilla fii Osoul AL Figh 145- 147 /1.

Dabbosi¹, Abu Zarah AL Iraqi² others³.

Second: The doctrines of the jurists in this case:

The jurists have differed in the provision of supererogatory prayers during the three adversity times on the three doctrines:

The first doctrine prohibits prayer during these three times and is the view of Maliki⁴, Shafi'i⁵, and Nawawi said: if a Muslim intends to pray an adversity prayer this is considered invalid like fasting on the Eid day⁶, and another view in the Hanbali⁷ school, and this is what is said by Dhahirya⁸.

Evidence: The scholars of this doctrine gave evidence from the Sunna including:

The first evidence: AL Quraafi⁹ said, Ibn Umar, peace be upon them said that , the prophet , peace be upon him said that : (it is not true to pray when the sun is rising or setting)¹⁰, and forbade prayer after the afternoon until the sun sets, and after dawn until the sun rises , Mawardi¹¹ said, forbidden to pray in these times concerns supererogatory pray¹².

The inference: The writer of (Matalib Oli AL Nuha said: (do To do and say a supererogatory pray is invalid during the time of forbidden)¹³.

Third evidence: that the prohibition if it concerns the devote itself, it is considered invalid¹⁴.

The second doctrine: that supererogatory prayers are true if they are reasonable it is the view of the Shafi'i¹⁵, the second view is of Hanbali¹⁶.

Evidence: The supporters of this doctrine gave the following evidence:

The first evidence: Umm Salamah, may Allah be pleased with her, said that: It was one day evening when the Messenger of Allah, peace be upon him, prayed two, entered my room and prayed two Raka'ats, then I said: O the

1- Tagweem AL Adilla fii Osoul AL Fighp 60.

2- AL Gheith AL Hami Sharh Jama AL Jawamia 282 /2.

3- AL Bahr AL Muheet 1213 /3.

4- Sharh AL Kharshi 222- 223 /1.

5- Rawdat al Talbeen wa Omdat AL Mufteen71 /1.

6- AL Majmou Sharh AL Muhadhab181 /4.

7- AL Mughni 759 /1.

8- AL Muhalla Bil A`athar 48 /2.

9- AL Dhakheera fii Froua AL Figh390 /1.

10- Saheeh Muslim 567- 568 /1.

11- Saheeh Muslim 566.

12- AL Hawi AL Kabeer 274 /2.

13- Matalib Oli AL Nuha 249 /3.

14- AL Figh AL Islami wa Adilatuhu 598 /1.

15- AL Majmoua Sharh al muhadhab 170 /4.

16- AL Kafii fii Figh al Imam Ahmad 238 /1.

Messenger of God, you have prayed at a time I haven't seen you done before, he said: (I used to pray two rak'ahs in the afternoon, but today a group of people from Bani Tamim, visited me and I couldn't pray at that time)¹, Mawardi said, (if it is not an obligatory, it can be prayed during that time)².

Second evidence: Qais Bin Fahad said: The Messenger of Allah, peace be upon him, saw a man was praying after Fajr prayer, the Messenger of Allah, peace be upon him, said : (have you prayed AL Fajr twice? the man said to him I used to pray two Rakats before AL Fajr prayer but today I didn't pray them, this is why I have just prayed them now, the Messenger of Allah peace be upon him, didn't comment)³.

Third evidence: Analogy: it is a prayer with cause like Tawaf⁴, Raka`at⁵, and because it is being so it can be performed at the time when it is forbidden⁶.

The third doctrine: that prayer is not permissible at the time of invalidity whether it supererogatory or an obligatory and this is the view of Hanafiya⁷, al Nasafi as well said : (if the prayer is supererogatory so it is true to be performed...)⁸. Evidence: the first evidence: based on the hadeeth of the Prophet, peace be upon him, when he and his companions, when they were traveling, they stayed on a valley and then they overslept till the sun rose, they got up and prayed AL Fajr prayer after the sun rising¹. AL Kamal Ibn Hammam said that (.. and this doesn't mean that if the prayer is not permissible, it is not true to be performed in all cases.

Second evidence: The origin of prayer is regarded in respect to time of the prayer itself.

The second requirement

its impact on fasting: the rule of fasting on the Day of slaughtering:

First: This is the branch where scholars differed based on the disagreement between fundamentalists in its provision.

AL Saffi AL Hindi said that the Hanafia agree that if someone fasts on the day of slaughtering, it is true and valid⁹: Zarkashi as well, said that:

1- AL Masnad Imam Hafidh.

2- AL Hawi AL Kabeer 271 /2.

3- AL Mustadrak Ala AL Sahechein Hadith No 1018- 409 /1.

4- Sharh Mukhtasar AL Khurgy 228 /1.

5- AL Mughni Ibn Gadama 793 /1.

6- AL Hawi AL Kabeer 275 /2.

7- Hashiyat Rad AL Muhtar ala AL Dur AL Mukhtar 403 /1.

8- AL Bahr al Raig Sharh Kanz AL Dagaig 483 /2.

9- Nihayat AL Wusoul fii Drayat AL Osoulp 69.

(Fasting is obligatory, but it is not allowed on the day of slaughtering.)¹.

Second: The doctrines of the jurists in this case : The scholars differed on the validity of the fast of the day of slaughtering on two different ways based on the disagreement of jurisprudents in juristic branches:

The first doctrine: The majority of scholars

Malikis², Shafi's³, Hanbalis⁴, and AL Dhahiriya⁵ say that fasting the day of slaughtering is not true.

Evidence: The supporters of this doctrine gave the following evidence:

The first doctrine: Umar ibn al-Khattab, Abu Huraira and Abu Said, God bless them, said that the Messenger of Allah, peace be upon him forbade fasting on Eid al-Fitr and Eid al-Adha⁶.

The inference: All scholars agree with the prohibition of fasting these two days (Eid al-Fitr and Eid al-Adha) in all cases⁷.

Second Evidence: that the entire of a case does not indicate that the parts of it are true, so how does forbidding of this matter indicate doing or leaving it, or whether it is obligatory and prohibition⁸.

AL Imam AL Ghazali objected this evidence⁹, the prophet, peace be upon him, said, in meaning not in word, (A woman is allowed not to pray during her waiting period, when she is not pure,)¹⁰ Allah (swt) said (And marry not women whom your fathers married,- except what is past:)¹¹, and the likes of these forbidden things, which does not meet originally did not prove it was known to use al-Shara, goes back to the origin of the situation, and we say: if the Shara and the positive law oppose, he who fasted the day of slaughtering has committed a forbidden situation, because their doctrine is conducive to change forbidding into what is forbidden and the absolute prohibition on something shows forbidding what is the same of it¹².

Third evidence: there is no difference between the prohibition on fasting, or not, on the day of Eid¹³.

1- AL Bahr AL Muheet Fii Osoul AL Figh 164- 165 /2.

2- AL Dhakheera Fii Froua AL Figh 219 /2.

3- AL Haythami- AL Hawi AL Kabeer 348 /2.

4- AL Kafi fii figh AL Imam Ahmad 450 /1.

5- AL Muhala Bila'athar Sharh AL Muhalla bilikhtisar. 231 /4.

6- Saheeh Muslim 152 /2.

7- AL Minhaj Sharh Saheeh Muslim 92 /12.

8- AL Mustasafa fii Osoul AL Figh 28 /3.

9- AL Mustasafa p 28- 29.

10- Previous.

11- Surat AL Nisa'a verse No 22.

12- AL Faig fii Osoul AL Figh 259 /1.

13- AL Sunan AL Kubra 129 /2.

The second doctrine: AL Hanafiya said that fasting on the day of slaughtering is permissible and those who fast on this day should be awarded¹.

Evidence: AL Hanafiya proved their doctrine as follows:

The first evidence: that fasting on the day of slaughtering is permissible, the Prophet, peace be upon him forbade fasting on the day of slaughtering², and because obligation of forbidding is to give away what is forbidden, and the worshiper is to choose either to fast and be awarded or not to fast so that he is to be punished³.

Third evidence: This fast is permissible, and the proof of its legitimacy is that it is a way to protect soul from evil actions, it was in terms of what it is really good and healthy⁴.

Fourth evidence: that the obligatory of prohibition is the prevention from doing a thing, and what is considered non-existent cannot be described as something, and the appropriate forbidding is the invalidity of the act, which is the performance of the necessity of completion, and performance becomes corrupted and forbidden, because it is left to be completed forbidden⁵.

Fifth evidence: what is forbidden in the day of slaughtering is fasting as an act, not fasting as reality, these two concepts are different, for instance, praying on extorted land is invalid, but this is not necessary that it is forbidden everywhere⁶.

The objection of this evidence: that forbidden concerns the prayer in extorted land and it doesn't related to prayer itself, unlike the prohibition of fasting on the day of slaughtering⁷.

Preference: After showing the scientists' doctrine, it is likely the first doctrine is the preferable one, which is the view of the majority of scholars.

Third Theme

Its impact on selling.

Selling on the bases of invalid condition:

1- Meaning of the issue: Sheikh Mayara AL Fassi said that by selling and condition it means that if selling accompanies the condition, in this case this condition may be prepared according to Islamic purity law, or

1- AL Mabsoot Lilsarkhasi, 103 /4.

2- AL Sunan AL Kubra'a.124 /2.

3- AL Mabsoot p 104.

4- AL Enaya Sharh AL Hidayah258- 260 /3.

5- Osuol AL Sarkhasip 68.

6- AL Bahr AL Muheet fii Osoul AL Figh164 -165 /2.

7- Nihayat AL Wsoul fii Drayat al Osoul1210- 1211 /3.

the condition may be prepared against Islamic purity law, if it is Halal (prepared according to Islamic purity law) there are some details in this question, and if it is Haram (prepared against Islamic purity law,) in this case the absolute selling is invalid¹.

2- The statement of the issue on the bases:

Selling on an invalid condition is one of the issues that scholars have different opinions on it, in respect to fundamentalists' disagreement on the evidence of what is forbidden, some of the fundamentalists stated it to prove the effect of disagreement on the bases some of them are Sarkhasi², and Abizaid AL Dabbosi³ and Tlemceni where he said : (scholars differed on this origin... till he said : and from which sell and condition)⁴.

3- doctrines of the jurists in this question: scholars disagreements of two ways:

The first doctrine: that selling in respect to invalid condition stands against the main purpose of selling itself, and this is the doctrine of Maliki⁵, the Shafi'i⁶, Hanbali⁷, and Dhahiriya⁸.

Evidence: The supporters of this doctrine stated the following evidence:

The first evidence: talk: Amr ibn Shuaib, his father and his mother narrated that the profit, peace be upon him, said that selling on condition is considered invalid⁹, the Prophet, may Allah bless him and forbade selling on condition and this prevention indicates that what is forbidden is invalid¹⁰, in particular when this condition on contrary to the contract¹¹.

Second evidence : that these conditions may be concerning the seller or the buyer. a seller or a buyer, if it concerns the seller, it prevented him from being free and stable in respect to the price, and if it concerns the seller it prevents him from completing his property, there for the contract becomes invalid on both cases¹².

Third evidence: it does not imaginable that forbidding takes place unless there is a process of selling, and this turned out that prohibition on selling

1- Sharh Mayarat AL Gasi 452 /1.

2- Osoul AL Figh p 66.

3- Tagweem AL Adilla fii Osoul AL Fighp 52.

4- Miftah AL Wsoul Ila Bina'a AL Froua Ala AL Osoulp 40.

5- Sharh AL Kharshi Ala Mukhtasar KHaleel,519.

6- AL Hawi al Kabeer 698 /5.

7- AL Mughni, Ibn Gadama329 /6.

8- AL Muhalla , Ibn Hazm AL Dhahiri340 /7.

9- AL Mujam AL Awsat Liltabarani235 /4.

10- Hawi AL Kabeer 6696 /5.

11- Jami AL Ommhat 2371/. AL.

12- AL Hawi AL Kabeer 696.

regarding the same selling and the same condition¹.

The second doctrine: that the selling is correct but the condition is invalid, this is the view of Hanafiya².

The first evidence: Hadeeth Aisha God pleased with her, : (she bought Bareirah and asked her to be faithful to her masters, then she made her free³, and asked the Prophet, peace be upon him about the validity of such selling on condition), the prophet peace be upon him, agreed the process of setting the girl free although of the existence of a condition on selling⁴.

Second evidence: that the prohibition was recognized in the description of selling and not in the origin of selling itself, so the condition is an additional something and part of selling process⁵.

Third evidence: that the prohibition of selling is an evidence that it is existence and it can be described⁶.

The doctrines of the majority of scholars seem to me to be the preferable doctrine and that is because of the following:

- 1- That the prohibition of selling on condition is a prevention of the same selling not the condition.
- 2- With the condition that selling is correct but the condition is invalid , this contradict that the Shara forbids it.
- 3- The strength of evidence of the majority of scholars and their replying to Hanafiya, with the existence of a view of Imam Abu Hanifa saying that selling and condition are both invalid⁷.

The second requirement

The rule of selling containing usury

- 1- Meaning of the question: selling containing usury means that money is considered as a substitute for money on one of the two aspects which is deserved according to the contract between the two sides⁸. Allah (swt) says (*forbidden usury*)⁹ and as well he says (*Prohibited to you [For marriage] are:- Your mothers,*)¹⁰ .

1- Gawati AL Adilla fii Osoul AL Figh 151 /1.

2- Hashyat Ibn Aabdeen 207 /5.

3- Saheeh AL Bukhari 2481 /6.

4- AL Fusoul fii AL Osoul 244 /1.

5- Kashif AL Asrsr 271.

6- Tagweem AL Adilla fii OSOUL AL Fighp 57.

7- AL Mujam AL Waseet 322 /4.

8- Kashf AL Asrar 270 /1.

9- Surat AL Baqara verse 275.

10- Surat AL Nisa'a verse 23.

2- Doctrines of the jurists in question: scholars agreed on the prohibition of usury, and they differed in the validity of the transaction containing the usury on two different doctrines:

The first doctrine: that the selling containing usury is forbidden and it is corrupted and considered invalid and does not lead to ownership and this is the view of Malikis¹, Shafi`is², Hanbalis³, and Ibn Hazm AL Dhahiri⁴. These scholars give the following

Evidence:

The first evidence from the Holy Quran book: Allah the Almighty says : (Those who devour usury will not stand except as stand one whom the Evil one by his touch hath driven to madness. That is because they say: (*«Trade is like usury,» but Allah hath permitted trade and forbidden usury.*)⁵.

The second evidence from the Sunna: they gave evidence from the Sunna including the following:

[A] What is narrated by Abdullah bin Masood and his father they said: (The Messenger of Allah, peace be upon him, had been cursing usury, its constituent, its witness, and who writes down the contract.

[B] What is narrated by Abu Sa`eed said: Bilal came and carried some dates and he wanted to give them to the prophet, peace be upon him, then the prophet said: (Where are these from)? Bilal Said: we used to have some decayed dates and I bought two measures for one measure, the Messenger of Allah, peace be upon him said : (Oh this is the same usury) do not do, but if you want to do, sell ours and buy with the money some of these dates)⁶. AL Nawawi said: (This is a proof that any corrupted sell must be returned back to his owner and repaid the price), AL Qurtubi said the contract of usury is considered invalid, and that what was narrated by our scholars they said that when the prophet, peace be upon him said that (It is the same usury) this means that he meant the usury itself and not something similar to⁷:

The third evidence is consensus: The Muslims are agreed on the prohibition of usury, many scholars⁸ transferred this consensus, Abu Muzaffar Sam`ani said: (The Amassar scientists at all times clung to their reasoning on corruption

1- Osoul Fakhr AL Islam 270 /1.

2- Saheeh Muslim Hadith No (1584) 1208 /3.

3- Nasb AL Raya Liahadeeth AL Hidayah 429 /6.

4- Kashf AL Asrar an FUSOUL Fakhr al Islam .

5- Surat AL Baqara verse 275.

6- AL Kafi fii Figh Ahl al Madina 632 /2.

7- AL Hawi AL Kabeer 134 /5.

8- AL Mughni , Ibn Gadama p 133 /4.

of usury once it was forbidden therefore it was considered, as a consensus).

The second doctrine: that selling containing usury is forbidden, and this is the view of the Hanafiya¹. After showing the scientists opinions on this question the preferable doctrine to me is the first one, that is the doctrine of the majority of scholars, because of the following reasons:

- 1- For the strength of their evidence which is clear and true.
- 2- Their doctrine is appropriate to what was well known during the era of the companions and later, AL Mawardi said: (The Muslims have agreed on the prohibition of usury).

The second theme **Its impact on marriage.**

First requirement **AL shighaar marriage**

First: the meaning of shighaar in language and idiomatically:

- 1- The meaning of shighaar in language: it indicates the meaning of vacancy, when you say Baldatun Shighar (you are talking about a country that not a lot of people live in it and it is easy to be invaded²).
- 2- The idiomatic meaning of shighaar: that a man marries other man's relative woman, may be his mother, daughter or his sister nation, which indicates that one of the contract is considered as a substitute for the other, and there is no dowry (money paid to a woman when she get married) and it is called so because there is no money paid to the married women³.

Second: the types of Shighar : explicit shighaar: a marriage in which dowry does not mention in the marriage certificate⁴.

The second type : it is the type of Shighar in which a certain amount of money (dowry) is paid to both sides but not necessary of the same number⁵. It is called so because from one side it is a type of Shighar since each man agrees to marry another man's sister, daughter or mother, on the other hand it is not considered as a type of Shighar because there is money (dowry) paid to each woman⁶.

Type three: it is a compound of two-sides : in this type the dowry is nominated to one of the two women but not both of them⁷.

1- AL Muhlla Bil A thar Sharh AL MUJABil ikhtisar 190 /7.

2- Tsj AL Aroos min Jawahir AL Qamoos 2016 /1.

3- AL Bahr AL Raig SHarh Kanz al dagaig 405 /6.

4- Sharh Mayarat al fasi 277 /1.

5- Sharh Mayarat AL Fasi p 277.

6- AL Sharh AL Kabeer ala Mukhtar Khaleel, 307 /2.

7- AL Sharh AL Kabeer ala Mukhtar Khaleel, 307 /2.

The statement of the case on the bases : AL Ghazali said that AL Shighar as a type of marriage is forbidden¹. On the other hand, AL Tilmisani said that scholars have two different points of view: the first opinion is that it is forbidden and the contract or the marriage certificate must be cancelled².

4- doctrines of the jurists in this question: scholars disagree with this case on two ways as follows:

The first doctrine: Maalikis³, Shafi`is⁴, Hanbalis⁵, and AL Dhahiriya⁶, said that the Shighaar marriage is void and it must be cancelled .

Evidence: The supporters of this doctrine prove their opinion as follows:

The first evidence from the Sunna⁷: Jabir bin Abdullah narrated that: (The Messenger of Allah, peace be upon him prevents Muslims from getting married through AL Shighar)⁸, Emran Ibn AL Husein, said that the Messenger of Allah, peace be upon him forbid Muslims from AL Shighar marriage⁹.

Omar Ibn AL Khattab, peace be upon him, said that the Messenger of Allah, peace be upon him forbade Muslims from AL shighaar marriage¹⁰.

The second requirement

The provision of AL Muhalil Marriage

First, the meaning of AL Muhalil idiomatically and in the language:

[A] The meaning in language: the Arabic terms (Ahalla and Hallala) are of the same meaning, they indicate that to make something valid and allowed (Halal) as in the verse, (*but Allah hath permitted trade and forbidden usury*)¹¹.

AL Muhalil is a person who marries a third times divorced woman aiming that her ex-husband can¹² remarry her again when this Muhalil divorces her. The prophet , peace be upon him said that (Allah (swt) L a`ana AL Muhallil wa AL Muhallal Lahu)¹³, therefore he is considered as (Hal) and her ex-husband is (Muhallal Lahu)¹⁴.

1- AL Mustasfa, Imam Ghazali 50 /1.

2- Miftah AL Wusoul Ela Bina' AL Furoua p 40.

3- Sharh AL kharshi ala Mukhtasar KHaleel168 /4.

4- AL Ahawi al Kabeer 323 /9.

5- AL Iradat , AL Mughni, 576 /7.

6- AL Muhala Bila`athar Sharh AL Majala Billkhtisar853 /8.

7- AL Dhakheera Fii AL Figh AL Maliki168 /4.

8- Saheeh Muslim, Hadith No (3536), 140 /4.

9- AL Sunan A Kubra, 36 /3.

10- Tuhfat AL Ahwudhi,2868/.

11- Surat AL Baqaraverse 275.

12- AL Misbah AL Muneer 147 /1.

13- Sunnan Abi Dawood 623 /1.

14- Taj AL Aroos – AL Zubeidi.

In fact all what Allah (swt) makes it valid and permissible it must stay Halal, and on the other hand all what Allah (swt) makes it invalid and not permissible it must stay Haram¹.

[B] The idiomatical meaning of AL Muhallil: He who² marries a three time divorced woman, in order to give a chance to her ex-husband to marry her again.

Stating this issue on the bases: Ibn Rushd said: (Malik and his companions, depending on the Hadeeth which was narrated by Ali bin Abi Talib, Ibn Masud, Abu Hurayrah, Ben Amer, they said that the Prophet, peace be upon him, said that : (God damn Al muhalil and AL Muhalla lahu)³, this way of damn is the same as Allah (swt) damn who he drinks wine or treats with usury, this means that all the three cases are forbidden⁴, and the forbidden indicates that what is forbidden is corrupted.

Sections of AL Muhalil marriage: there are five sections as follows:
the first section: he marries her on condition that he divorces her according to the contract marriage which should be cancelled after that⁵.

The second section: to marry her on condition that if she becomes Halal to her ex-husband, the second husband divorce her⁶.

The third section: He marries her absolutely without any condition, but he intends to divorce her before the contract⁷.

Doctrines of the jurists in this question: there are five doctrines as follows:
The first doctrine: That AL Muhalil marriage with its all divisions is considered corrupted and invalid both before and after marriage, and this is the view of AL Hassan, AL Nakhai, AL Sha'abi, Gatada, Abu bakr ALMuzni, Alleith, AL Thawri, Isa'ac and Imam Malik and his companions⁸.

Ibn Rushd said that (Malik and his companions and most of scientists agree that this type of marriage is corrupted and invalid before and after marriage)⁹. This is the view of AL Hanabilla¹⁰ and Abu Yosuf from AL Hanafiya¹¹.

1- Lisan AL Arab Ibn Mandhoor 163 /11.

2- Mujam Lughat AL Fugaha`al /2.

3- Sunan Abi Dawood fii AL Tahleel. 623 /1.

4- Bidayat AL Mujtahid wa Nihayat AL Mugtasid 70 /2.

5- AL Majmoua SHarh AL Muhadhab 250 /16.

6- AL Hawi AL Kabeer 334 /9.

7- AL Hawi AL Kabeer 334.

8- Bidayat AL Mujtahid wa Nihayat AL Mugtasid p 70.

9- AL Bayan wa AL Tahseel 385 /4.

10- AL Mughni 574, Manar AL Sabeel 118 /2.

11- Fath AL Gadeer , Ibn Humam 448 /8.

Evidence: The supporters of this doctrine give the following evidence:

The first evidence from the verse: (So if a husband divorces his wife [irrevocably], He cannot, after that, remarry her until after she has married another husband and He has divorced her.)¹, the inference: Ibn Taymiyyah said: (ALLah (swt) in the previous verse explained clearly what type of marriage, which is later and again explained by the prophet, peace be upon him, and it means a real marriage in which sexual intercourse is really practiced, because this is the only way that the woman becomes Halal and she can get married again by her ex- husband².

Second evidence : what is narrated by Ali bin Abi Talib, Ibn Masud, Abu Hurayrah, and Oqba Bin A'amir Ben Amer , God bless them, that the Prophet, peace be upon him said: (God damn AL Muhalil wa AL Muhalal Lahu).

The second doctrine: If he marries her on condition that when he practice sexual intercourse with her he must divorce her and marriage contract becomes invalid, therefore, the main reason behind marriage is to make the woman Halal for her ex-husband. this type of marriage is void.

The third doctrine: If he has married the divorced woman on condition of (Tahlaal) without mentioning any condition in the marriage contract, in this case the contract is true, even if he states this condition before the contract or he intends it. Ibn Hazm AL Dhahiri³ said that (If her first husband- who now divorced her- has desired and agreed with the second husband to marry her and then divorce her after he practices sex with her so as to make her Halal for her ex-husband to the marry her, it is permissible if he married her without any condition in the same marriage contract, if he marries her is with an option to keep or divorce her, this is also true, but if there is a clear condition in the marriage contract that he divorce her after marriage , in this case it is a corrupted and invalid contract⁴.

The fourth doctrine: that the second marriage is true, and it is not permissible that the first husband can marry her, and this is the view of Mohammad Ibn AL Hassan from Hanafiya.

Fifth doctrine: If he has married a divorced woman aiming to make her Halal for her ex-husband, in this case the marriage is halal (valid) but it is adversity. This is the view of Hanafiya, Imam Abu Hanifa and Zuf⁵.

1- Surat al Baqara verse No 230.

2- AL Fatawa AL Qubra 365 /9.

3- AL Muhalla Bil Aathar, 446 /9.

4- AL Muhalla Bil Aathar, 446.

5- AL Mabsout AL Sarkhasi 171 /6.

The Fourth Theme Its impact on the judiciary

The rule of the judge when he is angry. Stating the issue on the base: Many jurists and fundamentalists mentioned this issue based on the dispute of what is forbidden, One of them was Ibn Rushd who stated that the rule of the angry judge is true and executed, and it is probably said that it is not true because the prohibition indicates that the prohibited is invalid¹. Ibn Gadama also said that the rule of the judge is not true because it is prohibited². On this difference it is clear that many scholars and fundamentalists had not agreed on this issue.

Doctrines of the jurists in this question: scholars disagreed with this issue on two different doctrines as follows:

The first doctrine: The judge Abu Ya'ali³ from Hanabila and ALDawudi⁴ from Malikiya said that it is prohibitif a judge rules someone while he is angry, his rule must not be executed in the case of anger.

Evidence: Abi Bakra narrated that the prophet, peace be upon him, said that it is not allowed that a judge rules between two people when he is angry⁵.

The second doctrine: the supporters of this doctrine state that if the judge issues a rule and he is angry, this is regarded as adversity, and his rule is considered true and it should be executed if it expresses the truth, the scholars who supports this doctrine are: Hanafis⁶, Malikis⁷, Shafi'is⁸, and Hanbalis⁹.

Which is preferable: After displaying of the jurists opinions regarding the two mentioned doctrines, it is likely that the second doctrine is preferable because prohibition relates to an external matter, Al Alia said, (as well it is forbidden that the judge rules between two people when he is angry, a huffy it reserves the judgment, if the judgment takes place with all its principles and conditions, it is true)¹⁰.

1- Bidayat AL Mujtahid wa Nihayat AL Mugtasid, 779 /1.

2- AL Mughni, Ibn Gadama 574 /7.

3- AL Mughni, Ibn Gadama 574 /7.

4- AL TAJ wa AL Ikleel, Mukhtasar khaleel 30 /11.

5- Saheeh AL Bukhari, 2616 /6.

6- Sharh Fath AL Gadeer Lilkamal Ibn Humam352 /16.

7- AL Taj wa AL Ikleel , Mukhtasar khaleel30 /11.

8- AL Hawi Lilmawrdi,63 /16.

9- AL Mughni Ibn Gadama 574 /7.

10- Tahgeeg AL Murad fii Anna AL Nahei Yagtadi AL Fasaad, 73 /1.

Conclusion

Praise be to God, who has helped me to complete this search and I ask him to make me a servant of his law, and bless me with science and work, I found the following results:

- 1- That the issue of a statement of forbidding because of the invalidity of what is forbidden, although it is a branch but it is still one of the most important base on which the jurists state their opinions.
- 2- That there are many doctrinal sections that show the impact of this rule in jurists' different opinions, some of these sections are the following: as Praying on extorted land, and the provision of supererogatory prayers at the three adversity times, and the provision of fasting on the day of slaughtering, and the provision of sales on corrupted conditions, the provision of sales containing usury, and the provision of Shighar marriage, the provision of AL Muhalil marriage and the provision of the judge's rule when he is angry.
- 3- The scholars disagreed on the rule concerning Praying on extorted land, on three different doctrines and that the chosen one is that prayer on extorted land is correct, and it is the view of majority of scholars, because they presented strong evidence, some of them are the judge Al Baglani, and AL Razi.
- 4- The jurists have differed in the provision of supererogatory prayers during the three adversity times on three doctrines and the preferable doctrine is the one which represents that supererogatory prayer is forbidden during these three times.
- 5- The scholars, in respect to fasting on the day of slaughtering, disagreed on two different ways and the preferable opinion is the first one which is the doctrine of the majority of scholars.
- 6- Jurists disagreed on the rule of selling on an invalid condition on two doctrines, the preferable opinion is the first one which is the doctrine of the majority of scholars.
- 7- Jurists disagreed on the rule of selling that contain usury on two doctrines The doctrine of the majority of scholars is the preferable one which indicates that this type of selling is void and forbidden.
- 8- Jurists disagreed on the rule of AL Shighar marriage on two doctrines, and the preferable doctrine is that it is void and should be canceled before or after marriage, and this is the doctrine of the majority.
- 9- Jurists disagreed on the rule of AL Muhalil marriage on five doctrines,

and the preferable doctrine is the first one, which stated that this type of marriage is void in all cases with all sections it must be cancelled.

- 10- Jurists disagreed on the rule of the judge when he is angry on two doctrines, and the preferable doctrine is the second one which states that it is an adversity rule, and it is executed only if it meets the truth and the right

The first doctrine: that selling in respect to invalid condition stands against the main purpose of selling itself, and this is the doctrine of Maliki, the Shafi'i, Hanbali, and Dhahiriya.

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Responsibility for negligibility management (A comparative study) **Dr . Ahmad AL Zein Ahmad Hamed**

Abstract

Praise be to Allah, prayer and peace be to the Prophet Muhammad, peace be upon him, the subject of this research is the responsibility for negligibility management, where we learn through the concept of the responsibility for negligibility management, its origin and evolution in the Islamic Sharia and law, and then to analyze the elements of the responsibility for negligibility on responsibility for both management and individual depending on the legislative and unified judicial system, which is now adopted by the legislature and the Sudanese judiciary, and then the research also addresses the personal responsibility for the staff member when he makes a damaging act outside the framework of public service, whether in order to achieve personal interest or is actually he intends to do so, which results in compensation from his own money, and then the study researches the issue of responsibility for negligibility management, its situations in the law in which the damaging is to be compensated by the administration alone and not the member staff who caused the damage, and then the research concluded that management is responsible for risks and damage only.

Then, the conclusion of the research includes the most important findings and recommendations.

And Praise be to Allah, the Lord of the worlds, may Allah bless Prophet Muhammad, peace be upon him and blessed his family and his companions.

Introduction

Praise be to Allah and peace and blessings be upon his Messengers Our beloved prophet Mohammed, peace be upon him, and yet, no doubt that the provisions of Islamic Sharia is valid for every time and place, and human happiness is in the application of these provisions because it is the law of the Lord of the Worlds Creator world who knows the affairs of his devotes, the Almighty said (*Should He not know,- He that created? and He is the One that understands the finest mysteries [and] is well-acquainted [with them]*)¹, and the Islamic Sharia set provisions for the benefit of the individuals and the community and this is what is called the administrative responsibility of the governor and his aides, or the responsibility for negligibility management in

1- Surat AL Mulk verse no14.

the law, and this responsibility must be assigned to the provisions of Islamic Sharia and the law, and that is why the title of this research, the responsibility for negligibility management was chosen .

Reasons for selecting this research:

- 1- Sudanese legislation established administrative responsibility as a general rule on the public employee because he represents the management as moral entity.
- 2- Sudanese legislator states that the management is not responsible for the damage caused by the member staff if the harmful act has been done without intention and in good faith during the member staff service based on the base of affordability of public burdens, this statement is contrary to the guarantee rules in administrative responsibility in Islamic law .
- 3- That the management responsibility for the risk - without any infringement or adverse reaction from the administration –is an exceptional special responsibility stipulated by specific legislation, while Islamic Sharia set administrative responsibility and damage together and generally to make sure that the damage occurred.

research goals :

This research aims to:

- 1- Study the provisions of the responsibility for negligibility management, in legislation, judiciary, Sudanese Fiqh, compared with the legislation, judiciary and comparative jurisprudence.
- 2- State that the responsibility for negligibility management, in Sudanese legislation based on personal functional responsibility of the staff member of the department as a general rule.
- 3- That the responsibility for negligibility management as a moral figure is regarded as an exceptional responsibility that is proved in special cases and under certain conditions set by the law.
- 4- State that the administrative responsibility for the risk - without any violation or harmful reaction from the administration -in the Islamic Sharia and the law harmful is proved only by the occurrence of damage.

Research problem :

This research treats the following topics:

- * Personal responsibility of the staff member, if he commits an act outside the framework of his job, and he exploits, disregards or achieves personal benefits, compensation must be on his own money without any responsibility for the management.

* Management is responsible for certain issues in certain cases determined by law .

* Management is not responsible for a harmful action committed by the staff member while he is performing his job without intention.

* Management responsibility for risk only when damage causation happened. And without any violation or negligibility of the administration.

Research Methodology :

Researcher adopted inductive, analytical and historical method in this research, which presents and analyze the views of scholars and commentators of the law with respect to the themes of this research, with the comparison of other legislation and corresponding comparison in these subjects with an indication of exposure to the historical approach, and the origins and evolution of the provisions of the management responsibility in the Islamic and legal systems.

Structure of the research:

This research was divided into an introduction, six sections and a conclusion as follows:

Introduction: includes reasons of research selection, its objectives, its problem, approach and structure.

First topic: the definition of administrative responsibility its origin and evolution

The Second topic: the principle of administrative responsibility in Islamic Sharia and Law

The third topic: Elements of administrative responsibility as general

The fourth topic: personal responsibility of the staff member

The fifth topic: responsibility for negligibility management

The sixth topic: Management responsibility for risk

Conclusion : it includes the most important findings and recommendations

Sources and References

Index

The first topic

Definition of administrative responsibility, origin, evolution in the Islamic Sharia and law.

First requirement

The definition of responsibility for negligibility management in language and idiomatically

Section one: Definition of responsibility in the language:

Responsibility means to compel someone to compensate for the damage he caused to a third party as a result of a harmful action he did¹, and «morally» it means the person`s commitment including words and deeds².

From this definition it is clear that responsibility in language means committing the person whatever natural or legal, or to ensure compensation for damage caused to others.

Section two: definition of responsibility in Islamic law:

Responsibility in Islamic law means: the instinctive preparing that the God put on human to be fit to do matters that God entrusted him in relation to religion and the present life, so if he fulfill the goods he will be rewarded if not , he will be punished³.

From this definition we conclude that the responsibility in Islamic law preceded by an obligation or assignment to the person and the adoption of the authority and power granted to him, followed by reward or punishment.

Section three: definition of responsibility in law:

Responsibility in the law means that the subordinate commits to perform activities to maximum capacity and to bear what may arise from this commitment⁴, or it is the obligation of the person, whether natural or legal person to compensate the damaged person⁵.

According to these definitions, the responsibility-in-law is obligations and duties that put on the person, whether natural or legal to carry out certain actions, whether these actions are physical or legal.

Section four: definition of responsibility in language:

The Arabic term (Gassara) indicates that someone fails to do something because he is unable to do it, therefore neglecting is the slowness or delay to do something that is considered as a duty of a person or he leaves⁶.

1- Mujam Lughat AL Fugha` a.p 425.

2- AL Mujam AL Waseet p 425.

3- AL Om , AL Imam AL Shafii p38.

4- AL Ragaba AL Gadaiya Ala Amaal AL Idara p89.

5- AL Dawa AL Idariya p246.

6- Lisanu AL Arab , Ibn Mandhoor.

Section five: Definition of negligence in Islamic law:

The scholars of Islamic law defined neglecting as: «overstepping the limit or the right»¹, and some scholars defined the term (negligence) as of the overstepping of what is illegal or non-permissible or what should be limited to², jurists also expressed it as carelessness, negligence, transgression and excessiveness³.

Section six: Definition of negligence in the law:

Negligence in the law means the breaking of the general duty that is imposed on a specific person, whether this person is of legal or natural personality, so that this duty imposes no harm upon⁴.

Section seven: definition of the administration in language:

The linguistic meaning of the word administration is treatment, which means to handle a person an administrative public of matters concerning the affairs of individuals, such as providing administrative services including health, education ... etc, in charge of accomplishing them by the powers and authorities granted to him, as well as an administrative person treats people and helps them to achieve their desires and demands.

Section nine: Definition of Management in Islamic law:

Administration in Islamic law means that the Muslim ruler and his helpers mastermind the people affairs in various ways of life, such as providing services to them, and the management of the affairs of their daily lives, according to the responsibility of the ruler because the God will ask him about that , as well as people who chose him to such situation⁵.

Section ten: definition of management in the law:

Management in the law is the statement of the organizational structure of the unit concerned with the detailed terms of reference and its activities in accordance with the principle of legality»⁶ or is «the range of activities concerned with the direction of human effort to implement a policy in accordance with the methods of achieving social function and the final goals of the administrative system, the public interest as interpreted by and determined by the governing institutions⁷.

1- AL Nadhariya AL Aama Lil Muaamat Fii AL Sharia al Islamiya p86.

2- Tabyeen AL Hagaig Sharh Kanz AL Dagaig p 145 -146.

3- Previous Reference, p 147.

4- AL Ganoon AL Idari AL Libi, p 152.

5- AL Idara AL Aama AL Mabadiwa AL Tatbeeg p .

6- Previous Reference, p.

7- AL Ganoon AL Idari, Manshorat Jamiaat AL Sudan AL Maftooha.

Through these definitions it is clear that the meaning of management in the law means a statement of administrative units in terms of the organization of its structures to clarify the powers and functions of these units

Through these definitions we conclude that the negligence responsibility of management means: a penalty for disturbing public duty that imposes on the administration not to cause injury to others, and thus responsibility entails on the administration in the case of any infringement of which happens to others, and this infringement as an incident, which built the right to compensation towards administration by others «injured.»

The second requirement

The origins and evolution of administrative responsibility in the Islamic Sharia law

Section I: origins and evolution of administrative responsibility in Islamic law.

Since the appearance of Islamic law it has been shown that each individual is responsible for his administrative work to achieve the objectives of Islamic law, and to respect the work he is entrusted to .

The evidence that the responsibility of the ruler and the administrative officer of the Islamic Sharia is stated in the Koran verses,Allah says: *(Therefore, by the Lord, We will, of a surety, call them to account,)*¹, and also says: *(The [Qur`an] is indeed the message, for thee and for thy people; and soon shall ye [all] be brought to account.)*², and says: *(Come not nigh to the orphan`s property except to improve it, until he attains the age of full strength; and fulfil [every] engagement, for [every] engagement will be enquired into [on the Day of Reckoning].)*³.

The indication of these verses is that any person is responsible only for his own mistakes⁴, except that many of the basic principles are excluded because of justice and fairness therefore «Leaders» responsible for themistakes that have been done by followers, the Sunnah showed this responsibility very clearly and this statement has been supported by the keenness of the Prophet Muhammad, peace be upon him to raise the sense of responsibility for the majority of Muslims: Ibn Omar said that the Prophet, peace be upon him, said: «You are all responsible for your actions and as well as you are all responsible for the actions of the followers»⁵.

1- Surat AL Hijr verse no 92.

2- Surat AL Zukhruf verse no 44.

3- Surat al Isra`a verse no 34.

4- Musanafat al Nidham AL Islami, p428.

5- Saheeh Muslim Sharh AL Nawawi p 212.

Administrative system in Islam since its inception does not differentiate between the ruler and the ruled with respect to submit to Sharia in terms of responsibility and accountability, the Islamic Sharia is characterized by justice, equity and unity systems , there is no independent provisions applicable to the rulers without convicts everyone either, and I knew the administrative system in Islam are two types of justice, ordinary justice and eliminate injustices and the latter corresponds to what is now called the administrative judiciary, which specializes spend any grievances to adjudicate in disputes of an administrative nature, such as consideration.

Section Theme

Origins and evolution of administrative responsibility in Sudan

When the British administration started in the development and application of modern laws in Sudan, there was not what could be called a law administrative law of private sense, but was then the base applicable to administrative liability and other administrative disputes is the rule of justice, conscience , was first applied in article (4) of the civil Jurisdiction Act repealed for the year 1900 and read «in cases not governed by Article (3) of this Act or any other law, courts apply the rule of justice, equality and good conscience,»¹.

This base, later, became the basis of civil law in Sudan² and therefore the Sudanese judiciary has been facing one irreplaceable option : administrative disputes, despite the different nature are to be taken under the civil law .

There were special committees to decide on administrative artistic matters which have a special nature requires familiarity with things that are not found in the ordinary courts, and these committees play the role of the courts and they were concerning with matters like : administrative activity, such as housing, building planning and labor disputes, and the committees that decide on matters relating to social insurance 34- next

After the independence of Sudan, Sudanese courts started to observe the administrative system through what is known as the pretext cancellation based on the text of Article (7) of the Interim Constitution of the Sudan for the year 1956 and which states that :(natural and legal persons are subject to the rule of law), and in 1972 the Code of Civil Procedures was issued for the year 1972, which organized the appeal of administrative decisions

1- Ganoon AL Ijraat AL Madaniya 1983.

2- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL SUDANI.

cancellation and compensation procedures so as to determine the conditions and timing to accept the appeal of the administrative decision , then the text on the same conditions in a legal civil procedure 1974 m and 1983 m, and in 1984 transactions Act of 1984 provided for the administrative negligence in general, among which administrative responsibility for natural persons or legal persons where provision in Article 138 states : «every act causes damage to the others must be compensated».

In 1996 the Constitutional and Administrative Justice Act of 1996 was issued where making the jurisdiction of the Supreme Court Justice in the eyes of the administrative appeals issued by the President of the Republic or the Ministers Council or the Government of any state or any minister, State or Federal make competent to judge appeals court to consider the Administrative Appeals Apart from these administrative authorities contained in the jurisdiction of the Supreme Court.

In 2005, the Administrative Justice Act of 2005 was issued which organized the appeal ways system in the administrative decision and jurisdiction of administrative disputes and punishments of administrative responsibility, including compensation management of the injured person from the management business, where the provision in Article 19 of it :(judge will rule in requests for compensation for damage caused by administrative decisions.

Thus, the administrative responsibility in Sudan became subject to the rules of civil law - Civil Transactions Act of 1984 - in terms of subject and in front of the ordinary courts and under certain procedural ways to prove the administrative responsibility towards administration in other laws.

The second topic

The basis of administrative responsibility in the Islamic Sharia law

The first requirement

The basis of administrative responsibility in Islamic law

The basis of administrative responsibility in Islamic law is the actualize of the damage, because the damage is already prohibited and forbidden regardless of who causes it, a natural or legal person «the administration.»

The evidence for that on the responsibility of a natural person as stated in the Sunnah from Anas, may Allah be pleased with him said, some of the wives of the Prophet, peace be upon him, gave him food in a bowl, Aisha hit the bowl and destroyed, then the Messenger of Allah, peace be upon him said

«food with food and bowl with bowl»¹ and saying peace be upon him» do no harm»².

With regard to the responsibility of the legal person (Management) Imam Tirmidhi narrated in his Sunan that the Messenger of Allah, peace be upon him sent Ali IbnAbiTalib to pay compensations to some people who were attacked and kill by Khalid bin Walid, Ali paid them for everything regardless of its size, he paid them destructive - money even forthe least thing not only this but also for their children who were afraid of the horror that occurred to them : All that took place in the order of the Messenger of Allah, peace be upon him, the commander and head of the Islamic State «administration,» which indicates that the administration is responsible for administrative liability .

The second requirement

The basis of administrative responsibility in law

The administration operates and performs its functions through its staff because it cannot be attributed to the administration negligence or infringement because it is not only a moral character and it cannot practice its administrative work itself, and therefore harmful act concerns and attributed its employees, whether they are known or unknown³ so the public employee reaction of the management is an essential and necessary for the establishment of liability of the employee and the management. .

The basis of liability of administrative negligence-in-law are based on dependency relationship between the dependent and followers.

The scholars don't agree that always the administration is responsible for the act of public employee» . Some believe that the responsibility of management is based on the actions of another, «It is the responsibility of indirect», that the administration there is no one part, harmless act, administration is responsible for the actions of those who are following⁴.

Other scholars state this responsibility on the basis of guarantee, they say that the administration is responsible for harmful actions that have been committed by others as long as these actions occurred while employee performing their job, and thus the administration can not deny this responsibility away even if it proves that it is impossible to prevent the unlawful act that caused the damage.

1- Sunan AL Tirmidhi , Imam AL Tirmidhi, P 315.

2- Sunan AL Tirmidhi , Imam AL Tirmidhi, P 338.

3- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL SUDANI.

4- Al Waseetfii AL Ganoon AL Madani p 184.

This view is taken by the Sudanese legislator in responsibility in general negligence, whether natural or legal «administrative» Article (138) of the Civil Transactions Act of 1984 that: «Every act of the cause of damage should be compensated by the person who has done it even if undistinguished»

* Terms of administrative responsibility according to the relationship of subordination: administrative responsibility is realized according to two important conditions:

First, the relationship between the dependency followed by «administration» and the «public employee».

The dependency relationship between the dependent (the administration) and the followed by (the employee) on the actual power of the followed in guiding the follower¹.

Therefore, the administration must have an actual authority to issue subordinate commands to guide the employee, as well as in the implementation of these orders.

Second, public employee committed harmful action while performing his job.

Responsibility takes place if the employee committed an act of damaging to a third party, as in the text of Article (146 /1) of the Civil Transactions Act of 1984: «the followed (administration) will be liable for damage caused by the follower while he is performing his duties or because of it» and therefore there must not be a causal relationship close between the negligence and job, to prove that the «public employee» he couldn't have committed the harmful action unless he had had the job, so the job is the direct cause of the harmful act².

The third topic

The pillars of administration negligence Responsibility in general

When talking about the origins and evolution of administrative responsibility in Sudan that the Sudanese legislation Civil Transactions Act of 1984, according to the general rules based negligence management on the harmful action that caused by the employee while he is performing his job so the pillars of administration negligence responsibility in general and that including liability is, injury and a causal relationship between them, and as the following details:

1- Al Waseetfii AL Ganoon AL Madani p 869.

2- Al Waseetfii AL Ganoon AL Madani p 870.

First requirement

The harmful act

The Civil Transactions Act of 1984,takes the idea of compensation for damage or harmful action arising out, regarding Article 138 of the Civil Transactions Act of 1984 that: «Every act of the cause of damage to the non-necessary committed to compensation even if it is not described ,» the word harmful is the same as to ensure in the Islamic law (Article 5 / t from the Civil Transactions Act of 1984) .

The harmful act that considered responsibility as obligatory is in itself obligatory of compensation and it takes several different aspects Kalatlav and infringement and Altayib and irregularity, kidnapping and neglect¹ and the failure to reduce duty and willful² and not avoided and negligence and lack of attention, caution and vigilance etc, have tort be abstaining from Shara commitment dictated by law or this so-called «negative reaction»

And harmful act attributed to a natural person as well as can be attributed to moral or legal person, and the responsibility of the legal person «administration» responsibility does not mean in his being fixed as a body and it means, in fact, the responsibility of those who support it,

The conclusion is that the administration is responsible for compensation for the harmful act of the general employee while he is performing his job on the condition that this act should not be included in the framework of the civil service.

The second requirement

The damage

Damage is the harm that attacks human, whether physically or mentally, and so management is obligated to compensate the damage caused to a third party has to be on certain conditions they are :³

1- The damage must certainly take place :

And the damage is certainly confirmed which causes lost in the normal earning opportunities, and does not occur in the future because the rule is true only when it is based on fact and not on hypotheses and possibilities.

2- Damage must be special:

This means that damage infects a particular person or persons, but if it infected specified number of individuals, it would be public harm so it is considered as public burdens.

1- Majalat al ahkam al Gadiya al Sudaniya 2000, p 129.

2- Al Waseetfii AL Ganoon AL Madani p 644.

3- Al Waseetfii AL Ganoon AL Madani p 714.

3- The damage, which can be estimated with money:

And this condition is met in the physical damage, such as deprivation of earning a profit or the practice of a profession or compromising one of the movable or immovable property.

Third requirement

The causal relationship between the harmful action and the damage

It is a link between the harmful action and the damage to the injured, and expressed sometimes that damage is direct, and it means the reason of the harmful act is the one which caused the damage without the intervention of any other external reasons.

The causal link is eliminated between the harmful action and the damage if there is an existence of a foreign cause of force causes the act of the injury. In these cases, the defendant is not obliged to compensate the damage, This is stipulated in Article 141 of the Civil Transactions Act of 1984 that «if the person proves that the damage has arisen from an external reason or an act of the injured or the actions of another, it is not obliged to compensate the damage unless there is a text or an agreement on that, «but the defendant may not be relieved of the responsibility college if he had contributed doing harmful in bringing about the damage which is known as the status of joint action where necessary next to the defendant from compensation commensurate with its role in causing the damage.

Applying all of this, in the Commercial Bank of Sudan case against Dawud Idris: «there is a causal link between the error committed by the defendant and the damage done to the plaintiff, and the association exists if the result is because of a of a new factor, which is the mistake of a third person, a causal association is proved when he the third person's action is a reasonable action»¹.

We conclude from the above that the negligence responsibility is generally a penalty for disturbing public duty that imposes on everyone not to cause injury to others, and therefore the infringement, which is caused by the person who caused the damage is obliged to compensate the injured who suffered the damage, and the person who caused the damage, has intended to do that willingly.

The negligence responsibility of managing means: an administrative penalty for disturbing a general duty, which imposes harm to others, so its responsibility is not to cause harm to others and thus responsibility entails on

1- Majalat al ahkam al gadaia 1956 p 74.

the administration in the case of any infringement of which happen to others, and this infringement as an incident, which built the right to compensation to the administration by a third party «injured », responsibility of management and responsibility in general must have elements of harmful action, injury and a causal relationship between them.

The fourth theme

The personal responsibility of the employee (personal job damaging)

Previously we mentioned that the administration operates its actions by employees, if any one of them who commits a harmful action on behalf of the management and for its interest so management must take responsibility for damages resulting from such actions and behaviors on condition that the action is not personal, for example, the member staff is intended to achieve a personal interest ... etc. this is known as personal job damaging and in this case he is responsible for hi action and he, personally must pay compensation to the injured from his own money, but the administration is responsible only if the conditions set by law are available¹.

First requirement

The definition of personal job damaging:

Some jurists defined personal job damaging as : «the act actually has taken place by the public employee outside the scope of the civil service², the public employee who causes harmful actions to others and be an act outside the framework of his duties, then this act is regarded as personal job damaging and he is personally to be responsible and not his administration.

The second requirement

The condition of personal job damaging

Article 1601/ of the Civil Transactions Act of 1984 states that: (each person is an employee another or shall act to another cause harm to one another or to others exploited his job or disregard their duties or negligence is not justified in the performance in person is required to compensate the damage).

According to this text, if the public employee causes harm to any one as he intends to exploit his job, he is personally will be responsible for compensating the damage caused in his own money, and the administrative

1- Muhadaratfii AL Ganoon AL Idari.

2- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL Sudni.

body does not responsible for that damage , and personal responsibility of the employee in this case is the natural result of the harmful personal action, which has nothing to do with the nature of the principal public employee labor, harmful personal action is the cause of the personal responsibility of the employee.

Transactions Act of 1984 stated the following conditions :

First: the employee must be a public employee subordinate to a management .

This element is required to evidence the damage, as the lack of a link between the public employee and the administration does not make the administration responsible for any compensation.

and this association is governed and defined by the law, this association of dependency at the base of administrative responsibility in the law where this association is on the actual power of the «administration» and of the «public employee»¹.

Secondly: a public official causes harm to others

The public employee causes harm to others, and that this damage must be determined so that they can be evaluated and compensated as in that article 1611/ of the Act of Civil Transactions 1984 stated in that: « damage must be determined so that they can be evaluated and compensated.»

This damage occurred directly or because of certain reasons.

And harmful act that caused by public employee must be in the scope of his job and not because of others actions even if it has been done by the injured himself. but if the harmful act is committed by a public official as a result of what is happening to the right or wrong during the performance of his work, this harmful act is not considered a cause for compensation and this should be on certain conditions :

1. The harmful action must be intended : this is in the case that it took place intentionally and the public employee intended to commit the harmful action, but if his action happens as a result of right or wrong while he is doing his job , in this case no compensation will be paid.
2. The employee takes advantage and gets benefits as a result of unjustifiable exploitation of his job or negligence of his duties:

And the exploitation of the public employee`s job, meaning that the acts of his duties were not imposed on him, either he benefits from these action he himself or any other person, such as the public employee`s intends to harm one of the individuals, or to favor a service to one of his relatives or friends and differentiate between them and others².

1- SharhGanoon AL Mua`amalat AL Madaniya AL Sudani p 203.

2- SharhGanoon AL Muaamalat AL Madaniya, p 206.

Damage may result in by unjustified negligence issued by a public official, and some scholars¹ view that the neglected action is not justified, because every negligence resulting in injury requires responsibility, regardless of whether there is justifiable reason for this negligence or not.

The consequences of personal job damage :

1. A public official is responsible for committing harmful injured action.
2. The injured person has the right to bring an action of personal responsibility in the face of a public official, as the injured person can state this claim in the face of the both public administration and the employee.
3. If the injured states the claim in the face of both administration and public employee, the management compensates the injured person and then can accrue to the public employee to require the right of damage to personal damage proved against a public employee,²
4. If the injured complains the public employee without the administration the case will stop at that point and the administration has no right to punish the employee in any case, but if the injured comes back to the management and complains it without the public employee, in this case the management has the right to punish the public employee³, so the administration may return to the public employee to pay compensation.

At the conclusion of this section, the researcher finds that the Civil Transactions Act of 1984, gave more details, description and analysis of personal damaging it could be better to leave these details to the Competent Administrative Court to provide for the conditions that come out of this damage.

The basic function of administrative disputes is due to administrative judiciary in that it builds the rules and principles relating to administrative disputes and deciding where and which include administrative responsibility.

The Fifth Theme

Responsibility for Negligence Management

We mentioned above⁴ through the folds of this research that the administration operates through its employees and that the harmful action is often committed by the staff, since those employees engaged acts concerning the administration on its behalf and its interest, so management must hold

1- SharhGanoon AL Muaamalat AL Madaniya, p 206.

2- Nadhariyat AL Khatafii AL Masuoliya AL Idariya, AL Ganoon AL Sudni.

3- SharhGanoon AL Muaamalat AL Madaniya, p 209.

page 11 4- See page 11 in this research.

responsibility for damages arising from these acts, provided that the actions are impersonal and they are in the scope of public service or because of them, the Sudanese legislator has identified certain cases in the civil transactions Act of 1984 as an exception to the general rule - a personal public employee responsibility - in which the management is responsible for the harmful act committed by the employees, and these cases came in the view of the researcher were general and ambiguous, Article 163 of the civil transactions Act of 1984 states that: «The employer is not responsible for damage, unless the harm caused by his policy or his mistake or had given explicit consent to inflict harm».

This article confined situations that make the administration responsible for damage of the employee as follows:

- 1- The damaging takes place as a result of a mistake or policy of the «administration», for example, if a particular ministry plan or a particular public facility to prevent the export of goods or certain goods outside the country's borders, results in any harm from that plan, the employee is not responsible about that. does not ask about, as well as if a certain unit director issued a decree banning the appointment of any member of this unit temporarily by the employee in charge of the public to reject the request of any advanced appointment is not considered harmful to ask about public employee¹.
- 2- If the harm has resulted explicitly as an agreement of the «administration, for example, the reported examples in paragraph above, the administrative officer for public utility agreed explicitly to prevent the export of certain goods outside the country, or expressly do not set any temporary employee that resulted in any damages, the public official, is not responsible for such an action, instead of him, the «management» is responsible for any damage.
- 3- The third case is left to the court to classify the various conditions roles of the «administration» and the «public employee» in the circumstances of the injury and this Court is subject to the control of higher courts.

The conclusion in this article is that, in these three cases, there is an administrative negligence responsibility for damage that causes by a public official who is subject to this administration.

The researcher believes that the legislator was unsuccessful in paragraphs (12/) of Article 163 of the Civil Transactions Act of 1984 because it is not perceived that one of the public policies of public administration is to cause harm to others, or give explicit consent of harm to others,

1- SharhGanoon AL Muaamat AL Madaniya, p 322.

even if we assume for argument that the damage is the result of an error of the administration's policy or that the administration gave the public employee explicit authorization of harming others, this does not prevent the administration to prove that the disposal of harmful came as an investigation with the requirements of the law or public policy of the State or to provide justifications to convince the court that the disposal was for the purpose of public interest, and highlights the important question here is, if the Court persuaded that the administration had at its disposal in accordance with the public interest or ... etc. who bears compensate for this damage?! This is because the administration then not be responsible for this damage it is accepted by the public employee because the administration had authorized him to commit damage, then Who takes responsibility?!

The researcher believes that it is more useful to the Sudanese legislator to provide administrative negligence responsibility in general all actions of harm, unless it is proved that this harmful act was personally set by the law under certain conditions that we talked about in details in the folds of this research, then the Department may ask the employee to pay the compensation from his own money.

• No responsibility for the public employee on harmful act of good faith :

Public employee should not be responsible for ordinary actions in good faith during the performance of his job. Article 1612/ of the Civil Transactions Act of 1984 states that: « a normal expected error, which happens in good faith is not considered as an employee responsibility, «this means that a public employee is not liable for the damage caused while performing his job in good faith !!

This text is no doubt doesn't agree with the general rules relating to rules of guarantee in Islamic law and which resulted in guarantee as soon as the damage takes place , regardless of whether the harmful act is ordinary or serious, and whether it is accompanied by good faith or in bad faith. so the researcher believes to deletethis text to match the general rules in Islamic law, which proves guarantee as soon as the damage takes place, without looking at the conditions identified above.

The Fifth Theme

Management`s responsibility for risk

First requirement

The concept and bases of management`s responsibility for risk

Individuals may be exposed to particular risks while the administration perform its work without causing harmful act or fault of the administration¹, in such a case the administration is to be asked for these risks based on the subordination rule that if someone takes advantage of a particular activity, he has to bear what caused this activity for other damages without searching whether there was a mistake or not.

Which led to the emergence of management`s responsibility for the damage without fault or infringement of them in the eyes of jurisprudence is the emergence of the so-called the major industrial renaissance in the nineteenth century which carry this development a significant hazard to human activity is now threatening his life where he used machines that have complex structure which is difficult toknow and follow the instructions of operating. and thus the rate of risk is significantly increased which led to the emergence of this responsibility on the basis of damage not only on the basis of error, based on the idea of carrying liability, thus the administrative responsibility for the risks is materialized only on two pillars: the damage and the causal relationship in terms of the damage to be material, exceptional, unusual, persistent and permanent.

A team of scholars of administrative law supported this view, but a lot of them turns away and stop supporting when they saw that to take this as a general principle is particularly dangerous in social terms for the execution of personal motivation for the establishment of projects by both individuals and management, and the elimination of self-motivation would weaken A trend toward work².

The position of the legislator and the Sudanese judiciary has settled on the basis of administrative responsibility in general is a harmful act, and that the general rules of negligence responsibility that contained in the Civil Transactions Act of 1984 is applicable to claims of negligence responsibility and on this basis, the plaintiff must prove the existence of harm against the administration.

The philosophy of the Sudanese legislator is that it satisfied with the application of administrative responsibility on the basis of harm, and

1- Masouliyat AL IdaraGheir AL Ta` agudiya, p 259.

2- Daman AL Mutlafatfii AL Figh AL Islami.

administrative responsibility on risk-based, there is no special laws necessitated the occurrence of responsibility on the administration to compensate the injured person, and these laws are: the Law of compensation of Injured 1981 and the Law of constructional Planning 1994 and other laws.

Applying to this, «that the administration is not responsible because of the implementation of the project» Transferring a canal «unless proven a fault on its part (1), and in the case of Michelle Qatranreferred to the trial court said : «that the administration within the limits of its discretion does not exercise satisfied diligence, the Court considered this asnegligence of contesting (management) and therefore this error requires management responsibility for the damage happened to the plaintiff»¹.

The researcher believes that there should not be restricted and limited administrative responsibility for risk under certain special legislation, but must look at the justice rules that require compensating to the injured when damage takes place.

The second requirement

Models of administrative responsibility for risk in the legislation and Sudanese judiciary

First : work accidents:

The idea of administrative responsibility for the risks in this case is established to protect the employees of administration, and also on the basis of equality of citizens in public rights and duties, which is a constitutional rule, where no person shall be prejudiced without fault, just because the administration actively does an unusual action or just the worker is injured by the machine during hours of work ... etc.².

Second: the damage arising from work and Public installations:

Public works means the preparations for a real estate or facilities in order to achieve public benefit, and to serve the public facility or persons of public law³.

To be compensated in this case damage must be physical and exceptionally unusual - and always have, such as digging a tunnel under the house to run the railway line⁴.

1- AL Ahkam AL Sudanya, HeneryRiyad p 89.

2- Masouliyat AL DawlaGheir AL Ta'agudiya, p 259.

3- AL Qanoon AL Idari, previous Reference p 191.

4- AL Qanoon AL Idari AL Libi p 113.

Compensation for the damage in this case is established on the basis of the idea of equality of citizens in rights and duties, if someone loses his home or his land, there is no doubt that this damage must be compensated for, and therefore the injured must be compensated for the re-planning without proof of fault on the management, but the injured must prove the damage, and the application of this was that the Supreme Court ruled that «the Department of Central States and Gedaref,» stated that it «is the plaintiff who has to prove the damage for compensation that was caused by an error»¹.

Administrative responsibility for works or public facilities is established on the basis of the responsibility of things guard, where Article 1481/ of the Civil Transactions Act of 1984 that: «Anyone who guards anything, he himself is to be responsible for this thing and what it causes of harm to others whether this thing a human or an animal or movable property, «as well as the text of Article 1491/ of the same Act states:» the guard of anything is someone who has an effective power on that thing»².

Third: the damage arising from the use of dangerous activities or things:

The dangerous objects, for example, the use of explosives ammunition, explosion of stores firearms, and also dangerous risk-neighborly such as unusual activities, where the French courts ruled to compensate the owners of neighboring houses which were damaged due to the explosion of the amount of explosives that were collected in one military forts on the outskirts suburban areas of Paris, rejecting the establishment of responsibility on the error and planned responsibility on the basis of risk, and another example is also an explosion of government factories, and the explosion of a railway vehicle loaded with explosives into neighboring houses, as well as, if a policeman used weapon, wounding people unintentionally, and also the damage caused by the government motor vehicle accidents³.

Fourth: The administration`s failure to implement court rulings:

It is one of the areas of responsibility of management on the basis of equality, which requires the contribution of citizens in the obligations and burdens of administration and management of public utilities as determined by the law, and then must compensate the injured by the administration, where is the responsibility of management is realized without an error or its infection of them on this basis.

1- Gadiyat Dabitla`adat Takhteet Al Takaulat AGAINST Othman AL Haj Maala.2011.

2- Majalat al A HKAM al gadaiya AL Sudaniya, 2000 p 155.

3- Masouliyat AL DawlaGheir AL Ta`agudiya, Dr. Anwar Ahmad Raslan p 271.

Conclusion

Praise be to God that his grace is good deeds, prayer and peace be upon the prophet of guidance and blessings, we dealt with the negligence responsibility of management, where we studied the concept of administrative responsibility, its origins and evolution in the Islamic Sharia and the Law, and its basis, and the pillars of negligence responsibility in general, and then we talked about the personal responsibility of the public employee when he personally causes harmful action to others ,then we talked about negligence responsibility of management under the circumstances and conditions set by law.

The researcher concludes the most important findings and recommendations as follow:

First: results

- 1- Islamic law has generally shown in the context of negligence responsibility that everyone is responsible for harmful actions and the administration is not responsible unless under requirements of justice, fairness, circumstances and times.
- 2- The administrative system in Islamic law does not differentiate between the administration and public officials and ordinary individuals in that they are all subordinated to all the provisions of the Islamic Sharia.
- 3- That the basis of negligence responsibility in Islamic law is the realization of damage, but the basis of administrative responsibility in the law are based on the association of dependency between the public employee and the management, when this employee is performing his job or because of the condition of this act should not be personal to achievement personal interest.
- 4- That the elements of administrative responsibility in Sudanese law are the pillars of the negligence responsibility in Islamic law in general.
- 5- Administrative responsibility is realized on the risks on the availability of elements of damage and the causal relationship.
- 6- The injured person could claim for compensation for damage in the face of public employee or management, or both, and for the management to refer to public employee, including paid of the compensation due to the harmful act of him, as for the employee has the right to return to the administration, including the payment of compensation if he proves that the administration caused the harmful act or participated in it.

Second: Recommendations:

- 1- The researcher recommends that Sudanese legislation «Civil Transactions Act of 1984» is to determine the conditions of personal damaging and its obligations, leaving judicial management to eliminate the application of these conditions on each available case, allowing management to eliminate the Sudanese area to highlight the talent in inventing and innovating rules and principles of administrative assets relating to administrative disputes, a key administrative role to eliminate from its inception until now, and it needs to renew administration continued and individuals, and at the same time avoids the legislator of the redundancy of legislative models for this damage.
- 2- Researcher recommends not to look to the good faith of the public employee or the bad faith. This requires the responsibility of management for the damage caused by its employee, in order to safeguard the rights of others in compensation.
- 3- Researcher recommends the expansion of the special legislation that outlines the responsibility of management risk-based so that it becomes the responsibility in this extended legislation complementary to the general rules in administrative responsibility in general, and this can cover all the damages and compensation which would bring justice in the highest sense.

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Sharia (Islamic Law) Intentions in maintaining public property

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Introduction

The Islamic Sharia is a comprehensive religion that came to achieve the interests of the people in this world and the hereafter, which is the conclusion of the all messages from Allah (swt), therefore its provisions and rules including justice and mercy in all its details for the individual and the community.

So the Islamic Law came to maintain the most important pillars of Islam, which are the five totalities: religion, life, mind, descendants and property, came to keep them from being wasted and neglected.

Since property is the lifeblood and the main engine of people lifes the Islamic Law issued factors and elements that preserved this property, in the Islamic law trade and all what develops properties is permissible, whereas on the other hand, theft banditry, bribery are offense.

Islamic law gives more attention and care to prevent seduction and weak-willed people not to transgress properties.

The early Muslims rose up this role since the State of the Prophet Muhammad, peace be upon him and later came the Caliphs who extended the Treasury House, particularly in the era of the Caliph Omar bin AL Khattab, may Allah be pleased with him who had an influential role in this area, and through all the stages of the Islamic State until the end of the Islamic caliphate in the Ottoman State.

I studied the subject of the legitimacy with return to some of the legal and economic sources of modern overlapping subject between these sciences. And it was divided into three sections:

First theme: the definition of the Shria intentions and the law of public property.

The second theme: financial resources in past and present.

The third theme: the protection of public property from corruption.

Each theme contains a number of topics.

First theme: the definition of the Islamic law and public property.

First requirement: the definition of the intentionsofIslamic law:

Imam Dahlawi¹ defined it as: (the science of the secrets of religion searching

1- Dehlawi: Ahmed bin Abdul Rahim bin Wajihuddin- Rijal AL Fikrwa AL Da' wafii AL Islam - p.83..

Dr. Ali Mohammed Ali al-Sadig ————— Sharia (Islamic Law) Intentions in maintaining public property for rules and provisions, and the secrets of activity of properties)¹.

Allal El Fassi² defined it as : (the intentions of Sharia (Islamic Law), and the secrets that issued at each of its provisions)³.

Ben Ashour: The overall purpose of the legislation is to preserve the nation`s system and the sustainability of the goodness , including goodness of mind⁴.

Dr. Yusuf Hamid AL A`alim⁵: (by purposes of the legislation, we mean the ends that legislation intended and the secrets that were put at each of the provisions)⁶.

Imam Ghazali defined as: (intentions of legislation are five: that saves their religion , themselves , their mind and their property, all what included in these five intentions is an interest, and all what excluded these five intention is evil and interest paid)⁷.

The second requirement

The status of property and its importance in Islam

Money is important in Islam unlike other religions AlQaradawi says: (property in Islam has an important place in the life of the individual and the group, and has a huge influence in the world and the Hereafter. This is illustrated when comparing Christianity and Islam in this aspect: Christ says in Gospels : (the kingdom of God is so difficult to get on well with rich people, it is easier for the camel to enter into a needle than the rich enter the kingdom of God)⁸. the man who wants to follow Christ and walk with him, must sell his properties then he can come to go with the Christ⁹.

In Islam the situation of property is different, it is considered as an important means of achieving the legitimate intentions of the present life and the hereafter life. Life has been kept on with money, money is needed for

1- Hojjatollah AL Baligha, Shah Waliallah al Dahlawi 1/ 45, Kawthar Library, First Edition, 1420, 1999.

2- Allal El Fassi: Allal bin Abdul Wahid bin Abdul Salam bin Abdullah bin Majzoub Fassi Fihri, was born in 1326 h/1908 m, he was appointed as Minister of State for Islamic Affairs some of his books are (Difa` an AL Sharia) and (Maqasid AL Sharia AL Islamiawa Islamic Mkarma) he died in 1394h.

3- Maqasid AL Sharia AL Islamia, Allal El Fassi, p. 30.

4- Maqasid AL Sharia AL Islamia Mohammad Tahar Ben Achour, p 273, Dar AL Nafais, Jordan, Second Edition, 1421, 2001.

5- Yusuf Hamid AL Alim: born in 1356, Dar Ibn Hazm, 1418h- 1997, Beirut, Lebanon, First edition.

6- AL Maqasid AL Ama p. 83.

7- Almustasfi Lil Ghazali 1286/, Second Edition, Dar AL Kutub AL Ilmiya Beirut.

8- See: Gospel (Luke 18 / 24- 25), and (Matthew 19: 23 -24).

9- See the Gospel of Matthew (1921/).

food and drinks, clothing and housing , and as well money helps in making weapons, which in turn helps in defending himself and his family¹.

Third requirement

The definition of property:

In language, property means all things that human owns².

In the terminology, scholars differed in the definition of property as follows: According to Hanafiya, IbnAbidin said: what is meant by property is all what human behavior likes , and can be saved away for the time of need³.

Maalikis stated different definitions of property , Shatibisaid: It is all what is ruled by the owner⁴.

Zarkashifrom Shaafa`isdefined propertyas what is to benefit from , or is ready to benefit from it⁵.

Hanbalis said: property is what legitimately, absolutely benefit from, in any case, or it is permissible or acquired without need⁶.

Some researchers state definitions of public property as follows :

Dr. Abdullah defined the term public property as (public funds that the owner has to be the whole nation without considering the individuals so that the use of it for the benefit of all of them, without regard to one of them)⁷.

Dr. Abdullah Younisdefined the term as (what is owned by the nation or all people which include the funds of the state, but the state does not allow to act freely in the public property because it is general right of a nation and all people have the right to benefit from it⁸.

Dr. Abdul Rahman Al Sabounidefined it as (those funds that will be accompanied by a group of the nation or a group of them do not belong to certain individuals because the property used is related to all of them.)⁹.

1- Maqasid AL Sharia AL Islamia, p 5-Qaradawi, the European Council for Fatwa and Research, research presented for the eighteenth session of the Council - Dublin Jumada II / July 1429 / July 2008.

2- AL Maghribwa AL Misbahwa AL MughniFii AL Anba`a an Ghareeb AL Muhadhabwa AL Anba`a, IbniBatish 1/ 447.

3- RaddAl Muhtar4/ 3.

4- AL MuwafagatChatby 2 /14.

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6- Kashaf AL Qina`a Lil Bahoti 2 /464.

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8- Dr. Abdullah Younis, property in Islamic law, p. 183.

9- Dr. Abdul Rahman Al Sabouni, property and contract theory in Islamic law (146)(all previous definitions of the PhD thesis at the University of Omdurman Islamic measures to protect public property Comparative Study Setup / Mohamed Mahmoud Hassan Matari, supervision Dr. Musa Mohamed Osman.

The Civil Transactions Act of 1984 defined public property in Article 27:

- 1- Public funds are considered all real and personal property by the State or public legal persons and which are intended for public benefit or already under the law or public order.
- 2- The disposition of public funds is not permitted in all cases, except in accordance with the provisions of the law.

Public property includes : The state budget in any manner, craftsmen or union, buildings, vehicles and public transport and the focus of power in all these cases is that their owners are not determined¹.

Also public property is defined as all what is specially for the interests and benefits of the general public , such as mosques and the assets treasury . Scholars mention it in the chapters of : mortgage, leasing, selling, transactions, and theft².

The property and funds cannot be public unless of two conditions:

- 1- To be special for the nation and the state.
- 2- To be allocated for the public benefit.

The amount of public property spent on educational institutions is increasing, and this applies to other areas such as roads, hospitals, multiplicity of state function and growth led to a widening audience treated people with public property.

Whatever the philosophy of the type or creed the state believes in , it is no alternative the state must enact legislation to ensure proper use of individuals of public property, the freedom of individuals to use public property is not absolutely free³.

The owner of public property:

Scholars agreed that the owner of public property are the Muslims- Muslims in the Islamic state, and that no one owns this fund specifically, and the responsible in charge is not the owner of the public property⁴.

Fourth requirement

The importance of maintaining public money:

The importance of the preservation of public property is that , state funds closely provides the state economic progress which effectively guide its activities towards the appropriate economic development, it also contributes

1- Qadaya Fiqhya Mua`asira Dr. Albouti 2/ 62.

2- Mafhoom AL Ma`al AL a`amfii AL Islam, al Dawodi p.16, Kuwaiti 719/.

3- Ahmiyat AL Tarbiya`a AL Islamiyafii AL Muhafadha ALA AL Mal AL A`am, Abdul Rahman Saleh p.6.

4- Sultat Wali AL Amar, , Khalid bin Mohammed Al-Majed, p 1.

to the protection of the economic entity of the state and the preservation of their financial resources, and therefore in Islam the duties of the Caliph is to appoint the governors, and to ensure the availability of high moral level of the governors and those responsible for public property, as well as urging faith, with the prohibition of bribery, and that Islam is maintaining public property by seeking to regulate the public property and activation of control over spending¹.

The development of standards of public property :

There is no doubt that the standard of what is public property and what is not is different from community to another according to the prevailing political system of the state, sometimes it is a property that has monetary value under the ownership of the state that is an organizer and distributor of the wealth of society which specifies how it is used for the public interest and to provide protection as well as the state issues necessary laws in concern to this public property².

The Fifth Requirement **Derivatives of public property :**

1- Joint property:

Which is defined as money that is mixed of private and public and the state has share in it, and the individual or individuals as well have share of each according to their contributions.

2- Reserved property:

It is the property that reserved according to a rule that issued in a court by the judge till another rule is declared. Article 99 c 1991 BC and 96 criminal procedures 102 Sudanese Article 3.

3- Stolen and suspected property (Article 96 (c) and 102 procedures).

4- Neglected property, unless someone appears and claims of ownership and shows proof of ownership.

5- Cash public property:

Cash public property that exist in the public treasury or any other branch of treasury such as units administrative, foreign diplomatic missions or institutions that the state shares in the capital or funds which contribute to the state and includes the salaries of workers, or any public funds or funds of projects deposited in the Bank of Sudan or other government banks .

1- Search Islamic Bank, D.Fua`ad AL Omr p 175 . Rafat Mohammed Saeed.

2- AL Mal AL A`am Infagihawa Istithmarihi p. 46.

6- Funds under the custody of someone because of his occupation including all kinds of property such as governmental cars and houses and work materials including weapons, ammunition during wars, or any other equipment that the government purchase to help governmental officers to perform their jobs¹.

The second topic

Past and present financial resources

First requirement

The financial resources of the state in Islam

(It was argued that who was the first arranging and organizing Beit AL Ma`al (the treasury) was he Caliph Abu Bakr or Caliph Omar ibn al-Khattab _ God bless them both, it seems that the first who arranged Beit AL Ma`al was the Caliph Abu Bakr may Allah be pleased with him _ but there was no need to keep books at that time he did not write down the bureaucracy for not needed at the time, but Caliph Omar may Allah be pleased with him, was keeping books for financial affairs in 20 AH, Ibn al-Athir², and he appointed Abdul bin Arqam Azhari³ this is supported by what AL Kittani said (and it can be said that Abu Bakr, the first who arranged Beit AL Ma`al and Omar was the first who kept books and statistical figures)⁴.

The reason for arranging properties is the increasing of the number of people and property comparing with dishonest and lack of faithfulness among people, this change calling the need for statistics and book keeping which helps in Financial Accounting⁵.

Kinds of public property in Islam such as the charity, land tax, voluntary payments and Gizya (money paid by Christians and Jews living under Muslim rule) and all other funds imposed by God Almighty to be paid by Muslims and the Prophet Muhammad, peace be upon him, and the Caliphs who came after had taken care of these public properties as the basics of governance in the country⁶.

Omar Ibn al-Khattab` s Role in the expansion of the financial resources of the state:

1- Himayat AL Ma`al AL Aam.

2- Ibn al-Athir 2/ 31.

3- AL Dhahabi 491 /2.

4- AL Kittani 121 /1.

5- Ibn al-Athir 95 /2.

6- Mugadimafii Tareekh AL Igtisad AL Islami 167.

(Zakat, Alms) (Ghanima, booty) and (Gizyah, money paid by Christians and Jews living under Muslim rule) were resources of public property since the time of the Messenger of Allah, peace be upon him, and the era of Abu Bakr, but land tax and Oshoor (crops money) are considered new resources and they existed only in the days of Omar may Allah be pleased with him) Even that existed resources, Omar ibn al-Khattab expanded them and took into account the interests of Muslims as follows:

Zakat:

Zakat should be in honey, one tenth if grows in land half tenth when it grows mountain)¹, the Zakat of crops should be on the same way, if crops are watered by the rain it is subject to one tenth , if watering is mechanical the amount of Zakat should be half tenth.

Zakat was being delated by Omar Ibn AL Khattab during the years of Almadhin the case of disasters)².

Booty and Grant:

As Iraq, Egypt and Sham were opened this situation was increasing the financial resources of the state than it was before, and Muslims in these countries, seized many of countless weapons, horses and ammunition and others (when all these were put in front of Omar, he felt sad, Abdul Rahman bin Auf said : Oh Ameer AL Munineen why are you sad where this is a situation of happiness, Omar said : I am afraid if all these were given to Muslims , they may be jealous of eachothers)³.

The wealth of Muslims and their resources were increased after the Islamic conquests because of what had been left by presidents such as money, property and land. The leaders of armies wrote to Omar bin al-Khattab, may God bless him, and asked him to divide the lands among them, but Omar bin al-Khattab, may Allah pleased with him, agreed to divide the property but not lands. the Islamic state should make use of the crops for public utilities and state protection from the enemy, and to provide social, economic and political requirements⁴.

The God helps Omar and gave him the idea of keeping lands as public property, and general welfare of the community, because unless there is power, army, and authority on the boundaries of the Islamic state, the enemies may return back and God knows where the good is to be)⁵.

1- Kitab AL Amwal 497.

2- AL Amwal 383, wa AL Tabagat Ibn Saad.

3- AL Tareekh Lil Tabari 182 /2.

4- AL Khiraj Li Abi Tosuf p24.

5- AL Khiraj Li Abi Tosuf p27.

AL Gizya (money paid by Christians and Jews living under Muslim rule).

It was the Islamic state to organize the performance of Gizyato put a new system in line with the conditions of the community, so Gizya was began to be developed in terms of its organization.

The development of a unified system of categories applicable to all Dhimyeen(Christians and Jews), and these categories were ranging according to the financial cases, cases of exemptions . It was narrated that al-Nu`man Bin Zarah : (he asked Omar bin al-Khattab, and told him about BaniTaghlib AL Ansari , who were separated in the country because of AL Gizya payments, he said to Omar : they are Arabs and they do not have money to be paid their money , but the enemy may help them against us, so Omar accepted the idea and asked them not to support the enemy)¹.

Land Tax : the origin of Land Tax was that Muslims in the days of Omar bin al-Khattab may Allah be pleased with him , captured many agricultural lands in Iraq, and Muslim fighters thought that they should be divide four fifths between them , and the other one fifth according to what in the Holy Quran (And know that out of all the booty that ye may acquire [in war], a fifth share is assigned to Allah,- and to the Messenger, and to near relatives, orphans, the needy, and the wayfarer,- if ye do believe in Allah and in the revelation We sent down to Our servant on the Day of Testing,- the Day of the meeting of the two forces. For Allah hath power over all things².

The Caliph Omar ibn al-Khattab may Allah be pleased with him, had another opinion of the case , to keep these fixed funds such as land in the hands of the owners as a property of the state and it imposes Gizya upon them, and they live freely)³.

This is the policy of Omar bin al-Khattab, may God bless him and his theory of the resources of the state, until they was one hundred and twenty million dirhams from Iraq , and million dinars from Egypt⁴.

Taxes of Commerce:

Taxes of Commerce is one of the financial resources of the state in the days of Omar bin al-Khattab may Allah be pleased with him, a tax on import and export goods to and from the Islamic country .

1- Kitab AL Amwal 539,538,34,33

2- Surat AL Anfal verse no 41.

3- AL TareekhLiltabari.

4- AL TabagatIbn Sa`ad214/ 3.

This system existed since the era of Caliph Omar ibn al-Khattab may Allah be pleased with him, and it was on the principle of reciprocity, Abu Musa Ash`ari has written to the faithful Omar bin al-Khattab says: (The non-Muslim traders imposed taxes on Muslim traders so why we impose taxes on them on the same way they do? Omar, Allah pleased with him, support Abu Musa's idea, he said: (Impose taxes on them as they do on Muslim traders)¹.

And taxes imposed on non-Muslim traders were not from the Holy Quran and Sunnah of the Messenger of Allah, peace be upon him, but rather the source of (Ijtihad) by the Caliph Omar bin al-Khattab, who consulted his companions about it, and agreed them, according to economic principles and market equilibrium².

And the conclusion which improves that the Caliph Omar, God bless him, looked carefully after the public property is this story: when he went to pilgrimage said: how much we spent on this trip? they said: eighteen dinars, he said: Too much money to be taken from (Beit AL Ma`al)³. That was a good lesson to many officials in Islamic countries.

The second requirement

The components of modern public money

The components of modern resources of public property are the following:

- 1- Private property
- 2- General property
- 3- Nature and other things

The intervention was represented by nature such as forests, land and animals that existed by nature, which were considered permissible⁴.

This seizure of the state gains a new public property resulted in the seizure of a huge forest wealth and in the seizure of wildlife animals stock which considered as a huge resource of the public treasury.

The croplands and independence for agriculture, industry, mining or drilling for oil and minerals, archeology or sell an investment, industrial or residential in recent periods to bring huge resources to the public treasury and the tourism on land the forests and beaches, islands and wildlife watching in some reserves created by the state of the public treasury revenues of hard

1- AL Khiraj Li AbiYosuf 135.

2- AL Ahkam AL Sultaniya 320.

3- Siraj Al Mulook, Abu Bakr AL Tartooshi 52/ 1.

4- Ahkam AL Mua`amat AL Maliya Mohammad Zaki ABD al Gadirp 93.

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Trade was among people and the process of trade exchange between the world's population in modern times as the state entered as an investor in all economic, banking, agricultural and industrial activities in the area of the provision of services by the State to citizens entered in the current era, the citizens should pay part of the cost of services to the public as well as the value of certifications that granted by the State to the citizens and this system, of course, varies from state to another, according to the rich or the poor state and the ruling political system and this aspect is seen in the state budget that aspect of spending on citizens without return².

Function of public property:

Scholars agreed that the function of the responsible official of public money is the function of representation of the Muslim Affairs, said Ibn al-Arabi said: representative for everyone to bring the benefits and to protect from hurts³.

Third requirement

Kinds of aggression of public property

One of the most serious contemporary issues that threaten the social, economic and political security, is aggression of public property, these activities are many, such as theft, embezzlement, bribery, luxury and extravagance, dealing in Riba, and dishonesty, low quality, poor service delivery, exploitation, general property for personal interests, appointment in terms of favoritism, courtesy, hypocrisy, and the fear of people not of Allah, and no Promotion of Virtue and Prevention of Vice and not performing the legitimate rights of the state's, and collecting profit from the job, and the use of public property for purposes and political purposes⁴.

1- There is disagreement among scientists about the rule of tariffs some say it is inviolable, others say it is permissible if it matches the services that carried out by the state.

2- Himayat AL Maal al Aamfii AL Sharia wa AL Ganoon. Dr. Hassan Mohammad AL Ameen 1426 - 2005.

3- Ahkam AL Quraan 903/ 2.

4- Hurmaat AL Maal AL AamFiidaw AL Sharia AL Islamiya). Dr Hussein Shahata 130.

Fourth requirement

The fight against abuse of public property:

Previous procedures before the occurrence of the crime:

- 1- Self politeness through worship.
- 2- Preaching and guidance.
- 3- Intimidation of punishment in the hereafter life.
- 4- well-chosen of public official :

One of the preventive procedures for the conservation and protection of public property, we find that Islam is keen on the well-chosen of the public official as the honest of the public property, and so we find that Islam always keen to appoint the best and faithful person to keep the public property¹.

The Muslim Caliph chooses the most qualified, compatible and faithful public officials to help him in protecting, controlling and keeping the public property of the State².

This is why Abu Yusuf advised Haroon El-Rasheed in the appointment of public official: (that must be a confidential, faithful and official man who gives advice and be entrusted to public property)³.

The third topic

The protection of public property from corruption.

The first requirement

Preventive procedures subsequent to the committing of the crime

1- exile:

This measure is taken to confront the gravity of a person, whether before he commits the crime, such as exiling a warrior or after committing the crime to prevent him of committing a crime in the future, Allah, (swt) said, (The punishment of those who wage war against Allah and His Apostle, and strive with might and main for mischief through the land is: Execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the Hereafter;)⁴.

2- Dismissal from taking charge of civilian and military jobs:

The Islamic Law decided this procedure to refine and evaluate the behavior of the offender and that he feels how much dismissal is bitter in

1- Himayat AL Maal al Aamfii AL Sharia wa AL Ganoon. Dr. Abdalla Furdan p 25.

2- AL Imam AL Mawrdi p 163.

3- Shawgi AL Sahi, Muragabat AL Muwazana AL Aamafiidaw AL Islam p 150.

4- Surat AL Maida verse no 33.

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an attempt to reform his behavior. The prophet Mohammad, pray and peace be upon him, and his companions, Allah pleased with them, dismissed the warrior who withdraw away during fighting and the Ameer who did so as well dismissed¹.

The second requirement

The ways of corruption in public property

Corruption: corruption is the opposite of benefit². Corruption in public property has several ways exploited by the public employee to gain interest or benefit return from this exploitation, which vary depending on the circumstances and the people, some of them associated with the character of the public official himself and the factors affect his personality, including the associated social surrounding relations, the associated environment . The following are some examples.

1- kinship:

It is known that the public employee family and family links may be the cause of corruption in public property and through his behavior towards them, he gives his relatives special position that enables them to exploit the public property.

2- Bad people who incite public employee on corruption:

They are the followers who surround him and encourage him to do the evils , they are different in their position they may be friends who have nothing to do with his job, and may be administrative staff in the field of work. or advisers, who participate in the corruption, according to its degree, power, and effect on the employee.

The Prophet Muhammad, peace be upon him says (When the God sends a prophet , or chooses Khalifa, there are always to kinds of people around him: one group advises him to do the goods, and the other advises him to do the opposites)³.

3- Absence of the control bodies that control and prevent the public employee from corruption:

The absence of control over public employee encourages him to exploit his authority against people`s interests and property.

5- Self-interests of the employee:

Some of its forms are : to take advantage of influence and power, the

1- Ibn Teimiya , AL Siyasa al shariya p 134.

2- Lisanu AL Arab 3353/ Beirut, Da Sadir.

3- Saheeh AL Bukhari Hadith no 6773.

employee gives himself a right without legal or legitimate justification as to invest his money in businesses related to his job.

The article (92) of the Sudanese Criminal Act of 1991, dealt with this case stipulating the prohibition of the case: Every employee buys himself property under his authority or through other relatives, or participate in a tender to perform the work related to his job, shall be punished by imprisonment for a term not exceeding two years or a fine or both.

6- lack of experience and knowledge requirements of responsibility in public office:

This element is respect to the employee himself and so that it may be in terms of the general qualifications valid to assume a particular job, but lacks of personal necessary qualities for the job prevents him from assuming this is usually in the positions and movements of funds security, political and administrative bodies Supreme Perhaps it is the best evidence is that the prophet, peace be upon him, said to Abu Dhar al-Ghafari, may Allah be pleased with him, when he asked him to appoint him (Oh AbaDhar you are weak and it is a great responsibility in the day of Resurrection)¹.

It is not a secret that some corrupted individuals in the community benefit from the public authority that is in their hands, and not to be naive and wasted opportunities of wealth and social prestige in their hands².

Third requirement

Types of corruption in public property:

Bribery:

It is the illegally making use and being benefit from the job such as to provide a service to someone who doesn't deserve it or to prevent someone of a service that he deserves it³.

It is also: Maaattiyh person ruling or for others to judge him or him to Mairad⁴.

From the above it is clear that it can take a variety of forms of giving, but - whatever the form –it is to give the employee some money or benefit to get illegal benefit or accelerate a service, may be give to disrupt the interests of others, and the Messenger of Allah said, peace be upon him (God damn the briber and the bribed in the rule)⁵.

1- Saheeh Muslim, Kitab AL ImaraHadith no 1825.

2- MajalatDirasatDa`awitJamiatAfriqua AL A`alamiya

3- AL Mustashar, Mustafa Majdi AL Jamia AL Iskandariya.

4- IbnAabdeen, Rad AL Muhtarala al Durar AL Mukhtar.

5- Rawahu AL Imam Ahmad,8662.

It is forbidden¹ because of two reasons²:

First: because it is included in exploiting, unlawfully, of people's property which is absolutely forbidden .

Second: because they are the factors that affect the course of justice between people, and giving rights to those who don't deserve them. the Prophet Muhammad, peace be upon him said (A Muslim never tells a lie or commit a treasury)³.

The Sudanese Criminal Act of 1991 in Article 88⁴ stated that bribery is forbidden.

And bribery is widespread in Muslim countries and in African countries where the (Daily Telegraph)published a letter from John Hmira about his experiences in Africa and the Middle East ... in his letter he stated thatbribery has been provided to government ministers and officials as of all levels in the form of cash payments, commissions, fees, new vehicles and treatment in hospitals and others over forty years⁵.

Gifts:

Give him a gift money to the other person does not have his condition, which is the difference between them and bribery, which gives the purpose of showing affection and intimacy and the reward for relatives and friends, or scholars, sheikhs and Asalh who improves their conjecture⁶.

One of the actions called for by the Prophet peace be Aliu him and I loved them as prayed God told him (Give gifts to the gift go and free⁷ chest)⁸ and the gift of the reasons that solidified the pillars of relations between people and instilling in them the spirit of affection and serenity brotherly sincere, but all that is confined within the framework of the special and regular transactions between the general public.

It is forbidden if because of the function, was seen taking a gift - this Sbb- as taking money from the booty which prohibited the age of puberty for Prophet Muhammad, peace be upon him saying (gifts to workers malignant)⁹. The correct, he prayed God used him a man of Alozd said a son Alltibh the charity came and said: this is for you and this was given to me, so the Messenger

1- AL shawkani, Neil AL Awtar min AhadeethSeid AL Akhyar.

2- Yosuf AL Aalim,ALMaqasid al Aama Lil Sharia AL Islamiya p564.

3- Imam Ahmad Hadith No 21149.

4- MajalatDirasatDa`awitJamiatAfriqua AL A`alamiya,2005, pp129 -130.

5- Dr. Ibrahim AL Ameen, MajalatAfkhar Jadeeda,2004.

6- Dr. Abdallh AL Treifi, Jareemat AL Rashwafii AL Sharia AL Islamiya p 68.

7- IbnManthoor 281/ 5.

8- AL Tirmidhi , Kitab AL Wal`a Hadith No 2056.

9- Imam Ahmad Hadith No22495.

of Allah peace be upon him on the pulpit and said: Mapal agent whom I send comes and says this to you and this was given to me, do you not sat in the house of his father and mother are seen Oahda him or not, which is the same Mohammed his hand is not one of them you come up with something Alajae the day of Resurrection on his neck that was a camel Rghae him or her cow mooing or a sheep Taar, then raised his hands until we saw Ofra his hands and then said: O Is amounted to three¹.

Some pictures of corruption on public money:

Direct corruption on public money:

It has different ways such as theft, falsification and breach of trust, and these examples can be detailed individually as follows:

First: The theft:

Theft is taking movable and owned property without its owner satisfaction, each person moves movable property from the possession of someone without consent, is considered guilty of a crime of theft.

Second: Forgery:

Forgery is a preparation of false report with the intention of receiving money for nothing or illegal benefit. Forgery kinds are many, such as false signature on behalf of someone.

Third : Dishonesty or (AlGhuloo):

It takes place when an employee benefits from money under his control...

The Messenger of Allah, peace be upon him said (there is no cutting off hands or legs concerning on the processes of falsification and forgery)² and therefore in Article 77 of the Penal Code of 1991 all of the money entrusted under someone control as a public official, an agent or broker, commits a crime and dishonesty for that money shall be punished by flogging, fines and imprisonment³.

Violation on direct public property:

There are many pictures of the violation on direct public money and this kind is more dangerous than the direct violation, including:

1- Authority exploitation:

Authority exploitation or job selling is considered the most dangerous types of violation on public money because the employee makes effort to achieve personal benefits for himself.

1- AL Sheikhan , Bukhari 6639, and Muslim 3413.

2- Imam Malik , AL Muwata`a p591 Hadith No.1322.

3- Imam Malik p 590 Hadith No.1323.

2- Neglecting and Wasting:

The Article 351 of the Penal Code of 1983 provides that (everyone who is trusted to be honest and keep money or any money the state owns a part of it, and he does any activities leading to its loss or wasted or allowed is doing (73) something which male punishable by flogging, fines and imprisonment)¹ and more crimes of public money in the present era of this kind must therefore be the age of deterrent penalties for such cases Unfortunately, the 1991 Penal Code m such did not want it Subject .

3- Wrong Decisions:

One wrong decision concerning public property causes more than it is of the total of other crimes, and because the damage of such decisions are indirect, the person may not feel it at the time of the decision, therefore the public official who makes such a decision is considered violated public property, unfortunately, Penal Code did not punish such an employee while it punishes the person who steals a little public money.

4- Pictures of improper use of public money:

The pictures of improper use of public money are many, the public official who uses the government vehicle for personal purposes is considered a way of corruption on public property, as well as the person who uses a telephone office in personal purposes and those who leave the lights and fans of their offices on is a way of corruption on public property.

Privatization and its impact on public money:

Dr Ahmed Munir Najjar², tries to summarize the importance of the concepts of multi-privatization, he said (It is the gradual expansion of the private property, or to get rid of institutions that make loss in the state, or permanent transfer of the activities of public service to the private sector)³, which seems to me that this overall conclusion can be the most correct definition included all the details of the privatization process in accordance with the following:

- 1- Gradual expansion of private ownerships, on the account of state ownerships.
- 2- Disposal of the loss-making government institutions.
- 3- Or permanent transfer of the activities of public service production to the private sector.
- 4- Transfer and management of economic activity from the public to the private sector.

1- AL Mustashar Awad Idris, Majalat AL Adl.

2- Wajeeh Shams AL Deen, AL khaskhasa, 1413 – 1993 p38.

3- Ahmad AL Najjar, Majalat Dirasat AL khaleej.

5- Integrated policies based on market mechanisms and competition¹.

This is the privatization, defined as when the specialists have resorted to by many countries to improve the economy and get rid of some loss-making state institutions, some officials are trying to turn some government institutions for his personal benefit under the name of privatization or to provide some of his relatives or friends with facilities.

Fifth Theme

Sentence of a thief who steals public property

Severe disagreement took place among scholars about cutting the hands of thieves who steal money from (Beit AL Ma`al) - the house of Finance in Islam. and there are two different ways of this:

1- First:

AL Hanafiya support the opinion that the thief's hand should not be cut off, Ibn AL Hammam in his book (Fath al-Qadeer), as well as Shafei, Ahmed Nakha`i, and Sha`abimentioned this opinion².

Shaafa`is: AL Mahali in his book (Sharh AL Minhaj) said that if the thief is not a member of the group who own the money, his hand should be cut off, and the exceptional case is that if he is poor he shouldn't be cut off³.

The doctrine of the Hanbali Ibn Qudaamah said in his book (al-Mughni) : (if the thief is a Muslim and he stole from (Beit AL Ma`al) he shouldn't be cut off. Omar, God pleased with him, asked IbnMasoud about a person who stole from (Beit AL Ma`al) IbnMasoud said that he should be free because he has a right in this property⁴.

2- The second opinion :

Malikis said that a person who steals from (Beit AL Ma`al) should be cut off. (his hand) and they mentioned the verse 38 Surat AL Maida. They believe that the property is public and it includes all kind of money whether it is stolen from (Beit AL Ma`al) or from any other places⁵.

AL Hanafya, AL Shafiya and AL Hanabila said there is a suspicion prove which stands against cutting off the thief's hand , whereas on the other hand AL Malikiya do not agree with this opinion because they think that the evidence which was mentioned byALHanafya, AL Shafiya and AL Hanabila is not very strong⁶.

1- Dr. Ibrahim AL Obeidi, al Khaskhsa, first edition, 1422- 2011.

SharhFath AL GadeerAla AL Hidayah.

3- Sharh AL MuhallaAla AL Minhaj.

4- AL Mughni, Ibn Qadama135/ 9.

5- Hashiyat AL DusuqiAla al Sharh AL Kabeer, 366/ 4.

6- MajalatJamiatDimashg, Mansoor AL Hamwi p 346.

The result:

After viewing the sayings of scholars and their evidence on the issue of theft of public property, I tend to agree with the opinion of Maalikis, that punishment on theft should take place depending on the Quranic texts which doesn't distinguish between theft from public or private property.

This is because the verse covered by the general meaning of the text.

The nature of property in the early Islamic period is different from what it is today, in the past every Muslim has right in (Beit AL Ma`al) but these days it is very rare to find such right, as well as public property is not of one nature¹.

The sixth theme

Ways to protect public property:

Moral protection of public property:

Means of protecting public property begin at home, school, mosques each of these means has an active role in preventing corruption concerning public property and we are talking about these means separately:

- 1- Home: the family plays the main role in forming the personality of the individual in society, and it teaches the child the virtues of work and warns him of what is forbidden as well as the family trains him/her to receive instruction from his parents and from others.
- 2- School: school is an educational institution which service the community and achieve its objectives and its role is a complementary role of the home.
- 3- Promotion of virtue and prevention of vice: Promotion of virtue and prevention of vice, the principle of essential, educational a school teaching general provides the largest base in the nation to know what is permissible and what is forbidden. system up to the idea of the Promotion of Virtue and Prevention of Vice.

And the methodology of the Promotion of Virtue and Prevention of Vice, makes it imperative for every Muslim to be responsible for his own work. Promotion of virtue and prevention of vice helps a lot in protecting the public property. AL Imam AL Ghazali supported this idea and he believed strongly in the role of Promotion of virtue and prevention of vice in keeping the public property away from corruption and thieves' hands, and without it corruption is expected to be widened and ruins the country and its people)².

1- MajalatJamiatDimashg, Mansoor AL Hamwi p 351.

2- Ihya`aOloom AL Deen, AL Ghazali, 142/ 2.

Judicial protection of public property:

The Sudanese judicial system considered that the government regarded as a member of the community and on this basis the Sudanese courts consider issues that the government is a party of, as the same rules applied against personnel issues, therefore a difference between the people's issues and the government's issue, is that the government is based on the public employees in claiming or defending in front of courts and they may not give public property, the same individual attention to his wealth, in addition to that cases may be considered after the employee giving up his governmental job for any reasons, and this leads to the loss of public property.

Legislative protection of public property:

Legislative protection of public property requires the enactment of a clear deal with public property in various fields, especially in the present day in which the moral protection has failed, and criminal law is considered as the basic law¹.

As well as the policies included in the seminar (financial planning and control of public property) in collaboration between the Institute of Public Administration and the Statistical, Economic and Social Research of the Organization of the Islamic Conference, held from 12 to 14 November 2000, which ended in certain suggestions and some points of view which emphasize the following:

First: the role of educational and training institutions in the sense of developing the responsibility towards the public property.

- 1- Lack of contemporary Arab studies on the phenomenon of abuse of public property and the need for such studies, to set the topic in additional seminars and meetings.
- 2- The abuse of public property is a widespread phenomenon in many communities among different age groups and takes a variety of forms.
- 3- Emphasize the importance of instilling values and educational trends among young people and developing the sense of responsibility of public property through targeted approaches and the role of teachers.
- 4- Focusing on the Islamic educational theory and the introduction of various educational methods to achieve this goal.

Second: control over public property between the laws, regulations, and the Islamic Sharia.

The participants agreed that the Islamic Sharia and the Islamic heritage inherited the work and the ancestors stated principles and rules for the protection of public property.

1- Dr. Awad Idris, *Majalat al Adl*, pp 20/ 21.

As stated that public property is a property owned by God, and the human being is trusted this property, and corruption of this property is considered to be a betraying of all human beings.

Legally it was emphasized the concept of public property in overall framework and it should be controlled as the principal means of protecting public property and the need for a civil protection tool (the invalidity of any conduct which is located on public money) and criminal protection represented in the stated punishments.

The participants concluded the following:

- 1- Legislation includes special integrated ways to protection public property.
- 2- Continuation of the development of supervisory work in the state.

Third: planning on Islamic perspective:

The seminar has concluded that the foundations of planning are found in the principle of Islam including the oneness of God and commitment to his commands and prohibitions, and the lack of separation between the spiritual faith of Muslims and their physical movement and that the responsibility in the community is solid and integrated.

In the preparation of planning cadres it was emphasized that careful selection of members should take place, and putting them under training to ensure suitability, and give them a chance to prove themselves¹.

Conclusion of the research

At the conclusion of this research I hope that I have been able to shed light and clarify the legitimate objectives concerning the maintenance of public property, because of the importance of this subject in our modern life, so that a Muslim knows his limits in the use of public property.

I recommend the need to learn the (Figh) of public service for all employees in the public sector, so as to keep this property from being lost, neglect and illegal spending.

These values must be included in education system in the state and taught to generation, to develop the nation .

1- Majalat AL Idari, December, 2000.

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Scientific Miracles of the Holy Qura`an and Sunnah and What raised about
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Subtract

This study deals with the scientific miracles of the Qura`an and Sunnah and issues that raised about, and aims to find out the views of supporters and opponents of scientific miracles and states its importance and controls that scientists follow to search it, assome faces have been highlightedon the miracle of the Qura`an, and it was the miracle that the God has made to live ever long, and referred to by the verse: (Soon will We show them our Signs in the [furthest] regions [of the earth], and in their own souls, until it becomes manifest to them that this is the Truth. Is it not enough that thy Lord doth witness all things?)¹ it is a call of the Qura`an for Muslims to search, consider, and reflect on the verses of God in the universe to discover the scientific facts and thecosmicsunan and used in the provision of power and reasons of pride for Muslims, and lift them out of full dependence on others in the field of science and technology.

The nature of the study required the use of several approaches: the descriptive, analytical, and inductiveapproach. The researcher found out several conclusions, including: The Scientific Miracles of the Qura`an and the Sunnah became a reality and concrete, especially after the great results and real research conducted in various areas. The study recommended the need for scientific studies aimed to graduate students dealing with the scientific miracles of the Holy Qura`an and the Sunna.

And also the study has recommended that the seminars of local, regional and international conferences should be held to show the importance of the scientific miracles of the Qura`an and Sunnah as essential factors in the call to the God in the light of this enormous scientific revolutions in today`s world.

Introduction:

Praise be to Allah, thank meets the blessings and rewards more, and prayers and peace be upon the prophet, may Allah bless him and his companions and followers and those who followed him in truth until the day of Judgment.

1- SuratFusilatvers 53.

These days miracles in the Holy Qura`an and the Sunnah draw the attention of researchers and scholars in Islamic studies, more than ever, especially (Scientific Miracles) because of the growing of inventions day after day, and spectators scholars of Islam are just watching this huge number of those inventions and in their hands the Holy Qura`an, which encompassed everything related to people way of living this is true to the verse: (*Nothing have we omitted from the Book,*)¹ and Allah says: (*Soon will We show them our Signs in the [furthest] regions [of the earth], and in their own souls, until it becomes manifest to them that this is the Truth. Is it not enough that thy Lord doth witness all things?*)², in these verses there is an invitation to speculate the Qura`an and stand on the various aspects of its miracles, because the miracle of the Holy Qura`an and his argument on the people is not required to be proved for the universal to recognize and believe in it, because it is so clear enough to be observed³. We entrusted to offer an understandable language to the world with rapid developments and discoveries and we say to the universe all what they need has been found in the Holy Qura`an and the Sunnah for more than fourteen centuries; because the miracle of the Qura`an is a phenomenon appears to scholars in all fields: in organization and system, in language, in its eloquence, and in telling about the first people history, about future incidents, and the rule of law, and others. We have popularized the term scientific miracles of our time, to indicate the aspects miracle of the Qura`an and Sunnah revealed by cosmic science; we thank God because good news started to appear as models of the scientific miracles of the Qura`an and Sunnah by Muslim scholars who have made appreciated efforts in many experiences through which they came to real results and not presumptive accordance with the rules and regulations that scientists developed for scientific research in the Qura`an and Sunnah, those scientific statements that came in this era conclusive proof and honest supported the facts that surprisingly came in the Holy Qura`an and Sunnah, they are about human, plant and the universe, has given an effective weapon to believers, individuals, and those who are interested in Islam, to call for Islam.

The westerns stand against Islam because they believe that it is the only religion that has the ability to save humanity from the darkness of oppression because it is the religion that Allah has chosen for mankind as in the verse: (*This day have I perfected your religion for you, completed My favor upon*

1- Surat AL Ana`am verse 38.

2- SuratFusilatvers 53.

3- AL Kashaf AL Zamakhshari2 /1.

you, and have chosen for you Islam as your religion)¹ he is the creator and he knows the interests of human Allah says : *(Should He not know,- He that created? and He is the One that understands the finest mysteries [and] is well-acquainted [with them].)*² , they do not want success and dominance of the Holly Qura`an, but the God sorder is always the winner , he says: *(We sent him the Gospel: Therein was guidance and light, and confirmation of the Law that had come before him:)*³ , this success in the scientific miracles of the Qura`an and the Sunnah, in which the researchers found a better chance to draw the attention of the people, supported by large numbers of crowds that listen to lectures in miracles, and enjoys the subject of interest in newspapers, magazines and conferences, which discusses all what is new in this field, which sharpens the opinions of those who are interested in this type of research to find out more scientific statements, it is the book which its wonders never give up, God makes it a miracle ever lasting until the God inherits the earth and everything on it.

In the following pages we share with those who spoke in the miracle of the Qura`an in this research in order to help workers in this field to go to its prospects.

First - the reason for choosing this subject and its importance:

The reason for choosing this subject, that miracle in the Qura`an and the Sunnah take researchers and scholars entire attention in Islamic studies, etc., these days, more than ever, especially (Scientific Miracles), and God helped me to be among the Sudanese universities professors in the first training session of the scientific miracles of the Qura`an and the Sunnah, which was held in Egypt, I saw a lot of aspects of miracles in the course of the session, which encouraged me to plan for this study.

The importance of this study, is that it is a means of activating Muslims cosmic discoveries motivated by faith, it also contributes to the correct experimental science course and facilitate calling to Islam, through its effective role to convince those who do not have adequate evidence and arguments brought by the Prophet Muhammad, peace be upon him. Many people who live in the era of scientific and technological progress do not convince with proofs of faith and historical evidence and cosmic miracles but believe in scientific facts that human stands in front of its rights, appeared resigned to its real physical results, as it is an extension of explicit message in the era of scientific discoveries.

1- Surat AL Maida verse 3.

2- Surat AL Mulk verse 14.

3- Surat AL Maida verse 48.

Second: research methodology:

The researcher in the study followed the requirements of the inductive descriptive and analytical method, and sometimes refer to the historical method.

The conclusion includes findings and recommendations.

Third - research problem:

The problem for this research is that scientists presented two different opinions of scientific miracles of the Qura`an and Sunnah and the researcher tries to stand on the views of each team and its evidence.

Research plan»

Regarding the nature of the research it has been divided according to the following plan:

An introduction, three sections and a conclusion includes findings and recommendations in addition to sources and references.

The introduction includes:

1. Reasons for selecting research and its importance
2. Research Methodology.
3. Research Problem

First theme: the miracle: definition, terms and types.

First requirement: the definition of a miracle

The second requirement: the Qura`anic miracle: conditions and kinds

The second theme : some aspects of miracle in the Qura`an:

First requirement: Miracles through drawing away attention.

The second requirement: Miracles through composing .

Third requirement: Miracles through writing style .

Fourth requirement: Miracles including feelings that have been left in oneself .

Fifth requirement: Miracles informing about the unseen:

Sixth requirement: miracle through all of them:

The third theme : the scientific miracle , its concept, importance, and controls, and the issues about :

First requirement: the scientific concept and its importance miracles and the difference between it and the scientific explanation.

The second requirement: the issues that have been raised around it (the scientific miracles among those who support opposed to):

Third requirement: controls the scientific miracles.

The conclusion include:

First : Results:

Second : recommendations:

Sources and references

First theme

The miracle: definition, terms and types

First requirement

The definition of a miracle:

In language: the helpless and the inability which is opposite to the ability,.

The first thing is that it is inability and disable to do something it is helpless, which makes the mind weak . Allah, the Almighty, says in the Holy Qura'an: (*But we think that we can by no means frustrate Allah throughout the earth, nor can we frustrate Him by flight.*)¹ , and he said: (*Not on earth nor in heaven will ye be able [fleeing] to frustrate [his Plan],*)² .In the Holy Qura'an:But those who strive against Our Signs, to frustrate them,- for such will be a Penalty,- a Punishment most humiliating.)³, AL Zagag said: they supposed that there will not be a hell or a paradise, and sometimes it means precedence⁴.

Second: idiomatic and technical meaning: Scientists define the term miracle saying that : something extraordinary accompanies by challenge and cannot be opposed Allah has shown and presented it through his apostles⁵.

Miracles are cosmic nature and law because they are not subject to the reasons and causes, and cannot be achieved through personal effort, but it is a gift from the God, the Almighty, to prove out the truth of his messenger, Mohammad, peace be upon him,although the term « miracle » did not appear in the Qura'an or in the Sunnah, but this term appeared in a bit late when sciences arecodified, including the science of beliefs, in the late second century and the beginning of the third.

So we find that the Holy Qura'an has used the word (verse) in the process of giving evidence to the messengers peace be upon them for argument , the Almighty says: (*They swear their strongest oaths by Allah, that if a [special] sign came to them, by it they would believe. Say: «Certainly [all] signs are in the power of Allah: but what will make you*)⁶ also sometimes used the Qura'an the word (evidence) as in the verse (Now hath come unto you a clear [Sign] from your Lord! This she-camel of Allah is a Sign unto you:)⁷

1- Surat AL Jin verse12.

2- Surat AL Ankaboot verse 22.

3- Surat Saba'a verse 5.

4- Lisanu AL Arab 36 /95.

5- AL Itgan fii Oloom AL Quran 4 /3.

6- Surat AL Anaam 109.

7- Surat AL Araaf 73.

and the evidence is a clear indication mental or sensory was. And sometimes the Qura'an uses the word (evidence), the Almighty says: *(Those are the two credentials from thy Lord to Pharaoh and his Chiefs: for truly they are a people rebellious and wicked)*¹ . Evidence the statement of the argument, which assure the evidence requires honesty inevitably² . sometimes miracle is expressed as Sultan Allah (swt) says:³ Their messengers said to them: «True, we are human like yourselves, but Allah doth grant His grace to such of his servants as He pleases. It is not for us to bring you an authority except as Allah permits Perhaps the choice of that term Sultan instead of (verse), and other words to remove shared indication in a verse from the Qura'an as in the verse: *(None of Our revelations do We abrogate or cause to be forgotten,)*⁴, and the verse in the sense of a clear sign of the existence of Allah, the Almighty creator and oneness as in the verse: *(Behold! in the creation of the heavens and the earth, and the alternation of night and day,- there are indeed Signs for men of understanding,-)*⁵ and the verse in the sense of higher building as in the verse: (128). *(Do ye build a landmark on every high place to amuse yourselves?)*⁶ as well as out of the common connotations in other words.

The second requirement

The Qura'anic miracle conditions and kinds

[A] Conditions of miracle:

The most important of these conditions:

1. Only the God who can do it , such as: splitting of the moon, and the sea.
2. That it is extraordinary, such as spring water from between the fingers, and split the stone and a she-camel comes out.
3. It should be an evidence guide to believe in the God, the Almighty.
4. It happens according to the intension of the challenger.
5. No one has the ability to come up with the same thing that has been brought by the challenger as a mean of opposition. As it came from God in the Qura'an, saying the Almighty: *(Let them then produce a recital like unto it,- If [it be] they speak the truth!)*⁷ .
6. The basis of the miracle is to challenge people and this is one of the most of its conditions , to prove that ungrateful are disable and to establish

1- Surat AL Qasas 32.

2- AL Mufradat fii Ghareeb AL Quran, p.121.

3- Surat Ibrahim 10.

4- Surat AL Baqara 106.

5- Surat A'al Omran 190.

6- Surat AL Shuara 128.

7- Surat AL Toor 34.

proof against them, the lack of challenge to a miracle is not highlighted as evidence and proof, so as not to give them the chance to say later: if he had challenged people they would have been able to come up with the miracle.

This is often in the miracles of the prophets peace be upon them, Allah says: *(And [appoint him] a messenger to the Children of Israel, [with this message]: «I have come to you, with a Sign from your Lord, in that I make for you out of clay, as it were, the figure of a bird, and breathe into it, and it becomes a bird by Allah`s leave: And I heal those born blind, and the lepers, and I quicken the dead, by Allah`s leave; and I declare to you what ye eat, and what ye store in your houses. Surely therein is a Sign for you if ye did believe;»)*¹.

Also challenge must be (by force), such miracles that occurred at the hands of the Messenger of Allah peace be upon him and he was among his companies and they believe in his message, for example, water comes between the fingers of the Messenger of Allah peace be upon him, it was not in the field of challenge to prove a message, as well when small stones praise in his hand, these miracles took place in an atmosphere of faith in an Islamic society.

Some scientists have made a difference between the miracle that the prophet challenge people with it and makes them believe that his message is the true, and the extraordinary that not associated with the challenge and lies among the faithful message of the Prophet; they called the first type (miracles), and the second type (indications of prophecy). Ibn Hajar Says in Fath al-Bari to explain (Bab Alamat AL Nubuwa): that more general than the miracle and dignity, and the difference between Charisma and Miracle is that the miracle is more specific, because it requires that the Prophet challenges those who don't believe in his message².

[B] The types of miracles:

The miracles are of the same thing that people excel of, in the era of Moses, peace be upon him, people excelled in magic so was his miracle was the stick, Allah , the Almighty said: *(We put it into Moses`s mind by inspiration: «Throw [now] thy rod»: and behold! it swallows up straight away all the falsehoods which they fake!. Thus truth was confirmed, and all that they did was made of no effect.)*³.

1- Surat Aal Omran 49.

2- Fath AL Bari 58 /16.

3- Surat AL Aaraf 117 -118.

In the era of Jesus peace be upon him, people excelled in medicine so was his miracle to revive the dead, when the God is willing. He says: *(Then will Allah say: «O Jesus the son of Mary! Recount My favor to thee and to thy mother. Behold! I strengthened thee with the holy spirit, so that thou didst speak to the people in childhood and in maturity. Behold! I taught thee the Book and Wisdom, and behold! Thou makest out of clay, as it were, the figure of a bird, by My leave, and thou breathest into it, and it becometh a bird by My leave, and thou healest those born blind, and the lepers, by My leave. And behold! Thou bringest forth the dead by My leave. And behold! I did restrain the Children of Israel from (violence to) thee when thou didst show them the Clear Signs, and the unbelievers among them said: This is nothing but evident magic`»)*¹. He also said in another verse: *(And [appoint him] a messenger to the Children of Israel, [with this message]: «I have come to you, with a Sign from your Lord, in that I make for you out of clay, as it were, the figure of a bird, and breathe into it, and it becomes a bird by Allah`s leave: And I heal those born blind, and the lepers, and I quicken the dead, by Allah`s leave; and I declare to you what ye eat, and what ye store in your houses. Surely therein is a Sign for you if ye did believe;»)*² :

AL Suyuti said in his book (AL Itgan)³ miracles are two types:

1- Sensory miracles:

They are temporarily and they remove after the death of the prophet who brought it out like Moses` stick, and Salih`s she camel , he said, and more miracles of Bani Israel were sensory because of their stupidity and lack of insight.

2- Mentality miracles:

They remain as the Holy Qura`an and it is ever lasting, Al Suyuti said, and more of the miracles of this nation are mentality because they are intelligent and integrity make them understand and because of this law because they linger on forever pages to the Day of Resurrection summarized mental remaining miracle to see people with insights. The God has challenged all the universe with the holy Qura`an saying that : *(Say: «If the whole of mankind and Jinns were to gather together to produce the like of this Qura`an, they could not produce the like thereof, even if they backed up each other with help and support.)*⁴.

1- Surat AL Maida 110.

2- Surat AalOmran 49.

3- AL Itgan fii Oloom AL Quran.

4- Surat AL Israa 88.

And says (*We have, without doubt, sent down the Message; and We will assuredly guard it [from corruption]*)¹.

He said: (*No falsehood can approach it from before or behind it: It is sent down by One Full of Wisdom, Worthy of all Praise.*)² and the rest of the miracles of the prophets passed upon the expiry and what is left is only its only news ad stories.. and the impressive verses of Qura`an are still as they are for more than five hundredand thirty-five years³.

The second theme

Some miracle of the Qura`an:

Scientists disagreed with the aspects of Miracles, and the starting point of difference is that each team went to touch the miracles in the aspect of excellence in the Qura`an, some of whom found miracles in rhetoric and oratory, and some of them found a miracle in the news about the things that unseen, which were unknown to the Arabs, whom who found miracles in the ancestors stories, and some of them saw the miracle in writing styles and composing of words and phrases.

This multiplicity opinions is an evidence of miracles in the Qura`an in which linguists found a great creativity, and the rhetorical found great eloquence, and the prudent found wonderful legislation rules, and doctor`s found description of medicine , and the engineer found a great prospectation of the universe. The miracle must be in every nothing, which is absolute and does not only depend on language,eloquenceand the miracle of the Qura`an is an absolute extraordinary, and it is wrong to imagine miracles in the limited side, it does not stop at the borders of time or place, which is constantly carrying on till the day of resurrection , miracle extends to include the saving of the Qura`an by the God, and clear and true.

First requirement

Miracles with drawing attentions away

And the meaning of miracles with drawing attentions away is that the God draws Arab`s attention away from opposing the Qura`an and they were not able to challenge it , and this statement was said by IbnIsaaq Ibrahim ibnSayarALNidham⁴ this opinion is clearly invalid and corrupted, because it makes miracles outside the field of the Qura`an itself.

1- Surat AL Hijr 9.

2- Surat Fusilat 42.

3- Now it is more than One Thousand.

4- Ibrahim bin Sayyar Bin Hani AL Bisri AL ElaamLilzarkashi 43 /1.

This view is contrary to the apparent meaning of the Qura`anic verse in the verse: (Except for Mercy from thy Lord: for his bounty is to thee [indeed] great. 88. (Say: «If the whole of mankind and Jinns were to gather together to produce the like of this Qura`an, they could not produce the like thereof, even if they backed up each other with help and support.))¹.

It is clear from the verse that miracles are real even mankind and the jinn met and help one another, because the miracle lies in the Qura`an itself, and never stops at any age, and the principle of Miracle with drawing attentions away is the abolition of miracles, and the abolition of the privacy of the Qura`an, and to consider the miracle as an external aspect².

The second requirement

Miracle of its special composition and writing

This means that all the art and writing style is placed in the top rank in the pronunciation and meaning and ratios. AL Suyuti say that AL Zumlkani, the author of the book (AL Burhan Fii Igaz AL Qura`an, Ibn Atia and the majority of scholars and Almathag said that is challenge is in its meanings and the succession of the eloquence of words, and the aspect of miracles in this respect is that the Qura`an, which is beyond the ability of humans, even if the Arabs can come in kind, they are in the home challenge they did it, but they were helpless and they know people by their disability³.

In the opinion of Abu Bakr Albaqlani that The miracle is what the systems and composing, and that it is different from all the faces of the usual systems in the language of the Arabs and the buildings of the methods of their speeches, but it is the miracle is in the outstanding of the systems of the Qura`an, which has no example to follow.

Third requirement

Miracles in the style

It is represented in the unusual style, Suyutisaid that, Hazem, the author of Minhaj AL Bulagha`a saying: «The miracle in the Qura`an in terms of eloquence and it is ever lasted⁴.

AL Khatabi, in his book (Bayan Igaz AL Qura`an) said miracles of the Qura`an: «but when it became difficult for them to understand they judged its

1- AL Burhan fii Oloom AL Quran 99 /2.

2- AL Itgan fii Oloom AL Quran 15 /4.

3- Yousuf Bin Abi Bakr AL Sakkaki.

4- AL Itgan fii Oloom AL Quran 10 /4.

style through self-acceptance of taste, but their knowledge does not surround Arabic language names and conditions that are words, meanings, rhyming and Links¹.

Fourth requirement

Miracles including self-feelings

Suyuti said that said Alskaki² in his book «AL Miftah « said that : I know that the miracles of the Qura'an can be recognized and can not be described, but miracles is perceived by common sense, through which the human feels with pleasure and happiness .

In the same meaning Zarkashi cited in proof of what was said by Abu HayyanALTawhidi1 in his book AL Baseir, saying: « as well as the Qura'an to honor does not refer to something in it unless it is a verse in itself. And this is why minds stand disable to understand all what in the Holly Qura'an. Insights him and got lost »³.

Fifth requirement

Miracles informing about the unseen

Some argued that the miracle is that the Qura'an tells about the unseen interpretation of the meaning As concerning the people of Badr: «*Soon will their multitude be put to flight, and they will show their backs.*»⁴, and says: (*Allah has promised, to those among you who believe and work righteous deeds, that He will, of a surety, grant them in the land,*)⁵, the scientists stated that the verses that don not carry news have no miracles in them . this opinion is false, because the God has made every sura is a miracle in itself. The news about unseen can be divided into the past and the present:

1- News for the unseen past:

As the previous stories of the prophets and nations, such as the story of Thamud, Salih, Ibrahim, and Moses, and others.

Allah says (*And in Moses [was another Sign]: Behold, We sent him to Pharaoh, with authority manifest.*)⁶

Allah says (*The Jews call Uzair a son of Allah, and the Christians call Christ the son of Allah. That is a saying from their mouth; [in this] they but*

1- AL ItganfiiOloom AL Quran15 /4.

2- Yousuf Ibn Abi Bakr.

3- AL BurhanfiiOloom AL Quraaan 100 /2.

4- Surat AL Gamar 45.

5- Surat AL Noor 55.

6- Surat AL Dhariyat verse 38.

*imitate what the unbelievers of old used to say. Allah`s curse be on them: how they are deluded away from the Truth!)*¹.

2- The News about unseen in the future:

The Greek will win over the Persians, Allah says (*Alif, Lam, Mim. * The Roman Empire has been defeated * In a land close by; but they, [even] after [this] defeat of theirs, will soon be victorious*Within a few years. With Allah is the Decision, in the past and in the Future: on that Day shall the Believers rejoice * With the help of Allah. He helps whom He will, and He is exalted in might, most merciful.*)².

And this happened on the same day that Muslims defeated the unbelievers on the day of Badr.

(B) The Qura`an tells that the God saves his messenger from the unbelievers and they will never reach him, the God said: (*O Apostle! Proclaim the (Message) which hath been sent to thee from thy Lord. If thou didst not, thou wouldst not have fulfilled His Mission. And Allah will defend thee from men (who mean mischief). For Allah guideth not those who reject Faith.*)³ .

«Ali may Allah be pleased with him, he said:« when it was a very hard war and when we meet the enemy, we usually hid behind the prophet Mohammad, peace be upon him and he was the closest to the enemy.»⁴ .

At the Battle of Hunein when the Muslims were defeated the Prophet, peace be upon him ordered his uncle Abbas to call out loudly O immigrants and supporters. The Prophet, peace be upon him riding on a horse and was running fast towards the polytheists However, Abbas, may Allah be pleased with him, while the Prophet was running and Abbas prevented him from being near the enemy, until polytheists surrounded him, he got down and did not flee and did not escape away, he says: «I am the Prophet, and this is the truth, I`m IbnAbdu Almottalib».

Fifth requirement

miracle of all what has been mentioned

The miracle of the Qura`an is not limited to a method or systems or impact, in fact it is comprehensive ,perfect, stylistic, expressive and figurative, Qura`an lives in the hearts of listeners, and the fear felt by the Qura`an reader, which collected the richness and sweetness, and often meet, in the words of human beings, has collected Qura`an among the qualities, and

1- Surat AL Tawba verse 30.

2- Surat AL Room verses 1 -5.

3- Surat AL Maida 67.

4- AL Mustadrak Lilhakim Hadith 2633.

therefore of the greatest faces rhetoric of miracles, Allah says: (*Verily this Qura`an doth explain to the Children of Israel most of the matters in which they disagree.*)¹»².

AL GadiAyyad said in his book «AL Shifa»: I know that the Qura`an introvert on the faces of many miracles and collection of types in four ways: First: It was composed of word eloquence which challenges the Arabs in their language and its styles.

Second: It was organized by strange and curious method which was different from the Arabs style of their language.

Third: What went into the news about the unseen situations .

Fourth: What foretold its previous centuries news.

Then he said: «The miracle of the verses of the Holy Qura`an will stay forever and the God saves them , including the fact that the readers and hearers do not feel boring when reciting or listening to it, as well as it includes all kind of science and knowledge that have never been included in one book as it is included in the Holy Qura`an. »³.

The third topic

The scientific miracle, conception, importance, and its controls, and issues raised about it

First requirement

The concept and importance of scientific miracles and its difference from the scientific explanation

First - the concept of scientific miracles:

Scientific miracle is described so because of the term science . So the scientific miracles: it was the news that mentioned in the Qura`an and the Sunnah became facts through history, and it is impossible to be proved or recognized by human means at the time of the Prophet, peace be upon him, which shows the sincerity of what the God Almighty told about a section of the metaphysical miracle⁴.

Second - the importance of scientific miracles:

As the Messenger of Allah peace be upon him is the last Prophet so his miracle has to be an ever last miracle. «The Miracle of the Holy Qura`an and his argument on the people does not require to be deduce by the universal⁵.

1- Surat AL Naml 76.

2- AL BurhanfiiOloom AL Quran107 /2.

3- AL Shifa Bitareef Hugoog AL Mustafa 500 /1.

4- AL Mufradat LILRAGHIB al Asfahani 343 /1.

5- AL Igaz AL Ilmi Lil Quran wa AL Sunna.

Ibn Hajar has pointed to this truth in his explanation of miracle verses of every Prophet He said: «the miracle of the Qura`an continuing until the day of resurrection¹.

God showed aspect of the miracle of the holy book at the hands of scientists - from Muslims and non-Muslims, it is the scientific miracles in the Qura`an. (That miracle is the scientific lead of the Holy Qura`an, which stated the facts in the universe which were not being known by the human)² These facts have evolved because of the development of the discoveries that came as a result of signals contained in the Qura`an, and it is obvious that it varies because of the different positions of scientists according to their cultural backgrounds³. The Qura`an mentioned these scientific miracles and it was from Allah, who knows the secret in the heavens and in the earth also testifies that Muhammad, peace be upon him, the messenger from God, who took note of everything⁴.

Third - the difference between the scientific miracles and scientific explanation:

Scientific Miracles: Is the effort to understand the verses concerning the prospects through (news in the Qura`an or the Sunnah Preceded by facts mentioned which were proved by experimental science, and proved not to be recognized by human. It was a chapter of metaphysical miracles)⁵.

Al-Zindani defined the scientific miracles in the Qura`an and Sunnah as: » it shows the sincerity of the Prophet Muhammad peace be upon him » humans failed to attribute those miracles to Muhammad peace be upon him⁶.

So scientific miracle is an attempt to understand the scientific references in the Qura`an «and it is scientific not because it incorporates the scientific theories, which are renewed and changed and be the fruit of human effort in research and consideration, but in urging human to think, to consider the universe and manageable, and opens the doors of knowledge for them, there is no book of previous religions to ensure such guarantee by the Qura`an»⁷.

The scientific explanation: it is the discover of the meanings of the verse in the light of the validity of theories of cosmic science, it is the explanation

1- Fath AL Bari , Ibn Hajar.

2- Tawheed AL Khalig p 94.

3- Zaghlool AL Najjar 13 /1.

4- Tawheed AL Khalig p 94 /1.

5- AL Igaz AL Ilmi Lil Quran wa AL Sunna.

6- Majalat AL Muslimoon, Nov 1985.

7- Mabathith fii Oloom AL Quran 280 /1.

«that governs the scientific terminology in the Qura`an phrases»¹.

Dr. Salah al-Khalididefined scientific explanation, saying: « it is considering the verses of the scientific implications, from the scientific angle, and not interpreted scientifically, using science and new knowledge and discoveries in the expansion of its significance and make meaning»².

Dr. Zaghoul El-Naggar defined it as : «a human attempt to understand a good indication of the Qura`anicverse,if the interpreter`s explanation is right he gains a double reward,if not , he gains one reward »³.

Scientific miracles is a part of the scientific explanation and not vice versa.

This is in terms of their relationship, but in respect to terms they are different as follows :

1. Scientific miracles specially related to the legitimate facts, and cosmic facts and the scientific explanation deals with theories and implicit indications.
2. Interpreters agree with the scientific miracle, whereas they don`t agree with the scientific explanation , not only this but some scientists say scientific explanation is forbidden.
3. The scientific explanation - if you do not take into account the controls and conditions –this may cause errors in the understanding of the Qura`an.

Fourth: the aspects of scientific miracles:

Scientific miracles in the Qura`an and Sunnahhas most important aspects:

1. The exact compatibility between what is in the Qura`an and Sunnah, and what the universe was discovered by scientists from the facts and cosmic secrets was not possible for human beings to know the time of revelation of the Qura`an.
2. The Qura`an and Sunnahcorrect what popularized among mankind in different generations of false ideas about the secrets of creation.
3. If the collected texts of the Qura`an and Sunnahof the universe which completes the other, even though these texts revealed separately in different time, and this occurs only from God, who knows the secret in the heavens and the earth.
4. Enactment of wise legislation, which may stay secret until it is revealed by research of scientists in various fields.

1- AL Tafseer WA al Mufasssiroon249 /2 .

2- AL Bayan fii Igaz AL Quran 266 /1.

3- AL Sama`a fii AL Quran, 72 /2.

5. Clash shouldn't take place between the texts that describe the universe and its secrets and the discovered scientific facts, and the presence of the clash between science and other distorted religions.

Fifth: justifications of paying attention to the issue of Scientific Miracles in the Holy Qura`an:

1. The Qura`an was revealed to be understood, and its cosmic verses which cannot be understood as part of a true understanding of the language alone from the inclusion of Qura`anic indications and comprehensive knowledge that cannot be divided.
2. The call for each scientific miracle of the Qura`an and the Sunnah has become an appropriate way for the people of this era - the era of science and technology - most of the people denied the Creation and the Creator, also they denied the resurrection, heaven and hell, and so nothing was left except Islam, the religion of truth .
3. Both Islam and Muslims are exposed wrongfully today under fierce attack in all the west media who deny Islam and Qura`an, and the prophecy of the prophet, peace be upon him. The most important and effective means to respond to this attack is to demonstrate the scientific miracle of the Qura`an and the Sunnah through good words, clear argument and normal logic.
4. The world today is moving towards a major disaster, and its fuel is the scientific and technical amazing development, overshadowing the followers and tempted extermination and damage others in the absence of proper religious awareness and commitment to moral and behavioral which shall feed the truth of God and the rights of human brotherhood right care. The way out of this is to call the true religion and the Sunnah of his Messenger, peace be upon him¹.

Sixth: verses that referred to the scientific miracles:

Qura`an urged in many verses people to consider and forethought, and ordered them to consider the universe and the verses of the evidence, to lead them to the faith, unification and worship the God, the Almighty, through several verses that can be considered as a basis and originally scientific miracles: from which the verse: *(Soon will We show them our Signs in the [furthest] regions [of the earth], and in their own souls, until it becomes manifest to them that this is the Truth. Is it not enough that thy Lord doth witness all things?)*², and the Qura`an invites us to scientific discovery and access to

1- Gadiyat AL Igaz AL Ilmifii AL Quran wa Dawabitahu.99 - 103 /1.

2- Surat Fussilat verse 53.

experimental science initiated by the Muslims in the Islamic civilization, then the Westerners took this from Muslims, and used it extensively, as if it is the basis of the scientific revolution in which we live today.

Allah says: (*And say: «Praise be to Allah, Who will soon show you His Signs, so that ye shall know them»; and thy Lord is not unmindful of all that ye do.*)¹ and says (*and thy Lord is not unmindful of all that ye do*)² including the verse (*«And ye shall certainly know the truth of it [all] after a while.»*)³ , including the verse: (*For every message is a limit of time, and soon shall ye know it.»*)⁴ .

The second requirement

The issues that have been raised around it

The issue of the scientific miracles of the Qura`an and the Sunnah found well known between the various members of the community and especially the scientists, researchers and those who are interested in issues of science, in which like other issues, scientists were divided into two teams: those who agree with it and see that it is permissible to be called upon and discussed , whereas the other team don't agree on it and they think that it is far away from the objective of the holy Qura`an. Here are the two teams and their opinions and arguments :

They are many, and they are represented by Imam Muhammad Abduh, and his disciple, Sheikh Mohammed Rashid Rida, Sheikh Abdelhamid Ben Badis, and Sheikh Muhammad Abu Zahra and Abu Faid Ahmed Bin SiddigGhemari. Those who adopt the scientific interpretation of the Qura`an and they put conditions for those who try to interpret the holy Qura`an without knowledge, and these conditions are :

1. The need to comply with what the Arabic language indicates as :
 - take into account the meanings of words as they were in the language at the time of the revelation of the Qura`an.
 - take into account the grammatical rules and their implications.
 - take into account the rules and rhetorical implications.
2. To be away from predicting the statement of the scientific miracles in the Holy Qura`an.
3. The facts in the Qura`an shouldn't be put under consideration, but they

1- Surat AL Naml verse 93.

2- Fii Dhilal AL Quran 2670 /5.

3- Surat Sad verse 88.

4- Surat AL Ana`am verse 67.

must be treated as the origin: What is the horizon before and opposed refused.

4. The Qura`an has been explained only on certainty of science and not through the assumptions and theories that are still the subject of examination.

The second team is those who disagree with explaining the scientific miracles: In this era, the group who represent this team are:

Sheikh Mahmoud Shaltout, the former sheikh of Al-Azhar and SayyiQutb, and Dr. Mohammed Hussein AL Dhahabi and others. Their argument is that, they say :

1. The Qura`an is a book of guidance, and the God did not bring it down to people to talk about the theories of science, and the types of knowledge.
2. The scientific interpretation of the Holy Qura`an presents the Qura`an to follow and turn with scientific issues at all times and place.
3. The scientific interpretation of the Qura`an carries his companions and enamored by Poseur on the interpretation which is contrary to the accepted interpretation methods and approved.
4. Then they say that there is clear evidence from the Qura`an that Allah does not bring down the Qura`an to explain scientifically the facts of the universe, he said: *(They ask thee concerning the New Moons. Say: They are but signs to mark fixed periods of time in [the affairs of] men, and for Pilgrimage.)*¹.

This means that God did not answer them scientifically but he answer them to explain legitimately the objective intended:

The Qura`an is the holy book of guidance does not prevent the scientific signals illustrated in-depth modern science contained in it, the Qura`an has talked about heaven, earth, the sun, the moon, day and night, and other cosmic phenomena, also talked about the human, animal and plant, was not this extensive talk incompatible the fact that the Qura`an is a book of guidance, but his speech was this one road that pursued to guide people.

To join the facts cited by the Qura`an with the scientific hypothesis is rejected first by those who refused to interpret scientific the Holy Qura`an scientifically.

The inference of what is stated in the reason for the revelation of the verse: *(They ask thee concerning the New Moons.)* it needs to be proved² otherwise it is not true according to the report narrated by al-Tabari in his interpretation this verse, he said, Gatada asked the Prophet, peace be upon

1- Surat AL Baqara verse 189.

2- Al Athar Akhrajahu Abu Naeem fii Marifat Al Sahaba 269 /3.

him, why these periods of time determined? God revealed what you hear (Say : They are but signs to mark fixed periods of time in [the affairs of] men, and for Pilgrimage.) they are for their fasting ,rituals, pilgrimage and for their wives waiting period, and the God knows what is good for his creation.

Conclusion: The scientific interpretation of the Qura`an:

Rejected if relied on scientific theories that did not prove and did not become a reality.

Rejected if the Qura`an comes out of the Arab language. And rejected if an issue based on science as original and makes the Qura`an dependent issue. And it is rejected if it goes against what is indicated in the Qura`an and Sunna.

It is acceptable then if it follows the rules and principles, including the interpretation of the obligation imposed by the limits of language, and the limits of the law. And acceptable from who the God gives knowledge and wisdom.

Third requirement

Controlling Scientific Miracles¹

The topic of the scientific miracles is surrounded by risk, especially since some studies started from the non-controls, guided by enthusiasm and they were not being controlled, they run after theories and hypotheses, therefore controls are needed to organizes research process, and they are many,including:

First: a good understanding of the Qura`anic text according to semantics Arabic words, and according to the rules of the language and methods of expression , because the Qura`an was brought down by Arabic tongue.

Second: understand the reasons of bringing down the Qura`an, the invalidator and the invalidated - if any - and understand the difference between what is general and what is specific, the absolute and the determined,the general and the detailed the verses of the Qura`an.

Third: to understand the interpretation of the Prophet`s Hadeeth and refer to the words of the commentators of the companions and followers to the present time.

Fourth: the collection of correct readings on the Qura`anic gracious verse.

Fifth: the collection of Qura`anic texts that relevant to he topic because the Qura`an verses explain each others .

1- Gadiyat AL Igaz AL Ilmifii AL Quran wa Dawabitahu.91 - 97 /1.

Sixth: taking into account the context of the Qura`anic verse writing style relating to a specific cosmic issues without cutting off of any part of the verse, before or after.

Seventh: taking into account the base: that what is important is the general expression not the specific reason, and not limited to one issue in one place, and the verses shouldn't be put together in the scientific miracles and seem to be proved that in each verse there is a scientific miracle.

Eighth: Donot try to explain the verses forcedly for approval of scientific fact, because it is the word of the God, the Creator of the absolute truth.

Ninth: be careful not to engage in minute scientific detail that does not serve the cause of the scientific miracle of the verse or verses from the stones, such as complex mathematical equations, chemical symbols minute but minimalistic crisis to prove the face of the miracle.

Tenth: not to present metaphysical issues of science unless it is of high necessity and importance.

Eleventh: to emphasize that the Hereafter has laws which are different from laws of the whole world, they are as described by Allah is a sudden end of the present life , if he says : (They ask thee about the [final] Hour - when will be its appointed time? Say: «The knowledge thereof is with my Lord [alone]: None but He can reveal as to when it will occur. Heavy were its burden through the heavens and the earth. Only, all of a sudden will it come to you.» They ask thee as if thou Wert eager in search thereof: Say: «The knowledge thereof is with Allah [alone], but most men know not.»)¹ In spite of this, God in his mercy on us has kept for us many numbers of evidence in the rocks, in the sky that are regarded enough to prove that the universe will end and the afterlife is inevitable . but these cosmic evidence cannot be interpreted in trying to know when the Hereafter will be.

Twelfth: employ the certain scientific facts to prove the scientific miracles of the verse or verses contained in one subject or in a number of integrated topics.

Thirteenth: the need to distinguish between the investigator (the researcher) in the Qura`anic sciences and the transferor of these sciences to the world, taking into account who is specialized in the details to prove the scientific miracle in the Qura`anic verse .

Fourteenth: to emphasize that the findings of the scientific investigator in understanding the significance of the verse is not the final understanding,

1- Surat AL Araaf verse 187.

because the wonders of the Holy Qura`an never expire or last.

Fifteenth: the certainty that the Qura`anic text might apply to a firm scientific fact, but that will not negate an intentional metaphor , as the Qura`anic verse may come in place of analogy or metaphor, because the word of God the Creator of the universe, is the absolute right that is not made in a wrong way.

Sixteenth: taking into account the possibility of starting from the Qura`anic verse to get to the scientific truth that the universe did not reach any of them, and that is because the Qura`an is the word of the God.

Seventeenth: the former efforts of scientists in their attempts to understand the significance of the cosmic should not reduced because they were in the range of information that was available to them in their time as well as because the Holy Qura`an dominant human knowledge, and this is one of the greatest aspects of the miracles in it.

Eighteenth: the need to differentiate between the issue of the scientific miracle and the scientific explanation, Qura`an has the priority to tell about a specific scientific fact many years before modern science prove it.

Nineteenth: The holy Qura`an is true and certain , because it is the word of the God, the Creator of the whole universe, who saves it forever, and it never contradicts a scientific fact or a cosmic phenomenon, if it happens there must be a defect somewhere , either in the formulation of scientific truth or in the understanding of the interpreters of the Qura`anic text.

Twenty: Honesty, faithfulness and accuracy should be followed in dealing with the verses of the Holy Qura`an when explaining a cosmic phenomenon.

This large number of controls are presented here to guide researchers, who find themselves in the required qualification for entry into this kind of miracle, so as not to close the door in front of researchers who are faithfully study and interpret the scientific miracles of the Qura`an and the Sunnah, and we need it much today in the time when the prevailing science , knowledge and language are dominant, and perhaps compliance with those controls with undertaking research and purposeful studies that end at amazing results which show the greatness of this religion and confirms validity of every time and place, and contribute effectively to the call to God as a means convincing people who like much science and knowledge, and the objectors should be satisfied with to these miracles these studies and all the results that came out are real results and not presumptive, that are highly needed for concerted efforts to support the religion.

Conclusion

The findings of this study are the following:

1. The Scientific Miracles of the Qura`an and the Sunnah became a reality and concrete, especially when the results are recognized by most of the scientific research that were conducted in various areas.
2. When the God gives a chance to his devotes to see a verse which certifies what is in the Holly Qura`an, in this respect the meaning should be clear, and the compatibility is expected to be completed.
3. When other cosmic scenes have to be reflected through the centuries, this increases the sense of stable, clear, deep and broad meaning.
4. The evidence of opponents, whenever they increase the supporters of the scientific miracles have the ability to convince them.
5. The scientific interpretation of the Qura`an is rejected if it depends on the scientific theories which are not yet proved and has not reached the level of scientific reality.
6. There`s a difference between scientific explanation and scientific miracles, it has been discussed in the course of research.

Recommendations:

1. The researcher recommends universities and educational institutions to care and design issues of scientific miracles in the Qura`an and Sunnah in their curricula, and work on the preparation and teaching of new material in each college or institute to study the verses and Hadith of the scientific miracles involved in the specialty of this college.
2. The researcher recommends universities and research centers in the Islamic countries to encourage research and studies in the field of scientific miracles in the Qura`an and Sunnah.
3. The need for cooperation between universities and research centers in the Islamic countries, Muslims and scientists in the world to prepare an integrated research plan in various scientific fields and work to implement them in cooperation and coordination between them. in compliance with the invitation of the Holy Qura`an for Muslims to search, consider and reflect on the verses in the prospects of the universe.

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**Proverbs Prospective by the Caliph Omar ibn al-Khattab.
Dr . Mohammed Abdullah Sulaiman¹**

Research Summary

This research is marked by «proverbs and sayings Prospective by the Caliph Omar ibn al-Khattab may Allah be pleased with him (study and analysis), it aims to study the proverbs from the point of view of the Caliph Omar ibn al-Khattab.

The researcher has dealt with the proverbs of Caliph Omar, Allah be pleased with him, concluded the following results:

The proverbs and sayings of Caliph Omar characterized by a capacity of vision and the strength of significance, and the abundant of language, and the depth of meaning, and carries and includes the solution of problems with a social dimension.

The researcher also recommends the studying of the multiple rhetoric aspects in the personality of the Caliph Omar may Allah be pleased with him.

Abstract

This study investigated the proverbs of khalif OmaribnAlkhatab` God bless him « studying and analysis».

This study aims at studyingthe of the proverbs of khalif Omar which exposes his ability in giving the correct saying at the suitable place and situation .

The researcher deals with the sayings of khalif Omar through studying and analyzing them . This study resulted in the followings :

The sayings of Umar was viewed of wide vision and strong evidences that they were fantastic in language and deep in meaning and had social dimensions.

The researcher recommends to study the rhetoric different aspects in the personality of the khalif OmaribnAlkhatab «God bless him» .

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Introduction

The proverbs are types of rhetoric with a deep social connotations, stemming from the experiences of individuals and communities, which makes communication easy and effective and deals with the great problems of life, this is true for all peoples of the world.

A proverb may be as eloquent or dialect, they may be positive or negative issues in the communities, which we refer to in the proverbs and sayings of Caliph Umar (may Allah be pleased with him) as having a positive social issues that help in solving moral problems, and that the style of language used is very rich and purposively very high, as well as the proverbs characterized with entertaining and abundance, and good paraphrasing, they overcome problems in accurate and realistic ways.

The Caliph Omar possesses the principles of the language so he usually sends his voice instinctively and intuitively, and he had a sense of deep rhetoric and a good taste of art, as well as he had good and deep knowledge about people's issues and problems and understands the reality of their lives.

research goals :
This research aims to study the proverbs of Caliph Omar, God pleased with him, an art study reveals his capabilities and skills to communicate through proverbs.

Research problem :

Caliph Umar (may Allah be pleased with him) when he deals with proverbs and answer the following questions:

1. What is the literary value of the proverbs of Caliph Omar?
2. What are the linguistic and moral implications of these proverbs?
3. What are its social and humanitarian dimensions? And what are the problems they solve ?

The importance of this research :

1. The proverbs said by Caliph Omar indicates a tasteful, deep sense of Art.
2. The Caliph Omar set them to find the solutions of social issues occurred in his time.

Research Methodology:

Descriptive and analytical approach.

Structure Search:

This study includes three themes, they are:

First theme : The concept of proverbs.

The second theme: The characteristics of the proverbs.

The third theme: the proverbs of Caliph Omar.

Conclusion: findings and recommendations.

resources and references.

The first topic

The concept of proverbs and some examples

AL Mubarak said that : A proverb is a term taken from what is similar he said: it is a common saying in which a description of two nouns take place to tell that one looks like the other and the former was originally a metaphor¹.

Proverbs are the fine of speech and the essence of the word and the sweetness of meanings which have been stated and described in all languages: Arabic and foreign languages provided by the Persians and uttered by every time and on every tongue.

The God (swt) indicates the virtue of the proverbs in the following verses : *(O men! Here is a parable set forth! listen to it! Those on whom, besides Allah, ye call, cannot create [even] a fly, if they all met together for the purpose! and if the fly should snatch away anything from them, they would have no power to release it from the fly. Feeble are those who petition and those whom they petition!)*² and he said: *(Allah sets forth a Parable: a city enjoying security and quiet, abundantly supplied with sustenance from every place: Yet was it ungrateful for the favours of Allah: so Allah made it taste of hunger and terror [in extremes] [closing in on it] like a garment [from every side], because of the [evil] which [its people] wrought.)*³ and said *(It brings forth its fruit at all times, by the leave of its Lord. So Allah sets forth parables for men, in order that they may receive admonition)*⁴. and said: *(Allah sets forth the Parable [of two men: one] a slave under the dominion of another; He has no power of any sort; and [the other] a man on whom We have bestowed goodly favors from Ourselves, and he spends thereof [freely], privately and publicly: are the two)*⁵ and said: *(Allah disdains not to use the similitude of things, lowest as well as highest. Those who believe know that it is truth from their Lord; but those who reject Faith say: «What means Allah by this similitude?» By it He causes many to stray, and many He leads into the right path; but He causes not to stray, except those who forsake [the path])*⁶.

And said: *(Allah sets forth [another] Parable of two men: one of them dumb, with no power of any sort; a wearisome burden is he to his master; whichever way he directs him, he brings no good: is such a man equal with*

1- Abu AL Fadl AL Nisabari, Mujama`a AL Amthal, p1.

2- Surat AL HAJ , VERSE NO 73.

3- Surat al nahal verse no 112.

4- Surat Ibrahim verse no 25.

5- Surat AL Nahal verse no 75.

6- Surat AL Baqara verse no 26.

Dr . Mohammed Abdullah Sulaiman ————— Proverbs Prospective by the Caliph Omar ibn al-Khattab. *one who commands Justice, and is on a Straight Way?*)¹ and to the other things that pointed to the benefits of proverbs in good positions².

These are examples of some of what is happening in the course of the proverbs of the Koran which includes admiration, eloquent and tasteful style³ such as :

*(On account of their arrogance in the land and their plotting of Evil, but the plotting of Evil will hem in only the authors thereof.)*⁴.

*(O mankind! your insolence is against your ownsouls.)*⁵.

*(Every soul will be [held] in pledge for its deeds.)*⁶.

*(But thy people reject this, though it is the truth. Say: «Not mine is the responsibility for arranging your affairs;»)*⁷.

*(Say: «Everyone acts according to his own disposition.»)*⁸.

*(thou wouldst think they were united, but their hearts are divided:)*⁹.

*(No bearer of burdens can bear the burden of another.)*¹⁰.

*(each party rejoices in that which is with itself.)*¹¹.

*(They think that every cry is against them.)*¹².

There are some traditions Hadith sayings concerning the proverbs , one of them was that narrated by Abu Osama, Breid, AbiBurda and Abu Abu Musa that the Prophet peace be upon him, said, *(the difference between the good companion and the bad one is that the first is like the one who sells the smell, he usually either sends or sells a good smell, and the other one is like the one who blows the bellows, either he burns your cloth or you smell bad smell)*¹³ this is the meaning of the prophits` Hadith not the exact words of the prophet, (peace be upon him).

Some of the proverbs of the Prophet (peace be upon him) are the following :

Laysa AL Khabaru KalMua`ayanah (watching is better than telling): this means that to be an eye witness as a participant observer is more useful and

1- Surat al nahal verse no 76.

2- Abu Hilal AL Askari, jamharat al amthal.

3- Abu Mansoor ABD al malik al thaa`alibi.

4- Surat Fatir verse no 4.

5- Surat Younis verse no 23.

6- Surat AL Muddathir I verse no 48.

7- Surat AL Ana`am verse no 67.

8- Surat AL Israa verse no 84.

9- Surat AL Hashr verse no 14.

10- Surat AL Nahal verse no 75.

11- Surat AL Zumur verse no 7.

12- Surat AL Muminoon verse no 53.

13- Surat AL Munafiqoon verse no 4.

efficient than just to tell or report news in a way of indirect speech¹.

Srij bin Numanand Hushaymtold us that , AbiBisher ,Saeed Bin Jubair, and Ibn Abbas said that : The Messenger of Allah, peace be upon him, said that» Laysa AL KhabaruKalMua`ayanah»

La Yuldagh AL Mumin min JuhriMaratein (A Muslim is not stung twice in the same place ,the main idea and meaning of this saying is that, a Muslim should make use of lessons and experience and be aware of not being deceived twice in the same place².

Wayateekabilakhbarimn lam tuzawidi, the story behind this saying is that , Ali Bin Hajar told us , One day people asked Aisha if the Prophet (peace be upon him) used to deal with poetry ? She said that, he used to say some words from IbnRawahah, such as Wayateekabilakhbarimn lam tuzawidi³.

Zurhibban Tazdad Hubban(Frequency visiting declines eagerness) this saying was narrated by Habib Ben Maslama and others , they said that said: The Messenger of Allah, peace be upon him: said - this is the main idea of the prophet`s words -(Frequency visiting declines eagerness)⁴.

KuliMaroofinSadaqa (any virtue is a charity) this saying was narrated byAbd Allah IbnYazeed AL Gahtami and others who said that the prophet , peace be upon him, said - this is the main idea of the prophet`s words - (any virtue is a charity)⁵.

Agilhawatawakal (Tie your camel up and trust on God).

This saying was narrated by Hisham bin Ammar, Hatem Ben Ismail, Jacob bin Abdullah bin Amr bin Umayya,they said that , the prophet , may Allah be pleased with him, said: Tie your camel up and trust on God⁶.

Al NasuMa`adin(people are not the same as metals are).

Is`aaqibn Ibrahim , Gareer, Amara Abu Zarahm and Abu Huraira may Allah be pleased with him narrated that: the Messenger of Allah (peace be upon him) said (people are not the same as metals are)⁷.

MatluAlghaniuDhulm(Dispute and argument of a rich over a claim debt is injustice). Musdad, Abdul Aa`la , Muammar, and HumamIbnMunabbih, they all said that: Abu Huraira, may Allah be pleased with him, said: The Messenger of Allah (peace be upon him) (Dispute and argument of a rich over a claim debt is injustice)⁸.

1- MuSLIMibn AL HAJAJ.

2- Ahmad IbnHanbal.

3- Al bukhari, aljamia al musnad al saheeh.

4- Mohammad bin Esa al salami, AL Jami al saheeh , al Tirmidhi.

5- Mohammad al nisabouri, Mustadrak al saheehin.

6- AL Bukhari AL Adab AL Mufrad.

7- Ahmad ABU BAKR al Sheibanii.

8- AL Bukhari , Saheeh AL Bukhari.

The second topic

Proverb properties

When the Arabs know that proverbs behave in a more object-talk and interference in most ways, they express it in the strongest terms to be easy use and they are wonders when they emerge in the course of the speech, but it is important for each person to work hard in the field of art and novel in order to progress his level of understanding the properties and features of the proverbs¹.

It is an essential idea that every person who concerns with the study of proverbs should know a lot about these proverbs particularly the common proverbs should be known by all people in the community².

Proverbs are examples of wisdom when ears and eye missed the visibility and hearing³.

Arabs say the proverbs because of prescribed only reasons, and incidents dictated, therefore a proverb become in short and brief form⁴. As the proverbs like signals and meanings they become short, and for that they are called proverbs⁵:

Scientists reported and sum up some of the characteristics of the proverbs as follows:

1. Brevity, so as to be short and understandable .
2. It was a kind of independent science .
3. It makes the logic stronger and acceptable acceptance.
4. a proverb carries the idea of wisdom.
5. a proverb is an extract of experience .
6. It has a cause and an incident.

The third topic

Proverbs Prospective by the Caliph Omar (God pleased with him)

The Caliph Omar ibn al-Khattab(God pleased with him.) has been given an extraordinary ability to create proverbs, and he makes use of every event and a opportunity to say the proverb, and this is a reasonable result of a person who attended both types of life : the pre- history of Islam and during Islam era. And he made use of the fruits of expertise, good knowledge about the Arabs and their language.

1- AL BUKHARI , al jami AL Saheeh al mukhtasar.

2- Abu Hilal AL Askari , Jamharat AL Amthal, p 4.

3- Jamharat al amthal ABU Hilal AL ASKARI P6.

4- Abu Abdallahi IBN al I AL HAKEEM.

5- Ibn AL Atheer, ALM Mathal al sairp 40.

The proverbs that mentioned by the Caliph Omar ibn al-Khattab (God pleased with him) are so many, some of them are:

ShinshinaAa'rafuha min Akhzami (He is on his father's steps)^{1, 2}

This proverb was said by Omar in respect of Ibni Abbas and it indicates that Omar thought that Ibn Abbas was the best person in Qureish Tribe who absolutely has the best opinion among all people³⁶. Abu Obeida Muammar Ibn AL Muthanasaid that it is possible to say : Shanshana, or Nashnasha, and others don't agree with the Arabic term Nashnasha³.

Arabs usually liken a son to his father, in colloquial Arabic they say: Hadhwu AL NaliBilNali, and they also say Hadhwu AL QadhaBilQadha 39 LikulliOnasFiiJameelihmKhubru.(the essence is better than the appearance)^{4, 5}

Alaba ibn al-HaythamAlsados, talked to Omar bin al-Khattab, he was an one- eyed , when Omar heard his proficiency and his mastery, and when he came out Omar said: (the essence is better than the appearance) ,

ShawaAkhookaHattaIdhaAndajaRamad

This proverb came from Omar , and it means that, your brother started to cook a meal , when it has well cooked he throws it away into the ash, it is also said that (AL MinnaTufsid AL Sania)the general idea behind this proverb is that if you do a favor to someone and you always make him remember this favor, you lose your reward⁶.

It was narrated that Omar, God pleased with him, passed, one day by A person ' house , this person had been known well as a man of good behavior, Omar heard some sort of entertainment, he said (ShawaAkhookaHattaIdhaAndajaRamad).⁴³

Hanna QidhunLaysaMinha (a man is proud of a tribe he dosen't belong to).

The story behind this proverb was that Omar Ibn AL Khattab said this proverb when the prophet, peace be upon him, ordered his followers to kill OqbalbnAbiMueit, he said : Have I been killed and I am from Quraish? Then Omar said (Hanna QidhunLaysaMinha (a man is proud of a tribe he dosen't

1- Ibn AL atheer, AL Mathal al sair.

2- Abu Obeidaibn Salam, AL Amthal.

3- Abd AL Hameed bin hibatalla.

4- Abu AL GasimMahmoodALZamakhshari.

5- AHMAD al andalusy , al Igd AL FAREED.

6- Al jahiz , al bayanwa AL TABYEEN.

Law kana Almaru' Agwamu min QadhinlawajidalahuGhamiz (if a person is more generous than arrow, he wouldn't be safe from defamation)³

Omar Ibn AL Khattab said that :Law kana Almaru' Agwamu min QadhinlawajadalahuGhamiz (if a person is more generous than arrow, he wouldn't be safe from defamation) as well as Abu AL Fadl AL Mikyali said that :

A generous man has never been safe from defamation

Even if his deeds are true and straight like arrow⁴.

If a man is progressing in better life people will feel envoy toward him even if his deeds are true and straight like arrow⁵.

Be sociable with people and do not agree with all what they say

Omar Ibn AL Khattab, and Abdu AllahiIbnMasuood said that : Be sociable with people and do not agree with all what they say, and this is the same as Sasa'albnSawhan said (if you meet a Muslim communicate with him and if you meet a dissipated person avoid him. This saying, as well, goes with what Jesus, peace be upon him, said (be in the centre of and walk a side)⁶.

WalliHaraha man TawallaGaraha (you should give responsibility to those who made use of your rewards)⁷

This proverb was said by Omar Ibn AL Khattab,peace be upon him to AbiMasood Al Ansari (God pleased with him) the meaning of this proverb is that you should give responsibility to those who made use of your rewards⁸. another meaning of this proverb is that who is responsible under good conditions should he himself be under bad conditions⁹.

(KulQawma'alamuBisina'atihim) Each man knows his craft.¹⁰

The general idea behind this proverb is that it is more useful to give responsibility to those who are well qualified, and it was in Omar's letter when he wrote to Sa'adIbnAbiWaqas (Concerning the war you should consult AmroIbnMa'adYakrib and TuleihaIbnKHuweild and do not ask them advice in other cases because Each man knows his craft).

1- IbnHibatallah, sharhNahj AL BALAGHA.

2- IbnHibatallah, sharhNahj AL BALAGHA.

3- Abu Obeid AL Qasim, al Amthal.

4- Al Gadah , AHD GIDAH al meisir.

5- Abu Obeid AL Bakri, Fasl AL Magaal.

6- Abu Hayan AL Tawhidi, al imtaa.

7- IbnAbi AL Dunya, QURA al Deif.

8- IbnHibatalla, SharhNahj AL Ballaga.

9- Al midani,previous reference.

10- IbnAbi AL Dunya

QanieKatibukaSawtan¹

Omar IbnALKhattab, God pleased with him, wrote to Abi Musa AL Ashari, God pleased with him, QanieKatibukaSawtan².

Asa’atALnaqdwaA’azmta AL Khutba³ (you have done least and demand more)

The story behind this proverb is that One day OmarIbnALkhattab, God pleased with him, saw a man doing his prayer imperfectly, and when he finished, he asked Allah to help him to marry a nymph (Hourai) then Omar said to him (Oh man! Youhave done least and demand more)⁴.

LayameenHanath Aw Mandama (you should fulfill your oath or be regretful)⁵.

This proverb usually takes place to prevent people from swearing or taking an oath.

ON another hand Omar brought some proverbs that are equivalent to some of the sayings of Arabs, below are some examples.

Omar’s proverbs	Arabs Proverbs
your brother started to cook a meal, when it has well cooked he throws it away into the ash.	AL MinnaTufsid AL Sania) ⁶
Be sociable with people and do not agree with all what they say	FarrigBeinMadinTuhab ⁷
Each man knows his craft ⁸	A’ati AL QawsBareeha

Omar Ibn AL Khattab , God pleased with him, beside his own proverbs, he, as well, supported his speech with some Arabs proverbs, below are some examples.

Ajwad min Harim (more generous than Harim)

The story behind this proverb was that the daughter of HarimIbniSinanIbnAbiHaritha, one day, visited Omar Ibn AL Khattab, God pleased with him, Zuheir, the poet, rhymes a good poetry about your father, what did your father give him? He gave him, camels, horses, clothes and

1- IBN hibatalla.
 2- AL Meedani , previous reference.
 3- IBN Hamdoon AL Tadhkira al Hamdoniya.
 4- AL Meedani , previous reference.
 5- AL Askari, JAMHARAT al Amthal.
 6- AL Meedani , Mujama AL Amthal.
 7- AL SAWLI Adab AL Kitab.
 8- Abu Hilal AL ASKARI, Jawharat al amthal.

Dr . Mohammed Abdullah Sulaiman ————— Proverbs Prospective by the Caliph Omar ibn al-Khattab. many sorts of non durables, Omar said to her , but you were given what must have not ever been destroyed¹.

Omar said (It is better to consult those who really believe in God)²
AL kisai and AL Asmai said that(Ja'aYadribuAsdarayhi) this proverb is said when a person fails in doing something³

There was another proverb from the Arabs language which was⁴, as well, carrying the same point of virw of Omar, it was (Awfa min Omi Jameel)⁵.

Conclusion

All praise to Allah who has helped me to start and finish this research, and the conclusions are:

1. Proverbs, although they are brief, they help in solving some social issues.
2. Easy to be kept by heart and they hold great meanings.
3. The proverbs of the Caliph Omar characterized by a wide vision and depth of indication.
6. Some agreed with the proverbs of Arabs, some are his own.
7. Stories and events that were expressed by proverbs are of strong sense and a clear end.
8. Reveal that the Caliph Omar was a talent in respect to rhetoric use of the language.

Recommendations:

1. Studying deeply the ancient literary and culture and linking it with the contemporary literary life.
2. Studying the multiple literary aspects of the Caliph Omar's personality.

1- Abu Mansoor AL NISABOORI, LUBAB AL Aadab.

2- Shihab AL Deen al Niwairi, Nihayat al erabfii FINOON al Adab.

3- AL Zamakhshri , AL MustaqsfiiAmthal AL ARAB.P 357.

4- AL Zamakhshri , AL MustaqsfiiAmthal AL ARAB.P 350.

5- Al askari , Jamharat AL AMTHAL.P 88.

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Evidence proof of (hudoood); crimes; particular punishments prescribed by Allah in Quran for specific crime under specific conditions, by (DNA); Genetic imprint

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Abstract

The aim of this study is to investigate the proof of (hudoood), crime ; particular punishment prescribed by Allah in Quran for specific crime under specific conditions, by (DNA) , genetic imprint on the jurisprudential and legal levels. This study contains an introduction that contains the reasons, objectives and importance of the subject and the limits of the research and its problems and hypotheses and the methodology used in writing the research. The second topic: the establishment of (hudoood), under the presumption of DNA in comparative law, the third topic: a comparison between Islamic jurisprudence and comparative law. The researchers concluded the research with the most important findings and recommendations the most important ones are: The acceptance of the results of the modern physical proofing evidence in the evidence to lead to the consolidation of justice and the establishment of security and stability in society and thus achieve the purpose of the legislator to save people, their lives and their families and their money from aggression and maintenance it of violation. Among the recommendations are the establishment of specialized institutes and research centers to study modern physical evidence in the various scientific, legal, and judicial viewpoints, and to reach conclusions, recommendations and proposals that greatly help to identify the truth and what is the modern physical criminal evidence.

Introduction

Praise be to Allah, the Lord of the Worlds, and peace and blessings be upon His Messenger, and His Compassionate Companions.

Although DNA is the true identity of man through his genetic qualities in a remarkable sequence within each cell of his body, it is nevertheless not intended to be a definitive guide to proving the legal sharia, (hudoood), crime; particular punishment prescribed by Allah in Quran for specific crime under specific conditions, that depend on proof of the act, such as adultery,

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rape, theft and drinking alcohol. This is not the fault and the lack of DNA. Rather, it refers to God's mercy in man in the criminalization of the act that is forbidden to him. We address this topic in Islamic jurisprudence and law, for comparison.

The importance of the topic:

The importance of this study lies in the fact that it deals with a topic related to the identification of DNA in (hudood) crimes.

Reasons for choosing a topic:

This topic is chosen for a number of reasons, including:

- 1- The need to benefit from and quotations from the analogy and jurisprudence of preceding Islamic jurists, especially of the four orthodox and this is through the texts that allow jurisprudence and legal issue of the introduction of proof of (hudood) crimes with genetic fingerprint in Islamic jurisprudence and law.
- 2- To recognize the enormous information revolution that has allowed modern scientific theories in the field of using modern methods.

The hypothesis of the study:

This study attempted to answer the hypothesis of accepting the Islamic jurisprudence of modern methods in proving (hudood) crimes with DNA.

Study Questions:

This study attempted to answer:

1. Does Islamic jurisprudence accept the proof of (hudood) crimes with DNA;
2. What controls are required for these means?

Research Methodology :

The researcher followed the method of inductive analytical analysis of the correct deduction, and analyzed the modern methods of analysis of blood and urine in the cases of descent and its argument including the clerics of Islamic jurisprudence.

The researcher also attributed the verses to the Qur'an and the hadiths to their correct and authentic sources.

He also relied on the main references of jurisprudential books of the different sects as much as possible, in addition to many modern literature presented by Islamic jurisprudence in a simplified scientific way.

Study plan:

The researcher divided the research into three topics. The research included an introduction that included the reasons and importance of the subject, its hypotheses and problems, and the methodology used in the

research as follows:

The first topic: Proof of (hudoon), prescribed Islamic rules against certain crimes under the evidence of DNA in Islamic jurisprudence.

The Second topic: Proof of (hudoon), prescribed Islamic rules against certain crimes under the DNA hypothesis in comparative law.

The third topic: A balance between Islamic jurisprudence and comparative law.

The first topic:

Proof evidence of (hudoon) under the benefit of doubt of (DNA) in Islamic jurisprudence

If a woman claims that a man raped her or aborted her for adultery, and she made in her case, the seminal remnant in her clothes from the effects of his act, or said that her pregnancy is an effect of that act, or found a woman who is not married and is pregnant, and named certain person that he has convicted adultery, and raped her, or if well-known poor who suddenly looks like the richness of wealth, and found in his hand a certain money known to others, and demanded by them through the judiciary. The results of the DNA proved the validity of their claims (the woman who claimed the crime of adultery, and the stolen money), is the (hudoon), crime on the accused based on the results of DNA analysis or not?

The (fuqaha), jurists, fiqh scholars differed on the answer to this question on two points:

First, the majority of modern jurists and scholars have argued that it is not permissible to set (hudoon) crimes such as; (adultery, rape, stealing, drinking alcohol), based on the results of the DNA,¹ and they quoted their doctrine as follows:

First: From the Holy Quran:

Allah Almighty Said⁴ (And those of your woman who commit illegal sexual intercourse, take the evidence of four witnesses...)².

And He said: (And those who accuse chaste woman and produce not four witnesses...)³.

The significance of this is that the Prophet (p, b, u, h) forbade the adultery of (Maiz) unless it was approved four times⁴. This states adultery

1- Badai al sanai-Ali Al-Qardhaghi, op. Cit., P. 30, Dr. Nasser Abdullah Al-Maiman: The previous reference to the Qur'an, , P. 434, and notes that this is what was endorsed by both the Fiqh Council of the Muslim World League in the past, Its sixteenth session held in Makkah from 21/ 10 / 26-1422H, and the Fiqh Seminar of the Islamic Region for Medical Sciences..

2- Al - Nisa` verse -15.

3- Surah Al - Nour-4.

4- Al-mogni to Ibn Qudamah: A 10, p. 187, Scouts of the mask for the Bhouti: C 6, p. 103.

crime cannot be established by DNA, but by four eye witnesses¹.

This reasoning is discussed as follows: There is nothing in the verses or in the hadeeth which indicates that the methods of proving the crime of adultery are prohibited in acknowledgment and testimony.

One of the means of proving the crime of adultery is nothing else, as evidenced by the fact that the Commander of the Believers Omar ibn al-Khattab (may Allah be pleased with him) set the (hud); crime of (zina); adultery on the basis of the presumption of pregnancy on the one who does not have a husband or a master and did not mention any suspicion or coercion. Adultery if he is immune from men and women if the evidence of the pregnancy or confession)².

The scholars have agreed to say that the Sahaabi is not an argument on the part of one of the Companions who are hard-working, and they differed in that it is an argument against others, and the most correct of the scholars of the fundamentals is that it is not There is no argument at all, and this is chosen by the Amidah, al-hagib Jadeb al-bydawe³.

Secondly: From the Sunnah of the Prophetic:

1- Narrated by Ibn Abbas, may Allah be pleased with them said: The Messenger of Allah peace be upon him said: (If i (rajmat); stoned anyone without evidence ,I would have stoned her...she has appeared suspicious in the logic and body and ...) ⁴.

In this hadeith, the Prophet (peace and blessings of Allah be upon him) did not (hada); punished the woman who showed evidence of adultery, which is the appearance of suspicion in her logic and body, and the entry of foreigners on her. Even if he was accused of treason, and measured by the rest of the (hud), including the extent of theft⁵. Al-Shawkani said after mentioning this hadeih:

(It is not necessary to limit the charges - that there are evidence that makes him in the place of accusation - because the establishment of the (hud), is damage to those who must not be harmed by it, which is ugly and rational

1- D / Abdulrahman Ahmad Rifai, op. Cit., P. 440.

2- Sahih al-Bukhari: thechapter of stoning the pregnant in adultery if he is immune, c 6, p. 2505, Hadith no. 6442, Sahih Muslim : C 5, p. 556, door stoning al-Thib in adultery, Hadith No. 1691.

3- In the words of Omar ibn al-Khattab may Allah be pleased with him to impose his argument controversial, but it does not lend to the reasoning, why? It was narrated by those who say that it is not permissible to establish boundaries with evidence from ahaadeeth, and to do so, and to put the saheeh's view.

4- Sinan Ibn Majah: C 2, p. 118, Hadith number 2559, the door of the obscene, and said at the Imam Sindi: Isnadh right and his men trusted.

5- Fat'h Al-Bari: C 12, p. 188, the door of those who showed obscene and dirty and charge without evidence.

and legitimate, it is not permissible to set the (hud), punishment only after the certainty, because the mere intuition and accusation and suspicion is the case for error and error, So that he should not be punished .

Muslim and harming him without any difference¹.

There is nothing in the hadeith which indicates that it is not permissible to set the (hud), punishment of adultery, theft, etc., with genetic imprint, but rather indicates that it is not permissible to establish it without proof, and the genetic imprint evident . The adultery against this woman was not established due to the weakness of the marks that appeared on her, which did not amount to definite clues so that the (hud), was not ruled out².

This discussion answered: that the meaning of the evidence and the testimony of the witnesses, which is intended. Because the most evidence for the statement is witnesses³. And this answer can be as evidence, as Ibn al-Qayyim; said, the evidence is name of all that shows the truth and shows it, and the one who singled it out with the two or four witnesses or the witness and the two women, has not been proven. The evidence has never come in the Qur`an by the two witnesses, , and the group ... evidence includes all the clues and not one type without another⁴.

- 2- Narrated by Ibn Abbas, may Allah be pleased with them - he said: a man drank;(Fisker), intoxicated ,so he was taken to the Prophet peace be upon him, when he reached neighborhood of the Abbasid Abbas escaped and Abbas caught him, and told that to the Prophet peace be upon him, who said: (Did he do that?)⁵. He did not command anything.

The indication that intoxication is a presumption of drinking alcohol, and with the existence of this context, the Prophet (peace and blessings of Allah be upon him) did not order the flogging. It can be discussed in this reasoning that: The Messenger of Allah peace be upon him did not apply the drinking punishment on this man, because there was no confirmation before him, nor testified that he saw him drink wine...

And nor because he accompanied Abbas the uncle of the Prophet peace be upon him. Peace be upon him⁶.

- 3- It was narrated that Aa`ishah (may Allah be pleased with her) said: The Messenger of Allah (peace and blessings of Allah be upon him) said:

1- Nail Al-Awtar, Al-Shawkani, 7 ج, p. 104.

2- Dr. Muhammad Al-Zuhaili, Proofs, C2, p. 510, Dr. Mohamed Ra>fat Othman, Judiciary in 14- Islamic Jurisprudence, p. 282.

3- mogni al mohtag: C 4, p. 461, d / Abdul Rahman Ahmad Rifai, op. Cit., P. 441.

4- al torog al hukmeya: Ibn al-Qayyim, p. 11, informing the signatories, c 1, p. 90.

5- Al-Fajj, is the broad and wide road, see: al mesbah al moneer; Fayoumi, p. 176.

6- Mohie.

«ward off,(hudood), of the Muslim as you can...¹ The Prophet (peace and blessings of Allah be upon him) said in this hadeith that the (hudood), should be based on the possible suspicions, and the possibility of suspicion is not in itself, but in what is worn or mixed with suspicions related to the circumstances surrounding it².

(Most intelligent scientists believe that as long as there are humans, the probability of error is either through contamination of the samples used, a defect in the technique of analysis, statistics, etc.).

There is no doubt that each of these two similarities is sufficient to prevent and ward off,(hudood), on the accused³.

Third: From the prophetic tradition:

1- What is narrated that a woman came to the Commander of the Faithful Omar bin Al Khattab may Allah be pleased with him; she said: I have no husband and I'm pregnant, I am heavy sleep woman with a heavy head, a man coupled me while I was sleeping, I did not wake up until he finished. In this case he prevent and ward off,(hudood), on her⁴.

2- Narrated by al-Bara ibn Sabra⁵ from Omar bin al-Khattab may Allah be pleased with him that ; came pregnant woman, and claimed that she was forced to adultery, he said: let her go free, and wrote to the princes of the armies not to kill anyone except with his permission⁶.

The sign of significance: In these two tcases, the Commander of the Faithful Umar ibn al-Khattab (may Allah be pleased with him) did not punish the unmarried women who found pregnant or claimed coercion of rape.

The (hud), punishment of adultery does not take place only in the context of the presumption or the DNA, and that same for the other (hudoods)⁷

Fourth: It is reasonable: The evidence of reasonableness is that there is a suspicion that the (hud) may not apply. It may be a matter of suspicion or coercion,⁸ and the presence of the stolen money may in the hands of the accused or a or coercion. Narrated by Ali, and narrated from Ali and Ibn Abbas, they said: If the (hud) (may) and (perhaps)it is disabled⁹.

1- Dr. Mohammed Ra'fat Othman: The previous reference, p. 283.

2- Nile Awtar: Shawkani, c 7, p. 105.

3- D / Wahba al-Zuhaili, op. Cit., Pp. 17- 18.

4- D / Wahba al-Zuhaili, op. Cit., P. 17- 18, Dr. Nasser Abdullah al-Maiman, op. Cit.

5- Mogni: Ibn Qudaamah, c 10, p. 187.

6- Mogni: Ibn Qudaamah, c 10, p. 187.

7- Mogni: Ibn Qudamah, c 10, p. 187, d / Abdul Rahman Ahmad Rifai, op. Cit., P. 443.

8- The woman may bear the impurity, and to enter the water of the man in her vagina either by doing or doing other, see the creator to explain the mask, Ibn Mafaleh, c 9, p. 82, and beyond.

9- The treasure of the workers: the son of Hossam al-Din al-Hindi, c 5, p. 401, book of the border, Hadith No. 13423.

This evidence can be discussed as follows: The possibilities you have presented are rare, and the shar`i rulings are based on the majority, not on the rare few, and most often the pregnancy comes from the abyss and not from the introduction of water, although it is conceivable that it is rarely ruled¹.

The answer to this debate can be answered by two things:

The first thing is that what you have said can be invoked in money or in matters other than (hudoos) issues, because the latter is suspicious, and since the possibility of pregnancy is not guaranteed, it is a suspicion that the (hud) is prevent and ward off.

The second thing is that this statement is undermined by another rule: that the evidence, if touched by the probability, has fallen into the infallibility²...

Fifth: The evidence of consensus: Haji Ibn Najim unanimity of scientists to the prevent and ward off, (hudoos), of the(shabat), suspicion³.

The second view: Seeing the proof of all (hudoos), under the presumption of DNA, and so some said.

And some of the imams who say⁴: that the (zina); adultery should be imposed on the woman without a husband... or the theft with the presumption of the existence of the money stolen by the thief⁵.

The viewers have quoted their doctrine as follows:

1- The verse: (a witness of her household bore witness(saying) if it that his...)⁶.

The reason behind this verse is : that it is permissible to rule in the marks and evidence in the crime of adultery, because it is permissible to know the truth about them from the liar, and this is only a work in the marks⁷.

Ibn al-Gharas said in his saying: This verse is invoked by those who see the rule of the marks in the absence of evidence⁸. Ibn al-Qayyim said: God

1- D / Abd al-Rahman Ahmad al-Rifa'i, op. Cit., P. 444., Ezzat Obaid al-Da'as, Fiqh Rules, p. 38, first edition, Hama, Syria.

2- D / Abdul Rahman Ahmad Rifai, op. Cit., P. 444.

3- «Ibn al-Muhajaj», p. 145, al-Mughni: Ibn Qudamah, c 10, p. 187, locality: Ibn Farhoun, c8, P. 331.

4- P. 343, Arab Center for Security Studies and Training in Riyadh, 1414H / 1993, Dr. Mohammed bin Mohammed al-Sabeel, op. Cit., P. 55.

5- «Ibn al-Qayyim, p. 102,» Ibn al-Qayyim, p. 8, informing the signatories, Ibn al-Qayyim, c. 3, p. 202- 221, The Canons of Islam, for the Prophet, c. 2, p. 252.

6- Surat Yusuf, verse: 26- 27 -28.

7- Dr. Ahmed Abdel-Moneim Al-Bahi, Methods of Evidence in Sharia and Law, p. 73, quoting Dr. Muhammad Ra'fat Othman, op. Cit., P. 226.

8- Saheb al tabsera went to the emergence of the pregnancy freely municipality is not strange and does not know her husband, it is a challenge, as well as the nation that has no husband or master or that the master denies that he set foot, they challenge if the pregnancy appeared, because that witness adultery ... See: The Interpretation of the Rulers, Ibn Farhoun, c. 2, p. 118, d / Abdul Fattah Abdul Hadi Abed, op. Cit., P. 332.

mentioned the witness's testimony and did not deny it¹.

He may object to the reasoning of this verse that: This is in a law other than our Sharia, we do not have to, and this was answered by saying: «What Allah has revealed to him is revealed to him in favor of benefit.»

Allah says: «Those who are guided by Allah, I follow them.»²

The Prophet (peace and blessings of Allah be upon him) said: «The scholars have agreed that a law that is prescribed by us is lawful for us if it has been preceded by a path that is good and not denied. In this case of what is stated, and this verse³.

- 2- The words of God, Blessed and Exalted: (So when he had furnished them forth with their provision....)⁴

Evidence of these verses indicates that the existence of the stolen in the hand of the thief is sufficient evidence in establishing the (hud), against him. Rather, he is like his approval. It is stronger than the evidence. The intention of the structure is that he can benefit from it. It is obligatory to (hud) of pregnancy in adultery and smell in alcohol⁵.

He objected to this reasoning: that may have been permissible in their law, contrary to the Islamic Sharia, which prevented the establishment of the (hud) of the theft of that presumption, and did not address it from the thought or the possibility of the failure to establish the (hud). Ibn Hazm al-Dhahiri says: «... the fact that a stolen person is not a statement that he is a thief, but he thinks, and it is not permissible to cut off the Muslim's hand with suspicion.»⁶

1- Al torowg al hokmyea, Ibn al-Qayyim, p.

2- Surah Al - Ana (verse 31).

3- He previous narrations were different in the previous witness: «If his shirt has been passed by, and he is a liar, he is the student.» (Ibid., P. She defended herself, (although his shirt was from the house of Vtkbt which is the truth), she is a student and the fugitive of it, Furwa that he spoke in the cradle of the cradle said Suhaili: It is correct to talk about the Prophet peace be upon him and said other: On the authority of the minister, he was consulted in his affairs, and it was from the people of the woman and it was said that she was her cousin, he said al-Sadi, the second saying is correct, and narrated from a surly son that he was men of private money K. Al-Qurtubi said: If you descend upon a witness to be a child, there is no indication of the work in the Emirates ... If a man is correct, it is permissible to have an argument in the sign in the clip and many places ... The son of Farhaan followed what al-Qurtubi said: He said, because if he is a child, the argument is based on the permission of Allaah. He has guided us to his serenity, to observe and look at the signs and signs, which he teaches about the truthfulness of the truth and the invalidity of the words of the invalidator. (See Tafseer al-Qurtubi, c. 4, p. 3496, edition of Dar al-Ghad al-Arabi), the vision of the rulers: Ibn Farhoun, c 2, pp. 1118 -119.

4- Surat Yusuf verse 70- 76.

5- Information of the signatories: Ibn al-Qayyim, c. 2, pp. 202 -221.

6- Al mohali: Ibn Hazm, c 11, p. 340.

Secondly: From the Prophetic Sunnah:

It was narrated from Alqamah ibn Wael al-Kindi that his father said that a woman who came out at the time of the Messenger of Allah (peace and blessings of Allah be upon him) wanted to pray, so a man coupled¹. And she passed a group of immigrants, she said: That man did so and so, so they caught him, and took the man who thought to be to the prophet(p,b,u,h), when the prophet(p,b,u,h). ordered to stone him, the real one who coupled her stood up and said I did that.

So the prophet(p,b,u,h), said to her: «Go, God has forgiven you.» And ordered to stone the real man who coupled her.²

The evidence indicates that this hadeeth indicates the evidence is based on proving the crime of adultery and establishing the (hud), and this is applied on the other(hudoob)s³.

The scholar Ibn al-Qayyim said after mentioning this hadeith:

The Prophet (peace and blessings of Allah be upon him) said: ordered to stone al Mujeth without any evidence.» This was one of the first signs on the basis of evidence and taking the evidence of the conditions in the charges. It was narrated by Umar, and the scholars of the people of the city(al Madina), and Ahmad in his doctrine.

It is also true that if a person is found guilty of stealing if he finds that he is stolen, then this man is not aware of what he is trying to escape. The woman said that he did it to me and he admitted that he was a Muslim and came to her. In this evidence showed that the owner of it, and the presumption of it does not fall short of the presumption of evidence and evidence of the possibility of mistake and hostility of witnesses as the possibility of mistake and hostility of women, here, but thought enmity of women in this subject very exclusion and the end of the matter that this apparent taint does not rule out the proof is proven in the same way as in shar`i⁴.

Discussion of this evidence: This reasoning can be discussed that this hadeith is (dha;ef);weak not correct, some narrated that the Prophet peace be upon him abstained from stoning who admitted adultery to repent. And some of them are explicit in his stoning, and this is weak in the hadeith, so it is not permissible to infer it⁵.

1- Tjilha, (couoled).

2- Sunan al-Tirmidhi, 3, p. 7, the door came in the woman if she committed adultery, Hadith No. 1454.

3- Mohammed Ra'fat Othman, op. Cit., P. 279.

4- Eilam al mowageen, Ibn al-Qayyim, c. 3, p. 20, The methods of governance, Ibn al-Qayyim, p. 71.

5- He said in Musnad Imam Ahmadk when the Prophet ordered his skull said: «O Messenger of God, I said to the woman (Go, God has forgiven you, and said to the man said well, he was told the Prophet of God not translated? The city before them), see Musnad Imam Ahmad bin Hanbal: C 6, p. 399.

The narrators of the hadeith went on to say that this hadeith was narrated by the Messenger of Allah (peace and blessings of Allah be upon him) where he ordered the stoning of that man even though the crime was not proven against him, so that he claimed to have committed the crime. Ibn al-Arabi said in his commentary on Sunan al-Tirmidhi: (This is a great wisdom, because the Prophet (peace and blessings of Allah be upon him) ordered him to be stoned before he committed zina, even if he did not prove it. This is a reason to show the psychological when he feared that someone who did not do so would be stoned. (Peace and blessings of Allah be upon him)¹.

In the footnote of Aoun al-Ma'abud, in the margin of Sunan Abu Dawood:

(It is obvious that hadeith is problematic the stoning is not valid without the evidence and confession, and the saying of the woman does not fit him - but she is worth to (hud), of defamation².

It is supported by the above, the review of the Prophet peace be upon him to that man when he confessed himself to adultery four times, so the establishment of the (hud), on one who denies this incident do not settle³. The answer to the discussion: The response of those who say that the evidence is a means of proving in the (hudoods) , of this discussion that: Disturbance in the hadeith is not in the matter of stoning, the one who saved her, but it is in stoning the one who committed the crime of adultery with her, and the base of our reasoning is stoning which was saved based on the presumption that is evidence of the case of the arrest of the one who saved, and the insistence of women that he. This has been agreed upon by the Tirmidhi and others, and thus proved it is valid.

In addition to the above, Ibn al-Qayyim, who mentioned this hadeeth to support his doctrine, said that this hadeeth is a disturbance in his 4848-Sunnah, and that your imam is a Muslim who left it to this disorder, even though the hadith is on his condition. See the wise ways Ibn al-Qayyim, p. 70. Dr. Shehada Abdul Muttalib Hassan, p.To infer⁴.

The answered by saying that the disagreement in the hadeith indicates the weakness of that hadeith.

Third: From the prophetic tradition:

- 1- Aredat Al-Ahwadi with the explanation of Saheeh al-Tirmidhi, Ibn al-Arabi, c 6, pp.
- 2- The Prophets of the Idol Explanation Sunan Abi Dawood, Abu Tayyib Muhammad Shams al-Haq al-Azim Abadi, vol. 6, c 12, p. 28, first edition, 141 AH / 1990.
- 3- In addition to the above, Ibn al-Qayyim, who mentioned this hadeeth to support his doctrine, said that this hadeeth is a disturbance in his 48.
- 4- Sunnah, and that your imam is a Muslim who left it to this disorder, even though the hadith is on his condition. See the wise ways Ibn al-Qayyim, p. 70. Dr. Shehada Abdul Muttalib Hassan, p.

What was narrated from Ibn Abbas said: Umar ibn al-Khattab said: «when Allah revealed the verse of stoning, we read it and rationalized it and ... it. The Messenger of Allaah (peace and blessings of Allah be upon him) stoned and we stoned after that. I am afraid that in the long coming time people have to say: There is no stoning in the Book of God , but it is true, on the one who committed adultery if he is (mohsa'n-immune); married if is men or women if the evidence is made, or is the pregnancy or confession¹.

Meaning: In this evidence that a woman without a husband or a master, if found pregnant and did not mention suspicion, it proves the pregnancy , and this is what Omar said on the pulpit, not denied by one, so, it is same as consensus².

Discussion of this evidence: This reasoning can be discussed as that: This is the saying of Omar, and the words of the companions are differ in them, whether they are suitable to be an argument or not, so taken Omar's saying to prove such a great command that leads to the loss of souls. And Omar said this in group of companions and no one denied that , it does not need to be unanimous because denial in matters of judgment - in which opinions differ - is not necessary t required for the violation , especially if it is stated by Omar, which is similar in the issuance of companions and others³.

The answer to this discussion: Al-Tahaawi answered this discussion by saying: (The benefit of saying of Omar: Stoning is right on the adultery, if the pregnancy from the offense of the adultery, if so, but must be proven to be adultery, and to be stoned with the possibility of it, because Omar asked the pregnant women, she was crying, asked: Why are you crying ? she said that a man Fucked her while she was sleeping, so Omar prevent and ward off, (hud)⁴.

On the assumption of the convening of this meeting, it remains the same as the Scottish consensus, whose argument is considered a matter of dispute among the scholars of the fundamentals. See the jurisprudence of Shaykh Muhammad Abu Zahra, p. 205

This answer can be refuted by two things:

The first thing is that The first thing is that the analogy of our master Umar ibn al-Khattab may Allah be pleased with him, the pregnancy by confession does not mean that it does its place, because the instance of

1- Mohammed Ra'fat Othman, Judiciary in Islamic Jurisprudence, p. 279,280.

2- Al-Bari: Ibn Hajar al-Asklani, c 12, p. 148, Sahih Musallam, explaining the nuclear, C 5, p. 556.

3- Salb al-Salam, al-San`ani, 4, p. 8.

4- On the assumption of the convening of this meeting, it remains the same as the Scottish consensus, whose argument is considered a matter of dispute among the scholars of the fundamentals. See the jurisprudence of Shaykh Muhammad Abu Zahra, p. 205.

the thing is not the same, Ibn Hajar says, commenting on the words of the Taghawi: (It is not hidden to, Omar, but the person who does not adopted the (hud) as soon as the pregnancy does not see the possibility that the adultery is not ascertained adultery and that prevent and ward off, (hud)¹.

The second thing is that Omar`s rule was not a general one, but rather a policy of a situation that required it. Some modern jurists say: «This may be a policy of life for the circumstances that dictated that².

Imam Ali - may God be pleased with him narrated - that he said: «O people, whatever woman came with a pregnancy or recognized it, the Imam is the first to stone, then the people, ...

What is narrated from Imam Ali - may God be pleased with him - that he said: O people, adultery is adultery: adultery if it is a secret or seen and indented, if it is secret to testify witnesses, so witnesses are the first to stone then the public³

The significance of these two hadeith:

This statement from Imam Ali - indicates that the appearance of pregnancy is evidence of the occurrence of the crime of adultery, and shows that this is required to establish the (hud), and that the first to stone is the ruler to throw the prostitute who appeared to be pregnant, and if the adultery has been proven by the presumption, the Pregnancy, so to the extent of adultery all other (hudoods) ,are also confirmed by presumption, or DNA.

Hadieth of the Caliph Umar ibn al-Khattab may Allah be pleased with him, in addition to that it was narrated from the Imam Ali ,where he said: If in the (hud) perhaps and may be, it is suspended disabled, It was narrated that (Abd-Allaah ibn Mas`ood, Maa`adh ibn Jabal, and) Aqba ibn (Aamer said that they said: «If you suspect the the (hua) prevent and ward off, if you can»⁴

There is no doubt that the emergence of the Pregnancy from the unmarried woman, or the presence of traces of semen on the clothing of the victim, and the testing of the fingerprint on it, is not without suspicion compounded to prevent the (hud).⁵

It was narrated that Uthmaan ibn Affan (may Allaah be pleased with him) came to a woman who was born in six months, and he ordered that it be stoned. Ali ibn Abi Talib said to him: This is not what Allah says in his (book); Quran.

1- Open Al-Bari: Ibn Hajar al-Askalani, C 12, p.

2- Open Al-Bari: Ibn Hajar al-Askalani, C 12, p.

3- Methods of Judiciary in the Islamic Sharia, Sheikh Ahmed Ibrahim, p. 423, Dr. Abdul Rahman Ahmad Rifai, op. Cit., P. 447.

4- Singer: Ibn Qudamah, c 10, p. 187.

5- D / Abdul Rahman Ahmad Rifai: op. Cit., P. 447.

He said: (And the parents give their children full turns for those who wanted to be breastfeeding ...)¹.

Pregnancy may be six months, no stone in that, so Osman sent in her request and found she had been stoned².

The evidence is that the caliph Uthman (may Allah be pleased with him) ordered the stoning of this woman, who was born in six months, on the basis that this pregnancy was not for her husband³.

Fourth: the work of the people of the city (Madina): Imam Malik said in the mouata (If unmarried woman found pregnant and said she was forced, that is not acceptable, so (hud), must be applied, except to have evidence that she was married or that she was forced, or came bleeding if she was (Bakr), virgin, ..., If she did not come to any of this she will be stoned⁴.

Discussion of this evidence: that the work of the people of the city;(Madeina) does not agree on as argument.

The majority of the (Sahaabah); the companions of the prophet (p,b,u,h) left the city;(Madina) and dispersed in the territories, and with them many of the Sunnis were taken away from them by the people of these territories. Some of these Sunnis may have been invalidated. Sunnis were not limited to them alone. Their work is similar to their version of the Messenger of Allah peace be upon him⁵.

Fifth: The authors have argued that the DNA (clues) as a means of proof in the (hudood) by analogy, in two ways:

The first aspect: It is permissible to set (hudood); of adultery and theft, according to the results of the DNA, compared to the requirement that the wife should be based on the faith of (al-La'an); oath of condemnation according to the majority of the scholars of the Maaliki, Shaafa'is and Hanbalis⁶.

Discussion of this: This can be discussed by: The analogy of the DNA on the pregnancy is corrupt, because of the conditions of the validity of the analogy, that the basis of analogy is by the text or agreement of the opponents,⁷, it has not been established to (hud) the adultery by recoiling by textual text from the (book); holy Quran or sunna. The fuqaha Islam jurists are agreed

1- Surah Al - Ahqaf verse.

2- Surah Al - Baqarah verse 233.

3- The position of Imam Malik explain Zarqani, c 4, p. 146.

4- Ibid., P. 150.

5- An analysis study of the Maliki doctrine, Dr. Abdul Jalil al-Qarashawi, p. 6, a lecture series on graduate students at the Faculty of Sharia and Law.

6- The beginning of the hard work: Ibn Rushd, c. 2, p. 119, end of the needy, Ramli, c 7, p. 115, Zad al-Maad, Ibn al-Qayyim, c. 4, p. 100, locality of Ibn Hazm, c 10, p.

7- note in the fundamentals of jurisprudence: Muhammad Amin Shankiti, p. 324, fifth edition in 1422 e library of science and governance in Medina.

that it is so. The Hanafis and Hanbalis went in the most correct of the two narrations that the nakul is not evidence of zina and it is not permissible to (hud) it. If a woman abstains from (al-La'an); oath of condemnation, she will be imprisoned until she believes or acquires his claim or recognizes four¹.

If it is proven that the analogical thing is not correct, and that the Nkol is invalid, and the nullity of establishing the (hud), the analogy of the DNA is also, corrupt terms². The answer to this discussion can be: that the wife has not been punished only for her Nkol, but also by the oath of defamation of her husband³.

Nkol, which is in itself a suspicion, It does not eliminate it in any of the (hudood)⁴. But if it is not achieved by the husband's tenderness alone, then the woman may not be able to reduce the (hud)⁵. So they have two possibilities:

The first: There is no (hud) to it;

Secondly: It is necessary to (hud) it, because (al-laian),oath is the husband's concern⁶.

The second is to establish (hud) to adultery and theft under the presumption of DNA, in comparison to the permissibility of establishing alcohol drinking (hud) with a pinch of odor⁷. These issues, in which some scholars have proven the (hud) and the punishment of non-witnesses and not the evidence,⁸ but by taking the evidence and ruling it, then the adoption of the genetic fingerprint and judgment under the cases of (hud) and (qasas); retribution away from the right and not contrary to the right in comparison with those. And the accuracy of laboratory, development and the replication of experiments, especially in more than one laboratory, and by other experts

1- The singer of Ibn Qudamah, c 8, p. 75, says the owner of the innovations: (Our doctrine that it is any wife if she refrained from locking up even to condemn or recognize adultery, and punishment for the punishment of imprisonment is suffering, see Bdaiy al-Sanaa, Kasani, C 3, p. 348.

2- D / Abdel Rahman Ahmed Rifai, pp. 449 -450.

3- Singer, to Ibn Qudamah: C 8, p. 75.

4- Singer to Ibn Qudamah, c 7, p. 445, Zaid al-Maad Ibn al-Qayyim: c 4, p. 97.

5- Singer to Ibn Qudamah, c 8, p. 75.

6- The Illustrator of Shirazi, c. 2, p. 129.

7- Ibn al-Qayyim, Zaid al-Ma>ad, c 4, p. 97, singer of Ibn Qudamah, c 7, p. 445. See Dr. Abdul Rahman Al-Refai, op. Cit., Pp. 450451-, Dr. Saad Al-Din MUSAAD Hilali, op. Cit., Pp. 431- 432.

8- Some of the fuqaha have pointed out some of the limits and shortcomings in the evidence and the emirates that indicate their reasons, even if this is not proven by a certificate or a confession. (D) Proof of the extent of theft for those who have stolen money; (e) Proof of retribution against those found alone in the possession of a knife when a person is dead. See the letter of Ibn Abizaid al-Qizwani, with the margin of fruits Al-Duwani: Al-Nafrawi, 2, p. 182, Sheikh Muhammed al-Sadiq, p. 8, p. 82, Islamic book edition, the creator of explaining the maskan, Ibn Mufleh, , In the reform of the shepherd and the parish, to the sheikh of Islam, Ibn Taymiyyah, pp. 102,108, Jihad Press, 1381 AH, 1961 AD.

who reassure the Governor of their safety, And their experience, and other clues and conditions that carry legitimate ruler reassurance to the validity of the results, and suggest the emergence of the truth and his statement has a genetic fingerprint, if the evidence is affected from the face of the truth and demonstrated by any means¹. The scholar Ibn al-Qayyim: (Allah Almighty sent messengers, and sent down his books to make the justice done on the earth and heavens, if the signs of justice appeared, and resulted in any way that was the way of God's law and religion..., and God knows best and wisest and fairer Justice ... the intention is analogy to establish justice between people)². The analogy of alcohol drinking (hud), with the smell, is true rule; because of the conditions of the validity of the, the rule of the measured asset is fixed by the text or the agreement of the opponents, which is not achieved in the measure here, The measurement is corrupt.

Sixth: The (rational) reasonable: The evidence of reason, it is two ways: The first aspect is that the existence of a pregnancy is not absolute except from (zina), adultery and the (hud) is proven by that, except that it is refuted by the woman, and this indicates that there is a suspicion. Ibn al-Qayyim says in his book: The companions of the Prophet (peace and blessings of Allah be upon him) punished adultery by pregnancy and drinking alcohol and vomiting. This is the correct view. The evidence of vomit and smell, and the rope for drinking and adultery is absolutely correct³. He said in another place: (He was full of wisdom and mercy, that he did not take the perpetrators without an argument as he did not torture them in the Hereafter only after the establishment of the argument on them, and make the argument that takes them either one of them, the acknowledgment or what is in place of the status, From the confirmation of the tongue, if the evidence of the case of the crime as the smell of alcohol, and vomiting, and the pregnancy of a woman with no husband or a master, and the existence of stolen in the house of the thief and under his clothes.

These last two are explicit text they are not suspicion⁴.

Ibn al-Qayyim says in his book: The methods of governance: (The imams and caliphs are still ruled in absolute terms if found stolen money with the accused, and this evidence stronger than the evidence, and recognition, they address the truth and lying, and the existence of money with him explicit text does not address suspicion)⁵.

1- D / Omar ibn Muhammad al-Sabil: The previous research, pp. 55 -56.

2- El'am al moageen: Ibn al-Qayyim, c. 4, p. 309, methods of governance, Ibn al-Qayyim: p.

3- Ibn al-Qayyim, Al-Mu'awabeen, 2, p. 310.

4- Ibn al-Qayyim, the two sites, c. 2, p. 67.

5- Ibn al-Qayyim, the methods of governance, p. 8.

He says in his book: el'am al moageen: (But the legislator did not stand in the provision of rights at all on the testimony of two males, not in blood or money, nor in the vulva and in the (hudood), but the elders and companions wine by smell and vomiting, as well as if found stolen when the thief was first limiting the appearance of the rope)¹.

Discussion of this face: This can be discussed in two ways:

The first is that the view that the clue is stronger than the evidence and the confession is contrary to what is proven by the Prophet (peace and blessings of Allaah be upon him) that he did not (limit), the woman to what appeared from the signs of adultery². And stealing is from the (hudood) is not permissible, to (hud), it by comparison with regard to adultery³.

Second: The existence of money stolen by the thief does not oblige him to be the thief, for the possibility of his arrival to the one who tempts him (gift, or even coercion of theft)⁴. The presence of the defendant's DNA at the place of the theft is not necessary he is the offender, for the possibility of passing through that place by chance to spend something, or to do a specific purpose, and each of these possibilities of suspicion enough to prevent the (hud)⁵.

From the inferences of each of the two groups, and the discussions on the evidence, one can almost certainly say that the general public's view is not working with evidence or DNA at the (hud), is favored for the severity of the (hud), and the greatness of the matter and for the safety of the evidence on which this opinion was based. The most powerful of these evidence: that the presumption has many possibilities, and hover around suspicions, (hudood) and suspicions⁶.

However, the DNA illuminates the path to justice and guides them to persons who have already passed the scene of the crime or the victim's body. Justice, with its insight, has the right to decide the accusation of the accused in the first instance: on the basis of excluding the application of parish (hudood), with the slightest suspicion⁷.

1- The same is true of the existence of the stolen property with him, and he said, «I will not take it unless it is stolen.» Bshahdi justice or stability by choice, and voluntarily say contrary to legitimate policy.

2- Ibn al-Qayyim, informing the two signatories: 1, p. 87.

3- D / Mohammed Al-Zuhaili, Evidence, c. 2, p. 509.

4- Ibn Majah, c. 2, p. 118.

5- Al sharh al sageer of Dardiri, C 4, p. 138, d / Saad al-Din MUSAAD Hilali, op. Cit., P. 41.

6- Dr Abdul Rahman al-Rifai, op. Cit., P. 470.

7- (2) and to the weakness of those who have relied on the legitimacy of the work of evidence in the borders.

The second topic:

Proof of (hudood), under the DNA hypothesis in comparative law

First: To prove the crime of adultery and rape under the DNA. If an unmarried woman is pregnant, according to the concept of adultery in law

This is not considered adultery and does not result in punishment, because the crime of adultery in positive law means that a married person, a man or a woman, has intercourse with a non-wife. Adultery is a crime committed by a wife if she sexually contacts a man other than her husband and is committed by the husband if he sexually contacts a woman other than his wife¹.

Therefore, the fact that a married woman is one of the pillars of the crime of adultery in positive law. In addition, if sexual intercourse is found by an unmarried woman, it is not adultery, even if it results in pregnancy².

If the comparative law requires that adultery be committed for the fact that a woman is married and has sexual contact with her husband, what is the adaptation of the act if the sexual relationship is between the unmarried?

Comparative law finds that sexual intercourse is between a man and a woman who is not married, and they are eighteen years old, such sexual intercourse may have been consensual or may have arisen from the victim's dissatisfaction³.

If consensual sexual intercourse is made, the act is not a crime, but is the use of sexual freedom, and therefore, according to the codified scheme, it must be excluded from the scope of the prohibition⁴.

If the contact arises without the consent of the victim, this is considered rape. This is because the concept of rape is: a man contacts a woman with complete sexual intercourse without proper consent. This is explicitly stated in Article 267 of the Egyptian Penal Code: (If a woman is a victim of unconsensual sexual intercourse the doer shall be punished with hard labor.) It is agreed upon by the legislator that the comparative legislator did not specify evidence to prove the crime of adultery, except for the partner of the adulterous wife. Thus, the general rule of criminal proof in the statutes is the freedom of proof in all ways and means. The judge can draw from the evidence presented what

1- Mahmoud Mahmoud Mustafa, Explanation of the Penal Code (special section): - p. 337 - edition 1984, published by Dar al-Nahda al-87--Arabiya, Dr. Mahmoud Naguib Hosni, summarized in the explanation of the Penal Code (special section): - Paragraph 759 -500.

2- Mahmoud Mahmoud Mustafa: The previous reference - p. 338, Dr. Mahmoud Naguib Hosni: Ibid. Paragraph 667 - p.

3- If contact with the desire of the woman and without the consent of the man, this is an antidote to the show.

4- Dr. Mahmoud Naguib Hosni: Ibid. - p. 464, Dr. Shehata Abdul-Muttalib Hassan: ibid. - pp. 98 -99.

he considers productive in the case¹. This is explicitly stated in article 302 of the Egyptian Code of Criminal Procedure: (The judge shall judge the case in accordance with the faith which he has formed in his full freedom, but he may not build his judgment on any evidence he has not presented before him in the hearing).

Thus, the comparative law sets out the evidentiary evidence for the partner of the adulterous wife only². As for the wife herself, the husband and his partner and other persons, in accordance with the general rule of criminal evidence, their sexual offenses may be proved by adultery, rape, etc., by all means of proof, with no DNA. The French legislator has authorized the identification of the offender with genetic fingerprints in criminal offenses, including sexual offenses, in article 226 -28 of the new French Penal Code which states that: (Search to challenge or identify a person's identity or identification of a person with his genetic fingerprints, may only be for medical or scientific purposes under criminal or judicial proceedings).

In the area of Arab legislation, the Libyan legislator approved the crime of adultery by scientific means. Article 6 bis of the Libyan Penal Code No. 70 of 1973³ stipulates the following:

(And the crime of adultery provided for in article 1 of this law shall be proved by the confession of the offender or by the testimony of four witnesses or by any scientific means).

With this provision, the Libyan legislator has added to my way of proving the crime of adultery with the recognition and testimony of witnesses, a third way is the scientific means, and equated them with the value of proof. It should be noted that the term «scientific means» in the text is an absolute term that is not specific, allowing access to all methods and methods described in the text, such as the use of technical or technical devices and medical analysis.

Accordingly, if the crime of adultery or rape is proved by such scientific means as the DNA, the (hud), may be based on its results, such as recognition (confession) and witness testimony⁴.

The Yemeni legislator has taken the Islamic jurisprudence, where it is required to prove the crime of adultery according to the Islamic jurisprudence of the conditions, in articles (263 to 269) Yemeni sanctions.

1- The same reference - p.

2- Article 276 of the Egyptian Penal Code establishes the evidence of the partner of the adulterous wife by saying: «The arrest of him when he is actually wearing it, his confession, the existence of a ketubah or other written papers, or his presence in a Muslim house in the premises of the harem.

3- This article is added pursuant to Law No. 10 of 1999, concerning the establishment of adultery and the amendment of some provisions of the Penal Code.

4- D / Abdul Rahman Ahmad Rifai: Ibid.

Second: To prove the crime of theft by DNA:

The existence of the stolen object with the accused of stoling from the judicial evidence¹, which sees by a majority.

Comparative jurists² are one of the original methods in criminal law. They are a stand-alone evidence. This is what the Egyptian Court of Cassation has upheld in many of its rulings, in which it ruled that:

(Watching several people walking along the road with those who carry the stolen goods, entering them in a house, and disappearing with them, presuming their involvement in the theft)³.

The German Jurisprudence and Jurisdiction have determined the entry of DNA or DNA analysis under Article 81, paragraph (a), of the German Code of Procedure, which allows the identity of the accused to be proven⁴, and the crime of theft as other criminal offenses may be proven by all means of proof, According to the results of physical tests or medical examinations, of the offenses for which he is likely to be punished after his conviction⁵.

In the area of Arab legislation, the Libyan legislator stated that it is possible to prove the crime of theft and the punishment of a thief under the results of the DNA or other scientific means. Article 9 of the Penal Code No. 23 of 1996 on the grounds of theft and theft states that:

(The offenses of theft and theft - provided for in Articles I and IV of this law - shall be proved by the confession of the offender and by any other means of proof).

In general, general rules of positive criminal law allow the offense of robbery to be proven by DNA results. These rules give the judge broad freedom to take the evidence he sees Fit and rest to him and his conscience and reassure his conscience, whether that guide.

Direct as testimony and recognition. Or, indirectly, such as evidence and, he - the judge - in all cases is not restricted based on the rule to certain

1- Dr. Mahmoud Naguib Hosni, Explanation of the Code of Criminal Procedure - 487.

2- D / Hassan Sadiq Al-Marsafawi, The Origins of Criminal Proceedings - p. 692 - Publisher Ma`aref Establishment in Alexandria - 1964, Dr. 96-Mahmoud Naguib Hosny: The previous reference - Al-Nahdah Al-Arabiya, 1984. Dr. Mohamed Zaky Abu Amer, Criminal Procedures, S853, Al-Ma`aref Institution, Alexandria, Dr. Raouf Obaid, Criminal Proceedings in Egyptian Law, p. 727, Explanation of the Code of Criminal Procedure: - 680 - the second edition - in 1991 presses of the Egyptian General Book Association.

3- Registration on 191945/3/: The set of rules - C6 No. 527 - p.

4- See: Article 302 of the Egyptian Code of Criminal Procedure, as well as Article 179 of the Lebanese Code of Procedure.

5- We have already mentioned that the French legislator authorized the identification of a person with DNA in crimes, including the crime of theft, under the provisions of article 22628- of the new French Penal Code. See: Dr. Ghaith Mahmoud Al-Fakhri, Evidence and its Impact on the Evidence of Crimes, a PhD thesis presented to the Faculty of Sharia and Law, Cairo, 1421H (2000), p.

evidence, when he was in his judgment and reason in the logic of reasoning that led to his conviction, which is provided by the Egyptian legislator in the law of Article 302 of The Code of Criminal Procedure, as well as the Lebanese legislator in article 179 of the Code of Criminal Procedure¹.

As for the Yemeni legislator, we find it in the Code of Crimes and Penalties has been taken according to Islamic jurisprudence (297) ((proving the crime of robbery positive to (hud):

- 1- To recognize the judiciary before it is amended before implementation.
- 2- By the testimony of two righteous men.
- 3- The testimony of a man and two women Idol.

It should be noted that the theft of (t'azer) , which did not meet the conditions of reduction in accordance with Article (294), the researcher believes that there is no objection to taking the DNA as long as this does not entail a limit or punishment pursuant to article (300) Yemeni sanctions².

We conclude from the foregoing that if the crime of theft is proven by genetic fingerprints, the judge has the right to reject the evidence derived from it, or to accept it and the sentence that the accused convicts by virtue of its results. This is not restricted to the evidence resulting from it, which reassures him of his conscience and conscience. Put forward at the meeting

The third topic:

A balance between Islamic jurisprudence and comparative law.

After talking about the position of Islamic jurisprudence and the positive law of establishing (hudood) under³. Clues, including DNA, we can observe the following:

First, as there was a dispute between the scholars of Islamic jurisprudence in proving the (hudood) of evidence, the positive law's interpretation also differed in considering clue as evidence that can be proved and relied upon in criminal articles.

Secondly, the pregnancy of a woman who has no husband or a master is not considered a definitive proof of the extent of adultery among the majority of scholars, while the Maalikis and Ibn Taymiyyah and Ibn al-Qayyim, and Imam Ahmad, considered the pregnancy is a presumption of (hud), if the woman does not prove that she was forced to commit adultery It comes and it is destroyed or begged and it is on that case.

Thirdly, if an unmarried woman contacts more people sexually, it is not considered adultery punishable by law, even if she is charged with this

1- Ghaith Mahmoud Al-Fakhri: The previous message - p. 663 and beyond.

2- Note that this opinion taken by the Zaidi.

3- Dr. Abdul Rahman Al-Rifai: The previous message - p.

sexual intercourse , and there is nothing that is expected to be imposed on her in this case. It should be noted that the positive law is consistent with the view of the majority of fuqaha that there is no punishment for a woman who is pregnant or has a husband or a master¹. Fourth, the positive law differs from the view of the majority of jurists on the basis of which it is based on non-punishment. The basis on which the majority is based on not setting a (hud), on those who are pregnant with a husband or a master, or the existence of stolen money in the hands of the accused is that the presumption of love is not valid. The pregnancy may have been caused by coercion, or the (water) ; semen has entered her vagina, or the possibility of accepting money is a gift or a nudity, or even a compulsion to steal, and the (hudood) are suspicious. However, if the pregnant woman admits that this pregnancy was adultery or that four male witnesses testified, or if the accused confessed to stealing the money that was found in possession of it, it is permissible to do so².

Non-punishment in positive law has arisen from not considering such an act as a component of an offense. This is because the crime of adultery does not take place unless the woman is married, if a woman calls married to her husband without sexual intercourse, this is what is considered adultery, and punish the wife then the penalty prescribed by law, namely imprisonment for a period not exceeding two years (Article 247 of the Egyptian Penal Code)³. If the unmarried woman calls more people, it is not considered adultery, and punishment is not punishable by adultery, because the crime of criminalization in positive law is a violation of the wife's sexual devotion to her husband, each of the spouses can take into account the sexual relations of his wife⁴. As for the unmarried woman, there is no obligation that has been breached, and the act in her case is not a crime accordingly, and this is one of the fallacies of positive law⁵.

1- D / Shehata Abdel Latif Hassan: The previous reference - p.

2- Previous reference - p.

3- D. Mahmoud Naguib Hosni: Summary in the Explanation of the Penal Code, paragraph 769, p. 506.

It is strange that the case of adultery does not take place in positive law except by a complaint from the husband. The Public Prosecution can not move the case of adultery unless the husband raises the complaint. The crime of adultery is a crime. What is more strange is that if the husband raises the complaint against his wife's adultery, then his plea is not heard if the wife pays zina for her husband's adultery in the marital home. See details in: Dr. Sameh Sayed Gad, Criminal Proceedings in Egyptian Law. - 50 - 52 - edition of the Arab Union Printing House - in 1989, Dr. / Mahmoud Mahmoud Mustafa, explain the Penal Code (special section) - p. 340.

4- Mahmoud Naguib Husni, summarized in the explanation of the Penal Code (Special Section) - Paragraph 760- 500ص, Dr. Mahmoud Mahmoud Mustafa: ibid. - p.

5- D / Shehata Abdel-Muttalib Hassan: The previous reference - p.

Fifthly: The laws differ between proving the adultery of the wife and proving the adultery of her partner, and she asked for special exceptional evidence to prove his adultery: arresting him when she was actually doing it, confessing him, having notes or other written papers, or found in a house of women¹.)

As for the wife (or husband and his partner and other persons), the legislator did not require special evidence for her adultery, but it was proven by all means of proof, such as proof of genetic imprint, so that if the judge was convinced of any of them, he had to convict the wife and punish her.

In this case, if the wife's partner is not zina, the positive law is consistent with what the Maalikis, Ibn Taymiyyah, Ibn al-Qayyim and Hanbali said in one of the narrations and some contemporary jurists. It is permissible to prove adultery and rape with evidence or genetic fingerprints².

Sixth: The positive law agrees with what the Shaafa`is said in the face of Imam Ahmad in the narration of Ibn al-Qayyim and some of the modern scholars. It is permissible to prove the crime of theft and to impose the punishment on the accused with genetic fingerprints or fingerprints. Money stolen by the accused and under his clothes³.

This is contrary to the view of the majority of jurists that no clues or fingerprints at the (hudood) are ever implemented, including the extent of theft, in accordance with what is established in Islamic jurisprudence that the (hudood), are suspicious.

In accordance with this, and in keeping with the opinion of the majority of jurists, finding a biological or genetic trace of the accused at the scene of the crime, as if the criminal left a blood or seminal wound, or even an imprint on the character of a mail or a glass of water ... But after succeeding in reaching and holding him, we do not conclude that he is the real culprit, because his presence coincides with the crime (adultery, rape, robbery) and leaves an impression behind him and has nothing to do with the crime. It is also likely to be the real actor, but there were other motives and circumstances that weaken the elements of the crime and its conditions, as a mistake, forgetfulness or coercion, or so, and each of these possibilities of suspicion enough to prevent it.

There is no doubt that the ruling on the reduction of the (l hudood), on

- 1- See: Article 276 of the Egyptian Penal Code, and the Egyptian Court of Cassation has confirmed this exception (see: Revocation on 161941/5/: Group of Legal Rules - Q 115473- - No. 259).
- 2- There is no difference in proving the crimes of adultery and rape between the offender being a man or a woman and not being married or unmarried.
- 3- We have previously seen that the French, German and Libyan legislators have authorized the use of genetic fingerprint analysis as a crime of theft.

the accused, in such cases, or preferred to punish him with the suspicion that the limit, according to the words of the Holy Prophet:

(... The imam to make mistakes in amnesty is better than to sin in punishment)¹.

Conclusion

The paper concludes with findings, recommendations and suggestions as below:

First: Results:

- 1- The introduction of the modern physical evidence leads to the widening of the circle of evidence, which enables the society to prosecute the offender and apply the punishment.
- 2- Taking the results of modern evidence leads to the consolidation of justice and the establishment of security and stability in society and thus achieve the goal of the legislator to save people their lives and their families and their money from aggression and maintenance and maintenance of violation.
- 3- The scholars of the Islamic Shariah differed on the extent to which it is permissible to prove the(hudood) in evidence. Ibn al-Qayyim and Ibn al-Faris agreed that all the crimes of the may be proven by evidence. Imam Malik went on to say that some of the crimes of the(hudood) may be proven by evidence. , And considered the appearance of the smell of wine in the mouth or vomit presumption by the limit, but the Shaafa>i, Hanafi and Hanbali did not take evidence in (hudood) e crimes in general except the wife of the wife Nkul in Al-Lana, where they considered positive to adultery - the Hanafis and forced the imprisonment of the wife.
- 4- The Sudanese law has taken the opinion that it is permissible to work with evidence to prove some of the crimes of the border, where he took the presumption of pregnancy for the unmarried woman as a proof of adultery, and also took the proof of the adultery with the presumption that the wife was cursed. In the crime of the drinking (hud), he was taken with the smell of the smell, provided that Adlan saw that it was the smell of wine, or the testimony of an expert, and he did not take the vomit, and the Sudanese law also used evidence to prove the (hud).

1- Sunan al-Tirmidhi: 2, p. 438- 439 - the door of what came in the prevention of the border, the great Sunan: Baihaqi - c 4 p 228 - the door of what came in the prevention of the border suspicions, Almtadrak on the right: for the governor of Nisaburi - C 4 p246, Sunan Aldarkutni: C 4 P: 84 - edition Allam books.

- 5- Jurists agree that the scientific evidence to be acceptable in the proof must meet two basic conditions:
- A. Be the result of legitimate actions.
 - B. The result of which is categorical from the scientific point of view.

Second: Recommendations:

1. Use of physical evidence and use it to identify the fact of the physical impact to limit the circle of suspicion of the investigation and criminal investigation.
2. Establish specialized institutes and research centers to study modern material evidence in the various scientific, legal, and judicial viewpoints, and reach conclusions, recommendations and proposals that will help to identify the reality and the essence of modern physical criminal evidence.
3. Rehabilitation of legal cadres from the judiciary - law professors - lawyers - police officers and criminal investigation - to establish short training courses aimed at knowing the role of criminal laboratories and the importance of their results in criminal evidence and linking the course with its multi-faceted aspects.
4. Qualifying the technical cadres working in the criminal laboratory in order to enable them to perform their mission with accuracy, efficiency, scientific honesty and practical experience, and test their efficiency and monitor their performance, the seriousness and sensitivity and importance of the report they submit to the judiciary as this report has become one of the most important bases of judgments issued by national and foreign courts on Both.
5. Organizing seminars, , lectures, conferences and writing legal researches so that the people of government and justice will know the legislation, law and judiciary of the facts and the importance of physical evidence from the legal and scientific perspective.
6. The need to keep up with legal legislation development of criminal science and modern scientific theories in the discovery of facts and work on the significance of these scientific facts, which enjoy scientific stability and the prevention of criminal evidence.
7. Alerting the legislative and judicial specialists to the need to work to eliminate the results of modern readers until the crime is limited and restricted in the narrowest range.

8. The need for international cooperation in the fight against modern crime because it transcended the borders of the country and exceeded the boundaries of States and includes land, air and sea, and this will be done only with international cooperation to recognize and recognize the need to introduce the reasons for scientific and technical development in the field of combating and proving crime.
9. Drew the attention of the Ministry of Higher Education and Scientific Research the development of a special university curriculum for the faculties of Sharia and law includes the study of forensic medicine and its relationship to crime and to establish a relationship between this scientific study and its effects in the achievement of justice by uncovering the revenge of the crime and the identification and the significance of which helps in arresting offenders and stability and security.
10. Also drew the attention of law researchers to the importance of this research article and the issuance of more extensive research in this aspect, which contribute to highlight the role of evidence in modern proof of crime and justice.

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The Scientists Opinions About The Rule of Hair Implantation **Dr. Mohammed Thalith Ismaeil**

Abstract

This paper contains the summary to clarify the reviews of scientists in the Islamic rule of hair implantation, and its elongation the statement of the legality of the plastic surgery , this research states hair implantation in terms of definition, and scientists and doctors pinions in terms of legitimacy.

The aim of this research is to enrich the proper knowledge, and that does not contradict the premise of research with the ethical framework and principles of the protection of human beings and the society in which they live and then to know the rule of the Islamic Sharia in respect to hair implantation.

The induction approach and analysis of issues were followed in terms of legitimacy and medical views .

1. The hair implantation is a permissible process to make someone pretty and also it is the process of displacing damage that takes place on someone`s body.
2. The human hair is Tahir (pure) whether he was alive or dead , this is the majority of scholars opinion.
3. Hair elongate is impermissible , according to the view of majority of scholars.
4. Hair elongate with other hair, like wool or threads is impermissible regarding Maaliki and Ahmad`s.
5. The prevention of elongation is not only concerns women but also men are prevented from elongation of their hair.

Research Plan:

The research were divided into an introduction, two main chapters, a conclusion and indexes as follows:

*** Introduction**

*** Chapter One:** The Islamic rule of hair elongation

- **First theme :** Definition of Islamic rule

First requirement: The definition of Islamic rule idiomatically and in language.

Second requirement: The definition of elongation

Third requirement: The definition of hair

- **The second theme:** Types of hair implantation.

The first requirement: necessary implantation.

The second requirement: improvement implantation.

Third requirement: What is meant by hair implantation.

Fourth requirement: the Islamic rule of hair implantation

Fifth requirement : legality of cosmetic plastic surgery

*** Chapter Two :**

- **First theme:** the definition of hair elongation

First requirement: the language of the definition of elongation idiomatically and in language.

The second requirement: the evidence of hair elongation.

Third requirement: human hair purity (Tohoriyat)

- **The second theme :** Materials that are used in hair elongation and reasons behind prohibition of elongation.

The first requirement: elongating hair with hair

The second requirement: elongating hair with other materials.

Third requirement: Is forbidden concerns women only or both men and women?

Fourth requirement: Why prohibition?

*** Conclusion**

*** Sources and References Index**

Introduction

Praise be to Allah, prayer and peace be upon the prophet who has been sent as a mercy to all the universe .

The God creates human in the best image and well figure, he said (*and has given you shape- and made your shapes beautiful*)¹ and Allah urges beautification, saying: (*O Children of Adam! wear your beautiful apparel at every time and place of prayer*)² the Prophet, peace be upon him, urged the beauty, he said: (Allah is beautiful and he loves beauty) the news are true on the function of the inadmissibility of changing the creation of God .It is known that women usually change the purpose of procreation through what is known as hair implantation or elongation, many women don't know the Islamic rule and the reality of elongation. I had to make this research for the Taseel magazine at the University of the Holy Quran. This issue (hair implantation) is one of the modern issues in this era of so-called implantation or hair grow which is a modern surgery operation, but on the other hand elongation is different topic, I left it for the next chapter³.

1- Surat Ghafir , verse no 64.

2- Surat al Araf verse no 31.

3- Muslim , Kitab AL Eman

I ask God, the Almighty, that this work is purely for Allah's sake and that benefits the Islamic nation.

Chapter Two

The Islamic rule of hair implantation

First topic

The definition of the Islamic rule of hair implantation

This issue emerges in this era which is so-called implanting hair in the head through a plastic surgery which has not been known before.

First requirement

The definition of the Islamic rule both in language and idiomatically first in language :

Fayoumi says, originally it is judgment and initially it is the prevention¹, idiomatically the Islamic rule.

The fundamentalists defined it as the God's speech concerning the acts of in case of needs or giving choice².

The second requirement

The definition of implanting

Planting language:

Ahmed bin Mohammed Fayoumi says that : I plant (gharastu) the tree³, (ghars) with opened (gha) and (ghirs) with the reduced (gha) are the same pronunciation as anoun.

Third requirement

Hair definition

Hair in language:

The body's sprout or a plant, which is not wool, animal hair or human hair or others, «AL Mujam AL Waseet» Hair: threads grow on human skin and other mammals, like feathers in birds, and peels in fish⁴.

Benefits of hair:

The hair has many benefits, including:

1. Protects the body from external influences such as shocks that occur to the head.

1- AL Misbah AL Muneer 140.

2- AL ahkam / Amdi49 /1.

3- AL Misbah AL Muneer 145.

4- AL Mujam AL Waseet 484.

2. Protects the body from different rays and the heat of the sun
3. Prevents the entry of foreign objects into the nostrils, as well as maintenance of the eyes from dust and others.

The second theme

Types of hair implantation

First requirement

Necessary implanting

It is all self-implantations that considered necessary and needed. which is dispensable and life can go on without but with some.

Examples:

- skin implantation
- Implantation of bones
- implantation of strings and others.

The second requirement

Complementary and beautifying implantation

It is all self-implantation required complement or beauty, and life is not be ashamed without it, but the observance of it is a sense of morals or habits, so it is just a way of looking good and acceptable in front of people, and it is not a matter of looking strange or draw attention, such as plastic surgery operations.

Examples:

- Face surface repair after burns
- Repair low and twisted noses.
- Grafting cracked lips.
- Implantation of hair or beard¹.

Third requirement

What is hair implantation

Dr. Samir mentions that hair implantation process aimed at the transfer of natural sound hair bulbs from permanent hair zones behind the head and sides to the bald affected areas.

This process takes several hours, the patient carries on his work on the second day of the operation, and 24 hours later implanted grafts become an integral part of the body.

The implanted hair begins to grow, three months after the implantation,

1- Hukm AL Intifa' aBiladad al bashariyawa AL Haywaniya , kamal al Deen JUMA` A179- 180.

and it seems natural, but little intensity which can be increased, if the patient sits down for additional operation¹.

According to Arab magazine, about this kind of operations some doctors say that (In fact, hair implantations are not just to implant the hair, but implanting a portion of the skin, for example, the case of burns, where taken sound leather is taken and replaced by burnt skin².

Some of the side effects of this process:

There are not any long-term side effects of this process, but there are some temporary effects that disappear after a specific period, including:

1. Pain: where it is performed under local anesthesia, after the operation the patient is given pain reliever , the majority of patients don't need it.
2. Itching or creepiness , may commonly occur in wounds .
3. Sslight swelling at the front , happens to 10% of patients and it may last for several days and then disappears.

Fourth requirement

The Islamic rule of hair implantation

The Islamic scholars disagreed about the rules of hair implantation . Three matters should be stated here :

The first: implanted hair should be of non-human being.

The second: implanted hair should be taken from another human being.

The third thing is that the hair is implanted from the same person , contemporary jurists don't agree with the same opinion on this case, there are two views:

First opinion:

This type of operation is not permissible , because the intention here is decorations and adornment , dr. ShawkiSahi³ dr. Abdulsalam AL Sukkari⁴and Sheikh Tantawi⁵ dr. Muhammad ibn Muhammad Shanqeeti⁶.

The evidence of this opinion includes:

1. God's words about the devil: (*and to deface the [fair] nature created byAllah*)⁷ The evidence of this verse is in the context of the statement of forbidden deeds that the devil guides people to do them , such changes

1- Silsilat AL Buhooth AL FIQHIYA AL Muhakama.120- 121.

2- Majalat al Arabi no 177p. 132.

3- Al fikr AL Eslamiwa AL Gadaya AL Tibiya al Mua`asira136.

4- NaglwaZiraat AL Ada`a AL A`adamiya min MandhoorIslami.

5- Fatawi ALI al Tantawi 67.

6- Ahkam AL Jiraha al tibiya 193.

7- Surat al Nisa`a verse no 119.

of the creation of God, which is forbidden because they are actions of the devil. This type of plastic surgery, but it is a change of God's creation and it is not permissible.

2. What was narrated by Abdullah bin Masood may Allah be pleased with him, he said: (God damn splited, cracked and tattooed women who do so to change God's creation), Allah says (*So take what the Messenger assign to you, and deny yourselves that which he withholds from you*)¹.

The point of evidence is that «it is not permitted² because those who do so try to change the God creation: This evidence has been discussed in three aspects:

First aspect:

The change of this type of operations is for the need, shall be excluded from the provisions to change the creation of God, and that what was said by AL Nawawion the Previous Hadeeth of Ibn Mas'ud³.

The second aspect:

To return back to the situation of God's creation, which is a matter of removing the defect and it is not a matter of beautification, and therefore does not fall within changing the creation of God.

The third aspect:

That this type of plastic surgery does not include changing the creation of God intentionally, because its basic principle that it is intended to remove the injury, and beautification came accordingly⁴.

Second opinion:

Such plastic surgical procedures are permissible, there is nothing wrong in hair implantation, those who are supporting this opinion are: Dr. Mahmoud Sartawi, Dr. Othman Shabir and Dr. Hussain Ali, but they stipulated conditions for such operations, namely:

1. Unclean materials must not be used.
2. There should be no cheating and deceiving.
3. That does not change the creation of Almighty God.
4. That does not lead to greater harm.
5. Not be the intention of imitating the unbelievers or people of evil and debauchery.
6. Not intent to resemble other gender.

1- Surat al Hashr verse no 7.

2- Ahkam AL Jiraha al tibiya 193 -194.

3- Sharh Saheeh Muslim 14 /107.

4- Ahkam AL Jiraha al tibiya 186 -187.

Evidence of this to say:

Among the evidence of this view is that the process of hair implantation is not to change God`s creation. It is a matter of restoring back what God created and to remove a defect, not be a matter of changing the creation of God¹.

Fifth requirement

Legality of plastic surgery:

The idea of beauty in Islam is permissible unless it leads to evil actions, man tends to the beauty by nature. The God, the Almighty created man in the best form, as He says (*and has given you shape- and made your shapes beautiful*)², Allah urged on the beauty and adornment as he said (*O Children of Adam! wear your beautiful apparel at every time and place of prayer*)³.

The Messenger of Allah, peace be upon him, urged on beauty saying: (God is beautiful and he loves beauty)⁴ Evidence could be argued that the road to beauty through the legal, medical and surgical operations is permissible, evidence including:

1. Allah says :(*O Children of Adam! wear your beautiful apparel at every time and place of prayer*)⁵, God Almighty had praise from the so-called for the revival of psychology, medical, surgery is often acclaimed achieve this goal, shall be unlawful to do so.
2. What generally came in the traditional Hadith concerning treating the wounds, also in Jaber`s Hadith may Allah be pleased with him that the Prophet, peace be upon him -when he sent to IbnKa`ab⁶ and also types of surgical treatment, including bloodletting⁷ and others.
3. The general rules of the Islamic law allow these surgeries, as well as Al-Shara took into account the bringing of interests and warding off the evils and to maintain human`s health and the plastic surgery is type of this⁸.

1- FatawaMua>asira, Sheikh Mohammad Bin SalihGeimeen 292.

2- Surat Ghafir, verse 64.

3- Surat Al-A`araf, verse 31.

4- Previous p 3.

5- Surat Al-Maida, verse 31.

6- Muslim4/ 1730.

7- Saheeh AL Bukhari , Kitab AL Tib.

8- AL Mawqif AL Fighiwa AL AKHLAGI Fii Zara` AL Adaa` , Dr. Mohammad al Bar 101.

Chapter Two

The Islamic rule of Hair Elongation

First theme

The definition of elongation

First requirement

The definition of elongation in language and idiomatically

Elongation in the language: the Arabic word (wasala) (Waw), (Sad) and (Lam) As says Ibn Faris: it is the origin of one thin of two same parts attached together¹.

The focal point of the thing arrived thing is received a receipt link, connecting against abandonment, and the link: contact, and all contact with something between them and what is relevant.

Allah (swt) says in the Holy Quran: *(Now have We caused the Word to reach them themselves, in order that they may receive admonition)*². In the Hadith: God damn Al Wasilawa Al mustawsila³.

The technical and idiomatic meaning of elongation:

Idiomatic meaning is the same as linguistic meaning as defined by scholars it is the increase of hair from other hair⁴.

But Al Adawi Al Maliki Said: «AL Wasila»: any woman that elongate her hair with other woman's hair⁵.

Al Nawawi From Shafia said: AL Mustawsila is a woman who asked others to elongate her hair.⁶

Ibn Qudamah From Hanbali: «AL Wasila- any woman that elongate her hair with other woman's hair»⁷.

It is clear from these definitions that the scholars agree with the definitions of elongation in all the doctrines only the second Mawardi disagreed with those interpretation as he mentioned that (AL Wasila) is a woman that connects between men and women of immorality.

The second requirement

The evidence of hair elongation:

The evidence in this requirement are as follows:

Including the words of God for the devil: ([The Pagans], leaving Him, call

1- MUJAM Maqayees AL LUGHA, 115 /6.

2- Surat AL Qasas verse no 51.

3- AL Bukharifi Kitab wasl AL Shaar.

4- Fath AL Bari 74/ 10.

5- Hashiyat Ala Qifayat AL Talib AL Rabbani 367 /3.

6- Sharh Saheeh Muslim 103 /14.

7- AL Mughni 67 /1.

but upon female deities: They call but upon Satan the persistent rebel! 118. Allah did curse him, but he said: *(I will take of Thy servants a portion Marked off; 119. «I will mislead them, and I will create in them false desires; I will order them to slit the ears of cattle, and to deface the [fair] nature created by Allah.» Whoever, forsaking Allah, takes Satan for a friend, hath of a surety suffered a loss that is manifest)*¹.

It is the Sunnah: Asma`aBintAbiBakrnarrated that the Messenger of Allah peace be upon him damned both elongated and the elongator².

Jabir may Allah be pleased with him narrated that : The Prophet peace be upon him, scolded the woman that elongates her hair with something³.

Third requirement

The purity(Thoria) of head hair:

The human hair dead is Tahir (pure), whether connected or separated hair, the majority of scholars⁴.

Evidence this opinion, some of these evidences are the words of Allah: *(We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation)*⁵.

The evidence:

The issue of recognition is that if some died this doesn't mean that he becomes impure .

The prophet, peace be upon him says : (that the believer does get impure) in a word of Daaraqutni (that the believer does get impure dead or alive)⁶.

Scholars have been agreed⁷ thatit is not permissible to make use of human hair by using or selling it : *(We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation)*⁸.

1- Surat al Nisa`a verses117 -119.

2- AL Bukhari 79 /4.

3- Muslim, Kitab AL Libas 1679 /3.

4- HashiyatIbnAabdeen 109 /1.

5- Surat AL Israa verse 70.

6- AL Bukhari , Kitab AL Ghusl , 109, Muslim Kitab AL Tahara 282 /1.

7- Hashiyat AL Dusugi49/ 1, Nihayat AL Muhtaj 228 /1, AL Mughni 66/ 1.

8- Surat AL Israa verse no 70.

The second theme

Hair elongation arrived and reasons behind forbidden

The first requirement

Attaching hair with hair**Scholars disagree with attaching hair with hair on three statements:**

First statement: it is not permissible to elongate hair with another hair, public scholars I give some evidence including:

(1). Aa`ishah, God pleased her, narrated that the Messenger of Allah, peace be upon him, said: «May God curse the elongator and elongated woman»².

The evidence of the Hadith is that God damn the elongator and elongated woman, cursing and expulsion from the mercy of God, does not take place unless an action is forbidden,»³

(3). Jaber's Hadith, Allah be pleased with him, said: «The Prophet, peace be upon him restrained any woman elongates her hair»⁴.

The second statement: This saying is attributed to Om AL Mumineen Aaisha, God pleased with her, she says that hair elongation is permissible⁵.

The evidence of this saying:

Those who agree with this opinion depend on Hadith Aisha who says that the elongator woman is not that who elongate hair with hair because there is nothing wrong in this action, but the elongator is a prostitute woman⁶.

The evidence clearly indicates that Aisha did not see anything wrong with connecting hair with hair.

This evidence was discussed in two ways:

First: that the Aisha's Hadith was proved weak by Ibn Hajar, AL Nawawi and AL Ghadi Ayyad and others⁷.

Second: If the saying of Sahabias is true it should be opposed by proper explicit evidence which says elongation is absolutely prohibited.

Third: if the hair is elongated with another human hair or impure it is absolutely forbidden, but when the elongated hair is pure, this is subject to further discussion:

1. It is forbidden and some say it is detested if she is not married.
2. If she is married, this is subject to three aspects:

1- Hashiyat Aabdeen wa AL Qawneen AL Fighiya, al Mughni, al Muhala.

2- Previous reference.

3- AL Mughni.

4- Previous reference.

5- SHARH Saheeh Muslim 104 /14, Fath AL Bari, 375/ 10.

6- Previous Reference p 14.

7- SHARH Saheeh Muslim 104/ 14, Fath AL Bari, 375/ 10 .

More correctly:

The first it is permissible when she gets her husband's permission. the second : absolutely forbidden, and the third: It is not forbidden and not detested at all, and this is the doctrine of Shafi'i¹.

The evidence of this saying:

1. Elongation hair with human hair is forbidden for two things:
First: It's because of dignity of human being that it does not permissible to benefit from anything of his body after death².
2. It is not permissible to elongate hair with impure hair because AL Mawardi said that a Muslim is obliged to avoid all what is impure and the prayer is invalid if part of the body is impure³.
3. The evidence of elongating hair with another pure hair is the following:
A- That if she does not have a husband, elongation is forbidden⁴.
B- If she has a husband on condition that he gives her permission.

The second requirement

Elongating hair with another material but not hair

There is another issue that elongating hair with another material but not hair such as wool and threads. Scholars have disagreed on this issue on two views:

First: Malik said that it is not permissible to elongate hair with other materials⁵, but Hanbalis give details on this issue, that elongation is permissible only when it is not more than to tie her head, but if it is more than that there are two opinions: prohibition and hatred⁶ and this is Dhahiriya doctrine⁷.

The evidence of this opinion:

1. They rely on the absolute forbidden evidence like Jaber's Hadith: «The Prophet, peace be upon him, blamed the woman who elongate her hair with anything»⁸.

Ibn Hajar said: «This Hadith –Muawiya's Hadith- is an evidence to the public Scholars in preventing hair elongation with anything, and it is

1- Rawdat AL Talibeen.

2- Rawdat AL Talibeen 3811/, AL Majmoa 140 /3.

3- AL Azeez SHarh AL Wajeez 14 /2.

4- AL Hawi 256 /2.

5- AL Multaga 2767/, Hashyat AL Adwa, 367 /2.

6- Kashaf Al Ginaa, 81 /1.

7- AL Muhala 75/ 10.

8- Previous reference.

Dr. Mohammed Thalith Ismaeil ————— The Scientists Opinions About The Rule of Hair Implantation supported by Jabir's Hadith: The Prophet, peace be upon him that blamed the woman who elongates her hair with anything¹.

As well as there are rules of other evidence like hadeeth of Abu Hurayrah «God damn (al Wasila) the elongater and AL (Mustawsila) the elongated»².

Elongation is forbidden, whether it relates to elongate with, wool or other material «and they give the evidence of Jaber's Hadith mentioned by Imam Muslim after the Prophet, peace be upon him, that the woman mustn't elongate her hair with anything»³.

this inference is discussed in that these Ahadeeth of Forbidden is general and hadith Muawia is specific for hair elongation so it is forbidden only when hair is elongated with hair⁴.

2. AL Hanbali was mentioned that Ibn Qudamah, in his book (Almughni) said that: «that elongation is permissible only when it is not more than to tie her head, because it's needed,

Ibn Qudamah said that, elongation is forbidden only when it is elongated with human hair.

Discussion of this evidence:

3. Hanbalis said that it is not permissible to elongate human hair with other human hair and the evidence is that all the evidence of absolute forbidden of elongation⁵.

AL Hanafia⁶ and Malikis⁷ and Shaafa'is⁸ said that elongation of hair with human hair is permissible.

The evidence of these opinions:

1. There is falsity when hair is elongated with another human hair, but if it is elongated with any other material there is not any indication of falsity⁹.

Ibn Abidin mentioned the reason said: (whether it is her hair or hair of another woman because it indicates falsity and)¹⁰.

Discussion of this reasoning:

That this defect is not particularly concerns elongation of hair with hair, it is also a phenomenon concerning elongation of hair with other

1- Fath AL Bari 75/ 10.

2- AL Jamia Li Ahkam AL Quran 252 /253 /5.

3- Saheeh Muslim 104 /4.

4- AL Mughni 67 /1.

5- AL Mughni 67/ 68/ 1.

6- Hashiyat Ibn Aabdeen 239 /5.

7- Hashiyat AL ADWI 267 /2.

8- Al Majmoa 141 /3.

9- AL Mughni 68 /1.

10- Hashiyat Ibn Aabdeen 239 /5

materials. arrived without hair Kkherq and others, but it might be said that this is in the non-hair than the hair, especially these days` time in which many materials look like hair.

There is an interest of hair elongation with And, it is that the woman becomes more beautify , and this makes her husband happy, and this is the adornment that the God has permitted as in the verse: *(Say: Who hath forbidden the beautiful [gifts] of Allah, which He hath produced for His servants, and the things, clean and pure, [which He hath provided] for sustenance? Say: They are, in the life of this)*¹.

Nawawi said: «... because it is not in the sense of elongation , but it is an indication of beauty and improvement.»².

Discussion of this reasoning:

That this evidence is criticized and rejected at all, because the prophet , peace be upon him, damned the elongater and elongated woman even if it is for being more beautiful for her husband.

What is more preferable is that elongation of hair with other materials is impermissible .

Third requirement

Is elongation is absolutely forbidden for both women and men?

It is absolutely forbidden for both women and men because all evidence are expressed generally, elongation is mostly concern with women , but this doesn't mean that men are allowed to elongate their hair, because evidence are general.

AL Shafie: sai « Al Shobari words are : Elongation of hair with impure hair is forbidden Hair unclean forbidden even fo men.»³.

In his book AL Majmu'a, «he said, if a woman elongates her hair with another woman or man's hair, is considered forbidden and a married woman is the worse of all⁴.

1- Surat AL Aaraf verse no 33.

2- AL Majmou 141 /3.

3- Hashiat AL Jamal AlaSharh AL Manhaj 418 /1.

4- AL Majmoua 139 /3.

Fourth requirement

Why elongation is prohibition?

Here are some reasons why elongation is forbidden?:

First: the Hanafi's doctrine :

IbnAbidin, after he mentioned the forbidden of elongation, said: «Whether it is her hair or other hair because it is in the sense of falsity, in the hair of other there is a sense of making use of others,» he said, «the elongater is the woman who elongates falsely her hair with the hair of others hyphen that link hair hair of others¹, And also AL Musli said the same opinion².

Second: the Maliki Doctrine :

Al Nafrawi said: «... the forbidden of elongation of hair does not concern women only because it involves changing the creation of God³.

IbnGajisaid (It is not permissible for a woman to change the creation of the God, when she elongates her short hair with another long hair)⁴.

Third: the Shafi'i Doctrine:

AL Nawawi said: (It is absolutely forbidden that a woman elongates her hair with another woman's hair because she benefits from a human being part because of human's dignity that Allah (swt) awards it to him⁵.

Fourth: the Hanbali Doctrine :

The prohibition of elongation according to Hanbali takes place because of two reasons :

First: There is an indication of deceit (Tadlees).

Second: The use of impure materials in which Scholars disagree.

IbnQudaamah said: (It seems that what is forbidden is elongating hair with another hair because it involves deceit and the use of impure materials⁶.

AL Bahooti⁷ and AL Rahibani⁸ present the same opinion. These defects have been presented by scholars who give reasons behind forbidden of elongation including:

1. There are: falsity and delusion.
2. There is a benefit from a part of human body and this is forbidden for human dignity.

1- HashiyatIbnAabdeen 239 /5.

2- AL Ekhtiyar 426 /2.

3- AL Fawakih AL Dawani 410 /2.

4- Gawaneen AL Fagih 482.

5- Rawdat AL Talibeen381 /1.

6- AL Mughni 68 /1.

7- Kashaf AL GINAA 81 /1.

8- MatalibOli AL Nuha 90 /1.

3. There is a changing in the creation of God, which is forbidden
4. It makes impurity permissible when elongation takes place with impure hair.

All these defects are clear in the absolute prohibition of hair elongation which confirms that elongation is absolutely forbidden for both men and women with or without hair.

Conclusion

Praise be to God that His grace is righteous and peace and blessings be upon his faithful Messenger and his family and companions. After completing the search with the help of God the researcher has concluded the following conclusions:

1. Implantation of hair is permissible, because it is in the sense of allowed beauty and the removal of the moral damage. This allowance is on certain conditions: hair shouldn't be taken from the part of Human, man or woman, that should be covered with cloth. and the doctor's opinion is important in this case, the doctor who implants a woman's hair should be female doctor.
2. The human hair is pure whether alive or dead, and this is opinion of the majority of scholars.
3. Inadmissibility arrived Hair Hair entertained, a view that majority of scholars.
4. It is not allowed to elongate hair with other hair like wool or threads and the like, this is Maalikis Ahmad's opinion.
5. The Prevention of hair elongation is not restricted only to women without men, but men are included.

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Equality in international sovereignty between theory and practice (TaseeliStudy) Dr. Mona Awad Mohammed Yousuf¹

Abstract

We find that the principle of the sovereign equality of states has sparked heated debate among scholars of international law and those interested in political affairs and relations between the countries, there are varied views proof and denial around it, and a third team takes the principle of relativity which, considered its presence in terms of origin, but he controlled and limited the release. Despite these differences of opinion, the practice has proved that the work of this principle reserve on the States in terms of military and economic influence and power.

On the other hand, the sovereignty in the Islamic Sharia if we use this term, takes another dimension, and that the close link between religion and the State, they do not separate from each other, ruler in the conduct of his own affairs internally and externally, but derives this authority disciplined provisions of the law and its purposes, and therefore that any religious faith and political orientation contribute together in the construction of Islamic thought. Through these data the search concluded to a number of results including:

- * The principle of sovereign equality concept has development through successive periods of time.
- * The presence of sovereign equality of States is affected in accordance with the international political situation and the associated effects.
- * The principle of sovereign equality of States is dominated on the presence or absence and the great powers who have influence and power, and therefore seeks to impose the idea of world government.
- * We cannot as Muslims accept the idea of a world government to impose its sovereignty on all countries of the world, because, that will demolish the rules of the Islamic religion.

The recommendations in part:

There must be an active and influential Islamic union between States, but not only for the consolidation of the word, and the courage to make decisions and overcome the internal differences in order to re-Sultan of the Islamic religion, and thus protects the Muslim peoples from the violation of their rights and sovereignty.

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An introduction:

Praise be to Allah who has made us Muslims, May Allah bless our Prophet Muhammad and his family and companions.

Importance of research:

The principle of sovereign equality of States is the most important principles that stated in the international conventions on the foreign and domestic level, as is a third side in the state triangle after the completion of the other two sides: people and region. countries insist on their rights of sovereign equality, because when countries do not claim this right, this indicate the presence of international dependency or colonial domination, but nevertheless, we find that this principle, in the reality of life is set aside above all considerations of people, area, weakness or strength.

Research problem:

Originally no state has the right to impose its authority on the other, because this represents violation of its sovereignty, and hence it is considered as the collapse of one of its foundations, but that originally became just a theory found its place in the international covenants and charters, but in terms of the actual application it has been restricted by the states who have influence and power.

Research questions:

The theory of equality formed in sovereignty as a result of some of the factors that led to find it and decided through which a number of international rights and duties that have been shown through the answers to the following questions:

1. What is the concept of sovereign equality among nations?
2. What are the causes and factors that led to the emergence of the principle of sovereign equality?
3. What is the concept of sovereignty in Islamic jurisprudence?
4. What are the rights arising from the principle of equality among nations?
5. What are the views of lawyers on the principle of equality?
6. Are the articles that indicate equality in international sovereignty correspond to reality?

Research Methodology:

The nature of this research required to combine a number of approaches, which is the historical method in order to identify the origin of the principle of sovereign equality and to be compared with Islamic jurisprudence, in addition

to the inductive analytical approach of texts that believe in this principle, and finally descriptive approach through realistic views on the international scene.

Structure of the research:

There are three themes, each includes a number of requirement as follows:

First theme : the concept of equality in international sovereignty.

First requirement: linguistic and terminological concept of equality in international sovereignty.

Section one: the concept of equality

Section three: the concept of sovereignty

The second requirement: the emergence of the theory and concept of sovereignty.

Section one: the emergence of the theory of sovereignty.

Section two: the concept of sovereignty in the legal terminology.

Third requirement: idiomatic concept of sovereignty in Islamic jurisprudence.

The second topic: the rights arising from the principle of equality of States and opinions of the scholars of international law.

First requirement: the rights arising from the principle of equality among nations.

The second requirement: the views of the scholars of international law on the principle of equality.

Section III: equality in international sovereignty between text and reality.

First requirement: to prove the principle of sovereign equality in international text.

The second requirement: An Empirical evidence of deviation from the principle of equality in international sovereignty.

Conclusion and include findings and recommendations.

The first topic

The concept of equality in international sovereignty

First requirement: linguistic and terminological concept of equality in international sovereignty:

Section one: First: linguistic of the term equality:

The Arabic term «sawa» indicates the idea that two things are of the same kind, the plural in Arabic is «Aswa`a» and it is an infinitive from which both the plural and the dual can not be derived, Allah says (« At length, when he had filled up the space between the two steep mountain-sides,») AL Kahf verse No 96, and he says (Not all of them are alike:) AL Omran verse No 113 and says («When we held you as equals with the Lord of the Worlds;) AL Shuara` verse No 98, this means that people are of the same kind of creation and therefore they are the same in devoting¹.

The equal time is a fixed cycle time and constant duration,

The doctrine of equality is the doctrine is aimed at civil, political and social equality between people.

The basis of equity is justice which indicates that people are equal without preference of one to another².

Second: idiomatic concept of equality:

1/ Equality in the law:

It is the principle that people are equal on the basis of the law, and they have the same rights and duties regardless of their social status, religion and wealth³. This definition goes out with the equality of individual people, and what concerns in this research is the equality of states and defined as:

Equality in rights and duties prescribed by the international rules which resulted in a set legal effects to adjust the relations that arise between members of the international community⁴.

2/ Equality in Islamic jurisprudence:

Equality in Islam is based on two considerations:

First: equality of common human value, that is, in terms of human nature, and the differentiation between them on matters beyond their nature and their descendants, such as efficiency and science, ethics, business and so on, Allah says:(O mankind! We created you from a single [pair] of a male and a female,

1- Lisan AL Arab Ibn Mandhoor.

2- Mujam AL Lughah AL Arabia AL Muaasira.

3- Mujam AL Mustalahat AL Qanoniya.

4- Ahdaf AL Tashreea AL Islami.

and made you into nations and tribes, that ye may know each other [not that ye may despise [each other]. Verily the most honoured of you in the sight of Allah is [he who is] the most righteous of you. And Allah has full knowledge and is well acquainted [with all things].) (AL Hujrat: 13).

Second: that people are equal in rights of life in this world, according to instinct, not including the impact of the difference in sex, color, ethnicity(4).

Imam Ibn Ashour stated that : the intention of equality is derived from instinct which is considered as a standard in controlling inhibitions , either in an equity or not , and the obstacles that prevent the conduct are two things: either the emergence of benefit in the cancellation , or the appearance of evil when you make equality (5). It is known that the controller in the benefit and harm in Islamic jurisprudence is based on the intentions and objectives of Sharia, while in made law it is based on purely legal considerations. This is the standard separation between the two definitions in Islamic jurisprudence and the made law.

Section two: First: The State in Language:

The Arabic term «Da`al» indicates that something is to be transferred from one situation to another, Allah says (Such days [of varying fortunes] We give to men and men by turns:) A`al Imran 140.

Second: idiomatic concept of the state:

1/ state in the legal terminology:

It is a legal and political system consists of a group of individuals residing permanently in a given territory and controlled by a sovereign governing body holds their affairs and dominate the region¹.

2/ The State in Islamic jurisprudence:

The jurists do not use this term a lot, and it was common when jurists talk about the powers of the state they include the purview of the Imam and his authority , which considered that the state is represented in the character of the Imam or caliph and their subsequent states, rights and duties².

Section three : Sovereignty in language:

The Arabic term (Sad) means that a person prevailed and ruled, and become the ruler on his people, and become the king of everything, he became a master and ruler,: both are supposed to obey him as the king and incumbent many of the group, the Lord of all the servants and slaves³, as in the verse (And they would say: «Our Lord! We obeyed our chiefs and our great ones,

1- AL qanoon AL Dawli AL Aa.m.

2- AL Mawsoua AL Fighiya.

3- Mujam AL Lugha AL Arabia AL Muaasira.

and they misled us as to the [right] Path).AL Ahdhab: 67), the prophet, peace be upon him, : (I am the master of people in the day of the second life)¹, he intends that is the first person for whom the door of paradise is to be opened, he said that informing what God honored him of the credit and the good². Sovereignty means: power, dominance and control, and the freedom to act, and a sovereign state is an independent state, and the sovereign law means to respect and apply it to everyone., The intended meaning the term sovereignty in this research is that a sovereign state is the independent state in the sense that it has authority, dominance and absolute freedom to act in its affairs.

The second requirement: the emergence of the theory and concept of sovereignty :

Section one: the emergence of the theory of sovereignty:

We find that this idea originated during the conflict of the French monarchy in the Middle Ages³, in order to achieve its external independence to face of the emperor and the Pope⁴, and of the purpose of internal superiority over the feudal lords, the French Lords at their struggle against the Roman Empire, which was designed to extend its influence on all Christian countries, and to subject all kings. They always insist that they do not recognize any higher authority, and that the King of France is the emperor in his kingdom⁵, and so the King triumph over the obstacles erected by the feudal system at home and simplifies authority over all the kingdom, it was in need because it emphasizes his authority on feudal lords influence.⁶, and so an intellectual movement was formed and created the concept of sovereignty and tried to determine the meaning and assign meaning of what goes into it. One of the intellectual movement that meant the principle of sovereignty in the medieval century appeared in the writings of the twelfth century, which go out to highlight two angles. first, confirm the king`s independence from the emperor and this is the international point of view.

The second: the Kings have on their people powers similar to the same Emperor authorities⁷.

It is worth pointing out that the law in the Middle Ages had a special concept differs from the concept of the modern era, the law in the modern

1- Kitab AL eman Hadith 8.

2- Lisan AL Arab , Ibn Mandhoor 422 -424.

3- Mabadi Nidham AL Hukm fii al islam.

4- Previous reference p 111.

5- AL Dawla wa AL Siyada fii AL Figh AL Islami.p 22.

6- Previous reference p 24.

7- AL qanoon AL Dawli AL Aam.

era is a group of commands issued by the competent legislation authority, while in the Middle Ages is a previous set of customary principles of that exist before the ruler, who has no authority to touch or change it. The power orders were not to intervene, but only to prove the custom or legalize it. But after that a major development happened on the impact of the place of customs that was known for as a result of conceptual pressure that during the era of Renaissance, in which the political thought calls for the recognition of the kings of the authority to take wide-ranging and secured regulatory decisions. Thus, the Kings took over the legislature, and the Law became something issued instead of an imposed order¹.

The Renaissance has formed a historic turning point which has a clear impact on people's lives, that made the king of the dominance of a wide area and absolute authority in the legislation, and this definitely, if it is not optimally controlled, it may be subject to selfishness and thus people become a victim of this legislation.

From this perspective, thinking about separation between the king and the power takes place, and this has been claimed by the French intellectual (Jean Bodin), which the theory of sovereign is linked by his book under the title (six books of the Republic), which was directed in the year 1577, and his theory summed up in the following principles:

- 1/ The main element in the formation of the state is the presence of the supreme authority in which all other authorities.
- 2/ The central supreme power in the country is not headed by another authority.
- 3/ Sovereign has the power within the state and it is not subject to the laws that issued to regulate the affairs of individuals who, because it has an absolute power and does not of the not subject to its provisions of legislation.
- 4/ Power sovereign in the state is subject to the natural law and the law of nations, and that because there is no authority in the world can live with the other, or that the coexistence between nations will not continue if their authorities are not limited².

We conclude from what was mentioned above that the term sovereignty has evolved in its indication during the successive periods of time starting from the middle ages through the Renaissance ending up with the modern era, and it has different concept in every era according to the political situation

1- AL Dawla wa AL Siyada fii AL Figh AL Islami.p.

2- AL Qanoon AL Dawli AL A`am

and depending on the associated stimuli that contributed collectively to find a modern country, and sovereignty is one of its pillars.

Section Two: Definition of sovereignty in the legal terminology:

Jurists defined sovereignty from different points of view as follows:

Sovereignty is: (the right of influence and power, and the commands and prohibitions, and the consequent penalty, which represents the strength of the right of the community with regard to its position towards the citizens within its borders, and in its relationship with the international community)¹. And is also known as: (the highest authority, that we do not find a higher authority above it, as well as there is no equal power or competitor like it in the State)².

(The State's right to behave as it likes in order to defend its existence and preservation of survival, which is an absolute right, unless there is an evidence against)³.

Also it is defined as : (the right of the state linked to the its presence, and there is no person, other, whether international or non-international, to enjoy this right, which arranges other rights in domestic and international terms of reference without the need to comment by the others, as long as it is within the international legal rules)⁴.

Through the above definitions, we find that sovereignty represents state-of authority to face individuals within its territory and to face nations abroad, and the requirements of this authority is that it will be the reference of the actions of the state authority in various affairs, and the body that holds this power reflects the will of in each state in accordance with its political system⁵.

Based on the above it is clear that the sovereignty of the state is working in two directions. First: within the geographical boundaries through the extension of authority and influence on its citizens. The second is a subject of this research, the external sovereignty as an independent state holds a particular territory, and it has its people and its existence and independent entity are internationally recognized. Thus logic leads us to say that other States have no authority in directing and dictating its will upon it, because they are equal in terms of components of the state, but the question that we will try to answer through this search is: Are there any guarantee that states do

1- Al Islam wa Osoul AL Hukm p .25.

2- Mabda`a AL Shura fii AL Islam.

3- AL Ahkam AL AMA .

4- AL Omam AL Muttahida wa AL Niza`at AL Musallaha.

5- AL Qanoon AL Dawli AL Aamp 103.

not interfere in another states sovereignty, or they weaken them ?

Third requirement: idiomatic concept of sovereignty in Islamic jurisprudence:

AL Medina (Yathrib) was the beginning of the territory of the Islamic State, it was Haram (Holy)¹, The Messenger of Allah, peace be upon him and make it Holy, and sent some of his companions to build flags on the border of AL Madina from all sides, and between Thor mountain in North and Namiramountain in the south. Then this territory expanded and many people of the country enjoy Islam and believe in it until the country became large¹, which was defined as a state according to the applied international and constitutional Law because of the presence of region, people and a governing authority which was held by the prophet Mohammad, peace be upon him.

The close correlation between religious belief and political ideology have played the first role in the construction of Islamic thought which refuses dualism in power, does not agree with the existence of two separated authorities one for religious matters, and other for worldly life².

Islamic jurisprudence does not mention the Arabic term (Siyada), but it talked about Sulta (authority) and Sultan (Governor) , and it was in the Qur'an in a number of verses, including the verse: (Nor take life - which Allah has made sacred - except for just cause. And if anyone is slain wrongfully, we have given his heir authority [to demand qisas or to forgive]: but let him not exceed bounds in the matter of taking life; for he is helped [by the Law]. (Isra: 33) (and the Sultan is the argument and the ability of ruling and the governor, and also in the verse: (Soon shall We cast terror into the hearts of the Unbelievers, for that they joined companions with Allah, for which He had sent no authority:)(Al-Imran: 151)

Mawardi has stated that : (Shara came delegating matters to the Governor in religion), Allah Says (O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you.)(AL Nisaa: 59), Then we must obey the Imams³ Muslims set certain conditions that should be fulfilled by the Imamate, one of these conditions is that he is the best of all and people don't hesitate to pledge allegiance and obey him⁴.

Hence the ruler responsible for his actions in front of his citizens, and he feels the danger of this great responsibility in the Hereafter, Allah,

1- Maalim AL Dawla AL Islamiya p 113.

2- AL DAWLA wa AL Siyada fii al Figh AL Islami.

3- AL Ahkam AL Sultaniya p 16.

4- Previous references.

the Almighty says (O ye that believe! betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you.) (Anfal: 27 (and the prophet, peace be upon him, said : (If any person who rules citizens and deceive them, Allah will deprive him from the Paradise)¹, so sovereignty in Islam based on the human right arising from making a legitimate, in the sense that sovereignty in its origin is for the Almighty God regarding commands and prohibitions, and the practical sovereignty is derived from people in the light of the principles of Sharia, and the caliph derives his authority from the nation².

AL Mawardi stated that: If the Caliph chose an Ameer for a certain region his Emirate should be on two kinds: public and private, the public is of two kinds:

- 1/ Istikfa`a Emirate : It is being held by his choice, includes limited work, and the delegation should be on all people of the region.
- 2/ Invasion Emirate: It is being held by force on the country, so the Caliph takes the country by force and appoints an Ameer to start his responsibility and policies on all citizens.

The Private Emirate : it is that the Emirate will be limited to the army and the citizens policy measure of the parish and to protect women , and does not have to be exposed to the justice and provisions and the collection of alms and charity³.

Islam is based on ensuring religious freedom under Muslim rule, and so non-Muslim are free to adopt Islam or to submit to Islamic rules, and submit to the rule of Islam generally means the commitment to the provisions of Islam related to the organization of the society affairs as a whole, and to administrate its members relationships with each others, and the Islamic state should be pride and independence to be without any other authority has the right to interfere in their affairs⁴.

And we can see from the above that the concept of sovereignty in the law is different from what is in Islamic jurisprudence and that sovereignty in Islamic law derives its authority from the sources of sharia, and thus the state and religion are usually integrated and never separated.

1- Bab AL Nahy an Talab AL Imarap 214.

2- AL Figh AL Islami wa Adillatuhup 631.

3- AL Ahkam AL Sultaniya p 63 -66.

4- AL Alagat al dawliya Bein al Osoul AL Islamiyawa KHibrat AL TAREEKH al Islami.p 135.

The second topic

The rights arising from the principle of equality between states and the views of the scholars of international law.

First requirement: the rights arising from the principle of equality:

The International Legislation is the most important field in which the United Nations has succeeded, a number of multilateral international agreements has been reached to within the framework of the concerns of different states. It is characterized by being obligatory for countries that have ratified it, and does not deny the role of public agreements which stipulated certain standards of international economic and social relations which are reflected on the regional relations, and the growing sense of individuals that they have rights and international legal norms provide them with protection¹.

Charter of the United Nations has identified a number of principles that the body and its members should be committed with, and what concerns us among these principles is the principle of sovereign equality, the Article (21/) of the Charter provides that: (The Organization is based on the principle of the sovereign equality of all its members), San Francisco Conference² has identified elements of this principle as follows:

- (A) The states are legally the same.
- (B) State enjoys full rights of the full sovereignty.
- (C) Personality state as well as the territorial integrity and political independence are intact.
- (D) States should implement the international obligations they have assumed under the Charter in good faith³.

According to these elements, the principle of equality is the logical consequence of the principle of sovereignty, and the dividing line between equality of States on the one hand and the sovereignty of each of them on the other hand is difficult to be drawn, they are two sides of the same coin, and the recognition of state sovereignty requires cooperation with other members of the International Community, and it does not mean in any way results in being subject to it, and the basis of States cooperation is equality - regardless of their origin, size and governments –otherwise a state underwent another and thus lost its independence and sovereignty⁴.

1- AL Alagat al Dawliya, Dr. Raymoon Haddadp 441.

2- AL Muttamar al Dawli Lil Omam AL Muttahida.

3- AL Waseet fii AL Munadhammat al Dawliya.p 57.

4- AL Qanoon AL Dawli AL Aam.p 695.

And confirmation of the foregoing, we find that the United Nations General Assembly¹, believes in the principles contained in the Charter of the United Nations and issued a number of decisions declaring the principles of international law, including what came in decision No. (2652) issued in October 1970 (the General Assembly Noting that the major political, economic and social changes in the world since the adoption of the Charter and scientific progress witnessed in that period has increased the importance of those principles, and the need to better apply in the conduct of States wherever practiced). this research concerns what stated in the decision saying: (Reaffirming the fundamental importance of the principle of sovereign equality and in accordance with the Charter, confirming that the purposes of the United Nations can only be achieved if countries enjoyed equal sovereignty), as the General Assembly formally announced a set of principles, including the principle of the sovereign equality of states, and states that: (all nations enjoy equality and have equal rights and duties, they are equal members in the international community regardless of economic, social or political differences or others), also announced that all of its stated interconnected principles in the interpretation and application and interpret each principle of them in light of other principles, and that these principles represent the fundamental principles of law and, therefore, call all States to be guided by these principles in its international behavior and develop their mutual relations on the basis of strict observance of these principles².

The second requirement: the opinions of the scholars of international law on the principle of equality between states:

We find that the requirements of the idea of sovereignty is the principle of equality among nations as the basic cornerstone governing international relations, the right of equality means that countries in the international community have the same rights and duties no state has an advantage over the other³. Nevertheless arrows of criticism were directed towards the principle of equality since the beginning of this century. Some jurists considered it as false unrealistic idea that based on a purely hypothetical idea is in fact inconsistent with the idea of a fictional reality and the existing conditions and it must be replaced with other international regulation in order to exist and continue constantly⁴.

1- AL Jamiya AL Aama lil Omam AL Muttahida.

2- Mawsooat AL Qanoon AL DAWLI P88.

3- Izdiwagiyat AL Mua'amala fii AL Ganoon AL Dawli al Aamp 155.

4- AL Nadhariya AL Aama Ligrarat al munadhamat al dawliya.

The team adds that, while acknowledging the approval of States and that they believe in the principle of equality, the realization of the mentioned principle, either through legal provisions or international practice shows that there is a measure of the presence of the phenomenon of inequality between countries in various fields¹, and it argued that the immunity enjoyed by the big five states ,does not affect the legal organ of the United Nations Charter, and in the worst cases, these countries would be contrary to the law and violate system will remain in place and in force for the rest of the international community, this view must accept two international legal, one: the big five states, which control the rate of overwhelming military and industrial power in the world, and the other: to the rest states of the world, and from a political point of view the preservation of peace in these cases does not take place on the legal sanctions, but based on the balance of power between the major powers , and this is the reality of the situation².

On the other hand, this team believes that calling for the principle of legal equality between Member States in international organizations regarding the number of votes given to each of them to make the principle of equality has no substance, theoretically a decision could have been taken and supported by Smaller states but such a decision remains under the mercy of the most numerous States in international organizations, that the practical implications depends on the reaction of the major powers, these latter are finally decide the limits of realistic effects that result from their decision³.

We even find that some might raise a question that feasibility considered this principle such as the fundamental principles of international law, because nations are not be equal in their influence and capabilities and to achieve international interests, so there is an unequal role in establishing, interpreting and confirming the rules of international law, it becomes absurd to make the principle of equality one of the basic principles of international law. And then the so-called equality really considered, it should be reduced to the simplest form so that it becomes just one of the rules of courtesy and good behavior.

In all forms of non-realism of equality, we may find that there are certain effects produced in the framework of the legal relations between the parties to the relationship is between equally realistic, and therefore part of the Fiqh goes on to say that the will of the stronger party is destined to prevail

1- Izdiwagiyat AL Mua'amala fii AL Ganoon AL Dawli al Aamp 155.

2- Tawawur AL Qanoon AL Dawli , Dr. Wolfgang Fred Man.p 72.

3- AL Nadhariya AL Aama Ligrarat al munadhamat al dawliya.p 122.

in the imposition of acceptance of the other party to the legal act and accept what the resulting effects, or to direct the behavior of subjects of international law towards the creation of some of the legal rules that are going in the same direction and be more responsive to their interests, which raised the question: is not international law eventually consecration realism centers based on the disparity in the elements of power between members of the international community¹.

We conclude from the foregoing that this theoretical existence of the principle of equality of States can not be taken for granted in absolute terms, because it is an anti inhabitants and the facts in the international arena, and therefore it is also found that the principle of the sovereign equality of states is unrealistic, and that`s what we`ll try to be addressed in the next section.

The third topic

Equality in international sovereignty between textual and reality

First requirement: to prove the principle of sovereign equality in international text.

We find that the adoption of the Charter of the United Nations of the principle of sovereign equality of states is the explicit recognition of the sovereignty of each country, and the United Nations not to considera state above the states, and that some researchers describe the United Nations system as a compromise in which states retain full sovereignty².

And that sovereignty is the basis of the standard of the state as a person of international law, and the mainstay of the legal system Society, and thus sovereignty are the rule and reduction is the exception, and reinforce this vision of what happened in the diplomatic work, and international treaties and the provisions of the international courts³, while the other team see that we should not be cheated by texts. Although the Charter recognizes the sovereignty of States, but this recognition does not at all mean that the sovereignty of a state is fully in the barn of international organization. and that the Charter itself imposes obligations on Member States multiple inconsistent and fully enjoy full sovereignty, decisions issued by the Security Council by a majority of nine votes in at least, without objection from the five major states are bound to everyone, and this is what led some to say that these countries are the only ones retained full sovereignty, while the sovereignty of the rest of the

1- AL Ganoon AL Dawly AL A a`am , Dr.Muhammad Said AL Daggag,p29.

2- AL Tanzeem AL Dawli p194.

3- AL Ahkam AL Aama fii Qanoon AL OmamDr. Mohammad Talaat p 112.

members have detracted¹ in addition, the sovereignty is absolute power have serious consequences that rules the whole of international law demolitions, the state of this account can not be delivered there is any power over its will if it is the force of law and the rules of ethics.

On the other hand, the issue of interference in the internal affairs of States is the more topics that raised up controversy in the international arena, Article (207/) of the Charter of the United Nations that: (Nothing in the present Charter shall authorize the United Nations to intervene in matters which are stipulates essentially within the domestic jurisdiction of any State, nor shall it require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement under Chapter 7².

We find that this provision did not put a clear definition of this authority, the United Nations found itself in front of two categories of Member States, each of which depends on the text in the Charter to defend its point of view, every time when a topic related to colonialism was put in front of the General Assembly the major countries who was administering colonies defend itself relying on the principle of national jurisdiction purely, or the principle of the domestic jurisdiction in accordance with the previous text (m / 27/), while other states raise opposition was the principle of the right to self-determination as enshrined in Article (1 / 2)³ that the purposes of the United Nations (to develop friendly relations based on respect for the principle of equal rights of peoples and have their own self-determination, as well as to take other appropriate measures to strengthen universal peace).

Confirming the above, the writer «Zibghiniew Brijenskizenski»⁴ stated that the concept of comprehensive security in the era of globalization is a myth and cannot be reached and the real question is: What is the amount of insecurity that can coexist in the United States in the promotion of its interests in an increasingly interconnected and interactive? He added that America is a society that changes the world, but it is revolutionary in terms of destruction of sovereignty-based on international policy⁵. It is known that the United States is one of the great powers and it forms the center of gravity in terms of power and influence, which led some people call this the era of unilateral polar reference to was called the bi-polar era, which ended with the

1- AL Tanzeem AL Dawli Dr Mohammad Majdhoub, p 195.

2- <https://ar.m.wikipedia.org/wiki>.

3- AL Tanzeem AL Dawli Dr Mohammad Majdhoub, p 202.

4- Mustashar Markaz AL Dirasat al Estiratijiya wa al dawliya.

5- AL Ekhtiyar : AL Saytara ala AL Aalam Am Giyadat AL Aa`alam.pp27- 28.

disintegration of the Soviet Union, the other pole.

And also there are some decisions that emphasize the principle of non-interference in the internal affairs of United Nations General Assembly Resolution 1980, which provided that: (Reaffirming that the preparation of a declaration on non-interference in the internal affairs of States will constitute an important contribution to increase establish principles promote equitable cooperation and friendly relations between states on the basis of sovereign equality and mutual respect) .

In all these decisions do not find any reference for the explanation or the existence of an exception to the principle of non-interference, but only what has been referred to, with respect to the measures of repression for international peace and security, however, we find that some of the general secretaries , who led the United Nations have had a vision of the concept of international sovereignty, we find the «D.Boutrou Ghali» the former secretary of United Nations said that sovereignty has never been absolute principle as primarily perceived in theory, and the main intellectual of requirements of our time, so we should rethink of the issue of sovereignty, not to weaken its essence, which is of critical importance in Security and cooperation, but the purpose of the recognition is that it can take more than one form, and result in more than one job, and this vision can help to solve problems, whether within or between States. The rights of peoples are based on global sovereignty which is owned entirely by the human¹. If the Secretary-General believes that international sovereignty was not mainly perceived theoretically, in my opinion, to rely on preserving the rights of peoples through the so-called global government or universal sovereignty is more theoretical and far from realistic, according to reality of today` s world of power struggles and conflicts of interest, and the prove is that because some countries try to acquire nuclear weapons and weapons of mass destruction, and economic sanctions, which is considered as a sword hanging over governments, and only people who are to pay the price of such sanctions. which do not pay the toll, but peoples, Allah(swt) says: (If thy Lord had so willed, He could have made mankind one people: but they will not cease to dispute.)Hood: 118.

We find also the former Secretary General of the United Nations, «Kofi Annan» has stated in his report to the United Nations General Assembly in September 1999: that if humanitarian intervention is, indeed, an unacceptable interference on sovereignty, on what way should we respond to a Rwanda and Srebrenica and violations of physical rights that offend every

1- AL Omam AL Muttahida wa AL Niza`at AL Musallaha.

precept of our common humanity, and certainly there is no legal principle, not even sovereignty, can protect crimes against humanity, and that armed intervention should remain as a last resort, but it remains as the option that should not be abandoned in the face of mass murder¹. In response to this appeal, the Canadian Prime Minister at the time, «Jean Chretien» announced at the Millennium Summit held in September 2000 the establishment of an international commission for intervention and sovereignty, whose mission was to support a comprehensive global debate on the basis of reconciling the duty of the international community, which requires to intervene to counter the extensive violations against humanitarian rules and the need to respect the sovereignty of States. In December 2001 the Commission ended work report about the responsibility of protection, it was the first appearance of the idea of the responsibility of protection, which was a development of the principle of humanitarian intervention².

We conclude that the foregoing that the principle of equality in international sovereignty, despite the magnitude of the highness idea and labeled excellency, but it was and is still the subject of conflict between jurisprudence and judicial different issues, and that difference was the result of the critical turning over the course of events principle and realistic. between what is provided, and even internationally certified, and reality, and confirming this, we present some practical models to witness of the waste of this

The second requirement: An Empirical evidence of deviation of the principle of international sovereignty:

We find that, despite the presence of the United Nations as an organization of collective security, but the major countries obligations and duties remained away from the collective control, and that was in recognition of the countries that participated in the development of the Charter not to have actual equality existing among themselves, and increases the severity of this situation is not normal contrary to the principle of equal sovereign equality of States, some of these countries are the only countries thatowning nuclear weapons, this situation has led to an excellence position in that has increased its control over international relations, and to actually analyze.

The limitations of liability and legal rules contained in the Charter on the basis of their capacity for mutual destruction³, and evidence of this deviation in the international legitimacy are many, some of them are:

1- AL Omam AL Muttahida, min AL Tadakhul AL Insani Ela Masouliyat AL Himaaya. p 34.

2- Previous Reference p 34.

3- AL Ganoon AL Dawli AL AamDr. Hamid Sultan and others, p 701.

1/ Threats issued by the American presidency against Iraq, that helped the Security Council to issue Resolution No. (715) on the 12/19/91/10/ to submit tougher arms programs on Iraq, and observers described this decision as confiscates the right of the Iraqi government in exercise full sovereignty over its territory, and for the Iraqi people themselves, is aimed at the decision to prevent Iraq from rebuilding an arsenal of weapons after completely destroyed, preventing it from re-build facilities of scientific research in space, it eliminates the decision to grant the United Nations observer and inspection teams absolute freedom to move anywhere inside Iraq , making observers in New York describe the Security Council resolution that confiscated Iraqi sovereignty .

And US department of defense issued a statement in which it made clear that the United States must play a leading role in the world, and to be a superpower in the world, and be able to deter Japan and Europe and other countries for its rival on the international control¹, and this is what happened to a large extent when US Congress decided in the year 2002, to give the president an absolute power to initiate military action against Iraq under a UN mandate or without it. This indicated the extent of deviation of the necessities of power domination for the specified constitutional balance carefully between the basic branches of government which specify the policy².

The United Nations sanctions imposed on Iraq is the longest and most comprehensive and the most controversial in the history of the world has led to the weakening of Iraq`s military capabilities, and Iraq was forced to accept the inspection³.

And blocked the way for the import of vital materials⁴, on the other hand, we find that the decision was devoid of any reference to the Security Council`s obligations toward Iraq with the inspectors and the International Atomic Energy Agency, and the running of the blockade imposed on Iraq, and this is illogical, because the lack of linkage between the Iraqi commitment legitimacy and the imposed blockade on it are born to believe that the intent of this, is to destroy Iraq⁵.

Reference to the above explanations it is clear that the restriction of the principle of sovereign equality of States under the pretext of intervention

1- AL Nidham AL Dawli al Jadeed p9.

2- Previous Reference p 34.

3- AL Ekhtiyar : AL Saytara ala AL Aalam Am Giyadat AL Aa`alam.p226.

4- Tatawur Dour Majlis AL Amn AL Dawlifii HifdH al amn wa al alam.

5- Failiyat Oqubat AL Omam AL Muttahida, Andru Malikp 19.

on humanitarian grounds is only a cover for the States that have power, weapons, authority and influence to achieve their interests, and the evidence is the negative results of this intervention as undermining the security and stability of States and the displacement of its citizens and the lack of elements of human life, as well as the violation of the sovereignty of states.

2/ And also evidence that worth highlighting, some of the events in the State of Sudan, including:

(A) The bombing of Al-Shifa factory: That's when the United States began without any legal basis or legitimacy background information pounding Shifa pharmaceutical plant in Sudan in August 1998, with cruise missiles, citing this act that the purpose is to destroy the factory that produces chemical weapons based on questionable information in the origin and source, on the grounds that he had already been to the United States that has put Sudan on the list of terrorist states, and imposed economic sanctions, including the prevention of international finance fund to deal with Sudan¹.

(B) The Darfur issue, and of course we cannot take all the details and implications of this research, but we refer to things related to the subject of the sovereign equality of states.

An American called (Jabeera Down) who said that she specializes in Sudanese affairs, and the impact of this campaign US moved to persuade the Security Council to compose a committee to investigate the facts, and to judge some of the symbols of power in Sudan and prevent slavery², and because the United States inserted itself in the Sudanese issue, it dispatched Colin Powell, the foreign minister to Darfur and Khartoum in mid-2004 to discuss the problem of the region, he said that people are dying in Darfur, and that the rate of mortality has increased, and then the government and people's organizations began in the United States to take positions issued against the Sudanese government, and Arab tribes in Darfur³, and went after that the former Secretary General «Kofi Annan,» his tone against the Sudanese government in his report of September 2004 m saying that successive humanitarian disaster in the Darfur region in Sudan led to focus attention not on the immunities of sovereign states, but their responsibilities towards its own citizens or to the international

1- AL Nidham AL A`alami al Jadeed p37.

2- Mushkilat Darfour , AL Gidhoor AL Tareekhiya, Dr. Zaki Buheiri p 222.

3- Previous Reference.

community, so it has a growing recognition appeared that the issue is not the right to interfere, by any State, but it is the responsibility of protection¹.

In fact, the Darfur crisis is chronic, and the conflict between pastoral Arab tribes and farming African tribes has existed for hundreds of years, which is due to economic, social and historical multiple reasons, and when the outbreak of the rebellion the Western powers found chance to achieve their goals through intervention in Sudan's affairs, and use these goals in exploiting Sudan's economic potential and the opening of a loophole in the heart of the African continent is seeking through it to the rest of the continent, in addition to trapping the Middle East region from the African depth².

Through these signals it is clear that intervention by the United States under the umbrella to protect the population of Darfur is not intended for itself, but a means to achieve the objectives it was seeking for, the incident conditions in the Darfur region created a good climate for the implementation of its plans, and which confirms these facts is that we see what is happening in Palestine, Iraq, Somalia and others, and at the same time we can not deny the existence of a real issue in Darfur worthy of recognition of its existence by the state first, then looking for mechanisms to develop appropriate solutions, but in the inner frame and with the help of friends of the Arab and African countries, in order to avoid the problems raised by the presence of peacekeeping forces, which led to an escalation of the crisis and a greater witness to that is the refusal of the residents of the region to that foreign forces.

The main outputs of the crisis in Darfur in violation of the sovereignty is the issuance of a decision to refer suspected of war crimes in Darfur to the International Criminal Court, the first time that the issue of file referred to the Court since its inception in 1998. To make matters more complicated was a decision issued by the International Criminal Court on 4 March 2009 to arrest Sudanese President Omar al-Bashir, on charges of committing (war crimes, crimes against humanity and considered him criminally responsible, as guilty of indirect or partner indirectly, intentionally directing attacks against a large number of the civilian population in the Darfur region, as it considered responsible for the killings, extermination, rape, torture and forced displacement of civilians and looting their property.

It is worth mentioning that this is the first time that the international

1- AL Omam AL Muttahida min AL TADAKHUL al insani Ila Masouliyat AL Himaya.

2- Mushkilat Darfour, AL Gidhoor AL Tareekhaya, Dr. Zaki Buheiri p 222.

court to issue an arrest warrant against a head of state still in office¹.

The Court still following the President Bashir the last event took place when EU foreign minister in the words of a spokesman for Foreign Affairs, «Catherine Ashton» when she asked the authorities of Malawi to arrest the Sudanese president during his participation in the annual summit of the Common Market for West and South Africa, and the Sudanese government considered that this request is a violation of the sovereignty of African countries, especially Sudan is a Comesa economic compound member, and it is a pure African group, and Malawi is a sovereign state, and act in accordance with its sovereignty and that such actions confirm what the government has been saying that Western countries conversations on the Criminal Court is an attempt to politicize the international justice².

Perhaps this event and the accompanying take, has had a positive result reflected through the strength and stiffness of the African position in the protection of President al-Bashir, even if the opposite happened, the Arab and African nations as a whole could be disgraceful.

Internally it was a pleasant surprise that Sudanese people were the heart of one man, despite the diversity of the political spectrum and differing views, but that when it comes to the sovereignty of the state represented by its president united the state and nation for the safety and sovereignty of the homeland.

Through previous models it is clear that the principle of sovereign equality does not exceed the limits of inclusions of the texts, but actually it is, especially in light of current international developments, and some countries are centers of excellence in economic power and military power and hegemony and its partnership in decision-making, we cannot judge the existence of equality sovereign, and perhaps the course of events in the international arena is the biggest proof of that, but it doesn't need comment or criticism or legal analysis, stand witness on their own to the lack of actual equality of States sovereignty.

1- www.sasapos.com.

2- Arab -al shahid –net/read offline.

Conclusion

Praise be to Allah, and God bless the prophet Mohammed, peace be upon him, his family, who was sent as a mercy to the worlds .

This research concludes a number of findings and recommendations include the following :

First : Results

- * The principle and concept of sovereign equality has been developing during successive periods of time starting from the Middle Ages through the Renaissance, ending at the modern era.
- * The existence of the principle of sovereignty and its effectiveness is affected according to the political prevailing of international situation associated with, which collectively contributed in shaping the rules of international law.
- * States of the great powers, which controls the world and possesses including the influence of material and military strength, dominates the principle of sovereign equality of, and thus seeks to impose the idea of world government.
- * We as Muslims do not believe in the idea of a world government impose its sovereignty on all countries of the world, because this idea demolishes the rules of the Islamic religion.
- * The existence of the sovereign equality of States supported by international agreements and destroyed by principle of practical reality.

Second: Recommendations:

- * There should be an active and influential Union of Islamic legitimacy takes the legal principles and fundamentals of Islam as the way of life so as to have a positive impact and to overcome the invasion of Western intellectual and military dominance.
- * There must be a mechanism to act together in one body of Islamic thought and have word and courage to make the decision to protect vulnerable Muslim people.
- * Islamic governments must overcome internal differences between them so that they can face the current which has its justification for the violation of sovereign rights.

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