

## بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

### Killing the Drunkard on fourth time

Sunnan At-Tirmidhi, the chapters on legal punishments (Kitab Al-Hudud)

Hadith in Sunnan At-Tirmidhi, ed Darussalam, v 3 p 229-230:

“Chapter 15. What has been related about: whatever drinks wine then lash him, and whoever does it a fourth time, then kill him:

1444: Mu’awiyah narrated that the Messenger of Allah (saw) said: “Whoever drinks wine, then lash him. If he returns to it, then on the fourth time kill him” (Hasan)

He said: There are narrations on this topic from Abu Hurairah, Ash-Sharid, Shurabil bin Aws, Jarir, Abu Ar-Ramad Al-Balawi, and ‘Abdullah bin ‘amr.

(Abu Eisa said): The Hadith of Mu’awiyah was also reported like this by Ath-Thawri, from ‘Asim from Abu Salih, from Mu’awiyah, from the Prophet (saw). Ibn (Juraij) and Ma’mar reported it from Suhail bin Abi Salih, from his father, from Abu Hurairah, from the Prophet (saw). (He said): I heard Muhammad saying: “The Hadith of Abu Salih from Mu’awiyah from the Prophet (saw) about this topic is more correct than the Hadith of Abu Salih from Abu Hurairah from the Prophet (saw). This was only the earlier order, then it was abrogated later.”

This is what was reported from Muhammad ibn Ishaq, from Muhammad ibn Al-Munkadir, from Jabir bin ‘Abdullah, from the Prophet (saw) who said: “Whoever drinks wine, then lash him, if he returns to it, then on the fourth time kill him.” He said: “Then a man who had been drinking was brought to the Prophet (saw) a fourth time, so he beat him, he did not kill him.” Similar was reported by az-Zuhri from Qabisah bin Dhu’aib from the Prophet (saw), he (Qabisah) said: “So the order to kill was lifted, and that was a granted favour (from the Law-Giver)”

This (Hadith) is acted upon according to the people of knowledge in general, we do not know of any disagreement between them about this, neither the earlier or the latter among them. What strengthens this, is what is reported from the Prophet (saw) through many routes, that he said: “The blood of a Muslim man who testifies to La ilahah illallah and that I am the Messenger of Allah, is not lawful except for three: A life for a life, the (married) adulterer, and leaving his religion” (End of quote from at-Tirmidhi)

Hafiz Thanauallah 'Isa Khan al-Madni wrote in his "Jaizatul Ahwazi" v 2 p 685-687:

"The majority say that the matter of killing is abrogated rather the scholars claim a consensus on this, and Hafiz As-Suyuti has a discussion on it in his Hashiyah on At-Tirmidhi and he said singularly that the truth is that it (killing) is still valid, Allah knows best" (This has been said by As-Sindi)

Al-Hafiz said in Al-Fath (6/325): "It is narrated that if he drinks, he received Hadd on three times and if he drinks again, he is killed, and it is a hadith narrated in the Sunnan from many ways with strong asanid" End of his words.

As-Suyuti said in "Qut al-Mughtazi 'ala Jami' at-Tirmidhi" (quoting from the manuscript that I have) after quoting the Hadith of Mu'awiyah narrated by At-Tirmidhi and he mentioned the Ahadith indicated by Imam at-Tirmidhi by his saying: "And in this chapter" and he added three Ahadith and said:

"These are ten and some more Ahadith, all of them are authentic and clear about killing the drinker of wine on the fourth time, and there is nothing clear contradicting it, and the claim of abrogation is not supported by any evidence. Their saying: "Then a man who had been drinking was brought to the Prophet (saw) a fourth time, so he beat him, he did not kill him" is not sufficient to refute these Ahadith for many reasons: One of them is that it is Mursal...As for the saying of the author (At-Tirmidhi): "we do not know of any disagreement", this has been refuted by Al-'Iraqi by saying that the difference is established and narrated from a group. Ahmad narrated from 'Abdullah ibn 'Amr ibn Al-'Ass, he said: "bring me the man, I will establish the Hadd of wine on him, and if I don't kill him, I am a liar" and it is narrated from another way: "Bring me the man we drunk on the fourth time, it is incumbent on me to kill him" (End of As-Suyuti's words")

This saying of 'Abdullah ibn 'Amr is reported by at-Tahawi (2/91) and the Sanad is Munqati' (disconnected), this has been said in Al-Fath (6/329) and by Al-Ustaz Ahmad Shakir in his Ta'liq on the "Musnad" (of Ahmad) (9/52).

Hafiz ibn Al-Qayim said in "Tahzib As-Sunnan" (6/237): "This is the Madhab of some of the Salaf" end of his words.

Hasan Al-Basri and some people of Ahluz Zahir said according to it (Al-Fath: 6/325), and this is the saying supported by Ibn Hazm in "Al-Muhalla" (11/365-370), he argued for it and repelled the claim of Ijma, Ash-Shawkani preferred it in "An-Nayl" (7/124), and our Mu'asir (of our time) Al-'Allamah Al-Ustaz Ahmad Muhammad Shakir Al-Misri has detailed the speech upon it in Ta'liq Al-Musnad (9-49-92) and he erected the pillars of the view of killing the drunkard on the fourth time, and he declared it as Muhkam and not

abrogated, and this is a unique research, and likewise ibn Al-Qayim negated the claim of abrogation with a clear denial in "Tahzib As-Sunnan" (6/238), but he said: "What the evidence shows is that the matter of killing is definitive, but it is a Ta'zeer (punishment) according to the Maslahah, when the majority of people are involved in alcohol, and they do not abandon it by Hadd, and the Imam chooses to resort to killing, so he kills him on the fourth time, this is not a Hadd, this is only a Ta'zeer according to the Maslahah" (End of his words)

And it is mentioned in the "Ikhtiyarat" of his Shaykh Al-Imam Ibn Taymiyah (p 178): "Whoever repeats the actions of corruption and they are not repelled by the prescribed Hudud, rather he remains upon this corruption, he is like the one who assaults and he cannot be stopped except by killing, then he is killed. It has been said: It is possible to include the one who drinks on the fourth time in this" end of his words, but he strengthened the Madhab of the majority in his Fatawa (4/255).

And likewise, the author of "Dirasat Al-Labeeb" (Mu'een Ad-Deen As-Sindi, teacher of Muhammad Hayat As-Sindi) from the scholars of India considered the matter as Siyasa (political decision), as said by the Shaykh of our Shaykh in "Sharh Kitab Al-'Ilal At-Tirmidhi" (4/384)...

And the just saying for me is what was chosen by Hafiz ibn al-Qayim and what was pointed to by his Shaykh Al-Imam Ibn Taymiyah, and this is the best way to gather opposing Ahadith narrated about the Hadd of the drinker of intoxicants, the description of beating and number of beatings, and in conclusion, what they indicate, according to the strongest opinion, is that forty (beatings) is the Hadd and what is above it is delegated to the Ijtihad of the Imam" This was said by the author of "Ta'liqat as-Salafiyah" (2/328)

(Meaning all above quotes have been said by Shaykh 'Ataullah Al-Bhujjani in his "Ta'liqat As-Salafiyah)

As-San'ani said in "As-Subul" (7/171): "The Zahiriyah opted for the killing, ibn Hazm remained steadfast on it, argued for it and claimed an absence of consensus on its abrogation, and the majority say that it is abrogated and they do not mention any clear text abrogating it except for the narration of Abu Dawud from Az-Zuhri that he (saw) abandoned killing on fourth time, and it can be said: the saying (order to kill) is stronger than abandoning it, and maybe he (saw) abandoned it based on an excuse, Allah knows best"

The Author of "Al-'Awn" (Al-'Azimabadi) said in explaining the Hadith of the chapter: "This is a clear evidence for the one who says that the drunker is killed on the fourth time, and they are the Ahluz Zahir, this was supported by Ibn Hazm and strengthened by As-Suyuti"

Shaykh al-Albani said in his "Sahihah" (3/348): "It is said that the Hadith is abrogated, but there is no evidence for this, rather it is Muhkam and not abrogated as it was verified by Al-'Allamah Ahmad Shakir in his Ta'liq on the Musnad (9/49-92) and he detailed the speech on the different ways needing nothing to add to it, but we consider this from the topic of Ta'zeer, if the Imam sees (the need of such), he is killed, and if he sees no such needs, he is not killed contrary to the beating which is necessary for each time, and this is the saying chosen by Imam Ibn Al-Qayim (ra)" end of his words.

And ibn Al-Qayim chose it in "I'lam Al-Muwqi'in" (2/97)

The verifying scholars from the people of knowledge said that killing is among forms of Ta'zeer. Shaykh Al-Islam ibn Taymiyah (ra) said: "Whomever, his corruption on the earth is not repelled except by killing, then he should be killed like the one who divides the Jama'at of the Muslims and the caller to innovation in the religion" up to his saying "The Prophet (saw) ordered to kill the person who intentionally lies upon him, and ibn Ad-Daylami was asked about the one who does not cease to drink alcohol, he replied: the one who does not cease, kill him" and he (Ibn Taymiyah) said in another place about the reason behind killing for Ta'zeer: "This because the one who brings corruption is like the one who assaults, and when the assaulting person is not repelled except by killing, then he is killed", this is how it is reported in "Fatawa Al-Islamiyah" (3/380)

I (Thanaullah Al-Madni) say: this explanation is a reply to the strong arguments of At-Tirmidhi.

End of quotes from "Jaizatul Ahwazi"

If Ahadith saying that the Prophet (saw) abandoned it are all weak, then the saying of ibn Hazm, Ash-Shawkani, Ahmad Shakir and As-Suyuti is the most apparent, and there is no Daleel for it being a Ta'zeer, but even if it is a Ta'zeer as said by Ibn Al-Qayim, Al-Albani, Al-Bhujiyani, Thanaullah Al-Madni, it shows the Manhaj of Ahlul Hadith that is to favour authentic and clear Ahadith over action of majority of the community.

May Allah send Salah and Salam on the Prophet (saw), his family and companions!