

At-Tibyān Fī Istihdāf  
An-Nisā'i Was-Sibyān

**The Clarification Regarding  
Intentionally Targetting Women and  
Children**

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## Preface

All praise is due to Allāh Alone, Lord of the Universe, Who informs us that:

**“And if Allah did not check one set of people by means of another, the earth would indeed be full of mischief.”<sup>1</sup>**

And peace and blessings be on the Last of the Prophets, who said to his Companions, *“Advise me! Do you think we should target the children of those who helped them (the enemies), so we kill them; and if they remain sitting, then they will sit as those whose families have been killed, and property been seized, even if they survive.”*<sup>2</sup> And as for what proceeds:

When recently Allāh allowed the *Mujāhidīn* to carry out an operation against His Enemies, and while the hearts of the true Believers were rejoicing, as the Lord of the Heavens and the Earth described,

قَاتِلُوهُمْ يُعَذِّبُهُمُ اللَّهُ بِأَيْدِيكُمْ وَيُخْزِهِمْ وَيَنْصُرْكُمْ عَلَيْهِمْ وَيَشْفِ صُدُورَ قَوْمٍ مُّؤْمِنِينَ  
وَيُذْهِبْ غَيْظَ قُلُوبِهِمْ

**“Fight against them so that Allāh will punish them by your hands and disgrace them and give you victory over them and heal the breasts of a believing people, and remove the anger of their (believers') hearts.”<sup>3</sup>**

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<sup>1</sup> *Al-Baqarah*: 251

<sup>2</sup> Refer to *“Musnad Ahmad”* (18166), *Al-Bayhaqī* (9/218), *An-Nasā'ī* in *“Al-Kubrā”* (5/170), *‘Abdur-Razzāq* (5/330), *At-Tabarānī* in *“Al-Kabīr”* (20/10), and similar is narrated by *Al-Bukhārī* (4/1531), and *Ibn Abī Shaybah* (7/387). Also refer to *“Zād Al-Ma’ād”* by *Ibn al-Qayyim* under the chapter of *“The Pact of Hodaybiyah”*.

<sup>3</sup> *At-Tawbah*: 14-15

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ

**“And there is (a saving of) life for you in *Al-Qisās* [the Law of Equality in punishment], O men of understanding”<sup>4</sup>**

The delight had not been completed, so soon yet calamity struck us- not from the usual suspects, the hands of the Zionists or the Crusaders- but from those whom we had considered as our own Brethren. And behold! It was a mere repeat of the mistake they had fallen into earlier! And it reminded us of the exact words of *Shaykh* Yūsuf Al-'Uyayrī (ra) - when he responded to the brothers who rejected the operation of Hawwā' Barayev, may Allāh accept her amongst the martyrs, when he had said:

“However, while we were in the midst of rejoicing over our sister's self-sacrifice, and we were still supplicating for her to achieve forgiveness and mercy from Allāh, we received mail [i.e. news] which clouded our joy. It came, not from an enemy or envier, but rather from a handful of people whom we presume wanted to offer constructive advice. However, they erred, and accused the great *Mujāhidah*, Hawwā' Barayev, of having committed suicide, saying that it was not permissible for her to have committed this. Nor did they think it was permissible for us to mention her account on our website, rather that we should have criticized her. *They mentioned evidences which they had misunderstood to imply what they claimed.* In this study, we shall clarify that Hawwā' Barayev - and similarly `Abdur-Rahman Shīshani, Qadī Mowladī, Khatam, his brother `Alī, `Abdul-Mālik and others - are, Allāh willing, in Gardens of Eternity, in the bodies of green birds, betaking themselves to lanterns hanging from the `Arsh. This is how we regard them, but we do not sanctify anyone before Allah.

Before we embark on a detailed exposition concerning the *Islamic* verdict on martyrdom operations, it is appropriate for us to first present a brief, to-the-point response:

**Firstly:** If you did not know, could you not ask? It is not appropriate for someone who is unaware of a verdict to make sweeping statements accusing others of wrongdoing. If those who criticized us had only

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<sup>4</sup> *Al-Baqarah*: 179

investigated the issue first, they would have found that the issue is, *at worst*, a disagreed issue among scholars, such that we **cannot** be criticized for following legitimate scholarship.

**Secondly** : We request our respected brothers, who seek the truth, not to criticize us for anything *without* backing the criticism with verdicts of scholars, and [especially] the understanding of the Pious Predecessors.

**Thirdly** : Dear brothers and sisters! **Not every** martyrdom operation is *legitimate*, **nor is every** martyrdom operation *prohibited*. Rather, the verdict **differs** *based on factors* such as the enemy's condition, the situation of the war, the potential martyr's personal circumstances, and the elements of the operation itself. Thus, one may not give a verdict on such operations without having an understanding of the actual situation, and this is obtained from the *Mujāhidīn*, and not the disbelievers. How, then, can you accuse us of ignorance when you are unaware of our situation, let alone the specific details of the operation in question?"<sup>5</sup>

*Glory be to Allāh! How the ignorant do not learn their lessons!*

And likewise- as is mentioned in the third point- is the ruling of the action carried out by the *Mujāhidīn* - may Allāh assist them - recently in *Dār Al-Harb*. It is not permissible under every situation, nor is it prohibited under every situation. Rather, the verdict differs based on the factors and strategies on the ground - which are *best* known to the *Mujāhidīn* - and it is *their* duty to evaluate the benefit and results of such an operation - and if they deem it necessary, then those who are unaware of the situation have no right to speak about affairs of which they have no knowledge.

So in this essay- the topic which shall be addressed is what the *Amīr* of the *Mujāhidīn*, Abū 'Abdillāh Usāmah Ibn Lādin, may Allāh preserve him, said in a video tape released on October 29, 2004- in which he said, very briefly, "...And we shall punish the tyrant just as it punishes... so

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<sup>5</sup> Quote adapted from the translation of the *Shaykh's* treatise entitled, "The Islamic Ruling on the Permissibility of Martyrdom Operations".

that it can taste just some of what we have tasted (at its hands), so it would stop killing our children and women." The validity of this will be examined in the Light of the texts of the *Shari'ah* of *Islām*.

And we ask Allāh to make this book a heavy weight for our good deeds on the Day of Judgment.



## Chapter One:

# The Original Ruling Regarding Killing Women and Children of the *Kuffār*

Allāh (Most High) commanded,

**“So slay the *mushrikīn* wherever you find them, take hold of them, encircle them and lay in wait to ambush them on each and every path.”<sup>6</sup>**

*Shaykh* Yūsuf Al-'Uyayrī (ra) said, “Indeed the *Sharī'ah* of *Islām* has sanctified [made forbidden] the blood, wealth, and honor of the Muslims- and it has also prohibited harming them with any type of harm, whether it be directly, or indirectly; Except for a *Shar'ī* cause, as the Prophet said, “*The blood of a Muslim is not permissible except for three reasons- retaliation for a person he killed without any right, the married adulterer, and the one who apostates from his Dīn.*” So these are some of the situations in which the blood of the Muslims is permissible.

And as for the non-Muslims- the original ruling is not sanctity- rather, it is permissibility. Shedding the blood of the *kuffār*, seizing their wealth, and removing their honor [by enslavement] – these actions are all *Halāl* [permissible]. And it is not forbidden to spill their blood, seize their wealth, nor remove their honor- nor is it forbidden to harm him; Except for an external (i.e. secondary) matter, such as an '*Ahd* [covenant], *Thimmah* [tribute], or *Amān* [security, and also *Hudnah* (a pact of pausing the hostilities for a limited amount of time)]. As for their women and children and elders, and those who are similar to them from amongst those who do not fight- They have protection [*Ismah*], due to the texts excluding them from the original ruling

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<sup>6</sup> *At-Tawbah*: 5

regarding the *kuffār* [i.e. the permissibility].”<sup>7</sup> End of quote from *Shaykh Yūsuf Al-'Uyayrī* (ra).

And from these texts are the following:

Ka'b Ibn Mālik (ra) narrated, “In the Campaign of Khaybar, the Messenger of Allāh prohibited the *Mut'ah* marriage and the killing of any small child or woman.”<sup>8</sup>

He also narrated, “The Messenger prohibited those who were sent to kill Ibn Abī Al-Huqayq<sup>9</sup> from killing women and children.”<sup>10</sup> Ibn Hibbān (ra) in his “*Sīrah*” mentions that this incident took place in the year 4 after *Hijrah*.

And Nāfi' (ra) narrated on the authority of Ibn 'Umar (ra), “The Messenger saw a woman who had been killed in one of the campaigns, so he disapproved of this; and he prohibited the killing of women and children.”<sup>11</sup>

And Ibn 'Abbās (ra) narrated, “When the Prophet used to send out his armies, he used to tell them, “Battle in the Name of Allāh;

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<sup>7</sup> For more in-depth knowledge regarding the ruling on the *kuffār* in general-refer to the “*Essay Regarding the Basic Rule of the Blood, Wealth and Honor of the Disbelievers*”.

<sup>8</sup> Refer to “*Sharh Ma'ānī Al-Āthār*” (3/221), *At-Tabarānī* (19/74), “*Musnad Ahmad*” (1/79), and *Al-Bayhaqī* in “*Al-Kubrā*” (7/204).

<sup>9</sup> Abū 'Umar (ra) explained, “This Ibn Abī Al-Huqayq was a man from the Jews of Khaybar; his full name was Salām Ibn Abī Al-Huqayq. His *Kunyah* was Abū Rāfi'. He used to insult the Prophet صلى الله عليه وسلم, so the Prophet صلى الله عليه وسلم ordered for him to be killed; similar to the incident of Ka'b Ibn Al-Ashraf.” Refer to “*Fat'h Al-Mālik Bi Tabwīb At-Tamhīd*”, in “*Kitāb Al-Jihād*” (6/228).

<sup>10</sup> Refer to “*Musannaf Ibn Abī Shaybah*” (12/381), “*Sīrat Ibn Hishām*” (2/274-275).

<sup>11</sup> Refer to “*Sahīh Al-Bukhārī*” (4/147), and “*Sahīh Muslim*” (3/1364).

Fight those who disbelieve in Allāh; Battle! Do not transgress, nor betray, nor commit excess! Do not mutilate! Do not kill a child!"<sup>12</sup>

And in a different narration, "Set forth in the Name of Allāh, with Allāh, upon the Path of the Messenger of Allāh; Do not kill an old man, nor an infant, nor a youngster, nor a woman; Do not commit excess, and gather your booty; and make reconciliation [with your brethren], and do righteousness; Truly, Allāh loves the *Muhsinīn* (the good-doers)."<sup>13</sup>

And in another narration, "Go out in the Name of Allāh, fighting in the Path of Allāh; Do not betray; Do not mutilate; Do not kill children, nor monks."<sup>14</sup>

And it is in the *Hadīth* of Rubāh Ibn Rubayyī' (ra), "Join Khālid (Ibn Al-Walīd) and tell him not to kill a child nor a hired laborer." And in other narrations, "... and tell him not to kill a woman or a hired slave."<sup>15</sup>

As-Sa'b Ibn Jathāmah narrated, "And the Prophet of Allāh (may peace be upon him), when asked about the women and children [Tharāriyy] of the polytheists being killed during the night raid- he said: "*They are from them*". And in similar narrations, it is reported that he replied by saying, "*They are from their fathers*."<sup>16</sup>

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<sup>12</sup> Refer to "*Jāmi' Masānīd Abī Hanīfah*" by Al-Khuwārizmī (2/293).

<sup>13</sup> Refer to "*Sunan Abī Dāwūd*" (3/38).

<sup>14</sup> Refer to "*Ma'ānī Al-Āthār*" (3/220, 225).

<sup>15</sup> Refer to "*Sunan Abī Dāwūd*" (3/56, # 2669), "*Sunan Ibn Mājah*" (2842), "*Musnad Ahmad*" (3/488), and "*Mustadrak Al-Hākim*" (2/122).

<sup>16</sup> Refer to "*Fat'h Al-Bārī*" (6/146), and "*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*" (12/49), "*Sunan Ibn Mājah*" (2/967), "*Sunan Abī Dāwūd*" (3/56), "*Musnad Ahmad*" (4/38), Al-Bayhaqī (9/78), Ibn Abī Shaybah (12/388), At-Tabarānī in "*Al-Kabīr*" (8/102), Al-Baghawī in "*Sharh As-Sunnah*" (10/50), Al-Humaydī (2/343, # 781), and At-Tahāwī in "*Ma'ānī Al-Āthār*" (3/221), and "*Jāmi' Al-Usūl*" by Ibn Al-Athīr (2/733), and Ibn al-'Arabī in "*Āridhat al-Ahwathī*" (7/65).

Ibn Qudāmah (ra) narrates, “He (Ahmad Ibn Hanbal) said, ‘The *Hadīth* of As-Sa’b came after the forbiddance of killing the women and children, because his forbiddance of killing the women was when he sent (men) to Ibn Abī Al-Huqayq, and because it is possible to reconcile the two (*Hadīths*); the forbiddance upon intentionally (killing them), and the permissibility for what is besides that.”<sup>17</sup>

*Shaykh* ‘Abdul-Qādir Ibn ‘Abdil-‘Azīz (fa) said, “I say: And Ibn Hajar pointed to the possibility of its abrogation, in his explanation of the *Hadīth* of As-Sa’b, due to an additional phrasing narrated *Mudraj*,<sup>18</sup> from the statement of Az-Zuh’rī, in ‘*Sunan Abī Dāwūd*’, as he said at its end: ‘Sufyān said, Az-Zuhrī said, ‘The Messenger of Allāh forbade the killing of the women and children after that.’ And Ibn Hajar said, “And it is as if Az-Zuh’rī pointed to the abrogation of the *Hadīth* of As-Sa’b, with that, based upon the differing dates of this forbiddance, which are narrated. Because it is said that it was when he sent (men) to Ibn Abī Al-Huqayq, which was narrated by Abū Dāwūd and it is (also) said on the Day of Hunayn, which was narrated by Ibn Hibbān.”<sup>19</sup>

And Abū Bakr Al-Hāzimī<sup>20</sup> mentioned these two *Hadīths* and said that a group has taken (the opinion) that the first abrogated the second and a group (took the) opposite (opinion) to that. And a group took (the

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<sup>17</sup> Refer to “*Al-Mughnī Wash-Sharh Al-Kabīr*” (10/503). And as for the statement, “the forbiddance upon *intentionally* (killing them)” – this shall be explained in the remainder of this book, if Allāh permits- and it will be clear that there are many situations which it is permissible to kill them intentionally also.

<sup>18</sup> **Trans. Note:** Ibn Kathīr may Allāh be merciful to him, said: “And it is that a phrase, which is from the words of the narrator, is added in the *Matn* (text) of the *Hadīth*. So the one who hears it thinks that it is *Marfū’* (raised up) in the *Hadīth*, so he narrates it like that.” “*Al-Bā’ith Al-Hathīth Sharh Ikhtisār ‘Ulūm Al-Hadīth*” page 69, published by *Dār Al-Kutub Al-‘Ilmiyyah*, Beirut.

<sup>19</sup> “*Fat’h Al-Bārī*”, Vol. 6/147

<sup>20</sup> Muhammad Ibn Mūsā Ibn ‘Uthmān Ibn Mūsā Ibn ‘Uthmān Ibn Hāzim, Al-Hāfith Abū Bakr Al-Hāzimī, Al-Hamdānī. Born 548 AH.

opinion) of reconciling between them. Then he mentioned the statement of Ash-Shāfi'ī, which supports the reconciliation: "Ash-Shāfi'ī said, 'The *Hadīth* of As-Sa'b took place during the last 'Umrah of the Prophet , so if it was during his first 'Umrah, then Ibn Abī Huqayq was killed prior to that and it is said (that this was) the same year. And if it was during his last 'Umrah, then it was after the matter of Ibn Abī Huqayq, without doubt. And Allāh knows best.' Ash-Shāfi'ī, may Allāh be merciful to him, said, 'And we do not take the understanding that he gave the concession (*Rukhsah*) for the killing of the women and children and then later forbade it. And the meaning of the forbiddance of killing women and children, in our opinion, and Allāh knows best, is if he *intentionally* kills them and if they are recognizable and distinguishable from those who were ordered to be killed from them. And the meaning of his statement: '*...from them...*' is that they (have in them) two characteristics; that they are not ruled upon with faith (*Īmān*), which would make their blood impermissible, nor are they ruled upon as living within the state of faith (*Dār Al-Īmān*), which prohibits the raiding upon the home. And due to this, the Prophet permitted the night attack and the raiding upon the home and he raided upon Banī Al-Mustalaq, while they were inattentive. And the knowledge exists that the night attack and the raiding; if they were permitted by the permission of the Messenger of Allāh , it is unavoidable that someone would attack at night or raid without attacking the women and children. So the sin and the expiation and the blood-money and the *Qisās* (punishment by retribution) fall off of them with regards to those who were attacked, if the night attack and the raiding were permitted. And they do not have the sanctity of *Islām*. And it would not be for him to intentionally kill them when they are distinguishable and while he can recognize them. And he only forbade the killing of the children because they did not reach puberty upon kufr then act upon it so have to be killed for it, and from killing the women because they have no drive within them for fighting and because they and the children are a grant, so they would be an (added) strength for

the people of the religion of Allāh, the Mighty, the Majestic.”<sup>21</sup> End of quote from *Shaykh 'Abdul-Qādir Ibn 'Abdil-'Azīz (fa)*.<sup>22</sup>

And as for the statement of Az-Zuh'rī, 'The Messenger of Allāh forbade the killing of the women and children after that' – Abū 'Umar (ra) said, "Az-Zuh'rī [alone] considered the *Hadīth* of As-Sa'b to be abrogated due to the prohibition of the Prophet ; but [all] other than him consider it as a *Muhkam* [clear, obvious, explicit text] and not abrogated."<sup>23</sup>

And as Ibn Hajar stated, there were from the *Salaf* those who viewed it permissible to kill the women and children of the *kuffār* – regardless of whether or not they fight – as Ibn Hajar (ra) narrated from Abū Bakr Al-Hāzimī, that he viewed the killing of women and children permissible due to the *Thāhir* [external appearance] of the words of the Prophet in the *Hadīth* of As-Sa'b. And Ibn Hajar then remarked, "This is a strange (opinion)."

But still Al-Māwirdī (ra) narrated from Ash-Shāfi'ī the permissibility of killing the women (of the *kuffār*), other than from amongst the People of the Scripture. And this was pointed out by the a Ar-Ramlī when he said while explaining the quote of An-Nawawī, "And it is forbidden to kill a child, insane person, and a woman": "And this is even if they do not possess a Scripture, as opposed to those (scholars) who restrict it to that (stipulation)."<sup>24</sup>

And the abrogation of the prohibition of killing women and children of the *kuffār*, as Al-Hāzimī stated based upon the *Thāhir* [external appearance] the *Hadīth* of As-Sa'b is indeed possible; and this is because

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<sup>21</sup> "Al-I'tibār Fī An-Nāsikhi Wal-Mansūkh", by Al-Hāzimī, page 215, publication of "Makabat Al-Andalus", in Hims, 1386 H.

<sup>22</sup> Refer to "Al-'Umdah Fī I'dād Al-'Uddah Lil-Jihādi Fī Sabilillāhi Ta'āla" page 331.

<sup>23</sup> Refer to "Fat'h Al-Mālik Bi Tabwīb At-Tamhīd", in "Kitāb Al-Jihād" (6/237).

<sup>24</sup> Refer to "Nihāyat Al-Muhtāj" (8/64).

the *Hadīth* of As-Sa'b came after the prohibition, as stated by *Imām Ahmad Ibn Hanbal* (ra).<sup>25</sup>

And likewise *Ibn Hajar* (ra) also mentioned that the *Hadīth* of prohibiting *Khālid Ibn Al-Walīd* (ra) from killing women [and children in some narrations] and the hired laborers took place during *Hunayn* (early *Shawwāl*, eighth year after *Hijrah*); while the *Hadīth* of As-Sa'b was during *At-Tā'if* (late *Shawwāl*, eighth year after *Hijrah*).<sup>26</sup>

And *Shaykh Al-Islām Ibn Taymiyyah* (ra) said regarding the incident of *Ibn Abī Al-Huqayq*:

“And this took place before the Conquest of Makkah- rather, even before the Conquest of Khaybar also- and there is no difference of opinion regarding this amongst the People of Knowledge. And *Al-Wāqidī* mentioned that this took place in the year four after the *Hijrah*, before the Battle of *Khandaq*; and *Ibn Is'hāq* mentioned that it was right after *Khandaq*- and both of them claim that the Battle of *Khandaq* took place in the month of *Shawwāl* in the year five. And *Mūsā Ibn 'Uqbah*<sup>27</sup> said that it was in the month of *Shawwāl* in the year four, and the *Hadīth* of *Ibn 'Umar* (ra) supports this. And the Conquest of Makkah took place in *Ramadhān* of the year eight.

And we only mention this to refute the *Wahm* [mistaken claim] of those who *assume* that killing women was permissible in the Year of the Conquest [of Makkah], and was supposedly prohibited only afterwards.

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<sup>25</sup> *Ibn Qudāmah* (ra) narrates, “He (*Ahmad Ibn Hanbal*) said, ‘The *Hadīth* of As-Sa'b came *after* the forbiddance of killing the women and children, because his forbiddance of killing the women was when he sent (men) to *Ibn Abī Al-Huqayq*.” “*Al-Mughnī Wash-Sharh Al-Kabīr*” (10/503)

<sup>26</sup> Refer to “*Fat'h Al-Bārī*” (6/183).

<sup>27</sup> *Imām Mālik* (ra) said, “Whosoever wishes to write (and learn) regarding the history of the *Maghāzī* [battles, campaigns], then it is binding upon him to get [knowledge] from the book of the righteous man, *Mūsā Ibn 'Uqbah*.” Refer to “*As-Sārim Al-Maslūl*” by *Ibn Taymiyyah*.

And even, there is no difference of opinion amongst the People of Knowledge that the killing of women was *never* permissible [in originality]. Because the Verses of *Qitāl* [fighting], and the order in which they were all revealed <sup>28</sup>- prove that the killing of women was never permissible." <sup>29</sup> End of quote from *Shaykh Al-Islām*.

The majority of scholars of *Tafsīr*, such as Al-Qurtubī, Ibn Kathīr, and At-Tabarī, also use the following Verse as evidence used by the *Salaf* against killing women and children,

**"But transgress not the limits. Truly, Allah likes not the transgressors."**<sup>30</sup>

And *Imām* Ahmad (ra) narrated that during Hudaybiyah- which was the sixth year after the *Hijrah*- after the Messenger of Allāh was prevented from the House of Allāh- he said to his Companions, "*Advise me! Do you think we should target the children of those who helped them (the enemies), so we kill them; and if they remain sitting, then they will*

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<sup>28</sup> Because Allāh initially prohibited the Muslims from any violence whatsoever: "**But forgive and overlook, till Allāh brings His Command.**" [*Al-Baqarah*: 109]; and 'Abdur-Rahmān Ibn 'Awf (ra) and some of his companions came to the Prophet in Makkah and complained, "O Messenger of Allāh! We were honored and in pride when we were *mushrikīn*; and now after we have *Īmān*, we have become disgraced." So the Prophet

replied, "*I have been ordered to forgive, so do not fight (back).*" [Narrated by An-Nasā'ī (6/3) and Al-Hākim (2/307)]. And after this Verse, Allāh then revealed, "**And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.**" [*Al-Baqarah*: 190]. And women and children- usually- do not fight- thus it was never originally permissible. And then finally, Allāh revealed the Verse of the Sword [*At-Tawbah*: 5] which abrogated all other Verses regarding *Qitāl*.

<sup>29</sup> "*As-Sārim Al-Maslūl 'Alā Shātim Ar-Rasūl*": pg. 130

<sup>30</sup> *Al-Baqarah*: 190 - And it is important to understand this- since the scholars indeed have mentioned that this Verse is restricted by the Verses of *Qisās*.



*sit as those whose families have been killed, and property been seized, even if they survive.”* <sup>31</sup>

*Shaykh ‘Abdul-‘Azīz Al-Jarbū’ (fa) said after quoting this Hadīth, “And indeed the Messenger of Allāh is far removed from asking advise from his Companions regarding something which was prohibited upon him... Nay, rather he wouldn’t seek advice on anything except that which was made permissible for him.”* <sup>32</sup>

And *Shaykh Abū Qatādah Al-Filastīnī (fa) explained the benefits understood from it, and said, “So in the Hadīth there is the permissibility of using the offspring and the women as a means of putting pressure upon the Mushrikīn to weaken their matter and to divide their unity, because the Prophet wanted to attack the women and the offspring so as to divide the allied clans away from Quraysh.”*

And thus it can be derived from this *Hadīth*- which was after the general prohibition against killing women and children- that it is permissible to target the women and children in certain situations- when a greater benefit is in killing them, rather than keeping them alive [and enslaving them].

## Conclusion

Allāh (Most High) has made the *blood, wealth, and honor* of the People of *kufr* permissible for the Muslims. And He has made exceptions to this

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<sup>31</sup> Refer to “*Musnad Ahmad*” (18166), Al-Bayhaqī (9/218), An-Nasā’ī in “*Al-Kubrā*” (5/170), ‘Abdur-Razzāq (5/330), At-Tabarānī in “*Al-Kabīr*” (20/10), and similar is narrated by Al-Bukhārī (4/1531), and Ibn Abī Shaybah (7/387). Also refer to “*Zād Al-Ma’ād*” by Ibn al-Qayyim under the chapter of “The Pact of Hudaibiyah”.

<sup>32</sup> Refer to “*At-Ta’sīl Li Mashrū’iyyat Mā Hasala Li Amrikā Min Tadmīr*” (38); this book was read and approved by the Noble *Shaykh Hamūd Ibn ‘Uqlā’ Ash-Shu’aybī (ra)*, and the Imprisoned *Shaykh ‘Alī Ibn Khudhayr Al-Khudhayr (fa)*.

general ruling- amongst them are their women and children, whose *blood* has been made *Harām* by the *Sharī'ah*- they have been provided a restricted '*Ismah* [protection] by the *Sharī'ah*. But this *protection* is not absolute, nor is it unrestricted. Because indeed there are circumstances in which it is permissible to kill them both, intentionally, and unintentionally. And in these situations, the restriction is removed, and these women and children revert back to the original ruling of the People of *kufr*- permissibility.

## Chapter Two:

### The Reason Behind the Prohibition And the Penalty for Killing the Women and Children of the *Kuffār*<sup>33</sup>

*Imām* As-Sarkhasī (ra) explained, “The women, children, insane, and elderly of those who reside in *Dār Al-Harb*- should not be killed... And whosoever kills any from amongst these (people whose killing is prohibited) without having been fought by them- Then he does not need to give any compensation (*kaffārah*), nor blood money [let alone getting any punishment]. And this is because the *kaffārah* and the blood money is only obligatory with regards to sanctity and protection (when it is) *within itself*- and that (sanctity/protection) comes only from the religion (of *Islām*) or the land/state (of *Islām*)<sup>34</sup> - and neither of the two is present in them. And killing them is only prohibited due to attaining the benefit (i.e. them becoming a property of the Muslims); and also due to the absence of the basis which obligates the killing (of a person) - which is fighting [*Muhārabah*], not due to a sanctity [*Āsim*] or value within itself [*Fī Nafsihi*]. And so, it is not obligatory upon this murderer to compensate, nor to pay the blood money. And this is what was pointed out by the Messenger of Allāh when he said, “*They are from them*”- meaning the women and children of the *Mushrikīn* are

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<sup>33</sup> This chapter will only deal with the penalty of the intentional killing of women and children of the *kuffār* who do not have any covenant with the Muslims- in situations in which it is not permissible to kill them intentionally.

<sup>34</sup> And this is what *Imām* Ash-Shāfi'ī (ra) said while explaining the *Hadīth* of As-Sa'b, “And the meaning of his statement: ‘...*from them*...’ is that they (have in them) two characteristics; that they are not ruled upon with faith (*Īmān*), which would make their blood impermissible, nor are they ruled upon as living within the state of faith (*Dār Al-Īmān*), which prohibits the raiding upon the home.” Refer to “*Ar-Risālah*” (299).

indeed from amongst the *Mushrikīn*. This means that there is no sanctity for them, nor any value for their inviolability [i.e. within itself].”<sup>35</sup>

Al-Kāsānī (ra) stated, “And if any of these whom we have mentioned (from women, children, and elderly, etc) that are not permissible to be killed- if any of them are murdered, then that does not require any blood money, nor compensation (*Kaffārah*)- (it is only required to do) repentance and ask forgiveness from Allāh. And this is because the blood of a *kāfir* is not valued except if there is a covenant.”<sup>36</sup>

And Ibn Nujaym (ra) repeated from him his statement similarly, “And even if someone kills such a person whom it is impermissible to kill, from amongst those whom we have just mentioned [such as women or children, etc]- then there is nothing obligatory upon him such as blood money, nor compensation (*Kaffārah*)- except (it is obligatory upon him to do) repentance and ask forgiveness from Allāh. And this is because the blood of a *kāfir* is not valued except with a covenant- and this is not present.”<sup>37</sup>

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<sup>35</sup> Refer to “*Sharh As-Siyar Al-Kabīr*” (2741), in the chapter, “*Man Yukrah Qatluhu Min Ahl Al-Harb*” As for the statement, “*This means that there is no sanctity for them, nor any value for their inviolability*” : This should not be understood to mean that it is unrestrictedly permissible to kill their women and children- but rather- it is forbidden, not due to them being merely women and children, but rather because of the benefit that can be taken from them by enslaving them. And from this it can be understood that in a situation, if killing them brings greater benefits as opposed to enslaving them (i.e. keeping them alive)- then this is permissible, as Az-Zayla’ī (ra) has clarified, when he said, “So if it is permissible to kill the children of the *mushrikīn* for the benefit [*Maslahah*] of the Muslims- then killing their elders is even more worthy of being permissible, if there is a benefit in doing so- such as if they were kings. But if there is no benefit, then they shouldn’t be killed unless they fight- in which case they should be killed to repel (their harm).” Refer to “*Tabyīn Al-Haqā’iq*”, in “*Kitāb As-Siyar*”

<sup>36</sup> Refer to “*Badā’i’ As-Sanā’i*”, in “*Kitāb As-Siyar*”, “*Bayān Man Yahillu Qatluh*”

<sup>37</sup> Refer to “*Al-Bahr Ar-Rā’iq*” in “*Kitāb As-Siyar*”

*Shaykh Al-Islām Ibn Taymiyyah* (ra) said, “And under all circumstances, any woman who is a *Harbī* [is not under *Thimmah*, nor within any ‘*Ahd*]-(killing her purposely) does not require any punishment (upon the murderer), nor must any blood money be paid, nor is there any compensation (Kaffārah); and this is because the Prophet did not demand any of that from those who killed women in the campaigns. So this is the *difference* from a woman who *is* under *Thimmah* [in which case those can be demanded from the murderer]. And as for killing the *Harbī* woman who fights- then that is unanimously permissible.”<sup>38</sup>

Al-Hāfith Ibn Hajar (ra) said, quoting At-Tabarānī, “Abū Sa’id narrated, “*The Messenger prohibited the killing of women and children*”- and he [At-Tabarānī] commented, “(Because) they belong to those who conquer (i.e. property of the *Mujāhidīn*).”<sup>39</sup>

The Minor Shāfi’ī, Ar-Ramlī (ra), said, “And if they [the people of *Dār Al-Harb*] use Muslims, or the People of *Thimmah*, as human shields- then they should *not be attacked unless* there is a great necessity (for attacking them regardless of them) - due to the obligation of *respecting their sanctity* of *Īmān* (of the Muslims) and their covenant (of the People of *Thimmah*); And this (prohibition) is different from the (prohibition of killing) women and children- which is specifically because of the safeguarding of the rights of the Ghānimīn (the *Mujāhidīn* who become the owners of these women and children).”<sup>40</sup>

And likewise, *Shaykh Ibn Al-Uthaymīn* (ra) supported this when he said, “And as for his [i.e. Prophet’s ] prohibition against killing women and children (of the *kuffār*); then by “women”- its inclusiveness is unrestricted, including those who have reached puberty (and those who have not); and as for “children”- it is the boys who have not yet reached puberty. And *the only reason* for which the

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<sup>38</sup> Refer to “*As-Sārim Al-Maslūl*” Pg. 131

<sup>39</sup> Refer to “*Fat’h Al-Bārī*” (6/183).

<sup>40</sup> Refer to “*Nihāyat Al-Muhtāj*” (8/65).

Prophet prohibited (killing) women and children become...  
*For what reason? For : enslavement (Riqqah); for slavery (Sabiyy). And if they are killed, then the Muslims will lose much benefit."* <sup>41</sup>

And Ibn Taymiyyah also said, after mentioning the incident of Usāmah Ibn Zayd (ra) killing a man who professed the *Shahādah*, "It is established that they had killed Muslims, (those) whose killing is not permissible- but along with this, still the Prophet did not kill them (in return), nor did he punish them, nor did he obligate them to pay the blood money, nor compensate for the sake of the killed one; and this is because the killer had a *Ta'wīl* [misinterpretation: thinking that it was permissible to kill on the basis of merely doubting the *Islām* of a person who has not externalized anything nullification of *Islām*]- and this is the opinion of the majority of the scholars, such as Ash-Shāfi'i and Ahmad, and others. And there are also people who say, "Rather, they had indeed believed, but they did not emigrate"- (meaning) so they have *Al-'Ismah Al-Mu'thamah* <sup>42</sup>, but not *Al-'Ismah Al-*

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<sup>41</sup> Refer to side "B" from the third cassette of "*Kitāb Al-Jihād*" from "*Sharh Bulūgh Al-Marām*". Or download it from the *Shaykh's* own website: <http://www.binothaimeen.com/sound/snd/a0020/A0020-3B.rm> . Brothers and sisters are requested to download this before it is taken down by the Enemies of Allāh. Starting at time frame 28:17 .

<sup>42</sup> *Al-'Ismah Al-Mu'thamah*., literally "The Protection of Sin" - which means that if this "protection" is transgressed, then the transgressor will be sinful (the sin can be forgiven by making *Tawbah* [repentance] and *Istighfār* [asking Allāh for forgiveness]). But this does not necessarily mean that the transgressor has to pay blood money, nor compensate, nor be punished. And *Shaykh Al-Islām* has just mentioned the examples of these.

*Mudhamminah* <sup>43</sup>- like the category of the women and children of *Dār Al-Harb*." <sup>44</sup>

And Ibn Qudāmah (ra) said, "As for killing the women and children of *Dār Al-Harb*, then there is no need for compensation for killing them; and this is because they do not have Faith [*Īmān*] or covenant [*Amān*]. And the only reason it is forbidden to kill them is due to the benefit derived from them for the Muslims, by enslaving them and becoming the slaves of the Muslims. And also similar, is the killing of those whom the *Da'wah* has not yet reached- there is no need for compensating for killing them. And it is for this reason [i.e. because of them having neither *Islām* nor covenant], nothing is required from those who kill them <sup>45</sup>. So they are similar to those whose killing is permissible [*Mubāh*]." <sup>46</sup>

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<sup>43</sup> *Al-'Ismah Al-Mudhamminah*: literally "The Protection of Requirement" - which means that if transgressed, then the transgressor will be required to either pay blood money, or compensate, or be punished- depending on the exact nature of the crime. Such as killing a Muslim or a *Thimmī* (but keeping in mind the basic rule in the *Sharī'ah*, "A Muslim cannot be killed for the sake of a *kāfir*").

<sup>44</sup> Refer to "*Minhāj As-Sunnah*" (4/453-454).

<sup>45</sup> But since they have disobeyed the Prohibition of the Messenger صلى الله عليه وسلم - it is as the *Salaf* clarified earlier, "(it is only required to do) repentance and ask forgiveness from Allāh."

<sup>46</sup> Refer to "*Al-Mughnī*" (8/67).

## **Chapter Three:**

### **Situations When the General Prohibition is Restricted**

So after this explanation, it can be asked:

*Are there any situations in which it is permissible to kill the women and children of the kuffār, and other similar types of civilians? Or is it unrestrictedly forbidden, like adultery and sodomy?*

Answer: Indeed the *Shari'ah* of *Islām* has mentioned some situations during which it is permissible to kill the women and children of the *kuffār*- and has clarified that the protection [*Ismah*] of their blood is *not unrestricted*. Rather, there are situations when it becomes permissible to kill them, sometimes *intentionally*, and sometimes *unintentionally*. And some of these situations are as follows-

#### *Unintentionally Killing Them:*

- 1) When they are raided upon at night time- and according to some '*Ulamā'*, even day time- and they cannot be distinguished from their fighters, and the women and children are killed inadvertently- then in such a situation it becomes permissible. So if they are killed in this situation, their killing was permissible.

And the evidence for this is in the *Hadīth* of As-Sa'b Ibn Jathāmah, may Allah be pleased with them, when he reported:

The Prophet of Allah (may peace be upon him), when asked about the women and children [*Tharāriyy*] of the polytheists being killed during the night raid, he said: "*They are from them*".<sup>47</sup>

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<sup>47</sup> Refer to "*Fat'h Al-Bārī*" (6/146), and "*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*" (12/49).



*Imām* Ahmad Ibn Hanbal (ra) said, “There is nothing wrong with night raids, nor do I know of a single person who disliked it.”<sup>48</sup>

*Imām* An-Nawawī (ra) explained this *Hadīth* of As-Sa’b, saying, “And this means that the Prophet was asked regarding the ruling of the women and children of the *mushrikīn* whom they are raiding, and their women and children are killed (in the process)- so he clarified by saying, “*They are from their fathers.*”: In other words, there is no problem with that because the rulings upon their fathers are implemented upon them in the inheritance and in marriage and in equity in penalties (*Qisās*) and in blood-money and in other than that. And what is meant is that if they are not intended, for other than a necessity, as for the aforementioned *Hadīth* about the forbiddance of killing the women and children, then what is meant is if it is possible to differentiate (between the target and those who are present from women and children). And this *Hadīth*, which we have just mentioned, regarding the permissibility of attacking at night and killing the women and children, during the night attack; it is our scholarly opinion (*Math’hab*), as well as the scholarly opinion (*Math’hab*) of Mālik and Abī Hanīfah, as well as the majority. And the meaning of the night attack and the attacking them at night is raiding against them at night, where the man would not be recognized apart from the woman and child. As for the “*Tharārī*” (offspring), with the emphasis on the (letter) “ ” (“*Yā*”) – or without the emphasis, according to both dialects, whereas the emphasis is more correct – and the meaning of the offspring here is the women and children. And in this *Hadīth*, there is evidence upon permissibility of attacking at night and the permissibility of raiding upon those who the *Da’wah* has reached, without informing them about that. And in it, there exists that the children of the *Mushrikīn*; their ruling in this life is the (same) ruling as upon their fathers. As for in the hereafter, then regarding them, if they died before maturity, there are three scholarly opinions.”<sup>49</sup>

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<sup>48</sup> “*Fat’h Al-Bārī*” (6/146)

<sup>49</sup> Refer to “*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*” (12/49-50). Notice how the *Imām* (ra) mentioned that there is a difference of opinion regarding

And Ibn Al-Athīr (ra) said, "*At-Tabyīt*: Means striking the enemy at night time, raiding them while they are not aware. And the statement of the Prophet "*They are from them*" means- the ruling regarding them is the same as the rest of their people (kuffār). And similar is the other narration in which he said "*They are from their fathers.*"<sup>50</sup>

*Imām* Ash-Shāfi'ī (ra) said, "And it is permissible to raid the *kuffār* during the night or day- and if their women and children are killed in the process, then there is no need to pay blood money, nor punishment, nor expiation (kaffārah)."<sup>51</sup>

- 2) When the *kuffār* use their women and children as human shields, then it is permissible to kill them all (the fighters, and their women and children which are being used as shields).

*Imām* An-Nawawī (ra) said, "And if there is close combat [i.e. near their homes], and the *kuffār* use their women and children as (human) shields, *it is permissible to strike them.*"<sup>52</sup>

*Imām* Al-'Izz Ibn 'Abdis-Salām (ra) said, "We view it *permissible to kill the children of the kuffār* if they are used as shields."<sup>53</sup>

And *Imām* Al-Ansārī<sup>54</sup> (ra) said, "And it is prohibited to destroy animals, due to their innocence, and because of the prohibition of killing animals for any purpose other than eating- unless there is a need

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the *Hukm* of the children in the Hereafter- but in the life of this world he did not mention any difference of opinion in his statement, "*in this world, the children of the kuffār have the same Hukm (ruling) as their fathers*".

<sup>50</sup> Refer to "*Jāmi' Al-Uṣūl*" (2/733).

<sup>51</sup> Refer to "*Al-Umm*" (4/239). Notice how the *Imām* mentions killing the women and children during the broad day light.

<sup>52</sup> Refer to "*Minhāj At-Tālibīn*" (4/224).

<sup>53</sup> Refer to "*Qawā'id Al-Ahkām Fī Masālih Al-Anām*" (1/82).

<sup>54</sup> Zakariyyā Al-Ansārī, died 926 AH.

to kill them, such as killing horses which the *kuffār* ride upon when they fight. So in such a situation it is permissible to kill (these animals), to repel the harm of the *kuffār*- just as it is permissible to kill their women and children if they are used as shields.”<sup>55</sup>

*Shaykh Al-Islām* Ibn Taymiyyah (ra) said. “And the scholars are *united* that, if the armies of the *kuffār* shield themselves using the Muslim prisoners who are with them, and danger is feared for the (rest of the) Muslims if the *kuffār* are not fought- then it is permissible to fight them, *even* if it leads to the killing of the Muslims who were being used as shields.”<sup>56</sup>

So this is regarding a Muslim- and it is known that the blood of a *kāfir*- even of their women and children- is not equivalent to the blood of a Muslim. So if it is permissible to kill a Muslim in such a situation- then killing the women and children of the *kuffār* is obviously more worthy of being permissible.

And also Ibn Qāsim said, “He said in “*Al-Insāf*”: If they use a Muslim as a shield, then it is impermissible to strike him- except when it is feared (that it is a greater danger if the *kāfir* is not struck), then it is permissible to strike them, while aiming at the *kuffār*. And there is no argument against this (permissibility).”<sup>57</sup>

[AN IMPORATNT NOTE:

*Shaykh* Yūsuf Al-'Uyayrī (ra) explained:

And it is obligatory to note an important matter here: and this is that there is a difference in the *Hukm* [ruling] if the *kuffār* are using Muslims as their shields, and if they are using their own *kuffār* women and children.

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<sup>55</sup> Refer to “*Fat’h Al-Wahhāb*” (2/301).

<sup>56</sup> Refer to “*Majmū’ Al-Fatāwā*” 28/537-546, 20/52

<sup>57</sup> “*Al-Hāshiyah ‘Alā Ar-Rawdh*” 4/271

So if the human shields being used are Muslims, then the enemy should not be attacked except in the case of dire necessity- meaning that if the evil harm of leaving the *kuffār* is worse than the evil harm of killing those Muslim human shields; for example, if those *kuffār* later come back and kill even a greater number of Muslims; or if leaving those *kuffār* would cause a low morale amongst the Muslims.

But if the *kuffār* use their own women and children as human shields, then this situation is not as grave as the first situation (that has just preceded). It is permissible to kill those *kuffār* along with those (women and children) who are (originally) protected, if there is any need to do so- even if that need is not a dire necessity; because the *protection* placed upon the blood of the women and children of the *kuffār* is less than that of a Muslim (i.e. the blood of the Muslims is more valuable and protected)..

So the first situation is permissible for a dire necessity, while the second is permissible for any need that arises.]

- 3) When a catapult is used, it is permissible to attack the *kuffār*, even if it kills their women and children in such a situation. And similarly today, a similar analogy can be made for the permissibility of the use of heavy artillery like mortars, tanks, planes, bombs, etc.

Ibn Rushd (ra) said, “And the jurists are all united on the permissibility of using catapults to strike the fortresses of the *kuffār*, regardless of whether or not their women and children are in there; due to the Prophet attacking the People of At-Tā'if using a catapult.”

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And Ibn Qāsim, may Allāh be merciful to him, said in his commentary, “And it is permitted to fire upon the *kuffār* with catapults, even if children and women and old men and monks are killed

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<sup>58</sup> Refer to “*Bidāyat Al-Mujtahid*” (1/385-386).

unintentionally, because of the *Ijmā'* concerning the permissibility of terrorizing them. Ibn Rushd, may Allāh be merciful to him, said, "Terrorizing is permitted by *Ijmā'* against all types of *kuffār*." <sup>59</sup>

- 4) When there is a need to besiege, torch, burn, fumigate, drown the fortresses [and ships] of the *kuffār*, even if it leads to the killing/death of their women and children.

*Imām An-Nawawī* (ra) said, "And it is permissible to besiege the *kuffār* in their fortresses, and to drown them in water [if they are on ships], and to attack them with fire and catapults, and raiding them at night while they are unaware." *Imām Ash-Sharbīnī* (ra) said in his *Sharh* of the above quote from *An-Nawawī* (ra), "and to attack them with fire and catapults"- and this also includes demolishing their homes, and throwing snakes and scorpions upon them- even if there are women and children amongst them." <sup>60</sup>

*Imām Ibn An-Nahhās* (ra) said, "It is permissible to attack them with catapults, fire, and to drown them in water [if they are on ships] - even if there are women and children amongst them. But if there is a *Muslim* prisoner or merchant, or a *Musta'man* [a person with a covenant], then it is *Makrūh* [disliked], unless there is a necessity." <sup>61</sup>

*Imām Badr Ad-Dīn Al-'Aynī* (ra) said, "And the *Hadīth* of *Ibn 'Umar* (ra) <sup>62</sup> proves that it is permissible for the Muslims to plan against their enemies from amongst the *mushrikīn* with anything which deteriorates their valor, weakens their plots, and facilitates victory over them-

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<sup>59</sup> Refer to "*Al-Hāshiyah 'Alā Ar-Rawdh*" (4/270).

<sup>60</sup> Refer to "*Mughnī Al-Muhtāj Sharh Al-Minhāj*" (9/72).

<sup>61</sup> Refer to "*Mashāri' Al-Ashwāq*" (2/1024). Notice how the *Imām* (ra) did not state that it is *Makrūh* to attack the *kuffār* if their women and children are present- yet, he mentioned it for the Muslim prisoner/merchant and the *Musta'man*.

<sup>62</sup> He is referring to the *Hadīth* which *Ibn 'Umar* (ra) narrated, "The Prophet صلى الله عليه وسلم burnt and cut the date trees of *Banī An-Nadhīr*." Refer to "*Fat'h Al-Bārī*" (6/154).

whether it be cutting down their fruit trees, *poisoning their water supplies, and coercing them by besiegement*. And some of those who also declared this permissible are the People of Kūfah, Mālik, Ash-Shāfi'ī, Ahmad, Is'hāq, Ath-Thawrī, and Ibn Al-Qāsim. And the People of Kūfah said 'their trees can be burned, their countries can be devastated, and their cattle can be killed, *and their lands can be infested (planted purposely) with scorpions, if it is not possible to expel them*.'" <sup>63</sup>

*Intentionally Killing Them:*

- 5) When the women and children of the *kuffār* fight against Muslims, then it is permissible to kill them, intentionally targeting them.

"The 'Ulamā' have not disagreed concerning killing those who fight from the women and old men and that it is permissible to kill them. And also, the children who are able to fight and do fight; they are killed too."

*Imām An-Nawawī* (ra) said, "The 'Ulamā' are at consensus to act upon the *Hadīth* of the prohibition of killing women and children as long as they do not fight- But if they fight, then the majority of the scholars say they should be killed." <sup>64</sup>

*Imām Ibn An-Nahhās* (ra) said, "It is forbidden to kill the women of the *kuffār* and their children if they don't fight according to Ash-Shāfi'ī, Mālik, Ahmad, and Abū Hanīfah- but if they fight, then they are to be killed." <sup>65</sup>

*Ibn Al-Humām* (ra) said, "And likewise anyone who fights from amongst them (i.e. those who are originally forbidden from being

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<sup>63</sup> Refer to "*Umdat Al-Qārī*" (14/270). It is obviously apparent from his words that the fact of women and children being present does not deter the ruling of its permissibility.

<sup>64</sup> Refer to "*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*" (12/48).

<sup>65</sup> Refer to "*Mashāri' Al-Ashwāq*" (2/1023).

killed), then they should be killed to repel their harm, and because the act of *Qitāl* (fighting, killing) is permissible in *Haqīqah* (reality, i.e. the original ruling of *Qitāl*). And the insane person should not be killed, unless he fights, in which case he too should be killed. So if the child and the insane person fight, then they are killed." <sup>66</sup>

Ibn 'Ābidīn (ra) said, "And likewise it is permissible to kill the mute and deaf, and those who only have one hand, or one leg- because it is possible for them to still fight riding (on a horse, etc); *and similarly a woman should be killed if she fights.*" <sup>67</sup>

- 6) When any of them encourages their fighters, or supports them, or distracts the Muslims- then it is permissible to kill them.

Ibn Qudāmah Al-Maqdisī (ra) said, "If a woman stands in the ranks of the *kuffār*, or upon their fortress, and ridicules the Muslims, or reveals her naked self [as a distraction] - then it is permissible to strike her. As it is narrated on the authority of 'Ikrimah (ra), "When the Messenger

besieged the People of At-Tā'if, a woman came up and revealed her naked body. So the Messenger ordered, "Strike her!" So a Muslim man struck her." And this was not a mistake from him. And it is permissible to look at her private parts- in such a situation- since it is necessary to look at the target. And similarly, it is permissible to strike anyone who is (originally) protected from killing, such as a child or an old man and such - if she (or they) prepares arrows for the enemy, gives them water to drink, or encourages them to fight; because they will be considered as fighters." <sup>68</sup>

- 7) When they apostatize, then it is obligatory to kill all apostates, even if they are women.

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<sup>66</sup> Refer to "*Sharh Fat'h Al-Qadīr*" (5/203).

<sup>67</sup> Refer to "*Hāshiyat Ibn 'Ābidīn*" (3/225).

<sup>68</sup> Refer to "*Al-Mughnī*" (10/504).

*Al-Hāfith Ibn Hajar (ra) said, "And he (Ibn 'Abbās) narrated, "And the female apostate is to be killed, and Abū Bakr (ra) killed a woman who had apostatized during his Khilāfah, and all the Companions agreed, not a single one of them objected against him..." Because the original *kāfirah* can be enslaved and becomes property of the *Mujāhidīn*, but the female apostate cannot become enslaved, so she must be killed. And in the *Hadīth* of Mu'āth (ra) when the Prophet sent him to Yemen, there are the words, "Whichever man apostatizes from *Islām*, then call him back. So if he returns (then let him be), but if not, then strike his neck. And whichever woman apostatizes from *Islām*, then call her back. So if she returns (then let her be), but if not, then strike her neck." And the chain of narration of this *Hadīth* is *Hasan*. And it is a clear text regarding the issue being differed upon- so it is obligatory to come back to this text (and act upon it)." <sup>69</sup>*

Ibn Qudāmah Al-Maqdisī (ra) said, "And he (Ahmad Ibn Hanbal) said, "Whosoever turns back from *Islām*, from amongst the men and women, and is mature <sup>70</sup> and sane- they are given three days. So if they return to *Islām* (then let them be), and if not, then they should be killed..." There is no difference between men and women apostates in the obligation to kill them. This has been narrated from Abū Bakr (ra) and 'Alī (ra). And this is the stance of Al-Hasan Al-Basrī, Az-Zuhrī, Ibrāhīm An-Nakh'i, Mak'hūl, Hammād, Mālik, Al-Layth, Al-Awzā'i, Ash-Shāfi'i, and Is'hāq." <sup>71</sup>

- 8) When they curse the Prophet , or ridicule anything  
which manifests *Islām* [i.e. *Mus'haf*, *Ka'bah*, etc] - it is permissible

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<sup>69</sup> Refer to "*Fat'h Al-Bārī*", in "*Kitāb Istitābat Al-Murtaddīn*". And only a few have contradicted this ruling of the permissibility of killing women who have left *Islām*, claiming that the general prohibition from killing women and children of the *kuffār* should be applied here. *Imām* Ibn Hazm (ra) said regarding them in his "*Kitāb Al-Jihād*" from "*Al-Muhallā*", "*May this evil claim and its supporter(s) be destroyed!*"

<sup>70</sup> The Salaf excluded children from this.

<sup>71</sup> Refer to "*Al-Mughnī*" (10/74).



to kill them even if they are the women and children <sup>72</sup> of the *kuffār*.

Allāh (Most High) says,

**“But if they violate their oaths after their covenant, and attack your religion with disapproval and criticism then fight (you) the leaders of *kufr*- for surely their oaths are nothing to them - so that they may stop (evil actions).”** <sup>73</sup>

*Al-Hāfith* Ibn Kathīr (ra) said while explaining the above Verse, “And from this Verse, it is understood that whosoever insults the Prophet , or curses the *Dīn* of *Islām*, then such a person is to be killed.”

<sup>74</sup>

And Ibn ‘Abbās (ra) narrated, “A blind man had a wife <sup>75</sup> who used to revile the Prophet . So the man prohibited her, but she did not cease; he scolded her, but she continued. So during one night, she began reviling the Prophet and insulting him. So the husband took a dagger and put it in her stomach till he had killed her. And a child had come to her, and the blood splattered upon everything that was there. So when morning came, this [murder] was mentioned to the Messenger . So he gathered the people and announced, “*Allāh has notified (me) that a man has perpetrated this. I have a right upon him! Will he not stand up?*” So the blind man stood up and walked between the people, trembling, till he sat in front of the Prophet

. He said, “O Messenger of Allāh- I am her husband, and she used to curse you and revile you; and I forbid her, but she continued, I

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<sup>72</sup> As for their children- it is with the *Shart* (stipulation) that they have ‘*Aql* - the capability to understand what they say and do.

<sup>73</sup> *At-Tawbah*: 12

<sup>74</sup> Refer to “*Tafsīr Al-Qur’ān Al-‘Athīm*” (2/352).

<sup>75</sup> Ibn Taymiyyah (ra) in “*As-Sārim Al-Maslūl*” explains that this woman was a Jew *Thimmiyyah*.

restrained her, but she did not cease. So I took my dagger and put it in her stomach till I had killed her." So the Prophet \_\_\_\_\_ replied, "Nay, all of you (should) testify that her blood was worthless." <sup>76</sup>

*Shaykh Al-Islām* Ibn Taymiyyah (ra) explained this incident, and said, "And this *Hadīth* is a text which proves the permissibility of killing her due to her revilement of the Prophet \_\_\_\_\_ ; and this also is an evidence for killing a *Thimmī*." <sup>77</sup>

He also narrated, "When 'Umayr Ibn 'Adiyy Al-Khatamī (ra) heard the revilement of 'Asmā Bint Marwān [Al-Yahūdiyyah], he said, "O Allāh! You have an oath from me! If you return the Messenger of Allāh back to Al-Madīnah, then I will indeed kill her!" And the Messenger \_\_\_\_\_ was at Badr at that time.

So when the Prophet \_\_\_\_\_ returned, 'Umayr went to her in the middle of the night, and entered into her home while some of her children were sleeping around her- and one was being breast-fed. So he removed the infant who was being breast-fed with his hands, and placed a sword into her chest till it came out of her back. He then left, and prayed the Dawn Prayer with the Prophet \_\_\_\_\_. So after the Prophet \_\_\_\_\_ finished, he looked at 'Umayr and asked, "*Did you kill Bint Marwān?*" So he answered, "Yes, may my father be sacrificed for you O Messenger of Allāh!" And 'Umayr was afraid that he had transgressed against the Messenger \_\_\_\_\_ by murdering her, so he said, "Do I have to pay anything for killing her, O Messenger of Allāh?" So the Messenger \_\_\_\_\_ replied, "*Not even two goats would fight over her!*" As soon as 'Umayr heard these words from the Messenger, he said, "So please tell this to those around you." So the Messenger \_\_\_\_\_ said, "If any of you wish to look at a man who helped Allāh and His Messenger, without being seen- Then look at 'Umayr Ibn 'Adiyy." 'Umar Ibn Al-Khattāb (ra) said, "Look at this blind

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<sup>76</sup> Refer to "*Sahīh Abī Dāwūd*" (3665), and "*Sunan An-Nasā'ī*".

<sup>77</sup> Refer to "*As-Sārim Al-Maslūl 'Alā Shātim Ar-Rasūl*" (62).

man who obeyed Allāh in secrecy!" So the Messenger of Allāh

said, "Do not call him blind, indeed he is a person with sight!"

So after 'Umayr (ra) returned, he found her sons burying her; so when they saw him, they came to him and asked, "O 'Umayr! Are you the one who killed her?"

So he replied by saying, "Yes! *So plot against me, all of you, and give me no respite!*"<sup>78</sup> For I swear by Him in Whose Hand lays my life! If all of you were to say what she had said- then I would strike you all with my sword till either I had been killed, or till all of you were killed!"<sup>79</sup>

- 9) When they are the leaders of their people, it is permissible to kill them, even if they are women and children, queens or princes, or sorceress/witch.

Allāh (Most High) says:

**"Fight (you) the leaders of kufr."**<sup>80</sup>

*Imām Al-Mubārakfurī (ra) said, "[Quoting Ibn Al-Humām] 'And the queen is to be killed even if she does not fight, and likewise the child king [As-Sabiyy Al-Malik], and also the insane king. And this is because killing them breaks the determination of the enemies, as is mentioned*

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<sup>78</sup> *Hūd: 55*

<sup>79</sup> Refer to "*As-Sārim Al-Maslūl 'Alā Shātim Ar-Rasūl*" (95-98). Ibn Taymiyyah (ra) then mentions that her sons were both young (*sighār*) and old (*kibār*). So this means that if the young were to also curse the Prophet صلى الله عليه وسلم - then they should also be killed. And Al-Khattābī (ra) mentioned regarding Ibn As-Sayyād Al-Yahūdī- that it was not his youth which prevented the Prophet صلى الله عليه وسلم from permitting 'Umar (ra) to kill him- but it was the fact that he was under a covenant. And this is supported by the narration of the *Hadīth in Sharh As-Sunnah*, "*If he is him [i.e. Dajjāl], then you are not his killer- only 'Īsā Ibn Maryam is his killer. And if he is not, then it is not permissible for you to kill a person from the People of Covenant.*"

<sup>80</sup> *At-Tawbah: 12*

in “*Al-Mirqāt Al-Masābih*” [of *Al-Mullā ‘Alī Al-Qārī*].’ I say: Some of Ibn Al-Humām’s words have wisdom in them- so ponder upon this.”<sup>81</sup>

Ibn ‘Ābidīn (ra) said, “And the female ruler should be killed even if she does not fight, and the same ruling is for the child king. And this is because killing their ruler will deteriorate their valor.”<sup>82</sup>

- 10) When the *kuffār* break their covenant, the *Imām* can choose to kill them all, including their women and children, or to save part of them.

*Imām* An-Nawawī (ra) said in the chapter entitled, “Chapter: The Permissibility of Fighting Those Who Betray Their Covenant- and to Appoint a Just Ruler to Give the Verdict [i.e. fate] upon the [betraying] Town’s People.”<sup>83</sup>

“And this is what happened to Banū Quraythah. The Messenger told Sa’d Ibn Mu’āth (ra), “*Give your judgment upon them [i.e. Banū Quraythah], O Sa’d!*” Sa’d replied, “Allāh and His Messenger are more worthy of judging.” So the Prophet said, “Indeed Allāh has ordered you to judge upon them!”<sup>84</sup> And Sa’d (ra) gave the judgment for their men to be killed, and their properties/wealth, women, and children to be distributed amongst the Muslims.”<sup>85</sup>

Ibn Hajar (ra) said, “And the Prophet killed some of the *kuffār* on the Day of Badr, and ransomed others, and released others; and similarly he killed (every male from) Banū Quraythah; and released Banū Al-Mustaliq; and he killed Ibn Khatal and others at Makkah, and released the rest; and he enslaved Hawāzin; and he

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<sup>81</sup> Refer to “*Tuhfat Al-Ahwathī*”, in the “*Kitāb As-Siyar*”.

<sup>82</sup> Refer to “*Hāshiyat Ibn ‘Ābidīn*” (3/225).

<sup>83</sup> Refer to “*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*” (12/92).

<sup>84</sup> Refer to “*Fat’h Al-Bārī*” (7/412).

<sup>85</sup> Refer to “*Fat’h Al-Bārī*” (7/329, 411-414), and “*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*” (12/92-93).

released Thumāmah Ibn Uthāl. So all these prove that the saying of the majority of the scholars is most correct- that the judgment is up to the Imām." <sup>86</sup>

And Al-Mubārakfūrī (ra) said, "And in this incident (of Sa'd Ibn Mu'āth and Banū Quraythah) there is evidence that it is permissible to let the enemies choose a man from amongst the Muslims to give a verdict upon them which would be binding- whether the verdict be death or enslavement." <sup>87</sup>

Ibn Hazm (ra) said, commenting on the *Hadīth*: "It came on the Day of Quraythah that whoever attained the age of puberty, was executed." Ibn Hazm said, "This was general from the Messenger of Allāh that he did not leave (alive) from them, a tyrant, or a farmer or a tradesman or an old man and this is an authentic *Ijmā'* from him." <sup>88</sup>

*Imām* Az-Zayla'ī (ra) said, "So if it is permissible to kill the children of the mushrikīn for the benefit [Maslahah] of the Muslims- then killing their elders is even more worthy of being permissible, if there is a benefit in doing so- such as if they were kings. But if there is no benefit, then they shouldn't be killed unless they fight- in which case they should be killed to repel (their harm)." <sup>89</sup>

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<sup>86</sup> Refer to "*Fat'h Al-Bārī*" (6/152).

<sup>87</sup> Refer to "*Tuhfat Al-Ahwathī*", in "*Kitāb As-Siyar*".

<sup>88</sup> Refer to "*Al-Muhallā*" (7/299).

<sup>89</sup> Refer to "*Tabyīn Al-Haqā'iq*", in "*Kitāb As-Siyar*". So what is obvious is that the reason why the children and women of Banū Quraythah were spared, was because there was a benefit [Maslahah] in keeping them alive- meaning enslavement. And killing them would have meant destroying valuable property. But as Az-Zayla'ī (ra) clarifies- that if there is indeed a benefit in killing the women and children of the *kuffār*- a benefit which would have to be greater than the benefit of enslaving them- then it is permissible to kill them.

- 11) When *kuffār* target the women, children, and the elderly of the Muslims- then it is permissible in this situation to do the same thing to the women, children and elderly of the *kuffār*.

As Allāh (Most High) has said:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”** <sup>90</sup>

**“And those who, when an oppressive wrong is done to them, they take revenge. The recompense for an evil is an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from Allāh. Verily, He likes not the wrong-doers. And indeed whosoever takes revenge after he has suffered wrong, for such there is no way (of blame) against them. The way (of blame) is only against those who oppress men and wrongly rebel in the earth, for such there will be a painful torment. And verily, whosoever shows patience and forgives that would truly be from the things recommended by Allāh.”**

<sup>91</sup>

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones.”** <sup>92</sup>

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<sup>90</sup> *Al-Baqarah*: 194

<sup>91</sup> *Ash-Shūrā*: 39-43

<sup>92</sup> *An-Nahl*: 126

And the statements of the scholars will be brought in the remainder of this book, along with further evidence and clarification.

*Conclusion:*

These are some of the situations which are exceptions to the general prohibition against killing women and children of the *kuffār*; amongst these situations, it is permissible to sometimes kill them intentionally, and also unintentionally- as long as there is a *Maslahah* [benefit (in this case, greater than the benefit of enslaving them)] for the Muslims and *Mujāhidīn* in doing so.

So all these prove that the protection [*Ismah*] of their blood is not unrestricted- *unlike* the prohibition of fornication and sodomy and the likes, which *are* unrestrictedly forbidden. Rather- the *Sharī'ah* of *Islām* has made the blood of their women and children permissible in these exceptions. So this reveals the mistake of the people who claim that their protection [*Ismah*] is unrestricted and absolute under all circumstances.

## Chapter Four:

### The *Salaf's* Understanding of the Rule of Equal Retaliation

And it is not a strange matter that it is permissible to do something by *Qisās*, which would otherwise be forbidden in normal situations.

**“And for the prohibited things, there is the Law of Equality (Qisās). Then whoever transgresses the prohibition against you, you transgress likewise against him.”**<sup>93</sup>

*Imām At-Tabarī* (ra) said while explaining this Verse, “This means (that Allāh is saying)... Because I have made the forbidden things a matter of *Qisās*- So whichever *mushrikīn* makes permissible- O *Mu'minīn*- the sanctity of My Sanctuary [*Al-Masjid Al-Harām*], then you too make it permissible (*Istihlāl*) similarly.”

And we will briefly mention a few of the statements of the '*Ulamā'* of the *Salaf* regarding forbidden things- which become permissible in the condition of *Qisās*.

#### 1) The Prohibition of Fighting in the Sacred Months

**“The sacred month is for the sacred month, and for the prohibited things, there is the Law of Equality (Qisās). Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”**

<sup>94</sup>

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<sup>93</sup> *Al-Baqarah*: 194

<sup>94</sup> *Al-Baqarah*: 194



*Imām Al-Qurtubī* (ra) mentioned in his *Tafsīr* in the explanation of this Verse, "And it is narrated from Al-Hasan that the *mushrikīn* asked the Prophet , "Are you prohibited from fighting in the Sacred Months?" So the Messenger replied, "Yes." So the *mushrikīn* planned to fight against him in those months- So Allāh revealed this Verse.

And the meaning of this is that- If they permit for themselves (fighting in the Sacred Months) - then you too fight against them in it."

## 2) The Prohibition of Fighting in Al-Masjid al-Harām

Allāh says regarding Al-Masjid al-Harām,

**"Whosoever enters it, he attains security."** <sup>95</sup>

And He said:

***And fight not with them at Al-Masjid Al-Harām (the sanctuary at Makkah), unless they (first) fight you there. But if they attack you, then kill them. Such is the recompense of the disbelievers"*** <sup>96</sup>

*Al-Hāfith Ibn Kathīr* (ra) says in his *Tafsīr* of the above Verse, "Do not initiate fighting against the *kuffār* in *Al-Masjid Al-Harām*- unless they fight against you- then you have the right to fight against them." <sup>97</sup>

## 3) The Prohibition Against Mutilation

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<sup>95</sup> *Āl 'Imrān*: 97

<sup>96</sup> *Al-Baqarah*: 191

<sup>97</sup> And *Shaykh 'Abdul-'Azīz Al-Jarbū'* (fa) said, "Allāh has prohibited us from fighting them in *Al-Masjid Al-Harām* with a general forbiddance- and it is restricted by the situation in which *they* start to fight us in there."

Ibn Taymiyyah (ra) said, "As for mutilation, then it is forbidden, except if it is done for Equal Retaliation. And as 'Imrān ÷bn Husayn narrated, "The Messenger never gave us a speech, except that he had also ordered us with honesty, and prohibited us from mutilation." And even the *kuffār*, when we fight against them- we cannot mutilate them, nor cut off their ears, nor disembowel them - unless they do that to us, then we can do to them as they did to us." <sup>98</sup>

And it is regarding mutilation that Allāh revealed <sup>99</sup>,

**"And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted."** <sup>100</sup>

#### 4) The Prohibition of Punishing With Fire

From Aboo Hurayrah RAA that the Prophet said, "And verily, no one punishes with fire except Allāh." <sup>101</sup>

Al-Bukhārī mentions the following *Hadīth* under the chapter he entitled, "If a mushrik burns a Muslim- Can he be burned?"

And Anas Ibn Mālik (ra) narrated, "Some people of the tribe of 'Ukl and 'Uraynah arrived at Madīnah to meet the Prophet and embraced *Islām* and said, "O Prophet of Allāh! We are the owners of milch livestock (i.e. bedouins) and not farmers (i.e. countrymen)." They found the climate of Al-Madīnah unsuitable for them. So the Messenger ordered that they should be provided with some milch camels and a shepherd and ordered them to go out of Al-Madīnah and to drink the camels' milk

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<sup>98</sup> Refer to "*Majmū' Al-Fatāwā*" (28/314).

<sup>99</sup> Refer to "*Tafsīr Al-Qur'ān Al-'Athīm*" (2/653) and Al-Qurtubī (10/132).

<sup>100</sup> *An-Nahl*: 126

<sup>101</sup> Refer to "*Fat'h Al-Bārī*" (6/149-150).

and urine (as medicine) So they set out and when they reached Al-Harrah, they apostatized after embracing *Islām*, and killed the shepherd of the Prophet and drove away (with) [i.e. stole] the camels. When this news reached the Prophet, he sent some people in pursuit of them. (So they were caught and brought back to the Prophet). The Prophet gave his orders in their concern. *So their eyes were branded with pieces of iron and their hands and legs were cut off and they were left away in Al-Harrah till they died in that state of theirs.*" <sup>102</sup>

Al-Bājī (ra) commented regarding this incident, "They [the apostates] had done the same thing to the shepherds. So in this situation, it is permissible to mutilate [with fire] the one who mutilated the Muslim [with fire] - in accordance with the rule of *Qisās*." <sup>103</sup>

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<sup>102</sup> Refer to "*Sahīh Al-Bukhārī*" (2/546, # 1430) and "*Sahīh Muslim*" (3/1296, # 1671).

<sup>103</sup> Refer to "*Al-Muntaqā Sharh Al-Muwatta'*" (3/172). It should be mentioned that some of the *Salaf* disliked the use of fire completely, as Ibn Hajar (ra) said, "And the *Salaf* disagreed with regards to burning- 'Umar and Ibn 'Abbās and others disliked it, whether it be for their apostasy, or war (against Allāh), or even *Qisās*. And it was held permissible by 'Alī and Khālid Ibn al-Walīd and others." [*Fat'h Al-Bārī* 6/150]. And Ash-Shawkānī said, "And indeed Abū Bakr (ra) burned people with fire in the presence of the Companions; and Khālid Ibn Al-Walīd burned people from amongst the apostates, and so did 'Alī." [*Nayl Al-Awtār* 7/250]. And Ibn Taymiyyah said, "It is narrated with good chains of narration from him ('Alī) that he torched the heretics." [*Majmū' Al-Fatāwā* 8/474]. And it might be argued that 'Alī, Abū Bakr, and Khālid were not aware of the *Hadīth* prohibiting the use of fire as punishment- but this is a futile argument. Because it is narrated that Ibn 'Abbās (ra) said about 'Alī (ra) burning the apostates, "If it was up to me, I would not have torched them due to the prohibition of the Prophet صلى الله عليه وسلم, "None should punish with fire, because it is Allāh Who punishes with fire." But instead I would have just killed them." [Refer to "*Saheeh Al-Bukhārī*" 6/2537]. And when this criticism from Ibn 'Abbās (ra) reached 'Alī (ra), he did not accept his understanding of the *Hadīth* (i.e. that it is prohibited under all circumstances) - and remained upon the validity of his actions of torching the apostates, and said regarding the statement of Ibn 'Abbās (ra), "'Woe to Ibn 'Abbās!" [Refer to Ad-Dāraqutnī 3/108, "*Musnad Ahmad*" 1/282, "*Musannaf*

## 5) The Prohibition of Destroying Crops and Trees

Regarding this Allāh says,

**“And when he turns away (from you O Muhammad), his effort in the land is to make mischief therein and to destroy the crops and the cattle, and Allāh likes not mischief.”** <sup>104</sup>

And Abū Bakr (ra) said to his armies, “Do not cut down a tree, do not devastate (land), nor destroy a crop.” <sup>105</sup>

Ibn Qudāmah (ra) said, “And the trees of the *kuffār* should not be cut down, and their crops should not be burned- unless they do that in our lands- then it should be done to theirs, so that they cease (from doing it again)... And basically, trees and crops are divided into three categories:

- a) That which is necessary to destroy – such as those which are close to their fortresses, and is an obstruction in fighting against the enemies, or impairs the Muslims (from attacking them), or there is a need to cut it to expand the road, or to help the battle, or to repair the road, or to hide a catapult- or other things (like these); or if the *kuffār* destroy ours, then the same can be done to theirs- for them to stop doing such; and this is permissible without any disagreement that we know of.
- b) That which will harm the Muslims if it is cut down (or destroyed)- due the Muslims benefiting from it remaining, taking

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‘*Abdur-Razzāq*’ 5/213]. And it has been recorded by ‘*Abdur-Razzāq*’ that, “When Khālid torched the apostates, ‘Umar (ra) told Abū Bakr (ra), “*Will you allow him to punish with the Punishment of Allāh?*” So Abū Bakr (ra) replied, “*I will not cover a sword which Allāh has unleashed upon the kuffār.*”

<sup>104</sup> *Al-Baqarah*: 205

<sup>105</sup> Refer to “*Al-Mughni*” (9/289), “*Al-Mabsūt*” (10/31), and “*Al-Muhallā*” (7/294).

its shade, and eating from its fruits and vegetation- in which it is a norm, and it does not cause hostility between the *kuffār* and the Muslims. So if we were to cut down and destroy their trees, they might destroy ours- so this is prohibited due to its harmful affects upon the Muslims.

- c) Anything which is other than these two categories- that which neither benefits the Muslims, nor harms them- except that it enrages and harms the *kuffār*. Then regarding this, there are two opinions:
- i) It is not permissible due to the *Hadīth* of Abū Bakr (ra), and similar has been narrated as *Marfū'* to the Prophet . And also because it is useless destruction, so it is not permissible, just like killing animals [is not permissible without reason]. And this is the opinion of Al-Awzā'ī and Al-Layth and Abū Thawr.
  - ii) It is permissible, and this is the opinion of Mālik, Ash-Shāfi'ī, Is'hāq, and Ibn Al-Munthir."

End of quote from Ibn Qudāmah Al-Maqdisī (ra). <sup>106</sup>

So these are just a few of the situations regarding which the *Salaf* have stated that a general prohibition is removed in situations of *Qisās*. And some of the *Salaf* even went to the extent of declaring things which are *kufr* to be permissible- such as *Sihir* [magic].

Under the Tafsīr of the following Verse,

**"Verily, Allāh enjoins *Al-'Adl* (justice) and *Al-Ihsān* (goodness), and giving (help) to kith and kin: and forbids *Al-Fahshā'* (all filthy deeds), and *Al-Munkar* (evil deeds), and *Al-Baghy* (all kinds of oppression), He admonishes you, that you may take heed."** <sup>107</sup>

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<sup>106</sup> Refer to "*Al-Mughni'*" (10/509).

<sup>107</sup> Al-Nahl: 90

*Imām Al-Qurtubī (ra)* said, “And that is how the Prophet dealt with the Jew who put magic on him- even though the Prophet had the right to take Equal Revenge against him, due to the Statement of Allāh,

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>108</sup>

But he preferred to forgive and pardon, by taking the Statement of Allāh,

**And verily, whosoever shows patience and forgives that would truly be from the things recommended by Allāh.”** <sup>109</sup>

End of quote from *Imām Al-Qurtubī (ra)*.

Although this is obviously incorrect- due to the fact that *kufr* is not permissible except in the condition of *Ikrāh* (forced coercion) - but despite this fact, this demonstrates how the *Salaf* had understood these Verses of *Qisās*. And indeed- unlike magic- the killing of women and children is far from *kufr*- and it is permissible in many situations- so how can it be argued that the Verses of *Qisās* cannot be applied to the women and children of the *kuffār*- even though the *kuffār* kill our women and children? And the majority of the *Salaf* are agreed upon - *Imām Ash-Shawkānī* may Allāh be merciful to him said, “And the Verses of Allāh:

**“The recompense for an evil is an evil like thereof.”** <sup>110</sup>

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<sup>108</sup> *An-Nahl*: 126

<sup>109</sup> *Ash-Shūrā*: 39-43

<sup>110</sup> *Ash-Shūrā*: 40

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>111</sup>

**“Then whoever transgresses the prohibition against you, you transgress likewise against him.”** <sup>112</sup>

Essentially, the *decisive evidences which generally* prohibit the wealth, blood, and honor of a human are *restricted* by these three Verses.” <sup>113</sup>

And just as *Imām* An-Nawawī (ra) explained the *Hadīth* of As-Sa'b, saying, “And this means that the Prophet was asked regarding the ruling of the women and children of the *mushrikīn* whom they are raiding, and their women and children are killed (in the process)- so he clarified by saying, “*They are from them*”: meaning, there is no problem in killing them (in this situation), because they have same rulings [Ahkām] of their fathers, with regards to inheritance, marriage, *Qisās*, blood money, etc. And the intended meaning is that they should not be targeted *without any necessity*.” <sup>114</sup>

And in such a situation, in which the *kuffār* kill our women and children on a regular basis, the amount of which cannot be counted- we can certainly take this as a “necessity” -as the words of Ibn Qudāmah (ra) regarding the crops, etc. have preceded, “*Or if the kuffār destroy ours, then the same can be done to theirs- for them to stop doing such.*”

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<sup>111</sup> *An-Nahl*: 126

<sup>112</sup> *Al-Baqarah*: 194

<sup>113</sup> Refer to “*Nayl Al-Awtār*” (6/39)

<sup>114</sup> Refer to “*Al-Minhāj Sharh Sahīh Muslim Ibn Al-Hajjāj*” (12/49-50).

## **Chapter Five:**

# **The Verdicts of Contemporary Scholars Regarding Killing Women and Children as Equal Retaliation**

## **The Verdict of *Shaykh Al-Mujāhidīn***

### **Yūsuf Al-'Uyayrī**

The following is taken from the book of *Shaykh Yūsuf Al-'Uyayrī*, may Allāh accept his martyrdom, "*Haqīqat Al-Harb As-Salībiyyah Al-Jadīdah*":

And the most important argument that those who object against the raids of Sept. 11, is that the act of destroying the World Trade Center, the Pentagon, and the White House- this would entail killing a large number of "innocent" victims from amongst women, children, and those who are not hostile- amongst those whom the *Sharī'ah* has prohibited their killing.

And the refutation of these doubts will be mentioned by going through the specific situations which are exceptions to the general argument they use...

Indeed we have seen the clear evidences which prohibit killing women, children, the elderly, and those like them who have the same ruling; yet the protection (*'Ismah*) provided to these *kuffār* is not unrestricted. Rather, there are situations in which it is permissible to kill them, whether intentionally or unintentionally- and we shall mention these situations with their explanations...



**The First Situation:**

So from amongst the situations in which it is permissible to kill those protected *kuffār*- is when the Muslims punish the *kuffār* with the likeness of which they (i.e. the Muslims) were punished.

So if the *kuffār* target the women, children, and the elderly of the Muslims- then indeed it is permissible in this situation to do the same thing to the *kuffār*.

As Allāh (Most High) has said:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”** <sup>115</sup>

**“And those who, when an oppressive wrong is done to them, they take revenge. The recompense for an evil is an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from Allāh. Verily, He likes not the wrong-doers. And indeed whosoever takes revenge after he has suffered wrong, for such there is no way (of blame) against them. The way (of blame) is only against those who oppress men and wrongly rebel in the earth, for such there will be a painful torment. And verily, whosoever shows patience and forgives that would truly be from the things recommended by Allāh.”**

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<sup>115</sup> *Al-Baqarah*: 194

<sup>116</sup> *Ash-Shūrā*: 39-43

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones.”** <sup>117</sup>

And these Verses are general regarding everything- and the specific reason for its revelation does not restrict its meaning; because a basic principle in the *Sharī'ah* is that *“The text is according to the generality of its words, and not restricted by the reason (of its revelation)”*.

The Verse **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted...”** <sup>118</sup> was revealed regarding mutilation, as narrated by At-Tirmithī in his *Sunan*, with a *Sahīh* chain of narration <sup>119</sup>, on the authority of Ubayy Ibn Ka'b may Allāh be pleased with him , *“On the Day of Uhud, sixty four of the Ansār and six of the Muhājirīn were martyred- amongst them, Hamzah Ibn 'Abdil-Muttalib. The kuffār had mutilated them. So the Ansār said, “If we gain upon them for even one day, we will mutilate even more of them.” Then, on the Day of the Conquest of Makkah, Allāh revealed, “And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones.”* <sup>120</sup> A man then said, *“There shall be no more Quraysh after today,”*- and the Prophet replied, *“Refrain from (killing) the people except the four.”* <sup>121</sup>

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<sup>117</sup> *An-Nahl*: 126

<sup>118</sup> *An-Nahl*: 126

<sup>119</sup> At-Tirmithī (3054), similarly also narrated by An-Nasā'ī, Ibn Hibbān, At-Tabarānī, Al-Hākim, Ibn Sa'd, Al-Bazzār, Ibn Al-Munthir, Ibn Mardawayh, and declared *Sahīh* by Al-Bayhaqī in *“Ad-Dalā'il”*, and Abū Nu'aym in *“Al-Ma'rifah”*.

<sup>120</sup> *An-Nahl*: 126

<sup>121</sup> The scholars of Hadīth say that the four persons were 'Ikrimah Ibn Abī Jahl, 'Abdullāh Ibn Khatal, Muqayyis Ibn Subābah, and 'Abdullāh Ibn Sa'd Ibn Abī As-Sarh. Refer to *'Awn Al-Ma'būd* (7/247-248).

And Ibn Hishām may Allāh be merciful to him has narrated in his *Sīrah*:

“When the Messenger had seen how his uncle Hamzah may Allāh be pleased with him was mutilated, he said, *“If it were not for Safiyyah being in anguish, and that it might become a Sunnah after me- then I would have left him (i.e. Hamzah) so that he could be in the stomachs of the beasts and in the harvests of the birds. And when Allāh gives me victory over the Quraysh, wherever it may be, indeed I will mutilate thirty of their men!”* And when the Muslims saw the agony of the Messenger of Allāh

, and his fury against those who did such a thing to his uncle- they exclaimed, “By Allāh! If Allāh gives us victory over them for even one day, we will mutilate them in such a manner that none of the Arabs have ever been mutilated!”

Ibn Is’hāq may Allāh be merciful to him narrated from Ibn ‘Abbās may Allāh be pleased with them both, “Allāh (Most High) revealed regarding the statement of the Messenger and the statements of the Companions, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones. And endure you patiently (O Muhammad), your patience is not but from Allāh. And grieve not over them (pagans), and be not distressed because of what they plot.”**<sup>122</sup> So the Messenger of Allāh forgave them and prohibited (his Companions) from mutilating.” - End of quote from Ibn Hishām may Allāh be merciful to him.

And Ibn Abī Shaybah narrates, “On the Day of Uhud, after the *mushrikīn* had departed, the Muslims saw how their martyred brothers were horrifically mutilated, the *mushrikīn* had cut off their ears and noses, and split open their bellies; So the Companions said, “If Allāh lets us reach them (i.e. gain victory over them), indeed we will mutilate them.” So Allāh sent down the Verses, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them**

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<sup>122</sup> *An-Nahl*: 126-127

**with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones.”** <sup>123</sup> The Messenger of Allāh then said, *“Nay, we shall be patient.”* <sup>124</sup>

It should be remembered that mutilation is (originally) forbidden and prohibited by the words of the Prophet , as is narrated by Al-Bukhārī may Allāh be merciful to him on the authority of ‘Abdullāh Ibn Yazīd may Allāh be pleased with him , “He prohibited from looting war booty and from mutilation.”

Ibn Hajar may Allāh be merciful to him explained, “Mutilation means disfigurement of the appearance of a corpse; for example, chopping off limbs for it to be remembered (by the opposition), and the likes.” <sup>125</sup>

And in the *Sahīh* of Muslim, from the *Hadīth* of Buraydah, the Prophet ordered the commanders of his armies and warriors with, *“Raid in the Name of Allāh; Fight those who disbelieve in Allāh; Raid! Do not commit excess, nor betray! Do not mutilate! Do not kill a child!”* <sup>126</sup>

Yet, if the enemy mutilates the martyrs of the Muslims, then it is permissible for the Muslims to mutilate the dead from amongst the enemy- meaning that the prohibition is lifted in this situation. And patience and refraining from committing mutilation is better for the Muslims.

As for the Messenger of Allāh , then patience and refraining from mutilation was obligatory [*Wājib*] upon him- because Allāh said to him, **“And endure you patiently (O Muhammad), your patience is not but from Allāh”** <sup>127</sup>; and as for the Believers, it is preferred [*Mandūb*] -

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<sup>123</sup> *An-Nahl*: 126

<sup>124</sup> Refer to “*Musannaf Ibn Abī Shaybah*” (7/366)

<sup>125</sup> Refer to “*Fat’h Al-Bārī*” (5/120)

<sup>126</sup> Refer to Muslim (3/1357), also narrated by Al-Bukhārī in “*At-Tārikh*” (7/70), and Al-Khatīb in his “*Tārikh*” (3/39).

<sup>127</sup> { }

because Allāh said to them, **“if you endure patiently”** <sup>128</sup>. So the Verse testifies that the prohibition of mutilation is lifted in the condition of ‘equal retaliation’.

And the Verse is general- it is permissible for the Muslims to treat their enemies with the likeness of everything they perpetrate against the Muslims. So when the enemies target the women and children of the Muslims- then it is the right of the Muslims to retaliate equally- so they can target the women and children of the *kuffār*; and this is because of the generality of this Verse.

*Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him said:

“Verily, the retaliation in kind is a right for them. So it is permitted for them to perform it in order to restore their morale and to take revenge, yet they may decline it (i.e. this right) when patience is preferable. But this is when the retaliation in kind would not result in any advance in the *Jihād* and when it would not increase their terror (so as to keep them away) from the likes of that. But if a widespread retaliation in kind would be an invitation for them towards *Īmān*, or a preventative factor towards their aggression, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmīc* legislated punishments) and a (proper) *Sharī'ah*-based *Jihād*.” <sup>129</sup>

And Ibn Al-Qayyim may Allāh be merciful to him also said:

“Indeed Allāh has permitted the Muslims to mutilate the *kuffār* if they mutilate them (i.e. Muslims) - even though mutilation is forbidden (originally). Allāh (Most High) says, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>130</sup> So this Verse is evidence that cutting noses and ears, and splitting open bellies- if done

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<sup>129</sup> Narrated by Ibn Muflih may Allāh be merciful to him in “*Al-Furū*” (6/218). Also see “*Al-Ikhtiyārāt*” (5/521) of *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him.

<sup>130</sup> *An-Nahl*: 126

in retaliation- then it is neither a transgression nor a crime- rather, equal retaliation is justice.

As for mutilation being prohibited, then it is narrated by Ahmad in his "*Musnad*" from the *Hadīth* of Samurah Ibn Jundub may Allāh be pleased with him and 'Imrān Ibn Husayn may Allāh be pleased with him , who said, "The Messenger never gave us a speech, except that he had also ordered us with honesty, and prohibited us from mutilation." <sup>131</sup>

Then if it is said, what if he doesn't die when that which was done is done to him, then you kill him, and that is something extra on top of what was done, so where is the equal retaliation? It is said, this is refuted by the execution with the sword. Because if he (the executioner) strikes him on his neck, and does not kill him, then it is for us to strike him a second and a third time until it kills him, by agreement. Even if the first one struck (only) once. And the consideration of equal retaliation has two different ways: one of them is to consider the thing based upon its equivalent and its identical and it is the *Qiyās Al-'Illah* (analogy based upon the reason for the ruling), in which the thing is made equal to its identical. The second is the *Qiyās Ad-Dalālah* (analogy based upon the indication), in which the joining between the *Asl* (basis) and the *Fara'* (branch) is by using the evidence of the *'Illah* and that which is necessitated by it. Then, if added to one of these two is a generality in phrasing, then it is from the strongest evidences, due to the coming together of the two generalities; the phrasing and the meaning. And the combination of the two evidences; the *Sam'ī* (Revelation) and the intellectual. So then that which is necessitated by the Book and the *Mizān* (the scale) and the *Qisās* in this issue of ours would be from this type, as it has been shown earlier, and this is clear and there is no ambiguity in it, and to Allāh is the Praise and the Grace." <sup>132</sup>

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<sup>131</sup> Refer to "Sunan Abī Dāwūd" (3/35, # 2668), "Sunan An-Nasā'ī" (7/101), At-Tabarānī in "Al-Kabīr" (18/216), and "Al-Kanz" (17009).

<sup>132</sup> "Hāshiyat Ibn Al-Qayyim 'Alā Sunan Abī Dāwūd": Vol. 12/180

And these words of *Al-'Allāmah* Ibn Al-Qayyim may Allāh be merciful to him are a refutation against those who claim "How can you kill their women and children just because they kill the women and children of the Muslims? And how can you take revenge from those who are not the perpetrators- even though Allāh says, "**And no bearer of burdens shall bear the burden of another.**" <sup>133</sup> ?"

And this claim is futile- it is contradictory, even if we claimed that we can only take revenge from the fighters... But then how did the Prophet fight against the entire Quraysh, even though it was actually Banū Bakr Ibn Wā'il, or the chiefs of the Quraysh, who were the ones who violated the treaty!

And how did the Prophet kill the men, the elderly, and the hired laborers of Banū Quraythah- even though they did not violate the covenant; it was only their chiefs and advisors who violated the covenant- and for their crime, 700 souls were killed, while the remaining were enslaved.

And also, look at how the scholars *unrestrictedly* declared it permissible to mutilate the men of the enemy- the scholars did *not* stipulate that it has to be done *only to the perpetrator* of mutilation.

And if a man killed another, then why does his family take responsibility for the blood money and they are fined, while the one who committed the crime was (only) an individual from them, and they did not take part with him, and despite that, they take responsibility for his crime?

And also in the issue of the *Al-Qasāmah*, how could the *Shara'* (the *Islāmic* Legislation) permit fifty men from the *Awliyā'* (guardians) of the murdered one, who did not witness the murder, to take an oath against the one who is accused of the murder, that he killed there *Walī*, then he

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<sup>133</sup> *Al-An'ām*: 164

is given to them entirely so that they can kill him? So how is he killed in this condition while the guiltiness has not yet been confirmed in the same way as it is in the situation of the confession or the witnesses?

And it has come in the two "*Sahīhs*" also, from the *Hadīth* of Rāfi' Ibn Khadij who said: "We were with the Prophet at Thī Hulayfah at Tuhāmah, when we attained some sheep and camels. So the people quickly boiled it in pots, then the Prophet came and ordered for them to be dumped out" So how could the Messenger punish those ones by destroying the meat, while it is from the spoils of war which had not been divided yet, while the whole army had a right regarding it, and those who transgressed were only the ones who boiled (the meat in) the pots, so why was the punishment a group one?

Ibn Hajar said in "*Al-Fat'h*": "And Al-Bukhārī considered the dumping out to be a monetary punishment, even if the money wasn't specific to those ones who did the slaughtering, but when their greediness was attached to it, the punishment reached them."

And also, that false claim can be refuted by the generality of the Verse,

***"And fear the Fitnah (affliction and trial, etc.) which affects not in particular (only) those of you who do wrong"*** <sup>134</sup>

and also the Verse,

***"And when We decide to destroy a town (population), We (first) send a definite order (to obey Allāh and be righteous) to those among them who are given the good things of this life. Then, they transgress***

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<sup>134</sup> *Al-Anfāl*: 25



**therein, and thus the word (of torment) is justified against it (them). Then We destroy it with complete destruction.”** <sup>135</sup>

And the Pure *Sharī'ah* came with these types of punishments for those types of situations of transgressions. Because these crimes, for which Allāh also punishes those who did *not* perpetrate them, are transgressions which implicate the collective group- for indeed the group was capable, since it was aware that they were committing crimes, of forcing the perpetrators to refrain from their crimes. And it is for this reason that the *Sharī'ah* has brought punishment upon the collective group on behalf of the individual criminals; so that this can be an encouragement and motivation for the collective group to stop the perpetrators *before* they are all collectively punished. And Allāh knows best.

And refer to the previous words of Ibn Al-Qayyim may Allāh be merciful to him for clarification.

And the aforementioned Verses cannot be restricted to likeness in *Qisās* only- Nay, they are general regarding every punishment (*'Uqūbah*) and penalty (*Hadd*)- whether it be regarding a Muslim, a *Thimmī* <sup>136</sup>, a *Mu'āhid* <sup>137</sup>, or a *Harbī* <sup>138</sup>.

*Imām* Al-Qurtubī may Allāh be merciful to him said, “And the saying of Allāh:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him.”** <sup>139</sup>

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<sup>135</sup> *Al-Isrā'*: 16

<sup>136</sup> *Ahl Ath-Thimmah* are the People of the Book who live in the Lands of *Islām*, and the Laws of *Islām* are applied upon them, and they are required to pay the *Jizyah*.

<sup>137</sup> *Ahl Al-'Ahd* are *kuffār* with whom the Muslims have a treaty.

<sup>138</sup> Those *kuffār* who are neither *Ahl Ath-Thimmah*, nor *Ahl Al-'Ahd*.

<sup>139</sup> *Al-Baqarah*: 194

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>140</sup>

The *Salaf* have said that these Verses are all-encompassing of everything- and they supported this conclusion with the statement of the Prophet , which is narrated by Abū Dāwūd,

That he kept the broken plate in the home of the one who broke it and sent the intact one, and he said: “*A platter for a platter and food for food*”

There is no difference of opinion between the scholars, that the original base of this Verse is about being equal in *Qisās*; so whosoever kills with something, then he shall be killed with the thing which he used to kill with- and this is the opinion of the majority of the scholars- as long as they do not kill with something which is a sin (*Fisq*), such as sodomy, consumption of alcohol- so in such cases, he should be killed with the sword. Yet the *Shāfi'iyyah* have the opinion that those who kill with an act of sin- they should also be killed with that same act; their opinion states that [in case of sodomy], that a rod should be forced into his anus till he dies- [in case of murder by overdose of alcohol] he should be given alcohol to quench his thirst, till his death also.

And Ibn Al-Mājashūn <sup>141</sup> may Allāh be merciful to him said that whoever kills by burning his victim with fire, or by poisoning him- then such a criminal should not be killed using that same way [i.e. fire or poison], because the Prophet said, “*None punishes with fire except Allāh*”; and poison is a type of fire inside the intestines; But the majority of the scholars have said that it is permissible [to retaliate with

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<sup>140</sup> *An-Nahl*: 126

<sup>141</sup> 'Abdul-'Azīz Ibn Abī Salamah Al-Mājashūn, died 164 AH.

fire] due to the generality of the Verse.”<sup>142</sup> End of quote from *Imām Al-Qurtubī* may Allāh be merciful to him.

And *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him gave a verdict regarding the implications of this Verse when he was asked a question regarding people whose wealth is taken wrongfully without any right [by a transgressing Muslim], and those whose honor is transgressed upon, and those whose bodies are injured- yet they do not exact retribution in this world, knowing that what is with Allāh is better and more lasting – So does his pardoning of the [Muslim] transgressor lessen or decrease his reward with Allāh? Or will his reward be given to him in full completeness? And what is better- exacting retribution from the transgressor and on the Day of Resurrection, Allāh’s Punishment- Or pardoning him, and relying on what is with Allāh?

So *Shaykh Al-Islām* may Allāh be merciful to him answered, “Pardoning the transgressor does not decrease what rewards lay with Allāh for the oppressed one. Rather, forgiving the transgressor will increase what rewards he has.

And if he does not pardon the transgressor [and retaliates], then this is his right which he has upon the transgressor- for indeed it is his right to retaliate according to the measure of the transgression [i.e. to be equal]. Yet, if he forgives and makes reconciliation, his reward is due from Allāh- and the reward which is from Allāh is better and ever-lasting- as He (Most High) has said, **“The recompense for an evil is an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from Allāh. Verily, He likes not the wrong-doers.”**<sup>143</sup> So Allāh (Most High) has informed us that the compensation for an evil is similar evil *without* transgressing over that evil- and this is *Qisās* regarding matters of blood, wealth, and honor, etc. So then He said **“but whoever forgives and makes reconciliation, his reward is due from Allāh”** ...

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<sup>142</sup> *Tafsīr Al-Qurtubī* (2/357)

<sup>143</sup> *Ash-Shūrā*: 40

And Allāh has also said, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, it is better for the patient ones.”** <sup>144</sup> So He (Most High) has permitted retaliating upon the transgressor with the equivalent of that which he punished with- then He said, **“But if you endure patiently, verily, it is better for the patient ones.”** So He (Most High) has taught us that refraining from retaliating is better than retaliating. So how can it be considered that it would decrease the reward of the oppressed?”  
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So if it is permissible to equally retaliate against a transgressing Muslim as a *Qisās*- Then what about equally retaliating against a transgressing *Harbī*?

*Imām* An-Nawawī may Allāh be merciful to him said, “If the transgressor kills using a sword, then *Qisās* should not be applied to him with anything other than a sword, because Allāh (Most High) says, **“Then whoever transgresses the prohibition against you, you transgress likewise against him.”** <sup>146</sup> And also because the sword is the lightest type of pain (i.e. causes the least amount of pain). So if he uses this to kill, but then *Qisās* is applied on him with other than a sword- then the oppressed one has taken more than his legitimate right; because he only had the right to kill, yet, he not only killed, he also caused the transgressor torment.

But if the transgressor burned his victim (till death), or drowned him, or threw stones at him (till death), or threw him off a cliff, or struck him with a piece of wood (till death), or confined him (till death), or refused to give him water and food till the victim died- then it is the right of the guardian to apply *Qisās* with the equal means, since Allāh says, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were**

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<sup>144</sup> *An-Nahl*: 126

<sup>145</sup> Taken from “*Majmū' Al-Fatāwā*” (30/362)

<sup>146</sup> *Al-Baqarah*: 194

**afflicted.”** <sup>147</sup> And also due to what is narrated from Al-Barā' may Allāh be pleased with him from the Prophet , “Whosoever torches (a Muslim till death), then we shall also torch him; and whosoever drowns (a Muslim till death), then we shall also drown him.”

And *Qisās* is a matter of being equally like in retaliation, and it is perfectly possible to be equally like in retaliation with regards to these forms of *Qisās* to be carried out- so it is permissible. And it is also permissible for the oppressed (in the situations just mentioned) to use a sword for *Qisās*, because it is his right to kill and also torment- but if he only chooses to kill with a sword and gives up his right to torment, then this is also permissible.” <sup>148</sup> End of quote from *Imām An-Nawawī* may Allāh be merciful to him.

And *Imām Ash-Shawkānī* may Allāh be merciful to him said, “And the Verses of Allāh:

**“The recompense for an evil is an evil like thereof.”** <sup>149</sup>

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>150</sup>

**“Then whoever transgresses the prohibition against you, you transgress likewise against him.”** <sup>151</sup>

Essentially, the *decisive evidences which generally* prohibit the wealth, blood, and honor of a human are *restricted* by these three Verses.” <sup>152</sup>

And Ibn Al-Qayyim may Allāh be merciful to him further explained, “The sayings of Allāh, **“Then whoever transgresses the prohibition**

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<sup>147</sup> *An-Nahl*: 126

<sup>148</sup> “*Al-Muhathab*” (2/186)

<sup>149</sup> *Ash-Shūrā*: 40

<sup>150</sup> *An-Nahl*: 126

<sup>151</sup> *Al-Baqarah*: 194

<sup>152</sup> Refer to “*Nayl Al-Awtār*” (6/39)

against you, you transgress likewise against him”<sup>153</sup>, and, “The recompense for an evil is an evil like thereof”<sup>154</sup>, and, “And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted”<sup>155</sup> – imply the permissibility of “equal retaliation” in matters of life, honor, and wealth. And all the jurists have clearly stated that if the *kuffār* burn our crops and cut down our trees, then it becomes permissible to do the same to their crops and trees. And this is the exact same issue! And Allāh had indeed accepted the action of the Companions when they cut down the date trees of the Jews- because the action (of cutting down those trees) disgraced the Jews; and this shows that He (Most High) loves disgracing the oppressive transgressor- and this is a legislated action.

And if it is permissible to burn the property of the one who is extreme (in harm) due to his transgression against the Muslims with regards to their treachery with "*Ghanīmah*"- then it is even worthier and more correct to burn his property if he has burnt the property of an innocent Muslim.

And if the public finances in the Right of Allāh, which the excusing of it is more than its fulfillment, then for it to be legislated regarding the stingy slave is more befitting and more becoming. And because Allāh *Subhānahu* Legislated the *Qisās* to deter the selves from transgression. And it would have been possible for Him to Obligate the blood money to rectify the wrongdoing upon the one who was transgressed against through money. But, that which He Legislated is more complete and better for the slaves, and more curing for the anger of the one who was transgressed against and more preserving of the souls and the limbs. Otherwise, whoever has within himself (the desire) to kill or cut off the limb of another, then he could kill him or cut off his limb, and (then) pay his blood money. And the wisdom and the mercy and the benefit

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<sup>153</sup> *Al-Baqarah*: 194

<sup>154</sup> *Ash-Shūrā*: 39-43

<sup>155</sup> *An-Nahl*: 126

refuses that. And this is exactly what is present in the transgression against the property.”<sup>156</sup>

And after mentioning these texts from the People of Knowledge, and explaining that the “Equal Retaliation” which is mentioned in the Verses is not restricted to mutilation- which was the reason for the revelation of one of the Verses; It is clear that these Verses are general regarding *Qisās* and *Hudūd*, and treatment with the *kuffār* and also with the transgressing rebellious Muslims. And if it is permissible to equally retaliate against a Muslim according to his transgression- Then it is even more correct and more worthy to deal with the *Harbī kāfir* just as he deals with the Muslims.

And from what is obvious today, is that the *kuffār*- especially America- are killing the children, women, and elderly of the Muslims, due to no sin nor crime that they have committed.

So here they are- they have put economic sanctions on ‘Irāq for a long period of time- and they have killed none but the Muslim population. And in their bombardment of ‘Irāq, they did not even damage the ‘Irāqī Government significantly- rather, they only harmed the Muslims, killing hundreds of thousands of them.

So if the Muslims equally dealt with America [in a similar fashion], it would be perfectly permissible for them to kill around 10 million American civilians.

With a single missile, Americans killed more than 5 thousand Muslims in the Baghdad Social Refugee [Center] during the (first) Gulf War.

And if indeed the people behind the operations which took place in America [The Raids of New York and Washington] were Muslims- then this was nothing more than a payment of the debt that the Muslims owed to America on behalf of the Baghdad Social Refuge [Center] in

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<sup>156</sup> “*I'lām Al-Muwaqqi'in*” Vol. 1/328

which Muslims were murdered. <sup>157</sup> This statistic is not including the economic sanction, which has killed more than one million and one hundred thousand (1,100,000) Muslims in 'Irāq.

And let us not forget that the American transgression against 'Irāq has not ceased to continue upon the innocents. Indeed the effects of America's murderous weapons, with which they have satanically attacked the Lands of the Muslims, have ruined hundreds of thousands of innocent souls with strange illnesses, the most well-known of which is leukemia, and these strange illnesses are still apparent to the eyes. And these are all due to the depleted uranium [which is inside the bombs used by the Americans]. And the deaths of the infants in 'Irāq alone has reached, in these last few years, due to the attacks of America, along with economic sanctions- more than 750, 000 babies- meaning three quarters of a million.

Indeed the cruelty of America against 'Irāq is hundreds of times more than the number which was inflicted on the Blessed Tuesday.

And if you look to America's economic sanction upon Afghānistān- then you shall indeed see shocking oddities. The victims of the embargo have amounted to 70 thousand Muslims; as for the internal displaced, illness, and poverty- these things have increased to a percentage of 95 % of the population. And all this is due to America and it's imposed

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<sup>157</sup> **Trans Note:** It should be kept in mind that the Martyred *Shaykh* Yūsuf Al-'Uyayrī may Allāh be merciful to him had this book published nine days after the Blessed Tuesday. At that time the infidel news media was propagating that around 5,000 Americans had died in the Blessed Raids. So this is why the *Shaykh* referred to the Raids as "*nothing more than a payment of the debt that the Muslims owed to America*". But the *Shaykh* was misinformed- as later on it was established that only 2,000 Americans civilians were killed; meaning that the Muslims are still in debt of another 3,000 American civilians being killed merely on behalf of the massacre at Baghdad Social Refuge [Center]. And it is known by obviousness that Muslims are in more debt- as the *Shaykh* mentioned- with a total of 10 million civilians- and with the current situation in the Muslim Lands around the world, this number is on a rapid increase.



economic sanctions. And this Muslim Land was showered with seventy American missiles <sup>158</sup>- yet we did not find anyone who would condemn this “terrorism” and “murder of innocents”.

And then turn your glance towards Filastīn- verily you see that for more than 50 years, America has crusaded against the Muslims through the hands of the Jews... And the scores? 5 million refugees, 262,000 martyrs, with the Permission of Allāh, 186,000 injured, and 161,000 permanently handicapped. And the Zionist-American siege against our brothers in Filastīn has not ceased to continue...

And in Somalia, the Americans infiltrated it with excuses of “humanitarian aid” to continue its satanic cruelty upon its land; killing 13 thousand Muslims, and burned the children of Muslims, and perpetrated satanic deeds with the Muslimāt. And America buried its nuclear waste in the Muslim Land of Somalia, which has continued to make the Muslims suffer.

And there is Sudan, which has also been under economic sanctions from America for many years, and still is. America launched missile against this Muslim Land intending to kill all the inhabitants of the capitol Khartoum; Because America claimed that it [Ash-Shifā' Pharmaceuticals in Khartoum] was manufacturing chemical weapons- And if America's claim was true, the missiles striking it would have caused the entire population of the capitol to perish. Nor did America hesitate to explicitly support the Crusaders in southern Sudan, and to ignite a war, the sacrifices of which have been smelt by the Muslim sons and their economy.

These are just a few of the Muslims' affairs in which America has involved itself in overtly and directly in the murder of innocents, and

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<sup>158</sup> **Trans Note:** As was mentioned before, this was written 9 days after the Blessed Raids- so the *Shaykh*, may Allāh have mercy upon him, is referring to the missile attacks on Afghānistan during the regime of the *Tāghūt* Bill Clinton. After the official launch of this New Crusade, thousands- if not millions- of American missiles have been showered on this Muslim Land.

spreading cruelty in the Lands of the Muslims... We have not mentioned the affairs in which America covertly is behind- as in the Filibbin, Indonesia, Kashmīr, Macedonia, Bosnia, and many other Muslim Lands. And it is indeed correct for a Muslim to say that every calamity which has befallen the Muslims- America has had a long hand behind it, either directly, or indirectly.

So this is America, it can't be stopped by its own people, nor by other people [of other nations], whether it be *Islāmic* or *un-Islāmic*; Rather, it does not care about anything other than its own profits- even if it meant to kill all of mankind. Since it became a major world power in the last half century, the numbers of its victims have reached dozens of millions... So how can America be stopped? And how can its hand be seized from its transgressions against the Muslims?

Verily, the *Sharī'ah* of *Islām* is far from being imperfect- and thus we have in this Pure *Sharī'ah* the legislation of "Equal Retaliation" against the sinful transgressor. So here is America, murdering Muslims using various means- and the weak from amongst the Muslims are not capable of retaliating against it, because America does not fight face to face- rather they only strike from far away [using ships, submarines, planes, helicopters, jets, missiles, etc]. So these *Tawāghīt* are deserving of being punished with the like of that with which they afflicted the Muslims, and to be transgressed upon equally as they transgressed against the Muslims.

How can the hand of America be left free to kill our women, our children- and to drive out the Muslims?? And to let them murder the Muslims whenever they desire- however the desire- and wherever they desire?! And it is prohibited for the Muslims to deal with America in an equal manner?! Indeed the one who claims this- is either an ignorant, or an oppressive transgressor against the Muslims who defends America so that it can increase its murder and banishment of Muslims.

And from amongst the "equal treatment" that we will apply to America- we will apply its own law upon itself...

For the sake of Saddam [the *Tāghūt* infidel], and his *Ba'th* Party, the entire Muslim population of 'Irāq was punished; and America killed millions of Muslims with its bombs and economic sanctions...

For the sake of Usāmah Ibn Lādin (may Allāh preserve him), the Afghān population was put under sanctions, and they were struck with missiles, and dozens of thousands of Muslims have been killed...

For the sake of an "imaginary chemical weapons factory", America struck Sudan, destroyed a medicine factory [which provided medicine for half of the entire Africa], and all the Muslims who were in the factory were killed...

And like this... We will equally behave with them.

For the sin of the "American Regime", and its method of "punishing civilians" for the sake of "individuals"--- We will apply its own law, and we will punish the civilians because of the sin of the "Regime"!

So now... What angers America and its puppets when we equally retaliate- Is this not legitimate according to its own law? Is America not the one who issues the verdict on whomsoever it desires, and then strikes him claiming that he is a "terrorist" or a "supporter of terrorism"? And then it kills other than the "perpetrator" and exterminates innocent people- while you do not see anything wrong with its actions?

Yes! So we will act upon its law- we will take its own principle and use it is ours: The Jews are terrorists, and America supports Zionist terrorism in Filastīn. Is it not our right that we issue a verdict to strike it, in compliance with that principal? No doubt, we have the right to do that.

So then why is the world angry???

So if we want to deal with America equally, as it deals with us- then these operations (the Blessed Raids) are permissible according to the *Sharī'ah*...

And if we want to deal with America according to its own laws- then these operations are also permissible according to its New World Order!!!

Indeed, from the things regarding which there is no doubt- Is that killing the women, children, elderly of America, including any other American who does not fight- is perfectly permissible (*Jā'iz Halāl*)- Nay, it is from the forms of *Jihād* which Allāh (Most High) and His Messenger have commanded us with <sup>159</sup>, **“Then whoever transgresses the prohibition against you, you transgress likewise against him”** <sup>160</sup> and His saying, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>161</sup> . But there is one condition- It is not permissible for the Muslims to kill more than 4 million non-combatant American civilians, nor is it permissible to banish more than 10 million Americans!! And this is so that we do not surpass the equality of our retaliation. And Allāh knows best.

End of quote from the martyr, *Inshā' Allāh*, Yūsuf Al-'Uyayrī, may Allāh have mercy upon him.

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<sup>159</sup> As was clearly explained by *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him when he said, as narrated earlier, “But if a widespread retaliation in kind would be an invitation for them towards *Īmān*, or a preventative factor towards their aggression, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmic* legislated punishments) and a (proper) *Sharī'ah*-based *Jihād*.”

<sup>160</sup> *Al-Baqarah*: 194

<sup>161</sup> *An-Nahl*: 126

## The Verdict of *Imām* Hamūd

### Ibn 'Uqlā' Ash-Shu'aybī <sup>162</sup>

**And from the statements of the People of Knowledge regarding the permissibility of taking revenge in equivalence:**

From the knowledge that it is permitted to do to the *kuffār* what they do to us, there is a refutation and a clarification for those who repeat the word “innocents”, because Allāh, Glorified and Most High permitted that for us.

And from the texts, which indicate that, is His, the Most High's statement:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him” <sup>163</sup>**

And He, the Most High, said:

**“And those who, when an oppressive wrong is done to them, they take revenge. The recompense for an evil is an evil like thereof.” <sup>164</sup>**

And among the words of the people of knowledge, concerning the permissibility to retaliate in kind, are:

*Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him said:

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<sup>162</sup> Refer to his *Fatwā* regarding the Blessed Raids, entitled, “The Clarification of What Occurred in America”.

<sup>163</sup> *Al-Baqarah*: 194

<sup>164</sup> *Ash-Shūrā*: 39-42

“Verily, the retaliation in kind is a right for them. So it is permitted for them to perform it in order to restore their morale and to take revenge, yet they may decline it (i.e. this right) when patience is preferable. But this is when the retaliation in kind would not result in any advance in the *Jihād* and when it would not increase their terror (so as to keep them away) from the likes of that. But if a widespread retaliation in kind would be an invitation for them towards *Īmān*, or a *preventative factor towards their aggression*, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmic* legislated punishments) and a (proper) *Shari’ah*-based *Jihād*.”<sup>165</sup>

And it necessitates for all those who mention the issue of “murder of the innocent”, without any restriction or specification, that they accuse the Messenger of Allāh and the *Sahābah* and those who succeeded them, as “murderers of the innocent”, according to the terminology of those people. This is because the Messenger of Allāh erected the catapult in the battle of At-Tā’if. And from the nature of the catapult, is that it does not distinguish (the innocent from the guilty). And the Prophet killed all those who reached puberty from the Jews of Banī Quraythah.

Ibn Hazm said in “*Al-Muhallā*”, commenting on the *Hadīth*: “It came on the Day of Quraythah, that whoever attained the age of puberty was executed.” Ibn Hazm said, “This was general from the Messenger of Allāh that he did not leave (alive) from them, a tyrant, or a farmer or a tradesman or an old man and this is an authentic *Ijmā’* from him.”<sup>166</sup>

Ibn Al-Qayyim, may Allāh be merciful to him, said in “*Zād Al-Ma’ād*”, “And it was from his guidance that if he held a covenant or a treaty with a people, and they violated it or some of them violated it and the rest approved and were pleased with it, that he would battle them altogether and he considered them all betrayers as he did with Banī Quraythah and Banī An-Nathīr and Banī Qaynuqā’ and as he did with

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<sup>165</sup> Narrated by Ibn Muflih may Allāh be merciful to him in “*Al-Furū’*” (6/218). Also see “*Al-Ikhtiyārāt*” (5/521) of *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him.

<sup>166</sup> “*Al-Muhallā*” (7/299)

the people of Makkah. So this was his *Sunnah* with respect to those who violate their treaties and the betrayers.” And he also said, “And Ibn Taymiyyah gave the *Fatwā* about battling the Christians of the East when they helped the enemy of the Muslims fight them, by supporting them financially and with arms. And even though they did not battle us nor did they wage war against us, he saw that they were violators of the treaty as Quraysh violated the treaty of the Prophet by supporting Banī Bakr Ibn Wā'il in their waging war against a people who were protected (by the Muslims) according to the rights of their treaty.”

End of quote from *Imām* Hamūd, may Allāh have mercy upon him.

## The Verdict of *Shaykh* Muhammad

### Ibn Sālih Al-'Uthaymīn

The *Shaykh*, may Allāh be merciful towards him, said in a tape recording regarding this topic<sup>167</sup>:

“And the second (matter) is the forbiddance of killing women and children in times of war.

But if it is said: *‘If they (the kuffār) do this to us- meaning that they kill our children and women- Then do we then kill them?’*

The apparent [*Thāhir*] is that it is (permissible) for us to kill their women and children- even if it means that we lose profit/benefit from it [since keeping them alive is a profit/benefit because they become the property of the Muslims]; (and killing them in this situation is permissible) due to it threatening the hearts of the enemies and a humiliation for them.

And due to the generality of the Statement of Allāh:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him”** <sup>168</sup>

And to (purposely) destroy property (which could later belong) for the Muslims (by killing them in this case) is nothing strange.

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<sup>167</sup> Refer to the side “B” from the third cassette of Kitāb al-Jihād from Sharh Bulūgh al-Marām. Or download it from the Shaykh’s own website: <http://www.binothaimeen.com/sound/snd/a0020/A0020-3B.rm> . Brothers and sisters are requested to download this before it is taken down by the Enemies of Allāh. Starting at time frame 29:09 .

<sup>168</sup> *Al-Baqarah*: 194



And due to this, the baggage, the baggage of the one who steals from the *Ghanīmah* is burned, even though in that, there is the loss of some property of one the fighters.

Then if someone says:

*'If they rape our women then do we rape their women?'*

No, this, no, no we do not do it.

Why? Because this is prohibited as a (whole) category [i.e. it is forbidden within itself], and it is not possible for us to do it.

Meaning, it is **not** forbidden out of respect for the rights of others [i.e. not because we are respecting their rights] - **rather**, because it is forbidden as a category [i.e. the action of 'intercourse']. So it is not permissible for us to rape their women.

But if the dividing (of the *Ghanīmah*) takes place, and the woman from them ends up as a slave woman, then she becomes property of the right hand. The person can have intercourse with her as a right hand possession, which is permissible and there is nothing wrong with this"

Later on, the *Shaykh* was asked about the fact that the women being killed are not the ones who killed our women, so is this justice? So he answered:

**"Then whoever transgresses the prohibition against you, you transgress likewise against him"** <sup>169</sup>

What is justice? Not at all. They kill our women, we kill their women. This is the justice. It's **not** justice to say 'if they kill our women we won't kill your women.'

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<sup>169</sup> *Al-Baqarah*: 194

Because this, I notice from this that it has many enormous affects on them”

End of quote from *Shaykh* Muhammad Ibn Sālih Al-'Uthaymīn, may Allāh have mercy upon him.

## **The Verdict of *Shaykh* Nāsir Ibn Hamad Al-Fahd**

*Shaykh* Nāsir Al-Fahd (may Allāh hasten his release from the prisons of the *Tawāghīt*) said while discussing the permissibility of using weapons of mass destruction <sup>170</sup>:

Indeed, the issue of striking America with these types of weapons is permissible without mentioning further evidence, except the following Verses:

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>171</sup>

**“Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”** <sup>172</sup>

**“The recompense for an evil is an evil like thereof.”** <sup>173</sup>

And whosoever looks at the transgressions of the Americans against the Muslims and their lands in these recent times, will realize the permissibility of this (using weapons of mass destruction against America) - by *merely* basing it upon the principle of “Equal Treatment”; and it would *not even require* mentioning more evidences.

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<sup>170</sup> Refer to chapter two from the book, “*Hukm Istikhdām Aslihat Ad-Damār Ash-Shāmīl*”.

<sup>171</sup> *An-Nahl*: 126

<sup>172</sup> *Al-Baqarah*: 194

<sup>173</sup> *Ash-Shūrā*: 40

And some of the brothers have calculated the number of Muslims killed by America, using their weapons either directly or indirectly; So the number has reached close to 10 million. And as for the Muslim Lands which they have burnt with their missiles, bombs, and rockets- then this cannot be enumerated by anyone except Allāh. And another thing that we would like to point out is what they have done to Afghānistān and 'Irāq- and this is not including what their wars have done to thousands of Muslims with regards to being driven out from their lands.

So if a nuclear bomb was dropped upon the Americans, killing 10 million civilians, and destroying their lands to the extent that they have destroyed our lands - This would be permissible without any need to even mention another evidence. More evidence would only be required if we wanted to kill more than this number!!

End of quote from *Shaykh* Nāsir Al-Fahd, may Allāh hasten his release.

## The Verdict of *Shaykh 'Alī Al-Khudhayr*

The imprisoned *Shaykh 'Alī Ibn Khudhayr Al-Khudhayr* (may Allāh hasten his release from prison) said while discussing the Blessed Raids of the Blessed Tuesday <sup>174</sup>:

“And as for what you have narrated to me regarding those who seek to use some Verses and *Ahādīth* as evidence (to claim that the Raids were incorrect)- these (evidences) are taken out of their proper place; So we answer these doubts with a general answer, and a detailed answer.

As for the general refutation, then it will be said:

Those who use these Verses and *Ahādīth* which have been mentioned, they only take the general implications of these Verses, but they do not look at the specific situations and the other evidences which restrict (the general evidences)- and this is why they are confused, because they have only looked with one eye.

And as for the detailed answer, then we shall first mention the Verses, and then the *Ahādīth*.

### 1) The Verse:

**“If anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind.”**  
<sup>175</sup>

Firstly, this is indeed from amongst the strangest of attempts! Because when a person is a fighter, or assists in killing- even it be with advice or

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<sup>174</sup> Taken from the *Shaykh's* verdict “*Hukm Mā Jarā Fī Amrīkā Min Ahdāth*”.

<sup>175</sup> *Al-Mā'idah*: 32

any other type of counseling- then that person is worthy of being punished.

Secondly, this Verse is not regarding the 'abstaining group' [*At-Tā'ifah Al-Mumtani'ah*], nor is it regarding treacherous nations and tribes- so ponder upon this; and also, the supporter and helper has the same ruling as the direct (fighter) according to *Ijmā'*, as it has been mentioned earlier.<sup>176</sup>

2) The Verse:

**"But transgress not the limits. Truly, Allah likes not the transgressors."**<sup>177</sup>

So the meaning of this Verse is explained as, "Do not transgress wrongfully without any right", but if it is due to *Qisās*, or 'Behaving in Likeness' [i.e. retaliation], or due to a right in *Jihād*, or night raids, and the likes of these things- Then these are specific restrictions upon the generality of the Verse. And the aforementioned Verse is also restricted by the following Verse:

**"And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted."**<sup>178</sup>

And the *Hadīth* of As-Sa'b Ibn Jathāmah which has preceded (clarifies this).

And also the Verse:

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<sup>176</sup> Refer to "*At-Tamhīd*" by Ibn 'Abdil-Barr (16/142)

<sup>177</sup> *Al-Baqarah*: 190

<sup>178</sup> *An-Nahl*: 126

**“And wounds equal for equal.”** <sup>179</sup>

Ibn Taymiyyah said, “And for this reason all the ‘*Ulamā*’ are united upon the permissibility of destroying trees and crops that belong to the *kuffār*- if they do that to us first, or when it is not possible to reach the *kuffār* except by destroying these.” <sup>180</sup> He also said similarly regarding plants and buildings- If the *kuffār* destroy ours, we can destroy theirs- and there is no disagreement on this. <sup>181</sup> Similarly, Ibn Qāsim also narrated that Ibn Taymiyyah said this regarding trees, crops, and demolishing palaces, if there is any need to do so. <sup>182</sup>

**3) The Verse:**

**“And no bearer of burdens shall bear the burden of another.”** <sup>183</sup>

Indeed this Verse is general, just like the ones that preceded it. It is regarding a person who is completely innocent and free from any connection to guilt- one who has not fought, nor assisted in fighting- not with advice, nor counseling, nor with anything whatsoever- nor is the person in the homes (of the criminals), nor from amongst the ‘abstaining group’, nor from amongst the people who increase the number of the masses of the enemies.

End of quote from the imprisoned *Shaykh*, ‘Alī Al-Khudhayr, may Allāh preserve him and hasten his release from the prisons of the *Tawāghīt*.

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<sup>179</sup> *Al-Mā'idah*: 45

<sup>180</sup> Refer to “*Minhāj As-Sunnah*” (3/442).

<sup>181</sup> Refer to “*Al-Fatāwā*” (28/414, 596).

<sup>182</sup> Refer to “*Hāshiyah*” (40/270).

<sup>183</sup> *Al-An'ām*: 164

## The Verdict of *Shaykh* Abū Jandal Fāris

### Az-Zahrānī Al-Azdī

The *Shaykh*, may Allāh hasten his release from the prisons of the *Tawāghīt*, quotes the *Amīr* of the *Mujāhidīn*, Abū 'Abdillāh Usāmah Ibn Lādin, may Allāh preserve him, saying in an interview<sup>184</sup>:

*“Shaykh* Usāmah Ibn Lādin: ...so we kill the Kings of Disbelief [kufr] and the Kings of the Crusaders, and the civilians amongst the disbelievers, as opposed to the amount of our sons they kill, *and that is correct both religiously and logically.*

Taysīr Allūni: So you say that this is treatment with the same action? They kill our innocent, *so* we kill theirs?

*Shaykh* Usāmah Ibn Lādin: Yes, so we kill their innocents, **and that is valid both religiously and logically**. Because some of the people who talk about this issue, some talk about it from a religious point of view...

Taysīr Allūni: What is their proof?

*Shaykh* Usāmah Ibn Lādin: They say that this is wrong and invalid, and for proof, they say that the Prophet forbade the killing of children and women, *and that is true*. It is valid and has been said by the Prophet (in authentic narration)...

Taysīr Allūni: This is what we are asking about exactly! This is what we are exactly questioning ourselves about!

*Shaykh* Usāmah Ibn Lādin: ...But this forbidding of killing children and innocents... is not unrestricted and there are other texts which restrict it.

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<sup>184</sup> This is taken from the translation of the interview by Al Jazeera Satellite channel reporter Taysīr Allūni on October 21, 2001.



Allāh's (*Subhānahu Wa Ta'āla*) saying:

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted...”** <sup>185</sup>

The scholars and people of the knowledge [Ahlul-`Ilm], amongst them author of “*Al-Ikhtiyārāt*” [i.e. Ibn Taymiyyah], and Ibn Al-Qayyim may Allāh be merciful to him, and Ash-Shawkāni, and a lot of others, and Al-Qurtubi may Allāh be merciful to him in his *Tafsīr*, say that if the disbelievers were to kill our children and women, then we should not feel ashamed to do the same to them, mainly to deter them from trying to kill our children and women again. And that is from a religious standpoint, and those who speak without any knowledge in *Sharī`ah*, saying that killing such a child is not valid and what not, and having full knowledge that those young men, that Allāh has cleared the way for, didn't intend to kill children, but instead, they attacked the biggest center of military power in the world, the Pentagon, which contains more than 64,000 workers, a military base which has a big concentration of army and intelligence...

End of quote from *Shaykh* Usāmah Ibn Lādin, may Allāh preserve him and assist him.

Then, *Shaykh* Az-Zahrānī goes on to support this stance, “And whosoever seeks more knowledge regarding the refutation of this doubt, then he should read this book... “*Haqīqat Al-Harb As-Salībiyyah Al-Jadīdah*” <sup>186</sup> for this contains a *magnificent elucidation* regarding this issue.” <sup>187</sup>

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<sup>185</sup> *An-Nahl*: 126

<sup>186</sup> Which is the book by *Shaykh* Yūsuf Al-'Uyayrī may Allāh be merciful to him.

<sup>187</sup> Refer to the *Shaykh's* book, “*Usāmah Ibn Lādin: Mujaddid Az-Zamān Wa Qāhir Al-Amrikān*” (114).

The *Shaykh* also says while discussing the evidences for *Ightiyāl* (assassination):

*“The Tenth Evidence: Equal Retaliation*

As Allāh (Most High) has said:

**“Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”** <sup>188</sup>

**“And those who, when an oppressive wrong is done to them, they take revenge. The recompense for an evil is an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from Allāh. Verily, He likes not the wrong-doers. And indeed whosoever takes revenge after he has suffered wrong, for such there is no way (of blame) against them. The way (of blame) is only against those who oppress men and wrongly rebel in the earth, for such there will be a painful torment. And verily, whosoever shows patience and forgives that would truly be from the things recommended by Allāh.”**

<sup>189</sup>

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were**

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<sup>188</sup> *Al-Baqarah*: 194

<sup>189</sup> *Ash-Shūrā*: 39-43

**afflicted. But if you endure patiently, verily, it is better for the patient ones.”** <sup>190</sup>

And these Verses are general regarding everything- and the specific reason for its revelation does not restrict its meaning; because a basic principle in the *Shari'ah* is that “*The text is according to the generality of its words, and not restricted by the reason (of its revelation)*”.

So it is permissible for the Muslims to treat their enemies with the likeness of everything they perpetrate against the Muslims. So if they assassinate our *Mujāhidīn*, then we will assassinate them; and if they mutilate the Muslims, it is permissible to mutilate them; *if they target our women and children- then it is the right of the Muslims to equally retaliate by targeting their women and children-* and this is because of the generality of the Verses.

And Ibn Al-Qayyim may Allāh be merciful to him further explained, “The sayings of Allāh, **“Then whoever transgresses the prohibition against you, you transgress likewise against him”** <sup>191</sup>, and, **“The recompense for an evil is an evil like thereof”** <sup>192</sup>, and, **“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted”** <sup>193</sup> – imply the permissibility of “equal retaliation” in matters of life, honor, and wealth. And all the jurists have clearly stated that if the *kuffār* burn our crops and cut down our trees, then it becomes permissible to do the same to their crops and trees. And this is the exact same issue! And Allāh had indeed accepted the action of the Companions when they cut down the date trees of the Jews- because the action (of cutting down those trees) disgraced the Jews; and this shows that He (Most High) loves disgracing the oppressive transgressor- and this is a legislated action.

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<sup>190</sup> *An-Nahl*: 126

<sup>191</sup> *Al-Baqarah*: 194

<sup>192</sup> *Ash-Shūrā*: 39-43

<sup>193</sup> *An-Nahl*: 126

And if it is permissible to burn the property of the one who is extreme (in harm) due to his transgression against the Muslims with regards to their treachery with "*Ghanīmah*"- then it is even worthier and more correct to burn his property if he has burnt the property of an innocent Muslim.

And if the public finances in the Right of Allāh, which the excusing of it is more than its fulfillment, then for it to be legislated regarding the stingy slave is more befitting and more becoming. And because Allāh *Subhānahu* Legislated the *Qisās* to deter the selves from transgression. And it would have been possible for Him to Obligate the blood money to rectify the wrongdoing upon the one who was transgressed against through money. But, that which He Legislated is more complete and better for the slaves, and more curing for the anger of the one who was transgressed against and more preserving of the souls and the limbs. Otherwise, whoever has within himself (the desire) to kill or cut off the limb of another, then he could kill him or cut off his limb, and (then) pay his blood money. And the wisdom and the mercy and the benefit refuses that. And this is exactly what is present in the transgression against the property." <sup>194</sup>

And if America, as it claims, (attacks because of) the reason of Saddam- then indeed the matter is even more spacious. America has killed, and continues to kill, more than an approximately of 1,320,700 in 'Irāq due to its economic sanctions; and America has also killed thousands of lives in Afghānistān for the cause of "the *Jihādī* commanders" who reside there... and the list continues... Then for what reason is it forbidden for us to kill them, crush them, targeting them, and assassinating them- until the point when we have reached the same number with which they have afflicted us. So we will kill them for the reason of Bush, Blair, and Sharon- just as they killed us for the reason of so-and-so. Indeed, it is incumbent to be equal in the service (they have given us). So just as they kill, they should be killed; and just as they

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<sup>194</sup> "*I'lām Al-Muwaqqi'in*" Vol. 1/328

assassinate, they should be assassinated. And Allāh is Most Knowledgeable.<sup>195</sup>

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<sup>195</sup> Refer to “*Tahrīdh Al-Mujāhidīn Al-Abtāl ‘Alā Ihyā’ Sunnat Al-Ightiyāl*” (24).

## **The Verdict of *Shaykh* 'Abdul-'Azīz Al-Jarbū'**

The *Shaykh*, may Allāh hasten his release from the prisons of the *Tawāghīt*, said while refuting the 'verdict' of *Shaykh* Ibn Jibrīn (ha) (in which he spoke against the Blessed Raids of the Blessed Tuesday) <sup>196</sup>:

The *Shaykh* [Ibn Jibrīn, while trying to refute the killing of 'innocents' on the Blessed Tuesday] tried to use the Verse:

**"But transgress not the limits. Truly, Allah likes not the transgressors."** <sup>197</sup>

But the ruling of this Verse is general; it is restricted in the situation when they [the *kuffār*] transgress against us. As Allāh (Most High) says:

**"Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious."** <sup>198</sup>

And this [i.e. the fact that the latter Verse restricts the former one] is agreed upon by all the People of Knowledge, and there is no one who is known to have contradicted this (agreement).

The *Shaykh* (Ibn Jibrīn) also tried to use the Verse:

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<sup>196</sup> Refer to the *Shaykh's* *Risālah*, "*Al-Īdhāh Al-Mubīn Fī Bayān Haqīqat Ash-Shaykh Ibn Jibrīn*".

<sup>197</sup> *Al-Baqarah*: 190

<sup>198</sup> *Al-Baqarah*: 194

**“And let not the hatred of some people in (once) stopping you from Al-Masjid Al-Harām (at Makkah) lead you to transgression (and hostility on your part). Help you one another in *Al-Birr* and *At-Taqwa* (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allāh. Verily, Allāh is Severe in punishment.”** <sup>199</sup>

Then it is replied to by... And if it is said *“The text is according to the generality of its words, and not restricted by the reason (of its revelation)”*.

We will say: Indeed this is a beautiful rule- and it is actually a support for us, not against us... And under all circumstances, this Verse is general- and it is restricted in the situation in which the *kuffār* initiate the transgression against us- and this is why Allāh said:

**“And kill them wherever you find them, and turn them out from where they have turned you out. And *Al-Fitnah* is worse than killing. And fight not with them at Al-Masjid Al-Harām (the sanctuary at Makkah), unless they (first) fight you there. But if they attack you, then kill them. Such is the recompense of the disbelievers”** <sup>200</sup>

So in this Verse we are commanded to:

- a) Kill them wherever we find them
- b) To expel them from where they have expelled us, and Allāh did not order us to forgive them
- c) Allāh has prohibited us from fighting them in Al-Masjid Al-Harām with a general forbiddance- and it is restricted by the situation in which *they* start to fight us in there.

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<sup>199</sup> *Al-Mā'idah*: 2

<sup>200</sup> *Al-Baqarah*: 191

End of quote from *Shaykh Al-Jarbū'*, may Allāh preserve him and hasten his release.



## **The Verdict of the Council of the Scholars of Filastīn**

The scholars of the Council, may Allāh assist them in their *Jihād* against the sons of the swine, issued a verdict regarding martyrdom operations; and while responding to a doubt, they said:

The Second Argument: *“These martyrdom operations kill the civilians from amongst the Jews, including their women, children and elderly.”*

Indeed from the basics of *Jihād* in *Islām* is the basic rule of “Behavior in Likeness” [*Mu’āmalah Bil-Mithl*, i.e. Equal Retaliation].

Meaning, that *Islām* has permitted the Muslims to treat the *kuffār* in the same manner in which they (the *kuffār*) treat them (the Muslims).

And Allāh has said in His Mighty Book,

**“Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allāh, and know that Allāh is with the pious.”** <sup>201</sup>

And also His saying,

**“And if you punish (your enemy, O you believers in the Oneness of Allāh), then punish them with the like of that with which you were afflicted.”** <sup>202</sup>

And these Jewish transgressors, and others (i.e. other enemies) - with regard to us [the Muslims], they respect not the ties, either of kinship nor of covenant! They kill our children, our women, and our elderly-

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<sup>201</sup> *Al-Baqarah*: 194

<sup>202</sup> *An-Nahl*: 126

and we are Muslims; and thus *Islām* has permitted us to kill their women, children, civilians, and elderly.

And we in the Council of the Scholars of Filastīn- we are from Bayt al-Maqdas (a.k.a. Jerusalem), and from the shadows of Bayt al-Maqdas... We see the Jewish hostility and terrorism against our occupied people. It is from their political strategy to specifically kill our children and women, to demolish our homes, and to expel the natives from their own homes; pulling out the roots of trees (and destroying the land), and the immoral besiegement, and the confiscation of our lands, and the (continuous enlarging of) colonies and settlements, and the imprisonments; and the repeated transgressions against the Blessed Masjid Al-Aqsā, in their attempts to destroy it and build their supposed temple... Does not Allāh have the strength (to answer them?)... Indeed these martyrdom operations which are carried out by the sons of Filastīn who are doing *Ribāt* [stationed guarding] against the cursed Jewish enemy- these are (indeed considered) *Jihād* in the Path of Allāh, and it is indeed legislated...

End of quote from the verdict. This verdict was approved by the following scholars- a total of 85 '*Ulamā'*, whose names we shall leave in Arabic:

### **The Council of the Scholars of Filastīn**

#### **Name/Educational Qualifications**

- 1) Dr. Sālih Muhammad Sharīf/ Doctorate in *Shar'ī* Politics
- 2) Dr. Azzām Nu'mān Salhab/ Doctorate in '*Aqīdah*
- 3) Muhammad Māher Yūsuf Badr/ Masters in *Usūl Al-Fiqh*
- 4) Mustafā Kāmil Shāwir/ Masters in *Usūl Al-Fiqh*
- 5) Taysīr Rajab Bayyūdh At-Tamīmī/ Bachelors in *Sharī'ah*
- 6) Fat'hī Abdul-'Azīz 'Amr/ Bachelors in *Sharī'ah*
- 7) 'Abdul-Hamīd Nasr/ Bachelors in *Sharī'ah*
- 8) 'Izz Ad-Dīn 'Isā Farrāh/ Bachelors in *Sharī'ah*
- 9) Husayn Mahmūd Al-Mahdī/ Masters in Da'wah

- 10) Shafiq Abdul-Qādir Al-Qawāsīmī/ Bachelors in *Sharī'ah*
- 11) 'Ādil Shāker Ashniyūr/ Bachelors in *Sharī'ah*
- 12) Nāyif ar-Rajūb/ Bachelors in *Sharī'ah*
- 13) 'Abdul-Khāliq an-Natshah/ Bachelors in *Sharī'ah*
- 14) Fawzī Muhammad 'Abdul-'Athīm Al-Khatīb/ Bachelors in *Sharī'ah*
- 15) Jawwād Mahmūd Bahr An-Natshah/ Bachelors in *Sharī'ah*
- 16) Sālih ar-Rāzim/ Bachelors in *Sharī'ah*
- 17) Dr. Amīr 'Abdul-'Azīz/ Doctorate in *'Aqīdah*
- 18) Dr. Khidhr Sūnaduk/ Doctorate in *'Aqīdah*
- 19) Dr. Muhammad Hāfith Ash-Sharīdah/ Doctorate in *'Aqīdah*
- 20) Dr. Marwān Qadūmī/ Doctorate in *Shar'ī Politics*
- 21) Ahmad Al-Hāj 'Alī Muhammad/ Masters in *Tafsīr*
- 22) Dr. Muhammad 'Alī As-Salībī/ Doctorate in *Sharī'ah*
- 23) Ghassān 'Ātef Badrān/ Masters in *Tafsīr*
- 24) Hasan Sa'd 'Awadh Khidhr/ Masters in *Usūl Al-Fiqh*
- 25) Dr. 'Abdul-Mun'im Jābir Abū Qāhuuq/ Doctorate in *Sharī'ah*
- 26) Dr. Yāsir Salīm Al-Ashqar/ Doctorate in *Sharī'ah*
- 27) Māhir Tāhir Ridhā Al-Khirāz/ Bachelors in *Sharī'ah*
- 28) Ahmad 'Abdul-Qādir 'Abdul-Jabbār/ Masters in *Sharī'ah*
- 29) Jamāl Salīm Ibrāhīm Salīm/ Bachelors in *Sharī'ah*
- 30) Hāmid Sulaymān Khudhayr Al-Baytāwī/ Masters in *Sharī'ah*
- 31) Sālih Husayn Abū Zayd/ Bachelors in *Sharī'ah*
- 32) Ismā'īl Muhammad Hasan Al-Habbāzī/ Bachelors in *Sharī'ah*
- 33) Ahmad 'Abdul-'Azīz Sālih/ Bachelors in *Da'wah* and *Usūl Ad-Dīn*
- 34) Munthir Adīb Al-'Awrī/ Bachelors in *Sharī'ah*
- 35) Bassām Nihād Ibrāhīm Jarrār/ Bachelors in *Sharī'ah*
- 36) Khumayyis Muhammad 'Ābidah/ Bachelors in *Sharī'ah*
- 37) Sa'id Tāhā Sa'id/ Bachelors in *Sharī'ah*
- 38) Sāleh Tāhā Sa'id/ Bachelors in *Sharī'ah*
- 39) Abdur-Rahmān Muhammad Karājah/ Bachelors in *Sharī'ah*
- 40) Mahmūd 'Abdul-Karīm Mihnā/ Bachelors in *Sharī'ah*
- 41) Fadhl Muhammad Sālih Hamdān/ Bachelors in *Sharī'ah*
- 42) Dr. Husām Ad-Dīn 'Affānah/ Doctorate in *Sharī'ah*
- 43) Dr. 'Abdul-Fattāh Al-'Uwaysī/ Doctorate in *Islāmic History*

- 44) Dr. Hamzah Dīb/ Doctorate in *Sharī'ah*
- 45) Ibrāhīm Sa'id Abū Sālem/ Masters in *Sharī'ah*
- 46) Ghassān Harmās/ Masters in *Sharī'ah*
- 47) Khālid Ibrāhīm Ar-Ramhī/ Bachelors in *Sharī'ah*
- 48) Dr. Adīb Muflih Hawrānī/ Masters in *Sharī'ah*
- 49) Ahmad Mustafā Fawāqah/ Masters in *Sharī'ah*
- 50) 'Azīz Mustafā Abū Ra's/ Bachelors in *Sharī'ah*
- 51) Jamāl Muhammad At-Tawīl/ Bachelors in *Sharī'ah*
- 52) Ibrāhīm 'Umayrah/ Bachelors in *Sharī'ah*
- 53) Yāser 'Abdul-Majīd 'Abdullāh/ Bachelors in *Sharī'ah*
- 54) Ash-Shaykh Yūsuf Abū 'Asalah/ Bachelors in *Sharī'ah*
- 55) Dr. Mūsā Ismā'il Al-Basīt/ Doctorate in *Sharī'ah*
- 56) 'Ammār Tawfīq Ahmed Badawī/ Bachelors in *Sharī'ah*
- 57) 'Ārif Husayn Rāghib Al-Juyūsī/ Bachelors in *Sharī'ah*
- 58) 'Umar Mustafā Badīr/ Bachelors in *Sharī'ah*
- 59) Tawfīq Muhammad Jarrār/ *Sharī'ah* License
- 60) Muhammad Fu'ād Abū Zayd/ *Sharī'ah* License
- 61) Dr. Hilmī Kāmil 'Abdul-Hādī/ Doctorate in *Sharī'ah*
- 62) Zayd Mahmūd Abdur-Rahīm Zakārinah/ *Sharī'ah* License
- 63) 'Umar Muhammad Ibrāhīm Ghānim/ *Sharī'ah* License
- 64) Yāsir Muhammad Sa'id Abdur-Rahmān/ Masters in *Sharī'ah*
- 65) 'Abdul-Majīd 'Atā Muhammad Ahmad/ Bachelors in *Sharī'ah*
- 66) Bilāl Mahmūd Abd Zarīn/ Bachelors in *Sharī'ah*
- 67) Muhammad Najātī 'Abdul-Hāfith Az-Za'tarī/ Bachelors in *Sharī'ah*
- 68) Ya'qūb Shabānah/ Bachelors in *Sharī'ah*
- 69) Wajīh Yāghī/ Bachelors in *Sharī'ah*
- 70) Zakariyyā An-Nadīm/ Bachelors in *Sharī'ah*
- 71) Muhammad Shuraydah/ *Sharī'ah* Studies
- 72) 'Atā'ullāh 'Abdul-'Āl Abū As-Sabh/ Masters in *Sharī'ah*
- 73) Sa'd 'Abdul-Qādir Al-Maghāzī/ *Sharī'ah* Studies
- 74) Dr. Ismā'il Ahmad Al-Astal/ Doctorate in *Hadīth*
- 75) Muhammad Thīb Al-Qūsī/ Bachelors in *Sharī'ah*
- 76) Muhammad Hasan Bakhīt/ Masters in '*Aqīdah*
- 77) Mahmūd Yūsuf Ash-Shuwaykī/ Masters in '*Aqīdah*
- 78) Māhir Ahmad As-Sūsī/ Masters in *Fiqh*

- 79) Ahmad Thiyāb Ash-Shuwaydah/ Masters in *Fiqh*
- 80) Dr. Sālim Ahmad Salāmah/ Doctorate in *Hadīth*
- 81) Riyādh Mahmūd Jābir Qāsim/ Masters in *Fiqh*
- 82) Dr. Sulaymān Mūsā As-Satrī/ Doctorate in *Fiqh*
- 83) Dr. Ziyād Ibrāhīm Miqdād/ Masters in *Fiqh*
- 84) 'Alī Suway'id Abū 'Ajwah/ Bachelors in *Usūl Ad-Dīn*
- 85) Sa'id Sulaymān Al-Qiyaq/ Masters in '*Aqīdah*

May Allāh preserve those alive amongst them, and have mercy on those who have passed away from them.

## **The Verdict of *Shaykh* Abū Qatādah 'Umar Ibn Mahmūd Abū 'Umar Al-Filastīnī**

The *Shaykh* Abū Qatādah, may Allāh hasten his release from the prisons of the *Tawāghīt*, said in a treatise he wrote <sup>203</sup>:

The Second Condition: Killing the Women and the Children Intentionally to Prevent the Raping of the Muslim Women and the Killing of the Muslims.

It has been made clear to us in the passed chapter, the permissibility of killing the offspring and the women to enable the killing of the disbelieving fighters. So is it permitted to kill the offspring and the women to enable the preservation of the life of a Muslim and to repel the rape of a Muslim woman?

From that which is known in the *Shara'* is that preserving the life of a Muslim is a greater issue than killing a disbeliever, so repelling the harms and removing them is better than attaining the benefits. And killing the Muslim is a great mischief. As for killing the disbeliever, then it is a benefit. But if the benefit of killing the disbelievers goes against the benefit of ransoming them for the Muslims prisoners, then it is obligatory upon the Muslims to ransom the Muslim prisoners. And that would be by freeing the disbelieving prisoners.

If this is made clear to us, and we learned earlier about the permissibility of killing the offspring of the women to enable the killing of the fighting men, then it is more appropriate to permit the killing of these offspring and the killing of the women in order to enable the prevention of the killing of the Muslims - rather, the *Mujāhidīn* - and the raping of the Muslim women.

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<sup>203</sup> From "Al-Ansār Magazine" Issue #90, Thursday *Shawwāl* 29, 1415 AH, March 30<sup>th</sup>, 1995 (page 10-12).

So the reality of the issue is that if we are unable to prevent the apostates from killing the Muslim prisoners, from civilians and others, except by threatening those apostates with the killing of their women and their children, then it is permissible if not obligatory.

And likewise, if we are unable to prevent the apostates from attacking the honor of the Muslims and the molestation of the women except by threatening them with the killing of their offspring and their women, then it is permissible without doubt, if not obligatory. Because the benefit of preserving the life of the Muslims and preserving their honor is more imperative and more important than enabling the killing the apostates with the use of their women and children as shields. And that is the condition in which the *Shara'* permitted the killing of the offspring and the women with the text, as it has passed in the *Hadīth* of As-Sa'b Ibn Jathāmah. And it has come in the *Hadīth* – as will follow – the permissibility of attacking the offspring and the women until the disbelievers are humiliated and their matter is destroyed. So then the circle of the battle will become wider and their defeat will be made easier and that is through their distress upon their children and their women, and in their dispersing in order to protect them. As *Imām* Al-Bukhārī narrated in his "*Sahīh*" regarding the story of the spy from Khuzā', which he sent to find out the issues of Quraysh, while he was traveling to 'Umrah. And that was in the story of Hudaybiyah. So this spy informed him that Quraysh had gathered those who lived around Makkah against him, and formed a pact to fight him and his companions if he continued with the intention of entering Makkah to visit the House. So the Messenger of Allāh took consultation from his companions, saying: "Advise me! Do you think we should target the children of those who helped them (the enemies), so we kill them; and if they remain sitting, then they will sit as those whose families have been killed, and property been seized and if they do not come then it will be a neck, which Allāh has cut? Or do you see that we should travel to the House [Ka'bah] and then whoever prevents us from it, we fight him?"<sup>204</sup> – finished.

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<sup>204</sup> Refer to "*Musnad Ahmad*" (18166), Al-Bayhaqī (9/218), An-Nasā'ī in "*Al-Kubrā*" (5/170), 'Abdur-Razzāq (5/330), At-Tabarānī in "*Al-Kabīr*" (20/10), and similar is narrated by Al-Bukhārī (4/1531), and Ibn Abī Shaybah (7/387).

This is the phrasing of 'Abdur-Razzāq in his "*Musannaḡ*" and Al-Bukhārī narrated it in his "*Sahīh*" with similar phrasings.

So in the *Hadīth* there is the permissibility of using the offspring and the women as a means of putting pressure upon the *Mushrikīn* to weaken their matter and to divide their unity, because the Prophet wanted to attack the women and the offspring so as to divide the allied clans away from Quraysh."

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Also refer to "*Zād Al-Ma'ād*" by Ibn al-Qayyim under the chapter of "The Pact of Hodaybiyah".



## Chapter Six: Refutation of the Misconceptions

And those who oppose the stance of the 'Ulamā' bring some spurious arguments- and they are all based upon the following points:

### Misconception #1:

*The opposition claims: "Since the kuffār rape our Muslim women- then according to this understanding of yours - it necessitates that we are also allowed to do the same to the women of the kuffār; And this necessitates that you make adultery permissible in this situation."*

And this misunderstanding can be invalidated from either of two angles- agreeing with even one of them is sufficient to understand the futility of the claim.

a) This is an **invalid** *Qiyās* (analogy) between two realities.

And this was the angle *Shaykh* Ibn Al-'Uthaymīn (ra) used- when he said:

"Then if someone says:

*'If they rape our women then do we rape their women?'*

No, this, no, no we do not do it.

Why? Because this is prohibited as a (whole) category [i.e. it is forbidden within itself], and it is not possible for us to do it.

Meaning, it is **not** forbidden out of respect for the rights of others [i.e. not because we are respecting their rights] - **rather**, because it is

forbidden as a category [i.e. the action of 'intercourse']. So it is not permissible for us to rape their women."

Meaning that the basic action of "rape" [*Al-Ightisāb*] is sexual intercourse [*Al-Jimā'*]. And sexual intercourse is forbidden as an action within itself (*Fī Nafsihi/ Bi Naw'ihī*), and it is an action of *Fahshā'* (lewd sin)- with only two exceptions mentioned by Allāh Himself in His Book:

**"And those who guard their chastity (i.e. private parts, from illegal sexual acts). Except from their [1] wives or [2] (the captives and slaves) that their right hands possess, for then, they are free from blame; But whoever seeks beyond that, then those are the transgressors."** <sup>205</sup>

So the Creator of the Heavens and the Earth Himself has made the *Fi'l* [action] of *sexual intercourse* forbidden [*Harām*] under all circumstances- with two exceptions - when it is with the spouses, and with the *Sabāyā* [slaves].

So the *Asl* [original ruling] is prohibition - and there are exceptions which make it permissible.

And as for the basic action of "killing women and children of the *kuffār*" - it is killing [*Al-qatl*]. And the *Fi'l* [action] of *killing* is - in its original ruling - permissible [*Mubāh*].

And the proof for this is in the statement of the Prophet ,  
"Whosoever says, "None is worthy of being worshipped, except Allāh", and disbelieves in whatsoever is worshipped other than Allāh, **then his wealth and blood are protected, and his reckoning is with Allāh.**" <sup>206</sup>

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<sup>205</sup> *Al-Mu'minūn*: 5-7

<sup>206</sup> Narrated by Muslim in his "*Sahīh*" (23).

So this means that *killing* [i.e. shedding blood] is permissible [*Mubāh*] in *Asl* – with the exception of those who are upon the testimony *Lā Ilāh Illā Allāh* – for they are excluded from the ruling of permissibility- meaning they have been made *Harām*.

So after establishing that *sexual intercourse* is **forbidden**, and *killing* is **permissible** – it is obvious that two things which have opposite rulings cannot be compared with each other in *Qiyās* [analogy]; and thus,- the analogy being used in the doubt is indeed invalid from its very core.

And this is what the *Salaf* meant when they mentioned that Equal Retaliation can be carried out with regards to everything- except those things which are *forbidden within its own self* (*Harām Fī Nafsihi*). As Al-Qurtubī (ra) mentioned, “And this is the opinion of the majority of the scholars- as long as they do not kill with something which is a sin (*Fisq*), such as sodomy, consumption of alcohol- so in such cases, he should be killed with the sword.”<sup>207</sup>

And Ibn al-Qayyim (ra) supported this stipulation for *Qisās* being permissible in everything except that which is forbidden by itself, “And the most authentic opinion is that whatever the transgressor did to the victim, will be done unto him also- with the exception of that which is forbidden due to the Right of Allāh [that which is forbidden for its own self], such as killing by sodomy.”<sup>208</sup> And this is the same case with sexual intercourse.

- b) The reasons for the prohibitions. Sexual intercourse is forbidden due to the fact that it is a *Fahshā'* (lewd sin); while killing women and children is forbidden due to the benefit that can be attained by keeping them alive.

And the Prohibition of sexual intercourse is permanent and unrestricted (except that which was mentioned by Allāh Himself) - while the Prohibition of killing women and children is indeed

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<sup>207</sup> “*Tafsīr Al-Qurtubī*” (2/357)

<sup>208</sup> “*Hāshiyat Ibn Al-Qayyim ‘Alā Sunan Abī Dāwūd*”: Vol. 12/178-180

restricted, and the Prohibition is repeatedly lifted, and it is made permissible when there is a greater benefit [Maslahah] involved.

And sexual intercourse was not made permissible by Allāh nor His Messenger in any circumstance other than the two exceptions mentioned by Allāh. As for killing the women and children of the kuffār- then the Prophet prohibited this, and allowed it in certain situations. And the Salaf understood from his words and actions that the prohibition is removed whenever there is a greater benefit or need for the Muslims to kill them. And this was elaborated upon in Chapter Three – so the reader should refer back to it to attain more clarity.

And in conclusion, agreeing with either of the two angles will reveal the futility of the doubt.

### **Misconception #2:**

The opposition claims: *“But how can those who are not directly responsible for the crimes of the criminals, be punished? How can those who are free of crime be punished for the crimes of others? Do you not hear the Words of Allāh,*

**“And no bearer of burdens shall bear the burden of another.”** <sup>209</sup>

And this misconception was beautifully refuted by *Shaykh Yūsuf Al-Uyayrī* (ra) when he said:

“And this claim is futile- it is contradictory, even if we claimed that we can only take revenge from the fighters... But then how did the Prophet fight against the entire Quraysh, even though it was

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<sup>209</sup> *Al-An'ām*: 164

actually Banū Bakr Ibn Wā'il, or the chiefs of the Quraysh, who were the ones who violated the treaty!

And how did the Prophet ﷺ kill the men, the elderly, and the hired laborers of Banū Quraythah- even though they did not violate the covenant; it was only their chiefs and advisors who violated the covenant- and for their crime, 700 souls were killed, while the remaining were enslaved.

And also, look at how the scholars *unrestrictedly* declared it permissible to mutilate the men of the enemy- the scholars did *not* stipulate that it has to be done *only to the perpetrator* of mutilation.

And if a man killed another, then why does his family take responsibility for the blood money and they are fined, while the one who committed the crime was (only) an individual from them, and they did not take part with him, and despite that, they take responsibility for his crime?

And also in the issue of the *Al-Qasāmah*, how could the *Shara'* (the *Islāmic* Legislation) permit fifty men from the *Awliyā'* (guardians) of the murdered one, who did not witness the murder, to take an oath against the one who is accused of the murder, that he killed there *Walī*, then he is given to them entirely so that they can kill him? So how is he killed in this condition while the guiltiness has not yet been confirmed in the same way as it is in the situation of the confession or the witnesses?

And it has come in the two "*Sahīhs*" also, from the *Hadīth* of Rāfi' Ibn Khadij who said: "We were with the Prophet ﷺ at Thī Hulayfah at Tuhāmah, when we attained some sheep and camels. So the people quickly boiled it in pots, then the Prophet ﷺ came and ordered for them to be dumped out" So how could the Messenger ﷺ punish those ones by destroying the meat, while it is from the spoils of war which had not been divided yet, while the whole army had a right regarding it, and those who transgressed were only the ones

who boiled (the meat in) the pots, so why was the punishment a group one?

Ibn Hajar said in *“Al-Fat’h”*: “And Al-Bukhārī considered the dumping out to be a monetary punishment, even if the money wasn’t specific to those ones who did the slaughtering, but when their greediness was attached to it, the punishment reached them.”

And also, that false claim can be refuted by the generality of the Verse,

***“And fear the Fitnah (affliction and trial, etc.) which affects not in particular (only) those of you who do wrong”*** <sup>210</sup>

and also the Verse,

***“And when We decide to destroy a town (population), We (first) send a definite order (to obey Allāh and be righteous) to those among them who are given the good things of this life. Then, they transgress therein, and thus the word (of torment) is justified against it (them). Then We destroy it with complete destruction.”*** <sup>211</sup>

And the Pure *Sharī’ah* came with these types of punishments for those types of situations of transgressions. Because these crimes, for which Allāh also punishes those who did *not* perpetrate them, are transgressions which implicate the collective group- for indeed the group was capable, since it was aware that they were committing crimes, of forcing the perpetrators to refrain from their crimes. And it is for this reason that the *Sharī’ah* has brought punishment upon the collective group on behalf of the individual criminals; so that this can be an encouragement and motivation for the collective group to stop

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<sup>210</sup> *Al-Anfāl*: 25

<sup>211</sup> *Al-Isrā’*: 16

the perpetrators *before* they are all collectively punished. And Allāh knows best.” End of quote from *Shaykh Yūsuf Al-'Uyayrī* (ra).

And Al-Qurtubī (ra) said while explaining the Verse, **“And no bearer of burdens shall bear the burden of another”** <sup>212</sup> :

“It is understood that this Verse is regarding the Hereafter, just like the one before it <sup>213</sup>. But as for in this world- then indeed some are punished for the crimes of others- *Especially* if the righteous people do not forbid the sinful people, as has preceded in the *Hadīth* of Abū Bakr (ra) regarding the Verse, **“Take care of your ownelves”** <sup>214</sup> ; and also the Verse, **“And fear the *Fitnah* (affliction and trial, etc.) which affects not in particular (only) those of you who do wrong”**<sup>215</sup>... {Then Al-Qurtubī mentions some of the examples mentioned by Al-'Uyayrī}... And all these prove what we have said. And it [the Verse] can also be interpreted to be regarding this world.”

And as other '*Ulamā'* have pointed out- this Verse [in its unrestricted meaning and implications] **is indeed regarding the Hereafter**- as was explained by Ibn Kathīr (ra), when he said under that Verse:

“This (Verse) is notifying us of the situation *during the Day of Resurrection*; regarding the repayment of Allāh (Most High), and His Judgment and Justice; that the souls will only be rewarded (good or bad) for their own actions - if they did good, (then they will be rewarded) good - If they did evil, (then they will be punished with)

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<sup>212</sup> *Al-An'ām*: 164

<sup>213</sup> **“No person earns any (sin) except against himself (only), and no bearer of burdens shall bear the burden of another. Then unto your Lord is your return, so He will tell you that wherein you have been differing.”** [*Al-An'ām*: 164] - It is evident that this Verse is regarding the Hereafter, and further explanation is ahead.

<sup>214</sup> *Al-Mā'idah*: 105

<sup>215</sup> *Al-Anfāl*: 25

evil. And (this Verse means) that the sins of a person will not be burdened upon another (person), and this is from His Justice.”<sup>216</sup>

And even if the opinion that the Verse, “**And no bearer of burdens shall bear the burden of another**” is regarding this world- it is impossible for this to be unrestricted, as many incidents from the Prophetic *Sīrah* clearly show. And some were previously mentioned already by *Shaykh* Al-'Uyayrī (ra) [in the quote that was mentioned above].

And this is further clarified by the *Hadīth* narrated by 'Imrān ibn Husayn (ra), “(The tribe of) *Thaqīf* were allies of *Banū 'Uqayl* – and *Thaqīf* had taken two men from amongst the Companions of the Messenger as prisoners. So the Companions captured a man from *Banū 'Uqayl*, and they captured she-camels along with him. So the Messenger came to him while he was tied (in ropes), and he said, “O Muhammad!” - So the Messenger came near him and asked, “*What is your matter?*” He replied, “For what reason have you taken [i.e. captured] me and the one proceeding the pilgrims [i.e. the she-camels]?! So the Messenger replied, “**I took you because of your (tribe's) allies' - Thaqīf's - crime.**”<sup>217</sup>

So from the actions of the Prophet , we can see the following points being derived:

1. A tribe from the *kuffār* captured two Muslims.
2. The Companions, in return, captured a man who was from an allied tribe of the capturers.

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<sup>216</sup> “*Tafsīr Al-Qur'ān Al-'Athīm*”: 2/267

<sup>217</sup> Refer to “*Sahīh Muslim*” (1641), “*Sunan Abī Dāwūd*” (2838), “*Musnad Ahmad*” (4/430, 433, 434), “*Sunan Ad-Dāraqutnī*” (4/483), “*Sunan Al-Bayhaqī*” (6/320, 9/67, 72), and “*Jāmi' Al-Usūl*” (2/627). It is narrated in “*'Awn Al-Ma'būd*”, that Al-Khattābī narrated that some of the *Salaf* said, “So if it is permissible to be punished for the crime of one's own self- meaning his *kufr* – then it is also permissible to be punished for the crimes of others who are in his own state of condition- such as being an ally, or such.”



3. The Prophet said, “I took you because of your (tribe’s) allies’ - Thaqīf’s - crime.”
4. It is obvious that the *kāfir* man was guilty of no crime himself.
5. Nor was there any action of guilt from the tribe to which he belonged, Banū ‘Uqayl.
6. The crime was of Banū Thaqīf- those who were the allies of the tribe to whom the man belonged.

*Shaykh* Yūsuf al-‘Uyayrī (ra) expounded upon this *Hadīth*, saying, “The Messenger was not transgressing by doing this action of his- because the situation of warfare necessitates actions similar to these to attain the security of the people of *Islām*. Rather, it is not possible for us to protect the honor of the Muslims except by carrying out these types of actions.” <sup>218</sup>

And *Shaykh* ‘Alī Al-Khudhayr (fa) explained the implications of this *Hadīth*, saying, “We [the ‘*Ulamā*’] say regarding this *Hadīth*: If the criminals are a collection of people, or an abstaining group, or a country which has interest [to wage war against Muslims] – then it is *permissible* to punish a non-criminal from amongst them for the crimes of the rest of the people. And we say: If it were not for this, then the *Jihād* would be thwarted, and the Enemies of the *Dīn* would gain authority.” <sup>219</sup>

So as the *Salaf* have explained- the correct opinion is that the Verse is regarding the Hereafter; and even if it is taken to be regarding this world, it is indeed restricted in its implications. And perhaps *Shaykh* Al-Khudhayr (fa) gave the best explanation of the restrictions of the Verse, when he said regarding the Verse:

**“And no bearer of burdens shall bear the burden of another.”** <sup>220</sup>

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<sup>218</sup> “*Hidāyat al-Hiyārā Fī Jawāz Qatl Al-Asārā*”, pg. 9

<sup>219</sup> Taken from the *Shaykh’s* verdict “*Hukm Mā Jarā Fī Amrīkā Min Ahdāth*”.

<sup>220</sup> *Al-An‘ām*: 164

“Indeed this Verse is general, just like the ones that preceded it. It is regarding a person who is completely innocent and free from any connection to guilt- one who has not fought, nor assisted in fighting- not with advice, nor counseling, nor with anything whatsoever- nor is the person in the homes (of the criminals), nor from amongst the ‘abstaining group’, nor from amongst the people who increase the number of the masses of the enemies.”

### **Misconception #3**

They claim, “The scholars of the Salaf said there is *Ijmā'* on the prohibition of killing women and children intentionally. You are rejecting this. Have you not seen the statement of Ibn Hajar (ra) when he said,

“And all (the scholars) are agreed, as Ibn Battāl and others have narrated, upon the prohibition [*Mani'*] of intentionally killing women and children.”<sup>221</sup>

The truth is that those are general statements- and there are indeed situations in which it is permissible to kill them intentionally. This is clarified in Chapter Three, so let it be referred to again if needed for clarification.

### **Misconception #4:**

They claim: “How can you say something which was never said by the scholars of the Salaf?”

Firstly, it should be remembered that **none** of the Salaf even addressed [let alone declaring it *forbidden*] the issue of killing the women and children of the *kuffār* as Equal Retaliation, in the situation that the *kuffār* target and kill ours.

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<sup>221</sup> Refer to “*Fat’h Al-Bārī*” (6/146).

And as for this doubt which they raise- then it is spurious just as the others. *Shaykh Al-Islām* Ibn Taymiyyah (ra) mentioned regarding a matter in which he was alone, due to his predecessors not having had addressed the issue of 'dropping the stipulation of purity [*Tahārah*] from the menstruating woman who is confined by a group of people during circumambulation [*Tawāf*]:

“And this which I have mentioned is the implication of the general textually based principles, that cover this matter, literally and in meaning - and it is the implication of the understanding and *Qiyās* based upon similar principles. And the one who opposes it- (did so only) because he did not find a saying from the scholars who are followed about the concerned matter; similarly, he could not find any words (for them about the permissibility) of circumambulating (the *Ka'bah*) naked, because such matters were unimaginable in their times; (and due to this we say) that it is not obligatory for the matter to run through their hearts (and thus) for them to speak about it; *and these things either did not occur in their times, or were very rare- and their words regarding this (matter) is unrestricted and general*; So this is for generalities, if the concerned matter is not specified by reasons which would differentiate it and specify it. And this matter **cannot be addressed** by anyone by using the general words of the scholars, *due to this specific situation not being existent during their time.*”<sup>222</sup>

So these are the baseless points which caused them doubts, and they are answered- and all praise belongs to Allāh.

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<sup>222</sup> Refer to “*Majmū' Al-Fatāwā*” (26/239-241).

## Conclusion

And indeed the purpose, intent, and goal behind killing the women and children of the *kuffār*- since they target ours and kill our mothers, daughters, wives, sisters, sons, and babies- **is so that it repels them from repeating their crimes and massacres against our innocents, so that the blood of our innocent children and women do not get taken cheaply by the *kuffār***; and this is exactly as *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him said:

“Verily, the retaliation in kind is a right for them. So it is permitted for them to perform it in order to restore their morale and to take revenge, yet they may decline it (i.e. this right) when patience is preferable. But this is when the retaliation in kind would not result in any advance in the *Jihād* and when it would not increase their terror (so as to keep them away) from the likes of that. But if a widespread retaliation in kind would be an invitation for them towards *Īmān*, **or a preventative factor towards their aggression**, then in this case, it becomes included in a form of establishing the *Hudūd* (i.e. *Islāmic* legislated punishments) and a (proper) *Sharī'ah*-based *Jihād*.”<sup>223</sup>

And perhaps words which are appropriate to end any sincere research with are in the words said by Ibn Taymiyyah also elsewhere- and we repeat them here as the *Mujaddid* said them back then<sup>224</sup>:

“This is what is the correct opinion according to me in this matter; *and there is no movement nor might except with Allāh, the Most High, the Most Supreme*. And if it wasn't for the dire necessity and need of mankind for it, in terms of both, knowing it and acting upon it- then I would not have gone through the trouble of explaining something which I did not

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<sup>223</sup> Narrated by Ibn Muflih may Allāh be merciful to him in “*Al-Furū'*” (6/218). Also see “*Al-Ikhtiyārāt*” (5/521) of *Shaykh Al-Islām* Ibn Taymiyyah may Allāh be merciful to him.

<sup>224</sup> Refer to “*Majmū' Al-Fatāwā*” (26/239-241).

find anyone speaking about, other than myself. Verily *Ijtihād* during times of dire necessity is from the things which Allāh has commanded us with.

So if what I have said is correct, then it is the Decision of Allāh and His Messenger, and all praise belongs to Allāh. But if what I said is incorrect- Then it is from my ownself and *Ash-Shaytān*, and Allāh and His Messenger are innocent and free from it. And Allāh (Most High) knows best if the mistaken one will be forgiven, and all praise belongs to Allāh Alone, and salutations be upon Muhammad and his family, and many blessings and peace.”

*Completed on the Seventeenth from the Month of Ramadhān*

*1425 years after the Hijrah of the Messenger of Allāh*