

YAQEEN INSTITUTE FOR ISLAMIC RESEARCH

40 HADITHS ON SOCIAL JUSTICE

LECTURE NOTES

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Chapter 19: The Definition, Categories, and Prohibition of Torture in Islam

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

It has been narrated that Hisham bin Hakim bin Hizam (May Allah be pleased with them) happened to pass by some (non-Arab) farmers of Syria who had been made to stand in the sun, and olive oil was poured on their heads. He said: "What is the matter?" He was told that they had been detained for the non-payment of Jizyah. (Another narration says that they were being tortured for not having paid Al-Kharaj). Thereupon Hisham said: "I bear testimony to the fact that I heard the Messenger of Allah (ﷺ) saying, 'Allah will torment those who torment people in the world.'" Then he proceeded towards their Amir and reported this Hadith to him. The Amir then issued orders for their release. [Muslim].

وعن هشام بن حكيم بن حزام رضي الله عنه أنه مر بالشام على أناس من الأتباط، وقد أقيموا في الشمس، وصب على رؤوسهم الزيت فقال: ما هذا؟ يُعذبون في الخراج وفي رواية: حُبسوا في الجزية. فقال هشام: أشهد لسمعت رسول الله صلى الله عليه وسلم يقول: "إن الله يعذب الذين يعذبون الناس في الدنيا" فدخل على الأمير، فحدثه، فأمر بهم فخلوا

[رواه مسلم]

Introduction

- Hadith says: Allah tortures those who torture in this world (or tortures people)
 - إن الله يعذب الذين يعذبون الناس في الدنيا
 - The Hadith alludes to the prohibition of torture as a whole and refers to both those who are in a position of power and those who aren't.
- Hadith: "Do not punish (torture) with the punishment of God."
 - لا تعذبوا بعذاب الله [Sahih Bukhari]
 - This points to the prohibition of punishing people with Fire.
- This brings us back to the first Hadith in this series. When a person oppresses, they put themselves in the place of Allah. The Prophet (ﷺ) could've said, "Do not punish

with fire," but He used fire because that is reserved for Allah (swt) and He is in all things the Most Just.

- The people of Ukhlood would punish people for believing in Allah.
 - Today, the Rohingya people are similarly being punished right now for their belief in the ongoing ethnic cleansing.
- Ibn Al-Qayyim said, "This (fire) was the punishment that was used against Ibrahim (as) not the followers of Ibrahim (as).
- There are also general Hadith that teach us that the way we engage with others is the way Allah will engage with us.
- The Prophet (ﷺ) said, "Allah is merciful only to those of His slaves who are merciful (to others).
 - إِنَّمَا يَرْحَمُ اللَّهُ مَنِ عِبَادَهُ الرَّحْمَاءُ

Torture of Animals

- When looking at the topic of torture, most of the Ahadith on torture have to do with animals.
- One of the most famous hadith on torturing animals is the one about the woman and cat.
- Narrated `Abdullah bin `Umar: Allah's Messenger (ﷺ) said, "A woman was tortured and was put in Hell because of a cat which she had kept locked till it died of hunger."
- There are also many ahadith that come up in regards to this:
 - The hadith on branding animals.
 - The hadith on overburdening the camels.
 - The hadith on torturing the birds.
- There are numerous hadith on torturing animals so from this we can take the obvious impermissibility of torture human beings.

Prisoners



- There are many prisons both overseas and local that have lead the way in torturing prisoners.
- Thumama was the chief from Banu Hanifah a tribe who was most notable for the false prophet Musaylamah Al-Kadab
- “Abu Hurairah said “ The Messenger of Allah (ﷺ) sent some horsemen to Najd and they brought a man of the Banu Hanifah called Thumamah bint Uthal who was the chief of the people of Al Yamamah and bound him to one of the pillars of the mosque. The Messenger of Allah(ﷺ) came out to him and said “What are you expecting, Thumamah?”. He replied “I expect good, Muhammad. If you kill (me), you will kill one whose blood will be avenged, if you show favor, you will show it to one who is grateful and if you want property and ask you will be given as much of it as you wish. The Messenger of Allah (ﷺ) left him till the following day and asked him “What are you expecting, Thumamah?” He repeated the same words (in reply). The Messenger of Allah (ﷺ) left him till the day after the following one and he mentioned the same words. The Messenger of Allah (ﷺ) then said “Set Thumamah free.” He went off to some palm trees near the mosque. He took a bath there and entered the mosque and said “I testify that there is no god but Allah and I testify that Muhammad is His servant and His messenger.
 - The scholars point from this hadith that the Prophet (ﷺ) refused to do what was the custom of the tribe of Thumama which was torture.
 - According to Fiqh, the Prophet (ﷺ) dealt with the enemies in the way they treated him. Here with Thumama the prophet refused to torture him.
- And they give food, in spite of their love for it (or for the love of Him), to the Miskeen (the poor), the orphan, and the captive. (Saying): “We feed you seeking Allah"s Countenance only. We wish for no reward, nor thanks from you.”(Qur’an 76:8-9)
 - This ayah typically speaks to how you would spend upon other prisoners. Even if you don’t have the means to free them, you should free them.
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- Ibn 'Abbaas, one of the Prophet's companions, said: "In those days their prisoners were mushrikeen (idol worshippers); on the day of Badr, the Messenger of Allah (ﷺ) commanded them to be kind to their prisoners, so they [Muslim soldiers] used to put the prisoners before themselves when it came to food."
- Mujahid, another commentator of the Quran, said, "this refers to the one who is detained, meaning, they would give food to these prisoners even though they themselves desired it and loved it."
- In a hadith it was said that the Prophet (ﷺ) was pacing and had tears in his eyes after Badr. When asked why he said, "I could hear Abbas moaning because of the chains (i.e. he was chained up)" so one of the sahaba went to loosen it up for him. The Prophet (ﷺ) was pleased but told them that they would need to do it for everyone since he did it for Abbas.

Being Tortured

- The Prophet (ﷺ) spoke about forced confession in a hadith where he said, "Allah has pardoned people for what they do out of mistake, forgetfulness, or under duress"
- If you are being tortured there is concession in doing things you would otherwise never do.
- We see examples of this come up in the life of the Prophet (ﷺ) when sahaba would be tortured for their belief and forced to say and do things that went against everything they believed in. Some resisted and were martyred because of it like the parents of Yassir (ra). Those who were made to say things they didn't believe in, like Yassir, were told by the Prophet (ﷺ)
- While Ammar was being tortured he was being forced to say things he would otherwise not do. His parents did not do this and were killed. He did and felt an extreme amount of guilt over this.
- This meant a whole lot to the early muslims who were being persecuted.

Investigative Torture

- Azhar ibn Abdullah al-Harari said: Some goods of the people of Kila' were stolen. They accused some men of the weavers (of theft). They came to an-Nu'man ibn Bashir, the companion of the Prophet (ﷺ). He confined them for some days and then set them free.
- They came to an-Nu'man and said: You have set them free without beating and investigation. An-Nu'man said: What do you want? You want me to beat them. If your goods are found with them, then it is all right; otherwise, I shall take (retaliation) from your back as I have taken from their backs. They asked: Is this your decision? He said: This is the decision of Allah and His Apostle (ﷺ).
- The earlier scholars completely prohibited investigative torture. However, later scholars in the eleventh and twelfth century discussed this and started to give some exceptions to showing some physical force but only with those who have a history of criminal activity. This was analogous to half-proof.
- This shows that the schools knew they had to work within the boundaries that were already set by Allah and His Messenger.

Conclusion

- The UN defines torture as “Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”
 - While this definition seems more specific to human beings, Islam has condemned all forms of torture even against animals and other living creatures.
 - The Prophet mentioned to us that the first proceedings on the Day of Judgement will be between the animals. So what then of a human being who had more than another and took advantage of them or an animal?