

Shaykh Mashhūr Hasan Āl Salmān
(hafīdhahullāh)

ON SLAVERY, CAPTIVES AND PRISONERS OF WAR¹

Question:

“What is ‘slavery’ [‘Ubūdiyyah] and is it permitted in our times?”

Answer from Shaykh Mashhūr (hafīdhahullāh):

The question says “‘Ubūdiyyah” he intends by this ar-Riqq, our brother is asking about ar-Riqq. Has ar-Riqq been abrogated? During the time of the Prophet (*sallallāhu ‘alayhi wassallam*) was there ar-Riqq? Yes, there was during his time. Is ar-Riqq in existence now or not? Is Islām pleased with it? No, Islām interacted within a society in which there was slavery and the Prophet (*sallallāhu ‘alayhi wassallam*) said: “*The curse of Allāh is on a person who sells a free person and then consumes the price for that.*”² A free person cannot be taken into slavery.

¹ From the Shaykh’s Q & A session dated 22 March 2013 CE, it can be viewed here after 28 minutes:

<http://www.youtube.com/watch?v=SCHnlW2RQIU>

² **Translator’s Note [‘AbdulHaq al-Ashanti]:** Reported by al-Bukhārī on the authority of Abū Hurayrah (*radi Allāhu ‘anhu*) and also reported by Ibn Mājah and Imām Ahmad in his *Musnad*. There is another hadeeth wherein the Prophet Muhammad (*sallallāhu ‘alayhi wassallam*) stated “*Three types of people will not have rewards for their prayer: a man who forces himself as an Imām on a group of people; a man who postpones prayer until its time has gone and a man who enslaves a free person.*” This hadeeth is reported by Abū Dāwūd and Ibn Mājah, however both on the authority of ‘AbdurRahmān bin Zayd bin Aslam al-Ifrīqī who is very weak due to his fabrication of narrations attributed to his father, as mentioned by al-Hākim in his book of weak narrators entitled *ad-Du‘afā*. Imām al-Bukhārī stated about ‘AbdurRahmān ibn Zayd that “**his hadeeth are not authentic**” as relayed in *at-Tārīkh al-Kabeer*, vol.1, p.618; Ibn Hibbān stated about ‘AbdurRahmān ibn Zayd that “**he deserves to be abandoned**” as stated in *al-Majrūheen min al-Muhaditheen wa Du‘afā wa’l-Matrūkeen*, edited by Mahmūd Ibrāheem Zāyid (Halab: Dār ul-Wa‘ī, 1396 AH, 1st Edition and 1402 AH for the 2nd Edition), vol.2, p.57; Ibn Sa’d stated that ‘AbdurRahmān ibn Zayd “**reported many**

If we as Muslims take prisoners of war from the disbelievers [during a legislated period of war] we are to protect them and not harm and not enslave them so as to protect our captives [which they have]. Would that they would implement how our deen teaches slaves to be treated. Our Lord Says,

“And they give food in spite of love for it to the needy, the orphan, and the captive...”

{*al-Insān* (76): 8}

This is in regards to one who has tried to fight us, kill us and shed our blood when he becomes a captive are to give him food in spite of our love of it, and in regards to “in spite of love for it” the Mufasssireen have two views:

One: that it means he gives food from what he loves

Two: that it means that he gives food due to his love of Allāh

Thus, it is not possible to abrogate slavery however they preserve our captives and do not rape our women and our captives can attain their rights, then we are to treat the enemies the same and better. The first to lay down principles for the rights of captives was Imām Muhammad ibn Hasan ash-Shaybānī in his book *as-Siyar* and Abū Yūsuf in his book *al-Kharāj*.³ They both

hadeeth and was very weak” as found in *at-Tabaqāt al-Kubrā*, vol.5, p.413; al-Fasawī noted in *al-Ma’rifah wa’t-Tārīkh*, vol.3, p.43 placed ‘AbdurRahmān ibn Zayd amongst those who should not be narrated from; Abū Haatim stated that **“he is not strong in hadeeth but was righteous”**. The only scholar who graded ‘AbdurRahmān bin Zayd as above the level of *da’eef* (weak) was Ibn ‘Adī who stated that **“there are hasan (good) hadeeth from him and some of them (i.e. scholars) attested to his truthfulness, and he was from those who they recorded hadeeth from.”** For more see Ibn Hajar al-‘Asqalānī, *Tahtheeb at-Tahtheeb*, vol.6, p.178. Ibn Taymiyyah has also highlighted his weakness in narration.

³ [TN]: Many non-Muslim Western academics and researchers have also credited Imām Muhammad bin Hasan ash-Shaybānī for his efforts in this regard. Rudolph Peters (ed.) in *Jihad in Classical and Modern Islam: A Reader* (Princeton, New Jersey: Markus Weiner Publishers, 1996), pp.3-5 stated:

During the second half of the eighth century the first comprehensive treatises on the law of jihad were written by al-Awzai and Muhammad al-Shaybani.

Peters also admits that: **“the protection of non-combatants, lawful methods of warfare, treatments of prisoners of war [and] safe-conduct to enemy persons”** were all issues defined in the books on law covering Jihad. Peters also stated (p.137) that *as-Siyar* was **“devoted exclusively to Islamic law dealing with relations with non-Muslims.”** This was also noted by Charles Clinch in his 2005 article *Jihad: How it can save Just War Doctrine: An analysis of Just War Doctrine in the UCLA International Institute:* <http://www.international.ucla.edu/article.asp?parentid=35780>

mentioned that captives have the right to learn a trade while imprisoned, and that he has the right to learn his religion, to establish Jumu'ah, pray in congregation and gain understanding of his religion, contact his wife, children and relatives. These are important principles, and I think I mentioned to you before that a man and woman from Switzerland approached me and asked me to participate in a conference in Geneva on human rights which was organised by a charity called the Muhammad ibn Hasan ash-Shaybānī for Human Rights. If you were to ask the Muslims today: who was Muhammad ibn Hasan ash-Shaybānī? They would not know! Yet in Switzerland there is a charity named after him due to his precedence in this field.

John Strawson, a Reader of Law at the *School of Law of The University of East London*, stated in his renowned 1993 research paper *Encountering Islamic Law* that ash-Shaybānī's *Siyar*:

...contains detailed codes on the Law of War...its propositions on the Law of War would not seem unfamiliar to the modern student of international law.

See paper here: <http://www.witness-pioneer.org/vil/Articles/shariah/jsrps.html>

The role of Imām Muhammad ash-Shaybānī has also been highlighted by Recep Senturk (2005) in "Sociology of Rights: "I Am Therefore I Have Rights": Human Rights in Islam between Universalistic and Communalistic Perspectives," in the *Muslim World Journal of Human Rights*, vol. 2: issue 1, article 11.