

Al-Fatawa Ash-Shazlia

SHARIAH RULINGS
REGARDING USURY
AND MORTGAGE IN
NON-MUSLIM COUNTRIES

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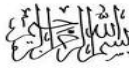
Preface

Alhamdulillah by the grace of the Almighty Allah, 19th book of FALAAH-U-DARAIN series of books is in your hands. This book is a selection from my previously written Urdu fatawas. The basic aim of this book is to mention the true opinion of the Chief of the Islamic Jurists, Imam Abu Hanifah (May Allah pleased with him). First I published this book in Urdu and sent some of its copies to my elder brother Mualana Muhammad Aslam Qadri (May Allah keep his kind shadow on us) residing in Houston TX. In response he advised me to translate it into English so that those who are not comfortable with reading Urdu can be benefited. Hence I have translated it into English. However, if there is any query, please feel free to contact us by post at address of Tooba Welfare Trust or can post their questions on our web-site:

www.toobawelfare.com.

May Allah accept this effort and reward all those who helped me in producing this book. Further those who want to be the part of this “FALAAH-U-DARAIN” series can become the member by sending postage expenses of one year to TOOBA WELFARE TRUST (International). You can also make donations for this purpose. Please contact Mufti Waqqar Ahamd on the following number; 03333786913

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Respected Mufti Sahib,

Asslamu alaykum WA rahmatullahi!

By the mercy of Allah, we often watch your programs on Qtv. You mostly give verdict of the lawfulness of mortgage in non-muslim countries. But here, in UK, we heard from some trustful scholars that mortgage is not allowed and they mention various proofs of its unlawfulness. Kindly tell us the right shariah rulings about mortgage. If your opinion is correct then kindly tell us the answers of the criticisms raised by the scholars?

***Answer with the help of Almighty Allah
O Allah! Guide me to the right and truth***

WA alaykum slaam WA rahmatullahi WA barakaatuhu!

All praises be to Allah, the cherisher of the universe and blessings and peace be upon the Chief of the Prophets and Apostles, upon his sacred family, his pious companions, jurists of his nation, especially upon the greatest Imam, Abu Hanifah Nauman s/o Thaabit. Success in hereafter is only for those who fear Allah. O Allah! Show me the right as right and give me taufeeq to follow it and show me the wrong as wrong and give me taufeeq to avoid it. Ameen by

the holy Prophet (blessings and peace be upon him).

I have already read the criticisms of scholars who differ in opinion from Imam Abu Hanifah, and read it again after receiving this question but no criticism is based on strong proofs. However, I will write the answers of all criticisms and it will be clear that the verdict of the chief of Imams, Abu Hanifah is right and in accordance with the Quran and the tradition of the holy Prophet (blessings and peace be upon him).

MY OPINION

Before writing the answers of the criticisms of the scholars who differ with Imam Abu Hanifah, I want to clear that this is a pure scholastic problem and great jurists of Islam have different opinion about this matter. According to some it is allowed earning profit by involving in a formal interest dealing with a hostile non-Muslim (Harabi) and this is the opinion of Imam Abu Hanifah as has been mentioned in the books, including mutoon .e. primary books, explanatory books and Fatawa books, of Hanafi School of jurisprudence. And on the other hand, this practice is allowed neither with a Muslim nor with a hostile non-Muslim. And it should be known that when a matter is disputed in between jurists (Mujtahadeen) then followers (Maqalladeen) do not need to talk about it. Every follower has right to follow his own Imam. But, now a day, some of the scholars not only try to weaken

the opinion of Imam Abu Hanifah without any need and interpret his verdict according to their desires rather they refuse it totally. Therefore, I intend to mention before the people the real opinion of the great Imam Abu Hanifah (Mercy of Allah be upon him). And I intend also to state the lawful facility for the Muslim brothers living in foreign countries, acting upon the saying of the holy Prophet (blessings and peace be upon him),

يَسِّرُوا وَلَا تُعَسِّرُوا

“Facilitate the people and don’t put them in problems”¹

so that they may get houses for them selves by mortgage, according to the facility given by Shariah. As well as, according to my knowledge, the so-called interest money left by the Muslims in their banks is used by Red-Cross for Christian missionary works. Therefore, even if any Muslim does not want to use that money, he must not leave it in the ownership of bank so that it may not be used for the missionary work of other religions. So it is good for them to get this money for other poor Muslim brothers.

It should be kept in mind that the purpose of this verdict is not to incite Muslim community to get involved in dealing in usury with interest based banking. In this scenario I would like to clarify that in this age, the economy of a country depends upon its banking system. Therefore, it is advised that if

anywhere, there is an availability of Islamic banking than it must be preferred instead of opening account in interest based banks. Further if the facility of mortgage can be availed easily through Islamic banking then it should be availed and there is no need to be involved in interest based banking.

PROOFS OF THE OPINION OF THE GREATEST IMAM

Before answering the criticisms against Imam Abu Hanifah's opinion, I would write briefly only two proofs among many proofs in his favour.

PROOF NO. 1 HADITH OF LA RIBA

Imam Abu Hanifa and other Mujtahadeen have denied the existence of interest between a Muslim and a hostile infidel on the basis of the saying of the holy Prophet (blessings and peace be upon him)

لَا رِبَا بَيْنَ الْمُسْلِمِ وَالْحَرَبِيِّ فِي دَارِ الْحَرْبِ

“No interest takes place in between a Muslim and a hostile infidel in Dar-ul-Harab (House of war).²

Imam Dhayla'i has mentioned this narration in the book named, Nasbur Rayah, Kitaabul buyua, Baur Riba. And Imam Baihaqi mentioned the same narration with the following wording in the book named, Maarifatus Sunan wal aasaar, Kitaabus Siyar, Babu bai-d diraham bidirhamain fi Ardil harab,

لَا رِبَا بَيْنَ أَهْلِ الْحَرْبِ

“No usury exists in between the

inhabitants of Dar-ul-Harb”³

PROOF NO. 2 RIBA OF ABBAS (Allah pleased with him)

Imam Ja’afar Al-Tahavi mentioned this hadith in support of Imam Abu Hanifah, in his book named, Mushkilul Aasaar. I will write it here briefly.

Imam Ja’afar Al-Tahavi wrote that according to some narrations Sayyuduna Abbas s/o Abdul Muttalib (Allah pleased with both of them) entered in the fold of Islam at the incident of the battle of Badr and according to some other narrations he accepted Islam at the time of battle of Khaibar. However, in both cases, he had accepted Islam before the conquest of Makkah Al-Mukarramah. And it is proved from the hadith of Fuzala s/o Ubaid that the prohibition of usury had been enforced at the time of Khaibar or before it. When Makkah Mukarramah was conquered the holy Prophet (blessings and peace of Allah be upon him) delivered a sermon and said,

أول ربا أضع ربانا ربا العباس بن عبدالمطلب

“The first usury which I terminate is our usury, the usury of Abbas s/o Abdul Muttalib.”

These words of the holy Prophet (blessings and peace of Allah be upon him) clearly show that usury was still established in Makkah Mukarramah; a thing is finished or terminated when it already exists. And the usury of Abbas (Allah pleased with him) existed in

that time although he had been a Muslim before that incident. Therefore, it comes to know that in that time usurious dealing was lawful in between Muslims and Non-Muslims, because Makkah was Dar-ul-Harab before its conquest. Therefore it appears that opinion of Imam Abu Hanifah is exactly right. This is why, before Imam Abu Hanifah, a great Imam named Ibraheem Nakha'i used to say, ((لا بأس بالدينار بالدينارين في دار الحرب بين المسلمين وبين أهل الحرب)) that there is no restriction in exchange of one dinar (gold coin) with two dinars in between Muslims and the inhabitants of Dar-ul-Harab.⁴

CRITICISMS AND THEIR ANSWERS

FIRST CRITICISM:

Were the Christians of Najraan and Zoarastarian of Hajar hostile infidels?

The critics wrote,

The narration which has been used by Imam Abu Hanifah for supporting his opinion is weak. And the clear proof of the weakness of this narration is that the holy Prophet (blessings and peace be upon him and his pious family) forbade to gain interest from the Christians of Narran and the Zoarastarian of Hajar even they were hostile infidels (Harbi) as has been narrated,

فَإِنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَتَبَ إِلَى نَصَارَى

نَجْرَانَ مَنْ أَرَبَى فَلَيْسَ بَيْنَنَا وَبَيْنَهُ عَهْدٌ، وَكُتِبَ إِلَى
مَجُوسِ هَجَرَ إِمَّا أَنْ تَدْعُوا الرَّبَّ أَوْ تَأْذَنُوا بِحَرْبٍ مِنْ
اللَّهِ وَرَسُولِهِ

“No doubt, the holy Prophet (blessings and peace be upon him and his pious family) wrote a letter to the Christians of Najran that whosoever involves in dealing of usury, no treaty will rest in between us and him. And he (blessings and peace be upon him and his pious family) wrote to the Zoroastrian of Hajar that either leave usury or declare war against Allah and his Prophet.”⁵

The above reference shows that the Christians of Najran and the Zoroastrian of Hajar were hostile infidels but the Apostle of Allah (blessings and peace be upon him and his pious family) did not allow them usurious dealing in their own territories. And when, even the infidels of Dar-ul-Harb are not allowed to involve in usurious dealing then how he (blessings and peace be upon him and his pious family) can permit the Muslims of Dar-ul-Harb for usurious dealing?

ANSWER:

I think this is the most powerful proof of deviating from the opinion of Imam Abu Hanifah but I think this reference of Mabsoot is not against Imam Abu

Hanifah rather it supports his opinion. The wording of the above mentioned reference itself shows that the Christians of Najran and the Zoarastarian of Hajar were not hostile infidels' rather they were Dhimmis (the infidels who live under the protection of Islamic government and pay fee for their protection). This is why the holy Prophet (blessings and peace be upon him and his pious family) forbade Muslims to involve with them in usurious dealing. First underlined wording from the above mentioned reference shows that the holy Prophet (blessings and peace be upon him and his pious family) made a treaty with the Christians of Najran and they were one of the parties of treaty. And the second underlined wording shows that the Zoarastarian of Hajar were also the party of treaty otherwise if they were hostile infidels, they would not have been said, "declare war against Allah and His Apostle" because a hostile infidel is the very person who is in war against of Muslims. Therefore, it is proved from the same reference that the Christians of Najran and the Zoarastarian of Hajar were not hostile infidels rather they were the parties of the treaty. And it is obvious for the men of knowledge that the Non-Muslim parties of treaty with Muslims are called Dhimmis and they are the people who called Dhimmis.

WHO IS DHIMMY?

Allama Murtaza Zabeedi writes the meaning of Dhimmi and says,

(الذمة بالكسر العهد) ورجل ذمي أي: له عهد... إلخ.

“If the word ‘Adh-Dimmah’ is written with the kasra of Dhaal so it stands for ‘Treaty’. Ad-Dhimmi is a Non-Muslim who made a treaty with Muslims.”⁶

Ishmael Al-Farabi Al-Jauhri writes,

الدِّمَامُ: الحرمة. وأهل الدِّمَةِ: أهل العقد. قال أبو عبيد:
الذمة: الأمان، في قوله عليه الصلاة والسلام:
(ويسعى بذمتهم أدناهم)

“Adh-Dhimaam means prohibition. Ahludh-Dhimmah stands for the party of treaty. Abu Ubaidah said that the word ‘Dhimmah’ in the saying of Prophet (blessings and peace be upon him and his pious family) i.e. (their Dhimmah will include their inferiors also) has been used in the meaning of peace treaty.”⁷

Allama Ali s/o Muhammad s/o Ali Jurjani writes,

(الذمة): لغة: العهد؛ لأنّ نقضه يوجب الذم.

“The literal meaning of Adh-Dhimmah means treaty because breaking of treaty causes for disgrace.”⁸

The above mentioned references show that Non-Muslim party of a treaty with Muslims is called Dhimmis, not Harbies. However, further more I write here the definition of Dhimmi given by the Imam Ibnu

Hajar (May Allah pleased with him). He writes,
وَالْمَرَادُ بِهِ مَنْ لَهُ عَهْدٌ مَعَ الْمُسْلِمِينَ سَوَاءً كَانَ بَعْدَ
جَزْيَةٍ أَوْ هُدْنَةٍ مِنْ سُلْطَانٍ أَوْ أَمَانٍ مِنْ مُسْلِمٍ.

“Dhimmi stands for a person who has a treaty with Muslims whether it is done for Dhimmah fee (Jizyah) or the ruler has kept quiet about him or he has got the Amaan (peace) by a Muslim.”⁹

The above discussion shows that it is quite wrong to count the Christians of Najran and the Zoroastrian of Hajar as hostile infidels because they were the parties of treaty as appears from the wording of the reference presented in first criticism, in opposition of Imam Abu Hanifah. And it is appeared from the Arabic dictionaries and from the wording of Imam Ahmad s/o Hajar, a party of a treaty is taken as a Dhimmi. Therefore the Christians of Najran and the Zoroastrian of Hajar were not Harbies rather they were Dhimmis.

Now I present here the references of some trustworthy books which will disclose that there had been made a treaty between Muslims and the Christians of Najran and the Zoroastrian of Hajar. And according to that treaty they used to pay jizya to the Muslims. I will write here only two or three references.

Imam Ibnu Sa'ad writes,

وكتب رسول الله ﷺ لأسقف بني الحارث بن كعب
وأساقفة نجران وكهنتهم ومن تبعهم ورهبانهم أن لهم
على ما تحت أيديهم من قليل وكثير من بيعهم
وصلواتهم ورهبانيتهم، وجوار الله ورسوله لا يغير
أسقف عن أسقفية، ولا راهب عن رهبانية، ولا
كاهن عن كهانته، ولا يغير حق من حقوقهم، ولا
سلطانهم، ولا شيء مما كانوا عليه ما نصحوا
وأصلحوا فيما عليهم غير مثقلين بظلم ولا ظالمين.

“The holy Prophet (blessings and peace be upon him and his sacred family) wrote to the leaders of Bani Harith bin Ka’ab and to the clergymen of Najran, their monks, priests and their followers that whatever they have possessed whether much or less, churches, their places of worship are in peace given by Allah and His Messenger and all these things will remain in their possession. No leader will be terminated from his leadership, nor any priest, nor any monk nor any clergyman will be terminated from his position and none of their right will be changed, none of their sanctity will be dissolved and nothing will be changed from what they were in until they are on goodness among themselves without suppressing anybody

and oppressed by other.”¹⁰

Imam Bukhari (May Allah pleased with him) writes a narration in chapter “Babul jizya wal muwadi’ah ma ahlidh dhimmah wal Harb”,

وَلَمْ يَكُنْ عُمَرُ أَخَذَ الْجِزْيَةَ مِنَ الْمَجُوسِ. حَتَّى شَهِدَ عَبْدُ
الرَّحْمَنِ بْنُ عَوْفٍ: أَنَّ رَسُولَ اللَّهِ ﷺ أَخَذَهَا مِنْ مَجُوسِ
هَجَرَ.

“Sayyiduna Umar (Allah pleased with him) did not accept jizya (Dhimmah tax) from the Zoroastrian unless Sayyiduna Abdur Rahman s/o Auf (Allah pleased with him) witnessed that holy Prophet (blessings and peace be upon him and his sacred family) accepted jizya from the Zoroastrian of Hajar.”¹¹

Imam Ja’afar Al-Tahavi (May Allah pleased with him) narrated three narrations in his book named as Mushkilul Aasaar but here I think one narration is enough to prove the opinion of Imam Abu Hanifah. He narrates,

حَدَّثَنَا يُونُسُ قَالَ: أَخْبَرَنَا ابْنُ وَهْبٍ قَالَ:
أَخْبَرَنِي يُونُسُ، عَنْ ابْنِ شِهَابٍ قَالَ: حَدَّثَنِي سَعِيدُ بْنُ
الْمُسَيَّبِ: أَنَّ رَسُولَ اللَّهِ ﷺ أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ
هَجَرَ وَأَنَّ عُمَرَ بْنَ الْخَطَّابِ أَخَذَهَا مِنْ مَجُوسِ السَّوَادِ
وَأَنَّ عُثْمَانَ أَخَذَهَا مِنْ بَرَبَرٍ.

“Younus said that Ibnu Wahab narrated us a hadith, he narrated from

Ibnu Shahab, he said that Sa'eed Ibnu Musayyab narrated that no doubt the holy Prophet (blessings and peace be upon him and his sacred family) accepted Jizya from the Zoarastarian of Hajar. And undoubtedly, Umar s/o Khitaab received jizya from the Zoarastarians of Sawaad and undoubtedly Uthman received it from the Zoarastarian of Barbar.”¹²

The first narration among the mentioned-above two narrations proves that the Christians of Najran were Dhimmis and second narration proves that the Zoarastarian of Hajar was also Dhimmis and they regularly paid jizya to the Messenger of Allah (blessings and peace be upon him and his sacred family).

Furthermore, it should be known that the critics opposed Imam Abu Hanifah through the reference of the book named Mabsoot and tried to prove that the Christians of Najran and the Zoarastarian of Hajar were Harbies (hostile infidels) but contrary to the critics Imam Sarkhasi wrote in the same book, Mabsoot,

(قَالَ) τ : وَإِذَا جَعَلَ الْإِمَامُ قَوْمًا مِنَ الْكُفَّارِ
أَهْلَ ذِمَّةٍ وَضَعَ الْخَرَاجَ عَلَى رُؤُسِ الرِّجَالِ وَعَلَى
النَّارِضِينَ بِقَدْرِ الْإِحْتِمَالِ أَمَّا خَرَاجُ الرُّؤُسِ ثَابِتٌ
بِالْكِتَابِ وَالسُّنَّةِ أَمَّا الْكِتَابُ فَقَوْلُهُ سُبْحَانَهُ وَتَعَالَى :

حَتَّىٰ يُعْطُوا الْجِزْيَةَ عَن يَدٍ وَهُمْ صَاغِرُونَ) وَأَمَّا
السُّنَّةُ مَا رَوَى أَنَّ النَّبِيَّ ﷺ أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ
هَجَرَ وَأَخَذَ الْحُلَّ مِنْ نَصَارَى نَجْرَانَ وَكَانَتْ جِزْيَةُ
وَقَالَ: سَوُوا بِالْمَجُوسِ سُنَّةَ أَهْلِ الْكِتَابِ يَعْنِي فِي اخْتِ
الْجِزْيَةِ مِنْهُمْ.

“Imam Muhammad (May Allah pleased with him) said that when a ruler of Islam makes the infidels of a territory Dhimmis so he enforces jizya upon their men according to the production of their land. And to get jizya is proved from the book of Allah and the traditions. The proof of imposing jizya from the Quran is as Allah says, ‘Until they pay jizya by their hands in state of humbleness.’ And its proof from the tradition is that narration which states that the holy Prophet (blessings and peace be upon him and his sacred family) received jizya from the Zoarastarians of Hajar and received clothes from the Christians of Najran and it was nothing but jizya. And he (blessings and peace be upon him and his sacred family) said that behave the Zoarastarian as you behave the people of book means in receiving jazzy.”¹³

In short, the above discussion clarifies that the Christians of Najran and the Zoarastarian of Hajar

were not Harbies. Therefore, the statement is quite wrong which expression is: when the holy Prophet (blessings and peace be upon him and his sacred family) did not allow Harbies to the dealing of usury so how can Muslims be allowed this practice.

SECOND CRITICISM

Is the opinion of Imam Abu Hanifah weak because it is based on Hadith Mursal?

The critics wrote,

The inference of Imam Abu Hanifah is based on a weak narration and supposed if it is correct so it refuses the usurious dealing with Non-Muslims as says Imam Nawavi (May Allah pleased him),

مرسل ضعيف فلا حجة فيه، ولو صح لتأولناه على أن
معناه لا يباح الربا في دار الحرب جمعاً بين الأدلة.

“This is a Mursal weak hadith so it can’t be a proof. If we accept it as a saheeh hadith so we explain this narration that usury is not lawful in Dar-ul-Harb, producing agreement in all other proofs.¹⁴

Meaning the word “LA” in this narration is for “NAHI” i.e. stopping from usury not for “NAFI” i.e. refusing of usury. This means that Muslims are not allowed to gain usury in Dar-ul-Harb. Furthermore, it is wrong to infer from the gambling of Sayyiduna

Abubakr Siddiq (Allah pleased with him) before migration. Because all of those narrations differ from each other so they are Muztarab narrations. And, according to the science of Hadith, a Muztarab hadith cannot be used for inference because it is a weak hadith near the doctors of hadith. And even if we take it as saheeh hadith then we say, this incident took place before the termination of the gambling. Therefore it cannot be a proof of lawfulness of gambling with Non-Muslims. Further, the holy Prophet (blessings and peace be upon him and his sacred family & companions) did not accept this wealth and did not allow Sayyiduna Abubaker to accept it rather said that it is an unlawful wealth so spend it in charity.

ANSWER:

This criticism is based on Shafa'is and other schools of jurisprudence. And this depends on the law that Hadith Mursal is a weak hadith and as Imam Abu Hanifah's inference depends upon Hadith Mursal, so Imam Abu Hanifah's opinion has no value although it is an agreed rule that the principle of a critic is not counted as a proof against his opponent. Therefore, to criticize Hanfies on the basis of opponent's rules is of no value.

HADITH MURSAL

Here I, avoiding the deep discussion about Mursal Hadith, will mention only the scientific value of

Hadith Mursal according to the doctors of hadith (Muhaddatheen) and the Hanfies. The doctors of hadith have different five opinions regarding Mursal Hadith which are as under:

1. It is absolutely allowed to use Mursal Hadith as a proof.
2. It is absolutely prohibited to use Mursal Hadith as a proof.
3. If Irsraal is related to the people of three periods so it can be used as a proof.
4. If the narrator of a Mursal Hadith narrates only from the trustworthy people so his Mursal Hadith will be accepted.
5. Irsraal of a companion of the holy Prophet (blessings and peace be upon him and his sacred family & companions) is only accepted.

The first opinion regarding Mursal Hadith among the five opinions mentioned above is of the view of the majority of the previous scholars and same is the view of Imam Abu Hanifah.

Imam Abu Dawood (May Allah pleased with him) writes in his book,

وأما المراسيل فقد كان يحتج بها العلماء فيما مضى،
مثل سفيان الثوري، ومالك بن أنس، والأوزاعي، حتى
جاء الشافعي فتكلم فيها، وتابعه على ذلك أحمد بن
حنبل وغيره.

“As regarding the matter of

Mursal Hadith according to the most of the previous scholars like Sufyaan Al-Thauri, Imam Malik, Imam Owzaa'i it is allowed to infer by it. After that Imam Shafa'i appeared and he criticized this opinion and Imam Ahmad and some other scholars followed his opinion.”¹⁵

Imam Hakim (May Allah pleased with him) mentioned the opinion of the scholars of Koofah. He writes,

فَأَمَّا مَشَايِخُ أَهْلِ الْكُوفَةِ فَكُلٌّ مِنْ أَرْسَلِ الْحَدِيثِ عَنْ
التَّابِعِينَ وَاتَّبَاعِ التَّابِعِينَ وَمِنْ بَعْدِهِمْ مِنَ الْعُلَمَاءِ فَإِنَّهُ
عِنْدَهُمْ مَرْسَلٌ مُحْتَجٌّ بِهِ.

“If Taba’een, Taba’taabaeen and any other scholar after them make a hadith Mursal, his narration can be used for a proof, according to the scholars of Koofah.”¹⁶

Shamsul Ayemmah Sarkhasi (May Allah pleased with him) writes,

وَهَذَا الْحَدِيثُ، وَإِنْ كَانَ مُرْسَلًا فَمَكْحُولٌ فَقِيهٌ نَفَقَةٌ،
وَالْمُرْسَلُ مِنْ مِثْلِهِ مَقْبُولٌ، وَهُوَ دَلِيلٌ لِأَبِي حَنِيفَةَ
وَمُحَمَّدٍ رَحِمَهُمَا اللَّهُ- فِي جَوَازِ بَيْعِ الْمُسْلِمِ الدَّرْهَمَ
بِالدَّرْهَمَيْنِ مِنَ الْحَرْبِيِّ فِي دَارِ الْحَرْبِ.

“Although this narration is Mursal but Imam Mak’hool is a faqeeh (expert of Islamic Jurisprudence) and trustful and no doubt, Mursal hadith of such a

person is accepted. And this hadith is a proof of the opinion of Imam Abu Hanifah and Imam Muhammad for selling one dirham for two dirham to a hostile infidel in Dar-ul-Harb.”¹⁷

He further writes,

وَكَذَلِكَ لَوْ بَاعَهُمْ مَيْتَةً، أَوْ قَامَرَهُمْ، وَأَخَذَ مِنْهُمْ مَالًا
بِالْقِمَارِ، فَذَلِكَ الْمَالُ طَيِّبٌ لَهُ عِنْدَ أَبِي حَنِيفَةَ وَمُحَمَّدٍ
رَحِمَهُمَا اللَّهُ.

“And the same ruling applies when a Muslim sells dead animal to a hostile infidel or gains their wealth by gambling so this wealth is lawful for a Muslim, according to Imam Abu Hanifah and Imam Muhammad.”¹⁸

Therefore to criticize the opinion of Imam Abu Hanifah due to Mursal hadith is of no value because to infer by a Mursal hadith is allowed according to Imam Abu Hanifah and other great Muhaddatheen and Fuqha.

Further according to the Hanfies the explanation of Imam Nawavi is not correct because by this explanation the apparent meaning of a hadith is neglected without any true reason though the other narrations support this apparent meaning like the gambling of Sayyiduna Abu Bakr (Allah pleased with him) before the conquest of Makkah is proved from many narrations and no Muhaddith denied these

narrations till our time.

THIRD CRITICISM

Are the narrations of the gambling of Sayyiduna Abu Bakr Siddiq (Allah pleased with him) Muztarab?

Some of the scholars wrote that the narrations proving the gambling of Sayyiduna Abu Bakr Siddiq (Allah pleased with him) are Muztarab so it can't be a proof or can't be used for inference.

ANSWER:

Yes, it is admitted that the different narrators narrated different things in this incident of Sayyiduna Abu Bakr (Allah pleased with him) for example the difference in the numbers of camels, difference in the time period of condition, difference in the success and defeat and the difference in the matter whether the camels were declared as an impure wealth or not. However in spite of all these differences, no Muhaddith dared to reject these narrations on the basis of their Iztiraab. It is not an easy task to declare a hadith Muztarab because it needs a vast knowledge. Therefore I would like to discuss briefly about Muztarab hadith to clear the confusion regarding these narrations.

What is a Muztarab Hadith?

According to the terminology of Muhaddatheen Muztarab hadith is a narration that contains such a difference in its text or in its chain of narrators which can neither be matched and nor be preferred. As in the

discussed matter the narration of the gambling of Sayyiduna Abu Bakr (Allah pleased with him) has been mistakenly declared as Muztarab by some scholars of our time so I will like to clarify this matter. Undoubtedly any narration contains such a difference in its text or in its chain of narrators which can neither be matched and nor be preferred is called Muztarab but it is also a phenomenon that sometimes instead of being a narration unmatched and not preferred can't be declared as a Muztarab narration especially when this difference does not relate to the essence of the hadith. Its best example is the hadith of Sayyiduna Fuzala s/o Ubaid (Allah pleased with him). No doubt this hadith instead of having a lot of differences in its text could not be declared as a Muztarab hadith. Imam Ibnu Hajar (May Allah pleased with him) mentioned the same hadith with its various chains. He writes,

حَدِيثُ فَضَالَةَ بْنِ عَبْدِ أَتَى النَّبِيَّ ﷺ وَهُوَ بِخَيْبَرَ بِقِلَادَةٍ فِيهَا خَرَزٌ... الْحَدِيثُ مُسْلِمٌ وَأَبُو دَاوُدَ...، وَلَهُ عِنْدَ الطَّبْرَانِيِّ فِي الْكَبِيرِ طَرِيقٌ كَثِيرَةٌ جِدًّا، فِي بَعْضِهَا قِلَادَةٌ فِيهَا خَرَزٌ وَذَهَبٌ. وَفِي بَعْضِهَا ذَهَبٌ وَجَوْهَرٌ. وَفِي بَعْضِهَا خَرَزٌ وَذَهَبٌ وَفِي بَعْضِهَا خَرَزٌ مُعَلَّقَةٌ بِذَهَبٍ وَفِي بَعْضِهَا بِلَالَتِي عَشَرَ دِينَارًا. وَفِي أُخْرَى بِتِسْعَةِ دَنَانِيرَ. وَفِي أُخْرَى بِسَبْعَةِ دَنَانِيرَ. وَأَجَابَ النَّبِيَّهُ قِيَّ عَنْ هَذَا الْإِخْتِلَافِ بِأَنَّهَا كَانَتْ بَيُوعًا شَهَدَهَا فَضَالَةُ قُلْتُ: وَالْجَوَابُ الْمَسْدُودُ عِنْدِي أَنَّ هَذَا الْإِخْتِلَافَ لَا يُوجِبُ ضَعْفًا، بَلِ الْمَقْصُودُ مِنَ الْإِسْتِدْلَالِ مَحْفُوظٌ لَا

اِخْتِلَافَ فِيهِ، وَهُوَ النَّهْيُ عَنْ بَيْعِ مَا لَمْ يُفْصَلْ، وَأَمَّا جِنْسُهَا وَقَدْرُ ثَمَنِهَا فَلَا يَتَعَلَّقُ بِهِ فِي هَذِهِ الْحَالَةِ مَا يُوجِبُ الْحُكْمَ بِالْبَاضِطِ رَأَبٍ.

“Fuzala s/o Ubaid brought a beaded necklace to the holy Prophet (blessings and peace be upon him) according to Saheeh Muslim and Sunan Abi Dawood..... And Tabaraani narrated the same hadith with different chains of narrators. According to the one of the chains the necklace contained beads and gold and according to some it contained gold and gems and according to a narration it contained beads of gold and according to a narration the beads were fixed in gold. According to some narrations he purchased this necklace for twelve dinars and according to a narration he purchased it for nine dinars and according to a narration he purchased it in seven dinars. Imam Baihaqi commentated that it were different sales which Fuzala observed but I say that according to me the correct answer is as these differences do not weak a hadith rather the portion of hadith which is used for inference is safe

and it does not contain any difference that is the prohibition of selling this necklace without separation of gold while genus and quantity do not have any relation with it. Therefore, in this case this hadith can't be declared as Muztarab hadith.”¹⁹

The underlined text clearly shows that sometimes instead of being a narration unmatched and not preferred, can't be declared as a Muztarab narration especially when this difference does not relate to the essence of hadith.

Same is the case of the narrations which mention the gambling of Sayyiduna Abu Bakr (Allah pleased with him) before migration to Madinatul Munawwarah. Though the narrations about this incident differ in numbers of camels, time period of gambling, success and defeat and in others but these differences do not relate to the essence of the hadith or we can say the important part of the hadith is safe which is used to infer. And that is the gambling of Sayyiduna Abu Bakr (Allah pleased with him) in the presence of the holy Prophet (blessings and peace be upon him and his family) without any restriction rather it is proved by the oral permission (Al-Ijaza Al-Qauli) of the holy Prophet (blessings and peace be upon him and family) because all of the narrations are agreed about this incident. Therefore, according to Imam Ibnu

Hajar and other Muhaddatheen, it is absolutely wrong to reject these narrations on basis of Izтирааб.

Variation of the ruling regarding a protected wealth and not protected

Some scholars supported themselves to weaken the opinion of Imam Abu Hanifah saying that even if the narrations regarding the gambling of Sayyiduna Abu Bark (Allah pleased with him) are taken to be correct, this incident can't be a proof of gambling with Non-Muslims for us because unanimously this incident took place before the prohibition of gambling. Because this incident took place before the conquest of Makkah Almukarramah while the prohibition of gambling imposed in Sura Ma'idah. And this Sura was revealed in the last in Madinah Almunawwarah.

I think this criticism is also weak and weightless like the previous criticisms because the opinion of Imam Abu Hanifah is based on the hadith "No interest takes place in between a Muslim and a hostile non-Muslim" not on the hadith of gambling while the scholars presented the incident of gambling for supporting the opinion of Imam Abu Hanifah. Now the prohibition of gambling was imposed whether before migration or after it, does not harm the opinion of the Imam Abu Hanifah because the prohibition of gambling applies to a person who lives under the reign of Muslims. On the contrary, according to the opinion

of the Imam Abu Hanifah gambling is allowed with a hostile infidel, not with every type of infidel in the light of the hadith, “No interest take place in between a Muslim and a hostile infidel”. And the people of knowledge know that according to the scholars of Islam the rulings regarding a hostile infidel are different from a Dhimmi and a Mustaaman. Therefore the prohibition of gambling applies to a Muslim, Dhimmi and a Mustaaman in Dar-ul-Islam because they are in the protection of Muslims and due to this protection their wealth becomes protected. On the contrary a hostile infidel whether he is in a Dar-ul-Islam or in a Dar-ul-Harb, he does not come under the prohibition of gambling because he is not in protection of Muslims. Therefore his wealth is Mubaah (legalized) because of not being in protection of Muslim government.

Did the Apostle of Allah (blessings and peace be upon him) return the wealth won by gambling?

Some critic scholars rejected the hadith of gambling on basis of Iztiraab though they have written against Imam Abu Hanifah a proof that the holy Prophet (blessings and peace be upon him) neither took the wealth won by gambling nor allowed Sayyiduna Abu Bakr (Allah pleased with him) to take it rather he (blessings and peace be upon him) declared this wealth impure and unlawful and ordered to spend

it as a charity. But I think this criticism is rejected according to the critics too because they have written their selves that the narrations of gambling differ with eachother therefore it can't be used as a proof. I say, when they themselves have rejected and declared the hadith of gambling as Muztarab then how can they use this hadith for inference? However, I will like to clear about the gambling of Sayyiduna Abu Bakr (Allah pleased with him). According to some narrations Sayyiduna Abu Bakr (Allah pleased with him) lost this gamble and according to some he won it so Muslims felt shame. Imam Tirmidhi mentioned the defeat of Sayyiduna Abu Bakr (Allah pleased with him) while some other Muhaddatheen mentioned his success. Therefore it is apparent that this portion of hadith contains difference so the matter of defeat and success is Muztarab and not worthy of inference while all scholars are agreed on the existence of gambling so it is free from Iztiraab and this is very portion of inference. Therefore this criticism is also weightless like other criticisms.

FOURTH CRITICISM

Does the word 'hostile infidel' (Harbi) stands only for a practical warrior?

Some scholars say that the word 'Harbi' mentioned in hadith "La Riba" does not mean only a person who is not Dhimmi rather it means an individual of a

fighting nation. And it is lawful to harm a nation which is practically being fought by any mean. This is why if Muslim gains money from an individual of such a nation through interest based dealing is lawful.

ANSWER:

The substance of this criticism is that

1. The hadith “La Riba...” merely allows Muslims to gain the wealth by gambling and usurious dealings, of those non-Muslims who are practically involved in war with Muslim nation.
2. Further Muslims are allowed to harm such infidels by any way whether it is harm of wealth or harm of life.

I think both points derived from the hadith are not correct. Reason of fault in first point is that the definition of a Harbi mentioned by critics is so novel that no scholar of Islam in 1400 years gave such a definition of Harbi. This is why no scholar stated the difference of practical warrior and potential warrior rather the doctors of Islamic jurisprudence stated only the rulings of absolute Harbies. Further it should be noted that if a practical warrior comes before a Muslim for fight so what would do a Muslim? Whether he will fight with him or involve in business dealing?

The mistake of second point is that it is in against of many powerful narrations. According to many narrations Muslim fighters have been ordered to cease-fire against those non-Muslims who do not fight like

old people, women, children, monks and priests etc.

FIFTH CRITICISM

Some scholars wrote rejecting the opinion of Imam Abu Hanifah,

“Further what Imam Kaasaani wrote is not correct. He presented a proof that the wealth of a Harbi is not protected rather it is legalized (Mubaah). Yes, a Muslim Mustaaman is not allowed to gain their wealth without their consent because it causes fraud and dishonesty. So if a Harbi gives his wealth with his own consent then the cause of prohibition will be dissolved. Therefore, now it is to take legalized free wealth for a Muslim and it is correct under the light of Shariah like to get grass and wood from a jungle. If the inference of Imam Kaasaani is admitted then such a practice should be allowed with a Harbi Mustaaman but no one declares it lawful. Therefore, it is not allowed in Dar-ul-Harb also.”

ANSWER:

What Imam Kaasaani wrote is absolutely according to the rulings of Islamic Jurisprudence but the critics tried to answer him with a weak inference. Instead of

replying this criticism I would like to clarify that thing which confused the critics and raised such a criticism in their minds. The critics could not differentiate between the rulings of a Muslim who goes to Dar-ul-Harb after taking protection (amaan) and a non-Muslim who comes into Dar-ul-Islam after taking protection. They applied the same rulings taking these two different matters same. If they had thought over the matter they would have known that the wealth of a Harbi Mustaaman is no more unprotected because of the protection given by Muslims so it is not allowed to gain it by interest based dealings and gambling. On the other hand, the wealth of non-Muslims of Dar-ul-Harb remains in the same position even after giving protection (amaan) to a Muslim. Its status did not change and remained legalized (Mubaah) as it was. Therefore, a Muslim is allowed to get their wealth by their consent through void contracts like usury and gambling while the wealth of a Harbi (hostile infidel) in Dar-ul-Islam cannot be gained through these means, because his wealth becomes protected due to the protection of Muslim government.

Imam Sarkhasi differentiate between these two matters and writes,

وَبِهِ فَارَقَ الْمُسْتَأْمَنِينَ فِي دَارِنَا؛ لِأَنَّ أَمْوَالَهُمْ صَارَتْ
مَعْصُومَةً بِعَقْدِ الْأَمَانِ فَلَا يُمَكِّنُهُ أَخْذُهَا بِحُكْمِ الْإِبَاحَةِ.

“By this proof the rulings differ regarding the non-Muslims who come in Dar-ul-Islam because their wealth has become protected due to contract of protection (Amaan). Therefore it is not possible to gain their wealth because of real legalization (Ibaahatu Asliyah).”²⁰

SIXTH CRITICISM

Does gaining wealth from non-Muslims through void contracts resemble the Jewish practice?

Some critics wrote that the opinion of gaining wealth from non-Muslims through void contracts is similar to the opinion of Jews. Jews say that usurious dealing between us is unlawful and it is lawful with non-Jews. Therefore the opinion of Imam Abu Hanifah is wrong because Allah Almighty forbids us to imitate Jews.

ANSWER:

Before answering the above mentioned criticism, I will like to clarify that Shariah is not the name of some compiled ethical codes by an individual or his given analogy rather Shariah is the name of the education given by the holy Prophet (blessings and peace be upon him). Therefore, anything contradicting the education of the Prophet (blessings and peace be upon him) is undoubtedly misguidance and astray whether it is best of all in the eyes of the entire world. Because the holy Prophet (blessings and peace be upon him)

said

لأنه قال عليه الصلاة والسلام: ((خَيْرُ الْهُدَى هُدَى
مُحَمَّدٍ)) صلى الله عليه وآله وسلم.

The best of the guidance is the guidance
given by Muhammad (blessings and
peace be upon him).

It is the education given by the same holy Prophet
(blessings and peace be upon him) who holds the
highest rank of morality that no usury takes place in
between a Muslim and a hostile infidel as has been
mentioned in hadith “La Riba”. Then, I say, how can
be right to understand it usury and rejecting it on the
basis of usury? And according to the Hanafies, it is
obviously wrong practice to think hadith Mursal as a
weak hadith rather according to the Hanafies hadith
Mursal is a correct hadith and no weakness exists in it.
In the light of above discussion it is clear that to
resemble this practice with Jews is based on the lack
of thinking because according to the Jews usury is
allowed with any non-Jews while according to us
usury is not allowed with anyone. Yes, the excess of
money or wealth, namely usury, gained from a hostile
infidel with his own consent is not usury at all in the
light of hadith rather it is the legalized wealth of a
hostile infidel which he gives with his own consent.
Therefore, we are allowed to possess it as has been
stated by the scholars of Hanafi School of
jurisprudence. It should be noted that if a Muslim

gains this wealth with the intention of usury so it will not become usury because of his wrong intention but no doubt he will be sinful due to his bad intention. And the examples of this matter are written in the books of Islamic Jurisprudence. It is written in Alamgheeri, "If a person drinks water with the intention of drinking wine so this water will not become wine but he will be sinful because of his bad intention." This discussion shows that thinking it like the practice of Jews is based on formal observation. If this type of formal observation is admitted then it can be criticized on Islam that the behavior of Muslims with a woman in her menstruation resembles with the practice of Jews. According to Jews, the woman becomes impure in her menstruation therefore it is not allowed to have sexual relations with her as well she is not permitted to offer her prayers and fasting. And Muslim woman in her menstruation is also behaved in the same manner therefore the behavior of Muslims with a woman resembles the Jews. Apparently, its answer is the same what we have written in previous lines that counting two different things as one thing, on the basis of formal similarity, is not correct.

SEVENTH CRITICISM

Is it allowed to cohabit with a hostile infidel whether man or woman? God forbid!

If usury is allowed with a hostile infidel with his

own consent then anybody can say that adulterous practice is also allowed with a hostile man and woman with his/her consent.

ANSWER:

The first and complete answer of this criticism is that the permission of formal interest based dealing with a hostile infidel is not proved by the personal opinion of an individual rather it is proved from the narrations of the holy Prophet (blessings and peace be upon him) while no narration is found about the permission of adultery.

Second answer is as although a hostile infidel's blood and wealth are legalized (Mubaah) yet regarding private parts our scholars say that real ruling in this case is prohibition. Therefore, sexual relation cannot be allowed but only by the way described by Shariah i.e. by the marriage contract or ownership of a handmaid. Imam of Ahlus Sunnah Ahmad Raza (May Allah pleased with him) writes,

“Fraudulent practice is unlawful by the consensus of the scholars likewise adultery because legalization is not applied in private parts. It is written in the book ‘Fathul Qadeer’ from the book ‘Mabsoot’ after mentioning above lines that ‘against of adultery if it is inferred on usury because private parts can’t be legalized by consent rather it is legalized

by a particular way (i.e. marriage). As regarding wealth, it can be legalized by permission and consent.”²¹

EIGHTH CRITICISM

Is Imam Abu Hanifah unique in his opinion regarding this matter?

Some of the critics say that suppose if the inference of its lawfulness is correct then we say that this is a disputed matter among Mujtahideen and according to the majority of the Mujtahideen it is prohibited. The proofs of the majority are those quranic and prophetic orders which absolutely forbid usury without any exception of Dar-ul-Harb and Dar-ul-Islam, Muslim and a hostile infidel.

ANSWER:

No doubt, it is a disputed matter among Mujtahideen but those who allow it are also great Muhaddatheen and prominent Fuqha of Islam. Imam Ibraheen Nakhai, Imam Abu Hanifah, Imam Sufyaan Ath-Thauri, Imam Muhammad s/o Hassan, Imam Ahmad s/o Hanble, Abdul Malik s/o Habeeb (May Allah pleased with them all) and other great Imam are included in the list of those who permit usurious dealings with hostile infidels. Regarding Imam Abu Hanifah and Imam Muhammad, it is not hidden that they are of view of its lawfulness. Regarding Imam Ahmad s/o Hanble, Sheikh Ibnu Muflih Hanbli writes

in his famous book “Furoo’a”,

وقد روي عن أحمد أنه قال: لا يحرم الربا في دار الحرب.

“There is a narration of permission of usurious dealings with hostile infidels in Dar-ul-Harb from Imam Ahmad s/o Hanble.”²²

This is why Sheikh Ibnu Taymiah wrote,

الربا محرم في دار الإسلام والحرب إلا بين مسلم وحرابي لا أمان بينهما.

“Usury is prohibited in Dar-ul-Harb and Dar-ul-Islam except among a Muslim and a hostile infidel who do not have any contract of peace between them.”²³

Likewise majority of Malikies also permit it. Ibnu Rushd Maliki writes,

كذلك الربا مع الحرابي في دار الحرب مكروه، وليس بحرام؛ لأنه لما جاز له أن يأخذ من ماله مالم يؤتمن عليه لم يحرم عليه أن يربي معه فيه.

“Likewise it is only disliked to involve in usurious dealings with a hostile infidel in Dar-ul-Harb, not prohibited. Because when a Muslim is not made a protector of the wealth of a hostile infidel therefore he is allowed to gain his wealth. Likewise a Muslim is allowed to involve in formal usurious

dealings with a hostile infidel.”²⁴

The above references show that a big number of scholars among the three school of Jurisprudence allow usurious dealing with hostile infidels. Therefore, it is obviously wrong to proclaim that Imam Abu Hanifah is unique in his opinion.

NINTH CRITICISM

Self-made explanation of the Imam Abu Hanifah’s opinion

Some critic scholars wrote, “The saying of Imam Abu Hanifah, ‘no usury takes place among a Muslim and a hostile infidel in Dar-ul-Harb’ means that as the Dar-ul-Harb does not come under the reign of Muslims so as a Muslim ruler, he cannot stop a Muslim who involved himself in usurious dealings in Dar-ul-Harb. So Muslim will become the owner of the gained wealth but this act is a sin and he will deserve the punishment in hereafter. And the same explanation is proved from Imam Sarkhasi. He writes,

وَأَبُو حَنِيفَةَ يَقُولُ: بِالإِسْلَامِ قَبْلَ الْإِحْرَازِ تَثْبُتُ
الْعِصْمَةُ فِي حَقِّ الْإِمَامِ دُونَ الْأَحْكَامِ، أَلَا تَرَى أَنَّ
أَحَدَهُمَا لَوْ أَتْلَفَ مَالَ صَاحِبِهِ، أَوْ نَفْسَهُ لَمْ
يُضْمَنْ، وَهُوَ آثِمٌ فِي ذَلِكَ، وَإِنَّمَا تَثْبُتُ الْعِصْمَةُ
فِي حَقِّ الْأَحْكَامِ بِالْإِحْرَازِ، وَالْإِحْرَازُ بِالدَّارِ لَا
بِالدِّينِ؛ لِأَنَّ الدِّينَ مَانِعٌ لِمَنْ يَعْتَقِدُهُ حَقًّا لِلشَّرْعِ
دُونَ مَنْ لَا يَعْتَقِدُهُ وَبِقُوَّةِ الدَّارِ يَمْنَعُ عَنْ مَالِهِ مَنْ
يَعْتَقِدُ حُرْمَتَهُ، وَمَنْ لَمْ يَعْتَقِدْهُ؛ فَلْيُبْتَغِ الْعِصْمَةُ
فِي حَقِّ الْإِثْمِ فَلَنَّا: يُكْرَهُ لُهُمَا هَذَا الصَّنِيعُ، وَلَعَدَمِ

العِصْمَةِ فِي حَقِّ الْحُكْمِ فَلَنَّا: لَا يُؤْمَرُ أَنْ يَرُدَّ مَا
أَخَذَهُ؛ لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمَا إِنَّمَا يَمْلِكُ مَالَ صَاحِبِهِ
بِالْأَخْذِ.

“Imam Abu Hanifah says that the freedom proved before entering into the protection of Dar-ul-Islam, is proved only from the Muslim ruler, not from the commandments of Shariah rulings. Don't you see if any of two Muslims ruins the wealth of other or his life he will not pay its penalty though he will be sinful because of his action. As a matter of fact, the application of commandments of Shariah is proved when an individual lives in Dar-ul-Islam. It is not proved only due to religion because the religion stops those who believe in its unlawfulness and does not stop those who do not believe in its unlawfulness. On the contrary if a person lives in Dar-ul-Islam, his wealth will be protected from those who believe in its unlawfulness as well as from those who do not believe in its unlawfulness. Therefore, according to its prohibition because of it being a sin we said that this act of these two individuals is makrooh and according to the freedom of law we

said that the wealth he gained will not be returned because when any of them possesses the wealth of other, he becomes its owner merely by possession.”²⁵

It is a principle of Imam Abu Hanifah that if a Muslim makes a void contract he will become owner of the gained thing but he will be sinful due to his action. Imam Sarkhasi writes,

وَأِنْ كَانَ أَسْلَمًا، وَلَمْ يَخْرُجَا حَتَّى تَبَايَعَا بِالرِّبَا، كَرِهَهُ
لَهُمَا، وَلَمْ أَرِدْهُ لَهُ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

“If the two dwellers of Dar-ul-Harb enter into fold of Islam and do not migrate to Dar-ul-Islam and during this stay they involve in usurious dealing between them so I say it is makrooh (tahreemi) but I will not order them to return this usury and same is the opinion of Imam Abu Hanifah.”²⁶

In the light of above mentioned references it comes clear that if two Muslims inhabitant of Dar-ul-Harb deal in usury with each other or a Muslim deals in usury with hostile infidels he will become its owner but anyhow he will be sinful.

ANSWER:

The critics have stated two things in mentioned

above lines:

1. If two Muslims deals in usury among each other they will become owner of this usury by this dealing but the receiver of usury anyhow will be sinful.
2. If a Muslims deals in usury with a hostile infidel he will become owner of this usury by this dealing but he will be sinful.

We also admit the first conclusion among these two and say that such type of formal usurious dealing is not allowed between Muslims even if they are inhabitants of Dar-ul-Harb as it is clear from the quote of Imam Sarkhas's book. But regarding the second conclusion which proves the sin of dealing with a hostile infidel and its punishment, I cannot admit it rather I will inquire critics which part of the mentioned above quote proves it? I could not understand this conclusion because both quotes of Imam Sarkhasi (May Allah pleased with him) in above mentioned criticism are merely about two Muslims and nothing has been mentioned about infidels in it. Further the quotes of Imam Sarkhasi have been presented after changing their sequence and removing some words, instead both of quotes are written on page No. 58 in volume 14 regarding the dealing of a Muslim with another Muslim in Dar-ul-Harb. Now we are writing the same text in the same order as Imam Sarkhasi wrote in his book and the removed words are also

heighted. It is as under:

وَأِنْ كَانَ أَسْلَمًا، وَلَمْ يَخْرُجَا حَتَّى تَبَايَعَا بِالرِّبَا،
كَرِهْنَاهُ لَهُمَا، وَلَمْ أَرُدَّهُ لَهُ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ،
وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدٌ رَحِمَهُمَا اللَّهُ- يَرُدُّهُ،
وَالْحُكْمُ فِيهَا كَالْحُكْمِ فِي التَّاجِرِينَ أَمَّا عَلَى أَصْلِ
أَبِي يُوسُفَ فَقَطُّ فَظَاهِرٌ؛ لِأَنَّهُ لَا يَجُوزُ هَذَا الْعَقْدُ
بَيْنَ الْمُسْلِمِ، وَالْحَرَبِيِّ فَكَيْفَ يَجُوزُ بَيْنَ الْمُسْلِمِينَ
وَمُحَمَّدٌ يَقُولُ: مَا لِكُلِّ، وَاحِدٍ مِنْهُمَا مَعْصُومٌ عَنْ
الْمُلْكِ بِالتَّأْخِذِ، أَلَا تَرَى أَنَّ الْمُسْلِمِينَ لَوْ ظَهَرُوا
عَلَى الدَّارِ لَا يَمْلِكُونَ مَالَهُمَا بِطَرِيقِ الْغَنِيمَةِ،
وَأَمَّا يَتَمَلَّكُ أَحَدُهُمَا مَالَ صَاحِبِهِ بِالْعَقْدِ بِخِلَافِ
مَالِ الْحَرَبِيِّ وَأَبُو حَنِيفَةَ يَقُولُ: بِالإِسْلَامِ قَبْلَ
الْإِحْرَازِ تَنْبُتُ الْعِصْمَةُ فِي حَقِّ الْإِمَامِ دُونَ
الْأَحْكَامِ، أَلَا تَرَى أَنَّ أَحَدَهُمَا لَوْ أَتْلَفَ مَالَ
صَاحِبِهِ، أَوْ نَفْسَهُ لَمْ يَضْمَنْ، وَهُوَ أَثِمٌ فِي ذَلِكَ،
وَأَمَّا تَنْبُتُ الْعِصْمَةُ فِي حَقِّ الْأَحْكَامِ بِالْإِحْرَازِ،
وَالْإِحْرَازُ بِالدَّارِ لَا بِالدِّينِ؛ لِأَنَّ الدِّينَ مَانِعٌ لِمَنْ
يَعْتَقِدُهُ حَقًّا لِلشَّرْعِ دُونَ مَنْ لَا يَعْتَقِدُهُ وَبِقُوَّةِ الدَّارِ
يَمْنَعُ عَنْ مَالِهِ مَنْ يَعْتَقِدُ حُرْمَتَهُ، وَمَنْ لَمْ يَعْتَقِدْهُ؛
فَلْيُتَبَوَّاتِ الْعِصْمَةُ فِي حَقِّ الْإِثْمِ فَلَنَّا: يُكْرَهُ لَهُمَا هَذَا
الصَّنِيعُ، وَلَعَدِمَ الْعِصْمَةُ فِي حَقِّ الْحُكْمِ فَلَنَّا: لَا
يُؤْمَرُ أَنْ يَرُدَّ مَا أَخَذَهُ؛ لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمَا إِنَّمَا
يَمْلِكُ مَالَ صَاحِبِهِ بِالتَّأْخِذِ.

“If the two dwellers of Dar-ul-Harb inter into fold of Islam and do not migrate to Dar-ul-Islam and during this stay they involve in usurious dealing in between

them so I say it is makrooh (tahreemi) but I will not order them to return this usury and same is the opinion of Imam Abu Hanifah. Imam Abu Yousuf and Imam Muhammad say that he will return back this wealth gained by usury. Command of Shariah regarding this matter is as of two traders. According to Abu Yousuf, its reason is obvious because when such a contract is not allowed in between a Muslim and a non-Muslim then how it can be allowed in between two Muslims. According to Imam Muhammad the wealth of both Muslims is protected because of their own possession on their wealth. Don't you see, if Muslims conquer a Dar-ul-Harb they cannot become the owner of the wealth of these two Muslims living in Dar-ul-Harb as booty? Therefore, both these two Muslims living in Dar-ul-Harb cannot possess the wealth of each other but only by a lawful contract, not like the wealth of a hostile infidel (which can be gained by void contract). "Imam Abu Hanifah says that the freedom proved before entering into the protection of Dar-ul-Islam, is proved only from the

Muslim ruler, not from the commandments of Shariah rulings. Don't you see if any of two Muslims ruins the wealth of other or his life he will not pay its penalty though he will be sinful because of his action. As a matter of fact, the application of commandments of Shariah is proved when an individual lives in Dar-ul-Islam. It is not proved only due to religion because the religions stop those who believe in its unlawfulness and does not stop those who do not believe in its unlawfulness. On the contrary if a person lives in Dar-ul-Islam, his wealth will be protected from those who believes in its unlawfulness as well as from those who do not believe in its unlawfulness. Therefore, according to its prohibition because of its being a sin we said that this act of these two individuals is makrooh and according to the freedom of law we said that the wealth he gained will not be returned because when any of them possesses the wealth of other, he becomes its owner merely by possession.”²⁷

I am not sure but it looks that the reason behind the

altering in order and removing words from the above mentioned text was to prove their wrong opinion otherwise if the critics had written the complete text of Imam Sarkhasi as it is it would have been known by a glance that this text discusses only about the usurious dealings among two Muslims and the reader would have understand that this text does not prove the prohibition of usurious dealing in between a Muslim and a hostile infidel as appears from the removed words “not like the wealth of a hostile infidel.” God forbid!

Furthermore they did not see those texts of Imam Sarkhasi which were written before the very page i.e. 56 & 57. In those texts Imam Sarkhasi stated in clear words that the Prophet of Allah (blessings and mercy be upon him) did not return the interest which Sayyiduna Abbas s/o Abdulmuttalib received up to the conquest of Makkah Shareef. And Imam Sarkhasi wrote the story of Rukaanah that the holy Prophet (blessings and peace be upon him) wrestled him on the condition of goats and got his goats after defeating him but returned them to incline him towards Islam. Then Imam Sarkhasi inferred from these two incidents of the holy Prophet (blessings and peace be upon him) and wrote in support of Imam Abu Hanifah,

وَكَذَلِكَ لَوْ بَاعَهُمْ مَيْتَةً، أَوْ قَامَرَهُمْ، وَأَخَذَ مِنْهُمْ مَالًا
بِالْقِمَارِ، فَذَلِكَ الْمَالُ طَيِّبٌ لَهُ عِنْدَ أَبِي حَنِيفَةَ وَمُحَمَّدٍ
رَحِمَهُمَا اللَّهُ.

“Likewise if a Muslim sold them a dead animal or gambled with them and got wealth by gambling so that wealth is lawful for him according to Imam Abu Hanifah and Imam Muhammad.”²⁸

Imam Sarkhasi further wrote in the same page,

وَهَذَا دَلِيلٌ عَلَى جَوَازِ مِثْلِهِ فِي دَارِ الْحَرْبِ
بَيْنَ الْمُسْلِمِ وَالْحَرَبِيِّ، وَهَذَا؛ لِأَنَّ مَالَ الْحَرَبِيِّ
مُبَاحٌ.

“This is a proof of lawfulness of such a matter among a Muslim and a hostile infidel and reason for this commandment is that the wealth of a hostile infidel is legalized (Mubaah).”²⁹

Likewise the critics did not see the text which is written in the next page of their presented text which clearly announces that it is legalized (Mubaah) to gain the wealth of a hostile infidel by this way. The text is given as under:

وَيَسْتَوِي إِنْ كَانَ الْمُسْلِمُ أَخَذَ الدَّرْهَمَيْنِ مِنَ الدَّرْهَمِ، أَوْ
الدَّرْهَمَ مِنَ الدَّرْهَمَيْنِ؛ لِأَنَّهُ طَيِّبَ نَفْسِ الْكَافِرِ بِمَا أُعْطَاهُ،
قَلَّ ذَلِكَ، أَوْ كَثُرَ، وَأَخَذَ مَالَهُ بِطَرِيقِ الْإِبَاحَةِ كَمَا قُرِّرْنَا.

“And it is equal if a Muslim exchanges one dirham for two dirham’s or two for one because the infidel gives him with his own consent whether it is less or

more while Muslim gained this wealth of infidel through a legalized way as we have mentioned previously.”³⁰

Both the above mentioned references clearly show that Imam Sarkhasi not only counts the wealth gained from hostile infidel as legalized rather he sees it as pure too. And legalized and pure is that which is neither a sin and nor cause for punishment. Therefore, the explanation of Imam Abu Hanifah’s opinion given by the critics is obviously self-made and against of Imam Abu Hanifah’s view and contradictory to all books of Hanafi jurisprudence, hence this self-made explanation has no value.

TENTH CRITICISM

Does the opinion of Imam Abu Hanifah not relate to the Muslims living in Non-Muslim countries?

The critics say that this saying of Imam Abu Hanifah is about the hostile infidels (Harbies) and it does not relate to the Muslims living in Non-Muslim countries because when a Muslim lives in a Non-Muslim country he makes different type of contracts with them. Therefore, he is like a party of contract with them.

ANSWER:

Like other criticisms this is also based on the lack of study because it is apparent that our Fuqha did not define the Dar-ul-Harb in the context of the relation of a particular person rather they defined it generally.

And it is evident that there may be many people living in Dar-ul-Harb who have friendship or relationship with those who live in Dar-ul-Islam so because of this friendship or relationship Dar-ul-Harb will not become Dar-ul-Islam for them or a hostile infidel will not become a Dhimmi or Mustaaman. Likewise if a Non-Muslim country allows some Muslims to live in its territory with some conditions it will not become Dar-ul-Islam due to this permission and the inhabitants of that place will not become non-Harbies.

Imam Sarkhasi keeping the same criticism in his mind clarifies it and wrote,

وَهَذَا دَلِيلٌ عَلَى جَوَازِ مِثْلِهِ فِي دَارِ الْحَرْبِ بَيْنَ الْمُسْلِمِ
وَالْحَرَبِيِّ، وَهَذَا؛ لِأَنَّ مَالَ الْحَرَبِيِّ مُبَاحٌ، وَلَكِنَّ الْمُسْلِمَ
بِالِاسْتِئْثَانِ ضَمِنَ لَهُمْ أَنْ لَا يَخُونَهُمْ، وَأَنْ لَا يَأْخُذَ مِنْهُمْ
شَيْئًا إِلَّا بِطَبِيعَةِ أَنْفُسِهِمْ، فَهُوَ يَنْحَرِّزُ عَنِ الْعُدْرِ بِهَذِهِ
الْأَسْبَابِ، ثُمَّ يَتَمَلَّكُ الْمَالَ عَلَيْهِمْ بِالْأَخْذِ لَا بِهَذِهِ الْأَسْبَابِ،
وَهَذَا؛ لِأَنَّ فِعْلَ الْمُسْلِمِ يَجِبُ حَمْلُهُ عَلَى أَحْسَنِ الْوُجُوهِ
مَا أَمَكَنَ، وَأَحْسَنُ الْوُجُوهِ مَا قُلْنَا.

“And this is the proof of permission of such dealings between a Muslim and a hostile infidel. And its reason is that the wealth of a hostile infidel is legalized (Mubaah) but when a Muslim asks peace from them (makes the contract of peace with them) he guaranties that he will

neither deceive them, nor will get their wealth without their consent. Therefore he will not behave fraudulently with them because of this contract but he is allowed to get their wealth with their consent and will become its owner. And its reason is that it is incumbent to assume the acts of Muslim in good forms as much as possible. And the good forms are what we have mentioned already.”³¹

He (May Allah pleased with him) writes the good forms in the following words,

وَأَنَّ بَايَعَهُمُ الْمُسْتَأْمَنُ إِلَيْهِمُ الدَّرْهَمَ بِالْأَرْهَمَيْنِ نَقْدًا أَوْ
نَسِيئَةً أَوْ بَايَعَهُمْ فِي الْخَمْرِ، وَالْخَنَزِيرِ، وَالْمَيْتَةِ فَلَا بَأْسَ
بِذَلِكَ فِي قَوْلِ أَبِي حَنِيفَةَ وَمُحَمَّدٍ رَحِمَهُمَا اللَّهُ تَعَالَى

“If a Muslim visitor who has made a treaty of peace with them sells them one dirham in exchange of two whether by spot sell or by deferred payment or sells them wine or pig or dead animal then there is no restriction in it according to Imam Abu Hanifah and Imam Muhammad (May Allah pleased with both of them).”³²

Then Imam Sarkhasi writes reason of its lawfulness in the following words,

وَهُمَا يَقُولَانِ هَذَا أَخَذَ مَالَ الْكَافِرِ بِطَبِيبَةٍ نَفْسِهِ، وَمَعْنَى

هَذَا أَنَّ أَمْوَالَهُمْ عَلَى أَصْلِ الْإِبَاحَةِ إِلَّا أَنَّهُ ضَمِنَ أَنْ لَا يَخُونَهُمْ فَهُوَ يَسْتَرْضِيهِمْ بِهَذِهِ الْأَسْبَابِ لِلتَّحَرُّزِ عَنِ الْعَدْرِ ثُمَّ يَأْخُذُ أَمْوَالَهُمْ بِأَصْلِ الْإِبَاحَةِ لَا بِاعْتِبَارِ الْعَقْدِ.

“They (Imam Abu Hanifah & Imam Muhammad) say that this is to take the wealth of a hostile infidel with his own consent. And it means that the wealth of a hostile infidel is legalized (Mubaah) and Muslim has made a treaty that he will not deceive them so he agrees to them by these means to avoid fraudulent practice and then gets their wealth because of legalization of their wealth, not by contract.”³³

ELEVENTH CRITICISM

Is the saying of Imam Abu Hanifah regarding the Dar-ul-Harb only?

Some of the critic scholars wrote that the permission of usurious dealings and gambling with non-Muslims according to the saying of Imam Abu Hanifah is limited to Dar-ul-Harb only. And Dar-ul-Harb is a place where the Muslims are practically busy with them in war and no diplomatic relations are established with them and where the Muslims are not protected with respect to their lives, wealth and dignity on the basis because they are Muslims as was the case of Spain..... while the countries of Non-

Muslims which the diplomatic relations are established with them, and the Muslim countries have with them treaty of trade and others, and people travel in those countries by visa and the lives, wealth and dignity of Muslims are safe there as well Muslims are allowed to practice their religion there freely like USA, UK, Holland, Germany and African countries, these are not Dar-ul-Harb rather these are Dar-ul-Kufr..... Therefore Muslims are not allowed to involve in usurious dealings in these countries anyhow. Likewise it is not allowed to get the wealth of Non-Muslim through void contracts.

ANSWER:

Firstly: The substance of the above mentioned criticism is that the usury takes place in between a Muslim and a Non-Muslim only in Dar-ul-Harb and now a day USA, UK, Holland, Germany, African countries and others are not Dar-ul-Harb. Therefore Muslims are not allowed to get the wealth of Non-Muslims through usury, gambling and void contracts.

Neglecting whether these countries are Dar-ul-Harb or not, I would like to clarify that the reasoning by which the critics got out the mentioned countries from the definition of Dar-ul-Harb, is not correct. Because according to our prominent Fuqha if the infidels of Dar-ul-Harb make some treaties with Muslims these treaties will not get out Dar-ul-Harb from the definition of Dar-ul-Harb as says Imam

Sarkhasi,

وَأِنْ أَرَادَ قَوْمٌ مِنْ أَهْلِ الْحَرْبِ مِنَ الْمُسْلِمِينَ الْمَوَادَّعَةَ
سِنِينَ مَعْلُومَةً عَلَى أَنْ يُؤَدِّيَ أَهْلُ الْحَرْبِ الْخَرَاجَ إِلَيْهِمْ
كُلَّ سَنَةٍ شَيْئًا مَعْلُومًا عَلَى أَنْ لَا تَجْرِيَ أَحْكَامُ الْإِسْلَامِ
عَلَيْهِمْ فِي بِلَادِهِمْ لَمْ يَفْعَلْ ذَلِكَ إِلَّا أَنْ يَكُونَ فِي ذَلِكَ خَيْرٌ
لِلْمُسْلِمِينَ؛ لِأَنَّهُمْ بِهِذِهِ الْمَوَادَّعَةِ لَا يَلْتَزِمُونَ أَحْكَامَ
الْإِسْلَامِ، وَلَا يَخْرُجُونَ مِنْ أَنْ يَكُونُوا أَهْلَ حَرْبٍ.

“If the infidels of Dar-ul-Harb intend to make a treaty with Muslims on the condition of paying khiraj (tax) to the Muslims and the rulings of Islam will not be imposed upon them in exchange of tax so Muslims are not allowed to make such a treaty except it causes for the betterment of Muslims. As they will not follow the rulings of Islam due to this treaty so they will not get out from the status of hostility.”³⁴

Now it is quite clear from the above mentioned text of Imam Sarkhasi that although hostile infidels pay Khiraj (tax) to the Muslim because of treaty and they do not fight against Muslims yet they will remain hostile (Harbies) because the rulings of Islam were not imposed upon them. Therefore in the light of above discussion, the fallacy of the critics has appeared obviously.

Secondly: The proclamation of critics that the permission of usurious dealings and void contracts with hostile infidels is limited to the Dar-ul-Harb is also fallacious according to the great Fuqha of Islam. The reason for this fallacy is that they could not understand hadith “No Riba takes place between a Muslim and a Non-Muslim in Dar-ul-Harb”. The critics thought that the word “Dar-ul-Harb” makes the permission of Riba and void contracts with hostile infidels limited to the Dar-ul-Harb only and restricts such dealing from other places. According to the terminology of Islamic Jurisprudence critics understood it as Al-Qaid-ul-Ahtirazi (restrictive limitation) but according to our great Fuqha it is not a restrictive limitation rather it is Al-Qaid-ul-Ittifaqi (accidental limitation) as Imam Ahmad Raza Khan (May Allah pleased with him) wrote,

“And it is clear from the mentioned discussion that the infidel whose wealth is gained must be a hostile while regarding the place of such dealing, it is not necessary to be a Dar-ul-Harb as it is witnessed from the rulings of the owner of a slave and the partners. This permission needs only the absence of the reality of usury and its intention then after that it will neither be a practice of unlawful act near Allah, nor be an act of

proceeding against the laws of Shariah according to his own opinion. The scholars wrote that the purpose of limitation of Dar-ul-Harb in the problem of hostile infidel is only to expel Mustaaman because after getting protection the wealth of a Mustaaman does not remain legalized. It has been mentioned in Raddul Muhtaar that the word “there” means in Dar-ul-Harb. It has been made limited to Dar-ul-Harb because if an infidel enters our country (Dar-ul-Islam) and a Muslim sells him one dirham for two dirhams it will not be permitted unanimously. (Miskeen) It has been mentioned in Al-Hidayah that no usury takes place between a Muslim and a Non-Muslim in Dar-ul-Harb in opposition of a Mustaaman infidel because his wealth has become protected by our protection. It has been written in Fathul Qadeer with reference to Al-Mabsoot that because of the absolute injections of the Quran and the Hadith regarding protected wealth it is prohibited for a Muslim to get their wealth by fraudulent practice and when fraudulent practice is not found then a

Muslim is allowed to get their wealth by any way and it will be lawful for him if he gets it with their consent in opposition to a Mustaaman infidel because his wealth has become protected by our protection. Therefore, if a Muslim gets the wealth of a Mustaaman infidel by a mean opposing Shariah it will be a fraudulent practice. In short usury does not take place but only in protected wealth as you have heard now.”³⁵

Sadrus Shariah Maulana Amjad Ali Aazami demonstrated the same thing. He wrote that the word “Dar-ul-Harb” in hadith is an accidental limitation.³⁶ However, it is clear from the above discussion that according to Imam Abu Hanifah and many other great scholars of Islam usury does not take place between a Muslim and a hostile infidel whether he is Dar-ul-Harb or in Dar-ul-Islam or in Dar-ul-Kufr.

TWELVETH CRITICISM

Does mortgage cause loss for a Muslim?

The critics say that it is fallacious to infer for the lawfulness of mortgage from the saying of Imam Abu Hanifah because according to him Muslims are allowed to receive usury from the hostile infidels instead of paying it to the infidels. And when a Muslim avails the facility of mortgage then he will be a payer of usury to the infidels instead of receiving.

Therefore, this is contradictory to the opinion of Imam Abu Hanifah.

ANSWER:

First of all I will like to declare that according to Imam Abu Hanifah usury is not allowed in any case. And what Imam Abu Hanifah has allowed mere the formal type of usury between a Muslim and an infidel. As a matter of fact it is not usury in the light of the saying of the holy Prophet (blessings and peace be upon him). After this clarification it should be known that according to Imam Abu Hanifah there is no restriction in such dealing with a hostile infidel whether excess money goes to a Muslim or to an infidel as we have written in previous lines. For further contentment we rewrite the text of Imam Sarkhasi. He says,

وَيَسْتَوِي إِنْ كَانَ الْمُسْلِمُ أَخَذَ الدَّرْهَمَيْنِ بِالْدَّرْهَمِ، أَوِ الدَّرْهَمَ بِالْدَّرْهَمَيْنِ؛ لِأَنَّهُ طَيِّبَ نَفْسِ الْكَافِرِ بِمَا أُعْطَاهُ، قَلَّ ذَلِكَ، أَوْ كَثُرَ، وَأَخَذَ مَالَهُ بِطَرِيقِ الْإِبَاحَةِ كَمَا قَرَّرْنَا.

"And it is equal if a Muslim exchanges one dirham for two dirhams or two for one because the infidel gives him with his own consent whether it is less or more while Muslim gained this wealth of infidel by a legalized way as we have mentioned previously."³⁷

Yes, it is admitted that from the above mentioned reference and according to our prominent Fuqha profit must go to a Muslim in such dealings. On the contrary if profit goes to an infidel though it is not usury still it is not allowed for a Muslim to do so because it is spoiling of wealth without any reason. Keeping this in mind if we think about the matter of mortgage it will be clear whether mortgage is profitable for a Muslim or a rented house? By the mercy of Allah I searched it on internet as well I inquired from some scholars and my friends living in USA & UK regarding this matter they informed me that if a Muslim lives in a rented house and passes even 20 years or more he gains nothing but the temporary stay. Rather he has to accept unbearable conditions from the owner like family must not be increased by more than two children. If the number of children increases as by the mercy of Allah it is obvious in Muslim families, he has to vacate the house or has to increase the rent. Further he has to follow the conditions of owner regarding guests that they should not visit frequently and if someone comes as a guest he must not stay for a long time. On the contrary if a Muslim avails the facility of mortgage he usually has to pay the installments of mortgage equal to the rent of this period rather sometimes less than the amount of rent. Further he is not compelled to bear the mentioned conditions of the owner. Then after 20 or 25 years the Muslim becomes the owner of this house.

Now in the light of these facts each wise person will admit that the mortgaged house is more profitable for a Muslim than a rented house. Therefore according to Imam Abu Hanifah, Imam Muhammad, many scholars belonging to other schools of jurisprudence and most of the Hanfies, it is allowed for the Muslims living in Dar-ul-Kufr or Dar-ul-Harb to avail the facility of mortgage of houses and on the other hand it is obvious loss of the Muslims to live in rented houses and benefitting an infidel without no reason.

Allah knows, the best

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¹ Saheehul Bukhari, Kitaabul Ilm, Hadith No. 69, Page 17, Printed by: Darus Salam Riyadh.

² Volume 4, page 82

³ Hadith No. 181669, volume 3, page 276

⁴ Mushkilul Aasaar, volume 4, on page 245.

⁵ Al-Mabsoot li Sarkhasi, Kitaabus Sarf, Babus Sarf, Volume 14, Page 58, Printed by: Dar-ul-Ma'arifah Beirut

⁶ Tajul Uroos, Babul Meem, Fasludh Dhal, Volume 8, page 301, Printed by: Dar-ul-Fikr Beirut.

⁷ Mukhtarus Sihah, Babul Meem, Fasludh-Dhaal, Volume 4, Page 1074, Printed by: Darul Ihyaa'ut Turasil Arabi, Beirut.

⁸ At-Ta'areefat, Babudh-Dhaal, Page 91, Printed by: Darul Kutub Al-Arabi, Beirut.

⁹ Fathul Baari, Kitaabud-Diyaat, Babu Ismi man qatal dhimmiyan bighairi jurmin, Under Hadith No. 7914, Volume 12, Page 297, Printed by: Darul Hadith Qairo.

¹⁰ At-Tabaqaat Al-kubra li Ibne Sa'ad, Volume 1, Page 266.

¹¹ Saheehul Bukhari, Hadith No. 3156 & 3157, Printed by: Darus slam Riyadh.

¹² Sharhu Mushkilil Aasaar, Hadith No. 2031, Printed by: Mu'assasatur Risalah.

¹³ Al-Mabsoot, Kitaabus Siyar, Part 10, Page 77, Printed by: Darul Ma'arifah Beirut.

¹⁴ Al-Majmoo'a sharhul Muhadhab, Volume 9, Page 392, Printed by: Darul Fikr Beirut.

¹⁵ Risaaltul Imam Abi Dawood As-Sajastani Ila Ahle Makkah fi wasafi sunanihi, Page 32, Printed by: Darul Bashaa'ir Al-Islamiyah Beirut.

¹⁶ Ma'arifatu Uloomil Hadith, Page 26, Printed by: Darul Ihay'il uloom, Beirut.

¹⁷ Al-Mabsoot lis Sarkhasi, Kitaabus Sarf, Part 14, Page 56, Printed by: Darul Maarifah Beirut.

¹⁸ Ibid

¹⁹ At-Talkheesul Habeer, Volume 3, Page 9, Printed by: Muassasatu Qartabah

²⁰ Al-Mabsoot, Kitaabu Sulhul Mamlook wal Muawada'h, Part 10, Page 95, Printed by: Darul Maarifah Beirut

²¹ Al-Fatawa Ar-Razwiyah volume 7, Page 89, Printed by: Maktaba-e-Razwiyah Karachi

²² Al-Furoo'a li Ibni Muflih, Volume 4, Page 147.

²³ Al-Muharrar, Volume 1, Page 318

²⁴ Al-Bayan Wat-Tahseel, Volume 17, Page 291

²⁵ Al-Mabsoot, Kitaabus Sarf, Babus Sarf fi Daril Harb, Volume 14, Page 58, Printed by: Darul Maarifah Beirut.

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Al-Mabsoot, Kitaabus Sarf, Babus Sarf fi Daril Harb, Volume 14, Page 59, Printed by: Darul Maarifah Beirut.

³¹ Al-Mabsoot, Kitaabus Sarf, Babus Sarf fi Daril Harb, Volume 14, Page 57-58, Printed by: Darul Maarifah Beirut.

³² Al-Mabsoot, Kitaabus Siyar, Babu Sulhul mulook wal muwadaa'h, Part 10, Page 95, Printed by: Daarul Maarifah Beirut.

³³ Ibid

³⁴ Al-Mabsoot, Kitaabus Siyar, Babu Sulhul mulook wal muwadaa'h, Part 10, Page 87-88, Printed by: Daarul Maarifah Beirut.

³⁵ Al-Fatawa Ar-Razwiyah volume 7, Page 88, Printed by: Maktaba-e-Razwiyah Karachi

³⁶ Fatawa-e-Amjadiyah, Volume 3, Page 227-228, Printed by: Maktaba-e-Razwiyah Karachi.

³⁷ Al-Mabsoot, Kitaabus Sarf, Babus Sarf fi Daril Harb, Volume 14, Page 59, Printed by: Darul Maarifah Beirut.