

*Selected issues  
relating to Ta'zir*

translated from

*Al-Muḥalla bil'Athār*

المحلى بالآثار

By Ibn Ḥazm

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## (Issue) No. 2303: Acts of the people of Luṭ (Lot) <sup>1</sup>

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Abu Muḥammad (Ibn Ḥazm), may Allah have mercy upon him said: acts of the people of Luṭ are from amongst the forbidden; the indecencies (*al-fawāḥish*), the major sins (*al-kabā'ir*): such as (consuming) pork, dead meat (*mayta*), blood, alcohol, fornication (*zina*), and other matters of disobedience. Whoever should make it lawful or anything of it as considered lawful, as we have mentioned, would consequently be a *kāfir*, a *mushrik* whose blood and wealth are lawful.

And indeed, there is a difference of opinion amongst the people concerning the legal obligation upon it:

- A group of which has said: the active and passive participant are to be burned alive.
- And (another) group has said: to carry them to the highest point within the town or the mountain and push them from it, and to be followed with stones (pelting).
- And (another) group has said: to stone them, the active and passive participant, whether *muḥsan* or not *muḥsan*.<sup>2</sup>
- And (another) group has said: kill all of them collectively.
- And (another) group has said: for the passive participant, to be stoned, *muḥsan* or not *muḥsan*; for the active participant, to be stoned if *muḥsan* and if not *muḥsan*, lashing, as the lashing of *zina*.
- And (another) group has said: the passive and active participants are equal (equivalent); whichever is *muḥsan*, then by stoning (*rajm*), whichever of them isn't *muḥsan* (then) with a hundred stripes (lashing), like that of *zina*.

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<sup>1</sup> *al-Muḥalla bil' Athār* [Vol. 12, pp. 388 / 397]

<sup>2</sup> The term can convey several meanings, such as relating to being chaste and free. Within the context relating offences pertaining to *zina*, it usually relates to an individual who is married.

- And (another) group has said: there is no *ḥadd* upon either of them and neither is there killing (execution), but rather, *ta'zir* upon each.<sup>3</sup>

The first do say, as has been narrated:

نا عبد الله بن ربيع نا ابن مفرج نا قاسم بن أصبغ نا ابن وضاح نا سحنون نا ابن وهب أخبرني ابن سمعان عن رجل أخبره قال: جاء ناس إلى خالد بن الوليد فأخبروه عن رجل منهم أنه ينجح كما توطأ المرأة، وقد أحصن؟ فقال أبو بكر: عليه الرجم وتابعه أصحاب رسول الله صلى الله عليه وسلم على ذلك من قوله: فقال علي: يا أمير المؤمنين إن العرب تأنف من عار المثل وشهرته، أنفا لا تأنفه من الحدود التي تمضي في الأحكام فأرى أن تحرقه بالنار؟ فقال أبو بكر: صدق أبو الحسن وكتب إلى خالد بن الوليد: أن أحرقه بالنار؟ ففعل

Abdullah ibn Rabeeh' narrated to us Ibn Mufarrij narrated to us Qāsim ibn Aṣḡbagh narrated to us Ibn Waḡḡāḡ narrated to us Saḡnun narrated to us Ibn Waḡb narrated to us Ibn Sam'aān reported to me from a man who reported it to him, he said: People came to Khālid ibn al-Waleed and it was reported to him about an (apparent) *muḡsan* man from amongst them who had intercourse (with other men) like that of a woman? Thus, Abu Bakr said: upon him is stoning (*rajm*) – and the companions of the Messenger of Allah peace be upon him followed him in relation to that and from their statements, Ali said: O Ameer of the Believers, indeed the Arab is disgraced by the like of such matters; concerning its punishment, which I believe it to be the ruling of burning with fire? Abu Bakr said: Abul'Ḥasan spoke the truth and he wrote to Khālid ibn al-Waleed to burn him with fire. So he did.

Ibn Waḡb said: I did not see Khālid burn him with fire, except after he was executed; because the punishment by way of fire, is but unto Allah the exalted. Ibn Ḥabeeb said: whoever burns by fire the participant in the acts of the nation of Luṡ isn't mistaken (i.e. not sinful). And from Ibn Ḥabeeb:

نا مطرف بن عبد الله بن عبد العزيز بن أبي حازم عن محمد بن المنكدر، وموسى بن عقبة وصفوان بن سليم: أن خالد بن الوليد كتب إلى أبي بكر الصديق: أنه وجد في بعض سواحل البحر رجلا ينجح كما تنجح المرأة، وقامت عليه بذلك البينة، فاستشار أبو بكر في ذلك أصحاب رسول الله صلى الله عليه وسلم فكان أشدهم فيه يومئذ قولاً علي بن أبي طالب قال: إن هذا ذنب لم يعص به من الأمم إلا أمة واحدة صنع الله بها ما قد علمتم، أرى أن تحرقهما بالنار، فاجتمع رأي صحابة رسول الله - صلى الله عليه وسلم - على

<sup>3</sup> Formatted as such for ease of reading; this sub-division is not in the Arabic text

أن يحرقه بالنار؟ فكتب أبو بكر إلى خالد بن الوليد أن أحرقه بالنار ثم حرقهما ابن الزبير في زمانه - ثم حرقهما هشام بن عبد الملك - ثم حرقهما القسري بالعراق

Muṭariff ibn Abdullah ibn Abdal-Aziz ibn Abi Ḥāzim narrated to us from Muḥammad ibn al-Munkadir, Musa ibn ‘Uqba and Ṣafwān ibn Sulaym that Khālīd ibn al-Waleed wrote to Abu Bakr al-Ṣadeeq: that he had found in some coastal areas by the sea, a man who had intercourse (with other men) like that of a woman and there was evidence to substantiate that. Abu Bakr consulted the companions of the Messenger of Allah peace be upon him concerning that. The one who had the strictest view concerning that was Ali ibn Abi Ṭālib, he said: This is a sin that was not undertaken by the nations except but one nation, which Allah responded to that by what you have known, I see that you should burn them with fire. And the companions of the Messenger of Allah peace be upon him concurred upon that view. Thus, Abu Bakr wrote to Khālīd ibn al-Waleed that he should burn (them) with fire – then (the decision to) burn them in this matter (sent also to) al-Zubayr, Hishām ibn Abdal-Malik and to al-Qasri in Iraq.

حدثنا إسماعيل بن دليم الحضرمي قاضي ميورقة قال: نا محمد بن أحمد بن الخلاص نا محمد بن القاسم بن شعبان نا محمد بن إسماعيل بن أسلم نا محمد بن داود بن أبي ناجية نا يحيى بن بكير عن عبد العزيز بن أبي حازم عن داود بن أبي بكر ومحمد بن المنكدر وموسى بن عقبة، وصفوان بن سليم: أنه وجد في بعض ضواحي البحر رجلا ينكح كما تنكح المرأة - قال أبو إسحاق: كان اسمه الفجاءة - فاستشار أبو بكر أصحاب رسول الله - صلى الله عليه وسلم - ثم ذكر مثل حديث عبد الملك الذي ذكرنا حرفا حرفا نسا  
سواء

Ismā'il ibn Dulaym al-Ḥaḍrami, the judge of Majorca narrated to us he said Muḥammad ibn Aḥmad ibn al-Khallās narrated to us Muḥammad ibn al-Qāsim ibn Sha'bān narrated to us Muḥammad ibn Ismā'il ibn Aslam narrated to me Muḥammad ibn Dāwud ibn Abi Najeeyah narrated to us Yaḥya Bukeyr narrated to us from Abdal-Aziz ibn Abi Ḥāzim from Dāwud ibn Abi Bakr and Muḥammad ibn Munkadir, Musa ibn ‘Uqba and Ṣafwān ibn Sulaym: that he found among some people in the suburbs of the coastal areas, a man who had intercourse (with other men) like that of a woman. Abu Ishāq said: His name was Fujā'a, so Abu Bakr, the companion of the Messenger of Allah peace be upon him, was consulted – then he mentioned the *ḥadith* of Abdal-Malik which we have mentioned previously letter by letter.

As for the one who said he would be taken to the highest mountain in the village:

نا أحمد بن إسماعيل بن دليم نا محمد بن أحمد بن الخلاص نا محمد بن القاسم بن شعبان نا أحمد بن سلمة بن الضحاك عن إسماعيل بن محمود بن نعيم نا معاذ نا عبد الرحمن نا حسان بن مطر نا يزيد بن مسلمة عن أبي نضرة عن ابن عباس سئل عن حد اللوطي فقال: يصعد به إلى أعلى جبل في القرية ثم يلقي منكسا ثم يتبع بالحجارة

Aḥmad ibn Ismā'il ibn Dulaym narrated to us Muḥammad ibn Aḥmad al-Khallāṣ narrated to us Muḥammad ibn al-Qāsim ibn Shaybān narrated to us Aḥmad ibn Salama ibn al-Daḥḥāk narrated to us from Ismā'il ibn Maḥmud ibn Nu'aym, Mu'ādth narrated to us Abdar-Raḥman narrated to us Ḥassān ibn Maṭar narrated to us Yazeed ibn Maslama narrated to us from Abi Naḍra from Ibn 'Abbās, he was asked regarding the punishment of the homosexual, so he replied: 'He is taken to the highest mountain in the village, is thrown down, and then followed up with the (pelting) of stones.'

Regarding those who said: the passive and active participant are to be stoned, be they *muḥsan* or not, as mentioned by:

نا محمد بن سعيد بن نبات نا عبد الله بن نصر نا قاسم بن أصيغ نا ابن وضاح نا موسى بن معاوية نا وكيع نا ابن أبي ليلى عن القاسم بن الوليد المهراني عن يزيد بن قيس أن عليا رجم لوطيا  
Muḥammad ibn Sa'eed ibn Nabbāt narrated to us Abdallah ibn Naṣr narrated to us Qāsim ibn Aṣbagh narrated to us Ibn Waḍḍāḥ narrated to us Musa ibn Mu'āwiya narrated to us Waki' narrated to us Ibn Abi Layla narrated to us from al-Qāsim ibn al-Waleed al-Mihrāni from Yazeed ibn Qays that Ali stoned the homosexual.

حدثنا حمام نا ابن مفرج نا ابن الأعرابي نا الدبري نا عبد الرزاق نا ابن جريج أخبرني عبد الله بن عثمان بن خثيم أنه سمع مجاهدا، وسعيد بن جبير يحدثان عن ابن عباس أنه قال في البكر يوجد على اللوطية: أنه يرمم

Ḥummām narrated to us Ibn Mufarij narrated to us Ibn al-'Arabi narrated to us al-Dabari narrated to us Abdar-Razzāq narrated to us Ibn Jurayj narrated to us Abdullah ibn Uthmān ibn Khatheem reported to me that he heard Mujāhid and Sa'eed ibn Jubayr narrating from Ibn 'Abbās, that he said: concerning the *bikr* (virgin) found to be engaging in homosexual acts, that he is to be stoned.<sup>4</sup>

<sup>4</sup> Abu Dāwud also cited this in his *Sunan* with a slightly different *isnād*: Ishāq ibn Ibrāhim ibn Rāhwayh narrated to us Abdar-Razzāq narrated to us Ibn Jurayj reported to us Ibn Khuthaym reported to me, he said: I heard Sa'eed ibn Jubayr and Mujāhid narrating from Ibn 'Abbās, concerning a man that is *bikr*, and is found committing

وعن إبراهيم النخعي أنه قال: لو كان أحد ينبغي له أن يرمم مرتين لكان ينبغي للوطي أن يرمم مرتين  
And from Ibrāhīm al-Nakha'i, that he said: if one had to be stoned twice, (then) the homosexual (*luṭi*) is to be stoned twice.

وعن ربيعة أنه قال: إذا أخذ الرجل لوطيا رجم، لا يلتبس به إحصان، ولا غير  
And from Rabi'a that he said: if a man takes up with a homosexual, (then he is to be) stoned; regardless of being *muḥsan* or any other consideration.

وعن الزهري أنه قال: على اللوطي الرجم أحسن أو لم يحسن  
And from Zuhri, that he said: concerning the homosexual, stoning, be he *muḥsan* or not.

وحدثنا عبد الله بن ربيع نا ابن مفرج نا قاسم بن أصبغ نا ابن وضاح نا سحنون نا ابن وهب أخبرني الشمر بن نمير، ويزيد بن عياض بن جعدبة، ومن أثق به، وكتب إلى ابن أبي سبرة، قال الشمر: عن حسين بن عبد الله بن ضميرة عن أبيه عن جده عن علي بن أبي طالب، وقال يزيد بن عياض بن جعدبة: عن عبد الملك بن عبيد عن سعيد بن المسيب، وقال ابن أبي سبرة: سمعت أبا الزناد، وقال الذي يثق به: عن الحسن، ثم اتفق علي، وسعيد بن المسيب، وأبو الزناد، والحسن، كلهم مثل قول الزهري المذكور

And Abdullah ibn Rabeeh' narrated to us Ibn Mufarijj narrated to us Qāsim ibn Aṣḡagh narrated to us Ibn Waḡḡāḡ narrated to us Saḡnun narrated to us Ibn Waḡb narrated to us al-Shamr ibn Numayr and Yazeed ibn 'Ayyāḡ ibn Ja'daba reported to me and relied upon it, and he wrote to Ibn Abi Sabra; al-Shamr said: from ḡussain ibn Abdullah ibn Dameerah from his father from his grandfather from Ali ibn Abi Tālib and Yazeed ibn 'Ayyad ibn Jaddaba said: from Abdal-Malik ibn 'Ubaid from Sa'eed ibn al-Musayib and Ibn Abi Sabra said: I heard Abul'Zinād and he said those who held it from al-ḡasan then Ali agreed and Sa'eed ibn al-Musayib and Abul'Zinād and al-ḡasan – all of them mentioned similar as Zuhri did.

And with it, the saying of al-Shāfi'i and it is also said by Mālik, Layth and Ishāq ibn Rāḡwayh.<sup>5</sup> Concerning those who have said, they are both to be killed, such as been said as narrated from

sodomy. He said: 'It is stoning.' After which he commented, Abu Dāwud said: The *ḡadith* of 'Aāṡim (shows) the *ḡadith* of 'Amr ibn Abi 'Amr as weak.

<sup>5</sup> In other words, being in agreement with the viewpoint that was taken by Zuhri for the legal ruling upon this issue. That can be found In the *Muwaṡṡā'* of Imām Mālik in the *Kitāb al-Hudud*: Mālik narrated to me that he asked Ibn Shihāb about those you act (from the) actions of the people of Luṭ. So Ibn Shihāb said: Upon them is stoning, whether *muḡsan* or not.

Ibn ‘Abbās, he said: kill them both, the doer and the one unto whom it is done. Concerning those who have said, it is like *zina*, the *muḥsan* is to be stoned, the non-*muḥsan* is to be flogged with a hundred lashes. Thus, (the) like has been mentioned:

نا أحمد بن إسماعيل بن دليم نا محمد بن أحمد بن الخلاص نا محمد بن القاسم بن شعبان نا أحمد بن سلمة، والضحاك عن إسماعيل بن محمد بن نعيم نا معاذ بن الحارث نا عبد الرحمن بن قيس الضبي عن اليماني بن المغيرة نا عطاء بن أبي رباح، قال: شهدت عبد الله بن الزبير وأتي بسبعة أخذوا في اللواط فسأل عنهم؟ فوجد أربعة قد أحصنوا، فأمر بهم فأخرجوا من الحرم - ثم رجموا بالحجارة حتى ماتوا، ووجد ثلاثة الحد وعنده ابن عباس، وابن عمر، فلم ينكرا ذلك عليه

Aḥmad ibn Ismā’il ibn Dulaym narrated to us Muḥammad ibn Aḥmad ibn al-Khallās narrated to us Muḥammad ibn al-Qasim ibn Sha’bān narrated to us Aḥmad ibn Salama narrated to us and al-Daḥḥāk from Ismā’il ibn Muḥammad ibn Nu’aym; Mu’ādh ibn al-Ḥārith narrated to us Abdar-Raḥman ibn Qays al-Qabee narrated to us from al-Yamani ibn al-Mughira; ‘Atā ibn Abi Rabbāḥ narrated to us he said: I witnessed before Abdullah ibn al-Zubayr – seven homosexuals were brought before him and he was asked about them. He found four to be *muḥsan*, so he ordered them to be taken out from the Ḥaram, then he stoned them with rocks until they died. The (remainder) three, (were subjected to) lashing as the *ḥadd*. And Ibn ‘Abbās and Ibn Umar (being present) didn’t object concerning this.

وعن الحسن البصري أنه قال في الرجل يعمل عمل قوم لوط: إن كان ثيبا رجم، وإن كان بكرا جلد  
And from al-Ḥasan al-Basri, that he said in relation to the man engaging in acts from the acts of the people of Luṭ: if *thayib*, stoning and if a *bikr* (virgin), lashing.

And others who said: if the doer is *muḥsan*, then he is to be stoned. If he isn’t *muḥsan*, (then it is) one-hundred lashes and a year’s exile. And as for the passive (*al-mankuh*), stoning if *muḥsan* or not. The statement going to Abu Ja’far Muḥammad ibn Ali ibn Yusuf, one of the jurists of al-Shāfi’i. And others who said: there is no *ḥadd* regarding that. As what has been narrated by:

نا محمد بن سعيد بن نبات نا عبد الله بن نصر نا قاسم بن أصيغ نا ابن وضاح نا موسى بن معاوية نا وكيع نا سفيان الثوري عن منصور بن المعتمر، وأبي إسحاق الشيباني، كلاهما عن الحكم بن عتيبة أنه قال فيمن عمل عمل قوم لوط: يجلد دون الحد

Muḥammad ibn Sa’eed ibn Nabbāt narrated to us Abdullah ibn Naṣr narrated to us Qāsim ibn Aṣḥbagh narrated to us Ibn Waḍḍāḥ narrated to us Musa ibn Mu’āwiya



narrated to us Waki' narrated to us Sufyān al-Thawri narrated to us from Maṣūr ibn al-Mu'tamir and Abu Ishāq al-Shaybāni, both of them from al-Ḥakam ibn 'Uṭayba that he said: for the one undertaking the acts of the acts from the people of Luṭ: lashing, but without the *ḥadd*.

And with that, is (also) the saying of Abu Ḥanifah and his followers and Abu Sulaymān and the majority of his companions. Abu Muḥammad (Ibn Ḥazm) said: when they differed - as we have previously mentioned - we have to look at what is argued by those who saw it to be burning with fire, and we have found them saying: It is the consensus (*ijmā'*) of the Companions, and it is not permissible to disagree with their consensus. If it is said, it is narrated from Ali, Ibn 'Abbās, Ibn al-Zubayr and Ibn Umar, after that, is *rajm*, and the *ḥadd* of the one (guilty of) *zina*, other than that? Saying, this is not allowed, because it conflicts with what is considered to be the consensus. Thus, all of what they mention in that, none of it is a proof other than this. And we have found that it does not establish an authoritative proof, because it is only narrated by way of Ibn Sam'aān from a man, who (allegedly) reported it to him. He did not hear it from Abu Bakr. Regarding (the reported channels of):

- Abdal-Malik ibn Ḥabeeb from Mutarrif from Abu Ḥazam from Muḥammad ibn al-Munkadir, Musa ibn 'Uqba and Ṣafwān ibn Sulaym and Dāwud ibn Bakr, etc.
- And Ibn Sha'bān from Muḥammad ibn al-'Abbās ibn Aslam from Muḥammad ibn Dāwud Abi Najjiyah from Yahya ibn Bukeer from Ibn Abi Ḥazm from Ibn al-Munkadir and Musa ibn 'Uqba and Ṣafwān ibn Sulaym and Dāwud ibn Bakr, etc.

All of which is *munqati'*;<sup>6</sup> not a single one from amongst them knew Abu Bakr. Furthermore, (the narrator) Ibn Sam'aān is a liar, and has been mentioned and described as such by Mālik ibn Anas. There is an authentic channel from the Messenger of Allah peace be upon him that prohibits to burn with fire, it is as such:

نا عبد الله بن ربيع نا عمر بن عبد الملك الخولاني نا محمد بن بكر نا أبو داود نا سعيد بن منصور نا المغيرة بن عبد الرحمن الحزامي عن أبي الزناد عن محمد بن حمزة بن عمرو الأسلمي عن أبيه أن

<sup>6</sup> The classification falls within the class of narrations that contain lacunas. Usually in translation it is referred to as being a 'broken-chained report,' signifying that there are one or more narrators missing from the chain of transmission, though not in consecutive sequence.

رسول الله صلى الله عليه وسلم أمره على سرية وقال: إن وجدتم فلانا فأحرقوه بالنار، فوليت فناداني فرجعت، فقال: إن وجدتم فلانا فاقتلوه ولا تحرقوه، فإنه لا يعذب بالنار إلا رب النار

Abdullah ibn Rabeeh' narrated to us Umar ibn Abdal-Malik al-Khawlāni narrated to us Muḥammad ibn Bakr narrated to us Abu Dāwud narrated to us Sa'eed ibn Maṣūr narrated to us Mughira ibn Abdar-Raḥman al-Ḥizāmi narrated to us from Abi Zinād from Muḥammad ibn Ḥamza ibn 'Amr al-Aslami from his father, that the Messenger of Allah peace be upon him appointed him commander over a detachment. He said: I went out along with it. He said: *If you find so-and-so, burn him with the fire.* I then turned away, and he recalled me. So I returned to him, and he said: *If you find so-and-so, kill him, and do not burn him, for no one punishes with fire, except the lord of the fire.*

Thereafter we looked at the sayings of those who saw that they should be executed, we found them arguing with what is reported as:

نا عبد الله بن ربيع نا محمد بن إسحاق نا ابن الأعرابي نا الدبري نا أبو داود نا عبد الله بن محمد النفيلي نا عبد العزيز بن محمد هو ابن محمد الدراوردي عن عمرو بن أبي عمرو عن عكرمة عن ابن عباس قال: قال رسول الله صلى الله عليه وسلم من وجدتموه يعمل عمل قوم لوط فاقتلوا الفاعل والمفعول به

Abdullah ibn Rabeeh' narrated to us Muḥammad ibn Ishāq narrated to us Ibn al-'Arābi narrated to us al-Dabri narrated to us Abu Dāwud narrated to us Abdullah ibn Muḥammad an-Nufayli narrated to us Abdal-Aziz ibn Muḥammad – and he is Ibn Muḥammad ad-Darāwardi – from 'Amr ibn Abi 'Amr from 'Ikrima from Ibn 'Abbās, he said: the Messenger of Allah peace be upon him said: *If you find anyone doing as Luṭ's people did, kill the one who does it, and the one to whom it is done.*<sup>7</sup>

حدثنا عبد الله بن ربيع نا ابن مفرج نا قاسم بن أصبغ نا ابن وضاح نا سحنون نا ابن وهب نا أخبرني القاسم بن عبد الله بن عمر بن حفص ثني سهيل بن أبي صالح عن أبيه عن أبي هريرة عن رسول الله صلى الله عليه وسلم قال اقتلوا الفاعل والمفعول به

وبه إلى ابن وهب عن يحيى بن أيوب عن ابن جريج عن ابن عباس عن النبي صلى الله عليه وسلم بمثل ذلك

<sup>7</sup> Sunan Abu Dāwud, *Kitāb al-Ḥudud*. After citing this tradition Abu Dāwud said: 'Similar is narrated by Sulaymān ibn Bilāl from 'Amr b. Abi 'Amr. And 'Abbād b. Maṣūr narrated it from 'Ikrima on the authority of Ibn 'Abbās who raised it. It has also been transmitted by Ibn Jurayj from Ibrāhim from Dāwud ibn al-Ḥuṣṣain from 'Ikrimah on the authority of Ibn 'Abbās who raised it.'

Abdullah ibn Rabeeh' narrated to us Ibn Mufarrij narrated to us Qāsim ibn Aṣḡbagh narrated to us Saḡnun narrated to us Ibn Wahb narrated to us al- Qāsim ibn Abdullah ibn Umar ibn Ḥafṡ reported to me Suhayl ibn Abi Ṣaliḡ narrated to me from his father from Abu Hurayrah from the Messenger of Allah peace be upon him, he said: *Execute (both) the one doing it and the one it is done to.*<sup>8</sup>

And with it (that *isnād*) to Ibn Wahb from Yaḡya ibn Ayub from Ibn Jurayj from Ibn 'Abbās from the Prophet peace be upon him, with the like thereof.

وبه إلى يحيى بن أيوب عن رجل حدثه عن عبد الله بن محمد بن عقيل بن أبي طالب عن جابر بن عبد الله أن رسول الله صلى الله عليه وسلم قال من عمل عمل قوم لوط فآقتلوه

And with it, to Yaḡya ibn Ayub from a man narrating it from Abdullah ibn Muḡammad ibn 'Uqayl ibn Abi Ṭālib from Jabir ibn Abdullah that the Messenger of Allah peace be upon him said: *Whoever undertakes acts from the acts of the people of Luṭ, execute them.*

And this 'man' is 'Abbād ibn Kathir. Abu Muḡammad, may Allah be pleased with him said: this is all that they clinging to and from all of it, nothing is authentically established. As for the *ḡadith* of Ibn 'Abbās, contained within it is 'Amr ibn Abi 'Amr and he is *daef* (weak), and Ibrahim ibn Ismā'il is *daef*. As for the *ḡadith* of Abu Hurayrah, contained within it is al- Qāsim ibn Abdullah ibn Umar ibn Ḥafṡ and he is forsaken, rejected; the ultimate in failing.<sup>9</sup> And as for the *ḡadith* of Jābir, which is stemming from Yaḡya ibn Ayub, and he is *daef*; from 'Abbād ibn Kathir and it is more pernicious than it. And as for the *ḡadith* of Ibn Abi Zinād, he is *daef*

<sup>8</sup> In the *Sunan* of Tirmidhi, *Kitāb al-Hudud*, it is recorded: Muḡammad ibn 'Amr as -Sawāq narrated to us Abdal -Aziz ibn Muḡammad narrated to us from 'Amr ibn Abi 'Amr from 'Ikrima from Ibn 'Abbās, he said that the Messenger of Allah peace be upon him said: *'Whoever you find doing the actions of the people of Luṭ then kill the one doing it, and the one it is done to.'* He said: and in the chapter (are narratives) from Jābir and Abu Hurayrah. Abu Esa said: But we know this *ḡadith* from Ibn 'Abbās from this channel and it's narrated by Muḡammad ibn Iṡḡāq from 'Amr ibn Abi 'Amr, where he said: *'Whoever undertakes the acts from the actions of the people of Luṭ is cursed.'* There is no mention of execution in it. And in it is mentioned the curse regarding one approaching an animal. This *ḡadith* was narrated from 'Aāṡim ibn Umar reported to me from Suhayl ibn Abi Ṣaliḡ from his father from Abu Hurayrah from the Prophet peace be upon him, he said: *Execute the one who does it, and the one to whom it is done.* Abu Esa said: this *ḡadith* in its *isnād* are problems and we don't know of one narrating it from Suhayl ibn Abi Ṣaliḡ other than by 'Aāṡim ibn Umar al-Umari. And 'Aāṡim ibn Umar is weak in *ḡadith* due to his memorisation. Amongst the people of knowledge, there is difference of opinion concerning the *ḡadd* of the *Luṭi* (homosexual). Some of them hold the opinion that it is stoning be they *muḡsan* or not and this is the statement of Mālik, Ṣāfi'i, Aḡmad and Iṡḡāq. Some of the people of knowledge from the *fuḡahā* and *Tābi'een*, from amongst them al-Ḥasan Baṡri, Ibrāhim al-Nakha'i, and 'Aṭā ibn Abi Rabāḡ and other than them. They said, the *ḡadd* of the *Luṭi*, is as the *ḡadd* of the *zāni* and it is the saying of al-Thawri and the people of Kufa.

<sup>9</sup> The wording employed by Ibn Ḥazm (in transliteration) is: *'muṭrah fi ḡḡāyat-il-Saqūṭ.'* In other words, he is cast out completely by scholars of *ḡadith*, essentially being viewed as a narrator that is extremely weak and unreliable, possibly even a liar.

and Muḥammad ibn Abdallah, he is *majhul* (unknown); also, it is *mursal*. Consequently, all of which in this section contains lacunas.

Without doubt, it is not lawful to shed the blood of a Jew or a Christian from amongst the people of the contract (*ahl al-Dhimaa*). Yes, indeed as is similarly with the blood of a warrior, from these reports. So how can the blood (be shed) for the *fāsiq* (rebellious) or the *ta'ib* (remorseful)? If any from amongst it (these reports) was authentic, we would say similarly, accepting that view and not opposing it. And with Allah the exalted is all *tawfeeq*.

Thereafter, we looked into what was said regarding the stoning of the participants, be they *muḥsan* or not and we found them to be arguing this (viewpoint) with the action that Allah meted out to the people of Luṭ. Allah the exalted said:

فَلَمَّا جَاءَ أَمْرُنَا جَعَلْنَا عَالِيَهَا سَافِلَهَا وَأَمْطَرْنَا عَلَيْهَا حِجَارَةً مِّن سَجِيلٍ مَّنصُودٍ، مُسَوِّمَةً عِنْدَ رَبِّكَ وَمَا هِيَ مِنَ الظَّالِمِينَ

بِبَعِيدٍ

*So, when our decree came to pass, we turned them upside down and rained down upon them stones, of what had been decreed, one after another.*<sup>10</sup>

They utilise (also) the reports which we mentioned previously, from what is narrated:

نا أحمد بن إسماعيل بن دليم نا محمد بن أحمد بن الخلاص نا محمد بن القاسم بن شعبان ثني محمد بن أحمد عن يونس بن عبد الأعلى، وأبي الربيع بن أبي رشدين نا عبيد الله بن رافع عن عاصم بن عبيد الله عن سهيل بن أبي صالح عن أبيه عن أبي هريرة عن النبي صلى الله عليه وسلم قال لاذي يعمل عمل قوم لوط فارجموا الأعلى والأسفل وقال فيه: وقال أحصنا أو لم يحصنا

Aḥmad ibn Ismā'il ibn Dulaym narrated to us Muḥammad ibn Aḥmad ibn al-Khallās narrated to us Muḥammad ibn al-Qasim ibn Sha'bān narrated to us Muḥammad ibn Aḥmad narrated to me from Yunus ibn Abdal-'Ala and Abi Rabeeh' Abi Rishdeen, Abdullah ibn Rāfiḥ' narrated to us from 'Aāṣim ibn 'Ubaidallah from Suhayl ibn Abi Ṣāliḥ from his father from Abu Hurayrah from the Prophet peace be upon him, he said: *Concerning those who do the actions of the people of Luṭ, stone the passive and active (participant). And he said in it, (be they) muḥsan or not muḥsan.*

<sup>10</sup> *Qur'ān*, 11: 82/83. Only the highlighted portion of the verses are quoted by Ibn Ḥazm. For the sake of completeness, the complete verses are included here.

So this is all what they have been purporting, and all of it after we have examined it, does not constitute an authoritative proof, as we will explain by the will of Allah. Regarding the action of Allah in relation to the people of Luṭ, it is (in fact) not as they have thought it to be, because Allah the exalted has said:

كَذَّبَتْ قَوْمُ لُوطٍ بِالَّذُرِّ، إِنَّا أَرْسَلْنَا عَلَيْهِمْ حَاصِبًا إِلَّا آلَ لُوطٍ نَجَّيْنَاهُمْ بِسَحَرٍ

*The people of Luṭ treated the warning as a lie. Indeed, we sent upon them a stone-storm, except Luṭ's followers; we saved them a little before daybreak.*<sup>11</sup>

Up until where he the exalted said:

فَذُوقُوا عَذَابِي وَنُذْرٍ

*So taste my chastisement and my warning.*<sup>12</sup>

He the exalted said:

وَلَمَّا أَنْ جَاءَتْ رُسُلُنَا لُوطًا سِيءَ بِهِمْ وَضَاقَ بِهِمْ ذَرْعًا وَقَالُوا لَا تَخَفْ وَلَا تَحْزَنْ إِنَّا مُنْجُوكَ وَأَهْلَكَ إِلَّا امْرَأَتَكَ كَانَتْ مِنَ الْغَابِرِينَ

*And when Our Messengers came to Luṭ he was grieved on account of them, and he felt powerless (to protect) them; and they said: Fear not, nor grieve; surely we will deliver you and your followers, except your wife; she shall be of those who remain behind.*<sup>13</sup>

And He the exalted said:

قَالُوا يَا لُوطُ إِنَّا رُسُلُ رَبِّكَ لَنْ يَصِلُوا إِلَيْكَ فَأَسْرِ بِأَهْلِكَ بِقِطْعٍ مِنَ اللَّيْلِ وَلَا يَلْتَفِتْ مِنْكُمْ أَحَدٌ إِلَّا امْرَأَتَكَ إِنَّهُ مُصِيبُهَا مَا أَصَابَهُمْ إِنَّ مَوْعِدَهُمُ الصُّبْحُ أَلَيْسَ الصُّبْحُ بِقَرِيبٍ

*They said: O Luṭ! we are the apostles of your Lord; they shall by no means reach you; so remove your followers in a part of the night-- and let none of you turn back-- except your wife, for surely whatsoever befalls them shall befall her; surely their appointed time is the morning; is not the morning nigh?*<sup>14</sup>

<sup>11</sup> Qur'an, 54: 33/34. The verses here are quoted in full.

<sup>12</sup> Qur'an, 54: 39

<sup>13</sup> Qur'an, 29: 33. The full verse is quoted here, the emphasis made (underlined) is the portion of the verse that Ibn Ḥazm only cites.

<sup>14</sup> Qur'an, 11: 81

The verses of the exalted are sufficiently clear, that the people of Luṭ were disbelievers; the punishment being for that. Thus, that is correct: that the punishment of stoning that befell them was not merely for the indecency (*fāḥisha*) only, but because of their disbelief (*kufr*). Therefore they cannot be stoned for the acts committed from the acts of the people of Luṭ, except if they were a disbeliever (*kāfir*). Hence (to act otherwise) they would have violated the ruling of Allah the exalted, being in conflict with these verses, if they maintain this position. Moreover, Allah the exalted has also reported that the wife of Luṭ was punished along with the people. Anyone with a mind of reason would know she did not undertake acts like that of the acts of the people of Luṭ.

It is correct that this ruling was not solely for that particular act. (In reply) if they were to say: she may have aided them regarding that act? We would say: then everyone would have to be subjected to stoning, (whether) leading or directing that act. Otherwise, by not doing so, they would be contradicting themselves and have invalidated their own proof given the Qur'ān and would be disobeying it. Also, Allah the exalted reports that the people approached the guests and were blinded as a result of the doing the acts from the people of Luṭ. Thus, they should also blind their eyes for they were not only subject to stoning by Allah but also blinded. By not doing this (or arguing for it), they have invalidated their proof, being at odds with the ruling of Allah in this matter. Also, they must blind the eyes of any who would approach another as well.

(Following this line of argument) it would also be necessary to burn all with fire, if they interfere with the measurements and weights,<sup>15</sup> because Allah the exalted burned with fire the people of Shu'ayb in that manner. Similarly, they should be executing anyone who does wound another person's she-camel, because Allah the exalted destroyed the people of Ṣāliḥ when they did this. When there is no difference between the punishment of Allah the exalted in relation to the people of Luṭ, with blinding and stoning, given their indecency and that of the people of Shu'ayb for altering the measurements and weights. Or indeed the destruction of the people of Ṣāliḥ because they killed the she-camel. Allah the exalted has said:

فَقَالَ لَهُمْ رَسُولُ اللَّهِ نَاقَةَ اللَّهِ وَسُقْيَاهَا، فَكَذَّبُوهُ فَعَقَرُوهَا فَذَمَّتْ عَلَيْهِمْ رَبُّهُمْ بِذُنُوبِهِمْ فَسَوَّاهَا

<sup>15</sup> Though not cited in the text, as set out in the book at [*Qur'ān* 11: 85/86]

So the Messenger of Allah said to them (leave alone) Allah's she-camel, and (give) her (to) drink.  
But they called him a liar and slaughtered her, therefore their Lord crushed them for their sin  
and levelled them.<sup>16</sup>

And to the end of the chapter. Then we looked at the statement of those who argued that no *ḥadd* applies and we found that their viewpoint was purported with the speech of Allah the exalted:

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا  
 And those who do not call upon another god with Allah and do not slay the soul, which Allah has  
 forbidden except in the requirements of justice, and (who) do not commit fornication and he who  
 does this shall find a requital of sin.<sup>17</sup>

Until where he said, 'Except he who repents...'<sup>18</sup> The Messenger of Allah peace be upon him said:

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إِيمَانٍ وَزَنَى بَعْدَ إِحْصَانٍ أَوْ نَفْسًا بِنَفْسٍ  
 It is not permissible to shed the blood of a Muslim except in three: *kufr* (disbelief) after faith  
 ('*Imān*), fornication after *Iḥṣān* or the life for a life.

And he peace be upon him said:

إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ  
 Verily your blood, your wealth, your honour and your persons are inviolable.

Thus, Allah the exalted has prohibited the shedding of blood, Muslim or *Dhimmi*, except by way of *ḥaqq*, and there is no *ḥaqq* except by way of text or consensus (*ijmā'*). And the Prophet peace be upon him forbade the shedding of blood, except by way of what was permitted concerning *zina* after marriage and *kufir* after *I'mān*, and the limit of drinking alcohol after three times and in relation to the brigand (*muḥārib*) unless he repented. The doer and recipient of the acts of the people of Luṭ, not one from amongst them is mentioned. Consequently, it is

<sup>16</sup> *Qur'ān*, 91: 13/14. The only portions of the verses cited in the section are those that have been underlined. However, for ease of reading, the complete verse has been quoted for the English translation.

<sup>17</sup> *Qur'ān*, 25: 68. Other verses also mention and detail this, such as at - 17: 33

<sup>18</sup> Therefore, to be read up to 25: 70

prohibited to shed their blood except by way of text or consensus. Indeed, we say: that none of the reports are authentic in relation to executing him. Yes, and it is not authentically established from one amongst the Companions may Allah be pleased with them, concerning that, (either) from Abu Bakr and Ali. (Those reports) of the Companions are all *munqati*; one from Ibn Sam'aān from someone who is unknown, the other reports unreliable.

Regarding the channel from Ibn 'Abbās, one of which from Mu'ādh ibn al-Ḥārtih from Abdar-Raḥman ibn Qays al-Dabbi from Ḥasan ibn Matar, and all of them are unknown (*majhul*). The channel from Ibn al-Zubayr and Ibn Umar, are like that, from the unknown (*majhul*). (It is established) that it is invalid that anyone from one amongst the Companions, may Allah be pleased with them, in this issue (reports) with anything authentic. As for what is seen from al-Ḥakam ibn 'Utayba, there is no *ḥadd*.

Abu Muḥammad (Ibn Ḥazm), may Allah be pleased with him, said: it is not authentically established that there is execution or *ḥadd*, because Allah the exalted did not oblige that, neither did the Messenger (peace be upon him). Its (actual) ruling, is that of one who has committed a *munkar* and the order of the Messenger of Allah (peace be upon him) is to change the *munkar* by hand. It is obliged to subject them to the *ta'zir*, which the Messenger of Allah (peace be upon him) limited and no more and to stop the people harmed (by that) only. As what has been reported from the channel of Bukhāri:

نا مسلم بن إبراهيم نا هشام هو الدستواني نا يحيى هو ابن أبي كثير عن عكرمة عن ابن عباس: قال لعن رسول الله صلى الله عليه وسلم المخنثين من الرجال والمترجلات من النساء، وقال: أخرجوهم من بيوتكم، وأخرج فلانا، وأخرج فلانا

Muslim ibn Ibrāhim narrated to us Hishām and he is ad-Dastuwā'ee narrated to us Yahya and he is Ibn Abi Kathir narrated to us from 'Ikrima from Ibn 'Abbās, he said: The Messenger of Allah peace be upon him cursed the effeminate men and those women who assume the similitude of men. He also said: *Turn them out of your houses. And he turned such-and-such person out.*<sup>19</sup>

And as for prison, the words of Allah the exalted are:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

<sup>19</sup> Bukhāri cites this twice in his collection of *Ṣaḥīḥ*, such as in the book of clothing, as does Abu Dāwud in his *Sunan* in the book of general behaviour (*'adab*).



...and help one another in goodness and piety, and do not help one another in sin and aggression.<sup>20</sup>

With certainty, everyone of sound mind knows of the effective harm (arising from) the acts of the people of Luṭ, the passive and active participants. The people upon piety and righteousness stay away from it. Neglecting that, is (tantamount to) aiding it, which is upon sin and aggression. It is obliged to stop them, but not by way of executing them/shedding their blood, (nor harming them by) person or by wealth?

Abu Muḥammad, may Allah have mercy upon him said: there are some of the ignorant and stupid who argue by leaving them from execution, it (somehow) excuses this act? In reply, we say unto them: by not executing everyone who commits *zina*, that makes *zina* lawful? By not executing everyone who is an apostate, (such as if) they repented, you see that as making disbelief lawful? And the worship of the cross, and denying the Qur'ān and the Prophet (peace be upon him) – and your leaving of the execution of the one who eats pork, dead meat and blood; drinks alcohol – you see that as making lawful eating pork, dead meat and blood and drinking alcohol? But this (is as much) a help unto them as the like of which they exhort with:

وَلَمَنْ انتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِّنْ سَبِيلٍ، إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ  
أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ

*But indeed, if any do help and defend themselves after a wrong (done) to them, against such there is no cause of blame. The blame is only against those who oppress men and wrong-doing and insolently transgress beyond bounds through the land, defying right and justice: for such there will be a penalty grievous.*<sup>21</sup>

And we seek refuge unto Allah that we are angered with that and of earning the anger of Allah the exalted, to his *Deen* or a statement from that. Or that of legislation by way of opinion – a corrupted law. And we praise Allah the exalted abundantly, upon what we have been granted to adhere to, by way of the Qur'ān and the *Sunnah* – and with Allah the exalted is all success and attainment.

<sup>20</sup> Qur'ān, 5: 2, only a small excerpt from the full verse is quoted

<sup>21</sup> Qur'ān, 42: 41/42