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# **Discourse 3: Scrutiny Of Judicial Justice**

### **Double Standards In Judgment**

### 1 – Two Ways Of Dealing – With Zahra And Jabir Bin Abdullah Ansaari

"Bukhari narrates in Sahih:

Ayesha says that Zahra demanded from Abu Bakr her inheritance – the Fadak and the rest of the amount of Khums. But Abu Bakr refused to pay. Zahra got angry and retired to her house. She never spoke to Abu Bakr until she died. 1

It is interesting that Bukhari writes:

After passing away of Prophet, Jabir bin Abdullah claimed that the Prophet had promised him to give him certain amount.

Abu Bakr put his hand inside and gave to Jabir again and again. Each time he gave five hundred dirhams and he did this thrice.2"3

This double policy of the Caliph is surprising: He did not accept the claim of Zahra to inheritance, who is infallible according to the testimony of verse of Quran and he asked her to present witnesses whom also he rejected later, but he accepted the claim of Jabir bin Abdullah Ansaari without asking for any witness regarding Prophet's promise.

"Bukhari and Muslim have narrated from Jabir bin Abdullah Ansaari: When revenue from Bahrain was brought to Abu Bakr I was present there. I said to Abu Bakr: The Prophet had told me that when the revenue from Bahrain came he would give me something from it.

Abu Bakr told Jabir to go and pick up what the Prophet had promised.

You see that the Prophet has passed away, Jabir claims that the Prophet had promised him a certain amount from Bahrain revenue. After his death the revenue comes. Abu Bakr has succeeded the Prophet. Jabir goes to Abu Bakr and narrates a story to him. Abu Bakr believes him and pays him the amount he wants.

Commentators of Bukhari and Muslim in their books justify the act of Abu Bakr in his making the payment from public funds without a witness or swearing.

The book Al-Kawakib al-Durari Fi Sharh Sahih al-Bukhari of Kermani, the most reliable commentary on Bukhari, writes:

Abu Bakr believed the word of Jabir because of the Prophet. He had warned that if anyone said a lie on his behalf he would have a seat of fire in the next world. Therefore it was not possible for a companion of Prophet to lie and accept fire for himself. 4There was great likelihood that Jabir told the truth. Well, why is such a possibility not considered with regard to Zahra? She was the daughter of Prophet and she was infallible. Her position was far greater than that of Jabir, who was only a companion of the Prophet.

New let us see what Ibn Hajar Asqalani says in Fath al-Bari:

This tradition proves that the word of a just companion of the Prophet, individually, should be accepted though it may be profitable to him. 5

For this reason, Abu Bakr did not demand a witness.

Zahra said that the Prophet had bestowed to her the Fadak. So why such difference between the two claims – one his only daughter and another only his companion among so many?

Ayini says in his book Umdat al-Qari Fi Sharh Sahih al-Bukhari: Jabir is a just man according to the proof of Quran and traditions. Therefore, Abu Bakr did not demand a witness. It is not likely that a Muslim would lie on the Prophet, what to say of a companion! 6

How is it that Abu Bakr accepted the claim of Jabir but did not accept the claim of Zahra?

Was she lesser than Jabir?

Would she lie about the Prophet? You do not presume that a Muslim would attribute lie to the Prophet.

What is the difference between the two claims?

Why the claim of Zahra is rejected inspite of the rules and witnesses? But the claim of Jabir is accepted without any witness!!"7

#### 2 - Double Standard Treatment Between Son Of Amr Aas And Ubadah Bin Samit

With regard to justice of Umar it is said:

"Umar was so dignified that he could stop any insurgency. Muhammad son of Amr Aas was a victor and governor of Egypt. During the governorship of Amr Aas a horse race was held. In this race someone else was riding the horse of Muhammad. In the race a horse resembling Muhammad's won. Muhammad was present there. He presumed his horse won the race. He said: By the Lord of Kaaba my horse was ahead of all.

The real owner of the horse, an Egyptian, shouted: By God of Kaaba it was my horse that won. Muhammad bin Amr Aas became angry and scourged him with the lash he was holding and said: Take this. I am a noble. The Egyptian went to Umar and complained. Umar called Amr Aas and his son to Medina. Umar asked the Egyptian to take the lash and beat the noble's son. Then he asked Amr Aas why he treated people like slaves when they were born free?"!8

It seems that Umar had forgotten the case of Ubadah bin Samit who had beaten up a man and broken his head. The complaint went to Umar who took the side of Ubadah and without obtaining the consent of plaintiff ordered a penalty to be paid.

At that time Zaid bin Thabit was present who reminded him that he was favoring of his slave to lash his own brother. Therefore he imposed penalty instead of lashing.9

Still they claim:

"Umar always held justice in his view above everything. He executed justice without any consideration." 10

The incidents narrated here show double standards and that justice depended upon his policies.

"When he gave his lash to the Egyptian to scourge Muhammad bin Amr Aas, he said: O, Amir! Are you satisfied now? Is your heart pleased now?

In this way he accused Umar of taking revenge from him and his father for personal reasons. 11"12

#### 3 – Different Treatment Between The Son Of Amr Aas And Mughaira Bin Shoba

Historical documents indicate that Mughaira was the first to address Umar as Lord of Believers and he greeted 13 Umar with this title. He was appointed by Umar as the governor of Basrah and he remained in this post for a long time.

Abu Bakra 14 was from Thaqif tribe who had embraced Islam when soldiers of Prophet surrounded Taif. Abu Bakra together with his two brothers, Nafe and Ziyad from his mother deposed to Umar to stone

Mughaira for adultery. The fourth witness was a person named Shaml bin Ma'bed.

All three gave evidence according to religious standard for Mughaira's sin, but Umar by some trick or other treated the case in such a way that the evidence given by three Muslim was not established as authentic. Thus, he rescued him from death.

"When Ziyad arrived and entered the mosque, elders of Muhajireen and Ansaar came and gathered around him. Umar saw Ziyad and said: God will not belittle any man from Muhajireen by the tongue of Ziyad. 15

[Ziyad got the message and gave evidence in a way, which exonerated Mughaira.]

Mughaira was saved from death and Umar was glad 16 and shouted: God is greater. All shouted along with him. Then Umar scourged the three witnesses but not Ziyad... 17"18

Allamah Al-Askari narrates from Ibn Abdul Barr that Umar admitted to Mughaira during Hajj rituals:

"I swear by God I don't think Abu Bakra had lied about you." 19

Yet Umar rescued him, which was against justice while Mughaira deserved punishment according to religious law and God's decree. Still they say:

"In Umar's view the governor was an individual like others. He too is subject to punishment as others according to God's Rule." 20

"Although he was a ruler of a wide and extended country he was a shrewd, astute and a clever man in executing justice in all cases."21

"Umar bin Khattab used to mention this in public. He said: Now I am the Caliph. I will be serious, severe, harsh and hard towards tyrants and wrongdoers. With regard to good people and pious, I will be kind and affectionate."!22

## **Ignoring Calls of Oppressed**

While it is claimed:

"He (Umar) made himself available to every victim, no matter however low a station he was from."!23

"In investigating disputes, he was to the extreme extent particular. Wherever one approached to him for justice he used to stand then and thereon the spot and dispense justice."!24

Historical documents show how inattentive Umar was in complying with petitions calling on him for justice:

"Ahnaf bin Qais narrates: On the occasion of a great victory we went to Umar to congratulate him.

Umar asked: Where have you lodged?

We told him such and such place. He got up and came with us to see the place of our lodging. We rode our horses. The horses were too tired, because they had run long.

Umar said: Why didn't you fear God when you rode the horses? Don't you know that they have a right upon you? Why didn't you show mercy to them? Had you come alone they would have grazed.

We replied: We are returning from victory and we hurried to congratulate you and Muslims.

Then he returned and we too accompanied him.

In the meantime, a man approached him and demanded justice from him as he had become a victim of someone's tyranny.

Umar immediately raised the cane and hit him on his head saying: When Umar is at your disposal you have no business with him, but when he is busy in attending Muslim affairs you come to him asking for justice.

The man went away angry..."25

Does this incident not show that Umar, who was so anxious about horses that are animals, was not at all anxious about human beings – especially the oppressed? Animal meant to him more than a man.

The judgment is upon you.

- 1. Quoted from: Sahih Bukhari, Vol. 5, Tr. 704; Tarikh Tabari, Vol. 3, Pg. 104.
- 2. Quoted from: Sahih Bukhari, Vol. 4, Tr. 889.
- 3. Sayyid Muhammad Hasan Jawahiri: Abu Bakr, Pg. 53.
- 4. Quoted from: Al-Kawakib, Vol. 1, Pg. 125.
- 5. Quoted from: Fath al-Bari, Vol. 4, Pg. 375.
- 6. Quoted from: Al-Umdatul Qari, Vol. 12, Pg. 121.
- 7. Ustad Sayyid Ali Husayni Milani: Guftaarhai-e-Peeramoon Mazloomiyat-e-Bartareen Banu (Translation: Masood Shikohi), Pgs. 61-65.
- 8. Abdul Qadir Dahqaan Siraawaani: Article quoted in Nida-e-Islam Magazine, Issue No. 11, Autumn 81, Pg. 5.
- 9. Its sources were explained in Discourse 2.
- 10. Sayyid Abdur Raheem Khateeb: Shaykhain (6th Edition 1382), Pg. 203.
- 11. It was perhaps on the basis of this argument that Amr Aas said: "Curse be on the time when I served as a governor of Umar."
- 12. Najah Ata at-Tai: Nazaryaat al-Khaleefatain, Vol. 2, Pgs. 208. (Najah Ata at-Tai: Saqifah, Pgs. 100; quoting from: Sharh Nahjul Balagha, Vol. 1, Pg. 58).
- 13. Some are of the view that Amr Aas has used this appellation for the Caliph (Najah Ata at-Tai: Nazaryaat al-Khaleefatain, Vol. 2, Pg. 240).
- 14. Nofiya bin Harith.
- 15. Quoted from: Wafayaat al-Ayaan, Vol. 2, Pg. 406.

- 16. Umar's dealing in this case shows that he had a hidden aim in carrying out or not carrying out the death penalty. His insistence on punishing Khalid bin Waleed in the case of Malik bin Nuwairah was not obedience to religious rules but to obtain political power, which Umar was after. He wanted to remove Khalid from the way as he considered him a strong rival.
- 17. Quoted from: Talkhees Dhahabi, Vol. 3, Pg. 448.
- 18. Allamah Sayyid Murtadha Al-Askari: Abdullah Ibn Saba Wa Deegar Afsaane (Abdullah Bin Saba and other legends), Vol. 1, Pgs. 249–254.
- 19. Ibid. Vol. 1, Pg. 253.
- 20. Fawad Farooqi: Beest-o-panj Saal Sukoot-e-Ali (2nd Edition 1379), Pg. 85; Fareedoon Islamniya: Ashra-e-Mubashira (1st Edition 1380), Pg. 90.
- 21. Abdul Qadir Dahqaan Siraawaani: Article quoted in Nida-e-Islam Magazine, Issue No. 11, Autumn 81, Pg. 7.
- 22. Sayyid Abdur Raheem Khateeb: Shaykhain (6th Edition 1382), Pg. 195.
- 23. Abdul Qadir Dahqaan Siraawaani: Article quoted in Nida-e-Islam Magazine, Issue No. 11, Autumn 81, Pg. 7.
- 24. Fareedoon Islamniya: Ashra-e-Mubashira (1st Edition 1380), Pg. 101.
- 25. Ibn Abil Hadeed: Sharh Nahjul Balagha, Vol. 12, Pg. 19; Ibn Jauzi: Tarikh Umar bin Khattab, Pg. 83.

This historical document also contains additional incidents that speak of the regret of the Caliphs but the attitude of the Caliphs portrayed in history is against these claims.

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