Sayyidina ‘Umar and his Suspension of the Hadd for Theft during the Year of Famine

By Abu Eesa

It is narrated by Ibn Kathir (rahimullah) in his al-Bidayah w’l-Nihayah (4:99) that the Caliph ‘Umar b. al-Khattab (radhy Allahu ‘anhu) decided not to establish the prescribed punishment (hadd) for theft upon those who were found to have stolen any food during the Year of Famine.

This historical incident is also supported by the statement of ‘Umar (radhy Allahu ‘anhu) himself when he said, “The hand is not severed (in the cases of) taking from a tree and famine.”

This narration is collected by al-Sa‘di (the student of Imam Ahmed and the teacher of al-Tirmidhi, Abu Dawud et al, d.256h) in his Jami’, as well as Imam al-Bukhari in mu‘allaq form in al-Tarikh al-Kabir (3:4). It is difficult to establish anything objectionable about the narrators of this report and thus remains acceptable insha’Allah.

Imam Ahmed was once asked about this by his student al-Sa‘di, “Is this what you say as well?” Ahmed replied, “Indeed, by Allah!” “So if he steals during a famine, the hand is not cut off?” asked al-Sa‘di. “No, not if he is desperately in need for that and the people are suffering from immense difficulty and famine.” (I’lam’l-Muwaqqi’in, 4:351, Dar ibn al-Jawzi)

Ibn al-Qayyim goes on further to elaborate that Sayyidina ‘Umar (radhy Allahu ‘anhu) didn’t invent anything new in the religion but rather was establishing Shari’ah in its most purest form, achieving its exact objectives by ensuring that two key juristic principles were applied, namely:

1. that doubt in the establishment of the crime, leads to the temporary suspension of the hadd for that crime

This is a well-known principle which is from the fundamentals of the field of qadha’ and the details of the hadd, something which has been agreed upon by all the schools of Islamic Law.

There is much in this area that one needs to consider before applying the hadd. For example, a criminal may repent before he/she has been caught by the authorities, and so if Allah jalla wa ‘ala forgives the one who repents then likewise the hadd is not established on such a person.

Please refer to the books of fiqh for more on the application of the hudud law.

2. the two juristic maxims “Difficulty brings ease”, and, “Necessity makes the prohibited permissible”

As Imam Ahmed has clearly stated above, it is for this reason that ‘Umar (radhy Allahu ‘anhu) didn’t apply the hadd to those who were starving and in desperate need for food during a famine. This principle is supported by the mass majority of the scholars, and has
been reported from Imam al-Awzaʿi, Ibn Qudamah in *al-Mughni*, and Imam al-Nawawi in the *Rawdhah*.

Crucially, it should be understood that if a Judge/Qadhi is sincerely unsure about whether a crime actually took place, or whether there is indeed some evidence that a crime took place under coercion or extreme necessity, then the Qadhi may decide to suspend the *hadd*.

Muslims sometimes misunderstand or worse, wilfully misinterpret such incidents from the Prophet (*sallallahu 'alayhi wa sallam*) or his Companions (*radhy Allahu 'anhum*), using them to create false analogies or perhaps pander to the whims and wishes of those who would wise for the suspension of *Shari’ah* in its entirety, such as the suspension of the *hadd* for *zina* in those areas that rule by Islamic Law.

And Allah knows best.