

The Answer to the Question:
The Ruling on Torturing a Detainee

To: Ustadh Jumah
(Translated)

Question:

Assalamu Alaikum our honorable Sheikh,

What is the ruling on beating a detainee in order to make him confess a matter that is doubted that he is the perpetrator without the existence of a tangible evidence but only based on doubts, knowing that beating ultimately results in him being the perpetrator? The second part of the question: is it permissible to use hallucination needles to make the accused confess of what he has done, because they justify their usage of the needles to prevent severe beatings that sometimes lead to death?

Your brother, Jumah Baru – Wilayah of Syria

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

Torturing the accused is a great crime in Islam punishable by severe punishment in accordance with the rulings of Islam, and extracting confessions by torture has no value in the case proceedings. Not only this, but even if the accused found guilty through a sound and straight judicial trial, it is not permissible that the judge decides penalty on the accused that involves torture, but he should only restrict to the penalties decreed by Shari'ah... To illustrate that, we say:

1. We have explained this issue in Article 13 in the Introduction to the Constitution, which reads: *“Every individual is innocent until proven guilty. No person shall be punished without a court sentence. Torturing is absolutely forbidden and whoever inflicts torture on anyone shall be punished.”* And here is some of what came in the explanation of the article: Muslim reported on the authority of Wa'il Ibnu Hajr who said:

«جَاءَ رَجُلٌ مِنْ حَضْرَمَوْتَ وَرَجُلٌ مِنْ كِنْدَةَ إِلَى النَّبِيِّ ﷺ، فَقَالَ الْحَضْرَمِيُّ: يَا رَسُولَ اللَّهِ، إِنَّ هَذَا قَدْ غَلَبَنِي عَلَى أَرْضٍ لِي كَانَتْ لِأَبِي، فَقَالَ الْكِنْدِيُّ: هِيَ أَرْضِي فِي يَدِي أَرَعَهَا لَيْسَ لَهُ فِيهَا حَقٌّ، فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْحَضْرَمِيِّ: أَلَمْ يَبَيِّنْهُ؟ قَالَ: لَا، قَالَ: فَلَمْ يَمِينْهُ، قَالَ: يَا رَسُولَ اللَّهِ، إِنَّ الرَّجُلَ فَاجِرٌ لَا يُبَالِي عَلَى مَا حَلَفَ عَلَيْهِ وَلَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ، فَقَالَ: لَيْسَ لَكَ مِنْهُ إِلَّا ذَلِكَ»

“A man from Hadhramout and a man from Kindah came to the Messenger of Allah (saw) and the Hadhrami said: “O Messenger of Allah, this man has taken from a land which belonged to my father.” The Kindi said: “It is my land, it is in my possession and I am farming it. He has no claim over it.” the Messenger of Allah (saw) said to the Hadhrami: “Do you have any proof?” He said: “No.” Upon this the Messenger of Allah (saw) said: “In this case you have his oath.” He said: “O Messenger of Allah! He is a rebel, he does not care what he swears and he does not fear of anything.” He (saw) said: “You have no other rights over him but this.” Al-Bayhaqii also related with Sahih chain of authorities: The Prophet, (saw), said: *«الْبَيِّنَةُ عَلَى الْمُدْعَى وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ»* **“The proof lies with the plaintiff and that of the oath lies with the defendant.”**

In the first Hadith, the Messenger of Allah (saw) commissioned the plaintiff with the proof, and this means that the defendant is innocent until proven guilty; and in the second Hadith, the Messenger of Allah (saw) explained that in essence, the proof should be provided by the plaintiff. This serves as evidence that the defendant is innocent until proven guilty.

2. Thus, the accused is innocent until proven guilty, so it is forbidden to torture him in any way to extract his confession, and there are Shari'ah evidences that clearly forbid doing so:

a. Allah has forbidden assault against a Muslim, on his body or on any part of his body, and decreed a Shari' punishment on the one who commits the assault on any of that, Allah said: *﴿وَالَّذِينَ يُؤْذُونَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ بَغَيْرِ مَا كُتِبُوا فَقَدْ اِخْتَلَوْا بِهِنَّاءً وَإِنَّمَا مُبِينًا﴾* **“And those who harm believing men and**

believing women for [something] other than what they have earned have certainly born upon themselves a slander and manifest sin.” [Al-Ahzab: 58].

b. Muslim narrated in his Sahih from Hisham ibn Hakim ibn Hizam, He said: I heard the Messenger of Allah (saw), he says: «إِنَّ اللَّهَ يُعَذِّبُ الَّذِينَ يُعَذِّبُونَ فِي الدُّنْيَا» “Allah would torture those who torture people in this world”.

c. Muslim narrated in his Sahih from Abu Hurayrah said: The Messenger of Allah (saw) said: «صِنْفَانِ مِنْ أَهْلِ النَّارِ لَمْ أَرَهُمَا، قَوْمٌ مَعَهُمْ سِيَاطٌ كَأَذْنَابِ الْبَقَرِ يَضْرِبُونَ بِهَا النَّاسَ...» “There are two types of the people of Hell (Annar) that I have not seen yet: men with whips like the tails of cattle, with which they strike the people...”

3. Also extracting confession under duress has no value and is not considered in the case procedures because it is not taken by choice:

- Ibn Majah reported in his Sunan on the authority of Abu Dhar al-Ghafari, who said: The Messenger of Allah (saw) said: «إِنَّ اللَّهَ قَدْ تَجَاوَزَ عَنِّ أُمَّتِي الْخَطَأَ، وَالنَّسْيَانَ، وَمَا اسْتَكْرَهُوا عَلَيْهِ»، “Verily Allah has pardoned [or been lenient with] for me my Ummah: their mistakes, their forgetfulness, and that which they have been forced to do under duress”. So whatever one is forced to do under duress he must not be punished for it.

- Al-Hakim transmitted in al-Mustadrak from the Musnads of the two imams on the authority of Ibn Abbas, may Allah be pleased with them, who said: The Messenger of Allah said: «تَجَاوَزَ اللَّهُ عَنِّ أُمَّتِي» “Allah has pardoned [or been lenient with] for my ummah: their mistakes, their forgetfulness, and that which they have been forced to do under duress”

4. Also, if the charge against the accused was proven by Shari’ah evidences before a competent judge and before a court of law, in truth and justice, it is forbidden to punish except by the punishments decreed by Shari’, and not by punishments forbidden by the Shari’, or not decreed by it. For example: it is forbidden to inflict a punishment which Allah (swt) has made a punishment in the Hereafter. The evidence for this is what was extracted by Bukhari on the authority of Abu Hurayrah who said, the Prophet (saw) said: «وَإِنَّ النَّارَ لَا يُعَذَّبُ بِهَا إِلَّا اللَّهُ» “And only Allah punishes with fire”. Abu Dawood also extracted on the authority of Ibn Masood from a story: «فَأِنَّهُ لَا يُعَذَّبُ بِالنَّارِ إِلَّا رَبُّ» “No one should punish with fire except the Creator of fire.”

Therefore, if the accused were proven to be guilty before a competent judge and before a court of law, he should not be punished by fire, nor by that which is similar, such as electricity, nor by anything which Allah (swt) punishes with. Furthermore, it is forbidden to inflict any punishment from among those not decreed by the Legislator. Hence, no one should be punished by burning with fire, nor should anyone be punished by pulling his nails, nor by pulling his eyebrows, nor by electrocution, nor by drowning, nor by pouring cold water over him nor by starving him, nor by letting him go cold, nor by anything similar. Punishing the accused should be confined to the penalties decreed by Shari’ah and apart from these, the ruler is forbidden from applying any other form of punishment.

Therefore, it is absolutely forbidden to torture anyone, and who does so will be violating Shari’ah. If it is established that someone has tortured anyone else, he will be punished.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer’s Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/554542371409505/?type=3&theater>

The link to the answer from the Ameer’s Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/ezpN5Gs5qJ>

The link to the answer from the Ameer’s Twitter page:

<https://twitter.com/ataabualrashtah/status/804612542765080576?lang=ar>