

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his "Fiqhi" Facebook Page

Answer to Question

The Principle: The Forbidden is Permitted Due to Necessities

To: Abu al-Qasim Nassar

(Translated)

Question:

Dear Sheikh, Asalaamu Alaikum Wa Rahmatu Allah Wa Barakatuhu

I wanted to ask you about the Shariah Principle that states: "the forbidden is permitted due to necessities." What is the Shariah meaning of the word necessities? I will mention two cases to explain what I mean:

The first: is a fatwa of Sheikh Yusuf al-Qaradawi allowing removing the headscarf (Khimar) in Western schools for education purposes, and he considered it as a necessity.

Second case: Women's childbirth delivery by male doctors.

But if we consider that the "necessities" only mean death and that which causing death, why then do male doctors attend to pregnant women and carry out child birth deliveries sometimes, which is a requirement of the "necessity" for example, for the absence of a female doctor...

If "necessities" means death, we find that this result is not seen in both cases i.e. in education and childbirth.

May Allah bless you and grant you paradise.

Answer:

Wa Alaikum As-Salaam Wa Rahmat Allah Wa Barakatuhu

Some scholars have adopted the principle: "the forbidden is permitted due to necessities" and the evidence they provide for this is the verse from the Qur'an:

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخُنْزِيرِ وَمَا أَهَلَ بِهِ لِيُغَيَّرَ اللَّهُ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

"He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful" [Al-Baqara: 173]

And the Almighty's saying:

﴿فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرٍ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

"But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful." [Al-Ma'ida: 3]

And His (swt) Saying:

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخُنْزِيرِ وَمَا أَهَلَ لِيُغَيَّرَ اللَّهُ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

"He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allah is Forgiving and Merciful" [An-Nahl: 115]

One who views this principle will find that it is incorrect:

The evidence put forward by the proponents of this principle is not appropriate for what they use it for, but it means that in necessity it is permitted to eat the dead animal and the like because of hunger:

﴿فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ﴾

"But whoever is forced by severe hunger" [Al-Ma'ida: 3]

“Makhmasa” is hunger and starvation that is near death, it is permitted in such a situation to eat from what is forbidden... and “necessity” as it is clear in the verse is restricted to famine and does not go beyond it, the wording is not general or absolute, to go beyond its meaning, but it is restricted to famine..

In some of the explanations of this subject by its proponents, they make it as a license, but even a license needs a verse as an evidence it is not decided by the mind, for example, breaking the fast due to travelling and illness as a license, this is due to the verse:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ * أَيَّامًا مَّعْدُودَاتٍ فَمَن كَانَ مِنكُم مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ﴾

“O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous * [Fasting for] a limited number of days. So whoever among you is ill or on a journey [during them] - then an equal number of days [are to be made up]” [Al-Baqara: 183-184]

Therefore all licenses must be based on text.

Therefore, it is incorrect to make this principle as general, as made by its proponents, and what is correct is that the evidences they use are licenses for a Muslim to eat or drink what Allah (swt) has forbidden of food prohibited in the case of necessity, and they do not indicate otherwise. The license in necessity for other cases need other evidences.

It is worth noting that this principle has become in our time as pretext for the legalization of all forbidden by making the word “general” that encompasses many matters according to their interpretation of “necessity” which led to committing forbidden actions under the name of “necessity”.

As for the examples mentioned in the question regarding permitting actions under the pretext of the principle: “the forbidden is permitted due to necessities”, they are not permitted; the mature Muslim woman is obliged by the Shariah to wear the Khimar (headscarf), she is not allowed to take off her khimar under the pretext of studying in Western schools, but if she wishes to study and it is not feasible in Western schools, then she must look for other schools that will allow her to wear the khimar and Jilbab, or adopt other means of study, or migrate with her Mahram to a country that facilitates her study... without taking off her Khimar, because there is no evidence to permit women to remove the Khimar in order to study, and for education.

As for revealing of the woman’s awrah in front of the doctor for treatment, it also does not fall under the principle of “the forbidden is permitted due to necessities”. But the evidence for this is the Hadeeth on seeking medical treatment, narrated by Tirmithi in his Sunan from Osama bin Sharik, that he said:

قَالَتِ الْأَعْرَابُ: يَا رَسُولَ اللَّهِ، أَلَا تَنْدَاؤِي؟ قَالَ: «نَعَمْ، يَا عِبَادَ اللَّهِ تَدَاؤُوا، فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، أَوْ قَالَ: دَوَاءً إِلَّا دَاءً وَاحِدًا» قَالُوا: يَا رَسُولَ اللَّهِ، وَمَا هُوَ؟ قَالَ: «الْهَرَمُ»

the Bedouins said: ‘O Messenger of Allah, can we seek medical treatment?’ He said, “Yes, O slaves of Allah seek medical treatment, Allah did not put any disease except that He put its cure, or said: cure, except for one disease.” They said: ‘O Messenger of Allah, what is it?’ He said, ‘old age.’” There is no doubt that only the parts that need medication and treatment must be revealed, it is prohibited to reveal other parts of the awrah, and i.e. only in the parts that require the treatment and there are numerous evidence for the permissibility of medical treatment.

Your brother,
Ata Bin Khalil Abu Al-Rashtah
16 Rabii' II 1437 AH
26/1/2016 CE

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

<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/438692372994506/?type=3&theater>

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

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/VE93JyCr7q?pid=6244905353163675266&oid=100431756357007517653>

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

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