

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

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

Answer to Question

Shariah Punishments under Man-Made Systems

To: M Dalih Akbar Sembiring

Question:

Assalam Alaikum. Should one wait for Khilafah to be re-established to ask for a death penalty? Assume that someone is living in a secular country, and he conducted a crime that is punishable by death under Shariah. If he wishes to be punished, is it correct, according to Shariah, if he asks for it to be carried out by, for example, trusted people?

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuhu

It is clear from your question that you are keen to get rid of a sin and of the punishment in the Hereafter, and you think that if you were punished in this world, then it will remove the punishment of the Hereafter which is greater and more severe, and that is why you ask if there is someone you can ask to apply the punishment. My brother, there are some points that must be made clear to you:

1- The worldly punishment that removes the sin on the Day of Judgment requires that it be a **Shariah punishment from an Islamic state i.e., from a state that governs by the laws of Allah**, and does not rule by man-made law. From the evidences for this is what was extracted by Muslim from Ubada Bin As-Samit who said: "We were in a council with the Prophet (saw) and he said:

«تُبَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاللَّهِ شَيْئًا، وَلَا تَزْنُوا، وَلَا تَسْرِقُوا، وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَسَتَرَهُ اللَّهُ عَلَيْهِ، فَأَمْرُهُ إِلَى اللَّهِ، إِنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَذَّبَهُ»

"Do you give me allegiance that you do not commit association (Shirk) with Allah, and do not commit adultery, nor steal, nor kill the soul that Allah has forbidden except with the truth. He who fulfills his part, then his reward is with Allah, and if someone commits a sin and is punished, then it is an expiation for him, and if someone commits a sin and Allah conceals it for him, then his matter is with Allah; if Allah wishes, He (swt) will forgive or punish him."

The Hadith explains that if a person is punished in this world, then his punishment is an expiation for him on the Day of Resurrection. Therefore, he will not be punished for that sin in the Hereafter. It is clear from the hadeeth that the penalty that expiates a sin is the punishment of the Islamic state in which a Khalifah is given allegiance (Bay'ah) to the rule by Islam.

The Prophet's Hadith began by:

«تُبَايِعُونِي... فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ»

"Do you give me allegiance... He, who fulfills his part, then his reward is with Allah, and if someone commits a sin and is punished then it is an expiation for him"

The expiating punishment is dependent on allegiance, and allegiance is to the ruler who rules by Islam, **and therefore the penalty in this world that expiates sins in the Hereafter is the punishment of the state that rules by Islam.**

2- So, when some Muslims committed a sin, they used to go to the Prophet (saw) to apply the punishment on them to remove the punishment of the Hereafter which is more severe than the punishment of the world. In his Saheeh, Muslim extracted from Sulaiman Bin Buraidah, from his father who said: "Ma'iz Bin Malik approached the Prophet (saw) and said: 'O Messenger of Allaah, cleanse me.' The Messenger of Allah said: «وَيْحَكَ، ارْجِعْ فَاسْتَغْفِرِ اللَّهَ وَتُبْ إِلَيْهِ» 'Woe to you! Go back and repent to Allah and ask His forgiveness' He said, he left but returned soon after and said: 'O Messenger of Allaah, cleanse me.' The Messenger of Allah said: «وَيْحَكَ، ارْجِعْ فَاسْتَغْفِرِ اللَّهَ وَتُبْ إِلَيْهِ» 'Woe to you! Go back and repent to Allah and ask His forgiveness' He said, he left but returned soon after and said: 'O Messenger of Allaah, cleanse me.' The Messenger of Allah said the same. When it was the fourth time, the Prophet (saw) said: «فِيمَ أَطَهَّرُكَ؟» 'What do you want me to cleanse you from?' He said: 'from Zina (fornication)', so the Prophet asked the people: «أَبِهِ جُنُونٌ؟» 'Is he insane?' He was told that he was sane, and He (saw) said: «أَشْرِبَ خَمْرًا؟» 'Is he drunk?' One man went and sniffed the man and said that he cannot smell alcohol. The Prophet (saw) said: «أَزْنَيْتَ؟» 'Did you commit fornication (adultery)?' The man said: 'yes'. The Prophet then ordered that he is stoned. The Prophet (saw) later came and sat down where they were sitting. He greeted and said: «اسْتَغْفِرُوا لِمَاعِزِ بْنِ مَالِكٍ»، 'Ask forgiveness for Ma'iz Bin Malik.' They said: 'May Allah forgive Ma'iz Bin Malik.' The Messenger of Allah(saw) said: «لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوْسِعَتْهُمْ» 'He repented with repentance if divided between a people, it will suffice them all'"

And as you see here, this sincere believer wanted to get rid of the torment of the Hereafter by having the Hudood carried out on him in this world, and therefore, he went to the Prophet to establish the Hudood on him to get rid of the severe punishment of the Hereafter. This action was considered by the Prophet (saw) as a sincere repentance, He (saw) said: «لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوْسِعَتْهُمْ» "He repented with repentance, if divided between a people, it will suffice them all"

And you may have read this Hadith and wanted to do the same and reach such a high degree, but the difference is clear; that man went to the Muslim ruler to establish the Hudood on him, but the punishments of the current countries based on man-made systems in the Muslim countries do not expiate sins because they do not meet the conditions we stated at the beginning (item number 1 above.)

3- Therefore, it is not permissible for you to go to the current Muslim countries nor to any group or association to punish you because they are not an Islamic state that rules by Islam, and their penalties are not according to Shariah. So, it will not expiate the sin off you on the Day of Resurrection. What is obliged upon you now to get rid of a sin and punishment of the Hereafter is the following:

- To repent to Allah (swt) a sincere repentance and to ask Him (swt) to remove your sin. Allah (swt) says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا تَوْبُوا إِلَى اللَّهِ تَوْبَةً نَّصُوحًا عَسَىٰ رَبُّكُمْ أَن يُكَفِّرَ عَنْكُمْ سَيِّئَاتِكُمْ﴾

"O you who have believed, repent to Allah with sincere repentance. Perhaps your Lord will remove from you your misdeeds" [At-Tahrim: 8]

- To make a lot of the good deeds...

Allah (swt) says:

﴿وَأَقِمِ الصَّلَاةَ طَرَفِي النَّهَارِ وَزُلْفًا مِنَ اللَّيْلِ إِنَّ الْحَسَنَاتِ يُدْهِنُ السَّيِّئَاتِ ذَلِكَ ذِكْرَى لِلذَّاكِرِينَ﴾

“And establish prayer at the two ends of the day and at the approach of the night. Indeed, good deeds do away with misdeeds. That is a reminder for those who remember” [Hud: 114]

And at the top of the good deeds is to work for the establishment of the Islamic Khilafah (Caliphate) which will carry out the penalties on the perpetrators of sins, and thus; rid them of sin and punishment of the Hereafter.

Thus, the duty of Muslims in the absence of the ruler who governs by Islam "Khalifah" is to exert effort in finding him. The existence of the Khalifah is an obligation, and not just any obligation; it is the one who implements the Hudood imposed by the Lord of the Worlds, and that which leads to a duty is itself a duty, especially that establishing the Hudood is a great obligation that secures the right path of the Ummah and its correctness. Ibn Majah extracted in his Sunnan from Abu Hurayrah who said: The Messenger of Allah (saw) said:

«حَدُّ يُعْمَلُ بِهِ فِي الْأَرْضِ، خَيْرٌ لِأَهْلِ الْأَرْضِ مِنْ أَنْ يُمَطَّرُوا أَرْبَعِينَ صَبَاخًا»

"The Hadd (Shariah punishment) established in the land is better for the people of the earth than having rain for forty days"

I hope that it has become clear to the questioner that it is not right to ask any person in the secular states to establish Shariah punishments on him even if it is established by trustworthy people. This does not expiate his sin because the punishment that expiates the sin must be a legitimate (Shariah) punishment from an Islamic state governing by Islam as we explained above.

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.122855544578192.1073741828.122848424578904/653877751475966/?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/44muCGeGZaB>

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

<https://twitter.com/ataabualrashtah/status/883247065446404097>