

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

Answer to Question:

The Principal “The Lesser of Two Evils or Lesser of the Two Harms”

To: Walid Elmi
(Translated)

Question:

Assalamu Alaikum, our Sheikh. I have a question related to the two principles: “The Lesser of Two Evils or Lesser of the Two Harms”, quoted by many Dawah carriers and Islamic movements to participate in the legislative and presidential elections. Are they both Shariah principles? Did some of the jurists adopt them? What are their evidences and what is the response to them? Barak Allah Feek.

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

As for this principle, we have answered it on 29/8/2010, and I will cite you this answer:

[the Principle: “The Lesser of Two Evils or Lesser of the Two Harms”

This is a Shariah principle adopted by many jurists. And according to scholars who adopt, it has one meaning which is the permissibility to carry out one of two prohibited actions, which is the lesser prohibited action of the two **if the person assigned by Allah (Al-Mukalaf) has no choice but to carry out one of the two prohibited actions and he cannot abstain from both of them, because it is out of his ability in every way.**

Allah (swt) says: ﴿لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا﴾ “**Allah does not charge a soul except [with that within] its capacity**” [Al-Baqara: 286]. Allah (swt) says: ﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾ “**So fear Allah as much as you are able**” [At-Taghabun: 16].

That is this principle according to those adopted it is only applied if there is no way out of committing one of the two prohibitions, when you cannot get rid of both prohibited actions except by committing a bigger prohibited action, then the lesser of the two evils is taken. These scholars also do not define the lesser of the two evils according to the whims, but rather according to the Shariah rules. For instance, protection of two souls takes precedence than preserving one soul, and preserving of three souls is better, and so on. Preserving of a soul comes before preserving the wealth. Preserving of Dar ul Islam comes under preserving the Deen which is of greater importance than preserving the soul and wealth. Likewise, Jihad and the great Imamah, fall under preserving the Deen which is the top and most important of necessities. The scholar Ash-Shatibi said in Al-Muwafaqat: “Souls are respected and preserved and must be saved, if a choice comes between allowing the soul to live or

lose the wealth over it, or to kill the soul and keep the wealth, then keeping the soul alive takes precedence.”

Examples mentioned by these scholars in the application of this principle include:

1- If a woman faces danger in labour and it becomes difficult to save both mother and baby and a quick decision is needed: either to save the mother which leads to the death of the baby, or to save the baby which means the death of the mother, and if the situation is left and one of the two is sacrificed to save the other or one is saved by the death of the other, this could lead to the death of both. In this situation we can use “the lesser of two evils, or two prohibitions, or two harms, which is to carry out the action of saving the one required in this case, which is the mother, even if this same action kills the second one.

2- That a person is subjected to drowning or murder by another person, or to severe harm to his body and organs, or a woman assaulted with fornication, in the presence of a person assigned by Allah (Mukalaf) who can prevent these evils and he has an obligatory prayer that he may miss its time, either he prevents that prohibited action and he misses the performance of the duty, Or if he performs the duty on time, then that forbidden action falls, and time is not sufficient for doing both things together. Here comes the application of the rule, and the balance is also decided by the Shariah, which made the lifting of these aforementioned prohibitions of precedence than of performing the aforementioned duty, but if it is possible to perform both duties together, then that becomes an obligation.

3- These are other examples mentioned by Imam al-Ghazali and Izz al-Din ibn Abd al-Salam, may Allah have mercy on them, that shows the application of the principle of “the lesser of two evils”, according to them, and also shows the balancing between rulings. Al-Ezz said in his book “Qawa’id Al-Ahkam Fi Masalih Al-Anam”: “If sheer evil is combined, if it is possible to prevent it, we will prevent it. If it is difficult to prevent all evils we prevent the most harmful followed by the most harmful and the worst and worst,” that a person is coerced to kill a Muslim, and if he declines it means that he will be killed, so, he must avoid the harm of murdering (the Muslim) by having patience for being killing, because his patience for being killed is less harmful than carrying out the killing (of a Muslim) ...” This is a clear example that it is a choice for the lesser of the two harms or the two prohibitions, because cannot let go of both, and if he can prevent the two harms, he must do so.

And he said in another example: “Likewise, if he is compelled to kill someone by making false testimony or a false judgment (against a Muslim), or he will be killed. If the one who is forced to testify or make judgement that leads to the killing of someone, or to dismember him, or to commit Zina then the testimony or judgment is not permissible, because to surrender to being killed takes precedence than causing the killing of a Muslim without a sin committed, or dismembering him without a crime, or to commit Zina ... ”, that is, if he either killed or testifies falsely against another that leads to his killing or dismembering him, or assaulting his honour, then it is not permissible for him to testify but rather he should be patient with being killed, because surrendering to his killing takes precedence over killing another Muslim ...

In other words, the situation when one resorts to applying with the lesser of the two prohibitions or the two harms, is when one is unable to avoid or prevent all of the two forbidden matters.

These are examples of the application of the principle of “the lesser of two evils”, according to what the scholars who adopt it. However, What the government scholars promote or those who want Muslim to turn away from the Shariah rules by misleading and falsehood are not from the examples of this principle.

Those who use the principle to do this forbidden action instead of that forbidden action, justifying their actions by their fear of imprisonment or being fired from their job, this is not an example of this principle.

Likewise, those who say we participate in the ruling of disbelief even though it is prohibited, so that we do not leave all the positions of ruling to the transgressors, because leaving it to them is more prohibited ... this is not one of the applications of the principle, rather it is like someone who says we open a bar (for alcohol) and earn money from it instead of letting the kaffir open it and earns the money...

It is not among the application of the principle that a person is presented with two prohibited matters and he chooses the lesser one when he is capable of abstaining from both of them, such as saying those who say elect so-and-so, even if he is a secular kaffir or a transgressor, or to support so-and-so and do not support the other, because the first helps us and the second does not help us, or anything like that, but what is said here: The two issues presented before us are prohibited, so it is not permissible to elect a secular person and it is not permissible to delegate him to represent a Muslim in opinion, because he does not adhere to Islam, and because he performs forbidden actions that are not permissible for the delegate to carry out like legislation and approving prohibited projects, and calling for forbidden things, accepting them and following them, i.e. he forbids what is good and enjoins the evil. Therefore, neither of them should be elected; because electing either of them is forbidden. And refraining from the election of either of them is within one’s ability.

It is not one of the applications of the "lesser of two evils" that a Muslim faces two prohibited actions, and he is able to abstain from both, yet he chooses the easier according to his desire, and he carries it out claiming that it is difficult to stop both prohibitions...! Rather he must abstain from all prohibitions as long as that is possible for him according to the Shariah rulings.

This is a brief picture of "the lesser of two evils" or "the lesser of two harms"] **End.**

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

10 Rabii’ Al Awwal 1442 AH

27/10/2020 CE

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

<https://web.facebook.com/HT.AtaabuAlrashtah/photos/a.1705088409737176/2780128525566487/>