

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

Answer to Question

Rulings Related to the Caliph and the Temporary Leader (Amir)

To: Sohail Dar

(Translated)

Question:

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh my dear brothers, I put before you questions to our Amir, and I wish that you can send it to him, by the permission of Allah. Please note that the Arabic language is not my mother tongue, and I apologise if I made any mistake.

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh my dear brother and our honourable Amir, I ask Allah to grant all the good.

To begin with, I would like to apologize to you for my weak Arabic language, however I will attempt to pose my question regarding the subject of Khilafah (Caliphate) in Arabic:

First: It was stated in the book, *The Ruling System in Islam*, that the permitted titles are Caliph, Imam and Amir Al-Mu'mineen (Commander of the believers), and those that are similar in meaning, such as Sultan of the Believers. But in the book **The Institutions of the Khilafah State**, the text only mentions the title "Amir Al-Mu'mineen" and does not mention others. Did the adoption change on the titles of the caliph and is limited to only three? If the adoption changed, what is the evidence for the change?

Second: As for what was mentioned in the *Institutions* book, regarding what led to the title of Umar, may Allah be pleased with him, Amir Al-Mu'mineen (Commander of the believers), is it correct to say that it is limited to using the title of Amir Al-Mu'mineen, or is it permissible to use another title such as Sultan of the Believers?

Third: I understood that one of the conditions for the consensus of the Companions is the presence of contradiction with something known, such as postponing the burial of the Messenger of Allah (saw) and the necessity of burying the dead immediately. So where is the contradiction in giving Umar (ra) the title of Amir Al-Mu'mineen, so that it is considered a consensus of the Companions?

Fourth: You have answered a question in the past and said that the term of the "Caliph" was a juristic Shar'i term, so can the same thing be said regarding the term of the "Imam" to be a juristic Shar'i term since it is mentioned in the Shariah evidences, or do we say that the term of the "Imam" is an *Istilah* term? Regarding this matter, in many Hadiths, the term "Imam" has been mentioned and refers to the one who leads people in prayer. Is there a difference in the meaning of whom it refers to? That is, does the meaning in these Hadiths refer to the caliph and the Walis he appoints and Amirs ... etc. exclusively, or does it include those who lead Muslims in prayer as we see them in these days in our mosques?

Fifth: The "interim Amir": Why is the executive assistant not assigned in the appointment of a caliph? In addition, what was the basis for choosing the oldest assistance in the appointment of a caliph? Why is the best assistant in his position as an assistant not chosen, or who is better in terms of justice or better than them in knowledge of the Qur'an ... etc?

I have another question, which is ... If the caliph violates one of the conditions of the contract of appointment after his pledge, will his pledge be invalid? That is, if he becomes unjust, for example, or becomes like the one whom the Messenger of Allah (saw) describes as the Imams whom Muslims hate.

May Allah reward you all the good.

I thank you very much for your answers, and I ask Allah to grant you, your family and brothers the good, good health and a blessed Ramadan

Your brother Dr. Suhail Abu Mus'ab

Answer:

Wa Alaikum Assalamu Wa Rahmatullah Wa Barakatuh

I was pleased that you wrote to me in the language of the Noble Qur'an, the Arabic language, even though you find it difficult to write in it ... In general, your questions are clear except for some places that need further clarification, and here are the answers:

1- The titles given to those who are given the pledge allegiance of the Caliphate are the title of Caliph, Imam, or Amir Al-Mu'mineen (Commander of the believers) as mentioned in the Hadiths of the noble Prophet (saw) and in the consensus of the Companions ... As for what is mentioned in *the Ruling System* (book) after these three:

[It is not obligatory to adhere to these three titles, rather it is permissible to give other titles to whoever takes charge of Muslims, which indicates their meaning, such as the ruler of the believers, or the leader of the Muslims, like the ruler of the believers, or leader of Muslims, or Sultan of the Muslims or others that do not contradict the meaning. As for the titles that have a specific meaning that contradicts the rules of Islam related to governance, such as the king and the president of the republic, (and the emperor), it is not permissible to use these titles for someone who takes charge of Muslims, because they contradict what is indicated by the rulings of Islam] End

Likewise, what was mentioned in the book, *The Islamic Personality*, Volume II, in the chapter on the Khilafah at the end of the paragraph [It is not necessary to adhere to this term, i.e. the Imama or the Khilafahc, but rather it is adhered to its meaning.] End

The two extracts were modified, and the aforementioned extra information in *the Ruling System* book and in *the Islamic Personality* book, volume II, were removed, and the three titles in the Book, "The Apparatus", remained (Caliph, Imam, Amir Al-Mu'mineen), and these three titles are the ones that will be used in the state when Allah (swt) grant us His victory.

2- In order for it to be considered an acceptable consensus, the silent consensus (Al-Ijma' Al-Sukooti) on a Shar'i ruling, "the Shariah ruling must be one that is usually a munkar (prohibition) and the Companions do not remain silent on it. If it is not usually a munkar, then the silence of the companions on it is not considered a consensus. In the *Shakhsyah* book, Volume III: (The silent consensus is that one of the Companions carry out and the Sahaba know about it and do not forbid him, so their silence becomes consensus, and it is called the silent consensus instead of the verbal consensus ... There are conditions for silent consensus, they are:

First: that the Islamic ruling is one that is usually forbidden and the Companions do not remain silent on it...

Second: That this action becomes known and known by the Companions...

Third: That it should fall under the matters that the Commander of the Believers has authority to manage, according to his opinion, such as money from the treasury ...) **End.**

These conditions must be met in the silent consensus in order to be used as evidence. As for the issue of the consensus of the companions, on the use of the title "Amir Al-Mu'mineen (Commander of the believers)," it is not a matter of silent consensus for the aforementioned condition to be required. Rather, it is a form of verbal consensus because the Companions (ra) in their entirety used this title in their conversations and they addressed the caliphs so. This was a verbal consensus and not silent consensus. Accordingly, this

ruling does not have to be from that which is usually forbidden in order for the consensus to be valid and considered.

3- With regards to your question about the term Imam:

A- The Imam in the language has several meanings, including the one who is followed and emulated. It is stated in *Mukhtar As-Sihah...* (so the Imam is the one imitated and its plural is Aa'ima (Imamas)...) In the book *Al-Ain* it states: (... and all who is emulated and was made the head of issues is an Imam...) The Imam in this sense is general and is given to any one who is emulated and followed.

B- The Sharia has used the term Imam as a jurisprudential term "Sharia truth" in the sense of the general leader of the Muslims, since the legal texts indicated that, and among these texts are:

- On the authority of Abdullah bin Amr bin Al-Aas, that he heard the Messenger of Allah (saw) say: «وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةَ يَدِهِ، وَثَمَرَةَ قَلْبِهِ، فَلْيُطِعهُ...» **"If a man takes an oath of allegiance to a leader, and puts his hand on his hand and does it with the sincerity of his heart..."** [Narrated by Muslim].

- On the authority of Auf bin Malik, on the authority of the Messenger of Allah (saw) He said: «خَيْرُ أَيْمَتِكُمُ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ، وَيُصَلُّونَ عَلَيْكُمْ وَتُصَلُّونَ عَلَيْهِمْ...» **"The best of your rulers are those whom you love and who love you, who invoke God's blessings upon you and you invoke His blessings upon them..."** [Narrated by Muslim].

- Bukhari extracted from Ibn Shihab ... that Salim told him that Abdullah ibn Umar, says: I heard the Messenger of Allah (saw) says: «كُلُّكُمْ رَاعٍ، وَكُلُّكُمْ مَسْنُونٌ عَنْ رَعِيَّتِهِ، الْإِمَامُ رَاعٍ وَمَسْنُونٌ عَنْ رَعِيَّتِهِ...» **"Surely! Everyone of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is a guardian and is responsible for his subjects..."**

In these Hadiths he mentioned the title of the ruler who implements the rulings of the Shariah in Islam, and it is: the Imam, just as the title of Caliph is mentioned in other Shariah texts. That is, the Shariah texts indicated that the term "Imam" is like the word "Caliph" and that it is juristic terms "a Shariah truth." That the Legislator stipulated and it means the general presidency of the Muslims, and it is called the great Imamate and the one who leads it is called the greatest imam...

C- Likewise, the term Imam is used in the Shari' with the meaning of "Imam of prayer," which is the Imamate, which is called the Minor Imamate. There are many Hadiths regarding this, including:

- Bukhari narrated in his *Saheeh* from the Mother of Believers Aisha (ra), she said: the Messenger of Allah (saw) prayed in his home, in his illness, so he prayed sitting while (his Companions) prayed (behind him) standing. He (saw) directed them by his gesture to sit down, and they sat down (in prayer). After finishing the (prayer) He (saw) said: «إِنَّمَا جُعِلَ الْإِمَامُ» **"The Imam is appointed so that he should be followed, so bow down when he bows down, and rise up when he rises up and say (prayer) sitting when he (the Imam) says (it) sitting"**.

It was narrated from Abu Hurairah that the Messenger of Allah (saw) said: «إِذَا أَمَّنَ الْإِمَامُ» **"When the Imam says Ameen, say Ameen, for if a person's Ameen coincides with the Ameen of the angels, his previous sins will be forgiven."**

The term "Imam" that is prescribed by Shariah in relation to the Imam of prayer is also a Shariah term as indicated by the aforementioned Hadiths.

D- There is no Shariah correlation between the word Imam meaning Caliph and the Imam in the meaning of the Imam of prayer, so the Hadiths in which the Imam was mentioned in the meaning of the Caliph are not necessarily related to the topic of the prayer, and the Hadiths in which the Imam is mentioned in the meaning of the Imam of the prayer are not necessarily related to the Caliph and the ruling, as are the Hadiths mentioned above,

which should show that there is no correlation between leadership of ruling and leadership of the prayer.

E- The texts containing the term Imam should be understood in their context and according to the Qara'in (indications):

- The term Imam may be used in the Shariah texts in the linguistic sense of meaning, like in Allah's saying ﴿وَالَّذِينَ يَقُولُونَ رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا فُرَّةً أَعْيُنٍ وَاجْعَلْ لَنَا لِمَتَّقِينَ إِمَامًا﴾ **"And those who say, "Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous."** [Al-Furqan: 74]

In the Tafsir of Ibn Kathir of this verse: (And His saying: ﴿وَجَعَلْنَا لِلْمُتَّقِينَ إِمَامًا﴾ **"and make us an example for the righteous."**

Ibn Abbas, Al-Hassan, Qatada, As-Suddi, and Ar-Rabi' bin Anas said: We are Imams emulated in the good. And others said: they are ones who guide and advocate to the good), and it is clear from the context that what is intended by the term Imam here is the person who is emulated in piety, not the Imam in the meaning of ruling or leading the prayer.

- The term "Imam" meaning caliph may be used, as in the Hadith narrated by Muslim from Abu Hurayrah that the Prophet (saw) said: **«إِنَّمَا الْإِمَامُ جُنَّةٌ يُقَاتِلُ مِنْ وَرَائِهِ وَيُتَّقَى بِهِ فَإِنْ أَمَرَ بِتَقْوَى اللَّهِ عَزَّ وَجَلَّ وَعَدَلَ كَانَ لَهُ بِذَلِكَ أَجْرٌ وَإِنْ يَأْمُرُ بِغَيْرِهِ كَانَ عَلَيْهِ مِنْهُ»**, **"A commander (of the Muslims) is a shield for them. They fight behind him and they are protected by (him from tyrants and aggressors). If he enjoins fear of God, the Exalted and Glorious, and dispenses justice, there will be a (great) reward for him; and if he enjoins otherwise, it redounds on him."**

And it's clear from the Hadith that what is intended is the ruler because the ruler is the one who the people fight behind him and he is the one who rules with justice or oppression, and the intention is not absolute imitation as it is in the linguistic meaning, nor is it to lead the prayer.

- the word "Imam" meaning leading prayers may be used as narrated in Saheeh Muslim from Abu Hurairah that the Messenger of Allah (saw): **«إِذَا قَالَ الْإِمَامُ سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ فَقُولُوا اللَّهُمَّ رَبَّنَا»** **"When the Imam says: "Allah listens to him who praised Him," say: "O Allah, our lord, to Thee be the praise, " for if what anyone says synchronises with what the angels say, he will be forgiven his past sins"**.

It is clear that the context here is about prayer and the leader of prayer.

4- Regarding your question about the temporary leader (Amir):

It is not clear exactly what is meant by your saying: ("The temporary Amir" why is the executive assistant not appointed as a caliph)

As for the issue of choosing the oldest assistants to be a temporary leader (Amir), we explained the reason for that in the answer to a question dated 02 Sha'ban 1435 AH corresponding to 31/5/2014 CE, and I quote to you from our aforementioned answer the following:

[... As for the second matter, which is how to appoint the temporary leader if the caliph does not appoint on before his death, and the priorities in this regard, it is an administrative matter, and it is permissible to adopt an article detailing this administrative matter, and accordingly came what was mentioned in Article 33:

(...then the eldest of the assistants becomes the temporary leader unless he intended to be a candidate for the Khilafah in which case the next senior assistant is to be given the position and so on. c. If all of the assistants intend to be candidates, then the eldest of the executive ministers will become the temporary leader or the one after him in seniority if he intends to be a candidate, and so on. If all of the executive ministers intend to be candidates for the Khilafah, then the position of the temporary leader is given to the youngest executive minister.)

For your information, reasonable considerations were taken into account in this adoption. The assistances are the most knowledgeable people on governance and the people most familiar with the course of affairs during the days of the previous caliph. They are followed in knowledge and experience by the executive ministers for their closeness to the caliph and his work. These are the best people to take over the temporary leadership, and since the assistants were equal and there was no differentiation between them in assistance, and the ministers as well, age was a suitable factor for differentiation, as in leading the prayer, if the worshipers were equal in terms of the conditions for leading the prayer, the oldest of them would be prioritized.

Muslim extracted in his Sahih from Shu'ba, from Ismail ibn Raja, that he said: I heard Aus Ibn Dham'aj say, I heard Abu Mas'ud say that the Prophet (saw) told us: «يَوْمُ الْقَوْمِ أَقْرَاهُمْ لِكِتَابِ اللَّهِ، وَأَقْدَمُهُمْ قِرَاءَةً، فَإِنْ كَانَتْ قِرَاءَتُهُمْ سَوَاءً، فَلْيُؤَمِّمَهُمْ أَقْدَمُهُمْ هِجْرَةً، فَإِنْ كَانُوا فِي الْهَجْرَةِ سَوَاءً، فَلْيُؤَمِّمَهُمْ أَكْبَرُهُمْ سِنًا، وَلَا تَوْمَنَنَّ الرَّجُلُ فِي أَهْلِهِ، وَلَا فِي سُلْطَانِهِ، وَلَا تَجْلِسَنَّ عَلَى تَكْرِمَتِهِ فِي بَيْتِهِ إِلَّا أَنْ يَأْذَنَ لَكَ، أَوْ بِإِذْنِهِ» “The person who is best versed in the recitation of the Book of Allah, should lead the prayer; but if all those present are equally versed in it, then the one who has most knowledge of the Sunnah; if they are equal in that respect too, then the one who has emigrated (to Al-Madinah) first, if they are equal in this respect also, then the oldest of them. No man should lead another in prayer where the latter has authority, or sit in his house, without his permission”.

Accordingly, the administrative decision adopted in this matter was to prioritize the oldest assistants, then the next, then the most senior executive minister, then the next one, and so on.] **End quote from the answer to the previous question.**

5- With regard to your question about a breach of one of the conditions of the appointment contract of the Khilafah after the pledge of allegiance to the caliph is completed, like the breach of the condition of justice, the overall answer to that is, that a breach of one of the conditions of the appointment contract does not necessarily mean the invalidity of the Khilafah contract, for example a breach of the condition of justice makes the caliph deserving of removal, but he must not be isolated immediately but only after a decision of the Al-Mathalim (Grievances) Court regarding that, i.e. his ruling term will remain in place until Al-Mathalim Court decides on the matter ... We have given details on this subject in more than one place in our books, and we explained it in **The Draft Constitution Volume I** in Articles (40 + 41), with their explanation, and you can refer to *Draft...* book to find out the details.

Finally, I thank you for your dua for us, and I make dua for you with all the good, and I repeat what I mentioned at the beginning of the answer. I am pleased that you wrote to me in the language of the Qur'an, the Arabic language.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

26 Dhul Hijjah 1441 AH

16/8/2020 CE

Link for the answer on the Ameer's Facebook page:

https://www.facebook.com/HT.AtaabuAlrashtah/posts/2721136748132332?_tn_ =K-R