

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 "Fiqhi" Page

Answer to Question

Concession (Rukhsah) and Strict Ruling (‘Azimah)

To Zahid Talib Na'im

(Translated)

Question:

Our Shaykh, the eminent scholar Aṭa Bin Khalil Abu al-Rashtah,

Peace be upon you and the mercy of Allah and His blessings,

I hope that this question reaches you while you are in complete health and well-being. I ask Allah to hasten for His believing servants succession and empowerment on earth, and to relieve the distress from the Muslims in general and from our people in Gaza in particular.

It is mentioned in *The Islamic Personality* Volume III, page 64 (Arabic version): "That is because acting upon the strict ruling, which is refraining from eating, is permissible, but it is a permissible act that inevitably leads to the prohibited, which is the destruction of the self. Thus it becomes prohibited in accordance with the legal principle 'a means to the prohibited is prohibited.' Therefore, acting upon the strict ruling here becomes prohibited, and acting upon the concession becomes obligatory, due to an incidental reason, which is the realization of destruction)"

Is leaving the concession (rukhsa) and acting upon the strict ruling (azimah) prohibited? And is leaving the strict ruling and acting upon the concession obligatory? Does this contradict the principle that commanding something is not a prohibition of its opposite, and prohibiting something is not a command for its opposite? Is refraining from eating described as prohibited, or is it considered leaving an obligation? And is the one who eats in this situation described as having performed an obligation and avoided the prohibited?

May Allah accept from us and from you righteous deeds, and may Allah bless you.

23/6/2024 – Zahid Talib Na'im

Answer:

Wa Alaikum Assalam wa Rahmatallhu wa Barakatahu

May Allah bless you for your good supplication, and we supplicate Allah for you with goodness.

The place you are asking about in *The Islamic Personality*, Volume 3, is in the chapter "Concession and Strict Ruling", and this is its complete text:

[This is with respect to the reality of concession (rukhsa) and strict ruling (azimah) legislatively. As for acting upon the concession or upon the strict ruling, then acting upon whichever of them one wishes is permissible; he may act upon the concession, and he may act upon the strict ruling. That is because the texts of concessions indicate that...

It may be said that the Messenger of Allah (saw) said: «إِنَّ اللَّهَ يُحِبُّ أَنْ تُؤْتَى رُخْصَتُهُ، كَمَا يُحِبُّ أَنْ تُؤْتَى عَزَائِمُهُ» "Allah loves that His concessions be taken just as He loves that His commands be observed." (Narrated by Ibn Hibban). This is a request, and it is evidence that it is recommended. And the compelled person, if he fears destruction upon himself, it is

obligatory upon him to eat the flesh of carrion, and it is prohibited for him to refrain from eating it. And the one choking who finds nothing except wine must remove his choking with wine if he fears destruction, and it is prohibited for him to refrain and perish. And the fasting person, if exhaustion reaches him to the level of perishing, it is obligatory upon him to break his fast, and it is prohibited for him to remain fasting and perish, and so on. This indicates that acting upon the concession is obligatory; therefore, the concession may be obligatory, may be recommended, and may be permissible. The answer to that is that the discussion is about the concession insofar as it is a concession. And the concession, insofar as it is a concession, is decisively permissible based on the previous evidences. Thus, the ruling of the concession, insofar as it is legislated, is permissibility. As for the saying of the Messenger (saw): «إِنَّ اللَّهَ يُحِبُّ أَنْ تُؤْتَى رُخْصَتُهُ» **“Allah loves that His concessions be taken.”** there is no indication in the hadith of recommendation (nadb); rather, it indicates permissibility (ibahah), because it explains that Allah loves that His concessions be taken, and He loves that His strict rulings be observed, and seeking one of them is not more deserving than seeking the other. The text of the hadith is: «إِنَّ اللَّهَ يُحِبُّ أَنْ تُؤْتَى رُخْصَتُهُ، كَمَا يُحِبُّ أَنْ تُؤْتَى عَزَائِمُهُ» **“Allah loves that His concessions be taken just as He loves that His commands be observed.”** Therefore, there is no indication in the hadith that acting upon a concession may be recommended. As for eating the flesh of carrion, it does not mean only the compelled person for whom destruction is certain; rather, merely fearing destruction is considered compulsion, and in this case eating is permissible for him and not obligatory. However, if destruction is certain were he not to eat, then at that point it becomes forbidden for him to refrain from eating, and it becomes obligatory upon him to eat. This is not because it is a concession, but because it has become obligatory. That is because acting upon the strict ruling, which is refraining from eating, is permissible, but this permissible act has come to inevitably lead to the forbidden, which is the destruction of life. Thus it becomes forbidden, in accordance with the legal principle: **“The means to the forbidden is forbidden.”** Therefore, acting upon the strict ruling here becomes forbidden, and acting upon the concession becomes obligatory, due to an incidental cause, which is the certainty of destruction. This is not the ruling of the concession in and of itself, but rather a case to which the principle **“The means to the forbidden is forbidden”** applies. This is not specific to concessions, but is general for all permissible matters. An example of that is the drowning person drinking wine, and the one whose destruction is certain breaking the fast, and other similar cases. Accordingly, the concession in and of itself, and in terms of its legislation as a concession, its ruling is that it is permissible. If abandoning it and acting upon the strict ruling leads inevitably to a forbidden matter, then the permissible becomes forbidden. [End]

And you ask:

[Is abandoning the concession and acting upon the strict ruling prohibited? And is abandoning the strict ruling and acting upon the concession obligatory? Does this contradict the principle that commanding something is not a prohibition of its opposite, and prohibiting something is not a command of its opposite? And is refraining from eating described as prohibited, or is it the abandonment of an obligation? And is the one who eats in this situation described as having performed an obligation and avoided the prohibited?] End.

The answer to that is as follows:

1- As established in the book “The Islamic Personality, Volume Three”, acting upon the concession, insofar as it is a concession, is permissible. This is the original ruling of the concession. Naturally, this applies when no detailed evidence exists indicating that the concession in a particular case is recommended and preferred over the strict ruling, or that the strict ruling in a particular case is recommended and preferred over the concession. We have explained these cases in the book “Taysir al-Wuṣul ila al-Uṣul”, where it states on pages 42–44 (Word file):

“The concession, insofar as it is legislated as a concession, its ruling is permissibility. If one continues to act upon the strict ruling, that is permissible for him, and if he acts upon the concession, that is also permissible for him.

As for why the strict ruling and the concession are equal in the ruling of permissibility, it is because the Messenger of Allah (saw) says: «إِنَّ اللَّهَ يُحِبُّ أَنْ تُؤْتَى رُخْصَتُهُ، كَمَا يُحِبُّ أَنْ تُؤْتَى عَزَائِمُهُ» **“Allah loves that His concessions be taken just as He loves that His commands be observed.”** This clarifies that both are equal in obedience to Allah in terms of performance.

This applies if no text exists indicating that either the concession or the strict ruling, in a particular case, is more beloved to Allah.

Example: Allah Almighty says: «أَيَّامًا مَّعْدُودَاتٍ فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ فَمَنْ تَطَوَّعَ خَيْرًا فَهُوَ خَيْرٌ لَهُ وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ» **“[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]. And upon those who are able [to fast, but with hardship] – a ransom [as substitute] of feeding a poor person [each day]. And whoever volunteers excess – it is better for him. But to fast is best for you, if you only knew”** [Surat Al-Baqarah: 184]. From this it is understood that whoever is permitted to break the fast due to an excuse, and is able to fast without hardship, then his fasting is better than his breaking the fast, such as one who travels the distance permitting concession in an airplane or a comfortable car; he may fast and he may break the fast, but his fasting is better in this case, based on the indication of: «وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ» **“But to fast is best for you, if you only knew”** [Surat Al-Baqarah: 184].

Likewise, it is authentically reported that the Messenger of Allah (saw) said: «لَيْسَ مِنَ الْبِرِّ الْيَأْسُ مِنَ الْبَرِّ» **“It is not righteousness to fast while traveling.”** This was said when he saw a traveling man who was fasting and had been exhausted by fasting. From this hadith it is understood that whoever’s travel is difficult and exhausting, then breaking the fast is better for him.

Thus, in the first case, it is understood from the verse that fasting is better, meaning acting upon the strict ruling is better. In the second case, it is understood from the hadith that breaking the fast is better, meaning acting upon the concession is better.

As for when no specific text exists indicating preference between the strict ruling and the concession in particular cases, then taking either the concession or the strict ruling is equally permissible for both, based on the previously mentioned hadith of the Messenger of Allah (saw) at the beginning of the discussion.)

2- In the case of the concession of eating or drinking what is prohibited in a state of necessity, as we explained above—namely: “As for eating the flesh of carrion, it does not mean only the compelled person for whom destruction is certain; rather, merely fearing destruction is considered compulsion” - then the ruling of the concession is permissibility, like all other concessions.

3- If destruction is certain by not eating or drinking the prohibited, then this means:

a- That acting upon the strict ruling (not eating the prohibited) in this case falls under the principle: (The means to the prohibited is prohibited). This is because the strict ruling was originally permissible for the one who fears destruction if he does not eat or drink the prohibited. However, for the one whose destruction is certain if he does not eat or drink the prohibited, the strict ruling—though originally permissible—becomes prohibited in this case, just like any other permissible matter becomes prohibited when the principle (The means to the prohibited is prohibited) applies. According to this principle, a permissible matter that leads to a prohibited matter becomes prohibited. Thus, by virtue of this principle, the strict

ruling that was permissible before its application transforms into prohibition, because it becomes a means to the prohibited, which is the destruction of life. Evidence has been reported prohibiting the destruction of life.

b- Likewise, the concession of eating for one who fears destruction if he does not eat or drink the prohibited had the ruling of permissibility, in accordance with the original ruling of concessions. But if destruction is certain, then its ruling transforms into obligation, because saving one's life from destruction is obligatory. And saving one's life in a case of certain destruction cannot occur unless he eats or drinks the prohibited. Thus, the realization of the obligation—saving life—in that specific case necessitates eating or drinking the prohibited. Since the obligation cannot be fulfilled except by it, it becomes obligatory by the principle: (That without which an obligation cannot be fulfilled is itself obligatory). Thus, acting upon the concession in this specific case becomes obligatory.

4- What is mentioned above does not contradict the principle: (Commanding something is not a prohibition of its opposite, and prohibiting something is not a command of its opposite), for saying that acting upon the strict ruling is prohibited in the specific case of certain destruction has its evidence, which is the principle: (The means to the prohibited is prohibited), and saying that acting upon the concession is obligatory also has its evidence, which is the principle: (That without which an obligation cannot be fulfilled is itself obligatory). Thus, saying that eating or drinking the prohibited is obligatory does not stem from the idea that refraining from eating or drinking is prohibited, but rather from the legal principle (That without which an obligation cannot be fulfilled is itself obligatory). Likewise, saying that acting upon the strict ruling by refraining from eating or drinking the prohibited is prohibited does not stem from the idea that acting upon the concession is obligatory, but rather from the legal principle (The means to the prohibited is prohibited). Therefore, the discussion here is not a linguistic discussion regarding the implication of command and prohibition, but rather a discussion supported by legal evidences related to its details. Hence, saying that acting upon the concession is obligatory is not based on a linguistic implication derived from prohibiting the strict ruling, nor is saying that acting upon the strict ruling is prohibited based on a linguistic implication derived from commanding the concession.

I hope the matter has now become clear.

Your brother,

Ata Bin Khalil Abu al-Rashtah

06 Rajab 1447 AH

Corresponding to 26/12/2025 CE

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

<https://www.facebook.com/AtaAboAlrashtah/posts/122114672175129051>