

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

It is not Allowed to Combine the Fasting of the Month of Ramadan in the Kaffara (Expiation) of the Unintentional Killing

To: Al-Abid Lillah

(Translated)

Question:

Assalamu Alaikum. May Allah help you in your work. Is it permissible to combine the Kaffara (expiation) of fasting for two consecutive months with the Kaffara of unintentional killing between Sha'ban and Ramadan, knowing that the Kaffara for fasting is obligatory in the absence of liberating a slave, and the fasting of the month of Ramadan is obligatory? I.e., can we combine Sha'ban and Ramadan in the Kaffara of fasting? Jazakum Allah Khair.

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh.

1- It is not permissible to include fasting during the month of Ramadan in the Kaffara (expiation) of unintentional killing, as each of them is a separate ruling from the other. The Kaffara of unintentional killing is to fast two consecutive months for the one who does not have a neck to free, as stated in the noble verse: ﴿وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا﴾ **“And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if the deceased was from the people with whom you have a treaty - then a compensation payment is presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], he should fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise”** [An-Nisa': 92] It is clear from the verse that what is required is fasting these two months for Kaffara and it does not include other fasts required for other than expiation, such as fasting the month of Ramadan. The Shariah text regarding the fasting of Ramadan: ﴿شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ وَالْفُرْقَانِ فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ﴾ **“The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it”** [Al-Baqara: 185]. It is a different text to that of the Kaffara of unintentional killing, so they do not overlap together. And I ask Allah (swt), to help you in this affliction and magnify your reward, and Allah takes care of the righteous.

2- In the case of a permanent inability to fast for a Shariah reason, there are two different rulings:

First: He does not have to feed the poor, because Allah (swt), did not mention feeding the poor, if he was unable to fast as a Kaffara for unintentional killing. And if there was

feeding, He (swt) would have mentioned it, as He (swt) has mentioned in the kaffara for zihar... and this is the opinion of the majority.

Second: Comparing the expiation for unintentional killing over other expiations, such as the expiation for zihar, where sixty poor persons must be fed if he is not able to fast sixty days “two consecutive months.” Allah (swt) says: ﴿وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَابِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرٌ رَّقَبَةٍ مِّن قَبْلِ أَنْ يَتَمَاسَا ذَلِكُمْ تُوعِظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ * فَمَنْ لَّمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَنْ يَتَمَاسَا فَمَنْ لَّمْ رَقَبَةٍ مِّن قَبْلِ أَنْ يَتَمَاسَا ذَلِكُمْ تُوعِظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ * فَمَنْ لَّمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَنْ يَتَمَاسَا فَمَنْ لَّمْ يَتَمَاسَا فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَنْ يَتَمَاسَا فَمَنْ لَّمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَنْ يَتَمَاسَا فَمَنْ لَّمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَنْ يَتَمَاسَا...﴾ **“And those who pronounce thihar from their wives and then [wish to] go back on what they said - then [there must be] the freeing of a slave before they touch one another. That is what you are admonished thereby; and Allah is Acquainted with what you do * And he who does not find [a slave] - then a fast for two months consecutively before they touch one another; and he who is unable - then the feeding of sixty poor persons. That is for you to believe [completely] in Allah and His Messenger; and those are the limits [set by] Allah. And for the disbelievers is a painful punishment”** [Al-Mujadila: 3-4]. This is one of the Shafi’i sayings.

3- The opinion that I outweigh is if the person is not able to fast for a Shariah reason, as we mentioned above, then he does not have to do anything, rather he should seek forgiveness from Allah (swt) and draw close to Him (swt) with supererogatory (nawafil) deeds, and Allah (swt) is Forgiving, Most Merciful. As for why we did not measure the expiation for unintentional killing with the expiation for zihar, it is because there is no analogy for expiations, it has no l’illa (divine reason).

It is mentioned in the book, The Islamic Personality, Volume Three, Chapter: “Conditions of the Ruling of the Origin” on Qiyas (analogy), page 338 (Arabic version), in the pdf file:

Fifth: That the rule of the origin is not based on the norms of analogy, and that which is based on the norms of analogy is divided into two parts:

The first: What does not make sense in meaning, it is either excluded from a general rule, or it begins with it:

The exception from a general rule such as the acceptance of the testimony of Khuzaymah alone, as Al-Bukhari narrated, is, although it is not reasonable in meaning, is excluded from the rule of testimony.

The beginning point, such as the number of rak’ahs, the estimation of the portions (nisab) of zakat, and the amounts of hadd punishments and expiations, although it is not reasonable in meaning, is not excluded from a general rule, and on both estimates the analogy is not permitted to take place...] **End**

I pray that this is sufficient and Allah is All-knowing and Most Wise.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

15 Sha’ban 1443 AH

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

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/514772870210087>