

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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:

**The Shari'i Principles Between the Raajih (stronger opinion) and
Marjough (outweighed i.e. weaker)**

To Mohammad Ibrahim

(Translated)

Question:

Assalamu Alaykom Wa Rahmatullah Wa Barakatuhu,

Our dear brother and respected scholar, I hope you answer the following question:

Saying that the 'asl (original state) with regards to transactions is permissibility and ibaha needs consideration and attributing it to the four madhahib needs precision and research...

This principle ('asl) was popularly said by the late scholars, but we did not find this 'asl in the books of the relatively old scholars. Ibn Najim al-Hanafi, who is a fundamentalist of the Hanafi (and it is said that this rule (qa'ida) was commonly used by them) mentioned only two rules:

The 'asl with regards to things is permissibility so long as no text of prohibition is present.

And the 'asl with regards to sexual interactions is prohibition.

The question is that if the Legislator safeguarded sexual interactions by making its original hukm prohibition to protect descendants!! Doesn't that seem steady in funds and financial transactions, or at least to say that the 'asl with regards to them is not permissibility... Therefore, it is necessary to study the issues of transactions within its general controls to give judgment, because just like the Legislator safeguarded descendants, He also safeguarded the funds...

I might be wrong, especially since I did not research all of what the scholars and fundamentalists said on this issue...

Because the risk is that we make permissible every form of contemporary transactions in accordance with the principle "the 'asl with regards to transactions is permissibility", without studying the reality of the issue and the nature of the evidence it deals with.

So how correct is this rule? And have the Fuqahaa' addressed it?

Sent by Abu Zakariyah from Lebanon

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Baraktuhu,

Brother, there are principles adopted by some Mujtahideen that are *Marjough* (weak/likely) according to us, among them is the principle you mentioned: "The 'asl with regards to transactions is permissibility", as for what we adopted for its strong evidence is: "The 'asl with regards to things is permissibility so long as no text of prohibition is present" and "the 'asl with regards to actions is being bound by the hukm of Allah". And we spoke about a number of other principles, and indicated their weakness, here are the details:

Firstly: it is mentioned in the book *The Islamic Personality Vol. III*, under the chapter “There is No Hukm Prior to the Coming of the Revelation”:

[It should not be said then that **the ‘asl [original state] of things and actions is prohibition [tahrīm]**, by the argument that it is free disposal [*tasarruf*] in the dominion of Allah the Exalted without his permission so it is prohibited, drawing analogy upon the created beings, because the explicit meaning of the *āyah* is that Allah does not punish until he raises a messenger, so He does not account until he clarifies the *hukm*. Further the creation is able to be harmed, but Allah the Exalted is above being benefited or harmed.

Similarly it should not be said that the **‘asl of actions and things is permissibility**, by the argument that it is utilisation that is free from any sign of corruption or harm to the owner and so it is permissible. This should not be said because the implied meaning [*mafhum*] of the *āyah* is that man is obligated with what the messenger comes with; he is punished for contravening this; thus the ‘asl becomes following [*ittibā’*] the messenger and being bound by the *ahkām* of his message; the ‘asl is not permissibility, which is the absence of being bound. Since the generality of the verses of *ahkām* indicate upon the necessity of referring back to the *shar’* and the necessity of being bound by its *ahkām*; the Exalted says, ﴿وَمَا اخْتَلَفْتُمْ فِيهِ مِنْ شَيْءٍ فَحُكْمُهُ إِلَى اللَّهِ﴾ **“Whatever it be wherein you differ, the decision thereof is with Allah”** [*al-Shūra*: 10]; and ﴿فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾ **“So if you dispute in a thing, then refer it back to Allah and the Messenger”** [*al-Nisā’*: 59]; and ﴿وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ﴾ **“And we sent down to you the book explaining all things”** [*al-Nahl*: 89]; and because the Messenger (saw) said in what was narrated by al-Daraqutni, **“Any matter upon which is not our command, then it is rejected”**, this indicates upon the ‘asl being following the *shar’* and being bound by it, and further utilisation that is free from any sign of corruption or bringing harm to the owner is not a proof for permissibility...

Similarly it should be said that **the ‘asl of things is cessation [tawaqquf] and the absence of the hukm**. Since cessation means the action is suspended or the *hukm* is suspended and this is impermissible, because the established (rule) in the Qur’an and Hadith for the lack of knowledge is inquiring about the *hukm* and not the cessation and absence of the *hukm*. The Exalted says, ﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾ **“Ask those of Knowledge if you know not”** [*al-Anbiyā’*: 7]; and the saying of the Messenger (saw) in the hadith of *tayammum*, narrated by Abu Dawud from Jabir, **“Don’t they ask when they do not know, for the only cure of ignorance is to ask”**; this indicates that the ‘asl is not cessation and the absence of the *hukm*.

Therefore it is after the advent of a Messenger that it that the *hukm* becomes for the *shar’* and there is no *hukm* prior to the coming of the *shar’*, so the *hukm* depends on the coming of the *shar’*, that is, on the presence of a *shar’i* evidence for a single issue. Thus no *hukm* can be given except on the basis of an evidence, just as no *hukm* can be given except after the coming of the *shar’*. The ‘asl, then, is to search for the *hukm* in the *shar’*, that is, the ‘asl is to search for the *shar’i* evidence for a *shar’i hukm* from the *shar’*...

Consequently the legal maxim, **“The original rule [asl] for the actions of man is being bound by the hukm of Allah”** is confirmed. So it is not permissible for a Muslim to perform an action except after knowing the *hukm* of Allah about that action, from the address of the Legislator. Permissibility [*ibaha*] is a *hukm* from the *ahkam* of the Shari’ah, necessarily requiring an evidence...

This is with regards to actions. As for the things, which are related to the actions, the **‘asl with regards to them is permissibility so long as no text of prohibition is present.**

Therefore the original rule of a thing is permissibility; it is not prohibited except if there is a *shar'i* evidence for its prohibition. This is because the *shar'i* texts have declared all the things to be permissible, and these texts have come as general, covering all things; the Exalted says, ﴿أَلَمْ تَرَ أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي الْأَرْضِ﴾ **“Do you not see that Allah has made subservient to you whatsoever is in the earth”** [al-Hajj: 65]; the meaning of subservience [*taskhīr*] by Allah for man of all that is on the Earth is the permissibility of all that is on it. He says, the Exalted, ﴿يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا﴾ **“O people! Eat of what is on earth, lawful and good”** [al-Baqarah: 168]; and He says, ﴿يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَشَرِبُوا﴾ **“O children of Adam, attend to your embellishments at every time of prayer, and eat and drink...”** [al-A'rāf: 31]; and He says, ﴿هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ ذُلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِن رِّزْقِهِ﴾ **“He it is Who made the earth smooth for you, therefore go about in the spacious sides thereof, and eat of His sustenance”** [al-Mulk: 15].

Thus have all the *ayāt* which permit the things come in the general form, their generality indicating the permissibility of all things. Hence if a thing is prohibited there must exist a text specifying this generality, indicating that this thing is an exception to the permissibility of all things. From here, the 'asl of things is permissibility. Accordingly we find in the revelation, when things are prohibited, specific texts about these things specifically as an exception to the general texts; so the Exalted says: ﴿حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالْدَّمُ وَلَحْمُ الْخِنزِيرِ﴾ **“Forbidden to you is that which dies of itself, and blood, and flesh of swine..”** [al-Ma'idah: 3]; and he (peace be upon him) said, **“Khamr is forbidden in and of itself”**, mentioned in al-Mabsūt from Ibn 'Abbas; thus that which the revelation prohibits is an exception from the general texts and is contrary to the 'asl, which is permissibility...]

From this, it becomes evident that those principles, whether those that you referred to **“the 'asl with regards to transactions is permissibility”**, or others as we referred to above are weak (marjūh) principles according to us, and the right opinion is the one related to the actions and things as we mentioned, i.e. **“the 'asl with regards to actions is adherence to the legal ruling”** and **“the 'asl with regards to things is permissibility so long as no text of prohibition is present”**.

I hope that this answer was sufficient, and Allah (swt) knows best and is the most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

29 Jumada Al-Akhirah 1441 AH

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192/1287035191493549/?type=3&theater>