

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

Claiming a Right Stipulated by non-Islamic Law

To: Rubhi Abu Muadh
(Translated)

Question:

The law obliges the employer to abide by laws concerning workers and their rights, but the employer evades compliance with the law. In the work crisis and the greed of employers, the worker's rights are lost, and he cannot claim his right except through the law that obliges the employer to pay the rights of the worker as stipulated by the law. So, is it prohibited to resort to the law if the worker feels injustice?

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

You are asking about the ruling for a worker claiming his right as stipulated by the law.

The answer is it is permissible in the case of restoring a right or having an injustice removed in accordance with the Shariah; that is, the right is set by the Islamic law and the injustice is set by the Islamic law, so it is not right to ask for a right that is not considered a right in accordance with Shariah. If the worker claims a right according to the law but it is not a right according to Shariah, it is not permissible for him to do so. If the worker claims a right according to the law, which is also a right according to Sharia, then he is allowed to claim it.

For example, for a person who is wronged and subjected to imprisonment because he says the word of truth, Islam defends him and takes him out of prison, and therefore it is permissible for him to resort to someone to defend him and remove the injustice from him and save him from prison.

For example, for someone who is robbed, Islam returns his stolen money to him, and it is permissible for him to resort to someone to defend him to return his stolen money.

In another example, if someone sells his house for a down payment, and the remainder through a payment plan, but the buyer ends up only paying the down payment, and refuses to pay the remainder or denies owing it, despite the fact that he bought the house and is living in it. In this case, Islam would restore the seller's rights from the buyer and therefore, it is permissible for the seller to resort to someone to defend him to restore the price of his house, which the buyer denied.

Thus, for the worker who works at a certain salary according to the work contract between him and the employer, but then his employer deducts his salary, Islam

obliges the employer to give the worker his full salary, and therefore it is permissible for the worker to turn to those who defend him to obtain his full salary.

That is, if the right has been set for him by the Islamic law and he is denied it, then it is permissible for him to resort to who can defend him before the courts to obtain the right that is granted to him by the Islamic law. In contrast, if the right is set for him by man-made law but contradicts Islamic law, then he is not allowed to resort to who can defend him before the court to obtain it.

For example, if someone owns shares in a joint stock company, formed on a Baatil (invalid) contract, and when the time comes to distribute the dividends to the shareholders, someone notices that his share of the dividends is less than what it should be. In this case, it is not permissible to resort to the courts to obtain this right, as long as this right is set man-made law and it is contrary to Shara' because the company structure is Baatil (invalid) and the resulting profits are not approved by Shara'. Therefore, it is obligatory (Wajib) upon the Muslim to remove himself from such a company structure.

In another example, if someone had deposited his money in a Riba-based bank at a certain interest rate, but when the bank gave him his share, he calculated the interest for him at a rate that is less than that agreed with the bank. In this case, it is not permissible to resort to the court to claim this Riba, as long as this right is set man-made law and it is contrary to Shara', since this "right" is set by man-made law, which permits Riba banks, but it is not set for him according to Islamic law. Therefore, it is the duty (Wajib) upon the Muslim to cancel this Riba contract with the bank.

In summary, if the rights, claimed by the worker in accordance with the law, **are also rights in accordance with the Shariah, such as if they were indicated by the Shariah or if they were conditions in work contracts that are not contrary to the Shariah etc., then it is permissible for the worker to claim them. However, if the rights claimed by the worker are rights according to man-made law and not Shari' rights, then the worker is not allowed to claim them before the courts.**

I hope that this will suffice, and Allah Ta'ala Knows Best and He is All-Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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

https://web.facebook.com/HT.AtaabuAlrashtah/posts/2604071459838862?_tn=K-R