

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

Answer to Question

The Khalifah Alone has the Right to Adopt Shari'ah Rules

To: Ahmed Al-Qairawan

(Translated)

Question:

Assalamu Alaikum, what is the meaning of the Khalifah alone has the right to adopt Shari'ah rules?

Answer:

Wa Alaikum Assalam wa Rahmatu Allahi wa Barakatuh,

The answer to your question is found in detail in the book The Draft Constitution and in other books of the party, and I will quote to you some of what was mentioned on this topic in the book The Draft Constitution part I:

- Page 110 of the Word file (Arabic edition) reads the following:

“With respect to the fourth principle, which is that the leader of the State alone has the right to adopt the laws, this has been established by the Ijma’ of the companions that the Khalifah alone has the right to adopt the laws, and from this Ijma’ the famous Shari’ah principles: “The order of the Imam resolves the difference”, “The order of the Imam is executed” and “The ruler can issue as many judgements as there are problems that appear” are all derived.”. End

- The explanation of Article 36 on pages 146-153 of the Word file (Arabic edition) reads the following:

“The evidence for paragraph “a” is the Ijma’ of the companions, since the law (Qanun) is a technical term which means: The command which is issued by the authority in order to govern the people according to it; and it is also known as **“the collection of rules which the authority imposes upon people to follow in their relations”**, in other words, if the authority orders specific rules, these rules are laws which the people are bound by, and if the authority did not order them then they are not considered laws and the people are not bound by them. The Muslims act according to the rules of the Shari’ah and, therefore, they act according to the orders and prohibitions of Allah (swt) and not the orders and prohibitions of the authority. So they act according to the rules of the Shari’ah and not the orders of the authority. But, these Shari’ah rules were differed over by the companions, so some of them understood something from the Shari’ah texts whereas others understood something different from them, and each of them proceeded according to what they had

understood, and their understanding would be the rule of Allah (swt) for them. However, there are Shari'ah rules that the Muslims would all have to proceed according to one opinion in order to facilitate the management of the affairs of the Ummah, as opposed to each one following their own Ijtihad. This actually happened; Abu Bakr (ra) thought that the wealth should be distributed amongst the Muslims equally, since it was their right collectively. As for Umar (ra), he thought that it was not correct to give the one who had previously fought against the Messenger of Allah the same as the ones who had fought alongside him, or to give the poor the same as the rich. However, Abu Bakr (ra) was the Khalifah and so ordered the implementation of his opinion, in other words, the adoption of the equal distribution of the wealth. The Muslims followed his opinion and the judges and governors acted according to it, and Umar (ra) submitted to the opinion of Abu Bakr (ra) and he acted according to it and implemented it. When Umar (ra) then became the Khalifah, he adopted an opinion which contradicted the opinion of Abu Bakr (ra); in other words, he ordered his opinion which was to distribute the wealth according to preference rather than equally. Therefore, he distributed the wealth according to those who embraced Islam earlier and according to need and the Muslims followed his opinion and the judges and governors acted according to it. So, there was an Ijma' of the companions that the Imam could adopt specific rules and order their enactment, and that it was upon the Muslims to obey that even if it went against their own Ijtihad, and they had to leave acting according to their own opinions and Ijtihad. These adopted rules are the laws. Consequently, the passing of laws is for the Khalifah alone and no one else possesses that right at all." End.

I hope the issue has become clear now.

This is my opinion in this matter and Allah is the Most Wise and He Knows Best.

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/2868489873397018>