

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

Answer to the Question:

"Khilaf Al Awla"

The Wrongful Judgment over What Constitutes Priorities in Small Matters

To: Numan Abo Ali

Question:

As-Salaam Alaikum

Is the Prophet's (saw) wrongful judgment over what constitutes priorities in small matters (*Khilaf Al Awla*) considered as Ijtihad or is it another matter? Please clarify this.

May Allah bless you and guide you in the straight path granting you victory.

Answer:

Wa Alaikum us Salaam Wa Rahmatullah Wa Barakaatuhu

You may be referring to what is mentioned in the book *al-Shakhsiyya al-Islamiyya* Vol.1. that 'It is not proper to describe the Messenger (saw) as a Mujtahid but it is allowed for him to make a wrongful judgment over what constitutes priorities in small matters (*khilaf Al Awla*)', and this is what prompted you to ask about the difference between Ijtihad and *Khilaf Al Awla*.

To answer this, it is vital to know the reality of Ijtihad and the reality of *Khilaf Al Awla*.

First:

Linguistically, *ijtihad* it means "exerting utmost effort" (*istifragh al-wus`i*) to realise and obtain something leading to inconvenience (*kulfah*) and hardship (*mashaqqah*).

Technically (among Usul scholars), it means: expending one's utmost effort in seeking the opinion in something related to the Islamic rulings (*al-ahkam al-shar`iyyah*) such that one feels unable to exert any further

This means that the Islamic ruling (Hukum Shar'i) of a matter is not known to the Mujtahid, he must perform Ijtihad to find the Islamic ruling on the matter, so he exerts effort to understand the reality of the issue and search for the relevant Shariah evidences to it, and exerts utmost effort to study them and he adopts the opinion that has the least amount of doubt as the Hukum Shar'i on the issue.

According to this understanding of Ijtihad, it is therefore improper to describe the Prophet (saw) as a Mujtahid. This is because the verses explain clearly that all what is conveyed by the Prophet (saw) is Divine Revelation (Wahi):

﴿قُلْ إِنَّمَا أُنْذِرُكُمْ بِالْوَحْيِ﴾

"Say, "I only warn you by revelation." But the deaf do not hear the call when they are warned" [Al-Anbiya: 45]

﴿إِنْ أَتَّبِعْ إِلَّا مَا يُوحَىٰ إِلَيَّ﴾

"I only follow that which is revealed to me" [Al-Ahqaf: 9]

﴿وَمَا يَنْطِقُ عَنِ الْهَوَىٰ * إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ﴾

“Nor does he speak from [his own] inclination. It is not but a revelation revealed” [An-Najm: 3-4]

This means that the Prophet (saw) conveys the Islamic rules from Divine Revelation (Wahi) and not from his own Ijtihad (opinion)

Also the Mujtahid is subject to making mistakes, if his opinion is correct he will get double the reward, but if it was incorrect, he only gets one reward. This is what was narrated in the Hadeeth of the Prophet (saw)

«إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ، فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ، فَلَهُ أَجْرٌ»

“If the judge make ijtiḥad and is correct, he gets double the reward, and if he makes Ijtiḥad and makes a mistake, he gets a single reward.” [Bukhari and Muslim]

The Prophet (saw) is innocent, protected and free from error (Ma'soom) in the Shar'iah, therefore it is completely improper to describe the Prophet (saw) as a Mujtahid. This is because in Ijtiḥad there is the possibility for the Mujtahid to be right or wrong, while all the rules conveyed by the Prophet (saw) in his speech, actions, and silence is a revelation from Allah (swt), and nothing else.

Also the Prophet (saw) used to wait for Revelation of many rulings (Ahkam), when he was in urgent need to know the rule of Allah. If he was permitted to perform Ijtiḥad he would have done so instead of having to delay in giving the rules; since he delayed conveying the rules until the descent of the revelation, it means that he did not perform Ijtiḥad. And it is evident that it is prohibited for him to perform Ijtiḥad, because otherwise he would not have delayed conveying the rules when he needed to do so.

Hence whatever was conveyed by the Prophet (saw) is by Divine Revelation and not from his own Ijtiḥad.

Second:

As for Khilaf Al Awla (to make a wrongful judgment over what constitutes priorities in small matters), it means that the Shariah ruling is already known but came as Mubah (permitted) actions, but some of these actions takes precedence over the others, or that the Islamic rule came as Mandoub (recommended) on actions but some of these actions takes precedence over the others.

It is Mubah (permitted) for someone to live in a city or a village, but for the person who is concerned with ruling matters and accounting of the rulers, living in the city should take precedence, and if he decides to live in the village he would have committed Khilaf Al Awal (to make a wrongful judgment over what constitutes priorities in small matters)

And to give Sadaqa in secret and openly is a recommended (Mandoub) matter, but to give in secret takes precedence, so if the person decides to give it openly he would have committed Khilaf Al Awal (to make a wrongful judgment over what constitutes priorities in small matters).

According to this meaning of Khilaf Al Awal, the Prophet (saw) can carry out actions which are Khilaf Al Awal. And He (saw) did so and Allah (swt) admonished him for it in His (swt) saying:

﴿عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ حَتَّىٰ يَتَّبِعَنَ لَكَ الَّذِينَ صَدَقُوا وَتَعْلَمَ الْكَاذِبِينَ﴾

“May Allah pardon you, [O Muhammad]; why did you give them permission [to remain behind]? [You should not have] until it was evident to you who were truthful and you knew [who were] the liars” [At-Tawba: 43].

It does not indicate the performance of Ijtihad, because the law (Hukm) that permitted the Prophet (saw) to give permission to whom ever he wishes came in a previous verse before this verse. The Almighty says in Surah An-Nur:

﴿فَإِذَا اسْتَأْذَنُوكَ لِبَعْضِ شَأْنِهِمْ فَأَنْزِلْ مَنْ شِئْتَ مِنْهُمْ﴾

“So when they ask your permission for something of their affairs, then give permission to whom you will among them” [An-Nur: 62]

This Surah was revealed after Surah Al Hashr during the Battle of the Trench (al-Khandaq) and the verse ﴿عَفَا اللَّهُ عَنْكَ﴾ **“May Allah pardon you, [O Muhammad]”** that came in Surah At-Tawba, and was revealed regarding the Battle of Tabouk in the ninth year of Hijra, so the rule was known and the verse in Surah An-Nur is explicit pointing to the Prophet (saw) was allowed to give them permission.

However in that event in which the verse of Surah at-Tawba was revealed which was the Battle of Tabouk and preparing the army of ‘Usra the priority was for the Prophet (saw) not to give permission for the hypocrites to stay behind. When he (saw) gave them permission in that event specifically, Allah (swt) admonished him (saw) for it, i.e. He (swt) admonished him for making a wrongful judgment over what constitutes priorities in small matters (Khilaf Al Awal). The verse is not a correction for his (saw) Ijtihad, and it is not a legislation of a rule that contradicts a rule deduced by Ijtihad of the Prophet (saw) in the same event, but it was an admonishment for Khilaf Al Awal (making a wrongful judgment over what constitutes priorities in small matters).

Third:

Subsequently, it is improper to describe the Prophet (saw) as a Mujtahid, but he only conveys the revelation to him (saw) from Allah (swt); this Revelation is either by speech or meaning which is the noble Qur’an, whereas by meaning only which is expressed by the Prophet’s own speech, or his silence indicating the rule, or by his (saw) action, and that constitutes the Sunnah.

And so this demonstrates the difference between Ijtihad and Khilaf Al Awla, and that it is not permitted to describe the Prophet (saw) as a Mujtahid because he is Ma’soom from error, but he can fall into committing Khilaf Al Awla, because doing Khilaf Al Awla is not a mistake.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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

<https://www.facebook.com/Ata.abualrashtah/photos/a.154439224724163.1073741827.154433208058098/502972989870783/?type=3&theater>