

Answer to Question:

The 'Illah (Shari'ah Reason) of the Law!

To: Mohamed Abou Youssef

(Translated)

Question:

Assalamu Alaikum, may Allah bless you.

Our Sheikh, my question is that can the 'Illah (Shari'ah reason) of the Hukm (Law) be deduced from ﴿ذَلِكَ أَذْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ﴾ **“That will be better, that they should be known (as free respectable women) so as not to be annoyed.”?**

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

The Ayah (verse) is the Hikmah (wisdom) behind the obligation of the Jilbab and not the 'Illah (reason) of the rule. Here is the clarification:

1- As mentioned in the Answer to Question on 10/7/2018, the reason for the revelation of the Ayah was to distinguish free women (Hara'ir) from those who are slaves (Imaa) as the Jilbab is not made obligatory on the slave women. So, some hypocrites used to approach slave women and say indecent words because they found the punishment for harassing a slave woman (Amah) is light, not as that for harassing a free woman (Hurrah). So, when one is heard saying that to a free woman, he is taken to the judiciary and there he says, I thought she was a slave woman, so that he is given a lighter punishment. The verse came down to cut this excuse on them, so it obliged the free believer women to distinguish themselves from the slave women by wearing the Jilbab and to let it drape to the bottom of the feet, and then they (the hypocrites) cannot say that we thought it was a slave woman and the punishment is not made lighter for them because there is no excuse for them.

Ibn Saad said in the Tabaqat that Abu Malik said that the women of the Prophet (saw) used to go out at night for their need, and some of the hypocrites used to approach them and annoy them. When the hypocrites were confronted with this, they said we only do that for the slave women, then this verse was revealed: ﴿يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكُمْ وَبَنَاتِكُمْ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَذْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ﴾ **“Oh prophet tell your wives and daughters and the women of the believers to draw their cloaks (Jalabeeb) all over their bodies. That will be better, that they should be known (as free respectable women) so as not to be annoyed.”** [Al-Ahzab: 59].

Therefore, the meaning of the verse is to recognize the free woman from the slave woman, and the draping down of the Jilbab is for this recognition ﴿ذَلِكَ أَذْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ﴾ **“that they should be known (as free respectable women) so as not to be annoyed.”** That is, it is not for identifying who she is. According to the Tafseer of al-Qurtubi (14/24): Allah (swt) says: ﴿ذَلِكَ أَذْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ﴾ **“that they should be known (as free respectable women) so as not to be annoyed.”** i.e., Al-Hara'ir (the free women), so that they are not mixed with the Imaa (slave women) ... and the desires are cut off from them, and the meaning is not that the woman to be identified until it is known who she is).

2- There is a difference between 'Illah (reason) and Hikmah (wisdom); 'Illah is the Ba'ith (incentive) for the legislation, which is realized from the text, as we have seen previously. However, there are texts that show the meaning of the justification according to the tools of reasoning used or the composition, but other connotations, whether from the same or other text, disrupt the meaning of Ta'leel (justification), and indicate other meaning which is the aim of the Lawgiver (Ash-Shari' i.e., Allah) which He (swt) intended by the Tashreea' (legislation) and not the Ba'ith (incentive) for the legislation. This aim or result that shows the intention of the Lawgiver (Allah) for the legislation has been termed by Istilaah (Technical Convention) "Hikmah" and not 'Illah because it is not the Ba'ith (incentive) for the legislation.

Thus, 'Illah (reason) goes along with the Ma'lool (reasoned rule) in its existence and absence, and is never absent, whereas Hikmah is not so, for example:

- ﴿لِيَشْهَدُوا مَنَافِعَ لَهُمْ﴾ **“That they may witness benefits for themselves”** [Al-Hajj: 28].

- ﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾ **“And I did not create the jinn and mankind except to worship Me.”** [Az-Zaariyaat: 56].

- ﴿إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾ **“...Indeed, prayer prohibits immorality and wrongdoing...”** [Al-Ankaboot: 45].

The context of the words in the previous texts with their connotations, whether from the same or other text, shows that they do not indicate the reasoning in the sense of the Ba'ith (incentive) for the legislation because if they were so, they would not have been absent, for the rule is never absent from the 'Illah; it revolves with it in existence and absence since the rule was legislated for its sake, whereas, Hikmah may be attained in some cases and may not be attained in other cases; that is, it could be absent sometimes:

- ﴿لِيَشْهَدُوا مَنَافِعَ لَهُمْ﴾ **“That they may witness benefits for themselves”** [Al-Hajj: 28]... and there are many who perform Haj and do not witness benefits.

- ﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾ **“And I did not create the jinn and mankind except to worship Me.”** [Az-Zaariyaat: 56]... and many of the Created do not worship Allah (swt).

- ﴿إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾ **“...Indeed, prayer prohibits immorality and wrongdoing...”** [Al-Ankaboot: 45], and there are people who pray but are not prevented.

Therefore, the above examples are termed (Hikmah) and not ('Illah) because the rule could be absent, and so is true for everything that the term Hikmah is applicable to it.

3- And now let us consider the Noble verse which is the subject of the question:

A- The Shari'ah ruling comes from: ﴿يَذْنِبْنَ عَلَيْهِنَ مِنْ جَلَابِيبِهِنَّ﴾ **“draw their cloaks (Jalabeeb) all over their bodies.”** [Al-Ahzab: 59], thus, this is the Daleel (Shari' evidence)

B- It is clear that ﴿ذَلِكَ أَذْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذِنْنَ﴾ **“That will be better, that they should be known (as free respectable women) so as not to be annoyed”** [Al-Ahzab: 59] is not the Ba'ith (incentive) for the legislation; that is, it is not the evidence for the obligation of the Jilbab, and thus not a 'Illah, but is the result achieved by the Jilbab, which is the aim of the Lawgiver (Allah) that He intends.

C - This result may be absent, where free women may wear Jilbab but there are no slave women to distinguish them from, so as not to be annoyed.

D - And so, ﴿ذَلِكَ أَذْنَىٰ﴾ **“That will be better”** [Al-Ahzab: 59] is a Hikmah and not a 'Illah in the Technical Convention of Usulliyeen.

This is what I see, and Allah is the Most Wise and Most Knowledgeable.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

7th Jumada I 1440 AH

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192/983480101849061/?type=3&theater>

The link to the answer from the Ameer's Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/ZNrJtLLvzu>
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