

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

Answer to Question

The Obligation of Successive Fasting of the Expiation (Kaffara)

To: Abu Hanifa Al-Shami

(Translated)

Question:

May Allah bless you, our eminent Ameer,

What if he starts fasting the two months in the month of Dhul-Qi'dah, for example, is it permissible for him to fast on the day of al-Adha, or is it permissible for him to interrupt the sequence by breaking the fast and then making up for it after that?

Please advise us, may Allah bless you

Answer:

Assalam Alaikum Wa Rahmatullah Wa Barakatuh,

In your inquiry you comment on the answer to the question that we issued on 15 Sha'ban 1443 AH corresponding to 18/3/2022 CE, about the expiation for accidental killing, and if it is permissible for the month of Ramadan to be among the two months of the expiation that Shariah enjoins their fasting for those who cannot find a neck to free.

And you are asking about the sequence of the consecutive two months, if the fast begins in the month of Dhul-Qi'dah, is it permissible for him to fast on the day of al-Adha, and if it is permissible for him to interrupt the sequence by breaking the fast during al-Adha?

The answer to that is as follows:

1- The ruling on expiation for accidental killing is stated in the Allah's saying: ﴿وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَفْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدَوِّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا﴾ **And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise” [An-Nisa: 92].** According to this noble verse, what is required in the absence of the neck to free, is to fast two consecutive months, and this means that the one from whom the expiation is required must fast at a time in which he can achieve what is required in the verse, of consecutive fasting of the two months. This is not possible in Dhul-Qi'dah and Dhul-Hijjah because fasting is interrupted by the presence of the day of al-Adha and the days of At-Tashreeq.

Therefore, the one who is required to carry out the expiation for accidental killing in accordance with this verse, should search for the possibility of fasting two consecutive months without interruption, which he is able to avoid, as we explained in the answer to our previous question.

For your information, in the Kuwaiti Fiqh Encyclopedia, the opinions of the schools of thought on the issue of breaking the sequence with breaking the fast of the two Eids and the days of At-Tashreeq is mentioned as follows:

[What breaks the succession in the fast of expiations:

The sequence of expiation fasting is interrupted by things mentioned by the fuqaha', which are:

.....

C- The advent of Ramadan, the two Eids and the days of Al-Tashreeq:

12- The Hanafi's view is that the advent of the month of Ramadan and Eid Al-Fitr or Eid Al-Adha and the days of Al-Tashreeq interrupts the fasting of the expiation, because of the obligation of fasting Ramadan and the prohibition of fasting the others. Also, for the ability of the person to find two months that do not include what is mentioned. This is also the view of the Shafi'is in fasting of other than the captive. As for the captive, if he fasts according to his own Ijtihad and Ramadan comes or Eid before finishing the two months, this interruption is different to the interruption of breaking of the fast by the sick.

[As for the Maliki's they mentioned: that to deliberately break the day of Eid breaks the consecutive sequence of fasting the expiation, also if then he deliberately fasts Dhul Qi'dda and Dhul Hijjah for the expiation of Zihar, knowing that Eid will be included in those days, is different to him not being aware, and in this case it is not interrupted. This is like if he thought that Dhul Hijjah is Muharram and he fasts it with the following month thinking that it is Safar, and this later became clear.

As for the Hanbalis their view is that fasting the expiation is not interrupted by that at all, due to the obligation by Shariah to fast Ramadan, and that breaking fast of the two Eids and the days of Al-Tashreeq is an obligation also by the obligation of the Shariah, i.e., that the Shariah forbade him from fasting that time, like the night] **End.**

This means that the Hanafis, Shafi'is and Malikis believe that breaking the fast on the day of Eid interrupts the sequence of the two months of expiation, that is, the one who has to carry out the expiation must start the calculation of the two months anew. As for the Hanbalis, the succession of the two months of expiation is not interrupted by Eid al-Adha.

2- As for fasting Al-Adha day and the days of At-Tashreeq, it is not permissible, this is due to what Muslim narrated from Abu Huraira (ra) that the Messenger (saw): «نَهَى عَنْ صِيَامِ» **“He forbade fasting on two days - the day of the Id al-Fitr and the day of the Id al-Adha.”** For what was narrated by Muslim from Nubaisha al-Hudhali, he reported that Allah's messenger said: «أَيَّامُ التَّشْرِيقِ أَيَّامُ أَكْلٍ وَشُرْبٍ» **“The days of at-tashriq* are days of eating, drinking.”** This means that the person who carries out the expiation is not allowed to fast on the Day of Al-Adha or the days of At-Tashreeq if the expiation fasting includes them. Rather he must break his fast on those days. Thus it means the break of the consecutive expiation fasting that he started in Dhul Qi'ddah. This means **he must begin to fast for two consecutive months other than what he previously fasted due to the interruption of the sequence required by Shariah in fasting the two months of the expiation.**

3- When reviewing the answer to the question that we issued on 15 Sha'ban 1443 AH corresponding to 18/3/2022 CE, it came to our attention that there was a clerical error that occurred apparently inadvertently, and it was stated in the aforementioned answer:

[The expiation for accidental killing is to fast for two consecutive months for one who does not have a neck to free, or to feed sixty poor persons, as stated in the noble verse ﴿وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا﴾ فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ ﴿ۙ﴾ And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a

believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise” [An-Nisa: 92]].

So, the statement in the previous answer: “It is to fast for two consecutive months for one who does not have a neck to free or to feed sixty poor persons” is correct to the word “to free it.” As for the sentence “or feeding sixty poor persons” it is not correct, it is not valid for the expiation for accidental killing to feed sixty poor persons, and the verse in the answer did not mention feeding sixty poor persons, rather the answer stated that the one who is unable to fast should feed... It was mentioned in the aforementioned answer, part 3:

(What I view as stronger, is that if he is not able to fast for the approved reason, as we mentioned above, then he does not have to do anything, but rather he asks Allah’s forgiveness and draws close to Him with supererogatory deeds, and Allah is Forgiving, Most Merciful. As for why we did not measure the expiation for wrongful killing on the expiation for zihaar, because there is no analogy (qias) in expiations, it has no l’la (reason/cause)...etc.)

Based on this, it seems that this sentence (or feeding sixty poor persons) has been inadvertently placed in this place, as it contradicts the rest of what was stated in the answer referred to, and the correct thing is to say this by deleting the incorrect sentence:

[The expiation for accidental killing is to fast for two consecutive months for one who does not have a neck to set free, as stated in the noble verse: ﴿وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا﴾ And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise” [An-Nisa: 92]. It is clear from the verse that what is required is fasting these two months for the expiation, and it does not include other fasts that are required for other than expiation, such as fasting in the month of Ramadan, the Shariah text regarding fasting Ramadan is: ﴿شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ وَالْفُرْقَانِ فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ﴾ “The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it” [Al-Baqara: 185]. It is a different Shariah text to the expiation for killing, so they do not overlap.]

I hope the answer is clear.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

28 Dhul Qi'dah 1443 AH

27/6/2022 CE

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

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/583704456650261>