

"Necessity makes forbidden things permissible"

Shaykh Aboo `Abd-al-Mu`iz `Alee Farkous al-Qoobee

Article taken and slightly adapted from: ferkous.com

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

Question: What are the norms of necessity that make permissible something prohibited?

Answer: All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers till the Day of Resurrection.

Necessity is the case of danger or extreme difficulty that happens to a person so that he fears that harm or an injury happens to himself, to one of his organs, to his honour, his reason or his money; that is to say: if the case is not respected, it is feared to lose necessary interests, because necessity has a direct relationship with the harm which is, at the basis, forbidden. It is then allowed for a constrained person to do something legally forbidden as committing something illicit or leave a duty or delay it in order to prevent harm from happening to him if he is almost sure of its occurrence, by taking into account the conditions and norms of the Sharee'ah that will be explained below. In order to put him at ease, the constrained person does not incur sin as for the right of Allaah. Whereas, people should be compensated for the undergone wrong as regards their rights in order to put them at ease.

The conditions and the norms of the Sharee'ah are as follows:

Firstly: that the necessity exists really and is not illusory, potential, or expected, because it is not allowed to give mitigated rulings by basing one's judgment on expectation and imagination.

Secondly: that the necessity should be a constraining one as if you fear damaging yourself, losing necessary interests which consist in the preservation of the five necessary things:

- the religion,
- the soul,
- money,
- reason and
- honour.

Thirdly: that there will be no other permissible means for the constrained person to push the evil but those which contradict the Sharee'ah, by not fulfilling orders and committing inhibitions.

"Necessity makes forbidden things permissible"

Fourthly: that the constrained person should limit himself to what is permitted in case of necessity by using just the needed amount to drive the evil away. That is to say, the minimum, that is why the rule: "***Necessity makes forbidden things permissible***" is restricted by a secondary rule which is: "***Necessities should be evaluated in a proper manner***".

Fifthly: that the duration of the authorisation for the constrained person should be restricted to the duration of the excuse. If there is no excuse, there will be no authorisation and permissibility, according to the rule which stipulates that: "***If the danger disappears, the interdiction will become effective***" or the rule: "***If the cause of forbiddance disappears, the forbidden thing reappears***" or the rule: "***The permissibility which is due to an excuse is invalidated by the disappearance of the excuse***".

Sixthly: that the harm of the forbidden thing which is allowed is lesser than the harm of the case of necessity. If the harm in case of necessity is less or equal, it will be not allowed [to commit the forbidden act], like forcing somebody to killing or committing fornication. Both are not permitted as their harm is outweighing, since the self of the killer and his honour have not priority over the self and honour of the killed person.

For this reason, it is not allowed to disinter the body – of a person who is not shrouded – from its tomb in order to shroud him, as the harm engendered by flouting the honour of the dead is stronger than the fact of not shrouding him, since the tomb can stand in for the shroud.

Seventhly: that the necessity should not be a cause of nullifying the rights of persons, as: "***Harm should not be removed by a same harm***" and: "***Harm should be removed without harm***" and: "***Necessity should not nullify the rights of others***". And the harm inflicted to others should be compensated by the person who caused it.

Eighthly: that the constrained person should not contradict the rules and general fundamentals of the Islaamic Sharee'ah, which are preserving the principles of creed, being equitable and restoring deposits [to their owners]. So, all that goes against the rules of the Sharee'ah, the necessity is not considered in it, because the constrained person then should contradict just some rulings of the Sharee'ah but not its general rules.

Finally, and in order that the use of the rule which stipulates that: "***Necessity makes forbidden things permissible***" becomes valid, we should take into consideration those conditions and restrictions to avoid the rulings of forbiddance and obligation due to this rule.

The perfect knowledge belongs to Allaah. Our last prayer is all praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon our Prophet ﷺ, his Family, his Companions and Brothers till the Day of Resurrection.

Algiers, Dhu Al-Hijjah 25th, 1427 H. January 14th, 2007.