

CLOSURE OF MASAAJID AND MY RESPONSE TO SUPPORTIVE ARGUMENTS

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In the Name of Allah The Most Merciful, The Most Beneficent

Before the lock down I had issued a ruling that it is not permissible to close down Masaajid for the five daily namaazes and Jumu'ah salaah. In that ruling I had also advanced Shar'ee evidence for my view. In this document I shall repeat the reasons, with further explanation, for which I believed it was not Islamically correct to suspend or halt jamaat salaah in the masaajid during the current pandemic. I would also like to take this opportunity to respond to some of the arguments presented in a panel discussion on Radio Islam as well as on other media platforms in various publications and posts. I am doing this purely to clarify our stance on the matter, and not to malign or vilify any aalim or individual.

As we go along, I shall elaborate on the broader reasons and evidences on the basis of which many Ulema have ruled that it was wrong and contrary to Shariah to close the masaajid, or as some prefer to say, 'suspend' the five daily jamaat salaah. Whether one calls it suspension or closure, in essence it boils down to the fact that the Musjids have been effectively closed to the Muslim public.

THE POSITION OF JAMAAT SALAAH IN ISLAM

It must be well understood that the jamaat salaah is a wajib or obligatory practice, and it ranks among the *Sha'air* or salient features of Islam. *Sha'air* or salient features are such acts and tenets of Islam, that when practiced, portray the glory and greatness of Islam to the onlooker. Upon witnessing such events, the observer, especially one who is not a Muslim, immediately realizes that this is the Religion of Islam at work. Examples of these *Sha'air* or Salient Features of Islam are: *the azhaan, the Masjid, the Hajj, Eid salaah, Jumu'ah salaah, Qurbani*, etc. Jamaat ranks among these *Sha'air*. The *Sha'air* enjoy a very special and prominent place in Islam, unlike other deeds that might technically be more important in terms of classification. Hence, these salient features of Islam are given preferential treatment and greater prominence.

For this reason, the Jurists have stated that should any community in an Islamic state abandon the jamaat salaah in the masjid, the ruler or head of state is obliged to compel that community to resume the jamaat salaah, even using maximum force, such as waging war against the offending party, since they are considered as rebels against the Islamic state for failing to protect this sacred feature of Islam.

WHY SUSPENSION OF JAMAAT AND CLOSURE OF MASAAJID

In support of jamaat salaah suspension some Ulema have cited those reasons or excuses that permit an individual to absent himself from jamaat salaah. However, I believe that was not the right approach to the matter. The issue under contention has nothing to do with individuals missing jamaat salaah. At this juncture we need to differentiate between the case of one, single individual missing jamaat salaah and a situation where, the entire community, en masse, is prevented from attending the masjid. The latter is in stark contrast to the former. The classical Jurists of Islam have defined a number of reasons for which one may miss a jamaat in the masjid and offer the salaah at home instead. But I believe that at this stage we do not even have to consider these individual and peculiar reasons for missing jamaat salaah. That is not the context of our discussion, and is not at the core of the debate. The bigger picture is the closing down of not one, but many masaajid on a national scale, thereby preventing scores of individuals and congregations from offering salaah in a Masjid.

Once the difference between the two scenarios is understood, it is evident that in the frame of our discussion, individual reasons and excuses for missing jamaat salaah cannot be used as evidence. To do so is, in the humble opinion of this writer, pointless, futile, and irrelevant.

AN UNPRECEDENTED ACTION

The suspension of jamaat salaah in masaajid is an unprecedented event in the annals of Islamic history. Never has there been a lockdown of masaajid on such a large scale, not even in one single town, let alone world-wide.

I have heard two precedents being cited for the closure of masaajid in the past. One was during a massive plague in the year 449 AH; a plague that affected almost the entire Middle East and parts of North Africa. However, I submit that this event cannot be used as a precedent for the phenomenon under discussion, because in that time the closure of the masaajid in some of the affected places, like Egypt, was not a deliberate act to stem the spread of the plague. Instead, those masaajid were closed because people had died on such a large scale that entire communities were wiped out, leaving no one to attend the masaajid. In other words, the closure of the masaajid in that plague was forced upon communities by the widespread devastation of the plague. This was not by plan or design; rather by force of circumstances. This incident, therefore, does not serve the cause of our opponents at all.

Secondly, on the assumption that the closure of masaajid during that plague was an orchestrated and deliberate move, I believe this is an historical event and not a matter of legal, Shar'ee opinion. Historical occurrences that are not backed by fatwa, do not represent proof in Shariah. There is nothing to suggest that a fatwa was issued by the Muftis of that time to close down or suspend jamaat salaah. It was an event driven by elements beyond the control of the people at that time, and not the result of any Shar'ee fatwa or informed opinion. There are many incidents in history that conflict with

authentic Shar'ee textual evidence. In such cases the Shar'ee evidence takes precedence. Another reason why historical episodes and incidents do not constitute Shar'ee proof is that many of these narrations are transmitted via insecure and unauthentic chains.

I shall respond to the other precedent further on in this article.

The one and only reason advanced for the suspension or discontinuation of jamaat salaah is *to stop the spread of coronavirus*. It is, therefore, our duty to ascertain whether this constitutes a valid reason in Shariah. In my humble opinion, this is not a tenable Shar'ee reason for suspending jamaat salaah. Just the fear of the virus spreading or being contracted by others is insufficient grounds for the large scale closure of masaa'id, and for asking thousands of Muslim not to attend the Musjid. We need to weigh the possibility or likelihood of the virus spreading against the importance attached to the functioning of a Musjid. Are we allowed to commit a wholesale closure of the masja'id just on the basis of a possibility that people attending the congregation might spread or catch the virus?

WHY WE BELIEVE CLOSURE OF MASAAJID IS WRONG

There are two ways we can address this question. The answers will also constitute our proof for the ruling stated earlier. Shariah has made a distinct difference between causes that are certain to bring about an effect, or almost certain to do so, and causes that may possibly bring about the same result, or have a slight to average likelihood of that result. An example of the first is consumption of food and drink. Both are causes for the satiation of hunger and quenching of thirst; these are causes that are certain to achieve their results. Likewise, flinging oneself from the roof of a high building is an act that will certainly cause death, barring a miracle. Drinking poison, too, will almost certainly cause death. These causes are categorized as *zhannul-ghaalib* or causes wherein the outcome or effect is overwhelmingly certain. An example of the second type of causes, those that are perhaps likely to bring about a particular result, but without certainty, is taking medication for illness, or treatments for ailments and disease. For each one of these two types of causes Shariah has fixed a different set of rules.

We may illustrate the two types of causes by the following examples. A person drives a vehicle at top speed, exceeding the speed limit. At such a speed it is highly likely, or almost certain that hitting a pedestrian will result in death. Should that happen, Shariah will hold the driver responsible for manslaughter or homicide. That is the first type of cause. On the other hand, a person drives at such a speed that there is a relatively small likelihood or possibility of killing someone on account of him remaining within the speed limit. Should the accident happen, it will not be regarded as a form of murder in Shariah.

From the above it is clear that results or effects brought about by the two different causes have two entirely different rulings in Shariah. In the first case, a person who is dying of thirst, for instance, refuses to drink water and passes away. Such a person will be sinful and his act is akin to suicide, because the cause is one that would have certainly saved the victim's life. For this category of causes, Shariah allows concessions whereby acts that are unlawful become lawful for as long as the cause remains, or one who has perpetrated a wrong as a result of that cause will be spared condemnation or censure. Even wine and swine become halaal in such cases. This is also interpreted in Shariah as *dharoorah* or cases of dire need.

In the second case, should a patient refuse medication for his or her illness, and then dies, no sin has been incurred and the act is not likened to suicide. This is because the cause (medication or treatment) is not regarded in Shariah as a cause that is certain or definite, though doctors and health experts might believe otherwise. In this category of causes, Shariah grants leeway to a certain extent, but does not allow an unlawful act to become unlawful. In other words, Shariah demarcates the limits to which concessions are granted for these types of causes.

EXAMPLES IN HADEETH

There are examples in the hadeeth of the Rasool of Allah (sallallahu alayhi wasallam) advising the ill to take medication, while not enforcing this, as there are examples of some of his companions who never resorted to any medication at all during illness.

There is an example in Saheeh Bukhari of a Sahaabi who suffered a severe head injury. When he woke up for Fajr salaah, he realized he needed a compulsory bath. He then asked his companions whether he was allowed to make tayammum. Due to lack of knowledge they insisted that he had to have a full bath and was not allowed to make tayammum. The result of him having to bath with ice cold water in extremely icy weather (since they were on a journey) resulted in his death. When the Rasool of Allah heard this incident, he was extremely upset and blamed the deceased's companions for his death, since they had given him the wrong advice. From this we glean that this person had permission to omit the compulsory bath since the open wound would have certainly lead to loss of life or limb when exposed to icy cold water and cold conditions.

Another example of the difference in causes is the incident mentioned about Rasoolullah (sallallahu alahyi wasallam) in Surah Abasa (Ch.80). The Messenger of Allah was busy inviting senior leaders of the Quraish to Islam when a blind Sahaabi came to see him. He frowned upon the arrival of this Sahaabi, for he feared the Quraishi leaders might disperse, thus depriving him of an opportunity to win them over to Islam. However, Allah decided differently. Allah wanted the Messenger to ignore the Quraish and give the blind Sahaabi his full attention. The reason for this was that the conversion to Islam of these Quraishi leaders was not certain, in fact, not even close to certain. That was not enough cause for him to turn away one who

sincerely intended to learn more about Islam. This is an example where a major Shar'ee preposition was not to be abandoned for a minor cause.

The rules and principles mentioned above are found in most of the classical works of fiqh, such as *Hedayah*, *Fataawa-Al Hindiyya*, *Raddul-Muhtaar* and are common in most of the other known Schools of Fiqh.

DOES THE CORONAVIRUS CONSTITUTE A VALID CAUSE?

We view the matter under contention in the light of the above Shar'ee principles. The objective in suspending jamaat salaah is to observe what modern medicine terms as 'social distancing', which is designed to protect people from contracting the virus. It is my considered opinion that social distancing will fall under the second category of causes, those that are not certain to bring about an effect. In other words, there is no overwhelming evidence that in a gathering of people a few will certainly contract the virus, or when contracted the virus will lead to loss of life or limb.

Many health and medical experts have stated on record that most people who contract the virus and have a reasonably good immune system, will recover. The old and those who have other serious medical conditions are at risk. Experience has proven that not all people who come into contact with coronavirus carriers become infected. I can cite recent cases of this nature here in South Africa.

In the light of the above I venture to say that social distancing, *while permissible and at times encouraged by Shariah*, is insufficient grounds to suspend jamaat salaah on a large scale by locking up masaajid. This falls within the second category of causes, one that is not overwhelmingly certain in its outcome, and thus, cannot legalize an unlawful act. Closing down masaajid on a mass scale is unlawful; the possibility of contracting the virus does not present solid reason for adopting this unlawful practice.

I hasten to add that those who have tested positively for coronavirus, the elderly, or those generally ill, would be allowed not to attend jamaat salaah during the pandemic. In their case, this would constitute valid reasons for not attending the masaajid.

PREVENTION AND CURE

Another way to view the issue under discussion is by highlighting the difference between prevention and cure. We have preventive measures to which Shariah attaches a different ruling, and we have curative measures that have another set of rules. Social distancing is of a preventive nature. This does not allow for any drastic changes to Shar'ee Law. Sometimes a preventive measure will be permitted in relation to a particular individual, but that does not hold good for an entire congregation. I do not believe social distancing is a strong enough case for the closure of masaajid.

As for curative measures, there is more leeway in Shariah whereby certain strict rulings can be relaxed. Examples of this are utilizing medication that contains alcohol when there is no alternative medication for the illness; permission to use capsules manufactured from haram gelatin in the absence of any other medication.

A HISTORICAL PERSPECTIVE INCLUDING SOCIAL DISTANCING

Historically, the world has seen literally hundreds of plagues. In fact, this pandemic can hardly be termed a plague. The world, especially Europe, will sadly remember the Bubonic plague of the fourteenth century and its wanton destruction of human life. The outbreak of this coronavirus looks very ordinary in the face of those deadly and destructive plagues, for which no cure was ever developed. Islamic history, too, is punctuated with many outbreaks of plagues, during which Sahaaba also succumbed. Yet, there is not a shred of evidence to indicate that the masaajid had ever closed down during those plagues, in spite the common knowledge that existed even then that plagues were contagious, through the Will of Allah. Even in those times, there was a certain degree of ‘social distancing’, imposed only on those who suffered the severe effects of the plagues. Some narratives indicate that these people were asked to remain in their homes, or were housed in a separate building or hospital to be treated and cared for. As for the healthy among them, they all attend the masaajid for salaah, as normal.

ANSWERING SOME OF THE SECONDARY ARGUMENTS

- Reference was made by one of the Radio panelists to a ruling in the famous Fiqhi Magnum Opus of Imam Ibn Maazah, *Al-Muheetul Burhani*. It was said that Imam Ibn Maazah had stated that *Jumu’ah salaah will not be permitted by the people of a locality or masjid when they were prohibited from doing so by the Muslim Ruler*. Though I was unable to locate this particular *mas’ala* in the said Fiqhi work, presumably through my laxity, we assume this ruling has indeed been mentioned therein. However, such a precedent cannot be used as an analogy to our case. There is a marked difference between a directive issued by a Muslim Ruler and one that emanates from a non-Muslim head of state pertaining to a strictly Shar’ee matter. Secondly, we need to see the circumstances surrounding such a ruling. Many a time a law is mentioned in the former books of Fiqh, but there are conditions and attendant circumstances that serve as a context for that ruling. This an aspect of Fiqh that we cannot ignore. The context of that ruling might be entirely different to what we are currently facing. Thirdly, there is no doubt the reference is to the closure of **one** particular masjid, while others remained open for Jumu’ah salaah. This was not a closure of all masjaaid and a national shutdown of the Jumu’ah salaah. Fourthly, this applied to only Jumu’ah salaah and not the five daily salaah. Ulema are well aware that in former times each city had one Jumu’ah masjid or Jaami’ Masjid. On the Day of

Jumu'ah, all other masjids were locked up so that people were forced to attend the main, Jumu'ah masjid for the Friday prayers. This maintained the unity of the community. It is, therefore, erroneous to draw an analogy between the ruling of *Al-Muheet* and the closure of masaajid in today's times. This is known in usool-e-fiqh as *qiyas ma'al faariq*, or a palpably false analogy.

- It was mentioned by a member of the panel discussion that a religious gathering (Ijtima) in Malaysia was the cause of the coronavirus outbreak in that country. The motive of this was to suggest that gatherings in masaajid can become direct causes of coronavirus spreading. I totally reject this claim. This is pure speculation, spurned from media propaganda against Muslims, and is not backed up with any solid evidence. The same was said by the Indian media about the Niznud-deed Ijtima. Alhamdu-lillah, this anti-Muslim propaganda was silenced by several Ulema and Muslim media outlets in India. The coronavirus is a stealthy assailant. No one can tell when and where it will emerge. Doctors know this well. To date scientists are unable to pinpoint where the virus exactly originated. To target a religious gathering and to heap the blame of the virus spreading on the attendees is as cruel as it is unreasonable.

- An argument cited in favour of the masaajid lockdown is that Ulema in other countries, as well as in the three holiest sites of Islam, have all called for a closure of masaajid. My response to this would be that the panelists themselves acknowledged that there was "vigorous debate" among those Ulema before taking this decision. This debate indicates that there were some Ulema who differed in opinion. And this is still the case. It must be born in mind that in matters of Fiqh, might is not always right. It is not necessarily the majority who will be deemed correct in a fatwa. Instead, it is whose proof is the strongest that decides which view is most correct. There are countless examples in the works of Fiqh of how the former Jurists differed in opinion, and the view of a minority was considered the correct view. Furthermore, just recently, all the Ulema of Pakistan had taken a unanimous decision to re-open the masaajid. The Pakistani government later acceded to this decision and allowed all masaajid to open under certain restrictive conditions. For us here in South Africa, the Ulema of Pakistan have always set the benchmark in many aspects of Deen. The argument, therefore, that Ulema world-wide have agreed to a lockdown of masaajid must seriously be re-considered in view of this new development. Here in South Africa, we have seldom followed the rulings and decisions of the Saudi regime.

THE CONTEXT OF THIS FATWA

Finally, it must be born in mind that the initial call by Ulema for masaajid to remain open during these times was issued before the announcement by government of a national lockdown. At that stage Muslims were still allowed to offer salaah with jamaat in the masaajid. However, the implementation of this lockdown has left most Muslims

with no choice but to offer salaah at home. Our fatwa, therefore, must be considered in that context, and should not be construed as call to Muslims to defy the government's lockdown regulations.

As regards the petition to government to allow masaajid to be re-opened, and the subsequent High Court Application in this regard, these are legal channels that are permissible to pursue in terms of our Constitution, and that were necessary to be explored in terms of Shariah.

It is indeed deplorable and sad to note that this very legitimate and lawful application is being opposed by our own Muslim scholars and learned men. If they differ in opinion on this matter, the least is to remain aloof from actively and purposely launching opposition. In any case, regardless of the outcome of these legal applications, Muslims can feel secure in the knowledge that they have explored all avenues and exhausted all efforts for the re-opening of the masaajid, while still remaining within the ambit of the Law.

And Allah Ta'ala knows best, for His Knowledge is Infinite and all-encompassing

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