

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

Answer to Question

**The Saying “The Wellbeing of Human Bodies Takes Precedence  
Over the Wellbeing of Religions”**

To: Mohammad Abdul Basir

(Translated)

**Question:**

Assalamu Alaikum our eminent Ameer,

These days, we are faced with a phrase that is repeated by different segments of society, about the issue of distance in prayer, as they invoke what indicates that it is a jurisprudential rule that (the wellbeing of (human) bodies takes precedence over the wellbeing of religions)! Could you kindly further clarify whether this is a jurisprudence rule on which it is actually based? What are the controls for that?

**Answer:**

Before answering your question, I would like to mention the following:

1- The universal rules in jurisprudence are Shari'ah rules that are derived from Shari'ah evidence by a correct Shari'ah derivation, and that the verdict is attributed to one of the universal expressions and not to a general expression. It was stated in the pamphlet *Kurrasah*:

[The Shari'ah universal rule is the general verdict which is applicable on its partials. And it is a verdict because it is derived from the address of the Legislator, so it is the meaning of the address of the Legislator. And as for its being universal, that is because it is not attributing a verdict to a common expression so that it can be called common verdict like the saying of Allah (SWT): {... وَأَحَلَّ اللَّهُ الْبَيْعَ} “**And Allah has permitted the sale...**” [Surat Al-Baqarah: 275], it is applicable to all kinds of sales so it is a common verdict, and like His (SWT) saying: {... حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ} “**Forbidden for you (of food) are: dead meat...**” [Surat al Maa'idah: 3], it is applicable on every dead meat so it is a common verdict, but the general verdict that can be a universal rule occurs by attributing the verdict to one of the universal expressions; therefore it is called universal (*kully*); and therefore every verdict included in the meaning of this expression is one of the partials of this universal verdict, not one of its individuals. It is like the rule: "The means to what is forbidden is forbidden" and the rule: "That which the obligation cannot be completed without it; it is an obligation" and the likes. So in these rules the Shari'ah verdict, which is the forbiddance, is not attributed to a general expression, like the sale is permissible, but it is attributed to a universal expression which is "the means to what is forbidden ...", and the Shari'ah verdict which is the obligation is not attributed to a general expression, like "the dead meat is forbidden", but it is attributed to a universal expression, which is: "That which the obligation cannot be completed without it..."; and therefore it is universal....] **End.**

2- Then, the evidence from which the universal rule is derived must include a Shari'ah 'illah, or a matter that is like an 'illah, as the evidence indicates the verdict and something else that is related to it or results from it, so it looks as if it is an 'illah, so that the universal composition for the rule can be made. It was stated in the book, *The Islamic Personality, (Shakhsiyah Islamiya) Volume III* in the chapter on “The Universal (Comprehensive) Rules (Of the Shari'ah)”:

[... The universal rules are derived from the Shari'ah text same like the derivation of any Shari'ah verdict either from one evidence or from several evidences, but the evidence of them includes a meaning similar to an 'illah, or it includes an 'illah. And this is what makes it applicable to all its partials, ... for instance the saying of Allah (SWT): {... وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ} “**And insult not those whom they (disbelievers) worship besides Allah, then they insult Allah wrongfully without knowledge...**” [Surat Al An'aam: 108], the (consequence) particle "ف" in the word ﴿فَيَسُبُّوا﴾ “**then they insult**” denotes that your insult to their idols leads to their insult to Allah, and this is forbidden, so it necessitates that your insult to their idols in this situation is forbidden, so it is like an

'illah. So the forbiddance of insulting the disbelievers is the evidence of the verdict, and beside its denotation of the verdict it denotes something else originated by it, which is His saying: ﴿فَيَسُبُّوا اللَّهَ﴾ **“then they insult Allah”** so from this Verse derived the rule: "The means which leads to what is forbidden is forbidden"....]

In this way, the rule "That which the obligation cannot be completed without it; it is an obligation" was derived... This is about the requirement of (the evidence includes a meaning) “similar to an 'illah”.

As for the evidence to include an 'illah, the following was mentioned in *The Islamic Personality*, (Shakhsiyah Islamiya) Volume III after the aforementioned on “similar to an 'illah”:

[for example the Messenger (SAW) said: «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلْبِ وَالْمَاءِ وَالنَّارِ» **“The Muslims are partners in three: in the pasture, the water and the fire”** compiled by Abu Dawood, and it is proven that he approved people in Al Madeenah and in Al Dtaa'if on their private ownership of the water, and it is understood from the situation of the water which he allowed to be owned privately that the public had no need in it, hence the 'illah which made the people partners in those three is because they are from the utilities of the public, so the evidence denoted the verdict and the 'illah, i.e. it denoted the verdict and something else that was the reason of legislating the verdict, so the rule: "All that which is from the public utilities is a public property" got derived from it, and thus are all the universal rules.]

Then *The Islamic Personality* concluded the topic with the following:

[And from that it became apparent that the universal rule makes the verdict like an 'illah for a universal verdict; because it is a cause for it, i.e. because it is resulted from it or originated by it, or it makes it a real 'illah for a universal verdict, so it is a universal verdict which is applicable on its partials; therefore it should be applied on every verdict on which it is applicable, the way the evidence is applied on the verdict it brought, so it is not proven by Qyaas, but they are partials of that universal rule and classified under it, so they are included in its connotation or in its literal meaning exactly as they are included in the denotation of the evidence, and the inference by it (the rule) is like the inference by the evidence...].

3- Accordingly, the considered universal Shari'ah rules are the ones that are derived by Shari'ah derivation according to the above, i.e. they fulfill the following conditions:

A- It must be derived by a valid Shari'ah derivation according to the principles of jurisprudence...

B- The derived ruling denotes universality, under which partials are classified...

C- That the evidence from which the general rule is derived includes an Shari'ah 'illah or something like an 'illah, and then the universal formulation of the Shari'ah rule.

These are the considered rules derived from a Shari'ah evidence by Shari'ah derivation, but the rules that are not derived from a Shari'ah evidence, or not derived by Shari'ah derivation are not considered and have no value.

By reflecting on the saying mentioned in the question (The wellbeing of human bodies takes precedence over the wellbeing of religions), the following becomes clear:

1- This saying has not been derived by Shari'ah derivation from evidence that includes an 'illah or something similar to an 'illah for it to be a valid universal rule under which partials are classified...

2- As for those who say that it is derived from the evidence for the prayer of the sick person who is unable to stand and prays sitting, this is not a Shari'ah derivation because this is a special ruling that does not go beyond the patient who is unable to pray standing and prays sitting, and does not include the one who prays standing but is separated from the worshiper next to him by a meter or two meters!

3- Accordingly, this saying “the wellbeing of human bodies takes precedence over the wellbeing of religions” is not a jurisprudential rule in this sense according to the jurists as I know. Rather, it is from the words of the public such as: “Observing human bodies is better than observing religions.” And their saying, “The goodness of human bodies is more important than the goodness of religions.” These are all not Shari'ah rules. There are even jurisprudence sayings that contradict them ... For example, [Ibn Amir Hajj al-Hanafi (the preservation of faith has utmost priority over everything else in the case of conflict of the necessities, because it is the greatest aim. Almighty said: ﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾ **“I did not create jinns and humans except that they worship Me”** [Surah Adh-Dhariyat: 56]., Al-Taqrer wa al-Tahbeer by Abu 'Abd Allah, Shams al-Din, known as Ibn Amir Hajj al-Hanafi (died: 879 AH)].

4- Therefore, this saying is not considered among the Shari'ah rulings, and its inclusion in the subject of distance is not valid in any case. As for the Shari'ah verdict on social distancing, we have

previously issued several detailed answers on this subject, and I will only remind you of two answers on this topic:

**- The first question and answer from 17 Shawwal 1441 AH corresponding to 8/6/2020 CE and I quote for you:**

[... Third: It is not said that contagious disease is an excuse that permits distancing in prayer, because contagious disease is an excuse not to go to the mosque and not an excuse to go and be at one or two meters apart from the worshiper beside him!! Because infectious diseases (the plague) occurred during the era of the Messenger of Allah (saw) and it was not reported from the Messenger Allah (saw) that the plagued patient goes to pray and keeps two meters away from his brother, but is excused and prays in his home... That is, the patient with an infectious disease does not mix with healthy people and is provided with adequate treatment, by the permission of Allah. As for the healthy one, he goes to the mosque and prays Friday and congregation prayers as usual, without distancing. [17 Shawwal 1441 AH corresponding to 8/6/2020 CE] **End.**

**- The second question and answer from 14/10/2020 CE about Friday Prayer, and I quote for you:**

[... It is clear from all of the above that Friday (prayer) is Fard Ain (individual obligation) and that it must be performed according to the method prescribed by the Messenger of Allah (saw) with its pillars (Arkan), conditions of its correctness and making the rows according to the Shari' manner, as we have shown in our previous answers... The prevention by the authority of performing the prayer in this way is a great sin that falls on the shoulders of the authority, whether that is by the state closing mosques or by preventing its performance in the Shari' manner ... And because Friday (prayer) is an individual obligation, every legally responsible (mukallaf) Muslim is obligated to seek it and perform it in the Shari' manner, with its pillars, conditions of its correctness, and keeping rows close together... etc. And if the individual is not able due to a physical impediment or an unjust ruler who prevents the performance of Friday prayers in the Shari' manner, rather he forces the worshipers to innovate by imposing separation, and the worshiper is not able to prevent that, then one should perform it according to his ability, and the unjust ruler bears the sin...

The Messenger (saw) said, as reported by Al-Bukhari and Muslim, may Allah have mercy on them, on the authority of Abu Hurairah, may Allah be pleased with him: «وإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ» **“so if I give you a command do it to the best of your ability”** and the wording is of Al-Bukhari ... Therefore, if a Muslim is able to perform Friday Prayer (individual obligation) in straight rows close together then it should be performed in this manner because separation is an innovation as long as he can avoid it. But if he is not able by the act of sinful authority, then he should pray in the manner that is possible for him. Al-Nawawi, “deceased: 676 AH” said in his book, *Al-Minhaj Sharh Sahih Muslim Ibn Al-Hajjaj*, in explaining of this hadith in the wording of Muslim: On the authority of Abu Hurayrah, the Messenger of Allah (saw) said: ... «فَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ» **“so if I give you a command do it to the best of your ability”** Al-Nawawi said in his explanation: [(«فَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ») **“so if I give you a command do it to the best of your ability”**] this is from the important rules of Islam and the words which are concise but comprehensive in meaning that were given to the Prophet (saw) and include under it countless provisions such as Salah (Prayer) of all kinds. If a person is unable to perform some of its pillars (Arkan) or some of the conditions (Shoroot) he should perform the rest ... Allah Knows Best] **End.**

I hope that this is sufficient, and Allah Knows Best and He is Most Wise.

**Your Brother,**

**Ata Bin Khalil Abu Al-Rashtah**

16<sup>th</sup> Shawwal 1442 AH

28/05/2021 CE

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

<https://web.facebook.com/HT.AtaabuAlrashtah/posts/2939275492985122>