

## Ruling about studying or teaching common law

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

From `Abdul-`Azeez ibn `Abdullah ibn Baaz to our honourable brother, Shaykh Ahmad ibn Naasir ibn Ghunaym, may Allaah increase his knowledge and 'Eemaan (faith) and make him blessed wherever he is. Ameen.

As-salamu 'alaykum warahmatullah wabarakatuh (May Allaah's Peace, Mercy, and Blessings be upon you!)

I received your letter dated 3/5/1397 A.H. (May Allaah guide you), but I was not able to read it until five or six days ago. I understood your question regarding the ruling on those who study or teach positive (man-made) law, as to whether they have committed Kufr (disbelief) or Fisq (flagrant violation of Islaamic Laws) by doing so and whether it is valid to perform Salaah (Prayer) behind them.

The answer is that there is no doubt that Allaah (Glorified be He) obligated His Servants to rule and judge according to His Sharee'ah (Islaamic law). He warned them against resorting to other than it, and declared this as characteristic of the hypocrites. He also said that ruling by other than His Laws is the ruling of Jahileeyyah (time of ignorance) and He (Glorified and Exalted be He) clarified that there are no laws better than His. Almighty Allaah swore that the Servants will not be Mu'mineen (believers) until they make His Messenger (peace be upon him) the judge in all disputes between them and find in themselves no resistance against his decisions and accept them with full submission. He (Glorified be He) also mentions in Soorah al-Ma'idah that judging by other than what He has revealed is Kufr, injustice, and Fisq. Allaah clarifies all the proofs of what we have mentioned in His Book. As for those who study and teach such laws, they are divided into different categories:

- **First category:** those who study or teach them to learn their reality, realise the superiority of the Sharee'ah laws over them, or to benefit from them in a way that does not contradict with the Sharee'ah, or to benefit others in these regards. As far as I can see, there is no sin in this, as evident to me from the Sharee'ah; in fact, they will be rewarded and praised if they want to show the defects of these laws and the superiority of the Sharee'ah over them. Performing Salaah behind anyone from this group is undoubtedly valid. The ruling on them is the same as for those who study or

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teach the rulings on Riba (usury/interest) or the types of Khamr (intoxicants) and gambling, and corrupt beliefs, to know what they are, clarify Allaah's Ruling on them, and benefit others by this. This is as long as they believe in their prohibition in the same way as the previous group should believe that ruling according to positive laws is inconsistent with Allaah's Sharee'ah. The ruling on them is not that of those who learn Sihr (sorcery) or teach it to others, as Sihr is forbidden in itself, as it includes Shirk (associating others with Allaah in His Divinity or worship) and worshipping Jinn (creatures created from fire) instead of Allaah. Consequently, learning or teaching it to others is not achieved except through Shirk. This differs from those who study and teach positive laws, not to rule in accordance with them or out of belief in their validity, but for a permissible or a Shar'y (Islaamically lawful) purpose as previously mentioned.

- **Second category:** those who learn or teach positive law to judge by it or assist others to do so, believing in the prohibition of ruling by other than what Allaah has revealed, but being motivated by a desire or love of money to do so. Those people are undoubtedly Fasiqs (flagrant violators of Islaamic Law) who are committing Kufr, injustice, and Fisq, however, it is minor Kufr, injustice, and Fisq that does not take them out of Islaam. This is the known opinion of the scholars and it is also the opinion of Ibn 'Abbas, Tawoos, 'Ata', Mujahid, and a group of the Salaf (righteous predecessors) and Khalaf (successors), as was mentioned by Al- Haafidh Ibn Katheer, Al-Baghawee, Al-Qurtubee, and others. It was also mentioned by the scholar Ibn Al-Qayyim (may Allaah be merciful to him) in his book: "Al-Salaah". Shaykh `Abdul-Lateef ibn `Abdur-Rahmaan ibn Hasan (may Allaah be merciful to him) also wrote a good treatise on this issue, which was published in the third volume of "Al-Rasa'il al-Ula (The First Collection of Messages)".

There is no doubt that the people of this category are in great danger, as it is feared that they may fall into Riddah (apostasy). As to the validity of performing Salaah behind them and their likes of Fasiqs, this is a well-known controversial subject. However, the more obvious from the Shar'y (Islaamic legal) evidence indicates that it is valid to perform Salaah behind all the Fasiqs whose Fisq does not reach to the level of major Kufr. This is the opinion of a multitude of scholars and the view of Shaykh al-Islaam Ibn Taymeeyah, who wrote some valuable words in this regard, which we will literally quote here for their great benefit. In "Majmu' al-Fatawa", vol. 23, p. 351, he said: "It is permissible for a man to perform the Five Daily Prayers, Jumu'ah (Friday) Prayer, and others, behind a person who is not known to commit Bid'ah (innovation in religion) or Fisq, by the consensus of the Four Imaams (Aboo Haneefah, Maalik, Al-Shafi'ee, and Ahmad) and other Muslim scholars. It is not one of the conditions for following an Imaam in Salaah that the Ma'mum (a person being led by an Imaam in Prayer) should know what the beliefs of the Imaam (the one who leads

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congregational Prayer) are. They should not also examine them by asking, "What do you believe?" Instead they should pray behind those whose reality is hidden. On the other hand, if they perform Salaah behind someone they know to be a Fasiq or a Muftadee' (one who introduces innovations in religion), there are two well-known scholarly opinions concerning the validity of the Salaah according to the Madh-habs (Schools of Jurisprudence) of Ahmad and Maalik, whereas the Madh-habs of Al-Shafi'ee and Aboo Haneefah say that it is valid.

As for those who say: "I only give my money to those I know," meaning that they do not perform Salaah behind those they do not know, in the same way as they do not give their money to those they do not know, this is an ignorant saying that was not stated by any of the Imaams of the Muslims. If someone gives money to someone unknown, they may deceive them over it or waste it, but if an Imaam makes a mistake or forgets, the Ma'mum will not be blamed for this, as mentioned in the Hadeeth reported by Al-Bukhaaree and others in which the Prophet (peace be upon him) said,

**"They (your Imaams) lead you in Salaah; if they do it correct, it (the reward for Salaah) is for you and for them, and if they mistake, it (the reward) is for you and (the sin) upon them."**<sup>1</sup>

He (peace be upon him) thereby makes it clear that the Imaam bears the responsibility of the mistake and not the Ma'mums. `Umar and other Sahaabah (Companions of the Prophet - may Allaah be pleased with them) forgetfully led people in Salaah while they were Junoob (in a state of major ritual impurity), so they repeated it but did not order the Ma'mums to do so. This is the Madh-hab of the Jumhoor (dominant majority of scholars), including Maalik, Al-Shafi'ee, and Ahmad, according to the well-known opinion reported from him.

The same ruling applies if an Imaam does something he deems it excusable, whereas in the opinion of the Ma'mum it invalidates Salaah, such as bleeding, performing Salaah without Wudoo' (ablution), touching his penis, not saying Basmalah (saying, "Bismillah Al-Rahmaan, Al-Raheem [In the Name of Allaah, the Most Gracious, the Most Merciful]"), where the Imaam believes that his Salaah is valid in spite of that, while the Ma'mum believes it to be invalid because of that. The Jumhoor agrees on the validity of the Salaah of the Ma'mum in this case, according to the Madh-habs of Maalik and Ahmad, based on the most authentic of the two narrations reported from him, and it is also one of the two opinions narrated from the Madh-hab of Al-Shafi'ee, and the one adopted by Al-Qaffal and others.

If, for example, an Imaam intentionally performed Salaah without Wudoo and the Ma'mums never knew this until they died, Muslims unanimously agree that Allaah will not hold them to account for this and they will not bear any sin for it, unless they learn that the Imaam is performing Salaah without Wudoo, in which case they must not perform Salaah behind him, because he is not a worshipper offering Salaah, but a jester! If after finishing the Salaah, it is

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<sup>1</sup> Al-Bukhaaree, Saheeh, Book on Adhaan, no. 694; and Ahmad ibn Hanbal, Musnad, vol. 2, p. 355.

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learned that the Imaam performed Salaah without Wudoo, there is a difference of opinion among the scholars as to whether it should be repeated. If a Ma'mum knows that the Imaam is a Mu'tadee' (one who introduces innovations in religion) who calls others to follow his Bid'ah or a Fasiq (someone flagrantly violating Islaamic law) whose Fisq (flagrant violation of Islaamic law) is apparent, if he is the regular Imaam of a Masjid (mosque) and the Ma'mum has no choice but to perform Salaah behind him, such as when he is the Imaam for the Jumu'ah (Friday) or 'Eed (Festival) Prayers, or the Imaam for the Hajj Prayers at 'Arafah, and so on, they should perform Salaah behind him, according to the majority of the Salaf and the Khalaf. This is the Madh-hab of Ahmad, Al-Shafi'ee, Aboo Haneefah, and others. Therefore, the scholarly opinion concerning 'Aqeedah (creed) is that Ma'mums should perform Jumu'ah and 'Eed Prayers behind any Imaam, whether he is righteous or wicked. Similarly, if there is only one Imaam in a village, congregational Salaah should be offered behind him, because performing Salaah in congregation is better than performing Salaah alone, even if the Imaam is a Fasiq, and this is the Madh-hab of the Jumhoor, including that of Ahmad ibn Hanbal, Al-Shafi'ee, and others. In fact, Salaah in congregation is Waajib (obligatory) on each individual man, according to the Madh-hab of Ahmad. Anyone who abstains from offering Jumu'ah and congregational Prayers behind a wicked Imaam is a Mu'tadee', according to Imaam Ahmad and other Imaams of Ahl-ul-Sunnah (Adherents to the Sunnah), as he mentioned in the treatise, "Risalaah `Abdus Ibn Maalik al-'Attar".

The correct view is that it should be performed and not repeated. The Sahaabah used to perform Jumu'ah and congregational Prayers behind wicked Imaams and they did not repeat them. For example, Ibn 'Umar used to perform Salaah behind Al-Hajjaaj, and Ibn Mas'ood and others used to perform Salaah behind Al-Walid ibn 'Uqbah. He used to drink Khamr to the extent that he once performed four Rak'ahs (units of Prayer) when leading them in the Subh (Dawn) Prayer and then asked, "Should I do more?" Ibn Mas'ood said, "What we have already done with you today is in excess." And this was why they referred the matter to `Uthmaan

It is also mentioned in: "Saheeh Al-Bukhaaree", that when `Uthmaan (may Allaah be pleased with him) was besieged, someone else led the people in Salaah. So someone said to `Uthmaan, "You are the Imaam of the people, and the person who is leading the Salaah is an Imaam of Fitnah (sedition)." `Uthmaan replied saying: "O my kin! Salaah is the best deed that people perform, so if they do it well follow them and if they do it badly, avoid their errors." There are many other similar examples.

The Salaah of a Fasiq or a Mu'tadee' is valid in itself, so if someone is led in Salaah by one of them, their Salaah will not be invalid, but it will be Makrooh (disliked), due to the reprehensibility of performing Salaah behind them, as enjoining what is good and forbidding what is evil are Waajib (obligatory). Therefore, anyone who openly commits Bid'ah or immorality should not be appointed as a regular Imaam for Muslims, as they deserve Ta'zir (discretionary punishment) until they make Tawbah (repentance to Allaah). If it is possible

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to shun him until he makes Tawbah, this will be good. Also, if some people stop performing Salaah behind him and perform it behind someone else, in the hope that this may affect him and induce him to perform Tawbah, withdraw, or shun other people away from committing sins like his, not performing Salaah behind such a man will be in the public interest, as long as the people do not miss performing the Jumu'ah or congregational Prayers. However, if not performing Salaah behind him will lead people to miss the Jumu'ah or congregational Prayers, anyone who abstains from performing Salaah behind him will be a Mubtadee', acting in opposition to the Sahaabah (may Allaah be pleased with them). Similarly, if the regular Imaam is appointed by rulers it will not be in the public interest to stop performing Salaah behind him, in this case people should not stop performing Salaah behind him; it will be preferable to perform it behind the best Imaam.

This ruling applies to anyone who openly commits Bid'ah or Fisq that patently contradict the Qur'aan or Sunnah, such as the Bid'ah of Al-Raafidah (a Shiitic group), Al-Jahmeeyah (a deviant Islaamic sect denying some Attributes of Allaah, claiming they are ascribed to people and cannot be ascribed to Allaah), and their likes."

It is, therefore, clear that anyone who declares that it is invalid to perform Salaah behind a Fasiq does not have any reliable proof, as far as I know. However, those who teach and practice positive law resemble those who study the different types of Riba, Khamr, or gambling, or teach them to others for their own desires or their greed for money, even though they do not regard that as permissible and know that all Riba-based transactions are Haraam (prohibited), as they know that drinking Khamr and gambling are also Haraam. However, due to their weak 'Eemaan and their being overwhelmed by their desires or greed for money, their belief that these things are Haraam does not stop them from being involved with these forbidden matters. According to Ahl-ul-Sunnah, they are not Kaafirs (disbelievers), as long as they do not believe that this is permissible as previously clarified.

- **Third category:** those who study or teach positive law believing that it is lawful to rule by them, whether they believe that the Sharee'ah is superior to them or not. According to the Ijma' (consensus) of Muslims, they are Kaafirs who are committing major Kufr, because, by believing that it is permissible to rule by positive law in contradiction to the Sharee'ah, they regard as permissible things necessarily known in Islaam to be Haraam. These people come under the same ruling as those who regard Zina (sexual intercourse outside marriage), Khamr, and the like as permissible, because deeming these to be permissible is belying Allaah and His Messenger and opposing the Qur'aan and Sunnah. The scholars of Islaam unanimously agree that anyone who regards as permissible something that Allaah has forbidden or regards as forbidden something that Allaah has permitted is a Kaafir, when the matter is inevitably well-known and undeniable in Islaam. This will be clear to anyone who

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studies the opinions of scholars from the four Madh-habs on the rulings on apostates.

There is no doubt that the students who study some matters related to positive law or an introduction to it in the legal or management institutes are not intending by this to rule by what contradicts with Allaah's Sharee'ah. They want or it is wanted from them to know about it and compare it to the rulings of the Sharee'ah to recognise its superiority over man-made laws. They may even gain other benefits from this study that will give them a deeper understanding of the Sharee'ah and have more certainty about its uprightness.

Even if we assume that some of them want to learn this subject to rule by it instead of by the Sharee'ah and that they deem this to be permissible, it is not permissible to rule against the others with the same ruling as them, as Allaah (Glorified be He) says:

**[...and no bearer of burdens shall bear the burden of another.]<sup>2</sup>**

The Prophet (peace be upon him) said,

**["A wrongdoer only wrongs themselves."][2]**

From what we have said, it will be clear to you that casting aspersions over the aforementioned students acting as an Imaam for the Salaah and ruling that it is not valid to perform Salaah behind them is not sanctioned by the Shari'ah or the people of knowledge, as it has no legal basis. I hope that what I have mentioned has removed any doubt in you about those students described as being in the first category, or regarding them as being Fasiqs or Kafirs. As for the second category, there is no doubt about their Fisq. As for the third category, there is no doubt that they are Kafirs and that it is not valid to perform Salaah behind them.

I ask Allaah by His Beautiful Names and Lofty Attributes to grant me, you, and all our brothers a good understanding of His Din and to keep us firm on it. I ask Him to protect us all from the evil of our own selves and the wickedness of our deeds, and from misleading temptations, verily He is the Ever-Near, the All-Hearer,

As-salamu 'alaykum warahmatullah wabarakatuh (May Allaah's Peace, Mercy, and Blessings be upon you!)

[2] Al-Tirmidhy, Sunan, Book on trials, no. 2159; and Ibn Majah, Sunan, Book on rituals, no. 3055.

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<sup>2</sup> Soorah al-An'aam [6:164]