

239103 - Ruling on making analogies with regard to concessions

the question

What is the ruling on doing qiyaas on concessions (Rukhas) such as doing qiyaas upon rain as a concession to absent oneself from Salaah Al-Jamaaah and thus giving concessions with regards to other things which may cause some inconvenience to a person?

Some of the scholars mentioned the reason behind the hadeeth about there being no salaah when food is brought as being that a person's mind is occupied with the food. Then, would it make sense to say that a person can miss Salaah Al-Jamaa'ah whenever their mind is slightly occupied?

Also, if the reason for a concession is not present but the situation is, is the concession still present (for example, if it is raining but one has an umbrella or a car and they can get to the masjid without getting wet, assuming getting wet was the reason for the concession)?

Is it not also the case that it would still be permissible for a person travelling in a first class luxurious style to combine and shorten the Salawaat even though he may not experience any hardship at all in performing them as normal, whereas a person could be extremely occupied with his work and in a hard situation, but it would still not be permissible for him to shorten the Salawaat.

Detailed answer

Firstly:

There is a difference of opinion among the scholars of usool al-fiqh when it comes to making analogies with regard to concessions. Dr 'Abd al-Kareem an-Namlah spoke of this difference of opinion in his book al-Muhadhdhab fi 'Ilm Usool al-Fiqh al-Muqaarin (4/1939), and stated that the correct view is that allowing concessions on the basis of analogy is valid. He responded to the evidence quoted by those who say that it is not allowed by saying: Is it permissible to make analogies with regard to concessions, like comparing snow to rain with regard to the permissibility of putting two prayers together, on the basis that

both of them may cause inconvenience to the Muslim? There was a difference of opinion concerning that, and there are two views:

1. The first view is that it is permissible to allow a concession on the basis of analogy, and there is nothing wrong with doing so, if we know the reason for the concession and are certain of that reason. This is the view of the majority of scholars, and it is the correct view, because of the following evidence:

(i) the general meaning of the evidence which confirms that using analogy in sharee'ah is valid, and that is based on scholarly consensus, the Qur'an, the Sunnah and reason – as explained above – because the evidence points to the fact that analogy is applicable with regard to all shar'i rulings, once the reason (for the concession) is known and well established, and that reason is applicable with regard to the issue under discussion, and all conditions for allowing the analogy are met, because this evidence did not differentiate between one ruling and another. As allowing concessions is one ruling of sharee'ah, it comes under this general concept.

(ii) A concession may be granted on the basis on a single report (khabr waahid), therefore it may be proven through analogy, and there is no difference between the two, because in both cases, they are based on what is though most likely to be the case (and are not based on what is definitive), so both are subject to error and mistakes.

2. The second view is that it is not permissible to make analogies with regard to concessions. This is the view of the Hanafis and is also narrated from Imam Maalik and Imam ash-Shaafa'i.

The evidence for this view is as follows:

(i) Concessions by nature go against evidence, so to suggest that it is permissible to make an analogy to a concession will lead to many instances of going against what is proven on the basis of evidence. Therefore it should not be allowed.

The response to that is that the shar'i evidence may be contradicted by the Lawgiver in order to serve a purpose greater than that which may be served by means of what is proven by that evidence, based on the concept of putting all the evidence together and giving precedence to that which is more appropriate, and that is the role of the Lawgiver. If we see that the same reason for which we were allowed to go against the evidence is applicable in another case, then we should go against the evidence in that case too. For then we would be more in harmony with the evidence and not going against it.

(ii) Concessions are a gift from Allah, may He be exalted, so they should not be used beyond the specific cases in which they were granted, because making an analogy for that which is not mentioned in a text with that which is mentioned specifically in the text, in terms of shar'i rulings, is equivalent to expecting a concession from the One Who granted it in the first instance in a case in which He did not grant a concession, and that is not permissible. Therefore it is not permissible to grant concessions on the basis of analogy.

The response to that is that the basis for making analogies is understanding the reason why the concession was granted, and the wisdom behind prescribing the ruling.

The fact that concessions are meant to make things easier does not prevent us from applying analogies to them. So once we understand the reason for which a particular concession was granted and prescribed, and we find that reason to be applicable in another instance, this means that we may apply that concession in the other instance, so as to multiply the generous gifts of Allah and preserve the wisdom behind the concession from being lost.

Imam al-Haramayn said, responding to this evidence: This is nonsense. All that people are enjoying of benefits is a gift from Allah, may He be exalted. End quote.

Based on that, if we know the reason for the prescription of a particular concession, and we become certain that this reason is applicable in another instance, in that case making analogy is valid.

However this analogy cannot be applied to the shortening of the prayer, because the reason for shortening the prayer is travel, not hardship. Therefore the traveller may shorten his prayer, whether he encounters hardship or not, but the non-traveller cannot shorten his prayer, even if he encounters hardship.

Therefore the scholars have stated that it is not valid to make an analogy with regard to a concession when the reason for which it was granted cannot be applicable except in the situation for which it was granted, such as the concessions of travel, because the reason of travel is not applicable when one is staying in a place (and not travelling). Similarly, it is not valid to make an analogy if we do not know the reason for the concession.

It says in al-Bahr al-Muheet fi Usool al-Fiqh (7/75):

Ilkiyah said: We do not allow making an analogy with regard to a concession if the concession is based on a particular reason that cannot be applicable in any other scenario. Therefore it is not allowed to make an analogy, because there is no common reason, such as comparing the non-traveller to the traveller with regard to the concessions of travel, because that would be an implicit rejection of the specific reason for which the Lawgiver granted the concession.

Al-Qurtubi said: There may be a differentiation between cases where there appears to be no apparent reason for the concession, so no analogy can be made, and cases where the reason is apparent, so analogies may be made.

I have seen in the words of some of the Maalikiis a differentiation between a case where the reason for the concession to which something else is being compared is stated, in which case it is permissible to make an analogy, and a case where the reason is not stated and is rather figured out, in which case it is not permissible to make an analogy. As a result of that, there are different views on this issue. End quote.

For more information on the views of Imam al-Haramayn concerning this topic, please see al-Bahr al-Muheet (7/79).

Shaykh Ibn Baaz (may Allah have mercy on him) said: The concession of travel is ongoing: it is applicable at present, it was applicable in the past and will also be applicable in the future, because the One Who prescribed it, Who is the Knower of the unseen, knows all things, may He be glorified and exalted, and He knew the situation of people at the time of prescription, and in the future, such as our own time. Allah knows all things – may He be glorified and exalted – so if the law (concerning travel) would be different in the future, He would have said: If travel becomes easy or comfortable means of travel become available, then do not shorten prayers or put them together. But the Lord, may He be glorified, did not say this, and neither did His Messenger (blessings and peace of Allah be upon him). The scholars said: Rather the reason for shortening the prayers when travelling is because it is expected that one will go through some fatigue and hardship, and the ruling in the case of expectation remains applicable, whether that expectation materialises or not. So hardship is expected when travelling, but hardship is not the prerequisite for shortening the prayers. If travel is comfortable, on easy camels and at an easy time, then shortening the prayer is still prescribed. Similarly, nowadays with cars, planes, trains and spaceships, it is all the same; it is still prescribed for the traveller to shorten his prayers and put prayers together, even if travel is extremely comfortable, because when the Messenger (blessings and peace of Allah be upon him) prescribed that, he did not mention any restrictions, and in His holy Book, Allah did not stipulate the condition that travel should be hard. Thus it is known that the traveller may shorten his prayers and put them together, and he may break the fast, even if travel is comfortable in a car or on a plane or in any other means of transportation. Praise be to Allah in all circumstances.

End quote from the Shaykh's website on the following link:

<http://www.binbaz.org.sa/node/19440>

Secondly:

With regard to delaying the prayer when food is served, the reason is not that food is ready; rather the reason is that one may be distracted and proper focus and humility may be lost

or reduced. Therefore it is valid to make an analogy between the serving of food and anything else that may distract the worshipper and reduce his proper focus and humility.

In his commentary on the hadith “There is no prayer when food is ready, or when one is resisting the urge to relieve oneself” – narrated by Muslim (560) – an-Nawawi (may Allah have mercy on him) said:

These hadiths indicate that it is makrooh to pray when food is ready that one wants to eat, because this will be a distraction and will lead to loss of perfect focus. It is also makrooh to pray when resisting the urge to relieve oneself, which refers to needing to urinate or defecate. We may add to this anything else that would similarly distract one and lead to a loss of proper focus in the prayer.

This ruling of it being makrooh applies where is still plenty of time left for the prayer. But if the time is too short, and if he were to eat or relieve himself and do wudoo’, the time for the prayer would end before he prays, then in that case he should pray as he is, so as to observe the deadline for the prayer, and it is not permissible for him to delay the prayer. End quote.

Al-‘Izz ibn ‘Abd as-Salaam (may Allah have mercy on him) said in Qawaa’id al-Ahkaam (1/38): The prayer may be delayed if there is anything that would affect one’s focus, such as extreme thirst and hunger. End quote.

As for not attending the prayer in congregation because of rain, the reason is not the rain itself. Rather the reason is the hardship that results from walking to the prayer in the rain. Therefore the scholars stipulated the condition that the rain should be heavy enough to make one’s clothes wet, because this is what causes hardship.

Al-Bahooti said in Kashshaaf al-Qinaa’ (4/12):

A person may be excused for missing Friday prayer and prayers in congregation if he fears that some harm may befall his property, or could affect his livelihood that he needs, or if he has let water run to irrigate his crops or his garden, and he fears that if he leaves it it may

result in damage, or he has been asked to take care of something and fears that it may be lost if he goes away and leaves it, such as a guard who is in charge of a garden and the like. That is because the hardship that may result from that is greater than merely getting one's clothes soaked by the rain, which is a valid excuse according to scholarly consensus. End quote.

Similar to rain is anything that could cause harm in such situations, such as intense wind, intense cold or mud.

Al-Bahooti said in ar-Rawd al-Murbi' (2/362), when discussing excuses for staying away from prayers in congregation: ... Or if he will be harmed by rain and mud. The same applies to snow, ice and hail, and intense cold winds on a dark night. End quote.

Shaykh Ibn 'Uthaymeen said in ash-Sharh al-Mumti' (4/317):

If he fears harm from rain or mud, i.e., if it is raining, and if he goes out for Jumu'ah or prayers in congregation, he will be harmed by the rain, then he is excused.

The harm that may be caused by rain is that he may be harmed if his clothes are soaked, or because it is too cold, and the like. The same applies if he fears that he may be harmed by mud.

In the old times people used to suffer a great deal due to mud, because the marketplaces were unpaved, and as a result of the mud people might slip, so a person would exhaust himself in order to attend the mosque. If that happens, then one is excused.

But nowadays there is no issue of mud, because the marketplaces are paved and there is no mud. The worst that may happen is that you will find puddles in some low spots, but this does not cause any harm to people's clothes or feet. So in this case the excuse applies when rain is falling, but once the rain has stopped, there is no excuse. But in some villages that are not paved, this excuse is still applicable. End quote.

Conclusion: when the reason for the concession is known, and the reason is applicable in another case, then making analogy is valid. But if the reason for a particular concession is

not known, or it is exclusive to that situation and is not applicable to any other situation, then it is not valid to make an analogy in that case.

And Allah knows best.