



Dear Mufti sahib,

Please answer the following query:

There are unfortunately many Muslims serving sentences for a variety of crimes in HM Prison Service across the United Kingdom. The disproportionate rise in numbers of Muslim inmates over the last couple of decades has been mirrored by an increasing number of UK trained *ulama* being employed by HM Prison Service to serve as Muslim chaplains in order to provide pastoral, spiritual and religious support for the Muslim inmates. Depending on the population of Muslim inmates at a given prison, a Muslim chaplain may be employed on a full time or part time basis. The duties of the Muslim chaplain almost invariably include leading the *Jumu'ah* prayers. However, HM Prison Service, by its very nature necessitates that there is no public access to the *Jumu'ah* prayer. Is it permissible under these circumstances to offer the *Jumu'ah* prayer in a prison, or must the Muslim inmates offer *Zuhr* prayer instead?

5th Rajab 1428
20th July 2007

There are a number of issues raised by your query as follows:

1. Are Muslim prison inmates resident in HM prisons obligated to offer the *Jumu'ah Salaah*? i.e., do they satisfy the necessary conditions for being obligated to perform the *Jumu'ah Salaah* or are they required only to perform the *Zuhr Salaah*?
2. In the case that Muslim prison inmates resident in HM prisons are not obligated to offer the *Jumu'ah Salaah* and are required only to perform the *Zuhr Salaah*, is it still permitted for them, in principle, to establish the *Jumu'ah Salaah*, or must they necessarily offer the *Zuhr Salaah*?
3. In the case that Muslim prison inmates resident in HM prisons are obligated or at least permitted to establish the *Jumu'ah Salaah*, what is the relevance of the condition of allowing public access?

Each of the above is answered below:

1. In al-Siraaj al-Wahhaaj it is mentioned that a prisoner is obligated to offer the *Jumu'ah Salaah*. This is irrespective of whether he is the oppressor or the oppressed. If he is the oppressor he can secure his release by compensating the litigant; if he is the oppressed he can secure his release by appealing for help [from the relative authority]. Thus, in both cases, he is obliged to attend the *Jumu'ah Salaah*. However, the plurality of *fuqahaa'* have rejected this position and have not deemed a prison inmate to be obligated to offer the *Jumu'ah Salaah*. Al-Tahtaawi has described the former position in his commentary on al-Durr al-Mukhtaar [1:344] as being weak while the majority have expressly enumerated a prison inmate amongst the ranks of the legally excused. Ibn 'Aabideen has added from al-Ramali:

"And in our times, there is no one to come to the aid of the oppressed and supremacy is with the oppressors. Whoever claims a right against them they destroy him."

Furthermore, even the rationale offered in the minority position of al-Siraaj al-Wahhaaj is not entirely relevant, if at all, in the case of Muslim prisoners in the UK, as they cannot on the whole secure their release through compensating the litigant or appealing to the authorities for help. Therefore, in light of the above, a Muslim prison inmate resident in HM prisons is not obligated to offer the *Jumu'ah Salaah* and is required only to perform the *Zuhr Salaah*.

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2. One who is legally excused from attending the *Jumu'ah Salaah* may, in principle, persist and offer the *Jumu'ah Salaah* with a congregation. It is not necessary, in principle, to offer the *Zuhr Salaah*. Therefore, it follows that a Muslim prison inmate resident in HM prisons who is legally excused may, in principle, persist and offer the *Jumu'ah Salaah* with a congregation. It is not necessary, in principle, for him to offer the *Zuhr Salaah*. The question remains as to whether this is only if he offers the *Jumu'ah Salaah* with a congregation located outside the prison walls, or is it permitted to establish the *Jumu'ah Salaah* within in view of the requirement to allow public access. This aspect is covered in the following answer.

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3. There does not appear to be any unequivocal express reference in the jurisprudential texts to establishing the *Jumu'ah Salaah* within the confines of a prison. However, there is wide mention of not establishing *Zuhr Salaah* in congregation on Friday within a prison. This is also the recorded opinion of 'Ali رضي الله عنه. In fact it is recommended that the inmates also delay their individual *Zuhr Salaah* until the *Jumu'ah Salaah* has been completed by the Imam. The reference to *Zuhr Salaah* would appear to imply that it is not permitted for the inmates to offer the *Jumu'ah Salaah* within the prison walls, and it can be argued that this is due to the restriction of public access. However, a possible answer to this objection [as also given in Fataawaa Usmaani, 1:527] is that this refers to the era when the *Jumu'ah Salaah* was offered at only one location under the leadership of the Sultan [or at a limited number of locations with the permission of the Sultan], and it was not permitted by the Sultan to establish a second congregation [or additional congregations] for the *Jumu'ah Salaah*. Therefore, as there was no permission to establish the *Jumu'ah Salaah* within the prison, the prison inmates had only the option of *Zuhr Salaah*. This answer is implicitly supported by the reasoning of al-Sarakhsi in al-Mabsut [2:52] regarding the non permissibility of establishing *Zuhr Salaah* in congregation on Friday wherein he states:

“And because what is commanded for one residing in a town at this time is two things: to not congregate [in their local masjid] and to attend the Jumu'ah Salaah. The inmates of a prison are able to do only one of these, and that is to not congregate, so they will do that.”

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Secondly, the *fuqahaa'* have offered different elucidations of this condition, which may possibly be a reflection of the prevailing circumstances of different eras and regions. The following is a summary of their deliberations:

1. Why is *al-idhn al-'aam* a condition for the validity of *Jumu'ah Salaah*? Al-Kaasaani has stated two reasons for this:
 - a. Allah ﷻ has prescribed the call to prayer for the *Jumu'ah Salaah* in *Surah al-Jumu'ah* [62:9]. The purpose of the call to prayer is to publicise it and call the masses towards it. Therefore, this requires that this prayer is offered publicly.
 - b. It is referred to as *Jumu'ah* as groups of people (*al-jamaa'aat*) congregate together in it. Therefore, the name itself necessitates that all groups are permitted to attend.

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2. What is the meaning of *al-idhn al-'aam*? Al-Zeyla'ee and Ibn Nujeym have stated that *al-idhn al-'aam* means that the *Jumu'ah Salaah* should be offered publicly. Therefore, if an *Amir* closes the fortress gates and performs the *Jumu'ah Salaah* within with only his family and army, then this is not permitted. The *Jumu'ah Salaah* is from amongst the *sha'aair* – distinguishing features of Islam and a special characteristic of the *din* and must therefore be offered publicly. If the *Amir* opens the fortress gates and allows the general masses to attend, the *Jumu'ah Salaah* will be valid. However, his action is still reprehensible on account of forsaking the right of the *Jami' Masjid*. If the Sultan instructs someone to lead the *Jumu'ah Salaah* in the *Jami' Masjid* while he himself leads the *Jumu'ah Salaah* in a separate congregation in another *masjid*, the *Salaah* of the congregation in the *Jam'' Masjid* is valid while that of the Sultan's congregation is not, unless the general masses are aware of his congregation. [The latter is evidently an example of the period when the *Jumu'ah Salaah* was offered at only one location in the city. Al-Tahtaawi has also offered the same meaning as al-Zeyla'ee and Ibn Nujeym in his commentary on al-Durr al-Mukhtaar [1:344].

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However, the plurality of *fuqahaa'* have interpreted *al-idhn a- 'aam* to mean that the public must be given access to where the *Jumu'ah Salaah* is being held. If this access is denied, the *Jumu'ah Salaah* is not valid. Consequently, if a group of people congregate in the *Jami' Masjid*, lock the doors of the *masjid* upon themselves, and then proceed to offer the *Jumu'ah Salaah*, it will not be valid as they have denied access to the general masses. Similarly, if the Sultan decides to offer the *Jumu'ah Salaah* in his personal quarters together with his servants but does not allow the general masses access, it will not be valid. However, if he opens the doors to his personal quarters thereby allowing access to the general masses, the *Jumu'ah Salaah* will be valid, irrespective as to whether the masses decide to join him or not. Again though, his action is reprehensible as he has forsaken the right of the *Jami' Masjid*.

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In truth though, both interpretations are actually different expressions of the same concept. Al-Sharanbulaali has used the words 'in a public and general manner' in his discussion of *al-idhn al-'aam* in *Maraaqi al-Falaah* [p. 510]. Al-Halabi has mentioned both jointly in *Ghunyat al-Mustamili* and Ibn 'Aabideen states in *Radd al-Muhtaar* as follows:

“(General permission) i.e., that he [the Imam] allows the masses general permission such that he does not restrict anyone with whom *Jumu'ah Salaah* may be established from access to the place where *Jumu'ah Salaah* is being offered. This is the objective of those who have interpreted *al-idhn al-'aam* to mean publicity.” [2:25]

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It can be seen then that these are but two different expressions to convey the same meaning, the summary of which is that the *Jumu'ah Salaah* must be offered publicly and without restriction of access to the general masses.

The question remains as to whether, if public access is restricted due to reasons of security or due to administrative issues, the *Jumu'ah Salaah* is still valid such as in prisons and other restricted areas?

As mentioned above, there does not appear to be any direct, unequivocal, express reference in the jurisprudential texts to establishing the *Jumu'ah Salaah* in prisons. The closest existing corollary of offering the *Jumu'ah Salaah* in a restricted area is an *Amir*, Sultan or leader offering the *Jumu'ah Salaah* in his fortress, palace or private quarters situated within a town. The *fuqahaa'* agree, either explicitly or at least implicitly, that if the controls are for the purpose of restricting the access of worshippers, and not due to reasons of security or administration, then the *Jumu'ah Salaah* will not be valid as the condition of *al-idhn al-'aam* has not been satisfied. Similarly, the *fuqahaa'* agree that if the *Amir*, Sultan or leader leads the *Jumu'ah Salaah* in his fortress, palace or private quarters situated within a town with the knowledge of the general masses and does not restrict them from attending, the *Jumu'ah Salaah* will be valid as the condition of *al-idhn al-'aam* has been satisfied. However, while valid, his action is reprehensible as he has forsaken the right of the *Jami' Masjid*, and in it is an apparent display of his attendance at the *Jami' Masjid* being beneath him.

There is a difference of opinion represented in the discussions of a few *fuqahaa'* in the case that access is restricted by the *Amir*, Sultan or leader due to reasons of security or administration. Most *fuqahaa'*, such as al-Sarakhsi in *al-Mabsut* [2:109], al-Bukhari in *Muheet al-Burhaani* [2:464], al-Zeyla'ee in *Tabyeen al-Haqaaiq* [1:533], al-Dihlawi in *Fataawaa al-Taataarkhaaniyyah* [2:55], Ibn Nujym in *al-Bahr al-Raa'iq* [2:151], and al-Halabi in *Ghunyat al-Mustamili* [p 480] have actually not discussed the issue of restriction due to reasons of security or administration. They have simply stated that if there is public access it is permitted, otherwise not. However, in *Majma' al-Anhur* Sheikh Zaadah has related from *Sharh 'Uyoon al-Madhaahib* as follows:

“And that which occurs in some fortresses in the closing of their gates due to fear of the enemy or due to a long standing practice at the arrival of the time for *Jumu'ah Salaah* is not objectionable as the condition of *al-idhn al-'aam* is satisfied by those within the fortress.”

Sheikh Zaadah has justified this position by stating that the closure of the gates is with a view to ensure protection from the enemy from outside and not to restrict the access of others. The condition of *al-idhn al-'aam* is satisfied by opening the doors of the *Jami' Masjid*, so that those within the fortress are able to offer *Jumu'ah Salaah*. Al-Haskafi has also concurred with Sheikh Zaada in *al-Durr al-Mukhtaar* [2:25]. Al-Tahtaawi has upheld Al-Haskafi's position in his commentary on *al-Durr al-Mukhtaar* [1:344]. Ibn 'Aabideen has also explicitly allowed the imposing of restrictions for reasons of security in *Radd al-Muhtaar* [2:25] and *Minhat al-Khaaliq* [2:151].

However, in his own discussion he leaves questions that remain to be answered. A summary of the relative portions of Ibn 'Aabideen's discussion is as follows:

Commenting on al-Durr al-Mukhtaar, Ibn 'Aabideen has interpreted the condition of *al-idhn al-'aam* to mean that the Imam [or whoever is leading the *Jumu'ah Salaah*] does not restrict those with whom *Jumu'ah Salaah* may be established from access to the place where *Jumu'ah Salaah* is being offered. He has then cited the two causative factors given for this condition by al-Kaasaani as mentioned earlier, viz:

- a. Allah ﷻ has prescribed the call to prayer for the *Jumu'ah Salaah* in *Surah al-Jumu'ah* [62:9] in order to publicise it. Therefore, this requires that this prayer is offered publicly.
- b. It is referred to as *Jumu'ah* as groups of people (*al-jamaa'at*) congregate in it. Therefore, the name itself requires that all groups are permitted to attend.

Then, commenting on the closure of the gates of a fortress due to fear of the enemy or due to a long standing practice, he explains under the words () – “as general permission is established for its [fortress's] inhabitants”, that it is better to relate the pronoun in to the noun – town/city [as opposed to the fortress] which is understood from the context as it is not sufficient to allow just the people within the fortress access to the *Jumu'ah Salaah* being held there. Rather, the condition is that all groups are allowed as has been recorded from Badaai' al-Sanaai'. In this case, whoever would like to attend the *Jumu'ah Salaah* within the fortress is allowed to do so prior to the closure of the gates. Therefore, it is the enemy who is restricted and not those who would like to attend. However, it is better that the gates are not closed as this is furthest from doubt. The reason for doubt is that it would appear that this condition must be satisfied at the time the *Jumu'ah Salaah* is actually held and not before as the call to prayer is for publicity [and it is only after the call to prayer that the masses attend]. However, the practice is that the gates are closed at the time of the call to prayer or just before. Therefore, one who hears the call to prayer and decides to attend cannot enter the fortress and so the restriction remains at the time of the *Jumu'ah Salaah*. It is for this reason that Sheikh Ismaa'eel has given preference to non validity.

Ibn 'Aabideen's discussion hitherto would, by implication, also appear to favour this latter stance of non validity as he has not ventured a direct answer to this objection. However, he has expressly stated a little further on that closure due to ensuring protection from the enemy or due to a long standing practice does not create any impediment.

Ibn 'Aabideen relates from al-Kaafi: “And similarly, if the Sultan decides to pray with his servants in his *daar* - private quarters; so if he opens its doors allows the general masses access, his prayer is valid, irrespective as to whether the masses decide to join him or not. If he does not open the doors, but closes them and posts guards to prevent entry, it is not valid. This is because the condition of the Sultan is to prevent the masses from missing the prayer.” [The presence of a Sultan or his representative is a condition to establish the *Jumu'ah Salaah*. The rationale to this condition is that his presence will remove any dispute as to when, where and who should lead all the various groups that congregate together. This will safeguard the masses from potentially missing the *Jumu'ah Salaah* altogether.] “And this [safeguarding the masses from potentially missing the *Jumu'ah Salaah* altogether] cannot be achieved without *al-idhn al-'aam*.” Ibn 'Aabideen then states: “It is appropriate that the point of contention [of validity and non validity] is when it is established at only one location. If it is established at a number of locations, then there is no contention as causing to miss does not occur as is represented by the causation/reasoning.” i.e., as the causative factor for the condition of *al-idhn al-'aam* is to safeguard the masses from potentially missing the *Jumu'ah Salaah*, if it is established at a number of locations, there is no danger of them missing it as they may offer it at an alternate location. The natural consequence of Ibn 'Aabideen's assertion is that it would unanimously be deemed permissible to offer *Jumu'ah Salaah* in a location restricted to the public [such as a prison] provided the *Jumu'ah Salaah* was also established at other locations the public could access. If there was no other such location, then according to some *fuqahaa'* including Sheikh Zaadah, al-Haskafi and Ibn 'Aabideen, if the restriction is due to reasons related to security and administration the *Jumu'ah Salaah* would still be valid. However, Ibn 'Aabideen assertion has been contested on a number of aspects:

The absence of a cause does not necessitate the absence of the effect or another cause. Al-Raafi'ee mentions this in al-Tahrir al-Mukhtaar, the gist of which is that the absence of the causative factor does not necessitate the absence of effect. i.e., just because one causative factor is absent it is not necessary that the effect also no longer

remains. Thus, the correct position is to retain the generality of the text even if this causative factor mentioned by Ibn 'Aabideen [to safeguard the masses from potentially missing the *Jumu'ah Salaah*] is absent as there may be another causative factor that requires generality. In addition, the causative factors quoted from Badaai' al-Sanaai' [viz. the call to prayer necessitating publicity and the name itself requiring access for all groups] dictate a general rule. It is a recognised position that negation of specific evidence does not necessitate negation of the effect. In the marginal notes of the H M Saeed print of Radd al-Muhtar [2:152] it is stated that Ibn 'Aabideen's discussion cannot oppose the generality of the texts of the *fuqahaa'*. i.e., the vast majority of the *fuqahaa'* have stated a general, unqualified rule and have not made allowances for the reasons stated by Ibn 'Aabideen. Therefore, Ibn 'Aabideen's assertion is insufficient to qualify that generality. It is also known that the rule is effected by the causative factor. i.e., the condition of *al-idhn al-'aam* is based on the causative factors mentioned by al-Kaasaani, and while they have not been satisfied, one cannot assert validity of the prayer. Thus, the true position is generality and non validity, even if offered in a number of locations. This latter position has been favoured by 'Allaamah Zafar Ahmad Usmani Sahib in Imdaad al-Ahkaam [1:750 and 757].

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Al-Sharanbulaali has also mentioned a qualification to the general rule in his discussion of *al-idhn al-'aam* in Maraaqi al-Falaah [p. 510]. In it, he reasons that the *Jumu'ah Salaah* is from amongst the *sha'aair* – distinguishing features of Islam and a special characteristic of the *din*. Therefore, it must be offered publicly and generally. If the Imam closes the gates of his palace or of the location it is being offered, and performs it within with his people it is not permissible. But if he allows the general masses to attend it will be valid. However, he has forsaken the right of the *Jami' Masjid*, and so his action is reprehensible. Further on he states: I came across a treatise of Ibn al-Shahanah in which he has argued the invalidity of the *Jumu'ah Salaah* at the Cairo fortress on the basis that it is locked during the *Jumu'ah Salaah*, while it is not a town in itself. [i.e., although it has shops and roads etc within, it does not satisfy all the necessary requirements, such as a judge, to be considered a town. Therefore validity cannot be argued on the basis that it is a town in itself. Consequently, the Cairo fortress does not satisfy the condition of *al-idhn al-'aam* as there is no general access.] Al-Sharanbulaali then questions this statement saying that there is an evident objection in adopting the position of non validity [regarding the Cairo fortress], as the reason for the ruling of non validity in the case of the Imam closing his palace is his exclusivity in relation to the *Jumu'ah Salaah* to the exclusion of the masses. [The latter appears to be an example of the period when the *Jumu'ah Salaah* was offered at only one place behind the leader.] This causative factor is absent in the case of the Cairo fortress as, despite the closure of the fortress, the Imam has no exclusivity to the *Jumu'ah Salaah* since there are many *Jami' Massajid* at [outside] the gates of the fortress, in each of which the sermon is given. One who is restricted from entering the fortress will not be deprived of the *Jumu'ah Salaah*. In fact, even if the gates to the fortress remained open, one would not desire to make the climb as the *Jumu'ah Salaah* is available at a more accessible location. And in each area of the city there are a number of sermons, [thus, there is no exclusivity, and] therefore there can be no reason to adopt the position of non validity in the case that the gates are closed.

The sum of al-Sharanbulaali's deliberations is that the *Jumu'ah Salaah* should not be offered exclusively in a manner that the general public is deprived of it. If there are multiple venues available to offer the *Jumu'ah Salaah*, access may be restricted at a given venue provided that there are still other venues available to offer the *Jumu'ah Salaah*. However, al-Tahtaawi has questioned al-Sharanbulaali's reasoning in his commentary arguing that the reason for the non validity of the Imam in closing his palace is not exclusivity, but rather restriction of access. Consequently, if a group of people congregate in the *Jami' Masjid*, lock the doors and offer the *Jumu'ah Salaah*, it will not be valid [even though there is no exclusivity here]. Thus, the reason for non validity is restriction of access. That is why in Majma' al-Anhur Sheikh Zaadah has recorded from Sharh 'Uyoon al-Madhaahib that the closure of the fortress gates due to fear of the enemy or due to a long standing practice is not objectionable as general permission exists for those within the fortress, and the closure of the gate is not in order to restrict the worshipper. [i.e., the cause of objection would have been restriction of access and not exclusivity.] Furthermore, Ibn al-Shahanah maintains the position of non validity even if the ruler establishes the *Jumu'ah Salaah* outside the

[Cairo] fortress [but with the same restriction]. This can only be due to the absence of general permission, and not exclusivity [as exclusivity is not relevant here].

However, while al-Tahtaawi has questioned al-Sharanbulaali's reasoning, he has accepted that, for genuine reasons of security, access can be restricted. In fact, in his commentary on al-Durr al-Mukhtaar [1:344] al-Tahtaawi has ventured one step further and stated that if there is a fear that the enemy will enter a fortress while those within are engaged in the *Jumu'ah Salaah*, it would appear to be obligatory to close the gates. In Imdaad al-Fataawaa [1:411], Hakimul Ummah Molana Ashraf Ali Thaanavi has also allowed the *Jumu'ah Salaah* in a fortress wherein restrictions are imposed out of necessity and not with a view to restrict worshippers.

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In short, Sheikh Zaadah in *Majma' al-Anhur*, al-Haskafi in *al-Durr al-Mikhtaar* [2:25], al-Sharanbulaali in *Maraaqi al-Falaah* [p. 510], al-Tahtaawi in *Sharh al-Tahtaawi 'Alaa Maraaqi al-Falaah* [p. 510] and his commentary on *al-Durr al-Mukhtaar* [1:344], and Ibn 'Aabideen in *Radd al-Muhtaar* [2:25] and *Minhat al-Khaaliq* [2:151] have allowed restriction of access for reasons of security. On this basis, it would appear to be permissible to allow the validity of *Jumu'ah Salaah* within the confines of a prison even if public access is restricted due to reasons of security. This is also the opinion of Mufti Rashid Ahmad Ludhianvi [*Ahsanul Fataawaa*, 4:122], Mufti Mahmud Hasan Gangohi [*Fataawaa Mahmoodiyyah*, 8:183], and Mufti Muhammad Taqi Usmani [*Fataawaa Usmani*, 1:523].

Therefore, to summarise:

A Muslim prison inmate is not obligated to offer the *Jumu'ah Salaah*, but may do so if he wishes [provided all the remaining normal conditions are satisfied]. However, any restrictions on public access must not be with a view to restrict worshippers, but rather must be for genuine reasons of security and administration or due to other legally valid reasons.

العبد محمد زبير بٹ

Reverend Ustadh,

Assalamualaikum wa rahmatullah,

I hope and pray that this e-mail finds you in the best of health. I have answered a query regarding Jumua in UK prisons which I would be most honoured if it would receive your attention. I am aware of your very busy schedule, but as there are certain elements within it that I have not found a precedent within the fataawaa of our mashaikh, I would feel more able to release the answer following your perusal.

Wassalaam

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Dear Br. Zubair Butt,

Assalamu alaikum,

I have seen your fatwa about jumah in prison. It is well-written. I agree with the conclusions. May Allah reward you for that. Amen

Wassalam

Muhammad Taqi Usmani