



***“Whoever clings to my Sunnah at
the time of the corruption of my Ummah,
will receive the reward of a hundred Shuhadaa.”
(Hadith of Rasulullah –Sallallahu alayhi wasallam)***

**AUTHORED BY:
MUJLISUL ULAMA OF S.A
PO Box 3393
Port Elizabeth, 6056
South Africa**

THE HAAIDHAH ON A JOURNEY

QUESTION

We have always understood from the senior Ulama that when a woman in the state of haidh goes on a journey and becomes paak along the journey or at her destination then she should perform Salaat in full if the distance to her destination remains less than 77 km. However, I have just recently read a brand new fatwa claiming that there has come forward “new information” on the basis of which the generally accepted view is now rejected.

According to the new fatwa issued by Mufti Taqi of the Karachi Darul Uloom, and supported by Advocate Emran Vawda of Durban, the woman should perform Qasar Salaat on the journey or at her destination as soon as she becomes paak. Is this correct? Please comment in detail.

ANSWER

We have read Mufti Taqi's fatwa as well as the article by Advocate Emran Vawda. What they have said is in reality old hat having no validity in relation to the more than a thousand-year Fatwa of the Jamhoor Hanafi Fuqaha. There is no "new information" on this mas'alah. This mas'alah is as old as Islam. Whatever has been mentioned in Mufti Taqi's fatwa is old, decrepit information well-known to our illustrious Fuqaha who had set it aside. It is information not for practical implementation. The information is all old hat which is being presented as 'new information'.

How is it possible for there to be 'new information' on such an old, antique issue of a female in *haidh* going on a journey? They have been going on journeys right from the time of the Sahaabah. Thus, this is not a new mas'alah. The one who claims 'new information' for changing the Fatwa of the Jamhoor, has miserably failed to apply his mind. The Fatwa of the Fuqaha which all our Akaabir Ulama have accepted and disseminated all these years is 100% correct.

When a woman in *haidh* attains purity along the journey, then if from that point to her destination there is a distance of 77 kilometres or more, she becomes a *musaafir* and has to perform *Qasar* Salaat. If from the point of purity to her destination, it is less than the *safar* distance (i.e. less than 77 km), then she has to perform *Itmaam* Salaat, i.e. Salaat in full.

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Similarly, if she attains purity at her destination, she has to perform Salaat in full – four raka'ts Fardh. Only if she undertakes a journey of 77 km or more from her destination, or from the point of purity will she become *musaafir* and perform *Qasar* Salaat. This is the Fatwa for practical implementation.

The other fatwa issued by Mufti Taqi based on so-called 'new information' is only of academic interest, and nothing more.

MUFTI TAQI'S BASELESS FATWA

Let us now examine the 'brand new' fatwa which the Korangi Muftis have deemed appropriate for creating a silly, unnecessary controversy.

Mufti Taqi rejects the popular view on the basis of a view mentioned in the kitaab, *Muheet Burhaani*. This is his sole basis for the 'new' fatwa which has no credibility in the Shariah since it is in conflict with the *Ijma'* (*Consensus*) of the Jamhoor Hanafi Fuqaha regardless of the very senior Hanafi Faqeeh to whom *Muheet Burhaani* attributes the view.

Mufti Taqi is baselessly implying, in fact claiming, that all the Akaabir Ulama and the Fuqaha of the past thousand years were unaware of this Kitaab, hence they opted for the view which is known as the popular view explained above. He further preposterously implies that all the illustrious Fuqaha had to incumbently submit to the view in *Muheet Burhaani*. And, by illogical inference it also should apply to the noble Author of the highly authoritative Kitaab, *Al-Haawi* which appeared on the scene about a century before *Muheet Burhaani*, and to all the Fuqaha who had preceded the Author of this Kitaab.

There is no incumbency to rely on *Muheet Burhaani* for accepting or rejecting a view. This has greater emphasis when the view is in conflict with the popular *Mufta Bihi* view of the Math-hab. In fact, *Muheet Burhaani* mentions

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both views – The so-called ‘new’ view and the popular view. But Mufti Taqi deemed it proper to cite only the so-called ‘new’ view from the Kitaab. The following appears in *Muheet Burhaani*:

“When the haaidh attains purity along the journey, she should perform Qasar Salaat because she has been addressed (by the Shariah in this regard). (However) it is mentioned in Al-Haawi: ‘When the haaidh attains purity from her haidh (along the journey), she should perform four raka’ts...”

Muheet Burhaani does not override the centuries old view of the Hanafi Math-hab nor did the noble Author conceal the Jamhoor’s view stated in *Al-Haawi*. All the illustrious Ulama who have adopted the popular view were fully aware of the other view stated in *Muheet Burhaani*. Whether they had access to *Muheet Burhaani* or not, is irrelevant. The Shariah was never reliant on *Muheet Burhaani* despite the lofty status of the Kitaab.

Imaam Al-Haseeri who stated the popular view was not a junior Molvi. Imaam Al-Haseeri, (d 505 Hijri), the illustrious Author of the illustrious work, *Al-Haawi*, was among the most eminent Students of Imaam Sarakhsi (Rahmatullah alayh). About him, it is mentioned in *Kashfuz Zunoon*:

“Haawil Haseeri fil Furu-il Hanafiyyah of Shaikh Muhammad Bin Ibraaheem Bin Anoosh Al-Haseeri Al

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Hanafi was the Student of Shamsul Aimmah As-Sarakhsi. He died in the year 505 Hijri. It (his Kitaab, Al-Haawi) is an Asal (fundamental basis) of the Kutub of the Hanafiyyah. It contains numerous Fataawa of the Mashaikh to which reference is made, and on which reliance is reposed.”

His view may not be brushed off lightly as Mufti Taqi has erroneously committed. In fact, Mufti Taqi and the rubber-stamping Korangi Muftis do not make the slightest reference to *Al-Haawi*. Imaam Burhaanuddeen Abul Ma'aali (Rahmatullah alayh), the Author of *Muheet Burhaani*, died in 616 Hijri. He appeared on the scene a century after the illustrious Author of *Al-Haawi*. The mas'alah was not new to him, i.e. the Author of *Al-Haawi*. He had acquired it from authorities above him, most likely from his noble Ustaad, Shamsul Aimmah Imaam Sarakhsi (Rahmatullah alayh), died 483 Hijri, who was among the greatest Fuqaha of the Hanafi Math-hab of that era.

Mufti Taqi has also attempted to minimize the extremely lofty status of Imaam Zaheerud Deen Al-Bukhaari (d.619) who also held the popular view which has always been the verdict of the Hanafi Math-hab. He states in his highly authoritative Kitaab, *Az-Zaheeriyah*:

“When the haaidhah attains purification from her haidh and the distance between her and her destination is less than the distance of three days, then she should perform four raka'ts. This is the most authentic correct view.”

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He states: “*Huwas Saheeh*”. This explicitly and emphatically confirms that the Fuqaha long before *Muheet Burhaani* made its appearance, were fully aware of the dissenting view which they had set aside. But the idea which the Korangi Muftis are attempting to disseminate is that the Fuqaha, of former and later times, were unaware of the proper mas’alah, and that the ‘correct’ view had surfaced only with the publication of *Muheet Burhaani*. The assumption is ludicrous.

This great Faqeeh, Imaam Zaheeruddeen, was not in need of *Muheet Burhaani* for the mas’alah in question.

Allaamah Aalim Bin Al-Alaa’ (Rahmatullah alayh)-d.786 Hijri- states in his *Fataawa Tatarkhaaniyyah*:

“*It appears in Az-Zaheeriyyah (As above)*”

Imaam Abu Bakr Bin Ali Al-Haddaad (rahmatullah alayh), d. 800 Hijri, states the same popular view in his *As-Siraajul Wahhaaj* from which Allaamah Shaami cites the mas’alah in his *Minhatul Khaaliq*:

“*It is mentioned in As-Siraaj and similarly in At-Taarkhaaniyyah narrating from Az-Zaheeriyyah that the haaidh when attaining purification from her haidh, and between her and her destination remains a distance of less than three days, she should perform four raka’ts. This is the Saheeh view.*”

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Imaam Badruddeen Al-Aini (Rahmatullah alayh), d.855 Hijri, in his *Al-Masaailul Badriyyah* in which he has compiled masaa-il selected from *Al-Fataawa Az-Zaheeriyah*, adopts the very same popular view.

Allaamah Ibraaheem Al-Halabi (Rahmatullah alayh), d.1190 Hijri, also states the popular view in his *Al-Kabeeri* and *As-Sagheeri*. He also relies on the authority of *Az-Zaheeriyah*.

Allaamah Haskafi, d. 1088 Hijri (Rahmatullah alayh), states in his *Ad-Durrul Mukhtaar*: “*When the haaidh attains purity and there remain two days (journey) to her destination, then she should complete (the Salaat, i.e. perform four raka’ts) according to the Saheeh view. She is like the child who attains buloogh (puberty along the journey, and has to perform four raka’ts), unlike the kaafir who accepts Islam (for he will perform Qasar).*”.

In 1415 Hijri, the senior Muftis of Darul Uloom Deoband issued a lengthy detailed fatwa on this question. They were fully aware of the other view, yet they maintained the popular view for practical implementation. But Mufti Taqi, set aside the popular view of innumerable Hanafi Fuqaha and Ulama who have adopted the *Itmaam* view prior to the appearance of *Muheet Burhaani*.

A FALSE ATTRIBUTION

In his fatwa, Mufti Taqi says: “*The qawl of itmaam (i.e. the view of four raka’ts) has been acquired from Nahjun Najaat and Fataawa Zaheeriyah. The author of Nahjun Najaat is unknown, and some have claimed that he was of the Shaafi’ maslak. On the other hand, the qawl of Qasar (performing two raka’ts) has been narrated from the well-known Faqeeh Imaam Abu Ja’far Al-Hindwaani, died 362 Hijri. He is enumerated among the senior Hanafi Imaams. By virtue of his Fiqhi insight, he has been called ‘The Junior Abu Hanifah.’*”

Leave alone the ‘Junior Abu Hanifah’, even some views of the *Senior Imaam Abu Hanifah* – Imaam A’zam (Rahmatullah alayh) – have been set aside by senior Hanafi Aimmah-e-Mujtahideen and Fuqaha on the basis of solid Shar’i dalaa-il, and this they effected in the light of Imaam Abu Hanifah’s instruction.

Firstly, Shaikh Muhammad Bin Kamaaluddeen Ibn Hamzah Al-Harraani Al-Hanafi (Rahmatullah alayh), died 1085 Hijri, the Author of *Nahjun Najaat*, is not an ‘unknown’ entity as baselessly averred by Mufti Taqi. The fact that Allaamah Shaami (Rahmatullah alayh) cited him debunks Mufti Taqi’s baseless claim of him being an unknown entity. Shaikh Ibn Hamzah was among the Mashaaiikh of Shaikh Abdul Ghani An-Nabulusi (died 1143 Hijri).

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More shall, Insha-Allah, be said about this illustrious Hanafi Faqeeh of the 11th Islamic century.

The very first claim of Mufti Taqi is false. Imaam Ibn Hamzah was not *ghair ma'roof* (a non-entity). The second falsity is Mufti Taqi's claim that *Shaami* cited the mas'alah from *Nahjun Najaat*. Mufti Taqi's entire case relies on this falsity. *Shaami* did NOT extract the mas'alah from *Nahjun Najaat*. The Korangi Muftis have abortively attempted to convey the impression that the basis of the popular view is *Nahjun Najaat* which is a Kitaab of the 11th century by an unknown author. This is a despicable act of chicanery committed by these Muftis who have hopelessly failed to apply their minds when they made a defective research of *Shaami* to ascertain Allaamah Ibn Aabideen's view. They stumbled on the name, *Nahjun Najaat* which was mentioned in the context of the mas'alah, then without proper rumination, they concluded that *Shaami*'s source for the mas'alah was *Nahjun Najaat* when in reality it was not. This falsity shall be discussed more in this treatise, Insha-Allah. At this juncture it suffices to know:

- The Author of *Nahjun Najaat* was not a non-entity.
- The Author was not a Shaafi'.
- Allaamah *Shaami* did NOT acquire the mas'alah from *Nahjun Najaat*.

Secondly, Allaamah Haskafi (Rahmatullah alayh) d.1088 Hijri, in his *Ad-Durrul Mukhtaar* simply states the mas'alah pertaining to the haaidh, namely, she should

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make *Itmaam*. Thus, commenting on what appears in *Ad-Durrul Mukhtaar*, Allaamah Shaami says:

“(His, i.e. Allaamah Haskafi’s statement: ‘She should make Itmaam according to the Saheeh view’): So is it mentioned in Az-Zaheeriyah. He said: It is like Salaat has been waived for her for the distance she has traversed (in the state of haidh), hence the hukm of safar is not considered during that time. Then when she has become ready for fulfilling (Salaat), it shall be regarded from that time (of her purity).

{His, (i.e. Allaamah Haskafi’s) statement: ‘She is like a (minor) child...} i.e. during the journey, and there remains for his destination less than three days. Then, verily he will make Itmaam, and what has past will not be considered because of non-imposition (of the ahkaam on a minor).

(His statement: ‘Contrary to a kaafir who accepts Islam), i.e. he will perform Qasar. The author of Ad-Durar said: ‘Because, verily, his niyyat is valid, hence he is a musaafir from the beginning whilst a child becomes a musaafir from this time (i.e. when he reaches buloogh).”

Allaamah Shaami comments on Allaamah Haskafi’s statements, not on Shaikh Ibn Hamzah’s (the Author of *Nahjun Najaat*) view of the mas’alah.

Thirdly, Allaamah Shaami did not acquire the mas’alah from *Nahjun Najaat*. He attributes it to *Az-Zaheeriyah* whose author, Imaam Zaheeruddin Al-Bukhaari died in

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619 Hijri, four centuries before the Author of *Nahjun Najaat*.

Hence Mufti Taqi's claim that Shaami acquired the mas'alah from *Nahjun Najaat* is baseless.

Fourthly, Allaamah Shaami cites *Nahjun Najaat* with reference to the rationale for the mas'alah in refutation of Shurumbulaali who held the view that the *haaidhah* should perform Qasar. Shurumbulaali after attributing this mas'alah of *Itmaam* to Az-Zaheeriyah, whose illustrious Author died in 619 Hijri, 4 centuries before *Nahjun Najaat*, argued that the status of a *haaidhah* is not lower than that of a kaafir who has embraced Islam, hence she is entitled to Qasar just as the new Muslim who has embraced Islam along the journey.

In response to Shurumbulaali's argument, Allaamah Shaami cited the rationale from *Nahjun Najaat*. Thus, Shaami states:

“He (i.e. Imaam Ibn Hamzah) responded in Nahjun Najaat that the factor prohibiting her (from Qasar) is heavenly (i.e. it is a hukm of the Shariah which may not be cancelled by opinion) whilst it is not so regarding the new Muslim despite both of them being repositories of niyyat. On the contrary, a child is not so. (i.e. a child before puberty is not a repository of niyyat). However (although she is a repository of niyyat) that which has prohibited her from Salaat is not of her own making, hence her niyyat

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from the beginning (i.e. when she set out on the journey in the state of haidh) is futile. On the contrary, the kaafir does have the ability to eliminate the prohibition from the very initiation (of the journey by embracing Islam), hence his niyyat (for the journey) is valid.”

Thus, Shaami has cited *Nahjun Najaat* **only** for the rationale, not for the actual mas’alah. For the mas’alah he presented *Az-Zaheeriyah* and *Siraajul Wahhaaj*. Mufti Taqi has erred in claiming that Shaami has acquired this mas’alah from *Nahjun Najaat*. In an attempt to deflect the focus from what exactly Allaamah Shaami had cited, Mufti Taqi says in his fatwa:

“In Shaami this very mas’alah (of Qasar) is cited with reference to Shurumbulaali”.

This is incorrect. This statement creates the impression that Shaami has adopted the *Qasar* view on the basis of Shurumbulaali’s claim. In reality, Shaami has negated Shurumbulaali’s view with the rationale acquired from *Nahjun Najaat*. As far as the mas’alah of *Itmaam* is concerned, Shaami cites *Az-Zaheeriyah* NOT *Nahjun Najaat*.

Whilst Mufti Taqi concedes that Shaami has cited the mas’alah from *Az-Zaheeriyah*, he deflects attention from this fact by erroneously emphasizing *Nahjun Najaat* to create the idea that Shaami had relied on *Nahjun Najaat*

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who was a late-comer on the scene. Mufti Taqi does not comment at all on Shaami's citation of *Az-Zaheeriyah*.

Mufti Taqi offering a flabby argument in his bid to negate the Fatwa of all our Akaabir Ulama of Deoband on this mas'alah, says:

“From the Urdu Fataawa, this mas'alah is found in Ahsanul Fataawa, and also this mas'alah is mentioned in Beheshti Zewer. Both these Kitaabs have adopted the Itmaam view. Since at that time Muheet Burhaani had not been published, there is no tarjeeh from these two views in the kitaabs of the Akaabir.”

This argument is ludicrous. Regardless of *Muheet Burhaani* which is not the final word of the Shariah, the Akaabir did not rely on *Nahjun Najaat* for this mas'alah, nor did Allaamah Shaami, nor did any of the other senior Ulama and Fuqaha nor were they obligated to accept one view from *Muheet Burhaani* which mentions both views. They relied on Haseeri's *Al-Haawi* and on Imaam Zaheeruddeen's *Az-Zaheeriyah* for this mas'alah, and both these illustrious Fuqaha flourished approximately 5 centuries before *Nahjun Najaat*. It is therefore despicable to make *Nahjun Najaat* a scape goat for the propagation of a view which conflicts with the centuries old Fatwa of the senior Fuqaha and Ulama.

Imaam Haseeri appeared a century before *Muheet Burhaani*. He was a Faqeeh of great eminence. Imaam

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Zaheeruddeen was under no obligation to accept the view of *Muheet Burhaani* whose Author was his contemporary. Just as the Author of *Muheet Burhaani* was aware of Imaam Abu Ja'far, so too was the Author of *Az-Zaheeriyah*. And, Imaam Haseeri, the Author of *Al-Haawi*, logically had greater awareness of Imaam Abu Ja'far than the Author of *Muheet Burhaani* since he was closer to the age of Imaam Abu Ja'far by a century. It is therefore highly improper for Mufti Taqi to attempt a negation of the view expressed by Imaam Haseeri and Imaam Zaheeruddeen on the basis of Imaam Abu Ja'far's view.

In his attempt to denigrate the status of *Nahjun Najaat* and also of Allaamah Shaami, Mufti Taqi deceptively states:

“The view of Itmaam has been acquired from Nahjun Najaat and Fataawa Zaheeriyah. The author of Nahjun Najaat is unknown, and some maintain that he was of the Shaafi' Maslak. On the other hand, the view of Qasar is narrated from the well-known Faqeeh, Imaam Abu Ja'far Al-Hindwaani, died 364 H.... It is therefore obvious that in such a case (of difference), the view of a well-known Faqeeh will be valid.”

This is a lamentable attempt by Mufti Taqi to obfuscate the reality of this mas'alah. Whilst he has endeavoured to denigrate the Author of *Nahjun Najaat*, he remains silent about the Author of *Fataawa Zaheeriyah* who is Allaamah Shaami's source of reference for the mas'alah,

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not *Nahjun Najaat*. The attempt of Mufti Taqi is to negate Allaamah Shaami's citation on the basis of *Nahjun Najaat* being a late-appearance. But, as explained earlier, Allaamah Shaami does not rely on *Nahjun Najaat* for this mas'alah. Although Mufti Taqi is fully aware or should be aware that Shaami relies on *Az-Zaheeriyah*, he deliberately and deceptively promotes the baseless idea of Shaami relying on *Nahjun Najaat*.

Mufti Taqi, then says: “*On the other hand, the narrator of the view of Itmaam is Allaamah Shaami (Rahimahullah), died 1252 H. He is among the Muta-akh-kireen Hanafi Fuqaha. On the contrary, the narrator of the view of Qasar is the Author of Muheet Burhaani, Imaam Burhaanuddeen Mahmood, died 616 H. He is of the third strata of Fuqaha (Mujtahideen fil Masaa-il). Apparently Allaamah Shaami was not aware of Muheet Burhaani.*”

This conclusion is baseless. The narrator of the *Itmaam* view is not only Allaamah Shaami. Numerous senior Hanafi Fuqaha and Ulama have narrated and adopted this view. The comparison with Imaam Burhanuddeen Mahmood is improper since Allaamah Shaami merely reports the view stated in *Az-Zaheeriyah* whose Author was a contemporary of the Author of *Muheet Burhaani*.

Furthermore, this view has been also narrated from *Al-Haawi* which preceded *Muheet Burhaani* by a century.

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It is also incorrect to believe that Allaamah Shaami had no knowledge of *Muheet Burhaani*. Mufti Taqi has no certitude on this issue, hence he is compelled to aver: “Apparently Allaamah Shaami was not aware of *Muheet Burhaani*.” This is a superfluity devoid of any significance. Awareness or not being aware of *Muheet Burhaani* is not the decisive factor for this mas’alah.

Mufti Taqi’s attempt to pass off and dismiss the Author of *Nahjun Najaat* as a Shaafi’ is also lamentable. Allaamah Shaami had better knowledge of the Author of *Nahjun Najaat* than Mufti Taqi. Besides this, it must be reiterated, that Shaami did not acquire the mas’alah from *Nahjun Najaat* which is the impression peddled by Mufti Taqi. The Shaafi’ claim made in *Eedhaahul Maknoon* and *Hadiyyatul Aarifeen* from which Mufti Taqi cites, is incorrect.

In these two kitaabs, the name of the Shaafi Faqeeh given is Izzuddeen Abil Abbaas Hamzah Bin Ahmad Al-Husaini Ash-Shareef Ad-Damishqui who died in 872 Hijri. Allaamah Shaami does not cite this Shaafi Faqeeh. The one whom he cites and who is the Author of *Nahjun Najaat* is Ash-Shaikh Muhammad Bin Kamaaluddeen Ibn Hamzah Al-Harraani who died in 1085 Hijri.

For a comprehensive biography of the noble Hanafi Author of *Nahjun Najaat*, Mufti Taqi should make a perusal of the Kitaab, *Al-Khulaasatul Athar fi A’yaanil Qarnil Haadi Ashar*. He should be impressed by the glowing appraisal presented in this Kitaab. Clearly, Mufti Taqi has confused

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the Author with someone else, with the Shaafi Faqeeh who died about 2 centuries before Imaam Ibn Hamzah. Also of note is the fact that *Nahjun Najaat* deals with Hanafi Fiqh, not Shaafi Fiqh.

Furthermore, *Muheet Burhaani*, despite the lofty status of its Author, is not on par with *Al-Haawi* and *Az-Zaheeriyah*. Regarding *Muheet Burhaani*, Mufti Taqi himself states in his kitaab, *Usoolul Iftaa wa Aadaabuhu*:

“The Muta-akhhir Ulama have enumerated Muheet Burhaani in this category. Verily, its Author although he was from the A’yaan Hanafi Ulama so much so that he has been regarded among the Mujtahideen fil Masaa-il, but Fuqaha such as Ibn Nujaim and Ibn Humaam have explicitly stated that it is not permissible to issue Fatwa with it (i.e. on the basis of Muheet Burhaani). Some of them (i.e. some Fuqaha) attributed this to him having compiled ratb wa yaabis (i.e. authentic and fake issues).”

Allaamah Lucknowi has attempted to defend *Muheet Burhaani* against this charge, but his argument does not achieve the objective. Of the approximately 40 volumes of *Muheet Burhaani*, according to Allaamah Lucknowi himself, he has perused only one volume, hence his vindication is based on conjecture which is the effect of an emotional bias in favour of the illustrious Author. On the other hand, the Fuqaha who have levelled the charge of *ratb wa yaabis* against *Muheet Burhaani*, did not slander the Author. They made proper studies of the Kitaab, then

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commented. Anyhow, the fact is that *Muheet Burhaani*, despite the elevated status of its Author, does not occupy the extremely lofty pedestal which Mufti Taqi has now suddenly accorded it solely to provide support for the *Qasar* view.

The impression which Mufti Taqi is trading is that the Shariah is reliant on *Muheet Burhaani* which had disappeared from the radar screen of history for a couple of centuries. The reality is that Allaamah Lucknowi in India had *Muheet Burhaani*. The Fuqaha who had demoted it, had copies of the *Kitaab* which justified their comments.

In the eagerness to promote their view, the Korangi Muftis attempted to portray Shaikh Ibn Hamzah, the Author of *Nahjun Najaat*, as a Shaafi'. Their defective research in this regard produced the following reference from the *kitaab, Idhaahul Maknoon*:

“*Nahjun Najaat ilaa Masaailil Muntaqaat of Izzuddeen Abil Abbaas Hamzah Ibn Ahmad Al-Husainish Shareef Ad-Dimashqui Ash-Shaafi, died 874.*”

They have presented a similar citation from *Hadiyyatul Aarifeen*:

“*Izzuddeen Hamzah Bin Ahmad Bin Ali Al-Husaini Ash-Shareef Abul Abbaas Ad-Dimashqui Ash-Shaafi, died 874.*”

It is surprising that the Korangi Muftis failed to realize that the noble Author of the *kitaab, Nahjun Najaat* which

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Allaamah Shaami cites, is NOT the person mentioned in the two aforementioned references provided by the Korangi Muftis. The Author of *Nahjun Najaat*, the Kitaab to which Shaami refers died in 1085 Hijri, i.e. 211 years after Izzuddeen Hamzah who had died in 874 Hijri. There is a gap of more than 2 centuries between these two Authors.

The Korangi Muftis who have rubber-stamped Mufti Taqi's fatwa also failed to understand that an author who died in 874 cannot quote in his Kitaab from kutub written decades and centuries after his demise. The Author of *Nahjun Najaat* mentioned by Shaami, in his Kitaab (*Nahjun Najaat*) cites from kitaabs long after 874. The following are some of the kutub subsequent to the death of Izzuddeen Hamzah, from which the Author of *Nahjun Najaat* quotes:

- Sharhul Kanz lil Maqdisi (died 1004 H)
- Al-Bahrur Raa-iq of Zainuddeen Ibn Nujaim (died 970 H)
- An-Nahrul Faa-iq of Sirraajuddeen Ibn Nujaim (died 1005 H)
- Fatawa Khairuddeen Ramali (died 1081).

While we have picked up the above information from the Author's *Nahjun Najaat* manuscript, even an Orientalist non-Muslim, Rudolph Mach of Princeton University Library, who had passionately devoted himself to the Kutub of our Fuqaha, discovered the error. He comments as follows:

[2034] fols. 9v-265v: Abu Abd Allah Kamal al-Din Muhammad Ibn Hamza al-Harrani al-Hanafi al-Maturidi أبو عبد الله كمال الدين محمد بن حمزة الحراني الحنفي الماتريدي: Kitab Nahj al-najat ila al-masa'il al-muntaqat كتاب نهج النجاة إلى المسائل المنتقاة

The author is only mentioned in Kahhale XI 163 with the name Muhammad Ibn Kamal al-Din Ibn Muhammad Ibn Husayn Ibn Muhammad Ibn Hamza al-Husayni al-Hanafi محمد بن كمال الدين بن محمد بن حسين بن محمد بن حمزة الحسيني الحنفي (died 1085/1674).

Two more mss. of this work on applied law are Princeton no.1241 and Köprülü no. 658. - Isma'il Pasha al-Baghdadi, Idah II p.695 ascribes the text to Izz al-Din Abu al-Abbas Hamza Ibn Ahmad al-Husayni al-Sharif al-Dimashqi al-Shafi'i عز الدين أبو العباس حمزة بن أحمد الحسيني الشريف الدمشقي الشافعي (died 874/1469-70).

This cannot be correct, however, as the text refers to later works, e.g. (fol. 85v7) to Mu'in al-mufti معين المفتي by Muhammad Ibn Abd Allah al-Arabi محمد بن عبد الله العربي , who wrote ± 986/1577 (→ GAL II 311; S II 427).

The description of the above-mentioned Köprülü manuscript correctly mentions as date of death the end of the 11th/17th century; the catalogue of Köprülü library

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gives as name of the author: Muhammad Ibn Kamal al-Din Muhammad Ibn Muhammad Ibn Husayn Ibn Kamal al-Din Muhammad Ibn al-Sayyid Hamza al-Husayni al-Hanafī al-Dimashqi mawliḍan al-Harrani aslan wa-mahtidan محمد بن كمال الدين محمد بن محمد بن حسين بن كمال الدين محمد بن السيد حمزة الحسيني الحنفي الدمشقي مولدا الحراني أصلا (Catalogue I p. 318). ومحتدا

The Köprülü Ms. ends with fol. 265r24 of our Ms., which continues with an epilogue enumerating some of the sources which the author used. After this enumeration we are informed by the author that he finished his book on 18 Dhu al-Hijja 1080/8 May 1670. In the margin the copyist repeated keywords and sentences.

(End of Rudolph's comment)

The Kitaab, *Mueenul Mufti*, to which the Author of *Nahjun Najaat* refers, and mentioned by Rudolph in his review, was written in 986 H, more than a century after the demise of Izzuddin Ibn Hamzah who was a Shaafi' Faqeeh and the great, great, great grandfather of the Author of *Nahjun Najaat*.

While it is not expected of Mufti Taqi and the Korangi Muftis to be aware of all these facts, they should have resorted to caution on the basis of Allaamah Shaami's citation of the Kitaab. They should not have pounced on the conclusion that the Author was a Shaafi' and *ghair ma'roof* (a non-entity). It was expected of them to have made proper research to ascertain the status of both the

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Author and the Kitaab. Although they have acquired the Shaafi' fact from *Idhaahul Maknoon*, they sucked the *ghayr ma'roof* stupidity from their thumbs because *Idhaahul Maknoon* as well as other kutub of biographies do not label Izzuddin Ibn Hamzah who died in 874 H as a 'non-entity'. They list him as a Shaafi' Faqeeh of lofty standing.

It should be palpably clear that *Muhammad Bin Kamaaluddeen Bin Muhammad Bin Husain Bin Muhammad Bin Hamzah*, described as *Naqeebush Shaam*, *Allaamatul Ulama-il A'laam Al-Husaini Ad-Dimashqui Al-Hanafi*, died 1085, is NOT Izzuddeen Hamzah who died in 874, and with whom the Korangi Muftis have confused the former, viz., the Author of the *Nahjun Najaat* from which Allaamah Shaami quotes.

In *Khulaasatul Athar* he is lauded with the following glowing accolades: "Aalim, Muhaqqiq, Hibr, Mudaqqiq, Ghawwaas alal Masaa-il, Katheerut Tabahhur, Mamloolan Mu-aarifan wa Funoonan. He surpassed all the seniors of his era and his fame extended to the horizons." This is the illustrious Shaikh whom the Korangi muftis have attempted to portray as a non-entity.

QIYAAS

Presenting the qiyaasi (rational) dalaa-il for the Qasr view, Mufti Taqi states:

"The *Qasr* view is also in accord with qiyaas."

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His arguments for this contention are:

1) The intention (*niyyat*) of *safar* by the *haaidhah* is valid despite her state of *haidh*. She does have the ability and qualification of making this *niyyat* at the time of setting out for the journey.

2) Those who lack the ability and qualification for making a *niyyat* at the time of commencing their journey, their intention will not be valid in terms of the Shariah. Conversely, those who possess the qualification and ability for making an intention, their *niyyat* of *safar* will be valid at the time when they set out on the journey, hence the rules of *safar* will be applicable to them. He bolsters this argument with the following three scenarios mentioned in the Kutub of Fiqh:

a) A *naa-baaligh* (minor) sets off with the intention of *safar*. Along the route he attains *buloogh* at a place which is at a distance less than the *safar* distance from his destination. He will not avail himself of *Qasr*, but has to perform *Salaat* in full because at the time when he had set out on the journey he lacked the qualification for making a valid *niyyat*. Thus, according to the Shariah he will not be a *musaafir* at that juncture.

b) A non-Muslim left home with the intention of *safar*. Along the route he embraces Islam at such a place which is less than the *safar* distance to his destination. He will

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perform *Qasr* because at the commencement of the journey he had the qualification of forming a valid intention. Kufr is not a *musqit* (*waiver*) of niyyat, i.e. kufr does not cancel the ability to make niyyat, whereas it is *musqit* of Ibaadat.

c) This scenario applies to the *haaidhah* who does have the qualification of making a *niyyat*. She is also bound by the *Ahkaam* of the Shariah. Precisely for this reason will her Ihraam of Hajj and Umrah be valid even if adopted during the state of haidh. It is therefore more preferable to base her state on the mas'alah pertaining to the kaafir who embraces Islam, hence she should perform *Qasr*.

The kaafir is aqil (intelligent and sane) and baaligh (an adult) and a valid repository for niyyat. Likewise is the *haaidhah*. Just as the kaafir's *safar* is valid, so too is the *safar* of the *haaidhah* valid.

The above are the three grounds presented by Mufti Taqi to rationally support his argument of *Qasr* for the *haaidhah* who attains purity along the journey.

The narrational evidence, Mufti Taqi cites is ambiguous and contradictory. Different views have been expressed by the Fuqaha on these scenarios. Mufti Taqi, has selectively adopted the view which suits his fancy despite such view being in conflict with the more than thousand-year Ijma' of the Fuqaha. The fact that such consensus has been extant in the Ummah for a thousand years is the evidence for the validity of the view from long before a thousand years. The

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rational grounds presented are also faulty and may not be proffered to scuttle the popular view of the Math-hab.

The argument that haidh is not *musqit* of *niyyat* for the *haaidhah* in relation to Salaat is not valid. It is confirmed beyond doubt, that Salaat is waived / cancelled for the *haaidhah*, hence it is haraam for her to perform Salaat. Furthermore, there is no *qadha* of such Salaat. Thus haidh is *musqit-e-salaat*. Since the Shariah prohibits her from Salaat, it is fallacious to claim that she has the *salaahiyat* of forming an intention for *safar*. The *ahkaam* of *safar* are directly related to Salaat. But in view of the obligation of Salaat falling away, her intention of *safar* is futile and not valid. The contention that she is *mukhaatab* (addressed) by the Shariah is not valid for the purposes of Salaat despite the applicability of the *ahkaam* of Hajj and Umrah which the Shariah does not waive for her.

Since the *haaidhah* has no qualification and ability for Salaat, her *niyyat* of *safar* has no validity in relation to Salaat. For Salaat and the rules pertaining to it, she is not a valid substratum. As far as Umrah and Hajj are concerned, there are no *ahkaam* related to *safar*. The *ahkaam* are the same for both the *muqem* and the *musaafir*. The difference is relevant to only Salaat. The analogy is thus fallacious.

In a vain attempt to provide evidence for the *Qasr* view, Mufti Taqi has been able to quote only the rational argument of Shurumbulaali who was a very late-comer on the scene. He died in the year 1069 H.

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In proffering the *Qasr* view, Shurumbulaali states:
“It should not be hidden that the *haaidh* does not descend to a status lower than the one who accepts Islam, hence *qasr* is her right just as it is the right of him (the convert).”

Firstly, the rational (qiyaas) view of Shurumbulaali stated in the 11th century, cannot cancel the more than thousand-year Fatwa of our Fuqaha.

Secondly, the rule of *Itmaam* does not denigrate the status of the *haaidhah* in any way whatsoever. On the contrary, she performs more raka'ts for which there will be greater thawaab.

Thirdly, it is baseless to analogize her with the kaafir who accepts Islam. The kaafir is at all times *mukhaatab* of the Shariah to accept Islam, and at all times he possesses the *salaahiyat* for entering into the fold of Islam. It is his evil intention which constitutes the impediment for his acceptance of Islam. Since he has the ability to eliminate the impediment at all times, his intention of *safar* will be valid. This is according to those who believe that *Qasr* is valid for him. On the contrary, the *haaidhah* despite being a Muslim is not allowed to perform Salaat, hence her *niyyat* will not be valid for *safar*. The objective of forming a *niyyat* when embarking on a journey is nothing other than to entitle the *musaafir* to perform *Qasr*. The intention has no other practical or Deeni significance. Now since the

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haaidhah is not the Shariah's subject for Salaat, her intention for this purpose will be *lahw* (futile/nonsensical).

Fourthly, there is no consensus of the Fuqaha regarding *Qasar* for the convert Muslim. According to some Fuqaha, even he has to perform *Itmaam*. It is stated in *Al-Fataawal Ghiyaathiyah*:

“When the kaafir musaafir accepts Islam and between him and his destination is (a distance of) less than three days, then he is in the category of a muqem. He has to complete his Salaat. And, it is more viable that the haaidh resembles the kaafir who has accepted Islam (i.e. perform Itmaam). And this is the adopted (Mukhtaar) view.”

Al-Ghiyaathiyah also mentions the other conflicting view:

“A child and a Nasraani (Christian) went on a journey. After travelling two days, the Nasraani accepted Islam and the child became baaligh. The Nasraani shall perform Qasr, and the baaligh child shall make Itmaam. This is the view of As-Sadrush Shaheed Husaamuddeen.”

In *Al-Masaailul Badriyyatul Muntakhabatu min Al Fataawaz Zaheeriyah*, Allaamah Aini (died 855 H) states:

Others said: When the child attains buloogh (on the journey), he shall perform four raka'ts, and when the kaafir embraces Islam (on the journey), he shall perform two raka'ts. This view is the adoption of As-Sadrush Shaheed Husaamuddeen. Some of them (i.e. some Fuqaha) said: Both shall perform two raka'ts.

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When the *haaidh* attains purity (along the journey) and between her and her destination is a distance of less than three days, she shall perform four raka'ts. This is the correct view (*Huwas-Saheeh*), and the effect of this statement is that the opposing view is not *Saheeh*. Thus in *Rasmul Mufti* it is mentioned that the opposing view will not be *Mufta Bihi*.

Note: The pronoun denotes emphasis, i.e. this is the most authentic view.

In Minhatul Khaaliq, Allaamah Ibn Aabideen commenting on Ibn Nujaim's statement in *Al-Bahrur Raa-iq*, viz. the child who attains buloogh along the journey shall perform four raka'ts because his *niyyat* is not valid, states:

"It is mentioned in As-Siraajul Wahhaaj, similarly in Taatarkhaniyyah narrating from Az-Zaheeriyyah: 'The haaidh who attains purity along the journey and the distance between her and her destination is less than the distance of three days, she shall perform four raka'ts. This is the most authentic view.'"

The mas'alah as it appears in *As-Siraajul Wahhaaj* is as follows:

"When the kaafir (musaafir) accepts Islam and between him and his destination there is (a distance of) less than three days, the hukam for him is the hukam of a muqem (i.e. he will perform 4 raka'ts). Similarly is the child along the journey with his father, who attains buloogh and

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between him and his destination are less than three days. His hukam is the hukam of a mugeem. So said Muhammad Bin Fadhl. Others said that both will perform the Salaat of the musaafir. Similarly is the haaidh. When she attains purity and between her and her destination is a distance of less than three days, she will perform four raka'ts. And this is the Saheeh view."

The Author of *As-Siraajul Wahhaaj* was Shaikh Allaamah Abu Bakr Bin Ali Al-Haddaad Al-Yemeni (died 800 H). He attributes the *haaidhah* mas'alah to Muhammad Bin Fadhl who was the Student of Imaam Muhammad through three links. He passed away in 381 Hijri. It is clear that the mas'alah has been transmitted from Imaam Muhammad (Rahmatullah alayh).

According to Allaamah Shaami, the *Itmaam* view for the *haaidhah* who attains purity along the journey is based on the second view that both the kaafir and the child shall make *Itmaam*.

The same difference is stated in *Ghunyatul Mutamalli*, and in other kutub as well: *"The kaafir sets off intending a journey. Along the route he accepts Islam whilst between him and his destination there remains a distance of less than three days. He will not make Qasr. The same applies to a child..... (i.e. he too shall not perform Qasr). This is the view of Abu Bakr Muhammad Bin Al-Fadhl. Other Mashaaiikh say that this applies to the child. However, the kaafir (who accepts Islam) shall make Qasr.*

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In Al-Khulaasah it is mentioned that this is the Mukhtaar view. It has also been said that both shall perform Qasr.

When the haaidh attains purity, and there remains between her and her destination a distance of less than three days, then she shall perform Itmaam, and this is the Saheeh view. This is stated in Az-Zaheeriyah.”

In short, regarding the child attaining *buloogh* and the kaafir accepting Islam along the journey, the views are as follows:

- The convert shall perform *Qasr*
- The convert shall perform *Itmaam* (full 4 raka'ts)
- Both shall perform *Itmaam*
- Both shall perform *Qasr*

But as far as the *haaidhah* is concerned, all the authentic kutub state that she shall perform *Itmaam*. It is only mentioned in *Muheet Burhaani*, according to one view that she shall perform *Qasr*. But at the same time the view of *Itmaam* is also stated in *Muheet Burhaani*.

NOTE: The attempt by Mufti Taqi is to peddle the idea that the *Itmaam* view for the *haaidhah* is unreliable. To achieve this objective he abortively endeavours to portray that this mas'alah has been acquired by Shaami from *Nahjun Najaat* whose author is an 11th century Faqeeh. This endeavour is the effect of either defective research or a deliberate attempt to deceive.

Allaamah Shaami does NOT attribute this mas'alah to

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Nahjun Najaat. He has stated explicitly that the sources of the mas'alah are *Az-Zaheeriyah*, *As-Siraajul Wahhaaj* and *Taatarkhaaniyyah*. To dispel any misgiving created by Mufti Taqi, it must be emphasized that *Nahjun Najaat* is a highly authentic and reliable Kitaab of the Hanafi Math-hab unlike *Muheet-e-Burhaani* which is the sole source of reliance for Mufti Taqi.

Notwithstanding the lofty status of the noble Author of *Muheet Burhaani*, very senior Fuqaha stated that it is not permissible to utilize this Kitaab for issuing Fatwa. They claim that *Muheet Burhaani* also contains baseless narrations. Such a charge has not been levelled at *Nahjun Najaat*.

It is difficult to understand the confusion of the Korangi Muftis regarding the two illustrious personalities, the one having appeared more than two centuries before the other. The Faqeeh, Izzuddeen Hamzah mentioned by Mufti Taqi was the great, great, great grandfather of Muhammad Bin Kamaaluddeen, the Author of *Nahjun Najaat*, from which Allaamah Shaami quotes some other masaa'il, NOT the mas'alah of *Itmaam* for the *haaidhah*. While the Author's great, great, great grandfather, Izzuddeen Hamzah was a Shaafi, Muhammad Bin Kamaaluddeen was without any dispute a leading Hanafi Faqeeh. His Kitaab deals with Hanafi Fiqh, not Shaafi' Fiqh.

The mustafti (the one who posed the question) presented in his istifta' some stupid specimens of qiyaas in the attempt

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to debunk the thousand-year Ijma' on the ruling that the *haaidhah* who attains purity on the journey shall perform *Itmaam*. It is quite surprising that the Korangi Muftis upheld his nonsensical reasoning.

The mustafti says: *“The reason given (i.e. by the Fuqaha) for her to perform full Salaat is: ‘Her prevention from Salaat is not of her own making, hence her niyyat is futile from the very beginning (of the journey).’*

However, it comes to mind that why will she not be qualified for making a niyyat on the basis of the waiving of Salaat when the niyyat of safar is not restricted to Salaat. Other masaa-il are also related to niyyat of safar. For example, if this woman travels during the days of Udhiyyah (Qur’baani), then Qur’baani will not be Waajib on her. Thus, in relation to Qur’baani, the safar is regarded valid. In the Shariah no such example of an intention of safar being valid for some ahkaam and not valid for other ahkaam has crossed us.

On reflection it transpires that whilst haidh is musqit-e-salaat, it is not musqit-e-ahliyyat. In fact, she remains liable for the other ahkaam of the Shariah because she is a Muslimah, aaqilah and baalighah. To rule that her niyyat is invalid merely because of haidh is an issue for evaluation (i.e. it should be re-evaluated for ascertainment of rectitude).”

It is unexpected of senior Muftis to uphold this reasoning,

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the status of which, is better conveyed by the Urdu term, *lachar*, i.e. foolish and stupid. The reasoning of the mustafti accepted by Mufti Taqi is deceptive and stupid.

Let us examine and refute the *lachar* arguments, one by one.

(a) The mustafti states: “However, it comes to mind that why will she not be qualified for making a *niyyat* on the basis of the waiving of Salaat when the *niyyat* of *safar* is not restricted to Salaat?”

Response:

For the simple reason that this is a Shar’i *hukm*, which *lachar qiyaas* cannot override. Her lack of qualification for making *niyyat* in this context is applicable to ONLY Salaat. Since she has been disqualified from Salaat by the Shariah, her disqualification from making a *niyyat* for Salaat purposes is axiomatic. It is simply a logical consequence of lack of *ahliyyat* for Salaat.

In the context of Salaat, *safar* has a direct bearing, and *Tahaarat* is a fundamental requisite for validity of Salaat. Haidh totally effaces the ability of performing Salaat, and this is not of her own making.

She has no power whatsoever of eliminating the impediment which prevents her from Salaat. Unlike a *junubi* whose impurity is momentary and whose elimination is fully within his power, the *haaidhah* is helpless. Even if she makes a *niyyat* of *safar*, it will be

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laghw in view of her inability to eliminate the obstacle which prevents her from Salaat.

Explaining this fact, Shaikh Ibn Hamzah states in his *Nahjun Najaat* in refutation of the objection presented by Shurumbulaali:

“The impediment regarding the haaidhah is samaawi (heavenly, i.e. an order of the Shariah). Therefore there is no difference between her and the child (who attains buloogh along the journey). On the contrary, (is the case of) the kaafir.”

The kaafir at all times is capable of eliminating the obstacle which impedes him from Salaat, namely the impediment of his kufr. The same applies to the junubi. On the other hand, the *haaidhah* and the child lack the ability to eliminate the impediment, hence the futility of making a *niyyat*. Thus, for the purposes of Salaat, the *haaidhah* lacks the *ahliyyat* of *niyyat*. It is therefore palpably erroneous to say that for the duration of her haidh she is *mukhaatab* (addressed and commanded by the Shariah). Yes, she remains *mukhaatab* regarding the other *Ahkaam* of the Shariah. But, when the Shariah itself has totally exempted her from Salaat, not even demanding qadha, then it is irrational to claim that she is *mukhaatab*. Those who assert that she is *mukhaatab* are either confused or ignorant. Her being the substratum of being *mukhaatab* for Hajj and Umrah, does not render her *mukhaatab* for Salaat.

(b) The mustafti states: “Other masaa-il are also related to

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niyyat of safar. For example, if this woman travels during the days of *Udhiyyah* (Qur'baani), then Qur'baani will not be Waajib on her. Thus, in relation to Qur'baani, the *safar* is regarded valid.”

Response

Qur'baani devolves as an obligation on only those who are *Muqem*. A condition for the *wujoob* of Qur'baani is *Iqaamat*. The simple response to this objection of the mustafti is that Qur'baani will be *Waajib* on the *haaidhah* if she is by the financial means whilst she is still a *muqem* in Shar'i terms. If the *haaidhah* reaches her destination in the state of haidh, Qur'baani will be *Waajib* on her in view of the existence of the condition of *Iqaamat*. This is the ruling on the basis of the view that her status as a *muqem* remains unchanged due to the futility and invalidity of her *safar niyyat*.

On the basis of the view of the validity of her *safar niyyat*, Qur'baani will not be Waajib on her. Thus, the ruling of invalidity according to the first view remains constant, and so does it in terms of the second view. However, as mentioned earlier, the second view is not the most authentic. It is not the popular view.

Furthermore, the relationship of other masaa-il to the *niyyat of safar* has no bearing on the invalidity of her *niyyat of safar* relative to Salaat. These are two different issues which the Korangi Muftis are confusing due to their failure of applying their minds. While according to the

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Shariah her *niyyat* for other masaa-il is valid, for Salaat purposes it is not valid.

(c) The mustafti says: “In the Shariah no such example of an *intention of safar* being valid for some *ahkaam* and not valid for other *ahkaam* has crossed us.”

Response

If it has not crossed you, it does not axiomatically follow that there are no such examples.

The mas’alah pertaining to the *haaidhah* is the classical example of the invalidity of the intention of *safar niyyat* for Salaat purposes. The Fuqaha who have decreed this invalidity were not morons. After the Aimmah Mujtahideen of Khairul Quroon era they were the noblest and the highest Authorities of the Shariah. When they have recognized the invalidity of the *intention of safar* relative to Salaat, it is contumacious for an absolute non-entity to attempt to refute this decree.

Furthermore, in terms of the invalidity of *niyyat* view, there will be a difference in effect when the *haaidhah* attains purity. Whilst her *Qasr* Salaat will not be valid, her Qur’baani will be valid despite it not being *Waajib*. The reason for this difference is that whilst for Salaat, *Tahaarat* is a *shart*, it is not a condition for the validity of Qur’baani. Hence, *Qasr* will be negated in view of the intention having been made during the state of impurity. But, this

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does not affect the validity of Qur'baani since it is not dependent on *Tahaarat*.

On the basis of the view that her *niyyat of safar* is valid for *Qasar* as well as for the rule of exemption applicable to Qur'baani, she may abstain from Qur'baani, but this is the contentious issue under discussion.

Another example of the invalidity and validity of a *safar niyyat* relates to travelling without a *mahram*. It is not permissible for a female to embark on a journey of three days without a *mahram*. For the purpose of *Qasar* Salaat she cannot avail of her *safar intention* for the benefit of the concession. But for the journey, her *niyyat* will be valid, hence she is obliged to travel with a *mahram*. She cannot argue that in view of her *safar niyyat* being invalid for Salaat, it should likewise be invalid for the journey, thus permitting her to travel without a *mahram* since *hukman* (legally according to the Shariah) she remains a *muqem*.

In brief, those Fuqaha who maintain that her *safar niyyat* is invalid from the very inception, restrict it to Salaat. For other purposes, her intention is regarded as valid since the Shariah has not cancelled her *ahliyyat* as it does relative to Salaat.

Another example of the invalidity of the *haaidhah's niyyat* is her intention of Sajdah Tilaawat. Since for this purpose she is not the *mukhaatab* of the Shariah, Sajdah will not be

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binding on her even if she recites such an aayat or hears it being recited. On the other hand, the Sajdah will be incumbent on a *junubi*. After ghusl, he has to compulsorily make the Sajdah, but not the *haaidhah*. Thus, the claim that she is *mukhaatab* for the *ahkaam* is not general. It does not apply to all the *ahkaam*. (*Al-Furooqu fil Furoo' of Imaam Abu Al-Muzaffar Al-Karaabeesi, An-Naisapuri, died 570 H*)

(d) The mustafti says: “On reflection it transpires that whilst haidh is *musqit-e-salaat*, it is not *musqit-e-ahliyyat*.”

Response:

This conclusion is erroneous. Haidh is not only *musqit-e-salaat*. It is also *musqit-e-ahliyyat-e-salaat*. It totally negates the qualification of Salaat for the *haaidhah* for the duration of the *haidh*. If the effect of *haidh* was only *musqit-e-salaat*, whilst not affecting *ahliyyat*, then on attaining purity, *Qadha* of Salaat would have been *Waajib* as it is in the case of Saum.

Just as *haidh* is *musqit-e-salaat*, so too is it *musqit-e-saum*. But relative to Salaat, it negates *ahliyyat*, but retains it (*ahliyyat*) for Saum, hence *qadha* of Saum is *Waajib*, but not *qadha* of Salaat. The difference is conspicuous, and the elimination of *ahliyyat* in relation to Salaat is palpably clear.

A GRAVE INJUSTICE

Both the mustafti and Mufti Taqi committed the grave injustice of despicably attempting to denigrate the lofty status of the illustrious Author of *Nahjun Najaat*. They labelled him *ghair ma'roof*, i.e. an unknown entity, and cast adverse aspersions on his view by peddling the false idea of him being a 'Shaafi'.

It is necessary to repeat that in the first instance, the mas'alah of the *haaidhah* was NOT acquired by Shaami from *Nahjun Najaat*. Assuming that the illustrious, well-known (*Ma'roof*) Author was truly an unknown entity, then too it would not affect the stance of Allaamah Shaami because he did not acquire the mas'alah from *Nahjun Najaat*.

Our concern is to vindicate the illustrious Author and to show that the view which the mustafti and the Korangi Muftis hold of him is absolutely baseless, in fact slanderous. It appears that the mustafti is also one of the Korangi muftis. The same errors stated in the Istifta' appear in the fatwa.

THE ILLUSTRIOUS SAAHIB-E-NAHJUN NAJAAT

His noble lineage

The Noble Lineage until Hadhrat Ali (Radhiyallahu anhu):
As-Sayyid Muhammad Bin Kamaalud Deen Bin
Muhammad Bin Husain Bin Muhammad Bin Hamzah Bin
Ahmad Bin Ali Bin Muhammad Bin Ali Bin Hamzah Al-
Harraani Ibn Muhammad Bin Naasirud Deen Bin Ali Bin

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Al-Husain Al-Muhtarif Ibn Isma'eel Bin Al-Husain An-Nateef Ibn Ahmad Bin Isma'eel Ath-Thaani Ibn Muhammad Bin Isma'eel Al A'raj Ibnul Imaam Ja'far As-Saadiq Ibnul Imaam Muhammad Al-Baaqir Ibnul Imaam Ali Zainul Aabideen Ibnul Imaam As-Sayyid Al-Husain Bin Sayyidina Ali Bin Abi Taalib, (Ridhwaanullahi Ta'ala alaihim ajma'een).

This is the lineage of the Bani Hamzah, the Chiefs and Elders of Shaam from generation to generation.

He (As-Sayyid Muhammad) was the *Naqeeb* (Chief) of Shaam and the Allaamah of the eminent Ulama. He was Al-Husaini (that is, his lineage goes up to Hadhrat Husain, Radhiyallahu anhu) and he was a leading Hanafi Faqeeh.

He was the leader in his time in *Ilm* and *Jaah* (knowledge and popularity) and unmatched in his leadership and piety.

He was an Aalim of lofty status, Muhaqqiq, exceptionally deep penetrator of Masaaa'il and absolutely profound in his awareness and skills. He surpassed all contemporary luminaries. His name and fame spread all over. When his father passed away he became the Chief of the Sayyids and the Head of Shaam. Students and people were perpetually at his door. He continuously remained engrossed in benefitting and fulfilling their needs and granting authorization in requests.

He authored wonderful and accepted books. He passed away at the end of the month of Safar in the year 1085

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Hijri. He is buried in Maqbarah Al-Faraadees. (Rahimahullahu Ta'ala).

(Extracted from Khulaasatul Athar, V.4, by Shaikh Muhammad Ameen Al-Muhibbi Ad-Dimashqi, d.1111Hijri)

Thus, he was not the 'ghair ma'roof' (non-entity) portrayed by the Korangi Muftis who themselves are *ghair ma'roof* acting as rubber stamps.

THE HAJJ AND UMRAH ARGUMENT

It has been averred that just as the *haaidhah's* niyyat is valid for Hajj and Umrah, so too is her intention valid for all acts of Ibaadat. However, this view is incorrect. The analogy is baseless. *Tahaarat* is not a *shart* for the validity of Hajj and Umrah whereas it is an incumbent condition for the validity of Salaat. Thus the validity of her niyyat for Hajj and Umrah does not render her niyyat valid for Qasr Salaat. Entering into the state of Ihraam is not reliant on *Tahaarat*, while Salaat is dependent on *Tahaarat*. Her *safar niyyat* for the concession of *Qasar* is directly related to Salaat, hence the invalidity of her intention.

SHAIKH ABU JA'FAR

Shaikh Abu Ja'far is the only authority which Mufti Taqi has been able to cite for the *Qasar* position. Besides *Muheet Burhaani* no other Authority mentions him for the *haaidhah* mas'alah despite the fact that Allaamah Haseeri flourished a century prior to the Author of *Muheet Burhaani*.

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It may not be stupidly argued that Allaamah Haseeri was not aware of Shaikh Abu Ja'far, and that the latter's kitaab, *Al-Mutafarriqaat* was unknown to him. Allaamah Haseeri quotes Abu Ja'far extensively in his *Al-Haawi*, and so does Allaamah Zaheeruddeen in his *Fataawa Zaheeriyyah*.

The fact that despite these great Fuqaha acknowledging the status of Abu Ja'far and citing him copiously in their kutub, they do not narrate the *haaidhah* mas'alah which *Muheet Burhaani* attributes to him, is indicative of something amiss. Either the attribution in *Muheet Buhaani* is an error or the Fuqaha believed in the error of the view propounded by Shaikh Abu Ja'far. No great person is free of error. Every good horse also slips. Whatever the case may be, the indisputable fact is that despite all the Fuqaha of the early eras being aware of Abu Ja'far's status and having access to his kitaab or kutub, they did not accept the *haaidhah-qasar* view attributed to him.

Whereas Mufti Taqi stumbled on Shaikh Abu Ja'far in *Muheet Burhaani* almost eleven centuries after his demise, Allaamah Haseeri flourished about 150 years after Abu Ja'far. Haseeri was more competent to cite Abu Ja'far than Mufti Taqi, and in fact he does refer to Abu Ja'far extensively in his *Al-Haawi*.

The Jamhoor Ahnaaf Fuqaha do not entertain the view which *Muheet Burhaani* attributes to Shaikh Abu Ja'far. Notwithstanding his lofty status, the fatwa of the Jamhoor

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cannot be set aside to accommodate the isolated view attributed to Shaikh Abu Ja'far.

The Jamhooir Ahnaaf Fuqaha certainly had valid reason for setting aside the view of Shaikh Abu Ja'far. It is highly improper for Muftis of the current age to override a decree which has been the official view of the Hanafi Math-hab for at least a thousand years.

It is grossly erroneous to baselessly presume that the noble Fuqaha who were the Authors of *Al-Haawi*, *Fataawa Zaheeriyah* and many other Kutub of those early eras were unaware of Shaikh Abu Ja'far's kitaab, *Al-Mutafarriqaat* to which Muheet Burhaani attributes the mas'alah of the *haaidhah*. *Al-Mutafarriqaat* of Abu Ja'far had not receded into oblivion as far as these eminent Fuqaha are concerned. They cite from it.

MUFTI TAQI'S SELECTIVE TAQLEED

Mufti Taqi has also selectively and without valid basis adopted only that view of Shaikh Abu Ja'far pertaining to the *haaidhah* while he ignores the view of Shaikh Abu Ja'far regarding the kaafir who embraces Islam along the journey. In this regard, *Muheet Burhaani* states:

“It appears in Mutafarriqaatil Abi Ja'far that both of them should perform four raka'ts because both were not addressed by the Shariah, hence they may not perform Qasar Salaat.”

The Korangi Muftis have eagerly accepted

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Shurumbulaali's rationale for arguing the validity of *Qasar* for the *haaidhah* in terms of the view which entitles the kaafir who accepts Islam to perform *Qasar*. But Abu Ja'far does not hold the view of *Qasar* for the *haaidhah* on the basis of the rationale posited by Shurumbulaali five centuries later. According to Abu Ja'far, the kaafir who embraces Islam will make *Itmaam*, hence the rational daleel of Mufti Taqi acquired from Shurumbulaali is at variance with Abu Ja'far on whom the Korangi Muftis rely for their fatwa – solely on the view of Shaikh Abu Ja'far. Therefore, they should likewise accept his view of *Itmaam* for the convert and uphold the *Itmaam* fatwa for the *haaidhah* who attains purity along the journey or at her destination in terms of Shurumbulaali's logic because she is not lesser in status than the kaafir.

Shaikh Abu Ja'far Al-Hindwani is Mufti Taqi's sole basis for his view in conflict with the Fatwa of the Jamhoor Hanafi Fuqaha of all ages. Furthermore, Mufti Taqi acquired this view not directly from the source, viz., Abu Ja'far's kitaab. He stumbled on this view in *Muheet Burhaani* which appeared several centuries after Shaikh Abu Ja'far. And he conveniently ignores the Jamhoor's view which is also stated in the very same *Muheet Burhaani*. But he ignores Abu Ja'far's view regarding the kaafir.

Mufti Taqi, furthermore, has no corroboration from any other source whatsoever to bolster the *qasar* view for the *haaidhah*.

TARJEEH?

It is extremely contumacious for Mufti Taqi and the Korangi rubber-stamping Muftis to set up the pedestal of *Tarjeeh* for themselves for sitting in arbitration over the illustrious Fuqaha of the status of the Authors of *Al-Haawi* and *Fataawa Zaheeriyah* and many others, to effect the *amal* of *Tarjeeh*. Further, to implement their brand of ‘*tarjeeh*’ for rejecting the 1000 year Fatwa of the Hanafi Math-hab, they miserably fail to provide solid *dalaa-il*. The solitary *Muheet Burhaani* argument is a flapdoodle ‘*daleel*’ devoid of valid Shar’i substance. It may not be presented in negation of the accepted and ‘*Saheeh*’ and ‘*Mukhtaar*’ view of the Jamhoor Fuqaha of the Math-hab.

It will also be salubrious for the Korangi Muftis to divest their minds from the hallucination of themselves or Mufti Taqi being Mujtahids. It is incumbent and in their own Imaani interests to understand that they are pure *muqallideen* of the Math-hab. In comparison to the illustrious Fuqaha of yesteryear the muftis of the current age, all piled up together, are absolute non-entities. The Noble Fuqaha of bygone times were members of a special celestial Breed created by Allah Azza Wa Jal to defend and guard this Deen from contamination – contamination such as that of the Ahl-e-Bid’ah, Ahl-e-Baatil, Ahl-e-Hawa and liberals such as Mufti Taqi and the Korangi Muftis and others of their ilk. Those glorious Fuqaha are the effects of Allah’s Declaration:

“*Verily We have revealed The Thikr, and verily We are its Protectors.*”

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The noble Sahaabah and their immediate successors, and their successors and their successors – all of the early eras of Islam – constitute the Institution established by Allah Azza Wa Jal for guarding and defending this Deen to ensure its pristine purity until the Day of Qiyaamah.

The muftis of this age in close proximity to Qiyaamah should therefore not become too big for their boots by dwelling in self-deception with the hallucination that they possess the expertise and the right to override the view of the Jamhooir who had set aside the view of Shaikh Abu Ja'far. In fact, Mufti Taqi has committed a grave injustice by blowing much hot air on the basis of the view he had stumbled on in *Muheet Burhaani*.

While there are *Usool* permitting divergence from the Fatwa which is an incumbent norm for the Ummah to follow, there is nothing to warrant abrogation of the *Jamhooir's haaidhah mas'alah*. She simply has to perform four raka'ts. There is no *Dhuroorah* here to dictate otherwise. The exercise of Mufti Taqi is therefore grossly futile, negative and tantamount to undermining the Shariah as presented by the Jamhooir Hanafi Fuqaha. It is not a simple issue related to a woman attaining purity from her haidh. The accepted Masaa-il of the Deen are not toys with which to trifle.

The issue of the adoption of selective Taqleed is serious, and may not be scanned over. It is stated explicitly in

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Muheet Burhaani that according to Shaikh Abu Ja'far, the kaafir who embraces Islam along the route shall perform four raka'ts (make *Itmaam*) if the distance between him and his destination is less than the *safar* distance.

Muheet Burhaani also states that this view is a narration in *Al-Mutafarriqaat*. While Mufti Taqi very conveniently ignores this view of the Shaikh Abu Ja'far – the only Authority on whom he relies for the haaidhah mas'alah – there is no conundrum underlying his selective taqleed of Abu Ja'far.

Since Abu Ja'far's view is in conflict with Mufti Taqi's view regarding the convert Muslim stated in his (Mufti Taqi's) fatwa, he deemed it appropriate to ignore and set aside the *Itmaam* view in relation to the kaafir who accepts Islam along the journey. But Mufti Taqi makes haste to accept Shaikh Abu Ja'far's view pertaining to *Qasar* for the *haaidhah*.

In terms of Abu Ja'far's principle, the kaafir who enters Makkah, then embraces Islam, will not be required to pay the Dumm penalty for having crossed the Meeqaat. The same applies to a child who attains *buloogh* after entering Makkah. The rationale for this is that both are not *Mukhaatab* by the Shariah regarding Ibaadat. Since this logic should also be extended to the *haaidhah* in view of her not being the Shariah's *Mukhaatab* for the duration of haidh in relation to Salaat, Abu Ja'far's view that she should perform *Qasar* is at variance with his logical

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principle. It is for this reason that the Jamhoor Fuqaha have set aside his view of *Qasar* for the *haaidhah*.

This methodology does not befit a Mufti. It reeks of *nafsaaniyat*. What is the rational reason for this selective taqleed?

ABANDONING THE JUNIOR ABU HANIFAH

For supporting his view of *Qasar* for the kaafir embracing Islam, Mufti Taqi relies on several Hanafi Fuqaha, and totally abandons Shaikh Abu Ja'far whose title of '*Junior Abu Hanifah*' he highlights in his fatwa. Thus, he cites *Fathul Qadeer*, *Badaaius Sanaai*, *Al-Fataawa Al-Hindiyyah*, and *Al-Ashbaah Wan Nazaair*. With the views of these Jamhoor Hanafi Fuqaha, he overrides the view of Abu Ja'far who is his sole authority for the *Qasar* view for the *haaidhah*.

Rationalizing validity for the Jamhoor's view of *Qasar* for the convert, and which is in negation of Abu Ja'far's view stated in *Muheet Burhaani*, the Korangi fatwa states:

"...Hence, it appears more appropriate to analogize (the haaidhah's mas'alah) on the basis of the kaafir's mas'alah because the kaafir is also aaqil and baaligh, hence has the qualification for niyyat. The haaidhah too is aaqilah, baalighah and ahl of niyyat. Therefore, just as the niyyat of safar of the kaafir has Shar'i validity, the haaidhah's niyyat of safar will be valid to a greater extent."

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On the basis of this rationale, Mufti Taqi sets aside Abu Ja'far's *Itmaam* view narrated in *Muheet Burhaani*. But he accepts with gleeful alacrity the view of the very same Abu Ja'far pertaining to *Qasar* for the *haaidhah*. Yet there is valid rationale for upholding Abu Ja'far's *Itmaam* view. Mufti Taqi had made *tarjeeh* of Abu Ja'far's view pertaining to the *haaidhah* solely on the basis of this illustrious Faqeeh being the "*Junior Abu Hanifah*". Ostensibly it was on the basis of Abu Ja'far's outstanding status that Mufti Taqi had deemed it valid to override the view of the Jamhoor. He should adopt the very same stance regarding Abu Ja'far's *Itmaam* view for the kaafir. But Mufti Taqi has conveniently forgotten that he, Abu Ja'far is the 'Junior Abu Hanifah'!

The rationale presented by Mufti Taqi to reject the view of Abu Ja'far is in fact the daleel of those Fuqaha who maintain that when a kaafir embraces Islam along the journey, then he should perform *Qasar*. However, other Fuqaha, including Abu Ja'far, are of the opinion that like the *haaidhah*, the convert will also perform *Itmaam*. Whilst an opinion of a Faqeeh may exercise greater appeal than the opinion of another Faqeeh, it is contumacious and baseless to claim that the opinion preferred by one group is the only valid one, and that the opposite view is in conflict with the principles of the Shariah as is stupidly averred in the fatwa issued by the Korangi Muftis. The Fuqaha were not morons or *maajin muftis* which abound in the current age. These Muftis lack the qualification for resorting to

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Tarjeeh in the sphere of the *Aqwaal* of the Giants of Uloom and Taqwa of the early eras of Islam. They should hold on powerfully to the Rope of Taqleed of the Jamhoor of the Math-hab. Lest some moron may misconstrue what we are saying, we hasten to clarify that in the adoption of the Jamhoor's view relevant to *Itmaam* for the *haaidhah*, we are not resorting to *Tarjeeh*. We are not preferring one view over the other. We are pure *muqallideen*, hence we have embarked on only the defence and narration of the mas'alah as it exists in the Hanafi Math-hab, and which Mas'alah has been the *Mufta Biha* version of all our Akaabireen.

PREPOSTEROUSLY BASELESS CONCLUSIONS

The mustafti, with Mufti Taqi concurring, says:
“Now the scenario is this: One juziyah (a particular mas'alah), namely, Itmaam, is in conflict with the principles, narrationally weak and in conflict with rationality while the other juziyah, namely, Qasar, is in conformity with the principles of the Math-hab. Its propounder is Shaikhul Islam Imaam Faqeeh Abu Ja'far and Allaamah Shurumbulaali.”

Firstly, it is really silly to place Allaamah Shurumbulaali in the same bracket as Shaikh Abu Ja'far. The former was an eleventh century Allaamah. He is not of the same calibre as Abu Ja'far. But, since Mufti Taqi has failed to find another Name of valid substance between the fourth and eleventh

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century to support him, he clutched at a straw and lumped Shurumbulaali together with Abu Ja'far.

It is most surprising that the Korangi Muftis saw fit to uphold this preposterous stupidity. Let us examine this specimen of stupidity which has been proffered without application of the mind.

(a) **The first stupidity:** *Itmaam is in conflict with the principles of the Shariah.*

Neither the mustafti nor the mufti or the muftis have explained their hallucinated conflict. Which are the principles with which *Itmaam* conflicts? Were the noble and illustrious Fuqaha who held the *Itmaam* view morons, and so stupid as not to have understood the hallucinated conflict? For the edification of those who hold this preposterously stupid view, the Fuqaha of the calibre of the Author of *Al-Haawi*, Al-Haseeri, were Giants of Uloom who split not only hairs, but atoms, in the presentation of their dalaa-il. Were the numerous Fuqaha who held the *Itmaam* view bereft of sufficient intelligence to render them incapable of understanding the imagined conflict? We can say with certitude that this claim made by the Korangi Mufti is bunkum, unexpected of Muftis who are supposed to be senior Ulama.

(b) *The Itmaam view is narrationally weak*

This is another stupidity blurted out without application of the mind. If they had applied their minds correctly, they would not have disgorged this drivel. In which way is the

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Itmaam view narrationally weak? Besides blurting out nonsense, they have not explained the nonsense which is devoid of Shar'i substance.

The *Itmaam* view has been narrated in *Al-Haawi* of *Al-Haseeri* (a century prior to *Muheet Burhaani*), in *Fataawah Zaheeriyah*, *Muheet Burhaani*, *As-Siraajul Wahhaaj*, *Fataawa Al-Ghiyaathiyah*, *Al-Masaa'il Badriyyah*, *Tatarkhaaniyah*, *Sagheeri*, *Kabeeri*, *Ad-Durrul Mukhtaar*, *Raddul Muhtaar*, *Nahjun Najaat*, etc.

All our Deobandi Akaabir have upheld and abided by this view.

The following were the eras in which these illustrious Fuqaha flourished:

- 1) Imaam Muhammad Bin Ibraaheem Al-Haseeri - died 505 H.
- 2) Imaam Burhaanuddeen Abul Ma'aali – died 616 H. (He is the author of *Muheet Burhaani*, the sole Kitaab from which Mufti Taqi cites Abu Ja'far Al-Hindwaani)
- 3) Imaam Zaheeruddeen Al-Bukhaari – died 619 H
- 4) Shaikh Dawood Bin Yusuf Al-Khateeb - 7th century H
- 5) Allaamah Aalim Bin Alaa – died 786 H
- 6) Imaam Abu Bakr Bin Ali Al-Haddaad – died 800 H
- 7) Imaam Badruddeen Al-Aini – died 885 H
- 8) Shaikh Muhammad Bin Kamaaluddeen Ibn Hamzah – died 1085 H. (Author of the baselessly much maligned authoritative, well-known Kitaab, *Nahjun Najaat*)
- 9) Allaamah Haskafi – died 1088 H

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- 10) Allaamah Ibraaheem Al-Halabi – died 1190 H
- 11) Allaamah Ibn Aabideen (Shaami) – died 1252 H

All these illustrious Authorities of the Shariah enumerated above have over the centuries narrated the mas'alah of *Itmaam* for the *haaidhah* in their famous Kutub. Thus, the narrational foundation for the *riwaayat* which the Korangi Muftis have abortively attempted to debunk, is Solid Rock – unassailable evidence. The authenticity of the narration is beyond the slightest vestige of doubt.

On the other hand, the *Qasar* view being peddled by Mufti Taqi, has been narrated by only *Muheet Burhaani*. There is no other Authority, besides *Muheet Burhaani*, who narrates this view. The Korangi Muftis have also flabbily attempted to elevate the status of the solitary source by presenting the deception that since *Muheet Burhaani* was not extant, other Fuqaha have not referred to it. This is baseless.

Fataawa Alamghiri cites *Muheet Burhaani*, and Allaamah Abdul Hay Lucknowi had access to *Muheet Burhaani*. Allaamah Lucknowi mentioned that of the 40 volumes, he had made a perusal of the first volume. Allaamah Kaashghari, died 705 H, in his well-known Kitaab, *Munyatul Musalli*, quotes *Muheet Burhaani* extensively. The Author of *Al-Ghiyaathiyah* (7th century) quotes *Muheet Burhaani* extensively. He also cites Faqeeh Abu Ja'far in several places, but does not take his *qasar* view for the *haaidhah*. He adopts the *Itmaam* view of the

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Jamhoor. *Taatarkhaniyyah* (786 H) also cites *Muheet Burhaani* extensively. Allaamah Ibraaheem Al-Halabi refers to *Muheet Burhaani* several times in his *As-Sagheeri*. He also criticizes the Author of *Muheet Burhaani* in some issues. In fact, even Allaamah Shaami cites *Muheet Burhaani*. Other Fuqaha who had access to this Kitaab, labelled it unreliable, saying that it contained such narrations which are labelled *ratb wa yaabis* (i.e. authentic and unauthentic). The bottom line is that the Jamhoor Fuqaha were not reliant on the sixth century *Muheet Burhaani*.

Regarding *Muheet Burhaani*, Ibn Nujaim states in his *Risaalah Fi Suratin Waqfiyyah*: “It is not permissible to narrate from it (i.e. from *Muheet Burhaani*), nor is it permissible to issue fatwa with it. This is stated explicitly in *Fathul Qadeer*.”

The aspersions which have been cast at *Muheet Burhaani* do not emanate from us. We regard the illustrious Author of *Muheet Burhaani* to be a veritable Authority of the Shariah. He is among the Giants of Shar’i Uloom. We have merely recorded the views of other very senior Authorities of the Shariah to show that the numerous Kutub in which the *haaidhah-itmaam* mas’alah is confirmed and promoted over the other view, are on a higher pedestal than *Muheet Burhaani*. Whilst *Muheet Burhaani* has been blemished by the criticism of illustrious Authorities, the other Kutub from which we have narrated such as *Al-Haawi* and

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Fataawa Zaheeriyyah from which the later Fuqaha narrate the mas'alah are free of the same or similar blemishes.

We state unequivocally, that from the narrational angle, the *Qasar qawl* for the *haaidhah* is decrepit, weak and unsubstantiated by the Jamhoor Fuqaha of the Math-hab. The attempt by the Korangi Muftis to elevate the status of the decrepit narration is a dismal failure.

(c) *The Itmaam view is irrational*

The rationality on which the Itmaam view is based has already been explained earlier. There is nothing irrational in the ruling that the *haaidhah* has to perform four raka'ts if she attains purity along the journey whilst there remains a distance of less than three days to her destination.

The order of Salaat is applicable to only those who possess the qualification (ahliyat) of performing Salaat. Since the *haaidhah's* qualification has been negated and cancelled totally, not temporarily, by the Shariah, the order of Qasr for the *musaafir* is not applicable to her.

The fact that the obligation of Qadha of the waived Salaat has not been imposed on her, also confirms the elimination of ahliyat. With regard to Saum (Fasting), while the *haaidhah* is not allowed to fast, her ahliyat remains intact, and this is confirmed by the fact that she has to compulsorily make qadha of the fasts which she has missed due to haidh, etc.

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Due to total lack of ahliyat for Salaat, her niyyat of safar has no validity. The analogy of the validity of her intention for Hajj and Umrah is fallacious. Ahliyat for one Ibaadat is not necessarily ahliyat for all acts of Ibaadat. Her ahliyat is established by the Shariah, not by opinion and qiyaas. Whilst the Shariah confirms the haaidhah's ahliyat for Saum, it negates the qualification for Salaat. The rational basis for this mas'alah is therefore palpable for the unbiased mind. Haidh is Musqit-e-Salaat as well as Musqit-e-ahliyat-e-Salaat. However, for Saum, haidh is only Musqit-e-Saum, not Musqit-e-ahliyat.

A DESPICABLE RED HERRING

The most despicable attempt made by the Korangi Mufti to assault and scuttle the Jamhoor's view is the creation of a haraam red herring to divert the focus of the unsuspecting readers from the Mufta Biha version of the Hanafi Math-hab. Releasing the red herring, the Korangi fatwa avers:

“The Itmaam version has been acquired from Nahjun Najaat and Fataawa Zaheeriyah. The author of Nahjun Najaat is ghair ma'roof (an unknown entity). Some have proclaimed him to be of the Shaafi' maslak.”

Without hesitation it must be said that the charge directed at the Author of *Nahjun Najaat* is completely false, and the claim that Shaami had acquired the mas'alah from *Nahjun Najaat* is utterly baseless. Also, the averment of the Author being a Shaafi' is baseless. This entire statement is

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tantamount to chicanery. It is a lamentable attempt to divert the focus from the valid mas'alah which the Hanafi Math-hab has upheld since time immemorial.

Although Mufti Taqi is constrained to mention that Shaami had 'also' acquired the mas'alah from *Fataawa Zaheeriyah*, he very conveniently pushes into oblivion this highly authentic Kitaab which occupies a lofty pedestal. He makes absolutely no reference of Shaami's reliance for the mas'alah on *Fataawa Zaheeriyah* and on *As-Siraajul Wahhaaj* which he mentions in his *Minhatul Khaaliq*. He acquits himself in a manner to convey the baseless idea that Shaami's reliance was only on *Nahjun Najaat*. The reality is that Shaami did not extract the mas'alah from the well-known, authentic kitaab, *Nahjun Najaat*.

We have already explained earlier the confusion spun around the Ibn Hamzah, Author of *Nahjun Najaat*, who had died in 1085 H, and the Izzuddeen Hamzah who had died two centuries earlier in 874 H. The one who died in 874 H was a Shaafi, whilst the one who died in 1085 H was a well-known Hanafi Shaikh.

Having failed to constructively apply their minds, the Korangi Muftis allowed themselves to become victims of confusion in their eagerness to peddle the *Qasr* view for the *haaidhah*, for this suits their own narratives. Allaamah Shaami was well aware, and more aware than Mufti Taqi of the Maslak of the Author of *Nahjun Najaat*.

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Furthermore, *Nahjtun Najaat* which refutes Shurumbulaali's rationale for the *Qasar* view, mentions several kitaabs which appeared decades and even a century or two after 874 H when the Izzuddeen Hamzah had died. He was the great, great, great grandfather of the Author of *Nahjun Najaat*.

It is lamentable that when the Korangi Muftis sought to denigrate the noble Author and his Kitaab, *Nahjun Najaat*, they had not engaged themselves cognitively. If they had, it would have precluded the intrusion of the subjective agenda underlying the baseless attribution to Allaamah Ibn Aabideen. Before blundering into the confusion which they have created for themselves, they were supposed to have applied their minds and carefully examine what exactly Shaami had said. Instead of cognitive engagement, the Muftis blundered by spinning the narrative that the Author of *Nahjun Najaat* was a Shaafi', and his Kitaab a non-entity implying that Shaami had blundered, when in reality the blundering is the exercise of the Korangi Muftis. For achieving this purpose, Mufti Taqi, without careful investigation, simply relied on *Idhaahul Maknoon* and *Hadiyyatul Aarifeen* for information on the Author of *Nahjun Najaat*.

Both these kitaabs mention Izzuddeen Hamzah as the author of *Nahjun Najaat*, and that he was a Shaafi'. Without proper research Mufti Taqi simply accepted that the Author mentioned in these two kitaabs was the same person to whom Shaami refers. Some genuine research

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would have revealed that the author mentioned in these two kitaabs was not the one to whom Allaamah Shaami had referred. They would then have ascertained that the Author to whom Shaami referred had died more than two centuries later. At the end of his Kitaab, the noble Author of *Nahjun Najaat* states:

“This is the final glance of this servant (who is in need of the pardon of Allah Azza Wa Jal) at the sources recorded by the illustrious Masters (Fuqaha). I have relied mostly on what the Muta-akh-khireen Ahl-e-Fatwa have authoritatively stated. They are those who have scaled the loftiest heights in the firmament of Knowledge, such as Shaikh Qasim, Muhaqqiq Abdul Barr, As-Samdeesi, the Author of Al-Faidh Sharhul Mukhtaar, Al-Burhaan Al-Karaki, the Author of Al-Faidh fil Fataawa, his Student, the Author of Al-Bahrur Raa’iq, his brother, the Author of An-Nahrul Faa’iq, Shaikh Maahir Shamsuddeen At-Tamartaashi Al-Ghazzi, the Author of At-Tanweer (the principal text of Ad-Durrul Mukhtaar).....

The conclusion of what I have written coincides with the morning of the blessed Yaumul Khamees, 18 Zil Hijjah of the year 1080 Hijrah of Nabi (Sallallahu alayhi wasallam). I have written in the hope that Allah Subhaanahu Wa Ta’ala makes this work solely for His Honourable Self, and that He grants a good ending for all Muslims. He is the Beneficent, the Most Merciful.”

If the Korangi Muftis had studied *Nahjun Najaat* or even cast a cursory glance at it, they would have observed that this Kitaab was completed in the year 1080 Hijri. This

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would have induced in them the realization that Allaamah Shaami was not speaking about some Shaafi Faqeeh who had died two centuries before the Author of *Nahjun Najaat*.

Furthermore, the authorities on whom the noble Author of *Nahjun Najaat* relied for the material in his Kitaab are illustrious Fuqaha of impeccable worth. Thus, *Nahjun Najaat* is not an unknown entity as the Korangi Muftis have attempted to portray.

The very fact that Shaami had cited him should have constrained the Korangi Muftis to adopt extreme caution before embarking on the exercise to denigrate the illustrious Allaamah Shaami and the illustrious Author of the well-known kitaab, *Nahjun Najaat*.

If the mind was applied correctly, it would have been ascertained that *Nahjun Najaat* is a kitaab dealing with Hanafi Fiqh.

The red herring ploy has boomeranged on these Muftis who have acted with extreme puerility by unnecessarily and destructively initiating a wasteful controversy on an issue which was settled by the Jamhooir Fuqaha of our Math-hab almost a millennium ago.

SUMMARY

(1) **The Mas'alah:** If a woman in the state of haidh (menses) sets off on a journey and attains purity along the journey, then if from the point of purity to her destination

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the distance is less than 77 km, she has to compulsorily make *Itmaam* of Salaat, i.e. perform four raka'ts even at her destination.

If she undertakes a journey of 77 km or more from her destination, then only will she become a *musaafir* which qualifies her for the concession of *Qasar* (two raka'ts).

(2) The view of *Qasar* for her which Mufti Taqi is promoting is baseless in the light of the standing Fatwa of the Hanafi Math-hab. This Fatwa has been the Law since the inception of Islam.

(3) Mufti Taqi's view is devoid of valid *dalaa-il* as has been explained in this discussion.

(4) Mufti Taqi has relied on a solitary view – an isolated view – which all the Fuqaha of the Math-hab were fully aware of, and which view they have set aside.

(5) Both the narrational and rational arguments of Mufti Taqi are decrepit and baseless.

(6) Mufti Taqi has contumaciously over-stepped the mark of propriety by attempting to abrogate the unanimous view of the Jamhoo Hanafi Fuqaha of all eras. He has grievously erred with his attempt to scuttle a mas'alah which is the official view of the Shariah in terms of the Hanafi Math-hab.

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(7) While Mufti Taqi has flabbily attempted to present *Muheet Burhaani* as the basis for his view, he (Mufti Taqi) has overlooked the fact that the Author of this Kitaab has cited both views, and that he has not given preference to the view of Abu Ja'far on which Mufti Taqi baselessly relies. He does not argue in favour of Abu Ja'far's view.

(8) Mufti Taqi has baselessly adopted *selective* taqleed of Abu Ja'far. While Mufti Taqi accepts Abu Ja'far's view regarding *Qasar* for the *haaidhah*, he rejects Abu Ja'far's view of *Itmaam* for the kaafir who embraces Islam along the journey, and for this selectiveness, Mufti Taqi has no valid *daleel*. On the contrary, he seeks the support of the Jamhoor Hanafi Fuqaha for the *Qasar* view regarding the kaafir, which view is the view of the very Fuqaha who say that the *haaidhah* has to observe *Itmaam*.

(9) For total lack of valid *dalaa-il*, and lack of narrational support, Mufti Taqi performed a great leap from the 6th century to the 11th century. *Muheet Burhaani* is a 6th century Kitaab. It was in this Kitaab that Mufti Taqi stumbled on the *Qasar* view of the solitary Shaikh Abu Ja'far (Rahmatullah alayh). In the five century gap, i.e. between the 6th and the 11th, when he was unable to locate a single Authority to corroborate his view, Mufti Taqi grabbed hold of Shurumbulaali, a 11th century Allaamah, and lumped him together with Abu Ja'far. But the former is nowhere near to the status of the latter. Thus, the only authority Mufti Taqi was able to present is Faqeeh Abu

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Ja'far, and this was old hat, nothing new. It was not a treasure lost and unearthed.

Furthermore, Faqeeh Abu Ja'far was a Shaikh of the 4th century. From the 5th century to the 6th century – which is the era of *Muheet Burhaani* – Mufti Taqi could not locate a single Faqeeh to corroborate his baseless fatwa of *Qasar*. Thus, Mufti Taqi was constrained to clutch at a straw, hence he grabbed hold of the mantle of the 11th century Shurumbulaali.

(10) Shurumbulaali's rational argument has been rationally demolished by the illustrious Author of *Nahjun Najaat*.

(11) Mufti Taqi and his rubber-stamping Korangi Muftis have committed a despicable act of chicanery by falsely alleging that Allaamah Shaami had acquired the mas'alah of *Itmaam* for the Haaidhah from *Nahjun Najaat* when in reality his sources are *Fataawa Zaheeriyah* and *As-Siraajul Wahhaaj*. On the basis of this false premise, the Korangi Muftis have abortively attempted to scuttle the view on which there is Consensus of the Jamhoor Hanafi Fuqaha.

(12) Mufti Taqi's claim that the illustrious Author of *Nahjun Najaat* was a Shaafi', is the effect of defective research caused by haste to promote the baseless view of *Qasar* for the *haaidhah*. The noble Author was a well-known Hanafi Shaikh of outstanding calibre in every field of Islamic Knowledge.

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(13) Mufti Taqi's claim that *Nahjun Najaat* is '*ghair-ma'roof*' – an unknown entity – is also baseless and is the effect of defective research. It is a *ma'roof* Kitaab of Hanafi Fiqh by an illustrious Author, hence Allaamah Shaami cites from this Kitaab on several masaa-il, but not the *haaidhah-qasr* mas'alah.

(14) Allaamah Shaami only presented *Nahjun Najaat's* refutation of Shurumbulaali's rational argument.

QUESTION

Since I have read the fatwa of Advocate Emran Vawda on the mas'alah of a woman in her menses undertaking a journey, I have been thrown into doubt. According to the new fatwa, if a woman in her menses is on a journey and becomes paak on the journey or at her destination, she should perform Qasar Namaaz. Hitherto we have understood that she has to perform Namaaz in full. We have learnt this from Beheshti Zewer.

Advocate Vawda supports his fatwa with the fatwa of Mufti Taqi of Pakistan. Please inform me what I have to do regarding some Namaaz which I had performed two raka'ts on arrival at my destination of Durban. I also had travelled from Durban to Pietermaritzburg where I performed two raka'ts. What is the correct view, and what do I have to do?

ANSWER

Mufti Taqi's fatwa is erroneous. This has been fully explained in this treatise. Advocate Emran Vawda has simply lapped up what Mufti Taqi had dished out without applying his mind. It is best that the advocate restricts himself to his secular kuffaar law practice. He should not dabble in the domain of the Shariah. In doing so, is only a display of ignorance and contumacy.

You should make Qadha of all the Namaaz which you had performed as *Qasar* at your Durban destination, and along

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the journey from the point you had attained purity if between that point and Durban the distance was less than 77 km. Having performed *Qasar* in Pietermaritzburg was valid.

RESPONSE TO THE FATWA OF THE U.K. MUFTI

A Brother from the U.K. writes:

“Mufti Shabbir of Darul Uloom Bury has recently published a fatwa supporting Mufti Taqi’s fatwa. He has added some extra arguments to support Mufti Taqi’s view. I have enclosed the fatwa for your comment.”

RESPONSE

The U.K. Mufti’s first argument: The Qur’aanic Verses

The U.K. mufti, baselessly proffers the following Qur’aanic verses in an abortive bid to support the *Qasar* view for the haaidhah:

“And when you travel throughout the land there is no blame upon you for shortening the prayer.”

“And whoever from you is ill or on a journey, then the same number from other days.”

He maintains that:

“These verses are general and do not stipulate any conditions in relation to the travel or the traveller. Thus according to the Hanafi school of thought, all forms of travel including travel for a sinful purpose constitute travel for the purpose of shortening the Salah and the option not to fast. Likewise the travel of all different types of travelling including a menstruating woman should constitute travel, as the reason for shortening Salaah and the option not to fast is travel.”

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Firstly, this mufti has run away with the stupid idea of him being a mujtahid. We dare say that he is not even a paper mujtahid. In this belated era in close proximity to Qiyaamah and more than 14 centuries from the era of Rasulullah (Sallallahu alayhi wasallam), there are NO Aimmah Mujtahideen. This U.K. mufti has no right and he lacks even the expertise and the qualifications for resorting to Ijtihaad and making *Istimbaat* of masaa-il directly from the Qur'aan Majeed. We do not understand from whence he has gained the stupid notion of him possessing the ability of making *istimbaat* of a *juz'i* mas'alah directly from the Qur'aan Majeed.

After the era of the Aimmah-e-Mujtahideen of *Khairul Quroon*, the thousands of illustrious Fuqaha down the long corridor of Islam's history did not venture into the domain into which this puny mufti from the U.K. is groping. The Fuqaha have adhered to Taqleed of the Imaam of the Math-hab, and have only narrated the mas'alah as it had been transmitted to them from above.

The haaidhah mas'alah is a *juz'i* (a point of detail) which cannot be deduced directly from the Aayats quoted by the U.K. mufti. The innumerable Fuqaha who narrated the *Itmaam* view for the haaidhah were not morons. The U.K. mufti implies by his stupid and baseless deduction from the Qur'aan Majeed that all the Fuqaha were morons since they had 'failed', in his stupid opinion, to understand the

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Qur'aanic aayaat which he implies he has understood in this last of ages (*Aakhiruz zamaan*).

The fact that the noble Fuqaha had not regarded these verses to be 'general', is adequate evidence for the validity of the stipulation that the haaidhah is not a Shar'i musaafir for the purposes of Salaat. The muqallid has no entitlement whatsoever to cite a Qur'aanic aayat in an attempt to negate the popular view – the view of the Jamhoor Fuqaha and Ulama of the Math-hab. Only deviates resort to such convoluted reasoning.

The Fuqaha have made it quite clear why the haaidhah is not considered a valid musaafir to avail of the qasar concession. Their rationale has already been explained in detail earlier.

The U.K. mufti further convolutes his argument by citing the Qur'aanic aayat pertaining to concession for the traveller regarding fasting. There is a difference between Salaat and Saum. Whilst the haaidhah is a valid musaafir for the purposes of Saum, she is not so for Salaat. Saum is not waived for her. It remains compulsory. She remains *mukhaatab* of the Shariah for the purpose of Fasting despite her haidh condition. On the contrary, she is not the *mukhaatab* of the Shariah for the purposes of Salaat. On the contrary, the Shariah specifically prohibits her from Salaat, and waives it from her. The difference should be palpably clear to a person of discernment.

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While Saum is Fardh for the haaidhah, hence she has to offer Qadha, she is totally exempted from Salaat. There is no qadha for her Salaat from which the Shariah has exempted her. Confusing the two indicates the ignorance of the U.K. mufti.

Is the Aayat general (i.e. Mutlaq)

In his arguments, the UK mufti claims that the Qur'aanic Aayat (which he has presented) is 'general', (i.e. *Mutlaq* in Fiqhi parlance). What he says here is that the meaning of 'travel' mentioned in the Aayat has literal application, devoid of any stipulative restrictions to narrow the meaning of the term.

The mufti sahib has misunderstood the Fiqhi meaning of *Mutlaq*. He also fails to understand that his stupid 'ijtihaad' cannot override the understanding of the Fuqaha of fourteen centuries. If he had constructively applied his mind, he would have referred to the Fuqaha for a proper understanding of the operation of the term, *safar (travel)* mentioned in the Aayat.

Erroneously applying the Fiqhi principle of *Mutlaq* to the Aayat, the UK mufti commits the further blunder of extending his convoluted meaning of 'general' to even the traveller (*musaafir*). Due to the fallacy of his 'ijtihaad', he has degenerated from one blunder into another blunder. This is always the fate of self-styled 'mujtahids' who are even defective in the comprehension of basic masaa-il, in both the domains of *Usool* and *Furoo'*.

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Safar (Travel) in its Shar’i meaning is a concept. It does not have the literal meaning. It is preposterous to claim that the *Safar* concept of the Shariah has a literal meaning, and that the term in this specific Qur’aanic Aayat has the literal meaning and should therefore be applied literally. *Safar* in the Shariah is subjected to numerous stipulations – masaa-il which are nugatory of the literal meaning.

The very Shar’i definition of *safar* debunks the claim of the UK mufti. Defining *safar*, the Fuqaha say:

“The literal meaning of safar is traversing distance without any limit (of miles / kilometres). (In the Shariah) it has a special meaning, and it is with this special meaning that the ahkaam (rules / laws) change pertaining to qasar of Salaat, permissibility of fitr (i.e. abstention from fasting), extension of masah alal khuffain from one day to three days, the waiving of the wujoob of Jumuah, Eidain and Udhiyyah (Qur’baani), and the prohibition of a woman emerging without a mahram.” (Shaami)

A plethora of *ahkaam* is the stipulatory attributes of *safar* and *musaafir*. This should have been self-evident for the UK mufti.

In *Al Inaayah Sharh Hidaayah*, it is stated: *“The (literal meaning) of traversing distance is not meant here (that is in the Qur’aanic concept of safar). On the contrary, it means a special traversing of distance). That is (the*

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distance) by which the ahkaam change. Thus it is muqayyad (stipulated) with this. (Furthermore), it is mentioned (as a stipulation) that there has to be a simultaneous intention made for what is contemplated (i.e. for the journey), because even if one has to journey the entire earth without the intention of a distance of three days, he will not be a musaafir..... Thus, the determinant (for the validity of safar) with regard to the changing of ahkaam is presence of both factors (intention and distance of three days).”

In the unanimous view of all the Fuqaha of all the Math-habs, the Qur’aanic term *safar* in the context of this aayat refers to a specific journey of varying distances according to the different views of the Math-habs. According to the Ahnaaf it is a journey of *three days* or *3 manzils* which the Ulama have for the convenience of the masses and for uniformity fixed with 48 miles or 77 kilometres. The number of kilometres vary in the opinion of the Ulama. But there is not a single authority of any Math-hab who avers that a journey in the Shar’i context is the unrestricted literal meaning. According to the Hanafi Math-hab, the qualifying distance is what is traversed in three days. According to the Maaliki Math-hab, it is 3 days. According to the Shaafi’ and Hambali Math-habs it is 48 Haashimi miles.

The second stipulation is the *intention* to travel the stipulated distance. Without this specific intention, even if one travels the whole world, one will not be a Shar’i musaafir.

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The third stipulation is the Shar’i termination of *safar* by means of a *niyyat* regardless of being literally a traveller. Thus, if a valid *musaafir*, intends to stay over at a place for 15 days or more, he/she will cease being a *musaafir* despite being literally on the journey.

With these restrictive stipulations it is baseless to claim that *safar* in the Aayat is ‘general’. On the contrary it is *muqayyad* (restricted with conditions). In a flabby and flapdoodle endeavour to bolster the *mutlaq (general)* supposition, the UK mufti proffered the Hanafi view which regards the *safar* valid even if the objective is to journey for the purposes of sinning.

In terms of the Hanafi Math-hab, this generality is restricted to only the objective of the journey. It does not cancel the other stipulations mentioned above. Furthermore, according to the other Math-habs, it is imperative that the *safar* be for a *mubah (permissible)* purpose. This is an added stipulation. It should therefore be quite evident that according to all Math-habs, the Aayat is in fact *Muqayyad* – restricted with conditions.

The UK mufti’s second argument

The mufti sahib rambles:

“We have not come across any hadīth or statement from the first generation of Hanafi jurists which suggests that the travel of a menstruating woman does not constitute

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travel for the purpose of shortening Salāh or the option not to fast. This is particularly relevant because the female companions would travel with the Prophet (sallallahu alayhi wasallam) and it would be inevitable for some of them to be in the state of menstruation at some point during the journey. If their travel in the state of menstruation did not constitute travel for the purpose of shortening Salāh, this is likely to have been transmitted.”

Response:

This contention is downright stupid, and coming from a supposedly senior mufti, it is most lamentable. He concedes that it is ‘inevitable’ that there must have been Sahaabiyyah who had travelled during the state of haidh, hence there should have been Hadith narrations explaining their *amal* during the state of menses.

Undeniably this is so. But to arbitrarily conclude that there are no such narrations on the basis of one not being aware of any such Hadith, is a baseless averment which is not a *daleel*. The very admission that there were Sahaabiyyah who must have journeyed during the state of haidh presupposes the existence of narrations pertaining to this issue. Being ignorant of any such Hadith does not detract from the validity of the mas’alah which has been reliably transmitted by the Fuqaha. For the mufti’s edification, he should know that the illustrious Fuqaha have solid sources for the masaa-il they have formulated. They did not suck masaa-il from their thumbs.

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Shaikh Muhammad Bin Fadhl (d.381 Hijri) who was Imaam Muhammad's Student via three links, is the earliest source known presently to us for the *Itmaam* view. It is quite obvious that Imaam Muhammad (Rahmatullah alayh) had transmitted this mas'alah which he had acquired by one of three ways:

- (i) Directly from his Ustaadh, Imaam Abu Hanifah (Rahmatullah alayh), or
- (ii) From a Hadith narration which may not have reached Imaam Abu Hanifah (Rahmatullah alayh), or
- (iii) By means of Qiyaas. And, the Qiyaas of a Mujtahid Imaam of the Math-hab is more than adequate for us.

Shaikh Muhammad Bin Fadhl, and all the successive Hanafi Fuqaha who have adopted the *Itmaam* view, had acquired the mas'alah from above, not from their thumbs. The attempt to show that the *Itmaam* mas'alah has no narrational credence from the Hanafi Fuqaha of the first century is therefore ludicrously baseless being the effect of failing to apply the mind cognitively.

If it is argued that by the same token Shaikh Abu Ja'far Hindwaani (d. 362 Hijri) must have acquired the *qasar* view from above, hence his view is equally valid or may even supersede the view of his contemporary, Shaikh Muhammad Bin Fadhl Bukhari, then this contention stands rejected for the simple reason that the illustrious Hanafi Fuqaha from the 5th century (as far as we are aware) have

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made *Tarjeeh* of the *Itmaam* mas'alah whilst being fully aware of the view expressed by Shaikh Hindwaani. They most certainly had valid grounds for setting aside the *qasar view*.

Furthermore, Shaikh Muhammad Bin Fadhl Bukhaari was no small fry. He was an Imaam of outstanding calibre whose erudition, excellence and greatness were acknowledged by even Shaikh Abu Ja'far Hindwaani. Although Shaikh Hindwaani was senior in age to Shaikh Muhammad Bin Fadhl (d. 381 Hijri), the latter was Imaam Muhammad's Student via three links, whilst Shaikh Hindwani was Imaam Muhammad's student via four links.

The Mashaaikh had granted Shaikh Muhammad Bin Fadhl *Ijaazat* (*authority*) to issue Fatwa at a young age. Shaikh Hindwani had objected to this. Shaikh Hindwani thereafter met the young Shaikh Muhammad Bin Fadhl. When he found him engaging in *mutaa-la'ah* (*research*) entire nights, and he also observed that whenever he felt sleepy, he would renew wudhu and then became engrossed with the kutub, he (Shaikh Hindwani) commented that the *Ijaazat* granted to this young man is befitting.

Shaikh Muhammad Bin Fadhl was also *Saahib-e-Karaamat* (one of miracles). His father said to him and to his brother that if they succeeded in making hifz of Al-Mabsoot of Imaam Mohammed, he would present them with a thousand Ashrafis (gold coins). After the two brothers had accomplished this stupendous feat, the father

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gave the 1000 Ashrafis to Shaikh Muhammad Bin Fadhl's brother. As for Shaikh Muhammad Bin Fadhl, his father said: "*This ni'mat of hizf of the Kitaab is an ample reward for you.*"

It is therefore not at all surprising that the Hanafi Fuqaha of the past more than a thousand years had been issuing Fatwa on the view of Shaikh Muhammad Bin Fadhl on the haaidhah mas'alah. The famous Hanafi Kutub are replete with the fataawa of Shaikh Muhammad Bin Fadhl. It is absolutely ludicrous for the paper 'mujtahid' muftis of this era of *Aakhiruz Zamaan* to stupidly set aside the *Tarjeeh* of the Hanafi Fuqaha of more than a thousand years, and to adopt a view which was discarded by the Jamhoor Fuqaha of the Math-hab.

In the face of the *Tarjeeh* (*giving preference for practical adoption*) of the early Hanafi Fuqaha which is binding on the Muqallideen, the laughable 'tarjeeh' of comparatively speaking non-entities such as Mufti Taqi of this age has no validity whatsoever.

Furthermore, the *Tarjeeh* of the senior Hanafi Fuqaha of many centuries ago has been adopted as the official position of the Hanafi Math-hab by all successive Fuqaha and by all our Akaabir Ulama of Deoband. Thus, the UK mufti is peddling arrant nonsense which is the effect when a muqallid becomes too big for his boots and is plagued by the hallucination of 'ijtihad' – that he has mounted the

pedestal of Ijtihad where dwell only the Aimmah-e-Mujtahideen of bygone times.

The UK mufti's third argument

The mufti sahib avers:

“According to most Hanafī scholars, the travel of a non-mature child does not constitute travel whereas the travel of a non-Muslim constitutes travel. This is because the child is not mukallaf (responsible) and mukhātab and therefore his intention to travel is not valid, whereas a non-Muslim adult is mukallaf and mukhātab and therefore his intention to travel is relevant. Although there is a clear difference between the state of menstruation and disbelief, however, in both conditions there is a common feature in that both are mukallaf and mukhātab, as outlined below. Thus, based on analogy, the travel of a woman in her menses should constitute travel for the purpose of shortening the Salāh.

Response:

The UK mufti states drivel. His claim that both the kaafir and the haaidhah are mukallaf is incorrect. For purposes of accepting Islam, the kaafir is at all times *mukhaatab*, hence his intention for *safar* is valid. Thus when he accepts Islam along the journey or at his destination, his intention will be valid.

On the other hand, the haaidhah is NOT mukallaf and not mukhaatab in so far as Salaat is concerned. On the contrary, Salaat is totally waived, hence she is not obliged to perform Qadha. All the Fuqaha who hold the *Itmaam*

view have categorically negated the claim of the haaidhah being mukhaatab for purposes of Salaat. Yes, she is mukhaatab for the other ahkaam of the Shariah, but not for Salaat. There is no validity in this drivel argument of the UK mufti.

The UK mufti's fourth argument

“ A woman in menstruation is mukallaf and mukhātab. This is illustrated by the fact that the prohibition of travelling without Mahram also applied to women in menstruation. Similarly, a travelling woman can choose not to fast after her menstruation ends. Similarly, a woman in her menstruation is required to enter the state of ihrām when she passes the mīqāt. These examples demonstrate that a woman in her menses is both mukallaf and mukhātab. This is why she is obliged to make qazā of the missed fasts. It is a separate matter that the Sharīah has not prescribed the Salāh to be repeated for a very good reason. The instruction not to perform Salāh temporarily during her menses does not mean she is incapable of making an intention to travel. Thus, her intention to travel is valid.”

Response:

The response to this fallacious analogy has already been given earlier in the refutation of Mufti Taqi's fatwa. The analogy is fallacious because in all the examples proffered by the mufti sahib, which he utilizes as the premises for his analogy, Tahaarat is not conditional for the validity of the ibaadat. Therefore, she remains mukhaatab of the Shariah, and this is the Math-hab of the Jamhoor Hanafi Fuqaha.

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In addition, it is palpably clear that while she is mukhaatab for the other acts of ibaadat, she is NOT mukhaatab for Salaat. Only a bigot will argue with stupid obstinacy that she is mukhaatab for Salaat. It is highly improper, in fact contumacious, for a muqallid to acquit himself with the audacity displayed by the paper ‘mujtahids’ who fail to apply their brains correctly. Now when the haaidhah is NOT mukhaatab for purposes of Salaat, what constrains the UK mufti to irrationally seek to validate her intentions on the basis of other acts of Ibaadat for which she is mukhaatab? It devolves on him to prove that she is mukhaatab for Salaat. Since she is unanimously not mukhaatab for Salaat, it logically follows that her intention regarding an issue related to Salaat will not be valid.

It does not follow as a necessary corollary that being mukhaatab for Saum, etc. makes her mukhaatab for Salaat as well. While the haaidhah is mukallaf of all acts of Ibaadat, Salaat is the exception. She is exempted in entirety from it. There is therefore nothing extraordinary in her intention not being valid for the purposes of Salaat.

The contention that the instruction to abstain from Salaat is ‘temporary’, is another fallacy which is the effect of misapplication of the mind. The prohibition is NOT temporary. It is permanent – for all time – lifelong. There is no qadha for the Salaat from which she abstains during the state of haidh. That is why her intention will be superfluous and futile for the purposes of Salaat. When

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there is absolutely NO Salaat for the haaidhah, what is the meaning of an intention to qualify for the concession of *qasar*? It is irrational to claim validity for her intention.

It has already been explained earlier that the *safar* as it applies to the Salaat concession is not *mutlaq safar*. It is a specific *safar* which requires a valid *niyyat*. But the haaidhah's *niyyat* is not valid for Salaat purposes, hence the assertion of validity is devoid of substance.

The mufti's averment that there is "a very good reason" for there being no qadha Salaat for the haaidhah, is a redundant superfluity. Every hukm of the Shariah has a very good reason. The issue here is not the 'good reason'. The issue is her intention, which according to the Jamhoor Hanafī Fuqaha is not valid because she is not mukhaatab. The discussion does not relate to the reasons of the ahkaam. It concerns the hukm itself.

The UK mufti's fifth argument

He says:

"Moreover, it could be argued from one perspective that the khitāb (address/instruction) to a woman in her menses is stronger than the khitāb to a non Muslim because a non-Muslim who accepts Islam is not required to make qazā of any fasts. It is perhaps for this reason some Mālikī scholars have mentioned that there is a difference of opinion whether non-Muslims are mukhātāb of furū (branches, compared to usūl, beliefs), whereas women in their menses are mukhātab prior to their menses by

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consensus and that the khitāb of Salāh is temporarily suspended due to an obstacle (menses) which will come to an end. This also suggests from one Mālikī perspective that the khitāb for women in their menses is stronger than the khitāb for non-Muslims. This is why some Mālikīs suggest that the travel of a woman in her menses constitutes travel unlike the travel of a non-Muslim, opposite to the opinion of most Hanafī scholars.”

Response

We are not concerned here with the Maaliki perspective. The issue is a Hanafī matter. The mufti has misapplied his mind by seeking to invalidate the Hanafī stance with the Maaliki perspective. This is plain stupidity. The Hanafi stance is crystal clear: The haaidhah is NOT mukhaatab for purposes of Salaat, and this is unanimous according to all authorities of all Math-habs. The khitaab is not directed to her in any way whatsoever.

The claim that the khitaab addressed to the haaidhah is stronger than the khitaab to the non-Muslim is ludicrous. Whilst the khitaab is exceptionally strong for the kaafir to accept Islam, there is NO khitaab whatsoever for the haaidhah to perform Salaat. On the contrary, the khitaab for her is NOT to perform Salaat.

The attempt to bolster the ludicrous argument by saying that the non-Muslim who embraces Islam does not have to make qadha of fasts whilst the haaidhah on attaining purity has to make qadha of the Saum, is stupid and irrational

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because the *khitaab* to the *haaidhah* pertains to Saum. Her *qadha* of fasts is the effect of the *khitaab* made specifically for this purpose whilst there is no *khitaab* for Salaat.

The averment of the *khitaab* being stronger for the *haaidhah* and less stronger for the *kaafir* is foolish. It displays the puerility of the *mufti sahib*. He lacks the ability of mind-application, hence the puerility. The *khitaab* (*address of the Shariah*) to the two is on different issues. As for the *haaidhah*, the *khitaab* pertains to all aspects for which she is currently liable. As for the *kaafir*, the *khitaab* pertains to *Imaan*. The very fact that the *kaafir* who embraces Islam is not liable for making *qadha* of fasts or of any other ritual worship substantiates that *khitaab* relative to him pertains to only *Imaan*.

Since the *khitaab* for the *kaafir* does not bring Salaat and Saum within its purview, he is not required to make *qadha*. It logically follows that in the absence of *khitaab* pertaining to an act of *ibaadat*, the person is not liable for its execution. In the same way, the *haaidhah* is not the subject of *khitaab* relative to performance of Salaat. The common factor between the *kaafir* who embraces Islam and the *haaidhah* as far as the absolution of *ahkaam* is concerned is *lack of khitaab*. Just as the *kaafir* will not make *qadha* of fasts or of anything because of *lack of khitaab*, so too will the *haaidhah* not make *qadha* of Salaat because of the presence of this common factor. But as far as Fasting is concerned, the *khitaab of the Shariah* brings her within its scope.

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The khitaab being “stronger” for her is therefore puerile bunkum. The *khitaab* is of different categories and applicable to different substrata as it concerns the different subjects – the kaafir and the haaidhah.

It is stupidity to blindly base the argument of *khitaab* in its unrestricted sense. It has to be seen in which capacity does the *khitaab* operate. Yes, as far as Salaat is concerned, the haaidhah is the subject of *khitaab* in a different dimension, and that is *abstention from Salaat*. Addressing her, the Shariah prohibits her from Salaat, and this is unanimous according to all authorities of the Shariah. Since Salaat has been negated in regard to her, all attributes, effects and consequences of Salaat are equally negated, hence her *safar* will commence only after having attained purity, and if the intention is to proceed 77 km or more.

In his fifth argument, the UK mufti avers:

“...whereas women in their menses are mukhātab prior to their menses by consensus and that the khitāb of Salāh is temporarily suspended...”

This averment is a stupid red herring. The woman being ‘mukhaatab prior to her menses’ does not relate to the performance of Salaat. As repeatedly mentioned earlier, the *khitaab* for her applies to Saum, etc., not to Salaat. It is therefore fallacious to argue that “she was mukhaatab prior to her menses”. She was NOT *mukhaatab* for performing Salaat prior to her menses. On the contrary she was

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mukhaatab for NOT performing Salaat, i.e. Salaat is prohibited for her.

The averment of Salaat being temporarily suspended is another red herring designed to bolster the baseless qasar view. As far as the haaidhah is concerned, Salaat is *permanently* waived for the duration of haidh. To emphasize the *permanency* of the absolution, qadha too has been waived. The mufti's argument is palpably baseless and fallacious.

The UK mufti's sixth argument

“We have not come across this issue in the works of Imam Muhammad ibn al-Hasan al-Shaybānī (d. 189/805). Based on the books cited in this document, Imam Abū Ja'far al-Hinduwānī (d. 362/973) appears to be from among the most senior and earliest scholars who has a view on this issue. This notwithstanding the fact that Allāmah Abū Bakr al-Zahīrī al-Bukhārī (d. 500/1107) and Allāmah Zahīr al-Dīn al-Bukhārī (d. 619/1622-3) and others cited above are also senior jurists as clearly demonstrated by the fact that most Hanafī jurists have subsequently relied on their position. It is worth noting, as mentioned by Mufti Muhammad Taqī Uthmānī (b.1362/1943), that Allāmah Ibn Ābidīn (d. 1252/1836) did not have access to al-Muhīt al-Burhānī wherein the view of Imam Abū Jafar al-Hinduwānī (d. 362/973) is cited. If Allāmah Ibn Ābidīn (d. 1252/1836) was aware of it, he may have adopted it or at least cited it as a view. Further, it has already been mentioned that Imam Abū Ja'far al-

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Hinduwānī's (d. 362/973) position is the same as the position of the Shāfi'ī and Hanbalī schools. Several Mālikī scholars also share this view."

Response

The mufti here speaks glorified drivel. We have already dealt in detail with the view expressed by Shaikh Hindwani. There is no need to repeat it here. We are not concerned with the Shaafi' and Hambali views regarding this mas'alah. We are dealing strictly with the Hanafi Math-hab. This is not an expedient for invoking the principle of *dhuroorah* to justify diversion from the Math-hab. It is superfluous and stupid therefore to seek support from other Math-habs to bolster a view which the Jamhoor Fuqaha of the Hanafi Math-hab have set aside.

The contention that Ibn Aabideen was unaware of the view appearing in *Muheet Burhaani* is pure baseless conjecture. Assuming that he was unaware, it does not detract from the validity of the official stance of the Hanafi Math-hab. Basing Shaami's supposed unawareness merely on the fact of him not having mentioned the opposite view is ludicrous. Neither Allaamah Kaasaani in *Badaaius Sanaa'* nor Shamsul Aimmah Imaam Sarakhsi in his *Al-Mabsoot* mentions the mas'alah. It is unintelligent to infer from their not mentioning the mas'alah that these Giants of Uloom were unaware of it. This is especially so when their kutub are replete with fatwas of Shaikh Muhammad Bin Fadhl who was the contemporary of Shaikh Hindwaani. The view

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of the former is on *Itmaam*. Mention of him has already been made earlier.

Furthermore, there is no mention made of the qasar view in *Al-Haawi* and in *Az-Zaheeriyyah* of the 5th and 6th centuries respectively, yet they do state the fatwa on the *Itmaam* view. It is stupidly presumptuous to contend that these two illustrious Hanafi authorities of the early ages were unaware of the Mas'alah whilst they cite the *Itmaam* view as stated by Shaikh Muhammad Bin Fadhl. The Hanafi Fuqaha simply discarded the qasar view since it was set aside by the Jamhoor, and the view stated by Shaikh Muhammad Bin Fadhl was accepted as the most authentic view.

The primary red herring which Mufti Taqi has let loose and lapped by the UK mufti, and perhaps he (Mufti Taqi) did so unintentionally due to deficiency in his research, is the attribution of the *Itmaam* view to a supposed non-entity, the illustrious Author of *Nahjun Najaat* from which Mufti Taqi baselessly claims that Shaami had acquired the *Itmaam* view.

CONCLUSION

It should be well understood and remembered that the Deen is the product of *Wahi* (Revelation from Allah Ta'ala). It is not the effect of reason. Thus, as far as possible, the masaa-il are all based on *Naql* (*Narration*), not on *Aql* (rational reasoning). A mas'alah based on *Naql* may not be cancelled or discarded by means of rational reasoning.

Mufti Taqi and the other couple of juniors who are following him have blundered in this respect. Instead of adhering to *Naql*, he utilizes reason for the qasar view. To give his view authenticity, he cited the solitary view of Shaikh Hindwaani, the view which the Jamhoor Hanafi Fuqaha have set aside and overridden with the *Itmaam* view.

The primary basis for the *Itmaam* mas'alah is *Naql* – narrational evidence, not the rational reasons which we have presented in this treatise. All the *aqli dalaal* pale into insignificance in the face of the Fatwa of the Jamhoor Hanafi Fuqaha whose consensus is on the *Itmaam* view. Notwithstanding the lofty status of Shaikh Hindwani, his view has been dismissed by the Jamhoor Hanafi Fuqaha.

Therefore, the Fatwa today remains the same as it was a thousand years and more ago. If the haaidhah attains purity along the journey and the remaining distance to her

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destination is less than 77 km, then she has to incumbently perform Salaat in full even at her destination. She will become a musaafir only if she undertakes a journey of 77 km or more from her destination or from the point of having attained purity. And, Allah knows best.