

THE ISLAMIC RULING ON MUSIC AND RAISING FUNDS VIA UNLAWFUL MEANS

BY

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Background

Legislation in Islâm is based upon the Qur'ân and the Sunnah. All authority to declare things permissible or impermissible must derive from these two sources, directly or indirectly. For as long as the Qur'ân or the Sunnah provide guidance on a particular issue there is no need, or rather, it would be unwarranted, to opt for other sources of legislation. The actions of any particular person, no matter how erudite or pious he may be, will have no bearing on the ruling of the Sharî'ah, if it does not derive from the Qur'ân and the Sunnah, or is in contradiction with either of these two.

The Qur'ân on music

There are at least four references in the Qur'ân on music.

(1) In Sûrah Luqmân Allâh Ta'âlâ states:

There are those amongst men who purchase vain speech without knowledge, to mislead from the Path of Allah and throw ridicule on (on the Path). For them there is a humiliating chastisement. (Luqmân : 6)

The words lahw al-hadîth in this âyah are interpreted by three of the eminent mufassirîn among the Sahâbah, 'Abdullâh ibn Mas'ûd, Jâbir ibn 'Abdillâh and 'Abdullâh ibn 'Abbâs radiyallâhu 'anhumâ as a reference to singing. This interpretation is narrated from seven different Tâbi'în: Hasan al-Basrî, 'Ikrimah, Sa'îd ibn Jubayr, Mujâhid, 'Amr ibn Shu'ayb, 'Ali ibn Badhîmah and Makhûl. From this it can be deduced that in the early days the opinion holding this âyah to be a reference to singing was a widespread one, an opinion in fact, whose roots go back to three of those who received their education at the feet of Rasûlullâh sallallâhu `alayhi wasallam.(1)

At the same time it must be noted that in the interpretation of these Sahâbah and Tâbi'în, "singing", and not "music", is mentioned. Allâh expresses his displeasure at singing, even when not accompanied by musical instruments. The implications upon song that is in fact accompanied by instruments cannot be clearer. Of course, if the words sung are of a religiously beneficial nature, the censure is lifted, since it cannot then be classified as "vain speech".

(2) Allâh says in Sûrah Banî Isrâ'îl, addressing Shaytân:

Arouse those whom you can amongst them with your voice; make assaults upon them with your cavalry and your infantry; share with them (their) wealth and children; and make promises to them. But Shaytân promises them nothing but deceit. (Banî Isrâ'îl : 64)

In the tafsîr of Mujâhid ibn Jabr the "voice of Shaytân" that the âyah refers to is "song and flutes".(2)

(3) In Sûrah an-Najm Allâh states:

Do you wonder at this Recital? And will you laugh, and not weep, wasting your time with vanities? (an-Najm : 59-61)

The words of Ibn 'Abbâs as well as his student Mujâhid ibn Jabr are on record that by "wasting time in vanities" Allâh refers to singing.(3) Ibn 'Abbâs comments that the word sâmidûn, in the old Himyarite dialect of Yemen, literally means "singing".

The Sunnah

In the Sunnah we are confronted with a host of ahâdîth narrated from the Nabi sallallâhu `alayhi wasallam that indicate the impermissibility of music. Below we reproduce some of them.

(1) In Sahîh al-Bukhârî it narrated from Abû `Amir (or Abû Mâlik) al-Ash`arî that Rasûlullâh sallallâhu `alayhi wasallam said:

Indeed, there will be in my Ummah such people who will regard fornication, silk, wine and musical instruments as permissible for themselves.(4)

In the Sunan of Abû Dâwûd the narration goes on to state that those spoken of in this hadîth will call these things by other names in order to embellish their evil doings.(5)

(2) In the Sunan of at-Tirmidhî it is narrated from 'Imrân ibn Husayn that Rasûlullâh sallallâhu `alayhi wasallam said:

In this Ummah there will be [people who will be] sunk into the earth, deformed, and upon whom stones will rain from heaven.

The Sahâbî asked when that would be, and Rasûlullâh sallallâhu `alayhi wasallam replied:

When singing girls and instruments of music will appear (become common), and wine will be drunk.(6)

(3) In another hadîth documented in Talbîs Iblîs of Ibn al-Jawzî Rasûlullâh sallallâhu `alayhi wasallam is reported to have said:

I have been sent to destroy the flute and the drum.(7)

(4) Ibn 'Abbâs narrates that Rasûlullâh sallallâhu `alayhi wasallam said:

Truly Allâh has prohibited wine, gambling and the drum upon me.(8)

(The word al-kûbah in this hadîth means a drum accord to the most widely accepted opinion.)

(5) It is narrated from 'Abdullâh ibn `Umar that once he was on a journey and heard the sound of a flute. He immediately blocked his ears with his fingers and moved away to where he could no longer the sound. He then informed his servant, Nâfi', that he had seen the Prophet sallallâhu `alayhi wasallam do likewise.(9)

Attitude of the Sahâbah and the Awliyâ' radiyallâhu `anhum

In the sayings of the Sahâbah there is also considerable evidence of a disvarouble attitude towards music.

(1) It is authentically narrated from 'Abdullâh ibn Mas'ûd that he said:

Singing breeds hypocrisy in the heart like water causes plants to grow.(10)

(2) Ibn 'Umar once passed by a little girl singing, and remarked:

If Shaytân were to leave anyone alone he would have left this little one.(11)

(3) Fudayl ibn 'Iyâd, the famous ascetic of Makkah, said:

Singing is the stepping stone to fornication.(12)

Music in the time of the Prophet sallallâhu `alayhi wasallam

It is sometimes claimed that there was music in the time of the Prophet sallallâhu ‘alayhi wasallam too. Admittedly there were cases where a musical instrument like the duff (a sort of tambourine) was used, and for that reason such instruments on those specific type of occasions were allowed by the later Fuqahâ too. But nowhere is there any evidence of an organised culture of music in the early society of Islâm. The few incidents in which music featured were spontaneous occurrences of an amateurish nature. Of professional musicians, or of organised gatherings music, there is no trace at all. In fact, early Muslim society was so much averse to the musical profession, that any person known for his indulgence in it was considered lacking in moral integrity, and therefore not a credible witness. Up to today the issue of music in the books of fiqh is discussed in the chapters on testimony.

The Madhâhib

In light of the âyât and ahâdîth adduced above it is not surprising at all to find that each of the four madhâhib, the Hanafî, Mâlikî, the Shâfi‘î and the Hanbalî, regard song accompanied by musical instruments as harâm. The views of the respective madhâhib are as follows:

The Shâfi‘î madhhab:

Imâm an-Nawawî states in Minhâj at-Tâlibîn:

Singing without musical accompaniment is makrûh, as is listening to it. It is harâm to use an instrument that is characteristic of those who consume intoxicants, such as the tunbûr (an instrument resembling the mandolin), the ‘ûd (lute), the sanj (cymbal), the ‘Irâqi mizmâr (a type of flute), but not the yurâ‘ (flute). [This exception is the view of Imâm ar-Râfi‘î. Imâm an-Nawawî disagrees with him, saying:] I say: It (the yurâ‘) too is harâm according to the more correct opinion. It is allowed for weddings and circumcision ceremonies, as well for other (similar) occasions, according to the more correct view, even if it may have little cymbals. It is harâm to beat the kûbah, which is a tall drum with a narrow middle.(13)

The Hanafî Madhhab:

‘Allâmah ‘Alâ‘ ad-Dîn al-Haskafî writes in ad-Durr al-Mukhtâr:

The official view of the madhhab is that it (singing) is altogether harâm, so the difference of opinion is effectively negated. In fact, it appears from the text of al-Hidâyah that it is a major sin, even if it be for a person himself. The author [of Tanwîr al-Absâr] concurs with him on that. The testimony of one who listens to singing or attends a gathering of singing is rejected.(14)

Imâm Ibn ‘Abidîn comments in Radd al-Muhtâr:

They [the Hanafî fuqahâ‘] have categorically stated singing for no specific purpose, or for the purpose of earning wealth is unequivocally harâm.

Know that singing for someone else to hear, or to entertain others is harâm according to (the fuqahâ‘) in general. There are some who declare it permissible in weddings and wedding-feasts.(14)

The Mâlikî madhhab:

Imâm al-Khurashî states in his commentary on Mukhtasar Khalîl:

Listening to singing causes one’s testimony to be rejected if it is without instruments and happens repeatedly, since listening to something makrûh in that case becomes makrûh (i.e. if done repeatedly). (This is) because that interferes with a person’s moral integrity. As for when the singing is (accompanied by musical instruments), that is harâm.(14)

The Hanbalî madhhab:

Ibn Qudâmah al-Maqdisî states in al-Mughnî:

The Chapter on musical instruments: Instruments are of three categories: The first category is harâm, and includes the beating of stringed instruments, all types of flutes, the ‘ûd, the tunbûr, the mi`zafah (a type of

stringed instrument), and the rabâb (an instrument similar to the violin). The testimony of a person who continuously uses these instruments is rejected.

Consensus

It is a fact that the consensus of the four major madhâhib in itself does not constitute the Ijmâ' that is an incontrovertible source of law in Islâm. Yet when we consider that what we have in this consensus of the four madhâhib is in actual fact not the opinions of four men alone, but rather of four traditions of jurisprudence, in which generation after generation of Fuqahâ' concurred with the stated views of their respective madhâhib, when that is taken into consideration, the value of the views of a few singled out scholars like Ibn Hazm and other more recent proponents of the permissibility of music, diminishes into insignificance.

Departure from madhhab

I in principle subscribe to the idea that the strength of argument outside one's own madhhab does warrant departure from the view of the madhhab. However, there are reasons why I cannot warrant departure from the view of the madhhab in this instance.

- Firstly, strength of proof clearly lies with the four madhâhib in this instance.
- Secondly, it is not one, but all four madhâhib that have unanimously and unequivocally stated music to be harâm, while contending views are those of singular individuals.
- Thirdly, there definitely seems to be an element of personal prerogative involved in the efforts of some of those who wish to have music legalised. Fiqh is not a tool to shape the ahkâm of the Sharî'ah according to our own desires. Allâh says:

Have you seen him who takes his own desires as his object of worship? In full knowledge Allah has led him astray, sealed his hearing and his heart, and placed a cover over his sight. Who will guide him after Allâh? (al-Jâthiyah : 23)

Necessity

Darûrah (necessity) is a principle that has the effect of rendering the unlawful lawful. However, before this principle can be invoked to legalise this venture it must be established beyond all doubt that there are absolutely no other viable alternatives. For as long as such alternatives exist, even though they may not bring in as much funds as a music show would, it will be dishonest and sinful to claim exemption on the grounds of necessity.

Personal reflection

Juristic opinions (fatâwâ) are usually the means of seeking the judgement of the Sharî'ah in exigencies that arise. However, Rasûlullâh sallallâhu 'alayhi wasallam has shown us another, much less complex way to the truth: personal reflection in all sincerity and honesty. He says:

Ask your heart. Good is that with which your soul feels content, with which your heart is at ease. Evil is that which causes uneasiness in the heart and creates agitation in the chest. (Ask your heart) even if the people give you opinions, even if they give you their opinions.(17)

If any of us would be asked what he or she thinks about hosting a function of this kind in aid of the masjid, or worse even, within the masjid, I am sure we would recoil in repugnance and horror. Let it be known then, that there is no difference in the Sharî'ah between what can be done for the masjid and for our other institutions. Our masâjid are the places for our 'ibâdah, but similarly our schools are the centres for the education of our children. No harâm funds may go into the upkeep of any of these institutions.

Utilisation of harâm funds

There exists the notion that it is permissible to use funds accrued by way of bank interest towards the construction of toilets, and that the same ruling should consequently be applicable to the case in question,

since the funds generated will be used to construct an ablution block. I wish to point out here that this is in fact a grievous misreading or misunderstanding of the fatwâ issued by Muftî Kifâyatullâh of Delhi. It is not correct to invoke the fatwâ of Muftî Kifâyatullâh in this case for the simple reason that there exists a difference in 'illah (ratio legis). In the case responded to by the learned Muftî the source of the funds derived was the general public, without specification of any particular persons, groups, societies or religious denominations. Money paid out by banks as interest derives from the public in this way. The learned Muftî reasoned that since the money derives from the public without any knowledge of to who in particular it belongs to, it must be returned to the public in a similar fashion. For this he devised the plan of building of public toilets in cities like Bombay and Delhi that would be used by the general public (Muslims, Hindus and Christians alike), and cannot be regarded as the exclusive property of any specific group or society. In our case, neither do the funds derive from a source similar to that of Muftî Kifâyatullâh's fatwâ, nor does the area towards which the funds are to be used correspond with that of his fatwâ. (The ablution block will be built upon the school grounds, and become part of the school building, both of which is the property of the local Muslims.) To invoke the said fatwâ is thus incorrect.

Another notion seems to regard the nature of the function of a toilet as sufficient grounds to legitimise the channelling of unlawful funds towards it. Let it be known that in Islâm the function of a toilet is far from squalid. Tahârah in Islâm is regarded as half of faith, and tahârah starts in the toilet. The role of the toilet is therefore religious in every sense of the word.

Fatwâ and facilitation

It might also be observed that the muftî's role is to facilitate things for the public, and not to make it difficult for them. To this I respond as follows:

The element of taysîr (facilitation) in fatwâ comes into play in two cases: one, when dire necessity (such as described earlier) calls for the relaxation of prohibition; and two, when the muftî is faced by two or more possible solutions to a problem, both or all of which fall within the sphere of the lawful. In that case he will opt for the easier solution. However, in a conflict between the lawful and the unlawful, of which the case in question is an example, introduction of the element of taysîr amounts to nothing less than the arbitrary cancellation of all things prohibited by the Sharî'ah. By such a radical step every unlawful thing in the Sharî'ah can be rendered lawful. What, I ask, is then the wisdom in prohibiting certain things if every jurist holds arbitrary power over the cancellation of prohibition?

Furthermore, I do not doubt that all of us are acutely aware that we live in times of moral degeneration and bankruptcy, where the little morality that remains is also at a steady ebb. I honestly doubt whether any 'âlim endowed with the qualities of taqwâ and fiqh an-nafs (a sociological and psychological appreciation of an issue under scrutiny) could possibly fail to read the implications of opening a door as destructive and obnoxious as that of a music show; not in an age where music is practically synonymous with libertinism.

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For all of the above reasons I, with full realisation of my responsibility in this regard towards Allâh, rule that

1. it is harâm to host such a function;
2. funds generated in such a show is harâm, and cannot be used for the intended purpose;
3. it is wâjib upon the body that oversees the affairs of the community to ensure that the organisation and planning of the function is terminated immediately.

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