

A Review over the Issue of Establishing the Months of Ramadan and Shawwal

The issue of establishing the month of fasting and establishing the day of Eid has several juristic aspects that must be taken into consideration:

- 1- The decision of confirmation is a decision of affirmation (*ithbaat*), not a decision of refutation (*nafee*).
- 2- The decision of confirmation is a decision of the Shariah judge who has the authority to decide on judgments.
- 3- The judge does not judge with his knowledge, but rather judges with evidence (*bayyinah*).
- 4- Confirmation of the month of fasting and the day Eid is a matter related to worship. Worship matters are from Allah (swt).
- 5- Worships and related issues that are not legally reasoned by 'illah and therefore cannot be made as legal analogy to other issues.

These matters must be taken into consideration when discussing the Shariah issue related to the establishment of Ramadan or Eid. Thus, the issue boils down to the following:

On the twenty-ninth day of Sha'ban, it is mandatory to work on observing the appearance of the Hilal crescent [new moon] of the month of Ramadan, based on the hadith of the Messenger of Allah (saw)

1. «صوموا لرؤيته وأفطروا لرؤيته، فإن غم عليكم فعدوا ثلاثين يوماً» **“Fast when you see it and break your fast when you see it.”** And in another hadith, «يَكْتُبُ وَلَا نَحْسِبُ، الشَّهْرُ هَكَذَا وَهَكَذَا». يَعْني مَرَّةً **“Indeed, we are an unlettered Ummah. We do not write or count. The month is like this and that. It means twenty-nine or thirty days.”** The basis for the month is that it has 29 days, but the month does not end as soon as the number of its days, reaches 29 days, because the Messenger (saw) said in the hadith, “We do not write or count,” but “fast for sighting the crescent and break the fast for sighting the crescent.”

2. What the Shariah has stipulated is that it is mandatory to work on sighting the Hilal crescent in order to initiating fasting or to end fasting on Eid day. The fact that the month is established is a cause (*sabab*) to start worshiping and it is an obligation upon the Ummah (Fard Kifayah). So working on sighting the Hilal crescent moon at the end of the twenty-ninth of Sha'ban and the end of the 29th day of Ramadan, is an obligation of sufficiency. It is not permissible not to exert effort in observing the appearance of the crescent of Ramadan and the crescent of Shawwal. This obligation (fard) may not be abrogated or annulled based on reports that the moon has not been born yet, or the moon does not have enough light to be seen, or the western horizons sights are blocked with clouds, haze, or sand storms. The order to setout for sighting the moon is not conditioned with any valid Sharii condition. And as stated, this is a matter of Ibadah, where the evidence has to be Sharii evidence.

3. The statement of the Prophet (saw) which says, «لا نكتب ولا نحسب» **“We neither write nor count”** does not mean that we do not know writing and calculating, but on the contrary, ‘We know how to write and calculate, but we do not start fasting just because we counted the number of days of Shaban, and if it reached 29 we fasted.’ The Hadith text dictates counting the number of fasted days, and once it reaches 29 days, then it becomes obligatory upon the Muslims to set out for watching the new moon, and if the moon is sighted then Ramadan/Shawwal will start, otherwise Muslims should complete the current month for 30 days.

Writing and calculating were common among the Arabs and others. Knowledge of the positions of the stars and the movement of the planets was known for all and not restricted to one or another Ummah. In fact the Arabs among other people were familiar with the star positions, the movements of planets, and the phases of the moon as indicated by several Ayat in the Quran ﴿وَعَلَامَاتٍ وَبِالنَّجْمِ هُمْ يَهْتَدُونَ﴾ (They use milestones and are guided by the stars); ﴿وَالْقَمَرَ﴾ ﴿قَدَرْنَاهُ مَنَازِلَ حَتَّىٰ عَادَ كَالْعُرْجُونِ الْقَدِيمِ﴾ (The moon goes through phases). The hadith also shows that in the event that there is something that prevents the sighting of the Hilal crescent, we complete the period, so the number here is counting and it is from the calculation. That is, the Messenger of Allah (saw) allowed the calculation in the event that the sighting was not possible, provided that

the calculation would be completed for 30 days. So we must stand upon the speech of the Messenger (saw) as it is divinely endowed (*tawqeefee*).

4. Based on the principle that acts of worship are not legally reasoned, we understand from this that we do not seek an 'illah for the Messenger of Allah's (saw) request for us to begin sighting the crescent at the end of the day of Shaban 29 or Ramadan 29. The matter is not legally reasoned, as the acts of worship are not legally reasoned and do not seek an 'illah for it. It is the endowment (*tawqeefiyyah*) of Allah (swt) as He decided. The Messenger (saw) stipulated the completion of the period for 30 days in case the sighting is not possible. This is a matter for which no 'illah is sought and it there is no legal reasoning or legal analogy in worship. Based on that, we can not say that we will set out to sight the moon only if we know that the moon is sufficiently large to be visible, and the moon has passed the conjunction for more than predetermined hours. Such a condition is termed as "mental condition" and not "Sharii", and it is not valid particularly in Ibadat. This is a well known base in Islamic jurisprudence, where the Ibadat are not subject to "illat". We note that the sighting of Ramadan and Shawwal crescent is in itself Ibadat, because it is related to fasting which is Ibadat.

The part of the Hadith «فَإِنْ غُمَّ عَلَيْكُمْ فَغُدُّوا ثَلَاثِينَ يَوْمًا» (**If the sight of the moon is blocked for your sight then count up to 30 days**), indeed provides a guidance on how to act in case the crescent was not visible due to any blockage «غُمَّ عَلَيْكُمْ» (**blocked for your sight**). The hadith indicates that in the case of not seeing the crescent at the end of the 29th day, due to a blockage of the moon sight, then it is required to continue fasting for 30 days. This is irrespective whether the moon does exist behind the clouds or fogs, or does not exist at all. In essence, if the moon indeed has been born, and it is old enough to be visible (based on calculations), however, the conditions in the skies prevented its sight then it is incumbent upon Muslims to continue fasting. Note that this is a case, where Muslims would be fasting on the first day of Shawwal, which is otherwise would have been prohibited. This clearly indicates that the time to start fasting or to break the fasting at the end of Ramadan is dependent only on the sighting and not on anything else. Assume that people in a certain area, at the end of the 29th day of Ramadan, set out to see the moon, which is known to have been born more than 30 hours earlier, but the skies were blocked with clouds to the extent they could not see the moon by any means. In this case, the Hadith clearly says that you have to continue fasting for more than one day. This clearly shows that Muslims are not allowed to rely on the knowledge that the moon has been born, and it does exist on the western horizons, and it is old enough to be visible for some good interval of time.

5- The hadith of the Messenger (saw) regarding the crescent of Ramadan and Shawwal is a request for affirmation (*ithbaat*), not of refutation (*nafee*). It means that the issue here is to affirm the arrival of the month and not to refute its arrival. The issue is one of confirming the sighting of the Hilal crescent of Ramadan/Shawwal and not refuting the end of the month of Sha'ban/Ramadan. The difference between them is that the judge asks for evidence of the beginning of the month of Ramadan/Shawwal and the start fasting/Eid through a sighting. Evidence to affirm the occurrence of an event is not the same as the evidence to refute the occurrence of the event. Hence it is necessary to understand that the required evidence is an evidence to establish the existence of the new moon, and not an evidence to refute its existence in the sky at a position and time where it can be visible or sighted.

It is also important to understand that an "evidence" in Islam is an Islamic rule "حكم شرعي" which in itself must be supported by a Sharii evidence just like any other Islamic ruling (See the book أحكام البينات *Rules of Evidences* by Sheikh Ahmad Ad-Da'oor). For example, the judge can not ask for 4 witnesses to establish a case of marriage or divorce, when the Sharii rule requires only 2, or requests only 2 witnesses for a case of "زنا" (adultery) when it 4 witnesses are required. In short, the types and categories and characteristics of evidences in all cases which require judgement are well defined in Islamic jurisprudence. In the case of establishing the beginning of Ramadan or Shawwal, the evidence is established as one or two (according to some scholars) witnesses who claim to have seen the crescent in the western horizons. And the judge is not allowed to use any other type of evidence for this case, unless there is a clear Daleel (evidence) for his choice. As we stated above, the sighting of the moon of Ramadan or Shawwal is part of Ibadat, which is a "tawqeefi - endowed" issue. Henceforth, it is not permitted for the judge to use the astronomical calculation as evidence for establishing the start of the month of Ramadan, or the end of it. Using the astronomy calculations to negate the start of the month is voided, as we

have indicated that the issue of Ramadan is an issue of establishing a fact rather than negating a fact.

6- The issue of affirming the sighting of the Hilal crescent for the judge is related to two things. The first is that the sighting is to be established on the twenty-ninth of the month. No sighting is considered or claimed before that, such as if a person claims on the twenty-eighth of Sha'ban that he saw the Hilal crescent. The judge does not look into this matter. It should not be said here that there may be a mistake at the beginning of the month of Sha'ban. This is because if there was a mistake, such as the delay in entering into Sha'ban because of the cloudiness of its crescent at the beginning of the month, then this matter must have been resolved before the end of the month of Sha'ban. Therefore, the correction of the beginning and end of the month of Sha'ban must have taken place. Accordingly, the twenty-ninth of Sha'ban, upon which the opinion of the judiciary has settled, is known and it is not permissible to delay beyond that. The point is that the judge does not consider any sighting before the twenty-ninth of Ramadan for establishing the Eid day.

7- As for the second matter, it is the issue of affirming the occurrence of the sighting. It is related to the evidence, which is the testimony of two witnesses, or one witness for some. Here comes the importance of the rule that says that the judge does not judge by his knowledge, but rather by evidence. This opinion is attributed to Imam Malik and Imam Shafi'i, it is a famous saying of Imam Ahmed and it is the opinion of the latter Hanafis. This means that the judge is assuming that he was an astronomer and his knowledge is set that it is impossible to see the moon on the twenty-ninth. However, a witness comes before him to testify that he saw the crescent. What does he do? Does he rely on his knowledge and reject the witness's testimony or does he make an effort to evaluate the evidence based on the testimony?

The judge here limits his work to the evidence for its acceptance or rejection. And that in terms of the validation and settling, and in terms of the evidence and its circumstances (mana'at). If a witness shows that he has weakness in his eyes and is unable to see distant objects, for example, then the judge may reject his testimony because it is related to sight. Or if the witness specified the location of the sighting of the crescent in a direction other than the one in which the crescent is located (for example he claims to have seen the moon in the eastern horizon). Or that the witness was in a turbulent state that provokes anger (this case is similar to the case where a judge does not judge while he is angry), or any of the matters relating to the capacity of the witness to bear witness. However, the judge is not allowed to reject the witness's testimony based on the knowledge of the astronomical estimation that the crescent at sunset did not have sufficient illumination from the sun to be able to be seen. In such cases where the judge's knowledge differs from the reality of the evidence presented by the witnesses, the judge may not rule on the matter and passes the case onto other judges.

8- These are the most important matters related to confirming the sighting of the Hilal crescent of Ramadan and the Hilal crescent of Shawwal. Here, I must address the issue of the unity of Muslims in their fasting and breaking their fast. Muslims all over the world have tried different opinions on this issue. Most of these attempts were aimed at unifying Muslims on the day of their fasting and breaking their fast. However, the reality is that all of them were not able to gather Muslims on one day, whether opinions related to the universality or difference of sightings, or related to the astronomical calculation of the birth of the Hilal crescent and the occurrence of the lunar conjunction, or related to sighting by the two witnesses and its validity for others. The main reason for this is the absence of the collective Imam, the guardian of the Ummah and its Khaleefah (caliph), who, with his opinion, settles the dispute, who must be obeyed and who unifies the Muslims in the state of the Khilafah upon one opinion. This underlines that the existence of the collective Imam of the Muslims and the true guardian, the Khaleefah of the Muslims, is an obligation of all obligations. Announcing the start of Ramadan and ending it with the arrival of Eid is just one of these obligations, whilst whosoever said that the Khilafah (Caliphate) is the mother of the obligations is to be believed.

Written for the Central Media Office of Hizb ut Tahrir by

Dr. Muhammad Malkawi