Crescent Sighting with Telescopes:

A Shi'ah Demonstrative jurisprudence Approach

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IN THE NAME OF ALLAH,
THE ALL-BENEFICENT, THE ALL-MERCIFUL

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Contents

Foreword

Praise to God, the exalted, and blessings to the guides of man, especially the last Prophet (sawas) and his pure family (as), particularly the Imam of the time (ajt).

This book deals with a sensitive issue, namely the implementation of modern tools, such as telescopes in approving the claims of sighting the crescent. It is worth emphasising the main issues and questions in this matter.

The case of watching for the Crescent marking the first day of the lunar month is extremely important for Muslims all over the globe. The most sensitive issue would be related to the first day of the lunar month 'Shawal' (Eid Fitr) after the termination of the holy month of Ramadhan.

The case has -for a long time- been a matter of confusion and misunderstanding. Some think it is a matter of religious decision; others would like to consider it an astronomical matter! As such, they say they would prefer to refrain from following the religious authority -as it is always divided- and everybody nowadays has access to telescopes anyway! In addition, the progress of modern tools has made information easily available to each and every individual following these advanced instruments. Of course, this is a misleading idea as it is based on

misunderstanding. The ‘different opinion’ has never been a sign of an unhealthy academic milieu; rather it is a sign of zero tolerance towards intellectual harassment, or intellectual ‘terrorism’ against free minds. Also, the crucial point for the different opinion can be traced back to the vague evidence that our sacred texts have referred to on the matter.

The Qur’an speaks about: (من شهد), which means ‘If you witness’, while the prophetic narration and hadiths speak about: (صم للرؤية وافطر للرؤية), which means: ‘Fast when the crescent is seen and break your fast when the crescent is seen’.

The different opinions of the Shi’ah scholars should be clinically executed with a succinct summary. Therefore, we are going to elaborate on this matter as required. The issues, which lead to different opinions, can be squeezed into mainly **three crucial premises and fundamental questions**:

Q.1: [Classical or modern tools] What is mean by ‘seen’, is it be seen solely with the naked eyes (referring to it with Y1), or would it apply to telescopes and sophisticated modern implements (referring to it with N1)?

Q.2: [Way vs. Subject matter] What is exactly meant by ‘seen’ and what is the fundamental philosophy behind the

Prophet (sawas) saying: 'seen'? Is it just a method to be sure (referring to it with Y2), or does seeing with the naked eye have its own fundamental importance, as if it has a magical and psychological effect on account of it having been seen with naked eyes (referring to it with N2)?

Q.3: [Globally or relatively to each and every Horizon] Do the above-mentioned phrases, in the sacred texts, refer to the actual appearance of the crescent to any single individual on Earth (referring to it with Y3), or rather to each group of mankind as they would be able to watch and see it on their own horizon (referring to it with N3)?

The author has dedicated the discussion of this book's arguments to answer the first question only, although he has slightly touched upon the third point and third question on page 62.

Personally –based on technical knowledge and research in the field and the Ijtihadi approach- I believe that the correct answers are as follows:

With regards to Q.1: It is not enough to rely on telescopes, thus N1 is not espoused, albeit not in the total favour of Y1.

With regards to Q.2: It is Y2

With regards to Q.3: It is N3

However proving these arguments and refuting the invalid amongst them is beyond my intention in this foreword. At the same time, one can easily realize that the author has adopted the answer N1 to the first question, which is not identical with my approved opinion, even though I have not included any criticism regarding this matter. This point reflects a free milieu amongst Shi'ah scholars within the Shi'ah Advanced Seminaries in Qum/ I.R. Iran, or in Najaf/ Iraq, amongst other Shi'ah Advanced Seminaries.

One has no doubt that the philosophy of this book was solely to prove the espoused standpoint on the first matter by some Shi'ah scholars. The author has discussed the various theories that have been presented by different Shi'ah scholars and tried to demonstrate the most logical, systematic and rationally accepted theory amongst them, as espoused by his late father, i.e. the late Grand Ayatollah Muhammad Fazel (ra), about this specific issue.

I believe this book shall fulfil a need felt by various researchers in this field and it will quench their thirst for free discussion and the jurisprudential information that is presented throughout those different arguments. I hope that the reader shall enjoy reading the book, as much as I have enjoyed working on it. It is

certainly going to increase the readers' knowledge about the technical discussion related to moonsighting, and why some Shi'ah Muslims have different opinions about approving the crescent and its jurisprudential arguments, as well as the philosophy behind accepting the modern tools, such as the telescopes, amongst Shi'ah Muslim scholars.

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Crescent Sighting with Telescopes: A Shi'ah Demonstrative Jurisprudence Approach

Introduction

One of the controversial questions at present is whether the employment of modern equipment and tools in sighting the new or old moon is or is not legally binding. This issue has been provided for discussion by Muslim jurisprudents following the invention of such optical instruments as the telescope and microscope so as to prove the possibility of relying totally on such equipment for sighting the new or old moon. The issue was thus presented in the form of the following question: Is it or is it not considered acceptable to employ such equipment for proving the sight of the new or old moon, just as when the moon is seen with the naked eye? Also: Is the fact of sighting the new or old moon with the aided eye - by means of artificial apparatus - legally binding or not?

On the 24th of Ramaḍān, 1425 AH, a question was put before His Eminence the Grand Ayatollah Shaykh al-Fāḍil al-Lankarānī concerning the employment of astronomical devices, such as telescopes and binoculars, in sighting the crescent.

In reply to this question, His Eminence wrote,

> "There is no difference whether the new (or old) moon is sighted with the naked or aided eye. Therefore, sighting with a telescope is acceptably sufficient (for proving the time of the new moon).

> The same is also applicable to sighting it with other optical instruments such as fieldglasses, binoculars, and hunting glasses."

This *fatwa* (a decision on a point of Islamic law) initiated extensive reflection and made a considerable impact both within and outside the Islamic world, especially among Muslim scholars and master jurisprudents. However, it may be said that a *fatwa* such as this, in its openness and clarity, cannot be found among the other *fatawi* of supreme religious authorities and master jurisprudents.

In the wake of this *fatwa*, a number of our virtuous colleagues have asked me to write an explanation and commentary on it.

By the grace of God I have been able to discuss this issue - which is regarded as one of the major contemporary issues - in the light of argumentative methodology as much as time and ability has permitted me. Finally, I hope that those experienced in these matters will consider my research fairly.

Redacting the Controversial Point

Before considering the different opinions and expounding on the proofs of each, it seems necessary to redact the controversial point into a certain form, which is as follows:

From the natural and the practical aspects, a new moon has two cases:

The ***first*** case is the contrast case, which means that the new moon falls under the sunlight. In this case, it is definitely impossible to sight the new moon with the naked eye.

The ***second*** case is the approximation case, which means that the moon has just left the state of waning (i.e. dwindling and decreasing in size) and has freed itself from the sunlight. This is the beginning of a new month according to lunar calendars, which in language and tradition is expressed as *hilāl* (new or old moon, or crescent).

In other words, the beginning of the approximate new moon is the first time of *hilāl*. In fact, the term of *ru'yat al-hilāl* (sighting the new moon), which has been frequently mentioned and presented in the narrations (*riwāyah*; one of the two major sources of Islamic legislation) as the essence of the issue of sighting the new moon, is a composition of two independent phrases: *ru'yah*, meaning *sighting*, and *hilāl*, meaning *the new moon*. It thus seems logical to study each of these two phrases separately.

In this study, when the definition of the word *ru'yah* (sighting) is discussed, we will try to answer some relevant questions such as whether the word *ru'yah* mentioned in the narrations should or should not be understood to be an independent topic or a means to a proper understanding of the subject, and whether this term is or is not so general as to be restricted to a certain meaning with regard to its origin.

However, the most important matter at this point is to prove that the word *hilāl* has one meaning only, that being *new month* or *the approximate new moon*. Yet certain statements that have been used in the narrations may indicate that there is an interval between the time of the approximate new moon and the formation of it. To clarify, a new moon cannot be formed and actualized unless a period of time elapses after its incipience, because its light at that stage would be too faint to be seen. In any case, it seems that a (lunar) month begins at the very moment of the approximate new moon.

Definition of Hilal

Linguistically, *hilāl* means the new month, although some people call the moon *hilāl* after one or two nights of the new month have elapsed; others even call it this after the elapse of seven nights.(1)

Explaining the word *hilāl*, Ibn Manẓūr says,

> "*Hilāl*: the onset of the moon when people shout upon seeing it at the beginning of a month. The word *hilāl* is said to be used for the moon until the elapse of two nights of a new month. After that, it is no longer used until the new moon reappears at the beginning of the coming month. The word *hilāl* is also said to be used for a three-night old moon. After that, the word *qamar* is used instead."(2)

This definition proves that *hilāl* is used to express the (lunar) month from its first night and from the moment of its formation, because a two-night *hilāl* means that it has appeared on the first and second nights of the month. In conclusion, the new moon is called *hilāl* as soon as it divests itself of the state of waning even if it has not yet been seen. Thus the phrase: "*when people shout upon seeing it*" is not a condition of the effectuation of its meaning; rather, it is only one of its general effects. Supporting this claim, al-Fayrūz'ābādī, the author of the Arabic-Arabic dictionary of *al-Qāmūs al-Muḥīṭ* (vol. 4, pp. 7) defines *hilāl* as the onset of the new moon, without stating a condition that people should shout upon seeing it.

The author of *Lisān al-ʿArab* (11/702) says,

> "Abū-Isḥāq says: In my conception, as well as that of many other scholars, the moon is called *hilāl on* the first two nights of the month exclusively, because the moonlight can be seen clearly from the third night."

Accordingly, the word *hilāl* is used to express the onset of the faint moonlight when it does not cover the darkness of the sky.

In his dictionary of *Ṣiḥāḥ al-Lughah* (5/1851), al-Jawharī defines *hilāl* as follows:

> "*Hilāl*: the moon on the first, second, and third night of a month. After that, it is called *qamar* (moon)."

According to this explanation, the moon on the first night of the month is considered *hilāl*, without the condition that *people should shout upon seeing it*.

In conclusion, the linguistic meaning of *hilāl* is very clear, although Ibn al-Aʿrābī—as is mentioned by Ibn Manẓūr in *Lisān al-ʿArab*—is famously quoted to have said that the new moon is called *hilāl* because people shout upon seeing it.[3] However, such claims cannot be considered the focus of the religious law of identifying the new moon. In other words, people's shouting upon seeing the new moon cannot be considered the criterion on which all laws appertaining to the new moon should be founded, although this condition may be present in the majority of the cases of the approximate new moon.

On the other hand, the author of *Ṣiḥāḥ al-Lughah* (in 5/1852) adds,

> "The verb that is used to express seeing the new moon is *istahalla*, which also means: to check and to get to know, but not *ahalla* (which means: to shout)."

Thus, this lexicographer has explained *istihlāl* (i.e. the process of seeking to see the new moon) as getting to know something. This is so because if one seeks to see the new moon but fails, it will not be regarded as a process of *istihlāl*, which is conditional upon actual sighting of the new moon.

It is noteworthy that the *istihlāl* mentioned in the narrations is not the basis of the religious law regarding this topic; rather, the basis of issuing such laws is the new moon itself and the very sighting of it.

It is also worth mentioning that even if we condescendingly accept that proving the presence of the new moon is conditional upon its visibility and the people's sighting and shouting upon seeing it, this is still imperfect evidence, because it has been already proven - as a general rule - that the reason for giving something a certain name has nothing at all to do with identifying the nature of that thing. In other words, on many occasions, certain things are characterized by certain features while the names of these things are definitely inapplicable to their nature and features.

In conclusion, the new moon must be considered to be existent the moment it takes its form. Furthermore, such new moons (i.e. the instantaneously shaped moons) must be included with those mentioned in the following holy Qur'ānic verse:

> "They ask you concerning the new moon. Say: They are times appointed for the benefit of men and for the pilgrimage… (2/189)"

So astronomers are allowed to use methods of accurate reckoning for identifying the birth of the new moon, in the same way as they use these in comparative issues. The problem, however, lies in the fact that such reckonings and calculations in themselves cannot be taken as provable evidence, apart from

the argumentation that the results of such reckonings can or cannot be taken for granted. The other problem to be faced in this regard is that the texts of legislating religious laws have decided sighting the new moon with the naked eye to be the criterion for deciding the birth of the new moon.

For these reasons, it is unacceptable to rely on the astronomical calculations in identifying the birth of the new moon, since sighting the new moon with the eye is the criterion of identifying its birth, as understood from the interpretations of the texts of the proofs.

Investigation, however, is focused on the following question: If the new moon can be seen only by telescope, while seeing it by telescope neither changes the reality of the birth of the new moon nor reflects anything else but the real new moon, can this type of sighting be taken as binding evidence or not?

According to the definitions of such master scholars as the late Sayyid al-Khū'ī with regard to identifying the new moon,

> "The new moon is decided when it leaves underneath of the ray of sunlight to such an extent that it becomes visible, even if only to some people."(4)

Sayyid al-Khū'ī specifies that for a new moon to be confirmed it must leave the ray of sunlight, separate itself a little from the sun, and move away from beneath the sun's rays to such an extent that it enables people to sight it, even if only in some regions.

However, I could not find any justification for imposing such a condition in the identification of a new moon. Moreover, this definition requires that there must not be a certain criterion to decide the birth of a new moon and disagreement among scholars in this regard can only be verbal.

To clarify, if we commit ourselves to this definition and specify as a condition of the birth of a new moon the moving away of the new moon from beneath the sun's rays to such an extent that it becomes impossible for some people to sight it with the naked eye because of its faint light, but that it is possible to be sighted technically and scientifically by such equipment as telescopes and cameras, it means that all scholars must agree that a technical sighting of the new moon is permissible and acceptable.

Although the majority of scholars conclude that sighting the new moon with a technical instrument is not sufficient to confirm its birth unless it is accompanied by a sighting with the naked eye, it is still a reality that when it becomes certain that the new moon has moved away from beneath the sun's rays several hours previously - which means that the new moon must now be several hours old - then that night must be indisputably and conclusively proclaimed to be the first night of the new lunar month.

However, if some people disapprove of this verdict and claim that the aforesaid probability is in itself controversial, then our study must be so comprehensive that it must include the two following probabilities:

The first probability is that the new moon has actually initiated according to astronomical calculations, but that it cannot yet be sighted with the naked eye. This probability is applicable at the first moments of the new moon's emergence from beneath the sun's rays.

The second probability is that the new moon emerges from beneath the sun's rays to such a minimal extent that according to astronomical calculations it is very unlikely, though not entirely impossible, that it can be seen with the naked eye.

All those studying the issue of sighting the new moon with equipment have not discriminated these two probabilities and studied each one apart from the other, although the second probability can be excluded from the question at issue.

Nevertheless, the question that needs to be answered remains as follows:

With regard to these two probabilities, is it legal to depend upon sighting the new moon with the aided eye - i.e. by means of a telescope or other equipment - in issuing a verdict with regard to identifying the beginning or the end of a month?

Famously, master jurisprudents are said to have decided that it is not sufficient to sight the new moon with the aided eye.

First of all, the issue of sighting the new moon with technical equipment is in fact one of the novel questions that cannot be traced back to ancient times; on the contrary the systematic and codified use of such equipment started only a few decades ago.

As a result, it is unreasonable to claim that the aforesaid verdict - the insufficiency of sighting the new moon with the aided eye - is famous; i.e. decided by the majority of master scholars, because a verdict can be pronounced famous (*mashhūr*) only when it is consensually agreed upon by ancient master jurisprudents alone. Although the aforesaid verdict is famous among modern master jurisprudents, such *famousness* (*shuhrah*) cannot act as an overwhelming argument, as everyone knows.

Proofs of Those Who Agree to Using Optical Instruments for Sighting the New Moon

Those who deem that it is acceptable to sight the new moon with the aided eye provide as evidence the general rule of the initial generality of all laws - *aṣālat al-iṭlāq*; that any law is initially inclusive of all of its cases unless there is clear-cut proof of an exception or exclusion. They thus claim that there is no evidence or indication that excludes sighting with the aided eye from the law or that restricts the lawful sighting to a sighting with the naked eye.

Although these jurisprudents regard the original process of sighting, i.e. perception with the eye, as worthwhile in the application of the law, while considering all other artificial processes, such as astronomical calculations and conjectural considerations, to be worthless, they still argue that since sighting with such simple equipment as fieldglasses is functionally active with regard to the application to religious laws, sighting with more complicated equipment such as

telescopes must be functionally active too, as long as sighting does not include any change in the reality of the sighted object. Technically, they argue, the most important thing in this regard is that the sighting is truly ascribed to the observer. Thus sighting with a telescope, for example, is indisputably ascribed to the observer; and this ascription is real, not figurative.

In other words, true sighting in the cases of seeing something by means of a telescope or a similar apparatus is incontestably positive and effective. For example, the testimony of a witness who has seen a murder through a telescope is completely acceptable and so conclusive that the judge in question is required to issue a judgment based on what the witness has seen. It is well-known in the Islamic judicial system that sighting is one of the conditions of the acceptance of testimonies.

The following instance is another proof: The legality of eating a fish is conditional upon the fish having scales, i.e. small plates or shields forming part of the outer skin of certain animals. According to some texts of Islamic legislation and verdicts of Muslim master jurisprudents, the presence of scales on the outer skin of a fish is the one and only criterion of the legality of eating that fish. So if it is impossible to see scales on the skin of a certain kind of fish with the naked eye but it is possible to see them with such apparatus as a microscope, or if it is impossible for ordinary people to identify such scales but it is possible for experts to do so, then the legal opinion seems to decide upon the legality of eating such a fish, since such secondary issues as

being visible by means of a microscope or only by experts is deemed sufficient for the legal consumption of the fish. In such cases it is unacceptable to specify as a condition being able to see the scales with the naked eye.

In conclusion, just as the legality of eating a fish is contingent upon the actual existence of scales on its outer skin, so also is the case of sighting the new moon with optical instruments. To put it more plainly, sighting the new moon with optical instruments means that the new moon actually exists. Therefore the laws ensuing from the existence of the new moon must be applied when it can be seen with optical instruments but the naked eye cannot see it. It is true that Islamic legislative texts have identified *ru'yah* (sighting) as conditional to the pronouncement of the birth of the new moon, but all other proofs indicate that the most important factor in this issue is the actual existence of the new moon, not catching sight of it with the naked eye.

In addition to the two previously mentioned points of evidence, the argumentation of those who agree to authorize the results of sighting the new moon with optical instruments can generally be summed up in the following three points of evidence and one supporting factor:

1) The first evidence is the general rule of the initial generality of all laws with regard to the reason for seeing or not seeing the new moon. Furthermore there is no indication of any exception or exclusion of sighting with the aided eye from the law involved.

2) Sighting in its real sense can be ascribed to those who see the new moon by means of optical instruments.

3) The Qur'ānic expression *ahillah,* meaning new moons, is so inclusive that it includes the new moons that people cannot see with the naked eye but which they can see with the aided eye.

In addition to these three points of evidence, some other factors support this opinion. For instance, if the new moon could not be seen with the naked eye on the first night of a month but could be seen with a telescope, and thus the next day was not considered to be the first day of the month but the day after, and if at the end of the month it became known that the month was only twenty-eight days, then it was obligatory to make up one day, as stated in some narrations, i.e. texts of Islamic legislation, and decided by all jurisprudents. This means that although the new moon cannot be seen with the naked eye on that night, it is still pronounced the first night of the month. Of course this is the best evidence that sighting the new moon with the naked eye is not conditional.

However, it may be argued that according to the afore-mentioned assumption sighting the new moon with the naked eye on the first night of the month would have been possible had it not been prevented by some means. In other words, this means that there is inseparability between sighting the old moon with the naked eye on the last or the thirtieth night of the month and sighting the new moon on the first night of it.

No proof has been presented, either in astronomy or in any other field, that there is any kind of inseparability between these two matters. On the contrary, in some states of sighting we find that astronomers claim the impossibility of sighting the new moon with the naked eye on the first night of a month, and after twenty-nine days, denying their previous claims, they declare the opposite.

Apart from this point, there is basically no evidence in astronomy on the matter in question.

Proofs of Those Who Oppose Using Optical Instruments for Sighting the New Moon

Regarding scholars who deem the sighting of the new moon with the aided eye to be insufficient, they provide two points only as their argumentation:

First Point: They claim that the word *ru'yah* is understood to mean the natural eye exclusively. In this respect, a master jurisprudent states:

> "Just as sighting with observatory instruments is insufficient, so also is sighting with supernatural eyes. This is for no other reason than that the word (*ru'yah*) implies the natural eye exclusively."(5)

Second Point: They claim that *sighting* must be understood according to its way, but not subject matter. This point will be discussed and elucidated below.

First Claim: Exclusive Sense of the Word

A master jurisprudent states,

> "When the word *ru'yah* is used, the initial meaning that comes to mind is 'vision' in its most prevalent sense, which exclusively implies seeing with the naked eye. This is because scholars of Muslim jurisprudence, in all fields of Muslim jurisprudence, use the words of general sense according to their most prevalent examples."(6)

This quotation actually comprises a number of noteworthy points, which are as follows:

Firstly, it is necessary to peruse the origin of the implication of a word.

It has been proven in *'ilm al-uṣūl* - the science of the fundamentals of Muslim jurisprudence - that to give a word an exclusive implication is valid only when the origin of this exclusive implication is the prevalence of usage, not the prevalence of existence. Thus just as the word *ru'yah* is used to express sighting with the naked eye, it is also used to express actual, not figurative, sighting with binoculars, telescopes, and microscopes.

Secondly, the point which has been provided as evidence for the claim is arguable. Even if we condescendingly accept that jurisprudents, in all fields of Muslim jurisprudence, use the words in a general sense according to their most prevalent

examples, it is still arguable whether this conviction of the jurisprudents can or cannot be held as binding evidence and argument in this very issue.

For instance, all jurisprudents who existed before ʿAllāmah al-Ḥillī decided that it was obligatory to drain an estimated number of buckets from a well when an impure object fell in it. Is this consensus binding for all jurisprudents, and must it be held as evidence and argument against them?

It is for this reason that this issue and similar ones must first be discussed within the proofs of the different opinions.

It is now clear that just as accurate investigation and analysis must be applied to the proofs provided in such issues, it is also necessary to refer to the proofs provided for the issue under consideration to ensure their being discussed thoroughly.

Thirdly, the author of the previously quoted passage claims that all jurisprudents use the words according to their most prevalent meaning. In fact, this claim cannot be applied to all jurisprudents just because a few of them actually did so. Below we will refer to some examples where scholars of Muslim jurisprudence contradict this claim. This proves the inaccuracy of the claim of the author, who decided an issue to be general, ascribing it to all jurisprudents.

Before referring to some examples where jurisprudents contradict or adhere to the alleged rule, let us bring up a few

points that need to be studied carefully and put to the test from a methodological angle.

First Point: It goes without saying that the general rule of the initial generality of all laws is one of the verbal and rational principles of Muslim jurisprudence. As is necessitated by premises of wisdom, generality of meaning is the initial principle of all verbalisms unless there is evidence or an indicative to the contrary, i.e. restriction of a word to a certain meaning. In other words, to forsake the generality of the meaning of a word and to claim that this word holds an exclusive implication always requires presumption, i.e. grounds for evidence, without which any claim to exclusive implication is worthless. Moreover, if we try to restrict the general sense of any word in any field of knowledge to the prevalent example, the practice of *ijtihād* ,in the sense of exerting all possible efforts to extract laws from the sources of the religious legislation, will definitely lose its vitality and activity, because *ijtihād* is vital and active thanks to such general senses and universally applicable meanings.

As for the narrations concerning the sighting of the new (or old) moon and the other proofs provided in this respect, no presumption can be observed; rather, the word *ru'yah,* meaning sighting, mentioned in these proofs is always general with regard to cause and reason, such as in the following texts:

> "If you see the new moon, you should then start your fast. If you see it, you should then break your fast."

> "Start your fast when you see it, and break your fast when you see it."

In all of the twenty-eight narrations concerning sighting the new moon,[7] the word *ru'yah* is mentioned as a verb form, whether or not with a second person pronoun. These verbs are either in the singular or plural forms. In none of these narrations can we find even a single presumption indicating that the word *ru'yah* is used to imply an exclusive concept. As a result, we can prove that sighting by using any means, be they natural or artificial, is sufficiently acceptable in proving the birth of the new moon. In other words, the criterion to prove the birth of a new moon is to catch sight of it no matter what means is used for sighting. Additionally, in many if not all cases of general senses, when the purport of an expression or word is restricted to its most prevalent usage, the sense of the general rule as well as the entire body of *'ilm al-uṣūl* requires the existence of a point of evidence, without which neither can restriction to the most prevalent usage of an expression be practical nor can this claim be acceptable.

Analysis of the Narrations

The general idea that can be concluded from the narrations dealing with the topic of sighting the new moon is that sighting is a means to and an indication of proving the birth of the new moon. Yet the only way that achieves certainty and assurance of the birth of the new moon is that it should be sighted in the sky after it leaves the contrast situation, i.e. falls under sunlight.

In fact, the expression *ru'yah* has been used in these narrations as an introduction to certainty. The same expression indicates that the declaration of the beginning of the month of Ramaḍān must not be based on personal views and conjecture:

1) Muḥammad ibn al-Ḥasan, through his own chain of authority, reported ʿAlī ibn Mahziyār from Muḥammad ibn Abī-ʿUmayr, from Ayyūb and Ḥammād, from Muḥammad ibn Muslim who reported Abū-Jaʿfar (Imam al-Bāqir) as saying:

> "Once you see the new moon, you should observe fasting; and once you see it again (i.e. the new moon of the next month), you should break your fasting. The matter must not be based on personal opinions or conjectures; rather, it must be based upon sighting."(8)

2) Muḥammad ibn al-Ḥasan reported ʿUthmān ibn ʿĪsā who quoted Sumāʿah as saying:

> "To start fasting during the month of Ramaḍān is based on sighting (the new moon), but not conjecture."(9)

3) Muḥammad ibn al-Ḥasan reported Faḍālah from Sayf ibn ʿUmayrah from Isḥāq ibn ʿAmmār who quoted Abū-ʿAbdullāh (Imam al-Ṣādiq) as saying:

> "In the Book of ʿAlī, it is written: 'Start fasting when you sight it (the new moon) and break your fasting when you sight it. Beware of doubt and conjecture."(10)

4) Muḥammad ibn al-Ḥasan reported al-ʿAbbās ibn Mūsā who reported Yūnus ibn ʿAbd al-Raḥmān, from Abū-Ayyūb Ibrāhīm ibn ʿUthmān al-Khazzāz who quoted Abū-ʿAbdullāh (Imam al-Ṣādiq) as saying within a long discourse:

> "Verily, fasting during the month of Ramaḍān is one of the duties commanded by Allah. So do not base the carrying out of this duty on conjecture."(11)

The most obvious findings inferred from these texts can be summed up in the following two points:

First Point: The word *ru'yah* (sighting) has been used in these narrations to express the opposite of personal opinion and conjecture. It also highlights the necessity of reaching certainty in sighting the new moon before carrying out the duty of fasting.

It goes without saying that reaching such certainty is not restricted to sighting with the naked eye; rather, it can be attained by means of other equipment and optical instruments.

Second Point: The criterion that identifies the beginning of the month of Ramaḍān is the very new moon, but not the existence of the original moon. Hence, once we are sure that the new moon is there, we will be required to carry out the religious duty of fasting. Likewise, the birth of a new moon means the beginning of a new month, and with the certainty of the birth of the new moon, the new lunar month begins.

5) Muḥammad ibn al-Ḥasan reported through his chain of authority from al-Ḥusayn ibn Saʿīd, from Muḥammad ibn al-Fuḍayl, from Abū-Ṣabbāḥ, from Ṣafwān, from Ibn Maskān, from al-Ḥalabī - all of whom reported that when Abū-ʿAbdullāh (Imam al-Ṣādiq) was asked about the new moons, he answered:

> "These are the signs of the commencement of months. So if you sight the new moon, you must start fasting; and if you sight it (i.e. the new moon of the next month), you must break your fasting.[12]

Inferred from this narration is the point that the criterion for identifying the beginning of a lunar month is the new moon, while sighting it is merely a way of being certain of the new moon's birth.

Furthermore, the birth of the new moon is not conditional upon its being sighted with the naked eye; otherwise there would be as many new moons as those who could sight one and as many as the number of countries where they could be sighted. Of course, this is absolutely incorrect.

Supporting the claim that sighting the new moon is no more than a way of reaching certainty about its birth is the purport of some narrations that conclude that if the new moon of a month is inspected in the morning from the east but cannot be seen, then the birth of the new moon must be decided at the end of that day, whether it can be sighted that night or not:

Muḥammad ibn al-Ḥasan reported through his chain of authority from al-Ṣaffār, from Ibrāhīm ibn Hāshim, from Zakariyyā ibn Yaḥyā al-Kindī al-Raqqī, from Dāwūd al-Raqqī who reported Abū-ʿAbdullāh to have said,

> "If the new moon be inspected from the east in the morning but could not be sighted, then that night must be decided as the first night of the month, whether the new moon is sighted thereat or not."(13)

Although the author of *Wasā'il al-Shīʿah* comments that the Imam's words in this narration were said to mean the most prevalent cases or to be in accordance with the principle of *taqiyyah* (camouflage for self-protection), the same purport of this narration can be found in other narrations, which means that the Imam's words cannot be understood to have been based on *taqiyyah*. However, what can be inferred from this narration and similar ones is the point that sighting is no more than a means to obtaining certainty about the birth of the new moon, while sighting as an independent matter has no significance or involvement in the issue of the birth of the new moon.

Thus the conclusion inferred from our analysis of these narrations is the inaccuracy of the probability that the Holy Legislator has decided that the new moon's exit from the state of waning to such an extent that enables people to catch sight of it should be the criterion for the obligation to fast, because there is neither evidence nor indication of such a probability; rather that sighting the new moon, be it with the naked eye or with an

optical instrument, is merely a way to confirm the birth of the new moon.

In brief, it is indisputable that one concludes that *sighting* as mentioned in the narrations plays the role of procedure for proving the birth of the new moon; therefore the criterion is to reach certainty about the birth of the new moon, no matter how the sighting of the new moon has been achieved.

However, some master scholars of Muslim jurisprudence have argued that the sighting of the new moon must have some significance with regard to deciding the beginning of a new lunar month. In other words, in order to decide the beginning of a new lunar month it is necessary for the new moon to have been seen with the naked eye even if such a sighting is actually impossible because there is an obstacle preventing this from taking place.(14)

As has been concluded from the previous discussion, such a claim must be deemed inaccurate, because in the narrations no evidence can be found indicating the necessity of sighting the new moon with the naked eye as a condition of declaring the beginning of a new lunar month. Although it may be acceptable to claim that an actual sighting of the new moon becomes unnecessary in identifying the beginning of the new month when there is an obstacle preventing this, this does not necessarily mean that sighting the new moon with the naked eye must have some significance in the issue involved. Rather, narrations have clearly indicated that identifying the birth of the new moon must never be based upon conjecture and personal

views; instead, certainty about the birth of the new moon must be reached. With regard to the eras in which these narrations were issued, the one and only way to reach certainty about the birth of the new moon at that time was by natural, unaided, sighting. This proves that sighting the new moon is no more than a way to prove its birth, and this very way is the procedure in reaching certainty. In fact, these narrations have had no implication on the issue of the possibility or impossibility of sighting the new moon, but rather what is meant by *ru'yah (*sighting the new moon) - in these narrations is the tangible sighting; it has been proven, in independent Muslim jurisprudential research, that expressions which are used in narrations must be understood to refer to their tangible applications.

Neither is it improbable to claim that the following idea can be inferred from the general implication of the narrations dealing with the topic of sighting the new moon:

In the past, the way to reaching certainty about the birth of the new moon was restricted to sighting, because astronomical calculations were not accurate enough to give certainty to the astronomer himself, not to mention an ordinary person, especially since the narrations warned against reliance on conjecture. As the astronomical calculations in the present day are so accurate that they can create certainty and can be relied upon, they are more reliable than in the past. Thus if, according to accurate astronomical calculations, it is proven at the sunset of a day that the new moon has emerged from beneath the sun’s

rays, it is then acceptable to decide that that night be the first night of the new lunar month. For this reason, jurisprudents proclaim that certainty about the beginning of the new lunar month can be sufficiently achieved when this matter is proven by means of accurate astronomical calculations.

It is worth mentioning that the only divine decree under which the Holy Legislator has placed us regarding the question of the obligation of observing fasting is that he has specified as a condition - of the validity of fasting, but not the beginning of a month - that we should avoid relying upon conjecture and personal views in identifying the new moon. So the Holy Legislator has not discriminated between the lunar month and the legal month (i.e. the period between the births of two new moons).

Second Point: In this point, we will ascertain what is meant by *the prevalent sense* and the *prevalent sense* of which age should be applied.

The author of *Jawāhir al-Kalām* quotes Shaykh al-Bahā'ī and the author of *al-Lawāmiʿ* as having said that it is obligatory to understand the *prevalent sense* according to the sense that was familiar during the lifetime of the Holy Prophet (ṣ) even if this sense was not familiar in the ages of the Holy Imams (ʿa). Giving an explanation for this ruling, he says, "This is so because the Holy Imams' verdicts are all received from the Holy Prophet (ṣ)."[15]

Accordingly, it is unacceptable to restrict the word *ru'yah* to its prevalent sense, because the issue of sighting the new moon with the aided eye was not basically under discussion at the time of the narrations. Even if there is in the present day another sense that is not familiar, this still does not justify the exclusion of this case and sense by the previously mentioned narrations. Likewise, it is unacceptable to pronounce sighting with the aided eye to be one of the unfamiliar senses. It is true that the optical instruments are not available for everybody and cannot be easily used and availed, but this question is different from the question of considering the employment of these equipments as unfamiliar.

On the other hand, if *unfamiliar sense* is used to mean scarce usage of a certain meaning—and this has the very meaning of *unfamiliar sense* throughout ages—then the claim can be acceptable from a certain aspect. Yet, if a sense is scarcely used in the present day but it was widely used in a previous time, then the claim is unacceptable, because such exclusion of a certain meaning will result in blocking the reliance upon generality of senses in the Muslim jurisprudential researches and nullifying many religious rulings and edicts.

Third Point: As is proven by investigations, the general rule of employing all the meanings of a word in jurisprudential researches involves discarding, but not combining, all restrictions. In view of that, the claim of the exclusion of or restriction to certain meanings is absolutely unjustifiable. Besides, if the said general rule involves combination of all

restrictions, the claim is then proven as justifiable to some extent, but its application is still contingent upon evidence or grounds for evidence.

To clarify: if the employment of all meanings of a word in jurisprudential research involves the rejection of all restrictions, then it is necessary to commit to the fact that the Holy Legislator, with regard to the word *ru'yah* (sighting the new moon), has taken into consideration the totality of the criterion, without considering any other restrictive matter and even without having any regard to the examples and applicable instances of the word involved; therefore, no certain meaning (of the word *ru'yah*) has been employed restrictively and no other meanings of it have been excluded.

On the other hand, if the same employment of meanings involves the combination of all restrictions, then it is possible to say that the Holy Legislator has taken into consideration all of the examples, applicative instances, and restrictions relevant to the word *ru'yah* and meant the general sense of all of the usages of the word. In this case, it is possible to claim that some of the meanings of the word *ru'yah* are excluded.

In other words, according to this presumption it is impossible to claim that certain meanings of the word *ru'yah* are excluded or that the same word is restricted to a certain meaning, although it is possible to do so, i.e. restrict the word to a certain meaning, when there is evidence proving this restriction. However this is not the subject at issue here.

Fourth Point: It is very important to know that words must be understood according to their most prevalent meanings, not their unusual or unfamiliar meanings. Yet there is a difference between the prevalent meaning and the prevalent applicative instance of a word. In the study of sighting the new moon, modern optical instruments can serve as examples of the unfamiliar applicative instances but not the unfamiliar meanings of the word *ru'yah*. Of course, the relationship between a word and its meanings is very clear, but the relationship between a word and its examples or applicative instances requires clarification, because it is not feasible to identify the usage, or application, of a word through the context or the syntax of the word. In fact, both the example and the applicative instance of a word are inseparably related to the use and employment of the word, while employment is a reason-based issue that has nothing to do with the context of a word or the tradition in which it is used. Based on this, it seems that the reason for some people's misconception on this point is their confusion regarding the prevalent meaning and the prevalent example of a word.

Below, some examples of such confusion will be cited:

First Example: The Holy Prophet (ṣ) is reported to have said, "Circumambulating the Holy House of God is sort of prayer (*ṣalāt*)." The prevalent meaning of the word *ṣalāt* is the set of devotional movements and utterances that are done and said in a certain way and at certain times. One of the rarely used meanings of the word *ṣalāt* is supplication to God (i.e. *duʿā'*).

Accordingly, it is inaccurate to claim that the initial meaning of the word *ṣalāt* in this context is supplication to God; rather, that the most prevalent meaning of the word must first of all be applied.

In this respect, the author of *Jawāhir al-Kalām* states:

> "All words and terms must be first of all understood according to their most prevalent meaning, but not the unfamiliar and rare meanings."(16)

Second Example: Regarding the ritual ablution when performed by extraordinary long-faced persons, the author of *Jawāhir al-Kalām* says:

> "It is obligatory upon the long-faced people, when performing the ritual ablution, to wash their faces from the forelock to the chin, even if the face is extraordinarily long, because the description of *face* is applicable to these faces, too."(17)

From this passage, it is to be concluded that the applicable examples of words have no effect on their general meanings when these meanings are clear. Similarly, unfamiliar examples of a word do not make any change to the meaning of that word. However, with regard to the meaning of the word *wajh* (face) and as to whether this word is restricted to the familiar front part of the head from the forehead to the chin, it may be possible to argue that the applicable examples of the face are

included in the meaning of the word *wajh*. For this reason, the author of *Jawāhir al-Kalām* says:

> "Those who lack hair on the front part of the head and those whose hair extraordinarily extends to the middle of their foreheads are excluded from the definition of the word *wajh* (face)."

He adds:

> "The face of each one of these individuals is decided according to the faces of the majority of people."

This edict deals with the matter from the angle that the word *wajh* means the familiar face; therefore it is obligatory to wash this part of the body with water in the ritual ablution as long as it is familiarly referred to as the face, even if it was not a familiar example of a face.

Third Example: Edicts of master jurisprudents affirm that when there is a general and unrestricted lexical meaning in a narration upon which scholars rely in inferring a religious law, all parts of the meaning of that narration must be treated equally. For instance, the author of *Jawāhir al-Kalām* states that it is not obligatory when washing with water of the ritual ablution to make the water permeate the long and flowing hair of the beard. He then quotes these words from al-Shahīd al-Awwal's book of *al-Durūs*, where he says:

> "It is recommended to force the water of ablution to permeate the hair of the beard even if that hair is too heavy."

Objecting to these words, the author of *Jawāhir al-Kalām* argues that there is no evidence supporting this claim, while many points of evidence prove the opposite. He thus says,

> "Because the narration includes such a general lexical meaning that all parts of it must be equally adopted, there is no difference between the meanings that correspond to the prevailing sense and those that oppose it. For instance, as for those whose hair, being heavy, extends to the middle of their forehead, it is sufficient for them to wash that hair in performing the ritual ablution."(18)

This proves that there is no difference between the prevailing and the rarely-used meanings of a term when it is used in its general sense.

Fifth Point: Even if the restriction of the purport of a certain term to a certain meaning is supported by evidence, the author of *Jawāhir al-Kalām* seems to have adopted an attitude entailing that it is still unacceptable for a jurisprudent to rely upon such an evidence-supported restriction alone; rather, that this restriction must firstly, correspond with the ancient master scholars' understanding of this meaning and, secondly be confirmed by other supporting factors.

Let us now refer to two examples:

First Example: There is disagreement among scholars on the issue of purification with a little water and whether it is conditional to the achievement of purity that the water should touch the impure substance or not.

The author of *Jawāhir al-Kalām* has solved this problem by depending upon the familiar and ordinary choice of people in this issue, since they consider water's touching the impure substance as cleansing from impurity. Yet he issued this edict after he had supported it with other factors such as scholarly consensus and continuous line of conduct (*sīrah*).

Second Example: With regard to the *takbīrat al-iḥrām* statement (i.e. the commencing statement of every ritual prayer), the author of *Jawāhir al-Kalām* says:

> "The formula of the *takbīrat al-iḥrām* statement is to say *allāhu-akbra*."

Shaykh al-Jawāhirī mentions among other proofs that he provides for proving the accuracy of this formula that this formula is the most familiar and conventional to the Holy Legislator. [19]

Conclusion

1. So far, it has been clearly proven that sighting the new moon with optical instruments is a prevalent applicative instance of sighting and there is no doubt about this fact. Accordingly, it is

necessary to confirm that the word *ru'yah* has been mentioned in the narrations in its general sense with regard to its causes.

2. The claim that the word *ru'yah* is restricted to a certain sense and meaning lacks evidence and is thus without foundation. It is not therefore feasible to take this claim as evidence considered by a jurisprudent in the inference of religious laws. However, some scholars have argued that the evidence of such restriction to a certain meaning can be the harmonious correspondence between the law and the subject matter of the issue. In fact, this evidence is also inaccurate, because just as it is appropriate to sight the new moon with the naked eye, so too is it appropriate to sight it with the aided eye.

Examples of the Scholars not Taking the Broad-Sense Terms in their Most Prevalent Meanings in Jurisprudence

There are many cases in which scholars of Muslim jurisprudence have not understood terms with broad meanings in a particular sense and have not taken these terms to mean their most prevalent items exclusively. This fact makes us conclude that scholars of Muslim jurisprudence do not understand poly-semiological terms in a particular sense, which is namely the most prevalent sense, unless there is evidence indicating such a restriction.

Let us now cite some examples:

First Example: Explaining the issue of the legality of cleansing the anus from feces with water only or with stones too, al-Sabzawārī says,

> "It is obvious that the narrations indicating that it is permissibly sufficient to cleanse the anus from feces with stones are so general that they lack any further details as to whether the feces have or have not passed over the ring of the anus."

He adds:

> "Unless there is scholarly consensus on the aforesaid ruling, the whole issue is still controversial."(20)

In fact, the most prevalent interpretation of the issue involved is the position of the feces. This interpretation is so familiar that the author of *Jawāhir al-Kalām* has justified it by saying,

> "All religious laws are generally based upon the prevalent, not the unusual, sense of the terms."(21)

Nevertheless the author of *Madārik al-Aḥkām* has adopted the general sense of the term, ignoring its most prevalent interpretation. So if the question of understanding all terms in their most prevalent sense and the most prevalent applicative instances had been common to scholars of jurisprudence, they would never have disagreed upon certain issues.

Second Example: One of the questions studied in the Muslim jurisprudence is the question of women who have beards and

the method of their performing the ritual ablution, which requires making the water of the ablution permeate the hair of the beard. Dealing with this question, the author of *Jawāhir al-Kalām* confirms that such women are not required to make water permeate the hair of their beards. He then quotes some non-Shīʿite scholars restricting the evidence of the duty of washing the hair of the beard with the water of the ablution or making that water permeate it to its most prevalent and most familiar meaning. Yet, he deems unlikely this opinion, justifying that by saying:

> "It is clear that the evidence has been stated in a general way lexically."(22)

This proves that restriction of a term to a certain meaning is impracticable when a lexically general sense is present.

Third Example: With regard to the question as to whether it is or it is not obligatory to use the right hand - as is prevalently and familiarly done - in rubbing the head with water when the ritual ablution is performed, the author of *Jawāhir al-Kalām* states that the general interpretation of the method of performing the ritual ablution that is inferred from the Holy Qur'ān, the Prophetic traditions, and the edicts of some master jurisprudents entails that it is not obligatory to use the right hand, although the accepted transmitted report (*ḥasanah*) of Zurārah who reported Imam al-Bāqir as saying, "*…then you should wipe the front part of your head with the wetness of your right hand*," indicates that it is obligatory to use the right hand rather than the left in rubbing the head with water when

performing the ritual ablution. Nevertheless, this narration - though approved as authentic in its chain of authority - cannot be apt enough regarding the restricting of such general senses to certain concepts, taking into consideration the probability that the ancient master scholars had disregarded this narration.

Shaykh al-Jawāhirī then adds:

> "In conclusion, the probability of taking the general sense of the texts and edicts to mean using the right hand exclusively because it is the most prevalent sense in this regard is extremely far-fetched."(23)

It is thus impracticable in such cases to restrict the general sense to a certain meaning even though most prevalent relevance is available.

Fourth Example: Scholars of Muslim jurisprudence have been in disagreement concerning the ruling of the discharge of semen. They have thus argued whether the rulings of ejaculation can be applied only when semen is discharged from its natural place or from any place, without there being any difference in the ruling as to whether it was discharged from its natural place or any other place, since the criterion in this case is the discharge of semen.

As for the author of *Jawāhir al-Kalām*, he infers from al-Muḥaqqiq al-Ḥillī's discussion of this topic that the rulings are applied to the discharge of semen in general, although the most familiar ruling in the question of the minor impurity(24) is the

discharge such as of wind, urination, or excrement, from its natural and customary place.

However, Shaykh al-Jawāhirī has deemed it improbable to apply the question involved to the states of minor impurity.

ʿAllāmah al-Ḥillī states:

> "If semen issues from a hole in the unusual urethra (i.e. the tube or canal that conveys semen), or in the testicles, or in the backbone, then it is most likely obligatory to perform the ritual bathing."(25)

In another book, he says,

> "If semen issues from a hole in the (male) genital organ, or the testicles, or the backbone, it becomes obligatory to perform the ritual bathing."(26)

There is scholarly controversy as to whether the backbone (*ṣulb*) mentioned in the aforesaid edict is so general that it includes whatever is above it or it is restricted to the very backbone.

Commenting on this statement, Shaykh al-Karakī says,

> "If semen issues from any of these three places that are mentioned in ʿAllāmah al-Ḥillī's *Muntahā al-Maṭlab*, then it is definitely positive to apply the same edict to all other prevalent and

> familiar cases (of semen discharge from other than the natural places)."[27]

Commenting on Shaykh al-Karakī's conclusion, the author of *Jawāhir al-Kalām* says,

> "Probably the reason for this edict is the opposite of what Shaykh al-Karakī has said, because the evidence is common to the totality of this edict; namely, generality of the sense, an example of which is the Holy Prophet's saying, 'Water (of bathing) is because of water (of semen).'"[28]

Eventually, Shaykh al-Jawāhirī deems more acceptable the latter claim entailing that the edict is so general that it includes all instances of the issue. Meanwhile, he deems as weak the evidence on which the earlier claim is founded, namely the claim that all general senses are restricted to their most prevalent and most familiar meaning.

This is in fact another indication of the impracticability of calling off the general senses and the open meanings of a term or a text even with the existence of prevalent and familiar denotations

Fifth Example: Discussing the jurisprudential question of the obligation of performing the ritual ablution in cases of anal sexual intercourse without ejaculation, scholars have mentioned a number of reasons and proofs, one of which is the following:

Shaykh al-Jawāhirī states:

> "Master scholars have decided in general that when one inserts, puts in, or sends the whole glans penis inside the anus, it becomes obligatory to perform a complete ritual bathing."

He then adds,

> "The claim that the general sense should be restricted to the most prevalent meaning may be accurate only when it is in conformity with the understanding of the master jurisprudents of this case; otherwise, this claim is refuted. Before that, it must be indisputably confirmed that there are justifiable grounds for restricting that poly-semiological term or expression to that most prevalent meaning. Yet if this restriction is incompatible to the understanding of the master jurisprudents, the whole matter should be exactly the opposite."(29)

From this passage, we can conclude these two points:

Firstly: According to Shaykh al-Jawāhirī, it is not a rule that there must be a justifiable reason for restricting a broad-sense term or expression to a certain meaning; rather, some items (i.e. definite meanings of a term) provide no grounds for restricting the general sense of a term to them.

Secondly: To decide a prevalent, or familiar, meaning as the object of restriction of a general sense is conditional to its not

being in disagreement with the understanding of the master jurisprudents with regard to the case involved.

With regard to the case at issue, Shaykh al-Jawāhirī believes that the general sense of the evidence must be decided although a prevalent meaning is claimed to be present.

Sixth Example: Discussing the question of the grape juice and its instances, Shaykh al-Jawāhirī, at the beginning of his study, adopts the view that one should restrict the general senses to their most prevalent meanings. He thus says:

> "… This is so if we do not take on (the principle of) restricting the general sense of the authenticated text to its most prevalent meaning regarding the instances of grape juice."

However, at the end of the study, he adopts the view of favouring acting upon the general sense rather than restricting it to a particular meaning. He thus says,

> "… Nevertheless, this must not be preferred to taking the term to its most extensive sense, with respect to the details of this question, such as the different forms and types of grapes, whether grapes is intoxicating are not, whether they are used for fermentation, or whether they are taken by a non-Muslim or a Muslim, whether this Muslim deems legal the amount of less than two thirds or not, etc.."[30]

From these words, we may conclude that there is no justification for restricting the meaning of a term to its most prevalent sense when the term has been used in its general sense.

Seventh Example: Discussing the issue of forbidding the head to be covered after entering the state of *iḥrām* (self-consecration), the author of *Jawāhir al-Kalām* writes,

> "This ruling of forbidding the head to be covered while being in the state of the ritual *iḥrām* is effective no matter what the thing that is used for covering the head may be; be it a garment, mud (when covering the head), a dye, henna, luggage that is carried on the head, or any other thing. This ruling was decided upon by many of our scholars. Moreover, I have not seen any disagreement in this issue, as the author of *Tadhkirat al-Fuqahā'* ascribes this ruling to our master scholars. However, another opinion has been mentioned by the author of *Madārik al-Aḥkām*. Yet this opinion is ambiguous, because the Holy Imams, as stated in the narration from them, have forbidden certain things only: namely, veiling the head, putting a mask over it, and covering it with one's garment, but not any sort of head covering. Besides, if forbidding the head to be covered was restricted to covering it with a veil, it would be necessary to take the whole ruling to mean the most prevalent meaning of

> covering, which is namely covering the head with the usual head coverings. The same opinion is adopted by the author of *Dhakhīrat al-Maʿād*."

Arguing this opinion, the author adds:

> "An additional proof is the Holy Prophet's saying, "A man's *iḥrām* is in his head,"(31) along with other many proofs of general senses that are mentioned in narrations, with the exception of the openings of skins (i.e. containers used for holding water), as well as many other related issues."(32)

In conclusion, Shaykh al-Jawāhirī prefers acting based upon the general senses and refutes restricting these general senses to their most prevalent meanings.

Eighth Example: It goes without saying that one of the common and clear-cut reasons for solar eclipse is the interception of the light of the sun by the intervention of the moon between the sun and the earth. When this phenomenon occurs, it becomes obligatory to perform the ritual *ṣalāt al-āyāt*. However, scholars disagree as to whether it is or is not obligatory to perform this prayer when some planets cause an eclipse of other planets or when the sun or the moon causes an eclipse of a planet other than the earth in such an unusual or uncommon manner.

Discussing this issue, Shaykh al-Jawāhirī says that, first of all, the basis that makes the *ṣalāt al-āyāt* prayer obligatory is the eclipse itself; therefore there is no intervention of any other

reason in the question, including the interposition of the earth between two other planets. Providing evidence, he cites the general sense of the narrations and the scholars' edicts with regard to this issue. He thus says:

> "The pertinence of the obligation of the *ṣalāt al-āyāt* prayer is the applicability of the applicative instance at issue, i.e. the eclipse, without any interference of the reasons for this eclipse, such as the intervention of the earth or any other planet. A proof of this is the general sense of the texts of the narrations and the scholars' edicts on this subject, as well as the non-interference of any of these matters in the linguistic, traditional, and legal concept of eclipse. However, in the unfamiliar cases of eclipse - such as the solar eclipse due to other planets rather than the earth and the moon - the question may be understood in another way, because in such cases, eclipse is not noticed except by a few people, since the loss of light must then be too slight to be noticed by everybody. In such cases, the principles (upon which this ruling was decided) must be kept unchanged."

Quoting the opinion of the author of *Kashf al-Lithām*, which is compatible with his opinion, he adds:

> "The author of *Kashf al-Lithām* has decided that there is no objection to performing the *ṣalāt al-āyāt* prayer upon noticing such kinds of eclipse,

> occurring due to the intervention of planets other than the earth and the moon, this being acceptable as long as this kind of eclipse is generally and traditionally considered as an applicative instance of the familiar eclipse."(33)

He then confirms that what makes it obligatory to perform the *ṣalāt al-āyāt* prayer is the very feeling of the loss of the sunlight or moonlight. Accordingly, it is obligatory upon every one who sees the eclipse to perform the *ṣalāt al-āyāt* prayer, whether others have or have not noticed such an eclipse and whether that loss of light has or has not been proven by astronomers or others. However, when astronomers confirm the occurrence of such loss of light but a duty-bound individual has not seen it with his or her own eyes, then it is not obligatory for him or her to perform the *ṣalāt al-āyāt* prayer, because the astronomers' claim is not trustworthy enough to be taken for granted.

Shaykh al-Jawāhirī then quotes the edicts of Shaykh al-Ṭūsī, in his book *al-Nihāyah*, and ʿAllāmah al-Ḥillī, in his book *Tadhkirat al-Fuqahā'*, when, discussing such unfamiliar cases of eclipse, they decide that there is not a clear-cut text about the inclusion of such unfamiliar cases with the familiar eclipse; therefore the jurisprudential rule entailing that things are initially free of any duty unless there is an overwhelming proof of the opposite (*aṣālat al-barā'ah*) must first of all be applied to such cases. They have also argued that such unfamiliar cases are too ambiguous to be considered and lacking in any perceptible indication. They therefore conclude that there is no other way to the inclusion of such unfamiliar cases to the

general rule except reliance upon the reports of such untrustworthy categories of people as astrologers.

On the other hand, it can be observed that such cases are actually examples of alarming natural signs. However, the author of *Kashf al-Lithām* finds this point problematic; he therefore argues:

> "In fact, all texts (of religious legislation) may include such instances. Yet the *ṣalāt al-āyāt* prayer becomes obligatory only when the alarming natural signs are felt, not when untrustworthy people declare so."(34)

On the same topic, al-Shahīd al-Awwal says:

> "The *ṣalāt al-āyāt* prayer is not obligatory when the natural sign is not alarming, i.e. not frightening. In fact, what is meant by *alarming* is that which causes feelings of fear to the majority of people in general although they are not aware of the occurrence of that phenomenon."(35)

As a result, we can say that such unfamiliar cases of eclipse cannot be felt by the majority of people and that they cannot therefore be considered an alarming natural sign which would make it obligatory to perform the *ṣalāt al-āyāt* prayer.

Al-Shahīd al-Awwal adds:

> "However, it is most likely that the *ṣalāt al-āyāt* prayer becomes obligatory under such

> circumstances, because such unfamiliar cases are still alarming for those who feel the occurrence. An alarming thing is only that which causes fear to the majority of those who are aware of its happening, but not to the majority of people in general."(36)

Commenting on these arguments of al-Shahīd al-Awwal in *Dhikrā*… and ʿAllāmah al-Ḥillī, Sayyid Muḥammad al-ʿĀmilī says:

> "However, it is most appropriate to state that the obligation of performing the *ṣalāt al-āyāt* prayer is conditional upon the occurrence of natural phenomena that bring about fear, as included in the narration involved."(37)

Although the author of *Jawāhir al-Kalām* has in the beginning acceded to the generality of sense in such instances and quoted all the previously cited words of master jurisprudents, he disapproves of the author of *Kashf al-Lithām*, by saying:

> "… We have already proved that the general senses that are mentioned in the texts provided as proofs of eclipse and their instances must be restricted to the most familiar meaning of eclipse, no matter what the reason for the eclipse might be. So, all other instances and cases cannot be included with this general sense. Moreover, it may even be dubious as to such instances can or cannot be called an eclipse."(38)

In conclusion, the author of *Jawāhir al-Kalām* does not believe that the reason for performing the *ṣalāt al-āyāt* prayer as a religious duty should be restricted to a certain matter, namely the interception of the sunlight or moonlight by the intervention of another object between that object and the observer; rather, he expands the matter to include other reasons because of which it becomes obligatory to perform the *ṣalāt al-āyāt* prayer as long as these reasons are common and familiar. Furthermore, the author of *Kashf al-Lithām* - depending upon the generality of the senses of the texts used as proofs of eclipse – even adds the unfamiliar reasons to the question. Thus he decides that the *ṣalāt al-āyāt* prayer becomes obligatory on condition that the duty-bound person has seen the eclipse in person.

In this respect, it is remarkable that the criterion to decide the occurrence of an eclipse according to the narration and the texts of legislation is the same sighting, which is also the criterion to define the beginning of the lunar month, as has been previously explained.

Imam al-Bāqir and Imam al-Ṣādiq are reported to have said:

> "When Allah decides to frighten His servants and re-reproach them, He eclipses the sun and the moon. So, when you observe such eclipses, you should resort to Allah with prayers."(39)

ʿAmmār reported Imam al-Ṣādiq (ʿa) to have quoted his father (ʿa) as saying:

> "Verily, earthquakes, solar and lunar eclipses, and the violent winds are within the signs of the Hour (of Resurrection). So, whenever you observe such a thing, you should recall the Resurrection and hurry up to your mosques."(40)

From the eighth example, we can conclude that the restriction of the broad-sense terms to their most prevalent meanings is not common to the scholars of jurisprudence; otherwise, there would not have been any disagreement among them on this issue. With regard to the above-mentioned example of identifying the eclipse, if the broad-sense terms were restricted to their most prevalent meanings, the criterion to identify an eclipse and to deem performing the *ṣalāt al-āyāt* prayer obligatory would be the very interception of the sunlight or moonlight and nothing else. However, the author of *Jawāhir al-Kalām*, like many other master scholars of jurisprudence, has not agreed to such a restriction of a general sense to its most prevalent and familiar meaning in the aforesaid example. Nevertheless there is difference of opinion in this question with regard to the applicability of eclipse to certain instances.

Ninth Example: Some master scholars, such as al-Khū'ī, have provided as evidence the general sense of the following holy Qur'ānic verse so as to prove that it is obligatory to provide alimony to the immature wives, although the decree in the holy verse clearly refers to the adult wives only:

> "And their maintenance and their clothing must be borne by the father according to usage. (2/233)"

This means that scholars do not take into consideration the restriction of the broad-sense terms to their most prevalent meanings.

Tenth Example: Scholars have provided the following holy Qur'ānic verse as evidence to prove that immature widows are required to observe *ʿiddah* - the post-divorce or post-widowhood waiting period for divorcees and widows - after the death of their husbands, although the general sense of the verse may seem to be restricted to the mature widows only:

> "And as for those of you who die and leave wives behind, they should keep themselves in waiting for four months and ten days. (2/234)"

Eleventh Example: Scholars have decisively relied upon the general sense of the following holy Qur'ānic verse in all kinds of sale and trade, including the modern ones, such as online shopping and telephone shopping:

> "Allah has permitted trade and forbidden usury. (2/275)"

No single jurisprudent has yet argued that *trade* must be restricted to the most familiar form of purchase and sale that is common to people; rather, some scholars of jurisprudence have provided the general sense of the Qur'ānic verse involved as

evidence to include even the doubted forms of trade with this rule (i.e. permissibility of all kinds of trade).[41]

Twelfth Example: As for the following holy Qur'ānic verse,

> "And when you strike (walk) through the earth…",

no scholar of jurisprudence has claimed that this idiom must be taken to mean exclusively the familiar sense of travelling by walking on one's feet or riding on the backs of animals. In fact, all master scholars have considered this Qur'ānic idiom to include all sorts of travelling, journeying, and walking to a destination, even if such travelling is not ordinary walking. It is however worth mentioning that some spurious arguments have been provided lately with regard to this issue.

Thirteenth Example: As for the following holy Qur'ānic verse:

> "And eat not up your property among yourselves in vanity (*bāṭil*). (2/188)",

the most eminent scholars of jurisprudence, including Shaykh al-Anṣārī, have explained the word *bāṭil* (vanity) to mean traditional vanity. Depending on the general sense of this holy verse and the ruling mentioned therein, some instances of modern transactions have been determined as vain and impermissible, such as the pyramid transactions of today. Apparently such transactions do not appear illegal and vain from a traditional point of view, but they are vain in reality. So,

if tradition knew the reality of such transactions, it would most certainly decree them vain and illegal.

Fourteenth Example: Looking at marriageable women is unconditionally illegal, i.e. without this rule being restricted to direct eye contact. In fact, no scholar has restricted the illegality of looking at marriageable women to direct eye contact. So to look at a marriageable woman from a distance of many kilometers with a spyglass or telescope is illegal too, because it is an applicative instance of looking at marriageable women.

Fifteenth Example: According to some narrations, if the new moon is seen in daylight before midday, then that day must be decided as the first of Shawwāl, but if it is seen after midday, then that day must be decided as the last day of Ramaḍān.[42]

In fact, this ruling is in violation of the opinion of those who claim that all broad-sense terms must be restricted to their most prevalent meanings. To explain, sighting the new moon must be restricted to night sighting exclusively, while the aforesaid narration clearly regards day sighting as part of sighting in general.

Sixteenth Example: Scholars of jurisprudence have decided it is illegal to look at the private parts of Muslim infants and adults alike. Their proof was the general sense of the following narration:

> "The private parts of a believing person are forbidden to be seen by other believing persons."(43)

For instance, deeming it illegal to look at the private parts of Muslim infants, al-Narāqī(44) provides as evidence the aforesaid narration, without restricting it to Muslim adults only.

From all these examples, we can conclude that it is not accurate to say that it is not possible to adopt all the familiar examples of a certain religious law in all fields of jurisprudence, but as far as the issue of sighting the new moon is concerned, it becomes possible to adopt the unfamiliar examples.(45)

Further investigation of the matter may result in many other instances being found where scholars have decided on rulings without paying any attention to the most prevalent meaning of a broad-sense term.

The book of *Ithārāt Hāmmah Ḥawla Ru'yat al-Hilāl* mentions a number of examples where scholars of jurisprudence take the general sense of a term to be its most prevalent meaning. Yet none of these examples have had any relation to the subject under discussion. For instance the fourth example mentioned in the aforesaid book reads:

> "The majority of scholars have dealt with the issue of the times of the obligatory devotional acts in the areas of the north and south poles and the nearby countries, where daytime and night are either unusually long or short, by deciding that

> the people of these areas should follow the same timing of the neighbouring familiar areas."

It is clear that this subject has nothing to do with the issue under discussion, namely the issue of sighting the new moon with the aided and the unaided eye.

In fact it is not a rule that whenever the word *familiar* is mentioned in any field of jurisprudence it must be related in some way to the issue under discussion.

Besides, there is no general sense in the issue dealt with in the cited passage that it can be said that it must be restricted to its most prevalent meaning.

In the aforesaid example, the word *familiar* is used to mean that the performance of the obligatory devotional acts is common to all duty-bound persons wherever they are; they are therefore required by religion to perform these obligatory acts just as other duty-bound persons in other countries do. As a result, it is most appropriate for them to perform these acts of which the performance is restricted to certain times according to the neighbouring familiar areas. Besides, no scholar of jurisprudence has concluded that the divine command in the following holy Qur'ānic verse must be taken to mean the familiar sunrise and sunset:

> "Establish regular prayers at the sun's decline until the darkness of the night, and the morning prayer and reading. (17/78)"

The same argument is applicable to the sixth example mentioned in the aforesaid book, where the author states that in order to execute the religious punishment of whipping, the familiar lash must be used.

It is quite clear that this ruling has not been based on the general sense of the religious text concerning the punishment of whipping; rather, it is based on the available grounds of reason that indicate the most prevalent meaning of the text.

Conclusion

1. The initial rule of the issue of sighting the new moon is the general jurisprudential principle of *iṭlāq*; i.e. any law is initially inclusive of all of its cases unless there is clear-cut proof of an exception or exclusion.

2. To restrict a general sense to a certain meaning requires special proof and reasoning. In this regard, it is observed that scholars of jurisprudence have in many jurisprudential issues relied upon the general sense of the text involved whenever a special proof and a ground of reason is missing. With reference to the topic under discussion, there is no proof of restricting its general sense to a certain meaning. Besides, no compatibility between the ruling and the subject matter of this case can serve as acceptable proof.

3. Any evidence that indicates restricting the general sense to a certain meaning is not sufficient when it is presented alone;

rather, it must be supported by other points of evidence and proofs to be relied upon by a scholar.

4. If the Holy Legislator had specified sighting with the unaided (naked) eye as a condition of deciding the birth of the new moon, he would certainly have declared so through a more clear-cut and obvious means than what is available now. In other words, it is impossible to believe that the Holy Legislator has not laid any further emphasis on this very important issue, which is repeated every year and at the beginning of every lunar month, and about which Muslims are still in disagreement; rather, he has only settled for restriction of general senses to the most prevalent meanings.

5. If we condescendingly accept the claim of the restriction to the most prevalent meaning in the case of sighting the new moon, it would be necessary to commit to the point that any sort of sighting is unacceptable other than the one taken from the even surface of the earth, but not from a mountain summit or a high building. Everyone is aware that such commitment is impracticable.

Some narrations have warned against sighting the sunset from the highest point of a mountain; however this topic has nothing to do with the issue under discussion, because the subject matter of each issue is different.

As a result, it is valid to decide permissibility of sighting the new moon with the aided eye being the same as with the naked

eye. This conclusion can be supported by many proofs and jurisprudential principles.

Second Claim: Way vs. Subject Matter

Having discussed the issue of sighting the new moon with astronomical equipment, some scholars differentiate between sighting as a means and sighting as subject matter as regards the issue of proving the birth of the new moon. They have thus decided that sighting in the issue of the approximate new moon is a way to prove its birth, while in the issue of the illegality of looking at women to whom one is not related, sighting is the very subject matter of the issue. Depending upon this differentiation, they have tried to solve the problem of the acceptability or unacceptability of sighting the new moon with equipment. In other words, they claim that since sighting in the issue of looking at women to whom one is not related is the very subject matter of the issue, there must not be any difference between its form and reasons.

In fact, this claim is extremely critical. It can be refuted as follows:

1. There is no doubt that sighting the new moon at the beginning of a lunar month has been taken as the means to deciding the birth of the new moon; therefore, the existence of evidence or personal knowledge of the birth of the new moon can replace the sighting. However, the point of disagreement in this regard has nothing to do with the argument as to whether sighting is a means or a subject matter of the issue, because the

disagreement can be based on any of these two statements. In fact, the point of controversy in this issue is specifically whether sighting in its general sense is always a means of recognizing the actual ruling, or whether the way to recognize the actual ruling is the very ordinary sighting; or whether sighting in its general sense is always taken as a means of reaching the actual ruling, or whether this general sense of sighting must be taken to mean its most prevalent meaning, which is the ordinary sighting with the eye. In other words, it is impossible to prove that sighting is restricted to the ordinary sighting with the eye by denying the fact that sighting is the subject matter of the issue involved.

According to some essays,(46) based upon the differentiation between the identity and subject matter of an issue, it is possible to say that the criterion to identify the birth of the new moon is nothing but the very ordinary sighting, i.e. that with the naked eye. Of course, this claim is extremely strange, because it is impossible to conclude from the distinction between the identity and the subject matter of an issue that the denial of the latter proves the validity of the former and vice versa. As for generality or particularity of a sense, these two things are definitely different from one another.

According to other essays,(47) some scholars believe that whenever hearings or sightings are mentioned in a narration for the identification of a certain issue, these two must be taken as the identity of the issue, and nothing can replace them even if

hearing and sighting were extraordinarily sharp, especially hearing and sighting through modern equipment and devices.

This opinion can be argued through the following points:

1. Something being the means of identifying a certain issue does not mean that that thing cannot be replaced by anything else; rather, the opposite applies. So something serving as a means to identify an issue can always be replaced by something serving the same purpose.

2. Serious consideration of the previous pages of this study reveals that there is confusion between taking a certain matter as a means to identifying an issue and taking it as a criterion or subject matter of that issue. In such cases, it could be said that the sighting and hearing of an issue are used for identifying that issue, while the proofs of the compatibility between the ruling and the subject matter of the issue involved necessarily entails the impossibility of replacing that hearing and sighting, in their capacity as ways to identify the issue, with any other thing; rather, what can actually replace them is exclusively that which is compatible with that identification but not contrary to it.

3. The writer of the aforesaid essay argues that the issue of sighting the new moon is similar to the issue of the permissible points of a journey (*ḥadd al-tarakhkhuṣ;* the points at the beginning and end of a lawful journey where the duty-bound travellers are allowed to perform their ritual prayers in the shortened form and to break their ritual fast. Just as the Holy Legislator has decided certain limits for travellers for no other

purpose than that of setting limits for this issue, so also has he decided on sighting as the restriction for identifying the birth of the new moon.

However, this is no more than a claim that lacks evidence. To clarify, according to the edicts we follow it is impermissible to use equipment as a substitute for ordinary sighting in identifying the permissible points of a journey, because there is compatibility between the ruling and the subject matter of the issue, considering that the criterion in the issue of the journey's permissible points is to be too far from one's home town to hear the *adhān* (call to prayer). This is of course different from the issue under discussion; which is the dependence on optical instruments as substitutes for ordinary sighting in identifying the birth of the new moon. Of course, this is by no means in violation regarding the identification of the beginning of the new lunar month.

Finally, the most important point for those who believe sighting the new moon with apparatus is sufficiently acceptable is that they must disprove all of the opposite opinions, including the one stating that a lunar month actually begins when the crescent moon ceases to wane.

With regard to all opposing opinions in general and the latter one specifically, is it still possible to claim that this opinion is in violation of the claim that the question of sighting the new moon has been cited for no other purpose than identifying the beginning of the new lunar month?

Furthermore, what will the most appropriate answer be if those who adopt the aforesaid opinion claim that *sighting* has been mentioned in narration in order to express the means of identifying the new month in order to prove that the crescent has left the state of waning, but not to prove the possibility of ordinary sighting?

In fact, the claim that *sighting* mentioned in the sources of religious legislation is exclusively experienced with ordinary eyesight is definitely a clear-cut baseless claim being as evidence, because the claimant has already had in his mind that the word *ru'yah* exclusively means the ordinary sighting and has then taken that same word as mentioned in the sources of religious legislation to imply that very meaning only, as if this meaning of *ru'yah* is conditional in understanding this word. To put it plainly, there are a number of peculiarities regarding the question of the journey's permissible points. They are as follows:

1. Tradition considers that there is in reality a certain limit, which is known as the journey's permissible point, and that been mentioned by the Holy Legislator regarding this issue may possibly be a means to identify this traditional limit.

2. Everything intended to be a path to the journey's permissible point must be compatible and congruent with the idea of identifying. However, with regard to the topic at issue, the identifying of the beginning of a new lunar month is an actual astronomical issue. A month has a beginning and an end; and this beginning and end are restricted and identified. The period

between the beginning and the end is twenty-nine or thirty days, and this is a natural fact, not a traditional custom.

So the limit in the issue of the journey's permissible point is a traditional custom, whereas regarding the issue of identifying the new lunar month it is a natural fact. In view of this, as the Holy Legislator has considered sighting to be a means to something, the following question may be posed: What is the thing that the means represented by sighting refers to? However, if, when answering this question, we claim that sighting is a means of identifying the new moon as it leaves the state of waning where it is impossible to sight it with the naked eye, then this claim is improbable and it is also the same as the question involved!

Sighting as Subject Matter of the Issue

Scientific research entails that the question of whether sighting is or is not a means of identifying the beginning of a new month is not the focus of the study; rather, the study must be concentrated on the subject matter, the sighting itself. If the sighting being the subject matter of the issue means that the new moon leaves the state of waning, then the answer is that leaving the state of waning is such an accurate and rational fact that it is not within the scope of traditional understanding. This is one probability.

The other probability is that the subject matter of sighting is that the new moon leaves the state of waning to a certain extent and

moves away from beneath the sun's rays where it cannot be seen except by the aided eye.

There is still a third probability for the meaning of the sighting being the subject matter of the issue, which is that the new moon appears and can be seen by the naked eye.

We shall now focus for our quest on the second and third probabilities so as to prove the most accurate of them through evidence.

However, merely to claim that sighting in this issue must be understood as the means to identifying the beginning of the new month is not sufficient for recognizing the most accurate probability, because sighting being a means but not a subject matter in this issue matches both probabilities, although it is still possible to prove or disprove a certain probability through proving whether the texts in which sighting has been mentioned are of general or particular senses.

In conclusion, neither of these two claims is sufficiently valid to prove the unacceptability of sighting the new moon with the aided eye. As a result, as long as the criterion in this issue has been proven to be the birth of the new moon while sighting the moon is no more than a way of identifying its birth so that certainty can be obtained - and there is no other criterion to decide the beginning of a lunar month or the beginning of the duty of fasting than proving the birth of the new moon - then sighting the new moon with optical apparatus and modern equipment must be legally valid and acceptable to prove the

birth of the new moon, taking into consideration the afore-mentioned fact that the birth of the new moon is such a natural and actual fact that occurs on the first night of every lunar month.

Objections and False Impressions

First Objection: If we accept that sighting with modern optical equipment is legally binding and valid, then the purity and impurity of things that are proven by microscopes and other optical apparatus must also be legally binding. Accordingly, it becomes obligatory to wash a garment when it is polluted by atoms of impurity that cannot be seen by the naked eye but can be seen through a microscope. Of course this is definitely inaccurate according to the principles of Muslim jurisprudence.

The reply to this objection is too clear to require an explanation. According to narrations, the criterion of proving the purity or impurity of things is to be certain of the existence of that impurity. Therefore it is obligatory to clean and purify a thing only when there is certainty that it has encountered impurity. In this regard, a narration reads:

> "… If any trace of that impure thing appears to you, then you should wash it; otherwise, you are not required to do anything."(48)

This narration and other similar ones deal with the matter of purity and impurity when there is only doubt. In fact the Holy Legislator has not imposed on duty-bound persons to investigate the reality of things that are doubted as to being

ceremonially pure or impure; rather, it is obligatory only to avoid exposing things to impurity and it is obligatory to purify ceremonially such impure things when there is certainty about their being impure.

In other words, if the investigation of impurity were obligatory in its capacity as the initial rule of the issue, we would consider investigating things through such optical instruments as microscopes and magnifying glasses to be among the ways of proving and identifying impurity. However, the Holy Legislator has not decided so; rather, he has made the question easier for the duty-bound, meaning that it is not obligatory to investigate the impurity of things. Furthermore, if impurity is ascertained through ordinary means, then it is obligatory to purify that impurity ceremonially.

In relation to the aforesaid example, the following question may be posed: It is true that the investigation of impurity is not obligatory, especially by the use of such magnifying instruments as microscopes, but if this were to take place by accident - for instance if some atoms of an impure substance were observed on a garment - what would be the ruling in this case?

To answer, it is not inaccurate to say that such a matter is one of the instances of investigation of impurity, especially when we base the case on the rule of the initial generality of senses. So as long as there is certainty about the existence of impurity, the same rule that is applied to the other instances when there is certainty about impurity must be applied in this case.

However, it is still feasible to say that the Holy Legislator has not decided this extreme investigation of impurity to be the subject matter of the ruling, as can be inferred from the totality of the proofs provided in reference books for jurisprudence with regard to the topics of purity and impurity. It may therefore be alleged that this profound amount of investigation has been decided as irrelevant to the topic of purity, although this does not mean that this conclusion has been based on the claimed principle of restricting broad-sense terms to their most prevalent meanings.

Second Objection: Regarding the journey's permissible point, it has been defined as the place where the walls of the houses of a city cease to be visible and the sounds of *adhān* cannot be heard. Based on this definition, if we consider the criterion of identifying the journey's permissible point to be sighting in its general sense and hearing in its general sense too, then it becomes necessary to consider a place that is twenty kilometers away from a city to be the journey's permissible point when the walls of the houses of the city can be seen from that distance by binoculars, while the fact is that scholars have decided on the ordinary state of sighting being the criterion to identify the journey's permissible point.

In response, of course the journey's permissible point is always fixed, and it does not differ from one person to another; rather, it is a limited matter identified by traditional custom. Thus the identification of the religious law regarding this point is not in fact purely devotional. That is, obligatorily to be observed;

rather, it only indicates a customary regulation. Traditional custom considers the ordinary and natural seeing and hearing to be the criterion in this issue, so does not make any allowances for optical apparatus and instruments, because if it did, then the journey's permissible point would vary from one person to another, according to the apparatus used by the travellers. Of course, if this were true, then the journey's permissible point would certainly lose its meaning and purpose.

In other words, the actual criterion of identifying a journey's permissible point is the departure from one's home town to such a distance that the traveller can no longer see the walls of the city nor hear the sound of the *adhān*. This departure in itself serves as evidence that it has in reality a certain point.

Third Objection: A religious law states that the testimonies of two sharp-sighted persons are not sufficient. Accordingly, sighting with apparatus must be treated according to this law.

To answer, firstly, there is a distinct probability that sharp-sightedness will be accompanied by error, while such error can rarely be found in sightings by telescope.

Secondly, telescopes and magnifying optical apparatus are available for everyone to use, while sharp-sighted people are very few in number; therefore, it is illogical to compare sighting with telescopes to the sighting by sharp-sighted persons.

Thirdly, the objection involved seems clearly to be a kind of analogy, and this is rejected in Muslim Shīʿite jurisprudence.

For instance, if a sharp-sighted person sees an impure material while other ordinary people cannot see it, it is not obligatory for the ordinary people to avoid that piece of impurity although it is obligatory for the sharp-sighted person to avoid it once he is certain of its impurity.

Fourthly, the edict mentioned in the objection implies that the testimony of such persons towards or against others cannot be deemed acceptable proof, but it acceptable proof for themselves, and they are required to follow whatever legal duty or prohibition that comes from such sighting.

Fourth Objection: If we believe that the Holy Legislator regards sighting with the aided eye as acceptable in proving the birth of the new moon, then this will mean that Muslims over the last one thousand years have been mistaken in this regard, because this optical equipment was not available in the past - a fact that implies that every lunar month was in most cases, if not always, late.

In response: firstly, this argument is exclusively restricted to the case of the Holy Legislator's prohibition of the use of such an optical equipment, while the Holy Legislator has not in fact prohibited this.

Secondly, the acceptability of the argument is in fact contingent upon the claim that sighting the new moon with the aided eye is the actual criterion to identify the beginning of a lunar month, while, as has been previously stated, scholars who accept the results of optical equipment in identifying the birth of the new

moon agree that this is only a means, but not the criterion, to identify the beginning of the new month.

Thirdly, if the new moon is seen with the naked eye in a certain region, this does not mean that it has been impossible to see it on the previous night. Accordingly, it is impracticable to argue the opinion through the aforesaid objection.

In other words, to deem sighting the new moon with the aided eye as acceptable or unacceptable does not change the reality of the matter, just like sighting it with the naked eye.

Fifth Objection: The claim of the acceptability of sighting the new moon with the aided eye necessitates numerous argumentations. Furthermore it is revocable through proving the opposite. In other words, the claim at issue entails that all religious laws, as well as the public advantages and disadvantages, are contingent upon society's evolution and the invention of new equipment. For instance, if an optical instrument such as a telescope is invented and used for seeing the birth of the new moon while it has not previously been possible to see it in this accuracy, this means that Grant Night (*laylat al-qadr*) should be put back one night and the angels should hasten in their descent so that they would descend according to the night on which the new moon was seen through these optical instruments![49]

In response: firstly, such argumentations can be common to all jurisprudential issues. Even if the criterion to identify the first night of a lunar month is sighting the new moon with the naked

eye, such argumentations are still active in countries where the new moon cannot be seen because these countries are far from ordinary horizons. In summary, such argumentations have not arisen from the invention of such modern equipment.

Secondly, we basically claim that if sighting the new moon with such optical equipment is deemed valid, all such argumentations will no longer arise. Therefore, using optical equipment in identifying the birth of the new moon is greatly preferable to sighting being dependent on sighting with the naked eye.

Thirdly, according to the principles of *'ilm al-uṣūl*, the laws that are contingent upon the public advantages and disadvantages are exclusively the appearance-based laws, i.e. laws that are decided according to the outward appearance of a certain issue, while the actual laws containing the exterior features have their own criteria, as mentioned in studies of *'ilm al-uṣūl*. This answer is in fact the most accurate in reply to the objection involved.

Fourthly, according to the narrations of the Legislators and edicts of master jurisprudents, if a person sights the new moon without any doubt while no-one else has seen it, then that person is obliged to start observing the ritual fasting. However, if the same person is not sure that he or she has sighted the new moon, then he or she is required to observe fasting when all others do. This means that the duty of such a person is different from the duty of others. Will the afore-mentioned argumentations still be valid in such cases? Or will it be proper

to resort to the unanimous ways of combination between appearance-based and actual laws?

As a result, none of the afore-mentioned disadvantageous results can be applied to the claim of the permissibility of employing modern optical equipment in identifying the birth of the new moon.

End Notes:

[1] Ṣafīpūrī, *Muntahā al-Irab*; al-Shartūnī, *Aqrab al-Mawārid*.

[2] Ibn Manẓūr, *Lisān al-ʿArab*, 11/702.

[3] The root of the word *hilāl* is *h-l-l*, which is the same root as that of the verb *halla*, meaning: to shout.

[4] Sayyid al-Khū'ī, *Kitāb al-Ṣawm* 2/118.

[5] Jaʿfar al-Subḥānī, *al-Ṣawm fi'l-Sharīʿah al-Islāmiyyah al-Gharrā'*, pp. 144.

[6] See: Makārim al-Shīrāzī, *Ithārāt Hāmmah Ḥawla Ru'yat al-Hilāl*.

[7] These twenty-eight narrations are found in al-Ḥurr al-ʿĀmilī's *Wasā'il al-Shīʿah*, Vol. 10, Section: The Month of Ramaḍān, Chapter Three.

[8] Al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 10/252, Ch. 3, H. 2.

[9] *Ibid.* 10/253, H. 6.

[10] *Ibid.* 10/255, H. 11.

[11] *Ibid.* 10/256, H. 16.

[12] *Ibid.* 10/254, H. 7.

[13] *Ibid*. 10/282. Ch.. 9, H. 4.

[14] Makārim al-Shīrāzī, *Ithārāt Hāmmah Ḥawla Ru'yat al-Hilāl*.

[15] Shaykh al-Jawāhirī, *Jawāhir al-Kalām* 6/115.

[16] Shaykh al-Jawāhirī, *Jawāhir al-Kalām* 1/222.

[17] *Ibid*. 2/147.

[18] *Ibid*. pp. 159.

[19] *Ibid*. 9/205.

[20] Mullā Muḥammad Bāqir al-Sabzawārī, *Dhakhīrat al-Maʿād* 1/17.

[21] Al-Jawāhirī, *Jawāhir al-Kalām* 2/30.

[22] *Ibid*. 2/159.

[23] *Ibid*. 2/185.

[24] Minor impurity (*al-ḥadath al-aṣghar*) includes every ceremonially impure affair that invalidates or makes it obligatory to perform (or re-perform) the ritual ablution, such as urinating, excreting, emitting wind, and sleeping.

[25] ʿAllāmah al-Ḥillī, *Muntahā al-Maṭlab* 2/181.

[26] ʿAllāmah al-Ḥillī, *Tadhkirat al-Fuqahā'* 1/222.

[27] Shaykh al-Karakī (al-Muḥaqqiq al-Thānī), *Jāmiʿ al-Maqāṣid* 1/277.

[28] *Jawāhir al-Kalām* 3/7.

The Holy Prophet means that ritual bathing (*ghusl*), which stands for immersion in water to attain ceremonial purity - and for this reason the Holy Prophet has expressed it as *mā'* (water - becomes obligatory when one is stained with seminal fluid. In Arabic, it is customary that the word *mā'* (or, more precisely, *mā' al-rajul*; meaning, water of the man) be used for semen.

29 *Jawāhir al-Kalām* 3/31.

30 *Jawāhir al-Kalām* 6/25.

31 This means that men must keep their heads uncovered as long as they are in the state of *iḥrām*.

32 *Jawāhir al-Kalām* 18/384.

33 *Ibid*. 11/401.

34 Al-Fāḍil al-Hindī, *Kashf al-Lithām* 4/365.

35 Al-Shahīd al-Awwal, *Dhikrā al-Shī'ah fī Aḥkām al-Sharī'ah*, pp. 249.

36 Al-Fāḍil al-Hindī, *Kashf al-Lithām* 4/364.

37 Sayyid Muḥammad al-'Āmilī, *Madārik al-Aḥkām* 4/128.

38 Shaykh al-Jawāhirī, *Jawāhir al-Kalām* 11/402.

39 Al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 7/484, H. 5.

40 *Ibid*. H. 4.

41 *Minhāj al-Ṣāliḥīn*, pp. 287.

42 Al-Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah* 10/279, H. 5.

43 Al-Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah* 2/37, H. 1&2.

44 See *Mustanad al-Shīʿah* 3/89.

45 Makārim al-Shīrāzī, *Ithārāt Hāmmah Ḥawla Ruʾyat al-Hilāl*.

46 See, for instance, Muḥammad Samīʿī, *Barrasī ḥukm sharʿī ruʾyat hilāl bā-chashm musallaḥ*.

47 See Reza Mokhtari, *Ruʾyat hilāl bā-chashm musallaḥ*.

48 Al-Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah* 3/467, H. 3.

49 Muḥammad Samīʿī, *Barrasī ḥukm sharʿī ruʾyat hilāl bā-chashm musallaḥ*.