

حكمة التفتيح
في الحكم الأهل
للأهل بانتلي و
بريطانيا

Contents:

Reason for the compilation of this criterion ...	3
Islam and moon sighting ...	4
Islam is according to the nature and intellect ...	5
The ruling regarding testimony on an impossible circumstance ...	5
Sighting of the moon ...	6
Passages of the fuqaha concerning the sighting of the moon ...	7
In non-Islamic countries ...	9
How to establish the sighting? ...	10
Method of establishing the Crescent moon ...	10
Confirming the moon sighting according to the hanafi principles ...	12
In relevance to the moon for Ramadhan when the sky is clear, the decision will be made according to the following principles ...	12
If the sky isn't clear then the decision for Ramadhan will be made according to the following principles ...	13
The decision for the moon of Shawwal and Zil-hijja will be made according to the following principles ...	15
The decision for the moon of Shawwal and Zil-hijjah will be made according to the following principles if the sky isn't clear ...	15
The conditions for members of the moon sighting committee and their responsibilities ...	17
Words to be used for announcement of the sighting ...	18
The decision in such a locality wherein no moon sighting committee exists will be as follows ...	19
The precise words for incoming information (those regions where no moon sighting committee exists ...)	19
Conditions for establishing the sighting according to the Three imams.(Malik Shafiee & Ahmed R.A. ...)	20
Other References ...	22
Istifadhaa ...	24

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ
نَحْمَدُهٗ وَنُصَلِّیْ وَنُسَلِّمُ عَلٰی رَسُوْلِهِ الْكَرِیْمِ وَ عَلٰی اٰلِهٖ وَاصْحَابِهٖ وَ اتَّبَاعِهٖ اَجْمَعِیْنَ

Reason for compiling this criteria

For the first time in more than 50 years a difference of opinion has occurred in the town of Batley with regards to moon sighting. Local Masjid committees wrote to I.M.W.S asking them to find a solution to this dispute, hence the Executive Committee of I.M.W.S handed this task over to the Ulama and agreed that their decision would be binding. After consultation an initial meeting was convened in which all the Ulama were invited, approximately 75 local Ulama participated. It was unanimously agreed at this meeting that an Ulama working committee consisting of 22 Ulama be created. This committee had approximately 6 meetings of deliberations and consultations at the conclusion of which some fundamental usool (principles) were drawn up to ensure that unity amongst the people is maintained; the usool were drawn up remaining within the framework of Shariah and in strict adherence with Quran, hadith, fiqh, fatawaa and in consultation with Muftis in this country and in the Indian sub-continent.

Thereafter on the 31st of May 2008 all of the local Ulama were once again invited to attend a presentation on the working committee's findings. Approx. 55 Ulama attended and listened attentively to the principles laid out, after which a unanimous decision was taken supporting the findings and the fundamental principles & criteria.

By the grace of Almighty Allah this criterion has now been compiled and is at your disposal. We ask Allah to make this a means of uniting the Ummah, especially for the people of Batley and beyond for the UK

May Allah Ta'ala give us all the taufeeq & ability to follow the teachings of Shariah and adopt taqwa and piety in our lives. Ameen.

9th Jumadal Ukhraa 1429 / 14 June 2008

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله الذى جعل الشمس ضياءً و القمر نورًا و قدّره منازل لتعلم عدد السنين و الحساب ، و الصلوة و السلام على رسوله الذى بعث نبيا اميا الى يوم المعاد ، و على آله و بقية الاصحاب ، اما بعد:

Islam and Moon Sighting:

The Muslim ummah is passing through a phase in which many a religious matters are the centre of attraction, one such matter is the sighting of the moon. Islam is a complete way of life given to us by Allah Ta'ala, and if adopted the key to success in this world and the Hereafter. Clear and apparent rules guidelines have been laid out in the Quraan and Ahadith regarding to the sighting of the moon, which are easy to understand and follow for people from all walks of life, and free from all complications and difficulties.

One of the many important acts of worship in Islam is the fasts of Ramadhan. These can only be observed in a specific period, which is obviously the month of Ramadhan. Islam is a way of life and source of guidance for humans across the globe and in all eras, and if adopted a simple and natural way to establish the commencement of those months which are connected with acts of worship. This guidance is not dependant on any rare instruments or experience; if this had been the case then a section of the community would have been put under unbearable difficulties. Islam has based it's commands on such things that can easily accommodate people from all walks of life, such as villagers and people far away from civilisation e.g. nomads etc. so that everyone is able to put the commands into practice. The basis of the issue which is currently being discussed, i.e. commencement of the months of Ramadhan and Shawwal etc., has been laid on sighting of the moon by the naked eye and not merely on the presence of the new moon on the horizon. Authentic Ahadeeth are the basis on which such simple and naturalistic principles, which are according to the natural disposition of Islam:

مُحَمَّدُ بْنُ زَيْدٍ قَالَ سَمِعْتُ أَبَا هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ يَقُولُ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْ قَالَ قَالَ أَبُو الْقَاسِمِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صُومُوا لِرُؤْيَيْهِ وَأَفْطِرُوا لِرُؤْيَيْهِ فَإِنْ عُمِيَ عَلَيْكُمْ فَأَكْمِلُوا عِدَّةَ شَعْبَانَ ثَلَاثِينَ . (رواه البخاري)
 عَنْ عَبْدِ اللَّهِ بْنِ أَبِي قَيْسٍ قَالَ سَمِعْتُ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا تَقُولُ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَتَحَفَّظُ مِنْ شَعْبَانَ مَالًا يَتَحَفَّظُ مِنْ عَمْرِهِ ثُمَّ يَصُومُ لِرُؤْيَيْهِ رَمَضَانَ فَإِنْ عُمِيَ عَلَيْهِ عِدَّةَ ثَلَاثِينَ يَوْمًا ثُمَّ صَامَ . (رواه أبو داؤد)
 عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ذَكَرَ رَمَضَانَ فَضَرَبَ بِيَدَيْهِ فَقَالَ الشَّهْرُ هَكَذَا وَهَكَذَا وَهَكَذَا ثُمَّ عَقَدَ إِبْهَامَهُ فِي الثَّلَاثَةِ فَصُومُوا لِرُؤْيَيْهِ وَأَفْطِرُوا لِرُؤْيَيْهِ فَإِنْ أَعْمِيَ عَلَيْكُمْ فَأَقْدِرُوا لَهُ ثَلَاثِينَ . (رواه مسلم)
 عَنْ ابْنِ عَبَّاسٍ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا تَصُومُوا قَبْلَ رَمَضَانَ صُومُوا لِرُؤْيَيْهِ وَأَفْطِرُوا لِرُؤْيَيْهِ فَإِنْ حَالَتْ دُونَهُ عَيَاةٌ فَأَكْمِلُوا ثَلَاثِينَ يَوْمًا (رواه الترمذي)

The hadith below points to this simple and natural practice:

عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ إِنَّا أُمَّةٌ أُمِّيَّةٌ لَا نَكْتُبُ وَلَا نَحْسِبُ الشَّهْرَ هَكَذَا وَهَكَذَا يَعْنِي مَرَّةً تِسْعَةً وَعِشْرِينَ وَمَرَّةً ثَلَاثِينَ . (رواه البخاري)

From the above mentioned narrations we come to the conclusion that the establishment of the Islamic months will only be through the sighting of the new moon, and nothing else. The Ummah has an Ijma (consensus) on this point.

Over time the Fuqahaa (jurists), taking into consideration events of their times and the advent of modern technology and new scientific instruments derived and compiled relevant laws from the Holy Quraan and Ahadith. Although modern technology led to us living a more comfortable life, these very

same advances have created confusing situations and scenarios which have been the reason for psychological upheaval and deep differences.

There is certainly no doubt regards to the permissibility and usage of these advances. Allah Ta'ala has created them for our convenience, allowing us to derive benefit from it in fulfilling our daily needs.

Islam is according to nature and intellect

It is an accepted reality that Islam coincides with nature and human intellect. There are no laws in Islam which defies this fact. Although some of the laws may be beyond human comprehension, however this doesn't mean they defy logic; but rather down to the deficiency in our intellect. Regarding this matter Imam Abu Ishaq Shatabi R.H. in his renowned book (Al- Muwafaqat Fi Usoolil Ahkam under the chapter Al Qism-ul Awwal) has demonstrated that those Usool (principles) which disagree with a sound mind are not worthy of being accepted. Sheikh Abdullah Daraz of Azhar University, who has researched and commentated on this subject titled his chapter 'Everything that does not comply with the laws of Shariah and intellect cannot be trusted' and in the edition printed by (Dar-ul Fikr) Sheikh Sayed Muhammad Khidhar Hussain At-tulisi has researched this matter and titled the chapter 'The Laws of Shariah are in accordance to reality', then he goes on to prove this point under a further heading 'The Sharee evidence does not contradict laws of intellect'. Likewise Imam Jassas Razi R.H. in his famous Usool-ul Fiqh book (Al-Fusool Fil Usool) under the chapter 'Refuting the claim of those who say the laws of Shariah are not according to intellect' has reiterated this very same point.

The ruling regarding testimony of an impossible occurrence

Allamah Ibn Hajar R.A. has mentioned this in his book Sharah Nukhbatul Fikr as thus:

و من القرائن التي يدرك بها الوضع ، ما يوجد من حال الراوى -- و منها ما يوجد من حال المروى ، كان يكون مناقضا لنص القرآن ، او السنة المتواترة ، او الاجماع القطعى ، او صريح العقل ، حيث لا يقبل شىء من ذلك التاويل - (زهة النظر شرح نخبة الفكر ، ص)

Imam Jassas Razi RA has also commentated on this subject and states that the testimony of an individual which contradicts a sound mind is unacceptable:

قال ابو بكر رحمه الله : و مما يرد به اخبار الآحاد من العلل ان ينافى موجبات احكام العقول ، لان العقول حجة الله تعالى - و غير جائز انقاص ما دلت عليه و اوجبه - و كل خبر يضاده حجة للعقل فهو فاسد غير مقبول - وحجة العقل ثابتة صحيحة ، الا ان يكون الخبر محتملا لوجه لا يخالف به احكام العقول ، فيكون محمولا على ذلك الوجه - (الفصول فى الاصول ، ٢٢١، ١٢١: ٣)

Allamah Suyooti R.A. states in his book Tadreeb-ur Rawee regarding rejecting a trustworthy persons statement which contradicts a logically impossible occurrence

قال : و مما يدخل فى قرينة حال المروى ما نقل عن الخطيب عن ابى بكر بن الطيب ، ان من جملة دلائل الوضع ان يكون مخالفا للعقل بحيث لا يقبل التاويل ، و يلتحق به ما يدفعه الحس و المشاهدة (تدريب الراوى ، ١ : 672) فى الدر المختار : (راى) مكلف (هلال رمضان او الفطر و رد قوله) بدليل شرعى (كتاب الصوم ، ٥٣ : ٣) و فى رد المحتار : قاله : (بدليل شرعى) هو اما فسقه او غلظه - نهر - و فى القهستاني : بفسقه لو السماء متغيمة او تفرد له لو كانت مصححة - (كتاب الصوم ، ٥٣ : ٣)

After reviewing all these sources we draw conclusion that any narrative, testimony or claim of an impossible occurrence will not be accepted, but rather will be refuted.

The following is an example of this refutation:

وإذا اعترفت المعتدة بانقضاء عدتها ثم جاءت بالولد لأقل من ستة أشهر يثبت نسبه لأنه ظهر كذبها بيقين فبطل الإقرار (هداية ميسرة للسرخسي).

Sighting of the moon

Just as Islam has taken into consideration ease and simplicity in all aspects, likewise nature has also been taken into account. Therefore the sighting of the moon, in light of Prophetic teachings and giving consideration to ease and simplicity, should only be dependent on shahadah (eye witness evidence). There are no difference of opinion regarding this. Furthermore Shariah also taking nature into consideration will only accept a testimony where the sighting of the moon is actually possible.

Indeed many books of Fiqh that have included a chapter on sighting the moon have written:

If the horizon is clear (no clouds, fog etc.) and only one or two people give testimony to the sighting of the moon, then in such a case their testimony will be rejected, regardless of how reliable, trustworthy and pious the people are. How can it be possible that with clear skies only one or two could sight the moon? This testimony is contrary to logic and apparent reasoning. In such a situation a large group of people should have sighted the moon, rather than just one or two. When the horizon is clear even people from adjoining areas should be able to sight the moon, there is no reason for others to not be able to sight it. This is proof to the fact that there was no moon present on the horizon, and as it is against clear logic their testimony will be cast doubtful and rejected by the judge.

قَالَ أَبُو بَكْرٍ : إِنَّمَا اعْتَبِرَ أَصْحَابُنَا إِذَا لَمْ يَكُنْ بِالسَّمَاءِ عِلَّةٌ شَهَادَةَ الْجَمْعِ الْكَثِيرِ الَّذِينَ يَفْعُ الْعِلْمُ بِخَبَرِهِمْ ؛ لِأَنَّ ذَلِكَ فَرَضٌ قَدْ عَمَّتِ الْحَاجَةُ إِلَيْهِ ، وَالنَّاسُ مَأْمُورُونَ بِطَلْبِ الْهَيْلَالِ ، فَغَيْرُ جَائِزٍ أَنْ يَطْلُبَهُ الْجَمْعُ الْكَثِيرُ وَلَا عِلَّةٌ بِالسَّمَاءِ مَعَ تَوَافِي هَمَمِهِمْ وَجَرِّصِهِمْ عَلَى رُؤْيِيهِ ، ثُمَّ يَرَاهُ النَّفَرُ الْيَسِيرُ مِنْهُمْ وَلَا يَرَاهُ الْبَاقُونَ مَعَ صِحَّةِ أَبْصَارِهِمْ وَارْتِفَاعِ الْمَوَانِعِ عَنْهُمْ ، فَإِذَا أَحْبَرَ بِذَلِكَ النَّفَرُ الْيَسِيرُ مِنْهُمْ دُونَ كَافِيَتِهِمْ عَلِمْنَا أَنَّ هُمْ غَالِطُونَ غَيْرُ مُصِيبِينَ ، فَإِنَّمَا أَنْ يَكُونُوا رَأَوُا خَيَالًا فَظَنُّوهُ هَيْلَالًا أَوْ تَعَمَّدُوا الْكُذِبَ ؛ إِذْ جَوَّازُ ذَلِكَ عَلَيْهِمْ غَيْرُ مُتَّبَعٍ . وَهَذَا أَصْلٌ صَحِيحٌ تَقْضِي الْعُقُولُ بِصِحَّتِهِ وَعَلَيْهِ مَبْنَى أَمْرِ الشَّرِيعَةِ ، وَالْخَطَأُ فِيهِ يَعْظُمُ ضَرَرُهُ وَيَتَوَصَّلُ بِهِ الْمُلْحِدُونَ إِلَى إِدْخَالِ الشُّبُهَةِ عَلَى الْأَعْمَارِ وَالْحَشْوِ وَعَلَى مَنْ لَمْ يَتَيَقَّنْ مَا دَكَّرْنَا مِنَ الْأَصْلِ (أحكام القرآن للحصاص 351/1)

(وإن لم يكن بالسماء علة فلا بد) للثبوت (من) شهادة (جمع عظيم لرمضان والفطر) وغيرها لأن المطلع متحد في ذلك المحل والموانع منتفية والأبصار سليمة والهمم في طلب رؤية الهلال مستقيمة فالتفرد في مثل هذه الحالة يوهم الغلط فوجب التوقف في رؤية القليل حتى يراه الجمع الكثير لا فرق في ظاهر الرواية بين أهل المصر ومن ورد من خارج المصر . (حاشية الطحطاوي على مراقي الفلاح ص 359)

The Fuqaha have mentioned another ruling under this discussion:

If a single person sighted the moon at the start of Ramadhan and the judge accepting his testimony passed judgment for the commencement of the holy month. However at the end of the thirtieth fast, despite the horizon being clear, the moon was not sighted, then it will be compulsory to keep 31 fasts. The person on whose testimony Ramadhan commenced will punished for giving a false testimony.

In the book Ilmul Fiqh Allamah Abdus Shakur Sahib writes:

If the fasts were observed on the account of only one person's testimony, and thereafter no moon was to be seen after the 30th fast, due to the horizon being unclear then the ruling for Eid will be given. However if the horizon was clear (and despite that no moon was sighted), then breaking of the fast will not be permissible on the 31st and it is necessary for the judge to punish the witness for giving a false testimony. (Ilm-ul Fiqh)

In this instance the witness gave his testimony, and the judge also accepted his single testimony. However on the eve after the 30th due to the moon not being sighted, not only did he pass judgement for rejecting and falsifying his account but also for punishing the witness. One of the reasons being, that his testimony at the start of Ramadhan was proven to be contrary to apparent reasoning.

Sometimes it seems to a person as if they have seen the moon and on this basis he gives testimony of his sighting. In his own mind he thinks himself correct, however in reality there was no moon but an external factor affected him and made him think that the moon is sighted. This is not a new phenomenon; there are many similar examples not only in our pious predecessors but also amongst the Sahaba R.A.

One such incident occurred during the era of Hazrat Umar R.A.; a person claimed to have sighted the moon, Hazrat Umar R.A. instructed him to wash his face and then asked him, 'Where is the moon?' He replied, 'I cannot see it anymore.' At this Hazrat Umar R.A. remarked, 'On your eyebrows was a hair which was dangling in front of your eyes in the shape of a crescent moon, you mistook it as being the moon.'

فى الدر المختار : أَمَا فِي هِلَالِ الْفِطْرِ فَلِكُونِهِ يَوْمَ عِيدِ عِنْدَهُ كَمَا فِي النَّهْرِ وَعَبْرِهِ وَكَأَنَّهُ تَرَكَهُ لِيُظْهِرَهُ (قَوْلُهُ : قَبْلَ الرَّدِّ لِشَهَادَتِهِ) وَكَذَا لَوْ لَمْ يَشْهَدْ عِنْدَ الْإِمَامِ وَصَامَ ثُمَّ أَفْطَرَ كَمَا فِي السَّرَاحِ (قَوْلُهُ : لِأَنَّ مَا رَأَاهُ الْخ) يُرْوَى أَنَّ عُمَرَ رَضِيَ اللَّهُ عَنْهُ أَمَرَ الَّذِي قَالَ : رَأَيْتَ الْهَيْلَالَ أَنْ يَمْسَحَ حَاجِبِيهِ بِالْمَاءِ ثُمَّ قَالَ لَهُ أَيْنَ الْهَيْلَالَ فَقَالَ فَقَدْتُهُ فَقَالَ شَعْرَةٌ قَامَتْ بَيْنَ حَاجِبَيْكَ فَحَسِبْتَهَا هَيْلَالَ سَرَاحٍ قَالَ ح وَهَذَا إِنَّمَا يَصْلُحُ تَعْلِيلًا لِعَدَمِ الْكِفَارَةِ فِي هَيْلَالَ رَمَضَانَ أَمَا فِي هَيْلَالَ شَوَّالٍ فَإِنَّمَا لَا يَجِبُ ؛ لِأَنَّهُ يَوْمَ عِيدِ عِنْدَهُ عَلَى نَسَقِي مَا تَقَدَّمَ (شامى 2/90).

Allamah Bukhait Misri R.A has also narrated a similar incident in his book Irshadu Ahlil Millah Ilaa Ithbaatil Ahillah). Hazrat Anas R.A. was with a group of Sahaba searching for the new moon. In this group was also Hazrat Iyas Bin Muawiya. After a while Hazrat Anas R.A. claimed to have sighted the moon, but no one else in the group saw it. Hazrat Iyas R.A., through his acuteness and intelligence, realised the fact of the matter. He saw a white hair hanging from the eyebrow of Hazrat Anas R.A. and hence raised the hair and asked Anas R.A., 'Can you still see the moon?' Hazrat Anas R.A. replied in the negative. (Irshadu Ahlil Millah Ilaa Ithbaatil Ahillah)

From this we can conclude that sometimes external factors do play a part and have an effect in the sighting of the moon. Therefore it is extremely important for any judge or moon sighting committee to keep these factors in consideration and to keep in mind what calibre of people the witnesses are and in what situation they are giving their testimony.

Quotes of the fuqaha concerning the sighting of the moon

فى البناية : قال : "وإذا لم تكن بالسماء علة لم تقبل الشهادة حتى يراه جمع كثير يقع العلم بخبرهم لأن التفرد بالرؤية في مثل هذه الحالة يوهم الغلط فيجب التوقف فيه حتى يكون جمعا كثيرا بخلاف ما إذا كان بالسماء علة لأنه قد ينشق الغيم عن موضع القمر فيتفق للبعض النظر". و في المحيط إن تفرد الواحد و الاثنين يورث بالرؤية تهمة الغلط او الكذب او التخيل. و المطلع لا تختلف إلا بالمسافة البعيدة الفاحشة. (4/274)

فى الدر المختار: (قَوْلُهُ : لَا يَحِلُّ) أَيُّ الْفِطْرِ إِذَا مَرَّ الْهَيْلَالَ قَالَ فِي الدَّرَرِ وَيُعَزَّرُ ذَلِكَ الشَّاهِدُ أَيُّ لِيُظْهِرَ كَذِبَهُ (قَوْلُهُ : لَكِنَّ الْخ) اسْتَبْدْرَاكَ عَلَى مَا ذَكَرَهُ الْمُصَنِّفُ مِنْ أَنَّ خِلَافَ مُحَمَّدٍ فِيمَا إِذَا عَمَّ هَيْلَالَ الْفِطْرِ بِأَنَّ الْمُصْرَحَ بِهِ فِي الذَّخِيرَةِ وَكَذَا فِي الْمَعْرَاجِ عَنْ الْمُجْتَبَى أَنَّ حِلَّ الْفِطْرِ هُنَا يَحِلُّ وَقَاقٍ وَإِنَّمَا الْخِلَافُ فِيمَا إِذَا لَمْ يُعَمَّ وَمَرَّ الْهَيْلَالَ ، فَعِنْدَهُمَا لَا يَحِلُّ الْفِطْرُ وَعِنْدَ مُحَمَّدٍ يَحِلُّ كَمَا قَالَهُ شَمْسُ الْأَيْمَةِ الْحُلَوَائِيُّ ، وَخَرَّزَةُ الشُّرَنْبَلَائِيُّ فِي الْإِمْدَادِ .

قَالَ فِي غَايَةِ الْبَيَانِ : وَجْهٌ قَوْلُ مُحَمَّدٍ وَهُوَ الْأَصْحَحُ أَنَّ الْفِطْرَ مَا ثَبَتَ بِقَوْلِ الْوَاحِدِ ائْتِدَاءً بَلْ بِنَاءً وَتَبَعًا ، فَكَمْ مِنْ شَيْءٍ يَثْبُتُ ضَمْنًا وَلَا يَثْبُتُ قَصْدًا وَسُئِلَ عَنْهُ مُحَمَّدٌ فَقَالَ ثَبَتَ الْفِطْرُ بِحُكْمِ الْقَاضِي لَا بِقَوْلِ الْوَاحِدِ : يَعْنِي لَمَّا حَكَمَ فِي هَيْلَالَ رَمَضَانَ بِقَوْلِ الْوَاحِدِ ثَبَتَ الْفِطْرُ بِنَاءً عَلَى

ذَلِكَ بَعْدَ تَمَامِ الثَّلَاثِينَ قَالَ شَمْسُ الْأَيْمَةِ فِي شَرْحِ الْكَافِي وَهُوَ نَظِيرُ شَهَادَةِ الْقَابِلَةِ عَلَى النَّسَبِ فَإِنَّهَا تُقْبَلُ ثُمَّ يُفْضَى ذَلِكَ إِلَى اسْتِحْقَاقِ الْمِيرَاثِ وَالْمِيرَاثُ لَا يَثْبُتُ بِشَهَادَةِ الْقَابِلَةِ ابْتِدَاءً . ١ هـ .

(قوله : وَفِي الرَّيْلَعِيِّ إِخْرَجَ) نَقَلَهُ لَيْبَانُ فَإِنَّهُ لَمْ تُعَلِّمْ مِنْ كَلَامِ الدَّخِيرَةِ وَهِيَ تَرْجِيحٌ عَدَمِ حِلِّ الْفِطْرِ إِنْ لَمْ يُعَمَّ سَوْأَلٌ لظُهُورِ غَلْطِ الشَّاهِدِ ؛ لِأَنَّهُ الْأَشْبَهُ مِنَ الْفَاطِ التَّرْجِيحِ ، لَكِنَّهُ مُخَالِفٌ لِمَا عَلِمْتَهُ مِنْ تَصْصِيحِ غَايَةِ الْبَيَانِ لِقَوْلِ مُحَمَّدٍ بِالْحِلِّ .

نَعَمْ حَمَلٌ فِي الْإِمْدَادِ مَا فِي غَايَةِ الْبَيَانِ عَلَى قَوْلِ مُحَمَّدٍ بِالْحِلِّ إِذَا عُمَّ سَوْأَلٌ بِنَاءً عَلَى تَحْقُوقِ الْخِلَافِ الَّذِي نَقَلَهُ الْمُصَنِّفُ وَقَدْ عَلِمْتَ عَدَمَهُ وَحِينَئِذٍ فَمَا فِي غَايَةِ الْبَيَانِ فِي غَيْرِ مَحَلِّهِ ؛ لِأَنَّهُ تَرْجِيحٌ لِمَا هُوَ مُتَّفَقٌ عَلَيْهِ تَأَمَّلْ . (شامي 2/95)

في مرآة الفلاح : (وشرط لهلال الفطر) أي لثبوته وثبوت غيره من الأهلة (إذا كان بالسماء علة) لفظ (الشهادة) الحاصلة (من حرين) مسلمين مكلفين غير محدودين في قذف (أو حر وحرتين) لكن (بلا) اشتراط تقدم (دعوى) على الشهادة كعتق الأمة وطلاق الزوجة وإذا رأى الهلال في الرستاق وليس هناك وال ولا قاض فإن كان ثقة يصوم الناس بقوله والفطر إن أخبر عدلان بروية الهلال وبالسماء علة لا بأس بأن يفطروا بلا دعوى ولا حكم للضرورة (وإن لم يكن بالسماء علة فلا بد) للثبوت (من) شهادة (جمع عظيم لرمضان والفطر) وغيرها لأن المطلع متحد في ذلك المحل والموانع منتفية والأبصار سليمة والهمم في طلب رؤية الهلال مستقيمة فالتفرد في مثل هذه الحالة يوم الغلط فوجب التوقف في رؤية القليل حتى يراه الجمع الكثير لا فرق في ظاهر الرواية بين أهل المصر ومن ورد من خارج المصر (ومقدار) عدد (الجمع) العظيم قيل أهل الحلة وعن أبي يوسف خمسون كالقسامة وعن خلف خمسمائة ببلخ قيل وقال البقالي الألف ببخاري قيل وقال الكمال الحق ما روي عن محمد وأبي يوسف أن العبرة لتواتر الخبر ومجيئه من كل جانب اه وفي التجنيس عن محمد أن أمر العقلة والكثرة (مفوض إلى رأي الإمام) وهو الصحيح وفي البرهان (في الأصح) لأن ذلك يختلف باختلاف الأوقات والأماكن وتتفاوت الناس صدقا (وإذا تم العدد) أي عدد رمضان ثلاثين (بشهادة فرد) برويته (ولم ير هلال الفطر و) ذلك و (السماء مصححة لا يحل الفطر) اتفاقا على ما ذكره شمس الأئمة ويعزر ذلك الشاهد كذا في الدرر وفي التجنيس إذا لم ير هلال شوال لا يفطرون حتى يصومون يوما آخر وقال الزيلعي والأشبه أن يقال إن كانت السماء مصححة لا يفطرون لظهور غلظه وإن كانت متغمة يفطرون لعدم ظهور الغلط (واختلف الترجيح) في حل الفطر (فيما إذا كان) ثبوت رمضان (بشهادة عدلين) وتم العدد ولم ير هلال شوال مع الصحو صحح في الدراية والخلاصة والبرازية حل الفطر لأن شهادة الشاهدين إذا قبلت كانت بمنزلة العيان وفي مجموع النوازل لا يفطرون وصححه كذلك السيد الإمام الأجل ناصر الدين لأن عدم الرؤية مع الصحو دليل الغلط فتبطل شهادتهما (ولا حل الفطر إذا) تم العدد لو (كان في السماء علة و لو) وصلية (ثبت رمضان بشهادة الفرد) العدل كالعدلين اتفاقا على التحقيق خلاف في (وهلال الأضحى) في الحكم (كالفطر) فلا بد من نصاب الشهادة مع

علة والجمع العظيم مع الصحو على ظاهر الرواية وهو الأصح لما تعلق به من نفع العباد خلافا لما يروى عن أبي حنيفة أنه كهلال رمضان وهي رواية النوادر وصححها في التحفة والمذهب ظاهر الرواية (ويشترط) في الثبوت (لبقية الأهلة) إذا كان بالسماء علة (شهادة رجلين عدلين أو) شهادة (حر وحرتين غير محدودين في قذف) وإلا فجمع عظيم (مرآة الفلاح)

From these passages it is clear that we should consider the authenticity of the reports coming in or being received or testimonies being taken. If this matter is viewed from this perspective, then sightings of the moon will not only be dependent on a testimony, but also the fact that it does not contradict sound reasoning and nature. This fact is nothing new, but rather an accepted reality in Shariah. The claim or testimony, by a trustworthy person, of an event which is logically and apparently impossible is completely unacceptable. In fact this itself will be evidence to refute such a testimony.

One thing to keep in mind is that we are followers of the Hanafi school of thought, therefore it is incumbent upon us to follow our own principles, unless a situation arises wherein not following another school of thought will result in 'difficulty'. Only in such an instance is it permissible to follow another school of thought, but even that needs to be adhered to with stringent guidelines.

We will now look into the issue which is currently being discussed (moon sighting), if it contains 'difficulties' which will allow us to follow another school of thought. After thorough research and scrutinizing the matter, we come to the conclusions that no such difficulties and inconveniences exist anymore (that were there in the past). Based on the principle "الضرورة تنقذ بقدر الضرورة", now that the 'difficulties' have change to ease, and the fact that we can now act on our own school of thought with relative ease especially now that modern technology and other scientific instruments have made things very easy, then how can we act upon another school of thought regarding this matter?

In non-Muslim countries

It is compulsory upon Muslims living in non-Muslim countries to appoint a Wali (responsible person) in relation to their religious matters. Therefore all the Muslims or it's majority must appoint a pious scholar, otherwise a representative Ulama committee for, all their religious matters. If not then at least appoint one for matters relating to moon sighting. Their decision will then be considered as binding

وَإِذَا لَمْ يَكُنْ سُلْطَانٌ وَلَا مَنْ يَجُوزُ التَّقْلِيدُ مِنْهُ كَمَا هُوَ فِي بَعْضِ بِلَادِ الْمُسْلِمِينَ غَلَبَ عَلَيْهِمُ الْكُفَّارُ كَفْرُطَةً فِي بِلَادِ الْمَغْرِبِ الْآنَ وَبِلَدَيْهِمَا وَالْبِلَادِ الْحَبَشِيَّةِ وَأَقْرَبُوا الْمُسْلِمِينَ عِنْدَهُمْ عَلَى مَا لِيُؤْخَذَ مِنْهُمْ بِحُجُبٍ عَلَيْهِمْ أَنْ يَتَّقُوا عَلَى وَاحِدٍ مِنْهُمْ يَجْعَلُونَهُ وَالْيَا قِيُولَى قَاضِيًا أَوْ يَكُونُ هُوَ الَّذِي يَقْضِي بَيْنَهُمْ وَكَذَا يُنْصَبُوا لَهُمْ إِمَامًا يُصَلِّي بِهِنَّ الْجُمُعَةَ . (فتح القدير 365/6 و الدر المختار مع رد المحتار، البحر الرائق شرح كنز الدقائق)

NOTE: The judgment on the sighting of the moon is not merely dependant on the decision of the ruler or the judiciary as understood by the following passage

لِأَنَّ إِنْثَابَ حُجِيِّ رَمَضَانَ لَا يَدْخُلُ تَحْتَ الْحُكْمِ ، حَتَّى لَوْ أَخْبَرَ رَجُلٌ عَدْلٌ الْقَاضِيَّ بِمَجِيءِ رَمَضَانَ يُقْبَلُ وَيَأْمُرُ النَّاسَ بِالصَّوْمِ يَعْنِي فِي يَوْمِ الْعَيْمِ وَلَا يُشْتَرَطُ لَفْظُ الشَّهَادَةِ وَشَرَايِطُ الْقَضَاءِ . أَمَّا فِي الْعِيدِ فَيُشْتَرَطُ لَفْظُ الشَّهَادَةِ وَهُوَ يَدْخُلُ تَحْتَ الْحُكْمِ ؛ لِأَنَّهُ مِنْ حُقُوقِ الْعِبَادِ ا هـ . (رد المحتار 93/2)

This is due to the fact that the judge is not allowed to make a decision without an appropriate claim, testimony or witnesses, as clearly proven in the book Kitabul Qadha under the chapter Adab-ul Qadhee.

In the issue of moon sighting nothing can occur until a trustworthy person gives testimony, thereupon it becomes incumbent on the judge to pass a ruling after considering the evidence of the witness. This is clear proof that sighting does not fall under the judiciary. As Huqooqul Ibaad (human rights) are fundamentally linked to the moon sighting for Eid and therefore any testimony or claim are not conditional for a judge, despite this as a precautionary the testimony of two trustworthy persons is deemed compulsory. This point is understood from the final part of the aforementioned passage. (Fataawaa Nizaamiyah)

If a moon sighting committee is established and a difference of opinion occurs between it's members and no agreement can be reached on the decision of the chair, then the majority vote will be considered a deciding factor. (Fataawaa Nizaamiyah)

In conclusion the need has now arisen for a solution to be found to this issue of moon sighting which complies with the teachings of Shariah and at the same time doesn't defy logic and apparent reasoning, a solution which is convenient & easy and in accord with the rules of Shariah and principles of Fiqh & school of thought. An easy solution to this is to conduct and moon sighting decision following the below eight foundation principles.

How to verify a sighting of the moon

There are five ways to verify moon sighting; if any one of these methods is present, with relevant conditions, then an announcement can be made:

(The details of these five points are mentioned in the books of fiqh. Three words 'Khabr' (news), 'Shahadat' (testimony) and 'Elaan' (announcement) are used in Fiqh in relation to moon sighting. If they are used in accordance to the Shariah and Fiqh meaning then they will carry weight, otherwise they have no meaning as terms of moon sighting. منتخبات نظام الفتاوى ١/١٤٨)

1. Sighting of the new moon

2. Testimony

(There three types of 'Shahadat' (testimony): 1) A testimony 2) A testimony of a testimony 3) A testimony to a judge's decision. For more detail check Fatawaa Rahimiyah 7/216)

3. Writing of a judge to another judge (Kitab-ul Qazi ilal Qazi)

4. Istifadah (over whelming sources of information that can't be falsified)

5. Radio, telephone, TV, letters, fax or any other means of communication.

Method of establishing a moon sighting committee

1. A consensus (amongst the people) is reached upon a fixed date for the commencement of a new month, which isn't contrary to Shariah, logic and apparent reasoning. *(An easy method to do this is that when all three countries Saudi Arabia, Morocco and South Africa coincide on the 1st day of a month then that day is unanimously taken as the 1st day of the Islamic month. These are the three countries from which all Hilal committees in the U.K. take their news from. Once the 1st of the month is fixed only then can one establish the 29th and 30th correctly. Thereafter if decisions are made as per the principles then they will always be according to Shariah, logic and apparent reasoning. If each Hilal committee takes different 1st days for the start of the month then the 29th and 30th will be different.)*

2. Every region should appoint people who observe the moon with punctuality. The nominated people should have knowledge regarding the location of the moon as the position of the moon differs with the seasons.

3. After agreeing a start date (as per point no.1), if a new sighting is confirmed in Britain on the eve of the 29th of the month, fulfilling all relevant conditions, then an announcement should be made accordingly.

4. If it was not possible to sight the new moon locally/nationally on the eve of the 29th, then information about moon sighting can be taken from other countries. These countries month dates must not be ahead of ours and neither should we be influenced incorrectly by their information. *(our days of the month should not become 28 or 31 days).* News of the sighting should be taken from such a country whose dates coincide with ours i.e. in both countries the date is 29, and their decision should be according to the Hanafi school of thought, or close to it, and the members of the committee are satisfied with the information.

5. A mutual agreement should be made with those countries from where information is taken (as mentioned under point no.4). That country should also have their own system of sighting the moon and must not be reliant on others, i.e. they don't make their decision after receiving confirmation from another country.

6. Information received or taken via telephone with regards to the commencement of an Islamic month, excluding then month of Ramadhan, has the same religious judgment as correspondence via letter, i.e. we are convinced that this is the very same person with whom contact was established and the voice is not being imitated. The caller is pious and the person making the call (from the committee) knows him well. The information should also be verified through other sources *(the news should reach the stage of Khabar e Mustafidh i.e. it is undeniable)* then an announcement can be made.

(Hazarat Moulana Burhanuddin Sambhali Sahib mentions about news received by phone: 1. Take the phone number of the person calling from abroad, then call him again from here and make other people who recognise the voice listen to it. 2. Try and verify the news from other people in the same town or city from the where the person has phoned. 3. When you receive satisfactory and reliable information from several towns of a similar kind then these phones will be considered

to be one source of news, and the announcement for the commencement of Ramadhan can be made, but not that of Eid. If the news was received from so many different areas or from one area but from so many different people that you can't perceive it to be wrong commonly or rationally (it becomes *Khabr e Mustafidh*) then you may announce commencement of Eid. For the full discussion look at the book 'Ruyat e Hilal Kaa Masalah' pages 62 to 72 and 'Ramadhan wa Eid Kay Masaail wa Dalaail' by Ml. Mohammed Miyan Sahib pages 54 to 58. Hazarat Moulana Burhanuddin Sambhali Sahib further explains under the statement 'You may also announce Eid' that Hazrat Mufti Shafee Sahib R.A. would not accept the hilal testimony by phone for the Eid sighting, but Moulana Sayyid Mohammed Miya Sahib has accepted in his book that when the phone testimonies reach so many that it becomes *Khabar e Mustafidh* then Eid announcements can be based on them. In the light of evidence the second view looks to be stronger and has been accepted.)

7. The general public must not make a decision based on information received from another country; however they are advised to inform the moon sighting committee along with the source of the information. Thereafter act upon the decision of the moon sighting committee.

8. The testimony of a witness deemed unacceptable through external factors can be rejected (for example even though the person sighting the moon is reliable, but has weak eyesight). Similarly the testimony of a fasiq (transgressor) can be accepted if validated by external factors.

وَالْعَدَالَةُ لِرُجُوبِهِ (فِي الْبِنَائِيَعِ : الْعَدْلُ مَنْ لَمْ يُطْعَنْ عَلَيْهِ فِي بَطْنٍ وَلَا فَرَجٍ وَمِنْهُ الْكُذِبُ لِخُرُوجِهِ مِنَ الْبَطْنِ (لَا لِصِحَّتِهِ) خِلَافًا لِلشَّافِعِيِّ رَضِيَ اللَّهُ تَعَالَى عَنْهُ (فَلَوْ قَضَى بِشَهَادَةِ فَاسِقٍ نَقَدَ) وَأَتَمَّ فَتْحَ (إِلَّا أَنْ يَمْنَعُ مِنْهُ) أَيُّ مِنَ الْقَضَاءِ بِشَهَادَةِ الْفَاسِقِ (الْإِمَامُ فَلَا) يَنْفَعُ لِمَا مَرَّ أَنَّهُ يَتَأَقَّتْ وَيَتَّقِيْدُ بِرَمَانٍ وَمَكَانٍ وَحَادِثَةٍ وَقَوْلٍ مُعْتَمَدٍ حَتَّى لَا يَنْفَعُ قَضَاؤُهُ بِأَقْوَالٍ ضَعِيفَةٍ وَمَا فِي الْقُنْيَةِ وَالْمُجْتَبَى مِنْ قَبُولِ ذِي الْمُرُوَّةِ الصَّادِقِ (قَوْلُهُ بِشَهَادَةِ فَاسِقٍ نَقَدَ) قَالَ فِي جَامِعِ الْفَتَاوَى : وَأَمَّا شَهَادَةُ الْفَاسِقِ ، فَإِنَّ تَحَرَّى الْقَاضِي الصِّدْقَ فِي شَهَادَتِهِ تُقْبَلُ وَإِلَّا فَلَا اه فَتَالُ : وَفِي الْفَتَاوَى الْقَاعِدِيَّةِ : هَذَا إِذَا غَلَبَ عَلَى ظَنِّهِ صِدْقُهُ وَهُوَ مِمَّا يُحْفَظُ دُرَّرَ أَوَّلَ كِتَابِ الْقَضَاءِ ، وَظَاهِرُ قَوْلِهِ وَهُوَ مِمَّا يُحْفَظُ اعْتِمَادُهُ اه . (الدر المختار مع رد المختار ، باب الشهادة على الشهادة 372/4)

وَأَمَّا قَوْلُهُ : " الرَّكْنُ فِي الشَّهَادَةِ هُوَ صِدْقُ الشَّاهِدِ " فَتَعَمُّ ، لَكِنَّ الصِّدْقَ لَا يَقِفُ عَلَى الْعَدَالَةِ لَا تَحَالَةَ ، فَإِنَّ مِنَ الْمَسْقَةِ مَنْ لَا يُبَالِي بِازْتِكَابِهِ أَنْوَاعًا مِنَ الْفَسْقِ ، وَيَسْتَنْكِفُ عَنِ الْكُذِبِ ، وَالْكَلامُ فِي فَاسِقٍ تَحَرَّى الْقَاضِي الصِّدْقَ فِي شَهَادَتِهِ فَعَلَبَ عَلَى ظَنِّهِ صِدْقُهُ - وَلَوْ لَمْ يَكُنْ كَذَلِكُ - لَا يَجُوزُ الْقَضَاءُ بِشَهَادَتِهِ عِنْدَنَا . (بدائع الصنائع في ترتيب الشرائع)

NOTE: The time limit for receiving news from abroad will be at the discretion of the committee. If no news is received on the fixed time, then 30 days should be completed, thereafter an announcement for Eid should be made (because taking news from abroad is neither *Wajib* (obligatory) nor a religious requirement, that is why the previous mufti of Darul Uloom Deoband Hazrat Mufti Nizamuddin Sb. writes 'As for the ruling on seeking sightings from other places that is neither *wajib* nor a religious requirement, but rather it goes against the *hadith* (For every locality they have their own sighting)')

Muntakhab Nizamul Fatawa part1 pg 171) . However if a testimony or information is received through a reliable local or National source (not international) then it will become compulsory to make a decision according to that.

(وَتُوَحَّرُ بِعُدْرِ) كَمَطَرٍ (إِلَى الرِّوَالِ مِنَ الْعَدِ قَطُ) فَوَقَّتْهَا مِنْ الثَّانِي كَالْأَوَّلِ وَتَكُونُ قَضَاءً لَا آدَاءً كَمَا سَبَّجِيءُ فِي الْأُضْحِيَّةِ وَحَكِي الْمُهَسْتَابِي قَوْلِينَ (وَأَحْكَامُهَا أَحْكَامُ الْأُضْحَى لَكِنْ هُنَا يَجُوزُ تَأْخِيرُهَا إِلَى آخِرِ نَالِثِ أَيَّامِ النَّحْرِ بِلَا عُدْرِ مَعَ الْكِرَاهَةِ وَبِهِ) (رد المختار 561/2)

The fixed time for receiving news from abroad during the summer months will be after Maghrib in that particular foreign country reliant.

Confirming the moon sighting according to the Hanafi principles.

A1. Commencement of Ramadhan when the horizon is clear; decision will be made according to the following principles:

1. If the sky is clear then a large group of people should sight the moon, i.e. such a large number that the judge or committee are satisfied with their sighting. *(the horizon should be clear in the actual place of sighting and therefore a large contingent of people should sight the moon, otherwise the testimony won't be valid. This ruling is for both Ramadhan and the two Eids. To accept the news from those countries whose School of Thought considers two witnesses sufficient when the horizon is clear, should be reconsidered. See Ahsanul Ftawaa v 4 pg 416)*

(و) فُيْل (بِلَا عَلَّةٍ جَمْعٌ عَظِيمٌ يَفْعُ الْعِلْمُ) الشَّرْعِيُّ وَهُوَ غَلْبَةُ الظَّنِّ (بِخَبَرِهِمْ وَهُوَ مُفَوَّضٌ إِلَى رَأْيِ الْإِمَامِ مِنْ غَيْرِ تَفْهِيمٍ بَعْدِ) عَلَى الْمَذْهَبِ . (قَوْلُهُ : وَفُيْلٌ بِلَا عَلَّةٍ) أَيُّ إِنَّ شَرْطَ الْقُبُولِ عِنْدَ عَدَمِ عَلَّةٍ فِي السَّمَاءِ هِلَالِ الصَّوْمِ أَوْ الْفِطْرِ أَوْ غَيْرِهَا كَمَا فِي الْإِمْدَادِ وَسَيَأْتِي تَمَامُ الْكَلَامِ عَلَيْهِ إِجْتِبَاءُ جَمْعٍ عَظِيمٍ فَلَا يُقْبَلُ خَبَرُ الْوَاحِدِ ؛ لِأَنَّ التَّفَرُّدَ مِنْ بَيْنِ الْجَمْعِ الْعَفِيرِ بِالرُّؤْيَةِ مَعَ تَوَجُّهِهِمْ طَالِبِينَ لِمَا تَوَجَّهَ هُوَ إِلَيْهِ مَعَ فَرَضِ عَدَمِ الْمَانِعِ ، وَسَلَامَةِ الْإِنْبَارِ وَإِنْ تَقَاوَتْ فِي الْحِدَّةِ ظَاهِرٌ فِي غَلَطِهِ بَحْرٌ . (قَوْلُهُ : يَفْعُ الْعِلْمُ الشَّرْعِيُّ) أَيُّ الْمُصْطَلَحِ عَلَيْهِ فِي الْأُصُولِ فَيَشْمَلُ غَالِبَ الظَّنِّ ، وَإِلَّا فَالْعِلْمُ فِي قَوْلِ التَّوْحِيدِ أَيْضًا شَرْعِيٌّ وَلَا عِبْرَةَ بِالظَّنِّ هُنَاكَ ح (قَوْلُهُ : وَهُوَ غَلْبَةُ الظَّنِّ) ؛ لِأَنَّهُ الْعِلْمُ الْمَوْجِبُ لِلْعَمَلِ لَا الْعِلْمُ بِمَعْنَى الْيَقِينِ نَصَّ عَلَيْهِ فِي الْمَنَافِعِ وَعَايَةِ الْبَيَانِ ابْنُ كَمَالٍ وَمِثْلُهُ فِي الْبَحْرِ عَنِ الْفَتْحِ وَكَذَا فِي الْمِعْرَاجِ وَقَالَ الْفُهَيْسِيُّ : فَلَا يُشْتَرَطُ خَبَرُ الْيَقِينِ النَّاشِئِ مِنَ التَّوَاتُرِ كَمَا أُشِيرَ بِهِ فِي الْمُضْمَرَاتِ لَكِنَّ الْكَلَامَ الشَّرْحَ مُشِيرًا إِلَيْهِ هـ وَفَرَادُهُ شَرْحٌ صَدَرَ الشَّرِيعَةَ فَإِنَّهُ قَالَ الْجَمْعُ الْعَظِيمُ جَمْعٌ يَفْعُ الْعِلْمَ بِخَبَرِهِمْ وَيُكْمِلُ الْعَمَلَ بِعَدَمِ تَوَاطُئِهِمْ عَلَى الْكُذْبِ هـ وَتَبَعُهُ فِي الدَّرَرِ وَرَدَّهُ ابْنُ كَمَالٍ حَيْثُ ذَكَرَ فِي مَنْهَيَاتِهِ أَحْطَأَ صَدَرَ الشَّرِيعَةَ حَيْثُ زَعَمَ أَنَّ الْمُعْتَبَرَ هَاهُنَا الْعِلْمُ بِمَعْنَى الْيَقِينِ (رد المحتار)

2. The sky is clear and no sighting is made locally, however a reliable person (male or female) from a higher altitude or another locality gives a satisfactory testimony

وَصَحَّحَ فِي الْأَفْضِيَّةِ الْإِحْتِفَاءَ بِوَاحِدٍ إِنْ جَاءَ مِنْ خَارِجِ الْبَلَدِ أَوْ كَانَ عَلَى مَكَانٍ مُرْتَفِعٍ ، (قَوْلُهُ : وَصَحَّحَ فِي الْأَفْضِيَّةِ إِخ) هُوَ اسْمُ كِتَابٍ وَاعْتَمَدَهُ فِي الْفَتَاوَى الصُّغْرَى أَيْضًا وَهُوَ قَوْلُ الطَّحَاوِيِّ ، وَأَشَارَ إِلَيْهِ الْإِمَامُ مُحَمَّدٌ فِي كِتَابِ الْإِسْتِحْسَانِ مِنَ الْأَصْلِ ، لَكِنَّ فِي الْحُلَاصَةِ ظَاهِرُ الرِّوَايَةِ أَنَّهُ لَا فَرْقَ بَيْنَ الْمَصْرِ وَخَارِجِهِ مِعْرَاجٍ وَغَيْرِهِ . قُلْتُ : لَكِنَّ قَالَ فِي التَّهَابَةِ عِنْدَ قَوْلِهِ : وَمَنْ رَأَى هِلَالَ رَمَضَانَ وَحْدَهُ صَامَ إِخ وَفِي الْمُبْسُوطِ وَإِنَّمَا يُرَدُّ الْإِمَامُ شَهَادَتَهُ إِذَا كَانَتْ السَّمَاءُ مُصْحِيَّةً ، وَهُوَ مِنْ أَهْلِ الْمَصْرِ فَأَمَّا إِذَا كَانَتْ مُتَعَيِّمَةً أَوْ جَاءَ مِنْ خَارِجِ الْمَصْرِ أَوْ كَانَ فِي مَوْضِعٍ مُرْتَفِعٍ فَإِنَّهُ يُقْبَلُ عِنْدَنَا . هـ . فَقَوْلُهُ عِنْدَنَا يَدُلُّ عَلَى أَنَّهُ قَوْلُ أَيْمَتِنَا الثَّلَاثَةِ وَقَدْ جَزَمَ بِهِ فِي الْمُحِيطِ وَعَبَّرَ عَنْ مُقَابِلِهِ بِقِيلٍ . (رد المحتار)

3. The sky is clear and an overwhelming number of people from another locality give a satisfactory testimony. (it reaches the status of 'Istifadhah')

A2 Commencement of Ramadhan when the horizon is unclear; decision will be made according to the following principles:

1. A single trustworthy adult (mature) male or female gives testimony of a sighting, this will suffice. The saying of the word shahadah (I bear witness) is not compulsory.

(وَفُيْلٌ بِلَا دَعْوَى وَ) بِلَا (لَفْظُ أَشْهَدُ) وَبِلَا حُكْمٍ وَجَلْسٍ قَضَاءٍ لِأَنَّهُ خَبَرٌ لَا شَهَادَةٌ (لِلصَّوْمِ مَعَ عَلَّةٍ كَعِيمٍ) وَغُبَارٍ (خَبَرٌ عَدَلٍ) أَوْ مَسْتَوِرٍ عَلَى مَا صَحَّحَهُ الْبِرَّازِيُّ عَلَى خِلَافِ ظَاهِرِ الرِّوَايَةِ لَا فَاسِقٍ اتِّفَاقًا وَهَلْ لَهُ أَنْ يَشْهَدَ مَعَ عِلْمِهِ بِفَسْقِهِ قَالَ الْبِرَّازِيُّ : نَعَمْ لِأَنَّ الْفَاضِيَّ رَمَّا قَبْلَهُ . (رد المحتار 90/2)

2. A minimum of two trustworthy men or one male and two females from another locality give witness that in their locality the judge or mufti has made a positive decision of sighting. (Ruyat e Hilaal by

Mufti Shafi Sahib pg 51)

(شَهَدُوا أَنَّهُ شَهِدَ عِنْدَ قَاضِي مِصْرَ كَذَا شَاهِدَانِ بِرُؤْيَا الْهِلَالِ) فِي لَيْلَةِ كَذَا (وَقَضَى) الْقَاضِي (بِهِ وَوَجَدَ اسْتِجْمَاعَ شَرَائِطِ الدَّعْوَى قَضَى)
أَيَّ جَازٍ لِهَذَا (الْقَاضِي) أَنْ يَحْكُمَ (بِشَهَادَتَيْمَا) . (الدر المختار مع رد المحتار 94/2)

3. A trustworthy person gives witness, that so and so trustworthy person has sighted the moon, but is unable to attend in person to give testimony. He has given an account of his sighting in my presence and has made me his representative, so that I may relay his testimony.

شهادة الواحد على هلال رمضان مقبولة وكذا شهادة الواحد على شهادة الواحد . (فتاوى قاضي خان، كتاب الصوم)

(وَ) كَيْفِيَّتُهَا أَنْ (يَقُولُ الْأَصْلُ مُحَاطِبًا لِلْفَرَعِ) وَلَوْ ابْنَهُ بَحْرٌ (اشْهَدْ عَلَى شَهَادَتِي أَيَّ اشْهَدُ بِكَذَا) وَيَكْفِي سُكُوتُ الْفَرَعِ ، وَلَوْ رَدَّهُ ارْتَدَّ
فُئِيَّةً ، وَلَا يَنْبَغِي أَنْ يَشْهَدَ عَلَى شَهَادَةٍ مِنْ لَيْسَ بِعَدْلٍ عِنْدَهُ حَاوِي (وَيَقُولُ الْفَرَعُ اشْهَدُ أَنْ فَلَانًا اشْهَدَنِي عَلَى شَهَادَتِهِ بِكَذَا وَقَالَ لِي اشْهَدْ
عَلَى شَهَادَتِي بِذَلِكَ) . (الدر المختار مع رد المحتار، باب الشهادة على الشهادة 392/4)

4. Information regarding the decision of a moon sighting committee is received via telephone or mobile, and the voice of the informant is recognised and confirmed by others, and this is either verified by other sightings or the accuracy of the information accepted using other sources.

5. Information regarding a sighting is received through radio, fax or internet. This will only be deemed acceptable when this information is actually confirmed by the chairperson of the committee (with whom you have a prior agreement), or another person of that particular locality testifies that he has personally sighted the new moon and the person receiving that news recognises him and considers him trustworthy. (extracted from *Allaat e Jadidah Kay Sharee Ahkaam* pg 178. The text is 'For the commencement of Ramadhaan neither a witness or Istifadhah news is conditional. But rather the testimony of one trustworthy person will be valid. For this reason the information received by letter or modern means (technology) will be accepted with the condition that the informer's letter or voice is recognised and he states he has personally sighted the moon. The recipient of the news recognises him and believes him to be trustworthy.')"

6. Many radio stations relay news of sighting from various places from the actual people (who can be recognised) who have sighted the hilal in a satisfactory manner. Or the radio announcer on behalf of the judge or moon sighting committee makes the announcement with all the relevant details and the local moon sighting committee is satisfied with that information. Or a big group of people relay the information after sighting the moon themselves, or relay the news from those who have seen it themselves, or that they have heard the news directly from the judge.

إذا تواردت أخبار راديو، متعددة من شتى جهات و لا تختلف جهات الأنباء من بلد الذي لم يرى فيه الهلال بعد يختلف فيه فيصوغ العمل
بهذه الأنباء المرسلة و تدخل في حد الاستفاضة المفيدة للطمانية (معارف السنن 340/5) (الخبر المسموع مرة واحدة إذا تضاف اليه قرائن افاد
اليقين . (شرح مواقف 127 ، توضيح 213) وقال الكمال الحق ما روي عن محمد وأبي يوسف أن العبرة لتواتر الخبر ومجيئه من كل. قوله :
مفوض

إلى رأي الإمام من غير تقدير بعدد كما في التنوير قوله : وتتفاوت الناس صدقا أي من جهة الصدق أي فيمكن أن يغلب صدق بعض الناس
عنده فيقبله (مراقي الفلاح ص 359).

(Extracted from *Allaat e Jadidah Kay Sharee Ahkaam* pg 177, 'The definition of 'Istifaadhah' is detailed in the books of *Ruyat e Hilal*. In it you will also rely and trust information from modern technology. When you get reports from the actual people who have sighted the moon being made from

different areas through radio, T.V., phone or mail. The condition is that these people can be recognised and that they testify that they themselves have sighted the moon, or they state that they were present

when the judge or moon sighting committee announced the hilal to be proven.(Shami v 2 pg 151) The mere news that the moon was sighted in such a place can't be classed as Istifadhah)

Or the information is received directly from a country's moon sighting committee or judicial council with whom you have a prior agreement.

7. An abundance of telephone calls, faxes and letters are received from a single or numerous locations, thus reaching the status of Istifadhah, one becomes convinced of the moon being sighted. (Kitabus Sawm, Majmuaah Fatawaa, Abdul Hai-)

8. The moon sighting committee sent a reliable person to a certain place, to verify a moon sighting judgment. He returns and gives a decision in favour of the sighting. (On condition that this person hears it directly from the judge, or had the news verified from a reliable source, or heard it directly from the people who saw the hilal. If he just heard hearsay then that will not suffice)

(كفى) عدل (واحد) في اثنتي عشرة مسألة على ما في الاشباه: منها إخبار القاضي بإفلاس المحبوس بعد المدة (للتزكية) أي تزكية السر، وأما تزكية العلانية فشهادة إجماعاً (وترجمة الشاهد) والخصم (والرسالة) من القاضي إلى المركزي والاثنان أحوط (الدر المختار مع رد المحتار، كتاب الشهادة 374/4) .

إِذَا كَانَ رَسُولُ الْقَاضِي الَّذِي يَسْأَلُ عَنِ الشُّهُودِ وَاحِدًا جَازَ وَالِاثْنَانِ أَفْضَلُ وَهَلْ مَا أَنَّهُ لَيْسَ فِي مَعْنَى الشَّهَادَةِ وَهَذَا لَا يُشْتَرَطُ فِيهِ لَفْظَةُ الشَّهَادَةِ وَجَمَلِيسُ الْقَضَاءِ ، وَاشْتِرَاطُ الْعَدَدِ أَمْرٌ حُكْمِيٌّ فِي الشَّهَادَةِ فَلَا يَتَعَدَّاهَا (هداية، كتاب الشهادة) .

كل اشتراط العدد إذا لم يرسل الناقل ليكشف خبر رؤية الهلال، أما إذا أرسل ليكشف الخبر فلا يشترط العدد في الناقل و يكون سماع الناقل من العدلين بمنزلة سماع المرسلين فيجب الصوم (ارشاد أهل الملة الى اثبات الاهلة).

9. The local moon sighting committee or it's chairperson receives a letter from the chair of a different moon sighting committee or his associates, or a mufti, or judge, and they are convinced of the sighting. (if there is a prior agreement then this local committee will fall under that agreement's jurisdiction and this letter will hold the status of an official announcement e.g. the firing of the canon)

وَالظَّاهِرُ أَنَّهُ يَلْزَمُ أَهْلَ الْفِرَى الصَّوْمِ بِسَمَاعِ الْمَدَافِعِ أَوْ رُؤْيَا الْقَنَادِيلِ مِنَ الْمَصْرِ ؛ لِأَنَّهُ عِلْمٌ ظَاهِرٌ تُفِيدُ غَلْبَةَ الظَّنِّ وَغَلْبَةُ الظَّنِّ حُجَّةٌ مُوجِبَةٌ لِلْعَمَلِ كَمَا صَرَّحُوا بِهِ وَاحْتِمَالُ كَوْنِ ذَلِكَ لِغَيْرِ رَمَضَانَ بَعِيدٌ إِذْ لَا يُفْعَلُ مِثْلُ ذَلِكَ عَادَةً فِي لَيْلَةِ الشَّكِّ إِلَّا لِثُبُوتِ رَمَضَانَ (قَوْلُهُ قِيلَ وَبِهِ يُفْتَى) قَالَ فِي خِرَازِنَةِ الْأَكْمَلِ : أَجَازَ أَبُو يُوسُفَ وَ مُحَمَّدٌ الْعَمَلُ بِالْحُطِّ فِي الشَّاهِدِ وَالْقَاضِي وَالرَّوَايِ إِذَا رَأَى حُطَّهُ وَ لَمْ يَتَدَكَّرْ الْحَادِثَةَ قَالَ فِي الْعُيُونِ : وَالْفُتُوَى عَلَى قَوْلِهِمَا إِذَا تَبَيَّنَ أَنَّهُ حُطُّهُ سِوَاءَ كَانَ فِي الْقَضَاءِ أَوْ الرِّوَايَةِ أَوْ الشَّهَادَةِ عَلَى الصَّكِّ ، وَإِنْ لَمْ يَكُنْ الصَّكُّ فِي يَدِ الشَّاهِدِ ، لِأَنَّ الْعَلَطَ نَادِرٌ وَآثَرُ التَّغْيِيرِ يُمْكِنُ الْإِطْلَاقُ عَلَيْهِ ، وَقَلَّمَا يَشْتَبَهُ الْحُطُّ مِنْ كُلِّ وَجْهِ فَإِذَا تَبَيَّنَ جَازَ الْإِعْتِمَادُ عَلَيْهِ تَوْسِعَةً عَلَى النَّاسِ . (رد المحتار، 354/4)

10. If the chair of a moon sighting committee, or mufti, or judge makes a decision in accordance with religious principles, and news of this reaches the moon sighting committee of another region(who have a prior agreement with them), or the committee itself spread the news, then the greater probability for the sighting will suffice. The announcement can be made when they are convinced and it does not have to reach the status of Istifadhah. (This is only because when there is a prior agreement then they fall under that jurisdiction, so just informing will suffice. If there is no agreement then conditions of one judge writing to another or the testimony on a judgment will apply)

B. Commencement of Shawwal and Zil-Hijja will be made according to the following principles:

1. If the sky is clear then a large group of people should sight the moon: a sighting on such a mass scale that cannot be refuted.
2. Or a large group of people from another locality mention their sighting of the moon, which leads to the undeniable fact (Istifadha) of the moon having been sighted.

B1 Commencement of Shawwal and Zil-Hijjah, when horizon is clear, will be made according to the following principles:

(if the horizon is clear and there is no large group sighting then there are four means of determining the moon for eid: 1. By testimony 2. By giving a testimony of another testimony 3. By giving testimony of a judgment 4. Istifadha. If anyone of these are met then the announcement can be made.)

1. Such a large group of people from another locality gives their account of the sighting, reaching the status of Istifadha, which leaves no room for denial.
2. A minimum of two trustworthy adult males, or one male and two females give their testimony using the word shahadah (I testify).

(وَ شَرَطُ لِلْفِطْرِ) مَعَ الْعِلَّةِ وَالْعَدَالَةِ (نِصَابُ الشَّهَادَةِ وَلَفْظُ أَشْهَدُ) . (قَوْلُهُ : مَعَ الْعِلَّةِ) أَي مِنْ غَيْمٍ وَعُجْبَارٍ وَدُخَانٍ (قَوْلُهُ نِصَابُ الشَّهَادَةِ) أَي عَلَى الْأُمُومِ وَهُوَ رَجُلَانِ أَوْ رَجُلٌ وَامْرَأَتَانِ (الرد المختار مع رد المحتار ٩١/٢)

3. Two trustworthy males or one male and two females from another locality bear witness to the fact that the moon sighting committee, judge or mufti in their locality has made a decision through standard procedure by taking a testimony.

(شَهِدُوا أَنَّهُ شَهِدَ عِنْدَ قَاضِي مِصْرَ كَذَا شَاهِدَانِ بِرُؤْيَا الْهَيْلَالِ) فِي لَيْلَةِ كَذَا (وَقَضَى) الْقَاضِي (بِهِ وَوَجَدَ اسْتِجْمَاعَ شَرَائِطِ الدَّعْوَى قَضَى) أَي جَازَ لِهَذَا (الْقَاضِي) أَنْ يَحْكُمَ (بِشَهَادَتَيْهِمَا) لِأَنَّ قَضَاءَ الْقَاضِي حُجَّةٌ وَقَدْ شَهِدُوا بِهِ لَا لَوْ شَهِدُوا بِرُؤْيَا غَيْرِهِمْ لِأَنَّهُ حِكَايَةٌ ، نَعَمْ لَوْ اسْتَفَاضَ الْحَيُّ فِي الْبَلَدَةِ الْأُخْرَى لَزِمَهُمْ عَلَى الصَّحِيحِ مِنَ الْمَذْهَبِ مُجْتَبَى وَغَيْرُهُ . (الرد المختار مع رد المحتار ٩٤/٢)

4. A minimum of two trustworthy men or one male and two females from another locality give witness that in their locality the judge or mufti has made a positive decision of a sighting.

(وَشَرَطُ لِلْفِطْرِ) مَعَ الْعِلَّةِ وَالْعَدَالَةِ (نِصَابُ الشَّهَادَةِ وَلَفْظُ أَشْهَدُ) . (رد المختار)
 وَلَوْ شَهِدُوا أَنَّ قَاضِي بَلَدٍ كَذَا شَهِدَ عِنْدَهُ اثْنَانِ بِرُؤْيَا الْهَيْلَالِ فِي لَيْلَةِ كَذَا ، وَقَضَى بِشَهَادَتَيْهِمَا جَازَ لِهَذَا الْقَاضِي أَنْ يَحْكُمَ بِشَهَادَتَيْهِمَا لِأَنَّ قَضَاءَ الْقَاضِي حُجَّةٌ وَقَدْ شَهِدُوا بِهِ ، (فتح القدير)

5. Two Muslim men, or one man and two females give testimony of their sighting in the presence of two men or one male and two females and then send them as representative witnesses for their sighting. These people come and testify. This will be accepted only if the people who sighted the moon relayed their account individually in front of the representatives. Then such a scenario would be deemed acceptable.

(قَوْلُهُ إِنْ شَهِدَ رَجُلَانِ عَلَى شَهَادَةِ شَاهِدَيْنِ) أَي كُلٌّ مِنْ الشَّاهِدَيْنِ فَعَلَى كُلِّ أَصْلٍ شَاهِدَانِ سِوَاءِ كَانَا هُمَا أَوْ غَيْرَهُمَا وَلَنَا قَوْلٌ عَلَى رِضِيِّ اللَّهِ عَنْهُ لَا يَجُوزُ عَلَى شَهَادَةِ رَجُلٍ إِلَّا شَهَادَةُ رَجُلَيْنِ وَلِأَنَّ نَقْلَ شَهَادَةِ الْأَصْلِ مِنَ الْحُفُوقِ فَهُمَا لَوْ شَهِدَا بِحَقِّ ثُمَّ شَهِدَا بِحَقِّ آخَرَ فَتُقْبَلُ وَقَوْلُهُ رَجُلَانِ وَقَعَ اتِّفَاقًا لِأَنَّهُ يَجُوزُ أَنْ يَشْهَدَ عَلَيْهِمَا رَجُلٌ وَامْرَأَتَانِ لِتَمَامِ التَّصَابِ (بحر الرائق باب الشهادة على لشهادة)

6. The chair of a moon sighting committee, or his associate, gives a written notification after making their decision. In such a case (the local moon sighting committee) can accept that decision as long as two witnesses testify to the fact that this is the chairs writing. The people sent with the writing can also be classed as witnesses.

7. A trustworthy person testifies (to the moon sighting committee), and two other witnesses bear testimony to the sighting of another person, then this will also be sufficient.

أَنَّهُ لَوْ شَهِدَ وَاحِدٌ عَلَى شَهَادَةِ نَفْسِهِ وَأَخْرَانِ عَلَى شَهَادَةِ غَيْرِهِ يَصِحُّ ، وَصَرَّحَ بِهِ فِي الْبَرَزَانِيَّةِ . (رد المحتار، 392/4 و بحر الرائق باب الشهادة على الشهادة) فجازت شهادة الأصل بنفسه، وكذلك جاز له أن يشهد غيره على شهادة نفسه، (محيط البرهاني قبيل الفصل العاشر: في شهادة الشهود بعضهم لبعض)

8. The moon sighting committee sent a reliable person to a certain place, to verify a moon sighting judgment. He returns and gives a decision in favour of the sighting. (*On condition that this person hears it directly from the judge, or had the news verified from a reliable source, or heard it directly from the people who saw the hilal. If he just heard hearsay then that will not suffice. Note: For the sighting of Shawwal witnesses are not sufficient, but rather numbers are necessary. But as there is a written agreement with that country then the representative will fall in their jurisdiction, and hence if the representative, as long as he fulfils the conditions, gives news of the decision then it can be relied upon*)

إِذَا كَانَ رَسُولُ الْقَاضِي الَّذِي يَسْأَلُ عَنِ الشُّهُودِ وَاحِدًا جازَ وَالْإِثْنَانِ أَفْضَلُ وَلَهُمَا أَنَّهُ لَيْسَ فِي مَعْنَى الشَّهَادَةِ وَهَذَا لَا يُشْتَرَطُ فِيهِ لَفْظَةُ الشَّهَادَةِ وَتَجْلِسُ الْقَضَاءِ ، وَاشْتِرَاطُ الْعَدَدِ أَمْرٌ حُكْمِيٌّ فِي الشَّهَادَةِ فَلَا يَنْعَدَّهَا (هداية، كتاب الشهادة) .

9. The same religious ruling applies for information received or taken via telephone as for a letter. Therefore if a well-known, trustworthy Muslim gives information regarding sighting of the moon in his locality via mobile, webcam, internet etc. then this will not be accepted until once is not certain that this is the very same person with whom the link was established and he is not imitating the voice of another. the person is religious, and this information is also confirmed through other sources who have actually seen the moon or have directly heard from the people who sighted the moon and they are in a large number (tawaatur) and when fully satisfied and the news reaches the status of Istifadha. Then only can the announcement be made to confirm the sighting. (*Hazarat Moulana Burhanuddin Sambhali Sahib mentions about news received by phone: 1. Take the phone number of the person calling from abroad, then call him again from here and make other people who recognise the voice listen to it. 2. Try and verify the news from other people in the same town or city from the where the person has phoned. 3. When you receive satisfactory and reliable information from several towns of a similar kind then these phones will be considered to be one source of news, and the announcement for the commencement of Ramadhan can be made, but not that of Eid. If the news was received from so many different areas or from one area but from so many different people that you can't perceive it to be wrong commonly or rationally (it becomes Khabr e Mustafidh) then you may announce commencement of Eid . For the full discussion look at the book 'Ruyat e Hilal Kaa Masalah' pages 62 to 72 and 'Ramadhan wa Eid Kay Masaail wa Dalaail' by Ml. Mohammed Miyan Sahib pages 54 to 58. Hazarat Moulana Burhanuddin Sambhali Sahib further explains under the statement 'You may also announce Eid' that Hazrat Mufti Shafee Sahib R.A. would not accept the hilal testimony by phone for the Eid sighting, but Moulana Sayyid Mohammed Miya Sahib has accepted in his book that when the phone testimonies reach so many that it becomes Khabar e Mustafidh then Eid announcements can be based on them. In the light of evidence the second view looks to be stronger and has been accepted.) Hazrat Mufti Shafi Sahub further states that a 'Khabar e Mustafidh' is only when a very large group of people have themselves heard the news from the people who sighted the moon or from the judge who announced the sighting decision. Hearsay that becomes commonly accepted but you cannot identify the source can't be a 'Khabar e Mustafidh' .(Shami v2 pg 921. Ruyat e Hilal pg55)*

الخبر المسموع مرة واحدة إذا تضاف إليه قرائن افاد اليقين . (شرح مواقف 127 ، توضيح 213) وقال الكمال الحق ما روي عن محمد وأبي يوسف أن العبرة لتواتر الخبر ومجيئه من كل. قوله : مفوض إلى رأي الإمام من غير تقدير بعدد كما في التنوير قوله : وتتفاوت الناس صدقا أي من جهة الصدق أي فيمكن أن يغلب صدق بعض الناس عنده فيقبله (حاشية الطحطاوي على مراقي الفلاح ص 359) .

10. Many radio stations relay news of sighting from various places from the actual people (who can be recognised) who have sighted the hilal in a satisfactory manner. Or the information is received directly from a country's moon sighting committee or judicial council with whom you have a prior agreement.

Various radio stations spread the news of sighting in their respective localities based on the decision of the judge or moon sighting committee and the radio announcer on behalf of the judge or moon sighting committee makes the announcement with all the relevant details and the local moon sighting committee is satisfied with that information. Or a big group of people relay the information after sighting the moon themselves, or relay the news from those who have seen it themselves, or that they have heard the news directly from the judge. And this group reaches tawaatur (large amount).

الخبر المسموع مرة واحدة إذا تضاف إليه قرائن افاد اليقين . (شرح مواقف 127 ، توضيح 213) وقال الكمال الحق ما روي عن محمد وأبي يوسف أن العبرة لتواتر الخبر ومجيبته من كل. قوله : مفوض إلى رأي الإمام من غير تقدير بعدد كما في التنوير قوله : وتتفاوت الناس صدقا أي من جهة الصدق أي فيمكن أن يغلب صدق بعض الناس عنده فيقبله (مراقي الفلاح ص 359)

Or the information is received directly from a country's moon sighting committee or judicial council with whom you have a prior agreement.

11. An overwhelming number of telephone calls, faxes and letters are received from a certain location or locations which lead to the undeniable fact (Istifadha) of the moon being sighted.

12. If the chair of a moon sighting committee, or mufti, or judge makes a decision in accordance with religious principles, and news of this reaches the moon sighting committee of another region (who have a prior agreement with them) (*This is only because when there is a prior agreement then they fall under that jurisdiction so just informing will suffice. If there is no agreement then the laws of one judge writing to another or testifying on a judgment will apply*), or the committee itself spread the news cautiously, then the greater probability for the sighting will suffice. The announcement can be made when they are convinced then this will not be accepted unless it is made sure that this is the very same person with whom the link was established and he's not imitating the voice of another. The person has to be religious, and the information is confirmed through other sources and when fully satisfied, only can the announcement be made to confirm the sighting

13. For the nine months excluding Ramadhan, Shawwal and Zil Hijjah, two male witnesses or one male and two female witnesses will suffice regardless of the sky being clear or not.

(قوله : وَيَقِيَهُ الْأَشْهُرُ التِّسْعَةَ) فَلَا يُقْبَلُ فِيهَا إِلَّا شَهَادَةُ رَجُلَيْنِ أَوْ رَجُلٍ وَامْرَأَتَيْنِ غُدُولِ أَحْرَارٍ غَيْرِ مَخْدُودَيْنِ كَمَا فِي سَائِرِ الْأَحْكَامِ بَحْرٌ عَنْ شَرْحِ مُخْتَصَرِ الطَّحَاوِيِّ لِلْإِمَامِ الْإِسْبِجَانِيِّ ، وَذُكِرَ فِي الْإِمْدَادِ أَنَّهَا فِي الصَّحْوِ كَرَمَضَانَ وَالْفِطْرِ أَيُّ فَلَا بُدَّ مِنَ الْجَمْعِ الْعَظِيمِ وَلَمْ يَغْزِهِ لِأَحَدٍ لَكِنْ قَالَ الْخَيْرُ الرَّمْلِيُّ الظَّاهِرُ أَنَّهُ فِي الْأَهْلِ التِّسْعَةَ لَا فَرْقَ بَيْنَ الْعَيْمِ وَالصَّحْوِ فِي قَبُولِ الرَّجُلَيْنِ لِقَدْرِ الْعَلَّةِ الْمُوجِبَةِ لِاشْتِرَاطِ الْجَمْعِ الْكَثِيرِ ، وَهِيَ تَوَجُّهُ الْكُلِّ طَالِبِينَ وَيُؤَيِّدُهُ . (رد المحتار 95/2) ديكھے فتاویٰ رحیمیہ ۲۳۳/۷، امدال الاحکام ۱۷۷/۲، عمدۃ الفقہ ۲۳۸/۲۔

The make-up of the moon sighting committee and their responsibilities.

1. The committee should consist of a minimum of 11 members.

2. Ideally all the committee members should be Ulama, if this isn't possible then a minimum of three scholars should be present and the remaining members should all be intelligent, religious orientated and aware of rules (moon sighting) in general.

3. Announcement for the sighting should be made using particular wording and the reason for the decision should also be cited.
4. There should be sub-committees in all areas consisting of members who are religious and trustworthy.
5. These sub-committees will collect information on local sightings.
6. The committee meetings should be professionally formalised. The chair himself will be the ameer (chair), if not then the committee will appoint someone as the ameer for that meeting. Ultimately he will make the decision and the announcement.
7. A minimum of seven members should be present in the meeting for the following 3 months: Ramadhan, Shawwal and Zil-Hijjah.
8. It is recommended for a minimum of five members to be present in the meeting concerning all the other months, excluding the above mentioned three.
9. The non-ulama members have the right to give advice, however the final decision will be made by the Ulama.
10. If membership of the committee decreases due to some circumstance, then the right for appointing new members will be in the hands of responsible local Ulama.
11. If the moon sighting committee goes into liquidation, then a meeting should be arranged for all the local Ulama, and the responsibility will be transferred to them.
12. If the need arises for minor amendments to be made to the criteria, then the committee will have the right to make slight changes as long as they stay within the framework of Shariah.
13. If due to some religious or rational reason the need arises to take information from a country other than the ones agreed upon, then it will be allowed for the committee to select another country on condition that the eight principals are adhered to.

Wording for announcement of a sighting.

1. Two trustworthy persons gave testimony of their sighting in front of the moon sighting committee, which has been verified; therefore I..... as the chair, or associate, of the committee after establishing sighting through religious principles announce the commencement of Ramadhan from tomorrow morning, or tomorrow will be the day of Eid.
2. The moon sighting committee for another particular region, whose members are all religious or the mufti, or scholar of so and so locality after receiving a testimony has made decision of the sighting.
3. A phone call was received by the committee from the chair of another moon sighting committee. The information has been authenticated through various means and the news reached the stage of Istifaadha. Therefore I as the chair, or associate, of the committee after establishing sighting through religious principles announce the commencement of Ramadhan from tomorrow morning, or tomorrow will be the day of Eid. (فتاویٰ نظامیہ اندرونیہ ۱/۱۶۹-۱۷۱)
4. The moon sighting committee received a number of phone calls from various places and these have been authenticated by the committee. Therefore I..... as the chair, or associate, of the committee after establishing sighting through religious principles announce the commencement of

Ramadhan from tomorrow morning or tomorrow will be the day of Eid.

The decision in such a locality where no moon sighting committee exists will be as follows.

1. If the sky is clear then one, two telephone calls will not suffice, regardless of the committee members being most trustworthy and reliable. However an overwhelming number of phone calls will be required from all over the country, which will lead to the undeniable fact of the information being authentic.
(منتخابات نظام الفتاوى ١/٣٠)

2. For the sighting of Ramadhan, if the sky isn't clear then one phone call will be deemed sufficient.
(منتخابات نظام الفتاوى ١/٣٠)

3. For the sighting of Eid (al-Adha) or Shawwal when the sky is clear, an overwhelming number of phone calls are needed which will lead to the undeniable fact of the information being authentic
(منتخابات نظام الفتاوى ١/٣٠)

4. At least two phone calls, using specific words, are needed from different places that one can be sure of them being truthful. Similarly when there is organised formal base for collation and dissemination of moon sighting information, but the phone call is coming from a person who cannot get to a committee then again if the news is given with specific words and meet the conditions then it will be valid.
(منتخابات نظام الفتاوى ١/٣٠)

The precise announcement wording for incoming information from those regions where no moon sighting committee exists)

1. Two trustworthy persons gave their testimony in the presence of the moon sighting committee. Their testimony has been verified by the committee. Therefore I..... as the chair, or associate, of the moon sighting committee after establishing the moon sighting through religious principles announce the commencement of Ramadhan from tomorrow morning, or tomorrow will be the day of Eid.

2. The moon sighting committee for another particular region, whose members are all religious or the mufti, or scholar of so and so locality after receiving a testimony has made decision of the sighting.

3. A phone call was received by the committee from the chair of another moon sighting committee. The information has been authenticated through various means and the news reached the stage of Istifaadha. Therefore I as the chair, or associate, of the committee after establishing sighting through religious principles announce the commencement of Ramadhan from tomorrow morning, or tomorrow will be the day of Eid

4. The moon sighting committee received a number of phone calls from various places and these have been authenticated by the committee. Therefore I..... as the chair, or associate, of the committee after establishing sighting through religious principles announce the commencement of Ramadhan from tomorrow morning, or tomorrow will be the day of Eid

Conditions for verifying the sighting according to the three Imams.(Malik Shafiee & Ahmed R.A)

The discussion which took place until now was in light of the Hanafi school of thought, now we will elaborate a little on the schools of thought of the three other Imams. There is no significant difference

in their schools of thought between the sky being clear or not. There are slight differences in secondary issues

Hazrat Imam Malik R.A.- Three ways to establish the sighting;1. Such a large number of people sight the moon of Ramadhan which makes it impossible to envisage them all to be liars. In addition there is no condition for the witnesses to be male, free (not slaves) and equitable.

2. For the months of Ramadhan and Shawwal a minimum of two people are required. In addition being equitable, adults, male and free are all conditions.

3. For the months of Ramadhan and Shawwal, in those regions where observation is made on a regular basis, the testimony of two people is required. That region where there is no such regular observations the testimony of only one person.

Hazrat Imam Shafiee R.A:

The testimony of one free Muslim male will suffice for the moon of Ramadhan, and in another narration the testimony of a woman or slave will also be acceptable. The criteria for Eid is two equitable, free persons is necessary.

Hazrat Imam Ahmed R.A:

The sighting for Ramadhan requires the testimony of two free males or even two women or two slaves. For Eid two equitable free persons are necessary

وقال المالكية (1) : يثبت هلال رمضان بالرؤية على أوجه ثلاثة هي ما يأتي:

أن يراه جماعة كثيرة وإن لم يكونوا عدولاً: وهم كل عدد يؤمن في العادة تواطؤهم على الكذب. ولا يشترط أن يكونوا ذكوراً أحراراً عدولاً. أن يراه عدلان فأكثر: فيثبت بهما الصوم والفطر في حالة الغيم أو الصحو. والعدل: هو الذكر الحر البالغ العاقل الذي لم يرتكب معصية كبيرة ولم يصير على معصية صغيرة، ولم يفعل ما يخل بالمروءة. فلا يجب الصوم في حالة الغيم برؤية عدل واحد أو امرأة أو امرأتين على المشهور، ويجب الصوم قطعاً على الرائي في حق نفسه. وتجوز الشهادة بناء على شهادة العدلين إذا نقل الخبر عن كل واحد اثنان، ولا يكفي نقل واحد. ولا يشترط في إخبار العدلين أو غيرهم لفظ «أشهد» .

أن يراه شاهد واحد عدل: فيثبت الصوم والفطر له في حق العمل بنفسه أو في حق من أخبره ممن لا يعتني بأمر الهلال، ولا يجب على من يعتني بأمر الهلال الصوم برؤيته، ولا يجوز الإفطار بها، فلا يجوز للحاكم أن يحكم بثبوت الهلال برؤية عدل فقط. ولا يشترط في الواحد الذكورة ولا الحرية. فإن كان الإمام هو الرائي وجب الصوم والإفطار.

ويجب على العدل أو العدلين رفع الأمر للحاكم أنه رأى الهلال ليفتح باب الشهادة، ولأنه قد يكون الحاكم ممن يرى الثبوت بعدل.

أما هلال شوال: فيثبت برؤية الجماعة الكثيرة التي يؤمن تواطؤها على الكذب ويفيد خبرها العلم أو برؤية العدلين كما هو الشأن في إثبات هلال رمضان.

ولا يثبت الهلال بقول منجم أي حاسب يحسب سير القمر، لا في حق نفسه ولا غيره؛ لأن الشارع أناط الصوم والفطر والحج برؤية الهلال، لا بوجوده إن فرض صحة قوله، فالعمل بالمراسد الفلكية وإن كانت صحيحة لا يجوز، ولا يطلب شرعاً، كما تقدم.

وقال الشافعية : تثبت رؤية الهلال لرمضان أو شوال أو غيرهما بالنسبة إلى عموم الناس برؤية شخص عدل، ولو مستور الحال، سواء أكانت

السماء مصحية أم لا، بشرط أن يكون الرائي عدلاً مسلماً بالغاً عاقلاً حراً ذكراً، وأن يأتي بلفظ «أشهد» فلا تثبت برؤية الفاسق والصبي

والمجنون والعبد والمرأة. ودليلهم: أن ابن عمر رضي الله تعالى عنهما رأى الهلال، فأخبر رسول الله صلى الله عليه وسلم بذلك، فصام وأمر الناس

بصيامه . وعن ابن عباس رضي الله عنهما، قال: «جاء أعرابي إلى رسول الله صلى الله عليه وسلم فقال: إني رأيت هلال رمضان، فقال:

أتشهد أن لا إله إلا الله؟ قال: نعم، قال: تشهد أن محمداً رسول الله؟ قال: نعم، قال: يا بلال، أذن في الناس، فليصوموا غداً» والمعنى في ثبوته بالواحد الاحتياط للصوم.

أما الرائي نفسه فيجب عليه الصوم، ولو لم يكن عدلاً (أي فاسقاً) أو كان صبياً أو امرأة أو كافراً، أو لم يشهد عند القاضي، أو شهد ولم

تسمع شهادته، كما يجب الصوم على من صدقه ووثق بشهادته.

وإذا صمنا برؤية عدل، ولم نر الهلال ثلاثين، أفطرنا في الأصح، وإن كانت السماء صحواً، لكمال العدد بحجة شرعية.

وقال الحنابلة (1) : يقبل في إثبات هلال رمضان قول مكلف عدل واحد ظاهراً وباطناً ذكراً أو أنثى حراً أو عبداً، ولو لم يقل: أشهد أو شهدت أني رأيته، فلا يقبل قول مميز ولا مستور الحال لعدم الثقة بقوله في الغيم والصحو، ولو كان الرائي في جمع كثير ولم يره منهم غيره. ودليلهم الحديث المتقدم أنه صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ صَوَّمُ النَّاسِ بقول ابن عمر، ولقبوله خبر الأعرابي السابق به، ولأنه خبر ديني وهو أحوط، ولا تهمة فيه، بخلاف آخر الشهر، واختلاف حال الرائي والمرئي، فلو حكم حاكم بشهادة واحد، عمل بما وجوباً. ولا يعتبر لوجوب الصوم لفظ الشهادة، ولا يختص بحاكم، فيلزم الصوم من سمعه من عدل. ولا يجب على من رأى الهلال إخبار الناس أو أن يذهب إلى القاضي أو إلى المسجد. ويجب الصوم على من ردت شهادته لفسق أو غيره، لعموم الحديث: «صوموا لرؤيته» ولا يفطر إلا مع الناس؛ لأن الفطر لا يباح إلا بشهادة عدلين. وإن رأى هلال شوال وحده لم يفطر لحديث أبي هريرة يرفعه قال: «الفطر يوم يفطرون، والأضحى يوم يضحون» (2) واحتمال خطئه وتهمته، فوجب الاحتياط. وتثبت بقية الأحكام إذا ثبتت رؤية هلال رمضان بواحد من وقوع الطلاق المعلق به، وحلول آجال الديون المؤجلة إليه، وغيرها كإقضاء العدة والخيار المشروط ومدة الإيلاء ونحوها تبعاً للصوم.

والخلاصة: إن الحنفية يشترطون لإثبات هلال رمضان وشوال رؤية جمع عظيم إذا كانت السماء صحواً، وتكفي رؤية العدل الواحد في حال الغيم ونحوه. ولا بد عند المالكية من رؤية عدلين أو أكثر، وتكفي رؤية العدل الواحد عندهم في حق من لا يهتم بأمر الهلال. وتكفي رؤية عدل واحد عند الشافعية والحنابلة، ولو مستور الحال عند الشافعية، ولا يكفي المستور عند الحنابلة، كما لا بد عند الحنابلة والمالكية من رؤية هلال شوال من عدلين لإثبات العيد.

وتقبل شهادة المرأة عند الحنفية والحنابلة، ولا تقبل عند المالكية والشافعية. (الفقه الإسلامي وأدلته)

طريقة كار

(الجزء رقم : 15، الصفحة رقم: 64)

س: كم شاهداً يكفي لرؤية هلال شوال؟ ولو رآه شخص واحد وكتمه في نفسه هل يلزمه الفطر أم الصيام؟ جزاكم الله خيراً نشر في (مجلة الدعوة) العدد (1677) بتاريخ 11 / 10 / 1411 هـ .

ج: لا بد من شاهدين عدلين في جميع الشهور ما عدا دخول رمضان، فيكفي لإثبات دخوله شخص واحد عدل، في أصح قولي العلماء؛ لما ثبت عن ابن عمر رضي الله عنهما قال: رواه أبو داود في (الصوم) باب في شهادة الواحد على رؤية هلال رمضان برقم (2342). تراءى الناس الهلال فأخبرت النبي صلى الله عليه وسلم أني رأيته، فصام وأمر بالصيام. وله شاهد حسن من حديث ابن عباس رضي الله عنهما. وإذا رأى الهلال شخص واحد ولم تقبل شهادته لم يصم وحده ولم يفطر وحده في أصح قولي العلماء، بل عليه أن يصوم مع الناس ويفطر مع الناس؛ لقول النبي صلى الله عليه وسلم: رواه الترمذي في (الصوم) باب ما جاء: الصوم يوم تصومون والفطر يوم تفطرون برقم (697) الصوم يوم تصومون، والفطر يوم تفطرون، والأضحى يوم تضحون، والله ولي التوفيق.

From the above text we can determine that in the other three schools of thought and for people, like Shaikh bin Baaz, the method and laws of moon sighting are not like that of the Hanafi school of thought; that is what currently being practiced in the Middle Eastern and Arab countries. When this has been established that our previous method moon sighting announcements was not according to the Hanafi school of thought, it becomes incumbent that we leave that method and practice on laws which are according to Hanafi school of thought; on which this criteria is based.

Other References

مزید عبارات

فيه: ابنِ عَمَرَ قَالَ: قَالَ النَّبِيُّ، عَلَيْهِ السَّلَامُ: « إِنَّا أُمَّةٌ أُمِّيَّةٌ لَا نَكْتُوبُ وَلَا نَحْسُبُ الشَّهْرَ هَكَذَا وَهَكَذَا، يَعْنِي مَرَّةً تِسْعَةً وَعِشْرِينَ وَمَرَّةً ثَلَاثِينَ »

قال المؤلف: فيه بيان، لقوله عليه السلام: « فاقدروا له » ، أن معناه إكمال العدد ثلاثين يوماً، كما تأول الفقهاء، ولا اعتبار في ذلك بالنجوم والحساب، وهذا الحديث ناسخ لمراعاة النجوم بقوانين التعديل، وإنما المعول على الرؤية في الأهلة التي جعلها الله مواقيت للناس في الصيام والحج والعدد والديون، وإنما لنا أن ننظر من علم الحساب ما يكون عياناً أو كالعيان، وأما ما غمض حتى لا يدرك إلا بالظنون وتكليف الهيئات الغائبة عن الأبصار فقد نهينا عنه، وعن تكلفه 27/4.

وعلة ذلك أن رسول الله إنما بعث إلى الأميين الذين لا يقرءون الكتاب، ولا يحسبون بالقوانين الغائبة، وإنما يحسبون الموجودات عياناً. (شرح البخاري لابن بطال باب مَنْ صَامَ رَمَضَانَ إِيمَانًا وَاحْتِسَابًا وَنِيَّةً)

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عَمَرَ رَضِيَ اللَّهُ عَنْهُمَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ ذَكَرَ رَمَضَانَ فَقَالَ لَا تَصُومُوا حَتَّى تَرَوْا الْهِلَالَ وَلَا تُفْطِرُوا حَتَّى تَرَوْهُ فَإِنْ أُغْمِيَ عَلَيْكُمْ فَأَقْدِرُوا لَهُ (صحيح المسلم باب وَجُوبِ صَوْمِ رَمَضَانَ لِرُؤْيَةِ الْهِلَالِ وَالْفِطْرِ لِرُؤْيَةِ الْهِلَالِ وَأَنَّهُ إِذَا غُمَّ فِي أَوَّلِهِ أَوْ آخِرِهِ أُكْمِلَتْ عِدَّةُ الشَّهْرِ ثَلَاثِينَ يَوْمًا)

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَلَامٍ الْجُمَحِيُّ حَدَّثَنَا الرَّبِيعُ يَعْنِي ابْنَ مُسْلِمٍ عَنْ مُحَمَّدٍ وَهُوَ ابْنُ زِيَادٍ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ صُومُوا لِرُؤْيِهِ وَأَفْطِرُوا لِرُؤْيِهِ فَإِنْ غُمِّيَ عَلَيْكُمْ فَأَكْمِلُوا الْعِدَّةَ (صحيح المسلم باب بَابِ وَجُوبِ صَوْمِ رَمَضَانَ لِرُؤْيَةِ الْهِلَالِ وَالْفِطْرِ لِرُؤْيَةِ الْهِلَالِ وَأَنَّهُ إِذَا غُمَّ فِي أَوَّلِهِ أَوْ آخِرِهِ أُكْمِلَتْ عِدَّةُ الشَّهْرِ ثَلَاثِينَ يَوْمًا)

وجمهور الفقهاء على أنه لا يصام رمضان إلا بيقين من خروج شعبان، إما برؤية الهلال أو إكمال شعبان ثلاثين يوماً، وكذلك لا يقضى بخروج رمضان إلا بيقين مثله، لأنه ممكن في الشهر أن يكون تسعة وعشرين يوماً، فالرؤية تصحح ذلك وتوجب اليقين كإكمال العدة ثلاثين يقيناً، هذا معنى قوله: « فاقدروا له » ، عند العلماء، ولا بن عمر فيه تأويل شاذ لم يتابع عليه وسنذكره (شرح البخاري لابن البطال، باب قَوْلِ النَّبِيِّ عَلَيْهِ السَّلَامُ: « لَا نَكْتُوبُ وَلَا نَحْسُبُ »)

حديث اختلاف المطالع: أَخْرَجَ مُسْلِمٌ فِي "صَحِيحِهِ" عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ أَنَّ أُمَّ الْفَضْلِ بِنْتَ الْحَارِثِ بَعَثَتْهُ إِلَى مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ بِالشَّامِ، قَالَ: فَقَدِمْتُ الشَّامَ فَقَضَيْتُ حَاجَتَهَا، وَاسْتَهَلَّ عَلَيَّ رَمَضَانٌ وَأَنَا بِالشَّامِ، فَرَأَيْنَا الْهِلَالَ يَعْنِي لَيْلَةَ الْجُمُعَةِ ثُمَّ قَدِمْتُ الْمَدِينَةَ فِي آخِرِ الشَّهْرِ، فَسَأَلَنِي عَبْدُ اللَّهِ بْنُ عَبَّاسٍ عَنِ الْهِلَالِ، فَقَالَ: مَتَى رَأَيْتُمُ الْهِلَالَ؟ فَقُلْتُ: رَأَيْنَاهُ لَيْلَةَ الْجُمُعَةِ، فَقَالَ: أَنْتَ رَأَيْتَهُ؟ قُلْتُ: نَعَمْ، رَأَاهُ النَّاسُ، وَصَامُوا، وَصَامَ مُعَاوِيَةُ، فَقَالَ: لَكِنَّا رَأَيْنَاهُ لَيْلَةَ السَّبْتِ، فَلَا نَزَالَ نَصُومُ حَتَّى نَكْمِلَ ثَلَاثِينَ، أَوْ نَرَاهُ، فَقُلْتُ: أَلَا تَكْتَفِي بِرُؤْيَةِ مُعَاوِيَةَ وَصِيَامِهِ؟ فَقَالَ: لَا، هَكَذَا أَمَرَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، انْتَهَى. وَهُوَ حُجَّةٌ عَلَى الْمَذْهَبِ، لَكِنِ قَالَ الْبَيْهَقِيُّ رَحِمَهُ اللَّهُ فِي "الْمَعْرِفَةِ": يَحْتَمِلُ أَنْ يَكُونَ ابْنُ عَبَّاسٍ إِذَا قَالَ ذَلِكَ لِإِنْفِرَادِ كُرَيْبٍ بِهَذَا الْحَبْرِ، وَجَعَلَ طَرِيقَهُ طَرِيقَ الشَّهَادَاتِ، فَلَمْ يَقْبَلْ فِيهِ قَوْلَ الْوَاحِدِ، وَيَحْتَمِلُ أَنْ يَكُونَ قَوْلُهُ: هَكَذَا أَمَرَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اعْتِبَارًا بِقَوْلِهِ عَلَيْهِ السَّلَامُ: "إِنِ غُمَّ عَلَيْكُمْ فَأَكْمِلُوا الْعِدَّةَ"، وَيَكُونُ ذَلِكَ قَوْلُهُ، لَا فَتَوَى مِنْ جِهَتِهِ، أَخَذًا بِهَذَا الْحَبْرِ، وَانْتَهَى. وَأَجَابَ صَاحِبُ "التَّنْقِيحِ"، فَقَالَ: إِذَا مَعْنَاهُ أَنَّهُمْ لَا يُفْطِرُونَ بِقَوْلِ كُرَيْبٍ وَحْدَهُ، وَبِهِ نَقُولُ، وَإِنَّمَا حَلَّ الْخِلَافِ وَجُوبِ قَضَاءِ أَيُّومِ الْأَوَّلِ، وَلَيْسَ هُوَ فِي الْحَدِيثِ، انْتَهَى. وَهَذَا الْجَوَابُ هُوَ جَوَابُ الْأَوَّلِ لِلْبَيْهَقِيِّ، وَهُوَ بِنَاءٌ عَلَى مَذْهَبِهِمَا فِي عَدَمِ قَبُولِ الْوَاحِدِ فِي هِلَالِ رَمَضَانَ، وَاللَّهُ أَعْلَمُ. (نصب الراية)

لَوْ شَهِدَ جَمَاعَةٌ أَنَّ أَهْلَ بَلَدٍ كَذَا رَأَوْا هِلَالَ رَمَضَانَ قَبْلَكُمْ بِيَوْمٍ فَصَامُوا وَهَذَا الْيَوْمُ ثَلَاثُونَ بِحِسَابِهِمْ ، وَلَمْ يَرَ هَوْلَاءُ الْهِلَالَ لَا يُبَاحُ لَهُمْ فَطْرُ عَدٍ ، وَلَا تُتْرَكُ التَّرَاوِيحُ هَذِهِ اللَّيْلَةَ ، لِأَنَّ هَذِهِ الْجَمَاعَةَ لَمْ يَشْهَدُوا بِالرُّؤْيَةِ ، وَلَا عَلَى شَهَادَةِ غَيْرِهِمْ ، وَإِنَّمَا حَكَمُوا رُؤْيَةَ غَيْرِهِمْ ، وَلَوْ شَهِدُوا أَنَّ قَاضِي بَلَدٍ كَذَا شَهِدَ عِنْدَهُ اثْنَانِ بِرُؤْيَةِ الْهِلَالِ فِي لَيْلَةِ كَذَا ، وَقَضَى بِشَهَادَتَيْهِمَا جَارَ لِهَذَا الْقَاضِي أَنْ يَحْكُمَ بِشَهَادَتَيْهِمَا لِأَنَّ قَضَاءَ الْقَاضِي حُجَّةٌ وَقَدْ شَهِدُوا بِهِ ، (فتح القدير)

(قوله ؛ لِأَنَّهُ حِكَايَةٌ) فَإِنَّهُ لَمْ يَشْهَدُوا بِالرُّؤْيَةِ وَلَا عَلَى شَهَادَةِ غَيْرِهِمْ وَإِنَّمَا حَكَمُوا رُؤْيَةَ غَيْرِهِمْ كَذَا فِي فَتْحِ الْقَدِيرِ . قُلْتُ : وَكَذَا لَوْ شَهِدُوا بِرُؤْيَةِ غَيْرِهِمْ وَأَنَّ قَاضِي تِلْكَ الْمِصْرِ أَمَرَ النَّاسَ بِصَوْمِ رَمَضَانَ ؛ لِأَنَّهُ حِكَايَةٌ لِفِعْلِ الْقَاضِي أَيْضًا وَلَيْسَ بِحُجَّةٍ بِخِلَافِ قَضَائِهِ وَلِذَا قَيَّدَ بِقَوْلِهِ وَوَجَدَ

اسْتَجْمَاعَ شَرَائِطِ الدَّعْوَى كَمَا قُلْنَا فَتَأَمَّلْ (رد المحتار)

الجزء الأول المسئلة السابعة : إِذَا أَخْبَرَ مُحْبِرٌ عَنْ رُؤْيَا بَلَدٍ (الهِلَال) فَلَا يَحْلُو أَنْ يَقْرُبَ أَوْ يَبْعُدَ ؛ فَإِنْ قَرُبَ فَالْحُكْمُ وَاحِدٌ ، وَإِنْ بَعُدَ فَقَدْ قَالَ قَوْمٌ : لِأَهْلِ كُلِّ بَلَدٍ رُؤْيُهُمْ ، وَقِيلَ : يَلْزَمُهُمْ ذَلِكَ . وَفِي الصَّحِيحِ عَنْ كُرَيْبٍ ، { أَنَّ أُمَّ الْفَضْلِ بَعَثَتْهُ إِلَى مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ بِالشَّامِ قَالَ : فَقَدِمْتُ الشَّامَ فَفَضَيْتُ حَاجَتَهَا ، وَاسْتَهَلَّ عَلَيَّ هِلَالُ رَمَضَانَ وَأَنَا بِالشَّامِ ، فَرَأَيْتُ الْهِلَالَ لَيْلَةَ الْجُمُعَةِ ، ثُمَّ قَدِمْتُ الْمَدِينَةَ فِي آخِرِ الشَّهْرِ ، فَسَأَلَنِي ابْنُ عَبَّاسٍ ، ثُمَّ ذَكَرَ الْهِلَالَ فَقَالَ : مَتَى رَأَيْتَهُ ؟ فقلت : لَيْلَةَ الْجُمُعَةِ ، فَقَالَ : أَنْتَ رَأَيْتَهُ ؟ قلت : نَعَمْ ، وَرَأَاهُ النَّاسُ وَصَامُوا وَصَامَ مُعَاوِيَةُ قَالَ : لَكِنَّا رَأَيْنَاهُ لَيْلَةَ السَّبْتِ ، فقلت له : أَوَلَا تَكْتَفِي بِرُؤْيَا مُعَاوِيَةَ ؟ قَالَ : لَا ؛ هَكَذَا أَمَرَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ { . وَاخْتَلَفَ فِي تَأْوِيلِ قَوْلِ ابْنِ عَبَّاسٍ هَذَا ، فَقِيلَ : رَدَّهُ ؛ لِأَنَّهُ خَبَرَ وَاحِدٌ ، وَقِيلَ : رَدَّهُ ؛ لِأَنَّ الْأَفْطَارَ مُخْتَلَفَةً فِي الْمَطَالِعِ ، وَهُوَ الصَّحِيحُ ؛ لِأَنَّ كُرَيْبًا لَمْ يَشْهَدْ ، وَإِنَّمَا أَخْبَرَ عَنْ حُكْمٍ نَبَتْ بِشَهَادَةٍ ؛ وَلَا خِلَافَ فِي أَنَّ الْحُكْمَ الثَّابِتَ بِالشَّهَادَةِ يُجْزَى فِيهِ خَبَرُ الْوَاحِدِ ؛ وَنَظِيرُهُ مَا لَوْ نَبَتْ أَنَّ أَهْلَ لَيْلَةَ الْجُمُعَةِ بِأَعْمَاتٍ ، وَأَهْلَ يَأْسَبِيلَةَ لَيْلَةَ السَّبْتِ ، فَيَكُونُ لِأَهْلِ كُلِّ بَلَدٍ رُؤْيُهُمْ ؛ لِأَنَّ سَهْبًا يُكشَفُ مِنْ أَعْمَاتٍ وَلَا يُكشَفُ مِنْ إِسْبِيلَةٍ ، وَهَذَا يَدُلُّ عَلَى الْخِلَافِ الْمَطَالِعِ .

(وَلِهَذَا لَا يُقْبَلُ إِجْبَارُهُ قَاضِيًا آخَرَ) غَيْرَ الْمَكْتُوبِ إِلَيْهِ (فِي غَيْرِ عَمَلِهِ أَوْ غَيْرِ عَمَلِيهَا) وَلَوْ كَانَ عَلَى قَضَائِهِ لِأَنَّهُ بِالتَّسْبِيَةِ إِلَى الْعَمَلِ الْآخَرَ كَوَاحِدٍ مِنَ الرِّعَايَا غَيْرَ أَنَّ الْكِتَابَ حُصِّنَ مِنْ ذَلِكَ بِالْإِجْمَاعِ (فتح القدير باب كتاب القاضي إلى القاضي)
وَالْقَاضِي لَوْ أَخْبَرَ قَاضِيَّ الْبَلَدِ الْآخَرَ بِأَنَّهُ نَبَتْ عِنْدَهُ بِبَيِّنَةٍ قَبْلَهَا حَقُّ فَلَانٍ عَلَى فَلَانٍ الْكَائِنِ فِي بَلَدِ الْقَاضِي الْآخَرَ لَمْ يُجْزَ الْعَمَلُ بِهِ لِأَنَّ إِجْبَارَ الْقَاضِي لَا يُنْبِثُ حُجَّةً فِي غَيْرِ مَحَلٍّ وَلَا يَتَّبِعُهُ فِكْتَابُهُ أَوْلَى أَنْ لَا يُعْمَلَ بِهِ ، لَكِنَّهُ جَازَ بِإِجْمَاعِ الصَّحَابَةِ وَالتَّابِعِينَ لِحَاجَةِ النَّاسِ إِلَى ذَلِكَ (فتح القدير باب كتاب القاضي إلى القاضي)

مسئلة : قَالَ الْقَرَائِي فِي الدَّخِيرَةِ فِي بَابِ السِّيَاسَةِ : نَصَّ ابْنُ أَبِي زَيْدٍ فِي التَّوَادِرِ عَلَى أَنَّا إِذَا لَمْ نَجِدْ فِي جِهَةٍ إِلَّا غَيْرَ الْعُدُولِ أَقْمَنَّا أَصْلَحَهُمْ وَأَقْلَهُمْ فُجُورًا لِلشَّهَادَةِ عَلَيْهِمْ وَيَلْزَمُ مِثْلُ ذَلِكَ فِي الْفَضَاةِ وَغَيْرِهِمْ فَلَا تُضَيِّعُ الْمَصَالِحَ . (تبصرة الحكام في أصول الأفضية ومناهج الأحكام)
وَفِي كِتَابِ ابْنِ شَعْبَانَ إِذَا لَمْ يَكُنْ فِي الْبَلَدِ عُدُولٌ قُبِلَ مِنْهُمْ الْأَمْتَلُ فَلَا مِثْلَ لِلضَّرُورَةِ ، وَيُؤَيِّدُ هَذَا مَا قَالَهُ ، ابْنُ أَبِي زَيْدٍ قَبْلَ هَذَا فِيمَا نَقَلَهُ الْقَرَائِي ، أَنَّهُ إِذَا لَمْ نَجِدْ فِي جِهَةٍ إِلَّا غَيْرَ الْعُدُولِ أَقْمَنَّا أَصْلَحَهُمْ وَأَقْلَهُمْ فُجُورًا لِلشَّهَادَةِ عَلَيْهِمْ . (تبصرة الحكام في أصول الأفضية ومناهج الأحكام)

(مسئلة) : قَالَ الْقَرَائِي فِي بَابِ السِّيَاسَةِ : نَصَّ بَعْضُ الْعُلَمَاءِ عَلَى أَنَّا إِذَا لَمْ نَجِدْ فِي جِهَةٍ إِلَّا غَيْرَ الْعُدُولِ أَقْمَنَّا أَصْلَحَهُمْ وَأَقْلَهُمْ فُجُورًا لِلشَّهَادَةِ عَلَيْهِمْ ، وَيَلْزَمُ ذَلِكَ فِي الْفَضَاةِ وَغَيْرِهِمْ لِئَلَّا تُضَيِّعَ الْمَصَالِحَ .
قَالَ : وَمَا أَظُنُّ أَحَدًا يُجَالِفُ فِي هَذَا ، فَإِنَّ التَّكْلِيفَ شَرْطٌ فِي الْإِمْكَانِ ، وَهَذَا كُلُّهُ لِلضَّرُورَةِ لِئَلَّا تُهْدَرَ الْأَمْوَالُ وَتُضَيِّعَ الْحُقُوقُ . (معين الحكام فيما يتردد بين الخصمين من الأحكام)

وَلَوْ سَمِعَ مِنْ وَرَاءِ حِجَابٍ كَتِيفٍ لَا يَشْفُ مِنْ وَرَائِهِ لَا يَجُوزُ لَهُ أَنْ يَشْهَدَ ، وَلَوْ شَهِدَ وَفَسَّرَهُ لِلْقَاضِي بِأَنْ قَالَ سَمِعْتُهُ بَاعَ وَمَ أَرَّ شَحْصَهُ حِينَ تَكَلَّمَ لَا يَقْبَلُهُ لِأَنَّ النَّعْمَةَ تُشْبِهُ النَّعْمَةَ إِلَّا إِذَا أَحَاطَ بِعِلْمِ ذَلِكَ لِأَنَّ الْمُسْتَوْعَ هُوَ الْعِلْمُ غَيْرَ أَنَّ رُؤْيَتَهُ مُتَكَلِّمًا بِالْعَقْدِ طَرِيقُ الْعِلْمِ بِهِ فَإِذَا فَرَضَ تَحْقُوقَ طَرِيقِ آخَرَ جَازَ ، وَذَلِكَ بِأَنْ يَكُونَ دَخَلَ الْبَيْتَ فَرَأَاهُ فِيهِ وَعَلِمَ أَنَّهُ لَيْسَ بِهِ أَحَدٌ غَيْرُهُ وَلَا مَنْفَعَدَ غَيْرِ الْبَابِ وَهُوَ قَدْ جَلَسَ عَلَيْهِ وَسَمِعَ الْإِفْرَازَ أَوْ الْبَيْعَ فَإِنَّهُ حِينَئِذٍ يَجُوزُ لَهُ الشَّهَادَةُ عَلَيْهِ بِمَا سَمِعَ لِأَنَّهُ حَصَلَ بِهِ الْعِلْمُ فِي هَذِهِ الصُّورَةِ . (فتح القدير ، فصل يتعلَّق بِكَيْفِيَّةِ الْأَدَاءِ وَمُسَوِّغِهِ)

قَالَ فِي الْعُيُونِ : وَالْفَتْوَى عَلَى قَوْلَيْهَا إِذَا تَبَيَّنَ أَنَّ خَطَأَهُ سَوَاءٌ كَانَ فِي الْفَضَاةِ أَوْ الرِّوَايَةِ أَوْ الشَّهَادَةِ عَلَى الصَّكِّ ، وَإِنْ لَمْ يَكُنْ الصَّكُّ فِي يَدِ الشَّاهِدِ ، لِأَنَّ الْعَلَطَ نَادِرٌ وَأَثَرُ التَّغْيِيرِ يُمْكِنُ الْإِطْلَاقَ عَلَيْهِ ، وَقَلَّمَا يَشْتَبِهُ الْخَطُؤَ مِنْ كُلِّ وَجْهِ فَإِذَا تَبَيَّنَ جَازَ الْإِعْتِمَادُ عَلَيْهِ تَوْسِعَةً عَلَى النَّاسِ هـ (رد المحتار باب كتاب القاضي إلى القاضي وَغَيْرِهِ)

إذا تواردت أخبار راديو، متعددة من شتى جهات و لا تختلف جهات الأنباء من بلد الذي لم يرى فيه الهلال بعد يختلف فيه فيصوغ العمل بهذه الأنباء المرسله و تدخل في حد الاستفاضة المفيدة للطمانية (معارف السنن 340/5)

Istifaadah

استفاضه

(شَهِدُوا أَنَّهُ شَهِدَ عِنْدَ قَاضِي مِصْرَ كَذَا شَاهِدَانِ بِرُؤْيَا الْهَلَالِ) فِي لَيْلَةِ كَذَا (وَقَضَى) الْقَاضِي (بِهِ وَوَجَدَ اسْتِجْمَاعَ شَرَائِطِ الدَّعْوَى قَضَى)
أَيَّ جَازَ هَذَا (الْقَاضِي) أَنْ يَحْكُمَ (بِشَهَادَتَيْهِمَا) لِأَنَّ قَضَاءَ الْقَاضِي حُجَّةٌ وَقَدْ شَهِدُوا بِهِ لَا لَوْ شَهِدُوا بِرُؤْيَا غَيْرِهِمْ لِأَنَّهُ حِكَايَةٌ ، نَعَمْ لَوْ
اسْتَفَاضَ الْحَبْرُ فِي الْبَلَدَةِ الْأُخْرَى لَزِمَهُمْ عَلَى الصَّحِيحِ مِنَ الْمَذْهَبِ مُجْتَبَى وَعَبْرُهُ

(قَوْلُهُ ؛ لِأَنَّهُ حِكَايَةٌ) فَإِنَّهُ لَمْ يَشْهَدُوا بِالرُّؤْيَا وَلَا عَلَى شَهَادَةِ غَيْرِهِمْ وَإِنَّمَا حَكُّوا رُؤْيَا غَيْرِهِمْ كَذَا فِي فَتْحِ الْمَقْدِيرِ .

قُلْتُ : وَكَذَا لَوْ شَهِدُوا بِرُؤْيَا غَيْرِهِمْ وَأَنَّ قَاضِي تِلْكَ الْمِصْرِ أَمَرَ النَّاسَ بِصَوْمِ رَمَضَانَ ؛ لِأَنَّهُ حِكَايَةٌ لِفِعْلِ الْقَاضِي أَيْضًا وَلَيْسَ بِحُجَّةٍ بِخِلَافِ
قَضَائِهِ وَلِذَا قَيَّدَ بِقَوْلِهِ وَوَجَدَ اسْتِجْمَاعَ شَرَائِطِ الدَّعْوَى كَمَا قُلْنَا فَتَأَمَّلْ (قَوْلُهُ : نَعَمْ إِخْلُ) فِي الدَّخِيرَةِ قَالَ شَمْسُ الْأَيْمَةِ الْحُلَوَائِيُّ : الصَّحِيحُ مِنْ
مَذْهَبِ أَصْحَابِنَا أَنَّ الْحَبْرَ إِذَا اسْتَفَاضَ وَتَحَقَّقَ فِيمَا بَيْنَ أَهْلِ الْبَلَدَةِ الْأُخْرَى يَلْزِمُهُمْ حُكْمُ هَذِهِ الْبَلَدَةِ أَهْلاً وَمِثْلُهُ فِي الشَّرْئِئِلَالِيَّةِ عَنِ الْمُعْنِيِّ .
قُلْتُ : وَوَجْهُ الْإِسْتِدْرَاكِ أَنَّ هَذِهِ الْإِسْتِفَاضَةَ لَيْسَ فِيهَا شَهَادَةٌ عَلَى قَاضٍ وَلَا عَلَى شَهَادَةٍ لَكِنْ لَمَّا كَانَتْ بِمَنْزِلَةِ الْحَبْرِ الْمُتَوَاتِرِ ، وَقَدْ ثَبَتَ
بِهَا أَنَّ أَهْلَ تِلْكَ الْبَلَدَةِ صَامُوا يَوْمَ كَذَا لَزِمَ الْعَمَلُ بِهَا ؛ لِأَنَّ الْبَلَدَةَ لَا تَخْلُو عَنْ حَاكِمٍ شَرْعِيٍّ عَادَةً فَلَا بُدَّ مِنْ أَنْ يَكُونَ صَوْمُهُمْ مَبْنِيًّا عَلَى حُكْمِ
حَاكِمِهِمْ الشَّرْعِيِّ فَكَانَتْ تِلْكَ الْإِسْتِفَاضَةُ بِمَعْنَى ثَقْلِ الْحُكْمِ الْمَذْكُورِ ، وَهِيَ أَقْوَى مِنَ الشَّهَادَةِ بِأَنَّ أَهْلَ تِلْكَ الْبَلَدَةِ رَأَوْا الْهَلَالَ وَصَامُوا ؛ لِأَنَّهَا
لَا تُفِيدُ الْيَقِينَ فَلِذَا لَمْ تُقْبَلْ إِلَّا إِذَا كَانَتْ عَلَى الْحُكْمِ أَوْ عَلَى شَهَادَةِ غَيْرِهِمْ لِتَكُونَ شَهَادَةً مُعْتَبَرَةً ، وَإِلَّا فَهِيَ مُجَرَّدُ إِخْبَارٍ بِخِلَافِ الْإِسْتِفَاضَةِ
فَإِنَّهَا تُفِيدُ الْيَقِينَ فَلَا يُنَافِي مَا قَبْلَهُ هَذَا مَا ظَهَرَ لِي تَأَمَّلْ .

[تَنْبِيهُ] قَالَ الرَّحْمِيُّ : مَعْنَى الْإِسْتِفَاضَةِ أَنَّ تَأْتِي مِنْ تِلْكَ الْبَلَدَةِ جَمَاعَاتٌ مُتَعَدِّدُونَ كُلٌّ مِنْهُمْ يُخْبِرُ عَنْ أَهْلِ تِلْكَ الْبَلَدَةِ أَنَّهُمْ صَامُوا عَنْ رُؤْيَا لَا
مُجَرَّدِ الشُّبُوحِ مِنْ غَيْرِ عِلْمٍ بِمَنْ أَشَاعَهُ كَمَا قَدْ تَشْبِعُ أَحْبَابًا يَتَحَدَّثُ سَائِرُ أَهْلِ الْبَلَدَةِ وَلَا يَعْلَمُ مَنْ أَشَاعَهَا كَمَا وَرَدَ : أَنَّ فِي آخِرِ الزَّمَانِ يَجْلِسُ
الشَّيْطَانُ بَيْنَ الْجَمَاعَةِ فَيَتَكَلَّمُ بِالْكَلِمَةِ فَيَتَحَدَّثُونَ بِهَا وَيَقُولُونَ لَا نَدْرِي مَنْ قَالَهَا فَمِثْلُ هَذَا لَا يَنْبَغِي أَنْ يُسْمَعَ فَضْلًا عَنْ أَنْ يَثْبُتَ بِهِ حُكْمٌ
أ هـ .

قُلْتُ : وَهُوَ كَلَامٌ حَسَنٌ وَيُشِيرُ إِلَيْهِ قَوْلُ الدَّخِيرَةِ إِذَا اسْتَفَاضَ وَتَحَقَّقَ فَإِنَّ التَّحَقُّقَ لَا يُوجَدُ بِمُجَرَّدِ الشُّبُوحِ