

## The Dhu al-Hijjah Moon

It happens often that the Dhu al-Hijjah new moon is established for a non-Imami scholar, and he declares its sighting, and the authorities of al-Haramayn al-Sharifayn make it compulsory for all pilgrims to follow his ruling, regardless of whether the new moon has been established for an Imami *mujtahid* or not. In such a case, what is an Imami pilgrim to do about the *wuquf* in 'Arafat and other rites related to specific dates and times if he cannot act according to his own school of fiqh? Is his Hajj invalid if he makes the halt with others, performing all the rites simultaneously with them?

Al-Sayyid al-Hakim, in his *Manahij al-hajj* (1381 H.), p. 91, says: "When the non-Imami authority (*hakim*) rules that the new moon has been sighted, so that the halt in 'Arafat takes place on the 8th of Dhu al-Hijjah and the halt in the Mash'ar on the 9th, then on the principle of *taqiyyah*, or the fear of being harmed, the halt with others is valid and relieves one of the duty. The same holds in case of a *na'ib* undertaking Hajj on another's behalf or one on a *mustahabb* Hajj of oneself or that of another. Also, there is no difference with respect to fulfilment of the duty whether he knows or not that the ruling (of the non-Imami *hakim*) is contrary to the reality."

Al-Sayyid al-Khu'i in *Manasik al-hajj* (1380 H.), p. 80, says: "When the new moon is established for a non-Imami *qadi* and he rules that it has been sighted, but the sighting of the new moon is not established for the Shi'ah 'ulama', to follow others in making the halt is obligatory and satisfactory of the Hajj duty if there is a probability of the ruling being correct. One who acts contrary to the dictates of *taqiyyah* and the possibility of being harmed, thinking that legal caution lies in acting contrary to them, has committed something forbidden and his Hajj is invalid."<sup>1</sup>

There is no doubt that God desires ease not hardship for His servants, and there is hardship in repeating the Hajj another time, even for one who has the means to undertake it more than once. But what should a poor man do who returns the next year to find the same thing to have occurred again? Should he keep on repeating the pilgrimage, two, three, or four times... until it coincides with the ruling of his school? May God's peace and benedictions be upon Amir al-Mu'minin, the Sayyid al-Wasiyyin, who said:

إن الله كَلَّفَ يسيراً ، ولم يُكَلِّفْ عسيراً ، وأعطى على القليل كثيراً

God has assigned duties which are easy to fulfil not difficult to cope with; and He rewards much for little.

Besides, we know that such kind of things happened during the era of the Infallible Imams ('a) and not one of them is known to have commanded the Shi'ah to repeat the Hajj. It is on this basis that al-Sayyid al-Hakim, in *Dalil al-nasikin*, says, "To fall in with the ruling of the non-Imami *qadi* is permissible; this is in accordance with definitive practice from the times of the Imams ('a), which has been to follow them (i.e. the non-Imamis) in the halt (at 'Arafat), and no other alternative has ever been suggested."

However, al-Sayyid al-Shahrudi, in his *Manasik al-hajj*, says, "It is permissible to follow, in regard to this question, the *fatwa* of the absolute *mujtahid* (*al-mujtahid al-mutlaq*) who considers it permissible." To tell the truth, to me this kind of thing is not digestible when coming from a *mujtahid mutlaq*, although I have read and heard such things from more than one *mujtahid* whom the common people follow.

Because, a *mujtahid mutlaq* in his *fatwas* should either take an affirmative or a negative stand, and if he doesn't, has no right to be a legal authority (for *taqlid*). Someone may say that it is not a condition for being *mujtahid mutlaq* that he should never abstain from giving a definitive *fatwa* or give up caution (*ihtiyat*) in some matter, for 'caution is the path of salvation' (*al-'ihtiyat sabil al-najat*). In answer I would say, this is an obvious fallacy.

Because, *ihtiyat* in a matter is something, and giving a *fatwa* to consult someone else is another matter. In fact when the *mujtahid* sees the necessity of *ihtiyat* in a matter, he does not give a *fatwa* upon it—as is the practice of legal authorities regarding several issues?

Here we affirm al-Hakim's position, because we understand from the necessary grounds for *taqiyyah* that the 9th is a requirement for *wuquf* in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for *sajdah* (prostration) in *salat* that it should be made on something which is not edible or wearable (*ghayr al-ma'kul wa al-malbus*)—a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

1. Our teacher al-Sayyid al-Khu'i makes the absence of knowledge (that the *fatwa* of the non-Imami authority about the sighting of the new moon is contrary to fact) a condition for the Hajj being satisfactory of the duty. But al-Sayyid al-Hakim considers the knowledge of its contradiction with reality or absence of such knowledge indifferent to the Hajj (performed on the basis of the non-Imami faqih's declaration) being satisfactory of the duty. Here we affirm al-Hakim's position, because we understand from the necessary grounds for *taqiyyah* that the 9th is a requirement for *wuquf* in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for *sajdah* (prostration) in *salat* that it should be made on something which is not edible or wearable (*ghayr al-ma'kul wa al-malbus*)—a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

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