

Translation of Fatwa (20/2569)

(1)... Although using optical aids is not necessary, it is not prohibited either. From a *shar'i* perspective, it considerably seems that a sighting done by optical aid is valid, given that the optical aid simply enhances the vision by capturing the light of the crescent present on the horizon using lenses or similar mechanisms, thereby magnifying the size of the object, and making it easier to see. This is because this sighting, although via a secondary medium, is done by the human eye and is a view of the actual moon. Moreover, in common knowledge, this type of sighting is accepted to be a view of the actual moon using the human eyes. In optical aids, the very rays of light coming from the moon are seen with the help of the eyepiece. Additionally, the optically aided sighting is only possible when the crescent is above the horizon and a portion of its side that is facing the earth is lit. Simply put, the optical aid enhances an object that is already on the horizon. Thus, a sighting done using such an optical aid shall be considered valid.

However, if an optical aid, in addition to the above mechanism, makes the celestial object visible through extraordinary means, (ex: it produces a celestial object from below the horizon, or it creates a picture or shape of the object based on astronomical data and not its actual presence) then such a sighting of the moon shall not be considered valid, as it is contrary to the *Shar'i* principle for valid sightings, that is, to actually sight the moon itself. A sighting using extraordinary means is essentially to rely on the mere existence of the moon, which results in abandoning the simple criteria set by the *Shariah* of sighting the moon. Furthermore,



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when using such a powerful optical aid, it is most probable that the celestial object was not possible to sight, and so it is not plausible to consider this an actual sighting of the moon itself.

(2)... There is no doubt that sighting via optical aids is an actual sighting, as there is no requirement for the validity of a sighting that it be without intermediaries or that it be direct. The reflection and/or refraction occurring within the optical aids do not disqualify the sighting. However, confusion is possible regarding what exactly is being sighted. In other words, is the requirement of the *Hadith*, “Fast when you sight it [the moon],” (i.e. actually sighting the moon itself), fulfilled in an optical aid observation? This is necessary to answer in order to clarify whether the next month shall begin by an observation using optical aids.¹

Explicit mention about beginning the month on the basis of a sighting through reflection and refraction could not be found in the works of the *Hanafi fuqaha* despite extensive search. However, in some other issues,

¹ To help understand this, a brief overview of the types of optical aids and their structures is given below. Fundamentally, two types of optical aids are used for seeing distant objects, especially celestial bodies: (1) optical/visual telescopes (2) binoculars. Both work by gathering the light coming from a celestial object, thereby enlarging it and strengthening the vision of the unaided eye. Optical telescopes are two basic types: (1) refracting telescope (2) reflecting telescope. Refracting telescopes are composed primarily of lenses, while reflecting telescopes are composed of mirrors. The rays of light coming in a refracting telescope bend slightly, but nonetheless, pass through to the other side. In a reflecting telescope, on the other hand, the rays of light bounce off the mirrors and do not pass through.

Binoculars are essentially two refracting telescopes together. And since one main purpose of binoculars is terrestrial observation, seeing everything right-side up is necessary. As such, binoculars consist of an additional piece between the objective lens and eyepiece, known as prisms.



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Hanafi fuqaha have considered sightings done from behind glass or other such transparent mediums to be sightings of the objects themselves, while acknowledging the possibility of distortion. They referred to this as *nufuz al-basar*, or the passing of the vision through the medium, which, in physics is termed as refraction. Thus, a medium of refraction (and any resulting distortion) seems to have no effect on considering it to be a sighting of the actual moon.

The *Shafi fuqaha* have discussed this topic. This can be found in the acclaimed work of *Allamah ibn Hajr Haitami Makki Shafi rahimahullah*, namely *Tuhfat al Muhtaj Sharh al Minhaj*, wherein he mentions a valid sighting to be contingent on the absence of an intermediary, suggesting mirrors as an example of an intermediary. However, *Allamah Shirwani rahimahullah* has withheld a decisive opinion (*tawaqquf*) regarding this, expressing that even through the medium of an optical aid, it is nonetheless a sighting.

In physics, looking via the medium of a mirror or its likes is termed as reflection. This terminology can also be found in the works of the *fuqaha*. Some *fuqaha* have considered looking in a mirror or on water to be a viewing not of the object itself, but of its impression, illusion, or reflection, and thus they did not issue the same ruling for it as of seeing the object itself. Other *fuqaha* have explicitly negated this opinion and declared such a sighting to be of the actual object itself. The texts of *Allamah Ibn al Arabi Maliki*, *Allamah Ala al Deen Samarqandi Hanafi*, and *Allamah Ala al Deen Kasani Hanafi* are clear examples.

Moreover, we can see an object because light rays bounce off it and enter our eyes. The same phenomenon occurs in an optical aid, as the



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same light rays that bounce off the object enter the objective lens of the optical aid, and then travel to the observer's eyes. In both cases, with or without a medium, the same rays of light result in vision, thus, logically, the ruling of both will be the same.

Additionally, a review of the structure of the two types of binoculars shows that reflection does not occur in any stage of a refracting telescope, and that magnification occurs through refraction. Acknowledging the possibility of distortion, the *fugaha* have nonetheless considered it a valid sighting of the object itself, as mentioned previously. In a reflecting telescope, however, the magnification is a result of reflection, and as clarified, looking through the medium of reflection is also a valid sighting of the object itself.

If, however, an additional diagonal is attached to the eyepiece of a refracting telescope to correct the orientation of the image, this piece of the refracting telescope will have reflection, since a diagonal is composed either of mirrors or prisms. When a mirror is used in the diagonal, the occurrence of reflection is obvious, but when a prism is used, a unique type of reflection occurs, known as total internal reflection. Thus, the explanation regarding reflecting telescopes can apply to binoculars and this specific situation of refracting telescopes.

In conclusion, it considerably seems that it is correct to declare the beginning of the next month based on a sighting of the moon using a refracting telescope, reflecting telescope, or binoculars, as long as it also fulfills the criteria of *Shar'i Shahadah*.

(3)... Considering the sighting of the moon in a mirror or in water as invalid based on qiyas on the mentioned *masa'il* appears to be fallacious.

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The reason why the *fuqaha* did not base the ruling based on a viewing in a mirror or in water in those few *masa'il* is not due to the presence of an intermediary. Rather, in *khiyar al ru'yah* it is because the objective, i.e. adequate knowledge of the purchased item, is missing. In the *mas'alas* of *hurma al musaharah* and physical *ruju'* it is due to extra caution. In the *mas'alas* of *yameen* and *talaq*, it is based on *'urf* (custom).

The purpose of *khiyar al ru'yah* is attaining knowledge of the item intended, i.e. attaining adequate identification of the item and sufficient knowledge of all its important details. Once this purpose is fulfilled, whether it be by viewing or some other way, the option to return shall be revoked. If not, it remains as long as this purpose is not achieved. This shows that the ruling of the revocation of *khiyar al ru'yah* revolves around the fulfillment of this purpose. Based on this, the presence of a transparent or reflective intermediary does not always affect the *khiyar al ru'yah*. It only does so when the intermediary disturbs the purpose of the *khiyar*, meaning it distorts the shape of the item such that adequate identification is not attained.

For this reason, if adequate identification of an item is attained without seeing it, (ex: by describing the item to a blind person, or by touching, smelling or feeling an item in the dark that is only identified by such senses), the *khiyar al ru'yah* will terminate. Furthermore, if adequate identification is attained by a prior viewing and no changes occurred later, then the sale can no longer be terminated on the grounds of *khiyar al ru'yah*.

However, the purport of the texts that appear to show the continuation of *khiyar al ru'yah* when the item is seen through a reflective



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intermediary, is that this ruling is regarding only those situations where the medium causes such perverse distortion that it disturbs adequate identification, for instance, the shape of the mirror contorts the shape of the item.

This is to the extent that if a transparent partition prevents adequate identification, (ex: tinted glass that changes the color of the item being sold where color makes a difference; or the viscosity of the item is important, for example in oil) *khayar al ru'yah* will remain, despite viewing the item from behind the transparent partition. This is despite the fact that this is actual sighting of the item itself, and as compared to viewing from a reflective intermediary, a transparent one is relatively more direct (and is thus referred to by the *fuqaha* as *nufuz al basar*).

On the contrary, viewing the moon with all its characteristics and details is not the purpose of moonsighting. Rather, sighting the moon itself is sufficient, and this is achieved despite the reflection and refraction occurring in optical aids. Moreover, even if the details of the moon look different, since actual sighting of the moon itself is being achieved, the next month shall begin as long as the criteria of *Shar'i Shahadah* is met. Furthermore, a previous sighting of the moon is not sufficient, and neither is simply describing it, while these are sufficient in *khayar al ru'yah* if the purpose is fulfilled. In conclusion, making *qiyas* on *khayar al ru'yah* is erroneous.

As far as *hurmat al musaharah*, physical *ruju'* and the *mas'alas* of *yameen* and *talaq* are concerned, texts proving the inapplicability of the ruling on the basis of seeing via reflection can be found. But even here, the reason



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is not that looking through the medium of reflection is not of the object itself, but in each of these *masa'il*, the reasoning is different.

In the case of *hurmat al musaharah*, the entire ruling of establishing *hurmat al musaharah* due to lustful physical contact with an unrelated woman is based on caution and *maslahah*. Otherwise, women are inherently permissible to marry. In addition, the ruling of *hurmat* by looking is based on further caution, and is thus confined to very specific conditions, some of which are explicitly mentioned in the texts of the *fugaha*, (ex: looking at the inner private part of the woman with lust). If the ruling of *hurmat* were to be applied when looking at a reflection, this would necessitate caution upon caution, which is unwarranted. Furthermore, to establish *hurmat* in such a situation requires an independent *daleel*, which does not exist. And if this fact is taken into consideration that *hurmat al musaharah* is itself based on caution, then establishing *hurmat* by viewing from a reflection would be caution upon caution upon caution, which cannot apparently be taken into consideration. The conclusion is that simply looking at the inner private of a woman is not enough, even though the other conditions may be met. Rather, it is also necessary that it is viewed directly without any intermediaries, and at the very least, it should be akin to a direct viewing.

Moreover, even though viewings via transparent and reflective mediums are viewings of the actual object itself, with respect to the role and structure of each, however, there is an obvious difference between the two. Viewing through a transparent partition is akin to a direct viewing, because the vision passes through and is facing the object seen. In addition, the transparent partition has no role in making the object



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visible in that the object could be seen whether the transparent partition is present or not. The most that can be said is that the transparent partition did not become an obstruction from visibility. On the contrary, a viewing done through a reflective medium cannot truly be called direct, as this medium itself has a fundamental role in making the object visible, and, the object was seen in the medium. Furthermore, the person looking is not truly facing the object, though it has been acceded to be akin to facing it.

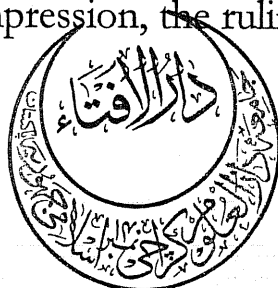
Thus, the reasoning for the texts that demonstrate *hurmat al musaharah* based on viewing from behind a transparent partition, is that such a viewing is akin to a direct viewing and holds the same ruling.

Furthermore, because the occurrence of physical *ruju'* by sight is contingent on the very same conditions required for establishing *hurmat al musaharah*, *ruju'* will also not occur when seen through a medium, just like *hurmat al musaharah*.

But in the cases of *yameen* and *talaq* that are conditional to seeing the moon, the oath shall not break nor shall *talaq* occur if the moon is sighted in a mirror. However, this sighting is not invalidated simply because of the presence of a medium, nor on the grounds of not having observed the actual moon. Rather, in these *masa'il*, the ruling revolves around the *'urf*, and it is for this reason that the ruling is not established, as the common understanding is that such an oath refers to seeing the moon directly and not via a medium.

Therefore, although the moon seen in a mirror was an actual sighting of the moon itself, since it is commonly said that the person did not see the moon but rather its reflection or impression, the ruling of *yameen* and

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talaq are not applied. A logical conclusion based on this is that if in some ‘urf, a sighting in a medium is also intended, then the rulings of *hinth* and occurrence of *talaq* should also follow.

On the contrary, if the moon is sighted through an optical aid, it is not usually understood to be a sighting of its reflection or impression or illusion. Rather, common understanding coincides with the reality, and even conventionally, it is an actual sighting of the moon itself.

In conclusion, there is no difference in the commencement of the new month whether the moon is seen directly or through a medium, as the ruling revolves around sighting the moon itself. This condition is found in both types of optical aids. This is the case even if the sighting is assumed to be a reflection in a reflective telescope, because the very rays of light coming from the moon reach our eyes, and thus it can accurately be considered a sighting of the moon itself. It follows that sighting the moon through optical aids is sufficient for establishing the next month. Conversely, in the other *masa’il* mentioned, since the basis of the rulings is different, it appears fallacious to make *qiyas* of moonsighting on these *masa’il*.

(4)... The author’s mentioned point is incorrect. This is because as far as we know, about four and a half years before the fatwa of Hazrat Mawlana Ashraf Ali Thanwi *rahimahullah*, the former Grand Mufti of Egypt and great Hanafi scholar, Hazrat Shaikh Muhammad Bikheet Mutee’i *rahimahullah* wrote a booklet titled, “*Irshad Ahl al Milla ila Ithbat al Ahillah*,” in which he determined that moonsighting with optical aids is valid on the grounds that it is a sighting of the moon itself. Shaikh Bikheet *rahimahullah* also established that optical aids merely enhance the



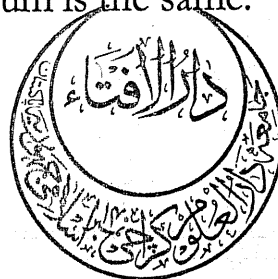
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vision by helping a person see distant or small objects that were not easily visible without this aid. He further considered eyeglasses as a precedent, thereby establishing that looking through optical aids is no different from looking with the naked eye. Despite this, however, it appears that Shaikh Bikheet *rahimahullah* opined that a sighting of the moon done by reflection on a mirror would be invalid.

Moreover, other Ulama Kiram of the recent past have also considered sighting with optical aids valid, and they did so without relying on the fatwa of Hazrat Hakeem al Ummah Ashraf Ali Thanwi *rahimahullah*. (See the unanimous resolutions of the *Majlis Hai'ah Kibar al Ulama* and *Majma Fiqh al Islami al Duwali Jeddah*, as well as the *fatawa* of Shaikh Bin Baz and Shaikh Ibn Uthaymeen *rahimahumullah*)

(5)... Firstly, it should be clear that the validity of a sighting made with optical aids is not a product of qiyas on eyeglasses. Rather, it is because the purport of the blessed Hadith in this regard is met, that is, actual sighting of the moon itself. However, it appears that since the ruling of such a sighting can possibly be unclear due to the presence of an intermediary, Hazrat Thanwi *rahimahullah* mentioned eyeglasses as a precedent, because eyeglasses are, overall, also an interference and medium, yet the validity of a sighting while wearing eyeglasses is an accepted fact. Furthermore, there exist some similarities between both eyeglasses and optical aids, as both are composed of lenses, (though lenses are a structural part of refractive telescopes and ancillary in reflective telescopes). Moreover, the type of lens used in hyperopia glasses are the same as those used in refractive telescopes: convex lens, and from this angle, the resulting medium is the same.



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This further exposes that differentiating between eyeglasses and optical aids based on their purposes is not correct (based on the argument that eyeglasses are to correct vision and make it normal, while optical aids are to enhance vision beyond normal). Instead, since it is established that the next month shall begin simply when the moon is sighted, then the presence of an intermediary and the enhancement of vision beyond normal do not affect the validity of the sighting.

Moreover, although there is a difference between the two considering their purposes, the fact that the lens used in both is the same does not change, and nor is there such a differentiating factor between the two to make one valid and the other invalid. Therefore, considering this to be erroneous qiyas would not be correct.

(6)... It has become clear from the answers above that to deem certain points of Hazrat Hakeem al Ummah *rahimahullah's* fatwa to be a *fiqhi* misjudgment is a misconception. Furthermore, most of those after Hazrat *rahimahullah* who issued *fatawa* declaring the validity of moonsighting with optical aids did so independently, without citing Hazrat *rahimahullah*. This being the case, it is extremely inappropriate to deem Hazrat *rahimahullah's* fatwa a *fiqhi tasamuh* and thereby discredit the Ulama Kiram after him to have merely relied on Hazrat *rahimahullah's* work. Moreover, the text of *Sharh Uqood Rasm al Mufti* regarding errors in transcription and the emulation of these errors by later scholars is presented as an example, while, most of the Ulama Kiram have issued independent *fatawa* regarding the *mas'ala* at hand.

(7)... Much contention exists among the expert astronomers regarding the minimum criteria for moon visibility. However, these criteria are




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based on coherent observational data, and is not a *Shar'i* matter.

According to the Shariah, when the moon is sighted for the first time, the following day shall be the first of the next month, regardless of the astronomical details of the moon. As such, if the decision mentioned was made while abiding by the criteria of *Shar'i Shahadah*, it is valid.

And Allah knows best.


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Translation is correct.



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Note: The original text of the Fatwa (20/2569) is in Urdu. The above text is its translation.



Agreed


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