

# The malady of operating beyond law

The question is, do we want sustained laborious action under the law to strengthen our democratic foundation or do we need rash desperate action without the cover of law? The "crossfire actions," undoubtedly, do not fit in with the first proposition. We need to be absolutely clear about that.

MUHAMMAD NURUL HUDA

THE Daily Star editorial of November 10 takes a very critical view of the pernicious modus operandi of a category of law enforcement officials that are reportedly operating beyond the law. It expresses justified concern at reports of "crossfire," "encounter" and "gunfights" that appear to be the preferred means for combating crimes. The premonition is that we are observing an increasing lack of faith in the legal system.

It is an unfortunate reality in Bangladesh that the greatest single factor that has tarnished the image of law enforcers is the practice of third degree methods. This practice alienates the police from the public, and the latter usually avoid any connection with police work. When a law enforcer indulges in third degree methods he not only brutalises himself but also degrades himself to the level of a criminal.

The efforts to obtain confessions through torture become more reprehensible than the misguided act of an ordinary criminal. We have to remember that expediency, protection of society, or the imperative need to bring an offender to justice are but poor arguments in favour of a barbaric practice. Law does not approve of an investigator turning into another criminal in order to solve a crime. If the government becomes a law-breaker, it breeds contempt for law.

We have to also remember that the persons on whom atrocities are perpetrated in police custody are left without any evidence to prove who the offenders are. Therefore, the time may have come when the law, as to the burden of proof, may have to be re-examined by the legislature so that the protectors do not use their authority and opportunity for oppressing innocent citizens.

It is rather unfortunate that in Bangladesh the investigating agencies still feel that a case is solved as soon as

they manage to get a confession from the accused, hence the tendency to extort a confession through torture. It is mostly forgotten that confession under pressure, even if judicially recorded, is often false and unverifiable, and is retracted in court. Such retracted confession has no value to the prosecution without substantive corroboration from other independent sources.

It is time to travel from evidence to accused and not from accused to evidence. Herein arises the question of proper investigation and the paramount necessity of attitudinal change. An environment has to be created in which no arrest can be made merely because it is lawful for the police officer to make an arrest. One has to realise that the existence of power to arrest is one thing and justification for it is quite another.

To many, the crossfire incidents are in fact extra judicial murders that have been authoritatively encouraged. There is good reason to agree with such a view as the so-called crossfire continued unabated during the democratic dispensation of 2001-2006. During the caretaker interval there were comparatively fewer deaths in crossfire. The return of democracy since early 2009 has not been able to put an effective stop to the suspected extrajudicial killing in the garb of crossfire.

Under circumstances as above, should citizens believe that lawless enforcement

officials are in great demand when lawlessness and disorder prevail? Alternately, are believers in the rule of law and followers of the straight legal methods not required and have to recede into the background? Don't we need to put sustained efforts to achieve substantial results in the long run? Won't we be able to shake off the obsession with the so-called spectacular results that in fact are illusory?

It is high time that we start realising the pernicious effects of the use of dirty methods by law-enforcement officials. When such functionaries are allowed to go beyond the law, they make the law dirty. It has to be borne in mind that for democratic, responsible government law is the means and justice is the end.

If, as a civilised nation, we expect our regulatory institutions, including the police, to regularly brush up their professional skills then we cannot be a party to willy-nilly facilitate the creation of a scenario wherein one would be willing to believe that those perpetrators of crime who cannot be brought under the law have to be dealt with beyond the law.

Needless to mention here that in such an assumption lies the suicidal admission that the criminal justice administration of a democratic polity has failed to act and the state has forsaken one of its primary functions. Since no right-thinking Bangladeshi would reconcile to such a

scenario, that smacks of a failed government, they have a duty to find out why some organs of the state have to resort to apparently vigilante action. The nation needs to know if law-enforcement personnel are deliberately deviating from the statutory directives in anti-crime operations.

Eulogising or praising of "crossfire actions" has created a worrying environment wherein result-oriented investigating officers are increasingly getting inclined to resort to short-cut methods to please the official boss or the political masters. The worrisome part is the threat of putting an alleged criminal or an ordinary suspect under the so-called "crossfire scenario" in order to gratify ulterior motives.

The question is, do we want sustained laborious action under the law to strengthen our democratic foundation or do we need rash desperate action without the cover of law? The "crossfire actions," undoubtedly, do not fit in with the first proposition. We need to be absolutely clear about that.

What we need is adequate provision of witness protection and victim support in the criminal justice administration. To make those effective we need large injection of governmental funds. Any further delay will only swell the ranks of summary-justice seekers and the admirers of vigilante action. The adversity of the



**Criminals must be punished, but under law.**

victims of crime demand mainstream support of the system.

The rule of law and criminal jurisprudence may appear to be unequivocally in favour of the offenders, the criminals, the law-breakers, the accused persons. That does not automatically give a license to resort to illegal measures because a civilised government must earnestly strive to demonstrate that law-enforcement effectiveness and civil liberties can co-exist in a society governed by the rule of law.

Muhammad Nurul Huda is a columnist of The Daily Star.

# Religious militancy creeps in with ominous consequences

Some ultra-religious groups trained in the academy of terror set up by the followers of Osama bin Laden have found some parts of Bangladesh as the most fertile grounds for planting the seeds of terror. What is beyond doubt is that religious extremism has very little to do with theology and is purely a political tool.

MD. ASADULLAH KHAN

WITH very grim consequences for the world at large, the demons of ultra-religious zealotry, racism and an ugly form of authoritarianism have popped up in Afghanistan, Pakistan, Sudan, Indonesia, and parts of the Philippines. Unsurprisingly, India and Bangladesh are not far behind.

As it appears, an ultra-Islamic revival and fervour far from the Islamic code of life as ordained in the Holy Quran and Hadith has seized the citizenry, almost to the extent that it seems to send an ominous signal to the whole country. In absence of a clear policy and action in cracking down on the zealots, who have created an unstable situation in the society by issuing fatwas and turning the madrasas into armories and training camps for militants, the state of affairs in the country has taken a worsening turn.

Shockingly, Prophet Muhammad's (SM) precepts as a code of earthly behaviour, which galvanised Muslim societies with hope for renewal and growth, are being lost sight of by the religious zealots. The whole world had reasons to be happy about the way medieval Europe crouched when Islam reached the apogee of its power.

Islamic culture and civilisation had worked wondrously, radiating brilliance and electrifying influence for over five centuries. After taking over in the last half of the ninth century, Fatimid rulers of Egypt ushered in an era of peace and progress. It was during this period that the great Al-Azhar Mosque and the University of Cairo sprang up, disseminating knowledge of all varieties. Researchers and

scholars of the world drank deep at the fountain of that knowledge.

At the same time, how can we forget the messages of the Quran that are so tolerant of minority views and other faiths? Today, in most parts of the country tolerance and liberal attitude towards other religions have given way to oppressive, illiberal and harsh measures hitherto unknown even in the earlier days of Islam.

The campuses of universities and colleges have become hostages to a section of "activists" belonging to the ultra-religious groups that have earned a bad name for Islam. Devout Muslims are often shocked to hear that in the name of their faith, which means submission to Allah, plans were made to bomb some foreign missions and important installations like Savar Atomic Energy plant in the country.

A report in The Daily Star (November 10), quoting investigating agency sources, indicated that suspected militants had plotted attacks on the US Embassy and Indian High Commission, some key installations, and several local dignitaries. The call lists of the cell phones recovered from the militants suggested that they had links with militant outfits outside the country.

The spectre of militancy with an overtone of religious extremism has raised its ugly head in most parts of the country. In January 2008, clandestine activities of the militants -- organising training centres in some madrasas in Patuakhali in a bid to propagate jihad among villagers and school children -- was unearthed by law enforcement agencies. In May this year, Daud Merchant and Zahid Sheikh, two suspected Indian-born Islamic militants and criminal operatives of notorious

Dubai-based Mafia leader Daud Ibrahim were arrested from Brahmanbaria.

And that opened Pandora's box, unearthing the clandestine activities of Indian born militant leader and trainer Mufti Obaidullah, rounded up from a madrasa at Shibpur, and Muhammad Abdur Rahim, second-in command of JMB outfit in Chittagong. These militant leaders, passing for religious teachers in the madrasas of the country, were engaged in organising jihadi groups in the country and had links with Pakistan based militant outfit LeT and Indian-based commando force Asif Reza group.

All this information came as a chilling reminder of the irreparable damage done in the bygone days when Bangla Bhai and his ilk dominated the political arena in the country during the alliance rule. More worryingly, as reports gleaned from investigating agency and law enforcers reveal, militant groups have been using the remote hill areas in Chittagong for arms training.

With Rab's busting of the JMB camp in Khagrachari and rounding up of Mufti Harun Ezahar, son of Islami Oikya Jote leader Mufti Izaharul Islam, from Lalkhan madrasa in Chittagong, people in the country came to know about the training in firearms and explosives being imparted to recruits including Rohingyas at some makeshift camps in far-flung hill areas.

As it appears, the ideology of terror is being disseminated everyday, acts of terror are planned and efforts are made to carry them out. The leaflets and books recovered from these groups contain articles and messages that run counter to the state law and the constitution of the country. Citing the fact that Prophet Muhammad (SM) went into 107 battles in nine years to establish Islam, and directed all his followers to wage jihad against the moshreqs and kafirs, the authors of these books and leaflets clearly espouse military programmes.

Apart from the concern for lives and freedom that might be in jeopardy, moderates fear that this wave of ultra-religious lessons and militancy unleashed by these militant groups might destabilise Muslim societies, more so in Bangladesh, by

creating large armies of emigrants on the march for safety, peace and tranquil environment.

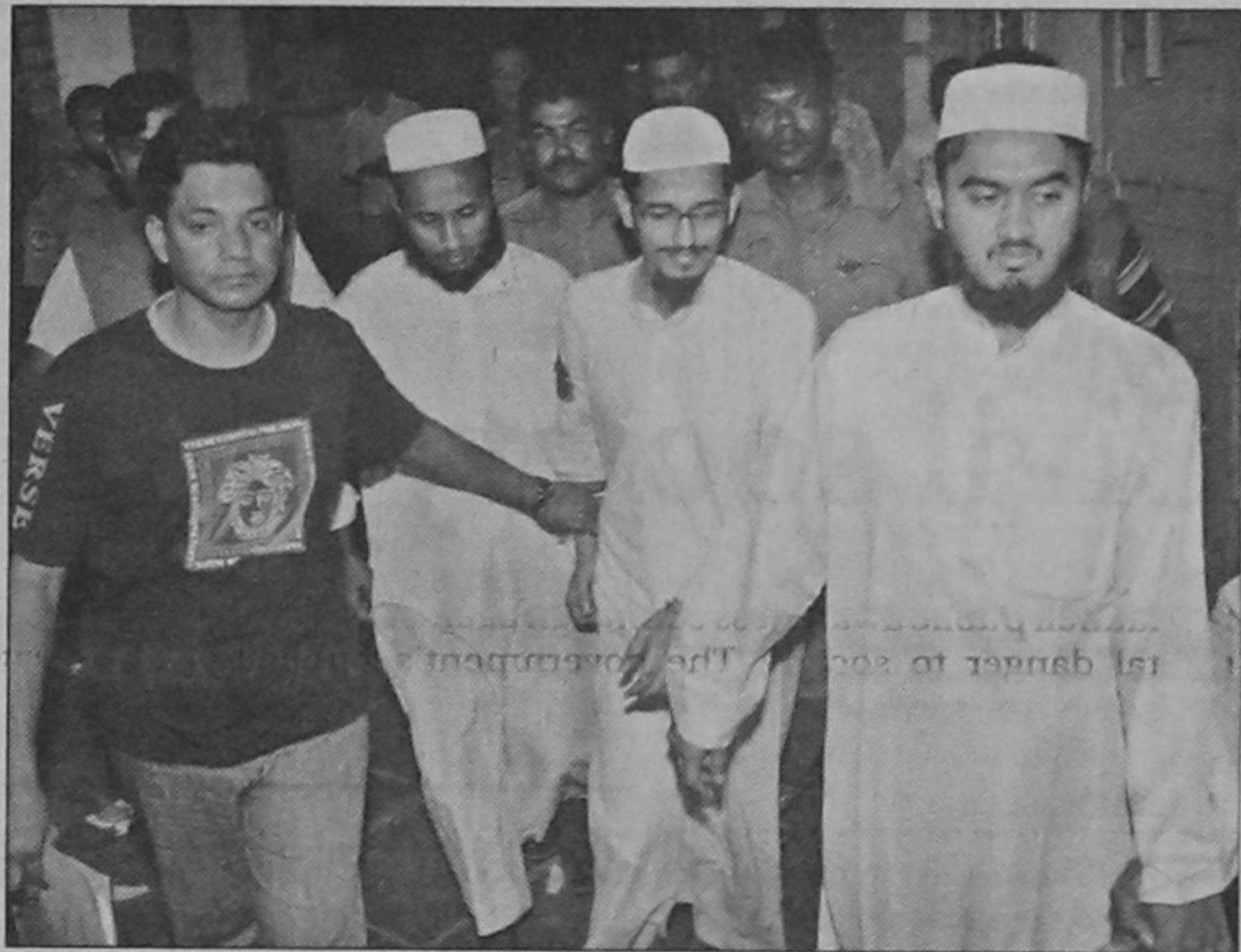
Perhaps some disillusioned groups in our country forget that this region's mixed races with different faiths have to live together if they want to sustain a formidable growth rate.

Islam can never be illiberal. Revealed through Prophet Muhammad (SM), it is among the most egalitarian of religions. Islam's strongest appeal down the centuries was to people who felt victimised and deprived of worth. In theory, with an ethic that allows merit to be rewarded, Islam ought to serve as a solid platform for political flexibility and economic growth. In attempting to diagnose the problem, we must see that that ultra-religious activism bordering on militancy is nothing but a psychic disease and its young followers are mostly unemployed and profoundly unhappy with the politics they have known.

These radical scholars of Islam must not lose sight of Prophet Muhammad's (SM) example of moderation and tolerance in articulating the treaty of Hudaibiah. The part of the treaty that impresses all regardless of religious conviction is the Prophet's (SM) great magnanimity, tolerance and restraint. After staying six years in Medina, he came to Mecca for performing Umrah with an unarmed band of 1,500 followers.

Article (3) of the treaty fills us with awe and admiration for the Holy Prophet (SM). It reads: "If a Quraish from Mecca under guardianship, should join the Prophet without the guardianship, he/she should be sent back to the guardian, otherwise, they should not be sent back."

Article (4) of the treaty reads: The Prophet of Islam and his party were not to enter Mecca that year, but they could enter unarmed the following year." Prophet Muhammad (SM) went back to Medina that year. Another remarkable feature of the draft of the negotiation was that it started with Bismillahir Rahmanir-Rahim, meaning in the name of the Allah, the most Gracious, the most Merciful. The Quraish insisted on excising the sentence and it was so done



Apprehending extremists.

at the instance of the Prophet (SM).

The article of negotiation contained another word, Rasul- ul- Allah, meaning the Prophet of Allah. The Quraish refused to accept this word in the article of negotiation on the plea that they did not adhere to the faith (Islam) preached by the Prophet Muhammad (SM). On that point also the magnanimous Prophet instructed Hazrat Ali to delete the word. But Hazrat Ali, out of his profound respect for Prophet Muhammad (SM) could not oblige him. Realising the sentiment of Hazrat Ali, the Prophet himself with the assistance of Hazrat Ali made the excision.

Overwhelmed by the magnanimity of Prophet Muhammad, the members of the Quraish tribe embraced Islam in large numbers. One wonders as to why all these great and singular examples of self-restraint and superb sense of tolerance demonstrated by the Prophet (SM) even in that dark age are being lost sight of.

Some ultra-religious groups trained in the academy of terror set up by the followers of Osama bin Laden have found some parts of Bangladesh as the most fertile grounds for planting the seeds of terror. What is beyond doubt is that religious

extremism has very little to do with theology and is purely a political tool. Run as a joint venture with the dreaded Huji, now banned, these groups transformed into Hijbut Tauhidi. Its teachers are mostly returnees from Afghan war and now perhaps working as religious teachers in most of the madrasas in different parts of the country, and its syllabus is one of frightening magnitude. It was here that impressionable young men -- many call them jihadis -- imbibed the mechanics of mayhem laced with religious overtones. The greatest threat these radical groups pose is that they can inspire and galvanise the impoverished elements in the society.

It is true that the country's slide into militancy began with the alliance rule in 2001. It began with a perception that was challenged in the wake of serial bomb blasts in 63 districts simultaneously. Even after the execution of Shayekh Abdur Rahman and Bangla Bhai and flushing out of the terrorist dens from various parts of the country, the flame of jihad still flickers with ominous consequences.

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# Moon sighting: Rule of thumb

Every month of the Islamic calendar starts with its own new visible crescent after the corresponding astronomical new moon. In order to have a very fair idea about the first visibility of the crescent anywhere on earth, use the rule of thumb for ascertaining earliest observation of lunar crescent.

DR. ANWAR-UL KARIM

THE moon phases depend on the relative positions of the sun, moon and earth and obviously independent of the place of observation. Half of the moon is always lit by the sun and not just the portion we see. The moon appears different to us depending on its location in its orbit around the earth. This is due to the different amounts of sunlight striking the part of the moon facing the earth.

The only other information that will be necessary to suggest the possible

date on which the new crescent moon is likely to be seen first on a particular month are the data for moonset and sunset for the place of observation. Moonset and sunset timings vary from place to place and also may change from day to day. These data are easily obtainable from a good observatory like the Royal Greenwich Observatory, England; U.S. Naval Observatory, Washington D.C., USA, etc.

If on a new moon date, moon sets earlier than sunset at the city of interest, the new crescent cannot be visible there on that date. Similarly, if a particular conjunction

on new moon takes place after local sunset at any place, question of moon's visibility there on that evening does not arise. At the time of the new moon, the moon rises in the east at about the same time the sun rises, and it sets in the west at about the same time the sun sets. At any place of observation at the first evening after conjunction, the moon is too thin to be visible. And on the third evening it always has already waxed enough to become visible, if the sky remains clear; however, all third evening sightings are not necessarily the earliest visibility of the crescent. In some cases they could be sighted on the second evening.

As such the second evening after conjunction is the earliest possibility for the young waxing crescent's first visibility. Based on the observational data for hundreds of years a simple criterion is here proposed for ascertaining crescent's earliest visibility: If on the second evening after conjunction with the sun, moonset takes place at least about 48

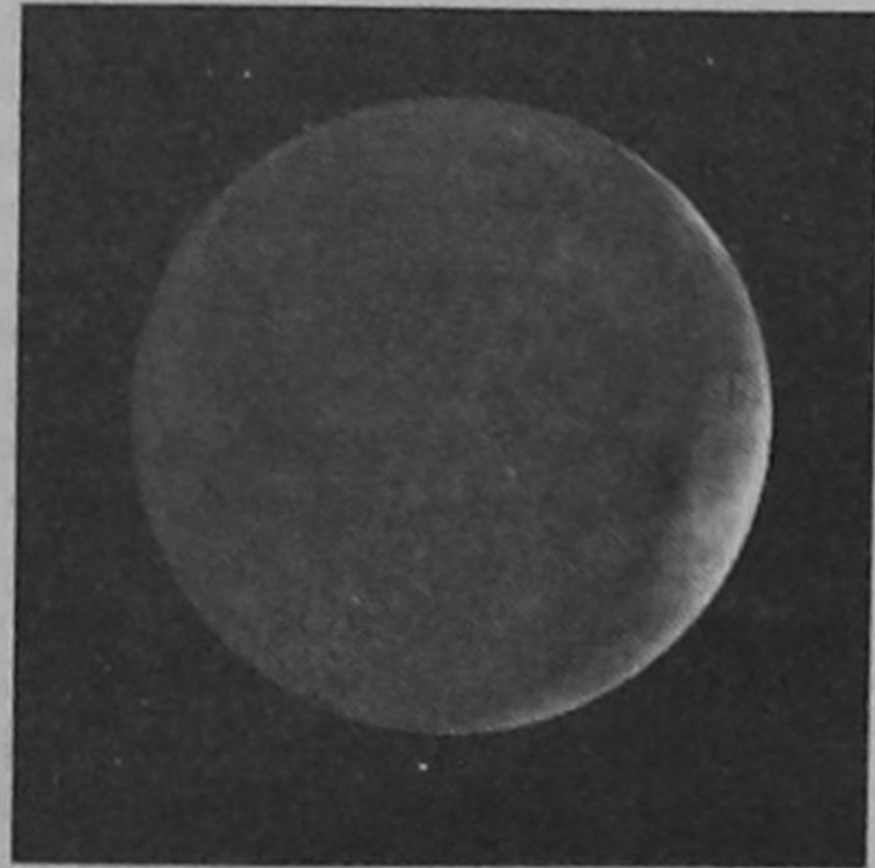
minutes after sunset, one can expect that the new crescent moon would appear in the western horizon after sunset at the place of observation.

It is perhaps meaningful to a layman who can now easily understand that the local moonset should follow considerably after the local sunset and never before it (i.e., conjunction must take place before the local sunset) and can easily estimate the chance of visibility on a local evening reasonably accurately.

The moonset lag time at the second evening after conjunction is the critical information for first visibility of the crescent. If the moonset lag is lesser than 48 minutes, then the crescent will be visible on the third evening after conjunction and the new lunar month will begin accordingly. To verify this rule of thumb, the available information on crescent sighting declarations for the last three years by the Islamic Foundation, Dhaka have been used. All moon sightings agree with the proposed rule of thumb.

Every month of the Islamic calendar starts with its own new visible crescent after the corresponding astronomical new moon. In order to have a very fair idea about the first visibility of the crescent anywhere on earth, use the above mentioned rule of thumb for ascertaining earliest observation of lunar crescent.

To give an example, use the procedure for Dhaka for the forthcoming occasion of the Eidul Azha in Bangladesh. 2009 Yearbook of Astronomy, Macmillan, London gives the relevant new moon time as November 16, 19:14 GMT, i.e. 2009 November 17, 1:14 Bangladesh time. And on the second evening November 18, using the data of U.S. Naval Observatory, Astronomical Applications Department, Washington D.C., USA ([http://aa.usno.navy.mil/cgi-bin/aa\\_pap.pl](http://aa.usno.navy.mil/cgi-bin/aa_pap.pl)) for Dhaka: Moonset will be at 18:17 and sunset 17:12. Thus moonset takes place 65 minutes after



The new moon.

sunset and as such the new crescent is likely to be visible in Dhaka on that second evening. And in that case Eidul Azha 2009 will be celebrated in Bangladesh, Insha Allah, on Saturday 28 November, 2009.

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