

Question 652) - What is the ruling of one who does not enter Ihram at the Miqat and intends entering Makkah?

A: If an Afaqi Muslim who is Mukallaf [Responsible for obeying Shari'ah] intends going to Makkah or enter the Haram, even if it is only for business or tourism, and he crosses the Miqat by land, sea or air without Ihram, then whether he later enters Ihram or not he has sinned and must pay Damm.¹¹⁹

¹¹⁹ Ibn Hajar said in Fathul Bori,: Malik has quoted the narration of Ibn'Umar in his Muatta from Nafi', "'Abdullaah bin 'Umar left Makkah. When he reached Qadid news of trouble reached him and he returned to Makkah without Ihram." In short he regarded Ihram only for one intending Hajj or 'Umrah based on the narration of Ibn 'Abbas RADI. "He who intends Hajj and 'Umrah...." This means that one going to Makkah without intending Hajj or 'Umrah does not need Ihram. The 'Ulama have differed about this. The famous view of ash-Shafi'i is that it is not Wajib.... The famous view of the other three Imams is that it is Wajib in all circumstances. There are narrations from all of them that it is not Wajib. This is the view of Ibn 'Umar, az-Zuhri, al- Hasan and the Ahluzh Zahir..... Ibn 'Abdil Barr claimed that most Sahabah RADI. and Tabi'in said that it is wajib.

Ibn Qudamah said: A Mukallaf who enters without reason of battle or recurring need may not pass the Miqat without Ihram. This is the view of Imaam Abu Hanifa RAH. and some of the companions of ash-shafi'i. others say, "Ihram is not wajib." There is a narration from Ahmad indicating that as well.... So the Mukallif should return to the Miqat and enter Ihram. If he does it after the Miqat he must pay Damm like one going for Hajj or 'Umrah.

I say: When it is the Mazhab of Imaam Abu Hanifa RAH. Malik and Ahmad and a narration of ash-Shafi'i and the view of most Sahabah RADI. and Tabi'in that be in Ihram when intending to enter Makkah, even if it be without intending Hajj or 'Umrah; then one should enter into Ihram of Hajj or 'Umrah when intending to go to Makkah, especially 'Umrah when not Hajj time. Yes, if we make an exception for people who have to constantly enter and exit such as those who have to earn for their families, we can deduce from the issue of wood-gatherers and this has some kind of basis. As for those who do not have to constantly enter and exit and go beyond the Miqat, they are not like wood- gatherers and must enter Makkah with Ihram.

Those who do not accept deduction from deduced opposite meaning do not accept that Ihram is not Wajib based on R, "Whoever intends Hajj and 'Umrah..." Then at-Tahawi narrates that the Narrator, Ibn 'Abbas RADI. also gave Fatwa that no trader or one coming for a need may enter Makkah without Ihram. More than 100,000 Sahabah'RADI. entered Makkah with the Nabi (S.A.W) upon the Conquest of Makkah IAwjazut Masaliki yet the majority of Sahabah held that one must enter with Ihram and did not use that incident as proof. They recognised the difference between need and no need.

The Conquest of Makkah was a special case where permission was granted to enter without Ihram due to the realities of fighting. Al-Bukhari narrates that Rasulullaah (A.S.W) said, "If anyone seeks licence from the fighting of Rasulullaah (S.A.W) then say to him, 'Allaah permitted His Rasul and did not permit you.' I was given permission only for a while in the day." As for Ibn 'Umar RADI. entering without Ihram, he went till the Hill and did not pass the Miqat and thus did not need to enter Ihram when he returned to Makkah.

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