

## The position of non-Imami Muslims in Imami jurists' opinion and Kohlberg's viewpoint

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### Abstract

In Shiite jurisprudence, non-Imami Muslims have the same rules as Shiites in different ways, but according to Dr. Kohlberg, a contemporary Shialogist, the sharia rules concerning the Imami and non-Imami Muslims are different in Imami jurisprudence. The importance of the issue led the author to make a comparative study of his views and the viewpoints of Imami jurists, especially contemporary ones. In this research, based on the analytical-descriptive method, it is obtained that the Dr. Kohlberg only relied on the opinions of some past jurists and in his study, no trace of the fatwas of contemporary jurists can be seen. Secondly, he means non-Imami Muslims, only members of the Nasabi sect, and he has generalized their specific rules to all Muslims. While the issue of Muslim homogeneity in the apparent rulings of Islam is the consensus of Shiite jurists and all of the Muslim sects; but the sect of Nasibi departs from this Muslim commonality in rulings on the basis of text-based allocation. Hence, this scholar's view is not based on credible Shiite sources.

**KeyWords:** jurisprudence, Imamiyya, non-Imamiyya, Nasabi sect, Kohlberg.



## Introduction

In Shiite jurisprudence, the non-Imami Muslims are common to all the rules of Islam except in special cases, and the reason for the common rules is the testimony, which leads to the unity of Islamic rules among all Muslims. But this is not the case with Dr. Ethan Kohlberg<sup>1</sup>, a contemporary Shialogist. He has raised some issues in this regard, due to doubts and problems in the book of belief and law in the Imami Shiism (Kohlberg, 1985, pp.99-105). He (hereinafter referred to as the author) believes that Imami jurists distinguish between Imami and non-Imami in many jurisprudential issues such as "purity, prayer, burial rites, alms – tax (zakat), marriage" and the like. Hence, the important question arises as to whether he has expressed this opinion based on reliable Imami sources of jurisprudence or not.

This research tries to clarify the nature of the author's point of view through the narrative-rational method. For this purpose, with a comparative study, we will first quote the author's point of view from pages 99 to 105 of his work and then examine it.

### 1=Non-Imami Muslims` purity

#### 1-1 Author`s opinion

The Nasiba are often judged in harsher term than the other ahl al-khilaf: some Imami jurists hold that non-Nasiba ahl

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1. Born in 1943 in Tel Aviv, he graduated from Oxford University in 1971, is a professor at Hebron University until 1991, and is the director of the Institute for Asian-African Studies in Israel; He is fluent in Arabic, Persian, English, and is introduced as a specialist in *Shiite Imami* jurisprudence and theology.



al-khilaf are entitled to be treated in this world as Muslims, even if in God's eyes they are unbelievers.

The author goes on to write: " Furthermore, while there is little disagreement as to the impurity (najasa) of the Nasiba, there are conflicting views as to the position of the rest of the ahl al-khilaf, with many jurists maintaining that they are not impure (Ibid, p.99-100).

### **1-2 Imami jurisprudents' opinion**

The Imami well-known jurists, and especially contemporary jurists, have a consensus that the apparent rules of Islamic law, such as purity, are applicable to all the Muslims; for example, the contemporary jurisprudent, Ayatollah Khuyi, says: "All the Muslims are considered as pure." (Gharavi, 1370: 9/93). Other Islamic sects i.e. Sunnis are Muslims and have the ruling of purity, and all Islamic rules and their effects are on them. Also, Mohaqqiq Ardabili also agrees with that (Ardabili, n.d. 1/172).

A Muslim who believes in the principles of religion will be included by the rules of Islam, and this is the case about a Muslim as long as he does not deny the necessities of the religion and Shari'a or does not commit an act that causes him to leave the religion. From these statements, the identity of the likes of Nasiba becomes clear, because they are condemned to depart from the faith and Islam by "insulting" and denying those whose purity are explicitly stated in the Qur'an; This is because the Holy Qur'an explicitly denies those who accept some verses of the Qur'an and deny the others (surat al-nisa,150). And this is one of the undeniable necessities for the jurists of the five Muslim sects.



Therefore, in opposite of the author's view, which had claimed that according to the Shiite jurisprudence, the Sunnis are infidels, purity of all the Muslims is a necessity of the religion among the Shiite jurists (faqihs) especially between contemporary ones. What is more, the definite tradition of the Shiites in all times and places has been on the purity of the Sunnis "(Najafi, 2014: 6/56; Ansari, 1995: 1/128), and impurity of Nasiba is an exception.

Finally, it is very surprising that the author has tried to write the statements in a kind that make the European readers consider the Shiite people claims (p.99): "The position of the ahl al-khilaf in general and the Nasiba in particular comes to the fore in discussions of the following topics", but the author's first topic i.e. ritual ablution (p.100), has no connection to the all non – Imami Muslims, because we considered in the above that they are pure, and consequently, all the water that is used for washing or drinking by them is pure. Therefore, the title of purity is only connected to the Nasibi people and is not related to all the Muslims,

## 2- Prayer

### 2-1 Author's opinion

Hence prayer is forbidden not only behind someone who is a Nasiba Imam, but also behind an Imam who professes allegiance to `Ali but does not dissociate himself from his enemies, or a Shii who has committed crimes or belongs to a sect other than Twelvers.<sup>1</sup> In case of danger (al-taqiyyah wa l-khawf), however, it is permitted to pray in a congregation led by a Nasiba Imam (ibid, p.100).

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1. Abbreviation (peace be upon him) .



## 2-2 View point of Imami jurisprudents

In response, it should be said that according to the common doctrinal principles and consensus of Imami jurists on the purity of non-Imam Muslims, the unity of Muslims is an obligatory injunction. Accordingly, the well-known contemporary jurisprudents and jurists of the past era consider it permissible and all of them believe that prayer of congregation behind to Sunni imams is permitted, and even some jurists like Gharavi Isfahani regarding true following in congregational prayers with Sunnis, writes: "And in fairness, the appearance of this news in the conclusion of the congregation is true, but it is not necessary to deny it ..." (Gharavi Isfahani, 1989: 215).

Ayatollah Khuyi also writes: "In some of our hadiths, there is no acceptance of the dispute in its meaning on the parts, and this is as if the heart of the one who prayed with them in the first row was the one who prayed behind the Messenger of God (PBUH)" (Khuyi, 1418: 4/290). Therefore, he considers it sufficient and goes on to say that when the prayer behind them is compared to the prayer behind the Prophet (PBUH), can we not consider it sufficient?!

Some other jurists considered the presence in the Sunni community to be recommended and virtuous (Sheikh Saduq, 1997: 1/382). Also, some other jurists have considered participating in the Sunni congregational prayers as absolutely - although there is no taqiyyah at all - as *mustahab* (recommended) or *wajib* (obligatory): What we mention in the great reward is the acceptance of prayer and its obligation" (Bahrani, 1984: 11/78). And many jurists and narrators also recommended the presence in their congregation as a manifestation of unity and expression of unity among the Muslims and the international community,



and encouraged them to be at the forefront (Horr Ameli, 1993: 8/299, and Muhaddith Nuri, 1988: 6/458).

What is more, Imam Khomeini also emphasizes participating in the group of opponents and following their group outside the days of Hajj as a true and recommended follow-up: "There are special hadiths (narrations) about meditating on the validity of prayer with people and encouraging them to be present in the mosques and to follow them and to believe in them" (Khomeini, 1999: 2 / 198-199).

In addition, Shiite jurists considered it permissible to offer congregational prayers behind Wahhabi scholars in order to achieve unity and the like, and due to its importance, we mention the fatwas of some Shiite jurists:

Imam Khomeini: Participation in Sunni congregational prayers during Hajj is obligatory (Khomeini, 1420: 63).

Ayatollah Khamenei's fatwa is: It is permissible to follow the Sunnis - the dream of Hajj - in order to observe unity, and praying with them is correct and separate (Explanation of Matters, 2007: Issue 603). According to Khuyi and Tabrizi, it is permissible and correct to participate in Sunni mosques and perform prayers with Sunnis (Ibid., Issue 599). Ayatollah Musawi Ardebili (RA): praying behind Sunnis is correct. (Musawi Ardebili, 1998). Ayatollah Javadi Amoli says: it can be followed (Javadi Amoli, 2013). Ayatollah Makarem Shirazi: There is no obstacle to participating in the Sunni congregational prayers for the purpose of unity, provided that they have no enmity with the Shiites, and this prayer will not be repeated.

Therefore, it should be distinguished between Nasiba imam and the others; while the prayer behind the former is haram, behind the Sunni or the Shii imams other than the twelvers is permissible or even recommended.



### **3-Burial rites**

#### **3-1 Viewpoint of the author**

Imami jurists agree that an Imami may not wash the body of a deceased Nasiba. Some jurists extend this rule to all non-Imami Muslims arguing inter alia that since washing takes place after the moment of death, the deceased must be treated according to his position in the next world, which is that of an unbeliever. Others permit washing in the case of taqiyyah, but stress that it should be performed in accordance with the dead person's madhhab (religion) (p. 100).

#### **3-2 Opinion of Imami jurists**

According to Shiite and Sunni jurists, burial rites of a Muslim dead – including ghusl (washing the body), prayer and burial - are obligatory on all of Muslims; It means that if some people try to equip the corpse, the task of others will be revoked. But if no one does it, it becomes obligatory on everyone, and if they leave, they will perpetrate the sin.

Therefore, equipping the Muslim corpse is an obligatory injunction for all Muslims, regardless of the Muslim dead's madhhab or sect.

Similarly, all Muslim jurists agree on that the rulings on the affairs of the Muslim dead are based on the apparent rulings of the Shari'a, and as it was mentioned in the previous section, all the Muslim sects are considered as real Muslim, even after the death of their followers. Consequently, ghusl and other rulings of a Muslim corpse are observed in accordance with their jurisprudence; then the claim of the fulfilment of the rulings of the corpses according to their positions in the hereafter is false and baseless.



#### **4-Alms tax (zakat)**

##### **4-1 Author`s Opinion**

Both zakat on property and zakat al-fitra may only be distributed among Imamis, and are invalid when given to non-Imamis. To the question whether. In the absence of Imami recipients, zakat al-fitra may be distributed among mustaḍ'afun, opposing answer was given (p.101).

##### **4-2 Viewpoint of Imami jurists**

Duty of paying zakat in general is one of the necessities of religion and the establishment of economic justice, and poverty alleviation of the Muslim community depends on the practice of this duty (Mustafavi, 1390: 275). And the jurists of Islam do not differ much about the use of zakat; because the guilds entitled to spend zakat are explicitly stated in the Holy Quran: " The charities are only for the poor and the needy, and those employed to collect them, and those whose hearts are to be reconciled, and for [the freedom of] the slaves and the debtors, and in the way of Allah, and for the traveller " (Tawbah, 60). The meaning of this verse and the application of other verses as well as narrations, - because the words "poor and needy and ..." are used without any restrictions - that the payment of obligatory zakat and zakat al-fitra, to every poor and needy And ..., from whatever sect they are, it is correct and causes the duty to be observed, and this ruling - the need to pay zakat to the poor Muslim - has also been specified by Sunni scholars (Al-Hanafi, 1412: 2/385). Shiite jurists also believe that it is permissible if a Muslim is not a Nasibi (Khamenei, Istifta', p. 548723).

Therefore, paying zakat al-fitra and atonement (kaffara), and the like, to any poor Muslim other than a Nasibi is the fulfilment of the duty.



## **5-Pilgrimage ( Hajj)**

### **5-1 Author Opinion**

An Imami may not perform the pilgrimage on behalf of a Nasibi or a Nasibi on behalf of an Imami, the only exception to this rule obtains when the Imami's own father is a Nasibi (p.101).

### **5-2 Imami jurists' opinion**

Shiite jurists have stated conditions for representation in Hajj, and these conditions are notorious but also agreed upon them; For example, Muhaqqiq writes: "It is conditioned on the deputy, the perfection of the intellect and Islam,..." (Sabzevari, n.d 1/286).

The use of the arguments and conditions mentioned in the words of the jurists is that the representation of an Imami from a non-Imami and vice versa is correct. As for Nasabi, different hadiths have been included and the sayings have been different. And it seems that the common denominator between the hadiths is that representation in the obligatory Hajj between an Imami and a non-Imami is not correct, but according to the meaning of some narrations, there is nothing wrong with a donation and a recommended representation (Horr Ameli, 1413: 11/197).

## **6-Holly war (jihad)**

### **6-1 Author Opinion**

To the rules described elsewhere, the following may be added: Imimis are allowed to sell weapon to Sunnis if these weapons are to be used against a common enemy, such as the Byzantines. But such a sale is prohibited when a conflict between Imamis and Sunnis breaks out (p.102).



## **6-2 Imami jurists` opinion**

Imami jurisprudents agree that the jurisprudential principle is to allow the sale of weapons to others, unless the buyer is an armed infidel or a non-armed infidel is fighting Muslims, or we know that a country or a group that buy the weapons will give them at the disposal of the enemies fighting Muslims or Imamis. The criterion for using the above things in the case of not allowing the sale of weapons to others is that the sold weapon be used directly or indirectly against the religion or security of the people in the world. And whenever this possibility is habitually existing, it is in accordance with precaution and the intellect, to stop selling weapons to such a buyer.

## **7- Marriage**

### **7-1 Author`s Opinion**

Imami men may not marry women who belong to the Nasiba. Khariji and Murji`i are included in this category. ... Imami men may however, marry Sunni women who are not Nasibat. In particular, it is permitted to marry women who are ignorant or uncertain of their faith, or or who are simple – minded, the assumption being that such women will follow their husband`s customs and beliefs. The rules pertaining Imami women are more stringent: they may marry only Imamis, and may not be given in marriage to shukkak and mustaḍ`afun. This latter restriction applies in particular to `ārifāt (ie, Imami women who have been initiated into secrets of the religion) (p.102).



**7-2 Imami jurists` opinion**

In response, we say that the popular opinion of the jurists is that it is permissible for men and women of different Islamic sects to marry each other, except for the deviant sects such as Nasibi that we have previously argued. Therefore, marriage with followers of other Islamic religions is not forbidden; because the principle is based on the permission and correctness of the action. By this reason, it is not permissible for an Imami woman to marry Jewish or Christian men, either permanently or temporarily. As for the marriage of Muslim men to Jewish and Christian women, it is temporarily correct but permanently is disputable. Just as the fatwa of the Imami jurists on marrying men and women who are shocked, naive and ideologically and intellectually weak, the verdict is true; although they don have the same belief and religion. What is more, Imami jurists have issued fatwas authorizing the release of Muslim slaves, even deviant sects - with the atonement of fasting and the like (Gharavi, 1370: 2/85; Ibn Idris, 1410: 345).

**8- Testimony****8-1 Author`s opinion**

The testimony of a non-Imami Muslim is invalid, because he is considered to be evil and unjust (p.103).



## 8-2 Imami jurists' opinion

The need for justice of witness is a matter for Shiite and Sunni jurists. Malik has cited the testimony of Omar as the testimony of force ( or qawl al-zur i.e. the invalid witness which is prohibited in the Holy Quran- surat al-hajj, 30) and Shafi'i rejects the unjust testimony of a person who has committed a sin and has not observed morality (quoted by Sayyed Ali, 2014). Ayatollah Khuyi also writes that there is a consensus claim that the promise of a wicked witness is not accepted.

Islam and faith are among the conditions of witness that most Shiite and Sunni jurists considered them as necessary. Of course, regarding the condition of faith, some Shiite jurists, who are not few in number, consider faith as the condition of accepting testimony, and its meaning here is to be as a Shiite.

On the other hand, some jurists did not consider faith and perhaps Islam as a condition for accepting testimony and being righteous and just; because they rely on a hadith (narration) that indicates the acceptance of the testimony of the Sunnis (Feyz Kashani, 1406,: 16: 426; Horr Ameli, 1413).

This narration, regardless of what is meant by Nasibi, is considerable. Of course, other possibilities can be raised, including the fact that the questioner in this narration is a non-Imami Muslim and the Prophet considered the witness of the Nasibis to be valid according to their jurisprudence. Or that in the absence of a witness within the religion - for example, the Imamiyya witness - the testimony of a non-Imami is valid and so on.



## **9- Expiation (kaffara)**

### **9-1 Author`s opinion**

One of the method of expiating for non – fulfilment of an oath (kaffarat al-yamin) consists in feeding ten poor people. These people have to be believers; If no believers (or their offspring) are found, the mustaq`afun may be fed instead. But it is forbidden to give food to a Nasibi needy.

### **9-2 Imami jurists` opinion**

It should be noted that Nasabi in the words of Shiite jurists is a deviant sect and disobedient to the Ahl al-Bayt of the Prophet (PBUH). As for the oppressed people or mustaq`afun, whether they are financially weak, ideologically weak, or weak in the religion in question, it certainly includes the weak of non-Imamis - Sunnis -, and feeding them will cause the task to be observed.

## **10-Su`r (half eaten non-Imami)**

### **10-1 Author`s opinion**

The use of the su`r of all unbelievers, and especially of the Nasiba, who are worse than bastards and more despicable than dogs.

### **10-2 Imami jurists` opinion**

The sum of the hadiths included in the narration sources is used in such a way that the su`r (the half-eaten) ruling of food is the same between Nasabi and the followers of other religions - Jews, Christians and Zoroastrian - and that abstinence is obligatory in terms of conventional ruling, not as an obligatory rule, because doing it does not lead to reprimand and punishment; rather, the half-eaten of the mentioned groups will bring some mental and physical losses on the individuals` soul as natural effects. For the same reason, the meat of the forbidden animals are



forbidden like infidels. Therefore, the prohibition in this matter is a guiding injunction; In addition, the prohibition of half-eaten Nasabi does not preclude the permission of eating the su`r of other non-Imami Muslims.

## **11- Wet-nurse**

### **11-1 Author`s opinion**

A Christian or Jewish wet – nurse is preferable to a Nasibi midwife.

### **11-2 Imami jurists` opinion**

Although the authority of the midwife for the child in our time is almost abandoned or very limited, but this issue is still raised in matters of jurisprudence and law. A noteworthy point in the midwife's possession is to pay attention to the honor and chastity of the midwife, and this has been discussed among the Arabs in general and the other people in particular, because the midwife's milk has a considerable effect on the soul and psyche of child.

Accordingly, choosing a Jewish or Christian midwife for a Muslim child is not permissible, that is, as long as a midwife can be obtained from a Muslim woman, it is not permissible for a non-Muslim to choose, for the same reason mentioned above. But the important point of distinguishing the midwife of Nasabiyah from Judaism and Christianity and the reason for the preference of Judaism and Christianity over the Nasibi midwife is that the midwife of Judaism and Christianity was only opposed to Islam and they did not accept it. In contrast, a Nasibi wet –nurse does not have a religion too, but in addition to being opposed to the Shiite school, she has hatred and enmity towards the elders of their religion, Therefore, it is obvious that the



choice of a Nasibi nanny is forbidden by reason of the intellect and the Shari'a, and a Jewish or Christian midwife is preferable to a Nasibi wet -nurse.

## 12-Conclusion

At least, four results can be inferred from the author's research as follows:

1- The text of the research is not adaptable to the chapter's topic, because the title includes all the non Imami – Muslims, both of the Sunnis and Nasibis, but the text is mostly connected to a nasibi's position in Imami fiqh.

2- Since the followers of Nasibiyya insult the household of the prophet (a.s), they are not regarded as the Muslims even by the very Sunnis, however, the author has not mentioned it at all.

3- The author has incompletely attributed the jurisprudential rulings of a nasibi to some ancient Imami scholars which the contemporary Imami jurisprudents have different viewpoints, but the author has not expressed any of them.

4- All the sources of the author for studying a nasibi position in Imami fiqh are nearly ten books which two of them are considered as the jurisprudential sources i.e. jawahir al- kalam and al-tanqih, the rest of them are the books of hadith like al-kafi, thadhib and the like.

Therefore, the sources of the author's research are invalid and cannot be regarded as reliable and acceptable.

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