

Jurisprudential analysis of Kohlberg's view on the position of the *walad zina* in *Imami Shiism*

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Abstract

The offspring of illegitimate intercourse is called the *walad zina* (or illicit child) by the *Imami* law, however, since he is a human being, he has the very rights of a Muslim. It means that there is no difference between legitimate child's rights or illicit one; consequently, to be an illicit child is not a criminal offence, but his parents' fornication is a determined (*hodud*) crime, and so in accordance with principle of personalizing penalties, he must not be punished for the crime of his parents. However, the claim of Dr. Kohlberg is that based upon the *Imami* traditions and jurisprudence, the such a child should be deprived of the Shiite rights, since he is not known as an *Imami* individual, but he is an infidel. In this paper, we will show that the most of traditions and jurisprudential theories which have been cited by Etan Kohlberg has been rejected by well-known *Imami* jurists, including Imam Khomeini. Therefore, if the author had not relied on the invalid sources, he could have transmitted the true data to the Western readers for all these years.

Keywords: The *walad zina*, *Imamiyyah*, jurisprudence, Kohlberg, *Foqaha*.



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1-Introduction

According to the *Imami* jurists (*foqaha*), any person whether the illicit (*walid zina*) or legitimate, has the same rights as other Muslims. In contrast, one of the western contemporary Islamologist named Etan Kohlberg¹ believes that the *Imamis* differentiate between the rights and duties of the *walid zina* and others. In his paper titled "The position of the *walad zina* in *Imami Shiism*",² he (hereinafter, he is named the author) has said that based on some *Imami* hadiths and jurisprudential opinions, the person of illicit relationship (the *w.z.*) is deprived of a Muslim's rights. Therefore, in spite of an illicit offspring is the result of the natural parents' illegal relationship, but the jurists have regarded the very parents' crime as the cause of their child's *najāsa* (impurity) and his infidelity (*kofr*). Therefore, this is his parents who deprive the *w.z* of his rights (Kohlberg, 1985, p. 237-238).

Therefore, an important question arises here: What are Kohlberg's arguments regarding the position of the *walad zina* in *Imami* jurisprudence (*fiqh*)? This is the first research that with a descriptive-analytical method, will try to answer this question. Summarily, it can be said that according to Imam Khomeini (*Imām Khomeinī*, 2000, p. 84-85) and the majority of *Imami foqaha* (Sheikh Anṣārī, 1994, v.5, p.155; M'arifāt, p.304; Fāḍil Lankarānī, 2004, p.509) and Iranian Islamic Punishment Code 2013, art. 552, the cited sources of the author are invalid and they are regarded as inconsistent with the human free will and justice.

This research will focus on three important topics of the author's work: concept of the *w.z.*, the related hadiths, some jurists' opinions. We

¹ - He was born in 1943 in Tel Aviv, graduated of Oxford University in 1971, professor at Hebrew University until 1991, head of the Institute of Asian-African Studies in Israel, fluent in Arabic and English, specialized of jurisprudence and *Shiism*. His works are about the jurisprudence and belief of *Imamiyya*, some of which were translated into Arabic, Persian and Turkish; see: www.emetprize.org/english/Product.aspx?Product=90.

² - *Bulletin of the School of Oriental and African Studies*, 48. London, 1985: p. 237- 236: <https://www.jstor.org/stable/617543>.

first bring the very statements of the author, and then, analyze them according to the jurisprudential opinions.

2- Concept of the *walid zina*

2-1- The author`s opinion

The term *zinā* applies to all varieties of illicit sexual intercourse between a man and a woman, and the word *walad* is equivalent to both male and female offspring, thus the *walad zinā* covers the offspring of both adultery and fornication (Kohlberg, Ibid, p.237).

2-2- The *Imami* jurists` viewpoint

The author has defined *zina* as "all varieties of illicit sexual intercourse ". Firstly, he has not mentioned any jurisprudential source for this definition, and secondly, this concept is not consistent with its definition in the *Imami* jurisprudence, because *Imami* jurists regard fourteen conditions as necessary for the realization of *zina* whether adultery or fornication, and define it as: whenever a man who is mature and sane with consent and free will, without a permanent or temporary marriage, or conductive marriage (*i.e. al-nikāḥ al-mu`āḥātī*), without doubt, and also with knowledge of prohibition of *zinā* shall penetrate into sexual organ (vagina or anus) of a mature and sane woman with her consent and free will, both of them have committed *zinā* and their child is illicit (Imām Khumeinī, 2000, v.1, p.267; Mūsawī Gulpāyegānī, 1993, v.1, p.30).

It is notable that the Islamic punishment code 2013 has followed the mentioned jurisprudential definition, but, at least, added these eight more stipulations to it: without unconsciousness, sleep and drunkenness, without force and duress, without deception and seduction, without abduction and threat (Civil code of Iran, arts. 884 and 1167; Islamic punishment code 2013, arts. 224, 247,552-553).

Accordingly, with the absence of even one of these 24 conditions, there will be no the *walad zina*. Definitely, it is only with all these 24 conditions that it is possible to prove and confirm that a child is the *walad zina*. As a result, in the *Shiite* societies, it will be too difficult that being



the *walad zina* is proven, and it is almost impossible (Seyyed Murtaḍā, 1994, p.545; Najafī, 1984, v.43, p.35). But with definition of fornication given by Kohlberg, anyone can easily be called *the walid zina*.

Therefore, what the author has drawn in his mind about the concept of the *w.z.* in the *Imamiyyah*, is completely contrary to the *Imami* jurists' theory. In fact, if the author had seen at least one source of *Imami* jurisprudence, he would not have attributed this arbitrary definition to the *Imamis*. In other words, the person whom the author calls the *walad zina* in his work, may not be basically the *walad zina* according to the *Imami* jurists and the Islamic Punishment Code

.3- The *w.z* in the *hadiths*

3-1-The author's approach

The following *Imami* traditions emphasize that the *w.z.* is ritually impure and he possesses despicable qualities (Kohlberg, Ibid, p.238-242):

1- Muhammad al-Bāqir says: "The *w.z.* is a joint product of the *zāni* and the devil, both of whom participate in the sexual act".

2- Al-Bāqir has declared: "There was nothing good in the *w.z.*: neither in his skin, nor in his hair, flesh, blood, or any other of part of him;" and in his another *hadith*: "After all, even the dog and the pig, normally considered impure animals, were carried on board Noah's ark, but not the *w.z.*"

3- (Imam al-Ṣādiq said:) "The *w.z.* is coupled with Sindis, Zinjis, Khuzistanis, Kurds, Berbers and Razis, all of whom share the dubious distinction of not having the sweetness of belief enter their hearts."

4- The prophet has announced: "The *w.z.* is the worst of the three (*sharr al-thalātha*)" that the trio in question were the *w.z.* and his parents; he has also declared:

w.z., the hypocrite, and he who was conceived during his mother's menstrual period." Ja'far al-Ṣādiq is said to have mentioned four characteristics of the w.z.: hatred of the ahl al-bayt, a tendency to commit

zinā himself, making light of the performance of religious duties, and making himself unpleasant company by speaking ill of others.

6- According to al- Bāqir: "God determined that in every case where a prophet or a son of a prophet - or the Imams- would be killed, his murderers would be a w.z."

7-Al- Bāqir, addressing his disciple Abū Ḥamza al-Thumālī, is said to have expressed this bluntly: "All people are offspring of fornicatrices (*awlād baghāyā*) with the exception of our *Shi' a*."

3-2- Analysis of the traditions

As to these hadiths, it is necessary to mention a general point that in the *Imami* jurisprudence, the traditions report the speeches or conducts of the innocent (*ma ṣūm* A.S.), whether the prophet or Imams (A.S.) about the religious orders; hence, *Imami foqaha* regard a tradition as valid that is reliable from the point of its document and text. The validity of a document is proved with reliability of its transmitters. However, as to authenticity of a text, it should be shown with the rules of the *hadith* sciences; as a result, If there is a tradition in a hadith work, it does not mean that it should be considered authentic.

Given to this crucial point, the hadiths cited by the author will be examined based on the works of jurisprudence.

3-2-1- The first narration

Due to several Quranic and intellectual reasons, the textual implication of this tradition cannot be accepted (Ibn Bābwayh, 1986, p.263), even if we assume that the document of this tradition is valid. These reasons can be listed as follows: First, the demonization of the human substance does not devote to the w.z., since, about the offspring' birth of legitimate intercourse, the devil tries to participate, and according to some other *hadiths*, it will sometimes succeed too (Shaikh Ṭūsī, 1987, v.7, p. 407; Qomī, 1994, v.4, p.433). Secondly, if a child born by whether the legitimate and illegitimate intercourse, does not grow under the religious moralities, the devil takes its share of the offspring, as the participation in *al-āyah*



(verse) 64, *al-asrā`* (chapter): *Shārik hom fī al-amwāl wa al-awlād* - (Oh! Satan) partake with them in their riches and children- means that the devil is taking its share of the people's property and offspring ('Allāma Ṭabāṭabāyī, 1995, v.13, p.201). Thirdly, if the concept of the tradition is that there is no way for the *w.z.* to get rid of his fate, such a meaning is in contradiction to the four jurisprudential evidences (*adilla arba`ah*) of the holy Quran, the Prophet or Imam's *sunnah* (tradition), the human reason and the jurists' *ijmā`* (consensus) connecting to the human free will (Ḥuseinī Ḥā`irī, 1994, p.408). Fourthly, the *w.z.* is the product of the parents' sin and their child should not carry punishment of their act, otherwise it will be contrary to the divine justice and *al-āyah 164, al-an`ām* : *wa lā taziro wāziratun wizra ukhrā* (and no bearer of burden shall bear the burden of another). For these reasons, without considering at least, text of the tradition, the author should not have cited the *hadith* and interpreted it as impurity or moral deviation of all the *w.zs.* Nevertheless, he even refers it to seventeen narrative and interpretive sources. It is likely that when the unfamiliar reader looks at these number of its sources, they will logically believe in reliability of the text and its meaning, and regard the *w.z.*'s position in *Imamiyya* as author wants, while as it was shown above, the tradition does not include all the *w.zs.* Eventually, it is possible that it was quoted by Imam Baqir (s) about a specific individual.

3-2-2- The second tradition

The document of this tradition (Shaikh Ḥurr `Āmilī, 1989, v.20, p.442) is reliable, but in the view point of the famous jurists, its generality is not acceptable; because it is against the divine justice, the human reason, the human rights and integrity (Shaikh Anṣārī, 1994, v.5, p.155; Mūsawī Bujnūrdī, 1995, v.5, p.383; Mūsawī Ardibīlī, 2002, v.1, p.60). Consequently, it may be attributed to a special case.

3-2-3- The third *hadith*

This tradition (Ibn Bābwayh, 1983, v.2, p.352) is called as the *marfū`ah*; it means that its one or more transmitters are definitely deleted

from its document, hence it is not reliable; of course, it is possible that when this tradition was quoted by Imam al-Ṣādiq (s), the most of people of the mentioned areas have been the unbeliever, pagan, or devious (Jaʿfarī, 2003, v.2, p.23; *Fehrī Zanjānī*, c1984, v.1, p.181). Similarly, this tradition does not indicate the position of all the w.zs in the *Imamiyya*, but it is likely that it can be related to a particular individuals in a specific period.

3-2-4- The forth *hadīth*

Both traditions (al-Majlisī, 1983, v.30, p.181; Burūjirdī, 2007, v.30, p.434) have issued judgments against him that he has essentially not played any role on his own position; so they are also inconsistent with the justice. Similarly, as it was said before, both of them are contradictory to the holy Quran, *al-āyah 164*, *al-anʿām*. For this reason, it should not rely on these such traditions and it is quoted as they have been interpreted connecting a particular person called *Abū Ghorra* that was slandering the holy prophet (s.a) (Ibn Abī Jumhūr, 1985, v.3, p.534).

3-2-5- The fifth *hadīth*

This type of *hadīths* (Ibn Bābvayh, 1993, v.4, p.418) is not reliable; the w.z.'s love or hate should be shown in practice, rather than attaching hate of an innocent Imam (s) to him only because of his parents' sin. Such a way is definitely the sense of oppression to him that is rejected by some verses such as *al-āyah 26*, *al-naba` : jazā`an wifāqā* (a recompense fitting), or *al-āyah 82*, *al-tawba: jazā`an fī mā kānū yakdhibūn* (a recompense for what they used to earn) (Mūsawī Bujnūrdī, *Ibid*, p.380).

Even, on the assumption of reliability of these traditions, they should be interpreted in pointing to some specific individuals, as the author himself has referred to the same one too (Kohlberg, *Ibid*, p.239). This typical is related to the man who came up to Imam ʿAlī (s); Imām al-Bāqir has reported it as follows: A man stood up and kindly said to ʿAlī I love the ahl al-bayt (the Prophet's household); some of the companions praised him but ʿAlī told you are lying; hermaphrodite, pimp, w.z., and monstrous



child did not love us, the man was subsequently killed at Şiffin while fighting on Mo'āwiyah's army (Nūrī, 1988, v.2, p.19).

Nevertheless, because of the contradiction of these kinds of traditions with the rational and narrative reasons, if the famous Imami faqihs can not interpret them, they reject them (Shaykh Anṣārī, Ibid; Mūsawī Bujnūrdī, Ibid).

3-2-6- The sixth *hadith*

This is contrary to the human reason if the text of the tradition (Rāvandī, 1989, p.220) is interpreted as a general conception. The Quran, *al- āyah 30, al-mā`ida* has explicitly introduced Cain as the murderer of Abel that both are descendants of the prophet Adam (a.s). Additionally, it is quoted by al- Jābir al-Anṣārī that training program of child is a significant factor even in connection with the w.z. (al-Majlisī, 1986, v.8, p.644).

3-2-7- The seventh tradition

Al-Majlisī has described the document and textual implication of this tradition (Shaikh Ḥurr `Āmilī, Ibid, v.16, p.37) as weak and unreliable (al-Majlisī, 1986, v.8, p.644): *since firstly, based on the Imami faqihs` approach, the criterion of the offspring`s illegitimacy in any society is valid according to the legal standard of the same people, not the Imami law (Sayyed Murtaḍā, 1985, v.4, p.108); secondly, the Imams of the Shi`a (a.s) were accepting the legitimacy of the marriage of other societies, as certainly, at least, the mothers of the seven Imams were the new Muslim women (al-Shubbar, 2003, v.1, p.177).*

Finally, as it was explained, the *faqihs`* opinion is that all the above traditions cited by the author, are weak and unacceptable in terms of their documents or textual implications. However, the author has tried to infer the position of the w.z. from these rejected *hadiths*. This very different method of the author proves that he has not applied the requisite rules of *hadith* sciences to these traditions.



4- The w.z. in the Imami jurisprudence

The author has expressed in the second section of his paper that many of the notions of the traditions about the w.z. are also evident in the realm of fiqh (Kohlberg, Ibid, p.243-256). As it was shown above, the traditions were invalid and unreliable; now the w.z.'s position will be studied in Imami legal literature according to the author's opinion. The author's analysis about the subject is as follows:

4-1- Ritual ablution (ṭahārah)

4-1-1- The author's approach

The sū'r (some additional water used for washing or drinking) of the w.z. is regarded by some authorities as impure, and in some others' opinion is reprehensible. Similarly, it is not permitted to use the sū'r of the Jews, Christian and the w.z. for ablution and major ablution or ghusl (Ibid, p.243).

4--1-2- The jurisprudents' opinion

Firstly, according to the majority's opinion (fatwā) of Imami jurisprudents, the w.z. is pure and Muslim, so ablution and ghusl with the sū'r of the w.z. is permissible ('Allāma Ḥillī, 1993, v.1, p.231; Muḥaqqiq Sabzewārī, 2002, v.1, p.60; Sheikh Anṣārī, Ibid, p.155; Najafī - ṣāhib al-jawāhir - , 1984, v.43, p.36; Mūsawī Bujnūrdī, Ibid, p.376; Mūsawī Ardībīlī, Ibid, p.58; Najafī 'Arāqī, 1961, p.349; Ṭabāṭabāyī Ḥakīm, 1995, v.1, p.385);¹ secondly, about the ṭahārah, the author should have explained the jurisprudential theories of the topic, while he has only mentioned two hadiths that it is not suitable for this section, because the nature of hadith is not regarded as fiqh; thirdly, his predominant sources are six books of hadith and two jurisprudential works: nevertheless, it is very surprising that his two latter sources i.e. al-mukhtalaf ('Allāma Ḥillī, ibid)² and jawāhir al-kalām (Najafī, Ibid)³ have made his reasoning invalid, because these books

¹ - *al-mashhūru bayna aṣḥābinā ṭahāratu waladī zinā wa Islāmuhu.*

² - *Bāqī 'ulamā' inā ḥakamū bi Islāmihī (w.z.) wa huwa al-ḥaqqu 'indī.*

³ - *Annahā (al-nuṣūṣ: traditions) jamī'uhā ḍa'īfah.*

emphasize that not only these two traditions, but also all of the hadiths in the previous section are unreliable and weak.

In this way, despite the fact that a minority of the Imami jurists believe that the w.z. is impure, such as Ibn Bābwayh, Ibn Idrīs, and Sayyed Murtaḍā, but unfortunately, the author has introduced their theory as the majority of the faqīhs' opinion (Sabziwārī, Ibid).¹

Based on the majority's theory, the Iranian legislative has described the w.z. as pure and Muslim/Imami, provided that at least, one of the zina parties is Muslim; By this reason, in accordance with Islamic Punishment code 2013, art. 552, a w.z.'s *dīyah* (blood money) is as much as a regular Muslim.²

4-2-Prayer

4-2-1- The author's claim

The generally held opinion is that a w.z. cannot lead the prayers as imam. This view was adopted even by those who admitted his testimony. According to al- Sharif al- Murtaḍā, however, the Imami position is that it is merely reprehensible to pray behind a w.z., not prohibited (Ibid, p.243-245).

4-2-2- The jurists' opinion

Connecting the conditions and qualities of the prayer Imam, the jurists have emphasized the quality of his *ṭahārat al-mawlid* (legitimacy of birth), while the author has not referred to it at all (Shahīd Thānī, 1993, v.13, p.327). According to the faqīhs' theory, the criterion of *ṭahārat al-mawlid* is simplified in this way: where the follower (*ma'mūm*) does not know that the Imam prayer is the w.z, the Imam's *ṭahārat al-mawlid* is established. (Muḥaqqiq Thānī, 1994, v.2, p.372; Mūsawī 'Āmilī, 1991, v.4, p.69; Seyyed Murtaḍā, 1995, p.544).³ However, if the *ma'mūm*

¹ - *Walad al-zinā najis 'inda ba'd al-aṣḥāb wa al-ashhar al-aqwā ṭahāratuhu* .

² - Islamic punishment code. art. 552: The w.z. in the face of both parties of illegitimate intercourse or one of them is to be Muslim, his *dīyah* ordinances are similar to a Muslim.

3. *Wa ammā ṭahārat al-mawlid , wa al- murād bihā an lā yu 'lam kawnuhu walada zinā*

is aware of that the Imam prayer is the w.z., only he cannot prayer behind him, but he has no right or duty to disclose it to the others; because, disclosure of a Muslim's previous secret or private sin or deviation itself is a mortal sin which is called as *'ishā'at al-fāḥisha* (disclosing the obscene act), *īdhā'at al-sirr* (disclosure of the human secret feature), or *'izā' al-mū'min* (inconveniencing him) by the holy Quran, the hadiths, and the scholars' consensus (Qomi, 1984, v.2, p.100; Ṭabarsī, 1993, v.7, p. 208; Shahīd Thānī, c1987, p.306; Shaikh Anṣārī, 1995, v.1, p.328; Shaikh Arākī, 1993, p.199; Imām Khumeinī, 1995, v.1, p.445; Makārim Shīrāzī, 1997, p.153).

Therefore, the author seems to have conceived that the ma'mūm can simply declare to the others that the prayer Imam is the w.z., and then he is deprived of being as the prayer Imam! As we considered in the above sources, such a conception is essentially null and void, because the features of any Muslim is located in the realm of his privacy; logically a prayer Imam, even if he might have been a w.z., is a Muslim and has his own privacy rights. In addition to it, if the ma'mūm declares that the Imam is the w.z., he should be subjected to a penalty of Islamic ḥudūd (prescribed) punishments such as *qadhf* (false accusation of unlawful intercourse), slander, or accusation and so on, since as it was explained as to the conceptualization of w.z., its burden of proof is too hard and near to be impossible.

4-3- Marriage

4-3-1-The author's analysis

The three main issues are: permissibility for others to marrying a w.z., for a natural parent to marry his or her w.z., and for anyone to marry a prostitute or a fornicatrix. Based on a hadith of Ja'far al-Ṣādiq, in principle, it is permissible for a man to marry a female w.z. and he can seek to have children by her. However, by reason of the w.z.'s unbelief, for Ibn Idris, such a marriage is forbidden. But connecting possibility of marriage between a natural parent and his or her w.z., the prevalent opinion among



Imami scholars is that the physical connection of them to each other, legally precludes such a marriage. Al-Ṭūsi, al-Ḥillī and Muḥammad Jawād Mughnīyya have adopted the above prevalent theory because, the w.z. is the natural child of the parents as the language and customary practice categorize a w.z. as their child (Ibid, p.244-247).

4-3-2- The Imamis' jurisprudential and legal analysis

The first problem of the author is that the main heading requires to be discussed about the w.z. in the jurisprudence not in the *hadith*, but again, the author has forgotten to refer to the jurisprudential sources. In regard with the second one, three or more ancient jurisprudential theories are regarded by him as the representatives of all the *Imami* jurists, while it is suitable for this title and also for our period, to explain the modern jurisprudential theories, because during the centuries, most of the ancient jurists' theories have been developed, rejected or informed. Therefore, this methodological trouble of the author has prevented him to raise the new problems about any issue. Consequently, the author's research about admissibility for a w.z. to marry the others is merely an evidence *i.e.* one *hadith*, and this shows that the author does not know there is difference between a *hadith* and jurisprudence. In this regard, the *faqihs* have additionally referred to other evidence that the author has not pointed to them at all: generality of validity of marriage, and legitimate intercourse for all of persons, and evidence of being famous of this theory among the Imamis (Bahrānī Āle 'Usfūr, 1985, v.19, p.418).

Connecting second issue, all the Imami scholars have applied the prohibition of the w.z.'s marriage to the three kinds of parents: natural parents, parents in law, and wet - nurse and her husband (Muhaqqiq *Thānī*, 1994, v.12, p.190; Imam Khomeini, 1984, p.199; Bahjat Fūmanī, 2005, v.3, p 537; *Makārim Shīrāzī*, 2004, v.2, p.116).



4-4- Slander (qadhf)

4-4-1-The author`s viewpoint

The *Quranic hadd punishment for qadhf* is carried out against someone who falsely accuses another of *zina* or brands him as a *w.z.* In the latter case, the person`s parents have been accused of *zina* and thereby, the punishment is done for them not the *w.z.* For this reason, when someone slanders the person`s mother as *zina*, the slanderer is given eighty lashes for defaming her (Ibid, p.254-255).

4-4-2- Analysis of the author`s view

In *Imami* law, falsely accusing someone of fornication and sodomy or denying a child's legitimacy cause to punishment for *qadhf*, but the author only considers the first one to be the cause of this punishment without mentioning its conditions including *Iḥṣān* (chastity) at all. In addition, here, it was appropriate to ask: is accusing the *w.z.* of fornication or buggery considered as slander? According to the *Imami* scholars` consensus, the *w.z.* is a Muslim and pure, and he who has chastity, and does not carry out fornication and sodomy, he is entitled right of *qadhf* (Fakhr al- Muḥaqqān Ḥillī, 1967, v.4,p.503) , but the author has not enter into the case.

Another fundamental question is: if someone call someone as the *w.z.*, it is his parents' *qadhf*, even if they are punished with the legal penalty, for they may have repented of what have done. Similarly: if a adulterer tells his illegitimate child that you are not my child, according to the *Imami* jurisprudents, this is the mother`s *qadhf*, not child, and he will be punished with the *qadhf* penalty for the mother, and for beating the child, he will be punished with *ta`zir* (Muḥaqqān Ḥillī, 1987, v.4, p.149) provided that the mother would have repented (Allāma Ḥillī, 1992, v.8, p.28).

4-5- Retaliation (qiṣās)

4-5-1-The author`s theory

Al-Baqir says: a mother who secretly kills illegitimate child is to be flogged one hundred lashes for killing him and then stoned for adultery if

she is married; but if she is not, she is flogged an additional one hundred lashes for fornication, because as a general rule, a parent (*wālid*) is not executed for killing the child. However, based on another contradicted utterance, the punishment of a mother who deliberately kills her legitimate child is death (Ibid, p.255).

4-5-2- The jurisprudential and legal analysis

Regarding jurisprudential rules of *qiṣāṣ* of a *w.z.*, there are many data that can be derived from the *Imami* legal sources. The author, however, quotes a weak utterance (al-Majlisī, 1984, vol. 23, p. 405) of Imam Bāqir (a.s.) in *al-Kāfi* (Kulaynī, vol. 7, p. 261) and prescribes the punishment of one hundred lashes for the mother of the *w.z.* if she kills her illegitimate child that no *Imami* jurist has issued such a fatwa for her. If the author were familiar with the method of jurisprudential reasoning and inference of *Imami* faqihs, he would not have deprived the readers of necessary information. In any way, it seems that the following issues in relation to *qisas* and *diya* of a *w.z.* are appropriate: will legitimate person murders an illicit one, the murderer is killed as the *qiṣāṣ* punishment? Do they differ in the amount of blood money? The answer is that according to the famous saying of the *Imamiyya* jurists, the *w.z.* is considered as pure and Muslim, even if before his puberty; accordingly, they are the same in the precepts of *qiṣāṣ* and *dīya* (Jawād Tabrīzī, nd, v.1, p.432; Islamic punishment code 2013, art. 552).

5-Conclusion

Dr. Ethan Kahlberg made a lot of efforts to explain an important issue such as the position of the *walad zina* in *Imami Shiism*, and for this reason, we can appreciate him. However, some results can be drawn from his research as follows:

1- Contrary to Kohlberg's point of view, the famous *Imami* jurists including Imam Khomeini have regarded the *walad zina* as a pure and Muslim person, provided that he or she is born of a Muslim father or mother, like any other person.

2- The traditions that based on them, the author have declared the *walad zina* as infidel, impure and the like, are invalid according to famous *Imami* Jurisprudents.

3- The jurisprudential principle is that the *walad zina* should be assumed as pure and Muslim, unless it is proven otherwise, and since all the hadiths which have been cited by the author, were unreliable, hence, there is no evidence to the contrary of the principle of the inherent purity of the *walad zina*, and the Islamic Penal Code also follows this principle.

4- This 360-degree disagreement of the author with the jurists does not seem as natural, and is really worthy of reflection. Perhaps in the most optimistic state, unavailability the *Imamiyyah* sources has probably made Kohlberg unable to reach the depth of the subject matter, and has led him and the western readers be astray in this issue for all these many years.

6-Suggestion

Three points are suggested to who seek to understand the *Imami Shiism*:

1- In order to know this school, one should directly refer to its specialists, i.e. *Imamiyyah* jurists, and not rely only on the works of Western scholars. Because by looking at the above critique of Kohlberg's theory, it became clear that a famous scholar like Ethan Kohlberg, in spite of his many experiences and works in the field of Shia studies, understood a simple issue such as 'the position of illicit child in *Imami Shiism*' in an upside-down form, and because of this very inverted comprehension, he was even awarded a million dollars by *the Zionist regime*.

2- In the works of such as Encyclopedia of Islam, as well as the European or American journals, no opportunity is given to the *Imamis* to defend their ideas against the critics. For example, who has seen an article from an Iranian *faqih* in EI yet? Or about four years ago, against Kohlberg's article published in the Bulletin of the School of Oriental and African Studies, I sent a review of his theory to the same Bulletin, but it quickly responded: "We do not publish reviews of Iranian jurists". This was despite



the fact that they had published Kohlberg's article against Shia, but they could not tolerate a critical response to it, and this severe media censorship and presenting upside down images of the Shia school is an important obstacle for those who interested in understanding the beliefs of this school.

3- Therefore, the establishment of the Western centers for Shia studies was mainly aimed at showing the shortcomings of the Shia school, and the research goals were not the basis of their establishment, Therefore, resorting to such institutions to know the Shiite ideas seems futile.

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