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## THE POSITION OF THE WALAD AL-ZINA IN IMAMĪ SHIITE JURISPRUDENCE A Critique of the Viewpoint of Kohlberg

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ARTICLE DETAILS	ABSTRACT
<b>Article History</b> Published Online: _Published_	The famous theory of the <i>Imami</i> jurists is that the <i>walad zina</i> (offspring of illegitimate intercourse) has the equal rights to the other Muslims` rights, because a child, whether legitimate or illicit, should not be punished for the behavior of the parents. However, the contemporary Shialogist, Dr Etan Kohlberg in his paper titled as "The position of the <i>walad zina</i> in <i>Imami Shiism</i> " has claimed that the <i>Imami</i> jurists do not consider the <i>w.z.</i> as an Shiite Imāmi, and then believe that such a child is deprived of the rights of Shiites and has been given the same infidel`s rights to him. In this research, with the descriptive - analytical method, has been shown that the author, Dr Kohlberg, has tried to deduce from Shiite
<b>Keyword</b> <ul style="list-style-type: none"><li>• Jurisprudence,</li><li>• Tradition</li><li>• Illegitimate Child,</li><li>• Kohlberg</li></ul>	

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	sources in a different way. As a result, he has relied on the traditions and jurisprudential theories to prove his claim, which most of them have been rejected by well-known Imami jurists, including Imam Khomeini. Therefore, the author has cited the main content of his article from invalid sources and has been transmitting them to Western readers for many years under the title of Shiite beliefs, while his inferences have been untrue
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## Introduction

In *Imami Shiism*, all the individuals have the equal rights and duties, even if he or she is an illicit child. However, the contemporary Shialogist, Etan Kohlberg (hereinafter, the author is named)<sup>2</sup> believes, in his paper titled "The position of the *walad zinā* in *Imāmī Shiism*"<sup>3</sup> that in accordance with some *Imāmī* traditions and jurisprudential sources, the *walad zinā* (child of illicit relationship: *w.z.*) is deprived of his rights. Therefore, in spite of the illicit child is the result of the natural parents' illegitimate intercourse, but the jurists have

<sup>2</sup> - 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](http://www.emetprize.org/english/Product.aspx?Product=90).

<sup>3</sup> - *Bulletin of the School of Oriental and African Studies*, 48. London, 1985: p. 237- 236: <https://www.jstor.org/stable/617543>.



regarded the very parents` sin as a cause of the *w.z`s* impurity (*najāsa*) and his infidelity (*kufr*); then, in reality, the parents deprives the *w.z.* of a legitimate child`s rights (Kohlberg, 1985, p. 237-238).

Therefore, an important question arises here: how much has the author been able to infer the true position of the illicit children from *Imāmī* traditions and jurisprudence? Summarily, it can be said that the author`s cited sources are inconsistent with the human free will and justice, and they have been rejected by the majority of *faqih*s including Imam Khomeini (*Imām Khomeinī*, 2000, p. 84-85; Sheikh Anṣāri, 1994, v.5, p.155; M`arifāt, p.304; Fāḍil Lankarānī, 2004, p.509; Islamic Punishment Code 2013 (I.P.C), art. 552).

The author`s paper consists of many discussions that we will only consider tree following important issues: concept of the *w.z.*, his connected traditions, some jurisprudential opinions about him. Based on descriptive - analytical method, in any case, we first bring the theory of the author, and then, discuss the jurisprudents` opinion.



## **2- Concept of the *w.z.***

### **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` opinion**

With the phrase " all varieties of illicit sexual intercourse ", the author provides a non - *Imami* definition of *zinā*, because, it does not conform to *Imāmi* jurisprudential concept at all, and for this reason, the author could not refer to an *Imāmi* source in his definition. The *Imāmiya* jurists (*faqih*s) have defined *zinā* with fourteen stipulations as follows: whenever a mature and sane man with consent and free will, without a permanent or temporary marriage contract, or conductive marriage (known as *al-nikāḥ al-mu`āḡāṡi*), 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, they have committed *zinā*



and their child is the *w.z.* (Imām Khumeinī, 2000, v.1, p.267; Mūsawī Gulpāyegānī, 1993, v.1, p.30).

By following jurisprudential definition, the Iranian legislative has added to the mentioned conditions of *zinā*, at least these eight stipulations: without insensibility, sleep and drunkenness, without force and duress, without deception and seduction, without abduction and threat (Civil Code, arts. 884, 1167; I.P.C 2013, arts. 224, 247,552-553).

Accordingly, with the absence of even one of these jurisprudential and legal conditions, the offspring is regarded as legitimate. It is evident that for establishing offspring's illegitimacy, existing of all these conditions should simultaneously be proved; consequently, in the *Imami* society, the proof of offspring of illicit intercourse is too hard and almost impossible (Seyyed Murtaḍā, 1994, p.545; Najafī, 1984, v.43, p.35). But with the simple definition of the author, anyone can easily be considered as illegitimate.

Therefore, in the first step, the author has conceived a concept of the *w.z.* in his mind that is completely different from the definition of the *Imami* jurists. Now, a basic question arises



here: has the author studied the position of which *w.z.* according to in *Imami Shiism*? Certainly, the *w.z.* in the title of the author's paper is not related with *Imami* jurisprudence or even its theology; as a result, there is no connection between his research and *Imami Shiism* in this regard!

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

#### 3-1-The author's approach

Based on Kohlberg's belief, the following *Imami* traditions emphasize that the *w.z.* is ritually impure and that 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-Şādiq 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-The Imami Jurisprudents` opinion**

First of all, it is necessary to note a general point about the above traditions that according to the *Imami* jurisprudents` approach, since *hadith* is the



speech or conduct of the prophet or an innocent Imam (*ma'ṣūm*) connecting a religious precept, hence the validity of tradition is dependent on the reliability of its document and textual implication. The authenticity of the document should be proved with its transmitters' reliability, as authenticity of the text with the rules of the *hadith* sciences; as a result, mere of existing a tradition in the *hadith* works, should not be usually considered as the evidence of its validity.

Now, given this point, the traditions of the first section of the author's article will just be examined by the jurisprudents' viewpoints.

### **3-2-1- Analysis of the first *hadith***

There are some Quranic and rational reasons that make the textual implication of the tradition (Ibn Bābwayh, 1986, p.263) unacceptable, even if its document is assumed to be valid; there are, at least, four evidences as follows: Firstly, 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 Tabāṭabāyī, 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 jurisprudents` *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 Ḥāmilī, 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 Ardībīlī, 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 *hadith***

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 hadith

This type of hadiths (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 'Alī (s); Imām al-Bāqir has reported it as follows: A man stood up and kindly said to 'Alī I love the *ahl al-bayt* (the Prophet's household); some of the companions praised him but 'Alī 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 *faqih*'s 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 Ardibīlī, Ibid, p.58; Najafī ‘Arāqī, 1961, p.349; Ṭabāṭabāyī Ḥakīm, 1995, v.1, p.385);<sup>4</sup> 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*)<sup>5</sup> and *jawāhir al- kalām* ( Najafī,

<sup>4</sup> - *al-mashḥūru bayna aṣḥābinā ṭahāratu waladī zinā wa Islāmuhu.*

<sup>5</sup> - *Bāqī ‘ulamā`inā ḥakamū bi Islāmīhi (w.z.) wa huwa al-ḥaqqu ‘indī.*



Ibid)<sup>6</sup> have made his reasoning invalid, because these books 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).<sup>7</sup>

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.<sup>8</sup>

## 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

<sup>6</sup> - *Annahā (al-nuṣūṣ: traditions) jamī`uhā ḍa`īfah.*

<sup>7</sup> - *Walad al-zinā najis `inda ba`ḍ al-aṣḥāb wa al-ashhar al-aqwā ṭahāratuhu .*

<sup>8</sup> - I.P.C. 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.





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 faqih's 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).<sup>9</sup> However, if the *ma`mūm* is aware of that the Imam prayer is the *w.z.*, only he cannot pray 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 *ʿishāʿat al-fāḥisha* (disclosing the obscene act), *īdhāʿat al-sirr* (disclosure of the

<sup>9</sup> *Wa ammā ṭahārat al-mawlid, wa al- murād bihā an lā yuʿlam kawnuhu walada zinā*



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-Şādiq, 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 Mughniyya 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 *faqih*s 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 (*qadhaf*)

##### 4-4-1-The author`s viewpoint

The Quranic *hadd* punishment for *qadhaf* 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 *qadhaf*, 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-Muḥaqqīn 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 *qadf*, 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* (Muḥaqqīn 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* faqih, 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* jurisprudents, 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

Reviewing some viewpoints of the author regarding the jurisprudential issues of the *w.z.* proves that he, despite of his international famousness in shialogy, faces with the following serious criticism and challenges:

First- in a completely different method, the author not only considers every utterance in the Shi'a narrative sources as authentic but also expresses it as *Imami* belief, while the jurists do not consider the mere existence of the narrations even in the four books as the cause of their validity unless the utterances are to be valid in terms of document or implication, or lack of conflict with other rational and narrative rules. For this reason, we saw that all the cited *hadiths* of the author's paper were almost invalid in terms of these criteria. Consequently, despite the author's numerous references to the *hadith* sources, his cited utterances are incapable to prove the inherent impurity of the





w.z or his infidelity; then, the principle of inherent purity of the *w.z* remains in force and an illicit child, in a Muslim society, is regarded as a pure Muslim, and the Islamic Penal Code has followed this principle.

Secondly, similarly, the author's method of research is merely to cite the jurisprudential sources, but his main problem is that his citations are limited to four or five ancient jurisprudential books that we found in our research, to have been rejected by most contemporary jurists. But the author, without knowing the contemporary jurists' views, has for many years transmitted the legal theories which are contrary to *Imami Shiism* as the well-known viewpoints of all Imamate jurists to Western readers. Therefore, to compensate the past, the author is expected to try to reform them in accordance with the scholars' works.

On the whole, adopting an inappropriate method of inference has severely prevented the author from relying on authentic *Imamiyah* narrative and jurisprudential sources and, for this reason, he has cited any utterance as a basis of his theory or ascribed the statements of the some early



jurisprudents as all the famous Imami faqihs. Finally, it can be said that his paper lacks the necessary research criteria.

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