

Notes of Lectures on Fiqh by Maulana Sadiq Hasan Lecture # 20 (Thursday 17 July 2003)

ROLE OF WITNESS IN SHARIA

✳ In Islamic sharia, a witness (gawah) is often required to prove the truthfulness of something. Examples of situations, where witnesses are often used, include:

- (a) To prove crime for decision on Islamic punishment
- (b) To witness a divorce case
- (c) To prove moon sighting

✳ What is the standard of witness in Islam ? In most of the cases in Islamic fiqh, two adil male Muslims are normally required as witnesses. In above three examples also, two adil male Muslims are required as witnesses.

✳ Who is an Adil person ? According to sharia, an adil (just) is that person who does not commit any major or minor sin, and if he commits any sin, he immediately seeks forgiveness (tauba) from Allah. In Shia fiqh, one of the conditions for the imam of jamaat of salat is that he must be an adil Muslim. While judging a person to be an adil, it is quite possible that he may be an adil in view of one muslim and may not be an adil in view of another muslim.

WITNESS REQUIREMENT TO PROVE NAJASAT OR TAHARAT

✳ Mujtahids differ in the standard of witness necessary to prove if a thing is najis or tahir. In order to prove the najasat or taharat of a thing, following witnesses are required:

According to Ayatullah Khoi, one reliable person is required.

According to Ayatullah Khomeini, one male adil Muslim is required.

According to Ayatullah Seestani, two male adil Muslims are required.

✳ What is the criterion that a person is considered reliable ? If you are confident that the person concerned is not speaking a lie about the taharat or najasat of a thing, you may consider him to be a reliable person for that matter. Thus, according to Ayatullah Khoi, a reliable person need not be an adil person, and such a person may be a muslim or a non-muslim, male or female.

✳ Thus it is possible that a thing is considered najis for the follower of one marja, and the same thing is considered tahir (not najis) for the follower of another marja, due to above differences in witness requirement.

NAJASAT OF A KAFIR

✳️ If you do not know the religion of a person you come across, then according to Islamic sharia, you can consider such a person as tahir, even if that person lives in a pre-dominantly non-Muslim country or has a non-Muslim appearance or name. Thus, for example, you can accept and eat food prepared by such a person, shake hand with wet hands, sit in a vehicle seat wetted by his sweat etc. It is not necessary, nor wajib, to ask his/her religion or his/her name. But if you are 100% sure that such a person is a kafir, then you have to follow the fatwa of your marja regarding the taharat/najasat of such a person.

✳️ If you do not know the religion of a person, then it is wajib to enquire about his/her religion in the following 2 cases:

- (a) For burial of such a person, in case of his/her death, in a Muslim graveyard, because it is haram to bury a non-Muslim in a Muslim graveyard
- (b) For marriage of such a person to a Muslim person, because it is haram for a Muslim to marry a non-Muslim. There are different rules for Ahle Kitab.

✳️ If a kafir person recites kalima (shahadatain) with its meaning, and if he/she does not do or say anything apparently against the kalima or its meaning, then such a person is to be considered a Muslim and hence a tahir person for all practical purposes, such as cooking food, marriage to a Muslim person, burial in a Muslim graveyard etc.

✳️ A munafiq (a Muslim who does not believe in Islam by heart) is considered as tahir in Islam.

TAHARAT / NAJASAT OF MEAT AND ANIMAL LEATHER

✳️ If an animal is not slaughtered Islamically (i.e. not zabiha), then according to Ayatullah Khoi and Seestani,

- (a) eating of its meat is haram,
- (b) its meat is najis
- (c) its skin and most other parts of its body are najis
- (d) wearing leather item made from such animal during salat makes his salat batil (void)

✳️ If you doubt or you do not know if the animal has been slaughtered Islamically, then, according to Ayatullah Khoi and Seestani,

- (a) eating of its meat is haram,
- (b) its meat is not najis,
- (c) its skin and most other parts of its body are not najis,
- (d) wearing of leather items made from such animal during salat is allowed according to Ayatullah Seestani only

✳️ Meat of pig and dog are always haram to eat and all parts of body of pig and dog are always najis

✳️ It is not wajib for a Muslim to enquire about the ingredients of a food item or food packet available in the market, unless it is meat or meat product.