Muslim Funeral Rights in The West

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ABSTRACT

This paper examines the rights of the deceased from a Sunni jurisprudential perspective and its application in selected Western nations. Despite the growing Muslim population in the West since World War II, scholarly attention has predominantly focused on topics such as extremism, Islamophobia, and minority jurisprudence, with minimal exploration of death-related matters. This paper addresses this gap by delving into the Islamic rulings concerning death and dying and their implications for Muslims living in Western societies. By examining issues such as burial rights, this research aims to provide valuable insights into how Muslims can navigate the complexities of death within Western legal and cultural frameworks. Through a comprehensive analysis of Sunni jurisprudence, this study seeks to offer practical guidance for Muslims facing end-of-life situations in non-Muslim majority environments.

KEYWORDS

Sunni jurisprudence, death and burial rights, western context, muslim minority communities, end-of-life jurisprudence

INTRODUCTION

During the reign of 'Omar Ibn Al Khaṭṭab (584-644 CE), the Islamic Caliphate spread from north Africa to China (Satti, 2006). Duderija and Rane (2019) assert that the Islamic empire has been growing from very early on, from the Umayyad Empire to the Ottoman Empire. Literature from both Muslim and non-Muslim historians has detailed the spread of the Islamic empire, such as works by al-Tabari (1967), Ibn Kathīr (1990), Al Dhahabi (1990), Kennedy (2007; 2016), and Hawting (2006).

Duderija and Rane (2019) state that established Muslim presence in the West falls into different periods. The first was the Muslim rule in Spain and Southern Italy between the eighth and fifteenth centuries. The second period was when the Muslims covered the north of the Caspian Sea. The third was Muslims in Central Europe under the Ottoman Empire. The fourth and final period was post-World War II, which Duderija and Rane (2019) refer to when Muslim communities established a permanent presence in Western Europe. The number of Muslims has been rising in the West since World War II (Brown, 2000), where they have faced opportunities and challenges (Mohiuddin, 2017). Much has been published about Muslims in the West, especially after 9/11, where the primary focus has been on extremism, radicalization, terrorism, Islamophobia, or belonging (see Lovat, 2017). There is also some research on fiqh al-aqaliyāt (jurisprudence for Muslims living as minority communities). Scholars have attempted to provide jurisprudential answers to emerging issues not addressed in previous fiqh literature, such as the question of citizenship, interest-based mortgages, and civic divorces. This area of jurisprudence aims to contextualize the practice of Islam in the West without compromising the fundamentals of Islam.

One area of concern for Muslims in the West is the question of death and burial, yet there seems to be little research on this matter from a jurisprudential perspective. As death is a part of everyday life, Muslims must understand the Islamic rulings about death and dying and how best to practice these in the West. Therefore, this paper explores the rights of the deceased (before, during, and after death) from a Sunni jurisprudential perspective and its application in selected Western nations.

This study delves into several critical questions to address the broader issue of Muslim funeral rights in the West. The first question investigates the Sharia rules regarding the washing (ghusl) of a deceased Muslim by a non-Muslim and vice versa. This inquiry is vital to understanding the permissibility and implications of cross-religious participation in burial rituals. The second question examines whether Sharia allows Muslims and non-Muslims to be buried

alongside each other in one cemetery, addressing the physical and symbolic separation of religious communities in death. Additionally, the study explores the views of the four Sunni schools of thought on Muslims attending a non-Muslim burial, which has significant social and religious implications for interfaith relations. Finally, it discusses the perspectives on giving ta'ziyyah (condolences) to non-Muslims, an essential aspect of maintaining social harmony and fulfilling religious duties. The significance of this study lies in its potential to provide practical guidance for Muslims living in non-Muslim majority environments. By addressing these specific jurisprudential issues, the study aims to help Muslims navigate the complexities of death and burial within Western legal and cultural frameworks, thereby ensuring the practice of Islamic rituals in a way that respects both their religious obligations and the laws of their residing countries.

Many Islamic scholars, past and present, have discussed the rights of the deceased; however, limited Western literature about these rights was found. Akkaymak and Belkhodja (2020) explore the funeral services available in Canada and the preferred burial location. However, their research focuses on the relationship between immigration, religion, burial decisions, and a sense of belonging. The study provides a short paragraph regarding washing the body but needs to explore any schools of thought, leading to a superficial treatment of the topic.

Ansori, Khasanah, and Sobirin (2022) examine burial rights as a reason for interfaith conflict. Their research explores who has the right to prepare the body of the deceased for burial and which rites should be followed. However, the article discusses the issue from a theological lens, addressing whether the body can be cremated or must be buried in the ground. Kadrouch-Outmany (2014; 2018) discusses burial in Belgium and the Netherlands, highlighting the rights of the deceased from washing the body to burial. While her research is specific to set rulings extracted from the Sunnah, it does not address the broader issues of burial for Muslims living in non-Muslim lands. Thus far, there is limited research exploring the issue of Janāza from a holistic angle.

METHODOLOGY

This paper explores answers to the above research questions (RQs) concerning aspects of Janāza using content analysis, a form of qualitative research. Creswell (2016) defines qualitative research as an inquiry process of understanding based on distinct methodological traditions that explore social human problems. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants, and conducts the study in a natural setting.

Chism and Banta (2007) state that there are several approaches to qualitative research, such as observations, interviews, and document analysis. The approach suitable for this research is content analysis,

as this research intends to explore and analyse written text. Krippendorf (2018) defines content analysis as a systematic reading of a body of texts, images, and symbolic matter. White and Marsh (2006) state that content analysis is a rigorous approach to analysing documents obtained or generated during the research. Similarly, Payne and Payne (2004) assert that document analysis aims to interpret physical sources, such as written sources. Potter and Levine-Donnerstein (1999) proffer that content analysis can only be utilised adequately if the nature of the content that is sought to be analysed is specified.

There are two main types of content analysis: conceptual and relational (Smith and Humphreys, 2006). The main aim of this research is to explore the views of the four Sunni schools of thought regarding the issue of Janāza in a Western context. Therefore, this article will analyse the proofs and reasoning used by each school of thought to answer the proposed RQs. Although both conceptual and relational analysis have similar steps at the beginning of the research, this study will utilise relational analysis to examine the strength of the link between the research questions and the reasoning put forward by each school of thought.

FINDINGS

1. The Permissibility of Non-Muslims Performing Ghusl on a Muslim

Zayn al-Dīn Muḥammad Ibn Nujaym (d. 970H), an eminent Egyptian jurist of the Ḥanafī school, argued in Al Bahr Rā'iq (1997) that if a Muslim passes away and has a relative who is not Muslim, the non-Muslim should not take responsibility for preparing the deceased for burial. This responsibility should fall to the Muslims. However, Ibn Nujaym does not state a reason for his opinion. Similarly, 'Ala' al-Din Al Kāsāni (d.1191H) states in Badai' As Ṣanai' that non-Muslims should not be allowed to wash the body of a Muslim. Al Kāsāni provides a reason for his opinion, referencing a hadith where the Prophet Muhammad ordered his companions to take responsibility for a Jewish boy who had accepted Islam on his deathbed rather than allowing the boy's non-Muslim father to do so. However, Yusuf bin Muhammad Az Zayla'i (d. 762H), a distinguished scholar of Hadīth and Ḥanafi Fiqh, believed that if a Muslim family member is not available, then a non-Muslim should have the right to prepare the deceased.

In the Maliki school, Abu Abdillah Muhammad ibn Muhammad al Ru'ayni, known as Al Hattāb (d. 954H), states in his explanation of Mukhtasar Khalīl (2010) that the Aṣḥāb deemed it impermissible for a non-Muslim, whether male or female, to wash the deceased. However, Sahnūn Ibn Sa'id At Tanūkhi (d. 240H) proffered that if no Muslims are available, it is permissible for a non-Muslim to wash the deceased. Muhammad bin Abdillah Al Kharshi (d. 1101H) discusses that if the washing of the body is a form of worship, then it is not allowed for a non-Muslim to wash the body. However, it is permissible if it is seen

as cleansing the body. In Ḥanbali Madhab, Mansūr bin Yūnus Al Buhuti (d. 1051H) asserts in his explanation of Al Muntahah (1993) that it is not allowed for a non-Muslim to wash the body of a Muslim. Ibn Qudāma (d.620H) states that if the wife of a Muslim is Dhimmiyah (Jew or Christian under Muslim rule), it is not correct for her to wash her deceased husband's body. Ibn Muflih (2003) also states that a non-Muslim should not wash a Muslim's body. Shāfi'i Madhab, al-Nawawi (d. 676H), a distinguished scholar of ḥadīth and fiqh from the Shāfi'i school, states in Al Majmu' Sharḥ Al Muhadhab (2010) that it is preferable to give precedence to a Muslim when washing the deceased, even if the Muslim is not a family member of the deceased. However, in his work Rawdatu al-ṭālibīn wa 'Umdatu Al Muftīn, he states that if a non-Muslim were to wash a Muslim, it would be sufficient, indicating it may not be preferable but is acceptable.

The different Sunni schools of thought show a range of opinions on the issue of non-Muslims washing a deceased Muslim. The Ḥanafi and Ḥanbali schools generally oppose this practice, emphasising that a Muslim should perform the washing, viewing it as an act of worship. The Māliki school presents a nuanced view, differentiating between the act of worship and mere cleansing, but generally deems it necessary for a Muslim to wash the body of a deceased Muslim body. While the Shāfi'i school is more permissive, accepting non-Muslim participation if necessary. In Islamic tradition, it is strongly emphasised that a Muslim family member should wash the body of a deceased Muslim. This practice is rooted in the belief that washing the body is a form of worship and must be performed by someone who shares the same faith. If no Muslim family member is available, it becomes the responsibility of the Muslim community to ensure that the body is washed correctly. A non-Muslim cannot perform this task, as their involvement would render the ritual invalid according to Islamic teachings. This guideline holds particular significance for Muslims living in Western countries, where Muslim communities may be smaller and more dispersed. It highlights the crucial role of having a well-organized community that can support each other in times of need, including the preparation for burial. Ensuring a system is in place for the washing and burial of the deceased is essential for maintaining religious practices and providing comfort to grieving families.

2. The Permissibility of a Muslim Washing the Body of a Non-Muslim

Muhammad Ameen ibn 'Umar, known as Ibn 'Ābidīn (d. 1237H), an expert in Ḥanafi jurisprudence, states in his commentary on Durr Al Mukhtar (2003) that it is allowed for a Muslim to wash the body of a non-Muslim family member if no one else is available. The Maliki school, similar to their stance on non-Muslims washing Muslims, deems it incorrect for a Muslim to wash the body of a non-Muslim. Mālik ibn Anas states, as found in Mudawana (1994), that even if the deceased was the father of a Muslim, it is incorrect for the Muslim to wash the body. The Shāfi'i school is the most lenient, allowing for non-Muslims to be washed by Muslims in any situation (An Nawawi, 2010). Musa ibn Salim Al Hajjaawi (d. 968H) posited in his summary of al Muqni', Zād Al Mustaqni' (2003) that it is impermissible for a Muslim to wash the body of a non-Muslim.

On the matter of Muslims washing non-Muslims, there is a notable divergence among the Sunni schools. The Māliki and Ḥanbali schools strictly oppose it, viewing it as opposing Islamic practices. The Ḥanafi school allows it under specific conditions, that is, if the deceased non – Muslim is a member of the family, while the Shāfi'i school is the most lenient, accepting it generally. For Muslims in the West, this understanding is fundamental. The diversity and multicultural nature of Western societies often lead to mixed-faith families and communities. In such contexts, maintaining clarity about religious obligations and practices is essential. By adhering to these guidelines, Muslims can ensure that they respect both their religious traditions and those of others. Muslims living in Western countries, it is crucial to understand these nuances. However, despite the allowances made by some schools of thought, it is generally advised that Muslims avoid washing the bodies of non-Muslims. This guidance is rooted in the belief that the ritual of washing the deceased is a religious act that members of the same faith should ideally conduct.

3. The Permissibility of Burying a Muslim in a Non-Muslim Cemetery

All four Sunni schools agree that it is not allowed for a Muslim to be buried in a non-Muslim cemetery. In Ḥanafi Madhab, Muhammad Ibn Ahmed As Sarkhasi, a renowned Persian jurist, asserts in Al Mabsut (1989) that it is not correct to bury a Muslim in a non-Muslim graveyard. Ash Sharnablali (2005) also states that if it is known who among the deceased is Muslim, a separate graveyard should be taken. In Māliki Madhab, Abdul Rahmān Ibn Al Qāsim Al Utaqi, who accompanied Mālik ibn Anas for approximately twenty years, asserts that if a woman accepts Islam before she passes away but is buried alongside non-Muslims, she should be exhumed and buried with Muslims unless her body has started to decompose (Ibn Rushd, 1988). In Shāfi'i Madhab, al-Nawawi (2010) states that a Muslim is not to be buried in a non-Muslim graveyard, and a non-Muslim is not to be buried in the cemetery of the Muslims. In Ḥanbali Madhab, Al Buhuti (1983) states that it is not allowed to bury a Muslim in a non-Muslim graveyard and vice versa. Ibn Hazm (1983) asserts that the separation of Muslims and non-Muslims regarding burial has been practised since the time of the Prophet Muhammad.

There is a unanimous agreement among the Sunni schools regarding the prohibition of burying Muslims

in non-Muslim cemeteries. This consensus highlights the importance of maintaining religious identity even in death. For Muslims in the West, this could mean advocating for separate Muslim burial grounds to ensure adherence to Islamic principles or, at the very least, seeking designated Muslim sections within public cemeteries.

4. The Permissibility of Muslims Attending the Funeral Prayer of a Non-Muslim

In Māliki Madhab, Muhammad ibn Yousaf Al Abdari asserts in his explanation of Mukhtasar Khalīl, Taj wa Iklīl (1994), that Imām Mālik believed it is not allowed to wash the body of a non-Muslim or follow the burial. Al-Nawawi (2010) deems it permissible for a Muslim to follow the funeral procession of a non-Muslim as long as it is a family member. Abu Bakr Ahmed Ibn Muhammad Al Khalāl (d. 311H) expresses that Imam Ahmed was asked about attending the burial of a Christian and replied that one should do as Al Hārith ibn Abi Rabea did, witnessing his mother's burial but standing to the side of the procession. Ibn Taymiyyah (2004) was also asked about Muslims visiting sick Christians and attending their burials. He replied that one should not participate in the burial but may visit the sick to soften them towards Islam.

The Sunni schools show a spectrum of views on attending non-Muslim funerals. The Māliki and Ḥanafi schools generally prohibit attendance, reflecting a strict stance on maintaining religious boundaries. The Ḥanbali school, represented by Imam Ahmed's more lenient view, allows attendance under specific conditions, while the Shāfi'i school permits it for family members. This range of opinions offers flexibility for Muslims in the West who may have close non-Muslim relatives or friends, allowing them to attend but not participate in funerals of non – Muslims.

5. The Permissibility of Giving Condolences to Non-Muslims

Abu Hanīfa deemed it permissible to give condolences to Dhimmis. Ibn 'Ābidīn (2003) states that Abu Hanīfa allowed giving condolences to non-Muslims under Muslim rule. Al Hattab (2010) asserts that Mālik and Sahnūn did not permit giving condolences to non-Muslims as it shows a form of love for those who oppose the religion of Allāh. Imam Ash Shāfi'i deemed it permissible to provide condolences to non-Muslim family members. Nawawi (2008) also states that it is acceptable for a Muslim to give condolences to a Dhimmi. Ahmed Ibn Hanbal was unsure about the permissibility of giving condolences. Ibn Qudāma (1997) asserted that it is allowed to provide condolences to non-Muslims. Early scholars like Al Hasan Al Baṣri gave condolences to Christians. However, some scholars like Abu Bakr Muhammad ibn Ibrahim Ibn Mundhir An Naysābūri (d. 319H) did not permit giving condolences to non-Muslims in any scenario.

There is a notable divergence among the Sunni schools on giving condolences to non-Muslims. The Ḥanafi and Shāfi'i schools generally permit it, recognising the importance of social relations and community harmony. The Māliki school, however, strictly prohibits it, viewing it as an endorsement of non-Islamic beliefs. The Ḥanbali school shows a range of opinions, with some scholars permitting it under certain conditions. However, living in the West, your neighbour may be non – Muslim, and thus understanding this issue is imperative. Suppose a Muslim offers condolences to a non-Muslim family to foster goodwill and possibly soften their hearts towards Islam or to prevent any harm from coming to Muslims. In that case, this act can be considered permissible. The intention behind the action is crucial; it should aim to build bridges and promote peace rather than endorse or respect the deceased's religious beliefs.

However, if offering condolences is perceived as a sign of respect for the non-Muslim religion itself, this is not permissible within Islamic guidelines. The act of giving condolences must be carefully balanced to respect Islamic principles while also considering the social context in which Muslims live, particularly in multicultural and multi-faith environments like those in the West. For Muslims in the West, this understanding is particularly significant. The multicultural nature of Western societies often necessitates interactions with people of various faiths. Therefore, Muslims must navigate these interactions in a way that remains true to their religious values while also being sensitive to the broader social context.

DISCUSSION

This academic paper delved into several significant issues surrounding funeral rituals within the Islamic tradition according to the four Sunni schools of thought. The first question pertained to the permissibility of non-Muslims partaking in the ritual washing or "ghusl" of a deceased Muslim. The schools of thought differ on this matter. The Shāfi'i school and certain Ḥanafi scholars hold that it is permissible, citing hadith where the Prophet allowed Ali to wash his father's body. However, Ahmed Ibn Hanbal and Ibn al-Munthir declared this hadith weak (Al Bayhaqi, 2003), and jurists agree that a weak hadith cannot be used as evidence for a legal ruling. Scholars who deem it incorrect for non-Muslims to wash a Muslim argue that the act is an act of worship, which a Muslim should perform. The concept of necessity is also considered by some schools of thought, allowing non-Muslims to wash their bodies if no Muslims are available. Still, they may lack the knowledge to perform the ritual correctly. However, that is better for a Muslim to wash the body, whether the Muslim is from the family or not.

Regarding Muslims washing non-Muslims, the Māliki school and some Ḥanbali and Ḥanafi scholars deem it impermissible. Al Uthaymīn (2006) cites a verse in the Qur'ān (Surah al-Tawbah, 9:84) prohibiting prayer over disbelievers, reasoning that anything less than prayer, including washing the body, is prohibited. The Shāfi'i school, however, is more lenient, allowing it in any situation. The stronger opinion seems to align with those who deem it incorrect for a Muslim to wash a non-Muslim's body. On the issue of burying Muslims in non-Muslim cemeteries, all four schools unanimously agree that it is not allowed. Some schools even mandate exhuming and reburying the body in a Muslim graveyard if initially buried in a non-Muslim cemetery, reflecting the importance of this separation since the Prophet's time.

Regarding attending non-Muslim funerals, the Māliki and Ḥanafi schools prohibit it, while Ahmed ibn Hanbal allows it for family members, provided the Muslim stands aside. This view is supported by examples from the Prophet's companions. Giving condolences to non-Muslims is permitted by some scholars and schools of thought, while others, like the Māliki school, prohibit it. Al-Uthaymīn (2006) suggests a middle ground, allowing it if it does not honour the non-Muslim's religion and may benefit the Muslim community.

CONCLUSION

Islam has spread swiftly since the passing of the Prophet Muhammad, leading to a significant Muslim presence in non-Muslim regions around the world. This expansion has presented unique challenges for Muslims who strive to practice their religion while living in non-Muslim lands. One of the primary challenges is adhering to Islamic rules and regulations that are considered timeless and universally applicable, regardless of the cultural or geographical context. This article asserts that Muslims must adhere to certain Islamic rules and regulations irrespective of time and place. However, the academic literature reveals a notable deficiency in research concerning specific practices related to Janāza (Islamic funeral rites) in non-Muslim contexts. This gap in research leaves many practical questions unanswered for Muslims living in Western countries, where the surrounding cultural and legal frameworks can differ significantly from those in predominantly Muslim regions.

In response to this gap, this paper explores several key issues, providing a comprehensive analysis of Sunni jurisprudence on the rights of the deceased. The focus is on how these rights can be upheld within a Western context, addressing theological principles and practical considerations. Topics covered include the washing and shrouding of the body, the performance of the Janāza prayer, and the burial process, all viewed through the lens of Sunni Islamic law. The paper delves into the specific challenges faced by Muslims in the West, such as navigating legal requirements for burial, finding appropriate burial sites, and ensuring that the rites are performed in a manner consistent with Islamic teachings. It also examines the differing opinions within the Sunni schools of thought, providing a nuanced understanding of how these differences can be reconciled or managed in a non-Muslim environment. By providing this comprehensive analysis, the paper aims to fill the existing gap in academic literature and offer practical guidance to Muslim communities in the West. It highlights the importance of maintaining religious practices while respecting the host country's legal and cultural context. Through this exploration, the paper contributes to a deeper understanding of how Islamic funeral rites can be faithfully observed in diverse and often challenging settings.

In summary, the swift spread of Islam has resulted in a substantial Muslim presence in non-Muslim regions, presenting challenges for practising religious rites such as Janāza. This article addresses the deficiency in academic research on this topic, offering a thorough analysis of Sunni jurisprudence on the rights of the deceased in a Western context. The paper aims to provide practical solutions and guidance for Muslim communities striving to uphold their religious duties while navigating the complexities of living in non-Muslim lands.

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