



# THE IMPACT OF RELIGIOUS DIFFERENCE ON PERSONAL STATUS MATTERS: A JURISPRUDENTIAL AND LEGAL STUDY

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Article history:		Abstract:
<b>Received:</b> 24 <sup>th</sup> May 2025	<b>Accepted:</b> 24 <sup>th</sup> June 2025	The difference in religion between spouses is considered one of the significant issues, especially in light of the growing interconnectedness of the world and the increasing desire among young people to travel and immigrate to other countries. This matter has garnered considerable attention in Islamic jurisprudence and various legal systems due to its implications for matters of personal status, such as marriage, divorce, custody, lineage, alimony, and inheritance. These legal and religious frameworks aim to establish specific regulations to govern relationships between individuals of different faiths in order to protect the family and society. Moreover, there is a pressing need to raise awareness among individuals regarding these legal and religious rules to reduce family disputes and avoid religious and legal complications—particularly considering that marriage is a bond that entails various consequences, including rights for women and children, which necessitate adequate protection.

**Keywords:** Religious difference, original religion, acquired religion, custody, alimony, inheritance

## INTRODUCTION

We praise You, O Allah, for opening our hearts to Islam and for prescribing to us a religion that You enjoined upon Your noble messengers. You have granted us the understanding of the Shari'ah of the best of creation — the final and complete Divine legislation, encompassing all benefits and virtues.

We send blessings and peace upon our master Muhammad (peace be upon him), the Seal of the Prophets, and upon his family and companions — fountains of wisdom and guides of nations — and upon those who followed them among scholars and strivers in the path of truth, who illuminated the world with guidance and revealed to mankind the path of light and righteousness.

To proceed...

Indeed, Allah the Almighty has bestowed upon us the blessing of Islam, and He chose our Prophet Muhammad (peace be upon him) to carry this trust and convey it to all of humanity. The Prophet fulfilled this responsibility in the best possible manner — may Allah reward him on our behalf with the best of rewards and gather us with him on the Day of Judgment.

The Islamic Shari'ah is comprehensive, encompassing all aspects of life. It possesses the capacity to address emerging circumstances and new realities in every time and place. One clear indication of this adaptability is its detailed attention to the rulings related to marriage — the lawful means for procreation, preservation of lineage, and the prevention of moral corruption, which may lead to the spread of diseases and the confusion of genealogies.

In order to achieve stability in marriage in its fullest form, it is essential to ensure compatibility (kafā'ah) between the spouses in various aspects, including religious compatibility. Allah Almighty has commanded the selection of a righteous spouse, as stated in His noble Book: *"So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard"*<sup>(1)</sup> (Qur'an 4:34).

The noble Prophet Muhammad (peace be upon him) also emphasized this matter, saying: *"A woman may be married for four reasons: for her wealth, her lineage, her beauty, and her religion. So choose the one who is religious; may your hands be rubbed with dust [i.e., may you prosper]"*<sup>(2)</sup>

<sup>1</sup> ) (Surah An-Nisa, 4:34)

<sup>2</sup> ) Muhammad bin Abdulaziz Al-Sudais, *Introductions to Marriage (A Comparative Study)*, Islamic University, Madinah, 1425 AH, p. 214.

Despite the strong emphasis on the proper selection of a wife, considering her righteousness and adherence to Islam, Islam has permitted, under certain conditions, the marriage of a Muslim man to a non-Muslim woman from the People of the Book (i.e., Christian or Jewish). Due to the widespread phenomenon of marriage with non-Muslim women, it became necessary for us to pay close attention to this issue and choose it as the title of this research. The aim is to clarify the relevant Islamic and legal rulings to raise awareness among our people about the consequences of choosing a spouse who does not follow Islam.

The reason for choosing this topic stems from the widespread phenomenon of Muslims marrying non-Muslims and the seriousness of this issue for Islam, especially after the migration witnessed by Islamic countries to foreign lands, including Iraq, due to the deteriorating security situation. This has driven many young people to migrate, resulting in a high incidence of marriages to non-Muslim women. Out of concern for our youth—both young men and women—we found it necessary to clarify the specific rulings related to these matters and the consequences that arise from them.

The subject of this study comprises three main sections. In the first section, we clarify the impact of the original religious difference in the case of a Muslim man marrying a non-Muslim woman, or a Muslim woman marrying a non-Muslim man, as well as the wisdom behind addressing these issues with clear legal and Shariah rulings to regulate them.

The second section is dedicated to examining the effect of a subsequent religious difference that occurs when one of the spouses converts to Islam or apostatizes, and the type of separation that results in each case.

In the third section, we discuss the impact of religious difference on the consequences stemming from the marriage contract itself, since it is a bond that Islamic Shariah encompasses with several rulings, including the conditions of guardianship and witnesses, and the obligations arising from this sacred bond such as maintenance, inheritance, and child custody, as the fruits of this union and the fate of their religious upbringing.

Finally, the study concludes with a set of findings and recommendations, hoping to provide a significant contribution to legal knowledge.

## Research Plan

### Introduction

#### First Section: The Original Religious Difference in the Marriage Contract

- First Subsection: Marriage of a Muslim Man to a Non-Muslim Woman
- Second Subsection: Marriage of a Muslim Woman to a Non-Muslim Man
- Third Subsection: Justifications for the Special Rulings on Religious Difference in Marriage

#### Second Section: The Subsequent Religious Difference in the Marriage Contract

- First Subsection: The Ruling on the Marriage Contract When One Spouse Converts to Islam
- Second Subsection: The Ruling on the Marriage Contract When One Spouse Apostatizes
- Third Subsection: The Type of Separation Resulting from Conversion or Apostasy of a Spouse

#### Third Section: The Impact of Religious Difference on the Consequences of the Marriage Contract

- First Subsection: The Impact of Religious Difference on Guardianship and Marriage Witnesses
- Second Subsection: The Impact of Religious Difference on Maintenance and Inheritance
- Third Subsection: The Impact of Religious Difference on Custody and the Religion of the Children

### (First Section)

#### The original religion and its effect on the marriage contract

The original religion means the religion a person is born with, i.e., the innate religion. The effect of religious difference in this case is determined according to whether the marriage is of a Muslim man to a woman from the People of the Book or to a woman not from the People of the Book, and whether it is the marriage of a Muslim woman to a non-Muslim man, as explained in the following subsections:

### First Subsection

#### Marriage of a Muslim man to a non-Muslim woman

The term "non-Muslim woman" may mean either a woman from the People of the Book or a woman not from the People of the Book. Each has a specific ruling in Islamic law regarding the marriage of a Muslim man to either of them. Therefore, the rulings related to the marriage of a Muslim man to a non-Muslim woman will be explained, divided into the following two branches:

### First Branch

#### Marriage of a Muslim Man to a Woman from the People of the Book

Meaning of "People of the Book":

The majority of jurists from the Maliki, Shafi'i, and Hanbali schools hold that the People of the Book are the followers of the Torah and the Gospel. It is stated in *Al-Mughni*: "The People of the Book are the followers of the Torah and the Gospel," based on the Almighty's saying: *'You only say, "The Scripture was revealed to two groups before us"*<sup>(3)</sup>

The Hanafi school holds that a "Kitābī" (person of the Book) is one who believes in a prophet and acknowledges a revealed scripture; therefore, Jews, Christians, and those who believe in the Psalms of David are considered People of

<sup>3</sup> ) Surah Al-An'am, verse 156.

the Book by them. The Shafi'i school provides a detailed view on the People of the Book, stating:

"If her ancestors entered into Christianity or Judaism before any corruption occurred, she is considered one of the People of the Book, and marriage to her is permissible because she truly belongs to those who were given the Scripture. However, if they embraced the religion after corruption, she is not considered a person of the Book, and marriage to her is not permissible<sup>(4)</sup>.

#### **Ruling on the marriage of a Muslim man to a woman from the People of the Book:**

Marriage to a woman from the People of the Book is permissible. Evidence for this is the saying of Allah: "*And chaste women from those who were given the Scripture before you*"<sup>(5)</sup> This is supported by the majority of jurists who say:

These women may be lawfully married," meaning it is permissible for the believer to marry a woman from the People of the Book. The previous verse specifically permits marriage to such women for the Muslim man because they possess a divine scripture<sup>(6)</sup> Marriage to the People of the Book and others carries the same rulings as marriage between Muslims regarding obligations such as dowry, maintenance, and the like. And if they dispute before us, we judge between them by what Allah has revealed to us<sup>(7)</sup> It has also been said:

It is permissible for a Muslim man to marry a free woman from among the People of the Book, provided that he does not incline towards her in a way that would lead him astray from the religion or influence their children. Allah permitted marriage to women from the People of the Book so that through interaction and companionship, they come to know the leniency of Islam and embrace it<sup>(8)</sup>

#### **Allah the Exalted says:**

Today, all good things have been made lawful for you. The food of those who were given the Scripture is lawful for you, and your food is lawful for them. And chaste women from among the believers and chaste women from those who were given the Scripture before you—when you give them their due compensation, desiring chastity, not unlawful sexual intercourse or taking them as secret lovers. And whoever disbelieves in faith—his deeds are worthless, and he will be among the losers in the Hereafter<sup>(9)</sup>.

#### **Second Branch**

Marriage of a Muslim Man to a Woman Not from the People of the Book

Meaning of "Non-People of the Book:

They are those who do not possess a divine scripture nor any semblance of one. These are idolaters who worship idols—statues carved from wood, stone, silver, jewels, or the like. As for idols, they are images without bodies, such as printed pictures and similar representations. It has also been said that there is no difference between an idol and a statue; both are names for deities worshiped besides Allah, symbolized by various forms such as images and statues. Included among them are apostates who reject what is necessarily known of Islamic religion<sup>(10)</sup>.

Ruling on the Marriage of a Muslim Man to a Woman Not from the People of the Book:

It is forbidden for a Muslim man to marry a woman who does not have a divine religion, does not believe in a prophet, and has no revealed scripture—such as a polytheist idolater who worships statues, a Magian who worships fire, or a Sabian who worships stars<sup>(11)</sup> And evidence for this is Allah's saying:

And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men until they believe. And a believing slave man is better than a polytheist, even though he might please you. They invite to the Fire, but Allah invites to Paradise and forgiveness by His permission, and He makes clear His verses to the people that perhaps they may remember<sup>(12)</sup>

Muslim jurists unanimously agree on the impermissibility of a Muslim man marrying a woman who is not from the People of the Book, such as a polytheist, idolater, worshiper of the sun, moon, fire, or animals, an apostate, or a pure non-Book woman born from a union between a Book woman and a Magian or vice versa. This also includes an atheist or materialist who believes in matter, denies the existence of the Creator (Glory be to Him), and does not recognize divine religions.

The reason behind this prohibition is that marriage to a disbeliever and cohabitation with her—given the existence of religious enmity—cannot provide the tranquility and affection that constitute the core objectives of marriage. The difference between a believer and a disbeliever causes hostility and animosity. The worship of monotheism came as a fight against polytheism, and a polytheist is considered impure; it is not permissible to approach or associate closely

<sup>4</sup> ) Amira Mazen Abdullah Abu Raad, The Effect of Religion on Marriage Rules in Islamic Jurisprudence, Master's Thesis, An-Najah National University, Palestine, 2007, p. 46.

<sup>5</sup> ) Surah Al-Ma'idah, verse 5.

<sup>6</sup> ) Abdulrahman Al-Jaziri, Fiqh According to the Four Schools of Thought, Vol. 4, 2nd Edition, Dar Al-Kutub Al-Ilmiyya, Beirut, no publication year, pp. 72-73.

<sup>7</sup> ) Muhammad ibn Ibrahim ibn Abdullah Al-Tuwaijri, Encyclopedia of Islamic Jurisprudence (Marriage Contract), Vol. 4, 1st Edition, Bayt Al-Afkar Al-Dawliyya, 2009, no place of publication mentioned, p. 58.

<sup>8</sup> ) Muhammad ibn Ibrahim ibn Abdullah Al-Tuwaijri, op. cit., p. 35.

<sup>9</sup> ) (Surah Al-Ma'idah, 5:5)

<sup>10</sup> ) Abdulrahman Al-Jaziri, op. cit., p. 72.

<sup>11</sup> ) Al-Shahat Ibrahim Muhammad Mansour, Marriage Rulings in Islamic Sharia, Dar Al-Nahda Al-Arabiya, 1999, p. 80.

<sup>12</sup> ) (Surah Al-Baqarah, 2:221)

with them. All of this is incompatible with the requirements of married life, which depend on the establishment and continuation of affection, mercy, and companionship<sup>(13)</sup>.

Allah Almighty has forbidden a Muslim man to marry a polytheist woman, just as He has forbidden a polytheist man to marry a Muslim woman. Marriage is not merely a bond between two hearts whose beliefs are not the same, for this sacred bond—whose status Allah has elevated—is not intended to be a mere animalistic inclination or a mere lustful impulse. Rather, it is intended for elevation so that the worship of Allah may be established through it, as marriage is a lineage established for Allah and is the highest of lineages. It is not appropriate for the highest to be like the lowest or to be beneath it<sup>(14)</sup>.

### Second Requirement

#### Marriage of a Muslim Woman to a Non-Muslim Man

The term "non-Muslim" refers to a man who either follows a divine religion or does not follow any divine religion. Allah Almighty has forbidden the marriage of a Muslim woman to a non-Muslim man, as has been definitively established by the Qur'an and the Prophetic Sunnah, in addition to the unanimous consensus of Islamic jurists.

As for the Qur'an, Allah Almighty says:

And do not marry polytheistic men until they believe. And a believing slave man is better than a polytheist, even though he might please you. They invite to the Fire, but Allah invites to Paradise and forgiveness by His permission, and He makes clear His verses to the people that perhaps they may remember<sup>(15)</sup>.

In the Noble Prophetic Sunnah, the prohibition of a Muslim woman marrying a non-Muslim has been established by the words of the Messenger of Allah (peace be upon him). For example, it was reported from Jabir ibn Abdullah that the Prophet (peace be upon him) said:

"We marry the women of the People of the Book, but they do not marry our women<sup>(16)</sup>.

Moreover, scholars have unanimously agreed on the prohibition of a Muslim woman marrying a non-Muslim man, whether he is from the People of the Book, such as Jews and Christians, or from non-Book groups, such as Buddhists, Communists, and other disbelieving sects.

As for the legislative stance on this issue, it is clearly reflected in the position of the Iraqi legislator in the Iraqi Personal Status Law, which states: A Muslim man may marry a woman from the People of the Book, but it is not permissible for a Muslim woman to marry a non-Muslim man<sup>(17)</sup>.

Therefore, the logical wisdom behind the unanimous agreement among jurists on the prohibition of a Muslim woman marrying a non-Muslim—whether he is a member of the People of the Book, a polytheist, an original disbeliever, or an apostate—is that the soul does not find comfort or joy in marital companionship unless the man is a Muslim. Allah Almighty says in His Holy Book:

"O you who have believed, when the believing women come to you as emigrants, test them. Allah is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. But give the disbelievers what they have spent. And there is no blame upon you if you marry them when you have given them their due compensation. And hold not to marriage bonds with disbelieving women but ask for what you have spent, and let them ask for what they have spent. That is the judgement of Allah; He judges between you. And Allah is Knowing and Wise<sup>(18)</sup>.

### Requirement Three

#### Justifications for Establishing Specific Rulings Regarding Religious Difference in Marriage

Most jurists view the marriage of a Muslim man to women from the People of the Book as permissible, while they unanimously agree on the prohibition of a Muslim woman marrying a non-Muslim man. The underlying reason for this is rooted in a devotional command. However, if we seek to understand the wisdom behind this ruling, it can be said that Islam, in allowing a Muslim man to marry a woman from the People of the Book, requires him to respect her religion, as the Muslim believes in all the prophets. On the other hand, if a non-Muslim marries a Muslim woman, he does not respect her faith nor believe in her Prophet. This could ignite conflict within the home and prevent the establishment of tranquility and mercy, which are the foundations of a stable household. For this reason, Islam has prohibited such a marriage<sup>(19)</sup>.

<sup>13</sup> ) Belkacem Laajal, Sabir Ouina, The Impact of Religious Difference on Marriage Contract Rules between Jurisprudence and Algerian Legislation, Master's Thesis, Mohamed Boudiaf University (M'sila), Faculty of Law and Political Science, 2020, p. 12.

<sup>14</sup> ) Muhammad ibn Ibrahim ibn Abdullah Al-Tuwaijri, op. cit., p. 58.

<sup>15</sup> ) Surah Al-Baqarah, Verse 221.

<sup>16</sup> ) Ameera Mazen Abdullah Abu Raad, op. cit., pp. 90–92.

<sup>17</sup> ) See Article (17) of the Iraqi Personal Status Law No. 188 of 1959.

<sup>18</sup> ) (Surat Al-Mumtahanah, Ayah 10)

<sup>19</sup> ) Ahlam Ali, Marriage of a Muslim Woman to a Non-Muslim – Ijtihad or Corruption , article published on the website: <http://www.alukah.net/social/o/248/>

Islamic jurisprudence also points to the wisdom behind the prohibition of a Muslim woman marrying a non-Muslim man. As Imam Al-Kasani states, the reason lies in "the fear that the believing woman may fall into disbelief, as the husband might call her to his religion, and women usually follow their husbands in actions and imitate them in matters of faith. Moreover, Islam has obligated Muslims to believe in other divine religions, their scriptures, and messengers."

In the case of a Muslim man marrying a woman from the People of the Book, the husband is required to respect his wife's religious sentiments and grant her freedom of worship and the expression of her faith. He is not allowed to prevent her from visiting the church, reading the Bible, or eating pork. On the other hand, followers of other religions are not obligated to believe in Islam, and therefore a non-Muslim husband is not bound to respect his Muslim wife's faith, assuming such a marriage were permissible and her religious freedom guaranteed. Furthermore, children are attributed to the father rather than the mother, and it is unreasonable to allow children of Muslim women to be affiliated with non-Muslim fathers, as this would risk leading them astray and into apostasy<sup>(20)</sup>.

Referring to Article (17) of the Iraqi Personal Status Law, this article permits a Muslim man to marry a woman of a revealed religion, while prohibiting a Muslim woman from marrying a non-Muslim man. The wisdom behind this ruling becomes clear at first glance, especially when considering Islam's approach to protecting women when they are wives. Through all matters of personal status, Islamic law strives diligently to protect women from their own recklessness regarding guardianship, from the harshness of their guardians concerning competence, from the unfairness of their husbands in choice, and from their inherent weakness by ensuring affection and kindness.

The issue of differing religions is one that threatens the happiness and peace of a woman when she is married to someone who does not recognize the sanctity of her religion or respect her rights. Islam, therefore, established another protective measure for women in this regard. As a result, Islamic judiciary has risen to protect the wife from an oppressive husband who prevents her from fulfilling her relationship with her Lord, especially in cases where they differ in their religious law but agree on the fundamental faith in Allah Almighty.

The Islamic solution to this family problem is that Allah forbade a man from marrying a woman whose religious law he does not believe in equally and is strictly bound to respect. This obligation makes him legally responsible for any violation concerning the religious aspect of his wife's life. The wife, due to the natural structure of the family, may find herself weak and unable to resist, or confined to a household with no alternative, placing her in an unbearable situation. It is out of God's mercy and kindness toward women that He protected them by preventing men who do not believe in their religion or respect their law from entering their lives<sup>(21)</sup>.

## Chapter Two

### The Effect of a New Religious Affiliation on the Marriage Contract

The topic will be divided into two sections: The first section will clarify the ruling on the marriage contract when one or both spouses convert to Islam, including the type of separation that occurs. The second section will explain the ruling on the marriage contract when one spouse apostasizes and the resulting type of separation, which will be addressed exclusively in the third section, as follows:

#### First Section

##### Ruling on the Marriage Contract When One of the Spouses Converts to Islam

If the husband converts to Islam: If he is permitted to remain with his wife, the marriage contract is confirmed, similar to the case of marrying a woman from the People of the Book, even if the marriage took place without a guardian.

If he is not permitted to continue, the marriage is not confirmed and separation between them becomes obligatory, such as if he converts while married to a woman who is closely related to him by blood (e.g., a sister or two sisters) or if he has more than four wives under his guardianship. Other cases are not considered.

If one of the spouses who were non-Muslims converts after consummation, the marriage contract is suspended.

- If the husband converts and his wife is from the People of the Book, the marriage remains valid.
- If his wife is a non-Book disbeliever and she converts, she becomes his wife; if she does not convert, he must separate from her.

If the wife converts and completes her waiting period ('iddah), and her husband has not converted, she may marry another husband or wait for his conversion.

- If he converts, she becomes his wife without the need for a new marriage contract, dowry, or physical consummation until his conversion.

If both spouses convert together, or if a husband who married a woman from the People of the Book converts, their marriage remains valid.

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<sup>20</sup> ) Belkacem Laâjal and Aouina Saber, The Impact of Religious Difference on the Provisions of the Marriage Contract Between Jurisprudence and Algerian Legislation, previously cited, p. 16.

<sup>21</sup> ) Dr. Ahmed Al-Kubaisi, Al-Wajeez fi Sharh Qanun Al-Ahwaal Al-Shakhsiyya wa Ta'deelatih [The Concise Explanation of the Personal Status Law and Its Amendments], Vol. 1, Al-Maktaba Al-Qanuniya, Baghdad, p. 77.



If a husband who married a non-Book disbeliever converts before consummation, the marriage is null because a Muslim man may not marry a disbelieving woman. If a non-Muslim woman converts before consummation with her non-Muslim husband, the marriage is null because a Muslim woman is not permissible for a disbeliever<sup>(22)</sup>.

Allah Almighty said: "O you who have believed, when believing women come to you as emigrants, test them. Allah is most knowing of their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. But give the disbelievers what they have spent [i.e., compensation]. And there is no blame upon you if you marry them when you have given them their due compensation. And do not hold to marriage bonds with disbelievers, but ask for what you have spent and let them ask for what they have spent. That is the judgment of Allah; He judges between you. And Allah is Knowing and Wise<sup>(23)</sup>."

### Section Two

#### Ruling on the marriage contract when one of the spouses apostasizes

An apostate is "one who disbelieves after having been a Muslim<sup>(24)</sup>." Regarding the ruling on the marriage contract, if one or both spouses apostasize before consummation, the marriage contract becomes void. If the apostasy occurs after consummation, the matter depends on the completion of the waiting period ('iddah). If the one who apostasized repents during the waiting period, their marriage remains valid; if they do not repent, the marriage is annulled after the waiting period ends. The waiting period is counted from the beginning of the apostasy, and the apostate is considered a disbeliever from the moment they leave Islam<sup>(25)</sup>.

Allah Almighty said: "And whoever among you reverts from his religion [to disbelief] and dies while he is a disbeliever — for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally<sup>(26)</sup>." Proponents of this view equate the ruling of separation due to apostasy with divorce, since divorce causes immediate separation before consummation, and the same applies to separation due to apostasy. Likewise, the wife is divorced by her husband after consummation and completion of the waiting period, and similarly, separation due to apostasy after consummation occurs the same way.

However, jurists hold several opinions regarding this matter. The majority of jurists from the Hanafi and Maliki schools believe that the apostasy of one of the Muslim spouses results in immediate separation between them, whether the apostasy occurs before or after consummation. This is because the apostate is considered legally dead and nonexistent; therefore, marriage cannot be validly established from the outset, and the marriage cannot be maintained<sup>(27)</sup>.

A third opinion among the jurists holds that the marriage contract is suspended but not dissolved upon the apostasy of one spouse; if the apostate returns to Islam, the spouse returns to them—whether the apostasy occurred before or after consummation, and whether the waiting period (iddah) has ended or not. This is because hastening the dissolution of the marriage due to apostasy may alienate the apostate and discourage their return to Islam<sup>(28)</sup>.

### Section Three

#### The Type of Dissolution Resulting from the Conversion to Islam or Apostasy of One of the Spouses

Regarding the legal characterization of the dissolution resulting from the conversion of one spouse to Islam while the other refuses, jurists have differed as to whether this dissolution constitutes an annulment (*fasakh*) or a divorce (*talāq*).

**First Opinion:** According to the Hanafi school, if one of the spouses embraces Islam and the other refuses, then the classification of the dissolution depends on which party refuses. If the refusal comes from the wife, the dissolution is deemed an annulment (*fasakh*), as it originates from her side. However, if the refusal is from the husband, the dissolution is considered a divorce.

**Second Opinion:** The Mālikī, Shāfi'ī, and Hanbalī schools hold that the dissolution in such a case constitutes an annulment and not a divorce. If the woman converts before the man, he is then invited to embrace Islam; if he refuses, the marriage is dissolved by annulment, akin to other forms of *fasakh*. Upon the completion of her waiting period ( *'iddah* ), the woman may remarry whenever she wishes. This dissolution arises from a difference in religion, similar to the case where the man converts and the woman refuses.

<sup>22</sup> ) Muhammad bin Ibrahim bin Abdullah Al-Tuwaijri, previously cited source, pp. 59-60.

<sup>23</sup> ) (Qur'an, Surah Al-Mumtahanah, Ayah 10)

<sup>24</sup> ) Muhammad bin Ibrahim bin Abdullah Al-Tuwaijri, previously cited source, p. 187.

<sup>25</sup> ) Muhammad bin Ibrahim bin Abdullah Al-Tuwaijri, previously cited source, p. 60.

<sup>26</sup> ) Surat Al-Baqarah, verse 217:

<sup>27</sup> ) Sufyan Mujarrab and Bouhlassa Boujama, The Impact of Religious Differences on Family Issues in Algerian Law, Master's Thesis, University of Mohamed Seddik Ben Yahia, Faculty of Law and Political Science, 2016, p. 32.

<sup>28</sup> ) Ibn Qayyim al-Jawziyyah, Ahkam Ahl al-Dhimmah, vol. 1, Dar al-Kutub al-Ilmiyyah, Beirut, 1995, p. 253.

**Third Opinion:** Ibn al-Qayyim opines that the marriage is to be held in suspension (*munqāṭiʿ*) and that conjugal relations become impermissible between the two<sup>(29)</sup>.

Based on the Legislative Position Article (18) of the Iraqi Personal Status Law No. (188) of 1959 states: The conversion to Islam of one spouse before the other shall be subject to the provisions of Sharia regarding the continuation or dissolution of the marriage.

Accordingly, if both spouses or one of them converts to Islam while the marriage is valid under Islamic law, the ruling is as follows:

1. If both spouses convert to Islam simultaneously or sequentially, their marriage remains valid and they continue in it.
2. If only the wife converts to Islam, Islam is presented to the husband; if he converts, the marriage remains valid. Otherwise, the marriage is dissolved. In this case, the dissolution is considered a *ṭalāq bāʿin* (irrevocable divorce), according to the predominant opinion in the Ḥanafī school, which is also applied in Iraqi judiciary practice.
3. If only the husband converts to Islam while the wife is a Christian (People of the Book), she remains in her status and the marriage continues. However, if the wife is a polytheist, Islam or entering another revealed religion is presented to her; if she accepts, the marriage remains valid. Otherwise, the judge dissolves the marriage, and this dissolution is considered an annulment<sup>(30)</sup>.

Regarding the Ruling on the Dissolution Resulting from the Apostasy of One Spouse

Jurists differ as to whether the dissolution caused by the apostasy (*ridḍa*) of one spouse constitutes an annulment (*fasakh*) or a divorce (*ṭalāq*), as follows:

**First Opinion:** Abū Ḥanīfa, Abū Yūsuf, and an opinion among the Mālikīs hold that the dissolution resulting from the apostasy of one spouse without the other is an annulment (*fasakh*), not a divorce. This is because, during apostasy, the marriage bond (*ʿiṣmah*) is nullified by the apostate themselves, which differs from the case of conversion to Islam where refusal to convert does not equate to leaving Islam. Moreover, dissolution due to refusal to convert requires judicial intervention, whereas dissolution due to apostasy does not depend on a court ruling, regardless of whether the apostasy is by the husband or the wife.

**Second Opinion:** Muḥammad ibn al-Ḥasan (from the Ḥanafīs) and a faction of the Mālikīs view dissolution due to apostasy as a divorce. Muḥammad ibn al-Ḥasan justifies this by stating that since the dissolution is caused by refusal or apostasy, it is impossible to maintain the marriage under goodwill (*ʿiṣmah* is lost), so separation with kindness (*taṣrīḥ bi-ihṣān*) is necessary, and separation is a divorce subject to the judge's discretion. However, among the Mālikīs themselves, there is disagreement as to whether the divorce is irrevocable (*ṭalāq bāʿin*) or revocable (*ṭalāq rajʿī*). The first opinion holds that dissolution due to apostasy is an irrevocable divorce whether the apostate is the husband or the wife, since it results from a valid marriage being dissolved. Therefore, if the apostate reverts to Islam, the marriage is not reinstated except by a new contract, which is the prevalent view among the schools. The second opinion considers it a revocable divorce, so if the apostate returns to Islam during the waiting period (*ʿiddah*), the marriage remains valid as it was<sup>(31)</sup>.

### Section Three

#### The Effect of Religious Difference on the Consequences of the Marriage Contract

Religious difference does not only affect the existing marital bond between spouses; its importance extends to influencing the legal consequences that result from the marriage contract as well. Accordingly, this section will be divided into three subsections:

The first subsection is dedicated to examining the effect of religious difference on the guardianship and witnesses of the marriage contract.

The second subsection addresses its impact on maintenance (*nafaqa*) and inheritance.

The third subsection discusses the effect of religious difference on the custody and religious upbringing of the children, as detailed below:

#### Subsection One

##### The Effect of Religious Difference on Guardianship and Witnesses of Marriage

Guardianship (*Wilayah*) Linguistically: It means "support" or "assistance." Allah Almighty says: "The believing men and believing women are allies of one another"<sup>(32)</sup>.

In Terminology: It is defined as the enforcement of a statement or decision upon another person whether they consent or not.

As for the issue of guardianship (*wilayah*), there is consensus among scholars that a Muslim has guardianship over a Muslim woman, whether the guardian is a father, grandfather, or son, according to the established jurisprudential hierarchy. However, if a Muslim woman wishes to marry and her father is a Christian, with brothers—one Jewish and

<sup>29</sup> ) Amira Mazen Abdullah Abu Raʿad, previously cited source, p. 109.

<sup>30</sup> ) Dr. Ahmed Al-Kubaisi, previously cited source, p. 81.

<sup>31</sup> ) Amira Mazen Abdullah Abu Raʿad, previously cited source, p. 117.

<sup>32</sup> ) Quran, Surah At-Tawbah, Verse 71:

another Muslim—the Muslim brother assumes the guardianship to contract her marriage, and the guardianship of the disbelieving father is nullified over the disbelieving woman<sup>(33)</sup> The Almighty said: "And those who disbelieve are allies of one another<sup>(34)</sup> Regarding the guardianship (wilayah) of a non-Muslim over a Muslim woman, the scholars have unanimously agreed that it is not permissible for a non-Muslim to have authority over a Muslim. For example, if a Muslim woman has a Muslim brother and a Christian brother, the guardianship belongs to her Muslim brother based on the following evidence:

1. The Qur'anic verse: And Allah will never give the disbelievers over the believers a way<sup>(35)</sup>.
2. From the Sunnah of the Messenger of Allah (peace be upon him): When the Prophet Muhammad (peace be upon him) intended to marry Umm Habibah, the daughter of Abu Sufyan—whose father and brothers were disbelievers—she was a Muslim emigrant in the land of Abyssinia. He married her to the closest of her kin among the Muslims, namely Khalid ibn Sa'id ibn al-'As<sup>(36)</sup>.

Just as the unity of religion is a condition for inheritance, the same applies to guardianship (wilayah). There is no inheritance between a non-Muslim and a Muslim woman based on the saying of the Prophet (peace be upon him): People of two religions do not inherit from one another<sup>(37)</sup>.

Regarding the guardianship (wilayah) of a Muslim over a non-Muslim woman, jurists differ in ruling on this matter. Some hold that it is not permissible for a Muslim to have guardianship over a non-Muslim woman, even if the guardian is her father. They base this opinion on the same evidence used to prohibit the guardianship of a non-Muslim over a Muslim woman, including the Qur'anic verse:

**You have no authority over them in any way<sup>(38)</sup>.**

In the second opinion held by the Maliki school, they permit the guardianship (wilayah) of a Muslim over his non-Muslim daughter, on the condition that her father marry her to a Muslim rather than a Christian. This is due to the preference of the Muslim over the non-Muslim, which grants him rights not given to others, as evidenced by the Qur'anic verse:

**Relatives are more entitled to inherit one another in the Book of Allah<sup>(39)</sup>.**

The Preferred Opinion: After reviewing the evidence presented by the jurists, it becomes clear—God knows best—that the first opinion, which prohibits the guardianship (wilayah) of a Muslim over a non-Muslim woman, is the more correct due to the strength of their proofs, as the unity of religion is a condition for the establishment of guardianship. As for the testimony in marriage, it is known that testimony is a condition for the validity of the marriage contract. Regarding the issue of differing religions in marriage, the question arises: must the witnesses be Muslim or not? The answer to this question comes through reviewing the opinions of the jurists as follows:

**The First Opinion:** This is the view of the Hanafi, Maliki, Shafi'i, and Hanbali schools, which require the witnesses in a marriage contract to be Muslim regardless of whether the wife is Muslim or of the People of the Book, based on the following evidences:

1. The Qur'anic verse: "And Allah will never give the disbelievers over the believers a way<sup>(40)</sup>. There is an element of guardianship in testimony, and accepting the testimony of a non-Muslim over a Muslim would imply granting authority to disbelievers over believers.
2. The saying of the Prophet (peace be upon him): There is no marriage except with a guardian and two just witnesses<sup>(41)</sup> What is meant here by "just" is justice in terms of religion.

**The Second Opinion:** This is the view of Abu Hanifah and Abu Yusuf, who held that the marriage contract of Muslims is valid with the testimony of non-Muslims, whether the wife is from the People of the Book or a Muslim—regardless of whether her religion matches that of the witnesses or not. Their evidence includes the following Qur'anic verses:

"Then marry those that please you of [other] women<sup>(42)</sup> and His saying, the Exalted: "And [lawful to you are all] beyond those, provided you seek them [in marriage] with your wealth, desiring chastity, not unlawful sexual intercourse<sup>(43)</sup>.

<sup>33</sup> ) Amira Mazen Abdullah Abu Ra'ad, previously cited source, p. 121.

<sup>34</sup> ) Surah Al-Anfal, Ayah 73:

<sup>35</sup> ) Surah An-Nisa, Ayah 141:

<sup>36</sup> ) Al-Hafiz Abu Bakr Ahmad ibn Al-Husayn ibn Ali Al-Bayhaqi, Sunan Al-Kubra, Vol. 7, Dar Al-Ma'rifah, Beirut, 1992, p. 139.

<sup>37</sup> ) Imam Al-Hafiz Abu 'Isa Muhammad ibn 'Isa ibn Surah Al-Tirmidhi, Al-Jami' Al-Kabir (Sunan Al-Tirmidhi), 1st Edition, Vol. 4, Dar Al-Risalah Al-'Alamiyah, Damascus, 2009, p. 186.

<sup>38</sup> ) Surah Al-Anfal, Ayah 72:

<sup>39</sup> ) Surah Al-Anfal, Ayah 75:

<sup>40</sup> ) Surah An-Nisa, Ayah 141:

<sup>41</sup> ) Imam Al-Hafiz Ali ibn 'Umar Al-Daraqutni, Sunan Al-Daraqutni, 1st Edition, Vol. 3, Dar Al-Kutub Al-'Ilmiyyah – Beirut, 1996, p. 158.

<sup>42</sup> ) Surah An-Nisa, Ayah 3:

<sup>43</sup> ) <sup>43</sup> ) Surah An-Nisa, Ayah 34:



The aforementioned evidences indicate that Allah, Glorified and Exalted, granted permissibility in marriage without stipulating specific conditions, while the requirement of witnesses has been established by scholarly consensus. As for the testimony of the People of the Book concerning one another, it is accepted even if their religions differ.

**The Preferred Opinion:** This is the opinion of the majority of jurists, as the evidences from the Qur'an and the Sunnah are explicit in requiring the justice ('adalah) of witnesses to the marriage contract. Thus, a non-Muslim is not qualified to testify over a Muslim, as there is no greater sin after disbelief.

Second Requirement The Effect of Religious Difference on Alimony and Inheritance

In Alimony Alimony in language: It is derived from the verb *nafaqa*. It is said: *nafaqat al-dābbah* — meaning it died; and *rajul munfāq* — meaning a man who spends excessively. As in His saying, the Almighty: "And when it is said to them: 'Spend from that which Allah has provided for you'<sup>(44)</sup>

As for the terminology, it is defined in jurisprudence as "the name for what a person spends on his wife, children, relatives, and dependents, including food, clothing, housing, and service<sup>(45)</sup>," and another view defined it as "a sufficiency from which he provides bread, blood, clothing, housing, and their accessories<sup>(46)</sup>."

As for the legal definition of maintenance, it is defined as "what is imposed on the husband to provide to the wife in money for food, clothing, housing, medical treatment, custody, and others<sup>(47)</sup>. If there is a change in religion after the marriage contract, such as one spouse converting to Islam while the other does not, this affects the marital maintenance. If the husband is Muslim and the wife is Christian (whether a "Kitabi" or non-Kitabi), if she is Kitabi, the marital maintenance remains as is, because marriage between a Muslim and a Kitabi is permissible, thus the marriage and maintenance are valid. But if she is non-Kitabi, she is either pregnant or not; if pregnant, maintenance continues until she gives birth. If not pregnant, jurists have differing opinions. The first opinion holds that maintenance for a non-Kitabi pregnant wife ceases once her husband converts to Islam, because her persistence in disbelief means separation due to her fault (disobedience), which causes forfeiture of maintenance. It is also interpreted that her persistence in disbelief is an intentional wrongful withholding of herself from her husband, thus no maintenance is due to her. The second opinion states that the wife's maintenance by her Muslim husband continues until the separation occurs because the marital bond remains valid, and even during the waiting period reconciliation may occur at any time before its expiry, so as long as marriage exists, maintenance is a right of the wife on the husband. The prevailing view is the first one, which holds that maintenance ceases for the non-Kitabi wife who remains on disbelief, causing dissolution of the marital bond and thus termination of maintenance<sup>(48)</sup>.

If the woman converts to Islam while the man does not, jurists hold differing opinions. The first view holds that the woman's maintenance from her husband continues until her waiting period ('iddah) ends because the separation occurred due to the husband's fault and his failure to uphold the marital bond. Moreover, whenever the separation is caused by the husband, his obligation to provide maintenance remains. The second view asserts that once the woman converts, her maintenance from her non-Muslim husband ceases unless the husband also converts and the marriage stabilizes again, whereby her right to maintenance returns. This is because once the woman embraces Islam, she becomes separated from her husband; thus, no maintenance is due to the one from whom she is separated. Furthermore, although the woman's conversion is an act of obedience, she causes the loss of her maintenance by her own action, similar to a woman who goes on pilgrimage without her husband's permission; in such a case, her maintenance is forfeited because she left without his consent<sup>(49)</sup>.

**On Inheritance:** Inheritance (Mirath) linguistically means the act of inheriting; it is derived from the root meaning to succeed or inherit something, and it may refer to two meanings: it may mean the source (the act of inheritance) or the inherited (the object of inheritance), which is a passive participle. In terminology, inheritance is defined as: a divisible right established for an heir after the death of the one from whom it is due, due to kinship, marriage, or allegiance<sup>(50)</sup>.

Jurists agree that a Muslim inherits from another Muslim unless there is an impediment to inheritance, such as the heir having killed the deceased or the existence of a blocking heir. However, regarding the inheritance of a Muslim from a non-Muslim, jurisprudence generally views it as impermissible based on the saying of the Prophet (peace be upon him): "A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim." Some jurists

<sup>44</sup> ) Surah Yaseen, Ayah 47:

<sup>45</sup> ) A.M.D. Mahmoud Bandar Ali Mohammed, "The Wife's Maintenance in Sharia and Law," Journal of the College of Islamic Sciences, Issue 16, without mentioning the year of publication, p. 374.

<sup>46</sup> ) Dr. Muhammad Yaqub Talib Ubaidi, Rules of Marital Maintenance in Islamic Sharia, Dar Al-Huda Al-Nabawi, Mansoura, 2004, p. 6.

<sup>47</sup> ) Sufyan Majarrab, Bouhlassa Boujemaa, The Effect of Religious Difference on Family Issues in Algerian Law, previous source, p. 54.

<sup>48</sup> ) Dr. Maha Sultan Abdullah Al-Humaidi, The Effect of Religious Difference in Personal Status, Journal of Islamic Studies and Academic Research, Issue 64, without year of publication, pp. 495–497.

<sup>49</sup> ) Sufyan Majarrab, Bouhlassa Boujemaa, The Effect of Religious Difference on Family Issues in Algerian Law, previous source, p. 56 and following.

<sup>50</sup> ) Dr. Ahmad Al-Suwaidi Shalibak, Religious Difference and Its Effect on the Inheritance of a Muslim from His Non-Muslim Relative (A Foundational Study), University of Sharjah Journal of Sharia and Legal Sciences, Vol. 5, No. 1, 2008, p. 78.

have permitted the inheritance of a Muslim from a non-Muslim by analogy to the permissibility of marrying their women, thus allowing inheritance similarly.

Regarding the inheritance of a non-Muslim from a Muslim, the majority of the Companions, the Successors (Tabi'un), and the jurists agree that a non-Muslim does not inherit from a Muslim. For example, if the husband is Muslim and his wife is non-Muslim, and the husband dies, the wife does not inherit him. Their evidence is the verse: "And Allah will not grant the disbelievers over the believers a way"<sup>(51)</sup>.

### Section Three

#### The Effect of Religious Difference on Custody and the Religion of Children

Custody in Sharia terminology is defined as the care of the child in his residence, providing for his food, clothing, bedding, and cleaning of his body. To address the core of our subject, we can pose a question, the answer to which constitutes the essence of this topic. The question is: Does the difference in religion affect the child intended for custody and the woman's right to custody? The answer is as follows:

**From the Jurisprudential Perspective:** The Hanafi jurists hold that the right to custody is not affected by the difference in religion, whether the mother is Muslim or non-Muslim, because custody is based on compassion, and the mother is compassionate towards the child. However, the Kitabi (People of the Book) mother loses the right to custody once the child reaches the age of understanding of religions, out of concern that she might return him to the morals of other faiths. As for the apostate woman, whether she is a mother or not, she has no right to custody of her Muslim child because she is considered in rebellion unless she returns to Islam.

The Maliki school is divided: one group holds that custody rights are not affected by religious difference, with two conditions: first, the ward (child) must live in a place where his life, honor, and property are secure; second, the ward must be raised in the religion of Islam. The other group among the Malikis holds that religious difference is a barrier to custody entitlement, because a sinful Muslim mother has no custody rights, so a non-Muslim mother is even more prevented from custody. This is also the view of the Hanbalis.

The Shafi'i school, based on their sources, holds the strongest opinion that custody is prevented due to religious difference for two reasons: first, a disbeliever has no guardianship over a Muslim in general; second, custody is prescribed for the benefit of the ward child, and there is no benefit in custody by a non-Muslim because the child may be led astray from his religion<sup>(52)</sup>.

**From the Legal Perspective:** Legislators in many Arab countries have drafted personal status laws in a way that aligns the texts of these laws with one of the opinions of jurists in Islamic jurisprudence. According to the Iraqi Personal Status Law No. (188) of 1959, Article (57), paragraph two states: "It is required that the custodian (woman) be mature, sane, trustworthy, capable of raising and caring for the child; the custody of the divorced mother does not cease by her remarriage, and the court decides in this case the right of the mother or father in light of the interest of the child."

#### Among the conditions not mentioned in this paragraph are:

1. The custodian must not live in a house with the child where animosity exists, even if it is a relative.
2. The custodian must not be an apostate, as she is unfit for this role unless she returns to Islam, like all other causes for losing custody.
3. It is not required that the custodian and the ward share the same religion, because custody here means compassion and care for the child, which is found among mothers whether Muslim or non-Muslim<sup>(53)</sup>.

As for the effect of religious difference on the religion of the children, the Master of Mankind, Muhammad (peace be upon him), said: "Every child is born upon the natural disposition (fitrah), then his parents make him a Jew, a Christian, or a Magian, just as an animal gives birth to a whole-bodied offspring—do you find any among them mutilated<sup>(54)</sup>? A child born to two Muslim parents is considered a Muslim by consensus. However, if there is a religious difference between the parents—whether this difference is original or has arisen later—what, then, is the fate of the child's religious affiliation in such a case?

Upon researching the relevant sources on the matter, it appears that jurists hold various opinions in this regard: The first opinion is that of the Hanafis, and a view held by some of the Malikis, Shafi'is, and Hanbalis, which states that a child born to two parents of different religions follows the religion of the better parent, with no distinction between whether the father or the mother is Muslim—since Islam is the best and final religion. This ruling applies to the period before reaching puberty. After reaching the age of maturity, the individual has the freedom to choose their religion.

As confirmation of this latter ruling, a decision by the Federal Court of Cassation accepted the claim of a plaintiff who

<sup>51</sup> ) Surah An-Nisa, Ayah 141. For more details:

Sufyan Majarrab, Bouhlassa Boujemaa, The Effect of Religious Difference on Family Issues in Algerian Law, previous source, p. 62.

<sup>52</sup> ) Ahmad Hussein Al-Taher, The Effect of Religious Difference on Personal Status Issues in Jurisprudence and Law, Journal of Legal and Sharia Sciences, Issue 6, 2015, pp. 270–273.

<sup>53</sup> ) Dr. Ahmad Al-Kubaisi, previous source, p. 216.

<sup>54</sup> ) Dr. Taha Khalid Muhammad Arab, Doctrinal Reflections on the Hadith "Every Child Is Born upon the Fitrah", Sirman Ra'a Journal, Vol. 13, Issue 48, March 2017, p. 414.

had embraced Islam following her father—who was originally Christian—while she was still a minor. Upon reaching the age of majority, the plaintiff chose to return to Christianity, and the court recognized her right to do so<sup>(55)</sup>.

They supported this opinion with several evidences, among them the saying of the Prophet (peace be upon him): Islam is superior and nothing surpasses it<sup>(56)</sup>. If the child were to follow the father while the father is of a non-Islamic faith, this would be tantamount to exalting disbelief and its people—while Allah, the Exalted, has favored Islam over all other religions. Therefore, the child must follow the Muslim parent, if either of them is Muslim, It was also narrated from Anas ibn Malik (may Allah be pleased with him) that the Messenger of Allah (peace be upon him) said: No Muslim among the people loses three children before they reach the age of accountability, except that Allah will admit him to Paradise by His mercy toward them<sup>(57)</sup>.

**The second opinion** is that of the Maliki school, which holds that the child follows the father in religion and lineage, and the mother in slavery or freedom. That is, the religion of the child is that of the father—whether Muslim or non-Muslim—until the child reaches puberty. After reaching the age of maturity, the child is free to choose their own religion<sup>(58)</sup>.

Their evidence is the saying of Allah, the Exalted: And those who believed, and whose descendants followed them in faith — We will join them with their descendants, and We will not deprive them of anything of their deeds<sup>(59)</sup>.

**The prevailing opinion:** It appears from the foregoing that the majority opinion is preferred, which holds that the child follows the religion of the better parent, due to the strength and validity of their evidences, as well as the soundness and logic of their view. This ruling applies equally whether the child and the parents reside in the same land or in different lands.

As for a child born from a marriage contracted before the spouses' conversion to Islam, the child is unquestionably attributed to the father according to the Islamic scholars. Children born between a Muslim and a *Kitabiya* (a woman from the People of the Book) are judged Muslim, following the religion of their father, whether male or female—contrary to the commonly known view that males follow the father's religion while females follow their mother's. The original rule is that children follow the religion of the better parent.

If the parents marry and one is a polytheist, *Kitabiya*, or Zoroastrian, the child is *Kitabiya*. If the father converts to Islam while they have a young child born before his conversion, the child is judged Muslim following the father's religion, whether they reside in Dar al-Islam or the child resides in Dar al-Islam and the parents in Dar al-Harb. However, if both reside in Dar al-Harb, or the child resides there, the child is not judged Muslim since Dar al-Harb is not under Muslim rule.

Among the effects of marriage to *Kitabiya* women is that "the children are Muslim, following their father" <sup>(60)</sup>.

## CONCLUSION

After reviewing all the details related to the effect of religious difference between spouses on the marital bond and its resulting implications, the topic can be summarized with the following findings:

1. Competency is a condition for the validity of the marriage contract, the most important being competency in religion.
2. A Muslim man is permitted to marry a *Kitabiya* woman to enable interaction and coexistence between Islam and the People of the Book.
3. It is prohibited for a Muslim woman to marry a non-Muslim, whether *Kitabi* or otherwise; this prohibition is firmly established by the Qur'an, the Sunnah, and scholarly consensus.
4. The wisdom behind permitting a Muslim man to marry a *Kitabiya* woman is that Islam commands the husband to respect his wife's religion, as Islam affirms all prophets. Conversely, the wisdom behind forbidding a Muslim woman from marrying a non-Muslim is that the husband is not obliged to respect the Muslim wife's faith, and since children are attributed to the father, this exposes Muslim children to apostasy and deviation.
5. Scholars differ on the permissibility of having a non-Muslim witness a marriage contract between spouses of different religions; the prevailing opinion requires the justice (competence and integrity) of witnesses for a valid marriage contract, hence a non-Muslim is generally not qualified to witness such a contract as disbelief is considered a major impediment.

<sup>55</sup> ) Decision of the Federal Court of Cassation, Personal Status and Civil Affairs Panel, No. 14161, issued on 24/10/2022 (Published Decision).

<sup>56</sup> ) Muhammad bin Abdullah bin Abid Al-Sawat, Jurisprudential Principles and Maxims According to Imam Ibn Al-Qayyim in Acts of Worship, Dar Al-Minhaj, 1434 AH, p. 329.

<sup>57</sup> ) What is meant by al-ḥinṭh is reaching the age of puberty or legal accountability.

See: Al-Bukhari, Sahih al-Bukhari, Vol. 1, p. 421.

<sup>58</sup> ) Al-'Abdari (Al-Mawwaq), Al-Tāj wa al-Iklīl, Vol. 2, p. 250.

<sup>59</sup> ) Surah At-Tur, Ayah 21:

<sup>60</sup> ) Dr. Ahmed Al-Kubaisi, Previous Source, p. 80.

6. Regarding the custody of a child by the mother, jurists differ; however, the majority agree that the mother's custody is not affected by religious difference because custody fundamentally means compassion and care for the child, which is instinctively present in mothers whether Muslim or non-Muslim.
7. As for the religion of the children, they follow the better of the two parents' religions, and Islam is the best and final religion; this applies before puberty, while after reaching maturity, the child has freedom of choice.

After examining these key points and clarifying the extent to which religious difference affects marital stability, some recommendations can be made as follows:

1. Raising awareness among Muslim youth about the wisdom of marriage—namely, companionship, love, harmony, and the preservation of the human race—and that this is best achieved by marrying within the same religion to ensure morality, decency, and chastity, as the Prophet (peace be upon him) said: *"Marry the loving and fertile, for through you, I will compete with the nations for superiority."*
2. Facilitating the marriage of Muslim women in Islamic countries and avoiding exorbitant dowries.
3. Establishing loan funds for young people and encouraging collective marriages to facilitate marriage between Muslims and Muslim women.
4. Educating Muslim girls about the true meaning of marriage—mercy, love, and understanding—and warning them against being deceived by the allure of Western countries, wealth, and deceptive appearances.

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