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The Difference of Religion Between the Spouses: Destinations Vision

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Abstract

As a result of Islam spread in Western societies, one of the spouses may revert to Islam while the other may refrain from embracing it. This article discusses the case of a wife converting to Islam while her husband remained on his old doctrine. Often, the wife either stays married to a non-Muslim husband or seeks a divorce due to religious differences. Islam has addressed this issue since ancient times, and it has re-emerged due to the mixing of contemporary societies in a way that has not been seen before. This study adopts the descriptive-analytical approach and the inductive approach to deduce the relationship between the Islamic sharia perspective and the legal ruling on new developments and issues. Results indicate that it is possible for the wife to remain under her husband's protection and wait for him to convert while refraining from sexual intercourse. It encourages the wife to convince her husband to convert to Islam in order to preserve their children, and their home, and prevent its destruction and loss. As for the dissolution of the marriage contract, it can only be done by mutual consent or by a judge's ruling, whether inside or outside Islamic countries.

Keywords: Embracing Islam, husband's religion, religious difference, destinations vision

Introduction

Marriage is considered one of the most sacred bonds, and Islam has emphasized its importance. Islam only intervenes if it has a negative impact on a person's belief. Therefore, caution must be exercised in issuing fatwas on this matter, as it could cause great harm to this bond and lead to the separation of their children. Islam came for love and affection, not division and hatred. Understanding the objectives of Islamic law is crucial, particularly for experts in Islamic sharia studies (Ilyas & Sampurno, 2022). This is because comprehending the objectives of Islamic sharia goes beyond just understanding the legal provisions and their intent. Rather, it delves into the faculties and goals of Islamic sharia in all aspects of life. It highlights the ultimate purpose of creation, which is to worship and build a righteous society. (Al-Gaseem & Khasawneh, 2022)

When studying the objectives of Islamic sharia, one will find that Muslim scholars have developed and refined this field through various historical stages, starting from the time of the Prophet Muhammad peace be upon him (PBUH) until our present time. They have also established means to achieve these objectives in reality, which play a role in reforming the individual, the family, the community, and the nation (Pattweekongka, 2022; Carman, 2022).

The development that human societies are experiencing in this era generates many issues and

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incidents that require a quick solution. This necessitates a group of scholars in jurisprudence, science, and thought to solve these problems and overcome these crises in order to keep up with the fast pace of life that presents us with countless new developments. However, it is necessary to adhere to the general rules and regulations of Islamic law and to have a renewed understanding of the meanings of the Holy Quran and the prophetic (traditions) Sunnah (Wang et al., 2022).

The problem of religious differences between spouses is a persistent issue that is affected by the changes in human life. It has become prevalent, especially in Western societies. When a wife converts to Islam and her husband remains on his own religion, the question arises as to whether their marital relationship should continue or end due to the husband's religious beliefs (Cuc et al., 2023).

One of the greatest objectives of the Islamic faith is to achieve benefits for people and to prevent harm from befalling them (Suleiman et al., 2023). Is it acceptable that this great religion, which is a religion of mercy and affection, becomes a cause for separating families who were once united? Does the Islamic religion sow hatred between spouses after they were in agreement? The Islamic law, which seeks to reconcile the hearts of people and bring them closer to the religion of God, cannot be the same law that drives a wedge between people and separates them from entering into this religion (Olimat et al., 2022).

Research Objectives

The purpose of this study is to clarify the theological perspective regarding the ruling on separation when a wife converts to Islam while her husband remains in his own religion. This can be achieved by fulfilling the following objectives:

1. Presenting the opinions of the early scholars regarding the ruling on the separation between spouses when the wife converts to Islam without her husband,
2. Clarifying the different aspects of evidence for all scholars' opinions,
3. Examining this issue from an Islamic sharia perspective,
4. Highlighting this issue and explaining its Islamic sharia perspective.

Methodology

This study adopts the descriptive-analytical approach and the inductive approach to deduce the relationship between the Islamic sharia perspective and the legal ruling on new developments and issues. The study first introduced the concept of Islamic sharia. Secondly, the study addressed the conversion of a wife to Islam while her husband remains in his own religion, including situations where the wife converts before her husband. Thirdly, the study discussed the opinions of early Muslim scholars on this matter, clarifying the reasonable opinions among them. Finally, the study examined the legal objective in ruling on a wife's conversion to Islam while her husband remains on his own religion, according to contemporary scholars who adopt an Islamic sharia perspective.

Islamic shariah (Maqasid Shariah)

Maqasid Shariah emerged and became clear due to the work of the scholar Al-Tahir Ibn Ashur, who defined it as the meanings and observed wisdom of the legislator in all aspects of legislation, or most of them, in such a way that these meanings and wisdom are not limited to

a specific type of legal ruling (Ibn Ashur, 2004). This was followed by his Moroccan student, the scholar Al-Alal Al-Fasi, who perceived Maqasid as the objectives and secrets that the legislator has placed in each ruling of Islamic law (Al-Fasi, 1993; Mozammel, 2023). Maqasid were also defined as the objectives that Islamic law has established for achieving the benefit of people (Al-Raysuni, 1992; Dung et al., 2022). Although the wording differs, the meanings are the same. Maqasid is a comprehensive term for the meanings and wisdom that Islamic law has considered in its rulings, by taking into account the interests of people and preventing harm from befalling them. Therefore, the objective perspective means any perspective or thought that aims to achieve the objectives of Islamic law when applying its legal rulings.

Wife's conversion while the husband remains on his own religion

The jurists' opinion have differed regarding the issue of wife's conversion to Islam before her husband, and the husband stayed on his religion. The difference stems from whether they should be separated directly due to their religious difference. Should the wife wait until the husband converts to Islam and the marriage contract remain valid? Is there a specific period for waiting or not? Or does the ruling differ if the wife is in a Muslim country and the husband is in a non-Muslim country? The early and contemporary jurists have different opinions on this matter, and the following are some of their views:

The first opinion

The marriage contract is annulled. The couple are separated if the wife's iddah (waiting period) ends without the husband converting to Islam. This is the view of the several schools of thought, Maliki (Al-Madani, 1994), Shafi'i (Al-Shafi'i, 2001), and Hanbali (Ibn Qudamah, 1968). They based their opinion on several evidences, including:

Holy Quran evidences

1. Allah says: "O ye who believe! When there come to you Believing women refugees, examine (and test) them: God knows best as to Their Faith: if ye ascertain That they are Believers, then send them not back To the Unbelievers. They are not lawful (wives) For the Unbelievers, nor are the (Unbelievers) lawful (husbands) For them" (Mumtahana, 10).

This opinion is supported by the evidence from the Quranic verse which states that if the religions of the spouses differ, sexual relations between them are not permissible due to their religious differences. This implies that a Muslim woman cannot be lawful for a non-Muslim husband, and that her conversion to Islam requires her to be separated from her non-Muslim husband (Al-Shafi'i, 2006).

2. Allah says: "But hold not to the guardianship of unbelieving women " (Mumtahana, 10).

This opinion is supported by the Quranic verse which forbids the believers from marrying women who associate partners with Allah from among the polytheists and instructs the believers to get separated from such women (Al-Qurtubi, 1964).

Sunnah evidences

1. It is narrated that the Messenger of Allah (peace be upon him) responded, to "Zainab, his daughter, is to be returned to her husband, Abu Al-Aas ibn Al-Rabi', with a new dowry and a new marriage contract." (Ibn Hanbal, 1995, 1/217:1876). This hadith indicates that separation between the spouses takes place when the waiting period (iddah) ends.

2. It is reported that there was a period of about a month between the conversion of Safwan

ibn Umayyah and his wife, the daughter of Al-Walid ibn Al-Mughira. She embraced Islam on the day of the conquest of Mecca. Safwan remained a disbeliever until he witnessed the battles of Hunayn and Ta'if, then he embraced Islam. The Prophet (PBUH) did not separate them, and Safwan's wife continued to live with him in that marriage (Al-Madani, 2004, 3/780). The evidence from the narrations is that the conversion of the wife to Islam does not necessarily require the dissolution of the marriage contract immediately. If it were so, the Prophet (PBUH) would have separated Safwan from his wife (Al-Madani, 1994, 2/213).

The second opinion

distinct between residency places (i.e., the land of war and - the land of Islam. In the land of war, separation occurs if Iddah (the waiting period) expires and the husband does not embrace Islam. In land of Islam, the issue is referred to a judge who presents Islam to the husband. If he refuses, the judge separates the couple. If the judge does not separate them, then the woman remains his wife. This is the Hanafi school of thought (Al-Sarakhsi, 1993, 3/191-192). They base their argument on the following evidence:

Holy Quran evidences

Allah says, "if ye ascertain that they are believers, then send them not back to the unbelievers. They are not lawful (wives) For the unbelievers, nor are the (unbelievers) lawful (husbands) for them. But pay the unbelievers what they have spent (on their dower). And there will be no blame on you if ye marry them on payment of their dower to them. But hold not to the guardianship of unbelieving women" (Mumtahaana, 10).

The saying of Allah: "send them not back to the unbelievers" (Al-Mumtahaana: 10) indicates that separation occurs between the spouses when they are in different residency places. The fact that a wife who has embraced Islam cannot be returned to her disbelieving husband in the land of disbelief is evidence of the termination of the marital bond between them due to the difference in places (Al-Jassas, 1994). The saying of Allah: " But hold not to the guardianship of unbelieving women" (Al-Mumtahaana: 10) indicates the obligation of separation between the spouses due to the difference in realms, where Allah, may He be exalted, has commanded the severing of the marital bond between the believing woman and her disbelieving husband by her leaving him (Al-Zayla'i, 1895).

Sunnah evidences

It is narrated that the Prophet Muhammad (PBUH) returned back his daughter Zainab to Abi Al-'As ibn Al-Rabi' with a new dowry and a new marriage contract. (Ibn Hanbal, 1995, 2/207). The narration implies that the difference in locations between the spouses requires them to be separated, as the new marriage contract was conducted in Medina (Al-Zayla'i, 1997).

Evidence from reasons

Is it plausible that the disparity between the two realms undermines the objectives of marriage? As when there is a difference in location, the spouses usually cannot benefit from the marriage? Therefore, it would not be beneficial for the marriage to continue, similar to the case of a Muslim who apostatizes and joins the realm of war, as he would lose his ownership of property and his children's mothers would be emancipated. Similarly, if there is a disparity in location between the spouses, the benefit of the marriage is lost (Al-Kasani, 1986).

The third opinion

states that if the wife converts to Islam while the husband remains on his previous religion, the marriage contract is immediately dissolved between them, resulting in separation. This applies regardless of whether the husband converts shortly after or later, or if he does not convert at all. There is no way for him to assert any rights over her except through a new marriage contract after his conversion, with her consent. This is the opinion of the Dhahiriyah school of thought (Ibn Hazm, n.d., 5/368) and one of the opinions within the Hanbali school of thought (Ibn Qudamah, 1994, 3/51). They support their stance with the following evidence:

Holy Quran evidences

"O ye who believe ! When there come to you Believing women refugees, Examine (and test) them : God knows best as to Their Faith : if ye ascertain That they are Believers, Then send them not back To the Unbelievers. They are not lawful (wives) For the Unbelievers, nor are The (Unbelievers) lawful (husbands) For them. But pay The Unbelievers what they Have spent (on their dower). And there will be no blame On you if ye marry them On payment of their dower To them. But hold not To the guardianship of Unbelieving women : ask For what ye have spent On their dowers, and let The (Unbelievers) ask for What they have spent (On the dowers of women Who come over to you). Such is the command Of God : He judges (With justice) between you. And God is Full of Knowledge and Wisdom" " (Al-Mumtahanah: 10)

Ibn Hazm argued that the interpretation of this verse is clear and that there is no room for deviation. He said that Allah has prohibited a believing woman from returning to a disbeliever, and that a Muslim who accepts Islam is obligated to break ties with any disbelieving relatives. Therefore, he argued that the protection of a Muslim woman from a disbeliever is severed at the moment of either of their conversions, whether one converts while the other remains a disbeliever, or vice versa. He said that any other interpretation of this verse is confusing and does not have any basis in Islamic law (Ibn Hazm, n.d.).

Sunnah evidences

It is authentically reported from the Prophet Muhammad (PBUH) saying: " Muhajir (emigrant) is the one who gives up (abandons) all what Allah has forbidden. " (Al-Bukhari, 1978, 1/9:10). So, whoever embraces Islam has indeed abandoned the disbelief that was prohibited, and thus they are considered a Muhajir (migrant) (Ibn Hazm, n.d., 5/374).

Evidence from reasons

As soon as one of couple embraces Islam while the other remains upon a prohibited religion, there arises a religious difference. Therefore, separation becomes mandatory immediately (Ibn Qudamah, 1994).

The fourth opinion

The marriage contract remains valid but suspended, and marital intimacy between the couple is prohibited. This is the view of Ibn Taymiyyah and Ibn al-Qayyim (Ibn Taymiyyah, 1995). They base their arguments on the following reasoning:

Sunnah evidences

1. According to a narration, the Prophet Muhammad (PBUH) annulled the marriage of his daughter Zainab to Abu Al-Aas bin Al-Rabi' with the first marriage contract " (Ibn Hanbal, 1995,1/217:1876). The narration clarified that the Prophet (PBUH) returned his daughter Zainab to Abu Al-Aas. Abu Al-Aas embraced Islam after the Treaty of Hudaibiyyah, which

was before the conquest of Makkah. On the other hand, Zainab had embraced Islam from the early days of the Prophethood, around six years before Abu Al-Aas embraced Islam. The phrase "between her embracing Islam and his embracing Islam, there were six years" is a misunderstanding by the narrator. What the narrator meant was the period between Zainab's migration and Abu Al-Aas embracing Islam.

2. Narrated by Ibn Abbas, he said: A woman embraced Islam during the time of the Prophet (PBUH) and then she got married. Later, her first husband came to the Prophet (PBUH) and said, "I had embraced Islam and discovered that she had also embraced Islam." So the Prophet (PBUH) separated her from her second husband and returned her to her first husband (Ibn Hanbal, 1995,1/323:2973). Sheikh Al-Albani, may Allah have mercy on him, considered this hadith to be weak (Al-Albani, 1985, 6/337).

The indication from the narration is that the woman was returned to her first husband when he mentioned that he had embraced Islam, and she had also embraced Islam. The narration did not specify whether they both embraced Islam together or if she embraced Islam before her iddah had ended. The omission of this detail suggests that there is no difference between returning her before or after the completion of her iddah (Al-Albani, 1985, 32/338).

3. Narrated by Ibn Abbas: "The polytheists had two categories in relation to the Prophet (PBUH): the believers who fought against him and he fought against them, and the believers who had made a treaty with him and neither fought against him nor he fought against them. When a woman from the polytheists who had made a treaty with the Muslims migrated, she would not be engaged until she menstruated and purified herself. Once she purified herself, she was allowed to marry. If her husband migrated before she could get married, she would be returned to him." (Al-Bukhari, 1978, 7/62:5286). The implication is that if a woman converts to Islam before her husband and then has her menstrual period, she may marry someone else. It is also permissible for her to wait for her husband to convert to Islam, and then return to him (Ibn Taymiyyah, 1995, 32/336).

4. It is narrated that a woman embraced Islam while her husband did not. Umar ibn Al-Khattab, may Allah be pleased with him, wrote to her that she may leave him if she wishes, or stay with him if she wishes (Al-Sunanai,1983, 6/83:10083). Ibn Al-Qayyim said: "This does not mean that she should live with him while he is a Christian. Rather, she should wait and be patient until he embraces Islam, and then she becomes his wife, even if it takes years. This is the most correct opinion among the schools of thought." (Ibn Al-Qayyim, 1994, 3/342).

Evidence from reasons

Hastening the separation between spouses if one of them converts to Islam is a strong deterrent from entering Islam, and the goal is to reconcile hearts in every way (Ibn Al-Qayyim, 1994, 3/371-372). Ibn Al-Qayyim responded to his opponents with many convincing arguments, including:

1.The verse in Surah Al-Mumtahanah (60:10) that states, "O ye who believe ! When there come to you Believing women refugees, Examine (and test) them...", does not indicate the invalidity of the marriage contract. Rather, it prohibits returning Muslim emigrant women to their disbelieving husbands. So where in this verse does it suggest that a woman should not wait for her husband to become a Muslim emigrant to Allah and His Messenger before returning to him? (Ibn Al-Qayyim, 1994, 3/364).

2.The verse in Surah Al-Mumtahanah (60:10) that states, "But hold not To the guardianship of

Unbelieving women" prohibits maintaining a marriage with a polytheistic woman while she remains upon her polytheism and disbelief. However, it does not prohibit waiting for her to embrace Islam and then holding onto the ties of marriage with her. Also, this verse does not indicate the invalidity of the marriage contract, and the marriage remains valid. However, if a man chooses to divorce his polytheistic wife, he may do so, as Umar, may Allah be pleased with him, divorced two of his polytheistic wives when this verse was revealed (Ibn Al-Qayyim, 1994, 3/366).

3.It is narrated that the Prophet PBUH, approved the marriage of his daughter Zainab to her husband Abu Al-Aas ibn Al-Rabee' in their first marriage, with a new dowry and a new marriage contract (Ibn Hanbal, 1995), 2/207:6938). More than one scholar has criticized this hadith. Al-Shawkani said: "In its chain of narrators is Hajjaj ibn Artat, who is known for deception, and a group of scholars weakened this hadith" (Al-Shawkani, 1993, 6/193). Al-Dhahabi also mentioned in his book that Hajjaj ibn Artat used to send ...and he was criticized for deception. (Al-Dhahabi, 1963, 1/458).

4.The saying that once one of the polytheistic spouses converts to Islam, separation occurs either before or after consummation is a very weak opinion. It contradicts the well-known and established teachings of Islam. It is known that among the early Muslims, some would precede others in declaring their faith by uttering the testimony of faith. Sometimes a man would embrace Islam while his wife remained a non-Muslim for a period of time, and then she would embrace Islam as well, as happened with many women from the Quraysh and others before their husbands. (Al-Dhahabi, 1963, 3/368).

5.The saying that if one of the spouses converts to Islam before the other, it necessitates immediate separation before or after consummation is based on a mistaken understanding. The Prophet PBUH did not ask anyone who embraced Islam whether they had consummated their marriage with their spouse or not. Rather, every time a man embraced Islam, his wife would also embrace Islam with him, and she would remain his wife without renewing the marriage contract. Arab delegations used to come to the Prophet PBUH, and embrace Islam, and then return to their families. Their wives would then embrace Islam at their hands after their husbands converted (Al-Dhahabi, 1963, 3/369).

6.Considering iddah as a condition for separation is contrary to the well-known practice of the Prophet PBUH, and his rightly guided successors. Many people apostatized during their time, and some of their wives did not apostatize with them. When they returned to Islam, their wives returned to them without renewing the marriage contract. It is known that some of them returned to Islam after a period longer than the waiting period, and many of their wives did not apostatize. Neither the Prophet PBUH, nor his successors asked anyone who had apostatized whether they had renewed their marriage contract or not. Rather, those who persisted in apostasy were killed, while those who returned to Islam had their wives and property returned to them (Al-Dhahabi, 1963, 3/371).

Maqasid Shariah perspective ruling on wife's conversion to Islam and the husband's survival of his religion

Previously, we mentioned the opinions of advanced Muslim scholars regarding the Islamic ruling on the wife's religion and the husband's adherence to his own religion, and the difference of opinions among them. We also mentioned that some contemporary scholars supported the opinions of Ibn Al-Qayyim and Ibn Taymiyyah, including Dr. Mustafa Al-Zarqa, Dr. Abdullah bin Yousuf Al-Judai, Dr. Yusuf Al-Qaradawi, Dr. Jasser Auda, and Dr. Mohammad Al-Imrani.

Dr. Mustafa al-Zarqa says: "Delaying the separation from a spouse who has embraced Islam while the other spouse refuses to embrace it, hoping that the latter will eventually come around, may be permissible temporarily under this hope. However, sexual intimacy between the spouses is still not permissible in any case." (Al-Zarqa, 1999, pp. 270-271). Al- Judai believes that the wife has the choice in case she embraces Islam. If she wishes to stay with her husband, she may do so, and if she wishes to separate, she may do so as well. Separation in this case does not serve any interest, but rather causes harm and leads to a turning away from Islam (Al- Judai, 2000, pp. 183-184).

Dr. Jasser Auda believes that if the Muslim wife is harmed by her husband, then separation between them is necessary. However, if the husband is of good character, the situation may differ. If we look at real-life cases of women embracing Islam, we will find that there is mutual harm that will affect the family if the husband immediately separates from his wife upon her conversion to Islam. Realistic thinking requires that we do not prevent her from converting, as this could lead to marital infidelity by the husband, complicating her life and pushing the husband further away from Islam instead of bringing him closer to it (Ouda, 2013).

Dr. Muhammad Al-'Imrani believes that following the opinion of Ibn al-Qayyim relieves the distress and difficulty of Muslim women, especially in the West, allowing them to remain with their husbands while maintaining the sanctity of marital intimacy. He adds that even a weak opinion may be acted upon if it relieves the distress of the ummah, and Muslims living in non-Muslim countries may follow what is easy for them, provided they do not exceed the limits of Islamic legislation. (Al-Kadi, 2001).

Among the decisions and recommendations made by the European Council for Fatwa and Research (ECFR) (2001) under the leadership of Dr. Yusuf al-Qaradawi are the following:

- 1.If both spouses embrace Islam and the wife is not someone who is permanently prohibited from marrying the husband, such as a woman who is permanently prohibited from marriage due to lineage or breastfeeding, then they may remain married to each other.
- 2.If only the husband embraces Islam and there is no reason for them to be prohibited from marriage, and the wife is a Jew or Christian, then their marriage remains valid.
- 3.If the wife embraces Islam while the husband remains on his religion, the council will consider the following:
 - A If they both couple embraced Islam before consummating their marriage, then they must separate immediately.
 - B. If they both embraced Islam after consummating their marriage and the husband converted before the end of the wife's iddah, then their marriage remains valid.
 - C. If the wife embraced Islam after consummating their marriage and her iddah has ended, she may wait for her husband to embrace Islam, even if it takes a long time. If they had previously consummated their marriage, there is no need to renew the marriage contract.
 - D. If the wife chooses to marry someone else after her idda has ended, she must seek a divorce through legal means.
- 4.The four schools of thought considered it is not permissible for a woman to remain with her husband or allow him to have intercourse with her after the end of her iddah.

Based on the previous opinions and evidence, if a woman embraces Islam while her husband remains on his religion, she is prohibited from having sexual relations with him immediately after the end of her iddah. She may marry someone else or wait for her husband to embrace Islam and

resume their marital life together. However, the marriage contract can only be dissolved by mutual agreement or by a court ruling, whether in a Muslim country or outside of it.

Those who argue against separating the spouses rely on the lack of a clear text that requires separation and the absence of consensus on the matter. They have credible evidence from the statements of the companions that support their stance. Their aim is to achieve the goal of bringing hearts together in Islam. Ibn al-Qayyim said in response to those who advocate separation: "This is a deterrent to Islam, as a woman or her husband may know that embracing Islam will result in the dissolution of their marriage and separation from their loved one, with no way out except with her consent, the consent of her guardian, and a new dowry. This is different from when they both know that if one of them embraces Islam, their marriage remains valid and there is no separation unless one chooses to do so. This encourages embracing Islam and loving it, which is more likely to lead to entering it." (Ibn al-Qayyim, 1994, 3/371).

Conclusion

All Muslim scholars and schools of thought agree that it is forbidden for a Muslim woman to marry a non-Muslim man, and such a marriage is considered invalid and unprovable. However, if both partners are non-Muslims and the wife converts to Islam while her husband remains a non-believer, she can either continue the marriage or end it. Islam highly values the bond between spouses as the most sacred connection, and only intervenes if it negatively affects a person's beliefs. A husband's heart may be touched by Islam if he witnesses his wife's good character and treatment, and she will be rewarded for maintaining her home and children. The study recommends the followings:

1. It is important not to rush into issue fatwa on separating spouses due to religious differences, as it can cause great harm to their children. Islam came to promote unity and love, not division and hatred.
2. The patience and loyalty of a Muslim wife towards her non-Muslim husband may have a positive impact on his heart and lead him to Islam.
3. It is beneficial for Muslim families to take advantage of the cultural freedom in Western countries to improve their lives.
4. It is essential to carefully review the conditions of marriage contracts between spouses of different religions.

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