

Research Article

Marriage of Muslim to Christian or Jews Woman and its Implications Under Islamic Law

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Received : July 15, 2025

Revised : August 13, 2025

Accepted : September 17, 2025

Available online : October 28, 2025

How to Cite: Adamu, A. I., & Ardo, H. (2025). Marriage of Muslim to Christian or Jews Woman and its Implications Under Islamic Law. *AL-IKHSAN: Interdisciplinary Journal of Islamic Studies*, 3(2), 212–233. <https://doi.org/10.61166/ikhsan.v3i2.129>

Abstract. Muslim marriage to Christian and Jews is a controversial topic in Islam. While some Islamic scholars argue that it is permissible others argue that it is forbidden. This paper will discuss the implications of Muslim marriage to Christian and Jews in Islam. It will examine the various opinions of Islamic scholars on the implications of such marriage on Islamic faith. It will also discuss the potential benefits and drawbacks of such marriage and the potential implications for the Islamic community. Finally it will consider the implications of the marriage in Islam.

Keywords: Marriage: Muslim: Christian: Woman: Implications

INTRODUCTION

Marriage is a means of unity that connects between a man and a woman who aim to share life together for establishing a Muslim family according to the instructions of the Almighty Allah and his messenger (PBUH).

Literally, the word "Nikah" marriage comes to puts something together, form single thing while technically Muslim view it as a legal union between man and woman under a voluntary contract which give room to the enjoyment of certain rights, duties and obligations of the parties to the contract.

Essentially elements of a marriage are; the existence of the contracting parties, offer and acceptance, consent of the contracting parties, witness, guardianship and dowry In Islam, people of the Book are the Christian and Jews those who believed in the Book of Allah Torait and Injil reveal to prophet Musa and Isah respectively. Marriage with the women of the book is permitted in Islam According to the following injunction in the Qur'an.

Nature of Marriage in Shari'ah

Marriage is the most important or significance institution in the society and no society wants to build a model society without it. This is why Islam gives maximum attention to the marriage affairs of the believers because if the foundation of the marriage is strong and base on Shari'ah, the marriage will be strong and last for long. Therefore, Islam does not have the roles of the individual member of the Muslim community on the Institution of marriage to mere human speculation Islam has puts every member in his rightful place and charged him to carry out his responsibilities on the Tagawa (fear of Allah). The Holy Qur'an says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۗ (34)

*"Men are the protectors and maintenance of women, because, Allah has given the one more (strength) than the other, and because they support them from their means."*¹

In order to keep peace and order in the marriage life of Muslim, it declared in this verse that men are Qawwamum is protectors and maintenance of women. The word Qawwamam signifies a person who takes the responsibility of safeguarding the interest of another person.

This position has comes to men as opposed to women not only because generally speaking, they have more physical strength and greater capacity for hard work, but also because it is extremely important that in every marriage or family, there should be a head who may give order to do settle things Among the members of the family. It is for this reason that the rest of family especially the wife is asked

¹ Q:4:34

to obey the husband. And it should be born in mind that the wife should not obey husband if what he asks he is against Allah's injunction, because obedience is first to Allah.

"The woman should observe chastity and guard her and her husband honour, whenever the husband is away from home".²

The nature of marriage in Islam or Shari'ah is completely Ibadah (i.e. worship of Allah and of his messenger), for procreation of children, protection of society, to guard from foulness and unchastely, to maintain mankind from pollution, allowing cohabitation between different sexes and not marrying another being beside human being.³

Allah Almighty says in the Qur'an in support of the above:

"And among his signs in this, that He created for you mates from among yourselves that you may dwell (live) in tranquility with them and He has put love and mercy between your hearts undoubtedly in there is signs for those who reflect".⁴

"O mankind, head (in reverse) your Lord who created you from single soul and from it, created its mate and them twain both spread multitude of men and women".⁵

"And Allah is made for you, your mates of your own nature and made for you out of them sons and daughters, and grandchildren and provide for you sustenance of the best".⁶

However, there are some Hadiths of the prophets Mohammed (S.A.W.) which interpreted the above Holy Quran verses, they are as follows:

In nutshell the nature of marriage in Shari'ah is Ibadah i.e. worship of Allah Almighty, procreation of children in a legitimate way act of piety guard of an individual modest, half fulfillment the religion, fearing of Allah and obedience of His Messenger and tradition of messenger of Allah (S.A.W.), safeguarding the society to live in quiet and peaceful manner, maintain mankind from pollution, love and mercy between each other, allowing combination between different sexes, guarding the society from foulness and unchastely and inter family alliance.

Definition of Marriage

Marriage is referred to Arabic as 'Nikah' or 'Zawaj'. The word 'Zawaj' is used in the Holy Qur'an as pair or mate; in usage it connotes marriage.

"Do they not look at the earth, how pairs of noble things we have provided therein".⁷

²Shari'ah – The Islamic Law – I Doipg: 129-30

³ Mohammedan Law V. 2 pg: 24

⁴ Q: 30:21

⁵ Q: 5:1

⁶ Q: 16:72

⁷ Q:16:72

The words 'Nikah' or 'Zawaj' in primitive sense means: carnal conjunction. And some have said that it signifies conjunction generally.

Marriage in the language of Law implies a particular contract used for the purpose of legalizing generation. Marriage has been defined as an institution ordained for the procreation of the society and in order that human being may guard themselves from foulness and unchastely. Marriage is a system allowed between two people of different sexes to whose mutual combination there is no natural or legal bar or prohibition. It is also defined as Relationship based on mutual consent on the part of man and woman between whom there is no bar to a lawful union..." Its also defined as an institute by Divine command among members of the human species. Marriage also-defined as "it is an act of Ibadat or piety for its preserves mankind free from pollution..."⁸

However, according to the Abdulrahman I. Doi defined as a "means of emotional and social gratification, mechanism of tension reduction, legitimate procreation, social placement, act of piety (Taqwa) and form of worship of Allah and obedience to his messenger (Ibadah)."⁹

Sheikh E.T El-imairi defined it as an institution serving certain rules and regulation whereby, male and female are permitted sexual relations the procreation of children with the view to the preservation of human species and their genealogy.¹⁰

Obligation of Marriage on A Muslim

According to Imams Abu Hanifa, Ahmad bin Hanbal and 'Malik bin Anas, although marriage in its origin may be deemed to be recommendatory, in cases of certain individuals, it becomes obligatory (wajib).¹¹

According to Maliki School it is obligatory (lord) for a Muslim to marry even though he may not be in position to earn his living on the following.¹²

1. If he fears that by not marrying he will commit fornication (zina).
2. If he is unable to fast to control his passion or that he can fast but his fasting does not refrain him from adultery
3. He cannot even find a slave girl or utterly poor girl to marry

However, Hannafi schools consider marriage obligation in the following four (4) conditions:

1. If a man is sure that he will commit zina if he did not marry
2. If he cannot fast or even if he can fast, it does not help him to control his passion. If fasting help him, he must fast rather than marry.

⁸ Mohammedan Law V.2 pg: 241

⁹Shari'ah the Islamic Law Chap: 6: pg: 117

¹⁰ Personal status in accordance with Maliki School by Sheik E.T El-Imairipg: 1

¹¹Hashiya Al-Dasuqi on the Sharh-al-Kabir vol.2 p. 215

¹² Al-Jaziri, Abdul-Rahaman-Al-Kitab al-Fiqhalal-Mathahid al-arab vol. ivpg: 4 Cairo 1970 14
Ibid pg 4.

3. If he cannot get slave girl to marry

4. If he is able to pay Dowry (mahr) and is capable to earn lawful live hood. If he is not capable to earn his live hood lawfully. It is not obligatory for him to marry.¹³

Marriage is compulsory (wajib) for a man who has the means to easily pay mahr) Dower and maintain the wife and children and who is healthy and fears that if he does not marry he may commit fornication (zina). It's also compulsory for a woman who has no other means of maintaining herself that her sexual urge may push her into fornication.¹⁴

However, according to the Sayyid Sabig in his hook Fighu-Sunnah where he said.

"The marriage is obligatory on who is able to do it, and on that whose soul desires, and one fears the fornication that the safeguarding of the soul and its abstinence from the forbiddance is obligatory and this is not completed hut with the marriage".¹⁵

Also Al-Qurtubi said in the same book: -

"Let those who find the marriage keep themselves chaste, until God gives them means out of his grace..."¹⁶

However, the scholar continue saying that on the above Qur'anic verse, he said that, it is on the person incapable to marry: Let him fast frequently as to what the group had narrated form the son of Mas'ud (R.A.) that the messenger of Allah (P.13.1.H) said

*"O group of youth that of you who is able to copulate let him marry, its lower the sight, safeguards vulva, those where cannot marry let him fast, that it is a protection for you"*¹⁷

Despite The speculation of the jurist and scholars, there are some people or persons whose marriages are not wajib (compulsory or obligatory) on them but rather mandub (recommendatory) Mubah or Nall (supererogatory). Makruh (not desirable) and Haram (forbidden) let see what scholars said on them

Mandub: It is recommendatory on a person who has strong will to control his sexual urge and not to fall prey to evil temptation of shaitan but aims only to have children.

Mubah or Nafi Marriage is supererogatory for a person who can control his sexual desire who has no wish to have children and who feels that marriage will not keep him away from his devotion to Allah.

Makruh: It is not desirable for a person who possess no sexual desire at all or who no love for children or who is sure to be slackened in his religion obligation as a result of marriage.

¹³ Ibid: pg. 4

¹⁴Mawahib al-Jalilvol II p.403-404

¹⁵Figh-Sunnah English translation vol II by F. Amira Murtaji at pg: 373

¹⁶ Q:24:33- The same book and page with reference 16 above

¹⁷Fiqh-us Sunnah English translation Vol: II by F. Amira Muhaji at pg: 373.

Haram: It is forbidden for a person who does not possess the means to maintain his wife and children or if he suffers from an illness serious enough to affect his wife and his progeny.¹⁸

Accordingly, it is forbidden on that who abandons the wife of the copulation and of the expenditure, with his incapability on doing it and his desire for it.

Alqurtubi said:

"Whenever the husband knows he is incapable of paying his wife's expenditure, or her dower or any of the obligatory rights for her, then it is not lawful for him to marry her until manifests for her that, or to make her known his ability to perform her rights.¹⁹

Purpose of Marriage

The prophet Mohammed (S.A.W.) orders Muslims to get married as soon as they can. The family is the nucleus of the Islamic society and marriage is the only way to bring about such an institution.

Extra-marital relations are categorically condemned and prohibited. Therefore, the purposes of marriage are as follows:

1. That sexual instinct, is of the strongest and the most fierce instinct. It insists on its owner always in finding a domain for it. As long as there is nothing to satisfy it; the human being is overwhelmed with, the anxious and disturbance and it will trend with him to an evil objection. The marriage is the best natural state and the most suitable active aspect to satisfy the instinct and gratify it. The body is calm of disturbance. The soul is tranquil from the conflict. The sight stops from the looking to the forbidden. The sympathy is at ease to what Allah has made lawful. Allah Almighty says:

"And among His signs is that he created for you mates from among yourselves, that ye may dwell in tranquility with them, and he has put love and mercy between your (hearts). Verily in that are signs for those who reflect".²⁰

However, the Hadith of the prophet (S.A.W.) which reported Abu Hurairah (R.A.) had said that: -

"The woman comes on the image of Satan, and she goes away in the image of Satan. If any one of you sees a woman he desires, let him come to his wife, for that repels what is in self".²¹

2. The marriage is the best way to have children, and in increasing the progeny, and the contribution of the life with the protection of the progenies; which has special care by Islam. The saying of messenger (S.A.W.) where said: -

¹⁸Mawahib-al-Jalil Vol: II pg. 403 (at Shari'ah the Islamic Law by Prof. Abdulhaliman I. Doipg: 118

¹⁹Fiqh al-Sunnah English Translation vol: II by F. Amira Mutrji at pg: 373

²⁰Q:30:21

²¹Fiqh-us-Sunnah English Translation by F. Amira Mutraj vol. II pg: 371

"Marry the warm hearted, fertile (female) for I boast in the Day of Judgment with your great number".

Similarly, in the ancient times it was said; The dignity is for the one who has greater number of the children. This in reality is still standing and nothing has; come to refute it. Al-Ahnaf bin Qaise had came upon the Mu'awuyya and Yazid (R.A.) was between his hands while he was looking at him admiring, he said:

"O prince of the believers, they are the pillars of our backs, the fruit of our hearts, the light of our eyes with them we attack our enemies. They are our successors. Be for them a number earth and a shadowing sky, if they ask you, give them, if they ask your good will agree on them. Do not detain from them. Your giving, and they will be bored of your nearness, and they detest your life, and to feet that your death is slow".²²

3. The worship of Allah (Ibadah). By worship it is not only meant the performance of ritual merely having sex with your wife, but it is essential implies righteousness in all transaction behavior. The concept of Ibadah is very wide, every good deeds, every service to humanity every usual productive effort and even every good word is a part of a true Muslim workshop of his creature. If both husband and wife observe this main purpose, this cardinal purpose of their union they would easily learn how to help each other to achieve s goal- a goal greater than themselves, They would learn how to tolerate each other, how to love Allah in themselves and in other beings and how to overcome their difficulties and other shortcomings".²³
4. The paternity and maternity instinct grow and complete in the shadow of the childhood, and feelings of sympathy, love and sympathy grow. They are virtues, the humanity of human being does not complete without.
5. The feeling with fellowship in the marriage, the guarding of the children calls for the activity making effort in strengthen the talent of the individual and his talent. So he runs for the work to handle his burdens and to perform his duties. Then the use increase and reason for the investment by which the wealth will increase and production. He thus, thereupon to deduce the good of Allah from the universe and what He (exalted) had entrusted in it of things and benefit to the people.
6. Distributing the deeds in a way organizing with it, the affairs of the house in one way as he harmonizing with it; the deed outside it in another way with restricting the responsibility of every man and woman with what is authorized of deeds.

The woman guard the house and manages it, to raise of the children preparing the condiment environment for the man to be comforted in it and to find what relieves him of his labour and his power will be renewed. In this according to the Prof. Abdulrahman 1. Doi has said:

²² Ibid: 23

"The woman is entrusted with coming for and rearing the children organizing the home, and creating the loving atmosphere inside the matrimonial home In an Islamic society the wife is not expected to push to work to gain money, even the unmarried woman, the divorced woman, and the widow are guaranteed by law, an income that help them lead a reasonable comfortable life, work or trade are not prohibited to woman in shari'ah provided they do it within the framework of modesty and with the permission of the husband, they are not prohibited to undertake such activities unless there is a justification for them to go to work and should be without the prejudice to their husbands rights. Once the women get married, she accepts the Islamic rule on the functioning at of the family. Her roles becomes mainly, to achieve the welfare of her household and to look after the internal family affairs. If she has her own property or fortune and she opts to run or invest such wealth she is entitle to do so without her husband's permission, provided this does not infringe upon her marital obligation and responsibilities to her children".

Meanwhile, the man pursuits and stand for the gain, and what the house needs of money and expenditure. Accordingly the same scholar continues to have saying as follows:

With this fair distribution every one perform his natural deeds by the phase which Allah consents on and which the people praise him and which he produces the blessed fruit.

7. That the marriage turns our well of a correlation of the families, strengthen the ties of love between the families and assurance of the social relationship with what the Islam blesses support and aids.

Therefore, the purpose of marriage in a nutshell could be means of emotional and sexual gratification. Mechanism of tension reduction means of legitimate procreation, on approach to inter-family alliance and group solidarity, social placement, on act of piety (Taqwn) and it is form of Ibadat - Worship of Allah and obedience to His Messenger (P.B.U.H.).

Characteristic of Woman to be married by Muslim Man

The wife is lodging to the husband and filth for him. She is partner of his life, and the lady of his house and the mother of his children and beloved of his heart, and the place of his secret and his intimate friend. The husband is the most important pillar of the family, that she is begetter of the children. From her they inherit the virtues and characteristics. In her bosom the sympathy of the child is formed, and his talents are breeder and form where he receives his language. He gains much of his customs and his habit. He knows about his religion, and he habituated with the social behavior. Because of this Islam she must be the features of characteristic of woman to be married by Muslim man are as follows based on the prophetic Hadiths (S.A.W.), where he said:

"The woman is asked for marriage for four things for her property, for her leakage, for her beauty, and for her religion. So win with that who has faith, may Allah cover your hands with sand".²⁴

And the prophet (S.A.W.) usually saying that the one who wants the marriage intending with it, other than what he intends of him of forming the family and safeguarding its affairs. That deals with contrary of what he intended. Thereupon he says:

"That one who marries the woman for her property, Allah will not add him but with poverty. And that who marries the woman for ancestry, then Allah will not add to him but baseness. Men marry to lower his sight. and to protect his genital part, or to tie his kinship-may Allah bless for him in her, and may He bless for her in him".²⁵

Ah-Al-Kitab-People of the Book

WHO IS AHLUL KITAB

Ahl-al-Kitab in Arabic terms which means 'people of the book and is theological term primarily related to Islam, describing Muslim peoples who according to the Qur'an received scriptures which were related to them by God before the time of Mohammad (SAW) in Islam the Muslim scriptures, the Qur'an, is taken to represent the completion these scriptures, and to support them as God's true, final and eternal message to humanity. However, because the people of the "Book recognize the supreme God of Abraham as the Muslims do, and they practice revealed faith based on. Divine ordinances, a certain level of tolerance and autonomy is accorded to them in societies governed by Shari'ah (Islamic Divine Law). The general accepted interpretation is that pre-Islamic text are the Taurat and Injil.

However, in the classical understanding, the people of the Book are the whose faith share the following qualities

- 1) They practice Tauhid (monotheism)
- 2) They recognize life after death, judgment, heaven, and the existence of angles
They usually recognize Satan and hell, and they have many similar beliefs They share belief in some of the prophet between them as Moses, Ibrahim and others.
- 3) They have similar beliefs regarding the creation, specifically, in lives of Adam and Eve in the Garden of Eden.

There are some of the Qur'anic verses where Allah Almighty, showing or illustrating some of these qualities mentioned above as follows: -

"Not all of them are alike a party of people of scripture stand for the right, they recite the verses of God during the boots of the night, prostrating themselvesprayer. They believe in God and the last Day, they enjoy all Ma'arufare

²⁴ Narrated by Bukhari and Muslim- Fiqhu us-Sunnah English translation by F. Amira Mutraj at pg: 378

²⁵ The Hadith Narrated An-Nissa'I and others with righteous chain at pg: 378 of Fiqh-us-sunnah of English translation vol. II by F. Amirah Mitraj.

and forbid Al-Munkar and they hasten in (all) good works, and they are among the righteous: And whatever good they do. nothing will be rejected of them for God knows well those who are Al-Muttaqun (pious and righteous persons who fear Allah much).

"and there, are certainly, among the people of the scripture (Jews and Christians) those who believe in God in that which has been revealed to you, and in that which has been revealed to them, humbling themselves before God. They do not sell the verses of God for a little price, for them is a reward with their Lord surely, God is still in account²⁶

"Verily Those who belief and those who are Jews and Christians, and Serbians, whoever believes in God and the Last Day and do righteous good deeds shall have their reward with their Lord on them shall be no fear, nor shall they grave²⁷

"Say (O Mohammed). O people of the scripture come to words that is just between us and you, that we worship none but Allah, and that we associate no partners with low and that none of us shall take others as Lord beside God²⁸

However, there are some verses of the Holy Qur'an which prompted tolerance toward people of the Book for example while Allah says:

"And do not dispute with the followers of the Book except by what is best except those of them who act unjustly, and say: we believe in that which has been revealed to you, and our God and your God is one, and to Him do we submit"²⁹

There are also some verses of the Holy Qur'an which promote an adversarial (enormous or misfortune) relationship for example:

Tigh those who believe not in God nor the last Day, nor hold forbidden that which hath been forbidden by God and His messenger, or acknowledge the religions of truths Over if they are (if the people of the Book), until they pay the Jizya with willing submission, and fact themselves subdued³⁰

Do they (Ahlil-Kitab) Exist?

According to the Sheikh Abdullahi Sale Pakistan (Chief Imam TudunMurtala Mosque Nassarawa Local Government Kano) and that. by virtues of Qur'anic verses and the prophetic Hadith (SAW) shown. the existence of the people of the book (Ahl-al-Kitab) contemporary world whether such persons are white or black men provided that, they ascribe themselves in either of the religion (Christians and Jews) Furthermore, supported his view with the opinion of low Taymiyya who was on the views that, the people of the book are still ring and re evidence that could he used

²⁶ Q:3:1113 – 115. Dr. Moh'dMuhsin Khan-Interpretation of the meaning of the noble Quran in English Language-published at Madian University 1985.

²⁷ Q:29:46.

²⁸ Q:9:29

²⁹ Q:5:51

³⁰ Q:2:65

to support their in existence because Qur'an shows clearly that they are in existence as Allah says in Surah Al-Imran verse:

They are not all the same; among the people of the scripture is a community standing (in Obedience) reciting the verses of Allah during period of the night-and prostrating (in prayers).³¹

And whatever good they do, they will not be denied the need thereof. Allah is aware of those who ward off (evil).³²

And Lo! Of the people of the scripture there are some who believed in Allah and that which revealed unto them, humbling themselves before Allah. They purchase not a trifling gain at the price of the revelations of Allah verily their reward is with their Lord. Lo! Allah is swift to take account.³³

However, according to him (Imam Pakistan) the prophet (SAW) found them in Madina and other neighboring cities of it, and interacted with them in trade and other transaction and it is found in one of the Qur'an verses where is saying in form of prophet (SAW) statement calling people of the book to come together and workshop none but Allah and not ascribe to any partner in His worship and also prophet? companions did not deed them but treated them with care and hospitality Wendy³⁴

Categories of Ahl-Al-Kitab

The Holy Qur'an has duly mentioned the categories of these people in the following words

*"Those believe (in the Qur'an), those who follow the Jewish (scripture), and the Sabians and the Christians, and who believe in Allah and last-day, and work righteousness on them shall be no fear, nor shall they grieve"*³⁵

Therefore, the categories of the peoples of the book can be sources from this noble verse of the Holy Qur'an. These categories are

1. Christian (Al-Nassara)
2. Jew-(Yahud)
3. Zoroastrian (Sabiuns).

These categories of people could be discus briefly below

1) **Christian:-(Al-Nassara):**

Are the followers of the Christianity belief which is among the wide spread religion of the world today. It was founded by the prophet Jesus of Nazareth (the

³¹ Q3:113

³² Q3:115

³³ Q3:119

³⁴ Interviewed with SheikehAbdullahi Sale Pakistan, Chief Imam TudunMurtala Mosques Narasawa Local Govt. Kano

³⁵ Q:5:69

Christ) in the first century of the Christian number are more than 100.000.000 and divided among the three main groups:

- a. The Roman Catholic Churches
- b. The Eastern Orthodox Churches
- c. The Protestants Churches

Christianity began as movement within the Judaism. Jesus was Jew in were his chief followers, the apostle, his follower, accepted him as 'Christ' or chosen one sent to fulfill God's promise to Abraham, Isaac, and Jacob. And the book he was given was Injil (Bible)³⁶

2) Jew:-(Yahud, Hebrew):

Any person whose religion is Judaism in broader sense of the term: A Jew is any person who belonging to the worldwide group that constituted through descent or conversion, continuation of the ancient (Jewish people, who were themselves descendant of the Hebrews of the old Testamen). In ancient times a Jew was originally a member of Judah le either of the tribe of Judah (one of the 12 tubes that took possession of the Promised Land) or of the subsequent kingdom of Judah (in contrast to rival kingdom of Israel to the month). The book revealed to them was Taurat³⁷

3) Zoroastrianism (sabiun)

The religion system of Persian, founded by Zoroaster sometime between 9th and 6th century B.C and this professed by some 20,000 Gabion's in Iran and 120.000 descendant of emigrant (the parsis) in Bombay, India and surrounding towns It sacred book is the Avesta (zed-Avesta). There are also treaties in a less ancient language Pahlavi

However, according to the Kathir, the famous commentary of the Qur'an on the commentary of verse 62 in suratulBakara which mentioned in the beginning of this is "he said

"The sabiuns used to pray in the direction other than Qiblah, they used to read zabur and worshipped They knew Allah and had their own Shari'ah and lived in the vicinity of Iraq It is also said that they believed in some prophets, and fasted for 30 days in a year and even preyed five time a day³⁸

However, Mallam Yusif Ali, quoting Encyclopedia Britannica considers them as people who played an important part in the history of Arabia whose inscription were like those of phoemcians and Babylonians, and had a flourishing Kingdom (name of the Kingdom) in Yamen tract on south Arabia about 800-700 BC They worshipped the planet and he further conjunctives that the Queen of Sheba of Bible

³⁶ The New Encyclopedia Britannica Vol.IIMicropodia knowledge in depth pg. 898:899

³⁷ The New encyclopedia Britannica Vol:16 pg: 544

³⁸Abdulrahman I. DoiSahari'ah the Islamic Law pg. 136

and Bilqis of the Qur'an connected with them in the period of caliph Mamum-al-Rashid in 830 AD a group of people in Harran in Syria claimed the privileges as the people of the Book. They were a particular dress and find long have. worshipped stars with Hellenic tendencies like the Jews contemporary with Jesus³⁹

Therefore, in brief it could be concluded that many scholars especially the early scholars such as Malik IbnAnas, agreed that Zoroastrian should be included. Zoroastrians is older than all three of chief of the Abrahamic religions, and is regarded by historian as the likely inspiration for most Abrahamic beliefs. It shares similar eschatological views with the Christianity and Islam, and recognizes life after death. Satan, heaven, and hell⁴⁰

The Marriage of the Women Of Books

In Islam it is lawful for the Muslim to marry the free women either Jo Christian who believe in the Books of Allah like Torant and he revealed to the prophets Musa and Isah (peace be upon them) respectively he people of these afore mentioned prophets are called people of the books and marriage with them, is permitted in Islam according, to the following injunction in the Qur'an: -

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ (5)

"This day are all things good and pure made lawful to you. The food of the people of Book a lawful unto you and yours is lawful unto them lawful unto you in marriage) are (not only) chaste women among the people of the book, revealed before your time when you give them their due dower, and desire chastity and not lewdness nor secret intrigues⁴¹

There is a consensus of opinion of the ulama of the Ahl-al-sunnahwaljama'ad that marriage with Jew and Christian woman is permitted was practice by the companions of the prophets (Sahaba) like UhmanTalha, Ibn Abbas, Hudhaifa and their followers (Tabi'un) like, said Ibn Al-mussayib, Sa'id bin Jubair, Al-hassm, Mujaheed, TawusAkiamal and others

In spite of the practice of the sahaba and the Tabi un, Abdallahbn Umar was of the opinion that one should not marry a Jews or a Christian woman He used to say Allah has forbidden to marry polytheism, and ido not understand anything other than greater polytheism when a woman says that her lord is Isah who is servant

⁴¹ Q:5:5

from the servants of Allah Likewise, the son of Al-Munthir said "it is not valid from anyone of the first people, that this is Forbidden

However, there is not contradiction between the two verses, that apparent pronounciation of the (atheism) does not handle with the people of the book as Allah says in the Qur'an

"Those who reject truth) among the people of the book and among the polytheist, were not going to depart (from their ways) until there should come in them clear evidence⁴²

...He separated between them in pronounciation Uthman (may Allah be pleased with them) had married Naila the daughter of farafisa Al-Kalbiya the Christian, and she embraced Islam when she came to his place. And also Huthaifa had married a Jewish of the people of the cites And Jaber was asked about the marriage of the Jewish and Christian. He said We married of them during the conquer period with Sa'ni bin Abu Waqqas .⁴³

The Jurist of the four Schools of Islamic Jurisprudence have discussed their views as follows:

In such a condition the children by that marriage will be more inclined towards the religion of their mother The Maliki school on the other hand has two opinions.

1. The marriage with a Kitabiyya is completely disapproved (Makruh) whether she is Dhimmi or one belonging to the Dar Al-harb The dislike for a woman of the latter category is greater
2. There is no complete disapproval in marrying a kitabiyya because the Qur'an has given facit approval, and scholars showed disapproval of such marriage in the abode of Islam because it is not forbidden. For a kitabiyya woman to eat the flesh of a pig or going to a church and this affect the religions belief and behavior of her children. It is not essential for a kitabiyya that both of the parents are ahli-kitab. Her marriage will be valid even if her father is a Kitabi and her mother is an Idol worshippers. The Shafi'i and Hanbali schools believe that both her parents must be Alh-al-kitab in order to have a valid marriage, if her father is a Kitab and her mother is an Idol worshipper the marriage is unlawful even though she has reached the age of puberty and has accepted the religion of the father.

According to the sayyid Sabiq the author of the translated Figh-us Sunna English version has concurred with the view of the shafi'i and schools where he says:

The marriage with them even if it were permissible but most probably was detected. It is not save that y to her and the may seduce him from the fourth to be may follow the people of her religion. If she lives in then the Islamic countries, then the detest is more, because the prevalence of the non Islamic people is abundant.

However, some servants believed in the forbiddance of the marriage with a

⁴² Q98:1.

⁴³FiqhSunnah by Amira F. Mutrajvol II pg 462-463

female living in countries other than the Islamic countries. The son Abbas was asked about that and he said: It is not lawful and he recited the saying of Allah (the Almighty, the Glorious)

" *And among His signs that he created for you mate from among yourselves, that you may dwell with them tranquility and he has put love mercy between you*"⁴⁴

If the number of Muslim in a country is small-for example, if they are immigrants residing in a non-Muslim country-the men ought to be prohibited from marrying non-Muslim women because, since Muslim women are prohibited from marrying non-Muslim men, their marriage to non-Muslim women means that many Muslim girls will remain unmarried. Since this situation is injurious to the Muslim society, this injury can be avoided by temporarily suspending this permission.

If there are good number of Muslim women to get married with, my given country, it will be considered unlawful, according to Ijtihad of certain Ulama, to marry the kitabiyyah women. Since Muslim women cannot marry the Kitabi men who will marry them in those circumstances? It is better then that Muslim men marry Muslim⁴⁵

The Wisdom of Permissibility of Marrying them (The People Of BOOK)

Islam allowed the marriage of the people of the book women (Kitabiyyan) in order to erase the border between the people of the book and the Muslims Because the marriage is the association and the intermingling and keeping nearness of the family to each other, and also opportunities become easy for them to study the Islam and knowledge with its reality. principles and ideals, this is the style of the Islam, the practical intimacy between the Muslims and the people of the book and invocation to the guidance and the religion of the truth. And that who intends to marry any of them to make this a goal of its goal and target of its target.⁴⁶

i. Condition of Marrying Them

The main conditions for a Muslim man to consider before marry them (kitabiyya) are as follows:

1. For a Muslim to contract marriage with a woman from Ahlilkitab family is that, he may get full authority or influence over her, hence she may totally give concession to him. That is why the opposite is strongly prohibited ie a Muslim woman to get married to Ahlil-kitab. Therefore, those Muslims who reside in America and other European countries and get married there, it is impossible for them to have full influence over their Ahlil-kitab spouses.⁴⁷

⁴⁴ Q30:28

⁴⁵Abdulrahman I DoiShariah the Islamic Law pg 136

⁴⁶Fiqh-us-sunnah by Amira F. Mutraj Vol. li pg 462-463

⁴⁷Addwa'ulShari'ah

Mujallatul

DauriyatasdurmaKulliyatulShari'ahBilRiyadRa;usultahirrbilAbdul'aziz Bin aidulRahmanipg 35.

2. Another condition for marrying an Ahlil-kitab woman is that, she must be a Qhimmi (non-Muslim who enjoys Muslims protection) for that, she may be acquainted with the provision of Shari'ah and well known she is under the influence or authority of Islam as oppose to the fact that, the woman is from kitabiyya.
3. If he lives among the Ahlil-kitab, he would not be rest assured about the up-bringing of his children, to be ideally according to the Islamic dictate (since he is under their influence). This is why the Islamic jurist are of the view that, it is prohibited for a Muslim man to marry in a Doral-harb (a country that Islam has no influence or authority)
4. As regard to a Muslim who reside in such countries (America and other European countries), and wants to get married, a question may arises. Does his residency in such countries is allowed by Shari'ah or not If the answer is in affirmative, he is henceforth allowed by Shari'ah to get married from them, but if the answer is otherwise, the marriage is prohibited thereon. If on the other hand, his residency of living in such countries is for temporary purpose (Le as a worker or visitor) he is ab initial prohibited to take a wife from them unless he come back to the Muslim country.
5. And finally, if Muslim is an indigene of such countries, it is therefore, compulsory for him to leave for the Muslims country provided he is not able to perform or observe his religion entirely including AmrBil-Ma'arufwal-nahyiAmil-Munkar
It is not sufficient even if he is allowed to fast or pray with the exclusion of the others that if there is no hindrance whatsoever, it is preferred to stay in his country.

ii. Causes of Muslims Marrying Them

As it has been illustrated the conditions to be considered when marrying the people of book in item (1) and this item therefore, intends to bring some of the causes that drawing interest of our Muslim brothers to marry Christians or Jews women rather than to marry their Muslim sisters are as follows:

- a). Residing in their dominant place (Country)
- b). Friending with them
- c). Beauty of that Christian Jew woman/lady
- d). Nobility of the woman
- e). Wealth of the woman

iii. Method of Contracting such Marriage

Islam permitted Muslim man to marry woman of the book and the ways or methods in contracting such manage are the same with the Muslim woman, that is to say all requirements needed must be fulfilled especially Sadaq (dower) as Allah Almighty says:

"Lawful unto you in marriage are (not only) chaste women who are believers, but chaste woman among the people of the book revealed before your time, when you give them their due dowers and desire chastity, to lewdness for secret intrigues.⁴⁸

And also the Hadith of the prophet (S.A.W.) says:

"And there is no marriage except with the permission of the guardian, and payment of dower and two reliable, witnesses "⁴⁹

Therefore, by virtues of the above provision the people of the book women are entitle to dower of her equal, presence of the witnesses, and their guardian (Wally). The method is similar but only when contracting marriage with a non-Muslin (women), it would be already contracted in the presence of two non-Muslim belonging to her faith, provided they do not labour under any legal disability.⁵⁰

Legal Implication and Effect of Marrying Kitabiyya (Women)

Indeed to use the decision of the above case in analyzing the legal implication and effect of this type of marriage in our contemporaneous society of today. The analysis are as follows on whether the spouse are entitle to inheritance to each other;

A husband inherits from the estate of his wife half of the wealth she left, if she has no child while the wife inherits the fourth from her husband estate if he has no Children be they from her or from another wife. As Allah Almighty say in the Qur'an:

"In that while your wives leave, your share is half if they have no child, but if they leave a child you get a fourth of which they leave and in that which you leave their (your wives) share is fourth if you leave no child, but if you leave a child, they get an eight of that which you leave ".⁵¹

According to the above verse of the Holy Qur'an, it has been shown to us that, the spouses inherit the property or estate of each other and specific portions to be inherit has been pointed out by Allah, the legal implication here is that, the restriction to that is when between the spouses there (difference of religion which provides that a non-Muslim does not inherit a Muslim. As it has been illustrated in the prophetic Hadith (SAW).

"A Muslim does not inherit a non-Muslim, neither does a non-Muslim inherit a Muslim"⁵²

So also, as far as the inheritance between the followers of the different of religions are concern, there are different opinion of the jurist of different school, Imam Malik and Ahmad bin Hamal say that they will not inherit each other i.e Jew will only inherit Jew only and Christian to inherit to a Christian only. Also a non-

⁴⁸ Q 5:6

⁵⁰Fatawiyy al Amgiri vol. I pg 377 and RaddulMukhar VOL II

⁵¹ Q4:12

⁵² C.F Abu Zahra Ahkam al-Tarakatwal-Mawarath Cairo pg 183

Muslim will not inherit a Muslim or a Muslim to inherit a Christian or Jew. The Muslim will only inherit the Sheikh QadiShuraibuibnYa'ala said while divided all the religion into three following groups.⁵³

- 1) Religion of Islam- Muslim will inherit each other
- 2) Christianity, Judaism and Sabi'ums they will not inherit each other (because of their differences in religion) The Zoroastrian and all other religions without Divine Book will be treated as one group and this will inherit each other.

"This constitution is supreme and its provision shall have binding on all authorities and person throughout the Federal Republic of Nigeria.⁵⁴

(2) If any other law is in consistence with this provision of this constitution, this constitution, shall prevail and other law shall to extend of inconsistency be void.

It is worth mentioning that in the above constitutional provision that any law that is in consistence with any section of Federal Republic of Nigeria constitution, shall be void and the constitution shall prevail to the extend of inconstancy. Therefore, impliedly, any law (Islamic Law inclusive) apply in any court (Shari'ah Court) and if the law contradict the provision of the constitution such law shall be held void as for example the principle of Islamic Law which devote that non-Muslim does not form a Muslim and Muslim does not inherit from a non-Muslim which is clearly in consistence with the above provision in the case law of succession in the country.

Although, the case of Marry T. Baikie⁵⁵ was not decided with the contemporary Law but by implication this could be happened presently to the extent of inconsistency of the constitutional provision but not on repugnancy test

Likewise, in the case of Gubba V. Gwandu NA⁵⁶ a decision based on Islamic law was nullified just because it differed with the English Law, this issue (inheritance) of discussion also could be nullified on appeal to the superior court based on the fact that it different with the constitution. Also the Judgment was made in the case of Guri V. Hadjia 118 N. A⁵⁷ and the case of YunusaRasaq V. Titi⁵⁸. Where Muslim bequated his property to one of his children. After his death, when the issue of distribution of his estate arises in high Court of Northern Nigeria before Justice Mohammed Bello (himself a Muslim) it was held that they could not be relied because the deceased being a Muslim, was not allowed by Islamic law to make a will in favor of an heir more, so when all the rest of the heirs were Muslims.

On appeal to the Supreme Court, Justice UdoUdoma, in a leading Judgment nullified the Judgment of the High Court and held that it was contrary to the

⁵³Abdulrahman I. DoiSgariah, the Islamic Law at pg 290

⁵⁴ S.I (I) of the 1999 constitution of the federal republic of Nigeria as amended.

⁵⁵ Suit K/20A/1943-Un reported

⁵⁶ (1947) 12 W.A.C.A 141

⁵⁷ (1959) AFSC 44

⁵⁸ (1986) N.N.L.R 97

provision of the Wills Act of 1837 which permitted everybody to make a will to dispose of his property to anyone he likes even to his dog. It is worthy to note that even today this issue (supreme court decision) could be decided as above case when appeal because they always argue that why should Islamic Law superseded customary laws Coulson did not hide his feelings when he stated in his book 'Islamic survey A history of Islamic Law' that Islamic Law was formulated in the Arab countries, Spain and Morocco and then introduced to Nigeria to displace customary law⁵⁹, It was untrusted to the Native court Judges who torment the people with it. And also, the Act as with general application in Nigeria, it is still the law in our court of Justice that wherever, this Act is in conflict with the Shari'ah court the Act would prevail. This is because it is being regarded as written law in the eye of 1999 constitution while the Shariah law is customary hence it is not written. The written law here means that the laws that are an ordinance of the legislative body. Therefore, there are so many cases denoting these problems in the past and even continue to happen contemporaneously as recent the case of Hisba of Kano State

However, on the other section of 1999 constitution of Nigeria has shown that even if the impeachment of Islamic Law of inheritance toward a believer will freely succeed especially on appeal to the superior court. The provision in section 42(1) it says –

"A citizen of Nigeria of a particular community, ethnic groups, place of origin, religion or political opinion shall not by reason only that such a person;

- a. be subjected either expressly by or in the practical application of any law in force in Nigeria of any executive or administrative action of the government to distribute or restriction to which citizen of Nigeria of other communities, ethnic groups, place of origin, sex, religion political opinion are not made subject to
- b. be accorded either expressly by or the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, places of origin, sex religion or political opinions.⁶⁰

By the above provision it has been clearly shown that any decision that is made by the Shari'ah court as in the case of distribution of estate or property excluding such person (Kitabiyya) from benefiting from that inheritance on ground of religion and such person appeal to the superior court, the superior court would reverse the case and decide the case on ground of inconsistency with the constitution for discrimination of religion which is clearly prohibited by the aforementioned provision as it has been held in *Mary T baiki v. M. Abba* (supra). Therefore, in short, the marriage of Christian or Jew lady contemporaneously is categorically discouraged.

⁵⁹ Abdulmalik Bappa Mahmud- A brief history for Shari'ah in the defunct Northern Nigeria at pg 16.

⁶⁰ S. 42 (1) of the 1999 constitution of Federal Republic of Nigeria as amended.

However, the legal implication and effect concerning the marriage of Kitabiyya woman is that of upbringing of the children. Allah Almighty says

"O you who believe Ward off from ourselves and your family a fire (Hell) whose fuel is men and stone over which are (appointed) angels stern (and) (from executing) the commands they received from Allah but do that which they are commanded"⁶¹

On the commentary of this above verse the great companion Suffiyān Thauri said: Train your children base on Islamic moral and educate them with the knowledge of Islam. And according to the Ibn Abbas said: Observe good deed and fear Allah Almighty, and command your family with Zikrillah (remembrance of Allah) and protect them and yourself from Hell fire. ⁶²And also base on the above verse the prophet (S.A.W.) was reported to have said

"Command your children to pray while they are seven years, and beat them for it when they are ten years and separate them in bed while sleeping "

Based on the above textual authorities' form both primary and secondary source of Islamic Law, Abdulrahman I. Doi in his book Sharia in Islamic Law, maintained that, Sahaba, Tabi'un (the companion their followers) who found themselves marrying Kitabiyya Women took so much caution before having to get marry with such women. This is because as Kitabiyya women have their religion with different teaching from the Islam, the Sahabai put more care and diligence so as to keep their children under the control of Islam so that they would not be influenced by their Kitabiyya Mother. This was, why there was no single example of Sahabe or Tabi'un whose children ever transgressed from the limit of Allah or Change over to their mother's religion. However, there is one question to be answered. what will be the situation in the contemporary Muslim family? Abdulrahman I Doi in answering this question observed that, in many such families in our contemporary set up, a Kitabiyya mother in most cases if not all, up bring her sons and daughters in according to her religions, even given them food and beverages which are primarily forbidden by their fathers faith (Islam). This up-bringing of their mother (as the mother has more time with the children more than their father les with them) slowly find its way in the family and consequently overwhelmed the psycho of the children in some families as Abdulrahman I Doi observed children, with Christin mother or Jew as the case may be, bear the names of such religion.

Nevertheless, among the legal implication and effect of such marriage (kitahiyya) is that, if there are a good number of Muslim women to get married wish, in any given country, it will be considered unlawful according to the ijithad of Ulama to marry the Kitabiyya women, since the Muslim women cannot marry a Kitab men, who will marry them in those circumstances? It is better then that Muslim men marry

⁶¹ Q. 66:6

⁶²AlhafizImaddeen Abu FidasIsma'illbnKathirTafsir of Qur'an under the commentary of Q: 66:6 at Vol:4 Arabic text .

Muslim women if not Muslim girls will remain unmarried, since this situation is injurious to the Muslim society, this injury can be avoided by temporary suspending this permission.⁶³

In accordance of the above observation Caliph Umar al Farouq (R.A.0⁶⁴ was once formally ordered the Muslim Ummah to disengage themselves from contracting such marriage because as pointed out that such marital relation corrupt Muslim families advertently. This classical point of timar al-Faruq is now apparently being in some families in Iraq and Syria.⁶⁵

CONCLUSION

In conclusion Qur'an and Sunnah (Hadith) of the prophet (SAW) and juristic views of the Islam shown clearly that Islam approved the marriage of the people of the Book in Qur'an 5-5 as provided and also prophet (S.AW.) and Sahaba were married these types of women and lived together safely without any problem or bad report on them. The present days Kitabiyya one majority of European and Americans and even black Africans who claiming Christianity and Jews contemporaneously and are registered as such in their census records but it will discovered that a lot of them have nothing to do with Sayyidina Isa (Jesus peace be upon him) or the Bible They do not believe in Sayyidina Musa (Moses peace be upon him) or in Taurah- not even in God or a Day of Judgment, It is obvious that such people do not come under the purview of the Qur'an injunction permitting marriage (with the people of the Book. Nikah (Marriage) with their woman is absolutely unlawful. It is clear that such people do not qualify for the exception given in the Qur'anic verse where Allah given exception to those good women from among the group of the people of the Book given before you, marriage with them is lawful to you. Therefore, marriage with them is absolutely unlawful Sheikh Maulana Ali Thanavi was saying. The Maliki Jurist are of the view that, it is not allowed to any person who reached the age of puberty to perform any act without knowledge. Therefore, e knowledge of a person concerning of the Book and make him to treat such women and her children in a good way that would not harm the religion and community in general and how to provide her fundamental right- as to protection from external threat, and internal tyranny. Therefore based on the above quotation, it is obligatory to a husband of Kitabiyya to protect her from anything that would harm her as it would be done to a Muslim wife.

Muslim community should try to restrict such marriage between Muslim and non-Muslim woman because contemporaneously Muslim community women are outnumber the men, if we are not marrying them, then they will be left without

⁶³ W.W.W. Islamonline 25th June 2007.

⁶⁴ Hadith el- Difa at pg 772

⁶⁵ Hadith el. Difa WWW islamonline .com. 25th2007

husband. And it is disgust to contract such marriage completely in the present Muslim society

In the contemporaneous Ummah it is found that a great number of Muslim woman are contracting marriage with non-Muslim man in ignorance of religion and under influence of so-called modern thinking they ruin their beliefs, and they seeing that as their constitutional right to live in the way they want it.

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