

INTERFAITH MARRIAGE IN ISLAM AND PRESENT SITUATION

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ABSTRACT: *Marriage is a part of life as well as society. This paper seeks to answer the issue pertaining to the practicability of interfaith marriage in Malaysia. The terms 'interfaith marriage' denote marital union wherein the partners belong to the different faith or religion. The definition of interfaith marriage as well as its type will be discussed in detail hereinafter. For the purpose of this paper, our main concern will be on the issue of interfaith marriage in which one of the parties to such marriage is professing Islam while another is ahl al-Kitab (people of the Book). I have based my opinion on primary sources of Shari'ah i.e. Al Quran and Sunnah of the Prophet (S.A.W). I also refer the purpose or Objective of Shari'ah (maqasid al sharia) as well as Principle of the law (al qawa'id al fihiyyah).*

KEYWORD: Interfaith Marriage, Islam, Malaysian Perspective, Ahl Al-Kitab.

INTRODUCTION

“...To be sure, most Muslims would argue that the Qur'an is true for all time and all places. If we go by that logic, then we must acknowledge that the Qur'an is still sympathetic to your dream of marrying a Christian man. Even though he is a Christian, the Qur'an does not hold that against him. For while mentioning that there are Christians who take Jesus as God, Islam's main document calls this 'kufr' (disbelief/ingratitude) rather than 'shirk' (polytheism). It's a significant distinction because, in another verse, the Qur'an also states that Christians who do good deeds have the right to enter heaven. Christian creedal beliefs are the same for both male and female followers of Christianity, so how can the Qur'an allow marriage to the Christian woman but not to the Christian man?”¹The above statement was said to have been made by Professor Dr. Khaleel Mohammed who is a professor of Religion at San Diego State University, in San Diego, California. He was also a core faculty member of the university's Centre for Islamic and Arabic Studies². He further mentions that:

“The evidence indicates that the main hang-up is the problem I emphasized above -- that the religion of the male spouse becomes dominant (as also evidenced in the Book of Ruth in the Hebrew Bible). In our day, since Qur'anic Islam (as opposed to the Islam of the male jurists) must acknowledge the radical notion that women are equals of men, that women have legal rights, and that those rights include placing conditions on the marriage (what you and I would term a 'pre-nuptial agreement'), then an inter-faith marriage can take place on condition that neither spouse

¹Project Ijtihad.<https://www.irshadmanji.com/sites/default/files/Eng_BothPages.pdf>. Retrieved on 28.12.2012

²<http://en.wikipedia.org/wiki/Khaleel_Mohammed>. retrieved on 28.12.2012

will be forcibly converted to the other's religion. As long as that condition is respected, you and she have my blessing.”

Referring to the statements, he is of the view that interfaith marriage should be allowed in its totality. This includes marriage between a Muslim woman and a man from the people of the Book. Before we proceed, it is interesting to note here that both statements were quoted from Irshad Manji's blog and official website. Irshad Manji is well known for her controversial books entitled 'Allah, Liberty and Love' and its translated version 'Allah, Kebebasan dan Cinta'. These books were banned in Malaysia for being misleading and contrary to the teachings of Islam. Other than openly supporting the Lesbian, Gay, Bisexual and Transsexual, she is also championing the right to marry with a person of different faith.

Lately, in Malaysia, there are voices urging for rethinking and re-examining the notion of interfaith marriage in Islam. Azira Aziz (2012), a young lawyer who relies on the statements by Professor Dr. Khaleel Mohammed has mentioned that:

“It is time to rethink that criterion that non-Muslims must convert into Islam before marrying a Muslim in Malaysia.”³

In other words, this young lawyer opined that interfaith marriage shall be allowed in Malaysia and the condition requiring the non-Muslim party to convert into Islam shall be disregarded.

The existence of such idea or belief signifies that liberalism and religious pluralism already have their place in Malaysia. How true such idea or belief is? This paper aims inter alia to answer such issue from the Islamic perspective and in the Malaysian context.

MARRIAGE IN ISLAM

Definition

In Arabic, the term used is 'nikah' which refers to contract ('aqd). However, this is not merely an ordinary contract that we have in normal and ordinary transaction. This is because the Qur'an uses the terms 'mithaqun ghalitun' to denote contract of marriage. The words 'mithaqun ghalitun' mean a strong covenant or agreement. Allah has mentioned in the Holy Qur'an:

“...and they have taken a strong pledge ('mithaqun ghalitun') from you?”⁴

The serious nature of this type of contract is described in the Holy Qur'an where the same terms were used to signify covenant between Allah and the Prophets before granting them the responsibility of the Prophethood.⁵ Now, let's look at the technical definition of marriage. One of the most comprehensive definitions is as being provided by Ibn Uthaimin. He defined marriage as: “It is a mutual contract between a man and a woman whose goal is for each to enjoy the other, become a pious family and a sound society.”

In addition, according to Sahih Muslim, marriage is defined as:

³Azira Aziz (2012). *Connect The Dots : Rethinking Interfaith Marriages for Muslim Women*. Retrieved on 28.12.2012 <<http://www.loyarburok.com/2012/07/15/connect-dots-rethinking-interfaith-marriages-muslim-women/>>

⁴ An-Nur (4:21)

⁵ Al- Ahzab (33:7)

"a relation between a man and a woman which is recognised by custom or law and involves certain rights and duties, both in the case of the parties entering the Union, and in case of the children born of it"⁶

Purpose of Marriage.

Sexual desire can only be fulfilled by having a valid marriage. Thus, one of the purposes of marriage is to legalise sexual intercourse which is undeniable a part of human nature (*fitrah*). Nevertheless, it is not the sole objective. Marriage can be considered as the best platform to secure comfortable atmosphere for the couple. Allah has mentioned explicitly in the Holy Qur'an: "One of His signs is that He created for you spouses of your own species, so that you might find comfort with them. And He put mutual love and affection in your hearts. Surely in this there are lessons for the thinking people"⁷

The next objective of marriage is to ensure preservation of the human species and continuation of the human race. This is in line with a Qur'anic verse stating that: "O mankind! Be careful of your duty to your Lord, who created you from a single soul and from it created its mate and from them has spread abroad a multitude of men and women"⁸

Another objective of marriage is to provide spiritual and legal foundation of the family. In a particular family unit, a husband is considered as a head of family. He is responsible to provide maintenance to his wife as well as the children. In addition, he is also responsible to treat them well and to provide religious as well as worldly education to the children. On the part of the wife, she has to be loyal to her husband and try the best to fulfill his needs as well the children's. As for the children, they must obey their parents and respect them. If every individual within a family unit play their role, they would be able to live happily and harmoniously. It is also important to note here that the parents must ensure that their family members are adopting Islamic way of life. Thus, having a valid marriage can also be a basis to bring one as well as his or her family closer to Allah.

Ruling on Marriage

There are differences of opinion among jurists pertaining to the original *hukm* or ruling on marriage. According to majority of *Shafi'i* school of thought, the default ruling on marriage is permissible (*mubah*). Hanafi, Maliki and Hanbali school of thought are of the view that the original ruling on marriage is recommended (*sunat*). On the other hand, according to Dzahiriy School of law, the original *hukm* of marriage is obligatory. In other words, everyone shall marry at least once in a lifetime. However, those jurists agreed unanimously that the rulings may change according to situation and circumstances. Followings are the rulings on marriage which vary according to situation: - 1) Marriage is obligatory in a situation where a person has the financial capability to support his prospective wife. At the same time, he is very sure that if he does not marry, it might expose him to adultery. 2) Marriage is recommended for those who can afford to maintain his future wife. However, he can still control his sexual desire. 3) Marriage is detested when a person

⁶Sahih Muslim, Book 8: the Book of Marriage

⁷Ar-Rum (30:21)

⁸An-Nisa' (4:1)

can neither afford to maintain his future wife nor fulfill his marital obligation to perform sexual intercourse with his future wife, but the future wife is rich and does not have strong desire/urge to have sexual intercourse. 4) Marriage is forbidden when a person has financial strain and thus would not be able to support his future wife. Other than that, he is incapable to fulfill his marital obligation. 5) Marriage is permissible in a situation where the person has no obstacles preventing him from getting married and at the same time there is no urge pushing him to get married.

INTERFAITH MARRIAGE

Definition

Interfaith marriage can be defined as a marital union in which the partners believe and belong to different faith or religious traditions. Sometimes, the words ‘interfaith marriage’ and the words ‘mix marriage’ are used interchangeably. However, I am of the view that ‘interfaith marriage’ shall not be equated with ‘mix marriage’ as the latter might include marital union in which the partners are of different race or ethnicity but they belong to the same faith.

Types of Interfaith Marriage

For the purpose of this paper, I divide interfaith marriage into two types. The first category is marriage between a Muslim man and non-Muslim woman. The second category is marriage between a Muslim woman and non-Muslim man. This first type of marriage i.e. marriage between a Muslim man and non-Muslim woman can either be valid or invalid depending on who is the non-Muslim woman. Thus, I further subdivide marriage under this category into two namely: - 1) marriage with a woman from the unbelievers i.e. atheists, idolaters and polytheists. Pertaining to the marriage with a woman from the people of the Book, ‘Ulama’ have different opinion with regard to its validity. This issue would be the major concern of this paper. The differences in opinion among jurists will be explained hereinafter in Part V. When it comes to marriage with a woman who belongs to other category of unbelievers i.e. atheists, idolaters and polytheists, the prohibition is very clear. Allah has mentioned in the Holy Qur’an: "And do not marry idolater women until they believe, and a believing maid is definitely preferable to an idolater (free) woman even though she may please you. Nor give (your women) in marriage to idolater men until they believe; and certainly a believing servant is preferable to an idolater (free man), though he may please you. Those invite to the Fire while Allah invites to paradise and forgiveness by His Will, and He makes clear His Signs to people, so that they may take heed."⁹

Marital union is not meant for one day. As much as possible, the union is meant forever. As I have mentioned previously, the words “mithaqun ghalitun” which means strong pledge is used to describe marital tie or marital union. Thus, a Muslim must choose his prospective or future wife by taking some features or qualities into consideration. The woman’s beauty, wealth, and progeny are among the criteria to be considered by a man. However, it is of paramount importance to choose a woman as a prospective wife because of her religion. Marital union between a Muslim man and a *musyrik* woman or atheist is unthinkable. Even if it is permitted, how would such marriage last forever if there is huge different in their faith and the way of life? I strongly believe that to

⁹ Al Baqarah (2:221)

overcome such differences, divorce would be the best way out. Our Prophet Muhammad was reported to have said:-

“The most hated Halal by Allah is divorce”

In addition to that, the marriage with musyrikah if permitted would expose the Muslim spouse as well as the children to the danger of committing shirk wherein the faith will definitely be compromised. Allah has clearly mentioned in the Holy Qur’an that:

“Surely Allah will not forgive the association of partners (shirk) with Him, but He forgives (sins) less than that to whomever He wishes”¹⁰

These are among the reasons why such marriage is strictly prohibited in Islam. The second category of interfaith marriage is the marriage between a Muslim woman and non-Muslim man. This category of marriage is *haram* in its totality regardless of whether the man is from the people of the Scripture or other types of unbelievers. The prohibition is very clear. Allah has stated in the Holy Quran:

“Nor give (your women) in marriage to idolater men until they believe; and certainly a believing servant is preferable to an idolater (free man), though he may please you. Those invite to the Fire while Allah invites to paradise and forgiveness by His Will, and He makes clear His Signs to people, so that they may take heed.”¹¹

Yusuf al Qaradhwawi, a very eminent Muslim scholar has cited this verse in expressing his view on this particular issue. He affirmed that it is *haram* for a Muslim woman to marry a non-Muslim man, regardless of whether he is of the people of the Book or not. The reason or wisdom behind the prohibition is also evident and unambiguous. As we know, the paramount objective of Shari’ah is to protect religion. If Islam allows such marriage, it will definitely jeopardize the Muslim woman’s faith. Not only would the Muslim woman be influenced by her non-Muslim husband’s faith and lifestyle, it is also not beyond expectation that the latter will prevent the former from performing religious obligations or duties. This is simply because the husband is the head of family and he is generally more dominant as compared to the wife.

Based on the categorisation, we can conclude that the difference in opinion only takes place in the issue of validity of marriage between a Muslim man and a woman from the people of the Scripture. As I have stated earlier, this would be the major concern of this paper. With regard to the other types of interfaith marriage, the proof indicating the prohibition is very clear and unequivocal. Thus, the statement made by Professor Dr. Khaleel Mohammed claiming that a non-Muslim man shall not be required to embrace Islam if he intends to marry a Muslim woman shall be rejected without hesitation.

¹⁰Surah An-Nisa (4:48)

¹¹Supra Note 9

Who is ahl al-kitab?

It is imperative to reiterate here that the general rule pertaining to interfaith marriage is *haram*. The only exception is given to Muslim men who are allowed to marry the chaste woman from the people of the Scripture. Thus, before we proceed to the crux of the discussion, it is of paramount importance to identify who can be classified as ahl al-kitab. It is obvious that ahl al-kitab is non-Muslim. However, not every non-Muslim can be classified as ahl al kitab.

According to ‘Ensiklopedi Hukum Islam’ (Encyclopedia of Islamic Law)¹², ahl al-kitab means those who possess Holy Scripture. Technically, it denotes a group of people believing in a revealed religion possessing a Divine Book other than Al Qur’an. All ‘Ulama’ agree that Jews and Christian may be regarded as ahl al-kitab. However, they differ in the inclusion of non-jews as well as non-Christian as ahl al-kitab Imam Al-Shafi’i restricted the definition of ahl al-kitab only to Jews and Christians who are the descendants of the People of Israel. This view is based on the wording in Surah al Ma’idah which is reproduced as follows:

“This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers. And whoever denies the faith - his work has become worthless, and he, in the Hereafter, will be among the losers.”¹³

According to Ash Shafie, the word ‘*min qablikum*’ in this verse which comes after the word *utu al-kitab* indicates that the permissibility of having interfaith marriage applies only to the Jewish and Christian who are the descendants of Israel. In addition to that, Prophet Musa A.S and Prophet ‘Isa A.S were appointed as prophets solely to guide the children of Israel. Muhammad Abdul Karim Syahristani was of the view that Ahl al-kitab refers to jews and Christian only but not restricted to the descendants of Israel¹⁴ Imam Abu Hanifah came with even more lenient opinion. He opined that Ahl-al Kitab shall include those who believe in one of the Prophets or Holy Scriptures revealed by God. Abu Hanifah extended the definition of Ahl-al Kitab to those who believe in Suhufas well as Zabur which were respectively sent down to Prophet Ibrahim and Prophet Dawood.¹⁵

In addition to that, Rashid rida, a contemporary scholar from Egypt has widened the definition of Ahl-al Kitab to include Zoroastrianism as well as idolaters in India and China. The reason is their holy scripture promotes the oneness of God. Another interesting view is as being expressed by Quraish Shihab¹⁶ an Indonesian scholar. He is of the view that ahl al-kitab refers to all Jewish and Christian people in any period regardless where there are and not limited to the children of Israel only. The reason is because the use of such terminology in the Holy Qu’ran is limited to Jewish and Christian people. In addition, Allah has mentioned in the Holy Scripture that:

¹² Ensiklopedi Hukum Islam (Encyclopedia of Islamic law)

¹³ Al-Maidah (5:5)

¹⁴ Supra note 13

¹⁵ ibid

¹⁶ Quraish Shihab ‘Wawasan al Quran’

[We revealed it] lest you say, "The Scripture was only sent down to two groups before us, but we were of their study unaware,"¹⁷

In Malaysia, the Fatwa Committee National Council of Islamic Religious Affairs has decided during the 14th Muzakarah (conference) in 1977 that the definition of people of the scripture is the Jews or Christians:-

- i) The descendants of the Prophet Jacob, if the ancestors were not known embracing the religion after the religion was abrogated by the next religion such as Judaism that had been abrogated by Christianity and Christianity had been abrogated by Islam
 - ii) Not the descendants of the Prophet Jacob if the ancestors were known embracing the religion before it was abrogated.
9. The definition of Ahl al-kitab is also spelt out in Islamic Family Law Act (Federal Territory) 1984 also provides definition of *Kitabiyah*. "Kitabiyah" means—
- a. A woman whose ancestors were from the Bani Ya'qub; or
 - (b) A Christian woman whose ancestors were Christians before the prophethood of the Prophet Muhammad; or
 - c) A Jewess whose ancestors were Jews before the prophethood of the Prophet Isa;¹⁸

Based on these views pertaining to the definition of ahl kitab, a question might arise as to whether ahl kitab in the real sense of the word is still available today especially in Malaysia.

Differences of opinion among Jurists

Proponent of Interfaith Marriage

Most jurists are of the opinion that a Muslim may marry a woman from the people of the Book i.e. Jewish woman or Christian woman. They based their arguments on the followings: -

- 1) Surah Al-Maidah, verse 5 clearly mentions its permissibility;
- 2) Surah Al-Baqarah, verse 221 has unequivocally mentioned that marriage with *Musyrikah* is absolutely forbidden. On the other hand, marriage with Ahl al-Kitab has been made permissible by virtue of Surah Al-Maidah verse 5. In other words, verse 5 of the Surah al Maidah qualifies verse 221 of the Surah Al Baqarah. It also means that the verse 5 of the Surah Al Maidah can be considered as an exception to the general rule provided in verse 221 of the Surah Al Baqarah.
- 3) The difference between Musyrikah and Ahl-al Kitab can be seen in Surah Al-Bayyinah, verse 1 and 6 wherein Allah clearly makes distinction between the two.. It is worth reproducing the said surah: -

i- *"Those who disbelieved among the People of the Scripture and the polytheists were not to be parted [from misbelief] until there came to them clear evidence -"*¹⁹

ii- *"Indeed, they who disbelieved among the People of the Scripture and the polytheists will be in the fire of Hell, abiding eternally therein. Those are the worst of creatures."*²⁰

Allah has mentioned the words 'musyrikin' (polytheists) and ahl al-kitab separately. This indicates the difference between the two. Therefore, the proponent of interfaith marriage is of the

¹⁷ Al An'am (6:156)

¹⁸Section 2 of the Islamic Family Law (Federal Territories) Act 1984

¹⁹ Al Bayyinah (98:1)

²⁰ Al-Bayyinah (98:6)

view that unlike polytheist, marriage with the woman from the people of the Scripture is permissible based on the proofs mentioned earlier.

- 4) In addition, the proponent of interfaith marriage also supports their argument with the practice of our Prophet Muhammad S.A.W who married to Maria al Qibtiyah, a Christian. Other than that, ‘Uthman bin ‘Affan was among the companions who married to a woman from the people of the book i.e. Nailah binti al-Farafisah. Even though most Ulama’ agree as to its permissibility, Hanafi Jurists, the most prominent view from the Shafi’i school of thought, and most Maliki Jurists are of the view that the marriage is detested or disliked if the woman are under the reign of Islamic Government. If the woman belong to the group of Ahl al-Kitab who wage war against Islam, the marriage becomes forbidden according to Hanafi school of thought

Opponent of Interfaith Marriage

Generally, the Opponent of interfaith marriage support their opinion based on the following verse:

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 [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember²¹.

On the other hand, Umar al-Khattab did not allow such marriage. He even asked the Sahabah who married Ahl al-Kitab to divorce their jewish or Christian wife. This is because Umar afraid that such practice will be followed by other Muslims i.e. to choose a woman from the people of the book who are more beautiful to the extent of abandoning muslim woman. In addition to that, Umar al khattab urged one of the companions to divorce his Christian wife for the purpose of military strategy. This was a preventive measure taken to avoid the leakage of information on military strategy. The same sentiment had been expressed by Ibn Umar on the validity or permissibility of interfaith marriage. He was of the view that this type of marriage is forbidden absolutely. He made no difference between the idolaters or polytheist and the people of the book. After all, all of them are committing *shirk* which is the biggest sin in Islam. The same view was taken by Zaidi School of thought. It is worth reproducing the well-known statement by IbnUmar :

"I do not know of a worse case of Shirk than her saying that `Isa is her lord"

Objective of the Shariah (Maqasid al Shari’ah)

There are five necessities that are generally referred to as the objectives of the Shari’ah. The list is as follows arranged according to priority: - 1) religion; 2) life; 3) mind; 4) Progeny and 5) Property. Among all, the protection of religion is the most important. If it is in conflict with other objective, it will prevail. It is undeniable that marriage is important to protect *an nasl* (progeny). However, the interfaith marriage would only expose threat to the religion which is clearly contrary to the paramount objective of the Shari’ah. Thus, it shall be rejected.

²¹ Supra Note.9

Principles of the Law (Qawa'id al Fiqhiyyah)

The first one is “درء المفسد مقدم على جلب المصالح” which means to prevent harm is better than to achieve benefits. Applying this principle to the instant case, it is better not to accept interfaith marriage for it can be a threat to one's religion. Even though marriage with ahl al-kitab can be a platform to attract them to Islam but I have doubt in saying so looking at the current situation. During the Prophet and Companion's period, their unshaken faith as well as their commitment to Islam was unquestionable. Thus, the issue whether they would be influenced by the faith of the ahl al-kitab might not be arisen. However, nowadays we will find that most people who opt for interfaith marriage are artists and entertainers as had happened in Indonesia. Would this group of people spread Islam to their spouse effectively? I have some doubt in this issue.

In addition, we have to refer to another relevant principle i.e.

“إذا اجتمع الحلال والحرام غلب الحرام” .

This principle was laid down by Shafi'i School of thought. It means that if there is mixture between halal thing and haram and we are not able to distinguish between the two, the haram will prevail. In Malaysia, the existence of Christian or Jewish is undeniable. However, we do not have an established mechanism to identify who are among them can be considered as ahl al-kitab. Because of this uncertainty, such marriage shall not be allowed by virtue of this legal principle.

The Application of the doctrine of *sad Al-dharaii*

Sadd al-Dharai means to block evil means. As I have mentioned earlier, by allowing interfaith marriage, it would be a danger to the religion which is contrary to the paramount objective of Shari'ah. Thus, to prevent this from taking place, such marriage shall not be allowed.

The Principle of *Siyasah Al-Shari'ah*

This principle is also known as Shari'ah-oriented policy whereby the Ruler may impose law on its subject based on need and interest of the religion, nation and the society in the light of the Qur'an and Sunnah. This is as happened in Indonesia where a fatwa prohibiting such marriage had been issued looking at the undesired situation there.

CONTEMPORARY VIEW

According to Yusuf Qaradhawi in his book entitled '*Hadyul Islam Fatawi Mu'ashirah*'²² the original rule pertaining to marriage with ahl al-Kitab is permissible. However, he mentioned that Umar al Khattab was not in favour of such marriage. Yusuf Al Qaradhawi further mentions that interfaith marriage is permissible so long as the prospective wife is professing a religion which promotes oneness of God. However, nowadays it is not an easy task to identify a religion other than Islam which promotes the concept of Tawhid. It is also imperative to mention that such marriage is not allowed if the woman belongs to the Jewish or Christian people who blatantly wage war against Islam.

²²1 Yusuf Qardhawi, *Hadyul Islam Fatawi Mu'ashirah*, translation. As'ad Yasin, "Fatwa-Fatwa Kontemporer", Vol 1, Jakarta: Gema Insani, 2001, p. 585

Sayyid Sabiq a jurist from Egypt is of the opinion that marriage between a Muslim and ahl al-kitab is permissible based on the clear evidence in the text. Despite of the permissibility to contract such marriage, he opined that such marriage is considered makruh or detested.²³ Referring to the position in Indonesia, a fatwa in relation with interfaith marriage has already been issued by Majelis Ulama Indonesia (Indonesian Ulama Council). According to the fatwa, interfaith marriage in whatever form it may take is haram and invalid. It includes marriage between a Muslim man and a woman from the people of the Book²⁴.

In Malaysia, during the 14th Mudhakarah (conference) held on 14th July 1977, the Fatwa Committee National Council of Islamic Religious Affairs has decided that Marrying a woman of the scripture is considered lawful (halal). However, marrying a Christian or Jewish woman who is not classified as ahl al-Kitab is forbidden.

MY PERSONAL VIEW

Looking at the current situation in Malaysia with special reference to our legal framework governing marital affairs, I am of the opinion that interfaith marriage between Muslim and non Muslim, whatever forms it may take shall not be allowed in Malaysia.

My lines of arguments are as follows:-

- 1) It is almost impossible to find ahl al-Kitab which fit the criteria laid down by Fatwa Committee or as prescribed in Section 2 of the IFLA.
- 2) If a woman claims that she is Ahl alkitab in the real sense of the word, do we have mechanism or method to ensure the genuineness or authenticity of her claim? My answer with regard to this issue is in negative.
- 3) Even if ahl al-Kitab is available in Malaysia, the number must be very small to the extent that we will not be able to differentiate between them and other Jewish or Christian woman.
- 4) As we know, marrying ahl al-Kitab is permissible while marrying Jewish or Christian who is not ahl al-Kitab is forbidden. When both are mixed and we are not able to differentiate between the two, we must give priority to the ruling pertaining to *Haram* over the *mubah*. This is based on legal maxim stating that:
 “إذا اجتمع الحلال والحرام غلب الحرام”
- 5) In Malaysia, we have dual system of family law. Muslim marriage is governed by Islamic Family Law Act / Enactment while non-Muslim marriage is governed by Law Reform (Marriage and Divorce) Act 1976.
- 6) By virtue of section 4 of the Islamic Family Law act 1984, this Act shall be applicable to all Muslim
- 7) Generally the Shari’ah Court has no jurisdictions over non Muslim.
- 8) Let’s say the Kitabiyah wife files application for custody, which court should she refer to? Would there be anything to prevent her to file her case in civil court? If the case decided before civil court, it is likely the case will be adjudicated based on civil law which might not be in line with Islamic principle. It is even worse if judgment is given in favour of the non Muslim mother as there are a strong probability that the children will not be raised in Islamic environment.

²³Sayyid Sabiq, *Fiqh al-Sunnah*, Kairo: Maktabah Dar al-Turas, juz 2, tth, hlm. 178

²⁴ Fatwa munas vii majelis ulama indonesia 2005

- 9) This will lead to greater mafsadah- it is undeniable that interfaith marriage can bring some benefit i.e. to spread da'wah. However, in this situation, the mafsadah is greater. According to an Islamic legal maxim:
 “درء المفسد مقدم على جلب المصالح”
- 10) If interfaith marriage took place in Malaysia, it also will lead to the abandonment of Muslim woman. This is another form of *mafsadah* which should be avoided.

CONCLUSION

Based on the arguments, I strongly believe that inter faith marriage shall not be given any place in Malaysia. In other words, current situations as well as our legal framework do not permit such marriage to take place. If we allow it, it may lead to undesired consequences. Undeniably interfaith marriage can have double edge sword effects. It has some benefits and at the same time it may lead to harm. Since the mafsadah is greater than maslahah, this type of marriage shall not be allowed. Thus, government shall not allow such marriage from taking place in Malaysia based on the principle of *siyasaḥ syari'ah* as being mentioned earlier.

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