

FIQH OF MUSLIM MINORITIES

Contentious issues & recommended solutions



Sheikh Yusuf al-Qaradawi

في فقه الاقليات المسلمة

حياة المسلمين وسط المجتمعات الأخرى

باللغة الإنجليزية

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



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Sheikh Yusuf al-Qaradawi

AL-FALAH FOUNDATION

For Translation, Publication & Distribution

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Preface

﴿ *But Allah will not allow except that His Light should be perfected even though the disbelievers hate (it). It is He Who has sent His Messenger (Muhammad) with guidance and the religion of truth (Islam), to make it superior over all religions even though the Mushrikun (polytheists, pagans and idolaters) hate (it)...* ﴾

Surely, the light of Islam will dawn and its sun will shine whether people want it to or not. Muslims have spread over the remote parts of the earth. They represent a distinct section among the inhabitants of the five continents. Islam is, and will always be, entwined with the strings of the heart, reviving sound instincts to return to their Lord.

New issues and problems have come to face Muslims in various countries as a result of the different environments in which they live. These issues are social, economic and familial. Muslim scholars - may Allah keep them safe - have persevered in studying the problems of Muslim minorities in order to provide them with Fatwas that would help them lead normal lives. Within this framework, sheikh Yusuf al-Qaradawi, a leading scholar in that field, contributed his great book "*Fi Fiqh al-Aqalliyyat al-Muslimah, Hayat al-Muslimin wasat al-Mujtama`at al-Ukhray*" (Fiqh of Muslim Minorities, the Life of Muslims Amidst Other Communities). Believing that Islam,

as a religion, is conducive to all ages and places, we feel it is imperative to present these Fatwas to English-speaking Muslims.

Al-Falah Foundation would like to offer thanks and good wishes to his eminence, sheikh Yusuf al-Qaradawi for his auspicious efforts, and for granting us the chance to translate this book and present it to the Muslim reader.

Sheikh al-Qaradawi divided his book into two sections; the first deals with principles of Islamic jurisprudence in relation to the issues pertaining to Muslims living in minority positions, the second is a collection of elaborated Fatwas on contentious issues raised among communities of Muslim minorities. The present work is a translation of this second part. However it also added the translation of the part entitled "Fiqh of Muslim Minorities: Its Objectives, Characteristics and Sources" of the first section and made it the introduction of the book since it shows the methodology sheikh al-Qaradawi followed in his Fatwas.

Admittedly, translation is an intricate task that requires precision and efforts. We have endeavored to the best of our ability to produce this precious work, but perfection is only Divine. Due to the usage of certain terms and the nature of the subject, the translation in hand is not literal. The translators have exerted their utmost efforts to make the text presentable and legible. On various occasions they have amended the Arabic text; by way of paraphrasing, rearranging and summarizing. Their aim is to present the fatwas in clear and simple language, along with preserving the academic and scholarly exposition of the work.

We would like to thank **Nirvan Tal`at** and **Ahmad M. Hasan** for their sincere efforts in translating the major part of this book. Thanks should also be extended to **Tal`at Faruq**, **Sami Ahmad** and **Eid `Abdulwahhab** who revised this work. Great appreciation is due to, **Selma Cook**, **Naseema Mall** and **Said Fares**; our editors, under whose guidance and supervision the subject matter took form.

﴿ Our Lord! Condemn us not if we forget or fall into error. Our Lord! Lay not on us a burden like that which Thou didst lay on those before us. Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins and grant us forgiveness. ﴾

**All praise and thanks are due to Allah,
without Whose Help and Guidance
nothing can be accomplished.**

General Director
Sheikh Muhammad `Abdu

Prologue

All human beings are created to be ever mindful of their Creator, the Almighty, through reflecting on their own being and this massive universe where they live. Moreover, the sole purpose behind the creation of the world and all things it contains is to make people heedful of the Almighty, His Holy Names, and Sublime Attributes. This is clearly mentioned in the Glorious Qur'an where the Almighty says,

﴿It is Allah Who has created seven heavens and of the earth the like thereof (i.e. seven). His Command descends between them (heavens and earth), that you may know that Allah has power over all things, and that Allah surrounds all things in (His) Knowledge.﴾

(At-Talaq: 12)

Being fully aware of the Almighty, humans should readily fulfill their obligations towards Him, as He has created them and provided them with endless bounties.

Accordingly, the Almighty has sent numerous Prophets bestowing good news as well as warnings, to guide humanity to the Almighty, to explain to them what He loves and what He detests in all aspects of their creed, utterances and deeds, and to judge between adversaries in a just way.

In this way, the universe has not been created randomly, nor are human beings fashioned in vain. On the contrary, they have

been appointed as vicegerents on this earth. They are urged to populate it and devoutly worship Him alone.

This entire scheme runs according to a divine law revealed by the Almighty in His Scriptures and brought to humans through His Messengers. As far as basic creeds, morals, and ritual acts of worship are concerned, all Prophets share one and the same message. Declaring this fact, Almighty Allah says,

﴿He (Allah) has ordained for you the same religion (Islam) which He ordained for Nuh (Noah), and that which We have inspired in you (O Muhammad), and that which We ordained for Ibrahim (Abraham), Musa (Moses) and `Isa (Jesus) saying you should establish religion, and make no divisions in it.﴾

(Ash-Shura: 13)

The detailed laws of the prophets have differed according to the contents of their various times, places and circumstances. Almighty Allah says, *﴿To each among you have We prescribed a law and an open way.﴾* (Al-Ma'idah: 48)

All these messages were sealed by the Seal of all Prophets and Messengers, Prophet Muhammad (peace be upon him), whereby Allah perfected Religion and completed His Blessings on the Believers. The Almighty says,

﴿This day have I perfected your religion for you, completed My Favor upon you, and have chosen for you Islam as your religion.﴾

(Al-Ma'idah: 3)

The Prophet's Message contains, first, the sound creed whereby man's view of existence, the Creator and the created,

the whole universe, of the Almighty and man himself, of life and death, of this life and that to come is rectified. By this sound creed, faith is freed from fantasy, fallacies, whims, and insidious distortions. Second, it contains ritual acts of worship enjoined by the Almighty on His Muslim servants to bring them close to Him, chasten their souls, purify their hearts and make them thank Allah for His graces bestowed on them and achieve full servitude to Him. Third, it also includes morals and noble values that elevate man and distinguish him from animals. Thus, he is not motivated by only bestial instincts. Rather, he is governed by the virtues of an intact nature, a sound mind and pious behavior; the ideal example of this is Prophet Muhammad (peace be upon him) whose noble character was the Qur'an and who said (peace be upon him), "I was sent to consummate noble manners."

This divine mission for humanity involves the laws that organize the life of the individual, the family, the community and the nation as well as the relation between different countries and nations. Such laws are comprehensive, balanced, and complete. They consider divine, moral, humanitarian, and universal issues. In addition, these laws are justified and understandable, and characterized by facility and realism in all affairs. They aim at the achievement of man's welfare and development, both physically and spiritually, in this life and the Hereafter. The mission or *Shari`ah* of Prophet Muhammad (peace be upon him) is universal in time and place and for all man's affairs. It is enacted for all people of all generations and does not permit secularism or separation between worldly and religious matters. It is an incumbent and inseparable *Shari`ah* for every Muslim, no matter where or how he lives. One of the distinctive features of this *Shari`ah* is that it is consistent with

everyone's circumstances and considers his needs whether he is a ruler or subject, man or woman, poor or rich, at home or abroad, and in a Muslim or non-Muslim country or society. Considering the various circumstances of man, this tolerant *Shari`ah* does not burden a Muslim beyond his scope or make things difficult for him. Therefore, Muslims wherever they are, whether in Islamic or in secular countries are obliged to apply the Islamic *Shari`ah* and approach, within their own possibilities and as *Shari`ah* itself dictates.

No Muslim can trespass the limits of *Shari`ah* or assume that he is exempted from observing its principles unless the *Shari`ah* itself exempts him according to its principles, rules, judgments and proofs. That is why we study the *Fiqh* of "Minorities;" or "Muslims in non Muslim communities", in the light of religious principles, concerning the issue that Muslims are required to apply the commands of Islam and the principles of *Shari`ah* wherever they are. Allah, the Almighty, says, ﴿ *And to Allah belongs the East and the West, so wherever you turn yourselves or your faces there is the Face of Allah.* ﴾ (Al-Baqarah: 115)

They are committed to and bound by the principles of Islam as Almighty Allah says,

﴿ *It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in a plain error.* ﴾

(Al-Ahzab: 36)

Almighty Allah also says,

﴿The only saying of the faithful believers, when they are called to Allah and His Messenger to judge between them, is that they say: 'We hear and we obey.' And such are the prosperous ones.﴾

(An-Nur: 51)

In order for a Muslim's faith to be complete, he should accept all the principles, rituals, morals, and laws of Islam as they are mentioned in the Glorious Qur'an and the noble *Sunnah*. The texts of the two sources - taking the form of a command, proscription or permission - all came from Allah. Consequently, they should be accepted as a whole not partially as Almighty Allah censured the Banu Isra'il (The Children of Israel) because of that attitude saying,

﴿Then do you believe in a part of the Scripture and reject the rest? Then what is the recompense of those who do so among you, except disgrace in the life of this world, and on the Day of Resurrection, they shall be consigned to the most grievous torment. And Allah is not unaware of what you do.﴾

(Al-Baqarah: 85)

Allah, Exalted be He, addressed His Seal Prophet (peace be upon him) saying,

﴿And so judge (you O Muhammad) between them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you (O Muhammad) far away from some of that which Allah has sent down to you.﴾

(Al-Ma'idah: 49)

However, among the characteristics of the *Shari`ah* are the following:

It does not indulge in sheer fancy and idealism ignoring the real issues that people face in their lives and their problems. Rather it is a realistic *Shari`ah* that considers man's true state of affairs, and his weakness before the pressure of needs and necessities. It takes into account the extent to which man is affected by time, place, circumstances, and surroundings. There is no wonder that Fatwas change according to changes in causes and thus eliminate narrowness and proceed gradually, releasing the people from their heavy burdens, and from the fetters that were upon them. Thus, the principles of this feasible, facile and tolerant *Shari`ah* are not spiritless cliches that are applied to every *Mukallaf*⁽¹⁾ regardless of his condition or circumstances. On the contrary, it tackles every case individually providing the suitable solution for each according to the surrounding circumstances. The following study may shed a beam of light on this truth. Through it, we will abide by the Guidance of Almighty Allah Who says, ﴿And whoever holds firmly to Allah, will be shown a Way that is straight.﴾ (Al-'Imran: 101)

1. In the Islamic *Shari`ah*, the *Mukallaf* is the sane, mature person to whom the rulings of the *Shari`ah* are directed and who is entitled to follow and carry them out. In short, he may be described as 'a responsible person.'

Introduction

***Fiqh* of Muslim Minorities: Objectives, Characteristics and Sources**

I have published the first edition of my book entitled "Non-Muslim Minorities in Muslim Societies" to deal with the issues facing indigenous non-Muslim minorities living in Muslim lands, according to the objectives of Islamic *Shari`ah*. Some foreign authorities exploit these minorities to hinder the call for an Islamic solution, the establishment of Islamic *Shari`ah* and the resumption of an integrated Islamic life. Thus, for these authorities, such minorities foil what devout Muslims seek to realize.

In the afore-mentioned book, I attempted to provide answers to the most important questions about the status of non-Muslim minorities under the Islamic *Shari`ah*. Some fellow Muslims in the West expressed their admiration of this work and the need of producing a book that deals with Muslims living in non-Muslim countries.

In fact, these Muslim minorities require a specific branch of *Fiqh* that should be based on sound *Shar`i* personal reasoning. It should also take into account such minorities' respective places, times and conditions. They are not authorized in these countries to implement the Islamic *Shari`ah*. Thus they become liable to non-Muslim laws, that may contradict the Islamic *Shari`ah*.

Accordingly, some zealous Muslims in "The Muslim Organizations Union" in Europe, who are interested in Islamic affairs, have earnestly sought to establish an Islamic juristic body. It is meant to fill this gap and provide answers to questions raised by Muslims there. Hence, "The European Council for Fatwa and Research" is established when its founders gathered in Britain and decided by consensus to found it, declaring its objectives, instruments, ways and members.

Facts about the *Fiqh* of Minorities

Dealing with the *Fiqh* of Muslim minorities, we should stress the following facts:

A) *Fiqh* alone is not enough for the life of the Muslim community; technically, *Fiqh* is concerned with deducing rulings for the manifest and external life of man. It is not interested in spiritual, creedal or moral aspects of human life. These are covered by another branch of knowledge, i.e. Ethics or Mysticism. This forms the basis of uprightness, righteousness and happiness in this world and salvation and Divine pleasure in the Hereafter.

In his book *Ihya' `Ulum Ad-Din*, Imam al-Ghazali classified "*Fiqh*" as a science that deals with worldly affairs, since it qualifies judges, Muftis and endowment guardians. Regarding acts of worship, *Fiqh* is concerned only with their external and manifest aspects. Accordingly, Muslims are in dire need of a number of jurists and scholars to teach them the *Fiqh Akbar* (principles of religion in general), purify their souls and teach them the Qur'an and wisdom.

- B) A Muslim minority is an integral and inseparable part of the whole Muslim nation as well as being a part of its indigenous non-Muslim community. Thus, both aspects should be taken into account so that none of them overstep the other.
- C) The '*Fiqh*' of minorities which is desired, is a mere branch of the "general *Fiqh*". Nevertheless, it enjoys its specific status, subject and issues. Early jurists did not give it any specific title, since massive migration and interrelation between human races and countries were not as prevalent as they are in our modern world village. Nowadays, we have various branches of *Fiqh* such as:
- Medical *Fiqh* that deals with health, disease, treatment as well as all related medical issues and developments.
 - Economic *Fiqh* that handles financial, economic and bank transactions as well as *Zakah*. This branch occupies a vast field of interests and research in our age.
 - Political *Fiqh* that examines the establishment of a Muslim state, its consultative, judicial, executive and military institutions and its stance towards democracy, plurality, non-Muslims, peace, war and so on.

Along with these branches of *Fiqh*, why should we not have "*Fiqh* of Minorities" to deal with their problems and answer their questions? All these branches are originally based on Islamic *Fiqh*. Though not systematic, they are concise, not detailed, and are incomplete, yet they keep up with their time and milieu. Rulings of a previous period are not entitled to handle future unforeseen disputes.

D) I would like to refer to a very important fact, which we Muslims should not overlook. As Muslims have a universal message, we should maintain an effective Islamic presence in the West, considering the undeniable fact that it leads the world now, determines its policy, economy and culture.

If there is no Islamic presence in the West, Muslims are entitled to work together to establish this presence in order to preserve the identity of Muslims living there, support their moral and spiritual entity and take care of those who embrace Islam, and receive migrating Muslims and provide them with good admonition, training, education, as well as help them propagate the Islamic call among non-Muslims.

The influential West should not be left to Jewish domination alone, which makes use of it, and dominates its policy, culture and philosophy, while we remain isolated leaving the field for others, despite the universality of our message. We recite in the Qur'an,

﴿We sent thee not but as a mercy for all creatures.﴾
(Al-Anbiya': 107)

﴿Blessed is He Who sent down the Criterion to His Servant, that it may be an admonition to all creatures.﴾
(Al-Furqan: 1)

On the other hand, we read the *hadith* narrated by Jabir ibn `Abdullah (may Allah be pleased with him) that the Messenger of Allah (peace be upon him) said, "*Every Prophet was sent to his nation only but I have been sent to all mankind.*"⁽¹⁾

1. Reported by al-Bukhari and Muslim.

Against this background, there is no room for questioning the legitimacy of Muslims residing in non-Muslim countries. Precluding it, as viewed by some jurists, would abort the Islamic call and propagation throughout the world. Furthermore, had Muslims been prohibited from staying in non-Muslim countries or in the abode of disbelief, Islam would have been confined within the borders of the Arabian Peninsula.

Considering history objectively, we find that Islam spread in what we call "The Arab world" and "the Islamic world" through some Muslims, whether merchants or scholars. They migrated to these lands in Asia and Africa, mingled with the indigenous people and dealt with them. Consequently, their good manners, sincerity, and religion led these natives to love them and to convert to Islam in multitudes.

On the other hand, even in countries conquered by Muslim armies to remove material hardships before Islam and convey its message to their people, they were entitled to choose their religion. Thus, these people adopted Islam willingly, so much that the Umayyad rulers used to exact *Jizyah* (the tribute) from newly converted Muslims in Egypt because of the large numbers of those who had embraced Islam. But `Umar ibn `Abd al-`Aziz (may Allah be pleased with him) abolished this tribute declaring his well known saying, "Surely, Allah has sent Muhammad as a guide not as a *Jizyah* collector."

Objectives of the *Fiqh* of Minorities

The *Fiqh* of Muslim minorities throughout the world, especially in the West, has certain objectives to achieve within the framework of the maxims and rules of the *Shari`ah*, namely:

1. To help Muslim minorities; individuals, families and communities, lead a wholesome Islamic life.
2. To help them maintain the essence of their Islamic identity known for its principles, obligations, values, morals, manners and common concepts, so much that all aspects of its life should be devoted to the Almighty and foster these precepts in forthcoming generations.
3. To enable the Muslim community to convey the universal Islamic message to their fellow citizens in their language. They should do so in the best way as Almighty Allah says,

﴿Say thou: 'this is my Way: I do invite unto Allah, on evidence clear as the seeing with one's eyes, I and whoever follows me.﴾

(Yusuf: 108)

All followers of Prophet Muhammad (peace be upon him) fall under this verse, calling for the Almighty, especially among non-Muslims.

4. To enhance their disciplined flexibility, so that they should not become isolated. They should interact with their communities positively, providing them with the best ideas and vice versa. Accordingly, they achieve the delicate balance i.e. open conservation and integration without assimilation.
5. To contribute to educating and awakening these Muslim communities in order to maintain their religious, cultural, social, economic and political rights guaranteed by the constitution. Thus, they can practice such rights freely without pressure or concessions.
6. To assist Muslim communities in fulfilling their various obligations, be they religious, cultural or social, without their

being hindered by religious extravagance, worldly gaieties, negligence or indulgence. In this way, religion becomes an incentive and a guide rather than a chain or a fetter.

7. This prospective *Fiqh* should provide answers to their questions and deal with their problems in a non-Muslim community, with its dissimilar principles, values, concepts and customs, according to a modern *Shar`i Ijtihad* (personal reasoning) exerted by eligible jurists.

Characteristics of this desirable *Fiqh*

This desirable *Fiqh* has certain characteristics that should be considered so that it will bear fruit and achieve its objectives. These characteristics are as follows:

1. This branch of *Fiqh* takes into account both the heritage of Islamic *Fiqh* and modern circumstances, trends, and problems. It does not neglect the glorious heritage produced by jurists over fourteen hundred centuries. On the other hand, it does not overlook our modern times with its theoretical and practical difficulties requiring deliberate consideration and knowledge of its main trends. Obligations render their devices obligatory.
2. It correlates the universality of Islam with local communities and examines and treats its problems. The Prophet (peace be upon him) used to consider the peoples' nature and customs. He (peace be upon him) is reported to have said, "*The Ansar*⁽¹⁾ are fond of amusement."

1. *Ansar* : (singular: *Ansari*) The Companions of the Prophet (peace be upon him) from the inhabitants of Madinah who embraced and supported Islam and who received and entertained the Muslim emigrants who had emigrated from Makkah and other places.

3. It keeps a balance between partial texts of the *Shari`ah* and its collective objectives. None is given priority over the other. In that way, it never overlooks the partial texts of the Qur'an or *Sunnah* on the supposition of maintaining the spirit of Islam and the objectives of the *Shari`ah*. On the other hand, it does not disregard the collective objectives of the *Shari`ah* by adopting the literal meanings of the texts.
4. It refers subsidiary issues to their main origin. It also examines partial issues in the light of collective ones, maintaining a stable balance between interests and evils respectively, as well as collectively, in case of contradiction, according to *Fiqh* of *Muwazanat* (drawing balance) and *Fiqh* of *Awlawiyyat* (priorities)
5. It bears in mind the fact that Fatwas change according to time, place, circumstances, and *`Urf* (custom). Thus, it takes into account the disgraceful difference between our present time and the past; between a Muslim country where all Islamic obligations are freely observed and a non-Muslim land where Islamic faith, values, rites and conventions are visibly absent.
6. It considers a very difficult parallel, i.e. to maintain the Muslim identity while positively interacting with non-Muslim communities.

The Sources of this *Fiqh*

One may inquire about the sources of this branch of *Fiqh* and whether it commands ones different from those of general *Fiqh*. In fact, it depends on the same sources; Qur'an, Sunnah, Consensus, Analogy...etc. However, *Fiqh* of minorities should be afforded renewable considerations of such sources.

It goes without saying that the Ever-Glorious Qur'an comes first among the other sources. Therefore, it should be the main source of the *Fiqh* of Minorities. Thus, all sources and principles, even the Prophet's *Sunnah*, should be referred to the Qur'an, i.e. should be understood in the light of the Qur'an.

The Qur'an forms the constitution for the legislative body. It lays down the general principles, rather than frequently handling minor detailed issues. But the *Sunnah* deals with day-to-day, personal and worldly affairs that may have no relation with religion. In this regard, the Prophet (peace be upon him) is reported to have said, "*You are more aware of your worldly affairs.*"⁽¹⁾

Accordingly, authoritative scholars have concluded that the *Sunnah* contains legislative and non-legislative texts. The former is comprised of general and specific texts, and permanent and temporal ones. Some of them are given by the Prophet (peace be upon him) as Fatwas revealed by the Almighty. Other texts are given by him, by dint of leadership over the Muslim state. A third group is confined to specific situations only.

We should also point out that weak *hadith*s do not form a solid ground for legislation, and thus rulings derived therefrom by some jurists are invalid, such as the following *hadith*s, "*I am not responsible for every Muslim living among the polytheists.*"⁽²⁾

"Whoever has social intercourse and resides with a Mushrik (polytheist) will be rendered like him."⁽³⁾

1. Reported by Muslim.

2. Reported by Abu Dawud.

3. Reported by Abu Dawud.

However, some scholars have accredited both reports. They should be reconsidered. Some scholars, such as al-Albani, sometimes accredit a certain *hadith*, but discredit it at other times due to additional information.

However, the surface meaning of the words "I am not responsible for" doesn't reveal the intended connotations. It may signify not being responsible for a Muslim's blood money if he is unintentionally killed by Muslims since he lives among non-Muslim enemies. Accordingly, he is treated like them. If killed during war, the Messenger of Allah (peace be upon him) or the Muslims are not entitled to pay his blood money.

On the other hand, the Arabic word "*Mushrik*," refers to the idol worshiper, according to the Qur'an. It does not include the People of the Book. How come it is forbidden to live with the People of the Book while a Muslim is permitted to marry from their women?

We have other authentic *hadith*s that may literally contradict the Qur'an. But they are only figurative, such as the following *hadith*s,

"Do not greet the Jews and the Christians before they greet you and when you meet any one of them on the roads force him to go to the narrowest part of it."⁽¹⁾

This *hadith* seems to contradict the Almighty Allah's saying,

﴿Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them...﴾

(Al-Mumtahanah: 8)

1. Reported by Muslim.

And because of the generality of His saying,

﴿When a (courteous) greeting is offered you, meet it with a greeting still more courteous, or (at least) of equal courtesy...﴾

(An-Nisa': 86)

Also, the Prophet (peace be upon him) was reported to have said, "*Spread the greeting of peace.*"⁽¹⁾

Thus, the said *hadith* should be understood within these other texts. In my understanding, this *hadith* refers to Christian and Jewish fighters only.⁽²⁾

The *Sunnah* should be considered in the light of the Qur'an, as well as in the light of the others *hadith*s and their relevant circumstances and objectives. We have to draw the line between stable ends and changing means.

After the Qur'an and the *Sunnah*, comes the consensus of Muslim scholars. In this regard, we should point out that most instances of consensus are not established, as scholars have discovered differences. On the other hand, some instances were based on a specific interest or a convention that has changed. Accordingly, they should be adapted to the new rationale.

Furthermore, if an instance of consensus is based on a text that takes certain circumstances or customs that have changed into account, the ruling derived therefrom should be changed.

1. See: *Sahih al-Jami` as-Saghir*.

2. We have already explained this issue in detail. Refer to our book entitled, *The Sunnah : A Source of Knowledge and Civilization under the Legislative Aspect of the Sunnah*."

The fourth source of this *Fiqh* is *Qiyas* (analogy) with all its conditions. The *Shari`ah* does not differentiate between two equals as it does not equate two contradictory matters. No scholar can do without analogy when its effective cause is ascertained both in the original case and in the new one without any relative difference.

We have also some controversial sources such as considerations of public interest, juristic preference, blocking the means to evil, custom, revealed laws preceding the *Shari`ah* of Islam, the Fatwa of a Companion, etc.

In our age, jurists should employ all these sources properly, according to the juristic mechanisms of evaluation and granting priority.



CHAPTER ONE

Acts of Worship

Is It permissible to Bring Religions Close Together?

Question:

To what extent is it permissible to bring religions (such as Islam and Christianity) close together? Is calling for such an idea permissible from the viewpoint of Islam taking into consideration that we heard that some sheikhs from Al-Azhar participate in dialogues concerning this matter?

S. F. `Abd ar-Rahman

Answer:

Praise be to Allah. 'Bringing religions close together' is a statement that comprises more than one meaning. Some of these concepts are rejected or must be rejected and others are acceptable or there is no harm in accepting them.

The rejected concept of bringing religions close together

The rejected concept of bringing religions close together refers to overlooking the substantial differences between different religions like those between the concept of Monotheism in Islam and that of the Trinity in Christianity or between the concept of Infallibility in the Islamic creed and Assimilation in the Jewish one.

It also refers to the difference between the Muslims' and Christians' stance concerning the Messiah (peace be upon him). We find that Christians of different sects and schools regard the Messiah as god, a son of god, or a member of a group consisting of three closely related gods: The Father, the Son, and the Holy Spirit.

Muslims revere the Messiah as one of the Messengers of resolve upon whom Allah, the Most High, sent down the Gospel in which there was guidance, light and an admonition to those who fear Allah. According to the Muslims' perspective of Jesus, Allah gave him clear signs, strengthened him with the Holy Spirit, and taught him the Book and Wisdom, and granted him some miracles that none of Allah's Messengers had been granted. The Qur'an cites some of these miracles and signs that were not mentioned in the Gospel. For example, the Messiah makes out of clay the figure of a bird and when he breathes into it, it becomes a bird by Allah's leave. The Qur'an also mentioned the table that was sent from heaven (upon the supplication of Jesus), after which *Surat al-Ma'idah* is named. In spite of all these miracles, Muslims view the Messiah as a human Messenger, a servant of Allah, a Messenger who called people to worship Allah, rather than him.

In this regard, Almighty Allah says,

﴿ *Christ disdaineth not to serve and worship Allah, nor do the angels, those nearest (to Allah)...* ﴾

(An-Nisa': 172)

He, Glory be to Him, also says,

﴿ *Christ, the son of Mary, was no more than a Messenger; many were the Messengers that passed away before him.* ﴾

His mother was a woman of truth. They had both to eat their (daily) food... ﴿﴾

(Al-Ma'idah: 75)

The previous Qur'anic verse mentions that he used to eat food; bearing in mind that excretion is a necessity that is corollary to eating, so, how can one like him be a god?

Hence, the Qur'an addresses the Christians saying,

﴿O People of the Book! Commit no excesses in your religion: nor say of Allah aught but the truth. Christ Jesus the son of Mary was (no more than) a Messenger of Allah, and His Word, which He bestowed on Mary and a Spirit proceeding from Him: so believe in Allah and His Messengers. Say not "Trinity": desist: it will be better for you: for Allah is one God: Glory be to Him: (far Exalted is He) above having a son. To Him belong all things in the heavens and on earth. And enough is Allah as a Disposer of affairs. ﴿﴾

(An-Nisa': 171)

Among the main and distinguishing differences between Muslims and the People of the Book is that the Qur'an is guarded against any change or alteration because of Allah's promise. Indeed, He never breaks His promise: *﴿We have, without doubt, sent down the message; and We will assuredly guard it (from corruption). ﴿﴾* (Al-Hijr: 9).

No wonder that tens of thousands of Muslims all over the world memorize it perfectly; even some non-Arab Muslims learn it by heart though most of them do not know the meaning of a word of what they have memorized. This is unlike the Torah and the Gospel, which are proven to have been distorted

by means of omitting, increasing and changing parts of them. This has been proven not only by Muslim scholars, but also by many Jewish and Christian Western scholars of different sects in the modern age as well.

The distortion of the Christian and Jewish scriptures resulted in changing attributions of godhood in the Torah in which both Jews and Christians believe. They attributed descriptions to God that do not befit His perfection such as ignorance, inability, envy and remorse. This is evident in the Book of Genesis.⁽¹⁾

Accordingly, this is a main distinction between Muslims on one part, and Christians and Jews on the other. This is by reason of the fact that Muslims attribute to Allah, Most High, all characteristics of perfection and deem Him far above any imperfection while Jews and Christians indifferently attribute to Allah human imperfections (High is Allah above what they attribute to Him!).

This distortion led to the change of the image of guidance and prophethood as they attributed to the honorable Prophets and Messengers descriptions that are not befitting of their human perfection since Allah, the Most High, prepared them to carry His Message and Guidance to human beings. In this regard, Almighty Allah says, ﴿Allah knoweth best where to place His mission.﴾ (Al-An`am: 124)

Accordingly, we Muslims believe in the infallibility of the Prophets against falling into sin and vice that are inconsistent with their role and purpose of guiding human beings. Rather, their sinning makes people feel disinclined towards them and makes them vulnerable to criticism, taking into consideration

1. One of the Pentateuch.

that Almighty Allah says, ﴿Do ye enjoin right conduct on the people, and forget (to practice it) yourselves...﴾ (Al-Baqarah: 44).

So, it is not permissible to bring religions close together through deliberate attempts to disregard the main distinctions between them. We do not accept this nor do they.

Accordingly, we are of the opinion that every call that stands on the basis of granting a concession at the expense of any religious matter concerning the Islamic creed and obligatory worship; the *Halal* (lawful) and the *Haram* (prohibited) including the principal legislative matters concerning the individual, the family or the community, is a call that must be rejected from the Islamic viewpoint.

The accepted concept of bringing religions close together

The accepted concept of bringing together divine religions aims at bringing the people of these religions close together in the light of the following facts:

1- Dialogue in the best and most gracious manner

We Muslims are commanded by our Lord according to the text of the Ever-Glorious Qur'an to facilitate dialogue with those who stand against Islam in the best and most gracious way. This kind of argument or dialogue is one of the means of *Da`wah* that has been commanded by Allah, the Most High, in His saying,

﴿Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious...﴾

(An-Nahl: 125)

Accordingly, with regard to those who are consistent with the teachings of our religion, we are to call them to the straight path with wisdom and beautiful preaching, i.e. with reasons that are persuasive to the human mind and with that which motivates the hearts and emotions. Similarly, non-Muslims should be argued with in ways that are best and most gracious. This means that if there are two ways of engaging in a dialogue, a good way and a better one, the Muslim is commanded to use the way that is better and is expected to have optimal effect. Concerning those who are consistent believers in Islam, the Qur'an is content to admonish them in a good way, but as regards non-Muslims, it (the Qur'an) is only content to argue with them in ways that are best and optimal.

The Qur'an stipulates this clearly with regard to the People of the Book. Almighty Allah says,

﴿And dispute ye not with the people of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury)...﴾

(Al-`Ankabut: 46)

Accordingly, I prefer that the title of the call be "A Dialogue between Religions," rather than "Bringing religions close together" because it may be misunderstood. I also prefer to concentrate on the common grounds between the religions.

2- Focusing on the common grounds

We should focus on the common grounds between us and the People of the Book. Almighty Allah concluded the previous verse by His saying,

﴿... but say, 'We believe in the Revelation which has come down to us and in that which came down to you; our God and your God is One; and it is to Him we bow (in Islam).'﴾

(Al-`Ankabut: 46)

Thus, in the field of bringing religions close together and in engaging in dialogue in ways that are best, we need to remember the points in which we have common ground rather than those in which we differ.

However, there are Muslim extremists who claim that there is no common ground between Muslims, Jews and Christians as long as we regard them as disbelievers and that they have perverted and changed the Word of Allah.

In fact, this is a misunderstanding of the Islamic stance towards the People of the Book, because if they are true, why has Allah, the Most High, permitted eating their food (the *halal* food) and allowed a marriage relationship with them? Moreover, how has He permitted the Muslim to choose a Jewish or Christian woman to be his wife, housewife and the mother of his children? This necessitates that grandfathers, grandmothers, uncles, aunts, and cousins from the maternal side will be from the People of the Book taking into consideration that all those people have the rights of kindred by blood. We must also ask why Muslims grieved when the Magi Persians vanquished the Christian Romans until Allah gave glad tidings for the Muslims that the Romans would be victorious in the near future. He says, ﴿On that day shall the believers rejoice with the help of Allah...﴾ (Ar-Rum: 4-5)

Obviously, this indicates that the People of the Book, however they disbelieve in the message of Muhammad (peace be upon him), are closer to Muslims than infidels or pagans.

3- Cooperation to confront atheism and promiscuity

Together, we have to cooperate to confront the enemies of religious belief and the materialist proponents of creedal infidelity and behavioral libertinism. Together, we should also cooperate to face the propagators of nakedness, promiscuity, abortion and sexual perversion in all its forms.

From the Islamic viewpoint, there is no objection to be at one with the People of the Book against those who tend to destroy humanity through their misleading calls and deviant behavior. We should unite our efforts to face those people who want mankind to descend from the highest level of humanity to the lowest level of animality. Almighty Allah says,

﴿Seest thou such a one as taketh for his god his own passion (or impulse)? Couldst thou be a Disposer of affairs for him? Or thinkest thou that most of them listen or understand? They are only like cattle; nay, they are worse astray in Path.﴾

(Al-Furqan: 43-44)

In addition, we have witnessed the stance of Al-Azhar, the Muslim World League and the Vatican when they persevered together in the face of libertinism and promiscuity at the Conference of Population held in Cairo in 1994 and at the Conference of Women in Beijing in 1995.

4- Upholding just causes and helpless people

We have to stand together to advocate just causes and to stand by oppressed and helpless people, such as the Palestinians, the Muslims in Bosnia and Herzegovina, Kosovo and Kashmir as well as the blacks and colored people who are the victims of

racial discrimination in the U.S. and elsewhere. It is our duty to uphold oppressed people against oppressors and those who are arrogant on earth without a just cause; those who want to make Allah's servants their servants.

A committed Muslim usually stands firmly behind truth, justice, goodness and freedom. When encountered with injustice, a Muslim is required to face it courageously.

Islam is against oppression. It stands by oppressed people regardless of their country, race, color or religion. In this regard, we may cite the saying of the Messenger (peace be upon him) regarding the Pact of *al-Fudul* in which he participated during the Pre-Islamic Days of Ignorance. This Pact was concluded to support the oppressed, and restore their rights even from noble and well-to-do people. The Prophet (peace be upon him) said, *"Were I called to its like in Islam I would respond."*⁽¹⁾

5- Spreading the spirit of tolerance rather than fanaticism

This call for dialogue between religions should include spreading the spirit of tolerance, mercy and kindness rather than that of fanaticism, cruelty and violence in the social intercourse between people of different religions.

Addressing the Prophet Muhammad (peace be upon him) Almighty Allah says, ﴿ *We sent thee not, but as a Mercy for all creatures.* ﴾ (Al-Anbiya': 107)

The Prophet (peace be upon him) said, *"I am but a source of mercy and guidance (for humanity)."*⁽²⁾

1. Reported by Ibn Is-haq.

2. Reported by al-Hakim.

Allah, the Most High, dispraised the Children of Israel in His saying, ﴿ *But because of their breach of their Covenant, We cursed them, and made their hearts grow hard...* ﴾ (Al-Ma'idah: 13)

In another verse, Almighty Allah says referring to them, ﴿ *Thenceforth were your hearts hardened: they became like a rock and even worse in hardness...* ﴾ (Al-Baqarah: 74)

Whenever gentleness is attached to something, it beautifies it, and whenever it is extracted from something, it disgraces it. In this vein, the Prophet (peace be upon him) was reported as having said to his wife `A'ishah, "*Verily, Allah loves gentleness in all affairs.*"⁽¹⁾

He (the Prophet) said, "*Verily Allah likes gentleness and gives it a reward rather than violence.*"⁽²⁾

For sure, the spirit of tolerance, mercy and gentleness in dealing with the People of the Book does not contradict the Muslim's opinion of their disbelief in the religion of Islam and their misguidance. There are other elements that alleviate this matter in the Muslim's thinking and consciousness.

A. A Muslim believes that the difference in religions between humans is destined by Allah's Will that is associated with His Wisdom. Almighty Allah says,

﴿ *If thy Lord had so willed, He could have made mankind one people: but they will not cease to dispute, except those on whom thy Lord hath bestowed His mercy: and for this did He create them...* ﴾

(Hud: 118-119)

1. Agreed upon *hadith*.

2. Reported by ad-Darami

This means that Allah created them to be in dispute as long as He granted them reason and freedom of will.

B. Judging the misguidance of those who went astray and the disbelief of the unbelievers is not in this worldly life, but in the Hereafter. The Muslim should take into consideration that judging people is not his responsibility, but it is attributed to Allah, the Judge, the Just, the Ever-Kindly and the Ever-Cognizant. Allah, Glorified and Exalted be He, says, ﴿*Now then, for that (reason), call (them to the Faith), and stand steadfast as thou art commanded, nor follow thou their vain desires; but say: I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Lord and your Lord: For us (is the responsibility for) our deeds, and for you for your deeds. There is no contention between you and us. Allah will bring us together, and to Him is (Our) final goal.*﴾ (Ash-Shura: 15)

C. The Muslim believes in the dignity of man insomuch as he is a human being. In this regard, al-Bukhari reported on the authority of Jabir ibn `Abdullah that a funeral procession passed in front of us and the Prophet (peace be upon him) stood up (and we too stood up). We said, 'O Allah's Messenger! This is the funeral procession of a Jew.' He said, "*Is it not a living being (soul)?*" Certainly! How great this situation is! And, how wonderful is this justification!

D. The Muslim believes that Allah's Justice is for all His servants, Muslims and non-Muslims. He says, ﴿*... and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety...*﴾ (Al-Ma'idah: 8)

Accordingly, the true Muslim does not favor the one whom he loves and does not oppress whom he hates. Rather, he

conveys the right to its due people, Muslim or non-Muslim, a friend or an enemy.

Allah, the Almighty, knows best.

Performing the *Jumu`ah* Prayer Before *Zhuhr* Time and After the `Asr Prayer

Question:

What is the Islamic ruling of performing the *Jumu`ah* (Friday) Prayer before noon time or after entering the time of the `Asr (Afternoon) Prayer for the reason that there is not sufficient time for both the sermon and the prayer at the time of the *Zhuhr* (the Noon Prayer) in some countries, especially in the winter season, or because of lack of opportunity to perform the *Jumu`ah*, except at an earlier or later time, due to study or work?

Answer:

The majority of Muslim jurists are of the opinion that the time for the *Jumu`ah* Prayer falls at the same time as that of the *Zhuhr* Prayer (and replaces it), i.e. its time starts when the sun begins to decline from its zenith (and not before that) until the shade of every thing becomes like it. So, it is not permissible to perform it (the *Jumu`ah* Prayer) before or after this time.

However, the *Hanbali* jurists expanded the beginning of its time. Some of them argued that its time falls at the same time as that of the `Id (feast) Prayer, i.e. about ten or fifteen minutes after sunrise until the end of the time of the *Zhuhr* Prayer.

Others maintained that its time starts from the sixth hour, an hour before the sun reaches its zenith. They based their ruling on proofs from Prophetic *Hadiths* and the practices of the Companions.

According to *Al-Mubdi` fi Sharh Al-Muqni`* , Ibn Muflih stated that its time begins from the time of the *`Id* Prayer. Ahmad and al-Qadi and his followers also held the same opinion. They based their ruling on the saying of `Abdullah ibn Sidan: "I witnessed *Jumu`ah* Prayer with Abu Bakr who used to deliver the sermon and pray before midday. Then, I witnessed it with `Umar whose sermon and Prayer were until I may say, it is midday. Then, I witnessed it with `Uthman whose sermon and Prayer were until I may say, the sun has passed its meridian. And I found no one expressing his refusal or denial". This saying was reported by ad-Dar Qutni and Ahmad.⁽¹⁾

Al-Kharqi said, "If they perform the *Jumu`ah* Prayer in the sixth hour⁽²⁾, before the sun reaches its meridian, it suffices them."

In his *Al-Mughni*, Imam Ibn Qudamah, in his explanation of the saying of al-Kharqi, said: "It was reported in other versions that al-Kharqi mentioned the fifth hour. But the sixth hour is more correct."

The literal meaning of al-Kharqi indicates that performing the *Jumu`ah* Prayer before the sixth hour is not permissible. Moreover, Ibn Mas`ud, Jabir, Sa`id and Mu`awiyah were

1. Ibn Muflih, *Al-Mubdi` fi Sharh Al-Muqni`* , vol. 2, pp. 147-148.

2. The sixth hour is that hour which precedes midday. For example, if the time of the *Zuhr* Prayer begins from 12 o'clock noon, the sixth hour starts from 11 o'clock.

reported as having performed the *Jumu`ah* Prayer before the noontime. Al-Qadi and his disciples argued that it is permissible to perform it in the due time of the *`Id* Prayer. `Abdullah, the son of *Imam* Ahmad, narrated that his father said: "We are of the opinion that its Prayer time is the same as that of the *`Id* Prayer."

Mujahid said, "People have no *`Id* except at the beginning of the daytime."

`Ata' also said, "Every *`Id* starts in the forenoon: *Jumu`ah* prayer, Greater Bairam and Lesser Bairam."

Ibn Mas`ud was reported to have said, "There is no *`Id* except at the beginning of the daytime and the Messenger of Allah (peace be upon him) used to lead us in the *Jumu`ah* Prayer in the shade of al-Hatim".⁽¹⁾

Also, Ibn Mas`ud and Mu`awiyah were reported as having performed the *Jumu`ah* Prayer in the forenoon and then said, "We were in a hurry lest you might be afflicted by scorching heat."

Added to this, because it (*Jumu`ah* Prayer) is considered a feast for Muslims, it becomes permissible to perform it at the same time of the feast such as the Greater and the Lesser Bairams. Being a festival day for Muslims is authenticated by the Prophet (peace be upon him) saying, "*Allah has made this day a festival (`Id) for Muslims...*"⁽²⁾

1. *Al-Hatim* is the place between *ar-Rukn* (the Corner) and the Station of Ibrahim (Abraham) on one part and *Zamzam* and *al-Hijr* (a portion of the *Ka`bah* left unroofed) on the other. See *Mu`jam Al-Buldan*, vol. 2, p. 290.

2. Ibn Majah, *Sunan*, vol. 1, p. 349.

He also said, "In this day of yours, two festivals (‘Ids) are gathered together."⁽¹⁾

The majority of Muslim jurists are of the opinion that its time (i.e. the *Jumu`ah* Prayer) falls at the same time as that of the *Zhuhr* Prayer. However, it is recommended to hasten performing it at the beginning of its due time. Salamah ibn al-Akwa` said, "We used to observe the *Jumu`ah* prayer with the Messenger of Allah (peace be upon him) when the sun passed the meridian. And then we returned and tried to find the afternoon shadow (of the walls for protecting ourselves from the heat of the sun)."⁽²⁾

Anas ibn Malik (may Allah be pleased with him) said, "The Messenger of Allah (peace be upon him) used to perform the *Jumu`ah* Prayer soon after the sun declined at midday."⁽³⁾

Since they (*Zhuhr* and *Jumu`ah* Prayers) are two interchangeable Prayers of one time, their time is the same. The *Jumu`ah* Prayer, being the alternative of the *Zhuhr* Prayer, means they should be performed at one time since their time ends at one and so they should start together.

Ibn Qudamah said, "The permissibility of performing it in the sixth hour is authenticated by the *Sunnah* and the consensus of the scholars. With regard to the *Sunnah*, Jabir ibn `Abdullah (may Allah be pleased with him) was reported as having said, "We used to observe the (*Jumu`ah*) Prayer with the Messenger of Allah (peace be upon him) and then we returned to give rest

1. Reported by Abu Dawud, *hadith* no. 1073.

2. Agreed upon *hadith*.

3. Reported by al-Bukhari.

to our camels (used for carrying water) until the sun passed the meridian."⁽¹⁾ Sahl ibn Sa`d also narrated, "In the lifetime of the Messenger of Allah (peace be upon him), we never used to have a mid-day nap and lunch except after the *Jumu`ah* (prayer)."⁽²⁾

Ibn Qutaybah said, "It is not called lunch or a nap after the sun passes the meridian." Salamah ibn al-Akwa` was reported as having said, "We used to observe the *Jumu`ah* Prayer with the Messenger of Allah (peace be upon him) and then return while there was no afternoon shadow from the walls under which we sought protection (from the scorching sun)."

Concerning the unanimous agreement of the scholars, *Imam* Ahmad cited the aforementioned saying of `Abdullah ibn Sidan which reads, "... And, I found no one expressing his refusal or denial." He also cited narrations of Ibn Mas`ud, Jabir, Sa`id, and Mu`awiyah that they observed the *Jumu`ah* Prayer before mid-day. Moreover, their *hadiths* indicate that the Prophet (peace be upon him) observed the *Jumu`ah* Prayer at most times after the sun had passed the meridian and there is no doubt that it is permissible and that it is the best and the most deserving to be followed. These *hadiths* authenticate the permissibility of observing it before midday and there is no contradiction between these (ours and theirs) *hadiths*.

As for performing the *Jumu`ah* Prayer at the beginning of the day, the majority of Muslim scholars are of the opinion that it is not permissible and this opinion is believed to be the most correct because of the above-mentioned narrations and that the timing of Prayers is only established by textual proof. Moreover,

1. Reported by Muslim.

2. Agreed upon *hadith*.

neither the Prophet (peace be upon him) nor the rightly guided Caliphs were reported as having observed the *Jumu`ah* Prayer at the beginning of the day. Originally its time falls at the same time as that of the *Zuhr* Prayer, yet, it is permissible to observe it an hour prior to this time in accordance with the aforementioned proofs. Thus, it is not permitted to perform it prior to this earlier time. Allah Almighty knows best!"

Added to this, in case it is performed at the beginning of the day, most praying Muslims will miss it because it is a custom that people gather to perform it in the meridian and only a small number of people will gather to perform it in the forenoon. In this regard, `Abdullah ibn Mas`ud was reported as having come (to the mosque) to observe the *Jumu`ah* Prayer where he found that he was preceded by four persons. So, he said, "A fourth of four persons and the fourth of four persons is not far away in time."⁽¹⁾

However, this view can be refuted by saying that when people of one country agree to perform it at a certain and proclaimed time, no one will miss it because they will be keen to prepare themselves to perform it in time.

However, we hold the view that it is permissible to perform the *Jumu`ah* Prayer at the beginning of the day only in case of necessity.

The Maliki jurists expanded the end of the time of the *Jumu`ah* Prayer. Some of them permitted the continuation of its time until sunset or a little time before the sunset concerning which there are different points of view

1. Ibn Qudamah, *Al-Mughni*, verified by Dr. `Abdullah at-Turki and Dr. `Abd al-Fattah al-Hilw.

Ibn al-Qasim argued, "It is permissible unless the sun has set even if the praying person observes some part of the Afternoon (*Asr*) Prayer after sunset."

Sahnun maintained that its time continues until before sunset insomuch as the time will be enough to deliver the sermon, observing two *Rak`as* of *Jumu`ah* and the (four *Rak`as* of) *Asr* Prayer. Others argued that its time continues until the sun turns yellow.⁽¹⁾

In the light of these opinions, we can benefit from what was concluded in the *Hanbali* and the *Maliki* schools of *Fiqh* if we come to find that Muslims are in need of it. This means that Muslims living in an abode other than that of a predominantly Muslim country should not miss this great Prayer, which is one of the most important matters that all Muslims should be very keen to perform and uphold. This is in view of the fact that the *Jumu`ah* Prayer plays an important role in strengthening the bonds of relationship among Muslims and cementing closeness to Islam and its pillars. It is the occasion set aside by Allah for Muslims to express their collective devotion. It is a convention for Muslims to feel reassured and to confirm their religious bonds and social solidarity on moral and spiritual foundations.

Thus, observing the *Jumu`ah* Prayer at the agreed upon time, namely, after the sun passes the meridian is more preferable. Moreover, the Muslim intellectuals, as far as they can, should be very keen to adhere to the agreed upon rather than the controversial.

However, if this time contradicts with the conditions of the Muslims in some countries or at particular times or

1. See al-Qarafi, *Adh-Dhakhirah* , the second part, pp. 331- 232.

circumstances, there is no wrong in holding the opinion of the *Hanbali* School of *Fiqh* in such cases, namely, to observe the *Jumu`ah* Prayer before the meridian even if it is at the time of the *`Id* Prayer. This is because necessity knows no laws.

It is also possible in such cases to maintain the view of the *Maliki* School: the permissibility of delaying the performance of the *Jumu`ah* Prayer until after the *`Asr*, in recognition of legitimate need and by way of achieving religious interest (*Maslahah*). This should be on condition that this time is specified, agreed upon and proclaimed to the Muslims so that they can gather in time to perform their weekly obligatory Prayer as commanded by Allah, the Almighty, and His Messenger (peace be upon him).

Allah, the Almighty, knows best.

Combining the *Maghrib* and the '*Isha*' Prayers in Summer

Question:

What is the Islamic ruling on combining the *Maghrib* (sunset) and the '*Isha*' (evening) prayers in summertime, either because of the excessive lateness of the time of the '*Isha*' prayer in some countries, which can be until midnight or because of the lack of the prescribed signs of the time for the '*Isha*' prayer?

Answer:

Indeed, prayer is a religious duty that has specified timings, in accordance with Allah the Almighty's saying, ﴿... for such Prayers are enjoined on Believers at stated times.﴾ (An-Nisa': 103)

These fixed hours have come to be recognized by way of following the actual practice of the Prophet (peace be upon him), and then made known down through the ages to all Muslims in the four corners of the globe. So, each of the five prayers has its own time limit that is not permitted either to be preceded or to be delayed unless there is an acceptable excuse. Otherwise, the one who delays prayers after their due times will be sinful.

However, Islam is the religion of ease and practicality, and so it is permissible to combine two prayers, i.e. the *Zuhr* (noon)

and the *'Asr* (afternoon) prayers, and the *Maghrib* and the *'Isha'* prayers together. Whether by performing the second at the time of the first or by delaying the performance of the first to the time of the second on account of some legitimate reasons, including travel, as proven by the *Sunnah* of the Prophet (peace be upon him).

Following are some other reasons accepted for such permissibility:

- Rain, similarly mud and slime, snowfall, violent wind and storms, as well as any similar inclement weather conditions or natural disasters, which prevent people from performing each prayer on time without requiring them to undergo formidable pain and trouble.
- Moreover, for the removal of difficulty, prayers may be combined without being in a state of journey, fear or rain such as when there is a dire need or an acceptable excuse as will be shown in the *hadith* of Ibn 'Abbas to be mentioned later on.

Indeed, among the miraculous aspects of this religion is that Muslims always find in its texts what addresses new issues and recent developments that continually unfold through the ages, and which people in former times never expected to occur.

We find an example in this *hadith* reported by Muslim in his *Sahih* on the authority of Ibn 'Abbas (may Allah be pleased with him) who was reported as having said, "The Messenger of Allah (peace be upon him) combined the *Zuhr* and *'Asr* prayers; and the *Maghrib* and the *'Isha'* prayers in Madinah without being in a state of fear or in a state of journey". It was

asked to Ibn `Abbas, "What prompted him to do that?" He replied that he (the Prophet) desired that no one among his *Ummah* should be put to unnecessary hardship."

`Abdullah ibn Shaqiq reported: "One day, Ibn `Abbas addressed us in the afternoon (after the *Zhuhr* prayer) till the sun disappeared and the stars appeared, and the people began to say: 'Prayer, prayer.'⁽¹⁾ A person from Banu Tamim came there. He neither slackened nor turned away, but (continued crying): 'the Prayer, the prayer.' Ibn `Abbas said, 'May you be deprived of your mother! Do you teach me the *Sunnah*?' And then he said, 'I saw the Messenger of Allah (peace be upon him) combining the *Zhuhr* and the *`Asr* prayers and the *Maghrib* and *`Isha*' prayers.'" `Abdullah ibn Shaqiq said: 'Some doubt was created in my mind about it. So I went to Abu Hurayrah and asked him (about it) and he testified to its truth.'⁽²⁾

This justification of the well-versed reputable scholar of the *Ummah*, Ibn `Abbas, refers to the fact that the Prophet (peace be upon him) did not want to put unnecessary hardship on the *Ummah*, for Allah, the Almighty, has imposed no difficulties in this religion, but rather He intends every facility for His servants and He does not want to put them to difficulties.

The aforementioned *hadith* contains clear proof on the legality of combining prayers together in case there is a need for that. It is worth mentioning that this *hadith* was also reported by Abu Dawud, an-Nasa'i and at-Tirmidhi in their *Sunan* .

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1. People wanted to remind Ibn `Abbas of the coming of the time of the *Maghrib* Prayer.
 2. Reported by Muslim.

Yet, in his *Ma`alim As-Sunan*, Imam Abu Sulayman al-Khattabi states: "The majority of jurists do not recognize this *hadith* as a proof..."

Ibn al-Mundhir said, "There is no indication in the *hadith* of referring the matter to an excuse because Ibn `Abbas uttered the justification in his saying, "He (the Prophet) wanted that no one among his Ummah should be put to unnecessary hardship."

Ibn Sirin was reported as holding the opinion that there is no wrong in combining two prayers in a state of need but it should not be adopted as a habit.

Further, in his *Al-Mughni*, Ibn Qudamah reported Ibn Shabrumah as maintaining the same opinion of Ibn Sirin.⁽¹⁾

The Hafizh Ibn Hajar in *Al-Fat-h* maintained that a group of scholars held the literal meaning of this *hadith*; so, they permitted combining prayers in case there is a need for that without being in a state of journey. They made the condition that this should not be adopted as a habit. This opinion was supported by Ibn Sirin, Rabi`ah, Ashhab, Ibn al-Mundhir, al-Qaffal al-Kabir and other scholars of *Hadith*.

Finally, we have in support of this, an authentic *hadith* narrated and practiced by Ibn `Abbas, who accepted it as proof to refute the arguments of those who rejected his delaying the *Maghrib* prayer, which was approved by Abu Hurayrah. All this supports our reply to the submitted question regarding the permissibility of combining the *Maghrib* and the `Isha' prayers in Europe in summer where the time of the `Isha' prayer is very late, until midnight or even after that, while people are required

1. Ibn al-Qayyim, *Tahdhib As-Sunan*, vol. 2, p. 55.

to go to work in the early morning. So, how can we demand them to stay up late at night to perform the *'Isha'* prayer on time? Indeed, in doing so there would be unnecessary hardship, which has been removed from the *Ummah* in accordance with the text of the Qur'an and the *hadith* narrated by Ibn `Abbas (may Allah be pleased with him).

Rather, it is also permissible to combine prayers in winter due to the shortness of the daytime in such countries and the difficulty in performing each prayer on time for all employees in their institutions.

Allah, the Almighty, knows best.

Building Islamic Centers Using Zakah Funds

Question:

His excellency Sheikh Yusuf al-Qaradawi, may Allah keep him safe.

As-Salamu `Alaykum. We would like to know the *Shar`i* (Islamic) ruling regarding something very important to all Muslims, most especially Muslims living in America and the West. It concerns the building of mosques and Islamic centers there, as they play a great role in the progress of our Islamic activities. It should be noted that Muslim communities in Western countries and also students with temporary residence permits are in dire need of Islamic centers to practice their various religious activities.

However, a question usually arises regarding the obligatory charity (*Zakah*), which constitutes the main source of income for such Islamic centers in the West. Can money collected as *Zakah* be used to build Islamic centers in the West?

Many of the contributors stipulate that their *Zakah* money should be used for that purpose (building Islamic

centers). While people in charge of the center do not feel at ease to accept that money. They are not certain if the *Zakah* money might be spent on such a project. Does your excellency consider building an Islamic center as one of the lawful ways of distributing *Zakah*, taking into consideration that the center will include a prayer hall, and may be a library, prayer room for women, residence place for the *Imam* and other facilities? The legal owner of that center and almost to all Islamic centers is North American Islamic Temporalities (NAIT), a body affiliated to Islamic Society of North America (ISNA). Both are reputed, reliable and trusted.

I Hope your excellency will reply to our question, especially as we are now collecting money to build our center. If we could not manage to collect money, Allah forbids, we will lose the Town Hall approval as well as a huge amount of money, not to mention the efforts exerted to bring this project into light.

May Allah guide you to the right path, protect you, and help us benefit from your knowledge!

Answer:

Wa`alaykum As-Salamu Warahmatullahi Wabarakatuh .

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

According to the Glorious Qur'an, one of the ways in which *Zakah* money can be spent is "in Allah's Cause." However, Muslim scholars hold different opinions on the meaning of "in

Allah's Cause." The majority of scholars maintain that it means *Jihad*, because it bears the closest lexical meaning to "Allah's Cause." Some other scholars state that the meaning of "in Allah's Cause" refers to anything which is useful for Muslims or is of benefit to them such as building mosques and schools, constructing bridges, or shrouding the dead bodies of poor Muslims, etc.

Therefore, I am of the view that the meaning of "in Allah's Cause" has a larger scope of meaning; much wider than the areas mentioned in the two juristic opinions. Hence, *Zakah* may be used to build Islamic centers for the purpose of calling others to Islam in those countries, where many challenges are posed against Muslims. The enemies of Islam (i.e. Christian Missionaries, Communists, and Secularists, etc.) do their best to seduce Muslims away from their creed and distract them from the essence of their religion.

There is no doubt that establishing such Islamic centers is a modern way of striving in the Cause of Allah; it is *Jihad* with both the tongue and the pen, via preaching and educating. This type of *Jihad* is indispensable at the present time, as it aims to confront the ceaseless invasion and wars waged by the enemies of Islam.

Just as fighting to uphold the Word of Allah is regarded as *Jihad* in Allah's Cause, so to calling, teaching, and/or guiding people to Islam with a view to uplifting the word of Islam, is also regarded as a form of *Jihad*.

Nowadays, Islamic centers are regarded as fortresses that defend Islam, but the important point here is the real intention

behind building Islamic centers. This is evident in Towson city where there is a center that was established by "Rashad Khalifah." It was named after a man who denied some Qur'anic verses and Prophetic sayings and considered obligatory prayers as vanity naming them "prayers of disbelievers." Worse than that, he declared himself a messenger of Allah!

Consequently, there should exist a center to defend the right against the wrong and there should be an Islamic fortress to confront atheism supported from inside and outside. Almighty Allah says,

﴿ Behold, ye are those invited to spend (of your substance) in the Way of Allah: but among you are some that are niggardly. But any who are niggardly are so at the expense of their own souls. But Allah is free of all wants, and it is ye that are needy. If ye turn back (from the Path), He will substitute in your stead another people; then they would not be like you! ﴾

(Muhammad: 38)

Allah, the Almighty, knows best.

Burying Muslims in Christian Cemeteries

Question:

What is the Islamic ruling concerning burying Muslims in cemeteries belonging to Christians, as there is no cemetery for Muslims or it is very far from the relatives of the deceased and it becomes a hardship on them to visit him easily whenever they want?

Answer:

There are fixed legal rulings concerning the dead body of a Muslim, such as washing and shrouding him/her and performing the funeral prayer over the dead. In addition, burying the Muslim decedent in Muslim cemeteries is one of these legal rulings. This is because Muslims have their Islamic method of burying, which is simply, directing the body towards the *Qiblah* and keeping away from imitating the practices of the unbelievers.

It is well known that every religious group has its cemeteries; the Jews have their cemeteries as do Christians and Idolaters. Thus, there is no wonder that Muslims have their own cemeteries as well. Muslim communities in non-Muslim

countries are to seek private cemeteries for Muslims and do their best to persuade the officials of their need to do so.

If Muslims fail to obtain private cemeteries, they should at least, obtain a private piece of land at the outskirts of Christian cemeteries to bury their decedents.

If they failed to obtain either of these facilities and have a decedent, they should bury him/her in another city that has Muslim cemeteries. Otherwise, they can bury their dead in the Christian cemeteries according to their ability and the rules of necessity. Indeed, Allah does not place a burden on a person greater than what he can bear. So, the Muslim will not be harmed if he is buried in a non-Muslim cemetery because what avails the Muslim after his resurrection and adds to his account are his good deeds, rather than the place of his burial.

Allah, the Almighty, says,

﴿That man can have nothing but what he strives for.﴾

(An-Najm: 39)

Finally, I would like to say that the fact that the cemetery is far from the relatives of the decedent is not an excuse to bury him in a non-Muslim cemetery, as burying Muslims in cemeteries for Muslims, according to the majority of Muslim scholars, is *Fard* (obligatory) whereas visiting the decedent is *Nafl* (optional).

The *Nafl* should not take priority over the *Fard*.

Also, I would like to mention the following *hadith* to show the wisdom behind visiting cemeteries; `Abdullah ibn Burayda reported on the authority of his father that Allah's Messenger

(peace be upon him) said, *"I prohibited you from visiting the cemeteries, but (now) you may visit them as it softens the heart, fills the eyes with tears and reminds of the hereafter."*

As for the decedent, Muslims can pray and ask Allah's forgiveness for him and the recompense will reach the decedent, by Allah's grace, regardless of the place where the decedent and the supplicant are.

Allah, the Almighty, knows best.

Abandoning the Sacrifice of Animals (Ud-hiyah) in Europe Due to a Contagious Disease

Question:

Your eminence, Sheikh al-Qaradawi, may Allah protect you.

The contagious diseases of livestock in Europe, such as mad cow disease and foot-and-mouth disease in cloven-hoofed animals such as cattle and sheep have obliged the officials to warn against eating these kinds of meat. They have advised Muslims, on the occasion of the Greater Bairam, to dispense with sacrifices this year for fear of infection.

Thus, can we, the Muslims in Europe, abandon this rite of the Islamic *Sunnah*? What do you advise us to do regarding these temporary circumstances so that we do not miss the reward of *Ud-hiyah* ⁽¹⁾?

May Allah reward you the best rewards!

Brothers from Britain

1. The sacrificial animal.

Answer:

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

Actually, Islam has obligated *Ud-hiyah* (on the rich) in the Greater Bairam to give Muslims the chance to be generous towards themselves and their poor relatives and neighbors. However, if it is proven that the sacrificial animals suffer from an epidemic disease that may harm those who eat them or infect man with the contagious disease in the present or in the future, then the agreed-upon legal rule is as follows, "No harm shall be inflicted or reciprocated in Islam." It means that the person should not cause harm to himself or others. It is an all-conclusive rule since it is derived from the Ever-Glorious Qur'an and the purified Sunnah.

Allah, the Almighty says,

﴿ *Not to kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful.* ﴾

(An-Nisa': 29)

He, the Most Merciful, also says,

﴿ *Make not your own hands contribute to (your) destruction.* ﴾

(Al-Baqarah: 195)

Thus, Islam has given permission in certain circumstances to preserve the safety of man and retain his health. The Prophet (peace be upon him) said, "... *Your body has a right upon you.*"⁽¹⁾

1. Agreed upon *hadith* .

Consequently, all Muslim jurists have prohibited all that which causes harm to man, whether this harm is in the form of food, clothing or anything else.

This prohibition was legislated to protect both the body and soul of man and this constitutes one of the five elements that are necessary to be protected, which is agreed upon by all religions.

Accordingly, we can say that if it is proven that partaking of the meat of cows, camels or sheep may cause harm to man, then man is prohibited from eating this meat whether it is a sacrificial animal or anything else. As man's life is a trust given by Allah, the Almighty, thus man is not permitted to abuse, neglect or harm it deliberately.

To shed more light on the question, abandoning *Ud-hiyah* in such cases becomes an obligation because the one who sacrifices gives the meat of the sacrificial animal to neighbors, friends, relatives, the poor and the needy. So, in this case harm is not confined to the one who wants to sacrifice but it extends to include many others, thus prohibition is even more appropriate here.

This rule takes effect if it is proven that these kinds of meat may harm man, and we can ascertain this through consulting specialists.

Allah, the Almighty says ﴿... ask thou, then, about him of any acquainted (with such things).﴾ (Al-Furqan: 59)

And He says, ﴿And none (O man) can tell thee (the Truth) like the one who is acquainted with all things.﴾ (Fatir: 14)

It is worthy mentioning that scientists have proven that foot-and-mouth disease is destructive and harmful to animals,

however it rarely affects human beings. If, however, it is proven that a kind of sacrificial animal suffers from a contagious disease, then a Muslim can offer another kind as a sacrifice; if it is found in cows, for example, he/she can offer camels or sheep.

If it so happens that all these kinds suffer from contagious diseases in a country, then the Muslim can perform this rite in another Muslim country by paying the equal price of the sacrificial animal to another Muslim living in that country and authorizing him to slaughter the animal on his behalf. Actually, this is practiced by charitable societies in various countries. Furthermore, a Muslim can buy many sacrificial animals in some poor countries at the price of one sacrificial animal in his country and this is of great benefit for poor Muslims in these countries. How good is this alternative!

Allah, the Almighty, knows best.

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CHAPTER TWO

Fiqh of Muslim Family

The Prohibition of Marrying a Muslim Woman to a Communist Man

Question:

A young man proposed marriage to my daughter while I knew that he was a Communist and insisted on his Communism. Am I legally allowed to give him my daughter in marriage since his official religion is Islam, his family is Muslim and he carries an Islamic name? Or am I obligated to refuse his proposal because of the corruption of his creed? Please, give us your *Fatwa* regarding this issue. Many thanks.

A. I.

Answer:

Before answering this question, we would like to introduce a short abstract concerning the stance of Communism against religions in general in order to provide the questioner with greater insight into the situation. Communism is a materialist theory that only believes in those things that are tangible and denies anything else. It denies the existence of Allah, the human soul, revelation, the Day of Judgment and any aspect of the Unseen. Thus, the Communist system rejects religion altogether and considers it of the remnants of ignorance, deterioration and exploitation.

In this respect, Karl Marx, the founder of Communism, states, "Religion is the opium of the people." He criticized those who said, "Allah has created the cosmos and man." He reiterated sarcastically the previous saying of the atheist materialists, "Allah has not created man; the opposite is correct. For, it is man who created Allah, that is, he invented *Him* through illusion and imagination."

Lenin - one of the founders of Communism - said, "Our revolutionary party cannot take a negative stance towards religion, because religion is a form of superstition and ignorance."

Stalin, who succeeded him, said, "We are atheists and we believe that the idea of Allah is a superstition. We believe that belief in religion hinders our progress. We do not want to make religion dominate because we do not want to be intoxicated."

Actually, this is the opinion of Communism and its leaders regarding religion. Hence, it is not strange to find that the constitution of the Communist party and the constitution of international Communism oblige every member in the Communist system to adopt atheism and to propagate against religion and cancel the membership of any person who practices any religious rites.

Supposing that a Communist adopts only the social and economic aspects of Communism leaving its creedal and intellectual bases, would this be sufficient to render him an apostate? Islam has wise and clear teachings and rules for regulating the social and economic life of man, while the Communist system absolutely denies them. Among these rules are private ownership, inheritance, man's relationship with woman, etc. Bearing in mind that these rules are among the

pillars that form the basic principles of Islamic faith, hence, denying such rules is unanimously considered disbelief. Added to that, the Communist system is so correlated that its practical system cannot be separated from its creedal or philosophical basis.

Knowing that Islam does not permit a woman to marry a man from the People of the Book, whether he is a Christian or a Jew, although the People of the Book believe in Allah, His Books, Messengers and the Day of Judgment and so on, how then can it be permissible for a Muslim woman to marry a man who does not believe in godhood, prophethood, the Day of Judgment, or Reckoning?

The man whose Communism is known is considered an atheist and an apostate according to Islam. So, a Muslim father is not allowed to accept the proposal of such a person. Also, any Muslim girl who is pleased with Allah as her Lord, Islam as her religion, Muhammad (peace be upon him) as the final Messenger and the Qur'an as the constitution is not permitted to accept the marriage proposal of such a person. And, in case he is married to a Muslim woman their marriage must be nullified and he is to be deprived of the right of raising his children so that he may not mislead them and corrupt their religion. If he dies while insisting on his belief, the Muslims are not allowed to wash him, perform the funeral prayer for him or bury him in Muslim graveyards.

Generally speaking, the Islamic rules of dealing with apostates and atheists are to be applied to him and he will have a grave punishment on the Day of Judgment.

Allah, the Most High, says,

﴿... Nor will they cease fighting you until they turn you back from your Faith if they can. And if any of you turn back from their Faith and die in unbelief, their works will bear no fruit in this life and in the Hereafter; they will be companions of the fire and will abide therein.﴾

(Al-Baqarah: 217)

Allah, the Almighty, knows best.

Marrying a Muslim Man to a Non-Muslim Woman

Question:

I hope you find time to answer this question concerning the eligibility of marrying non-Muslim women; I mean the Christian and Jewish women whom we regard as *Kitabis*⁽¹⁾. I and many others have seen a lot of corruption resulting from this kind of marriage especially regarding the children of that woman as she mostly influences the whole house and raises sons and daughters according to her way, while the husband has a passive role in this respect.

I have asked a scholar about this issue and he responded: "The Glorious Qur'an has allowed marrying women of the People of the Book and we have no way to prohibit something that Allah, the Most High, has made permissible."

As I know that Islam does not permit something that bears harm or corruption, I wrote to you asking your opinion regarding this issue because I know that you have a comprehensive approach in dealing with such

1. People of the Book.

issues in the light of the textual proofs of *Shari`ah*, its objectives and general and comprehensive principles.

I hope you do not neglect responding to this message although I know that you have a busy schedule. May Allah help you and support your efforts!

M. Sh.

Answer:

All praise and thanks are due to Allah and peace and blessings be upon the Messenger of Allah, his household, Companions and those who follow his guidance until the Day of Judgment.

I was destined to visit a number of countries in Europe and North America and to meet some Muslims, who study or teach and have permanent or temporary residence over there.

A lot of them used to raise questions regarding the Islamic legal ruling on marrying a non-Muslim girl especially the Christian or the Jew. Islam acknowledges the originality of their religions and calls those who believe in these religions "People of the Book," and gives them rights that others do not enjoy under the shade of Islam.

Before outlining the Islamic legal ruling on this issue it is necessary to outline the categories of non-Muslim women and the stance of *Shari`ah* towards each category.

Prohibition of marrying a polytheist woman

According to the text of the Glorious Qur'an, a Muslim man is prohibited from marrying a polytheist woman, i.e. the idolaters.

Allah, the Most High, says,

﴿Don't marry unbelieving women (idolaters) until they believe: a slave woman who believes is better than an unbelieving woman. Even though she allures you.﴾
(Al-Baqarah: 221)

He also says,

﴿... But hold not to the ties (marriage contract) of unbelieving women...﴾
(Al-Mumtahanah: 10)

The context of the above-mentioned verse, the whole Surah of Al-Mumtahanah and the cause of its revelation indicate that the unbelievers mentioned in the verse refer to the idolaters.

The wisdom in this prohibition is clear, and that is the incompatibility between Islam and idolatry. The reason for this is simply that the creed of monotheism is in direct contradiction to the creed of polytheism. Moreover, idolatry has no divine book or an acknowledged prophet. So, idolatry and Islam are at variance. The Glorious Qur'an has clarified the prohibition of marrying polytheist women or giving a Muslim woman in marriage to a polytheist man in Almighty Allah's saying,

﴿... Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of Bliss) and forgiveness...﴾
(Al-Baqarah: 221)

This ruling of the prohibition of marrying the polytheist women is well-proven by the textual proofs of the Qur'an, the *Sunnah* and the unanimous agreement of the Muslim scholars as

have been mentioned in his *Bidayat Al-Mujtahid* by Ibn Rushd and others.

The prohibition of marrying an atheist woman

What is meant by "atheist woman" is the one who disbelieves or denies the existence of God and does not acknowledge godhood, prophethood, Divine Books or the Day of Judgment. She is given precedence over the polytheist woman regarding this prohibition. This is because the polytheist believes in the existence of Allah however she associates other partners or rivals in worship with Allah and takes them as intercessors so that they may bring her closer to Allah as polytheists claim.

The Glorious Qur'an has narrated many sayings of the polytheists in this regard. Almighty Allah says,

﴿ If thou ask them, who it is that created the heavens and the earth. They will certainly say, Allah... ﴾

(Luqman: 25)

In another verse, Almighty Allah says,

﴿ ... But those who take for protectors others than Allah (say): We only serve them in order that they may bring us nearer to Allah... ﴾

(Az-Zumar: 3)

If Islam has prohibited marrying this pagan girl who acknowledges Allah in general, so, what is the case of an atheist, materialistic woman who denies anything beyond the tangible elements of life, and does not believe in Allah, the Day of Judgment, the angels or the Prophets?

Indeed marrying such a woman is surely *Haram*; rather, it is absolutely invalid.

I would like to offer an example of such a woman: the persistent Communist woman who believes in the materialistic philosophy and alleges that religion is the opium of the people and explicates the appearance of religions in a materialistic way; that they are the secretions of the society and are among the prevailing effects of the economic conditions and the factors of products.

Dear questioner, I said, "The, persistent, Communist woman" because some Muslim men or women may adopt this materialistic system without knowing the details and facts of this system. He/she may be seduced when some advocates of this system offer it as a means of economic reform that has no relation to creed or religion, etc. First of all, the ambiguity must be removed and the straight way must be shown to those people so that the difference between faith and disbelief becomes clear. Knowing this, whoever insists on his Communism, will be considered a renegade disbeliever. The rules of the disbelievers must be applied to him in his life and after his death.

The apostate woman

The ruling of the atheist woman applies to the apostate woman, may Allah forbid. By the "apostate" we mean anyone who disbelieves after having been a believer regardless of whether he/she converted to another religion or not. It does not matter if he/she converted to the religions of the People of the Book or otherwise. Apostasy also includes those persons who abandoned Islam in order to embrace Communism,

Existentialism, Christianity, Judaism, Buddhism, Bahaism, or the like or abandoned Islam without embracing any other religious belief.

As far as apostasy is concerned, Islam does not compel anyone to embrace it. Moreover, it does not accept the conversion of anyone who is compelled to accept Islam. However, whoever embraces Islam of his own free will is not permitted to abandon it.

Some of the Islamic rules on apostasy are connected to the Hereafter and some others are connected to this worldly life.

As for the Hereafter, the one who dies as an apostate will have the reward of all his previous good deeds removed and thus he will be deserving of eternity in the Hell-fire.

Almighty Allah says,

﴿... And if any of you turn back from their Faith and die in unbelief, their works will bear no fruit in this life and in the Hereafter; they will be companions of the fire and will abide therein.﴾

(Al-Baqarah: 217)

As for the rules of the apostate in this world, he does not deserve the support of the Muslim community in any respect. It is not permissible to establish a marital relationship between a Muslim man and an apostate woman initially or the preservation of such relationship after her apostasy. So, the marriage of one who marries an apostate woman is null and void. Also, if it happens that a Muslim woman apostatizes after marriage, the marriage must be dissolved. There is unanimous agreement among Muslim jurists concerning this ruling. It is upheld by

those who are of the opinion that the apostate is to be killed and those, who hold that the punishment of the woman who apostatizes from Islam is imprisonment.

It is worth mentioning that pronouncing the judgment of apostasy and disbelief on any Muslim is the most extreme punishment. Therefore, it is obligatory to investigate the matter thoroughly and ward off the judgment of apostasy as long as there is any shred of doubt. This is necessary because we should think good of the Muslim as he is originally a Muslim. No one should be considered an apostate unless there is absolute evidence that proves his apostasy, for certainty is not to be removed by doubt.

The prohibition of marrying a Baha'i woman

A Muslim man is prohibited from marrying a Baha'i woman. This marriage is null and void because if she was a Muslim initially and came to abandon the true religion of Allah to this fabricated religion, she would be considered as an apostate and we have illustrated previously the ruling of marrying an apostate woman. The same ruling of apostasy is not removed whether she apostatized herself or blindly followed her family (in apostasy).

Also, if she was a non-Muslim initially, the ruling concerning her is the same as the polytheist because Islam does not acknowledge her religion in origin or the divinity of her book. It is a basic principle of the Islamic faith that every person who claims to be a prophet after the mission of Muhammad (peace be upon him) is rejected and every Book after the Qur'an is null and void and everyone who alleges that he is sent with a new religion after Islam is an imposter because

Almighty Allah has sealed prophethood, completed the religion and perfected His favor on man.

﴿If anyone desires a religion other than Islam (submission to Allah), never will it be accepted of him; and in the Hereafter he will be in the ranks of those who have lost (all spiritual good).﴾

(Al `Imran: 85)

If the Muslim man's marriage to a Baha'i woman is null and void, the marriage of a Muslim woman to a Baha'i man is likewise invalid and for a greater reason. That is because the Islamic *Shari`ah* does not permit the Muslim woman to marry the *Kitabi* ⁽¹⁾, so, this prohibition includes the one who has no book, so it is done with greater reason.

Accordingly, it is not permissible to observe a marital life between a Muslim man and a Baha'i woman or vice versa and this marriage is null and void and must be dissolved.

This ruling has been applied by the legal courts in Egypt on more than one incident.

The permissibility of marrying a Kitabi woman

Permissibility is the original ruling of marrying women of the People of the Book according to the majority of Muslim scholars. They held that Allah, the Most High, has permitted Muslims to eat food⁽²⁾ from the People of the Book and to take their women in marriage.

1. One of the People of the Book.

2. Of course the lawful food for Muslims. If it contains anything unlawful such as wine or pork, it becomes unlawful for Muslims to eat. (Translator)

Almighty Allah says in this regard,

﴿... The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto them in marriage) are (not only) chaste women who are Believers, but chaste women among the People of the Book, revealed before your time, when you give them their due dowers, and desire chastity, not lewdness, nor secret intrigues...﴾

(Al-Ma'idah: 5)

The opinion of Ibn `Umar and some Mujtahidin⁽¹⁾ regarding this issue

`Abdullah ibn `Umar (may Allah be pleased with them) was from the Companions who did not make it permissible for the Muslim to marry a Kitabi woman. Al-Bukhari reported that whenever Ibn `Umar was asked about marrying a Christian or a Jewish woman, he would say, "Allah has made it unlawful for the believers to marry unbelieving ladies, who ascribe partners in worship to Allah⁽²⁾, and I do not know of a graver sin, as regards to ascribing partners in worship to Allah, than that a lady should say that Jesus is her Lord although he is just one of Allah's slaves."

Some scholars interpret this saying of Ibn `Umar that he wanted to make it abominable rather than unlawful but the phrases, which are reported on his authority, indicate more than abomination.

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1. Muslim jurists who observe personal reasoning regarding legal issues for which there is no textual proof in the primary sources of legislation.
 2. Referring to the Qur'anic verse that reads, "Do not marry unbelieving women (idolaters) until they believe..."

A group of the *Shi`ah Imamiyyah* sect have adopted the opinion of Ibn `Umar based on Almighty Allah's saying, "*Do not marry unbelieving women (idolaters) until they believe...*" and His saying, ﴿... *But hold not to the ties of (marriage contract) of unbelieving women...*﴾ (Al-Mumtahanah: 10)

Giving preference to the opinion of the majority of scholars

The opinion of the majority of scholars is believed to be the most correct because of the clarity of the Qur'anic verse of Surat al-Ma'idah in referring to the permissibility of marrying women from the People of the Book.

As for Almighty Allah's saying, "*Do not marry unbelieving women (idolaters) until they believe...*" and His saying, "*... But hold not to the ties of the (marriage contract) of unbelieving women...*" it may be said that this is a general ruling which is specified in the verse of Surat al-Ma'idah. It may be said that the word "unbelievers" does not include the People of the Book according to the language of the Qur'an. Therefore, they are joined (by means of a conjunction) as in the Qur'anic verse that reads, ﴿*Those who reject (Truth), among the People of the Book and among the Polytheists, were not going to depart (from their ways) until there should come to them Clear Evidence.*﴾ (Al-Bayyinah: 1)

In another verse, Almighty Allah says, ﴿*Those who reject (Truth), among the People of the Book and among the Polytheists, will be in Hell fire, to dwell therein (for aye). They are the worst of creatures.*﴾ (Al-Bayyinah: 6)

Also Allah, the Most High says,

﴿Those who believe (in the Qur'an), those who follow the Jewish (scriptures), and the Sabians, Christians, Magians, and Polytheists, Allah will judge between them on the Day of Judgment: For Allah is witness of all things.﴾

(Al-Hajj: 17)

In the above-mentioned Qur'anic verses Allah, the Most High, has distinguished the unbelievers from the rest of the categories.

Restrictions that must be observed when marrying a non-Muslim woman

Knowing that what is believed to be the most correct is that the original ruling is the permissibility of marrying a Muslim man to a woman of the People of the Book for the sake of inviting her to Islam and in an attempt to strengthen ties of compassion and mercy among Muslims and People of the Book, but this origin is attached to several restrictions that must not be ignored. They are as follows:

The first restriction

Being sure that she is from the People of the Book, i.e. she believes in a religion of divine origin such as Judaism or Christianity. Since such a woman believes in Allah, His messages and the Day of Judgment in general, she is not to be regarded as an atheist or an apostate, nor to be considered a believer in a religion that is not divine.

It is definitely known in the West that not all girls born to Christian parents, for example, are Christian nor each girl who is

raised in a Christian environment will necessarily be Christian. She may follow Communism, Bahaism or any other rejected creed according to the Islamic perspective.

The second restriction

She must be a chaste woman because Almighty Allah does not permit marrying any woman of the People of the Book. Rather, He has made chastity a condition for the eligibility for marriage in His saying, "... *but chaste women among the People of the Book ...*"

Ibn Kathir stated, "Apparently, this means the chaste women who are not involved in committing shameful acts such as *Zina*⁽¹⁾ and the like. This is supported by the Qur'anic verse that reads, '*... and desire chastity, not lewdness, nor secret intrigues...*'. On my part, I favor this opinion. So, the Muslim is absolutely prohibited from marrying an unchaste woman who has sexual intercourse with any man out of marriage. Rather, she must be pure, chaste and completely free of doubt concerning her morality."

This ruling is what Ibn Kathir favored and mentioned as the opinion of the majority of jurists.

Imam al-Hasan al-Basri stated that a man asked him, "Is it permissible that a Muslim man marries a woman of the People of the Book?" He answered, "Why does he go to the People of the Book while Allah has increased the number of the Muslim women. But in case he insists on that he should choose the chaste rather than the obscene woman." The man said, "What do you mean by the obscene?" He said, "The one that if a man winks at her she follows him."

1. Adultery.

No doubt, this category of (chaste) women in the western communities in our age is very rare, rather it is abnormal as indicated in the writings, reports and statistics of the westerners themselves. Moreover, what we call virginity, chastity, honor or the like have no social value in these communities. In addition, the girl who has no boyfriend is rebuked by her friends, and reproached by her family.

The third restriction

She is not to be from among any People bearing enmity or at war with Muslims. For this reason a group of jurists separated between *Dhimmi* ⁽¹⁾ and *Harbi* ⁽²⁾ women. They made it permissible for the Muslim man to marry a *Dhimmi* woman while prohibiting him to marry a *Harbi* one. This is indicated in the saying of Ibn `Abbas, "Some women of the People of the Book are permitted for the Muslim men to marry and some others are not permitted." Then, he recited the Qur'anic verse that reads,

﴿Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of truth, from among the People of the Book, until they pay the Jizyah⁽³⁾...﴾ (At-Tawbah: 29)

So, it is permissible for the Muslim man to take in marriage a woman of the People of the Book, who gives *Jizyah* to the Muslims but he is not permitted to take in marriage a woman of the People of the Book, who does not give *Jizyah* to the Muslims.

1. A non-Muslim living under the protection of an Islamic government.

2. It refers to the one who is in a state of war with Muslims.

3. *Jizyah*: Head-tax imposed by Islam on *Dhimmi* s (non-Muslims living under the protection of an Islamic government according to a compact or covenant).

This opinion is favored by Ibrahim An-Nakh`iy, one of the jurists of Kufa. In his *Majmu`*, Imam Zayd narrated on the authority of `Ali that he disdained marrying any woman of the people who are at war with Muslims. The expounder stated in *Ar-Rawd An-Nadir*, that abomination in the previous saying means prohibition because they are not *Ahl Dhimmah* ⁽¹⁾.

No doubt, the opinion of Ibn `Abbas has sound justifications and preponderance. Almighty Allah has made the conjugal relationship one of the most vital relationships among human beings. In this regard, Allah, the Most High, says,

﴿ *It is He Who has created man from water: then has He established relationships of lineage and marriage...* ﴾

(Al-Furqan: 54)

I wonder how this relationship is achieved between the Muslims and people who bear enmity towards Muslim and are at war with them. How is it justified for a Muslim man to marry from among them and thus the grandfathers, grandmothers, uncles and aunts from the maternal side come from them, let alone his wife, the mistress of his house and the mother of his children? No wonder we find the erudite scholar Abu Bakr ar-Razi al-Hanafi inclined to favor the opinion of Ibn `Abbas. He quotes, in support, Almighty Allah's saying,

﴿ *Thou wilt not find any people who believe in Allah and the Last Day, loving those who resist Allah and His Messenger...* ﴾

(Al-Mujadalah: 22)

1. (Also *Dhimmi* s) Plural of *Dhimmi*.

But marriage, he adds, obligates love and affection.

Allah, the Most High, says,

﴿And among His Signs is this, 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)...﴾

(Ar-Rum: 21)

Accordingly, he said that marrying a *Harbi* woman must be prohibited because of Almighty Allah's saying, "...loving those who resist Allah and His Messenger..." deals with those who are at war with the Muslims.

This view is supported by Almighty Allah's saying,

﴿Allah only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong.﴾

(Al-Mumtahanah: 9)

Is there any turning to those people more than to marry from them while the married woman becomes a part of the Muslim family, rather, she becomes the backbone of the family?

Accordingly, a Muslim is not permitted in our time to marry a Jewish lady as long as there is war and struggle between Israel and the Muslims. Added to that, there is no value for the distinction between Judaism and Zionism. Indeed, each Jew is a Zionist by nature because the rationale and psychology of Zionism are derived from the same source. Each Jewish woman is in spirit a soldier in the army of Israel.

The fourth restriction

Marrying a woman of the People of the Book should not contain *Fitnah* ⁽¹⁾ or any kind of harm to the Muslim man because utilizing permissible things are confined to their not causing harm. The Prophet (peace be upon him) was reported as having said, "*No harm shall be inflicted or reciprocated in Islam.*"

This *Hadith* represents a definitive *Shar`i* ruling because, it conforms in spirit to the texts and partial rulings derived from the Qur'an and the *Sunnah* and that provides certitude.

Accordingly, the *Imam* or the leader has the authority to restrict some permissible things if he fears that the absolute use of them may cause a certain kind of harm.

Knowing this, the harm caused by marrying a non-Muslim woman may take several forms including the following:

1. The prevalence of marriage between Muslim men and non-Muslim women in a way that negatively affects the ability of Muslim girls to marry. That is because of the fact that women most probably outnumber men and the number of girls eligible for marriage is more than the number of men who can afford marriage.

If marrying non-Muslim women becomes a usual social practice, an equal number of Muslim women will be deprived of marriage, especially when polygamy in our age has become rare, and is often wrongly considered abnormal. Bearing in mind that the Muslim woman is only permitted to marry a Muslim man, blocking the door of marrying the Muslim men to non-Muslim

1. Trial, ordeal or affliction.

women will be the only solution for this delicate issue if it is feared that the Muslim women may be deprived of the rights to have husbands, and therefore be mothers.

If Muslims represent a limited minority in a certain country such as some colonies in Europe and America and some minorities in Asia and Africa, the logic and spirit of *Shari`ah* necessitates the impermissibility of marrying non-Muslim women in such circumstances. Otherwise, a large number of Muslim women living in those countries will not find a suitor from among Muslims. At this time, the Muslim woman will be vulnerable to one of three things:

- A. She may marry a non-Muslim man, which is strictly prohibited in the Islamic *Shari`ah*.
- B. She may fall into obscenity and satisfy her sexual desire outside of marriage, which is a major sin.
- C. She may spend all her life deprived of matrimony and motherhood.

Islam is not content with these things that constitute the inevitable result of the marriage of Muslim men to non-Muslim women.

In his book *Al-Athar*, Imam Muhammad ibn al-Hasan narrated that when the Commander of the Believers `Umar ibn al-Khattab was informed that the venerable Companion Hudhayfah ibn al-Yaman married a Jewish woman while he was in al-Mada'in, he (`Umar) wrote to him immediately, "I recommend you not to put my message until you divorce her. I fear that Muslims may take you as an example and prefer to

marry *Dhimmi* women because of their beauty and this is enough in causing *Fitnah* for Muslim women."⁽¹⁾

2. In his *Sunan*, Imam Sa`id ibn Mansur cited the same story of marriage of Hudhayfah but he mentioned another reason for the intervention of `Umar to dissolve this marriage. After he rejected the permissibility of this marriage, he stated, "But I was afraid that you marry the prostitutes from among them."⁽²⁾

There is no wrong if both reasons were meant by `Umar (may Allah be pleased with him). He feared that the Muslim women or a large number of them may not find suitors from among Muslims and this is a major *Fitnah*.

On the other hand, he also feared that the Muslims might ignore chastity as a condition for marrying non-Muslim women to the extent that they may marry adulteresses and prostitutes. This corruption must be prevented before its occurrence in compliance with the Islamic rule of blocking the means to evil. This may be the same reason that made `Umar advise Talhah ibn `Ubayd Allah to divorce the woman he had married. It was reported in *Musannaf* `Abd ar-Razzaq that she was a daughter of a Jewish rabbi.⁽³⁾

3. In the case of marrying a Muslim man to a non-Muslim woman, if she is a foreigner who is unacquainted with the husband's country, language, culture and traditions, such as marrying an Arab man to a Christian European or American lady, represents another danger that is tangible to anyone who

1. See our book "*Shari`at Al-Islam: Khuluduha wa Salahuha lil Tatbiq fi Kul Dhaman wa Makan*", p. 39, first edition.

2. *Ibid*, p. 40.

3. `Abd ar-Razzaq, *Musannaf*, vol. 7, pp. 177-178.

studies this phenomenon deeply and equitably. In most cases, some Arab Muslims travel to Europe and America to study in their universities or for training in one of their factories or to find work in their corporations. Their stay may extend for several years and some of them may return accompanied by a foreign wife whose religion, language, nationality, traditions and thoughts (or at least the traditions and thoughts of her country) are different from his. If it happens that she is content to live in his country, although in most cases she is not content with that, and one of his parents, brothers or relatives comes to visit him in his house, he will find it strange. He/she (the relative) will find all things in the house influenced by the American style. It may be that she has the leadership and the guidance, rather than the husband. Knowing this, the family of this man will return to their village or city feeling pain as if they had lost their son while he is still alive.

The situation is aggravated when the interfaith spouses have children. Mostly, children grow up according to the customs and guidelines of the mother if she has the leadership in the house. This means that they are closer to her and are more deeply affected by her, especially if they are born and raised in her country and among her people. Hence, they are raised in their mother's religion, respecting her values, concepts and traditions even if their official religion is their father's. This is often because they only carry its name and depiction. This means that we (the Muslim *Ummah*) have lost many of our youth from both the religious and national perspectives.

This category of people is less evil than those who marry foreign ladies, then stay with them in their country and among

their people in such a way that he merges with them gradually. He hardly remembers his religion, family, country and *Ummah*. As for his children, they are raised as Europeans or Americans in thought, morals, behavior and, may be, in belief as well. They may lose their identity and thus have nothing to remind them that they descended from Arabic or Islamic origins.

An important notice

In conclusion, I would like to draw attention to a matter that cannot be ignored by wise and far-sighted people. In my opinion, it is of paramount importance especially in the shade of the surrounding conditions that make the *Fatwa* eligible for change (from one situation to another):

When Islam permitted marrying from the People of the Book, it took into consideration the following two points:

1. The woman has a religion of divine origin. So, she shares the Muslim the belief in Allah, His messages, the Day of Judgment, the moral values and the spiritual models inherited by humanity from the Prophets. Of course, this is in general rather than in detail. However, this makes the distance close between her and Islam because the Muslim man acknowledges the originality of her religion as well as its pillars in general. Moreover, it perfects her religion with everything beneficial and new.

2. If the woman lives under the authority of a committed Muslim husband and under the leadership of a Muslim community abiding by the legal laws of Islam, she is supposed to be affected by this community, rather than to affect it. So, there is more hope that she will embrace Islam in belief and in

practice. However, if she does not enter Islam - and this is her right because there is no compulsion in religion - in belief and in practice, she enters it in terms of adopting its traditions and social morals. This means that she merges within the Muslim community from the behavioral perspective unless she merges within it with regard to her belief.

Thereby, there is no fear that she will affect her husband or children because the authority of the Muslim community around her is stronger and greater than any attempt on her part to affect the Muslim community.

Moreover, the strength of the husband in times gone by, his zeal for his religion, his boundless glorification of it and his keenness to raise his children according to the teachings of Islam dispossesses the woman of the power to affect the children in such a way that contradicts the teachings of Islam.

However, in our age, we should confess bravely and frankly that the man's authority over the cultured woman has weakened and the character of the woman has become strong, especially the Western woman as we have indicated previously.

As for the authority of the Muslim community, I wonder where it is! The true Muslim community that adopts Islam as a creed, *Shari`ah*, concepts, traditions, morals and a comprehensive civilization does not exist today.

If the Muslim community does not exist in its desired image, the Muslim family must remain so that it may compensate for some of the defects resulting from the absence of the perfect Muslim community.

So, if it happens that we neglect the family too and thus, it consists of a non-Muslim mother and a Muslim father, who is indifferent to the behavior of his sons and daughters, let alone that of his wife, then Islam and the Muslims will be played in a more weakened position.

Consequently, we must know that marrying non-Muslim women in our age should be prohibited in order to block the means to several aspects of harm and corruption, bearing in mind that warding off harm is given priority over obtaining any kind of benefit. It should be made permissible only in cases of dire necessity.

Now we should not forget to say that as much as those who seek excuses to marry a non-Muslim woman are concerned, there is unanimous agreement that marrying a Muslim woman is preferable for various reasons. No doubt, the spouses' congruence from the religious perspective provides them with a happy life.

Moreover, Islam is not satisfied with marrying any Muslim woman. Rather, it encourages marrying the religious Muslim woman because she is more likely to be keen to please Allah, preserve the rights of her husband, as well as his wealth and children, and more capable to keep herself away from any shameful act. In this regard, the messenger of Allah (peace be upon him) said, "*... So you should marry the religious woman (otherwise) you will be a loser.*"

Allah, the Almighty, knows best.

A Woman Embracing Islam Without Her Husband: Should They Be Separated?

Question:

It is common these days in the West that women come to embrace Islam more often than men and this is a well known phenomenon. If the woman, who wants to embrace Islam, is unmarried, there will be no problem except for her need to marry a Muslim man. The problem arises if a married woman comes to embrace Islam without her husband especially when they share a long-lived love and they may have children. Here the question arises: what should a woman do in such a case while she is keen on Islam and at the same time, she is anxious for her husband, children and home?

The opinion of Muslim scholars in such a case is that they oblige her to separate from her husband immediately after her embracing Islam or after the expiry of her *`Iddah* (waiting period) at the most. Naturally, this is difficult for a newly converted woman to do, as she sacrifices her family, taking into consideration that some women wish to embrace Islam but the obstacle of

separating from their husbands stands in the way of their conversion.

Is there any *Shar`i* (Islamic legal) solution for this complicated issue in the light of the Qur'an, the *Sunnah* and the *Maqasid* (the primary objectives) of *Shari`ah* ?

Answer:

Praise be to Allah and peace and blessings be upon our leader and model, the Messenger of Allah, his household, his Companions and those who follow his way until the Day of Judgment.

Actually, for many years, I used to issue the same *Fatwa* as those scholars mentioned by the questioner. I used to say that if a woman embraces Islam, she must be separated from her husband immediately or after the expiry of her *`Iddah* (waiting period). I made this *Fatwa* concordance with the proof that Islam has dictated; namely that no Muslim woman should remain under the matrimonial authority of an unbeliever. I used to argue that as long as she is not permitted initially to marry a non-Muslim, likewise, she is not permitted to continue her life with a disbelieving husband. Practically, this was the prevailing and the definitely known opinion for people in general and the Muslim scholars in particular.

Twenty-five years ago, I remember well that I was in America participating in a conference of Muslim Students. A similar issue had arisen where Dr. Hasan at-Turabi was present. He was of the opinion that there would be no harm if the woman who embraced Islam stayed with her disbelieving husband. Immediately, great protest and disapproval were vociferated

against him. A number of the attendant scholars of *Shari`ah*, including myself, refuted his opinion on the grounds that he contradicted the unanimous agreement of the Muslim *Ummah* .

Ibn al-Qayyim states nine sayings concerning this matter

In fact, the Muslim continues to seek knowledge from the cradle to the grave and there is no one who encompasses all knowledge. Almighty Allah calls His Prophet to say, ﴿O my Lord! Advance me in knowledge.﴾ (Taha: 114)

He also says,

﴿... of knowledge it is only a little that is communicated to you, (O men).﴾

(Al-Isra': 85)

I came to learn what was cited by *Imam* Ibn al-Qayyim concerning this important and embarrassing issue in his book, *Ahkam Ahl Adh-Dhimmah*, He (may Allah have mercy on him) cited nine sayings from well known *Imams* and scholars. According to his precious book, he mentioned the matter then he said, "Actually, the *Salaf* ⁽¹⁾ and the *Khalaf* ⁽²⁾ had different views concerning this issue."

The first opinion: The instant annulment of the marriage contract

A group of scholars said, "When a woman converts to Islam her marriage contract is annulled at once, whether she is of the

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1. *Salaf* : This term refers to the righteous predecessors including the Prophet's Companions, the *Tabi`un* , and those who followed them (*tabi`u at-tabi`in*)
 2. *Khalaf* : The descendants who came after the generation of the *Tabi`un* and those who followed them (*tabi`u at-tabi`in*).

People of the Book or otherwise and whether her husband converts to Islam after her in an instant or later. He has no authority over her except that they convert to Islam together at the same time. If he preceded her in embracing Islam, her marriage contract is abrogated at the very time of his conversion even if she converted to Islam after him in a twinkling of an eye. This is the saying of a group of the successors and a group of the *Zahiri* ⁽¹⁾ school of *Fiqh*. It was narrated by Abu Muhammad Ibn Hazm on the authority of `Umar ibn al-Khattab and Jabir ibn `Abdullah, `Abdullah ibn `Abbas, Hammad ibn Zaid, al-Hakam ibn `Uyaynah, Sa`id ibn Jubayr, `Umar ibn `Abd al-`Aziz, al-Hasan al-Basri, `Adiy ibn `Adiy, Qatadah and ash-Sha`bi (may Allah be pleased with them all).

Ibn al-Qayyim also said, "Referring this narration to `Umar ibn al-Khattab is a mistake because we will cite below that `Umar ibn al-Khattab narrated another opinion contrary to this as has been mentioned by Abu Muhammad and others."

The second opinion: The annulment of the marriage if the husband refuses to embrace Islam

Imam Abu Hanifah stated, "If one of the couple becomes a Muslim before the other's conversion, the one who is still unbeliever should be asked to embrace Islam in case he/she is in the abode of Islam. If he/she accepts (voluntarily) to embrace Islam, their marriage contract remains valid; but if he/she refuses, their separation takes effect immediately without waiting for the expiry of the *`Iddah*."

1. A school of *Fiqh* that sticks to the literal meanings of the *Shar`i* texts.

The third opinion: The annulment of the marriage contract after the expiry of the `Iddah

Imam Malik said, "If a woman becomes Muslim when her husband is an unbeliever, and this happens before the marriage has been consummated, separation takes effect immediately. But in case this happens after the marriage is consummated, if he, then, becomes a Muslim while she is still in her `Iddah, their marriage remains valid. However, if he does not become a Muslim until the expiry of her `Iddah, she has to be divorced. If it happens that a husband becomes a Muslim without his wife being a Muslim, she should be asked to embrace Islam. If she responds to this call, their marriage remains valid, but in case she refuses (to embrace Islam), their marriage contract is annulled at that moment whether it happens before the marriage has been consummated or after it.

The fourth opinion: This opinion is in contrast with the previous one

Ibn Shabrumah held an opposite point of view. He stated: "If she (the wife) becomes a Muslim before her husband, separation takes effect immediately. However, if he becomes a Muslim before her and then she becomes a Muslim within her `Iddah period, their marriage remains valid; otherwise, separation takes effect with the expiry of her `Iddah.

The fifth opinion: `Iddah is considered for the two parties

Al-Awza`i, az-Zuhari, al-Layth, *Imam* Ahmad, ash-Shafi`i and Is-haq said, "In case one of the spouses precedes the other

partner in embracing Islam, and this occurs before the marriage has been consummated, the marriage contract is annulled. If this takes place after the consummation of their marriage and the other partner comes to embrace Islam during the *`Iddah*, then their marriage contract remains valid. However, if the *`Iddah* period has expired before the other partner becomes a Muslim, the marriage contract is annulled.

The sixth opinion: Waiting for the husband's embracing Islam

Hammad ibn Salamah reported Ayyoub as-Sukhtiyani and Qatadah as having said on the authority of Muhammad ibn Sirin, on the authority of `Abdullah ibn Yazid al-Khatmi that when a wife of a Christian man came to embrace Islam, `Umar ibn al-Khattab enabled her to choose either to be separated from him or to wait (until he becomes a Muslim).

Ibn al-Qayyim said concerning this opinion, "It does not mean that she waits under his authority while he is a Christian. Rather, it means that she may wait for his Islam. If he becomes a Muslim, then she is his wife even if she waits for years." This opinion is believed to be the most correct in this matter. It is validated by the *Sunnah* and is supported by the Sheikh of Islam, Ibn Taymiyah.

The seventh opinion: He has authority over her as long as she does not leave her city.

Hammad ibn Salamah reported Qatadah as having said on the authority of Sa`id ibn al-Musayyib that `Ali ibn Abi Talib (may Allah be pleased with him) said concerning the spouses

when one of them converts to Islam, "He (the husband) has authority over her as long as she is still in her abode." In another narration, `Ali ibn Abi Talib (may Allah be pleased with him) was reported as having said, "He has more right to live with her as long as she does not leave her city."

The eighth opinion: Their marriage contract remains valid unless the ruler separates them

Ibn Abi Shaybah said that Mu`tamir ibn Sulayman narrated on the authority of Mu`mmar that az-Zuhari said, "If it happens that she becomes a Muslim while her husband refuses to enter Islam, their marriage contract remains valid unless they are separated by the order of a ruler."

The ninth opinion: She should stay with him on condition that he does not have sexual intercourse with her

Dawud ibn `Ali said, "If a wife of a *Dhimmi* converts to Islam while he does not, she should stay at his house but he is not permitted to sleep with her." Shu`bah reported Hammad ibn Abi Sulayman as having said on the authority of Ibrahim an-Nakh`i that he said concerning a *Dhimmi* woman who embraced Islam while her husband was still a *Dhimmi*, "She should stay at his house." Hammad ibn Sulayman also issued the same *Fatwa*.

Ibn al-Qayyim commented on this opinion by saying, "They want to say that the bond of marriage is still existent, meaning that he (the husband) is obligated to provide her with maintenance and lodging, however, he is not permitted to sleep

with her." The majority of Muslim scholars issued the same ruling concerning the slave woman who has a child from a *Dhimmi* person and then she becomes a Muslim.

The inquiry of Ibn al-Qayyim concerning the issue:

Ibn al-Qayyim said, "We are going to mention the shortcomings of these different opinions and what is considered to be strong, weak and what is more inclined to be correct."

As for the proponents of the first view, who are of the opinion that separation takes effect the moment that a wife becomes a Muslim, we do not know that any of the Companions issued the same ruling in any way. What has been narrated by Abu Muhammad ibn Hazm on the authority of `Umar, Jabir and Ibn `Abbas, is according to his understanding of the general narrations reported on their authority and we are going to mention them as follows:

Shu`bah said, "Abu Is-haq ash-Shaybani informed me that he heard Yazid ibn `Alqamah saying that his grandfather and grandmother were Christians. Then, his grandmother became a Muslim and thereby `Umar ibn al-Khattab separated them." There is no evidence in this narration indicating that he separated them from each other at the same moment that she embraced Islam. Perhaps, this was before the consummation of their marriage, or perhaps it was due to the expiry of her *`Iddah*. On the other hand, being entitled to decide, she may have chosen the annulment of the marriage without waiting for his conversion. It also may be based on the opinion that the marriage contract remains valid until the ruler annuls it.

Many narrations have been reported from `Umar which were thought to be contradictory, while in fact there is no contradiction among them, rather they are in agreement with the *Sunnah*. They include the above-mentioned narration and the one previously reported, where he enabled her to choose either to separate, or to wait (until he becomes a Muslim). They also include what has been narrated by Ibn Abi Shaybah from `Abbad ibn al-`Awwam from Abu Is-haq ash-Shaybani on the authority of Yazid ibn `Alqamah that `Ubadah ibn an-Nu`man at-Taghlibi married a woman from (the tribe of) Banu Tamim who had embraced Islam. At that moment, `Umar ibn al-Khattab (may Allah be pleased with him) asked him to embrace Islam, otherwise, he would separate them. He (`Ubadah) refused (to embrace Islam) so, `Umar (may Allah be pleased with him) separated them. Those scholars, who are of the opinion that the other partner is entitled to choose either conversion or separation, which takes effect immediately, base their ruling on this narration. This is in agreement with the saying of Abu Hanifah.

Ibn al-Qayyim added, "In fact, there is no contradiction regarding these versions reported on the authority of the Commander of the Believers, `Umar ibn al-Khattab. This is because marriage contracts, after the conversion of a wife, become contingent rather than binding. Thus, it is permissible for the *Imam* to separate them immediately or ask the other partner to become a Muslim. It is permissible to delay separation until the expiry of the *`Iddah* period. The wife is also permitted to wait until her husband becomes a Muslim even if she waits for years. All these rulings are permissible and there is no objection in their respect."

In Ibn al-Qayyim's understanding, marriage is of three categories. They are as follows:

- 1- Binding
- 2- Forbidden and annulled, such as the case with a husband who becomes a Muslim while his wife was not initially permissible for him to marry (e.g. an unbelieving woman).
- 3- Permissible and Conditional: This case is comes between the previous two. It does not necessitate the marriage contract to be binding or annulled absolutely. In this case, the wife is irrevocably divorced in one aspect without the other. When Abu al-`As ibn ar-Rabi` came to Madinah during the time of the truce (of al-Hudaybiyah) while he was still an atheist, his wife, Zaynab, daughter of the Messenger of Allah (peace be upon him), asked if he was permitted to stay in her house. The Prophet said, "He is your husband but he is not permitted to sleep with you."

Marriage in this period cannot be classified as annulled or binding in every respect. Therefore, `Umar ibn al-Khattab (may Allah be pleased with him) once enabled a woman to choose (either to be separated from her disbelieving husband or to wait until he becomes a Muslim). In a second case, he immediately separated a couple. In a third case, he asked the other partner to embrace Islam but he (the husband) refused and thus he separated them. However, the Messenger of Allah (peace be upon him) never separated a couple when any of them became a Muslim without the other.

Malik said that Ibn Shihab narrated, "There was about one month between the conversion of Safwan ibn Umayyah (to

Islam) and his wife's, daughter of ibn al-Mughirah. She embraced Islam on the day of the Conquest (of Makkah) while Safwan remained an atheist until he witnessed (the battles of) Hunayn and at-Ta'if. At that time, he became a Muslim. The Prophet (peace be upon him) had not separated them and thus the wife stayed with him according to the same marriage contract."

Ibn `Abd al-Barr said, "The acclamation of this *hadith* is more powerful than its chain of transmission."

Az-Zuhari said, "Umm Hakim embraced Islam on the day of the Conquest (of Makkah) while her husband, `Ikrimah, escaped to Yemen. She set out until she reached him in Yemen. She called him to Islam and he responded to her and became a Muslim. He then returned and gave a pledge of allegiance to the Prophet (peace be upon him). Thus, their marriage remained valid."

Ibn Shabrumah said that in the lifetime of the Prophet (peace be upon him) it happened that some husbands converted before their wives and vice versa. Thus, if he/she became a Muslim before the expiry of the wife's *`Iddah* (period), their marriage contract would remain valid. However, if the conversion happened after the expiry of the *`Iddah*, the marriage contract would be annulled.

It was narrated that Abu Sufyan embraced Islam, in the year of the Conquest of Makkah, before the Prophet (peace be upon him) entered Makkah, while his wife Hind, did not embrace Islam until the Prophet (peace be upon him) conquered the city. However, their marriage remained valid.

Also, it was reported that Abu Sufyan ibn al-Harith and `Abdullah ibn 'Umayyah set out and met the Prophet (peace be upon him) in the year of the Conquest of Makkah at al-Abwa' where they declared their conversion to Islam prior to their wives' conversion.

It was proven that the Prophet (peace be upon him) brought his daughter Zaynab, back to Abu al-`As by the same marriage contract after six years. Abu Dawud narrated that Ibn `Abbas stated that the Messenger of Allah (peace be upon him) made Zaynab go back to Abu al-`As according to the first contract of marriage. In another narration it was reported that this was after six years. Another narration stated that this was after two years.

Sheikh al-Islam, Ibn Taymiyah, maintained that this narration has been proven authentic according to the scholars of *Hadith*. As for those who narrated that he (the Prophet) made a new contract of marriage between them, their narration is weak.

Ibn Shabrumah added that sometimes a wife becomes a Muslim, and then, is followed by her husband while their marriage remains valid. Such was the case with Umm al-Fadl, the wife of al-`Abbas ibn `Abd al-Muttalib who embraced Islam some time before al-`Abbas. `Abdullah ibn `Abbas (may Allah be pleased with him) was reported as having said, "I and my mother were of those excused by Almighty Allah according to His saying, ﴿ *Except those who are (really) weak and oppressed-men, women, and children...* ﴾ (An-Nisa': 98)

When the Prophet (peace be upon him) conquered Makkah, the wives of at-Tulaqa' (those people who were released by Allah's Messenger on the day of the Conquest of Makkah) became Muslims while a group of those people embraced Islam

about two or three months later, such as Safwan ibn Umayyah, `Ikrimah ibn Abi Jahl and others. However, the Prophet (peace be upon him) did not mention any difference between what was before the expiry of the `Iddah and what was after. `Ali ibn Abi Talib (may Allah be pleased with him) pronounced a *Fatwa* that such women should be returned to their husbands irrespective of the long period between the conversion of both. Further, it was reported that `Ikrimah ibn Abi Jahl came to the Prophet (peace be upon him) in Madinah about three months after the conversion of his wife, during which the `Iddah period might have expired⁽¹⁾. However, the Prophet (peace be upon him) permitted him to continue his marriage without asking his wife regarding the expiry of her `Iddah. It was not proven that the Prophet (peace be upon him) asked even one woman concerning the expiry of her `Iddah, despite the fact that there were many who embraced Islam after a period in which their `Iddah might have expired. It was also reported that Safwan ibn Umayyah fought beside the Prophet (peace be upon him) in the Battles of Hunayn and at-Ta'if while he was still unbeliever until he (the Prophet) divided up the spoils of Hunayn following the Conquest of Makkah about two months later. In other words, Makkah was conquered on 20th Ramadan while the spoils of Hunayn were divided in the month of Dhul-Qi`dah, which means that it is possible that the `Iddah may have expired during such a period.

1. That was after he (the Prophet) had ended the siege of at-Ta'if and divided the spoils of Hunayn in Dhul-Qi`dah, while the Conquest of Makkah had been in Ramadan. That period was about three months, during which the `Iddah might have expired.

Ibn al-Qayyim added: "Generally, had the Prophet (peace be upon him) associated returning the woman to her husband within the expiry of her *`Iddah*, he would have illustrated this before, considering the fact that they were in dire need to clarify such matters during this stage. All this, in addition to the case of Zaynab, proves that if a woman becomes a Muslim and her husband refuses to embrace Islam, she has the choice either to wait for his conversion or to be divorced immediately. If she chose to wait for his conversion and he, later, embraced Islam, their marriage would remain valid. In the lifetime of the Prophet (peace be upon him), women in such cases used to do this, such as the Prophet's daughter Zaynab and others. While waiting, she should not let him sleep with her, as he has no authority, or maintenance, or oath over her. The husband, in this case, does not have matrimonial authority over her in any respect. However, if he embraced Islam he is in no need to initiate a marriage contract once again in which a guardian, witness, a dowry and a contract are required. Rather, his conversion represents his acceptance of the marriage and her waiting represents her consent.

The contract of marriage during this period is not binding. No restriction or harm shall be inflicted on the wife due to it. There is no proof that this is inconsistent with the rules of *Shari`ah*. On the other hand, if the husband became a Muslim and his disbelieving wife refused to embrace Islam, they should be separated in view of the fact that keeping her under his authority would harm her. In this regard, Almighty Allah says,

﴿... But hold not to ties (marriage contract) of unbelieving women...﴾

(Al-Mumtahanah: 10)

Accordingly, men were not allowed to keep disbelieving women under their authority. In other words, if the husband became a Muslim, his disbelieving wife should be asked to embrace Islam, and if she did not, they should be separated.⁽¹⁾

Proofs of those who are of the opinion that they should be separated immediately

The eminent Muslim scholar, Ibn al-Qayyim mentioned some proofs of those scholars who are of the opinion that if a wife became a Muslim before her husband they should be separated immediately. They took as proof Almighty Allah's saying,

﴿O ye who believe! When there come to you believing women refugees, examine (and test) them: Allah 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 Allah: He judges (with justice) between you. And Allah is Full of Knowledge and Wisdom.﴾

(Al-Mumtahanah: 10)

1. See Ibn al-Qayyim, *Ahkam Ahl adh-Dhimmah*, verified by Dr. Subhi as-Salih, vol. 1, pp. 318 - 326.

They added: This is Allah's ruling that no one is permitted to violate. According to this verse, Allah made it unlawful for the believing women to be returned to their disbelieving husbands. Allah made it permissible for those women to get married after being separated from their disbelieving husbands without waiting for the expiry of their *`Iddah*. If she is waiting under the matrimonial authority of the husband that he may become a Muslim during or after the *`Iddah*, she is not permitted to marry especially when the *`Iddah* of the immigrant woman expires after one menstruation and this is clear in ending the bond of marriage with immigration.

Almighty Allah's saying, "... *But hold not to ties (marriage contract) of unbelieving women...*" is a clear proof that a Muslim is commanded not to hold the ties (of marriage) of a non-Muslim woman. Thus, it is correct that the marriage bond of a disbelieving woman is revoked instantly when the husband embraces Islam.

Finally, Almighty Allah's saying, "... *They are not lawful (wives) for the unbelievers, nor are the (unbelievers) lawful (husbands) for them...*" is an absolute proof of forbidding their relation. Thus, there are four proofs in this verse supporting our opinion.

The response of other scholars to them

Those who opposed this opinion said, "We welcome the Book of Allah and we pay full obedience to the saying of our Lord, but you misunderstood the verse as it contains nothing that requires separation between the couple if one of them preceded the other in embracing Islam. It was not proven that any one of

the Companions of the Messenger of Allah (peace be upon him) or the successors understood this verse in the way you did and it does not prove your ruling at all. As for Almighty Allah's saying "... *then send them not back to the unbelievers ...*" , it proves the prohibition of sending those women who migrate in the way of Allah and His Messenger back to the unbelievers. So, nothing necessitates that she should not wait until her husband becomes a Muslim who submits to Allah and adheres to His Messenger and then she return to him according to the same marriage contract. Also, Almighty Allah's saying "... *They are not lawful (wives) for the unbelievers, nor are the (unbelievers) lawful (husbands) for them...*" proves the original prohibition of mutual marriage between Muslims and unbelievers; that neither of them is permitted to marry the other. It does not indicate that either of the marriage partners should not wait until the other partner's conversion, whereby their marriage contract would remain valid.

As for Almighty Allah's saying, ﴿...*And there will be no blame on you if ye marry them on payment of their dower to them...*﴾ it is a message to Muslims and a way of eliminating blame from them to marry immigrant women if they forsook their husbands and finalized their marriage. Of course this occurs after the expiry of the woman's *`Iddah* and after she chooses for herself. There is no doubt that when the woman's *`Iddah* expires she is asked to choose either to marry whomsoever she chooses (whenever she likes), or to wait until her husband becomes a Muslim and by then she returns to him according to the first marriage contract (the opinion that we support) or according to a new contract (the saying of those who hold that the marriage contract is annulled the moment the *`Iddah* is over). They say that the woman in such a case must wait for her husband's conversion, unable to

marry after the expiry of the *`Iddah* period, whether she wishes to or not. This is in opposition to the proof stated in the verse. Rather, she has the right to choose either to marry, if she likes, or to wait (for the conversion of her husband).

As for Almighty Allah's saying, ﴿... *But hold not to ties (marriage contract) of unbelieving women...*﴾, it includes the prohibition of holding a disbelieving woman under a Muslim's authority while she holds tenaciously to her disbelief. It does not include the prohibition of the husband's waiting for her conversion and then holding her under his custody.

If it is said that he is still holding her under his authority while waiting for her conversion, we reply in the negative. Rather, she has the right to be separated from him and marry another man after the expiry of her *`Iddah*. Had he held matrimonial authority over her she could not have done this.

Also, the verse indicates that if it happens that the husband becomes a Muslim while his wife does not embrace Islam he should be separated from her. If she embraces Islam afterwards he will have the right to hold her under his matrimonial authority (according to the same marriage contract). In addition, the command of prohibiting believers from marrying unbelieving women is not indicated in this verse. Rather, it is proven in Almighty Allah's saying,

﴿*Don't marry unbelieving women (idolaters) until they believe...*﴾

(Al-Baqarah: 221)

The aforementioned verse shows Allah's ruling concerning the believers and the unbelievers due to women who apostatize

Islam and return to the unbelievers and those who embrace Islam and immigrate to the Muslims. For, among the conditions of the Truce of al-Hudaybiyah was: Whoever wants to enter into the religion of the Messenger of Allah (peace be upon him) and his party, he/she is permitted and whoever wants to enter into the religion of Quraysh and their party, he/she is permitted. Then, some women converted to Islam and others apostatized and chose atheism. Thus, Allah issued the best ruling between the two parties in this verse. He prohibited the Muslims from holding matrimonial authority over any woman who chooses atheism because this hinders her from getting married to whom she likes while she is under the matrimonial authority of a Muslim. The Truce stipulated that in case any of the Muslims go to the unbelievers, they will not send him/her back and in case any of the unbelievers go to the Muslims (without his guardian's permission) they will send him/her back to them. Thus, if an unbelieving woman came to the Muslims, her marriage bond is annulled and any Muslim man is permitted to marry her. In the case where a Muslim woman went to the unbelievers while under the authority of her Muslim husband, this would cause her harm because in such a case she cannot get married once again as long as she remains under his authority. And this would do harm to him if she married another person while she is still under his matrimonial authority. Accordingly, justice requires immediate separation between the Muslim and the apostate or the unbelieving woman in order that she be able to marry once again. Also, this ruling applies to the Muslim woman in order that she may be able to marry if she immigrated. This is the truth of what that verse indicates. It does not stipulate that, should a woman become a Muslim, separation takes effect at the moment

of her conversion. Also, it does not stipulate that in case her husband becomes a Muslim he would have no authority over her. Thus, the Qur'anic texts should be given their due rights, as with the *Sunnah*. There is no contradiction between this verse and the *Sunnah* in any respect. They all come from the same source and some of these texts affirm the others.

The Sheikh of Islam said, "As for the saying that separation takes effect at the moment of the conversion of anyone of the unbelieving spouses before or after the consummation of the marriage, it is an extremely weak opinion because this is in contradiction with the well known and the *Mutawatir* ⁽¹⁾ of the Islamic *Shari`ah*. It is known that some of those who converted to Islam preceded some others in pronouncing the testimony of faith. Sometimes, the husband became a Muslim and then his wife followed him, such as the case of many women of Quraysh. At other times the wife converted before her husband. It was narrated that Umm Sulaym, the wife of Abu Talhah, became a Muslim before him. No one should say: this happened before the prohibition of marrying the unbelievers, because of two reasons. First: if we assume that this claim is correct, it requires proof. Second: people embraced Islam and entered into Allah's religion in crowds after the revelation of the verse that prohibits marrying the unbelieving women. This was also after the revelation of the verse that prohibits holding the ties (marriage contract) of the unbelieving women. Because at-Tulaqa' of Makkah who embraced Islam were many and so were the people

1. An undoubted tradition (continuous tradition) is one that is handed down by many distinct chains of narrators, and has always been accepted as authentic and genuine, no doubt ever having been raised against it.

of (the city of) at-Ta'if whose conversion was after the Prophet (peace be upon him) besieged them and set a catapult against them. He then, divided the spoils of Hunayn at al-Ju`ranah. Next, he performed the *`Umrah* ⁽¹⁾ of Ju`ranah. Afterwards, he (peace be upon him) marched back with the Muslims to Madinah. Then, a delegation of at-Ta'if came to Madinah and declared their conversion to Islam while their wives had not yet become Muslims. They returned home and their wives had entered into Islam by that time. Whoever says: the conversion of any of the marriage partners before the other necessitates immediate separation between them, either before the consummation of marriage or after it, is totally and clearly wrong. For the Prophet (peace be upon him) never asked any of those who embraced Islam: have you consummated the marriage with your wife or not? Rather, all those who entered into Islam after which their wives followed them, their marriage contract remained valid with no need to renew it. Also, many delegations of the Arabs came to the Prophet (peace be upon him), declared their conversion to Islam and then returned to their people. Their wives declared their conversion at their hands. In addition, the Prophet (peace be upon him) dispatched `Ali, Mu`adh and Abu Musa to Yemen. A great number of men and women, Almighty Allah alone can count them, embraced Islam at their hands. It was commonly known that some men declared their conversion before their wives, while some women became Muslims before their husbands. However, they were not reported as having said to any: you and your wife should pronounce the testimony of faith at the same moment so that your marriage contract may not

1. A lesser pilgrimage.

be annulled. They never distinguished between those who consummated the marriage with their wives and those who did not, and they never stated that separation takes effect after three menstrual periods (unless the other marriage partner becomes a Muslim) otherwise, the annulment of the marriage is obligatory. Rather, `Ali ibn Abi Talib (may Allah be pleased with him) witnessed the ruling concerning such cases with the Messenger of Allah (peace be upon him) and in the latter's absence he once said in a similar issue: "He (the husband) has more right to return to her as long as she does not leave her country." In another narration, he said, "as long as she does not depart from her abode of immigration." He never ruled that separation takes effect instantly nor did he stipulate that it takes effect after three menstrual periods. The case of Zaynab, the daughter of the Prophet, proves our claim.

The *Sunnah* of the Prophet (peace be upon him) was that he used to reunite the spouses in case one of them preceded the other in embracing Islam and agreed to continue the marriage. He (the Prophet) never separated between them nor did he stipulate that they were in need of a new marriage contract. In case a woman precedes her husband in embracing Islam she can wait until his conversion. So, if he became a Muslim at any time, she remains his wife. And in case a man precedes his wife in entering Islam, he is not permitted to keep her under his matrimonial authority nor is he permitted to compel her to accept Islam. In other words, he is not permitted to oppress her in religion or in marriage. Rather, she has the right to choose whether to wait for his conversion, or to marry another person after the expiry of her *`Iddah* period. The *`Iddah* is necessary in

such cases to identify the fatherhood of any offspring. If any of the marriage partners becomes a Muslim during or after the *`Iddah* period the marriage remains valid unless the husband chooses divorce. `Umar ibn al-Khattab (may Allah be pleased with him) for instance, divorced his two unbelieving wives when Allah revealed His saying, ﴿... *But hold not to ties (marriage contract) of unbelieving women...*﴾. Besides, if the woman chooses to get married after the expiry of her *`Iddah*, she is permitted to do so.

Also, the instant separation between the couple provokes a sense of repulsion against Islam. If the wife or the husband comes to know that marriage is annulled the moment she/he becomes a Muslim, that she/he will be separated from her/his beloved, he/she will be disinclined to convert. Also, when the husband knows that he will have no authority over his wife except with her consent, the agreement of her guardian and a new dowry, he will be disinclined to enter into Islam. If we take the other point of view, the couple learns that in case the other partner becomes a Muslim the marriage remains valid unless the husband chooses separation. No doubt, this will attract them to accept, love and embrace Islam.

Also, retaining the permissibility of the contract of marriage, rather than making it binding, without enabling the husband to sleep with the woman is a source of pure good and a benefit for both spouses, rather than evil. For evil is initiated with keeping the Muslim woman under the authority of the unbelieving husband. According to the Islamic perspective, this is not permissible, as is the case of his initiating marriage to a Muslim girl, even if there is no sexual intercourse. Thus, retaining the

marriage as valid has a benefit for the couple on both the worldly and the spiritual levels. *Shari`ah* does not prohibit matters such as these."

Review of Imam Ibn al-Qayyim's approach

What Ibn al-Qayyim mentioned was a beginning in this case that we had previously considered to be a unanimously agreed upon issue. It was a theoretical unanimity (*Ijma`*) on the part of the Islamic Schools of *Fiqh* associated with constant application on the part of the Muslim *Ummah*.

Then, I came to know that this *Ijma`* is correct in its prohibition of giving a Muslim woman in marriage to a non-Muslim initially. This is absolutely *Haram* and no Muslim jurist has issued a *Fatwa* permitting this. Thus, it is a theoretical and practical *Ijma`*.

The disagreement among the Muslim jurists that was mentioned by Ibn al-Qayyim belongs to the case of a non-Muslim woman who is married to an unbelieving husband originally and it happens that Allah guides her to embrace Islam and she becomes a Muslim while her husband refuses to accept Islam. There is disagreement among Muslim jurists concerning this issue about which *Imam* Ibn al-Qayyim mentioned nine sayings.

In fact, this urged me to refer to the original references from which Ibn al-Qayyim derived these opinions. These original references and classifications are compiled sayings of the Companions (may Allah be pleased with them all), their successors and their disciples of the righteous predecessors during the best centuries.

The Messenger of Allah (peace be upon him) said concerning those people,

"The people of my generation are the best, then those who follow them, and then those who follow the latter. After that there will come some people whose witness will go ahead of their oaths, and their oaths will go ahead of their witness."

Below are some of these references:

1. `Abd ar-Raziq as-San`ani, *Musannaf*.
2. Ibn Abi Shaybah, *Musannaf*.
3. Abu Ja`far at-Tahawi, *Compilations*.
4. Al-Bayhaqi, *As-Sunan Al-Kubra*.

A Return to the fatwas of the companions and the successors who do not belong to the schools of *Fiqh*

In his *Musannaf*, Ibn Abi Shaybah narrated on the authority of `Ali ibn Abi Talib (may Allah be pleased with him) that he said concerning the wife of a Jew or a Christian when she becomes a Muslim, "He has more right to go back to her as he has a pledge of safety."⁽¹⁾

In another narration he said, "He has more right to go back to her as long as she is still in the abode of Hegira (Immigration)."⁽²⁾

1. Ibn Abi Shaybah, *Musannaf*, (18301), Verified by Mukhtar an-Nadawi, ad-Dar as-Salafiyyah, India.

2. *Ibid*, (18302).

ʿAbd ar-Raziq narrated that he said, "He has more right to go back to her unless she left her country."⁽¹⁾

He also narrated on the authority of al-Hakam that Hani' ibn Qabisah ash-Shaybani, who had been a Christian, had four wives. All of them embraced Islam and thus ʿUmar ibn al-Khattab (may Allah be pleased with him) wrote to him that they should stay in his house (if they want, until he becomes a Muslim).⁽²⁾

Accordingly, it becomes clear that ʿUmar (may Allah be pleased with him) made it permissible for the woman to stay at her husband's house in such cases.

He also narrated on the authority of ʿAbdullah ibn Yazid al-Khatmi that ʿUmar wrote: "They are to be asked to choose (either to be separated from him or to wait until he becomes a Muslim)."⁽³⁾

This has been narrated by ʿAbd Ar-Razzaq on the authority of al-Khatmi that he said, "It happened that a woman of the people of Hirah embraced Islam while her husband refused to enter into Islam. ʿUmar ibn al-Khattab wrote regarding her issue that she is to be asked to choose either to be separated from him if she likes or to stay at his house (without permitting him to sleep with her until he becomes a Muslim)."⁽⁴⁾ It means that he authorized the woman to choose either to stay at her husband's house if she wants or to be separated from him.

1. ʿAbd ar-Raziq, *Musannaf*, narration no. 10084, verified by Habib ar-Rahman al-Aʿzhami.

2. Ibn Abi Shaybah, *Musannaf*, (18306).

3. *Ibid* , (18303).

4. ʿAbd ar-Raziq, *Musannaf*, narration no. 10083.

Ibn Abi Shaybah was reported as having said on the authority of al-Hasan that a Christian woman became a Muslim while she had been under the matrimonial authority of a Christian man. Some Muslims wanted to separate them, so they referred the matter to `Umar. Accordingly, he (`Umar) asked her to choose (either to stay at her husband's house if she wants or to be separated from him).⁽¹⁾

Ibn Abi Shaybah narrated also on the authority of Ibrahim an-Nakh`i that he said, "Their marriage remains valid."⁽²⁾

`Abd ar-Raziq narrated him (Ibn Abi Shaybah) as having said, "He has more right to return to her unless she leaves her abode of *Hijrah*."⁽³⁾ This is the same saying of `Ali ibn Abi Talib (may Allah be pleased with him).

Ash-Sha`bi was narrated as having said, "He has more right to return to her as long as she is still in her country."⁽⁴⁾

Actually, the saying of `Ali (may Allah be pleased with him) does not contradict this saying that the Jewish or Christian husband has more right to return to his wife in case she becomes a Muslim unless he permits her to leave her country or the abode of *Hijrah*. In another narration, it was added, "Because he has a pledge of safety."

The saying of `Ali has been confirmed by the narrations of ash-Sha`bi, Ibrahim and the saying of `Umar in more than one narration that the woman stays at her husband's house or is

1. Ibn Abi Shaybah, *Musannaf*, (18307).

3. *Ibid*, (18305).

3. `Abd ar-Raziq, *Musannaf*, narration no. 10085.

4. Ibn Abi Shaybah, *Musannaf*, 18304.

asked to choose either to wait until he may embrace Islam or to be separated from him.

Nothing contradicts this saying except a narration reported on the authority of `Umar concerning the case of a man from Taghlib who was asked to enter Islam but he refused. Thus, he (^Umar) separated him and his wife. In some other narrations, it was reported that he said to `Umar, "I only refused to embrace this (religion) for fear that the Arabs might say: he only became a Muslim for the sake of keeping a woman under his matrimonial authority. Accordingly, `Umar separated them."⁽¹⁾

This ruling of `Umar may give us an indication that the *Imam* or the Judge has vast discretion in such cases. He can issue a ruling that the woman should stay at her husband's house or ask her to choose or separate them in case he realizes that this would be in their interest, especially if the case raised to him is similar to this issue.

It also supports what has been mentioned by Ibn al-Qayyim from the saying of Ibn Shihab az-Zuhari that their marriage remains valid unless they are separated by the order of a ruler.

Reconsidering ibn al-Qayyim's point of view

Although the verifier Ibn al-Qayyim (may Allah have mercy on him) promised to comment on these nine sayings or scholastic views that he mentioned, he did not fulfill his promise and did not analyze them all. Rather, he focused on the sixth opinion that he and his teacher Sheikh of Islam Ibn Taymiyah supported. This opinion states, "A woman should stay in the

1. At-Tahawi, *Sharh Ma`ani Al-Athar*.

house of her husband and wait for his becoming a Muslim without permitting him to sleep with her even if she stays with him for years." He elaborated and supported this opinion as if he forgot the last three sayings.

The choice of Ibn al-Qayyim and his teacher has sound reasons and proofs. However, there arises a practical problem, that is, the woman stays with her husband waiting for his conversion even if she waits for years without permitting him to sleep with her. Practically, the problem is: can both of them remain patient in this condition, seeing as they live under one roof for years and no one should come close (sleep with) the other especially if they are young? I wish that the eminent scholar Ibn al-Qayyim could review the opinion of *Imam `Ali* (may Allah honor him), concerning the woman who entered into Islam before her husband. He states: "He has more right to return to her as long as she is still in her abode of *Hijrah*." Another narration reads, "He has more right to return to her unless she sets out of her country." `Ali (may Allah be pleased with him) had been dispatched by the Messenger of Allah (peace be upon him) during his lifetime and he assumed Caliphate after (the murder of) `Uthman. He must have witnessed this case himself. Thus, his ruling concerning this issue has the sense of *Fatwa* and the sense of judgment.

I notice that he (may Allah be pleased with him) based his ruling on the following Qur'anic verse that reads,

﴿O ye who believe! When there come to you believing women refugees, examine (and test) them: Allah 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... ﴿*

(Al-Mumtahanah: 10)

According to this verse, the believers are demanded, if the believing women come to them as refugees and in case they come to know the truthfulness of their faith, not to send them back to the unbelievers and thus make them vulnerable to *Fitnah* in religion. However, if she prefers to stay at her husband's house and does not migrate to the abode of Islam, she is still his wife. It seems as if *Imam* `Ali (may Allah honor him) based his ruling on this concept.

This is a sound opinion from my point of view, which is given preference by the need of the newly-converted Muslim women who stay with their husbands in the abode of non-Muslims to stay with them, especially if they expect their conversion to Islam and had children from them and feared to be scattered and lost in case they are separated.

I would like to cite here that the case that Ibn al-Qayyim and his teacher Ibn Taymiyah narrated from `Umar on which they based their ruling, seems to be inconsistent with them. This is because `Abdullah ibn Yazid al-Khatmi reported that a wife of a Christian man came to embrace Islam and then `Umar ibn al-Khattab (may Allah be pleased with him) enabled her to choose either to be separated from him or to wait (until he becomes a Muslim).

According to this narration, we understand that he permitted her to wait until he may become a Muslim. The literal meaning of this narration seems to make it permissible for her to have sexual intercourse with him because this is the prerequisite of

staying with the husband. However, *Imam* Ibn al-Qayyim (may Allah have mercy on him) interpreted this saying literally: "It does not mean that she stays under his full matrimonial authority while he is a Christian. Rather, she should wait until he may convert to Islam." Thus, if a *Mujtahid* took the literal meaning of the saying of `Umar, there is no blame on him.

This narration has been supported by other narrations reported on the authority of `Umar (may Allah be pleased with him). Some of them permit the woman to stay with her husband while other narrations enable her to choose as in the narration of al-Khatmi.

This is ascertained by what Ibn al-Qayyim reported on the authority of az-Zuhari that he said, "If it happens that she becomes a Muslim while her husband refuses to enter into Islam, their marriage contract remains valid unless they are separated by the order of a ruler." This is an eighth opinion.

Indeed, there is great facilitation specified for the newly converted Muslim women. However, it becomes unbearable for the people of knowledge because it contradicts what they have become familiar with. However, it is definitely established that we can excuse in continuation what we cannot in initiation. This is a well-established judicial rule that has a lot of practical branches. It makes a distinction between initiation and continuation where we can pardon in continuation what we cannot in initiation.

In other words, we are originally prohibited to marry a Muslim woman to a non-Muslim. Almighty Allah says, ﴿ *Don't marry unbelieving women (idolaters) until they believe: a slave*

woman who believes is better than an unbelieving woman even though she allure you. Nor marry (your girls) to unbelievers until they believe: a man slave who believes is better than an unbeliever even though he allure you...﴾ (Al-Baqarah: 221)

Accordingly, it is legally prohibited to marry a Muslim girl to a non-Muslim initially. However, in our case we do not initiate her marriage, rather, we found her in the state of marriage before she enters into our religion and is being ruled by the laws of our *Shari`ah*. Hence, matters in continuation are different from those of initiation.

Three considerable opinions

Thus, we have three considerable opinions on which people who give *Fatwa* can base their ruling for the treatment of this complex issue that may stand as an obstacle in the way of many women from entering into the fold of Islam.

The first opinion is that of *Imam `Ali* (may Allah be pleased with him) who said: "Her husband has more right to return to her unless she leaves her country." In our case, we note that the woman remains in her country and does not leave it for the abode of Islam or any other abode. This saying of `Ali is well established and reported directly from him. There was no contradiction in it. Moreover, ash-Sha`bi and Ibrahim of the *Tabi`i Imam*s agreed with him.

The second opinion is attributed to the Commander of the Believers `Umar ibn al-Khattab (may Allah be pleased with him). In some cases he allowed some women who became Muslims to remain in their non-Muslim husbands' houses (until they may convert to Islam) or enabled them to choose (either to

wait for their conversion or to be separated from them). Many narrators transmitted this saying from him that is contradicted by only one narration, which has its special circumstance. Therefore, we have freedom either to favor the many narrations or to say that the *Imam* or the Judge has vast discretion in either allowing the continuation of the marital life (without permitting the non-Muslim husband to sleep with her) or to enable the woman to choose or to separate from them according to what seems appropriate for the interest of the couple. No doubt, this may differ from one case to another.

The third opinion is that of az-Zuhari who is of the opinion that their marriage remains valid unless they were separated by the order of a ruler, i.e. unless a judicial verdict was issued separating them.

The permissibility of issuing Fatwa based on the sayings of the Companions and the Tabi`un⁽¹⁾

Some jurists, in the ages in which fanaticism to schools¹ of *Fiqh* and imitation prevailed, argued that a scholar is not permitted to issue *Fatwa*s based on sayings of the Rightly-Guided Caliphs such as `Umar ibn al-Khattab and `Ali or other well versed Companions such as Ibn Mas`ud, Ibn `Umar, Ibn `Abbas and others (may Allah be pleased with them all). They argued that the sayings of the Companions were general rather than restricted and abridged rather than elaborate. So, they maintained that they are not to be regarded as a source of *Fatwa*; however, most of their *Imam* s' *Fatwa* s were general and abridged.

1. *Tabi`un* : The successors of the Companions of Prophet Muhammad (pbuh).

In his book, *I'lam Al-Muwaqqi'in*, Ibn al-Qayyim originated and verified the legality of issuing *Fatwa* according to sayings of the Companions and the *Tabi'un*. He (may Allah have mercy on him) stated, "To issue *Fatwa* on the basis of sayings of the Companions and the *Tabi'un*, is better than to follow those of the later generations. The more you approach the age of the Prophet (peace be upon him), the more you find the correct *Fatwa*. Hence, *Fatwa*s of the Companions are more applicable than those of their successors and the latter *Fatwa*s are more applicable than those of their successors and so forth. This rule applies to the whole generation rather than to certain individuals. So, the well-versed scholars of the righteous predecessors are better than the well-versed scholars of the latter ages. Consequently, the same rule may be issued concerning their *Fatwa*s, for the discrepancy between them in knowledge is the same as the discrepancy between them in religion and superiority. I think that the Mufti and the ruler will have no excuse before Allah when they are asked why they issued *Fatwa*s according to so and so of those, who imitated their *Imam*s and abandoned the *Fatwa* of al-Bukhari, Is-haq ibn Rahawayh, `Ali ibn al-Madini, Muhammad ibn Nasr al-Maruzi and the like. Also, he may ignore the sayings of Ibn al-Mubarak, al-Awza'i, Sufyan ibn `Uiaynah, Hammad ibn Zayd, Hammad ibn Salamah and the like. Moreover, he may not pay attention to the sayings of Ibn Abi Dhu'ayb, az-Zuhari, al-Layth ibn Sa`d and the like. Also, he may ignore the sayings of Sa`id ibn al-Musayyib, al-Hasan, al-Qasim, Salim, `Ata', Tawus, Jabir ibn Zayd, Shurayh, Abu Wa'il, Ja`far ibn Muhammad and the like. Rather, he may prefer sayings of the latter generation people of *Fatwa* to *Fatwa*s of Abu Bakr, `Umar, `Uthman, `Ali, Ibn Mas`ud,

Ubayy ibn Ka`b, Abu ad-Darda', Zayd ibn Thabit, `Abdullah ibn `Abbas, `Abdullah ibn `Umar, `Abdullah ibn az-Zubayr, `Ubadah ibn as-Samit, Abu Musa al-Ash`ari and the like. He will not find an excuse justifying his equating *Fatwa*s of the latter generation and those people. So, what will the matter be if he preferred *Fatwa*s of the latter generation to those people? What will be the case if he made it binding to follow their verdict concerning a certain issue and ignore the sayings of the Companions? What will be the case if he moreover, deemed it permissible to punish whoever contradicts his ruling based on the latter generation and accused him of innovation in religion, going astray, contradicting the people of knowledge and plotting against Islam? Indeed, he applied the well-known proverb that says, "She hastily accused me of her defects and rushed away." For he named the Prophet's heirs after his name, dressed them in his garments, and attributed his defects to them. Many of those loudly call the entire nation to follow those whom they follow rather than Abu Bakr, `Umar `Uthman, and `Ali and the other Companions. Those who believe in such verdicts and lead their lives accordingly, Allah may let them in their way and give them on the Day of Resurrection their right. However, we believe in the opposite."⁽¹⁾

Finally, I would like to refer to the deep and prolonged study submitted by the eminent verifier Sheikh `Abdullah al-Judi` to the Jordanian Council for *Fatwa* and Research. In the concerned study, he reached the same ruling as mine. He outlined his research in the following points:

1. See *T'lam Al-Muwaqqi'in* , vol. 4, pp. 95-96.

1. There is no conclusive textual proof concerning this issue.
2. There is no unanimous agreement among the Muslim scholars concerning this issue.
3. The marriage contracts existing before the conversion of any of the marriage partners remains valid after his/her conversion to Islam. The marriage contract cannot be annulled unless there is certainty. The difference in religion does not vitiate the marriage contract with certainty because there is no textual proof supporting the annulment and there is difference among the Muslim scholars regarding this issue.
4. Textual proofs from the Qur'an and the Sunnah have indicated that the continuation of the marriage in spite of the incidental difference in religion between the marriage partners after marriage does not vilify the origin of religion and the relation between them is not rendered invalid.
5. Invalidating the marital relation between the couple because of the conversion of any one of them to Islam does not take effect immediately.
6. Although there were many people who entered into Islam in the lifetime of the Prophet (peace be upon him), he was never reported as having separated any couple because of the conversion of either of the marriage partners without the other or preceding the other. Also, he was not reported as having commanded the separation. Rather, he was reported as having commanded the contrary as in the case of his daughter Zaynab who stayed under the matrimonial authority of her husband Abu al-`As until he embraced Islam before the Conquest of Makkah, following the revelation of the

verse of al-Mumtahanah. Prior to his conversion, she had only immigrated to Madinah after the great Battle of Badr and abandoned him at Makkah and her immigration did not invalidate the marriage contract between them.

7. Relying on the verse of al-Mumtahanah as a base for the invalidation of the marriage contract in case of difference in religion is not correct. Rather, the verse discusses stopping the relation between the Muslim wife and the husband involved in fighting against her religion. Further, it discusses untying the relation between the Muslim husband and his wife involved in fighting against his religion.
8. The verse of al-Mumtahanah has raised the blame concerning marrying a believing immigrant woman if she had a disbelieving husband who is involved in fighting against her religion. However, it does not oblige her to be separated from her disbelieving husband as in the case of Zaynab. Accordingly, this indicates that the marriage contract in case of the disbelieving husband turns from the case of binding into the case of permissibility.
9. It also made it impermissible for the Muslim husband to hold under his authority a disbelieving wife who does not emigrate to him from the abode of disbelief into the abode of Islam or the one who flees as an apostate to the unbelievers involved in fighting against Islam. In fact, this is for fear of the fact that the marriage relationship may arouse inclination towards the unbelievers as in the case of Hatib ibn Abi Balta`ah who wrote to the unbelievers informing them of the march of the Muslim army against them because of his relatives at Makkah. It is also because of the harm inflicted

upon her in the case of leaving her hanging without taking a husband.

10. If one of the marriage partners became a Muslim and the disbelieving partner was not involved in fighting against the Muslims, they are permitted to wait until the conversion of the other partner without being separated immediately as soon as any of them became a Muslim. Practically, this is authenticated in the case of those who embraced Islam before the *Hijrah* and those who became Muslims on the day of the Conquest of Makkah. Furthermore, during his Caliphate, the Commander of the Believers `Umar ibn al-Khattab issued the same ruling in such cases without any disagreement. Also, the Commander of the Believers `Ali ibn Abi Talib held the same view.
11. Difference in religion by the conversion of any of the marriage partners is not a sound reason for the permissibility or the obligation of the annulment of the marriage contract as indicated in the ruling issued by `Umar and the agreement of the Companions.
12. The prerequisite of preserving the marriage between the newly converted husband and a disbelieving woman who is not involved in fighting against his religion or the newly converted wife and the disbelieving husband who is not involved in fighting against her religion is that the marital relation in such cases is permissible. Retaining the validity of the marriage contract between them obligates a kind relation including sexual intercourse.

Allah, the Almighty, knows best.

Interfaith Inheritance

Question:

His Excellency Sheikh Yusuf al-Qaradawi, may Allah protect him let Muslims to benefit from his knowledge.

I am a Muslim from Britain. Allah, the Almighty, guided me to Islam ten years ago. My family is Christian and have British nationality. I tried many times to call them to Islam throughout these years but Allah has not opened their breasts to Islam and so they remain Christians. My mother died five years ago leaving a little property behind and I refused to take my share of that inheritance on the basis that a Muslim does not inherit from non-Muslims the same as the unbeliever does not inherit from Muslims.

Now, my father has died and left a great inheritance and I am his only inheritor. The prevalent laws state that all this property belongs to me as the only inheritor.

Should I refuse this huge inheritance and leave it to the non-Muslims, although it is my right and I am in dire need of it to spend on myself, my Muslim family (my wife and children), my brothers in Islam, who are in greater need of help, and to contribute to Islamic projects that require financial support?

Furthermore, most Muslims are economically weak and it is well known that money is the pivot of life and that economy affects politics. Thus, why do we let a chance that may support a Muslim economically pass, especially when this chance came to him through a lawful way without committing wrongdoings or major sins?

I hope that you find a solution for this complicated issue, which concerns tens of thousands like me who were guided by Allah, the Almighty, to Islam and who testified that none has the right to be worshiped but Allah and that Muhammad is His Messenger and Prophet.

May Allah guide you to the right path, protect you, and help us benefit from your knowledge.

A British Muslim

Answer:

All praise and thanks are due to Allah.

The majority of jurists hold that the Muslim should not inherit from a non-Muslim as a non-Muslim should not inherit from a Muslim; interfaith inheritance is forbidden in Islam. They take as evidence the agreed upon *hadith* that reads, "*Neither a Muslim should inherit a non-Muslim, nor should a non-Muslim inherit a Muslim.*"⁽¹⁾ As well as another *hadith* that states, "*There is no interfaith inheritance (in Islam).*"⁽²⁾

1. Narrated by al-Bukhari and Muslim

2. Narrated by Ahmad and Abu-Dawud

This opinion was supported by the four Rightly Guided Caliphs, the four *Imam*s (of Schools of *Fiqh*) and the majority of Muslim scholars up to the contemporary age. It was narrated that `Umar, Mu`adh and Mu`awiyah, (may Allah be pleased with them all), were cited as holding the view that a Muslim may inherit from a non-Muslim, but not vice versa. The same was narrated by Muhammad ibn al-Hanafiyyah, `Ali ibn al-Husayn, ash-Sha`bi and others.⁽¹⁾

Also, it was narrated that Yahya ibn Ya`mur judged between two brothers, one of them was a Muslim and the other was Jewish, concerning the inheritance of their disbelieving brother. Yahya let the Muslim inherit from his brother and when he was asked about that, he answered, "Abu al-Aswad told me that another man told him that Mu`adh narrated that the Prophet (peace be upon him) said, "*Islam increases and not decreases.*"⁽²⁾ This means that Islam increases a Muslim's blessings and does not decrease or deprive him. We (Muslims) marry their women and they do not marry our women, thus we inherit from them and they do not inherit from us."

I support this opinion although it contradicts the majority. Actually, Islam does not stand as an obstacle in the way of good or benefit coming to the Muslim, as long as he supports Islam thereby. Believers are worthier of this wealth so long as they devote it to obey Allah, the Almighty. So, if any law allows them to inherit, we must not deprive them of this good and grant it to the unbelievers to enjoy and to devise malicious schemes against Muslims.

1. *Al-Mughni*, Vol. 9, p. 154

2. Narrated by Ahmad

As for the aforementioned *hadith* that says, "A Muslim does not inherit from an unbeliever and an unbeliever does not inherit from a Muslim," we may interpret it as the *Hanafī s*⁽¹⁾ interpreted the following *hadith*, "No Muslim should be killed for the killing of an unbeliever." They said that the word "unbeliever" here means *al-Harbi* ⁽²⁾. In the same manner, a Muslim does not inherit from the "unbeliever," i.e. *al-Harbi* . Thus, interfaith inheritance is lawful.

Ibn Taymiyah & Ibn al-Qayyim support this opinion

In his book, *Ahkam Ahl Adh-Dhimmah*, Ibn al-Qayyim discussed this issue in detail and quoted his Sheikh Ibn Taymiyah, who supported this opinion.

Ibn al-Qayyim, (may Allah have mercy on him) says:

(This issue was a controversial one among the predecessors.) The majority was of the opinion that a Muslim should not inherit from a non-Muslim, as a non-Muslim should not inherit from a Muslim. This opinion was supported by the four *Imam s* of the well-known Schools of *Fiqh* and by their disciples. Some of the disciples held the view that a Muslim may inherit from a non-Muslim, but not vice versa. In the same way, a Muslim man may marry a woman from the People of the Book, while a non-Muslim man cannot marry a Muslim woman. This opinion was supported by Mu`awiyah ibn Abi Sufyan, Muhammad ibn al-Hanafiyyah, Masrouq ibn al-Ajda` and Yahya ibn Ya`mur. It was also supported by Sheikh Ibn Taymiyah and many others.

1. *Hanafī s* : The disciples and followers of *Imam* Abu Hanifah an-Nu`man.

2. *Harbi* : It refers to a man who is in a state of war with Muslims.

As for those who forbade interfaith inheritance, they took as evidence the agreed upon *hadith* that reads, "*Neither a Muslim should inherit from a non-Muslim, nor should a non-Muslim inherit from a Muslim.*"

In the same vein, those who prohibited interchangeable inheritance between a Muslim and an atheist hypocrite or an apostate took this *hadith* as evidence. Sheikh Ibn Taymiyah said that it was proven through *Twatur* ⁽¹⁾ that our Prophet (peace be upon him) used to deal with the atheist hypocrites like Muslims regarding their public affairs, thus, they may inherit from Muslims and Muslims may inherit from them. When `Abdullah ibn `Ubayy and many others, who were reported to be hypocrites by the Ever-Glorious Qur'an died and the Prophet was commanded not to pray (the funeral prayer) or to ask Allah's forgiveness for them, but their Muslim relatives inherited from them. Furthermore, `Abdullah ibn `Ubayy inherited from his Muslim son. Moreover, the Prophet (peace be upon him) did not take a penny from the inheritance of one of those hypocrites nor did he consider their heritage as Fay' (booty), but instead he gave it to their due inheritors. Thus, we realize that inheritance depends on outward advocacy rather than the inward belief; *al-Munafiqun* ⁽²⁾ advocate Muslims overtly against the unbelievers, but inwardly they conceal malicious schemes.

As for the apostate, many Companions such as `Ali ibn Abu Talib and Ibn Mas`ud (may Allah be pleased with them all) stated that the apostate's inheritance might be inherited by his Muslim inheritors. They did not include him in the *hadith* of the

1. Handing down an opinion by very many distinct chains of narrators.

2. Hypocrites.

Prophet (peace be upon him), "*Neither a Muslim should inherit from a non-Muslim, nor should a non-Muslim inherit from a Muslim.*" I support this opinion, which is believed to be the most correct.

As for *Dhimmi* ⁽¹⁾, those who supported the opinion of Mu`adh and Mu`awiyah state that the saying of the Prophet (*Neither a Muslim should inherit from a non-Muslim...*) refers to the *Harbi* rather than the hypocrite, the apostate or the *Dhimmi*. They think that although the word "non-Muslim" includes all unbelievers, it may refer only to some kinds of them as in the following verse where Allah, Most High, distinguishes between the hypocrites and the unbelievers, ﴿Allah will collect the hypocrites and the unbelievers all in Hell﴾ (An-Nisa': 140).

Accordingly, the jurists do not include the apostate with the unbeliever but they distinguish between them. Therefore, they say, "If a non-Muslim embraces Islam, he will not be obligated to make up for the missed prayers, but if an apostate happens to revert to Islam, there are two opinions in this regard; (Some say he should make up for the missed prayer, while others say he is not obligated to do so.)"

As many jurists interpreted the word "non-Muslim" in this *hadith*, "*No Muslim should be killed for killing a non-Muslim*", as "*al-Harbi*" and not *Dhimmi*, the same interpretation applies to the aforementioned *hadith*.

Actually, many non-Muslims want to embrace Islam but some of them fear that when their wealthy relatives die, they will not be allowed to inherit from them. We have heard this from a great number of non-Muslims. Thus, if he knows that by

1. *Dhimmi* : A non-Muslim living under the protection of an Islamic government.

embracing Islam he would not be forbidden from his inheritance, his desire to convert to Islam would be strengthened.

Hence, there is a great benefit behind letting Muslims inherit from their non-Muslims relatives.

Inheritance is deserved by safeguarding, thus Muslims inherit from *Dhimmi* s as they defend them and redeem their captives, but *Dhimmi* s do not inherit from Muslims.

In addition, inheritance depends on outward advocacy rather than inward belief; therefore, *al-Munafiqun* inherit from Muslims and vice versa.

As for the apostate, Muslims are entitled to inherit from him. Nevertheless, concerning his inheriting from Muslims, if one of his relatives died at the time of his apostasy, he would not inherit from him because he was not advocating him. However, if he returned to Islam before dividing the inheritance, he would inherit from him according to the majority of the Companions and the successors. Consequently, the apostate's desire for Islam would be strengthened.

Ibn Taymiyah said, "Muslims are entitled to inherit from *Dhimmi* s, as they defend and protect them. Besides, they redeem their captives. That is why most jurists forbade Muslims to inherit from *Dhimmi* s stating that it is similar to the issue of *Muwalah* (Loyalty), which ceases between Muslims and non-Muslims. They were answered that inheritance becomes due by outward advocacy rather than inward belief. Hence, *al-Munafiqun* are entitled to inherit from Muslims although Allah, the Almighty, describes them saying, '*They are enemies; so*

beware of them.' So, Muslims are entitled to receive inheritance from *Dhimmi* s because they protect and defend them, and not vice versa."

To conclude, we can consider interfaith inheritance as a kind of bequest from a father to his son. Bequest from a non-Muslim to a Muslim and from a Muslim to a non-Muslim, who is not *Harbi*, is indisputably permissible. According to the laws of non-Muslim countries, man can grant all his property as a bequest to a dog! Therefore, granting it to his son is obviously worthier.

Finally, according to the majority, who do not allow the inheritance of Muslims from non-Muslims, we should answer the questioner by saying, "Take the property of your father, but you should not retain any for yourself except what you need to spend on your family and devote the rest for performing good deeds and supporting Islamic projects. Furthermore, you should not leave this property to the government because they may give it to Christian Missionary Societies and the like."

Allah, the Almighty, knows best.

A decorative rectangular border with ornate floral and scrollwork patterns, featuring circular motifs with the letter 'V' at the corners and midpoints.

CHAPTER THREE

Food & Beverages

The Ruling on Vinegar Made of Alcohol

Question:

What is the ruling on Vinegar that is made of alcohol?⁽¹⁾

Answer:

If alcohol has acetified (i.e. turned into vinegar) by itself, then it is lawful and pure by consensus. However, if it has been acetified through certain intentional procedures by adding salt, bread, onions, vinegar or any chemical substance, then in this case the opinions of jurists differ. Some jurists are of the opinion that it is pure and therefore lawful to use because it has been transformed from its original state and has therefore lost its foul characteristic (i.e. intoxication). On the other hand, some other jurists say that it is not pure and cannot be put to use because we have been commanded by Allah to avoid and stay away from it in the Qur'anic verse,

﴿... eschew such (abomination)...﴾

(Al-Ma'idah: 90).

Thus, if it were considered lawful, we would not be eschewing it; therefore it is not permissible.

1. The question came from Frankfurt, Germany.

A *hadith* concerning this issue, narrated by Anas on the authority of Abu-Dawud, states that Abu Talha mentioned to the Prophet (peace be upon him) that there were orphans who had inherited alcohol and he (peace be upon him) said, "*Spill it out.*" Abu Talha asked, "May I not turn it into vinegar?" The Prophet (peace be upon him) answered, "*No*".

So, we conclude that it is not permissible, because if it were permissible he (peace be upon him) would have allowed it for the sake of putting these orphans' money to work. Furthermore, it has been mentioned that `Umar said, "Do not partake of vinegar that has become so through acetifying alcohol, except if the alcohol has become vinegar on its own without deliberate decrement. And, it is permissible for a Muslim to buy vinegar from Christians and Jews as long as he knows that they have not treated this vinegar deliberately."

In addition, *Imam* an-Nawawi said in his book *Al-Majmu`*, "If alcohol has turned into vinegar on its own it is said to be pure by the majority of scholars. The judge `Abd al-Wahhab al-Maliki said that it is pure by consensus. However, others narrated that Sahnun said that it is not pure. However, if it has turned into vinegar by adding something to it, it is our view that it is not pure (Ahmad and the majority of scholars hold this opinion). In addition, Abu-Hanifah, al-Awza`i and al-Layth rule that it is pure."

Moreover, there are three opinions that have been reported from *Imam* Malik of which the most correct is that turning alcohol into vinegar is unlawful but purifies alcohol. The second opinion is that it is unlawful and impure and the third opinion is that it is lawful and pure. Moreover, in the books written by the

followers of Malik, the opinion that bears the most weight is that it is permissible to turn alcohol into vinegar.

Imam al-Khattabi mentioned in his book *Ma`alim As-Sunan* that `Ata' ibn Abi Rabah and `Umar ibn `Abd al-`Aziz permitted the acetification of alcohol (i.e. into vinegar). Abu Hanifah holds this opinion. Yet, Sufyan and Ibn al-Mubarak argued that this is reprehensible.⁽¹⁾ Furthermore, Abu `Ubayd in the book *Al-Amwal* narrated on the authority of `Ata', when he was informed that a man had inherited alcohol, that he said, "He should spill it out," and when asked, "What if he pours water onto it and, as a result, it turns into vinegar?" He replied, "If it turns into vinegar then he can sell it."

Also, Abu `Ubayd narrated on the authority of al-Muthanna ibn Sa`id that `Umar ibn `Abd al-`Aziz wrote to `Abd al-Hamid ibn `Abd ar-Rahman in Kufa⁽²⁾ telling him that he should transport alcohol from one place to another and turn all the alcohol he finds aboard ships into vinegar. So, `Abd al-Hamid wrote to his deputy, Muhammad al-Muntashir, in the city of Wasit ordering him to do that and so he poured water and salt into all the barrels of alcohol he found on ships thus turning it into vinegar. Abu `Ubayd said, "Umar did not forbid them from drinking it because the treaty between them allowed it, but he absolutely forbade them from selling it because it was not in the treaty."⁽³⁾

1. See *Bidayat Al-Mujtahid*, vol. 1, p. 461.

2. A city in Iraq (Translator).

3. This situation was talking about (the People of the Book) i.e. Jews and Christians and the treaty between them and Muslims. (Translator)

Abu `Ubayd's explanation of `Umar ibn `Abd al-`Aziz's actions contradicts the understanding of al-Khattabi who holds the view that `Umar ibn `Abd al-`Aziz made the acetification of alcohol and turning it into vinegar permissible to all people whether Muslims or non-Muslims.

In addition, Abu `Ubayd narrated on the authority of al-Mubarak ibn Fudala on the authority of al-Hasan, "If a man inherits alcohol can he turn it into vinegar?" He replied that it is undesirable from the point of view of religion although not punishable. This means that it is better if a person does not treat it for the sake of piety and staying away from doubtful matters.

Moreover, what bears more weight in my opinion is that if alcohol turns into vinegar it becomes pure and lawful because it has transformed from one state to another; its characteristics have changed and so its ruling should change. That goes for all impurities that have been transformed whether they have transformed by themselves or intentionally. Alcohol itself was originally lawful as it is made from grapes and was made unlawful when it was transformed into an intoxicating substance. Therefore, if it transforms and loses this intoxicating trait then it is rendered lawful and returns it to its original ruling. (i.e. that it is lawful.)

Moreover, it is unlikely that people would turn alcohol into vinegar intentionally because to them alcohol is more important and expensive than vinegar. Therefore, one cannot imagine that they would intentionally turn it into vinegar and suffer any loss when foremost on their mind is material gain.

The argument that the *Hanafis*' and those who agree with them follow is influential, because acetifying something (i.e.

into vinegar) makes it lose its foul characteristic (i.e. intoxication) and proves its validity first because it is used for nutritional and medicinal purposes. Second, because the reason that it is rendered impure and unlawful, the trait of intoxication, is lost when transformed. Moreover, it is known that the ruling goes according to the absence or presence of its reason (i.e. what makes it lawful or unlawful). Furthermore, *Imam at-Tahawi* in his book *Sharh Mushkil Al-Athar* agrees with the *Hanafis*, stating his case as follows: If ordinary juice turns into alcohol, whether someone treats it or it turns by itself, it becomes unlawful due to the intoxication it incurs if drunk. The same applies to alcohol, if it turns into vinegar, whether that happens intentionally or unintentionally; it becomes lawful and the alcohol therefore loses its unlawfulness.

The same also applies to the hides of dead animals (originally unlawful to use); that they become lawful to use whether they have been chemically treated by a person or dried out, on their own, by the sun and wind. In both cases it becomes lawful to use just as if it were an animal sacrificed (slaughtered) according to the teachings of Islam. And since acetifying is reconditioning something foul into something good, it therefore follows the ruling of tanning dead animal hides. As the Prophetic *hadith* states, "*If a dead animal hide is tanned, it becomes pure.*"⁽¹⁾

Furthermore, the Prophet (peace be upon him) said, "*The best of Idam (anything eaten with bread) is vinegar.*"

Here the ruling is absolute because no differentiation is made between one kind of vinegar and another and we are not required to investigate the source of this vinegar.

1. Reported by Muslim.

Abu `Ubayd narrated on the authority of `Ali that he made *Idam* (i.e. dipped his bread) in alcohol vinegar. Ibn `Awn said that Ibn Sirin did not call it alcoholic vinegar but grape vinegar and that he used to eat it.

In our age when vinegar is bought, it is put to test by scientific laboratories. They analyze its ingredients to determine whether it is really vinegar or not, regardless of its origin. Concerning Abu Talhah's question in the *hadith* narrated by Anas, and the Prophet's (peace be upon him) strictness, it appears that the Prophet (peace be upon him) wanted to completely wean them from drinking alcohol. To do that, he (peace be upon him) forbade them from merely getting close to it even if it were for the sake of reconditioning it into something lawful.

The so-called *hadith* that was narrated by at-Tirmidhi and was used by ash-Shafi`i, Ahmad and those who agreed with them as evidence, was narrated on the authority of Anas that Abu Talhah said, "O, Prophet of Allah, I have bought alcohol for some orphans that are in my care." To this the Prophet (peace be upon him) answered, "*Spill out the alcohol and break the casks.*"⁽¹⁾

From this *hadith*, we understand that spilling out alcohol was the aim. Thus, why should we also break the casks that contain alcohol, knowing that it can be purified by water? Would not that be a waste of money? Are we not warned against that?

The answer is that the Prophet (peace be upon him) was very strict concerning this matter because at that time alcohol had just

1. Reported by at-Tirmidhi.

been forbidden and so the Prophet (peace be upon him) was severe so that Muslims would not make light of the matter. Now that order has long been established and adhered to, and it is our obligation only to spill out alcohol but not to break its containers and waste money. On the contrary, it is preferable that a Muslim acetifies alcohol into vinegar so that Muslim's money would not go to waste.

Allah, the Almighty, knows best.

Enzymes Made from Pork Products

Question

We have managed to get a list that contains the names and numbers of some enzymes, which are originally made of pigs' bones or lard, such as E422, E153 and many others. Thus, we would like to know the Islamic ruling on having food that contains such enzymes. May Allah guide you to the right path, protect you, and help us benefit from your knowledge.

Answer

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

Many people wrongly think that all enzymes originally made of pigs' bones or lard are absolutely forbidden. The majority of jurists think that if the characteristics of impurity changes, as wine changes into vinegar, impurity itself turns into ash or becomes salty - as in animals, such as dogs or pigs that become saline and the salt eats it away and eliminates its essential characteristics. As the description of the completely new substance changes, so should the judgment.

Thus, we can say that we cannot judge things by their origin; the origin of wine is grapes, which are lawful. When this

substance, the grape, changes into wine, it becomes prohibited and when it changes into vinegar, it becomes lawful and pure.

Actually, many substances that are originally made from pork products have been chemically changed. These substances are no longer impure or related to the same judgment of the prohibited pork such as jelly that may be taken from the bones of pigs.

Many specialists, such as Dr. Muhammad al-Hawwari, said that many substances have been chemically changed such as jelly, some kinds of soap, toothpaste and many others, that are originally made from pork products. Consequently, their characteristics have been changed.

Finally, we ask our brothers, scientists and specialists, like Dr. al-Hawwari, to prepare a list that includes substances, which have been chemically changed and turned to be lawful and pure in spite of their origin.

Allah, the Almighty, knows best.

A decorative rectangular border with ornate floral and scrollwork patterns, featuring circular motifs with stylized letters at the corners and midpoints.

CHAPTER FOUR

Social Dealings

Congratulating the People of the Book on Their Feasts

Question:

I am a Muslim student undergoing postgraduate studies (Doctorate of atomics) in Germany. I praise Allah that I adhere strictly to my religious duties and cooperate with my Muslim brothers to serve Islam and maintain the Muslim communities here.

I'd like to ask your eminence a question: Is it permissible to compliment the People of the Book through congratulating them on their various feasts whether national or religious such as Christmas which witnesses a great celebration?

In other words, can we, as Muslims, compliment our non-Muslim colleagues, supervisors and neighbors on these occasions?

I heard some Muslims say that it is forbidden and is regarded as one of the major sins. By doing so we support their falsehood and disbelief and we share in their rituals and traditions.

However, when I compliment them by words or presents, I do not mean to support their disbelief or falsehood, but

I mean to deal with them in a civil and courteous manner obliged by Islam, especially when they are keen to compliment us on our feasts and may offer us presents. Furthermore, I think that it is not suitable to return their civility by disaffection, rudeness or disregard. By this tough behavior, particularly in the recent times, which witness organized campaigns against Islam stigmatizing it with violence and its *Du`ah* ⁽¹⁾ with terrorism, we give them a weapon to attack our religion and our Muslim nation.

I hope that you show the view of the contemporary Islamic jurisprudence towards this sensitive issue. May Allah guide you to the right path, protect you, and help us benefit from your knowledge.

Answer:

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger.

There is no doubt that this issue is very important and sensitive as the questioner described. Actually, many brothers and sisters, who live in different countries in Europe and America, asked me this question. Muslims, in these countries, coexist with the non-Muslims under the bonds of neighborhood, fellowship and colleagueship. Furthermore, the Muslim may feel the kindness of the non-Muslims towards him in certain circumstances; the non-Muslim supervisor helps the Muslim student with sincerity, the non-Muslim doctor treats the Muslim patient truthfully and so on.

1. Muslims who shoulder the responsibility of calling people to Islam.

So, what is the Islamic point of view towards dealing with these non-Muslims, who do not fight the Muslims nor drive them out of their homes?

The Ever-Glorious Qur'an laid the constitution of the Muslims relationship with non-Muslims in two verses in "Surat al-Mumtahanah." Allah, the Almighty says,

﴿Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just. Allah only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong.﴾

(Al-Mumtahanah: 8-9)

Thus, these two verses differentiate between those who coexist with Muslims peacefully and those who fight them. So, Allah, the Almighty, orders the Muslims to deal with the former kindly and to be just to them. Also, He orders Muslims not to turn to those who fight them and drive them out of their homes like the Quraysh and the *Mushriks* of Makkah did with the Prophet (peace be upon him) and his Companions.

Al-Bukhari and Muslim narrated on the authority of Asma' bint Abu Bakr that she said, "O Messenger of Allah, my mother, who is still a pagan, has come to me and she desires to receive a reward from me, shall I keep good relations with her?" The Prophet said, "*Yes, keep good relations with her.*"

Thus, Allah's Messenger ordered her to keep good relations with her mother although she was a pagan. It is well known that Islam gives the People of the Book superiority over those who are pagan; the Ever-Glorious Qur'an permits Muslims to eat the meat slaughtered by the People of the Book and to marry their women. Allah, the Most High, says,

﴿This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. And so are the virtuous women of the believers and the virtuous women of those who received the Book, revealed before your time﴾

(Al-Ma'idah: 5)

Furthermore, one of the prerequisites and the fruits of this marriage is the intimacy between the two spouses, Allah says,

﴿And among His Signs is this, 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)﴾

(Ar-Rum: 21)

So, how can a man not show sincere love towards his wife although Allah says, *﴿They are your garments and ye are their garments!﴾* (Al-Baqarah: 187)

Also, affinity is one of these prerequisites and fruits of this marriage and it is one of the two natural and basic bonds among humans as Allah says,

﴿It is He who has created man from water: then has He established relationships of lineage and affinity.﴾

(Al-Furqan: 54)

As well as this, motherhood is one of these relationships that bears its rights and responsibilities of the sons in Islam. So, isn't it a kind of ingratitude, on the part of the son, not to compliment his non-Muslim mother on feasts and to ignore his non-Muslim relatives such as his grandfather, grandmother, uncles, aunts and cousins although Allah says,

﴿But kindred by blood have prior rights against each other in the book of Allah﴾

(Al-Anfal: 75).

Also, He says,

﴿Allah commands justice, the doing of good, and liberality to kith and kin.﴾

(An-Nahl: 91)

Hence, the rights of motherhood and family ties ordained that a Muslim should keep good relations with his mother and kin in a manner that reflects the good behavior of Muslims, their generosity and loyalty, and the other rights imposed on him that he behaves in a good manner. Therefore, the Prophet (peace be upon him) advised Abu Dharr saying, "*Fear Allah wherever you are, follow the misdeed by a good one in order to eliminate it and behave toward people in a good manner.*"⁽¹⁾ Notice that the Prophet said, "*behave toward people*" and not "*behave toward Muslims*".

Also, the Prophet (peace be upon him) induced Muslims to behave toward non-Muslims in a kind and gentle manner and he warned against treating them violently or toughly. It is narrated that some Jews greeted the Prophet (peace be upon him), playing with words, saying, "*As-Samu 'Alayka* (i.e., death be

1. Narrated by at-Tirmidhi

upon you)." Then `A'ishah (may Allah be pleased with her) heard them and answered back, "*As-Samu `Alaykum Wal-La'na* (i.e. Death and Allah's Curse be upon you)." When the Prophet (peace be upon him) blamed her, she said "Didn't you hear what they said?" He replied "*Yes, and I said: Wa`alaykum* (i.e., the same be upon you too), *O `A'ishah, be gentle and calm, as 'Allah likes gentleness' in all affairs.*"⁽¹⁾

The permissibility of complimenting those people on their feasts is asserted as they compliment Muslims on their Islamic feasts; Allah ordained Muslims to return the favor by its same and greeting with its better. Allah says,

﴿ *When a (courteous) greeting is offered you, meet it with a greeting still more courteous, or (at least) of equal courtesy.* ﴾

(An-Nisa': 86)

It is not suitable for Muslims to be less in morality than the non-Muslims. Rather, they should be the epitome of politeness and gentleness as the Prophet (peace be upon him) said, "*The best of believers in faith are those best in morality*"⁽²⁾ and also, he said, "*I was sent to perfect the nobility of character.*"⁽³⁾

Moreover, it was narrated that a Magus said to Ibn `Abbas "*As-Salamu `Alaykum Warahmatullah* (Peace and Allah's mercy be upon you)." Ibn `Abbas answered him, "*Wa`alaykum as-Salam Warahmatullah.*" Some of his Companions said, "Did you say to him *Warahmatullah* (Allah's mercy be upon you)!" He answered them, "He lives in Allah's mercy, doesn't he?" So,

1. Narrated by al-Bukhari and Muslim

2. Narrated by Ahmad

3. Narrated by al-Bukhari

if we want to call them to Islam and endear Muslims to them, we have to deal with them gently and politely.

The Prophet (peace be upon him) used to deal with the *Mushriks* of Quraysh in a courteous and polite manner in spite of their rudeness and cruelty towards him and his Companions. As a result, they trusted him to the extent that they used to leave their deposits with him as a trust, and when he (peace be upon him) emigrated from Makkah to al-Madinah he ordered `Ali to return the trusts to their owners.

Therefore, it is permissible to congratulate non-Muslims on their feasts by words or cards that do not include religious mottoes or slogans that contradict Islamic principles, such as the Cross, as Islam refuses the idea of Crucifixion completely, Allah says,

﴿They killed him not, nor crucified him, but so it was made to appear to them.﴾

(An-Nisa': 156)

The usual complimentary words do not reflect any support for them in their falsehood and disbelief but are merely compliments.

Also, it is permissible to receive their presents provided that they are not prohibited for Muslims such as pork and wine. The Prophet (peace be upon him) received presents from non-Muslims. For example, he (peace be upon him) received presents from al-Muqawqis, the leader of the Copts in Egypt, and many others.

I know that some jurists, such as Ibn Taymiyah, were intransigent towards participating in the feasts of *Mushriks* and the People of the Book.

I agree with him in resisting the idea that some Muslims celebrate the feasts of non-Muslims, such as Christmas as they celebrate *'Id al-Fitr* and *'Id al-Ad-ha* (Lesser and Greater Bairams of the Muslims). This is not allowed as we have our feasts and they have theirs. However, I think that there is no harm to congratulate non-Muslims on their feasts under the bonds of neighborhood, fellowship and collegueship, which require dealing with them gently and politely.

There is no doubt that Ibn Taymiyah issued this *fatwa* in the light of the conditions of his age. However, had he (may Allah be pleased with him) lived till our age and saw the complexity of relations among people, the world which has turned into a small village, the Muslims' need to deal with non-Muslims, he would perhaps have changed his mind. Unfortunately, the non-Muslims have become our masters in science and industry and hold many misconceptions about Islam and Muslims, thus the need for *Du`ah* to approach those people to demonstrate that the true Muslim calls for peace rather than violence and gives glad tidings rather than bad tidings is more necessary than ever. Perhaps if the non-Muslim is congratulated on these occasions without having their falsehood and disbelief supported, they may change their mind.

Concerning national days such as Independence Day or the social feasts such as Mother's Day, Children's Day, May Day and Youth Day, there is no constriction on Muslims to participate in or congratulate non-Muslims on these feasts as citizens of these countries, on condition that they avoid all prohibited matters on these occasions.

Allah, the Almighty, knows best.

Dealing with Non-Muslim Neighbors in a Non-Muslim Country

Question:

I am a student in the fourth year at the European College for Islamic Studies in France. I am currently conducting a research, which will be my graduation project in the near future, Allah willing.

I am facing a puzzling matter and I am looking forward to your help.

This matter is: If a non-Muslim invites his Muslim neighbor to dinner and (the non-Muslim) places a bottle of wine on the dining table, is it obligatory to accept the invitation?

Does this case come under the Prophet's *hadith*, "*Whoever believes in Allah and the Last Day should not sit at a table where wine is served?*" Can a Muslim remain at such a table? If the Muslim suspects that wine will be served, should he confirm the matter with his neighbor or should he wait until he goes to his house?

Are there cases in which remaining at the table is permitted?

Is it permissible to attend the dinner with the intention of calling the people to Islam? In other words, if a Muslim intends to call his neighbor to Islam and he expects his approval, can he sit with him at that table according to the legal rule that says, "Committing minor sins are permissible to change major sins"?

I hope that you can answer me by supporting your answers with relevant evidence.

May Allah guide your eminence to the right path, protect you, and help us benefit from your knowledge.

Answer:

My dear son in Islam, and discerning student, may Allah protect you and guide you to the right path.

Concerning your interesting questions, I'd like to start with the following:

It is even more important to observe Islamic manners with a neighbor, whether he is a Muslim or a non-Muslim as Allah, the Almighty, says, ﴿...the neighbor who is of kin (unto you) and the neighbor who is not of kin﴾ (An-Nisa': 36).

"The neighbor who is not of kin" includes Muslims who live far-off as well as non-Muslims.

`Abdullah ibn `Amr recommended his servant not to forget to give his Jewish neighbor of the sacrificial animal and `Abdullah asserted this matter many times to him. The servant wondered and he asked him about his concern in this matter. `Abdullah answered by saying that the Prophet (peace be upon

him) said, *"Jibril has been recommending the neighbor to me in a way that makes me feel that he is almost making him an heir."*

A Muslim must not respond to an invitation if he knows an abomination that he cannot change will occur. This is the opinion of many jurists concerning the invitation to a wedding banquet although they said that the response to the wedding banquet is obligatory. Some other jurists said that the response to a wedding banquet is permissible. Other invitations apart from the wedding banquet are not obligatory by consensus. These invitations are acceptable to strengthen bonds and develop friendly feelings among people, especially if they are relatives, neighbors and friends.

The most important question here is: "Can a Muslim respond to such invitations at which wine is served?"

According to the Majority, it is not permissible to respond to such invitations. As you said before, the Prophet (peace be upon him) said, *"Whoever believes in Allah and the Last Day should not sit at a table where wine is served."* Furthermore, one of the main rules of Islam is to prevent sins in order that they be completely rooted out. So, it is forbidden to support these sins. Thus, the Prophet (peace be upon him) cursed ten persons regarding wine including whoever supports it in any way. Also, he (peace be upon him) cursed those who devour, record and witness usury.

Consequently, a Muslim who attends such functions is considered to be sinful even if he did not drink because his very attendance supports and sustains them.

It was narrated that some drunkards were brought to `Umar ibn `Abd al-`Aziz in order to receive the *Hadd* ⁽¹⁾ punishment.

It was said to him, "O, Commander of the Faithful, a man from among them did not drink but he is fasting." He said, "Begin with him, as Allah, the Almighty, says ﴿Already has He sent you word in the book, that when ye hear the Signs of Allah held in defiance and ridicule, ye are not to sit with them unless they turn to a different theme: if ye did, ye would be like them. For Allah will collect the hypocrites and those who defy faith all in Hell.﴾"

Thus, the Ever-Glorious Qur'an considers those who sit with the unbelievers, who deal with Allah's signs defiantly, like them in committing sins.

He would be excused of the guilt if he feared a destructive harm should he reject the invitation. By doing so, he would have behaved according to the legal rule that says, "Minor sins are permissible to avoid major sins."

Similarly, if he expects a great benefit through his response to that invitation, such as expecting the approval of his neighbor to embrace Islam and he fears to lose that chance, *Ijtihad* ⁽²⁾ takes place.

Asking the inviter to make sure that there is no wine or pork to be served at this invitation is more suitable.

Thus, the inviter realizes that Muslims neither drink wine nor eat pork. This is exactly what Muslims do in non-Muslim countries and this is what makes their neighbors or colleagues

1. *Hadd* : A punishment specified by the Shari`ah, such as the punishments for adultery, fornication, theft, and wine-drinking.

2. *Ijtihad* : Personal Reasoning: a secondary source of Islamic Law.

respect their values and principles and so they do not offer these forbidden things. This is more appropriate than simply not accepting his invitation.

Allah, the Almighty, knows best.

Buying Residences Through Banks

Question

We would like to know the legal ruling concerning buying residences through banks. Wa Jazakum Allah Khayran.

Answer

The purchase of residences in the West via banks by means of usurious loans is not a new issue. It is a very old question, which goes back a quarter of a century or more. I have heard it a lot since I started visiting Muslim minorities and colonies in America, Europe and the Far East. Actually, these questions about purchasing residences, in addition to the questions about the meat of slaughtered animals, in most cases by Christians and about foods that may contain pork or its fat have been frequently repeated. There are two obvious reasons behind the repetition of the first question.

The first is that people are in dire need to have houses of their own, which are large and spacious enough for their children and guests.

The second is that some scholars, who are few, have delivered a *Fatwa* about the lawfulness of purchasing such residences.

Some brothers in Britain informed me that in the past some scholars in India and Pakistan issued a *Fatwa* of the lawfulness of buying such residences with interest according to the *Madh-hab*⁽¹⁾ of *Imam* Abu Hanifah and his companion Muhammad. This led the Indian and Pakistani brothers, who were living in Britain to buy residences in London and in other large cities at very cheap prices at that time. Then in no time, the prices rose and these houses became worth millions and so some of those brothers became among the most famous proprietors in England. Here I would like to say frankly that for almost twenty years my opinion regarding this issue has remained the same. I hold that it is forbidden and prohibited and I tend to refute other opinions.

I remember that during the 1970's I met the erudite jurist Sheikh Mustafa az-Zurqa (may the mercy of Allah be upon him) in America. This issue was presented during one of our meetings. He held the view that such a matter is lawful depending on the *Madh-hab* of *Imam* Abu Hanifah, which was the *Madh-hab* that he adopted, whereas I argued that it is forbidden as I adopt the opinion of the majority of the Muslim scholars and on the common proofs that prohibit usury in all cases.

However, the mind of a Muslim scholar is not made of steel, for his mind must keep on moving, searching, comparing and considering. He cannot stop learning and he cannot say one day that he has reached the peak of knowledge. Rather, the Muslim is required to seek knowledge from the cradle to the grave and here we find Almighty Allah addressing His Messenger saying,

1. *Madh-hab*: Islamic School of Fiqh.

﴿... but say, O my Lord! advance me in knowledge.﴾ (Taha: 114)
And, ﴿... of knowledge it is only a little that is communicated to you.﴾ (Al-'Isra': 85).

And since the scholar seeks knowledge, then there is no wonder if he one day changes his mind, for he might see new legal proofs that he did not see before. This was what happened with *Imam* Muhammad ibn 'Idris ash-Shafī'i, who changed many of his sayings. It became known that he had an old *Madh-hab* besides the new one that he wrote after settling in Egypt where he saw and heard what he had never seen or heard before, together with his becoming more mature and more experienced.

This was the same case with the disciples of Abu Hanifah, who disagreed and contradicted their great *Imam* in more than one third of his *Madh-hab* simply because of the ever-changing conditions of their age. They said, "Had he seen what we have seen, he would have said what we have said." So, this is the kind of contradiction that emerges from the change of age and time not from a change of proof and evidence.

This can be applied as well to the disagreement between *Imam* Malik and his disciples and *Imam* Ahmad and his disciples. It can also be applied to the contradiction apparent in the opinions of *Imam* Ahmad himself. For example, he could have ten opinions about the same matter and each one is appropriate to each case.

Therefore, if this was the case with our great *Imam* s then it is not strange if someone like me changes his opinion in a certain case from prohibition to permission and from severity to facilitation.

For a period, I found it difficult to announce my new opinion concerning this issue of purchasing a residence through usurious banks; however, I used to convey it to whoever asked me about the matter in private.

Then I found that it would be better to announce the opinion especially since the question is frequently repeated in lectures, public meetings and through satellite channels. I could no longer hide it. The Muslim jurist must not deliver a *Fatwa* of which he is not convinced, for it will be a breach of the trust of scholarship and a sign of disloyalty to Allah, to His Messenger and to all the Muslims.

Even if the jurist's opinion is wrong, let us assume so, he is excused as Allah the Almighty says, ﴿... *Condemn us not if we forget or fall into error; our Lord!*﴾ (Al-Baqarah: 286)

In addition, the Prophet (peace be upon him) said, "*Allah pardons our mistakes, forgetfulness and what we are forced to do.*"⁽¹⁾

It was also mentioned in the Prophetic *hadith* that if *al-Mujtahid* (a legalist formulating independent decisions in theological matters) commits an error, he is not only pardoned but he is also rewarded. Here the Prophet (peace be upon him) said, "*If the judge tries to formulate an independent opinion based upon the Qur'an and Sunnah and upon reality, and his opinion is right, he will have two rewards. But if he did so and his opinion is wrong, then he will have one reward.*"

This shows only one of the great wonders of Islam: that the mistaken *Mujtahid* is rewarded instead of being punished. What a great encouragement! Moreover, before answering this

1. Ibn Majah, *Sunan*, Hadith no. 2045.

important question let us see how those who are concerned with the issue clarify its nature for they are the best to clarify the problem with its different aspects.

Obtaining an illustration of the problem from the viewpoint of those concerned is the duty of the *Mufti* (the one who delivers a *Fatwa*). He has to understand the problem he is dealing with in the right way that is built upon reality without undermining or exaggerating the matter. Here the scholars said, "Judging something is attached to its conception."

This is what we call *the Fiqh of reality*. In many cases the wrong opinion of a *Faqih* is not the result of misunderstanding the texts and the legal norms, but of inability to understand the reality of the matter being dealt with. Now we shall see how the brothers in the West, who are interested in this matter, present the following relevant data:

1. In the first installments of the house purchased via the usurious bank, interest represents the greater percentage of installment value and the lesser percentage represents the payment of the original loan value.

Then in the final installments, the latter percentage comes gradually to represent the greater portion.

2. The period determined for paying the debt may reach thirty years; and the interest is lessened or increased according to shortening or prolonging this period. At the end of the period, the interest may be doubled and, consequently, exceed the original loan according to the period of payment.
3. The installment that is paid monthly to the bank is equal to the annual rent that is paid in case of renting the house; sometimes it is a little bit more or less.

4. In the case of buying the house from the bank through usurious interest, after paying the installments, it becomes the buyer's own property.

Whereas, in case of renting the house, what the tenant pays to the owner is considered a wasted sum of money from the tenant's point of view.

5. In case of a loan with interest, bank interest is excluded in an equal proportion from the overall tax that is burdensome for many people. However, in the case of renting, this tax is paid completely.
6. In the case of renting the house, the tenant does not pay for heating, electricity, property taxes, cleaning and/or any reformations in the house. While in the case of buying a house, the owner will have to pay for all such things.
7. There is probable damage, i.e. allowing the purchase of residences through usurious banks without putting any restrictions. This may threaten the growth and progress of Islamic companies that work in that field.
8. It is impossible for Muslims to own houses in these countries except in three cases:
 - A- In case of paying cash, or through cooperation among the individuals which is both difficult and rare.
 - B- Through some Islamic companies, however it is also difficult because the capital here is weak and cannot meet the requirements of the Muslim minority. In addition to this, the percentage of *Murabahah* may reach three times the percentage of the usurious interest of the bank added to the shortness of the period of payment that does not exceed five years. In addition, the value of the annual

installment is also doubled and, as a result, in most of the cases, many fail to pay it.

C- Through the usurious banks.

9. In the West, most house owners do not rent their houses to families with many children, which is a characteristic spread among the Muslims. Many Muslim families were driven out of their houses because of their many children or many guests or because of the obstinacy of the non-Muslim neighbors. For the same reason it is not easy to move from one house to another.
10. In some regions in Europe and America, the houses for rent permit only families with four children as the maximum number and this multiplies the dilemma because many of the Muslims there have more than four children.
11. There is ambiguity in the contract issued by the bank. It is a contract for selling a house however, the borrower is not given any money in his hand but instead he is given the house. The ambiguity that some advocate is that the usury here is only a formality, represented in the form of the contract, but the essence of the procedure is that it is a process of *Bai` al-Ajal* ⁽¹⁾ where the price increases in return for increasing the period of payment.
12. Sometimes people buy, through the bank, a house that has two apartments. They live in one apartment and rent the other and the rent here is taken to pay the installment that is due for the house as a whole. Then, after paying the debt to the bank, the two apartments become the possession of the buyer.

1. It refers to the sale based on deferred payment.

The privileges of owning a residence

Muslim brothers who live in Western countries confirm the existence of many moral and material privileges behind their owning a residence, which are as follows:

Economic privileges

The reduction of the paid interest from income that is subjected to income tax. This in turn leads to a reduction in the amount of tax paid. This reduction is always less than the amount of paid interest. Whereas the paid rent is not exempted from tax and so, the tenant does not acquire any reduction in taxes.

Part of the paid installment, very small at the beginning and increasing by time because all installments are equal, is paid for the capital of the loan, which means that capital is formed for the buyer (the house). On the other hand, rent is considered expenditure.

The buyer owns the house. He is the one who benefits from any difference of price between buying and selling in case of his selling the house. If the prices rise, he wins the difference with regard to the house as a whole not just to what he has paid. On the other hand, if the prices come down he loses because he owes the bank the loan. This has nothing to do with the price of the house for it is relevant to price rises and so people always consider this fact when buying a house and when choosing its location.

The price installment is most likely invariable. (There are loans whose interest changes but within a certain percentage while the loan does not change except with what is paid from it).

In case of a long-term loan, inflation takes place, even if it is slow, and so the individual's income increases but the installment he pays does not increase and so the latter becomes less than the former. On the other hand, inflation is usually accompanied by an increase in the rent.

Owning a house is a sign of stability; it increases the other borrowers' trust in the person. In addition, the commitment of the lender with a big sum that is paid through long-term installments is considered as an advantage that helps in attaining other loans and in acquiring credit cards, besides other financial privileges. Whereas renting does not guarantee any of these privileges.

Owning a house encourages the owner to make constant improvements in it because it is his own and this increases the house's value, however this is not always the case with rented houses.

Non-financial privileges

The buyer has the privilege of choosing the districts where good schools are found, whereas the tenant does not enjoy the same privilege because the places offered for rent are usually found in inferior districts and the matter of choosing suitable schools is crucial.

The buyer also has the privilege of choosing the places that are near to mosques and to the Islamic center and so, Muslim owners will have the chance to be close to each other, which is a great spiritual benefit that the tenant is deprived of.

All governmental services are better in the districts inhabited by house owners than in the districts constructed for rent.

Living in an owned house endows the inhabitants with a sense of honor and self-respect and this affects the way others deal with them starting from the schoolteacher up to the colleagues at work.

The environment in general is better in the districts of residences than in the districts of apartments, even the percentage of crime is less in the former.

Owning an independent residence has many other privileges. For example, in one's own home the noise of children and their guests is not restricted; women are free to move inside their home and are able to remove their outer garments away from the eyes of neighbors. Also, the inhabitants are able to wake up for the *Fajr* (Dawn) Prayer, hold tutorials and practice other activities freely.

Inquiries that require research and study

Are the contracts made with the banks in Europe and America to buy residences purely usurious contracts or contracts of *Bai` al-Ajal* due to the presence of a commodity between the bank and the borrower (the buyer)?

Does the purchase of the residence from the bank contradict the necessity of protecting the Muslims' money?

Does the process of owning properties through buying houses from usurious banks contradict the Muslims' welfare?

If there is no harm inflicted by purchasing a house via usurious banks, is it permissible to borrow money from these banks to buy a house for residence out of necessity?

What are the realistic solutions and practical alternatives that can satisfy the Muslims' need to acquire essential residences?

The opinion of contemporary scholars and their opinions regarding this issue

Some contemporary scholars have examined the issue of dealing with usurious interest in non-Islamic societies. The majority delivered a *Fatwa* prohibiting it, while some others declared it as being lawful.

One of the oldest scholars of the modern age, who chose to discuss this issue, was the famous scholar Mr. Muhammad Rashid Rida, who used to receive questions from all around the world and he always answered them in his monthly magazine "Al-Manar." A question from Java, Indonesia, was posed as follows: "Mr. Muhammad Rashid, what do you think about the *Fatwa* given by some Muslim scholars that the money of *al-Harbi* ⁽¹⁾ is *halal* so long as it is not obtained through theft or treachery and since it is documented and acquired by their consent. Is this money *halal* even if it comes from pure usury?"

Isn't this *Fatwa* a fatal blow to all what Allah the Almighty has prohibited? Isn't it a violation of all of the strict Divine Limits that we are not allowed to overstep like polytheism, blasphemy and intentional killing?"

Mr. Rashid replied to the question saying: "The original ruling in Islamic *Shari`ah* is that the money of *al-Harbi* is permissible for any Muslim who acquires it in any way except through treachery. *Fuqaha'* (plural of *Faqih*; a jurist) limited

1. *Al-Harbi* : According to the majority of scholars, it refers to a non-Muslim person who lives in a non-Muslim country that is in a state of war against Muslims. But Abu Hanifah states that it refers to a non-Muslim person who lives in a non-Muslim country (*Dar Al-Harb*) regardless of whether it is in a state of war against Muslims or not.

this general ruling saying, "A Muslim is not allowed to be a traitor under any circumstances. If anyone, even *al-Harbi*, entrusts him with a certain sum of money, he has to keep the trust. So, the *Asl* ⁽¹⁾ of the money of *al-Harbi* is that it is considered as booty for the Muslim, who can obtain it either by force or by intrigue or by any other means save treachery. Hence, it is more logical that the Muslim is allowed to acquire the money of *al-Harbi* when it is by his consent even if it takes the form of a false contract. Any way, I do not see any point of similarity between permitting the prohibited actions like blasphemy, drinking alcohol and eating dead animals, which are prohibited anywhere whether in Muslim or non-Muslim countries. Acquiring the money of *al-Harbi* is permissible in *Shari`ah*. The *Asl* in *Qiyas* (the fourth source of law in the Islamic legal system) is to justify the ruling on a certain thing by examining it in the light of what is like it, not what is opposite to it.

If our friend here, who asked the question, had not explained the reason behind this question, we would not have understood his words when he said, "This *Fatwa* is a fatal blow to all that the Almighty has prohibited." He wrote to us about some of those who love their religion (Islam) in Java and how they objected to the *Fatwa* because they understood that since it permits usury in the non-Muslim countries, then it permits all other sins like adultery, sodomy and killing. However, it is obvious that they misunderstood the *Fatwa* because it did not entirely permit usury. Another point is that they must know that unlawful killing is certainly prohibited on a higher level than the unlawful acquisition of money. Can they compare the

1. *Asl*: plural *Usul*, denotes origin, source, foundation, basis, fundamental or principle. (Trans.)

permissibility of killing the warrior to killing peaceful civilians from among the Muslims? We also say to them: If a Muslim lives in a non-Muslim country, can they assume that Allah orders this Muslim to pay all the impositions levied upon him according to the country's law and prohibits him from taking any money given (to him) according to the same law and by the consent of its people? i.e. do they think that Allah, the Almighty, obliges the Muslim to pay so that others, like non-Muslims, may gain? Does Allah, the Almighty, oblige the Muslim, in this case, to live under oppression?"⁽¹⁾

Fatwa of the World Islamic Assembly of Fiqh

The charter of the Assembly no.23 (11/3), when answering the inquiries set by the World Institute of Islamic Thought, states the following:

Question number twenty-eight:

What is the ruling of buying a house for residence, furniture for the house and a car for personal use through land banks, knowing that the alternative of buying is paying a monthly rent, which is mostly more than the installment paid for the land banks in the case of buying?

The answer:

It is not permitted in Islamic *Shari`ah*.

Actually, the Assembly referred the questions of the World Institute of Islamic Thought to a limited number of scholars and

1. *Imam Muhammad Rashid Reda, Fatawa*, chapter five, *fatwa* number 717, pp.974-1978.

the outcome was represented in brief answers like the previous one. They did not take care to ensure that such issues are not objects for study and discussion like all other issues.

Fatwa of the General Committee in Kuwait

There have been recent *Fatwas* issued that permit this sort of dealing, like the *Fatwa* of Kuwait. This *Fatwa* was issued by the General Authority of *Fatwa* in Kuwait (Committee of General Affairs)⁽¹⁾. It was made as a reply to an inquiry made by someone who works in the field of *Da`wah* ⁽²⁾ in the United States of America. The date of this *Fatwa* is 15 Shawwal 1405 A.H. (2/7/1985). We managed to get a copy of this *Fatwa* and it says what follows:

All praise and thanks are due to Allah, and peace and blessings be upon His Messenger, his family, his Companions and those who follow him rightly till the Day of Judgment. On the morning of Thursday, 25th of Ramadan 1405 (13/6/1985), while holding the session of the Committee of the General Affairs that follows, the General Authority of *Fatwa*, Mr. (X) presented the following request for *Fatwa*: What is the legal ruling of buying a house in America through a land bank? It is known in this case that the percentage of interest the buyer will have to pay is subtracted from the taxes that are levied on him. For example, I bought a house in June 1985 with a total sum of two hundred and eighty thousand dollars. I have to pay forty five

1. This committee included: Shaykh Badr Al-Mutwaly `Abd al-Basit, Dr. Muhammad Sulayman al-Ashqar, Dr. Muhammad Fawzy Faydallah, Dr. Khalid al-Madhkur and Dr. `Abd al-Sattar abu Ghuddah.

2. *Da`wah* : This word involves the meaning of calling people to Islam through the best and most suitable means.

thousand dollars annually for the price of the house and the interest of the loan. Before buying the house I had to pay forty thousand dollars as federal taxes but since I have bought the house with a loan from the bank, the total sum that I now have to pay ranges between five and seven thousand dollars because the usury is subtracted from the house installments. So, am I allowed to buy a house in America with such a loan?

Moreover, I shall only mention few things concerning this issue:

The majority of rented houses have been bought by loans from the banks.

A tenant with a small family can rent an apartment today, but he cannot do this if he has a large family. At such a time, he will have to borrow from the bank or else throw his family onto the street.

The reply of the committee was the following:

The circumstances and conditions of Muslims living in non-Muslim countries, in the absence of legal alternatives offered by a financial institution that sells by installments, create a semi-necessity that the *Fuqaha* call "The general need that is treated as a necessity." Therefore, the committee believes that under such circumstances, it is permissible to buy a house in America with a loan that has interest, from the bank because of the general need that is treated like necessity, and this will remain the case until legal alternatives appear. It is also a duty to work hard in helping the projects that can offer such legal alternatives and Allah knows best.⁽¹⁾

1. *Fatawa Al-Hay'ah Al-'Anmah Bil Kuwait*, fatwa number 42/85.

This is the *Fatwa* of the committee in Kuwait that was issued by a number of scholars known for their truthfulness. They built their *Fatwa* upon a rule of jurisprudence that is known and confirmed in the various *Madhahib* (plural of *Madhhab*) namely, "The need may reach the level of the necessity." This rule means that the need is treated like the necessity in permitting the prohibited and it is known that the prohibitions are permissible in case of necessity and Allah the Almighty says, ﴿ *He hath explained to you in detail what is forbidden to you except under compulsion of necessity.* ﴾ (Al-An`am: 119).

The scholars, in saying that the need is treated like the necessity, depended upon authentic *hadith* s of the Prophet (peace be upon him) where he allowed some of his companions to wear silk after he had prohibited all men from doing so. The reason for his allowing it was that someone was afflicted by a skin irritation. Hence, the need justified permitting the prohibited.

The Prophet (peace be upon him) also prohibited his Companions from sitting on the roadsides, but when they said, "We cannot avoid such sittings," he (peace be upon him) understood their need and excused them, provided that they would adhere to the right of the road.

Fatwa of the famous scholar Mustafa az-Zurqa

Among the *Fatwas* (plural of *Fatwa*) that allow this kind of dealings is the one issued by the famous scholars named Sheikh Mustafa az-Zurqa.

I heard his *Fatwa* personally from him when I met him in America in the 1970's however at that time I did not agree with

him. He then wrote down his *Fatwa*s and honored me by presenting them.

Sheikh Mustafa az-Zurqa (may the mercy of Allah be upon him) built his *Fatwa* upon the *Madh-hab* of the great *Imam* Abu Hanifah and his companion Muhammad, which contradicts that of Abu Yusuf. However, he was fair enough to say that the majority of scholars adopted a different opinion but for himself, he believed that the need required such a *Fatwa*.

Sheikh az-Zurqa (may the mercy of Allah be upon him) discussed this issue in five of his *Fatwa*s that were published in his "*Fatwas*" from page 614 to page 626. He answered those who asked him about the issue and among them were as-Sabuni, al-Kilani, ar-Rifa`i, Rashad Khalil and many others who live in America and Canada and whose names he did not mention.

We choose the *Fatwa* that was issued in 4/6/1418 A.H. (5/10/1997) for it is the last one published in his book and it is comprehensive in presenting the case and illustrating the aspects of its proofs.

The wording of the *Fatwa* of Sheikh az-Zurqa

"It is usual for the Muslims who live in the United States of America and Canada to ask about the ruling of borrowing money from the banks with usurious interest for the sake of buying a residence and then paying the loan back with its interest on long-term installments that may take twenty or twenty-five years. After repayment, the house becomes the buyer's property and by this, they solve the problem of finding a residence with lesser costs than those of renting a house.

In order to live in such countries one may either buy a house with his own money, which is very rare because the houses are very expensive, or rent a house, but the rent is usually very high. Alternatively, he may also take a loan from the bank with usurious interest then repay it in the form of long-term installments, as mentioned before, after which he owns the house. In such a case, the installment is usually less than the rent however, at the end of the period he owns the house.

After thinking deeply and revising the texts, I found the *Madh-hab* of Abu Hanifah and his companion Muhammad, concerning the Muslim who enters *Dar al-Harb* ⁽¹⁾ with their permission, necessitates the permissibility of his taking a loan with a usurious interest for the sake of buying a house for residence, if the life there is as outlined above.⁽²⁾

Abu Hanifah and his companion Muhammad state the following: The one who enters *Dar al-Harb* with the permission of its inhabitants is permitted to take the money that they give him with their consent, so long as he does not take it by treachery, even if it comes from a source prohibited in Islam like usury. However, he is not permitted to give them usury because the money of *al-Harbi* for him is not protected, but since he has

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1. *Dar Al-Harb* : According to Abu Hanifah, it refers to a non-Muslim country that is not under the sovereignty of Islam regardless it is in a state of war against Muslims or not. But the majority of scholars state that it refers to a non-Muslim country that is in a state of war against Muslims.
 2. In another *fatwa* Shaykh Az-Zurqa added in this paragraph the following words: This is not applied upon those who live in the Muslim countries. They are not allowed to send their money to the non-Muslim countries and take usurious interests upon it. Have they been allowed, the capitals of the Muslims would have been smuggled and this would have caused a serious economic damage for the Muslims. See: "*Fatawa Az-Zurqa*", p.620.

entered the country with their permission, then he is not allowed to take anything from it except with their consent.

The aim behind preventing Muslims from giving usury to *al-Harbi* is to save the money of the Muslims and keep it away from them. However, if the case is reversed and it is found that taking a loan from them then giving them usury is more beneficial for the Muslims, then the ruling must be reversed as well. The loan in this case with its interest is better for the Muslim than renting a house, because at the end of the rent period the tenant comes out with his hands empty and the house remains the owner's own property.

Therefore, the important factor is the outcome in either of the two cases: which of them is more beneficial for the Muslim in a non-Muslim country? There is no doubt that taking a loan from a usurious bank with interest is better for him according to the *Madh-hab* of *Imam* Abu Hanifah and so it is permissible, especially for the one who cannot buy a house with his own money.

Added to this is the reduction of taxes in the case of taking a loan from the bank, however in the case of buying a house, or renting it with his own money (his being a buyer or a tenant) he will have to pay very high taxes. Calling the non-Muslim country *Dar al Harb* (Abode of war), does not mean that they are in a state of war against Muslims. It only means a non-Muslim country, an independent country that is not under the sovereignty of Islam."⁽¹⁾

1. Mustafa Az-Zurqa, *Fatawa*, pp. 626-625.

In another *Fatwa*, the famous scholar (may the mercy of Allah be upon him) added this phrase:

"As for the contemporary scholars who tell you that bank interest is not usury, these are not only trivial words and signs of ignorance, but they are also means of misleading people because bank interest is the prohibited usury itself and there is no doubt about that."⁽¹⁾

Reflections on the Fatwa of Sheikh az-Zurqa

I would like to say a few important comments on the *Fatwa* of Sheikh az-Zurqa (may the mercy of Allah be upon him).

Changing my opinion and agreeing with az-Zurqa:

The first comment:

A quarter of a century ago, I was against the *Fatwa* of Sheikh az-Zurqa. For almost twenty years, I adopted the *Fatwa* of prohibiting such dealings and I was so strict in this regard because at that time I believed it to be the right thing. Now I have changed my opinion and I agree with az-Zurqa in his *Fatwa*.

It is permissible for the Muslim scholar to change his mind and move from one opinion to another for he is as fallible as any human being. We have seen how a great *Imam* like Muhammad ibn 'Idris ash-Shafi'i changed his opinion on many issues after he settled down in Egypt and saw and heard things that he had never seen or heard before. The change in his opinion was also due to his mind, that had become more mature, and his

1. In his answering the request for fatwa presented by Dr. Muhammad Rashad Khalil the chairman of the American Muslims' Community, p. 624.

knowledge that had grown wider. We became accustomed to reading: ash-Shafi`i said in his old *Madh-hab* and ash-Shafi`i said in his new *Madh-hab* and we never deny any of his opinions.

In addition to this, we have seen many *Imam* s, who had several sayings and several narrations about the same issue like *Imam* Malik and *Imam* Ahmad especially the latter, who sometimes used to have seven or even ten narrations concerning the same case.

This gives the Muslim scholar the freedom to change his opinion as long as his intention is for the benefit of the Muslims. This change must not be for the sake of any worldly prize, at the expense of the Almighty's Content, may Allah forbid this and may He help us to be faithful in what we say and do.

In our age we have seen some of the assemblies of jurisprudence adopting a certain opinion at one time and thereupon delivering a certain *Fatwa* and then after a while, they may countermand their decision and deliver a different *Fatwa* just as the Jurisprudence Assembly of the Muslim World League has done. In one of its sessions, it allowed the usage of the ovary of one of the two wives married to the same man to be put in the uterus of the other wife if the former has no uterus or if her uterus has a certain defect that prevents her from getting pregnant.

Then in its following session, it countermanded its decision and prohibited the previous procedure. It was believed that such a procedure might lead to the loss of the concept of motherhood between the two wives. Indeed, who would be the mother? Would she be the one whose ovary was taken to carry the genes and the hereditary factors! Or the one in whose uterus the ovary

was placed, who carried the baby and suffered the pains of pregnancy throughout the nine months as Allah, the Almighty says, ﴿ *His mother bears him with hardship and she brings him forth with hardship.* ﴾ (Al-Ahqaf: 15) Here all members of the assembly countermanded their decision unanimously.

There is also the World Islamic Jurisprudence Assembly that decided in one of its sessions, on disregarding inflation and therefore necessitating the payment of old debts. In this case, the old debts that take the form of banknotes must be repaid in the same form and number, even if the banknote value is reduced hundred or a thousand times less, as happened with the Lebanese lira, the Iraqi dinar, the Sudanese pound and the Turkish lira.

However, the administration of the Assembly, and its secretariat general, has decided to hold specialized debates to discuss this issue. They have also decided to reexamine it in the twelfth session that was held in Riyadh. However, I think that they have postponed the decision until another session.

In addition to the previous examples, we find the Committee of *Fatwa* of Al-Azhar changing its *Fatwa* in some cases owing to many and various reasons and conditions.

Thus it is no wonder if the individual scholar changes his mind in some cases as `Umar ibn al-Khattab (may Allah be pleased with him) delivered *Fatwas* in a number of issues then changed them after a while saying, "This is according to what we have learnt and that is according to what we have learnt."

In his message to Abu Musa, we find him saying, "If you made a judgment today and then, you find yourself mistaken, you must countermand your judgment and return to the truth.

The truth is the origin that can never be nullified and returning to the truth is better than going far with falsehood."⁽¹⁾

I ask myself, "Why do I tend to adopt the other opinion now although I insisted on rejecting it for a long time?"

I say that man in his old age may come to sympathize more with people and find in himself a tendency to facilitate things for them and to find solutions for their problems. On the other hand, when man grows mature, he may become more courageous in adopting the permissions and facilities and in announcing his stance without fearing the consequences, as he knows that his end is approaching.

Whatever the reason may be, the important thing is that I became convinced of this opinion and I cannot betray the trust of knowledge and deliver a *Fatwa* that is against my beliefs. A Muslim scholar is legally expected to pronounce his opinion to the people, or else he will be a sinner, especially if what he is keeping from them is something that can make their lives easier.

The second comment:

Imam Abu Hanifah and his companion Muhammad were not the only ones to adopt this opinion. There were also a number of great *Imam* s who agreed with them. Among those *Imam* s were Ibrahim an-Nakh`i, who is one of the leading *jurists* and the inheritor of the knowledge of the Mas`udiyah school in al-Kufa, and Sufyan ath-Thawri who is one of the leading *Imam* s in *Fiqh* and the Caliph of Muslims in *hadith* as well as being one of the *Imam* s of piety and asceticism.

1. Muhammad Muhyi ad-Din `Abdulhamid, *Flam Al-Muqi`in* , vol.1, p. 86, As-Sa`adah edition

Ibrahim an-Nakh`i said, "There is nothing wrong if the dinar becomes two dinars in a non-Muslim country between Muslims and non-Muslims."⁽¹⁾

The same thing was also related by Abu Sufyan.⁽²⁾

Also, in the book of the Indian scholar Zhafr Ahmad al-`Uthmani entitled, *I'la' As-Sunan* , in his narration of `Amr ibn al-`As⁽³⁾, we find evidence to prove that transactions which are considered to be corrupt between Muslims are permitted in non-Muslim countries between the Muslims and the non-Muslims. Such transactions are also permitted in the countries that have a peace treaty with the Muslims. It was related on the authority of as-Sarkhasi that having a peace treaty with the Muslims does not mean that the country has become a Muslim country: it remains a non-Muslim country.

It was also related that *Imam* al-Layth ibn Sa`d said, "The peace (treaty) between us and the Nubian states is that we should not fight them and they should not fight us, and that they give us slaves and we give them food. And if they sell their children and women, I see it is all right if the Muslims buy them."

Al-Layth said, "Yahya ibn sa`id al-Ansari also considered this to be permissible."⁽⁴⁾

Muslim jurists disagreed about this. The majority see that the buying is false. Those who allow it are those who live in non-Muslim countries and have permitted it among themselves.

1. Related by *Imam* Abu Ja`far At-Tahawi. See: *Sharh Mushkil Al-'Athar*, vol.8, p.249, the edition of Ar-Risalah.

2. *Ibid* .

3. Abu `Ubayd, *Al-Amwal* , p. 146.

4. *Ibid*, p. 147.

In his book *Al-Amwal*, Abu `Ubayd said commenting on the opinion of al-Layth and Yahya ibn Sa`id, "This was also the opinion of al-Awza`i" (about the country that has a peace treaty with Muslims), and he said, "It is all right because our rules are not applied to them." As for Sufyan and the people of Iraq, they detested it. He said, "And I favor this opinion because the peace treaty is a trust, so how can they be taken as slaves?"

The author of *I`la' As-Sunan* said, "This is indisputable if they believe in the non-permissibility of such a transaction. However, if they consider it permissible then it must not lead to treachery or to breaking the peace treaty."⁽¹⁾

Therefore, we find that a number of the *Imam*s regard non-Muslim countries, including countries that have peace treaties with Muslims, differently from the way they regard the Muslim countries. They permit the kinds of transactions that are not permitted in Muslim countries, if the people of the non-Muslim country approve of such transactions and permit them between themselves. At the same time however, the Muslims must keep away from treachery.

I would like to clarify a certain point here: Under no circumstances could I ever allow a man to sell his children, either in a non-Muslim country or in a Muslim one. We have only quoted the sayings of those jurists, to emphasize a certain principle and that is; the ruling in the Muslim country may be different in a non-Muslim country and a certain transaction, which is forbidden in a Muslim country, may be permitted in the non-Muslim country.

1. See: *I`la' As-Sunan* , vol.14, p.347.

The third comment:

The explanation of Sheikh az-Zurqa of the opinion of *Hanafi* scholars (those who follow the *Madh-hab* of Abu Hanifah) that allows taking usury outside the Muslim countries but not paying it. I totally agree with his explanation because what is of paramount importance is what benefits the Muslim. I would like to remind Sheikh az-Zurqa that the earlier *Hanafi* scholars did not stipulate in usury, taking or paying as their ruling was generalized. However, the later *Hanafi* scholars confined permissibility to receiving usury, as they believed that the process of paying it is in no way profitable for the Muslim. My assumption is endorsed by *Imam* Muhammad ibn Abi al-Hasan when he cited a story of Banu an-Nadir. He quoted (in *As-Sayr Al-Kabir*) the *hadith* of Banu an-Nadir. When the Prophet (peace be upon him) evacuated them they said, "We still have some money that was lent to some Muslims for which the time of repayment has not yet come." He (peace be upon him) said, "Reduce the loan and take it immediately."

Imam Muhammad stated that this is evidence for allowing usurious dealings between a Muslim and a non-Muslim in *Dar al-Harb*. He said, "The Prophet (peace be upon him) permitted these sorts of dealings because they were in a state of war against Muslims (their abode was considered as *Dar Harb* where the Prophet besieged them). However, such dealings are not permissible among Muslims."

Then he continued to say that if a Muslim entered a non-Muslim country according to a treaty and sold, to the non-Muslims, a commodity of which the price was deferred to a

certain date, then agreed with them that they pay instantly on the condition that the whole sum will be reduced.⁽¹⁾

One of the jurists quoted the abovementioned passage of *Sharh As-Sayr*, in his argument against ibn al-Humam who said (in *Al-Fat-h*), "Scholars were bound to believe that allowing usury and gambling was on the condition that interest goes to the Muslim, depending on the cause of benefit for the Muslim. However, generalizing the rule is not intended." After quoting the passage the jurist said, "Consider how he allowed such dealings despite the fact that interest goes to *al-Harbi*. He justified it by referring to the permissibility of usurious dealings between the Muslim and *al-Harbi*. Therefore, it became clear that the ruling is not limited to the case when interest goes to the Muslim. It is a general rule.

In his book *I'la' As-Sunan*, the erudite Zhafr al-Uthmani commented on the issue as follows:

I said we do not take it for granted that interest is obtained by *al-Harbi* because the payment in advance is better than the deferred one. Referring to this, he said, "It is an exchange of the deferred payment for the urgently required price (which is definitely usury), therefore, interest is not obtained by *al-Harbi*, but rather by the Muslim. They may both receive equal interest. On the contrary, according to what has been assumed by some of my fellow jurists, this confirms the permissibility of incorrect dealings between the Muslim and *al-Harbi* in *Dar al-Harb*." It was mentioned in *Al-Mabsut* that the issue is generally permissible whether the Muslim lends or borrows because the money he takes is gained through the consent of the

1. Also mentioned in *Sharh As-Sayr*, vol. 3, pp. 228, 229.

non-Muslim. The fellow jurist should have presented this reasoning rather than quoting the passage from *Sharh As-Sayr*. This does not permit the Muslim to give the non-Muslim extra money as a kind of charity. This is permitted only if there is benefit for the Muslim.

The Hanafi Madh-hab is an authority for Muslims

In addition, it is acknowledged that this *Madh-hab* has a great following among Muslims. It is widespread, especially among the Muslims in India, Pakistan, Bangladesh, Afghanistan, and The Islamic Republics in central Asia, Turkey, Bosnia, Kosovo, Albania, etc. Two great Muslim states, the Umayyad and the Abbasid, ruled according to this *Madh-hab*. Its civil law was codified in (*Majallat al-Ahkam al-`Adliyyah*). It was still being practiced and until recent times, in a number of Arab and Islamic countries. Thus, there is no restriction whether to adopt the reasoning of this *Madh-hab* or to accept the ruling that permits such dealings in general. We have previously mentioned that a number of great *Imam*s shared *Imam* Abu Hanifah's and his companion Muhammad's opinion. Among these were *Imam* Ibrahim an-Nakh`i and *Imam* Sufyan ath-Thawri.

Imam Zhafr Ahmad al-`Uthmani said in *I`la' As-Sunan*, "To sum up, the opinion of Abu Hanifah and his companion Muhammad ibn al-Hasan is the most authentic and reliable statement in this issue. It has been supported by the opinions of *Imam* an-Nakh`i, who permitted usury in *Dar al-Harb*, Ibn `Abbas, who allowed usury between the master and his slave, and Sufyan ath-Thawri."

Fatwa of the European Council for Fatwa and Research

The Council, in its fourth session that was held in Dublin in Rajab, 1420 A.H. - October 1999 A.C. issued a unanimous *Fatwa*. It reads as follows:

The Council has reviewed the issue that has spread distress in all the countries of the West; namely buying residences through land banks. Several papers were submitted, whether supporting or objecting, to the Council. The majority, after reading and discussing the papers in details, concluded with the following:

The Council confirms what the *Ummah* has agreed upon, i.e. the prohibition of usury and that it is one of the seven major sins and is among those grave offences that give notice of war from Allah and His Messenger. It also confirms what the international Islamic assemblies of *Fiqh* have confirmed, i.e. that bank interest is a prohibited usury.

The Council calls upon all Muslims in the West to work hard to find lawful alternatives such as "resale with a stated profit", which is employed by Islamic banks, or the establishment of Islamic companies that construct residences for Muslims with suitable and reasonable conditions.

It also invites Muslim gatherings in Europe to negotiate with conventional banks to effect a lawful formula for these transactions, like a sale with installments in which the price is increased in return for term increase. This is common in some European countries. In addition, some Western banks have inaugurated branches in some of our countries, like Bahrain, that

transact according to the laws of the Islamic *Shari`ah*. Also, the Council can help in calling upon these banks to adapt its ways of dealing to suit the Muslims.

Otherwise the Council, in the light of evidence, bases and juristic considerations, deems it unobjectionable to resort to this means, i.e. obtaining usurious loans to purchase a residence as long as a Muslim does not have a residence and on condition that he does not have enough financial surpluses to buy one. The Council based this *Fatwa* on essential bases:

A. The first basis

"Necessity knows no laws" is a conventional rule, which is derived from five Qur'anic verses among which is, ﴿He has explained to you in detail what is forbidden to you, except under compulsion of necessity.﴾ (Al-An`am: 119) And, ﴿But whosoever is forced by necessity without willful disobedience, nor transgressing due limits, (for him) certainly, your Lord is Oft Forgiving, Most Merciful.﴾ (Al-An`am: 145).

Jurists have decided that need may be considered necessity whether general or specific. Need is that which, if not satisfied, causes embarrassment for the Muslim, even though he can do without. On the other hand, necessity is that which, if not fulfilled, Muslim is unable to dispense with.

Allah, the Almighty, has not imposed any difficulty on this *Ummah* as He says, ﴿...and has not laid upon you in religion any hardship﴾ (Al-Hajj: 78) and, ﴿Allah does not want to place you in difficulty﴾ (Al-Ma'idah: 6).

To remove this difficulty, a Muslim needs a suitable and affordable residence.

In its *Fatwa*, the Council has relied on the rule "Necessity knows no laws," and they have not overlooked the other complementary and regulatory rule; namely, what is permitted, in case of necessity, should be restricted to the necessity. Thus, obtaining usurious loans to purchase residences for trade is unlawful.

Undoubtedly, having a residence is necessary for Muslim individuals and families. Allah, the Almighty, has bestowed favor upon people as He says, ﴿And Allah has made for you in your homes an abode.﴾ (An-Nahl: 80) Moreover, the Prophet (peace be upon him) indicated that a suitable residence is one of the three or four elements of happiness.

However, a rented residence does not satisfy the needs of a Muslim as he pays large amounts of money to non-Muslims, for a long period. In addition, he does not feel secure and all the rent he pays is wasted as expenditure without owning a residence. At all times he is liable to be expelled from the rented residence in case he has many children or is visited by many guests. Not to mention that if he grows old or gets his salary reduced, he may be evicted. Owning a residence spares the Muslim this distress. He can also choose a residence that is near to mosques, Islamic centers and schools. This gives the opportunity for the Muslim group to build up a community and consequently establish a smaller Muslim community within the greater one. Then they can get acquainted with each other, strengthen their relations and cooperate to live under the umbrella of the principles and supreme values of Islam. As long as the Muslim owns his residence, this will enable him to establish and arrange it in a way that fulfills his social and religious needs. Besides the

individual needs of every Muslim, there are also the public needs of Muslim minorities in non-Muslim countries. These include improving their living conditions and enhancing their standard of living, so that they are worthy of belonging to the best of peoples ever raised up for mankind. Hence, the picture of Islam will be enhanced in the minds of non-Muslims. It also includes relieving economic pressures on these minorities so that they are able to perform the obligation of *Da`wah* and contribute to upgrading the community. This highlights the importance of the Muslim owning a residence.

B. The second basis (complementary to the first)

It represents the permissibility of usurious dealings and other imperfect contracts among Muslims and non-Muslims in non-Muslim countries. It is the opinion of *Imam* Abu Hanifah, his companion Muhammad ibn al-Hasan ash-Shaybani, Sufyan ath-Thawri and Ibrahim an-Nakh`i. It is also reported from *Imam* Ahmad ibn Hanbal and endorsed by Ibn Taymiyah, as mentioned by some followers of *Imam* Ahmad ibn Hanbal.

According to this Madh-hab:

A Muslim is not legally obliged to put into effect the financial, political or civil injunctions of the Islamic law in a non-Muslim society, as Allah, the Almighty does not burden a person beyond his scope. The forbiddance of usury is one of these injunctions that pertain to the identity, the philosophy and the social and economic orientation of a state. Rather, the Muslim is required to apply the injunctions that concern the individual, like the laws of devotional acts, food and drink, clothing, marriage, divorce, restitution, *`Iddah*, inheritance and

other such issues. Moreover, if circumstances become straitened to the extent that he cannot practice even these obligations, then he should immigrate to a place where he can.

If a Muslim does not conclude such imperfect transactions, among which is usury, in non-Muslim countries, this will lead to the deterioration of his financial and economic status. Embracing Islam is supposed to strengthen man's status and to benefit him. Some *Salaf* scholars relied, in permitting Muslims to inherit from non-Muslims, on the *hadith* that says, "Islam is always superior and never inferior" and the *hadith*, "Islam increases (in superiority) and never decreases." That is to say, it increases the profit of a Muslim. If a Muslim abstains from taking interest, he will not be exempted, as he succumbs to the laws of these countries, from paying it. Thus, the Muslim will be wronged financially because of his commitment to Islam; and this is undesirable. Some scholars argue that the *Hanafi* Madh-hab permits usury only in the case of receiving interest, not giving it, as giving does not produce any benefit for the Muslim. They also argue that *Hanafi* scholars permit contracting imperfect transactions on two conditions:

- They are beneficial for the Muslim.
- They are not based on perfidy or cheating the non-Muslim.

Consequently, they assume that there is no benefit for the Muslim.

The reply: This conclusion is not admissible as evidenced by Muhammad ibn al-Hasan ash-Shaybani in *As-Sayr Al-Kabir* as well as the general stance of the *Hanafi* predecessors. In addition, although the Muslim gives interest, he is the beneficiary because eventually he will own the house.

The Muslims who live in such countries have confirmed that the installments paid to the bank are equal to the rent paid to the property owner and sometimes it is less than rental payments. Thus, forbidding usurious transactions with banks will prevent the Muslim from owning a house, which is considered by jurists as a necessity. He may continue to pay a monthly or annual rent for thirty years or more without owning a house while he can own it within twenty years or less.

However, if such transactions were not permissible according to the *Hanafi* scholars and those who agreed with them, it would be permissible according to the majority, as a need that is considered a necessity; permitting what is prohibited. This is especially the case when the Muslim does not receive interest, rather he gives it while the prohibition is originally directed towards eating *Riba* (usury) as is mentioned in the Noble Qur'an. He has forbidden giving usury as a prohibition of evasive legal devices. In the same way, writing the promissory note and witnessing it are also prohibited. It belongs to the rule of prohibiting means, not intentions. It is acknowledged that eating usury is, by all means, forbidden, but giving interest is permissible in case of necessity. Jurists have laid down this rule and permitted borrowing money on interest in case of necessity, when all other lawful ways are unavailable. One well-known relevant rule is: What is prohibited for itself should not be permitted except in necessity, while what is prohibited of evasive legal devices should be permitted in case of need. Surely, Allah is our Guide.

The remarks of some members of The European Council

Ash-Sharq al-Awsat journal published remarks of two members of the Council, which are as follows:

"Praise be to Allah and peace and blessings be upon our Prophet Muhammad, his Household, his Companions and those who follow him.

The signers of this paper have reviewed the decision ratified by the majority of the Council and resolved to prove their dissent in the following way:

Justifications of the decision

The two signers deem that buying residences through banks, whether usurious or not, is legally prohibited and that the evidence quoted to permit it do not render it permissible. This is due to the following:

- 1) The stance of the *Hanafi Madh-hab* does not apply to that case, because their opinion is outbalanced in usurious transactions, as preferred by *Hanafi* researchers like al-Kamal ibn al-Humam in *Fat-h al-Qadir* and Ibn `Abedin in *Radd Al-Muhtar*, is that the Muslim be the receiver of interest and that transactions with the non-Muslim take place in *Dar al-Harb* through the consent of both. They argue that the first two conditions are not applicable because the European countries are not *Dar al-Harb*. In such case, the Muslim becomes the giver not the receiver. Thus, the reason behind the decision has been altered, even if the second condition is generalized to include both the giver and the receiver of interest. Moreover, the evidence quoted by the *Hanafi* scholars on the issue are not sustainable. This brief

dissent does not include the reviews of scholars among which are *Hanafi* .

Regarding the statement that the *Hanafi* division of the abode, is binary not ternary, we say that it is either a Muslim or a non-Muslim; this does not contradict what we have ruled of the unlawfulness of such a transaction. This is because they deem that the abode of disbelief is either an abode of Protection or not. In case it is not, this transaction is unlawful.

The second reason behind the unlawfulness of this usurious transaction is the absence of necessity for concluding it whether individual or collective. This is due to the non-existence of the legal prerequisites of necessity; namely,

- a- It should be a *fait accompli* not a forthcoming event, i.e. that there is a real threat against one's faith, soul, mind, offspring, or wealth.
- b- It should be inescapable that if one refrains from the forbidden transaction, he would fear the ruin of his soul, damage to one of his limbs, or the discontinuation of profit.
- c- There should be no other alternative for the compelled person.

It is clear that the Muslim community has not reached that extent in any European country. In addition, the availability of residences in such countries eliminates the necessity of usurious transactions.

- 2) The fact that we live in Europe and we do not believe that such a necessity exists. The Muslim community is not forced to make such usurious transactions, keeping in mind that the decision permits borrowing on interest to secure a residence that is suitable in its location and size.

- 3) We believe that the economic debility of the Muslim community, referred to in the decision, does not arise from abstaining from these usurious transactions. Rather, it is caused by the lack of unity and financial investment and by depositing wealth in usurious banks. This adds to their power and enables them to continue their usurious strategies.
- 4) The decision has overlooked the legal ruling concerning buying residences through borrowing on interest. This will encourage many members of the Muslim community to enter into unreserved usurious dealings in Europe relying on that decision.

Our Fatwa

The signers of the opposing opinion assume that purchasing residences through land banks in Europe is not imperative; it is not a need that is regarded as a necessity. Consequently, they judge transactions as unlawful and affirm that man should not engage in such transactions except in the following conditions: if he fails to afford to buy or rent (of course through lawful means) a residence, to find any one who would give him a good loan (with no interest), or any other *shar`i* means like *Murabahah*⁽¹⁾ and that, finding such a means, the residence should not be highly luxurious or transgress the need.

Peace and blessings of Allah be upon the Prophet, his Household and Companions and praise be to Allah, the Almighty.

Dr. Muhammad al-Barazi -Denmark.

Dr. Suhaib Hasan `Abd al-Ghaffar -England.

1. A legal term for selling a thing for a profit, when the seller distinctly states that he purchased it for so much and sells it for so much.

Our reply to the above-mentioned review

Our reply to the previous review was published in the Middle East magazine under the title: *Assessing the needs of the people is not the task of the jurist alone*. It runs as follows:

Sheikh Yusuf al-Qaradawi - head of the Supreme European Council for Fatwa and Research - denied that the decision of the Council regarding purchasing residence through land banks in non-Muslim countries had been based on the *Hanafi Madh-hab* only. Rather, the *Hanafi* ruling was mentioned only to support and substantiate the council's decision. Moreover, the evidence stated by the council was that, for Muslim minorities in non-Muslim countries, some needs are considered as necessities. Sheikh Yusuf said, "The European Council for Fatwa and Research has issued its decision regarding purchasing residence after receiving a number of researchers that treat the subject and discussing it thoroughly through an open debate. Then, the Council endorsed the decision that was taken, thanks to the Almighty, in a landslide. Actually, juristic assemblies follow this way of endorsing decisions that win overwhelming majority among the members. However, some juristic assemblies do not report the dissenting opinions, like the assembly of the Islamic Conference Organization, while some others only allow the dissenting members to record their dissent in the minutes of the sessions, like the assembly of the Muslim World League in Makkah. As for our assembly, we let the dissenting member record his dissent if he wishes and, finally, the decision is issued in the name of all the members. This is the tradition followed by almost all councils, organizations, cabinets, etc., all over the world. In addition, it has never been mentioned that a dissenting member of any juristic assembly has published his dissent in

newspapers or vituperated the other members, who may surpass him in knowledge and honor."

As regards the statement issued by three⁽¹⁾ members of the European Council for Fatwa and Research, in which they recorded their dissenting opinion concerning the council's decision of permitting purchasing residences through land banks (mortgage), sheikh al-Qaradawi says, "This deed, by all means, violates the morals of teamwork. Unfortunately, the member who stirred up such an odd campaign and moved other members to follow him, was not reliable in his dissent, which he called (academic), as he mentioned some reservations that had been fully discussed and refuted by the council. Furthermore, his dissent is full of falsities and misconceptions. There is no power and no strength except in Allah!

The dissenter focused on the *Hanafi Madh-hab* though it was only recorded to support the council's decision, not to mention that some members asked for omitting it from the minutes of the session lest people (like the dissenting member) should trade on it. In addition, the proof capitalized on by the council was the need that is considered as a necessity; i.e. the need of Muslim minorities in non-Muslim countries to have their own residences. However, the assessment of such a need is not assigned to the jurist only, as it is not a *shar`i* case, so we should consult experts and those who know well the sufferance of people; rather, we should recourse to people themselves."

It is worth noting that no scholar has the right to claim that he is the only one more aware of the people than themselves.

1. In fact they were only two as seen through their signatures on the statement.

The true scholar is the humble one who reveres others, especially his colleagues, and respects their views. For the one who makes things easy for the people is no less, in piety and righteousness, than the one who makes things difficult for them.

The statement of the Shari`ah Scholars League in America

The preceding claim is consolidated by the statement, issued in the conference of the *Shari`ah* Scholars League that was held in America in the period 10-13 Sha`ban, 1420 A.H / 19-21 November, 1999. The statement runs as follows:

Examining the problems that face the inhabitants of the U.S. in obtaining residences in light of the observed applications, namely rent or ownership through mortgage, the participants of the conference concluded the following:

First: the conference advises Muslim residents in the West and investment firms to do the following:

A) Work to produce Islamic alternatives that solve the problem of financing through setting up enough Islamic financial institutions and housing cooperatives (that are hopefully supposed to consider the circumstances and needs of low-income people) to eliminate necessity and give people more room to choose.

B) Work to support and reinforce nascent Islamic institutions that observe the rulings of Islamic *Fiqh* in their transactions, so as to enable them to produce the above-mentioned alternatives.

C) Study the contracts currently used to finance housing in common banks to reach a formula that does not contradict the rulings of *Shari`ah*, and attempt to convince banks of it.

Second:

A) Residence is a requirement that should be available whether through ownership or rent.

B) American Muslims who seek to rent houses face many obstacles relating to the arbitrariness of landlords, number of the family members or to the location of the residence.

C) The available option of owning residences, i.e. through mortgage, is originally a kind of usury, so Muslims should not resort to it only when failing to find any *shar`i* alternatives that can satisfy his need like institutions, which offer finances based on *Ajal*⁽¹⁾, *Murabahah*, etc.

D) Failing all *shar`i* alternatives, the Muslim who seeks to own a residence through mortgage is allowed, according to most of the participants, to do so because of the need that is considered as a necessity. That is to say there should exist two factors: that a Muslim lives outside the abode of Islam and that there is a common substantial need among all Muslims living outside Muslim countries. Then mortgage is allowed to shove religious, moral, social and economic evils, and to fulfill the benefits required for the preservation of the Islamic religion and identity. However, such allowance should be restricted to the individual need and not to be extended to include trade or investment.

In addition, some jurists rule that it is impermissible to engage in mortgage even if the need that is considered as necessity is affirmed. They assured that it is sufficient to rent a residence as an alternative to ownership, disregarding the

1. A legal term for buying on delayed terms.

acknowledged benefits which the tenant misses out on, drawing upon the juristic opinion that prohibits usury whether inside or outside the abode of Islam and only permits it in the case of legal exigency and dismissing the case of need, even if it were common.

It has become clear, through the data presented by specialists about the currently used contracts of home ownership, that they are much like the contracts of *al-Ajal* purchase in content. In this case, we are allowed to revise and rephrase the formula of such contracts drawing upon the rule that the crucial factor in contracts lies in intentions and meanings, not in style and structure. While the prohibition of bank loans is unanimously emphasized, allowing home ownership through mortgage and in light of the above-mentioned conditions, becomes an exception. Such an exception is required due to the need that is considered as a necessity or the necessity that is measured according to surrounding circumstances. However, the original ruling of its prohibition remains valid.

Query and reply

Some of our brothers questioned: Isn't it possible to employ *Murabahah*, which is effected by Islamic banks, as an alternative to mortgage?

The answer to such a question is that Islamic banks in Western countries do not deal in *Murabahah* or any other Islamic transaction. Moreover, *Murabahah*, as employed by Islamic banks, does not solve the current problem of owning houses in the West, as dealing in *Murabahah* first requires the payment of about 30% of the price of the house. Besides,

Islamic banks do not extend the installment plan for more than five years while common banks extend it to about thirty years, which makes it easy for common people to pay a small amount of money over a long period of time.

The research of Dr. Nazih Hammad

Our brother Dr. Nazih Hammad has written a concise and valuable research about the ruling of usurious dealings in *Dar al-Harb* or Outside the Abode of Islam, in which he gives preponderance to their non-permissibility. Moreover, he goes on refuting the evidence used by *Hanafi* jurists to make such transactions lawful.

Dr. Nazih should be respected for adhering to his viewpoint and for imbibing (almost) and refuting all evidence introduced by *Hanafi* jurists. However, he does not mention the evidence introduced by Imam Muhammad ibn al-Hasan in *As-Sayr*, i.e. what is related regarding the Bani an-Nadir case.

However, I have found two negative points in Dr. Nazih's research:

First: Dr. Nazih was quite literal in his dealing with the viewpoints of the *Hanafi Madh-hab*, as he did not delve deep into their essence. This is evident in his assumption that the *Hanafi* jurists permitted taking interest but not giving it.

It is a requirement to comprehend the texts of *Shari`ah* according to their essence, so how can we take the texts of the jurists literally without understanding the gist. Reading Dr. Nazih's works, I know that he does not belong to the new *Zhahiris* ⁽¹⁾ or textualists. On the contrary, he has produced

1. Those who adhere to the explicit sense of a given text or doctrine.

many meticulous, up-to-date research in which he adopted the moderate approach, like his research on credit letter, so why is he extremely literal in this context?

What is meant in the *Hanafi Madh-hab* is to save and keep the Muslim's money against the greed of others, who derive benefit from it while he does not. But in our case it is the Muslim who derives the complete benefit, regardless of the fact that it is he who pays the interest. Moreover, we have stated above in our comment on the Fatwa of sheikh az-Zurqa that what was narrated of the later *Hanafi* jurists concerning this point was not absolute for their precedents. Dr. Nazih has also defined *Dar al-Harb* in a different way from that of the *Hanafi* jurists, who use it to refer to whatever lies beyond the abode of Islam, thus it includes *Dar al-`Ahd wa al-Mu`ahadah* ⁽¹⁾. For them, the classification of the abodes is dual.

Second: Dr. Nazih has negated the necessity of Muslims in Western countries - in which he lives - to have houses of their own, so that they will not be at the mercy of those who may drive them out at any time, especially when they have many children. Perhaps this is due to the fact that Dr. Nazih lives in Canada, where people lead a more luxurious life than others and so he thinks that all minorities all over the world live in such welfare.

In our present age, the problem with many jurists is that, though, they fully acknowledge weighty legal rulings, such as, necessity knows no law, need -whether private or public - may be considered a necessity, difficulty is the nurse of facilitation, etc., they are unable to put these rulings into practice. But I think Dr. Nazih is not one of them.

1. Those who enter into covenant with Muslims.

Solutions suggested by Dr. `Abd as-Sattar Abu Ghuddah

In his precious paper, introduced to the Conference of *Shari`ah* Scholars in the U.S. (November, 1999), Dr. `Abd as-Sattar Abu Ghuddah, one of the eminent contemporary jurists in the field of transactions, presented a number of solutions to this problem. His views, undoubtedly, denote an accurate understanding and deep sagacity regarding *Shari`ah* and reality, both at the same time. He, may Allah guide him on the right way, said, "While all suggested solutions are based on the process as originally an *Ajal* purchase, because it involves exchanging an object; a house for a price, however, the aim of this process is not to borrow from land banks, the usurious loan is the reason behind prohibition. There are apparently two separate operations; first: the *Ajal* purchase, which takes place between a Muslim buyer and a non-Muslim seller, and it is a lawful transaction. Second: borrowing money from the bank to pay the price for the seller, and then to repay the mortgage debt to the bank by installments, which is considered an illegal transaction.

The lawful way of such a process is to have a transaction between a Muslim buyer and a non-Muslim seller or the usurious bank if it is allowed to undertake the selling directly. In such a way the seller can have interest for the delayed price as it is approved by the jurists. Here I will try to introduce some suggested solutions based on integrating the two processes; buying and getting money from the bank. If such suggested solutions are not in accordance with the real nature of the process as it takes place, it could be propounded so that the non-Muslim sellers may accept it. However, this will require

great efforts on the part of concerned institutions to help Muslims acquire houses by way of such solutions that will make them feel at peace.

The solutions are as follows:

A) Considering the transaction as an *Ajal* purchase with the non-Muslim seller selling the debt to the bank

The suggestion offered for discussion tackles the possibility of considering the act of buying residences through land banks (mortgage) as an *Ajal* sale. In spite of considering the transaction between the non-Muslim parties (the bank and the seller) as a kind of usury, we have to examine whether it may be considered as an *Ajal* purchase, concerning the Muslim, or not.

In this transaction, the non-Muslim seller immediately gets the (deducted) total price of the house from the land bank. Thus, we have two transactions; a) an *Ajal* purchase between the seller and the purchaser, which is a lawful transaction, and b) discounting debts (between the non-Muslim seller and the land bank, with no direct responsibility on the Muslim purchaser), which is an unlawful transaction. As for considering the Muslim as an indirect part in this unlawful transaction, we may classify his role under the *Fiqhi* rule that reads: Some evasive legal devices are not prohibited, as prohibiting all evasive legal devices of evil would provoke embarrassment.

Hence, we can conclude the following:

- This transaction can be considered as an *Ajal* purchase.
- The irresponsibility of the Muslim purchaser for the unlawful transaction between the non-Muslim seller and the usurious land bank.

- We have not considered the act, in which the Muslim purchaser pays the monthly installments to the bank as a kind of usury, because the installments are paid in return for a residence and because the whole process is based on the firm relationship between the non-Muslim seller and the bank. Actually, this relationship is due to an implicit agreement between both of them to pay the total sum of the residence to the seller and he, in turn, sells the debt - that the Muslim has to repay to the seller - to the bank.

As for the case of mortgage in order to assure indebtedness: if it is considered as an *Ajal* sale (with the seller selling the debt to the bank), there will be no harm in this lawful transaction. On the other hand, if it is made in order to ensure the debt that the Muslim has to repay to the bank; in this case, mortgage is unlawful.

B) Considering the transaction as an *Ajal* purchase while the seller and the bank are participants in the sale

This suggestion offered for discussion also tackles the possibility of permitting mortgage on the basis that the sale contract assumed by the seller is a result of an implicit agreement between the non-Muslim seller and the bank to fulfill the process. The non-Muslim seller or the bank ratifies the contract and then they share the proceeds of this transaction according to the applied usurious dealing, clearing the Muslim of any direct responsibility. As for considering the Muslim as an indirect part in this unlawful transaction, we may classify his role under the *Fiqhi* rule that reads: Some evasive legal devices are not prohibited, as prohibiting all evasive legal devices of evil would provoke embarrassment.

C) Considering the transaction as an *Ajal* purchase, with the bank as an agent of the seller, even if implicitly

This suggestion offered for discussion tackles the possibility of considering mortgage as an *Ajal* sale. The bank assumes the act of selling qua an agent of the non-Muslim seller; this agency is an implicit one depending on dealing and custom. Thus, this transaction may be considered as an *Ajal* sale between the Muslim purchaser and the non-Muslim seller, but it is fulfilled through the bank (the agent of the non-Muslim seller) in return for sharing the proceeds of the sale.

Finally, many thanks are due to Dr. Abu Ghuddah for his valuable suggestions which are open for discussions by other honorable specialists and scholars.

Allah, the Almighty, knows best.

Fiqh of Muslim Minorities sheds light on the principles of our feasible, facile and tolerant Shari`ah. These principles are not spiritless clichés that are applied to every mature Muslim regardless of his conditions or circumstances. Contrarily, they tackle every case individually providing a suitable solution for each according to the surrounding circumstances.

Fiqh of Muslim Minorities discusses controversial issues, be they social, economic and familial that face Muslim communities living in a non-Muslim polity. Is it permissible to bring religions close together? Can a Muslim be buried in a Christian cemetery? Will a female convert be obliged to separate from her non-Muslim husband? Can a Muslim inherit from his non-Muslim relative? These are just examples of what this book attempts to answer.

Born in Egypt, **Sheikh Yusuf al-Qaradawi** graduated from Faculty of Usul ad-Din (Theology), al-Azhar University, in 1953 before obtaining a teaching certificate in 1954 and a Ph.D. in 1973. He is the founder and dean of the Islamic Department in the Faculties of Shari`ah (Islamic Law) and Education in Qatar, and the chief of the World Center for *Sunnah* and *Sirah*. He was chosen as a chairman of the Islamic scientific councils of Algerian Universities. An advocate of Islamic moderation, he grew up among the mother Islamic movement. Among his teachers were Imam Hasan al-Banna, Sheikh al-Bahiyy al-Khuli and Sheikh Muhammad al-Ghazali.



Al-Falah is an institution devoted to developing a better understanding of Islam among all people of the world; Muslim and Non-Muslim. Our aim is to clear the way for a fair appraisal of the fastest growing religion in the world.

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