

WHAT HAPPENS TO A MARRIAGE IF ONE OF THE COUPLE CONVERTS TO ISLAM?

Traditional Islamic jurisprudence says that Muslims should only marry each other. The only exception to this is that Muslim men are allowed to marry women who are Ahl al-Kitab (People of Scripture), usually limited to Jews and Christians. Muslim women are not allowed to marry non-Muslim men. But what happens to a non-Muslim couple who are married, and later one or both of them convert to Islam? Here are some fatwas on the issue, that slightly differ from each other:

A. Fatwa of The European Council for Fatwa & Research, including Sheikh Yusuf al-Qaradawi, Sheikh ‘Abdullah bin Bayyah, Sheikh ‘Abdullah al-Judai and others (from Sheikh ‘Abdullah bin Bayyah, *Sina’at al-Fatwa*, pp. 356-7)

1. If both of the couple become Muslim, and they are not close relatives by blood or suckling that would make the marriage invalid, their marriage continues in its validity. (NB they do not need an Islamic nikah ceremony.)
2. If only the husband converts to Islam, they are not close relatives and the wife is a person of scripture, their marriage continues in its validity.
3. If only the wife converts to Islam, the view of the Council is that: a) if she converts before the marriage is consummated, she must leave him immediately; b) if she converts after consummation and her husband converts within 3 months or within 3 of her monthly cycles, their marriage continues in its validity; c) as before, but if a long time period has passed, she may remain with him in the expectation that he will convert also. If he eventually converts, their marriage continues in its validity, without needing a new marriage ceremony. d) If she wishes to leave her husband after the 3-month time period, she should seek dissolution of her marriage from the relevant authorities.
4. If the wife is Muslim and the husband is not, the four Madhhabs do not allow her to remain with him after the expiry of the 3-month period, or to have sexual relations with him. However, some scholars allow her to remain with him, fully-married, as long as he does not harm her regarding her religious practice and as long as she has hope that he will also convert to Islam eventually.

It is authentically narrated from ‘Umar bin al-Khattab that a woman became a Muslim while her husband remained non-Muslim: he ruled, “If she wishes, she may leave him or if she wishes, she may remain with him.” Also, there is an authentic narration from ‘Ali bin Abi Talib: “If the wife of a Jewish or Christian man becomes Muslim, he is entitled to remain her husband, since he has a covenant with the Muslims.” Similar views are authentically-narrated from Ibrahim al-Nakh’i, Imam Sha’bi and Hammad bin Abi Sulayman.

B. FATWA OF SHEIKH ‘ABDULLAH AL-JUDAI (from his book *Islam Ahad al-Zawjayn*, pp. 249-251)

1. There is no decisive, unequivocal text (*nass qati’*) about this matter.
2. There is no consensus (*ijma’*) about this matter.
3. Pre-Islamic marriages are sound and valid. They can only be annulled for definite reasons. Difference of religion is not a definite cause of invalidity due to the absence of an unequivocal text and due to the existence of a difference of opinion about the matter.
4. Evidence from the Qur’an and Sunnah shows that a couple remaining together with a difference of religion does not damage the basis of their faiths. Their relationship remains sound, not corrupt.
5. The simple fact that one of them converts to Islam does not invalidate the marriage.
6. Despite the multitude of people converting to Islam in his time, it is not recorded at all that the Prophet (pbuh) separated a husband and wife or ordered their separation due to one of them converting, or due to one of them converting before the other. What is authentic from him is the opposite, as in the case of his daughter Zaynab who remained married to Abul-‘As for six years after she converted to Islam and before he did so, just before the Conquest of Mecca and after the revelation of Surah al-Mumtahinah. The most that happened was that she emigrated and left him in Mecca after the Battle of Badr, but her emigration (*hijrah*) did not nullify their marriage.
7. To say that the ayah of al-Mumtahinah ends marital relations due to a difference of religion is not correct. It only applies when one spouse is at war with Islam (*harbi*), not simply a non-Muslim (*kafir*).
8. The ayah of al-Mumtahinah allows a believer to marry a believing woman whose husband is at war with Islam. It does not obligate this. The story of Zaynab shows that a woman’s marriage to a non-Muslim (*harbi*) man changes from being binding to being allowed. The reason for this is the difficulty of her returning to her *harbi* husband, and the difficulty she faces without a husband.
9. The ayah forbids a Muslim man from retaining a non-Muslim wife who has not joined him in emigrating from a land of *kufir* to a land of Islam, or has fled from him, renouncing her faith and joining non-Muslims who are at war with Islam. The reason for this is to prevent an inclination towards ones enemies, as happened with Hatib bin Abi Balta’ah, who wrote to the polytheists about some of the movements of the Muslims due to the presence of some of his relatives in Mecca.

10. When one of the couple converts to Islam whilst the other is not at war with Islam, they are allowed to remain together. They are not separated simply due to difference of religion. The evidence for this is the practice of the Prophet (pbuh) and the Companions regarding those who embraced Islam in Mecca before the Hijrah and at the Conquest of Mecca. This was also the fatwa given by ‘Umar during his caliphate without any opposition, and also by ‘Ali.
11. A difference in religion due to the conversion of one of the couple to Islam allows the annulment of the marriage but does not obligate it, as shown by the judgment of ‘Umar with the endorsement of the Companions.
12. The conclusions of the Madhhabs in this matter are not to be given precedence due to their opposition to what is established, weakness of evidence (*dalil*), weakness of juristic indication (*istidlal*), or all of the above.
13. The allowance for the couple to remain together means that their marital life together is permitted, including sexual intercourse.

C. TAKING INTO ACCOUNT THE LIKELY EFFECTS ON CHILDREN

The majority of jurists regard a man who doesn't pray regularly out of laziness as still a Muslim and not a *kafir*, so his wife is not obliged to divorce him.

In certain situations, the wife is allowed to have patience and persevere with her marriage, despite the objectionable behaviour of her husband, **especially if she has children from him and she fears that they will become psychologically ruined and wasted.**

(Sheikh ‘Abdullah bin Bayyah, *Sina’at al-Fatwa*, p. 353)

Compiled and translated by Usama Hasan, London, 13th January 2012