

INTERRELIGIOUS MARRIAGES IN THE LAW OF MONOTHEISTIC RELIGIONS: ISLAM AND JUDAISM*

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SUMMARY: 1.- Interreligious marriage as a process of social integration; 2.- Plurality of marriage and family models; 3.- Mixed marriages in Islamic law; 4.- Mixed marriages in Jewish law; 5.- Conclusion.

1.- Interreligious marriage as a process of social integration.

With the term interreligious marriages, we generally mean marriage between people of different religious faiths, belonging to different religious confessions or churches, or sometimes even marriage between a believer and a person who is uninterested in any religious belief or belonging.

However, diversity from a strictly fideistic point of view is usually accompanied by another equally meaningful kind of diversity, that dealing with the ethnicity, nationality and traditions of a person. In other words, the diversity of the complex of lifestyles, mentality and cultural formation which contributes in shaping the identity of a person and the social group to which he or she belongs.

The trend of interreligious marriage is destined to grow in the West in line with the increasing number of non-Christian immigrants as they become integrated into our society¹. This number of mixed marriages will grow naturally as more immigrants come to permanently reside in Europe, enter work life and participate in its social life. Interreligious marriages are therefore destined to increase as the process of integration of immigrants into its society matures².

Marriage constitutes one of the most important and significant motors of integration, the one that generates, within the core of the conjugal relationship, the first fundamental step towards creating the new union of two people from different religions and culture³.

In an open society that welcomes foreign values, traditions and lifestyles which are different from what everyone knows, mixed marriages can be seen in a positive light, as an opportunity for increased dialogue and interaction between religions and cultures and therefore a means of promoting peace and harmony in a society marked by the phenomenon of multiculturalism. However, this model of society is difficult to achieve and what is more common is an inclination of disapproval and rejection of mixed marriages.

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¹ P. Moneta, *I matrimoni tra persone di diversa fede religiosa*, Convegno Unione Giuristi Cattolici, Messina, 30 May 2014, in <https://www.ascait.org/i-matrimoni-tra-persone-di-diversa-fede-religiosa/>

² P. Bonizzoni, *Migrazioni familiari, matrimoni e nascite*, in *Dossier statistico immigrazione 2019*, Centro Studi e Ricerche IDOS (ed), IDOS, Rome, 2019, pp. 226 ss.

³ B. Ghiringhelli, *Coppie miste, coppie interreligiose: anatomia di una definizione*, in *Matrimoni Misti: una via per l'integrazione tra i popoli*, Convegno multidisciplinare internazionale, Simona Marchesini (ed), Verona – Trento 1-2 December 2011, Alteritas, Verona, 2012, pp. 183 ss.

This attitude, not being limited to the personal aspect of the relationship between the two spouses, undoubtedly makes the marriage more difficult and more exposed to the risk of failure. In marital life, the spouses establish a community between themselves that embraces every aspect of the personal identity of each of them, and a basic affinity, a common cultural matrix and a shared religious belief undoubtedly favour the establishment of this communion of intimacy. Certainly, this partnership will be all the more difficult to achieve the more it becomes necessary to bridge profound and deep-rooted differences between the spouses.

2.- Plurality of marriage and family models.

Indeed, the process of 'pluralization' of marriage we are currently experiencing poses problems of coexistence between the different marital and family models and, at the same time, raises questions of compatibility with the legal order of the states in whose jurisdiction they take place⁴.

At the same time, the multiplicity of the conjugal arrangements adopted in the different religious systems creates, as a direct consequence, a significant problem relating to the possibility or impossibility of freely acquiring marital status, which is closely connected with the other issue of the equality or inequality between men and women and their different positions within some family models.

The emergence of these two constants is not surprising, as these are issues that are co-essential to the marriage, however diverse the variations of the institution are in different cultures, and which directly affect "marital freedom".

In a general sense, a strict limit to matrimonial freedom with a strong religious connotation comes from the veto of "confessional" heterogamy⁵ or, in other words, in faith communities, there is a strong disapproval of mixed marriages and often their prohibition.

The religions of the Book are united by a similar concern to impede, albeit with different modalities and intensity, conjugal ties between members of different faiths.

The prohibition of religious heterogamy also acts, in the Abrahamic religions, in the sense of determining or allowing the forced exit from marriage in case of conversion of one of the spouses to another religion after the forming of the marital bond⁶.

In fact, marriage between a man and a woman who profess different religious faiths is seen, from within the religious community, as a threat to the survival of the community itself and therefore as a union to be avoided and discouraged, or even prohibited and prevented.

Such an attitude is found with greater fervour in religious communities characterized by two specific connotations.

Firstly, from the connotation of exclusivity: the community considers itself as the custodian of the only true faith, has universalistic salvific claims and believes that adherence to a different faith is incompatible, as it is considered apostasy.

⁴ S. Ferrari, *Pluralità di sistemi matrimoniali e prospettive di comparazione*, in *Daimon. Annuario di diritto comparato delle religioni*, 2/2002, p. 20 and more recently, S. Ferrari (ed), *Strumenti e percorsi di diritto comparato delle religioni*, Il Mulino, Bologna, 2019.

⁵ E. Dieni, *Introduzione*, in *Daimon, Annuario di diritto comparato delle religioni*, 2/2002, p. 7.

⁶ See A. Madera, *Lo scioglimento del matrimonio nei diritti confessionali*, in *Daimon. Annuario di diritto comparato delle religioni*, 8/2008, p. 250 and S. Ferrari, *Matrimonio e alterità: la rilevanza interordinamentale del matrimonio nei sistemi giuridici religiosi*, in *Daimon. Annuario di diritto comparato delle religioni*, 5/2005, p. 202.

Secondly, from the ethnic-cultural connotation: the communities experience fear of global "uniformity" and tend to be obsessed with the identity that embodies the illusion of the sense of belonging to a homogeneous reality which preserves its ethnic, religious and cultural characteristics. It is important to note that within Islamic law and Jewish law there is no central authority endowed with universal legislative power so excluding the existence of a unique and uniformly applicable rule. In this work, we shall limit ourselves to giving an account of some of the prevailing interpretative lines.

3.- Mixed marriages in Islamic law.

The Islamic religion is strongly characterized by a sense of exclusivity, it being considered by the faithful as the one and only true religion and which one is obliged to follow by responding to divine command, which requires the repudiation of any other belief. The Islamic confession is strongly connected with identity factors of the population even outside the territory of origin.

With its advent, Islam swept away the various forms of promiscuous unions practised in pre-Islamic society and established the conditions of a legitimate conjugal union, instituted for the satisfaction of sexual appetite, for procreation and for the education of children; all for the sake of worship of God and the demographic growth of the Islamic nation, an indispensable factor for the mission of the *Umma* in the world⁷. Marriage is a duty for every Muslim in adulthood unless two essential conditions are missing: sexual competence and economic stability.

Islamic law still absolutely forbids marriage between Muslims and idolaters and prohibits a Muslim woman from marrying a non-Muslim man.

The position of superiority of men over women leads to mitigating the aversion towards mixed marriages for Muslim man⁸, who equally cannot marry a non-Muslim woman "Do not marry the polytheist women, unless they come to believe", except for a woman belonging to one of the religions of the Book, that is, a Jew or a Christian⁹.

There are, however, theological opinions and interpretations which tend to either broaden or narrow the scope of the impediment; but not even those who most widely admit the existence of marriage between the Muslim and the non-Muslim can accept the marriage between a Muslim woman and a non-Muslim man, even if belonging to the people of the Book.

The mandatory prohibition of mixed marriage for Muslim women is explained on the basis of some characteristics of Islamic marriage, which are assumed to be essential to the institution of marriage in general¹⁰.

⁷ I. De Francesco, *Diritti, ruoli, relazioni: I diritti della sposa nell'Islam*, in *Daimon. Annuario di diritto comparato delle religioni*, 9/2009, p. 153.

⁸ "Do not marry the polytheist women, unless they come to believe (in Islam); a Muslim slave-girl is better than a polytheist woman, even though she may attract you; and do not give (your women) in marriage to polytheist men, unless they come to believe; a Muslim slave is better than a polytheist, even though he may attract you. They invite to the Fire when Allah invites, by His will, to Paradise, and to forgiveness. He makes His verses clear to the people, so that they may heed the advice". Koran sure 2,221

⁹ "Today all good things are made lawful for you. And the food of those given the Scripture is lawful for you, and your food is lawful for them. So are chaste believing women, and chaste women from the people who were given the Scripture before you, provided you give them their dowries, and take them in marriage, not in adultery, nor as mistresses". Koran sure, 5,5.

¹⁰ See R. Aluffi Beck Pecoz, *Il matrimonio nel diritto islamico*, in R. Aluffi Beck Pecoz, A. Ferrari, A. M. Rabello, *Il matrimonio. Diritto ebraico, canonico ed islamico: un commento alle fonti*, S. Ferrari (ed), Giappichelli, Torino, 2006,

First, the prohibition is motivated by the fact that the Jew or Christian does not believe in the holiness of the Prophet Muhammad, Messenger of God; inevitably it will follow that the Islamic woman will be inclined to feel repulsion for her husband and this will endanger the future of the family.

Furthermore, the Muslim woman is in the power of her husband and owes him obedience; a mixed marriage would lead a non-Muslim to exercise his authority over his Islamic wife. Moreover, the woman is naturally influenced by his man; therefore, if the Muslim wife decided or was persuaded to follow her husband in his faith, so abandoning Islam, she would commit apostasy, which is a very serious sin.

Finally, the children follow the religion of the father: the offspring born to a Muslim wife from a non-Muslim husband would not be part of Islam but would follow the paternal religion.

In truth, the impediment of the difference of cult is temporary because it can be overcome by the conversion of the man to Islam or of the idolatrous woman to one of the celestial religions.

The difference of faith becomes important even if it does not exist at the time of the celebration of the marriage but occurs later. If, for example, in the marriage between two non-Muslims, the woman converts to Islam and the husband is invited to follow her but doesn't, the marriage must be dissolved. In the case of apostasy, or the distancing of a man or a woman from Islam, immediate divorce is required.

According to Islamic law, marriage concluded despite the existence of an impediment does not establish marital life: the judge pronounces the *Fash* and imposes separation. Those who apostatize and abandon Islam also lose all inheritance or matrimonial rights and must separate from their spouse. Finally, it should be noted that the impediment of mixed marriage constitutes a principle of public order in countries that regulate family relations according to the *sharī'a* tradition: it follows that for believers of different faiths or for non-believers, there is no possible form of marriage, not even between them¹¹.

4.- Mixed marriage in Jewish Law.

In Judaism, the disapproval of inter-religious marriages dates to the words of Abraham, when the Patriarch sends his faithful servant to the land of his family of origin to take a wife from there for his son Isaac: «Now Abraham was old and far on in years: and the Lord had given him everything in full measure. And Abraham to his chief servant, the manager of all his property, said: “Come now, put your hand under my thigh. And take an oath by the Lord, the God of heaven and the God of the earth, that you will not get a wife for my son Isaac from the daughters of the Canaanites among whom I am living; But that you will go into my country and to my relations and get a wife there for my son Isaac”»¹².

In the Bible we find other passages that refer to mixed marriages and the main reason why they are forbidden is to avoid the Jewish people from falling into idolatry and assimilation, being able to fulfill their divine function. At the time, it was certainly not a theoretical danger; on the contrary, it was concrete and could affect even the highest ranked personalities.

pp. 200-201; F. Castro, *Lo statuto personale. Persona, famiglia e successioni*, in G.M. Piccinelli (ed), *Il modello islamico*, Giappichelli, Torino, 2007, p. 46.

¹¹ R. Aluffi Beck Pecoz, *Il matrimonio nel diritto islamico*, cit., p. 202.

¹² Gen. 24: 1-4

In Deuteronomy the prohibition returns, with the same motivation; a ban that is pronounced on the eve of entering the Promised Land, as if to emphasize that even in the Land of Israel there is no exemption from the danger of idolatry: “When the Lord your God takes you into the land where you are going, which is to be your heritage, and has sent out the nations before you,... seven nations greater and stronger than you; And when the Lord has given them up into your hands and you have overcome them, give them up to complete destruction: make no agreement with them, and have no mercy on them. Do not take wives or husbands from among them; do not give your daughters to their sons, or take their daughters for your sons. For through them your sons will be turned from me to the worship of other gods: and the Lord will be moved to wrath against you and send destruction on you quickly”¹³.

These verses have been considered by rabbinic teaching as the basis of one of the strictest and most observed prohibitions in Judaism.

From the Jewish law perspective, a "mixed marriage" is the marriage of a Jewish man to a non-Jewish woman or of a Jewish woman to a non-Jewish man. A Jew is defined as someone who was born of Jewish parents, or at least from a Jewish mother or who became a Jew through a conversion process considered valid by *Halakha*.

On the contrary, the conversion of one of the spouses from Judaism to another religion has no relevance: in this case it will not be dealt with in the hypothesis of "mixed marriage", and this because according to the *Talmud* "a Jew, even when he has sinned, remains a Jew"¹⁴.

It can therefore be said, in general, that under Jewish law only marriage between Jews by birth or between Jews and proselytes is permitted; only children born of such unions are considered offspring of the father and follow his legal *status*.

Children born of mixed marriages - unions that are considered invalid by the Jewish law- instead follow the juridical status of the mother, according to the matrilineal principle that was accepted in the ancient world, including the Roman world. Children born of a Jewish father and a non-Jewish mother are therefore considered non-Jews; while those born to a Jewish mother and a non-Jewish father are considered Jews, since they follow the condition of the mother¹⁵.

The verses we have quoted above “Do not take wives or husbands from among them; do not give your daughters to their sons or take their daughters for your sons. For through them your sons will be turned from me to the worship of other gods”, are interpreted by the *Talmud* as an explicit prohibition of mixed marriages, one of the 613 precepts, a negative precept of biblical origin.

However, what is exactly the extent of the prohibition of biblical origin discussed: this prohibition concerns only the seven peoples who inhabited the land of Canaan, before the Jewish conquest, or it is a general prohibition, that is, prohibition of any marriage between a Jew and a non-Jew?

The *Talmud* explains that, since the *Torah* made express reference to the separation of the son from the Lord, the prohibition of marriage exists for anyone who can lead people away from the Lord and therefore for any non-Jew who is not obliged to follow the *Torah*¹⁶. It should also be noted that the *Talmud* deduced from that passage of Deuteronomy that such unions, between a Jew and a non-Jew,

¹³ Deut. 5-11

¹⁴ TB. Sanhedrin 44a.

¹⁵ A. M. Rabello, *Il matrimonio nel diritto ebraico*, in R. Aluffi Beck Pecoç, A. Ferrari, A. M. Rabello, *Il matrimonio. Diritto ebraico, canonico ed islamico: un commento alle fonti*, cit., p. 32.

¹⁶ *Ibidem*.

have no legal value, but are to be considered as simple *de facto* unions, which do not change the legal *status* of the individual¹⁷.

The main consequences of this principle include, for example, that if a Jew married with a non-Jew in an interreligious marriage, then wishes to marry a Jewish woman, he will not need, according to *Halakha*, a divorce from the first union, and will be able to enter into the new marriage which will be considered the first and only by Jewish law.

This stringent rule is still strictly observed by Orthodox Judaism.

Maimonides establishes that it is forbidden by the *Torah* for any Jew to marry a non-Jewish woman, whether she belongs to one of the seven Canaanite peoples, or whether she belongs to another people. From this prohibition, and from the fact that the mixed marriage does not have consequences on personal *status*, also derives the absence of other legal consequences, normally connected with marriage.

At the base of this problem is also the prohibition, *a priori*, established by the *Talmud*, to allow the conversion of a person who wishes to convert to marry a Jew. In fact, the conversion must be desired to observe the precepts of the Lord and to become part of the Jewish people, and not for other external factors¹⁸.

It is also required that the proselyte agrees to fully observe the precepts of Judaism, both of biblical and rabbinic origin; the potential proselyte not accepting even the lightest precept of biblical or rabbinic origin excludes the possibility of welcoming the non-Jew into the religion¹⁹.

5.- Conclusion

In the states in which family law is governed by personal *status*, it is therefore under confessional legislation that laws regarding marriage must be evaluated in their aspects such as the ability of the parties to marry, the prohibitions or impediments, the methods of celebration and any hypotheses of dissolution or annulment of the bond.

From the premises the contrast is clear between a liberal society which is based on the human rights of individuals, who claim to have the right of free will and so free love, compared to a society based on a divine law which requires the individual to submit to God's will. It is evident that in a secularized society it is increasingly difficult to maintain a rigid level of observance of the precepts and a sense of group solidarity: the individual and not the group will be the focal point of interests of the liberal society.

It should also be noted that religious profession and confessional affiliation are not taken into consideration by the matrimonial laws in force in the countries of Western civilization, including Italy, as these countries are based on the principles of secularism and separation between the State and religious denominations.

However, in many states, particularly in those of Muslim areas as well as in Israel, the system of personal statutes is in force, which entail the application of the matrimonial regime proper to the religious denomination to which they belong.

¹⁷ TB. Kiddushin 68b.

¹⁸ See in detail, A. M. Rabello, *Il matrimonio nel diritto ebraico*, cit., pp. 34 ss.

¹⁹ TB., Bekhoròt 30b.

To conclude, mixed marriages constitute a social phenomenon of undoubted interest in all those societies characterized by a strong migratory flow and by a corresponding increase in the rate of multiculturalism.

They cannot be demonized or rejected, but they must be followed carefully if the goal is, as it should be, a harmonious order of a society, able to bring together and integrate different cultures, ethnic groups and religions.

At the same time, it is appropriate to maintain a realistic and prudent attitude, attentive to the risks and difficulties that interreligious marriages may present for conjugal life.

Rather, it is necessary to avoid that concrete moments of mutual understanding and integration turn into negative examples of dissociation and discrimination.