

Legal Regime on Child's Religion: Pakistan v. England

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ABSTRACT

This article endeavors to explore the issue of legal regime on child's religion in Pakistan and England. The discussion highlights the major issue including the parents' authority to choose the religion of the child and provide the religious education after separation especially when father is Muslim and mother is from ahl al-Kit b under the Pakistan and the English Family Law. Moreover, the research paper explains the stance of the judges of the Courts of Pakistan & England as whose religion the child presume to follow after separation between interreligious parents. The research paper further investigates the approach of the judges of both states to decide the interreligious custody dispute on the ground of child's religion/religious upbringing. The research paper refers to four sunn schools of thoughts, statute laws, and case laws of Pakistan and England. An analysis of the Pakistan Family Law and the English Family Law has carried out in a comparative way to scrutinize the tendencies of the Courts between the both states. For this purpose, cited cases are examined to discover the compatibility between the practices of the both Courts. The research paper is restricted to the discussion on the issue of choosing the child's religion only under the Pakistan Family Law and the English Family Law. In the end, it has found that the parameters are conflicted concerning the interpretation & application lay down under the Pakistan Family Law and the English Family Law. Therefore, it is suggested that child should follow the religion of the Muslim parent because it is the matter of the protection and preservation of our religion.

KEYWORDS

Child's religion, Muslim father, al-Kit b mother, Islamic Law, Pakistan Family Law, English Family Law, Specific Issue Order, Children Act 1898.

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1. INTRODUCTION & IMPORTANCE OF THE RESEARCH

The children are close with parents; therefore, when relationship between parents break up, it affects the child's personality and rights including the religious upbringing of the minor child particularly after the dissolution of the interreligious marriage. This work primarily discusses the crucial issue of picking the child's religion or religious upbringing of the child as whose religion the child presumes to follow after or before the dissolution of marriage where one parent is Muslim and other is from *ahl al-Kit b* under the Islamic, Pakistan and English Family Law. It also expounds the outlook of the judges of Pakistan vis-à-vis deciding disputes between interreligious parents on the issue of picking the child's religion or religious upbringing. Moreover, the research provides the detail on the issue of the parents' authority to choose the child's religion and provide the religious education in English Law and attitude of the judges of England on the dispute of picking the child's religion.

The Islamic Law about the matter of picking the child's religion or religious upbringing of the child is very clear as children of interreligious parents are Muslims and presume to follow the religion of the father. In regard to Pakistan Family Law, the matter of picking the child's religion or religious upbringing is not resolved distinctly except that this issue is discussed along with the custody disputes which is regulated under the Guardians and Wards Act, 1890.

On the other hand, under the English Family Law, there are separate Orders, which decide the dispute of picking the child's religion or religious upbringing of the child under Specific Issue Order and Prohibited Steps Order of the Children Act, 1989, s. 105(1). For this purpose, the English Law provides a uniform set of law to resolve the interreligious custody disputes without considering religion, nationality and culture (Lowe & Douglas, 2015). Therefore, the issue of child's upbringing is regulated by Children Act, 1989, which includes feeding, clothing, washing, putting the child to bed, education, housing, arranging babysitting, medical treatment, arranging school and transportation, holidays and recreation, keep the child in touch with family circle, deciding the religion, disciplining the child, contacting with child, protecting from physical and mental harm, naming the child and encouraging social or moral development. It is the physical authority to control the child's movements until the child reaches the age of discretion (Collier, 2001).

2. RESEARCH QUESTIONS

The research is primarily based on some significant issues including what are the teachings of Islamic Law regarding the picking of child's religion to follow in interreligious marriages? Whether dissolution of Muslim interreligious marriage outrageously effects the child's religion/religious upbringing? Which parent has authority to choose the child's religion and



provide the religious education after separation particularly where parents having divergent faith under the Pakistan and the English Family Law? Who determines a child's religion parents or the Courts under English law? What are the standpoints of the judges of the Courts of Pakistan and England about the selection of child's religion? How judges of both states decide the dispute between interreligious parents on the issue of picking child's religion and for this purpose, what kinds of the parameters are set down by these courts? Whether the Pakistan Family Law and the English Family Law are conflicting about the interpretation and application of the rules in deciding dispute between the interreligious parents on the issue of picking up the child's religion/religious well-being?

3. RESEARCH OBJECTIVES

The prime objective of this research is to explore the teachings of Islamic Law about the choosing of child's religion/religious upbringing between interreligious parents. Furthermore, the study expounds the parental authority to choose the child's religion and provide the religious education after separation in interreligious marriage under the Pakistan and the English Family Law. Likewise, the research work highlights the standpoint of the judges of the Courts of Pakistan and England on the issue of evaluation of child's religion and religious upbringing and the parameters set down to address this dispute between interreligious parents. Lastly, the study is aim to figure out the conflicting areas between the laws of Pakistan and England by providing solution under the teachings of Islamic law.

4. RESEARCH METHODOLOGY

For obtaining the concrete result, method of comparative study has been adhered in this research. For this purpose, an analysis of Pakistani Family Law and English Family Law has carried out in a comparative way to scrutinize the tendencies of the Courts between both states. Moreover, cited cases are examined to ascertain the conflicting areas between the laws of both states.

5. LITERATURE REVIEW

Here are few works indicating the importance and needs of further research about the issue of picking the child's religion or religious upbringing, as there are few scholarly research works, legal writings and blog post available to explain the issue under the laws of US, UK and some other states.

Among them is the "Faith and Children's Rights: A Multi-Religious Study on the Convention on the Rights of the Child (Aggoune, Goonesekere, Nelson, Rios-Kohn & Todres, 2020). This Study has discussed the rights of children under CRC and expected as a guiding reference. This study discusses the issue of spiritual development of the child, which is recognized in the CRC of article 27 and article 17. It is informative study but it did not discuss the issue of choosing the child's religion in detail under the English and the Muslim laws.

Likewise, "Child Custody and Religion" (Otterstrom, n.d.) is a very informative article under the English law regarding the issue of child's religion and provides general information reading the taking of decisions about a child's religion.

Another work is "Changing your Child's Religion", (Blog Post) only provides the information regarding the selection of the child's religion under English Family law in England and provides legal services to resolve this conflict. It is very useful website to create awareness among parents on the said issue.

In "The Impact of Religion in Interreligious Custody Disputes: Middle Eastern & Southeast Asian Approaches", (Gallala-Armdt, 2015), the author mainly discusses the effects of different religions of parents on custody disputes in US and Germany, and emphasizes that non-Muslim mothers have limitation of custody rights in interreligious custody disputes.

Similarly, "Role of Religion in Custody Disputes: A Missouri Case Study", (Cordell & Cordell's, n.d.) is a legal page by attorneys which raise awareness about the significant issue and explains the effect of religion on custody disputes under Missouri Courts and discusses this issue by supporting few cases.

In last, "A Tale of Two Religions: A Contractual Approach to Religion as a Factor in Child Custody and Visitation Disputes" (Korzec, 1991), the author focuses on the role of religious conflict between parents in determining child custody and visitation disputes. It suggests a framework for reconciling parental control over religious observance and training with the state's duty to protect the child's best interest by opposing the practice of Court awarding spiritual custody to one parent and physical custody to other parent.

It is a very serious and core issue which required the attention of scholars and legal experts as in Pakistan there is no legal blog to create awareness among interreligious parents regarding the effects of religion on custody dispute, however, there are number of legal firms guiding about custody disputes. Similarly, there is no legal book serving as guideline on the required issue either within or outside the Pakistan for Muslim parents.

6. TEACHINGS OF ISLAMIC LAW ON CHILD'S RELIGION

The dissolution of the Muslim interreligious marriage outrageously effects the child's religion/religious upbringing. Therefore, the teachings of Islamic law about the picking of child's religion are very clear particularly in interreligious

marriages. For that reason, Islamic Law has set some standards for those people who are desirous to be a guardian (either male or female) of the Muslim Child. Thus, under Islamic Law, only Muslim father has authority to choose the religion of the child and provide the religious education before and after separation. In this regard, all jurists agreed that child presumes to follow the religion of the father in case where father is Muslim and mother is from *ahl al-Kitāb*. For that purpose, jurists have set some standards and agreed on this point that the guardian must fulfill these standards to acquire the custody of the Muslim child (Justice Tanzil ur-Rahmān, 1998).

The significant standard to retain the custody of the Muslim child especially where both parents have different faith is that the guardian must be Muslim and have the same religion as the child has. In this regard, Ḥanafī jurists said, it is essentially required that guardian profess same religion as the child has except the *kitābīyyah* mother because she is just like Muslim mother to retain the custody of the minor on the grounds of kindness. In this regard, Abū Bakr Aḥmad bin ‘Alī al-Rāzī said *kitābīyyah* mother is ineligible to retain the custody of the discriminating child either girl or boy except the indiscriminating child. Likewise, non-believer mother is inappropriate person to keep the custody of the Muslim child (either a boy or girl) who has attained the discriminating age. The reason is that child is a Muslim due to the religion of his father and there is immense fear that she may corrupt his or her religion. Similarly, it is necessary that blood relatives must be Muslim to keep the custody of the Muslim child because close relatives who are non-Muslim have no right to hold the custody of the Muslim child according to Imām Muḥammad and Imām Abū Ḥanīfah. The reason is that this right is not approved in favour of any other person belongs from divergent religion except the mother who has given relaxation in this regard. Furthermore, the apostate mother has deprived from the *ḥaḍānah* of the Muslim child either she apostatizes in the non-Muslim state or in the Muslim state because she may harm the child’s religion (Sarakhī, 1978).

Contrary to it, Imām Mālik said there is no condition that *ḥāḍin* (male custodian) must be a Muslim or profess same religion for the custody of the child because this right is also valid in the favour of disbeliever parent. Therefore, the Christian or Jewish or Magians mothers deserve more for the custody of the minor child because she is like the Muslim mother in this matter except that the female child has attained the majority age and there is a fear that place is unsafe (*ḥirz*) for the Muslim female child. Moreover, when she feeds pork or wine then it is necessary to observe the circumstances before removing the child from her custody, thus, if she intends to do so then prevent her and do not remove the child from her custody but if there is fear that she will do so then restrict her within Muslim vicinity so that she cannot feed prohibited things to her child (Khirshī, n.d.).

In this regard, Imām Shāfi‘ī said guardian must be Muslim to keep the custody of the Muslim child because disbeliever parent has no right of *ḥaḍānah* over a Muslim child. The reason is that, it is reported that ‘Holy Prophet gave a boy the choice between his Muslim father and polytheistic mother and he inclined towards his mother’ then Holy Prophet said:

اللَّهُمَّ اهْدِهِ، فَتَوَجَّهَ إِلَى الْمُسْلِمِ فَفَضِيَ لَهُ بِهِ. (ibn Mājah, n.d.)

O Allāh, Guide him, and he turned towards the Muslim and he ruled that he should go with that parent. (Ghazālī, n.d.)

Likewise, Ḥanbalī jurists said disbeliever parent is not entitled to retain the *ḥaḍānah* of the Muslim child because when *ḥaḍānah* has not been approved for dishonest person then it is denied in favour of disbeliever on preferable basis too owing to an immense harm in it. There is possibility that she may corrupt the child’s religion as it is reported that:

أَنَّ أَسْلَمَ، وَأَبْتَ امْرَأَتَهُ أَنْ تُسَلِّمَ، فَآتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ: ابْنَتِي وَهِيَ فَطِيمٌ أَوْ شِبْهَةٌ، وَقَالَ رَافِعٌ: ابْنَتِي فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَقْعَدُ نَاحِيَةً، وَقَالَ لَهَا: أَقْعَدِي نَاحِيَةً، قَالَ وَأَقْعَدُ الصَّبِيَّةَ بَيْنَهُمَا ثُمَّ قَالَ: ادْعُوَاهَا فَمَأَلَتْ الصَّبِيَّةَ إِلَى أُمِّهَا، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: اللَّهُمَّ اهْدِهَا فَمَأَلَتْ إِلَى أَبِيهَا، فَأَحْذَهَا. (Abū Dāwūd, 1970)

Rāfi‘ embraced Islam and his wife refused to embrace Islam. She came to the Prophet and said: My daughter, she is weaned or about to wean. Rāfi‘ said: My daughter. The Prophet said to him: Be seated on a side. And he said to her: Be seated on a side. He then seated the girl between them and said to them: Call her. The girl inclined to her mother. The Prophet said: O Allāh! guide her. The daughter then inclined to her father and he took her.

Thus, jurist said it is proved from the above tradition that *kafālah* and *ḥaḍānah* is required to secure the interest of the child and is approved only in the favour of the Muslim parent (Ibn Qudāmah, 1992).

The contemporary scholar Maulāna Muḥammad Yūsuf Ludhiyānvi said marriages of Muslim men and *kitābīyyah* (who are resident of non-Muslim state) are *makruh teḥrīmī* because if father permitted the Christian or Jewish mother to raise his child according to her faith then he became apostate (Khan, n.d.). Likewise, assembly of Muslim Jurists of America (AMJA) declared that marriages of Muslim men and *kitābīyyah* are risky in perspective of child’s future because these women have given the right under law to raise the child according to her faith. Whereas Yūsuf al-Qaraḍāwī said Muslim man is permitted to marry a chaste Christian or Jewish woman with the condition that he assured to raise his child according to his religion (Wael, n.d.).

The above tradition proved that objectives of the institution of *kafālah* and *ḥaḍānah* are to protect the interest of the child including religious identity. Therefore, it is approved in the favour of the Muslim, the reason is that if a child is left alone under

the custody of the Christian or Jewish or non-Muslim mother, her daily observance of religious beliefs at home or church will effect the child's religion or religious identity, therefore, it is compulsory to protect the child from harm by following the above-mentioned tradition.

7. LEGAL REGIME ON CHILD'S RELIGION IN PAKISTAN FAMILY LAW

The Islamic Law has set some standards for those people who are desirous to be a guardian of the Muslim child and among them is the religion of the guardian and minor as well. Although, the statute law did not define the standards for the appointment of the guardian but these standards have extracted from the various case laws, which also endorsed the position of the Islamic Law and declare that only father has right to choose the child's religion and provide the religious education even after the separation or dissolution of the interreligious marriage. Thus, the stance of the Court on the point of choosing the child's religion is that the child presumes to follow the religion of the father. For instance, in a famous case, it was decided that the guardian must have the same religion as of the minor. A child follows the religion and social status of the father (PLD, 1981). Moreover, apostate person is devoid of all rights including custody, such as an apostate mother cannot hold the custody of the minor except a *kitābīyyah* (Christian or Jewish) mother (1995). The stance of the Guardian Courts on choosing the child's religion is that the child must be brought up according to the father's religion because he is presumed to have the father's religion under the law. Therefore, it is the duty of the guardian to train and bring up the child according to the father's religion as it has held in the case of *Nadir Mirza v. Munni begum* (IC). Likewise, in *Mst. Atia Waris v. Sultan Ahmad Khan* (PLD, 1959), it was held that the minor must be presumed to have the father's religion and corresponding civil and social status. Whereas in *Grace Abdul Hadi Haqani v. Abdul Hadi Haqani* (PLD, 1961), the Court held that the child always follows the religion of the father. In *Christine Brass v. Dr. Javed Iqbal* (PLD, 1981), the Courts held that the father has the right to determine the religion of his infant children and such right subsists even after his death (Mahmood, 2016).

The judges of the Pakistan decide the dispute between the interreligious parents on the issue of picking the child's religion and for this purpose, they introduce the parameter of welfare of the child under the Guardians and Wards Act, 1890. Thus, the judges fluctuate vis-à-vis interpretation & application of the rule 'welfare of the child' in each case. Consequently, The Courts of Pakistan have adopted two different positions in deciding the custody disputes on the grounds of religion especially in interreligious marriages.

In the past cases, the Courts always prefer the religion to decide the custody disputes between the parents of divergent religion such as in a famous case, the Courts tended to favour the fathers on the ground of religion and refused to give the custody of the Muslim child to the non-Muslim mother (PLD, 1981). Likewise, in a landmark case *Mst. Atia Waris v. Sultan Ahmad Khan* (PLD, 1959), the Court disqualified the Christian mother on the basis of her religion and held that the mother was not likely to bring up the child in the Muslim religion. Therefore, the custody was granted to the paternal aunt to ensure that the child was brought up in the religion of his father. In *Mrs. Mosselle Gubbay v. Khwaja Ahmad Said* (PLD, 1957), the custody of the Muslim children was given to Jewish mother. Thereafter, the father brought the children to Karachi. The mother filed a criminal case for kidnapping of the two children under s. 368 PPC in Pakistan and later filed a *habeas corpus* petition. The High Court held that it was improper to give the custody of two Muslim children to a Jewish mother who was an Indian nationality and was residing there. In another case, *Mrs. Grace Abdul Hadi Haqani v. Abdul Hadi Haqani*, it was held that the father has right of the custody of his daughter (PLD, 1961). Likewise, in *Miss Christine Brass v. Dr. Javed Iqbal* (PLD, 1981), the custody of the minors was refused to the Canadian Christian mother on the grounds of religion even though she has custody order from the Court of the minor's habitual place of residence. The father being Muslim has a legal right under the Pakistan Family Law as well as in International Law to see that his children are brought up in the Muslim faith even mother has different faith. Therefore, if the custody of the children with mother takes them to such a position that father cannot exercise his supervision then the mother may forfeit her right of custody. The Peshawar High Court held that the father alone is the natural and legal guardian of his minor children even during the period of *ḥadānah*, the constructive custody of the children remains with father.

In the recent years under s. 491, the Court adopted two different approaches to decide the custody on the ground of welfare in which the foreign mothers have been able to at least gain temporary custody of their children pending the decision of the Guardian Courts and in some cases, the mother has returned abroad with her children without awaiting the Court's final ruling (MLD, 1992). As in *Peggy Collin v. Muhammad Ishfaq Malik* (PLD, 2010) the Lahore High Court granted the custody of the minor son to his Christian mother who had a custody order from the French Court while the minor has been brought to Pakistan by his father. The Court held that:

The father against whom international warrant for arrest stands issued and he is already under arrest in his country facing a criminal charge of abduction. Therefore, mere professing of Muslim faith and his mere birth in Pakistan is not sufficient to conclude that welfare of the minor would lie in living with father rather than with a French Christian mother whose credentials are blotless. Thus, her courage and character may be better to put good moral, social and human values in the minor's personality.

In *Ms. Louise Anne Fairley v. Sajjad Ahmed Rana* (PLD, 2007), the custody of twelve year old daughter was given to the Christian mother irrespective of the father although the child profess the Islamic faith.

The study proved that the stance of the judges of the Guardian Court of Pakistan to choose the child's religion by Muslim father is very clear but they have exhibited different approaches to settle the interreligious custody disputes by awarding custody of the Muslim child to the non-Muslim mother without ensuring the child's religion or religious upbringing which is an alarming factor.

8. LEGAL REGIME ON CHILD'S RELIGION IN ENGLISH FAMILY LAW

In general, the judges have no authority to choose or prescribe the child's religion or religious upbringing except the judges consider various factors to determine the custody arrangement focusing on child's best interests. In this regard, only parents have sole power to do that. Under English law, the child above age of 18 has authority to choose which religion he or she has to follow or does not follow, therefore, he or she can legally choose to follow any religion. Moreover, the parents with or without parental responsibility can decide the religion of the child (who is under the age of 18) but before separation, however, after dissolution of marriage, one or both parents may decide the child's religion (although the child can also choose his religion at any stage) but this fact may cause the dispute between parents on the issue of child's religion or religious upbringing or changing of religion or some time noncustodial parent feels that practice of custodial has harmful influence on child's religion. therefore, if any parent feels that following a particular religion have harmful influence on a child or parents have dispute over the child's religious upbringing, in that case, parent can apply to the court under Specific Issue Order to decide the matter of child's religious upbringing. A Specific Issue Order is an order, which can decide any specific issue of the child related to parental responsibility about which parents are disagreed. The Children Act, 1989 s.8 (1) defines the Specific Issue Order in the following words:

A Specific Issue Order means an order giving directions for determining a specific question which has arisen or which may arise, in connection with any aspect of parental responsibility for a child.

This Order empowers the Court to decide the one aspect of a dispute and take the major decision about child's future such as change of the surname, school, religious upbringing and medical treatment in case where one or both of the parents disagreed due to variation of religion or any other reason. The court will collect the facts of the case and reevaluate it keeping in view the child's best interests instead of the wishes of the parents. Therefore, Court can order that the child can be known by such name or the child should attend a particular school or the child can be taken permanently to reside in a foreign country or can receive a particular medical treatment. Likewise, if any parent desires to change the child's religion while second parent opposes on this issue, at that stage, parent can apply under Prohibitive Steps Order, where the court will decide according to the best interests of the child.

Consequently, English Family Law set some standards to resolve the custody dispute ignoring the issue of child's religion e.g. a person with parental responsibility has a right to choose the child's religion, provide the religious education until the child becomes *gillick* competent (Standley & Davies, 2013) and choose a religion to follow himself. The reason is that religion is considered as a personal right of the child and this right is secured in Convention on the Rights of the Child, art. 14(1 & 3). Moreover, residential parents have right to remove their children from religious education and school assemblies. However, parental rights are not absolute because in some cases best interests of the child would prevail e.g. medical treatment is objected in the context of religion. However, parental responsibility apparently indicates that it includes the right to brought up the child according to specific religious faith but local authority cannot interfere in the religious upbringing of child. Likewise, a judge cannot weigh one religion against the other as in case of *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [Burton, 2003], where the child's parents disagreed about two issues. The first issue was about the circumcision of boy and secondly, whether the child should be brought as a Muslim because the mother was a Christian and the father was a Muslim. The Court of appeal held that the circumcision required the consent of both parents while the issue of religious upbringing would be decided by the mother, however, the father is permitted to teach the child about Islam when the child has contact with him (FLR, 2000). Likewise, in the case of *Re J (Lowe & Douglas, 2015)*, where the Court had refused the Muslim father about the circumcision of the son under the Prohibited Steps Order (PSO). In respect of child's religion, the Court did not order the Christian mother to raise the child according to his father's religion because the father did not propose for such religious observance (Burton, 2003). Likewise, in case of *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [FLR, 1999], the Court of appeal held that child's religious upbringing would be decided by the mother (who was a Christian), however, the father is permitted to teach the child about Islam when the child has contact with him. Accordingly, the judges of the English Court consider various factors to determine the disputes on the issue of child's religion or religious upbringing valuing the child's best interests.

9. ANALYTICAL REVIEW

The Pakistan and the English Family Laws are conflicted concerning the issue of choosing the child's religion in interreligious custody disputes. In Pakistan, this issue is addressed under the Muslim Personal Law in pursuance to implement

the Islamic Law as required under the Constitution of Pakistan. Contrarily, under English Law, this issue is adjudicated by applying a uniform code of law, without any religious cult, nationality or cultural constraints. Additionally, in Pakistan, ss.7, and 25 of the Guardians and Wards Act, 1890, regulate the issue of interreligious custody disputes while custody disputes are regulated by s.8 of the Children Act, 1989 to protect the interest of the child who is under 18 years of age under the English Law.

The Children Act, 1989 provide a detail law to resolve the interreligious custody disputes by ignoring the significant factor of religion as the significant aspect of upbringing the child is to choose the child's religion and provide the religious education. However, unfortunately, religion is considered as a personal matter under English Law and the child has freedom to choose any religion even local authority or court cannot interfere and educate the child to any religious preferences. Only the residential parent (mostly mother) has this right to choose the child's religion and give the religious education to her child even in those cases where both parents have different religions. Although, Specific Issue Order addresses this issue and empowers the Court to decide it, even then in most cases English Law empowers the non-Muslim mother to provide the religious education of the Muslim child according to her faith. Consequently, English Family Law authorizes the residential parent to take major decision of the child's life including religious education and delimit the authority of the non-residential parent (Muslim father) in a non-Muslim state. This law did not secure the right of the Muslim father with regard to take major decisions of the child's life including religion. In Islamic Law, the Muslim father has right to decide the religion of his child whether residing in Muslim state or non-Muslim state. In Muslim Personal Law, it is presumed that the child should follow up the religion of his father, therefore, it is required that the child must be brought up according to the father's religion. Whereas, under English Law, father has deprived from this right by giving preference to residential parent (usually *kitābīyyah* mother) to choose the child's religion and provide the religious education until the child becomes *gillick* competent. Yet, the *kitābīyyah* mother is not permitted to raise the Muslim child according to her faith under *sharī'ah* and stance of Pakistani Court on child's religion is also inconsonance with *sharī'ah* as child must be raised according to the father's religion because the minor is presumed to have the father's religion in Pakistan. Thus, child must be brought up according to the father's religion because a minor is presumed to have the father's religion; therefore, it is the duty of the guardian to train and nurture the child according to father's religion.

The English Law provides guidelines in the form of checklist, which provides a benchmark to interpret the legal doctrine 'best interest' and support to judge the welfare of the child. Although Muslim Family Law also secures the welfare of the minors in custody disputes under particular principles but principles, which constitute the welfare of the child are different with English law particularly on the doctrine of religion as English Law applied a uniform set of law to resolve the custody disputes keeping in view the interest of the child. However, indeed they ignore the significant aspect of religion, which constitute the 'best interest' of the child.

Whereas it is acknowledged that mother is a best person to protect the interest of the minor child but when child's religion is considered at risk due to mother's religion (Christian/Jewish) and culture then Muslim father is considered to be in the best position to protect the interest of his child especially in a non-Muslim state. There is a greater apprehension of harm if such custody is awarded in a non-Muslim state because non-Muslim mother will not only corrupt the child's religion but religious and cultural preferences of her non-Muslim relatives and friends would also affect the religious identity of Muslim child. Moreover, it is considered against the welfare of the child to reside with prohibitory relatives who are non-Muslim. In this regard, moral and religious well-being takes paramount consideration among the significant factors of welfare. Insofar as, father is considered untrustworthy then paternal grandparents are preferred to raise the child according to Muslim faith. However, in exceptional cases, if custody is even awarded to *kitābīyyah* mother by the Courts of Pakistan or UK, then it is ensured that child should be facilitated to follow the Muslim religion, by explicitly instructing mother to reside within Muslim vicinity and report the activities of the child to father while father has been granted right to take the major decisions regarding child's life.

Furthermore, the tendencies of the Courts are inconsistent to determine the custody disputes where parents have different religion resided either in Pakistan or in UK or in another state by favoring or rebutting to award the custody to the *kitābīyyah* mother.

10. CONCLUSION

The Islamic law prescribes that only Muslim father has the authority to choose the religion of his child and control the religious upbringings during the subsistence and after the dissolution of the interreligious marriage. In this regard, the stance of the Guardian Courts about choosing of child's religion is uniform such as the child must be brought up according to the father's religion because he is presumed to have the father's religion under the Law. Contrary to it, under English Law, the judges have no authority to choose or prescribe the child's religion or religious upbringing except the parents who have sole power to do that. Moreover, the child above the age of 18 has authority to choose his religion as he or she wish to follow while the child under the age of 18, only the residential parent can decide the religion follows up until at the age of 18. In

contrast, there is no age limit for choosing or controlling the religious education by the residential parent in Islamic Law. Moreover, in English Family Law if parents have dispute over the child's religious upbringing, in that case, parent can apply to the court under Specific Issue Order to decide the matter of child's religious upbringing or if any parent desires to change the child's religion, can apply under Prohibitive Steps Order. On the other hand, there is no specific Order in Pakistan Family Law to resolve this dispute because the said fact is also established.

Furthermore, the Muslim Jurists have set some standards for those people who are desirous to be a guardian (either male or female) of the Muslim child and among them is the religion of the guardian and minor. For that purpose, The Guardians and Wards Act, 1890 under section 17(2) introduce the standard of welfare of the minors including the parameters of age, sex, religion of the minor, the character and capacity of the proposed guardian, nearness of kin to the minor, the wishes if any of a deceased parent has, existing or previous relations of the proposed guardian with the minor or his property. Contrarily, the English Judges do not set any standard for those people who are desirous to be a guardian of the Muslim child because religion is a constitutional right which gives the freedom of religion as this right is secured in Convention on the Rights of the Child, art. 14 (1 & 3). Yet, the court under the Children Act, 1989, s.1(1)(3) introduce the standard of child's welfare comprising a checklist which provides parameter to determine the child's welfare e.g. ascertainable wishes and feelings of the child, child's physical, emotional and educational needs, effect of change circumstances on child, child's age, sex, background and any characteristics of his or her, which the Court considers relevant, any harm which the child has suffered or is at risk of suffering, capability of child's parents to meet the child's needs.

Beside, the English Family Law on the issue of choosing child's religion and religious education is not in accord with Muslim Family Law. There exists certain significant theoretical differences between two paradigms, but there are few commonalities regarding some aspects as well, such as, both states' laws gave considerable significance to the principle of welfare of the minor but the interpreting principle are different on the ground of religion. Although the stance of the judges of the Guardian Court of Pakistan to choose the child's religion by Muslim father is very clear but they have exhibited different approaches to settle the interreligious custody disputes by awarding custody of the Muslim child to the non-Muslim mother without ensuring the child's religion or religious upbringing which is a alarming factor.

The reason is that observing religious beliefs by residential parent at home or at churches can influence the child's religious identity, therefore the study recommends that judges may limit a parent's religious activities or prescribe that which parent should control the child's religious upbringing or limit a child's exposure within the Muslim vicinity. Moreover, the spouses may resolve this dispute by entering an agreement before the marriage contract on the matter of child's religious upbringing. It is the matter of the protection and preservation of our religion so religious and legal scholars carefully drafted the rules which may protect the child's religious identity.

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