



Custody of Minors in the Context of Forced Conversion: A Socio-Legal Analysis

Muhammad Hammad Chaudary^{1*}

¹Ivy College of Management Sciences, Lahore, Pakistan.
muhammad.hammad.lhr@rootsivy.edu.pk

Abstract. Forced Conversion (FC) of minor girls belonging to minorities in remote regions of Pakistan is an escalating socio-legal and human rights concern that violates both domestic and international legal frameworks. The Constitution of the Islamic Republic of Pakistan, 1973, guarantees freedom of religion and the right to liberty. These fundamental rights are further reinforced by international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, numerous cases of abduction and forced marriages are frequently reported in Sindh and Southern Punjab, where minor girls are compelled to renounce their faith and marry their abductors. Accordingly, this study aims to examine how the Pakistani legal system addresses the issue of FC involving minor girls and safeguards the fundamental rights of religious minorities. This research proposes a framework for the protection of child rights, particularly in the context of the liberty and freedom to hold and practice religion. This research adopts a socio-legal approach with a qualitative research methodology based on library data. The findings reveal that legal loopholes, inadequate enforcement, and pervasive social pressures contribute to the misapplication of laws, often enabling abductors to retain custody while victims are coerced into marriage under duress. This article contends that there is an urgent need for targeted legislation addressing FC, especially those involving minors, to ensure the protection of religious freedom and the fulfillment of Pakistan's constitutional and international human rights obligations, while fostering interfaith harmony and equal citizenship for all communities.

Keywords: Forced Conversion, Forced Marriage, Religious Freedom, Minority Rights, Human Rights.

1 Introduction

Religious conversions are defined as "the acquisition of a set of beliefs associated with one particular denomination to the exclusion of others." As a result, it can be described as giving up one denomination and joining another [1]. Exact definitions and differentiations between forced and voluntary conversions are required [2]. A major issue for minority groups has been and continues to be the kidnapping or abduction of female members of religious minorities and their forced conversion to Islam, particularly in Punjab and Sindh, where these incidents are becoming more frequent [3]. However, media reports are the sole thing bringing attention to the problem of such conversions in Pakistan [4]. In violation of the Constitution's intent and spirit, the victim and her family were singled out for discrimination based on their religious minority status and equal citizenship. Conversion to another religion typically follows these steps:

In many instances, free will affidavits or Nikkah-nama bear the same date as the reported missing or kidnapping/abduction. Girls from religious minorities are

abducted or kidnapped, forced to convert to Islam, or married to the kidnapper or a third party.

Section 365 B of the Pakistan Penal Code (PPC), which applies to women, i.e., girls above 18, is frequently inserted by the police without first asking the girl's age. Opposed to such abduction, the victim's family is filing a formal complaint. The kidnapper may occasionally file a counter-FIR, claiming that the girl's conversion was voluntary because her family was harassing her. In many instances, the kidnapper also files constitutional petitions in high courts to register a counter-FIR or obtain a restriction order that prevents the police from arresting the accused or putative kidnapper.

1.1 Problem Statement

Religion conversion is an important issue as it violates fundamental human rights, affecting many communities, including those in Pakistan. Religious freedom and conscience are fundamental human rights. In Pakistan, freedom of religion and the right to manage religious institutions are recognised under Article 20 of the Constitution of Pakistan. The victim and their families are the targets of discrimination because they are religious minorities and lack equal citizenship, which goes against the spirit and intent of the Constitution. This issue is observed in our surroundings, so as law students and Pakistani citizens, this issue is of great legal importance because it has various issues to address, which require a working legal framework for the prevention of the religious conversion of minor girls. Due to the dearth of literature and limited attention given to the said subject, the issue is examined from multiple angles.

1.2 Literature Review

Farhan Ispahani, in his article "Cleansing Pakistan of Minorities", concluded that when Pakistan gained independence in 1947, the percentage of non-Muslims living in Pakistan was 23% but now it has decreased to 3%. He has written that according to the last census, which was conducted in 1998, the Hindus and Christians were below 2%, and the main reason for this is forced conversion. He mentioned the historic case of Rinkel Kumari based on forced conversion, with a report from Asian Human Rights Watch that 20 to 25 girls were forcefully converted to Islam every month in Pakistan. He emphasised the need to protect minorities in Pakistan [5].

Abdul Hadi concluded in his article "Injustice and Persecution: Forced Migration of Sindhi Hindus in Pakistan", published in the *Mediterranean Journal of Social Sciences*, that after Pakistan was made, the minorities, from the start, felt unsafe. The running of the state through Islamic ideology has ruined minorities, and the kidnapping and forced conversion of their girls without the accused being held accountable in the court of law made them feel that they didn't belong in the state. He mentioned the Human Rights Commission Report of Pakistan 2014, which stated that courts do not look at the cases of forced conversion from the perspective of the minority of a girl. He stated that the representatives of minorities could not address

this issue in the assemblies, and this conversion of their girls is unbearable, as they are then sold for unlawful activities. In 1947, Hindus were 15% of the total population, but now it has decreased to 2% and almost 1,000 Hindu families leave Pakistan every year, according to the Pakistan Hindu Council. Hindus are on the verge of losing their identity [6].

Shaun Gregory, in his article “Under the shadow of Islam: the plight of the Christian minority in Pakistan”, concluded that, of Pakistan's total population, approximately 4 to 5 per cent are minorities. The US Commission on Religious Freedom has expressed worry about the protection of minorities in Pakistan, while Pakistan's international standing is deteriorating daily. He discussed the history of the creation of Pakistan and certain articles of the Constitution of Pakistan, which guaranteed equal protection for all, that the political history of Pakistan has destroyed. He emphasised that of all the minorities, the Christian community's suffering can be summed up by CLASS, a Pakistan Christian NGO, which explains how cruelty is inflicted upon them, and children and women are forced to change their religion for the sake of marriage [7].

Abdul Hadi, in his article “Patriarchy and Gender-Based Violence in Pakistan”, concluded that Pakistan is a society that supports patriarchy, and there are certain traditions against women that they follow, such as honour killing. He discussed certain theories of feminism and gave various reasons why men feel superior to women and what the consequences are. Due to this superiority, the author links how women of minority groups live in constant fear of men and mentions the report that around 1,000 girls from Pakistan who belong to certain minorities were compelled to change their religion to Islam in the name of marriage [8].

A thorough examination of the aforementioned literature showed that nobody had addressed Pakistan's laws on forced conversion or the laws that could be created in this country. Therefore, there is a substantial research gap in carrying out this study in the legal setting of Pakistan.

1.3 Research Questions

The following legal questions shall be answered through the research:

- After a child converts to another faith, who should be the child's legal guardians?
- How should the minor's conversion to a different religion be taken into consideration while determining custody?
- Does changing one's religion automatically deny a parent custody of their child?
- If the guardian can give the minor a friendly and contented household, can conversion be considered a disqualification for custody of the child?

1.4 Purpose of Study

The goal is to construct the necessary infrastructure to safeguard Pakistan's minorities, such as:

- To respond to the study topic by addressing the judicial system's shortcomings in Pakistan.
- To enact laws that specify the terms of a minor's custody in situations involving religious conversion.
- Advise the government to implement administrative and legislative measures that give minors more security and rights in accordance with the welfare of minors.
- In accordance with the Supreme Law of the Land, to enforce the law on this matter.
- To balance the sentiments of Muslims and non-Muslims while adhering to the law.

1.5 Research Methods

The research method adopted for this research question was robust. As the topic "Custody of Minor in the Context of Forced Conversion" is a Socio-Legal issue, it requires a combination of doctrinal and qualitative approaches to address the topic. Data was collected through primary and secondary sources and was contrasted with semi-structured interviews while adopting an analytical approach. Semi-structured individual interviews were conducted either in-person or remotely, along with purposive sampling. In order to accomplish the objective of critical analysis of the problem, the audio recordings of the interviews were then converted into transcripts for grounded theory content analysis. According to the nature of the research, this was qualitative with an inductive approach.

2 Combating Conversion Should Be A National Priority

Due to their vulnerability as children, women, and members of a religious minority, minority girls in Pakistan face triple jeopardy. At least a thousand non-Muslim girls convert to Islam each year, according to the Human Rights Commission of Pakistan's most recent report, "State of Human Rights 2019." According to reports, some 25 forced marriages occur each month in the Umerkot district alone. A list of 74 purported religious conversions of young minority girls in Punjab over six years was just released by the Centre for Social Justice as part of their ongoing investigation. The locations shift, the names shift, but the terrifying tales stay the same. Their faith ties them together, whether it's Rinkle, Raveena, Mehek, or Huma [9].

2.1 Unreported Cases

Even wealthy Sikhs and Hindus are affected by kidnapping and conversion; over time, they have prevented their girls from completing higher education. They believe that this is the only way to safeguard girls who are at risk. In one instance, Saneha Kinza Iqbal, the daughter of a pastor, showed up in the Lahore court on September 17, nearly two months after she vanished. She was wearing a burqa and was accompanied by some 20 members of her husband's family, who are twice her age. The teen stated that her family is now a threat to her and claimed to have converted to Islam. Despite being 16 on her baptism and school certificates, she is 20 years old on her marriage certificate. Another case in September involved the kidnapping and marriage to Abdul Saboor of 14-year-old Parsha Kumari from Khairpur. The family provided a school certificate to confirm the girl's age, but the kidnapper (her husband) used a "free-will affidavit" to establish her age at 18. It demonstrates that the girl is not a minor and is capable of making her own decisions [9].

2.2 A Need for Medical Examination

There is a prevalent way to hide religious conversions to Islam - by saying that at the time the girl was of age at 18 and showing a fabricated age certificate or saying she has reached puberty. Then she is an adult, and no more questions are asked. The quandary of each conversion case is that the authorities do not conduct any medical examinations to determine the age of the minor [9].

2.3 Minimal Mainstream Media Coverage

While such cases are largely lacking mainstream media coverage, the local media can draw attention to more notable instances. The majority of incidents involving powerful locals and religious leaders go unreported because of the pressure the leaders place on the media not to report the stories [9].

2.4 The Law on Custody of Minor

The terms custody and custodian are distinguished by the Guardian and Wards Act of 1890; the former refers to a person's guardianship, while the latter refers to a guardian. The honourable court defined custody as actual or constructive possession to meet the requirements of protection in *Juma Khan v. Gul Feroosh* (1972) [10].

In *Sultana Begum v. Mir Afzal* (1988), the Honourable High Court of Karachi expounded on custody as the raising of a minor or child by a mother or another legal guardian. Since the law deals with a child's welfare, custody should be granted to the mother when the child is very young or tender because it is thought to be in the child's best interests. Later, the father is granted custody, but during this time, the mother is granted custody for the child's protection. According to the law, it is assumed that a child living with the person who is entitled to it is doing so for the child's well-being; nevertheless, this can be refuted based on the specific facts and circumstances of each case [11].

2.5 Criteria of a Custodian

Certain requirements must be fulfilled by the individuals who are eligible to have custody of the minor, as stated in certain rulings by the highest courts. The Honourable High Court of Lahore ruled in *Imtiaz Begum v. Tariq Mehmod* that a person shouldn't be a sinner or dishonest. The individual must be a mahram to the minor, according to further custody requirements. When the minor is a female, the second husband must be within the prohibited degree and descended from the same ancestors. However, custody is awarded to the mother if she is still in a better position to care for the child, and all of these elements are dependent on the child's welfare [12].

In *Rafiqan V Jalad Din*, the honourable Supreme Court of Pakistan held that when the second marriage has ended, the parents who were disentitled to custody again become entitled to custody of the minor. So, in conversion cases, it can be clearly seen that a girl cannot live in a house where non-mahram also reside [13].

It was determined that the father is the minor's natural guardian after evaluating several Apex Court rulings. Constructive custody always stays with the father, even when the mother has custody, because of the right of monitoring. The Honourable High Court of Lahore ruled in *Mst. Chiragh Begum v. Khadim Hussain* held that a father's right to constructive custody will be deemed to be violated if the person who is entitled to custody denies him access to his child. According to the court, it would go against the child's welfare, and in these kinds of situations, the father should be given custody [14].

2.6 Sui Juris

A sui juris woman cannot be detained at Dar ul Aman against her will, according to the ruling in *Ali Muhammad v. The State* [15]. In Islamic law, a minor is referred to as a "sabi" or "saghir." Kabir is the reverse of it. Legally speaking, majority refers to the age at which an individual is legally permitted to commit specific crimes or be held accountable for specific actions or inactions. A person is considered a minor in Islamic law until they reach puberty. In Pakistan, when the majority is reached at the age of 18, Section 3 of the Majority Act is pertinent for our current needs.

The father is the children's natural guardian until they reach the age of majority under the Majority Act 1875, which is 18 years old, according to the analysis of a plethora of cases in *Muhammad Sadiq v. Sadiq Safoora* [16]. There is a difference between the two terms, as this case illustrates. In accordance with Islamic law, puberty gives a person the ability to exercise rights related to marriage, divorce, dower, and adoption; but, upon reaching the age specified by the Majority Act of 1875, he must have complete legal competence.

3 Landmark Judgement (Pummy Muskan Case)

Every individual has the fundamental right to practice their religion and their conscience. The right to declare one's own faith is recognised by Article 18 of the UDHR. Similar to this, the right to religious freedom is recognised under Article 18 of the ICCPR, which states that everyone has the freedom to declare their faith and alter their beliefs. It also grants the freedom to openly teach, practice, or worship one's religion in a private or public setting, either individually or within a community. Nothing should be done to individuals that would interfere with their freedom to practice whichever religion they want. This right would only be subject to the limitations provided by the law, which are important to protect the public order and morality, and the rights of others. ICCPR not only protects the right of freedom of one's religion, but it also protects the views that a person of one religion shares with other persons of the same religious belief. It protects the views a person shares regarding their beliefs and disbeliefs with others. Various other laws also recognise this right: 1) Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), 2) Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), 3) Article 12 of the American Convention on Human Rights (1969), 4) Article 8 of the African Charter on Human and Peoples' Rights (1981), 5) Universal Islamic Declaration on Human Rights (1981), and 6) Arab Charter on Human Rights (1994) [17].

3.1 Constitution of the Islamic Republic of Pakistan

The apex court clarified in the *Suo Moto Regarding Suicide Bomb Attack* on 22nd September 2013, PLD 2014 SC 699, case that the right to practice one's religion under the aforementioned Article (Article 20) of the Constitution does not expressly address the practice of any minority or majority, Muslim or non-Muslim. Since it discusses citizens, all citizens, whether or not they are Muslims, have the freedom to follow their faith. They are not even allowed to force their opinions on one another or to follow the beliefs of their own fellow believers [17].

Since every person has the freedom to propagate their religion, no one can coerce others into converting to their faith. Therefore, Article 20 of the Constitution should not be seen as promoting conversions but rather as the authority to prevent them. Most significantly, the freedom of religion encompasses all religions in which citizens are free to exercise their right, not just one. Other nations, such as India, Bhutan, Nepal, and others, have passed anti-conversion laws. However, as stated in *Pakistan V Hindu Council*, PLD 2012 SC 679, no such regulation has been implemented in Pakistan [17].

3.2 Islamic Perspective of Religious Conversion

According to Islam, a person is born a Muslim, but their parents and society determine their life course. Islam opposes religious conversion as a positive step and does not permit it. No verse or hadith in the Quran indicates that Islam has promoted religious conversion or that religious compulsion exists. According to the scholar Hafiz Ismail Ibn Khatir, Islam is obvious to everyone and should not be forced onto

others because it is so straightforward. Islam stipulates that Muslims should not coerce anyone into accepting Islam (forcibly), but rather promote the faith in a way that is fair and wise, as revealed in the Quran [17].

3.3 Forced Conversion

The issue of religious conversion, or simply conversion, is important and needs to be handled carefully. When someone reads "Kalma" and accepts that Allah is one and that Hazrat Muhammad (SAW) is the final prophet, they are considered to be a Muslim. However, conversion can also involve a change in religion. It would be considered fraud and unlawful if the primary goal of conversion was to alter the rights or obligations as specified by law. Additionally, such a conversion will not be permitted by the courts. When a conversion issue is brought before the court, the judge makes a decision based on the facts to determine if the conversion is authentic or not. The actions of the person (converted) in relation to his apparent religion must be taken into consideration. Furthermore, the courts are unable to judge if a person's conversion and religious views were sincere, but they can judge whether or not the conversion was real based on the person's actions [17].

3.4 Age for Religion Conversion

The age of conversion is not stated in any of the Holy Quranic verses or in the Hadith of the Prophet Muhammad (PBUH). Hazrat Ali (RA) was just ten years old when he converted to Islam. Furthermore, according to Muslim jurists, a child's mental capacity plays a significant role in determining whether they were of majority age at the time of conversion. Some jurists believe that girls reach puberty at age nine, whereas boys reach puberty at age twelve. Alternatively, they are considered baligh (adults) once they reach the age of 15. A person (minor) is said to have reached puberty when they reach the age of 15, in Ameer Ali's book on Muhammadan Law. The court ruled in *TEOH ENG HUAT V. Kadhi, Pasir MAS & ANOR*, [(1990) 2 MLJ 300], that minors are subject to their parents' will and cannot choose their own religion. Additionally, if they wish to convert, their parents' or legal guardians' consent is required. In certain instances, Islamic jurists and courts have also held that a person's age (majority) will be decided in accordance with Islamic law when they convert to Islam [17].

3.5 Custody in Cases of Religious Conversion

In the cases regarding the custody of minor, courts act as loco parentis, for which the welfare of children is the prime duty of the court. Section 19 of the Guardian and Wards Act, 1890 states that when a child's father is living and is not an unfit guardian according to the court, then no guardian is appointed. A guardian must be appointed in the best interests of the child. The right of the father is the most precious, and custody of a minor is a highly delicate affair. The court will only step in and take away the father's rights in specific situations if he has done something immoral or illegal, misbehaved, or acted cruelly. Furthermore, if the father has not engaged in any of the behaviour, the court does not interfere with his custody rights. Since a minor

cannot decide to convert on their own, the conversion does not deny the parents' custody of their child. At this stage, the conversion itself can simply be refused to make it effective rather than being viewed as void or invalid [17].

4 Discussion and Analysis

The question of custody of a minor in cases of religious conversion requires both doctrinal and qualitative research. Purposive sampling and interviews were carried out with seven participants, including six lawyers and one area expert working for organisations for the protection of minorities' rights in Pakistan. Saturation was achieved after four interviews, and three interviews were further conducted for confirmation. As per interviews which were conducted in different modes through in-person meeting (voice recording), written interviews or voice notes from WhatsApp. Most of the participants were hesitant to give an interview, but we convinced them that their identities would be confidential and their opinions would be used for educational purposes. Four questions were formulated to address our research gap, which is about legal points on custody matters in cases where the conversion of faith of the minor is involved. These questions are totally based on legal contentions, and ethical considerations were determined while conducting research.

After conducting interviews and making transcripts, analysis of the data was conducted under the grounded theory method, in which codes were assigned to condensed meaning units, formulated themes and categories. The following four categories were made and addressed accordingly as per the opinions of interviewees, which provided legal contentions and crises faced in Pakistan with respect to the custody of minors in faith conversion cases.

4.1 International Obligation

According to the opinions of the interviewees, we came to know that Pakistan is signatory to International Convention known as "Convention on Child's Rights", which ensures and protects child's rights available in convention from any kind of discrimination of colour, race, language, religion etc., and custody of the minor is also addressed in the convention under the principle of "Welfare of Minor". The minor's best interests are protected by this convention. One of the interviewees mentioned that Article 9(1) of the CRC stipulates that parties must make sure that a child cannot be taken away from their parents against their will unless decided by competent authorities who are subject to judicial review, and in compliance with applicable laws and procedures. It demonstrates that Pakistan, as a signatory to the convention, has an obligation to guarantee that minors are not separated from their parents unless it is required by law, which is also known as the Rule of Law. According to convention, the welfare of the minor will be the basis for deciding the custody issue.

According to one interviewee, "In compliance with international commitments, the Federal Government established the National Commission on the Rights of the Child under the National Commission on the Rights of the Child Act, 2017 (XXXII of 2017) (NCRC Act)." This commission's primary responsibility is to

review proposed or current laws and policies about child rights, among other topics. However, no statute legislation has established any criteria for deciding custody issues involving minors who have already converted to another religion. Since the welfare of minors is the primary mandate of the CRC and this issue requires prior attention, the commission established under the NCRC 2017 had the authority to review both proposed and existing laws and instruments. However, the legislature should have the authority to make recommendations and propose bills because there are no parameters on the custody of minors in cases of religious conversion for the purpose of fulfilling international obligations.

4.2 Legal Custodians of Minor

Regarding who the minors' legal guardians are, the interviewers immediately responded that custody of a minor can only be transferred to legally entitled individuals in circumstances of divorce or second marriage, or in the absence of both parents, in accordance with the relevant law, which is the Guardians and Wards Act of Pakistan. According to the interviews, the mother and father are the child's natural guardians, or the second party to custody may be the child's grandparents, either maternal or paternal, depending on the circumstances, or any individual based on the welfare principle in general. However, no law contains any provisions regarding the custody of a minor in the event of religious conversion.

According to the interviewee, when a child is young, the mother usually has custody of them; later, the father does. The mother will be given preference over relatives, including the father, because it is considered in the child's best interests to spend his or her formative years with the mother. Living with the individual who has custody rights under Islamic law is assumed to be in the child's best interests. Religious conversion has no bearing on guardianship status. In the Pummy Muskan case, Justice Tariq Salem Sheikh of the Lahore High Court ruled that a minor's parents' guardianship is not revoked due to religious conversion. Additionally, according to one respondent, "the biological parents still have custody of the child even if they change their religion." The Guardians and Wards Act states that parents are typically granted custody of a minor since they are the child's natural guardians, unless the mother marries again, in which case the father or maternal grandmother may be granted custody. Parents' custody rights do not disappear, nor does a minor child's right to reside with their parents when they convert to another religion. Parents have the legal right to custody, and children are free to live with their parents if they so want. As a result, parents have custody of their children, except in special circumstances.

4.3 Jurisdiction

Where a complainant or other aggrieved person should go for the proper remedies is one of the main legal disputes in Pakistani law. We learned about our judicial system's shortcomings from our qualitative research, which has to be appropriately addressed. According to the interviewees, the Guardian and Wards Act is the relevant law in this custody case, and the Guardian Courts established under the Act are the proper forum.

However, one problem identified during the study process was the lack of legislation or rules about custody in the event of a minor's conversion to another religion. "What has been observed in all those cases that courts either question the validity of marriage on account of age or have given relief on account of custody but haven't touched upon the matter of conversions or validation or non-validation of the conversion itself, that shows precaution on the part of the judges considering the environment in Pakistan," explained one interviewee. In a small number of cases or complaints, they have relied on a safe route to offer relief, and custody has been granted to the parents either directly or gradually. Additionally, the interviewee says, "There is no authoritative law on this because we don't have any laws covering faith conversions, so there is no specific direction." The custody law has been cited by the courts. Because guardianship is within their jurisdiction, concerns pertaining to minors' custody are directed to them, even when there are no direct provisions available. According to one interviewee, "The matter is to be decided as per the principles contained in Guardians and Wards Act, 1890, without discussion as to the validity of conversion by a minor, as per present views of Honourable Superior Courts." Based on our analysis of the interviews, we came to the conclusion that custody cases, regardless of whether a minor's conversion to another religion is lawful or not, belong in the Guardian Courts established under the Guardians and Wards Act.

4.4 Parameters & Courts' Views for Determining Custody

As to the research question regarding custody of a minor in religious conversions, we inferred from the interviews that there are no specific directions regarding the custody matters in faith conversion. According to one interviewee, "There is no specific direction because we don't have any law covering faith conversions; therefore, there is no authoritative law on this. The courts have relied on the law concerning custody." Even though those provisions are not available on custody, as to the religious conversion of a minor. One interviewee stated that "Without discussion as to the validity of conversion by a minor, as per present views of Honourable Superior Courts, the matter is to be decided as per the principles contained in the Guardians and Wards Act, 1890, whereby paramount consideration is 'welfare of minor' irrespective of religion". All the interviewees replied with the answer that there is no such law which governs custody with respect to religious conversion, there are only judge-made parameters and interpretations which are totally based on the principle of "welfare of minor" irrespective of the validity of religious conversion by a minor. Furthermore, all interviewees state that custody remains with parents, and judges should not deny custody to parents on the grounds of religious conversion of the minor.

4.5 Overarching Theme

Pakistan has complied with international conventions to safeguard and protect children's rights, but minor custody is still a contentious issue. The Guardian courts, established under the Guardians and Wards Act, have jurisdiction over minors and no statutory laws; judges set guidelines for minors' religious conversion. These judges operate on the principle of the minor's welfare and transfer custody to parents,

grandparents, or other legally entitled parties for the minor's welfare. According to research, parents must be entitled to custody of a minor, and the child should not be separated from the parents except in accordance with law, and such law is required to be made. Otherwise, custody of a minor comes into question, which also violates the international obligation of the state under the International Convention of which the state is a signatory.

5 Findings

The methodology of research, in which doctrinal research was supported by a qualitative approach, validates the objectives and aims of the research under discussion and analysis mentioned above. The research proves that Pakistan's legal system is inadequate in matters concerning the custody of a minor in cases where he/she has converted religion. As per doctrinal and qualitative data analysis, it addressed the legal research gap that there is no piece of legislation governing the faith conversion of a minor and his/her custody. There were only surveys and articles reporting incidents of religious conversion of minors and custody matters related to such conversion. This research article has determined the gap and discussed parameters that should be considered while awarding custody to a person in cases of religious conversion involving a minor.

6 Recommendations

Considering the above discussion, the study proposes a few constructive suggestions. To stop and eradicate such issues in the future, a broad range of legislative, regulatory, and administrative actions is needed at the federal and provincial levels. Therefore, the government ought to carefully consider the suggestions made by the Parliamentary Committee to Protect Religious Minorities from Forced Conversions.

First, appropriate legislation that safeguards those who might be harmed by religious conversions is required. In light of the committee's recommendations, the Ministry of Human Rights ought to assemble a team of specialists to design the legislation on religious conversions, which would then be presented to the House as a joint Treasury and opposition proposal.

Second, it is necessary to update the personal laws that minorities use to regulate private affairs such as marriage, divorce, custody, maintenance, and inheritance.

Third, state and government employees (judges, police, doctors, etc.) who report, look into, and prosecute incidents of religious conversion ought to be made aware of the problem and held responsible for it.

Fourth, women who have been harmed require further protection. Fair legal involvement, trauma recovery, reparation, privacy, confidentiality, and protection are necessary.

Finally, an awareness campaign must be started to inform minority citizens about their fundamental rights and freedoms to stay up to date with legislative developments. The penal laws governing forced faith conversions and associated offences ought to be known to the general public. Since it is the duty of every citizen to speak out against injustice, educating the public should also be a top concern.

7 Conclusion

There is still a disparity between the criminal justice system's actual operations, the human rights instruments that Pakistan has ratified, and the legal protections guaranteed by the Constitution. The UDHR, of which Pakistan is a signatory, declares that while everyone has the right to practice their religion freely, no one may be forced to do so. At the same time, every citizen of Pakistan has the right to profess, practice, and propagate their religion, according to Article 20 of the Constitution. It implies that neither the dominant nor the minority religious groups can force their beliefs or ways on other people. However, no legislation has been created expressly to stop the ongoing wave of religious conversions. Two such proposals were defeated after being introduced in 2016 and 2019. Ironically, the state consistently reaffirms its commitment to passing legislation regarding forced conversions whenever a case is disclosed. However, there is a lack of regulations on religious conversions due to the egregious ineptitude of both the federal and provincial administrations.

According to the qualitative part of the study, Pakistan has complied with international conventions to safeguard and protect children's rights; however, custody of minors is a matter of concern as well, with jurisdiction falling under the Guardian Courts established under the Guardians and Wards Act. There are no statutory laws pertaining to child custody, only guidelines set by judges in cases of religious conversion. The law stipulates that custody of minors should be given to parents, or if parents are not present, grandparents or the person legally entitled to it for the minor's welfare. According to the interviewees, the Guardian and Wards Act is the relevant law in this custody case, and the Guardian Courts established under the Act are the proper forum. However, one problem identified during the study process was the lack of legislation or rules on custody in the event of a minor's conversion to another religion. There is only one known Lahore High Court ruling by Justice Tariq Saleem Sheikh in which the court granted the parents gradual custody relief. There are two unreported cases in which the court granted custody of minor parents. It supports the theory that Pakistan's legal system is insufficient to decide a minor's custody when they convert to another religion.

Author's Contribution. By pointing out gaps in current jurisprudence and providing suggestions for a more child-centric judicial approach, the author critically analyzes the legal complications surrounding the custody of minors in cases of religious conversion.

Acknowledgment. I want to thank Dr. Zeeshan Ashraf, Head of Department, IVY College of Management Science (ICMS), from the bottom of my heart for helping me through this process

and helping to make it what it is today. This research report would not have been feasible without his direction and tenacious assistance. I also want to express my gratitude to my department colleagues, who have consistently provided insightful commentary and helpful criticism. Lastly, I want to thank my family and friends for their unwavering patience, encouragement, and support during these endeavors.

References

1. R. Stark, R. Finke, *Acts of Faith: Explaining the Human Side of Religion*, University of California Press, Berkeley, 2000, p. 114. Quoted in: *Nasira v. Judicial Magistrate and 5 others*, PLD 2020 Lahore 489. DOI: <https://doi.org/10.1525/9780520924345>
2. K. Ali, CII to define forced conversions, panel told, Dawn, Nov. 17, 2020.
3. M. Zia, S. Ali, R. Khan, *Judge's Toolkit: Delivery of Justice, Issues Faced by Gender and Religious Minorities*, Legal Aid Society and EDACE, Karachi, 2020.
4. Asian Human Rights Commission, *Pakistan: Forced conversion of religious minorities*, AHRC-STM-025-2016, 2016.
5. F. Ispahani, *Cleansing Pakistan of minorities*, *Current Trends in Islamist Ideology*, vol. 31, 2013.
 - A. Hadi, *Injustice and persecution: Forced migration of Sindhi Hindus in Pakistan*, *Mediterranean Journal of Social Sciences*, vol. 6, no. 2S5, 2015, pp. 11–14. DOI: <https://doi.org/10.5901/mjss.2015.v6n2s5p11>
6. S. Gregory, *Under the shadow of Islam: The plight of the Christian minority in Pakistan*, *Contemporary South Asia*, vol. 20, no. 2, 2012, pp. 195–212. DOI: <https://doi.org/10.1080/09584935.2012.670201>
 - A. Hadi, *Patriarchy and gender-based violence in Pakistan*, *European Journal of Social Sciences Education and Research*, vol. 4, no. 4, 2017, pp. 289–296. DOI: <https://doi.org/10.26417/ejser.v10i2.p297-304>
7. National Commission for Justice and Peace, *The Stance*, Issue No. 02, Aug. 2021.
8. *Juma Khan v. Gul Ferosh*, PLD 1972 SC 1.
9. *Sultana Begum v. Mir Afzal*, PLD 1988 Karachi 252.
10. *Mst. Imtiaz Begum v. Tariq Mehmood*, CLC 1996 800.
11. *Rafiqan v. Jalal Din*, SCMR 1983 481.
12. *Mst. Chiragh Begum v. Khadim Hussain*, PLD 1967 Lahore 382.
13. *Ali Muhammad v. The State*, SCMR 2013 1484.
14. *Muhammad Sadiq v. Sadiq Safoora*, PLD 1963 WP Lahore 534.
15. *Nasira v. Judicial Magistrate*, PLD 2020 Lahore 489.

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