

Effects of Dissolution of Transnational Muslim Interreligious Marriages on Child's Life: Comparative Analysis of Pakistan and English Family Law in the Context of Sharī'ah

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Abstract

This paper seeks to answer the issue concerning the effects of dissolution of transnational Muslim interreligious marriages on the child's life. Therefore, the paper mainly addresses the significant issues including the approach of classical and modern scholars to interreligious marriages of Muslim men and women in the Muslim minority state, essential requirements and problems to celebrate it under Sharī'ah, Pakistani law and English Family Law. Furthermore, the paper focuses on the effects of dissolution of transnational Muslim interreligious marriages on child's life especially in determining the religion of child in Pakistan and England. In addition, the study identifies the major problems, which adversely effects the family life and society including the issue of conversion of the contracting parties. This study is restricted to the opinions of four sunnī schools of thoughts, Statute laws, and Case laws of Pakistan and England. It argues that dissolution of transnational Muslim interreligious marriage disgracefully effects the child's religion. Moreover, the study articulates a comparative perspective to examine the regulations and challenges of transnational interreligious marriages of Muslim men and women under Islamic Law, Pakistan and English Family Law. Besides, the effects of transnational interreligious marriages have been figured out through comparing and analyzing of both laws, which effects the family and society as whole in order to address the contradictions found between the legal practices of Pakistan and England. Therefore, the study suggested that there is need of keen attention of Islamic and legal scholars of both states to work hard collectively to make a single procedure in order to overcome the conflicts keeping in view the religion of both parties.

Key Words:

Transnational Muslim Interreligious marriage, religious upbringing, abduction, child's residence, contact, medical treatment, surname, Sharī'ah, Pakistan and English Family law.

Introduction

The transnational Muslim interreligious marriage is a marital union where an individual intends to marry someone outside the religion (e.g. Judaism, Christianity, and Islam) or outside the country. The term Muslim interreligious marriage is a marital union in which one partner is a Muslim while the other partner belongs to different religious background (Taylor & Francis, 2008). In *Sharī‘ah*, the jurists have discussed the Muslim interreligious marriage under the title “marriage with *ahl al-kitab*” where one of the parties is Muslim while the other is *ahl al-kitab*. The term “*ahl*” refers to a group of people and followers of specific religious characteristics while the term *kitab* means sacred Book containing the revelation of God to his worshippers. Consequently, the term *ahl al-kitab* means possessors of divine scriptures. Technically, this term stands for Christians and Jews who are possessors of early revealed Books (Bible, Psalms and Gospel) (Chopra, 2005). The renowned *mufassir* al-Ṭabri said the term *ahl al-kitab* includes people of Torah (*ahl al-Tawrat*) and people of Gospel (*ahl al-Injil*). According to him, verse of *surah* al-‘Imran does not specify that which group is addressed as *ahl al-kitab*, therefore, both groups are included (Christians & Jews as *ahl al-kitab*) in it. Likewise, Ibn Kathir and Zamakhshari said the term *ahl al-kitab* referred to Jews and Christians (Zamakhshari, 1977). Another well-known *mufassir* Ṭusi added that phrase *ahl al-kitab* (People of the Book) adds Christians of Najran, Jews of Madinah (those who worshipped their leaders and their monks) and combination of both groups. In addition to this, abu Abdullah added the group of *ṣaba’* in this definition and said; the word *ṣaba’* means one who had abandoned his faith and embraced a new religion. Abu ‘Aliyah said *ṣabeans* who recites Psalms are also incorporated in the group of *ahl al-kitab* (Bukharai, 1981). Contrary to it, Ibn Shihab also added other people in this definition and supports his opinion by saying that the Holy Prophet took *jizyah* from Zoroastrians of Bahrain, ‘Umar ibn al-Khaṭṭab took the *jizyah* from Zoroastrians of Persia and ‘Uthman ibn ‘Affan took it from Berber. Respectively, Imam Abu Hanifah applied the term *ahl al-kitab* on Christians and Jews and extended the ambit of definition by applying it on those who believe in Psalm, which was sent down to Prophet Dawud because according to Imam Abu Hanifah, they do not worship the stars except that they respected them (Kasani, 1993). In this regard, Hanbali jurists said the term *ahl al-kitab* applied for people of Bible and people of Gospel as people of Bible (Old Testament) are Jews and *Samirah* while people of Gospel (New Testament) are Christians and those who agreed with their basic doctrines among the group of Harranians and Armenians whereas to *Ṭabeans*, they are Christians but observer of *sabbat* (Holy Saturday), therefore, they resemble with Jews. However, Imam Shafi‘i said, if they do not differ with the fundamental doctrines of Christians and Jews but differ in its *furu’* (minor issues), then they are among them but if they differ in their basic doctrines, then they are not among them (*ahl al-kitab*). Therefore, those who adhered the scripture of Prophet Ibrahim, Shith and Dawud are not considered as *ahl al-kitab* but they are unbelievers according to Imam Shafi‘i because he confined the term ‘*ahl al-kitab*’ to those Christians and Jews who are descendants of Bani Isra’il while Imam Ahmad bin Hanbal extended the term *ahl al-kitab* to all those people who believe in revealed books without considering their adherents or whether their scrolls have preserved or have not preserved.

This article explains the concept, legal position and types of transnational Muslim

interreligious marriages under *Sharī‘ah*, Pakistan and English Family Law. In addition to this, the article discusses the different questions including: What kinds of rights emerge as a result of Muslim interreligious marriages? What are the injunctions of *Sharī‘ah* on the issue of validity of interreligious marriages of Muslim woman? Whether conversion is required to constitute a valid interreligious marriage under *Sharī‘ah*, Pakistani family law and English Family Law? What are the essential requirements to celebrate the transnational Muslim interreligious marriages in *Sharī‘ah*, Pakistan and English Family Law? How dissolution of transnational Muslim interreligious marriages effects the religion of a child, travelling rights and contact with the parent?

The current study examines the theoretical rules of the Muslim interreligious marriages with Islamic Law perspective. Therefore, the comparative method has been applied to determine the similarity and differences, which exist in the legal practices of both Pakistan and English Family Law arising as a result of religious differences. The study is descriptive in nature, therefore, statute laws of both states have been critically evaluated to highlight the adverse effects of transnational Muslim interreligious marriages on the child’s life and the problems met with interreligious couples before, and at the time of celebration, registration and recognition of transnational Muslim interreligious marriage in order to resolve the conflicts. This is a significant problem which require the opinion of scholars and legal experts of both states to work collectively in order to design a common framework to remove the factors which have negative effects on child’s life triggered as a result of dissolution of transnational Muslim interreligious marriages.

Stance of Religious and Modern Scholars on Muslim Interreligious Marriage

The Muslim interreligious marriage refers to a marriage between partners having different religions. The validity of Muslim interreligious marriage is not a controversial issue in the classical law especially where a Muslim man is involved. Therefore, the Hanafi, Maliki and Hanbali jurists permitted the interreligious marriage of Muslim man with *Kitabiyyah* in Muslim state on the basis of general meaning of the verse “And lawful to you are (all others) beyond these” (Qur’ān, 4:24) and “So marry them with the permission of their people” (Qur’ān, 4:25) “And chaste women from among those who were given the Scripture before you, when you have given them their due compensation” (Qur’ān, 5:5). However, Imam Malik dislikes the interreligious marriage of Muslim man with *Kitabiyyah* (either Jewish or Christian) because they consume pork, wine and do not observe purity while in case of child, there is a fear that she will up bring the child according to her own faith and feed him prohibited things like wine etc., which are not permitted in Islam. Accordingly, it is reported that when it was asked from Jabir about the marriage of Muslim man with Christian and Jewish woman, he said I and Sa’d bin abi Waqaş married them at the conquest of Kufa but it was disliked to marry their women because it may corrupt his religion and he may become the follower of her faith (Ibn Rushd, 1415). Whereas, Imam Ahmad bin Hanbal said it is better that do not marry with *Kitabiyyah* because caliph ‘Umar said those who had married the women from *ahl al-kitab*, divorced them. Consequently, all of the companions divorced them except the Hudhayfah. ‘Umar said to him: divorce her, he replied: Testify that she is prohibited? He said, “She is ember so divorce her.” He again asked, “Testify that she is prohibited?” He said, “She is ember”. Hudhafah said, “I

knew that she is ember but she is lawful for me, yet, he divorced her later.” Therefore, when it was asked to him: why did you not divorce her when ‘Umar had ordered you? He said: I hated to think that people looked at me to commit in such a matter, which is not appropriate for me (Şana‘ānī, 1983). Therefore, on the basis of above evidence, Hanbali jurists approved the marriage of Muslim man with *Kitabiyyah* (Qudāmāh, 1992). Contrary to it, Imam Shafi‘i permitted the marriage of Muslim man with those *Kitabiyyah* who are *Isrā’īliyyah* (descendants of *Bani Isra’il*) as *Isrā’īliyyāt* are those Jews and Christians who believed in the original scripture of their ancestors before the changing and abrogation. Secondly, those women are permitted from *ahl al-kitab* who knows that they had accepted the faith after distortion but before the abrogation of scriptures. Therefore, if they observed truth and avoided from distortion then they will be treated like Christians and Jews but if they are involved in distortion then it is unlawful to marry them. Thirdly, those who know that they had accepted the faith after distortion and abrogation, then marriages with those women are unlawful. However, those people who had converted to Judaism or Christianity but before the mission of the Holy Prophet are lawful for Muslims but if they are converted after the mission of the Holy Prophet then they are unlawful for Muslims. Fourthly, those who do not know when they had entered in their faith or unaware about distortion in their scripture then marriage is not permitted with them as companions have ruled about ‘Arab’s Christian, consequently former (*mutaqadaimin*) and later (*muta’khairin*) jurists also followed this rule (Nawawī, 1995).

On the other hand, the juristic opinions fluctuate about the validity of interreligious marriage of Muslim man with those *Kitabiyyah* who are citizens in non-Muslim state as Hanafi jurists disapproved to marry a *harbiyyah* on the basis of the verse “O you who have believed, when the believing women come to you as emigrants” (Qur’ān, 60:10) and Allah says “then do not return them to the disbelievers” (Qur’ān, 60:10). Moreover, ‘Alī disapproved to marry *hirbiyyah*, because Holy Prophet said “I am free from every Muslim who lives among the polytheist ... their fires should not be visible to one another” (Nisā’ī, n.d). Consequently, there is a possibility that he may corrupt his religion and follow the polytheism and intends to domicile there. Moreover, if he left her in non-Muslim state then separation took place between them due to variation of states because the wife is inhabitant of a non-Muslim state while the husband is inhabitant of a Muslim state and variation of abodes (states) may cause the separation between the spouses. Contrary to it, Shafi‘i jurists declared that separation does not take place between them due to variation of abodes in case where a woman migrated to another state as a refugee or if any of the spouses converted to Islam or husband left the Islamic state either he is a Muslim or *kitabi* on the basis of narration as it is reported that abu Sufyan became Muslim at Marr al-Zahran in the camp of Holy Prophet and the Holy Prophet did not refresh the marriage contract between him and his wife Hind. Moreover, when the Holy Prophet conquered Mecca, at that moment ‘Ikrimah bin Abu Jahl and Hakīm bin Hizam escaped until their woman embraced Islam, obtained security for husbands, departed, later came back with their husbands and the Holy Prophet did not refresh their marriage. Indeed when daughter of the Holy Prophet PBUH Zainab (R.A) migrated toward Medina and her husband abu al-‘āṣ follow her after a year so Holy Prophet returned her to her husband on the basis of first marriage (Bayhaqī, 1991). In addition to this, Shafi‘i jurists strongly disapproved the marriage of Muslim

male with *harbīyyah* because of fear of corruption in his religion and child as well as she is not under Islamic jurisdiction and he will remain unaware about his child's religious education. In this regard, Imam Malik, Imam Abu Hanifah and Imam Shafi'i agree that marriage of *Harbīyt* in non-Muslim state are lawful but they disapproved these marriages (Sarakhsī, 1978). Contrarily, Hanbali jurists do not differentiate between *Kitabiyyah* (resident of Muslim state) and *harbīyyah*, therefore, marriage of Muslim man with *harbīyyah* (in non-Muslim state) is valid in the same way as it is permitted to marry a *Kitabiyyah* in Muslim state (Qudāmāh, 1992). The well-known contemporary scholar Yusuf Al-Qaradāwī said interreligious marriage of Muslim man with *Kitabiyyah* should be prevented on the rule of *sad al-dhari'ah* (to block pretenses) in the present era because Muslim men are not ensured whether women meet the criteria of chastity (Rekness & Rudnitzky, 2013). In addition to this, Maulana Muhammad Yusuf Ludhianvi issued a *fatwā* and permitted to marry those Christian and Jewish women who are residents of Muslim state only but considered such marriages as disapproved (*makruh tanzīhi*). Contrary to it, marriage with *Kitabiyyah* in non-Muslim state is valid but deemed as *makruh tehrīmi*, therefore, it is prohibited to marry them. Besides, child from these marriages will be raised as Muslim but if he permitted her to raise the child according to Christian belief then he became apostate (Arif Khan, 2015). However, Assembly of Muslim Jurists of America (AMJA) declared Muslim man may marry the chaste woman from *ahl al-kitab* but deemed as *makruh*. However, these marriages are considered risky in perspective of future of child because these women have right to practice their faith and raise the child accordingly.

In regard to interreligious marriage of Muslim man with polytheistic woman, the Hanafi, Maliki, Shafi'i and Hanbali jurists do not permit the marriage of Muslim man with a polytheistic woman on the basis of the verse "And do not marry polytheistic women until they believe" (Qur'ān, 2:221). The reason of prevention is religious hostility as she blindly follow her ancestors regarding the religious practices, and most probably she will not believe in Islam even in case of invitation to Islam. Additionally, Imam Shafi'i added the adherents of the Prophets Shith, Idrīs, Ibrahim, Dawud in the ambit of disbeliever because whatever they have possessed are not the words of Allah Almighty except that these are sermons and advices. Likewise, worshippers of sun, moons, idols, stars, atheist and hypocrite are polytheists, Hanbali jurists added the worshipper of stones, trees and animals in this ambit (Qudāmāh, 1992). In regard to interreligious marriage of Muslim man with Magians, the jurists including Imam Abu Hanifah, Imam Malik, Imam Shafi'i and Imam Ahmad bin Hanbal do not permit the marriage of Muslim man with Magians as there is consensus of the jurists on the prohibition of this marriage. The Hanafi jurists do not place them from *ahl al-kitab* on the basis of the verse "(We revealed it) lest you say, the Scripture was only sent down to two groups before us. (Qur'ān, 6:156) and tradition "follow the same *sunnah* with Magians as you follow with the people of the Book but do not marry their woman nor eat their sacrifice s" (Bayhaqī, Hadīth 1913) Thus, Shafi'i and Hanbali jurists said they have no revealed Book and they are like idol worshipper. Contrary to it, Abu Nur permitted the Muslim man to marry their woman because they pay the *jizyah* like Jews and Christians, similarly, Abu Thawr permitted this marriage because Holy Prophet said: "Follow the same *sunnah* with them that you follow with the people of the Book" (Bayhaqī, Hadīth 5512).

Whereas the Marriage of Muslim man with *ṣābīyah* is concerned, Imam Abu Hanifah permitted the Muslim man to marry them while Imam Abu Yusuf and Imam Muhammad do not permit to marry them. The reason of disagreement among the jurists is the uncertainty about their religion. According to Imam Abu Hanifah, they believe in Book, recite Psalm and do not worship stars but respected them as Muslims respect the Ka‘bah to face the direction except that in some matters they are different from *ahl al-kitab*. On the other hand, Imam Abu Yusuf and Imam Muhammad said they worship the planets and worshippers of planets are just like idol worshippers, therefore, it is not permitted to marry them. Contrary to this, Imam Shafi‘i does not permit the marriage of Muslim man with *sāmīrah* (a group apart from Judaism) and *ṣābī* (a group apart from Christianity) while Hanbali jurists placed them in the category of *ahl al-kitab* (Shayrāzī, 1976; Qudāmah, 1992).

In regard to marriage with a woman born from Kitabi and Magians parents, the Hanafi jurists permitted to marry them and said they will be treated like *ahl al-kitab* like in case of Muslim parent the child is always treated like Muslim. On the other hand, Maliki jurists disapproved the Muslim male to marry a female born from the wedlock of magi and Christian mother because Allah Almighty permitted the Muslim man to marry a woman from *ahl al-kitab* and child always follow the father’s religion. Similarly, Shafi‘i jurists do not permit the Muslim man to marry a woman born from *kafīrah* and *kitabi* parents or from pagan, magi or apostate, magi and *Kitabiyyah* excluding the child born from Muslim and *Kitabiyyah* parents. The reason is that Islam is always superior and should never be surpassed while all other religions are kinds of disbelief. Therefore, it is permitted to marry a girl if she follows the religion of *kitabi* parent after attaining of majority age. There are two opinions for a child who is born from *kitabi* and Magians parents. One is that she is not forbidden because she belongs to the tribe of her father and her father is from *ahl al-kitab* and second opinion is that she is prohibited because she is not merely *Kitabiyyah*, thus, she is like Magians. In addition to this, Hanbali jurists affirmed that when one of the parent is *kitabi* and the other is non-*kitabi*, in that case, it is not permitted for a Muslim man to marry her because she does not absolutely belong to *ahl al-kitab*. Therefore, it is not permitted for a Muslim man to marry her when her father is non-believer as she is born from the wedlock of one who is permitted and the one who is not permitted, for that reason, she is not permitted for marriage and deemed like mule (Kasani, 1993).

Approaches of Classical and Modern Scholars on Interreligious Marriage of Muslim Woman with *Kitabi*

The validity of the interreligious marriage of Muslim woman with *kitabi* is highly controversial issue between the classical jurists and modern scholars. The Hanafi jurists do not validate the interreligious marriage of Muslim woman with *kitabi* or any non-*kitabi* (idol worshipper or polytheist or magi) because Muslim woman can marry a Muslim man only on the basis of the verse “And do not marry polytheistic women until they believe” (Qur’ān, 2:221) and tradition as Holy Prophet said “Islam is always superior and should never be surpassed” (Bukhārī, 1981). The reason is that there is a fear that woman may leave her religion and follow the faith of her husband because practically woman is influential in nature. Consequently, if marriage is contracted, it is required to immediately separate them but if marriage is

consummated then it is essential to punish the woman and mediator except the *kitabī*. Contrary to this, Imam Malik said, execute the *kitabī* due to this marriage contract because he has violated his agreement. In addition to this, punished the mediator also because he had supported them to take an action about a matter, which was unlawful in Islam as Holy Prophet said, “The Allah Almighty cursed the one who bribes and the one who takes a bribe and the one who mediates”. Moreover, if spouse accepts Islam after the marriage contract even then he is not allowed to continue the marriage because this contract was invalid ab-initio and acceptance of Islam does not change the status of contract into valid position. Likewise, Maliki jurists said when a *kitabī* married a Muslim woman with the permission of her guardian and had consummated the marriage, *ḥad* is inflicted on man, woman and guardian as guardian is also liable about his misconduct. Ibn Qasim said if marriage had solemnized in the circumstances of ignorance, do not beat him nor inflict the *ḥad* penalty, otherwise punish him if there was no excuse of ignorance. Wahb Juhunī said when it was asked from ‘Umar about the marriage of Muslim woman with *kitabī*, he said, Muslim man can marry a Christian woman but Christian man cannot marry a Muslim woman. ‘Alī said Jewish and Christian man cannot marry a Muslim woman. Rabi‘ah said, it is not permitted for Christian to marry a free *muslimah*. Abu Salmah bin ‘Abd Raḥmān said if he did so then *sulṭān* (head of state) can separate them as their marriage would remain invalid. In addition to this, Jābir bin ‘Abd Allah said, women from *ahl al-kitāb* are lawful for us but our women are forbidden for *ahl al-kitāb*. Ibn Shuhayb said, all polytheists are equivalent to *ahl al-kitāb*, therefore, they are forbidden and interreligious marriage of Muslim woman with polytheistic prohibited. In this regard, Hanbali jurists and Imam Shafī‘ī said, it is not permitted for non-believer to marry a believing woman because of variation of religion. This impediment is caused due to disbelief as Allah Almighty forbidden this marriage. Another reason is that guardianship from men side is stronger than guardianship from women’s side; therefore, if disbeliever marries a Muslim woman, he may persuade her to his faith. Moreover, Allah Almighty declares the Muslim man as *qawām* (caretaker) and Islam as superior religion but this status is not approved in favour of polytheist or for his religion; therefore, it is forbidden to marry them (Kasani, 1993).

The modern scholars have contradictory opinions regarding the validity of interreligious marriage of Muslim woman with non-believer i.e. *kitabī* or *non-kitabī*. In this regard, there are two approaches and among them, one group upheld the position of classical jurists and prohibited the interreligious marriage of Muslim woman with *kitabī*. Accordingly, Sheikh ibn Baz, Dr. Sheikh Ṣāleḥ al-Sawī (Sawī, 2007) and Sheikh Muhammad Ṣāliḥ al-Munajjid declared the interreligious marriages invalid and the progenies illegitimate (shaikh ibn Baz, 2015). In addition to this, Sheikh ibn Jibreel and Muṣṭafā Az-Zarqā permitted the interreligious marriage of Muslim woman with a *kitabī* or disbeliever only when he becomes Muslim and truly follows Islam (‘Abdul ‘Azīz, 2015). Contrary to it, Sheikh Hamid al-‘Alī said, interreligious marriage of Muslim woman is the commitment of a major sin and considered it equal to adulteress while Yusuf al-Qaraḍāwī Sheikh Zoubir Bouchikhi, Dr. Ṣhabir Ally, Sheikh Fayṣal Mawlawī and Dr. Muzammil Ṣiddīqī prohibited the interreligious marriage of Muslim woman (Zahid ul-Islam, 2001). Likewise, Maulana Taqī ‘Uthmānī said, in case of children, non-Muslim father might object to teach his child about Islam and prefer to teach his faith. In turn, it may effect her relations if she refused to do so and as a result, if non-Muslim

spouse divorced his wife then it would cause disturbance for both Muslim mother and the child. Likewise, he may order her to dress up in an inappropriate way especially when they go to a party, serve and consume alcohol and pork while it is not allowed for a Muslim. In addition, a non-Muslim husband could compel her to accept his faith. Thus, due to all these factors, it is better for a Muslim woman to marry a Muslim man (Taqī ‘Usmanī, 2015). The Indonesian council of ‘Ulemā’ passed a *fatwā* and declared that marriage (with *ahl-kitab*) in whatever form is prohibited (*harām*) and invalid, therefore, it also includes the marriage between Muslim men and *Kitabiyyah* (Zahid ul-Islam, 2001). Whereas Fiqh Council of North America (FCNA) prevented the marriage of Muslim woman with a *kitabi*, as Sheikh Muhammad al-Hanooti declared that when Allah Almighty forbade the Muslim woman from marrying a non-Muslim then being Muslims it is required to believe in and accept it like a matter of faith where no one can become a true Muslim except to admit everything that are ordained by Allah Almighty (Wael, 2015). European Council for Fatwa and Research (ECFR) confirmed the prohibition of Muslim woman to marry a non-Muslim man as it is also proved from *Shari‘ah* (Usāma Hasan, 2015; European Council for Fatwa and Research, 2014).

Secondly, some modern scholars have adopted the modernist approach and desired to reform the whole issue as Imam Faiṣal ‘Abdul Rauf said, if Muslim women do not find compatible husbands, they could marry a *kitabi* on the basis of necessity because those verses which explicitly permits the marriage of Muslim man with *Kitabiyyah* does not prevent the Muslim woman to marry a Christian or Jewish man (Orbala, 2015). Another well-known scholar Dr. Khaleel Mohammad acknowledged that Muslim women are living in a different place and time where they are equal to men. They have a legal right to place a prenuptial agreement that spouse will never compel her to convert to another faith and for this purpose; non-Muslim man is not required to become a Muslim if he intends to marry a Muslim woman (Zahid ul-Islam, 2001). Likewise, ‘Abdullahi Ahmed an-Na‘īm declared that men are not dominant in marriage in the prevailing society, therefore, rule of preventing the marriage of Muslim woman with non-Muslim man is not valid today. Another distinguishing scholar Mahdi Zahrah believed that Allah Almighty clearly explains the core matter of Islam and left some matters ambiguously so that jurists can interpret it according to the requirements of time. Therefore, having no clear prohibition against Muslim women to marry a *kitabi* actually strongly permitted such marriages in certain circumstances (Mahdi Zahrah, 2000). Likewise, Imam Taj Hargey said there is no explicit verse, which prohibited the Muslim woman to marry a non-Muslim man because when Muslim men are permitted to marry from *ahl al-kitab* then same right has been given to Muslim women (Rudabah ‘Abbāss, 2015). Similarly, Muhammad Ja‘far Nadwi Phulwarwi permitted the Muslim woman to marry a *kitabi* when their culture, ethical and intellectual terms are advanced than the Muslim societies and they are willing to provide greater rights than Muslims. For this purpose, intellectual, moral strength and maturity level of Muslim woman should be fully developed so that she can mold her non-Muslim husband and children towards Islam because women should not go with her non-Muslim husband like a melon but like a knife, which cuts the melon (Zamān, 2012).

Legal System of Pakistan & English Family Law on Transnational Muslim Interreligious Marriage

The laws and community practices regarding the transnational Muslim interreligious marriages are different concerning the celebration, recognition and registration. In Pakistan, the statute law does not provide any criteria to celebrate the marriage between Pakistani Muslim man and British (non-Muslim) woman or vice versa but it is essentially required to satisfy the contractual capacity and essential forms before the celebration of transnational Muslim interreligious marriages. The reason is that every Pakistani Muslim is subject to Muslim Personal Law and MFLO, 1961 applies on every citizens of Pakistan wherever they are residing. Therefore, the Muslims are required to follow such forms, which are prescribed by Islam whether they reside in Pakistan or England because every country recognizes the particular institution of marriage as nature of marriage and its consequences are different from country to country due to variation of legal system and religious norms since Muslim marriage is a civil contract as J. Mehmood affirmed the nature of Muslim marriage in the following words:

“Marriage among Muhammadan is not a sacrament but purely a civil contract ... the validity and operation of the whole are made to depend upon the declaration or proposal of the one and the acceptance or consent of the other contracting parties or of their natural and legal guardian before competent and sufficient witnesses as also upon the restriction imposed and certain of the conditions required to be abided by according to the peculiarity of the case (ILR (1886) 8 Allahabad 149).”

Moreover, the law provides rules regarding the celebration and recognition of transnational Muslim interreligious marriages e.g. Pakistani Muslim man with British (*ahl al-kitab*) woman or vice versa; and acknowledged these marriages celebrated under English law which did not contravene the Islamic Law (PLD 1982 Lahore 532). For example, marriage of Pakistani Muslim man with British (Christian) woman would be recognized as valid when it is celebrated before the Registrar office while marriage between British or Pakistani Muslim woman with British non-Muslim man would not be recognized as valid in Pakistan (PLD 1967 SC 580, 601) as in *Ali Nawaz Gardezi* case, validity of marriage was challenged contracted in England on the ground that marriage between Muslim male with a Christian woman was invalid. The reliance in this case was placed on the rule of International Law that the validity of a marriage had to be judged by the *lex loci contractus* but legal capacity of the parties had been to be judged according to the law of the domicile of the contracting parties. Thus, it was held that marriage was perfectly valid under English law (PLD 1963 SC 51) while marriage of *shi'a* with a *Kitabiyyah* is a controversial issue because there are two opinions about it. One is that it is forbidden while other is that it is valid only in case of *mut'ah* (temporary) marriage but latter authorities validated it. However, it is highly disapproved nevertheless forbidden. The Supreme Court of Pakistan also upheld above mentioned views (PLD 1963 SC 51). In case of *Ehsan Hasan v. Pannalal*, a Hindu woman had married a Muslim man without converting to Islam and had several issues from this wedlock. The Patna High Court held that marriage contract was irregular while children were legitimate (AIR 1928 Patna 19). In case of *Mrs.*

Marina Jatoi v. Nuruddin K. Jatoi, (PLD 1967 Supreme Court 580) Supreme Court held that marriage before a registrar in London does not necessarily import the essential of monogamy. Such marriage confirms the requirements of Muslim marriage and would be recognized valid according to Muslim Law. With regards the form, the Muslim Law by which the husband presumably was subject, requires the declaration and acceptance of marriage by both couple at one and in the same meeting with two witnesses as this procedure is ensured by the Marriage Act, 1949. The Muslim Law does not prescribe any specific ceremony or religious rites for contracting a valid marriage. In case of *Zarina Tassadaq Hussain v. Qazi Tassadaq Hussain*, (PLD 1953 Lahore 112) the question arose about the validity of the marriage of a Muslim man with Christian woman, which was not solemnized in accordance with the provisions of s. 5 of the Christian Marriage Act, 1872. In this case, the woman (Mst. Zarina) was a Christian at the time of marriage and accepted Islam later on. The marriage took place in Badshahi Mosque Lahore on 16 October 1934, according to Muslim rites. According to Islamic Law, a Muslim man can marry with Christian woman and there is no prohibition in Islamic Law for being solemnizing such marriages according to Muslim rites. However, s. 5 of the Christian Marriages Act, 1872 has altered or superseded the pure Islamic Law and marriage not solemnized in accordance with the provisions of the said Act would be void. The Muslim man is permitted to marry a *Kitabiyyah* under Islamic and Statute Law of Pakistan, but Muslim woman is not permitted to marry a *kitab*. In this regard, Karachi High Court ruled in *Muhammad Ishaq Yaqoob v. Umrao Charli*, case that a marriage between a Muslim woman and a non-Muslim man is void ab initio and invalid except for Muslim man marrying *ahl- al-Kitab* (Charli, 1987 CLC 410).

With regard to contractual capacity, it is essentially required that contracting parties must possess full legal capacity and be sane before the celebration of marriage according to the consensus of the jurists (Kasani; Ibn Rushd, n.d). Similarly, it is essentially required that contracting parties must have the legal age and sound mind at the time of marriage according to Pakistani Family Law, (PLD 1976 Lahore 670) since section 3 of the Majority Act, 1875 s. 3). determines that no person is considered major until and unless he has completed his eighteen years of age, However, s. 2(a) of the Child Marriage Restraint Act, 1929 (XIX of 1929) determines the minimum age for male and female child, as it is stated that:

“Child means a person who if a male is under eighteen years of age and if a female is under sixteen years of age.”

The Case Law also confirmed that every Muhammadan of sound mind who has attained the puberty (18 years) might enter into a valid contract of marriage (PLD 1976 Lahore 670).

Another element of contractual capacity is related to the religion of the party e.g. contracting parties profess the same religion or if one is Muslim then other may be from people of Book (PLD 1976 Lahore 670). Although, there is no particular Statute Law which addresses the issue of religion of the contracting parties except the article 260 (3b) of the Constitution of Islamic Republic of Pakistan, 1973, which only describes the characteristics of Muslim as it provides that:

“A person who does not believe in the absolute or unqualified finality of

Muhammad or claims to be prophet or any of the description is not a Muslim.”

Consequently, only Classical Law clarify that Muslim man is permitted to marry people of Book while Muslim women are not permitted to marry any non-Muslim man whether he is from people of Book or non-believer. For this purpose, conversion to Islam is required in order to marry a Muslim woman whether she resides in Pakistan or in any other state. Therefore, when non-Muslim man converts to Islam, statement of conversion in Court before marrying a Muslim will not be doubted. The fact is that when a person declares himself as a Muslim then strong presumption would arise in his favour (1999 CLC 1202). According to Case Law, converted Muslim is not required to observe any particular rites or ceremonies. The sincerity of religious belief cannot be measured or tested by any court. Therefore, according to law the only requirement to become a Muslim is the mere recitation of *kalmah* (PLD 1959 Lahore 205). In general, the Court also upheld the same position as prescribed in Islamic Law, therefore, it was held in another case that marriage between a Muslim woman and *kitabī* is void (*baṭīl*) (1995 MLD 34).

As regards to essential formalities of marriage, it is required that marriage must carry out the essential requirements of the validity of marriage e.g. proposal from one side and acceptance from other side, according to the consensus of the jurists, contracting parties accept the offer in the same meeting because if session has changed then marriage does not take place. While, Case Law upheld the position of Islamic Law i.e. contracting parties must declare offer and acceptance in the same meeting in the presence of two Muslim, adult, and sane witnesses as it was held in case of *Dr. A.L.M. Abdulla v. Rokeya Khatoon* (PLD 1969 Dacca 47). Whereas concerning the consent of the parties, it is essentially required that both man and woman should give full and free consent to marry without any coercion because there is no marriage at all in Law when consent of the contracting parties are acquired under force or fraud according to Islamic and Pakistani Family Law (2012 PCr.LJ 11).

Another essential requirement of marriage is witnesses. However, Statutory Law of Pakistan does not specify the gender and prerequisite of witnesses to a Muslim marriage with *Kitabiyyah* but generally, Court upheld the position of Islamic Law (PLD 1982 FSC 42). Thus, according to Islamic Law, marriage of Muslim spouses must be witnessed by two Muslim witnesses but in case of marriage between Muslim and *Kitabiyyah*, witnesses of one or two *dhimmī* are unacceptable according to majority jurists because they can be the evidence in favour of *dhimmī* but cannot be in the favour of Muslim. It means witnesses only heard the statement of woman irrespective of man as it is the condition that witnesses must hear the statement of both parties. Contrary to it, Hanafī jurists maintained that required condition in marriage is presence of witnesses; therefore, marriage is valid in the presence of two *dhimmī* witnesses because the objective of the witnesses is to announce the marriage (Bahūtī, 1982). However, in Statute Law, only publicity of marriage would be desirable because marriage becomes irregular in the absence of two witnesses (2012 PCrLJ 11).

The dower is another essential requirement for the validity of the marriage, thus, according to the consensus of the jurists, *Kitabiyyah* is entitled for dower (Kasani, 1993). Whereas, Statute Law does not explain this issue except the Case Law, thus, according to Case

Law, husband is required to pay the dower to his wife even she is *Kitabiyyah*. Although Statute Law is silent in this regard but Case Law defined that:

“Dower under Islamic Law is sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of marriage and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife (ILR (1886) 8 All. 149).”

Therefore, *Kitabiyyah* woman is entitled for dower even it is not stipulated. As marriage between a Pakistani Muslim man and British woman (Christian) had solemnized in England before a Registrar and question of competence to divorce was decided on the footing that Muslim husband was entitled to treat the marriage with a Christian woman, as one governed by Muslim Law, therefore, wife has the right to claim the dower. Although no dower has been fixed initially at the time of marriage, however, dower in such circumstances would be assessed as *mahr al-mithl* that is the dower which would be payable to a woman of similar status and circumstances (PLD 1967 SC 580).

The last condition for the validity of the marriage prescribed in *Sharī‘ah* is that woman should not be forbidden due to variation of religion e.g. marry a Magians or polytheistic woman or with such woman who is under *‘iddah* even if these impediments are removed from the contract, it will remain invalid according to the consensus of the jurists and has no legal effect.

The registration of transnational Muslim interreligious marriage is the legal requirement introduced by the Muslim Family Laws Ordinance, 1961 (PLD 1982 Lahore 532). Thus, s.5 of MFLO, 1961, declares it compulsory to register the marriage wherever the Muslim citizens of Pakistan solemnized it. In this regard, section 5 of MFLO, 1961 (a written form placed under the custody of marriage registrar in marriage register) prescribed the procedure to register a marriage because written *nikāh nāma* is important for both parties to sign and declare their consent. Thus, procedure for the registration of marriage is outlined in rule 10 and 11 of West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 for those marriages, which are solemnized in Pakistan by *nikāh* registrar or other than *nikāh* registrar while rule 12 prescribed the manners of registration for those marriages, which are solemnized outside Pakistan. Contrary to it, when a Pakistani British dual national solemnized his marriage outside Pakistan or in UK then it is essentially required that he or she must fill the form II according to the provision of rule 11 of the West Pakistan Rules under Muslim Family Laws Ordinance, 1961 and ensure the delivery of form II along with its registration fee to the consular officer of Pakistan or country where marriage had solemnized for onward transmission to the *nikāh* registrar of ward of which the bride is a permanent resident. However, if bride is not a citizen of Pakistan then it is essential to transmit the certificate to the *nikāh* registrar of the ward of which the bridegroom is resident. Regarding the receipt of the form II under rule 11 or rule 12, the *nikāh* registrar has to proceed it in such a manner that are provided under rule 10 as it is solemnized by him. But it is not necessary for him to obtain the signatures of the necessary persons (West Pakistan Rules under Muslim Family Laws Ordinance, 1961, 10, 11, 12 (1)(2) & Rule 13). For this purpose, it is not necessary that both spouses should be Pakistani citizens because required thing is to perform the marriage according to Muslim Family Laws

as in case of *Ali Nawaz v. Mohammad Yusuf and Marina Jatoi v. Nuruddin Jatoi* (PLD 1967 SC 580). The significant reason is that a Muslim is subject to Personal Law and preferred to govern by the laws of his religion, no matter wherever he is residing either temporarily or permanently (whether living in Pakistan or at any place outside Pakistan because it has extra-territorial law). As it is stated that:

“The rule of decision, subject to the provisions for any enactment for the time being in force, shall be the Muslim Personal Law (*sharī‘at*) in case where the parties are Muslims (The West Pakistan Muslim Personal Law (Sharī‘at) Act 1962, s.2).”

Therefore, family issues should be regulated according to Muslim Personal Law where both or one of the party is Muslim. While regarding the legal position of unregistered marriage, the Case Law affirmed that non-registration of marriage does not affect the validity of marriage as Federal *Sharī‘at* Court held in case of *Allah Rakha v. Federation of Pakistan* that:

“Non-registration of *nikāḥ* under section 5 of the Muslim Family Laws Ordinance, 1961 does not invalidate the marriage itself merely on account of non-registration provided that such *nikāḥ* has been performed in accordance with the requirements of *Sharī‘ah* (PLJ 2000 36).”

However, failure to register the marriage may cause the civil and criminal liabilities (PLD 2003 Peshawar 1).

Whereas, English Law recognizes and acknowledges the transnational Muslim interreligious marriages, which are celebrated according to the English, law between British subjects either Muslim or non-Muslim in UK. As there is no specific statute law which deals the transnational Muslim interreligious marriages in UK because each individual in England is the subject of sole jurisdiction of an English Family Law; therefore, judges of Family Court applied a unified and single set of legal principles to all regardless of religion or culture or nationality.

There are significant factors that have contributed to constitute a valid transnational Muslim interreligious marriage between a British and non-British subjects of different culture under English Family Law. Therefore, the transnational Muslim interreligious marriages are celebrated under English Law according to the prescribed manners. In this regard, only English Law can determines the validity of marriage between a British and a non-British subject by providing rules about the matrimonial capacity and the forms of marriage. Consequently, it is required that rules must be tested by *lex loci celebration* is with regards to form and capacity because it confers the status of the parties and issues (children) from it such as foreign incapacity is disregarded under English Law. Accordingly, it is essentially required to meet the tests of matrimonial capacity (i.e. minimum permitted age, consent of the parties, close relation with each other or monogamous contract or sex of the party) and the formal requirements (i.e. parental consent or publicizing intention or manners to celebrate or register the marriage), prescribed by English Family Law. Therefore, it is required to satisfy the

matrimonial capacity and the forms of marriage to constitute a valid transnational Muslim interreligious marriage in England (Morris and Jones, 2015).

Legal Effects of Transnational Muslim Interreligious Marriages on Marital Rights

In regard to legal effects of interreligious marriages on marital rights, the classical jurists agreed that as a result of valid Muslim interreligious marriage, the *Kitabiyyah* woman has the same rights and obligations as a Muslim woman have. Therefore, Hanafi jurists said, when Muslim man marries a believing woman and woman from *ahl al-kitab*, then it is essentially required to treat them on equal basis because it is permitted to marry a *Kitabiyyah* before or after or at the same time when he had married a Muslim woman. Thus, rights of *Kitabiyyah* are approved according to the consensus of the jurists as it is approved for Muslim woman as a result of valid marriage contract like maintenance during the persistence of marriage, dower, partition of time in case of polygamous marriage, clothing, divorce, *Īlā'*, *Zihār*, waiting period, legitimacy of the child, sanctity of marriage after three divorces or marriage within prohibited degree of relation and other legal provisions as well. The rights of *Kitabiyyah* are equal with the rights of Muslim woman except the right of inheritance because they are not inherited from the inheritance of each other in variation of religion as there is consensus of the jurists (Imam Abu Hanifah, Imam Malik, Imam Shafi'i and Imam Ahmad bin Hanbal) that both spouses cannot be inherited from the property of each other in case of variation of religion. Moreover, Imam Shafi'i said, in case of *qadhf* same rule would be applied as it is applied in case of Muslim woman except that there is no *had* (capital) punishment for the one who accused the *Kitabiyyah* but discretionary punishment may be awarded. Furthermore, when her husband divorces her, then she has the same *'iddah* as observed by Muslim woman and he can recouse her during the *'iddah* (revocable). While in case of thrice divorces, she cannot remarry another man without the completion of waiting period and if she had remarried after the expiry of waiting period then her marriage is valid and in case of death or divorce of second husband, she is again permitted for her ex Muslim husband. Likewise, she will observe the mourn (*ihdad*) in case of death of Muslim husband as Muslim woman observe the mourn and avoid from all acts which are forbidden for Muslim wife during the *'iddah* as a result of divorce or death.

Besides this, Muslim husband can prevent her to attend church as he can prevent his Muslim wife to attend the mosque and he can also prevent her to consume pork or wine or garlic or from all other things whose smell can hurt him as he can prevent his Muslim wife. While according to Maliki jurists' husband cannot prevent his Christian wife to consume pork or wine or going to church (Sarakhsī, 1993). In this regard, European Council for Fatwa and Research (ECFR) declared that Muslim husband could not prevent his wife to visit her Christian parents. He must be good and close to them because it will cause them to come closer to Islam. Besides this, he must also remember that they are grandparents, aunts and uncles of his children and all of them have rights of kinship.

Whereas, in the legal system of Pakistan, religious ceremony is sufficient to acquire the marital rights and obligations as a result of valid Muslim interreligious marriage. The *Kitabiyyah* women and Muslim women are equal in the eye of law regarding the marital rights

and obligations. The law only introduces the legal requirement of the registration of the marriage in order to prove the legal status between spouses with intention to avoid the conflicts in future to claim their rights. There is no special procedure or requirement of the celebration of the civil ceremony in order to claim the rights as marriage celebrated in the Registrar Office is also acknowledged in Pakistan except that it contradicts with essential requirements of the marriage.

However, English family law do not acknowledge the religious ceremony, for this purpose, celebration of civil ceremony is required to prove the legal status between spouses in order to acquire the rights in future.

Comparison of Pakistan and English Law as regards the Challenges of Transnational Muslim Interreligious Marriages

The transnational Muslim interreligious couples are facing numerous challenges before the celebration of marriage because there is no proper law to celebrate the essential formalities of transnational Muslim interreligious marriage nor there is proper platform, which address the challenges faced by these couples either in Pakistan or in UK. The principal challenge is related to the nature of the marriage as in Pakistan Muslim Family Law, marriage is a civil contract as against sacramental concept of Christianity and Hinduism who enters in the contract eternally according to their faith. Yet, under English law, marriage is a sacrament and a voluntary union for life of one man and one woman owing the attributes of indefinite and monogamous union.

Moreover, one more challenge is related to specific procedure for celebration of interreligious marriage in Pakistan and UK as there is a specific procedure and manners to celebrate the marriage ceremony under English law regardless of religion and nationality. Therefore, it is required that the intended party give a notice of their intention to marry to the superintendent registrar, provide the prescribed information and after the issuance of license, couple goes through a civil ceremony by an authorized celebrant, declare and exchange the vows and be witnessed by at least two witnesses with open doors between 8:00am to 6:00 pm in the approved premises. The civil ceremony is essentially required to celebrate the marriage ceremony under English law and after that parties can celebrate their religious ceremony. Contrary to it, the Muslims are not required the particular procedure or manners to celebrate the marriage e.g. the specific building, authorized person, formal requirement to declare and provide information, specific time or manners etc. as marriage can be celebrated by anyone with the restriction that such marriage should be registered under Muslim Personal Law. However, Muslims are required the particular words to made declaration (offer and proposal) in the expressed form at one session in the presence of two Muslim, sane and adult witnesses along with dower for a valid marriage.

In addition to it, another challenge is about the application of Ordinance as the family laws ordinance of 1961 applies to all Muslim citizens of Pakistan wherever they may be i.e., whether living in Pakistan or at any place outside Pakistan. The ordinance does not apply where the wife of a Muslim national is a foreigner or British subject. Similarly, if parties are Christians by religion then they cannot be proceeded against under this ordinance. On the other hand,

British national in England is the subject of sole jurisdiction of an English Family Law, therefore, family judges applied a uniform and single set of legal principles to all regardless of religion or culture or nationality or country.

The crucial challenge confronted by transnational Muslim interreligious couples is about the religion of the contracting parties. There is no particular statute law in Pakistan which regulates the issue of religion of the contracting parties except the article 260 (3b) of the Constitution of Islamic Republic of Pakistan 1973. The above article only describes the characteristics of Muslim as it provides that “a person who does not believe in the absolute or unqualified finality of Muhammad or claims to be prophet or any of the description is not a Muslim. Consequently, there is no particular statute law in Pakistan, which regulates the marriage of Muslim with *ahl- al-Kitab* or non-Muslim. Only classical law clarify that Muslim man is permitted to marry from people of Book while Muslims women are not permitted to marry from people of Book. Therefore, both contracting parties must be Muslims and profess the same religion or one of them may be a Muslim man and other from people of Book (Christian or Jewish woman). Under Muslim Personal law, religion is a bar for contracting a valid marriage because Muslim men are only permitted to marry *Kitabiyyah* but Muslim woman is not permitted to marry any non-Muslim man irrespectively whether he is from people of Book or non-believer. For this purpose, it is required that non-Muslim man must convert to Islam in order to marry a Muslim woman either she is resided in Pakistan or in any other jurisdiction. The court also upheld the same position as prescribe in Islamic law, therefore, it was held in case of *Mohammad Ishaq Yacoob v. Umrao Charlie*, where marriage is declared void (*bāṭil*). Contrary to it, British subject has capacity to marry any person regardless of religion either male or female. The reason is that religion or conversion is considered as personal issue under English Law. Therefore, the vibrant challenge met by interreligious couples is related to conversion. In regard to Pakistani subjects, when both couples intend to marry in Pakistan having different faith as man is Muslim and woman is Christian or from other religion, conversion is required. For this purpose, non-Muslim woman can seek help from an Imam at the nearest mosque in the area to embrace Islam. After that, procedures of Muslims marriage will apply for the solemnization and registration of marriage. Likewise, a non-Muslim man must convert to Islam in order to marry a Muslim woman in Pakistan. Thus, in case of variation of religion, when woman converted to Islam then Muslim Personal law will be applied for the solemnization and registration of marriage. However, when a non-Muslim comes within the fold of Islam then it would be highly unjust to presume that conversion had been done out of some ulterior motive because true intention is known to God alone. Therefore, statement of conversion in the court before marrying a Muslim that she is a Muslim and embraced Islam by her own free will cannot be doubted. Moreover, a minor girl who is under the age of 18 years but above 15 can validly converted to Islam by her own will along with her understanding. Furthermore, under Pakistan Family Law, it is not necessary that converted Muslim observe any particular rites or ceremonies, which are essential under Islamic law while no court can test the sincerity of religious belief. Therefore, it is sufficient that if he or she professes Islam because mere recitation of *kalmah* is sufficient for a person to become a Muslim in law. Thus, if a person read *kalmah* and once believes in the oneness of Allah Almighty, Prophet Muhammad as last Messenger and professes to be a Muslim then he must be accepted as such.

The reason is that when a Muslim man marry a *kitabiyah* then it is not required to consider that whether a person is true Muslim or not or whether he or she has accepted Islam from heart or not. The fact is that when a person declares himself as a Muslim then strong presumption would arise in his favour. However, under English law, religion is considered as a personal matter, it does not create any bar between couples either male or female as there is no requirement of conversion nor required to observe the religious norms in case of conversion as every part is free to follow the religion on his or her choice (Mahmood, 2005).

In regard to legal age, Pakistan Family Law said the intended parties must have the legal capacity to solemnize a valid contract. For this purpose, legal age is determined as sixteen years but guardian can solemnize the marriage of underage child and child has right of option to repudiate it before attaining the age of nineteen years. However, English law endorsed the condition of legal capacity to execute valid marriage regardless of religion and nationality. For this purpose, legal age is determined as sixteen year to celebrate the marriage with the restriction that guardian or any person cannot solemnize the marriage of minor under legal age and if he did so then marriage would be void under English law.

Another challenge is related to acquire the parental consent, under Muslim Personal Law, parental consent is essential requirement for the validity of the marriage and lacking of such consent effect the status of marriage. Moreover, no one can consent on behalf of parent. However, under English law, parental consent is required only in case where child is under legal age. However, if such person refused to give the consent or is unable to give it due to inaccessibility or absence or disability then the court can give such consent and it has same effect as it had been given by the person whose consent is required. Lacking of consent does not effect the validity of the marriage as it is imposing formality and effect the formal preliminary requirement.

Furthermore, the interreligious couples met the challenge of the registration of the transnational interreligious marriage as in case of conversion to Islam, marriage will be registered under MFLO, 1961 but if she does not convert to Islam then marriage is solemnized according to Christian Marriage Act before the Registrar office. Likewise, in most cases Muslim interreligious marriages are polygamous in nature while polygamous marriages are permitted only under Muslims Personal Law but it is not permitted under English law. Lastly, some classical jurists define the criteria of chastity and attached certain conditions for *Kitabiyah* woman, however, there is a fear of lacking to meet the criteria of chastity or criteria to meet from *ahl- al-Kitab* as there is no surety that those women are chaste or belong from *ahl- al-Kitab*.

Effects of Dissolution of Transnational Muslim Interreligious Marriages on Child's Life

The dissolution of transnational Muslim interreligious marriages adversely effects the child's life due to disparity of parental religion, nationality and applications of law especially when one parent is living in non-Muslim states (e.g. UK) and other is in Muslim state (e.g. Pakistan) or both are living in non-Muslim state. The harmful dispute which effects the child's life as a result of dissolution of transnational Muslim interreligious marriages is concerning about the

upbringing of the Muslim child. In one case (57 IC 651), Pakistani Court held regarding the upbringing of a child held that it should be according to the religion of father as a minor is presumed to have the religion of his/her father under the law.

The same view was opted in other cases held that the minor follows the religion of the father. In *Mrs. Mosselle Gubbay v. Khwaja Ahmad Said*, (PLD 1957 (W.P) Karachi 50) the Jewish mother was given the custody of the children and after that, the father brought the children to Karachi. The Calcutta High court drew Contempt proceedings against him while the criminal case of kidnapping was mother filed by mother under s. 368 PPC in Pakistan and later filed a *habeas corpus* petition. The High Court held that giving the custody of Muslim children to a Jewish mother Indian nationality was improper. Whereas concerned to the committing of the contempt of the High Court of Calcutta, it is not the real issue.

In another case, the Christian mother residing in Canada was refused to have custody of the abducted minors although having custody order from the Court of the minor's habitual residence (PLD 1981 Peshawar 110). On the grounds of religion, it was held by the court that a father has right to determine the religion of minor even after his death (PLD 1981 Peshawar 110). Muslim Personal Law and International Law give a right to Muslim father to see the upbringing of his minor. The Peshawar High Court held that only father is the natural and legal guardian of his minor even during the period of *hadānah*.

However, English law gave this right (to choose the religion of minor) to parental guardian (in most of the cases "mother") until he or she becomes adult and choose a religion for him or her (Convention on the Rights of the Child, art. 14(1)). However, these parental rights are not acknowledges as absolute due to some cases where the child's interest would prevail. Yet, parental responsibility apparently indicates that it includes the brought up right should according to specific religious faith even local authority cannot interfere in it. Likewise, a judge also has no right to weigh one religion against the other as in case of *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* (Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision), [2000] 1 FLR), where the parents disagreed about the brought up of the child whether it should as a Muslim because the mother was a Christian. The Court of appeal held that the issue of religious upbringing would be decided by the mother, however, father has right to teach Islam whenever the child has contact with him.

Another interesting effect of the dissolution of the transnational Muslim interreligious marriage on the life of child is related to the restriction that put on the authority of father regarding making decisions about child circumcision. Muslim law gives the father an authority regarding the major decision of the future of child without attaining the permission of the court whereas the English law allows Specific Issue Order to make a decision about any specific child's issue about which parents are disagreed. This order authorizes the Court to take the major decision about the future of child such as; 1 change the religion & religious upbringing, surname, school and medical treatment in case where one or both of the parents disagreed. Therefore, Court can order to have a particular medical treatment as in the case of *Re J (Re J (Specific Issue Order: Circumcision)*, [1999] 2 FLR 678.), where the Court had refused the Muslim father about the circumcision of the son under the Prohibited Steps Order (PSO). In

case of *Re J* (Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision), [2000] 1 FLR 571), the Court of appeal held that the regarding the circumcision the consent of both parents is required.

Besides, the other effecting injurious difference is connected to decide the child's residence or actual possession (resulting psychological and behavioral problems in child's personality) under custody order. In English law, the Residence Order only settles the residence of the child as where child will live and who will care for him. This order only confers few rights to the residential parent as to decide the future and upbringing of the child, where the child should live and to whom the child belongs. Consequently, when a child is born, both the parents have duty to register the surname of child according to the Births and Deaths Registration Act, 1953 (BDRA 1953). Accordingly, when name is registered once, then parent is not allowed to change the surname. For this purpose, residential parent is required to take consent to each person who have parental responsibility, in case where residence order is not operative but if the residence order is operative then Court's permission is necessary to change the surname as it was held in *Re T (Change of Surname)* (Re T (Change of Surname), [1998] 2 FLR 620). Contrary to it, the Guardians and Wards Act, 1890 of Pakistan settle the custody dispute and decide the child's residence, and care of the child while constructive custody is conferred to the father who has right to decide the future of the child including education, religion, medical treatment, schooling, profession etc. Moreover, it is only the duty of the father to register the name of the child. Moreover, both or any parent can suggest the surname of the parent and can change it even after the registration with the consent or without the consent of the other parent as there is no need to obtain the court's permission.

Moreover, the destructive problem connected with child's personality is lacking of parental (especially father) access. In English law, The Contact Order regulate the visit of non-residential parent with the child. The Contact Order operative in case where parents disagree on a particular programme and prefer the Court to make a specific and detailed order for them to provide a direct or indirect contacts. However, the Contact Order is refused, or regulated or postponed if it is absolutely against the child's interests as in most cases, the Residence Order is made in favour of the English mother while Muslim father are deprived to access the child due to fear of abduction. On the other hand, under Muslim Personal law, every parent can visit the child as residential/custodian parent cannot stop the non-custodian parent to visit his/her child e.g. if the father did not acquire the actual custody of the child even then the custodian mother has no right to prevent the father to visit his child. Likewise, if a mother lost her right of custody and child is under the father's actual custody, the father has no right to stop the mother to visit her child. Each parent of the child shall see the child once in a week under the law, however, the classical jurists did not define the visiting schedule for parents (Ghazi, 1990). In Pakistan, non-custodian parents have the right to visit their child when they desired it. No person has the right to stop the non-custodian parent to visit his/her child. In this regard, the Guardian Court define the duration of parental visit to child with the agreement of both parents keeping in view the welfare of the child, beside this, child has right to spend his/her causal holidays, vocations and special festivals with non-custodian parent (2000, SCMR 838).

Another threatening issue which effect the child's life is about the authorizing person to care the child who stands within prohibited degrees of relation especially in case of girl. Therefore, in Pakistan, Islamic law declares that responsibility of the child's custody lies on the parents, grandparents, aunts and uncle when both parents are Muslims (either they belong to same or different cultures). Among them, the mother has been given priority for the custody of the child (Re T (Change of Surname), [1998] 2 FLR 620). However, when both parents profess different faith even then according to Hanafi jurists the mother deserve more to take care of the Muslim child either she is a *Kitabiyyah* or *dhimmiyah* because she is like the Muslim mother as *haḍānah* is based on kindness, therefore, the Muslim child can be placed under the custody of the *Kitabiyyah* mother. After the mother, the maternal grandmother is entitled to take care of the child either she is Muslim or *Kitabiyyah* or *dhimmiyah*. However, in case of the disbeliever mother, the paternal grandmother is considered to take care of the child. Whereas, the blood relatives must be Muslim to keep the custody of the Muslim child according to Imam Muhammad and Imam Abu Hanifah because this right is not approved for others except the mother. Likewise, Imam Malik said the Jewish, Christians and Magians women could retain the custody of the minor child except for the female child who had attained the majority age. Contrary to it, Imam Shafi'i and Hanbali jurists said the *hāḍin* must be Muslim because the disbeliever is not entitled for the *haḍānah* of the Muslim child. After that, this right will be transferred to the male relatives. In this regard, the jurists preferred the *mahram* who have blood relations with the child and among them, the father is given priority because the child belongs to him and he is close, kind, competent to maintain, look after and secure the interests of his child but the female child would not be placed under the custody of paternal uncle's son as he does not stand within the prohibited degree of the child, however, if female child has no relative then *qaḍī* has authority to decide what he deems appropriate for the child while Imam Malik added the close and distant relatives to retain the custody of the male child after the blood relations and Shafi'i jurists added the legal heirs in this ambit. The Statute Law does not provide any detail list for the appropriate persons who are entitled for the custody of the child, however, the Case Law provides the list by upholding the position of Islamic Law (2011 YLR Lahore 348). The Karachi High Court in the case (PLD 1957 Karachi 50) considered it inappropriate to give the custody of the Muslim children to the Indian Jewish mother (1993 PCr.LJ 1097). Whereas English law did not observe the strict criteria of *mahram* and blood relations either close or distant. In English Law, the entitled applicants are parents (both natural parents), guardians, step parent, persons whose name is mentioned in the Child Arrangements Order or who has parental responsibility, civil partner, those person with whom child has resided for a period of three years, or have the Residence Order or local authority who has the Care Order or has parental responsibility, foster parents, relatives of the child with whom the child has lived for a period of at least one year before preceding the application, special guardians and local authority under the Children Act, 1989 (Children Act 1989, s. 10 (4, 5,6,7A&9))

Likewise, the child cannot travel with non-residential parent. In Pakistan, the custodian or non-custodian parents have absolute authority to travel with the child. There is no need for special application to obtain the permission from the Court unlike the UK whether for a holiday or for any other purpose except that if restrictions have been imposed on travelling by the Guardian Judge (The Guardian & Ward Act 1890, s. 26) If the child is removed from the legal

custody of the parents by the non-custodian or custodian parent from the Jurisdiction of Pakistan to UK or vice versa, it would become a case of illegal detention (1997 PCrLJ 84) Correspondingly, when the custody of the minor child is taken illegally or improperly then the High Court is competent under s. 491 to entertain the application and pass an order for restoration of such custody (1999 YLR 2290) as in *Mst. Wallan v. Sultan*, (1977 PCrLJ Lahore 1073) the Lahore High Court held that no one has authority to forcibly take the minors from the custodian. However, if the mother refuses to deliver the custody of the minor to father after the expiry of the *hadānah* period then in such case, the mother cannot be saddled with criminal liability (PLD 1987 Karachi 239) Moreover, the right of custody of minor to a Muslim mother is subject to the control of father and if she removes the minor against or without the consent of the father to such a distance from where the father cannot exercise his supervision then removing the minor amounts to prevent him from exercising necessary supervision or control over the child (PLD 1956 Lahore 484). The Foreign Custody Orders concerning the removal and custody issues in Pakistan are subject to the paramount consideration of the welfare of the minor (PLD 1981 Peshawar 110) In the case of *Musharaf Ali v. M. Jameel*, (1992 MLD 520) where the Muslim father holding dual citizenship of England and Pakistan breach the order of the Court of England and removed the children to Pakistan. It was improper removal, therefore, the Guardian Court of Pakistan giving due weight to the judgment of England Court and the mother is allowed to retain the custody of the children but only in Pakistan under the *habeas corpus* petition. In another case (1991 PCrLJ 44), the petitioner mother had been given custody of the minors by the Superior Court at Montreal, Canada but the respondent father had removed the minors to Pakistan improperly, therefore, the father is directed under the *habeas corpus* petition to hand over the minors to petitioner immediately subject to final decision of the guardianship case pending at Karachi. In another case, in which custody of the was given to the Christian mother in *habeas corpus* petitioner but identification of the father and the mother was evaluated with reference to the welfare of the minor (PLD 2010 Lahore 48).

In addition to it, another effecting issue is about the residence of the child. In English Law, the Prohibited Steps Order (PSO) prevent the parents from taking any step by misusing to meet his/her parental responsibility towards the child which are specified in the order and no one can take it without the approval of the Court. The intention of the order is to prevent the parents to remove the child from his/her home or from the jurisdiction of his/her country or prevent the child to contact a named person or from medical treatment. Therefore, no person can take such actions without the written approval of every person who have parental responsibility or permission of the Court when Residence Order is in force (Morris and Jones, 2015). Likewise, residential or non-residential parent is not permitted to remove the child permanently from one jurisdiction to another except the Court's permission (Children Act 1989, s. 13(1)(b)). The welfare of the child always remains of paramount consideration, in these cases since the Court grants permission to wishing parent to remove the child when satisfied that the child's welfare is secured as in the case of *Payne v. Payne* (*Payne v. Payne*, [2001] 1 FLR 1052), it was ruled that welfare of the child is of paramount consideration, same decision was taken in the case of *Re N (Leave to Remove from the Jurisdiction)*, (*Re N (Leave to Remove from the Jurisdiction)*, (2) [2014] EWHC B16 (Fam) where the mother was permitted to remove the child from the jurisdiction of England and reside permanently in her country. Contrary to that, the Court may

refused to remove the child from the jurisdiction when presented future picture was unsatisfactory as in the case of *Re K (A Minor)*, (*Re K (A Minor)*, [1992] 2 FLR 98) where the Court did not permit the mother to move with the child to USA for the purpose of her postgraduate study because it would adversely disturb the contact of the father with the child. Thus, it demonstrates that each case will be decided genuinely on the basis of its own circumstances because it requires to balance the child's interests according to the statutory checklist. However, the residential parent may take the child out of the United Kingdom for one month on holiday without the permission of the Court but if leave is necessary for a longer time then it can be acquired from the Court if the other parent did not consent (Children Act 1989, s.13(2)(3).) However, Islamic law did not allow the mother to disturb the residence of the child as Hanafi jurists said woman cannot remove her child to a non-Muslim state even her marriage has solemnized there and she is resident of that state (*harbī*), because it may harm the minor's religious identity while Shafi'i jurists added that the child has option to choose any of the parent when they move to same place, however, the father is not allowed to move to the non-Muslim state in order to domicile there (Kasani, 1993)

Conclusion

The study showed that there are some religious and legal restrictions for Pakistani British Muslim woman to marry a non-Muslim man (either Christian or Jewish or any non-believer) either resides in Pakistan or UK. Consequently, families do not accept the Muslim women's interreligious marriage due to religious differences except the Muslim man's interreligious marriage as there are no religious and legal bars for these kinds of marriages. However, the transnational interreligious couples are facing many challenges before and at the time of the celebration and registration of civil marriage under the legal system of England in regard to the validity of marriage and marital rights because English law do not recognize the religious marriage in order to claim the rights after the dissolution of the transnational Muslim interreligious marriage.

The study also revealed that dissolution of transnational Muslim interreligious marriages have worst effects on child's life (including religious and cultural identity, medical treatment, residence, surname, education, [abduction and lacking of access with one parent and living with non-prohibitory relatives causing behavioral and psychological issues]) due to differences of parental religion, culture, nationality, and applications of law as compare to those children having parents from the same religious and cultural background. Though in custody disputes, it is acknowledged about the mother to be a best person regarding the protection of the interest of the minor, therefore the custody is awarded to *Kitabiyyah* mother by the Courts of Pakistan and UK without ensuring to protect the religious identity of the Muslim child. This is a very serious and important issue which emphasis the need to debate by the religious scholars and legal experts of UK and Pakistan to work hard collectively for legislative reforms by crafting specific policies keeping in view the religious and cultural background of both parents.

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Webology (ISSN: 1735-188X)
Volume 18, Number 6, 2021

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