

The Current Practice of Interfaith Child Custody Disputes in Bangladesh and Malaysia: A Comparative Analysis

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Abstract

Interfaith child custody dispute is one of the burning issues in both Bangladeshi and Malaysian legal system. Whenever an interfaith couple decided to divorce or legally separated, conflict as to the custody right of the child is likely to occur. It will eventually lead to socio-legal-religious complications during the trial. The child custody issue is correlated with the wellbeing and welfare of the child of the marriage. The interfaith parents should consider what would be the best interest of their child before applying for divorce or judicial separation. As Bangladesh and Malaysia consist of multireligious and multicultural societies, interfaith child custody dispute adversely impacts on the social and family life. The application of the different set of laws in the existing judicial system seems to be inadequate in resolving interfaith child custody disputes. The aim of this paper is to provide a comparative overview of the existing interfaith child custody disputes in Bangladesh and Malaysia. It seeks to examine the current legal framework and legal disputes in both jurisdictions. This paper is based on theoretical analysis; therefore it adopts the library research, where reference to relevant data from text books, journals, legal provisions and case law relating to the interfaith child custody disputes is made. The study concludes that an adequate legal framework would be the best solution in deciding interfaith child custody disputes.

Keywords: interfaith, child custody, laws, legal system, Bangladesh and Malaysia

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Introduction

Islam is the main religion in Bangladesh and Malaysia, however freedom of religion is guaranteed by the Constitution of both countries to other religious minorities. Due to diverse social setting; religious conversion, apostasy and interfaith relationship are common practice in both countries. Interfaith marriage is one of the main causes for such conversion.¹ Interfaith marriage couples, who live in a multi-religious social setting, face a big challenge particularly in raising up their children. Among the parental duties of the parents are to care and maintain the children, but when one of the parents decided to divorce or separate or convert to another religion, the children of such parents become more vulnerable in the society. Despite of the break down in any marital relations, parental care and control remain with the respective parents, until the child attains the age of 18 years old. The issue of the parental care and control becomes more complicated in the case of the conversion of one party of the marriage. As a result, both the parents vacillated that who will be allowed to get the parental rights. Subsequently, both the parents are bound to seek legal solution from the Court. In practice, determination of interfaith child custody disputes becomes more complicated due to religious restrictions. Diverse personal laws, religious obligations and social status also created procedural barrier in legal practice. Nowadays, obtaining child custody rights is more likely a battle than a legal proceeding.² In addition, different set of laws, legal issues, procedural discrepancies and jurisdictional conflicts become more challenging factors for both disputant parents and the court.³

1. Child Custody Rights - International Perspective

The United Nations Convention on the Rights of the Child (hereinafter referred to as CRC) is one of the international Human

¹ Heama Latha Nair and Gan Ching Chuan, "The Effects of Conversion to Islam of a Non-Muslim Spouse on the Custody of Minor Children-Thoughts and Trends from a Malaysia Perspective," *Advanced Science Letter* 23, no. 1 (2017): 688–91.

² MD Brian Zimnitzky, "Custody Disputes" *Psychiatric Times*, 2011, vol. 28, no 10, Access December 10, 2018, <http://www.psychiatrictimes.com/child-adolescent-psychiatry/custody-disputes>.

³ Nair and Chuan, "The Effects of Conversion to Islam of a Non-Muslim Spouse on the Custody of Minor Children-Thoughts and Trends from a Malaysia Perspective."

rights treaties, specially drafted for children. It was adopted by the UN General Assembly resolution in the year 1989. It came into force in the year 1990.⁴ According to the CRC, child means every human aged below 18, unless the majority is attainable earlier under any existing law applicable to the child.⁵ It is to be emphasized that every child deserves special protection from social vulnerability; therefore the CRC reserves some special protections for all the children. The member state shall ensure and provide measurable direction in exercising such rights and duties in a way in which devolving capacities of the child.⁶ According to the preamble of the CRC, every child is entitled to get special care and assistance from their family. In this respect, the family should provide reasonable protection and assistance for their child well-being. The CRC also confirms that the family is responsible for the harmonious development of their children personalities including love, happiness, and mutual understandings within the family atmosphere. Article 3 of the CRC states that the best interest of the child shall be a primary consideration.⁷ In this regard, it states that every state parties shall undertake to ensure the parents or legal guardians, or other persons, who are legally responsible for the child protection and care, to take care and protect the children. The CRC ensures that no child shall be separated from their parents without their will. The exception is that when separation is necessary for the best interest of the child.⁸ Almost every country is ensured that the custody issues are determined by the application of the principle of the best interest of the child.⁹ On the other hand, every member state shall respect all the rights of the children, whose parents are separated from each other. In doing so, the state shall ensure that children are permitted to maintain their personal interaction with the parents. Such communication should be either on regular basis or unless it is contrary to the best interest of the child.¹⁰

The Universal Declaration of Human Rights or UDHR 1948 is another international instrument, which protects the fundamental

⁴ Convention on the Rights of the Child (1989)

⁵ Article 1 of the Convention on the Rights of the Child (1989).

⁶ Article 14 of the Convention on the Rights of the Child (1989).

⁷ Article 3(1) of the Convention on the Rights of the Child (1989).

⁸ Article 9(1) of the Convention on the Rights of the Child (1989).

⁹ Brian Zimnitzky, "Custody Disputes." Access December 10, 2018.

¹⁰ Article 3 of the Convention on the Rights of the Child (1989).

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human rights. In particular, Article 25 of the UDHR, is relevant to the issue of child's welfare as the said provision stipulates that every member of the family has the right to enjoy adequate living standard for the wellbeing of the family life.

2. Child Custody Rights - Islamic Perspective

In Islam, custody of the child is known as *hadanah*, which means a right to custody of the child under *Hukum Syara* (the Islamic law according to the recognized Mazhab).¹¹ The Arabic word *hadanah* is rooted from the literary word *hadana*, which means custody of the child belongs to the mother, unless and until the child does not need any woman's care.¹² Che Soh and Hak¹³ state that the terms *hadanah* (custody) means raising of a minor child either by the mother or someone else, who is legally entitled to get the custody rights in order to love, care, shelter and protect the child. It should also be noted that women are allowed to get custody rights during or after divorce procedure. On the other hand, in Islam, the father is the natural guardian of his child. In the absence of the father, guardianship is shifted to either the paternal grandfather or the maternal grandfather.¹⁴ From the religious point of view, mother has no rights upon her children to be a guardian. From the legal perspective, mother is only allowed to get the temporary custodial rights, for the boy until he reaches 7 years and for the girl until she attains puberty. Also, the mother has an immediate custody rights, if the father or the appointed guardian breaches the custodial duties.¹⁵ It is important to mention that parentage is a prolonged cohabitation between married couples.

¹¹ The Islamic Family Law (Federal Territories) Act (1984); Section 2(1).

¹² John L. Esposito., "Hadana: In The Oxford Dictionary of Islam," Oxford Islamic Studies Online, Accessed December 11, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e756>.

¹³ Roslina Che Soh and Nora Abdul Hak, "Application of Maslahah (Interest) in Deciding the Right of Hadanah (Custody) of a Child. The Practice in the Syariah Court in Malaysia," Journal of Applied Sciences Research 7, no. 13 (2011): 2182–88, http://irep.iium.edu.my/6542/1/Application_of_maslahah.pdf.

¹⁴ BLAST, "A Report on Legislative Initiatives and Reform in the Family Laws," 2003, Accessed August 17, 2018, https://www.blast.org.bd/content/publications/Legislative_Initiatives_Family_Law.pdf.

¹⁵ Ibid.

Parentage directly leads to the acknowledgement of the legitimacy of the child. It is evident that parentage is a blended relationship between the parents and the children. In this regard, paternity is a legal relationship between the father and his child, which is established through a valid marriage. Similarly, maternity is also a legal relation between the mother and her children, which is established through giving birth to the children.¹⁶ Both the parentage and legitimacy of the child are established by the marital relationship.¹⁷ Such relationship creates some specific rights and obligations, such as divorce, maintenance, custody or guardianship of the child, and property rights.¹⁸ In the *Qur'an*, Allah says to the effect:

“mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father, is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is seeing of what you do.”¹⁹

3. Interfaith Child Custody Disputes - Bangladesh Perspective

In Bangladesh, majority of the population are Muslims, and their family matters are dealt with by the Muslim personal law. Similarly, other religious minorities are governed by their own

¹⁶ Merajuddin Farani, *Manual of Family Laws in Pakistan* (Lahore; Pakistan: Lahore: Lahore Law Times Publications, 1980), 291.

¹⁷ MA Mannan, *Mulla on the Principles of Mohammedan Law* (Lahore; Pakistan: Lahore: Law Publishing Co, 1977), 286.

¹⁸ Farani, *Manual of Family Laws in Pakistan*, 291.

¹⁹ S.D. Kachrid, *Al-Quran Al Karim: Initiation Al'interpretation Objective Du Texte Intraductible de Saint Coran* (That Es-Salasil, 1984). 2: (233).

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personal laws and traditional customs. Interfaith child custody is one of the challenging issues in the existing family settings. A divorce between interfaith couples is not only problematic but also emotional for both couples and their families. After divorce, both parents fear about their child's future. Typically, a marital breakdown creates more problems within the parental relationship. Scholars²⁰ argue that the custody and guardianship of the child issues are not dealt with in a wider sense in the current legal practice. It is acknowledged that custody dispute cases are facing difficulties in getting the proper justice from the court. Also, majority of the child custody disputes are adjudicated based on the apex court judgment.²¹ In the case of *Narsing vs Hem Raj*,²² the court clarified that custody is a physical care of the minor child, but guardianship connotes a wider sense than custody, guardianship includes having care of a minor child as well as the minor's property.²³

In general, a mother can get the custody rights in order to care and support the infant, but eventually the father shall continue as the guardian of the child. Determination of the welfare of the child is not an easy task for the court, because issues like family, social, religious and legal are coherently interlinked. In granting the custody order, the court will consider the principle of best interest of the child. In this regard, the court may allow either single custody or joint custody order with parental visiting rights. Nevertheless, in Bangladesh, the interfaith child custody issues are more complicated compared to other family matters.

3.1.Special Marriage Act, 1872

The Special Marriage Act 1872 is one of the oldest laws applicable in the current legal setting. It was enacted in 1872 by the British parliament; subsequently the Bangladesh parliament adopted it

²⁰ Nowrin Tamanna, Sara Hossain, and Muhammad Amirul Haq, *MUSLIM WOMEN'S RIGHTS UNDER BANGLADESH LAW: Provisions, Practices and Policies Related to Custody and Guardianship* (Dhaka; Bangladesh: South Asian Institute of Advanced Legal and Human Rights Studies, 2011).

²¹ *Ibid.*, 15.

²² *Narsing vs Hem Raj* (1934) AIR Lah 323.

²³ IC Saxena, "The Guardians and Wards Act: Eleventh Edition by B.B. Mitra, Shambhudas Mitra," *Journal of the Indian Law Institute* 3, no. 393 (1969): 31.

as a state law under the provisions of the Bangladesh Laws (Revision and Declaration) Act, 1973. The main objective of this Act is to legalize a marriage between the parties who do not profess any existing religion in Bangladesh.²⁴ This Act also deals with divorce, child custody, maintenance, inheritance and adoption by the intervention of the court. It is also important to note that marital rights and obligations are not adequately addressed by this law. Due to the insufficient legal provisions, interfaith couples are bound to follow the Divorce Act, 1869 in order to file a petition for divorce or judicial separation. In practice, divorce and custody disputes are problem-based issues in the current legal system. Section 17 of the Special Marriage Act 1872 states that subject to the conditions of section 2:

marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion.²⁵

Likewise, a marriage may be declared as null or void if it contravenes one or more of the conditions prescribed in section 2 of the Special Marriage Act 1872. From the above perspective, it can be said that the breach of marriage conditions creates many problems. Majority of the interfaith custody disputes are misjudged due to inadequate and insufficient legal provisions. It is worth mentioning that the Special Marriage Act 1872 does not provide any specific provisions regarding child custody.

3.2.Divorce Act, 1869

The Divorce Act 1869 was enacted just before the enactment of the Special Marriage Act, 1872. The main purpose of the Divorce Act, 1869 is to deal with divorce or judicial separation among the Christian couples only. However, section 17 of the Special Marriage Act 1872 states that interfaith couples can apply for divorce under the Divorce Act, 1869. It needs to be mentioned that divorce, maintenance

²⁴ The Special Marriage Act (1872).

²⁵ Section 2 and 17 of the Special Marriage Act (1872).

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and custody are correlated issues for both couples and their children. In determining the parental custody rights, the court will consider the age of the child. Section 3(4) of the Divorce Act 1869 states that minor children for boys means those who have not completed the age of 16, and for girls, aged of 13 years or in other case, person who is unmarried but under 18 years.²⁶ On the other hand, the court also has power to make an *ad interim* order at the trial proceeding of the suit for obtaining judicial separation²⁷ or dissolution of marriage or nullity of the marriage.²⁸ At the same time, the court shall make direction in respect of the welfare of the child, such as custody, maintenance and social safety of the child under the Guardian and Wards Act, 1890. It is to be noted that, the Divorce Act 1869 does not offer an adequate remedy regarding interfaith child custody. Therefore, in the current social setting, mutual compromise regarding interfaith child custody issues is not only challenging but also a private matter for both couples. The existing legal provisions and religious criticisms are also a barrier for the court to determine the best welfare of the child.

3.3. Guardian and Wards Act, 1890

The Guardian and Wards Act 1890 was enacted by the British and subsequently, it was adopted by the Bangladesh Laws (Revision and Declaration) Act, 1973. The Guardian and Wards Act, 1890 deals with the rights and obligations of the guardian for the wellbeing of the child. The literary understanding between child custody and the guardianship is not the same, but then the custody of the child is a part of guardianship. According to section 4 of the Guardians and Wards Act 1890, guardian means a person having care of a minor or minor's property.²⁹ Obtaining guardianship is also another legal battle for the parents under the current legal practice. In other exceptional circumstances anyone can file a petition before the court as a guardian in order to obtain custodian rights of the minor child. Also, section 25 of the Guardian and Wards Act 1890 states that "if a ward leaves or is removed from the custody of a guardian of his person, the court, if it is of opinion that it will be for the welfare of the ward to return to the

²⁶ Section 3(4) of the Divorce Act (1869).

²⁷ Section 41 of the Divorce Act (1869).

²⁸ Section 43 of the Divorce Act (1869).

²⁹ Section 4 of the Guardian and Wards Act (1890).

custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.”³⁰

In an appeal petition between *Mt. Lalita vs. Paramatma Prasad*,³¹ where the original petition was filed under section 25 of the Guardians and Wards Act, 1890 for the custody of the minor child, the petitioner wife denied the paternity of the respondent husband and claimed for child custody. In this regard the court found that the respondent husband is the real father of that minor child. The court also found that the petitioner mother used to live in an immoral life, which is a real threat for the minor child. The appeal was dismissed on the ground of an immoral life style of the applicant mother. The judge states that;

“This case does not help the appellant, because it has been proved that she is leading an immoral life, it will not be in the interest of the minors that they should be allowed to remain in her custody. I therefore see no reason for interference with the order of the learned District Judge. It is accordingly ordered that the appeal be dismissed with costs³²,”

The entire trial proceeding raised a doubt that if the custody order is allowed in favour of the applicant mother then it would not be for the best interest of the child.

In another case, *Mokkond Lal Sing vs Nobodip Chunder Singha And Anr. No 1*,³³ where the petitioner father filed a petition under section 17 of the Guardians and Wards Act, 1890 to obtain the custody of his minor boy aged 12 years old. The Hindu mother died, thereafter the petitioner father left his minor child and converted him to Christianity. In this case, the District Judge observed that the petitioner father is a Christian, but his minor boy was brought up at the grandfather’s house in a Hindu religious culture. It would not be appropriate to give the custody of the minor child to the petitioner father. From that point of view, the District Judge rejected the

³⁰ Section 25(1) of the Guardian and Wards Act (1890).

³¹ *Mt. Lalita Twaif vs Paramatma Prasad* (1940) AIR All 329.

³² *Ibid.*, All 329.

³³ *Mokkond Lal Sing vs Nobodip Chunder Singha And Anr* (1898) ILR 25 Cal 881.

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application for the custody of the minor child. Subsequently, the petitioner made an appeal before the Appellate Court against the rejection order. The Appellate Court noted that the minor boy expressed to the court that he wanted to remain in the Hindu family, because he loves Hindu Gods and he has no intention to follow Christianity. The Appellate Court also found that the petitioner father neither claims the custody rights nor contributes any maintenance cost before the current proceeding. Moreover, the court always gives priority for the best interest of the child. The judge stated that;

I consider that, under the circumstances of this case, the father must be regarded as having abdicated his strict legal parental rights, and that it would be (as has been said by a most learned and distinguished Judge) a capricious, if not a cruel, resumption of his paternal authority, if he could now compel his child to be brought up henceforth as a Christian, which admittedly would be the result of handing over the child to the custody of his father. Looking at all the circumstances of the case, I think the Court below was justified in its conclusion, and that this appeal must be dismissed.³⁴

3.4.Jurisdictional Conflicts in Bangladeshi Legal Setting

In Bangladesh, all kinds of family matters are dealt by the Family Court. It has exclusive jurisdiction³⁵ over the family law cases like divorce, maintenance, restitution of conjugal rights, dower money, guardianship, inheritance, etc.³⁶ It is governed by the Family Court Ordinance, 1985. In recent years, the judicial service commission has taken an initiative in arranging a training workshop for the Family Court judges. Thereafter, they made effort to establish a quick, amicable and effective disposal court in order to resolve family cases.³⁷ The most interesting thing is that the Family Court has

³⁴ Ibid., 25 Call:881.

³⁵ Assignment Point, "Family Courts in Bangladesh," Online, Accessed May 13, 2017, <http://www.assignmentpoint.com/arts/law/family-courts-bangladesh.html>.

³⁶ The Family Courts Ordinance (1985); Section 5.

³⁷ Assignment Point, "Family Courts in Bangladesh." Accessed May 14, 2017.

no jurisdiction to deal with the Special Marriage Act, 1872 or the Divorce Act 1869 related to family cases. As a result, interfaith couples are predominantly discriminated to get remedy from the Family Court.

In the case of *Abdul Jalil and Others vs Sharon Laily Begum Jalil*,³⁸ the parties have utilised different court jurisdictions in order to get child custody rights. In the appeal petition, it was discovered that there were four appeals arose out from the same judgment. Subsequently, one writ petition was filed before the High Court Division of the Supreme Court of Bangladesh. On appeal, the court observed that the respondent Abdul Jalil was a Muslim Bangladeshi national and the appellant, Sharon Laily Begum Jalil was a Christian British citizen. Both parties registered their marriage at the local registrar's office in England. They were blessed with four children (2 sons and 2 daughters). On one occasion, the respondent illegally removed their four children from the mother's custody and came to Bangladesh for a short visit. After some time, the appellant received a notice for divorce (*talak*) under section 7 of the Muslim Family Law Ordinance 1961.³⁹ Subsequently, the appellant filed a suit before the High Court of Justice (Family Division) in England for seeking custody of her four children, who were illegally detained⁴⁰ in Bangladesh. On that ground, the English Court passed an order that the respondent father and their four children must return to England. The Court also directed that the respondent father forthwith handover the four children to their mother's physical care. In this regard the respondent father replied through an affidavit that the appellant mother used to lead an immoral and disgusted life style, which is a real threat for their minor children. That is why their children remained in Bangladesh in order to avoid any evil influence of the western cultures. Subsequently, both couples were divorced, and the respondent husband filed a petition praying for the custody of their four children before the Family Court under section 25(1) of the Guardians and Wards Act, 1890 and under section 5 of the Family Court Ordinance 1985. After assessing all those issues, the Appellate Court found that the fact of the case and the other surrounding were

³⁸ Abdul Jalil And Others Vs. Sharon Laily Begum Jalil (1998) DLR 50 (AD) 55.

³⁹ Section 7 of the Muslim Family Laws Ordinance (1961).

⁴⁰ Dr. (Mrs.) Veena Kapoor vs Shri Varinder Kumar Kapoor (1982) AIR SC 792.

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not maintainable according to the provisions of article 102 (2) (b) (i) of the Bangladesh Constitution 1972. Also, the Court observed that the respondent submitted that if their children will return to UK then they will be provoked to convert to Christianity. However, the court has considered the fact of the case and the best interest of the child. The judge stated that:

“the High Court Division gave no consideration, not to speak of making any finding, to the story of alleged deceitful removal of the children on 8-5-95 by the appellant father nor was it held that the custody of the appellant was for any reason unlawful. But then we find substance in the submission of Dr. Hossain that the minor children should be with their mother as long as she does not earn any disqualification for such custody and if there is a breach of this normal order brought about by an unilateral act of the father or anybody on his behalf, the aggrieved mother has the right to move the High Court Division under Article 102 of the Constitution for immediate custody of the children which may be ordered in the interest and for the welfare of the said children.”⁴¹

Furthermore, the Court held that, the elder son aged 7 years old will stay with the respondent and the other three minor children will remain with the appellant in Bangladesh. Also, both the parents have been given the visiting rights more than three agreed times in a week.

Article 94 of the Bangladesh Constitution states that the Supreme Court is the highest Court of the land,⁴² where it is combined with Appellate Division and High Court Division.⁴³ It needs to be mentioned that the Family Court has the original jurisdiction to deal with all kinds of family issues including child custody. However, interfaith divorce and custody matters are dealt with by the District Court or High Court Division of the Supreme Court of Bangladesh. Unfortunately, both the Special Marriage Act 1872 and the Divorce

⁴¹ Abdul Jalil And Others Vs. Sharon Laily Begum Jalil (1998) DLR 50 (AD) 55.

⁴² The Constitution of the People's Republic of Bangladesh, 1972.

⁴³ Article 94 of the Constitution of the People's Republic of Bangladesh.

Act 1869 are not applied in the Family Court proceeding. According to section 4 of the Divorce Act, 1869 both the High Court Division and the District Court have the original and concurrent jurisdiction to deal with interfaith divorce and custody issues.⁴⁴ In the same way, the District Court has no exclusive jurisdiction to pass the final decree or order in the matters related to the divorce and child custody. It is important to note that due to the procedural restriction most of interfaith child custody disputes face jurisdictional conflicts. Therefore, under section 16 of the Divorce Act, 1869, the High Court Division has no limitation to deal with any family issues,⁴⁵ but the District Court requires confirmation from the High Court Division in order to pass the final decree or order.⁴⁶ From that point of view, it is evident that inadequate legal provisions, procedural conflicts, religious disapprovals are some of the challenging issues for the current judicial system of Bangladesh.

4. Interfaith Child Custody Disputes - Malaysian Perspective

Malaysian social system is multi-religious and multi-cultural, where people come from different religious backgrounds like Muslim, Hindu, Christian, Buddhist and others. The Federal Constitution of Malaysia states that Islam is the religion of the Federation, however, other religions may be practiced in peace and harmony in any part of the Federation.⁴⁷ Family issues like marriage, divorce, child custody, maintenance, guardianship and inheritance are governed by dual legal system. The Islamic Family Law (Federal Territory) Act, 1980 is applicable for Muslim families and the Law Reform (Marriage and Divorce) Act, 1976 is for non-Muslim families. In addition, Muslim family matters are dealt by the Shariah Courts and non-Muslim family issues are dealt by the Civil Courts respectively. Interfaith child custody dispute is one of the most challenging issues in the current legal system. Determining parental rights after religious conversion is another complicated issue for the courts. In such circumstances, interfaith child custody matters are opposed by the existing laws and

⁴⁴ Section 4 of the Divorce Act (1869).

⁴⁵ Section 16 of the Divorce Act. (1869).

⁴⁶ Section 17 of the Divorce Act. (1869).

⁴⁷ Article 3 of the Federal Constitution of Malaysia (1957).

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religious obligations. Similarly, the Shariah Court and Civil Court judges face numerous procedural difficulties in determining interfaith child custody disputes.⁴⁸ On the other hand, there has been no specific law enacted to govern interfaith family disputes, however conversion related family issues are partially dealt with by the Law Reform (Marriage and Divorce) Act 1976, the Guardianship of the Infants Act 1961 and the Child Act 2001.

4.1.Law Reform (Marriage and Divorce) Act, 1976

The Law Reform (Marriage and Divorce) Act, 1976 (hereinafter referred to as LRA) came into force on 1st March 1982. This Act is applicable to the non-Muslim families in Malaysia.⁴⁹ At present, the conversion related family issues like interfaith divorce and child custody matters are ruled under this Act. The custody of the child is a formal obligation upon the person who is approved as a custodian by the court order. The custodian duties and responsibilities are to care, control, educate and protect the wellbeing of the child.⁵⁰ The Shariah law and the Civil law recognized the principle of the best interest of the child⁵¹ in determining child custody disputes. The principle of the best interest of the child will always be the paramount consideration in determining the issue of child's custody. Also, such consideration should be well balanced with the physical, psychological and moral wellbeing of the child and the conduct of the parties. At the same time, the court shall consider the individual wishes of the children, and the financial status of the parents in

⁴⁸ LEGAL ADVICE & REFERRAL CENTER, "Parental Rights and Responsibilities," New Hampshire Legal Aid, 2015, Accessed May 07, 2019, <https://nhlegalaid.org/self-help-guides/family/parental-rights-and-responsibilities>.

⁴⁹ Siti Marshita Binti Mahyut, "THE RATIONALITY OF LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 TO THE SENSITIVITY OF THE MULTI-RELIGIOUS COMMUNITY IN MALAYSIA," *Journal of Asian and African Social Science and Humanities* 2, no. 2 (2016): 123–38.

⁵⁰ Norlia Ibrahim et al., *Family Law (Non-Muslims) in Malaysia* (IIUM Press, 2011), 308.

⁵¹ Hadayati Mohamed Jani and Najibah Mohd Zin, "Jurisdictional Conflict on Interfaith Custody Dispute in Malaysia: Challenges and Prospect for Reform," in *PROCEEDINGS OF ICWC 2016 SUBANG JAYA, MALAYSIA* (SUBANG JAYA, MALAYSIA: Faculty of Law, Jalan Arif, Universiti Teknologi MARA, 2016), 60–67, <https://law.uitm.edu.my/v4/images/icwc2016/PROCEEDINGS-OF-ICWC-2016-SUBANG-JAYA-MALAYSIA.pdf#page=60>.

determining the best interest of the child.⁵² Zin⁵³ states that in Malaysia, the principle of the best interest is not contrary to the shariah law practice, but the child custody issue creates a traumatic impact on both interfaith couples and their children.⁵⁴ As such, it is understood that determination of the child custody order is one of the difficult jobs for the court during the proceeding.⁵⁵ It is observed that best interest of the child is also another vague principle in the current legal practice, because the best interest of the child is based on the prediction of the judges to control numerous custody issue.

In the case of *Tunku Mahmood Shah v Noor Faridah Sutherland*,⁵⁶ the petitioner wife claimed for the custody of her two daughters aged 13 and 10 years old respectively. The respondent husband argued that as his ex-wife used to live with another husband, she would not be able to look after their daughters. The court held that the custody to be given to the paternal grandmother. In that regard, it is important to mention that “in Islam, religious scholars observe that a child shall follow the religion of the Muslim parents, regardless whether the parent is the father or mother. Nevertheless, the child may choose the religion that he or she feels comfortable with upon attainment of either majority or puberty. Also, it is impossible for the

⁵² Normi Abdul Malek, “Factors Determining Welfare of the Child in Malaysian Civil Law of Custody: An Analysis of Decided Cases,” *Jurnal Undang-Undang & Masyarakat* 15 (2001): 169–78.

⁵³ Najibah Mohd Zin, “For the Best Interest of The Child: The Impact on The New Approach in Custody Order in Malaysian Legislation,” *IUM Law Journal* 11, no. 1 (2003): 63–81.

⁵⁴ Heama Latha Nair, “Interfaith Custody and The Best Interest of The Child,” in 1st International Conference on Women and Children Legal and Social Issues (ICWC 2016) (Subang Jaya, Malaysia: Faculty of Law, Universiti Teknologi MARA, 2016), 50–59, <http://law.uitm.edu.my/v4/images/icwc2016/PROCEEDINGS-OF-ICWC-2016-SUBANG-JAYA-MALAYSIA.pdf>.

⁵⁵ Nor Fadzlina Nawi and Nurhidayah Muhammad Hashim, “Child Custody and Maintenance Decisions: A Case Study of Selected High Court Judgments in Malaysia from 1998-2008,” in Workshop on Marital Dissolution in Asia (Bukit Timah, Singapore: Asia Research Institute, National University of Singapore, 2010), 1–17,

[https://www.researchgate.net/profile/Nor_Fadzlina_Nawi/publication/277325771_Child_Custody_and_Maintenance_Decisions_A_Case_Study_of_Selected_High_Court_Judgments_in_Malaysia_from_1998-](https://www.researchgate.net/profile/Nor_Fadzlina_Nawi/publication/277325771_Child_Custody_and_Maintenance_Decisions_A_Case_Study_of_Selected_High_Court_Judgments_in_Malaysia_from_1998-2008/links/564b03e008ae9cd9c827c188/Child-Custody-and-Maintenance-Deci-)

[2008/links/564b03e008ae9cd9c827c188/Child-Custody-and-Maintenance-Deci-](https://www.researchgate.net/profile/Nor_Fadzlina_Nawi/publication/277325771_Child_Custody_and_Maintenance_Decisions_A_Case_Study_of_Selected_High_Court_Judgments_in_Malaysia_from_1998-2008/links/564b03e008ae9cd9c827c188/Child-Custody-and-Maintenance-Deci-)

⁵⁶ *Tunku Mahmood Shah v Noor Faridah Sutherland* (1997) 11 JH 227.

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child to adopt religion other than Islam which is the religion of *fitrah*.”⁵⁷ It is to be noted that interfaith child custody is more vulnerable than other issues, where socio-religious bitterness is one of the main barriers for both couples.⁵⁸ The child custody dispute related to the religious conversion of the parents is a contemporary legal issue in the Malaysian legal system, where it has many religious and legal conflicts. As a result, due to the religious conversion, the child custody issue becomes more complex to be determined by the court.

In the case of *Mahabir Prasad v Mahabir Prasad*,⁵⁹ it was observed that if the child expresses his wishes to stay with both parents, then it would be very difficult for the court to decide on the custody disputes. However, the court always gives preference to the overall best interest of the child's welfare. In this case, the Federal Court ruled that the trial court has committed procedural error for granting child custody order in the absence of the best interest of the child. In another case, *Yip Fook Tai*,⁶⁰ where the petitioner wife filed a divorce petition under section 51 of the LRA 1976. Thereafter, both parties mutually agreed that their elder child will stay with the respondent husband and the younger one will remain in the custody of the petitioner. Subsequently, the petitioner wife filed another petition before the court to get the custody of their elder child. In those circumstances, the Court held that the custody of the child will remain with the respondent, because the elder child professes Islam and she expressed to stay with her father. Thus, it would be inappropriate for the Hindu mother to be given the custody of her Muslim daughter.⁶¹

⁵⁷ Najibah Mohd Zin and Roslina Che Soh@ Yusoff, “Legal Disputes in Determining the Religion of the Child When One Parent Converts to Islam under Malaysian Law,” *Australian Journal of Basic and Applied Sciences* 6, no. 11 (2012): 66–73.

⁵⁸ S. Sintang et al., “Interfaith Marriage and Religious Conversion: A Case Study of Muslim Converts in Sabah, Malaysia,” in *International Conference on History and Society Development (ICHSD) (International Economics Development and Research Center (IEDRC), 2011*), 25–27.

⁵⁹ *Mahabir v Mahabir* (1982) 1 MLJ 189.

⁶⁰ *Yip Fook Tai v Manjit Singh @ Mohd Iskandar Manjit Abdullah* (1990) 2 CLJ 605.

⁶¹ Zin and Che Soh@ Yusoff, “Legal Disputes in Determining the Religion of the Child When One Parent Converts to Islam under Malaysian Law.”pp 66–73.

It is important to mention that previously, the conversion related cases were dealt with under the old section 51 of the LRA, 1976. There has been amendment made to section 51 of the LRA.⁶² The newly amended section 51 provides that:

(1) where one party to a marriage has converted to Islam-

(a) either party may petition for a divorce under this section or section 53⁶³

(b) both parties may petition for a divorce under section 52⁶⁴.

(2) the court upon dissolution the marriage or at any time may make provisions for the wife or husband and for the support, care and custody of the children of the marriage, if any under part VII and part VIII and may attach any conditions to the decree of the dissolution as it thinks fit.

(3) section 50 shall not apply to any petition for divorce where one party has converted to Islam.⁶⁵

Other relevant provision in the LRA pertaining to the issue of custody of children is section 89, which provides that the court has power to give custody order for the wellbeing of the child, subject to the conditions that the custody order is given on the following grounds

“(1) an order for custody may be made subject to such conditions as the court may think fit to impose, and subject to such conditions, if any, as may from time to time apply, shall entitle the person given custody to decide all questions relating to the upbringing and education of the child.

⁶² Amendment made on 17 October 2017.

⁶³ Section 53 of the Law Reform (Marriage and Divorce) Act (1976).

⁶⁴ Section 52 of the Law Reform (Marriage and Divorce) Act (1976).

⁶⁵ Section 51 of the Law Reform (Marriage and Divorce) Act (1976).

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- (2) without prejudice to the generality of subsection (1), an order for custody may—
- (a) contain conditions as to the place where the child is to reside, as to the manner of his or her education and as to the religion in which he or she is to be brought up;
 - (b) provide for the child to be temporarily in the care and control of some person other than the person given custody;
 - (c) provide for the child to visit a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody at such times and for such periods as the court may consider reasonable;
 - (d) give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the child at such times and with such frequency as the court may consider reasonable;
- or
- (e) prohibit the person given custody from taking the child out of Malaysia.”⁶⁶

In the case of *Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C Mogarajah (also known as Muhammad Ridzwan bin Mogarajah) & Anor*,⁶⁷ the appellant wife filed an appeal against the leave order. The judgment arose before the Federal Court under Article 128(2) of the Federal Constitution. The court found that in exercising the power of the court to allow the leave to appeal against the rejection order on the grounds of preliminary objection made by the husband that how the best interest of the child can be served. In this regard, the respondent alleged that appellant should not be allowed to proceed leave to appeal

⁶⁶ Section 89 of the Law Reform (Marriage and Divorce) Act (1976).

⁶⁷ *Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C Mogarajah (also known as Muhammad Ridzwan bin Mogarajah) & Anor* (2011) 2 MLJ 281.;

due to contempt of court order. After the hearing, the court found that both parents have equal rights to care and control of their children. However, the court also found that the appellant mother not only violated the court order but also deprived the respondent father from visiting rights of their children. Therefore, the court held that the respondent's preliminary objection against the leave order has been allowed but the appellant references dismissed with cost order.

In delivering the judgment, the court states that;

“ the final analysis and notwithstanding any instruction that may be obtained by learned counsel for the wife, I am of the view that since there is no undue serious prejudice I am therefore inclined to rule that the interest of justice is best served by making an order that the wife and the children are to appear before this court within three months from today failing which this reference will be deemed dismissed with costs. Upon dismissal the Court of Appeal may then proceed to deal with the matter before it accordingly.”⁶⁸

4.2. Guardianship of the Infants Act, 1961

The Guardianship of the Infants Act, 1961 (hereinafter referred to as GIA) is another main statute which governs custody related matters. Section 1(3)⁶⁹ and section 5(1) of the GIA are essential to determine guardianship of the infant. Section 5 of the GIA provides equal parental rights or shared parenting in respect of care, control, wellbeing and the administration of the infant's property. In the case of *Shamala a/p Sathiyaseelan v. Dr. Jeyaganesh a/l C. Mogarajah*,⁷⁰ it was held that both parents have equal rights over the religion of their infant children. The court observed that the mother is not only disobeyed the court order but also deprived the father from the parenting rights under section 5 of the GIA 1961 and the constitutional rights under article 12(4) of the Federal Constitution of

⁶⁸ *Samala a/p Sathiyaseelan v Dr. Jeyaganesh a/l C Mogarajah & Anor* (also known as *Muhammad Ridzwan bin Mogarajah*) (2011) 2 MLJ 281.

⁶⁹ Section 1(3) of the Guardianship of Infants Act (1961).

⁷⁰ *Shamala a/p Sathiyaseelan v. Dr. Jeyaganesh a/l C. Mogarajah* (2004) 2 CLJ 648.

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Malaysia that the religion of a child who is under 18 years shall be decided by the parent or guardian.”⁷¹

In another case, *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and Other*,⁷² the petitioner wife filed a complaint and alleged that without her consent, the husband has no right to convert their children’s religion to Islam. In this respect, the petitioner wife further stated that it is a vested right for both the couples to determine the children’s religion under section 5 of GIA 1961 and article 8 and 12(4) of Federal Constitution of Malaysia. Section 5 of the GIA 1961 ensures that both the parents have equal parental rights, where it states that;

“(1) in relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal; (2) The mother of an infant shall have the like powers of applying to the Court in respect of any matter affecting the infant as are possessed by the father.”⁷³

Similarly, article 12(4) of the Federal Constitution states that the religion of child (under 18 years) shall be chosen by the parent or guardian. The word parent means a single parent. However, the mother may be allowed the custody right, but such right is not an absolute right. Further, the Court held that the petitioner’s complaint was misconceived.

In another case, *Teoh Eng Huat vs The Kadhi, Pasir Mas, Kelantan & Anor*,⁷⁴ also known as Susie Teoh’s case, where a girl named Susie Teoh (under 18) had converted to Islam without the consent of her guardian. The petitioner father, who was a Buddhist

⁷¹ Article 12 (4) of the Federal Constitution of Malaysia (1957).

⁷² *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and Other* (2008) 2 CLJ 2 FC.

⁷³ Section 5 of the Guardianship of Infants Act (1961).

⁷³ Section 8 of the Child Act (2001).

⁷⁴ *Teoh Eng Huat v The Kadhi, Pasir Mas, Kelantan & Anor* (1990) 2 MLJ 228.

had applied for a declaration that the religious conversion of his daughter to Islam was null and void. The petitioner father mentioned that as the guardian, he has the right to decide on the religion, education and upbringing of Susie Teoh. The court held that the girl's conversion to Islam is valid because at the time of the decision, she was no longer a minor. The court held that the previous decision made by the court under article 12(4) of the Federal Constitution of Malaysia was wrong. Therefore, the conversion to Islam without the consent of infant's guardian was null and void.⁷⁵

In addition, on the death of the infant's parent the court may appoint anyone as a guardian either alone or jointly with one of the survival parents.⁷⁶ On the other hand, if the court thinks fit that the parent does not perform his or her duties⁷⁷ then the court shall remove and appoint anyone to be a guardian of an infant child under section 10 of the GIA, section 10 states that;

“the court or a Judge may at any time remove from his guardianship any guardian, whether a parent or otherwise and whether of the person or the property of the infant, and may appoint from time to time another person to be guardian in his place”

4.3. Child Act, 2001

In the year 2001 the Malaysian Government enacted the Child Act to fulfill the commitment of the rights of the United Nations Convention on the Rights of the Child (UNCRC). The Child Act, 2001 was implemented not only for ensuring the rights of the child's care but also ensuring the opportunities of the child's potential development. Section 18 of Child Act, 2001 states that;

“any protector or police officer who is satisfied on reasonable grounds that a child is in need of care and protection may take the child into temporary custody, unless the Protector or police officer is satisfied

⁷⁵ Narizan Abdul Rahman, “Conversion of Minor to Islam in Malaysia: Whither Consent of Parents?,” *Jurnal Syariah* 16, no. Keluaran Khas (2008): 585–602, <http://eprints.um.edu.my/8733/1/All.pdf>.

⁷⁶ Section 6 of the Guardianship of Infants Act (1961).

⁷⁷ Section 3 of the Guardianship of Infants Act (1961).

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that— (a) the taking of proceedings in relation to the child is undesirable in the best interests of the child; or (b) the proceedings are about to be taken by some other person.”⁷⁸

The protector of the child is appointed under section 8 of the Child Act 2001. The court has power to give a recovery order under section 52 of the Child Act 2001 if a child had been taken away or sent somewhere without a valid consent from the lawful custodian. In that situation, the responsible person can make a request for recovery order. Upon request, the court may make a recovery order in favour of the person who has lawful custody.⁷⁹ The recovery order may be given in any of the following terms:

- (a) direct any person who is in a position to do so to produce the child on request to any authorized person; or
- (b) authorize the removal of the child by any authorized person; or
- (c) require any person who has information as to the child's whereabouts to disclose that information to the authorized person; or
- (d) authorize any police officer to enter into any premises specified in the order and search for the child, using reasonable force if necessary.⁸⁰

In the case of *Viran a/l Nagapan v Deepa a/p Subramaniam (Penang Negara Malaysia & Anor, intervener)*,⁸¹ the respondent wife was granted recovery order of her child under section 53⁸² of the Child Act, 2001. In the appeal petition, the appellant husband mentioned that the High Court has no power to deal with section 53 of the Child Act, 2001. Also, the respondent wife has failed to prove the threshold of section 53 of the child Act, 2001 before the High Court. In this

⁷⁸ Section 18 of the Child Act (2001).

⁷⁹ Section 53(1) of the Child Act (2001).

⁸⁰ Section 53(3) of the Child Act (2001).

⁸¹ *Viran a/l Nagapan v Deepa a/p Subramaniam (Penang Negara Malaysia & Anor, intervener)* (2015) 3 MLJ 209.

⁸² Section 53 of the Child Act (2001).

regard, it is undecided whether the High Court had prevailed over the Shariah Court or not. The Court of Appeal observed that after the conversion to Islam, the appellant husband went to the Shariah Court. On the religious ground, the Shariah court granted the custody order to the appellant, as he is a Muslim father. On the other hand, the court found that under the LRA 1976, the Shariah Court has no jurisdiction to deal with conversion related family issues. Therefore, the Court of Appeal held that the Shariah Court has no power to deal with section 53 of the Child Act, 2001.

4.4. Jurisdictional Conflicts in Malaysian Legal System

In Malaysia, Muslim family matters are governed by the Shariah Courts under the provisions of the Islamic Family Law (Federal Territory) Act, 1984. On the other hand, non-Muslim family matters are dealt by the Civil Courts under the provisions of the LRA, 1976. In recent years, conversion related family issues like interfaith child custody dispute become one of the predominant conflicts in the current legal system. Both the Shariah Courts and the Civil Courts are facing jurisdictional conflicts in determining interfaith child custody disputes. The research has shown that most of the child custody disputes were originated from the religious conversion of one of the parents.⁸³ Therefore, it can be said that jurisdictional conflicts are not only substances issue of the court but also other supplementary issues ranging from the contradictory court decisions. In doing so, the government has tried to resolve such jurisdictional conflicts. In support, the Federal Constitution of Malaysia added a new sub-article to Article 121, which states that;

the courts referred to in Clause 1 of article 121 that there shall be two High Courts of co-ordinate jurisdiction and status, namely (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and (b) one in the States of

⁸³ Narizan Abdul Rahman, "Civil Court and Shariah Court Orders in Children Custody Cases in Malaysia: Recent Development," in 1ST INTERNATIONAL CONFERENCE ON WOMEN AND CHILDREN LEGAL AND SOCIAL ISSUES (SUBANG JAYA, MALAYSIA, 2016).

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Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine; shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.⁸⁴

In the case of *Indira Gandhi*,⁸⁵ the petitioner husband had converted to Islam together with their three children and filed a petition before the Shariah Court for the custody of their children. The youngest child was less than 1 year old at the time of the conversion. Thereafter, the Shariah Court granted custody order in favour of the petitioner husband. On the other hand, the respondent wife, a Hindu went to the Civil High Court and filed a petition for recovering their children from the petitioner husband. The High Court has granted a custody order for recovery of infant children and return to their mother's custody. The order was made under section 53 of the Child Act, 2001. Furthermore, the Court has given an authority to the IGP (Inspector General of Police) to execute such order. It is evident that the petitioner husband has received custody order from the Shariah Court and the respondent wife has received custody order from the Civil High Court. In consequence, the Police authority has faced serious difficulty after receiving two conflicting custody orders. Whether, the police officer should execute the High Court order or Shariah Court order. If the police officer executes High Court order than he would be committed contempt of the Shariah Court order, and vice versa. Due to the delay of execution of High Court order, the respondent wife has filed another petition of the Judicial Review against the IGP to execute the previous custody order in which was passed by the High Court. The Judicial Review application was successfully granted. In addition, the review court found that the Shariah Court has no jurisdiction to deal with religious conversion related to child custody issue. Thereafter, on appeal, the IGP contended that the High Court has no power to deal with such family matters, where the disputants' personal issues are not a subject matter of the public law. In this

⁸⁴ Federal Constitution of Malaysia (1957); Article: 121 (1A).

⁸⁵ *Indira Gandhi a/p Mutho v Patmanathan a/l Krishnan* (anyone having and control over prasana Diksa) (2015) 7 MLJ 153.; see also *Ketua Polis Negara v Indira Gandhi a/p Mutho* [2015] 2 MLJ 149 CA.

regard, the Court of Appeal has pointed out that the Shariah Court has no power to deal with conversion related family issues under article 121(1A) of Federal Constitution. Also, the High Court and the Court of Appeal has power to punish any contempt of court under article 126 of Federal Constitution of Malaysia. Finally, the court held that custody order of the Shariah Court is null and void.

In another case, *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals*,⁸⁶ where the respondent husband converted to Islam with their 4 years old son and filed a petition for the child's custody before the Shariah Court. The respondent husband was granted an interim custody order under section 46(1) of the Islamic Family Law (Federal Territory) Act 1984 (IFLA). On the other side, the petitioner wife has filed a petition before the High Court for the dissolution of the marriage and the custody of the infant child under section 51 of the LRA 1976. After a long procedural battle both parties went to the Federal Court. The Federal Court found that if the child was born from a civil marriage under LRA, 1976, then custody of the child issues will be dealt only by the Civil Court, because it has original jurisdiction to deal with it. The Federal Court also pointed out that it would not be inappropriate that the mother had a custodial right over her children. Also, the High Court has power to determine such custody rights. Thus, the court held that the High Court decision is the final remedy. In the same way, if both interfaith couples mutually agreed to divorce, then they can file a joint petition for divorce, provided that 2 years has lapsed from the date of their marriage. If the case involves issue of child custody, then the court shall also make an order under section 52 of the LRA 1976 for the respective parents to care, control and provide for the welfare of their infant child.

5. Comparative Overview

From the comparative overview, it can be said that both Bangladesh and Malaysia experience various difficulties in resolving interfaith child custody disputes. Religious conversion before and after marriage directly impacts on family affairs. As a consequence,

⁸⁶ *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* (2008) 2 MLJ 147.; see also *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other* (2008) 2 CLJ 2FC.

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children usually face various difficulties in the society. Similarly, due to insufficient law and legal proceeding most of the child custody disputes are facing various challenges in the current legal system. Especially, in Bangladesh, disputant couples are discriminated by the existing law, but in Malaysia, disputant couples face jurisdictional conflicts in order to confirm parental rights and obligations. In Bangladesh, the existing law does not fulfill all the rights and obligations of the interfaith couples particularly for child custody issues. On the other hand, in Malaysia, only conversion related custody disputes are dealt with by the Law Reform (Marriage and Divorce) Act 1976, though some provisions of the LRA had been amended, it does not cover all the issues of wellbeing of the child. It is important to note that in Bangladesh, religious abandonment is a common phobia under the Special Marriage Act, 1872, where it is inconsistent with the Constitutional rights. Similarly, the Malaysian Law Reform (Marriage and Divorce) Act 1976 only deals with the religious conversion to Islam. In comparison, Bangladeshi courts are unable to provide appropriate remedy due to the inadequate legal provisions. Also, in Bangladesh, the Family Court does not deal with the interfaith family disputes. The District Court is not self-reliant due to over excess power by the High Court Division of the Supreme Court.

In view of the above-mentioned problems, both countries should propose for a self-sufficient and adequate law in order to deal with interfaith family disputes, so that the court may apply the principle of the best interest of the child in order to fulfill the main purpose of the UNCRC.

Conclusion

In sum up, it is important to note that the interfaith child custody is a complicated legal procedure due to religious and legal complications. It is also challenging for the court to determine appropriate remedy for the welfare of the children. Inadequate legal provisions also create a hidden blockage between religious obligation and legal remedy, which is determined by the court authorities. Finally, it is recommended that Malaysian legal provisions should be studied and implemented as a promising legal framework for governing interfaith child custody disputes in Bangladesh. Also, the

government should take more initiative and proactive role to amend the existing law of both jurisdictions. The interfaith child custody related provisions should provide adequate provisions through a legal reform. Eventually, new reformation of the law will be highly appreciated in order to serve what would best for the wellbeing of the interfaith child. Also, it would be the best solution for the child if the interfaith couples mutually compromised their custody issues rather than go to the Court.

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