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## Religion Issue of Abandoned Children: Analytical Study of Juristic and Legal Approaches

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### Abstract:

Human Respect is an important element for any human society. Societies comply with the people of different categories and different natures. Abandoned children are no doubt an important class of the human society which cannot be ignored or left helpless. There may be different issues of the abandoned children and the religion issues related to the abandoned children cannot be left unsolved as the religion deals with most of the social as well as the worship issues. When the parents of a child are unknown, then complications related to this matter will increase day by day. To prove the religion of an abandoned child, guardian influence, lineage of the abandoned and evidences available to resolve this issues will critically be observed. Each criterion for proving the religion of such child is further divided into different issues and juristic opinion. Lastly it will be discusses that if child disbelieves and turns to any other religion, how will he be dealt? The main objective of this research is to explore the different juristic opinions related to the religion of any abandoned child so that his worldly matters may be dealt with his/hers determined religion. This is, in some way, the freedom of religion even for a minor person. It is Islamic quality that it deals with principles just to provide the justice to every member of the society.

**Keywords:** Abandoned Children, Human Society, Religion, Influence, Lineage, Evidence, Disbelieve

Religion is the human need and everybody has to believe willingly or unwillingly and bow before the superior authority to praise for fulfillment of his daily needs. This concept has been instilled in the child by birth which is called “Fitratullah” as Allah SWT clearly mentions:

فَطَرَتِ اللَّهُ الْبَنِيَّ فَطَرَ النَّاسَ عَلَيْهَا ۖ لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ۚ ذَٰلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ<sup>1</sup>

<sup>1</sup>. Al-Qurān, 30:30

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“So set your face with absolute concentration (and single-minded devotion) to the obedience of Allah. The nature (made) by Allah is (Islam) on which He has created mankind. (Adopt it. The instinct) created by Allah will never be changed. This Din (Religion) is straight but most people do not know (these realities)” An abandoned child, who has been thrown or left alone due to adultery of his/her parents or due to death of the parents in wars or natural disasters and the parents are unknown, to which religion he/she will be attached? It is a controversial issue amongst the Islamic scholars and the jurists are of different opinions in this regard. The main and important aspect is that the child will be declared as the Holy Prophet PBUH has clearly mentioned in his tradition that:

كل مولود يولد على الفطرة فابواه يهودانه او ينصرانه او يمجسانه<sup>2</sup>

“Every child that is born, is born upon the Fitrah, but his parents make him a Jew, a Christian or a Zoroastrian” Keeping in view the above mentioned circumstances, the determination of religion is important matter for an abandoned child to deal with him according to the determined religion. If Islam is declared as the religion of such child, he or she must be taken from the Non-Muslim picker so that he may not educate him according to his own religion rather than Islam or enslave the child in future<sup>3</sup>.

Now the point is that how the religion of the abandoned child will be determined? This issue may be resolved through guardian influence, through lineage and through the evidence. Another important issue related to this topic is

<sup>2</sup> . Abū 'abdullah Mummad Bin Ismā'īl, Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Janāiz, Bāb Mā Qīla Fī Aolād-il-Mushrikīna, (Dāru ṭaūq-il-Najāt, Dimishq, 1422 AH), 2/100, Hadīth No.1385; Muslim Bin Hajjāj, Al-Jāmi'-ul-Sahīh, Tahqīq: Muhammad Fuūād 'abdul Bāqī, Kitāb-ul-Qadr, Bāb-o-Ma'nā Kullu Maolūdin Yūladu 'lā-al-Fitrah Wa Hukmu Maūt-e-Atfāl-il-Kuffār-e-Wa Atfāl-il-Muslimīn (Dār-o-Ihīa Al-Tarath al-Arabī, Bīrūt)4/2047, Hadīth No.2658.

<sup>3</sup> . Abū 'abdullah al-Maūaq al-Mālikī, Muhammad Bin iūsuf, Al-Tāj Wal Iklīl Li MuKhtsar Khalīl (Dār-ul-Kutub-il-' ālamīya, Bīrūt, 1416 AH-1994 AD), 8/53.

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that how an abandoned child will be dealt who disbelieves after attaining the majority age? So there will be following four key points of discussion for this research:

1. Determination of a Child's Religion under Guardian Influence;
2. Declaration of Religion through Lineage;
3. Declaration of Religion through Evidence;
4. Dealing with the Child Who Disbelieves After Attaining the Age of Majority.

Detail of these main points is as under:

### **1. Determination of a Child's Religion under Guardian Influence:**

It can be observed that the guardian or the parents influence the child in religious aspect as clearly mentioned in the prophetic words narrated by Bukhāri and Muslim, so is the reason that the Islamic jurists have settled some principles to determine the abandoned child religion and normally abandoned child will be considered upon the religion of the guardian as the case is in the presence of the parents.

- i. The religion of the father will be declared the child's religion as the child follows the parents' religion usually and has been clearly discussed in the above mentioned narration that parents are the major cause to make the child to Jew, Christian or Zoroastrian<sup>4</sup>. Nawawi has interpreted this Prophetic saying that child enters into

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<sup>4</sup> . Abū 'abdullah Mummad Bin Ismā'īl, Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Janāiz, Bāb Mā Qīla Fī Aolād-il-Mushrikīna, (Dāru ṭaūq-il-Najāt, Dimishq, 1422 AH), 2/100, Hadīth No.1385; Muslim Bin Hajjāj, Al-Jāmi'-ul-Sahīh, Tahqīq: Muhammad Fuūād 'abdul Bāqī, Kitāb-ul-Qadr, Bāb-o-Ma'nā Kullu Maolūdin Yūladu 'lā-al-Fitrah Wa Hukmu Maūt-e-Atfāl-il-Kuffār-e-Wa Atfāl-il-Muslimīn (Dār-o-Ihīa Al-Tarath al-Arabī, Bīrūt)4/2047, Hadīth No.2658.

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the world on Islamic and his parents convert him to some other religion. So is the reason if any of his parents is Muslim, he will also be declared the Muslim and if both of them are nonbelievers, he will also be declared nonbeliever as per his parents' religion and same will be continued after his attaining the age of puberty. Such religious attachment will be considered in his worldly matters and in the matters related to his life hereinafter. Ibn-e-Hajar narrate that the same viewpoint is also supported by Ibn-e-Qayyam<sup>5</sup>. So worldly matters and disputes of such child will be settled according to his religion as decided above to be considered and the matters related to him after his death will also be preceded according to the teachings of the religion accepted for him.

- ii. There may be another situation that the child is parentless or his parents are unknown, then the person, who picks him up and owes the responsibility of his livelihood and all other needs, will be attached to him in religion. If he is Muslim then the child will be declared Muslim, otherwise he will be considered nonbeliever keeping in view the religion of his declared guardian. Here the child is minor and definitely will follow the person binding himself with child relate responsibilities in social as well as the religious affairs<sup>6</sup>. Muslim jurists have different opinions regarding the point under discussion. Imam Malik attaches the children with guardian's religion even if his mother is present. Imam Aozai declares him Muslim if the guardian is Muslim even anyone of his parents is alive<sup>7</sup>, but if any of his parents is alive, then Hanafies and Shafiees don't

<sup>5</sup> . Naūaūī, īahīā Bin Sharf-ul-Dīn, **Al-Minhāj Sharah Sahīh Muslim** (Dār-ul-Ihīā-il-Turath-il-'arabī, Bīrūt, 1392), 16/ 208; Ibn-e-Hajar, Ahmad Bin 'alī, **Fath-ul-Bārī** (Dār-ul-Ma'rifah, Bīrūt, 1374), 13/252.

<sup>6</sup> . Naūaūī, **Al-Minhāj Sharah Sahīh Muslim**, 21/105

<sup>7</sup> . Abū Habīb Sa'dī, Maūsū'at-ul-Ijmā' (Dār-ul-Fikr, Bīrūt, 1404 AH), 1/ 97.

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consider him Muslim due to his guardian's religion of Islam<sup>8</sup>. These juristic approaches are based on the guardianship, guarantee and custody of the minor child as they all owe the father's status<sup>9</sup> and the same rule will be applied in abandonment. The abandoner will be considered the father of abandonee and he will follow the abandoner in religious and other social matters and this practice is being observed in daily routine. Juristic approaches regarding the issue under discussion may be summarized into following three points.

- a) **Nonbeliever's Custody Not Allowed:** If the abandonee has been declared Muslim, he cannot be handed over to any nonbeliever because this is the guarantee matter for the abandonee welfare in future which purely relates to the guardianship and Islam doesn't allow the guardianship of any Non-Muslim for a Muslim minor as Allah SWT declares his verdict that:

وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا<sup>10</sup>

“And never will Allah allow the disbelievers anyway to (overpower) the Muslims”

So such child will not be handed over to any nonbeliever but any Muslim will be selected for this prestigious duty keeping in view the Quranic order. Secondly if the child is handed over to any nonbeliever he will influence and lead him to anti-Islamic believes, practices and in result this child will be converted to any other religion. Thirdly such nonbeliever may harm such child destroying his property. So keeping in view the shariah objective and child's

<sup>8</sup> . Muhammad Bin Ahmad Al-Sarkhasī, Al-Mabsūt (Dār-ul-Ma'rifah, Bīrūt)10/209; Naūaūī, Majmū Sharh-ul-Muaḍḍab, **21/99**.

<sup>9</sup> . Naūaūī, Majmū Sharh-ul-Muaḍḍab, 21: 99

<sup>10</sup> . Al-Qurān, 4: 141

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interest, Imam Navavi declares that the child, who is declared Muslim, will not be handed over to any Non-Muslim just to save his religion and other interests<sup>11</sup>.

b) **Nonbeliever's Custody Will Be Declared Legal:** When the child has been declared nonbeliever, he will be sustained with nonbeliever adopter and he will be declared the righteous to care this child, on the other hand if any Muslim picks him up to adopt and none of nonbelievers object this adoption, the child will remain with this Muslim adopter keeping in view the original religion of the child through Fitrah<sup>12</sup> and that's the innate interest of the child which must be observed.

c) **Child Will Be Handed Over to Any Muslim and Islam Will Be Declared His Religion:** If the child is found at the place where the religion matter cannot be decided through any circumstantial evidence and no one claims its adoption, the child will be handed over to any Muslim and Islam will be declared his religion<sup>13</sup>. An important point in this discussion is that whenever the Jurists declare him Muslim without any proof of the religion, they decide it for his/her interest. Imam Navavi has clearly mentioned that if the lineage of the child is not clear and no claimant for him is known then the child will be handed over to any Muslim, he will care and look after his matters and the child will remain with him till his attaining the age of majority and govt. will pay all his expenditures. He also declares that when the child attains the age of puberty, he will be given choice to choose either Islam or any other religion. If he chooses Islam as religion, he will be

<sup>11</sup>. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15:292

<sup>12</sup>. Muhammad Amīn Bin 'umar Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, (Dār-ul-Fikr, Bīrūt, 1412 AH-1992 AD) 4/270

<sup>13</sup>. 'abdullah Bin Ahmad Ibn-e-Qudāmāh Al-Muqaddasī, Al-Mughnī (Maktabat-ul-Qāhirah, Al-Qāhirah, 1338 AH-1968 AD), 8/351.

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declared the Muslim otherwise he will be considered nonbeliever and will be attached to religion he opts with effect from the day he has opted the same<sup>14</sup>. Here the Islamic philosophy may be observed that Islam does not compel anybody to embrace Islam by force but everyone is free to embrace any religion, even residing in Islamic state, and act according his own opted religion.

## 2. Declaration of Religion through Lineage:

Another mode for declaring and specifying the religion of a child is his lineage as the children usually follow the religion of their parents. Now the lineage of the child may be proved through valid evidence or merely by the claim without any proof. The focusing point is lineage of the child which will make him free from the social stigma which makes such persons ashamed. So if any thrown child is found and any nonbeliever claims himself as his/her father, child will be handed over to him without asking any proof for child's welfare. The issue here is whether the child's religion should be determined as that of the claimant, solely based on his assertion that the child follows the father's faith. This matter must be examined from two perspectives:

**A. Nonbeliever's Fatherhood Claim during Minor Age of the Child:** Any nonbeliever claims his fatherhood for this child during his minor age period. The child will be attached with this claimant's religion or not? Islamic Jurists are divided into two groups in this point. Malikies and according to one viewpoint shafiees are of the opinion that the child will be attached with this claimant considering him his father, and keeping in view Islamic rule that the child follows his father. So he will be declared nonbeliever and will

<sup>14</sup> . Naūāūī, Majmū' Sharh-ul-Muadḍab, 15:301

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be dealt with the teachings of the religion embraced his declared father.<sup>15</sup> This opinion is based on the parentage rule that they have to make a child Jew, Christian or Zoroastrian as the lineage affects the children religion. So they have to follow their parents in their minor age period.

Such child will be declared Muslim keeping in view the dominating position of Dar-ul-Islam and considering the majority religion and this rule will not be avoided merely by claim of any person. Basically it is the view point of Hamblis<sup>16</sup> while Imam Nawawi has declared this opinion authentic, Imam Muzni owes this view point and declares it authentic Shafie opinion, and again Hanafies are also of the same approach.<sup>17</sup> The of this opinion is that, the lineage is being decided merely relying on the claim not the evidences which are necessary to prove such claims and that is just to look after the child and to ensure his welfare. Actual welfare of the child to preserve his believes not the worldly benefits only. So he will not be attached with any un-Islamic religion considering the rule if any child has Muslim and Non-Muslim parents, the lineage will be proved by the father if he is Non-Muslim and Islam will be declared his religion if the mother is Muslim<sup>18</sup>. If any other religion has been decided for this child it will lead to prove the guardianship of Non-Muslim which is not permissible in Islam by the Quranic verdict.<sup>19</sup>

<sup>15</sup> . ĩahĩa Bin Sharaf Al- Naũaũĩ, Raodhat-ul-ťalıbĩn Wa `umda-ul-Muftĩn(Al-Maktab-ul-Islĩmĩ, Bĩrũt, 1412AH-1991AD)5/435.

<sup>16</sup> . Ibn-e-Qudĩmah Al-Muqaddasĩ, Al-Mughnĩ, 8/351.

<sup>17</sup> . Al-Sarkhasĩ, Al-Mabsũt, 10/209; `abdullah Bin Ahmad Ibn-e-Qudĩmah Al-Muqaddasĩ, Al-Kĩfĩ Fĩ Fiqh-il-Imĩm Ahmad (Dĩr al-Kutub-il-`ilmiĩah, Bĩrũt, 1414 AH - 1994 AD), 2/252.

<sup>18</sup> . Abu Bakr Bin Mas'ũd Kĩsĩnĩ, Badĩ' -ul-Sanĩ' (Maťba'ah Sharikt-ul-Maťbũ'ĩt-il-'ilmiĩah, Misr, 1327-1328 AH) 6/198.

<sup>19</sup> . Al-Qurĩn, 4: 141



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Here an important point to be considered is that the matter will become complicated if the lineage is proved in favor of Non-Muslim and religion of the child is declared contrary to the father's religion. Again the child is also in the custody of a person whose religion is contrary to the child's religion and he has to look after the matters of such child and also he has to teach and educate the child. How his religion can be avoided while the child's grooming is in the house which is equipped with UnIslamic atmosphere. If the child remains with such person, he will avoid Islam automatically and will be inclined to anti-Islamic thoughts and attitudes. Here Jurists decide to take the child back from such father and will be handed over to any Muslim before his attaining the puberty age.<sup>20</sup> Here one approach is that it is better to convince the father leniently for this step<sup>21</sup> while the other approach is that it is compulsory to preserve the basic human right of the child to keep him on his original religion.<sup>22</sup> This is the valid and reasonable opinion to preserve the child welfare.

**B. Once the Child Attains Adulthood, the Nonbeliever Declares His Paternity:** Any nonbeliever claims his fatherhood for this adopted child when he attains the majority age and, remains silent throughout his minor age. The child keeps on practicing the Islamic teachings like prayers, fasting, performing hajj and Umrah and so on observes the Islamic compulsions and prohibitions. Jurists declare that his practice will dominate and claim of the nonbeliever will be ineffective with regard to his religion

<sup>20</sup> . Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār , 4/270.

<sup>21</sup> . Muhammad Bin Ahmad Al-Sharbīnī, Al-Iqnā' Fī Hall-e-Alfāz-e-Abī Shujā' (Dār-ul-Fikr, Bīrūt), 2/561.

<sup>22</sup> . Kamāl-ul-Din Muhammad Bin Abd-ul-Wāhid Ibn-il-Hummām, Fath-ul-Qadeer (Dār-ul-Fikr, Bīrūt), 2/561, 6/ 114

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option keeping in view the dominating authority of Islam which is proved in his favor by his previous practice.<sup>23</sup> Here Ibne-e-Qudama expresses his opinion that the matter of declaring Islam as the child's religion is apparently not actually<sup>24</sup> as there is chance of being this abandoned the child of any nonbeliever and if so is proved, the child will be attached to him in his worldly and religious dealings.

Aside from Islamic verdict, constitution of Pakistan every citizen is free opt any religion<sup>25</sup> and if he has been born he will be considered Muslim as per Pakistani law of guardianship and if the parents of any Pakistan child are unknown, then he will be declared Muslim.<sup>26</sup>

### 3. Declaration of Religion through Evidence:

The main source to prove the rights or facts is evidence called “**Al-Bayyinah**” in Islamic terminology. When any nonbeliever presents evidences to prove his fatherhood in favor of the child<sup>27</sup> and these evidences are valid, the lineage will be declared in favor the this nonbeliever keeping in view the Prophetic word:

الولد للفراش وللعاهر الحجر<sup>28</sup> “The child is for the bed and for the prostitute is stoning”.

<sup>23</sup> . Naūāūī, Majmū Sharh-ul-Muḥḍab, 15/302

<sup>24</sup> . Ibn-e-Qudāmah Al-Muḥḍasī, Al-Mughnī, 8/351

<sup>25</sup> . Constitution of Islamic Republic Pakista, 1973, article 20

<sup>26</sup> . Guardian and Wards Act, 1890, Section 17, 19 and 24.

<sup>27</sup> . Al- Naūāūī, Raḍḥat-ul-ṭālibīn Wa `umda-ul-Muḥḍīn, 5/423; Ibn-e-Qudāmah Al-Muḥḍasī, Al-Mughnī, 8/351; Ibn-e-`ābidīn, Radd-ul-Muḥḍār `alā-al-Durr-il-Muḥḍār, 4/270

<sup>28</sup> . Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Farāidh, Bāb-o-Man Idd'ā Akhan Ao Ibna Akhin, 8/156, Hadīth No. 6765; Muslim, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Ridhā', Bāb Al ūaladu Lil Frāsh Wa Taūaqqū'il-Shubhāt, 2/1081, Hadīth No. 1458.

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The main condition for this evidence is that the witnesses must be Muslim who supports the paternal fact of the child and if there if the witness is Non-Muslim his evidence will not be acceptable and the lineage will not attached with such nonbeliever.<sup>29</sup> Here Imam Shafie declares that this verdict relates to evidences presented for the lineage proof in immaturity age of the child, and if it has been presented after attaining the child maturity age, it will be accepted and lineage will be attached with that nonbeliever considering it the human need as well as the lesser chances of misleading and deviating chances from the religion. Because the child at that age understands the right and wrong, so this evidence will be acceptable if no other proof of lineage is available.<sup>30</sup> In short evidence is valid proof for declaration of the abandoned children religion and it will be accepted for declaring such children from both of Muslim and Non-Muslim but and will not be accepted from Non-Muslim to prove the disbelief of the child and if the Muslim evidences are available for the disbelief of the father then the child will be declared disbeliever.

According to Pakistani law parents and guardian are responsible for the religious training of their children and ward<sup>31</sup> then definitely the presence of the child with any person is the evidence for his religion unless the contrary is proved.

#### **4. Addressing a Child Who Disbeliefs After Reaching Adulthood:**

When any abandoned child is declared a Muslim, he will be dealt with the Islamic teachings and if he returns to disbelief and embraces any other religion

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<sup>29</sup> . Al-Sarkhasī, Al-Mabsūt, 10/209.

<sup>30</sup> . Naūaūī, Majmū' Sharh-ul-Muqḍab, 15: 302

<sup>31</sup> Guardian and Wards Act, 1890, Section 19 and 24

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after attaining the age of majority, how will he be dealt? Islamic jurists are divided on this point into following two different opinions.

1. He will be declared apostate and will be dealt with the Islamic teachings related to apostasy as to ask him to repent and if he denies coming back to Islam, he will be killed as punishment. It's the opinion Hambile<sup>32</sup>, Malikies<sup>33</sup>, and according to an opinion of Shafies<sup>34</sup> and Ibn-e Qudamah attributed this opinion to Imam Abu Hanifa.<sup>35</sup> The reason for this opinion is that this person was declared Muslim or considered Muslim if not declared the nonbeliever. He remained on this religion in Islamic state without any coercion even if for a short time. Now if converts to any other religion, will be considered apostate and dealt with the laws related to apostasy because he is leaving Islam now and proffering any other religion on it. So he is liable to punishment for this wrongful act.
2. Second opinion is that he will not be declared apostate but will be considered disbeliever from his childhood. This is the authentic opinion of Shafies<sup>36</sup> and Hanafies.<sup>37</sup> Here Hanafies are of the opinion that such abandoned must be stressed forced to convert to Islam by imprisonment and other precautionary threats.<sup>38</sup> This forcing method does not mean that he was bound to embrace Islam, Islam does not desire the coercive

<sup>32</sup> . Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 6/36; 'lā-ul-Dīn 'lī Bin Muhammad Al-Mardāvī, Al-Insāf (Dār-o-Ihīā-il-Turāth-il-'rabī), 4/524.

<sup>33</sup> . Muhammad Bin Ahmad Bin Arfah Al-Dusūqī, Hāshīyat-ul-Dusūqī Al-al-Sharh-il-Kabīr (Dār-ul-Fikr, Bīrūt), 4/127.

<sup>34</sup> . Al- Naūaūī, Raodhat-ul-ṭālibīn Wa `umda-ul-Muftīn, 5/434

<sup>35</sup> . Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 8/351.

<sup>36</sup> . Naūaūī, Majmū Sharh-ul-Muadḍab, 15/313; Al-Sharbīnī, Al-Iqnā' Fī Hall-e-Alfāz-e-Abī Shujā', 1/302.

<sup>37</sup> . Al-Sarkhasī, Al-Mabsūt, 10/209

<sup>38</sup> . Ibn-il-Hummām, Fath-ul-Qadīr, 6/98

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embracement but it considers the freedom of religion and this process is to be adopted just to keep him on the righteous path naturally fixed for him by birth. If after utilizing the stress, he opts to disbelieve, he will be freed to opt the religion on his own choice and will be stressed no more<sup>39</sup> just to preserve his freedom of religion. This group of opinion argue for their opinion that:

- a) That the matter of believe or disbelieve relates to the human heart or announcing it through words. When a child did not attain the age of majority, it cannot be claimed that he is Muslim throughout his minor age. When a person did not declared his religion himself how he can be claimed apostate which cannot be claimed without the factual evidence. Just on the doubt basis apostasy could not be justified as the Hudood must be avoided on the basis of doubts and Imam Tirmadhi has clearly mentioned the prophetic order to avoid the hudood from Muslims if you can<sup>40</sup>, and obvious it will on the basis of doubts. So this person may not be punished with apostasy punishment but be tried to motivate him towards Islam;
- b) Declaration of apostasy for such person is the total neglect of the Islamic proved benefits for any person and no benefit is left if was killed for his apostasy<sup>41</sup>. So such person must be considered apostate to avoid from his murder;
- c) Here Islamic jurists have conflict about the Islam of such person which leads to doubt and doubt is the major reason to avoid the Hudood, that is

<sup>39</sup> . Naūaūī, Majmū Sharh-ul-Muaḍḍab, 15/314

<sup>40</sup> . Abū 'iīsā Muhammad Bin 'iīsā al-Tirmiḍī, Al-Jāmi'-ul-Kabīr (Sunan al-Tirmiḍī), Abwāb-ul-Hudūd, Bāb Mā Jā' Fī Dar'-il-Hudūd (Dār-ul-Gharb-il-Islamī, Bīrūt, 1996 AD),3/85, Hadīth No: 1424

<sup>41</sup> . Al-Sarkhasī, Al-Mabsūt, 10/209

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why Holy Prophet repeatedly asked about committing adultery just to avoid the implementation of Hadd<sup>42</sup>. Here the nature of the doubt is not determined and while the difference of the opinion itself is the major doubt so such person must be avoided from such major penalty.

Keeping in view the above mentioned situations, it looks appropriate that such person must be considered disbeliever on the following grounds:

- i. Difference of juristic approaches lead to the doubt and merely relying on the doubt nobody will be put to major penalty, so it should be avoided here;
- ii. The logic of attaching him with Islam is to preserve his worldly and hereinafter benefits, and no benefit is left if he is declared apostate and punished for the same and if he is pardoned and left on his claimed religion, he may return to Islam on any stage because he has already observed the Islamic values and he has the opportunity to analyze both of the religions and Islam remains dominant on other religions always as per prophetic words: "Islam is always dominant and never be overwhelmed"<sup>43</sup>.
- iii. Many doubts and rumors may be raised against Islam if the first opinion is owned as the disbelievers relate so many prohibitions and limitation about Islamic freedom concept and many other aspects of human life and their believes. So the second opinion looks better, logical and human favoring opinion and most suitable for the abandoned children.

This study declared three different aspects for proving the religion of minor abandoned and different opinions related to abandoned who disbelieves after attaining the age of majority. This study will help and lead the researchers to

<sup>42</sup> . Muhammad Ashraf Bin Amīr Al Siddīqī, **Aon-ul-Maabood Sharh Sunan Abī Dāwood** (Dār-ul-Kutub-il-Ilmiyyah, Bīrūt, 1415), 12/72.

<sup>43</sup> . Abū-ul-Hasan Alī Bin Umar, Dār-e-Qutnī, Al-Sunan, Kitāb-ul-Nikāh, Bāb-ul-Mahr (Muassat-ul-Risālah, Bīrūt, 2004 AH), 4/371, Hadīth No. 3620

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search the social, legal and religious issues of the abandoned children to provide them their rights so that they may lead their human and honorable life.

## References

1. Al-Qurān, 30:30
2. Abū 'abdullah Mummādh Bin Ismā'il, Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Janāiz, Bāb Mā Qīla Fī Aolād-il-Mushrikīna, (Dāru ṭaūq-il-Najāt, Dimishq, 1422 AH), 2/100, Hadīth No.1385; Muslim Bin Hajjāj, Al-Jāmi'-ul-Sahīh, Tahqīq: Muhammad Fu'ād 'abdu Bāqī, Kitāb-ul-Qadr, Bāb-o-Ma'nā Kullu Maolūdin Yūladu 'lā-al-Fitrah Wa Hukmu Maūt-e-Atfāl-il-Kuffār-e-Wa Atfāl-il-Muslimīn (Dār-o-Ihīa Al-Tarath al-Arabī, Bīrūt)4/2047, Hadīth No.2658.
3. Abū 'abdullah al-Maūaq al-Mālikī, Muhammad Bin Iūsuf, Al-Tāj Wal Iklīl Li MuKhtsar Khalīl (Dār-ul-Kutub-il-'ālamīya, Bīrūt, 1416 AH-1994 AD), 8/53.
4. Abū 'abdullah Mummādh Bin Ismā'il, Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Janāiz, Bāb Mā Qīla Fī Aolād-il-Mushrikīna, (Dāru ṭaūq-il-Najāt, Dimishq, 1422 AH), 2/100, Hadīth No.1385; Muslim Bin Hajjāj, Al-Jāmi'-ul-Sahīh, Tahqīq: Muhammad Fu'ād 'abdu Bāqī, Kitāb-ul-Qadr, Bāb-o-Ma'nā Kullu Maolūdin Yūladu 'lā-al-Fitrah Wa Hukmu Maūt-e-Atfāl-il-Kuffār-e-Wa Atfāl-il-Muslimīn (Dār-o-Ihīa Al-Tarath al-Arabī, Bīrūt)4/2047, Hadīth No.2658.
5. Naūaūī, īahīa Bin Sharf-ul-Dīn, **Al-Minhāj Sharah Sahīh Muslim** (Dār-ul-Ihīa-il-Turath-il-'arabī, Bīrūt, 1392), 16/ 208; Ibn-e-Hajar, Ahmad Bin 'alī, **Fath-ul-Bārī** (Dār-ul-Ma'rifah, Bīrūt, 1374), 13/252.
6. Naūaūī, **Al-Minhāj Sharah Sahīh Muslim, 21/105**
7. Abū Habīb Sa'dī, Maūsū'at-ul-Ijmā' (Dār-ul-Fikr, Bīrūt, 1404 AH), 1/ 97.
8. Muhammad Bin Ahmad Al-Sarkhasī, Al-Mabsūt (Dār-ul-Ma'rifah, Bīrūt)10/209; Naūaūī, Majmū' Sharh-ul-Muaḍḍab, **21/99**.
9. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 21: 99
10. Al-Qurān, 4: 141
11. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15:292

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12. Muhammad Amīn Bin 'umar Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, (Dār-ul-Fikr, Bīrūt, 1412 AH-1992 AD) 4/270
13. 'abdullah Bin Ahmad Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī (Maktabat-ul-Qāhirah, Al-Qāhirah, 1338 AH-1968 AD), 8/351.
14. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15:301
15. Iahīa Bin Sharaf Al- Naūaūī, Raodhat-ul-ṭālibīn Wa 'umda-ul-Muftīn (Al-Maktab-ul-Islāmī, Bīrūt, 1412AH-1991AD) 5/435.
16. Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 8/351.
17. Al-Sarkhasī, Al-Mabsūt, 10/209; 'abdullah Bin Ahmad Ibn-e-Qudāmah Al-Muqaddasī, Al-Kāfī Fī Fiqh-il-Imām Ahmad (Dār al-Kutub-il-'ilmīyah, Bīrūt, 1414 AH - 1994 AD), 2/252.
18. Abu Bakr Bin Mas'ūd Kāsānī, Badāī'-ul-Sanāī' (Maṭba'ah Sharīkt-ul-Maṭbū'āt-il-'ilmīyah, Misr, 1327-1328 AH) 6/198.
19. Al-Qurān, 4: 141
20. Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār , 4/270.
21. Muhammad Bin Ahmad Al-Sharbīnī, Al-Iqnā' Fī Hall-e-Alfāz-e-Abī Shujā' (Dār-ul-Fikr, Bīrūt), 2/561.
22. Kamāl-ul-Din Muhammad Bin Abd-ul-Wāhid Ibn-il-Hummām, Fath-ul-Qadeer (Dār-ul-Fikr, Bīrūt), 2/561, 6/ 114
23. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15/302
24. Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 8/351
25. Constitution of Islmic Republic Pakista, 1973, article 20
26. Guardian and Wards Act, 1890, Section 17, 19 and 24.
27. Al- Naūaūī, Raodhat-ul-ṭālibīn Wa 'umda-ul-Muftīn, 5/423; Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 8/351; Ibn-e-'ābidīn, Radd-ul-Muhtār 'alā-al-Durr-il-Mukhtār, 4/270
28. Bukhārī, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Farāidh, Bāb-o-Man Idd'ā Akhan Ao Ibna Akhin, 8/156, Hadīth No. 6765; Muslim, Al-Jāmi'-ul-Sahīh, Kitāb-ul-Ridhā', Bāb Al ūaladu Lil Frāsh Wa Taūaqqū'il-Shubhāt, 2/1081, Hadīth No. 1458.
29. Al-Sarkhasī, Al-Mabsūt, 10/209.
30. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15: 302



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31. Guardian and Wards Act, 1890, Section 19 and 24
32. Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 6/36; 'lā-ul-Dīn 'lī Bin Muhammad Al-Mardāvī, Al-Insāf (Dār-o-Ihīā-il-Turāth-il-'rabī), 4/524.
33. Muhammad Bin Ahmad Bin Arfah Al-Dusūqī, Hāshīyat-ul-Dusūqī Al-al-Sharh-il-Kabīr (Dār-ul-Fikr, Bīrūt), 4/127.
34. Al- Naūaūī, Raodhat-ul-ṭālibīn Wa `umda-ul-Muftīn, 5/434
35. Ibn-e-Qudāmah Al-Muqaddasī, Al-Mughnī, 8/351.
36. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15/313; Al-Sharbīnī, Al-Iqnā' Fī Hall-e-Alfāz-e-Abī Shujā', 1/302.
37. Al-Sarkhasī, Al-Mabsūt, 10/209
38. Ibn-il-Hummām, Fath-ul-Qadīr, 6/98
39. Naūaūī, Majmū' Sharh-ul-Muaḍḍab, 15/314
40. Abū 'īsā Muhammad Bin 'īsā al-Tirmidī, Al-Jāmi'-ul-Kabīr (Sunan al-Tirmidī), Abwāb-ul-Hudūd, Bāb Mā Jā' Fī Dar'-il-Hudūd (Dār-ul-Gharb-il-Islamī, Bīrūt, 1996 AD), 3/85, Hadīth No: 1424
41. Al-Sarkhasī, Al-Mabsūt, 10/209
42. Muhammad Ashraf Bin Amīr Al Siddīqī, **Aon-ul-Maabood Sharh Sunan Abī Dāwood** (Dār-ul-Kutub-il-Ilmiyyah, Bīrūt, 1415), 12/72.
43. Abū-ul-Hasan Alī Bin Umar, Dār-e-Qutnī, Al-Sunan, Kitāb-ul-Nikāh, Bāb-ul-Mahr (Muassat-ul-Risālah, Bīrūt, 2004 AH), 4/371, Hadīth No. 3620