**Difference of Opinion or Indifference of Opinion?**

[Waiza Rafique](https://dailytimes.com.pk/writer/waiza-rafique/" \o "More Articles by Waiza Rafique)

November 17, 2020

Difference of opinion in court judgments is considered to be a key source of evolution of law. The possibility of different juries interpreting the same law as per their own judicious mind gives several shades to the same piece of legislation. In addition to that, it paves various grounds of continuous debate for legal practitioners and scholars. However, it is not just growth and evolution that is watered by difference of opinion, but sometimes the same practice feeds inequality and injustice as well. The same liberty used by courts to uphold the fundamental principles of human rights at certain times is used to ignore some of the key doctrines of law by relying on their own interpretation of law.

One key example of this is the on-going proceedings of Arzoo Raja case, the case of forced religious conversion and marriage of a minor girl in Sindh. For now, there is little to opine on the case as the matter is sub-judice and not finally decided. However, considering the flow of developments in this case, I believe we have a lot to learn from a similar case titled as Nasira v Judicial Magistrate and 5 others decided by the Lahore High Court earlier this year. Under this case, the Lahore High Court was confronted with a similar situation of forced religious conversion of a 14 years old girl Pumy Muskan. She was forcefully taken away from custody of her mother who pleaded before the court for return of her daughter. The mother also pleaded that her daughter has been forcefully converted into Islam and that being not an adult she is not mature enough to take the decision of changing religion from a prudent mind. Under the circumstances, the court framed three questions to resolve the issue. Firstly, was the minor Hindu girl, Pumy Muskan competent to change her religion without the consent of her parents?; secondly, was the religious conversion of Pumy Muskan by her choice or was it actually forceful?; and lastly, does a religious conversion of a minor warrants deprivation of custody from the child’s parents?

It was easy for the accused to impress and emotionally motivate this minor girl because of her tender age hence this religious conversion could not be protected under the law, neither could the mother of the minor girl be deprived of her daughter’s legal custody

In a meticulous judgment, based on plethora of precedents from different legal jurisdictions, Islamic sources of law and Constitution of Pakistan, Honourable Justice Tariq Saleem Sheikh of the Lahore High Court articulated on all the three abovementioned questions and finally decided that since the girl had not attained the age of majority, she was not likely to make an informed and intelligent decision about change of her religion. It was easy for the accused to impress and emotionally motivate this minor girl because of her tender age hence this religious conversion could not be protected under the law, neither could the mother of the minor girl be deprived of her daughter’s legal custody.

This judgment came out as an important and progressive judgment on the right to freedom of religion which is a grave and sensitive issue in Pakistan. The same three questions can be used to analyse the case of Arzoo Raja in light of the right to freedom of religion as enshrined in the Constitution of Pakistan. Despite having some extremely comprehensive judgments of the Supreme Court on the same issue as well such as PLD 2014 SC 699, the right to freedom of religion remains vulnerable particularly for religious minorities of the country. In the abovementioned Judgment, the Supreme Court of Pakistan has evidently held that the freedom of religion must be construed liberally to include freedom of conscience, thought, expression, belief and faith. In the same case, the Honourable Supreme Court went further explaining that Article 20 of the Constitution of Pakistan holds prime importance over all the other articles pertaining to religious minorities. Nonetheless, it disturbing how all such rulings miss manifested in practical situations. One reason behind this is disagreements even on fundamental rights such as freedom of religion. Therefore, it is important to realise that basic rights such as right to freedom of religion should be unanimously upheld and respected. We hope that the case of Arzoo Raja in Sindh meets the same end as that of Pumy Muskan in Punjab.

*The writer is a Lawyer and Human Rights Activist*