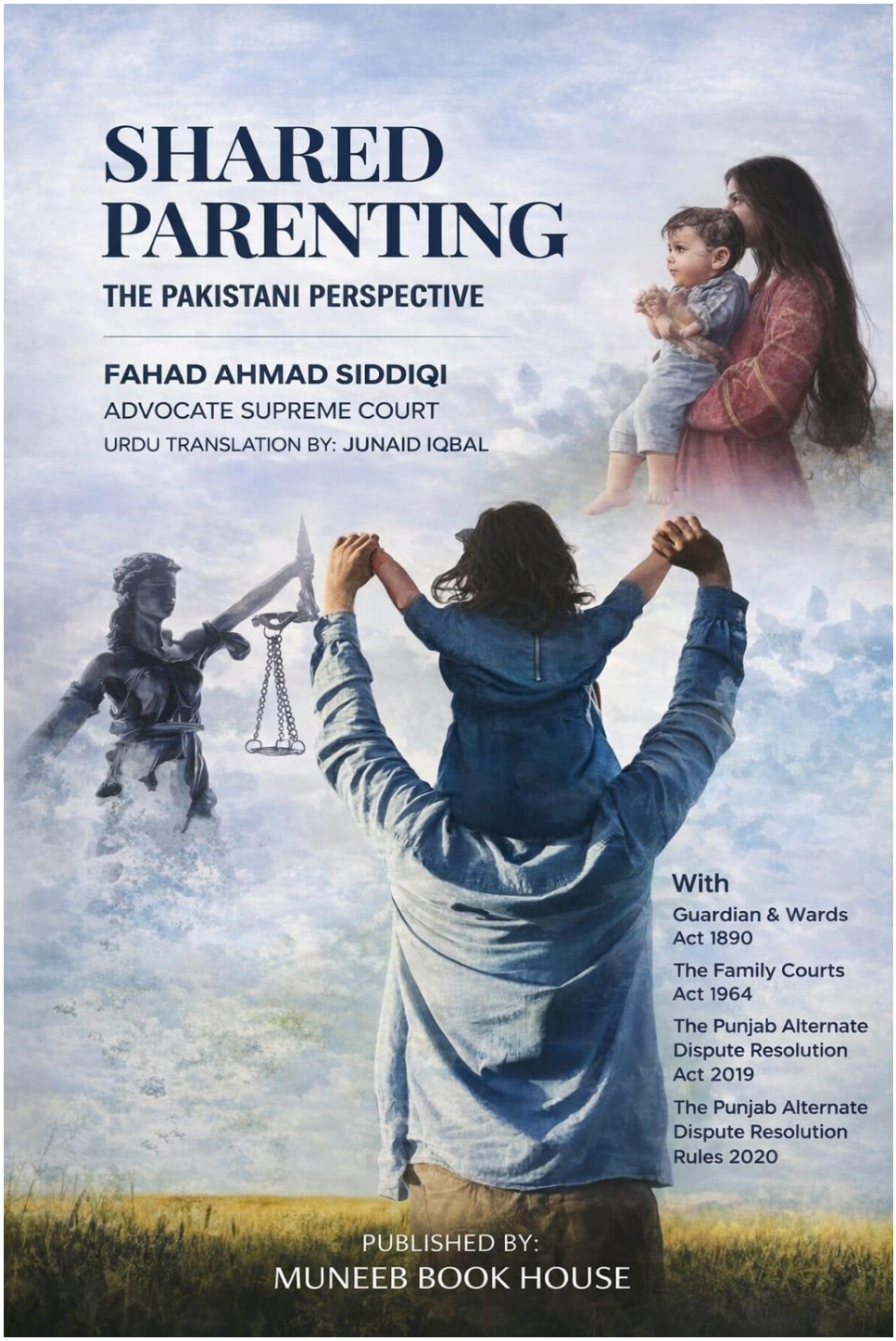
SHARED PARENTING
THE PAKISTANI PERSPECTIVE
FAHAD AHMAD SIDDIQI
ADVOCATE SUPREME COURT
URDU TRANSLATION BY: JUNAID IQBAL
With
Guardian & Wards Act 1890
The Family Courts Act 1964
The Punjab Alternate Dispute Resolution Act 2019
The Punjab Alternate Dispute Resolution Rules 2020
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بسم الله الرحمن الرحيم

Shared Parenting

Shared Parenting-

The Pakistani

Perspective

BY

FAHAD AHMAD SIDDIQI

Advocate Supreme Court

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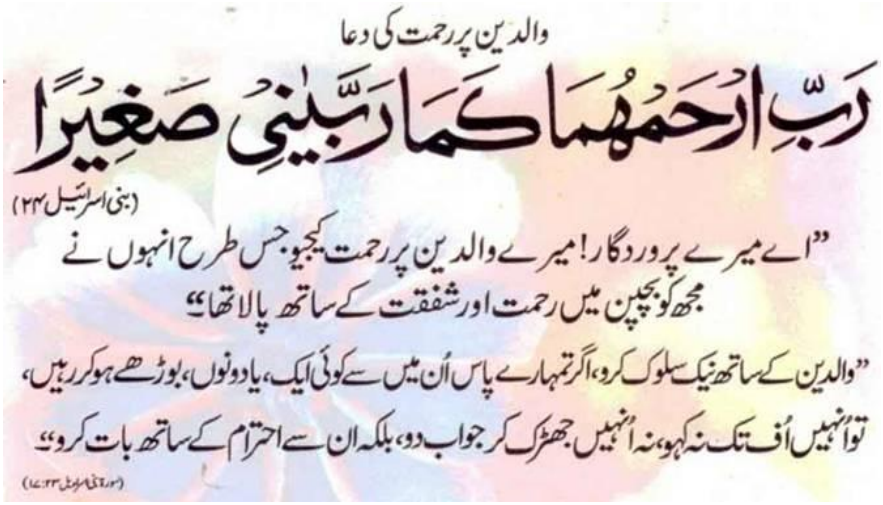

“My Lord, have mercy upon them as they brought me up [when I was] small.”

In Loving Memory of My Father

My Father was a person who was loving & Kind,
And often he knew what had been on my mind!
He was a person who used to defend,
My father was my one & only best friend!
He held my hand & Joyed my success,
But when I went wrong, he hid my abscess!
For all what I do today, my father laid the base.
Forever in my heart there is always his place!
Every Passing day increases, my gratitude towards you,
I feel humbled & proud to call you my Abbu!
Thank you Abbu you stood by me, when i was a small plant
You nurtured me to become a tree and pay back my part
Thank You Abbu, for all you did & for listening and caring
It's because of you, i do believe in giving and sharing!!

By
(Fahad & Beenish Fahad)

Fahad Ahmad Siddiqi: Pioneer of At-Home Visitation Rights and Reformist Voice in Pakistan's Child Custody Jurisprudence

Fahad Ahmad Siddiqi, Advocate of the Supreme Court and High Courts of Pakistan, stands as one of the most influential and reform-oriented voices in the evolution of child custody jurisprudence in the country. With over two decades of dedicated and specialized practice in family law, he has not only litigated complex and precedent-setting cases but has also fundamentally challenged and reshaped the conceptual foundations upon which custody and visitation rights have historically been determined in Pakistan.

This book, Shared Parenting: The Pakistani Perspective, must be understood against the backdrop of that lifelong commitment. It is not merely a scholarly work it is the crystallization of years of courtroom advocacy, intellectual engagement, and reformist vision. As the first comprehensive and indigenous work on shared parenting in Pakistan, it introduces a paradigm that moves beyond adversarial custody battles toward a model rooted in cooperation, continuity, and the holistic welfare of the child.

Practicing primarily before the Lahore High Court, Fahad has built a formidable reputation for principled, strategic, and jurisprudentially innovative advocacy in custody and guardianship disputes. His work has consistently focused on restoring balance within a legal system that has traditionally marginalized non-custodial parents particularly fathers by confining them to minimal, mechanical, and often dehumanizing forms of access. In doing so, he has reoriented judicial discourse from a framework

of parental entitlement to one centered on the child's right to sustained, meaningful relationships with both parents.

Among his most significant and enduring contributions is his role as the pioneer of at-home visitation rights in Pakistan, including the recognition of regular, structured, and overnight stays of minors with the non-custodial parent. Prior to his intervention, visitation in Pakistan was largely restricted to court premises or brief, supervised meetings in public spaces environments inherently incapable of fostering genuine parental bonding. Through persistent litigation and doctrinal articulation, Fahad introduced a transformative legal proposition: that true parental access must occur within the natural setting of a home, where a child can experience routine care, emotional security, and an authentic sense of belonging.

This concept of at-home visitation rights comprising frequent, structured, and overnight stays of minors at the residence of the non-custodial father once entirely alien to Pakistan's family jurisprudence, has gradually gained judicial recognition and is now influencing how courts conceptualize and structure visitation regimes. It signifies not merely a procedural innovation, but a fundamental reorientation of the welfare principle itself: shifting from artificial, time-bound access toward a model that acknowledges the child's need for continuity, emotional security, and a lived parental relationship within a natural home environment.

Fahad's academic and intellectual foundations were laid at Aitchison College Lahore, Government College Lahore, and the University Law College, University of the Punjab. Enrolled as an Advocate in 2002 and elevated to the High Court in 2004, he has since remained exclusively devoted to family law a rare specialization that has allowed him to develop deep doctrinal insight and practical expertise in custody, guardianship, and visitation matters.

As a legal scholar, his contributions extend far beyond the courtroom. He has authored 23 published articles on child custody, engaging with Pakistani statutory law, Islamic jurisprudence, and international human rights frameworks in a manner that is both analytically rigorous and reform-oriented. A substantial portion of his scholarship has been published on leading legal platforms such as CourtingTheLaw.com, Pakistan Law Site, and PLD forums that are widely consulted by practitioners, judges, and academics alike.

His internationally recognized article, “Meeting Their Parents: A Right Always Ignored for Divorce-Affected Parents,” featured in the Routledge International Handbook of Shared Parenting (2021), situates his work within the broader global movement toward shared parenting and child-centered custody regimes, while simultaneously projecting Pakistani legal thought onto the international stage.

He is also the author of three seminal books:

Guardian Laws and Non-Custodial Fathers (vernacular)

Shared Parenting and Pleadings

Shared Parenting: The Pakistani Perspective

These works are not merely descriptive they are prescriptive. They provide courts, practitioners, and policymakers with a coherent framework for reform, while simultaneously empowering parents with knowledge and legal clarity. In particular, Shared Parenting: The Pakistani Perspective represents a doctrinal milestone: a bold articulation of how shared

parenting can be harmonized with Pakistan's legal system, cultural context, and Islamic principles.

Fahad is further credited with introducing and mainstreaming critical concepts within Pakistan's legal discourse, including Parental Alienation Syndrome, quasi-parental jurisdiction, and the application of therapeutic jurisprudence in family courts. He has been a consistent advocate for the reform of the Guardians and Wards Act, 1890, calling for the incorporation of psychological assessments, child-inclusive processes, and a departure from rigid adversarial models toward a more empathetic, welfare-driven approach.

At the core of his jurisprudential philosophy lies a simple yet profound proposition: children are not subjects of custody they are holders of rights. Their emotional, psychological, and developmental needs must guide every judicial determination. He urges courts to act in loco parentis, not merely adjudicating disputes between parents, but actively safeguarding the child's holistic well-being by ensuring the continued presence and involvement of both parents in their lives.

Beyond legal doctrine and courtroom advocacy, Fahad's work resonates deeply with the lived realities of families. For countless parents particularly those sidelined by conventional custody arrangements his efforts have restored not only access to their children but also dignity, purpose, and hope. His voice has become synonymous with a movement that seeks to humanize family law and align it with the fundamental truths of child development and parental responsibility.

In this context, Shared Parenting: The Pakistani Perspective is more than a book it is a call to rethink, to reform, and to realign Pakistan's family law

with the best interests of its children. And at the heart of this call stands Fahad Ahmad Siddiqi: advocate, scholar, and architect of a more just and compassionate future for families in Pakistan.

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FOREWORD TO SHARED PARENTING – THE PAKISTANI PERSPECTIVE

Twenty-two years ago, shared parenting was considered a questionable parenting arrangement when a marriage dissolved. Now, with shared responsibility by both parents having become a widely accepted alternative, the debate has shifted toward examining what circumstances make it workable and the extent to which responsibility should be shared.

I am delighted to write the forward for the second edition of Shared Parenting, The first edition of my book was Shared Parenting & Pleadings, was published in 2021, set the agenda for law reform and research on the effects of joint &shared custody. The initial volume reported on preliminary data from the small research samples then available and surveyed existing law. Benefiting from the studies that have been conducted since then and from new legal developments, this second edition--completely revised and updated to encompass the wealth of new research, literature, Law and case laws--represents the collective knowledge of child developmental experts, therapists, mediators,

researchers, judges, and lawyers.

Chapter I provides an introduction and legal framework of family laws in Pakistan and an overview of the history of child custody and considerations for and against. Chapter II, focusing on the historical evolution of concept of shared parenting, in the light of international human rights law. Chapter III reports the distinction between the two parallel concepts of Custody and Guardianship and the nature of jurisdiction that a Family / Guardian Court while acting as a loco parentis exercises while adjudicating a child custody dispute. Chapter IV explores the distinction between permanent, interim and temporary custody. This Chapters examine findings on co-parenting two years after divorce, compare joint custody with maternal and paternal sole custody arrangements, and discuss the effects of custody arrangements on preschool children, child support payments, and ongoing post-divorce conflict also suggests a better schedule of at home visitation for children less than 24 months and also for children above the age of 36 months and older

In Chapter V, this Part explore trends in the law, judicial preference for one type of child arrangement over another, and discuss mediation and alternate dispute resolution arrangements that Pakistan has undertaken. Also included is discussion of Province of Punjab' alternate dispute resolution statute and Pakistan's legal perspective.

Chapter VI, deals with the subject of role of judicial academies for failing to impart appropriate and adequate trainings to the judicial officials pertaining to the therapeutic nature of family jurisdiction that they are expected to exercise as a Family / Guardian Courts across the country. In Chapter VII, the doctrine of Writ of Habeas Corpus as is exercised in Family Jurisdiction is discussed at a length. Chapter VIII discusses the myths and truths about shared parenting, UNCRC and International approach to shared parenting, whereas Chapter IX deals with the subject of Parental Alienation, child abuse and various signs and markers of parental alienation syndrome. In Chapter X, the need for psychiatric & psychological evaluation of parents is discussed and lastly the need for using child development research to make appropriate custody decisions is discussed. This book also contains 15 articles written by the Author from

time to time. The book concludes with ten helpful appendices: all statutory enactments and key cases on joint custody and shared parenting; and a sample joint-custody agreement with alternative provisions to suit different circumstances. There is also an extensive bibliography.
The book contains specific chapters dealing with family laws, child's access management, parental alienation, welfare of minor and needs for reforms in family jurisdiction. He vividly brings out the complexities of the issues involved and possible way forward.

This is a pioneering book which is likely to bring together seemingly different domains of study, but which, in the ultimate analysis, are very closely intertwined.

It is my expectation that this text will provide an effective learning experience and become a referenced resource for students and professionals working to secure the best interest and welfare of minor and reduce known and unknown threats with this developing knowledge.



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Preface

The present book embodies the articles which I have written on the subjects covering different aspects of child custody litigation, in the course of twenty-one years. While consolidating them into the form of a book, I have kept in view the needs of two classes of audience. The universal concept of child custody litigation incorporated herein may prove useful not only to young generation preparing for academicals and professional practice, but also to the majority of elderly individuals engaged in child custody litigation on account of having differences with their spouses. Moreover, both these classes find it essential, to familiarize and acquaint

themselves with the therapeutic nature of the Law of Visitation with their offspring.

I have aimed at making the range of topics concise and simple, what may be grasped upon at first perusal, even by those who are not familiar with the therapeutic nature of child custody law. On the other hand, I have tried to treat each individual topic with such totality as to fix it effectively in the reader's memory. Yet the susceptibility of his memory may very well depend (as all articles soon discover) upon the extent to which the matter in hand arouses his interest.

Fortunately, the law of Family – when once the preliminary difficulties attendant upon the chaotic form which it still retains in Pakistan have been faced and surmounted- is a branch of jurisprudence peculiarly capable of being rendered interesting. It is closely linked with psychology, ethics, history, politics and philanthropy.

My endeavor has been to provide illustrative examples that may give vividness and reality to the abstract principles of our Family Law; and to further on explain its connection with the past, the various anomalies which still encumber it; and more-over, to suggest the most important controversies—psychological, social and judicial- likely to arouse in the near future. Partly for the last mentioned purpose, and also because of their importance for present day practices which seems greater to me than usually perceived, I have given more than usual prominence to the subjects of at Home Visitation, Shared Parenting and obligations of a Family Court.

Dedication:

I have incurred many debts in writing this book. Some chapters make use of material which I have published in one form or another in earlier articles. I am grateful to the editors and administrators of Courtingthelaw.com legal web portal, for their kind permission to make use of the material published on their web portal,

The biggest debt of all is owed to my family, especially my wife who has never wavered in her support and encouragement, even at times when it appeared to me that the book would never be completed. My darling daughter Fatima who uncomplainingly tolerated a father mostly disappeared into the study room at weekends and holidays for far longer than he should have done.



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ACKNOLEDGMENTS

The world is a better place thanks to people who who want to develop and lead others. What makes it even better are people who share the gift of

their time to mentor future leaders. Thank you to every one who strive to grow and help others grow. To all the individuals I have the opportunity to lead, be led by, or watch their leadershop from afar, I want to say thank you for being the inspiration and foundation of Shared Parenting- The Pakistani Perspective.

There are plenty of people who helped bring this book to fruition, and I am grateful to all of them. Once this book started to go from concept in my head to a manuscript, there were many people involved who deserved to be acknowledged and thanked. My rough draft was very rough; I almost threw it away. Than I reached out to my associates; Advocates Shahzad Farooq Ch, Moazzam Ali, Ms. Farhat Yasmeen, Ms. Ansa Yasin, Ms. Maira Raza, Momin Ali Khan, Fahad Shabbir, Ali Hassnain Sargana and Mohammad Ali Siddiqi. Their ideas and suggestions helped me get a manuscript that made me say, Yes, it's finally a book. The next step was to have an Urdu Translation of the earlier version i.e. Shared Parenting & Pleadings, and I want to give a shout out to my friend and brother Junaid Iqbal who despite having a grueling academic schedule and the quick deadlines that we face, he took this project on with enthusiasm and precision and made the translation in vernacular significantly better than what it would have been had I written it alone. Also I thank your children for supporting you on this project.

Thank you Advocate Waseem Baig, your help was instrumental in launching my writing carrier.

Thank you Khalid Mehmdood, Fahad Aziz and Faisal Mehmood, withoiut your unconditional support, this book never would have come to be.

I'd like to express my gratitude to my friend and Advocate Mian Mohammad Rauf and Lt. Col. Mohammad Wasiq Khan, my brother and an esteemed advisor, for all their guidance, support, and instruction they have provided me throughout for their proof reading, comments and suggestions that greatly improved the text. This book is dedicated to all of them with my affection, humbleness and gratitude



Fahad Ahmad Siddiqi

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Shared Parenting- The Pakistani Perspective

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97. Urdu Translation of Shared Parenting 1st Edition

بسم الله الرحمن الرحيم

SAHIH HADITH OF HOLY PROPHET

(صلى الله عليہ وآلہ وسلم)

(Peace and blessings of Allah be upon him)

A man came to Allah's Messenger (صلى الله عليہ وآلہ وسلم) and said,

"O Allah's Messenger (صلى الله عليہ وآلہ وسلم)! Who is more entitled to be treated with the best companionship by me?"

The Prophet (صلى الله عليہ وآلہ وسلم) said, "Your mother."

The man said. "Who is next?" The Prophet said, "Your mother."

The man further said, "Who is next?"

The Prophet (صلى الله عليه وآله وسلم) said, "Your mother."

The man asked for the fourth time, "Who is next?"

The Prophet (صلى الله عليه وآله وسلم) said, "Your father. "

Sahih al-Bukhari 5971; In-book Reference: Book 78, Hadith 2; Reference: Vol. 8, Book 73, Hadith 2

بسم الله الرحمن الرحيم

1- Need for the book

Here is a list of practical problems faced related to child custody and visitation by fathers:

In many cases, the child is taken by mother to her native place, and being far away the father is deprived not only of physical contact with child but he is usually not allowed to allow even telephonic or online communication with child by mother.

A general problem is that lawyers discourage non custodial parents to file for child custody or at home equal visitation rights giving various reasons like "child is very young", "child custody is usually given to mother", "we will handle other cases right now", and so on. What is not informed to father is that the longer he delays (or doesn't file a case at all), at later stage the same can be used as a reason against him from giving him meaningful access/interim custody or visitation of child. However, the interesting thing is that if the situation is reversed in the sense that mother has left the child and father had been raising the child alone, the mother can approach court even after a gap of 1-2 years and able to get full custody of child easily or get meaningful shared custody rights. It reflects the societal and judicial mindset of considering mother's presence as very important for child's upbringing and father's role being more important as a financial provider for family. That attitude is not going to change overnight, and possibly may not change at all. So the focus should be to consider those logical points where some sense can be hammered back into the legal system that keeping father out of child's life is not in paramount or any kind of interest of child's best welfare.

Many fathers assume that the separation between wives and them may get sorted out over a period of time, and combined with discouragement by lawyers they delay filing any case whatsoever. As pointed above, fathers are not given a sympathetic hearing which mothers get if they delay asking for child access or custody. Also a general scare factor is there that the "family laws are women centric" so people are unable to understand that child custody law is not about women, it's just a myth (even if a convenient one) that custody decisions will automatically go in favour of women.

The fact is that the custody decisions are given in favour of mothers mainly because of the following reasons:

Due to practical reasons of mother/child in different city, they don't want father to meet or contact child, and all these combined with the fact that fathers are not filing GWC case asking for any kind of access with child, e.g. time during vacations where they can take child with them to their own city.

Even if child and mother are in same city as father, most fathers don't file a case in time, and that itself results in various other circumstances including possible alienation of child from father that it becomes a self-fulfilling prophecy. Later the same reasoning is used by courts that the child is not comfortable in the company of father (which can be 'arranged' too) so interim custody cannot be given to father. When a father is not being allowed to meet his child, then merely hoping won't work and courts cannot grant any relief unless an appropriate relief is asked for under the appropriate act (Guardians and Wards Act is the appropriate law for asking child custody or even proper visitation rights).

In cases there are other cases pending in court between the couple pertaining to return of dowry, maintenance allowance etc, many fathers spend their energies to prove to the court about ill-behaviour and false cases allegations alleged by wife, whereas the child custody decisions are not made based on what false allegations (since anyway as yet not having been deemed as false by court) and mental cruelty the wife has been inflicting on husband. Fathers need to highlight child welfare as the main focus of their arguments and bring in all specific wife's behaviours to notice of court to the extent that such behaviour is also against child's well-being and welfare. E.g. if wife is in habit of threatening suicide attempts often, then the argument can be made in court that such behaviour patterns of wife will definitely make her not a fully fit parent, leave alone her responsiblity of becoming a sole/single parent to a child in case of sole custody given to her. The focus on child welfare has to be brought in, merely highlighting wife's irresponsible or cruel behaviour won't be enough for court to automatically grant reliefs. At least that is the current situation. In future maybe a framework can be evolved (preferably in law) where child custody decisions according to framework based on which facts are proven true about each parent.

As of now the ad hoc process seems to be that by default child custody is with mother so that cannot be disturbed unless very strong evidence is brought against her fitness to be a sole custodian and guardian of child, but if a father has the custody of child, then mother can come at a later point

of time and get meaningful custody of child based on the fact that she is a mother and courts deem it very important for mother to be part of child's life. This is also because of the current legal regime of child custody laws where there is no concept of shared guardianship of child, with the regime being that one parent gets full custody and other parent gets visitation rights. But it is already changing quickly based on what is seen in individual cases for those fathers who fight persistently in court for shared custody etc.

Further in the book we will consider the child custody aspect from various angles listed below:

Brief discussion on laws related to child custody and how child's welfare has emerged as the main point of deciding on access to the child. So the focus will be on highlighting how the point of child welfare gets decided by courts. For this reason, focus will be mostly on judgments rather than bare acts related to custody since the judgment precedents are already set which tend to overrule the statutory points in custody/guardianship laws.

Judgments highlighting visitation decisions whether in favour of mother, father, or both parents having joint custody, as has started to happen in last few years.

Come up with practical suggestions on how to get shared child custody, interim custody, visitation etc depending on various practical circumstances depending on child's location, ongoing cases and allegations among couple, and so on.

Come up with practical points in filing GWC case, both with regards to points about father's role, as well as what kind of custody or shared custody to ask for.

Discuss shared parenting, and whether it already contains good recommendations or the laws of custody need further modifications before laws of guardianship and custody are amended by parliament.

1-A. Introduction

With rapid social and economic change in our society, conjugal and familial relationships are becoming more complex with each passing day, and so are the conditions for their dissolution. As these social changes are affecting family life and there is a dire need to update the laws governing family relationships during and after marriage. At present, our

legal framework for child custody is based on the assumption that custody can be vested with either one of the contesting parties, and suitability is determined in a comparative manner. But just as the basis for dissolving marriage has shifted over time from fault-based divorce to mutual consent divorce, we need to think about custody differently and provide for a broader framework within which divorcing parents and children can decide what custodial arrangement works best for them.

Judicial attitude towards custody proceedings has evolved considerably, but despite this evolution of judicial attitude, we have ignored the idea that, under certain favourable circumstances, the welfare of the minor could also be ensured by securing simultaneous association with both parents. Since there is no inherent contradiction between pursuing the welfare of the minor and the concept of shared parenting or custody, the law needs to provide for this option, provided certain conditions are met.

I fully understand that the time has come to give up the archaic mindset that our judiciary has adopted since the British era to think that a single parent is better than the other one to take care of the child. The Guardian and Wards Act, currently applicable in Pakistan, was passed in 1890, almost 134 years ago. The Family Courts Act 1964 was passed by the Parliament of Pakistan almost 60 years ago, and since then, society has been evolving at a fast pace. Contemporary Pakistan is adopting new ethos and concepts. In comparison to 1964, when the Family Courts Act was passed, Pakistani women were not as career-oriented, as of now, the majority of Pakistani women belong to the working class, earning their own livelihood and protecting their rights and self-esteem. The standards set primarily back in 1890 by the British Era and later on in 1964 by the Pakistani Parliament cannot be applied directly to the litigants of this globalised 21st century, where the majority of the litigants live in metro cities like Lahore, Karachi, and Islamabad. Therefore, now the time has come to change our mindset of finding out who the better parent is and rather to adopt a new thinking as to find out how these two parents can behave responsibly and work collectively to give their child the best from both of them. Keeping in view the observations made by the superior courts of Pakistan in multiple judgements, for example, in the case of Haq Nawaz Vs Zeba Rashid cited as 2023 YLR 816 Peshawar, Honourable Peshawar High Court held that Such was inherent right of parents to have visitation rights with his/her children and depriving any of the spouse of

such visitation rights would have an effect on the personality of the child/minor. Minor was to carry parentage with her throughout her life and such relation would remain throughout as neither Islam nor land laws allowed such renunciation. The High Court did not appreciate the order of Family Court returning the gift given by the petitioner. High Court directed Family Court to pass an interim order allowing visitation rights to petitioner and thereafter to chalk out a comprehensive plan pertaining to the visitation rights and other obligations. Whereas in Saima Nazir Vs Guardian Court No. IV Lahore cited as 2023 PLD 433 Lahore, the Honourable Lahore High Court has held in unequivocal terms to the effect that Provisions of Mental Health Ordinance, 2001, do not contradict and repeal the provisions of S. 5 read with Entries Nos. 5 and 6 of Part I of the Schedule to the Family Courts Act, 1964 to take away jurisdiction of the Family Court in disputes amongst parents regarding guardianship and/or custody of minors who are suffering from any mental disability--- Overriding effect of the Mental Health Ordinance, 2001, as provided in S. 60 thereof, is limited to cases of conflict. Likewise, in Shahida Adnan vs. Additional District Court, cited as 2021 YLR 1915, Lahore has held the view that a father could not be denied the right of access to his minor daughter, nor would he be considered an alien or enemy to her. Minors not only needed the love, affection, care, and attention of a mother but also the company and guiding hand of a father. Negating the father's right to meet his daughter would lead to emotional deprivation. The Honourable Lahore High Court in the case of Sughran Bibi vs. Munawar Akram, 2019 MLD 2036, has observed, “that the rights, if any, of the parents are to be given a second place, and the child’s welfare will always be the key consideration. The welfare of the minor or child includes, but is not limited to, his health, education, physical, mental, and psychological well-being, as well as his development". As earlier in the case of Mst. Ayesha Shahid vs. Additional District Court and others (2018) MLD 1592 Lahore, the Honourable Lahore High Court laid emphasis on the fact that the welfare of minors was a prime consideration before the Court. Admittedly, the respondent was the father of the minor, and being the natural guardian, he had the right to his supervision under Islamic law. Therefore, on separation of the parents, the minor could not be permanently deprived of the love and affection of either of the parents. Similarly, the Honourable Division Bench of the Balochistan High Court in Abdul Khaliq vs. Ms. Mah Noor and others, 2018 PLD 44 Quetta, held that neither the father nor the minor

could be deprived of the company of each other. Father, being the natural guardian, was not only required to participate in the upbringing of the minor but should also develop love, bondage, and affinity with her. To achieve such a purpose, the court was to facilitate a congenial, homely, and friendly environment and a reasonable visitation schedule. The Office of the Guardian Court, or the Office of Civil Nazir of the Court, for the said purpose, was neither conducive nor effective, lacked proper facilities and arrangements, and was not comparable to a homely environment. A meeting on court premises could not serve the purpose of the meeting, and it was not in the interest or welfare of the minor to hold a meeting on court premises. Meetings of the minor with the father, preferably, were to be held at the residence of the father.

And in the case of Jehangir Siraj Dogar vs. District Court, 2021 YLR 1299 Lahore, it is held by the Honourable Lahore High Court to the effect that the Lower Appellate Court rightly observed that since both parties were at daggers drawn, it could not be ruled out that minors would have been subjected to some brain washing against their mothers. Once children reached the age of discretion, custody matters were to be disposed of in terms of their wishes, which itself would constitute their welfare. To deprive a mother of meeting minors was not only harsh and cruel but was also against the welfare and interests of minors, who would further be influenced and brainwashed against their mother and not be able to develop any bonding with her.

Whereas in the case of Imran Butt vs. Mehreen Imran, 2015 CLC 1209 Sindh, the Honourable Sindh High Court stated that "father and mother both were working parents, therefore, had equal right to have temporary custody of minors. The minor daughter was at a tender age, and she required the love and care of both parents. Father was entitled to spend some time with her daughter at his house during summer vacations.

And in the case of Mst. Aliya Fazil vs. Mirza Farhan Rubbani, 2013 MLD 1631 Lahore, the Honourable Lahore High Court observed that a father could not be denied the minimum right of access to his minor children, nor would he be considered an alien enemy to them. A child would need the love, affection, care, and attention of a mother, as well as the love, affection, company, and guiding hand of a father. Depriving a father of his right to meet his children would lead to emotional deprivation on both sides.

Whereas in Mst. Maryam Masood vs. Mughisuddin Mirza and other 2009 CLC 1443 Lahore, the Honourable Lahore High Court observed, "Cases pertaining to custody or visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil rights and obligations, such as property disputes, etc. These cases have their own dimensions, repercussions, and consequences, founded upon human emotions and sentiments. The resolution and adjudication of this special kind of matter, therefore, should be conceived, considered, and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time, the natural feelings of the parents cannot be overlooked and ignored; if the parents mean something great for a child, the child may also mean the whole world for the parents. In such cases, therefore,

Putting all these facts together, contemplate that, regarding the visitation schedule, neither the mother nor the minor should be altogether deprived of complete custody if she has the lawful custody of the minor until her right of custody terminates on account of the court's order or otherwise. Nor should the father be deterred and prevented from meeting and seeing his own child, with whom, in a normal situation, he shall have free access and interaction and could shower his love and affection if the relation between the parents was normal; this is also the true position, vice versa.

The third important character is the child himself, who, under the law of nature, should have the privilege of the love and affection of both parents, which is one of the greatest blessings of God Almighty. But if, for certain reasons, the parents, on account of their discord and disparity, have parted ways, the child should not be deprived of having the maximum of what he or she could have achieved from either of the parents. And it is not rightful of the adversary parties, who may have ill feelings towards each other, to claim exclusive possessory rights over the child to the exclusion of the other, as one could demand in the matter of the property dispute, etc.

Besides, it may be clearly understood that the father is the natural and legal guardian under the Islamic Personal Law, and the right of mother to "Hizanat", in the case of a male child, terminates around the age of seven years (this observation, in no manner, shall be construed as causing any prejudice to either party on the issue of a minor’s custody), which has nexus and must be kept in view while considering the question

of visitation.

The father, once the child has passed the age of seven years, must have maximum interaction with the minor, even if the custody is with the mother, but this again should be subject to the rule of welfare of the minor; if for any reason it is against the noted principle, the court should either restrict the visitation or even decline it. If otherwise, preventing the minor from meeting his father may cause estrangement, prejudice, psychological intricacy, and cobwebs in the mind of the child, which may ultimately prove to be a pivotal vice and a shortcoming in the growth of his personality on the count that he, at the appropriate time, could not secure sufficient love, affection, and company from his father, which a normal child would enjoy otherwise.

It is a matter of concern that it is quite unnatural and rather harsh to hold that though the father is the legal and natural guardian of the minor and holds the right of his supervision under the Islamic law as well, he still has to wait for a week, a fortnight a month, or even more than that in certain cases, to meet his son for the very reason that the custody under the court's order or otherwise is with the mother or the matter is sub judice. This is true for the mothers as well, who are the de facto guardians of their children, keeping the child in their womb for 9 months and undergoing the labour pains and rigour of feeding, nurturing, and raising them; a child is a part of their flesh, and it is for this reason that in Islam the Paradise is said to be laid underneath the mother's feet. One is really shocked, dismayed, disappointed, and disgusted to see that in the Family/Guardian Courts, the parents are kept waiting to meet their own children, the opportunity they might have secured after struggling for weeks, months, or even years, and which may last only for not more than an hour or so. The food, clothes, sweets, and toys brought by them are sometimes not even accepted or are thrown away by the child because he may have been told not to take those by the custodial parent he was brought with, which, coupled with the staring of the adversary party, may also spoil the pleasure of such a short meeting. The Court should be liberal 'in chalking out the visitation schedule of the minor with the parents, obviously keeping in view his or her welfare, and in the instant case, only two factors have been indicated against the above principle. Firstly, there is a stepmother in the house, and secondly, there is not enough accommodation enabling the child to study, and/or on account of his night custody with the father or full 10-day visitation, his tuition and study shall suffer.

Stepmother is not always a lady Macbeth, a witch, or an evil figure, and it cannot be presumed in law that she shall always have dislike, hatred, and disaffection towards the minor, until and unless there is strong proof in this regard.

It is observed by the Honourable Lahore High Court in Mst. Ayesha Shahid vs. Additional District Court and Others, 2019 PLJ 484 Lahore, that irrespective of the fact whether the application before the learned Guardian Court is under Section 12 of the Guardian & Wards Act 1890 for interim custody of the minor or under Section 25 of the Act ibid. for permanent custody of the minor, the only consideration that requires to be adhered to by the learned Guardian Court is the welfare of the minor and nothing else. The minor, in the present case, had crossed the age of six years; therefore, he should have maximum interaction with the father, even if the custody is with the mother; otherwise, it may cause an estrangement in the mind of the child, which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection, and company from his father. In order to achieve such a goal, the court made every possible effort to chalk out a reasonable visitation schedule in a friendly atmosphere.

2- ISLAMIC INJUNCTIONS ON MAINTAINING KINSHIP TIES

As per the provisions of Verse No. 2, Ayat No. 233 of the Holy **Quran**, no parent will be subjected to torture for his being the parent of a **child**. The said provision is reproduced here to below for the perusal:

AYAT OF SURA AL BAQRA

Translation as per Mushin Ali

The mothers shall give sucking to their **children** for two whole years, that is, for those parents who desire to complete the term of sucking, but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear. **No mother shall be treated unfairly on account of her child, or a father on account of his child.** And on the father's heir is incumbent the like of that (which was incumbent on the father). If they both decide on weaning by mutual consent and after due

consultation, there is no sin on their part. And if you decide on a foster suckling mother for your **children**, there is no sin on you, provided you pay (the mother) what you agreed to give her on a reasonable basis. And fear Allah and know that Allah is all-seeing of what you do.

(**Al-Baqara, Chapter #2, Verse #233**)

Your Lord has ordered you to worship none except him and to be good to your parents. If either or both of them attain old age with you, do not say "fie on you", or rebuke them, but speak to them with words of respect and lower to them the wing of humility out of mercy, and say,'my lord, be merciful to them, as they raised me since I was little. {**Surah al-Isra,juz -15**

But those who break the covenant of Allah after contracting it and sever that which Allah has ordered to be joined and spread corruption on earth—for them is the curse, and they will have the worst home. **Surah al Raad Ayat No. 25**

And let not those among you who are blessed with graces and wealth swear not to give any sort of help to their kinsmen, the poor, or those who left their homes for Allah's cause. Let them pardon and forgive. Do you not love that Allah should forgive you? And Allah is often-forgiving, Most Merciful. **[Sûrah al-Nûr, 24:22]**

...and fear Allaah through whom you demand your mutual rights, and do not cut the relations of the wombs (kinship). [**Surah al-Nisa' 4:1**]

"And give to the kindred his due and to the miskeen (poor)..." **[Surah al-Isra' 17:26]**

But if you turn away, you are sure to cause mischief in the land and cut off the ties of kinship! **Surah al Mohammad 47:22**

Thou wilt not find a people who believe in Allah and the latter day love those who oppose Allah and His Messenger, even though they be their fathers, their sons, their brothers, or their kinsfolk. These are they into whose hearts He has impressed faith and strengthened them with a Spirit from Himself, and He will cause them to enter gardens wherein flow rivers, abiding therein. Allah is well-pleased with them, and they are well-pleased with Him. These are Allah's parties. Now surely it is Allah's party that is successful! **Surah al Mujadila, 58:22**

And I fear my kinsfolk after me, and my wife is barren, so grant me from Thyself an heir—**Surah al Mariyum 19:5.**

"And those who break the Covenant of Allaah, after its ratification, and sever that which Allaah has commanded to be joined (i.e., they sever the bond of kinship and are not good to their relatives), and work mischief in the land, on them is the curse (i.e., they will be far away from Allaah's Mercy); and for them is the unhappy (evil) home (i.e., Hell). **[Surah al-Ra'd 13:25]**

Let the women live (in 'iddat) in the same style as you live, according to your means: Annoy them not, so as to restrict them. And if they carry life in their wombs, then spend your substance on them until they deliver their burden; if they suckle your offspring, give them their recompense; and take mutual counsel together, according to what is just and reasonable. And if you find yourselves in difficulties, let another woman suckle the child on the father's behalf. **Surah al Talaq, 6**:**65**

Surah al Nisa, Verse No. 1, says, "Respect the womb that bore you" (26). Also, Surah Nisa, Verse No. 36, says: "And worship Allah, and join not any partner with Him, and do good to parents."

Surah al'nam, Verse No.151, says, "You have to be kind to your parents."

Again in Surah al Luqman, Verse No. 14, it says the same thing: "We have enjoined on human beings to be kind to their parents. In travail upon travail, did their mother bore them, and in years' twain was their weaning".

A similar thing is repeated again in **Surah al Ahqaf, Verse No. 15:** "We have enjoined on human beings to be kind to their parents. In pain, their mother bore them, and in pain, she gave them birth.

3- Rights of Children

Now let us see the other side of the coin. We have mentioned that the parent-child relationship is reciprocal. The rights of parents (discussed above) are the duties of children. Now let us see what the rights of children (and duties of parents) are in Islam. Children are a trust put in the hands of parents who will be answerable before Allah on the Day of Judgement about their children, as they are enjoined to satisfy their offspring's spiritual and religious urges in order to produce righteous men and women and to be a consolation for the eyes of their parents in both the

present world and the hereafter.

Surah al-Tur, Verse 21 Allah, the Almighty says: "And those who believe and whose families follow them in faith—to them shall We join their families; nor shall We deprive them (of the fruit) of aught of their works; yet is each individual in pledge for his deeds."

Surah al-Tahrim, Verse 6. Allah, the Almighty, says, "O you who believe! Save yourselves and your families from a fire whose fuel is men and stones.

4- AUTHENTIC AHADITH OF HOLY PROPHET (MAY ALLAH BE PLEASED WITH HIM)

It is a well-known Hadith reported in Ibne Majja, one of the celebrated Books of Hadith, that Moawiya bin Maida (God be pleased with him) asked the Holy Prophet (peace be upon him) with whom he should do good. The Holy Prophet (peace be upon him) answered, "Be kind to your mother.". The question was repeated, and the answer was "To your mother. For the third time, the same question was put, and the Holy Prophet (peace be upon him) said, "Do good to your mother. When this question was repeated four times, the Holy Prophet (peace be upon him) replied, "To your father and afterwards to your other relatives. Sahih al-Bukhari 5971, Book 78, Hadith 2

It was narrated by Jabir bin 'Abdullah that a man said:

"O Messenger of Allah, I have wealth and a son, and my father wants to take all my wealth. He said, "You and your wealth belong to your father. Vol. 3, Book 12, Hadith 2291

Whoever would like his rizq (provision) to be increased and his life to be extended should uphold the ties of kinship. (Reported by al-Bukhaari, 5986, and Muslim, 2557)

"Whoever believes in Allah and the Last Day should be hospitable to his guest; and whoever believes in Allah and the Last Day should maintain his kinship ties; and whoever believes in Allah and the Last Day should speak well or remain silent. [Sahih al-Bukhari 6136; Book 78, Hadith 163; Vol. 8, Book 73, Hadith 158]

Narrated Abdullah ibn Abbas: The Prophet (ﷺ) said: If anyone has a female child and does not bury her alive, or slight her, or prefer his children (i.e., the male ones) to her, Allah will bring him into Paradise.

Uthman did not mention "male children". Sunan Abi Dawud 5146, Book 42, Hadith 5127

The Maliki scholar, Al-Dusuki, stated in his commentary on Al-Sharh al-Kabir by Sidi Ahmed al-Dardir: "The father and other relatives are entitled to see to the child's education and upbringing while he is in his mother's custody"; taking care of the child necessarily involves visiting

5- Constitution of the Islamic Republic of Pakistan

Art. 2A. The Objectives Resolution to form part of substantive provisions

The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive parts of the Constitution and shall have effect accordingly.

227. Provisions relating to the Holy Qur'an and Sunnah

All existing laws shall be brought into conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted that is repugnant to such Injunctions.

[Explanation: In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]

(2). Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3). Nothing in this part shall affect the personal laws of non-Muslim citizens or their status as citizens.

In Mst. Zohra Begum vs. Sh. Lateef Ahmad Munawar, cited as **1965 PLD 695 (WP) Lahore**, it has been observed by His Lordship to the effect “that where there is no Quranic or Traditional Text or an Ijma on a point of law, and if there be a difference of views between A'inima and Faqihs, a Court may form its own opinion on a point of law. It would, therefore, be' permissible for courts to differ from the Rule of Hizanat stated in the Text Books on Muslim Law, where there is no Quranic or traditional text on the point. Courts that have taken the place of Qazis can, therefore, come to their own conclusions through the process of Ijtihad, which, according to Imam al-Shafai, is included in the doctrine of Qiyas. Where the rule propounded in different text books on the subject of

Hizanat is not uniform, it would be permissible for the courts to depart from the rule stated therein if, on the facts of a given case, its application is against the welfare of the minors".

In support of this view, reliance was placed on the following questions and answers in Al-Risala by Imam al-Shafai."

"He asked: I have found the scholars in former and present times in disagreement on certain (legal) matters. Is it permissible for them to do so?

"(Shafei') replied: Disagreement is of two kinds; one of them is prohibited, but I would not say the same regarding the other."

"He asked. What is a prohibited disagreement?

"(Shafei') replied: On all matters concerning which God provided clear textual evidence, His book or (a Sunna) uttered by the Prophet's tongue, disagreement among those to whom these texts are" known is unlawful. As to matters that are liable to different interpretation or derived from analogy, so that he who interprets or applies analogy arrives at a decision different from that arrived at by another, I do not hold that disagreement of this kind constitutes such strictness as that arising from textual evidence."

On this view, it would be permissible for courts to differ from the Rule of Hizanat stated in the Text Books on Muslim Law, for there is no Quranic or traditional text on the point. Courts that have taken the place of Qazis can, therefore, come to their own conclusions by process of Ijtihad, which, according to Imam Al-Shafei, is included in the doctrine of Qiyas. It has been mentioned earlier that the rule propounded in different text books on the subject of Hizanat is not uniform. It would, therefore, be permissible to depart from the rule stated therein if, on the facts of a given case, its application is against the welfare of the minor. I am fortified in this view by the instances in which a Qazi finding hardship in the application of a rule of law to which the parties belonged sent the case to the Qazi of another School of Law, which took a liberal view of the matter.

Later, this view was taken up by the Honourable Supreme Court of Pakistan and further elaborated in Mst. Khurshid Bibi v. Baboo Muhammad Amin, **PLD 1967 SC 97**. The Honourable Full Bench observed that "the Fundamental Laws of Islam are contained in the Quran,

and this is, by common consent, the primary source of law for Muslims. Hanafi Muslim jurisprudence also recognises hadith, ijtehad, and ijma' as the three other secondary sources of law. The last two really fall under a single category of subsidiary reasoning, ijtehad being by individual scholars and ijma' being the consensus of scholars who have resorted to ijtehad in any one age". This is the order of priority in their importance, as is clear from the well-known hadith relating to Muadhibne Jabal, who was sent by the Prophet as Governor and Qazi of Yemen. The Prophet asked him how he would adjudicate cases. "By the Book of God", he replied. "But if you find nothing in the Book of God, how? "Then by the precedent of the Prophet". "But if there is no precedent? "Then I will diligently try to form my own judgment." On this, the Prophet is reported to have said, "Praise be to God who hath fulfilled in the messenger sent forth by his apostle that which is well-pleasing to the apostle of Allah".

Honourable The full bench further held that the Holy Qur'an, which is the embodiment of divine will, is the fundamental source of Islamic laws. The laws in it are decrees and commandments of divine origin and not only have super-eminence over other sources of Muslim law but cannot be changed or altered by human agency. Verse 2:229 falls into the category of Qur'anic law. Ahadith comes next in importance. The Hanafi Muslim Jurisprudence recognises ijtehad and ijma as the remaining two sources of Islamic Laws, but they are subsidiary reasoning really falling under a single category, ijtehad being by individual scholars and ijma' by consensus of scholars indulging in ijtehad in any one period. The opinions of jurists and commentators stand on no higher footing than the reasoning of men falling in the category of secondary sources of Muslim law and cannot, therefore, compare in weight or authority with or alter the Qur'anic law or the Ahadith. If the opinions of the jurist's conflict with the Qur'an and the Sunnah, they are not binding on courts, and it is our duty, as true Muslims, to obey the word of God and the Holy Prophet (Ati-ullah-wo ati-ur-Rasool).

Observed further, the four orthodox schools of Sunni fiqh were headed by Imam Abu Hanifa, Imam Malik, Imam Shafei, and Imam Ahmad bin Hanbal. The learned Imams never claimed finality for 'their opinions, but due to various historical causes, their followers in subsequent ages invented the doctrine of taqlid, under which a Sunni Muslim must follow the opinions of only one of their Imams, exclusively, irrespective of whether reason be in favour of another opinion. There is no

warrant for this doctrinaire fossilization in the Quran or authentic Ahadith.

Later, the Honourable Lahore High Court in Lt. Col. (r) Ijaz Ali Khan Vs Mst. Shaheen cited as **1993 CLC 2088 Lahore**, observed that "while interpreting and enforcing the law in vacant areas the Islamic principles of law are to be applied".

6- Legal Framework

The law governing custody of children is closely linked with that of guardianship. Guardianship refers to the bundle of rights and powers that an adult has in relation to the person and property of a minor, while custody is a narrower concept relating to the upbringing, day-to-day care, and control of the minor. The term 'custody' is not defined under any Pakistani family law, whether secular or religious. The term 'guardian' is defined by the Guardians and Wards Act, 1890 (hereinafter, GWA) as a "person having the care of the person of a minor or of his property or of both his person and property. Another term used by the law is 'natural guardian,' who is the person legally presumed to be the guardian of a minor and who is presumed to be authorized to take all decisions on behalf of the minor. The legal difference between custody and guardianship (or natural guardianship) can be illustrated by the following example: under some religious personal laws, for very young children, the mother is preferred to be the custodian, but the father always remains the natural guardian.

(i) Guardians and Wards Act, 1890

The law pertaining to guardianship and regulating the custody of children in Pakistan is known as the Guardians and Wards Act, 1890. The primary consideration in guardian courts while granting custody of minors to either parents or sometimes grandparents or other relatives is the welfare of the minor. The said law is the main mode of attaining custody of children. In a guardian/custody proceeding pending adjudication in a family/guardian court, there are three parties to the said proceedings: the custodial parent, the non-custodial parent, and the minor.

(ii) Guardian & Wards Act 1890 is divided into four chapters.

The first **chapter (sections 1–4 A)** deals with certain preliminary matters, such as title, extent, commencement, savings, definitions, and

powers to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

Section 4(2) defines the term guardian as "a person having the care of the person of a minor or his property, or of both his person and property". It must be pointed out that anyone having the care of a minor is defined as a guardian, and the word custody or custodian is not a term defined by the Guardians Act. The word custody is used in sections 12 and 24 of the Guardians Act while empowering the court to require a person having custody of the minor to produce the minor before the court and for purposes of making a temporary custody arrangement in relation to the minor pending adjudication of a guardianship claim before the court. There is no other provision in the Act that contemplates the award of custody of the minor on a permanent or semi-permanent basis to a person who is not otherwise appointed as a guardian of the minor.

Chapter 2 (sections 5–19) deals with the appointment and declaration of guardians. A large number of questions have arisen with reference to certain provisions contained in this chapter, particularly **sections 7, 17, and 19**. **Section 5,** which dealt with guardianship by will or other instrument in the case of European British subjects, has been repealed. The power to appoint a guardian in other cases is saved by **Section 6** now, which applies to all persons.

Section 7 is the operative provision in the chapter, with the power of the Court to appoint the guardian of the person, property, or both.

Section 7 of the Guardians Act empowers the court to appoint a person as a guardian of the person or property of a minor. And it provides for the removal of any other person, by implication, who has not been appointed guardian of the minor by the court. The paramount consideration for making such an appointment for the guardian is the welfare of the minor. Pursuant to Section 7, the court has the authority to appoint a person as the guardian of the person of the minor, the property of the minor, or both.

Sections 8–15 mostly deal with procedural or other minor matters.

Section 15 of the Guardians Act contemplates the appointment of several guardians in relation to a minor at the same time. Section 15 states the following:

15. Appointment or declaration of several guardians.

(1) If the law to which the minor is subject admits of having two or more joint guardians of his person, property, or both, the court may, if it thinks fit, appoint or declare them.

(2) and (3) are omitted by the Federal Laws (Revision and Declaration) Ordinance, XXVII of 1981.

(4) Separate guardians may be appointed or declared for the person and the property of a minor.

(5) If a minor has several properties, the court may, if it thinks fit, appoint or declare a separate guardian for any or more of the properties.

There is scant jurisprudence in relation to Section 15. But the language clearly conceives of joint guardianship for the person of the minor as well as multiple guardians for the person and for the property of the minor, if the situation so requires.

Section 15 permits the appointment of two or more guardians for the person or property of a minor. There is scant jurisprudence regarding the said provision. But the law does provide for two or more guardians being appointed for the same person. In an appropriate case, this is an area that needs consideration given changing family structures, especially in urban areas where both parents often work and can assume responsibility for the maintenance, health, and education of the child. There is no reason why a mother who works and is able to support a child ought not be formally recognised as the guardian of the child, if the circumstances so require. In situations where the mother and father of the child are separated or divorced, while granting joint guardianship to such parents, the court can enumerate their respective responsibilities in relation to the child.

However, provisions of sections 15 and 24 would need to be read together with sections 19(b) and 41(1)(e) of the Guardians Act in the context of the grant of custody and declaration of guardianship in favour of someone who is not the child's natural parent. A collective reading of provisions of the Guardians Act clarifies that in a situation where the father of a child is alive and not unfit to be the guardian of the person of his child, no third party can be appointed as guardian of the child. And in view of the definition of "guardian" read together with sections 12 and 24, no third party who is not a parent of the child can be appointed as a guardian of the child while the father is still alive and fit to be his or her guardian. This is manifest from the reading of section 41, which in

subsection (1)(e) provides that "the powers of a guardian of the person cease in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the court to be so unfit, by his ceasing to be so in the opinion of the court."

Section 17 is of great importance. It pertains to the matters to be considered by the courts in appointing a guardian.

Section 17 lays down factors to be considered by the court when appointing guardians. Section 17(1) states that courts shall be guided by what the personal law of the minor provides and what, in the circumstances of the case, appears to be for the 'welfare of the minor.' Section 17(2) clarifies that in determining what is for the welfare of the minor, courts shall consider the age, sex, and religion of the minor; the character and capacity of the proposed guardian; and how closely related the proposed guardian is to the minor.

Section 18 provides that a collector, if appointed or declared a guardian, is so appointed by the virtue of his office to be the guardian of the person, property, or both.

Section 19 prohibits the appointment of a guardian in certain cases. Although negative in form, this section has given rise to a number of problems in interpretation and to the question of the interrelationship between **sections 17 and 19**.

Section 19 places limitations on the powers of the court to appoint a guardian for the person or property of the minor and states the following:

19. Guardian not to be appointed by the court in certain cases.

Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person.

(a) of a minor who is a married female and whose husband is, in the opinion of the court, unfit to be guardian of her person, or

(b) of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

(c) of a minor whose property is under the supervision of a Court of Wards competent to appoint a guardian for the minor.

In view of the provisions of Section 19(b) read together with Section 41(1)(e), it is patent that where the father of a minor is alive, the only consideration in which a third person, who is not the biological parent of the minor, can be appointed as guardian is where the father is found by the court to be unfit to be the guardian of the child or has abandoned his child, rendering him unfit. In such a situation, the authority vested in a guardian appointed by a declaration made by the court will stay intact only until such time that the father remains unfit to be the guardian. Provisions of the Guardians Act therefore do not contemplate the appointment of a third party, even where such party is a close relative of the child, with whom the child shares a bond of love and affection, to be appointed guardian in addition to or in the stead of his or her father, who is living and not unfit to be the guardian of the child.

Sections 20–23 deal with matters of a general character, such as the fiduciary relationship of the guardian to his ward, the capacity of minors to act as guardians, the enumeration of guardians, and the control of the collector when he is appointed as a guardian.

The guardian of the person is dealt with in **sections 24-26,** of which the most important is **section 25,** which deals with the restoration of the custody of the ward to the guardian. This is the section most frequently resorted to in practice, and as expected, case law on this section is prolific.

Section 24 of the Guardians Act identifies the duties of the guardian and states the following:

24. Duties of the guardian of the person

A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health, education, and such other matters as the law to which the ward is subject requires.

Section 25 provides the mechanism to seek the recovery of the ward who has been removed from the custody of the guardian and states the following:

25. Title of guardian to custody of ward

(1) 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 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.

(2) For the purpose of arresting the ward, the court may exercise the power conferred on a Magistrate of the First Class by Section 100 of the Code of Criminal Procedure, 1898 (Act V of 1908).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

Section 25(1) provides the mechanism through which a guardian can seek to re-acquire the custody of the ward, and Section 25(3) clarifies that a ward being removed from the custody of the guardian against the guardian's will does not result in automatic termination of guardianship.

Guardianship of the property is the subject matter of **sections 27–37.**

With **sections 38–42**, the **Act** again reverts to matters of general character, namely, the rights of a supervisor ship amongst joint guardians, the removal of a guardian, the discharge of a guardian, the cessation of authority of the guardian, and the appointment of a successor to a guardian who is dead, discharged, or removed.

These operative provisions of the **Act** are supplemented by **Chapter 4 (sections 43–51),** which are primarily concerned with matters in the nature of enforcement, appeal, cost, rules, and other topics of miscellaneous or residuary Chapter.

The parents of a child are his or her natural guardians and do not need to seek a declaration from a court for such purposes under the Guardians Act. The laws of Pakistan stipulate that a child is in the custody of his or her parents. The question regarding the custody and guardianship of a child arises in situations where the nuclear family unit is under stress or breaks up due to the separation or divorce of the parents. In such circumstances, a court is obliged to decide who retains primary custody of the child when both parents are no longer living together. The situation where the custody of a minor is to be shared by his or her biological parents and the question of guardianship arises in such a scenario is significantly different from a situation where a relative or another carer is seeking custody of a child when one or both parents are still alive.

(iii) Family Courts Act 1964

The **(sections 1- 6)** deals with certain preliminary matters, such as

title, extent and commencement, savings, definitions and establishment of family courts, qualification of family Courts, jurisdiction, place of sittings.

(Section 7-12) are the operative provisions in the Chapter. They deal with the procedure of institution of a Suit, intimation to defendants, written reply, pre-trial reconciliation, conclusion of trial etc.

(Section 12-A) is of great importance. It provides that Cases are to be disposed of within a specified period of 6 months.

Sections 13-16 deal with matters of enforcement of Decrees, Appeals, Powers of Family Courts to summon witnesses and contempt of Family Courts.

Section 17, 17-A & 17-B deals with exclusion of provisions of evidence act and code of civil procedure, suit for maintenance and power of Court to issue commission.

Sections 18-21-A deal with appearance through agents, Court fee, powers of family court as Judicial Magistrate, affectivity of Provisions of Muslim Family Laws Ordinance 1961, and Interim Order during Pendency of Suit.

With **sections 21B-25**, the **Act** again reverts to the matters of general character, namely, intimation to Arbitration Council, Bar on the issue of injunctions by Family Courts, Validity of marriages registered under the Muslim Family Law Ordinance 1961, not to be questioned by Family Courts, intimation to Union Councils regarding cases not registered under Muslim Family Law Ordinance, 1961 and Family Court deemed to be a District Court for the purposes of Guardian & Wards Act 1890.

Sections 25A-26 mostly deals with transfer of cases, stay proceedings by High Court and District Courts and Power to make Rules.

The **Act** is further supplemented by **2 Schedules,** which are primarily concerned with matters in the nature of Jurisdiction and offences and aid abetment thereof under section 337A (i), 337F (i),341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code (Act XLV of l860)]

Visitation Rights are introduced in Family Courts Act 1964 through Family Courts (Amendment) Ordinance 2002 (LV 2002)

2[“6A. Matters pertaining to Return of Child under The Hague Convention on Civil Aspects of International Child Abduction, 1980.”]

through 2Ins. by S.R.O 980(1)/2017, dated 25-9-2017.

(iv) Muhammadan Law by Dinsha Fardunji Mulla

Dinshaw Fardunji Mulla was not a Muslim scholar who could be accredited with religious expertise to interpret the precepts of Islam. Dinshaw Fardunji Mulla, of Zoroastrian faith by descent, was a legal scholar who authored treatises on various subjects of law, including contract law and Muslim personal law. The Treatise of Dinshaw Fardunji Mulla on Muslim Personal Law is like any other legal commentary by a scholar of law, as opposed to the commentary by a Muslim jurist with expertise or authority to interpret primary sources of Islamic law. Dinshaw Mulla's commentary can therefore not be treated as a source of law itself, but like any other treatise commenting on a subject of law, it can be used as a reference and a commentary.

It was clarified by the Honourable Islamabad High Court in Mumtaz Bibi v. Qasim and others (PLD 2022 Isl. 228) that the treatise of Dinshaw Mulla is not a divine text or a statutory source of law on the basis of which alone the legal rights and obligations of parties can be determined. It is merely a legal treatise or commentary, and the priority to be accorded to aspirants to guardianship over someone else's child cannot be based on any priority list supplied by Dinshaw Mulla. Further, in the 21st Century, it can no longer be presumed that the obligation to nurture and care for children vests exclusively in the female gender. A man who marries to bring progeny into this world is equally responsible for the care of his children, as is the mother of such children. Providing for the physical, emotional, and day-to-day needs of children is the joint responsibility of their father and mother. And the responsibility to care for children cannot be outsourced to female relatives in the family merely because the children's mother has passed away. Another person can only be endowed with such responsibility when the father is found, on a tangible basis, to be incapable, unfit, or unwilling to care for his children after the demise of the mother of the children.

The legal difference between custody and guardianship (or natural guardianship) can be illustrated by the following example: under some religious personal laws, for very young children, the mother is preferred to be the custodian, but the father always remains the natural guardian.

7- Three Stake Holders in a Custody Litigation

When a lis is between the parents, there are three main characters in the scenario: a mother, a father, and a child, and in certain cases, the brothers and sisters of the minor. They are all stakeholders, and the emotions and feelings of each one of them should be kept in mind while deciding the noted issue, besides the personal law of the minor and the rule about his welfare, as mentioned earlier, which should be of pivotal consideration.

8- NON-CUSTODIAL PARENTS

Non-custodial parents can be divided into two categories: those who have harmed their children and don't deserve custody or visitation, and those who are good, loving parents who are not able to live with their child or children due to divorce or separation from their spouse. Statistics prove that in 99% of cases, non-custodial parents fall into the second category and deserve reasonable and regular visitation with their children.

In the vast majority of cases, a non-custodian parent has to wait for months before his or her first official meeting (within the court) with his or her own children. The delay arises due to the flawed and inefficient system of serving notices. Delaying an appearance in court by not receiving the notice or summons is a common practice.

For reasons not conformed to the law, the guardian courts often hesitate in handing over the minors to the non-custodian parent outside of court meetings. This is often justified by the threat of illegal snatching of minors by non-custodial parents and taking them out of court jurisdiction. However, it is observed that the entire idea of running away with minors evolved over time and is a result of frustration over not being able to meet the minors. It’s a fact that running away with the minors from the jurisdiction of the court is often not easy. The non-custodian parent has to leave his or her social setup, home, business, and a lot more in order to disappear with the minor children. He or she has to live a criminal life with the fear of being caught all the time. The act of running away is normally considered a last resort after being disappointed by delayed and flawed judicial systems. Had the guardian court granted a reasonable visitation schedule to both parents, the non-custodian parent would never be tempted to take the law into his own hands. It has further been witnessed that keeping the minors away from the non-custodial parents

further aggravates the already adverse relationship between custodial and non-custodial parents. Most separated or divorced couples, after many years of litigation, forget the actual reasons for their separation and start fighting over the visitation rights of their children. Had the court not supported the element of revenge through children, things would have started cooling down between the parties with the passage of time.

All these factors contemplate that regarding the visitation schedule, neither the mother should be altogether deprived of the complete custody of the minor nor the father should be deterred and prevented from meeting and seeing his own child, with whom, in any normal situation, he shall have free access and interaction and could shower his love and affection if the relation between the parents was normal; this is also the true position, vice versa.

The third important character is the child himself, who, under the law of nature, should have the privilege of the love and affection of both parents, which is one of the greatest blessings of Allah Almighty. But if, for certain reasons, the parents, on account of their discord and disparity, have fallen apart, the child shall not be deprived of having the maximum of what he or she could have achieved from either of the parents. And it does not behove the adversary parties, who may even have hatred towards each other to claim exclusive possessory rights over the child to the exclusion of others, as one could demand in the matter of property disputes, etc.

CHAPTER II

9- Welfare of The Minor: Historical Evolution

Traditionally, under common law, the father was considered the sole guardian of the person and property of the child. The authority of the father in every aspect of the child's life, including his or her conduct, education, religion, and maintenance, was considered absolute, and even the courts refused to interfere with the same. Mothers did not have any authority over children since mothers did not have independent legal status, their identities being forged with those of their husbands upon marriage. As divorce became possible and mothers began to have independent legal existence and residence, their claim, if not right, to have custody of the children began to be recognised by the courts. However, despite a series of legislation, starting with the Custody of Infants Act,

1839, in the UK, that enabled the mother to claim custody over minor children, the rights of the father continued to remain supreme.

Two developments aided in the dismantling of paternal authority over children under English law. First, in a number of judicial decisions, the courts claimed the parens patriae jurisdiction—an even higher parental authority of the state—to supersede the natural guardianship of the father and award custody depending on what promoted the welfare of the child. Second, through a series of legislation, the British Parliament shifted the emphasis from paternal rights to the welfare of the child and conferred equal legal status to the father and the mother in determining guardianship and custody.

The Custody of Infants Act, 1873, allowed the mother to have custody of the child until the age of sixteen and removed the restriction on petitions made by mothers who had committed adultery. The Guardianship of Infants Act, 1886, recognized equal rights of the mother over custody, access, and appointment of a testamentary guardian and allowed the court to appoint and remove guardians in certain circumstances. The Guardianship of Infants Act, 1925, put the claims of the mother and the father in a custody dispute on an equal footing and provided that the welfare of the infant shall be the "first and paramount consideration". Finally, the Guardianship of Minors Act, 1973, conferred the same rights to the mother that the common law gave to the father; the mother was allowed to exercise these rights without the concurrence of the father. If the parents fail to reach an agreement, then the court is authorized to decide the matter based on the principle of the welfare of the child.

In Pakistan, the Guardians and Wards Act was enacted in 1890 by the colonial state, which continued the legacy of common law and the supremacy of the paternal right to guardianship and custody of children. While Sections 7 and 17 of the Act provided that courts should act in furtherance of the welfare of the minor, Sections 19 and 25 of the original Act subordinated the same to the supremacy of the father. It is only the Family Courts Act of 1964 that provides that the welfare of the minor shall be the paramount consideration, superseding all other factors.

10- Best Interest of the Child" in International Human Rights Law

While the "welfare of the child" principle dominates the domestic

legal framework, a comparable legal standard is found in international human rights law. According to the United Nations Convention on the Rights of the Child (hereinafter, CRC), "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration."

The Convention directs the State Parties to ensure that "both parents have common responsibilities for the upbringing and development of the child. The CRC provides that a child should be separated from his or her parents if there is "abuse or neglect of the child by the parents, or where the parents are living separately and a decision must be made as to the child's place of residence. The welfare of the child, as a criterion for decision, is generally flexible, adaptable, and reflective of contemporary attitudes regarding family within society.

The Committee on the Rights of the Child has provided additional guidance regarding the best interest standard in its General Comment. The Committee stated that it is "useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interest's assessment by any decision-maker having to determine a child's best interests."

The Convention on the Rights of the Child, Art. 3 (1989) 6 Id., at Art. 18. 7 Id., at Art. 9. 8 Gilmore, Stephen, Great Debates: Family Law, Palgrave Macmillan, (2014), pp. 76–83. 9 Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), U.N. Doc. CRC/C/GC/14 (May 29, 2013). 10 General Comment 14, at ¶

The committee suggested that the following considerations can be relevant: the child's views; the child's identity (such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, and personality); preservation of the family environment and maintaining relations (including, where appropriate, extended family or community); the care, protection, and safety of the child; any situation of vulnerability (disability, minority status, homelessness, victim of abuse, etc.); and the child's right to health and right to education. However, there are two main criticisms of the best interest standard when applied to custody issues.

First, it is unpredictable and information-intensive. Parents who are divorcing are left guessing as to how the courts will make custody

decisions; this can lead to unnecessary pre-court bargaining that may be harmful to both the child and the parents. This could be resolved by a more predictable rule-based standard, which delineates the content of the best interest standard. On the other hand, a rule-based standard is likely to be rigid and not consider the individual circumstances of each case.

Second, the best interest of the child standard primarily focuses on the predicaments of the child alone and does not take into consideration the feelings and interests of the parents. The parents are also actors within the family who have rights, and any legal framework must account for their welfare as well.

Thus, it is an open question whether the child standard is an adequate legal tool to resolve child custody decisions or whether it needs to be supplemented with further guidelines.

11- Concept of Joint Custody

The face of child custody arrangements is changing. A number of countries across the globe have adopted a preference for shared parenting systems over sole custody as a post-divorce arrangement with respect to children. In the West, this trend has arisen largely in response to changing familial roles (male caretakers taking on more child-rearing responsibilities) as well as psychological studies revealing that the involvement of both parents in child-rearing is preferable to sole custody arrangements.

Studies indicate that children generally fare better when parents share custody, and some jurisdictions in some countries have a legally prescribed presumption of joint custody. However, scholars and courts also caution that a presumption of joint custody can run contrary to the "best interests of the child" standard, especially in cases of domestic violence, where battered women may agree to joint custody out of fear of further violence.

Strangely, there is no specific duration or frequency defined in the Guardian & Wards Act 1890 for granting a visitation schedule for minors. The basic paramount consideration in deciding on a reasonable schedule is the welfare of the minor." In fact, the entire Guardian and Wards Act of 1890 is ultimately based on the welfare of minors. The Guardian Court is required to act or think as a responsible father in order to pass a decision. This extremely limited visitation schedule was initially adopted by

guardian courts to avoid complications and hassles that arise during administering more frequent visitation meetings. However, this negates the entire fundamentals of the Guardian and Wards Act, because taking a child away from a parent cannot be in the best interest of the minor and should not be the solution to avoid administrative problems.

The welfare of a minor was a prime consideration before the court; admittedly, the respondent was the father of the minor, and being the natural guardian, he had the right to his supervision under Islamic law; therefore, on separation of the parents, the minor could not be permanently deprived of the love and affection of either of the parents. Minor, in the present case, had crossed the age of six years; therefore, he should have maximum interaction with the father, even if the custody was with the mother; otherwise, it may cause an estrangement in the mind of the child, which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection, and company from his father. Court, in order to achieve such a goal, was to make every possible effort to chalk out a reasonable visitation schedule in a friendly atmosphere. The meeting of the minor on the court premises with the father was neither conducive nor effective and did not serve the purpose of the meeting; therefore, the welfare of the minor was at stake in the meeting with the father at his residence.

CHAPTER III

12- Distinction between Guardianship & Custody

The term "custody" alludes to bringing up and nurturing a child and taking care of his or her personal and emotional needs on a day-to-day basis, and guardianship refers to the obligation of maintaining the child, completing legal communications in his or her name, and retaining constructive custody over his or her person or property for resolutions of discharging duties as a guardian. A father is a natural guardian even when a mother is conferred with the child's custody. "Custody" of a minor is not a precondition or requirement for being the guardian of his or her person or property.

The distinction between custody and guardianship and the respective rights and obligations of a custodian and a guardian under the Act, especially where one parent has custody of the child and the other is the guardian, The term 'custody' is not defined in the Act. The term

'guardian' has been defined in Section 4(2) of the Act and seems to include the concept of custody, unless a guardian court awards custody of a child exclusively to a party or parent who is not the guardian of the minor. It was held in Mst. Atia Waris v. Sultan Ahmed Khan [PLD 1959 Lahore 205] that custody means actual custody and not constructive custody. However, custody was defined as actual or constructive possession for purposes of protection in Jumna Khan v. Mst. Gull Ferosha [PLD 1972 Peshawar 1]. and in [PLD 1988 Karachi 252], custody was referred to as the right to the upbringing of a minor child by the mother or someone legally entitled to it. It was held in Bushra Asghar v. Dr. Rehmat Ali and 3 others [2012 MLD 1755] that guardianship entails the concept of taking care of the minor even in situations when the guardian does not have "domain over the corpus of [the] child".

In view of the case law, it is apparent that in the manner in which the concepts of custody and guardian are understood and applied, there is an overlap between the two. And where the guardian also retains custody of the minor child, there is complete overlap. The question of the respective obligations of the custodian and the guardian of the minor arises when custody of a minor is awarded to someone other than the guardian. In such a case, the custodian and guardian are separate persons, and while the guardian would maintain constructive custody over the child for purposes of discharge of his obligations as guardian, he or she would not have physical custody of the child. So custody alludes to bringing up and nurturing a child and taking care of his or her personal and emotional needs on a day-to-day basis. Whereas guardianship refers to the obligation of maintaining a child, affecting legal transactions in his or her name, and retaining constructive custody over his or her person or property for purposes of discharging obligations as a guardian.

Traditionally, in the event of separation of the parents as a family unit, custody of suckling minors is handed to the mother, whereas the father is endowed with the responsibility to act as guardian for the person and property of the minor [see **PLD 2009 SC 751**]. However, this general rule is not carved in stone, and for purposes of the Act, the welfare of the child remains the paramount consideration (not one of the considerations or even the primary consideration). In view of sections 17, 19, and 41 of the Act, the scheme of the Act is that the father is the natural guardian even when the mother is bestowed with the child's custody, and custody of a minor is not a precondition or requirement for being a guardian of his or

her person or property.

(See **PLD 1967 Karachi 569**, **PLD 1968 Karachi 774,** and **PLD 1963 Lahore 534.)**

A father is considered the natural guardian of a minor, since even after separation with the mother and even when the mother has been granted custody of a minor child, the father is obligated to provide financial assistance to the minors. In Mst. Kaneez Akhtar v. Abdul Qadoos and 2 others, [**2005 MLD 828**] held at para 9 that "[t]here is no cavil about the proposition that liability to maintain a minor child is not only a religious or moral obligation of the father but it is also his bounded legal duty. In Nazan Bibi v. Additional District Judge, Jhang and 2 others [**2009 YLR 991 (Lahore)**] held in para 10 that the father, "although a natural guardian, his right of Hizanat [custody] is subordinate to the fundamental principle, i.e., the welfare of the minor, the sole criteria, which in any case should prevail". In Habib-ur-Rehman v. Hina Saeed [**2010 MLD 544**], the father of the child, who was in France, wasn't awarded custody, as the mother would have been unable to see the child, but the father was still held responsible for maintenance. The concept of guardianship thus encapsulates, in the ordinary scheme of things, the obligation of the father to maintain a minor child, and the rights that come along with them are afforded to him to exercise oversight and to stay involved with the affairs of the child for purposes of discharging his obligations as guardian.

It was held by the august Supreme Court in Mst. Feroze Begum v. Lt-Col. Muhammad Hussain [**1983 SCMR 606**] and reiterated in Munawar Bibi v. Muhammad Amin [**1995 SCMR 1206**] that maintenance of the child was the duty of the father and the mother could not be deprived of custody due to her inability to maintain her child. It was held in Masroor Hussain v. Additional District Judge, Islamabad [**2011 CLC 851 Islamabad**] that if the father failed to maintain his child, he would lose the right to custody and guardianship. In this case, the father had claimed guardianship upon the mother's remarriage but had not been maintaining the child or taking an interest in her life. The court turned down his claim and granted both custody and guardianship to the mother. In short, in a claim of custody by the mother, a lack of resources to maintain the child is not a disqualification, as the obligation to maintain the child remains vested in the father in his capacity as guardian, even if the custody of the child is handed over to the mother. But lack of resources by the father is a disqualification in his claim for custody and in

his claim to retain his status as guardian, because if he cannot discharge his fundamental obligation to maintain his child in his capacity as the natural guardian, the assumption is that it is not in the child's welfare to remain in his custody or under his guardianship, and the child ought to be placed in someone else's constructive care who is capable of discharging the obligations of a guardian.

The Honourable Islamabad High Court in the case titled Mst. Shazia Akbar Ghalzai vs. Additional District Judge Islamabad East, reported as **2021 MLD 817, Islamabad** observed that the concept of the welfare of a child operates differently in a claim for custody versus a claim for guardianship. In a claim for custody, a whole host of factors are to be considered by the guardian court to determine wherein lies the child's welfare. As the question of custody is not part of the law before this court, there is no need to list the considerations germane to the determination of the welfare of a child in a custody matter. But in a claim for guardianship, the law itself assumes, when Sections 7, 17, 19, and 41 are read together, that the welfare of the child is best served when his or her natural father remains the guardian, unless he is found unfit to be the guardian.

13- Duration of A Custody Case

In Pakistan, an average family or custody case under the Guardian & Wards Act lasts approximately three to five years in the guardian courts. During these years, due to a lack of interaction of the minors with the non-custodial parents, the parent-child bond keeps on depleting and often completely breaks after a while. In the majority of the observed cases, the custodial parent keeps on brainwashing the minors against the non-custodial parent. Furthermore, the guardian courts strengthen the revengeful motives of the custodian parent by not granting reasonable visitation schedule of minors with the non-custodial parent. It is seen that a non-custodial parent initially struggles and contests the litigation in hope of getting justice, but then finally gives up after being disappointed. He or she remarries, starts a new life, and bears new children. As a result, the minors normally end up losing one of the parents forever.

14- NATURE OF JURISDICTION

Child Custody Litigation is based on protecting the interests of the minor, with his welfare being the paramount consideration. However,

while protecting the welfare of minors, the courts in Pakistan often place restrictions on the enjoyment of their fundamental rights without even providing any reason therefor. It is a settled law, as enshrined in the provision of Section 24-A of the General Clauses Act 1897, that every authority has to pass a speaking order while adjudicating the civil rights of the litigants and to give valid reasons as to why the fundamental right of the minor to have access to both parents is curtailed and is restricted to a mere 2 hours' visitation once or twice a month, and that too to be held within the court premises instead of the home of the non-custodial parent. All these facts contemplate that regarding the visitation schedule, neither the mother should be altogether deprived of the complete custody of the minor nor the minor child should be deterred and prevented from meeting and seeing his own father, with whom, under any normal situation, he shall have free access and interaction and could receive fatherly love and affection.

15- (i) WELFARE OF THE MINOR

Changes over the last few decades in the structure and function of the Pakistani family, as well as the relative complexity of contemporary family legal issues, challenge judges to adopt an appropriate jurisprudential philosophy that addresses these transformations. The tremendous volume and breadth of family law cases now before the courts, coupled with the critical role of the family in today's society to provide stable and nurturing environments for family members, require that judges understand relevant social science research about child development and family life. This informed perspective can assist decision makers to dispense justice aimed at strengthening and supporting families.

(ii) What constitutes welfare of the child?

There are several important factors that are taken into consideration in determining the welfare or interests of the child in custody disputes. In the classical English case of *J. & Anor. V C. & Ors.*, the phrase 'the paramount consideration shall be the welfare of the child' has been defined as:

… a process whereby, when all the relevant facts, relationship, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighted, the course to be followed will be that

which is most in the interests of the child's welfare.'[1]

In Islamic law, this principle has long been established by jurists. Almost 900 years ago, Ibn Qudamah in al-Mughni said:

The ultimate purpose of *hadanah* is to ensure that the welfare of the child is protected[2]

Sayyid Sabiq in his book Fiqh al-Sunnah states:

Both the persons who have the right to *hadanah* and the person over whom *hadanah* is exercised have their rights but the rights of the person over whom *hadanah* is exercised are stronger than the rights of the person who has *hadanah*.[3]

Welfare of the Minor child as 'the first and paramount consideration.' This phrase was explained by Lord Mac Dermott in a well-known passage in J v C [197] AC 668, 710, as follows:-

'Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.

Lord Mac Dermott could have put this more simply. He could have said that 'first and paramount' is an example of draftsman's duplicity

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[1] [1970] AC 668, pp.710-711.

[2] Ibn Qudamah, Ahmad bin Muhammad, n.d., *Al-Mughni*, Riyadh: Maktabah al-Riyadh al-Hadithah, vol. 9, p. 153.

[3] Al-Sayyid Sabiq, 1987, *Fiqh al-Sunnah*, Beirut: Dar al-Kitab al-'Arabi, vol. 2, p.302.

(now obsolete). It uses what Langton J once called 'resounding adjectives', and simply means 'paramount'. 'Paramount',

Lord Mac Dermott could have said, simply means 'overriding'. He could have spared us the nonsense about the top item in a list of items. He could have stated, as is the case, that 'first consideration' taken by itself is practically meaningless. It is a choice example of the phrase which, to the unthinking, appears significant but in fact, when examined, is found to have no clear meaning.

As the welfare of the minor is the paramount consideration , such welfare would prevail parental rights . Parental Rights would enter into a consideration, as one of the factors in considering the welfare of the Child, but not as a dominating factor, where they would conflict with the welfare f the minor child.

As Scrutton L.J. said in his picturesque language, "Proceedings for obtaining the custody are being used "not for the body but for the soul of the infant".

Justice S. N Dhingra of the Honourable Supreme Court of India observed while determining a child custody case:

"The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably the provisions of law pertaining to the custody of child contained in either the Guardians and Wards Act, 1980 (Section 17) or the Hindu Minority and guardianship Act, 1956 (Section 13) also hold out the welfare of the child are predominant consideration. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the Court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love

for the child may be one of the relevant considerations but cannot be the sold determining factor for the custody of the child. It is here that a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration."

Justice Saqib Nisar of the Honourable Lahore High Court as he then was, observed while determining a Child Custody dispute in the following terms:

"Cases pertaining to custody/visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil rights/obligations, such as the property disputes etc. These cases have their own dimensions, repercussions and consequences, founded upon the human emotions and the sentiments. The resolution and adjudication of this special kind of matters, therefore, should be conceived considered and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time the natural feelings of the parents cannot be overlooked and ignored; if the parents mean something great for a child, the child may also mean the whole world for the parents. In such cases therefore, (when the lis is between the parents), there are three main characters of the scenario, a mother, a father and a child and in certain cases the brothers and sisters of the minor, they are all the stakeholders and the emotions and feelings of every one of them should be kept into view while deciding the noted issue, besides the personal law of the minor and the rule about his welfare as mentioned earlier which should be of pivotal consideration. All these putting together contemplate that regarding the visitation schedule neither the mother should be altogether deprived of the complete custody if she has the lawful custody of the minor (until her right of custody terminates on account of some courts' order or otherwise) nor the father should be deterred and prevented to meet and see his own child with whom in the normal situation, he shall have a free access and interaction, and could shower his love and affection, if the relation between the parents was normal; this also is true position vice versa. The third important character is the child himself, who under the law of nature should have the privilege of the love and affection of both the parents, which is one of the greatest blessings of the God Almighty, but if for certain reasons, the parents on account of their discord and disparity have fallen apart, the child should not be deprived of having the maximum of what he/she could achieve from either

of the parents. And it does not behave of the adversary parties, who may even have hatred towards each other to claim, exclusive possessory right over the child to the exclusion of the other, as one could demand in the matter of the property dispute etc. Besides, it may be clearly understood that the father is the natural and legal guardian and under the Islamic Personal Law, the right of mother to "Hizanat", in case of a male child, terminates around the age of seven years, (this observation, in no manner, shall be construed of causing any prejudice to either party on the issue of minor's custody), which has nexus and must be kept into view while considering the question of visitation. The father, once the child has passed the age of seven years, must have maximum interaction with the minor even if the custody is with the mother, but this again should be subject to the rule of welfare of the minor; if for any reason it shall be against the noted principle, the court should either restrict the visitation or even can decline. But if it is otherwise, to prevent the minor from meeting with his father may cause an estrangement, prejudices, psychological intricacies and cobwebs in the mind of the child, which may ultimately prove to be a pivotal vice and a shortcoming in the growth of his personality on the count that he, at the relevant time, could not get sufficient love, affection and company of his father, which a normal child would enjoy. It is a matter of concern that it is quite unnatural rather harsh and coercive to hold that though the father is the legal and natural guardian of the minor and has the right of his supervision under the Islamic law as well, yet has to wait for a week, a fortnight or a month or even more than that in certain cases, to meet his son for the reason that the custody under the court's order or otherwise is with the mother or the matter is sub judice. This all as mentioned is true for the mothers as well, who are the de fecto guardians of their children, keeping the child in their womb for 9 months and undergoing the labour pains, the rigour of feeding, nurture and raising them; a child is a part of their flesh and it is for this reason, why in Islam the Paradise is said to be underneath the mother's feet. One is really shocked, dismayed, disappointed and disgusted to see that in the Family/Guardian Courts the parents waiting to meet their own children, which opportunity they might be having after weeks or month and may only last for not more than an hour or so. The food, clothes, sweets and toys brought by them are sometime not accepted or are thrown away by the child, because he may have the instruction not to take those by the one from whose custody he is brought, coupled with the staring of

the adversary party may also spoil the pleasure of such a short meeting. The Court should be liberal ‘in chalking out the visitation schedule of the minor with the parents, obviously keeping in view his/her welfare. And in the instant case, only two factors have been indicated against the above principle. Firstly, that there is a stepmother in the house and secondly there is no enough accommodation enabling the child to study and/or on account of his night custody with the father or full 10 days’ visitation, his tuitions/study shall suffer.

It shall be against the welfare of the minor, if he is kept away from the father, because besides the love and affection from which he shall be deprived, he may develop an estrangement, which would not be in any way in his best interest”.

(iii) QUASI PARENTAL JURISIDCTION

This is also a true position and vice versa. The Honourable Karachi High Court in Mst. Abeera Khan vs. Adnan Jamil, **2019 CLC 1478 KHI**, “held that the court exercises quasi-parental jurisdiction in guardianship matters; supreme consideration, in such a context, is the welfare of minors, and to achieve said purpose, the court has unfettered powers”.

In Maimoona Ilyas vs. Additional District Judge, Lahore, **2017 CLC 1747 Lahore, the** Honourable Lahore High Court “held that Family Court had parental jurisdiction and there was no scope of such jurisdiction for any undue adherence to technicalities, and Family Court, being a quasi-judicial forum, could follow its own procedure, which was not to be against the principles of a fair trial”.

In Umar Farooq vs. Khushbakht Mirza, **2008 PLD 527 Lahore, the** Honourable Lahore High Court has observed that "in guardianship matters, courts had to exercise quasi-parental jurisdiction; the supreme consideration in such context was the welfare of minors; to achieve such a purpose, courts had unfettered powers. Application under S.12 of the Guardian and Wards Act, 1890, was required to be decided on such principles. Contesting parents had an inherent right to seek visitation from the minor, especially the father, who was the natural guardian. The father was not only required to participate in the upbringing of minors but should develop love, bondage, and affinity with them.

(iv) IN LOCO PARENTIS POSITION

In loco parentis is a Latin term meaning "in [the] place of a parent" or "instead of a parent. The term refers to a common law doctrine that denotes the legal responsibility of some person or organisation to perform some of the functions or responsibilities of a parent.

There cannot be any dispute and indeed both the petitioner and the learned counsel for the respondent are agreed that the jurisdiction exercised by this Court in respect of matters relating to custody of minor is more parental in nature than anything else. This dispute cannot be resolved on the basis of any technicality or on any principle of law without completely separating from the realities of the situation. “In all matters relating to the custody of minors, the Courts Act applies in loco parentis. It is painful, but nevertheless a legal duty that a court must perform to regulate the custody of the minor in order to ensure his wellbeing and welfare, which is a paramount and dominant consideration”. Reliance can be placed at **1995 PLD 151, Lahore.**

And the Supreme Court of Pakistan observed in **P L D 2002 Supreme Court 267** to the effect “that custody of minors in all cases cannot be effectively settled by private compromise. The court's powers with regard to custody of minors are in the nature of parental jurisdiction, and it must act in a way that a wise parent would do. The expression "welfare"' would be construed in a way so as to include in its compass all the dominant factors essential for determining the actual welfare of the minor”.

(v) INDULGENCE IN TECHNICALITIES OF LAW AND PROCEDURE

The Supreme Court of Pakistan, in Arif Fareed vs. Bibi Sara, cited as **2023 SCMR 423,** has held “that technicalities and trappings of normal practice and procedure are not suitable for such suits. Family litigation directly or indirectly causes long-term effects on the emotional health of parties, especially children, who become silent victims of differences and disputes between contesting adults. Therefore, when a child comes to interact with the judicial system, the response must be facilitative, cooperative, and backed by a child-rights-driven approach. The technicalities and trappings of normal practice and procedure are not suitable for cases where very young children are involved”.

The question of who is considered to be a child and what period in a person's life can be labelled as childhood has undergone change over time. There are many reasons for this, including social changes and the need to define certain ages at which rights and responsibilities are attached to those falling into a defined age bracket. The traditional view of children has been to see them as objects in need of protection, not as persons with the rights and capabilities of autonomous individuals. The children have often been regarded primarily as being part of the family unit, not as independently acting agents. Until the end of the 1970s, the prevalent understanding among historians was that historically, children did not constitute a category of their own. The United Nations Convention on the Rights of the Child 1989 (CRC) is the first treaty specifically concerned with the rights of children, and it marks an important shift in thinking towards a 'rights-based approach' that holds states and governments legally accountable for failing to meet the needs of children.

The worst affected by divorce and family breakdowns are the children. Maintaining the central importance of the welfare of the child in proceedings for custody will help ensure that the child's future is safe and protected, regardless of changing familial circumstances. The courts in Pakistan have also arrived at similar conclusions. For instance, the Lahore High Court in Mst. Tahira Parveen vs. District Judge and 2 others cited **2022 MLD 1693 Lahore** and "held that a question as to who was entitled to hold custody of a child under the law did not normally arise during the subsistence of a marriage. Only after separation and/or divorce between the parents do the parties become bitter and angry, and such separation in itself creates tension between them, which generally leads to hostile and vengeful behaviours in society". In such a situation, it is imperative to understand that children are a trust from Allah (Subhanahu Wa Taala), and they should be treated and looked after in a proper manner. Hence, while dealing with issues of custody of a child, his or her welfare is always the supreme consideration. The law that a mother has the right to the custody of her son till the age of seven years, and thereafter it goes to the father, is not an absolute and invariable rule. The welfare of the child is given paramount importance. The court has to consider the child's welfare and interests over those of the parent's rights, as courts in cases of custody and guardianship exercise parental jurisdiction.

The Supreme Court of Azad Kashmir in Waheeda Bashir Kayani vs. Mohammad Munsif Khan, cited as **2022 YLR 2201 SUPREME-**

COURT-AZAD-KASHMIR held that the word "welfare" in such cases is to be taken in its widest sense, which includes not only the monetary expenses of the minor but also his mental and physical health, educational needs, psychological well-being, and religious and moral values. Courts are duty-bound to consider such cases in the best interest and healthy upbringing of the minor, which sometimes may yield the rights of the parents. No doubt, according to certain Muslim jurists, custody of a minor son till the age of seven years may remain with the mother, and in the case of a minor daughter till she attains the age of puberty and thereafter, normally their custody should be restored to the father. However, it is an established principle of law that the paramount consideration in all such situations would be the betterment of the minor, and even a mother may be deprived of the custody of a minor if circumstances of the case allow. has said that the welfare of a child is not to be measured merely by money or physical comfort, but the word welfare must be taken in its widest sense, meaning that the tie of affection cannot be disregarded.

Therefore, when a child comes to interact with the judicial system, the response must be facilitative, cooperative, and backed by a child-rights-driven approach. The Family Courts Act, 1964, gives ample powers to the Family Court to devise its own procedure wherever it is so desired. The object of the Act is to have expeditious disposal of such matters in the shortest possible time.

(vi) UNFETTERED POWERS OF FAMILY COURT

"In guardianship matters, courts had to exercise quasi-parental jurisdiction; the supreme consideration in such a context was the welfare of minors. To achieve this purpose, courts had unfettered powers". See **2009 CLC 1443, Lahore.**

"Family Court, being a quasi-judicial forum, could draw up and follow its own procedure in order to fulfil said obligation, provided it was not against the principles of fair hearing, trial, and inquiry". See **2018 MLD 1480 Lahore**

CHAPTER IV

16. CONCEPT OF INTERIM CUSTODY & VISITATION RIGHTS

Presently, even the legal system, bureaucrats, politicians, statutory agencies for child welfare, NGO's, etc., have forgotten or missed the opportunity to appreciate or understand child rights, as well as the immense emotional trauma that innocent children undergo in the process of custody litigation and parent separation due to a lack of love and affection from both parents. Depriving love and affection of both parents, more particularly due to alienation of the child by the custodial parent and/or denial of proper access to the non-custodial parent by the courts, without realising the serious consequences caused in the later part of the child's life such as drug abuse, deteriorating educational achievement, premature sexuality, mental/personality disorder, chronic depression, suicidal tendency, out-of-wedlock birth, and often a major force behind serious crimes. There is an urgent need to establish a well-defined framework and guidelines for family courts and the counsellors to implement while deciding the custody of the children. Delay in action or callous approach: what kind of future society or generation are we going to create? Needless to say, today's youth are going to be the leaders and thinkers of tomorrow. The nation's future depends on today's children. Hence, immediate intervention by higher courts is necessary. Presently, these issues are being decided in an absolutely subjective fashion by the family court, seriously affecting the mental health of the tender children as well as specific violations of the UN Convention on the Rights of the Child.

One of the fundamental rights of children is to get love and affection from both parents (irrespective of parent's conflict), to have a quality of life and survival, to be cared for, to develop a sense of belonging, and to participate fully in family, cultural, and social life.

I would like to bring specific focus to Article 35 of the Constitution of the Islamic Republic of Pakistan, which asks the state to protect marriage, the family, the mother, and the child. In such a manner that the tender age of children is not abused, children are given opportunities and facilities to develop in a healthy manner, and childhood is protected against exploitation and against moral and material abandonment. While framing the guiding principle, a clear distinction needs to be made between the rights of the child and the rights of a parent

(which invariably end up being interpreted as the rights of only the mother)

The right to life includes not only one's own life but also the life, liberty, and happiness of one's children. Denying a person, the right to the company of his children is as severe a penalty and a curse upon him as denying him life altogether. It is further reiterated here with humility that a minor child cannot be denied the right of access to his non-custodial parent (mostly his father) during the pendency of child custody litigation before a Guardian Court under the provisions of the Guardian & Wards Act 1890, nor can any restriction for an indefinite period be placed on his freedom of access to his real father. The directions to the custodial parents to produce the minor for the purposes of meeting with his or her non-custodial parent act as a restriction on the fundamental human rights of the minor as well as of the non-custodial parent, and that too without assigning any reason thereof, the access of the non-custodial parent is often seen curtailed to a two-hour meeting with his or her minor child and that too to be held within the court premises; hence, the same falls within the classification of an unqualified and unreasonable restriction on the fundamental rights of access and movement as the same are protected under the provisions of Article 15 of the Constitution of the Islamic Republic of Pakistan.

Further, it is witnessed that a right to a fair trial for the determination of civil rights is the fundamental right of every citizen of Pakistan. The concept of fair trial and due process has always been the golden principle of the administration of justice, but after the incorporation of Article 10-A of the Constitution, it has gained more importance. Due process should be adopted for conducting a fair trial, and an order passed in violation of due process should be considered void. On the touchstone of this observation made by the Honourable Supreme Court of Pakistan, it becomes abundantly clear that the Guardian Courts are under a constitutional as well as statutory obligation to assign valid reasons for curtailing the fundamental rights of movement of the non-custodial parents and imposing a restriction for an indefinite period that the non-custodial parent has to meet his minor growing up children for merely two hours twice a month, and that too within the Court premises. It is peculiar to be noted here that although it is an admitted proposition of law that a family Court has discretion and is always competent to adopt any procedure to decide the case provided such procedure is not expressly

barred by the family Courts Act, 1964 or of fends any of its provisions or is violative of any right of parties being against the principles of fair hearing/trial yet no reason of whatsoever nature is usually assigned to any Non-Custodial Parent while dismissing an application filed under the provisions of Section 12 of the Guardian & Wards Act by the Non-Custodial parent for the grant of ad interim physical custody of the minor till the final disposal of the main Petition and curtailing their rights of access to minor children except that of a mere two hours once or twice a month and while selecting the court premises as a venue of visitation / meeting between the minor and non-custodial parent. The right to a fair trial only guarantees a fair opportunity for a defendant to defend himself in a trial for the determination of his civil rights and obligations. Wisdom is sought from **2021 CLC 644 Lahore.**

17- INTERIM ORDER FOR PRODUCTION OF MINOR UNDER GUARDIAN AND WARDS ACT 1890

Provisions of Subsection (2) of Section 12 of the Act ibid clearly places a condition on the exercise of jurisdiction regarding the production of female minors in the Court premises for the purposes of their meeting with their non-custodial Parents. It is significant to be noted here that the provisions of Section 12 of the Guardian & Wards Act 1890 are reproduced here to below for better understanding of the subject,

"12). Power to make interlocutory order for production of minor and interim protection of person and property.

(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

Bare perusal of sub section (2) of Section 12 clearly suggests that special care and caution is to be required regarding the production of female minors in the court premises for the purposes of her meeting with her non-Custodial father. Provisions of Article 14 of the Constitution of

Pakistan further cements the fact that meeting one's father in a premises over crowded by more than 100 to 200 strangers infringes the very Right of Privacy of the minor females who are brought in the Court on every Saturday for the purpose of their meetings with their fathers in accordance with a non-speaking order passed by learned Guardian Courts while deciding applications filed under Section 12 of the Guardian & Wards Act 1890, to the effect as to why meeting one's father in the court is better than a meeting with one's father at his home. It is further pertinent to be noted here that the dignity of man and privacy of home is inviolable, it does not mean that except in home, privacy is vulnerable and can be interfered or violated. Home in literal sense will mean a place of abode- a place where a person enjoys a personal freedom and feels secure. The emphasis is not on the boundaries of home but the person who enjoys the right wherever he may be. The term "privacy of home" also symbolizes the security and privacy of a nature which a person enjoys in his home. It is peculiar to be noted here that meeting one's own father, at a place where privacy is neither inviolable nor there exists any seating arrangement but it rather is crowded by a large number of people brings within the mischief of the concept of privacy of home as is enshrined within the provisions of Article 14 of the Constitution of Islamic Republic of Pakistan.

18- Interim, Permanent and Temporary Custody – Distinction

Guardian and Wards Act provides two kinds of Custody, the Interim Custody being regulated under the provisions of Section 12 of the Act and of Permanent Custody which is governed by the provisions of Section 25 of the Act ibid. However, after the introduction of Visitation Rights that are added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) another kind of Custody is introduced and that is temporary custody of minor through Visitation Rights.

The distinction between the term ad interim and temporary has further been elaborated by the Honourable Lahore High Court in **2007 C L C 348 Lahore** to the effect that "Word ad interim is distinguishable from word temporary---Ad interim means for the meantime (to make the interim gap) while word temporary means for a certain fixed period".

19- VISITATION RIGHTS UNDER FAMILY COURTS ACT, 1964

The provisions of Item No. 5 of the Schedule attached to the Family Courts Act 1964 are reproduced here and below for a better understanding of the term visitation rights:

5. Custody of children and the visitation rights of parents to meet them.

Accordingly, visitation' means a non-custodial parent's period of access to a child. Visitation rights mean a non-custodial parents or grandparent's court-ordered privilege of spending time with a child or grandchild who is living with another person, usually the custodial parent. A visitation order is an order establishing the visiting times for a non-custodial parent with his or her children. Although the non-custodial parent is responsible for the care of the child during visits, visitation differs from custody because the non-custodial parent and child do not live together as a family unit. Hence the word parents," which is categorically mentioned in Section 5 of the Schedule attached to the Family Courts Act 1964, allows the grant of visitation rights to not only the father but also the grandparents of the minor.

Unlike permanent or ad interim custody, a child will not live for a long time with a parent who has visitation rights. However, the child may be able to have overnight, weekend, or even longer visits with the parent, depending on what the judge decides.

Unlike permanent or interim custody, visitation does not give a parent the right to make major decisions about the child's well-being, including education or medical care matters. A parent must have either sole or shared legal custody in order to make those decisions.

The Trial Courts (Guardian & Family) have all but stopped using the provisions of Family Courts Act 1964 in matters pertaining to the Visitation Rights; that even when they proceed under the provisions of the Family Courts Act 1964, in cases few and far between, they do so without resorting to the provisions of the Schedule attached with the Family Courts Act and thus act in violation of the provisions of Item No. 5 of the Schedule attached with the Family Courts Act 1964, further that the trial courts mostly act under Section 12 of the Guardian & Wards Act 1890, taking it as a substitute and an alternate to the provisions of Section 5 of

the Schedule attached with the Family Courts Act, 1964.

Non-application or wrong application of the provisions of the Family Courts Act, 1964, in child custody matters often leads to a situation where those who may not be entitled to the benefit under the Act get benefited and those who fully deserve the protection and benefits of Item No. 5 of Section 5 of the Schedule attached with the Family Courts Act, 1964 are denied the protection.

The term "welfare of the minor" has nowhere been defined by any of the laws regulating child custody litigation in Pakistan, may it be the Family Courts Act 1964 or the Guardian & Wards Act 1890. Therefore, it is a matter of absolute discretion for the presiding officer of the court to evaluate the evidence produced before it and the facts and circumstances of each case, respectively.

(i) VISITATION RIGHTS- LEGAL DEFINITION

As per the Black's Law Dictionary, the term visitation rights denotes a non-custodial parent's or grandparent's court-ordered privilege of spending time with the child or grandchild who is living with another person, i.e., a custodial parent.

Concepts of 'visitation' are defined there with specific reference to Family Law, to a non-custodial parent's period of access to a child and also termed 'parental access' and further defined as 'parenting time', residential time.

'restricted and supervised visitation' is defined as visitation under the orders of a court in which a parent may visit the child or children only in the presence of some other individual, and a court may order supervised visitation when the visiting parent is known or believed to be prone to physical abuse, sexual abuse, or violence.

(ii) INTERIM CUSTODY OF MINOR

Once a marriage is dissolved, the parents of a minor may get entangled in a legal battle to satisfy their self-nurtured ego, which is a path chosen by them on their own, and they may, at any time, get out of and/or put an end to such a fight. However, the minor, in such a battle, suffers the most as he is dragged into the battle. The fighting parents are least bothered about the psychological and other toll on the minor on account of such a fight. In such situations and proceedings, the parents often lose

sight of the fact that the children face mental and emotional trauma because of the ill-defined visitation schedule when custody is handed over to one of the parents, which may result in multiple personality disorders. Seldom do we come across an erstwhile couple that keeps the welfare of the minor as their paramount consideration. That is why the role of the court attains immense significance, as it is the court that is obligated to keep the welfare of the minor as its paramount consideration.

Held, in **2021 MLD 1610 QUETTA**, that under S.12(1) of the Guardians and Wards Act, 1890, the Guardian Judge was empowered to make interlocutory orders for production of minors and interim protection of his person and his property. Said power could even be exercised in the absence of urgency.

Petitioner was the father of a minor daughter who was denied the right to visitation. It was held in **2023 YLR 816 PESHAWAR** that it was the inherent right of parents to have visitation rights with their children, and depriving any of the spouses of such visitation rights would have an effect on the personality of the child or minor. Minor was to carry parentage with her throughout her life, and such a relationship would remain throughout as neither Islam nor land laws allowed such renunciation.

The intention of the petitioner (the mother of a minor) was that only the parents could request the visitation rights of the minor, as the 'grandmother' was not covered in the definition of 'parent'. Held in **2021 YLR 1989 Lahore** that the word 'parent' used in S. 5 and the Sched. of the Family Courts Act, 1964, was wider in sense and was not restricted to its literal meaning, particularly when the grandchild was entitled to inheritance from the grandparent. The application of the respondent (grandmother) was maintainable before the Guardian Court.

(iii) TEMPLATE VISITATION SCHEDULE COMPRISING OF A MERE 2 HOURS ONCE OR TWICE IN A MONTH COURT ACCESS

Though family matters are not to be decided strictly on the strict yardstick of procedural laws or any other principle aimed at the observance of technicalities, Paramount consideration before the court must be the welfare and betterment of the minor; courts in such a matter are required to act in a Loco Parentis position, and plenty of deliberations

are required to be kept into consideration by the guardian court, which of course is not the practice observed by the courts adjudicating guardian and custody matters in Pakistan. What has actually been done in the vast majority of cases pending in multiple guardian courts in Pakistan is that the non-custodial parents are subjected to abuse and victimization in the name of procedural technicalities, especially during the pendency of divorce and custody of minors. Even after waiting for months for the first face-to-face meeting with his or her own children, the non-custodial parent gets an extremely limited visitation schedule to meet his children. This visitation schedule is often as little as once a MONTH for two hours within the court premises. Surprisingly, this visitation schedule has been widely followed in the guardian courts of Pakistan for over two decades and has now become a precedent.

Presently, our courts have forgotten or missed the opportunity to appreciate and understand child rights as well as the immense emotional trauma that innocent children undergo in the process of custody litigation and parent separation due to a lack of appropriate and adequate access for the child to both parents.

Our courts are disinclined to appreciate that a schedule of visitation comprising as little as two hours once or twice in a month and that too to be held within the court premises is actually adding fuel to the miseries of already divorce / separation affected minor children. Depriving love and affection of both parents, more particularly due to alienation of the child by the custodial parent and/or denial of proper access to the non-custodial parent by the courts, without realizing the serious consequences caused in the later part of the child's life such as drug abuse, deteriorating educational achievement, premature sexuality, mental/personality disorder, chronic depression, suicidal tendency, out-of-wedlock birth, and often a force majeure behind serious crimes In other words, "once a month for 2 hours on court premises" has become a "template" for visitation orders being granted to non-custodial parents in guardian courts. In addition, even the above-mentioned visitation schedule of two hours can be conveniently avoided by a custodial parent by simply presenting a fake medical certificate. In such cases, the non-custodial parent is left with no choice but to wait for the next scheduled meeting. The guardian courts are generally very casual towards such excuses furnished by custodial parents.

Hundreds and thousands of non-custodial parents involved in child custody litigation across Pakistan are aggrieved by the arbitrary and

capricious practice that is being followed by our family and guardianship courts. They have suffered in the form of losing their bondage with their divorce-affected minor children, but they have also suffered in terms of a heavy financial burden for which neither the law nor the courts provide any compensation.

It is often witnessed that the Learned presiding judicial officials at Guardian/ Family Courts have developed a tendency to mostly proceed under Section 12 of the Guardian and Wards Act 1890 under the mistaken notion that the provisions of this Section are a substitute and an alternate to Visitation Rights of Non-Custodial Parents as are protected under the provisions of Section 5 of the Schedule attached with the Family Courts Act, 1964, due to the failure on the part of the Punjab Judicial Academy to develop training courses relating to administration of family justice including use of information technology and its inability to impart proper training and education to the Learned Civil Courts while transferring them as Guardian Courts to understand and appreciate the difference between exercising general jurisdiction and the quasi parental jurisdiction conferred upon them by virtue of their office.

(iv) VISITATION WITHIN COURT PREMISES

In the case reported as "Umer Farooq vs. Khushbakht Mirza" **PLD 2008 Lahore 527,** it is held that the contesting parents had an inherent right to seek visitation from the minor, especially the father, who was the natural guardian. Fathers were not only required to participate in the upbringing of minors but should also develop love, bondage, and affinity with them. To achieve such a purpose, the court should facilitate a congenial, homely, and friendly environment with a reasonable visitation schedule. The Court of Guardian Judge, for such a purpose, was neither conducive nor effective; it lacked proper facilities and arrangements and was not comparable to a homely environment. Meeting on court premises did not serve the purpose of the meeting and was not in the best interest of minors to hold meetings there. Meetings of minors with parents should preferably be held on the premises of the contesting parent to familiarise minors with the environment there, strengthen a healthy relationship, and dispel fears of a future re-union. Only in extreme and exceptional cases could the court of the Guardian Judge be chosen as a venue for which detailed reasons should be cited; thus, mechanical order in such a context was not tenable.

This view was later supplemented by the Honourable Quetta High Court in the case reported as "Abdul Khaliq vs. Mst. Mahnoor," **2018 MLD 44 Quetta,** to the effect that a father might disentitle himself to custody on account of his conduct, but the father, in the present case, was regularly depositing the maintenance allowance of his minor daughter as fixed by the court. A minor daughter of her tender age required the love and care of her parents; deprivation of any of them would have a negative effect not only on her mental growth but also on her intellectual development. Neither the minor nor the father could be deprived of each other's company. Father, being the natural guardian, was not only required to participate in the upbringing of the minor but should also develop love, bondage, and affinity with her to achieve said purpose. The court was to facilitate a congenial, homely, and friendly environment and a reasonable visitation schedule. The office of the Guardian Judge or the office of the Civil Nazir of the Court, for the said purpose, was neither conducive nor effective, lacked proper facilities and arrangements, and was not comparable to a homely environment. A meeting on court premises could not serve the purpose of the meeting, and it was not in the interest or welfare of the minor to hold a meeting on court premises. Meetings of the minor with the father were preferably to be held at the residence of the father.

(v) AT HOME VISITATION

The law on the subject is contained in the Act. The parent who does not have custody has visitation rights as a non-custodial parent. A non-custodial parent has a right to file a suit for visitation rights. The law in vogue on the subject lacks any guidelines about the duration or frequency of such visits or the overnight stay of the minor with a non-custodial parent. The Act does not contemplate a set pattern of the visitation schedule for the minors inasmuch as it is silent on the frequency of visitation or the venue thereof. It is trite law that while deciding a guardian petition, including the chalking of a visitation schedule, the ‘welfare of the minor’ is of paramount consideration. Limited hours of meeting within the court premises is the policy generally adopted by the courts, which is certainly not an appropriate solution inasmuch as it only enables a minor to identify his relationship with the non-custodial parent without developing any bonding due to the lack of proper interaction between the minor and such a non-custodial parent because of the non-

conducive environment of the court premises. As a natural corollary, there is a great chance that the minor will turn against such a non-custodial parent. Therefore, the courts are to consider the impact that the proposed visitation schedule might have on the child. Failure to protect the development of healthy and secure attachments in a minor with a non-custodial parent can have long-term negative effects on the development of the minor; hence, the basic consideration while chalking out the visitation schedule is to ensure that the minor will not turn against one parent because of the inadequacy of time given to the non-custodial parent. Reliance is placed at W.P. No. 17366/2021, adjudicated by the Honourable Lahore High Court.

The welfare of minors was a prime consideration before the Court. The Honourable Lahore High Court observed in **2018 MLD 1592 Lahore** to the effect that, "admittedly, the respondent was the father of the minor, and being the natural guardian, he had the right to his supervision under the Islamic Law; therefore, on separation of the parents, the minor could not be permanently deprived of the love and affection of either of the parents. Minor, in the present case, had crossed the age of six years; therefore, he should have maximum interaction with the father, even if the custody was with the mother; otherwise, it may cause an estrangement in the mind of the child, which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection, and company from his father. Court, in order to achieve such a goal, was to make every possible effort to chalk out a reasonable visitation schedule in a friendly atmosphere. The meeting of the minor on the court premises with the father was neither conducive nor effective and did not serve the purpose of the meeting; therefore, the welfare of the minor was at stake in the meeting with the father at his residence".

(vi) BALANCED VISITATION SCHEDULE

A father, being a natural guardian, has an inherent right to properly and effectively participate in the upbringing of the minors while developing proper bonding and love with the minors, which can only be achieved if the visitation schedule is chalked out in such a manner that the non-custodial parent meets the child in a pleasant, homely, and responsive environment on a frequent and regular basis. Certainly, the court's premise is that there is no place where a minor can have a congenial feeling towards his or her parent. Moreover, a balanced annual visitation plan

would benefit the child as it would allow significant time to develop a meaningful relationship with both parents. Overnight access could also benefit the child by giving him or her an opportunity to interact with the family of the non-custodial parent and maintain relations with them. Learned Guardian Courts are obligated to chalk out a schedule in such a manner that both parents must be accommodated in such a way that one parent should not be deprived of participating in the important aspects and events of the minor's life, inter alia, school and leisure time activities, annual vacations, birthdays, and other important occasions and festivals such as Eid, etc. The fundamental rule that the court must follow is to ensure that the minor spends proper and adequate time with a non-custodial parent who can also exhibit his or her love and affection for the child. An overnight stay with a non-custodial parent is one of the most appropriate steps, and in this regard, different arrangements work better for children of different ages. An overnight stay for a child of tender age with a non-custodial parent may not be advisable. Similarly, there appears to be no harm in allowing an overnight stay for a male child over 7 years of age. These aspects should be kept in mind while chalking out the visitation schedule. Therefore, the fact whether the Guardian Court can or should assume that an overnight stay of the minor with a non-custodial parent is harmful or beneficial until proved otherwise is a question that cannot be answered by way of applying a straitjacket formula and invariably has to be decided by keeping in view the peculiar facts of every case on its own merits, including but not limited to factors such as the age of the minor, the environment in the house of the non-custodial parent, the availability of time with the non-custodial parent, and his or her other social and moral obligations and commitments. The observations were passed by the Honourable Lahore High Court in **Shahid Wazeer vs. Additional District Judge, etc. in W.P. No. 17366/2021.**

20-INTERLOCUTORY ORDERS IN VISITATION ARE APPEALABLE ORDERS:

Earlier, it was a view that an order, under the provisions of Section 12 of the Guardian & Wards Act 1890, once passed, attains finality, which, being interim in nature, is neither reviewable nor appealable in terms of Section 47 of the Guardian & Wards Act 1890. However, it is pertinent to be noted that the Legislature introduced an amendment in the Guardian & Wards Act 1890 in the year 1982 and introduced a proviso to

Section 47 of the Act ibid., whereby it is [Provided that, where the order from which an appeal is preferred is passed by an officer subordinate to a District Court, the appeal shall lie to the District Court']. This proviso was further elaborated by the Honourable Lahore High Court in the case titled Mst. Maimoona Illyas vs. Additional District Court and cited as **2017 CLC 1747 Lahore** supra, which shattered this myth and held that the provisions of the Guardian & Wards Act 1890 could not be read in isolation because the Legislature, by design, had brought the disputes relating to the guardianship within the purview of the First Schedule of S. 5 of the Family Courts Act 1964; therefore, all the affairs relating to the guardianship would be exclusively triable by the Family Court under the Family Courts Act 1964 because the Statute, which was later in time, would prevail. In terms of S. 14 of the Family Courts Act 1964, while excluding an interim order, a decree or decision given by the Family Court would be appealable. The High Court observed that an order passed by the Family Court or Guardian Court under Section 12 of the Guardians and Wards Act was appealable under Section 14 of the Family Courts Act of 1964. Family Court had parental jurisdiction, but there was no scope for such jurisdiction for any undue adherence to technicalities, and Family Court, being a quasi-judicial forum, could follow its own procedure, which was not to be against the principles of a fair trial.

21-LAW OF TEMPORARY INJUNCTION AGAINST VISITATION RIGHTS

Scores of appeals against visitation orders passed by Guardian Courts are pending settlement in practically each appellate court in Lahore and several such appeals have been pending adjudication throughout the region of Punjab in Guardian Appellate Courts for over 2-3 years. There is just one explanation for this: the learned appellate courts have allowed stay orders/interim injunctions simply on the basis of an introduction of affirmation by the appellant. In practically all such appeals, various dates have additionally been given to the appellants and various applications for excursions of stay/interim injunctions have been documented — though without results.

This article highlights the law of interim injunction in family jurisprudence. It is an issue which has not yet been tended to by any of the courts of suitable locale despite repeated requests. The appellate courts in

Lahore have disappointed in guaranteeing consistencies in their orders thereby causing inequity towards non-custodial parents and neglect towards minor children who are expected to bear the brunt of careless laws.

As most readers may know, an order is a legitimate cure which is forced by a court. In basic terms, a directive implies that a specific activity should either accomplish something or abstain from accomplishing something. When the court settles on a choice, the parties must submit to that decision. In the event that a party neglects to stick to the order, there can be monetary punishments and even detainment in specific instances.

Having practised child custody litigation for over a decade, I am familiar with the structure of family jurisprudence and the *loco parentis* limit. Before a temporary directive can be awarded in an appeal based on an affidavit of the appellant, the appellate court must acknowledge the typical practice among couples to use children as pawns. In cases of such flippant behaviour, youngsters are often left severely scarred post separation. A court's powers, with regard to visitation rights and the custody of minors, come within the nature parental jurisdiction, therefore, the court must act in a way that a wise parent would. The expression "welfare of minor" is to be construed in a way so as to encompass all the dominant factors essential for determining the actual welfare of the minor. Technicalities of law should not be adhered to in such type of cases and used to suspend visitation rights of non-custodial parents. Reliance is placed on ***2002 PLD 267 Supreme Court***.

An order by the appellate court allowing the suspension of visitation rights based on an affidavit presented by the appellant on the day of the hearing and without issuing prior notices to the non-custodial parent appears to encroach upon visitation privileges which are already confined to meeting minors on court premises, for two hours and two times a month (***PLD 1958 SC 41***).

When the *lis*/suit is pending between guardians, there are three fundamental characters of the situation: mother, father and child — and in specific cases the siblings of the minor. The feelings and sentiments of all those involved ought to be taken into consideration whilst addressing the main issues, in addition to considering the welfare of the minor as referenced before.

All those appearing and assembling for the proceedings should consider that the mother should not be denied complete custody of the minor, nor should the father be discouraged from meeting and seeing his children ***(2009 CLC 1443 Lahore).*** The third significant character is simply the child, who under the law of nature ought to receive the warmth of both guardians ***(2019 MLD 804 Karachi).***

For the sake of welfare of the minor, genuine efforts should be made by legal executives to put a stop to the misuse of legal procedures. Specialized curriculum and workshops are also required for Guardian Judges who ought to keep in mind that restricting the civil rights of non-custodial parents (generally the fathers) should be justifiable with substantive reasons. It is further proposed that the learned judges serving as Guardian Judges be provided with guidelines on the standards of natural justice appropriate in guardianship proceedings, as well as awareness of the constitutional guarantees which non-custodial parents are entitled to, such as the right to a fair trial and the right to privacy and dignity.

22- INTERIM CHILD VISITATION SUGGESTIONS

Immediately within one week from the date of service of summons or the first meeting with the counsellor for mediation and conciliation parties, the parties shall draw up an interim visitation plan. The basic principles of the courts are to ensure that the child or children get to spend equal, substantial, and significant time showered with love and affection from both parents, irrespective of the parent's conflict. Efforts should be made by parties, and if necessary, the court should direct parties to mutually agree upon a visitation schedule to be drawn up within a maximum period of 60 days. Pending the finalisation of the mutual final overnight visitation agreement, interim access has to be worked out immediately. If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Visitation is for the primary benefit of the child. Visitation should not be viewed as a privilege to be exercised at the whim of either parent but as a responsibility that should be fulfilled as a necessary cause. The custodial parent is expected to provide access to each child at unscheduled times if requested, and if to do so would not unreasonably disrupt prior planned activities of the child or the custodial parent,

23- REINTRODUCTION OF ABSENT PARENT:

The most common kind of child abuse is parental child abuse which often occurs when the parents separate or initiate divorce proceedings. A parent may, remove or retain the child from the other parent's custody, seeking to gain an advantage in the expected or pending child custody proceedings, or because that parent fears losing the child in the lengthy, pending child custody proceedings. A parent may refuse to return a child at the end of an access visit or may even flee with the child to prevent an access visit. This very retention by the parent can itself create tangible effects on a child psychology which often goes unaddressed.

The worst possible thing that can happen in a child's life, apart from losing a parent, is to become a rolling ball in a parents' divorce and the ensuing custody battles. Whilst the spouses and their families hurl accusations and try to get the better of each other, the trauma being suffered by the child may sometimes be overshadowed by the volley of hurt and anger of the parties.

Cases pertaining to custody/ visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil rights/ obligations, such as property disputes etc. These cases have their own dimensions, repercussions and consequences, founded upon human emotions and the sentiments. The resolution and adjudication of this special kind of matters, therefore should be conceived, considered and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time the natural feelings of the parents cannot be overlooked and ignored. If a parent means a lot to a child, the child may also mean the whole world to the parents.

The suggestion assume that each parent has been a continuous presence in his children's lives. In the event that a parent has had limited or no contact with his or her children and wishes to be reintroduced into the children's lives, it is up to the parents to agree on the means by which this is to be accomplished. If the parents are unable to agree, the first alternative will be to mediate the conflict. If mediation is unsuccessful, it shall be the responsibility of the Court to adopt a schedule to ease the reintroduction.

24- INTERIM VISITATION

On an average, a family/ custody case under the **Guardian & Wards Act** lasts approximately three to five years in the guardian courts. During

these years, owing to a lack of interaction between the minors and the non-custodial parents, the parent-child bond keeps on depleting and often completely breaks after a while. In a majority of cases it has been observed that the custodial parent keeps on brain-washing the minors against the non-custodial parent. On top of that, the guardian courts strengthen the revengeful motives of the custodial parent by not granting a reasonable visitation schedule between children and the non-custodial parent. It has been seen that the non-custodial parent initially struggles and contests the litigation in the hopes of getting justice, but then finally gives up after being disappointed. He/she re-marries, starts a new life and bears new children. As a result, the minors normally end up losing one of the parents forever.

Family matters were not to be decided strictly on the yardstick of procedural laws nor any other principle aimed at the observance of technicalities. Paramount consideration before the court must be the welfare of the minor and betterment of the minor. Courts in such a matter are required to act in a *loco parentis* position and many matters are required to be kept into consideration by the guardian court, which is not always the practice observed by the courts adjudicating guardian and custody matters pending adjudication in Pakistan. What has actually been done in a vast majority of cases pending in multiple guardian courts in Pakistan is that the non-custodial parents are subjected to abuse and victimization in the name of procedural technicalities especially during the pendency of divorce and custody-of-minor proceedings. Even after waiting for months for the first face-to-face meeting with his/her own children, the non-custodial parent gets an extremely limited visitation schedule to meet the children. This visitation schedule is often as little as ONCE IN A MONTH FOR TWO HOURS WITHIN COURT PREMISES. Surprisingly, this visitation schedule is being followed widely in the guardian courts of Pakistan for over decades and has now established precedence. In other words, “once a month for 2 hours in court” has become a “template” of visitation orders being granted to non-custodial parents in guardian courts. In addition, even the aforementioned visitation schedule of TWO HOURS can be conveniently avoided by a custodial parent simply by presenting a fake medical certificate showing they are unable to make it. In such cases the non-custodial parent is left with no choice but to wait for the next scheduled meeting. The guardian courts are generally very casual towards such excuses furnished by

custodial parents.

The following interim visitation suggestions would balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the non-custodial parent.

25- VISITATION FOR (CHILDREN AGED BETWEEN 24 TO 36 MONTHS)

The following visitation suggestions would balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the non-custodial parent.

Weekends: The non-custodial parent shall be entitled to weekend visitation every weekend. For children between 24 and 36 months, visitation shall be between 11 a.m. and 2 p.m. or 4.30 p.m. and 7.30 p.m. on every Saturday of a calendar month.

Holidays: The non-custodial parent shall be entitled to spend at least three hours on the holiday or festival day, including 14th August, 23rd March, 1st May (Labour Day), 25th December (Quaid Day), and 14th November (Children's Day), excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the non-custodial parent shall be entitled to spend time with the minor child; in even-numbered years, the schedule shall be reversed. A party's entitlement to holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either party or both parties celebrate other holidays, such holidays should be written down, divided, and alternated each year.

Note: For children aged between 0 and 24 months, it shall be open for the custodial parent to remain present during visitation.

Visitation shall be from 11:00 a.m. until 2:00 p.m. or 4.00 p.m. to 7.00 p.m. on the official holiday.

26- VISITATION FOR (CHILDREN 36 MONTHS AND OLDER)

Weekends: The non-custodial parent shall be entitled to weekend visitation every other weekend or every weekend for at least two overnight stays. Every other weekend, visitation shall begin on Friday at 6:00 p.m.

and end at 6:00 p.m. on Sunday. If every weekend visitation is opted for, then every week overnight visitation shall begin either on every Friday at 6.00 p.m. and end on Saturday at 6.00 p.m. or on every Saturday at 6.00 p.m. and end on Sunday at 6.00 p.m. It is not the responsibility of the custodial parent to provide food or shelter for the child during the non-custodial parent's visitation.

Holidays: The non-custodial parent shall be entitled to spend at least three (3) hours on holidays and festival days, excluding the time of travel. Only where it is not possible to share during the holidays and festival day due to reasons of distance or otherwise. A party's entitlement to holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either party or both parties celebrate other holidays, such holidays should be written down, divided, and alternated. In the absence of an agreement, the court shall allocate religious holidays between the parties.

Visitation shall be from 11:00 a.m. until 2:00 p.m. Or from 4 p.m. to 7 p.m. on the official holiday.

CHILDREN COMPLEX ROOM: Where access, even though either agreed by mutual consent or ordered by the court, is not being granted to the non-custodial parent, a children's complex room situated in the premises of the Family Courts or in such other place as either mutually agreed or directed by the court, such as premises made available and approved by the Hon'ble Family Court, shall be used for purposes of counselling the child or the parent for a specific period, and thereafter access can continue as per the schedule set forth

27- FINAL CHILD VISITATION GUIDELINES

GENERALPROVISIONS The parent with primary custody (the parent who has had custody of the child since birth and is taking care of the day-to-day and hour-to-hour needs of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the non-custodial parent.

If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Even if mediation does not work, the court can pass an appropriate order in terms of the visitation schedule for the parties to comply with. Special reasons may exist to alter this visitation schedule, such as the age of the child, health, special care needs, etc.

Within a period of not more than 60 days, parties shall draw up and finalise a final schedule of visitation as per Chapter 3 below.

On the visitation schedule being drawn and agreed upon between the custodial and non-custodial parent, the counsellor shall have the same duly executed by the parties, and the same shall be placed on record for the approval of the Hon'ble ourt. Parties shall comply with the agreement in full, and any violation shall give rise to a cause of action for the aggrieved party to seek appropriate directions from the court.

The no-contact or limitation-of-contract provisions of any domestic violence case, injunction case, juvenile case, or criminal case supersede any contact provisions set forth in these guidelines. That is, the no-contact or limitation-of-contract provisions of any domestic violence case, injunction case, juvenile case, or criminal case should be followed as set forth by the judge in that case. It may be necessary to seek a modification of the no-contact or limitation-of-contract provisions in order to facilitate visitation.

The term "local" shall apply to parties residing within 200 driving kilometers of each other.

The term "nonlocal" shall apply to parties not residing within 200 driving kilometers of each other.

ENFORCEMENT OF VISITATION SCHEDULE: If the parties cannot agree on visitation, their first alternative is to mediate the conflict through an alternative dispute resolution process. Even if mediation does not work, the court can pass an appropriate order in terms of the visitation schedule for the parties to comply with.

MEDICATION, ILLNESS OR ACCIDENT If medication or therapy has been prescribed for the child, then both parents shall without fail provide the child with all medical prescription dosages, treatment, and/or therapy as may be prescribed for the child. The parents shall share the health care professional's name and phone number, as well as instructions for treatment. If the child becomes ill or is involved in an accident and treatment by a medical professional is obtained, the parent who has the child at the time of the illness or accident shall notify the other parent as soon as practicable but no later than three (3) hours after the incident or diagnosis. Illness of the child should not be a reason to prevent visitation of the non-custodial parent with the child, unless the child is hospitalized. Non-Custodial Parents should be allowed to attend

the child during his hospitalization.

COMMUNICATIONS: Provided that both parents have exchanged their cell numbers and they are not blocked, the child shall be entitled to telephone communication at least once every day with both parents. Each parent shall immediately deliver to the child all letters, cards, e-mails, correspondence, telephone messages, gifts, toys, clothes, and other items sent to that child by the other parent. Neither parent shall withhold, return, destroy, give away, sell, or otherwise dispose of any such items. If either parent plans a vacation or trip out of town with the child for three (3) days or more, that parent must provide the other parent with a general itinerary, a phone number where the child can be reached, and the dates of departure and return. Each Parent shall provide the other Parent promptly upon being requested to do so, with information concerning the well-being of said children including, but not limited to; monthly school attendance reports, reports concerning completion of homework, copies of report cards, school meeting notices, vacation schedules, class programs, requests for conferences, results of diagnostic tests, notices of activities involving said children, samples of school work, order forms for school pictures, communications from health care providers; the names, addresses and telephone numbers of all schools, preschools, regular day care providers, all health care providers, counselors, or other activity supervisor, and friends, schoolmates and relatives.

SCHEDULED EVENTS: Both parents shall be entitled and are encouraged to attend and participate in the child's special events, such as school programmes, graduation, sports, recitals, and other extracurricular activities. When the child has extracurricular activities, the parent caring for the child when the activity is scheduled should assure the child's attendance. Each parent shall advise the other parent of extracurricular activities in which the child participates within twenty-four (24) hours of notification of an event or activity. Each parent shall make an effort not to schedule activities for the child that interfere with the other parent's visitation time with the child.

COMPENSATORY VISITATION: a. The non-custodial parent shall be entitled to a compensatory visitation in case his scheduled visitation is skipped for any justifiable reason, upon reasonable notice, subject to a minimum of 12 hours' notice to the custodial parent whenever There may be a need where the non-custodial parent wishes and desires that the child be present on certain occasions, such as carnivals, bonfires,

religious functions, birthdays, anniversary celebrations, inaugurations, marriages, or emergencies such as the untimely death or hospitalization of a close relative, such as a grandparent or relative, etc. In such circumstances, the custodial parent shall allow access to the child immediately.

ADEQUATE AND CLEAN CLOTHING FOR VISITATION: Adequate and clean clothing shall be supplied by the custodial parent, and all these clothes shall be returned in the same clean condition by the non-custodial parent to the custodial parent after each visitation period

INTENT TO RELOCATE: Neither party to the suit can relocate unless the final visitation rights agreement as set out is signed and finalized.

NOTICE OF INTENT TO RELOCATE: In the event that either parent intends to relocate outside of the local area of residence of the non-custodial parent, he or she shall provide the other parent with ninety (90) days written notice prior to any relocation. This is a notice provision only and does not eliminate the need for court approval of such relocation if legally necessary. In the event such relocation does take place and the custodial parent is permitted to relocate, and further, if the non-custodial parent, in order to be able to be near the child and for the sake of the child, also chooses to relocate, then under such circumstances, the non-custodial parent on relocation shall enjoy the same access schedules as already decided and agreed upon without any alterations. In the event the noncustodial parent's status changes from 'Non-local' to Local, the access schedule shall also likewise change, and the non-custodial parent shall be entitled to all provisions of local access.

CHANGES IN ADDRESS AND PHONE NUMBERS: Neither parent shall conceal the whereabouts of the child from the other parent. Each parent shall advise the other parent at all times of the residence address and telephone number where the child will be, as well as the parent's work telephone number. If a residence or telephone number changes, the parent making the change shall notify the other parent personally or by telephone within twenty-four (24) hours and in writing within seventy-two (72) hours of the change.

CHILD SUPPORT / MAINTENANCE: Non-payment or late payment of child support is not an acceptable reason to deny or interfere with visitation. Conversely, denial of visitation is not justification for non-

payment or late payment of child support. Child support and child visitation are separate and independent issues and are not to be manipulated by either parent to gain leverage over the other parent with regard to visitation or child support. Child support shall not stop during visitation periods unless provided by court order.

FLEXIBILITY AND THE BEST INTERESTS OF THE CHILD: The parents may agree to change this schedule to meet the needs of their child. The parents are encouraged to put such changes in writing. If the parents do not agree to visitation schedule changes, they must adhere to these guidelines, or a parent in violation may be held in contempt of court.

SHIFT OF CUSTODY: FOR REASONS OF CHILD ALIENATION / TUTORING / MIND POINSONING / BRAINWASHING / PARENTAL ALIENATION SYNDROME : In the event it is observed or alleged by concrete substantive evidence or material placed on record enumerating instances as listed below the court shall proceed to seriously entertain and decide that the custody of the child be shifted from the custodial parent to the non-custodial parents on their being conclusive evidence to substantiate either any one or more of the following : A custodial parent who unjustifiably punishes her divorcing or divorced non-custodial parent by:

i. Attempting to alienate their mutual child(ren) from the Non-Custodial parent.

ii. Any act, deed done or caused to be done by the custodial parent which may lead to the infringement of the right of the non-custodial parent's visitation.

iii. Involving others in malicious actions against the Non-Custodial parent.

iv. Engaging in excessive litigation.

v. The custodial parent specifically attempts to deny her child(ren)regular uninterrupted visitation with the Non-Custodial parent.

vi. Uninhibited telephone access to the Non-Custodial parent.

vii. Obstructs or causes any obstruction in the Non-Custodial Parents participation in the child(ren)'s school life and extracurricular activities.

viii. The pattern is pervasive and includes malicious acts towards the Non-Custodial parent including:

ix. Lying to the children

x. Lying to others

xi. Violations of law or Making False Complaints

xii. The disorder is not specifically due to another mental disorder although a separate mental disorder may coexist.

NEW SPOUSE OR COMPANION: The parents shall not encourage the child to call a new spouse or companion "Papa" "Mummy" "Father", "Dad", "Mother", "Mom", or similar names, as such is detrimental to the child's relationship with his or her natural parents and may confuse and adversely affect the child. A substitute name may be suggested or encouraged. Each parent shall encourage a new spouse or companion not to confront or interfere with the other parent's contacts or visitation with the child, and each parent is expected to prevent any such confrontation or interference. The other parent shall not be adversarial or hostile to a new spouse or companion but shall be courteous, polite, respectful, and non-threatening. Unless otherwise ordered or agreed upon by the parties, the parents are expected to speak directly with each other concerning all matters related to a divorce or separation judgement or order.

NAME OF THE CHILD & SURNAME: The custodial parent shall not be entitled to change the name or surname of the child that has been given to the child as per either a ceremony performed for the same or the name along with the father's surname as it appears in the birth certificate.

CHANGE OF SCHOOL OR DAYCARE CENTRE: The custodial parent shall not be entitled to admit or change the school or daycare center of the child without written consent and/or agreement between the parties. If the issue is not resolved, then such admission or change of school or daycare center for the child shall be as per the order of the court.

REMOVAL OF CHILD FROM DAYCARE OR SCHOOLIn the absence of prior agreement between the parties and proper notification of the daycare or school, except in the event of an emergency, the non-custodial parent shall not remove the child from daycare or school for visitation or otherwise. This paragraph shall not be applied to preclude the non-custodial parent's participation as a parent in school activities and access to the child at school, to the same extent as afforded the custodial parent, nor to prevent the non-custodial parent from picking the child up

after school or daycare if such pickup is pursuant to the parties' visitation arrangement

CANCELLATION BY NON-CUSTODIALPARENT

A. Local (parties residing within 200 driving Kilometers of each other)

i. Twelve (12) hours' notice shall be given by the parent entitled to visitation with the child if visitation will not be exercised for the weekday or weekend.

ii. A minimum of Three (3) days' notice shall be given by the parent entitled to visitation for a holiday if visitation will not be exercised.

iii. A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for a period of one week or greater if visitation will not be exercised.

iv. The parent seeking cancellation shall arrange and pay for babysitting, child care or other appropriate visitation of the child for the visitation period; to the extent such expense is due to the cancellation. Any Visitation if cancelled by the Non-Custodial Parent shall be forfeited unless the Parents agree to a substituted alternate visitation. A Notice for cancellation of the meeting is required to be given; the Custodial Parent, however shall not unreasonally withhold the alternate visitation.

NOTICE – Non Local (parties not residing within 200 Driving Kilometers of each other /

i. A minimum of three days (3 days) notice shall be given by the parent entitled to visitation for a holiday or special occasion if visitation will not be exercised. A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for Eid ul Fitr, Eid ul Azha, Summer vacations or an annual visitation period of one (1) week or greater if visitation will not be exercised. If the cancellation is NOT agreed to by both parents, the parent seeking cancellation must arrange and pay for child care or other appropriate supervision of the child for the visitation period, to the extent such expense is due to the cancellation.

Any Visitation if cancelled by the Non-Custodial Parent shall be forfeited unless the Parents agree to a substituted alternate visitation. A Notice for cancellation of the meeting is required to be given; the Custodial Parent, however shall not unreasonally withhold the alternate visitation.

ADDITIONAL / COMPENSATORY VISITATION: The Non-custodial parent shall be entitled to a compensatory visitation in case his scheduled visitation is skipped for any reason.

TRANSPORTATION

A. Local (parties residing within 200 driving Kilometers of each other): The Noncustodial parent shall pick up the child for visitation and the custodial parent shall pick up the child after visitation. A third party, agreed to by both parents, may substitute for one of the parents in transporting the child to and from visitation. The parties should reasonably consider a parent's current spouse or a family member of the child as a substitute. A party who moves and thereby causes an increase of more than thirty (30) Kilometers in driving distance between the two parents, shall bear responsibility for transportation in absence of Court intervention. The place of pick up and drop of the child shall be agreed to in writing by both the parents. However, the place of pick up and drop shall either be the residence of the custodial parent or the family court children's complex or as ordered by the Hon'ble court.

B. Nonlocal (parties not residing within 200 driving Kilometers of each other): The court shall decide the issue of transportation on a case by case basis absent an agreement by the parties.

WAITING:

A child shall be picked up or delivered within thirty (30) minutes of the scheduled time of exchange. If the Non-custodial parent is more than thirty (30) minutes late to pick up the child for visitation and creates a hardship as a result, visitation shall be forfeited for that visitation period. If legitimate reasons exist for delay in picking up the child for any weekend or longer visitation, and beginning the visitation the next day does not create a hardship on the custodial parent, the Non-custodial parent may pick up the child at a mutually agreed upon time later in the visitation period. The Non-custodial parent shall give the custodial parent as much notice as reasonably possible of any delay in picking up the child.

AMENDMENTS:

Parties can vary; alter the interim access schedule as per convenience within a period of one week from the date of presentation of the petition before the Hon'ble court or within one week from the date of

their meeting with the counselor for mediation whichever is earlier. In the event parties fail to arrive at a decision and conclude on the interim visitation schedule then the counselor shall draw up an interim visitation schedule and place the same before the Hon'ble court to be made final by an order of the court.

OVER NIGHT ACCESS:

Courts are under obligations to consider the child spending equal time, or substantial and significant time, with each parent. In making a parenting order the court 'must consider' making orders that the child spend equal time, or if not equal then substantial and significant time, with each parent. 'Substantial and significant time' is defined to mean, essentially, weekdays and overnight weekends and holidays, times that allow the parent to be involved in the child's daily routine as well as occasions and events that are of particular significance to the child or the parent child to maintain or consolidate a secure attachment with a parent whose behavior is oriented only to 'visiting' rather than 'care-giving'.

Children have the right to know and be cared for by both their parents, regard - less of whether their parents are married, separated, divorced, have never married or have never lived together; and

Children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other immediate family members & relatives); and

Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

Over Night Access at home of the non-custodial parent should be encouraged at an early stage so that the children have a close and continuing relationship and get the love, affection of not only parents but also of grandparents and other immediate family members like uncle, aunties, cousins etc. The healthy emotional development of children depends upon their early experience of a continuous, emotionally available care-giving relationship, through which they are able to form an organized attachment, and to develop their human capacities for thought and relationships essentially, Children have their right to childhood of hopeful existence free of exploitations, neglect. Children need consistent support system as well as love, hope and encouragement, all these things and more are required in order to experience childhood to the fullest and to

eventually develop into a healthy, capable adult for the full and hormonal development of his or her personality children should grow up in a family environment in an atmosphere of happiness, love and understanding which is very important for their overall growth and wellbeing. The children should be fully prepared to live life in society, in the spirit, dignity tolerance, freedom, equality and solidarity. However young children are subjected to exploitation especially in a broken marriage where the court has to intervene to protect the rights of the child. Children have to be ensured that their right to parental access, right to quality of life, right to be cared for, and right to freedom of expression is not compromised and children get love and affection from both parents and grandparents and immediate family members. They should have a sense of belonging to a healthy family environment maintaining their heritage so that the genealogy of the child is not lost after attaining adulthood and they are able to be linked with their ancestors. Overnight access should therefore be encouraged at an early stage

28- FINAL VISITATION (CHILDREN LESSER IN AGE THAN 36 MONTHS)

The following visitation suggestions would balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the Non-custodial parent.

WEEKENDS: The Non-custodial parent shall be entitled to overnight weekend visitation every weekend. For children between 24 to 36 months' visitation shall be between 11.00 A.M. to 2.00 P.M. or 4.30 P.M. to 7.30 P.M. on every Saturday of a calendar month

One of the most important considerations is for attachment with both parents. It is important for visitation to provide opportunities to establish a bond between the child and the parent. Generally, frequency of visitation is given more consideration than duration of visitation. Making up for less frequent visits by increasing the length of time of visits is not recommended for infants recommended daily visits, but if this is impractical, then visits should be spaced no more than two days apart. There is research, however, to show that overnight visits with the parent can occur, provided that the parent has been a significant caretaker and a primary attachment figure.

HOLIDAYS: The non-custodial parent shall be entitled to spend at least 3 Three hours on the holiday or festival day including 14th August,

23rd March, 1st May (Labour day;), 25th December (Quaid Day), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated each year. **Note:** For children aged between 0 to 24 months it shall be open for the custodial parent to remain present during visitation.

Visitation shall be from 11:00 a.m. until 2:00 p.m. or from 4:00pm to 7:00pm on the official holiday.

Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 2:00 pm or 4:00pm to 7:00pm.

Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 am. until 2:00 p.m. or 4:00pm to 7:00pm

Eid / Moharram / Ramzan / Eid Milad un Nabi/ Ashoora New Year / visitation to the non-custodial parent shall be for a period of 3 three hours excluding travelling time and timings shall be decided between the parties mutually.

FESTIVALS WEEKEND OVERNIGHT ACCESS: Festivals which last for more than three days especially Eidain and Ramzan and for which long holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation.

MOTHER'S BIRTHDAY: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.

FATHER'S BIRTHDAY: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.

CHILD'S BIRTHDAY: The child shall celebrate his or her birthday with the Noncustodial parent in odd-numbered years and the custodial parent in even numbered years. In years that the child spends his or her birthday with the Noncustodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. The parent holding a birthday party for the child may wish to consider inviting the other parent.

ANNUAL VISITATION FOR CHILDREN (UNDER AGED 24-TO-36 MONTHS): Unless otherwise agreed to by the parties, regular weekend and weekday visitation shall be maintained year round in lieu of a designated annual visitation period.

29- FINAL VISITATION (CHILDREN 36 MONTHS AND OLDER)

36. WEEKENDS: The Non-custodial parent shall be entitled to atleast two overnights stays at the home of his non-custodial parent, every other weekend. Visitation shall begin Friday at 6:00 p.m. and end at 6:00 p.m. on Sunday. If parties wish to avail continuous every week access, then every weekend access shall begin from Friday at 6.00 p.m. and end on Saturday 6.00 p.m. or Saturday 6.00 p.m. to Sunday 6.00 p.m. It is not the responsibility of the custodial parent to provide food or shelter for the child during the Non-custodial parent's visitation.

37.WEEKDAY VISITATION: If the parties reside within thirty (30) Kilometers driving distance of each other, the Non-custodial parent shall have visitation two (2) evening per week for 3 two hours between 6.00 p.m. to 9.00 p.m., but shall exercise the weekday visitation in the locale of the child's primary residence or within the radius of 10 ten kilometers. The preceding sentence shall not preclude occasional travel

beyond the thirty (30) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening. If there are activities scheduled for Wednesday, the Noncustodial parent shall have first choice of an alternate weekday for weekday visitation.

38. HOLIDAYS: The non-custodial parent shall be entitled to spend at least 4 seven hours stays on the holiday or festival day for instance like 14th August, 23rd March, 1st May (Labour day;), 25th December (Quaid Day), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If the parties celebrate religious holidays other than those defined in sections A and B below, those religious holidays shall be mutually agreed upon in writing, divided, and alternated each year. In the absence of an agreement, the court shall allocate those religious holidays between the parties.

i. Visitation shall be starting from 11:00 a.m. until 6:00 p.m. or 4.00 p.m. to 11.00 p.m. on the official holiday.

ii. Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m.

iii. Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m.

iv. Ramzan / Eid ul Fitr / Eid ul Azaha / Eid Milad un Nabi/ Moharram / New Year / visitation to the non-custodial parent shall be for a period of an overnight stay excluding travelling time and timings shall be decided between the parties mutually.

NOTE: Non-custodial parent shall be entitled to take the child at his residence during this period of access.

39.FESTIVALS WEEKEND OVERNIGHT ACCESS: Festivals

which last for more than three days especially Eid ul Fitr & Eid ul Azha and Ramzan and for which long holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation.

40. FIFTY % VACATION: The non-custodial parent shall be entitled to 50% of each vacation during the year the child has vacations for Summer, Winter & Spring.

41.MOTHER'S BIRTHDAY: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.

42.FATHER'S BIRTHDAY: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.

43.CHILD'S BIRTHDAY: The child shall celebrate his or her birthday with the Noncustodial parent in odd-numbered years and the custodial parent in even numbered years. In years that the child spends his or her birthday with the Noncustodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m.. The parent holding a birthday party for the child may wish to consider inviting the other parent.

30- CHILDREN IN DIFFERENTAGE GROUPINGS:

i. If there are two (2) or more children whose ages span different age groupings entitling the children to different visitation periods with the Noncustodial parent, then the younger children shall get the benefit of the oldest child's visitation schedule.

ii. This Provision does not apply to children aged between 0 to 24

months. Parents of a child aged between 24 to 36 months must follow the visitation schedule for that child regardless of whether or the child has older siblings on a different schedule.

31- SCHEDULING ANNUAL SCHOOL VACATION:

i. The Non-custodial parent shall have first choice of annual vacation visitation and shall designate such choice in writing no later than March 1 of each year. Subject to the Non-custodial parent parent's designated choice on or before March 1st, the custodial parent shall designate in writing his or her choice for annual vacation by March 15th of each year.

ii. The custodial parent's annual vacation shall be scheduled around the Noncustodial parent's annual vacation and may override no more than one (1) weekend and three (3) weeknight regularly scheduled visitation periods of the Non-custodial parent.

iii. A parent's first choice of annual vacation shall not interfere with the other parent's entitlement to the child's birthday or the Diwali Holiday. iv. Unless specifically prohibited by Court order, either parent may temporarily remove the child from the jurisdiction of the court for purposes of annual visitation only if the parent travelling with the child provides the other parent with a written general itinerary and phone numbers where the child can be contacted during the vacation. v. Annual vacation shall not conflict with the school calendar.

Non Local Guiding Principles for (Parties not residing within 200 Driving Kilometers of each other

32- MODIFICATION OF SCHEDULE OF VISITATION

Most separations today, whether between spouses or between a child and a parent, include a schedule directing how much access non-custodial parents can have to their children on a monthly basis. Our family courts still find it hard to devise an effective mechanism to allow the ward to interact with his or her parents through an interim visitation schedule during the early stages of child custody litigation. As a bare minimum, the family court often awards access to a minor child for merely two hours, and that too within court premises only, once or twice a month. Accordingly, the legal arrangement ordinarily reached administers the day-to-day cadence and schedule of meeting the kids without change until

the law gets decided by the court after 2-3 years of prolonged custody litigation.

A visitation schedule that addresses the needs of an infant may also not be ideal for an older child. Furthermore, it is unlikely that a small child will demand an adjustment in visitation schedule or that his or her demand will actually be taken into account since it would mean having to change a longstanding course of action. Confronted with such issues, children in separated families, every now and then, wind up stifling their own needs and choices to avoid any unpleasantness with their parents or having to choose between clashing loyalties. This goes against their wellbeing or welfare and may even actuate a line of provocative and harming practices.

To remedy this, all visitation schedules should be subjected to mandatory, binding review and modification every two years after being chalked out. The modification ought to incorporate a private or confidential conversation between minors and an intercession prepared by the family court. The discussion could be recorded to guarantee that the minor child was not compelled to respond in a certain way or posed with leading questions and inquiries. They ought not to be compelled to state their inclinations but should still be welcomed if they decide to share. It is quite possible that many children may not be willing to do this as they may be hesitant to hurt their parents, yet they should be encouraged to advocate for themselves periodically too. And when they do so, their wishes, including those regarding visitation schedules, ought to be respected as expressed, not as deciphered by a specialist or attorney (reliance can be placed on the case titled **2019 MLD 804 Karachi**).

It is an established fact that children raised by a single parent tend to develop numerous psychological problems as they grow up.

The effect includes, but is not limited to:

(1) Increased drug addiction

(2) increased rate of suicide

(3) increased ratio of involvement in crimes of serious nature.

It is to be noted here that, despite a specific provision of the Constitution, no coherent doctrine of human dignity has emerged in our child custody jurisprudence. Only a handful of cases involving alleged torture, invasion of privacy, and the right to life have invoked Article 14 in the discourse. However, an entire spectrum of issues faced by the courts,

including periodical meetings within the visitation areas, non-availability of facilities during the said meeting, acid victims, illegal arrests, trampling of religious freedoms, availability of electricity and gas, public housing, and free education, all of which touch upon the cords of human dignity, have not involved any discussion of Article 14. It is time we break these shackles and embrace the idea of human dignity as an overriding concept in our human rights discourse. Only in this way, through emphasising the dignity and respect of each human being, can we aspire to rid many of the social and legal plagues that rot the fabric of our nation. It is time that our honourable courts become open to the idea of interpreting Article 14 in a new and broader light that puts human worth at the centre of the fundamental rights debate, allowing the law to transcend its letter and fulfil its spirit.

33- COMPENSATORY VISITATION:

The Non-custodial parent shall be entitled to have a compensatory visitation in case his scheduled visitation is skipped for any reason.

34- IMPLICATIONS OF APPROPRIATE CONTACT DENIAL

As already stated above, there is no specific duration or frequency defined in the Guardian & Wards Act 1890 or in the Family Courts Act 1964 for the grant of a reasonable visitation schedule for minors. The basic paramount consideration in deciding a reasonable schedule is the well-being of the minor.

In fact, the entire Guardian and Wards Act of 1890 is ultimately based on the welfare of minors.

The Guardian Court has to act or think as a father in order to pass a decision. This extremely limited visitation schedule was adopted by courts to avoid complications and hassles that arise during administering more frequent visitation meetings. However, this negates the entire fundamentals of the Guardian and Wards Act, because taking away a child from a parent and thereafter restricting his access to his child for a mere two hours, and that too to be spent within the court premises, cannot be in the welfare of the minor and should not be the solution to avoid administrative problems.

As it is seen, keeping the minors away from the non-custodial

parents further aggravates the already adverse relationship between custodial and non-custodial parents. Most separated or divorced couples, after many years of litigation, forget the actual reasons for their separation and start fighting over the visitation rights of their children. Had the court not supported the element of revenge through children, things would have started cooling down between the parties with the passage of time.

It is a God-given fundamental right of every child to be with his mother and father, may it be separately, and vice versa. There is no replacement for a natural father or a natural mother. The courts must exercise their powers to strongly discourage any effort by a father or a mother to prevent their children from meeting one side of their blood or family in case of a divorce or a separation. It should be one of the foremost duties or responsibilities of a guardian court to protect the right of children to have reasonable access to or visitation with their non-custodial parent.

CHAPTER-V

35- MEDIATION IN CHILD CUSTODY CASES

Mediation refers to a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties arrive at a negotiated settlement. In the context of child custody, the focus of mediation is not to determine who is right or wrong but rather to establish a solution that meets a family's needs and is in the best interest of the child. The benefits of mediating a child custody dispute are that both parents have input in determining custody and access arrangements for their children; the children feel more secure knowing that their parents are willing to continue working together to resolve family problems; parents are in the best position to decide what their children need; it helps parents develop some trust in each other, which allows for future negotiation on issues that arise; it is easier to work with a plan that parents have formulated themselves rather than one that is imposed by the court; and it can help avoid a long and costly court battle. Mediation reportedly produces better outcomes for children after divorce.

(i) HOLY QURAN ON MEDIATION

Following are some of the relevant assertions of the Holy Quran guiding course of actions to settle the dispute among

the citizens:

1). Surah “al Nisa” Ayat 35: “And if you fear a breach between the two, bring forth an arbiter from his people and her people an arbiter if they desire to set things right.”

2) Surah “al Nisa” Ayat 128: “Compromise is better”.

3) Surah “al Hujurat” Ayat 09: “And if two parties of the believers argue, reconcile between them”.

4) Surah “al-Shuʿarā” Ayat 118 “Judge Thou, then, between me and them openly, and deliver me and those of the Believers who are with me.”

(ii) CURRENT LEGAL FRAMEWORK FOR MEDIATION IN FAMILY CASES IN PAKISTAN

In Pakistan, there are the following laws having provisions about alternative dispute resolution (ADR): The Constitution of Pakistan, 1973 (Arts. 153-55); the ADR provisions of the Code of Criminal Procedure, 1898; and S.89-A of the Civil Procedure Code (CPC), 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods).

(iii) PROVISIONS ON DIFFERENT LAWS ON ALTERNATE DISPUTE RESOLUTION IN PAKISTAN

The Civil Procedure Code of 1908 (CPC) contains rules relating to dispute resolution and makes mediation a contemporary subject. The following provisions are described:

1. Section 89-A: “The Court can, when it finds appropriate, having respect to the facts and circumstances of the case, follow with the agreement of the parties an alternative conflict settlement process, including mediation and conciliation, to obtain expeditious disposition of a case, in or to a suit.”

2. Order X Rule 1A: The Court may: (i) conduct preliminary proceedings and issue orders for speedy processing of the case; (ii) issue, with the consent of the parties, commissions to examine witnesses, admit documents, and take other steps for trial; (iii) adopt, with the consent of the parties, any alternative method of dispute resolution.

There are other Acts other than CPC which encourages the use of ADR in Pakistan i.e.

The Punjab Alternate Dispute Resolution Act, 2019

The Punjab Alternate Dispute Resolution Rules, 2020

The Arbitration Act, 1940

Sections 10 and 12 of the Family Courts Act, 1964

36- The Punjab Alternate Dispute Resolution Act, 2019

Section 3 of the Punjab Alternate Dispute Resolution Act, 2019 makes it obligatory for every family or guardian court to refer family disputes, including guardianship and custody of minor children, to ADR within thirty days of the Section 3 of the Punjab Alternate Dispute Resolution Act, 2019 makes it obligatory for every family or guardian court to refer family disputes, including guardianship and custody of minor children, to ADR within thirty days of the defendants' appearance. It further provides that (2) A trial court may refer a case mentioned in Schedule II of the Act to ADR at any time or stage where it is of the view that the case is likely to be resolved through ADR. (3) The court, prior to referring the case to ADR, shall ask the parties their opinion as to the referral, and where a reference is made to ADR with the consent of the parties, the court may formulate the points in issue. (4) In every case where a reference is made to ADR, the court shall provide a timetable for completion of ADR proceedings not exceeding 60 days, provided that the court, on the application of both parties, may extend the time granted for resolution of the case through ADR. provided further that the total time granted for completion of ADR proceedings shall not exceed 6 months in any case. (5) The trial of a case referred to ADR shall be postponed till the completion of the time allotted for ADR proceedings under subsection (4).

Section 6 of the Act ibid. grants a family or guardian court the power to refer a case to ADR at any time. The provision provides that (1) Nothing in sections 3 or 4 shall prohibit or restrain a court from referring a case to ADR at any stage of the case with the consent of the parties. (2) Where a referral is made under subsection (1), the court may, if it thinks fit,: (a) fix a time period for completion of ADR; and (b) postpone the trial during the period given for completion of ADR proceedings.

37- The Punjab Alternate Dispute Resolution Rules, 2020

The Punjab Alternate Dispute Resolution Rules, 2020 provides the mechanism and criteria as to how can mediate and how one can become a mediator in as much as the procedure to be adopted for the resolution of disputes. The Punjab Alternate Dispute Respolution Rules, 2020 promises to have a trickle-down impact on other segments of society, where the need is obvious. The rapid settlement of family/ custody conflicts, where ADR is gaining ground, could boost customer trust both domestically and internationally.

38- Provisions of Family Courts Act 1964 on ADR

Subsection 3 of Section 10 of the Family Courts Act, 1964, provides for a mechanism at the pretrial stage to make an attempt to effect a compromise between the parties, at first instance, in arriving at a settlement in respect of the subject matter. The Family Courts have also been conferred with the duty to make another effort to effect a compromise or reconciliation between the parties within a period not exceeding fifteen days after the close of evidence on both sides, under the provisions of Subsection 1 of Section 12 of the Family Courts Act 1964.

39 International Approaches to Mediation in Child Custody

Despite many differences in the law regulating divorce and child custody worldwide, there is a broad awareness that the best way to reorganize a family after separation involves a consensual or extrajudicial solution that minimizes conflict and encourages collaborative parenting. Virginia law specifies that "mediation shall be used as an alternative to litigation where appropriate." The goals of mediation "may include the development of a proposal addressing the child's residential schedule and care arrangements and how disputes between the parents will be handled in the future. However, in assessing the appropriateness of a referral for mediation, the court shall, upon motion of a party, ascertain whether there is a history of family abuse. The fee paid to a mediator is set by statute and is paid by the government. Although the statutory scheme does not expressly say so, it appears that courts have the obligation to ensure that a mediated agreement is in the best interest of the child.

South African law also encourages mediation. It states that, in any matter concerning a child, "an approach that is conducive to conciliation and problem-solving should be followed, and a confrontational approach

should be avoided. More specifically, a children's court may order mediation before deciding an issue, but it must consider several factors before doing so: the vulnerability of the child, the ability of the child to participate in the proceedings, the power relationships within the family, and the nature of any allegations made by the parties.

Mediation cannot be used in a matter involving the alleged abuse of a child. Where parents reach an agreement through mediation, the court must confirm that the agreement is in the best interests of the child. Also, when divorced parents who are co-holders of parental rights and responsibilities are experiencing difficulties in the exercise of their rights, they must attempt to agree on a parenting plan before seeking the court's assistance. 99 In developing a parenting plan, the parents must either seek assistance from certain specified people (e.g., a social worker) or go through mediation.

{VA Code Ann. § 20-124.2(A). 92 VA Code Ann. § 20-124.4.93 VA Code Ann. § 20-124.4 ("The fee of a mediator appointed in any custody, support, or visitation case shall be $100 per appointment and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1- 267."). See Va. Prac. Family Law § 15:14(i) (2014 ed.) (citing a case where "a trial judge concluded that it would be contrary to public policy to simply enforce an arbitrator's award without determining whether the award is in the best interests of the child, and, while the arbitrator's decision could be given weight, it could not be used to deprive the court of its jurisdiction to determine the child's best See Va. Prac. Family Law § 15:14(i) (2014 ed.) (citing a case where "a trial judge concluded that it would be contrary to public policy to simply enforce an arbitrator's award without determining whether the award is in the best interests of the child, and, while the arbitrator's decision could be given weight, it could not be used to deprive the court of its jurisdiction to determine the child's best interests"). Children's Act, No. 38 of 2005, § 6(4) Children's Act, No. 38 of 2005, § 49. Children's Act, No. 38 of 2005, § 71(2) Children's Act, No. 38 of 2005, § 72}

In China, a court dealing with a divorce case "shall carry out mediation. However, mandatory mediation has been criticized as problematic in cases of domestic violence—mediated agreements in such cases will not be the product of negotiations between parties of equal bargaining power.

In Canada, family mediation is widely promoted as an alternative to litigation. The Divorce Act, 1985, requires every lawyer or advocate acting on behalf of a divorcing spouse to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of mediation facilities that might be able to assist with this. A lawyer must submit a certification to the court that he or she has discussed this with the client. In addition, Canadian family law provides that parents who cannot agree must attend a mediation information session before appearing before a judge. The session provides information on the mediation process, including the nature and objectives of mediation, the steps involved in the process, the role of the mediator, and the roles played by the spouses. After attending this session, the spouses can proceed with mediation or continue legal proceedings. Provincial laws also provide for mediation. In the province of Quebec, for example, divorcing couples that have children can obtain the services of a professional mediator during the negotiation and settlement of their application for separation, divorce, dissolution of the civil union, child custody, spousal or child support, or the review of an existing decision. Five hours are paid by the Family Mediation Service, and another 2.5 hours can be added when a revision of an existing court judgement is needed. Some provincial laws also specify the duties of dispute resolution professionals and the required qualifications for family mediators.

{Children’s Act, No. 38 of 2005, § 33(2). Children’s Act, No. 38 of 2005, § 33(5) Marriage Law of the People's Republic of China (1980), art. 32 Charlotte Germane et al., Mandatory Custody Mediation and Joint Custody Orders in California: The Danger for Victims of Domestic Violence, 1(1) BERKELEY J., GENDER L., & JUST. 175, 176 (2013); see generally DENNIS P. SACCUZZO ET AL, MANDATORY CUSTODY MEDIATION: EMPIRICAL EVIDENCE OF INCREASED RISK FOR DOMESTIC VIOLENCE VICTIMS AND THEIR CHILDREN (2003), available at

https://www.ncjrs.gov/pdffiles1/nij/grants/195422.pdf.

Francine Cyr et al., Family Life, Parental Separation, and Child Custody in Canada: A Focus on Quebec, 51(4) FAMILY COURT REV. 522, 528 (2013). 104 Divorce Act, 1985, § 9(2) Divorce Act, 1985, § 9(3) 106 Francine Cyr et al., Family Life, Parental Separation, and Child Custody in Canada: A Focus on Quebec, 51(4) FAMILY COURT REV.

522, 528 (2013)}

CHAPTER VI

40- ROLE OF JUDICIAL ACADEMY

Apparently, the basic reason that comes to the understanding of the author, behind the absence of prompt decision-making on the part of learned guardians, is directly proportionate to the training they are attaining at the Provincial Judicial Academy in Lahore. The Punjab Judicial Academy is an institution created to impart training and education to the learned judicial officials through conferences, seminars, lectures, workshops, and symposia relating to court management, administration of justice, law and development, and legislative drafting under the provisions of the Punjab Judicial Academy Act 2007.

However, over the years, the non-negotiable principle on which cases of visitation of children are decided is that of theWelfare of the Minor Child, which attempts to enable each child to survive and reach his or her full potential. Despite its widespread recognition as a relevant consideration, the manner in which the welfare principle occurs in our legal and judicial framework has certain problems that need redress by the Honourable Court. Firstly, there is a disparity in the relevance accorded to this principle by different legislation regulating custody and guardianship. Secondly, there is uncertainty and a lack of judicial consensus on what exactly constitutes the welfare of the child. As a result, in fiercely fought custody battles, there are no ways to ensure that the interests of the child are actually protected. Thirdly, the legal framework is silent on how visitation issues should be handled and what factors should be relevant in decision-making. And what should be the process of dispute resolution between parents and children, among others? Fourthly, although there are no codified rules governing custody, decision-making in this area is based on the presumption that the welfare of the child essentially lies in custody being awarded to any one of the parents, assessed comparatively.

Apparently the training staff at Punjab Judicial Academy is extending a flawed and an outdated training to the Guardian/ Family Courts, bringing in acute hardships to not only the already divorce affected minor children but also to the fathers for their being Non-Custodial Parents that are already suffering from Contact denial as well as with minimum access with their divorce affected minor children save in accordance to the Orders passed by the Learned Courts for interim meeting arrangements comprising of a merely 2 hours once or twice in a month access and that too to be held within the Court premises in major

cities of the Province of Punjab and restricted to a mere 30 minutes span in outskirts.

41- SYLLABUS EXTENDED DURING TRAINING TO THE JUDICIAL OFFICIALS

It is significant to observe that, due to the flawed training extended by the training staff at the Punjab Judicial Academy to guardians and family courts exercising quasi-parental jurisdiction throughout the Province of Punjab, they have absolutely no knowledge about the therapeutic nature of child custody jurisprudence. The stance of the author is further fortified by the fact that the Guardian and Family Courts are adamant about acknowledging the simple fact that a child wants to share his joys and sorrows, failures and successes, with his parents simultaneously. Such simultaneous association is required for the healthy upbringing of the child, and that would not be possible with restricted access for the minor to his biological parents without any reason assigned thereto. It is pertinent to reiterate here that the child must get a sense of belonging and social security, and he should not feel that he has a broken family or develop self-pity. Peer pressure has a negative impact on the tender and impressionable mind of a child. In the absence of simultaneous association with both parents, the child misses the completeness of their relationship. Therefore, shared custody may be an option for the court to offer parents and make them aware of not only their child's needs but also the child's rights. Hence, I personally understand that the Punjab Judicial Academy must develop a new syllabus and shall ensure and impart training to the learned guardians and family courts with the latest concepts of shared parenting and joint or equal custody, which is not in the field despite the fact that our neighbours have shifted the emphasis from sole custody to joint custody decades ago.

It is stated here with remorse and regret that separation is a shock for the child in itself. It gives rise to fear of the future as well as anger in the minds of children, and they do not understand who should be blamed. There is a possibility of self-blame and a feeling of guilt as well. A majority of the children want contact with both parents on a regular basis, and if it is denied, then the children become hostile to the once-loved but now non-custodial, i.e., absent parent. If a custodial parent speaks badly about the absent parent, the child tends to identify with that sentiment. Gradually, a feeling that I can do without the absent parent develops, and

this gradual parental alienation becomes a part of the child's life and may lead to social alienation, which is in fact a deep trauma and not a healthy or happy circumstance. Alienated children often show contempt and withdraw affection whenever they are in contact with the parent. Physical estrangement adds to emotional alienation. To curb this estrangement, the Legislature introduced the concept of visitation rights, and these visitation rights are being given statutory protection under Clause (e) of Section 5 of the Schedule attached to the Family Courts Act 1964. However, for lack of proper knowledge and education imparted to the learned guardians and family courts across the Province of Punjab by the Punjab Judicial Academy, the concept of visitation rights has not received due acknowledgment from our lower judiciary so far.

It is significant to be noted here that the Punjab Judicial Academy at Lahore was established under the Punjab Judicial Academy Act 2007 (Pb Act XV of 2007), and one of the fundamental functions of the academy is to develop training courses relating to the administration of justice, including the use of information technology, in addition to holding conferences, seminars, lectures, workshops, and symposia relating to court management, the administration of justice, law and development, and legislative drafting. It is significant to be noted here that the Academy conducted more than 37 training sessions in 2017. Seven sessions were for the District and Sessions Courts, 14 for Additional Sessions Courts, and 16 training sessions for Civil Courts. Again, a 6-Day Training Programme for Senior Civil Courts (Family Division) was arranged in the year 19. However, no not even a single training session has been conducted for the Guardian and Family Courts regarding their specialised training and education of the therapeutic nature of child custody and visitation jurisprudence that they will exercise while presiding over the court as a Guardian Court.

42- WELL REASONED ORDER

Every court, including the Guardian and Family Court, is under a legal obligation to state reasons as to why it is understandable that the minor shall be visited by one of his parents within the court premises, and there must be a reason as to why the duration of the said meeting should be as minimum as two hours only within the complete month. It is held by the Honourable Lahore High Court that **in 2015 PLC (CS) 501 Lahore** held that principles of natural justice must be followed not merely as a

formality but as a well-meaning and effective requirement of law, which included confronting the parties with statements of allegations, the opportunity to rebut documents and charges against them through written and oral defence as well as cross-examination witnesses, and only thereafter, a well-reasoned and speaking order must be passed as mandated in S.24A of the General Clauses Act, 1897.

43- APPLICATION OF GENERAL CLAUSES ACT -1897

According to **Article 4** of the **Constitution of Pakistan,** to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he or she may be, and for every other person for the time being within Pakistan no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The **Constitution of Pakistan** which is the supreme law of the land says that nobody will be dealt with against the law, therefore, every statutory functionary is bound to deal with an individual in accordance with the law and in any case he or she is not authorized to act against the law, misapply the law or misuse power. Similarly, according to **Article 10-A** of the **Constitution**, for the determination of his or her civil rights and obligations or in any criminal charge against him or her, a person shall be entitled to a fair trial and due process.

Article 10-A of the **Constitution** mandates that civil rights and obligations of citizens can only be determined through fair trial and due process. Provisions of **Article 10-A** of the **Constitution** Morph **Article 4** of the **Constitution** into a more robust fundamental right, covering both substantive and procedural due process. Substantive due process provides a check of legislation and ensures protection of freedoms guaranteed to a person under the **Constitution**. Provisions of **Article 10-A** of the **Constitution** are not limited to a judicial trial in the strict sense but require fairness from any forums which determine the rights of a person (reliance is placed on **2012 CLC 1236*)***.

Under the provisions of **Section 24-A** of the **General Clauses Act 1897**, where, by or under any enactment, the power to make any order or give direction is conferred on any authority, office or person, such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. It is further made obligatory for every authority, office or person making any order or issuing any direction under the power conferred by or under any enactment to, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction.

In guardianship matters, courts have to exercise *quasi*-parental jurisdiction and the supreme consideration in such context is welfare of the minor. To achieve such purpose, courts have unfettered powers. Therefore, an application under **S.12 of Guardians and Wards Act 1890** has been required to be decided

on such principles. It has been observed by the honourable Lahore High Court in a judgment titled ***Umar Farooq Vs Khushbakht Mirza***, and cited as **2008 PLD 527 LHC,** that contesting parents, especially fathers, have the inherent right to seek visitation to the minor. A father is not only required to participate in the upbringing of minors but should also develop love, bonding and affinity with them. However, for reasons not known to the author, the learned Guardian/ Family Judges while exercising authority under the **Guardian and Wards Act 1890** and **Family Courts Act 1964**, have evolved a template order for disposing off the applications filed under the provisions of **Section 12 of the Guardian and Wards Act 1890** by the noncustodial parents, especially fathers, seeking grant of interim custody of the minors till the final decision of the petition. It usually faces dismissal either for being a premature one or on the ground that the same cannot be decided without evaluating evidence from both sides, though as a general practice, almost all the Guardian Courts appreciate the fact that the absence of interaction between the minor and his or her real non-custodial parent will result in estrangement between both the minor and the parent. For this reason, they consider a periodical meeting a necessity, yet they fail to give valid reasoning for subjecting that very meeting between the minor and the non-custodial parent to be conducted within the court premises for two hours, twice a month.

Non-custodial fathers fighting custody litigation for their children file applications before the learned Guardian Judges, under the provision of **S.12** of the **Guardian and Wards Act 1890**. These are for the grant of interim physical custody of their children till the final disposal of the custody litigation pending adjudication. However, for the reasons of that application being premature, most of the times their applications are dismissed.

Surprisingly, child custody litigation is based upon protecting the interests of the minor as well as his or her welfare being of paramount consideration. However, while protecting the welfare of the minor, the courts in Pakistan often place restrictions on the enjoyment of fundamental rights by the minors without even giving any reason thereto. It is a settled law as enshrined in the provision of **S. 24A** of the **General Clauses Act 1897** which states that every authority has to pass a speaking order while adjudicating civil rights of the litigants. This is done to give valid reasons as to why a fundamental right of the minor to have access to both parents has been curtailed. It is restricted to a 2-hour visit once or twice a month and that too to be held within the court premises instead of the home of the non-custodial parent. All these put together contemplate regarding the visitation schedule that neither the mother should be altogether deprived of complete custody of the minor, nor the minor child should be deterred to meet his or her own father with whom the minor could have free interaction or access and receive fatherly love and affection if the relationship between the parents had been normal.

44- APPLICATION OF PRINCIPLES OF FAIR PLAY & NATURAL JUSTICE

It has often been witnessed that though the right to fair trial for the determination of civil rights is a fundamental right of every citizen of Pakistan, the concept of fair trial and due process has always been the golden principle of administration of justice. However, after incorporation of **Article 10-A** into the **Constitution**, it has become more important that due process should be adopted for conducting a fair trial and an order passed in violation of due process should be considered void. On the touchstone of this observation made by the honourable Supreme Court of Pakistan, it becomes abundantly clear that the Guardian Judges are under a constitutional as well as statutory obligation to assign valid reasons while curtailing fundamental rights of movement of the non-custodial parents. It imposes a restriction for an indefinite period of time that the non-custodial parent has to meet his or child/children for merely two hours twice a month and that too within court premises. It is peculiar to note here that no reason of any nature has ever been assigned to any non-custodial parent while dismissing the application filed under the provisions of **S.12** of the **Guardian and Wards Act 1890**.

A right to life not only includes one's own life but also the life, liberty and happiness of one's children. Denying a person the right to the company of his or her children is as severe a penalty and a curse, more than denying him or her the right to life altogether. It is further reiterated here that a minor cannot be denied the right of access to his or her non-custodial parent (mostly father) during the pendency of child custody litigation before a Guardian Court under the provisions of the **Guardian and Wards Act 1890**. Furthermore, any restriction for an indefinite period of time can be placed on his or her freedom to have access to his or her real father. Giving directions to custodial parents to bring the minor for the purposes of meeting his or her non-custodial parent, acts as a restriction on the fundamental human rights of the minor as well as of the non-custodial parent. Without assigning any reason thereof, the access of the non-custodial parent is often seen to be limited to a two-hour meeting with his or her child and that too within court premises. Hence, the same falls within the classification of an unqualified and unreasonable restriction on

the fundamental rights of access and movement, as the same is protected under the provisions of **Article 15** of the **Constitution of Islamic Republic of Pakistan**.

It is further significant to observe that the question of whether law imposes reasonable restriction(s) on the freedom of movement of persons is justifiable. In determining this question, the court has to look at the nature and extent of the restriction(s), the manner in which it is imposed, the nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed. However, in the matter at hand, not even a single aspect has been looked into by either the learned Guardian Judges functioning in Lahore, while access to non-custodial parents has also been restricted (reliance is placed upon **PLD 1958 SC 41***)*.

Additionally, it is significant to note here that it is the fundamental and basic human right of a child to share love, affection and the care of his or her mother as well as father. Furthermore, it is again a fundamental right of the child as well as of the non-custodial parent (mostly fathers) that their dignity and, subject to law, their privacy of home shall be inviolable. Time and again this has been observed by the Honourable Supreme Court of Pakistan to the effect that the right conferred under **Article 14** of the **Constitution** is not limited to any premises, home or office, but to the person, the man or woman, wherever he or she may be (reliance is placed on **PLD 1998 S.C. 388** and **2010 PLD 119 Karachi**).

Moving on, it is peculiar to note here that the provisions of **S.12(2)** clearly place a condition on the exercise of jurisdiction regarding the appearance of female minors in court premises for meeting their non-custodial parents. The provisions of **S.12** of the **Guardian and Wards Act 1890** are reproduced below for better understanding of the subject:

"12) Power to make interlocutory order for production of minor and interim protection of person and property.

(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country."

A bare perusal of **S.12(2)** clearly postulates that special care and caution is required regarding the appearance of female minors on court premises for the purpose of their meeting with non-custodial fathers. Provisions of **Article 14** of the **Constitution of Pakistan** further cement the fact that meeting one's father on court premises, overcrowded by more than 300 to 400 strangers, infringes the very right of privacy of the female minors who are brought to court every Saturday. Meeting one's father in court may still be better as compared to meeting him at his home. It is further pertinent to note that though the dignity of a man and the privacy of his home is inviolable, it does not mean that his privacy is vulnerable and can be violated outside the premises of his home.

Home in the literal sense will mean a place of abode – a place where a person enjoys personal freedoms and feels secure. The emphasis is not on the boundaries of home, rather on the person who enjoys the right wherever he or she may be. The term "privacy of home" also symbolizes the security and privacy of nature which a person enjoys in his or her home. It is peculiar to note that though privacy is inviolable, there exist no seating arrangements at the meeting place which is also crowded by a large number of people. This gives rise to the mischief of the concept of privacy of the home enshrined within the provisions of **Article 14** of the **Constitution of Islamic Republic of Pakistan**.

Every judge, including the Guardian Judge is under a legal obligation to state reasons as to why he or she deems it fit that the minor shall be visited by one of the parents within court premises and there must be a reason as to why the duration of the said meeting should be as minimum as two hours only, within a complete month.

It is stated here with humility that every public or judicial functionary is duty-bound to decide upon the application of a citizen in accordance with **S. 24A** of the **General Clauses Act** and as laid down by the **Supreme Court of Pakistan** in **1998 SCMR 2268**.

The provisions of **Article 4** of the **Constitution of Pakistan** categorically lay down that it is the inalienable right of every citizen to enjoy the

protection of law and to be treated in accordance with the law. If the provision of **Article 4** of the **Constitution** is to be read in juxtaposition with the provisions of **S.12** of the **Guardian and Wards Act 1890**, it is clear with regards to the first instance that the law is silent as to the selection of venue for meeting between the non-custodial parent with his or her child within the court premises, once or twice a month on the second instance and for two or three hours on the third instance. The practice carried out by the Guardian Judges at Lahore in respect of allowing meetings scheduled to be conducted within the court premises for two hours twice a month, is against the mandate of fundamental rights of citizens as enshrined within the regime of the **Constitution of Pakistan 1973**. A court of law without assigning any valid reasons cannot take any action detrimental to the life and liberty of any person, except in accordance with the law, nor shall a person be prevented or hindered from doing what is not prohibited by law.

There is no specific duration or frequency defined in the **Guardian and Wards Act 1890** for granting a visitation schedule for minors. The paramount consideration to decide a reasonable schedule is the WELFARE OF THE MINOR. In fact the entire **Guardian and Wards Act 1890** is ultimately based on the welfare of minors. The Guardian Judge has to act/think as a parent in order to pass a decision. This extremely limited visitation schedule was adopted by courts to avoid complications and hassles from arising during the administration of more frequent visitation meetings. However, this negates the entire fundamentals of the **Guardian and Wards Act,** because taking away a child from a parent, and thereafter restricting his or her access to the child for a mere two hours and that too to be spent within court premises, cannot be in the welfare of the minor and should not be the solution to avoid administrative problems.

Even after waiting for months for the first face-to-face meeting with his or her own children, the non-custodial parent gets an extremely limited visitation schedule. This visitation schedule is often as little as ‘ONCE IN A MONTH FOR TWO HOURS WITHIN COURT PREMISES’. Surprisingly, this visitation schedule has been followed widely in the Guardian Courts of Pakistan for over decades and has now become precedent.

Keeping the minors away from the non-custodial parents further aggravates the already adverse relationship between the custodial and non-custodial parent. Most separated/divorced couples, after many years of litigation, forget the actual reasons of separation and start fighting over the visitation rights of children. Had the court not supported the element of revenge through children, things would have started to cool down between parties with the passage of time.

It is a God-given fundamental right of every child to be with his or her mother and father, may it be separately or with both of them together. There is no replacement for a natural father or a natural mother. The courts must exercise their powers to strongly discourage any effort by a father or mother to prevent their children from meeting one side of their family in case of a divorce or separation. It should be one of the foremost duties/responsibilities of a guardian court to protect the right of children to have reasonable access/visitation to their non-custodial parent.

It is an established fact that the children raised by a single parent tend to develop numerous psychological problems as they grow up. The effects include but are not limited to:

1. Increased drug addiction
2. Increased rate of suicide
3. Increased ratio of involvement in crimes of a serious nature.

It is also important to note that despite a specific provision of the **Constitution**, no coherent doctrine of human dignity has emerged in our child custody jurisprudence. Only a handful of cases involving alleged torture, invasion of privacy and right to life have invoked **Article 14** in the discourse. However, an entire spectrum of issues faced by the courts – including periodical meetings within the visitation areas, non-availability of facilities during the said meeting, acid attacks, illegal arrests, trampling on religious freedoms, availability of electricity and gas, public housing and free education – all of which touch upon the cores of human dignity, have not involved any discussion of Article 14.

It is time we break these shackles and embrace the idea of human dignity as an overriding concept in our human rights discourse. Only in this way, through emphasizing the dignity and respect of each human being, can we

aspire to rid many of the social and legal plagues that rot the fabric of our nation. It is time that our honourable courts become open to the idea of interpreting Article 14 in a new and broader light that puts human worth at the center of the fundamental rights debate, allowing the law to transcend its letter and fulfil its spirit.

It is the need of the hour that some serious steps be initiated by our superior judiciary in this regard and the abuse of process of law carried out in the name of welfare of the minor(s) be brought to a halt. Special education and workshops are required to be conducted to raise awareness for the learned Guardian Judges so that they are obliged to pass speaking orders while acting as a Judge and while curtailing civil rights of non-custodial parents (mostly fathers). They must assign valid reasons as to why a minor should be brought within court premises for the purposes of meeting the non-custodial parent, especially when every case is required to be decided on its own facts.

It is stated that every public or judicial functionary is duty-bound to decide the application of the citizen after application of mind, after the addition of Section 24-A in the General Clauses Act as laid down by the Supreme Court of Pakistan. Reliance is placed at **1998 SCMR 2268.**

45- EQUAL PROTECTION OF LAW

The provisions of Article 4 of the Constitution of the Islamic Republic of Pakistan categorically state that it is the inalienable right of every citizen to enjoy the protection of the law and to be treated in accordance with the law. If the provision of Article 4 of the Constitution is to be read in juxta position with the provisions of Section 12 of the Guardian & Wards Act 1890, it is clear that the law is silent as to the selection of venue of meeting between the non-custodial parent and his minor child within the Court premises, in the first instance, once or twice a month frequency on the second instance, and for two or three hours' duration on the third instance. The practice carried out by the Guardian Courts in respect of allowing meeting schedules to be conducted within the court premises for two hours, twice a month, is against the mandate of the fundamental rights of the citizens as enshrined within the regime of the Constitution of Pakistan, 1973. A court of law, without assigning any valid reasons, cannot take any action detrimental to the life and liberty of any

person except in accordance with the law, nor shall a person be prevented from or be hindered from doing that which is not prohibited by law. In Farhan Mustafa vs. State, reported as **2022 YLR 1 Islamabad,** it is observed by the Honourable Islamabad High Court that there is a principle of governance in which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. The rule of law also requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. Quality of governance and protection of the rights of citizens are the paramount measures of the status of the rule of law. Law is a body of rules and conduct prescribed by competent forums, and they have binding force. Laws and rules must be obeyed and followed, and a breach thereof attracts sanctions and legal consequences. Laws are promulgated and enforced to protect the rights and liberties of citizens and to maintain order in society.

CHAPTER VII

46- WRIT OF HABEAS CORPUS IN FAMILY MATTERS

Habeas corpus is a Latin term which means “you have the body.” Habeas corpus has its roots in the most valuable and sacred human rights, i.e., personal liberty and human dignity. All civilized societies have worked to protect a citizen's liberty, and if the restriction on him is illegal, the courts shoud step in to free him. An English author writes: "Of what avail are the rights of man if he has no means of escaping arbitrary, improper, or wrongful imprisonment? Habeas corpus is the means whereby the validity of imprisonment is tested".1

1 C. Gordon Post, An Introduction to the Law. Cited by Ataullah Sajjad, J. in Muhammad Ajmal Khan v. Lt.-Col. Muhammad Shafaat and others (**PLD 1976 Lahore 396** at p.460).

The writ of habeas corpus is one of the oldest writs known to the common law of England. In Secretary of State for Home Affairs v. O'Brien, [1923] AC 603, Earl of Birkenhead described it as "a writ antecedent to statute, and throwing its roots deep into the genius of our common law." The writ of habeas corpus is more efficient than any other remedy in protecting the right to liberty guaranteed by the famous Magna Carta.2

It is, therefore, also called the “Writ of Liberty.”3 Habeas corpus is an exception to the general rule that a writ petition can be instituted only by a person whose rights have been infringed. A stranger can also apply for habeas corpus.

(i) PRECISE ORIGIN OF THE WRIT OF HABEAS CORPUS IN FAMILY MATTERS

The precise origins of the writ of habeas corpus are

unknown.4 However, in Kanu Sanyal v. District Magistrate, Darjeeling and others (**AIR 1973 SC 2684**), Bhagwati J. observed that during the twelfth and thirteenth centuries, the writ of habeas corpus was a special kind of summons used in the mesne process. It was merely a command by the court to someone to bring a particular before it. In most cases, it was aimed at persons not in custody but at large. In the early fourteenth century, the common law courts started using the writ of habeas corpus to extend their jurisdiction at the expense of the rival courts. As a result, the writ of habeas corpus cum causa appeared. It not only commanded the sheriff to "have the body" of the person mentioned therein like its predecessor but added the words "with the cause of the arrest and detention." This writ required the person having the custody of a prisoner to bring him before the court along with the reason for his detention. Thus, it became a means of testing the legality of the arrest. In due course, the writ of habeas corpus, known in this form as habeas corpus ad subjiciendum, came to be a writ by which a person unlawfully imprisoned could secure his release. In this way, it assumed great constitutional importance as a tool for challenging arbitrary imprisonment by the executive.

(ii) THE HABEAS CORPUS ACT OF 1679

The Habeas Corpus Act of 1679 codified the procedure for issuing a writ of habeas corpus. Before it, Parliament passed the Habeas Corpus Act of 1640 to overturn a ruling that 2 Kanu Sanyal v. District Magistrate, Darjeeling and others (**AIR 1973 SC 2684**) 3 Durga Das Basu, Commentary on the Constitution of India, 9th Edn, Vol.10, p.10388…4

https://www.brtiannica.com/topic/habeas-corpus

the King's command was a sufficient answer to a petition for habeas corpus. The Habeas Corpus Act of 1816 changed and expanded the legislation's territoriality.

The writ of habeas corpus is one of England's most potent protections of people's liberty. Albeit the grounds for issuing it are somewhat similar, the writ of habeas corpus is not a part of the judicial review procedure.5

It is a prerogative writ under which the King can look into any laws that deprive his people of their liberty. In general, the writ cannot be denied because an alternative remedy for challenging the legality of an individual's detention is available.6

The most distinguishing feature of the writ of habeas corpus is its peremptoriness. In Cox v. Hakes, [1890] UKLawRpAC 36; [1890] 15 A. C. 506, Lord Halsbury, LC., said: "The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release if the detention is found to be unlawful." Unlike other prerogative writs, this is based on the right rather than mere discretion. However, courts have traditionally refused to entertain habeas corpus petitions to challenge convictions or sentences handed down by the Courts of Record or inferior courts, directing the party to seek the remedy provided by statute.

In the United States, the first ten amendments (generally known as the Bill of Rights, 1791) do not mention the writ of habeas corpus. However, Article I, Section 9, clause 2 of the U.S. Constitution prohibits Congress from doing certain things. The first of these prohibitions states: "The privilege of Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." According to Chief Justice William H. Rehnquist, "the assumption has been that the limitation on suspension of the writ contained in Article I implies a guarantee of its existence. The assumption has never been tested because the very first Congress provided for the writ by statute."7

5 Durga Das Basu, Commentary on the Constitution of India, 9th Edn, Vol.10, p.10389

6 Halsbury's Laws of England, 4th Edn., Vol. II,

Butterworths

Insofar as the Indian sub-continent is concerned, we may begin with the Code of Criminal Procedure, 1898 (the "Cr.P.C."). It codified the writ of habeas corpus by introducing section 491. Originally, the High Courts in the three Presidency towns of Calcutta, Madras, and Bombay had the authority to issue this writ but they only exercised power in respect of their "ordinary original civil jurisdiction". As a result, when the person held was outside the jurisdiction of such courts, section 491 was inapplicable. Subsequently, section 491-A was enacted, which provided that any Chartered High Court could exercise the powers conferred by the section, in the case of European British subjects, within the appellate criminal jurisdiction and such other territories as the Central Government may direct. The Criminal Procedure Amendment Act of 1923 extended section 491 to all the High Courts in respect of their "appellate criminal jurisdiction". In consequence, all the High Courts in India could exercise jurisdiction under section 491 Cr.P.C. in their respective territorial jurisdictions but not when the person was detained beyond those limits.

At this stage, it may be mentioned that Ordinance VIII of 2002 in Pakistan has added sub-section (1A) in section 491 Cr.P.C. Now, the Sessions and the Additional Sessions Judges can issue directions of the ature of a habeas corpus subject to the conditions specified by the High Court in a general or special order published in the official Gazette.

(iii) SECTION 491 OF THE CODE OF CRIMINAL PROCEDURE

Presently, section 491 Cr.P.C. reads as under

491. Power to issue directions of the nature of a habeas corpus: (1) Any High Court may, whenever it thinks fit, direct-

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any Jail situated within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court martial or any Commissioners for trial or to be examined touching any matter pending before such Court martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of Cepi Corpus to a writ of attachment.

(1A) The High Court may, by general or special order published in the official Gazette, direct that all or any of its powers specified in clauses (a) and (b) of subsection (1) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by-

(a) a Sessions Judge; or

(b) an Additional Sessions Judge, within the territorial limits of Sessions Division.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under any law providing for preventive detention.

In Pakistan, before July 1954, the habeas corpus jurisdiction vested in the High Courts under section 491 Cr.P.C. Thereafter, the Government of India (Amendment) Act, 1954 also conferred constitutional power on the High Courts to issue such writ by inserting section 223-A in the Government of India Act, 1935. Article 170 of the 1956 Constitution, Article 98 of the 1962

Constitution, and now Article 199 of the 1973 Constitution have maintained this jurisdiction.

The High Court's jurisdiction under Article 199(1)(b)(i) of the Constitution of 1973 is much wider than section 491 Cr.P.C. In Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (**PLD 1969 SC 14**), Hamoodur Rahman, CJ. wrote:

> "In my view the words 'in an unlawful manner' in sub-clause (b) of Article 98(2) [of the Constitution of 1962] have been used deliberately to give meaning and content to the solemn declaration under Article 2 of the Constitution itself that it is the inalienable right of every citizen to be treated in accordance with law ... It would seem, therefore, that by these words, at any rate, so far as the deprivation of the liberty of a citizen was concerned, the Constitution makers intended that this most cherished right should not be taken away in an ordinary manner and hence by subclause (b) of clause (2) of Article 98 they advisedly left it to the High to review the actions of the detaining authority, untrammelled by the formalities or technicalities of either section 491 of the Criminal Procedure Code or the old prerogative writ of habeas corpus not only with regard to the vires of the law or the officer concerned but also enjoined upon them to satisfy themselves that the detention is not in any manner contrary to law. The scope of the enquiry is, therefore, not in any way fettered by the procedure of writ of habeas corpus or the Rules laid down under the various Habeas Corpus Acts. The court must, nevertheless, in deciding this question necessarily have regard to the language of the statute under which the power is exercised, the purpose for which the detention is sought to be made and the circumstances in which it came to be ordered. The content of the power vested by the Constitution in the High Court cannot be limited or taken away by subconstitutional legislation, but the reference to the statute and the other factors mentioned above is rather for determining its true nature, scope and legality."

Habeas corpus is available against anyone suspected of unlawfully detaining another person, not just jailors, police officers, or other public officials whose duties normally include arrest and detention. It may also be filed in respect of minors. In R v. Greenhill, (1836) 4 A & E 624, Coleridge J. explained:

> "A habeas corpus proceeds on the fact of an illegal restraint where the person is too young to have a choice, we must refer to legal principles to see who is entitled to the custody, because the law presumes that where the legal custody is, no restraint exists." In Queen v. Clarke, (1857) 7 EL & BL 186: 119, ER 1217, Lord Campbell, C.J., said at p. 193: "But with respect to a child under guardianship for nurture, the child is supposed to be unlawfully imprisoned when unlawfully detained from the custody of the guardian; and when delivered to him, the child is supposed to be set at liberty."
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> According to Basu, the use of habeas corpus in custody cases is very different from its traditional use. It is considered a matter of nurture, control, and education rather than liberty. It is used to protect the child's soul rather than their body.9 The American Jurisprudence states as follows in the context of reviewing a parent's claim for custody of a child through a habeas corpus proceeding: "
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> … An application by a parent, through the medium of a habeas corpus proceeding, for custody of a child is addressed to the discretion of the court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be satisfied by a change of custody. In determining whether it will be in the best interest of a child to award its custody to the father or mother, the court may properly consult the child if it has good judgment."10
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> 9Durga Das Basu, Commentary on the Constitution of India, 9th Edn, Vol.10, p.11073
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> 10 Amerian Jurisprudence, 2nd Edn, Vol. 39

In **Howarth v. Northcott, (1965) 152 Conn. 460, 208 A.2d 540**, the Supreme Court of Connecticut said: "The employment of the forms of habeas corpus in a child custody case is not to test the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate."

In Syed Saleemuddin v. Dr. Rukhsana and others, **(2001) 5 SCC 247**, the Supreme Court of India ruled that in a habeas corpus petition seeking transfer of custody of a child from one parent to the other, the court's primary consideration should be whether the child's current custody is unlawful and whether the child's welfare requires it to be changed. In Tejaswini Gaud and others v. Shekhar Jagdish Prasad Tewari and others (**AIR 2019 SC 2318**), the Indian Supreme Court ruled that the High Court has jurisdiction in child custody cases only when a minor is held by someone not entitled to his legal custody. However, depending on the circumstances of the case, the parties should ordinarily seek relief under the Hindu Minority and Guardianship Act or the Guardian and Wards Act because the proceedings before the writ court are summary in nature.

In Pakistan, the Guardian and Wards Act of 1890 (the "GWA") is the principal legislation that deals with guardianship matters. Section 7 addresses the appointment of a guardian, while section 25 empowers the court to order that a ward be returned to the guardian when removed from custody if the ward's welfare requires it. Section 12 authorizes the court to make interlocutory orders for the protection of minors and the interim protection of their person and property. The habeas corpus jurisdiction under section 491 Cr.P.C. is extraordinary.

In Muhammad Javed Umrao v. Uzma Vahid (**1988 SCMR 1891**), the couple with two daughters divorced. The mother filed two separate applications under sections 12 and 25 of the GWA in the Guardian Court in Lahore. On the other hand, the father made an application under sections 7 & 9 of the GWA in the Guardian Court at Abbottabad. Although these applications were still pending, the High Court entertained the mother's petition under section 491 Cr.P.C., granted her custody of the minors, and ordered that they shall remain with her until they reached puberty. The father argued before the Supreme Court of Pakistan that the Guardian Judge had exclusive jurisdiction under the Family Courts Act and that the High Court could not decide the issue of minors' custody and guardianship in proceedings under section 491 Cr.P.C. The Supreme Court ruled that the scope of the GWA is significantly different from section 491 Cr.P.C. The one does not exclude, overlap, or destroy the other. The facts of individual cases may be such that the cover of one type of proceeding is used to advance the cause of the other. In such instances, the court should determine the core issue and then redirect the proceedings to the appropriate forum under section 491 Cr.P.C. or the GWA. The Supreme Court further ruled that section 491 Cr.P.C. is not normally available for appointing a guardian or resolving a child custody dispute. Therefore, it set aside the High Court's decision insofar as it stated that the minors shall remain with their mother until puberty. It ordered that the issue of final custody would be decided in the proceedings initiated by the mother in the Lahore Guardian Court under the GWA, and if she does not pursue the matter, by the Guardian Court at Abbottabad. If neither proceeding is prosecuted to a conclusion, the High Court's order regarding present custody shall remain intact without the qualification that it will last until puberty. The right to minors' regular custody must be based on factual findings primarily motivated by their well-being.

It is significant here to be understood that the jurisdiction of a court

adjudicating a habeas corpus petition in relation to a child cannot be confused with an ordinary habeas corpus petition where the focus of the court is on the recovery of the person illegally detained in order to uphold his Article 9 rights to life and liberty. In case of a minor, his right to liberty under Article 9 of the Constitution entails a right to be in the custody of the person who ought to have the custody of the minor in accordance with law, as till such time that the minor attains the age of majority he/she has a right to be taken care of whether by parents or relatives or the State. And consequently the focus of the court in a habeas corpus petition filed on behalf of a child is not just on illegal detention but on ensuring that the interim custody of the minor pending its determination by a Guardian Court is being dealt with in accordance with law.

A habeas corpus petition filed for the lawful treatment of a minor is not to be confused with abduction or illegal detention of an adult and the consideration to be borne in mind in such matter is the welfare of the minor as recognized across common law jurisdictions.

(i) It is stated in the Halsbury's Laws of England, Fourth Edition, Vol.24 (para 511) that:

"511. ...Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father."

(ii) Baily states in Habeas Corpus, Vol. I, (PP.581) that:

"The reputation of the father may be as stainless as crystal; he may not be afflicted with the slightest mental, moral or physical disqualifications from superintending the general welfare of the infant; the mother may have been separated from him without the shadow of a pretense of justification; and yet the interests of the child may imperatively demand the denial of the father's right and its continuance with the mother."

(iii) In McGrath, Re, (1893) 1 Ch 143, it was observed that:

"The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of the child is not to be measured by money only nor merely physical comfort. The word 'welfare' must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well-being. Nor can the tie of affection be disregarded."

(iv) American Jurisprudence, Second Edition, Vol. 39 (para 148) notes that:

Generally, where the writ of habeas corpus is prosecuted for the purpose of determining the right to custody of a child, the controversy does not involve the question of personal freedom because an infant is presumed to be in the custody of someone until it attains its majority. The Court, in passing on the writ in a child custody case, deals with a matter of an equitable nature; it is not bound by any mere legal right of parent or guardian but is to give his or her claim to the custody of the child due weight as a claim founded on human nature and generally equitable and just. Therefore, these cases are decided not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of an adult, but on the Court's view of the best interests of those whose welfare requires that they be in custody of one person or another; and hence, a court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the exercise of a sound discretion, after careful consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration, irrespective of the rights and wrongs of its contending parents, although the natural rights of the parent are entitled to consideration."

(v) In Howarth v. Northcott (152 Conn. 460), the Supreme Court of Connecticut held that:

The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ or by statue, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate."

The law laid down in Pakistan is in sync with the jurisprudence referred to above, as it is now settled that in exercising jurisdiction under Section 491 of the Cr.P.C., the welfare of the child is the primary and predominant consideration.

It was held by the august Supreme Court in Muhammad Javed Umrao v. Miss Uzma Vahid (**1988 SCMR 1891**) that Section 491, Cr.P.C., and the provisions of the Guardians and Wards Act, 1890 are neither mutually exclusive nor overlap or destroy one another. Thus, to the extent of the question of permanent custody of a minor, the matter falls within the domain of the guardian court pursuant to the provisions of the Guardians and Wards Act, 1890. And the remedy available under Section 491, Cr.P.C., is not a remedy available for declaring or determining the question of custody of a minor on a permanent basis. However, courts are obliged to exercise their jurisdiction under Section 491 Cr.P.C. in a proper case where the question of treatment of a minor in accordance with the law comes before the court, pending determination of custody by the guardian court.

It was held by the august Supreme Court in Nisar Muhammad v. Sultan Zari (**PLD 1997 SC 852**) that availability of a remedy under the Guardians and Wards Act, 1890, is no bar to exercise of jurisdiction under Section 491, Cr.P.C., and the availability of such a remedy is not in and of itself a valid ground for refusing to interfere in the custody of a minor by a parent who is otherwise not entitled to such custody. In para. 9 of the said judgement, the following was held:

In the judgement of Mst. Rizwana Bokhari's case (supra), Muhammad Munir Khan. J. (as his Lordship then was) had rightly laid down the law, which we are inclined to approve that on examination of the various provisions of Muslim Law, the Criminal Procedure Code, particularly its sections 491, Cr.P.C., and sections 361 and 363 of the P.P.C., indicate that a mother is entitled to the 'hizanat' of her male child below the age of 7 years, failing that the mother's relations under Muslim Personal Law are entitled to the custody of the minor. Since the two male minors in this case are admittedly below 7 years of age and the three females have not yet attained puberty, all three being less than 8 years old, the respondent is, therefore, prima facie entitled to 'hizanat' of all five for the limited purpose of Section 491, Cr.P.C. at the moment, and the rights of the petitioners to the custody of the aforesaid minors have not accrued so far. In these circumstances, the custody of the aforesaid minors with the

petitioners was, therefore, rightly declared illegal or at least improper by the learned Chief Justice of the Peshawar High Court. The learned Chief Justice was also justified in having expressed more than once that the ultimate determination of entitlement to custody shall of course lie with the Guardian Judge, whom the parties were directed to approach if they so desired."

In Naziha Ghazali v. The State (**2001 SCMR 1782**), a petition under Section 491, Cr.P.C. was filed by the mother after almost six months of the accrual of the cause of action. The august Supreme Court held that there was no explanation for the delay in reporting the removal of the minor from the custody of the mother. The custody of the minor with the father was found not to be illegal, especially as no proceedings for determination of custody of the minor on a permanent basis were pending before the guardian court either.

It was held by the august Supreme Court in Khalida Parveen v. Muhammad Sultan Mehmood (**PLD 2004 SC 1**) that in exercise of jurisdiction under Section 491, Cr.P.C., the court should not go into technicalities of law and should decide the matter before it in view mainly of the welfare of the child and also "ensure that the rights conferred upon the child are fully protected in a suitable manner".

It was held by the august Supreme Court in Mst. Nadia Perveen v. Mst. Almas Noreen and others (**PLD 2012 SC 758**) that jurisdiction under Section 491 Cr.P.C. is only to be exercised where the children of very tender age have been snatched away from lawful custody quite recently and there is real urgency in the matter. In the said case, the children were neither found to be of tender age nor snatched away from the mother, and it was held that the case was not made out for exercise of jurisdiction under Section 491 of the Cr.P.C.

The latest view of the august Supreme Court was recorded in Mirjam Abberras Lehdeaho v. Station House Officer, Police Station Chung, Lahore, and others (**2018 SCMR 427**), wherein it was held that:

22. The Guardian Court is the final arbiter for adjudicating the question of custody of children. However, where a parent holding custody of a minor lawfully has been deprived of such custody, such parent cannot be deprived of a remedy to regain custody while the matter is sub judice before a Guardian Court. Therefore, in exceptional cases (like the instant case), where the High Court finds that the best interest and

welfare of the minor demand that his or her custody be immediately restored to the person who was lawfully holding such custody before being deprived of the same, the Court is not denuded of jurisdiction to pass appropriate orders under Section 491, Cr.P.C., directing that custody be restored to that person as an interim measure pending the final decision of the Guardian Court. While the tender age of the minor is always a material consideration, it is not the only consideration to be kept in mind by the High Court. Other factors like the best interest and welfare of the minor, the procedural hurdles and lethargy of the system, delays in finalisation of such matters, the handicaps that the mother suffers owing to her gender and financial position, and above all, the urgency to take appropriate measures to minimise the trauma, emotional stress, and educational loss of the minor are equally important and also need to be kept in mind while granting or refusing an order to restore interim custody by the High Court. The two provisions of the law, namely Section 491, Cr.P.C., and Section 25 of the Guardians and Wards Act, deal with two different situations. As such, the question of the ouster of jurisdiction of the High Court on account of provisions of sections 12 or 25 of the Guardians and Wards Act or the pendency of proceedings under the said provisions does not arise. There is no overlap between the two provisions as both are meant to cater for different situations, the first to cater for an emergent situation, while the latter to give more long-term decisions regarding questions relating to the guardianship of minors, keeping in view all factors, including their best interest and welfare."

The Honourable Islamabad High Court in Abdul Farooq vs. Mst. Maryam Farooq, cited as **2022 PLD 120 Islamabad**, held that in a matter involving the right of a minor to be dealt with in accordance with law under Section 491 of the Cr.P.C., the question before the Court is not whether a child has been abducted by a parent in the ordinary sense. During the duration of marriage, both parents have joint custody of their minor children. In the case of a matrimonial dispute or altercation between the spouses, it is not necessary that the children be physically snatched from one parent to bring the matter within the scope of Section 491 of the Cr.P.C. In the event that a husband subjects his wife to abuse, forcing her to leave the matrimonial home, the court cannot turn a blind eye to the circumstances in which the shared custody of the children was transformed into sole custody. In such circumstances, for purposes of Section 491, Cr.P.C., it is not for the court to sit in judgement over who is

at fault in the matrimonial dispute, but how would the welfare of a child be best preserved in the interim when joint custody of the child shared by both parents is not an option?

For a considerable period, the "Tender Years Doctrine" has guided the exercise of discretion by courts in custody matters, where courts assumed that healthy development occurred when young children were raised by their mothers. However, contemporary psychological and sociological research questions the assumption that the mother is necessarily the best parent for raising a child in all circumstances (see, for example, Santrock and Warshak, Father Custody and Social Development in Boys and Girls, 35 J. Soc. Issues 112 (1979); Watts V. Watts, 77 Misc.2d 178, 181–182, 350 N.Y.S.2d 285, 289–90 (Fam.Ct.1973)). Research is now pointing to the need to evolve a more gender-neutral approach to child welfare given changing social structures, two-career families, etc. One of the questions to ask while considering the child's welfare in a custody matter in order to accord continuity to such welfare is which of the parents is the primary caregiver. The parent who maintains the strongest bond with the child as a result of daily attention to the child's physical and psychological needs is regarded as the psychological parent (see J. Goldstein, A. Freud, and A. Solnit, Beyond the Best Interests of the Child (1979)). In a nutshell, an important consideration for the court while addressing the question of interim custody for the child's welfare is ensuring the continuity of care for his or her physical and psychological needs by the parent who customarily provides such care.

CHAPTER VIII

47- Myths and Truths about Shared Parenting and Child Well-Being

Myth	Truth
Shared parenting emphasizes parents' rights at the expense of the best interest of children.	The primary consideration supporting a presumption of shared parenting is the benefits shared parenting provides to children. More than 40 years of social science research establishes a growing consensus that, in the vast majority of cases, children raised in shared parenting arrangements score significantly higher on almost every metric of child well-being than those raised in a sole custody arrangement. Nielsen (2014); Baude (2016); Bauserman (2002 & 2012)
Shared parenting doesn't benefit children when the parents are in conflict with each	Even when there is conflict between parents, shared-custody arrangements are better for children than sole-custody arrangements on all measures of behavioural, emotional, physical, and academic well-being and are related to children having better relationships with their

other.	parents and grandparents. The quality of the parent-child relationship is a better predictor of children's long-term outcomes than coparenting conflict. Fabricius & Leucken (2007); Nielsen (2017 & 2018); Harmon *et al.* (2022); Fabricius & Suh (2017)
Shared parenting doesn't *cause* the better outcomes for children; it's just a correlation.	While families that choose shared parenting may have other characteristics that help children succeed (higher income, higher levels of education, less conflict), there is now clear evidence that shared parenting itself, and not just these other characteristics, contributes to children's well-being. Evidence for this comes from countries where shared parenting is common across socio-economic divisions and, also, from advanced statistical analyses that allow measurement of the effects of shared parenting. [Braver & Votruba, 2018]
Shared parenting isn't appropriate for infants and toddlers.	Young children develop primary attachments to more than just one person. Strong, healthy parent-child relationships need consistent and frequent contact, including daytime and nighttime caregiving. Restricting infants and toddlers from overnights with loving parents is inconsistent with what we know about the development of meaningful parent-child relationships in the first years of life. There is no scientific support for the claim that infants' and toddlers' overnighting with their fathers is harmful or interferes with their attachment to their mothers. Warshak (2014 & 2018); Nielsen (2014); Fabricius & Suh (2017); Fabricius (2022)
Shared parenting undermines children's security by requiring them to shuttle between two	While having two homes sometimes causes inconveniences, research has shown that this is not harmful to children, nor does it hinder their developing strong relationships with both parents. Overnights "up to and including equal numbers

homes.	of overnights at both parents' homes" benefitted "both the long-term mother-child and father-child relationships." Fabricius & Suh (2017); Fransson et al. (2018); Warshak (2014)
Shared parenting isn't necessary because what benefits children is the quality not the quantity of time with each parent.	The quality of parenting time is vital, of course. But the quantity of parenting time is also vital to children's well-being. Research shows that benefits to children arise because both parents are significantly involved in ordinary, day-to-day parenting responsibilities, not just weekend and holiday time. And the benefits of shared parenting for children increase as time with each parent approaches equality. Fabricius & Suh (2017); Fabricius (2020 & 2022)
Shared parenting leaves children vulnerable to abuse	There is no scientific evidence to support this statement. Shared parenting laws are rebuttable when this type of custody plan is not in the child's best interest and when there is a demonstrated history of family violence. HHS reports show no increase in cases of child maltreatment in states after the enactment of equal shared parenting presumptions. ("Child Maltreatment 2020," U.S. Department of Health and Human Services Administration for Children and Families, p. 30) Fabricius (2020)
Shared parenting is a "one size fits all" arrangement.	Shared parenting is an extremely flexible approach to separated parenting. There are many different shared parenting schedules to fit the needs of different families. Research supports schedules tailored to the ages of children, with shorter exchange periods for younger children. But it does not support unequal parenting time, even for infants and toddlers. Baude et al., 2016; Fabricius, 2020
Parenting roles should remain the	Parenting roles usually change after separation and divorce. The experience of one parent taking

same after separation and divorce	on more parenting responsibilities and another pursuing career activities can provide for more enriching experiences for the children with each parent. Children raised in shared parenting arrangements demonstrate better adjustment across several domains, including family relationships, behavioural adjustment, emotional well-being, and academic achievement, than children who remain in the sole custody of one parent, regardless of how parenting roles were handled when the parents lived together. Fabricius & Hall, 2005; Emery, 2004; Fabricius, 2003; Bauserman, 2002.
Shared parenting increases parental conflict.	There is no scientific support for the claim that shared parenting increases parental conflict. In fact, both mothers and fathers practicing shared parenting report less conflict and more emotional support and positive feelings with their ex-spouses. Bauserman, 2012; Kruk, 2013; Nielson, 2017 & 2018
Shared parenting increases domestic violence (intimate partner violence)	Recent research has demonstrated just the opposite: presumptions of equal shared parenting reduce the incidence of intimate partner violence and female partner homicides. Fernández-Kranz et al., 2020
Presumptions of shared parenting have been tried and were found unsuccessful	There are no examples in which presumptive shared parenting legislation was reversed because of unsuccessful outcomes. A California example that is sometimes cited as a retrenchment from shared parenting was, in fact, a clarification that the previous law did not, in fact, create a presumption in favour of shared parenting. Public polling demonstrates that presumptions of shared parenting are popular with the public, and research has shown that equal shared parenting presumptions are favoured by divorce professionals. Fabricius et al. (2018
Shared parenting	While a very old (1980s) study in California

arrangements are unstable and tend to turn into a sole custody arrangement, except in name.	suggested that shared parenting arrangements tended to drift over time to sole maternal custody arrangements, recent research has demonstrated that "the living arrangements of children with shared placement were at least as stable as those of children with sole mother placement. Bartfield et al., 2021
Even though shared parenting is better for children, there should be no legal presumptions about parenting time.	Legal presumptions of equal shared parenting provide parents and children with assurances that their relationship will be protected. Young adults who were raised by divorced parents wish that they had more equal parenting time with both their parents. Fabricius, 2003, and 2020
Fathers could share in the physical custody of their children more if they wanted to share equally in the responsibility of raising children.	Child support often limits a father's financial ability to set up a residence that supports equal shared physical custody. The legal costs required to fight for equal parenting time often deter parents from asking for equal time. Fabricius and Braver, 2003; Braver, 1998; Wallerstein and Blakeslee, 2004
Children will be less supported financially if they spend equal time living with fathers because it will decrease the amount of child support the father must pay.	Financial support for children can be either direct (what parents spend themselves on the children) or indirect (what one parent gives the other to spend on the children). Equal shared parenting often results in less indirect spending on a child, but it always results in much more direct spending. The more time children spend in the care of their fathers, the more money fathers spend on supporting the children. Wallerstein & Blakeslee, 2004; Braver, 1998; Fabricius & Braver, 2003

48- **ANNOTATED EFERENCES**

Reference	General Findings/Conclusions
Baude, A. et al. (2016). Child adjustment in joint physical custody versus sole custody: A met analytic review. Journal of Divorce & Remarriage. 57(5), 338-36	This meta-analytic study found that "better adjustment for young people in joint custody was only significant for those who spent an equal or almost equal amount of time with their two parents."
Bauserman, R. (2002) Child adjustment in joint custody versus sole-custody arrangements: A meta analytic review. Journal of Family Psychology, 16(1), 91–102	A meta-analysis of 33 studies compared the adjustment between children being raised in sole custody and children being raised in joint custody after divorce. Children were found to be better adjusted in areas of self-esteem, family relationships, divorce-related adjustment, academic achievement, and emotional and behavioural adjustment when raised by parents who shared legal and physical custody.
Bauserman, R. (2012). A meta-analysis of parental satisfaction, adjustment, and conflict in joint custody and sole custody following divorce. Journal of Divorce & Remarriage. 53(6), 464-488	Both JC [joint physical custody] mothers and JC fathers report less conflict with their ex-spouse and more emotional support and positive feelings in the relationship. The frequency of litigation is also less in cases of JC (especially for specific types of actions, such as child support modification)."
Braver, S. L., and A. M. Votruba. (2018). Does joint physical custody "cause" children's better outcomes?	While it is well established that children raised in shared parenting arrangements fare better on average than those raised in a sole custody situation, there has been controversy over whether the better outcomes are caused by shared parenting. Braver and Votruba employ

Journal of Divorce & Remarriage 59(5), 452-468	advanced methodologies to establish that shared physical custody is, indeed, a cause of children's better outcomes.
Fabricius, W. & Luecken, L. (2007). Post-divorce living arrangements, parental conflict, and long-term physical health correlates for children of divorce. Journal of Family Psychology. 21(2), 195-205.	"The more time children lived with their fathers after divorce, the better their current relationships were with their fathers, independent of parent conflict... More time with father was beneficial in both high- and low-conflict families, and more exposure to parent conflict was detrimental at both high and low levels of time with father."
Fabricius, W. and Go Woon Suh. (2017). Should infants and toddlers have frequent overnight parenting time with fathers? The policy debate and new data. Psychology, Public Policy, and Law 23(1) 68-84	Recent findings demonstrate the ability of infants to form multiple attachments simultaneously. Based on interviews with college students and their parents, this study focused on three factors not addressed by previous studies: (1) the longer-term impact of frequent overnights; (2) the long-term benefits to the father-child relationship; and (3) the impact of daytime-only parenting time. The analyses of these surveys demonstrated long-term benefits to both parent-child relationships associated with overnights, even when the research delineated children under two and then children under one.
Fransson, Emma, Anders Hjern, and Malin Bergström. (2018). What can we say regarding shared parenting arrangements for Swedish children? Journal of Divorce & Remarriage. 59(5), 349-	Equally shared physical custody "has been debated in relation to child well-being because of the frequent moves imposed on children and the potential stress from living in two homes. This study found that children in JPC [joint physical custody] report better well-being and mental health than children who live mostly or only with one parent. No Swedish studies have found children's health to be worse in JPC than in sole parental care from the age of 3 years

358.	and beyond."
Harmon, J., Matthewson, M, & Baker, A. (2022). Losses experienced by children alienated from a parent. Current Opinion in Psychology, 43: 7-12.	This article describes the lifelong losses a child experiences when they are alienated from a parent. The losses affect many areas, such as identity and self-concept, enriching childhood experiences with parents and extended family, a sense of community, and quality relationships.
Neilsen, L. (2014). Shared physical custody: summary of 40 studies on outcomes for children. Journal of Divorce & Remarriage, 55(8), 613-635.	Overall, the children in shared parenting families have better outcomes on measures of emotional, behavioural, and psychological well-being, as well as better physical health and better relationships with their fathers and their mothers, benefits that remained even when there were high levels of conflict between their parents.
Warshak, R. (2014). Social science and parenting plans for young children: A consensus report. Psychology, Public Policy, and Law. 20(1) 46-67.	The conclusions of this report were endorsed by 110 researchers and practitioners. Those conclusions include: "There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers," and "the social science evidence on the development of healthy parent-child relationships and the long-term benefits of healthy parent-child relationships supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children."
Warshak, R. (2018) Night shifts: Revisiting blanket restrictions on children's overnights with separated parents. Journal of Divorce & Remarriage, 59(4) 282-	A review of the literature regarding infants and toddlers having overnights with fathers after separation and divorce The research supports the conclusion that children benefit from spending overnights with their fathers.

323.	
Fabricius, W. (2022). Attachment and parenting Time for children under three years of age. The Oxford Handbook of Development Psychology and the Law (in press). Oxford University Press	"The best parent-child relationships in young adulthood were those in which the children were spending equal overnights at both parents' homes before they turned 3. "The current findings indicate the unique role of equal parenting time in infancy and toddlerhood in laying the foundation for future relationships. The long-term health risk of damaged parent-child relationships should translate into policies that encourage equal parenting time in order to protect the young child's developing attachment to each parent and the child's future health."
Bartfeld, J. et al. (2021). Stability of Placement Arrangements Among Divorced Wisconsin Families with Sole Mother and Shared Placement Orders. Institute for Research on Poverty Research Report.	This recent research on the stability of shared parenting arrangements differs from previous research in two significant ways. First, unlike earlier studies, it studied the stability of shared parenting in a context where shared parenting is no longer uncommon, and secondly, it studied this over a longer period than previous studies had. Researchers found "no evidence that shared placement orders are particularly unstable, either in an absolute sense or relative to sole placement."
Baude, A. et al. (2016). Child Adjustment in Joint Physical Custody Versus Sole Custody: A Meta-Analytic Review. Journal of Divorce & Remarriage. 57(5), 338-360.	This meta-analytic study found that "better adjustment for young people in joint custody was only significant for those who spent an equal or almost equal amount of time with their two parents."
Bauserman, R. (2002). Child Adjustment in Joint-Custody Versus Sole-Custody	A meta-analysis of 33 studies compared the adjustment between children being raised in sole custody and children being raised in joint custody after divorce. Children were found to be better adjusted in areas of self-esteem,

Arrangements: A Meta-Analytic Review. Journal of Family Psychology, 16(1), 91–102.	family relationships, divorce-related adjustment, academic achievement, and emotional and behavioural adjustment when raised by parents who shared legal and physical custody.
Bauserman, R. (2012). A Meta-Analysis of Parental Satisfaction, Adjustment, and Conflict in Joint Custody and Sole Custody Following Divorce. Journal of Divorce & Remarriage. 53(6), 464-488.	Both JC [joint physical custody] mothers and JC fathers report less conflict with their ex-spouse and more emotional support and positive feelings in the relationship. The frequency of litigation is also less in cases of JC (especially for specific types of actions, such as child support modification)."
Braver, S. (1998). Divorced Dads: Shattering the Myths. New York: Putnam.	The book is a compilation of findings based on an 8-year federally funded study of divorced fathers. The research found that most policies and professional beliefs have been based on inaccurate negative stereotypes of the "divorced father. The book describes six myths about divorced fathers that are unsupported by research findings.
Emery, R. (2004). The Truth About Children and Divorce. New York, NY: Viking.	While divorce is an adjustment for children, it does not necessarily cause lasting damage. It is a major stressor, but "pain is not pathology. Grief is not a mental disorder."
Fabricius, W. (2003) Listening to Children of Divorce: New Findings that Diverge from Wallerstein, Lewis, and Blakeslee. Family Relations 52(4), 385-396	College students preferred equal time with their parents after divorce. They reported better adult relationships with parents, feeling more supported by their parents, and receiving more college support from parents when they had equal parenting time arrangements after divorce.
Fabricius, W. & Braver,	Data reported from a large group of college students who received support from divorced

S. (2003) Divorced Parents' Financial Support of Their Children's College Expenses, Family Court Review. 41,145-56.	parents who voluntarily contributed to college expenses showed that mothers and fathers contributed equally when their resources were similar. Fathers contributed more proportionately than mothers when they had joint legal custody than when mothers had sole custody.
Fabricius, W. & Hall., J. A. (2005). Young Adults' Perspectives on Divorce Living Arrangements. Family Court Review. 38(4), 446–461.	820 college students provided their perspectives on the parents' divorce. The majority wished they had been able to spend more time with their fathers while growing up. Their perspective was that their fathers wanted more time, but their mothers did not want them to have more time.
Fabricius, W. et al. (2018). What Happens When There is Presumptive 50/50 Parenting Time? An Evaluation of Arizona's New Child Custody Statute. Journal of Divorce & Remarriage. 59(5), 414-428.	Four years after Arizona enacted its shared parenting legislation, research showed that "the law functions as a rebuttable presumption of equal parenting time; that it is evaluated positively overall in terms of children's best interests" by "conciliation court staff, judges, mental health professionals, and attorneys; and that it "has a neutral impact on legal and interpersonal conflict.
Fabricius, W. (2020). Equal Parenting Time: The Case for a Legal Presumption. The Oxford Handbook of Children and the Law (pp. 453-476). Oxford University Press.	The overall pattern of evidence indicates that legal presumptions of equal parenting time would help protect children's emotional security with each of their divorced parents and consequently would have a positive effect on public health in the form of reduced long-term stress-related mental and physical health problems among children of divorce."
Fernández-Kranz, D. et al. (2020). Bargaining Under Threats: The Effect of Joint Custody	Researchers in Spain found that presumptions of equal shared parenting led to almost a 50% decrease in IPV among divorcing parents and to a significant reduction in female homicides by intimate partners.

Laws on Intimate Partner Violence. IZA Discussion Papers, No. 13810.	
Kruk, E. (2013). The Equal Parenting Presumption. Montreal, Quebec: McGill-Queens University Press.	Kruk addresses many of the myths concerning equal shared parenting, including its benefits to children in a wide variety of circumstances and its effect on parental conflict and cooperation.
Nielsen, L. (2017). Re-Examining the Research on Parental Conflict, Co-parenting, and Custody Arrangements. Psychology, Public Policy, and Law. 23, 211–231.	This article addresses four questions: (1) how much consideration should be given to co-parenting conflict when determining parenting time; (2) do children have better outcomes when their divorced parents have low levels of conflict; (3) are children's outcomes worsened by parents taking their divorces to court; and (4) are children's outcomes better in sole physical custody situations if the parents are conflicted and uncooperative?
Nielsen, L. (2018). Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent–Child Relationships, Income, and Conflict in 60 Studies. Journal of Divorce & Remarriage. 59(4) 247-281.	This article reviews the outcomes for children in joint physical custody (JPC) compared to those in sole physical custody (SPC), controlling for income, co-parenting conflict, and quality of the parent-child relationship. Regardless of income, conflict, or the quality of children's relationships with their parents, JPC children generally had better outcomes on most or all measures.
Fabricius, W. & Braver, S. (2003). Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers. Family Court Review.	The investigation provided preliminary support that nonresidential fathers' expenditures on items such as clothes, bicycles, auto expenses, toys, etc. increase as their time with the child increases. Fathers were also found to contribute to these expenses at high levels, even when they had minimal contact time with the child.

41, 70-82.	The findings support more adjustments in child support calculations for nonresidential parents.
Wallerstein J. and S. Blakeslee. (2004). What About the Kids? Hyperion	Based on the authors' 30 years of in-depth interviews with children of divorced parents, they advise divorced parents on how to protect their children during divorce, addressing topics such as introducing new partners, when and how to tell children about divorce, choosing custody arrangements, and how to raise children who can build lasting relationships.

49- INTERNATIONAL APPROACHES TO JOINT CUSTODY

Joint custody systems vary widely across the globe. A comparative review of different countries reveals a vast diversity of approaches. The term "joint custody" can refer to several different things: joint legal custody, joint physical custody, or a combination of both. The definition in the State of Virginia recognizes this: "Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child. Similarly, the State of Georgia defines joint custody as "joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. There is a similar distinction between sole legal custody and sole physical custody, although some states (including Virginia) combine them together.

"Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. "Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.

One of the unifying themes across the different shared parenting systems is the importance given to the best interests of the child. However, jurisdictions differ on how they apply this standard. Some have a presumption that shared parenting is in the best interest of the child—

Australia's Family Law Act, for example, states that "[W]hen making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child. Other jurisdictions allow for shared parenting but do not contain this presumption. Minnesota law explicitly states that there is no presumption for or against joint physical custody," with certain exceptions. Canada, South Africa, the U.K., and Kenya also have no presumption for or against joint custody. West's Ann. Cal. Fam. Code § 3006. West's Ann. Cal. Fam. Code § 3007. See, e.g., Canada Divorce Act, 1985, § 16(8). ("In making an order under this section, the court shall take into consideration only the best interests of the child...); Australia Family Law Act, 1975, § 65AA (as amended 2006) ("[I]n deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration."); South Africa Children's Act, No. 38 of 2005, § 9; U.K. Children's Act, 1989, § 1(1). 64 Australia, Family Law Act, 1975 § 61DA (as amended); see also Idaho Code Ann. § 32-717B(4). There shall be a presumption that joint custody is in the best interests of a minor child or children. M.S.A. § 518.17(2)(a). Canada Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), § 16(4), (8); South Africa Children's Act, No. 38 of 2005, §§ 22, 23, 30; U.K. Children's Act, 1989, §§ 8, 11(4); Kenya Children's Act, §§ 82(1), 83(1).

Many countries that allow (or even have a statutory preference for) shared parenting do not allow it in some cases. Where there is domestic violence or any sort of abuse, most jurisdictions have a presumption against shared parenting.

Shared parenting is also disfavored where parents have a particularly contentious relationship. As the US Court of Appeals noted in Braiman v. Braiman, joint custody is encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in a mature, civilised fashion. As a court-ordered arrangement imposed upon already embattled and embittered parents, accusing one another of serious vices and wrongs can only enhance familial chaos.

Practical considerations are also relevant. Some jurisdictions consider geographical proximity when deciding the award of shared parenting. Family courts in South Africa, for example, do not frequently award joint physical custody of children on the basis that such an arrangement would be disruptive for the child, particularly in cases where

the parents live far apart. Also, the de facto living situation of a child can be relevant—in the United Kingdom, shared residence orders "may be regarded as appropriate where it Id. St. 32-717B(5) ("There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic Also, the de facto living situation of a child can be relevant—in the United Kingdom, shared residence orders "may be regarded as appropriate where it Id. St. 32-717B(5) ("There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic violence..." (Idaho); Australia Family Law Act, 197 (as amended), § 61DA(2) (presumption that equal parental responsibility is in the best interest of the child does not apply if there is reasonable ground to believe that a parent has engaged in abuse or family violence).

A number of jurisdictions recognise the distinction between legal custody (the right to make major decisions for a child, such as decisions involving education, medical and dental care, religion, and travel arrangements) and physical custody (the right to provide routine daily care and control of the child). This distinction parallels the distinction between guardianship and custody in Pakistan. Some jurisdictions use other terms for this distinction. In Australia, for example, "parental responsibility"—defined as "the duties, powers, responsibilities, and authority which, by law, parents have in relation to children"—is distinct from the amount of time the child spends with each of the parents. Similarly, in France, "parental authority," which refers to "a set of rights and duties whose finality is the welfare of the child," is distinct from a parent's in re A, [2008] EWCA Civ 867, ¶ 66. See V.A.M.S. 452.375(1)(2). ("'Joint legal custody' means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education, and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and ("'Joint legal custody' means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education, and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority..."); V.S.A. § 664(1)(A) Legal responsibility' means the rights and responsibilities to determine and control various matters affecting a child's

welfare and upbringing, other than routine daily care and control of the child. These matters include, but are not limited to, education, medical and dental care, religion, and travel arrangements. Legal responsibility may be held solely or may be divided or shared. See VA Code Ann. § 20- ("'Joint custody' means... (ii) joint physical custody where both parents share physical and custodial care of the child...); V.S.A. § 664(1)(B) Physical responsibility' means the rights and responsibilities to provide routine daily care and control of the child, subject to the right of the other parent to have contact with the child. Physical responsibility may be held solely or may be divided or shared."); Ga. Code Ann., § 19-9-6(3) ("'Joint physical custody' means that physical custody is shared by the parents in such a way as to assure the child of substantially equal time and contact with both parents.) Compare Austrl. Family Law Act 1975 § 61B ("In this Part, parental responsibility, in relation to a child, means all the duties, powers, responsibilities, and authority which, by law, parents have in relation to Compare Austrl. Family Law Act 1975 § 61B ("In this Part, parental responsibility, in relation to a child, means all the duties, powers, responsibilities, and authority which, by law, parents have in relation to children") with Austrl. Family Law Act 1975 § 61DA (the presumption that parents have equal responsibility "does not provide for a presumption about the amount of time the child spends with each of the parents"). France Civil Code Art. 371-1. right of access and lodging. Kenya distinguishes between "legal custody" and "actual custody."

50-PAKISTAN AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD (UNCRC)

The UNCRC—United Nations Convention on the Rights of the Child (UNCRC), a clarion of worldwide movement and the pinnacle of international effort to promote the basic needs of children as fundamental human rights—is a remarkable and wonderful gift to the children, which is given a 'go by' by our current legal system. Pakistan, along with 193 other countries, has also agreed to undertake the obligations of the Convention by ratifying it on November 12, 1990.

The United Nations Convention on the Rights of the Child ("UNCRC") was adopted by the United Nations General Assembly in

1989 and entered into force on September 2, 1990. UNCRC has done for the rights of children what the United Nations' Human Rights Declaration did for fundamental human rights more generally. Pakistan is a party to the UNCRC and is under an obligation to comply with its provisions. It has done so by enacting a string of legislation, and the introduction of Article 25A of the Constitution is also part of the legislative measures taken by Pakistan to bring its laws into compliance with the UNCRC. Reproduced below are some of the most relevant clauses and sub-clauses of the UNCRC that seek to entrench, operationalize, and protect the fundamental rights of children across nation-states: -

- ***Article 1***

For the purposes of the present Convention, a child means every human being below the age of eighteen years, unless, under the law applicable to the child, the majority is attained earlier.

- ***Article 2***

States Parties shall respect and ensure the rights set forth in the present Convention for each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth, or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

- ***Article 3***

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

- ***Article 4***

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social, and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

♦ ***Article 5***

States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians, or other persons legally responsible for the child to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

♦ ***Article 6***

States Parties recognise that every child has the inherent right to life.

States Parties shall ensure, to the maximum extent possible, the survival and development of the child.

♦ ***Article 7***

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

♦ ***Article 8***

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognised by law, without unlawful interference.

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection with a view to re-establishing his or her identity quickly.

♦ ***Article 9***

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence.

In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation, or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child, or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

♦ ***Article 10***

In accordance with the obligation of States Parties under Article 9, Paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane, and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants or for the members of their families.

A child whose parents reside in different states shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in

accordance with the obligation of States Parties under Article 9, Paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

♦ ***Article 11***

States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

♦ ***Article 12***

States Parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

♦ ***Article 13***

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security, of public order (ordre public), or of public health or morals.

♦ ***Article 14***

States Parties shall respect the right of the child to freedom of

thought, conscience, and religion.

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her rights in a manner consistent with the evolving capacities of the child.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

♦ ***Article 15***

States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of the rights and freedoms of others.

♦ ***Article 16***

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation.

The child has the right to the protection of the law against such interference or attacks.

♦ ***Article 17***

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual, and moral well-being and physical and mental health.

To this end, state parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child in accordance with the spirit of Article 29;

(b) Encourage international cooperation in the production, exchange, and dissemination of such information and material from a

diversity of cultural, national, and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

♦ ***Article 18***

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents, or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children.

States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

♦ ***Article 19***

States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s), or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of

child maltreatment described heretofore, and, as appropriate, for judicial involvement.

- ***Article 20***

A child temporarily or permanently deprived of his or her family environment, or whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.

States Parties shall, in accordance with their national laws, ensure alternative care for such a child.

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption, or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural, and linguistic background.

- ***Article 23***

States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life in conditions that ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment, and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

States Parties shall promote, in the spirit of international

cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological, and functional treatment of disabled children, including the dissemination of and access to information concerning methods of rehabilitation, education, and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

♦ ***Article 24***

States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right to access such health care services.

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

♦ ***Article 25***

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

♦ ***Article 26***

States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

The benefits should, where appropriate, be granted, taking into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

♦ ***Article 27***

States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social

development.

The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.

States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a state different from that of the child, state parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

- ***Article 28***

States Parties recognise the right of the child to education, with a view to achieving this right progressively and on the basis of equal opportunity.

- ***Article 29***

States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for a responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes,

and friendship among all peoples, ethnic, national, and religious groups, and persons of indigenous origin;

(e) the development of respect for the natural environment.

No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

♦ ***Article 30***

In those states in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

♦ ***Article 31***

States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child, and to participate freely in cultural life and the arts.

States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational, and leisure activity.

♦ ***Article 32***

States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous, interfere with the child's education, or be harmful to the child's health or physical, mental, spiritual, moral, or social development.

States Parties shall take legislative, administrative, social, and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall, in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions

of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

♦ ***Article 34***

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall, in particular, take all appropriate national, bilateral, and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials

♦ ***Article 36***

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare.

♦ ***Article 37***

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age.

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent, and impartial authority, and to a prompt decision on any such action.

- ***Article 38***

States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable to them in armed conflicts that are relevant to the child.

States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen do not take a direct part in hostilities.

States Parties shall refrain from recruiting any person who has not attained the age of fifteen into their armed forces. In recruiting among those persons who have attained the age of fifteen but who have not attained the age of eighteen years, state parties shall endeavour to give priority to those who are the oldest.

In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure the protection and care of children who are affected by an armed conflict.

- ***Article 39***

States Parties shall take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment that fosters the health, self-respect, and dignity of the child.

- ***Article 40***

States Parties recognise the right of every child alleged, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged to have infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged to have infringed on the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses; and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent, and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

States Parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged to, accused of, or recognised as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected, 4. A variety of dispositions, such as care, guidance, and supervision orders; counselling; probation; foster care; education and vocational training programmes; and other alternatives to institutional care, shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

- ***Article 41***

Nothing in the present Convention shall affect any provisions that are more conducive to the realisation of the rights of the child and which may be contained in:

(a) The law of a state party; or

(b) International law is in force for that state.

- ***PART II***
- ***Article 42***

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

- ***Article 43***

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

The Committee shall consist of eighteen experts of high moral standing and recognised competence in the field covered by this Convention.

The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

The members of the Committee shall be elected by secret ballot from a list of persons nominated by state parties. Each state party may

nominate one person from among its own nationals.

The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties to the present Convention.

The elections shall be held at meetings of state parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

The members of the committee shall be elected for a term of four years. They will be eligible for re-election if re-nominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting.

If a member of the Committee dies, resigns, or declares that for any other reason he or she can no longer perform the duties of the Committee, the State Party, which nominated the member, shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

The Committee shall establish its own rules of procedure.

The Committee shall elect its officers for a period of two years.

The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The committee shall normally meet annually. The duration of the meetings of the Committee shall be determined and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions

of the Committee under the present Convention.

With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

♦ ***Article 44***

States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted that give effect to the rights recognised herein and on the progress made in the enjoyment of those rights.

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter, every five years.

Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

A state party that has submitted a comprehensive initial report to the committee need not, in its subsequent reports submitted in accordance with paragraph 1(b) of the present article, repeat basic information previously provided.

The Committee may request from state parties further information relevant to the implementation of the Convention.

The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

States Parties shall make their reports widely available to the public in their own countries.

♦ ***Article 45***

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialised agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the

consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund, and other competent bodies any reports from States Parties that contain a request or indicate a need for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from State Parties.

- ***PART III***
- ***Article 46***

The present convention shall be open for signature by all states.

- ***Article 47***

The present convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

- ***Article 48***

The present convention shall remain open for accession by any state. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

♦ ***Article 49***

The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

For each state ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such state of its instrument of ratification or accession.

♦ ***Article 50***

Any state party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of state parties present and voting at the conference shall be submitted to the General Assembly for approval.

An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

When an amendment enters into force, it shall be binding on those States Parties that have accepted it; other States Parties are still bound by the provisions of the present Convention and any earlier amendments that they have accepted.

♦ ***Article 51***

The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall

then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

- ***Article 52***

A state party may denounce the present convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

- ***Article 54***

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

51- INCORPORATION OF INTERNATIONAL LAW IN MUNCIPAL LAW

The issue of giving effect to international law came before the August Supreme Court in Hanover Fire Insurance Company v. Muralidhar Banechand (PLD 1958 SC 138), wherein the following was held: --

It is therefore necessary to act in accordance with the reciprocal arrangements arrived at between Pakistan and the country concerned, i.e., Pakistan and India in the present case; otherwise, our courts would be passing orders inconsistent with the rules of international law. In this connection, the following passage from Maxwell on Interpretation of Statute, Tenth Edition (p. 148) is instructive:

Under the same general presumption that the legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, as its language admits, as not to be inconsistent with the unity of

nations or with the established rules of international law. If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clarity to induce a court to believe that it entertained it, for if any other construction is possible, it would be adopted to avoid imputing such an intention to the legislature. All general terms must be narrowed in construction to avoid it. But if the statue is unambitious, its provisions must be followed, even if they are contrary to international law."

This question came before the learned Sindh High Court in Najib Zarab Limited v. Government of Pakistan (PLD 1993 Karachi 93), wherein the following was held: --

We are of the view that nations must march with the international community, and municipal law must respect the rules of international law, even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in municipal law even without express legislative sanction, provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and integrity of the Republic and the supremacy of the constituted legislatures in making laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. ... National courts will endorse international law, but not if it conflicts with national law. National courts, being organs of the national state and not organs of international law, must enforce and apply national law if international law conflicts with it. But the courts are under an obligation within legitimate limits to interpret the municipal statute so as to avoid confrontation with the community of nations or the well-established principles of international law. But if conflict is inevitable, the latter must yield.

CHAPTER IX

52- PARENTAL CHILD ABUSE

The most common kind of child abuse is parental child abuse, which often occurs when the parents separate or begin divorce proceedings. A parent may remove or retain the child from the other parent, seeking to gain an advantage in the expected or pending child custody proceedings or because that parent fears losing the child in the lengthy pending child custody proceedings. A parent may refuse to return a child at the end of an access visit or may even flee with the child to prevent an access visit. This very retention of the parent itself creates tangible effects on a child's psychology, which are often unaddressed.

The worst possible thing that can happen in a child’s life, apart from losing a parent, is to become a rolling ball in a parent's divorce and ensuing custody battles. While the spouses and their families hurl accusations and try to get the better of each other, the trauma being suffered by the child may sometimes be overshadowed by the volley of hurt and anger of the parties.

Though technically family matters are not to be decided strictly on the yardstick of procedural laws nor any other principle aimed at the observance of technicalities, the paramount consideration before the court must be the welfare of the minor and the betterment of the minor. Courts in such a matter are required to act in a Loco Parentis position, and many considerations are required to be kept into consideration by the guardian court, which of course is not the practice observed by Our Family Judicial System. What is actually being done in the vast majority of cases pending in multiple guardian courts in Pakistan is that the non-custodial parents are subjected to abuse and victimisation in the name of procedural technicalities, especially during the pendency of divorce and custody of minors. Even after waiting for months for the first face-to-face meeting with his or her own children, the non-custodial parent gets an extremely limited visitation schedule to meet their children.

As a direct consequence of the extremely limited access and visitation rights that are allowed to non-custodial parents in the form of a template visitation schedule chalked out after an unexpected prolonged battle ranging over a period of 7–8 months in routine, it is always the child who is on the tail end who suffers. Our Family Justice System is adamant about appreciating the simple fact that the mind of a child is like a perishable commodity. With the passage of time, it is easy to change an innocent mind. Within months, due to a lack of interaction with the non-custodian parent and constant brainwashing by the custodian parent and his or her family, the children start forgetting and, in many cases, disliking the non-custodial parent, who once used to be extremely dear and loved. This phenomenon has been named Parental Alienation Syndrome, or simply PAS," by the psychiatrists. Parental alienation syndrome often starts developing in children when the parents separate or begin divorce proceedings. A parent may remove or retain the child from the other parent, seeking to gain an advantage in the expected or pending child custody proceedings or because that parent fears losing the child in the lengthy pending child custody proceedings. A parent may refuse to return a child at the end of an access visit or may even flee with the child to prevent an access visit. This very retention of the parent itself creates tangible effects on a child's psychology, which are often unaddressed.

(i) Indications of Parental Alienation Syndrome & How to Counteract Its Effects

Negligence impairs the overall development of nations, undermines people's spiritual and material well-being, compromises human dignity and creates a climate of fear and violence that erodes the quality of life. Roughly more than 1.5 million civil cases are pending adjudication in the lower courts throughout the province of Punjab, in cahoots with an incompetent lower judiciary. The Guardian/ Family Courts in particular have utterly failed to render justice to the wronged masses. Due to the failure of the family justice system, the common man's life, property and respect are eternally hedged to the discretion of powerful criminals and con-men. The incompetency of the Family Courts is forcing citizens to approach higher courts and the High Courts were overburdened with cases against police officials for non-compliance of the court's orders with regard to family cases in particular.

Our Family/ Guardian Courts are adamant to appreciate the simple fact that the mind of a child is like a perishable commodity. With the passage of time it is easy to change the innocent mind. Within months due to lack of interaction with non-custodian parent and constant brainwashing by custodian parent and his/her family, the children start forgetting and in many cases disliking the non-custodial parent who once used to be extremely dear and loved. This phenomenon has been named as Parental Alienation Syndrome or simply "PAS" by the psychiatrists.

Parental distance or its disorder has various signs, the head of which starts with an inquiry: "Why should minor children who were at first close to both parents unexpectedly look to reject one of them?" This has a tendency to happen after a bitter detachment or separation. There is a propensity to depend a lot on what a minor child says it needs as opposed to looking behind the conspicuous comments. They are regularly "modified" by the estranging guardian and this prompts false, pointless overstated reactions against the other guardian. 28 indications of estrangement which are not generally at the same time obvious are displayed and additionally 24 proposals for remediation.

From then on there will be two sections. The principal part will manage the indications of parental estrangement or what kind of special attention one ought to give when managing minor children, alienators, and the

casualties of distance. The second part will emphasize on cures in managing the estrangement process.

It must be comprehended that what the youngster needs is vital yet one must be totally sure that what the minor child needs is really being reflected by what the minor child says. It must be comprehended that minor children who express that they would prefer not to see a guardian – unless there has been demonstrated sexual, physical or psychological mistreatment – they still ought to be firmly urged to have contact with the other guardian.

Minor children might state they don't wish to see a guardian and the individuals who manage minor children in the lawful calling and as clinicians and specialists frequently feel they should listen to the youngster and surrender that what the minor child needs is ideal for him or her. This is a wrong method for taking a gander at things. Minor children regularly need things for themselves that are bad in the transient and in addition the long haul. While a noteworthy thought when managing the distance procedure is to do what is best for the minor child, we should be mindful so as to comprehend that minor children will have responded certainly after a time of estrangement by one guardian. This then prompts data exclusively on the premise of what the minor child feels and thinks ought to happen. Youngsters who have been distanced or modified against a guardian will regularly state things that are untrue, overstated or trivial in spite of previously having had a decent association with that parent.

The methodology of the advisor in managing estrangement cases is altogether different from the clinician or specialist managing an assortment of mental issues or psychoses. What is required is to comprehend that the estranging guardian can be, yet not so much, rationally sick, or fiendish, or both in the way in which she manages the youngster keeping in mind the end goal to look for retribution on a guardian who had been close sooner or later in time. What such contesting parents neglect to acknowledge is that they are hurting the minor child both in the short and the long haul by denying that offspring a decent parent just in light of the fact that they are irate and wish to get vengeful against their ex accomplice. The minor child is utilized as an apparatus as a part of this procedure. The alienator is not worried for the welfare of the

minor child but rather is worried with his or her own longing for retribution against the distanced person.

ii). Markers of Parental Alienation (PA)

Various signs or markers of distance can be recognized. It ought to be perceived that not every one of these signs show up in all cases and some truths that would be told would only apply to the individuals who estrange minor children against the non-custodial guardian, who tragically tends to be the father as opposed to the mother, although fathers have also been utilizing such methods against the mothers. Whoever utilizes estrangement systems or mental conditioning to get the minor child to loathe the other guardian is plainly in the wrong and is blameworthy of making mischief. There is impressive examination showing the damage that is done to youngsters who are distanced against a guardian when they are still young. Expanding research has likewise demonstrated that when they get to be grown-ups such people experience the ill effects of the harm done by an estranging guardian.

Following are some of the various signs which communicate with different things and ought to be seen not in segregation but rather in blend in this intricate issue of the estrangement process:

1. Absence of free thinking from the minor child mirroring the alienator's musings and emotions.

2. Annihilating mail or even displays from the estranged guardian.

3. The estranging guardian tends to try to shorten all correspondence between the minor child and the distanced guardian.

4. The distanced guardian is seen as the substitute. He or she is reprimanded for everything that has turned out badly with the youngster. There is no feeling of irresoluteness.

5. The minor child calls the distanced guardian a liar and other damaging names like the estranging guardian.

6. The youngster abuse, demonstrates disregard, and embarrasses the estranged parent regularly on front of the alienator.

7. Estranged contesting parents are seen as being wretched, broken and meriting being dismisses for all time.

8. Contesting parents who estrange youngsters are enticing the minor child candidly and will keep on doing this while in control of the minor child, yet they deny that they are doing anything other than urging the minor child to reach the distanced guardian.

9. The minor child is made to feel regretful for any adoration demonstrated towards the distanced guardian. The minor child will deny any association with the estranged guardian, dreadful of what the alienator would do to him or her.

10. The minor child fears dismissal by the software engineer on the off chance that he or she wishes to say good thing in regards to the estranged parent or wishing to be with him or her.

11. The youngster is claimed, controlled, and taught by the distancing guardian. That parent is seen as all great, all shrewd, and all intense by the youngster who gets to be subordinate, controlled by them. There is never scrutinizing that what the guardian says or does is constantly right.

12. The youngster tends to reword proclamations utilized by the estranging guardian. The words utilized are regularly untypical of words liable to be utilized by a minor child. It is fundamentally the same to a faction sort of inculcation.

13. The minor child experiences suspicion (scorn) taught by the distancing guardian who advances dispositions, expectations, and practices of a negative nature to the estranged guardian.

14. The minor child will talk about overstated or invented misuse that has been experienced from the distanced guardian.

15. The minor child or distancing guardian makes articulations hinting semi or genuine sexual, passionate, and physical misuse endured by the minor child.

16. The dialect comes in a roundabout way from the alienator, for example, “he touches me improperly,” or “he has infiltrated me,” These are all acquired situations from the estranging guardian.

17. Minor children who are distanced no more know truth from falsehood.

18. The minor child who is distanced against the guardian will regularly be estranged against the guardian’s family.

19. The alienator will likewise influence the minor child against the specialist unless the advisor bolsters the alienator. Consequently the specialist is seen as an adversary in the same light as the distanced guardian.

20. It is not what alienator says but rather how it is said. For instance while telling a minor child “father might want to take you out,” it can be said with happiness and excitement showing positive desires or it can be said with venom demonstrating negative emotions. This is what is dominatingly conveyed to the minor child as opposed to the verbal message.

21. The estranged minor children tend to see themselves in a capable position, particularly in the seriousness of their hostility displayed towards the distanced guardian. This is all done after the programming by the alienator.

22. Female alienators will frequently pick female specialists as they accept they will have the capacity to relate to them better.

23. Female alienators are frequently furious because of the way that the distanced individual has another relationship, while she has not.

24. A few alienators move far from where their ex accomplice dwells keeping in mind the end goal to make visits troublesome or outlandish.

25. Sometimes the name of the minor child is changed to that of the alienator or the following accomplice to which the alienator has connected him or herself.

26. Negligible reasons are frequently given for not having any desire to be with the estranged guardian. Notwithstanding when informed that if these unimportant reasons were uprooted the minor child will frequently assert they don't wish to be with that parent under any circumstances.

27. The youngster is urged to be with companions or play on computer games in inclination to being with the estranged guardian.

28. A youngster who had a background marked by a decent, cheerful and warm association with the now distanced guardian before detachment or separation, will neglect to recall occasions that previously made them upbeat. They might be experiencing amnesia of any great occasions because of the distance process.

iii). <u>Approaches to Combat Parental Alienation During Mediation and Treatment</u>

There is no simple approach to battle distance, particularly if it has stretched over time and the estranged guardian has had little contact with the minor child. One may say the alienator has won and has the complete control of the youngster in this situation. The two (alienator and minor child) then are a "group" who absolutely work against the estranged guardian with the ultimate goal of mortifying and dismissing that parent from having contact with the defrauded minor child.

A percentage of the techniques that are prescribed for managing the procedure of distance might appear to be great, however it is a compelling circumstance that one is confronting when managing the staggering force of the alienator. Run-of-the-mill restorative systems are incapable when managing such issues. Firm methodologies are required and these must be

upheld unequivocally by the court with the goal that they should have an impact in questioning the casualty of the distance. This occasionally puts the specialist in a hazardous circumstance for he or she might be blamed for being too firm in trying to switch the distance impacts. A mix of both reason and feeling must be displayed to the minor children to make them mindful of the harm that has and is continuing, so as to end the negative mentality towards living with one guardian. This is obviously accepting that the estranged guardian is pure of all physical, sexual or psychological mistreatment.

The following approaches would be able to lessen the impacts of estrangement & parental alienation syndrome:

1. Wreck the impacts of denigration by one guardian towards the other by making the minor child mindful of the upbeat history before the sharpness and partition between the contesting parents happened.

2. Get the minor child to focus on the good things about the criticized guardian.

3. Be firm and proactive in changing dispositions and conduct that has brought on the parental distance.

4. Attempt to get the distancing guardian to coordinate in halting the estrangement. This is simpler said than done, and numerous alienators will decline to participate in this. This is even so when it is highlighted that such activities are really unsafe to the minor child’s advancement.

5. Speak to the minor child’s inner voice, that he or she is dismissing, harming and mortifying a pure gathering that looks after that child.

6. Bring the minor child closer together with the distanced guardian at the appointed time, while looking to change both states of mind and conduct by means of balanced emotive treatment. There is a need in this procedure for firm correspondences.

7. Make the youngster mindful of what a blood relative may give up for that minor child which is not the situation for outsiders.

8. Caution the guardian who estranges the offspring of the damage that they are doing to the youngster in the present time as well.

9. Speak to the youngster's basic considerations (knowledge and feelings) and make the minor child mindful of the injustice and coldness in dismissing a cherishing guardian.

10. Make the minor children mindful that they require both contesting parents without jeopardizing the association with the distancing guardian.

11. Make the minor children mindful that they might lose a decent parent if the procedure of distance proceeds.

12. The youngster ought to be made mindful that the distant family of the estranged guardian is also being unreasonably dismissed.

13. Support the minor child to draw in with the distanced guardian as well as with the estranged guardian's more distant family, i.e. grandma, granddad, close relatives, uncles, and so forth. This will serve to invert the estrangement process.

14. Abridge or wipe out phone calls and different interchanges from the programming guardian while the minor child is with the non-custodial guardian.

15. It is critical for minor children who have been estranged to invest as much energy as is conceivable with the distanced parent alone so that a relationship can be recreated between them. The more drawn out this individual contact happens, the higher the probability that the estrangement procedure will be drained.

16. Stop the minor child from being utilized as a spy against the estranged guardian.

17. The minor child ought to be expelled from the impacts of the distancing parent and be given in care of the estranged guardian or another body including a relative. This is to shield the minor child from further estrangement.

18. Lack of involvement and resistance are negative factors when managing parental distance. What is required is a showdown of an intense sort with a specific end goal to balance the impacts of the estrangement and to turn it around.

19. The force of the court must back the persons looking to evacuate the estrangement impacts.

20. The minor child should frequently be uprooted to an impartial setting, for example a healing facility, to avoid further estrangement. This could especially work where extreme mental harm has been done to a great extent.

21. In case of serious distance it is best for the estranged contesting parents to never approach the home of the alienator, rather they should utilize a middle person for the exchange of contact with the minor child.

22. It ought to be recollected that the youngster who has been the casualty of mental programming needs to realize that he or she can still feel protected with the distanced guardian without this decreasing their devotion and responsibility towards the other guardian. Henceforth the distanced guardians ought to do as much as could reasonably be expected to promise this to the youngsters.

23. Once the estranged contesting parents have reached out to their youngsters, they ought to focus on discussing cheerful times spent together in the past, supplemented with pictures or recordings. At first a minor child could be dismissive and even neglect to have eye contact however this can be diminished through indications of content past events and how to proceed with them.

24. Estranged contesting parents ought not to surrender without making an effort first and ought to continue with their endeavors to reach out to their youngster. Steady dismissal from the minor child is prone to be mortifying and unsettling, however ingenuity now and then prompts accomplishment with the assistance of a specialist and the backing of the courts.

Both angles included in managing parental estrangement are essential, however the points of interest are positively inadequate as there are numerous different methods for managing distanced youngsters and additionally their guardians. It is imperative to understand that there is an extraordinary contrast between restorative methodologies in the typical sense and those that are required with contesting parents who are estranging a minor child against another guardian. It cannot be underlined too firmly that without the sponsorship of the courts these endeavors may be too unrealistic to have impact.

iv- Victims of Parental Alienation Syndrome: Children of Divorced Parents Can Easily Be Manipulated to Give False Accounts

Our family judicial system, while adjudicating cases pertaining to custody, is oblivious to the tactic of managing estrangement cases, which is altogether different from the clinician or specialist managing an assortment of mental issues or psychoses. What is required by our judicial system is that the custodial parent (mothers mostly) can be, yet not so much, rationally sick, fiendish, or both in the way in which she manages the youngster, keeping in mind the end goal of looking for retribution on a non-custodial parent (fathers mostly in our society) who has been close

sooner or later in time. What such contesting parents neglect to acknowledge is that they are hurting the minor child both in the short and long haul by denying him/her a decent parent just in light of the fact that they are irate and wish to get vengefully against their ex-spouse. The minor child is utilised as an apparatus as a part of this procedure. The alienator is not worried for the welfare of the minor child but rather is worried about their own longing for retribution against the distanced person.

An award-winning book published by the American Psychological Association shows just how easily children can be manipulated to give false accounts that bad things have happened to them. In one study, children were asked to repeatedly think about whether different events had ever happened to them (for example, whether they got their finger caught in a trap and then went to the hospital to get the trap off). After ten such sessions, a large portion of the kids recounted false stories about this invented occasion. The children reiterated such compelling stories of this scenario that the specialists could not recognize which occasions were genuine and which were not. Moreover, after the analysts told the minors that the occasions never actually happened, a large portion of the children insisted that they recalled the invented occasion happening.

Children suffering from Parental Alienation Syndrome can be problematic as they can give the judge a persuading picture that is not real. These children are more vulnerable and can easily be manipulated to create a belief of alienation and stories that are not real. Before the minor is brought to the judge, he or she is trained to display a loathsome attitude towards his or her guardian. This can be entirely influential as the script has been drilled into the minor and so it is very compelling when told to the judge. By the time the child gets to the judge, he or she has already told the story to an assortment of lawyers and other experts. This further solidifies the story when it is reiterated to the judge. There have been various events where judges have accepted such statements and not considered whether the statements were merely the result of rehearsed reiterations. But these minors even often confuse therapists about whether they are telling the truth, so how can our judges be more cautious?

Below is an arrangement of enquiries that may be useful to judges in discovering valuable information while meeting such minors. It is critical to see that the enquiries mentioned below identify the normal conditions (i.e. the father being the detested guardian and the mother the adored one). However, when the circumstances are reversed (the mother being the despised one and the father the cherished one) then clearly one ought to switch the enquiries as well.

Portray your custodial guardian (mother/father)

A minor with parental estrangement disorder will usually give positive reactions to such a question. On the off chance that any negatives are given, they will as a rule be insignificant. Minors who are "typical" or have to endure with different sorts of psychiatric unsettling influences will for the most part have the capacity to list both positives and negatives about every guardian. The complete romanticizing of a custodial guardian is a sign that the minor is closer to the issue than normal.

Portray your non-custodial guardian (mother/father)

A minor who suffers from parental estrangement disorder will give a lengthy answer with little substance. Often the minor will talk about past and present encounters. Sometimes minors will talk about a situation that has never happened in real life but may have often overheard their mother talking about it. The minor tends to acknowledge the mother as legitimate and gives no validity to the father.

How would you feel about your non-custodial guardian's (father/mother) family?

A child suffering from a parental distance disorder will for the most part answer that all individuals from the father's/mother's more distant family (including the minor's own grandparents, aunts, uncles and cousins), are awful and antagonistic. There is generally no basis for such feelings as the child has barely had any contact with the family of the non-custodial guardian. If the child is asked for any explanation or examples for the ill-feelings there is generally no response.

Does your custodial guardian (mother/father) interfere with your meeting with your non-custodial guardian (mother/father)?

The minor will suggest no obstruction to the meeting with the non-custodial guardian. Frequently the child will be more than happy to claim that it is his or her choice to not meet the non-custodial guardian.

Why then would you prefer to not visit your father/mother?

The minor generally gives exceptionally ambiguous reasons as to why they do not want to visit the non-custodial guardian. If the child is asked for specifics then the child portrays a horrendous abuse in an exceptionally persuading way. Often children magnify situations and make "mountains out of molehills" to ensure that they do not have to visit the other parent. Commonly, the minor will request that no contact with the father is needed for now, or at least not until they grow up.

Does your mother disturb or trouble you?

Salubrious children will give a few examples of "provocation" like being made to turn the TV off, do homework or go to bed early. Minors with parental distance disorder claim they are never made to do such things. They regularly depict their mother as being immaculate. This is clearly a biased image. Typically the word badgering is used with minors since this term is utilized by mothers of kids with parental estrangement disorder. The father's suggestions for engagement with the child is alluded to as badgering, by the mother. In the event that the minor is new to the word badgering, it can be substituted by "trouble you a considerable measure."

Does your father trouble you?

Children suffering from the syndrome will be more likely to point out the father's so called "provocations." These "provocations" in reality are mere attempts to try to contact the kids. Letters, phone calls and legitimate endeavors to meet the child are all put under the expression of "provocations." The child and the mother generally twist the truth and present the father's attempts to meet the child as harassment or worse.

The judge will most likely ask more particular questions related to the specific case. These might incorporate enquiries with regard to why the child needs to change his or her name back to the mother's original last name, why presents given by the father were tossed in the garbage (as a rule in the mother's nearness), what the siblings' reasons are for not having any desire to see the father, etc. Judges who meet children in their

chambers must be made mindful of the fact that the child might be exceptionally persuasive. Judges are often taken aback by the emphasis on the objections and give such weight to the child's announcements that they oblige with the expressed inclination. Judges must be cautious of this issue and decide if the child is suffering from such a syndrome. The judge should keep an eye out for: the complete absence of vacillation, the obsession with silly and immaterial "insults," the aggregate expulsion from the more distant family of the loathed guardian, the outright refusal of any positive contribution by the abhorred guardian on the child's life and the clear articulation of the child's desire to never see the detested parent again for the rest of his or her life. Keeping these points in mind will help the judge assess whether a child is saying such things because of the syndrome or whether the statements have actual substance. Considering the popularity of indoctrinating or coaching to distance the child from the non-custodial guardian, the custody ought to be moved from the custodial guardian to the non-custodial guardian who will guarantee towards the kid, adoration and warmth of both the guardians.

A court while dealing with custody cases is neither bound by statutes and precedents nor by strict rules of evidence or procedure. In selecting the proper guardian of a minor, paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is expected and bound to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favorable surroundings. But over and above the physical comforts, moral and ethical values cannot be ignored. They are equally, if not more, important essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is best for the welfare of the minor.

V). Common set of actions by an alienating parent:

a) Changing the name of the child
b) Throwing away gifts given by a non-custodial parent
c) Telling the child that a non-custodial parent or family does not love him or her
d) Creating hindrances or excuses whenever a non-custodial parent is supposed to take the children for access

e) Interrogating the child after access is over; having the child spy on the actions of a non-custodial parent

f) Monitoring a child's phone calls, SMS, e-mail, or Facebook profile so as to control access with a non-custodial parent

g) Withdrawing love and gifts every time the child talks about or expresses a desire to meet a non-custodial parent

h) Making the child feel guilty about a positive relationship with the non-custodial parent.

i) Narrating "adult" stories to the child—talking about how non-custodial parents used to behave while they were together

j) Narrating the "truth" behind the reason for separation or divorce

k) Making false allegations or repeated police complaints

l) Having the child call somebody else mama or papa and telling the child that someone else is his or her mother or father

m) Asking the child to choose between "father" or "mother"

n) Denigrating or belittling the spouse in front of the child

o) Analysing or "splitting open" every word that a non-custodial parent says in front of the child

p) Emotionally blackmailing the child every time the child stays over at a non-custodial parent's house: "I couldn't sleep last night and cried all night since you were not there."

q) Having the child keep secrets from the non-custodial parent

r) Having secret signals and means of communication with the child

s) Relocating the child to a different city to block or deny access

t) A child is asked not to smile for any photographs at a non-custodial parent's house.

Various signs or markers of alienation can be recognized. It ought to be perceived that not every one of these signs shows up in all cases; they are various, yet numerous will, truth be told, apply to the individuals who estrange minor children from the non-custodial guardian. Whoever utilises estrangement systems or mental conditioning to get the minor child to loathe the other parent is plainly in the wrong and is

blameworthy of making mischief of the minor child in the present and what's to come. There is an impressive examination showing the damage that is done to children who are alienated against a non-custodial parent when they are minors. Expanding research has likewise demonstrated that when they get to be adults, such children experience the ill effects of the harm done by an estranged custodial parent.

Some of the significant indications that an alienated child dispels are enumerated here and below:

The absence of free thinking in the minor child mirrors the alienator's musings and emotions.

The custodial parent tries to shorten all correspondence between the minor child and the distant non-custodial parent.

The distant non-custodial parent is seen as the substitute. He or she is reprimanded for everything that has turned out badly with the minor. There is no feeling of irresoluteness.

The minor child calls the distanced non-custodial parent a liar and other damaging names, like the estranged guardian.

The youngster abuses, demonstrates disregard, and embarrasses the estranged non-custodial parent regularly in front of the alienator.

Contesting parents who estrange minor children are enticing the minor child candidly and will keep on doing this while in control of the minor child, yet they deny that they are doing anything other than urging the minor child to reach the distanced guardian.

The minor child is made to feel regretful for any adoration demonstrated towards the distant, non-custodial parent. The minor child will deny any association with the estranged non-custodial parent, dreadful of what the alienator would do to him or her.

Minor children who are distanced no longer know truth from falsehoods.

It is not what the alienator says, but rather how it is said. For instance, while telling a minor child, "Father might want to take you out," it can be said with happiness and excitement, showing positive desires, or it can be said with venom, demonstrating negative emotions. This is what is dominantly conveyed to the minor child as opposed to the verbal message.

There is no simple approach to battle distance, particularly in the event that it has occurred for a drawn-out stretch of time and the estranged guardian has had little contact with the minor child. One may say the alienator has won and has complete control over the minor in this situation. The two (the alienator and the minor child) then are a "group" who work absolutely against the estranged parent with the end goal of denying the estranged non-custodial parent from having contact with the defrauded minor child.

A number of the techniques that are prescribed for managing the procedure of parental alienation might appear to be great; however, it is a compelling circumstance that one is confronting when managing the staggering force of the alienator. Run-of-the mill restorative systems are incapable of managing such issues. Continuous efforts are required, and these must be upheld unequivocally by the court as well. A mix of both reason and feeling, yet above all else, stability must be presented to the minor child to make them mindful of the harm that has and is continuing so as to be finished living with such a negative mentality towards one parent.

The only recourse to combat parental alienation syndrome injected in an estranged minor child by a custodial parent is that the court should go for adoption of a shared parenting arrangement instead of indulging in the formal adjudication of a family dispute over custody of the minor. The non-custodial parent must have frequent and adequate access to his or her minor child. It is a time when our family justice system must understand that in guardianship matters, courts are required to exercise quasi-parental jurisdiction; the supreme consideration in such a context is the welfare of the minor, and to achieve such a purpose, courts have unfettered powers. An application under Section 12 of the Guardian & Wards Act, 1890, is required to be decided on such principles. It is a time when our judicial system must acknowledge that contesting parents have an inherent right to seek adequate and reasonable visitation of the minor, especially the non-custodial parent, who is mostly the father and is inherently a natural guardian of the minor. Fathers are not only required to participate in the upbringing of minors but should also develop love, bondage, and affinity with them. In order to achieve this purpose, the Guardian Court should facilitate a congenial, homely, and friendly environment and a reasonable visitation schedule for the non-custodial parent. The courtroom of a guardian judge or a separate room within the court premises for visitation

or meeting purposes is neither conducive nor effective. It lacks basic and proper facilities and arrangements and is not comparable to a homey environment. Meeting for two hours once a month cannot serve the purpose of meeting and is not in the welfare of the minor to hold meetings there with the non-custodial parent, i.e., a father.

vi). Intelligent Prefrence of a Child

It is well settled that while disposing applications under **Section 17** and **25** of the **Guardian and Wards Act 1890**, supreme consideration should be given to the welfare of the minor coupled with the wishes of said minor *(***1998 MLD 1697 Quetta High Court***)*.

The relevant section for this issue under the **Guardian and Wards Act 1890** is **section 17(3)** which reads as follows:

"If the minor is old enough to form an intelligent preference, the court may consider that preference."
This means a child is required to be of sufficient age and capacity to form an intelligent preference as to custody or visitation. In such a case the court may consider and give due weight to the wishes of the child in making an order granting or modifying custody or visitation.

It is also true that any child who is placed in such an unfortunate position, can hardly have the capacity to express an intelligent preference. This may require the court to take the upper hand and decide what best course should be adopted to ensure the welfare of the child.

In a landmark case, cited as ***Shaukat Khalid vs Additional District Judge, Rawalpindi*** **[1989 CLC Lahore High Court***]*, the court observed that there was an existing influence on the minor. This influence was a result of being tutored and brainwashed to have certain preferences. The court further observed that the preference expressed by the minor to stay with her uncle's wife were relevant but was to be judged with reference to the welfare of the child. Such Preference has to be judged with reference to the welfare of minor. Minor being immature, could not visualize the hazards of life and exercise sound discretion qua her welfare. Court while exercising its parental jurisdiction has to judge the welfare of minor in the context of circumstances of each case.

In a landmark case, cited as **Maqsood Ali vs Soofia Naushaba [1986 SCMR 426],** the Honourable Supreme Court of Pakistan observed that We were tentatively of the opinion that, in the course of long period of litigation between their parents, the children having remained with the mother, may have been subjected to influences tending to regard their father in an unfavorable light and in any case must have formed strong association with their mother to the entire exclusion of the father. We therefore, thought that the matter cannot be left entirely to the choice of the minor children in the circumstances of this case.

In case cited as **Mukhtar Ahmad vs Aziza Begum [PLD 1975 Lahore 86]** the Honourable Lahore High Court observed that The minor is at present about 13/14 years of age. The Appellant in his statement complained that he had not even been allowed to see the minor. This sort of treatment from the Respondent side led also to the hardening of the attitude. This is why the learned Guardian Judge was constrained to remark that the appellant so far appears to be stranger to the minor. But it needs to be observed that he (the Appellant) in this behalf does not appear to be at fault. It also appears that the minor has not been given balanced training by the Respondent and her close relations in so far as his regard for his mother is concerned. I also examined the minor. he had come from the Respondents custody and obviously he supported her by expressing the desire that he would like to stay with her. If he had lived for such a long period since his infancy with the Appellant, I am certain he would have made a contrary choice. In the background of the above circumstances, therefore, the desire expressed by the minor gets explained and is not sufficient by itself to control the question of custody.

The minor has been deprived of the affection and love of the father for such a long time. He is passing through a formative stage during which he needs to learn about his father and his family. It is in his welfare that if not earlier, at least from now onwards he should start living with his father. apart from this general consideration, in the peculiar circumstances of this case, I am of the view that it would be entirely to the benefit of the minor if he goes out of the present atmosphere.

In case cited as **Parveen vs Mohammad Ashar [PLD 1975 Lahore 334]**

the Honourable Lahore High Court observed that It is apparent that whatever alleged disliking the children have entertained towards their mother is after the episode of 20th October 1973. They had come in the exclusive custody of the Respondent who admittedly is on inimical terms with the Petitioner. "It is not difficult from this to conclude that their refusal to meet their mother in the school at Murree or before the District Judge is only on account of either some instructions given by the Respondent, which they consider incumbent upon them to follow, or the Respondent had been feeding them with the stories which might estrange them towards their mother." It was no doubt stated by the eldest daughter that finding that their uncle and father were present outside the Airport, they sat in their car on their own volition but it is quite possible that this testimony may also be a result of some directive from the Respondent.

The Court observed further, that "My impression is that the Respondent is making the children a party to the dispute between him and his wife although this is something in which the children, in their interest of their own mental and psychological development should not be involved". For all these reasons, I am of the view that the best course would be to keep the children away from this type of influence and by allowing equal access of the parents to them, they should be saved from the ugly gossip of one against the other and to allow them to make up their own mind about the real facts. The estrangement between one parent and the children is necessary to be avoided at all costs. It is with this view, that I have passed the order by which I have tried to ensure both the parents should have equal opportunity of meeting their children and of living with them temporarily during the period when their school is closed. This itself is a matter of great urgency.

In case reported and cited as **Saad Amanullah Khan vs IVTH- Senior Civil Judge, (South), Karachi PLD 2008 Karachi 499]** the Honourable Sindh High Court observed that,

"(c) where children had remained under complete supervision of mother and maternal parents/ relatives to the complete exclusion of father and his part of family for the last 8/9 years, statements of such children were a result of tutoring and brain-washing. Statements of such children could not be accepted in circumstances.

(d) In long legal battle with allegations and counter allegations both father and mother has lost sight of the fact that in ultimate result, the losers were children as their welfare was in fact that both the parents should have an effective say in upbringing and children should be attached to both the parents."

And lastly in a recent judgment cited and reported as Jehangir Siraj Dogar Vs Adj [**2021 YLR 1299 Lahore**] it is held by the Honourable Lahore High Court that All three minors appeared before Family Court and stated that they wanted to live with their father. Such statement did not mean that minors would be kept away for all times from their mother and not allowed to develop any bonding with her. Lower Appellate Court rightly observed that since both parties were at daggers drawn, it could not be ruled out that minors would have been subjected to some brain washing against mother. Once children would reach age of discretion, custody matters were to be disposed of in terms of their wishes which itself would constitute their welfare. To deprive mother from meeting minors was not only harsh and cruel but was also against welfare and interest of minors who would further be influenced and brain washed against their mother were not able to develop any bonding with her. High Court declined to interfere in schedule of visitation. Constitutional petition was dismissed in circumstances.

The above case law is regarding final custody of the minor where it is held that the statement of minor may not be treated as conclusive rule to determine custody. However, in the present case, only visitation rights of the mother are involved which are distinct in nature from custody, therefore, the statement of minor will have very low probative value in relation to visitation rights of the mother, especially where interim custody is already given to the father.

There is no substitute to a real mother. It is well-known Hadith reported in Ibne Majja, one of the celebrated Books of Hadith, that Moawiya bin Maida (God be pleased with him) asked the Holy Prophet (Peace be upon him) that with whom he should do good. The Holy Prophet (Peace be upon him) answered, "Be kind to your mother.". The question was repeated and the answer was "To your mother." For the third time the same question was put and the Holy Prophet (Peace be

upon him) said "Do good to your mother." When the fourth time this question was repeated, the Holy Prophet (Peace be upon him) replied, "To your father and afterwards to your other relatives." This shows the degree of preference accorded to the mother over the father and others.

And in **Writ Petition bearing No. 17366/2021 titled as Shahid Wazeer Vs ADJ**, approved for reporting, the Honourable Lahore High Court has very candidly observed that, “Once a marriage is dissolved, the parents of a minor may get entangled in a legal battle to satisfy their self-nurtured ego, which is a path chosen by them on their own and they may, at any time, get out of and/or put an end to such fight. However, the minor, in such a battle, suffers the most as he is dragged in the battle. The fighting parents are least bothered about the psychological and other toll on the minor on account of such a fight. In such situations and proceedings, the parents often lose sight of the fact that the children face mental and emotional trauma because of the ill chalked visitation schedule when the custody is handed over to one of the parents that may result into multiple personality disorders. Seldom do we come across an erstwhile couple which keeps the welfare of the minor as their paramount consideration. That is why, the role of the Court attains immense significance as it is the Court, which is obligated to keep the welfare of the minor as its paramount consideration.

The law on the subject is contained in the Act. The parent who does not have custody has the visitation rights, being a non-custodial parent. A non-custodial parent has a right to file a suit for visitation rights. The law in vogue on the subject lacks any guidelines about the duration or frequency of such visits or the overnight stay of the minor with non-custodial parent. The Act does not contemplate a set pattern of the visitation schedule for the minors inasmuch as it is silent on the frequency of visitation or the venue thereof. It is trite law that while deciding a guardian petition, including chalking of a visitation schedule, it is the ‘welfare of the minor’ which is of paramount consideration. Limited hours of meeting within the Court premises is the policy generally adopted by the Courts which is certainly not an appropriate solution inasmuch as it only enables a minor to identify his relation with the non-custodial parent without developing any bonding due to the lack of proper interaction between the minors and such non-custodial parent because of non-conducive environment of the Court premises. As a natural corollary, there is great chance that the minor will turn against such non-custodial parent.

Therefore, the Courts are to consider the impact that the proposed visitation schedule might have on the child. Failure to protect the development of healthy and secure attachments of a minor with non-custodial parent can have long-term negative effects on the development of the minor, hence, the basic consideration while chalking out the visitation schedule is to ensure that the minor will not turn against one parent because of inadequacy of time given to the non-custodial parent. In case reported as "**Umer Farooq vs Khushbakht Mirza" (PLD 2008 Lahore 527)**, this Court has held that the parents, especially father being natural guardian, has an inherent right to properly and effectively participate in the upbringing of the minors while developing proper bonding and love with the minors that can only be achieved if the visitation schedule is chalked out in such a manner that the non-custodial parent meets the child in a pleasant, homely and responsive environment on frequent and regular basis. Certainly, the Court's premise is not such place where a minor can have congenial feeling towards his/her parent. Moreover, a balanced annual visitation plan would benefit the child as it would allow significant time to develop a meaningful relationship with both parents. Overnight access could also benefit the child by giving him or her an opportunity to interact with the family of the non-custodial parent and maintain relations with them. Learned Guardian Courts are obligated to chalk out a schedule in such a manner that both the parents must be accommodated in such a way that one parent should not be deprived from participating in the important aspects and events of the minor's life, inter alia, school and leisure time activities, annual vacations, birthdays, and other important occasions and festivals such as Eid etc. The fundamental rule which the Court must follow is to ensure that the minor spends proper and adequate time with non-custodial parent who can also exhibit his or her love and affection towards the child for which overnight stay with non-custodial parent is one of the most appropriate steps and in this regard different arrangements work better for children of different ages. Overnight stay of a child of tender age with non-custodial parent may not be advisable. Similarly, there appears to be no harm in allowing overnight stay in case of a male child above 07 years of age. These aspects should be kept in mind while chalking out the visitation schedule. Therefore, the fact whether the Guardian Court can or should assume that an overnight stay of the minor with non-custodial parent is harmful or beneficial until proved otherwise is a question which cannot be answered

by way of applying a straitjacket formula and invariably has to be decided by keeping in view peculiar facts of every case on its own merits, including but not limited to factors such as the age of the minor, the environment in the house of the non-custodial parent, availability of time with the non-custodial parent and his/her other social and moral obligations and commitments. Having analyzed the law and the objectives behind a balanced visitation schedule and some of the factors principles to be considered by the learned Guardian Court while chalking a visitation schedule and granting or refusing overnight stay, it is imperative to put in juxtaposition the schedules, chalked out by the learned Courts below before rendering opinion of this Court regarding the suitability of visitation schedule in the case

(a) Welfare also signified stability and security; loving and understanding care; guidance, and warm and compassionate relationship that were essential for full development of a child's character, personality and talents. Welfare was a question of fact and had to be determined on basis of material placed before a judge and not presumptions.

(b) minor 's interview may help in a decision of a case as it may bring certain facts to guardian court's notice which may have been concealed or overlooked by parties during recording of evidence and thus it was preferable that Guardian Court should quiz such minor in detail. Ascertaining preferences of a minor and weight to be attached to same, however, were two different things and while questioning a minor, Guardian Court should not only consider minor 's age and maturity but also see whether such minor had been tutored or was under undue influence of person with whom such minor was living for the time being. In the present case, minor was old enough to form an intelligent preference so petitioner was justified in invoking S.17(3) of the Guardians and Wards Act, 1890 however, perusal of impugned order showed that Guardian Court had declined petitioner's request not on ground that it was contrary to law but for reason that Guardian Court had already conducted such interview of minor , which was also reflected in the record---High Court observed that there existed no necessity for another application by petitioner for conducting such interview again, therefore, impugned order was justified. Constitutional petition was dismissed, in circumstances.

CHAPTER X

53-PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION OF PARENTS AND THE CHILD.

Child custody and visitation disputes are extremely difficult for judges to decide. These family court matters may involve complex issues such as requiring the judge to review past behaviour and family history, predict future behaviour and outcomes, and rely on expert testimony to ultimately determine what is in the best interests of the child. Part of this analysis requires the judge to evaluate the parent-child relationship, parenting capacity, and parenting skills. This close examination of the family might reveal a potential mental health issue for one or both of the parents. Family units where one or more parents suffer from a mental illness are more likely to experience divorce than families without a parental mental illness. Unlike Pakistan, in almost all the jurisdictions of the world, most statutes authorise the presiding officer of the Family or Guardian Courts to consider parental mental health as one of many factors in the best-interest or welfare of minors. A parent's mental illness may increase the risk for a child's own emotional or developmental growth or interfere with the ability to care for the child and provide a safe home environment. However, not all children will be negatively affected, or affected in the same way. The fact that a parent has a mental illness alone is not sufficient to deny physical custody or parenting time. Rather, the court must evaluate how the mental illness affects the parent's behaviour, the ability to nurture the child, and the overall safety of the child. Ultimately, it is up to the family court judge to weigh all of the evidence and determine whether a parent's mental illness impacts the best interests of the child.

A parent's mental illness may increase the risk for a child's own emotional or developmental growth or interfere with the ability to care for the child and provide a safe home environment. However, not all children will be negatively affected, or affected in the same way. The fact that a parent has a mental illness alone is not sufficient to deny physical custody or parenting time. Rather, the court must evaluate how the mental illness affects the parent's behaviour, the ability to nurture the child, and the overall safety of the child. Ultimately, it is up to the family court judge to weigh all of the evidence and determine whether a parent's mental illness impacts the best interests and welfare of the child.

Most, if not all, family law proceedings revolve around the best

interests and welfare of minors. This includes, but is not limited to, child custody, child support, adoption, and termination of parental rights. In all of these proceedings, the court's primary concern is the safety and well-being of the children involved. The majority of jurisdictions base their best interests and the welfare of minors on the guidelines proposed by the Uniform Marriage and Divorce Act. This Act states that, with regard to child custody matters, the court shall determine custody "in accordance with the best interest of the child. The court shall consider the wishes of the parents and the child; the relationship between the parents and the child; the child's adjustment to home, school, and the community; and the mental and physical health of the individuals involved. (UNIF. MARRIAGE & DIVORCE ACT § 402, 9A NAT'S. CONF. OF COMM'R. UNIF. ST. LAW. 561 (1998).)

In Pakistan, the Family Court's Act, 1964, provides a speedy mechanism for the resolution of issues arising from matrimonial relations. The intent of the legislature is to provide speedy justice to all concerned by simplifying the procedure for the resolution of family disputes. It is held in **2016 YLR 1316 Lahore** that a family court, for the advancement of justice, can adopt any mode that is not specifically prohibited under the law. It is further elaborated in **2018 MLD 1480 Lahore** that a family court, being a quasi-judicial forum, could draw up and follow its own procedure in order to fulfil said obligation, provided it was not against the principles of fair hearing, trial, and inquiry. Therefore, in settling a problem, the judge of the family court should not merely take his own personal decision. Under this doctrine, he is required to rely on and consult an expert, as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, have to be kept in mind. The judge, therefore, will have to act as all-in-one. If either or both litigants are quarrelsome, the altercations will definitely lead to litigation on various grounds, and their children will be the worst sufferers. In such cases, the opinion of medical and welfare experts will be of much use.

The Family Court, either on an application by one of the litigants or the Court's own motto, is exercising its discretion to conduct a psychiatric and psychological evaluation of both parents, including the child, in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring the welfare of the child. The procedure for such psychological evaluation shall be as per the procedure prescribed.

Failure in marriages is sometimes due to a lack of awareness or realization among the litigants, where often one of the partners suffers from a personality disorder and/or adjustment disorder, which can be easily diagnosed through psychological evaluation.

The child or children are psychologically evaluated (by play therapy) to determine stress, depression level, and any bad tutoring or poisoning of the mind to alienate the child from other parents. On diagnosis, if confirmed, the child is assisted through the intervention of psychological counselling.

In fact, Islamabad High Court has come down heavily for not using the services of medical experts by the lower courts. In Ahmad Bilal v. Khurram Javed **PLD 2023 Islamabad 83,** the Honourable Court observed that while deciding guardianship requests in the 21st century, we are still working with the roles assigned to genders in a patriarchal society, in disregard of studies carried out to determine what impacts the well-being of children during their early years leading into their youth, and without relying on the advice of professionals such as child psychologists and psychiatrists. Judges are not professionals trained in determining the means for optimally promoting child welfare within broken or divided families. And yet they are required to do so without any expert advice being made available to them while making consequential decisions that have a major impact on shaping the sense of self and identity of a young person. The Honourable Court further observed that,

"30. It is not enough to look at the age or sex of the child or the educational credentials or financial situation of the third-party eager to be appointed as a guardian of the child in the stead of his/her biological parent. For a court to conclude that a person other than child's natural parent is best placed to secure the welfare of the child in the immediate, medium and long term, the court must be satisfied that a child would be at the risk of significant harm, abuse or exploitation if he or she remains in the custody of his or her parents, as stated in section 16 of the ICT Child Protection Act. Even in such situation the court must order professional assessment for the needs of the child to be made by professionals as contemplated in section 11 of the ICT Child Protection Act. A court cannot pretend to be a child psychologist or psychiatrist which can undertake such assessment and then project on a medium or long term basis as to where the best interest of the child lies and what conditions would be congenial for the physical and emotional wellbeing of the child.

Unfortunately, the Child Protection Institutions to be established under the ICT Child Protection Act and are required to possess the requisite professional resources to make such assessments have not yet been put in place. The delinquency of the State in giving effect to provisions of the ICT Child Protection Act does not however absolve the Government from making available to Family Courts duly qualified professionals who can undertake the assessment of the psychological state of a child in relation to whom a guardian is to be appointed. It is the obligation of the State to make such resources available to Family Courts and the Family Courts ought to base their judgments regarding appointment of guardians while taking into account such professional assessment and advice.

31. Physiological, emotional and psychological needs of children evolve over time and are affected by their circumstances. Where a court is required to make a declaration to appoint a guardian in the stead of a child's biological parents, the court remains under an obligation to evaluate the welfare of the child and ensure that the guardianship arrangement made by it continues to serve the welfare of the child over time. In other words, where a guardian has been appointed by the court, such arrangement in view of the evolving the physiological, emotional and psychological needs of the child needs must be revisited in order for the court to determine whether the guardianship arrangement needs to be tweaked or altered. In short, other than situation where a child is in the custody and under the guardianship of his/her biological parents, guardianship arrangements are not permanent. In situations where a third-party guardian is appointed while a natural parent of the child is still alive, such arrangement can only last till such time that the parent remains disabled or unfit to serve as a guardian of the child in view of section 41(1)(e) of the Guardians Act. Even in other situations where the parents are not alive and a caregiver or guardian is to be appointed, the intent of the Guardians Act as well as the ICT Child Protection Act is that it is the court that is ultimately responsible for the welfare of the minor and under an obligation to continue to assess that the guardianship arrangement is serving the welfare and interest of the child".

The Honourable Court held that in reaching a custody and guardianship decision, the court must rely on professional assessment regarding the emotional, physiological and psychological needs of the child, which assessment the courts concerned are not trained to make independently. For such purpose it is the obligation of the State to ensure

that duly qualified experts, including child psychologists and psychiatrists, are made available as a resource to the Family Courts to seek expert opinion while making guardianship decisions. And it is for the State to compensate such professionals for the services they render"

54-POWER OF FAMILY COURT TO SECURE PSYCHOLOGICAL ASSISTANCE

Under the doctrine evolved by the Honourable Islamabad High Court, as stated above, a family court is empowered to secure the services of medical experts; however, the family court rarely uses the same. In settling a custody dispute, the judge of the family court cannot merely take his own personal decision. Under this doctrine, he is required to rely on and consult an expert, as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, have to be kept in mind. The judge, therefore, will have to act as all-in-one. If either or both litigants are quarrelsome, the altercations will definitely lead to litigation on various grounds, and the children will be the worst sufferers. In such cases, the opinion of medical and welfare experts will be of much use. Should it not be mandatory for the Family Court either on an application by one of the litigants or the Court suo moto while exercising its discretion to conduct a psychiatric or psychological evaluation of both parents, including the child, in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring the welfare of the child? A common practice followed in US courts while deciding child custody is to conduct psychological evaluation tests such as the MMPI, the Rorschach ink blot test, etc., which reveal any litigant suffering from any mental or personality disorder, drug abuse, alcoholism, manipulation, tendency to speak lies, tendency to abuse or physically attack their spouse, etc. However, if, in the event, both parties or litigants are refusing or do not find it necessary to be evaluated, then the court should follow the primary caretaker principle as detailed in Paragraph III below. And if either one of the litigants (the child's father or mother) refuses, then, as per law, an adverse inference shall be drawn. The child or children are psychologically evaluated (by play therapy) to determine stress, depression level, and any bad tutoring or poisoning of the mind to alienate the child from other parents. On diagnosis, if confirmed, the child is assisted through the intervention of psychological counseling. Often, Pakistani courts fail to differentiate between psychosis and mental

disorders. Individuals suffering from mental disorders are often intelligent but with a very poor emotional state (high intelligent quotient but poor emotional quotient), tend to suffer from uncontrolled rage and temperament, are violent, aggressive, manipulative, and often speak lies. This can be diagnosed only through specific psychological tests. Hence, merely interviewing litigants by the court will never give a clue whether the individual is suffering from a mental or personality disorder except psychosis. In fact, family courts should resort to referring litigants for diagnosis to such reputed and high-calibre psychologists or psychiatrists identified or appointed by the family courts or high courts. While referring litigants for the conduct of psychiatric and psychological evaluations, courts need not be concerned as regards the expenses involved, wherein expenses (including travel expenses) are to be paid out of the revenues of the government. However, if the litigants are willing, the same may be borne by the respective litigants.

GENERAL: The parent with primary custody (the parent who has had custody of the child since birth and is taking care of the day-to-day and hour-to-hour needs of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the non-custodial parent.

CHILD'S WISHES: Often, the family court decides the child's custody based on the wishes of the child during an interview that the court conducts with a child of tender age who is not his own master and is not capable of forming any intelligent, prudent, or well-reasoned preference of a parent. (In other words, if a child expresses that he or she is unwilling to go to school, will the family court honour the ishes?) The court has to ensure the welfare and best interest of the child's upbringing and not be influenced by the mere wishes of the child, especially in some cases where the child is heavily tutored, brainwashed, or poisoned by the noncustodial parent while deciding custody.

THE GENESIS OF FASLE ACCUSATION: an award-winning book published by the American Psychological Association, shows just how easily children can be manipulated to give false accounts that bad things have happened to them.

In one study, children were simply asked to repeatedly think about whether different events had ever happened to them, such as getting their finger caught in a mousetrap and going to the hospital to get the trap off.

After ten sessions, more than half the children told false stories about the fictitious events in their lives. In fact, their stories were so elaborately embellished with details that experts could not detect which events were real and which were not. Even more remarkable, after the researchers told the children that the events never really happened, many of the children continued to insist that they remembered the fictitious events that occurred. One four-year-old boy had already been told by his parents that the whole mousetrap story was just in his imagination and that nothing like this ever happened. Yet when Stossel asked the boy if he ever got his finger caught in a mousetrap, with his parents beside him, this child said he remembered the event and then gave a detailed account. Stossel reminded him that his parents already said that it never happened, but the boy protested. "It really did happen; I remember it."

In another study, a stranger named "Sam Stone" visited a preschool classroom. He said hello, walked around the room for two minutes, then said good-bye and left. That was it. He touched nothing. During the next ten weeks, the children were interviewed four times and asked to describe Sam Stone's visit. One month following the fourth interview, another adult interviewed the children, this time asking about two events that did not occur: "Did Sam Stone do anything to a book or a teddy bear? The investigators learned that they could produce false reports of Sam Stone's behaviour both by badmouthing Sam Stone and by asking the children leading, suggestive questions. The badmouthing took the form of telling stories to the children prior to Sam Stone's visit about Sam Stone's clumsiness. For example: "You'll never guess who visited me last night [pause]. That's right. Sam Stone! And guess what he did this time? He asked to borrow my Barbie, and when he was 29 and carrying her down the stairs, he tripped, fell, and broke her arm. Sam Stone is always getting into accidents and breaking things. The day after Sam Stone's visit, the children were shown a soiled teddy bear that had not even been in the room during Sam's visit. They were asked if they knew how the teddy bear had been soiled. An example of a suggestive question was the following: "Remember that time Sam Stone visited your classroom and spilled chocolate on that white teddy bear? Did he do it on purpose or was it an accident? By the time of the final interview, an astounding 72% of the youngest preschoolers had falsely incriminated Sam Stone. Like the children in the mousetrap study, they embellished their stories with fabricated details, such as reporting that they saw Sam Stone on his way to

the store to buy chocolate ice cream. And, once again, the children fooled the experts. The investigators showed videotaped interviews of the children to specialists who interview children for purposes of criminal investigation and who treat children suspected of having been abused. These experts were confident in their judgements about which events really occurred and which were made up. But the experts were wrong. In fact, the very children they rated as most accurate were the ones who were least accurate. Substitute Mommy or Daddy for Sam Stone, and you begin to see how children can be manipulated to give convincing, yet false, negative reports about a parent. False beliefs about abuse hurt children beyond the damage done by alienation. A child who believes that she has been sexually abused by a relative can develop problems similar to those of a child who has actually suffered abuse. The child comes to distrust her caretakers in the same way she would if actually abused. Her view of sexuality is corrupted at an early age, and this may lead to problems with sexual adjustment as an adult. Her ability to trust in close relationships is impaired. This may interfere with her relationships throughout her life. Thus, a child can be manipulated to create alienation.

55- INTERVIEWING CHILDREN WITH PARENTAL ALIENATION SYNDROME:

Children suffering from parental alienation syndrome may present the judge with a convincing picture. By the time the child reaches the judge, he or she has developed a well-rehearsed litany of complaints against the presumably hated parent. This can be quite convincing, especially because the script has probably been rehearsed many times with the allegedly preferred parent. Also, by the time the child reaches the judge, he or she has probably presented the scenario to a variety of attorneys and mental health professionals. This has given them the opportunity to practice and sharpen their speeches. There have been a number of occasions when judges have been completely taken in and have not appreciated that they were being handed a "bill of goods: These children have a way of snowballing even experienced psychologists and psychiatrists, so one cannot be too critical of judges here. Below are a

series of questions that judges should find useful when interviewing these children. It is important to appreciate that the questions provided here relate to a more common situation, the one in which the father is the hated parent and the mother is the loved one. However, when the situation is reversed (the mother is the hated one and the father is the loved one), one should obviously reverse the questions.

Describe your custodial parent (mother / father) to me: Children with parental alienation syndrome typically provide only positive responses. If any negatives are provided, they will usually be minimal. If asked to elaborate on the negatives, only inconsequential criticisms will be provided. Children who are "normal" or suffer from other kinds of psychiatric disturbances will generally be able to list both positives and negatives about each parent. The complete idealization of a parent is a clue to the presence of this disorder.

Describe your non-custodial parent (mother / father) to me:

The child with parental alienation syndrome will enumerate various criticisms at great length. These will be both present and past. Often, past indignities will be about experiences that other children would consider normal or would have forgotten long ago. Sometimes a complaint will be about an event that the child has not actually observed but that the mother has described. The child will accept as valid the mother's rendition and not give any credibility to the father's refutation. When it is pointed out to the child that few, if any, positives have been described, the child will claim flatly that there are none. Inquiries into past good times between the child and the father will be denied as nonexistent, or the child will claim that these events were painful and the child's professed enjoyment of them stemmed from the fear of punishment for not doing so. It is this complete one-sidedness of the response, the total absence of normal ambivalence, that should alert the interviewer to the fact that one is probably dealing with a child suffering from parental alienation syndrome

How do you feel about your non-family? The child with parental alienation syndrome will generally respond that all members of the father's extended family, even the child's own grandparents and previously loved aunts, uncles, and cousins, are somehow obnoxious and vile. When asked for specific reasons why there is absolutely no contact at all with any of these individuals, no compelling reasons are provided. Often, inconsequential reasons are given. Attempts to impress upon the child how

important it is to have relationships with these loving relatives are futile. The child extends the noxious view of the father to the father's extended family. The child will describe no sense of loss or loneliness over this self-imposed removal from the father's extended family. If a potential or actual stepmother is involved with the father, this hatred will extend to her and her extended family as well

Does your custodial parent (mother or father) interfere with your visiting with your non-custodial parent (mother or father)? Generally, the child will describe absolutely no interference on the mother's part. Often, the child will proudly describe the mother's neutrality and state that the decision is completely his or her own.

Why, then, don't you want to visit with your (non-custodial parent) father or mother? The child may give very vague reasons. When asked to give specific reasons, these children may describe horrible abuses in a very convincing way. In addition, they often provide gross exaggerations of inconsequential complaints. They make "mountains out of mole hills" and will dwell on frivolous reasons for not visiting. Often, they will claim that they want absolutely no contact at all with the father for the rest of their lives, or at least not before they are adults. When it is pointed out to these children that the vast' majority of other children would not cut their fathers off entirely, forever, for such indignities, they insist that their total rejection is justified.

Does your mother or father (custodial parent) harass or bother you? Healthy children generally will give some examples of harassment," such as being made to turn off the television, do homework, or go to bed earlier than they want. Children with parental alienation syndrome describe no such harassment. They will often describe their custodial parent's mother as being perfect and never asking them to do things they don't want. This is obviously a fabrication and a manifestation of the whitewash of the mother. You use the word harassment with these children because it is a common expression utilized by mothers of children with parental alienation syndrome. The father's (non-custodial parent’s) overtures for involvement with the child are generally referred to as harassment by the mother (custodial parent). If the child is unfamiliar with the word harassment, it can be substituted by "bother you a lot." custodial parent’s (father or mother).

Does your father (a non-custodial parent) harass you? These

children are likely to describe in great detail the (non-custodial parent's) father's "harassments. Generally, they involve attempts on his part to gain contact with the children. Letters, telephone calls, and legal attempts to gain visitation are all clumped under the term "harassments. Although the father's initial overtures may have been spaced reasonably, with mounting frustration over rejection and alienation, the father's overtures increase in frequency and intensity. The love and affection that are at the foundation of these overtures are denied completely by both the mother and the child with parental alienation syndrome. Rather, they are viewed simply as onerous harassments. The above questions are general ones. The judge does well to ask more specific questions pertinent to the particular case. These might include questions regarding why the child wants to change his or her name back to the mother's maiden name, why the father's presents were thrown in the garbage (usually in the mother's presence), why the child wants to have the father still contribute to his or her education even though he or she never wants to see the father again, and what the brother's and sister's reasons are for not wanting to see the father (these too often prove inconsequential). and so forth.

Judges who interview children in chambers must be made aware of the fact that these children may be very convincing. They may be taken in by the litany of complaints and give such weight to the child's statements that they may go along with the child's stated preference. Judges must be alerted to the primary manifestations of this disorder, especially the complete lack of ambivalence, the dwelling on frivolous and inconsequential "indignities," the total removal from the extended family of the hated parent, the absolute denial of any positive input on the hated parent's part at any time in the child's life, and the definite statement that the child wishes never to see the hated parent again throughout the remainder of his or her life. It is hoped that judges will increasingly appreciate what is occurring when they see such children and rectify the situation in accordance with the guidelines to be presented. Under the circumstances of brainwashing, tutoring, and poisoning to alienate the child from the non-custodial parent, custody should be shifted from the custodial parent to the non-custodial parent, who will ensure the child has the love and affection of both parents.

ROLE OF COUNSELORS: Role of Counsellors A court counsellor, if appointed by the court, is duty-bound to counsel the child to ensure access, especially in cases of bad tutoring against the non-custodial

parent, rather than being indifferent or a mute spectator. The role of the counsellor in family courts has to be proactive to succeed in providing healthy access to the non-custodial parent. Regular quarterly workshops have to be conducted for the counsellors as well as the judges of the family courts by reputed psychiatrists and psychologists for continuous upgradation and orientation to handle sensitive issues.

56- USING CHILD DEVELOPMENT RESEARCH TO MAKE APPROPRIATE CUSTODY AND ACCESS DECISIONS FOR YOUNG CHILDREN

Los Angeles, July 2000, Joan B Kelly & Michael E Lamb, Volume 38, Issue No. 3:297-311, Published by Sage Publications

Decisions regarding custody and access are most often made without reference to the research on child development, although this literature can be useful in conceptualizing children's needs after separation and divorce. Research on attachment processes, separation from attachment figures, and the roles of mothers and fathers in promoting psychosocial adjustment are reviewed in this article. It concludes with a discussion of the implications for young children's parenting schedules.

Powerful influences shape decisions about custody and access arrangements when parents are separating or divorcing. Regardless of whether parents make their decisions independently or rely on therapists, custody evaluators, or judges for recommendations and decisions, statutory, historical, and cultural forces often determine which care arrangements are deemed to be in the children's best interests (Kelly, 1994). Unfortunately, however, decision-makers in family law and mental health fields remain largely ignorant about several decades of research on child development. Child development researchers and child custody decision-makers rarely cross paths, and most of the relevant publications intended for academic audiences are inaccessible to casual readers. In this article, we discuss research that directly helps conceptualise custody and access issues that need to be addressed when parents separate. Because so many questions arise regarding appropriate post-separation arrangements for infants and young children, the focus will be on attachment processes, separation from attachment figures, and the roles of mothers and fathers in

promoting children's development. To facilitate readability, we primarily cite review articles; readers can study the cited articles for references to the primary literature.

57- Research on Attachment Procedures

Over the past four decades, our understanding of early social and emotional development has improved enormously. In particular, psychologists have identified many of the factors that influence the formation of attachment relationships between infants and their parents, as well as the adverse effects on children of disrupted and distorted parent-child relationships (Lamb, Bornstein, & Teti, in press; Lamb, Thompson, Gardner, & Charnov, 1985; Thompson, 1998). The essence of our emergent understanding of this phenomenon is briefly summarised in the following pages. The development of attachments to parents and other important carers constitutes one of the most critical achievements of the first year of life. These enduring ties play essential formative roles in later social and emotional functioning. Infant-parent attachments promote a sense of security, the beginnings of self-confidence, and the development of trust in other human beings. Concerned with the profoundly negative impact on children's development of prolonged separation from parents, Bowlby (1969) first proposed a theoretical explanation for the importance of continuity in relationships, drawing on psychoanalytic and ethological theory. Subsequent decades of research have focused on the phases and types of attachment: the security of attachments, the stability of attachments over time, the contributions of infants and carers to the quality or security of attachments, cultural differences in attachment outcomes, and later personality and cognitive characteristics associated with different types of attachment. Researchers initially focused exclusively on infant-mother attachment, and that literature is best known in the mental health community. In the past 20 years, however, the meaning and importance of infant-father attachments and of attachments to nonfamily carers in daycare and preschool settings have been studied extensively as well (for detailed reviews, see Lamb, 1997a, 1998; Thompson, 1998).

58- Phases of Attachment Formation

Attachment formation involves reciprocal interactive processes that foster the infant's growing discrimination of parents or carers, as well as the emotional investment in these ese careInfants who receive sensitive

and responsive care from familiar adults in the course of feeding, holding, talking, playing, soothing, and general proximity become securely attached to them (Thompson, 1998). Even adequate levels of responsive parenting foster the formation of infant-parent attachments, although some of these relationships may be insecure. Children are nonetheless better off with insecure attachments than they are without attachment relationships at all. Bowlby (1969) described four phases of the attachment process, and subsequent research has largely confirmed this delineation: (a) indiscriminate social responsiveness, (b) discriminating sociability, (c) attachment, and (d) goal-corrected partnerships.

59- Indiscriminate social responsiveness

During this phase, which occurs between birth and 2 months, the infant uses an innate repertoire of signals to bring carers to him or her, including crying and smiling. The child begins to associate the carers with relief from distress (from hunger or pain). Furthermore, adults' vocalisations and animated facial expressions create additional opportunities for social interaction. Although infants are able to recognise their parents by voice or smell within the first weeks of life, they accept care from any carer during this phase without distress or anxiety (Lamb et al., in press).

60- Discriminating Sociability

Discriminating sociability occurs between 2 and 7 months of age. Here, the infants begin to recognise certain carers and prefer interaction with them. Infants thus coo and soothe more readily in response to these familiar figures, orient their posture towards them, and show more pleasure when interacting with them. This attachment-in-the-making indicates that the carers' responses are sufficiently prompt and appropriate. During this phase, infants begin to learn reciprocity, a sense of effectiveness ("I can make things happen"), and trust. They generally do not protest when separated from their parents during this phase, but they become anxious if separated from humans for too long.

61- Attachment

In the attachment phase, which occurs between 7 and 24 months of age, the child, by actively seeking to remain near preferred carers, gives increasingly clear evidence that attachments have been formed.

Behaviours demonstrating attachment include differential following and clinging to parents, especially when tired or sick, and preferences for specific caretakers as secure bases for exploration of the environment.

Somewhere around the middle of the first year of life, infants begin to cry or protest when separated from their attachment figures. This transition marks the initial attainment of the ability to recognise that parents continue to exist when they are not present, an ability referred to by Piaget as object constancy. Of course, the understanding of this fundamental concept is quite rudimentary at first and continues to mature in the next year and a half of the child's life. As this comprehension matures, the child's ability to tolerate separation from humans grows, although separation does remain stressful for young children. Infants clearly cope better with separation from one attachment figure when they are with another attachment figure. Nevertheless, it is important to minimise the length of time that infants are separated from their attachment figures; extended separations unduly stress developing attachment relationships. If they are attached to both parents, as most infants are, this means that the length of time with each parent needs to be adjusted to minimise the length of time away from the other parent.

Considerable evidence now exists (for a review, see Lamb, 1997a) that documents that most infants form meaningful attachments to both of their parents at roughly the same age (6 to 7 months). This is true even though many fathers in our culture spend less time with their infants than mothers do. This indicates that time spent interacting is not the only factor in the development of attachments, although some threshold of interaction is crucial. Most infants come to "prefer" the parent who takes primary responsibility for their care (typically their mothers), but this does not mean that relationships with the other parent are unimportant. The preference for the primary caretaker appears to diminish with age, and by 18 months, this preference has often disappeared.

In general, the ways in which mothers and fathers establish relationships with and influence their children's development are quite similar. Although much has been made of research showing that mothers and fathers have distinctive styles of interaction with their infants, the differences are actually quite small and do not appear to be formatively significant (Lamb, 1997a). The benefits of maintaining contact with both parents exceed any special need for relationships with male or female parents.

The empirical literature also shows that infants and toddlers need regular interaction with both of their parents to foster and maintain their attachments (Lamb et al., in press). Extended separations from either parent are undesirable because they unduly stress developing attachment relationships. In addition, it is necessary for the interactions with both parents to occur in a variety of contexts (feeding, playing, diapering, soothing, putting to bed, etc.) to ensure that the relationships are consolidated and strengthened. In the absence of such opportunities for regular interaction across a broad range of contexts, infant-parent relationships fail to develop and may instead weaken. It is extremely difficult to reestablish relationships between infants or young children and their parents when the relationships have been disrupted. Instead, it is considerably better for all concerned to avoid such disruptions in the first place.

During this phase, children become more mobile, increase their explorations of the world, initiate more social interactions, and develop more extensive and sophisticated linguistic and cognitive abilities. These achievements increase the child's anxiety about separation from important carers, and this anxiety is reflected in vigorous vocal and behavioural displays of resistance to separation, especially until approximately 18 months. Thus, it is common for children between 15 and 24 months of age to resist transitions from their mothers' houses to their fathers' after marital separation, even when children have good attachment relationships with both parents. However, once removed from their mothers' environments, these youngsters function well with their fathers and vice versa. If planned separations are announced shortly in advance in a calm, matter-of-fact way, with reassurance that the parent (or child) will return, anxiety can be reduced. By 24 months, the majority of children no longer experience severe separation anxiety, although children with very insecure attachments and those whose primary attachment figures have their own separation difficulties may continue to express anxiety.

62- Goal-Corrected Partnerships

Finally, the goal-corrected partnership phase occurs between 24 and 36 months of age. It involves children's and parents' beginning to plan jointly; children are increasingly able to compromise and to take their parents' needs into some account. Children can now understand to some extent why parents come and go, and they can predict their return.

However, children's primitive sense of time continues to make it difficult for 2-year-olds to comprehend much beyond today or tomorrow, and this has implications for the tolerable duration of separation from important attachment figures.

In sum, when given the opportunity, infants form multiple attachments, each with a unique emotional meaning and importance. Physical caregiving is critical to survival and health, but social and emotional input from diverse attachment figures is important as well. Children with multiple attachments appear to create a hierarchy of carers, seeking out the particular carers that suit their needs and moods, although they tend to accept any important attachment figure for comfort and soothing when distressed or anxious in the absence of more preferred eferred There is no evidence, however, that having multiple attachments diminishes the strength of attachments to the primary attachment figure or figures in the first 2 years of life.

63- Individual Differences in the Security of Attachment:

Extensive research into controlled separations from and reunions with parents (using the Strange Situation procedure) has supported the classification of attachment into secure and insecure types. Insecure attachments are further classified into avoidant, resistant, and disorganised types (Ainsworth, Belhar, Waters, &Wall, 1978; Lamb et al., 1985, in press; Thompson, 1998). Babies with secure attachments prefer parents over strangers, may cry at separation, and immediately seek interaction or contact with and reassurance from parents when they return. About two-thirds of middle-class American infants are securely attached, presumably because their parents are responsive to infant cries and distress and are psychologically available.

About 20% of infant-parent attachments in middle-class American homes are insecure. These babies seem not to notice when separated, avoid greeting the returning parents in the assessment procedure, but do not resist physical contact. Babies with insecure, resistant attachments (10% to 12%) show angry, aggressive behaviours upon reunion and are not easily comforted by their parents after separation. A small number (about 5%) of babies display confused behaviours after separation and have been classified as disorganised and disoriented. Their contradictory behaviours upon reunion include gazing away while being held, odd

postures, and dazed facial expressions.

Although secure and insecure attachments were once thought to be fixed and stable over time, this appears to be true only when the infants experience reasonably stable family conditions over the course of the first 2 years (Lamb et al., in press; Thompson, 1998). Factors known to influence the security and stability of attachments include poverty; marital violence and high conflict between parents; and major life changes such as divorce, death, or the birth of a sibling, which in each instance are associated with more insecure attachments. Insecure attachments are significantly linked to poor styles of parenting that affect the quality of the child's attachment, such as disturbed family interactions, parental rejection, inattentive or disorganised parenting, neglect, and abuse.

It should be noted that infant-parent attachments often become insecure in response to the parents' separation or divorce, at least for a period of time, and infants who experience a reduction in parental discord become more securely attached over time (Cummings & Davies, 1994). Thus, although infants from very high-conflict parental relationships may initially have insecure attachments, their relationships with both parents may become more secure if the level of conflict between the parents declines. It is also clear that cross-cultural differences in parenting styles and expectations are associated with different patterns of attachment.

Individual differences in the security of attachment are important. Compared to children who were initially insecure, securely attached children later are more independent, socially competent, inquisitive, and cooperative and empathic with peers; have higher self-esteem; and demonstrate more persistence and flexibility on problem-solving tasks. These differences seem to reflect not only the initial differences in attachment security but also continued differences in the quality of parenting experienced (for reviews and analyses of these issues, see Lamb et al., 1985, in press; Thompson, 1998).

64- IMPLICATIONS OF ATTACHMENT RESEARCH FOR CUSTODY AND ACCESS ARRANGEMENTS

Maintaining children's attachments after separation or divorce

If the parents lived together prior to separation and the relationships with both parents were at least of adequate quality and

supportiveness, the central challenge is to maintain both infant-parent attachments after separation. When there are concerns about child maltreatment, substance abuse, mental illness, or inter-parental violence, of course, evaluations of parental adequacy are essential, and supervised or restricted visits may be required to avoid compromising the child's safety or development. Furthermore, when parents have never lived together and the infant has had no opportunity to become attached to one of the parents, as is common while paternity is being established legally, special efforts are needed to foster the development of attachment relationships. These issues are beyond the scope of this article, however.

In general, relationships with parents play a crucial role in shaping children's social, emotional, personal, and cognitive development, and there is substantial literature documenting the adverse effects of disrupted parent-child relationships on children's development and adjustment (Lamb, 1999; Lamb, Hwang, Ketterlinus, & Fracasso, 1999). The evidence further shows that children who are deprived of meaningful relationships with one of their parents are at greater risk psychosocially, even when they are able to maintain relationships with the other of their parents. Stated differently, there is substantial evidence that children are more likely to attain their psychological potential when they are able to develop and maintain meaningful relationships with both of their parents, whether the two parents live together or not.

The most common practice in custody and access decisions has been to emphasise and preserve continuity in the infant-mother relationship, with children living with their mothers and having limited contact with their fathers. Thus, the infant or toddler who was accustomed to seeing both parents each day abruptly began seeing one parent, usually the father, only once a week (or once every 2 weeks) for a few hours. This arrangement was often represented by professionals as being in the best interests of the child due to the mistaken understanding, based on Bowlby's earliest speculations, that infants had only one significant or primary attachment. As a result, early child development research followed untested psychoanalytic theory in focusing exclusively on mothers and infants, presuming fathers to be quite peripheral and unnecessary to children's development and psychological adjustment. The resulting custody arrangements sacrificed continuity in infant-father relationships, with long-term socio-emotional and economic consequences for children. Very large research literatures now document the adverse

effects of severed father-child relationships as well as the positive contributions that fathers make to their children's development (for reviews, see Lamb, 1997b).

The research reviewed by Bowlby (1973) indicated that the loss or attenuation of significant relationships in childhood can cause anxiety and a profound sense of loss, particularly in the first 2 years, when children have limited cognitive and communicative resources to help cope with loss. Both marital conflict and the abrupt departure of one parent from the child's daily life may foster insecurity in the child's attachments and should thus be avoided.

To be responsive to the infant's psychological needs, the parenting schedules adopted for children younger than 2 or 3 must involve more transitions rather than fewer to ensure the continuity of both relationships and the child's security and comfort during a time of great change. The ideal situation is one in which infants and toddlers have opportunities to interact with both parents every day or every other day in a variety of functional contexts (feeding, play, discipline, basic care, limit setting, putting to bed, etc.). To minimise the deleterious impact of extended separations from either parent, there should be more frequent transitions than would perhaps be desirable with older children. As children reach age 2, their ability to tolerate longer separations increases, so most toddlers can manage two consecutive overnights with each parent without stress. Schedules involving alternating longer blocks of time, such as 5 to 7 days, should be avoided, as children this age still become fretful and uncomfortable when separated from either parent too long.

There is ample evidence that infants and toddlers get used to regular transitions, such as those associated with enrollment in alternative care facilities, without there being adverse effects on the quality of their attachments to their parents (Lamb, 1998). The same should be true of separations in the context of parental separation or divorce. Infants and toddlers should thus have multiple contacts each week with both parents to minimise separation anxiety and maintain continuity in the children's attachments. Unfortunately, the concept of location-engendered stability (one home, one bed) has been incorrectly overemphasised for infants and toddlers without due consideration for the greater significance to the child of the emotional, social, and cognitive contributions of both parent-child relationships. Living in one location (geographic stability) ensures only one type of stability. Stability is also created for infants (and older

children) by the predictable comings and goings of both parents, regular feeding and sleeping schedules, consistent and appropriate care, and affection and acceptance (Kelly, 1997). Furthermore, post-separation access or contact schedules that are predictable and that can be managed without stress or distress by infants or toddlers provide stability after separation.

65- Overnights with the Nonresidential Parent

With the historic focus on preserving the mother-infant attachment while establishing an exclusive home, overnights or extended visits with the other parent (mostly the father) were long forbidden or strongly discouraged by judges, custody evaluators, therapists, mental health professionals, family law attorneys, and, not surprisingly, many mothers (e.g., Garrity & Baris, 1992; Goldstein, Freud, Solnit, & Goldstein, 1986; Hodges, 1991). Hodges (1991 j), for example, stated that for infants younger than 6 months, "overnight visits are not likely to be in the child's best interests because infants' eating and sleeping arrangements should be as stable as possible" (p. 175). For infants 6 to 18 months of age, overnight visits "should be considered less than desirable" (p. 176). Although Hodges noted the importance of several visits per week for older infants who were attached to fathers, he recommends that these be limited to several hours. Hodges stated that children might be able to spend overnights "without harm" only after reaching 3 years of age (p. 177).

Such unnecessarily restrictive and prescriptive guidelines were not based on child development research and, thus, reflected an outdated view of parent-child relationships. Furthermore, such recommendations did not take into account the quality of the father-child or mother-child relationship, the nature of both parents' involvement, or the child's need to maintain and strengthen relationships with both parents after separation (Lamb, Sternberg, & Thompson, 1997). Research and experience with infant day care, early preschool, and other stable caretaking arrangements indicate that infants and toddlers readily adapt to such transitions and also sleep well once familiarized with them. Indeed, a child also thrives socially, emotionally, and cognitively if the caretaking arrangements are predictable and if parents are both sensitive to the child's physical and developmental needs and emotionally available (Homer & Guyer, 1993; Lamb, 1998).

The evening and overnight periods (like extended days with nap

times) with nonresidential parents are especially important psychologically, not only for infants but for toddlers and young children as well. Evening and overnight periods provide opportunities for crucial social interactions and nurturing activities, including bathing, soothing hurts and anxieties, bedtime rituals, comforting in the middle of the night, and the reassurance and security of snuggling in the morning after awakening that 1- to 2-hour visits cannot provide. These everyday activities promote and maintain trust and confidence in the parents while deepening and strengthening child-parent attachments.

There is absolutely no evidence that children's psychological adjustment or the relationships between children and their parents are harmed when children spend overnight periods with their other parents. An often-missed study by Solomon (1997) reported high levels of insecure infant-mother and infant-father attachment when parents lived apart, although toddlers who spent overnights with both their fathers and mothers were not significantly more likely to have insecure relationships than those children who did not have overnight visits with both parents.

Indeed, as articulated above, there is substantial evidence regarding the benefits of these regular experiences. Aside from maintaining and deepening attachments, overnights provide children with a diversity of social, emotional, and cognitively stimulating experiences that promote adaptability and healthy development. In addition, meaningful father-child relationships may encourage fathers to remain involved in their children's lives by making them feel enfranchised as parents. Other advantages of overnights are the normal combination of leisure and "real" time that extended parenting affords, the ability to stay abreast of the constant and complex changes in the child's development, opportunities for effective discipline and teaching that are central to good parenting, and opportunities to reconnect with the child in a meaningful way. In contrast, brief, 2-hour visits remind infants that the visiting parents exist but do not provide the broad array of parenting activities that anchor the relationships in their minds.

When mothers are breast-feeding, there is considerable hesitation, indecision, and perhaps strong maternal resistance regarding extended overnight or full-day separations. Breast-feeding is obviously one of the important contexts in which attachments are promoted, although it is by no means an essential context. Indeed, there is no evidence that breast-fed babies form closer or more secure relationships with their parents than do

bottle-fed babies. A father can feed an infant with the mother's expressed milk, particularly after nursing routines are well established.

When there are overnights, it is not crucial that the two residential beds or environments be the same, as infants adapt quickly to these differences. It may be more important that feeding and sleep routines be similar in each household to ensure stability. Thus, parents should share information about bed times and rituals, night awakenings, food preferences and feeding schedules, effective practices for soothing, illnesses, and changes in routine as the child matures. Parents should be encouraged by attorneys or mediators to communicate directly, either verbally or in writing. If this is not possible due to the intransigence of either or both parents, then the court should order the involvement of co-parenting consultants, special masters, or custody mediators until the normal angers of divorce subside (Emery, 1994, 1999; Kelly, 1991, 1994). It is important as well to recognise that protracted litigation and the spectre of winning or losing delay the decline of conflict (Maccoby & Mnookin, 1992), and thus, such disputes should be resolved with speed. Furthermore, communication quality should not be judged by the level of conflict surrounding and encouraged by the litigation.

The challenges of child-focused communication require commitment on the parents' part to their children's well-being but will have long-term positive consequences for children and for each of the parent-child relationships. Although it is clear that a cooperative relationship between parents is beneficial, parenting schedules that promote meaningful child-parent relationships should not be restricted after separation if one or both parents are not able to cooperate. Disengaged parents may function effectively in their parallel domains and, in so doing, enhance their children's adjustment (Lamb et al., 1997; Maccoby & Mnookin, 1992; Whiteside, 1998).

Because high conflict is associated with poorer child outcomes following divorce (Johnston, 1994; Kelly, in press; Maccoby & Mnookin, 1992), it is preferable that transitions be accomplished without overt conflict. However, it is important to understand how high conflict is conceptualised in the relevant research, as the findings are often misunderstood. Almost by definition, of course, custody and access disputes involve conflict, but it is clear that such conflict in and of itself is not necessarily harmful. The high conflict found harmful by researchers such as Johnston (1994) typically involved repeated incidents of spousal

violence and verbal aggression that continued at intense levels for extended periods of time and often in front of the children. Johnston emphasised the importance of continued relationships with both parents, except in those relatively uncommon circumstances in which intense, protracted conflict occurs.

High conflict at the time of transition may heighten children's anxiety about separation. Even without conflict, transitions can cause unsettled behaviour, fretting, and crying as children move from one set of routines or one parental style to another. As noted above, this is especially true of children 15 to 24 months of age, when it is quite normal. If conflict is difficult to avoid because of one or both parents' hostility, then transitions should be implemented by babysitters or should take place at neutral places such as day care centers, special visiting centers set up for this purpose, or supportive grandparents' homes.

Occasionally, mothers are very hostile to fathers after separation as part of a legal strategy to prevent or diminish the fathers' participation in child rearing and co-parenting. In such instances, fathers should not be denied adequate contact with their children because conflict between the parents exists. Similarly, when fathers berate mothers at transitions or refuse to communicate about the infants' behaviours when with them, they will need to demonstrate more cooperative attitudes to warrant more extended contact.

It should be assumed that parents would have somewhat different parenting styles, which are related to their own upbringing and personalities. Regardless of these differences, children (and parents) benefit from discussions of disciplinary techniques and approaches as well as about the achievement of major developmental tasks such as toilet training. Furthermore, children will typically have different social experiences (and holiday rituals) with each parent and with extended families and friends.

66- HOW MUCH SEPARATION FROM PRIMARY ATTACHMENT FIGURES IS APPROPRIATE?

The extent to which infants and toddlers can tolerate separation from significant attachment figures is related to their age, temperament, cognitive development, social experience, and the presence of older siblings. Aside from their very immature cognitive capacities, infants have

no sense of time to help them understand separations, although their ability to tolerate longer separations from attachment figures increases with age. The goal of any access schedule should be to avoid long separations from both parents to minimise separation anxiety and to have sufficiently frequent and broad contact with each parent to keep the infant secure, trusting, and comfortable in each relationship.

Preschool children can tolerate longer separations than toddlers can, and many are comfortable with extended weekends in each parent's home as well as overnights during the week. In general, however, most preschool children become stressed and unnecessarily overburdened by separations from either parent that last more than 3 or 4 days. The exception might be planned vacations, in which parents and siblings are fully available to engage preschool children in novel, stimulating, and pleasurable activities. Even so, most parents would be advised to limit vacations at this age to 7 days and to schedule several vacations rather than one single lengthy vacation.

When children reach school age, they have significantly more autonomy and greatly increased cognitive, emotional, and time-keeping abilities, so the duration of separations from both parents becomes less critical. Even so, before the age of 7, and often thereafter, most youngsters still enjoy reunions during the week with each parent rather than extended periods without contact. By 7 or 8 years of age, most youngsters can manage 5- to 7-day separations from parents as part of their regular schedules and 2-week vacations with each parent. Court orders for young children that reflect children's increasing ability to tolerate longer separations by building age-based and stepwise increases into vacation schedules are most responsive to children's best interests.

Many discussions of custody decisions have emphasised the need to identify a primary caretaker when attempting to determine where children should spend most of their residential time (for a review, see Kelly, 1994). The expanded world of young school-age children, the greater richness of children's emotional and cognitive abilities, and the increasing importance of children's social and recreational life outside the home lead many to conclude that the concept of the primary caretaker should play little role in determining custody, however, particularly after the age of 5 (Chambers, 1984). As noted throughout this article, children are enriched by regular, diverse, and appropriate interactions with two involved and emotionally supportive parents, and this is no less true of

school-age children as they journey toward adolescence. Regardless of who has been the primary caretaker, children benefit from the extensive contact with both parents that fosters meaningful father-child and mother-child relationships.

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68- RECOMMENDATIONS OF CHAIRPERSON OF THE APPLIED PSYCHOLOGY DEPARTMENT, PUNJAB UNIVERSITY, LAHORE

DEPARTMENT OF APPLIED PSYCHOLOGY
UNIVERSITY OF THE PUNJAB, QUAID-E-AZAM CAMPUS, LAHORE

No.D/284/A. Psy Dated: 25-03-2013

Honorable High Court, Lahore

Lahore

re: Case No WP No: 28566-2011 Dated 30-1-2013

Subject: Two Hours once a month visitation at the premises of court to the Noncustodial Parents: Psychological perspective on implications for the Child, Suggestions and Recommendations

Dear Sir,

Honorable High Court has required the undersigned to submit recommendations as a senior psychologist from University of the Punjab, Lahore. Following are my submissions and Recommendation for your kind considerations.

Recently, matrimonial relationships have become extremely volatile and divorce rate has risen in the recent past. Family courts have been approached by couples for divorce which results in custody battles. Children are often in a very vulnerable position between the battle of both parents. Custodial parent usually is oblivious of need for the presence of noncustodial parent and its significance for normal psychological and emotional development of the children. Subsequent to divorce, both parents may move on with their lives but infact it's the children who bear the brunt of the situation. It is very common that parents menovour and manipulate the situation through children without realizing the emotional and psychological agony caused to the child during the process. Children facing such situations can develop a wide range of psychological problems e.g. anxiety, depression, somatic complaints, conduct problems, attention and concentration problems, personality problems, substance abuse, psychopathic problems.

In our society, the custodial parent may intentionally get indulged in child abuse by removing or retaining the child from the other parent, seeking to gain an advantage in the expected or pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. Whatever, the reason of retaining or removing the child may be, it causes irreparable damage to the emotional and psychological well being of the child. However, psychological impact on child is often ignored and remains unaddressed.

The worst a child can experience during the custody battles is inherent ambiguity, uncertainty and continued negativity in form of heightened negative emotions, ordeal of court of hearing and his/her visits to the court which at times is even nerve reckoning experience for an adult. The child becomes a rolling stone and witnesses very ugly discourses and displays among his/her parents and to the child future seems bleak. Continued exposure to stressful situations inculcates pessimism and negativity in minors. The parents who are meant to render unconditional love, care and protection to the child seem unaware of the psychological trauma being suffered by the child.

Cases pertaining to custody/visitation issues of the minors are not ordinary cases like other cases and considering the delicacy of emotions and sentiments of the minors being involved and the short term and long term psychological implication for their personality and psychological adjustment. The resolution and adjudication of this special kind of matters, therefore warrant the need for special considerations and these cases should be conceived, considered and settled in a different perspective and context, keeping in view the welfare of the minor. However, maternal and paternal natural instincts of love and care for their child cannot be overlooked and ignored as both parent and child are integral part of the whole ordeal and both matter a lot to each other.

Family matters, particularly those involving minors need empathetic procedural facilitations to mitigate the negative effect of ongoing trauma faced by the child after having his/her parents, grandparents, and significant others being divided. The foremost importance should be the welfare and betterment of the minors which may be determined and decided without getting into the procedural technicalities e.g. schedule of visitation and venue of visitation should be negotiated and finalized at very early stage of litigation keeping in view that the noncustodial parent is not a lesser one and has also been affected emotionally and psychologically. Delays in court proceedings keep children from meeting their non-custodial parent for months and in some cases years and the lapse of time in

such cases may be fatal for the psychological development of the child and his/her relationship with the noncustodial parent. With the passage of time it is easy to change the innocent mind. Within months due to lack of interaction with non-custodian parent and probable brain washing by the custodian parent and his/her family, the child may start forgetting and in many cases disliking the non-custodian parent who once used to be extremely dear and loved one.

Long delays in the court proceedings and visitation schedules have negative short and long term impact on mental health of the minors. As per the existing practice of the esteemed court, to allow noncustodial parent meet the minor/s months after the divorce/separation for a very brief time at the premises of the court and in the presence of the custodial parent may add to the agony of both the child and the parents. Few of the psychological impacts (as identified by research) of delayed, limited visitation and visitation in the court premises on the minor/s are:

1. Become distant to noncustodial parent
2. Lack of intimacy and detachment
3. Become hesitant, fearful & scared
4. Blame noncustodial parent for the situation
5. Become quarrelsome & aggressive
6. Defiance & Stubbornness
7. Anxiety
8. Depressed mood
9. Agitation/temper tantrums
10. Lack of attention and concentration which effect their academic performance
11. Lack of confidence and self-esteem
12. Disbelief in people and world around them
13. Conduct disorders (which may lead to psychopathic behaviours)}
14. Social withdrawal and Aloofness
15. Self blame and guilt feelings
16. Confused about their role in the situation
17. Overall maladjustment due to change of school, friends,

relatives and environment. 18. Lack of control over the situation

In view of the above it is highly recommended that:

1. Schedule of visitation is negotiated, finalized and implemented as the first step) i.e. soon after the case is filed (from day 1).
2. Visitation should be ensured and delays be avoided. The custodial parent's absence from the court hearing be discouraged by accumulating the total number of visits in lieu of their absence.
3. Two hours' visitation of the minor and noncustodial parent in the court environment where the minor is likely to witness emotional displays may cause severe distress to the child. It is not advisable that the child meets his/her noncustodial parent is such an emotionally heightened situation.
4. Noncustodial parent may be allowed to meet the minor in more peaceful and familiar premises e.g. home. Noncustodial parent may be allowed to take the minor home for fair length of time e.g. for a day, night stay, weekends, summer vocations (depending on the age of the minor) so that quality time is available to the child and the parent to interact. Moreover, it would allow the minor to interact with extended family members of the noncustodial side. Court may devise some mechanism to ensure the minor's protection instead of depriving a minor of the noncustodial parent's love, affection and care, as the child need both parents' presence for healthy psychological functioning.

Submitted for your kind considerations

Yours Sincerely,

Prof. Dr. Rukhsana Kausar Chairperson
Director, Centre for Clinical Psychology University of the Punjab, Lahore.

CHAPTER XI

69- INTRODUCTION (NEED FOR REFORM)

A family is a fundamental unit of any nation and is particularly important to ensure the well-being and all-round development of the children of that family. A family consists of not just the mother and father (along with their respective parents and siblings in some cases), but also their value systems, their beliefs, their aspirations, and their struggles—a link to a child's past and a bridge to their future.

However, another truth in modern Pakistan is that just as joint families have given way to nuclear families, marriages are no longer a bond of a lifetime (or seven, for that fact!). but rather a meeting of two souls (and sometimes families) to "explore" the possibility of being a partner in each other's journey. Divorce rates in Pakistan have been soaring, with some estimates being close to 17% (source: estimated from UN Statistics, which reports crude divorce rates), and predictions are that these rates are only going to increase significantly, though hopefully will not reach catastrophic levels as in Belgium (71%), Spain (61%), France (55%), or the USA (53%).

What this means is that in Pakistan, currently, 1 in every 6–7 children will belong to a separated or divorced home, and going forward, this may increase to 1 in every 3–4 children. It is well established that, as a result of broken homes, the greatest threat is to the physical, psychological, and emotional well-being of the child. Studies across the world have conclusively shown that children living in single-parent families with little or no access to "non-custodial" parents are two times more likely to drop out of school, 2.5 times more likely to have teenage pregnancy (4 times more likely to have teenage sex), and three times more likely to have a criminal record, apart from various research studies that point towards significant psychological, emotional, and academic harm to the child. Further research studies point out that separation or divorce is traumatic for both parents, and to add to that, loss of contact with a child can be catastrophic for either parent, resulting in severe depression and suicide. To a degree, this has been borne out by suicide data from Pakistan, wherein separated men are 1.9 times more likely to commit suicide than separated females.

70- Steps Needed for Implementation.

♦ ***1. Improve procedures of service of Summons***

- Summons: 1) Notice; 2) TCS; 4) Public Notice/Newspaper Advert All within 2/3 weeks' period in between.
- The summon procedure is inherited/derived from the Civil Procedure Code 1908 s?
- The service procedures should be on the lines of:

o "Order V CPC and Section 9(5) of The Financial Institutions (Recovery of Finances) Ordinance 2001"

o Recently introduced "The Punjab Rented Premises Act 2009" (Sections 21 and 22) has dramatically improved time for servicing of notices.

♦ ***2. Minimum standard of Interim Visitation:***

Interim visitation should be geared towards joint custody and joint decision making as far as possible so that any patch up is not discouraged and the child is not affected and maligned against one parent.

- Children above the age of 3 years should be granted at least ONE overnight visitation (24 hrs.) per week to meet their non-custodial parent. The non-custodial parent must be allowed to take the children home so that the non-custodial parent can spend quality time and the children can get a fair opportunity to keep their relationship with the other half of the family such as grandparents, uncles, aunts, cousins etc.

- Children between 6 months and up to 3 years should be granted at least ONE "morning till evening" visitation PER WEEK to meet their non-custodial parent. The visitation should be out of the court, after ensuring that the non-custodial parent has appropriate arrangements to take care of the child at home and has also given sureties as per POINT 6 in this document.

- As a standard, non-custodial parents should be entitled for half the school holidays for all children who are more than 5 years of age. The longer vacations could be divided into multiple segments. This will give the non-custodial parents a good opportunity to revive the relationship/ bond with their children that had started diminishing due to lack of interaction.

- As long as visitation is in a neutral place like the Court, it cannot be in front of the custodial parent.

♦ ***3. Parenting Plan: Interim and Permanent***

- Annexing and filling this form be declared compulsory and mandatory for all applicants /petitioner /respondents with their guardian/custody petitions being filed under Section 25 (Specifically) of The Guardians & Wards Act.

- Parenting Plan form details the yearlong visitation of the child to his/her non-custodial parent along with a lot of other useful information.

♦ ***Pros:***

✔ Parenting Plan provides a methodological means of resolving interim custody disputes

✔ An estimated 75% reduction in court work related to family matters and most of the matters revolve around deciding visitations.

✔ Reduction of overall litigation expenses since non-custodian parents will not have to file a separate application for each occasion.

✔ Non-Custodial parents will be able to plan out vacations and holidays with the minors in advance.

✔ An estimated 45 minutes to fill out & resolve custody and visitation disputes in comparison with months & even years.

✔ To the point & precise worksheet ensures nominal issues, impartiality & equal input from both parties.

✔ Straight forward enough to be filled out by literate individuals or by lawyers.

♦ ***4. Cumulative Visitation***

All visitations must be cumulative, which means that, due to any reason, if the visitation gets disturbed, the same visitation duration or time will be accumulated for the next meeting date. This will discourage excuses such as presenting fake medical certificates. [Add in Section 12]

♦ ***5. Heavy fines/ introduction of Penal Clause***

The courts must exercise instruments such as heavy fines and strict punishments to discourage custodial parents from not obeying court orders pertaining to visitation as per the agreed parenting plan. It is seen that courts are extremely laid back when it comes to a violation of visitation. Custodial parents take advantage of the laid-back attitude of courts, and children are often produced after many warnings. [Implementation problem: Add amendment in S44 of the G&W Act.]

♦ ***6. Implementation of Personal and Financial Sureties to restrain any parent from abducting the child. [Add amendment in S12]***

● Along with the Parenting Plan BOTH parties must submit reasonable financial and personal bonds/ sureties.

● Personal sureties: at least two, from close family or a reasonable person from community such as local grade 17 officer. These

surety bonds should be valid till the final disposal of the case and as long as Parenting Plan is intact.

[Most of the cases before Guardian Court call for 24/30 surety bonds till its final disposal damaging several properties and inviting various modes of corruption as well. The best possible advice for such a situation is to bind down the parties with their personal surety bonds. The parents of the minors should be directed to put their own bonds including their service documents, job documents or their own property documents so that in case of any misuse to the concession extended by the court, the candidate misusing the same be knocked out once and for all.]

♦ ***7. Retaining child's passport and putting them into the ECL where applicable***

In all cases where the court has a significant threat of child abduction and removal of the child from jurisdiction, the Guardian Courts should have the power to make directions to put the names of the minor on the Exit Control List (ECL) and, if available, restrain the passport of the minor, verified by the Deputy Commissioner, and for children with bay-forms only, restrain their bay-form together with a picture and their thumb impression (as a lot of fake bay forms also go around).

♦ ***8. Counseling***

Mandatory Counseling Session (as in UK – verify and see how it works) with a psychiatrist. After failing these sessions and obtaining a certificate filed in the court can a S.25 case be filed.

9. Definition of Custodian and Non-Custodian Parents be added in Guardian and Wards Act 1890 or in alternate in Family Courts Act 1964

♦ ***10. Natural Guardian***

The Concept of Natural Guardian as is provided in the provisions of Guardian and Wards Act 1890 needs to be redefined in a wider and broadened context. Mother of the minor be given the role of natural guardian as well

♦ ***11. Principle of Welfare of Minor defined***

It is strongly suggested that the different aspects of term "Welfare of the Minor", specially pertaining to child visitation with the non-custodial parent be studied and defined.

- The entire scheme of the Guardian and Wards Act, 1890, revolves around the principle of the welfare of the minor." However, this term "Welfare of the Minor" has never been defined or elaborated. All parties, including custodial and non-custodial parents and their advocates, try to manipulate this term according to their own will and whim. The Guardian Courts are only available in major cities in Pakistan. In most of the smaller towns and cities, child custody cases are being heard by civil courts that are not properly qualified on the subject. The cases pertaining to children require a different skill set and expertise than those pertaining to land and property.

- Constitution of a special Panel including senior Advocates and Psychiatrists define “Welfare of the Minor” specific to Child Visitation.

Some recommendation of leading Sources to constitute such panel would be:

- Head of the psychology department Punjab University Lahore (Applied Psychology)
- Head of the psychology department MAYO Hospital Lahore
- Head of the psychology department Services Hospital
- Head of the psychology department Govt. College University Lahore
- Head of the psychology department KINNARD College Lahore
- Chief Executive FOUNTAIN HOUSE Lahore

♦ ***12. Trainings of Presiding Officers of Guardian & Family Courts and also Civil/other Courts dealing with guardian cases***

Guardian Courts should be directed to strictly follow these established guidelines to avoid any misinterpretation of spirit of G&W Act, 1890.

♦ ***13. Media Coverage:***

We need to mobilize people and attract media attention so that the issue can be highlighted so that the Parliamentarians can be made aware of what is happening and can pass the amendment bill when we introduce it. Strategies!

CHAPTER XII

71- PARENS PATRIAE JURISDICTION

Under the parens patriae jurisdiction of the courts and as a signatory to the United Nations Convention on Rights of the Child (wherein Articles 5, 8, and 9 specifically recognise the rights, responsibilities, and duties of both parents as being of primary importance for the welfare of the child in separated and divorced parents), this has vexed law-officers across the world regarding the "best interests of the child" in a separated home wherein rival parties (parents) make emotionally charged allegations against each other. Further, what research has further elaborated is that the "window period" of 12 months after separation is most critical for the child and the parents, during which reasonable contact must be established and maintained with both parents to minimise damage to the child.

With these thoughts in mind, the Pakistani judiciary and parliament took a commendable step to establish "family courts" in 1964 specifically for the purpose of dealing with these matters on a priority basis and on a different footing from the usual civil cases. Though the Family Court Act (1964) was a landmark regulation in recognising the urgent needs of families, especially children, its implementation has left a lot to be desired. Key concerns articulated by various stakeholders are as follows:

- An adversarial nature of trial wherein one party takes all.
- Significant delays in passing even interlocutory orders result in non-custodial parents not seeing their child for up to 2 years, thereby destroying the child-parent relationship. This exists even though the Supreme Court has passed multiple directions to dispose of such cases involving child rights within a period of six months.
- A plethora of false allegations by both parties are soiling the picture, not allowing the presiding judicial officer any credible data to base his or her orders or judgements, and further increasing animosity

between "warring" parents.

- Repeated contempt of the court's orders for child access goes unfettered.
- A very high degree of subjectivity and a lack of codified guidelines result in highly variable orders, increasing litigant frustration with the system.
- Antiquated laws (Guardian & Wards Act passed in 1890 and Family Courts Act passed in 1964), which have not kept abreast of the dynamic social fabric of Pakistan
- "Child Interviews are being conducted in hostile court environments, which are traumatic for the child. They are conducted by courts that don't have the time and infrastructure to gently observe and build bonds with the child before eliciting credible information or allowing reasonable access between the child and his non-custodial parent. Further, this encourages tutoring and brainwashing, and sometimes children as young as 5–6 years old are asked their opinion about something of which they have no clue!

Though judicial reforms in terms of simplifying and expediting the process, increasing infrastructure (courts), etc. are urgently needed and would help alleviate some of the concerns, research and experience from all over the world point towards making a rebuttable presumption of shared parenting as the best practice in order to safeguard the best interests of children, decrease the adversarial nature of litigation, decrease litigation time and expense, and also ensure greater litigant satisfaction.

Therefore, this book proposes to introduce shared parenting in Pakistan and help courts across the country make well-informed and expeditious judgements in the best interests of the child, thereby minimizing damage to the child, decreasing the workload on family courts, and increasing the predictability of judgements

72- THE CONCEPT OF SOLE CUSTODY

"Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. "Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation. One of the unifying themes across the different shared parenting systems is the importance given to the best

interests of the child. However, jurisdictions differ on how they apply this standard.

Whereas joint custody systems vary widely across the globe, A comparative review of different countries reveals a vast diversity of approaches. The term "joint custody" can refer to several different things: joint legal custody, joint physical custody, or a combination of both. The definition in the State of Virginia recognizes this:

♦ ***"Joint custody" means:***

(i) joint legal custody, where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child, even though the child's primary residence may be with only one parent.

(ii) joint physical custody where both parents share physical and custodial care of the child, or

(iii) any combination of joint legal and joint physical custody that the court deems to be in the best interest of the child.

73- WHAT IS SHARED PARENTING/ JOINT CUSTODY?

Shared parenting, or joint custody, in common terms, means when children are brought up with the love and guidance of both parents. It is basically an acknowledgement of nature’s principle of providing for two parents for each child in order to ensure their healthy development and upbringing.

Although different countries use different definitions, the most commonly accepted definition is a collaborative arrangement in child custody or divorce determinations in which both parents have the right and responsibility of being actively involved in the raising of the child (ren)". It is also referred to as "joint custody, co-parenting, or equally shared parenting."

Shared parenting is an extension of the U.N. Convention on the Rights of the Child, 1989 (UNCRC), to which Pakistan is a signatory. Article 5 of the UNCRC states that "state parties shall respect the responsibilities, rights, and duties of parents," acknowledging the primacy of both parents in the lives of their children;

- That the children feel that they have two properly involved

parents who have broadly equal ‘moral authority’ in their eyes.

- That the children imbibe values and traditions from both families in substantial measure in order to carve their own sense of belonging and identity.
- That time is allocated between both parents such that no one parent is excluded from any aspect of child’s life, e.g.: sleeping & waking rituals, school, homework, friends, leisure time, vacations, important religious & national festivals, important dates like birthdays etc.
- That the children do not develop stereotyped ideas from their parents about the roles of the sexes, for example that a father’s role is chiefly financial and a ‘giver of treats’ and mothers have responsibility for everything else.

74- SOCIOLOGICAL RESEARCH FINDINGS

A multidisciplinary group of experts, under the banner of Child Custody Law Services in Pakistan, evaluated the empirical evidence regarding the ways in which children are affected by divorce and the impact of various custody arrangements. This group formed a considered opinion with the following conclusion relevant to parenting plans for young children:

To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children’s everyday lives and routines—including bedtime and waking rituals, transitions to and from school, and extracurricular and recreational activities—are likely to keep non-custodial parents playing psychologically important and central roles in the lives of their children. How this is accomplished must be flexibly tailored to the developmental needs, temperament, and changing individual circumstances of the children concerned.

Since then, 110 prominent experts (heads of universities, professional journal editors, leaders of professional associations, etc.) from around the world in the fields of early child development, sociology, psychiatry, clinical and forensic psychology, and social work were invited by Dr. Richard Warshak to review a large amount of data and research on

the subject and come to a consensus on parenting arrangements for children in separated families (Social Science and Parenting Plans for Young Children: A Consensus Report; Richard Warshak, 2014).

- Social science evidence supports the view that Shared Parenting (35-65) should be the norm for parenting arrangements for children of all ages, including very young children.
- To maximize children's chances of having a good and secure relationship with each parent, we encourage both parents to maximize the time they spend with their children.
- Research on children's overnights with father's favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home.
- Parenting plans that provide children with contact no more than six days per month, and require the children to wait more than a week between contacts, tax the parent-child relationship.
- There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers.
- Our recommendations apply in normal circumstances, for most children with most parents and may be rec-considered in parents with major deficits, such as parents who abuse their children and need protection and distance even in intact families.

Dr. Linda Nielsen examined, 21 peer-reviewed research papers published between 1998 & 2011 [Linda Nielsen, 18 Nov, 2011 – Shared Parenting after divorce: A review of shared residential parenting research] wherein outcomes of children living in Shared Parenting (>35% of time) versus children living in sole custody (with some access to non-custodial parent) was compared, covering ~14,000 separated / divorced families of which ~3,000 families practiced Shared Parenting while ~11,000 families had single parent (mothers) as the primary caregiver. Dr. Nielsen also concluded on the same lines as Dr. Warshak quoted above.

The key findings of these research papers, other books on similar topic and family court findings are as follows:

Note: Only a few indicative research finding are given here, while detailed sociological research findings against each heading are given in Annexure – 2 (Sociological Research Findings)

a. Father's absence in children's lives is associated with significant psychological trauma, behavioural problems, poor academic achievement and poor social outcomes.

- Barber and Eccles (1992) examined the long-term impact of divorce and single woman-headed families on adolescent development, particularly on career aspirations, personal relationships and self-identity. They found that adolescents who experienced father absence had lower self-esteem, engaged in sexual activity at an earlier age and had lower general achievements compared to adolescents of intact dyadic families. Furthermore, a negative impact on personal relationships was noted (Barber and Eccles, 1992).

- Father involvement is associated with positive cognitive, developmental, and socio- behavioral child outcomes such as improved weight gain in preterm infants, improved breastfeeding rates, higher receptive language skills, and higher academic achievement. [Pediatrics. 2006 Apr; 117(4): e637-45.; Fathers and the well-child visit.; Garfield, Isacco A. Department of Pediatrics, Evanston Northwestern Healthcare Research Institute]

b. Children in Shared Parenting Arrangements have been found to be psychologically, emotionally and academically far better off than children in sole custody. Research has shown them to be less depressed, have fewer health problems, are less aggressive, have higher self- esteem, show lesser stress-related illnesses and perform better academically.

- A large study in Denver with 459 maternal custodies, 76 paternal custodies, 89 joint custodies, and 62 shared residential custody families, the shared residence children had the best scores 3 years after the divorce on measures of depression, agitation, stress, and favourable adjustment. What is especially noteworthy is that the children in both groups had similar scores on these measures 3 years earlier at the time their parents divorced.

- Having a close, ongoing relationship with dad after parents' divorce also has health benefits. As teenagers, these girls are less likely to be extremely overweight or extremely underweight (Menning & Stewart, 2008) or to develop an eating disorder (Maine, 2004). As young girls, they also enjoy better overall health (Troxel & Mathews, 2004). As young adults, they have fewer stress-related illnesses such as insomnia,

headaches, chest pains, and intestinal problems (Fabricius & Luecken, 2007).

c. Intuitively also Shared Parenting is the most preferred mode of child rearing by the society, though emotionally charged adults during the process of divorce / separation may disagree.

- A non-binding ballot election was conducted in Massachusetts of 530,000 individuals in 2004 and 85% stated that children should live equally with both parents after divorce (Father's coalition, 2004)

- The philosophy of shared parental responsibility is overwhelmingly supported by parents, legal system professionals and service professionals (Kaspiew et al, 2009 – examining the impact of Shared Parenting regulation passed in Australia in 2006)

d. Shared Parenting is successful even for high conflict divorces, since most estranged couples in this category gravitate towards "parallel parenting" with little or no contact between themselves. Similarly, Shared Parenting has been equally successful irrespective of education of parents or quantum of money earned by the parents or the gender of the child.

- Parents can share the residential time even though they are not talking to each other or trying to coordinate the child rearing environments of their two households (Maccoby & Mnookin, 1992, pp. 248, 292).- Stanford Longitudinal Study covering 1,110 divorced families & 1,386 children

- In yet another study with 354 teenagers, those who spent the most time with their fathers were closer to him, admired him more, and felt they would talk to him if they were unhappy or had a major decision to make. This held true even for those whose parents had ongoing conflicts (Sobolewski & King, 2005).

e. Shared Parenting is preferred by children; children & university students have expressed far greater satisfaction with Shared Parenting Arrangements rather than single parenting arrangements with regular visits by the "non-custodial" parent.

- 400 university students were interviewed (Fabricius, 2003) and 93% of the children living in Shared Parenting felt that this was the best parenting plan, however, only 30% of students living in sole

residence (with regular visits by father) felt that this was the best parenting plan.

- Children in "joint custody" rather than sole-mother custody are more satisfied with their arrangements, and are better adjusted. [Kelly J (1988) Longer-term adjustment in children of divorce. Journal of family Psychology 2 (2) 119-140.

f. The amount of time spent by the non-custodial parent with the child has direct relation with the bonding and therefore psychological well-being of the child

- Fortnightly amusement-park parenting (the old 80% - 20% formula) contributes little to developing meaningful parent-child relationships. [Laumann-Billings L & Emery RE (2000), Distress among young adults from divorced families, Journal of Family Psychology, 14:671-687]

- In the Netherlands, 135 children in Shared Parenting families had as close a relationship with both parents as the 2,000 children from intact families. These father–child relationships were closer than those where the father regularly spent time with the children who lived with their mother (Spruijt & Duindam, 2010).

- Most of this research suggests that “child adjustment is directly related to visitation frequency; more frequent contact is associated with improved child adjustment." – Hong Kong Law Reforms Commission, Report 2005

g. Shared Parenting Arrangements are not only better for the child but also for the parents, who have been shown to show lesser depression and lower rates of suicides post separation compared to parents with single custody.

h. Shared Parenting Arrangements help reverse the gender stereotypes, wherein the father is not just a provider but also a care-giver and vice-versa. Thereby, they help in gently taking the society towards a more gender equal society.

- Research shows that in shared custody situations, fathers spend more time and are more involved with their children than fathers in other custody arrangements, even when socio-economic status and the pre-divorce quality of the parent-child relationship are taken into account (Kline et al., 1989; Arditti, 1992)

It is rather unfortunate that on one hand we talk about gender equality, women empowerment and providing equal opportunities for men & women, while on the other hand we send out conflicting messages by reinforcing gender stereotypes and condemning our women to being sole child care-givers & home-makers and thus preventing them from making economic & other contributions to the society.

i. Shared Parenting Plan though has not been shown to conclusively decrease animosity however a predictable format of orders of Shared Parenting definitely decreases the amount of time spent on litigation, thereby decreasing the work-load on courts. Although, research does conclusively state that Shared Parenting does not increase inter-parental conflict.

- King & Heard (1999) analyzed parental conflict and found that the maximum parental conflict is found when child visit by the non-custodial parent are in the middle range and that high contact between non-custodial parent & child (as in Shared Parenting) is associated with lower parental conflict.

- Australian Institute of Family Studies longitudinally analyzed data on 7,718 children of which ~4,000 children were under the age of 5 years (Kewpie et al). The data revealed that 90% of parents practicing Shared Parenting (35-65) were satisfied with their parenting Arrangements.

j. Shared Parenting Arrangements encourage and facilitate women to enter back into work-force faster, thereby giving a boost to the economy.

k. Shared Parenting minimizes “bargaining in the shadow of law” thereby increasing the perception of fairness of justice system.

l. Over the long term, Shared Parenting coupled with shared earning emanating from economic freedom of women has resulted in decrease in divorces. Although, not yet conclusively proven, a recent study in USA found that families where both parents share child-rearing & earning responsibilities are 50% less likely to divorce. Similar data has emerged from Sweden.

75- SUGGESTED SHARED PARENTING ARRANGEMENTS

The numbers of divorce cases are rising; more and more couples have been approaching family court for divorce, resulting in the rise of bitter child custody and access matters. A serious need is therefore felt for the introduction of a parenting arrangement, which will help reduce the burden of courts to a great extent and will also help in the speedy disposal of court cases. A shared parenting arrangement will also bring ease between the couples who are undergoing separation. During the initial stage itself, a copy of the shared parenting arrangement can be provided to the couples by the courts, making them aware and helping the parents mutually draw up a suitable parenting plan that is agreeable and acceptable to both parents and that covers aspects related to child custody and access in the best interest and welfare of the child.

When children know that their parents have talked about what's best for them and that an arrangement is written down, they are likely to feel cared for and safer. Children can predict the shape of their lives and know that parents will keep the adult issues between adults (the allegations and arguments between the couple entering the parenting plan would be at a minimum). Children will be able to manage the stresses and fears of the separation much better, and they may not be required to visit court for access or for hearing that often.

The courts can direct the couple to draw a parenting plan (just like consent terns) within a period of sixty (60) days and also pass appropriate orders based on the shared parenting arrangement.

A shared parenting arrangement or custody agreement is required by the family court when parents' divorce or separate. A shared parenting arrangement or plan allows parents to avoid future conflicts in dealing with responsibilities relating to their children. Without specific agreements around these responsibilities, disputes can arise, and litigation may be needed to resolve these issues. Divorce and separation are painful for everyone involved, particularly children.

At this challenging time, children need support, love, and contact with both parents. Some certainty about the future is also very important for everyone. A written parenting plan, worked out between parents, will help clarify the arrangements needed by the parents to put in place to care for the children. It will help everyone involved to know what is expected

of them, and it will be a valuable reference as time passes and circumstances change. If the standard shared parenting plan by the court is agreed upon by parties before the court hearing, it is called "stipulated". The court can approve the stipulated parenting plan without a court hearing. A standard shared parenting plan by the court puts the best interests of the child first. It is drawn up in good will with a shared commitment to the children and their future firmly in mind (just like consent terms).

In most developed nations, there is a law requiring that court-ordered parenting plans set forth the minimum amount of parenting time and access a noncustodial parent is entitled to have. A parenting plan is a written agreement between parents covering practical issues of parental responsibility approved by the court. The parenting plan will detail practical decisions about children's care in such areas as::

- Parenting Time (physical custody)
- Major Decision Making (legal custody)
- Visitation / Access
- Transportation and Exchanges
- School Holidays, Vacations and Festivals
- Child Support / Maintenance
- Alternate Dispute Resolution Process
- Schools Attended and Access to Records
- Physical and Mental Health Care
- Contact Information, Relocation
- Activities and School functions
- Overnights and Visitation
- Communications and Mutual Decision-Making
- Mediation
- Medical Insurance
- Contact with Relatives and Significant Others

Parents normally can make variations to the court standard parenting plan or develop a different custom plan if the judge approves the changes

Parents later can modify the existing parenting plan by filing a new request with a court when circumstances have changed. A parenting plan can take any form, however it must be made free from any threat, duress or coercion. It must be in writing and signed and dated by both parents. If both parents agree on arrangements, Parents can submit parenting plan (just like consent terms) to the Family Court and Court can pass an appropriate order based on the parenting plan, giving it the same legal effect as an order made after a Court hearing. Parenting Plan approved by Court would be one form of consent order issued by the Court. If parents cannot agree on arrangements for children, they may need to have the Family Court decide and issue a Parenting Order. In deciding parenting arrangements, the Court must always consider:

- The best interests of the child
- The extent to which both parents have complied with their obligations in relation to the child, which may include those set out in a standard parenting plan (As follow).

Parents can normally make variations to the court-standard parenting plan or develop a different custom plan if the judge approves the changes.

Parents can modify the existing parenting plan later by filing a new request with a court when circumstances have changed. A parenting plan can take any form; however, it must be free from any threat, duress, or coercion. It must be in writing, signed, and dated by both parents. If both parents agree on arrangements, parents can submit a parenting plan (just like consent terms) to the family court, and the court can pass an appropriate order based on the parenting plan, giving it the same legal effect as an order made after a court hearing. A parenting plan approved by the court would be one form of consent order issued by the court. If parents cannot agree on arrangements for children, they may need to have the Family Court decide and issue a parenting order. In deciding parenting arrangements, the Court must always consider:

- The best interests of the child
- The extent to which both parents have complied with their obligations in relation to the child, which may include those set out in a standard parenting plan (as follows),

It is significant to note here that there is no provision in the present

regime of laws, including the Guardian and Wards Act 1890, the Muslim Family Laws Ordinance 1961, the Family Courts Act 1964, or the Family Courts Rules 1965, regulating matters pertaining to joint custody or adoption of shared parenting arrangements for minors, except for a few reported judgements by the superior courts that give an idea as to the frequency of visitation and duration of interaction between a child and his non-custodial parent. In this backdrop, it is safe for a court of law seized with child custody litigation to resort to the provisions of Article 220 of the Constitution of the Islamic Republic of Pakistan 1973, which clearly postulate that a court can seek guidance from Islamic injunctions in vacant areas of jurisprudence. Therefore, guidance from Ayat No. 233 of Surah Al-Baqarah, in the Holy Quran, is present, which reads, "No mother shall be treated unfairly on account of her child, or father on account of his child," and from Ayat No. 06 of Surah Al-Talaq, which categorically lays down, "Take mutual counsel together, according to what is just and reasonable.

It is important to remember that shared parenting arrangements do not mean an exact apportionment of 50% time to each parent but rather a collaborative process wherein each parent's work schedule, proximity to each other's house, age of the child, availability of a support system, etc. are looked into while arriving at the best plan for the child's welfare. It is widely accepted that weekend "Santa Parenting" is definitely not in the best interest of the child and definitely does not constitute shared parenting; however, any plan wherein each parent gets at least 30% of the child's time can be considered to be a good shared parenting plan. At the same time, it is not just the concept of time but also of responsibilities that must be shared between parents, whether in terms of financial, social, psychological, or security.

With these concepts in mind, there are some well-accepted plans that have worked well for a number of parents across the world:

- ***(i) Principles:***

1. The primary goal of family courts is to establish, preserve and strengthen positive parent-child relationship with both parents

2. Children have the right to know, be cared for and regularly communicate with both their biological parents and their families (grandparents, siblings etc), regardless of whether their parents are married, separated or have never married or have re-married.

3. Parents jointly share duties and responsibilities concerning the care, welfare and development of their children.

4. Each parent has sufficient time to be part of all different activities of a child's life, including waking & sleeping rituals, school activities, social activities, festivals / celebrations, vacations etc.

Note: Detailed Shared Parenting Arrangements for various categories of parents along with options and common attributes are given in Annexure – 3 (Detailed Shared Parenting Arrangements).

- ***(ii) Common Attributes across all Parenting Plans:***

1. A child less than 2 years of age will normally be largely in the company of the mother and Shared Parenting will not be applicable.

2. Vacations: in Pakistan, there are 3 common vacations in schools & colleges across the country – Summer (Approximately 90 days), Winter Vacations (Approximately 10 days) & Spring (Approximately 7 days) – Both parents of children over 3 years of age should be granted 50% of all vacations with regular telephonic, e-mail or video-chat with other parent during this period. While overnight stays (typically 1-2 nights on weekends) with non-custodial parents may start at the age of 2 years, a long vacation is generally suggested at the age of 3 years onwards.

- ***3. Festivals:***

A list of 12 common festivals should be drawn up by each parent for each year, as per the local customs and religion of each parent. For festivals exclusive to one parent (eg: Eid to Muslims or Parsee New Year for Parsees etc), overnight access or at least access of 8 hours should be granted to that parent. in case of common festivals (eg: Pakistan Day or Eid Milad Un Nabi), both parents may agree to sharing a few hours or the court may give it to each parent on an alternating basis, i.e. odd numbered years to one parent and even numbered years to the other.

- ***4. Birthdays:***

Upto 6 birthdays are envisioned per family, i.e. Child's birthday, Siblings birthdays (including close cousins), parent's birthdays and grandparents birthday. Same principles as in "Festivals" should be followed.

- ***5. Schools:***

The schools are required to post the progress report of the child to both parents and also inform both parents regarding any upcoming Parent-Teacher Meeting, Sports Day, Cultural Event etc. Both parents are required to attend at least 50% of these events failing which the court may withdraw this privilege from the parent.

♦ ***6. Child Interviews:***

Courts are a traumatic environment for the child and hamper with his / her development, therefore courts should NOT call children below 12 years of age to courts unless absolutely necessary.

Note: Detailed "child interview" guidelines and Guidelines for "Dealing with high conflict parents" are given in Annexure – 4 (Suggested Legal Process)

A. Parents living in the same city with one parent being the primary earner having heavy work schedule (Illustrative)

- Less than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note:

- Visits to range from 2 to 4 hours
- For the first 2 months, the custodial parent could accompany the child during these visitations, however subsequently, the non-custodial parent should have singular access
- Use of "Children Rooms" in court premises is generally not in the best interests of the child & therefore best avoided, however, it may be used for children less than 2 years of age during initial 2 months.

- More than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note: The half day mid-week visits (Wednesdays in the chart above) are preferably straight after school, i.e. ~ 2:30 pm and end at 7 pm. Similarly, mid-week pick-ups (Thursdays in the chart above) are from school or immediately after school.

76- SPECIAL MENTION – PARENTAL ALIENATION SYNDROME

Denigrating your spouse in front of your children tells your child that one-half of him / her is bad and this is one of the most severe forms of child abuse that a parent can practice

Parental Alienation Syndrome or PAS is a term coined by Dr. Richard Gardner (1980) to describe incessant denigration, tutoring / brainwashing and indoctrination of the child done by a parent in order to alienate the child from his / her spouse / partner.

PAS has now found mention in DSM – 5 (Diagnostics & Statistics Manual of Mental Disorders; "bible" of Psychiatric disorders) under the heading "Parent-child relational" problem and broadly has four defining features;

- Access & Contact Blocking
- Unfounded abuse allegations (including sexual abuse)
- Deterioration in relationship since separation
- Fear reaction / rejection by child of alienated parent

Parental Alienation frequently begins with just a "stern look" to the child while he / she is seen smiling in the company of other parent or a seemingly "genuine" excuse to deny access to non-custodial parent, however, if it is not checked here immediately, it can very quickly snow-ball into heinous allegations, "staging" of sexual abuse with physical harm to child and complete rejection and denigration of a healthy, capable, willing & "good" non-custodial parent. One of the most serious recent case in Pakistan, that of Tatheer Fatima had sent shivers down the spine of national conscience; however, thousands of such cases go un-noticed / undiagnosed or even worse "ignored" by the judiciary for want of information, tools and infrastructure to deal with this problem.

Note: Refer to Annexure – 5 (Signs of Parental Alienation)

77- What can be done?

- Brazil in August, 2010 recognized the acuteness of the problem and its impact on the society and passed a law declaring it as a civil & criminal offence, while UK is in the process of criminalizing it, in what is known as "Cinderella Law", while courts across the world regularly penalize offenders through fines and also shift of custody.

- In Pakistan, we must first start acknowledging that emotional abuse is as much damaging to a child as physical or sexual abuse and using it as one of the evaluation criteria while determining the welfare and best interests of the child. For example: While framing issues in any custody litigation, "Is the parent emotionally abusing the child by alienating the non- custodial parent", should find mention.

- At the first instance, any contempt in the form of denial of access to the child must be expeditiously and strictly dealt with. At the same time, a parent who shows greater desire and willingness to cooperate with the spouse in matters of parenting should be given preference in terms of custody.

- In case of repeated contempt or first sign of alienation (Kindly see Annexure – 5 for signs of parental alienation), the child along with both parents should be referred to mental health professional and based on the report of the psychologist, obligatory social work or heavy penal fines on the alienating parent should be instituted. Alongside, maximum contact with the alienated parent is suggested in order to restore and strengthen relationship.

- It is well-documented that alienating parent frequently has a personality disorder (Narcissist or Borderline or Anti-social) and therefore in need of help, which should be provided to them expeditiously

- Finally, in case of continual alienation, custody of the child should be shifted to alienated parent. This though may seem drastic but has been well-documented by Dr. Richard Gardner in his "99 case studies" to be effective and optimal in severe cases and has been ordered judiciously by a number of Supreme Courts across the world, including by Supreme Court of Pakistan.

78- SUGGESTED AMENDMENTS in THE GUARDIAN & WARDS ACT

Over the years, the nonnegotiable principle on the basis of which cases of custody of children are decided is that of the 'best interest and welfare of the child' which attempts to enable each child to survive and reach his or her full potential.

Despite its widespread recognition as a relevant consideration, the manner in which the welfare principle occurs in our legal and judicial framework, certain problems, which need legislative redressal. First, there is disparity in the relevance accorded to this principle by different legislations regulating custody and guardianship. Second, there is uncertainty and lack of judicial consensus on what exactly constitutes welfare of the child, as a result, in fiercely fought custody battles, there are no ways to ensure that the interests of the child are actually protected. Third, the legal framework is silent on how should custody issues be handled, what factors should be relevant in decision making, and what should be the process of dispute resolution between parents over children, among others. Fourth, although there are no codified rules governing custody, decision-making in this area is based on the presumption that welfare of the child essentially lies in custody being awarded to any one of the parents, assessed comparatively.

This book reviews the current laws dealing with custody and guardianship, namely, the Guardians and Wards Act, 1890 and the Family Courts Act 1964, and suggests recommendations to the Honourable High Court to suggest the Provincial Government to add a new entry in the Schedule attached with the Family Courts Act 1964 and introduce Shared Parenting Arrangement, while exercising its statutory authority under the provisions of Sub Section 3 of Section 5 of the Family Courts Act 1964, so as to achieve the following objectives:

• Strengthen the welfare principle in the Guardians and Wards Act, 1890 and emphasize its relevance in each aspect of guardianship and custody related decision-making

• Provide for equal legal status of both parents with respect to guardianship and custody

• Provide detailed guidelines to help decision makers assess what custodial and guardianship arrangement serves the welfare of the child in

specific situations.

• Provide for the option of awarding joint custody on the touchstone of shared parenting arrangement to both parents, in certain circumstances conducive to the welfare of the child.

• Establishing, preserving and strengthening a positive parent-child relationship with both parents must be the primary goal of the courts

• Decrease in age of rebuttable presumption of mother having the primary custody from 5 years to 2 years

• Addition of a new entry in the Schedule attached with the Family Courts Act for the introduction of Shared Parenting Arrangement with the following attributes;

79- Rebuttable presumption of "Shared Parenting"

i. Making "Parenting Plans" mandatory in any suit / petition related to divorce, maintenance or child custody

ii. Outlining principles behind parenting plans and giving illustrative parenting plans

iii. Re-introduction of "absent parent" must be done within 3 months of institution of Petition for the grant of permanent custody of the minor

iv. Infrastructural Changes:

v. Creation of post of trained counselor's / child welfare officers (mental health professionals) within the family court. Meanwhile encouraging the use of private mental health professionals by family courts to gather data and arrive at most appropriate decisions

vi. Creation of at least 1 "child-friendly" space within each family court & high court for observation of child by mental health professional / Courts and court ordered visitation

vii. Strict provisions for dealing with contempt of court orders including use of penal provisions like community service obligations, heavy penal fines, shift of custody or court arrest. The court may take Suo Moto action against the offending parent.

viii. Strict provisions for making false, scandalous & baseless allegations in order to deny / deprive access to non-custodial parents with

Suo Moto action against the offending parent.

CHAPTER XIII

80- ARTICLES BY THE AUTHOR

- ***(i) Law of Interim injunction in family / Custody cases***

Scores of Appeals against Visitation Orders passed by the Guardian Courts are pending adjudication in almost each Appellate Court and hundreds of such Appeals are pending adjudication throughout the province of Punjab in Guardian Appellate Courts even for the last more than 2-3 years. The core reason in majority of such Appeals is only one, and that is the Learned Appellate Courts has granted Stay Orders/ Interim Injunctions, merely on the presentation of an affidavit by the Appellant. In almost all such Appeals, multiple dates have also been issued to the Appellants and a number of Applications for vacations of Stay/ Interim Injunctions has been filed but to no avail. The instant Article relates to the Law of Interim Injunction in Family Jurisprudence. It is an issue which has not yet been addressed by any of the Courts of appropriate jurisdiction except that mere notices and summons are issued one after the other. It is to be noted that the failure of the Appellate Courts to ensure compliance of their Orders has resulted in gross miscarriage of justice to not only the Non-Custodial Parents but also, the minor children are left alone to bear the brunt of the lax laws as well as the failure on the part of the Appellate Courts to ensure compliance of their orders thereof. Our hierarchy of Courts in Family Jurisdiction are expected to exercise a quasi-parental jurisdiction and to act a Locus Parentis, deal with the delicate matters touching the rights of the people, particularly the deprived minor children and their Non-Custodial Parents, instead of dealing with their such rights of Access and Visitation in a mechanical manner. There is a need to adopt a new line of action to start with the creation of a society, which is dreamed of as a social welfare State. Grant of interim injunctions against Visitation Rights of minor merely on the affidavits of the Appellants without appreciation of delicacies of child psychology serves no useful purpose to the Custodial side of Parents involved in child custody litigation nor the needy minors rather their miseries are enhanced. This sorry state of affairs needs to be addressed by the judiciary at large. As you all know, an injunction is a legal remedy which is imposed by a court. In simple terms, an injunction means that one of the parties to a certain

action must either do something or refrain from doing something. Once the court makes its decision, the parties must abide by the ruling. If the party fails to adhere to the injunction, there can be stiff monetary penalties and even imprisonment in certain instances. There are different kinds of injunctions: a preliminary injunction, a temporary restraining order and a permanent injunction. A preliminary injunction is one which is given to a party prior to a trial. Since a full trial has not yet occurred, the courts are usually reluctant to issue this type of injunction unless it is absolutely necessary and great damage may occur without the preliminary injunction. Another type of injunction is known as the temporary restraining order. This type of injunction is very limited in time and scope. The purpose of the temporary restraining order is to give the court time to review the matter in order to determine whether to grant a preliminary injunction. On the other hand, a permanent injunction is one granted after the trial regarding the matter. A permanent injunction can be issued after a preliminary injunction or temporary restraining order. If a permanent injunction is granted, it means that the party must either stop acting or begin acting in a certain way permanent requirements.

In most jurisdictions, an injunction will not be granted unless the party seeking the injunction can prove that they will cause irreparable injury if the court does not grant the injunction. Irreparable injury means that the harm inflicted on one party is so bad that no monetary or other type of payment is a good enough reward for putting up with the circumstances. In addition, the party must show there is no other remedy available. Furthermore, the party must demonstrate that if the court balances the parties' interests, the balance will tilt in favor of the party seeking the injunction. Relief of injunction That the relief of injunction is a discretionary and an equitable relief which a party to litigation cannot claim as a matter of right and he who seeks equity must come to the court with clean hands. Before grant of such relief conscience of the court has to be satisfied that the party seeking such relief has not acted inequitably. And the party seeking interim injunction must also satisfy the Court that an interference is necessary to protect it from the species of injury which the Court called “irreparable loss” before the legal right could be established. For adjudication of the question of granting or withholding preventive equitable relief, an injury is set to be irreparable because no legal remedy furnishes full compensation for it or there was no adequate redress for such injury or there existed inherent ineffectiveness of legal

remedy for such injury. Reliance is placed at 2019 YLR 815 Karachi I being an Advocate practicing in the child custody jurisdiction for a couple of years now, understand that under the mandate of Family Jurisprudence in as much as the Locus Parentis capacity, a Learned Appellate Court, before grant of an ad interim injunction in an Appeal, merely on the basis of an Affidavit of the Appellant, is required to appreciate that it is a common practice among couples to use kids as pawns in the game of emotional chess. It amounts to absolutely irresponsible parenting to scar children emotionally post separation. In due course the parents move on in their lives and onto another partners but children carry the trauma of being manipulated and torn apart emotionally, all their lives. A Court's powers with regard to Visitation Rights and Custody of Minor are in the nature of parental jurisdiction, and it must act in a way a wise parent would do--- Expression "welfare"' would be construed in a way so as to include in its compass all the dominant factors essential for determining the actual welfare of the minor---Technicalities of law are not adhered to in such type of cases. Reliance is placed at 2002 PLD 267 Supreme Court In my legal experience I have seen a large number of these kids suffering from personality problems, conduct, disorder, and substance abuse, criminal and anti-social traits etc and all just because of appropriate contact denial between the Non-Custodial Parents with their children involved in Child Custody Litigation in the garb of procedural technicalities. An Appellate Court should be aware of the fact that where in any proceedings before it, the visitation right of a minor is in question, then, in deciding that question, the Court must have regard to the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that visitation is superior to that of the mother, or the mother's claim is superior to that of the father.", hence an Order suspending the rights of the minor to have better access and approach towards his Non-Custodial Parent must not be dealt on the basis of mere technicalities. The suspension of the Order granting Visitation Rights of the minor required due diligence to be practiced by the learned Appellate Courts seized of the matter and at least an opportunity must have been allowed to the Non-Custodial side of parents prior to suspending the operation of the Order. An Order granting suspension of the operation of Visitation Rights granted by an Appellate Court merely on the basis of an Affidavit submitted by the Appellant on the first date of hearing and in the absence of issuance of notices to the

Non-Custodial Parents, I believe falls within the classification of an unqualified and an unreasonable restriction on the fundamental rights of access and movement of the minor child as the same are protected under the provisions of Article 15 of the Constitution of Islamic Republic of Pakistan. It is further significant to observe here, that a question whether a law imposes reasonable restriction on the freedom of movement of a person is justifiable and in determining this question the Court has to look at the nature and extent of the restriction, the manner in which it is imposed the nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed. However, in the subject matter under discussion not even a single aspect is usually looked into by the Learned Appellate Judges functioning, while restricting the access of the Non-Custodial Parent (Fathers mostly) to his minor children and restricting his visit / meeting with his children to be held in a Court premises and for 2 hours twice a month. Reliance is placed at PLD 1958 SC 41 That every Court, including the Appellate Court is under Legal Obligation to state reasons as to why it understands it fit that operation of the Visitation Rights allowed to the Non-Custodial Parent shall be Stayed. It is peculiar to understand at this juncture that every Public or Judicial functionary is duty bound to decide the application of the Citizen after application of mind, after addition of Section 24-A, in General Clauses Act as was laid down by the Supreme Court of Pakistan. Reliance is placed at 1998 SCMR 2268. It is an admitted proposition of Law by now that A Court of law without assigning any valid reasons cannot take any action detrimental to the life and liberty of any person except in accordance with the law nor shall a person be prevented from or be hindered in doing that which is not prohibited by law. When the lis is between the parents, there are three main characters of the scenario, a mother, a father and a child and in certain cases the brothers and sisters of the minor, they are all the stake holders and the emotions and feelings of every one of them should be kept in view while deciding the noted issue, besides the personal law of the minor and rule about his welfare as mentioned earlier which should be of pivotal consideration. All these putting together contemplate that regarding the visitation schedule neither the mother should be altogether deprived of the complete custody of the minor nor the father should be deterred and prevented to meet and see his own child with whom in the normal situation, he shall have a free access and interaction and could shower his love and affection, if the relation

between the parents was normal; this also is true position vice versa. The third important character is the Child himself, who under the law of nature should have the privilege of the love and affection of both the parents, which is one of the greatest blessings of Allah Almighty, but if for certain reasons, the parents on account of their discord and disparity have fallen apart, the Child shall not be deprived of having the maximum of what he/ she could achieve from either of the parents. And it does not behoove of the adversary parties, who may even have hatred towards each other to claim exclusive possessory rights over the child to the exclusion of others, as one could demand in the matter of property disputes etc. it is further an admitted notion of law that the Visitation Rights of a real Non-Custodial Father involves the rights of minor toward their father as well. Hence without assigning any valid reason while staying/ granting an ad interim injunction to the Custodial Parent in an Appeal merely on her affidavit on the first date of hearing is an act that tantamount to deprive the minor from his fundamental rights protected under multiple provisions of the Constitution of Islamic Republic of Pakistan 1973. Reliance is placed at 2019 MLD 804 Karachi It is therefore observed to be the need of the hour that some serious steps should be initiated by our superior judiciary in this regard and to curb the abuse of process of law being carried out in the name of welfare of minor shall be brought to a halt. Special education and workshops are required to be conducted to cause awareness for the Learned Guardian Judges that they are obliged to pass speaking orders while acting as a Judge and while curtailing Civil Rights of Non-Custodial Parents (fathers mostly) they must assign valid reasons as to why a minor should be produced in a court premises for the purposes of meeting his Non-Custodial Parent, especially when every case is required to be decided on its own facts. It is further most humbly suggested that the Learned Judges appointed as Guardian Judges, shall be given special training to the effect that the principles of Natural Justice are fully applicable in Guardianship Proceedings as well, if an accused is the most favorite child of a criminal law than a Non-Custodial Father shares almost the similar status in Child Custody litigation, hence he should be considered a human being at least if not a most favorite child of law and must be given basic amenities, he is entitled under the Constitution of Islamic Republic of Pakistan, That the Honourable Chief Justice of the Lahore High Court is requested through this Article that please take notice of the helm of affairs being carried out in the Guardian Courts throughout

the Province of Punjab and a direction be issued to all the Learned Judges functioning within the supervision of this Hon'ble Court, in the Province of Punjab, to ensure protection of Fundamental Rights of Fair Trial, Right of Privacy and Dignity of Man, Right of Fair Trial and other rights of children from broken families and of the non-custodian parents, by announcing a reasonable at home "MINIMUM STANDARD" visitation schedule right from the start of the Child Custody Litigation, in the similar manner as that of the fixation of interim maintenance allowance under the provision of Family Courts Act 1964. This relief of "minimum at home visitation schedule" should be available to all non-custodial parents without discrimination from the very beginning of the trial, at least during the interim stage till the final disposal of litigation pending adjudication before the Learned Guardian / Family Judges respectively. References Constitution of Islamic Republic of Pakistan Family Court Act 1964 General Clauses Act 1897

(ii) Citations PLD 1958 S.C 41; 1998 SCMR 2268; PLD 1998 S.C. 388; 2002 PLD 267 Supreme Court; 2009 CLC 1443 Lahore; 2010 PLD 119 Karachi; 2012 SCMR 1235; 2019 MLD 830 Karachi; 2019 YLR 815 Karachi

(iii) The writer is a Lahore based lawyer advocating for adoption, application and implementation of principles of shared parenting, for the grant of annual visitation schedules comprising of at home frequent visitation rights to the already divorced affected minor children and for the rights of non-custodial parents involved in child custody litigation in Pakistan. He can be reached at qaslaw@gmail.com

Note: this article has been published earlier at https://www.lawyersclubindia.com/articles/law-of-interim-injunction-in-family-custody-cases-10680.asp

(ii). ***Concept of Joint Guardianship Under the Guardian and Wards Act 1890***

With rapid social and monetary change, conjugal and familial interactions are becoming more complex with each passing day, and so are the conditions for their dissolution. As these social changes affecting family life escalate, there is a dire need to update the laws governing family relationships during and after the nuptial bonding. At present, our legal framework for custody and guardianship is based on the supposition that custody can be vested with either one of the contesting parties and suitability is determined in a qualified manner. But just as the basis for

dissolving marriage has shifted over time from fault-based divorce to mutual consent divorce, we need to think about custody and guardianship differently and provide for a wider context within which separating parents and children can decide what custodial arrangement works best for them.

Judicial attitude towards guardianship proceedings has evolved considerably, but despite this evolution of judicial attitude, we have overlooked the idea that, under certain favourable circumstances, the welfare of the minor could also be ensured by securing simultaneous association with both arents. Since there is no integral contradiction between pursuing the welfare of the minor and the concept of shared parenting or joint guardianship, the law needs to provide for this option, provided certain conditions are met.

The Honourable Islamabad High Court has clearly marked the distinction between the terms "custody" and guardianship in the case reported as 2021 MLD 817 Islamabad, to the effect that "custody" alludes to bringing up and nurturing a child and taking care of his or her personal and emotional needs on a day-to-day basis, while guardianship refers to the obligation of maintaining a child, completing legal communications in his or her name, and retaining constructive custody over his or her person or property for resolutions of discharging duties as a guardian. A father is a natural guardian even when a mother is conferred with the child's custody. "Custody" of a minor is not a precondition or requirement for being the guardian of his or her person or property.

I fully understand that the time has come to give up the archaic mindset that our family justice system has adopted since the British era to think that a single parent is superior to another to take care of the child. The Guardian and Wards Act, currently applicable in Pakistan, was passed in 1890, almost 132 years ago. The Family Courts Act 1964 was passed by the Parliament of Pakistan almost 56 to 58 years ago, and since then, society has been evolving at a fast pace. Contemporary Pakistan is adopting new ethos and concepts. In comparison to 1964, when the Family Courts Act was passed, Pakistani women were not as career-oriented. As of now, the majority of Pakistani women belong to the working class, earning their own livelihood and protecting their rights and self-esteem. The standards set primarily back in 1890 by the British Era and later on in 1964 by the Pakistani Parliament cannot be applied directly to the litigants of this globalised 21st century, where the majority of the litigants live in

metro cities like Lahore, Karachi, and Islamabad. Therefore, now the time has come to change our mindset of finding out who the better parent is and rather to adopt a new thinking as to find out how these two parents can behave responsibly and work collectively to give their child the best from both of them.

During my practice at the bar, I have observed that when a marriage fails, either party, male or female, uses the child to browbeat the opposite partner into obedience. In the emotional encounter between the parents, the child is often held hostage by whoever has physical care. Pakistan urgently needs legislative and judicial action to avoid either parent alienating the child from the estranged partner. A temporary measure can always be that a parent who purposely alienates the child from the other will have his or her rights to custody debilitated, the underlying hypothesis always being that it is never healthy for a child to be denied the love and guidance of a biological parent.

Be it as it may, my concern in this article is to draw attention to another emotional landmine: the issue of joint guardianship or joint decision-making authority. In my opinion, this continues to languish in a neglected corner of our jurisprudence.

The law governing custody of children is closely linked with that of guardianship. Guardianship refers to a package of rights and powers that an adult has in relation to the person and property of a minor, while custody is a narrower notion relating to the upbringing and day-to-day care and control of the minor. The term ‘custody’ is not clearly defined in any Pakistani family law, whether common or religious. The term ‘guardian’ is defined by the Guardians and Wards Act 1890 as a person having the care of the person of a minor, of his or her property, or of both his or her person and property. Another term used by the law is ‘natural guardian, who is the person lawfully presumed to be the guardian of a minor and who is presumed to be authorised to take all decisions on behalf of the minor. At this juncture, it is worthy to understand that the Act ibid. further provides the concept of joint guardianship by virtue of the provisions of Section 15 of the Act, subject to the personal law of the minor permits; however, there is scant jurisprudence regarding the said provision. But the law does provide for two or more guardians being appointed for the same person. In an appropriate case, this is an area that needs consideration given changing family structures, especially in urban areas where both parents often work and can assume responsibility for the

maintenance, health, and education of the child.

In Pakistan, the Guardians and Wards Act was enacted in 1890 by the colonial state, which continued the legacy of common law and the supremacy of the paternal right to guardianship and custody of children. While Sections 7 and 17 of the Act afforded that courts should act in continuation of the welfare of the child, Sections 19 and 25 of the original Act subordinated the same to the authority of the father. It is only the Family Courts Act 1964, ordained by the independent Pakistani state, that provides that the welfare of the minor shall be the dominant consideration superseding all other factors, as well as relevant Supreme Court and High Court judgements, and determines that the law on custody in Pakistan has progressed to a point where it is appropriate to initiate a discussion on the idea of shared parenting and joint guardianship for separated parents.

In law, 'Guardian' means a legal guardian who can and who should take care of the person of the minor and administer the property of the minor unless he is disqualified in law or, in fact, when he may be substituted by intervention of the Family Court or by a law, and if any other person acts for the minor, he or she can never be recognised as a guardian in law except to bind the minor and his estate by rule of estoppel and rule of demonstration for the advantage of the minor or the estate by legal fiction and not by rule and which can be either endorsed or repudiated by the minor after reaching the age of majority. The jargons 'de jure guardian' and 'de facto guardian' etc. are all protection quasi coverage for the advantage of the minor and his estate and legal communications as a public guiding principle and not as an ancillary to the real legal status and legal consequences. Thus, in the absence or death of the father, the natural guardian, or when he conflicts with the interests of the minor, the mother or any other person can act for the interests of the minor and his estate to bind him and his interests within the regulation of law and not otherwise.

It was held in Ms. Shazia Akbar Ghazali vs. Additional District Judge, Islamabad East {2021 MLD 817 Islamabad} that the distinction between custody and guardianship and the respective rights and obligations of a custodian and a guardian under the Act, especially where one parent has custody of the child and the other is the guardian, The term 'custody' is not defined in the Act. The term 'guardian' has been defined in Section 4(2) of the Act and seems to include the concept of custody, unless a guardian court awards custody of a child exclusively to a party or

parent who is not the guardian of the minor. It was held in Mst. Atia Waris v. Sultan Ahmed Khan [PLD 1959 Lahore 205] that custody means actual custody and not constructive custody. However, custody was described as actual or constructive possession for purposes of protection in Jumna Khan v. Mst. Gull Ferosha [PLD 1972 Peshawar 1]. and in [PLD 1988 Karachi 252], custody was referred to as the right to the upbringing of a minor child by the mother or someone legally entitled to it. It was observed in Bushra Asghar v. Dr. Rehmat Ali [2012 MLD 1755] that guardianship entails the concept of taking care of the minor even in situations when the guardian does not have "domain over the corpus of [the] child".

In view of the case law, it is apparent that in the manner in which the concepts of custody and guardian are understood and applied, there is an overlap between the two. And where the guardian also retains custody of the minor child, there is complete overlap. The question of the respective obligations of the custodian and the guardian of the minor arises when custody of a minor is awarded to someone other than the guardian. In such a case, the custodian and guardian are separate persons, and while the guardian would maintain constructive custody over the child for purposes of discharge of his duties as guardian, he or she would not have physical custody of the child. So custody alludes to bringing up and nurturing a child and taking care of his or her personal and emotional needs on a day-to-day basis. Whereas guardianship refers to the obligation of maintaining a child, affecting legal transactions in his or her name, and retaining constructive custody over his or her person or property for purposes of discharging obligations as a guardian.

Traditionally, in the event of separation of the parents as a family unit, custody of suckling minors is handed to the mother, whereas the father is endowed with the responsibility to act as guardian for the person and property of the minor [see PLD 2009 SC 751]. However, this general rule is not carved in stone, and for purposes of the Act, the welfare of the child remains the paramount consideration (not one of the considerations or even the primary consideration). In view of sections 17, 19, and 41 of the Act, the scheme of the Act is that the father is the natural guardian even when the mother is conferred with the child's custody, and custody of a minor is not a prerequisite or constraint for being a guardian of his or her person or property. (See PLD 1967 Karachi 569, PLD 1968 Karachi 774,

and PLD 1963 Lahore 534.)

It was observed by the august Supreme Court in Mst. Feroze Begum v. Lt-Col. Muhammad Hussain [1983 SCMR 606] and reiterated in Munawar Bibi v. Muhammad Amin [1995 SCMR 1206] that maintenance of the child was the duty of the father and the mother could not be deprived of custody due to her inability to maintain her child.

Therefore, as is held in Ahmad Bilal v. Khurram Javed in WP 2383/2021 by the Honourable Islamabad High Court, the theory of the welfare of minors works differently in a claim for custody versus a claim for guardianship. In a claim for custody, a complete host of factors are to be considered by the guardian court to determine wherein lies the child's welfare. Whereas in a claim for guardianship, the law itself assumes, when Sections 7, 15, 17, 19, and 41 are read together, that the welfare of the child is best served when his or her natural father remains the guardian, unless he is declared unfit to be the guardian.

To further understand the topic, let us turn to the provisions of the Guardians Act of 1890. Section 4(2) describes the term guardian as "a person having the care of the person of a minor or his property, or of both his person and property". It must be pointed out that anyone having the care of a minor is defined as a guardian, and the word custody or custodian is not a term defined by the Guardians Act. The word custody is used in sections 12 and 24 of the Guardians Act while enabling the court to require a person having custody of the minor to produce the minor before the court and for purposes of making an interim custody plan in relation to the minor pending adjudication of a guardianship claim before the court. There is no other provision in the Act that envisages the award of custody of the minor on a permanent or semi-permanent basis to a person who is not otherwise appointed as a guardian of the minor.

Whereas Section 7 of the Guardians Act empowers the court to appoint a person as a guardian of the person or property of a minor. And it provides for the removal of any other person, by implication, who has not been appointed guardian of the minor by the court. The paramount consideration for making such an appointment for the guardian is the welfare of the minor. Pursuant to Section 7, the court has the authority to appoint a person as the guardian of the person of the minor, the property of the minor, or both.

Section 15 of the Guardians Act contemplates the appointment of

several guardians in relation to a minor at the same time. Section 15 states the following:

♦ ***15. Appointment or declaration of several guardians.***

(1) If the law to which the minor is subject admits of having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them. (4) Separate guardians may be appointed or declared for the person and the property of a minor.

(5) If a minor has several properties, the court may, if it thinks fit, appoint or declare a separate guardian for any or more of the properties. There is scant jurisprudence in relation to Section 15. But the language clearly conceives of joint guardianship for the person of the minor as well as multiple guardians for the person and for the person and property of the minor, if the circumstances so require.

In Zohra Begum vs. Maimuna Khatun (PLD 1965 Dacca 290), reliance was placed on Mst. Siddiq un nisa Bibi vs. Nizam uddin Khan (AIR 1932 All. 215), where it was observed that while appointing a guardian under Section 17 of the Guardian and Wards Act, "the personal law of the minor is to be taken into consideration, but that law is not necessarily binding upon the Court, which must ensure the welfare of the minor consistently with law". And that "personal law can be ignored if the welfare of the minor requires that someone else, even inconsistently with that law, is the more proper person to be appointed guardian of the minor. In Zohra Begum, it was held that "the Court, having regard to the provision of the Mohammedan Law and also the welfare of the minor, should appoint a guardian and not blindly merely because a mother has a preferential right or merely because a mother has lost her preferential right after having taken a second husband.

However, it is quite unfortunate to witness that our family justice system still dabbles with the age-old concepts of custody, interim custody, and sole guardianship. These terms, custody and guardianship, both emanate from a rights regime rather than a responsibility regime. Today, the importance has shifted from the regime where we were concerned with the rights of the parents over the child to a regime where we should be concerned about the duties of the parents towards the child. After the advent of the Children Act 1989 in the U.K., the old terminology of "custody", "guardianship" and "custody orders", has gone {see Cheshire and North's Private International Law, Thirteenth Edition, Lexis Nexis

Butterworths Publication (page 857)}. Taking the law from the rights regime to the responsibilities regime, the Hague Conference concluded a convention in 1996 in respect of Parental Responsibility for the Protection of Children". The provisions of this Convention place stress on parental responsibility, and they require that the child be treated as an individual and not simply as a supplement to its parents.

In this background, it is essential to grasp two terms, namely, joint physical custody and joint legal guardianship. Joint legal guardianship implies that both parents have equal rights and responsibilities towards the child, including the child's education and upbringing, whereas joint physical custody would mean that both parents would share the physical custody of the minor by spending equal time with and having equal contact with the minor.

The International Council on Shared Parenting (ICSP) at its conference held in Bonn, Germany, in July 2014 has arrived at certain areas of consensus, as follows:

(i) That "shared parenting" is defined as incorporating both shared parental authority (decision-making) and shared parental responsibility for the day-to-day upbringing and welfare of the minor between both parents, keeping in mind the children's age and stage of development. Thus, "shared parenting" is defined by the presumption of shared rights in relation to the parenting of minors by fathers and mothers who live together.

(ii) Shared parenting can be a post-divorce parenting arrangement for the optimal development of minors, including children of high-conflict parents. If there's 50-50 parent time, it might be an optimal time that every parent could expect during the weekdays or weekends, as the case may be.

(iii) There’s also a consensus that shared parenting orders can be passed, whether or not someone opposes them. Shared parenting is in agreement with the International Human Rights and Constitutional Rights of the minors to be raised by both their parents.

(iv) Any judicial discretion to be exercised by the Court must be within the best interest of the children.

(i) Though shared parenting wouldn’t apply to situations where there’s violence, abuse, or maltreatment of the minor in any form, including parental alienation,

(vi) An accessible network of relationship centres that might render relevant support services and family mediation are necessary and vital for the success of shared parenting.

Thus, the concept of shared parenting would assume greater importance after the divorce of biological parents by a dissolution of their marriage. Questions like custody, visitation, and guardianship would then assume significance within the context of their responsibilities towards their children. Thus, concepts like "joint legal guardianship" or "joint physical custody" have emerged over a period of time in several legal regimes.

In Australia, the Family Law (Shared Parental Responsibility) Amendment Act, 2006, has introduced changes to the first Act of 1975, i.e., the Family Law Act, 1975. The body of the amendment is to encourage shared and cooperative parenting after the separation of biological parents, bearing in mind the welfare of the minor, which is the paramount consideration. While considering the identical factors like compatible parenting, cooperation, degree of maturity, attitude, and behaviour of the parents, and therefore the willingness to talk with other parents,

In Great Britain, joint custody arrangements take into consideration the welfare principles that are in the interest of the minor.

Likewise, the Dutch Parliament passed a law in 1996 mandating joint legal guardianship and custody as the presumed standard for post-divorce parenting within the Netherlands. From 2009 onwards, all divorces are in the course of a parenting plan that supports the belief in the shared parenting system. If no plan can be agreed upon or the plan is not amenable, the judge has discretion to send the divorcing parents to a mediator so as to amass such a thought before continuing the divorce proceedings. The plan must include: the division in care and parenting tasks; the way to inform and consult each parent on parenting minors and therefore the costs of caring for and parenting the minors, etc.

The Children's Act No. 38 of 2005 in South Africa deals with parental responsibility to incorporate the responsibility and also the right (a) to care for the minor; (b) to take care of contact with the child; (c) to act as guardian of the child; and (d) to contribute to the maintenance of the child. Shared parenting norms are also prevailing in Canada, Singapore, Kenya, etc. [*Source: Article on "Shared Parenting System vis-à-vis

Custody of Minors and Sole Guardianship of the Minor.

As per my humble understanding, one of the ways to resolve the conundrum is by resorting to the emerging concept of shared parenting. In some overseas jurisdictions, the concept of shared parenting has been popular and prevalent but not so well entrenched in Pakistan and has been ordered only in exceedingly few cases. It's necessary to remind ourselves that a minor always requires both parents—the mother and therefore the father—to jointly bring up the child, which might have a holistic impact on the general growth of the minor. This is often because both parents have a joint responsibility in nurturing their children, as each parent contributes in a unique way to the mental, physical, and emotional/psychological development of the minor child. Hence, whenever there is a separation between the parents, shared parenting would mean that the joint responsibility would continue, subject to certain arrangements being put in place.

(iii) RIGHTS OF ACCESS OF GRANDPARENTS UNDER FAMILY COURTS ACT 1964

The rights, if any, of the parents are to be given second place, and the "child's welfare" will always be the key consideration. The welfare of the child or minor includes, but is not limited to, his health, education, physical, mental, and psychological well-being, as well as his development. His right to be together with his siblings is also very relevant. There is, as such, no check list under the governing statute to determine the welfare of the minor; therefore, each case has to be decided on its own facts and evidence brought to the record. Reliance is placed at 2019 MLD 2036 [Lahore].

Admittedly, cases pertaining to the custody or visitation issues of minors are not ordinary cases like the breach and enforcement of other civil rights and obligations, such as property disputes, etc. These cases have their own dimensions, repercussions, and consequences, founded upon human emotions and sentiments. The resolution and adjudication of this special kind of matter, therefore, should be conceived, considered, and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time, the natural feelings of the parents cannot be overlooked and ignored; if the parents mean something great for a child, the child may also mean the whole world for the parents. Despite the fact that, as an overall general practice, virtually

all the guardians and family courts across Pakistan understand that the lack of association based upon love and affinity between the minor child and his non-custodial parent or grandparent will bring about antagonism between both the minor and the parent and therefore consider a periodical get-together or meeting a fundamental need. In any case, for no good reason, our courts are hesitant to permit sensible and appropriate at-home visitation rights or access, particularly when the applicant is a non-custodial paternal grandparent in the physical absence of a non-custodial father.

A right to life not only comprises one's own life but also the life, independence, and pleasure of one's children. To disallow a person the right to the company of his children or grandchildren is as brutal a penalty as denying him the right to live altogether. It is a settled principle of law that separation is always being affected between spouses and never among parents; hence, a child can in no case be reprimanded for a wrong he has not committed nor taken part in. Denying a child the right to easy access to his paternal side of relatives is like penalising a minor child for the separation that has occurred between his parents. It is an inalienable right of every minor child to have free access to both paternal sides of the family, including the non-custodial grandparents, for an appropriate time so as to develop a bond of love and affection with the non-custodial parental side of the family. Strangely, no legal definition of the word visitation rights/parents and grandparents is available under any of the provisions of family laws practiced and promulgated in Pakistan. However, for the purpose of understanding the term visitation rights of grandparents, we can resort to the provisions of Section 4 of the Family Laws Ordinance of 1961. It is held that the purpose of enacting Section 4 in the Muslim Family Laws Ordinance of 1961 was to cater to the needs of grandchildren to remove their sufferings, but this provision could not be interpreted in a manner affecting the shares of other descendants in the property in accordance with the law of Shariah. Reliance is placed at 2005 SCMR 1595 SUPREME-COURT.

It is significant to be observed at this juncture that previously, access of a separation-affected minor towards his non-custodial parent was regulated by the provisions of Section 12 of the Guardian & Wards Act 1890, which often resulted in the chalking out of a schedule comprising as minimum as that of a mere two hours, once or twice a month, access and interaction between the divorce-affected minor child and his or her non-

custodial parent and that too to be held within the court premises. To address this shortcoming and mischief, the Legislature, through the Family Courts Amendment (LV Ordinance of 2002), introduced an independent entry in the Schedule as well as in the provisions of Section 7 of the FCA 1964 Act. The provisions of Item No. 5 of Part I of the Schedule attached with the Family Courts Act 1964 are reproduced here and below for a better understanding of the term visitation rights: 5. custody of children [and the visitation rights of parents to meet them]

Since the terms 'visit' or 'visitation' are not defined under the Guardian and Wards Act 1890 or Family Courts Act 1964, The 'Chambers Concise Dictionary Deluxe Edition' defines the word "visit" as to pay a call upon; to go to for sightseeing; to go to stay with; to make a stay; to be in the habit of seeing or meeting each other at home; a short stay, etc., whereas the 'Black's Law Dictionary' provides different concepts to the term "visitation" and has recognised five kinds of visitation rights, such as (i) visitation; (ii) grandparent visitation; (iii) restricted visitation; (iv) stepped-up visitation; and (v) supervised visitation.

The word 'visitation' is defined there with specific reference to family law, to a non-custodial parent's period of access to a child, also termed 'parental access' and further defined as 'parenting time', residential time. A grandparent's visitation is defined as a grandparent's court-approved access to a grandchild’s restricted and supervised visitation' is defined as visitation under the orders of a court in which a parent may visit the child or children only in the presence of some other individual; a court may order supervised visitation when the visiting parent is known or believed to be prone to physical abuse, sexual abuse, or violence; 'stepped-up visitation' means a visitation under the orders of a court for a parent who has been absent from the child's life that begins on a very limited basis and increases as the child comes to know the parent. Therefore, in legal parlance, the grandparents' visitation of the child is well recognized, and the same takes place in overnight custody for a short period of time. Therefore, a visitation' means a non-custodial parent's period of access to a child.

A visitation order is an order establishing the visiting times for a non-custodial parent with his or her children. Although the non-custodial parent is responsible for the care of the child during visits, visitation differs from custody because the non-custodial parent and child do not live together as a family unit. Hence the word parents," which is categorically

mentioned in Section 5 of the Schedule attached to the Family Courts Act 1964, allows the grant of visitation rights to not only the father but also to the grandparents of the minor.

The word parents, as used in the entry, is not restricted to the biological parents alone but also means and includes the grandparents of the minor. And this is the mischief that the legislature wanted to address through the instant amendment. "To ensure the correct and true interpretation of all statutes in general, four things are to be discerned and considered by a court of law, and those are: i. What was the common law before the making of the Act; ii. What was the mischief and defect for which the common law did not provide; and iii. What remedy has the Parliament resolved to cure the disease of the commonwealth? The true reason for the remedy and the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, to suppress subtle inventions and evasions for the continuance of the mischief, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono public. Reliance is placed in General Principles of Interpretation by Maxwell on the Interpretation of Statutes, Twelfth Edition.

It would not have been difficult for the Legislature to use Father or Mother instead of Parents in Entry No. 5 in the schedule attached to the Family Courts Act 1964 had it been its intention to restrict the relief of visitation to the biological parents alone and not the grandparents of the minor. The cardinal rule of construction of statute entailed two features: first, meaning; and second, object and purpose. Meaning referred to what the precise words of the statute [or its particular provision(s)] denoted. Whereas "object and purpose" referred to the reason, rationale, objective, aim, underlying principle, or raison d'être of the statute, such an interpretative approach, thus, necessarily combined both the literal and purposeful approach in discerning the legislative intent, the intention of the legislature was discovered, determined, and understood by bearing in mind the meaning of the words used in the statute while taking into consideration the purpose and object of the statute and also the mischief which the statute sought to curb. Reliance is placed at 2016 PLD 514 SUPREME-COURT.

It is particularly important to observe that, as per our traditions and culture, the children are allowed to live with their grandparents, immediate elder members of the family, and relatives during festival seasons and

other holidays. The children are also allowed to attend family functions, festivals, electronic copies available in religious institutions, etc. in the maternal as well as paternal houses in order to understand the cultural and traditional backgrounds that are prevailing in the family and community, irrespective of religious and cultural differences. This is done with the prime intention of bringing up the child as a social being and with the objective and intention of making them responsible citizens to yield fruitful results for the family, society, and the nation at large. It is also common and well-settled that the children may reside in the maternal and paternal houses along with their grandparents whenever such occasion demands. This will help the children to have a larger perspective and broader minds, which are also necessary for their welfare and wellbeing.

The Honourable Lahore High Court in Sarosh Sikander vs. Guardian Judge reported as 2021 YLR 1989 Lahore to the effect that in the Family Court Act, 1964, the Schedule made under S. 5 thereof, prescribed "custody of the children" in clause (5); however, an amendment was made through the Family Court (Amendment) Ordinance, 2002, and after custody of children," the words "and the visitation rights of parents to meet them" were added. It was further held by the Honourable Court that the word 'parent' used in S. 5 and the Sched. of the Family Courts Act, 1964, was wider in sense and was not restricted to its literal meaning, particularly when the grandchild was entitled to inheritance from the grandparent. Accordingly, the application of the grandmother seeking visitation of the minor was declared maintainable by the Court.

In another reported judgement of the Honourable Islamabad High Court, it is held that "depriving the grandmother from spending some time with her grandchild was not fair; while the custody remained with the mother, the grandmother resided within the territorial jurisdiction of the court, so apprehension of the mother was misplaced. The Guardian Court, while taking the welfare of the minor into consideration, had rightly declined the suggestion of the mother to allow visitation within the court premises. The court premises were neither an appropriate place for visitation nor were they appropriate to expose the child to its environment. No illegality or infirmity having been noticed in the impugned order, the constitutional petition was dismissed accordingly". Reliance is placed at 2018 YLR 1891, Islamabad.

Earlier, the Honourable Lahore High Court held that in the absence of the mother of the minor, the maternal grandmother had the right to see

and meet the minor. Denial of such a legal right would tantamount to depriving the minor of the love and affection of his maternal grandmother and the family of his deceased mother, which was against the welfare of the minor for the reason that the minor needed the love and affection of both his paternal and maternal relations. Minor was not to be deprived of the love and affection of either of the two blood relations and have maximum interaction with his maternal relations as well, as his permanent custody was with the father; otherwise, the same could cause an estrangement in the mind of the child, which could ultimately leave a vacuum in the development of his personality. Reliance is placed at 2018 MLD 1793 LAHORE-HIGH-COURT-LAHORE.

It is therefore suggested that the children learn many things from their grandparents and hear many stories, which are termed 'grandpa's and grandma's stories'. The grandparents also enjoy the company of the children in their old age, which will be helpful to their old age, and the same has many dimensions and significance, correspondingly. The courts, while considering custody of children or visits sought by grandparents, should bear in mind such realities while reckoning the circumstances conducive to the welfare of the child, as the welfare of the minor is a paramount consideration for a court of law to ensure.

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69.	2018 PLD 830 LHR	153.	2023 YLR 816 Peshawar
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72.	PLD 2023 Islamabad 83	156.	2018 MLD 1480 Lahore
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84-FAQ's (Frequently Asked Questions)

♦ o ***Can father's really take care of young children? Do father's even want Shared Parenting?***

That the perusal of literature in respect of child psychology goes to reveal that a child attachment with non-custodial parent establishes only when frequent visitations are paid by the non-custodial parent to the divorce affected minor child. The purpose of meeting of the minor with the non-custodial parent is to establish attachment, character building and bonding with the parent based upon love and affinity, which could only be achieved when minor gets adequate opportunity to remain in contact with the non-custodial parent frequently.

Unfortunately, however, decision makers in family law and mental health fields remain largely ignorant about several decades of research on child development. Child development researchers and child custody decision makers rarely cross paths, and most of the relevant publications intended for academic audiences are inaccessible to casual readers although this literature can be useful in conceptualizing children's needs after separation between their parents.

Research goes to reveal that the development of attachment to parents and other important care givers constitutes one of the most critical

achievements of the 1st year of life. These enduring ties pay essential formative roles in later social and emotional functioning of the minor. Infant- parent attachment promotes a sense of ownership as well as a sense of security, the beginning of self-confidence and the development of trust in other human beings. In this regard research article titled as "Using child development research to make appropriate custody and access decisions for young children, published in family and conciliation courts review; Los Angeles, July 2000, Joan B Kelly & Michael E Lamb, Volume 38, Issue No. 3:297-311, Published by Sage Publications can be taken into consideration wherein age based requirements of access of minor has been discussed at length and it has been described the fact of attachment which occurs between 07 and 24 months of age and a child by actively seeking to remain near to preferred care givers, gives increasingly clear evidence that attachments have been formed. It is further highlighted in the said article that the empirical literature also shows that the infants and toddlers need regular interaction with both of their parents to foster and maintain their attachments which is not possible in template order of meeting comprising of merely an hour or two once or twice in a month and that too to be held within court premises, often passed by our family / guardian courts across Pakistan.

The success of any task including "child-rearing" depends on two variables – Capability & Willingness.

Capability - in fact Clark, Stewart & Hayward's study (1996) found that in case of single parenting, children were better off in father's custody rather than mother's custody on comprehensive parameters of anxiety, depression, problem behavior and self-esteem. Frodi and Lamb found no sex differences in psycho-physiologic responsiveness to videotapes of quiescent, smiling, or crying infants. These findings were extended to investigate 8- and 14- year-old boys and girls in a similar research design, and Frodi and associates concluded that there were "no biologically based sex differences in responsiveness to infants." Fathers of infants were found to be equally anxious as mothers about leaving their infants in the care of others. The men's skills at identifying their infant also are equivalent to those of women. Israeli fathers who were blindfolded and blocked olfactory still were able to recognize their infant by touching their hands, as were their mothers. Newborn nursery observations by Parke and Swain documented that fathers responded to infant cues regarding satiation, burping, soothing, and so forth, as

effectively as did mothers. Fathers adjust their speech patterns spontaneously when interacting with infants, speaking more slowly, in shorter phrases, and using multiple repetitions of a musical nature.

Willingness - Research has shown that father's all over the world prefer Shared Parenting, however, are constrained by gender stereotypes prevalent in the society and more importantly by 3 key reasons why a number of fathers did not even ask for Shared Parenting. One, they were really worried about the lengthy & possibly dirty legal battle; Two, they were not willing to put their children through the ordeal and Three, because they felt that the courts were loaded in their opinion against fathers and therefore their chances of getting Shared Parenting was slim. (Frieman, 2007; Kruk, 2010; Stone & Dudley, 2006). Further willingness has been incorporated in the process through institution of "Parenting Plan" in the first step of evaluation itself.

♦ o ***What about Primary Attachment that primary caregivers (usually mothers) form which is considered to be utmost importance for children's nourishment and psychological well-being***

1. The Primary Attachment theory postulated by Goldstein, Freud & Solnit (1973) was a landmark paper (Building on theory of Monotropy postulated by John Bowley) wherein they linked the psychological well-being of a child to primary attachment (with mother) formed in infant years. Using this theory as a base Michael Lamb & Joan Kelly (2000) and Richard Warshak (2000) came to a conclusion that it is not one but multiple attachments which are formed of which 2 are of primary importance (mother & father). Fathers & mothers have been found to have complementary roles, which are both essential and most importantly these roles are societal and not genetic, that is both and fathers can take on each other's roles if the situation so demands. in fact Clark, Stewart & Hayward's study (1996) found that in case of single parenting, children were better off in father's custody rather than mother's custody on comprehensive parameters of anxiety, depression, problem behavior and self-esteem.

This debate has still not been settled, however, what all researchers do agree on is that the primary attachment(s) whether one or multiple is formed maximum by the age of 12-18 months and therefore, in our recommendations we have taken a cut-off date of 2 years to initiate Shared Parenting including overnight visits.

♦ o ***Is it not extremely disconcerting for children to constantly shift from one house to other, does Shared Parenting not treat them like chattels or toys?***

2. Yes, this is one of the disconcerting and unfortunate impact that children of divorce have to go through irrespective of whether they are in Shared Parenting or weekend visitation plans, because the number of exchanges per month remain the same. However, 2 studies of British children aged between 6 and 22 with sample size of 117 children and 73 children are instructive. 2 key findings emerged; one that though children (especially adolescents, the rebellious teens!) complained of having to change their social life etc every week or so, they still preferred the dual arrangement over single parent and two that the earlier the system of Shared Parenting is instituted in their lives, the better they are able to adjust and cope with the arrangement.

Moreover, the children who were the most stressed and unhappy were not those in dual residence, but those who lived with their mother but seldom saw their father (Smart, 2001).

♦ o ***What about children who go through physical or sexual abuse, how can we be sure that our children will be safe?***

- Firstly, contrary to prevalent view, both men and women may be sexual offenders, though men are more likely to commit sexual offence than women. Secondly, research in Australia (Kaspiew et al) which made Shared Parenting into a law in 2006 has concluded that physical & sexual abuse is lowest in families with Shared Parenting, even lower than in intact families. However, it is well recognized that even one child who has to go through such a traumatic experience is something that we as a society must try to prevent. It is further well recognized that child sex offenders have typically been convicted previously in sexual or non-sexual crimes. Lastly, a process of filters has been put in place in order to weed out such parents, through institution of mental health professionals, taking into account any history of mental illness or criminal record. Similar filters also need to be put in place for emotional abuse of children, i.e. Parental Alienation, in fact Brazil is the first country which has passed a law against Parental Alienation and UK is in the process of doing so.

♦ o ***Non-custodial parents (especially fathers) will use Shared Parenting as a tool to decrease or eliminate child maintenance or harass custodial parents***

Evidence points to the contrary. Large study conducted by AIFS (Kaspiew et al, 2009) states that there is no difference in payment of maintenance by fathers in Shared Parenting rather it is the fathers who rarely saw their children who default. Similarly, Kate Funder (Australian Institute of Family Studies) in her article "New Partners as co-parents" found that when fathers are living with their children, their willingness to financially support their children was much higher than non-living fathers.

Any parent who is genuinely not interested in caring for his / her children or is unable will easily be found out by not picking up his / her children, not spending time with his / her children during access, denigrating the other parent in front of children in order to alienate the child, leaving the child in the custody of maids, not visiting the school of the child on important events etc. Therefore, it is important to err on the side of giving more access so as to allow for a bond to develop and for the child to enjoy his / her God-given right to enjoy the company of both parents, rather than err on side of lesser access thereby killing the relationship altogether. Pakistani mythology abounds with stories of even the most "hardened" parents being transformed in the company of children!

♦ o ***Creating a Shared Parenting platform will only increase the animosity between the parents, how can 2 individuals who are divorcing due to "irreconcilable" differences between them ever agree to raise their children together?***

– For one, it has been conclusively shown by research that parents do not need to agree on a Shared Parenting plan for it to be successful. in fact, only ~30% agree to a Shared Parenting plan but the success rate as measured by continuity of plan after 3 years and well-being indicators of the child, is more than 70%. It has been seen that parents tend to gravitate towards "parallel parenting" and individually bond & help the child in their own unique ways. However, as mentioned before, there are a few "intractable" couples for whom psychological counseling, strict "no-contact" parenting plans and strong fear of the law is suggested.

♦ o ***Why does the "non-custodial" parent need so many days to form a healthy bond with the child?***

It is not the question of the parent needing "so much" time with the child, but rather the need and best interest of the child which demands that the parent spend substantial quality time for a healthy and normal bond to

be formed. There is a significant co-relation between the amount of time spent by the non-custodial parent and the bonding, hence psychological well-being of the child. It has been conclusively proven that when the child is living in a dual residence (Shared Parenting), both the child and parent is able to mimic a non-separated family and react to each other in a natural, relaxed way thus strengthening the bonding.

- 1,030 students (of which 400 were living in Shared Parenting arrangement were methodologically studied (Fabricius, Diaz & Braver, 2011) and the amount of time that the child spent with the "non-custodial" parent significantly impacted the quality of relationship and thus bonding developed. The bonding and well-being of children in Shared Parenting was better even when compared against children visiting their fathers on 2 weekends every month.

- In the Netherlands, 135 children in Shared Parenting families had as close a relationship with both parents as the 2,000 children from intact families. These father–child relationships were closer than those where the father regularly spent time with the children who lived with their mother (Spruijt & Duindam, 2010).

- In the Stanford Custody Study, 4 years after their parents' divorce the dual residence adolescents had closer and more trusting relationships with their fathers than those who had only spent a few nights a month in his home (Buchanan & Maccoby, 1996).

- 400 university students were interviewed (Fabricius, 2003) and 93% of the children living in Shared Parenting felt that this was the best parenting plan, however, only 30% of students living in sole residence (with regular visits by father) felt that this was the best parenting plan.

- The co-relation of time with bonding held true even when there was high conflict between the parents (Cashmore, Parkinson & Taylor, 2008)

- The greatest benefit comes to children when parents practice an "authoritarian" model of parenting which can be best practiced by doing ordinary routines and rituals include cooking together, running errands, getting ready for school, working together on homework, shopping, doing chores, and being together in spontaneous, unstructured ways. (Amato & Dorius, 2010)

♦ o ***Since researchers point out that very high conflict between parents is associated with poor outcomes for children, Shared Parenting should be avoided in these circumstances?***

It is true that high conflict between parents is associated with poor outcomes; however, as long as the conflict is non-physical, there is absolutely no reason to abandon Shared Parenting for the following reasons;

- Children of "high-conflict" parents need Shared Parenting the most since they are at greatest risk of losing contact with non-custodial parent
- Shared Parenting, since it increases satisfaction levels and instills a sense of fairness, may decrease conflict in some cases.
- In case even after counseling and intervention by mental health professionals, they are not able to co-operate, "parallel parenting" is shown to be effective and least traumatic for the child.

Therefore, abandoning Shared Parenting would be akin to throwing the baby away along with the bath-tub water, in this case literally!

o There are far too many intricacies in each case, it is best left to the court to appreciate them and determine best parenting arrangements without any presumption

This paper does not advocate a "one-size-fit-all" legislation; the Courts still have the discretion to choose among many, the best arrangement for children. However, our courts are far too inundated with cases such that it takes 5-6 years for the judgment to be delivered, which is more than 1/3rd the life of a child. Further, the Courts within a limited contact that they have with the litigants are not equipped to make a judgment call on appropriateness of a parent for the child. in any case, all this paper does is presumes that both parents have only the best interests of the child in their mind, which in any case is what we presume for >90% of non-litigating parents! All we propose to do is to put the onus on litigating parents to prove that in spite of research from all across the world universally stating that Shared Parenting is the best solution for children & parents, why their case is unique and should be treated differently. in fact, in spite of this legislation being passed in Australia in 2006, only ~ 30% of cases have Shared Parenting orders since then, but is

increasing each year and hopefully leading to a dynamic new society of better-adjusted and secure children.

o I understand that the custodial parent is emotionally abusing the child by denigrating the non-custodial parent, throwing away gifts, changing name etc, in effect practicing "Parental Alienation". However, the custodial parent has a good bonding with the child, don't you think it is best that the child remains with the custodial parent. Shift of custody is too drastic & more damaging a response.

Many very "logical" reasons are given by Courts / courts on why they are helpless in cases of "Parental Alienation" and believe that the best interests of child would lie in maintaining status quo and not treating the child like a chattel. Some of these are, "mothers are the best Court", "As parents mature & conflict reduces with time, it will sort itself out", "the child is not a chattel, who can be shifted from one house to another", "the damage to child of losing his / her primary attachment figure (custodial parent) outweighs the damage due to alienation", "this will encourage all non-custodial parents to allege alienation" etc.

The most appropriate question to ask would be that in case one parent is indulging in physical / sexual abuse of the child, would they still express the same views. Emotional abuse in mature societies must be treated at par with physical / sexual abuse and in some cases even greater, for emotional abuse is more likely to destroy the child's psychological & emotional development and thus the fabric of our society. Brazil has in fact passed a criminal law against Parental Alienation while UK is in the process of doing so.

In the most well-documented study on this, Richard Gardner (2001) studied 99 cases in detail of "Parental Alienation" wherein courts had ordered shift of custody. in 22 of those, actual shift took place while in 77 shift did not take place. of the 22 cases, PAS symptomatology was either significantly reduced or eliminated, while of the 77 cases, in 91% (70 cases) PAS symptomatology increased and only in 9% of the cases did the symptomatology come down. Therefore, while it may seem too drastic a measure to shift custody of the child out of alienating parent, it has been shown to be effective.

o The child is just not willing to go with the non-custodial parent, cries or becomes aggressive, what can the court or custodial parent do?

The primary & only goal of guardianship courts has to be to establish, preserve and strengthen a positive parent-child relationship with all willing and capable parents.

♦ ***This can be due to 4 major reasons:–***

- Separation Anxieties: similar to leaving a child to school on the first day, normally seen in young children seeing their parents after a long time. Just the way we as parents cajole them to stay in school, therefore, encouraging them & sometimes even forcing them may be the only intervention required for the benefit of the child. Therefore, a schedule for gradual re- introduction of absent parents has been suggested.

- Disruption: Largely seen in teenagers who sometimes perceive non-custodial time to be a disruption in their normal school or home schedule. in this case also, a bit of a carrot & stick and push towards an objective for their benefit is the best solution.

- Alienation: A large portion of children refuse to do so on account of being "alienated" by the custodial parent, wherein as small a suggestion by the custodial parent that the child will get a special present or a promised "gift" will be withheld could manifest itself as refusal. of course, far greater degrees of indoctrination & alienation are practiced by some alienating parents which causes havoc in the lives of children. in such a case also, the child needs to be gently coerced, sent to mental health professionals (including alienating parent) and as successfully demonstrated by Dr. Richard Gardner, even shift the custody so as to help the child form a bond with the alienated parent, something that could be a positively life-saving experience for the child.

- Estrangement: Finally, a small portion of children refusing to do so fall under the category of "Estrangement", that is due to family violence witnessed by them they have developed an aversion towards one parent or in case of older children, they have identified themselves with custodial parent and feel hurt / angry on account of custodial parent. Therefore, in case history of family violence is ruled out, then a bit of coercion, followed by help from a mental health professional and finally maximum exposure to non-custodial parent will benefit the child significantly.

Therefore, as can be seen, except where there is documented history of family violence and the non-custodial parent is willing and capable, coercion / force to gradually build up bonding / relationships,

followed by help from mental health professional to gradually increase access (including overnights) and lastly followed by shift of custody (since after ruling out all other reasons, alienation is the strongest possibility) is the best course of action. However, experience shows that other than in cases of severe alienation, more than 95% of cases resolve through coercion and short intervention of mental health professionals.

♦ o ***Why aren't there any Pakistani research studies on the topic?***

That to address this agonizing problem the Honourable Supreme Court of Pakistan in Madiha Younus Vs Imran Ahmad cited as 2018 SCMR 1991 issued a comprehensive plan with regard to Custody, Visitation and Maintenance of minor children and obligations of both parents listed. In this case, Honourable Karachi High Court has allowed custody to be retained by the father of the minors against which the mother of minors approached Honourable Supreme Court of Pakistan. During the proceedings before Honourable Supreme Court, Learned Counsel for the Respondent Father proposed a compromise and states that the terms and conditions of the compromise are such that, if at all, custody is handed over to the Respondent No.1 – father, he shall ensure the visitation rights to the Petitioner in the manner stated therein. According to him such visitation Rights are equally balanced and if at all, the mother petitioner wants to retain the custody similar rights may be given to him. It is significant to be asserted here with humility that the Honourable Supreme Court of Pakistan allowed Custody of both the minors to the mother and Schedule of Visitation to the Respondent Father.

Whereas, Pakistani courts in general have not awarded many shared custody judgments and therefore it is very difficult to create a sample. Secondly, a few shared custody families that do exist have done so purely voluntarily, with "mutual consent", therefore data from those families is neither forthcoming nor very relevant for the purpose of this book. Lastly, as a nation, sociological research of this kind and divorce has been treated as a taboo in our society and therefore discussions on this are swept under the carpet for the want of "propriety"!

85- <u>(Sociological Research Findings)</u>

o Father's absence in children's lives is associated with significant psychological trauma, behavioural problems, poor academic

achievement and poor social outcomes.

- In an examination of the associations between father absence and the onset of female sexual activity and adolescent pregnancy, Ellis et al. (2003) found that adolescent females who experienced father absence at an early age (less than five years), the authors concluded that adolescent females exposed to father absence, particularly at an early age, have a greater risk of engaging in sexual activity and becoming pregnant at an early age, whereas father presence was a protective factor against early sexual activity.

- Barber and Eccles (1992) examined the long-term impact of divorce and single woman-headed families on adolescent development, particularly on career aspirations, personal relationships and self-identity. They found that adolescents who experienced father absence had lower self-esteem, engaged in sexual activity at an earlier age and had lower general achievements compared to adolescents of intact dyadic families. Furthermore, a negative impact on personal relationships was noted (Barber and Eccles, 1992).

- It has been well documented that children of single parent-headed families, typically headed by females, exhibit more behavioral problems, poorer academic achievement, engage in early sexual activity, demonstrate poorer psychological well-being and experience greater life adversity, compared to the children of dyadic families (Ellis et al., 2003; Farrell and White, 1998; Hetherington et al., 1998; Lang and Zagorsky, 2001; Spurijt et al., 2001).

- Furthermore, Pfeiffer et al. (2001) found that children between five and 11 years with an absent biological father had significantly higher anti-social and behavioural symptoms, and that these difficulties continued regardless of whether a stepfather was present or not.

- These “under-fathered” daughters are also more apt to make bad grades, drop out of high school, and never make it through college (Chadwick, 2002; Krohn & Bogan, 2001; Menning, 2006). They engage in more antisocial behavior and are more likely to be arrested for breaking the law (Coley & Medeiros, 2007; C. Harper & McLanahan, 2004). With more self-image problems (Dunlop, Burns, & Berminghan, 2001), they abuse drugs and alcohol more often, even when they do not live in poor communities (Hoffmann, 2002; Lerner, 2004). As teenagers

and young adults, they have more emotional and psychological problems and are more likely to become depressed than daughters with close, ongoing relationships with their fathers after divorce (Amato & Dorius, 2010; Carlson, 2006; King & Soboleski, 2006; K. Stamps, Booth, & King, 2009; Stewart, 2003).

- Father involvement is associated with positive cognitive, developmental, and socio- behavioral child outcomes such as improved weight gains in preterm infants, improved breastfeeding rates, higher receptive language skills, and higher academic achievement. [Pediatrics. 2006 Apr; 117(4): e637-45.; Fathers and the well-child visit.; Garfield, Isacco A. Department of Pediatrics, Evanston Northwestern Healthcare Research Institute]

  - Children in Shared Parenting plans have been found to be psychologically, emotionally and academically far better off than children in sole custody. Research has shown them to be less depressed, have fewer health problems, are less aggressive, have higher self-esteem, show lesser stress-related illnesses and perform better academically.

- Many Australian mothers find sole parenting a tough task and crave some respite from its demands, seeing part-time weekend parenting an easy ride compared to the hard yard's mothers have to do. (Australian Institute of Family Studies, Research report No 9, 2004, Bruce Smyth)

- The philosophy of shared parental responsibility is overwhelmingly supported by parents, legal system professionals and service professionals (Kaspiew et al, 2009 – examining the impact of Shared Parenting regulation passed in Australia in 2006)

  - Shared Parenting is successful even for high conflict divorces, since most estranged couples in this category gravitate towards "parallel parenting" with little or no contact between themselves. Similarly, Shared Parenting has been equally successful irrespective of education of parents or quantum of money earned by the parents or the gender of the child.

- Parents can share the residential time even though they are not talking to each other or trying to coordinate the child rearing environments of their two households (Maccoby & Mnookin, 1992, pp. 248, 292).- Landmark Stanford Longitudinal Study covering 1,110 divorced families & 1,386 children

- In yet another study with 354 teenagers, those who spent the most time with their fathers were closer to him, admired him more, and felt they would talk to him if they were unhappy or had a major decision to make. This held true even for those whose parents had ongoing conflicts (Sobolewski & King, 2005).

- It is true that McIntosh in his paper [Shared Care and Children's best interest in conflicted separation] has stated that high, ongoing conflict between parents is detrimental to Shared Parenting success. However, multiple researchers have stated,, it is worth noting that the general consensus among experts is that nonphysical conflict should not be used as an excuse for limiting the amount of time that children spend with either parent after their divorce (Afifi & Hamrick, 2006; Ahrons, 2007; Amato & Dorius 2010; Buchanan & Maccoby, 1996; Emery, Otto, & O'Donohue, 2005; Emery, Sbarra, & Grover, 2005; Fabricius, Braver, Diaz, & Schenck, 2010; Gunnoe & Braver, 2001; Johnston et al., 2009; King & Soboleski, 2006; Sandler, Miles, Cookston, & Braver, 2008). The key word is "nonphysical conflict".

In shared custody situations, "there appears to be less change in contact in the first several years after separation, particularly when the arrangement is close to 50/50" (Kelly, 1994: 5). Others have found that fewer fathers "dropped out" in shared compared to sole maternal custody arrangements (Coysh et al., 1989; Kline et al., 1989).

It is rather sad that on one hand we talk about gender equality, women empowerment and providing equal opportunities for men & women, while on the other hand we send out conflicting messages by reinforcing gender stereotypes and condemning our women to being sole child care-givers & home-makers and thus preventing them from making economic & other contributions to the society.

Shared Parenting Plan though has not been shown to conclusively decrease animosity however a predictable format of orders of Shared Parenting definitely decreases the amount of time spent on litigation, thereby decreasing the work-load on courts. Although, research does conclusively state that Shared Parenting does not increase inter-parental conflict.

King & Heard (1999) analyzed parental conflict and found that the maximum parental conflict is found when child visit by the non-custodial parent are in the middle range and that high contact between non-custodial

parent & child (as in Shared Parenting) is associated with lower parental conflict.

Australian Institute of Family Studies longitudinally analysed data on 7,718 children of which ~4,000 children were under the age of 5 years (Kaspiew et al). The data revealed that 90% of parents practicing Shared Parenting (35-65) were satisfied with their parenting plans.

The evaluation indicates that a majority of parents are able to sort out their post- separation parenting arrangements quickly and expeditiously (Kaspiew et al, 2009)

Shared Parenting Plans encourage and facilitate women to enter back into work-force faster, thereby giving a boost to the economy.

Shared Parenting minimizes "bargaining in the shadow of law" thereby increasing the perception of fairness of justice system.

Over the long term, Shared Parenting coupled with shared earning emanating from economic freedom of women has resulted in decrease in divorces. Although, not yet conclusively proven, a recent study in USA found that families where both parents share child-rearing & earning responsibilities are 50% less likely to divorce. Similar data has emerged from Sweden.

86. (Detailed Shared Parenting Plans)

It is important to remember that Shared Parenting Plans do not mean an exact apportioning of 50% time to each parent but rather a collaborative process wherein each parent's work schedule, proximity to each other's house, age of the child, availability of support system etc is looked into while arriving at the best plan for child's welfare. It is widely accepted that weekend "Santa Parenting" is definitely not in the best interest of the child and definitely does not constitute Shared Parenting, however, any plan wherein each parent gets at least 30% of child's time can be considered to be a good Shared Parenting plan. At the same time, it

is not just the concept of time but also of responsibilities that must be shared between parents, whether in terms of financial, social, psychological or security.

With these concepts in mind, there are some well accepted plans which have worked well for a number of parents across the world;

- ***Principles:***

1. The primary goal of family courts is to establish, preserve and strengthen positive parent-child relationship with both parents

2. Children have the right to know, be cared for and regularly communicate with both their biological parents and their families (grandparents, siblings etc), regardless of whether their parents are married, separated or have never married or have re-married.

3. Parents jointly share duties and responsibilities concerning the care, welfare and development of their children.

4. Each parent has sufficient time to be part of all different activities of a child's life, including waking & sleeping rituals, school activities, social activities, festivals / celebrations, vacations etc

- ***Common Attributes across all Parenting Plans:***

A child less than 2 years of age will normally be largely in the company of the mother and Shared Parenting will not be applicable. Thereafter, a child who has been seeing his father through a visitation schedule will be gradually shifted to Shared Parenting over a period no longer than 6 months, i.e. latest by the age of 2.5 years.

A child who has not seen the non-custodial parent for more than a period of 12 continuous months, will be gradually re-introduced to the non-custodial parent and shifted to a Shared Parenting plan within a period no longer than 12 months.

Vacations: in Pakistan, there are 3 common vacations in schools & colleges across the country – Summer (Approximately 90 days), Spring (Approximately 7 days) & Winter (Approximately 10 days) – Both parents of children over 3 years of age should be granted 50% of all vacations with regular telephonic, e-mail or video-chat with other parent during this period. The normal Shared Parenting plan shall remain suspended during the vacations. While overnight stays (typically 1-2 nights on weekends) with non-custodial parents may start at the age of 2 years, a long vacation is generally suggested at the age of 3 years onwards.

Festivals: A list of 12 common festivals should be drawn up by each parent for each year, as per the local customs and religion of each parent. For festivals exclusive to one parent (eg: Eid to Muslims or Parsee New Year for Parsees etc), overnight access or at least access of 6 hours should be granted to that parent. in case of common festivals (eg: Eid Milad Un Nabi or Pakistan Day), both parents may agree to sharing a few hours or the court may give it to each parent on an alternating basis, i.e. odd numbered years to one parent and even numbered years to the other.

Birthdays: Upto 6 birthdays are envisioned per family, i.e. Child's birthday, Siblings birthdays (including close cousins), parents birthdays, grandparents birthday. Same principles as in "Festivals" should be followed.

Schools: The schools are required to post the progress report of the child to both parents and also inform both parents regarding any upcoming Parent-Teacher Meeting, Sports Day, Cultural Event etc. Both parents are required to attend at least 50% of these events failing which the court may withdraw this privilege from the parent. The court may show relaxation on the 50% attendance in case of "non-custodial" parent living more than 4 hours away from the school.

Any medical illness of a child must be immediately (within 4 hours) intimated to the "non-custodial" parent and the "non-custodial" parent must be allowed uninhibited access to the child and his / her medical records.

Both parents have uninhibited privileges in terms of making phone calls, having video-chats, writing e-mails to the child during the "non-custodial" period.

In case of conflict regarding "non-custodial" parents place of residence being less than or more than 4 hours away, the opinion expressed by "non-custodial" parent is to be given weight age and generally accepted

Change in Schedule: Each parent is allowed to make 3 changes each year in the schedule after informing the other parent well in advance, however, any request for change must be made with at least 2 options to make good the change. No changes should be requested during special occasions (Birthdays / Festivals etc), unless there are well documented emergencies.

Re-location of Custodial Parent: The custodial parent may be allowed to re-locate only if a signed joint consent is presented by both parents or once the court is satisfied regarding the following;

Re-location is in the best interests of the child with regards to schooling and social & psychological development

A statement of compelling reasons is given by the custodial parent regarding the need to re-locate, along with proof of service of notice to non-custodial parent

An alternate "Parenting Plan" has been prepared by the non-custodial which ensures substantial and meaningful access for the non-custodial parent

There is no attempt by the custodial parent to deprive the child love, care and affection of the non-custodial parent

Parents living in the same city with one parent being the primary earner having heavy work schedule

Less than 2 years of age

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1							
Week 2							
Week 3							
Week 4							

Note:

Visits to range from 2 to 4 hours

For the first 2 months, the custodial parent could accompany the child during these visitations, however subsequently, the non-custodial parent should have singular access

Use of "Children Rooms" in court premises is generally not in the best interests of the child & therefore best avoided, however, it may be used for children less than 2 years of age during initial 2 months.

a. More than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note: The half day mid-week visits (Wednesdays in the chart above) are preferably straight after school, i.e. ~ 2:30 pm and end at 8 pm. Similarly, mid-week pick-ups (Thursdays in the chart above) are from school or immediately after school.

Parents living in the same city with both parents working

b. Less than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note:

Visits to range from 2 to 4 hours

For the first 2 months, the custodial parent could accompany the child during these visitations, however subsequently, the non-custodial parent should have singular access

Use of “Children Rooms” in court premises is generally not in the best interests of the child & therefore best avoided, however, it may be used for children less than 2 years of age during initial 2 months.

c. More than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Parents living in separate cities with travel distance of less than 4 hours

Less than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

More than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note: On alternate Sundays (i.e. Week 2 & 4 in the chart above), the "non-custodial" parent may take the child out for 4-5 hours within the city of the "custodial" parent. Further, the court may wish to compensate the "non-custodial" parent with greater access during vacations.

Parents living in separate cities separated by more than 4 hours of travel time

d. Less than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note:

The schedule outlined above does not presume an overnight stay on Saturday nights but rather two separate visits, i.e. on Saturday evening (for 3-4 hours) and Sunday morning (for 3-4 hours).

In addition, the non-custodial may be given the liberty to visit his child for 2-4 hours on any weekday on which the non-custodial parent is in the city.

For the first 2 months, the custodial parent could accompany the child during these visitations, however subsequently, the non-custodial parent should have singular access

Use of “Children Rooms” in court premises is generally not in the best interests of the child & therefore best avoided, however, it may be used for children less than 2 years of age during initial 2 months.

e. More than 2 years of age

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1							
Week 2							
Week 3							
Week 4							

Note:

In addition, the “non-custodial” parent may be given the liberty to visit the child during any weekday (3-4 hours), whenever he is visiting the city, after informing the “custodial” parent.

Since this plan does not ensure Shared Parenting (35-65%), the court may wish to grant extra time during vacations / festivals to the non-custodial parent

87- (Suggested Legal Process)

Any couple with children, when they approach the court for divorce or maintenance or custody related litigation, the first concern of the court should be around children and parental responsibilities. Therefore, the following process is suggested;

Immediately refer the parents to mediator / counselor for re-conciliation / mutual agreement along with a copy of "Parenting Plan".

Reconciliation is of course the most desirable option and parents are encouraged to sort out their differences amicably over few sittings with the mediator / counselor.

In case the parents reach a mutual agreement to part ways, they are instructed to jointly sign on a parenting plan and the court must satisfy itself that all child responsibilities are taken care of.

In case the parents are not able agree for a mutual agreement, then they are instructed to fill the "Parenting Plan" before the suit can proceed any further.

In case parents agree on a "Parenting Plan" and court is satisfied that the same is in the best interests of the child, the same may be put on record of the suit.

In case parents do not agree on a "Parenting Plan", the court should pass an order within 3 months of parents presenting themselves to court. The "interim order" must deliberate on award of "primary custody", visitation to non-custodial parent and suggested future course of action. While passing the order, the court must take the following into consideration;

Primary Considerations:

i. Willingness (as expressed in Parenting Plan) & ability (education, financial capability, health, work schedule etc) of either parents.

ii. Any documented history of mental illness or criminal record which could place the physical or emotional well-being of the child at risk.

iii. Any documented history or reasonable risk of physical or emotional abuse to the child

Secondary Considerations:

1. Age of the child

2. The parent showing greater willingness to cooperate with the other parent with regards to parenting

3. The practical difficulty and expense of a child spending time and communicating with the parent

4. The extent to which each parents has taken the opportunity (or failed to take opportunity) to communicate & spend time with the child and fulfil parental responsibilities

The court may NOT call the child for a "interview" to ascertain his wishes for access to non-custodial parent, unless;

The child is more than 7 years of age and in the opinion of the court and parents is able to make intelligent articulation of his likes and dislikes.

The child has been in a Shared Parenting plan for a period no less than 1 year and is more than 8 years of age.

There are serious allegations of sexual or physical or emotional abuse of the child by one parent, documented history of the offending parent and prima facie evidence presented to the court point towards a reasonable possibility / risk of sexual or physical or emotional abuse. in such a circumstance, the court should take the help of a court appointed mental health professional who must present his / her report within a period of 3 months from the date of order. Separate guidelines for mental health professionals prepared by competent authorities must be adhered to. During this period, the court may order the "alleged offending" parent to visit the child in court premises in the "Child Visitation Room".

The interim order may be one where the "absent" parent is being gradually re- introduced into the life of the child in case there has been no interaction between the child and non-custodial parent for more than 6 months. in such a case, the court must make provisions for gradually shifting the child to a Shared Parenting arrangement within a period of 6-12 months.

The court after a minimum period of 1 year should call both the parents for a review of the parenting plan enforced and review the "performance" of both parents (through individual interviews) on the following parameters alone;

Have both parents been regularly picking up the child as per the access time allotted to them?

Has either parent been creating any hindrance to access of the child by the other parent? – Questions for assessing whether the child is being tutored / brainwashed in order to deprive the other parent must be asked.

During the time of access, has the parent been spending "quality time" with the child and engaging with the child in activities appropriate for the age of the child?

Have both parents been visiting the school of the child on events (as outlined above)?

Is there any specific, serious and documented reason to be worried regarding the physical safety of the child?

In case of serious allegations of neglect with prima facie evidence, the court may call the child to assess, however, this must be avoided as far as possible and preferably the child should be sent to a mental health professional for evaluation, with a request for report within a period of 1 month.

Is there any joint request by both parents to modify the plan enforced by the court?

The purpose of child / parent interviews is to ascertain suitability of both parents for parenting, re-establish positive parent-child relationship (in case absent) and formulate the best Shared Parenting plan for that particular child and parents. in case "child interview" needs to be conducted, it should be conducted on two different occasions, once brought in by each parent, so as to negate any effect of tutoring by either parent.

Dealing with "High Conflict" Parents:

The need for Shared Parenting is probably the greatest in high conflict separations, since the threat for the child losing contact with "non-custodial" parent is the greatest, thereby causing significant emotional, psychological & social damage

These cases usually have one party with a significant personality disorder (Narcissistic, Border-line, Histrionic, Paranoid or Obsessive-Compulsive) and therefore mental health professionals should be frequently referred to, including appointing them as "Special Masters" with powers to take decisions on their behalf as a neutral decision-maker.

False allegations & contempt of court orders only increase conflict and therefore must be strongly & strictly dealt with at the first instance.

Use unconventional ways to rein in litigating parties, including ordering social work, shift of custody, heavy penal fines etc.

Time is of the greatest essence for child's well-being, therefore, early "diagnosis" and quick / firm orders go a long way in helping the child and parents.

It is worthwhile attempting to make them co-operate, however, not necessary, they may be allowed to practice "parallel parenting" with as little interaction between them as possible.

The parenting plans made for them should be highly structured and detailed, so as to minimize any possibility of conflict

88-Guardian & Wards Act 1890

GUARDIANS AND WARDS ACT, 1890

[1]ACT No. VIII OF 1890

[21st March, 1890]

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows: –

CHAPTER I PRELIMINARY

1. Title, extent and commencement. -(1) This Act may be called the Guardians and Wards Act, 1890.

[2][(2) It extends to the whole of Pakistan;] and

(3) It shall come into force on the first day of July, 1890.

2. [Repeal.] Rep. by the Repealing Act, 1938 (I of 1938), s.2 and Schedule.

3. **Saving of jurisdiction of Courts of Wards and Chartered High Courts**. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by [2][any competent legislature, authority or person] in [3][Pakistan], and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by [4][any High Court [5] * * *].

[1]For Statement of Objects and Reasons, see Gazette of India, 1886 Pt. V, p. 77 ; for Report of the Select Committee, see ibid., 1890, Pt. V, P. 77, and for Debates in Council, see ibid., 1886, Supplement, pp. 419 and 666, and ibid., 1890, Pt. VI, pp. 33 and 45. This Act has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P, subject to certain modifications and; also extended to the Excluded Area of Upper Tanawal (N.W.F.P.) other than Phulera with effect from such date and subject to such modifications as may be notified, see N. W.F.P. (Upper Tanawa1) (Excluded Area) Laws Regulation, 1950. Extended to the Leased Areas of Baluchistan, see the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950) ; and applied in the Federated Areas of Baluchistan, see Gazette of India, 1937, Pt. I, p. 1499. Extended to the Baluchistan States Union by the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G.G.O. 4 of 1953), as amended.

Extended to the Khairpur State by the Khairpur (Federal Laws) (Extension) Order, 1953 (G.G.O. 5 of 1953), as amended. The Act has been and shall be deemed to has been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2. The Act, as in force in the North-West Frontier Province immediately before the commencement of N.W.F.P. Regulation No. II of 1974, has been applied to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Area, by N.W.F.P. Regulation, No. II of 1974, s. 3

[2]*Subs. by A.O., 1937, for "the G. G. in C. or by a Governor or Lieutenant-Governor in Council".*

[3]*Subs. by Ord. 21 of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation", which had been subs. by A.O., 1949, Arts. 3(2) and 4, for "British India."*

[4]*Subs. by A.O., 1937, for "any High Court established under the Statute 24 and 25 Vict, c. 104 (an Act for establishing High Courts of Judicature in India)".*

[5]*The words "established in [the Provinces and the Capital of the Federation] by Letters Patent" omitted by Ord. 21 of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955). The words in crotchets were subs. by A. O., 1949, Arts. 3(2) and 4, for "British India.".*

4. Definitions. In this Act, unless there is something repugnant in the subject or context,

- (1) "minor" means a person who, under the provisions of the Majority Act, 1875 (IX of 1875), is to be deemed not to have attained his majority;

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property;

(3) "ward" means a minor for whose person or property, or both, there is a guardian;

(4) "District Court" has the meaning assigned to that expression in the [6][Code of Civil Procedure, 1908] (Act V of 1908) and includes a High Court in the exercise of its ordinary original civil jurisdiction;

[7][(5) "the Court" means–

(a) the District Court having jurisdiction to entertain an application under the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a

guardian; or

[6]*Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch., for "Code of Civil Procedure".*

[7]*Subs. by the Guardians and Wards (Arndt.) Act, 1926 (4 of 1926), s. 3, for the original cl. (5*

(b) where a guardian has been appointed or declared in pursuance of any such application-

(i) the Court which, or the Court of the Officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred.]

(6) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the [1][Provincial Government], by notification in the official Gazette, may, by name or in virtue of his Office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act;

[2] * * * * * * *

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

[3][4A. **Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers**. -(1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction sub-ordinate to a District Court, or authorize the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

(3) The Judge of a District Court may at any stage transfer to his

own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.]

[1]*Subs by A.O., 1937, for "L.G.".*

[2]*Omitted by the Federal Laws (Revision and Declaration) Ordnance, 1981 (27 of1981), s. 3 and 2nd Sch.*

[3]*S. 4A ins. by the Guardians and Wards (Amdt.) Act, 1926 (4 of 1926), s. 2.*

CHAPTER II

APPOINTMENT AND DECLARATION OF GUARDIANS

5. [Power of parents to appoint in case of European British subjects.] **Omitted** by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch.

6. **Saving of power to appoint in other cases**. - In the case of a minor who is not a European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

7. **Power of the Court to make order as to guardianship**. -(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made–

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this

section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

8. **Persons entitled to apply for order**. An order shall not be made under the last foregoing section except on the application of–

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

9. **Court having jurisdiction to entertain application**. -(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. **Form of application**.-(1) If the application is not made by the Col1ector, it shall be by petition signed and verified in manner prescribed by the [1][Code of Civil Procedure, 1908] (Act V of 1908) for the signing and verification of a plaint, and stating, so far as can be ascertained,–

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if

any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

[1]*Subs by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch. f or "Code of Civil Procedure."*

(I) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses.

11. **Procedure on admission of application**. - (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof and cause notice of the application and of the date fixed for the hearing–

(a) to be served in the manner directed in the [1][Code of Civil

Procedure, 1908], (Act V of 1908) on-

(i) the parents of the minor if they are residing in [2][Pakistan],

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the courthouse, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The [3][Provincial Government] may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section

(1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

[1]Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981,(27 of 1981),s. 3 and 2nd Sch., for "Code of Civil Procedure".

[2]Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been [3]subs. by A. O., 1949, Arts. 3 (2) and 4, for "British India". [3]Subs. by A.O., 1937, for "L.G.".

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

12. Power to make interlocutory order of production of minor and interim protection of person and property. -(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and

before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorize – (a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. Hearing of evidence before making of order. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. Simultaneous proceedings in different Court. -(1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

[1] [(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case to, and be guided by such orders as they may receive from, their respective Provincial Governments.]

15. **Appointment or declaration of several guardians**. -(1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

[2]* * * * * * *

[1]*Subs. by A.O., 1937, for the original sub-section (3).*

[2]*Omitted by the Federal Laws (Revision and Declaration) Ordinance 1981 (27 of 1981), s. 3 and 2nd Sch.*

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties. Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. Appointment or declaration of guardian for property beyond jurisdiction of the Court. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

17. Matters to be considered by the Court in appointing guardian. - (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

[4] * * * * * * *

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Appointment or declaration of Collector in virtue of office. - Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

19. Guardian not to be appointed by the Court in certain cases. Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person–

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or

(b) [1]*** of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

[1]*Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch.*

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS

General

20. Fiduciary relation of guardian to ward. -(1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. Capacity of minors to act as guardians. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22. Remuneration of guardian. -(1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the

Government out of the property of the ward as the [1] [provincial Government], by general or special order, directs.

23. Control of Collector as guardian. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the l [provincial Government] or of such authority as that Government, by [2]notification in the official Gazette, appoints in this behalf. Guardian of the Person

24. **Duties of guardian of the person**. - A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education and such other matters as the law to which the ward is subject requires.

[1]*Subs. by A.O., 1937, for "L. G.".*

[2]*For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject, see different local R. &. O.*

25. Title of guardian to custody of ward. -(1) 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 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.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the l [Code of Criminal Procedure, 1898] (Act V of 1898).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. Removal of ward from jurisdiction. -(1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it. Guardian

of Property

27. Duties of guardian of property. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realization, protection or benefit of the property.

28. Powers of testamentary guardian. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

29. Limitation of powers of guardian of property appointed or declared by the Court. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court, -

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

[1]*Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch., for "Code of Civil Procedure, 1882."*

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. Voidability of transfers made in contravention of section 28 or section 29. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. Practice with respect to permitting transfers under section 29. -(1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely: -

(a) that a sale shall not be completed without the sanction of the Court;

(b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Variation of powers of guardian of property appointed or declared by the Court. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward. - (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks tit.

(3) The guardian stating in [1]good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. Obligations on guardian of property appointed or declared by the Court. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall, –

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration

of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

[1]*For definition of 'good faith', see s. 3(20) of the General Clauses Act, 1897 (10 of 1897).*

[1]**[34A. Power to award remuneration for auditing accounts**. When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.]

35. Suit against guardian where administration bond was taken. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

36. Suit against guardian where administration bond was not taken.-(1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be. [2] * * * * * * *

37. General liability of guardian as trustee. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those

sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee. Termination of Guardianship

38. Right of survivorship among joint guardians. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court

[1]*S. 34A ins. by the Guardians and Wards (Amdt.) Act, 1929 (17 of 1929), s. 2*

[2]*Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch.*

39. Removal of guardian. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely: -

(a) for abuse of his trust;

(b) for continued failure to perform the duties of his trust;

(c) for incapacity to perform the duties of his trust;

(d) for ill-treatment, or neglect to take proper care, of his ward ;

(e) for contumacious disregard of any provision of this Act or of any order of the Court;

(f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;

(g) for having an interest averse to the faithful performance of his duties;

(h) for ceasing to reside within the local limits of the jurisdiction of the Court;

(i) in the case of a guardian of the property, for bankruptcy or insolvency;

(j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed

– (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is

shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. Discharge of guardian. -(1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the application is the Collector and the l [Provincial Government] approves of is applying to be discharged, the Court shall in any case discharge him.

41. Cessation of authority of guardian. -(1) The powers of a guardian of the person cease–

(a) by his death, removal or discharge;

(b) by the Court of Wards assuming superintendence of the person of the ward;

(c) by the ward ceasing to be a minor;

(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,

(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease __

(a) by his death, removal or discharge;

(b) by the Court of Wards assuming superintendence of the property of the ward; or

(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs

any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. Appointment of successor to guardian dead, discharged or removed. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

[1]*Subs. by A.O., 1937, for "L. G."*

CHAPTER IV

SUPPLEMENTAL PROVISIONS

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders. -(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub- section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under [1] [rules 1 and 2 of order XXXIX of the First Schedule to the Code of Civil Procedure, 1908] (Act V of 1908) in a case

under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. Penalty for removal of ward from jurisdiction. - If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to award, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

45. Penalty for contumacy. -(1) In the following cases, namely: -

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or (b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

[1]*Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch., for certain word*

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3), the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may

be.

(2) If a person who has been released from detention on giving an undertaking under subsection (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. Reports by Collectors and Subordinate Courts. -(1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the Subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a . witness to give evidence or produce a document which is conferred on a Court by the [1][Code of Civil Procedure, 1908] (Act V of 1908).

47. Orders appealable. An appeal shall lie to the High Court from an order made by a 2 [2]* Court,- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or (b) under section 9, sub-section (3), returning an application ; or,

[1]1 Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and 2nd Sch., for "Code of Civil Procedure".

[2]The word "District" rep. by s. 4 of the Guardians and Wards (Amdt.) Act, 1926 (4 of 1926).

(c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,

(d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,

(e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or,

(f) under section 32, defining, restricting or extending the powers of a guardian; or,

(g) under section 39, removing a guardian; or,

(h) under section 40, refusing to discharge a guardian; or,

(i) under section 43 regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or,

(j) under section 44 or section 45, imposing a penalty [1][:]

[1] [provided that, where the order from which an appeal is preferred is passed by an officer subordinate to a District Court, the appeal shall lie to the District Court.]

48. Finality of other orders. Save as provided by the last foregoing section and b [2][section 115 of the Code of Civil Procedure, 1908] (Act V of 1908) an order made under the Act shall be final and shall not be liable to be contested by suit or otherwise.

49. Costs. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50. Power of High Court to make rules. -(1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act–

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and Subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

[1]Subs. and added by the Guardians and Wards (Amdt.) Ordinance, 1980 (11 of 1980), s. 2. [2]Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981, (27 of 1981), s. 3 and 2nd Sch., for "section 622 of the Code of Civil Procedure".

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians; (f) as to the inspection of those statements and accounts by persons interested; [1] [(ff) as to the audit of accounts under

section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;]

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the [2][provincial Government], nor shall any rule under this section have effect until it has been published in the official Gazette.

51. [Applicability of Act to guardians already appointed by Court.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Sch. II.

52. [Amendment of Indian Majority Act.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Schedule. 53. [Amendment of Chapter XXXI of the Code of Civil Procedure.] Rep. by the Code of Civil Procedure, 1908 (V of 1908), s. 156 and Schedule

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V. THE SCHEDULE. -[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Schedule.

[1]*Clause (ff) ins. by the Guardians and Wards (Amdt.) Act, 1929 (17 of 1929), s. 3.*

[2]*Subs. by A.O., 1937, for "L. G."*

89- THE FAMILY COURTS ACT, 1964 (Act XXXV of 1964)

[18 July 1964]

An Act to make provision for the establishment of Family Courts.

Preamble. –

WHEREAS it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith;

it is hereby enacted as follows: ¬

1. Short title, extent and commencement. –

(1) This Act may be called the [2][* * *] Family Courts Act, 1964.

[[3] (2) It shall extend to whole of the Punjab.]

(3) It shall come into force in such area or areas and on such date or dates as Government may, by notification in the official Gazette, specify in this behalf.

[4][(4) Nothing in this Act shall apply to any suit or any application under the Guardians and Wards Act, 1890, pending for trial or hearing in any Court immediately before the coming into force of this Act, and all such suits and applications shall be heard and disposed of as if this Act was not in force.

(5) Any suit, or any application under the Guardians and Wards Act, 1890, which was pending for trial or hearing in any Court immediately before the coming into force of this Act, and which has been dismissed solely on the ground that such suit or application is to be tried by a Family Court established under this Act, shall, notwithstanding anything to the contrary contained in any law, on petition made to it in that behalf by any party to the suit or application, be tried and heard by such Court from the stage at which such suit or application had reached at the

time of its dismissal.]

2. [5]Definitions.– [(1)] In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say–

(a) "Arbitration Council" and "Chairman" shall have the meanings respectively assigned to them in the Muslim Family Laws Ordinance, 1961;

(b) [6] "Family Court" means a Court constituted under this Act;

[(c) "Government" means Government of the Punjab;]

(d) "party" shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute;

(e) "prescribed" means prescribed by rules made under this Act [7]

[;]

[[8] (f) "Schedule" means the Schedule appended to the Act; and

(g) "Union Council" means a Union Council, Municipal Committee, Cantonment Board, Union Administration or, in case of absence of any of these local governments in a local area, any other comparable body or authority constituted under any law relating to the local governments or local authorities.]

[9][(2) Words and expressions used in this Act but not herein

defined, shall have the meanings respectively assigned to them in the Code of Civil Procedure, 1908.]

[10][3. Establishment of Family Courts. –

(1) Government shall establish one or more Family Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Court: Provided that at least one Family Court in each District, shall be presided over by a woman Judge to be appointed within a period of six months or within such period as the [11]

[Government may extend].

(2) A woman Judge may be appointed for more than one District and in such cases the woman Judge may sit for the disposal of cases at such place or places in either District, as the [12] [*] Government may specify.

(3) Government shall, in consultation with the High Court, appoint as many woman Judges as may be necessary for the purposes of sub-section (1).] [13]

[4. Qualifications of Judge.– No person shall be appointed as a Judge of a Family Court unless he is or has been [14] [or is qualified to be appointed as] a District Judge, an Additional District Judge, [15] [a Civil Judge or a Qazi appointed under the Dasturul Amal Diwani, Riasat Kalat].

5. Jurisdiction.– [16] [1] Subject to the provisions of the Muslim

Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [17] [Part I of the Schedule].

[18] [(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction

to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.]

[19] [(3) The Government may amend the Schedule through addition, deletion or substitution of any entry in the Schedule.]

6. Place of sittings. – Subject to any general or special orders of Government in this behalf a Family Court shall hold its sittings at such place or places within [20] [the District or area for which it is established] as may be specified by the District Judge.

7. Institution of suits. –

(1) Every suit before a Family Court shall be instituted by the

presentation of a plaint or in such other manner and in such Court as may be prescribed.

(2) The plaint shall contain all [21] [material] facts relating to the dispute and shall contain a Schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the facts to which they would depose

[22] [Provided that a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children:]

Provided [23] [further] that parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

[24] [(3) (i) Where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time, deliver the document or a copy thereof to be filed with the plaint.

(ii) Where he relies on any other document not in his possession or power, as evidence in support of his claim, he shall enter such documents

in a list to be appended to the plaint [25] [giving reasons of relevancy of these documents to the claim in the plaint].]

(4) The plaint shall be accompanied by as many duplicate copies thereof including the Schedule and the lists of documents referred to in subsection (3), as there are defendants in the suit, for service upon the defendants.

[26] [**8. Intimation to defendant**. – (1) When a plaint is presented to a Family Court, it shall

(a) fix a date which shall not be more than fifteen days for the appearance of the defendant;

(b) within two days of the presentation of the plaint, sent a notice or summons of the suit to a defendant through a process serving agency of the Family Court, registered post acknowledgment due, electronically or through courier, together with a copy of the plaint, a copy of the schedule referred to in subsection (2) of section 7 and copies of the documents and a list of documents referred to in subsection (3) of section 7; and

(c) direct that the notice or summons issued under clause (b) also be served through affixation and shall simultaneously issue a proclamation in a newspaper.

(2) While issuing the notice or summons to a defendant, the Family Court shall require the defendant to submit a written statement on the day mentioned in the notice or summons.]

[27] **[9. Written statement**.– [28] [(1) On the date fixed under section

8, the defendant shall appear before the Family Court and file the written statement, a list of witnesses and gist of evidence, and in case the written statement is not filed on that date, the Family Court may, for any sufficient reasons which prevented the defendant from submitting the written statement, allow the defendant to submit the written statement and other documents on the next date which shall not exceed fifteen days from that date.]

[29] [(la) A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it.

(1b) A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make a claim for dissolution of marriage including khula which shall be deemed as a plaint and no separate suit shall lie for it: Provided that the proviso to subsection (4) of Section 10 shall apply where the decree for dissolution of marriage is to be passed on the ground of khula.]

(2) Where a defendant relies upon a document in his possession or power, he shall produce it or copy thereof in the Court along with the written statement.

(3) Where he relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents in a list to be appended to the written statement [30] [giving reasons of relevancy of these documents to the Defence in the written statement].

(4) Copies of the written statement, list of witnesses and precis of evidence referred to in subsection (1) and the documents referred to in subsection (2) shall be given to the plaintiff, his agent or advocate present in the Court.

(5) If the defendant fails to appear on the date fixed by the Family Court for his appearance, then–

(a) if it is proved that the summons or notice was duly served on the defendant, the Family Court may proceed ex parte; provided that where the Family Court has adjourned the hearing of the suit ex parte, and defendant at or before such hearing appears and assigns good cause for his previous nonappearance, he may, upon such terms as the Family Court directs, be heard in answer to the suit as if he had appeared on the day fixed for his appearance; and

(b) if it is not proved that the defendant was duly served as provided in subsection (4) of section 8, the Family Court shall issue fresh summons and notices to the defendant and cause the same to be served in the manner provided in clauses (b) and (c) of subsection (1) of section 8.

[31] [(5A) If the defendant fails to submit the written statement on or before the date under subsection (1), the Defence of the defendant shall stand struck off and the Family Court shall decide the case under the law.]

(6) In any case in which a decree is passed ex parte against a defendant under this Act, he may apply within [32] [thirty days of the service of notice under subsection (7) of the passing of the decree] to the Family Court by which the decree was passed for an order to set it aside, and if he satisfies the Family Court that he was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was heard or called for hearing, the Family Court shall, after service of notice on the plaintiff, and on such terms as to costs as it deems fit, make an order for

setting aside the decree as against him, and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also.]

[33] [(7) The notice of passing of the exparte decree referred to in subsection (6) shall be sent to the defendant by the Family Court together with a certified copy of the decree within three days of the passing of the decree, through process server or by registered post, acknowledgement due, or through courier service or any other mode or manner as it may deem fit.

(8) Service of notice and its accompaniment in the manner provided in subsection (7) shall be deemed to be due service of the notice and decree on the defendant.]

10. Pretrial proceedings. –

[34] [(1) When the written statement is filed, the Court shall fix an

early date for a pretrial hearing of the case.]

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.

[35] [(3) The Family Court may, at the pretrial stage, ascertain the precise points of controversy between the parties and attempt to effect compromise between the parties.]

[36] [(4) Subject to subsection (5), if compromise is not possible

between the parties, the Family Court may, if necessary, frame precise points of controversy and record evidence of the parties.]

[37] [(5) In a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and, in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty five percent of her admitted prompt dower to the husband.]

[38] [(6) Subject to subsection (5), in the decree for dissolution of marriage, the Family Court shall direct the husband to pay whole or part of

the outstanding deferred dower to the wife.]

11. Recording of evidence. – (1) On the date fixed for [39] [recording of the evidence] the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

[40] [(1A) The Family Court shall record or cause to be recorded, the substance of the statement of a witness or may record or cause to be recorded, the statement of a witness through audio or video recording.]

(2) The Court shall not issue any summons for the appearance of any witness unless, within three days of the framing of issues, any party intimates the Court that it desires a witness to be summoned through the

Court and the Court is satisfied that it is not possible or practicable for such party to produce the witness.

[41] [(3) The witnesses shall give their evidence in their own words: Provided that the parties or their counsel may further examine, cross - examine or reexamine the witnesses: Provided further that the Family Court may forbid any question which it regards as indecent, scandalous or frivolous or which appears to it to be intended to insult or annoy or needlessly offensive in form.]

[42] [(3A) The Family Court may, if it so deems fit, put any question to any witness for the purposes of elucidation of any point which it considers material in the case.]

(4) The Family Court may permit the evidence of any witness to be given by means of an affidavit: Provided that if the Court deems fit it may call such witness for the purpose of examination in accordance with sub-section (3).

12. Conclusion of trial. – (1) After the close of evidence of both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties [43] [within a period not exceeding fifteen days]. (2) If such compromise or reconciliation is not possible, the Family Court shall announce its judgement and give a decree.

[44] [**12A. Cases to be disposed of within a specified period**. – The Family Court shall dispose of a case, including a suit for dissolution of

marriage, within a period of six months from the date of institution:

Provided that where a case is not disposed of within six months, either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.]

13. Enforcement of decrees. – (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.

(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment [45] [or] the delivery of property, as the case may be, in the aforesaid register.

(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court [46] [not

exceeding thirty days], the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree--holder.

(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct. (5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.

14. Appeals.– [47] [(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable–

(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and

(b) to the District Court, in any other case.]

(2) No appeal shall lie from a decree passed by Family Court–

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower [48] [or dowry] not exceeding rupees [49] [one hundred

thousand] ;

(c) for maintenance of rupees [50] [five thousand] or less per month.

[51] [(3) No appeal or revision shall lie against an interim order

passed by a Family Court.

(4) The appellate Court referred to in subsection (1) shall dispose of the appeal within a period of four months.]

15. Power of Family Court to summon witnesses. –

(1) A Family Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document: Provided that–

(a) no person who is exempt from personal appearance in a Court under subsection (1) of section 133 of the Code of Civil Procedure, 1908, shall be required to appear in person;

(b) a Family Court may refuse to summon a witness or to enforce a summons already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable.

(2) If any person to whom a Family Court has issued summons to appear and give evidence or to cause the production of any document before it, willfully disobeys such summons, the Family Court may take cognizance of such disobedience, and after giving such opportunity to explain, sentence him to a fine [52] [of five thousand] rupees.

16. Contempt of Family Courts. – A person shall be guilty of contempt of the Family Court if he without lawful excuse–

(a) offers any insult to the Family Court; or (b) causes an interruption in the work of the Family Court; or

[53] [(bb) misbehaves with any person in the Court premises or uses abusive language; threats or uses physical force or intimidates in any form; or]

(c) refuses to answer any question put by the Family Court, which he is bound to answer; or

(d) refuses to take oath to state the truth or to sign any statement made by him in the Family Court; and the Family Court may forthwith try such person for such contempt and sentence him to a fine not exceeding rupees [54] [two thousand].

17. Provisions of Evidence Act and Code of Civil Procedure not to apply. –

(1) Save as otherwise expressly provided by or under this Act, the provisions of the [55] [Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984)], and the Code of Civil Procedure, 1908, [56] [except sections 10 and 11,] shall not

apply to proceedings before any Family Court [57] [in respect of Part I of Schedule].

(2) Sections 8 to 11 of the Oaths Act, 1872, shall apply to all proceedings before the Family Courts.

[58] [17A. Suit for maintenance. –

(1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen days of each month, the Defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on

the basis of averments in the plaint and other supporting documents on record of the case.

(2) In a decree for maintenance, the Family Court may:

(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and

(b) prescribe the annual increase in the maintenance.

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.

(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.]

[59] [**17B. Power of the Court to issue Commission**. – Subject to such conditions and limitations as may be prescribed, the Court may issue a Commission to,

(a) examine any person;

(b) make a local investigation; and

(c) inspect any property or document.]

18. Appearance through agents. – If a person required under this Act to appear before a Family Court, otherwise than as a witness, is a pardah nashin lady, the Family Court may permit her to be represented by

a duly authorized agent.

[60] [**19. Court fee**. – Notwithstanding anything contained in the Court Fees Act, 1870 (VII of 1870), the Court fee to be paid on any plaint or memorandum of appeal shall be rupees fifteen for any kind of suit or appeal under this Act.]

[61] [20. Family Court as Judicial Magistrate. –

(1) A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VIII of 1961) ; and, the Child Marriage

Restraint Act, 1929 (XIX of 1929).

(2) A Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trials.

(3) An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party.]

[62] **[21. Provisions of Muslim Family Laws Ordinance, 1961 not affected**. – Nothing in this Act shall be deemed to affect any of the provisions of Muslims Family Laws Ordinance, 1961, or the rules made thereunder.]

[63] **[21A. Interim order pending suit**. – The Family Court may

pass an interim order to preserve and protect any property in dispute in a suit .and any other property of a party to the suit, the preservation of which is considered necessary for satisfaction of the decree, if and when passed.]

[64] **[21B. Intimation to Arbitration Council**. – If a Family Court decrees dissolution of a Muslim marriage, the Family Court shall immediately but not later than three days from the decree send by registered post or other means a certified copy of the decree to the concerned Chairman of the Arbitration Council and upon receipt of the decree, the Chairman shall proceed as if he had received intimation of Talaq under the Muslim Family Laws Ordinance, 1961 (VIII of 1961).]

22. Bar on the issue of injunctions by Family Court. –A Family Court shall not have the power to issue an injunction to, or stay any proceedings pending before, a Chairman or an Arbitration Council.

23. Validity of marriages registered under the Muslim Family Laws Ordinance, 1961, not to be questioned by Family Courts. – A Family Court shall not question the validity of any marriage registered in accordance with the provisions of the Muslim Family Laws Ordinance, 1961, nor shall any evidence in regard thereto be admissible before such Court.

24. **Family Courts to inform Union Councils of cases not registered under the Muslim Family Laws Ordinance, 1961**.– If in any

proceedings before a Family Court it is brought to the notice of the Court that a marriage solemnized under the Muslim Law after the coming into force of the Muslim Family Laws Ordinance, 1961, has not been registered in accordance with the provisions of the said Ordinance and the rules framed thereunder, the Court shall communicate such fact in writing to the Union Council for the area where the marriage was solemnized.

25. Family Court deemed to be a District Court for purposes of Guardians and Wards Act, 1890. – A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall, in dealing with matters specified in that Act, follow the procedure prescribed in that Act.

[65] [**25A. Transfer of cases**. – (1) Notwithstanding anything contained in any law the High Court may, either on the application of any party or of its own accord, by an order in writing–

(a) transfer any suit or proceeding under this Act from one Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district; and

(b) transfer any appeal or proceeding under this Act, from the District Court of one district to the District Court of another district.

(2) A District Court may, either on the application of any party or of its own accord, by an order in writing, transfer any suit or proceeding under this Act from one Family Court to another Family Court in a district

or to itself and dispose it of as a Family Court.

[66] [(2a) Where a Family Court remains vacant or the presiding officer remains on leave or absent for any reason, except due to vacations, for more than thirty days a District Court may, either on the application of any party or of its own accord, by order in writing, transfer any suit or proceeding from such Family Court to another Family Court in a District or to itself and disposed it of as a Family Court.

(2b) On the application of any of the parties and after notice to. the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the Supreme Court may at any stage transfer any suit, appeal or other proceedings under this Act pending before a Court in one Province to a Court in another Province, competent to try or dispose of the same.]

(3) Any Court to which a suit, appeal or proceeding is transferred under the preceding subsections, shall, notwithstanding anything contained in this Act, have the jurisdiction to dispose it of in the manner as if it were instituted or filed before it: Provided that on the transfer of a suit, it shall not be necessary to commence the proceedings before the succeeding Judge de novo unless the Judge, for reasons to be recorded in writing directs otherwise.]

[67] [**25B. Stay of proceedings by the High Court and District Courts**. – Any suit, appeal or proceeding under this Act, may be stayed–

(a) by the District Court, if the suit or proceeding is pending before a Family Court within its jurisdiction; and (b) by the High Court, in the case of any suit, appeal or proceeding[68] [:]]

[69] [Provided that the stay application shall be finally decided by the District Court or the High Court, as the case may be, within thirty days failing which the interim stay order shall cease to be operative.]

26. Power to make rules. –

(1) Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the provisions contained

in subsection

(1), the rules so made may, among other matters, provide for the procedure, which shall not be inconsistent with the provisions of this Act, to be followed by the Family Courts.

SCHEDULE [SEE SECTION 5] [70]

[PART I]

1. Dissolution of marriage [71] [including Khula].

2. Dower.

3. Maintenance.

4. Restitution of conjugal rights.

5. Custody of children [72] [and the visitation rights of parents to meet them].

6. Guardianship.

2 ["6A. Matters pertaining to Return of Child under The Hague Convention on Civil Aspects of International Child Abduction, 1980."]

[73] [7. Jactitation of marriage.]

[74] [8. Dowry.]

[75] [9. The personal property and belongings of a wife and a child living with his mother.

2Ins. by S.R.O 980(1)/2017, dated 25-9-2017.

10. Any other matter arising out of the Nikahnama.]

[76] [PART II

Offences and aid and abetment thereof under Section 337A (i), 337F (i),341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code (Act XLV of l860)]

{[1]}For statement of objects and reasons see Gazette of West Pakistan (Extraordinary), dated 6th April, 1964, pages 1153-P to 1155-W. This Act was passed by the West Pakistan Assembly on 30th June, 1964; assented to by the Governor of West Pakistan on 14th July, 1964; and, published in the West Pakistan Gazette (Extraordinary), dated 18th July, 1964, pages 2427-34.

[2]]The words "West Pakistan" omitted by the Family Court (Amendment) Act, 1996 (Federal Act X of 1996).
[3]Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for the following:

"(2) It extends to the whole of [Pakistan]."
The word "Pakistan" was earlier substituted by the Federal Adaptation of Laws Order, 1975 (P.O. 4 of 1975), for "the Province of West Pakistan except the Tribal Areas"..

[4] Added by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[5] Section 2 renumbered as subsection (1) of that section by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[6] Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for the following: "(c) "Government means [the Provincial Government]." The words "the Provincial Government" were earlier substituted by the Federal Adaptation of Laws Order, 1975 (P.O. 4 of 1975), for "the Government of West Pakistan".

[7] Substituted for the full stop by the Family Courts (Amendment) Act 2015 (XI of 2015).

[8] Inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[9] New subsection (2) added by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[10] Substituted by the West Pakistan Family Courts (Amendment) Act, 1994 (Federal Act XXI of 1994).

[11] Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for "Federal Government may, on the request of Provincial Government, extend".

[12] The word "Provincial" omitted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[13] Substituted by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[14] Inserted by the West Pakistan Family Courts (Amendment) Act, 1994 (Federal Act XXI of 1994).

[15] Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969), for "a Civil Judge".

[16] Section 5 renumbered as subsection (1) by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[17] Substituted for "the Schedule" by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[18] New subsection (2) added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[19] The following subsection (3) was added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) and substituted by the Family Courts (Amendment) Act 2015 (XI of 2015): "(3) The High Court may, with the approval of the Government, amend the Schedule so as to alter, delete or add any entry thereto."

[20] Substituted by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966), for "the Districts".

[21] Inserted by the West Pakistan Family Courts (Amendment)

Ordinance, 1966 (X of 1966).

[22] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[23] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[24] Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969). [25] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[26] The following section 8, having been previously substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969), and successively been amended by various enactments, was substituted by the Family Courts (Amendment) Act 2015 (XI of 2015): "8. Intimation to defendants. – (1) When a plaint is presented to a Family Court, it– (a) [shall] fix a date [* *] of not more than thirty days for the appearance of the defendant; (b) shall issue summons to the defendant to appear on a date specified therein; [(c) shall, within three days of the presentation of the plaint, send to each defendant, by registered post, acknowledgment due, [or by courier service or by both] a notice of the suit, together with a copy of the plaint, a copy of the Schedule referred to in sub-section (2) of section 7 and copies of the documents and a list of documents referred to in subsection (3) of the said section]. (2) Every summons issued under clause (b) of subsection (1) shall be accompanied by a copy of the plaint, a copy of the Schedule referred to in subsection (2) of section 7, and copies of the documents and list of documents referred to in subsection (3) of the said section. [(3) * * ** * * *] (4) Service of the plaint and its accompaniments in the manner provided in clause (b) or clause (c) of subsection (1) shall be deemed to be due service of the plaint upon the defendant. (5) Every notice and its accompaniments under clause (c) of subsection (1) shall be served at the expense of the plaintiff. The postal charges for such service shall be deposited by the plaintiff at the time of filing the plaint. (6) Summons issued under clause (b) of subsection (1) shall be served in the manner provided in the Code of Civil Procedure, 1908, Order V, Rules 9, 10, 11, 16, 17, 18, 19, [20,] 21, 23, 24, 26, 27, 28 and 29. The cost of such summons shall be assessed and paid as for summons issued under the Code of Civil Procedure, 1908. Explanation– [* * * *]"

[27] Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

[28] Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for the following: "(1) On the date fixed under clause (a) of subsection (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith a list of his witnesses along with a precis of the evidence that each witness is expected to

give."

[29] New subsections (1a) and (1b) inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[30] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[31] Inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[32] Substituted for the words "reasonable time of the passing thereof" by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[33] New subsections (7) and (8) added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[34] Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

[35] Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for the following: "(3) At the pretrial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible."

[36] Substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) for the following: "(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording of evidence: Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage."

[37] New subsection (5) inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[38] New subsection (6) inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[39] Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969), for "the hearing of the evidence".

[40] New subsection (1A) inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[41] Substituted by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

[42] Added by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

[43] Added by the Family Courts (Amendment) Ordinance 2002 (LV of

2002).

[44] The following section 12A was added by the Family Courts (Amendment) Act, 1996 (Federal Act X of 1996) and substituted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002): "12A. Certain cases to be disposed of within a specified period.–Notwithstanding anything contained hereinbefore, a suit for dissolution of marriage shall finally be disposed of within a period of four months from its institution: Provided that where an appeal lies against the dissolution of marriage, such appeal shall be disposed of within four months."

[45] Substituted, for the word "and", by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[46] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[47] Substituted by the West Pakistan Family Courts (Amendment) Ordinance, 1966 (X of 1966).

[48] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[49] Substituted previously by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) for "fifteen thousand" and then by the Family Courts (Amendment) Act 2015 (XI of 2015) for "thirty thousand".

[50] Substituted previously by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) for "five hundred" and then by the Family Courts (Amendment) Act 2015 (XI of 2015) for "one thousand".

[51] New subsections (3) and (4) added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[52] Substituted for "not exceeding one thousand" by the Family Courts (Amendment) Act 2015 (XI of 2015).

[53] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[54] Substituted for the word "two hundred" by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[55] Substituted for "Evidence Act, 1872" by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[56] Inserted by the West Pakistan Family Courts (Amendment) Act, 1967 (XV of 1967).

[57] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[58] The following new section 17A was inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) and substituted by the Family Courts (Amendment) Act 2015 (XI of 2015): "17A. Interim order for maintenance. – At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, where under the payment shall be made by the fourteenth of each month, failing which the Court may strike off the Defence of the defendant and decree the suit."

[59] New section added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[60] Substituted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) for the following: "19. Court fees. – Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court fees to be paid on any plaint filed before a Family Court shall be rupee [fifteen] for any kind of suit." The word in crotchets was earlier substituted by the Punjab Finance Act, 1973 (XIV of 1973), for "one".

[61] Section 20 substituted by the Family Courts (Amendment) Act 2015 (XI of 2015). At the time of first substitution by the Family Courts (Amendment) Ordinance 2002 (LVof 2002), the original section 20 read as under: "20. Investment of powers of Magistrates on Judges. – Government may invest any Judge of a Family Court with powers of Magistrate First Class to [make order for maintenance] under section 488 of the Code of Criminal Procedure, 1898." [**Note:** The words in crotchets had been substituted by the Punjab Finance Act, 1973 (XIV of 1973), for "to hear the case".] After substitution by the Family Courts (Amendment) Ordinance 2002 (LV of 2002), section 20 read as under: "20. Family Court to exercise the powers of the Judicial Magistrate. – A Family Court shall have and exercise all the powers of a Judicial Magistrate of the First Class under the Code of Criminal Procedure, 1898 (Act V of 1898)."

[62] Substituted by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

[63] New section inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[64] New section inserted by the Family Courts (Amendment) Act 2015 (XI of 2015).

[65] Added by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

[66] New subsections (2a) and (2b) inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[67] Added by the West Pakistan Family Courts (Punjab Amendment) Ordinance, 1971 (XXIV of 1971).

[68] Substituted for the full stop by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[69] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[70] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[71] Inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[72] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002).

[73] Added by the West Pakistan Family Courts (Amendment) Act, 1969 (I of 1969).

[74] Added by the Family Courts (Amendment) Act, 1997 (Federal Act VII of 1997). **Note:** This amendment shall not effect pending cases (section 3 ibid).

[75] The following new entry 9 was added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) and substituted by the Family Courts (Amendment) Act 2015 (XI of 2015): "9. Personal property and belongings of a wife."

[76] Added by the Family Courts (Amendment) Ordinance 2002 (LV of 2002)

90- THE WEST PAKISTAN FAMILY COURTS RULES, 1965

[Gazette of West Pakistan, Extraordinary, 2nd November 1965]

No. Intg. 10-31/64 (ii).-In exercise of the powers conferred by section 26 of the West Pakistan Family Courts Act, 1964 (Act No. XXXV of 1964), the Governor of West Pakistan is pleased to make the following rules, namely: -

1. These rules may be called the West Pakistan Family Courts Rules, 1965.

2. In these rules, unless there is anything repugnant in the subject or context: -

(a) "**Act**" means the West Pakistan Family Courts Act, 1964 (Act XXXV of 1964);

(b) 1 ["**Court**" means the Family Court established under the West Pakistan Family Courts Act], XXXV of 1964;

(c) "**form**" means a form appended to these rules, 2 [and]

(d)"**section**" means a section of the Act.

(e)3 [**Suit includes** an application for the custody of children or guardianship under the Guardians and Ward Act, 1890].

1.Subs, by Notification No. Integ .10.31.64/11, dated 5.4.1966.

2.Omitted by ibid.

3.Ins. By ibid.

3. Subject to the provisions of rule 7, the Courts of the District Judge, the Additional District Judge, the Senior Civil Judge, the Civil Judge, First Class and the Civil Judge, First Class (Additional) shall be the

Family Courts established for the purposes of the Act.

4.-(1) A plaint under subsection (1) of section 7 shall be in writing, signed and verified by the plaintiff and shall be presented to the Court having jurisdiction under rule 5 of these Rules by the plaintiff or through a counsel, and where the plaintiff is a female, by her agent.

(2) The plaint under sub-rule (1) shall also contain the following particulars; -

(a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;

(b) the name, description and place of residence of the plaintiff;

(c)the name, description and place of residence of the defendant so far as can be ascertained; where the plaintiff or the defendant is a minor or a person of unsound mind a statement to that effect;

(d)the facts constituting the cause of action and the place where and date when it arose; and

(e)the nature of the claim and valuation of the claim with particulars in brief and the relief claimed.

5. Where a plaint is presented to a Court not having jurisdiction- (a) the plaint shall be returned to be presented to the Court to which it should have been presented; (b) the Court returning the plaint shall endorse thereon the date of its presentation to it and its return, the name of the party presenting it, and a brief statement of the reasons therefore.

6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which-

(a) the cause of action wholly or in part has arisen, or

(b) where the parties reside or last resided together:

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

7.- (1) Suits relating to custody of children and guardianship shall be instituted, heard and tried by the Court of the District Judge, but such Court may transfer any such suit to the Court of the Additional District Judge, the Senior Civil Judge, the Civil Judge, First Class or the Civil Judge, First Class (Additional), having jurisdiction as provided in rule 6, and thereupon the Court to which such suit is so transferred shall have

jurisdiction to hear and try the same.

(2) Suits relating to the custody of children and guardianship shall be instituted, heard and tried in the Court of the Senior Civil Judge, the Civil Judge, Fi rst Class or the Civil Judge, First Class (Additional), having jurisdiction as provided in rule 6, and where in any district there is no such Court, such suits shall be instituted in and heard and tried by the Court of the District Judge.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the Court of District Judge may-

(a) recall any suit made over by it for trial under sub-rule (1) to an Additional District Judge, Senior Civil Judge, Civil Judge, First Class or Civil Judge, First Class (Additional) and either try such suit himself or refer it for trial to any other Court within the District;

(b) send for the record and proceedings of any suit pending for trial in the Court of the Additional District Judge, Senior Civil Judge, Civil Judge, First Class or the Civil Judge, First Class (Additional) and hear and try the suit itself or refer it for trial to any other Court within the District, and thereupon the District judge or the. Court to which such suit is so transferred, as the case may be, shall have jurisdiction to hear and try the suit.

PUNJAB AMENDMENT Sub-rule (2) of rule 7 shall be deleted and sub-rule (1) of rule 7 shall be re-numbered as Rule 7 . by notification No. legis 4 (24)/72, dated 7.4. 1972.

8. The Court of the District Judge may, for reasons to be recorded in writing, stay the proceedings of any suit pending in the Court of the Senior Civil Judge, Civil Judge, First Class or Civil Judge, First Class (Additional).

PUNJAB AMENDMENT Rule 8 shall be deleted by notification No. legis 4 (24)/72, dated 7.4. 1972.

9. On transfer of a case from one Court to another it shall not be necessary to commence the proceedings before the succeeding Judge de novo unless the Judge for reasons to be recorded in writing directs otherwise.

PUNJAB AMENDMENT Rule 9 shall be deleted by notification No. legis 4 (24)/72, dated 7.4. 1972.

10.- (1) The Court may, where it deems fit, direct that the whole or any part of the proceedings under the Act be held in camera. (2) Where both the parties to the suit request the Court to hold the proceedings in camera, the Court shall do so. 1

[**10-A**. (1) The evidence of each witness shall be taken down in writing, in the language of the Court by the Presiding Officer of the Court, or in his presence and hearing and under r his personal direction and superintendence and shall be signed by the presiding officer of the Court.

(2) When the evidence of a witness is given in English, the presiding officer of the Court may take it down in that language with his own hand and unless the parties request the Court otherwise, and authenticated translation of such evidence in the language of the Court shall form part of the record.

(3) When the evidence of a witness is given in any other language, not being English, or the language of the Court, the presiding officer of the Court may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

(4) In cases in which the evidence is not taken down in writing by the presiding officer of the Court, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the presiding officer of the Court with his own hand, and shall form part of the record.

(5) As the evidence of each witness taken down is completed, it shall be read over to him, and shall, if necessary, be corrected.

(6) If the witness denies the correctness of any part of evidence when the same is read over to him, the presiding officer of the Court may, instead of correcting the evidence, make a memorandum thereon of the objections made to it by the witness, and shall add such remarks as he thinks necessary.

(7) If the evidence is taken down in a language different form that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be

interpreted to him in the language in which it was given, or in a language which he understands.

(8) When the Court has recorded the evidence of a witness, it shall also record such remark ks (if necessary) as it thinks material respecting the demeanor of such witness whilst under examination.] 1. S.10A ins. by w.p. Notification no. Integ. 10-31/64, dated 21-2-1967

11. Where the parties agree to a compromise or conciliation effected between them under subsection (3) of section 10 or subsection (1) of section 12, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between the parties, as the case may be.

12.- (1) Where the plaintiff or his pleader, makes default in appearing before the Court, the suit may be dismissed in default.

(2) The Court may restore a suit dismissed in default on sufficient cause shown, on application made to it within thirty days of the dismissal in default.

13. Ex parte decree or proceedings may, for sufficient cause shown, be set aside by the Court on application made to it within thirty days of the passing of the decree or decision.

14. (1) Every judgment or order shall be written by the presiding Judge or from the dictation of such Judge in the language of the Court, or in English and shall be dated and signed by the Judge in open Court at the time of pronouncing it.

(2) Judgments and orders which are appealable shall contain the point or points for determination, the decision thereon and the reasons in brief for the decision.

REGISTERS OF CASES, DECREES, ORDERS, ETC.

15. When a plaint has been filed, its particulars shall be entered in a register to be kept in the form prescribed for Civil Suits under the Code of Civil Procedure, 1908.

16. In every suit, on passing the judgment, a decree shall be drawn up in Form I and shall be signed by the presiding Judge. The decree shall bear the seal of the Court.

17. The Court shall maintain a register of decrees and orders in the

form prescribed for decrees and orders under the Code of Civil Procedure, 1908.

18. Whenever any fine is paid under section 15 or section 16 or money or property is deposited with or realized by the Court under the Act or these rules, a receipt shall be given in Form II which shall be serially numbered and the counterfoil thereof shall be kept in the Court.

19. All fines, monies, or property deposited or realized and disbursed by the Court shall be entered in a register in Form III.

20. Where the Court receives any amount payable to a party it shall cause a notice thereof to be served on the' party entitled to receive it and shall pay it to the party concerned within four days, so far as may be of his applying therefor.

21. The records of the Court; including its registers, shall be preserved for such period as is provided under the rules of the High Court applicable to Civil Courts.

APPEALS 1

[**22.**- (1) An appeal under section 14 against the decree or decision passed by the Court shall be preferred to the High Court within thirty days of the passing of the decree or decision, excluding the time requisite for obtaining copies thereof; **Provided that** the High Court may, for sufficient cause, extend the said period.]

(2) The appeal shall be in writing, shall set out the grounds on which the appellant seeks to challenge the decree or decision, shall contain the names, description and addresses of the parties, and shall bear the signature of the appellant or his counsel.

(3) A certified copy of the decree and decision of the Court where a decree is passed, and a copy of the decision where only an order is passed shall be attached with the appeal.

2 [(4) Any order passed by the High Court on appeal shall, as soon as may be, be communicated to the Court concerned and the Court shall modify or amend the decree or decision accordingly and shall also make necessary entries to that effect in the appropriate column of the register of decrees.]

1.Sub.rule 22(1) subs. By W.P. notification No. Integ. 10-31/64, dated 21-2-67.

2.sub.rule 22(4) subs. By W.P. notification No. Integ. 10-31/64, dated 21-2-67.

RECORDS AND THEIR INSPECTION

23.- (1) The Court shall, on the application of any party to a dispute, allow inspection of the records of the Court relating to the dispute on payment of a fee of fifty paisa.

(2) On the application of any party to a suit, certified copies of the decree or decision or other proceedings or entry in any register maintained under these rules or of any portion thereof shall be supplied on payment of a fee calculated at the rate of 25 paisa for two hundred words or part thereof.

PUNJAB AMENDMENT in Rule 23— (a)in sub-rule (1), the brackets and figures ‘(1); and (b) sub-rule (2) (c)shall be deleted. By notification No. O. P. 8(1)/71, dated 7-8-71.

24.-(1) There shall be kept in the office of every Court a seal of the Court which shall be circular in shape and shall have thereon the inscription `Family Court' and the name of the District.

(2) The seal of the Court shall be used on all summonses, orders, decrees, copies and other documents issued under the Act or these rules.

FORM I

(See Rule 16)

Form of Decree

(See Rule 16) Form of Decree in the Family Court ----------

1. Case No. ----------

2. ----------Petitioner/Plaintiff Versus ----------Defendant/Respondent

3. Claim for----------This suit coming this day for final disposal before this Family Court, it is hereby ordered that---------- Date---------- Seal of Court. Signature of the Judge Family Court at----------

FORM II

(See Rule18)

1. Name of the Family Court----------

2. Name of the payer----------

3. Amount of fine, money or property paid ----------

4. Particulars of the case and purpose of payment ----------

5. Date of payment----------

(Steal)----------

Signature of the Judge Family Court----------

FORM III

(See Rule 16)

Register of Receipts and Disbursement

FAMILY COURT OF----------

--

1.Serial No.

2.Name and address of the payer.

3.Amount or property paid, realized or deposited.

4.Particulars of the case.

5.Date of receipt.

6.No. of receipt in Form II.

7.Signature of the Judge, Family Court.

8.Date of disbursement with the name of the person to whom the money or property is paid or delivered.

9.REMARKS.

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91- THE PUNJAB ALTERNATE DISPUTE

RESOLUTION ACT 2019

(Act XVII of 2019)

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SCHEDULE
SCHEDULE I

SCHEDULE II

THE PUNJAB ALTERNATE DISPUTE RESOLUTION ACT 2019 XVII OF 2019

[11 October 2019]

An Act to provide for a system of alternate dispute resolution of civil and criminal disputes.

It is necessary to ensure inexpensive and expeditious justice by means of an alternate dispute resolution system.

Be it enacted by Provincial Assembly of the Punjab as follows:

1. Short title, extent and commencement. – (1) This Act may be cited as the Punjab Alternate Dispute Resolution Act 2019.

(2) It shall extend to whole of the Punjab.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint and different dates may be so appointed for different areas of the Punjab.

2. Definitions.– In this Act:

(a) "Act" means the Punjab Alternate Dispute Resolution Act 2019;

(b) "Alternate Dispute Resolution (ADR)" means a process in which parties' resort to resolving a dispute, other than through adjudication by courts, and includes, but is not limited to, mediation, conciliation and evaluation;

(c) "ADR Centre" means a Centre established under the Act;

(d) 'ADR person' means a person who may undertake ADR under section 11 of the Act;

(e) "Code" means the Code of Criminal Procedure, 1898 (V of 1898)

(f) "conciliation" means a process where a person encourages the parties to resolve their disputes voluntarily and includes advising possible solution and terms of settlement to them;

(g) 'court' means a criminal court or a civil court having original jurisdiction under any law for the time being in force.

(h) “Government” means Government of the Punjab;

(i) “mediation” means a process where a mediator facilitates dispute resolution by encouraging communication and negotiation between the parties;

(j) “prescribed” means prescribed by the rules made under the Act;

(k) “rules” means the rules made under the Act; and

(l) ‘settlement” means the agreement reached between the parties as a result of successful ADR.

3. Reference in civil disputes.– (1) A court shall refer a case mentioned in Schedule I of the Act to ADR within thirty days of appearance of the defendants.

(2) A trial court may refer a case mentioned in Schedule II of the Act to ADR at any time or stage where it is of the view that the case is likely to be resolved through ADR.

(3) The court prior to referring the case to ADR shall ask the parties their opinion as to the referral, and where a reference is made to ADR with the consent of the parties, the court may formulate the points in issue.

(4) In every case where a reference is made to ADR, the court shall provide a time table for completion of ADR proceedings not exceeding 60 days:

provided that the court on the application of both the parties, may extend the time granted for resolution of the case through ADR.

provided further that the total time granted for completion of ADR proceedings shall not exceed 6 months in any case.

(5) The trial of a case referred to ADR shall be postponed till the completion of the time allotted for ADR proceedings under subsection (4).

4. **Reference in criminal disputes**.– (1) A court shall refer a case falling under section 345(1) of the Code to ADR as follows:

(a) in a case arising out of a police report:

(i) on the application by the concerned public prosecutor with the consent of the complainant at any time before framing of the charge; or

(ii) on its own within seven days of the framing of the charge;

(b) in a case arising out of a complaint, on its own, within seven days of the summoning of the accused

(2) A court may refer a case falling under section 345(2) of the Code to ADR as follows:

(a) in a case arising out of a police report, with the agreement of the public prosecutor concerned, at any time after framing of charge

(b) in cases arising out of a complaint, with the agreement of the parties to the case, at any time after framing of the charge

(3) In every case where a reference is made to ADR under this section, the court shall provide a time period for completion of the ADR proceedings not exceeding ninety days: provided that the court may, on application of the parties to the case, extend the said time for a further period of 90 days.

(4) The court which makes a referral to ADR under subsection (1) shall postpone the trial of the case till the completion of the time allotted for ADR proceedings under subsection (3) unless there are compelling reasons to proceed with the trial.

(5) A court which makes a referral under subsection (2) shall proceed with the trial in the manner provided by the Code.

5. **Power to record evidence during postponement**.– (1) Nothing in section 3 or 4 shall prohibit or restrain the court from recording evidence which is likely to become unavailable due to postponement of trial.

(2) The court may order the recording of evidence of such person on its own or on the application of any party to the trial including the public prosecutor.

6. Power to refer a case to ADR at any time.– (1) Nothing in section 3 or 4 shall prohibit or restrain a court from referring a case to ADR at any stage of the case with the consent of the parties.

(2) Where a referral is made under sub section (1), the court may if it thinks fit:

(a) fix a time period for completion of ADR; and 5

(b) postpone the trial during the period given for completion of ADR proceedings.

7. Selection of ADR person. – (1) The parties to the case may

select the person or persons who shall undertake ADR.

(2) Where the parties are unable to agree on one or more persons for conduct of ADR proceedings, the court shall provide a list of accredited ADR service providers or ADR centers to the parties for selection.

(3) Where the parties are unable to arrive at a common decision, the court shall make a reference to an accredited ADR service provider or ADR center in the prescribed manner.

8. Return to court. – A case referred to ADR shall be returned to the court in the prescribed format on the completion of ADR proceedings or on the expiry of the time provided under section 3 or 4 of the Act whichever is earlier.

9. Confidentiality. – Notwithstanding anything contained in any other law for the time being in force, the person performing ADR and the parties taking part in the ADR proceedings shall keep all matters confidential relating to such proceedings.

Meaningful offer. – Where a meaningful offer is made by a party to a civil dispute and is rejected by the other, the party which rejects the offer shall not be entitled to costs for the suit and the other party shall be entitled to costs.

Explanation: A 'meaningful offer' is an offer which is substantially the same as the decree or order of the court.

11. Who may perform ADR.– (1) ADR under this Act may be undertaken by:

(a) parties directly;

(b) counsel of parties;

(c) one or more persons selected or agreed upon by the parties;

(d) an accredited ADR service provider; and

(e) an accredited ADR center.

(2) An ADR center shall not be accredited unless it is registered under the Companies Act, 2017 (XIX of 2017)

(3) An ADR Center and an ADR services provider shall be accredited in the prescribed manner.

12. ADR proceedings. – (1) The parties to the dispute may take

part in the ADR proceedings in person, through authorized agents or attorneys.

(2) An attorney who has acted for a party in an ADR proceedings shall not represent another party in the case with regard to the same matter.

13. Failure of ADR. – Where a matter has not been resolved or cannot be resolved through ADR on referral, the court shall proceed to adjudicate the dispute or remaining dispute in accordance with law. 6

14. Judgement and Decree. – (1) When the outcome of the ADR is returned to the court and the court finds that the matter has been completely or partially resolved in accordance with law, the court shall pronounce judgment and in case of a civil dispute pass a decree in terms of the settlement.

(2) Where the outcome of ADR is not clear, the court may ask the ADR person to provide the requisite clarification.

15. Appeal and revision barred. – (1) No revision or appeal shall lie from the decree or order of the court under this Act except provided by this section.

(2) A public prosecutor may challenge the judgment of a court with regard to a case falling under subsection (2) of section 345 of the Code.

16. Savings.– (1) Save as provided in the Act, the ADR proceedings shall be privileged and shall not be admissible in evidence before any court without consent of the parties and the person undertaking ADR shall not be required to appear as a witness or otherwise in any arbitral or judicial proceedings with respect to the dispute that is or has been the subject matter of the ADR but the final settlement, award or agreement, wholly or partly, between the parties shall be admissible in evidence in any subsequent proceedings between them relating to the same subject matter.

(2) The ADR person shall not act as an agent or attorney of any party to the ADR, in any subsequent proceedings with respect to a dispute that is or has been the subject matter of the ADR.

(3) No suit, prosecution or other legal proceedings shall lie against an ADR person or any other person connected with the ADR proceedings for anything which is done or intended to be done in good faith under the

Act except where the ADR person allowed or ordered the commission of an offence in retaliation of an offence which was the subject of ADR proceedings before him.

17. Application of certain laws.– (1) Subject to the provisions of this Act the Oaths Act, 1873 (X of 1873) and the rules made thereunder shall apply mutatis mutandis to the proceedings under the Act.

(2) Save as provided in the Act, the Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984) shall not apply to the ADR proceedings under the Act:

Provided that the ADR person may adhere to principles of evidence contained in the Qanun-e-Shahadat Order, 1984.

18. Overriding effect. – The provisions of the Act shall have effect notwithstanding anything contained in any other law for the time being in force.

19. Cases pending in appeal or revision. – The provision of the Act shall, with the consent of the parties, apply mutatis mutandis to a dispute pending adjudication in an appeal or revision.

20. Code of Conduct. – (1) The Government shall prescribe a Code of Conduct for ADR service providers and ADR centers accredited under this Act.

(2) An ADR service provider and an ADR center shall comply with and act in accordance with the provisions of the Code of Conduct.

(3) An ADR service provider or an ADR center who commits a violation of the Code of Conduct shall be removed from the list of accredited service providers or centers by the prescribed authority.

21. Accreditation Authority. – (1) The Government shall notify an authority established by law for purposes of accrediting ADR service providers or ADR centers.

(2) Where the Government notifies an authority under subsection (1), it shall provide such authority with the requisite staff and funds.

7 (3) The Government may subject to rules entrust accreditation work to any entity qualified to perform work of accreditation.

22. Costs and fees of ADR. – The costs and fees of the ADR proceeding, if required, shall be borne by the parties in such proportion as may be mutually agreed upon by them failing which it shall be determined

by the rules made under the Act.

23. Power to make rules. – (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of the Act.

(2) Notwithstanding the generality of subsection (1), the Government may make rules:

(a) to provide for ethical conduct in the provision of ADR services by licensed ADR service providers and ADR centers;

(b) to provide for accreditation of licensed ADR service providers;

(c) to provide for documentation of decisions; and

(d) to provide for procedures to be adopted during ADR proceedings.

24. Power to amend the Schedules. – The Government may, in consultation with the Lahore High Court Lahore, amend the schedules to the Act, from time to time, so as to add an entry thereto or omit therefrom or modify any entry therein.

25. Removal of difficulty. – If any difficulty arises in giving effect to any provision of the Act, the Government may, within two years of the commencement of the Act, make such order not inconsistent with the provisions of the Act as may be necessary to remove the difficulty.

Repeal. – Subject to the provisions of section 19 of the Act, section 89-A of the Code of Civil Procedure, 1908 (V of 1908) and clause (iii), Rule 1A, Order X in the First Schedule to that Code, to the extent of the Punjab, are hereby repealed.

8 **SCHEDULE-I**

[See section 3(1)] (1) A dispute between a landlord and tenant under the Punjab Rented Premises Act, 2009 (VII of 2009).

(2) Dispute involving pre-emption under the Punjab Pre-Emption Act, 1991 (IX of 1991).

(3) Disputes relating to possession of immovable property.

(4) Family disputes including guardianship and custody of minor children.

(5) Dispute arising out of enforcement of commercial contracts except those that in fall in schedule II.

(6) Suits for specific performance of contracts except those that fall in schedule II.

(7) Disputes arising out of negotiable instruments under the Negotiable Instruments Act, 1881 (XXVI of 1881) except those that fall in schedule II.

(8) Suits arising out of Tort except those that fall in schedule II.

(9) Dispute for recovery of movable property or value thereof.

(10) Dispute for separate possession of joint immovable property through partition or otherwise including claims for mesne profits.

(11) Disputes for rendition of accounts of joint property.

(12) Disputes to remove nuisance.

(13) Disputes involving recovery of money.

(14) Cases relating to inheritance including declaration and succession.

SCHEDULE-II [See section 3(2)]

(1) Disputes relating to ownership of immoveable property.

(2) Disputes relating to professional negligence under Tort and those under the Punjab Consumer Protection Act, 2005 (II of 2005).

(3) Suits under the Banking Companies Ordinance, 1962 (LVII of 1962).

(4) Disputes involving copy rights and patents under the Copyright Ordinance, 1962 (XXXIV of 1962) and the Patents Ordinance, 2000 (LXI of 2000) respectively.

(5) Disputes involving trademarks under the Trademarks Ordinance, 2001 (XIX of 2001).

9 (6) Suits for redemption of mortgaged property under the Transfer of Property Act, 1882 (IV of 1882).

(7) Cases relating to Waqf and Trusts under the relevant laws for the time being in force

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92- The Punjab Alternate Dispute Resolution Rules, 2020

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GOVERNMENT OF THE PUNJAB
LAW AND PARLIAMENTARY AFFAIRS DEPARTMENT
NOTIFICATION
(52 of 2020)
30 April 2020

Notification No. Legis: 5-5/2020/2160, dated 30.04.2020, issued by the Government of the Punjab, Law and Parliamentary Affairs Department is hereby published in the Official Gazette for general information.

"GOVERNMENT OF THE PUNJAB
LAW AND PARLIAMENTARY AFFAIRS
DEPARTMENT
Dated, Lahore 3 0 April 2020

NOTIFICATION

No. . - In exercise of the powers conferred under
section 23 of the Punjab Alternate Dispute Resolution Act 2019 (XVII of 2019), Governor of the Punjab is pleased to make the following rules:

1. Short title and commencement.- (1) These rules may be cited as the Punjab Alternate Dispute Resolution Rules 2020.

2. (2) They shall come into force at once.

Definitions.- (1) In the rules:

(a) "Act" means the Punjab Alternate Dispute Resolution Act 2019 (XVII of 2019);

(b) "authority" means the accreditation authority notified under the Act;

(c) "format" means a format attached with the rules; and

(d) "rules" mean the Punjab Alternate Dispute Resolution Rules 2020.

(2) A word used but not defined in the rules shall have the same meaning as assigned to it in the Act.

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3. Eligibility for accreditation. - (1) The persons with following qualifications may be eligible to act as ADR service providers:

(a) a professional including engineer, doctor, financial expert or retired civil servant (not below the rank of BS- 17), with relevant qualification and experience in alternate dispute resolution; or

(b) a retired judge of a High Court or retired District and Sessions Judge or Additional District and Sessions Judge having age not more than seventy years and who is physically and mentally sound; or

(c) an Advocate Supreme Court with at least ten years active practice and have relevant experience; or

(d) a duly registered law firm or company.

(2) The following persons shall not be eligible for consideration as ADR service providers:

(a) who have been adjudged insolvent; or

(b) against whom criminal charges involving moral turpitude have been framed by a criminal court; or

(c) who have been convicted by a criminal court for an offence involving moral turpitude; or

(d) who have been punished in disciplinary proceedings or retired in consequence of that proceedings; or

(e) who have been involved in corruption; or

(f) who have bad repute.

Procedure for accreditation.- (1) An application containing complete name, address, contact details of the applicant along with certified copies of the following documents shall be made to the authority for accreditation as an ADR Service provider or ADR centre:

(a) valid computerized national identity card (CNIC) in case of ADR service provider;

(b) certificate of incorporation under the Companies Act, 2017 (XIX of 2017), in case of ADR centre;

(c) list of alternate dispute resolution cases dealt with; and

(d) experience certificate issued by the competent authority.

(2) The authority itself or through its authorized officer shall examine the application received under sub-rule (1) and may confirm the truthfulness of the information provided therein, inquire into the genuineness of the documents attached thereto, and in case of an ADR centre, satisfy that the ADR centre has:

(a) sufficient rooms and offices required for the purpose of conducting ADR proceedings; and

(b) minimum three experts including at least one legal expert, one financial expert and one negotiator.

(3) The authority or its authorized officer may, subject to recording reasons in writing, require additional information or documents or both from the applicant.

(4) In case of examination of application by the authorized officer, a detailed report along with recommendations shall be submitted to the authority within a given time for decision.

(5) The authority may accredit an applicant for an extendable period of three years subject to passing a written examination conducted

by the authority.

(6) In case of dis-satisfaction with the examination, inspection or recommendations of the authorized officer, the authority shall return the case after recording specific points for further examination and inspection by the authorized officer who shall submit its report along with recommendations to the authority within given time.

(7) The authority shall decide the application within a period of three months from the date of its receipt.

(8) In case of rejection of application, the authority shall record reasons of such rejection and inform the applicant in writing.

5. Cancelation of accreditation.- (1) The authority may, on its own information or upon receipt of a complaint, after conducting such inquiry as it may deem fit and subject to recording reasons in writing, cancel the accreditation of an ADR service provider or ADR centre accredited under the rules.

(2) The authority shall, before cancelation of accreditation of ADR service provider or ADR centre under sub-rule (1), provide an opportunity of hearing to the ADR service provider or ADR centre, as the case may be.

6. Procedure for ADR proceedings.- (1) In a case, specific date and time for appearance before the ADR service provider or ADR centre has not been given by the court, the ADR service provider or ADR centre, as the case may be, after receipt of reference shall immediately issue a notice to the parties through an urgent mail service (UMS) with acknowledgement due and Tranzum Courier Services (TCS) for appearance.

(2) The parties shall appear in person or through authorized representative or attorney before the ADR service provider or in the ADR centre on the date and time as given by the court or in the notice.

(3) In case of non-appearance, a fresh notice shall be issued and if a party, in spite of three consecutive notices, falls to appear, the matter shall be reported in writing to the court for further directions.

(4) The proceedings may be adjourned, but not for more than three days, on the genuine request of a party or parties.

(5) The ADR service provider or ADR centre, as the case may be, shall inform the court in writing if any undue influence, pressure or any unfair means are used by the parties for a favorable decision.

(6) If during the course of proceedings, ADR service provider or ADR centre finds that there is any conflict of interest, the matter shall be reported in writing to the court.

(7) If during the course of proceedings, a party finds that the ADR service provider or ADR centre is prejudice or partial or has conflict of interest, it may report the matter in writing to the court.

(8) If the dispute with free consent of the parties is settled or agreed, the settlement, award or agreement, as the case may be, shall be recorded in writing in presence of the parties.

(9) The settlement, award or agreement recorded under sub-rule (8) shall be signed along with thumb Impressions by the parties, their representatives or attorneys, if any, witnesses and the ADR service provider or ADR centre in their presence.

(10) The settlement, award or agreement completed under sub-rule (9) shall be submitted in original along with duly filled format to the court immediately.

(11) If parties fail to settle the dispute within given time frame, the matter on a prescribed format along with complete report in writing shall be submitted to the court.

7. Documentation of a decision.- ADR service provider and ADR centre shall retain a copy of the settlement, award or agreement, notices or any other document or communication made in writing during the ADR proceedings.

8. Code of conduct for accredited ADR service provider and ADR centre. The accredited ADR service provider and ADR centre shall follow the following code of conduct:

(a) parties shall be informed in detail about their roles;

(b) parties shall be informed that they are independent in making their decision;

(c) ADR service provider and ADR centre shall reasonably ensure that parties understand completely the alternate dispute resolution process;

(d) no legal or professional advice shall be provided to the parties by the ADR service provider and ADR centre;

(e) parties shall be encouraged to resolve their dispute;

(f) parties shall be advised for possible solutions and terms of settlement;

(g) parties shall be facilitated by encouraging communication and

negotiation;

(h) only impartial views and opinions on the matter under issue shall be provided by the ADR service provider and ADR centre;

(i) parties may be advised to consult or seek independent legal advice from their attorneys for independent decision;

(j) parties shall be informed about the circumstances, if any, affecting independence and impartiality of dispute resolution;

(k) ADR service provider and ADR centre shall not have any conflict of interest in the matter in dispute;

(l) ADR service provider and ADR centre shall not have any personal interests or unauthorized benefits in the disputed matter;

(m) respect and honour of parties during the course of dispute resolution shall be ensured;

(n) ADR service provider and ADR centre shall have professional skills and abilities for alternate dispute resolution;

(o) ADR service provider and ADR centre shall maintain good repute;

(p) ADR service provider and ADR centre shall follow the ethical values and social norms during the course of dispute resolution;

(q) ADR service provider and ADR centre shall not cause undue delay in resolution of a dispute between the parties;

(r) ADR service provider and ADR centre shall not promise or guarantee to any party for settlement or specific results;

(s) ADR service provider and ADR centre shall not impose any terms of settlement on the parties;

(t) ADR service provider and ADR centre, during the course of dispute resolution, shall not exhibit or display a conduct which is unbecoming of a facilitator;

(u) date, time and schedule for each session of a dispute resolution shall be fixed in consultation with parties;

(v) the proceedings of dispute resolution shall be conducted at the

ADR centre or at any convenient place agreeable by the parties in case of service provider;

(w) ADR service provider and ADR centre shall facilitate and assist the parties in reducing misunderstandings, clarifying priorities and exploring areas of compromise to resolve the dispute; and

(x) ADR service provider and ADR centre shall always act in good faith.

(y) proper arrangements shall be made and peaceful atmosphere shall be ensured during the dispute resolution proceedings.

SECRETARY
GOVERNMENT OF THE
PUNJAB
LAW AND
PARLIAMENTARY
AFFAIRS
DEPARTMENT

FORMAT FOR DECISION MAKING

(see rule 7)

Case

No._____
_____
Referring court_____
dated_____
Parties details:
_____
_____
Vs
_____
_____
Decision of the reference:
_____
_____
_____
_____
_____
_____
_____
_____

Signature & Stamp
ADR service provider/ADR centre"

Date:____/____/____

_____
_____

NAZIR AHMAD GAJANA
Secretary
Government of the Punjab
Law and Parliamentary Affairs

Department

PART II

93- Judgements of Family / Guardian Courts

IN THE COURT OF SHAFQAT ABBAS MIGHIANA, GUARDIAN JUDGE-III, LAHORE.

Muhammad Qasim Nawaz s/o Sheikh Muhammad Nawaz, Permanent Resid3enrt of Rail Bazar Waan Radha Ram, Post office Khass, tehsil pattoki District Kasur. Presently residing at house No 2/3. Street no 4-C, Paris Road, Tariq Colony Sodhiwal, Lahore.

(PETITIONER)

Versus.

Ayesha Saleem D/O Muhammad Saleem, Resident of House No.-21, Kacha ravi road, near baba Chatriwala, lahore.

RESPONDENT)

APPLICATION UNDER SECTION 25 OF THE GUARDIAN AND WARD ACT

Guardian petition number ……...803/G.C of 2016.
Date of Institution……. 19.11.2015
Date of decision……..... 19.04.2017

****

ORDER:

Present: - *Learned Counsel for the petitioner* ***Advocate Fahad Ahmad Siddiqui****. Learned Counsel for the respondent Advocate Ch. Irfan Munir Kamboh.*

VISITATION SCHEDULE BETWEEN THE PETITIONER AND THE MINORS NAMELY, NIMRA QASIM & AZAN QASIM.

Prior to chalking out visitation calendar, it appears quite appropriate to give milieu of disagreement between the parties

On 19-11-2015 the petitioner filed a custody petition U/S 25 of The Guardian and Ward Act 1890(hereinafter called as "The Act") and alleged that his marriage with the respondent was solemnized on 05-04-2009 and as the outcome of this marriage two children namely ***NIMRA QASIM and AZAN QASIM were born 28-11-2011 and 17-01-2013*** respectively; that after few years of matrimony, the respondent started and to squabble on trivial household issue and to leave house of the petitioner without any rhyme and reason; that in this scenario, while talking the minors along with her, the respondent went to her parental home and thereafter got dissolved marriage through decree of the Court; that the petitioner is very loving and caring towards his children but the respondent is very much unenthusiastic to even arrange meeting between the children and the petitioner; that the environment where minors are growing up presently, is very obnoxious for the them, in terms of their required pleasant, healthy and active grooming in respect to every sphere of life; that the petitioner has asked time and again to the respondent to permanently hand him over the custody of the minors, but in vain.

Through her written reply, the respondent has declared the version of the petitioner as the master piece of fiction and fabrication of facts.

While dismissing the application of the petitioner U/S 12 of The Act, for the interim custody of the minors, on 15-03-2016, my learned predecessor laid down an interim visitation schedule and on the same date framed the issues as based on divergent pleadings on of the parties.

However due to one or the other reasons, since March 2016 to the preceding date of hearing, the petitioner could not produce his evidence. On 15-03-2017 the petitioner filed a miscellaneous application and sought for determination of a **generous yearly parenting schedule** and for disposal of principal custody petition. In this regard, on for going date of hearing, learned Council for the respondent got recorded his version and contended that if the permanent custody of the minors may not be changed in favour of the petitioner, then the respondent would have no objection on detailed visitation schedule.

Through the above mentioned miscellaneous application, the petitioner has contended that he knows well about repercussions and consequences of cases pertaining to custody and visitation issues; that such cases be conceived, considered and settled in different perspective to those of routine civil cases; that if the parents, means something great for a child, then a child also means the whole world for the parents; that if due to inevitable reasons parents have fallen apart, then the child should not be deprived of having the maximum of what he/she could achieve from either of the parents; that a father is not only required to participate in up-bringing of minor/s and supposed to fulfill worldly needs of his children but he should also be awarded opportunity to develop love, bondage and affinity with them.

It is further contended by the petitioner that premises of the court, for the purpose of meeting between the minors and the non-custodial parent is neither conductive nor effective as it lacks proper facilities and arrangements and it may not be compared to homely environment; that undoubtedly, as being the non-custodial parent the present petitioner have to make an extra effort to prove himself a presentable, acceptable and eligible to win the heart of his children and attention of the court as well, whereas the respondent is freely enjoying continuous and unconditional custody of a minors; that respondent is never required to prove her moral, mental or legal fitness to continue with the custody of the children; that The Guardian and Ward 1890; does not provide even a single provision about any restricted visitation between a non-custodial parent and his/her children; that in this context, while considering the legal, moral and religious rights of the petitioner, a detailed meeting schedule be given with the following details:

1. On weekends, interim physical custody of his both minor children at 5 pm on Saturday and the petitioner undertakes to return physical custody of the minors at 5 pm on Sunday likewise on all the four weekends.
2. On the occasion of Eidain, if Petitioner father is held entitled for interim physical custody of the minors on 2nd day of the Eidain and the Petitioner undertakes to return the custody of the minors on the 3rd day of Eidain.
3. On the occasion of birthdays of minors and the father/petitioner as well, if the petitioner is held in title for interim physical custody of his both minor children for an overnight stay with the petitioner at his home in the manner as stated above.
4. On the occasion of Summer/Spring & Winter Vacations, if the Petitioner father be held entitled for half of the vacations to be spent with the minors at his home.
5. On the occasions of public holidays, including holidays on account of Moharram-ul-Haram, 23rd march, 14th August Quaid-e-Azam day, if, the physical custody of the minors be handed over to the Petitioner, he undertakes to return the custody of the minors of the custodial parent in the manner as already stated above.

In addition to it all, the petitioner himself has contended that he is ready to pay Rs. 10,000 with 10% annual increment, as the maintenance allowance of each minor and above and all he is also ready to beer all academic and school expenses of the minors.

While arguing about the instant petition, learned Counsel for the petitioner has contended that:-

1. *In common parlance a noncustodial father is supposed to be an ATM machine, just meant to fulfill economical needs of the children, but as a reward, nothing is available to him.*
2. *That if after hectic efforts and longstanding wait, he succeeds to have interim visitation schedule of meeting with his children, then it never exceeds to two hours visitation at court premises only.*
3. *That even such meetings fully depend on whims of the mother, as to whether she may bring the children or may not produce them*

with any lame excuse. However, in such situation a court never penalize to a mother while exchanging the custody in favor of the non custodial father.

4. *That even a non custodial father is always burden to furnish surety bonds if fortunately he is allowed to have meetings at his own home, but no such conditions is ever imposed on the mother.*
5. *That in present case, if the respondent gets remarry, then in such situation, the petitioner be allowed to file fresh custody petition to have permanent custody of minors.*
6. *That even after 07 years of age respective minor, petitioner be allowed to file fresh custody quotation U/S 25 of The Act.*

During the course of arguments, learned council for the petitioner has relied upon following dictums of Hon'able apex courts;-

PLD 2001 KARACHI 371	2003 YLR 2528 LAHORE	2014 MLD1137 LAHORE
2015 CLC 1260 LAHORE	2015 CLC 2019 SINDH	PLD 1995 LAHORE 151
2009 CLC 1443 LAHORE,	2013 MLD 1631 LAHORE,	PLD 2005 LAHORE 527,
2023 MLD 1631 LAHORE,	2016, YLR 1431 LAHORE,	2014 MLD LAHORE 11 37,
2009 CLC 1437 LAHORE,	2016, YLR 583 SINDH,	PLD 2004 LAHORE 395.
CHILD ACCESS & CUSTODY GUIDE LINES: BY CHILDS RIGHTS Foundation year of publication 2011	PETITION NO. A-932 OF 2015 OF LEARNED FAMILY COURT, MUMBAI AT BANDRA.	

Collective Impressions of the above referred dictums of Hon'ble Apex courts and arguments of learned Counsel for the petitioner is that:-

1. Right off non custodian father must be observed and kept in priority about his meetings with the children.

2. Non custodian father must have the careful access or approach to the social and the educational activities of the minors.

3. That non-custodian father or even the mother must not be treated as an accused.

All the above referred arguments of learned Counsel for the petitioners are here by answered as under: -

a. Undoubtedly, non custodian parents have inalienable right to enjoy the custody of his/her children, however, it is not necessary that in every case a non-custodial parent is always righteous.

b. This Court has strong credence that if the parties may lead their evidence in earlier and spotlight on final decisions, instead of claiming only short-term visitation, then no case may prolong beyond the period of one month only.

No comes to matter in hand. In view of above discussion and in view of the statement of learned respondent as recorded on preceding date of hearing, following schedule of meeting between the petitioner and his minor children is hereby chalked out:-

POINTS OF CONSIDERATIONS

- ✓ The visitation schedule, will override the earlier interim visitation schedule between the parties.

- ✓ Petitioner is in the business, while responded is the house wife, however, family members of the respondent are also businessmen.

- ✓ Petitioner permanently resides outside the Lahore, while the respondent is permanently resident of District Lahore.

- ✓ Nimra Qasim, the minor, is aged about 5 **1/2** years.

- ✓ Azan Qasim, the other minor, is aged about 4 **1/2** years.

- ✓ Petitioner has given undertaking to bear a monthly maintenance allowance and academic expenses of the minors.

- ✓ Parties to this petition do not reside in same vicinity.
- ✓ Petitioner has got remarried, but he has no issue from the second marriage. However, the respondent has yet not married
- ✓ Petitioner has produced several photographs, captured during his meetings with the minors held at his own home and in the court premises as well and some provide about strong affiliation between the petitioner and the minors.

In this regard petitioner is held entitled to have meeting with his minor children

(i) On every alternate Saturday since 10:00 A.M to following Sunday till 04:00 P.M.

(ii) On 2nd day of respective birthday of the minors and first day of his own birthday, since 10:00 Am to 5:00 PM at his own residence.

(iii) On **first** day of Eid ul Azha since 10:00 A.M to following day till 10:00 A.M.

(iv) On **2nd** day of Eid ul Fitr since 10:00 A.M to following day till 10:00 A.M.

(v) On first ten (10) days of every month of summer vacation and for first four (04) days of winter vacation and first two (02) days of spring vacation.

(vi) During the stay of the children at the home of the petitioner, they will be at liberty to call their mother, through telephone or through social media i.e. face book, Whatsapp etc. In this regard petitioner will not create any hindrance.

(vii) If any of the parents would like to take the children outside the city for any picnic and touring program then he/she will inform the other about such visit and will follow the opinion of other.

(viii) On any special occasion e.g. marriage ceremony or funeral ceremony of any close relatives of the petitioner or on the occasion of Eid-Milad-ul-Nabi. Shab-e-Barat or ashoora

Muharam-ul-haram etc, meeting between the petitioner and the minors will be held after consent of the respondent.

However, in this regard, respondent is directed to be generous for the welfare of the minors.

Meeting schedule, liable to be followed at home of the respondent, would be subject to payment of surety bonds, amounting to Rs, 50,00,000/. Rupees Fifty Lac only) with one local surety to the satisfaction of this court, on all said occasions.

HANDING OVER AND RECEIVING THE CHILDREN

Place of handing over and receiving the children shall be gate of house of the respondent. Process for handing over and receiving the minors will be held through Bailiff, subject to bearing any travelling expenses of the Bailiff, by the petitioner. However, if the parties may define the process of handing over and receiving of the minors on their own, then the court has no object on such mechanism.

ISSUES OF EMERGENT NATURE

In case of any emergency about health or any other issue of the minors, the parent having custody of the minor will inform then non-custodial parent within 03 hours to the emergency.

DECISION MAKING

Major decisions about education or health of the minors or about their future planning shall be taken up jointly. In present case, marriage between the parties has been dissolved, so respondent may communicate to the petitioner through the children themselves or through her brother or any other family member.

PETITIONER'S VISIT TO SCHOOL

As it has been declared obligatory for the petitioner to pay maintenance allowance and to bear school expenses of the minors, then he is hereby held entitled to visit school of the children at the end of every quarter of academic year. He is allowed to meet with teachers of the minors to have update about their academic profile. However, he would not be allowed to interfere in policies of school administration or to take the minors with him on such visit. Similarly, he is allowed to keep liaison with tutor at academy or at home.

PAYMENT OF MAINTENANCE ALLOWNANCE AND OTHER EXPENSES:

Petitioner will remain under obligation to pay Rs. 10,000/- per

month as the maintenance allowance of each minor with 10% annual increment since April 2017 till the age of majority of the minor son namely Azan Qasim and till the marriage of the minor daughter namely Nimra Qasim. In this respect, respondent will share her bank account to the petitioner, and he will deposit said amounts directly in bank account of three respondents. Said amounts will not be paid in hard cash.

Moreover, the petitioner will remain under obligation to pay the school expenditure of the minors with reference to their books, uniform and the other curricular activities.

PENAL CLAUSE:

If the petitioner will deviate from the discipline of this schedule, then after being proved, he would be declared disentitled to have its benefits. Similarly, if two consecutives complaints arise against the respondent to violate this schedule, then after being proved, custody of the minor will be changed in favour of the petitioner for the nest three months. Both the parties will keep record about the scheduled meetings and payments, made for the welfare of the minors.

IMPORTANT NOTE:

If the respondent gets re-marry, then the petitioner would be at liberty to file fresh application to have permanent custody of the minors, otherwise this schedule will remain intact, even if the minors exceeds the age of seven years or more.

Muhammad Usman, Ahlmad is directed to arrange the file properly and get in consigned in the record room after its necessary compilation.

Announced

SHAFQAT ABBAS MIGHIANA
Guardian Judge III, Lahore

19.04.2017

Certified that this order consists of eight (08) pages, each page has been dictated, read, corrected and signed by me.

Dated: 19.04.2017

SHAFQAT ABBAS MIGHIANA
Guardian Judge III, Lahore

IN THE COURT OF SHAFQAT ABBAS MIGHIANA, GUARDIAN JUDGE-III, LAHORE.

Barrister Hassan Nawaz Sheikh

(*Petitioner***)**

vs.

Mst. Manaal Malik

(*Respondent***)**

ORDER:
20/4/2017

Present: - Petitioner in Person.
Learned counsel for the respondent, Advocate Shehzad Butt.

This order is meant to decide application U/S 12 of Guardian & Wards Act 1890

VERSION OF THE PETITIONER:

According to the petitioner, his marriage with the respondent was solemnized on 18.12.2015 and as the outcome of this marriage, a daughter namely ***Eshaal Hassan*** was born on 10.09.2016; that the relations between the petitioner and the respondent remained cordial initially, but, thereafter, disputes started to arise and the respondent along with said named minor went to her parents' home in the month of July, 2016 and has denied to return back to the petitioner; that the respondent is highly under influence of her parents, specially her father who has caused un-necessary differences amongst the petitioner and the respondent and has many a times openly declared that he wants this marriage union to end in dissolution, much to the shock of the petitioner; that there is no major dispute between the parties, but only false ego is running the life of both the spouses; that the petitioner is still desirous of compromising and reconciling with the respondent for the welfare of the minor and the respondent as well; that minor is growing up in an inappropriate, insufficient and non-congenial environment; that in the given circumstances, till final decision of principal custody petition, on interim basis custody of the minor be handed over to the petitioner.

NARRATIVE OF THE RESPONDENT:

Conversely the respondent has contended that minor is baby girl of just six months; that the petition in hand been filed with malafide intention and just to harass and humiliate the respondent; that in fact during the month of July 2016, when the respondent was bearing a child, then no one was available at petitioner's home to look after her in said particular situation, hence she had moved to her parental home; that even after the birth of the said minor, the behavior of the petitioner has remained non-caring and that of aggression towards the respondent; that father of the respondent has done his best to reconcile the matter but due to rude behavior of the petitioner and his family members it all remained fruitless; that the respondent is very much caring towards the minor daughter; that the petitioner has never paid maintenance allowance of the minor; that even the respondent has never

refused for arrangement of any meeting between the petitioner and the minor. Lastly the respondent has submitted for dismissal of petition in hand.

Arguments have been heard, Record perused.

While arguing about petition in hand, the petitioner has contended that he ready to maintain his minor daughter and the respondent as well in all shapes. He has augmented his arguments, while relying upon following dictums of Hon'able Apex courts:

PLD 2008 LAHORE 527, 2009 CLC 1443, 1993 CLC 2088, PLD 1963 LHR 534

On the other hand, the respondent counsel has fortified his arguments, while relying upon 2009 SCMR 1062.

Valuable arguments from the both sides and the available record provides that minor is an innocent fairy of just 08 months. Both the parties to this petition are highly educated and reside in a locality, which is supposed to be vicinity of sophisticated people. However, despite this very class, unfortunately they both are wandering in a blind alley as to remove root cause of their dispute, which is nothing else but the ego and self-esteem, as they both have not disclosed about any material dispute existing between them.

This verdict of the court is based on the tentative assessment of record; moreover it would not prejudice the merits of the case. Minor is if extreme tender age, hence it is not desirable to change her custody merely on interim bases. However the matter about custody of the minor may rightly be decided after recording of the evidence. In the given circumstances, application in hand is hereby **dismissed**.

However, keeping in view the relationship between the petitioner and minor as that of being father and daughter, following meeting schedule is hereby chalked out:

<u>CONSIDERABLE POINTS FOR MEETING SCHEDULE:</u>

- ✓ Both the parties are concerned to legal fraternity.
- ✓ Minor is just about eight months in age.
- ✓ This is the first baby of the parties to this petition.

- ✓ Both the parties are residing almost near to each other.
- ✓ Both the parties have the resources, will and capability to maintain the minor at the best of her welfare.

In this context, petitioner is held entitled to meet with his minor daughter namely **ESHAAL HASSAN**:

- *On every Saturday since 10:00 A.M to 06:00 P.M (During Summer season) and since 10:00 A.M to 4:00 P.M (During Winter season) at his own residence.*
- *On 2nd day of **"Eid ul Fitr"** and 1st day of "**Eid ul Azha**" since 10:00 A.M to 05:00 P.M at his own residence.*
- *On 2nd day of Birthday of the minor, since 10:00 A.M to 4:00 P.M at the same venue.*
- *In case of any emergency about health or any other issue of the minor, the parent having the custody of the minor will inform the non custodial parent within 03 hours to the emergency.*
- *Handing over and receiving of the minor daughter would be held through Bailiff. In this regard if nay travelling expenses will incur by the Bailiff, then same will be paid by the petitioner.*
- *Petitioner will be entitled to enjoy this schedule only if he would submit surety bonds amounting to Rs. 20,000,00/(Twenty Lac Rupees) with one local surety to the satisfaction of this court.*
- *None of the parties will be allowed to take the minor abroad, but with permission of the court. Similarly none of the parties could **permanently** shift the minor beyond territorial jurisdiction of this court.*

PENAL CLAUSE:

If the petitioner will deviate from the discipline of this schedule, then after being proved, he would be declared disentitled to have its benefits. Similarly, if two consecutive complaints arise against the respondent to violate this schedule, then after being proved, custody of the minor will changed in favor of the petitioner for the next three months.

NOTE:-

If on some special occasion, i.e, Ashoora Muharam-ul-Haram, Eid Milad-ul-Nabi, Kashimr day, father/mother day, death or illness of some relative, Aqeeqa or marriage ceremony of relatives etc., petitioner may desire to have custody of minors, then, he would have to proceed before the court, to obtain special permission and same would be allowed or disallowed by the court, according to on-going proceedings in file.

To decide the application U/S 25 of Guardian & Wards Act, out of divergent pleadings following issues are hereby framed:-

ISSUES:-

1. *Whether welfare of the minor exists in hands of the petitioner, so her custody be permanently handed over to the petitioner, as prayed for? OPA*
2. *Whether the application U/S 25 of Guardian & Wards Act filed by the petitioner is masterpiece of fabrication and that of having no cause of action, hence same is liable to be dismissed? OPR.*
3. *Relief?*

List of witnesses be submitted within the seven days from this order. Now to come up for evidence of the petitioner on **18.05.2017.**

Announced: 20.04.2017.

SHAFQAT ABBAS MIGHIANA
Guardian Judge-III, Lahore.

It is certified that…….

IN THE COURT OF SENIOR CIVIL WITH POWER OF GUARDIAN JUDGE LAHORE

Suit No. _____/2014

MUHAMMAD IMRAN MIRZA

VERSUS

MAMOONA ILYAS

PETITION UNDER SECTION 25 OF THE GUARDIAN AND WARD ACT FOR THE CUSTODY OF THE MINORS NAMELY MIRZA ABDUL REHMAN (SON) DATE OF BIRTH 23.8.2009 AND (2) HIRA IMRAN (DAUGHTER) DATE OF BIRTH 14.6.2011.

ORDER

31.10.2018

Present: **Fahad Ahmad Siddiqi Advocate** for the Petitioner

Learned Counsel for the Respondent

Petitioner in person

` **APPLICATION U/S 25 OF THE GUARDIAN AND WARD ACT**

The petitioner has filed an application u/s 25 of the Guardian and Ward Act for permanent custody of the minors namely Mirza Abdul Rehman and Hira Imran. On 01.10.2018 the petitioner recorded the following statement:-

میں اور جائے دیا شیڈول کا ملاکات سالانہ comprehensive ساتھ کا بالغان نا مجے
دوبارہ م تو کی شادی دوسری نے الہہ مسول اگر .ہوں لیتا واپس حضانت درخواست
اپنی میں عمر کی سال ۱2 بالغان نا اگر .ہوں رکھتا حق کا کرنے دائر حضانت ا درخواست
پوچھے بھی view کا ان عدالت تو چاہیں رہنا پاسس ک جس مطابق ک consent

The court personally heard the minors on 06.10.2018 and both the minors have un hesitatingly stated that they are not conformable with their parental grandparents as they scold them but they have also admitted that the petitioner lays special emphasis on their education. The minors had further averred that the petitioner is strict with them. The court personally counseled the petitioner to stay polite with the minors. All the documents relating to the education of the minors tendered by the petitioner have been pursued which signify high level of concern of the petitioner

regarding academic career of the minors. It is also an undeniable fact that the parent has to strictly monitor the academics of their children and to ensure their progress, they have to make them disciplined. The petitioner is doting, caring and concerned father so keeping in view the statement of the petitioner, the following meeting schedule is chalked out which is as under:-

The following meeting schedule will be implemented.

1. The petitioner/father shall be entitled to get interim custody of the minors on 1st 2nd and 4th Friday of every calendar month from 4.00 pm and shall return the minors back to the respondent/mother on Sunday at 6:00 pm.

2. On the occasion of the Eid-ul-Fitr, the petitioner/father shall be entitled to get interim custody of the minors on 2nd day of Eid-ul-Fitr from 10:00 am and shall return the minors back to the respondent/mother on very next day i.e third day at 4:00 pm.

3. On the occasion of the Eid-ul-Azha the petitioner/father shall be entitled to get interim custody of the minors on preceding day of Eid-ul-Azha from 7:00 pm and he shall return the minors back to the respondent/mother on the 2nd day of Eid-ul-Azha at 9:00 am.

4. On the occasion of birthday of minors and petitioner, the petitioner shall be entitled to get the interim custody of the minors on 2nd day of birthday starting from 5:00 pm and he shall return the minors back to the respondent/mother on very day at 5:00 pm. (If Birthday does not fall on weekend, then the minors will be handed over on the following Saturday till

Sunday of the same week for the same duration and both the minors will be handed over to the father to celebrate birthday.)

5. The petitioner/father shall be entitled to get the interim custody of the minors for first half of winter, spring and spring vacations of school of minors (from 11:00 am of first day till 8:00 pm of last day).
6. On the occasion of 9th and 10th Moharram, the petitioner shall be entitled to get interim custody of the minors on 09th Moharram from 11:00 am and he shall return the minors back to the respondent on the very next day i.e. 10th Moharam at 07:00 pm.
7. On public holiday i.e. 23rd March, the petitioner shall be entitled to get interim custody of the minors on 22nd March from 07:00 pm and he shall return the minors back to the respondent on the very next day i.e. 23rd March at 07:00 pm.
8. On public holiday i.e. 5th February, the petitioner shall be entitled to get interim custody of the minors on 4th February from 07:00 pm and he shall return the minors back to the petitioner on the very next day i.e. 5th February at 07:00 pm.
9. On the occasion of Eid Milad-un-Nabi, the petitioner shall be entitled to get interim custody of the minors on 11th Rabi-ul-Awwal from at 04:00 pm and he shall return the minors back to the respondent on the very next day i.e. 12th Rabi-ul-Awwal at 07:00 pm.
10. Petitioner can visit the school of minors once in every month to check their academic growth and performance and can attend parent teacher meeting.
11. Handing over and taking over the minors shall be conducted through bailiff of the court. Robkar will be issued in this regard bailiff is fixed @ Rs.500 which will be paid by the petitioner. If the respondent/mother will refuse to hand over the minors to the petitioner then the bailiff can obtain assistance of police.

PENAL CLAUSE

If the parties will not follow the meeting schedule without assigning any plausible justification then they will pay Rs.2000/- cost for each violation.

The petitioner orally requested to appoint him guardian of person of the minors alongwith the respondent because he face hurdle in pursuing the issues related to the education of the minors in the school.

The counsel for the respondent has vehemently opposed the stance taken by the petitioner.

I have heard both the parties and pursed the record.

The petitioner has only filed the petition u/s 25 of the Guardian & Ward Act for the custody of the minors and he cannot claim guardianship of the person or the minors in this petition. In order to secure the academic career of the minors, the petitioner is allowed to stay in contact with the school administration, teachers and academy of the minors. The petitioner can attend the parent teacher meeting and he can visit the school of the minors twice in a month. The school authority is bound to share academic progress of the minors with the petitioner.

In the light of the statement of the petitioner, the instant custody petition is hereby dismissed as withdrawn with the permission to file fresh custody petition if the respondent will contract second marriage. The petitioner is directed to furnish surety bond in the sum of Rs.5, 00,000/- to the satisfaction of this Court. There is no order as to costs. Ahlmad Atif is directed to consign the file to the record room after its due completion and compilation.

Announced
Zaira Manzoor Malik
Guardian Judge VI-Lahore
31.10.2018

IN THE COURT OF AMBER GUL KHAN,
GUARDIAN JUDGE-V,LAHORE

IN RE
Mohammad Nauman Saleem Vs Mst. Roop Pervaiz Butt
(GUARDIANSHIP PETITION)

ORDER
29.07.2019
PRESENT: **Fahad Ahmad Siddiqi** for the Petitioner
Learned counsel for *parties*

Perusal of record shows that on 09.10.2018, the petitioner u/s 25 of Guardian & Wards Act filed by the petitioner was decided by the court of Ms. Zaira Manzoor Malik the then Guardian Judge-VI, Lahore in view of statement recorded on 07.07.2018 by the petitioner(father). Feeling aggrieved from this order, the respondent (mother)filed an appeal and contested night stay of minor with father allowed be Guardian Court, appeal has been accepted and case was remanded to this court with direction to decide application u/s 25 of Guardian & Wards Act afresh determine visitation schedule after hearing both of the parties. The petitioner father has filed writ petition of Hon'able Lahore High Court

Lahore in which the petition has been disposed of with the observation that if the petitioner repeats his earlier statement of not pressing his application under section 25 of Guardian & Wards Act, 1964 provided a schedule of meeting is fixed, the learned guardian court seized of the matter shall expeditiously dispose of the case without granting undue adjournments and after duly providing opportunity of hearing to both sides shall finalize a proper meeting schedule conductive to the parenting needs and welfare of the minor within 15 days. In pursuance to direction of Hon'able court, exhaustive arguments of learned counsel for the parties have been heard. On 27.04.2019, again the petitioner father appeared before the court and got recorded his statement to the effect that he will withdraw the custody petition u/s 25 of Guardian & Wards Act subject to confirmation of visitation schedule. However, I reserve my right to file fresh petition for custody of minor, in case if respondent lady contracts second marriage.

In view of above discussions, the petition u/s 25 of Guardian & Wards Act is dismissed as withdrawn. The petitioner is at liberty to file fresh custody petition if the respondent contracts second marriage subject to all just and legal exceptions. Record reflects that minor namely **Muhammad Ismail is aged about 05-years**, therefore, comprehensive visitation schedule shall be beneficial to build deeper bounding between father and son as well as physical and mental growth of minor as no other person except real father can ensure confident, positive and protected outdoor activity to a minor boy.

So, in the interest & welfare of minor, meeting schedule between the petitioner and minor is chalked out which is as under:-

Meeting Schedule.

i. The petitioner/father of minor will be entitled to have the custody of the minor on 2nd and 4th Saturday of every calendar month from 3.00 P.M till 6:00 P.M of following day (Sunday) at his own residence.

ii. On the occasion of the Eid-ul-Fitar, the petitioner/father will be entitled to have the custody of minor on 2nd Day of Eid-ul-Fitar from 10:00 A.M and shall returned back the custody of the minor to the respondent/mother on 3rd Day of Eid-ul-Fitar at 06:00 A.M.

iii. On the occasion of the Eid-ul-Azha, the petitioner/father will be entitled to have the custody of minor on 1st Day of Eid-ul-Azha

from 10:00 A.M and shall returned the custody of the minors to the respondent/mother on 2nd Day of Eid-ul-Azha at 06:00 P.M.

iv. On the birthday of petitioner/father and minor, the petitioner/father will be entitled to have the custody of the minor from 12:00 P.M. to 5:00 P.M. at his own residence. In case of birthday falls during work/school days, timings will be 04:00 P.M to 08:00 P.M.

v. The petitioner/father is entitled for the custody of the minors on first 10 days of every month of summer vacation and last 03 days of winter vacation &, spring vacations from 10:00 A.M. to 10:00 A.M. During summer vacation routine monthly visitation shall remain suspended.

vi. On 9th & 10th Muharram ul Haram, the petitioner/father will be entitled to have the custody of minor on 09th Muharram ul Haram from 10:00 A.M. till 10:00 A.M. of 10th Muharram ul Haram, at his own residence.

vii. On public holidays i.e. 5th February, 23rd March, 14th August & 12th Rabi-ul-Awal, the petitioner/father will be entitled to have the custody of the minors from 10:00 A.M and shall returned the custody of the minor to the respondent/mother on next day at 04:00 P.M.

viii. Petitioner/father is allowed audio/video call to the minor for 10 minutes daily. Similarly, during the stay of the minor at the home of petitioner (father), minor will be at liberty to call her mother. In this regard both parties /parents shall not create any hindrance.

ix. Handing over and taking over the minors shall be conducted through bailiff. Meeting schedule is to be implemented, subject to furnishing of surety bonds, amounting **to Rs. 500,000/- (Rupees Five Lac),** with one local surety to the satisfaction of this court. Both of the parties are restrained from taking the minors out of jurisdiction of this court.

It is hereby held that for implementation of the above schedule of meeting of minor(s), there will be no need to move any separate miscellaneous application as court will issue Robkar for implementation on verbal request of the party concerned, which shall be made before in time and the same shall be made part of record.

PENAL CLAUSE:

The party in default shall be liable to pay cost of Rs. 2,000/- in case of violation of visitation schedule except in emergent situation and penal provision of section 45 of Guardian and Wards act may also be invoked. Moreover, cancellation of visitation/compensatory visitation shall also be pronounced then and there. it is made clear that visitation schedule shall not be suspended or altered on ground of ailment, exams or monthly test of the minor, as in said eventually, then non-custodial parent taking custody is quality responsible to take care of the ailing children and render his contribution towards education of the children. Moreover, in order to cope with apprehension of respondent (mother) regarding damage to study of minor, it is made clear that the court may requisite details relation to academic progress of minor from the concerned school or party, if so required.

NOTE

An execution petition titles as "Roop Pervaiz vs Muhammad Noman saleem" regarding maintenance allowance of minor between the same parties is pending adjudication in this court, in which the petitioner's (father) application making installments of outstanding decretal amount has been accepted today. In order to ensure payment of monthly installments to the respondent (mother) and visitation of minor son to the petitioner father, this visitation schedule is made conditional with the monthly installments of maintenance allowance. Ahlmad Sheikh Uzair is directed to issue earlier robkar in a month for scheduled subject to payment of installments of Rs. 50,000/- and not otherwise. Filed be consigned to the record through Ahlmad Sheikh Uzair after its due completion and compilation.

Announced
Amber Gul Khan
Guardian Judge V-Lahore
29.07.2019

IN THE COURT OF ASAD IMAN RAWN,
FAMILY/GUARDIAN JUDGE-VII, LAHORE

Muhammad Shahid Vs. Fazilat Javed

PETITION U/S 25 OF THE GUARDIAN AND WARDS ACT 1890
FOR THE
CUSTODY OF MINOR NAMELY ABDUL REHMAN

PETITION NO 444G.C OF 2017
DATE OF INSTITUTION 24.04. 2017

DATE OF DECISION 20.07.2019

Muhammad Shahid

Vs.

Fazilat Javed

PETITION U/S 25 OF THE GUARDIAN AND WARDS ACT 1890 FOR THE CUSTODY OF MINOR NAMELY SARA SHAHID

PETITION NO 268 G.C OF 2017
DATE OF INSTITUTION 17.04. 2017
DATE OF DECISION 20.07.2019

ORDER
20.07.2019

Through this order two custody petitions filed by the petitioner/father Muhammad Shahid are hereby disposed of one custody petition for the custody of the minor namely Abdul Rehman and other custody petition for the minor namely Sara Shahid. The petitioner has filed application for withdrawal of petitions for custody of the minors and has requested for the comprehensive meeting schedule. Hon'ble Lahore High Court Lahore has ordered for decision of the instant petition before 31st July 2019 with specific reference to judgement reported 2018 SCMR 1991.

Fahad Ahmad Siddiqui Advocate, learned counsel for the petitioner argued that company of the father is as much essential for the minors as of mother for welfare of the minors. Petitioner/father has surrendered claim of custody of the minors for time being the requested for the comprehensive schedule for the minors. He further argued that even at school record name of the father of the minors is not registered.

On the other hand, learned counsel for the respondent. Ms. Samina Khalid Advocate argued that as far as meeting schedule which was formulated by Hon'ble Supreme Court of Pakistan in judgment reported 2018 SCMR 1991 is concerned that cannot be applied in instant case as per ages of the minors. She further argued that respondent is willing to arrange a meeting of the minors. However, overnight stay would not be healthy for the welfare of the minors.

After hearing arguments, I have perused record. Minor namely Abdul

Rehman is aged about almost six years and minor namely Sara Shahid is aged about seven years and six months. Being so if overnight stay with petitioner /father is granted that will not harm minors. Now concept of shared parenting is being promoted and implemented throughout the world. Although complete 50/50 custody is not possible in our culture due to different behavior of parties toward ex-spouses. Further although the company of mother is very necessary for the physical and mental growth of the minors. However, at the same time love and affection of the father is as much important for the psychological growth of the minors. Even today in separate suits for the maintenance parties have given statement and petitioner father has given statement that he would be responsible for the fee as well as medication of the minors which shows that petitioner/father is very much concerned about welfare of the children. As petitioner/father is ready to pay the expenditures of the minors so he shall also be given interim custody of the minors so that he can spend time with the minors out of the court in a peaceful environment. Somewhere at place of his own choice. Further if petition father is given interim custody for the purpose of the meeting, he would be convenient to have outing with the minors which would be beneficial for minors. So, in view of this while taking guidance of 2018 SCMR 1991 custody of minor shall remain with the respondent mother following meeting schedule is hereby framed for petitioner father: -

(i) On every first and third weekend minors may reside with the father who shall pick up the minors from the house of the mother on Friday at about 08:00 pm. Late evening and shall drop the minors at the house of the mother on Sunday by 01:00 pm in the afternoon. As already minors are having medical checkup on third Saturday so petitioner is allowed to have medical checkup of minors during their custody with him.

(i) During summer vacation the custody of the minors shall be handed over to the father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the mother at evening, on the 1st Sunday during the vacations so that minors may have four weeks to spend with their father. During this period meeting of minor shall be arranged with the mother for three hours on every Sunday.

(iii) Winter vacations were generally due from 21st December to 31st December. First week of the winter vacation shall be

spent by the minors with their father and second week with the mother.

(iv) During Eid ul Fitr the minors shall celebrate Eid with their father from Chand Raat at 8:00 pm till second day of Eid up to 8:00pm

(v) On Eid ul Azha the mother shall allow the minors to celebrate Eid with their father who shall pick the minors from the residence of mother to the second day of Eid-ul-Azha from chand raat at 11:00 am till 3rd day of Eid at 10:00pm or earlier.

(vi) Minors may spent alternate unscheduled holidays with their father from 10:00 am to 8:00 pm in the evening. If holidays are announced in school, then minors shall spend first half of holidays with petitioner/father.

(vii) in case there was any family occasion for which the father desired and wished that his children may also attend, he shall inform the mother who shall not unreasonably stop the minors from attending such family events

(viii)The petitioner shall be entitled to meet with the minors on the day of the birthday of the minor after school hours for four hours.

(iX) Both the parents shall allow phone contact of minors with other parent during custody.

(x) Both mother and father shall not do any act that may prejudice the minor's mind towards the other parent.

Further during course or arguments it transpired that mother has not registered name of father in the school record of minors. No doubt company of mother is blessing for child but at the same time company and name of father is always a protection for children. Even not registering name of father in the record of children is like snatching identity of minors. this can be prejudicial for minors in the school record of the miner as per Form-B.

Further petitioner/father is allowed to have information about progress of minors from their respective schools. School authorities shall provide details of marks sheet to the petitioner/father. Further petitioner can also attend parent-teacher meetings; However, petitioner shall avoid any other investigation and meeting with minors in school.

I hope that both the parents will arrange meeting of the minors without

interference of the court process as both the parties are educated. However, in case of any disagreement then minors shall be handed over through bailiff. Fee of bailiff is fixed at Rs. 1000/- which shall be paid by the petitioner. Meeting of the minors shall be conducted subject to clearance of maintenance. In case of default in conducting of meeting Rs. 2000/- fine shall be paid to the other party.

in above discussions, both the custody petitions are hereby disposed of in above terms. However, in case of second marriage of respondent/mother petitioner would be at liberty to file fresh custody petition. File be consigned to the record room by Junaid Kasheed Ahlmad after due compilations.

Announced ***Asad Imran Kawn***
20.07.2019 ***Family/Guardian Judge V-II Lahore***

Certified that this judgment consists of 04 pages. Each page has been dictated, read, corrected and signed by me.

Announced

Asad Imran Kawn
Family/Guardian Judge V-II Lahore
20.07.2019

IN THE COURT OF MUJTABA UL HASSAN GUARDIAN JUDGE-IV, LAHORE.

Shamas Taberaz Vs Hifza Taberaz

ORDER:

12.02.2019

Present: **Fahad Ahmad Siddiqi Advocate** for the Petitioner

Learned Counsel for the Respondent

Petitioner made an application that the meeting schedule be modified as the case was filed in year 2013 but till date it has not been decided despite family court act has provided 6 month time span to sum up the family case. Only two hours meeting schedule for father has been formulated once in month. The minors children Hiba Qisar age about 12 years and Mohammed Abdullah aged about 6 years are upbringing minors therefore it is not fair and justified for a biological father to meet his minors only for 2 hours.

2. Respondent hotly contested the applications and filed written reply with the contention that the application is frivolous in nature and barred by law. Therefore, this application be dismissed.

3. Arguments heard. Record perused.

4. Record reveals that petitioner Shamas Taberaz filed an application for the custody of the minors namely Hiba Qaiser and Muhammad Abdullah being real father on 15.11.2016. Petitioner also made an application U/S.12 of the GWA for seeking interim custody of the minors which was decided by learned predecessor court vide order dated 09.05.2018 with observation that the minors are tendered age and change of custody would hamper mental psychological and educational

well being of minors. Court also formulated a meeting schedule that the petitioner will meet his children on the fourth Saturday of every month from 10:00 Noon to 12:00 P.M in court premises. The issues were also framed and parties were directed to furnish their respective evidence but all in vain due to the pendency of different applications for seeking custody of the minors from the petitioner on different occasions. At this stage four applications are pending adjudication for the custody of minors.

5. It is hard nut to crack that guardian petitions always delayed due to filing of miscellaneous applications for meeting with the minors. Parents always intended to meet their offspring on every cost but previous egoism and hatred between spouses remained hurdle in meeting with the minors on either side. A party which carries custody of the minors always misuses this advantage and causes hardship for the other party in meetings on different occasions. Aggrieved party knocked the court door and filed different applications for meeting with the minors and real matter lingered on.

6. All applications filed in guardian court revolve around the welfare of the minors. Supreme rule of the welfare of the minors always lies in better education, better atmosphere and better facilities of life according to the capacity of the parties. Better atmosphere for the children is impossible until and unless both of parents may impart their role in character building of upbringing children. It is very correct and accurate that mother love and affection has no alternate but father is a figure who enriches the personalities of the minors in this society. Father always proves to be guiding star for grooming children.

7. Life is harsh. This world is a cold place. To adjust to that, minors need the support and guidance of father, who have seen live and the world more than them and his experience is invaluable. His firmness and strictness at times prepares minors for the male-dominated society and world they live in. He also teaches them to take calculated risks, overcome fears,

be strong in hardships and never give up in times of lack of hope. He will also tell them about the realities of life and how to adjust to them. So minors need to learn to take father as their mentor and counsellor. Let them step into father's shoes and walk the life he is living and if they get as far as he has, they would come to know about all the sacrifices he makes for them, and his love and care.

8. Meeting schedule formulated by the learned predecessor court is of two hours. It is not possible for father to discuss any aspect of life with the minors in two hours. It is therefore to avoid further delay in decision of guardian petition and to determine welfare of the minors a detailed meeting schedule is chalked out where mother and father can impart their roles to groom and shape personalities of their minors without nourishing **grudge, egoism** and **hatred** in minds of the minors. Learned counsel for respondent raised objection that court at this stage cannot interfere or review its order. It is of no cavil to make clear that guardian court has **parental jurisdiction** which always seeks best future of minors. It can make any appropriate order for the welfare of the minors without prejudice to any of previous order or decision. Further dictum 2017 CLC 1747 is very clear and apt over the subject matter.

"Family Court had parental jurisdiction and there was no scope of such jurisdiction for any undue adherence to technicalities and family court being Quasi-Judicial forum could follow its procedure which was not to be against principle of fair trail".

Meeting of minors with the father is **not harmful, Illogical, dangerous, arbitrary or destructive** to respondent case.

9. Counsel for the respondent time and again emphasized that the atmosphere of petitioner house is not cordial and aupright. Petitioner resides in joint family where the children of elder brother are also settled. There may be unto-wanted incident due to prohibited decree of kinship with respect to minor daughter Hifza qaiser. These are only the apprehensions of respondent which are not possible in the presence of father.

10. The upshot of whole discussion is that father has right to visit his minors not only **under great love and affection** but for the character building of minors. So, the solution of all the applications is the following meeting which is hereby formulated as under:

MEETING SCHEDULE:-

(i) The interim custody of the minors shall be handed over to the petitioner on 2nd and 4th Saturday of every calendar month at 5:00 PM and petitioner/father shall return the custody of the minors to the respondent on next day i-e Sunday at 5:00 P.M.

(ii) On the occasion of Eid Ul Fitar the petitioner/father shall be entitled for custody of the minors on 2nd day of Eid ul Fitar at 5:00 P.M and petitioner shall return the custody of minors to the respondent on 3rd Day of Eid ul Fitar at 5:00 P.M.

(iii) On the occasion of Eid ul Azha the petitioner/father shall be entitled for custody of the minors on 2nd Day of Eid Ul Azha at 5:00 P.M and petitioner/father shall return the custody of the minors to the respondent on the 3rd Day of Eid Ul Azha at 5:00 P.M.

(iv) On the occasion of birthday of the minors the petitioner/father shall be entitled for custody of the minors at 6:00 PM and petitioner/father shall return the custody of the minors to the respondent on the next day of birthday of the minor at 4:00 P.M.

(v) On the occasion of birthday of father of the minors, the petitioner/father shall be entitled for custody of the minors at 5:00 PM and petitioner/father shall return the custody of the minors to the respondent on the next day of birthday of father of the minors at 5:00 P.M.

(vi) During summer vacations, the petitioner/father will be entitled for custody of minors for one month (second month of summer vacations).

(vii) During spring vacations, petitioner/father will be entitled for custody of his minors for 2nd half of the vacations.

(viii) During winter vacations, petitioner/father will be entitled for custody of his minors for last four days.

(ix) During Moharram ul Haram, petitioner/father will also be entitled for custody of his minors on 9th Musharraf Ul Haram

at 11:00 A.M and petitioner/father shall return custody of minor to the respondent/mother on next day i.e 10th Moharam Ul-Haram at 11:00 A.M.

11. The custody of minors from one parent to the other shall only be carried out through bailiff. All the above said meetings will be subject to submission of surety bonds of Rs.1000000/- (one million) and fee payable to the bailiff Rs.1000/-. Keeping in view the distance of residences of both the parents from court premises, the fee of bailiff is fixed Rs.1000/- per meeting. Handing over and taking over the custody of minor shall only be carried out through bailiff of this court. After taking interim custody of minor, petitioner shall not take the minor outside the jurisdiction of this court without permission from the court. If the petitioner has any passport, he will surrender the same before taking the custody of the minor.

12. Petitioner is also made clear to avoid filing further application so that the main petition be decided on merit after taking evidence. Let petition is hereby adjourned for evidence of the petitioner for 28-02-2019.

Announced:

Mujtaba Ul Hassan
Guardian Judge IV, Lahore

12.02.2019

IN THE COURT OF MUJTABA-UL-HASSAN
GUARDIAN JUDGE-IV LAHORE

Muhammad Saad Aslam Vs. Mst. Saira Naseem

20.05.2019

APPLICATION UNDER THE PROVISIONS OF SECTION (SCHEDULE) WEST PAKISTAN MUSLIM FAMIY COURTS ACT, 1964 TO BE RAD WITH THE PROVISIONS OF SECTION 12 OF GWA, 1890 FOR THE PROVISIONS OF GENEROUS YEARLY

PARENTING SCHEDULE FOR MEETING/VISITATION WITH THE MINOR.

Present: Learned counsel for the Respondent

Petitioner being father natural guardian filed custody petition of minor. A meeting schedule of father and minor was formulated in the court premises only for two hours in a month. Meeting of minor is very much essential on every weekend for her growth and familiarity with father who has his own role in the life of upbringing of minor despite previous hatred and egoism between the parents.

2. Whereas these assertions have been hotly opposed by learned counsel for the respondent and requested for dismissal of the same.

3. Learned counsel for the petitioner argued that meeting schedule of the minor was chalked out and meeting was allowed within the court premise which is not sufficient or material for upbringing minor. Mother and father have equal rights to up bring the minor despite difference between them. Meeting of the minor with father/ or non-custodian parents is a right of the minor. He further contended that father of minor did not intend to meet with minor in the court premise due to which "Parcha Mulaqat" was unattended. He relied upon dictum **2017 CLC 1747 LHR.** He further contended that court even amend meeting schedule by considering the welfare of the minor at any stage of the petition. At the end, he prayed that an exhaustive meeting schedule at home be made.

4. Leaned counsel for the respondent appeared and made arguments that court has formulated a exhaustive schedule which is sufficient to meet the requirements of the minor who is of age about only five years. He further contended that meeting schedule which was formulated by the predecessor court was not followed by the petitioner with letter and spirit. He made violations of meeting schedule on every date and occasion. He filed this petition just to prolong and harass the respondent. He further contended that petitioner has no love and affection with his daughter

who always remained present in the court but the petitioner intentionally did not appear in the court. Travelling allowance Rs.500/- already outstanding on behalf of the petitioner but he failed to deposit in the court. At the end, he prayed that petition be dismissed.

5. Arguments heard. Record perused.

6. Record reveals that meeting schedule was formulated by learned predecessor court vide order dated 04.01.2016. The petitioner father was entitled to have meeting with the minor on every third Saturday of month from 11:00 A.M to 2:00 PM in meeting room of court. Petitioner was also entitled to have meeting with minor on Eidian and for remaining special occasion ie **Ashoora Muharam Ul Haram.**

Eid Milad-ul-Nabi, Kashmir day, father/mother day, death or illness of some relative. Aqeeqa or marriage ceremony, relatives' petitioner was at liberty to obtain the custody minor from the court with special permission. Meeting schedule formulated by the learned predecessor court was exhaustive in nature but father has to file different applications which is not only burdened the court but also lingered on subject matter in the court.

7. Father is natural guardian and he has equal parental rights under the natural love and affection. He has also right to meet his minor at home. It is also welfare of the minor to protect him or her from the court premises atmosphere which is not welfare for him or her. Parents' previous hater and prejudice will not be allowed to inject in the life of minor. A/ minor has to provide such pleasant atmosphere where she spent prosper life without any deprivation. A minor should not be allowed to become a rolling stone between the court and ego of parents. Father and mother should be allowed to meet with the minor freely as and when the circumstances required even on the wish of minor.

8. It is very right and correct that the court has already formulated a meeting schedule and same was not

challenged by any higher forum but a number of dictums of higher courts are available in which higher courts set the principles for lower courts to amend the schedule at any time by considering the welfare of minor. The family courts are loco parental courts; they can adopt their procedure to avoid technicalities for the sake of welfare of the minor. The meeting of minor with father at court visitation room for two hours is not appropriate in present scenario where minor has sufficient maturity. The precedent **PLD 2018 Baluchistan 44 and 2018 MLD 1592** also fortified that Father being natural guardian was not only required to participate in the upbringing of the minor but should also develop love, bondage and affinity with him to achieve said purpose. Court has to facilitate a congenial, homely and friendly environment and reasonable visitation schedule. Office of the Guardian Judge or office of Civil Nazir of the Court, for the said purpose, was neither conductive nor effective which lacked proper facilities and arrangements, and was not comparable in homely environment. Meeting in Court premises could not see the purpose of meeting, and it was not in the interest or welfare of the minor to hold meeting in the Court premises. Meetings the minor with the father, were preferably to be held at the residence of the father.

9. The moot point before this court that guardian court either has power to modify or alter its order in this regard dictum **PLD 2001 Karachi 371** laid down guidelines

"Order passed by Guardian Court in respect of custody of minor (consent order or otherwise) may be an order in the best interest and welfare of the minor at that point of time but due to certain future eventuality and subsequent developments the same may not serve as such it is for this reason that Guardian Court has been empowered to modify, set aside or alter an earlier order and pass an appropriate order at any subsequent days safeguard the interest and welfare of the minor Order earlier by Guardian Court with regard to custody of minor cannot operate as a bar of jurisdiction for Guardian Court all time to come"

Even the petitioner being a father may file separate application for visitation rights under the schedule of Family Court Act. So it is appropriate to formulate the proper schedule.

AMENDED MEETING SCHEDULE:-

(i) The petitioner father shall be entitled the custody of minor on first and third Saturday of every month. He shall take the custody of minor at 4:00 PM on first and third Saturday of every month and shall return the custody of minor on first and third Sunday of every month at 4:00 PM.

(ii) On the occasion of Eid Ul Fitar the petitioner father shall be entitled for custody of the minor on 2nd day of Eid ul Fitar at 2:00 P.M and petitioner shall return the custody of minor to the respondent on 3rd Day of Eid ul Fitar at 2:00 PM.

(iii) On the occasion of Eid ul Azha the petitioner/ father shall be entitled for custody of the minor on 2nd Day of Fid Ul Azha at 2:00 P.M. and petitioner shall return the custody of the minor to the respondent on the s3rd Day of Eid Ul Azha at 2:00 PM.

(iv) On the occasion of birthday of the minor the petitioner father shall be entitled for custody of the minor at 2:00 PM and petitioner shall return the custody of the minor to the respondent on the next day of birthday of the minors at 2:00 PM.

(v) On the occasion of birthday of father of the minor, the petitioner father shall be entitled for custody of the minor at 2:00 P.M and petitioner shall return the custody of the minor to the respondent on the next day of birthday of father of the minor at 2:00 P.M.

(vi) During summer vacations, the petitioner father will be entitled to custody of minor for one month (second month of summer vacations).

(vii) During spring vacations, petitioner/father will be entitled for custody of his minor for first half of the vacations.

(viii) During winter vacations, petitioner father will be entitled to custody of his minor for first four days.

(ix) During Moharram ul Haram, petitioner/father will also be entitled for custody of his minor on 9 Moharram Ul Haram at 11:00 AM and petitioner/father shall return custody of minor to the respondent/mother on next day ie 10 Moharam Ul-Haram at 11:00 AM.

All the meetings will be conducted through evening court.

The custody of minor from one parent to the other shall only carried out through bailiff. All the above said meeting will be subject to submission of surety bonds of Rs.1000000/-(one million). Keeping in view the distance of residences of both the parents from court premises, the fee of bailiff is fixed Rs. 1000 per meeting. Handing over and taking over the custody of minor shall only be carried out through bailiff of this court. After taking interim custody of minor, petitioner shall not take the minor outside the jurisdiction of this court without permission from the court. If the petitioner has any passport, he will surrender the same before taking the custody of the minor. Let petition be adjourned along with connected file for 31.05.2019.

Announced:
MUJTABA-UL-HASSAN
Guardian Judge-IV Lahore
20.05.2019

IN THE COURT OF FAMILY JUDGE XXIII-KARACHI (EAST)
BEFORE MANSOOR AHMED SOOMRO

Family Suit No. 3754 of 2019
Mst Syeda Hareem Fatima
D/o Syed Riaz Ali
Muslim. Adult, R/o House No. B-23,
Block12. Gulistan-e-Johar, Karachi ..... Plaintiff/Respondent
Baby Fatima..... Minor
VERSUS
Fahad Aziz
S/o Aziz-ur-Rehman
Muslim, Adult, R/o House No. R-911,
Sector15A-1, North Karachi.....Defendant/Applicant

Mr. Shakill Ahmed, Advocate for Plaintiff'
*Mr**. Fahad Ahmed Siddiqui**, Advocate for Defendant*

Dated: 09.01.2021
ORDER

Through this application the Applicant (father) has sought visitation rights & interim custody of the minor daughter namely Fatima.

2. In reply, to the Application Counter Affidavit was filed by the Respondent side, wherein he has vehemently denied for meeting with the minor on the ground that defendant has failed to maintain the minor and is irresponsible father hence he is not entitled for the meeting as such instant application at this stage is not maintainable and liable to be dismissed.

3. Arguments have been heard and record perused.

4. Record reveals that the matrimonial tie between the contesting parties comes to an end by way of Khulla and the minor daughter is under the care and custody of he Respondent/Plaintiff (Mother) since before obtaining Khulla by the Court and the Applicant/Defendant(Father) has lost access to minor daughter since then. besides, for the sake of welfare and well-being of the minor Applicant father has avoided to drag the ex-spouse and minor daughter in the Court by filing the Application for

permanent custody of the minor under section 25 Guardian & Wards Act rather preferred comprehensive visitation schedule in order to remain familiar with the minor as such reflects good gesture on the part of Applicant (Father). Even otherwise, being real father and natural guardian of the minor, is equally enuueu to spend quality time with child and it is also in better interest of the minor to remain familiar with paternal lineage and he must not be deprived from the love and affection/company not only the father but also grandparents and blood relatives as such the separation and conflicts are always between the spouses but not the parents and children. Hence estrangements between the father and the minor must be avoided and they must not deprive of their right in any manner. In this regard guidance is borrowed from PLD 2008 Lahore 527. The relevant Para is reproduced as under: -

-Contesting parents had inherent right to seek visitation to the minor, especially father, who was the natural Guardian-Father was not only required to participate In up-bringing of minors but should develop love, bondage and affinity with them - To achieve such purpose, Court should facilitate a congenial homely and friendly environment and a reasonable visitation schedule. Meeting in Court premises did not serve purpose of meeting and was not in the welfare of the minors to hold meetings there - Meetings of minor with the parents should preferably be held at the premises of contesting parent to familiarize minors with environment there, to strength a healthy relationship and dispel fears of future reunion-"

5. Additionally, report issued by Department of Applied Psychology University of Punjab, Quaid-e-Azam Campus, Lahore dated 25.03.2013 submitted in connection with writ petition No.2856/2011 is also important to be mentioned here is as under:

"1n our society, the custodial parent may intentionally get indulged in child abuse by removing or retaining the child from the other parent, seeking to gain an advantage in the expected pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. Whatever, the reason of retaining or removing the child may be, It causes irreparable damage to the emotional and psychological wellbeing of the child. However, psychological Impact on child is often ignored and remained unaddressed".

6 In order to ensure development of love, bondage and affinity between father and children which is fundamental to crave a balanced personality of the minor(s).The element of hatred and desire to take revenge mostly prevails among separating parents should not be a factor hampering the Guardian Court from discharging its loco parentis character and quasi parental jurisdiction. Hence disallowing a child to have reasonable homely access with his one biological parent tantamount to infringement of fundamental rights of the minor(s) that are guaranteed under the provisions of the Constitution of Islamic Republic of Pakistan and the principles of natural justice, fair play and equity. Thus, keeping in view the precedents of Hon'able Superior Courts and Welfare, well-being and better interest of minors following meeting schedule under the provisions of section 12 of the Guardian & Ward Act, 1890 read with section 12-A and 5 of the schedule attached with the Family Court Act 1964, is formulated which shall be observed for the minor as under: -

SCHEDULED /PUBLIC HOLIDAYS

vii, scheduled holidays i-e Eid Miladun Nabi (SAW), Pakistan day, Quaid-e-Azam day etc., the minor may spend alternate gazette holidays of each calendar year with Applicant Father from 11:00 AM to 07:00PM.

UNSCHEDULED HOLIDAYS

viii. On unscheduled holidays, the minor may spend holidays with Applicant Father from 11:00 AM to 07:00 PM in the evening.

FAMILY OCASSIONS / FUNERAL:

ix. ln case there is any family occasion i.e. marriages or deaths of the blood relatives in which the Applicant Father desire and wish that minor may also attend shall inform the Respondent Mother who shall not unreasonably stop the minor from attending such family events or functions. That the Respondent Mother can ask the same to the Applicant Father, in case of any such family occasion from the Respondent's Mother's side.

PARENTS TEACHER MEETINGS &ANNUAL/ RESULT DAY:

x. The Applicant (Father) will be entitled to attend Parents teacher meetings, Annual/Result day. Besides, Applicant (Father) may inquire the educational/academic progress after three months and the Principal or Authorized person of School/Academy should co-operate the Father/Applicant.

TELEPHONIC/ MEDIA COMMUNICATION:

xi. When the Minor is in the care of one Parent, they should be encouraged

to have contact by telephone, video call at least 10 minutes a day with the other Parent.

xii. Parents, relatives and/or friends of either Parent, are restrained from unreasonably interfering during such telephonic/media conversation

GENERAL OBLIGATIONS:

xiii. Both Parents shall cooperate in ensuring that the Minor receives her routine medical care and dental check-up, counseling and other health care services. In case of any emergency about health or any other issue of minor, the person who has the custody of minor will inform the non-custodial person within one hour to the emergency.

PARENTING TIME FOR THE APPLICANT/ FATHER:

I. The Applicant Father is entitled to the interim custody of the minor; from11:00 AM to 05:00 PM on every Sunday at the residence of the Applicant (Father).

BIRTHDAYS:

ii. On second day of birthday of minor, Applicant (Father) would be entitled to celebrate birthday with the minor from 03:00 PM to 09:00 PM at Applicant residence.

iii. On Applicant Father's birthday minor would spent time from 04:00 PM to 09:00 PM with the Applicant Father. ln case on any occasion day is holiday, the Applicant Father would be entitled to meet or has the custody of minor from 11:00AM to 09:00 PM at Applicant residence.

SUMMER VACATIONS

iv. During summer vacations the custody of the minor shall be handed over to Applicant Father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the Respondent Mother in evening of the 4th Sunday during the vacation so that minor may have four weeks to spent with his Applicant Father. That such 4 weeks shall constitute half of the summer vacations and if the summer vacations are less than two months then 1st half of the summer vacations of the minor shall be spent with the Applicant (Father).

WINTER VACATIONS:

vi. Winter vacations which are generally due from 21st December to 30th December. 1st half of the winter vacations shall be spent by the minor with the Applicant Father and 2nd half with the Respondent Mother,

Note: - The Father will avail the Summer and Winter Vacations after the minor attain the age of five years.

EID AL FITR & EID AL AZHA:

vi. On the occasions of Eid-ul-Fatar and Eid-uL- Azha, the Applicant/Father Will be entitled to the interim custody of the minor from 11:00 am to 09:00 PM on second day of Eids.

xiv. The Applicant shall be responsible and shall pay for all expenses of the minor/ward at his own for her necessities of life viz food, clothing, educational expenses, stationery, medication, treatments and also conveyance expenses in future without fail.

xv. None of the parties will be allowed to take the minor abroad. Similarly, none of the party could permanently shift the minor beyond the territorial jurisdiction of this court but with permission of the Court.

xvi. Minor is of such an impressionable age and both the parents are expected to be sensible and conscious of their social responsibility shall not do any act that may prejudice their mind towards the other parents.

PENAL CLAUSE:

xvii. If the Applicant will deviate from the discipline of this schedule, then after being proved, Applicant (Father) would be declared to have dis-entitled to have its benefits. Similarly, if two consecutive complaints arise against the Respondent (Mother) to violate this schedule, then after being proved, the custody of the minor would be shifted to Applicant (Father) for the next one month.

7. In order to avoid untoward situation the Bailiff is appointed to supervise the handing and taking over of the minor as scheduled. The Applicant will enjoy the meeting schedule subject to furnishing P.R bond in sum of Rs.10,00,000/- and the travelling expenses will be borne by the Applicant. In case of need, Bailiff may avail police aid from concerned Police station. The parties may, however, seek modification of interim custody/meeting arrangement to cater for their mutual convenience, could be varied at any subsequent stage. With no order as to costs.

8. Office of this Court is directed to communicate copy of this order to the Head Bailiff District, East Karachi so that the scheduled meetings arranged timely.

Announced in open Court.
(MANSOOR AHMED SOMRO)
Guardian Judge XXIII-Karachi (East
Court
Given under my hand and seal of this 9th day of January 2021

IN THE COURT OF GUARDIAN JUDGE -XXIII KARACHI (EAST)

BEFORE: (MANSOOR AHMED SOOMRO)

G & W Application No.142 of 2018

Anwar Ahmed
S/O Iftikhar Ahmed
Muslim, Adult, R/O House No. 1010
Sector 11/A, Muhammad Naggar,
Orangi Town,
Karachi,…….……..…….Applic

ant

V E R S U S

Amna Sakeel
D/O Shakeel Pervaiz,
Muslim, Adult, R/O Shumaila Phase 3,
Flat No. 22, Block M, Scheme 33,
Karachi……..……..……
…….Respondent

Muhammad
Abdullah….……...……...……..Minor
/Ward

APPLICATION UNDER SECTION 12-A READ WITH ITEM NO.5 OF GUARDIAN & WARD ACT,1890

Mr.Anwar Ahmed, Applicant in person

Mr.Muhammad Wakeel Uddin, Advocate for Respondent

Dated: 07.05.2021

O R D E R

This application is filed by the Applicant (father) against the Respondent (Mother) for the modification of order dated: 29-07-2019.

2. Notices served to the Respondent but none appeared.

3. Arguments have been heard and record perused

4. Record reveals that the Application u/s 25 was filed by the Applicant, wherein the same was dismissed vide order dated: 29-07-2019 and the visitation schedule was formulated by this Court. Presently, the minor has attained the age of four years and has become much familiar to Applicant (Father) who being natural guardian of the minor is equally entitled to spend quality time with his child and it is also in better interest of the minor to remain familiar not only with father but also the paternal lineage and he must not be deprived from the love and affection/company of father, grandparents and blood relatives as such the separation is always between the spouses but not the parents and child. Hence estrangements between the father and minor(s) must be avoided and they must not deprive of their right in any manner. In this regard guidance is borrowed from ***PLD 2008 Lahore 527*** . The relevant para is reproduced here under:-

> ***"Contesting parents had inherent right to seek visitation to the minor, especially father, who was the natural guardian -- Father was not only required to participate in up -bringing of minors but should develop love, bondage and affinity with them -- To achieve such purpose, Court should facilitate a congenial homely and friendly environment and a reasonable visitation schedule. Meeting in Court premises did not serve purpose of meeting and was not in the welfare of the minors to hold meetings there -- Meetings of minor with the parents should preferably be held at the premises of contesting parent to familiarize minors with environment there, to strengthen a healthy relationship and dispel fears of future reunion ---"***

Additionally, report issued by Department of Applied Psychology

University of Punjab, Quaid-e-Azam Campus, Lahore dated 25.03.2013 submitted in connection with writ petition No.28566/2011 is also important to be mentioned here is as under:

> ***"In our society, the custodial parent may intentionally get indulged in child abuse by removing or retaining the child from the other parent, seeking to gain an advantage in the expected pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. Whatever, the reason of retaining or removing the child may be, it causes irreparable damage to the emotional and psychological wellbeing of the child. However, psychological impact on child is often ignored and remained unaddressed".***

5. In order to ensure development of love, bondage and affinity between father and son which is fundamental to crave a balanced personality of the minor(s).The element of hatred and desire to take revenge which mostly prevails among separating parents should not be a factor hampering the Guardian Court from discharging it's loco parentis character and quasi parental jurisdiction. Hence disallowing a child to have reasonable homely access with his one biological parent tantamount to infringement of fundamental rights of the minor (s) that are guaranteed under the provisions of the Constitution of Islamic Republic of Pakistan and the principles of natural justice, fair play and equity. Thus, keeping in view the precedents of Hon'ble Superior Courts and welfare, wellbeing and better interest of minor following meeting

schedule under the provision of section 12 of the Guardian and Ward Act,1890 read with section 12-A and 5 of the schedule attached with the Family Court Act,1964, is formulated which shall be observed for the minors as under:-

PARENTNG TIME FOR THE APPLICANT/ FATHER:

i. The Applicant Father is entitled to the interim custody of the minor; First, Third & Fifth week, from 11.AM 07:00 PM on every Sunday. Second and Fourth week from Saturday 06:00 PM to Sunday 04:00 PM.

BIRTHDAYS:

ii. On second day of birthday of minor, Applicant Father would be entitled to celebrate birthday with the minors from 04:00 PM to 10:00PM.

iii. On Applicant, Father's birthday minor would spent time from 04:00 PM to 10:00 PM with the Applicant Father. In case on any occasion day is holiday, the Applicant Father would be entitled to meet or has the custody of Minor from 11:00 AM to 09:00 PM.

SUMMER VACATIONS:

iv. During summer vacations the custody of the minor shall be handed over to Applicant Father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the Respondent Mother in evening of the 4th Sunday during the vacation so that minor may have four weeks to spent with his Applicant Father. That such 4 weeks shall constitute half of the summer vacations and if the summer vacations are less than two months then 1st half of the summer vacations of the minors shall be spent with the Applicant Father.

WINTER VACATIONS:

v. Winter vacations which are generally due from 21st December to 30th December. 1st half of the winter vacations shall be spent by the minor with the Applicant Father and 2nd half with the Respondent Mother.

EID AL FITR & EID AL AZHA:

vi. On the occasions of Eid-ul-Fitar and Eid-ul-Azha, the Applicant/Father will be entitled to the interim custody of the minor on second day of both Eids from 11:00 AM to 07:00 PM of second day of Eids.

SCHEDULED / PUBLIC HOLIDAYS:

vii. Scheduled holidays i-e Eid Miladun Nabi (SAW), Pakistan day, Quaid-e-Azam day etc, the minor may spent alternate gazetted holidays of each calendar year with Applicant Father from 11:00 AM to 07:00 PM.

UNSCHEDULED HOLIDAYS:

viii. On unscheduled holidays, the minor may spend holidays with Applicant Father from 11:00 AM to 07:00 PM in the evening.

FAMILY OCASSIONS / FUNERAL:

ix. In case there is any family occasion i.e. marriages or deaths of the blood relatives in which the Applicant Father desire and wish that minor may also attend shall inform the Respondent Mother who shall not unreasonably stop the minor from attending such family events or functions. That the Respondent Mother can ask the same to the Applicant Father, in case of any such family occasion from the Respondent's Mother's side.

PARENTS TEACHER MEETINGS &ANNUAL / RESULT DAY :

x. The Applicant/Father is entitled to attend Parents teacher meetings, Annual/Result day. Besides, Applicant/Father may inquire the educational/academic progress once in a month and the Principal or Authorized person of School/Academy must co-operate the Father/Applicant.

TELEPHONIC / MEDIA COMMUNICATION:

xi. When the Minors are in care of one Parent,they should be encouraged to have contact by telephone, video call, email, text etc with the other Parent.Each Parent shall be allowed to exercise reasonable telephonic/media communication with the Minor every day.

xii. Parents, relatives and/or friends of either Parent, are restrained from unreasonably interfering during such telephonic/media conversation.

GENERAL OBLIGATIONS:

xiii. Both Parents shall cooperate in ensuring that the Minor receives his routine medical care and dental check-up, counseling and other health care services. In case of any emergency about health or any other issue of minor, the person who has the custody of minor will inform the non-custodial persons within one hour to the emergency.

xiv. None of the parties will be allowed to take the minors abroad. Similarly none of the party could permanently shift the minors beyond the territorial jurisdiction of this court but with permission of the Court.

xv. Minor is of such an impressionable age and both the parents are expected to be sensible and conscious of their social responsibility shall not do any act that may prejudice their mind towards the other parents.

PENAL CLAUSE:

xvi. If the Applicant will deviate from the discipline of this schedule, then after being proved, Applicant (Father) would be declared to have dis-entitled to have its benefits. Similarly, if two consecutive

complaints arise against the Respondent (Mother) to violate this schedule, then after being proved, the custody of the minor would be shifted to Applicant (Father) for the next one month.

6. In order to avoid untoward situation the Baliff is appointed to supervise the handing and taking over of the minors as scheduled. The Applicant will enjoy the meeting schedule subject to furnishing CNIC or original Passport and P.R bond in sum of Rs.5,000,000/- and the travelling expenses will be borne by the Applicant. In case of need, Baliff may avail police aid from concerned Police station. However, protective measures and SOP's in wake of third wave of COVID-19 pandemic be strictly followed.

7. Order dated: 29-07-2019 stands modified in view of above terms as such the Guardian Court has ample powers to modify an already chalked out schedule. Guidance borrowed from **(2001 PLD 371 Karachi)**. The parties may, however, seek modification of interim custody/visitation schedule to cater for their mutual convenience, could be varied at any subsequent stage subject to the consent of both the parties with no order as to costs.

8. Office of this Court is directed to communicate copy of this order to the Respondent and Head Baliff District (East) Karachi so that the scheduled meetings be arranged timely.

Announced in open Court.
Given under my hand and seal of this Court
This the 07th day of May 2021

(MANSOOR AHMED SOOMRO)
Guardian Judge XXIII -
Karachi (East)

IN THE COURT OF Ms. ASMA ZAKA, JUDGE
FAMILY COURT AT LAHORE

SAIMA ASLAM VS DR. MOHAMMAD BILAL

23.06.2023
Present:
*Mr. **Fahad Ahmed Siddiqui**, Advocate for Petitioner*
Learned counsel on behalf Respondent
O R D E R

This order is meant to dispose of an application filed by the petitioner/Saima Aslam U/S 12 of the Guardian & Wards Act read with part 1 of the schedule attached to the Family Court Act for obtaining visitation rights of her minor daughters and son. It is contended by the petitioner that that marriage inter se parties has been ended up and respondent is denying the right of applicant and not allowing the minors to meet with appellant/mother. Applicant further prayed that a detailed visitation schedule till the majority of minors be chalked out in the interest of justice.

Conversely, the respondent has contested this petition and agitated that the petitioner be not allowed to have night stays with minors due to unsupervised and unattended conduct of petitioner. He further raised certain allegations regarding character of petitioner and requested to dismiss petition for chalking out visitation schedule.

Arguments pro & contra have been heard, record perused.

There is no cavil to the proportion that applicant is real mother of minors. Marriage tie between the parties has been dissolved and now the parents of minors are indulged in tug of effectian but they must have keep in mind that subject matter of it was their children. Mother/petitioner has filed this application for comprehensive meeting schedule of the minors with her whereas, respondent challenged the application on the ground of maintainability with the stance that application for visitation of the minors cannot be allowed without recording of evidence of the parties when the respondent has raised serious allegations against the petitioner.

Family court act 1964 is special act for special cases of the family nature. In family court Act court, the schedule made under clause (5) prescribes custody of the children, however, amendments were made through Family Court (Amendment) Ordinance 2002 and after custody of the children the word visitation rights of the parents to meet with them was also added. Therefore, there is no embargo to decide the application in hand after hearing the arguments of both the parties instead of fixing it for recording of evidence.

Respondent has raised very serious and bold allegations against the moral character of appellant. Entire written reply filed by the respondent contains such allegations. It is not appropriate for a family court to probe into such like allegations when simple matter before court is regarding visitation of children. Though Qanaon-e-Shahdat Ordiance 1984 is stricto senso not applicable to the family court proceedings, however, basic notion can be drawn from such legislation wherein it is categorically provided that certain communications between husband and wife are privileged and any of the spouses must not be allowed to state the privileged facts known to him/her during the wedlock. In case in hand, the appellant has requested only visitation rights for her children. She is forgoing her custodian rights regarding the children. In such circumstances refusing the mother to spend some time with children would be unjustifiable things. Father should not create hurdles in enabling the

minors to develop healthy relationship with their mother and maternal side which could not be developed if they are allowed to spend a reasonable period of time with them. Denial of such legal rights would tantamount to deprive the minors from the love and affection of maternal side and the real mother which was against the welfare of the minor for the reason that minors need love and affection of both his parents. Question of formulation of visitation schedule cannot be determined only from rule of law rather it requires an exercise of judicial discretion dependent upon relevant facts and circumstances of the case. Since both the parties are at dagger drawn, therefore, it could not be rule out that minors would have been subjected to some brain washing against non-custodial parent. Once children reach at the age of discretion, custody matter are to be disposed off in terms of their wishes. At this stage, application of the petitioner for formulation of meeting schedule is accepted and following visitation schedule is hereby chalked out:-

I. *The appellant/mother shall be entitled to get interim custody of the minors on every 2nd and 4th Friday of every calendar month from 04:00pm and she shall return the minors back to the respondent/father on the Sunday at 04:00pm.*

II. *On the occasion of Eid ul Fitar and Eid ul Azha, the appellant/mother shall be entitled to get interim custody of the minors on 2nd day of Eid ul Fitar and 1st day of Eid ul Azha from 11:00am and she shall return the minors back to the respondent/father on very next day at 7:00pm.*

III. *On the occasion of birthday of minors, the petitioner shall be entitled to get interim custody of the minors on 2nd day of birthday starting from 11:00am and she shall return the minors back to the respondent/father on very next day i.e third day at 07:00pm. (if birthday does not fall on weekend then the minors will be handed over on the following Saturday till Sunday in the same week). Same clause shall be followed for birthday of mother.*

IV. *Appellant/mother shall be entitled to get the interim custody of minors for first half of winter vacations and for the half of spring vacations of school of minors. The father will hand over the interim custody of minors on the first day of vacation at 11:00am and mother will return the minors on the last day (of first half vacation) at 06:00pm.*

V. *During summer vacation the appellant/mother shall be entitled to get interim custody of the minors for first seven days of each month of summer vacations from 11:00am of first vacation till 06:00pm of last day given to him.*

VI. *Appellant can visit the school of minors once in every month to check her academic growth and performance.*

VII. *Appellant can also seek permission of the court for the interim custody of the minors on special events i.e marriage or death of real maternal relatives.*

VIII. *The minors will spend alternate unscheduled holidays with her mother from 10:00am to 06:00pm.*

IX. *Handing over and taking over of minors shall be conducted through bailiff of the court. Robkar will be issued in this regard, Bailiff fee is fixed Rs.2000/- which is payable by the father. If the respondent/father will refuse to hand over the minors to the appellant, then the bailiff can obt*ain assistance of police.

Penal Clause:

If the respondent will not follow the meeting schedule without assigning any plausible justification, then he will pay Rs. 5,000/- cost for each violation along-with alternate meeting of skipped days. Appellant is directed to furnish surely bond in the sum of Rs.10,00,000/- to the satisfaction of this court. There is no order as to costs. File be consigned to record room by Ahlmad of this court. Parcha Mulakat be prepared by Ahlmad after submission of surety by the petitioner.

Announced ***Asma Zaka,***
23.06.2023 ***Judge Family Court, Lahore.***

94- ***JUDGMENTS OF APPELLATE COURTS***

IN THE COURT OF MUHAMMAD AMIR MUNIR ADDITIONAL DISTRICT JUDGE, LAHORE

Amaan Ullah Chaudhary etc Vs Muhammad Asif Samma

Guardian Appeal No.56/2016.

Date of institution. 07.04.2016

Date of decision 14.09.2018.

GUARDIAN APPEAL

JUDGMENT:

This appeal is preferred against the impugned order dated 31.03.2016, passed by learned Guardian Judge-VII, Lahore.

2. Facts relevant for the disposal of appeal in hand are that respondent/petitioner filed a petition under Section 25 of the Guardian & Wards Act of 1890 for custody of the minor. Further appellants/petitioners also filed a petition for grant of guardianship certificate of person and property of the minor. Both the petitions were contested from both sides and learned trial court, after hearing the arguments, passed a consolidated order which is challenged under.

Memos of appeal.

03. Feeling aggrieved from said order, appellant's side has preferred appeal with the contention that the impugned order is not sustainable in the eyes of law and is result of surmises and conjectures; that judicial mind has not been applied and that the order is not in the welfare of the minor; that by setting aside the impugned order, appeal of the appellant may kindly be accepted.

Arguments.

4. Learned counsel for the appellant has argued that the intelligent preference of the minor is in favour of the appellants on two occasions: one recorded by the learned trial court and one at the stage of hearing this appeal; that the daughter of the appellant was married with the respondent where after the minor was born on 23.11.2006. On 17.04.2008, appellant's daughter/mother of the minor was murdered and FIR was lodged by the respondent bearing no.178/2008 under Section 302/34 PPC dated

17.04.2008 Police Station Kohsar Islamabad. After sometime the appellants came to know that it is the respondent who has murdered his own wife and on this suspicion the respondent and his family was arrested in this case. During the trial, out of pressure from the respondent's side a compromise was effected between the parties in terms that the affidavits of compromise were filed by the appellants for acquittal of the respondent so that real culprit can be searched together. Respondent was acquitted under Section 265-K of Cr.P.C on 03.09.2008 accordingly by the learned District and Sessions Judge, Islamabad. The respondent has never claimed the minor or paid any maintenance. After sometimes when the appellants further came to know that some DNA reports etc were received with respect to criminal case shows the involvement of the respondent in the case, then a writ petition no.650/11 through maternal grandmother in terms that the acquittal of the respondent be set aside and trial be taken up for disposal on merits on which notices have already been issued on 07.03.2011. This Writ Petition is still pending as per the information from both sides. An earlier guardian application filed by the respondent in Islamabad was dismissed for want of jurisdiction while he has moved the present application before learned Guardian Judge Lahore under Section 25 GWA dated 25.05.2011. Prior to that on 25.01.2011 the appellant has also moved an application under Section 7 of the GWA for appointment of guardianship of person and property of the minor. It is argued that the respondent has never shown any love towards the minor and moved the application under Section 25 of GWA only as a counter blast to writ petition no.650 ibid; that his application for temporary custody has already been dismissed as also some applications for additional evidence. The only evidence produced by the respondent is his affidavit himself while he failed to bring on record any witness to corroborate his version. It is argued that the respondent has never raised any question of disentitlement of the appellants or that anything has been done by them against welfare of the minor. Likewise there is no evidence produced by him. The evidence of the respondent is beyond pleadings while no corroboratory evidence could be produced by him. Conversely, the appellant's side has produced three witnesses i.e appellants themselves and maternal aunt of the minor who have fully corroborated the stance of the appellants and acceptance of their application under Section 7 of GWA. As per information, the respondent is involved in more than ten cases and thus is a criminal record holder while the learned trial court could not decide the case properly in this regard. The

learned trial court also failed to decide if the respondent has discharged the onus on him. With respect to statement of the minor, it is argued that learned trial court could not appreciate said statement in toto while accepting the application of respondent under Section 25 of GWA. The appellants have also argued that the evidence has not been analyzed properly while the judgment is silent about any discussion on evidence and there are no speaking orders with respect to issues no.2 and 3. It is argued that the appellants are fully supporting the minor by providing him best education, food, living environment and other psychological needs and thus he is happily living with them which is also established from his statement of intelligent preference. It is argued that the welfare of the minor is of prime importance which has not been challenged by the respondent with respect to the appointment of guardian for person and property of the appellants. Learned counsel for the appellant has relied on NLR 2017 SC 374, 2017 CLC 96 SC (AJK), NLR 2017 186, 2017 CLC 96 SC(AJK), 2012 CLC 784 (Lahore), 2010 MLD 1313, 2003 MLD 1306, PLD 1978 SC 192. While concluding the arguments learned counsel for the appellants has also argued that the minor will be adversely affected if his situation changed and that how a minor can live in the house where his mother was murdered allegedly by the respondent and that either this appeal be allowed in favour of the appellants or in the alternative, the matter be remanded to the learned trial court for decision a fresh after disposal of the applications that were decided by the learned trial court.

5. The respondent's side on the other hand has argued that the respondent has never contracted second marriage for the welfare of the minor; that acquittal is admitted in the criminal case; that mere issuance of notices in writ petition no.650/11 ibid caused no prejudice against the respondent since the welfare of the minor to live with him is concerned; that how a minor can file a writ petition is also a question yet to be decided; that any DNA results are not against the respondent to make him culprit of murdering his own wife. He has never committed offence of murder of his wife while it were the terms and conditions of affidavit of the compromise by the appellants that the parties will search together the real culprit; that the compromise in murder case was result of free consent of the appellants as the respondent and his family members were in jail at that time; that the conduct of the appellants is not proper as they tried not to allow the minor to meet with his father; that the first meeting with the minor was possible after twenty five notices by the learned Guardian Court

including a warrant under Section 100 of Cr.P.C; that the minor is under influence of the appellants while deposing before the courts to give his intelligence preference; that all the facts not cross examined have to be deemed as admitted; that the love of the father and the fact that he has never married again also establish that the welfare of the minor lies in his hands as these facts were never cross examined by the appellant's side; the appellant Rw.1 has admitted in his cross examination that previous FIRs are not against the respondent; that the appellant's side lives in rented house; that Rw.3 who is maternal aunt of the minor has stated in the cross examination that her sister/deceased mother of the minor and wife of the respondent has never claimed any wrong behavior of the respondent during her life time; that the respondent is continuously contributing towards the welfare of the minor in terms of gifts and other expenditures; that the statements of the minor for intelligent preference cannot be looked into in isolation of other attending circumstances discussed above; that statement perse are not binding on the court as the prime consideration for a Guardian Court is to see the welfare of the minor and not his own wishes as they may be subject to some external pressure. The conduct of the appellants is to brain wash the minor to develop a sense of hatred in his mind against his innocent father; that the delay in disposal of the main petition and the instant appeal at the hands of the appellants is just to cause prejudice to the respondent in terms that the minor is a growing child and the hate developed in his mind by the appellants become permanent; that if the court is of the view that the welfare of the minor does not lie with the respondent the minor has to be admitted to a boarding house and that the impugned judgment and decree be maintained. Learned counsel for the respondent has relied on various versus of Holy Quran, Articles 4,10-A, 35 and 227 of the Constitution of Pakistan 1973 as also the judgments of Hon'ble Superior Courts cited as 2018 SCMR 590;2004 SCMR 1735; 1993 SCMR 2303, PLD 1985 SC 436, 2012 MLD 1755, 2011 CLC 1062, 2010 MLD 340, 2010 MLD 42, PLD 2010 Lahore 206, 2013 YLR 926, 1999 PCr.L.J 1711, 2017 YLR 1461 and 2009 MLD 637

6. Arguments heard, record perused.

Analysis

7. The point for consideration in this appeal is welfare of the minor to be seen in the light of evidence from both sides. There are certain admitted

facts to which we need not to go into any further discussion particularly the fact of the FIR against the respondent; his acquittal under Section 265-K of Cr.P.C and a writ petition pending in the Hon'ble Islamabad High Court seeking revival of the trial against the respondent. The minor is with the appellants since the alleged murder of his mother. Now, it is question of custody sought by the respondent while guardian of person and property is sought by the appellants. The court has to look into various dimensions to reach at the conclusion as to where the welfare of the minor lies. The respondent is still un married as per the record so far produced from both sides. The appellants lived in rented house while the respondent has his residence in Islamabad. The minor has shown his intelligent preference to stay with the appellants. He is studying in Lahore Grammar School and is satisfied with his education and other needs at the hand of the appellant.

8. Now we will look into the evidence first. Consolidated issues were framed in the instant matter and respondent has deposed through his affidavit which is Exh.A1. He states that the minor was taken away by the appellants only for two or three days for sad demise of his mother but they never returned the minor and that he is innocent in murder case. He being real father and natural guardian of minor is in a better position to take care of the minor in his best welfare keeping in view his financial resources. He has also superior right for the custody of the minor as compared to any right of appellants being maternal grandparents.

9. In cross examination, he was cross examined about his family whereby he mentioned that his father has passed away in 1999 and mother is alive. He has not shown any suspicion on his family when his wife was allegedly murdered. Many questions were about the murder story of the late wife of the respondent. With respect to the welfare of the minor, no question was put except that the respondent was not making any payment of the maintenance to maintain the minor. He stated it incorrect that the instant petition filed by him is a counter blast to the writ petition filed by the maternal grandmother of the minor. He also denied that he has no interest in the minor or that he has any adverse steps taken against the welfare of the minor. Documentary evidence consists of criminal litigation in Islamabad and some other documents filed before Guardian Court of Islamabad etc.

10. Conversely, the respondent's side has produced three

witnesses through their affidavits. They have deposed on the strengthen of the FIR no. 174/2008 ibid that the respondent is an alleged killer of his wife/mother of the minor and hence is not entitled to any custody of the minor while the minor is in the safe hands at the moment.

11. In cross examination, Rw.1 admitted that none of the FIRs mentioned in the written reply to an application under GWA Section 25 are against the respondent; that compromise was effected between the parties with respect to murder of mother of the minor and that said was result of fraud played upon them by the respondent. He admitted that the statement of compromise by appellant's side was with free will and that on account of said compromise the minor has to stay with them.

12. Rw.2 is also an appellant and maternal grandmother of the minor. She was also cross examined on those points and admitted that compromise was with free will with respect to murder trial.

13. Rw.3, the maternal aunt of minor, when cross examined has deposed that her deceased sister was having good relations with the respondent.

14. There are certain documentary evidence submitted by the appellant/respondent's side as well which have been perused.

15. The above evidence shows that the appellants could not establish that how the respondent is to be considered a guilty person of murdering of his wife when all the evidence until now suggests that he has been acquitted from the murder case while said case is never opened up again till now although writ petition is pending before Hon'ble Islamabad High Court. This court cannot comment on any of the dimensions of said criminal case as the same is against propriety. However, it is established that the status of the respondent at the moment is an acquitted person without any stigma.

16. With respect to the question that for the first three years the respondent has never shown any love towards minor are of no use to the appellants because the law is very clear in terms that any agreement between any parties with respect to minor/ward can always be looked into by a Guardian Court of competent jurisdiction to see if the welfare of the

minor is or is not affected by said agreement. Father is a natural guardian while maternal parents are of the other degree in this regard. We have to look into disqualification of father first, if any, to deprive him from seeking of the custody of the minor.

17. The only disqualification at the moment as alleged by the appellants is an allegation of murder of their daughter, his wife and mother of the minor. The law is very clear at criminal side that unless a person is proved guilty after trial, he cannot be so held or stigmatized. In such like situation, this court is not acceding to the arguments of the appellant's side that only due to such FIR the father has to be deprived from the custody of the minor. With respect to his love and affection towards the minor, this question can be determined in the light of the fact that he has never married again nor there is any other criminal record against him to establish any of his criminal nature. Even the appellant's side could not brought on record any psychological or psychiatric evidence to show that the respondent is not a person of good behavior especially with respect to his treatment with the minor. Rw.3, maternal aunt of the minor, has already deposed that the respondent was having good relations with his wife. This supports the personality of the respondent in terms that so far there is nothing established that he will not prove a good father if the custody is given to him. With respect to the fact that the respondent has allegedly claimed the custody of the minor as a counter blast to a writ petition no.650/11 ibid, it is sufficient to observe that this contention in itself is not acceptable particularly when there is dispute between the parties with respect to the alleged murder of the mother of the minor. Even otherwise, without any disability of the father/respondent, this plea in itself is not sufficient to be considered or acceded to. The fact that the minor is living with the appellants happily and has now developed a good understanding with them is in itself not a ground to deprive a father from seeking custody especially when he is fighting for the same since last seven years or so. If the minor is of eleven years of age, now, he must be somewhere around three or four years since the present legal battle is going on. It is unfortunate that quick decision of guardianship cases is not there in the courts so that these questions are determined at the earliest stage. Every moment passing in such like cases actually goes against the spirit of the law and even may result in that the minor is grown up to a reasonable understanding and also to develop certain cognitive behaviors towards different persons around him and definitely a child is influenced by those persons who are around

him or her. In such like situation, if the child is developing his love towards maternal parents and aunt/uncle this is only due to this fact that the minor is living with them.

18. Reverting to the question that the minor is now in a calm and cool environment and earning good grades in school is also to be seen accordingly. As welfare of the minor has yet to be determined by the courts and in the first attempt the learned Guardian Court has already granted his custody to the respondent but due to this appeal he is yet to see if his welfare is in his hands or otherwise. It is well settled law that the minor in his own cannot be considered to determine his welfare and the Guardian Court is thus given this responsibility to decide this issue keeping in view all the attending circumstances including the views of the minors in case his intelligent preference is recorded by the courts. However, mere statement of a minor in this regard is not enough to see if his welfare lies as per his preference. For this, a minor has to wait for the understanding of the decision of the court in this regard.

19. It was time and again argued by the appellant's side that the respondent could not brought on record any disability of the appellants. This argument is seen in the light of the status of respondent who is real father of the minor. It is so because when a father is competing with maternal parents of minor on the question of custody, it is the disability of the father first if any, that has to be seen and not otherwise. It would have been different question if the mother was alive and the dispute was between the parents. This is not the case here.

20. The whole discussion above and the perusal of the whole evidence in this matter has shown that there is no disability of the father existing at the moment to deprive him from obtaining the custody of the minor not only as per the principle of welfare of the minor but also in Islamic law that gives a preference to a father over other relations to have custody of a boy over the years of age.

21. Now, I will turn towards the statement of the minor recorded before this court and before learned trial court with respect to his intelligent preference. His first statement was recorded by the learned trial court on 21.03.2015 and the learned trial court has observed as under;-

Minor has been produced for ascertaining his opinion as to whether he wants to live with his maternal grandparents or with his father Muhammad Asif Samma. I have asked learned counsel for the parties and the maternal grandfather of the minor to go outside the chamber so that the opinion of the minor can be taken without any fear and favour. Minor and the undersigned alongwith stenographer are present in my chamber. Minor who seems to be in a good shape of health and is in a position to form his opinion has been asked certain questions about his school, class, education, family and he has given satisfactory answers to the questions which reflects mental and intellectual well being of the minor. Now he has been asked as to whether he wants to live with his maternal grandfather i.e petitioner or his father namely Muhammad Asif Samma and he has replied in a un shattered manner that he wants to live with his maternal grandfather.

22. In said statement, the learned trial court has mentioned that the minor was confident in saying that he wants to go with his grandparents.

23. During proceedings of this appeal before this court, this court has also recorded the statement of the minor on an application by the appellant's side. The statement was recorded by the undersigned in my chamber in exclusion of every other person to give a confident environment to the minor. The statement is reproduced as under;-

The minor is present. Learned counsel were present in the court. Respondent is not available today as stated by his counsel. Maternal grandfather of minor is also present in court. To make the minor little comfortable, he was asked to sit in my chambers. After sometime, now I am in chambers to ask him few questions and record his statement as well about his intelligent preference. He is a child of well understanding of his environment. He seems confident and is ready to tell his preference and to respond questions by this court. The learned counsel for parties and maternal grandfather are present in court. I asked the minor about oath as if he has understanding of this. He is not clear about that. Hence, he has been informed that he has to speak truth and truth

only and that he can tell his feelings freely. He answered it affirmatively.

Q: Are you giving your statement with free will and understanding?

Answer: Yes. I am going to give my statement with my free will:

Q: Have you been told by any one as what you have to say before the court/judge?

Ans: No. No one has told me to tell something particular.

Q: Who told you about sad demise of your mother in terms that she was killed by your father?

Ans: I am very young at that time. Hence my friends, cousins told me this. Mamo and nana/nani also told me this.

Q: What is your preference with respect to staying with yours nana/nani or your father?

Ans; I would prefer to live with my nana/nani because I am living with them for the last nine or ten years. I have also made a lot of friends and I do not want to leave my school. My family even don't bother me and I am happy with them. I also got good marks in school. I am very comfortable with my present family.

Q; Why you prefer your maternal family over your father?

Ans. It is because I believe that he has killed my mother.

Q: How you feel about meeting your father in court?

Ans: Its ok if, I meet him in court but I do not want this meeting to continue.

Q: Do you want to say anything else?

Ans: I am ok with my maternal grandparents.

24. It is true that both times the minor has preferred to stay with his maternal grandparents but we have to see that when a father has no disability then how the minor is insisting to stay with the appellants. When I asked the minor that who informed him about the murder of his mother, he stated that he was very young at that time and that his friends and cousins told this fact to him. Thereafter, his mamo and nana/nani also told this fact to him.

25. Here comes a question of great importance. When a person is still not declared guilty by the court of law then infusing a particular view in the mind of the minor about his father is nothing but use of influence by the appellants to let the minor make it firm in his mind that it is his father who actually committed the yet to be provide crime. This cannot be allowed until the respondent is clearly declared guilty by a court of competent jurisdiction after a formal trial. The role of the appellants and their family is thus not positive as far as the mental grooming of the minor to this extent is concerned. I will highlight the next question asked to the minor that whether he will prefer to live with his maternal grandparents or father, he informed that he is happily living with them since last nine or ten years. In next question that why he prefer to stay with the appellants, his answer is very relevant for this discussion. Answer is as under;-

"It is because I believe that he has killed my mother"

26. The bad mental grooming of a minor who was only of one year or so at the time of alleged murder of his mother is apparent in terms that the minor is not informed that when a person can be considered as a murderer of any person. It is only the law that has to determine a person guilty and not the appellants. It is so because none of the witnesses of the appellants are eye witness to the alleged murder of the mother of the minor. Information of every such person is either based on suspicion or hearsay. It was the duty of the appellants to guide the minor that unless proved guilty his father cannot be said to be a killer of his mother. A minor is not brought up in true spirit in this regard and it shows that the feelings of hate are being unfiltered in him through mis-guiding him at law. Here, this

court is conscious of the fact that a daughter of the appellants has lost her life in an unfortunate incident and this court sympathises with them as also with the minor that still the murderer of said lady has yet to be tried and convicted by a court of competent jurisdiction. But everyone has to understand that no one can be wiser than the law. Thus, I am not satisfied with the intelligent preference of the minor in terms that the same is not based on his own free thinking without prejudice from either side. Definitely, his strong views about his father have been infused in him by the appellants and their family and a minor has been groomed to consider his father as "killer" of his mother without any proof until now through a judgment of conviction against him. Already the appellants have themselves given affidavits of compromise to get the respondent acquitted from the case under Section 265-K of Cr.P.C. No other comments on the criminal case by this court.

27. The purpose of intelligent preference is to bring on record the true feelings of minor keeping in view the attending circumstances of a case. Although in the instant case the minor has preferred twice to stay with the appellants but for the above reasons that there is no disability of the respondent, his preference is found merely on the basis of his continuous living with the appellants.

28. When a father has established that there is no disability in him, then he has a right to seek custody of the minor to live with him, to groom with him; to enjoy his company and to learn how to live in the world. This is also the right of a father to have his son with him as also the duty on him to groom him as a good citizen of this country. Of course the custody and guardianship have limitation until a minor becomes major. These rights and duties are very important part to make a person a good citizen. A little mistake committed in this regard can result in grooming the minor into a bad person which a Guardian Court has jealously to protect. For this reason, the law provides margin to the Guardian Court in terms that it is only the "welfare of the minor" which has to be given prime importance. Thus, when the court is of the firm view that the intelligent preference of the minor is actually influenced by the appellants or their other family members, this court is not satisfied that said preference can be given more weight than the right of the father to have a custody of his son. Resultantly, the impugned judgment and decree to the extent of the custody of the minor granted to the respondent is maintained but definitely for the

additional reasons advanced above by this court. The application under Section 25 of GWA filed by the respondent is thus accepted with costs.

29. Now coming to the application under Section 7 of GWA, it is found that the appellants have already granted relief in terms that they are to manage the property of the minor. This part of the impugned judgment and decree has not been challenged by the respondent. Still further, the appellants are seeking guardianship of the person of the minor as well. As per the whole discussion above this court is of the firm view that unless the father/respondent has any disability, no one else can be appointed guardian of the person of a ward/minor. Hence, said part of the impugned judgment is also maintained. The costs of this appeal shall be on the appellants.

30. Learned counsel for the appellants has also argued that if this court is not to pass an order on the appeal as prayed for then the court has first to decide the applications moved by the parties during the proceedings of the above mentioned Guardianship Petition and Custody Petition. After going through the whole evidence and arguments from both sides and the case law cited at bar, this court is of the view that there is no need to reopen any said application as the evidence available on record is sufficient to put the issue between the parties to rest. Hence, the arguments of learned counsel for the appellants that the matter may be remanded to the learned trial court are not tenable.

31. The judgments cited at bar by the learned counsel for the respondent are relevant, guiding and applicable to the peculiar facts and circumstances of this case. However, the case law cited at bar by the appellants is humbly distinguishable for the reasons discussed above. Hence, the above findings.

32. Before parting with this judgment, this court wants to address the parties and the minor directly.

To the Appellants (Maternal Grandparents)

33. You are parents of your beloved daughter who has lost her life in an unfortunate incident. It has already been mentioned that the court sympathies are with you in this tragedy and you are right in saying that the

minor is only source for you to seek patience and comfort in her perpetual absence. The court hopes that sooner or later, the system will capture the alleged murderer of your daughter, whoever he or she is. These comments are not to prejudice your own stance that it is the respondent who is the alleged murderer of your daughter. However, for this stance you have to establish on record through the trial and conviction of the respondent. Prior to that, when he has an acquittal order in his favour, you cannot prejudice the mind of the minor against him. I am sorry to say that the minor has developed hate in his mind about his father just on the basis of information provided by you and your other family members about the respondent. I cannot believe that it was his friends who were first to inform him about the respondent as an alleged murderer of his mother. It would have been much better if you have with-held this information from the minor until the respondent is finally declared guilty of the alleged fact of murder of your daughter by a court of competent jurisdiction. I understand that even there was no psychological guidance to the relatives of deceased person with respect to the treatment of the minor who is actually not aware as to who did what with his mother. Hence, it is not to blame you but to explain you that unless you establish a legal and factual disability in the father/respondent of the minor, you cannot claim the custody of the minor as also guardianship of his person. This is Sharia; this is law; this is the best welfare of the minor. A father has to take care of his son. Your love, affection, and putting all the social, psychological and financial resources for better grooming of the minor until now are hereby appreciated by the court in terms that the minor is healthy, happy and is getting good education and earning good educational results. There is only one hitch which I have already discussed from the treatment you have given to the minor. Although you have done so much good things for the welfare of the minor when the law says that the welfare of the minor is actually in the hand of a father, your rights comes after the father. Thus, the meeting schedule is there as passed by learned Guardian Court so that you can show all your love, affection and other good gesture to the minor in his further grooming. Definitely, he will become a good citizen of this country. Your role in his grooming for the years up till now will be remembered in good words. Thank you very much for all the good things. I have already mentioned above that none is wiser than the law not even the court but the courts have to administer the law and while administrating this law in this case I have observed that the respondent/father is entitled to the custody of

the minor. If any time in future you establish any disability in the father, you are always there to challenge the custody of the minor with his father.

To the father.

34. I want to address you directly as well. You are in a very sensitive position at the moment. Your parents-in-law (appellants) have allegation against you with respect to your deceased wife and their daughter that you have allegedly killed her. Although you have been acquittal from the charges on their statements but this situation has caused some negative feelings in the mind of the minor about you. I have already discussed above that definitely those feelings are premature as on this there is no conviction against you. No one including the appellants has to infuse in the minor any such thoughts about you without a conviction order. I held them responsible for such negative feelings of the minor about you. Thus, the minor being a fragile mind must require some time to adjust with you. He is little grown up now. His feelings are maturing on different aspects of the life. Thus, please don't rush. Try to engage a psychologist to understand this relationship of a father with his grown up child who has such a negative feeling about you. Taking such professional advice with help you and the minor start life together in a better way. It is not to a stigma for you to move in this particular direction but being a Guardian Court in appellate capacity this court is of the view that instead of taking up decisions of your own in such a sensitive position about you as well as of the minor, such professional advice will help to move forward with respect to the beginning of the life of the minor with you in that place where his mother was allegedly murdered. He will definitely need time to readjust with you and you have to give margin to him for said purpose. No force; no pressure; no abuse in this regard. You being a father has to remain within the bound of law while dealing with the minor and the minor will be at liberty to report any matter about your dealing with him. If he feels anything bad or if he feels something going wrong with him, the learned Guardian Court can take up the issue. You will remain bound to submit the minor to meet with his maternal grandparents etc in accordance with the schedule crafted by the learned Guardian Court. It is the learned Guardian Court who can change said schedule on any future application keeping in view the adjustment with respect to the comfort of life of the minor as also his studies. You can yourself report any matter with respect to the minor for any such adjustment in the best welfare of the minor.

35. This court has found that the maternal grandparents of the minor have put all their efforts and financial resources for good grooming of the minor. Whenever I met him in the court or in the chambers, I found him in happy mood, confident, intelligent and with all reasonable understanding. You have to remain thankful to them in this regard on that. Apart from one matter, they have left nothing to make the minor as a good citizen of this country and good grandson. Of course, he will prove himself a good son for you as well. I hope that you will enjoy his company as your son and he will do the same with you. You need to perform your role with more caution so that the minor can adjust himself with you and that will be a critical question and test for your future conduct so that the court's view that you have no legal disability to have the custody of the minor is maintained. Keep it up. Making the minor a good citizen requires your active involvement in his life. Please keep him away from any negative thinking. Let him live his life happily and let him play his role in the society after his education and grooming. This court request that please don't infuse in future any negative things in his mind about his maternal grandparents or family just because you have issues with your in laws with respect to the above mentioned case. Keep negative feelings away from the minor and let him focus on his studies and other extracurricular activities. It is now you who have to decide that how to meet these standards of being a good father in the above mentioned sensitive position. I hope that you will understand this and that you will prove to be up to the required standard in this regard.

To The Minor:

36. I want to address you finally and directly. I hope you will read this part of my judgment and will try to understand that why I have given this judgment in favour of your father and why you have to stay with him.

37. I have met you on three or four occasions in the court room and once in my chamber to record your statement. I have found that you are an intelligent and well groomed boy. Your education record is good. Your love and affection towards your maternal grandparents and uncles/aunt is natural. You are living with them happily. You are living

with your maternal grandparents for the reasons that your mother has lost her life in an unfortunate incident. It is natural that when a person lives with someone, he or she develops affection towards said person and what to say when they are maternal relations. The court is happy to know that you are living happily.

38. However, you need to understand legal position about yourself with respect to your father and the order that I have made above. The law in our country shows that whenever there is a dispute between a father and a mother or between a father and some other relations with respect to the custody of a child, it is the Guardian Court that has to decide about the issue of your residence with one of the contesting parties. It is not their wishes that have to prevail or the comfort of yourself to be given the only importance. The law ensures that Guardian Court has to see welfare of the minor as of prime importance. Welfare of the minor is to include many things and I will inform you that why I have up held the decision of the learned Guardian Judge that you have to stay with your father.

39. First of all, please note that under Islamic Law, a male child has to stay with his mother until seven years of age, if the parents have a dispute about their relationship with each other. In your case, your mother is no more in this world but she is being represented by your maternal grandparents. Law further shows that a father has a superior right to have custody of his son after seven years of age unless there is some disqualification in him in terms that the court feels that if custody of the child is given to the father, child will suffer. When I have gone through the whole evidence, the statements of your father, your maternal grandparents and your aunt, I could not locate that up till now it is your father who has been convicted by court in the case of alleged murder of your mother. Let me explain little further.

40. In our country, as is in almost all the countries in the world (you can Google it) a person charged with a crime remains innocent unless court of law declares him guilty of commission of said offence/crime and punish him accordingly. This is our constitutional mandate as also the legal mandate. Every citizen of Pakistan has to understand and follow this principle and the position. Your father has been subject of investigation in the case of murder of your mother but on the statement of your maternal

grandparents recorded before the learned judge in Islamabad your father has now been acquitted from the charges of murdering of your mother. Hence, for all legal purposes we have to consider him innocent, unless a court further finds him guilty of said crime. Not only you, your maternal grandparents or even this court cannot put any stigma on your father. I find that you are able to understand this legal position keeping in view of your age at the moment and the fact that you are intelligent and have seen the courts since last few years. Although your maternal grandmother has filed a writ petition before the Hon'ble Islamabad High Court about your father but again I am to explain that unless any findings come against your father, everyone has to consider him innocent. If any finding comes against him, definitely the courts will stand up for you to shift your custody to a proper person in your best welfare. Again it will be the Guardian Court that will look into this aspect of the matter, if situation turn like this.

41. I am also to inform you that when a case is pending before any court, I cannot comment upon that in any manner. This is to mandate the principle of propriety, i.e, that every court has to take the decision of a matter which is pending before itself. Hence, I cannot comment upon any case pending in the Hon'ble Islamabad High Court against your father unless a final decision is given and the matter is put up for deliberation before the Guardian Court.

42. I feel sorry that you have lost your mother at the very early age of your life when you were just one and half year or so. You have a difficult life to face and you have to bear it out to show that you understand not only the legal position as mentioned above but also that you have to remain calm and composed throughout your life to be a good and respectable citizen of this country. There should be no bias or prejudice in your mind about any person unless a court holds said person as guilty. No matter even if he is your father:

43. Now, I turn towards your statement you recorded before learned Guardian Court. In said statement you have preferred to live with your maternal grandparents. Nothing wrong in it. Likewise, you recorded a statement before me in my chamber and you have responded a number of my questions intelligently and in a befitting manner and I always appreciate your confidence and that you have cooperated with the court even to meet with your father. What I have gathered from your detailed

statement made before me is that you are not aware by yourself about any wrong of your father. It is the people around you who have informed that it was your father who has allegedly killed your mother. This is culture in our society. I cannot blame either for this as far as your strong thoughts that you think that your father is guilty of murdering of your mother. However, I have already made you understand that the legal position at the moment is that he has no guilty verdict against him and thus you have to presume him innocent as such. When this is the position, then the court was to look into question that whether your father has any disability so that the court will not grant your custody to your father. The evidence suggests none. Your father has shown all the love for you whenever he has appeared before me and I have stated legal position in detail in simple words for your understanding.

44. The court respects your opinion. However, the law of this country also states that merely understanding of a child to take a decision about himself is not enough to decide about his welfare. The court has also to look on further dimensions of his life as well. A father has a preferential right over his son as compared to any other person no matter how close said person is to the said child if the mother is not there if the child is above seven years of age, as is your case. I found that your bad feelings about your father are only due to what you have been told. You need to reconsider yourself and un-learn your negative feelings about your father at the moment. He is your natural guardian. He is your real father. He has to see what is in your welfare. He has to see how to groom you as a good citizen in this country. It never means that your maternal grandparents have nothing left for you. I have found them having all their efforts put into your grooming, education, health and other psychological needs. These are reflected through your personality before me and I appreciate your maternal grandparents that during the hard times and during this legal battle, still they have fully shown their responsibility to maintain you in a proper way. This qualification of your maternal grandparents cannot over ride the qualification of a father being natural guardian especially when there is nothing on record against him to deprive him from having your company. Hence, I have found that your stay with your father will bring a new dimension in your life in terms that you will come into his company and see that what a father has for his son in a normal course of life. You need to give margin to your father in all respectful way that he starts his life with you as his only son. Definitely, it will be difficult for you initially

to adjust. However, when your life has special circumstances, you have also to learn that how to meet challenges and how to cope with the situation where your mind quickly rejects certain changes in life. Please trust in the law and please trust in the court. Unless you are twenty one years of age, the court has a parental role in your life. Not your father; not your maternal grandparents but the court that has to decide what is your welfare. I will again emphasis that it never means that the law and the court does not respect your opinion. The decision of the court is after considering all the aspects of your life. Mere discomfort of readjustment about the place of living or change of personality with whom you have lived is not to be considered the only factors to pass an appropriate order for your welfare. If you were not told that it was your father who is guilty of the crime, you would never have developed any hate or bad feelings about your father. Thus, this court, as also the learned Guardian Court, being in parental position have decided that your welfare is to live with your father in the natural course of things, and at the moment.

45. You have now developed more love and affection towards your maternal grandparents, aunt and uncle for the reason that you have lived longer time with them at the initial stage of your life. The court is conscious of this fact and for this reason, you have all the rights to meet them as per the schedule crafted by the learned Guardian Court. If ever you want to have change into said schedule, you can always inform the Guardian Court that what type of change you need and the court will definitely consider your opinion to amend the schedule if so required again, keeping in view the principle of welfare of the minor.

46. Your are also to consider that may be you have to change your school. In such like situation, never feel down and never feel deprived. Again take it as a challenge in your life because you have spent only very few years of your life until now and a large portion of life is yet to come and no one knows that what type of challenges are still there. Hence, try to be a bold and courageous person. I know that I am talking to you when you are just eleven years of age. However, I believe that whatever I have said to you in these lines is only for the reason that you can understand my point and that it is the court that has to determine your welfare and not the persons around you no matter how closed they are to you.

47. With respect to your father, I hope that you will respect him in true spirit being your father. You have to start your feelings changed from “hate” towards “love”. Put little effort for a happy life. Happiness is to make a person more efficient and competent. Please do what I recommend.

48. With respect to your maternal grandparents, always show full respect for them. Please do not become a basket where people throw their bad feelings and ideas about the other side. This only you will be able to manage when you will not be there to listen any bad thing from your father as also from your maternal grandparents about each other. Stop anyone who tries to take you into said trap. Hopefully, things will improve.

49. Finally, if you have anything to say, the learned Guardian Court is there. Whenever you will visit Guardian Court you can tell with confidence any problem that you want to discuss. No one should bring any pressure on you to say any particular thing in any particular way as you have to remain independent of any dispute between your father and your maternal grandparents.

50. I wish all the success and happiness in your life again with a word of sorry that you have lost your mother in this life where she may have brought more happiness in your life as also her kindness for you. Consider that after your father and maternal grandparents, court is also like a mother. Anything that will affect your happiness will be taken care of by the Guardian Court.

Bye Bye

Conclusion

51. Keeping in view the above discussion, appeal filed by the appellants is hereby dismissed with costs throughout. Memo of appeal, be drawn up accordingly. Appending the copy of this judgment, record of learned guardian court if any be sent back immediately after due legal formalities and that of this court be consigned to record room by Ahlmad Jaffar Hussain.

Muhammad Amir Munir
Announced: Addl: District Judge
14.09.2018 Lahore.

Certified that this judgment consists of 28-pages, each of which has been dictated, read, corrected and signed by me.

Addl: District Judge, Lahore

IN THE COURT OF MUHAMMAD AMER HABIB
ADDITIONAL DISTRICT JUDGE SIALKOT
Usman Khan vs. Mst. Sana Usman
Family Appeal No. 154 of 2020
Date of Institution: 28.10.2020
Date of Decision: 14.11.2020

FAMILY APPEAL

PRESENT:

Mr. ***Fahad Ahmad Siddiqui Advocate*** *leamed counsel*

for appellant.

Rana Asif Siddique advocate learned counsel for the respondent.

JUDGMENT:-

Usman Khan has brought this family appeal against Mst. Sana Usman under provision of section 14(3) of the West Pakistan Muslim Family Courts Act 1964 read 47 of the guardian & Wards Act 1890 against order passed by the learned Judge Family Court dated 03.10.2020 where through visitation of the minors is fixed at Taj Hotal under the supervision of Bailiff of the Court. Learned counsel for the appellant submits amongst grounds mentioned in the memorandum of the appeal that the present appellant by is petition filed under provision of section 25 of the guardian and Wards Act 1890, for the custody of his minors of three children before the Senior Guardian judge at Sialkot alongwith petition and application under section 12 of the Guardian & Wards Act was also filed for obtaining interim custody of the minors. The order dated 07.10.2020 is challenged after hearing the parties. Learned Trial Court has chalk out the extremely restricted visitation schedule comprising of as minimum 3 hours twice a month visit and that too to be held within premises of Taj Hotel under the supervision of the Court Bailiff, resulting into the 72 hours total visit in a year with his minor children despite the fact that appellant is burdened to pay a sum of Rs. 20,000/- (twenty thousand) per child in addition to school fees. It is further argued that learned Trial Court has failed to appreciate that appellant has filed an application for the grant of at home General Annual Visitation Schedule. It is further argued that learned respondent No.1 has failed to appreciate that appellant is real father of all 3 minor Children and his visitation rights involved the right of minor's access towards his father. The eldest minor daughter has crossed age of 8 years, the younger minor daughter is above the age of 6 years and the youngest minor son is about 4 years as per their birth certificates. As the minor are school going children having all the

vocations available to them. At home access to there is a contact denial in the first instance in as much as deprivation of rights of three minor children. He referred the case law "**2019 MLD 804 Karachi".** He further submits that the father shall be provided interaction otherwise it may cause an estrangement in the minds of the children which may ultimately have vacuum in the accomplishment of their personality for deprivation of love affection and company of her father. It is further submitted that under order to achieve this goal the Court shall make every possible efforts to chalk out a reasonable schedule in the congenial, homely and friendly atmosphere and visitation schedule fixed by learned Trial Court has no manner could be construed to meet the above objective. He relied on **"2018 PLD 44 Quetta".** The learned counsel submits that welfare of the child is paramount consideration before a Court and law as the Guardian Court exercised parental Jurisdiction, hence no scope in such jurisdiction for any undue adherence to technicalities. Such welfare would be remained over parental rights. He submits that proceedings before the Guardian Court pertaining the visitation rights of the minor has to be used, not for the body of the wards but for the soul of the infant. He may thirst order that learned Trial Court failed t appreciate that for the social condition that exist today this is very necessary for the Court to ensure bringing up children involved in the Child Custody Litigation as healthy, happy and useful individual all-round standard of education as active builders of society. Submits that learned Trial Court has not ensure development of the minors and to safeguard its interest. He further submits that Court has failed to appreciate the best suited educational competence and no solid and valid justification was given mere 3 hours visitation twice in a month. He referred to the Holy Quran and read out Verse (No mother should be harmed through her child, and no father through his child" submits that father despite being a law abiding citizen and a loving father feels chastened when he cannot meet his own children sufficiently and even enjoy constitutional rights

for mere 3 hours that too merely once a month within the premises of Taj Hotal Sialkot. He has to "earn" every minute's meeting with his child by spending precious resource like money, energy and time in shape of heavy legal expensed, various applications and surety bonds has to be paid (also the money that goes into paying the bailiffs each time) for up bringing the minors. The learned Trial Court. In Surah Baqra's verse 233 "No person is charged with more than his capacity". He submits that learned Trial Court failed to appreciate the simple fact that there is no specific duration or frequency defined in the Guardian & Ward Act 1890 for granting a meeting /visitation schedule for the minors. The provision dealing with interim custody of the minor is regulated under Section 12 of the Guardian & Wards Act, 1890, and Section 5 of the Schedule attached to the West Pakistan Muslim Family Courts Act 1964, which is silent regarding the quantum of visitation or venue of schedule. The basic paramount consideration to decide a reasonable schedule is the "Welfare of the Minors". He submits that instant order is a clear cut violation of the mandatory Provisions of Law as are couched in the gist of Section 24-A of the General Clauses Act 1897, which calls for the logic, reasoning and justification by the Court adjudicating rights of citizens before the Court. As family matters are not to be decided strictly on the yardstick of procedural laws not any other principle aimed at the observance of the technicalities as relied on "**2005 PLD 97** Lahore" and submits that if the minor kept away from the father, because beside they love an affection from which minors shall be deprived, they may develop an estrangement, which would not be in any way in their best interest. He placed reliance upon **"2009 CLC 1443 Lahore"**. He submits that special time for days important to the child, including birthdays of his paternal Grandparents, uncle & Aunts, their children who are first degree cousins of the minor. Further prayed that 50 % time of all gazette holidays may also be granted included but not restricted to Pakistan Day, Independence Day, Kashmir

day, Quaid Day & Day. etc

2. Special time for days important to the child, including birthdays of his paternal grandparents, uncle & Aunts, their children who are first degree cousins of the minor;

Birthdays:

a. Father on 8th February

b. Paternal Grandmother on 23 October

c. Minor daughter namely Fatima Khan aged about 8 years and 04 months on 04 February,

d. Minor daughter Namely Naima Khyan aged about 06 years and 04 months on 22th February

e. Minor son namely Mohammad Hussain Khan aged about 03 years and 07 months on 05 November.

II. PATERNAL COUSINS

a. Ahmad Mohammad Babar on 09th February (1st degree Paternal Cousin)

b. Mohammad Moiz on 03rd June (1st degree Paternal Cousin)

c. Haleema Owais on 01st July (1st degree Paternal Cousin)

d. Mohammad Mohid on 07th August (1st degree Paternal Cousin)

e. Aminah Owais 03rd September (1st degree Paternal Cousin)

f. Areeba Khan on 12th September (1st degree Paternal Cousin)

g. Laiba Khan on 13th September (1st degree Paternal Cousin)

3. Conversely, learned counsel on behalf of respondent it is submitted that no such provision of appeal against interlocutory order of the Guardian Court is available and further submits that the present appellant has dully stamp Visas of USA of minors and if custody would be given to the father, he would not only leave the station but also there is apprehension to leave the country and in this way mother of the minor would suffer irreparable loss. He submits that visitation was fixed at the asking of the appellant and therefore, prayed for dismissal of appeal.

4. Be that as it may, it may be held that the cases pertaining to custody /visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil right/obligation, such as the property disputes etc. These cases have their own dimensions, repercussions and consequences, founded upon the human emotions and the sentiments. The resolution and adjudication of this special kind of matters, therefore, should be conceived considered and settled in a different perspective an context, which obviously revolves around the welfare of the minor, but at the same time the natural feelings of the parents cannot be overlooked and ignored; if the parents means something great for a child, the child may also mean the whole world the parents. In such cases therefore, (where the lis is between the parents), there are three main characters of the scenario, a mother, a father and a child and in certain cases the brothers and sisters of the minor, they are all the stakeholders and the emotions and feelings of every one of them should be kept into view while deciding the noted issue, besides the personal. Law of the minor and the rule about his welfare as mentioned earlier which should be of pivotal consideration. All these putting together contemplates that regarding the visitation schedule neither the mother should be altogether deprived of the complete custody if she has the lawful custody of the minor (until her right of custody terminates on account of some Courts order or otherwise) nor the father should be deterred and prevented and yearn to meet and see his own child with whom in the normal situation, he shall have a free access and interaction, and could shower his love and affection, if the relation between the parents was normal; this also is true position vice versa. The third important character is the child himself, who under the law of nature should have the privilege of the love and affection of both the parents, which is if for certain reasons, the parents on account of their discord and disparity have fallen apart, the child should not be deprived to have the maximum of the possible he/she

could achieve the above from either of the parents. And it does not behove of the adversary parties, who may even have hatred towards each other to claim exclusive possessory right over the child in exclusion of the other, as one could demand in the matter of the property dispute etc. Besides, it may be clearly understood that the father is the natural and legal guardian and under the Islamic Personal law, the right of mother to "Hazanat", in case of a male child, terminates around the age of seven years, (My this observation, in no manner, shall be construed of causing any prejudice to either party in the issue of minor's custody), which has nexus and must be kept into view while considering the question of visitation. The father, once the child has passed the age of seven years, must have maximum interaction with the minor even if the custody is with the mother, but this again should be subject to the rule of welfare of the minor; if for any reason it shall be against the noted principle, the court should either restrict the visitation or even can decline. But if it is otherwise, to prevent the minor from meeting with his father may cause an estrangement, prejudices, psychological intricacies and cobwebs in the mind of the child, which may ultimately prove to be a pivotal vice and a shortcoming in the growth of his personality on the count that, he at the relevant time could not get sufficient love, affection and company of his father, which a normal child would enjoy. It may be stated with concern that it seems quite un-natural rather harsh and coercive to hold that though the father is the legal and natural guardian of the minor and has right of his supervision under the Islamic law as well, yet has to wait for a week, a fortnight or a month or even more than that in certain cases, to meet his son for the reason that he custody under the Court's order or otherwise is with the mother or the matter is subjudice. This all as mentioned is true for the mothers as well, who are the de fecto guardians of their children, keeping the child in their womb for 9 months and undergoing the labour pains, the rigour of feeding,

nurture and raising them; a child is a part of their flesh and it is for this reason, why in Islam the Paradise is said to be underneath the mother's feet. One is really shocked, dismayed, disappointed and disgusted to see that in the Family/Guardian Courts the parents waiting to meet their own children, which opportunity they might be having after weeks or month and may only last for not more than an hour or so. The food cloth, sweets and toys brought by them are sometime not accepted or are thrown away by the child, because he may have the instruction not take those by the one from whose custody he is brought coupled with the stating of the adversary party may also spoil the pleasure of such a short meeting,. In my candid view thus, the court should be liberal in chalking out the visitation schedule of the minor with the parents, obviously keeping in view his/her welfare.

5. Reliance is also placed on **"PLD 2018 Baluchistan 44**. The relevant Para is hereby reproduced here under;-

6. In Guardianship mattes, Courts exercise a parental jurisdiction, the supreme consideration, in this context is the welfare of the minor(s), to achieve this purpose Courts have unfettered powers, thus, application under section 12 of the Guardian & Wards Act is required to be decided on this principle. It is an inherent right of the contesting parent to seel visitation to the minor, especially a father, who is the natural guardian, he not only I required to participate in the upbringing of the minor(s), but should develop love, bondage and affinity with them, to achieve this purpose, the concerned Court should facilitate a congenial, homely and friendly environment and reasonable visitation schedule. The Court of the Guardian Judge or the office of Civil Nazir of the Court, for this purpose is neither conducive nor effective, it lacks proper facilities and arrangements, and is not comparable to a homely environment. Thus, meeting in Court premises does not serve the purpose of meeting. It, therefore, is not in the interest or welfare of the minor to hold meeting in the court premises, therefore, meetings of

the, minor with the petitioner should preferably be held at the residence of the petitioner at Quetta, if he has or arranges.

7.In this regard a report issued by Department of Applied Psychology University of The Punjab, Quaid-E- Azam Campus, Lahore dated 25.03.2013 submitted in connection with writ petition No.28566/2011 is also important to be mentioned here under;

8. In our Society, the custodial parent may intentionally get indulged in child abuse by removing or retaining the child from the other parent, seeking to gain an advantage in the expected or pending to gain an advantage in the expected or pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. Whatever, the reason of retaining or removing the child may be, it causes irreparable damage to the emotional and psychological impact on child is often ignored and remains unaddressed.

9. When the meeting schedule devised by the learned Guardian Court is viewed in juxtaposition with the obligation imposed upon a Guardian Court as discussed above, it is discernible that the learned Guardian Court had not formulated the visitation schedule which could ensure development of love, bondage and affinity between father and minor and which is fundamental to carve a balanced Add personality of a minor, hence following meeting schedule is formulated which shall be observed for minors i.e. Fatima Khan (minor daughter), Naima Khan (minor daughter) and Muhammad Hussain Khan (minor son).

Meeting Schedule

(i) On every alternate weekend minors i.e. Fatima Khan (minor daughter), Naima Khan (minor daughter) and Muhammad Hussain Khan (minor son) may reside with (father) and respondent/mother will handed over the minor on Friday at about 08:00pm late evening and appellant will return the minors on Sunday by 01:00p.m in the afternoon.

(ii) During summer vocations the custody of the minor shall be handed over to the father on the 1st Sunday of the summer vocations so declared by the School/Government and shall be returned to the respondent-mother in evening of the 4th Sunday during the vocation so that minor may have four weeks to spent with his father i.e. appellant.

(iii) Winter vocations which are generally due from 21st December to 30th December. 1st Week of the winter vocational shall be spent by the minor with appellant-father and 2nd week with the respondent mother.

(iv) On Eid-ul-Fitar the minor shall celebrate Eid with his father/appellant from second day of Eid-ul- Fitar from 08:00A.m till Third day of Eid upto 08:00 p.m, if third day is also a holiday otherwise the meting shall be from 08:00 AM to 08:00 PM of second day of Eid-ul-fitar.

(v) On Eid-ul-Azha the minor shall be handed over to the appellant to celebrate Eid-ul-Azha on the second day at 09:00a.m in the morning till 3rd day of Eid-ul-Azha at 08:00p.m or earlier."

(vi) Unscheduled holidays the minor may spe holidays with appellant father from 09:00a.m. to 06:00p.m in the evening.

(vii) On the occasion of birthdays of minors, on second day of birthday of minor father would be entitled to celebrate birthdays of minors or meet with the minor from 04:00 PM to 08:00PM, and in case on that day it is holiday, than the father would be entitled to meet or have the custody of Minor from 10:00 AM to 06:00 PM.

(Viii) On the day of father's birthday minor would spent time from 04:00 PM to 08:00 Pm with the father and in case on that day it is holiday, than the father would be entitled to meet or has the custody of Minor from 10:00 AM to 06:00 PM.

(IX) It may be observed that in case there is any family occasions i.e. marriages or deaths in which the appellant father desire and wish that minor may also attend shall inform the respondent-mother who shall not unreasonably stop the minor from attending such family events and or functions.

(X) It is needless to say that the minor is of such an impressionable age and both the parents are expected to be

sensible and conscious of hi social responsibility shall not do any act that any prejudice his mind towards the other parents.

10. The custody of the minors shall be carried through bailiff. Fee of bailiff Rs.1000/- will be paid by the appellant. All the above said meeting will be subject to submission of surety bonds of Rs. 10,00,000/-.

11. The epitome of preceding discussion is that the impugned order is set-aside and appeal of the appellant is hereby partially accepted in above stated terms. No order as to costs. Record of learned Trial Court if any be sent back immediately after due legal formalities alongwith an attested copy of this judgment and that of this Court be consigned to record room.

Announced:
Muhammad Amer Habib
Additional District Judge
Sialkot

14.11.2020

Certified that this order consists of sixteen (16) pages; each page has been dictated, read, corrected (where necessary) and signed by me.

Additional District Judge
Sialkot

IN THE COURT OF ALI NAWAZ,
DISTRICT JUDGE, SIALKOT.

Nabeel Baig Mirza son of Asmat Baig Mirza resident of House No.06, Sector A, Civil & Defence Housing Scheme, Lahore Cantt, Lahore.

Versus.

Mst.Saima Naseem wife of Muhammad Naseem resident of House No.24/551 Mohallah Wassi Shahidan, Sialkot (presently residing at House No.100-E, PIA Society, Lahore.

F.A No.02 of 2020.
Date of institution. 01.09.2020.
Date of decision. 18.12.2020.

APPEAL AGAINST THE ORDER DATED 11.08.2020 PASSED BY CH.IMRAN ALI, LEARNED JUDGE FAMILY COURT/GUARDIAN COURT, SIALKOT.

PRESENT:

*Mr. **Fahad Ahmad Siddiqui Advocate** leamed counsel for appellant.*
Learned counsel for the respondent.

JUDGMENT:

1. This appeal has been directed against the order dated 11.08.2020 passed by Ch.Imran Ali, learned Judge Family Court/Guardian Court, Sialkot whereby while disposing of application under Section 12 of Guardian & Wards Act, learned trial court allowed the appellant to see his minor son within the court premises for two hours two time in a month.

2. Necessary facts for disposal of this appeal are that the appellant filed an application under Section 25 Guardian & Wards District Judge, Sialkot Act for custody of his minor son Adil Baig Mirza. It has been alleged in the application that appellant was married with respondent on 16.08.2006 and spouses were blessed with a son namely Adil Baig Mirza who born on 30.05.2015. Attitude of respondent was hateful to the appellant. In fact she wanted to marry somewhere else due to which she estranged herself to her husband. Many times appellant tried to persuade her and asked her to concentrate on his family life and also tried to assure that he will fulfill all her requirements but respondent was not happy with the appellant and thereafter she demanded divorce from the appellant. When appellant refused to divorce her, she took her minor son with her da and left the house of appellant in his absence and came in Sialkot. Thereafter she filed a suit for dissolution of marriage which was ex-parte decreed on 14.12.2016. Thereafter respondent entered into marriage with one Muhammad Naseem in November, 2017. Above-said Muhammad Naseem was already married and was father of six children. It became routine of Muhammad Naseem to maltreat with minor Adil Mirza Baig and to commit torture upon him due to which minor left that house and came to the appellant. He remained 6/7 months with the appellant but thereafter by filing Writ Petition, interim custody of the minor was given to the respondent. Appellant alleged that he is entitled for permanent custody of the minor because he is natural guardian of the minor. He has not entered

into second marriage due to welfare of the minor whereas respondent has contracted third marriage and present husband of the respondent is already father of six children who used to commit torture upon the minor. It is welfare of the minor that he should remain with his father because he had got admission of the minor in American Public School, Lahore Defence Housing Scheme. Prayer was made that custody be handed over to the appellant. Alongwith application under Section 25 Guardian & Wards Act, an application under Section 12 Guardian & Wards Act for interim custody was also filed by the appellant wherein interim District Judge, Siafo Custody of the minor was demanded by the appellant. Both the applications under Section 25 & 12 Guardian & Wards Act were contested by respondent by filing her written replies respectively wherein various factual and legal pleas were raised. Learned trial court while disposing of the application under Section 12 Guardian & Wards Act allowed the appellant to see the minor within the court premises for two hours two times in a month, hence, this appeal.

3. Mr. **Fahad Ahmad Siddiqi Advocate**, learned counsel for the appellant has reiterated his contention as contained in memorandum of appeal whereas Kh.Zeshan Irshad Advocate learned counsel for the respondent has vehemently opposed it by his oral arguments as well as in his written arguments. He submitted that appellant has not come to the court with clean hands. He has not paid maintenance allowance of the minor, hence, he is not entitled that application be decided in his favour. He further submits that regularly two times in a month the appellant is meeting with his child but case is being lingered on due to non-production of evidence of appellant. He further submits that appellant is a criminal person and a FIR No.528 was registered against him in 2009 at FIA, Lahore. He submits that earlier appellant had kidnapped his son and custody of minor was handed over to the respondent by the Hon'ble Lahore High Court, Lahore. He submits that minor is suffering from disease of Asthma and in such like situation only a mother can properly look after him. He prayed that appeal be dismissed.

4. Arguments heard. Record perused.

5. It is an admitted fact that appellant is real father of the minor. This fact has also not been denied by the respondent that appellant has not contracted second marriage whereas respondent has entered into another marriage with a person who has already six children, after taking divorce from the appellant. Learned counsel for the respondent during the course

of arguments submitted that appellant is not regularly paying maintenance allowance of the minor whereupon he was asked to produce order of the Family Court, Lahore where suit for maintenance was pending adjudication. He has produced the order sheet of the above-mentioned court but not even in a single order it has been mentioned by the court that appellant remained failed to provide maintenance allowance to minor which reflects that the appellant is regularly paying maintenance allowance of the minor. No doubt it is right of the appellant to meet his son and no law can deprive him of this right.

6. So far as contention of learned counsel for the respondent that appellant is a criminal and FIRS have been registered against him, is concerned respondent has mentioned only one FIR which was registered in 2009 and mere registration of FIR does not prove that appellant is a criminal person. It is not only the right of the appellant to meet his son but it is also right of the child to take love and affection of his father. If there is no interaction between a son and father then it may cause an estrangement in the mind of minor which may ultimately cause vacuum in accomplishment of his personality for deprivation of love and affection and company of his father and to achieve this goal Family Court should keep in mind this fact and should make every possible effort to chalk out a reasonable schedule in the congenial, homely and friendly atmosphere and visitation schedule fixed by learned trail court.

7. Since, respondent/mother of the minor has taken divorce from appellant and has contracted second marriage, it is matter of common observation that when there is separation between the parties then the party with whom minor resides always tries to put hatred in the mind of a child for the other party due to which minor becomes stranger for other party and hatred is developed in his mind which is also a negative fact for development of personality of the minor. One day a person came to the Prophet (Peace Be Upon Him) and asked Him that who has preferential right upon him, Prophet (Peace Be Upon Him) replied that "your mother". He again said that who is after the mother, Prophet (Peace Be Upon Him) replied that "your mother". Third time he made the same question and Prophet (Peace Be Upon Him) made the same answer. When fourth time that person made the same question, Prophet (Peace Be Upon Him) replied that "your father". From this Saying of Prophet (Peace Be Upon Him) it can be said District Judge, Sialkot that if mother has three time rights upon her child then at least fourth portion of right is of father. Guarding Courts should

always keep in mind welfare of the minor and his meeting with his father, has to be used only not for the body but for the sole of the child. There is a Verse in Holy Quran that "no mother should be harmed through her child and no father should be harmed through his child". If a minor is kept away from the father, not only the love and affection from which minor shall be deprived, but also may develop an estrangement, which would not be in any way in the interest of the minor. Guidance is taken from 2009 CLC 1443, Lahore. In case for custody there are three stakeholders, father, mother and a child and interest and rights of all these three stakeholders should be kept in mind at the time of deciding any such like applications. Neither the mother should be altogether deprived of the complete custody nor the father should be deterred and prevented and yearn to meet and see his own child with whom in the normal situation, he shall have a free access and interaction, and could shower with his love and affection. Minor has also a right to take love and affection of both his parents which nature provides to him, who, under the law of nature should have the privilege of love and affection of both the parents and due to separation of parents the minor should not be kept deprived to have the maximum of the possible he could achieve the love and affection from both of his parents and no party should be permitted to presume that he has exclusive possessory right over the child in exclusion of the other. Deprivation of child to take love and affection of his mother or father may cause an estrangement prejudices, psychological intricacies in the mind of the child which becomes a shortcoming in the personality of that child due to the fact that at the relevant time of his childhood he could not get sufficient love and affection and company of his father, which is a normal right of the child. A father who is natural and legal guardian of a minor when he has to wait for weeks, cannot give pleasure in such short meeting to minor or his father and a loving father feels chastened when he cannot meet his child sufficiently and only two hours are given to him fortnightly those are also in court room this would spoil the bond between father and son. In these circumstances I am of the view that father should be given custody of minor for Saturday after the school hours till Monday till the times school starts in normal days in a fortnight. Now-a-days when schools are closed due to Corona Virus he would be given first one week of every month and during the period of summer holidays then also first week of every month he would be given custody of minor, in winter vacations half of holidays minor would remain with his father and on Eid occasions two

days after the Eid day minor will remain with his father. So far as apprehension of the respondent, that appellant can remove the minor somewhere else, is concerned, appellant is directed to furnish two sureties of Rs.10,00,000/- (Ten Lac) each for the assurance that he shall return the minor as per above-mentioned schedule.

8. In these circumstances, instant appeal is allowed and visiting schedule is modified as mentioned above. No order as to costs. File be consigned to the record room after its due completion.

Announced:
(Ali Nawaz)
18.12.2020. District Judge, Sialkot.

Certified that this judgment consists of six (06) pages and each page has been dictated, read, corrected and signed by me.
Dated:18.12.2020.

IN THE COURT OF MUHAMMAD UMAR FAROOQ BHATTI
ADDITIONAL DISTRICT JUDGE, LAHORE

Usama Yousaf vs Mst. Muniba Zia

Guardian Appeal No.282/2020.
Date of institution. 09.11.2020
Date of decision. 05.06.2021.

Guardian Appeal

JUDGMENT:

Present: **Fahad Ahmad Siddiqi advocate** on behalfof appellant.

Muhammad Ramzan Qadri advocate on behalf of respondent.

This appeal has been filed against impugned order dated 06.10.2020 whereby learned family court dismissed the application under Section 12 of Guardian & Wards Act and chalked out visitation schedule of minor.

2. Brief facts necessary for the disposal of appeal are that appellant filed AT a petition under Section 25 of the Guardian & Wards Act, alongwith an application under Section 12 of the same which was contested by the respondent and after hearing arguments from both sides learned Trial court vide order dated 06.10.2020 dismissed application under Section 12 of the Guardian & Wards Act and chalked out meeting schedule of the minor. Hence, this appeal. Appellant has only assailed the visitation schedule.

3. Feeling aggrieved from this order appellant has preferred this appeal being father of minor with the claim that the learned court below failed to appreciate that appellant is real father of the minor and his visitation rights involved the right of minor to have access to his father; so that a bond of love, affection and attachment could form between the two which is necessary for the balanced development of personality of the minor; that the minor son of the appellant is aged about 05 years and he should have maximum interaction with his father even if the custody is with the mother, otherwise it may cause an estrangement in the mind of the child,

which may ultimately. leave a vacuum in the accomplishment of his personality due to deprivation of love affection and company of his father; that learned trail court failed to appreciate that in the social conditions that exist today, it La very necessary for the courts to ensure brining up of children involved in child custody litigation become healthy, happy and useful individuals and should get quality education so that they could become active builders of society; Further submitted that learned trial court by allowing a very restricted visitation schedule comprising of 01 hour visitation once in a month within the court premises, has infact failed to exercise its quasi parental jurisdiction and further failed to act as a loco parentis and it is necessary that a comprehensive meeting schedule alongwith overnight stay should have been devised in favour of the appellant/father but learned trial court while devising the visitation schedule.. has ignored this principle, hence, the order is illegal and unlawful and needs to be corrected.

4. On the other hand learned counsel for the respondent vehemently contested this appeal, and prayed for its dismissal.

5. Arguments heard, record perused.

6. The main grievance of the appellant is that while passing the impugned order learned trial court has ignored this fact that father a natural guardian and apart from the fact of his guardianship it is in the welfare of the minor that the father should remain in constant touch with minor. It has been argued that psychological and physical growth as well as development of personality of minor's lies in the fact that love, care and affection of father remain integral part and parcel of his life. When this contention of learned counsel of appellant is considered, in view of the fact that a guardian court works in loco-parental capacity, is bound to give paramount importance to the welfare of the minor, the visitation schedule without any second opinion, does not appear to produce the kind of relation of minor with his father which is necessary for his balanced personality. This aspect i.e welfare of the minor needs to be given weight while chalking out visitation schedule or while deciding a custody 'petition instead of the right of non custodial parent to meet with his children.

7. When the meeting schedule chalked out by the learned Guardian court dated 06.10.20299 is perused, it transpires that learned Guardian Court had just allowed meeting of minor with his father on every 1st week of every month at 02:00pm to 3:00pm in evening court premises. The appellant is aggrieved with this part of the order that since the minor is

grown up child hence, maximum interaction with the father should eve been allowed by way of formulating a comprehensive visitation schedule embodying home visitation as well.

8. From the perusal of record further reveals that on the occasion of 'Eidain' and birthday of minor interim custody of minor is given to the appellant from 10:00am to 5:00pm and 12:00pm to 04:00pm receptively. It is not understandable that when, the custody of the minor on the eve of Eidain and birthday could be given to the appellant/father then why meeting on every first week of the month could not be allowed at the house of the appellant/father. It is not beyond stretch of imagination that meeting of the minor in the court premises with the father is neither conducive nor effective and does not serve the purpose for which the meeting is intended. Therefore, welfare of the minor lies in the fact that his meeting with the appellant/father should have been arranged at such a place where father and minor could gel with each other more comfortably. In this regard reliance is placed on PLD 2018 Baluchistan 44. The relevant para is hereby reproduced here under;-

> **In guardianship mattes, Courts exercise a parental jurisdiction, the supreme consideration, in this context is the welfare of the minor(s), to achieve this purpose Courts have unfettered powers, thus, application under section 12 of the Guardian and Wards Act is required to be decided on this principle. It A inherent right of the contesting parent to seek visitation to the minor, especially a father, who is the natural guardian, he not only is required to participate in the upbringing of the minor (s), but should develop love, bondage and affinity with them, to achieve this purpose, the concerned Court should facilitate a congenial homely id Friendly environment reasonable visitation schedule. <u>The court of the Guardian Judge or the office of a Civil Nazir of the Court, for this purpose is neither conducive nor effective, it lacks proper facilities and arrangements, and is not comparable to a homely environment. Thus, meeting in Court premises does not serve purpose of meeting.</u> It, therefore, the is not in the interest or welfare of the minor to hold meeting in the Court premises, therefore, meetings of the minor with the petitioner should preferably be held at the residence of the petitioner at Quetta, if he has or arranges.**

9. Further while deciding a question of formulation of visitation schedule three factors are necessary to be kept in sight,i.e, age of the minor, date of desertion/separation of the spouses and conduct of the parent. These are the determining factors on the basis which a court decides that whether home visitation rights/overnight stay is to be awarded to non custodial parent or not. Record transpires that at the time of deciding this appeal the age of the minor namely Abdul Qadir is about 5 years and 06 months. The age of the minor is sufficient enough that his custody could be handed over to the father for overnight stay. Further the minor was also personally examined/interviewed by this court on 05.06.2021. Minor appears to recognize his father well and also appears to be comfortable in his company. The level of comfort adduced by the minor does not smell that if overnight visitation is chalked out, the same will put the minor in some uncomfortable situation or his disassociation for a day from his mother will not be couped up by him.

10. When the meeting schedule chalked out by the learned guardian court is viewed, there is no cavil to hold that the learned Guardian court had not formulated the visitation schedule which could ensure development of love, bondage and affinity between father and minor. In view of the following meeting schedule formulated:-

Meeting Schedule

(i) On every alternate weekend minor may reside with (father) respondent/mother will handed over the minor on Saturday at about 02:00p.m and appellant will return the minor on Sunday by 03:00p.m in the afternoon.

ii) The appellant shall be entitled for I first interim custody of the minor for first one month during summer vacations.

iii) The appellant shall be entitled for interim custody of the minor for first three days during winter vacations.

iv) On the occasion of Eid ul Fitar and Eid ul Azha the custody shall be handed over to appellant/father on 2nd day of both Eids from 11:00am to 6:00pm of the third day through bailiff.

v) On the occasion of birthday of minor, the father will be entitled to celebrate birthday of minor or meet with the minor from 03:00 PM to 08:00PM, and in casa on that day it is holiday, than the father would be entitled to meet or have the custody of Minor from 10:00 AM to 06:00 PM.

Vi) On the day of father's birthday minor would spent time from 03:00 PM to 08:00 PM with the father and in case on that day it is holiday, than the father would be entitled to meet or have the custody of Minor from 10:00 AM to 06:00 PM.

Vii) On special occasions like, birthdays of paternal grandparents, scheduled and

unscheduled holidays father will so be entitled to meet with the minor. However, in this regard an application. Before learned guardian court shall be filed by the father and guardian court shall allowed the same keeping in view the circumstances prevailing at that time.

Viii) The appellant is entitled to attend parent teacher meeting as well as to collect minor's study reports school.

ix) 'It is needless to say that the minor is of such an impressionable age and both the parents are expected to be sensible and conscious of their social responsibility shall not do any act that may prejudice his mind towards the other parents.

11. The custody of the minor shall be carried rough bailiff. Fee of bailiff shall be Rs.1000/-, the same shall be paid by the appellant. All the above said meeting shall be subject to submission of Surety bonds of Rs.1,00,000/-.

12. The epitome of preceding discussion is that the impugned order is set-aside and appeal of the appellant is hereby partially accepted in above stated terms. No order as to Costs. Record of learned trial court if any be sent back immediately after due legal formalities alongwith an attested copy, of this judgment and that of this court be consigned to record room.

Announced**:**

Muhammad Umar Farooq Bhat

05.06.2021 Addl District Judge, Lahore.

Certified that this judgment consists of 11 pages. Each page has been dictated, read, corrected signed by me.

Muhammad Umar Farooq Bhat

Addl District Judge, Lahore.

IN THE COURT OF MUHAMMAD AMIR MUNIR,
ADDL. DISTRICT & SESSIONS JUDGE, PHALIA (M.B.DIN).

Family Appeal No. 86 of 2021
Date of Institution: 10.08.2021
Date of Decision: 12.11.2021.

Asif Muhammad s/o Ghulam Muhammad, Caste Rehmani, r/o Mouza Chibba Sandhowaan, Tehsil Noshera warkan District Gujranwala.

Vs.

Siama Rani d/o Muhammad Latif (wife of Muhammad

Aslam Tabbasam) r/o Bheerowal Waryam, VPO, Tehsil Phalia, District Mandi Bahauddin.

FAMILY APPEAL

JUDGMENT:

Ch. Sarfraz Ahmad Arian Advocate, learned counsel for the appellant.

Mr. Amir Shahzad Gondal Advocate, learned counsel forthe respondent.

This is an appeal against impugned order and decree dated 12.07.2021 passed by Mr. Wasim Hussain, Learned Civil Judge Family Court wherein an application u/s 25 of the Guardian Wards Act 1890 filed by the appellant was dismissed. It has been prayed that on the grounds mentioned in the memo of appeal said, order be set aside and he be handed over the custody of the minor as per the evidence.

2. **The appeal has been contested by the respondent.**

3. Heard and file perused.

4. A guardian application u/s 25 of the Guardian Ward Act 1890 was moved by the appellant in terms that the minor was born during the wedlock of the parties on 01.01.2014 who is living with the respondents since then. Due to continuous dispute between the parties respondent was divorced. A compromise was affected between the parties that if the respondent will contract a second marriage, the appellant may file a claim of his custody. As she has now married another husband, therefore, this petition. A number of grounds have been mentioned seeking custody of the minor to show that welfare of the minor is in the hands of appellant.

5. The respondent has contested this petition and evidence was recorded from both sides. After hearing the both sides, vide the impugned order and decree, the application was dismissed and a meeting schedule was crafted by the learned family judge in the following terms:-

> *"In view of my finding on issue No.1, the custody petition is hereby dismissed. Since, the petitioner is the real father of the minor and his visitation right cannot be curtailed under any circumstances, therefore visitations schedule of the minor with the petitioner is chalked out in the following manner subject to his furnishing bail bond to the tune of*

Rs.20-lacs with one local surety in the like amount to the satisfaction of this court".

1) The minor would be brought in court room on 1st & 3rd Saturday to meet with the petitioner b/w 11:00 a.m to 01:00 pm.
2) On the occasion of Eid-ul-Fitar, the petitioner shall be entitled for custody of the minor on 3rd day of Eid-ul-Fitar from 10:00 a.m and he would return the custody of the minor to the respondent on the same day at 05:00 pm.
3) On the occasion of Eid-ul-Azha, the petitioner shall be entitled for custody of the minor on 2nd day of Eid-ul-Azha from 10:00 p.m and he shall return the custody of the minor to the respondent on the next day at 05:00 pm of Eid-ul-Azha.
4) On the occasion of summer vacations, the petitioner shall be entitled for custody of the minor only for fifteen days.

6. The above impugned order has been challenged to this appeal. The parties has advanced the arguments as under:

ARGUMENTS:

7. The appellant has argued that the respondent is not letting him to the meet the minor; that affidavit of compromise is to be implemented; that maintenance paid by him is admittedly not used on the welfare of the minor; that minor lives with his maternal grandparents and respondent only sees him on weekends and he has been deserted by the respondent; that the family background and set up of the appellant is much better and sounds as compared to the respondent and hence he seeks that the appeal be allowed.

8. Conversely, the respondent has argued that the welfare of the minor is not in the hands of the appellant as he has also contracted second marriage and a minor cannot remain peaceful in the hands of a step mother; that even if the minor travels between the herself and her parents, still it is a relation of love and that a step mother cannot be equated with the mother and grandparent; step mother has also her own children; that the appellant only wanted to hand over the minor to paternal grandparents; that there is nothing adverse at the moment to get the custody given to the appellant. He has referred the judgment of the Superior Courts cited as

2021 CLC 704; 2000 SCMR 838; 2016 CLC 1460.

ANALYSIS:

9. The first point for determination is whether by second marriages, the respondent is disentitled from the custody of the minor.

10. It is pertinent that both the parties are natural guardian of the person of the minor. When both the parties have contracted second marriages, then the court has to see as to which party is in a better position to retain the custody for the most parts. It is well established jurisprudence of the family court law that a minor is more at peace with his mother and maternal grandparents as compared to living with father having a second or third wife as step mother. If there are children from the stepmother, it will also remain an issue about the welfare of the minor if she can properly take care particularly when the father has to remain away from house to earn his livelihood. The evidence of the petitioner, with respect to the general health and over all being is deficient to show that minor is suffering from any physical, psychological or social issue. The evidence is sufficient that he is obtaining the education while living with the respondent and her parents. Learned trial court has also appreciated all these issues in a befitting manner through a speaking order.

11. The second point for determination is whether the living with the maternal grandparents is also raising the question of welfare of the minor. When we read the evidence of the appellant, it is found that his own mother has deposed to show that infact she will be going to take care of the minor if the petition is allowed and not the petitioner. Thus, when we compare the situation, it can easily be inferred that the appellant wants to obtain the custody of the minor from the respondent so that he be given in custody of his own parents. Thus, this point is also to show that the petition is merely a counter blast to the execution petition for maintenance and nothing else.

12. Another point for determination is whether the place of living of the respondent is not proper for the mental growth and grooming of the minor.

13. On this aspect, it is found that no substantial evidence has been brought on record by the appellant to establish that infact the place of residence of the minor is worst for his physical, psychological and social needs. It cannot be made a ground that one place in a city or a province is more appropriate for a minor than the other. If the appellant intends to establish any such fact, cogent evidence is required. Nothing is on record

in this regard. No question of welfare of minor is in involved in this respect.

14. The next point for determination is about some agreement between the parties that if the respondent will enter into second marriage, the minor will be handed over the to the appellant. With respect to this is sufficient to note that the question of welfare of the minor is of paramount importance and no agreement which is against the law can operate against the rights of the minor. Even in existence of any such admitted agreement, a guardian court has still to see as to where the welfare of the minor lies. Resultantly, this point is of no favor to the appellant.

15. In view of above discussion, it is found that the impugned order and decree are based on sound reasons. Hence, to that extent no interference is to be made into said order, except that the schedule of meeting needs to be improved. It is to ensure that the child is not estranged from the love of his father and to ensure the concept of shared parenting. The following improved schedule is thus crafted:

a) In point No.1, the time of meeting is enhanced from 11:00 to 01:00 p.m to 11:00 to 03:00 p.m. The appellant may take the minor for any recreation outside the court room in Tehsil Phalia.
b) In point, No.2 for Eid-ul-Fittar, the minor will be with his father/appellant on second day of Eid-ul-Fittar instead of third day.
c) The point No.3 shall remain same.
d) In point No.4, with respect to the summer vacations, the custody of the minor will remain with his father for one month instead of 15 days.
e) Further, for birthdays of the minor, he will spend the next day with his father from 01:00 p.m till 06:00 p.m. He will also join his father for birthday of his father for one day from 01:00 pm to 07:00 pm. Likewise, he will also join for birthdays of his paternal grandparents for the same period.
f) Further, for winter holidays, he will spend first three days with his father.

g) Further, for other standard public holidays notified by Government, like Muharram, 12th Rabi-ul-Awal etc, if one holiday is with mother, then the next will be with father. For this, the minor will be handed over to father at 04:00 pm prior to said public holiday and he will bring back the minor at 06:00 pm to hand over him back to mother on said holiday.

16. It is further to be noted that the Schedule may always be suitably amended on mutual agreement of parties by the learned Guardian Court in the best interest of the child. Both sides are directed to ensure that no feelings of hate are groomed in the mind of the child about the other parent.

17. While passing the above order, guidance has also been solicited from the cited judgments.

CONCLUSION

18. With the above improvement in the Schedule of meeting, the instant appeal stands **dismissed**. A copy of this judgment be sent to learned trial Court with the file of Guardian Court who will amend the decree as per this judgment in accordance with Rule 22(4) of the Family Court Rule, 1965 for execution. The parties to bear their own costs.

19. File be consigned by Ahlmad Mr. Muhammad Awais Zameer Gondal to the record room after its due completion.

Announced.
12.11.2021.

Muhammad Amir Munir,
Addl. District & Sessions Judge,
Phalia.

*Certified that this order consists of **six** pages, which has been dictated, read, corrected and signed by me.*

Addl. District & Sessions Judge, Phalia.

IN THE COURT OF ASAD ULLAH SARAJ
ADDITIONAL DISTRICT JUDGE, GUJRANWALA.

Dr. Shehzad Ahmad

Versus.

Mareens Zulifqar

Appeal No.	: 413/2022
Date of Institution	: 15.07.2022
Date of Decision	: 06.12.2022

APPEAL AGAINST ORDER DATED 15.06.2022 PASSED BY MR. AMIN MEYO LEARNED JUDGE FAMILY COURT, GUJRANWALA WHEREBY APPLICATION U/S 12 OF GUARDIANS AND WARDS ACT, 1890 WAS REJECTED AND TEMPORARY VISITATION RIGHT WAS CHALKED OUT.

Present: Sajjad Hussain advocate for appellant.
Ch. Abdul Haq Dhillon advocate for respondent.

ORDER
06.12.2022

Brief facts leading to present appeal are that present appellant/father filed a petition for permanent custody of her minor children namely Ahmad s/o Shehzad Ahmad, Amir s/o Shehzad Ahmad and Muhammad Shehzad s/o Shahzad Ahmad on the grounds that he is well educated person and serving as doctor

in Ministry of Health, Kuwait, so, for the betterment of minors, the custody of minors be removed from respondent/mother and handed over to petitioner/father for welfare of minors. Alongwith said petition, present appellant/father also filed an application u/s 12 of Guardians & Wards Act, 1890 for interim custody of minors. Seizing with matter, learned Judge Family Court passed the impugned order dated 15.06.2022, whereby application of present appellant/father was rejected, however, he was granted temporary visitation rights once in a month in court premises in the last week of each month from 02:00 p.m., to 03:00 p.m., subject to advance payment of Rs.1000/- per head as travelling expenses.

2. Feeling dissatisfied, appellant/father preferred appeal in hand on the grounds that learned trial court while passing the impugned order has ignored the fact that appellant/plaintiff is an overseas Pakistani and prayed for visitation rights for at least once in a year during his visit in Pakistan in the month of October/November for annual vacation, but learned trial court had disregarded the said crucial facts while passing the impugned order and proceeded to unfairly travel beyond the relief which was claimed on behalf of appellant and has set onerous and unfair entitlement upon the appellant in terms of his visitation rights qua his minor children. That appellant/father is a natural guardian of the minors but through passing the impugned order, learned trial court has travelled beyond its

jurisdiction as it has passed an order which on the face of it is void ab initio, without application of judicial mind to facts and circumstances of the particular case.

3. Respondent/defendant contested the appeal in hand on the grounds that learned trial court had rightly decided the petition u/s 12 of Guardian and Wards Act, 1890, after perusing the whole material available before the court. It is prayed that instant appeal may kindly be dismissed and impugned order of learned trial court be upheld.

4. Arguments heard. Record perused.

5. Admittedly, father cannot be deprived from meeting his minor children, as this is his inalienable right and while granting this right the day, time & visitation hours must be kept in mind with respect to particular facts of each case. In instant case, it has been admitted that appellant/father is overseas Pakistani and is residing at Kuwait, whereas while awarding interim visitation schedule, learned Judge Family Court/Guardian Court ordered that appellant/father is entitled to visit and meet the minors in the court room for an hour from 02:00 p.m., to 03:00 p.m., once in a month in the last week of each month subject to payment of travelling expenses of Rs.1,000/- each, ignoring the fact that appellant/father is an overseas Pakistani and is permanent resident of Kuwait, who did not even pray for the same, hence findings of learned trial court & qua awarding temporary visitation schedule

in favor of appellant/father has been reframed:-

i. Appellant/father is entitled to get interim custody of minors for seven days, during his vacation in the month of October/November and for the exercise of this right, he shall inform the learned Guardian/Family Court about his vacation and learned trial court /Guardian Court with consent of both parties, shall fix said seven days of interim custody to present appellant/father, if the lis with respect to guardian petition remained pending up to such period subject to sufficient surety as to the satisfaction of learned trial court.

ii. Appellant/father is also entitled to video call with minors in the courtroom for an hour from 02:00 p.m. to 03:00 p.m. fortnightly/twice in a month preferably on the day of Saturday through Skype, Whats app or other video links, in absence of respondent/mother till final adjudication of lis.

Impugned order is set-aside and modified in the above stated terms. Memo of costs be prepared accordingly. Record of learned trial court alongwith copy of this order be sent back to learned trial court forthwith. Ahimad Nisar Ahmad is directed to consign the file to the record room after it's due completion.

Ahlmad Nisar Ahmad is directed to consign the file to the record room after it's due completion.

Announced
06.12.2022

Asad Ullah Saraj,
Additional District Judge
Gujranwala

Certified that this order consists of 03-pages. Each page been dictated, read, corrected and signed by me.

Asad Ullah Saraj,
Additional District Judge
Gujranwala

IN THE COURT OF MR. MAZHAR ABBAS
ADDITIONAL DISTRICT JUDGE, LAHORE

Dr. Afaf Manzoor Vs. Tahir Hussain
Guardian appeal No. 114/2023
Date of institution. 01.04.2023
Date of decision. 01.06.2023

JUDGMENT

Present: **Fahad Ahmad Siddiqi advocate** learned counsel for the appellant.

Rao Adnan Ramzan advocate learned counsel for the respondent.

This appeal has been preferred against the order dated 21.03.2023 (hereafter impugned order) passed by Zaheer Ahmed, learned Family/Guardian Judge, Lahore whereby upon the application of the appellant/petitioner for visitation rights meeting schedule of the minor with the appellant has chalked out. Being aggrieved by the impugned order, appellant/mother of the minor has preferred the instant appeal.

2. Brief facts as per petition, necessary for disposal of this appeal are that the appellant filed a guardian petition under section 25 of the

Guardian & Wards Act for the custody of minor namely Mohammad Ibrahim Hussain alongwith an application u/s 12 of the Guardian and Wards Act.

3. On the other side, respondent contested the petitions by filing written reply.

4. Learned trial court was accepted the application of the appellant/petitioner u/s 12 of Guardian and Wards Act for interim custody of the minor and chalked out the meeting schedule of the minor with the respondent/father vide its order 04.10. 2022.After that father/respondent was filed appeal against the order 04.10.2022 that appeal has accepted by learned appellate court vide judgment dated 02.02.2023 in the following words: -

> "Therefore, in absence of afore mentioned factors the change of custody of minor would definitely affect adversely the person of the minor and his health is likely to be jeopardize, hence, learned trial court has committed error while handing over the custody of the minor from appellant to respondent that too without recording of evidence and determination of welfare of minor which can be adjudged well after evidence of both parties. Therefore, in view of the above, appeal in hand is se set aside. The accepted. Impugned order application for interim custody of the minor filed by the respondent shall be deemed as dismissed".

After that appellant/petitioner has filed an application under proviso of item No.5 of the schedule attached with the family court Act, 1964 for the grant of generous visitation rights with her minor son at his home. That learned trial court has prepared following meeting schedule:-

Before the child attains age of ten years.

i. The petitioner shall be entitled to have interim custody of the minors on 1st and 3rd Saturday of every calendar month, from 10:00 A.M to 01:00 P.M in the visitation room of this court premises.

After the child attains age of ten years.

i. The petitioner/mother shall be entitled to have interim custody of the minor on 1st and 3rd Saturday of every month from 04:00 PM of Saturday to 05:00 PM of Sunday.
ii. The petitioner/mother will be entitled to take the custody of the minor for the period of first ten days of every month of the summer vacations and first two days of winter vacations.

iii. On the occasion of Eid ul Fitar and Eid ul Azha the petitioner/mother shall be entitled to have interim custody of the minor on 2nd day of both Eids from 09:00 AM to 06:00 PM.

iv. On the occasion of birthday of the minor the of petitioner/mother shall be entitled to have interim custody of the minor on 2nd Day of birthday from 01:00 PM to 06:00 PM.

5. But appellant/petitioner is not satisfied with the impugned meeting schedule prepared by learned guardian judge vide order dated 21.03.2023, therefore, appellant/petitioner being aggrieved of the impugned order dated 21.03.2023 passed by the learned Guardian court has filed the instant appeal on the following grounds amongst other inter alia.

Arguments

6. Learned counsel for the appellant submitted that impugned order dated 21.03.2023 passed by learned Judge Family court is against the welfare of the minor. He also submitted that the respondent is incapable to look after the minor personally. He argued that the minor is growing age and normally at this stage the minor is required special care, love and affection but learned trial court chalked out the meeting schedule of the minor and deprived the minor to have at home access with his mother and an abrupt and absurd order has been passed by the court vide dated 21.03.2023 without assigning one single reason as to why the appellant mother should be deprived of having a reasonable interaction with his minor son or as to why the appellant/mother must not have at home access with his son despite the fact that the same court has allowed interim custody of the minor son to the appellant vide its order dated 04.10.2022. He further argued that minor child is a school going child, having all the vacations available. However, the learned trial court below did not mention any reason as to why the minor must not spent quality time with his mother/appellant in the first instance. In the peculiar circumstances, the minor being a subject of parental alienation is required to have maximum interaction with his mother even if the custody is with the father. Hence, impugned meeting schedule is illegal, unlawful and against the judicial policy. He further argued that for the welfare of the minor and bright future of the minor it will be appropriate that comprehensive meeting schedule of the minor with his mother/appellant at home of the appellant may kindly be fixed. Finally he prayed that appeal in hand may be accepted as prayed for and impugned order may be set aside or modified.

7. On the other hand learned counsel for the respondent controverted the arguments of the appellant/petitioner and submitted written arguments in the instant appeal. It is argued that appellant has bad conduct as right after birth of minor she burdened the respondent by refusing to suckle the child. That appellant was already divorced and had a minor son from her previous marriage. He also submitted that appellant always compromised on the welfare of the minor. That she had been absent from the home of her previous husband and consequently was divorced. Similarly, she did not mend her ways in her this second marriage and had a habit of returning home late night after midnight. So, she is unable to provide a stable environment to her children in accordance with decision of the Hon'ble Lahore High Court, Lahore in Chaudhry Nasir Mehmood v. Musarrat Parveen, that the welfare of minor lies with the respondent/father and future of the minor son will be bright in the custody of respondent, if the custody of the minor is changed the future of the minor will be badly spoiled. That the minor Muhammad Ibrahim Hussain 1st born son of respondent is residing with respondent since birth in the joint family and respondent and all his family is carefully looking after the welfare of child in every possible way since his birth, including the breastfeeding for early years of life. That keeping in view of child residing with father since birth, there are numerous cases of the August Supreme Court of Pakistan that tell father has preferential Rights of Hizanat, which include education, religious, personality of the minor, bright future of the minor and psychological backdrop of the child. Furthermore, appellant had contracted third marriage with a person not related to her two minors son, who is within prohibited degrees to minors. This sole fact disqualifies the appellant from any right of Hizanat towards the minor. That respondent is real father of the minor and minor is residing with respondent comfortably as atmosphere of the house of the respondent/father for the minor is very calm and peaceful for the welfare of the minor, health of the minor, bright future as well as to build up the personality of the minor. Lastly, he prayed that keeping in view all the objections and replies to the grounds of the suit, the appeal in hand may be dismissed.

Findings of this court

8. Perusal of the record reveals that appellant/petitioner filed an application u/s 25 of the Guardian and Wards Act 1890 for permanent custody of the minor namely Muhammad Ibrahim Hussain against the respondent, alongwith the main petition appellant/petitioner also filed an

application u/s 12 of the Guardian and Wards Act for interim custody of the minor with prayer that minor be handed over to her during the pendency of main petition u/s 25 of the Guardian and Wards Act. Learned trial court has accepted the application of the appellant for interim custody of the minor u/s 12 of the Guardian and Wards Act vide order dated 04.10.2022 and chalked out the meeting schedule of the minor with the respondent/father till decision of petition u/s 25 of the Guardian and Wards Act as under:-

Meeting Schedule:-

i. The respondent/father shall be entitled to meet with the minor in the court premises/visitation rooms on 1st & 3rd Saturday of every calendar month from 10:00 AM to 02:00 PM.

ii. On the occasion of Eid ul Fitar and Eid Ul Azha of the minor the father shall be entitled to meet with the minor on 2nd day of both Eids in the 08:00 AM to 07:00 PM.'

iii. On the occasion of birthday of the minor the respondent shall be entitled to have interim custody of the minor on 2nd day of birthday from 01:00 PM to 06:00 PM.

iv. On the occasion of birthday of father of the minor the father shall be entitled to have interim custody with the minor on 2nd Day of birthday of father of minor from 01:00 Pm to 06:00 PM.

v. In case of meeting is not held due to negligence of petitioner or illness of minor then compensatory meeting on next weekend would be given.

So far as visitation rights at the occasion of religious days like Moharram-ul-Haram and Eid Milad-Un-Nabi is concerned, according to my humble view on both days all the security agencies are being engaged to keep law and order situation. Therefore, in order to avoid any untoward incident these two days are excluded from visitation rights.

9. But respondent/father was not satisfied from the order dated 04.10.2022, therefore, respondent was filed appeal against the order dated 04.10.2022. Appeal of the respondent was accepted by learned appellate court vide judgment dated 02.02.2023 in which learned appellate court was set aside the order of learned guardian court. After that learned guardian court has again chalked out the visitation schedule of the minor with the appellant through order dated 21.03.2023 which is as under:-

Before the child attains age of ten years.

i. The petitioner shall be entitled to have interim custody of the minor on 1st and 3rd Saturday of every calendar month, from 10:00 A.M to 01:00 P.M in the visitation room of this court premises.

After the child attains age of ten years.

i. The petitioner/mother shall be entitled to have interim custody of the minor on 1st and 3rd Saturday of every month from 04:00 PM of Saturday to 05:00 PM of Sunday.
ii. The petitioner/mother will be entitled to take the custody of the minor for the period of first ten days of every month of the summer vacations and first two days of winter vacations.
iii. On the occasion of Eid ul Fitar and Eid ul Azha the petitioner/mother shall be entitled to have interim custody of the minor on 2nd day of both Eids from 09:00 AM to 06:00 PM.
iv. On the occasion of birthday of the petitioner/mother shall be entitled to have interim custody of the minor on 2nd Day of birthday from 01:00 PM to 06:00 PM.

10. Admittedly, minor is tender age requires love and care of his parents, therefore, deprivation of any of them would help negative effect not only on his mental growth but would also effect on intellectual developing, however, neither the minor nor the mother could be deprived from the company of each other. Mother being natural guardian does not only require to participate in the upbringing of the minor but should also develop love, care and affection with minor to achieve the said purpose. It is settled law that courts while deciding the custody petition are required to draw a balance between rights of the parents for the welfare of the minor. If the custody is to remain with the father then the mother cannot be deprived from his right to meet with the minor, which is otherwise essential to develop love bondage and affinity between them and also necessary for the mental health and normal upbringing of the minor.

11. However, meeting in court premises could not serve the purpose of meeting, and it was not in the interest or welfare of the minor to held meeting in the court premises. Moreover, it is duty of the court to facilitate homely and friendly environment and reasonable visitation schedule. Meeting of the minor with his mother is preferably to be held at the residence of mother of the minor/appellant, therefore, following schedule of the meeting with the minor is hereby fixed: -

Meeting Schedule: -

The following meeting schedule will be implemented, subject to the furnishing of surety bond in sum of Rs. 10,00,000/- by the appellant for the satisfaction of the court/learned trial court.

1. The mother/appellant shall be entitled to get interim custody of the minor on every 1st and 3rd Saturday of every calendar month, respondent/father is directed to hand over the minor to appellant from 10:00 am and appellant/mother shall return the minor back to the respondent/father on the next day at 06:00 p.m.
2. On the occasion of Eid-ul-Fitar and Eid-ul-Azha, the mother shall be entitled to get interim custody of the minor on 2nd day of both the festivals, respondent/father is directed to hand over the minor to appellant/mother from 10:00 am and appellant/mother will return the minor back to the father/respondent on next day at 06:00 P.M.
3. On the occasion of birthday of minor as well as birthday of mother of the minor, mother shall be entitled to get the interim custody of the minor on the day of birthday, respondent/father is directed to hand over the minor to appellant from 10:00 am and appellant/mother shall return the minor back to the father/respondent on the next day at 06:00 P.M.
4. During summer vacation the respondent will hand over the custody of minor to appellant/mother for first 15-days of each month of summer vacations from school of minor.
5. During winter vacation the respondent will hand over the custody of minor to appellant for last 04- days of winter vacation.
6. **Handing over and taking over of minor** shall be conducted through bailiff of the court and fee of bailiff Rs.2000/- will be paid by the appellant. Robkar will be issued in this regard by learned trial court for every meeting. The meeting will be carried out through the learned trial/Guardian Court, Lahore.
7. **However, in case of any emergency** about health or any other issue of minor, the persons who have the custody of minor will inform the non-custodial persons within 03 hours to the emergency.

   None of the parties will be allowed to permanently shift the minor beyond the territorial jurisdiction of this court.

Penal Clause:-

It is duty of the custodial parent to motivate the minor for meeting in a friendly manner with non- custodial parent. Custodial parent is directed not to poison the mind of minor towards non- custodial parent and his family and it is proved otherwise then custody of minor would be changed from custodial parent to the non-custodial parent for one month.

If the mother will deviate from the discipline of this schedule, then after being proved, mother of the minor would be declared disentitled to have consecutive its benefits. Similarly, if complaints arise against the father of the minor to violate this schedule, then after being proved, custody of the minor would be changed in favour of the real mother of the minor for the next one month.

12, With the above observations appeal filed by appellant is hereby partially accepted and impugned meeting schedule chalked out by learned trial court is modified. Parties shall bear their own cost. Copy of this judgment be sent to learned trial court for information and compliance. Record of the learned trial court (if any) be returned. Record of the present appeal be consigned to record room after necessary compilation and compilation by Ahlmad Waqas.

Announced:

Mazhar Abbas

01.06.2023 Addl. District Judge, Lahore

Certified that this judgment consists of 13- pages, each of which has been dictated, read, corrected and signed by me.

Announced:

Mazhar Abbas

01.06.2023 Addl. District Judge, Lahore

IN THE COURT OF IMTIAZ NADEEM,
ADDL. DISTRICT JUDGE, SIALKOT.

Zaheer Abbas Versus **Mst. Maryam Akbar**
(Appellant) (Respondent)

Guardian Appeal No. **51/2023.**
Date of institution: 30.03.2023.
Date of decision: **23.05.2023.**

Present: **Fahad Ahmad Siddiqui Advocate**, learned counsel for the appellant.

Ch. Ashiq Hussain Advocate, learned counsel for the respondent.

Appeal u/s 14 of the Family Courts Act, 1964.

JUDGMENT:

This is an appeal against the order dated 21.03.2023 passed by Sheikh Muhammad Taqi, learned Judge Guardian Court, Sialkot, by virtue of which, an application u/s. 12 of the Guardian & Wards Act, 1890 for the interim custody of minors, filed by the appellant, was disposed of.

2. Briefly, stated the facts necessary to be detailed for the decision of titled appeal are that appellant filed an application U/S. 25 of the Guardian & Wards Act, 1890 for the custody of minors namely Muhammad Ayyan, Haider Abbas (sons) and Mst. Shaista (daughter) against the respondent. Alongwith main application, appellant also filed an application U/S. 12 of the Guardian & Wards Act, 1890 with the assertion that respondent by filing a false and concocted petition u/s. 491 Cr.P.C took the custody of minors on 25.01.2022 and since then minors are residing with her; that the appellant being a father is awarded natural guardianship by the Almighty Allah in its entire

wisdom whereas the mother has merely to look after the 23-05-2023 wellbeing of the minors and that too is purely sponsored by father; that the mind of a child is like a perishable commodity, with the passage of time it is easy to change the innocent mind within months due to lack of interaction with non-custodian parent and constant brain washing by custodian parent and her family; that in guardianship matters, court has to exercise quasi parental jurisdiction, the supreme consideration in such context is welfare of minors, to act such purpose, courts have unfettered powers; that the respondent is a careless mother, therefore, appellant has serious apprehensions to the welfare of the minors. It is, therefore, prayed that interim custody of the minors may kindly be given to the appellant till the final disposal of the main petition or in alternate fixed a schedule fully detailed in paragraphs No. (a) to (h) of the prayer clause of petition.

3. Respondent filed contesting written reply. She denied the averments of application by contending mainly that the minors are being brought up properly in her custody while needs of the minors are not being made by the appellant and that too behavior of respondent is also not cordial with the minors; that the petition of appellant is liable to be dismissed on account of being based on false, frivolous and baseless facts.

4. After hearing to learned counsel for the parties, the learned Judge Guardian Court vide impugned order dated 21.03.2023 disposed of the application U/S. 12 of the Guardian & Wards Act, 1890 in following terms: -

"Petitioner is allowed to get conduct meeting with the minors on 3rd Saturday of every month. Meeting will be conducted in the court premises under the supervision of this Court from 11:00 A.M to 01:00 P.M."

5. Feeling aggrieved by the impugned order dated 21.03.2023, appellant/petitioner has preferred this appeal.

6. It is contended by learned counsel for the appellant that the impugned order is against the law, facts and record; that the appellant being father is a natural guardian of the

minors children; that the learned Judge Guardian Court has passed the mechanical order which is against the regime of adjudication of welfare of the minors; that the purpose of meeting of the minors with non- custodian parent is to establish attachment, character building and bonding with the parent based upon love and affinity, which could be achieved when minors get adequate opportunity to remain in contact with the non-custodian parent frequently; that the impugned order suffers from patent defects; that the meeting schedule fixed by the learned Judge Guardian Court is not proper and contrary to the verdicts of August Superior Courts; that the learned Judge Guardian Court while passing the impugned order has not evaluated, appreciated and understand the relation of appellant with minors; that the impugned order is not speaking one; that the learned Judge Guardian Court acted illegally as such impugned order is not sustainable in the eyes of law. It is, therefore, prayed that while accepting the appeal, the meeting schedule of minors be modified as per prayer of the appellant made in application u/s. 12 of the Guardian & Wards Act, 1890.

7. Learned counsel for the respondent while controverting the arguments advanced by learned counsel for the appellant has contended that impugned order is quite legal and according to the facts and record; that the minors are of tender age and cannot live without their mother (respondent) who also are residing with respondent since their birth and are being brought up properly, so for the welfare of minors, change of their custody, would not be in the fitness of things; that the meeting schedule prayed by the appellant in his petition is beyond the scope of petition u/s. 12 (2) of the Guardian & Wards Act, 1890; that no material illegality or misreading/non-reading of record has been found in the impugned order. It is, therefore, prayed for dismissal of appeal.

8. Arguments heard. Record perused.

9. Firstly, I take up the argument of learned counsel for the respondent that the meeting schedule prayed by the

appellant in his petition is beyond the scope of petition u/s. 12 (2) of the Guardian & Wards Act, 1890. It has been held by the Apex Courts in a number of judgments that ***irrespective of the fact whether the application before the learned Guardian Judge is under section 12 (2) of Guardian and Wards Act, for interim custody of the minors or under section 25 of the Act ibid for permanent custody of the minors, the only consideration which requires to be adhered by the learned Guardian Court is the welfare of the minor and nothing else.*** On the moot point I have been guided by the esteemed dictum laid down in ***"Mst. AYESHA SHAHID Vs. ADDITIONAL DISTRICT JUDGE and others" (2018 MLD 1592 [Lahore]).*** In this backdrop, and the argument of learned counsel for the respondent is misconceived.

10. Now turning towards the merits of petition u/s. 12(2) of the Guardian and Wards Act, 1890. Admittedly the appellant is real father of the minors and is residing at Sialkot. The minors are of tender age requires love and care of their parents (respondent and appellant), deprivation of any of them would have negative effect not only on their mental growth, but also affect their intellectual development. In view of the fact, neither the minors nor the appellant could be deprived of company of each other. It has been settled by the apex courts in a number of judgments that in guardianship matters, Courts exercise quasi paternal jurisdiction, the supreme consideration, in this context is the welfare of the minor(s), to achieve this purpose courts have unfettered powers. On the moot point I have respectfully placed my reliance on the dictum laid down in ***"ABDUL KHALIQ and others Vs. Mst. MAH NOOR and others" (PLD 2018 Baluchistan 44).*** Even otherwise, it is an inherent right of the contesting parent to seek visitation to the minor, especially a father, who is the natural guardian, he not only is required to participate in the upbringing of the minors, but should develop love, bondage and affinity with them, to achieve this purpose, the concerned Court should facilitate a congenial, homely and

friendly environment and reasonable visitation schedule. The Court of the Guardian Judge, for this purpose is neither conductive nor effective, it lacks proper facilities and arrangements, and is not comfortable to homely environment. Thus, meeting in court premises as scheduled by the learned Judge Guardian Court is neither conductive nor effective and does not serve the purpose of meeting. It is, therefore, is not in the interest of welfare of the minors to hold-meeting in the Court premises, therefore, meeting of the minors with the appellant should preferably be held at the residence of the appellant located at Sialkot. In this regard, reliance is placed on the above referred esteemed dictum laid down in ***"ABDUL KHALIQ and others Vs. Mst. MAHNOOR and others" (PLD 2018 Baluchistan 44).*** In this backdrop, the meeting schedule already fixed/chalked out by the learned Judge Guardian Court is not justified and while relying upon case law titled ***"Mst. AYESHA SHAHID VS. ADDITIONAL DISTRICT JUDGE and others" (2018 MLD 1592 [Lahore])*** as well as the facts and circumstances of this case, the same is liable to be modified.

11. For all the reasons record supra, this appeal is allowed and in result thereof meeting schedule is modified in following terms:-

i. ***The interim custody of the minors shall be handed over to the appellant on 2nd and 4th Saturday of every calendar month at 5:00 PM, and appellant shall return the interim custody of the minors to the respondent on 2nd and 4th Sunday at 5:00 PM.***

ii. On the occasion of Eid-ul-Fitar the appellant/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-Fitar from 5:00 P.M and appellant shall return the interim custody of the minors to the respondent on the 3rd day of Eid-ul-Fitar at 5:00 P.M.

iii. On the occasion of Eid-ul-Azha the appellant/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-Azha from 5:00 P.M and appellant shall return the interim custody of the minors to the

respondent on the 3rd day of Eid-ul-Azha at 5:00 P.M.

iv. On the occasion of birthday of the minors, the appellant/father shall be entitled for interim custody of the minors from 5:00 PM and appellant shall return the interim custody of the minors to the respondent on the next day of birthday of the minors at 5:00 P.M.

v. During summer vacations, the appellant will be entitled to have custody of the minors for one month. vi. During winter vacations, he will be entitled to meet with his minor children for five days.

vii. The custody of minors shall be carried through Bailiff of the Court.

12. However, the appellant shall not take the minors beyond the territorial jurisdiction of Guardian Court without the permission of the learned Guardian Court. In order to avoid any apprehension of removal of the children from the territorial jurisdiction of the Court, the appellant is directed to submit surety bonds to the tune of Rs.10,00,000/- to the satisfaction of learned Judge Guardian Court.

13. Memo of costs be prepared accordingly. Copy of this order be sent o the learned Guardian Court for information/compliance. *Qaisar Abbas Ahlmad* is directed to consign the file to the record room after its due completion and compilation within stipulated period.

Announced.

Imtiaz Nadeem
23-05-2023
Addl. District Judge, Sialkot.

Certified that this judgment consists of 07-pages each of which has been dictated, read over, corrected and signed by me.

Dated.

Imtiaz Nadeem
23-05-2023
Addl. District Judge, Sialkot.

IN THE COURT OF MAZHAR ABBAS
ADDITIONAL DISTRICT JUDGE, LAHORE

1. Dr. Abdur Rehman Zaheer Butt **Vs.** Mst. Hina Gulzar

2. Dr. Hina Gulzar **Vs.** Dr. Abdul Rehman Zaheer Butt

CONSOLIDATED JUDGMENT

Present: **Fahad Ahmad Siddiqi advocate** learned counsel for the appellant.
M. Faisal Rafique Ch. advocate learned counsel for the respondent.

Through this single judgment I shall decide both the above titled appeals, as they are preferred against the same order dated 21.11.2022 passed by Muhammad Javed learned Guardian Judge-IV, Lahore whereby meeting schedule of the minor Muhsina Rahman with the appellant chalked out by learned Guardian court. **Appellant of the first appeal (hereafter appellant)** is not satisfied from the meeting schedule. On the other hand, **appellant of the second appeal (hereafter respondent)** has also assailed the meeting schedule. Therefore, both the parties are feeling grievance from the impugned meeting schedule, hence, filed their appeals with prayer to modify the meeting schedule.

Factual Background

2. Brief facts as per appellant's appeal are that the appellant is married to the respondent on 29.12.2017 in accordance with the injunction of Islam and Sunah of the Holy Prophet (peace be upon him). That out of this wedlock the appellant was blessed with a minor daughter namely Muhsina Rehman on 24.10.2020. That respondent is a working lady and is serving in Jinnah Hospital at Lahore as a nephrologists, and the relationship between the spouses remained cordial throughout the subsistence of their marriage, however, after the birth of minor daughter, the relationship between the spouses started facing undue and uncalled for interference from the father of the respondent, which eventually resulted in separation between the spouses. That the appellant approached family elders of the respondent side, for the rehabilitation and settlement of issues in numerous times, however no heed was paid by the respondent side to the appellants for the redresser of the legitimate grievances of the appellant. That the appellant while feeling aggrieved of this contact denial practices upon the appellant approached the court of the respondent No.1 through a custody petition filed for the grant of permanent custody under the provisions of section 25 of the Guardian and Wards Act 1890 vide dated 10.01.2022. Later on filed an application seeking at home visitation

rights of access with his minor daughter through application filed under the provisions of item No.05 of the Schedule attached with the Family courts Act, 1964 dated 15.06.2022 for the grant of Generous at home visitation rights of access in terms of Annual visitation schedule of meeting. That the learned counsel of the appellant recorded a statement in the petition u/s 25 of the Act ibid, tilted as Dr. Abdur Rehman Vs. Hina Gulzar to the extent that he is inclined to surrender his right of permanent custody of his minor daughter and withdraw his custody petition subject he is allowed a generous at home visitation rights including frequent overnight stays, access on equality basis during school and religious vacations vide dated 28.09.2022. That learned Guardian court while misconstruing the statement recorded by the appellant passed a mechanical order whereby the appellant was allowed merely four hours access twice in a month at this home starting from 02:00 p.m till 06:00 p.m on every 2nd and 4th Sunday at his home through Bailiff of the Evening Court. That the appellant is aggrieved from the impugned order dated 21.11.2022 passed by the learned Guardian Court.

3. On the other hand, respondent/Mst. Hina Gulzar has also filed appeal and assailed the impugned order dated 21.11.2022. Brief facts of the appeal filed by respondent are that appellant filed an application under section 25 of Guardian and Wards Act, 1890 for the custody of minor Mohsina Rehman. That the respondent filed her contesting written statement against the said petition. That on 28.09.2022 the appellant recorded his statement. That on the statement of the appellant the learned Guardian court chalked out the meeting schedule vide its impugned order dated 21.11.2022 which is against the welfare of the minor daughter. That the impugned order is illegal, contrary to law and facts of the case and the same is liable to be revised/modified.

4. However, both the parties have filed their appeals and assailed the meeting schedule on the following grounds:-

Arguments

5. Learned counsel for the appellant submitted that the impugned order is against the law and facts of the case because appellant was requested for comprehensive schedule at home but learned trial court granted only 04 hours in the evening court. He also submitted that learned trial court failed to appreciate that appellant is natural guardian of his minor daughter and for his being real father, his visitation rights involved the right of minor’s access toward her father. Admittedly the minor

daughter has crossed the age bracket of 02 years, therefore, depriving the minor to have an appropriate at home access to her father is a contact denial in the first instance in as much as deprivation of the rights of access of the minor child. He further submitted that learned guardian court failed to appreciate that appellant is natural guardian of the minor, so, natural feelings of the parents cannot be overlooked and ignored because visitation rights involved the right of minor's maximum access toward his father. Mere four hours visitation in the evening court does not serve the purpose of meeting. The minor daughter aged about 02 years and 10 months should spend maximum time with his father at his home so that the minor may develop loving bonds with his father, therefore, depriving the minor to have a reasonable at home access to his father is a contact denial in the first instance in as much as deprivation of the rights of access of the minor daughter. He further argued that as per judgment of the Honourable Supreme Court in case titled as Mst. Madiha Younus Vs. Imran Ahmad cited as 2018 SCMR 1991 is that if the father of the minor surrenders his right to permanent custody of his minor children in favour of the mother, it shall be considered as a compromise and the father of the minor child shall have to be treated equally and he shall be given adequate visitation rights that are equally balanced. He also argued that learned guardian court has chalked out a very restricted visitation schedule comprising of 04 hours only, therefore, impugned meeting schedule may be modified. Lastly, he prayed for acceptance of appeal filed by appellant as prayed for.

6. On the other hand learned counsel for the respondent has vehemently controverted the arguments of the appellant and submitted that learned guardian court completely ignored the facts of the case as mentioned in her written statement filed by the respondent and passed the impugned order in hasty manner so the impugned order is liable to set aside. He also argued that appellant lost his right of permanent custody by recording his statement before learned guardian court. It is clear law that if the party of the suit gives up his permanent right, the court cannot grant him any type of relief driven by the permanent relief. So, the impugned order is liable to be set aside. He further argued that minor daughter is about 02 years and 10 months only due to tender age she cannot live without her mother for four hours while this long time period is very harmful for the welfare of the minor, therefore, meeting schedule in the residence of the appellant will be against the welfare of the minor. Lastly,

he prayed that appeal filed by the respondent may be accepted as per prayer and impugned meeting schedule with the minor may be revised.

7. Arguments have been heard and record perused.

Findings of this court

8. Perusal of the record reveals that appellant filed a petition u/s 25 of the Guardian and Wards Act 1890 for the custody of minor Muhsina Rahman date of birth 24.10.2020 alongwith the main petition appellant has also submitted an application u/s 12 of the Guardian and Wards Act for the interim custody of minor. On 28.09.2022 appellant appeared in person before learned Guardian Court and on the said date learned Guardian court has recorded the statement of the appellant which is as under:-

Press اگر مجھے نا بالغہ سے ملاقات کا مناسب حق دیا جاتا ہے تو کسٹڈی کی حد تک کیس نہ کرتا ہوں دستخط بر حاشیہ لیے جاتے ہیں بعد از انتظار پیش ہوے۔

On 21.11.2022 learned Guardian court has dismissed the petition of the appellant u/s 25 of the Guardian and wards Act 1890 as withdrawn and chalked out the visitation schedule of the minor daughter with the appellant as under:-

Meeting Schedule:-

i. The petitioner will be entitled to have the custody of minor on 2nd and 4th Sunday of every calendar month. Minor shall be handed over to the petitioner/father on 2nd and 4th Sunday at 02:00 p.m and petitioner shall return the interim custody of minor to respondent/mother on the same at 06:00 pm.

ii. On the occasions of Eid-ul-Fitar and Eid-ul-Azha the petitioner will be entitled to have the custody of the minor on 2nd day of Eidain. Respondent is directed to hand over the minor to petitioner/father at 10:00 am (second day of Eid) and petitioner will return the minor to respondent/mother on the same day at 06:00 pm.

iii. On the occasion of birthday of minor, the petitioner will be entitled for meeting with the minor. Respondent is directed to hand over the minor on 05:00 P.M to the petitioner/father and petitioner/father will return the minor to respondent/mother at 08:00 P.M on the same day.

iv Petitioner is directed to furnish surety bond in the sum of Rs.10,00,000/- to the satisfaction of the court. Handing

over and taking over of the custody of the minor shall be conducted through Bailiff of the court. Fee of Bailiff is fixed Rs.1000/- which shall be paid by the petitioner.

9. Admittedly appellant is real father and natural guardian of the minor daughter. Moreover, minor daughter is in tender age requires love and care of her parents, therefore, deprivation of any of them would help negative effect not only on her mental growth but would also effect on intellectual developing, however, neither the minor nor the father could be deprived from the company of each other. Father being natural guardian does not only require to participate in the upbringing of the minor but should also develop love, care and affection with minor to achieve the said purpose.

10. It is settled law that courts while deciding the custody petition are required to draw a balance between rights of the parents for the welfare of the minor. If the custody is to remain with the mother then the father cannot be deprived from his right to meet with the minor, which is otherwise essential to develop love bondage and affinity between them and also necessary for the mental health and normal upbringing of the minor. Therefore, meeting schedule chalked out by learned guardian court is hereby modified and appellant is entitled for meeting with the minor at his residence as under:-

Before the child attained age of five years:-

i. The appellant will be entitled to have the custody of minor on 1st and 3rd Saturday of every calendar month at his home. Minor shall be handed over to the appellant/father on 1st and 3rd Saturday at 09:00 a.m and appellant shall return the interim custody of minor to respondent/mother on the same day at 06:00 pm.

ii. On the occasions of Eid-ul-Fitar and Eid-ul-Azha the appellant will be entitled to have the custody of the minor on 2nd day of Eidain. Respondent is directed to hand over the minor to appellant/father at 10:00 am (on second day of Eidain) and appellant will return the minor to respondent/mother on the next date i.e. third day of Eidain at 10:00 Am.

iii. On the occasion of birthday of minor, the appellant will be entitled for meeting with the minor at his home. Respondent is directed to hand over the minor on 09:00

A.M to the appellant/father and appellant/father will return the minor to respondent/mother at 06:00 P.M on the same day.

iv Appellant is directed to furnish surety bond in the sum of Rs.10,00,000/- to the satisfaction of the court/learned guardian court Lahore.

v. Handing over and taking over of the custody of the minor daughter shall be conducted through Bailiff of the court. Fee of Bailiff is fixed Rs.2000/- which shall be paid by the appellant.

After the child attained age of five years.

1. The father/appellant shall be entitled to get interim custody of the minor on every 1st and 3rd Saturday of every calendar month from 09:00 A.M and he shall return the minor back to the respondent on very next day i.e. Sunday at 04:00 P.M.
2. On the occasion of Eid-ul-Fitr and Eid-ul-Azha, the father/appellant shall be entitled to get interim custody of the minor on 2nd day of both the festivals from 09:00 am and he will return the minor back to the mother/respondent on very next day i.e. third day at 04:00 P.M.
3. On the occasion of birthday of minor, the father/appellant shall be entitled to get the interim custody of the minor on 2nd day of birthday starting from 09:00 am and he shall return the minor back to the mother/respondent on very next day i.e. third day at 04:00 P.M.
4. The appellant/father is entitled to take the custody of minor for first 15-days of each month during summer vacations and first half winter holidays.
5. Handing over and taking over of the custody of the minor shall be conducted through Bailiff of the court. Fee of Bailiff is fixed Rs.2000/- which shall be paid by the appellant.

11. With the above observations appeal filed by appellant/Dr. Abdur Rehman is hereby partially accepted whereas appeal filed by the respondent/Hina Gulzar is dismissed. Parties shall bear their own costs.

Memo of cost be prepared accordingly. Copy of this judgment be sent to learned trial court for information and compliance. This original judgment be placed in appeal titled "**Dr. Abdur Rehman Zaheer Butt Vs. Mst. Hina Gulzar**". Attested copy of this judgment be also placed in the second appeal titled "**Dr. Hina Gulzar Vs. Dr. Abdul Rehman Zaheer Butt.**" Record of the learned trial court (if any) be returned while record of the present appeals be consigned to record room after its due completion and compilation.

Announced:

Addl. District Judge, Lahore

95. REPORTED JUDGMENTS OF THE HONOURABLE HIGH COURTS

2017 C L C 1747

[Lahore]

Before Mudassir Khalid Abbasi, J

MEMOONA ILYAS----Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others----Respondents

W.P. No.8132 of 2017, heard on 2nd June, 2017.

Guardians and Wards Act (VIII of 1890)---

----Ss.12, 25 & 47---Family Courts Act (XXXV of 1964), S.5, Sched. & S.14---Suit for custody of minors by father---Visitations rights of the father---Scope---Guardian Court granted visitation rights to father for

meeting children twice a month-- Father moved the Court again for handing over interim custody of children during school summer vacations---Guardian Court partially accepted the application against which father preferred appeal---Appellate Court passed order regarding interim custody to father adding considerable period of summer, winter and spring vacations and also on occasions of Muharram, both Eids and birthdays of minors as well as father's---Mother objected both revised schedules passed by Trial Court as well as Appellate Court---Order passed on application under mien S.12 of Guardians and Wards Act, 1890---Extent---Jurisdiction of Family Court---Scope---Right of appeal---Scope---Petitioner/mother contended that earlier order of visitations rights of father to meet twice a month passed under S.12 of Guardians and Wards Act, 1890 was final, which being interim in nature, was neither reviewable nor appealable in terms of S.47 of Guardians and Wards Act, 1890---Father asserted that Trial Court had ample powers to modify or review its earlier order in the interest of justice and provisions of Guardians and Wards Act, 1890 could not be read in isolation and combined reading of Family Courts Act, 1964 had made the decision of Family Court under Family Courts Act, 1964 appealable in terms of S.14 of the said Act---Validity---Provisions of Guardians and Wards Act, 1890 could not be read in isolation because the legislature, by design, had brought the disputes relating to the guardianship, within the purview of First Sched. of S.5 of the Family Courts Act, 1964, therefore, all the affairs relating to the guardianship would be exclusively triable by the Family Court under the Family Courts Act, 1964 because the statute which was later in time would prevail---In terms of S.14 of Family Courts Act, 1964 while excluding an interim order, a decree or decision given by the Family Court would be appealable---High Court observed that order passed by Family Court/Guardian Court under S.12 of the Guardians and Wards Act, 1890 was appealable under S.14 of Family Courts Act, 1964---Family Court had parental jurisdiction and there was no scope of such jurisdiction for any undue adherence to technicalities and Family Court being quasi-judicial forum could follow its own procedure which was not to be against the principles of fair trial---No legal infirmity or jurisdictional defect having been noticed, constitutional petition was dismissed accordingly.

Messrs Mehraj Flour Mills and others v. Provincial Government and others 2001 SCMR 1806; Suo Motu Case No.13 of 2007 PLD 2009 SC 217; Aley Nabi and others v. Chairman, Sindh Labour Court and

another 1993 SCMR 328; Mst. Zaibun Nisa v. Muhammad Mozammil PLD 1972 Kar. 410; Syed Shamim Ahmad v. Mst. Riaz Fatima PLD 1975 Kar. 448; Muhammad Deen Malik and another v. IInd Additional District Judge, Karachi and 2 others 1982 SCMR 1223; Sakhawat Ali and another v. Mst. Shui Khelay PLD 1981 SC 454; Malik Khizer Hayat Khan Tiwana and another v. Mst. Zainab Begum PLD 1967 SC 402 and Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore 2014 SCMR 1365 ref.

Mst. Sabira Sultana v. Asif Firdous 2011 YLR 1453 distinguished.

Mushtaq Ahmad Mohal for Petitioner.

Fahad Ahmad Siddiqui for Respondent No.2.

Muhammad Hammad Khan Rai, AAG on Courts call.

Date of hearing: 2nd June, 2017.

JUDGMENT

MUDASSIR KHALID ABBASI, J.--- This constitutional petition has been directed against judgment dated 18.02.2017 passed by learned Additional District Judge, Lahore whereby order dated 25.06.2016 passed by Guardian Judge, Lahore was set aside.

2. Precisely, the facts of the case are that respondent No.2 (father) filed a petition under Section 25 of the Guardians and Wards Act, 1890 against the petitioner for the custody of minor children along with an application for the grant of visitation rights under the provision of Section 12 of the Guardians and Wards Act, 1890. Guardian Judge allowed the visitation rights to the respondent-father to meet the children on every first and third Saturday of every month starting from 11:00 a.m. till 01:00 P.M. in the Court premises vide order dated 03.06.2015. Respondent No.2 again filed an application under Section 12 of the Guardians and Wards Act, 1890. Learned Guardian Judge vide order dated 25.06.2016, partially accepted the application for handing over the interim custody of the minors to the respondent No.2 during the summer vacations from 11.07.2016 to 11.08.2016. Feeling aggrieved, respondent No.2 filed an

appeal before learned Additional District Judge who vide impugned order dated 18.02.2017 chalked out the following schedule:-

> "(i) The interim custody of the minors shall be handed over to the petitioner on 2nd and 4th Saturday of every calendar month at 05:00 PM and petitioner shall return the interim custody of the minors to the respondent on 2nd and 4th Sunday at 05:00 P.M.
>
> (ii) On the occasion of Eid ul Fitar the petitioner/father shall be entitled for interim custody of the minors on 2nd Day of Eid ul Fitar from 5:00 P.M and petitioner shall return the interim custody of the minors to the respondent on the 3rd Day of Eid ul Fitar at 5:00 PM.
>
> (iii) On the occasion of Eid ul Azha the petitioner/father shall be entitled for interim custody of the minors on 2nd Day of Eid ul Azha from 5:00 PM and petitioner shall return the interim custody of the minors to the respondent on the 3rd Day of Eid ul Azha at 5:00 PM.
>
> (iv) On the occasion of birthday of the minors the petitioner/father shall be entitled for interim custody of the minors from 5:00 PM and petitioner shall return the interim custody of the minors to the respondent on the next day of birthday of the minors at 05: PM.
>
> (v) On the occasion of birthday of father of the minors petitioner/father shall be entitled for interim custody of the minors from 05:00 PM and petitioner/father shall return the interim custody of the minors to the respondent on the next day of birthday of father of the minor at 05:00 PM.
>
> During summer vacations, the appellant will be entitled to meet with his minor children for one month. During spring vacations, he will be entitled to meet with his minor children for half of the vacations. During winter vacations, he will be entitled to meet with his minor children for five days. During Moharram ul Haram, he will also be entitled to meet with his minor children on 9th Moharram ul Haram at 11:00 A.M. and appellant shall return back

custody of minors the respondent / mother on next day at 11:00 AM. All the above said meeting will be subject to submission of surety bonds and fee payable to the bailiff: "

Feeling aggrieved, petitioner has filed the present constitutional petition.

3. Learned counsel for the petitioner has mainly argued that in terms of Section 14(3) appeal before the learned District Judge was incompetent; therefore, impugned order is coram non judice, without jurisdiction. In this regard, he has relied on "Mst. Sabira Sultana v. Asif Firdous" (2011 YLR 1543), "Shamim Ara v. Bakhtawar Gul and 2 others" (2012 CLC 1881). Learned counsel for the petitioner further argued that lower appellate Court has failed to appreciate, while passing the impugned order dated 18.02.2017 that any order in the presence of order dated 03.06.2015 regarding chalking out the schedule of meeting in accordance with the wishes of respondent No.2 would amount to review of earlier order dated 03.06.2015 after lapse of more than 1 year and 8 months, which is certainly not warranted by law as the same had attained finality and respondent No.2 has not challenged the same at any forum. Contends that in terms of Section 47 of Guardians and Wards Act order passed under Section 12 is not appealable. Moreover, impugned judgment is contrary to law and is liable to be set aside.

4. On the other hand, learned counsel for respondent No.2 has vehemently opposed the contentions advanced by the learned counsel for the petitioner mainly on the ground that Provisions of Guardians and Wards Act cannot be read in isolation and combined reading of Family Courts Act will lead to a conclusion that in fact Section 14 of the Family Courts Act provides that decision given under Family Courts Act is appealable. Contends that impugned order under Section 12 passed by Judge Family Court was not interim in nature. Further contends that appeal filed by respondent No.2 before the Additional District Judge was fully competent. Submits that Guardian Judge under the Family Courts Act is exclusively governed by said Act and can exercise powers to modify or review the order which was earlier passed. In this regard learned counsel for respondent No.2 has placed reliance on "Dr. Kiran Qadir v. Maj. Dr. Muhammad Ali Yousaf Khan" (PLD 2014 Lahore 17), "Abdul Hameed v. Mst. Shabnam alias Shabana and 2 others" (PLD 2014

Balochistan 39) and "Muhammad Anwar Khan v. Mst. Yasmin Zafar" (1987 SCMR 2029).

5. Arguments heard. Record perused.

6. Primary question involved in this case is that as to whether an appeal is competent before the District Judge against order dated 25.06.2016 passed by Guardian Judge under Section 12 of the Guardians and Wards Act whereby Guardian Judge partially accepted the application for handing over the interim custody of the minors to the respondent No.2 during the summer vacations from 11.07.2016 to 11.08.2016. Much emphases has been laid by the counsel for the petitioner that in terms of Section 5 of the Family Courts Act, 1964, Part-I of the schedule includes matters relating to the Guardianship, therefore, all such matters pertaining to the Guardianship shall be governed by the said Act and in that context Section 14(3) imposes a restriction upon filing an appeal against an interim order. He has relied on Section 47 of the Guardians and Wards Act which according to the learned counsel for the petitioner does not provide the remedy of appeal. For facility of reference Section 5 of the West Pakistan Family Courts Act, 1964 is reproduced as under:

> **5. <u>Jurisdiction</u>.--** [1] Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule.
>
> Part-I of Schedule is given as under: -
>
> **SCHEDULE**
>
> **[PART I]**
>
> 1. ……
> ……
>
> 2. ……
> ……

3. ……

4. ……

5. ……

6. Guardianship.

Section 14(3) of Act ibid is reproduced herein below:-

> **Appeals**.--- (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable---
>
> (a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and
>
> (b) to the District Court, in any other case.
>
> (2) No appeal shall lie from a decree passed by Family Court--
>
> (a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;
>
> (b) for dower [or dowry] not exceeding rupees [one hundred thousand] ;
>
> (c) for maintenance of rupees [five thousand] or less per month.
>
> (3) No appeal or revision shall lie against an interim order passed by a Family Court.

(4) The appellate Court referred to in sub¬section (1) shall dispose of the appeal within a period of four months.]

Section 47 of Guardians and Wards Act is reproduced as under:-

47. Orders appealable. An appeal shall lie to the High Court from an order made by a Court :-

(a) under Section 7, appointing or declaring to appoint or declare a guardian ; or

(b) under Section 9, subsection (3), returning an application ; or

(c) under Section 25, making or refusing to make an order for the return of a ward to the custody and of his guardian ; or

(d) under Section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or

(e) under Section 28 or Section 29, refusing permission to a guardian to do an act referred to in the section; or

(f) under Section 32 defining, restricting or extending the powers of a guardian ; or

(g) under Section 39 removing a guardian ; or

(h) under Section 42, refusing to discharge a guardian ; or

(i) under Section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order, or

(j) under Section 44, imposing a penalty: [Provided that, where the order from which an appeal is preferred is passed by an officer subordinate to a District Court, the appeal shall lie to the District Court'

7. At the first instance, it is observed that provisions of Guardians and Wards Act cannot be read in isolation because the legislature by design has brought the disputes relating to the guardianship, within the purview of First Schedule of Section 5 of the Family Courts Act, therefore, all the affairs relating to the Guardianship shall be exclusively triable by the Family Court under the Act ibid.

8. It is settled principle of interpretation of statutes that the statute which is later in time shall prevail. Reliance is placed on "Messrs Mehraj Flour Mills and others v. Provincial Government and others" (2001 SCMR 1806), "Suo Motu Case No.13 of 2007"(PLD 2009 SC 217) and "Aley Nabi and others v. Chairman, Sindh Labour Court and another "(1993 SCMR 328),

9. So far as Section 14(3) regarding the maintainability of the appeal before the Additional District Judge is concerned, plain reading of language of Section 14 makes it abundantly clear that notwithstanding anything provided in any other law for the time being enforce a decision given or a decree shall be appealable. The only exclusion is with regard to an interim order. Now the question before this Court is as to whether order dated 25.06.2016 passed by learned Guardian Judge/Judge Family Court under Section 12 of the Guardians and Wards Act was a decision or an interim order. This Court while confronted with the similar situation had already pronounced that such order falls within the purview of "decision given" and is appealable under Section 14 of Family Courts Act, 1964. Reliance is placed on "Mst. Zaibun Nisa v. Muhammad Mozammil" (PLD 1972 Karachi 410). In another pronouncement "Syed Shamim Ahmad v. Mst. Riaz Fatima" (PLD 1975 Karachi 448), it was observed that expressions or decisions given in Section 14 are not in any manner qualified by any such word as final, and therefore, an order under Section 12 is a decision given and is appealable. Further reliance has been placed on "Muhammad Deen Malik and another v. IInd Additional District Judge, Karachi and 2 others" (1982 SCMR 1223) and "Sakhawat Ali and another v. Mst. Shui Khelay" (PLD 1981 Supreme Court 454)

10. Learned counsel for the petitioner has relied on "Mst. Sabira Sultana v. Asif Firdous" (2011 YLR 1453). This judgment does not relate to a case of Guardianship and is a dispute pertaining to maintainability of

appeals against an order passed in a suit for maintenance under Section 17-B which was under discussion, therefore, this judgment is inapt.

11. In view of the above, it can safely be concluded that the impugned judgment passed by Addl. District Judge was well within jurisdiction of the lower appellate Court.

12. So far as the argument of learned counsel for the petitioner that family Court could not pass the order dated 25.06.2016 whereby application filed by respondent No.2 for handing over custody of the minor during the summer vacations was illegal on the ground that when the application already decided no fresh application could be entertained. In this regard, it is observed that the Guardian Judge exercises a parental jurisdiction and there is no scope of such jurisdiction for any undue adherence to technicalities. Separate application can be made on fresh grounds. Reliance is placed on "Malik Khizer Hayat Khan Tiwana and another v. Mst. Zainab Begum" (PLD 1967 SC 402).

13. It has been categorically laid down by the Hon'ble Apex Court that the Family Court is a quasi-judicial forum which could draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial. Reliance is placed on "Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore and others" (2014 SCMR 1365), relevant portion is reproduced herein below:-

> "Family Court empowered to strike off defendant's defence and pass ex parte decree---Scope---Family Court was a quasi-judicial forum, which could draw and follow its own procedure, provided such procedure was not against the principles of fair hearing and trial"

14. So far as the merits of the case are concerned, suffice it so to say that this Court under the constitutional jurisdiction cannot substitute the findings of the appellate Court. It is well established principle that powers of judicial review of this Court are not analogues to those of appellate Court, reason being that appellate Court is final Court for determination of question of fact. Purpose of the Family Courts is to resolve the family disputes expeditiously and in order to save the parties from ordeal of litigation and to curb the mischief of delaying tactics.

15. By now it has become an established law with particular reference to Family Courts Act, 1964 that interference under the constitutional jurisdiction is permissible only in case of any jurisdictional defect or legal infirmity which does not exist in the present case.

What has been discussed above, this Court is not persuaded to interfere in the impugned judgment, this petition is dismissed.

MQ/M-109/L Petition dismissed.

P L D 2018 Balochistan 44

Before Mrs. Syeda Tahira Safdar and Zaheer ud Din Kakar, JJ

ABDUL KHALIQ and others---Petitioners

Versus

Ms. MAH NOOR and others---Respondents

Constitutional Petitions Nos.698, 978 of 2016 and 604 of 2017, decided on 22nd November, 2017.

Guardians and Wards Act (VIII of 1890)---

----S. 12---Visitation rights of father of minor---Scope---Court premises as meeting place of the minor with the father---Effect---Welfare of minor---Scope---Petitioner/father contended that Family Court had rightly allowed him to take his minor daughter to his house on (certain) special days---Respondent/Mother contended that Appellate Court had rightly set aside schedule arranged by Trial Court as father should meet minor within court premises---Validity---Father might disentitle himself to custody on

account of his conduct but father, in the present case, was regularly depositing the maintenance allowance of his minor daughter as fixed by the court---Minor daughter in her tender age required love and care of her parents; deprivation of any of them would have negative effect not only on her mental growth but would also affect her intellectual development---Neither the minor nor the father could be deprived of company of each other---Father being natural guardian was not only required to participate in the upbringing of the minor but should also develop love, bondage and affinity with her, to achieve said purpose---Court was to facilitate a congenial , homely and friendly environment and reasonable visitation schedule---Office of the Guardian Judge or office of Civil Nazir of the Court, for the said purpose, was neither conducive nor effective which lacked proper facilities and arrangements, and was not comparable to a homely environment---Meeting in Court premises could not serve the purpose of meeting, and it was not in the interest or welfare of the minor to hold meeting in the Court premises---Meetings of the minor with the father, were preferably to be held at the residence of the father---High Court set aside the impugned order passed by the Appellate Court and re-scheduled the more flexible arrangements of meeting of minor with the father on special days and on every Saturday of the calendar month with arrangement that Civil Nazir or a bailiff be deputed by the Trial Court to collect the minor from the residence of the mother at 10:00 a.m. along with a representative of the father, take her to residence arranged by the father, and thereafter along with representative of mother collect her from the father on the same day and drop her back at the residence of mother---Such arrangement would remain in vogue till the minor daughter was five years of age or admitted to school---Constitutional Petition was disposed off accordingly.

Petitioners in person.

Date of hearing: 26th October, 2017.

JUDGMENT

ZAHEER-UD-DIN KAKAR, J.---Through this single judgment, we intend to decide the above captioned constitutional petitions, as common question of law and facts are involved in all the petitions.

2. Precisely stated facts of the case are that the petitioner (Abdul Khaliq) and the respondent (Mah Noor) were married to each other on 09.2.2013. Out of wedlock one daughter Ambar (the minor), was born on 15.3.2014. The relationship between the petitioner and respondent, however, deteriorated resulting in the petitioner living apart from respondent No.1 and marriage between the parties were dissolved on the basis of Khula on 29.10.2014. Now coming to the gist of present petitions.

C.P No.698 of 2016

The petitioner filed Misc: Application No.4 of 2016 against respondent No.1, before the Court of Family Judge-I, Quetta (the trial Court) for visitation custody of minor namely Ambar for one week. The respondent No.1 contested the application and after hearing the parties, the trial Court allowed the application vide order dated 11.4.2016 in the following manner:

> "He is allowed to keep minor girl with him at Khuzdar for one week subject to furnishing surety bonds/personal surety bonds of Rs.500,000/- (five lacs). The respondent is directed to bring minor girl on 17th of this month at 10:00 a.m. to the office of Civil Nazir, so that she may be handed over to applicant/father for taking her with him to Khuzdar. The applicant is bound down to bring minor back on 24th of this month at 10:00 am so that the minor girl is handed back to respondent/mother. Both parties shall abide by the fix schedule and comply the order of this court. The applicant is directed to submit surety bonds within 03 days. A letter shall be issued to Civil Nazir in this regard after furnishing surety bonds, for necessary arrangement and submit his report."

Thereafter, the respondent No.1 filed an application before the trial Court with prayer to exempt minor girl from one week meeting for the time being as she is seriously ill. The trial Court vide order dated 20.4.2016 directed the respondent No.1 to handover the custody of the minor to her father (petitioner) for one week i.e. with effect from 24.4.2016. Feeling aggrieved from orders dated 11.4.2016 and 20.4.2016, the respondent filed Family Appeal No.6 of 2016 before the Court of Additional District Judge-IV, Quetta (the appellate Court). After hearing

the parties, the appellate Court set aside both the impugned orders vide order dated 30.6.2016, hence this petition.

C.P. No.978 of 2016.

The petitioner filed Misc: Application No.12 of 2016 against respondent No.1 and others, before the Court of Family Judge-I, Quetta (the trial Court) for grant of interim physical custody of the minor namely Ambar for three days including two overnight stay with the petitioner being real father on account of 5 public holidays on the eve of Eid-ul-Adha. The trial Court allowed the application vide order dated 05.09.2016 in the following manner:

> "Therefore, in the light of above discussion, keeping in view of minor age and present circumstance and perusal of previous record, the applicant father is allowed to take minor with him on the second day of Eid-ul-Adha, i.e. 14th September, 2016 at 10-00 a.m. from the office of Civil Nazir and he is bound to hand over the minor child Amber on the same day at 6:00 pm in the evening to Civil Nazir, so that he may hand over the minor girl Amber back to respondent/mother."

Feeling aggrieved the respondent filed Family Appeal No.10 of 2016 before the Court of Additional District Judge-IV, Quetta (the appellate Court). After hearing the parties, the appellate Court accepted the appeal and set aside the impugned order dated 5.9.2016, vide order dated 8.10.2016, hence this petition.

C.P. No.604 of 2017

The petitioner filed Misc: Guardian Petition No.21 of 2016 against the respondent before the Court of Family Judge-I, Quetta (the trial Court) for grant of an-interim annual visitation schedule of meeting with the minor Ambar under the provisions of Section 12 of the Guardians and Wards Act, 1890 read with Sections 12-A and 5 of the Schedule attached with the Family Courts Act, 1964. The respondent contested the application and after hearing the parties, the trial Court passed the following order on 29-12-2016.

> "At this stage I am in the view that the earlier chalked out visitation schedule of minor i.e. twice in a month for two hours from 10:00 a.m. to 12:00 p.m. fortnightly is sufficient at this stage. However the applicant is additionally allowed to meet his minor daughter Amber on the second day of Eid-ul-Fitr and Eid-ul-Adha for two hours on the same timings from 10:00 a.m. to 12:00 p.m. in the office of Civil Nazir.

Feeling aggrieved, the petitioner filed Family Appeal No.01 of 2017 before the Additional District Judge-II, Quetta (the appellate Court). After hearing the parties, the appellate Court dismissed the same vide order dated 02.5.2017, hence this petition.

3. The petitioner has mostly relied upon the grounds mentioned in the petitions.

4. We have heard the petitioner in person, perused the impugned orders and have also gone through the material available on record. The petitioner (father) under the Mohammadan Law is the lawful guardian of his minor child and is ordinary entitled to his custody provided it is for the welfare of the minor. The right of the father to claim custody of a minor is not an absolute right, in that, the father may dis-entitle himself to custody on account of his conduct depending upon the facts and circumstances of each case. In the case in hand, the petitioner is regularly depositing the maintenance of the minor as fixed by the trial court. The minor Amber is in her tender age requires love and care of her parents (respondent and petitioner) deprivation of any of them would have negative effect not only on her mental growth, but also affect her intellectual development. In view of the fact neither the minor nor the petitioner could be deprived of company of each other.

5. In guardianship matters, Courts exercise quasi parental jurisdiction, the supreme consideration, in this context is the welfare of the minor(s), to achieve this purpose Courts have unfettered powers, thus, application under section 12 of the Guardians and Wards Act is required to be decided on this principle. It is an inherent right of the contesting parent to seek visitation to the minor, especially a father, who is the natural guardian, he not only is required to participate in the upbringing of the minor(s), but should develop love, bondage and affinity with them, to

achieve this purpose, the concerned Court should facilitate a congenial, homely and friendly environment and reasonable visitation schedule. The Court of the Guardian Judge or the office of Civil Nazir of the Court, for this purpose is neither conducive nor effective, it lacks proper facilities and arrangements, and is not comparable to a homely environment. Thus, meeting in Court premises does not serve the purpose of meeting. It, therefore, is not in the interest or welfare of the minor to hold-meeting in the Court premises, therefore, meetings of the minor with the petitioner should preferably be held at the residence of the petitioner at Quetta, if he has or arranges.

6. Keeping in view the discussion made herein above, the facts and circumstances of the case and also the welfare of the minor, we are inclined to set aside the impugned orders passed by the Courts trial and appellate and allow the petitions in the following manner, by keeping in view the tender age of the minor Amber:

(i) The interim custody of the minor shall be handed over to the petitioner on every Saturday of the calendar month at 10:00 a.m. and shall return the custody of the minor to respondent (Mah Noor) at 5:00 p.m. on the same day.

(ii) On the occasion of Eid-ul-Fitr and Eid-ul-Adha, the petitioner (father) shall be entitled for interim custody of the minor on second day of both Eids from 10:00 a.m. and he shall return the interim custody of the minor to the respondent on the same day at 5:00 p.m.

(iii) On the occasion of birth day of the minor, the petitioner (father) shall be entitled for interim custody of the minor from 10:00 a.m. and he shall return the custody of the minor to the respondent on the same day at 05:00 p.m.

(iv) On the occasion of the birth day of father (petitioner) of the minor, the petitioner shall be entitled for interim custody of the minor from 10:00 a.m. and the petitioner shall return the interim custody of the minor to respondent on the same day at 5:00 p.m.

(v) The Civil Nazir or a bailiff be deputed by the trial Court (Family Judge-I, Quetta) to clleect the minor from the residence of respondennt (Mah Noor) at 10-00 a.m. along with a representative of the petitioner, take her to residence arranged by the petitioner, and thereafter along with representative of respondent (mother) collect her from the petitioner on the same day and drop her back at the residence of respondent (Mah Noor).

(vi) This arrangement shall remain in vogue till the minor is five (05) years old or admitted in school and thereafter may be reviewed by the Family Judge-I, Quetta, if either party so desires.

7. All the petitions are disposed of in the above terms.

MQ/180/Bal. Order accordingly.

2018 M L D 1592

[Lahore]

Before Muhammad Farrukh Irfan Khan, J

Mst. AYESHA SHAHID---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No. 63673 of 2017, decided on 26th March, 2018.

Guardians and Wards Act (VIII of 1890)---

----S. 12---Interim custody of minor---Visitation schedule of minor with his father---Scope---Overnight stay with father---Welfare of minor---Scope---Meeting of minor with father in Court premises---Effect---Petitioner/mother contended that Appellate Court had wrongly chalked out overnight stay of minor with his father/respondent as the same would affect his growth adversely and he was likely to confront some unpleasant situation there---Mother also apprehended removal of the minor out of territorial jurisdiction of the Court---Father contended that proper growth of the minor required love and affection of parents and Guardian Court had wrongly dismissed his prayer of meeting with his son out of Court premises---Validity---Welfare of minor was prime consideration before the Court, admittedly, respondent was father of the minor and being the natural guardian he had right of his supervision under the Islamic Law, therefore, on separation of the parents the minor could not be permanently deprived from the love and affection of either of the parents---Minor, in the present case, had crossed the age of six years, therefore, he should have maximum interaction with the father even if the custody was with the mother, otherwise, it may cause an estrangement in the mind of the child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father---

Court, in order to achieve such goal, was to make every possible effort to chalk out reasonable visitation schedule in friendly atmosphere---Meeting of the minor in the Court premises with the father was neither conducive nor effective and did not serve the purpose of meeting, therefore, welfare of the minor was in meeting with the father at his residence--- Appellate Court had already imposed condition of submission of surety bonds by the father at the time of taking over custody of the minor which was sufficient to dispel the apprehension of the mother regarding removal of the minor from the territorial jurisdiction of the Court---No illegality or infirmity having been noticed in the impugned order passed by the Appellate Court, constitutional petition was dismissed accordingly.

Sh. Zahid Mehmood for Petitioner.

Fahad Ahmad Siddiqui for Respondent No.3.

ORDER

MUHAMMAD FARRUKH IRFAN KHAN, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner calls in question the validity of impugned judgment of the learned Appellate Court dated 09.08.2017 whereby the said court while accepting appeal of respondent No.3 against the order of the learned Guardian Judge dated 02.07.2016 chalked out meeting schedule of the minor with respondent-father in the following manner:-

> "i. The interim custody of the minor shall be handed over to the petitioner on 2nd and 4th Saturday of every calendar month at 05.00 PM and petitioner shall return the interim custody of the minors to the respondent on 2nd and 4th Sunday at 5.00 PM,
>
> ii. On the occasion of Eid ul Fitar, the petitioner/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-Fitar from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid ul Fitar at 5.00 PM
>
> iii. On the occasion of Eid ul Azha, the petitioner/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-

Azha from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid ul Azha.

iv. On the occasion of birth day of the minor, the petitioner/ father shall be entitled for interim custody of the minor from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the next day of birthday of the minor at 5.00 PM

v. On the occasion of birth day of father of the minor petitioner/ father shall be entitled for interim custody of the minor from 05:00 PM and petitioner/father shall return the interim custody of the minor to the respondent on the next day of birthday of father of the minor at 5.00 P.M.

vi. During summer vacations, the appellant will be entitled to have custody of minor for one month.

vii. During winter vacations, he will be entitled to meet with his minor children for five days."

2. Learned counsel for the petitioner submits that the visitation schedule set out by the learned Appellate Court is very harsh; that at present age of the minor is about six years and at this stage his overnight stay with the respondent-father is likely to affect his growth adversely; that the respondent-father is unable to properly maintain the minor as such, the petitioner being the real mother, has serious reservations that the minor may confront unpleasant situation over there or may encounter some psychological phenomena; that there is also strong apprehension that the respondent would remove the ward from the territorial jurisdiction of the Guardian Court; that the learned Guardian Judge had rightly formulated a schedule of meeting of the minor with the respondent/ father in the court premises which has illegally been modified by the learned Appellate Court.

3. On the converse, learned counsel for respondent No.3 submits that the respondent is real father of the minor; that proper growth of the minor requires love and affection of the parents and its deprivation from either side would not be in the welfare of the minor; that meeting schedule chalked out by the learned Guardian Judge in the court premises was not

conducive as such the learned Appellate Court keeping in view the welfare of the minor has rightly formulated the visitation schedule which needs no intervention by this Court in its Constitutional jurisdiction.

4. Arguments heard. Record perused.

5. Irrespective of the fact whether the application before the learned Guardian Judge is under section 12(2) of Guardians and Wards Act, for interim custody of the minor or under section 25 of the Act ibid for permanent custody of the minor the only consideration which requires to be adhered by the learned Guardian Court is the welfare of the minor and nothing else. Admittedly, respondent No.3 is the real father of the minor and being the natural guardian he has right of his supervision under the Islamic Law. Therefore, on separation of the parents the minor cannot be permanently deprived from the love and affection of either of the parents. The minor has now crossed the age of six years, therefore, he should have maximum interaction with the father even if the custody is with the mother, otherwise, it may cause an estrangement in the mind of the child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father. In order to achieve this goal the concerned Court should make every possible effort to chalk out a reasonable visitation schedule in a congenial, homely and friendly atmosphere. The visitation schedule chalked out by the learned Guardian Judge in the court's premises while dismissing the application of the respondent for interim custody of the minor in no manner could be construed to meet the above objective. Meeting of the minor in the court premises with the father is neither conducive nor effective and does not serve the purpose of meeting. Therefore, welfare of the minor lies that his meeting with the respondent-father should be arranged at his residence. The learned Appellate Court after taking into consideration all the pros and cons has rightly chalked out the visitation schedule of the minor in the above terms which in my considered view is in the interest and welfare of the minor. The learned Appellate Court has already imposed a condition of submission of surety bonds by the respondent at the time of taking over custody of the minor which is sufficient to dispel the apprehension of the petitioner regarding removal of the minor from the territorial jurisdiction of the Guardian Court. Learned counsel for the petitioner is unable to convince this Court in what manner the welfare of the minor is compromised if the impugned schedule is

implemented upon as such this Court is not inclined to intervene with the same in its Constitutional jurisdiction.

6. Resultantly, this writ petition is **dismissed.**

MQ/A-45/L Petition dismissed.

2021 Y L R 1989

[Lahore]

Before Ali Baqar Najafi, J

SAROSH SIKANDER and others---Petitioners

Versus

GUARDIAN JUDGE, LAHORE and others---Respondents

Writ Petition No. 248310 of 2018, decided on 23rd June, 2020.

(a) Guardians and Wards Act (VIII of 1890)---

----Ss. 8 & 12---Family Courts Act (XXXV of 1964), S. 5, Sched.---Interim custody of minor---'Parent'---Scope---Application moved by grandparent---Maintainability---Respondent (grand-mother of the minor) instituted application for interim custody and visitation rights of minor girl, whereas the petitioner (mother of the minor) filed application for rejection of the same on the ground of maintainability---Guardian Court rejected the application of petitioner---Petitioner invoked constitutional jurisdiction of the High Court contending that

only the parents could request for the visitation right of the minor as the 'grandmother' was not covered in the definition of 'parent'---Validity---Record revealed that parents of the minor got married to each other but , soon after the birth of minor, the divorce was effected---Intensity of estrangement was so high that a criminal case was got registered on the behest of father of the petitioner which though was later cancelled---Father of the minor was a foreign national, who came back after the birth of child to see new-born child and to reconcile but the efforts failed and he returned abroad after pronouncing divorce---Petitioner had referred to definition of the word 'parent' from dictionaries, which included adoptive parents, but such concept was not recognized in Islam---Keeping in view the fact in the present case that neither the real father of the minor had come forward with any definite plea nor the effort was made to implead him as a party, his tacit approval could be presumed---Proceedings before the Guardian Court were for the visitation right of the minor only, therefore, the application filed by the grandmother was competent---Constitutional petition dismissed, in circumstances.

(b) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Guardians and Wards Act (VIII of 1890), Ss. 8 & 12---'Parent'---Scope---Interim custody of minor---Application moved by the grandmother (respondent) before the Guardian Court---Maintainability---Contention of the petitioner (mother of minor) was that only the parents could request for the visitation right of the minor as the 'grandmother' was not covered in the definition of 'parent'---Held, that the word 'parent' used in S. 5 and the Sched. of the Family Courts Act, 1964, was wider in sense and was not restricted to its literal meaning particularly when the grandchild was entitled to inheritance from the grandparent---Application of the respondent (grandmother) was maintainable before the Guardian Court---Constitutional petition was dismissed, in circumstances.

Mst. Mahmooda Sultana v. Mst. Jainila Begum 1988 SCMR 538 ref.

(c) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Family Court (Amendment) Ordinance, 2002 (LV of 2002), Preamble---Guardian and Wards Act (VIII of 1890), Ss. 8 & 12-

--Interim custody of minor---Application moved by the grandmother before the Guardian Court--- Maintainability--- 'Parent'---Scope---Respondent (grandmother of the minor) instituted application for interim custody and visitation rights of minor girl, whereas the petitioner (mother of the minor) filed the application for rejection of the same on the ground of maintainability--- Guardian Court rejected the application of petitioner---Contention of the petitioner was that the Family Courts Act, 1964, was promulgated as a special act for special class of people i.e. husband and wife in case of their custody---Validity---Although contention of the petitioner was correct but the Guardians and Wards Act, 1890, also dealt with the situation where only grandparents were contestants, therefore, the same would not stop the Guardian Court to adjudicate upon matter-in-hand---In the Family Court Act, 1964, the Schecule made under S. 5 thereof, prescribed "custody of the children" in clause (5), however, an amendment was made through Family Court (Amendment) Ordinance, 2002 and after " custody of children" the words "and the visitation rights of parents to meet them" were added---Application of the respondent (grandmother) was maintainable before the Guardian Court---Constitutional petition was dismissed, in circumstances.

Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others 2011 SCMR 1361; Mst. Abeera Khan v. Adnan Jamil and another 2019 CLC 1478 and Mst. Maryam Masood v. Mughisuddin Mirza and 2 others 2009 CLC 1443 distinguished.

(d) Guardians and Wards Act (VIII of 1890)---

----Ss. 8 & 12---Family Courts Act (XXXV of 1964), Ss. 5, Sched. & 14---Constitution of Pakistan, Art. 199---Constitutional petition filed against an interlocutory order of Guardian Court---Maintainability---Interim custody of minor---Impugned order was just an interlocutory order holding that the application of interim custody/visitation right filed by the grandmother could proceed and the same was not even an order deciding the application filed by the grandmother, therefore, constitutional petition was not maintainable since an appeal could be filed against the final order---Constitutional petition was dismissed in circumstances.

Muhammad Shah Nawaz Khan for Petitioners.

Fahad Ahmad Siddiqui for Respondent No.2.

Zafar Raheem Sukhera, A.A.G. for Respondents.

Date of hearing: 31st January, 2020.

JUDGMENT

ALI BAQAR NAJAFI, J.--- Through this constitutional petition, the petitioner has challenged the order dated 12.09.2018 passed by learned Guardian Judge-II, Lahore whereby her application for rejection of petition filed by respondent No. 2 under section 5 of the Schedule attached with the Family Courts Act, 1964 read with section 8 of the Guardians and Wards Act, 1890, was dismissed.

2. Brief facts giving rise to file the present writ petition are that respondent No. 2 being the grandmother of the minor, namely, Rahmeen Shoaib born on 15.9.2016 had filed petition under section 5 of the Schedule attached with the Family Courts Act, 1964 read with section 8 of the Guardians and Wards Act, 1890 on 31.10.2017 for the interim custody and visitation rights of the minor. However, the petitioner, being real mother, on 07.03.2018 filed an application for the rejection of the said petition on the ground of maintainability which was dismissed, hence this direct constitutional petition.

3. The argument advanced by the petitioner is that only the parents can request for the visitation right of the minor as required under section 8 the Guardians and Wards Act, 1890; that parents do not include grandparents of the minor; that under the Schedule (Part-1) and under section 7(2) of the Act ibid, the visitation request is only for the parents to meet their children; that in the presence of the petitioner being biological parent (mother) giving of the interim custody to anyone else would be against the welfare of the minor, particularly when she remained in the custody of the petitioner since her birth; that the logic that minors can directly inherit under Islamic Law from grandparents is not enough to give even the visitation right/interim custody to them particularly when the father is alive and living in U.K.

3. Conversely, the learned counsel for the respondent argues that the order was rightly passed, hence, seeks dismissal of the writ petition.

4. Arguments heard and file perused.

5. Admittedly, the petitioner and Shoaib Muhammad son of Rasheed Ullah and respondent No.2 got married on 20.12.2015, whereafter minor Rahmeen Shoaib was born on 15.9.2016 but unfortunately soon a divorce was effected between them on 30.10.2016. The intensity of estrangement was so high that FIR No. 582 dated 08.11.2016 under sections 363, 511, 354, 337-A(i), 337-F(i) and 337-L/2 of P.P.C. was got registered on 08.11.2016 at Police Station Model Town, Lahore on the behest of father of the petitioner which was although cancelled on 29.06.2017. Both father and brother of the respondent are U.K. national and to ensure the foreign nationality, the marriage was solemnized. After the birth of the child, the father of the minor came to Pakistan to see the new born child and to reconcile but the efforts failed and, therefore, he returned to U.K. on 02:11.2016 after pronouncing divorce to the petitioner. The above referred divorce was also registered.

6. The respondent No.2 had filed a petition under sections 5 and 8 before the Guardian Court on 31.10.2017 while relying upon case titled "Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore and others" reported as 2014 SCMR 1365 and case titled "Malik Khizar Hayat Khan Tiwana and Malik Ghulam Muhammad Khan v. Mst. Zainab Begum, Ch. Aziz Ahmad Waraich, District Judge, Lahore and Qazi Muhammad Dastgir, Guardian Judge, Lahore" reported as PLD 1967 SC 402 and prayed for interim custody of half of the time by making a schedule. This application was contested by the petitioner on the ground that it is only the parents who are entitled to the custody, and the grandmother is not covered in the said definition of parents. However, on 12.09.2018, the said application filed by the respondent was found maintainable on the ground that the word parent used in section 5 of the Schedule is wider in sense and is not restricted to its literal meaning particularly when the grandchild is entitled to inheritance from her. Reliance was placed upon case titled "Mst. Mahmooda Sultana v. Mst. Jamila Begum" reported as 1988 SCMR 538. The argument advanced by the learned counsel for the petitioner that Family Courts Act, 1964 was promulgated as a Special Act for special class of people i.e. husband and wife and children in case of their custody is correct but the Guardianship Act also caters for the situation where only grandparents are contestants, therefore, it will not stop the Guardian Court to adjudicate upon such matters. The reliance

is placed upon case titled 'Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others" reported as 2011 SCMR 1361 is therefore misplaced. The other reliance upon case titled "Mst. Abeera Khan v. Adnan Jamil and another" reported as 2019 CLC 1478 and case titled "Mst. Maryam Masood v. Mughisuddin Mirza and 2 others" reported as 2009 CLC 1443 are also irrelevant as in the said case, the controversy was between the father and the mother, and not the grandparents.

7. In the original West Pakistan Family Courts Act, 1964, Schedule made under section 5 thereof, prescribed "custody of the children" in clause 5. However, through an amendment made on 01.10.2002 after "custody of the children" following words were added through amending Ordinance of Family Court (Amendment) Ordinance, 2002 (LV of 2002):--

"and the visitation rights of parents to meet them".

8. The main thrust of the learned counsel for the petitioner was on the interpretation of the word parents, wherein according to him it does not include grandparents. He has referred to the various definitions of the word parent from different dictionaries. Notably, they include the adoptive parents, a concept not recognized in Islam. Keeping in view the fact that neither the real father of the minor has came forward with any definite plea nor the effort was made to implead him as a party, his tacit approval can be presumed. The proceedings pending before the Guardian Court are for the visitation right of the minors only, therefore, the application filed by the grandmother is competent. Even otherwise, the maintainability of such application does not guarantee that it would be allowed. However, it would be a matter of concern to read and appreciate the evidence which the respective parties would like to produce to support their respective claim. Notably, the impugned order is just an interlocutory order holding that application for interim custody/visitation right filed by the grandmother could proceed. It is not even an order deciding the application filed by the respondent, therefore, the-writ petition was not maintainable since an appeal lies against the final order.

9. At this stage, it is noted therefore much appreciated that both sides are fully loaded with the solid arguments in their favour, but at this stage giving any observation would prejudice their case before the

Guardian Court where the question whether in the facts of the case, the grandmother can have the interim custody/visitation rights is pending. It is, therefore, observed that the application of the respondent will be decided expeditiously and preferably within six months but in accordance with evidence and the law. This writ petition is therefore, dismissed as not maintainable.

MQ/S-
22/L Petition dismissed.

2021 Y L R 1915

[Lahore (Rawalpindi Bench)]

Before Jawad Hassan, J

SHAHIDA ADNAN---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No. 3312 of 2020, decided on 1st June, 2021.

(a) Guardians and Wards Act (VIII of 1890)---

----S. 25---Custody of minor---Visitation right---Scope---Petitioner/mother was aggrieved of issuance of a schedule of meeting of the minor with her father---Contention of petitioner was that the minor had no attachment with her father and that the father did not regularly maintain the minor---Validity---Father could not be denied the right of access to his minor daughter nor would he be considered an alien/enemy to her---Minor not only needed love, affection, care and attention of a mother but also the company and guiding hand of father---Negating the father of his right to meet his daughter would lead to emotional deprivation---Constitutional petition was dismissed.

Mst. Madiha Younus v. Imran Ahmed 2018 SCMR 1991 ref.

(b) Guardians and Wards Act (VIII of 1890)---

----S. 25---Custody of minor---Scope---Paramount consideration in the matter of custody of minor is the welfare of minor.

Ms. Farhana Qamar Rana for Petitioners.

Fahad Ahmad Siddiqui for Respondents.

Date of hearing: 1st June, 2021

JUDGMENT

JAWAD HASSAN, J.---Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner/Mst. Shahida Adnan has called in question the judgments and decrees dated 30.10.2020 and 02.03.2020, whereby Application under Section 25 of the Guardians and Wards Act, 1890 (the "Act") seeking custody of minor Mst. Fatima Adnan, filed by the Respondent No.3/Adnan Haroon, was dismissed by making a Schedule of meeting.

2. Brief facts for the disposal of this petition are that the Respondent No.3/ Adnan Haroon filed an Application under Section 25 of the Act for custody of his minor daughter Mst. Fatima Adnan, on the grounds that marriage between the Petitioner and the Respondent No.3 was solemnized on 29.08.2014 according to Muslim rites; out of this wedlock minor daughter (Fatima Adnan) was born on 12.07.2015. That unfortunately desertion took place between the parties and presently the minor/daughter is living with the Petitioner/mother, which was contested by the Petitioner by raising certain objections. The learned Guardian Judge after framing of issue, recording of evidence and hearing the arguments of learned counsel for Parties dismissed the Application vide judgment dated 02.03.2020 by making a meeting schedule in the following manner:

> "9. Law favours right of visitation of a parent to remain intact even if the custody is awarded to the other parent and it is God-given right of minor to have association with their real moth. Hence this issue is answered in negative. Thus it is held that petitioner being real father is entitled for meeting with the minor in the following manner:
>
> (i) The interim custody of the minor shall be handed over to the father on 4th Saturday of every calendar month at 09:00 A.M. and petitioner shall return the interim custody of the minor to the Respondent on 4th Sunday at 09:00 A.M.
>
> (ii) The Petitioner shall be entitled to meet the minor daughter in court room on every first Saturday of every calendar month from 09:00 A.M. to 01:00.P.M.
>
> (iii) On the occasion of Eid-ul-Fitar, the petitioner/father shall be entitled for interim custody of the minor on 2nd day of Eid-

ul-Fitar from 03:00 pm and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid-ul-Fitar at 03: 00 pm.

(iv) On the occasion of Eid-ul-Azha, the petitioner/father shall be entitled for interim custody of the minor on 2nd day of Eid-ul-Azha from 03:00 pm and petitioner shall return the interim custody of the minor to the mother on the 3rd day of Eid-ul-Azha at 03:00 p.m.

(v) The petitioner/father shall be entitled for interim custody of minor for two days of the minor in winter vacations.

(vi) The petitioner/father shall be entitled for custody of minor for one week in summer vacations."

Feeling aggrieved thereof, the Petitioner filed an Appeal but the learned Appellate Court vide judgment and decree dated 30.11.2020 dismissed the same. Hence, this writ Petition.

3. Ms. Farhana Qamar Rana, Advocate for the Petitioner submits that the impugned judgments and decrees to the extent of chalking out schedule of meeting of Respondent No.3 with the minor are patently illegal, against law and the facts. She adds that both the learned Courts below failed to appreciate the evidence produced by the Petitioner/ mother that the minor has no attachment with the Respondent No. 3. Learned counsel also states that as the Respondent No.3 did not maintain the minor regularly therefore, he is not entitled for any meeting with her. Lastly, she prayed for acceptance of the writ petition and setting aside of the impugned judgments and decrees to the extent of meeting schedule. Learned counsel relied on the judgments cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991), "Mst. Hanifan Bibi v. I. G. Police and others" (2003 MLD 1329), and "Shahbaz Aftab Khan v. Judge Family Court and others" (2014 CLC 1168).

4. Conversely, Mr. Fahad Ahmad Siddiqui, Advocate for the Respondent No.3 has supported the impugned judgments and decrees by contending that both the courts below have correctly appreciated as well as evaluated the evidence on record in its true perspective to the extent of meeting schedule, therefore, no exception can be taken to it in constitutional jurisdiction. In support of his contention learned counsel

relied on the judgment cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991), wherein comprehensive plan for custody, visitation rights and maintenance of minors and obligation of both the parents have been issued by the Hon'ble Supreme Court of Pakistan. He also relied on "Mst. Aliya Fazil and another v. Mirza Farhan Rubbani and another" (2013 MLD 1631), "Saira Anjum and 2 others v. Rizwan Riaz Saigal and 2 others" (2014 MLD 1137), "Mst. Ayesha Shahid v. Additional District Judge and others" (2018 MLD 1592), "Abdul Khaliq and others v. Ms. Mahnoor and others" (PLD 2018 Balochistan 44) and "Mst. Hira v. 7th Additional Sessions Judge, Hyderabad and another" (2019 MLD 804). He has further argued that the Respondent No.3 is also entitled to get the custody of the minor because the Petitioner has failed to provide conducive atmosphere to minor, whereas the Respondent No.3 being natural guardian/father is entitled to get custody of the minor who will provide better maintenance to her. Learned also placed reliance on "Mrs. Seema Chaudhry and another v. Ahsan Ashraf Sheikh and others" (PLD 2003 SC 877), "Shabana Naz v. Muhammad Saleem" (2014 SCMR 343), "Nazia Bibi and others v. Additional District Judge, Ferozewala and others" (PLD 2018 Lahore 916), "Muhammad Alam v. Nazish Qazi and 2 others" (2018 YLR 1771) and "Mst. Shahnaz Bibi and another v. Nazeer Ahmed and 3 others" (2019 MLD 753).

5. Arguments heard. Record perused.

6. It is reflected from perusal of record that in the matter of custody of minor, the paramount consideration is welfare of the minor and the Courts have to adjudge that out of father and mother who is the best suited for the custody of minor. Under Muslim Personal Law, mother is entitled to the custody of daughter even after she has attained the age of puberty and until she is married. Hence, both the learned Courts below have rightly appreciated the law as well as evidence while dismissing the Application under Section 25 of the Act and declined custody of the minor daughter to the Respondent No.3.

7. As regard chalking of meeting schedule of minor with the Respondent No.3 is concerned, the learned Guardian Judge has rightly passed the judgment because the father could not be denied right of access to his minor daughter nor would he be considered an alien enemy to her. The minor/daughter would not only need love, affection,

care and attention of her mother but also the company and guiding hand of father. Therefore, negating father of his right to meet his daughter would lead to emotional deprivation. Hence, the learned Courts below have rightly chalked out reasonable visitation/meeting schedule of the minor with the father in light of the dictum laid down by the Hon'ble Supreme Court of Pakistan in the judgment cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991).

8. In view of above, the findings of both the learned Courts below are based on cogent reasons and no illegality, irregularity, misreading or non-reading of evidence has been found. Resultantly, this petition is hereby dismissed with no order as to costs.

SA/S-42/L Petition dismissed.

96- **Sample of Pleadings**

1. APPLICATION FOR THE GRANT OF VIRTUAL VISITATION RIGHTS TO THE NON RESIDENT NON CUSTODIAL FATHER

IN THE COURT OF SENIOR GUARDIAN JUDGE, AT LAHORE

PETITION No.____/2022

_____ *son of* _____ *resident of* _____

……..PETITIONER

VERSUS

Mst. _____ daughter of _____ resident of _____.

……..RESPONDENT

_____ son of _____, (minor son) aged about 6 years and 4 months presently living in the care and custody of Respondent mother at her address

…

..**WARD**

APPLICATION UNDER THE PROVISIONS OF ITEM NO. 5 OF THE SCHEDULE ATTACHED WITH THE FAMILY COURTS ACT 1964 TO BE READ WITH ALL OTHER ENABLING PROVISIONS OF GUARDIAN & WARDS ACT 1890, FOR THE GRANT OF INTERIM VIRTUAL VISITATION RIGHTS OF CONVERSATION WITH THE MINOR, TO THE APPLICANT BEING HIS REAL BUT NON CUSTODIAL FATHER EX DEBITITIO JUSTATIE

Respectfully Sheweth:

1. **That** the addresses of the parties are correctly mentioned in the heading of the plaint for the effective service of the summons and notices issued by this Honourable Court.
2. **That** the brief facts leading to the filing of the instant Application are enumerated here to below:
3. **THAT** it is pertinent to be noted here that the Applicant is a U.S. Citizen having Passport No. _____ of Pakistani decent whereas respondent No. 1 is a Canadian Citizen having Passport No. _____ of a Pakistani Decent. That the Petitioner contracted marriage with the Respondent on 15-08-2015 in accordance with the injunctions of Islam and Sunnah of the Holy Prophet (peace be upon him) at Islamabad. Soon after marriage, both the spouses shifted to New

Jersey, United States as the Petitioner is settled at New Jersey for the purposes of earning his livelihood. Copies of Nakanama and Marriage Certificate are attached herewith as **ANNEXURE "A- A1".**

4. **THAT** the couple, out of the wedlock, were blessed with a minor son on _____ born in New Jersey, United States of America, having a dual Nationality. Copy of Birth Certificate of the minor son namely _____ is appended herewith as **ANNEXURE "B".**

5. **THAT** after the birth of the child, Respondent went to Pakistan with the child twice. Later on , the Respondent took up the trip firstly in March 2017 and the second trip she undertook in November 2017. Before leaving for Pakistan on 25.11.2017 Respondent assured the Applicant that she would return with the child soon, whereupon the Applicant signed the one-time travel documents in favor of the Respondent on the said assurance tendered by the Respondent. It is pertinent to be noted here at this juncture that after landing in Pakistan, the Respondent started exerting pressure upon the Applicant and refused to return to USA along with the minor child on the agreed date i.e. 02-02-2018 in clear cut violation to the terms of one-time travel consent letter issued by the Applicant in favor of the Respondent. That the Applicant with an aim to resolve the controversy and reconcile with the Respondent travelled to Pakistan firstly on 15.02.2018, but his efforts went in vain and he had to return to USA, thereafter he again visited Pakistan on _____, however during the entire duration of the petitioner's trip to Pakistan, Respondent and her family did not allow the petitioner to spend any time with the minor child alone. While feeling completely helpless, the Applicant approached the Family Court at New Jersey, USA that very graciously granted temporary custody of the minor to the Applicant Further Pakistani Officials were requested to assist in the production of the child.

6. **THAT** the Respondent in order to frustrate the Orders of US Court, and to deprive the Applicant from the lawful custody of his minor son namely _____ filed multiple Suits in Pakistan, i.e. Suit for Recovery of Maintenance and Suit for her being appointed as legal guardian of the minor, which were duly contested by the Applicant and the same are still pending adjudication, Applicant has also filed a Petition for the grant of permanent custody of the minor in as much as a Petition for the execution of the Foreign Judgment, and the same are pending adjudication.

7. **THAT** since 25-11-2017, the minor is under the supervision of Respondent and a complete contact denial has been practiced upon the Petitioner despite the fact that he is regularly maintaining the minor by paying the interim maintenance allowance fixed by this Honourable Court.

8. **THAT** the Petitioner / Petitioner is a Non-Custodial Father of the minor as custody ad litem of the minor child has been retained by Respondent Mother in the instant matter. And it is a well-established fact that the Petitioner, being a non-custodial father shall have to make extra effort to prove him presentable, acceptable and eligible in order to win the heart of his child as well as of the court; whereas the Respondent Mother is freely enjoying continuous and unconditional custody of the minor son. She is never required to prove her moral, mental or legal fitness to continue having the sole decision making power about the future of the child.

9. **THAT** there is no cavil to this proposition that the Petitioner being a father, is awarded natural guardianship by Allah Almighty in its entire Wisdom, whereas the mother has to look after the wellbeing of the minor child and that too is purely sponsored by the father.

10. **THAT** it is pertinent here to be noted that the family matters are not to be decided strictly on the yardstick of procedural laws nor any other principle aimed at the

observance of technicalities Paramount consideration before the court must be the welfare and betterment of the minor child, Courts in such a matter are required to act in a Loco Parentis position and large many considerations are required to be kept into consideration by the guardian Court. It is peculiar to be noted here that Child Custody Litigation is a true representative of "Justice delayed is justice denied". The mind of a child is like a perishable commodity. With the passage of time it is easy to change the innocent mind. Within months due to lack of interaction with non-custodian parent and constant brain washing by custodian parent and his/her family, the children start forgetting and in many cases disliking the non-custodian parent who once used to be extremely dear and loved one. That it is further peculiar to be noted here that throughout the period of litigation, the custodial parent side is using this precious time to brainwash the children into believing unpardonable monstrosities about the Petitioner / Petitioner who is an alienated parent by fabricating false allegations (sometimes based on real but ignorable incidents). The minor child of the Petitioner is not mature enough to see similar human flaws in her Custodial Parent i.e. the Respondent Mother. The minor's maternal uncles and maternal aunties are also siding with the Respondent Mother /Custodial Parent in order to soothe the grieving child by making him believe that the Petitioner i.e. contesting parent knowingly left him and so he does not deserve the child's tears.

11. **THAT** the Petitioner has pinned his hopes for the permission to have Virtual Visitation Rights of access in favour of the Petitioner or in alternate for chalking out of an interim but Annual Visitation Schedule of Meeting with his minor son namely _____ aged above 6 years and on the following amongst other inter alia perspectives / grounds which this Honourable Court may consider appropriate for the determination

of the Welfare of the Minor child in the instant matter. Said perspectives are reproduced hereto below:

GROUNDS

A. **THAT** it is pertinent to be noted here that in guardianship matters, courts have to exercise quasi parental jurisdiction, the supreme consideration in such context is welfare of minor, to achieve such purpose, courts had unfettered powers. Interim Visitation Schedule is required to be chalked out on such principles. Contesting parents had inherent right to seek visitation to the minor, which is a statutory right of the father being a Non-Custodial Parent.

B. **THAT** it is the inalienable right of every minor child to have free access to his parents, including the Non-Custodial Grandparents for an appropriate time so as to develop a bonding, love and affection with his Non-Custodial Parental side of the family.

C. **THAT** the provisions of Section 5 of the Schedule attached with the Family Courts Act, 1964 are reproduced here to below for the better understanding of the term Visitation Rights;

> 5. Custody of children [**and the visitation rights of parents to meet them**].

D. **THAT** it is therefore pertinent to be noted here that Visitation' means a non-custodial parent's period of access to a child. Visitation right means a non-custodial Parent's, Court ordered privilege of spending time with a child who is living with another person, usually the custodial parent. A visitation order means an order establishing the visiting times for a non-custodial parent with his children. Although the non-custodial parent is responsible for the care of the child during visits, visitation differs from custody because non-custodial parent and child do not live together as a family unit. Hence the word "Parents" is categorically mentioned in Section 5 of the Schedule attached with the Family Courts Act 1964, allows grant of visitation rights to not only the father but also the grandparents of the minor.

E. **THAT** the stance of the Petitioner is further substantiated from the observations of the Honourable Islamabad High Court on the subject. It has been observed by the Honourable Court, that Family Court has jurisdiction to entertain and adjudicate upon an application for Visitation Rights filed by any of the parents to meet with their minor child. Reliance is placed at **2017 MLD 214 ISLAMABAD**

F. **THAT** undoubtedly as a Muslim, the Petitioner seeks guidance from the ultimate source of Divine Wisdom, Holy Quran, which clearly directs in these words, "No mother should be harmed through her child and no father through his child". On the contrary, regretfully stated that the Petitioner father despite being a law abiding citizen and a loving father feels chastened when he cannot meet his own child or have a reasonable interaction with him for a reasonable time.

G. THAT the Constitution of the Islamic Republic of Pakistan, 1973 also ensures, protects and guarantees the rights of the family in Art. 35, "The State shall protect the marriage, the family, the mother and the child". The legislature it its entire wisdom emphasized the word "family" which includes father, mother and child. Even after a marriage is terminated, the right of the child being able to enjoy the completeness of "family" (equal access to all parents and all sides of the family) is to be protected under **Article 35**. Intention and object of the framers of the Constitution, while inserting Art.35 was to protect the child from all types of hostile forces, so that it was ensured that he was brought up in conducive and favorable social environments; and more particularly to become a viable citizen with Honour and grace. Likewise, the entire focus of this Hon'ble Court is on the welfare of minor.

H. **THAT** in **Art.4 of the Constitution** of the Islamic Republic of Pakistan, 1973, *"right of individuals to be dealt with in accordance with law, etc",* the point (b) "no person shall be prevented from or be hindered in doing that which is not prohibited by law", clearly directs how a just division of time should be made between two separated parents with their

children. The Petitioner as a loving father and according to the Constitution cannot be barred from having free access to his child for a reasonable and meaningful time during the pendency of the instant litigation between spouses.

I. **THAT** it is scientifically proven that living in a state of prolonged anticipation is highly stressful because human body keeps on releasing certain chemical throughout a period of mental disturbance. When a child is unsure that despite a court order or schedule, if or not he/she will be able to meet the father as scheduled, the child enters a prolonged state of confusion, stress and anticipation. The most crucial time in this regard is right after separation while the child still is highly attached to both parents, who are his/her entire world.

J. **THAT** the facts narrated hereto above are an attempt to discuss Allah Almighty's clear directions about balance of power and responsibilities, respecting the natural attributes Allah Almighty bequeaths upon all genders and resolution of the conflicts. Then science backed impact of anxiety on the innocent brains of minor son of the Petitioner. Constitutional guarantee with the rights of individuals and particularly in this case, the Petitioner father; likewise, this Hon'ble Court is dealing with such type of matters on regular basis, undoubtedly, with abundant caution and care in its entire wisdom and parental jurisdiction. The application is an effort to show this Hon'ble Court; sufferings of a non-custodial father; that the only answer to this excruciating problem is introduction of a balanced and just virtual visitation schedule in line according to the human nature and teachings of Quran and Sunnah. A comprehensive virtual visitation plan must be designed, based on an undeniable logic; that the minor son of the Petitioner should be entitled to the continuation of all the healthy activities he/she enjoyed with the non-custodial parent i.e. Petitioner. If a regular unfettered contact of the Petitioner with his minor son is ensured, none of the three parties would feel cheated out of their fair share of each other.

K. **THAT** the minor child of the Petitioner is a growing up child and he has to understand roles, feelings and responsibilities of each parent, which is not possible when the minor child watches his mother trying to play a father's role and failing at her own. A balanced visitation plan would let both parents and grandparents of the minor to polish his own natural act and ensuring the best welfare of the minor.

L. **THAT** since November 2017, the Ward is in the care and Custody of the Respondent and total denial of access to the ward has been practiced upon the Petitioner, without any legal justification.

M. **THAT** In view of the above submissions, it is therefore most humbly prayed that this Honourable Court may very graciously accept the instant Application in the best interests of the principles of Natural Justice, Fair Play, Equity and the Welfare of Minor and grant reasonable virtual access to the Petitioner with his minor son as the prominence of real-time, interactive video technology provides individuals the opportunity to communicate in the face of physical separation. The iPhone's FaceTime Application, Gmail's g-chat phone and video application, and Skype software exemplify the realm of tools that facilitate people's ability to maintain relationships despite the geographical distance between them.

N. **THAT** the in the instant matter the Petitioner, father of the minor is employed in United States of America, hence he seeks the attention of this Honourable Court for the grant of "virtual visitation rights," while utilizing available technology such as web cameras and other Internet tools to provide regular and visual contact between a noncustodial parent and his child.

o. **THAT** the Petitioner father also requests to have a right to have access to the minor's study reports, medical, dental, optical records, and to keep track of his religious training.

PRAYER

THAT it is therefore most humbly prayed that the instant application may very kindly be accepted in the best interest of the minor, doctrine of welfare of minor , principles of natural justice and fair play and an adequate and appropriate rights of "Virtual Visitation" for an appropriate time duration may very kindly be allowed to the Applicant to have a reasonable interaction with his minor son namely _____ and to extend the Applicant an opportunity to remain in contact with his minor child for future reunion, on twice in a week basis through this Honourable Court till the final adjudication of the litigation between the parties.

That any other relief that this Honourable Court deems just and proper may also very kindly be allowed to the Petitioner in the peculiar circumstances of the instant matter.

PETITIONER

THROUGH

FAHAD AHMAD SIDDIQI
Advocate Supreme Court
PLH CC No. 19737

SHAHZAD FAROOQ
Advocate Supreme Court

ANSA YASIN
Advocate Supreme Court

For

QADEER AHMAD SIDDIQI LAW ASSOCIATES
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10-01-2023

VERIFICATION

It is verified on oath on this day of 10-01-2023 at Lahore that the above mentioned contents of the affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

DEPONENT

2. PETITION UNDER ITEM NO. 5 OF THE SCHEDULE ATTACHED WITH THE FAMILY COURTS ACT 1964 FOR THE GRANT OF GENEROUS AT HOME VISITATION RIGHTS

IN THE COURT OF SENIOR CIVIL JUDGE HAVING THE POWERS OF FAMILY/ GUARDAIN COURT AT LAHORE

PETITION No.___/2023

Mst. _____ *daughter of* _____ *resident of* _____

……..PETITIONER

VERSUS

Mr. _____ daughter of _____ resident of _____.

……..RESPONDENT

_____ son of _____, (minor son) aged about 6 years and 4 months presently living in the care and custody of Respondent mother at her address

…

..**WARD**

PETITION UNDER THE PROVISIONS OF ITEM No. 5. OF THE SCHEDULE ATTACHED WITH THE WEST PAKISTAN FAMILY COURTS ACT 1964, TO BE READ WITH SECTION 12 OF THE GUARDIAN AND WARDS ACT 1890, FOR THE GRANT OF GENEROUS BUT TEMPORARY ACCESS TOWARDS ALL THE THREE MINOR CHILDREN ON SHARED PARENTING BASIS, TO THE APPLICANT, EX-DEBITITIO JUSTITIAE

12. **That** the addresses of the parties are correctly mentioned in the heading of the plaint for the effective service of the summons and notices issued by this Honourable Court.

13. **That** the Petitioner contracted marriage with the Respondent in accordance with the injunctions of Islam on 15-04-2006 at Lahore. The couple was blessed with three minor children namely _____, _____ & _____ respectively. Copy of the Nikkah Certificate and Birth certificates of minors are appended herewith as **ANNEXURE "A & A-1".**

14. **That** it is pertinent to be noted here that certain irreconcilable differences erupted between the spouses and the Respondent while retaining all the three minor children pronounced divorce upon the Petitioner vide dated _____. Copy of the Divorce Deed is appended herewith as **ANNEXURE "B"**

15. **That** it is pertinent to be noted here that Applicant is a Non-Custodial Parent in the instant litigation and is contesting litigation for the grant of generous at home visitation Rights of access with her minor children namely _____, _____ & _____, all the three minor children are school going children and are attaining education in Newlands Defence Branch at Lahore

16. **That** the Applicant approached family elders of both the parties, for the rehabilitation and settlement of issues between her and the Respondent in respect of grant of generous at home access and visitation rights of the Petitioner towards her minor children innumerous times, however no heed was paid by the Respondent side for the redresser of her legitimate grievances in as much as a deaf ear was given to the requests of the.

17. **That** the Instant Application is filed for the grant of Generous Visitation Rights of Access in terms of Annual Visitation Schedule of Meeting, under the provisions of Item No. 5 of the Schedule attached with the Family Courts Act 1964 to be read with the provisions of Section 12of Guardian & Wards Act whereby this Hon'ble Court would be deciding main relief qua appropriate and adequate Visitation Rights of Access to the minor children in the first instance and of the Petitioner being real mother of the minors in the second, save in accordance with the doctrine of welfare of the minors.

18. **That** the Applicant has pinned her hopes in this Learned Court for the grant of a reasonable at home parental visitation rights under the Provisions of Section 5 of the Schedule Attached with the Family Courts ACT 1964 ON EQUALITY BASIS at the home of the mother of all the three minor children i.e., ex-Debitio Justitiae to avoid estrangement with her all three children as named above on the following amongst other inter alia

GROUNDS

a. **That** it is the inalienable right of every minor child to have free access to his/her parents, including the Non-Custodial Grandparents for an appropriate time so as to develop a bonding, love and affection with his Non-Custodial Parental side of the family.

b. **That** the provisions of Section 5 of the Guardian & Wards Act are reproduced here to below for the better understanding of the term Visitation Rights;

> 5. Custody of children [and the visitation rights of parents to meet them].

c. **That** it is therefore pertinent to be noted here that Visitation' means a non-custodial parent's period of access to a child. Visitation right means a non-custodial Parent's or grandparent's Court ordered privilege of spending time with a child or grandchild who is living with another person, usually the custodial parent. A visitation order means an order establishing the visiting times for a non-custodial parent with his or her children. Although the non-custodial parent is responsible for the care of the child during visits, visitation differs from custody because non-custodial parent and child do not live together as a family unit. Hence the word "Parents" is categorically mentioned in Section 5 of the Schedule attached with the Family Courts Act 1964, allows grant of visitation rights to not only the non-custodial parent but also the maternal grandparents of the minor.

d. **That** the stance of the Applicant is further substantiated from the Citation Mohammad Tabish Khan Vs Additional District Judge, Lahore (2014 SCMR 1365).

> "--- Scope--- Family Court was a quasi – judicial forum which could draw and follow its own procedure, provided such procedure was not against the principles of fair hearing and trial."

e. **That** it is pertinent to be noted here that the provisions of Section 5 of the Schedule Attached with Family Court Act 1964 allows the Applicant to seek Visitation Rights of access to meet her three minor children on equality basis and the same are protected under the said provision independently.

f. **That** it is stated here further with humility that the family matters are not to be decided strictly on the yardstick of procedural laws nor any other principle aimed at the observance of technicalities, Paramount consideration before the court must be the welfare of the minor and betterment of the minor, Courts in such a matter are required to act in a Loco Parentis position and large many considerations are required to be kept into consideration by the guardian Court. It is peculiar to be noted here that Child Custody Litigation is a true representative of a litigation where "Justice delayed is justice denied". The mind of a child is like a perishable commodity. With the passage of time it is easy to change the innocent mind. Within months due to lack of interaction with non-custodial side of the parent and constant brain washing by custodian parent and his/her family, the children start forgetting and in many cases disliking the non-custodian parent who once used to be extremely dear and loved one. That it is further peculiar to be noted here that it is seen in most of the cases that throughout the period of litigation, the Respondent i.e. custodial parent usually uses this precious time to brainwash the children into believing unpardonable monstrosities about her paternal side of the family who is an alienated side of the parent by fabricating false allegations (sometimes based on real but ignorable incidents). The minors involved in child custody litigation are often not mature enough to see similar human flaws in the custodial parent. The minor's paternal uncles and paternal

aunties are also seen siding with the Respondent /custodial parent in order to soothe the grieving children by making them believe that the contesting parent knowingly left them and so she does not deserve the children's tears.

g. **That** it is peculiar to be stated here with respect that a Non-Custodial Mother could not be considered an alien enemy qua her minor children. A child would need love, affection, care and attention of father as well as love, affection, company and guiding hand of a mother if alive. Depriving a mother of her right to meet her children for a reasonable time would lead to emotional deprivation on both sides. Any amount of acrimony between ex-spouses should not be allowed to stand in way of welfare of minor.

h. **That** it is further most humbly reiterated here with respect that it is observed in a recent Judgment of the Honourable Lahore High Court, approved for reporting, titled as Maimoona Ilyas Vs Imran Mirza, in case reported as 2017 CLC 1747 Lahore, that,

> *"It is observed that the Guardian Judge exercises a parental jurisdiction and there is no scope of such jurisdiction for any undue adherence to technicalities. Separate applications can be made on fresh grounds. Reliance was placed at (PLD 1967 SC 402)".*

i. **That** the Applicant also requests to have a right to have access to the minor children's schools, study reports, medical, dental, optical records, and to keep track of their religious training.

PRAYER

That In view of the above submissions, in as much as keeping the present age of the minor child, This Honourable Court may very graciously accept the instant Petition in the best interests of the principles of Natural Justice, Fair Play, Equity and the Welfare of Minor and may very kindly be pleased to grant:-

a). **An** Annual Interim Parenting Visitation Schedule may kindly

be granted to the Applicant being real mother of the minor children namely _____, _____ & _____ for temporary custody of the minors at her home at the ratio of 50% time of every calendar year; containing:

b). **An** overnight stay, on each weekend, with the Applicant at her home to keep the minors actively in connection with their mother, grandparents in as much as maternal uncles and maternal aunties and their children and other paternal side of the family.

c). **At** least 2 overnight stays at the home of the Applicant on the eve of Eid ul Fitr , Eid ul Azha, Eid – Milad-un Nabi, & Ashoora-a- Moharram Holidays, every year, so as to enable the maternal side of the family to educate and equip the minor children with the importance of religious occasions.

e). **Ap**proximately 50% of time of all gazzatted holidays may also be granted including Independence day, Pakistan day, Labor Day, Kashmir Day etc;

f). **Ap**proximately 50% of time of all School holidays may very kindly be allowed to the Applicant including Summer, Winter & Spring holidays.

g). **An** opportunity / information to the Applicant who is a Non-Custodial mother, if either of the minor child falls ill, as soon as possible;

h). **In** case the father is unable to take care of the children because of some emergency, the Applicant should be given priority right to take care of all the minor children;

i). **An** access to the medical, dental, optical & Vaccination records, and to keep track of her/his religious training may kindly be granted;

j). **S**pecial time for days important to the children, including birthdays of mother, maternal grandparents and Aunty;

k). **A**n access of the minors to their real mother through internet should also be made affective

k. **That** the Applicant further seeks the grant of temporary custody of her minor children on the following dates as well:

i. Birthday of Mother on 04th February

ii. Birthday of Grandmother of the minors on 28th August
iii. Birthday of Grandfather on 01st August
iv. Birthday of _____ on 03rd September
v. Birthday of _____ on 22nd July
vi. And Birthday of _____on 05th of March

That it is further prayed that a penal Clause may also very kindly be included where under if either of the parties do not follow the meeting schedule of or cause any kind of hindrance thereto without assigning any plausible justification then the party contravening the schedule must be penalized to pay an amount of Rs. 10,000/- cost for each such violation and temporary interim custody of both the minor children shall be handed over to the Applicant.

That any other relief that this Honourable Court deems just and appropriate may also very graciously be extended to the Applicant while keeping in view of the peculiar circumstances of the instant matter.

APPLICANT

THROUGH

FAHAD AHMAD SIDDIQI
Advocate Supreme Court.
PLH CC No. 19737

For

M/s. QADEER AHMAD SIDDIQI LAW ASSOCIATES
M/s. Child Custody Law Services in Pakistan
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18.03.2023

IN THE COURT OF SENIOR CIVIL JUDGE HAVING THE POWERS OF FAMILY/ GUARDAIN COURT AT LAHORE

PETITION No.___/2023

In Re:

_____ Vs _____

AFFIDAVIT OF

I, _____ daughter of _____, resident of _____, Lahore, the above named deponent do hereby solemnly affirm and declare that the contents of the accompanying Petition filed under the Provisions of Item No. 5 of the Schedule attached with the Family Courts Act 1964 for the grant of Generous at home Visitation Rights of access with her three minor children namely _____, _____ & _____ at her home are true and correct to the best of my knowledge and belief and nothing has been concealed there-from.

DEPONENT

VERIFICATION

It is verified on oath on this 18th March 2023 at Lahore that the above mentioned contents of the affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

DEPONENT

3. PETITION FOR THE MODIFICATION OF SCHEDULE OF VISITATION

IN THE COURT OF SENIOR GUARDIAN JUDGE, AT LAHORE

PETITION No.____/2023

_____ son of _____ resident of _____

PETITIONER

VERSUS

Mst. _____ daughter of _____ resident of _____

RESPONDENT

PETITION UNDER THE PROVISIONS OF SECTION 5 OF THE SCHEDULE ATTACHED WITH THE FAMILY COURT ACT 1964 TO BE READ WITH ALL OTHER ENABLING LAW FOR THE MODIFICATION OF SCHEUDLE OF VISITATION CHALKED OUT IN AGREEMENT BETWEEN THE PARTIES, AND ACCORDINGLY GRANT OF GENEROUS VISITATION RIGHTS IN THE ORDER OF AN ANNUAL VISITATION SCHEDULE OF MEETING WITH HIS MINOR SON NAMELY _____ AT HIS HOME AND ON 50% EQUALITY BASIS, EX- DEBITO JUSTITIAE, TO THE PETITIONER RESPECTIVELY

Respectfully **S**heweth:

1. **That** the addresses of the parties are correctly mentioned in the heading of the plaint for the effective service of the summons and notices issued by this Honourable Court.

2. **That** the addresses of the parties are correctly mentioned in the heading of the plaint for the effective service of the summons and notices issued by this Honourable Court.

3. **That** the Plaintiff is married to the Defendant on 12.01.2017 in accordance with the injunctions of Islam and Sunnah of the Holy Prophet (peace be upon him).

4. **That** the Plaintiff is blessed with a minor son namely _____ on 15th December 2017 at _____Hospital Lahore, expenses were all borne by the Plaintiff, and minor Ward is presently aged above 5 years and 08 months, out of this wedlock.

5. **That** it is pertinent to be noted here that the relationship between the spouses remained cordial throughout the subsistence of their marriage, however, after the birth of the minor son, the relationship between the spouses started facing undue and uncalled for interference from the father of the Defendant, which eventually resulted in separation. And the Defendant opted for Forced Voluntary Separation since December 2020, accordingly litigation was instituted from both the sides. It is significant to be noted here that later sanity prevailed and while keeping in view of the tender age of the minor as the minor was only 3 years of age at that time, both the parties entered into a compromise vide Family Settlement dated 13th December 2021 whereby the Petitioner was allowed a ten (hours) visitation on every Friday in addition to have temporary access of minor on three consecutive days in last week of every calendar month. In addition, maintenance of minor was fixed at Rs. 50,000/- per month to which the Petitioner agreed to pay and accordingly both the parents of the minor agreed mutually to be appointed as joint legal guardian of the minor. Copy of the Family Settlement is appended herewith as **ANNEXURE "A".**

6. **That** accordingly this family agreement was submitted in the Predecessor Court and the Learned Court also bound both the parties to abide the terms and condition of the agreement vide its Order dated 13-12-2021 and dismissed the Petition as having been withdrawn by the

Petitioner. Copy of the Order dated 13-12-2021 passed by the Learned Predecessor Court is appended herewith as **ANNEXURE "B"**

7. **That** it is pertinent to be noted here that Petitioner is a Non-Custodial Parent in the instant litigation and has already surrendered his right of custody of the minor by entering into a family settlement with the Respondent, has diligently been fulfilling his responsibilities as a Father, have been paying a sum of Rs. 50,000/- per month as maintenance and a sum of Rs. 60,000/- per month as School Fees, got his son admitted in one of the expensive and he is attaining education in Grade 1 in _____, in its DHA Branch, Phase VI, Lahore without any default however That the family settlement continued for more than one and a half year smoothly but now, for reasons not comprehendible by the Petitioner, the Respondent has started causing inconvenience for the Petitioner without any plausible rhyme and justification. Absolute contact denial is being practiced on the Petitioner since for the last more than a month. All of his for reconciliation has failed and the Respondent is not allowing the minor's access towards the Petitioner hence this Petition.

8. **That** the Petitioner approached family elders of both the families, for the resumption of his regular visitation with his minor son, however no heed was paid by the Respondent side to the Petitioner's for the redresser of legitimate grievances of the Petitioner.

9. **That** the Instant Petition is filed for the grant of Generous Visitation Rights of Access in terms of Annual Visitation Schedule of Meeting, under the provisions of Item No. 5 of the Schedule attached with the Family Courts Act 1964 to be read with the provisions of Section 12of Guardian & Wards Act whereby this Hon'ble Court would be deciding main relief qua appropriate and adequate Visitation Rights of Access to the minor son in consideration of the needs of association of a growing up minor son while modifying the schedule of visitation agreed mutually by both the parties through a Family Settlement.

10. **That** it is stated here with humility that the mind of a child is like a perishable commodity. With the passage of time it is easy to change the innocent mind. Within months due to lack of interaction with non-custodial parent and constant brain washing by custodian parent and his/her family, the child start forgetting and in many cases disliking the non-custodial parent who once used to be extremely dear and loved one. That the Petitioner apprehend that the Respondent i.e. custodial parent is using this precious time to brainwash the child into believing

unpardonable monstrosities about the Petitioner who is an alienated parent by fabricating false allegations (sometimes based on real but ignorable incidents). The minor is not mature enough to see similar human flaws in the custodial parent. The minor's maternal uncles and maternal aunties are also siding with the Respondent /custodial parent in order to soothe the grieving child by making him believe the contesting parent knowingly left him so he does not deserve the child's tears.

11. **That** the Petitioner has pinned his hopes in this Learned Court for the modification of schedule of visitation mutually agreed by both the parties vide dated 13-12-2021 and for the grant of a generous and a balanced parental visitation rights while keeping in view of the growing needs of association with the father as are attached with growing age of the minor under the Provisions of Section 5 of the Schedule Attached with the Family Courts ACT 1964 ON EQUALITY BASIS at the home of the father i.e., ex- Debito Justitiae to avoid estrangement with his minor son namely _____aged about 5 years and 08 months and who is attaining education in _____, Lahore on the following amongst other inter alia

GROUNDS

i). That Father being natural guardian, has an inherent right to properly and effectively participate in the upbringing of the minor while developing proper bonding and love with the minor that can only be achieved if the visitation schedule is chalked out in such a manner that the non-custodial parent meets the child in a pleasant, homely and responsive environment on frequent and regular basis. A balanced annual visitation plan would benefit the child as it would allow significant time to develop a meaningful relationship with both parents. Overnight access could also benefit the child by giving him an opportunity to interact with the family of the non-custodial parent and maintain relations with them. Learned Guardian Courts are obligated to chalk out a schedule in such a manner that both the parents must be accommodated in such a way that one parent should not be deprived from participating in the important aspects and events of the minor's life, inter alia, school and leisure time activities,

annual vacations, birthdays, and other important occasions and festivals such as Eid etc. The fundamental rule which the Court must follow is to ensure that the minor spends proper and adequate time with non-custodial parent who can also exhibit his or her love and affection towards the child for which overnight stay with non-custodial parent is one of the most appropriate steps and in this regard different arrangements work better for children of different ages.

ii). That it is further significant to be asserted here that the time when both the parties have entered into a compromise, the age of minor was only three years, whereas now he has crossed the age barrier of 5 years and admittedly, Petitioner is father of the minor and being the natural guardian he had right of his supervision under the Islamic Law, therefore, on separation of the parents the minor could not be permanently deprived from the love and affection of either of the parents—Minor, in the present case, is five years and eight months of age therefore, he should have maximum interaction with the father even if the custody was with the mother, otherwise, it may cause an estrangement in the mind of the child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father—Court, in order to achieve such goal, was to make every possible effort to chalk out reasonable visitation schedule in friendly atmosphere.

iii). That the instant application is an effort to show this Hon'ble Court; sufferings of a non-custodial father; that the only answer to this excruciating problem is introduction of a balanced and just yearlong visitation schedule in line according to the human nature and teachings of Quran and Sunnah. A comprehensive visitation plan must be designed based on an undeniable logic; that the minors should be entitled to the continuation of all the healthy activities he/she enjoyed with the non-custodial parent i.e. Applicant father. If a regular unfettered contact of the minors with both the parents would be ensured, none of the three parties would feel cheated out of their fair share of each other.

iv). **That** it is the inalienable right of every minor child to have free access to his parents, including the Non-Custodial Grandparents for an appropriate time so as to develop a bonding, love and affection with his Non-Custodial Parental side of the family.

v). **That** the provisions of Section 5 of the Guardian & Wards Act are reproduced here to below for the better understanding of the term Visitation Rights;

> 5. Custody of children [**and the visitation rights of parents to meet them**].

vi). That it is therefore pertinent to be noted here that Visitation' means a non-custodial parent's period of access to a child. Visitation right means a non-custodial Parent's, Court ordered privilege of spending time with a child who is living with another person, usually the custodial parent. A visitation order means an order establishing the visiting times for a non-custodial parent with his children. Although the non-custodial parent is responsible for the care of the child during visits, visitation differs from custody because non-custodial parent and child do not live together as a family unit. Hence the word "Parents" is categorically mentioned in Section 5 of the Schedule attached with the Family Courts Act 1964, allows grant of visitation rights to not only the father but also the grandparents of the minor.

vii). **That** the stance of the Petitioner is further substantiated from the Citation Mohammad Tabish Khan Vs Additional District Judge , Lahore (2014 SCMR 1365).

"--- Scope--- Family Court was a quasi –judicial forum which could draw and follow its own procedure , provided such procedure was not against the principles of fair hearing and trial."

viii). That in all eventualities of Law and Religion, complete focus is made towards the father, especially when male child is involved, as the core processing unit in a family, responsible not only for providing financially for his children but also ensuring sound moral guidance for the entire unit.

ix). That admittedly the Petitioner is the real father of minor son who is regularly maintaining his son to the best of his resources in as much as has surrendered his right over his son for permanent custody and being the Natural Guardian of the minor he has his right of supervision under the Islamic Law. Therefore, on separation of the Parents, the minor son cannot be deprived of love and affection of either of the Parents. Therefore minor

should have appropriate interaction with his father even if the custody is with mother; otherwise it may cause estrangement in the mind of each child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father. In order to achieve this goal, this Honourable Court is required to make every possible effort to chalk out a reasonable visitation schedule in a congenial, homely and friendly atmosphere. Reliance is placed on **PLD 2018 Quetta 44**

x). **That** it is pertinent to be noted here that in guardianship matters, courts have to exercise quasi parental jurisdiction, the supreme consideration in such context is welfare of minor, to achieve such purpose, courts had unfettered powers. Interim Visitation Schedule is required to be chalked out on such principles. Contesting parents has inherent right to seek visitation to the minor, which is a statutory right of the father being a Non Custodial Parent. Reliance is placed at **1991 PLD 95 Lahore**

xi). That it is further reiterated herewith humility that although this doctrine & principle of welfare of the minor has been evolved with respect to the final orders of custody, yet there appears no plausible reason not to extend it to the decisions of the petitions / applications moved under Section 12 of the Guardian & Wards Act 1890. Contesting parents has inherent right to seek visitation to the minors, especially father, who is a natural guardian. Reliance is placed at **2014 MLD 1579 Lahore**

xii). That it is stated here with humility that the Custody is not but the Visitation is the inalienable right of the Non Custodial Parent in as much as that of the Minor Son. it is reiterated here with humility that the Petitioner is the real father of the minor and his Visitation Rights involved the rights of minor son 's toward his father. it is significant to reiterate here with humility that fatherly supervision, channeling his activities, would be beneficial for the welfare of the minor, which could not be denied. Reliance is placed at **2019 MLD 804 Karachi.**

xiii). That the Constitution of the Islamic Republic of Pakistan, 1973 also ensures, protects and guarantees the rights of the family in Art. 35, "The State shall protect the marriage, the family, the mother and the child". The legislature it its entire wisdom emphasized the word "family" which includes father, mother and child. Even after a marriage is terminated, the right of the child being able to enjoy the completeness of "family" (equal access to both parents and both sides of the family) is to be protected under article 35. Intention and object of the framers of the Constitution, while inserting Art.35 was to protect the child from all types of hostile forces, so that it was ensured that he was brought up in conducive and favorable social environments; and more particularly to become a

viable citizen with honour and grace. Likewise, the entire focus of this Hon'ble Court is on the welfare of minor.

xiv). **That** it is scientifically proven that living in a state of prolonged anticipation is highly stressful because human body keeps on releasing certain chemical throughout a period of mental disturbance. When a child is unsure that despite a court order or schedule, if or not he/she will be able to meet the father as scheduled, the child enters a prolonged state of confusion, stress and anticipation. The most crucial time in this regard is right after separation while the child still is highly attached to both parents, who are his/her entire world. This is noteworthy to mention here that to give a balanced visitation schedule to the applicant/Applicant father and enforce the same through the exercise of parental jurisdiction of this Hon'ble Court so the minors know right from the start exactly when and or how long he/she will meet the father and as a result he/she can go on living the life without being in a state of anxiety all the time.

xv). **That** it is the inalienable right of every minor child to have free access to his parents irrespective of their marital status, including the Non-Custodial grandparents for an appropriate time so as to develop a bonding, love and affection with them.

xvi). **That** the minor son is in his growing age and is attending school regularly hence he has to understand roles, feelings and responsibilities of each parent, which is not possible when the minor watch his mother trying to play a father's role and failing at her own. A balanced visitation plan would let both parents to polish their own natural act and ensuring the best welfare of the minor.

xvii). **That** it is significant to be noted here with respect that the Head of Department of Applied Psychology, University of the Punjab, while submitting her recommendation in Writ Petition bearing No. 28566/11 has suggested that

"Family matters, particularly those involving need empathetic procedural facilitations to mitigate the negative effect of ongoing trauma faced by the child after having his/ her parents, grandparents and significant others being divided. The foremost importance should be the welfare and betterment of the minor child which may be determined and decided without getting into the procedural technicalities. E.g. the schedule of visitation and venue of visitation should be negotiated and finalized at a very early stage of litigation keeping in view that the Non Custodial Parent is not a lesser one and has also been affected emotionally and psychologically. Delays in court proceedings keep children from meeting their non custodial parents for months and in some cases for years and the lapse of time in such cases may be fatal for the psychological growth of the minor child and his / her relationship with his / her Non Custodial Parent. With the passage of time it is easy to change the innocent mind.

Within months due to lack of interaction with Non custodial Parent and probable brain washing by the custodial parent and his / her family , the child may start forgetting and in many cases disliking the non custodial parent who once used to be extremely dear and loved one."
That it has further been observed by the Chairperson of the Department of Applied Psychology in her recommendation submitted before the Honourable Division Bench of the Lahore High Court, that,
"**Long delays in the court proceedings and visitation schedules have negative short and long term impact on mental health of minors. As per the existing practice of the esteemed court, to allow a non custodial parent meet the minor/s month after the divorce/ separation for a very brief time at the premises of the Court and in the presence of Custodial Parent may add to the agony of both, the child and the non custodial parent.**"
Copy of the reply submitted in the Honourable Division Bench of the Lahore High Court by the Chairperson of the Department of Applied Psychology is appended here for the perusal of this Learned Court as **Annexure "C"**.

xviii). That in the light of the decisions of the apex courts, it is reiterated here with humility that in the backdrop of the type of education the minor received in an urban society, he could not develop his emotional attachment with the father if he is not permitted to live with his father during half of the summer, winter and spring vacation period, hence, it would be just and reasonable to allow the minor to stay with the Petitioner and his Paternal family during half of his summer vacations. Reliance is placed upon **2014 MLD 1137 Lahore High Court Lahore.**

xix). That it is peculiar to be stated here with respect that a Father could not be considered an alien enemy qua children. Child would need love, affection, care and attention of mother as well as love, affection, company and guiding hand of a father. Depriving a father of his right to meet his children for a reasonable time would lead to emotional deprivation on both sides. Any amount of acrimony between ex-spouses should not be allowed to stand in way of welfare of minor. Father and minor should have access to each other and spend time in each other's company also during minor's vacation. Reliance is placed upon **2013 MLD 1631 Lahore**

xx). That the perusal of literature in respect of child psychology goes to reveal that a child attachment with non-custodial parent establishes only

when frequent visitations are paid by the non-custodial parent to the divorce affected minor child. The purpose of meeting of the minor with the non-custodial parent is to establish attachment, character building and bonding with the parent based upon love and affinity, which could only be achieved when minor gets adequate opportunity to remain in contact with the non-custodial parent frequently.

xxi). That unfortunately, however, decision makers in family law and mental health fields remain largely ignorant about several decades of research on child development. Child development researchers and child custody decision makers rarely cross paths, and most of the relevant publications intended for academic audiences are inaccessible to casual readers although this literature can be useful in conceptualizing children's needs after separation between their parents.

xxii). **That** the research goes to reveal that the development of attachment to parents and other important care givers constitutes one of the most critical achievements of the 1st year of life. These enduring ties pay essential formative roles in later social and emotional functioning of the minor. Infant- parent attachment promotes a sense of ownership as well as a sense of security, the beginning of self-confidence and the development of trust in other human beings. In this regard research article titled as "Using child development research to make appropriate custody and access decisions for young children, published in family and conciliation courts review; Los Angeles, July 2000, Joan B Kelly & Michael E Lamb, Volume 38, Issue No. 3:297-311, Published by Sage Publications can be taken into consideration wherein age based requirements of access of minor has been discussed at length and it has been described the fact of attachment which occurs between -4 to 08 years age and a child by actively seeking to remain near to preferred care givers, gives increasingly clear evidence that attachments have been formed. It is further highlighted in the said article that the empirical literature also shows that the infants and toddlers need regular interaction with both of their parents to foster and maintain their attachments which is not possible in template order of meeting comprising of merely an hour or two once or twice in a month and that too to be held within court premises, often passed by our family / guardian courts across Pakistan.

xxiii). **That** the Petitioner craves to agitate further grounds at the time of final arguments of the instant Petition.

PRAYER

That In view of the above submissions, in as much as keeping the present mental status of the minor child, This Honourable Court may very graciously accept the instant Petition in the best interests of the principles of Natural Justice, Fair Play, Equity and the Welfare of Minor and may very kindly be pleased to modify the schedule chalked out with consent of both the parties vide agreement dated _____ and grant:-

a). An **Annual Interim Parenting Visitation Schedule** may kindly be granted to the Petitioner /father for interim custody of the minor till decision of the main guardian petition at the ratio of 50% time of every calendar year; containing:

b). **At least two overnight stay, on each weekend**, with the Petitioner **at his home** to keep the minor actively in connection with his father, and grandparents in as much as paternal uncles and paternal aunties and their children and other paternal side of the family starting from Friday at 3.00 PM till Sunday 3.00 PM on every week of the colander month.

c). At least **2 overnight stays** at the home of the father on the eve of Eid-ul- Fitr , Eid ul Azha, Eid – Milad-un Nabi, & Ashoora-a- Moharram Holidays, every year, so as to enable their father to educate and equip the minor children with the importance of religious occasions.

d). An Overnight stay at the home of the Father on account of Public Holidays of Pakistan i.e. Day 23rd March, Kashmir Day i.e. 05th February , Independence Day i.e. 14th August and Defence Day i.e. 09th September respectively.

e). Half of the Summer/ Winter/ Spring Vacations as well as all the school vacations, as the minor son namely _____aged above 5 years and 8 months as he is attaining education and is a school going child; may very graciously be granted on shared and equality basis;

f). Approximately 50% of time of all gazzatted holidays may also be granted including Independence day;

g). An opportunity / information to the Petitioner/ Petitioner who is a Non-Custodial Parent if his child falls ill, as soon as possible;

h). In case the mother is unable to take care of the child because

of some emergency, the Petitioner /Petitioner should be given priority right to take care of the child;

i). an access to the school including minor's parent –teacher meetings, study reports, medical, dental, optical records, and to keep track of her/his religious training may kindly be granted;

j). Special time for days important to the child, including birthdays of her paternal grandparents, uncles, their children who are first degree cousins of the minor;

vii. Birthdays:
   i. Father on _____-
   ii. Paternal Grandfather on _____
   iii. Minor Ward namely _____on_____

viii. Paternal Cousins
   i. _____ on _____ (1st degree Paternal Cousin)

k). **That** mother and father both shall undertake not to subject both the minors to parental alienation against other parent and shall not do any act that may prejudice the minors' mind towards the other parent.

l). **That** it is further prayed that a penal Clause may also very kindly be included, in this revised schedule where under if either of the parties do not follow the meeting schedule or cause any kind of hindrance thereto without assigning any plausible justification than the party contravening the schedule must be penalized to pay an amount of Rs. 15,000/- cost for each such violation and temporary interim custody of both the minor children shall be handed over to the Petitioner.

That any other relief that this Honourable Court deems just and appropriate may also very graciously be extended to the Petitioner while keeping in view of the peculiar circumstances of the instant matter.

PETITIONER

THROUGH

FAHAD AHMAD SIDDIQI
Advocate Supreme Court.
PLH CC No. 19737

Moazzam Ali

Advocate Supreme Court
For

M/s. QADEER AHMAD SIDDIQI LAW ASSOCIATES
M/s. Child Custody Law Services in Pakistan
CHILD CUSTODY SPECIALIZED LAW CONSULTANTS, ADVISORS & SOLICITORS
Ground Floor, Siddiqi Plaza, 7- Turner Road, Opposite Lahore High Court at Lahore
Phone 92-42-37241319; Mob 92-300-8411403; Website: www.cclsip.com E-Mail: qaslaw@gmail.com ; https://www.facebook.com/CCLSIP/

02-09-2023

IN THE COURT OF SENIOR GUARDIAN JUDGE, AT LAHORE

PETITION No.____/2023

In Ref:

_____ **VS** *Mst.* _____

pETITION UNDER THE PROVISIONS OF SECTION 5 OF THE SCHEDULE ATTACHED WITH THE FAMILY COURT ACT 1964 TO BE READ WITH ALL OTHER ENABLING LAW FOR THE MODIFICATION OF SCHEUDLE OF VISITATION CHALKED OUT IN AGREEMENT BETWEEN THE PARTIES, AND ACCORDINGLY GRANT OF GENEROUS VISITATION RIGHTS IN THE ORDER OF AN ANNUAL VISITATION SCHEDULE OF MEETING WITH HIS MINOR SON NAMELY _____AT HIS HOME AND ON 50% EQUALITY BASIS, , RESPECTIVELY

AFFIDAVIT OF

_____ son of _____ resident of _____

I, the above named deponent do hereby solemnly affirm and declare that

the contents of the accompanying Petition for the modification of schedule chalked out with mutual understanding of both the parties and for grant of Generous Visitation Rights of Access in terms of an Annual Schedule of Visitation with his minor son namely _____aged above 05 years and 08 months at his home comprising of frequent overnight stays, filed under the Provisions of Item No. 5 of Schedule attached with the Family Courts Act 1964 to be read with the provisions of Section 12 of the Guardian & Wards Act 1890 are true and correct to the best of my knowledge and belief and nothing has been concealed there-from.

DEPONENT

VERIFICATION

It is verified on oath on this 02nd day of September 2023 at Lahore that the above mentioned contents of the affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

DEPONENT

iv)- BIRTHDAY APPLICATION

IN THE COURT OF MR. SHAFQAT ABBAS MAGHIANA, LEARNED GUARDIAN JUDGE No. III, LAHORE

IN RE

_____ Vs _____

APPLICATION FOR THE GRANT OF INTERIM CUSTODY OF THE MINOR SON _____ & MINOR DAUGHTER _____ FOR ONE DAY TO THE REAL FATHER I.E. APPLICANT, ON THE OCCASION OF BIRTHDAY OF APPLICANTON 21.12.2015

Respectfully **S**heweth:

That the brief facts leading to the filling of the instant application are stated hereto below:

1. **That** the above titled guardian petition is pending adjudication before this Honourable Court and the same is fixed for hearing on 07.04.2015.

2. **That** the minor is in the custody of her mother i.e. Respondent, since the initiation of the legal proceedings under section 25 of the Guardian & Wards Act, 1890, filed by the Applicant and the same is pending adjudication before this Honourable Court since 2013. It is pertinent to be noted here that an ad interim visitation schedule has been chalked out by this Court vide order dated 17.06.2015, whereby Applicant was allowed to meet his minor child twice a month for a time period of only two hours and that too within the Court premises.

3. **That** it is significant to be noted here that since the chalking out of the schedule of visitation, the minor has never been produced regularly for the purposes of meeting with the Petitioner on account of different excuses. It is further stated here with humility that earlier the Applicant has filed an application for the grant of interim physical custody of the minor on the occasion of spring vacations in as much as to avail the public holidays of 5th February & 23rd. March however, for want of non-submission of written reply coupled with other considerations, this Honourable Court failed to adjudicate them in time resulting in their becoming in fructuous. The copy of the same is available on the record of the file.

4. **That** the minor child of the Applicant is in her growing age and children in such age span needs frequent visitation with their father and interaction with their paternal side of the family to avoid estrangement. It is pertinent to be stated here that the worst possible thing that can happen in a child's life, apart from losing a parent, is to become a rolling ball in a parents' divorce and ensuing custody battles. Whilst the spouses and their families hurl accusations and try to get the better of each other, the trauma

being suffered by the child may sometimes be overshadowed by the volley of hurt and anger of the parties, for which law would provide no compensation.

5. **That** the Applicant / petitioner is the real father of the minor child named above and being a Father he has an inalienable right to ensure that her daughter should spend some pleasure time and moments with her paternal side of the family, it is in this backdrop the instant application is being filed. It is significant to be noted here that the birthdays of two of the real paternal cousins of the minor are expected on as the minor is in her growing age hence there is an urgent need to familiarize them with their paternal side of the family.

6. **That** the mother alone has no exclusive and absolute rights to enjoy and share the happy moments but the Applicant has also equal rights in respect of enjoying the companionship of the minors.

7. **That** it is pertinent to be noted here that the Petitioner has been allowed 36hours during Winter Vacations of the minors, however, the Respondent has taken them out of the jurisdiction of this Honourable Court without seeking any permission from this Court despite pendency of an application under the provisions of Section 26 of the Guardian & Wards Act 1890, in order to fail the Applicant to spend winter vacations as allowed by this Court with his Minor Children.

8. **That** it is further pertinent to be noted here that the Applicant apprehends estrangement with his minor child for lack of interaction with them, except that of a mere 2 hours visitation , twice in a month and that too within the Court Premises, which is often evaded in the past on the submission of fake medical certificates in as much as fabricated date sheets and also by taking the minors out of the territorial jurisdiction of this Honourable Court.

9. **That** the growing but minor children of the Applicant need frequent visitation with their father to avoid estrangement. That the worst possible thing that can happen in a child's life, apart from losing a parent, is to become a rolling ball in a parents' divorce and ensuing custody battles. Whilst the spouses and their families hurl accusations and try to get the better of each other, the trauma being suffered by the child may sometimes be overshadowed by the volley of hurt and anger of the parties, for which law would provide no compensation.

10. **That** it is further pertinent to be noted here that during the course of proceedings in the instant matter ,a Public Holiday on the eve of Kashmir Day is expected be observed on Friday , 05th February, it is pertinent to be noted here that there will be more than three public holidays after the occasion, starting from 05th February on Friday, than 06th and 7th will be Saturday &Sunday, respectively.

11. **That** the petitioner is a natural guardian being the real father of the minor children and according to law, the visitation rights vest with the Applicant/Respondent save in accordance with the provisions of Section 5 of the Schedule attached with the West Pakistan Muslim Family Courts Act, 1964.

12. **That** the responsibility of educating the minor rests with their Father. Therefore, in order to educate his minor children about the importance of Kashmir Day, and about the great sacrifices laid down by the Kashmiri People, it would be just and reasonable to allow the Minors to stay with the Applicant and his Paternal family during these three public holidays, in as much as to enjoy the celebrations of birthday of their father at his home.

13. **That** the petitioner undertakes to look after the minor to the best of his ability and resources and further ensures this court to return the custody of the minor on the date fixed by this Honourable Court in this regard.

14. **That** in case the present application is not accepted there is every probability that the petitioner as well as the minors may suffers and irreparable loss and injury for which there will be no compensation either given by the law or by this Honourable Court.

PRAYER

That it is, therefore, most humbly prayed that the instant application may very graciously be accepted in the best interests of the Welfare of the Minors, Principles of Natural Justice and Fair Play.

That the interim custody of the minor son namely Mohammad Bin Mohammad aged about 7 years, Minor Daughter _____ aged about 5 years and minor daughter _____ aged about 3 years may

very graciously be granted to the present Applicant i.e. father, on the occasion of Birthday of the applicant on 02.02.2016in as much as keeping in view of the Public Holiday on 05th February, a school off day on Saturday 06th February and a holiday on Sunday the 07th February, at the home for at least two days coupled with overnight stays with the Applicant, keeping in view of the fact that the Respondent has avoided to hand over the interim physical custody of the minors during winter vacation while removing them outside the territorial jurisdiction of this Honourable Court, without prior permission .

That it is further most humbly prayed that any other relief that this Honourable Court deems just and proper, in the peculiar circumstances of the instant matter, may also very kindly be allowed to the present Applicant.

APPLICANT

THROUGH

FAHAD AHMAD SIDDIQI
Advocate Supreme Court.

IN THE COURT OF MR. SHAFQAT ABBAS MAGHIANA, LEARNED GUARDIAN JUDGE No.III, LAHORE

In re: _____ Vs Mst. _____

(Guardian Petition)

APPLICATION FOR THE GRANT OF INTERIM CUSTODY OF THE MINOR SON _____ & MINOR DAUGHTER _____ FOR ONE DAY TO THE REAL FATHER I.E. APPLICANT, ON THE OCCASION OF BIRTHDAY OF APPLICANTON 21.12.2015

Respectfully Sheweth;

_____ son of _____ resident of _____

I the above named deponent do hereby solemnly affirm and declare that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Deponent

Verification

It is verified on oath on this 03rd day of November, 2015 at Lahore, that the above mentioned contents of the affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Deponent