



Safeguarding Children's Rights: Ensuring Hearing and Consent in Family Cases Post-Parental Divorce with Recommendations

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Abstract: *The lacunas and inadequacies present in the provisions with respect to a child's custody in Pakistan are featured in this research paper. It contends that flaws existing in the Guardian and Wards Act of 1890 provide the domestic courts to practice vast discretionary powers while entertaining the litigations related to custody of children, in this manner prompting contrary judgments. This paper contains the perusal of the provisions of the Act of 1890, and the judicial precedents, for the purpose of identifying loopholes and deficiencies. Besides, it also includes what other Islamic and Western developed countries give rights to the children in this matter. Some particular arrangements are proposed to harmonize existing fragmented practices. Other than this, some laws and remedies are proposed, which other developed countries of the world provide, to fill the lacunas and loopholes in the provisions of the Act of 1890 for the wellbeing of children.*

Key Words: Child Custody, Child welfare, Family Court, Muhammadan Law, Parental Divorce, Guardianship

Introduction

Custody is a significant issue influencing a child's welfare, after parental divorce. But there is a dearth of laws in Pakistan, relating to the rights of hearing and the consent of children in custody disputes. Hardly any rule is provided by the Act of 1890 with respect to rights of hearing and the consent of children in the disputes of custody and what remains is left to the prudence of the courts which infrequently rises to conflicting rulings. The disputants, in custody issues, need to depend on case laws to discover rules, because of the absence of definite provisions of law in the Act. This paper will contain the perusal of the provisions of the Act of 1890, and the judicial precedents, for the purpose of identifying loopholes and deficiencies. Besides, it will also include what other Islamic and Western developed countries give rights to children in this matter. Some particular arrangements will be proposed to harmonize existing fragmented practices. Other than this, some laws and remedies will be proposed, which other developed countries of the world provide, to fill the lacunas and loopholes in the

provisions of the Act of 1890 for the wellbeing of children.

The existing loopholes in Pakistan's laws pertaining to the rights of hearing and consent for children in family cases following parental divorce highlight a critical need for intervention by the parliament, legislative bodies, and the judiciary. This research paper focuses on parliamentary provisions, judicial precedents, and principles derived from both the Muhammad Law and Western legal systems. The resolution of family cases concerning children's custody after parental divorce falls under the Guardian and Wards Act of 1890, which, however, exhibits certain deficiencies. Notably, the Act fails to recognize the fundamental rights of children in terms of hearing and consent, and it lacks clarity in distinguishing custody from guardianship. Acknowledging the significance of these rights, a Pakistani citizen, Jahanzeb Khaan, emphasized the transformative potential of children when given the opportunity to voice their concerns. The interplay between custody and guardianship is crucial, with custody encompassing the nurturing and psychological well-

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being of a child, while guardianship involves the authority over legal transactions and agreements. Section 4 of the Act defines a guardian as an individual responsible for a minor's well-being and property. Despite this, custody is often granted to the mother, while guardianship over property and marriage typically resides with the father. The Act lacks provisions compelling the court to consider the child's views and consent, leading to situations where the child's input is often overlooked. The fundamental rights of hearing and consent are integral to a child's effective participation in family cases post-parental separation, particularly in disputes over minors' custody.

Child Custody

The custody of a minor in Pakistan is influenced by various laws such as the C.P.C., 1908, the Majority Act of 1875, High Court Rules and Orders, and the Sindh Court of Wards Act 1905. However, the primary focus of this study is on the Guardians and Wards Act of 1890, as it holds greater significance. "Guardianship" is equated with custody, and the lack of clear legislation necessitates reliance on judicial precedents. Custody is defined as "actual or virtual possession for protection" by the Apex Court of Khyber Pakhtunkhwa (Court T. P., Juma Khan Versus Gull Farosha, 1972). In the best interest of the minor, early years are typically spent with the mother, who has a priority right over other relatives, including the father. The assumption is based on the belief that living with the custodian, usually the mother, is in line with Sharia laws and the child's well-being, although this is subject to debate. Custodial rights may be revoked due to character flaws or under unusual circumstances, such as the mother's refusal to breastfeed. The court, referencing Qur'anic verses, concludes that custody can be revoked if the mother refuses breastfeeding, aiming to prevent overburdening and unequal treatment. This decision, however, contradicts basic norms of Muslim law. The age for terminating custody is determined by the customs of the parents' living area, challenging the fixed age of 7 or 9 set by legal experts. There is a need for legislation to govern custodial rights, preventing judges from making subjective decisions based on varying interpretations of Islamic law (Marchetti, 2008).

In our national law, the well-being of a minor is a top priority. The child's age, gender, and religion, as well as the guardian's actions and closeness to the child, are considered. If the child can make a choice, that is also taken into account. In any child-related case, the judge prioritizes the child's upbringing and parents' rights (Macdonald, 2015). The welfare of minors is

defined as their health, schooling, physical, cognitive, and psychological development, along with comfort, moral, and spiritual well-being. Even if it goes against Muhammadan law, the child's interests are prioritized. For instance, a newlywed mother was given custody based on the child's well-being, departing from Muhammadan laws. When there's a conflict, the best interests of the child prevail (Macdonald, 2015).

The global and domestic discourse on the rights of hearing and consent for children entails nuanced interpretations and operational challenges. Pakistan finds itself at a juncture where modifications to its legal system are imperative to acknowledge minors not merely as passive entities but as active subjects endowed with rights that demand deliberate exercise. The legal framework must transcend hypothetical notions, ensuring that minors are afforded genuine opportunities to participate in decision-making processes (Marchetti, 2008).

At the core of this premise lies the Guardian and Wards Act, of 1890, along with judicial precedents and fundamental guidelines from Muhammadan and Western Jurisprudence. The foundational principle asserts a child's right to articulate consent and viewpoints in court proceedings affecting their well-being. This extends beyond a mere right to expression, encompassing the child's entitlement to age-appropriate information about hearings and an understanding of potential implications arising from court rulings (Kruk, 2008).

The broad perspective of fundamental human rights introduces a triad comprising subjective protection, responsibilities to others, and the delineation of how the right should be exercised, safeguarded, maintained, and protected against infringement. While Western countries advocate for children's unrestricted right to voice their consent openly, subtle variations in interpretation and implementation across different jurisdictions pose potential challenges (Macdonald, 2015).

The Convention on the Rights of the Child provides a universal framework, yet the exercise of hearing and consent rights is contingent upon a child's level of comprehension (Caffrey, 2013). Custody laws in both Muhammadan and Pakistani legal systems exhibit disparities that contravene the principles outlined in the Convention. Notably, the child's consent and viewpoints should be considered, with age being an insufficient metric for comprehension. The gravity of considering a child's consent is contingent on the impact of a decision on their life (Buchanan, 2021).

In situations where conformity with a minor's consent is unattainable, it becomes imperative to

communicate the decision and articulate the reasons behind it. Guidance from parents, lawful caretakers, and the broader community must be attuned to a child's evolving capacity to exercise their rights. The nuances of maturity and comprehension among minors are crucial factors, and decision-makers must recognize that age alone may not adequately signify a child's level of understanding (Macdonald, 2015). Furthermore, the Pakistani government is urged to enact legislation mandating that all judgment-makers in administrative or judicial hearings involving children notify them about the procedures for their participation. This includes elucidating how their consents and viewpoints will be considered, the weight given to their inputs, and the mechanisms facilitating the exercise of this right. The detailed and comprehensive approach ensures a holistic consideration of the multifaceted aspects inherent in safeguarding the rights of children in legal proceedings (Kruk, 2008). G&W Courts often overlook the minors' preferences in residence decisions, focusing primarily on the financial capacity of parents/guardians to meet the child's needs. In my case (Guardian & Ward Application No. 1424/2020) *Mst. Hameeda Vs Mohammad Khalid*, the court did not inquire about the children's preference between their sane and sound-minded parents. Despite the children being 7 and 10 years old, the court did not seek their consent. Ideally, courts should prioritize the child's choice and consider which natural guardian provides a caring environment. In one instance, the court favoured the mother due to the father's unstable income and substance abuse issues, deeming it in the child's welfare (Mundalamo, 2016).

Child Welfare

The welfare of the child is of paramount consideration in any custody matter, and the court may take into account the child's wishes and preferences if the child is old enough to form an intelligent preference. In practice, the age at which a child's wishes are given consideration varies depending on the circumstances of the case and the discretion of the judge. In some cases, the court may consult with a child welfare officer or a psychologist to determine the child's best interests (Kruk, 2008).

There have been several notable cases in Pakistan where the court has taken the child's wishes into account in custody matters. For example, in the case of *Muhammad Iqbal v. Munawar Begum (PLD 1970 Lahore 129)*, the Lahore High Court held that the welfare of the child was of paramount importance, and the court must take into account the child's wishes if

the child was old enough to form an intelligent preference (Mundalamo, 2016).

Similarly, in the case of *Maryam Khatoon v. Fazal Elahi (PLD 1992 Karachi 207)*, the Sindh High Court held that the court must consider the wishes of the child in a custody matter, and the child's preference must be given due weight, particularly when the child is of a mature age (Buchanan, 2021). The judgments of the courts in Pakistan regarding minors' consent to reside with their parents have consistently emphasized the paramount importance of protecting the rights and welfare of minors. The court's decision regarding custody and residency arrangements is based on what it considers to be in the child's best interests, taking into account various factors such as the child's age, health, education, and the parents' ability to provide for the child's needs (Mundalamo, 2016).

The established legal principle is that the most important factor when determining custody is the well-being of the child, regardless of age, gender, or religion. This includes their moral, spiritual, and material welfare. The court will take into account the child's age, gender, and religion, as well as the proposed guardian's character and ability, and the child's preference if they are capable of expressing it when determining what is in the child's best interests. To achieve this objective, it is the responsibility of the court to prioritize the well-being of the child and ensure that the parents involved in the litigation are not using the child to settle personal scores, boost their egos, or fulfil their need for love and affection. Such actions should only be taken if they are in the best interest of the child. In custody cases, the Family Court should not get bogged down in technicalities but focus solely on the welfare of the child, which should be the primary concern (Buchanan, 2021).

Muhammadan Law

The Family Court's reasoning for granting custody of minor daughters to the father is not in line with established principles because the mother, who is the petitioner, has entered into a second marriage with a person who is not related to the minors within the prohibited degree. On the other hand, the father, who is caring and concerned for his daughters, has not remarried and has made significant efforts to obtain their custody. He filed a guardianship application and, when that failed, appealed to a higher court and succeeded (Scully-Hill, 2016).

Based on the above facts and circumstances, the mother loses her right to "Hizanat" (custody) when she enters into a second marriage and is not entitled to custody of the minor daughters under such

circumstances. This is supported by the case of *ShabanaNaz v Muhammad Saleem (2014 SCMR 343)*, which also acknowledges this principle (Mundalamo, 2016). Regarding the father's second marriage to another woman, it should be noted that this fact alone does not disqualify him from obtaining custody of his minor daughter. Furthermore, the mother herself has remarried another person, namely, Haji Syed Wali, with whom the minor has no relationship. Therefore, the father's remarriage should not be viewed as a disqualification for custody (Buchanan, 2021). According to Para 352 of Muhammadan Law, the mother is entitled to the custody (Hizanat) of her male child until he reaches the age of seven, and of her female child until she attains puberty. This right continues even if she is divorced by the father of the child unless she marries a second husband, in which case the custody belongs to the father (Scully-Hill, 2016). In addition, Para 354 of the Muhammadan Law specifies circumstances where a female, including the mother, may be disqualified from custody of the minor. One of these instances is if she marries a person not related to the child within the prohibited degree, such as a stranger. However, the right to custody revives upon the dissolution of the marriage by death or divorce (Kruk, 2008).

It is evident from a reading of Para 352 and Para 354 of the Muhammadan Law that the mother's right to custody (Hizanat) of her minor child ends if she marries a second husband who is not related to the child within the prohibited degree and is a stranger. In such a case, custody of the minor child belongs to the father. However, Pakistani courts have interpreted this as not an absolute rule but subject to exceptions where exceptional circumstances justify departure from the rule. In such cases, the court must consider the welfare of the minor child, and it is possible that even in the case of the mother's remarriage, the welfare of the minor may still be best served by being in her custody (Mundalamo, 2016).

In the current case, there are no grounds presented to disqualify respondent No.1 from having custody of his minor daughter NajlaBugti, especially since the mother has remarried a person who is a complete stranger to the minor and is not within a prohibited degree (Easteal, 2013). Furthermore, no exceptional circumstances have been argued to justify granting custody to the appellant. The case of *Mst. Nazir v. Hafiz Ghulam Mustafa etc. (1981 SCMR 200)* is cited in support of this position (Marchetti, 2008).

The court has the responsibility, under Article 199 of the Constitution of the Islamic Republic of Pakistan, to exercise parental jurisdiction and ensure the welfare of the minor is considered in all circumstances. This

includes preventing any physical or emotional harm that may come to the child due to the breakdown of the family ties between the parents. The cases of *MirjamAberrasLehdeaho v S.H.O., Police Station Chung, Lahore and others (2018 SCMR 427)* and *Mst. MadihaYounus v Imran Ahmed (2018 SCMR 1991)* provides guidance in this regard (Mundalamo, 2016).

Based on the analysis of the record and applicable law, the judge finds that the appellate court's judgment in the family appeal is well-reasoned and in accordance with the law. Therefore, the judge is hesitant to interfere while exercising constitutional jurisdiction, and the petition is dismissed. Regarding the visitation schedule of the minors with the petitioner, the judge agrees with the appellate court's decision that the mother should not be denied the right to access her daughters. The judge recognizes that the minors need the company and guidance of their father, as well as the love, affection, care, and attention of their mother. Therefore, the judge finds that the appellate court has reasonably chalked out a visitation/meeting schedule for the minors with the mother, based on precedents of the superior court (Mundalamo, 2016).

Parental Divorce

Matrimonial relationships in our society are experiencing a significant shift with a rising number of divorce cases, especially in the past two decades. This trend has resulted in bitter child custody battles, with middle and lower-middle-class couples approaching family courts for divorce. Unfortunately, children are often being used as pawns to seek vengeance by vindictive parents who inflict severe emotional and psychological abuse on them. This abuse seriously affects the child's development in the later part of life. Divorce has various implications for the individual, family, and society, but children of divorced couples are the most affected. Parents commonly use children as tools in this emotional game, and it is irresponsible parenting that emotionally scars children after separation. While parents move on with their lives and partners, children carry the trauma of being manipulated and emotionally torn apart throughout their lives. In the legal field, I have observed that many of these children suffer from personality disorders, substance abuse, criminal conduct, and antisocial traits due to their experiences (Vallabh, 2009).

The law in Pakistan that governs guardianship and custody of children is referred to as the Guardians and Wards Act of 1890. In this law, the welfare of the child is the primary consideration for guardian courts when granting custody to either parent, grandparents, or other relatives. This law is the primary means of obtaining custody of children. During the legal

proceedings for guardianship or custody in family or guardian courts, there are three parties involved: the custodial parent, the non-custodial parent, and the minor (Vallabh, 2009).

According to Verse No. 2, Ayat No. 233 of the Holy Quran, *no parent can be subjected to torture or harm for being the parent of a child*.

As translated by Mushin Ali, Verse No. 233 of Chapter 2 of the Holy Quran states that mothers should breastfeed their children for a period of two years if they desire to complete the full term of suckling. During this time, the father of the child is responsible for providing food and clothing for the mother on a reasonable basis. No person should be burdened with more than they can handle, and neither the mother nor the father should be treated unfairly because of their child (Vallabh, 2009). The father's heir is also responsible for fulfilling these obligations. If both parents mutually agree to wean the child before the two-year period, there is no sin on them. If the parents decide to hire a foster-feeding mother for their child, they must pay her according to their agreement on a reasonable basis. It is important to fear Allah and remember that Allah sees all that we do (Vallabh, 2009).

Parental child abuse is the most common form of child abuse, and it frequently occurs during divorce or separation proceedings. One parent may take the child away from the other parent's custody to gain an advantage in the pending or expected child custody proceedings, or out of fear of losing custody. This can include not returning the child after a visit, or even fleeing with the child to prevent access visits. These actions can have serious psychological effects on the child (Marchetti, 2008).

Children who are caught in the middle of custody battles suffer greatly, and it is one of the worst things that can happen to them aside from losing a parent. As the spouses and their families engage in a war of words and accusations, the trauma experienced by the child can be overlooked (Macdonald, 2017).

Cases involving custody and visitation issues of minors are not like ordinary cases, such as property disputes. They have their own unique dimensions and consequences, based on human emotions and sentiments. Therefore, the resolution and adjudication of these cases should be approached from a different perspective, which centres around the welfare of the child, while taking into account the natural feelings of the parents. If a parent means a great deal to a child, then the child may also mean the world to the parent (Knight, 2019).

In situations where there is a disagreement between parents, it is important to consider the emotions and feelings of all parties involved, including the mother, father, child, and sometimes siblings of the minor. The decision should take into account not only the personal law applicable to the minor but also the rules about the minor's welfare, which are of paramount importance (Vallabh, 2009).

In the context of the visitation schedule, it is essential that neither parent is completely deprived of custody of their child, as both parents have the right to interact and provide love and affection to their child. This holds true for both the mother and the father. The child is the most important stakeholder in this scenario, and it is natural for them to receive love and affection from both parents. Even if the parents have separated due to their discord and differences, the child should not be deprived of the love and support they could receive from either parent. It is not appropriate for either parent to claim exclusive possession of the child as if they were disputing property rights (Kop, 2023).

Typically, a family or custody case under the Guardian & Wards Act can last for about three to five years in the guardian courts. During this prolonged duration, the lack of interaction between non-custodial parents and their children can cause the parent-child bond to weaken and even break. Sadly, it is common for the custodial parent to manipulate the minors against the non-custodial parent. Furthermore, the guardian courts often contribute to the vengeful motives of the custodial parent by not granting a reasonable visitation schedule between the non-custodial parent and their children. As a result, non-custodial parents initially fight for justice, but eventually give up after becoming disillusioned. They may remarry and start a new family, ultimately leading to the minors losing contact with one of their parents forever (Knight, 2019). It is important to keep in mind that family matters should not be decided based solely on procedural laws or technicalities. The welfare of the child should be the primary concern of the court, and they should act in a loco parentis position. There are many factors that need to be taken into consideration by the guardian court when deciding on custody and visitation matters. However, in many cases pending in guardian courts in Pakistan, non-custodial parents have been subjected to abuse and victimization due to procedural technicalities during divorce and custody proceedings. This goes against the principle of acting in the best interests of the child, and the courts should strive to protect the rights of all parties involved in the case. Despite waiting for months to see their own children, non-custodial parents in Pakistan often receive a visitation schedule that is severely limited,

sometimes allowing for only one visit per month lasting two hours within the court premises. This visitation order has become a precedent that has been widely followed by guardian courts in Pakistan for several decades. It is concerning that such a limited and infrequent visitation schedule is considered appropriate for non-custodial parents to maintain their relationship with their children (Marchetti, 2008). Furthermore, custodial parents may abuse this visitation order by presenting a fake medical certificate to avoid allowing the non-custodial parent to see their children. This leaves the non-custodial parent with no other option but to wait for the next scheduled visitation (Parkinson & Cashmore, 2008). Unfortunately, the guardian courts tend to be casual towards these excuses presented by custodial parents, exacerbating the issue for non-custodial parents seeking to maintain their relationship with their children (Macdonald, 2017). It is observed that in many cases, flawed court systems are being used to seek revenge against the non-custodial parent, who is usually the father, by preventing him from meeting his children. This is often achieved through the use of delaying tactics, such as filing frivolous applications and appeals and challenging orders in higher courts. As a result, thousands of children are kept away from their non-custodial parents for extended periods, sometimes even for years (Scully-Hill, 2016). The problem is that the guardian courts fail to recognize that child custody cases are vastly different from routine civil cases. Time is of the essence in such cases, and justice delayed is tantamount to justice denied. The minds of children are incredibly malleable, and if they are kept away from one parent for prolonged periods, they may start to forget that parent and even harbour negative feelings towards them. This phenomenon is known as Parental Alienation Syndrome or PAS, as identified by psychiatrists (Knight, 2019).

Unfortunately, the guardian courts in Pakistan have been unwilling to acknowledge the seriousness of the situation, and they continue to follow a visitation schedule that limits the non-custodial parent's access to their children to as little as two hours per month, often within the confines of the court premises (Buchanan, 2021). This visitation schedule has become a precedent in guardian courts throughout the country. What's worse, even this limited schedule can be easily circumvented by the custodial parent presenting a fake medical certificate, which is usually accepted by the courts without much scrutiny. The non-custodial parent is then left with no choice but to wait for the next scheduled meeting (Macdonald, 2017).

Overall, the courts in Pakistan need to realize the gravity of the situation and prioritize the welfare of the

children over procedural technicalities. They need to act in a loco parentis position and consider all relevant factors when deciding on custody matters. Failure to do so will only result in continued victimization and abuse of non-custodial parents, as well as the irreparable harm caused to innocent children who are caught in the middle of these bitter disputes (Kop, 2023). The absence of clear guidelines in the Guardian & Wards Act 1890 pertaining to the frequency and duration of visitation schedules for minors is quite remarkable. As the primary principle of the Act, the "WELFARE OF THE MINOR" should be the foremost consideration when determining an appropriate schedule. Given the Guardian Judge's role as a surrogate parent, this principle should hold even greater significance. Despite this, some guardian courts have implemented severely limited visitation schedules in an attempt to avoid complications and challenges that may arise during more frequent visitation meetings (Vallabh, 2009). Such an approach, however, is diametrically opposed to the very essence of the Guardian and Wards Act, which seeks to protect and promote the welfare of minors. Separating a child from a parent, particularly in situations where the welfare of the child is at stake, cannot be justified as a means of avoiding administrative issues. Therefore, courts must prioritize the welfare of the child above all else in determining visitation schedules, regardless of any potential administrative obstacles (Scully-Hill, 2016). It is important to recognize that non-custodial parents can be divided into two distinct categories. The first category includes parents who have committed harmful acts against their children and therefore do not deserve custody or visitation rights (Alminde, 2024). The second category includes good and loving parents who, due to a divorce or separation from their spouse, are unable to live with their child or children but still maintain a strong desire to maintain a meaningful relationship with them. In fact, statistics demonstrate that 99% of non-custodial parents fall into the latter category and therefore deserve reasonable and regular visitation rights with their children. It is essential to uphold the rights of these parents and prioritize the best interests of the child in all custody and visitation decisions (Parkinson & Cashmore, 2008). In many cases, non-custodial parents have to endure a long and frustrating wait before their first court-approved meeting with their children. One common justification for severely limiting visitation schedules for non-custodial parents in child custody cases is the fear of illegal snatching of minors by the non-custodial parent, taking them out of the court's jurisdiction. However, this idea of running away with minors has evolved over time, largely due to the frustration of non-custodial parents who are

unable to spend time with their children (Scully-Hill, 2016). In reality, running away with minors from the court's jurisdiction is not an easy feat. The non-custodial parent must leave behind their social circle, home, business, and much more in order to disappear with their children. They must live like a fugitive, constantly fearing being caught by the authorities. Running away is usually considered a last resort when the judicial system fails to provide a timely and fair resolution to custody disputes (Macdonald, 2017).

Guardianship

If the guardian court were to grant a reasonable visitation schedule to both parents, the non-custodial parent would not be tempted to take the law into their own hands. By denying access to the non-custodial parent, the court not only contributes to the frustration that leads to such desperate actions but also harms the child's welfare by depriving them of a meaningful relationship with both parents (Jaffe et al., 2014). The non-custodial parent's willingness to go to such extreme lengths is a clear indication of the need for reform in the system. If both parents were granted reasonable visitation rights, they would have a chance to spend time with their children and build stronger relationships, reducing the likelihood of drastic measures (Scully-Hill, 2016).

Moreover, keeping minors away from non-custodial parents further aggravates the already adverse relationship between custodial and non-custodial parents. In most separated/divorced couples, after many years of litigation, they forget the actual reasons for separation and just fight over the visitation rights of children. This leads to a hostile environment between the parties, which could have been avoided if the court had not supported the element of revenge through children. Had the court taken a more impartial stance, matters could have cooled down between the parties with the passage of time (Parkinson & Cashmore, 2008).

In order to effectively address guardianship matters, the courts must act with quasi-parental jurisdiction and make the welfare of the minor their primary consideration. The Guardian and Wards Act, of 1890 provides the necessary legal framework for such matters and must be applied in a way that promotes the best interests of the child. Both custodial and non-custodial parents have the right to seek visitation with their children, and the non-custodial parent (often the father) should be afforded the opportunity to develop a loving bond with their child (Kop, 2023).

To achieve this goal, the guardian court should strive to create a homely and friendly environment for the non-custodial parent to have reasonable visitation with their child. Holding meetings in a courtroom or a separate room within the court premises is not conducive to this purpose, as it lacks the necessary facilities and arrangements to create a homely environment. A visitation schedule of only two hours once a month is also not sufficient to establish a meaningful relationship between the non-custodial parent and their child, and may not be in the best interests of the child (Vallabh, 2009). It is important for the courts to facilitate a reasonable visitation schedule that allows the non-custodial parent to spend adequate time with their child, while also taking into account any potential safety concerns. Delaying or denying visitation to the non-custodial parent can further exacerbate already strained relationships between the parents and may lead to drastic actions, such as the non-custodial parent attempting to take the child out of the court's jurisdiction (Macdonald, 2017). Therefore, it is imperative that the courts prioritize the welfare of the child and provide a fair and reasonable visitation schedule to both custodial and non-custodial parents, taking into account the unique circumstances of each case. This will not only help establish a healthy relationship between the parent and child but also minimize the potential for further conflict between the parents (Jaffe et al., 2014).

Conclusion

To conclude, prioritizing the child's welfare is paramount in custody cases. The outdated Guardian and Wards Act of 1890 in Pakistan lacks relevance to current societal needs. A lack of clear guidelines leads to inconsistent rulings, emphasizing the need for comprehensive legislation to streamline decision-making. Recognizing both parents' rights is crucial; non-custodial parents, typically fathers, should be granted reasonable visitation. Courts' hesitancy to allow visitation can negatively impact the child's well-being. To address this, guardian courts should preferentially conduct meetings between minors and non-custodial parents at the latter's premises, fostering a healthy relationship. Ultimately, the focus should be on safeguarding the child's well-being while respecting the rights of both parents.

Recommendations

- Children are often seen as tools rather than active participants in legal decisions. Treating them as equals from the start is crucial for fair proceedings.

- Legal representation, such as a lawyer or welfare worker, is vital to protect children's rights in legal processes.
- The participation principle should be individually assessed, considering factors like age, maturity, and cultural background for each child.
- Recognizing a child's right to participate in legal proceedings is essential for building a just and empowering legal system.
- Updating The Guardian and Wards Act 1890 to consider minors' perspectives is crucial for a fair legal system.
- Judges must carefully decide whether to hear a child, prioritizing their best interests and providing transparent reasons for their decisions.
- Eliminating age-based differences and considering mental maturity is essential for fair opportunities in legal proceedings involving children.
- Judges must provide clear and comprehensive reasoning, especially when refusing a minor's hearing or going against a child's wishes.
- Specialized judges or multidisciplinary groups can handle cases involving children, ensuring their unique needs are addressed.
- The right to dialogue, legal representation, and information accessibility are crucial for meaningful child participation in legal proceedings.
- Children should receive clear and age-appropriate information about legal issues to make informed decisions in legal proceedings.
- Individuals offering facts and counselling to children in legal proceedings must possess psychoanalytical or instructional skills and be unbiased.

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